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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. Moorer,

Respondent,

v.

Norfolk Southern Railway Company,

Appellant.

RECORD ON APPEAL

Vol. II of IV

Paul F. Tecklenburg, Esquire
Rivers T. Jenkins, III, Esquire
P.O. Box 20667
Charleston, SC 29413
(843) 534-2628
Attorneys for Appellant

John E. Parker, Esquire
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Attorneys for Respondent

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1 desire to return to work at the railroad?

2 A. Yes, sir. I had no other reason to
3 believe otherwise.

4 MR. MOSS: I think those are all the
5 questions I have.

6 REDIRECT EXAMINATION

7 BY MR. TECKLENBURG:

8 Q. Doctor, Paul Tecklenburg again. I just
9 have a few follow-up questions.

10 A. Yes, sir.

11 Q. With respect to these permanent
12 restrictions for Mr. Moorer, such as frequent
13 breaks and taking fluid. When we talked in our
14 direct and I was asking you about that --

15 A. Yes, sir.

16 Q. -- you said that fluids for people
17 working outside was always a good thing, correct?

18 A. Correct. And the breaks is still good
19 due to the fact that fatigue sets in also.

20 Q. All right. And have you ever read
21 Norfolk Southern's safety rules?

22 A. No, sir, I have not.

23 Q. All right. Would it surprise you that
24 those rules encourage their crews to take breaks
25 and to consume liquids?

1 A. It would not surprise me.

2 Q. All right. Because that's just good
3 company practice, isn't it?

4 A. Exactly.

5 Q. All right. So if you released him in
6 May '07 to do that sort of thing and the company
7 rules allowed it, it would be okay for him to come
8 back to work. Correct?

9 A. Yes.

10 MR. MOSS: Object to form.

11 BY MR. TECKLENBURG:

12 Q. Now, with respect to Dr. Lina, it's my
13 understanding that you learned for the first time
14 today that Dr. Lina has disqualified him to return
15 as a conductor due to the recurrent condition.

16 A. Yes, sir.

17 Q. All right. Would you agree with me
18 that having two episodes of rhabdomyolysis in a
19 three-week period is unusual?

20 A. It is.

21 Q. It is. And you haven't read Dr. Lina's
22 deposition, have you?

23 A. No, sir, I have not.

24 Q. Would it surprise you that she has
25 testified that she has over seven or eight years

1 experience in the Army where she studied heat
2 related illnesses? Would that surprise you?

3 A. If she was in the military, no, sir.

4 Q. Yeah. It's a common issue in the
5 military.

6 A. Right.

7 Q. And her opinion is that she believes
8 Mr. Moorer has some underlying condition that needs
9 to be fully evaluated.

10 MR. MOSS: Object to form.

11 BY MR. TECKLENBURG:

12 Q. Would you be surprised if a physician
13 took that position, that it needs to be evaluated?

14 A. No, sir, I would not. If -- and I have
15 to put the "if" in there -- if this is recurrent
16 without an aggravating circumstance.

17 Q. All right. And rhabdomyolysis is a
18 rather complicated human event; or medical event,
19 is it not?

20 A. It is. That's why I just gave a
21 thumbnail of what it is.

22 Q. And to fully explore whether someone
23 has a genetic condition to it, it's my
24 understanding that the true test to do that is to
25 ultimately perform a muscle biopsy. Is that

1 correct?

2 A. That's correct.

3 Q. Have you ordered a muscle biopsy on
4 Mr. Moorer?

5 A. No, sir, I have not.

6 Q. All right. And therefore, you are not
7 able to rule out that he may have an underlying
8 condition?

9 MR. MOSS: Object to form.

10 A. Correct.

11 BY MR. TECKLENBURG:

12 Q. Okay. And then finally you have
13 testified that you believe that the work conditions
14 he was exposed to caused this incident that he has.
15 Correct?

16 A. I would say, could have contributed to
17 it.

18 Q. Could have contributed. Okay. But I
19 think your testimony during direct examination is
20 at least with the second incident you don't know
21 the heat, he didn't describe the type of work.
22 Correct?

23 A. Yes, sir. Yes, sir.

24 Q. Okay. And if Mr. Moorer was handling
25 the same number of cars, rail cars that employees

1 had handled for the full five months of that year;
2 on average, if he's doing the same amount of work
3 that everyone else did on that job and none of them
4 had an incident, how does one explain what he went
5 through?

6 MR. MOSS: Object to form.

7 A. Each of us are different. Each of us
8 have our -- have different ability to adapt. And
9 so some of us may be able to adapt easier and
10 quicker, while others may not adapt as quickly.

11 Q. All right.

12 MR. TECKLENBURG: Very good, Doctor.
13 Thank you for your time.

14 THE WITNESS: Thank you.

15 RECROSS EXAMINATION

16 BY MR. MOSS:

17 Q. Speaking of adaptability, if one has
18 what appears to be a heat-related incident, can an
19 employer also adapt by easing the employee back
20 into work or providing him additional breaks or
21 providing him air-conditioning, or things like
22 that?

23 A. It would lessen the likelihood of
24 recurrence.

25 Q. Why?

1 A. Because you're allowing the body either
2 to adapt or recover when the episode may come about
3 from prolonged exposure.

4 Q. You mentioned that it was unlikely for
5 rhabdomyolysis to occur within a three-week period
6 absent -- I think you said aggravating
7 circumstances?

8 A. Yes, sir.

9 Q. What did you mean by that?

10 A. Aggravated circumstances such as impact
11 trauma. Such as other incidences, including
12 dehydration, that could lead to rhabdomyolysis.

13 Q. Okay. So what you are saying, is like
14 this situation, if Mr. Moorer was performing
15 essentially the exact same job at about the same
16 time of day in roughly the same kind of weather,
17 doing about the same amount of work, are those the
18 kind of aggravating circumstances you are talking
19 about that one must look at that could explain a
20 recurrent episode of rhabdomyolysis?

21 A. If it occurred previously from that,
22 then it could recur.

23 Q. So what we should do is look at the
24 underlying circumstances and compare the two
25 factual situations to see if there's a correlation

1 between the work performed and the amount of heat
2 exposure on day one versus a day three weeks later?

3 A. Yes, sir.

4 Q. And the reason you didn't order a
5 muscle biopsy, I take it, Dr. Dantzler, is because
6 you didn't think, and still don't think that
7 Trumaine Moorner has any kind of underlying genetic
8 susceptibility that would explain his
9 rhabdomyolysis?

