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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
No. 2012-212062

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No.: 2010-CP-40-5460

Trumaine V. Moorner,

Respondent,

v.

Norfolk Southern Railway Company,

Appellant.

RECORD ON APPEAL

Vol. I of IV

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SC Court of Appeals

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IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2008-CP-38-24

ORDER

Plaintiff,

V.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

This matter comes before the Court for a hearing on the Defendant's motion for summary judgment. The Plaintiff has withdrawn Count I from the Complaint.

The Court finds there exists genuine issues of material fact for the jury to determine as to Count II and Count III of the Complaint, and for this reason the Defendant's motion is denied. It is therefore,

Ordered that the Defendant's motion for summary judgment is denied.

Handwritten signature

Edgar W. Dickson
Resident Judge
Second Judicial Circuit

Orangeburg, South Carolina
July 7, 2010

100

FORM 4

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

JUDGMENT IN A CIVIL CASE

10 CP40 5460

CASE NO. 2008-CP-40-0024

Norfolk Southern Railway

Trumaine V. Moorer

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Mistrial

Dated at Columbia, South Carolina, this 24 day of September, 20 11.

W/B
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 4th day of October, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

John Parker

Paul Tecklenburg

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

CLERK OF COURT

SCANNED

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP405460

Trumaine Moorer

Norfolk Southern Railway

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Jury awarded \$1,100,000.00, Plaintiff was 40% negligent and defendant was 60% negligent. Plaintiff will receive \$660,000.00

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
Trumaine Moorer	Norfolk Southern Railway	\$ 660,000.00
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge NB

Judge Code 2161

Date 03/12/2012

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of March, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. McBride

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4005460

Trumaine V. Moorner

Norfolk Southern Railway Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (vol. No suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant's Motion for JNOV and Alternative Motion for New Trial is respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge h/p Judge Code 2161 Date 03/21/2012

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Mar, 20 11 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Mar, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdyClerk of Court Heather W. McBride

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

FORM 4

AMENDED JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP405460

Trumaine Moorer

Norfolk Southern Railway

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Defendant's Motion to Amend the Judgment in this case is granted. Judgment is entered as follows: Jury awarded \$1,100,000.00. Plaintiff was 40% negligent and Defendant was 60% negligent. Plaintiff will receive \$660,000.00. No post Judgment interest is to accrue on \$17,388.30 of the Judgment. Additionally, Norfolk Southern is to receive tax credit for all taxes withheld on behalf of the Plaintiff upon satisfaction of the Judgment.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

VB

Judge Code 2161

Date 03/12/2012

For Clerk of Court Office Use Only

This judgment was entered on the 9 day of May, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

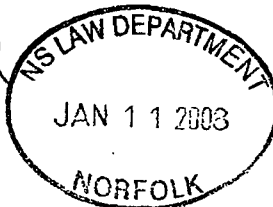
Court Reporter Debbie McCurdy

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. McBride

Received via Certified Mail
to Roger A. Petersen
Roger A. Petersen
1-11-08



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

CIVIL ACTION NO.: 2008-CP-38-

TRUMAINE V. MOORER,)

Plaintiff,)
v.)

NORFOLK SOUTHERN RAILWAY)
COMPANY,)

Defendant.)

SUMMONS
(Federal Employers Liability Act)
(Violation of Railroad Law)
(Jury Action Demanded)

TO THE DEFENDANT ABOVE NAMED:

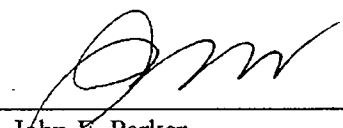
Qm
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 303 First Street, East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

ATTEST: TRUE COPY
John A. Moss
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

John A. Moss
MATTHEWS STEEL & MOSS, LLP
15 Piedmont Center, Suite 1560
3575 Piedmont Road, NE
Atlanta, Georgia 30305
Telephone: (404) 264-1292
Fax: (404) 264-0161

-And-

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

BY: 

John E. Parker
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Telephone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

December 31, 2007
Hampton, South Carolina

Received via Cert Mail
to Roger A. Petersen

JAN 11 2008

NORFOLK

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

CIVIL ACTION NO.: 2008-CP-38-_____

TRUMAINE V. MOORER,)

Plaintiff,)

v.)

NORFOLK SOUTHERN RAILWAY)
COMPANY,)

Defendant.)

COMPLAINT

(Federal Employers Liability Act)

(Violation of Railroad Law)

(Jury Action Demanded)

2008 JAN -7 PM 4:39

The Plaintiff, Trumaine V. Moorner, Plaintiff, brings this Complaint against Defendant, Norfolk Southern Railway Company (NSRC), stating as follows:

NATURE OF THE CASE - PARTIES

1. Plaintiff's cause of action is brought pursuant to the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq.
2. At all times to the Complaint, Defendant NSRC was Plaintiff's employer and a common carrier by rail engaged in interstate commerce.
3. The Defendant is a resident of Orangeburg County and venue is proper in Orangeburg County because the cause of action arose in Orangeburg County.

COUNT I - MAY 9, 2007 INCIDENT

4. On or about May 9, 2007, Plaintiff was working for NSRC as a conductor on job P28 in Orangeburg, South Carolina.

5. Job P28 is a physically demanding job for NSRC conductors due to the volume of work, especially in the heat, and it was historically manned by two train crew members.

ATTEST: TRUE COPY

Seal of Court
ORANGEBURG COUNTY, SOUTH CAROLINA

6. On May 9, 2007, however, Plaintiff worked it alone at the direction of NSRC and performed all the manual labor functions of a conductor in the hot weather.
7. Plaintiff rode the engine when he was not walking and working on the ground, but the Engine did not provide meaningful relief from the heat.
8. During the work shift, Plaintiff was overcome by effects of exertion and heat exposure, and sustained a serious heat-related injury.
9. Defendant negligently failed to provide Plaintiff with a reasonably safe place to work as required by 45 U.S.C. § 51, et seq.
10. Defendant failed to staff job P28 with sufficient manpower and allowed Plaintiff to be exposed to unreasonable temperatures in the performance of his job.
11. Defendant knew, or in the exercise of reasonable care should have known, that the amount of work that was required of Plaintiff on P28, combined with the temperatures on and off the locomotive, created an unsafe workplace for Plaintiff.
12. Despite this knowledge, Defendant assigned Plaintiff to work under the conditions described above and violated the Federal Employers' Liability Act.
13. As a result of the Defendant's negligence, as set forth above, Plaintiff was injured, suffered pain and suffering, incurred medical expenses and lost earnings.

COUNT II - MAY 31, 2007 INCIDENT

14. Plaintiff realleges paragraphs 1-13 as if each was set forth in its entirety.
15. Following the incident detailed above, Plaintiff returned to work at NSRC as a conductor following medical approval from the Norfolk Southern Medical Department.
16. After Plaintiff's first heat-related injury Norfolk Southern knew that he was more susceptible to have another heat-related injury if exposed to heat.
17. On or about May 31, 2007 Plaintiff was again working in Orangeburg, South Carolina on

job P28 under conditions similar to those described in Count I above.

18. At this time, Defendant knew of Plaintiff's prior heat event, but took no steps to provide him with additional manpower or a way to cool his body temperature following heat exposure at work.

19. As a direct and proximate result of the Defendant's failure to provide Plaintiff with a reasonably safe place to work and in violation of the Federal Employers' Liability Act, as set forth above, Plaintiff had another heat injury that has caused NSRC to disqualify him from his job as a conductor, has caused him to incur medical expenses and lost wages, and has caused him to experience pain and suffering. Plaintiff will incur additional future medical expenses and future loss of earnings and benefits as a result of this injury.

COUNT III

20. Plaintiff realleges paragraphs 1-19 as if each was set forth in its entirety.

21. On May 31, 2007 the engineer on job P28 called the NSRC terminal superintendent in Columbia, South Carolina from Orangeburg, South Carolina to inform the terminal superintendent that Plaintiff was cramping and did not think he could ride the train from Orangeburg, South Carolina to the terminal at Columbia, South Carolina.

22. The terminal superintendent told the engineer to bring Plaintiff on the train to Columbia, South Carolina, despite this information.

23. During the trip, the engineer continued to call the terminal superintendent and repeated Mr. Moorers' concern to the terminal superintendent and provide updates on Plaintiff's condition.

24. Despite these calls, the engineer was instructed to come all the way to Columbia with Mr. Moorers, even though the terminal superintendent knew that Plaintiff was injured and that he

would continue to be exposed to extreme heat on the forty-five minute to one hour trip to the terminal.

25. Once the train arrived in Columbia, Mr. Moorer could not exit the engine on his own power, and paramedics were not on the scene.

26. After a period of time, the paramedics finally arrived, rendered emergency aid, and helped Plaintiff from the engine.

27. The inaction of the terminal superintendent constitutes a violation of the Federal Employers' Liability Act.

One
x
28. The inaction of the terminal superintendent, when armed with sufficient information to send paramedics to Orangeburg or to stop the engine on the way to Columbia, allowed Plaintiff to continue to be exposed to extreme heat on the engine and aggravated his heat-related injuries.

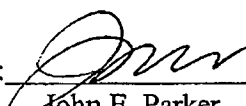
WHEREFORE Plaintiff prays the following:

- (a) That Plaintiff have a trial by jury; and
- (b) That judgment be entered in Plaintiff's favor for compensatory damages, including unpaid medical expenses, past lost wages, future lost wages, future medical expenses, diminished earning power, lost fringe benefits, and past and future pain and suffering, mental and physical, in such amounts that a jury shall determine are just and reasonable under the circumstances.

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-And-

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ATTORNEYS FOR PLAINTIFF

December 31, 2007
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CASE NO.: 2008-CP-38-24

TRUMAINE V. MOORER,
Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY,
Defendant.

ANSWER TO COMPLAINT

ATTEST: TRUE COPY
[Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

TO: PLAINTIFF, TRUMAINE V. MOORER, and his attorneys, JOHN E. PARKER,
ESQUIRE, and JOHN A. MOSS, ESQUIRE

The Defendant, Norfolk Southern Railway Company ("Norfolk Southern"), answering the Complaint of the Plaintiff, alleges and states as follows:

1. Each and every allegation of the Complaint not specifically admitted is expressly denied.
2. The allegations of paragraph 1 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, said allegations are denied.
3. The allegations of paragraph 2 of the Complaint are admitted.
4. The allegations of paragraph 3 of the Complaint are denied.
5. Defendant admits so much of the allegations of paragraph 4 of the Complaint that state that on or about May 9, 2007, Plaintiff was working job P28 as conductor which transitted between Columbia and Orangeburg, South Carolina. As to the remaining allegations, Defendant denies same.
6. Defendant admits so much of the allegations of paragraph 5 of the Complaint that state that the occupation of conductor has certain physical demands as determined by the U.S.

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CLERK OF COURT
ORANGEBURG, SC

Department of Labor, and that job P28 was once manned by more train crew members prior to union contract negotiations that reduced train crew size. As to the remaining allegations, Defendant denies same.

7. Defendant admits so much of the allegations of paragraph 6 of the Complaint that state that on May 9, 2007, Plaintiff worked with the engineer on job P28 at the direction of his employer, Norfolk Southern, and performed manual labor functions. As to the remaining allegations, Defendant denies same.

8. Defendant denies the allegations of paragraph 7 of the Complaint.

9. Defendant is without sufficient knowledge and information as to the allegations of paragraph 8 of the Complaint and, therefore, denies same.

10. Defendant denies the allegations of paragraph 9, 10, 11, 12, and 13 of the Complaint.

11. In response to the allegations of paragraph 14 of the Complaint, Defendant realleges and reiterates paragraph 1 through 10 hereinabove.

12. Defendant admits so much of the allegations of paragraph 15 of the Complaint that state that Plaintiff's physician released Plaintiff for work at Norfolk Southern as a conductor, and the release was received and accepted by the Medical Department. As to the remaining allegations of the Complaint, Defendant denies same.

13. Defendant denies the allegations of paragraphs 16, 17, 18 and 19 of the Complaint.

14. In response to the allegations of paragraph 20 of the Complaint, Defendant realleges and reiterates paragraphs 1 through 13 hereinabove.

15. Defendant admits so much of the allegations of paragraph 21 of the Complaint that stated that the engineer informed the Norfolk Southern terminal superintendent of cramps suffered by the Plaintiff. As to the remaining allegations of paragraph 21 of the Complaint, Defendant denies same.

16. Defendant denies the allegations of paragraph 22 of the Complaint.

17. Defendant admits so much of the allegations of paragraph 23 of the Complaint that state that the engineer informed the terminal superintendent of updates on Plaintiff's condition. The remaining allegations are denied.

18. Defendant denies the allegations of paragraph 24 of the Complaint.

19. Defendant admits so much of the allegations of paragraph 25 of the Complaint that state that Mr. Moorer stated on May 31, 2007, that he could not exit the engine on his own power, and that paramedics were not on the scene. As to the remaining allegations of paragraph 25 of the Complaint, Defendant denies same.

20. Defendant admits the allegations of paragraph 26 of the Complaint.

21. Defendant denies the allegations of paragraphs 27 and 28 of the Complaint.

FOR A SECOND DEFENSE

22. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

23. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

24. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

25. The injuries and damages complained of, if any, by the Plaintiff, were not due to any negligence, fault or want of due care on the part of the Defendant, or its failure to provide Plaintiff with adequate and safe equipment or a safe place to work; rather, Plaintiff's alleged injuries and damages are solely due to and caused by the negligence, fault and or want of due care on the part of the Plaintiff. In the alternative, however, if any liability is found against the Defendant, then the Plaintiff is guilty of contributory negligence which was the proximate cause of his injuries, in such particulars as will be shown at trial, which contributory negligence is pleaded in mitigation or embar to the injuries or damages complained of by the Plaintiff.

FOR A FOURTH DEFENSE

26. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

27. If the Plaintiff was required to use any tools and/or equipment or to perform any procedures that continue to cause or contribute to any injury, which is denied, the Plaintiff misused any such tools and/or equipment and/or failed to properly and carefully perform such procedures, which cause or contributed to produce the injuries alleged.

FOR A FIFTH DEFENSE

28. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

29. The damages alleged by the Plaintiff were the result of intervening and/or superseding causes that were not related to any acts or omissions of the Defendant. The Defendant may rely upon all properly, provable defenses, including but not limited to, any other affirmative defenses based on facts not yet discovered that will act in mitigation of or embar to

Plaintiff's claims, and the Defendant reserves its right to amend its Answer and to amend and allege additional affirmative defenses of which it becomes aware up to and including the time of trial.

FOR A SIXTH DEFENSE

30. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

31. Orangeburg County is an improper venue for the subject action, and the same should be dismissed and/or transferred to an appropriate venue pursuant to Rule 12(b)(3), SCRPC.

FOR A SEVENTH DEFENSE

32. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

33. Plaintiff's claims are superseded, precluded, or preempted by the applicable federal law and regulations, including, without limitation, the Federal Railroad Safety Act and regulations issued thereunder.

FOR AN EIGHTH DEFENSE

34. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

35. Defendant avers that the Plaintiff's alleged injuries, if any, were caused by preexisting conditions, or other conditions or factors.

FOR A NINTH DEFENSE

36. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

37. Defendant denies that any of its actions or omissions or the acts or omissions of its agents and employees proximately caused Plaintiff's alleged injuries, if any.

FOR A TENTH DEFENSE

38. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

39. In the alternative, without waiving its denial of liability to Plaintiff, Defendant avers that it is entitled to apportionment of any awarded damages against it among other parties and other causes which contributed to Plaintiff's alleged injuries and damages.

FOR AN ELEVENTH DEFENSE

40. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

41. Plaintiff has failed to mitigate damages.

FOR A TWELFTH DEFENSE

42. Each and every defense or allegation set forth hereinabove is realleged and repeated here verbatim.

43. To the extent that Plaintiff has entered into settlements or received funds for the alleged injuries and damages made the basis of this action with other persons, corporations,

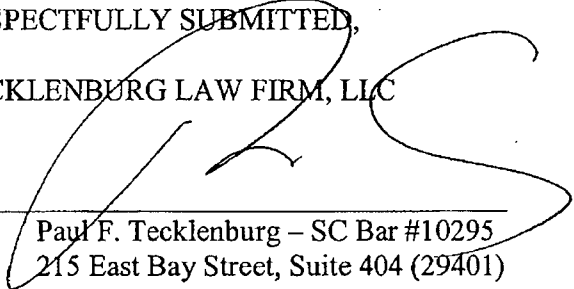
entities or firms which are not parties to this action, any damages recoverable by Plaintiff in this action should be offset or reduced by the total amount of such settlements.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the same be dismissed with costs assessed against the Plaintiff.

RESPECTFULLY SUBMITTED,

TECKLENBURG LAW FIRM, LLC

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Charleston, South Carolina

March 11, 2008

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No.: 2010-CP-40-5460

Trumaine V. Moorer.....Respondent,
v.
Norfolk Southern Railway Company.....Appellant.

NOTICE OF APPEAL

Norfolk Southern Railway Company appeals the Order of The Honorable DeAndrea G. Benjamin dated March 21, 2012, and filed March 29, 2012, and the corresponding judgment filed March 19, 2012. Appellant received written notice of the entry of the Order denying Defendant's Motion for JNOV and Alternative Motion for New Trial on April 11, 2012.

May 11, 2012

TECKLENBURG & JENKINS, LLC

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2010-CP-40-05460

3
4 TRUMAINE V. MOORER,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 NORFOLK SOUTHERN RAILWAY)
8 COMPANY,)

9 Defendant.)

March 5-9, 2012
Columbia, South Carolina

10
11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
15 jury.

16
17 A P P E A R A N C E S:

18 JOHN A. MOSS, ESQ.
19 JOHN E. PARKER, ESQ.
Attorneys for the Plaintiff

20 PAUL F. TECKLENBURG, ESQ.
21 RIVERS T. JENKINS, III, ESQ.
Attorneys for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

MARCH 5, 2012

1
2 THE COURT: They have a jury list ready for
3 us. I know you all have a motion to change venue,
4 and I'll be glad to hear that. And then -- but we
5 do have a list. Then we'll be ready to pick a jury
6 depending on how I rule on that, hopefully this
7 morning. If I deny the motion -- if I grant the
8 motion we won't be picking a jury. But I'll be
9 glad to hear you all's motions, and then I think --
10 is there any -- there may be a motion in limine
11 from the Plaintiff?

12 MR. MOSS: Yes, Your Honor. Hello again.
13 John Moss. With me is Johnny Parker. Just -- I
14 think the only one I probably should bring up is
15 the same one we argued before with respect to the
16 muscle biopsy testing and request of the Defendant
17 to draw blood from Mr. Moorner.

18 You'll recall that the Defendant wanted to get
19 into evidence that there could be some muscle --
20 invasive muscle biopsy testing to determine whether
21 or not the rhabdomyolysis of Mr. Moorner might be
22 genetically linked or in some way constitutional
23 for him as opposed to caused by heat.

24 And in the first trial my motion in limine was
25 to keep out evidence or comments from the

1 witnesses, and doctors specifically, that muscle
2 biopsy testing is an option that he could engage in
3 if he wanted to get into evidence that he had some
4 genetic disposition. And the Court ruled the
5 doctors could not get into that testimony.

6 They also wanted an IME to take some of Mr.
7 Moorer's blood invasively, which he declined
8 rightfully under the rules. And the Court also
9 ruled in two parts: One, no muscle biopsy testing
10 evidence or testimony; two, no evidence with
11 respect to involuntary -- having involuntarily
12 having his blood drawn by an IME. That was the
13 only motion we had.

14 THE COURT: Okay. And then I believe
15 Mr. Tecklenburg had -- you filed the motions and
16 rulings. Unless you want to argue again, I'm
17 thinking the rules are going to probably be the
18 same on all motions at this point.

19 MR. TECKLENBURG: Your Honor, we did have a
20 couple of motions in limine.

21 THE COURT: Oh, you did?

22 MR. TECKLENBURG: Yes. A lot of it is just
23 sort of a work-up of the last trial. So I'll need
24 to think about what specifically I want to -- if I
25 need to reargue anything. And if you are prepared

1 THE COURT: He is shaking his head yes.

2 MR. MOSS: Ten or more would be fine with us.

3 MR. TECKLENBURG: I don't think it came up.

4 THE COURT: I think y'all agreed on that last
5 time.

6 (Pause.)

7 MR. TECKLENBURG: Your Honor, one thing I do
8 want to point out on in limine. I think for the
9 record it probably is important on, at least on my
10 in limine motions, that we identify what the prior
11 ruling was in the transcript and adopt it. So if
12 you are going to make the same ruling, it is -- I
13 think there has got to be some record so she can
14 mark the prior transcript and we can refer to your
15 prior rulings. And I know it is a little bit
16 tedious, but in my memorandum I did actually refer
17 to where I believe the rulings were on the various
18 issues.

19 And in any event, I don't want to belabor all
20 the issues, but I also want to make a proper
21 record.

22 Thank you.

23 THE COURT: Have you gone through the
24 transcript, Mr. Moss, to determine --

25 MR. TECKLENBURG: I am going to need some

1 time.

2 THE COURT: I don't want to -- as you all
3 recall last time, it was scheduled for a week-long
4 trial, but it was definitely more than a week. And
5 so I would like to get it moving as fast as
6 possible. And that might be something you can just
7 supplement the record with later. What do you
8 think?

9 MR. MOSS: Well, the proposal that we don't
10 even really argue motions, that we simply in a pro
11 forma way kind of state what the motion is and
12 adopt the prior ruling.

13 Is that kind of what your suggestion is?

14 MR. TECKLENBURG: That's correct. And prior
15 stipulations. You will recall, Your Honor, we
16 stipulated to about two-thirds of these motions,
17 and I'm hopeful we can stipulate to most of them
18 again.

19 It sounds like Mr. Moss is -- well, I'm not
20 going to --

21 MR. MOSS: You're right, I am agreeing. I am
22 agreeing that if we basically -- I agree that if we
23 have pro forma short summary of what the motion is,
24 our position with reference to the prior ruling, we
25 can very efficiently run through almost everything.

1 I have got the transcript here that I can go to as
2 well.

3 I do think we have one or two substantive in
4 limine motions that we may want to reargue, one
5 that I want to; but, otherwise, I will simply
6 agree, as he is suggesting, and we can move right
7 through it.

8 THE COURT: All right. Well, she has the
9 list. So we can go ahead and get started.

10 Are they on the way up?

11 MR. MOSS: Are they going to be seated in any
12 particular order?

13 THE COURT: They are going to be right behind
14 you.

15 MR. MOSS: No, I mean, is one going to be
16 here?

17 THE COURT: What I can do is to have each
18 juror stand up and give their jury number so you
19 will know who they are.

20 MR. MOSS: That would be great.

21 THE COURT: Okay. I mean, because you don't
22 necessarily know who is who. So I can have the
23 jurors stand up when they first come in and
24 introduce themselves and give their juror number.

25 THE COURT: Are y'all ready to bring them up?

1 ready.

2 THE COURT: Yes, sir, Mr. Moss, we'll start
3 with you on your motions in limine; or do you want
4 me to start with Mr. Tecklenburg?

5 MR. MOSS: Well, I think I have already said
6 my motion. And I don't have reference to the page
7 number, but I will tell the Court I can find it
8 quickly if I need to.

9 THE COURT: Okay.

10 MR. MOSS: The motion is to exclude evidence
11 that there is muscle -- invasive muscle biopsy
12 testing and --

13 THE COURT: And he refused?

14 MR. MOSS: Correct. And he offered to go out
15 and -- and I can find the page number for the
16 Court. But I think he is not required to do that
17 and prejudice creeps in because if he is asked to
18 undergo some invasive test that we feel he is not
19 required to take, the probative value is clearly
20 outweighed.

21 THE COURT: And I believe my previous ruling
22 was that you all couldn't get into that.

23 MR. TECKLENBURG: Your Honor, this particular
24 motion has sort of morphed. And I'd like to spend
25 a moment explaining that and discuss it with you.

1 Your original ruling was on Page 106 of the
2 transcript. And basically, Your Honor, if you look
3 at the Plaintiff's original motion, the original
4 motion was done in context of an IME. Mr. Moorer
5 shows up for an IME that was scheduled at the
6 Medical University of South Carolina. The
7 physician conducting the IME asked for his blood.
8 Blood would of course -- have allowed genetic
9 testings to take place.

10 The original motion filed by the Plaintiff
11 states -- well, I forgot to add something. Mr.
12 Moorer refused to give any blood.

13 The original motion filed by the Plaintiff
14 stated that that fact, the fact that he went to an
15 IME and refused to give blood and refused to engage
16 in any type of muscle biopsy, those sort of things
17 should not be admissible because it is discovery
18 that from the Plaintiff's point of view the
19 Defendant was not entitled to to start with. Okay?
20 That was the original argument.

21 And, Your Honor, for the purposes -- we have
22 been through all this -- I won't say I necessarily
23 agree, but I understand the Court's ruling.

24 Now, what the Plaintiff is doing now is
25 expanding their argument. And what he is saying is

1 that any physician reference to any potential -- or
2 any testing that could be done on Mr. Moorer, that
3 that simply has no place in this case.

4 And I would disagree with him for two reasons,
5 because -- and first of all, I need to refer you
6 back to Dr. Moseley.

7 Dr. Moseley, in his report -- you will recall
8 that that is Mr. Moorer's treating nephrologist --
9 basically said, Mr. Moorer, we have got more issues
10 here, you really need to think about a muscle
11 biopsy. There is something else that is
12 potentially going on with you. We want to -- you
13 know, that needs to be explored if you have any
14 more issues.

15 The evidence is -- and we argued this
16 before -- that he did have cramping while he was
17 working in the car wash in the 2008/2009 time
18 frame. So he did start having heat cramps again.
19 He never received treatment.

20 So it is part of our argument that the
21 Plaintiff has an obligation to be medically fit and
22 to keep up with his health. In other words, to
23 mitigate his losses, whether it be physical health
24 or economic damages. He has an obligation if the
25 doctor tells him it is a good idea to do something

1 to follow through on that.

2 But I'll tell you why it is more important
3 than what Dr. Moseley said. Why it is more
4 important is, you will recall, Your Honor, and this
5 is, you know, I don't think it is a big issue in
6 the case, but it is an issue that overran the last
7 case. What seemed to overrun the last case is the
8 Plaintiff's theme that Norfolk Southern needed to
9 get him a job. And that Norfolk Southern, it has
10 even been suggested recently and was suggested in
11 Ms. Cicero's deposition, and part of our objection
12 is to part of her deposition, it was suggested by
13 the Plaintiff, Ms. Cicero, that Mr. Moorner ought to
14 be rehired as a conductor. Okay? In other words,
15 he ought to be given his job back.

16 Well, the reason he doesn't get his job back
17 is because he won't finish his medical treatment
18 program. He won't show Norfolk Southern and rule
19 out the issues that he has.

20 So I'll just caution the Court however you may
21 rule on this issue, if the Plaintiff opens the door
22 and asks the question, why didn't Norfolk Southern
23 hire him back as a conductor? He seems qualified.
24 He's been working at the police force. He passed
25 the physical. Why isn't he hired back?

1 If they are going to make that argument, I
2 think it opens the door to our reason why we're not
3 hiring him back.

4 MR. MOSS: We're not making that argument.

5 THE COURT: All right.

6 MR. MOSS: So, to that question, we're not
7 making that argument.

8 THE COURT: All right. Well, the ruling will
9 be I would exclude any testimony regarding the
10 muscle mass test or him doing the muscle biopsy or
11 blood test. And of course if any testimony opens
12 the door to it, we'll have to cross that at that
13 time, but Mr. Moss --

14 MR. MOSS: And I will agree that if there is a
15 reference to a specific question that pointedly
16 asks that to Ms. Cicero, I will tell the Court now
17 that can be redacted and we'll take it out of the
18 case. We're not going into him being a conductor.
19 There is other problems that they have got that are
20 bigger than that. So I agree with that.

21 THE COURT: All right.

22 MR. TECKLENBURG: Your Honor, I think you have
23 the trial transcript.

24 THE COURT: I do.

25 MR. TECKLENBURG: Hopefully we can rush

1 a problem, because their loan program and we are
2 going to end up talking all about that.

3 MR. TECKLENBURG: Your Honor, may I suggest
4 that I would volunteer to the Court before I would
5 even open that door. I don't intend on opening --
6 in opening, and if I am going to open it with any
7 witness, I'll give you advance notice.

8 THE COURT: We can proffer it. Because -- I
9 think I told you this on the phone -- I think if
10 you get into him borrowing money, I think the issue
11 of him borrowing money from the company and why
12 they stopped giving it to them and all of that
13 might be admissible also. So --

14 MR. TECKLENBURG: Understood.

15 THE COURT: But we'll cross that bridge when
16 we get there and we will proffer that testimony if
17 need be.

18 MR. MOSS: Thank you, Judge. That's all for
19 me.

20 MR. TECKLENBURG: Your Honor, I didn't bring
21 but four copies, but what I will do, or maybe the
22 court reporter can assist us on, is what I would
23 like to do is take the trial transcript from the
24 last proceeding and mark it as Court Identification
25 1. And that way when we refer to it during this

1 argument, it is available for those that may want.
2 to read it later on.

3 THE COURT: All right.

4 MR. TECKLENBURG: Thank you, Your Honor.

5 (WHEREUPON, Court's Exhibit No. 1 was
6 marked for identification only.)

7 MR. TECKLENBURG: And these are Defendant's
8 motions in limine that were filed this morning.
9 You will notice, Your Honor, and there is a
10 typographical error, I apologize, but on Argument
11 One there was an argument regarding air
12 conditioning. You ruled on Page 116 at Line 6.

13 THE COURT: And that was based on the Whaley
14 case.

15 MR. TECKLENBURG: Line 6 through 18
16 essentially adopted the footnote in Whaley and
17 stated that evidence of air conditioning on
18 locomotives could not be admitted.

19 You also ruled on Page 118 at Line 15 that
20 basically that evidence of hot air in engines could
21 be part of the case.

22 THE COURT: Yes.

23 MR. TECKLENBURG: And I guess for the record,
24 is it your intent to rule the same way?

25 MR. MOSS: I need to be heard on this. I

1 look at it tonight.

2 Number Seven has been stipulated to?

3 MR. TECKLENBURG: It was, Your Honor.

4 Mr. Moss agreed.

5 THE COURT: Page 123, Lines 19 through 24.

6 MR. TECKLENBURG: Correct.

7 Number Eight, Your Honor, is the testimony of
8 Dr. Lina. Our position was that if the
9 disqualification letter comes in, that her
10 explanation should as well. And that was the
11 ruling that was made on Page 100, Line 16 through
12 Page 101, Line 4.

13 THE COURT: Anything in response?

14 MR. MOSS: I'm just trying to remember what it
15 was real quick, Your Honor.

16 (Pause.)

17 MR. MOSS: Only that seems to me that all she
18 can say is: I don't know what it is. It might be
19 this, it might be the other. It could be this and
20 it possibly could be this, but I really don't know.
21 And I looked at some literature and I still don't
22 really know and I'm not really sure, which is
23 exactly what she said. In my review then and
24 remains, there is no medical opinion. She later
25 said, it is my opinion that I really don't know, it

1 doesn't make sense to me. But she doesn't really
2 render a medical opinion.

3 And I never thought that, with due respect,
4 the Court had it later, because Dr. Lina says, I
5 just really don't know. I didn't know then. I
6 don't know how. It is possible. It could be. And
7 that is my opinion.

8 But because it is her opinion, stated that
9 way, the Court let it in, but it is her opinion,
10 she is just really not sure that something is
11 causing it. That is what she says. And I have
12 never thought that that was --

13 THE COURT: You never thought what? I'm
14 sorry?

15 MR. MOSS: I never thought that her opinion
16 about that he might have or could have some
17 underlying genetic predisposition based on reading
18 some epidemiological studies was admissible. I
19 just never thought that made sense.

20 She did look at the studies, she did
21 disqualify him, but then she said in her letter:
22 I'm disqualifying you for a heat-related illness,
23 recurrent. But then when she was asked to explain
24 she simply said, I really don't know what he's got
25 and why he's got it. But that is my opinion. It

1 is possible. It could be. Maybe. But that is my
2 opinion.

3 So it got brought in under the guise of her
4 opinion, but all she ever said was --

5 THE COURT: Yes, sir?

6 MR. TECKLENBURG: Yes, Your Honor. On Page 91
7 of the transcript, you quoted directly from Dr.
8 Lina's testimony, and then specifically starting on
9 Page 46, and basically the question was -- Mr. Moss
10 was asking the questions. It was on Page 46 of her
11 deposition.

12 MR. MOSS: Thank you.

13 MR. TECKLENBURG: Sure. And I will just read
14 from the trial transcript. Mr. Moss asked on
15 Page 46: What do you mean by underlying
16 susceptibility?

17 And then she answers: It may be likely that
18 Mr. Moorer may have an underlying medical condition
19 to include genetic or inherited medical conditions.

20 Next question: Is that an opinion or
21 speculation at this point?

22 Her answer: It is not speculation at all. It
23 is my opinion.

24 And then, Your Honor, on Page 75 and 76 and
25 again on Page 92 of the trial transcript, Mr. Moss

1 asked: Am I understanding if you had this
2 underlying susceptibility, does that mean -- let me
3 make this as simple as I can -- less heat might
4 cause a heat event to somebody with an underlying
5 susceptibility than a person who does not have an
6 underlying susceptibility?

7 The answer: I don't think it can be stated
8 that simply. I think the way I would state it, it
9 is my impression and opinion that he likely has an
10 underlying susceptibility.

11 And then finally, Your Honor, on Page 93 of
12 the trial transcript, Page 103 of Dr. Lina's
13 deposition, essentially it was asked whether she
14 believed that a heat illness is not related to the
15 work environment. And basically she said that: In
16 the absence of other triggering factors that I
17 discussed previously, they would have led to a heat
18 illness of this event.

19 And then I asked: To a reasonable degree of
20 medical certainty that it is not related to
21 physical exertion as described in the interrogatory
22 answers, and she described the work she was doing.

23 Her answer: Yes. Again, with respect to any
24 absence of any other triggering factors and
25 underlying conditions, I do not believe he would

1 have experienced a heat illness at the level of
2 exertion.

3 So she is giving opinions within a reasonable
4 degree of medical certainty on Page 103 that it is
5 not related to the work environment.

6 Further, on Pages 46 and 75 and 76, she is
7 saying it is likely that he has this underlying
8 condition.

9 We believe you got it right the first time,
10 Your Honor. If you are going to get into the fact
11 that he's been disqualified, she needs to be able
12 to explain why she did that.

13 THE COURT: Let me ask you this. And there is
14 a relatively new case.

15 MR. TECKLENBURG: If I may pass up a case,
16 Your Honor.

17 THE COURT: Yes. In this case she is saying
18 to a reasonable degree of medical certainty that
19 she -- that it is not related to the heat.

20 MR. TECKLENBURG: It is not related to the
21 work environment.

22 THE COURT: Work environment. Okay.

23 MR. TECKLENBURG: Correct.

24 THE COURT: Then you asked her, is it likely
25 related to something else, but that is not as to a.

1 reasonable degree of medical certainty.

2 MR. TECKLENBURG: Yeah, well, unfortunately --
3 if I may pass up this case, Your Honor. This is a
4 case called Mayhew versus Bell Steamship. It is
5 917 F.2d 961. This is a case arising under the
6 Jones Act, Your Honor. The Jones Act, if you will,
7 is the FELA on water. And in examining FELA
8 liability and standards that courts apply, they
9 look to Jones Act cases.

10 And essentially what this case says is that
11 for medical causation under the Jones Act and FELA,
12 all that is required, because of the lightened
13 standard of causation, all that is required is that
14 it has to be more than a mere possibility. It
15 doesn't have to be a reasonable degree of medical
16 certainty. It doesn't have to be more probably
17 than not. It just has to be more than a mere
18 possibility.

19 And I would contend, Your Honor, that Dr.
20 Lina's testimony stated that it likely meets the
21 standard.

22 THE COURT: She is saying likely. This
23 says -- the doctor in this case, it says: Dr.
24 Nebel's statement that it could have been was
25 excluded. It says it has to be some degree of

1 certainty.

2 MR. TECKLENBURG: Your Honor, I think what it
3 says, all that is required is that it be more than
4 a mere possibility.

5 THE COURT: But she is just saying -- if I
6 remember the testimony -- she is just saying, I
7 don't know what it was, but I know what it wasn't.
8 And I don't think that is more than a mere
9 possibility.

10 MR. TECKLENBURG: Well, she is saying what it
11 wasn't, and she is saying that to a reasonable
12 degree of medical certainty.

13 THE COURT: Yes, but then she says -- if I
14 remember the testimony, she is pretty much saying,
15 I know what it is not. And so therefore because it
16 is not this, it could be likely something else to
17 do with something, with him, some preconceived --
18 some -- I guess some pre-condition that he may have
19 had.

20 MR. TECKLENBURG: Well --

21 THE COURT: I don't think she says to any
22 certainty.

23 MR. TECKLENBURG: Your Honor, our focus has
24 always been on this argument this. They need or
25 want to put into evidence this letter from Dr. Lina

1 from August 2007 that says: The Plaintiff is
2 medically disqualified from being a conductor.

3 She went in great detail as to what she did
4 prior to issuing that letter.

5 You will recall that you passed me with the
6 fact that, did she research it, did she look at the
7 medical literature. I was able to show you in the
8 transcript or show you in her deposition that she
9 indeed had looked through the medical literature
10 and that she has spent time identifying her
11 reasoning for issuing the letter.

12 So our primary argument, irrespective of
13 whether it meets the test in Mayhew, our primary
14 argument has always been, if they want to get in
15 the letter that disqualifies him, the physician
16 that writes it is entitled to give a reason.
17 Otherwise, if she is not able to give a reason,
18 then we have this letter introduced into evidence
19 with no background and no explanation as to why the
20 medical department has disqualified this gentleman.

21 THE COURT: Well, what was her explanation,
22 that it was likely that he had --

23 MR. MOSS: Here is the exhibit. Here is a
24 copy of the letter. Exhibit 3.

25 (Pause.)

1 THE COURT: We'll take a look at this one.
2 We're not doing this one today. I'll have to go
3 back and look at the transcript and look at her
4 testimony, but if she is saying, you know, I don't
5 know what it is, but it is likely this, I don't
6 know if that is -- I mean, even the case that you
7 handed up there needs to be some degree of
8 certainty. So I'll take a look at that one. We'll
9 take a look at that.

10 All right.

11 MR. TECKLENBURG: Your Honor, keep in mind the
12 second half of that argument, though, that they are
13 trying to get in the medical opinion, because it is
14 one that he is disqualified, okay. If that medical
15 opinion -- and I guess their argument is it is
16 premised on a bad medical opinion, right? Then the
17 letter itself should stay out.

18 So either you put in a bad opinion letter and
19 live with it, the explanation of it, or it doesn't
20 come in at all. And that was really the premise of
21 our first argument in dealing with this issue.

22 THE COURT: All right. Well, I'll take a look
23 at it.

24 MR. TECKLENBURG: Do you need any of the
25 transcripts to take a look at this evening? I have

1 a --

2 THE COURT: Where are the depositions?

3 MR. MOSS: I actually briefed all the
4 testimony, and I'll forward -- it looks rough on
5 the iPad. I'll forward copies to both of you.

6 THE COURT: Okay. All right. I want to move
7 a little bit faster because I hate to have the
8 jurors sitting back there waiting.

9 Yes, we do have Dr. Lina's deposition.

10 All right. And the next one is Number 9. It
11 is a stipulation.

12 MR. TECKLENBURG: It is a stipulation, but I
13 want you to keep an eye on that one, Your Honor.
14 Yes, Page 17 of our brief. The Plaintiff
15 stipulated that he was not claiming the medical
16 department was negligent, and based upon that you
17 made the ruling that I guess that there wasn't
18 going to be reference of duty.

19 So I'm guessing Mr. Moss is going to make some
20 of those same representations to you, but I'm not
21 sure that is how it ended up in the last case, so
22 we just need to --

23 THE COURT: Well, you will just have to make
24 an objection at the --

25 MR. TECKLENBURG: I will, Your Honor.

1 THE COURT: All right, Mr. Moss, are you still
2 stipulating to Number Nine?

3 MR. MOSS: I am not going to argue the medical
4 department was negligent, if that is what you are
5 asking. I am going to be critical of the process
6 that includes the medical department returning him
7 to work. So I don't mean to be too -- make too
8 fine a point about it, but I am -- I was and will
9 continue to be critical of the process that allowed
10 a man to go back to the same job given his known
11 weak condition. Yes, I am going to say that.
12 Because I think that is what I said last time. I
13 hope so.

14 MR. TECKLENBURG: I think it sounds like the
15 air condition argument to some extent. But, Your
16 Honor, these cases that we cite are very clear that
17 the railroad only takes -- medical departments only
18 take on a duty when they provide the physician,
19 when a company doctor is provided by the railroad
20 to do a physical.

21 The other situation is where the employee's
22 doctor says to do something and a railroad ignores
23 them. Okay? So it gives restrictions. There is
24 evidence that the railroad knew of those
25 restrictions, in other words, had evidence of it,

1 and discarded them anyhow.

2 We don't have that in this case. So, you
3 know, Your Honor, I certainly would make a
4 contemporaneous objection, but I think these cases
5 are very clear as to what the duty is of Norfolk
6 Southern. And that really is an issue of law. I
7 mean, it is an issue of duty.

8 THE COURT: All right. Number 11?

9 MR. TECKLENBURG: Yes. Ten was the same, Your
10 Honor.

11 Eleven was a stipulation from the Plaintiff
12 dealing with Gerringer's illness.

13 Three and twelve was employee Thompson's
14 illness.

15 MR. MOSS: Agreed.

16 MR. TECKLENBURG: Thirteen was Mr. Norwood's
17 thermometer. We will not get into that.

18 MR. MOSS: Agreed.

19 MR. TECKLENBURG: Fourteen was the police
20 officer. And obviously that didn't become
21 necessary. I think we can skip over that.

22 Fifteen didn't become necessary either because
23 the Plaintiff didn't try to put in Mr. Deshazor, so
24 we don't need a ruling. We can wait.

25 Seventeen was a stipulation on sending a

1 message.

2 MR. MOSS: Agreed.

3 MR. TECKLENBURG: Eighteen, I don't think it
4 was problem with Mr. Moss, but basically we are
5 told now due to recent -- we do make these motions
6 now due to the recent McBride decision to prevent
7 the Plaintiffs from arguing "but for causation" to
8 a jury.

9 MR. MOSS: I am going to argue right out of
10 McBride.

11 MR. TECKLENBURG: What's that?

12 MR. MOSS: I am going to argue right out of
13 the case law. That was already done. Thank you.

14 MR. TECKLENBURG: Nineteen is a new one, Your
15 Honor. And I don't know how it came up at the last
16 trial, but I think the Plaintiff has a handicapped
17 son. It came out that he needed medical benefits
18 for that son. I just don't think it has a place in
19 a FELA case. The son is not entitled to damages
20 under the FELA. There is no obligation to provide
21 medical benefits.

22 THE COURT: If I remember, the reason it came
23 out was in the issue of damages when you all were
24 asking him about certain jobs that he took or why
25 he didn't take a certain job.

1 For some reason that just sticks out. And he
2 didn't take a job because he needed medical because
3 he has a sick son. I mean, I think that -- and if
4 you ask it, he has got to give the answer, that it
5 is what it is. If he doesn't take a job, then he
6 has to have a job with -- or if he quits a job
7 because there is no medical or if he takes a job
8 that pays less that has medical than another job
9 that takes more that has insurance, then, I mean, I
10 think that is all relevant. I mean, if you ask the
11 question I think it is what it is. It is the
12 answer.

13 So I'm going to allow that if -- like I said,
14 if it -- I believe that is how it came in the last
15 time. I'm not sure.

16 MR. TECKLENBURG: I am going to have to look
17 back, Your Honor, but --

18 MR. MOSS: It came out on cross for sure.

19 MR. TECKLENBURG: If we opened the door we
20 will make sure we --

21 MR. MOSS: It does seem to me that a man
22 should be entitled to explain who his family is,
23 what his circumstances are, very limited, and what
24 motivates him to get up in the morning and go look
25 for jobs and find jobs. Given that mitigation is

1 such an important part of the case, when you have
2 got a disabled son it affects what you do. It
3 affected this man for sure. And so we would
4 certainly not spend a lot of time on this, but to
5 say that the man can't tell you about his family
6 and his disabled child --

7 THE COURT: I think that goes to something
8 about his wife not working. Is she not working?

9 MR. MOSS: They have built their whole family
10 around this, yes.

11 THE COURT: I mean, I'm inclined to let it in.
12 I don't think it -- I'm not sure how it prejudices
13 you all other than the fact that people are going
14 to feel sorry for him because he has a disabled
15 son.

16 MR. MOSS: Well, I mean --

17 MR. TECKLENBURG: Your Honor, he can testify
18 all day that he needs health benefits and wants
19 health benefits and that is why he left the job,
20 but to load it all up on one of the members of the
21 family, I just think it goes beyond what is
22 necessary to explain his position. He can --

23 THE COURT: I don't think he did that.

24 MR. MOSS: It is also slightly insulting to
25 suggest that he is going to load up on anybody.

1 He's got a very disabled son. He has got a family
2 to feed. And he is going to tell the story in
3 context. We will not overplay our hand. We
4 understand the parameters of fair play. We will
5 stay on this side of the boundary.

6 THE COURT: All right. He said he is not
7 going to overdo it.

8 Number 20, is that --

9 MR. TECKLENBURG: Your Honor, you made a
10 ruling. It came up mid-trial. So it is not the
11 original motion in limine. That deals with
12 Dr. Casa's testimony about acclimatization,
13 providing light duty, giving some unlimited hours,
14 fewer work days. And your ruling was that that
15 evidence was not appropriate because you can't do
16 that with a conductor. A conductor, when he marks
17 up, he has a duty to work whatever job the union
18 contract would give him. So that was your ruling
19 on Page 539, Line 14 to Page 540, Line 3.

20 THE COURT: Yes, sir.

21 MR. MOSS: And I agree with Mr. Tecklenburg.
22 I think that is true. But we do want to remind the
23 Court that the Norfolk Southern Medical Department
24 has its Fee for Service Provider Manual. It does
25 allow for workplace evaluation.

1 we will begin this trial, but before we do that I
2 need you all to stand. You can be sworn by the
3 clerk.

4 THE CLERK: Would each of you raise your right
5 hand, please?

6 (The jury complies.)

7 THE CLERK: Do you swear or affirm you shall
8 well and truly try the issues joined in this case
9 and a true verdict give according to the law and
10 the evidence, so help you God?

11 If so, please say, "I do."

12 THE JURY: I do.

13 THE CLERK: Thank you.

14 THE COURT: Yes, sir, Mr. Moss.

15 MR. MOSS: May it please the Court?

16 THE COURT: Yes, sir.

17 OPENING STATEMENT

18 MR. MOSS: Counsel? Ladies and gentlemen?

19 If a railroad knows that an employee is
20 susceptible to a heat injury, it must protect the
21 employee from getting too hot while he is at work.

22 If a railroad knows that an employee has a
23 heat injury and can't help himself, it must provide
24 emergency medical care to minimize the harmful
25 effects of the injury.

1 So, if a railroad fails to protect its
2 employee or it fails to provide emergency care and
3 harm results, then the railroad is responsible for
4 all the harms and the losses that result.

5 Now, let me tell you the story of what
6 happened in this case. On May 9, 2007, the
7 railroad sent two men, an experienced locomotive
8 engineer named Forrest Britt, and an inexperienced
9 conductor from the rail yard to Andrews Yard in
10 Columbia, South Carolina, to Orangeburg, South
11 Carolina, to drop and pick up rail cars at
12 industries in Orangeburg on a job called P28.

13 The day was humid and sticky, but not
14 particularly hot. The high temperature was in the
15 high 70s with relative humidity, about 80 percent.

16 The conductor worked doing things conductors
17 do: Throwing switches, climbing on rail cars, and
18 walking in the ballast and rock that supports the
19 track at the customer's facilities in Orangeburg.

20 Because of morning rain, the conductor wore a
21 rubber rain suit while he did his work outside.

22 At the last industry of the work day, Doane
23 Pet Products, he collapsed and fell into the rocks
24 at the switch at Doane beside the track.

25 A Doane employee called EMS, and EMS promptly

1 responds and got the conductor from the ground and
2 took him to the hospital in Orangeburg where he
3 spent three days being treated for heat-related
4 problems.

5 During that same work day, heat and humidity
6 also made the engineer, the man driving the train,
7 feel sick. The engineer also missed some work and
8 saw a doctor for treatment of heat-related
9 symptoms.

10 Less than 30 days later, on May the 30th and
11 31st, the Defendant again sent an experienced
12 engineer, a gentleman named Tommy Connelly, with
13 the same inexperienced conductor to work the P28
14 leaving Columbia, Andrews Yard, and traveling the
15 roughly 47 miles to Orangeburg to service the
16 customers, dropping and picking up rail cars.

17 The high temperature on May 30 was 91 degrees,
18 but the day was uneventful. On May 31st, the work
19 day started early, around 6:00 a.m., in Columbia,
20 and the day warmed to a high of 88 degrees with
21 relative humidity in the 40s. And the two-man
22 crew, the experienced engineer and the
23 inexperienced conductor, worked the industries.

24 At 2:26 p.m. the conductor, on his personal
25 cell phone, calls his boss in Charleston and said

1 that he was not feeling well.

2 He then boarded the engine and told the
3 experienced engineer that he was feeling sick.

4 And then the train started the 47-mile journey
5 back from Orangeburg to Columbia.

6 On the trip back the conductor started
7 cramping severely. And the engineer used two
8 different cell phones to call and receive calls
9 from the railroad bosses. In each call the
10 engineer told the boss, the conductor is getting
11 worse.

12 The engineer spoke to the railroad bosses at
13 2:58, at 2:59, at 3:00 o'clock, and at 3:07, that
14 the train moved from Orangeburg right through St.
15 Matthews and towards the Congaree Swamp.

16 The conductor cramped and lost energy and
17 simply rode as the engineer operated the train and
18 placed and received cell phone calls.

19 The boss in Columbia then spoke to the train
20 at 3:21 and at 3:22 while the train was in the
21 swamp.

22 In those phone calls he got the same message
23 from the engineer, that the conductor is getting
24 worse.

25 The train made its way back to the outskirts

1 of Columbia and crossed several paved busy rail
2 crossings as it approached the yard.

3 At 3:49 p.m. the train entered the railroad,
4 Andrews Rail Yard, in Columbia. And there it
5 slowed from its 49 miles per hour to 10 miles per
6 hour. And then it went 10 miles an hour for
7 three miles from the yard limit to its final
8 resting place in the center of Andrews Yard.

9 When the engine stopped in the center of
10 Andrews Yard, the railroad boss in Columbia
11 thwarted the equipment.

12 He looked at the conductor and told his
13 subordinate, call EMS.

14 At 3:56 the railroad called emergency medical
15 services in Columbia.

16 At 4:03 the fire department arrives.

17 At 4:11 EMS arrived.

18 And at 4:28 EMS was able to administer IV
19 fluids to the conductor.

20 EMS then took the conductor to the hospital
21 for treatment. Heat injury.

22 Within 60 days the railroad medically
23 disqualified the conductor from his job at Norfolk
24 Southern.

25 We sued the railroad in this case for two

1 reasons. The railroad knew that this conductor was
2 susceptible to a second heat injury. It chose to
3 send Trumaine Moorner back to the same job with the
4 same staffing but with hotter temperatures than the
5 earlier event in May.

6 According to Dr. Douglas Casa, one heat injury
7 predisposes a person to a second injury if the
8 person is not properly heat acclimatized and has
9 not fully physically recovered from the first heat
10 event.

11 Dr. Casa is a professor of exercise physiology
12 at the University of Connecticut. And in 2009, he
13 co-authored the U.S. Army guidelines for returning
14 soldiers to work following a heat injury.

15 According to Mr. Moorner's primary care
16 physician, Dr. James Dantzler, after the first
17 incident Mr. Moorner was more likely to have a
18 second heat event.

19 Dr. Walton Moseley, who was a board certified
20 nephrologist from Charleston, South Carolina, will
21 tell you that Mr. Moorner's injuries are directly
22 related to the heat event at work.

23 In fact, the railroad's own expert witness, a
24 gentleman named Mr. Shea, is an industrial
25 hygienist. He will tell you that one heat injury

1 predisposes a person to a second injury and makes
2 the person more susceptible to further injury
3 based on exposure because the first heat injury
4 lessens or lowers the body's tolerance and ability
5 to dissipate heat.

6 Because he was too hot and physically depleted
7 and not fully recovered from the first incident,
8 Mr. Moorer had a second heat injury that caused him
9 severe cramping, listlessness, fatigue, and the
10 inability to even help himself. He had acute renal
11 or kidney failure.

12 Both Drs. Casa and Moseley will describe to
13 you a condition called rhabdomyolysis, which refers
14 to muscle damage when the muscle releases its
15 component parts into the blood and those component
16 parts overwhelm the kidney causing acute renal
17 kidney failure.

18 The railroad should have acclimatized Mr.
19 Moorer to his work environment after the first
20 incident.

21 According to Dr. Casa, athletes and workers
22 suffering from heat injuries must be gradually
23 released to work and play by slowly increasing the
24 duration and the intensity of their work or their
25 play.

1 In a three-week period a person loses his
2 fitness and acclimatization and you need five to
3 ten days of work to get your fitness level back.
4 The Defendant should have put Mr. Moorner through
5 some simulated work activities in small stretches
6 at increasing intervals of intensity and duration
7 and monitor his progress before letting him come
8 back to work after the first incident.

9 Dr. Casa will explain that the Defendant
10 should have anticipated and prevented the second
11 incident based on longstanding knowledge of how to
12 properly manage the injury.

13 And in this case he will explain to you that
14 Mr. Moorner's second heat event was 100 percent
15 preventable if the railroad had chosen to follow
16 proper heat acclimatization and return-to-work
17 strategies.

18 The second reason that we are suing the
19 railroad in this case is because it chose to let
20 the train come to Columbia but even though it knew
21 that Mr. Moorner was sick and getting worse.

22 Between 2:58 and 3:07 p.m. the engineer told
23 the boss, the boss in Charleston, Mr. Moorner was
24 feeling worse four different times.

25 At 3:21 the engineer also told the boss in

1 Columbia that Mr. Moorer was still getting worse.

2 The railroad had numerous opportunities to
3 intervene to stop the train and get emergency help
4 to Trumaine Moorer when he needed it most.

5 According to the railroad's chief medical
6 officer, Dr. Ray Prible, there is a simple rule to
7 follow when dealing with employees with heat
8 injuries. When in doubt, call EMS. When in doubt,
9 get help to the person. Do not bring the equipment
10 back. Send help to the man and get the man off the
11 train. When in doubt, call EMS.

12 Mr. Moorer suffered on that ride back for more
13 than 90 minutes after his boss knew, not just that
14 he was feeling bad, but after the next call that
15 said he was feeling worse.

16 What started as him simply not feeling well
17 turned into a serious life-threatening heat event,
18 potentially life-threatening and unfortunately
19 career-ending.

20 Active management of heat injuries decreases
21 the severity of the injury. It decreases the time
22 and the duration of the injury. And likely, had
23 there been proper management, Mr. Moorer would
24 still be working at the railroad as a conductor.

25 The Norfolk Southern Medical Department

1 disqualified him because of his recurrent severe
2 heat-related illnesses.

3 Before coming to trial, we had to determine
4 whether this workplace was safe or not to answer
5 the Defendant's claims that this was just normal,
6 routine work.

7 The Defendants will call witnesses who were
8 healthy, experienced employees to say that the job
9 was generally not too hard and not too hot. But
10 May 2007 was Mr. Moorers's first time ever working
11 the P28.

12 When the second injury occurred, May 31st,
13 that was his fourth day ever on the P28. Mr.
14 Moorers was a rookie, a P28 rookie. And what might
15 seem easy to a veteran is difficult for a rookie.

16 So we asked the experts, Drs. Casa and
17 Dantzler, about the job and about the work. And we
18 even asked the railroad's expert, Mr. Shea. What
19 we learned is that you can't simply look at the
20 job. Once someone has a heat injury, things are
21 different. These experts will tell you that once
22 you have a heat injury, the only way to evaluate
23 the workplace or the play place is to be sure that
24 you remember that the person coming back to work or
25 coming back to play has had a recent prior heat

1 event. That is the only possible way to properly
2 manage and protect the person, because this person
3 who has had the prior heat event is by definition
4 susceptible and vulnerable to a second heat event.

5 We also had to determine, how could the
6 railroad have let him come back to work full duty,
7 same job, same staffing, but under hotter
8 conditions.

9 We learned that Dr. Dantzler filled out a
10 return-to-work slip in the middle of May after the
11 first incident but before the second incident,
12 indicating that Mr. Moorner could work, but the note
13 was accompanied by the actual medical records that
14 imposed restrictions. He needed to be frequently
15 hydrated and take frequent breaks. But the Medical
16 Department at Norfolk Southern did not have the
17 notes that accompanied the return-to-work slip.

18 Finally, the medical doctor in Virginia, her
19 name is Dr. Paula Lina, she is the person at the
20 railroad with the most knowledge and experience in
21 handling and managing heat injured workers. She
22 was not involved. She was not involved in the
23 decision to let Mr. Moorner come back to work before
24 the second event.

25 We also learned Mr. Moorner actually had his

1 first heat symptoms May 8, 2007, at the end of his
2 shift and that he sweated profusely through the
3 sheets that night at home.

4 The next day, May 9th, you recall, is the date
5 he collapsed in the ballast. He told his
6 supervisor that this -- he got sick, felt this way
7 at home and not at work. And he did it for one
8 reason. If he did so, the railroad would not have
9 to report the incident as an on-the-job injury.

10 If the Defense raises this point, remember, we
11 are not blaming the railroad in this case for
12 anything related to the first incident. Nothing.
13 Everything in this case relates to the second, the
14 May 31st incident.

15 Similarly we learned that Mr. Moorer took a
16 supplement called KM for years before this incident
17 with no problems and no side effects. When he
18 played basketball in an unairconditioned gym, when
19 he worked overseas as a government contractor in
20 the desert in the Middle East before coming to the
21 railroad while taking KM he never had a problem.
22 He did have headaches while he was in the Middle
23 East and he listed them as reasons for leaving, but
24 those headaches had nothing to do with hydration or
25 a heat injury. No doctor thinks that KM had

1 anything to do with either of these heat events.
2 No one has tested it and there is no reason to link
3 this supplement to his physical problems based on
4 the testimony of the medical professionals.

5 Finally, we had to evaluate the Defendant's
6 conduct on the trip back from Orangeburg to
7 Columbia on May 31st. We had to get the cell phone
8 records. We had to build a timeline of calls and
9 communications. We had to see if the railroad made
10 the right decisions when it brought the train back
11 knowing that Mr. Moorer had a prior recent serious
12 heat illness.

13 We learned that the decision about whether to
14 call in EMS was not from the engineer, Tommy
15 Connelly, it was from the bosses in Charleston or
16 in Columbia.

17 Remember the rule from Dr. Prible, the
18 managers of the railroad are to follow the rule.
19 When in doubt, call EMS.

20 The Defendant could have met the train well
21 before it got to the swamp on the Orangeburg side
22 based on the timeline, or it could have met the
23 train on the Columbia side of the swamp at the rail
24 crossings between the swamp and the yard itself.

25 The timeline tells the story. If the

1 Defendant had acclimatized Mr. Moorer to the work,
2 the second incident would never have happened. If
3 it had gotten emergency medical care, the magnitude
4 of the injury would have been greatly reduced and
5 likely he would be working today as a conductor at
6 Norfolk Southern.

7 One of the questions you must deliberate about
8 is how much money will make up for the harms and
9 losses that Mr. Moorer has suffered. And to decide
10 this, you can consider only the harms and the
11 losses, nothing else. Sympathy and emotion are not
12 safe visitors to this decision. You may decide
13 this case only on the magnitude of harms and the
14 losses. Nothing else.

15 On May 31st Trumaine Moorer was helpless. He
16 did not make or receive any phone calls after the
17 initial call to his boss at 2:26 because he
18 couldn't. He was depleted at 2:26 when he made the
19 call, and then as the calls came and go, all he
20 could do was sit in his seat in the engine, watch
21 the engineer drive the train, and listen as
22 Mr. Connelly told the bosses every time, Trumaine
23 is getting worse; Trumaine is getting worse;
24 Trumaine is getting worse.

25 Between 2:26 when he made the first call and

1 3:54 when he finally received EMS help, he would
2 have been able to speak and willing to try to come
3 back on the train to listless, soaked in sweat,
4 severely cramped and scared for his life. He went
5 from able to climb on the engine to try to go home
6 to unable to get off the engine without the help of
7 medical professionals and a chair specifically
8 designed to help people who can't help themselves.

9 However, the greatest single loss for Mr.
10 Moorer is that he has lost his ability to work at
11 the job, the best job he ever had, that paid him
12 the most money. His career ended on August 2nd of
13 2007 when Dr. Lina wrote a letter and said, you are
14 no longer qualified. You don't physically meet the
15 minimum requirements for a conductor at the
16 railroad based on your recurrent severe heart
17 illness.

18 And Trumaine has not worked for the railroad
19 since. He would love to work for the railroad. He
20 has taken tests at the railroad to prove that he
21 has the skill -- skills and aptitudes to work at
22 the railroad. He has passed the tests. He
23 qualifies for several light duty, lighter duty
24 office type jobs. He has been qualified for those
25 jobs for years. He's never been offered one of

1 those jobs. He even asked if he could be a police
2 officer for the railroad. Railroad jobs are high
3 paying jobs. Good benefits. So he took the test,
4 at least the aptitude test. He passed the test.
5 He has never been offered the job.