10 A. There is no -- was no indication that
11 he has had any neuromuscular problems different
12 from that than most of the public prior. And so
13 giving no indication that that could be an
14 underlying factor at that time.

15 Q. And whether it's a causative factor or
16 not, if you're simply looking at the most likely
17 contributing factor to Mr. Moorner's rhabdomyolysis,
18 would you say that it is exertional heat-related
19 workplace exposure?

20 MR. TECKLENBURG: Object to the form.

21 A. I would have to say that I would have
22 to contribute it to some injury, no matter what
23 that injury could be. Although I was not with him,
24 it could even be impact injury.

25 Q. Sure.

1 excused her from serving on the jury. So that is
2 where -- if you turn around and she is not there,
3 that is where she is. She wasn't feeling too good.

4 All right, we are ready for Mr. Moss to call
5 his next witness.

6 MR. MOSS: Your Honor, the Plaintiff calls
7 Dr. Fred Johnson.

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, and face the
10 clerk. She will swear you in.

11 (Witness complies.)

12 THE CLERK: Do you solemnly swear or affirm
13 the testimony you are about to give in this case
14 will be the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Have a seat in the
18 witness stand, please.

19 (Witness seated.)

20 THE CLERK: State your name for the record.

21 THE WITNESS: Fred Johnson.

22 THE COURT: Thank you, Your Honor. May it
23 please the Court?

24 FRED JOHNSON,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. MOSS:

3 Q What is your home address, sir?

4 A 3200 Heathrow Downs, Birmingham, Alabama.

5 Q What do you do for a living?

6 A Retired professor of economics, retired in 1989.

7 Since that time I have done part-time economic
8 consulting in the area of calculating economic
9 damages.

10 Q Would you talk us through your educational
11 background and professional background, please?

12 A I have B.S. and M.S. degrees in statistics, a Ph.D.
13 in economics, I have a J.D., which is a law degree,
14 but I don't practice law.

15 Q Where did go to school?

16 A University of Alabama.

17 Q How long have you been doing this economic
18 calculation work?

19 A Approximately 41 years.

20 Q How many times do you think you have testified,
21 Mr. Johnson?

22 A By deposition and live testimony?

23 Q Sure.

24 A Eight hundred or a thousand times probably.

25 Q Okay. You testified all over the country?

1 A Approximately 22 states.

2 Q And you and I have -- you have worked on cases
3 involving me and my law firm before?

4 A I have.

5 Q Dating back how long and about how many cases?

6 A I would have to just guess.

7 Q Give us your best estimate.

8 A Fifteen, 20.

9 Q Okay. At trial? How many trials?

10 A Probably four or five.

11 Q Okay. Obviously we're paying you to come and do
12 this and do the calculations. Talk us through your
13 rates and how that works.

14 A Seven-fifty per appearance for testimony, plus
15 expenses.

16 Q You drove over from Birmingham?

17 A Yes, sir.

18 Q Okay.

19 MR. MOSS: Your Honor, I would offer Dr.
20 Johnson as an expert economist in the field of --
21 an expert in economic analysis.

22 MR. TECKLENBURG: No objection, Your Honor.

23 THE COURT: All right. He will be admitted as
24 an expert in economic --

25 MR. MOSS: Calculation of economic damages.

1 He's an economist.

2 THE COURT: All right. As an economist. All
3 right.

4 MR. MOSS: Thank you.

5 BY MR. MOSS:

6 Q What is it that you were asked to do in this case,
7 Dr. Johnson?

8 A Generally, calculate economic damages. More
9 specifically, the past and present value of future
10 income loss, as well as the lost health insurance
11 benefits.

12 Q Do you have a methodology that you use in all these
13 cases?

14 A Same methodology.

15 Q Would you describe the methodology, please?

16 A Well, you take taxes and expenses out. You
17 calculate past losses after taking those things
18 out.

19 To get the present value of future income
20 loss, you consider any residual earning capacity,
21 which is, well, he could earn that now, what can he
22 earn -- I mean, then, what can he earn now. That's
23 what I call the residual earning capacity.

24 So you take the difference between those two
25 and calculate the present value.

- 1 Q Past losses, it covers what time period?
- 2 A Since the date of his injury.
- 3 Q The record is May 31st, 2007.
- 4 A 5/31/07 --
- 5 Q Yes, sir.
- 6 A -- until today.
- 7 Q All right. That is one distinct period, and that
- 8 is past loss?
- 9 A Yes, sir.
- 10 Q You mentioned future loss. What period does that
- 11 cover?
- 12 A His work life expectancy from the date to today is
- 13 21.64 years, so it will cover 21.64 years into the
- 14 future.
- 15 Q Where does that number 21.64 --
- 16 A U.S. Department of Labor provides work life
- 17 expectancies by age, race and sex.
- 18 Q It is a government table?
- 19 A Yes, sir.
- 20 Q And you plug in his rate -- his specific
- 21 information and it spits out a number as to what --
- 22 how long he would be expected to remain in the work
- 23 force?
- 24 A Employed.
- 25 Q Okay.

- 1 A Yes, sir.
- 2 Q There is no way to predict whether he actually
3 would or wouldn't make that number, it is just
4 based on statistics?
- 5 A That's correct.
- 6 Q Got it. Well, how do you go about -- how do you go
7 about calculating the past loss number, Dr.
8 Johnson?
- 9 A Since the date of injury until today, you project
10 what his earnings would have been at the railroad.
11 You subtract from that his actual earnings of this
12 same period. You take the difference, which is
13 \$216,765. And you take taxes and expenses out, as
14 I have suggested earlier. What is left is what I
15 call a net income loss to date, and that is
16 \$195,088.
- 17 Q Why do you take taxes out and expenses out?
- 18 A Well, you want to be fair. You don't want to
19 overcompensate.
- 20 Q In coming at that number, you said you compared it
21 to what he could have earned at the railroad?
- 22 A Yes, sir.
- 23 Q How do you come up with a number that he would have
24 earned at the railroad? What is the analysis?
- 25 A It is based upon the average of comparable workers,

1 that is, people comparable to him on the seniority
2 list at the railroad.

3 Q Okay.

4 A In the years '07 through 2011.

5 Q You requested -- we requested the specific earning
6 information for those around him on the seniority
7 roster?

8 A Yes.

9 Q Then you can look at their actual earnings and kind
10 of stick -- put him in the middle of them. Is that
11 the way it was?