6 This injury has cost Trumaine a substantial
7 amount of money in the form of lost wages. A
8 comparison between his earning potential before and
9 his earning potential now. We know what his
10 earning potential is now because he worked. Not
11 just now, but for the last two years, more than two
12 years, he has worked for the Town of St. George as
13 a police officer. Recently he was promoted to
14 lieutenant. He's been through the police academy.
15 He spent the last two weeks in refresher training.
16 The problem is the Town of St. George, when you
17 compare pay and the benefits to each other as a
18 conductor, a professional on the railroad, there is
19 no comparison. The benefits are tremendously
20 different. The benefits are extensive. The
21 comparison between what he would have made as a
22 conductor between what he will make as a St. George
23 police officer over the course of his life is
24 almost a million dollars.

25 Everything we show you at the trial is for you

1 to understand why Mr. Moorer should be compensated
2 and how much money does it take to compensate him
3 for the harms and losses he sustained.

4 By the end of this trial you will see that the
5 evidence forces me to come back and ask you for a
6 verdict of \$1,250,000. You will see that that
7 amount of money equals the harms and the losses
8 sustained by Mr. Moorer. It will compensate him
9 for his lost wages in the past from the time he
10 last worked to now, but also his lost wages in the
11 future to retirement age, plus, critically for him,
12 health insurance.

13 The only thing we are going to ask you to ever
14 consider in this case is the evidence, the harms
15 and the losses.

16 Thank you.

17 THE COURT: Yes, sir, Mr. Tecklenburg?

18 MR. TECKLENBURG: May it please the Court?

19 THE COURT: Yes, sir.

20 OPENING STATEMENT

21 MR. TECKLENBURG: Mr. Moss? Mr. and Ms.
22 Moorer? And ladies and gentlemen of the jury?

23 As I introduced myself earlier when you were
24 going through the qualification process, my name is
25 Paul Tecklenburg. I am from Charleston. And I'm

1 very proud to represent Norfolk Southern Railway
2 Company.

3 I get to go second, so you have heard a lot
4 from Mr. Moss that we don't necessarily agree with.
5 I'm going to give you the reasons why in a couple
6 of minutes.

7 But before I get into the details -- and
8 you'll be glad to know many of the details we agree
9 on, but there is some that we don't -- that we
10 disagree on, and we'll have to work with you to
11 find a solution because that is your job, to decide
12 the facts.

13 But before I talk about that, I want to
14 introduce some of the people that are with me at my
15 table just so you -- you met Mr. Jenkins earlier.
16 He's my partner. Vickie Carroll-White, who is
17 seated at the counsel table, Vickie Carroll-White
18 is a nurse from the Norfolk Southern Medical
19 Department. She has worked there nearly 15 years
20 and was a private nurse before that. She was the
21 person that was involved in reviewing Mr. Moorer's
22 records that you are going to hear a lot about over
23 the next couple of days.

24 And Mr. David Stinson -- if you would just
25 stand up -- Mr. Stinson is one of the supervisors

1 that greeted Mr. Moorer when he came back to
2 Columbia. And you are going to hear from him
3 during the trial and what he has to say about what
4 happened on this day -- on the days. And I can
5 tell you there is a stark difference between what
6 Mr. Moss has described and what Mr. Stinson and
7 Mr. Connelly are going to describe when they tell
8 you right there on that witness stand what they
9 were conversing about over the cell phone.

10 So I must always start -- and you have heard
11 some of this, I think Judge Manning went sort of
12 rapidly through some of it today, but we all know
13 and you have heard that you belong to the best
14 judicial system in the world, where citizens --
15 citizens get to decide disputes between other
16 citizens.

17 And one of the things that the judge is going
18 to tell you at the end of the case, because she is
19 the one that is going to what is called charge the
20 law, she is going to tell you what the law is, she
21 is going to tell you that companies or corporations
22 are equal citizens in the eyes of the law, that you
23 are to treat individuals and companies on an equal
24 scale. We are here because we know you can do
25 that. We know you can be impartial. And you know

1 that we know that you can treat a company and an
2 individual equally. Your impartiality in this
3 process is key.

4 The other thing that I would ask you, since
5 the Plaintiff does get to go first, just like they
6 just gave the first opening argument, but the
7 Plaintiff presents their witnesses first and then
8 the Defendant produces and presents their
9 witnesses. And, believe it or not, the Plaintiff
10 has an opportunity to reply. So you may hear from
11 the Plaintiff twice.

12 Please keep an open mind throughout this
13 process. Let the Defendant witnesses testify. And
14 you are not supposed to make up your mind until the
15 judge charges you the law at the end of the case.
16 But I can tell you, from our viewpoint, you need to
17 hear at least both sides. Make your judgment of
18 the facts after you hear all the witnesses, not
19 when one side is finished.

20 Judge Manning said that no one is here to
21 punish or reward anyone. And we come to you with
22 that thought. We're all here to present to you
23 facts which you must weigh and decide what to do at
24 the end of the day.

25 Another thing that I want you to remember as

1 this case proceeds is that the Plaintiff always has
2 the burden of proof. So no matter what stage the
3 case may be in, the burden of proof to convince you
4 that the Defendant was negligent, which we're going
5 to talk about in a second, it is their burden of
6 proof. They have to prove that the company, that
7 Norfolk Southern was negligent. It is not enough
8 that it just happened at work. It is not enough
9 that it just happened when he happened to be
10 walking around the tracks. It is just not enough.
11 They have to prove negligence at the end of the
12 day. And the judge is going to tell you what that
13 means.

14 In the process, though, of finding negligence,
15 it really comes down to one thing that you walked
16 in with today, one thing that you will leave with
17 this afternoon, and one thing you will leave with
18 when this case is over, and that is your common
19 sense. Your common sense.

20 Judge Manning said today that it is your job
21 to decide cases based on conscience, common sense,
22 and good judgment. I don't think he could have put
23 it better. And I assure you if you apply common
24 sense you will find the solution to the questions
25 you are going to be asked to answer.

1 You need to ask yourself, do the things that
2 the Plaintiff is advocating make sense. Does it
3 really make sense that they are accusing the
4 company of that. Did Norfolk Southern act
5 reasonably when faced with the facts.

6 So what happened? And, excuse me, I am one of
7 these folks that does rely a little bit on the
8 screen. But I do it for a reason. Because I find
9 that it is an excellent way to show you what we
10 believe the facts are.

11 I have told you about the company. I want to
12 tell you a little bit about the people. Because
13 really all a company is is an organization made of
14 people. That is really all it is.

15 And the first person I want to discuss with
16 you who will testify is Vickie Carroll-White. I
17 have already told you she is from the medical
18 department. She talked to Mr. Moorer when all of
19 this was going on. You see they had that first
20 incident, the May 9th incident, that they are not
21 suing about, well, after that incident Mr. Moorer
22 wanted to come back to work. His doctor said he
23 could come back to work. And that information was
24 sent on to Ms. Carroll-White. She called
25 Mr. Moorer and said, I need some more information.

1 We don't have your hospital records. We don't have
2 any -- we don't have the rest of your records.
3 Send me something.

4 Mr. Moorer got a Fax. He sent it to the
5 medical department and she reviewed it. That is
6 what medical departments do. Medical departments
7 are not personal doctors. They review what
8 employees give them. And you'll hear in a minute
9 what sort of medical records she was presented with
10 to make her decision as to whether to clear him for
11 work.

12 The next person you will hear from is Will
13 Deshazor. Will Deshazor was involved as
14 Mr. Moorer's direct supervisor. He was from
15 Charleston. And when he -- when Mr. Moorer came
16 back to work on May 30th, Mr. Deshazor went out and
17 met with Mr. Moorer and asked him how he was doing
18 and how was his first day back, gave him Gatorade,
19 everything was fine. Mr. Moorer said he was fine.
20 That is what a reasonable supervisor should do.

21 You'll hear from Tommy Connelly. He was the
22 engineer on the train on May 30th and May 31st. He
23 is going to tell you that on May 30th was just a
24 fine day. Three industries worked. Not a big
25 deal. They get the second day on May 31st. They

1 work two industries. I am going to talk in a
2 couple of minutes about what that means. And he is
3 going to tell you that when Mr. Moorer got on the
4 train in Orangeburg at 2:34 or -- we agreed to the
5 times, but around 2:24 or 2:25 on that afternoon of
6 May 31st, Mr. Moorer said, talk to Mr. Deshazor,
7 let's go back to Columbia. I'm not feeling great,
8 but I feel up to going. Okay? He didn't ask for
9 any help. He didn't tell Mr. Deshazor he needed
10 any help. He was willing and wanted to go back to
11 Columbia.

12 He is also going to tell you about the trip
13 back. Mr. Moss is right. Mr. Moorer told
14 Mr. Connelly, I'm feeling worse. Guess where they
15 are? They are in the middle -- right south of the
16 Congaree Swamp. For those of you who know Richland
17 County geography, there is not much out there. And
18 they were faced with a decision on what to do. And
19 we will discuss that in a minute too and how that
20 decision was made.

21 David Stinson I have already introduced to
22 you. Mr. Deshazor was out of town, so Mr. Stinson
23 was in Columbia. He was the person who handled
24 this incident. And within seven minutes of the
25 train arriving at the yard, there was fire

1 personnel there, which are qualified EMTs, to try
2 to deal with the situation.

3 You are going to hear from Roger Davis, who is
4 a conductor. He has a lot of experience on this
5 job. He is going to describe the work that was
6 done on these days, and the description I think you
7 will find -- you will look at those descriptions
8 and see what is involved with being a conductor.

9 We are going to show you video clips so you
10 can judge that for yourself.

11 Norfolk Southern is a business essential to
12 our economy, providing us goods, run by good
13 people, and it is not what we just heard. It is
14 not "the railroad."

15 So, one of the things that was hinted during
16 the opening statement was the rookie status of Mr.
17 Moorer. Folks, you are going to hear about a
18 training that he went through. There is nothing --
19 nothing close to being a rookie on the railroad.
20 You have to go through weeks of classes in
21 McDonough, Georgia. He started in August of 2006.
22 He did not even what they call mark up or sign up
23 as a conductor until January. He had over four
24 months of training. Okay? He had classes. And
25 after you get out of classes you have to ride every

1 train on your division. Every train. He rode them
2 all. You have to work with the people, see the
3 industries. He rode them all. This gentleman was
4 not a rookie. He was trained. And he will admit
5 that Norfolk Southern does good training. They do
6 annual rules tests. And you'll see the rule book
7 that he has to memorize. It is a fairly large
8 book. And there are safety rules in there that you
9 are going to see that Norfolk Southern knows, every
10 employer knows that has outdoor job employees, they
11 know that heat exists. There are tracks in South
12 Carolina. There are tracks in Georgia. Those
13 places are pretty hot in the summer. There are
14 tracks in, you know, up in the northeast. They are
15 pretty cold in the winter. Okay? Employees that
16 work outside are exposed to a lot of heat. Anyone
17 who has worked outside knows.

18 So, what does the safety manual do? It tells
19 you about heat. It tells you how to look out for
20 things. And Mr. Moorer had that with him. And he
21 in fact did hydrate and did things that he was
22 supposed to. Anyhow, we will talk to you about
23 that.

24 The other thing is that when they leave the
25 yard, they have a cooler of water. Every day they

1 have a slam full cooler. And they give you what
2 are known as Squenchers so you can create Gatorades
3 for yourself during the course of the day.

4 And then finally -- and this is important --
5 employees, these conductors, they work at their own
6 pace. Everybody is different. Some people can
7 knock it out. Some people are slower than others.

8 Norfolk Southern realizes that, so what they
9 do is they tell a conductor, listen, when you need
10 to take a break, take a break. If it is hot, take
11 a break. And the way they run trains allows you to
12 do that. I'll explain that in a minute.

13 So, what happened? You have heard on May
14 8th -- this is when this all started -- they are
15 not suing over this, by the way -- but he hurt on
16 May 8th. He had heat cramps. He was at home. He
17 sweated in his sheets. It was -- it sounded like a
18 pretty rough night.

19 He decided to go to work on May 9th. He
20 didn't tell anybody. He got on the engine. He
21 didn't tell Engineer Britt that he had a problem
22 the night before. He didn't tell the supervisor.
23 He just decided to go to work. And he got to work
24 at 10:25. He worked three industries. And the
25 weather was 78 degrees.

1 Now, working industries you are going to hear
2 a little bit about from all the witnesses and you
3 are going to get a range of how long it takes to
4 work the industries. Their witnesses may say an
5 hour and a half. Some of our witnesses may say a
6 half hour. You can decide. It is up to you. But
7 however long it is, what you are going to find is
8 and what the evidence that is going to be presented
9 to you is they work 4.3 industries a day. And on
10 these incidents, these days, they were not getting
11 close to that. He worked three industries on May
12 9th. The weather was 78 degrees. And EMS was
13 called in Orangeburg and retrieved him and took him
14 to the Orangeburg Hospital. Mr. Moorer knew how to
15 ask for help. He got help on May 9th. And as
16 Mr. Moss has told you, they are not suing over this
17 event. It happened at home.

18 Your Honor, we have a juror with their hand
19 up.

20 FEMALE ALTERNATE: May I go to the ladies
21 room?

22 THE COURT: Do you need to go right now? It
23 is an emergency. Okay.

24 Excuse me, Mr. Tecklenburg. We will take a
25 short break so she can run to the restroom.

1 (Pause.)

2 MR. TECKLENBURG: Thank you, Your Honor.

3 OPENING STATEMENT CONTINUES:

4 MR. TECKLENBURG: So we were on May 9th. He
5 gets his note saying it happened at home. He
6 wasn't encouraged. And the testimony will be he
7 certainly wasn't told to lie. That is what he told
8 folks at work. He said it happened at home.

9 So he shows up on May 17th. Okay? Eight,
10 nine days after the accident. He meets with
11 Mr. Deshazor. He says, I got a note from my
12 doctor. I want to come back to work. I would like
13 to come back to my job. A pretty ordinary
14 experience. People come in with a note and want to
15 come back to work.

16 So his family doctor, Dr. Dantzler, signed
17 this return-to-work note. And you will see it in
18 evidence. It is clear as a whistle. It says he
19 can come back.

20 Mr. Moorer ends up speaking with Ms. Vickie
21 Carroll-White. She says, I need all your records,
22 just not the note. Give me what you have. Give me
23 what you can get. So he sent more, as I told you.

24 And at the end of the day the doctor released
25 him to come to work because Mr. Moorer told the

1 doctor he wanted to come to work. And the doctor
2 had access to the medical records and decided, you
3 can go back to work. So the doctor was with him.

4 Mr. Moorner came to the supervisor, Mr.
5 Deshazor, says, I want to come back to work.

6 Mr. Deshazor said, great. Nice you have a
7 release here. I'll send it up to the medical
8 department.

9 Then the medical department gets the records,
10 talks to Mr. Moorner, and he tells them he wants to
11 come back to work. Okay?

12 Everybody -- everybody is working in good
13 faith trying to get Mr. Moorner coming back to work.

14 So Mr. Moss said in his opening, he said that
15 they are suing the railroad for two reasons. Okay?
16 And the first reason is based upon this expert,
17 Dr. Casa, that they hired for this case. Okay? He
18 is going to testify on the video. And basically
19 Dr. Casa, this newfound expert, doesn't agree with
20 Dr. Dantzler. Okay? That Dr. Dantzler should have
21 done a better job.

22 That is what this case is about. It is not
23 about whether Norfolk Southern did anything wrong.
24 It is not that at all. And we'll talk about that
25 as the case goes on.

1 So, I'm not going to get into detail in all of
2 this. It is sort of late. But I will tell you
3 this. There are different types of conductor jobs.
4 Mr. Moorer's conductor job was sort of in the
5 middle. The real hard jobs are the yard jobs where
6 you worked all day switching. The type of job he
7 had, you get to spend an hour or more sitting down
8 going to your job. From Columbia they ride down to
9 Orangeburg. Whenever they are passing trains and
10 you have to clear up, as they call it -- you will
11 learn what that means -- you get to rest, a passing
12 train coming. So it is a medium type job as far as
13 conductors go.

14 You are also going to see videos of what
15 conductors do. And they throw switches. They turn
16 brakes or wheels on cars. They change a derail or
17 they move a derail. These are things that you will
18 know by the end of the week. You will know
19 everything a conductor does. But I will submit to
20 you the descriptions you will hear is these are
21 either light to medium jobs. They are not out
22 there swinging sledge hammers or digging holes. It
23 is a light to medium job.

24 One of the other things that is important is
25 Charleston and Columbia have a number of jobs,

1 railroad jobs that are available, meaning that the
2 conductors are assigned with any other jobs. They
3 belong to a union. They get on a -- they can
4 either -- if they have seniority they can either
5 get a good job or whatever job they want. If they
6 don't have seniority, sometimes they don't get the
7 best job in the world. They get what is known as
8 forced to a job. You'll learn what that is.

9 But more than two-thirds of the jobs they run
10 out of Charleston and Columbia have a single
11 conductor. Okay? Just like the P28 that Mr.
12 Moorer was working.

13 And for the seven years prior to this
14 incident, six of those years, more than six of
15 those years was with a single conductor on the P28.

16 You will hear from Mr. Derrick Mason that
17 there was a short period in 2006 when they were
18 trying to avoid furloughs, and he increased that
19 job with a second man, a brakeman, as it is called.
20 But that only lasted about five months and then it
21 went back to a single conductor job.

22 So this job historically for the seven years
23 prior to the incident was mostly run by one
24 conductor and the engineer.

25 And the reason that a railroad can do that is

1 because employees are encouraged to work at their
2 own pace. Okay? And the law says, the federal
3 law, if you get to 12 hours you have got to stop.
4 About like stopping airlines. Railroad workers are
5 the same. Get to 12 hours, you have got to stop.
6 And that is the ultimate safety valve for these
7 employees; they can't work more than 12 hours.

8 I'm sort of skipping through these a little
9 bit, but you are going to learn a little bit about
10 track warrants. A track warrant is essentially a
11 grant of space for a train to operate.

12 I am referring to Defendant's Trial Exhibit
13 96. And this is Columbia. Down here is
14 Orangeburg. And all of these are mileposts. And
15 that is how a train is given authority to go from
16 one place to another.

17 The dispatcher says, you are allowed to go
18 from Milepost SC-125 down to SC-107. And that
19 means that you have exclusive right to work at that
20 track. That keeps trains from running into each
21 other.

22 So you are going to learn about track
23 warrants. And why that is important is, is when
24 you are working in Orangeburg, they let you know
25 when a train is leaving Columbia. So you get about

1 an hour to plan. Okay? And guess what? If for
2 some reason it just doesn't work out and you have
3 got to work in the industry a little longer, the
4 conductor says, we can't get in the clear. We need
5 a little more time. In other words, they get to
6 work at their own pace. They can stop a train that
7 is coming their way just by saying, we need more
8 time.

9 I have already mentioned the P28 historically
10 is 4.3 industries. And I want you to listen very
11 carefully to the folks that are going to testify
12 that have worked this job.

13 On May 30th there were three industries
14 worked. Okay? That means boots on the ground,
15 walking around, throwing a switch, talking on the
16 radio to the engineer, 20 to 60 minutes per
17 industry. Okay?

18 On May 31st, the day that they are suing over,
19 there were two industries worked. You are going to
20 hear about this same timeframe. Maybe they will
21 differ a little bit depending on whether Mr. Moss
22 called them or whether I called them, but you can
23 decide what the true time it takes to work these
24 industries.

25 So, on May 30th you of course know, because

1 this is what the case is about, Mr. Moorer came
2 back. He had the three industries. I already
3 mentioned he was greeted by Will Deshazor to see
4 how he is doing. Given some Gatorade. Made sure
5 he had plenty in his cooler. And it was an
6 uneventful day. No complaints. No complaints.

7 You have already heard from Mr. Moss. Again,
8 we agreed to a lot of the timeline. Mr. Moorer
9 called Mr. Deshazor not feeling great. But what he
10 did say, and we both agreed, you know, I can make...
11 it back to Columbia. I'm okay. And that is what
12 they did. He and the engineer went on.

13 And the testimony will be that he did not
14 fault management for that call. Okay? The sworn
15 testimony that you will hear.

16 You have already heard about Engineer
17 Connelly's phone call that said, Trumaine is
18 feeling worse. Talked to Mr. Stinson. He told
19 him. And a decision was made at that time -- they
20 are near the Congaree Swamp -- Mr. Stinson says,
21 well, can I come meet you? Do you need me?

22 Mr. Connelly, I'm going 49 miles an hour
23 towards the city, where the medical facilities are.
24 Why don't I continue on?

25 Now, folks, at that point there is a choice to

1 be made. Do you stop -- you are in the middle of a
2 swamp, or right when you get out of the swamp, you
3 are in southern Richland County -- and call EMS and
4 wait? Or do you keep running 49 miles an hour to
5 get to the yard? Which, by the way, the Andrews
6 Yard is on the south end of Columbia. It is near
7 the football stadium. Okay?

8 Either of those are good decisions. Either of
9 them. And that is the second thing that they are
10 suing about.

11 So the second reason they are suing is they
12 let this engine return. He said he was okay to
13 come back. So really the only thing they have to
14 complain about is Mr. Connelly and Mr. Stinson.

15 Mr. Connelly is going to tell you that
16 Trumaine Moorer did not ask for EMS. Okay? That
17 is what Mr. Connelly says. That is a fact dispute
18 that you will have to resolve between Mr. Connelly
19 and Mr. Moorer, but I would submit that emergency
20 personnel showed up in Andrews Yard seven minutes
21 after the train got there anyhow.

22 Keep your eye on -- he was talking earlier
23 about the harm and the damages. Keep an eye on
24 what that seven minutes means. There is not going
25 to be testimony that explains what any long-term

1 medical effect would be by a 7-minute delay. It is
2 just not.

3 Now, the great thing about Mr. Moorer is he
4 has made a great recovery. He's going to tell you
5 that he feels healthy. He's been re-employed. He
6 worked outside in a family car wash that he and his
7 wife owned in 2008 to 2009. That was in St.
8 George. Working outside on pavement in the heat
9 washing cars. He qualified as a police officer at
10 the police academy. You are going to hear what it
11 takes to become a policeman. And it is pretty
12 rigorous. They have to go to the academy for about
13 three weeks. They have to jog three miles. They
14 have to lift a 170-pound body down three flights of
15 stairs. They have got to do a lot. And Mr. Moorer
16 has been through that. It sounds like he has just
17 been recertified.

18 But what is more amazing is that this past
19 summer he actually worked down in Charleston. St.
20 George, if you don't know your geography, it is
21 about an hour from Charleston. And he worked at
22 Charleston at a place called Kinder Morgan.

23 Kinder Morgan has a terminal railroad. Okay?
24 Which means that Kinder Morgan is -- and you will
25 see an aerial of this, but Kinder Morgan is on the

1 water. They serve ships. And they have a railroad
2 that runs around the rail cars to serve these
3 ships. And Mr. Moorer worked there last summer.
4 They provided excellent benefits. And last year in
5 2011 Mr. Moorer earned over \$38,000. And as I have
6 already mentioned, he believes he is in excellent
7 health now. So all of this shows a great recovery
8 by him and a great effort, last year at least, to
9 be re-employed. In fact, you see now he can work
10 outside again.

11 So Mr. Moss and I, or I should say Norfolk
12 Southern and Mr. Moorer, agree on a lot of things.
13 A lot of these timelines there won't be any
14 dispute. Cell phone records, they are what they
15 are. I'll have a nice chart for you to follow that
16 gives all the times and the dates, every event that
17 happened, so you can make your decision what that
18 means.

19 I have already mentioned, it is so important
20 to not make up your mind on anything until the
21 judge charges you and tells you it is time. But
22 the Defendant has a number of witnesses. We ask
23 you to be patient and please listen to them and
24 what they say.

25 Most importantly, apply your common sense.

1 Ask, does it really make sense that someone is
2 liable from what they are describing? You need to
3 ask that question, does it make sense.

4 And then finally, do what everyone in this
5 courtroom has asked you to do, what you have sworn
6 to do: Be impartial and find a judgment and a
7 verdict, find a verdict that speaks the truth.

8 Thank you.

9 THE COURT: It is about 5:30. And let me see
10 you all for a second.

11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: All right, ladies and gentlemen of
15 the jury, I believe we had a witness lined up to
16 testify, but we are going to -- does anyone have
17 any conflict, I think, that it would probably take
18 until right at 6:00 o'clock before they could
19 finish him. If not, we'll start in the morning.
20 Y'all have probably had a pretty long day, haven't
21 you? All right, we'll start at 9:30 in the
22 morning. We'll start at 9:30 in the morning. You
23 are to report back to your jury room at that time.

24 I remind you that you are not to discuss this
25 case with anyone. Not your family members. And

1 MR. TECKLENBURG: Your Honor, as a reminder
2 since you are hearing some -- or thinking on some
3 rulings this evening, Dr. Lina's letter has now
4 been referred to very specifically to the jury, so
5 just for your information.

6 Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 (WHEREUPON, court adjourned for the
9 evening.)

10 MARCH 6, 2012

11 THE COURT: Are ready for the first witness?

12 MR. MOSS: Yes, sir.

13 MR. TECKLENBURG: Your Honor, there was one
14 motion that we didn't argue yesterday, which was
15 Dr. Casa. You recall that we moved in limine at
16 the last trial to exclude him. There is motion on
17 file basically excluding his qualification, the
18 fact that he has no industrial experience, and also
19 his unfamiliarity with the railroad industry. And
20 basically you ruled against us on Page 504 of the
21 transcript.

22 I was just wondering before we go any further
23 with the trial, which I'm sure Dr. Casa is going to
24 get mentioned, whether you want to re-rule on that
25 issue.

1 THE COURT: Is your argument still the same?

2 MR. TECKLENBURG: It is, Your Honor.

3 THE COURT: I think it just goes to the weight
4 of the evidence.

5 MR. TECKLENBURG: We cited the Watson case,
6 Your Honor.

7 THE COURT: I think it goes to the -- let's
8 see. I think he was qualified to testify as to
9 exertional injury heat illness.

10 MR. TECKLENBURG: Correct. Your Honor, also
11 yesterday during the opening -- I'm sorry.

12 THE COURT: All right. I think that the
13 ruling will be that he can -- I mean, he will
14 testify to what he testified to previously. And,
15 you know, the issue about him not having railroad
16 experience and not being familiar with the
17 railroad, I mean, I think that goes to the weight
18 of the evidence.

19 MR. TECKLENBURG: Your Honor, also on Page 539
20 of the transcript -- and we addressed this
21 yesterday, but I'm not quite sure what your ruling
22 was -- on Page 539, Line 14, you essentially
23 limited Dr. Casa in his ability to talk about
24 sending people back for light duty work and to work
25 limited days, limited hours, things of that nature.

1 And yesterday when we were -- I think the
2 Plaintiff is stretching the field test part of the
3 Fee for Service Manual to the limit, and actually
4 beyond the limit. Yesterday he suggested, Your
5 Honor, that you could have a field test lasting for
6 weeks, okay, where you have professionals out in
7 the field and you have supervisors out in the field
8 and you essentially observe this person and
9 acclimatize him back to work over a period of
10 certainly -- and Dr. Casa talks in terms of weeks,
11 two or three weeks.

12 That is not what a field test is, Your Honor.
13 And what is starting to develop here is a stretch
14 of -- not even a stretch, a complete aberration of
15 what the field test manual says.

16 So I would just re-emphasize to the Court your
17 prior rulings on that issue because the door seems
18 to be opening towards trying to say Dr. Casa said
19 there should be, you know, a 3-week field test.
20 And there is no evidence anywhere that field tests
21 are like that.

22 I mean, field tests -- and this is Exhibit 8,
23 Plaintiff's 8. It is dealing with locomotion,
24 agility, manual dexterity, hearing or visual
25 acuity, or other functional limitations where

1 essentially it interferes with your safe
2 performance.

3 It is primarily made for the guy who has come
4 back to work, has some restriction, can't walk as
5 well, he has some orthopedic issue. And they send
6 a therapist out there for an hour to observe him.
7 It is not a 3-week acclimatization class. Okay?

8 So, in any event, Your Honor, you ruled
9 previously on that. And I just wanted to notify
10 the Court that.

11 THE COURT: Are you putting up Dr. Casa's
12 testimony this morning?

13 MR. MOSS: No.

14 THE COURT: All right, we'll deal with it at
15 that point. But, I mean, the ruling, unless
16 Mr. Moss has some more to add, the ruling is going
17 to -- I mean, it will remain as is as to the
18 designations I think on the deposition.

19 MR. TECKLENBURG: On Dr. Casa?

20 THE COURT: Yes.

21 MR. TECKLENBURG: Thank you, Your Honor.

22 MR. MOSS: And we have invoked the rule of
23 sequestration, Your Honor.

24 THE COURT: I'm sorry?

25 MR. MOSS: We have agreed to invoke the rule

1 of sequestration or we would ask the Court to --

2 THE COURT: Okay, so witnesses, anyone that
3 will testify.

4 MR. TECKLENBURG: Correct.

5 THE COURT: All right. All right, let's bring
6 them in.

7 (WHEREUPON, the jury came into open
8 court at 9:54 a.m.)

9 THE BAILIFF: The jury is present, Your Honor.

10 THE COURT: All right. Good morning, ladies
11 and gentlemen of the jury. I hope that you had a
12 restful evening.

13 At this time I am going to ask the Plaintiff
14 to call his first witness.

15 MR. MOSS: Your Honor, the Plaintiff calls
16 Billy Chavis.

17 (Witness enters courtroom.)

18 THE BAILIFF: Place your left hand on the
19 Bible, raise your right hand, and face the clerk,
20 please.

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you are about to give in this case will
24 be the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Have a seat in the
3 witness stand, please.

4 (Witness seated.)

5 THE CLERK: State your name for the record.

6 THE WITNESS: Billy Nakia Chavis.

7 BILLY N. CHAVIS,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MOSS:

11 Q Good morning.

12 A Good morning.

13 Q Where do you live, sir?

14 A I live in Holly Hill, South Carolina.

15 Q How are you employed? How are you employed?

16 A I'm employed with Norfolk Southern Railroad.

17 Q What do you do?

18 A I'm a train conductor.

19 Q What does that mean?

20 A I'm the ground man for a train that leaves out of
21 Columbia and goes to International Paper, American
22 Italian Pasta, and back to Columbia.

23 Q That sounds like a specific job you are currently
24 working?

25 A Yes.

- 1 Q Does it have a number or designation?
- 2 A Yes, P66.
- 3 Q How long have you been at the railroad?
- 4 A Seven years.
- 5 Q What is your -- roughly, what is your hire date, if
- 6 you can recall?
- 7 A June 21st, 2005.
- 8 Q Do you have seniority in any other crafts other
- 9 than a conductor?
- 10 A Yes.
- 11 Q What else do you have?
- 12 A Yardmaster.
- 13 Q Is that it? Like have you been to locomotive
- 14 engineer training?
- 15 A No.
- 16 Q Will you describe, if you will, the natural career
- 17 progression for a conductor who hires and then
- 18 progresses through the ranks to become a locomotive
- 19 engineer for Norfolk Southern?
- 20 A Once you get hired out, you go to school in
- 21 McDonough, Georgia. Once you graduate McDonough,
- 22 Georgia, you come back and you train. Once you
- 23 train, you are -- the local -- the contract
- 24 agreement with the union and the railroad states
- 25 that you will, after one year on the ground, you

1 could possibly end up going to engineer school..

2 But when you are hired out, you have that one year
3 timeframe. Nothing says that you will go to
4 engineer school within a year, but you could
5 possibly go.

6 Q An engineer is different than a conductor?

7 A Absolutely:

8 Q How?

9 A The engineer is the guy who is actually running the
10 train. He is running the engine. He stays on the
11 engine. He is overall in charge of that engine..

12 Q So, briefly, distinguish what you do from what the
13 engineer does.

14 A The engineer does everything the conductor tells
15 him to do. So you don't have -- the person who is
16 overall in charge of the train is the conductor.
17 The engineer goes back and forward. That's all he
18 can do. The conductor tells him to go back and
19 forward, couple up. The conductor watches over his
20 speed, even though the engineer knows the speed,
21 but that is -- you are on the ground. The
22 conductor is on the ground. The engineers sits up
23 on the engine.

24 Q Are there different kind of jobs that a conductor
25 might work? And I'm talking specifically about a

1 road job versus a local versus a yard job.

2 A Yes.

3 Q Describe that, please.

4 A A yard job, you don't leave the yard, you stay
5 inside a confined area, yard limits. A road job
6 you can go from say Charleston to Columbia and the
7 train that you take from Charleston to Columbia you
8 take back from Columbia to Charleston. Then you
9 have locals. A local will go out of Charleston, go
10 out, work a certain distance, like, for example,
11 say Columbia, there is a job -- there is two jobs
12 out of Columbia, one goes to Orangeburg and my job
13 goes to Eastover, and then it goes back to its home
14 terminal, which is Columbia.

15 Q Would those be local jobs?

16 A Yes.

17 Q What are the two number designations for the local
18 jobs that go out of Columbia?

19 A The first one, the morning job is the P28. It goes
20 from Columbia to Orangeburg and back. Then you
21 have the P66 that goes from Columbia to Eastover
22 through Kingville and then back to Columbia.

23 Q Let's talk specifically about the P28. Have you
24 ever worked that job, Mr. Chavis?

25 A Yes.

1 Q And I know that it may change from day to day, but
2 generally would you describe what the P28, the
3 local job out of Columbia, does?

4 A The P28 gets the train together in Columbia and you
5 leave headed west -- or headed east back towards
6 Charleston. You go through St. Matthews -- or
7 Kingville, St. Matthews, into Orangeburg to
8 Rowesville, sometimes Branchville, and back to
9 Columbia working industries on the way from
10 Columbia to Rowesville.

11 Q What do you mean when you say working industries?

12 A You have customers along the route that you have
13 to -- they call for cars whether it be to place
14 cars, pull cars. So if he calls for -- say today a
15 customer calls for -- he wants to switch today,
16 then on your route, whether it be an eastbound
17 switch or westbound switch, you stop and switch
18 that customer, pick up cars or haul cars for him.

19 Q And then when -- what does a local job like the
20 P28, how does the engineer and the conductor relate
21 to each other? Can you just kind of talk us
22 through how you might handle any generic industry,
23 nothing specific.

24 A Before the conductor gets off, you have what is
25 called a job briefing. You go ahead and explain

1 between yourselves all your safety hazards,
2 anything that you may encounter with derailis,
3 switches, heat, bees, roaches, anything around
4 that -- in that nature that is going to have to
5 deal with safety. You make sure you are on the
6 same radio channel, because the conductor has a
7 radio and the engineer has a big radio. So one of
8 the things that you want to make sure is that you
9 and your engineer are both on the same channel.
10 And then once you get on the ground you do a radio
11 check to make sure that you and him are on the
12 radio -- the right channel.

13 Q And what is the process of dropping and picking up
14 rail cars?

15 A Usually your customer, depending on -- you know, if
16 you have got a customer that has one car, you,
17 depending on how you want to do it, if you have got
18 a car for him and you are going to pick up a car,
19 so you are going to do a one-for-one, then you
20 could do it one of two ways. You can either cut
21 your engine off, leave the car on the mainline, cut
22 your engine off, go into the customer light end,
23 which is just the engine by itself, grab the car,
24 come back out and grab the load and go back in and
25 spot up. Or you can go in with the load, go out

1 and grab the empty, go out to the mainline, put the
2 empty back out and go back in and spot up a little
3 bit.

4 Q So it sounds like usually when the P28 leaves
5 Columbia, does it usually have some cars attached
6 to the locomotive?

7 A Yes.

8 Q Roughly, how do those numbers vary? On a P28, what
9 is the kind of range of cars that you might expect
10 to leave Columbia going to Orangeburg?

11 A You could have anywhere from one -- well, you could
12 have anywhere from none to -- I think the most I
13 have ever had on me was probably about 15, 20, 25.

14 Q Mechanically, how does an engine couple to or
15 attach to a rail car?

16 A By knuckles. The knuckle -- you have a pin. And
17 whenever you open up a knuckle, it is just like a
18 knuckle on a finger, when you pull a cut lever, the
19 knuckle opens up. And both -- all -- both ends of
20 a car, both ends of an engine have a knuckle on
21 them. So whenever you want to couple up to a car,
22 all you do is when you hit those cars, those
23 knuckles close up and the pins fall. So once those
24 pins fall, then you pull the slack out and make
25 sure that the pin held and is going to hold the

1 car.

2 Q If we were to watch you on the ground at an
3 industry in Orangeburg, for example, on the P28,
4 what tasks, physical tasks, would we see you doing?

5 A You would see us -- or you would see me switching,
6 looking at a lot of paperwork, going over -- well,
7 you won't see me going over it through my mind, but
8 you would see me checking over my paperwork to make
9 sure that I'm going to pull the right cars, place
10 the right cars, and that my train is -- the numbers
11 match. And going over trying to get myself a plan
12 together on how I'm going to switch each individual
13 customer and set my train up to make sure that I
14 can do it efficiently as possible.

15 Q Is there any walking involved?

16 A Yes.

17 Q Describe it, please.

18 A For instance, one customer we have, Dog Food --

19 Q That is Doane Pet Products?

20 A Doane Pet Products.

21 Q Also called Dog Food?

22 A Yes.

23 Q Okay.

24 A He takes 15 cars on the spot, but his spot is
25 actually 30 car lengths long because he takes 15

1 cars towards the mainline, and that way he can roll
2 a car that he needs back out on his side of the
3 track.

4 So you could -- the customer rolls his own
5 cars by, so, you know, so he will get corn, he'll
6 get meat and bone, and things like that. So he
7 doesn't unload cars each individual at each time.
8 So he goes after a car with specific numbers
9 because he knows what is in them. So he could have
10 cars on the top of the hill and he could have cars
11 behind it. So you could end up walking at Pet Co
12 by itself 30 car lengths.

13 Q What about switches? What is a switch?

14 A A switch is where points come together. It allows
15 you to take another direction, whether it be a
16 customer. And all it is is a -- it is a lever that
17 you throw. And whenever you throw it, it allows
18 the leading edge of another track to intervene into
19 that track and allows you to go into a customer and
20 it just takes the rails and slides it against the
21 outside rails and it provides you a new route.

22 Q For example, do you take the mainline track from
23 Columbia to Orangeburg on the P28?

24 A Yes, on the mainline.

25 Q Then when you get to an industry, do you switch to

1 get to a track that actually services the industry?

2 A Absolutely.

3 Q Is that when you would throw the switch?

4 A Yes.

5 Q Okay. When you set cars off or any time you stop,
6 do you have to do anything with the brakes,
7 handbrakes?

8 A Oh, yes. You have to set handbrakes to make sure
9 that your cars aren't going to roll away. You guys
10 don't want to have cars come back to Columbia.

11 Q How do you do it?

12 A It is a wheel. It is a chain assembly that is
13 hooked to a braking system that applies to the
14 brake pads. Clockwise tightens the brakes,
15 counterclockwise knocks off the brakes. There is
16 holes in it. You climb up on the side of the car.
17 Well, first you get 3-step from your engineer over
18 the radio.

19 Q 3-step?

20 A Yes. 3-step is a way to make sure that you don't
21 get yourself killed. You ask for 3-step over the
22 radio. Once he gives you 3-step, he draws down the
23 independent brake, which is the brake to lock the
24 train; he draws down the automatic brake, which is
25 the brake to hold the engine; and he puts the -- or

1 actually, I'm sorry, he draws down the automatic
2 brake, which is enough brake on the train, air, to
3 hold the train back. He centers the reverser and
4 he's got a field switch that he takes and it takes
5 away all the power he can do. So he can hit the
6 throttle and the engine won't do anything.
7 Generator field switch is what it is called.

8 Once you get the 3-step, that tells you --
9 that is part of the three steps -- that is the
10 three items that he does to make sure that there is
11 nothing that he could do that could get you hurt.

12 Q Meaning move the equipment while you are between
13 it?

14 A Move the equipment while you are between it. So
15 once he gives you 3-step, then climb up on the side
16 of the box, or swing inside -- or the car -- you
17 swing inside, and you go to the hand brakes.

18 Once you get inside the hand brake, then you
19 maintain three points of contact, which is
20 two feet, one hand, and you turn the brake.

21 Q Are you up on the rail car at this point?

22 A Yes.

23 Q We've seen rail cars, but kind of -- where are you
24 on the rail car when you are applying and releasing
25 these hand brakes?

1 A You are -- sometimes you can be on the leading end
2 because, you know, cars get turned at all different
3 stages throughout the railroad. The car -- the
4 hand brake could be on the engine side or it could
5 be on the trailer side. The brake is always going
6 to be just inside the gauge of the car, inside the
7 rail. The gauge is between both pieces of rail, is
8 considered a gauge. So the hand brake is going to
9 be inside the gauge, which is the reason why you
10 need 3-step in order to go in and get that brake.
11 But the brake is going to be on the end of the car
12 usually at all times.

13 Q The brake itself is shaped how?

14 A In a circle.

15 Q Like as big as a manhole cover or --

16 A A little smaller than a manhole cover. Probably
17 about -- they actually differ. You have some that
18 are pretty big and you have some that are smaller.
19 I would say probably about a foot and a half,
20 2-foot wide.

21 Q And you are up on the equipment. How high are you
22 when you are applying and releasing the hand brake?

23 A Six foot.

24 Q If you would, just show the jury -- you don't have
25 to stand up or anything, just kind of show them how

1 you move your arm and what you do when you apply
2 and release a hand brake.

3 A When you are turning the hand brake, it has holes
4 inside of it, so you are grabbing it and you are
5 turning the hand brake.

6 MR. MOSS: The record shows his left hand is
7 in the air and his right hand is moving in a
8 counterclockwise fashion.

9 Q What does -- what role does seniority play in your
10 ability to work any specific job at the railroad?

11 A Seniority? If you were a senior manager, the job
12 that you want or job that you like, if you don't
13 have the seniority, which is everyone who was hired
14 before you is senior to you, you can go to school
15 with three people down to McDonough, Georgia and
16 you could be the junior man coming out of school
17 which means there are two guys ahead of you --
18 well, when you have two guys ahead of you. Until
19 you gain seniority, which is people retire or quit
20 or just get hurt or leave, then you don't gain
21 seniority, so you pretty much stay where you are at
22 until you stand for the job seniority-wise.

23 Q Do you always get the job that you want?

24 A No.

25 Q And why is that?

1 A Because if it is jobs that other people -- if it is
2 a good job and pays you well, you -- if it is a
3 really wanted job, the chances of you getting it
4 are slim to none if you are the junior man, because
5 everybody else wants it.

6 Q Does being forced to a job -- is that a term you
7 are familiar with?

8 A Yes.

9 Q What does that mean?

10 A That means that no one wanted the job. So,
11 therefore, the junior man got forced to the job.
12 The job goes on the bulletin for seven days.
13 According to the contract rules with the union, on
14 the seventh day the job is awarded. And if no one
15 bids on the job, then the job is awarded to the
16 junior man.

17 Q We talked about conductors and we talked about
18 engineers. What is a brakeman?

19 A The brakeman is -- he is the man as far as on a job
20 is the bottom man on the job. He does what the
21 conductor tells him to do. He answers to the
22 conductor, the conductor tells him what to do,
23 which the engineer and the conductor -- or the
24 engineer and the brakeman fall up under the
25 conductor, but the conductor -- the brakeman, he is

- 1 going to do whatever the conductor don't want to do
2 usually. Tie the brakes, lays air hoses, write car
3 numbers down.
- 4 Q If we refer in this trial to a two-man crew --
- 5 A Uh-huh.
- 6 Q -- what two men are we talking about?
- 7 A Engineer and conductor only.
- 8 Q If we talk about a three-man crew, what are we
9 talking about?
- 10 A Engineer, conductor, brakeman.
- 11 Q Who decides whether a job like the P28 has a
12 two-man crew or a three-man crew?
- 13 A Usually it is going to be a trainmaster.
- 14 Q I forgot to ask you, sometimes you had the ability
15 to use some equipment in applying or releasing the
16 hand brakes?
- 17 A Yes.
- 18 Q What is it called?
- 19 A A brake stick.
- 20 Q Does it help?
- 21 A Yes.
- 22 Q Okay. Are they always available or is it optional
23 to use it or not use it?
- 24 A Now they are available. They were then -- actually
25 then they were required, if my memory serves me

1 correctly. And they were -- any time you lost one
2 or had -- or needed one or broke one, you got
3 another one.

4 Q What does a brake stick do?

5 A It just extends your reach. It allows you to keep
6 from having to get up on the side of a car. You
7 still had to get 3-step from the engineer, but it
8 keeps you from -- say, when it is raining, it is
9 cold, snow, sleet, it keeps you off the side of the
10 car because the equipment is made out of steel. So
11 it allows you to extend your reach and do things
12 from the ground that you're not allowed to do
13 unless you come up on the car.

14 Q Have you worked the P28 as both on a two-man crew
15 and a three-man crew?

16 A Yes.

17 Q Can you please tell the jury the differences to you
18 when you are -- physically, how does it change the
19 job when it is a two-man crew versus a three-man
20 crew?

21 A With a two-man crew, engineer and conductor only,
22 you are the only man on the ground. So therefore
23 you are overall in charge of having to walk those
24 30 car lengths. You have to ride the cars back
25 out. You have the line switches, or not

1 necessarily the 30 car lengths, but at Doane Pet
2 Care. But every place that has to be walked, you
3 have to walk it. You have to line every switch --
4 or you have to knock off every derail. You have to
5 protect every shove move. You have to pull every
6 pin. You have to cut out air. You have to do your
7 C102, you know, things like that.

8 Whereas, a three-man crew, it is a pitch and
9 catch. It allows you to do things and pass it on
10 to another person. So whenever I make a coupling,
11 say here, and I've got a switch that is out, if I
12 have got to brake and the switch went out, I can
13 take and make the coupling and pull him out and
14 just walk over to stand there and wait for the
15 shove to come my way. So it is a pitch and catch.
16 I'm doing things here. I'm allowing somebody else
17 to do work to make it easier on myself.

18 Q For example, if you've got a pitch and catch
19 scenario and you are dropping and picking up cars,
20 as it relates to walking specifically, how does it
21 affect that?

22 A It would cut your walking out probably in half if
23 not -- if you put yourself in proper position to
24 where you can pitch and catch with your brakeman,
25 it can cut your -- no one has to do more work than

1 the other, and it actually takes a lot of work and
2 it actually speeds you up.

3 Q When you are walking at any of the industries in
4 Orangeburg what are you walking on?

5 A Ballast, grass, mud, clay.

6 Q Ballast is what?

7 A Rock. The rock that is underneath -- that is made
8 up of the bed of the track.

9 Q In your experience, Mr. Chavis, what impact does
10 having experience as a conductor, what impact does
11 that have on your ability to efficiently work any
12 job?

13 A With being -- with time comes experience. With
14 experience comes a quicker way to do things.
15 Things you may do today are not the same things you
16 are going to do five years from now because you are
17 going to learn ways to, not circumvent the system,
18 but learn how to -- if I walk myself -- we have a
19 term at the railroad saying you are going to -- you
20 know, you come out here at six feet tall, when you
21 retire you are going to be 5'11". That is from
22 people who don't have the knowledge to put
23 themselves in proper position to where they are not
24 going to walk themselves to death, they will be --
25 they will learn how to work faster and efficiently.

1 And that comes with time. That is nothing -- there
2 is no class, there is no school that you can go to
3 that will teach you how to work efficiently,
4 because when you first come out here you have got a
5 deer in the headlight look. You know nothing.
6 McDonough teaches you how to stay alive. It is up
7 to the people who are training you to teach you how
8 to work efficiently and safe, but it is just one
9 day the light switch comes on and you work things
10 out for yourself to learn how to work efficiently
11 and safely and gain experience.

12 Q If someone has worked a particular job for four
13 days, how would you rate their experience?

14 A Better than Day One.

15 Q But compared to somebody who has done it for years
16 or months or what?

17 A No comparison. Day One, like I said, you have got
18 a deer in the headlight look. Day Four you have
19 kind of got a better clue of how to work
20 efficiently and faster. But someone who has worked
21 that job for years, you've gained -- you have
22 gained customer one-on-one. So there is customers
23 you can call and talk to them personally by them
24 calling CYO, Central Yard Office, instead of them
25 calling them to get them to tell them what cars you

1 need, you actually have that one-on-one and you
2 learn where everything is. You learn where every
3 nook and cranny is at that customer so you -- and
4 that is from someone who has been there for years
5 and worked that job for years. You know how to
6 work that place as efficiently as possible.

7 Q Mr. Chavis, I am showing you Defendant's Trial
8 Exhibit 96. I am going to ask you if you recognize
9 that.

10 A Absolutely.

11 Q What is that?

12 A That is the SC mainline, also the SB mainline.

13 Q Would it help you or assist you in explaining to
14 the jury the mileposts and the route from
15 Orangeburg to Columbia?

16 A Yes.

17 Q If we look at the bottom of this exhibit for the
18 record, we start with SC 90 at Rowesville, okay?
19 Up at the top, to orient everybody --

20 A Did you say SC 90?

21 Q I'm sorry, I meant, SC 70. And the numbers get
22 larger, 71, as you move up the chart, ending at --
23 we'll just say SC 126. What is SC 126?

24 A 126 is in Columbia yard itself.

25 Q All right. So the route from Columbia yard to

1 Orangeburg -- do these each designate one mile?

2 A Yes.

3 Q Okay. So from 126 to 70 is basically the route
4 that the P26 takes --

5 A Eight.

6 Q -- the P28 takes -- out of Columbia and then back
7 to Orangeburg?

8 A Yes.

9 Q All right. Let's talk really quickly about a few
10 specific locations.

11 Doane Pet Products, Dog Food, that is at what
12 milepost?

13 A Seventy-six.

14 Q All right. CSX, as you move towards Columbia?

15 A Seventy-nine.

16 Q Seventy-nine. St. Matthews?

17 A Ninety-three -- ninety-two.

18 Q Ninety-two?

19 A Yes, is St. Matthews, unless you are talking about
20 Lime at 93.

21 Q I'm talking about the town itself.

22 A Yes, 92.

23 Q Where does the track, the mainline track, run in
24 relationship to the Town of St. Matthews?

25 A Right through the middle.

- 1 Q Similarly with Orangeburg?
- 2 A Yes.
- 3 Q In the middle?
- 4 A Yes. Except St. Matthews, their bridges for the
- 5 roads go over the top of the mainline with the
- 6 bridge; whereas, Orangeburg is all ground up,
- 7 stoplights, crossing gates.
- 8 Q So as we continue to move up the chart here, Fort
- 9 Motte, what is that?
- 10 A Fort Motte is at the 109. That is just a little
- 11 small town.
- 12 Q I've got that at 99.5?
- 13 A I'm sorry, 99. Yes, 99. I'm sorry.
- 14 Q For the record, 99.5?
- 15 A Yes. I'm sorry.
- 16 Q And that is -- it appears that is on the Orangeburg
- 17 side of the Congaree National --
- 18 A Forest.
- 19 Q And then after that, is that when you enter into
- 20 the -- we'll call it the swamp?
- 21 A Yes.
- 22 Q When I talk about the swamp, do you know what I'm
- 23 talking about?
- 24 A Yes.
- 25 Q Tell them, please.

1 A The swamp is -- when we're -- when we come through
2 St. Matthews and we are heading towards Columbia,
3 headed west, we go into an area that is called
4 the -- it goes -- it is just a drop-in for the
5 Congaree, a single hill. It starts at 95.5 and you
6 are on that hill until you get to the Congaree at
7 103. 103 is in the middle of the Congaree River.
8 So that is what we consider the swamp. That is
9 where the engineer has to be on his Ps and Qs
10 depending on his tonnage and his length of train on
11 where -- because the train will get away from you
12 on a single hill.

13 Q What is the milepost where you come out of the
14 swamp headed towards Columbia?

15 A Come out of the swamp?

16 Q Yes, sir. The first paved crossing or the first
17 landmark that you can think of?

18 A It is about the 101 right there at the light.
19 Coming out of the swamp is --

20 Q Coming out of the the swamp is going to be going
21 up.

22 A All right. Out of the swamp is the 107, or
23 actually 106.7, .8.

24 Q Kingville, McKenzieville?

25 A McKenzie.

1 Q McKenzie. 1-0...

2 A 106.7, .8.

3 Q Okay.

4 A And you have another crossing that is 30 car
5 lengths past it, 107.2.

6 Q 107.2. And you say a crossing. What is that?

7 A A crossing is a paved crossing, asphalt that goes
8 across the mainline. It is usually protected by
9 stop signs, crossbucks, crossing gates, and gates
10 that come down.

11 Q At what point do you actually start seeing
12 residences, trailers and homes, if you start moving
13 towards Columbia past Kingville or McKenzie?

14 A McKenzie?

15 Q Yes.

16 A Well, you have a -- the first trailer you come up
17 on is 107.2.

18 Q Okay.

19 A He lives on that property by himself.

20 The next crossing or the next place that you
21 start seeing houses is about the 109.3, .4 at the
22 next signal, that is, the next public crossing that
23 you pass that you actually have mobile homes on
24 both sides of the road.

25 Q What is going on at 110.4?

- 1 A 110.4? Let's see. That would be the Town of
2 Gadsden.
- 3 Q Bluff Road?
- 4 A Yes.
- 5 Q What is going on at 118.1?
- 6 A 118.1.
- 7 Q Lower Richland?
- 8 A Lower Richland Boulevard.
- 9 Q How big a population -- how big an area is that?
- 10 A It is -- house-wise, there is not a lot of houses
11 there, but that is a major artery for -- it is a
12 crossroad from Bluff Road. That is how you get
13 into Lower Richland, as they call it, Lower
14 Richland, and that is the reason why it is called
15 Lower Richland Boulevard.
- 16 Q The speed limit up and down the main?
- 17 A Forty-nine miles an hour. Not exceeding 49.
- 18 Q Never above; it is okay to be below?
- 19 A Uh-huh.
- 20 Q One track or two?
- 21 A One. Single mainline.
- 22 Q Moving further north, what is the next anything, if
23 you will, beyond Lower Richland Road to 118.1?
- 24 A Lower Richland Boulevard. Then you've got the
25 121.5, .4.

1 Q Okay. Then you've got Pineview Road at 122.7?

2 A Yes.

3 Q What kind of interchange is that?

4 A That is a major artery. That is the road that also
5 ties in from Bluff Road over to Garners Ferry Road.

6 Q And then what is the actual yard limit, the board,
7 the mile markers for the yard limit?

8 A 123.6.

9 Q What does that mean, the yard limit?

10 A The yard limit board means that you are -- the yard
11 limit board means you are entering yard limits. We
12 have a set speed, which is a restricted speed not
13 exceeding 15 miles an hour.

14 And so by the time you get -- by the time the
15 lead end of that engine gets to that yard board,
16 you better be at or below 15 miles an hour
17 nowadays.

18 Q At the time of this incident, what was the speed
19 limit?

20 A Ten. Restricted speed not exceeding ten. Well --

21 Q From 123.6 to what? Anywhere within the yard?

22 A Yes.

23 Q Do you actually know where the train stopped on
24 May 31st when Mr. Moorer had the second heat event?

25 A Yes.

1 Q How do you know about that?

2 A Because I was on the P66. I caught it off the
3 extra board.

4 Q Where -- and at what milepost did the train Mr.
5 Moorer was on stop on May 31st?

6 A About the 126.5, .6, at Old Maude shack.

7 Q Old Maude shack. So roughly three miles from the
8 yard limit within the yard to the stopping point?

9 A Yes. At ten miles an hour.

10 Q So it is 49 all the way up and then ten?

11 A Uh-huh.

12 Q Please yes for her.

13 A Yes. I'm sorry.

14 Q If you were on the P66, why were you there to see
15 the train pull in from the P28?

16 A Well, at the time we didn't know the P28 was -- we
17 knew we were going to meet the P28. We were told
18 by the yardmaster in Columbia when we come in for
19 our job briefing was that to go down to Old Maude
20 shack, we were going to get the P28 engine because
21 sometime they would come in, P28 would come in, you
22 would tie the train down a long time, and he would
23 cut the engine off and we would take the engine and
24 go get our train, and the yard job would get his
25 cars out of our way so we can leave.

1 But the only information we were given this
2 particular day was we were told to go to Old Maude
3 shack and wait for the P28 to come up long time.

4 Q What is the first thing you can remember happening?
5 Did you get there or did his train arrive first?

6 A No, we got there -- me and Don Medlin got there
7 first.

8 Q Don?

9 A Medlin.

10 Q What is the next thing you remember happening?

11 A P28 -- or actually P28 pulls up and Mr. Stinson
12 pulled up.

13 Q Who is Mr. Stinson?

14 A Mr. Stinson was the terminal superintendent at the
15 time.

16 Q The boss in --

17 A The boss of the boss.

18 Q The boss of the boss?

19 A (Nods affirmatively.)

20 Q In?

21 A Columbia.

22 Q He pulls up in a vehicle?

23 A Yes.

24 Q Describe what happened next, please.

25 A P28 is pulling up. Mr. Stinson pulls up. And when

1 they pull up, Mr. Stinson gets out the car and he
2 says, you guys hang tight.

3 Q Talking to you?

4 A Yes, me and Don Medlin, because we had our grip and
5 equipment to go to work with.

6 Q You thought you were going to get on the --

7 A P28's engine.

8 Q The engine that Mr. Moorer was on?

9 A Yes.

10 Q And he says hang tight?

11 A Yes.

12 Q What happened next?

13 A He gets up on the engine. He walks in. And they
14 come in short hood.

15 Q Meaning?

16 A The short hood of the engine is, you have the
17 engine on one end, and you have a cab on the other.
18 And normally we call it short hood is the end that
19 is away from the engine. Also it is where the cab
20 is going to be. The engine can be ran in both
21 directions, long hood and short hood. But this
22 particular day they came in short hood west, which
23 means the cab was on the west end with the engine
24 behind them next to the cars.

25 When they come up to Old Maude shack,

1 Mr. Stinson gets up on the engine. They come to a
2 stop, Mr. Stinson tells us to hang tight. He
3 climbs up on the engine. He walks in the cab. The
4 door was on our side. I could see the engineer,
5 Tommy Connelly, on -- out through the window.
6 Mr. Stinson walks in and walks towards the middle.

7 And I couldn't hear any of the conversation
8 going on, but after a few minutes an ambulance
9 pulls up. Or actually a firetruck pulls up.

10 A firetruck pulls up. Mr. Stinson gets off
11 the engine, talks to the firefighters. The
12 firefighters go up on the engine. Mr. Stinson
13 walks off on his cell phone.

14 Q Let me stop you for a second. To get up to the
15 engine, what do you have to climb?

16 A A ladder.

17 Q Describe the configuration of the locomotives so we
18 can picture Mr. Stinson climbing the ladder,
19 please.

20 A The ladder has two vertical handrails that go up.
21 They go -- unlike the normal ladder, the handrails
22 actually extend all the way around, so whenever
23 you -- when go to climb up, the handrail goes from
24 the bottom all the way up and the handrail extends
25 all the way around the whole circumference of the

1 engine. So you have got a complete handrail all
2 the way around and it just makes into a ladder.
3 You have steps that go vertical, whether it be
4 three or five. And Mr. Stinson got up on the
5 handrails and climbed up the ladder and got into
6 the short hood end of the ladder -- or of the
7 engine in the cab.

8 Q Was the firetruck there present before or after
9 Mr. Stinson?

10 A Before. Oh, I'm sorry, after Mr. Stinson.

11 Q Make that clear for the record. Did Mr. Stinson
12 arrive first or the firetruck?

13 A Yes, Mr. Stinson was there first.

14 Q How much time about, just estimate, from the time
15 Stinson arrived until the firetruck arrived?

16 A Five, ten minutes maybe.

17 Q Once the firemen arrived, what happens next?

18 A The firefighters go up and -- the firefighters go
19 in and they, once again, they go inside the cab.
20 They talk to who we found out was Trumaine, and
21 they come back up, and then the ambulance pulls up.

22 Q You didn't hear any of that conversation?

23 A No.

24 Q You are just watching?

25 A (Nods affirmatively.)

1 Q How long were the firefighters on the engine?

2 A A minute, minute and a half.

3 Q Then?

4 A The ambulance pulled up.

5 Q What happened?

6 A So now they are trying to figure out how they are
7 going to get Trumaine off of the conductor side and
8 get him off the engine.

9 So the firefighters talked to the ambulance
10 workers. And the firefighters go back in, they
11 pick up Mr. Trumaine -- Mr. Moorer up underneath
12 his underarms, one had him up under his underarms
13 and one had him underneath his legs, behind his
14 knees. And he started carrying -- they started
15 bringing him across from the conductor side to the
16 engineer side.

17 Well, as they start bringing him through, he
18 starts cramping up again.

19 Q Are you watching this?

20 A Yes. They sit Mr. Moorer into the engineer seat.
21 And Mr. Moorer is hanging out the window of the
22 engine. And the firefighters come back down on the
23 short hood end of the engine. And they are talking
24 to the fire -- to the ambulance workers.

25 So then they come out with a chair. It is

1 like a wheelchair. It has got two wheels in the
2 back. Instead of having two wheels in the front,
3 it has got just stump legs, stumps with rubber tips
4 on them with a high back. And they bring the chair
5 in up onto the end platform of the engine and try
6 to bring -- to bring Mr. Moorer out to the chair.

7 When they go to pick Mr. Moorer up he cramps
8 up again and they set him back down. And that
9 moment they bring the chair up onto the even
10 platform with the cab of the locomotive by the
11 door. That is whenever they pick up Mr. Moorer,
12 just spin him around, and they put him in the chair
13 and seatbelt him in, strap him into the chair, and
14 they carry him down the two steps onto the end
15 platform and then bring him off the end of the
16 short hood end of the engine.