12 A Well, you put him at the average of those.

13 Q You add them up, divide by in this case five or
14 six --

15 A Yes.

16 Q -- and get the number. So in this number, for
17 example, he worked as a police officer for two
18 years, he worked at Kinder Morgan.

19 Does this past loss wage number account for
20 the fact that he has actually earned some money
21 over the last two years?

22 A Yes. As I suggested, you subtract from what he
23 would have lost at the railroad and what he has
24 actually earned in this period.

25 Q Okay. So to date from the date of injury, after

1 tax, after expenses, given what he has already
2 earned, he is out of pocket this number?

3 A Yes, sir..

4 Q All right. Now, how do you go about the future
5 loss wage calculation?

6 A There are four variables that you have to consider.
7 One is the after tax income loss of the difference
8 between the two jobs. For example, if you can make
9 \$30 an hour here and you make \$20 here, you take
10 the \$10 difference and take taxes out of it.

11 Second is the work life expectancy, which we
12 have already alluded to.

13 Q Okay.

14 A The third is, the average American worker has since
15 at least the 30s secured wage increases, not every
16 year, but on average. So we have to go back in
17 time and ask, well, what would be an appropriate
18 rate of increase in his wages in this 21.64 year
19 period.

20 And lastly, because you are providing the
21 income stream today in a present value amount,
22 you've got to use an appropriate discount rate to
23 discount those future values to their present
24 value.

25 Q Because a dollar today is worth more than a dollar

1 probably ten years from now?

2 A I hope so.

3 Q I hope so too. We're all counting on that. Okay.
4 So did you also factor in the earnings of those
5 above and below him on the seniority roster when
6 making your future lost wage calculation?

7 A I did, in this respect. The annualized 2011
8 earnings will be used as the pre-injury, quote,
9 capacity for projecting future losses.

10 Q What does that mean?

11 A Well, the -- by annualized?

12 Q Yes, sir?

13 A I have the actual earnings through July of 2011.
14 If you annualize it, you simply ask, well, if he
15 made -- if they made over the past -- the last five
16 months of the year what they made over the first
17 seven, you know, then -- you know what I mean, you
18 annualize it. If you make \$50,000 in six months,
19 you know you make \$100,000 in a year. That's what
20 I'm alluding to.

21 Q Got it.

22 A Now, over that period, the five workers earned --
23 I'm sorry, six workers. One, two, three, four,
24 five -- seven.

25 Q Norfolk Southern conductors around him on the

1 seniority roster?

2 A Yes, sir.

3 Q Got it.

4 A Earned \$61,809. So that ---

5 Q On an annual basis. Okay.

6 A That serves as the basis for utilizing his, quote,
7 railroad income in comparing with his residual
8 earnings.

9 Q Okay. Now, how do you come up with his residual
10 earnings?

11 A He is now working at the police station?

12 Q Yes, sir.

13 A On the police force?

14 Q That's right.

15 A I understand he recently got a raise to about
16 \$29,000. I used \$30,000.

17 Q Okay.

18 A As his residual earnings. So you subtract the
19 residual earnings present value from the railroad
20 earnings present value to get the difference, and
21 that is what I call the future losses of income.

22 Q So you are simply comparing what he would like to
23 make in the future had he stayed at the railroad
24 with what he would likely make in the future when
25 he is not at the railroad?

1 A Correct.

2 Q And the spread of the difference is the number that
3 you then project over his work?

4 A That's correct.

5 Q All right. Please talk us through that
6 calculation, Mr. Johnson.

7 A Well, as I said earlier, you compare the present
8 value of the railroad earnings after taxes and
9 expenses with the present value of the \$30,000 a
10 year job.

11 The present value of the railroad earnings was
12 \$1,186,784. The present value of the \$30,000 a
13 year job is \$576,026. The difference between those
14 is damages in the future, and that is \$610,758.

15 Q The assumption, I guess, is that those two numbers
16 expect the railroad wages and his current police
17 wages would basically just stay the same, you are
18 not really factoring in -- or are you factoring in
19 potential increases and whatnot?

20 A You remember earlier I said that I factor in wage
21 increases?

22 Q Yes, sir.

23 A I factor in wage increase of the same magnitude for
24 both jobs.

25 Q I see. What other component did you calculate for

1 Mr. Moorer?

2 A I calculated the most important benefit that he is
3 going to lose. That is health insurance benefits.

4 Q And how did you do that?

5 A The current railroad employee expenditures for
6 health insurance is \$14,083 annually. The employee
7 contributed \$2,400 of that, so I'm taking that away
8 because he's not losing the amount that he would
9 contribute. The difference is \$11,683.

10 Q Per year?

11 A The first year. Now, that premium cost is going to
12 grow. And it has grown more than twice regular
13 inflation over the past 20 or 30 years. But in
14 spite of that, I have assumed in a very
15 conservative manner that the increased expenditure
16 cost will not exceed the discount rate in the
17 future.

18 So it is simply a simple calculation of work
19 life expectancy times current cost, which is
20 \$280,909.

21 Q How do you deal with overtime, if somebody is
22 willing to work and make more money at one job
23 versus the other. How do you deal with that?

24 A Well, I don't unless I'm asked to assume that he is
25 going to be making more than \$30,000 here or more

1 than that \$61,000 for the railroad. I just use the
2 tax returns as I received them.

3 Q And is it your understanding that at the police
4 job, for example, he can earn overtime if he has
5 the ability and the time to do it?

6 A I don't understand any of that because I'm not an
7 expert on police pay.

8 Q Okay.

9 A But I know that it is possible to earn overtime.
10 It is possible to earn overtime at the railroad too
11 because I have worked on cases for 41 years and I
12 know that.

13 Q Right.

14 A But I don't consider those things because they are
15 too speculative for me.

16 Q I understand. So, in summary, Dr. Johnson, if you
17 combine with the assumption that Mr. Moorer will
18 make \$30,000 a year as a police officer --

19 A The first year.

20 Q The first year. And then use that number as you
21 described. Compared to his railroad annualized
22 income based on the co-workers, project it forward,
23 net it out, reduce the present value, taking out
24 expenses, can you tell us the total economic loss
25 Mr. Moorer would sustain over his work life?