17 Q How many people did it take to get him off?

18 A Four.

19 Q What happened next?

20 A We got on the engine.

21 Q What happened to him?

22 A He went to the -- he got taken into the ambulance.

23 Q And then once he was -- once he and Mr. Connelly
24 had evacuated, exited the engine, you then got on
25 it and went on to do your work?

1 A Yes.

2 Q Your best estimate, how long did it take from the
3 time that the train pulled up at Old Maude until
4 Mr. Moorer was actually physically in the EMS
5 vehicle?

6 A Twenty, 25 minutes maybe.

7 Q Thank you. Those are all my questions.

8 THE COURT: Please answer any questions that
9 Mr. Tecklenburg may have.

10 CROSS-EXAMINATION

11 BY MR. TECKLENBURG:

12 Q Good morning, Mr. Chavis.

13 A Good morning, sir.

14 Q How are you doing?

15 A I'm doing good. How about yourself?

16 Q I'm well. Now, we heard the description of how to
17 do work on the railroad.

18 A Yes, sir.

19 Q In order to learn that work, did you actually do
20 some training in McDonough?

21 A Yes, sir.

22 Q And when you did the training, did they teach you
23 about switches and how to operate them and also how
24 to do the various tasks that you have described
25 today?

1 A Yes, sir.

2 Q And in addition to the training that you got in
3 McDonough, when you got out of school at McDonough,
4 did you learn the various jobs in the Charleston
5 district?

6 A Yes, sir. I was on each job for two weeks.

7 Q And the Charleston district, describe that to me.
8 What are the various jobs that you as a train man
9 working out of the Charleston district can work?
10 Tell me where they are and what they do.

11 A All of them?

12 Q Sure.

13 A You've got the yard jobs, which is going to be the
14 PN01. It is the morning yard job. It goes on at
15 7:00.

16 You have got PN60, which is a second shift
17 yard job. It goes on at 3:00.

18 You have the PN40, also a nighttime yard job.
19 It goes on at 11:00.

20 You have a P27, which is a local that leaves
21 Charleston and goes all the way to -- could
22 possibly go all the way to Branchville and come
23 back. It goes on at 9:30.

24 You have the through freight, 338, which takes
25 mixed freight from Charleston to Columbia. It goes

1 on when called.

2 Pigs train, which is a container train. It
3 goes on at various times. It goes from Charleston
4 to Columbia and Columbia to Atlanta.

5 Then you have the BMW train. Various times
6 also.

7 You have a mill job over at North Charleston.
8 It stays around and it services Westvaco Paper
9 Mill.

10 You have a Reeds Branch that goes from
11 north -- that does from 7-mile yard, which is
12 Charleston, to North Charleston and takes cars to
13 the mill to work Westvaco, chips and stuff like
14 that.

15 And that is the jobs pretty much in
16 Charleston.

17 Q And you have described some of the assignment
18 process for folks that have worked those jobs.

19 A Absolutely.

20 Q And you have described -- well, tell us, what is
21 the difference between an extra board and an
22 assigned job?

23 A An extra board -- well, let's go with an assigned
24 job. An assigned jobs means the job has been up
25 for -- put up on the bulletin and someone has been

1 awarded the job. Once the job has been awarded,
2 every job that has been awarded is a regular
3 assigned job which means the same people will show
4 up for the job every day. That is a regular
5 assigned job.

6 The extra board fills the vacancies by -- or
7 fills the vacancies of people who are regularly
8 assigned. Say, if I don't go to work today, well,
9 an extra board is called to work my job.

10 Now, you have two extra boards. You have a
11 brakeman's extra board and you have an engineer's
12 extra board. So any engineers that mark off on a
13 regular assigned job, the engineers extra board
14 covers.

15 Any conductor or brakeman or switchman or
16 foreman that are marked off, the extra board covers
17 them.

18 Q Now, if you are on the extra board, are you
19 essentially on-call 24/7?

20 A Yes.

21 Q So you may get a call from headquarters or wherever
22 they dispatch telling you to report to whatever job
23 may be on the extra board?

24 A Yes.

25 Q And do you have a choice in which job you can have?

1 A Unless you win a regular assignment, that is the
2 only choice you have.

3 Q And that is set up through the union contract you
4 have talked about?

5 A Yes, sir.

6 Q And have you been on the extra board?

7 A Oh, yes, sir.

8 Q And it sounds like now you are working a job called
9 the P66?

10 A Yes, sir.

11 Q Describe that job. I think you said it came in and
12 out of Columbia, is that right?

13 A Yes. Yes, sir. My job goes only in Columbia. I
14 work American Italian Pasta at the 122 milepost.
15 And I drop off and pick up -- place loaded wheat
16 and pull empty wheat cars. Leave there, go to
17 International Paper in Eastover, South Carolina.
18 Drop off and pick up there. And come back, and if
19 I have American Spiral Steel, which is right beside
20 the pasta plant, if he's got cars -- if I have cars
21 for him or he has got empties for me, then I stop
22 there and pick him up and go right on into
23 Columbia.

24 Q And is that a conductor only job?

25 A Yes, sir.

1 Q So you don't have a brakeman?

2 A No.

3 Q And how long have you been on that job?

4 A June will be two years.

5 Q And you appear to be a physically fit man?

6 A Yes, sir.

7 Q All right. Have you had any heat problems where
8 you had to get medical treatment?

9 A No, sir.

10 Q And with respect to the car loads that you
11 typically encounter on your job, the P66, what
12 number of car loads do you encounter on your job
13 working as a conductor only?

14 A Car loads. The pasta plant, I could -- the pasta
15 plant gets 48 cars, or can get 48 cars on an
16 inbound track. So I can go anywhere from 48 to
17 none, just depending on the day.

18 International Paper, I can go from no cars to
19 at that time, you know 35, 40 cars. And about the
20 same coming in and out. And International Paper,
21 you used to get work five days a week, but I only
22 work him now two to three times a week. He just
23 got back in the yard.

24 Q So if you get your paperwork on the P66 and you
25 look at it and you decide, this is going to be a

1 bad day, what sort of car load counts are we
2 talking about? When I say bad days, it would be a
3 lot of work.

4 A I would say probably about 40.

5 Q Okay. All right. And --

6 A Well, when I say 40, that is 40 for International
7 Paper because like if I have got 88 cars, 48 going
8 to pasta plant, I'm not -- that doesn't make my day
9 bad, it just makes my day just a tad bit longer
10 because I have got to shove those 48 into the
11 inbound train at pasta. But International Paper is
12 where I have to deal with CSX. So 40 cars going
13 over to International Paper having to deal with CSX
14 could make for a bad day.

15 Q What is the most cars you have handled in a day on
16 the P66 that you work?

17 A Now it is 63.

18 Q So you have handled up to 63 cars as a conductor
19 only on that job?

20 A Here recently.

21 Q Now, one of the things that I didn't hear discussed
22 in your direct testimony, but as a conductor, do
23 you have the ability to take breaks when you need
24 them?

25 A Absolutely.

1 Q So if for some reason you are feeling tired or need
2 a little extra time, do you take breaks?

3 A Yes.

4 Q And do your fellow conductors do that?

5 A Yes, sir.

6 Q To your knowledge. Now, let's talk a little bit
7 about the P28. You said you have worked that job
8 before?

9 A Absolutely.

10 Q Correct? And you have described that, I think in
11 your direct testimony up to 15 or 25 cars you
12 worked on that job?

13 A Yes, sir.

14 Q Okay. Would 25 cars be a long day?

15 A With dodging trains, yes.

16 Q Now --

17 A Because it gives you limited places to clear up.

18 Q Describe that for me. What do you mean by clear
19 up?

20 A Clearing up, which is the mainline, you only have
21 one mainline, so any time you have a local, which
22 the P28, the P66, P27 are locals, any time you are
23 out there, if you have trains that are still in
24 Columbia that have to go to Charleston, if you are
25 out there on the mainline, the train can't just go

1 around you. You have to strategically place
2 yourself in place that you can clear up. And if
3 you have 20, 25 cars on you, that limits the places
4 that you can clear up.

5 Clearing up means getting off the mainline,
6 lining everything back for the mainline so the
7 mainline -- so the trains can go by you and no one
8 will get hurt.

9 Q Okay. And during that clearing up process, that
10 means that you are not working the industry
11 usually, is that right?

12 A Yes.

13 Q So is it, for all essential purposes, when you
14 clear up is a break time for the conductor?

15 A With the exception of, depending on how close the
16 train is, you have to watch the train go by. You
17 are supposed to have someone positioned on both
18 sides of the train. As long as you can get it --
19 do it in a safe manner.

20 Q So if the train is going by, it sounds like
21 49 miles an hour?

22 A (Nods affirmatively.)

23 Q Is that right?

24 A Yes, sir.

25 Q So you have to watch however long that takes to go

1 by?

2 A Yes, sir.

3 Q Other than that task, is the task of clearing up --
4 which you are standing I assume when you do that?

5 A Yes.

6 Q Other than that task of standing, letting the train
7 pass by, is that pretty much a break period for the
8 conductor?

9 A Yes, sir.

10 Q Okay. Now, I want to refer you to a timeline we
11 created for the last two days Mr. Moorer worked on,
12 the P28.

13 MR. TECKLENBURG: If we could put up Exhibit
14 109, please.

15 Q And there is a screen in front of you, Mr. Chavis,
16 and hopefully you can see it on the screen. But I
17 just want to ask you about a couple of events that
18 happened that day.

19 This indicates that at 7:30 in the morning
20 this train left Andrews yard with 11 rail cars?

21 A Uh-huh.

22 Q And it also indicates that at 10:45 there was a --
23 the reports -- the limits were clear and there was
24 a track warrant given till 11:03. In other words,
25 what does it mean when a P28 reports that their

1 limits are clear?

2 A That means that they are clear of the mainline, all
3 the switches and derails protecting the train going
4 down the mainline is clear to go. The P28 is
5 completely off the mainline and it is safe locked
6 in a hole for the mainline to be --

7 Q So this would be a time period, from 10:45 to
8 11:03, that the conductor would have the job of
9 standing and watching a passing train?

10 A Yes, sir.

11 Q Okay. And then at 11:30 it shows that he worked a
12 facility called Doane. I think you already talked
13 about that with Mr. Moss, right?

14 A Yes, sir.

15 Q And it says that he pulled three cars and placed
16 five. Okay? And I just want to ask you because
17 you have already been up here a little while, but
18 I'd like to go through just sort of your best case
19 scenario and worst case scenario on doing that task
20 in terms of time.

21 In other words, if you were at Doane and you
22 had to pull three and place five, what would be the
23 shortest time period and the longest time period
24 that it would take you?

25 A Best case scenario is -- you said placing five?

1 That means I'm coupling up with my five cars and my
2 three cars are at the very bottom. That is
3 coupling up with five swinging the whole track. It
4 would take probably about five to ten minutes, best
5 case scenario.

6 Q Okay. Worst case, how long would it take?

7 A It could take anywhere from 45 minutes to an
8 hour-ish.

9 Q Okay. Up to an hour?

10 A And that is because the five cars that you are
11 showing that have to place in there, you reach in
12 with the five cars thinking that you are going to
13 do the work the same every day because you don't
14 talk to your customer, you reach in with the five
15 cars, you couple up to the cars that are in the
16 industry, and then whenever you go to pull them he
17 tells you that, I want those five cars on the
18 bottom. So you have to walk back to the head, cut
19 away with those five cars that you walked them,
20 send them out to the mainline, then go back in and
21 grab the whole cut that is in the industry and
22 swing them all out and tag the five to the bottom
23 and then switch out your empties.

24 Q Earlier you were talking about pitching and
25 catching.

1 A Yes, sir.

2 Q Does a conductor like yourself have the ability to
3 actually ride the cars for parts of those moves?

4 A Yes, sir, until you get to -- unless you have a
5 place that has a close clearance, not across
6 crossings, like industrial crossings and stuff like
7 that, but for the most part, yes.

8 Q So a conductor is able to cut down on some of the
9 walking when he is working alone by riding the rail
10 cars?

11 A Yes, sir.

12 Q Now, the next industry that this shows is at 12:40,
13 the CSX exchange. There was one car pulled and
14 four cars placed. Okay? And again, just
15 time-wise, if you can give the best and worst case
16 scenarios for CSX?

17 A Best case scenario is that that one car that he
18 pulled is the only car there and the car is all the
19 way up by the mailbox in between the crossings at
20 601 -- or 21 and stuff. You are looking at about
21 maybe 15, 20 minutes for best case scenario.

22 Q Let's say 20. And worst case?

23 A Worst case scenario is an hour, hour and a half.

24 Q Okay. Sixty to 90. Okay. And then the last job
25 on this particular day, on May 30th, appears to be

- 1 at 2:30 where there is three cars pulled and six
2 cars placed at Chemical Lime. Again, if you could
3 give the best and worst case scenario there.
- 4 A For Virginia Lime the best case scenario is, is the
5 cars are going to be on the head. You are looking
6 at about 15, 20, 25 minutes maybe.
- 7 Q Okay. Up to 25 for best.
- 8 A Worst case is the cars are behind Dog Food.
- 9 Q We're at Lime now.
- 10 A Yes, sir, but the way we switch Dog Food --
- 11 Q Yes.
- 12 A Sometimes, not all the time, but --
- 13 Q It depends on where it is in the train?
- 14 A Yes, sir.
- 15 Q Gotcha.
- 16 A Thirty, 45 minutes maybe.
- 17 Q Okay. Thirty to 45. Then once you leave Chemical
18 Lime, you ride your engine back to Columbia, is
19 that right?
- 20 A Yes, sir.
- 21 Q And when you get to Columbia, what are your duties
22 to finish the day?
- 23 A It -- it varies. Sometimes if the yardmaster -- if
24 you have a yard job that is going on duty, he'll
25 have you come up long time, cut the engine off, put

1 your engine in the shop, or hand your engine to the
2 P66.

3 Back then a common practice was with the 28
4 and the 66 were call jobs. So the 66 was called
5 upon the 28 coming in. So that gave you two hours
6 to get to work and switch the engines out. So the
7 28 always handed their engines off -- well, not all
8 the time, but that was a common practice, the 28
9 handed their engine to 66.

10 Best case scenario is you come up long time,
11 cut your engines off, put your engines in the shop
12 or give it to the 66.

13 The worst case scenario is, is you have got to
14 come through the yard, pull through the yard and
15 put your train in one of the tracks, tie ten hand
16 brakes on the east end, and then walk to the head
17 or get a ride in a taxi to the head and cut the
18 engine off.

19 Q Okay. And how long does that yard process take?

20 A It varies.

21 Q Okay.

22 A Quite varies.

23 Q I heard earlier that you talked about on rail cars
24 that sometimes you have to actually climb up?

25 A Yes, sir.

- 1 Q Six feet?
- 2 A Uh-huh.
- 3 Q Is this the brake stick where you can actually tie
- 4 the brake from the ground?
- 5 A Absolutely.
- 6 Q Exhibit 107?
- 7 A Uh-huh.
- 8 Q And are you able to extend the brake stick?
- 9 A Absolutely.
- 10 Q I want to direct your attention to the day Mr.
- 11 Moorer was put in the ambulance and you observed
- 12 that, okay? And that is Exhibit 110. Again, this
- 13 is a timeline we put together.
- 14 On this day at 7:30 it indicates the train
- 15 passes a scanner with seven rail cars. And you
- 16 described earlier you worked as many as 25 rail
- 17 cars on this job?
- 18 A Yes, sir.
- 19 Q Okay.
- 20 A Actually, now, nowadays I have worked more than
- 21 that.
- 22 Q All right. And at 10:40 in the morning it shows
- 23 that there were two cars pulled and two cars placed
- 24 at Okonite?
- 25 A Yes, sir.

1 Q Do you see that?

2 A Uh-huh.

3 Q And is that one of the industries near Doane?

4 A Yes, sir.

5 Q And I am going to turn this around because I'll
6 lose it. That is in the same area where Okonite,
7 Doane --

8 A Trinity Steel.

9 Q Trinity Steel. Okay. Fair enough.

10 So you are at Okonite, and you have got to do
11 two and two: Two in, two out.

12 A (Nods affirmatively.)

13 Q Time-wise what is the best case scenario?

14 A Best case scenario is, for Okonite, is going to be
15 your two middle cars, your carbonite car and your
16 plaster car. So you are going to cut the rear one
17 off and just pull out three. Grab the one -- or
18 line yourself up. You are looking at about 15 to
19 30 minutes, best case.

20 Q Fifteen to 30?

21 A Ish. Ish.

22 Q Okay.

23 A And the best case scenario would be to only pull
24 one.

25 Q And your worst case at Okonite where you have two

1 in and two out?

2 A Yes, sir, the worst case scenario is going to be
3 the end car and the bottom car.

4 Q And how long would that take?

5 A Forty-five minutes. Fifty minutes.

6 Q Forty-five to 50?

7 A Yes, sir.

8 Q Okay.

9 A Depending on -- depending on the cars that are
10 between the derail and the gate and inside the
11 gate. And if one of those cars is one of the cars
12 that has to go back in the spot.

13 Q Now, it shows that at 1:08 p.m. the next industry
14 is Okonite. Oh, again, we have this 11:40, P28
15 reports limits clear and crew rests until
16 work-between is authorized. So at 11:40 there is
17 another track warrant clearance.

18 A Uh-huh.

19 Q Tell the jury what a track warrant is.

20 A A track warrant authorizes a train to move on the
21 mainline. It is a four digit number followed by
22 the train number followed by where you are located,
23 where you are at so that you can't get confused on
24 what train is who. And it authorizes you, whether
25 it be a proceed, which is one direction, or a

1 work-between, which is to go back and forth. And
2 it has a conductor's name on it and it has a date
3 and a time and the dispatcher's initials.

4 Q And when a track warrant is given, does -- to a
5 passing train on a mainline -- does the P28 lose
6 its warrant?

7 A Yes. He has to clear it up to make -- to tell the
8 dispatcher that the mainline is clear.

9 Q Okay. So really at 11:40 what that represents is
10 that P28 has lost its warrant and the through train
11 has gotten a warrant for that territory, is that
12 correct?

13 A Absolutely.

14 Q And this period again from 11:40 to 12:10, is this
15 the period where the conductor has to go out and
16 watch the passing train?

17 A Yes.

18 Q Now, at 1:08 it shows that the P28 placed five and
19 pulled four at Doane. It sounds like -- it is
20 pretty much similar to the day before, would you
21 agree?

22 A Uh-huh.

23 Q Would your timelines be about the same?

24 A Yes, sir.

25 Q So the best case would be ten?

1 A Five to ten.

2 Q And worst case?

3 A Would be 60.

4 Q Would be 60? Okay. And on this day it doesn't
5 show that any other industry was working. Okay?
6 And my question for you is, if you got the
7 paperwork that day on May 31st to show you had
8 seven cars, had to work two industries, had to work
9 two industries that day, how would you describe
10 that day?

11 A A light day.

12 Q Okay. And you have worked the P28 as a single
13 conductor many times?

14 A Yes, sir.

15 Q Have you been able to work it safely?

16 A Yes, sir.

17 Q And did you have any heat incidents personally out
18 there?

19 A No, sir.

20 Q Thank you very much.

21 MR. MOSS: Would you put Exhibit 110 back up,
22 please?

23 REDIRECT EXAMINATION

24 BY MR. MOSS:

25 Q Mr. Chavis, when you were giving us your best

1 estimates of time, were you talking about you,
2 Billy Chavis time?

3 A Yes, sir.

4 Q Given your current training, knowledge and
5 experience?

6 A Uh-huh.

7 Q Yes?

8 A Absolutely. Yes.

9 Q How about for a person that has been out there for
10 the fourth day? Would those times likely vary?

11 A Yes, sir.

12 Q Why?

13 A Because, once again, his experience of being out
14 there and learning the fastest and efficient way to
15 do it. That is not something you can learn in four
16 days.

17 Q If we look at 2:53 on the timeline.

18 A Uh-huh.

19 Q It showed the temperature was 88 degrees with
20 humidity of 42 percent. Do you see that?

21 A Yes, sir.

22 Q Is that consistent with your recollection of the
23 weather when you were meeting the train roughly at
24 Old Maude when you saw -- when the P26 -- I'm
25 sorry, the P28 was coming in and you were leaving

1 the train, how -- let me just try that again. Does
2 that time -- does that temperature and humidity, is
3 it consistent with your recollection of how hot it
4 was that day and the humidity was like? Or do you
5 just not know?

6 A You forget I was coming out of a car with air
7 conditioning.

8 Q Okay. You said there were two different times Mr.
9 Moorer cramped while you were watching to try to
10 get him off the engine. As specifically as you
11 can, tell the jury what you saw.

12 A Mr. Moorer looked flushed in his skin, like he
13 looked like pale in his skin. He had bags up under
14 his eyes as he was hanging out the window looking
15 at us, like you could tell in his arms, you could
16 see like everything was tight inside of his
17 forearms, because that is the only thing that you
18 could see on him was his forearms.

19 Q Did you realize something was going on when you saw
20 Mr. Moorer?

21 A When the firefighters brought him over, that is
22 whenever we realized something was going on.

23 Q Thank you. Those are all my questions.

24 MR. TECKLENBURG: No further questions, Your
25 Honor.

1 THE COURT: All right. Thank you, sir. You
2 may step down.

3 (Witness steps down.)

4 THE COURT: Any objection to this witness
5 being excused?

6 MR. MOSS: No, Your Honor.

7 MR. TECKLENBURG: No, Your Honor.

8 THE COURT: You may be excused.

9 (Witness excused.)

10 MR. MOSS: May we approach the bench?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 MR. MOSS: Your Honor, the Plaintiff calls
16 Trumaine Moorner.

17 THE BAILIFF: Place your left hand on the
18 Bible, and raise your right hand, please.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the
21 testimony you are about to give in this case will
22 be the truth, the whole truth, and nothing but the
23 truth, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, please.

2 (Witness complies.)

3 THE CLERK: State your name for the record.

4 THE WITNESS: Trumaine Bernard Moorner.

5 TRUMAINE B. MOORER,

6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MOSS:

9 Q Please state your home address.

10 A 217 Roosevelt Street, St. George, South Carolina,
11 29477.

12 Q Be sure to speak up so everybody can hear you. You
13 are soft-spoken. What is your date of birth?

14 A June 11th, 1973.

15 Q Where are you from?

16 A From St. George, South Carolina.

17 Q Were you born and raised there?

18 A Yes.

19 Q Who raised you?

20 A I was raised by my grandparents in St. George.

21 Q And the home you are living now is the same home
22 you were raised in?

23 A Same home.

24 Q Are your grandparents alive?

25 A No, sir.

1 Q Did you go to high school there?

2 A Went to St. George High.

3 Q Tell us about your high school experience. What
4 kind of student were you? What kind of sports did
5 you play?

6 A I would say I was an average student. I played
7 basketball for St. George High, the varsity team.
8 We were able to obtain a state championship around
9 '90, '91. And we were state runnerup in '92, my
10 senior year.

11 Q I think you told us your date of birth. How old
12 are you?

13 A I'm 38.

14 Q Are you married?

15 A Yes.

16 Q What is your wife's name?

17 A Athena Moorner.

18 Q Have you been married more than once?

19 A Yes.

20 Q Twice?

21 A Twice.

22 Q Tell us about your children.

23 A I have three children, two from my first marriage,
24 two boys: One 17; one is 14. And I have a
25 daughter with my current marriage. Her name is

- 1 Tylia. She is nine.
- 2 Q What do you do for fun? What are your hobbies?
- 3 What do you like to do?
- 4 A Well, it was playing basketball. Time won't permit
- 5 now to play basketball. So fun, I guess just
- 6 watching basketball on TV, maybe on the internet.
- 7 Q Do you go to church?
- 8 A I go to church, Right Direction Christian Center.
- 9 Q Where is that?
- 10 A It is on Broad River Road here in Columbia. I was
- 11 living in Columbia and we used to attend. Since
- 12 then we moved back to St. George. They were able
- 13 to open up a closer location in Orangeburg.
- 14 Q How many days a week do you spend at church?
- 15 A Bible study on Tuesday and church on Sunday.
- 16 Q You and Athena do that together?
- 17 A Yes.
- 18 Q How tall are you?
- 19 A I'm 6'4".
- 20 Q How much do you weigh?
- 21 A About 230.
- 22 Q Have you ever taken all this out in your life?
- 23 Have you ever had any meaningful illnesses,
- 24 diseases, or anything like that?
- 25 A None.

1 Q Are you currently still an employee of the
2 railroad?

3 A Yes.

4 Q Are you currently employed anywhere else?

5 A Yes. I work for St. George Police Department in
6 the Town of St. George.

7 Q Briefly, if you will, talk us through your
8 employment in a thumbnail kind of way from the time
9 you graduated from high school up until you were
10 hired on with the railroad.

11 A I finished high school. My first employment was
12 with Dorchester County Sheriff's Office. I worked
13 inside the detention center. I was a jailer. I
14 left and went to the Town of St. George as a police
15 officer.

16 I left there, went -- I moved to Atlanta. I
17 worked in Atlanta. My grandparents, at the time my
18 grandmother, she got sick, so I came back to help
19 my grandfather with her, and I became employed with
20 at the time -- before I became employed, I was
21 helping him. My grandmother passed. And then I
22 moved to Florida and started working for ADT in
23 Florida.

24 I left there to be closer to my kids because
25 my first marriage, the kids lived in Summerville,

1 South Carolina. And I moved to Columbia here and
2 got employment with the City of Columbia working
3 with the warrant division. I moved from the City
4 of Columbia to Richland County Court
5 Administration. Worked there. And from there I
6 went overseas.

7 Q Tell us briefly about the overseas tour.

8 A While working overseas I was doing contract work.
9 The first four months I was working on the Saudi
10 Arabia border, a country called Qatar, doing
11 security, searching cars, searching for bombs. I
12 left there, went to Kuwait. It was more of a
13 logistic job working with supplies. What I was
14 doing is keeping track of all soldiers' humvees,
15 equipment, anything they could use in Iraq I kept
16 track of.

17 Q How long were you there?

18 A I was there from 2004 to 2006.

19 Q Did you have any heat or heat-related problems
20 while you were overseas?

21 A No.

22 Q Until this incident that we're here about, have you
23 ever had any problems with heat or heat-related
24 injuries?

25 A Never had any problem with heat.

1 Q Were you ever consistently on any kind of
2 prescription medication?

3 A None.

4 Q After you came back from the Middle East, where did
5 you go? What did you do?

6 A I came back from the Middle East. I was blessed to
7 get a job with the railroad in 2006.

8 Q You were hired on as a conductor?

9 A As a conductor.

10 MR. MOSS: Your Honor, I move the admission of
11 Plaintiff's Exhibit Number 1.

12 MR. TECKLENBURG: No objection, Your Honor.

13 (WHEREUPON, Plaintiff's Exhibit No. 1
14 was marked for identification and
15 received into evidence.)

16 Q Railroad conductor job description. Do you have
17 that in front of you?

18 A Yes, sir.

19 Q Does that piece of paper, Plaintiff's Exhibit 1,
20 fairly and accurately depict the physical demands
21 and physical requirements of a conductor at Norfolk
22 Southern?

23 A Yes, sir.

24 MR. MOSS: May I publish, Your Honor?

25 THE COURT: Yes, sir.

1 (Exhibit published to jury.)

2 Q How is it that you made contact with the railroad

3 to get the job in the first place?

4 A I actually started applying for the railroad while

5 I was overseas.

6 Q Online?

7 A Online.

8 Q And you did have some headaches while you were in

9 the Middle East?

10 A Yes. I was in Kuwait and I started having

11 headaches, which I went to the doctor and they told

12 me it came from sinus, it was a sinus infection

13 from the dust.

14 Q Was it your understanding that the headaches had

15 anything at all to do with heat or heat exposure?

16 A No.

17 Q What is your hire date at the railroad?

18 A I really don't know.

19 Q Give us your best estimate. If it is not perfect,

20 it is okay.

21 A Maybe -- maybe February of 2006. I really don't --

22 2006?

23 A 2006, I know.

24 Q Okay. And did you undergo a complete physical when

25 the railroad hired you?

1 A Yes, sir.

2 THE COURT: Your Honor, I move the admission
3 of Plaintiff's Exhibit Number 4.

4 MR. TECKLENBURG: No objection.

5 (WHEREUPON, Plaintiff's Exhibit No. 4
6 was marked for identification and
7 received into evidence.)

8 Q Do you have Exhibit 4 in front of you, Mr. Moorers?

9 A Yes, sir.

10 Q What is it?

11 A It is a physical I went through in order to become
12 employed at Norfolk Southern.

13 Q You have got to speak up a little bit. I am having
14 trouble hearing you.

15 A A physical.

16 Q Okay. Was it a mandatory part of the hiring
17 process to go through a complete physical?

18 A Yes, sir.

19 Q Did you have any problems in that physical that
20 kept you from being hired at Norfolk Southern?

21 A No, sir.

22 Q And the date on that physical was what?

23 A July 26th, 2006.

24 MR. MOSS: May I publish?

25 THE COURT: Yes, sir, you may.

1 MR. MOSS: Thank you.

2 (Exhibit published to jury.)

3 Q Mr. Moorner, you have taken a supplement called KM

4 throughout your life, have you not?

5 A Yes, sir, I have.

6 Q Since how long?

7 A Since I was 13, 14.

8 Q What was the purpose and why did you take it?

9 A It was a supplement I would take to help with the

10 sinus, colds, just build my immune system, --

11 Q Where did you get it?

12 A -- energy. A local store in St. George.

13 Q Like an herbal supplement?

14 A Yes.

15 Q So any time while you were taking KM from the time

16 you were a teenager up until this incident, did you

17 have any problem with heat or heat exposure?

18 A None.

19 Q All right. In your life until this incident, have

20 you ever had any problems with cramping and profuse

21 sweating?

22 A No, sir.

23 Q When you were hired on at the railroad, describe

24 for the jury the training process you went through.

25 A It was a two week training I had to go through in

1 McDonough, Georgia for conductor. What they do is
2 send you to training and then they sent you out in
3 the field to be trained on various jobs and with
4 the designees.

5 Q Did you feel like you were well trained by the
6 railroad?

7 A Yes, sir.

8 Q Do you have any criticism of the training process
9 that you received?

10 A None.

11 Q Once you completed training, what happened? Tell
12 us about the work that you engaged in and the
13 process of actually coming from McDonough and
14 becoming an active conductor.

15 A Once they mark you up, that means you can go to
16 work without being trained. You go on the extra
17 board, and you actually catch jobs. What they will
18 do is call you, tell you what job to report to, and
19 you can go to work.

20 Q Where did you typically -- was there a place you
21 typically reported, to a yard or location?

22 A In Charleston, North Charleston, Charleston yard is
23 generally where I caught jobs.

24 Q Were you working any specific job out of Charleston
25 when you first started or was it just whatever job?

- 1 A Just random jobs.
- 2 Q Working on the extra board?
- 3 A Yes.
- 4 Q Okay.
- 5 MR. MOSS: Your Honor, I move the admission of
- 6 Plaintiff's Exhibit Number 7.
- 7 THE COURT: Any objection?
- 8 MR. TECKLENBURG: No objection, Your Honor.
- 9 (WHEREUPON, Plaintiff's Exhibit No. 7
- 10 was marked for identification and
- 11 received into evidence.)
- 12 Q Do you recognize Exhibit Number 7?
- 13 A Yes, sir.
- 14 Q What is it?
- 15 A It is my notes that I kept from being in class and
- 16 while I was training with other conductors and
- 17 brakemen.
- 18 Q Did you keep those notes with you in your bag or on
- 19 your person when you were out working?
- 20 A Yes, sir, it was in my bag so I could have access
- 21 to it.
- 22 Q When you reported to work, did you always carry --
- 23 Mr. Chavis called it a grip -- did you always carry
- 24 some kind of bag with you?
- 25 A Yes, I always carried a bag, basically carried a

1 clipboard, snacks, food, and my notes.

2 Q Why would you keep this notebook with these very
3 specific notes in it?

4 A Because I was new on the job. I didn't really want
5 to make any mistakes, so I kept notes in order to
6 keep me --

7 MR. MOSS: May I publish Exhibit Number 7,
8 Your Honor?

9 THE COURT: Yes, sir, you may.

10 (Exhibit published to jury.)

11 Q When you had gotten off the engine, was your bag
12 with you or did you get it sometime later?

13 A I got it sometime later from the railroad.

14 Q And was that notebook, Exhibit Number 7, was it in
15 the bag when they gave it back to you?

16 A It was in the bag.

17 Q You mentioned snacks. What kind of snacks would
18 you keep with you?

19 A Sometime I would keep soup, cookies, energy bar,
20 things of that nature.

21 MR. MOSS: I move the admission of Plaintiff's
22 Exhibit Number 6.

23 MR. TECKLENBURG: No objection, Your Honor.

24 (WHEREUPON, Plaintiff's Exhibit No. 6
25 was marked for identification and

1 received into evidence.)

2 Q Do you recollect what is in the bag, Exhibit Number
3 6?

4 A Yes, sir.

5 Q What is that?

6 A My can of soup, cranberry almond Honey Bunches of
7 Oats bar, and some Cheerios.

8 Q Is it also your understanding that when you
9 received your bag back from the railroad that this
10 was in your bag?

11 A Yes.

12 MR. MOSS: I move the admission of Exhibit
13 Number 6, Your Honor, and -- if I haven't
14 already -- would ask to publish.

15 THE COURT: All right.

16 MR. TECKLENBURG: No objection.

17 (Exhibit published to jury.)

18 Q Okay. Let's get down to P28. When is the first
19 date you ever worked on the P28?

20 A The first day, I think it was May 2007.

21 Q Okay. To get you oriented, the first heat event
22 occurred on May the 9th.

23 A May the 9th?

24 Q So the first day would have been May 8th?

25 A May 8th.

1 Q Did you voluntarily go to the P28 or were you
2 forced to the job?

3 A I really don't remember. I can't say.

4 Q Okay. Very briefly, did anything happen that day,
5 your first day on the P28?

6 A It was a long day being fresh on the job. You are
7 kind of nervous because you don't want to make any
8 mistakes. Just being careful, just working safe
9 was my main goal.

10 Q But at some point that day you started to feel
11 badly?

12 A At the end of the shift I caught a cramp in my
13 hand.

14 Q Where?

15 A In my hand.

16 Q What did you do?

17 A Shake it off and kept going.

18 Q What about when you got home that night?

19 A When I got home I noticed that I was sweating a
20 whole lot. Really I can't remember if I was
21 cramping at home, but I know I sweat a whole lot
22 that night.

23 Q You woke up the next morning and went to work on
24 the 9th?

25 A I went to work on the 9th.

1 Q You were working that day with what engineer?

2 A On the 9th I was working with Mr. Forrest Britt.

3 Q Did Mr. Britt have any problem that he made you
4 aware of on that day?

5 A Yes, sir. When he got to Doane Pet Product, I
6 walked up on the engine to get some water and I
7 noticed Mr. Britt, he had a bag of ice on the back
8 of his neck and he looked like he was kind of
9 feeling bad. So I asked him what was wrong, and he
10 told me that he just felt --

11 MR. TECKLENBURG: Objection, Your Honor.

12 THE COURT: Your objection?

13 MR. TECKLENBURG: Hearsay.

14 MR. MOSS: Mr. Britt is going to testify and
15 he is going to say exactly what he said.

16 THE COURT: All right. Sustained.

17 Q What did you do once you saw Mr. Britt in that
18 condition? Did you do anything any differently or
19 just kind of -- pick up the story and tell us what
20 happened.

21 A Well, I told him, I said, well, what I'll do is try
22 to speed up my process and try to get him back to
23 Columbia.

24 Q Now, what were you wearing?

25 A At the time it was raining, and I had on a rain

1 suit.

2 Q Describe the rain suit, please.

3 A It was a jacket with rain pants. It was two-piece.
4 It had a hoodie. Basically a cover to keep you --

5 Q Tell us about the event when you got sick.

6 A When I got sick -- well, I got off the engine. I
7 told Mr. Forrest that I needed to speed up the
8 process. I think I -- I don't know if I switched
9 any cars or went into Pet Product and came out with
10 some cars and I started feeling bad.

11 Q What did you feel? What happened?

12 A I started breathing kind of heavy. I started
13 cramping in my hand. So the guy that works at the
14 Pet Product, he noticed it. And he told me, he
15 said, man, you look kind of rough.

16 MR. TECKLENBURG: Objection, Your Honor.

17 MR. MOSS: It is not offered to prove --

18 THE COURT: Sustained.

19 MR. MOSS: -- the truth of the matter
20 asserted, Your Honor.

21 THE COURT: You can't say what someone else
22 said. All right.

23 A Okay.

24 Q You started to cramp?

25 A I started to cramp. And I sat down by the switch.

1 And the guy from Pet Product asked me did I want
2 EMS, and I told him because my hands were cramping
3 shut, I couldn't open them, I told him, yes, I
4 needed EMS.

5 Q Did EMS arrive?

6 A Yes.

7 Q Took you where?

8 A They took me to Orangeburg Hospital.

9 Q How long were you there?

10 A I was there about three days.

11 Q Spending the night?

12 A Yes.

13 Q When you were released, talk us through the process
14 of trying to get back to work.

15 A Well, once I stayed in the hospital, they -- my
16 kidneys started functioning, I was released. They
17 told me to follow up with my doctor in St. George,
18 which I did, I followed up with him.

19 Q Dr. Dantzler?

20 A Dr. Dantzler. Basically, I don't know when, but he
21 released me to go back to work.

22 Q And there was -- was there some interaction with
23 the Norfolk Southern Medical Department about you
24 getting back to work?

25 A Yes. I spoke with the trainmaster and told him,

1 you know, that I was ready to come back to work.

2 And he said, well --

3 Q Don't tell us what he said. Just tell us what
4 happened. It is okay.

5 A Okay. I sent a return-to-work form from Dr.
6 Dantzler, and I was advised that I needed more
7 information.

8 Q Okay. So that is someone from Norfolk calling you
9 on the phone?

10 A Yes.

11 Q Okay. And did you provide it?

12 A Yes.

13 Q And so then, after being released, what was your
14 first day back?

15 A My first day back probably was May -- I don't know
16 the exact date.

17 Q It would have been the 30th?

18 A May 30th, right.

19 Q And who was your engineer on May the 30th?

20 A On May the 30th Tommy Connelly was my engineer.

21 Q Had you ever worked with him before?

22 A I think during training I may have. I'm not sure.

23 MR. MOSS: Your Honor, I move the admission of
24 Plaintiff's Exhibit Number 2.

25 THE COURT: Any objection?

1 MR. TECKLENBURG: No objection.

2 (WHEREUPON, Plaintiff's Exhibit No. 2

3 was marked for identification and

4 received into evidence.)

5 Q Do you recognize Plaintiff's Number 2?

6 A Yes, sir. It is a note that I wrote the
7 trainmaster.

8 Q And what was the -- in your mind, what was the
9 purpose of the note?

10 A Just because I know the railroad is big on
11 reportable injuries, so I figure if, you know, if
12 this happened at home it would get me back to work
13 quicker.

14 Q Okay. So you wrote this note and gave it to the --

15 A Trainmaster.

16 Q The trainmaster. As part of the getting back to
17 work process?

18 A Yes, sir.

19 MR. MOSS: May I publish Exhibit Number 2?

20 THE COURT: Yes.

21 (Exhibit published to jury.)

22 Q If we go to May 31st now, the day of the event, who
23 was your boss that day?

24 A I think William Deshazor.

25 Q Deshazor?

1 A Deshazor, excuse me.

2 Q He was out of Charleston?

3 A Yes.

4 Q You reported to work where?

5 A I reported to Columbia for the P28.

6 Q In the morning?

7 A Yes.

8 Q As best you can remember, and talk us through the
9 day on May 31st.

10 A First thing, we have to bring our engine out. They
11 have our cars staged on a track. We have to go
12 switch a couple of tracks to get our engine to the
13 car that I need to pick up. We pick the cars up.
14 We do a brake test in order to go on the mainline.
15 We get track warrants to go switch out some cars.

16 Q Before you went back to work on the 30th, did the
17 railroad ask you to go to any kind of physical
18 therapy or work hardening?

19 A No, sir.

20 Q Did they ask you to go to any kind of facility to
21 do any kind of simulated work or any kind of
22 exercise?

23 A No, sir.

24 Q Other than seeing your primary care physician, did
25 they ask you to see any other physician or

1 specialist?

2 A No, sir.

3 Q The records show, we have already seen, that you
4 worked at Okonite and Doane Pet Products on the
5 31st.

6 Do you actually have a specific recollection
7 of that day that you could tell us how many cars
8 you pulled or how many that you didn't spot?

9 A No, sir, I don't.

10 Q We have all the records to show that. Tell us, if
11 you can, what you do remember about the day.

12 A I do remember I started feeling bad and I, you
13 know, said in my head, I said, well, I'm not going
14 to, you know, get caught out here with the cramping
15 that I did last time.

16 So I called Mr. Deshazor and advised him that
17 I was feeling bad, and that I was going to bring my
18 train into Columbia.

19 So I think I was checking the brakes at the
20 time, so I was walking the brakes on my train and I
21 got back on the engine.

22 Q When you placed that call, were you actually at
23 Doane Pet Products at the time?

24 A Yes, sir.

25 Q While walking the train. What does that mean?

1 A You are just doing an inspection of the train to
2 make sure your brakes are --

3 Q Given how you felt, did you -- were you willing and
4 did you actually tell Mr. Deshazor that you were
5 willing to come back to Columbia?

6 A Yes.

7 Q Do you fault him in the least for not getting you
8 emergency medical care or not intervening or
9 telling you not to get on the train?

10 A Not at all.

11 Q When you got on the engine after telling
12 Mr. Deshazor that you were not feeling well, did
13 you also tell Mr. Connelly?

14 A Yes.

15 Q What did you tell him?

16 A I told him that I was starting to feel bad and I
17 already had called Mr. Deshazor and needed to take
18 a train into Columbia.

19 Q Describe, if you will, what happened. I think the
20 record will show that at 2:28 the train left and
21 that you all started from Doane towards Andrews
22 Yard?

23 A Well, I don't know what exact time, I started
24 feeling worse, I could feel a cramp in my stomach.
25 My hands started doing the same thing. My legs.

1 started cramping up. I started breathing heavy
2 again.

3 So at that time I looked at my engineer, which
4 was Tommy Connelly, and I told him, I said, I'm
5 feeling worse and I think I'm going to need EMS
6 waiting on me.

7 Q Did Mr. Connelly then place a call to the railroad
8 boss?

9 A Yes. He called, I don't know who, but he called.

10 Q And I know you may not know, but were there -- do
11 you recall that there were consistent phone calls
12 from Mr. Connelly to the bosses and from the bosses
13 back to Mr. Connelly as the train moved towards
14 Andrews Yard?

15 A Yes. I noticed that he was calling because I was
16 getting worse and I stressed it to him. I said,
17 I'm feeling worse. And he was placing calls.

18 Q Did he then convey your message that you were
19 feeling worse to the bosses?

20 A Yes.

21 Q Why didn't you just pick up the phone?

22 A I wasn't able to hold a phone because my hands were
23 cramped shut.

24 Q Other than the cramping, how were you feeling? How
25 were you -- what was going through your head?

- 1 A What was going through my head was heat stroke. I
2 was always told by my grandfather if, you know, you
3 are catching cramps all over, there is nothing to
4 stop you from catching a cramp in your chest. So I
5 just, you know, started praying, and just talking
6 to my engineer, Mr. Connelly.
- 7 Q And when the train moved actually to the swamp, did
8 Mr. Connelly actually call Mr. Stinson on the phone
9 as well?
- 10 A I know he was on the phone. I don't know who he
11 spoke with, but I know he was making calls.
- 12 Q And each time the message was what?
- 13 A He was getting worse.
- 14 Q And do you even know where you were or what
15 milepost when these calls were made?
- 16 A I don't have a clue.
- 17 Q Don't remember?
- 18 A Yes, sir.
- 19 Q When you hit the yard limit at 123.6, what happened
20 to the speed of the train?
- 21 A It slowed down to ten miles an hour.
- 22 Q Then what happened?
- 23 A You go in to get permission to go into the Andrews
24 Yard.
- 25 Q Finally, at what point did the train come to a spot

1 of rest?

2 A I don't remember at what point. I remember seeing
3 the shack.

4 Q At Old Maude?

5 A Old Maude, yes. And I remember coming to a stop.
6 And I could pretty much just see the shack from
7 where I was sitting.

8 Q From the time Mr. Connelly made his first call to
9 the boss, Mr. Moorer, were you physically able to
10 help yourself at all?

11 A No. I was completely helpless.

12 Q You talked about the cramps in your hands. Where
13 else were you cramping?

14 A I was cramping in my stomach and legs.

15 Q Where in your legs?

16 A The thigh part and calf.

17 Q When you say cramp, what do you mean?

18 A It immobilized me as far as movement of my hands.
19 All I could move was like my arms and just try
20 to -- I don't like for my hands to stay shut. I
21 was trying to put my hands on my lap in order to
22 open them.

23 Q Were you able to actively work helping Mr. Connelly
24 as the train moved from or moved towards the
25 Andrews Yard?

1 A Not at all.

2 Q When the train stopped, was either fire or EMS
3 physically present?

4 A No, sir. All I can remember is Superintendent
5 Stinson coming on board.

6 Q What happened?

7 A They tried to get me off. Wasn't able to.

8 Q Who is they?

9 A Tommy Connelly and -- well, actually Mr. Stinson
10 tried.

11 Q Did you ever hear him tell somebody to call EMS?

12 A No, I didn't.

13 Q Did Mr. Stinson actually lay his own hands on you?

14 A No. I can remember him standing in front of me and
15 asking me could I move.

16 And I remember me saying I couldn't. And
17 after that, it is kind of fuzzy. I don't remember
18 if he actually tried to pick me up. I don't
19 remember.

20 Q Do you actually recall the events as they tried to
21 get you off the engine?

22 A I remember they had a hard time getting me off the
23 engine, I guess because of my size and it is so
24 narrow on the engine.

25 Q What was hard about it?

1 A They just couldn't get a -- well, like I say, a
2 grab, a grab hold to me, and each time they were
3 able to grab hold to me, a cramp would hit and, you
4 know, I would yell out and they would put me back
5 down.

6 Q Put you back in the engineer's seat?

7 A Well, I was still in the conductor seat.

8 Q Did you end up in the engineer's seat at some
9 point?

10 A I believe I did.

11 Q Well, how did they end up getting you off the
12 engine, Mr. Moorer?

13 A I think someone had to get behind me and someone
14 had to get my legs and then had to get a chair in
15 order to get me off the engine itself.

16 Q And then when they finally got you off, what
17 happened?

18 A I remember getting to the EMS. They were
19 transporting me to the hospital. As I was going
20 into emergency, I remember my arms started to
21 swell, and I asked the nurse why was my arm
22 swelling. And she said that --

23 MR. TECKLENBURG: Objection.

24 Q Don't tell us what he said. What is your
25 understanding?

1 A Well, I was told that --

2 Q Don't tell us -- what is your understanding of what
3 happened? It is okay.

4 A The IV wasn't in my arm and my arm was swelling.

5 Q As you are sitting there in the yard, what is going
6 through your head, Trumaine?

7 A I was praying. And basically it was like I was
8 having -- I know from the past about heat strokes,
9 and I was just praying that I didn't have a stroke.
10 And I know from prior that it was bad.

11 Q Was it worse than the first time?

12 A Yes.

13 Q Why?

14 A I guess the cramping, just people touching me and
15 trying to handle me, just excruciating pain.

16 Q What was the temperature like in the engine from
17 the time you boarded at about 2:28 until you
18 finally got off at Andrews Yard?

19 A It was very hot.

20 Q I guess y'all opened the windows?

21 A Yes, the windows were open to try to circulate some
22 air.

23 Q Had you done your best to hydrate and nourish
24 yourself before going to work on the 30th and 31st?

25 A Yes.

1 Q Because there was some question earlier in the
2 month when you had your problem about whether you
3 had eaten enough and eaten a banana and all that.

4 A Yes.

5 Q After that first event, what steps did you take to
6 be positive that you were going to be properly
7 hydrated and properly nourished when you were at
8 work?

9 A That is why I brought the cans. If I get stuck I
10 have a chance to eat, hydrate, make sure that it
11 didn't happen again.

12 Q You are talking about the canned goods that are
13 Plaintiff's Exhibit Number 6?

14 A Yes.

15 Q Which hospital did they take you to in Columbia?

16 A Palmetto. Palmetto.

17 Q How long were you there?

18 A About four days.

19 Q Was the treatment about the same as it was the
20 first time or was it different?

21 A They started running a series of tests. It was
22 different. They ran a series of tests for lime
23 disease, tests on my blood. They had me to a heart
24 monitor, monitor my heart. Basically get my
25 kidneys functioning back to normal.

1 Q Is that your understanding of what the problem is,
2 your kidneys weren't functioning well?

3 A Yes.

4 Q So you go home early June 2007?

5 A Yes.

6 Q And what is the next meaningful interaction you had
7 with work?

8 A I don't remember the name of who came by and spoke
9 with me.

10 Q Apparently the medical department was now getting
11 involved?

12 A Yes.

13 Q Okay. Was it your understanding that somebody in
14 Norfolk was going to evaluate you for fitness for
15 duty?

16 A I can't -- I don't remember what he said. I think
17 he --

18 Q We don't want to know what he said.

19 A Yes. Yes.

20 Q We want to know what your understanding was of what
21 they were doing.

22 A Yes.

23 Q At some point did you receive information from the
24 railroad about whether or not you would be allowed
25 to come back to work?

1 MR. TECKLENBURG: Objection, Your Honor. May
2 we approach?

3 THE COURT: Yes, sir.

4 (WHEREUPON, a bench conference was held
5 in the presence of the jury but out of
6 the hearing of the jury.)

7 THE COURT: All right, ladies and gentlemen of
8 the jury, it is about 1:40 and time for a break.
9 There is a matter of law that I need to take up
10 with the attorneys outside of your presence, and
11 this is a good time for you all to take a break. I
12 think we have been going almost two hours, so we'll
13 take about a 15 minute break.

14 Thank you.

15 (WHEREUPON, the jury retires to the jury
16 room at 11:41 a.m.)

17 THE COURT: You want to place your objection
18 on the record?

19 MR. TECKLENBURG: I do, Your Honor. The
20 Plaintiff was submitting for the witness to examine
21 Plaintiff's Exhibit 3, I believe, a letter dated
22 August 2, 2007, from Dr. Lina. Her position is set
23 forth in my motion in limine, specifically this was
24 Motion Number 8.

25 Our position, Your Honor, is that any opinion

1 of Dr. Lina that is entered into evidence in this
2 case, and that is her opinion, she is giving a
3 return-to-work evaluation, she has explained in
4 great detail in the written testimony, which I'll
5 be happy to hand up to the Court -- or, excuse me,
6 in her deposition testimony, she gave two
7 depositions, as to what her opinion was and why she
8 gave this letter.

9 Norfolk Southern's position is if this letter
10 and its contents are going to be part of the case,
11 explanation needs to be provided, the rule of
12 completion, if nothing else. If someone is giving
13 an opinion, they are entitled to explain what it
14 is. So if the Plaintiff wants to get it in, we're
15 entitled to explain it.

16 If Your Honor believes it is an inadmissible
17 medical opinion, the foundation is inadmissible,
18 then the letter should be inadmissible as well. It
19 is sense of fairness and the rule of completeness.
20 Anyone who issued the letter is certainly entitled
21 to explain why. And that is all we ask.

22 THE COURT: All right. Yes, sir, Mr. Moss?

23 MR. MOSS: Your Honor, she's under the opinion
24 that Mr. Moorer suffers from a recurrent severe
25 heat-related illness. And obviously the only two

1 heat-related events -- recurrent means twice.
2 Heat-related is early May and late May. So there
3 is a work-related implication to this heat-related
4 illness in the opinion from a medical doctor.

5 She is going to say in her deposition, and
6 they are right, they are entitled to ask her what
7 her opinion is. Is he -- technically is he
8 qualified for work, is what we are really getting
9 to. Heat-related. Not qualified.

10 What our objection was and their motion in
11 limine is about is other explanations for this
12 heat-related problem. But she actually gets beyond
13 heat-related and she starts talking about something
14 else going on and she can't tell what it is.

15 What she says in this medical record is,
16 heat-related illness. And the only heat-related
17 events were the two events in May.

18 Then she wants to say: Well, it also could be
19 something else that caused this problem, when in
20 fact the letter simply says heat-related. She
21 wants to say genetic predisposition, she wants to
22 say maybe he was taking a supplement, she wants to
23 say it doesn't add up.

24 But her opinion here -- and she says it in
25 her deposition repeatedly. I took her deposition

1 for this purpose, and she says: Yes, that is my
2 opinion. He does not qualify to work because of
3 his problem. Now, I don't know exactly what is
4 going on with him. I don't really -- I can guess
5 about that. I can think about that. But I do know
6 that he has a severe heat-related problem that
7 disqualifies him from working at the railroad.

8 THE COURT: All right. And your objection to
9 the designations is not -- if I'm understanding you
10 correctly -- is not her response that it is not
11 related to heat at work, but her speculation as to
12 genetic predisposition and the supplements, is it
13 the flu, is it whatever, whatever, whatever.

14 MR. MOSS: That's exactly right.

15 THE COURT: And that is kind of the issue --
16 and I've been looking at the case law. I don't
17 think he is saying that she can't -- she could -- I
18 think her testimony is basically saying what it is
19 not. She knows it is not related to the heat at
20 work. It could be something else.

21 But as far as her speculating as to what else
22 it is, I don't think that part of it should be
23 entered as admissible.

24 And in reading the case law, and I even went
25 and looked at the FELA law and the relaxed

1 standard, it still says that it has to be more than
2 just speculation.

3 I mean, she just basically goes on and started
4 listing the things that it possibly could have
5 been. I mean --

6 MR. TECKLENBURG: Well, her opinion -- and it
7 is on Page 46, Your Honor, of the deposition. I
8 can pass it up if you like.

9 THE COURT: I have it.

10 MR. TECKLENBURG: It is likely Mr. Moorer has
11 an underlying medical. So basically her opinion is
12 that he has got something else. It is -- her
13 opinion is that it is not work related. You are
14 very clear on that, Your Honor. She will give you
15 that to, you know, even the South Carolina
16 evidentiary standard.

17 But putting the evidentiary standards aside,
18 what we're talking about is putting in a letter
19 where the good doctor is asked several times, why
20 did you write this letter? What did you do to
21 develop your reasoning behind this letter?

22 And she goes through great detail: I reviewed
23 the literature. I considered the medical records.
24 I conferred with Dr. Prible. I did all of these
25 things. And I made this decision.

1 THE COURT: He is not objecting to that.

2 MR. TECKLENBURG: What's that?

3 THE COURT: He is not objection to her saying
4 what she considered to --

5 MR. MOSS: No, I'm not. I agree with you.
6 Everything you say with I agree with, Your Honor.

7 MR. TECKLENBURG: He does, Your Honor.
8 Because when she describes the literature, she
9 says, the literature shows that this is very
10 unique. It is not work-related. And essentially
11 there is something else going on here.

12 So that is what her review of the literature
13 indicated.

14 THE COURT: Okay. Well, I mean, I think the
15 letter comes in. I'm not sure if you all are
16 disagreeing or not. He is saying he doesn't have a
17 problem with her saying what all she did to come to
18 her conclusion that it was not related to work. I
19 think the issue is her going into -- or speculating
20 as to -- speculating basically with no -- other
21 than, you know, her reading the literature and
22 consulting with a doctor, her speculating as to all
23 of these other different things that it may be, and
24 she just doesn't -- she doesn't know.

25 So I think what needs to be entered, and you

1 all will have to go through the record, is
2 basically her saying what she did to come to her
3 decision, which I think alleviates your concern
4 regarding the entering of the letter, but what she
5 did to come up with her decision, how -- what made
6 her decide that it was not related to his job. And
7 the sources that she used, if she talked to Dr.
8 Prible, if she read up on whatever, but just her
9 just throwing out different things, it may be
10 genetic, it may be vitamins, it may be this, I
11 think the law requires something a little bit more
12 than that speculation.

13 Because if that is the case, the jurors can
14 sit there and say, well, maybe he had something
15 genetic, maybe he picked up something in Iraq,
16 maybe he had the flu. I mean, she is doing the
17 exact same thing.

18 MR. TECKLENBURG: Well, she has gone through
19 what doctors do, is they go through a process of
20 elimination. And she eliminated the workplace.
21 And what she basically said is that these are the
22 other causes, that there is -- I believe that there
23 is an underlying susceptibility. There is an
24 underlying medical condition. There is something
25 going on with this person as opposed to the

1 workplace. And that is her opinion.

2 Rhabdomyolysis is a very complicated illness.
3 And she read the literature on it and felt that it
4 was her obligation to explain it. She has
5 essentially engaged in the process of differential
6 diagnosis, which is what all doctors do.

7 THE COURT: All right. Well, I'll let her
8 testimony regarding the letter, what she did, what
9 she looked at, but any opinion as to -- just any
10 opinion as to -- she can say the part about, is not
11 related to work, but I think any opinion as to all
12 these other things, what it might be is only
13 speculative. And even under the relaxed, under
14 FELA, it still says it has to be more than just a
15 guess.

16 All right, so y'all try to get together.
17 Well, you are not putting up her deposition until
18 after lunch? And the problem with rhabdomyolysis
19 is that she says -- I don't think -- does she say
20 to a reasonable degree of medical certainty that
21 she thought that that is what it was?

22 MR. TECKLENBURG: I think she accepted the --
23 I mean, rhabdomyolysis, I think she accepted the
24 hospital and the doctor's diagnosis of
25 rhabdomyolysis. That is something I think

1 everybody agrees with.

2 MR. MOSS: I agree with that.

3 THE COURT: Does she say --

4 MR. TECKLENBURG: The problem is there are too
5 many causes of it. And working as a conductor on a
6 78-degree day in her opinion doesn't add up.

7 THE COURT: And that is admissible.

8 MR. TECKLENBURG: (Nods affirmatively.)

9 THE COURT: Mr. Moss, I think you all are
10 agreeing. I'm just not sure what y'all are
11 disagreeing about.

12 MR. TECKLENBURG: Okay. It might be better,
13 Your Honor, I understand your ruling, I think, and
14 when we get to the specifics of the testimony we
15 will obviously take that up.

16 THE COURT: All right. But, yes, I think she
17 can -- I mean, that part of it can come in, that
18 she -- that it just doesn't add up to work-related.

19 MR. TECKLENBURG: Your ruling appears to be
20 the letter is coming in, and you will gauge very
21 carefully her opinions that are speculative.

22 THE COURT: Yes, if it is speculative. All
23 right.

24 MR. TECKLENBURG: All right. Thank you.

25 THE COURT: All right. Let's take about five

1 minutes and take a break.

2 (WHEREUPON, a break was taken.)

3 (WHEREUPON, the jury came into open
4 court at 12:13 p.m.)

5 THE BAILIFF: The jury is present, Your Honor.

6 THE COURT: Yes, sir, you may continue.

7 MR. MOSS: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUES:

9 BY MR. MOSS:

10 Q Mr. Moorer, the letter we were referring to earlier
11 is Plaintiff's Exhibit 3.

12 MR. MOSS: I move its admission, Your Honor.

13 THE COURT: Any objection?

14 MR. TECKLENBURG: Your Honor, subject to the
15 Court's prior ruling. I think you have
16 sustained -- you had overruled the objection.

17 THE COURT: All right.

18 (WHEREUPON, Plaintiff's Exhibit No. 3
19 was marked for identification and
20 received into evidence.)

21 Q Did you receive a copy of this letter?

22 A Yes.

23 Q Who is it from?

24 A It is Norfolk Southern, Dr. Paula Lina.

25 Q And is it your understanding that based on this

1 letter that you were disqualified from working as a
2 conductor with the railroad?

3 A Yes, sir.

4 MR. MOSS: May I publish Exhibit Number 3,
5 Your Honor?

6 THE COURT: Yes, sir.

7 (Exhibit published to jury.)

8 MR. MOSS: Your Honor, I also move for the
9 admission of Plaintiff's Exhibit Number 13, a
10 handwritten note from Dr. Lina dated 8/1/2007.

11 THE COURT: Any objection?

12 MR. TECKLENBURG: No objection, Your Honor.

13 (WHEREUPON, Plaintiff's Exhibit No. 13
14 was marked for identification and
15 received into evidence.)

16 MR. MOSS: May I publish?

17 (Exhibit published to jury.)

18 MR. MOSS: Your Honor, I would move the
19 admission of Numbers 15 and 16, the climatological
20 data from May 30 and May 31st. May I publish?

21 THE COURT: Any objection?

22 MR. TECKLENBURG: No objection, Your Honor.

23 THE COURT: Continue.

24 (WHEREUPON, Plaintiff's Exhibit No. 15
25 was marked for identification and

1 received into evidence.)

2 (WHEREUPON, Plaintiff's Exhibit No. 16

3 was marked for identification and

4 received into evidence.)

5 (Exhibits published to jury.)

6 MR. MOSS: Your Honor, if there is no

7 objection, the Plaintiff offers Exhibits 17, the

8 EMS report from May 31st, which is Exhibit 17;

9 Exhibit 9 is the discharge summary dated June 4th,

10 2007; Exhibit 10, is the history and physical from

11 Mr. Moorer June 1st, 2007; and Exhibit 11 is the

12 June 4th discharge documents from Palmetto Baptist

13 Hospital.

14 (WHEREUPON, Plaintiff's Exhibit No. 17

15 was marked for identification and

16 received into evidence.)

17 (WHEREUPON, Plaintiff's Exhibit No. 9

18 was marked for identification and

19 received into evidence.)

20 (WHEREUPON, Plaintiff's Exhibit No. 10

21 was marked for identification and

22 received into evidence.)

23 (WHEREUPON, Plaintiff's Exhibit No. 11

24 was marked for identification and

25 received into evidence.)

1 MR. MOSS: May I publish?

2 THE COURT: Yes, sir.

3 MR. MOSS: Thank you.

4 (Exhibits published to jury.)

5 Q After learning that you were disqualified
6 physically as a conductor, what steps did you take,
7 Mr. Moorer, to try to return to work at Norfolk
8 Southern in a different capacity?

9 A Well, I took a series of tests to qualify for a
10 different position.

11 Q And was that through a department or a
12 vocational --

13 A It was through the Norfolk Southern Vocational
14 Rehab.

15 Q Okay. Did they reach out to you?

16 A Yes.

17 Q And they offered you what kind of testing?

18 A It was like typing, reading, writing.

19 Q What was your understanding of why they wanted to
20 test you and why they reached out to you?

21 A To qualify me for different positions other than
22 being a conductor.

23 Q With the assumption that there are other positions
24 at the railroad that are not as physically
25 demanding that might not --

1 A Yes.

2 Q -- cause you a problem? Were you open and
3 receptive and willing to participate in the
4 program?

5 A Yes, sir.

6 Q It looks like you were tested on May 8th, 2009.
7 Where did you go to do that?

8 A I went to Orangeburg. I met with someone I think
9 at the Holiday Inn in Orangeburg, and they give me
10 a series of tests.

11 Q What kind of -- written tests?

12 A Written tests. Writing, typing.

13 Q Were you the only one there or was it as part of a
14 larger session of other people?

15 A It was just me and the person ahead of me.

16 Q Do you have any idea who that person was?

17 A I think it was the rehab -- from the Rehab
18 Department from Norfolk Southern. I'm not sure.

19 Q What was your attitude? Were you excited? Were
20 you apprehensive? What did you feel when you were
21 taking the tests with an eye towards coming back to
22 work?

23 A Excited, ready to go back to work.

24 Q And did you learn from the railroad how you did on
25 the test that they administered to you?

- 1 A Yes. I qualified for several positions. I don't
2 know offhand. I think it was a yardmaster
3 position. There were several. Clerical,
4 administrative position.
- 5 Q What does a -- do you know what a yardmaster does?
6 Can you tell us?
- 7 A Yardmaster, basically just keeping track of all the
8 cars on the yards, trains that move out, just
9 keeping a list of inventory of the inventory that
10 needs to go out in different places.
- 11 Q Is it an inside job?
- 12 A Yes.
- 13 Q You thought you could do that?
- 14 A Yes.
- 15 Q What about a clerical job? What was your
16 understanding of that?
- 17 A I did well on the typing. Qualified for dispatch.
- 18 Q Dispatch. What is a dispatcher?
- 19 A Just keeping track of where the trains are, the
20 movement -- movement of the trains. Just making
21 sure they don't collide.
- 22 Q Is that an inside job?
- 23 A Inside.
- 24 Q Like an air traffic controller with a train?
- 25 A Yes.

1 Q Okay. Did you feel like you could do that job?

2 A Yes.

3 Q Is it your understanding that those kind of jobs
4 would also be governed by seniority and union
5 membership and the same things that applied when
6 you took the conductor job?

7 A Yes.

8 Q If you got a job that you had to drive to Columbia
9 or you had to drive to Charleston, would you have
10 been willing to go to one of these lighter office
11 jobs had one been made available to you?

12 A Yes.

13 Q As you sit here today, in March of 2012, has the
14 railroad ever offered you a position at any one of
15 these light duty jobs?

16 A No, sir.

17 Q Do you know even, Mr. Moorer, if the medical
18 department physically qualified you to work those
19 jobs?

20 A I don't know. I don't know.

21 Q Okay. We'll clean that up later. But you are
22 currently working as a police officer?

23 A Yes, sir.

24 Q How long have you been doing that?

25 A I've been doing that since January of 2010.

1 Q Okay. So you tested in May of '09. You went to
2 work where in 2010?

3 A St. George Police Department.

4 Q Tell us about that.

5 A I was approached by the chief of police, and he
6 told me he had a position for a school resource
7 officer. He asked me was I interested, and I told
8 him yes.

9 Q You are going to get in trouble if you start
10 telling us what he started telling you, so we are
11 going to ask you what happened, okay? Now, you
12 knew him -- did you know him from before?

13 A Yes, I knew him from working with him previously in
14 1995.

15 Q When you were doing what?

16 A Working as a police officer.

17 Q I see. Now, did you have to go back and be
18 requalified or recertified? Or tell us about the
19 process.

20 A Yes, I would have to -- because I had been out of
21 law enforcement for so long, I had to go back and
22 recertify through the Criminal Justice Academy here
23 in Columbia.

24 Q Describe that process, please.

25 A A very extraneous process. It is sort of like

1 basic training in the military. You do push-ups.
2 They are going to check your ability. You run
3 three miles. Just seeing that you are physically
4 fit in order to be a police officer.

5 Q Today, do you feel physically fit, Mr. Moorer?

6 A Yes.

7 Q What concerns if any do you have now?

8 A I know I have to be careful in the heat, keep my
9 eyes on the symptoms. I sweat a lot now because
10 after the incident for some reason I sweat a whole
11 lot. To stay hydrated and just keep my eyes out
12 for the signs of cramping.

13 Q Were you able to actually get through the police
14 academy training?

15 A Yes.

16 Q Now, I do know that when you applied for the police
17 academy job, they specifically asked have you ever
18 had a prior heat problem.

19 A Yes.

20 Q What did you tell them?

21 A No.

22 Q It wasn't the truth, was it?

23 A No, it wasn't.

24 Q Why did you tell the police that you never had had
25 a prior heat problem?

1 A Because in the past I did go on an interview and
2 was disqualified from that job position because
3 they asked previous employment, and I told them the
4 railroad. And they wanted to know why would you
5 leave a job at the railroad. And I told them about
6 the heat-related incident. And they disqualified
7 me. They told me I would be working in the heat.

8 And at that time -- at that point it was
9 survival for me and my family. And I needed a job,
10 so --

11 Q So you actually went through the process twice?

12 A Yes.

13 Q Once with full disclosure and once with less than
14 full disclosure?

15 A Yes.

16 Q When you hired on, how much money were you making?

17 A Twenty-five-five was the start.

18 Q Specifically what was your job title and
19 description?

20 A I was a police officer hired for school resource.

21 Q Doing what?

22 A I was working in the middle school, which gave me a
23 chance to interact with the middle school students.
24 Just give me a chance to kind of minister to them
25 and found out about their goals and direct them in

1 the right path.

2 Q How big a force does St. George have?

3 A Eleven officers.

4 Q Do you wear a badge, carry a gun, and the whole --

5 A Yes.

6 Q Drive a police car?

7 A Drive a police car.

8 Q Have you moved on beyond the school resource
9 officer at the Police Department?

10 A Yes. I moved through the ranks and became
11 sergeant. The chief took me out of the school
12 because my experience told him that he wanted me to
13 work in investigations, and that is what I
14 currently work now.

15 Q What is your current title?

16 A Lieutenant.

17 Q Was that a promotion or was that a lateral move?

18 A It was a promotion.

19 Q Any more money?

20 A It is a little bit more money. The benefits, no
21 benefits.

22 Q When you say a little bit more money, you mean from
23 25.5 to what?

24 A To 29.

25 Q But no benefits?

- 1 A No benefits.
- 2 Q When you were at the railroad, can you describe the
3 benefit package you had?
- 4 A It was outstanding. It was able to cover myself,
5 my wife, my three kids, which it was great because
6 I do have a son who is 17 and he has cerebral palsy
7 so he is in a wheelchair, so it gave me -- I call
8 it the total package, when you are making money
9 plus the benefits.
- 10 Q Today, Trumaine, do you have health insurance?
- 11 A No.
- 12 Q Does Athena?
- 13 A No, she don't.
- 14 Q Any of your three children?
- 15 A No.
- 16 Q You and Athena also started -- tried to start your
17 own business?
- 18 A Yes. During the time I was out of work, we had to
19 try to generate some income and came up with the
20 idea of opening up a car wash, do detailing, and
21 window tinting, which we did for about two and
22 half, three years.
- 23 Q What was the name of that business?
- 24 A Kingdom Car Wash.
- 25 Q Kingdom?

- 1 A Kingdom Car Wash.
- 2 Q Did you go through the process of getting a
3 business license and doing the whole thing?
- 4 A Yes. My wife -- my wife did. We were under -- it
5 became a plan until I found a job I was going to
6 run the car wash, when I found a job she was going
7 to take over the business.
- 8 Q Did you ever try to hide the fact that you were
9 starting your own business and working at it?
- 10 A No.
- 11 Q Did you become aware that the railroad was
12 conducting surveillance on you while you were
13 running your car wash business?
- 14 A Yes, I had a friend that told me that --
- 15 Q Don't tell us what he told you.
- 16 A Yes, I became aware I was being checked out.
- 17 Q But were you hiding anything?
- 18 A No.
- 19 Q Have we actually showed you the video?
- 20 A Yes.
- 21 Q And what does it show you doing?
- 22 A Washing cars, assisting people that we had working
23 out there with us.
- 24 Q Have you ever told one person on the planet that
25 you can't wash a car in the heat?

- 1 A No.
- 2 Q Was this surveillance after you applied for those
3 jobs and qualified for those lighter duty jobs?
- 4 A Yes.
- 5 Q Even after the surveillance, did you continue to
6 try to work at Norfolk Southern?
- 7 A Yes.
- 8 Q Specifically, Mr. Moorer, what did you do after not
9 receiving any word on the office jobs and after the
10 surveillance?
- 11 A After -- I think I took another test.
- 12 Q Right. For a different position?
- 13 A Yes.
- 14 Q What position did you try to get this time?
- 15 A A police position.
- 16 Q Did you reach out to them this time or did they
17 reach out to you?
- 18 A I reached out to them.
- 19 Q Through me?
- 20 A Through you.
- 21 Q Specifically, what was it that you, through me,
22 requested?
- 23 A A police position either in Charleston or Columbia
24 area.
- 25 Q Well, is there a railroad police force that there

1 might actually be a position for you?

2 A Yes.

3 Q Describe it, please.

4 A It is a good position. It pays good. And the
5 benefits were outstanding. Like I said, with the
6 railroad I had the total package, the money and the
7 benefits, which will allow me to cover my family.

8 Q We'll get specifically to the dollars through other
9 folks, but what is your understanding of the pay
10 comparison between your job at the railroad as a
11 conductor and your pay at St. George as a police
12 officer?

13 A It would probably be about 22 to 23 more thousand.

14 Q Per year?

15 A Per year.

16 Q Mr. Moorner, did you see your job at the railroad as
17 a job or did you see it as a chance to advance and
18 become a locomotive engineer and see this as a
19 career?

20 MR. TECKLENBURG: Leading, Your Honor.

21 MR. MOSS: I'll rephrase.

22 THE COURT: Please rephrase.

23 Q How did you see it, Mr. Moorner, as a job or a
24 career?

25 A Like I said, it was a job with a total package. It

1 was all about bettering myself. I could see
2 myself, hopefully would move to management.
3 Just -- it is a good company.

4 Q Who interviewed you? Do you recall who it was that
5 actually was the one responsible for hiring you?

6 A Mr. David Stinson and Derrick Mason.

7 Q Is David Stinson, the boss's boss, the same
8 Mr. Stinson who got on the engine when you got
9 there on the 31st?

10 A Yes.

11 Q He was the one who interviewed you when you came on
12 in 2006?

13 A Yes, sir.

14 Q How did you do on the test to see if you could be a
15 police officer at the railroad?

16 A I was told I did well. I didn't get any scores,
17 but was told by the guy from rehab that I did well.

18 Q So you have continued to be in contact with the
19 rehab department?

20 A Yes.

21 Q How long ago was it that you learned that you had
22 passed the test to be a Norfolk Southern police
23 officer?

24 A Maybe three, four, months maybe. I'm not sure.

25 Q Have they offered you any kind of job as a police

1 officer?

2 A No.

3 Q A few little clean-up details and we will be
4 finished.

5 Last summer you took, while you were a police
6 officer, another job?

7 A Yes.

8 Q Tell us about that.

9 A I took a job at Kinder Morgan. It is a ship yard.
10 It is a terminal.

11 Q Where?

12 A In Charleston.

13 Q Why did you gravitate towards that job?

14 A Because of the benefits. I didn't have the
15 benefits. I was still a police officer. So I took
16 a job that was going to cover my family. It sticks
17 out in my mind about having coverage. And so I
18 decided to get back out there in the heat and get
19 coverage for my family.

20 Q Did you actually quit the Police Department to go
21 to Kinder Morgan?

22 A No, I didn't. I stayed on part-time with the
23 Police Department and they worked different shifts.
24 They have a morning shift. If I was working the
25 morning, I would go in the evening to the Police

1 Department for a few hours in the office. And
2 basically was just trying to get benefits for my
3 family.

4 Q And the jury is going to hear through all the tax
5 returns later. Did you actually earn some money at
6 Kinder Morgan?

7 A Yes, they make pretty good money. But what I was
8 doing is kind of -- it wasn't really healthy for
9 me.

10 Q Why?

11 A Because it was back out in the heat. We were doing
12 similar stuff, like switching the cars. They had a
13 rail locomotive out there, which I had to switch
14 cars. It was chemical cars. And it was hot out
15 there in Charleston. And just driving back and
16 forth, it took a lot out of me.

17 Q Finally, the railroad had you seen by a vocational
18 expert?

19 A (Nods affirmatively.)

20 Q Do you remember that?

21 A Yes.

22 Q When they asked you to come see her to let her
23 render her opinions about what you can and can't
24 do, did you do that?

25 A Yes.

1 Q Where did you have to go to do that?

2 A It was Mt. Pleasant.

3 Q South Carolina?

4 A South Carolina.

5 Q And her name was Ms. Cicero?

6 A I really don't remember her name. Something like
7 that, yes.

8 Q Okay. With respect to taking any tests Norfolk
9 Southern Medical Department offered you, have you
10 refused?

11 A No.

12 Q Have you been open towards any position at Norfolk
13 Southern since you were disqualified on August 2nd,
14 2007?

15 A Yes. I been open and still open.

16 MR. MOSS: Those are all my questions, Your
17 Honor.

18 THE COURT: All right. Please answer any
19 questions that Mr. Tecklenburg may have.

20 MR. TECKLENBURG: Your Honor, with the
21 Court's indulgence, I'll take a couple of minutes
22 to move a couple of things around.

23 THE COURT: Yes, sir.

24 MR. TECKLENBURG: And while I'm doing that, if
25 the bailiff could collect the exhibits, the

1 Plaintiff's exhibits, so I can use them during
2 cross-examination.

3 THE COURT: All right, once they finish
4 looking at them. I think they are still looking at
5 some of them, so let them finish looking at them.

6 MR. TECKLENBURG: Okay. Thank you, Your
7 Honor.

8 (Pause.)

9 THE COURT: Do you need to use the restroom?
10 Okay. You all can take her to the restroom while
11 he is setting up.

12 (Female Alternate to restroom.)

13 (Female Alternate returns to courtroom.)

14 CROSS-EXAMINATION

15 BY MR. TECKLENBURG:

16 Q Mr. Moorer, good afternoon.

17 A Good afternoon.

18 Q I want to review some of the work history you
19 described to the jury already.

20 And I believe that you indicated, maybe you
21 didn't give years, but, as you know, you have been
22 in this case a while, and I have taken your
23 testimony before, but I think your records show
24 that around 2001 you worked for ADT?

25 A Yes.

- 1 Q And you did sales for them?
- 2 A Yes.
- 3 Q And then around 2002 to 2003 you worked as a law
- 4 clerk?
- 5 A Yes.
- 6 Q Okay. And where did you do that work?
- 7 A Columbia City.
- 8 Q And then you actually worked -- in addition to
- 9 working for the Columbia City, did you work for the
- 10 county at some point?
- 11 A Yes, Richland County.
- 12 Q About the same time period?
- 13 A After I left the city I went to the county.
- 14 Q Were those desk jobs?
- 15 A Yes.
- 16 Q And then after the city where did you go?
- 17 A Overseas.
- 18 Q And you described your work there. When you were
- 19 checking Humvees and things of that nature, did
- 20 that involve any lifting, so to speak, or heavy
- 21 labor?
- 22 A Not lifting. Climbing. Climbing the tanks.
- 23 Q Did you use a clipboard to keep track of things?
- 24 A Yes.
- 25 Q And then you came to Norfolk Southern, is that

1 right?

2 A Yes.

3 MR. TECKLENBURG: And if we could put up
4 Exhibit 1, please.

5 Q At Norfolk Southern you filled out an application.
6 Did you do that online?

7 A Yes.

8 Q And let me know if you can't read anything that we
9 put up. Exhibit 1 talks about this, received
10 shipments of military materials and put the data
11 from the items received. That is the job you
12 described in Kuwait, overseas?

13 A Yes.

14 Q Okay. And what was your reason that you gave to
15 Norfolk Southern for leaving that job?

16 A To come back to the United States to be with the
17 family.

18 MR. TECKLENBURG: Your Honor, I move Exhibit 1
19 into evidence.

20 MR. MOSS: No objection.

21 (WHEREUPON, Defendant's Exhibit No. 1
22 was marked for identification and
23 received into evidence.)

24 Q And when you came to Norfolk Southern, were there
25 certain forms, things that you had to sign?

1 A Yes.

2 MR. TECKLENBURG: If we can go to Exhibit 5,
3 please.

4 Q And Exhibit 5 is a personal commitment. Is that
5 your signature on there?

6 A Yes, sir.

7 Q Okay. And it says that, I understand that my
8 position may be required to work holidays.

9 MR. TECKLENBURG: Let's see if we could put
10 that a little closer so we can read it.

11 Q Holidays, weekends, and during adverse weather
12 conditions. Did you sign that?

13 A Yes.

14 Q And you knew that the work you were going to do at
15 Norfolk Southern was an outdoor job?

16 A Yes.

17 Q You may have to work in snow?

18 A Yes, sir.

19 Q Rain?

20 A Yes, sir.

21 Q And hot weather?

22 A Yes.

23 Q And going back to your application --

24 MR. TECKLENBURG: Before that, Your Honor, I
25 move Exhibit 5 into evidence.

1 MR. MOSS: No objection.

2 (WHEREUPON, Defendant's Exhibit No. 5
3 was marked for identification and
4 received into evidence.)

5 Q Now, going back to Exhibit 1, the application you
6 did online, one of the things that it asked you,
7 did it not, is where you might be willing to
8 relocate, is that right?

9 A Yes, sir.

10 Q And it says that you were willing to work in three
11 different states?

12 A Yes, sir.

13 Q And when you got assigned to the Charleston
14 division, did you work jobs in Columbia and Rock
15 Hill?

16 A Yes, sir.

17 Q Did you ever work in Aiken?

18 A Yes, sir.

19 Q Okay. So you were driving all over the state?

20 A Yes, sir.

21 Q So you finished the application. And I want to ask
22 you a little bit about this job in Kuwait. When
23 you left Kuwait --

24 MR. TECKLENBURG: If we could put up Exhibit
25 49, please. And highlight it, second paragraph.

1 Q Is this your e-mail you sent when you left Kuwait?

2 A Yes, sir.

3 Q And what you told your employer in Kuwait basically
4 is that you have got a medical problem you need to
5 take care of and go back to the states, right?

6 A Yes, sir.

7 Q But that is not what you told Norfolk Southern.
8 What you told Norfolk Southern is that you needed
9 to leave and get back to your family?

10 A Yes, sir.

11 Q And I want to talk a little bit about the training.
12 The training you had, I don't think you described
13 it that much, because you said that you were in
14 McDonough, Georgia?

15 A Yes, sir.

16 Q Did you watch videos?

17 A Yes.

18 Q And it showed you the various tasks that you do as
19 a conductor?

20 A Yes, sir.

21 Q And tell me about your on-the-job training. How
22 many jobs did you work in the Charleston district
23 where you did on-the-job training?

24 A You would have to work all the jobs on that
25 division before you mark up.

1 Q And did you work the P28 during your training?

2 A Yes. I worked all of them.

3 Q And who did you work with?

4 A The P28 I worked with Roger Davis and a guy named
5 Chris. I don't remember his last name.

6 MR. TECKLENBURG: If I could have -- let's
7 see, I've got --

8 Q Did you get a rule book as part of your becoming an
9 employee --

10 A Yes.

11 Q -- at Norfolk Southern? Excuse me while I locate
12 that.

13 (Pause.)

14 And what types of rules did you learn or what
15 types of groups of rules were in that book that you
16 received? I finally found it. Exhibit 95. Is
17 that your rule book, Mr. Moorer?

18 A Yes, sir.

19 Q Okay. And I have taken a yellow post-it and put a
20 star on it. Can you turn to that?

21 MR. TECKLENBURG: Your Honor, we would move
22 Exhibit 95 into evidence.

23 MR. MOSS: No objection.

24 (WHEREUPON, Defendant's Exhibit No. 95
25 was marked for identification and

1. received into evidence.)

2 Q What is that, Page 95?

3 A Chemical burns --

4 Q Not Page 95. Excuse me, where there is a post-it
5 with a star. What is that?

6 A It talks about chemical burns, heat problems.

7 Q It talks about heat problems?

8 A Yes, sir.

9 Q And did you read all of the rule book before you
10 started work in January? Did you go through the
11 rule book?

12 A I go through it, but I didn't read all of it.

13 Q Did you get tested on the rule book?

14 A I don't remember.

15 Q Let me show you Exhibit 2, which is an excerpt of
16 that book.

17 And Exhibit 2 says, heat problems. It says,
18 heat problems may be caused by a salt or water
19 intake that is inadequate to make up for that which
20 is lost by sweating. Did I read that right?

21 A Yes, sir.

22 Q Okay. It says, prevention for heat problems.
23 Drink warm or hot water. Water should be drunk
24 every 20 to 30 minutes. Do you see that?

25 A Yes, sir.

1 MR. TECKLENBURG: Your Honor, I move Exhibit 2
2 into evidence, which is an excerpt.

3 THE COURT: Any objection?

4 MR. MOSS: No objection.

5 MR. TECKLENBURG: May I publish, Your Honor?

6 THE COURT: Yes, sir.

7 MR. TECKLENBURG: Thank you.

8 (WHEREUPON, Defendant's Exhibit No. 2
9 was marked for identification and
10 received into evidence.)

11 Q And these instructions from Norfolk Southern on
12 consuming water, taking care of yourself, it wasn't
13 new to you as a person who was an athlete?

14 A No, sir.

15 Q And you knew as an athlete it is important to
16 hydrate, important to eat properly?

17 A Yes, sir, I did.

18 Q And when you were at ITT over in the Middle East,
19 did they encourage you to hydrate properly?

20 A Yes, sir, they did.

21 Q And would you agree with me that if you failed to
22 eat, missed meals, it could weaken you?

23 A Yes, sir, I agree.

24 Q Common sense?

25 A Yes, sir.

1 Q Now, you have described your training. You went
2 through the jobs. And you went to a number of
3 places.

4 When the training was complete, when you
5 finished your on-the-job training, what were you
6 allowed to do?

7 A Mark up, stand for a position that came up on the
8 extra board, go to work.

9 Q And is that something you wanted to do?

10 A Yes, sir.

11 Q You wanted to be a full-time conductor?

12 A Yes, sir.

13 Q If you had felt you needed more training, would you
14 have told your supervisor?

15 A Yes, sir.

16 Q And that didn't happen, did it?

17 A No, sir.

18 Q You felt ready?

19 A Felt ready.

20 Q You had not only had classes, but on-the-job
21 training. What do you think it lasted, four
22 months?

23 A Yes, sir.

24 Q Now, I want to talk a little bit about how you
25 handle a job that you might be assigned to.

1 When you go and work a job for a day, do you
2 do something called a job briefing?

3 A Yes, sir.

4 Q Describe for the jury what a job briefing is that
5 you did before each and every job you did at
6 Norfolk Southern?

7 A Basically get with the people that is working with
8 you, discuss what the day is going to consist of,
9 the moves you are going to be making for the day.

10 Q Would you plan your day?

11 A Yes.

12 Q And would talk about safety?

13 A Yes, sir.

14 Q Did you believe that your supervisors that you
15 worked under were concerned about safety?

16 A Yes, sir.

17 Q Overall did you believe Norfolk Southern was a safe
18 place to work?

19 MR. MOSS: Objection. Not relevant to this
20 case in particular. The company's reputation or
21 standing has nothing to do with this case and this
22 issue.

23 MR. TECKLENBURG: Your Honor, he has been
24 testifying about his training in direct. I think
25 it is certainly proper cross.

1 MR. MOSS: The question is whether it was
2 reasonably safe on the day in question.

3 THE COURT: All right. Objection overruled.

4 A Yes, sir.

5 Q So you believe the work environment you were
6 presented in and that you were trained for, that
7 they were trying to provide a safe environment for
8 you?

9 A On the day that I --

10 Q No, overall.

11 A Overall? Yes, sir.

12 Q Okay. We're going to get specific in a few
13 minutes.

14 A Okay.

15 Q Now, I think there has already been plenty of
16 description, but as a junior member of the
17 conductor pool, you worked the extra board?

18 A Yes, sir.

19 Q And as a result of that, if you got called, did you
20 have the option of saying no?

21 A No, sir.

22 Q Okay. That was part of the job? You took what was
23 available that day?

24 A Yes, sir.

25 Q And did you ever have an occasion to work the

1 Charleston job?

2 A Yes, sir.

3 Q And did you ask for an extra man to help you and
4 receive one?

5 A I believe I did.

6 Q Okay. So you knew how to ask for extra help?

7 A Yes, sir.

8 Q And when you went to these jobs, did they have a
9 cooler that was on the locomotive?

10 A Yes, sir.

11 Q And what would be in that cooler?

12 A Water.

13 Q Ice?

14 A Ice.

15 Q And did they provide anything such as electrolytes
16 or --

17 A Yes, sir. Squinchers.

18 Q What is a Squincher?

19 A It is like -- it is a powder form. It replaces
20 your electrolytes. It is like Gatorade, but you
21 pour it in water.

22 Q Now, Exhibit 3 is a list of your daily activities
23 and where you were assigned.

24 MR. TECKLENBURG: And if we could put up
25 Exhibit 3.

1 Q This is a company record, but I want to ask you
2 about this. Exhibit 3 has a list of all your
3 assignments. And on April 15th, 2007 -- that is a
4 about I guess three weeks before your first
5 incident -- what does it indicate that was going on
6 with you on April 15th?

7 A On April 15th, looked like I marked off as sick.
8 When doing the extra board, in order to get the day
9 off you have to mark off sick.

10 MR. TECKLENBURG: And, Your Honor, I move
11 Exhibit 3 into evidence.

12 MR. MOSS: No objection.

13 (WHEREUPON, Defendant's Exhibit No. 3
14 was marked for identification and
15 received into evidence.)

16 Q And we have gone over this before, but on
17 April 15th you took the day off and did some things
18 other than working for Norfolk Southern, right?

19 A Yes, sir.

20 Q And as part of the discovery in this case, we asked
21 you about what jobs you may have applied for over
22 the years. Do you recall that?

23 A Yes, sir.

24 Q And did you provide to your lawyer your e-mails and
25 efforts to get other jobs?

1 A Yes, sir.

2 MR. TECKLENBURG: That is marked Exhibit 92.

3 Your Honor, I move Exhibit 92 into evidence.

4 MR. MOSS: No objection.

5 (WHEREUPON, Defendant's Exhibit No. 92

6 was marked for identification and

7 received into evidence.)

8 Q Now, on Exhibit 92, which is a stack of e-mails
9 going over a period of time, I notice something
10 that on April 15th -- let's see, can you see on
11 this e-mail, Sunday April 15th, 2007, 9:10 p.m., it
12 is from, Info at Web Hire. Subject, thank you for
13 your interest with ITT Industries. Jobs applied
14 to, administrative services manager.

15 Do you believe you were applying for other
16 jobs on April 15th, 2007?

17 A Yes, sir. I believe in keeping options open. I
18 applied for a position. Just like fishing, I never
19 get a bite, but I keep my name in the hat.

20 Q Okay. So you were applying for work.

21 MR. TECKLENBURG: And if we can go to the next
22 slide which is part of this exhibit.

23 Q This looks like you applied for the district's
24 coordinator, Bogota.

25 A Yes.

- 1 Q That would be in Colombia?
- 2 A Yes, sir.
- 3 Q Next position, administrative services manager?
- 4 A Yes, sir.
- 5 Q Did you apply for that, that position?
- 6 A Yes, sir.
- 7 Q Warehouseman, traffic warehouseman. Did you apply
- 8 for that?
- 9 A Yes, sir.
- 10 Q As a matter of fact, that one -- and I want to ask
- 11 you about this. You said you were keeping your
- 12 options open. So when you were working at Norfolk
- 13 Southern, you were actually applying for other
- 14 jobs?
- 15 A Yes, sir.
- 16 Q And if you got a better job, you would take that
- 17 job, would you not?
- 18 A It is a process. I do have a wife. And I can't
- 19 say I will, but if she agrees, maybe I'll think
- 20 about it.
- 21 Q Now, let's go back to the events that you are here
- 22 about, which I want to talk first about May 8th.
- 23 A Okay.
- 24 Q On May 8th you worked the P28, is that right?
- 25 A Yes, sir.

- 1 Q And do you recall eating a meal prior to late that
2 night?
- 3 A I don't remember.
- 4 Q You said that your hands cramped when you left the
5 job on May 8th and you shook it off, I think is the
6 words you used in your direct, is that correct?
- 7 A Yes, I cramped in one hand.
- 8 Q One hand?
- 9 A Yes.
- 10 Q And you were able to shake it off?
- 11 A Yes, at work.
- 12 Q Did you tell anyone at Norfolk Southern about that
13 on May 8th?
- 14 A Not a cramp. Being an athlete, when you catch a
15 charley horse you just keep going.
- 16 Q And you have described that when you went home that
17 night on May 8th you sweated?
- 18 A Yes.
- 19 Q You left the sheets wet, didn't you?
- 20 A I believe so.
- 21 Q We'll see what your wife says about that.
- 22 A Yes.
- 23 Q She may remember.
- 24 A Yes.
- 25 Q But it was a difficult night for you, wasn't it?

1 A It was a difficult night.

2 Q You -- this was something new to you, this sweating
3 in the bed?

4 A Sweating?

5 Q What is that?

6 A Sweating in the bed?

7 Q A high amount. Well, that is a bad question.

8 A Okay.

9 Q It was unusual for you -- well, I'll be careful
10 with that one. Oh, boy. You have always got to
11 watch what you ask.

12 Let me ask you this. Was your health
13 different that night?

14 A Yes, sir.

15 Q How was it different?

16 A I don't think I sweat that much at night in bed.

17 Q Okay. Fair enough.

18 When you came to work on May 9th, did you
19 tell -- who was your engineer? Was that Mr. Britt?

20 A Mr. Britt.

21 Q Did you tell Mr. Britt, hey, I had a rough night
22 last night, I sweated all night, I had cramps when
23 I left work yesterday? Did you tell him that?

24 A No, sir.

25 Q Did you tell your supervisor that?

1 A No, sir.

2 Q And on that day when you got back on May 9th, did
3 you ask for any additional crew or help?

4 A No, sir.

5 Q And the records show -- and we didn't get into too
6 much detail I heard on your direct -- but the
7 records show that you pulled some cars at
8 Gulbrandsen. Is that one of the industries you
9 worked?

10 A I believe so.

11 Q Do you remember how long it took?

12 A No, sir.

13 Q Do you remember how much walking you did?

14 A No, sir.

15 Q Then you worked Doane. And we heard about that and
16 the EMS. I believe -- oh, I'm sorry. Then you
17 worked Okonite. That was the second industry for
18 the day. You placed three cars. Do you know how
19 long that took?

20 A No, sir, I can't recall.

21 Q And when you handle a wheel or brake wheel on a
22 rail car, was it your habit to use this Exhibit
23 107, a brake stick?

24 A Yes, sir.

25 Q And did you have a brake stick assigned to you?

1 A Yes, sir.

2 Q And you worked those two industries. And you said
3 it was raining that day?

4 A Yes, sir.

5 MR. TECKLENBURG: Exhibit 94.

6 Q Is this the rain clothing you were wearing?

7 A Yes, sir.

8 Q Okay. It was two pieces, a top and a bottom?

9 A Yes, sir.

10 Q And did you buy that yourself?

11 A Yes, sir.

12 Q It wasn't provided by the company, was it?

13 A No, sir.

14 Q And at the time that you started feeling bad that
15 day, you described your conversations with the
16 Doane Pet Products person, did you have any of that
17 rain gear on, on May 9th?

18 A I don't remember. I remember taking at least one
19 piece off, I think it was the bottom. I'm not
20 sure.

21 Q And you testified you went to the hospital?

22 A Yes, sir.

23 Q Did your supervisor, Mr. Deshazor, visit you?

24 A Yes, sir.

25 Q Did he seem concerned?

1 A Yes, sir.

2 Q And when you left the hospital, who did they tell
3 you to follow up with?

4 A The trainmaster, Mr. Deshazor.

5 Q Okay. But when you left the hospital and they gave
6 you the release -- the discharge, who did the
7 doctor at the hospital tell you to get -- follow up
8 with?

9 A My family doctor.

10 Q And who is your family doctor?

11 A Dr. Dantzler.

12 Q And prior to this incident in May of 2007, he had
13 treated you for personal ailments, sinuses, things
14 of that nature?

15 A Sinus infection.

16 Q And when you met with -- you met with Dr. Dantzler,
17 didn't you?

18 A Yes, sir.

19 Q You told him you wanted to come back to work?

20 A Yes, sir.

21 Q And he gave you a return-to-work slip.

22 MR. TECKLENBURG: If we could put up Exhibit
23 66.

24 Your Honor, I move 94 in, the rain coat, in.

25 MR. MOSS: No objection.

1 (WHEREUPON, Defendant's Exhibit No. 94
2 was marked for identification and
3 received into evidence.)

4 MR. TECKLENBURG: Could you put up Exhibit 66?
5 And highlight -- close in on the handwriting.

6 Q Now, is this the slip you got from Dr. Dantzler?

7 A Yes, sir.

8 MR. TECKLENBURG: Your Honor, I move Exhibit
9 66 into evidence.

10 MR. MOSS: No objection.

11 (WHEREUPON, Defendant's Exhibit No. 66
12 was marked for identification and
13 received into evidence.)

14 MR. TECKLENBURG: May I publish?

15 THE COURT: Yes, sir.

16 (Exhibit published to jury.)

17 Q When you got that slip from Dr. Dantzler, did he
18 give you any other notes or anything like that?

19 A Not at the time.

20 Q And when Dr. Dantzler gave you that slip that he
21 said you can return to work, did you agree with
22 him?

23 A Yes, sir.

24 Q And did you give that slip to Mr. Deshazor, your
25 supervisor?

1 A Yes, sir, I did.

2 Q And you also gave him the handwritten statement
3 that we went over earlier --

4 A Yes, sir.

5 Q -- that you talked about?

6 MR. TECKLENBURG: Turn to Exhibit 10, please.

7 Q Exhibit 10 has also been marked as a Plaintiff's
8 Exhibit. You wrote that out?

9 A Yes, sir.

10 Q Okay.

11 MR. MOSS: Plaintiff's 3.

12 Q Plaintiff's 3. Mr. Deshazor didn't tell you to
13 lie, did he?

14 A No, sir.

15 Q Okay. You came up with this statement on your own?

16 A Yes, sir.

17 Q And what the statement says is that you started
18 cramping and felt sick while -- you say of duty at
19 home. Did you mean off duty at home?

20 A Off duty.

21 Q Now, did the medical department contact you?

22 A No, sir.

23 Q Okay. Let me ask you this. Did you ever learn
24 that you needed to provide more information to the
25 medical department of Norfolk Southern?

1 A Yes, sir, I was advised by Mr. Deshazor.

2 MR. TECKLENBURG: If we could turn to Exhibit
3 69.

4 Q This is a fax. It says to Vickie Carroll. And it
5 says from Trumaine Moorner. Up at the very top it
6 shows a fax legend of Dorchester County.

7 Did you or someone on your behalf send these
8 medical records to Norfolk?

9 A Yes, sir.

10 MR. TECKLENBURG: I believe this is Exhibit
11 69. I would like to move this into evidence,
12 please.

13 MR. MOSS: No objection. Is it just the fax
14 cover sheet or the entire record?

15 MR. TECKLENBURG: The entire record.

16 MR. MOSS: That's good.

17 THE COURT: Without objection?

18 MR. MOSS: Without objection.

19 (WHEREUPON, Defendant's Exhibit No. 69
20 was marked for identification and
21 received into evidence.)

22 MR. TECKLENBURG: May I publish, Your Honor?

23 THE COURT: Yes.

24 MR. TECKLENBURG: Thank you.

25 (Exhibit published to jury.)

1 MR. TECKLENBURG: And if you can put that back
2 up, please.

3 Q I believe the date of that document was May 25,
4 2007, correct?

5 A Yes, sir.

6 Q And when you sent that document on to the medical
7 department, it was your desire to come back to
8 work, wasn't it?

9 A Yes, sir.

10 Q Now, you came back to work on May 30th, right?

11 A Yes, sir.

12 Q And do you recall Mr. Deshazor meeting you?

13 A Yes, sir.

14 Q And how were you doing that day?

15 A I was doing good.

16 Q Okay. You were ready to work, weren't you?

17 A Yes, sir.

18 Q Do you remember what your work load was like that
19 day? How many industries?

20 A I don't remember. Can't recall.

21 Q Do you remember how long you were at any of the
22 industries?

23 A No, sir.

24 Q Did you finish May 30th okay?

25 A Yes, sir.

1 Q So after finishing the first day of work coming
2 back, were you looking forward to the next day?

3 A Yes, sir.

4 Q To go and work as a conductor again?

5 A Yes, sir.

6 Q And on May 31st, the day we're all here about, how
7 many industries did you work that day?

8 A I believe two or three. I don't know for sure.

9 Q And I believe the cell phone records -- and we all
10 have the benefit now of cell phones and timelines
11 so we can tell what anybody was doing at any time
12 of day -- but I think the cell phone records
13 indicate that at 2:26 -- 2:26 -- that I guess --
14 you tell me. Did you telephone Mr. Deshazor?

15 A Yes, sir. I called Mr. Deshazor and told him that
16 I was feeling bad.

17 Q Okay. And did you and him talk?

18 A Yes, sir.

19 Q And you told him you were going to put your train
20 together and come back to Columbia?

21 A Yes, sir.

22 Q You felt okay to do that, right?

23 A Yes, sir.

24 Q You didn't express any dire situation to
25 Mr. Deshazor at 2:26, did you?

1 A No, sir.

2 Q And I think you have already testified that at that
3 point you don't fault management?

4 A No, sir.

5 Q Now, I think we have heard plenty of detail from
6 you and Mr. Chavis about the events that happened
7 on the railroad. I want to go past those events
8 and talk a little about your hospitalization. You
9 went to Richland County Hospital, or Baptist?

10 A Palmetto.

11 Q Palmetto. Palmetto Hospital.

12 MR. TECKLENBURG: And if you could put up
13 Exhibit 80, please.

14 Q Exhibit 80, we're going to highlight a couple of
15 things. First of all, on the bottom is that your
16 signature?

17 A Yes, sir.

18 Q It says Trumaine Moorner?

19 A Yes, sir.

20 Q And I'm pointing with my finger. And then right
21 here is, other instructions. Do you see that?

22 A Yes, sir.

23 MR. TECKLENBURG: And keep highlighting that
24 whole other instructions.

25 Q It says, discontinue any nutritional supplement,

1 aggressive fluids when outside in heat, right? Do
2 you see that?

3 A Yes, sir.

4 Q What nutritional supplement were they talking
5 about? Is that the KM you were testifying about
6 earlier?

7 A Yes, sir.

8 Q And that discharge was in June 2007, correct?

9 A Yes, sir.

10 Q Now, let me ask you this. After you left the
11 hospital, at some point in the future you started
12 taking KM again, didn't you?

13 A Yes, sir.

14 Q And, in fact, you didn't stop taking KM I believe
15 until 2010, which is a year and a half ago?

16 A Yes, sir.

17 Q Now, after you left the hospital, did you again go
18 back to your family doctor?

19 A Yes, sir.

20 MR. TECKLENBURG: If we could put up -- if I
21 didn't move into evidence, Exhibit 80 into evidence
22 Your Honor?

23 MR. MOSS: No objection.

24 THE COURT: Without objection. All right.

25

1 (WHEREUPON, Defendant's Exhibit No. 80
2 was marked for identification and
3 received into evidence.)

4 MR. TECKLENBURG: If we could go on to
5 Plaintiff's 14.

6 Q This is a note in Plaintiff's 14 which is from Dr.
7 Dantzler. It is dated June 12th after your May 31
8 accident.

9 At the bottom it says, RTW to regular duties,
10 which we will learn later means return to work,
11 RTW.

12 Did Dr. Dantzler tell you just 12 days after
13 this you could go back to work?

14 A I guess. Yes, sir.

15 Q Did you approach Norfolk Southern at that point?
16 Approach Mr. Deshazor?

17 A Yes, sir.

18 Q Talk to him at all?

19 A I really don't remember at that time.

20 Q Okay. And we have all been through and talked
21 about in August you got Dr. Lina, because Dr. Lina
22 was I guess looking at this?

23 A Yes, sir.

24 Q You had two events in May that were three weeks
25 apart?

1 A Yes, sir.

2 Q Now, I want to talk a little bit and move tracks
3 over to the vocational rehabilitation.

4 THE COURT: And it is about --

5 MR. TECKLENBURG: And it would be a good time
6 for a break.

7 THE COURT: It is 1:15 and I think it will be
8 a good time for us to take a lunch break. We will
9 take a break until 2:30. If you all could be back
10 in the jury room at 2:30.

11 Remember that you are not to discuss this case
12 with anyone during your break. If anyone tries to
13 speak with you regarding the case, tell them that
14 you are on the jury and that you cannot discuss the
15 case with them. Please let the bailiffs know and
16 they will let me know.

17 Have a great lunch. Thank you.

18 (WHEREUPON, the jury is excused for
19 lunch at 1:14 p.m.)

20 THE COURT: All right, we'll start back -- you
21 all anticipate -- I know I still have that other
22 motion out, that other motion in limine.

23 MR. TECKLENBURG: Right.

24 THE COURT: That is not going to come up at
25 this time, I don't believe. Do you anticipate

1 having anything else between now and 2:30 that we
2 may need to come back early, because I will be glad
3 to do so?

4 MR. TECKLENBURG: I will take a look at
5 Dr. Prible, Your Honor. Let me look, but I don't
6 think so.

7 THE COURT: Who -- is that your next --

8 MR. MOSS: Well, I have got another live
9 witness who is going to be short.

10 THE COURT: Okay.

11 MR. MOSS: And then Dr. Prible is short.

12 THE COURT: Okay.

13 MR. JENKINS: I have already looked at it. I
14 am looking at two things I need to discuss with
15 Mr. Tecklenburg. And I might not have anything on
16 Dr. Prible.

17 MR. MOSS: And I have got one witness, I will
18 tell the Court, my vocational expert has a personal
19 matter that is going to keep him from coming in his
20 proper spot, and I am going to try to get him on
21 and off today. He is not a long witness. But just
22 for batting order, it is going to be a live
23 witness, probably Dr. Prible if that fits, and I
24 would like to call Dr. McClanahan if I can to
25 accommodate him.

1 THE COURT: Okay.

2 MR. MOSS: Okay?

3 THE COURT: All right. Y'all have a good
4 lunch.

5 MR. TECKLENBURG: Thank you.

6 MR. MOSS: Thank you.

7 THE COURT: Thank you.

8 (Lunch recess.)

9 THE COURT: Are you ready for them to come in?

10 MR. TECKLENBURG: Your Honor, shortly. We are
11 trying to do better this time. I passed over
12 moving Exhibit 49 into evidence, and I would like
13 to do that.

14 THE COURT: All right. Yes, sir.

15 MR. TECKLENBURG: Defendant's Exhibit 49, Ms.
16 Court Reporter.

17 THE COURT: Any objection?

18 MR. TECKLENBURG: I have been reminded to use
19 the word Defendant.

20 (WHEREUPON, Defendant's Exhibit No. 49
21 was marked for identification and
22 received into evidence.)

23 THE COURT REPORTER: What about Defendant's
24 107 and 10?

25 MR. TECKLENBURG: 107, no. Exhibit 10 is the

1 same as Plaintiff's 3.

2 THE COURT REPORTER: And Plaintiff's 14?

3 MR. TECKLENBURG: Is it okay if I move

4 Plaintiff's 14 into evidence at this time?

5 MR. MOSS: Sure. I need to make a photocopy.

6 Mine are highlighted.

7 MR. TECKLENBURG: I think we have an extra.

8 THE COURT: She will let you exchange it out.

9 MR. TECKLENBURG: Okay. Anyhow, I move

10 Plaintiff's 14 into evidence.

11 MR. MOSS: No objection.

12 THE COURT: Without objection?

13 MR. MOSS: Yes. No objection.

14 MR. TECKLENBURG: Thank you, Your Honor.

15 (WHEREUPON, Plaintiff's Exhibit No. 14

16 was marked for identification and

17 received into evidence.)

18 THE COURT: All right.

19 MR. TECKLENBURG: That's all the housekeeping.

20 THE COURT: Bring them in.

21 (WHEREUPON, the jury came into open

22 court at approximately 2:45 p.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: All right, ladies and gentlemen of

25 the jury, I hope you had a good lunch.

1 At this time we will continue the
2 cross-examination of Mr. Moorer by Mr. Tecklenburg.

3 Yes, sir.

4 MR. TECKLENBURG: Thank you, Your Honor.

5 CROSS-EXAMINATION CONTINUES

6 BY MR. TECKLENBURG:

7 Q Mr. Moorer, we were transitioning to another topic
8 before we went to lunch, and that was to talk a
9 little bit about the Vocational Rehabilitation
10 Department at Norfolk Southern. Do you recall that
11 transition?

12 A Yes, sir.

13 Q All right. And did you receive communications
14 after your injury from that department? Letters?

15 A Yes, sir.

16 Q I'm going to show you Exhibit 58. Do you recall
17 receiving this letter dated August 8, 2007? I can
18 pass it up to you. It is addressed to your address
19 of 217 Roosevelt Street.

20 A Yes, sir.

21 MR. TECKLENBURG: Your Honor, I would like to
22 move this into evidence, please.

23 MR. MOSS: No objection.

24 THE COURT: What number?

25 MR. TECKLENBURG: Defendant 58.

1 THE COURT: Without objection.

2 (WHEREUPON, Defendant's Exhibit No. 58
3 was marked for identification and
4 received into evidence.)

5 Q Now, in this particular letter, it is from a person
6 by the name of Ms. Lafon. It basically first
7 identifies that you have medical problems. And it
8 says at the bottom, the last sentence: We will
9 consider in appropriate cases providing training or
10 educational opportunities.

11 Do you see that?

12 A Yes, sir.

13 Q Did you contact Ms. Lafon to follow up on what
14 educational opportunity might be available?

15 A I don't remember at the time.

16 Q Okay.

17 MR. TECKLENBURG: If we can go on to the next
18 page, please.

19 Q And on the second page of this letter, it offers
20 the services of a medical management nurse to help
21 you in finding other work.

22 Did you take the disability -- the
23 rehabilitation department up on getting a nurse
24 assigned to you?

25 A No, sir, not a nurse.

1 Q Okay.

2 Your Honor, may I publish Exhibit 58?

3 THE COURT: Yes, sir.

4 MR. TECKLENBURG: Thank you.

5 (Exhibit published to jury.)

6 Q Now, there is some further communications that I
7 believe occurred.

8 MR. TECKLENBURG: If we can go to Exhibit 59.

9 And, please, if you will blow up the highlighted
10 part, please.

11 Q This appears to be a letter that is copied to you
12 but directed to your attorney. I guess by this
13 point -- this is August 2008, about a year after.
14 I show you this. By August 2008, had you retained
15 an attorney?

16 A Yes, sir.

17 Q Okay. And one of the things that it directs
18 Mr. Moss and copies you on, it basically says if
19 there are additional updated medical records to
20 submit them to the medical department. Do you see
21 that?

22 A Yes, sir.

23 Q All right. Did you ever submit medical records
24 directly to the department for their consideration?

25 A I sent everything I had, sir.

- 1 Q Okay. But how about after this point in time,
2 after the summer of August 2008? Did you send
3 anything?
- 4 A I don't remember.
- 5 Q Okay. There is going to be testimony in this case
6 from a gentleman by the name of Dr. Casa. Have you
7 ever met with Dr. Casa?
- 8 A I believe I did.
- 9 Q Did you get evaluated by Dr. Casa or get any
10 examination?
- 11 A I think I did. I'm not sure.
- 12 Q He's the gentleman that is going to talk about heat
13 exertion. What kind of examination did he give
14 you? I was just curious.
- 15 A I'm not sure. I'm trying to picture him. I'm not
16 sure.
- 17 Q This is the gentleman that I believe was hired as
18 an expert witness in your case. You have probably
19 seen his video before. Sort of a bald-headed
20 gentleman. Runs marathons.
- 21 A Still I'm not -- it doesn't -- I'm not sure. I
22 can't --
- 23 Q You are not recalling him?
- 24 A No, sir.
- 25 Q Okay. Do you know whether this Dr. Casa has

1 prepared any medical reports associated with you?

2 A Not that I know of, sir.

3 Q Now, at some point prior to 2008 I think you had
4 seen a nephrologist, is that correct?

5 A Yes, sir.

6 Q And who is that? Do you remember his name?

7 A Not right offhand.

8 Q Was it Dr. Moseley?

9 A I believe so.

10 Q And after you saw him, what was your understanding
11 of your visit with Dr. Moseley? Did he -- what
12 ultimately was his recommendations, if you recall?

13 A I don't recall.

14 Q Do you know whether he said you could work outside
15 or do anything like that?

16 A I don't recall the exact words.

17 Q Let me show you what has been marked as Defendant's
18 Exhibit 112. Have you seen this report before,
19 about you, prepared by Dr. Moseley?

20 A Yes, sir.

21 Q Okay. And in Dr. Moseley's report, did he tell you
22 if you had any other problems after he saw you,
23 which I believe was in, let's see, November 2007?

24 A No, sir.

25 Q Did he -- after November 2007, did you follow-up

1 with Dr. Moseley at all?

2 A Yes, sir.

3 Q Okay. Did you see him more than once, Dr. Moseley?

4 A Just once.

5 Q Okay. So you saw him once?

6 A Yes, sir.

7 Q So after you left him in November 2007, did you
8 seek any more medical treatment from Dr. Moseley?

9 A No, sir.

10 Q Okay. Have you been back to Dr. Dantzler for your
11 heat issues?

12 A No, sir.

13 MR. TECKLENBURG: Your Honor, I move
14 Defendant's 112 into evidence.

15 THE COURT: Any objection?

16 MR. MOSS: No objection.

17 (WHEREUPON, Defendant's Exhibit No. 112
18 was marked for identification and
19 received into evidence.)

20 Q When you got the letter in 2008 that was copied to
21 you, addressed to your lawyer, was it August 2008?
22 It said, send anything else you got. Do you know
23 whether Dr. Moseley's letter was sent on to the
24 medical department?

25 A I have no idea.

1 Q Okay. Now, you testified that you had some testing
2 with the vocational department and qualified to do
3 some light duty work?

4 A Yes, sir.

5 Q Did you ever pick up the phone and call Ms. Lafon
6 and talk to her about what positions might be
7 available?

8 A No, sir.

9 Q In fact, with respect to the people that have held
10 that position, which I think is now held by
11 Mr. Wright, is it true that you really didn't start
12 making calls until last September or October?

13 A Yes, sir.

14 Q So just -- now that we're in 2012, in March, it was
15 just last October of 2011 that you started direct
16 communications?

17 A Yes, sir, I did.

18 Q And has Mr. Wright expressed an interest in trying
19 to help you find a light duty job?

20 A Yes, he has.

21 Q And has he arranged for you to have some
22 interviews?

23 A One, yes, sir.

24 Q Has he told you that you are treated like everyone
25 else, in other words, you don't get a special step

1 up just because you are working with him? Has he
2 told you that?

3 A Yes, sir.

4 Q Okay. So you understand that as you apply for work
5 you are evaluated like everyone else that is an
6 employee of the company?

7 A Yes, sir.

8 Q Would you agree with me that jobs at Norfolk
9 Southern are competitive?

10 MR. MOSS: Objection. Speculation.

11 MR. TECKLENBURG: Well, I can lay a
12 foundation.

13 THE COURT: Yes, sir.

14 Q With respect to the work that you've been involved
15 in that you have applied for, have there been many
16 jobs in Charleston, light duty jobs that you saw
17 posted?

18 A None that I saw posted.

19 Q And you looked, right?

20 A Yes, sir.

21 Q Okay. Because if there was a clerk job that came
22 up in Charleston, you would apply for it?

23 A Yes, sir.

24 Q And you haven't found one, is that correct?

25 A No, sir.

1 Q Now, I want to move on to the car wash. And I
2 don't want to take too much of your time with this.
3 But you ran a car wash with your wife in 2008 and
4 2009?

5 A Yes, sir.

6 Q Has it continued on since 2009 or --

7 A She just closed it in January, I believe.

8 Q Of this year?

9 A Yes, sir.

10 Q 2012. Okay. Now, when you opened the car wash,
11 did you call anyone at the vocational department at
12 Norfolk Southern and say, hey, I've got a job now,
13 or, I'm doing work now? Did you let anybody know?

14 A No, sir.

15 Q And the car wash itself, is it located on a public
16 street?

17 A Yes, sir.

18 Q And, therefore, if someone was trying to see if you
19 were working or not, would it be pretty easy to
20 take a camera shot of that?

21 A Yes, sir.

22 Q Okay. As a matter of fact, you smile a little bit,
23 but you were actually an investigator, correct?

24 A Yes, sir.

25 Q So surveillance is not uncommon to what you may do

1 in your business, correct?

2 A Yes, sir.

3 Q Okay.

4 MR. TECKLENBURG: If we could play Exhibit
5 45 -- excuse me, Exhibit 97. I think this is the
6 correct one. I'll verify the number, Your Honor.

7 (Exhibit 97 played in open court.)

8 Q Now, Exhibit -- Defendant's Exhibit 97 that we're
9 watching right now is a video from 2009. Do you
10 recognize the person that is in that video?

11 A Yes, sir.

12 Q Who is that?

13 A That's me.

14 Q And were you working doing car wash work in the
15 summer of 2009?

16 A Yes, sir.

17 Q And without getting I guess in the basics, but for
18 the sake of the record, as part of car wash duties
19 you would bend, scrub, climb perhaps up on the roof
20 area? Is that what you would typically do during a
21 day?

22 A Yes, sir.

23 Q And would you perspire as part of that duty?

24 A Yes, sir.

25 Q During the summer? While you were working at the

1 car wash, were you able to perform your duties
2 without having another event of rhabdomyolysis?

3 A Yes, sir.

4 Q Did you ever have any condition resulting from the
5 car wash where you had to seek medical treatment?

6 A No, sir.

7 Q And just for the record, we're at Counter 919 and
8 ten seconds right now. Are you the person in the
9 middle or now on the left at 17 seconds with the
10 gray shirt?

11 A Yes, sir.

12 Q And the baseball cap?

13 A Yes, sir.

14 Q And on a good day, how many cars could the car wash
15 handle?

16 A In the past, maybe 20, 25.

17 MR. TECKLENBURG: Your Honor, I move Exhibit
18 97 into evidence.

19 THE COURT: Any objection?

20 MR. MOSS: I don't think we have the person
21 who took the video to cross-examine, Your Honor.

22 MR. TECKLENBURG: Your Honor, he has
23 identified himself in the video.

24 MR. MOSS: They have to authenticate this
25 document. It is now before the jury. And I don't

1 think it is admissible. They have got to lay some
2 foundation for this. And it is not admissible.
3 Without me being able to cross-examine the person
4 who took it and find out why he --

5 MR. TECKLENBURG: Your Honor, may we approach?

6 MR. MOSS: It is not admissible.

7 THE COURT: Yes. Yes.

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: The objection is overruled.

12 MR. MOSS: Withdrawn.

13 MR. TECKLENBURG: We'll move on to something
14 else.

15 (WHEREUPON, Defendant's Exhibit No. 97
16 was marked for identification and
17 received into evidence.)

18 Q I want to talk a little bit about your getting into
19 the police academy. And it was explained I think
20 in some detail. As part of that process you signed
21 an application, correct?

22 A Yes, sir.

23 Q And I believe it is Exhibit 54. And I am going to
24 hand that up for you to identify. Is this your
25 signature on the first and last page of Defendant's

1 Exhibit 54?

2 A Yes, sir.

3 Q And I want to show you a couple of portions of
4 this.

5 MR. TECKLENBURG: If you could highlight the
6 middle.

7 Q When you signed that, you understood that you were
8 supposed to be telling the truth?

9 A Yes, sir.

10 MR. TECKLENBURG: Next page.

11 Q And when it got to the page reporting whether there
12 had been kidney problems, it was checked no, is
13 that correct?

14 A Yes, sir.

15 MR. TECKLENBURG: Hold on, is that the page?

16 Q And when it asked, have you ever been unable to
17 hold a job because of medical reasons, you checked
18 no, is that correct?

19 A Yes, sir. And at this point, I was telling you, I
20 was doing anything I could to put food on the
21 table.

22 Q And I understand. I understand you were admitting
23 to everyone in this courtroom that you didn't tell
24 the truth, right?

25 A Yes, sir.

1 Q Now, as part of that process -- this is an
2 application filled out with the physician, you and
3 the physician together, right?

4 A Yes, sir.

5 MR. TECKLENBURG: If we could go to Page 5.
6 And increase the highlighted area, please.

7 Q First of all, you had been into academy before,
8 correct?

9 A Yes, sir.

10 Q So you knew what you were going to have to go
11 through in order to get certified again, is that
12 correct?

13 A Yes, sir.

14 Q And I assume you read this form. You gave it to
15 the doctor, did you not?

16 A Yes, sir.

17 Q Did you and he discuss going to the academy?

18 A You mean the doctor?

19 Q Did you discuss what you were planning on doing?

20 A Yes, sir.

21 Q And you knew that in signing up for this you were
22 agreeing to do runs up to five miles in length, do
23 90-minute physical training sessions, and would
24 ultimately have to tolerate extreme heat, cold and
25 incimate weather?

1 A Yes, sir.

2 Q You knew all of that.

3 MR. TECKLENBURG: And the next page. Page 6.

4 Next page. I think it is back a page, Page 6.

5 We're on Page 8. Okay.

6 Q On Page 6 --

7 MR. TECKLENBURG: Again in the center if we
8 could concentrate on the highlighted part.

9 Q -- you also knew, having gone through this before,
10 that you were going to have to go through a
11 physical assessment course, correct?

12 A Yes, sir.

13 Q And that requires you to run up and down stairs,
14 jump through an open window, and drag a 170-pound
15 dead-weight bag?

16 A Yes, sir.

17 Q Is that correct?

18 A Yes, sir.

19 Q And you have done that before?

20 A Yes, sir.

21 Q So you signed up for this in March 2010, correct?

22 A Yes, sir.

23 Q The date of this application.

24 MR. TECKLENBURG: And may I have that back?

25 There it is. Thank you.

1 Your Honor, I move Exhibit 54 into evidence.

2 THE COURT: Any objection?

3 MR. MOSS: No, Your Honor.

4 (WHEREUPON, Defendant's Exhibit No. 54
5 was marked for identification and
6 received into evidence.)

7 Q And you actually went to the training several
8 months later. Didn't you go in like July of 2010?

9 A Yes, sir.

10 Q So the training academy, which is where?

11 A Columbia.

12 Q It is in Columbia. You actually spent how many
13 weeks there?

14 A Nine.

15 Q Nine weeks?

16 A Yes, sir.

17 Q In July, and what was other month?

18 A July and August and September.

19 Q And during that period, did you do the 3-mile runs?

20 A Yes, sir.

21 Q Did you have to do push-ups?

22 A Yes, sir.

23 Q Did you have to climb the stairs and drag the
24 weight?

25 A Yes, sir.

- 1 Q And were you able to complete the academy course?
- 2 A Yes, sir.
- 3 Q And as a certified police officer, you have to wear
- 4 certain gear, correct?
- 5 A Yes, sir.
- 6 Q So part of it is wearing a bullet-proof vest?
- 7 A Yes, sir.
- 8 Q Can that get warm?
- 9 A Yes, sir.
- 10 Q And you have not had any heat incidents at the St.
- 11 George Police, have you?
- 12 A No, sir.
- 13 Q And you sound like you have been working steadily
- 14 at the police force since, is it February of 2010?
- 15 A January. Yes.
- 16 Q January. So you are now more than two years on the
- 17 force?
- 18 A Yes, sir.
- 19 Q Part of which was part-time?
- 20 A Yes, sir.
- 21 Q And the part-time work was at a place called Kinder
- 22 Morgan in Charleston, is that right?
- 23 A Part-time police.
- 24 Q I'm sorry, while you were working part-time at the
- 25 police --

1 A Yes, sir.

2 Q -- you worked full-time at Kinder Morgan. Tell the
3 jury what Kinder Morgan does.

4 A They basically deal with gasoline that comes in on
5 the ships and they pump them to a tank. Different
6 other chemicals like ethanol, methanol to rental
7 cars.

8 Q Okay. And I am going to show you Exhibit 23, which
9 is an aerial. It looks like the river on the
10 right-hand side.