1 A \$1,086,755.

2 Q 5-5?

3 A 7-5-5, yes, sir.

4 Q Thank you.

5 A Thank you.

6 THE COURT: Please answer any questions
7 Mr. Tecklenburg may have.

8 Yes, sir?

9 MR. TECKLENBURG: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. TECKLENBURG:

12 Q Good afternoon, Dr. Johnson.

13 A How are you doing, sir?

14 Q How are you?

15 Now, I heard you say you were a lawyer, is
16 that right?

17 A I am a lawyer, but my friends love to tell me I'm
18 not a real lawyer because I don't practice.

19 Q Understood. Now, as an economist, you have come
20 and given numbers today to the jury to consider:
21 You are not an expert on liability, are you?

22 A No, sir, I'm not.

23 Q All right. So you are not giving testimony today
24 as to whether Norfolk Southern may be liable to pay
25 those, you are just giving information in the event

1 they reach liability, is that correct?

2 A Correct.

3 Q And with respect to your work that you do, the work
4 that you do relies on certain assumptions, is that
5 correct?

6 A Correct.

7 Q And when you look at assumptions, you have
8 essentially set one side sort of on the offsetting
9 or current mitigating wage that Mr. Moorer earns or
10 can earn, is that right?

11 A Correct.

12 Q So one side looks at his potential and the other
13 side looks at a railroad wage, is that fair?

14 A Correct.

15 Q Okay. Now, I want to walk through -- excuse me for
16 walking behind that big chart. I need to set up
17 another one. I want to walk through some of your
18 testimony and some of the assumptions that you
19 presented today.

20 First of all, with respect to the mitigating
21 wage or the wage that Mr. Moorer can currently
22 earn, your testimony has changed on that issue from
23 your beginning of being retained in this case, is
24 that right?

25 A Yes, sir, because there is a higher residual wage

1 now than there was in the earlier period.

2 Q So if we could put on the one side, we'll call it
3 the mitigating wage -- hopefully this will not fall
4 on me -- and on the other side the railroad wage.

5 And as part of your calculations what you do
6 is you calculate the difference between the two,
7 right?

8 A The present value.

9 Q The present value?

10 A Yes, sir.

11 Q Now, initially you relied on Dr. McClanahan for the
12 assumption of the mitigating wage, is that right?

13 A You know, I don't recall. I think it was like
14 \$25,000 initially.

15 Q That's correct.

16 A Yes.

17 Q Dr. McClanahan, as you recall, testified that he
18 believed Mr. Moorer could make somewhere between
19 \$20,000 and \$30,000?

20 A And I used \$25. You are exactly right.

21 Q So you split the middle?

22 A Yes, sir.

23 Q And came up with a mitigating wage of \$25,000 based
24 on McClanahan, right?

25 And then that has now changed. It is my

1 understanding that today you have used a different
2 mitigating wage. What is that amount?

3 A Thirty thousand.

4 Q Thirty thousand dollars. Okay. So this was
5 Opinion One, \$25,000.

6 And now your opinion today --

7 A I'm sorry, sir, that is not my opinion, that is
8 someone else's opinion.

9 Q Okay. All right. Whose opinion is it that the
10 mitigating wage is \$30,000?

11 A Well, initially it was Dr. McClanahan, as I recall,
12 which was a very close approximation to what he was
13 earning at the police force when he started there.

14 Since he's been there, wages have gone up.
15 And that is the reason I'm using -- it is actually
16 around \$29,000. I went ahead and used \$30 just to
17 build in a little leeway.

18 Q Okay. So now it is \$30,000. And is that based
19 more on your evaluation of what Mr. Moorner has made
20 at the Police Department?

21 A No, it is based upon facts.

22 Q Okay. What facts are those?

23 A The facts as provided today of what he was -- what
24 he is earning now at the Police Department. He got
25 a raise recently, is my understanding.

1 Q Okay. So that is your opinion?

2 A It is not my opinion, sir. It is a fact.

3 Q Well, those are the facts you rely on?

4 A You're correct.

5 Q And you have also been provided in this case, have
6 you not the, 2011 W-2s of Mr. Moorner, have you not?

7 A Yes, sir.

8 Q Okay. And that amount that he earned last year is
9 \$38,267. That is what the facts reveal, does it
10 not?

11 A That's correct.

12 Q And we know that therefore that Mr. Moorner has the
13 potential to earn that amount because he in fact
14 did it?

15 A I don't want to get into someone else's expert area
16 because I'm not a vocational rehab person. The
17 reason he earned that last year, my understanding,
18 is because he worked two jobs for a while. You
19 can't continue to do that. So if you ask me my
20 opinion, no, he is not capable of doing that for
21 any extended period of time.

22 Q Have you read the deposition testimony of another
23 vocationalist that has testified in the case,
24 Ms. Cicero?

25 A No, I haven't.

1 Q All right. If she testified that he could get
2 employment and has good potential to get employment
3 in the \$45,000 range, that would be another
4 assumption you could run with, would it not?

5 A Certainly. Certainly.

6 Q Okay. And, therefore, how large your number gets
7 for the future wage loss depends on what assumption
8 you use for the mitigation side of this pie, would
9 you agree?

10 A Correct.

11 Q Now, let's turn to the other side of the pie. You
12 have used a railroad wage, I believe, of \$61,809,
13 or what number have you used?

14 A \$61,809 gross, that's correct.

15 Q And to do that number, you have been provided --
16 and I refer you to Exhibit 104 -- various wages of
17 employees that are higher and lower of Mr. Moorer's
18 seniority, is that correct?

19 A Correct.

20 Q And essentially you have taken 2010 -- or 2011,
21 right?

22 A Yes, sir.

23 Q And annualized them for those employees, is that
24 right?

25 A For six of them, that's correct.

- 1 Q Okay. So would the six be Mr. Anthony?
- 2 A Let me read them off.
- 3 Q Please do. And I'll check them off.
- 4 A Mr. Blan.
- 5 Q Mr. Blan. Okay.
- 6 A Mr. Brock.
- 7 Q Mr. Brock. Okay.
- 8 A Mr. J.B. King.
- 9 Q Mr. King. Okay.
- 10 A Mr. Whaley.
- 11 Q Mr. Whaley. Okay.
- 12 A Mr. Anthony.
- 13 Q Mr. Anthony. Okay.
- 14 A And Mr. Walker.
- 15 Q Mr. Walker. All right. So we have six of the ten
- 16 being used, is that correct?
- 17 A That's correct.
- 18 Q Now, I notice that Mr. Blan, for example, in 2010
- 19 was the highest wage earner of them all. And it
- 20 appears that 2008 he was the highest wage earner of
- 21 all, making nearly \$70,000. Did you see that?
- 22 A Sixty -- around 70 and ten and annualized 67 and
- 23 11. That's correct.
- 24 Q And basically you elected to use this number. Do
- 25 you know his background and why he earned more than

1 the others?