11 A Yes, sir.

12 Q And perhaps a pretty busy highway on the left-hand
13 side.

14 A Yes, sir.

15 Q Is that the Kinder Morgan facility?

16 A It looks like it.

17 Q And where would the -- do they have an engine?

18 A Yes, sir.

19 Q And do they have rail cars?

20 A Yes, sir.

21 Q And where do they run on this Exhibit 23?

22 A Somewhere in the area where the tracks are.

23 Q Where the tracks are?

24 A Yes, sir.

25 MR. TECKLENBURG: And if you can put up

1 Exhibit 114, please.

2 Q Is that the locomotive at Kinder Morgan?

3 A Yes, sir.

4 MR. TECKLENBURG: And the next photo from 114.

5 Q Are those the types of rail cars you would handle?

6 A Yes, sir.

7 MR. TECKLENBURG: Your Honor. I move 114 into
8 evidence.

9 THE COURT: Any objection.

10 MR. MOSS: No objection.

11 (WHEREUPON, Defendant's Exhibit No. 114
12 was marked for identification and
13 received into evidence.)

14 Q And as part of the work you did last summer -- by
15 the way, when did you start?

16 A I don't remember.

17 Q If the pay record said May, would you agree with
18 that?

19 A I would agree with that.

20 Q And when did you stop? If it said August, would
21 you agree with that?

22 A I would agree with that, yes, sir.

23 Q Okay. Maybe a little over three months?

24 A Yes, sir.

25 Q When you worked those three months last summer in

1 Charleston for Kinder Morgan, did you do duties
2 like tie hand brakes?

3 A Yes, sir.

4 Q Throw switches?

5 A Yes, sir.

6 Q Things very similar to what you did at Norfolk
7 Southern?

8 A Yes, sir.

9 Q In addition to actually doing conductor duties last
10 summer at Kinder Morgan, did you also have any
11 responsibility for loading rail cars?

12 A Yes, sir.

13 Q Tell me how that you did that.

14 A Had like load arms you have to drop in the rail
15 cars. It is computerized. Press the start code,
16 and it would start loading.

17 Q And what type of material were you loading?

18 A Call it PX, para-xylene, and methanol and ethanol.

19 Q So it sounds like methanol, ethanol, and something
20 that sound likes --

21 A Yes, PX.

22 Q -- like a chemical of some sort?

23 A Yes.

24 Q Did you wear any protective gear?

25 A Yes, sir.

1 Q What type of protective gear did you have to wear
2 last summer at Kinder Morgan?

3 A Gloves and we had protective glasses, and all that.

4 MR. TECKLENBURG: And let's see if we can go
5 to Exhibit 57, please.

6 Q This says at the top, 2011 benefits enrollment.
7 Did you enroll your family for health benefits
8 there?

9 A Yes, sir.

10 Q And did you believe they had pretty good benefits?

11 A Yes, sir.

12 Q Better than St. George?

13 A Yes, sir.

14 Q And ultimately the job didn't work out for you, is
15 that right?

16 A It didn't.

17 Q Was mileage and gas money the big concern for you?

18 A Yes, sir.

19 Q And if Kinder Morgan was right down the street in
20 St. George, would you have considered staying on
21 there?

22 A I would have tried.

23 MR. TECKLENBURG: Move on to Exhibit 83,
24 please. Excuse me, I move 57 into evidence, Your
25 Honor.

1 MR. MOSS: No objection.

2 (WHEREUPON, Defendant's Exhibit No. 57
3 was marked for identification and
4 received into evidence.)

5 Q Exhibit 83 is a W-2 form and your pay records from
6 Kinder Morgan. It indicates on the bottom or in a
7 number of boxes that while you worked for those
8 three odd months at Kinder Morgan, I believe it is
9 under social security wages, Number 2, that you
10 made, depending on how the tax man calculates it,
11 but 11,000 -- over \$11,000. Would you agree?

12 A Yes, sir.

13 MR. TECKLENBURG: Your Honor, I move, I
14 believe it is Defendant's Exhibit 83 into evidence.

15 THE COURT: Any objection?

16 MR. MOSS: No, Your Honor.

17 (WHEREUPON, Defendant's Exhibit No. 83
18 was marked for identification and
19 received into evidence.)

20 Q Now, you went back to St. George and started
21 full-time work again at the town, is that correct?

22 A Yes, sir.

23 Q And if I could just confirm your wages for last
24 year on Exhibit 55, please.

25 MR. TECKLENBURG: Do you have the first page

1 of Exhibit 55? Or the last page. Okay, let's see
2 if we can get this legible. That is going to be
3 hard from that distance. Can you blow up a piece
4 of that, please?

5 Q It shows that your social security wages in 2011 at
6 the city was \$26,983. Would you agree with that?

7 A Yes, sir.

8 MR. TECKLENBURG: And, Your Honor, I would
9 move Exhibit 55 into evidence.

10 THE COURT: Any objection?

11 (WHEREUPON, Defendant's Exhibit No. 55
12 was marked for identification and
13 received into evidence.)

14 MR. TECKLENBURG: And if you would move on to
15 Exhibit 102, please.

16 Q What was done, Mr. Moorner, is combine these two to
17 sort of evaluate how much you made last year.

18 MR. TECKLENBURG: I think it is 102, please.

19 Q And on the bottom here --

20 MR. TECKLENBURG: And I'll take out my pointer
21 and we can blow this up. Excuse the hard to read,
22 folks. I'm trying my best here.

23 Q We have \$26,984, \$11,283 from Kinder Morgan, for a
24 total of \$38,267. Was that your income last year?

25 A Yes, sir.

1 Q And the other thing we did --

2 MR. TECKLENBURG: If you could please reduce
3 that and go back to that exhibit.

4 Q -- we looked at your overtime hours that you have
5 been working. You do work overtime at St. George,
6 correct?

7 A Yes, sir.

8 Q And we came up with an average in 2011 of about 23
9 hours a month. Sound about right?

10 A Yes, sir.

11 Q So on average, five hours a week or so?

12 A Yes, sir.

13 Q Would you agree with that?

14 A Yes, sir.

15 Q Okay.

16 MR. TECKLENBURG: And, Your Honor, I move 102
17 into evidence, please.

18 THE COURT: Any objection?

19 MR. MOSS: (Nods negatively.)

20 (WHEREUPON, Defendant's Exhibit No. 102
21 was marked for identification and
22 received into evidence.)

23 MR. TECKLENBURG: And if we can move to 115.

24 Q I think you mentioned you are a lieutenant now?

25 A Yes, sir.

1 Q And as part of the lieutenant, you did get I think
2 a pay raise, is that right?

3 A Yes, sir.

4 Q That looks like it is effective in November.

5 MR. TECKLENBURG: If you could blow up that
6 amount.

7 Q If this document shows that -- boy that is hard to
8 read -- but I think it is at \$29,450?

9 A Yes, sir.

10 Q Is that your current salary?

11 A Yes, sir.

12 Q And that doesn't include overtime, does it?

13 A No, sir.

14 Q And I calculated your overtime rate, would it be
15 about \$19.73 an hour or so for your overtime, or do
16 you know?

17 A Yes.

18 Q So if you continue to work five hours a week in
19 overtime like you have in the past and at this new
20 rate, would you expect to earn maybe \$34 or \$35,000
21 this year?

22 A The town take it and they have a say. Sometimes
23 they cut back on overtime, so it is hard to
24 guesstimate.

25 Q But since you have been there in 2010, it looks

1 like they have pretty freely allowed you to work
2 overtime?

3 A No, sir.

4 Q Oh.

5 A Because we were short officers, and that is why it
6 is freely given.

7 Q Okay. All right. We'll look at the wage records
8 later on.

9 A Okay.

10 Q We can do that. Let me ask you this. Have you
11 worked any overtime this year in 2012?

12 A Yes, sir.

13 Q Now, I just want to close with sort of getting
14 where you are in life.

15 Are you able now to do at least some things
16 you enjoy? Do you -- have you played any
17 basketball in the last year or so?

18 A No, I haven't.

19 Q With your son?

20 A Well, shot around with him a couple of times, yes.

21 Q Okay. Sure. And as you sit here today, do you
22 overall believe that you are in fairly good health?

23 A Yes, sir, I'm blessed.

24 Q And that actually is important in how you feel
25 about your health today?

1 A Yes, sir.

2 Q And that is a big part of your life?

3 A Yes, sir.

4 Q Thank you. I appreciate it, Mr. Moorner.

5 A Thank you.

6 THE COURT: Thank you. Please answer any
7 questions Mr. Moss may have.

8 MR. MOSS: Sir, can you turn on the Elmo for
9 me?

10 REDIRECT EXAMINATION

11 BY MR. MOSS:

12 Q Mr. Moorner, the rain suit that you were wearing
13 that is in evidence, Mr. Tecklenburg asked if it
14 was issued by the company or if you purchased it
15 yourself.

16 A Yes, sir.

17 Q Was there any prohibition or rule or restriction on
18 your wearing a rain suit while working at the
19 railroad?

20 A No, sir.

21 Q Were they aware that you wore the protective
22 clothing when you were outside working in the rain?

23 A Yes, sir.

24 Q Similarly, this rule book contains the Norfolk
25 Southern rules about how to do your job. And it

1 is -- I don't know how many pages it is -- thicker
2 than my hand. Were you charged with violating any
3 one rule or sub-part of any rule in that book
4 relating to this incident?

5 A No, sir.

6 Q Does the railroad have the prerogative and the
7 ability, if they find that one of their employees
8 or conductors specifically had violated a rule, to
9 charge him and discipline him for his behavior and
10 conduct?

11 A Yes, sir.

12 Q And I'm not just talking about the first incident,
13 I'm talking about the second incident as well.

14 A Yes, sir.

15 Q Ever, for either of these incidents, were you
16 charged with any one of those rules?

17 A No, sir.

18 Q Did you ever tell somebody that you were unable to
19 wash a car?

20 A No, sir.

21 Q When the railroad asked, did you tell them you were
22 running a car wash?

23 A Yes, sir.

24 Q They took your deposition and you told them the
25 truth?

- 1 A Yes, sir.
- 2 Q And I think by my calculation, when that video was
3 taken, that was after you had qualified for
4 alternate positions by taking the test?
- 5 A Yes, sir.
- 6 Q You never took the video?
- 7 A No, sir.
- 8 Q Do you know what point they were trying to make?
- 9 A No, sir.
- 10 Q How does it make you feel?
- 11 A Like I did something wrong. Like I applied for
12 disability or something. But I didn't.
- 13 Q Did you ever tell them you couldn't work at Kinder
14 Morgan?
- 15 A No, sir.
- 16 Q Did you tell them that you were working at Kinder
17 Morgan when you got the job through me?
- 18 A Yes, sir.
- 19 Q Did you ever try to hide that fact or conceal that
20 fact from anybody?
- 21 A No, sir.
- 22 Q Have you ever tried to hide the fact that you are
23 making overtime and working hard?
- 24 A No, sir.
- 25 Q Exhibit Number 3, which is the August 2nd, 2000

1 letter, which is a letter that disqualified you
2 from working at the railroad, right?

3 A Yes, sir.

4 Q Since then the railroad has learned that you ran a
5 car wash, you work in heat, you were working at
6 Kinder Morgan?

7 A Yes, sir.

8 Q You went to the police academy?

9 A (Nods affirmatively.)

10 Q You completed the police academy?

11 A (Nods affirmatively.)

12 Q You went to the doctor to get approved to go to the
13 police academy?

14 A (Nods affirmatively.)

15 Q Has Norfolk Southern ever rescinded or withdrawn
16 their opinion that you do not qualify to be a
17 conductor at Norfolk Southern?

18 A No, sir.

19 Q What is in that letter, your understanding, is the
20 law of the land today?

21 A Yes, sir.

22 Q Irrespective of what you have done?

23 While we're on it, after you hired a lawyer,
24 who did you expect to give medical records to the
25 railroad?

- 1 A After I hired my lawyer?
- 2 Q Yes.
- 3 A The lawyer.
- 4 Q As far as you understand it, did your lawyer give
- 5 every single medical record to them when he got it?
- 6 A Yes, sir.
- 7 Q Did you understand the burden was released from you
- 8 to me?
- 9 A Yes, sir.
- 10 Q Full disclosure?
- 11 A Yes, sir.
- 12 MR. MOSS: I move for the admission of
- 13 Plaintiff's Exhibit Number 5, Your Honor.
- 14 MR. TECKLENBURG: No objection, Your Honor.
- 15 (WHEREUPON, Plaintiff's Exhibit No. 5
- 16 was marked for identification and
- 17 received into evidence.)
- 18 Q Do you recognize that?
- 19 A Yes, sir.
- 20 Q What is that?
- 21 A It is a letter from Mr. Moss.
- 22 Q When you hired a lawyer, did you also expect me to
- 23 participate in trying to help you get back to work?
- 24 A Yes, sir.
- 25 Q And there is a bunch of letters. And this one kind

1 of summarizes. This letter is dated June 4, 2010.

2 MR. MOSS: Sir, can you highlight as we go, or
3 not? Or can I?

4 IT: Yes, sir.

5 MR. MOSS: Can you show me how? I'll make it
6 simple.

7 Q There is a lot of talk about you not following up a
8 suggestion. This letter kind of summarizes, but
9 would you please read into the record, Mr. Moorer,
10 right there where the sentence that starts in
11 November of 2007?

12 A In November 2007, he and I requested that your
13 department inform us about openings for jobs within
14 his geographic area that fall within his
15 restrictions. We were looking for concrete job
16 openings for positions that fit within his
17 demonstrated ability. After he tested, a letter
18 suggesting that he may be considered for positions
19 for which he has no seniority and which did not
20 address his concerns and was frustratingly short on
21 specifics.

22 Q Let me stop you there. The last paragraph says --
23 if you would, just read that first two sentences in
24 the record.

25 A Please forward me the actual test that NS

1 administered to Mr. Moorer, as well as test results
2 of Mr. Moorer testing from May 13th, 2009 so that
3 he and I can evaluate the results. Also please
4 send us the critical job function of jobs at NS
5 that the railroad believes match his aptitude so
6 that he can at least evaluate his options.

7 Q Thank you. And I think that we saw that the
8 surveillance video from the car wash was dated
9 June 23rd, 2009?

10 A Yes.

11 Q You actually took the test that qualified you to
12 work other jobs May 13th, 2009, right?

13 A Yes, sir.

14 Q So surveillance was done within six weeks of you
15 qualifying and passing the test, right?

16 A Yes, sir.

17 Q How does that make you feel?

18 A Six weeks after I --

19 Q By the way, Page 2 of the letter, where does that
20 indicate the letter was sent to?

21 A Mr. Paul Tecklenburg.

22 Q Okay. The burden of proof was on me at this point,
23 right?

24 A Yes, sir.

25 Q Okay. Do you make any apologies at all, Mr.

1 (WHEREUPON, a break was taken.)

2 (WHEREUPON, the jury came into open
3 court at 4:16 p.m.)

4 THE WITNESS: The jury is present, Your Honor.

5 THE COURT: Yes, sir, you may continue.

6 MR. MOSS: Your Honor, I will move for the
7 admission of Plaintiff's Exhibits 24A and B.

8 THE COURT: All right. Those will be without
9 objection?

10 MR. TECKLENBURG: Without objection, Your
11 Honor.

12 (WHEREUPON, Plaintiff's Exhibit Nos. 24A
13 AND 24B was marked for identification
14 and received into evidence.)

15 REDIRECT EXAMINATION CONTINUES

16 BY MR. MOSS:

17 Q Do you see Exhibit 24A up on the Elmo, Mr. Moorer?

18 A Yes, sir.

19 Q What is that?

20 A It is a letter to the rehabilitation.

21 Q Dealing with what issues?

22 A About the job for a police officer.

23 Q Speak up, if you can.

24 A The job for -- saying that I was certified for a
25 police officer.

1 Q Okay. And then in response to that letter, did
2 they offer you some testing?

3 A Yes, sir.

4 Q And your understanding is what with respect to the
5 test?

6 A That I passed the test that they told me to take.

7 Q Okay. Exhibit 24B is now up on the Elmo.

8 Hopefully that was from the last week of 2011.

9 There is talk in this correspondence about the
10 police job, but then also apparently there was some
11 conversation about you showed an interest in being
12 a manager at Norfolk Southern, is that right?

13 A Yes, sir.

14 Q Were you asking them when the police job didn't
15 work out to actually consider you be a manager at
16 the railroad?

17 A Yes, sir.

18 Q And then the last sentence here, just read that
19 starting with, can.

20 A Can you let me know if NSR -- Norfolk Southern
21 Railway Company is considering --

22 Q Speak up.

23 A -- considering Mr. Moorer for this position --
24 these positions -- and, if so, what steps it has
25 taken to help him transition into one of these

- 1 jobs.
- 2 Q Was there a response to that?
- 3 A No, sir.
- 4 Q The last request is on the last line. Would you
- 5 read that into the record, please?
- 6 A Finally, please forward to me the results of the
- 7 testing Mr. Moorner went through during the
- 8 application process for the police job at NSRC.
- 9 Q Have you ever seen those?
- 10 A No, sir.
- 11 MR. MOSS: Your Honor, may I publish 24A and
- 12 B, please?
- 13 THE COURT: Yes, sir.
- 14 MR. MOSS: Thank you.
- 15 (Exhibits published to jury.)
- 16 Q My last two questions, Mr. Moorner. In the last 30
- 17 days, have you reached out to the Norfolk Southern
- 18 Vocational Rehabilitation Department through me
- 19 asking if they needed any additional medical
- 20 information from you?
- 21 A Yes, sir.
- 22 Q And has there been any response to you about what
- 23 Norfolk Southern needs from you?
- 24 A No, sir.
- 25 Q Thank you. Those are all my questions.

RECROSS-EXAMINATION

BY MR. TECKLENBURG:

Q Mr. Moorer, just one or two questions.

A Yes, sir.

Q It sounds like in the fall of last year, approximately four months ago, you were down asking Mr. Wright that you were talking about about the possibility of getting what is known as a non-agreement position, is that right?

A Yes, sir.

Q So you were willing to get a job outside of the union, is that right?

A Yes, sir.

Q Prior to your discussions with Mr. Wright three months ago or four months ago about that, have you ever expressed that to any other person in the vocational department?

A No, sir.

Q All right. Thank you very much.

THE COURT: All right. You may step down, sir.

THE WITNESS: Thank you.

(Witness steps down.)

THE COURT: Call your next witness.

(Witness enters courtroom.)

1 THE BAILIFF: Place your left hand on the
2 Bible, and raise your right hand, please.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about give in this case will be
6 the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Have a seat in the witness stand,
10 please.

11 (Witness complies.)

12 THE CLERK: State your name for the record.

13 THE WITNESS: My name is Jay Norwood.

14 JAY NORWOOD,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOSS:

18 Q Can I call you Captain Norwood?

19 A Yes, Mr. Moss.

20 Q Please, tell us where you are from.

21 A I'm from Summerville, South Carolina.

22 Q I see you are in your military uniform. Do you
23 have some -- tell us about yourself. Where do you
24 work and what do you do?

25 A I'm -- my civilian job, I'm a conductor with

1 Norfolk Southern Railroad. I have been in the
2 South Carolina Army National Guard for the last six
3 years. And previous to that I was in the Marine
4 Corps. And was born and raised in Summerville.
5 Joined the Marine Corps out of high school. Came
6 back and worked as a police officer for a few years
7 before joining the railroad. And currently I'm
8 doing a project, officer assignment with the
9 National Guard for 18 days this year. Then I will
10 be back to regular duty and resume my job at the
11 railroad.

12 Q And the railroad gives you time to do your military
13 service?

14 A Yes, sir, they do.

15 Q Very good. Your seniority, where does your
16 seniority fall on the roster relative to where Mr.
17 Moorer's falls?

18 A I'm one slot senior to Mr. Moorer.

19 Q Meaning that if a job -- a preferable job is open
20 and you both want it, who gets it?

21 A That's means I will.

22 Q If I say the term, forced to a job, does that mean
23 something to you?

24 A Yes, sir.

25 Q What does it mean?

1 A Well, when you are talking about seniority, the way
2 the I-guess agreement or the way it works is, say
3 they have a job opening and no one claims the job.
4 They would take the junior person, whether it be on
5 the conductor side or -- the engineer side works
6 exactly the same, it is just a different roster --
7 they would take the junior person that is available
8 and basically that person would then be assigned to
9 that job.

10 Q Have you ever worked a job that is designated as
11 P28?

12 A Yes, sir, I did.

13 Q When is the first time you ever worked that job?

14 A Outside of --

15 Q Outside of training?

16 A Outside of training? I may have worked it once
17 outside of training. I don't recall, but probably
18 when I was forced to the job. I would say that was
19 the first time I worked it, without looking back at
20 the records.

21 Q And the records show that when Mr. Moorer went off
22 May 31st, 2007, you took over?

23 A Yes, sir, I believe that would be correct.

24 Q And if the seniority system was working properly,
25 explain how that works. If the man below you

1 gets -- can't cover the position, is that what
2 happened to you?

3 A Yes, sir, that is what happened to me.

4 Q So the first time you ever worked the P28 on your
5 own was the day after Mr. Moorer was injured?

6 A Yes, sir, that sounds correct.

7 Q Did you train as part of a two-man or a three-man
8 crew?

9 A I trained along with a full-time conductor, and
10 then the engineer.

11 Q And you functioned as the brakeman?

12 A More or less.

13 Q My point is, during training, was it just you and
14 the engineer, or was there another person?

15 A There was another person, the conductor, who is
16 actually the person conducting the train..

17 Q So the first day after Mr. Moorer's May 31st, 2007
18 event, you took the position or were forced to the
19 position of conductor?

20 A Yes, sir, I believe that to be correct.

21 Q And your engineer was who?

22 A Forrest Britt. Or shortly after it was Forrest
23 Britt. They --

24 Q Probably was. Given that you had no experience on
25 the P28, would you describe how the job was for you

1 as a new-to-the-job conductor when you took over
2 say early June 2007?

3 A Yes, sir.. Well, it was hot, obviously. You know,
4 from South Carolina you know it is hot that time of
5 year, regardless. It had decent working hours, I
6 mean, during the day, you know, including the
7 hottest part of the day, noon to 4:00 o'clock.
8 Usually you found yourself in or around the
9 Orangeburg area from -- during that time working
10 your way back towards Columbia.

11 I'd say it was tough. If I had to use one
12 word to describe the job, I would say it was hard,
13 you know, for a variety of reasons.

14 Q What about -- what are those reasons?

15 A The reasons that, number one, you are by yourself
16 now, being a guy in the first six, eight months
17 after you mark up. You know, that is a hard job
18 because you are doing -- you have a lot on your
19 plate. You have to take a train from Columbia.
20 You have to get engines from one end of the yard in
21 Columbia to another part of the yard to get your
22 train by yourself. You have to line the switches.
23 You have to double-check yourself. A lot of things
24 we do on the railroad where you do have two guys on
25 the ground, you are able to -- one person does

1 something and sends the engine or the train down a
2 track to where another person would line a switch
3 or make a coupling or something.

4 Q Pitch and catch?

5 A Yes, pitch and catch. That is really all -- all we
6 do. But not when you are by yourself. You have to
7 line switches, ride, maybe go back and line the
8 switch, or make all movements on your own, make a
9 coupling, line the train out, ride the bottom of
10 the train, you know, towards the other end of the
11 yard where you are exiting, doing brake tests on
12 your own. And that is all before you get on the
13 line of road.

14 Once you are up, you go from Columbia to
15 Orangeburg, and you are on the ground, the engineer
16 is on the engine, obviously, and, you know, it is
17 all on you. You make whatever moves you have to
18 make. You know, we call it switching. And you
19 switch these industries out. It is all on you. I
20 mean, you can ask the engineer questions, but, I
21 mean, he is up on the engine. Normally those guys
22 will keep you straight, you know.

23 Q Try to?

24 A They do, as much as they can.

25 Q What is it about being new to the job that makes it

1 difficult? So the jury can understand how it is to
2 work the P28 as a new guy on the job versus a guy
3 like Roger Davis or versus a guy like Chris
4 Gerringer, who has been there a long time?
5 Describe that for me, please.

6 A Well, this job is a lot of -- very mental. Very
7 mental. The smarter you are or more experienced
8 you are, the easier the work is. A lot of times
9 being a new guy you'll do things the hard way,
10 which there is a little saying I'll tell you, if
11 your mind doesn't catch it, your feet will, which
12 means you are going to cause yourself more physical
13 work unless, you know -- I say smart, but it is
14 really a job you learn through experience, I feel.
15 And just being inexperienced down on the P28, you
16 know, I know I don't know how many times I walled
17 out or met my 12-hour deadline, but it was more
18 than once. I don't know how many times I worked at
19 least ten hours, but it was often. And I'd say
20 that was the hardest part of it, trying to get
21 everything done being new. Being new, you don't
22 know the shortcuts, you are just not experienced in
23 it. And it is a lot of pressure because it is on
24 you. You are trying to get this done and get back
25 to Columbia and see if you can get off and go home.

1 Q How many days did you work the P28 where you would
2 consider yourself to be a rookie?

3 A I think I worked about four months, I still felt
4 like a rookie. Yes, I'd say anything the first
5 year you are absolutely trying to get the hang of
6 it.

7 Now, I was gone for quite a while on military
8 on a domestic assignment for about two and a half
9 years with, you know, there were some other schools
10 I went to, but I was gone from the railroad for a
11 number of years, and I came back. And a few months
12 after I came back, I went back to the P28. And
13 there was some stuff I was missing, you know, not
14 catching on, and I had done it for a year, left,
15 and came back, and I was still being corrected and
16 shown the right way to do things. So it takes a
17 while.

18 Q Thank you. Those are all my questions.

19 THE COURT: Please answer any questions
20 Mr. Tecklenburg has.

21 THE WITNESS: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. TECKLENBURG:

24 Q Mr. Norwood, I understand you are working up here
25 today?

- 1 A Yes, sir.
- 2 Q Is that right?
- 3 A That is correct.
- 4 Q And with your uniform on, you must be engaged in
- 5 some of your guard duties?
- 6 A Yes, sir.
- 7 Q Thank you for the service you give to our country.
- 8 A Yes, sir.
- 9 Q And it sounds like you just came back to Norfolk
- 10 Southern recently. I was trying to get this
- 11 timeline. You worked the P28 after Mr. Moorner, is
- 12 that correct?
- 13 A Yes, sir, in 2007, that's correct.
- 14 Q And during that time period, did you decide to go
- 15 and do work at the Guard instead of doing work at
- 16 Norfolk Southern?
- 17 A Oh, yes, sir, I had a school that was coming up
- 18 from -- after completion of Officer Candidate
- 19 School, and there was some recruiting money
- 20 available so -- for my school. I did leave on some
- 21 recruiting orders waiting to go to school.
- 22 Q And from a wage point of view, was the wage you got
- 23 with the Guard at least comparable to what you were
- 24 getting at Norfolk Southern?
- 25 A Yes, sir.

1 Q Very good. Now, I want to take you back to 2007.
2 You have described the job some. And you and I
3 have had a chance to meet, so -- but I wanted to
4 just get into a few things that you were doing
5 around that timeframe.

6 A Yes, sir.

7 Q First of all, I understand you have children?

8 A Yes, sir.

9 Q How many?

10 A I have four of them.

11 Q Congratulations.

12 A Thank you.

13 Q And in addition to working Norfolk Southern in
14 2007, the summer after Mr. Moorer, were there other
15 things that you had going on in your life?

16 A Yes, sir.

17 Q Other than your family? Tell us about those.

18 A I had National Guard obligation, which was Officer
19 Candidate School. I was obligated to attend drill
20 once a month and work-between drills from time to
21 time. And I was also a student in college, taking
22 college classes.

23 Q Okay. So in 2007 when you were assigned to the
24 P28, it sounds like you almost had two more
25 part-time jobs, working and doing drill, as well as

1 finishing your college?

2 A Yes, sir.

3 Q Getting degrees. Now, with respect to the P28, I
4 would assume that you worked enough to know the
5 industries and how long it takes to work them?

6 A Yes, sir.

7 Q And I want to go over those a little bit with you,
8 so excuse me while I take a second to stand these
9 up. I should have done this a few minutes ago. I
10 apologize.

11 (Pause.)

12 Q Now, we're here about some work that Mr. Moorer did
13 on May 30th and May 31st. And I wanted to review
14 with you the process or duration of how long some
15 of those things would take.

16 MR. TECKLENBURG: And if we could put up
17 Exhibit 109.

18 Q We will have it on the screen so you can see it --

19 A Okay, thank you.

20 Q -- a little closer. You're very welcome.

21 A Okay. All right.

22 Q And basically at 7:30 in the morning we show a
23 train leaving with 11 cars. Then it has to go --
24 it looks like the first job it worked on that day
25 was -- I want to get this right -- I believe was

1 Doane. Let me get this right. Hold on one second.
2 It left Andrews Yard, had a work-between.

3 First of all, at 10:45 it talks about trains
4 reporting, limits are clear. When a P28 clears up,
5 what is that?

6 A That means he basically forfeits his right to the
7 mainline. He is giving up the track authority,
8 which is the authority to proceed on a segment of
9 rail, kind of like mileposts on the interstate.

10 And the term work-between would mean that he
11 is allowed to go between those two mileposts. And
12 proceed would mean that he is allowed to travel a
13 specific direction between the two mileposts.

14 Q So on this particular day it looks like the first
15 industry worked was 7:30 -- excuse me, 11:30,
16 excuse me, left at 7:30, started working in the
17 industry, the first industry, at 11:30. If you
18 were out there as a single conductor pulling three
19 rail cars and placing five at Doane, can you give
20 any sort of a worst and best case scenario
21 time-wise of how long that might take?

22 A Three, place five? Depending on where those three
23 rail cars are in the -- in Doane, because I believe
24 they hold about 20 cars, anywhere from 45 minutes
25 to a little over an hour, I would guess.

1 Q Okay. So on an easy side 45, over an hour on the
2 best case scenario?

3 A Yes, sir, I think so.

4 Q Okay. And when you go to where CSX exchanged,
5 which is next stop, there is one rail car being
6 pulled and four being left behind or placed. What
7 is your worst and best timeline for that?

8 A I would give it roughly the same thing, 45 minutes,
9 because at CSX connection track, there is a -- it
10 is a little more involved. I don't think the
11 time -- it takes a long time to do regardless.
12 Well, it takes about that amount of time to do
13 regardless if you are -- of how many cars you are
14 pulling or placing.

15 Q And what time is that again?

16 A I would say 45 minutes.

17 Q Okay.

18 A To an hour. Somewhere in there.

19 Q About the same?

20 A Yes, sir.

21 Q And then Chemical Lime, if you pull three and place
22 six at Chemical Lime, what sort of duration are you
23 talking about walking on the ground, throwing
24 switches, tying brakes?

25 A I'd say 30 to 45.

1 Q All right. Now, the next day was May 31st.

2 MR. TECKLENBURG: And if we could put up
3 Exhibit 110.

4 Q And this shows again the train passes the scanner
5 at 7:30 in the morning. And the first industry
6 that got worked is Okonite. Have you worked that
7 before?

8 A Yes, sir.

9 Q And it shows pulling two cars out and placing two
10 cars. Give me your worst and best time that you
11 would spend again walking, throwing switches, and
12 engaged in conductor activity.

13 A All right. On Okonite you have to stop and make a
14 cut twice. You could mess around like that for
15 probably a good hour.

16 Q A good hour?

17 A Yes, sir, on a switch like that, I would think.

18 Q Is that the worst and best, or is there --

19 A Yes, sir.

20 MR. TECKLENBURG: Actually I got these in
21 reverse, ladies and gentlemen, I'm sorry. The best
22 is the shorter period and the worst is the longer.
23 So I apologize.

24 A Yes, sir. I'd say 45 to an hour and 15 minutes
25 doing that. Again.

1 Q So the worst -- I'll re-categorize it. Did you say
2 45 to an hour?

3 A Forty-five to an hour, yes, sir, something like
4 that.

5 Q Forty-five minutes and 60 minutes. And at Doane
6 again on that day it appears that Doane was worked
7 around 1:08 in the afternoon. And again it looks
8 like you are leaving five cars and pulling four.
9 So almost about the same as the day before?

10 A Yes, sir.

11 Q What would be your best and worst for that
12 situation?

13 A The same. Within five minutes either way.

14 Q So 45 to maybe over 60 minutes again?

15 A Yes, sir, possibly.

16 Q At best 45 and worst plus 60. Got it.

17 Now, as part of your being on Mr. Moorers's
18 close in seniority, did you actually go to school
19 with Mr. Moorers?

20 A Yes, sir, I did.

21 Q So you went to training down in McDonough, Georgia?

22 A Yes, sir, that's correct.

23 Q And when you went to training in McDonough, did you
24 see videos?

25 A Yes, sir.

- 1 Q Did you see one on heat?
- 2 A Yes, sir, I believe so.
- 3 Q And it sounds like you came back -- or you left in
- 4 August '07 to do your guard duty, is that correct?
- 5 A Yes, sir, that's correct.
- 6 Q And when did you actually come back?
- 7 A May of this year, April of '11, somewhere around
- 8 there.
- 9 Q And does Norfolk Southern give you the flexibility
- 10 to go to duty and come back?
- 11 A Yes, sir, they are very, very good about that.
- 12 Q And when you came back in May of 2011, you hadn't
- 13 been at work for a while. Did you have to undergo
- 14 any more training?
- 15 A Yes, sir.
- 16 Q What did you do?
- 17 A I spun up on the rules, rules class on operating
- 18 rules, safety rules, and basically my certification
- 19 or my conductor certification was still good, so I
- 20 had to be requalified on each job in the district,
- 21 so I went out and spent about a week at each job
- 22 before I was allowed to mark up, as they say.
- 23 Q Okay. And what job are you currently in?
- 24 A I'm currently on the P57 in Rock Hill.
- 25 Q And since you live in Summerville but work in Rock

1 Hill, are you able to commute, or how does that
2 work?

3 A Yes, sir, just on my weekends.

4 Q On your weekend?

5 A Yes, sir.

6 Q So on the weekdays you actually live in Rock Hill?

7 A Yes, sir, I rent a room in Rock Hill.

8 Q And is that common in the railroad where you have
9 to go and travel?

10 A Yes, sir, it is. It is a foregone conclusion.

11 Q Now, I'm going to end with your experience on the
12 P28. You worked with Mr. Forrest Britt?

13 A Yes, sir, I did.

14 Q Did you believe that he was a safe engineer?

15 A I did.

16 Q And were you able to work the P28 safely as a
17 two-man crew, just you and Mr. Britt?

18 A Well, I didn't get hurt.

19 Q Okay. Very good. Thank you very much.

20 A Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. MOSS:

23 Q Why did you just hesitate when he asked you that
24 question?

25 A I remember having objections to the railroad about

1 certain things, about the job and the temperature
2 and the equipment and the work conditions on that
3 job.

4 I never wrote anything in writing and
5 submitted it. It was verbal. And I personally
6 don't recall who the specific manager was that
7 dealt with us most directly about it, beyond
8 Mr. Stinson. And I can't recall ever having a real
9 conversation with Mr. Deshazor about it.

10 But -- and I just think that things could have
11 been done better, personally.

12 Q What kind of shape are you in?

13 A I'm in very good shape.

14 Q How hard was this job on you?

15 A I thought it was hard. It was hard on me.

16 Q The times that you just gave us, are those the
17 times it would take you to work that hypothetical
18 job today with your experience?

19 A Yes, sir. I mean, I have only been -- I have been
20 back for a year. It would probably still take me
21 that long, I would say.

22 Q What about your first day back? What about
23 June 1st? Would those times be the same or would
24 they be longer?

25 A They would probably be longer.

1 Q Thank you. Those are all my questions.

2 THE COURT: All right.

3 MR. TECKLENBURG: No further questions, Your
4 Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 THE COURT: Any objection to the witness being
9 excused?

10 MR. TECKLENBURG: No, Your Honor.

11 THE COURT: All right, sir, you are free to
12 leave.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. MOSS: Dr. Michael McClanahan. We are
16 going to take him out of order, Your Honor.

17 THE BAILIFF: Place your left hand on the
18 Bible, and raise your right hand, please.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the
21 testimony you are about to give in this case will
22 be the truth, the whole truth, and nothing but the
23 truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, please.

2 (Witness complies.)

3 THE CLERK: State your name for the record.

4 State your name, please.

5 THE WITNESS: Michael Clifton McClanahan.

6 MICHAEL CLIFTON MCCLANAHAN,

7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MOSS:

10 Q Would you pull that mic in front of you, please?

11 A Closer?

12 Q Yes, thank you. Sir, where are you from?

13 A I'm from Auburn.

14 Q Auburn or Alabama?

15 A Yes. I don't like to admit that Auburn is in the
16 State of Alabama because I'm an Auburn fan. In
17 fact, if it were up to me we would secede from the
18 state.

19 Q So you are not a Clemson fan, right?

20 A Oh, no, I'm not a Clemson fan. In fact, I'm not a
21 Clemson fan at all. I'm not a South Carolina fan
22 either except for in two nights, night after
23 tomorrow, Thursday night South Carolina plays
24 Alabama in the SEC tournament, so for a couple of
25 hours I'm going to be a South Carolina fan.

1 Q All right. Let's get to business. What do you do
2 for a living?

3 A I'm a vocational consultant and a disability
4 analyst.

5 Q You are an expert witness?

6 A Yes, sir.

7 Q What does it mean to be a vocational consultant?

8 A I work with people with disabilities. And mostly
9 what I do is assessments, vocational evaluations,
10 but generally I work with people with -- the field
11 is working with people with disabilities in a
12 vocational sense or a job-related sense, help
13 people get jobs. So what I do is do some testing
14 to see what kind of jobs they are best suited for.

15 Q Can you please give the jury the benefit of your
16 educational background and your experience?

17 A I've been a practitioner in the field of vocational
18 rehabilitation in disability analysis for more than
19 30 years. I have a Ph.D. from Auburn University in
20 1994; a master's degree from the University of
21 Georgia in rehabilitation counseling in 1981; and
22 then in 1977 a bachelor from Auburn in
23 rehabilitation services.

24 I have been -- really been a practitioner all
25 through my education, from 1977 to today. I've

1 always been employed. Even when I was in school
2 full-time I was employed.

3 Q You and I have known each other for?

4 A It is either 22 or 24 years.

5 Q And you have evaluated over the years a number of
6 my clients and testified in a number of my trials?

7 A Not so much testified. I think I testified maybe
8 four times, if I'm counting correctly. I mean, I
9 have had more cases than that because they don't
10 all go to trial, but, you know, I have probably had
11 15 cases with you or in that range, I think.

12 Q And each time that I engage you to work for the
13 benefit of my client, is the request the same? Is
14 the request the same that --

15 A Pretty much, yes.

16 Q What is that? What did I ask you to do?

17 A In this case it was to evaluate him and provide a
18 diminution of wage earning capacity. Not exactly.
19 To provide an assessment of his ability to work and
20 earn wages in the future.

21 Q With his injury?

22 A With his injury, yes. Or with his condition,
23 whatever it is.

24 Q What is it that makes you qualified to render an
25 opinion about what he can do vocationally given his

1 injury? How do you do that?

2 A Well, I mean, by virtue of -- the way I do it is
3 through testing. I mean, that is the first part of
4 it. And if you think of it -- if we think of it in
5 terms of a medical model, the first thing you do is
6 assessment. When somebody comes in where they
7 triage somebody, they want to know, you know, where
8 they are at that moment, and then they put together
9 a plan to make the person well.

10 From a rehabilitation standpoint, when they
11 come to me, I take them as they are. I do a
12 variety of vocational and relevant tests. And if
13 you think about -- I mean, if you think about what
14 things relate to jobs, we in my field try to test
15 those very same things.

16 So we either test it or we use information for
17 it. So, for example, I would use medical records
18 generally to assess somebody's physical
19 functioning, along with what they tell me, what the
20 person tells me.

21 In terms of vocational aptitudes, though, like
22 their ability to read, write, their ability to
23 think, just solve problems, things like that, I
24 test those things.

25 And I also do some dexterity testing to see

1 how well they work with their hands. There is a
2 plethora of other kinds of tests that we have
3 available to us that we pick and choose from.

4 Q Are you compensated for your time and for your
5 services?

6 A I hope so.

7 Q At what rate?

8 A For -- to be here today, I have a witness fee that
9 is a flat rate, \$800, unless it goes over two
10 hours, in which case it is a \$400 per hour rate.
11 Then I have my professional time apart from that is
12 \$125 an hour. So I drove over this morning. I'll
13 drive back probably tonight and I'll have about ten
14 hours of travel time and then the witness fee plus
15 mileage.

16 Q And, in addition, you have met with Mr. Moorer and
17 prepared a report?

18 A I did. And I charged for the evaluation of him
19 \$995 plus the travel that was involved there. I
20 had to go from Auburn to Charleston to test him.
21 So I think it is \$16 or \$1,800, somewhere around
22 there, for the total amount.

23 Q Why is it important to actually meet with the
24 client, in this case, Mr. Moorer, to get to the end
25 result?

1 A Well, I need to know him. I mean, that is the main
2 thing. And in order for me to make an assessment
3 of how he relates to the world of work, I have to
4 know who he is. I mean, the world of work is kind
5 of a -- even though it is a little mercurial, you
6 know, we have statistics, and you will hear some of
7 those I'm sure during my testimony, but the person
8 and their enterprise is critical. And so I have to
9 know reading, writing, arithmetic. I need to know
10 their intelligence level. I need to know what his
11 perception is of his abilities. Plus I need to
12 know what else he brings to the table like past and
13 relevant work, things like that. That has
14 everything to do with what he is going to do in the
15 future.

16 Q Do you also do independent analysis and testimony
17 for the social security administration?

18 A I do. That is the disability analyst part, but I
19 testify in about 70 or 80 disability hearings a
20 month with the Social Security Administration.

21 Q Are you retained by either side in those
22 situations? Or how does that work?

23 A Social Security hires me. It is actually the
24 Office of Disability Adjudication, adjudications on
25 Social Security. I do some other cases that are --

1 Plaintiff's attorneys sometimes will send cases to
2 see if I can evaluate them and see about them
3 applying for disability.

4 Q Have you ever done work for the other side, if you
5 will, for the Defendant?

6 A I have. Back in the early days, not the early
7 days, probably back in the early 1980s I worked for
8 two private for-profit rehabilitation companies,
9 Crawford & Company and what is now known as
10 Intercore. And I worked on the railroad side of
11 cases back then. I also made the habit out of
12 working for insurance companies and employers to
13 this day. I don't do as much on the Defense side
14 as I do the Plaintiff, but I still have my doors
15 open to do work for both sides.

16 Q In the last five years, how many times in court
17 have you -- do you think you testified when I'm in
18 trial, with me?

19 A Twice.

20 Q Do we have any pending or open cases right now?

21 A I don't think we do. There might be one, but other
22 than that, I don't think we do.

23 MR. MOSS: Your Honor, I would --

24 A I mean, other than this case.

25 Q Sure.

1 A I consider this --

2 Q I've got this one.

3 MR. MOSS: Your Honor, I'd like to offer
4 Dr. Michael McClanahan as an expert in vocational
5 rehabilitation compensation.

6 MR. TECKLENBURG: No objection, Your Honor.

7 THE COURT: All right. Ladies and gentlemen
8 of the jury, normally a person cannot give opinion
9 testimony. Normally when a person testifies they
10 must testify as to what they either saw, heard or
11 sensed by smell, or something of that nature.
12 However, there is an exception when someone is
13 qualified because of education or experience. They
14 are permitted to give their opinion in certain
15 areas if the Court qualifies them that way. This
16 witness will be qualified in the area of
17 vocational --

18 MR. MOSS: Rehabilitation counseling.

19 THE COURT: Vocational rehabilitation
20 counseling to give opinion testimony in that area.
21 That does not mean that you must accept the
22 opinion, but it is evidence for you to use in any
23 way you see fit.

24 Thank you.

25 You may continue.

1 MR. MOSS: Thank you, Your Honor.

2 BY MR. MOSS:

3 Q I'm now just going to let you tell the jury what
4 you did in this case, and then I'll ask you what it
5 means. So tell them what you did.

6 A What I did was what we call vocational evaluation.
7 And a vocational evaluation is a process that is
8 designed to assess and predict work behavior.

9 And to do that, again, we had a face-to-face
10 meeting. It was about three hours long. The first
11 part of which I sent to him ahead of time a
12 vocational interview form, which is a nine page
13 form that I ask him to fill out. It is just a lot
14 of background information, medical history, his
15 perception of his functional ability or inability,
16 work history, medications, lifetime surgeries, all
17 that kind of stuff. Just a real background thing.

18 So the first thing I do is I go over that with
19 him. And I did that in this case. Probably 30 or
20 45 minutes just figuring out who he is from the
21 vocational standpoint.

22 I then go over the vocational testing. And
23 the first test I normally give is a wide range
24 achievement test, or any achievement test actually,
25 to find out how well the person reads. You know,

1 we have people that may be high school graduates
2 who don't read or don't read well. And that is a
3 critical factor. And it also drives what other
4 tests that I can give. If I have a reading test
5 and I can't read, then I have to go to some visual
6 tests.

7 So I gave him an achievement test and he
8 scored a little lower than I would have expected
9 him because he has a 12th grade education.
10 Obviously I was going to go right into testing.

11 Q Please go ahead.

12 A His four years of education plus a little bit
13 beyond the high school graduation, so you would
14 expect or predict a 12th grade functional level.
15 He didn't do that. He scored seventh grade in
16 reading, or work recognition; 10th or 11th grade
17 spelling; and 8th grade arithmetic.

18 That is fairly common. When you see people,
19 first of all, he may not have been at grade level
20 when he graduated from high school. Secondly, he
21 had been removed from academia for a while.
22 Academic setting. School. He's been out of school
23 for a while. And so a little bit of decline I
24 would expect. On IQ testing, I gave him the
25 Kaufman Brief Intelligence Test. There have been

1 several IQ tests given in this particular case.
2 They all cluster around average, low average range.
3 And that is exactly what he did on my tests. He
4 had a full-scale IQ of 96, the average being 100,
5 the average range being 90 to 109. So he was in
6 the average range there.

7 I gave him the Wonderlic Personnel Test. The
8 Wonderlic is really kind of a unique test that
9 assesses a person's, what I call work IQ. And it
10 is their ability to creatively solve problems or
11 logically solve problems. The NFL uses it in their
12 timelines to assess intelligence of their athletes
13 who are coming in. I hear Cam Newton aced the test
14 last year.

15 Q Predictable.

16 A But he scored well enough to -- his performance on
17 the Wonderlic indicated -- predicted a WAIS-R IQ,
18 and that is a different IQ test of 90 -- and if you
19 remember, I said he had a 96 on the tested IQ.
20 That is within what we call a standard of
21 measurement. So they are both in average range,
22 both indicating on the low average side of things.

23 Also consistent with the ability to learn semi
24 to skilled work tasks. And I understand the work
25 that he is doing now will be considered skilled and

1 some of his past railroad work would be skilled.

2 On the aptitudes, he -- and without going
3 through all of them, but there are ten, or nine
4 vocational levels on aptitudes. He scored in the
5 average range on all of them that you would
6 consider to be sort of paper-pencil kinds of
7 things. And then on the dexterity, interestingly
8 enough, he was a little bit below average, meaning
9 finger dexterity, which is manipulate small
10 objects; manual dexterity was a little bit larger
11 objects; and then motor coordination, which is the
12 ability to respond quickly and accurately to a
13 visual stimuli.

14 I don't think that that reflects an innate
15 ability. I think he is at least average on those
16 dimensions. Sometimes when you're sitting there
17 taking paper-pencil tests, you just kind of get a
18 little bit, not lethargic, but your attack on it is
19 not the same as if you had several people competing
20 with you to do it.

21 So, but overall I thought generally his
22 performance was just sort of in the average range.
23 And that is the picture Mr. Moorer presents.

24 I gave him a Zung Depression Self-Rating
25 Scale, which is not really a test, it is just an

1 inventory. And it really didn't indicate anything
2 significant from a depression standpoint. And I
3 think that that has been validated by his behaviors
4 since the time I saw him. He just strikes me as a
5 motivated guy, which doesn't go -- which does
6 not -- usually people that are depressed do not
7 forward move in that way.

8 Q You mentioned that there are other tests in this
9 case. Is it your understanding that the railroad
10 actually hired their own vocational expert in this
11 case to assess Mr. Moorner?

12 A Yes.

13 Q Okay. You had the ability to appreciate and
14 understand the work of Ms. Cicero I think as well
15 in this case?

16 A Yes, sir.

17 Q She'll be with us. Is it also your
18 understanding -- I digress for a second -- that Mr.
19 Moorner took some tests to see if he could qualify
20 to be a clerk, work an indoor type job at the
21 railroad and that he passed those tests?

22 A Yes, sir.

23 Q Does that surprise you, given your test results?

24 A No, it does not.

25 Q Why not?

1 A The type of jobs that he was looking at are
2 consistent with a sixth to eighth grade functional
3 level on academic testing. Now, most of -- a lot
4 of those tests -- a lot of the jobs, I'm sorry,
5 require high school diploma. When they advertise
6 that, I'm talking about people looking at jobs and
7 advertising jobs, they are -- when they say, we
8 want a high school graduate, they know they are not
9 going to be able to get everybody to function at a
10 12th grade level. About 80 percent of the jobs in
11 the national economy can be performed with sixth to
12 eighth grade functional level. And that is what we
13 have in this case.

14 Q Did I interrupt you before you got through your
15 analysis and conclusions?

16 A I didn't really reach any conclusions, I just went
17 through the actual testing that I did.

18 Q All right. Then what did you do? After the
19 testing battery, what is your next step?

20 A To do a report basically. I mean, I looked at the
21 medical records and any other records that are
22 available, sometimes the personnel records, things
23 like that.

24 In this case I reviewed a deposition by
25 Dr. Moseley. And it was my opinion -- and I don't

1 know if we said this, but I saw him on
2 September 25th, 2009, so we're two and a half years
3 post now. But at the time that I tendered my
4 report on December 17th, 2009, I felt like he would
5 reasonably be a \$20,000-a-year worker.

6 Q I'm sorry, \$20?

7 A Twenty to \$30,000-a-year worker.

8 Q So that was late 2009?

9 A Yes, sir.

10 Q And is it your understanding that within 30 days of
11 you testing him and predicting that he would make
12 between \$20 and \$30,000, he got a job at St. George
13 Police Department?

14 A Right.

15 Q And what is your understanding of his actual
16 historical earnings, because he has two years there
17 now in earnings at the St. George Police
18 Department.

19 A Let's see, there was a -- I believe he started in
20 the early to mid 20s. There was a change in pay
21 that I think brought him up to about \$25 and that
22 was -- hold on just a minute.

23 (Pause.)

24 Q That's right.

25 A Anyway, he got up to around \$25 or so. I

1 understand that he recently got a promotion to
2 lieutenant and is making in the \$29,000 range.

3 Q Does that surprise you at all?

4 A No. That is within the range that I predicted. I
5 mean, I should point out that he's not getting any
6 insurance, and so that is a significant barrier for
7 him because of his -- well, we all need health
8 insurance, and he has got a family with a special
9 needs kid and I think that makes it more important
10 for him than for a lot of us, the health insurance
11 I'm talking about.

12 Q Did you also understand, Dr. McClanahan, that at
13 least for a while last summer, Mr. Moorer worked at
14 Kinder Morgan?

15 A Yes, sir.

16 Q And did you have enough information to understand
17 what the job entailed and what he was trying to
18 balance in his life at the time?

19 A I believe I did.

20 Q What is your take on Mr. Moorer's (a), desire to
21 take the job, try the job; but also his inability
22 to stay at the job?

23 A Specifically or Kinder Morgan or what?

24 Q Yes, Kinder Morgan in particular, but also in
25 general trying to keep or maintain two jobs, one of

1 which is physical?

2 A Well, I mean, first of all, and I mentioned
3 earlier, I'll probably say it three more times, he
4 is really a remarkable and motivated guy.

5 Q Why do you say that?

6 A He keeps working. I mean, and keeps applying for
7 jobs. He is always trying to better himself. He
8 runs counter to what we see in a lot of trials. I
9 mean, a lot of people, you know, when they know
10 that there is -- when they are suing for money they
11 would be disinclined to be so motivated. So I've
12 been really impressed with him from Day One. So I
13 don't think, you know, working at Kinder Morgan, I
14 understand that there was a good wage rate
15 associated with it, but it was a long drive. And I
16 think in order for him to maintain a balance in his
17 life, he couldn't maintain that job and the other
18 work that he was doing too.

19 Q So kind of to summarize, based on your testing,
20 your training and your education, but also knowing
21 what he has done in the past and what he is
22 currently doing, what is your professional opinion
23 about what Mr. Moorer's vocational aptitude is
24 given injury?

25 A His vocational aptitude, I mean, he really is -- he

1 is an average range functioning individual who has
2 above average motivation and he presents well. He
3 is likeable and he is believable and I like him and
4 I would.

5 Q Thank you. Those are all my questions.

6 THE COURT: All right. Please answer any
7 questions from Mr. Tecklenburg.

8 CROSS-EXAMINATION

9 BY MR. TECKLENBURG:

10 Q Those traits, being likeable, being motivational,
11 is it your experience that those lead usually to
12 good jobs if someone keeps working at it and
13 applying?

14 A Yes. All other things being equal, that person
15 will fare better than one who doesn't have those
16 traits.

17 Q Because someone that can go and interview well and
18 make a good presentation, that is often at least a
19 third of the battle, would you agree, in finding a
20 job?

21 A I think it is.

22 Q Now, your involvement in this case has sort of
23 changed over time. And what I mean by that is when
24 you first got involved, you issued a report in
25 January of 2010, is that correct?

1 A Yes, sir. I'm sorry, December of 2009.

2 Q December 2009. Okay.

3 A Yes, sir.

4 Q All right. So in December 2009 it was your opinion
5 that Mr. Moorer basically could do sedentary work,
6 sedentary to light?

7 A That was -- yes, sir.

8 Q And what you have learned over the time of, since
9 that has expired and we have gone on now more than
10 two years, that that is not true, isn't that right?

11 A Yes.

12 Q In fact, what has happened with Mr. Moorer is he
13 has gone back to police work and that is not light
14 to sedentary work, is it?

15 A The dictionary of occupational titles I think
16 regards it as a medium job. That I would submit to
17 you is probably heavy in terms of its essential
18 function, because if you have to apprehend somebody
19 you are going to be exerting more than 50 pounds of
20 force, and that is part of the definition for
21 heavy.

22 Q And that is one of the things we didn't hear about
23 on direct. Tell us what the Dictionary of
24 Occupational Titles is and how it classifies jobs.

25 A The Dictionary of Occupational Titles is a product

1 of the Department of Labor and it has been in
2 existence for 70 years. And it lists all of the
3 jobs that exist in significant numbers in the
4 national economy. It doesn't list every job, it
5 lists every job that exists in significant numbers.

6 And what they did to compile this dictionary,
7 what we would call a dictionary, is they had a
8 3-job analyst go look at every job that exists in
9 significant numbers, and then they averaged all of
10 their findings so that -- and it is cross-multiple
11 things, I mean, there is about 50 different
12 variables, how much from a physical standpoint of
13 how much do you lift, squat, crawl, climb,
14 everything that you can think of, is it inside,
15 outside, both, anything you can think of
16 physically. It also looks at the aptitude, so the
17 same aptitudes in the Dictionary of Occupational
18 Titles are the same aptitudes that I test for in my
19 report. It gives academic levels, everything.

20 So any job -- the only problem with it is it
21 is outdated now. There was a -- and I think the
22 Department of Labor is now regretting that decision
23 and has put some more money back into it. But
24 there is 12,375 different jobs discussed in the
25 Dictionary of Occupational Titles.

1 Q And with respect to jobs, you first limited Mr.
2 Moorer to a light to sedentary. Once you move up
3 the scale to medium or maybe even heavy like police
4 work, doesn't that increase the universal job you
5 can apply for?

6 A Yes.

7 Q And as you increase the universal jobs you can
8 apply for, doesn't that also increase the wages
9 that may be available to you?

10 A It can.

11 Q And in addition to what you found with Mr. Moorer
12 since your evaluation in 2009, he, in addition to
13 doing police work, he has worked at Kinder Morgan,
14 is that correct?

15 A Yes, sir.

16 Q What is the task considered when you work in an
17 industrial yard doing railroad work and loading the
18 tank cars. What is that class?

19 A From an exertional standpoint?

20 Q Yes?

21 A You know, it would depend on how much he had to
22 lift on that job. And I think -- if he had to lift
23 knuckles it would be a heavy job. If he didn't
24 have to lift knuckles it probably would be light to
25 medium.

1 Q Okay. Light to medium. In fact, if we back up
2 from the jobs he had been doing and go back to Day
3 One which he was working on the railroad, describe
4 for us what your opinion is of how a conductor job
5 is classed. In other words, is it light, medium or
6 heavy. And how did you make that determination?

7 A The Department of Labor classifies a conductor as a
8 light job, light skills. It has an SVP of 7. I'm
9 in disagreement with that. And the reason being
10 that one of the essential functions is to replace a
11 knuckle and it weighs 80 pounds, so that puts it at
12 least in the heavy range of work.

13 Q So -- and is that something that is frequently done
14 by conductors as far as you know?

15 A It depends on their route and the condition of the
16 tracks and the types of loads that they have. I
17 mean, some conductors tell me they don't have to
18 replace knuckles but once or twice a year. Others
19 more than that.

20 Q So it could be infrequently?

21 A It would be infrequent usually.

22 Q Yes. Now, so your original opinion of sedentary to
23 light, has that changed?

24 A Yes. And, I mean, I don't make the assessment of
25 sedentary to light. I mean, I classify it based on

1 what the medical records and history shows.

2 Q And then once you make your wage range, which in
3 this case is \$20 to \$30,000, right?

4 A Yes, sir.

5 Q That is your opinion today?

6 A It is.

7 Q That information is passed on to a gentleman by the
8 name of Fred Johnson. Who is Mr. Johnson?

9 A He's an economist. And I don't know if he is a
10 mister or a doctor, but he is the economist on this
11 case.

12 Q And where is he from?

13 A Birmingham, I think.

14 Q Okay. But he is from Alabama?

15 A Yes, sir.

16 Q All right. And what does he do? Does he compare
17 what you could earn before a incident to what you
18 can earn after?

19 MR. MOSS: Objection.

20 Q Do you know what he does?

21 THE COURT: Sustained. Please rephrase the
22 question.

23 Q Do you know what Dr. Johnson does?

24 A I am not familiar with what he does. I have read
25 transcripts, hearing transcripts of his testimony,

1 so I'm familiar with that way.

2 Q All right. And if your wage range instead of \$20
3 to \$30,000, maybe \$30 to \$40,000 if it were higher,
4 isn't it true that his number gets lower?

5 A Yes. I mean, all others things being equal, yes.

6 MR. TECKLENBURG: Now, if we could put up
7 Exhibit 102, please.

8 Q And you should have a screen up there,
9 Dr. McClanahan.

10 A Okay.

11 Q This is a document that was prepared -- And if you
12 could -- before he emphasizes anything up at the
13 top, it says the Town of St. George, and it shows
14 Kinder Morgan right there. And down here it says,
15 Town of St. George, \$26,984, and Kinder Morgan,
16 \$11,283. Do you see those numbers?

17 A Yes, sir.

18 Q And it looks like based on his W-2s that last year
19 in 2011 Mr. Moorer made \$38,267.

20 A Right.

21 Q Is that your understanding of how much he made last
22 year?

23 A Yes, sir.

24 Q So he exceeded again I guess your expectations of
25 the \$20 to \$30,000 range last year?

1 A That's true.

2 Q And now we know that he is working for the St.
3 George Police Department I think making \$29,450.
4 Is that the number?

5 A Yes, sir.

6 Q Does he also work overtime?

7 A I'm not sure about the overtime.

8 Q Okay. We actually looked at that and came up with
9 an average of around a little over 20 hours a month
10 overtime, about five hours a week.

11 A Uh-huh.

12 Q At about almost \$20 an hour. So if we add overtime
13 to what he currently does in St. George on the
14 range of over 20 hours a week, could we expect him
15 to earn more than the \$30,000 you predicted?

16 A Well, sure, if you factor in the overtime,
17 absolutely.

18 Q Now, finally, when you meet with Mr. Moorner and
19 take this information from him, do you require the
20 client, if you will, to self-report things he can
21 and cannot do?

22 A Yes.

23 Q And when you met with him, what was the date that
24 you met with him?

25 A It was September 25th, 2009.

1 Q Okay. And did he tell you how far he could walk?

2 A No. He initially on the form said half a mile.
3 But when I talked with him, he actually said he had
4 no limitation in that regard.

5 Q Thank you. That's all I have.

6 MR. MOSS: No more questions, Your Honor.

7 THE COURT: All right, sir, you may step down.
8 Any objection to this witness being excused?

9 MR. MOSS: No, Your Honor.

10 MR. TECKLENBURG: None, Your Honor.

11 (Witness steps down and is excused.)

12 THE COURT: Is there anyone that needs to
13 leave before 6:00 o'clock today? There is a -- I
14 think he tells me about a 22-minute video
15 deposition, a witness deposition 22 minutes that --
16 well, which is the next witness that I will go
17 ahead and let them play. And we'll -- so we'll be
18 finished before 6:00 o'clock. All right?

19 Call your next witness. It is a deposition,
20 so I'll go ahead and tell them a little bit about a
21 deposition.

22 Ladies and gentlemen of the jury, testimony is
23 now going to be presented to you by a deposition.
24 A deposition is a document containing sworn
25 testimony given by a witness outside of court in

1 the presence of the lawyers for each party who may
2 ask questions of the witness.

3 If any objections were made at the deposition
4 I will rule on them when the deposition is read.
5 This testimony is entitled to the same
6 consideration and is to be judged as to credibility
7 and weighed by you in the same way as if the
8 witness were present and gave testimony about
9 the -- actually it is a video deposition, so the
10 video that you are about to see as if the person
11 were here on the witness stand.

12 It is then for you, the jury, to determine the
13 effect, value, weight and truth of the testimony
14 given in the deposition.

15 All right. Thank you.

16 Do you need me to turn the lights down?

17 MR. MOSS: That would be great. We're pulling
18 this up. It will take 20 seconds.

19 This is Dr. Ray Prible, who is the chief
20 medical officer at Norfolk Southern.

21 THE COURT: Doctor who?

22 MR. MOSS: Ray Prible.

23 (WHEREUPON, a video deposition of
24 Dr. Ray Prible was played in open
25 court.)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TRUMAINE V. MOORER,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

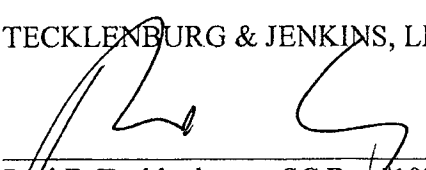
CASE NO.: 2010-CP-40-05460

**STIPULATION OF VIDEO
DEPOSITION DESIGNATIONS OF
CHARLES PRIBLE, M.D. TAKEN
8/20/09, PLAYED AT TRIAL (437:23-25)**

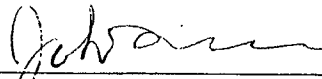
The undersigned parties stipulate the following excerpts of the deposition of Charles Prible, M.D., taken August 20, 2009, were played at trial:

06:07 - 09:11
11:20 - 12:18
32:23 - 33:16
34:20 - 35:13
35:15 - 36:13
38:11 - 38:22
38:24 - 39:07
40:10 - 42:08
47:07 - 50:03
50:06 - 51:08
51:21 - 53:12
63:07 - 63:12
64:03 - 64:14

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

TRUMAIN V. MOORER,)
)
Plaintiff,)
V.) NO. 2008-CP-38-24
)
NORFOLK SOUTHERN RAILWAY)
COMPANY,)
)
Defendant.)

VIDEOTAPED 30(b)(6) DEPOSITION UPON ORAL EXAMINATION
OF NORFOLK SOUTHERN RAILWAY COMPANY
THROUGH DR. CHARLES RAY PRIBLE
ON BEHALF OF THE PLAINTIFF

Norfolk, Virginia
Thursday, August 20, 2009

1 NORFOLK SOUTHERN RAILWAY COMPANY THROUGH
2 DR. CHARLES RAY PRIBLE was sworn and deposed on behalf
3 of the Plaintiff as follows:
4

5 EXAMINATION

6 BY MR. MOSS:

7 Q. Good morning.

8 A. Good morning.

9 Q. Dr. Prible, I'm John Moss. We just met.

10 Could you please introduce yourself to us by
11 telling us your name and professional address and, if
12 you would, what you do for a living.

13 A. My name is Charles Ray Prible. I'm the
14 medical director for Norfolk Southern and I'm a
15 physician.

16 Q. You've been the medical director for how
17 long?

18 A. About 15 and a half years.

19 Q. You're obviously a doctor licensed to
20 practice medicine.

21 A. Yes.

22 Q. Okay. And your exhibit -- I mean, your CV
23 I've marked as Exhibit Number 2 and I will attach to the
24 deposition.

25 Could you just give us a little bit of

1 information about what it is that you do at
2 Norfolk Southern, please? Just your job description and
3 how you see it.

4 A. Well, as the director of Medical Services,
5 one of the principal duties I have is to oversee medical
6 policy development for the corporation. I interface
7 closely with our Safety Process and Safety Department in
8 handling health and safety-related matters.

9 We are responsible -- we, the department that
10 I oversee -- is responsible for the fitness-for-duty
11 determinations that are conducted on our employees
12 during the course of business. We handle our drug and
13 alcohol testing programs for Norfolk Southern in
14 compliance with federal regulations and we do drug and
15 alcohol counseling in connection with that program. We
16 assist the Claim Department in managing on-duty injury
17 claims through reviewing medical reports and, and
18 offering opinions regarding treatment and return to
19 duty.

20 That's kind of it in a nutshell.

21 One piece of it also is medical surveillance,
22 that is, people who are involved in, in jobs where they
23 must wear respirators, wear hearing protection covered
24 by various governmental regulations from OSHA and the
25 FRA, we oversee the medical portion of those programs as

1 well.

2 Q. How many people are in the Medical
3 Department?

4 A. Including our drug and alcohol counselors
5 that are around the system? Roughly 19 or 20. I don't,
6 I don't know the exact count right off the top of my
7 head.

8 Q. Do you spend most of your time doing any one
9 of these particular tasks or is there about an equal
10 division of labor?

11 A. I spend most of my time doing policy work and
12 assisting the Safety Department with FRA reportability
13 matters and representing the department at various
14 committees that, that address safety matters and health
15 and benefit matters.

16 Q. When you say "medical policy," what is it
17 that you're specifically referring to?

18 A. It would be, for example, how the Medical
19 Department would respond to a pandemic, laying --
20 helping lay out medical practices and policies for
21 employees who get sick at work or want to come back to
22 work after being sick with, say, the current swine flu
23 issue.

24 We've developed policies that address how,
25 how we handle cardiovascular disease in our work force

1 when they get sick and then desire to come back to work,
2 what kind of testing is required, those types of things.

3 Q. You may not know this, but how many people
4 work for Norfolk Southern?

5 A. Close to 30,000.

6 Q. Okay. And so you're trying to set policy and
7 refine existing policy to be sure that it addresses both
8 the workplace concerns as well as the other medical
9 concerns of this large body of people.

10 A. Yes. It's basically a small community, if
11 you want to look at it that way, yes.

12 Q. And what makes your job a little more
13 complicated is you have to deal with federal regulations
14 with respect to OSHA and respirators and FRA
15 reportability issues as well.

16 A. Right.

17 Q. Okay. Dr. Lina has already testified.
18 She works -- she reports directly to you?

19 A. Yes.

20 Q. Is there another person who occupies the same
21 position as Dr. Lina or is she the only direct report to
22 you?

23 A. No, I have two other direct reports. One is
24 our drug and alcohol manager who handles our
25 rehabilitation counseling service. He reports to me.

1 interpretation or what something means or what it means
2 in terms of reportability, the Safety Department will
3 often get me involved in those cases and ask me to
4 review it and give them an opinion.

5 Q. Okay. I just want to clarify, because
6 Dr. Lina, I think she said in her earlier deposition
7 that the FRA reportability side of things really kind of
8 fell more under your jurisdiction than it did hers. Is
9 that fair?

10 A. Yes. When, when her position was created and
11 filled, we kind of set up a division of work, and that's
12 one of the things that I kept. I was doing it before
13 she was hired. And rather than get her involved in
14 that, I elected to keep it.

15 And it's not a heavy load, but it's enough
16 that if she did what she did and that, too, it could be
17 kind of overwhelming, so --

18 Q. Sure.

19 A. -- I kept that part of the work.

20 Q. Does the fitness-for-duty determinations,
21 does that typically fall under Dr. Lina or under Dr. --
22 or under you?

23 A. Dr. Lina.

24 Q. And you get involved in the fitness-for-duty
25 determinations in situations where she comes to you with

1 a particular issue and would like to talk to you about
2 it and bounce stuff off of you.

3 A. Yes.

4 Q. And I believe that that is what happened in
5 this case of Trumain Moorner; is that right?

6 A. Yes, I believe so.

7 Q. Okay. And so everybody's oriented, I'm going
8 to ask you some big-picture questions about the issues
9 that underlie this case, and I'm going to ask you some
10 specific questions that relate specifically to this case
11 and the reportability and the fitness-for-duty
12 categories. Is that fair?

13 A. That's fine.

14 Q. Great.

15 My guess is you haven't met Trumain Moorner
16 because you'd have no reason to ever meet him
17 personally.

18 A. No, I have not.

19 Q. Okay. Can you tell me how it is that this
20 case came across your desk or to your knowledge the
21 first time?

22 A. Well, when I reviewed the file to prepare for
23 this time, it appears that I didn't get involved in the
24 case until there was an inquiry from the Safety
25 Department concerning his -- Mr. Moorner's first episode

1 Q. And that is what you were trying to convey in
2 the June 6th, 2007 and August 23rd, 2007 emails.

3 A. Well, the June 6th one, I don't know at that
4 time if I was aware of the second event at that time.

5 Q. I understand.

6 A. I don't make any reference to it in here, and
7 I don't know that I had been notified or gotten any
8 information related to the second event at that time,
9 and I don't have any memory of that, so...

10 Q. All right. Well, let me ask the question
11 better.

12 When looking at those two emails together,
13 you did conclude that there were two separate events,
14 both of which were, in fact, related to the workplace.

15 A. Yes.

16 Q. Okay. And there was enough information
17 linking Mr. Moorers's problems to the workplace that you
18 felt confident enough that you felt like you could stop
19 the discussion between the Safety Department and the
20 Medical Department, and this was a pretty clear-cut
21 case.

22 A. Yes.

23 Q. Okay. Switching gears here, it also sounds
24 like you were -- you played a role in the
25 fitness-for-duty determination with respect to

1 Mr. Moorer.

2 A. I think my role in that was really limited to
3 a brief review with Dr. Lina when she was planning to
4 disqualify Mr. Moorer from his position.

5 Q. Would you just tell me what that brief review
6 included?

7 A. I don't recall any specific details of the
8 conversation.

9 I do remember it because -- I mean,
10 rhabdomyolysis is a very unusual event. I-- I've
11 probably seen it twice in my almost 30 years of medical
12 practice, once in the emergency room and once here.
13 Beyond that, it's something you read about in textbooks.

14 So, you know, it's unusual. So you recall
15 things that are unusual.

16 Q. Right.

17 A. And I remember Paula chatting with me after
18 Mr. Moorer had the second event, and she laid kind of
19 the clinical scenario out, and she said, "I recommend we
20 not allow him to come back to work as a conductor
21 because it appears he has some susceptibility to this
22 problem," and so I concurred with her.

23 And that's really the extent of my
24 involvement in it.

25 Q. Did you or do you hold any opinions about the

1 cause of the, of the underlying susceptibility, if any?

2 A. No, I don't know that anyone really knows
3 what causes someone to -- someone to be susceptible to a
4 recurrent serious heat-related event. It can follow --
5 it usually follows heat stroke. If somebody has one
6 heat stroke, they often are more susceptible to having a
7 second one.

8 In this case, he didn't have heat stroke. He
9 had rhabdomyolysis. And I don't know that I've seen any
10 articles or data that suggest recurrences being an
11 issue.

12 But the fact that he had two in a fairly
13 short period of time certainly would raise concern about
14 it occurring again.

15 And I don't want to, you know, jeopardize our
16 employee's health unnecessarily.

17 Q. He did have acute renal failure both times,
18 did he not?

19 A. Yes.

20 Q. Did his condition, if we're looking at it on
21 a spectrum, did it -- if it didn't actually meet the
22 clinical definition of heat stroke, did it approach that
23 definition?

24 A. Well, when I looked through the file, I
25 didn't really see any evidence that he had hyperthermia.

1 And ordinarily when someone -- when someone is having
2 heat stroke, their body loses its ability to
3 self-regulate its temperature, and usually the
4 temperature rises and they get hyperthermic. And I
5 certainly had no evidence of that.

6 I saw no comments that he ceased sweating --

7 THE COURT REPORTER: "That he ceased
8 sweating"?

9 THE DEPONENT: "Ceased sweating."

10 -- nor that he lost consciousness or had any
11 other stigmata of heat stroke.

12 So he may have approached it, but he
13 certainly didn't get there.

14 BY MR. MOSS:

15 Q. Okay. Did -- do you have any opinions or did
16 you ever form any opinions about the cause of
17 Mr. Moorers's heat-related problems?

18 A. Well, I -- when -- during the first episode,
19 I was concerned because it wasn't all that hot when it
20 occurred. The temperature was in the high seventies,
21 and that, you know, to me is not, is not a high
22 temperature, by any means.

23 He was wearing rain gear. It was raining,
24 presumably. And so -- and it sounds as though it could
25 have been occlusive to his skin, and that may have

1 contributed to it.

2 But in terms of heat, I don't know that this
3 was strictly a heat-related problem.

4 A few weeks later the temperature was maybe
5 10 degrees higher, from what I understand, in the high
6 eighties, mid to high eighties. That to me is not an
7 extreme heat. That's certainly warm.

8 But I thought both episodes were somewhat
9 unusual because, you know, we see people getting
10 dehydrated when the temperature's in the nineties-plus
11 and they are working out in the hot sun for prolonged
12 periods of time and that kind of thing, and it certainly
13 wasn't the situation here, that I'm aware of.

14 Q. Okay. And I appreciate your inclusive
15 answer.

16 I'm going to ask you a more specific
17 question, and that is, I understand your analysis that
18 you've just set out for me.

19 But have you actually formed an opinion about
20 a cause-and-effect relationship between his heat
21 injuries and the work environment?

22 A. No, there's no discrete cause-and-effect
23 relationship that I formed an opinion about.

24 Q. Meaning you don't have an opinion or you have
25 an opinion that there is no cause-and-effect

1 THE DEPONENT: Can I get a drink of water?

2 MR. MOSS: Certainly. Let's go off the
3 record.

4 THE VIDEOGRAPHER: We're going off the
5 record. The time is 11:33 a.m.

6 (A recess was taken from 11:33 a.m. until
7 11:37 a.m.)

8 THE VIDEOGRAPHER: We're back on the record.
9 The time is 11:37 a.m.

10 BY MR. MOSS:

11 Q. So to summarize, Dr. Lina came to you in the
12 Moorer case regarding the fitness-for-duty
13 determination.

14 Taking what you knew about the file, plus
15 listening to her, it sounds like you concurred with her
16 with respect to the fact that he should not be qualified
17 to return to work in his former occupation.

18 A. That's correct.

19 Q. Was it your belief that if he continued to
20 work at that job, that he may have -- or that he likely
21 would have another heat event that could, in fact, be
22 life-threatening?

23 MR. TECKLENBURG: Object to the form.

24 THE DEPONENT: Yes.

25 BY MR. MOSS:

1 Q. And that's what your real concern was.

2 A. Yes.

3 Q. It had happened twice. The conditions had
4 been similar enough that if he was put in the same
5 situation, there was at least the real potential for
6 another event that could be worse than the first two.

7 A. Correct.

8 Q. But it wasn't really your role or Dr. Lina's
9 role to impose any kind of work restrictions per se; is
10 that right?

11 A. It would have been our role had they been
12 felt to be appropriate. I mean, we do impose work
13 restrictions. We usually try and work with the personal
14 doctor and find out where they are coming from in terms
15 of fitness for duty and see if we can work within
16 whatever limitations the doctor imposes. Sometimes the
17 doctor will put no restrictions on somebody. And I'm
18 not necessarily speaking about Mr. Moorer here. But we
19 may not agree --

20 Q. Right.

21 A. -- and think that they should be restricted
22 in some way, and we will do that, too.

23 Q. So it goes both ways. Your office can impose
24 greater or lesser restrictions than the personal
25 physician imposes.

1 A. We ordinarily don't impose lesser
2 restrictions because we certainly don't want to do
3 anyone any harm if they are aware of something that
4 we're not aware of.

5 But on the other hand, we don't want to do
6 them harm either if the personal doctor is just giving
7 them a carte blanche to come back to work.

8 Q. But in this case, you did not feel like it
9 was a situation where restrictions or accommodations
10 were appropriate.

11 A. Well, when it comes to conductor work,
12 restricting somebody is very, very difficult, because if
13 you start saying things like they can't work when the
14 temperature's greater than 85 degrees or whatever you
15 might set it, I mean, we just can't have people marking
16 off just because it's hot out.

17 Q. Right.

18 A. And then how does that level get set? It's
19 going to be somewhat arbitrary. And so it gets very
20 difficult to administer.

21 I mean, he might hold seniority to work a
22 night shift or something, you know, that might get him
23 in a cooler environment or something like that. But by
24 and large, the restrictions don't -- are very difficult
25 to deal with in T and E service, train and engine

1 service.

2 Q. Because the nature of the work is it's a
3 24-hour-a-day, 7-day-a-work, all-four-seasons kind of
4 job.

5 A. Correct, call-out type work.

6 Q. And the employees don't have the luxury of
7 necessarily picking and choosing the equipment they work
8 on, the job they work or the conditions under which they
9 work.

10 A. Correct.

11 Q. It's basically you have to be fully qualified
12 or you're not qualified.

13 A. Yes.

14 Q. What is it about this particular heat-related
15 illness that you thought could, in fact, be
16 life-threatening?

17 A. Well, the fact that he went into acute renal
18 failure was probably the biggest concern.

19 People that develop rhabdomyolysis will often
20 get renal insufficiency because of it, and it could be
21 permanent and result in the person requiring dialysis or
22 a kidney transplant.

23 The other thing is if he got dehydrated
24 sufficiently, he could go into shock and, and die from
25 that.

1 Q. What is acute renal failure?

2 A. Acute renal failure is when the kidneys fail
3 to filter out the impurities in the blood and they start
4 building up and, to a point of becoming toxic to the
5 body, and, and at some point the body systems can't
6 tolerate excess sodium and potassium because that
7 excretes -- you excrete electrolytes and waste in your
8 urine, and the wastes are toxic.

9 Q. With respect to the topic we talked about a
10 minute ago which is the cause-and-effect relationship
11 for purposes of this litigation, are you content to
12 defer to the physicians who have actually treated
13 Mr. Moorer and laid hands on him and taken a history
14 from him and have been deposed about those issues?

15 A. As far as his?

16 Q. Causation, cause and effect between the work
17 environment and his current problems, for purposes of
18 this litigation.

19 A. Well, I certainly don't -- am not going to
20 inject myself in the middle of it unless I'm asked to do
21 so.

22 Q. I understand.

23 A. Somebody within the company may be asked to
24 render that opinion.

25 Q. Okay.

1 briefings.

2 When I'm out in the field on safety sessions
3 and it's in the summer or spring, I remind people about
4 dressing appropriately and drinking plenty of fluids.

5 So it's not without attention within the
6 company, for certain.

7 Q. And do you feel like the railroad in general
8 and your office in particular tries to give the
9 supervisors enough information so that they can properly
10 identify a true emergency and take appropriate steps?

11 A. Yes.

12 Q. Why is that important?

13 A. Well, we don't want anybody to die from, die
14 from getting hurt.

15 You know, some people think that injuries are
16 inevitable, and that's not necessarily true.

17 One of our tenets of safety is all injuries
18 can be prevented. And we -- that's certainly what we
19 subscribe to. And when we do that, we look at any ways
20 to prevent things from happening.

21 Q. And then would you agree with me that once
22 the heat event occurs, it is important for there to be
23 appropriate steps taken by everyone involved to address
24 the heat concern in the workplace and try to prevent
25 further injury or damage?

1 A. Yes. It's a very important learning point.
2 It's a time to bring it up and discuss it when we know
3 that it's happened.

4 Q. When someone's having a heat-related event,
5 is time of the essence in the sense that the appropriate
6 steps would need to be taken to either get the person
7 cooled down or get them out of the hot environment or to
8 get them medical treatment?

9 A. Yes, potentially all of the above, yes.

10 Q. Why? Why is that?

11 A. So that you don't get some further
12 complication, you know, some irreversible problem
13 occurs.

14 Q. Are these heat events, heat injuries, how do
15 they relate to time in the sense that once somebody has
16 an event and they are dehydrated and they are not
17 feeling right, does the longer they feel that way
18 potentially expose them to additional injury?

19 A. Well, if they've continued and not replaced
20 fluid or done anything to correct the problem, yes,
21 because someone would just continue to get more and more
22 dehydrated.

23 The idea is to interrupt it wherever you can.
24 If, if you drink ahead of time, presumably you can
25 prevent getting dehydrated at all.

1 Q. Sure.

2 A. But if you start getting dehydrated and start
3 having cramps, you don't want to be working. You want
4 to get out of the sun and the heat, and you want to be
5 drinking fluids.

6 I've experienced it personally, and it's not
7 a -- and it's not a very pleasant experience, so, you
8 know, I kind of know what it's all about, so...

9 Q. Somewhat of a helplessness, a feeling of
10 helplessness.

11 A. Absolutely. And you're having some muscle
12 spasms throughout your body, and there's not much you
13 can do about it, you know, except get very still and
14 quiet and hope that they'll relax.

15 Q. Okay.

16 A. So, yes, you want to prevent progression from
17 one stage to the next, and they certainly can progress.

18 Q. Is it a situation where the more dehydrated
19 and the hotter it is, the quickly (sic) it will progress
20 from one stage to the next?

21 A. I, I don't know that for a fact.

22 Q. Okay.

23 A. Intuitively I would think yes, but I don't
24 have the medical fact to support that.

25 Q. How important is it for somebody who's having

1 a heat event to receive prompt medical treatment as
2 opposed to, for example, trying to cool themselves and
3 washing water on their face and sitting in the shade?

4 MR. TECKLENBURG: Object to the form.

5 You can answer.

6 THE DEPONENT: Well, it would become a
7 judgment call. You know, not everybody that's having a
8 heat event needs to get professional help.

9 BY MR. MOSS:

10 Q. Right.

11 A. At what point does somebody need to go to a
12 medical facility? We would encourage the supervisor if
13 there's any question, they need to get there.

14 Q. When in doubt, get them to a facility.

15 A. Exactly.

16 Q. Or if there's emergency services available,
17 bring the medical facility to them.

18 A. Either way, yes. If, if it's clearly heat
19 stroke, yes, call an ambulance. Don't fool around with
20 it.

21 Q. When -- that's what some of your bulletins
22 even say if it's a heat stroke.

23 But would you also agree that even short of a
24 heat stroke, on the continuum, there are heat events and
25 heat injuries that do warrant medical attention under

1 the when-in-doubt-be-safe rule?

2 A. Sure. I mean, heat exhaustion could
3 certainly fall in that category, especially if you were
4 not able to get enough fluid down to make a difference.

5 Q. And heat exhaustion results from dehydration
6 and exposure to high temperatures and or humidity; is
7 that right?

8 A. Yes.

9 Q. If we go to topic 10, it looks like we may
10 end up repeating some of what we just said.

11 That topic says, "We are going to talk about
12 policies, practices and procedures in effect at
13 Norfolk Southern at the time of both incidents, the
14 purpose of which was to minimize heat exposure or
15 prevent further injury to an employee experiencing
16 heat-related symptoms or complaining of heat-related
17 physical problems."

18 And it sounds like we just had that
19 conversation.

20 A. Yes.

21 Q. And that is, when in doubt, be safe, get the
22 employee to a medical facility or get a medical facility
23 to the employee.

24 A. Correct. Refer to your first aid guide if
25 you need any additional information or have any

1. questions or call, call Medical or call 911.

2. Q. And that's because time is of the essence or
3. could be of the essence, depending on the severity of
4. the problem.

5. A. Right.

6. Q. There's no benefit in waiting, that I can
7. think of; is that right?

8. A. No benefit in waiting.

9. I think, regardless, the person's probably
10. not going to continue working anyway. He -- he's
11. probably going to be removed and sent home from service,
12. even if he's just simply having heat cramps.

13. Q. And it doesn't matter if it's inconvenient to
14. stop the train or there may be some interruption of
15. service. If somebody's having a serious heat event,
16. that should -- that should not factor in.

17. A. No, no.

18. Q. Don't bring the equipment back. Send EMS out
19. there. Get the guy off the train, if that's the
20. situation, and get them help.

21. A. Right.

22. Q. Okay. And as far as that analysis goes,
23. that's not even close. Those are bright-line simple
24. rules to be followed, right?

25. A. Yes.

1 Q. And every supervisor at Norfolk Southern has
2 had the training and has the wherewithal to make those
3 decisions and make them well.

4 A. Actually, every employee should have had that
5 training.

6 Q. Right.

7 This is blocking and tackling. This is
8 nothing sophisticated. If you're having a problem, tell
9 somebody, and somebody in a supervisor role needs to be
10 sure that they assess the situation, and when in doubt,
11 get the person help.

12 A. Yes.

13 Q. Okay. Topic 16, and I think we can get you
14 out of here, my friend. We may have touched on this a
15 little bit. We'll just put it all on the record in one
16 place.

17 It's my understanding, Dr. Prible, that
18 Norfolk Southern actually has medical standards that
19 you-all use to evaluate fitness for duty.

20 A. We have a Fee For Service Provider Manual
21 that we get into the hands of the company facilities and
22 examiners that do work for us that offer some guidance
23 as to how to handle physical examinations, drug-testing
24 and those types of things, yes.

25 Q. And those are the standards that, that the

1 observing, that they ultimately make a judgment call
2 whether to involve emergency personnel or not?

3 A. Yes.

4 Q. All right. And, and you expect that to occur
5 in the field.

6 A. Well, they have to.

7 Q. Sure.

8 Now, finally, I think you indicated that
9 Norfolk Southern has approximately 30,000 employees; is
10 that correct?

11 A. Yes.

12 Q. I think you described them as a community.

13 A. Yes.

14 Q. What is your experience on the number of
15 heat-related illnesses? I think you, you put it in a
16 small term earlier.

17 But of those 30,000 people, how many people
18 are getting heat-related illnesses?

19 A. Well, I look at the accident reports when
20 they come in, and if, if the folks are reporting things
21 the way they are supposed to be reporting them on our --
22 under our system, I presumably am seeing them all, and I
23 would say I see no more than anywhere from three or four
24 a year.

25 Q. Okay. And based upon the number of things

1 experienced with your 30,000 employees, is it rare?

2 A. It's rare, yes.

3 Q. Okay. And with respect to Mr. Moorer who's
4 had events of, I believe you described it as
5 rhabdomyolysis, have you ever seen an employee that had
6 two events of rhabdomyolysis where they were
7 hospitalized?

8 A. No. I've never seen anyone as an employee
9 with rhabdomyolysis --

10 Q. So this is --

11 A. -- at all.

12 Q. -- this is the first one ever?

13 A. Right, right, or at least to my knowledge
14 anyway.

15 Q. All right. So based upon the fact that this
16 is the first one you've ever encountered in your 15
17 years with Norfolk Southern, is that something you would
18 expect your -- the physicians that do physicals in the
19 field to, to be able to look out for?

20 A. Well, I'm not sure I'd know what to tell them
21 to look out for.

22 Q. In fact, it -- there is really no test or, or
23 readily accessible test where you can just say yes or
24 no, you have rhabdomyolysis; is that correct?

25 A. Well, if, if you've got somebody who's

1 THE COURT: All right, ladies and gentlemen of
2 the jury, at this time we will -- I thought he had
3 another short witness -- we will take our break for
4 the evening. We will start back in the morning at
5 9:30, so if you can report to the jury room at
6 9:30.

7 And I remind you again that you are not to do
8 any research or any social networking. You can't
9 discuss the case with anyone, your family members,
10 your friends, not even your fellow jurors.

11 And it would also be improper for you at this
12 point to form an opinion in your mind until you
13 have all of the evidence.

14 You have a great evening, and we'll see you
15 tomorrow morning at 9:30.

16 Thank you.

17 (WHEREUPON, the jury is excused for the
18 day at 5:45 p.m.)

19 THE COURT: All right. There apparently is
20 some issue of the testimony of Ms. Moorer? Is that
21 an issue?

22 MR. TECKLENBURG: Well, they have opened the
23 door. And you said they could -- we of course
24 moved in limine on the handicapped child. You
25 basically denied the motion and said it is

1 relevant, but, you know, I think part of the
2 understanding in your ruling was this wasn't going
3 to be a theme.

4 Dr. McClanahan gets up and starts talking
5 about -- and mentions the handicapped child again.

6 Again, I'm quite respectful of Ms. Moorner's
7 situation, but, you know, at some point the
8 re-emphasis, the bringing it back up of witnesses,
9 all we would ask is that I think the jury has got
10 it now. It is in evidence. Let's not bring it up
11 again with a third witness. That is what we would
12 simply ask.

13 THE COURT: Well, he brought it up in terms of
14 the insurance.

15 MR. TECKLENBURG: What's that?

16 THE COURT: He brought it up in terms of the
17 insurance. He is a vocational counselor as to why
18 he would need insurance. I mean, I don't
19 understand why that wouldn't be relevant.

20 MR. TECKLENBURG: Your Honor, it is
21 prejudicial. It may be relevant, but it is
22 prejudicial. And as you know, under I believe Rule
23 403, if it is unduly prejudicial it overrides the
24 relevance. And there gets to a point when it keeps
25 getting emphasized that it is overtaking the trial.

1 And honestly I think we're at that point. I would
2 respectfully request that that not be elicited from
3 any further witness or that, you know, unless we
4 ask for it -- if we ask for it, that is our own
5 business, okay? But, I would respectfully ask that
6 it not be elicited from any other witness and that
7 any other witness with that personal information be
8 instructed not to talk about it in direct
9 examination.

10 THE COURT: Well, I think under Rule 403, the
11 rule is does the prejudicial effect outweigh the
12 probative value. And he is a vocational counselor
13 talking about this man's job and his income. And I
14 think in that situation it does. And as to
15 Ms. Moorer, I'm not sure what she is going to --
16 oh, it is substantially outweighed by the
17 probative -- I mean, unfair prejudice. I'm not
18 sure how him having a handicapped child is unfair
19 prejudice to the Defendant.

20 MR. TECKLENBURG: Your Honor, I'm not asking
21 for a mistrial. I didn't make a contemporaneous
22 objection with Mr. McClanahan. We argued this
23 before. I just don't want it to become a theme.
24 That's all. And why Ms. Moorer now needs to talk
25 about it I have no idea. It is already in the

1 record. And, if I'm not mistaken, this is actually
2 not her blood daughter, it is a stepdaughter --

3 MR. MOSS: Stepson.

4 MR. TECKLENBURG: Stepson. Excuse me,
5 stepson.

6 THE COURT: Does he live with them? He
7 doesn't live with them?

8 MR. TECKLENBURG: I don't know. I really
9 don't know the facts. But I think it is his
10 stepson. So I think we are just -- we are crossing
11 the bridge, we're on top of it, and we are getting
12 to the point if we keep rolling it is just unduly
13 prejudicial. That is all I ask, Your Honor.

14 THE COURT: Yes, sir, anything?

15 MR. MOSS: No, Your Honor.

16 THE COURT: Do you intend on going into that
17 with Ms. Moorner?

18 MR. MOSS: I don't think the transcript
19 reflects we went there the first time. I don't
20 know why we would this time.

21 THE COURT: Does it?

22 MR. TECKLENBURG: I don't know. I heard
23 direct examination from Mr. Chavis that had nothing
24 to do with what happened at the last trial. It was
25 about half new material.

1 MR. MOSS: This is not her child. And what we
2 tried to do is discretely and politely in the
3 context of the case from the expert Mr. Moorer put
4 in the case. We don't really have any intention of
5 asking Ms. Moorer to comment on that other than to
6 the extent that -- if it -- I don't want to limit
7 Ms. Moorer because this is such an important issue
8 to this family that, I'm sorry it hurts their
9 feelings, but it is just life and it is what he has
10 been working against and through for a long time.
11 And I don't think that they should be able to tell
12 her what she can and can't say about a critically
13 important issue in her life, provided we do it
14 discretely and within the bounds that we have done
15 Mr. Moorer and we have done Dr. McClanahan,
16 appropriate, responsive and relevant. Although I
17 will tell you, at this moment I have no intention
18 of even asking her a question. I don't want to be
19 limited either.

20 MR. JENKINS: Your Honor, may I address the
21 question that was just asked, which was about did
22 it come up in the last trial.

23 And on Page 597 of the transcript there was a
24 question: After the railroad's insurance expired,
25 did y'all have any insurance at all, health

1 insurance, until you took the job at Kinder Morgan?

2 Answer? Correct.

3 Question -- this is Mr. Moss doing the
4 examining, not me: How about this. Today, this
5 moment in time, do you have any health insurance,
6 ma'am?

7 Answer: No.

8 Okay, fair enough. But there is another
9 question: How about any of those three children?

10 Answer: No.

11 That is the gratuitous part. It didn't go as
12 far as the handicap, but it is just not necessary.

13 THE COURT: You can't limit -- well, you might
14 not think it is necessary, but this is a case where
15 they are going to be asking -- this is for wages --
16 and, I mean, it is not -- based on -- I have looked
17 at the rule. And, you know, we're talking about
18 his jobs, how much income he has made, he doesn't
19 have insurance at the other job. It is all
20 relative. And I don't believe that the prejudicial
21 effect outweighs the probative value. And it has
22 to substantially, and it doesn't. The fact that --
23 and it is already in evidence that the child is
24 handicapped. And based on what he just read into
25 the record, it says nothing about -- she just says,

1 we don't have insurance, the kids don't have
2 insurance.

3 How does that -- I am just not -- I don't
4 understand how that prejudices you all to say that,
5 we don't have insurance everyone.

6 Even if she said, just me, I'm sure -- just
7 the two of us -- I'm sure they can -- I mean, it is
8 already in the record that the kids don't have
9 insurance.

10 MR. TECKLENBURG: Insurance for dependents,
11 I'm not sure that is even recoverable. I'm still
12 trying to get my arms around that. I mean, he
13 might be entitled to insurance, but insurance for
14 dependents, for the dependents is probably not even
15 a recoverable damage.

16 We argued this in limine. You ruled against
17 us.

18 THE COURT: Yes, sir. And I will stick with
19 the ruling. And she -- I mean, of course I don't
20 think they have done anything -- he mentioned it
21 and the vocational counselor mentioned it in his
22 analysis as a vocational counselor. That is
23 something that he considered.

24 And in the last trial all she said was that
25 none of us had insurance. I mean, Mr. Moss says he

1 doesn't have any intention of going into the
2 handicapped child. So I think we need to move on
3 from this issue.

4 MR. TECKLENBURG: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 And then you all, you will call her first in
7 the morning?

8 MR. MOSS: Probably not. I am probably going
9 to get into other more boring medical proof and
10 that kind of stuff. But I have an economist, who
11 will be live, and I've got a couple of medical
12 depositions to read. And I think I've got to make
13 some decisions about Dr. Lina that we probably need
14 to work on tonight. And then I have to review my
15 proof chart, and that may be it for us.

16 THE COURT: All right. And Mr. Tecklenburg
17 said you all probably have some objections to the
18 depositions that need to be placed on the record in
19 the morning. Do you want start at 9:00?

20 MR. TECKLENBURG: Yes. I think we have
21 already given those to Mr. Moss. They are
22 highlighted in the book. And he has given us ours.
23 And I have already gone through six of them and
24 agreed to four of them. So we're hopefully going
25 to make a little progress.

1 MR. MOSS: I think -- the Manning issues?

2 THE COURT: Yes.

3 MR. MOSS: I think it is their case, not in my
4 case.

5 THE COURT: Okay. So withdrawn.

6 MR. TECKLENBURG: Your Honor, a piece of
7 housekeeping, the court reporter reminded me that
8 in my cross-examination of Mr. Moorer I did not
9 move in Defendant's 59, which is a letter from
10 Ms. Lafon, or Defendant's 115, which is a St.
11 George salary increase form. I'd like to do so at
12 this time.

13 THE COURT: Any objection?

14 MR. MOSS: No objection.

15 THE COURT: All right, thank you.

16 (WHEREUPON, Defendant's Exhibit No. 59
17 was marked for identification and
18 received into evidence.)

19 (WHEREUPON, Defendant's Exhibit No. 115
20 was marked for identification and
21 received into evidence.)

22 MR. TECKLENBURG: Oh, I'm sorry, Your Honor.
23 We do have two small objections of Dr. Casa's
24 video.

25 THE COURT: Okay.

1 MR. TECKLENBURG: Which regretfully didn't go
2 my way last time.

3 MR. MOSS: Unfortunately they are not about
4 any kind of speculation either.

5 MR. TECKLENBURG: Yes. I have got to preserve
6 my record.

7 Your Honor, do you need a copy of Dr. Casa?

8 MR. MOSS: I've got it right here, Paul.

9 MR. TECKLENBURG: Okay.

10 (WHEREUPON, Court's Exhibit No. 2 was
11 marked for identification only.)

12 THE COURT: Is that Dr. Casa's? We have it up
13 here. Oh, we have two depositions, June and
14 February.

15 MR. TECKLENBURG: There is. That should be
16 the latter one.

17 THE COURT: Which one are we looking at?

18 MR. MOSS: The latter one.

19 MR. TECKLENBURG: The latter one, June 2010.

20 THE COURT: Okay. Okay, I'm looking at June.

21 MR. TECKLENBURG: Yes, Your Honor. If you can
22 go to Page 31, Line 14.

23 Excuse me, Your Honor, I'm sorry. Your Honor,
24 you might recall it is a long-winded question and
25 answer. Page 31, Line 14 goes to -- apparently I

1 mismarked.

2 MR. MOSS: Thirty-two, 4, Paul.

3 MR. TECKLENBURG: Thirty-two, 4. But honestly
4 I think that the answer keeps going.

5 MR. MOSS: No. Thirty-two -- the next
6 designation I have is on 33, 8.

7 MR. TECKLENBURG: Right. Okay, got it. We're
8 going to share, Your Honor.

9 MR. MOSS: That is one we sat and marked
10 together.

11 MR. TECKLENBURG: Thirty-one, 14 should be --
12 there you go -- it is talking about the
13 acclimatization.

14 You will recall, Your Honor, that previously
15 we argued -- and it is dealing with the -- bringing
16 the person back over a five to ten day period, give
17 him light duty work, ease him in, make him work
18 Monday, Wednesday, Friday half days, that that is
19 just not available on the railroad.

20 And the testimony is very clear in the record
21 already from the Plaintiff's witnesses that that is
22 the case.

23 So in any event this particular question
24 elicits, you know, him easing in it. More
25 importantly, it talks about putting him in a

1 climate controlled facility.

2 And there is no evidence that Norfolk Southern
3 has, you know, a training facility or a gym or
4 somewhere to acclimatize this person back to work.

5 So basically we object to it, primarily on the
6 basis that it violates our Collective Bargaining
7 Agreement. We can't do that to a conductor. And,
8 secondly, we have no duty to.

9 Our medical department are not treatment
10 providers. We have no obligation to provide
11 acclimatized gyms or places for him to work out for
12 two weeks.

13 So under the circumstances this is just
14 inappropriate from the testimony.

15 THE COURT: Yes, sir, Mr. Moss?

16 MR. MOSS: Yes, Your Honor. I think last time
17 you overruled his objection because there is no
18 allegation in this question or in this case that
19 they should put him back to light duty work at the
20 railroad. The conditioning, the reconditioning of
21 Mr. Moorer could have occurred in a lot of
22 different contexts. He could have gone to a work
23 hardening clinic or a physical therapy center, all
24 in conjunction with the medical department.

25 And I would tell the Court that that happens

1 all the time. The medical department wants
2 somebody to go through work hardening or
3 occupational therapy. They will write a letter or
4 call a person and have him do it. And what he is
5 saying here is in a climate controlled environment
6 he is talking about some kind of therapy measures
7 or some kind of professional controlled environment
8 outside the railroad. This is not a return-to-work
9 in violation of the Collective Bargaining
10 Agreement. This is simply a simple obvious means
11 to acclimatize somebody who has had a heat event.

12 THE COURT: If I remember correctly, he is
13 just talking about what he does. And this is the
14 NFL guy that treats the people.

15 All right. I will overrule the objection and
16 allow it in.

17 I believe Mr. Tecklenburg comes back and
18 asks -- you come back and ask him about the
19 policies. I think you do come back and ask that.
20 I'm sure you do.

21 MR. TECKLENBURG: Good memory. I don't
22 remember.

23 THE COURT: And I think that takes care of
24 your concern. So I will overrule that.

25 MR. TECKLENBURG: Your Honor, one more. Page

1 43, Line 11.

2 This question goes again to Dr. Casa's
3 qualifications. As you recall, he has testified
4 that he has never worked and promulgated any type
5 of recommendations for industries, it is my
6 recollection. He certainly has no familiarity with
7 the railroad industry.

8 And here he is trying to create some standard
9 of care or duty that an industry has as compared to
10 where he typically works, which is dealing with
11 athletics and dealing with the military.

12 I think we all know that is his true bread and
13 butter and that is what he has written guidelines
14 on. He has never written a guideline that has been
15 accepted by an industry. He is not aware of any
16 industry that has accepted his recommendation.

17 And, again, for him to testify as to what a
18 supervisor at the railroad should do is just
19 inappropriate.

20 We cited the Watson case for that proposition.

21 THE COURT: Yes, sir. What did I do the last
22 time?

23 MR. MOSS: You overruled the objection.

24 THE COURT: All right.

25 MR. MOSS: What he is doing is he is saying --

1 his knowledge is so pervasive and complete in
2 the -- that he does most of his work for athletes
3 and professional sports teams and military, the
4 knowledge he has is industry-wide. And all he is
5 simply saying is -- you will recall that the
6 Defendant's proof is that Mr. Deshazor on the 30th
7 met with Mr. Moorer and made a big deal about him
8 checking on him and giving him Gatorade.

9 All Dr. Casa is saying here is that
10 Mr. Deshazor was not the right person to -- if you
11 are going to have a person on the ground evaluate
12 Mr. Moorer and check on him, you have got to have
13 somebody with some skill and expertise.

14 And that is in the case. I mean, it is a big
15 part of the case. They have already made a point
16 and we are going to make the point again that
17 Mr. Deshazor did everything he could to get
18 Squinchers and Gatorade and a pat on the back on
19 the 30th. And all Dr. Casa is saying is, that is
20 not enough.

21 MR. TECKLENBURG: Well, I mean the Watson case
22 says that you have to apply standards reliably.
23 And there is nothing in the record to show that he
24 armed himself with the information he needs to give
25 his opinion. It is not there.

1 THE COURT: I will ask Mr. Moss, how is this
2 different from Watson? Because if I -- I'm
3 familiar with Watson. I'm trying to remember what
4 the job -- what the expert testified. But the
5 facts are somewhat similar where the expert is
6 testifying to something and the Court says that he
7 doesn't have any -- it is Watson v. Ford -- he
8 doesn't have any expertise in this area.

9 They pretty much narrow -- in Watson he was an
10 electrical engineer. He was testifying regarding
11 the cruise control system diagnosis.

12 And the Court said that, yes, he was an expert
13 as an electrical engineer, but that he had no
14 experience whatsoever as to cruise control systems.
15 And therefore the Court reversed stating that he
16 was not qualified to talk about the cruise control
17 system.

18 And I'm thinking what Mr. Tecklenburg is
19 saying is that your guy may be able to talk about
20 heat, but he doesn't know the specifics of a
21 railroad, he has not done any work with the
22 railroad, which would be similar to cruise control.

23 MR. MOSS: Right. And my only response to
24 that, Your Honor, would be that his expertise is in
25 returning soldiers and athletes and workers to work

1 following an injury. It is not like he is an
2 electrical engineer talking about cruise control
3 where they have a mismatch. His area of expertise
4 is how do you handle a man or somebody who has had
5 a prior heat event to get them back to work. And
6 the concept of acclimatization applies equally
7 irrespective of the industry. It is not like you
8 have to have some specific railroad knowledge to
9 testify about how to return a railroad person to
10 work versus a soldier. As long as you have an
11 opinion of what they do in the environment, I think
12 what he is trying to say is, from Watson, the
13 knowledge that he has is on returning folks to work
14 and those principles because acclimatization
15 strategies apply equally whether it is in the
16 railroad industry or in the military or on the
17 football team.

18 MR. TECKLENBURG: Forty-three, Line 11.

19 THE COURT: My concern is not Line 15 -- well,
20 part of not 15. He's trying to find the rule. I
21 do have a concern about him saying what he thinks
22 Norfolk Southern benefits from and how he should go
23 about doing it if he doesn't have --

24 MR. MOSS: I agree with that, Your Honor.

25 THE COURT: If he doesn't have any -- I mean,

1 I think he can say, well, I don't think it was
2 adequate, but him getting into detail as to what
3 the railroad ought to do and how they ought to go
4 about doing it, and if he doesn't know anything
5 about the union agreement and how they should do
6 it. So I will allow 15 through just -- I don't
7 think it was adequate at all. He didn't think that
8 Dr. Deshazor has any background in terms of heart
9 illness or medical, but I think for him to get into
10 them having to have a consultation session and all
11 that should be excluded.

12 MR. MOSS: You want to stop after the word
13 "whatsoever"?

14 THE COURT: Uh-huh, yes.

15 MR. TECKLENBURG: What line is that, Your
16 Honor?

17 MR. MOSS: Seventeen.

18 THE COURT: Fifteen through 17, stopping at
19 what, 12? I think when he starts saying what he
20 thinks they should do and he doesn't know, that
21 that might be a problem if he doesn't know what --
22 anything about the railroad, the operation, I
23 should say, of the railroad.

24 MR. TECKLENBURG: Your Honor, if you can also
25 look at Page 33, Line 8.

1 THE COURT: What are you asking?

2 MR. TECKLENBURG: The entire -- starting at
3 33, 08 and runs to 34, 02. Basically that question
4 and answer. On the same basis of Watson.

5 He is giving an opinion regarding what Norfolk
6 Southern as an industry should do. And, again, for
7 the same reasons of your ruling on the last
8 statement, 33, 08 to 34, 02 should be excluded as
9 well.

10 THE COURT: Any response?

11 MR. MOSS: That is the specific analysis of
12 the railroad --

13 THE COURT REPORTER: I'm sorry, I didn't hear
14 you.

15 MR. MOSS: I'm sorry. That is the analysis of
16 this case, specific to this case. And that is a
17 question where he is coming up with things they
18 should have done and hypotheticals. All he says
19 here is in this case this is what they did and this
20 is why on direct. That is what he tried to do.
21 That is what his area of expertise is,
22 return-to-work strategies in a variety of different
23 industries from the military to the private sector
24 to the sports arena was the strategy implemented --
25 was there a strategy, and was it implemented

1 properly. He looked at that in this case, and he
2 said in this question and answer, no.

3 THE COURT: According to his expertise?

4 MR. MOSS: Right.

5 THE COURT: I'll allow that to remain in. Is
6 that all?

7 MR. TECKLENBURG: One second, Your Honor. I'm
8 sorry.

9 (Pause.)

10 MR. TECKLENBURG: Your Honor, Page 44, Line 8,
11 that question and answer.

12 THE COURT: What is the problem?

13 MR. TECKLENBURG: It is the same thing, Your
14 Honor. He is -- again, he has no experience in
15 dealing with any industrial setting, and
16 specifically dealing with railroads. And he is now
17 saying that Norfolk Southern needs an action plan,
18 needs to be able to have all these things in
19 advance in place basically to have something like
20 an athletic team or the military may have. And,
21 again, I think under Watson he is speaking out of
22 turn.

23 MR. MOSS: Your Honor, my response is the same
24 as I have said the other two times.

25 THE COURT: All right, I am going to overrule

1 the objection.

2 MR. TECKLENBURG: One more second, Your Honor.
3 I have got to sort of change my approach to the
4 depo, if you will give me one minute.

5 (Pause.)

6 MR. TECKLENBURG: Your Honor, Page 75, Line 6.

7 MR. MOSS: I have never heard of the Court
8 opening the door, but apparently you have.

9 THE COURT: Yes, sir, what page?

10 MR. TECKLENBURG: Page 75, Line 6, Your Honor.

11 THE COURT: I mean, he is still qualified as
12 an expert in heat exertion. So I don't think
13 Watson narrows it to that degree. I am going to
14 overrule that objection.

15 MR. TECKLENBURG: For the record, the
16 objection was Page 75, 06 to 75, Line 24.

17 THE COURT: And I think my ruling the last
18 time was that some of the issues that you brought
19 out goes to his lack of experience with the
20 railroad will go towards the weight of the
21 testimony. It is somewhat different in Watson.
22 The cruise control -- the electrical engineer had
23 no experience or expertise with cruise control;
24 whereas, here Dr. Casa does have experience and
25 expertise with heat illnesses and acclimatization

1 in a particular setting.

2 So the other part was kept out because he was
3 talking about policies that had to be put in place
4 for the railroad and not so much specifically about
5 Mr. Moorer and his situation and what in his expert
6 opinion he would have done differently.

7 All right.

8 MR. TECKLENBURG: Thank you. Can I check with
9 the video editor, Your Honor, so we can get your
10 rulings?

11 THE COURT: Yes.

12 (Pause.)

13 THE COURT: Are you ready?

14 MR. TECKLENBURG: He's printing it off and we
15 will take a look at it. But I think we're good. I
16 have looked at the -- what is onscreen. It appears
17 to be consistent with your rulings.

18 THE COURT: So are you ready to bring the
19 jurors in, or do you need a second?

20 He is your next witness?

21 MR. TECKLENBURG: He's ready, Your Honor.

22 THE COURT: All right, let's bring them in.

23 (WHEREUPON, the jury came into open
24 court at 10:14 a.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: I hope you had a wonderful
2 evening. At this time we will -- and I apologize
3 for you having to sit back there. We were trying
4 to work out the video that we're about to see. And
5 I believe we have it all ready for you to see. So
6 I will ask that Mr. Moss call his next witness.

7 MR. MOSS: Your Honor, the Plaintiff calls
8 Dr. Douglas Casa.

9 THE COURT: This is another video deposition
10 similar to what you saw last night, or yesterday
11 afternoon.

12 (WHEREUPON, the video deposition of Dr.
13 Douglas Casa was played in open court.)

14 THE COURT: Let's take about a ten minute
15 break.

16 (WHEREUPON, the jury retires to the jury
17 room at 11:02 a.m.)

18 THE COURT: All right, we'll take about a ten
19 minute break.

20 MR. JENKINS: Thank you, Your Honor.

21 (WHEREUPON, the jury came into open
22 court at 11:30 a.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: We'll continue with this video.
25 They tell me they have about 45 more minutes.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TRUMAINE V. MOORER,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-05460

**STIPULATION OF VIDEO
DEPOSITION DESIGNATIONS OF
DOUGLAS CASA TAKEN 6/21/10,
PLAYED AT TRIAL (467:12-13)**

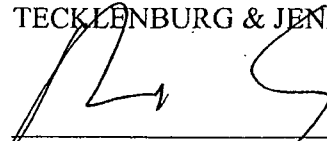
The undersigned parties stipulate the following excerpts of the deposition of Douglas

Casa taken June 21, 2010, were played at trial:

05:09 - 05:10
05:11 - 13:12
13:19 - 19:04
19:14 - 25:05
25:22 - 31:13
31:14 - 32:04
33:08 - 34:02
34:03 - 34:09
34:18 - 35:09
35:14 - 40:03
40:20 - 43:10
43:11 - 43:17
44:02 - 46:15
47:03 - 57:21
58:03 - 62:04
62:07 - 70:24
71:02 - 71:10
72:11 - 73:05
73:09 - 76:10
76:14 - 77:13
78:09 - 78:10
78:13 - 78:25
79:03 - 83:09
83:11 - 83:15

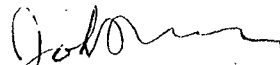
[SIGNATURES ON NEXT PAGE]

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1
2
3 STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

4 :
5 COUNTY OF ORANGEBURG : CASE NO. 2008-CP-24

6 :
7 TRUMAINE V. MOORER, :
8 :

9 Plaintiff, :
10 :

11 v. :
12 :

13 NORFOLK SOUTHERN RAILWAY :
14 COMPANY, :

15 :
16 Defendant. :
17 _____ :
18
19
20
21

22 DEPOSITION OF: DOUGLAS CASA

23 DATE: JUNE 21, 2010

24 HELD AT: BRANDON SMITH REPORTING & VIDEO
25 44 CAPITOL AVENUE
26 HARTFORD, CT
27
28
29

30 BRANDON SMITH REPORTING & VIDEO, LLC

31 44 Capitol Avenue Six Landmark Square
32 Hartford, CT 06106 4th Floor
33 (860) 549-1850 Stamford, CT 06901
34 (800) 852-4589 (800) 852-4589
35

36 Reporter: Tiffany V. Pratt, LSR`#00128
37

1 DOUGLAS CASA, called as a
2 witness, having been first duly sworn by
3 a Notary Public in and for the State of Connecticut,
4 was examined and testified as follows:

6 D I R E C T E X A M I N A T I O N

8 BY MR. MOSS:

9 Q Good morning.

10 A Good morning.

11 Q Will you please state your name and professional
12 address?

13 A It's Douglas Casa. It's C-a-s-a. And I work at
14 the University of Connecticut in Storrs, Connecticut. It's
15 S-t-o-r-r-s.

16 Q And you are currently located for purposes of
17 this deposition in Connecticut; is that right?

18 A Yes, I'm in Hartford, Connecticut giving this
19 testimony.

20 Q Okay. Please tell us a little bit about
21 yourself, where are you from, where you went to school and
22 that kind of thing.

23 A Sure. I am currently a professor at the
24 University of Connecticut, and I started my schooling in
25 1986 at Allegheny College. I was a biology major,

1 graduated in 1990, went to the University of Florida and
2 was a graduate student in sports medicine, graduated in
3 1993, went to the University of Connecticut to study for my
4 Ph.D. in exercise physiology and graduated in 1997, have
5 been working at the University of Connecticut since 1999,
6 so I'm just finishing my 11th year, and I do research
7 related to heat and hydration issues with athlete, soldiers
8 and people in general, and I also teach, and I also act as
9 a clinician on site treating heat strokes where they
10 occur.

11 Q What is exercise physiology?

12 A Exercise physiology is the study of the human
13 body and how it relates, adapts, changes during the act of
14 exercise or labor or any kind of physical work. So
15 whatever the task may be for a soldier or an athlete, we
16 study how that athlete can try to enhance their
17 performance, how to stay healthy, and if they're injured or
18 sick, how they can get back the fastest, safest way
19 possible.

20 Q You said that you teach. What is it that you
21 actually teach?

22 A My graduate classes that I teach, one graduate
23 class is called Exertional Heat Stroke. I have another
24 class called Preventing Sudden Death in Sport and Physical
25 Activity. I have another graduate class called

1 Current Research and Issues in Athletic Training. My
2 undergraduate classes are titled Emergency Procedures in
3 Athletic Training and Current Research and Issues in
4 Athletic Training. I think those are the five core classes
5 I've taught the last few years.

6 Q How about your clinical work? Can you describe
7 that in more detail, please?

8 A Sure. Over the last, I guess, about 16, 17 years
9 I've been working on site where heat strokes take place.
10 So as an example, I've worked extensively at the Falmouth
11 Road Race in Massachusetts. They average about ten per
12 year. I've worked extensively at the Boston Marathon. I
13 believe I have 14 years of service in there. I've worked
14 at the New York City Marathon extensively, at the
15 Marine Corps Marathon in Washington D.C., at the
16 Iron Man Triathlon, and thus far I've actually successfully
17 treated over 125 heat strokes with zero deaths in my time
18 of working in those situations. I've also worked
19 extensively with the U.S. military consulting with them on
20 numerous different initiatives regarding heat stroke issues
21 with soldiers, have also worked with a lot of, you know,
22 high schools, colleges, professional teams who access my
23 services to try to develop, you know, better policies
24 related to heat and hydration issues with the athletes.

25 Q You mentioned that your -- a lot of your clinical

1 work deals with heat stroke. Before we get too deeply into
2 this case, can you tell us about what heat stroke is and
3 then also describe the other heat-related issues that are
4 maybe precursors or that lead to ultimately heat stroke in
5 some cases?

6 A Sure. There is probably technically maybe eight
7 different heat illnesses, but the most common ones that we
8 deal with in a labor situation or a soldier or an athlete
9 situation would be things like heat cramps. Heat cramps
10 would be one of the most mild forms of heat illnesses.
11 It's probably related to three key factors, probably a
12 dehydration issues, a sodium-electrolyte issues, and a
13 fatigue or -- a fatigue issue.

14 The next one we would often think of as heat
15 syncope. Heat syncope is when people collapse or faint
16 during prolonged exposure to the heat, and it's usually due
17 to a decrease in their blood volume that's returning back
18 to the heart. So if you stand for a prolonged period of
19 time in one space, you might get a pooling of blood in the
20 legs.

21 Third one would be heat exhaustion. That's the
22 inability to continue exercise in the heat usually due to
23 some kind of cardiovascular insufficiency due to the, for
24 instance, amazing demand of the skin to try to cool itself
25 and the muscle to try to continue to exercise, along with

1 the heart to try to maintain blood pressure, and ultimately
2 it can't keep up.

3 A fourth one the military uses is the term "heat
4 injury." Heat injury would be somewhere between heat
5 exhaustion and heat stroke where you maybe don't have the
6 extreme hypothermia or the CNS disfunction, but you do have
7 some kind of lasting sequelae or lasting medical
8 complication, so, for instance, someone who has
9 rhabdomyolysis or some kind of kidney malfunction or some
10 kind of other specific incident. So it would take it
11 beyond a heat exhaustion. A heat exhaustion would have no
12 long-term implications.

13 So then moving from heat exhaustion then to heat
14 injury, which I just described, and heat stroke would be by
15 far the most serious heat illness, because it could cause
16 death. I mean, heat injury could cause death as well if
17 it's not treated properly, but heat stroke will cause death
18 if someone's not cooled rapidly or not treated rapidly. I
19 shouldn't say will. It very likely can cause death. So
20 that's just when somebody just gets too hot. I mean, the
21 most common heat stroke temperatures we see in the field at
22 the time of collapse is 106, 107, 108, 110 degrees
23 Fahrenheit. Those are the common temperatures. And that's
24 just due simply to an overwhelming of the thermoregulatory
25 system, simply meaning you're generating more heat than you

1 can lose in a given period of time, and you do it for a
2 long enough period of time, and you simply just get too
3 hot. The body can basically handle itself under 105.5.
4 That's probably the critical threshold for cell damage,
5 meaning you can probably exercise for a long period of time
6 in the 104, 105 range and be okay, but once you get over
7 that 105.5 range and the 106 range, your body probably can
8 only handle 30 to 60 minutes without some kind of long-term
9 complications related to that elevated temperature. Is
10 that helpful?

11 Q When you're talking about temperatures -- yes,
12 sir.

13 When you're talking about temperatures in the 104
14 and higher range, are you talking about environmental
15 temperatures, or are you talking about the body
16 temperature?

17 A Sorry I didn't clarify that. All those
18 temperatures I just gave all have to do with the person's
19 internal body temperature.

20 Q Now, when you said, for example, you've been in
21 the field at marathons and other sporting events, are you
22 also evaluating and treating, whether it's athletes or
23 soldiers who have these lesser forms of heat injury, for
24 example, less than heat stroke, maybe heat exhaustion and
25 heat injury as well?

1 A Absolutely. I mean, thank God by far the most we
2 see are the lesser forms of heat illnesses. I mean, heat
3 stroke -- I mean, if I've seen five, six, seven hundred
4 people during all those years, maybe 125 are heat stroke,
5 and the other four or five hundred are the other heat
6 illnesses..

7 Q As part of your training and expertise, it sounds
8 like in addition to hands-on clinical work, you also have
9 done work with respect to creating policies and guidelines
10 to help organizations manage their people who are working
11 in hot environments?

12 A That is correct. I have extensive experience.
13 I'll chronicle them. The first one was in 2000. I was the
14 lead author for the National Athletic Trainers Association
15 position statement on fluid replacement. That was a policy
16 statement very specific to how physically active people
17 should hydrate before, during and after activity and how
18 the medical staff who take care of them should implement
19 those policies.

20 The second one was in 2002. I was a coauthor on
21 the National Athletic Trainers Association position
22 statement on exertional heat illnesses. We basically gave
23 strategies for the prevention, recognition, treatment and
24 return to play for the heat illnesses that I just described
25 earlier.

1 Third was in 2003. I served as chair of the
2 Inter-Association Task Force on Exertional Heat Illnesses.
3 That was 18 different organizations including the different
4 branches of the military, the Centers for Disease Control,
5 the NIH, all the different sports medicine organizations.
6 I chaired that group to come up with a policy statement
7 related to heat illnesses.

8 Fourth was in 2007. I was a co-author on the
9 American College of Sports Medicine position stand on
10 exertional heat illnesses where we covered those same heat
11 illnesses again and looked at the prevention, recognition,
12 treatment and return to play or duty or activity
13 strategies.

14 And then fifth would be in 2009. The United
15 States Army asked me to co-chair about a two-year process
16 to revamp the U.S. Army guidelines for return to duty
17 following exertional heat stroke. I co-chaired that with
18 Fran O'Connor who works at the United States University for
19 the Health Sciences in Bethesda, Maryland and is approved
20 by the surgeon general of the U.S. Army I believe June 22
21 of 2009. So that's been in play now for almost exactly one
22 year. I think that recaps the five biggest ones I've been
23 involved with.

24 Q Okay. Are you a full-time professor? Is that
25 what you consider your job?

1 A Yes, I'm a full professor. I was recently
2 promoted from associate professor to full professor, and I
3 would say about 60 to 70 percent of my job is research,
4 about 20 to 30 percent of my job is teaching, and about
5 20 to 30 percent of my job is like clinical work and
6 service.

7 MR. MOSS: Okay. To the Court, I would
8 offer Dr. Casa as an expert witness, an expert in the
9 field of exertional heat illness, as well as an expert in
10 the field of the proper planning and management of an
11 injured -- heat injured worker or athlete following a heat
12 injury.

13 MR. TECKLENBURG: Your Honor, Norfolk
14 Southern objects to this witness being offered for those
15 purposes, and I would like to conduct a limited voir dire
16 on his qualifications. May I proceed, Mr. Moss?

17 MR. MOSS: Certainly, please.

18
19 VOIR DIRE EXAMINATION

20
21 BY MR. TECKLENBURG:

22 Q Mr. Casa, you are not a medical doctor, are
23 you?

24 A I am not.

25 Q All right. In fact, you're also not an

1 industrial hygienist, are you?

2 A I am not.

3 Q Industrial hygienists evaluate the stresses on
4 workers in the workplace, do they not?

5 A Yes.

6 Q And that is not what you do?

7 A I don't do that specifically in the workplace,
8 but I do -- I can assess the physical stress of people who
9 do physical exercise and have an idea of what impact that
10 will have on the human body.