2 A No, sir. I just used the above and below as
3 provided to me.

4 Q You testified that you try not to consider
5 overtime. When you looked at Mr. Blan's records,
6 did you consider whether he had worked overtime at
7 the railroad?

8 A As I said earlier, I just look at the actual
9 earnings without regard to how they earned it.

10 Q Okay. The other thing that I noticed is some
11 people are missing. So, for example, Mr. Mitchell,
12 right, who has made less than the others, \$41,409
13 in 2008; \$49,924 in 2010; and, let's see, \$36,689
14 in 2009. You did not consider him, did you,
15 Mr. Blan? I'm sorry, Mr. Mitchell. I'm sorry, Mr.
16 Mitchell.

17 A I don't know where you got -- either I was provided
18 wrong information or you have wrong information
19 because my records show that he didn't earn
20 anything in 2010.

21 Q Okay. With respect to Mr. Mitchell, you decided
22 not to use him, whatever information you got?

23 A He wasn't working.

24 Q Do you know whether he may have been furloughed?
25 Did you consider any employees that have been

1 furloughed?

2 A No, sir.

3 Q So if for some reason this number has overtime on
4 this side, on the railroad side, and doesn't have
5 overtime on the mitigating side, it is worthy of an
6 adjustment, wouldn't you agree?

7 A No, sir.

8 Q Why not?

9 A Because if he is still working for the railroad he
10 would be getting that overtime.

11 Q Now, I want to talk --

12 A It would be part of his wages.

13 Q Now, I want to talk to you about another assumption
14 that flows through all of this. In making your
15 future damage calculation, you are assuming that
16 Mr. Moorer is going to work for the railroad for
17 the next 21 point -- how many years was it?

18 A 21.64.

19 Q Okay.

20 A Or some other job earning equivalent wages.

21 Q So have you looked at the frequency of his job
22 applications and whether the railroad was a long
23 term?

24 A I'm not qualified to do that.

25 Q Okay. So this assumes he would be in a comparable

1 status with the other railroad employees for 21
2 years, is that right?

3 A Yes, that's correct.

4 Q And of that amount, you came up I believe with --
5 let's see here -- \$610,758, is that right?

6 A That's the present value of the difference of the
7 two earning streams, that's correct.

8 Q All right. I believe when we talked I asked you to
9 run that number for 2011. In other words, run an
10 assumed mitigation loss of \$38,267. Do you recall
11 our discussion on that?

12 A Yes, sir, I believe I do.

13 Q Okay. And my recollection is if you use this
14 number, you come up, at least during our discussion
15 you came up with \$452,046?

16 A I did not write that down, but that sounds right.

17 Q Okay. So basically as these numbers get closer,
18 your number of \$610,758 gets smaller?

19 A Yes, sir.

20 Q Is that correct?

21 A Yes, sir.

22 Q All right. Now, I want to talk to you a little bit
23 about the past loss, the \$195,088. And I
24 understand on the past wages you made certain
25 assumptions as well, is that correct?

1 A I don't recall that there are any, quote,
2 assumptions required for past losses, it is simply
3 looking at two numbers, what he would have earned
4 based upon the comparable work earned versus what
5 he actually earned in other pursuits.

6 Q And for past loss, it is my understanding for 2007
7 you used the mitigating amount, right, of \$19,062,
8 is that correct?

9 A That is how much he actually earned, correct.

10 Q 2008, zero?

11 A Correct.

12 Q 2009, zero?

13 A Correct.

14 Q Okay. And in 2010 what number did you use?

15 A 22,240.

16 Q Okay.

17 MR. TECKLENBURG: Could you put up Exhibit 45
18 on the screen, please?

19 Q Exhibit 45 is a tax return.

20 MR. TECKLENBURG: Can you close-up on the
21 highlighted part?

22 Q This is Ms. Moorers's tax return that he and -- that
23 Mr. Moorers and Ms. Moorers ran together. Did you
24 consider the income from the car wash that they had
25 and worked together?

1 A If it was on the tax return I did. If it wasn't I
2 did not.

3 Q Okay. Did you talk with him about his earnings
4 while he was at the car wash?

5 A No, sir.

6 THE COURT: Hold on one second.

7 MR. TECKLENBURG: Yes, Your Honor.

8 THE COURT: Can you not see because of the
9 board?

10 JUROR: Because of the board.

11 MR. TECKLENBURG: Oh, I'm sorry. Thank you.
12 Can you re-display the exhibit?

13 THE COURT: Do you need the lights dimmed?

14 MR. TECKLENBURG: I only have one exhibit,
15 Your Honor. Thank you.

16 BY MR. TECKLENBURG:

17 Q Now, finally I want to talk about the benefits.
18 Oh, before I do that, though. Obviously, if he
19 received some income from the car wash, that would
20 reduce your present -- your -- the amount you
21 claimed for -- or put forth for past loss of
22 \$195,000?

23 A If he received income, yes, sir.

24 Q Very good. Now, finally you had this health
25 insurance amount of \$280,909?

1 A Yes, sir.

2 Q And it is my understanding that you looked at the
3 value of benefits offered at the railroad, is that
4 correct?

5 A Which include both the employer and the employee
6 contributions, that's correct.

7 Q And you look at the value of what he currently has
8 at St. George, is that correct?

9 A Well, I looked and was told that he had no health
10 insurance benefits there.

11 Q All right. So what you assumed is that for the
12 rest of his life, for 21 years, that Mr. Moorner's
13 employer, whoever that might be, would not provide
14 him any health insurance benefits?

15 A That is what is implicit, that's correct.

16 Q And obviously if Mr. Moorner were to get a job like
17 he had at Kinder Morgan that offered some medical
18 benefits, then that number would be reduced as
19 well?

20 A It would be reduced, that's correct.

21 Q All right. Thank you very much. I appreciate your
22 time.

23 A Thank you, sir.

24 MR. MOSS: Mr. Tecklenburg, can you leave the
25 boards there? That one too.

REDIRECT EXAMINATION

BY MR. MOSS:

Q It sounds like you got accused of handpicking people, Dr. Johnson.