11 Q What you've just told us about, your role as
12 professor, it sounds like that you teach two undergrad
13 courses both dealing with athletics; is that correct?

14 A No, not necessarily. Athletic trainers actually
15 have to deal with soldiers, they work in industry, and they
16 work with athletes. The term is an athletic trainer.
17 Those are the people we're preparing for licensure, but we
18 prepare them to work in multiple settings.

19 Q You also discussed your -- what you teach in
20 graduate school. It's also largely concentrated in
21 athletics, is it not?

22 A I would disagree with that. A lot of the people
23 that I work with and I teach at the graduate school level
24 are working -- they work for industry after, they work for
25 the military after, and they also work in athletics. They

1 work in all different settings where people have to do
2 extreme exercise under potentially stressful conditions.

3 Q The guidelines that you've just mentioned to the
4 court, in 2000 the guidelines were associated with athletic
5 trainers; is that correct?

6 A The National Athletic Training Organization
7 produced it, yes.

8 Q And in 2002 it dealt with returning to play,
9 going back into athletics?

10 A 2002 one was also by the National Athletic
11 Trainers Association, and it dealt with all facets of heat
12 illnesses.

13 Q In fact, when you look at the advice that you
14 provide to folks in your capacity as a professor, much of
15 what you've written is for athletic organizations and the
16 United States Army; isn't that right?

17 A That is -- that is true, most of it probably is
18 in those realms. I think we have to first make sure we
19 understand an athletic trainer, because the word athletic
20 is in the title, it might be a little misleading. Those
21 people are specifically trained and licensed in our country
22 to prevent, recognize, treat and rehabilitate people --
23 physically active people who have injuries and try to
24 prevent those injuries. So they work in industry, they
25 work in military, and they work in athletics. So don't be

1 mislead just by the title athletic trainer, because they
2 work in all of the -- all of the realms where people do
3 physical activity.

4 Q And you would agree with me in developing
5 guidelines for the U.S. military, that you're dealing with
6 persons in the military and service that have heavy
7 exertional load, such as doing marches for 20 or more
8 miles, carrying backpacks on their back that weigh 50 or
9 more pounds? Those are the type of exertion levels that
10 you develop these guidelines for in the Army, correct?

11 A Most of the time they do have to perform very
12 intense activity, but they also have a great range of
13 activity. Depending on the duty of that particular
14 soldier, it could range in terms of what their physical
15 labor is. It could go from what we might consider medium
16 to what we might consider, you know, just brutally
17 difficult exercise. So I'd say there's a working range of
18 what -- it all depends on what that person's job is in the
19 military.

20 Q Likewise, in athletics, for those persons on the
21 jury, they see not only basketball players that run back
22 and forth during the game, that's a heavy exertional level,
23 correct?

24 A Yes, assuming they're exerting themselves to
25 their potential. Most of the times in athletics it's

1 pretty heavy.

2 Q That's right. And for football players, they
3 have to condition four hours or more a day before they
4 start their games, before the game starts, the season
5 starts?

6 A Yes, most athletes hopefully are conditioning
7 themselves for at least a couple hours a day before the
8 season starts.

9 Q And most of what you've written are for those
10 types of persons, those persons that have been either in
11 athletics or have been in the military?

12 A Yes. To answer your question, I would say most
13 are for athletics and military up to this point, but they
14 are certainly applicable in any situations where people are
15 physically active.

16 Q In fact, prior to this case you've had no prior
17 experience with railroad conductors, have you?

18 A No.

19 Q You've never been inside a locomotive, have
20 you?

21 A No.

22 Q So you don't know what the conditions are like
23 inside the locomotive that any railroad may operate in this
24 country, do you?

25 A I think I have a general sense from seeing

1 videos, but it is correct that you said before I've never
2 actually stood inside one.

3 Q And then, ultimately, I understand your opinion
4 in this case deals with gradually working a person back
5 into the workplace. Isn't it true that you're not aware of
6 any corporation that has ever adopted the policy and
7 opinion that you're going to give this court today?

8 A I'm not aware of a particular company. I hope
9 that there are many companies that have a proper phase-back
10 heat acclimatization program for their employees.

11 Q But you're not aware of any company that's
12 adopted what you're going to recommend today?

13 A I've never researched it, but I'm not aware of
14 any company that has that strategy specifically in place.

15 Q And it is also not your practice to evaluate
16 specific industries for heat stress; in other words, you've
17 never done any studies of how specific industries expose
18 their employees to heat stress, do you? You've never done
19 that?

20 A No.

21 Q All right. And you've never evaluated a
22 conductor's threshold limit values or watts per hour that
23 they may be expending? Have you ever done that for a
24 railroad conductor?

25 A No.

1 Q And you've never even been in Orangeburg,
2 South Carolina, have you?

3 A No, I've been in South Carolina many times, but I
4 don't believe I've been in that town.

5 MR. TECKLENBURG: All right. Your Honor,
6 we would move to exclude the witness at this point.
7 Please proceed, Mr. Moss, and we'll --

8 MR. MOSS: Thank you, Mr. Tecklenburg.

9 MR. TECKLENBURG: -- accept the court's
10 ruling. Thank you.

11

12 DIRECT EXAMINATION

13

14 CONTINUED BY MR. MOSS:

15 Q Dr. Casa, in addition to your academic and your
16 clinical work, you have testified, it sounds like, in other
17 litigated cases; is that true?

18 A Yes. Extensively, yes.

19 Q And you have -- have you worked on any railroad
20 cases before this one?

21 A I have, yes.

22 Q Just so the jury has a flavor of the range of
23 cases that you worked on, without going into too much
24 detail, can you just give them, but also the court, a
25 sampling of the other cases in which you worked as an

1 expert witness like you've worked in this case?

2 A Yes, certainly. Well, the one you just
3 mentioned, previous experience with the railroad industry.

4 There was a welder who was working in Alabama at
5 the time, and he suffered a couple heat illnesses over the
6 course of a couple days. So similar to this case, they
7 asked for my expertise related to exertional heat
8 illnesses.

9 I also assisted in another industrial situation
10 of a police officer doing specialty training and
11 competition in New Mexico, although he originally actually
12 came from South Carolina. So a similar kind of situation
13 where he had a heat injury competing in hot conditions.

14 Also worked extensively with cases involving
15 football players, multiple different cases, professional,
16 college, high school, youth league.

17 I think that gives you a little bit of a
18 snapshot. So there's been cases related to athletics and
19 industry.

20 Q Okay. And with respect to what you've done to
21 gain an understanding about this case, would you just
22 simply tell the court and the jury generally, not
23 necessarily by name and number, what you've done to gain a
24 sense of the job, the P-28 job, as well as the job of a
25 conductor in general?

1 A Well, I mean, I read the materials that were
2 produced by Norfolk Southern in terms of the duties of a
3 conductor, read all the log sheets that people did for
4 their work that they did during those days, and read
5 obviously the depositions of Trumaine and his supervisors,
6 multiple levels, read affidavit from his colleague and read
7 the medical records related to this case from both times he
8 was hospitalized, and I believe that's probably the extent
9 of it.

10 Q And you mentioned videos?

11 A Yes, earlier.. Yes, I --

12 Q What were those?

13 A I watched two videos that I believe were produced
14 by Norfolk Southern related to some of the basic activities
15 and duties that a conductor might perform during the course
16 of a day.

17 Q Okay. Do you feel like you have sufficient
18 information to render expert opinions based on your
19 education and expertise about what was done and what should
20 have been done with respect to the management of Mr. Moorer
21 following his first heat injury?

22 A Absolutely.

23 Q Okay. Let's now turn, if we can, to the case,
24 and I think that pretty quickly we can run through your
25 testimony. You do understand, I think, that Mr. Moorer was

1 working as a conductor on the P-28?

2 A Yes.

3 Q Okay. Now, I think about the time the jury sees
4 your testimony, they will have heard a lot about the job
5 and have an understanding about it, so I'd rather not go
6 too deeply into the job itself, unless Mr. Tecklenburg
7 would like to, but feel free to get as deep as you like.
8 Okay?

9 A Yes.

10 Q All right. If you will, please give us your
11 understanding of what happened to Mr. Moorer in early May,
12 the May 9, 2007 incident, and then pick it up and talk us
13 through the month of May as to what happened from your
14 perspective.

15 A Okay. On I believe May 7 he worked a 12-hour
16 shift, did typical duties of a conductor and I believe
17 arrived home in the ballpark of midnight and maybe didn't
18 feel optimal at that point, maybe was slightly dehydrated
19 at that point and was weak, maybe not nourished properly
20 through the course of the day. He goes back out the next
21 day and resumes his work, and he false out in the
22 afternoon, and they get some pretty prompt medical
23 attention for him. And it looks like, if you had to recap
24 looking back, that he had some kind of what we would call a
25 heat injury where he had rhabdomyolysos and dehydration and

1 kidney issues.

2 I believe he was hospitalized for three days. He
3 was released to the care of his primary care physician. I
4 believe he saw his primary care physician on May 17 in the
5 ballpark of, you know, maybe a week after being discharged
6 from the hospital. Dr. Dantzler saw him that day, cleared
7 him to return to his normal work days with modifications,
8 his work duties with normal -- with modifications. I
9 believe then some of that information must have been shared
10 with his supervisors of where he works, and then he
11 received clearance to go back to work, and on May 30 he did
12 a normal work shift, had some interaction with
13 Mr. Deshazor, one of his supervisors, before beginning that
14 work shift.

15 And then on May 31 he went back to work again and
16 worked I would say approximately a half a day before he
17 reported having difficulty. He reported it himself and
18 reported it to his coworker, Mr. Connolly. He, himself,
19 Trumaine, and his coworker started to make some phone calls
20 to their supervisors about what to do. They were told to
21 just immediately come back to Columbia, and then he came
22 back to Columbia, and eventually they started having some
23 medical care, and he was eventually hospitalized. And then
24 what ensued was his -- the company ultimately deciding that
25 he's not cleared to return to work. That's just my basic

1 view without providing opinions.

2 Q Okay. Now, that's helpful. That gives us some
3 background information. You've now mentioned a term twice
4 that I'd like you to define for us, and you said it's
5 rhabdomyolysos. What is that?

6 A Rhabdomyolysos is a fancy word to mean muscle
7 damage. And what happens when a person has some unique
8 stresses or they just -- they work harder maybe than they
9 usually do, the muscles break down a little bit, and things
10 leave the muscle cells that should not normally leave the
11 muscle cells. And so normally the problems with
12 rhabdomyolysos are seen in the kidney, because those things
13 that are now in the blood overwhelm the kidney, and often
14 you'll see people will have kidney problems. That's often
15 what they're being treated for at the hospital. If it's
16 bad, someone could have to have dialysis or a kidney
17 transplant, or it could ultimately cause someone to die.

18 Q Now, did you get an understanding of Mr. Moorers's
19 life-style and work history before coming to Norfolk
20 Southern?

21 A I did get a little bit of a sense. He had worked
22 successfully for a couple years over in Kuwait serving as a
23 person who dealt with our military equipment as it came on
24 scene in Kuwait and also was logged out of Kuwait. So he
25 was certainly in a hot environment, a hot theater assisting

1 our U.S. military. And then he obviously had lived in
2 South Carolina for a prolonged period of time. He had a
3 background as an athlete as well. And as far as the
4 records indicate, he had no previous problems of living,
5 sustaining himself or exercising in hot environments.

6 Q The doctors have spoken to this, but from your
7 perspective, did it appear to you that at least the first
8 incident in early May of 2007 was related to some
9 underlying condition or, rather, was it related to exertion
10 in the workplace?

11 MR. TECKLENBURG: Objection not qualified.
12 You can answer, Doctor, once the court rules.

13 BY MR. MOSS:

14 Q You can answer.

15 A I would -- you can't know for sure, because I
16 don't know all of his background medical records, and I'm
17 not even sure if some of the tests have even been done, but
18 I would say there's a 99-percent chance that this was
19 related to a workplace specific stresses that he was under.
20 That would be certainly my estimation in this case from
21 reviewing the files I have.

22 Q Ultimately, with respect to what's related to
23 what, would you simply defer to the medical doctors?

24 A Absolutely.

25 Q Okay. Great. Now I'd like you to define a term,

1 please. Acclimatization, what is that?

2 A Acclimatization -- I mean, if you put the word
3 heat in front of it, because acclimatization could be done
4 in multiple different environmental situations, but if we
5 said heat acclimatization, that's that very unique process
6 that allows the body to make physiological changes over the
7 course of one to two weeks when someone exercises in hot
8 conditions.

9 So as an example, after you've exercised in the
10 heat for one to two weeks, you have a higher sweat rate so
11 you can cool yourself better. You start sweating at a
12 lower body temperature, so you start cooling earlier. For
13 instance, you lose less sodium in your sweat; your body
14 conserves more sodium. And then there's a myriad of other
15 changes that take place, but that's just an example. So
16 it's a very powerful protective tool that the human body
17 can invoke during the course of one to two weeks of
18 exercising in the heat that allows them to have an enhanced
19 exercise heat tolerance.

20 Q Why is an enhanced exercise heat tolerance
21 important from your perspective as an expert in exercise
22 physiology?

23 A Well, there's no question that after someone's
24 heat acclimatized, that they can handle more work in hot
25 conditions. So whether it be higher intensity or more

1 duration or some combination thereof, anybody who's heat
2 acclimatized will perform better in hot conditions than
3 when they were not heat acclimatized. That's the bottom
4 line.

5 Q With respect to developing policies, is this
6 acclimatization, heat acclimatization in particular, is
7 this a concept that has been medically accepted for some
8 period of time, or is this some new idea?

9 A No, very fortunately for our military, as an
10 example, this has been going on for probably at least a
11 good 30 to 40 years that our soldiers get heat acclimatized
12 so that they can better perform activities in the heat.
13 And the athletic situations, once again, fortunately it's
14 been going on for a very long period of time. Just as an
15 example, in 2003 the NCAA mandated heat acclimatization for
16 the Division One football players so they'd phase back in
17 their -- phase back their activity during two-a-day
18 practices, but that was just, you know, invoking science
19 and research that we've known for a really long time to try
20 and do a better job of protecting these athletes.

21 Q Okay. Does acclimatization as an overall policy,
22 does it apply to whether it's athletes or soldiers or
23 workers who have never had a heat injury, or is
24 acclimatization really only relevant to somebody once
25 they've had a prior heat injury?

1 A Well, it's 100-percent relative to both of those
2 people that you just mentioned. Every person who goes out
3 to activity is at risk of having a heat illness when they
4 go and do intense exercise in warm or hot conditions. So
5 irregardless if they've had a previous heat illness, you'd
6 want to get them heat acclimatized to enhance their
7 exercise heat tolerance and protect them. That's why we
8 want to do that for any soldier or an athlete or a laborer.
9 But it's even probably more important for someone who's had
10 a previous problem, because it could potentially help you
11 identify if they're fully recovered from the previous
12 problem and to make sure that they have their maximal
13 capacity and ability to exercise in the heat.

14 Q What impact, based on your training and
15 experience, does a prior heat injury have on someone who
16 goes back into the hot working conditions or hot athletic
17 conditions?

18 A That's a good question. There's three things you
19 always want to think about when someone who's had a
20 previous heat illness goes back or trying to get them back
21 to activity.

22 The first is we always take a look at what caused
23 the original problem in the first place. Now, we don't
24 always know diffinitively, but you certainly can take a
25 look at it, and we often can start pointing fingers at what

1 caused that problem when it first happened. As an example,
2 the person did not have a good hydration strategy. The
3 person might not have had a good heat acclimatization
4 strategy. The person might not have had a good enough
5 fitness level. The person might have been ill that
6 particular day. They might have been on certain
7 medications that put them at risk. So as an athletic
8 trainer dealing with these soldiers or athletes or a
9 medical doctor dealing with these same people, that's the
10 first thing we want to look at, to see if there's something
11 that we potentially could identify and potentially modify
12 to decrease their risk when they go back. For instance, if
13 somebody's not hydrating well, we would come up with
14 specific hydration doctrine for them the before they go
15 back to keep them as safe as possible. That's just one
16 example.

17 The second item that we always want to think
18 about, are they actually recovered from the original insult
19 when we're bringing them back to activity. It could take
20 someone a week, it could take someone a month, it could
21 take someone six months to be recovered from that first
22 exertional heat illness. So you obviously have to have,
23 you know, proper medical supervision, proper clinical
24 assessment to get a sense if they're actually recovered
25 from the initial insult. So that's the second one.

1 The third one is now that when we put this person
2 back into the workplace, is they've lost everything that
3 they acquired in the time that they've been away from the
4 activity. So in the example, for instance, with Trumaine
5 or it could apply to any athlete or soldier, is he was away
6 from the activity for three weeks, so his fitness level
7 declined in that time, obviously, and his heat
8 acclimatization potentially disappeared completely or near
9 completely in that three-week period, especially since he
10 was inactive and his fitness level was also falling. It's
11 important to note that someone who's fit can get more heat
12 acclimatized faster than someone who's not fit. So they
13 often go hand-in-hand. So the fitness level and the
14 acclimatization probably were not what they were for
15 Trumaine prior to the May 7 day when we went to work, or
16 May 8. So that's the third thing you have to think about.

17 So to recap, first, what caused the condition in
18 the first place, what do we think might have had a big role
19 in causing it; second, have they recovered from the actual
20 insult of the first incident; and, third, the deficit that
21 took place during the time away, has that been made up
22 before we put them back to their work setting or their
23 athletic setting, before we put them back with their fellow
24 soldiers, athletes or colleagues.

25 Q What is the significance of the three-week or

1 approximately three-week gap during the time where
2 Mr. Moorer did not work from the end of the first week in
3 May until May 30, 2007?

4 A It's extremely important to think about, because
5 in a three-week stretch, you could probably lose, you know,
6 a great percentage of what your fitness level is and
7 probably could completely lose your heat acclimatization,
8 so you would have to now regain that. Someone might gain
9 it back a little bit faster than someone who's never been
10 heat acclimatized after only being gone for three weeks,
11 but certainly would have to have a -- you know, some kind
12 of five- to ten-day stretch of getting back the vast
13 majority of the heat acclimatization that was lost.

14 Q How do you do that? If you take a five- or
15 ten-day period, how do you advise someone to regain their
16 acclimatization, for example, like Mr. Moorer who is
17 otherwise healthy, in pretty good physical condition, he's
18 from Orangeburg or the Orangeburg area, St. George? What
19 kind of strategy should be employed to get him heat
20 acclimatized before he's returned to full duty?

21 A That's a good question. First you would -- first
22 I personally would work on their fitness level first,
23 meaning I would want him to be in a climate-controlled
24 facility getting exercise in and getting their fitness
25 level up first over the course of, you know, maybe a week,

1 and then take them outside and do some exercise outside in
2 the heat. And I would want both of those to be handled
3 well and him not reporting any signs or symptoms associated
4 with that.

5 And then the medical people at the company that
6 he works for would bring him back into his conductor
7 duties. And I -- for instance, if his normal work week is
8 a five-day workweek, I might have him go Monday, Wednesday
9 Friday, and if his normal shift is ten hours, I might have
10 him do a five-hour shift. If his normal break is, you
11 know, ten minutes every hour, I might do it twenty minutes
12 every hour. I would take whatever his existing work
13 situation was and back off on the stresses that would be
14 imposed on that day. And then I would talk to him after
15 that Monday, see how he feels. I would talk to him after
16 the Wednesday. I would talk to him after the Friday. And
17 if that all went well, I would probably then go Monday
18 through Friday the following week, but maybe back off from
19 not doing ten hours, maybe do a six-hour, seven-hour shift,
20 and then once again, following up with him.

21 And during the course of this two- to three-week
22 process, we get his fitness level back up, we get his heat
23 acclimatization back to where we want it to be, and we also
24 get a sense of monitoring him during the activity so we
25 know if there's a problem instead of finding out that

1 there's a problem when there's a serious situation by
2 putting him back to full duty.

3 MR. TECKLENBURG: Your Honor, I would move
4 to strike that answer on the basis that he's advocating
5 something that's preempted by federal law that we've
6 previously taken up with the court. Thank you.

7 BY MR. MOSS:

8 Q Dr. Casa, given the strategy that you've just
9 described, can you tell the court and the jury, please,
10 what is your opinion about whether Norfolk Southern acted
11 reasonably to properly acclimatize Mr. Moorer into the work
12 force, into the job as a conductor following his initial
13 heat injury before he returned to work on May 30, 2007?

14 A In this particular case, I think the biggest area
15 where Norfolk Southern made a mistake is that they made no
16 effort to get Trumaine back to duty in a gradual manner.
17 They had no idea or way of knowing if he could handle that
18 activity when he went back. So I don't believe at -- at
19 any point he had no specific interactions on site with any
20 people who have any medical credentials or who could really
21 give him advice in terms of things that he should be
22 looking for or feeling or working back into his normal
23 activity levels or reporting to people at the end of a
24 particular workday. So I don't think that the company made
25 any effort in terms of phasing them back -- phasing

1 Trumaine back to activity, and it's something that I hope
2 they change in the future.

3 Q The -- what is your understanding of who
4 ultimately decides whether or not Mr. Moorer is allowed to
5 return to work following his first incident leading up to
6 the second incident?

7 A It seems like it was the orders by the primary
8 care physician, Dr. Dantzler, that he saw on May 17 and
9 then that form that was submitted to his supervisors.

10 Q Okay. Is it your understanding that the railroad
11 then simply had to listen to Dr. Dantzler, or did they have
12 their own processes or medical department to further
13 evaluate Mr. Moorer for themselves?

14 A They absolutely had their own medical people
15 looking into it. I believe they had a nurse who oversaw
16 the basic paperwork involved with Trumaine's case that
17 allowed him to go back to work.

18 Q Okay. So is it your understanding that the
19 railroad or someone else actually made the decision to
20 allow him to return to work full duty ultimately?

21 A Ultimately it had to be the responsibility of
22 Norfolk Southern that gave him clearance based on the
23 preliminary advice from Dr. Dantzler.

24 Q Now, I know you've looked at something that will
25 be an exhibit at this trial called the "Norfolk Southern

1 Medical Department Fee for Service Provider Manual"?

2 A Yes.

3 Q And you've looked at excerpts of that at my
4 request; is that right?

5 A Yes.

6 Q Tell the jury what it is that you found relevant,
7 if anything, about the railroad's ability to have a person
8 perform some kind of evaluation process on the ground in
9 the work environment before returning them to full duty?

10 MR. TECKLENBURG: Objection, your Honor.
11 He's eliciting an opinion where Norfolk Southern has no
12 duty. Again, it's been brought up in an in limine with
13 the court. Thank you. Please proceed, Dr. Casa.

14 A I was actually encouraged by the document that
15 you shared with me, because on one of the pages they
16 describe a field testing process that certainly is a very
17 good idea not just in the case of heat illnesses or
18 Trumaine's case, but certainly would be very applicable for
19 even someone who has a knee injury or a head injury or
20 whatever it might be, but they have a plan in place that
21 someone would be on site interacting with the person who
22 had the injury of concern, and then they would have them
23 perform their actual job duties to see if they could handle
24 those duties in a safe manner and also perform the duties
25 in the manner that the company needs them to perform them.

1 But that's half of the piece of the puzzle.

2 Evaluation is important, but we still need to
3 allow him to gain back his normal capacity. Remember, he
4 lost his normal capacity from his three weeks away after
5 the original insult. So we need to give him the chance to
6 succeed, and that would come from fitness and heat
7 acclimatization. So just doing the evaluation would tell
8 you maybe he's not ready yet to do it. It doesn't mean
9 ultimately he's not able to do it.

10 Q Okay. So the two pieces of the puzzle are,
11 number one, evaluation and, number two, acclimatization?

12 A Yes. The evaluation would tell you where he's at
13 right now and might dictate some of your strategy for
14 phasing him back to activity.

15 Q And the language that's in the Norfolk Southern
16 Fee for Service Provider Manual addresses the evaluation
17 prong as opposed to the acclimatization prong?

18 A Yes.

19 Q Okay. I do note that Mr. Moorer had his first
20 heat incident in conditions that many would think were not
21 particularly hot. I think high 70s kind of conditions,
22 although I think he was wearing a rain suit part of the
23 time. Can you help give the jury an understanding of how
24 it is that somebody can have a heat injury or heat illness
25 while working even in environmental temperatures that are

1 not what we think of as brutally hot?

2 A Absolutely. It's a big misconception with a
3 lot of people who don't have a lot of knowledge related
4 to heat illnesses, that they assume it has to be very
5 very hot out for you to have a heat stroke or a heat
6 illness or a heat injury. But just to give you an
7 example, in the U.S. military, a great number of the
8 heat strokes and heat illnesses they have are in the
9 morning during physical training where it's actually not
10 hot at all. It might be in the 60s and 70s. As an
11 example, working the Boston Marathon or the Marine Corps
12 Marathon, a lot of the heat strokes that we treat and heat
13 illnesses we treat are in races where it's in the 60s and
14 it's in the 70s. So that just shows to you that it doesn't
15 have to be really hot out to have heat illnesses, and it
16 also tells you that the physical activity that somebody's
17 doing is often just as important as the environmental
18 conditions.

19 Q Is it your understanding that the heat -- the
20 actual temperature heat at the end of May, the May 31
21 incident, was warmer than it was early in May 2007? Is
22 that right?

23 A Yes. The second incident I believe it was in the
24 high 80s, whereas in the first incident I believe it was in
25 the mid 70s.

1 Q Okay. But I think the jury will understand by
2 the time they hear your testimony that Mr. Moorner actually
3 worked a full day in the high 80s, low 90s on May 30, 2007.
4 Is that what you understand?

5 A Yes. Yes. And actually --

6 Q Help us -- go ahead.

7 A That would fall in line with what I was trying to
8 describe earlier with the U.S. Military. They often have
9 these heat problems in the morning when it's actually not
10 hot out at all, but it often happens the day following a
11 very hot day and physical labor and hot conditions on the
12 day before. So the next morning for whatever reason, maybe
13 they didn't sleep well, they're still dehydrated, they're
14 still fatigued, that there seems to be a lower threshold to
15 cross for someone to have a heat illness the day following
16 that, you know, long exercise in the heat.

17 Q So if you're trying to tell the jury how to look
18 at the May 30, 31 incident, should we look at it only in
19 terms of May 31, or should we look at the overall picture
20 starting with May 30 to get a better understanding?

21 A Actually, I think you have to take it within the
22 context of his May 7, 8 range and May 30, because I don't
23 believe that he was, you know, heat acclimatized, fit,
24 maybe not fully recovered from the initial incident, and
25 then he has this very -- a long day of labor in the heat,

1 and that would just be so much stressful for anybody who
2 goes back to activity, but it might be more stressful for
3 someone who might not have been completely recovered. So,
4 absolutely, you have to take it all as a whole; not in
5 isolation.

6 Q Does one heat injury predispose someone to having
7 another heat injury?

8 A Yes, it absolutely can if they're not cared for
9 properly.

10 Q Explain what you mean by that, please.

11 A That's the three things that I went through
12 before. If what caused the heat illness in the first place
13 is still present, like whatever -- like not a proper
14 hydration strategy, if someone doesn't feel comfortable
15 reporting their problems or they're not heat acclimatized,
16 whatever the situation is; second, if they're not recovered
17 from the initial insult, they might not have the same
18 physical capacity; and third, for whatever they lost in the
19 time frame their heat acclimatization and fitness from the
20 initial incident. So I absolutely think that someone who
21 has a previous problem could be more at risk for having an
22 ensuing problem.

23 Q Given the entire context of the factual
24 background of this case, Dr. Casa, do you believe in your
25 opinion that the May 31, 2007 incident was preventable?

1 A One-hundred percent preventable if proper heat
2 acclimatization and phase-back-to-activity policy was
3 followed.

4 Q What about if I asked the same question about
5 foreseeable, and that is, given the totality of the facts
6 of the case as you know them, was the second heat incident
7 in the context of the first heat incident, was it
8 foreseeable to the employer who's monitoring Mr. Moorer and
9 his care?

10 A I think any medical professional who has
11 experience with heat illness would absolutely be more
12 concerned with someone like Trumaine back in activity
13 because of the previous problem and maybe not the complete
14 recovery and not the heat acclimatization being restored.
15 So to answer your question, I do think it would be
16 foreseeable, and, in fact, if I was working in that
17 particular situation, he would be the one I would want to
18 watch closest, because he'd be the one I'd have the
19 greatest concern with.

20 Q It sounds like these heat injuries are a
21 little bit off the beaten path in the sense that it's not a
22 broken finger or a broken leg; they have a different
23 dynamic and complexity to them by their very nature; is
24 that true?

25 A It is, because you don't often know the full

1 extent of what that previous injury did, like what was the
2 extent of the organs that were insulted, the CNS issues.
3 We don't know the extent that he -- how much he lost his
4 fitness level, his heat acclimatization level. And, also,
5 just the implication that when you're dealing with a
6 serious heat illness like this, that if you do it wrong,
7 the outcome could be death or it could be permanent
8 morbidity that could affect his livelihood; whereas, you
9 know, with a lot of other musculoskeletal problems we might
10 not have such grave concerns.

11 Q The final topic I'd like to talk to you about is
12 the management of Mr. Moorer following his May 31 heat
13 incident. Excuse me. Do you understand that Mr. Moorer
14 had a second heat incident at about the same place he had
15 his first heat incident?

16 A Yes.

17 Q Okay. And you've mentioned, I think, that he was
18 given prompt medical attention following the first heat
19 incident; is that right?

20 A Yes. I was encouraged that --

21 Q What did you mean by that?

22 A I was encouraged they called and an ambulance
23 arrived on site from -- at the particular spot that they
24 had stopped at that point.

25 Q Now, what is your experience in the emergency

1 management of one who's having a heat incident?

2 A Extensive. That's probably one of my very strong
3 areas of expertise. I mean, I do research. My clinical
4 work is all related to the amount of time that passes from
5 the original insult or collapse or when you notice there's
6 a problem to when they're actually starting to receive high
7 level medical care. So you want to minimize that time as
8 much as possible. In fact, your goal is always to try to
9 keep their amount of time that they're hot or that they're
10 struggling to under 30 minutes, and if you have to, maybe
11 60 minutes, but the more time that passes and any time that
12 medical care is delayed, the more likelihood there's going
13 to be complications or potentially death.

14 Q How reliable is the person who is having the heat
15 incident as by way of providing a history or telling you
16 what it is that they really need, or in your experience are
17 they really good at helping you help them?

18 A Only in the mild cases of heat illness would we
19 really depend or put much weight in what the actual person
20 who is suffering the problem is telling us. It's like if
21 you went up to someone at a car accident and they had a
22 head injury and they're telling you something, you probably
23 would take everything with a grain of salt, because they
24 might not really be giving you a fair assessment of what
25 they're feeling at that particular point. And same with

1 any kind of heat injury and heat stroke situation, we would
2 try to depend on people with medical -- a medical
3 professional to get an idea of the extent of the problem
4 that they're dealing with.

5 Q Okay. One quick point. I got to digress, and
6 then I'll finish up. It appears in the record that
7 Mr. Deshazor, the Norfolk Southern train master, actually
8 counseled Mr. Moorner or spoke with him before his return to
9 work on May 30, 2007. You're aware of that?

10 A Yes.

11 Q In your opinion, was Mr. Deshazor's counseling of
12 Mr. Moorner sufficient to give him what he needed,
13 Mr. Moorner what he needed, to work safely when he went back
14 to work?

15 A I do not think it was adequate at all. I mean,
16 Mr. Deshazor has no background in terms of heat illnesses.
17 or any medical field whatsoever. I do think that Norfolk
18 Southern would benefit from having a medical person on the
19 ground when they have a particular person coming back from
20 a severe case, I mean severe when someone's hospitalized
21 and has been gone for three weeks. They should have some
22 kind of consultation session that occurs with these people,
23 because I don't think Mr. Deshazor would even know if
24 there's a problem or the severity of a problem if anything
25 was even shared with him, because he's just not trained in

1 that area to know what was serious or not.

2 Q In that context, I think that when Mr. Moorer
3 started having his problems in late May, there were phone
4 calls placed by both him and Mr. Connolly to Norfolk
5 Southern supervision, namely, Mr. Deshazor and Mr. Stinson;
6 is that right?

7 A Yes.

8 Q What is your opinion, Dr. Casa, about the way
9 that Mr. Moorer was specifically managed moving along the
10 time line and how it should have been done differently, if
11 at all?

12 A First of all, I don't even know if they have any
13 kind of emergency action plan. That's a big concern for me
14 just for the other railroad workers who are out there today
15 and in the days to come. I don't think anyone really had
16 any kind of policy to follow or any plan to invoke..

17 So Mr. -- you know, Trumaine called in and
18 Mr. Connolly called in. Deshazor and Stinson are receiving
19 these phone calls, and there's no policy in terms of who's
20 going to call the ambulance or are they going to stop the
21 run and get an ambulance to them or are they going to get
22 the ambulance to the site when they come in and should the
23 ambulance be there when they arrive. What's the criteria
24 or threshold that would cross to actually have an ambulance
25 ready.

1 It's a big concern for me that at three o'clock,
2 I believe, the first call was placed to a supervisor, and
3 another series of calls took place between 3:00 and 3:20,
4 and he doesn't actually arrive to a hospital until 4:50.
5 So that means almost two hours passed before he can receive
6 high-level medical care from when the first problem is
7 identified. And this is a problem identified, remember, in
8 a person who had a previous problem a few weeks ago that
9 required hospitalization, and now we're waiting almost two
10 hours before we can get advanced care. That's really
11 worrisome, because obviously the longer he's waiting, the
12 more serious the problem and the longer it's going to take
13 for him to recover and less likely that he's going to be
14 able to resume normal things in the future.

15 Q Is it okay or permissible, at least in your
16 judgment, to rely entirely on what Mr. Moorer says and what
17 Mr. Connolly says when deciding whether or not to take
18 emergency action to help Mr. Moorer?

19 A It's tough to say, because all the people
20 involved here really don't have any medical background, and
21 they don't have, to me, any kind of emergency action plan
22 to follow when there is a problem. So there's no real
23 process that they could, you know, follow along with. So
24 if there was ever a question or a doubt, I certainly would
25 want to, you know, lean more towards being proactive. But,

1 you know, sometimes in the reading, you got a sense that
2 sometimes they would rather maybe an incident not be
3 reported, because everyone obviously cares about the number
4 of incidents and safety incidents that are reported. So
5 maybe they're a little hesitant to make that call.

6 But in a case like this in a heat illness
7 situation, especially someone who just had a previous
8 problem that everyone was aware of, I certainly would make
9 the call as fast as possible.

10 Q Have all of the opinions you've expressed in this
11 testimony been expressed more likely than not?

12 A Yes.

13 MR. MOSS: I think those are all the
14 questions I have. Mr. Tecklenburg may have a few for you,
15 Dr. Casa.

16 MR. TECKLENBURG: Dr. Casa, I have a few
17 questions, but I'm going to take a five-minute recess, and
18 I'll be back with you after five minutes. Thank you.

19 THE WITNESS: Yes.

20 THE VIDEOGRAPHER: Off the record 10:40.

21 (Off the record: 10:40 p.m. to 10:48 a.m.)

22 THE VIDEOGRAPHER: This is the beginning of
23 Tape Number 2. Back on the record 10:48.

24

25

C R O S S - E X A M I N A T I O N

BY MR. TECKLENBURG:

Q Mr. Casa, Paul Tecklenburg for Norfolk Southern,
and just a few questions.

I think you established in prior questioning that
you are not a medical doctor; is that correct?

A Yes.

Q And you've never met Trumaine Moorner before, have
you?

A No.

Q You have not even examined Mr. Moorner; is that
right?

A No.

Q In your experience today, as you've testified,
you currently are a professor in Connecticut? Is that what
you stated?

A Yes.

Q Okay. And have you had any prior experience in
working for a private company such as in a medical
department that may make decisions regarding its
employees?

A I've made -- helped made decisions with athletes,
so not technically employees, but people that we supervise
that have to make decisions for when they go back to

1 activity.

2 Q For athletes, but not people in the workplace; is
3 that right?

4 A If you consider soldiers a workplace or
5 professional athletes as a workplace, so many people who
6 are working as their livelihood I've had to assist with
7 that process.

8 Q But we're talking about people who have ordinary
9 jobs that work outside such as landscapers, train
10 conductors. You've never worked for a company that has
11 workers outside, have you?

12 A No.

13 Q Okay. And, in fact, I think you've testified
14 earlier, you've never been to this industrial area where
15 Mr. Moorer worked; you've never seen the industries that he
16 worked?

17 A Only the video that was shared with me.

18 Q Okay. And you've never been to Orangeburg; is
19 that right? So you've never observed the local climatic
20 conditions that may exist in Orangeburg?

21 A No. I lived extensively in Georgia and Florida,
22 but not specifically Orangeburg.

23 Q Now, this particular area that Mr. Moorer worked
24 is less than one mile away from an airport. Would the
25 National Weather Service information from an airport less

1 than one mile away be a good data source to refer to in
2 this case?

3 A Yes.

4 Q All right. There would be no reason to expect
5 that climatic conditions less than one mile away from an
6 airport would greatly differ from what were measured by
7 federal approved instruments at a NOAA weather station, is
8 there?

9 A No, not on the ground from where they're working
10 between those two locations.

11 Q In fact, in your involvement in this case, you've
12 not taken any measurements? Since you've never been to
13 Orangeburg, I assume you've not taken any measurements in
14 Orangeburg, either, have you, of the heat --

15 A No.

16 Q -- or heat inside locomotives?

17 A No.

18 Q With respect to measurements, you've testified in
19 a deposition you gave previously in this case that really
20 the best measure, I believe, is using a dry bulb, wet bulb
21 and globe temperature which is put into a specific
22 temperature you called a gold standard. What is the gold
23 standard for taking measurements?

24 A We call it the "wet bulb globe temperature." Its
25 acronym is WBGT. And as you just mentioned, it factors in

1 the dry bulb temperature, the wet bulb temperature and the
2 globe temperature, and by doing that, it gives you an idea
3 of the amount of heat outside, which is the dry bulb, the
4 amount of humidity outside, which the wet bulb tells you,
5 and then the effect -- the radiant heat from the sun, which
6 is what the black globe temperature gives you.

7 Q So if I was trying to get the best recreation, if
8 you will, of the heat temperatures that may be involved
9 with a locomotive, would the best way to do that would be
10 to use a device that would measure WBGT?

11 A Yes.

12 Q And have you ever heard of a device made by a
13 company called QUESTemp or a device called QUESTemp?

14 A Yes.

15 Q And is that a device you have used and relied on
16 in the past?

17 A Yes.

18 Q Now let's talk a little bit about the work
19 environment at Norfolk Southern. Do you know whether
20 Norfolk Southern encourages the use of water by its
21 employees?

22 A In general terms, yes.

23 Q And it would be a good idea for any company to
24 provide water to its employees that may be working outside,
25 don't you think?

1 A Yes.

2 Q And by your review of the materials, I understand
3 you've read depositions of Mr. Moorer, depositions of
4 company personnel. Is there any indication that water was
5 not provided on this day as part of his workday on the
6 locomotive?

7 A No.

8 Q Okay. And, also, it's my understanding that
9 things such as -- they're known as "sqwincher powders,"
10 which I think you've referred to in the past as the poor
11 man's Gatorade. Tell me the benefit of providing sqwincher
12 powders in the workplace.

13 A It's a very good idea to have it, because it
14 provides calories and it provides electrolytes like sodium
15 and potassium so it will enhance the rehydration process
16 for the workers.

17 Q And, likewise, from your review of the materials,
18 do you know whether Norfolk Southern provides those
19 sqwinchers in the workplace?

20 A I don't know in every situation, but in most of
21 the situations that I read up on, it seemed like that that
22 was available.

23 Q In addition to consuming water and/or sqwinchers,
24 electrolytes in the workplace, if possible, would it be
25 best if a company were to allow its employees to be

1 self-paced, in other words, to work at their own pace?

2 A Yes, that's a good idea.

3 Q And that way if you're self-paced, then you can
4 take breaks whenever you want during the course of the day
5 and cool down; isn't that right?

6 A It is, yes, as long as they don't feel some
7 pressure that they have to finish certain duties in certain
8 periods of time.

9 Q As a matter of fact, I understand that when I
10 asked you about this earlier, you described the self-paced
11 work environment as the optimal work environment; isn't
12 that right?

13 A Yes.

14 Q Now, conductor work on Norfolk Southern, from the
15 materials you've read, doesn't it indicate that it is
16 self-paced?

17 A Yes.

18 Q And, in fact, do you know about the operation of
19 a train where actually the conductor is in charge of the
20 train, and the conductor is responsible for telling the
21 engineer whether to move or not move? Did you know that --

22 A Yes.

23 Q -- that the conductor is in charge of the
24 train?

25 A Yes.

1 Q So as a result, if the conductor needs to take a
2 break and not move cars, is it your understanding in the
3 railroad industry that a conductor has the right to do
4 that, to stop the train, take a break?

5 A Yes.

6 Q Okay. Now, you said that you've watched a video
7 that was created by industrial hygienist Mr. Shea. In that
8 video, do you see any exertion that would require heavy
9 lifting like 50 or 100 pounds that would put this in the
10 medium to heavy labor categories that the Department of
11 Labor defines?

12 A Not in the material that was shared with me, I
13 didn't see that.

14 Q Right. In fact, the conductor activities, did
15 you see people coupling and uncoupling air hoses?

16 A Yes.

17 Q Did that look very difficult to you?

18 A No.

19 Q Did you see conductors standing and using a radio
20 to direct car movements?

21 A Yes.

22 Q And would you consider standing and using a radio
23 to be a heavy exertional level or even a medium exertional
24 level?

25 A No.

1 Q And then, finally, I assume that you saw a great
2 deal of walking, that conductors walk along the track. Did
3 you see that?

4 A Yes.

5 Q And in what you deal with with athletes, with
6 marathons and things of that nature, those are dealing with
7 people like -- like athletes and persons such as yourself.
8 I believe you're a runner, correct?

9 A Yes.

10 Q All right. You're dealing -- in those situations
11 you're dealing with people that are running long distances
12 where extreme levels of exertion are done by the athlete.
13 You've dealt with those, and you've actually helped with
14 these marathons, correct?

15 A Yes.

16 Q But in watching the video, did you see the
17 conductor running at all?

18 A No.

19 Q In fact, most of the activity was walking, isn't
20 it?

21 A Yes.

22 Q And with respect to walking, for a well-nourished
23 fit male that is out in the open, how many miles a day
24 would you expect a person to be able to walk in a normal
25 course of a day?

1 A There's a lot of parts of that question. It
2 would depend on how hot it is outside, how much, like,
3 clothing or protective gear they have on in certain
4 situations and what their fitness level is, their heat
5 acclimatization status. So, I mean, a very fit, high level
6 athlete could probably walk 30 miles without having a
7 problem, but for some people walking three, four, five
8 miles might be quite a challenge during the course of a
9 day.

10 Q Now, with respect to Mr. Moorer, as he reported
11 to the workplace on May 8 before all of this started, you
12 had every indication he was fairly conditioned, he was able
13 to walk several miles a day, didn't you?

14 A Yes.

15 Q All right. Now, with respect to the condition
16 that Mr. Moorer ultimately suffered, you've given various
17 levels of heat or heat stroke. First of all, Mr. Moorer
18 did not suffer a heat stroke on May 9 or May 31, did he?

19 A I don't think you have enough information that
20 you could accurately say that. We never had an accurate
21 temperature on site or even soon after the incident that
22 was done in terms of an accurate internal body temperature.
23 Certainly indicates on May 30 or 31 that a heat stroke
24 could have been a possibility. He had altered mental
25 status, and he couldn't continue exercising, and he was

1 struggling a great deal, couldn't even support his own body
2 weight. Without a temperature, an accurate temperature,
3 you would have no way of knowing at this point.

4 Q With respect to heat stroke, though, it's often
5 persons become disoriented and potentially unconscious,
6 right?

7 A We've had various levels of mental status
8 changes. So they don't always have to become unconscious.
9 We've actually had conversations with some people when
10 they're first suffering a heat stroke, and then it can go
11 all the way up to being in a coma. So there's certainly a
12 range.

13 Q Right. In Mr. Moorers's situation, he never
14 became unconscious in any way, did he?

15 A No, but it seemed like he had altered mental
16 status.

17 Q He had an event of rhabdomyolysis, correct?

18 A Are you speaking now of the first incident, too?

19 Q Both incidents, yes.

20 A Yes.

21 Q And even you, as a conditioned athlete, you've
22 had events of what you would refer to as mild
23 rhabdomyolysis, correct?

24 A Yes.

25 Q And that's not unusual for marathon runners to

1 have some form of mild rhabdomyolysis, right?

2 A Yes. It's -- I don't know how you exactly
3 phrased that question. It is somewhat normal for someone
4 to have mild rhabdomyolysis.

5 Q Let's turn to the May 9 events. And, first of
6 all, with the May 9 events, we know that Mr. Moorner, from
7 the testimony, that he had sweats and cramping the night
8 before he returned -- the night before he came to work on
9 May 9. Is that your understanding?

10 A Yes.

11 Q And as part of the worker environment, would you
12 agree with me that the interaction between an employer and
13 an employee with respect to the employee's health is a
14 two-way street; in other words, the employee needs to
15 effectively communicate how he's feeling to the employer?

16 A Yes.

17 Q And in Mr. Moorner's situation, is there any
18 indication that he reported to any person that he had those
19 events the night of May 8 where he had cramping or sweating
20 all night? Is there any indication of that?

21 A Not that I'm aware of.

22 MR. MOSS: Excuse me. Let me interpose an
23 objection to the extent that we're alleging or somehow
24 alleging comparative fault with respect to what was
25 Count 1 that's now been dismissed. Subject to my

1 objection, sir, you can answer.

2 BY MR. TECKLENBURG:

3 Q Do you understand the question?

4 A Yes. I don't have any indication that he
5 reported his struggles the night before to anybody when he
6 arrived at the work site on the following day.

7 Q And it would be a good idea to do that, right?

8 A Yes.

9 Q And your testimony is, in fact, that the May 30
10 and 31 events were somewhat of a continuation of the
11 condition he was in. In other words, that he was now more
12 susceptible to heat injury; therefore, there was a
13 continuation of the May 8 and May 9 events that happened
14 later in May; is that right?

15 A No, I didn't -- I didn't say that. I said there
16 was a possibility you could have a continuation if the
17 person's not completely recovered, but they could be just
18 two completely separate incidents, because the first one
19 might have happened for a particular reason, and maybe that
20 reason wasn't corrected, or it just might have been unique
21 to that day, and then the second incident could also be a
22 stand-alone incident, or they could be intertwined if the
23 person wasn't recovered completely before they were allowed
24 to go back for the second activity.

25 Q Let's get back to these May 9 events. There's no

1 indication that Mr. Moorer told his supervisors of his
2 condition the night before. Is there also evidence in the
3 record that you've reviewed that he failed to hydrate and
4 potentially nourish himself properly?

5 A It indicates that on the -- that long -- the
6 12-hour shift, that he felt he didn't hydrate as well as he
7 could have.

8 Q Right. And that's a two-way street, too. The
9 employee needs to take care of himself, needs to eat during
10 the day, three meals a day if possible, in order to be fit
11 if he's going to work outside; don't you agree?

12 A I absolutely agree. We always -- we want the
13 employee to take control of the actions that they can
14 control, but you also want to make sure that the work
15 situation that they're in encourages those breaks and the
16 nourishment and the hydration and that they feel
17 comfortable reporting when they do have problems.

18 Q Now, let's sort of move on from the May 9 events.
19 Is it your understanding that Mr. Moorer presented to his
20 supervisor, Mr. Deshazor, this return-to-work slip from
21 Dr. Dantzler?

22 A Can you repeat that question?

23 Q Is it your understanding that Mr. Moorer gave to
24 Mr. Deshazor his return-to-work slip from Dr. Dantzler?

25 A I'm actually not aware of the exact person he

1 handed his return-to-work slip to, so I apologize.

2 Q The return-to-work slip, basically, do you have
3 it near you or in front of you?

4 A I don't have it with me right now, but I have
5 reviewed it.

6 Q It basically says that he can return to work on
7 May 21, 2007; isn't that what that slip says?

8 A Yes.

9 Q And it doesn't give any specific limitations,
10 does it, on that return-to-work slip?

11 A On that particular slip it does not, in his
12 medical notes.

13 Q Right. And at the time this slip came in,
14 and I know you've now opined and criticized the work of
15 Nurse Carol White who made the decision to let him come
16 back, but at the time that all of this was happening in
17 May 2007, you were not involved in this case, right?

18 A No.

19 Q And there was no lawsuit pending at the time?

20 A No.

21 Q And, in fact, you are here as a paid expert of
22 the plaintiff. How much do you charge per hour, sir?

23 A \$300.

24 Q And how much have you charged in this case? Do
25 you know?

1 A All work related up to this point?

2 Q Yes, sir.

3 A I think it's around \$12,000.

4 Q And you've charged that amount to Mr. Moss?

5 A Yes.

6 Q All right. Now, let's talk a little bit about
7 Dr. Dantzler. Dr. Dantzler, is it your understanding that
8 he is Mr. Moorers's personal physician?

9 A Yes.

10 Q You don't have any indication otherwise? There's
11 no indication he was appointed by Norfolk Southern to
12 examine him, is there?

13 A Not that I'm aware of.

14 Q All right. So Mr. Moorers goes to his
15 personal physician and gives this return-to-work note. In
16 fact, if Dr. Dantzler would have called you, you would have
17 told him what you've told the jury today, that you think
18 that he needs to be acclimatized, that he needs reduced
19 work hours. Isn't that what you would have told
20 Dr. Dantzler?

21 A Yes.

22 Q You would have second-guessed him, wouldn't
23 you?

24 A I don't know if second-guessed is the right
25 phrase. I think I would have tried to just give him the

1 knowledge that I have related to heat illnesses.

2 Q Which would be to do something different than
3 what he recommended, which is returning to work to regular
4 duties?

5 MR. MOSS: Object to the form of the
6 question.

7 A You might have to rephrase that. I wasn't sure
8 what you were looking for there.

9 BY MR. TECKLENBURG:

10 Q Sure. No problem. You, in fact, would have done
11 something different than Dr. Dantzler? You would have
12 acclimatized him and not given a work slip allowing him to
13 return to regular duties?

14 A Absolutely.

15 Q Now, with respect to Dr. Dantzler, your testimony
16 is that the medical department should have done something
17 different than what Mr. Moorer's personal physician
18 recommended, right?

19 A I'm not sure if that's exactly true. I think
20 just having more engagement with that physician and also
21 just having better policies in place to bring someone back
22 in that particular situation.

23 Q Let me ask you about that engagement process.
24 Are -- you, I'm sure, are aware of the federal law named
25 HIPAA, correct?

1 A Yes.

2 Q And is it not the case that any person, whether
3 an employer or third party or otherwise, cannot discuss
4 with someone's personal physician particular matters
5 without approval and a written release that's authorized
6 under HIPAA; isn't that right?

7 A That's true, yes.

8 Q And have you seen any HIPAA release by
9 Dr. Dantzler, signed by Dr. Dantzler in this case --

10 A Nothing.

11 Q -- or by -- or by Mr. Moorer where he's
12 authorized Dr. Dantzler to talk to the Norfolk Southern
13 medical department?

14 A I have not seen anything that's been shared with
15 me.

16 Q And basically your testimony is that he or the
17 medical department -- I'm sorry, Nurse Carol, that she
18 should have imposed additional conditions, that she should
19 have come up with some plan, like you've testified to,
20 which is this acclimatization plan, correct?

21 A I don't think she should come up with it, because
22 I don't think she has the knowledge base to come up with a
23 heat acclimatization plan. I think the company should have
24 a heat acclimatization plan for anybody who returns to work
25 after some prolonged period of absence, and it doesn't have

1 to just be following a heat illness. It could be someone
2 who's away for --

3 Q Mr. Casa, you don't know that. You've never met
4 Nurse Carol or talked to Nurse Carol or reviewed any of her
5 testimony, have you?

6 A No. I believe I've seen just an affidavit.

7 Q You don't know her experience level as a nurse,
8 how she's worked at a hospital in the state of Virginia or
9 how she's spent almost 20 years with Norfolk Southern? You
10 don't know her history, do you?

11 A No, I only assumed that if she had experience
12 with heat acclimatization, that she would have invoked a
13 policy for him that gave him heat acclimatization.

14 Q And you have this policy, but you're not aware of
15 any private corporation that has adopted the policy you
16 embrace today, are you?

17 A Like I said, I've never researched that, but I'm
18 not aware of any company, but I've never looked into it.

19 Q And, in fact, one of the things I think I've
20 heard you recommended is that a medical professional ought
21 to come out in the field; every time there is a significant
22 heat injury in a private company, that a medical
23 professional, presumably a doctor or a trainer should come
24 out in the field and watch the employee? Is that what
25 you're telling this jury?

1 A I think that they should definitely have an
2 initial interaction with him on site to review the duties,
3 the physical demands, what signs and symptoms to look for
4 and develop that specific policy for getting that person
5 back, not every day that they're exercising and that
6 they're working, but I do think she should have an initial
7 interaction with that person when they're returning to
8 work.

9 Q So if I have a large landscaping company and I
10 have an employee like Mr. Moorer that falls ill, is
11 hospitalized for two days, that I, the landscape company,
12 have an obligation to send a doctor or medical professional
13 in the field to watch this man come back to work? Is that
14 what you're telling us?

15 A I'm not saying he has to be at the place where
16 he's working. I'm saying there should be an interaction
17 with someone from the company who has a sense of what those
18 job demands are and knows what this person is coming back
19 from and come up with a strategy to allow them to perform
20 safely.

21 Q Have you evaluated how practical this
22 recommendation is to undertake? Have you talked to any
23 other professional involved with private corporations to
24 see whether sending a medical professional out in the field
25 is even practical?

1 A I obviously would have to see how many serious
2 heat illnesses that require hospitalization occur and then
3 that person coming back to activity. I'm thinking that
4 hopefully in your company you don't have too many heat
5 illnesses that require hospitalization and then returning
6 to work. So the ones that you do have, I certainly think
7 there should be some interaction with them.

8 Q I guess the luxury of advising sports teams and
9 advising the U.S. Army is that they have persons on staff.
10 For example, sports teams generally have medical trainers
11 on the field at all times; don't they?

12 A I mean, all professional -- all college and most
13 high schools have an athletic trainer, but I just -- if a
14 public high school that's struggling financially can afford
15 and athletic trainer, I certainly think a company like
16 Norfolk Southern could have some people interacting with
17 their employees after having a heat illness that requires
18 hospitalization.

19 Q But, Dr. Casa, the difference is that those
20 athletes out there, they're hitting it, they're going after
21 that training for four hours on end, they're running
22 sprints, whereas the Norfolk Southern employee, his main
23 activity is walking. Isn't that the difference?

24 A There's certainly a difference in the level and
25 the activity, but if somebody's walking for 10 to 12 hours

1 in hot conditions, that would still very much worry me for
2 the population at large.

3 Q Let's move on to the events of May 31. Now,
4 you've read Mr. Connolly's affidavit that's been submitted
5 in the case, correct?

6 A Yes.

7 Q And he states that he started talking to
8 Mr. Stinson around 3:20 in the afternoon telling him that
9 Mr. Moorer was not feeling better. Isn't that what your
10 recollection is?

11 A Yes.

12 Q And it looks like -- and at the time they were in
13 Kingville, South Carolina. Do you know where Kingville
14 is?

15 A I do not.

16 Q I will represent to you it is on the edge of the
17 Congaree Swamp in probably one of the most rural areas in
18 South Carolina. Is it your expectation that a medical
19 professional should run to that area and wait on that area,
20 or that the train should proceed on like it did and go
21 50 miles an hour towards civilization? Isn't that the
22 right thing to do?

23 A Like I said earlier, that's why you would have an
24 emergency action plan. Absolutely, in the situation you
25 just mentioned, if you're not near medical care, I would

1 try to get the train closer to where the proper medical
2 care could meet Trumaine, so of course that makes a lot of
3 sense. And if it means getting all the way back in, that
4 could make sense as well, but obviously have an ambulance
5 ready and waiting when you arrive there, but obviously each
6 particular run that these trains make, you would have an
7 emergency action plan to decide what makes sense if someone
8 has problems on certain areas of the certain runs. Yes,
9 coming back might make sense, and in certain situations
10 coming back might not make sense, because you might be a
11 lot closer to medical care where you're at.

12 Q All right. Let's say Mr. Connolly's affidavit is
13 right, that he's talked to Mr. Stinson around 3:20. The
14 EMS record shows that they were called at 3:56, so about
15 30 -- my math is not always that right, but basically from
16 3:20 to 3:56 would be 36 minutes afterwards. It's your
17 testimony that you ought to get people on the ground within
18 30, but no later than 60 minutes, right?

19 A Yes.

20 Q Okay. And, in fact, the EMS arrived -- they
21 were a little slow that day, didn't arrive until 4:11, so
22 they arrive 50 minutes approximately after this call to
23 Mr. Stinson; isn't that right?

24 A Yes, but there's also indication that maybe there
25 were conversations with Deshazor prior to the call with

1 Stinson. So that time frame might be extended slightly.

2 Q The testimony is going to show also before EMS
3 arrived, that there were fire department EMT's on site.
4 Did you know that they arrived before the EMS at the train
5 depot in Columbia?

6 A You're saying that it was there at the time of
7 Trumaine's arrival?

8 Q But very shortly thereafter. Did you know that
9 before EMS arrived, there were fire department EMT's on
10 site?

11 A I don't actually -- I'm not sure if that was
12 actually shared with me or the exact time frames of
13 those.

14 Q And really the best thing that can happen to
15 someone in this situation is to get an IV set up and get, I
16 believe it's saline solution going? Isn't that the best
17 thing that can start happening?

18 A Not necessarily, not if it's a heat stroke. If
19 it's a heat stroke, cooling him would be much more
20 important than the IV.

21 Q Okay. Well, with respect to Mr. Moorer,
22 according to the EMS record I have in front of me, he was
23 administered and started getting IV and solution at 4:28.
24 Did you know that?

25 A Yes.

1 Q Okay. So he's getting -- going through the
2 progression, Stinson gets a call at 3:20. EMS doesn't get
3 there until 4:11, and then he starts getting the IV at
4 4:28. I noted in your testimony earlier you said that it
5 was nearly two hours before he got to the hospital, but in
6 fact he was getting medical care within an hour of
7 Mr. Stinson's call, wasn't he?

8 A He was -- yes, your statement is correct; he was
9 receiving medical care within an hour of the Stinson call,
10 but it was nearly two hours from when problems were first
11 reported when he could start receiving high level medical
12 care at a hospital. It's very limited what an EMT or EMS
13 services can provide.

14 Q Now let's talk --

15 A If it was heat stroke, it's extremely important
16 that the cooling that would be done at a hospital, because
17 it's very limited with the potential what an EMT or EMS
18 could do.

19 Q Let's talk a little bit finally about Mr. Moorer.
20 With respect to Mr. Moorer's true medical condition, we
21 really don't know the full situation with respect to
22 Mr. Moorer. We really don't know all of the potential
23 causes of what he encountered; isn't that right?

24 A Yes.

25 MR. MOSS: Object to form, vague.

1 BY MR. TECKLENBURG:

2 Q And, in fact, things such as too much sodium or
3 salt in the sweat can cause cramping; isn't that right?

4 A Yes.

5 Q So you would agree with me that there are
6 multiple causes of things that could have resulted in
7 Mr. Moorer's condition? It could be genetic?

8 A Yes.

9 Q Could be sickle cell?

10 A Yes.

11 Q And wouldn't you agree with me that if Mr. Moorer
12 was offered genetic testing, that he should pursue that?

13 MR. MOSS: Objection.

14 A I don't really -- I don't know if that's my place
15 to judge what he would want to find out about in terms of
16 genetic -- his own genetic conditions. It certainly could
17 help us identify what potential risk he might be at in the
18 future.

19 BY MR. TECKLENBERG:

20 Q And identifying the full picture with a person in
21 this situation would be a goal, such as yourself or
22 Dr. O'Connor who you've worked with a number of times?
23 Isn't that the goal, is to find out really what's behind
24 the problem?

25 A Yes, I would want to know.

1 Q And if Mr. Moorer was offered genetic testing as
2 part of this lawsuit and refused, do you think that's a
3 good idea?

4 MR. MOSS: Objection. You offered to take
5 his blood. You can answer.

6 A If he was going to go back into a work setting
7 that might put him at risk and heat, I would like to know
8 the genetic risk, because I'd want to rule it out, because
9 I think it's highly unlikely that it's a problem in this
10 particular case, but I would rather know than not know.

11 BY MR. TECKLENBURG:

12 Q And, in fact, with respect to Mr. Moorer going
13 back to the railroad industry, you would not foreclose
14 Mr. Moorer from being a conductor again, would you?

15 A No.

16 Q And if he would voluntarily undergo a work-up,
17 create some medical evidence that perhaps would convince
18 Norfolk Southern or if he applied at another railroad as a
19 conductor, you wouldn't foreclose Mr. Moorer from doing
20 that again, would you, doing that occupation?

21 A I would actually want him to try it, but there's
22 a potential that he might have long-term complications from
23 these incidents that might preclude him from performing
24 those duties.

25 Q Ah, Dr. Casa, but you used the word "might," and,

1 in fact, we don't know what the long-term effect has been
2 on Mr. Moorner, do we?

3 A No.

4 MR. TECKLENBURG: Thank you. I have no
5 further questions. Mr. Moss may have a few more.

6

7 R E D I R E C T E X A M I N A T I O N

8

9 BY MR. MOSS:

10 Q Mr. Tecklenburg represented to you and asked you
11 about Dr. Dantzler releasing Mr. Moorner to return to work
12 with no restrictions on that return-to-work slip. Do you
13 recall that question?