A I really didn't take it that way. But if you did, we can discuss it.

Q Well, we'll be real quick about it. Why didn't you pick this guy named J.A. Norwood? Why didn't you pick him in the calculation?

A My information is that Mr. Norwood really hasn't worked since '07, but I think he earned \$1,600 in '08. So he is not employed there anymore.

Q He might have been on active duty?

A Well, he is not working.

Q What about Jeff Thompson? Why didn't you include Jeff Thompson?

A Jeff Thompson is dead. He died in 2010.

Q Not a good person to use?

A Well, no, I don't think so.

Q Dr. Johnson, if a witness comes in this courtroom this afternoon and says that Mr. Moorner was an excellent employee, he hired him, he liked him, and he thought he had management potential, and assume that Mr. Moorner could make more than \$61,000 on the railroad wage side, how would that affect your

1 number?

2 A All others things equal, the higher the previous
3 earnings the more the damages, and vice versa.

4 Q So it is just like we can do the math over here, if
5 in fact the jury believes that Mr. Moorer could be
6 a manager at the railroad --

7 MR. TECKLENBURG: Your Honor, he's beyond the
8 scope of the cross-examination.

9 THE COURT: Yes, sir?

10 MR. MOSS: Your Honor, I'm simply -- I have
11 one question to be sure that we understand that
12 we're talking about the mitigating side and the
13 railroad wage side on a hypothetical basis. I have
14 one more question.

15 THE COURT: All right. Objection overruled.

16 BY MR. MOSS:

17 Q If you assume that Mr. Moorer can be a manager at
18 the railroad and testimony from the stand comes out
19 that they make more than \$61,000 a year, what would
20 that do to this number, the future loss number, and
21 what would it do to this number, the bottom number?

22 A Obviously the bottom number, the \$108,600, would be
23 greater because, as you suggest, this number
24 assumes that he would have stayed in the same job.
25 If he had got a promotion and earned more, then the

1 number would be less, and if that number is
2 greater, all other things equal, then the \$610
3 would be greater.

4 Q So if we want to do our own math, let's assume
5 hypothetically, just make it \$10,000 more dollars,
6 assume a supervisor makes \$71,000 instead of \$61 --
7 we'll find out -- what would just a simple \$10,000
8 increase off the \$60 --

9 MR. TECKLENBURG: Your Honor, I think he
10 wanted a point of clarification. He is going way
11 beyond what the cross-examination entailed.

12 THE COURT: All right. Objection sustained.

13 MR. MOSS: Thank you.

14 A Thank you.

15 Q I have no more questions.

16 A Thank you, sir.

17 MR. TECKLENBURG: I have one question since
18 he -- or two -- since he opened the door.

19 RECROSS-EXAMINATION

20 BY MR. TECKLENBURG:

21 Q On the management side, are you -- did you hear Mr.
22 Moorer's testimony about how he just recently
23 expressed an interest in applying for a management
24 position --

25 MR. MOSS: Objection. May we approach the

1 witness.

2 MR. MOSS: Your Honor, the Plaintiff calls
3 Dr. Walton Moseley by steno deposition.

4 THE COURT: All right. And of course you all
5 know that this is not Dr. Moseley. We are doing
6 role playing again.

7 And this is Mr. Rivers -- I mean, Mr. Jenkins.

8 MR. JENKINS: But I am doing examination by
9 Mr. Tecklenburg.

10 THE COURT: All right. So you are role
11 playing. All right.

12 (WHEREUPON, the deposition of Dr. Walton
13 S. Moseley was read in open court.)

14 THE COURT: The next witness is here and
15 short. Call your next witness.

16 MR. MOSS: Your Honor, the Plaintiff calls
17 Athena Moorner.

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

20 (Witness complies.)

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

25 THE WITNESS: I do.

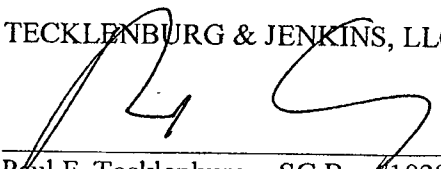
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2010-CP-40-05460
	)	
TRUMAINE V. MOORER,	)	
	)	
Plaintiff,	)	STIPULATION OF DEPOSITION
	)	DESIGNATIONS OF WALTON
vs.	)	MOSELEY, M.D. TAKEN 5/21/09
	)	READ AT TRIAL (504:12-13)
NORFOLK SOUTHERN RAILWAY	)	
COMPANY,	)	
	)	
Defendant.	)	
	)	

The undersigned parties stipulate the following excerpts of the deposition of Walton Moseley, M.D. taken May 21, 2009, were read at trial:

03:06 - 07:13
07:20 - 12:09
19:21 - 20:07
25:13 - 28:07
28:08 - 30:07
30:08 - 31:21
34:04 - 35:01
37:04 - 38:04
38:05 - 40:25
41:01 - 42:05
47:09 - 51:09
52:14 - 52:22
53:11 - 54:03
55:14 - 56:18
58:09 - 59:22
60:22 - 61:05
61:12 - 62:06
62:07 - 62:18
62:22 - 64:05
64:10 - 64:21
65:13 - 66:01
66:18 - 67:24
71:13 - 73:01
74:01 - 74:16
76:03 - 76:18

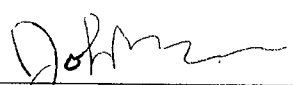
[SIGNATURES ON NEXT PAGE]

TECKLENBURG & JENKINS, LLC



Paul F. Tecklenburg – SC Bar #10295
1819 Meeting Street Road, Ste. A
Charleston, SC 29405
Telephone: (843) 534-2628
Facsimile: (843) 534-2629
Email: pft@tecklaw.net
Counsel for Defendant

STEEL & MOSS, LLP



John A. Moss, Esquire
15 Piedmont Center, Suite 1560
3575 Piedmont Road, NE
Atlanta, GA 30305
Counsel for Plaintiff

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

TRUMAINE V. MOORER,

Plaintiff,

vs.

CASE NO. 2008-CP-38-24

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

DEPOSITION OF: WALTON S. MOSELEY, M.D.

DATE: May 21, 2009

TIME: 4:36 p.m.