14 A Yes.

15 Q In your reading of the actual note from May 17,
16 did that note consistently state that Mr. Moorner could, in
17 fact, be released to work without restriction at the
18 railroad?

19 A No. I mean, it seemed like that there was some
20 specific things that Dr. Dantzler wanted to take place.

21 Q What kind of limitations or workplace
22 limitations, if any, do you recall Dr. Dantzler imposing on
23 May 17, 2007?

24 A No caffeine or alcohol, which probably not is an
25 issue in the workplace, more focus on hydration and, most

1 importantly, frequent breaks.

2 Q Is it your understanding that Nurse Carol White
3 actually had the medical record from May 17 when she
4 released Mr. Moorer to return to work, or did she instead
5 rely entirely on the return-to-work slip?

6 A I'm guessing she only had the return-to-work
7 slip, because she didn't make -- she didn't adhere to any
8 of the specific recommendations of Dantzler.

9 Q Is it your understanding that Dr. Dantzler
10 imposed those limitations or restrictions on May 17 on a
11 permanent basis?

12 A I'm actually not -- I couldn't say for sure. I
13 don't know what Dantzler's interpretation was. That may
14 be -- that was maybe was a temporary modification until a
15 future work-up.

16 Q And I think Mr. Tecklenburg made this point, but
17 I think I should follow. If there was never any HIPAA
18 release information, would it be appropriate for the
19 Norfolk Southern Medical Department to place a phone call
20 and speak directly to Dr. Dantzler?

21 A Absolutely. I would want them to -- if they
22 needed to get the signatures, I'm sure Trumaine and the
23 doctor would be comfortable signing off since his goal was
24 to get back to work on that May 17. So I'm sure he would
25 have full release of those medical records.

1 Q We also know from looking at the documents
2 following the second incident that Norfolk Southern
3 actually did make a very specific inquiry of
4 Dr. Dantzler?

5 A Yes.

6 Q Can you think of any reason in managing
7 Mr. Moorer's return to work from your point of view why
8 Norfolk Southern couldn't have very carefully corresponded
9 with or spoken with Dr. Dantzler before Mr. Moorer was
10 released to work in late May 2007?

11 A I would absolutely want the company to interact
12 with that doctor, and if they do have to get the obvious
13 approvals to be -- to do it all legally and correct, but
14 you would want an open chain of command -- open chain of
15 communication between the primary care physician and the
16 company, because the doctor might have to inquire about the
17 specific job duties and what stresses might be imposed and
18 what work settings they might be in in terms of
19 environment, and the company can share that, and the
20 company can ask specific questions regarding the notes that
21 are in his records and what he means by those notes. For
22 instance, it says frequent breaks, but that's not
23 specifically defined. So the company -- going back and
24 forth, they both can benefit from that communication.

25 Q Mr. Tecklenburg asked you about the practicality

1 of your recommendation and more specifically your criticism
2 of Norfolk Southern. I'd like you to actually tell the
3 jury how burdensome it would be for a company like Norfolk
4 Southern, who I think is going to tell this jury that these
5 heat incidents are very rare in their workplace, I'd like
6 to you to actually give the jury a description how
7 difficult it is to have a company like Norfolk Southern
8 with 30,000 employees to do what you're recommending for
9 those employees who have a heat illness at work. How
10 difficult is it, Dr. Casa?

11 A I don't think it's --

12 MR. TECKLENBURG: Objection, not qualified.
13 You can answer, Dr. Casa.

14 A I don't think it's difficult at all. In fact, I
15 think the company has an obligation to help these employees
16 get back to work, because these individual employees are
17 not experts in terms of getting their fitness status back
18 and their heat acclimatization status back, and the company
19 could employ a few people who are experts in that area. I
20 don't think it would be difficult at all. You don't have
21 to go around chasing everyone who was sick for a day.
22 We're talking about people who had serious conditions,
23 somebody in this case who was hospitalized for a few days.
24 So I definitely think that it's very feasible, and I
25 wouldn't see it as burdensome at all, especially a company

1 that touts itself on the importance of safety in the
2 workplace. This seems like that this would be certainly
3 good practice of that advice.

4 Q All right. If -- hypothetically, if an industry
5 like Norfolk Southern called you and said we had someone
6 hospitalized following a heat incident, how much
7 professional time would it take you to implement the plan
8 that you just described to this jury?

9 A With one individual, it probably would take me
10 three to five hours of work, and that includes likes
11 all -- you know, reading all the medical records, the
12 interaction with the physician, the company and the
13 employee.

14 Q And is there any reason that somebody would have
15 to actually be hired and put on staff, or can people in
16 your industry work as an independent contractor on a
17 case-by-case basis?

18 A A company the size of Norfolk Southern, I think
19 it would be very wise to have one person who has that kind
20 of expertise, and then they could potentially consult out
21 for the particular cases that they have to deal with. But
22 it's all based on the numbers. I don't know what numbers
23 we're talking about here with this particular company. If
24 it's a lower number, then I certainly would just do this on
25 a consulting basis, but if you're dealing with a more

1 substantive number of cases, then maybe you have a person
2 on staff who's dealing with this.

3 Q So how much would it cost, Dr. Casa, if Norfolk
4 Southern asked you to implement your strategy for Norfolk
5 Southern? You said it would take a few hours. How much
6 money would it cost to implement the strategy?

7 A To hire me for five hours for one person would be
8 about \$1,500.

9 Q And if they hired you, in your opinion would the
10 next heat injury be entirely preventable?

11 MR. TECKLENBURG: Object to the form. The
12 next injury is not relevant. You can answer, Dr. Casa.

13 A I could never prevent all cases of heat illnesses
14 by being -- having someone heat acclimatized, because
15 people can still get heat illnesses, but we would
16 dramatically reduce the incidents of a heat illness, that
17 we would dramatically increase that person's exercise heat
18 tolerance. So we certainly would be doing the best things
19 we can for that employee.

20 Q And if someone like you was hired on a one-to-one
21 basis to target an individual, in your opinion would that
22 make the workplace and the return to work safe?

23 A Yes.

24 MR. MOSS: Those are all the questions I
25 have.

1 R E C R O S S - E X A M I N A T I O N

2

3 BY MR. TECKLENBURG:

4 Q Dr. Casa, sounds like a full employment act
5 that -- again, this is Paul Tecklenburg for the record. I
6 know we're not live, so we have the videotape. But it
7 sounds like the full employment act, a good gig, that every
8 time there's a heat-related illness where hospitalization,
9 you would get hired or someone like you would get hired as
10 a consultant. That would be good for your profession.

11 A I actually -- my first recommendation was to have
12 someone on staff with the company who has expertise maybe
13 in sports medicine who could help with some of these
14 specific physical activity, sports medicine related issues
15 and help with that return to play or work strategies. But
16 based on your heat illness numbers, then yes, if you were
17 seeing hundreds and hundreds of heat illnesses, I certainly
18 would hope that you guys would employ one expert in that
19 particular area, one to prevent future cases, because maybe
20 there's some policy changes that need to be made, and then
21 certainly to help people who need help to get back to
22 activity and get back to their work setting and doing the
23 things you want them to do.

24 Q Fortunately the evidence is they're not hundreds,
25 they're not even dozens. But, Mr. Casa -- Dr. Casa, you go.

1 and you train people at the University of Connecticut in
2 the field of athletic sports, athletic --

3 A Athletic training sports medicine.

4 Q There you go, sports medicine. So if companies
5 were to follow your advice, there would be more employment
6 for your students, right?

7 A Athletic trainers in general, I mean, that
8 certainly seems like most -- a lot of industries employ
9 athletic trainers. So it doesn't seem like it would be
10 very different than a lot of other industries who are
11 already employing these people. They just have some
12 specific expertise related to environmental conditions,
13 heat acclimatization and prevention recognition, treatment
14 and return to work related to heat illnesses. So it does
15 seem like that this particular profession of athletic
16 training, these people -- the company could benefit from
17 having somebody around with that expertise.

18 Q Well, I'm sure the vocational folks at your
19 college would be happy to hear that.

20 Let's move on to Dr. Dantzler. Now, with
21 Dr. Dantzler -- I have his note in front of me, and it says
22 Action Plan, quote, Dehydration, frequent breaks during
23 heat, increase fluid intake, no caffeine, alcohol,
24 resolved, return to work to regular duties, unquote. Is
25 that what you recall that note saying, his specific May 17

1 note?

2 A Yes.

3 Q In fact, what he's indicating is that what
4 Mr. Moorer had was indeed resolved, and he is the hands-on
5 physician, the personal physician of Mr. Moorer; isn't that
6 right?

7 A Yes.

8 Q And he talks about going back to regular duties,
9 and I want to talk to you about that, because it's the
10 first thing we talked about, and it will probably be the
11 last thing. Dr. Dantzler talks about frequent breaks
12 during the heat, and frequent breaks would mean what to
13 you?

14 A That would all depend on the intensity of the
15 activity. So if it's extremely intense, it would mean more
16 breaks and longer breaks per hour, and if it's lighter
17 intensity, it would be less, so --

18 Q And you've seen the video of what conductors do.
19 It's lighter intensity, isn't it?

20 A Yes. So, I mean, if I had to give an estimation
21 of someone who is already fully heat acclimatized and
22 someone whose fitness status is back to where it needs to
23 be for that job, I would say that would be something like
24 10 minutes per hour in terms of a break.

25 Q And the beauty of self-paced work, Dr. Casa, like

1 we described earlier for conductors is that you get to pace
2 yourself and take breaks when you want. Isn't that the
3 ideal work environment?

4 A I think self-pace is a fantastic way to prevent
5 problems in the work setting, but it doesn't resolve the
6 problem that Trumaine was not heat acclimatized when he
7 went back to work on May 30.

8 Q And self-pacing allows the frequent breaks that
9 Dr. Dantzler wanted him to have?

10 A It could, certainly.

11 Q And, also, the increased fluid intake, we've
12 already established that Norfolk Southern provides water on
13 its trains every day; it's part of, if you will, what
14 leaves the station; isn't that right?

15 A Yes.

16 Q And fluids are available, water is available and
17 potentially Squinchers are available to its employees,
18 aren't they?

19 A Yes.

20 Q And as far as you could tell, Norfolk Southern
21 would encourage increased fluid intake? In fact, that's
22 what their safety manual talks about, is consuming frequent
23 amounts of water, right?

24 A Yeah, they don't give any specific guidelines for
25 their employees, but in general they do speak about

1 hydration.

2 Q And, finally, if a doctor wrote in his notes
3 frequent breaks, increased fluid, no caffeine, no alcohol,
4 don't you think that's the kind of thing the doctor would
5 discuss with his patient?

6 A Yes.

7 Q And, in fact, you have every belief that
8 Dr. Dantzler and Mr. Moorer, when they sat down on May 17,
9 they had that discussion? Don't you believe that?

10 MR. MOSS: Objection.

11 A I'm hopeful that they had that, but I'm not -- I
12 would think a doctor, if he's writing it down in his notes,
13 he's communicating that to his patient.

14 MR. TECKLENBURG: So would I. Thank you,
15 Dr. Casa.

16 MR. MOSS: This concludes the deposition
17 from the plaintiff.

18 THE VIDEOGRAPHER: Off the record 11:34.

19 MR. TECKLENBURG: Thank you.

20

21 (Deposition concluded: 11:34 a.m.)

22

23

24

25

1 (WHEREUPON, the video deposition of Dr.
2 Douglas Casa continued.)

3 THE COURT: All right. Who is your next
4 witness?

5 MR. MOSS: Forrest Britt.

6 THE COURT: The next witness is Mr. Forrest
7 Britt. His deposition has been -- I think I told
8 you yesterday that sometimes we have a video
9 deposition and sometimes it is reduced to a
10 transcript. And what happens at that deposition is
11 a court reporter who is similar to the court
12 reporter here sits there and takes down everything
13 that that person says. So it is transcribed and we
14 have that. I think the next two witnesses, or at
15 least two witnesses are by deposition. We have Mr.
16 -- who is it?

17 MR. MOSS: John Steel.

18 THE COURT: Mr. Steel, who is Mr. Moss's
19 partner, who is not Mr. Britt, but he will read
20 into the record the deposition, and I believe
21 Mr. Moss is going to -- this is a little bit of
22 role playing -- is going to play himself.

23 MR. MOSS: I will play myself.

24 THE COURT: And Mr. Tecklenburg, are you going
25 to play yourself?

1 MR. TECKLENBURG: With this witness, yes, Your
2 Honor.

3 THE COURT: All right. So we'll have a little
4 bit of role playing.

5 All right, thank you, Mr. Steel.

6 MR. STEEL: Thank you, Your Honor.

7 (WHEREUPON, the deposition of Forrest
8 Britt was read into the record.)

9 THE COURT: Call your next witness.

10 MR. MOSS: Your Honor, the Plaintiff again by
11 deposition, steno deposition, will call Dr. James
12 Dantzler.

13 While we are getting organized, I move the
14 admission of Plaintiff's Exhibit 8.

15 THE COURT: Any objection?

16 MR. TECKLENBURG: No, Your Honor.

17 (WHEREUPON, Plaintiff's Exhibit No. 8
18 was marked for identification and
19 received into evidence.)

20 (Exhibit published to jury.)

21 (WHEREUPON, the deposition of Dr. James
22 Dantzler read in open court.)

23 MR. MOSS: That concludes the deposition.

24 THE COURT: Thank you, sir. You may step
25 down.

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-05460
3
4 TRUMAINE V. MOORER,)
5)
Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7)
NORFOLK SOUTHERN RAILWAY)
COMPANY,)
8)
Defendant.)

September 19-23, 2011
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
jury.

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

JOHN A. MOSS, ESQ.
RANDOLPH MURDAUGH, IV, ESQ.
Attorneys for the Plaintiff

PAUL F. TECKLENBURG, ESQ.
RIVERS T. JENKINS, III, ESQ.
Attorneys for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 THE CLERK: Thank you. Have a seat in the
2 witness stand, please.

3 (Witness seated.)

4 THE CLERK: And state your name for the
5 record.

6 THE WITNESS: Forrest Britt.

7 FORREST BRITT,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MOSS:

11 Q Mr. Britt, we promised these people that they will
12 be out of here at 5:58, okay?

13 A Yes, sir. Sounds good to me.

14 Q So let's get to it, okay?

15 A All right, sir.

16 Q Where are you from?

17 A Richburg, South Carolina.

18 Q Do you work?

19 A I'm retired.

20 Q From?

21 A Norfolk Southern Railway.

22 Q How long did you work there?

23 A Thirty-six years.

24 Q What did you do?

25 A I was a locomotive engineer.

1 Q The whole time?

2 A Thirty-five of the 36 I was engineer.

3 Q Do you know Trumaine Moorner?

4 A Yes, sir. Yes, sir, I do.

5 Q You looked over there.

6 A Oh, there he is. Yes, okay.

7 Q How do you know Mr. Moorner?

8 A He was -- he trained under me as a conductor
9 trainee, and then he worked as a conductor on my
10 job for a short period of time.

11 Q Your job had a job number, P28?

12 A P28.

13 Q The jury will get most of this from other people
14 tomorrow, but generally speaking the P28, what does
15 it do?

16 A It is a local freight that takes cars from the yard
17 and delivers them to our customers down the road.
18 We pick up empties or loads, whichever the case may
19 be, and replenish the industries with loads or
20 empties.

21 MR. MOSS: Your Honor, may I approach the
22 bench one second?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 THE COURT: Ladies and gentlemen of the jury,
3 there is a matter of law that I need to take up.
4 It is going to take two minutes. I am going to
5 send you all out. Before you can sit down and use
6 the bathroom -- if you have to use the bathroom, go
7 ahead and do it, but there is a matter of law that
8 is going to take about two minutes.

9 (WHEREUPON, the jury retires to the jury
10 room at 5:41 p.m.)

11 THE COURT: All right. Yes, sir? You can
12 just place it on the record.

13 OUTSIDE THE PRESENCE OF THE JURY

14 BY MR. MOSS:

15 Q Mr. Britt, the Court has made a ruling about the
16 air conditioning on the engines. And one of the
17 issues that we were going to talk about was the
18 complaints you made to Norfolk Southern back a year
19 or so before this incident; is that fair?

20 A Right. Okay.

21 Q You made a request to Norfolk Southern management
22 that they put air conditioned engines?

23 A Yes.

24 Q And their response was what?

25 A That they didn't furnish local freights with air

1 conditioned engines.

2 Q And was that true, after that, they didn't give
3 local freights --

4 A That's -- that's correct.

5 Q Now, you have said it. Don't say it again, please,
6 in front of the jury.

7 A Okay.

8 Q Or I'm in big trouble.

9 A Okay.

10 Q You can talk about anything else, but we can't talk
11 about AC, okay?

12 A Okay.

13 Q Thank you, Mr. Britt.

14 A Throw something at me if I do.

15 Q All right.

16 THE COURT: All right. You can bring them
17 back in.

18 (WHEREUPON, the jury came into open
19 court at approximately 5:42 p.m.)

20 THE COURT: All right, see, I told you it
21 would be very quick.

22 Yes, sir, Mr. Moss, you may continue.

23 MR. MOSS: Thank you.

24 DIRECT EXAMINATION CONTINUES

25 BY MR. MOSS:

1 Q How much exposure, Mr. Britt, did you have to Mr.
2 Moorer before you retired?

3 A Not a whole lot. I think he was only with me two
4 or three days as a qualified conductor.

5 Q Okay. On those two or three days as a qualified
6 conductor, was it a two-man crew or a three-man
7 crew on the P28?

8 A Two-man crew.

9 Q Had the P28 been a two-man crew before this
10 incident?

11 A For a short period of time it had, yes.

12 Q Tell us a little bit about May 9th. Y'all were
13 working the P28, you and Mr. Moorer, from Andrews
14 Yard to Orangeburg, right?

15 A Right.

16 Q Because it is late in the day, I am going to go
17 fast.

18 A Okay.

19 Q Let's get to what happened. It started to rain and
20 Trumaine put his rain suit on, right?

21 A Right.

22 Q Pick up the story for us.

23 A All right. We had already worked Gulbrandsen. We
24 went down to Rowesville, ran around the train.

25 Lined our train up in the order that we need going

1 back.

2 We came back up. That's -- during that time
3 it had started raining. He put on his rain suit.
4 We worked Okonite, which took a good while.

5 After Okonite we coupled back up the train and
6 moved on up to Doane Pet Care, which is a dog food
7 processing plant.

8 There, before he started work, he came up to
9 the engine, he got on the engine and got some water
10 and -- because it was right warm. There he sat a
11 few minutes until he felt like he, you know, he was
12 recouped or ready to go back to work.

13 He got off the engine, went back to make the
14 cut, as well as I remember, and the next few
15 minutes I turned around and looked and he was
16 laying in the ballast at the switch, laying on the
17 rocks. And the gentleman at the dog food plant was
18 over him.

19 And so I got off the engine and went back to
20 him and --

21 Q What did you find when you got back there?

22 A I found him on the ground, his hands constricted a
23 lot, him in cramps. He wasn't in good shape at
24 all. The gentleman had already called the
25 paramedics.

1 Q Was the gentleman employed by the railroad who
2 called the paramedics?

3 A No, he was employed by Doane Pet Care. He was the
4 foreman who would come out and tell the conductor
5 exactly what he wanted done.

6 Q How far is the EMS facility from Doane Pet Products
7 there in Orangeburg? If you know?

8 A I don't know, but I would say four or five miles.

9 Q Okay. Did you stay there with Mr. Moorer until the
10 EMS arrived and he was removed from the scene?

11 A Yes, sir, I did.

12 Q Mr. Britt, the evidence in this case is going to be
13 that it wasn't hardly hot at all that day,
14 depending on how you find that, mid-70s kind of
15 temperature. Okay? I want you to assume that.

16 A All right.

17 Q All right? You said a moment ago that it was right
18 hot.

19 A Yes.

20 Q Explain how it is that a mid-70s day can be, in
21 your words, right hot?

22 A Well, where we were there were trees and hedge rows
23 on both sides of the track.

24 Q What is a hedge row, for those younger folks?

25 A Bushes, weeds that had grown up a long consistent

1 line.

2 Q Along the tracks on each side?

3 A Right, along the tracks on each side.

4 Q And this is at the dog food plant, Doane Pet
5 Products?

6 A Right. Most of it was at Okonite because, really,
7 all this I feel like happened more between Okonite
8 and where we stopped than right at Okonite, because
9 we had only been there just a few minutes and
10 hadn't really done any work.

11 Q So it wasn't really the work at Doane's Product, it
12 was something that led up to the work at Doane's
13 Products?

14 A I feel that way, yes, sir.

15 Q Okay. Do you get off the engine any time on May
16 9th when you are doing your work? I know you got
17 off to see about Trumaine.

18 A No, sir.

19 Q Was it right hot for you?

20 A Yes, sir; it was.

21 Q Had you ever had a problem with the heat, you,
22 yourself, on that engine until this day, that you
23 can remember?

24 A On this particular engine, no.

25 Q All right. Tell the jury what happened to you

1 physically, Mr. Britt, on May the 9th, 2007, on a
2 day that was 70 something degrees.

3 A Well, I remember it raining because the rain --
4 there is a rain guard right above where I sit. And
5 I would catch the rain water and rub it on me to
6 cool down.

7 Q So your windows are down -- your windows are down
8 in this engine?

9 A Yes, sir.

10 Q Did you have any problems?

11 A Well, actually I did, but his -- in fact, he was
12 more worried about me when I was trying to get him
13 straightened out than --

14 Q Explain this, Mr. -- what do you mean?

15 A Well, I hadn't been feeling well either.

16 Q On this trip on this day?

17 A Right.

18 Q Specifically, what were you feeling?

19 A Really overheated, a little nauseated, and what
20 have you, like that.

21 Q And so Mr. Moorer expressed --

22 A Concern for me. When the paramedics was there,
23 they said, check on my engineer.

24 And I said, I'm fine, let's get you taken care
25 of.

1 Q In the ballast, hands clinched, he says, check on
2 my engineer?

3 A Right.

4 Q Did you end up going to the doctor yourself?

5 A I did. But that was on Monday.

6 Q And you told Norfolk Southern's supervision that
7 you were having -- had had problems on that day;
8 did you not?

9 A Well, I mentioned it, but now I didn't make a
10 formal report of it.

11 Q Right. Nothing on paper?

12 A Right.

13 Q But you spoke to Will Deshazor and said something
14 about it?

15 A Yes, sir.

16 Q Okay. My last question is, what kind of man is
17 Trumaine Moorner?

18 A A very good man. Outstanding.

19 Q Why do you say that?

20 A He was the type of person that would do the job the
21 way you expected him to, and he was the kind of
22 person who would take constructive criticism,
23 and --

24 Q He didn't get his feelings hurt?

25 A No. He took it as constructive criticism. And

1 sometimes I could be kind of rough on them, but it
2 wasn't because I was trying to hurt their feelings,
3 it was because I wanted them to learn, because that
4 is a big safety hazard on the railroad not knowing
5 what you are doing. And he learned well.

6 Q My last question for you is, you have seen a lot of
7 folks, young ones come through?

8 A Yes, sir.

9 Q Was he the kind of man that had the ability --

10 A Yes, sir, he did.

11 Q -- to be a good railroader, work his whole career
12 and finish it?

13 A Yes, sir.

14 Q Those are all my questions, Mr. Britt.

15 THE COURT: Please answer any questions Mr.
16 Tecklenburg might have.

17 CROSS-EXAMINATION

18 BY MR. TECKLENBURG:

19 Q Mr. Britt, good afternoon.

20 A Good afternoon.

21 Q I'll be very brief with you.

22 Now, I want to talk to you just a little bit
23 about this particular job that you worked. Were
24 you a senior on the union roster when you took this
25 job?

1 A That's correct.

2 Q You were pretty close to retirement, weren't you?

3 A Right.

4 Q All right. And the P28, why did you pick a job
5 like the P28 as opposed to maybe a through freight
6 where you wouldn't have to work all the industries?

7 A The through freights originate out of Charleston.
8 I live at Richburg, which is about a two and a half
9 to three hour drive from my home to Charleston.

10 Q Okay.

11 A So it wasn't a good idea for me to move to that
12 place. My wife was working. She had a good job.
13 And so it wouldn't have been beneficial for me to
14 go. It would have been nice if I could have.

15 Q Right.

16 A But I chose it even over the jobs in Rock Hill.
17 Rock Hill jobs were working a paper mill, and they
18 were nighttime jobs, and I had been doing that for
19 years. And I just got tired of it. And so I
20 wanted -- and that was six and seven days a week.
21 P28 was a five-day-a-week job.

22 Q And if you don't mind my asking, how old are you?

23 A Sixty-three.

24 Q All right. So back in 2000 -- May of 2007, I guess
25 you would have been 59 or so?

1 A Fifty-nine.

2 Q All right. And even though you had the most
3 seniority, you picked the P28 to work? .

4 A That's correct.

5 Q All right. Got it. And the P28, tell me about the
6 number of industries you would typically serve.

7 Would you serve up to five, maybe six industries a
8 day?

9 A Yes, sir. On an average day it would be at least
10 that. And some days we would have -- well, I think
11 there were 13 or 14 industries along the route.
12 Westbound and eastbound. Some days -- it didn't
13 happen often -- but some days we would have to work
14 all of them. Of course usually we would time-out
15 and wouldn't be able to work them all. And then
16 some days we might have a good day and work two or
17 three of them.

18 Q So would you call a good day two or three
19 industries?

20 A Yes. But that was still ten hours.

21 Q Now, on those ten hours, though, you are riding
22 down to Orangeburg and you are riding back, so you
23 are -- at that point you are running on the road,
24 right?

25 A Yes, sir.

1 Q All right. And also, it is my understanding on
2 this job you work that there is a single main line
3 going through?

4 A That's correct.

5 Q Right. So if another train is coming, you would
6 have to essentially clear out, get to another place
7 out the way?

8 A Right.

9 Q Is that right?

10 A You have to clear up in a side track, or what have
11 you.

12 Q When that happens, when you have to clear up down
13 there, is that a point where the crew can rest?

14 A The conductor has to get off and observe the train.

15 Q He has to stand out on the main line, doesn't he?

16 A That's right. He has -- he'll get on the opposite
17 side.

18 Q Not on it, but on the side of it. And his job is
19 to watch the train go by?

20 A Right. To make sure that everything -- there is no
21 dragging equipment, no hot boxes. That is another
22 term for the railroad where the journals might
23 would get hot. And if they weren't observed they
24 would eventually ring in two causing a derailment.

25 Q The point is, though, when that passing train

1 happens, the task at hand for the conductor is
2 standing?

3 A Right.

4 Q Okay. Fair enough. Now, when Mr. Moorer came to
5 work on May 9th, did he tell you that he had had
6 problems all the night before?

7 A I don't remember him saying that he had, no.

8 Q Did he tell you what his wife told him?

9 A He said that his wife had gotten on him for not
10 having eaten any earlier the previous day than what
11 he did.

12 Q And then finally I want to talk about the trains
13 when you left. Well, two things.

14 When -- the trains when you left, were they
15 supplied with water?

16 A Yes, sir.

17 Q Okay. And did you always make sure there was
18 enough water to go out for the day when you went
19 out?

20 A Yes, sir.

21 Q And finally I want to talk to you about the number
22 of men on this job.

23 How many years did you work prior to
24 Mr. Trumaine Moorer's accident in May 2007?

25 A Let's see. I think I started working around 2000.

1 This was in 2007. So six or seven years.

2 Q And I think it was your testimony that other than a
3 few months it was two men, an engineer and a
4 conductor only?

5 A That's right, just the engineer and conductor.

6 Q Were you able to perform the job safely during that
7 time?

8 A We did, yes.

9 Q Thank you.

10 THE COURT: Anything else?

11 MR. MOSS: I will not ask a question at 5:59,
12 Your Honor.

13 THE COURT: All right, sir, you may step down.

14 THE WITNESS: Thank you.

15 (Witness steps down.)

16 THE COURT: Any objection to this witness
17 being excused?

18 MR. TECKLENBURG: None from the Defendant.

19 MR. MOSS: No, sir -- no, ma'am.

20 THE COURT: Sir, you are free to leave.

21 THE WITNESS: I thank you.

22 THE COURT: All right. Thank you.

23 MR. MOSS: Thank you, Mr. Britt.

24 THE WITNESS: Thank you.

25 (Witness excused.)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TRUMAINE V. MOORER,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-05460

**STIPULATION OF DEPOSITION
DESIGNATIONS OF JAMES
DANTZLER, M.D. TAKEN 12/2/09
READ AT TRIAL (469:21-22)**

The undersigned parties stipulate the following excerpts of the deposition of James

Dantzler, M.D. taken December 2, 2009, were read at trial:

04:06 - 08:19

11:07 - 12:01

12:14 - 20:12

20:13 - 20:21

24:19 - 25:16

27:02 - 27:06

27:07 - 29:09

29:10 - 30:04

30:11 - 31:11

35:12 - 36:01

36:20 - 38:23

39:05 - 40:08

40:16 - 43:11

44:17 - 47:19

48:05 - 49:21

50:11 - 51:16

52:04 - 53:03

TECKLENBURG & JENKINS, LLC

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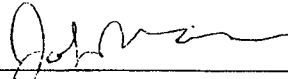
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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 TRUMAINE V. MOORER,

4 Plaintiff,

5 vs.

CASE NO: 2008-CP-38-24

6 NORFOLK SOUTHERN RAILWAY COMPANY,

7 Defendant.

8 VIDEOTAPED

9 DEPOSITION OF: JAMES DANTZLER, M.D.

10 DATE: December 2, 2009

11 TIME: 1:02 PM

12 LOCATION: Dantzler Family Care
5664 Memorial Boulevard
St. George, SC 29477

13 TAKEN BY: Counsel for the Defendant

14 REPORTED BY: Laura J. Bash, RPR

15
16 A. WILLIAM ROBERTS, JR. & ASSOCIATES
FAST, ACCURATE & FRIENDLY

17 Charleston, SC Hilton Head, SC Myrtle Beach, SC
18 (843) 722-8414 (843) 785-3263 (843) 839-3376

19 Columbia, SC Greenville, SC Charlotte, NC
20 (803) 731-5224 (864) 234-7030 (704) 573-3919

21
22
23
24
25
Dantzler, James M.D. 12/2/09

1 reporter, please swear in the witness?

2 JAMES DANTZLER, M.D.;

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TECKLENBURG:

6 Q. Dr. Dantzler, I thank you for being
7 here for your deposition today. As I announced, my
8 name is Paul Tecklenburg, I represent Norfolk
9 Southern Railway Company. I'm here to take your
10 deposition regarding your treatment of Trumaine
11 Moorer, both before and after his on-the-job
12 accident.

13 And before I do that, the rules require
14 me to tell you that if there's anything you find
15 unclear, needs repeating, please let me know and
16 I'll try to rephrase that. Okay?

17 A. Yes, sir.

18 Q. And the same will go to Mr. Moss, if he
19 asks you some questions after I finish. All right?

20 A. Yes, sir.

21 Q. Tell us a little bit about yourself.
22 You practice medicine here in Saint George?

23 A. Yes, sir. I'm a board certified family
24 practitioner. Went to medical school at Medical
25 University of South Carolina. Graduated in 1994.

1 Residency at USC/Richland. Finished it in 1997. A
2 little less than a year as a local attendance ER
3 physician. And been practicing here since March of
4 1998.

5 Q. All right. And when you say "here," in
6 Saint George?

7 A. Yes, sir.

8 Q. And do you have your own practice?

9 A. Yes, sir. I'm in a solo practice.

10 Q. Okay. And you said that you're board
11 certified in general practice?

12 A. Family practice.

13 Q. Family practice. Very good.

14 And tell me what types of things you
15 see in your day-to-day course of treatment.

16 A. Pretty much anything that involves most
17 individuals, such as flu, burns, cuts, arthritis,
18 depression. Just a general aspect. And from
19 there, if necessary, specialists people go to.

20 Q. All right. And with respect to
21 exposure to heat or being involved with either heat
22 exhaustion, heatstroke, or having heat episodes,
23 have you ever treated that type of illness before?

24 A. Yes, sir.

25 Q. All right. And how often have you seen

1 that?

2 A. On an average, a couple a year.

3 Q. Okay. And what type of incidents have
4 you seen over the years of people reporting heat
5 episodes?

6 A. Vast majority of the time it is
7 accompanied by problems such as dizziness,
8 exhaustion. And in most cases it is relatively
9 minor. And with rehydration, they recover fairly
10 well.

11 Q. Okay. And by "rehydration," what do
12 you mean by that?

13 A. Increasing fluid intake because they
14 have expended more fluid than the body likes to
15 expend through sweating process.

16 Q. All right. And what are the causes of
17 dehydration? What can cause someone to lose too
18 much liquid or fluid?

19 A. In most cases heat and humidity play
20 the biggest role. Body habitus can play a role in
21 it. And conditioning of the individual.

22 Q. And when you say "body habitus," what
23 do you mean by that?

24 A. Generally thinner people have a greater
25 propensity to have heat-related problems.

1 Q. Okay. Are there any things that people
2 do that can cause dehydration? For example,
3 consumption of certain substances?

4 A. Alcohol can lead to an increased
5 potential for fluid-volume problems.

6 Q. Okay. Now, with respect to Mr. Moorer.
7 Had you seen Mr. Moorer prior to these heat
8 episodes that he complained of?

9 A. Yes, sir. I had seen him the -- the
10 first time I had ever seen Mr. Moorer was on
11 June 13th, 2005. And I had seen him that time and
12 subsequently three times prior to this -- the
13 episode of heat exhaustion.

14 Q. Okay. All right. And with respect to
15 these prior visits, we'll get to them in a little
16 more detail in a little while. But did he come to
17 you seeking your expertise as a family physician?

18 A. Yes, sir.

19 Q. All right. So at the time the heat
20 episodes happened, you were already his physician;
21 is that correct?

22 A. Yes, sir.

23 Q. All right. Now, I want to go first to
24 your first visit that you saw him related to these
25 heat-related episodes. And if you could tell me

1 when that was, and what history you obtained.

2 A. Initially, I saw him for the first
3 episode on May the 17th, 2007.

4 Q. Uh-huh.

5 A. At that time he had been hospitalized
6 for heat exhaustion. And he had told me he had
7 noticed some cramping, and that's when he went to
8 the emergency room; he was given some IV fluids;
9 hospital stay for three days, and then released.

10 Q. Okay. And other than the fact that he
11 had told you he had been cramping, did he give you
12 any details as to where it happened, why it
13 happened, or anything of that nature?

14 A. Yes, sir. He said that it occurred on
15 his job, which was for the railroad.

16 Q. Did he give you any description of the
17 work he was doing that day?

18 A. The only thing that I was knowledgeable
19 of was that he was working outside.

20 Q. Okay. And have you done any
21 independent investigation of what the weather was
22 like that day?

23 A. No, sir, I did not.

24 Q. All right. If the weather reports from
25 an area only five miles away indicated that the

1 you mean like exertion?

2 A. Yes, sir.

3 Q. Okay. So you would -- you could be
4 doing things like using a sledgehammer or using a
5 shovel, things of that nature?

6 A. Yes, sir.

7 Q. All right. If the exertion was mostly
8 walking, and you were expected to walk two or three
9 hours during this day --

10 A. Yes, sir.

11 Q. -- would you expect walking to be the
12 type of thing to bring on a heat episode requiring
13 hospitalization?

14 MR. MOSS: Object to the form.

15 A. It should not in most people.
16 It's -- would also depend on whether the individual
17 was in the direct sunlight.

18 BY MR. TECKLENBURG:

19 Q. Okay. Very good. And are you familiar
20 with Norfolk Southern's practices about how
21 employees are encouraged to take rest, to consume
22 fluids, seek shade? Are you familiar with any of
23 those practices or rules?

24 A. The only thing I was knowledgeable of
25 at the time was the aspect of being provided

1 electrolyte fluids to rehydrate.

2 Q. Okay. And was it your understanding
3 that those are made available to --

4 A. Yes, sir.

5 Q. -- to its employees?

6 And what are electrolytes?

7 A. Those are chemicals that the body
8 maintains to keep a certain balance so that organs
9 can function properly.

10 Q. Okay. And common over-the-counter
11 electrolyte drinks would include things such as?

12 A. Gatorade. Fusion. There are several
13 out there.

14 Q. Okay. Now, he gave you a history. Did
15 you do an examination when you first saw him on
16 May 17, 2007?

17 A. Yes, sir.

18 Q. And tell me what your examination
19 revealed.

20 A. At that time, as per the chart, he
21 looked well; he was not in any particular distress.
22 His -- looking at mucous membranes, like his mouth,
23 they were moist, not dry. Lungs were clear. Heart
24 was regular; meaning it was not speeding up, it
25 hadn't slowed down slower than that recommended.

1 And he had -- at the time, abdominal exam was
2 normal. His extremities, he had -- were normal;
3 there was no swelling. And he had good skin
4 turgor. Which "turgor" indicates fluid hydration.
5 And it was not unusual.

6 Q. Okay. And did you also have available
7 to you the -- the blood test results from the
8 hospital associated with his treatment?

9 A. Just a moment. Let me flip to that if
10 I could. That's the 21st. No, sir, I did not.

11 Q. All right. Let me look through your
12 chart a second, Doctor.

13 A. Sure. I don't see it.

14 Q. I thought I saw it a minute ago.

15 A. I may have passed it.

16 Q. There we go.

17 A. Okay.

18 Q. There.

19 A. I did.

20 Q. I believe I see a set of blood
21 results --

22 A. I did.

23 Q. -- dated May 11, 2007?

24 A. Yes, sir. I'm sorry.

25 Q. That's okay. And you have those in

1 your chart?

2 A. Yes, sir.

3 Q. All right. I'm going to show you just
4 a copy of those as Exhibit 4.

5 (DANTZLER EXH. 4, Laboratory Results,
6 was marked for identification.)

7 BY MR. TECKLENBURG:

8 Q. And feel free to refer to the original
9 in your chart.

10 A. Sure.

11 Q. My question for you, Doctor, is based
12 upon having the blood work available that was done
13 some six or seven days earlier, did it appear that
14 his blood work had also -- was consistent with your
15 examination?

16 A. Well, let me re -- let me recant what I
17 said. Actually the -- the fax mark has it dated
18 July the 23.

19 Q. Okay. All right. So it wasn't in your
20 file at that time?

21 A. It was not.

22 Q. Okay.

23 A. No, sir.

24 Q. Okay. All right. Very good. So you
25 had a physical exam -- you had a physical exam of

1 him. And what did you conclude based upon the
2 physical exam?

3 A. At that time his physical exam was
4 normal. I could only go by his -- his word of
5 hospitalization at the time for dehydration.
6 And -- from my perspective, he was back to a -- his
7 normal state of health.

8 Q. Okay. And do you know the purpose for
9 which he came to see you? In other words, was he
10 looking for a clearance of any type?

11 A. Yes, sir. He was looking for clearance
12 to return to work.

13 Q. And based upon your meeting with him,
14 did he want to come back to work?

15 A. Yes, sir.

16 Q. All right. And in part of your job, is
17 that something that you do, that you meet with your
18 patients to determine whether they are fit to come
19 back to work?

20 A. Yes, sir.

21 Q. And how many times have you done that?

22 A. With him or with others?

23 Q. Others.

24 A. Most everyone that I see that is either
25 work-related or even personal issues, then I

1 generally see them if it's something that is
2 serious.

3 Q. Okay. So are we talking about hundreds
4 of times or thousands of times?

5 A. Probably thousands.

6 Q. All right. And when you make the
7 opinion to return back to work, do you -- do you
8 expect the employers to rely on that opinion?

9 A. Yes, sir. I would hope that they would
10 feel that I'm trying to be as forward and to the
11 best interests of both parties.

12 Q. Very good. And do you, as part of
13 this, often fill out a slip, so to speak, to
14 indicate when a person can come back?

15 A. Yes, sir, I do.

16 (DANTZLER EXH. 5, Certificate to Return
17 Back to Work/School, was marked for identification.)
18 BY MR. TECKLENBURG:

19 Q. I'm going to show you what has been
20 marked as Exhibit 5. Is that a slip signed by you?

21 A. Yes, sir, it is.

22 Q. Does that indicate that Mr. Moorer can
23 come back in May of 2007?

24 A. Yes, sir, it does.

25 Q. Okay. And your opinion at that

1 point -- I'll put it on one that is not
2 highlighted.

3 Your opinion at that point, that he
4 could return back to work, did you hold that
5 opinion to a reasonable degree of medical
6 certainty?

7 A. Yes, sir, I did.

8 Q. Okay. Now, when did you next see
9 Mr. Moorer?

10 A. Next date that I saw him was on June
11 the 12th --

12 Q. Okay.

13 A. -- 2007.

14 Q. And what history did you get at that
15 point?

16 A. At that point he denoted he had
17 increased stress, another hospitalization for
18 dehydration, and -- because of heatstroke. At the
19 time, he noted he was feeling much better since the
20 hospitalization.

21 Q. Okay. And do you recall any history
22 that he gave you?

23 A. He commented that he had been drinking
24 quite a bit of electrolyte-type drinks, such as
25 Gatorade.

1 Q. Before or after the incident, or
2 hospitalization?

3 A. Before.

4 Q. Okay. Anything else you recall from
5 that particular history that he gave you? Did he
6 describe his work in any way?

7 A. He related that his work was that of
8 outside type.

9 Q. Okay. All right. Any indication of
10 the amount of work he did that day?

11 A. No, sir.

12 Q. Or the temperature that day?

13 A. No, sir.

14 Q. All right. And are you in possession
15 of any information since that as to the temperature
16 or the amount of work he had on May 31st?

17 A. No, sir.

18 Q. Okay. And did you do a physical exam
19 again?

20 A. Yes, sir, I did.

21 Q. And tell me about that.

22 A. At that time he looked like a
23 well-developed, well-normal male that was in no
24 distress. His ENT exam was normal. With again,
25 mucous membranes being moist. Lungs were clear.

1 Heart was regular. His abdomen was soft and
2 normal. His extremities, he didn't have any edema.
3 Skin was warm and dry without lesions. And again,
4 good skin turgor, indicating again, the aspect of
5 potential good hydration.

6 Q. Okay. And did you order some blood
7 work?

8 A. Yes, sir, I did.

9 Q. Okay. And I'm going to show you a
10 copy, I believe, of that blood work which I'm going
11 to mark as Exhibit 6.

12 A. Yes, sir, that's it.

13 Q. As soon as I locate the stickers.

14 (DANTZLER EXH. 6, LabCorp Blood Work,
15 PLT-MOORER_000016, was marked for identification.)

16 BY MR. TECKLENBURG:

17 Q. And based upon the blood work you
18 ordered in June, what did you conclude?

19 A. That his renal function and his
20 hydration status was normal.

21 Q. Okay. And what was your plan with
22 respect to Mr. Moorner in June 2007 after the second
23 incident?

24 A. That he was able to return to work, but
25 with precautions.

1 Q. Okay. And what type of precautions
2 would those be?

3 A. Frequent breaks. Drink plenty of
4 fluids. Not just electrolyte, but alternating with
5 water. And to try not to take in any alcohol or
6 caffeine.

7 Q. Okay. I was going to ask you that. In
8 the history that you gathered from Mr. Moorner, did
9 you receive any history about caffeine, alcohol, or
10 dietary supplements, anything that he had been
11 consuming?

12 A. No, sir.

13 Q. Now, the plan again was to be able to
14 go back to work with return -- well, let me ask you
15 this. You said in your plan of June 12th, to avoid
16 alcohol and caffeine. Is that something you would
17 normally tell a person irrespective of what they
18 told you they were consuming, or --

19 A. Yes, sir, I would include that, due to
20 the fact that I don't always know exactly -- people
21 don't always tell me exactly what they consume.

22 Q. Okay. All right. Now -- let's see.
23 What was your next time of seeing Mr. Moorner after
24 June 12, 2007?

25 A. My next encounter with Mr. Moorner was

1 Q. Okay. And by "underlying problems" are
2 we talking about -- what sort of issues? Are we
3 talking about genetic issues or?

4 A. In most cases genetic.

5 Q. Okay. And it's my understanding the
6 things that he was hospitalized for -- or the thing
7 is rhabdomyolysis; is that correct?

8 A. Yes, sir.

9 Q. What is that?

10 A. That is muscle cell rupture.

11 Q. Okay. What types of things can cause
12 rhabdomyolysis?

13 A. Impact injuries. Dehydration can. And
14 some underlying inherent diseases.

15 Q. Have you done any blood work with
16 Mr. Moorer to rule out any underlying genetic
17 problems that he may have?

18 A. No, sir.

19 Q. Okay. And your ultimate opinion was
20 that he could return to work?

21 A. Yes, sir.

22 Q. Okay. And I'm going to show you a
23 note. I don't know if you recall having this
24 conversation, but this is from Norfolk Southern's
25 medical file.

1 (DANTZLER EXH. 8, 7/9/07, Norfolk
2 Southern Medical Services Letter, was marked for
3 identification.)

4 BY MR. TECKLENBURG:

5 Q. This is a note that Dr. Lina wrote to
6 the file we have marked as Exhibit 8. And there is
7 a handwritten note on the bottom dated July 30,
8 2007. It says, quote: Called and spoke with
9 Mr. Moorer's physician, Dr. Dantzler's office. I
10 would advise that Dr. Dantzler -- let's
11 see -- required a ten-minute break every three to
12 four hours, unquote.

13 Do you recall any discussions with the
14 Norfolk Southern Medical Department?

15 A. I recall them calling but I cannot tell
16 you exactly our discussion.

17 Q. Okay. Very good. Do you know one way
18 or the other whether you had this conversation
19 about the period or number of breaks required?

20 A. To be honest, I'm not sure.

21 Q. Okay. Very good. It's a long time
22 ago, I wouldn't expect you to.

23 A. Yes, sir.

24 Q. And if -- if you were presented with
25 this requirement today for Mr. Moorer, a ten-minute

1 A. Yes, sir.

2 Q. Now, the opinion that you held in
3 July 2007 that Mr. Moorer could return to work, did
4 you hold that opinion to a reasonable degree of
5 medical certainty?

6 A. Yes, sir, I did.

7 Q. Okay. When did you next see
8 Mr. Moorer?

9 A. My next encounter was, I think,
10 August 3rd, 2007.

11 Q. And tell me what that visit entailed.

12 A. At that time he had followed up again
13 for a previous episode of dehydration. And he
14 related he had had no more episodes at that time.
15 His exam at the time was -- was normal. There was
16 no -- nothing that was outstanding.

17 Q. Did he give any history of what he had
18 been up to?

19 A. The only thing he had told my nursing
20 staff, that he had been sweating more at that time.

21 Q. Okay. And what was your plan as of
22 August 3, 2007?

23 A. That the dehydration had resolved.
24 That he can continue rehydration. Reasonable
25 rehydration. His acute renal failure was probably

1 secondary to his dehydration, and it had resolved.
2 And that we would need to follow him at intervals
3 to ensure that it remained that way.

4 Q. Okay. And did he come see you again?

5 A. He came about -- little over a month
6 later on September 28th, 2007.

7 Q. And in those visits, what did he tell
8 you then?

9 A. At that time, he says that, you know,
10 he was here for the previous aspect of the
11 dehydration. Also at that time he had some lower
12 back pain. And he did not have any associated
13 symptoms with the lower back pain.

14 Q. Okay. And what did your exam reveal?

15 A. At that time, he was well-developed,
16 well-nourished male that was in no apparent
17 distress. Lungs were clear. Heart was regular,
18 rate and rhythm. Abdomen was soft with no
19 pathology. Extremities, no edema, full range of
20 motion. Neurovascular intact. His back was supple
21 with full range of motion with pain in his
22 lumbosacral spine with no costovertebral angle
23 tenderness or point tenderness.

24 Q. Okay. And what was your plan at that
25 time?

1 A. At that time he had some low back pain
2 so he was given an anti-inflammatory for a very
3 short term. And for his dehydration aspect, it
4 appeared to be resolved with no recurrence. And he
5 was to follow up in about three months.

6 Q. Did he ever follow up after September
7 of 2007?

8 A. No, sir. That's the last time I have
9 seen him.

10 Q. Okay. And did you also get some blood
11 work at that point? Show you Exhibit 9.

12 (DFT. EXH. 9, Lab Work Report, Bates
13 stamped PLT-MOORER_000011, was marked for
14 identification.)

15 A. Yes, sir, I did. We did a -- what is
16 called a liver and kidney function test. Kidney
17 function test is termed a basic metabolic panel,
18 and it was normal as far as laboratory guidelines.
19 His hepatic protein test, again was liver function,
20 was also normal. We did a myoglobin, which checks
21 for rhabdomyolysis; which it again was in what is
22 considered a normal range.

23 Q. Okay. And that was as of
24 September 2007, correct?

25 A. Yes, sir.

1 Q. And since then, your testimony is he's
2 not been back to see you?

3 A. No, sir, I have not seen him in the
4 office since then.

5 Q. All right. And have you seen him
6 anywhere else? He lives here in St. George?

7 A. I may have run into him in the grocery
8 store, I think, but I'm not going to swear to it.

9 Q. All right. I understand. Small town.

10 A. Correct.

11 Q. In September of 2007, was it your
12 medical opinion that the condition of Mr. Moorner
13 had resolved?

14 A. Yes, sir. At that point in time, it
15 appeared everything was back to what appeared to be
16 a normal state.

17 Q. And did you hold that opinion, and do
18 you hold that opinion today --

19 A. Yes, sir.

20 Q. -- as to a reasonable degree of medical
21 certainty?

22 A. Yes, sir, I do. I have no reason to
23 doubt that at this point.

24 Q. All right. Now, I want to back up to
25 your first visits with him, because we didn't cover

1 them in detail. But I just want to make sure,
2 since this may be my only chance to ever talk to
3 you about Mr. Moorner, that we go over your history
4 with him prior to the accident. Tell me what you
5 first saw him for.

6 A. The first time I had seen Mr. Moorner
7 was on June 13th, 2005 when he had come in with a
8 lesion on his left lip that was termed a mucocoele.
9 At that time he decided not to pursue any
10 intervention with it. He also had come in with a
11 headache. And low back pain, again.

12 Q. Okay. And it says a headache for two
13 months; is that right?

14 A. Yes, sir.

15 Q. Where was that headache?

16 A. It was in an area as if you were
17 wearing a baseball cap.

18 Q. I was trying to read your handwriting,
19 and it said headache in hat-type area. Is that
20 what it says?

21 A. Yes, sir.

22 Q. So approximately where you wear a
23 baseball cap, you said?

24 A. Yes, sir.

25 Q. All right. Lump in mouth. Patient

1 Q. And to summarize his visits -- I'll
2 call it pre-heat. And by "heat," I mean May of
3 2007. It sounds like he came in for a variety of
4 what sounds like pretty minor stuff that you
5 treated him for?

6 A. Very much run-of-the-mill aspects.

7 Q. And he had a car accident that required
8 him to come in here one time in July 10th, 2006.
9 And I think the next time he saw you was after the
10 heat incident.

11 A. Yes, sir.

12 Q. So is it fair to say that you felt
13 like -- at least when you last saw Mr. Moorer in
14 July of 2006, he was an otherwise healthy,
15 young/middle-aged man?

16 A. Yes, sir.

17 Q. And there was no history of any kind
18 that he had had any problems before in his life
19 with heat problems, heat episodes, or anything
20 related to heat. Is that right?

21 A. That's correct. In fact, according to
22 my -- if you will give me a second.

23 Q. Sure.

24 A. My paperwork that I have patients fill
25 out, there is no evidence from him answering

1 questionnaires of any heat-related problems prior.

2 Q. Okay. And if one has any of these
3 genetic predispositions to rhabdomyolysis, isn't it
4 true that you tend to see those problems manifest
5 themselves earlier on in life than in the 30s like
6 Mr. Moorer was when he had these problems? Is that
7 right?

8 A. Yes, sir.

9 MR. TECKLENBURG: Object to the form.

10 BY MR. MOSS:

11 Q. And while we're on that point, you
12 never diagnosed Mr. Moorer with any genetic --
13 genetically-related heat problems. Is that right?

14 A. Yes, sir. That's correct.

15 Q. You did not think that his
16 rhabdomyolysis was caused by any underlying
17 susceptibility or any genetic problems. Is that
18 right?

19 A. That's correct.

20 Q. Was it your opinion, Doctor, expressed
21 to within a reasonable degree of medical certainty,
22 that Mr. Moorer's heat-related problems were, in
23 fact, related to the work environment and the
24 exertion at work as described in his history to
25 you?

1 A. Yes, sir.

2 MR. TECKLENBURG: Object to the form.

3 BY MR. MOSS:

4 Q. What are the dangers of heat-related
5 illnesses like those for which you treated
6 Mr. Moorer?

7 A. In extreme cases you could have
8 vascular collapse, kidney failure, and multiorgan
9 failure.

10 Q. "Multiorgan failure," I think to its
11 logical conclusion, could actually result in death?

12 A. Correct.

13 Q. What is it -- what happens within the
14 body that causes one to go down the slippery slope
15 from I'm too hot to acute renal failure to
16 ultimately organ failure? How does that process
17 work?

18 A. Generally what occurs is the
19 vasculature attempts to conserve water by
20 decreasing sweating; and in doing so, with the
21 decreased fluid inside the vasculature, the kidneys
22 cannot function as they should. Therefore, they
23 cannot get -- dispose of chemical impurities as
24 easily. And as chemical impurities build, then you
25 can contaminate other systems.

1 Q. And as I understood your testimony to
2 Mr. Tecklenburg was when you last saw Mr. Moorer in
3 September of 2007, you felt like that the
4 underlying problems; that is, the things you had
5 treated him for related to the heat, had resolved?

6 A. Yes, sir.

7 Q. All right. But did you also believe,
8 Doctor, that he was additionally predisposed and
9 will continue to be predisposed toward heat-related
10 problems in the future?

11 A. Yes, sir.

12 Q. Can you explain why that is?

13 A. In people who are subjected to heat to
14 a more extensive degree and have problems related
15 to that, their body is attempting to conserve, and
16 for whatever reason initially it couldn't,
17 its -- it has the potential to do it again.

18 Q. Meaning that once a person has one
19 heat-related episode, am I understanding you
20 correctly, that he or she is more likely to have
21 another heat episode in the future?

22 A. Yes, sir. They are more susceptible to
23 changes in temperature.

24 Q. Might it even be that under the exact
25 same conditions, one would have to have less heat

1 exposure or less exertion or less dehydration on a
2 second or third or subsequent event than one did
3 initially?

4 A. That is a possibility.

5 Q. Initially when you released Mr. Moorner
6 to return to work after the first incident, I don't
7 think that you put any restrictions of any kind on
8 him. Is that right?

9 A. Nothing more than -- that I noted as
10 far as frequent breaks, increase fluid intake, no
11 caffeine or ethanol. Alcohol.

12 Q. What date note are you looking at?

13 A. That's on May the 17th, 2007.

14 Q. Okay. Then I misunderstood. So there
15 were actually restrictions that accompanied that
16 return to work?

17 A. Right. And that's noted in the note.

18 Q. Okay. Is that the exhibit
19 Mr. Tecklenburg showed you earlier, the
20 return-to-work note?

21 A. No, sir. That was my note that was in
22 the chart, that I spoke to him.

23 Q. Okay. So let me be sure we're clear on
24 this. Would you go back through what those
25 restrictions were after the first incident that you

1 released Mr. Moorner to return to work with?

2 A. My exact words as far as written in the
3 chart were: Frequent breaks during the heat,
4 increase fluid intake, no caffeine or ethanol. The
5 episode of dehydration had resolved, and return to
6 regular duties.

7 Q. Okay.

8 A. That was on May the 17th, '07.

9 Q. And was it your understanding that the
10 Norfolk Southern Medical Department was tracking
11 these visits and obtaining your notes so that they
12 could perform their own independent return-to-work
13 assessment for Mr. Moorner?

14 A. I had no idea of that until I was
15 contacted.

16 Q. Okay. And that would have been later?

17 A. Yes, sir.

18 Q. All right. But to make this point as
19 finely as I can, you did not release Mr. Moorner
20 after the first incident to work as a road
21 conductor without restrictions?

22 A. Correct.

23 Q. And then when you were contacted by
24 Norfolk Southern, they asked you a series of very
25 specific questions in this regard, and I think that

1 is what we were talking in Exhibit Number 7.

2 A. Yes, sir.

3 Q. All right. Was there anything
4 different in the return-to-work restrictions that
5 you imposed upon Mr. Moorer in this July
6 correspondence that were in any way different than
7 what you had said in your May 17th note?

8 And I'm just looking for any
9 differences. And if it's just the same, that's
10 perfectly fine too.

11 A. If I may ask a question?

12 Q. Certainly.

13 A. Is that the questionnaire they sent me?

14 Q. Yes, sir, that's what I'm talking
15 about. And for the record, I think Exhibit Number
16 7, in your note, indicates you put your handwritten
17 marks on there July 20th, 2007.

18 A. Correct.

19 Q. All right.

20 A. Because there was no place for me to
21 sign. So I signed so -- indicating that I had
22 filled it out.

23 Q. Okay. And as a predicate question. At
24 this point you learned that Norfolk Southern was
25 actually -- medical department, was actually

1 tracking Mr. Moorer's medical condition?

2 A. Right. Yes, sir.

3 Q. And based on the information they had
4 in their tracking, they asked a series of very
5 specific questions?

6 A. Yes, sir, they did.

7 Q. Now, I'm going to repeat my earlier
8 question. And I apologize.

9 A. Sure.

10 Q. Which is: At this point, July 20th,
11 2007, was your release with restrictions different
12 than it was in any way than the May 17th, 2007,
13 release?

14 A. No, sir.

15 Q. Okay. So I think we now have an
16 understanding that from the time you first saw
17 Mr. Moorer after the first incident, up until
18 today, the restrictions that you have articulated
19 to us a moment ago have always been in place?

20 A. Yes, sir.

21 Q. Meaning that those restrictions are in
22 place today and he should abide by those in the
23 future?

24 A. Yes, sir.

25 Q. So what you are saying, is you would

1 like him to return to work in some capacity, and
2 therefore he is released; but at whatever job he
3 works, at Norfolk Southern or otherwise, he needs
4 to abide by your restrictions?

5 A. Yes, sir.

6 Q. And those are permanent?

7 A. Yes, sir.

8 Q. And that is expressed -- is that
9 opinion expressed to within a reasonable degree of
10 medical certainty?

11 A. Yes, sir.

12 Q. All right. Did you ever learn that
13 Norfolk Southern had, in fact, medically
14 disqualified Mr. Moorner from working as a conductor
15 at the railroad?

16 A. Up until today, I had no knowledge of
17 that.

18 Q. Okay. Let me show you what was Exhibit
19 Number 5 to Dr. Lina's deposition. It's Bates
20 Number 179. Ask you to take a moment to look at
21 it, if you would. Okay. Had you ever seen this
22 note before, until just now?

23 A. Not to my knowledge.

24 Q. Okay. Dr. Lina, to Mr. Moorner, says --
25 and I'm quoting: Your present medical condition,

1 recurrent severe health-related illness does not
2 permit safe performance of the essential functions
3 of your position and is thus inconsistent with our
4 medical guidelines, end quote.

5 Do you, Dr. Dantzler, defer to the
6 Norfolk Southern Medical Department in general, and
7 Dr. Lina in particular, on whether or not
8 Mr. Moorer medically qualifies to work at the
9 railroad?

10 A. To answer that I would have to say it's
11 according to what capacity and what he was
12 subjected to.

13 Q. Okay. What do you mean by that?

14 A. Meaning, if he was in an
15 air-conditioned environment, then should be no
16 problem.

17 Q. Okay.

18 A. If he was in the capacity he was
19 previous as a conductor and exposed to outside,
20 then if he doesn't follow particular guidelines
21 then this could reoccur.

22 Q. Okay. And I think I understand what
23 you mean. But when you say "if he doesn't follow
24 guidelines," -- let me flip the question around.
25 If the work doesn't allow him to take frequent

1 breaks and hydrate himself, that would -- those
2 conditions in and of themselves would disqualify
3 him from working?

4 A. Correct.

5 Q. And just so we have a complete picture
6 of rhabdomyolysis. I notice that Mr. Tecklenburg
7 did not provide you with any weather data related
8 to the second incident, May 31st, 2007. And I
9 guess my question is: Have you ever seen any of
10 that data?

11 A. No, sir, I haven't.

12 Q. All right. Is it your understanding
13 that exertion can be a contributing cause of
14 rhabdomyolysis? Because of exertion or because of
15 the dehydration that accompanies exertion?

16 A. The dehydration.

17 Q. Okay. For example, if one is
18 wearing -- the clothes one is wearing should be
19 looked at in determining whether the workplace, for
20 example, caused the dehydration?

21 A. Correct.

22 Q. That's why we have to look at factors
23 like sun exposure, correct?

24 A. Yes, sir.

25 Q. Clothing?

1 A. Yes, sir.

2 Q. Humidity?

3 A. Yes, sir.

4 Q. Air flow?

5 A. Yes, sir.

6 Q. External sources of heat?

7 A. Correct.

8 Q. Not just to include the sun?

9 A. Correct.

10 Q. Is it your understanding Mr. Moorer
11 worked around an engine?

12 A. Radiating -- radiating off of
13 equipment. Radiating off of solid objects.

14 Q. Off the ground?

15 A. Correct.

16 Q. Dark cross ties?

17 A. Correct.

18 Q. So what one must do in looking at the
19 larger picture of what caused or contributed to
20 what, you have to look at the entire picture, you
21 can't simply isolate the ambient temperature and
22 say this is what we got to look at?

23 A. Yes, sir, you are right.

24 Q. Did Mr. Moorer always express to you
25 what you believed to be a sincere and genuine