LOCATION: Charleston Nephrology
Associates
3815 Faber Place Drive
North Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Moseley, Walton S., M.D. 5/21/09

1 WALTON S. MOSELEY, M.D.,
2 being first duly sworn, was examined and testified
3 as follows:

4 EXAMINATION

5 BY MR. TECKLENBURG:

6 Q. Doctor, could you give your full name
7 for the record, please?

8 A. Dr. Walton Strozier Moseley.

9 Q. Where is your office located?

10 A. North Charleston.

11 Q. And tell me a little bit about
12 yourself. Where are you from? Where were you
13 born?

14 A. I'm originally from Raleigh, North
15 Carolina. I was born in 1964. I grew up in
16 Raleigh, went to college and med school in North
17 Carolina, moved to St. Louis and did my residency
18 and fellowship there prior to moving to Charleston.
19 That was in 1999.

20 Q. Tell me about your undergrad. Where
21 did you go to undergrad college?

22 A. I went to undergraduate school at Duke.

23 Q. And your med school?

24 A. Duke. I was there for eight years.

25 Q. And your residency?

1 A. I did my residency at Washington
2 University in St. Louis.

3 Q. And the residency is not -- was that in
4 any particular concentration or area?

5 A. Internal medicine.

6 Q. When did you finish that, your
7 residency at Washington U?

8 A. I finished residency in '93, 1993. I
9 was on medical staff there working in the hospital
10 for two years, to '95. Then I did a renal
11 fellowship there for four years from '95 to '99.

12 Q. And describe what's involved in the
13 renal fellowship.

14 A. That is a clinical training in --
15 subspecialty in renal disease, learning about
16 diseases of the kidney, treating it, dialysis.
17 There was some exposure to renal transplantation.

18 Q. And are you board certified?

19 A. Yes.

20 Q. In what areas?

21 A. Nephrology.

22 Q. When did you become board certified?

23 A. '99.

24 Q. So when you finished the fellowship in
25 '99, that's when you sought board certification?

1 A. Yes.

2 Q. Did you hold any board certification
3 prior to that?

4 A. Internal medicine.

5 Q. Do you still hold that, or did you give
6 that up, so to speak?

7 A. I did not renew that. So, technically,
8 I'm board certified in nephrology, but internal
9 medicine expired after ten years. So that would
10 have been, I guess, 2003.

11 Q. So you first got that in 1993?

12 A. Right.

13 Q. And that's when you finished the
14 residency at Wash. U?

15 A. Right.

16 Q. And since 1999, what have you been
17 doing? Where have you been working?

18 A. Since 1999 I've worked with Charleston
19 Nephrology Associates, practiced here in North
20 Charleston specializing in nephrology or kidney
21 disease.

22 Q. And how many doctors are in your
23 practice?

24 A. There are currently five nephrologists.

25 Q. And who are they?

1 A. There is myself, there is Samuel
2 Franklin, Richard Browder, Eric Pride, and Blake
3 Weathersby.

4 Q. And did they have the practice in
5 existence prior to your coming? Did you join them?

6 A. Yes. I was invited to come here and
7 interview by Sam Franklin, one of the partners who
8 actually trained with me at Washington University.
9 He finished a couple of years ahead of me. So I
10 came down here and ended up joining the practice in
11 1999. And then two of those partners have joined
12 the practice after I did.

13 Q. And are you a partner?

14 A. Yes.

15 Q. And what hospitals do you have
16 privileges at?

17 A. We have privileges at Roper Hospital,
18 St. Francis Hospital, Trident Medical Center, and
19 we have consulting privileges at Summerville
20 Medical Center, and consulting privileges at
21 Kindred Hospital.

22 Q. Where is Kindred?

23 A. It's across the street from Roper.
24 It's on the third floor where Charleston -- I guess
25 Charleston Memorial Hospital used to be.

1 Q. Okay.

2 A. It's kind of a specialty hospital for
3 long-term inpatient care.

4 Q. We are here about a gentleman that
5 suffered two episodes, I believe, of
6 rhabdomyolysis. Is that your understanding of what
7 he had?

8 A. Right.

9 Q. Did you study that as part of your
10 fellowship out in St. Louis or in med school?

11 A. Yes, that would be one component of
12 things that we would study in medical school and in
13 residency training.

14 Q. Tell me a little bit about it. I've
15 been -- I'm going to show you an article here in a
16 minute that -- it's called -- it's a Critical Care
17 2005 article, and I think it probably gives more of
18 an overview, probably something lawyers could read
19 and potentially absorb. And I'm going to show it
20 to you in a minute. But tell me a little bit about
21 it. What is it? What causes it, from your
22 perspective?

23 A. Well, from my perspective, the times
24 that we deal with rhabdomyolysis is mainly because
25 of the effect that it has on the kidney. If the

1 rhabdomyolysis is severe enough, it can potentially
2 lead to acute renal failure. And we will often be
3 consulted to see patients, oftentimes in the
4 hospital, who have been admitted by their physician
5 to the hospital with rhabdomyolysis. And then
6 during their time in the hospital, they develop
7 acute renal failure, and we were consulted for
8 that, to manage their renal failure in that
9 setting. So that's the most common scenario we
10 deal with rhabdomyolysis in our practice.

11 Q. Because you're a specialist, so you're
12 coming in to treat it?

13 A. Right, because we specialize in kidney
14 disease. From our perspective, when we're dealing
15 with rhabdomyolysis, we're dealing with the effects
16 of the rhabdomyolysis on the kidney, which can
17 potentially be acute renal failure.

18 Q. Sometimes lawyers ask, you know, common
19 sense or -- I don't want to say stupid questions,
20 but stupid questions. Tell me what acute renal
21 failure is. To me, that kind of sounds like your
22 kidney is failing, but is that what pretty much
23 what it is?

24 A. Well, in a general term. I mean, one
25 of the main functions of the kidney is to filter

1 and clean the blood. So when blood goes through
2 the kidney, the kidney filters the blood. It
3 removes impurities. That filtrate from the blood
4 is the urine. It can remove excess fluid. And
5 those two jobs are what the major tasks of what a
6 kidney does.

7 When someone says acute renal failure,
8 what they're referring to is that job that the
9 kidney is doing it's not doing as well. So the
10 kidney, in short, does not filter the blood the way
11 it normally should. And evidence of acute renal
12 failure can be manifest by lab values that are
13 abnormal and show evidence that the blood is not
14 being cleaned or filtered as it normally would.

15 Q. So when you use the word acute renal
16 failure, it doesn't necessarily mean someone is on
17 their deathbed?

18 A. Doesn't necessarily mean that, no. It
19 can be anywhere from being asymptomatic, in other
20 words, the only way you would necessarily know that
21 someone had acute renal failure, you just happened
22 to draw some blood and see evidence of that; or it
23 can be life threatening. So there is a wide
24 spectrum of symptoms or lack of symptoms with acute
25 renal failure.

1 The acute part means that it's felt to
2 be, you know, sudden, in other words, presumably
3 their kidney function was normal or baseline, and
4 then in a relatively short period of time, their
5 kidney function worsened.

6 Q. Now, I believe -- and I don't want to
7 over-generalize things. But I believe in
8 Mr. Moorers's case, he received IV fluids, stayed in
9 the hospital a couple of days on two occasions, and
10 generally recovered. Is that something you see
11 with acute renal failure? Is that one of the
12 possibilities?

13 A. Yes, that is a fairly common scenario,
14 that someone for differing reasons has an insult or
15 an injury perhaps to the kidney. The filtering
16 ability of their kidney is decreased. They have
17 abnormal labs reflecting that. And then over a
18 period of usually several days, sometimes, you
19 know, one or two, three weeks, then the kidney
20 function recovers.

21 Q. Okay. Now, how does rhabdomyolysis
22 play in that? Is it one of -- I guess is one of
23 the consequences of rhabdo the acute renal failure?

24 A. One of the potential consequences of
25 rhabdomyolysis could be acute renal failure.

1 Rhabdomyolysis is a condition that reflects injury
2 to the muscle. And there are several things, many
3 things that can cause injury to the muscle. But
4 one of the side effects to injury of the muscle is
5 various components of the muscle can be released
6 into the bloodstream. And if those components are
7 high enough, they can affect kidney function, at
8 least temporarily, and lead to acute renal failure.

9 Q. When you say injury to muscle, what are
10 you talking about there?

11 A. Well, it can be a wide variety of
12 things that can lead to muscle injury. Certain
13 instances that can lead to rhabdomyolysis, common
14 things would be injuries, crush injuries, such as
15 in motor vehicle accidents, or if -- you know,
16 sometimes you'll see it like in natural disasters,
17 earthquakes, or any type of thing that may lead to
18 a limb being crushed or impaired blood flow to a
19 large portion of the muscle in which the muscle
20 lacks oxygen and part of it dies.

21 Other things that can lead to muscle
22 injury would be exertional types of conditions
23 where you may see people who exert themselves, such
24 as marathons or sporting events such as football
25 practice where they're outside in the heat and

1 exerting themselves. Those are common causes of
2 it.

3 Sometimes we'll see it in -- you know,
4 if an elderly person has fallen or had an event
5 where they're on the floor and they can't get up or
6 someone has passed out on the floor and they
7 can't -- they don't move, then just being on one
8 spot, a hard spot, for a long period of time, that
9 can even lead to injury to the muscle.

10 Q. And the exertional conditions you were
11 talking about a minute ago, marathons and sporting
12 events, have you treated renal failure or rhabdo in
13 those situations in the past?

14 A. We have seen instances of that where
15 people in various scenarios have had overexerted
16 themselves and led to acute renal failure from
17 rhabdomyolysis. It's not common. Most of the time
18 people, as long as they drink plenty of fluids and
19 pace themselves, then that tends not to be a
20 problem. But in more serious conditions, that can
21 sometimes happen.

22 Q. Do you recall any specific histories or
23 descriptions of the types of exertion that you've
24 seen?

25 A. Just off the top of my head, there have

1 I'm sure I don't know what they are. And it talks
2 about are chronic autoimmune conditions that in
3 rare cases can progress to rhabdo. And then it
4 says: An interesting and challenging cause of
5 rhabdo is an ingestion of large quantities of
6 licorice.

7 Have you ever heard of that?

8 A. I have never seen anyone develop
9 rhabdomyolysis from ingesting large quantities of
10 licorice. I mean, it's pretty rare. But, I mean,
11 it's just talking about renal potassium wasting.
12 If your potassium is low enough, that can perhaps
13 predispose you to developing rhabdomyolysis. But
14 I've never seen a case of that. Polymyositis and
15 dermatomyositis, again, are not common conditions.
16 They're autoimmune conditions, what they're
17 describing, where the body attacks the muscle cells
18 and can lead to chronic inflammation within the
19 muscles, and that can lead to elevation in muscle
20 enzymes.

21 Q. The reason I ask is -- I'm thinking
22 it's in your chart too -- there is a mention that
23 Mr. Moorer took some supplements, matter of fact
24 something called KM. Have you ever heard of that
25 supplement?

1 A. No.

2 Q. We were looking on the Internet, and
3 one of the ingredients of that is licorice. And I
4 was just curious whether you had considered that or
5 not. Did you ever look at the ingredients of KM as
6 part of your evaluation?

7 A. No, I did not.

8 Q. On the second page of this article, it
9 gives sort of a long list of causes. We'll go back
10 to page 1147, which is on page 2. I jumped ahead
11 because you were talking about medications.
12 Otherwise, I would have put this in a different
13 order.

14 A. Okay.

15 Q. But this gives a whole long list of, I
16 guess, things that are causes of rhabdo. I just
17 want you to look at this chart, this Table 1, and
18 just let me know one way or the other whether you
19 disagree or agree with this author's causes that
20 she's come up with with respect to rhabdo. You've
21 already mentioned crush injuries, which is the top
22 of the list.

23 A. Right, motor vehicle accidents.

24 Q. And I think you mentioned the third one
25 in some respect, long-term confinement. You were

1 people at tertiary care centers such as MUSC that
2 deal with genetic type of diseases that deal with
3 specific enzyme deficiencies. And, frankly, again,
4 these are oftentimes deficiencies people are born
5 with because they're genetic. And a lot of times
6 these are seen in people who are kids, when they're
7 younger. And oftentimes it's frequently seen in
8 the pediatric setting. So we do not deal with
9 these types of conditions by any means on a regular
10 basis. I mean, these are things you may read about
11 and learn about and hear about, but it's not common
12 by any means.

13 Q. Well, tell me a little bit about what
14 you did and how you came upon Mr. Moorer. Who
15 referred him to you?

16 A. Can I refer to this chart?

17 Q. Please, yes.

18 A. All right. I saw him one time on
19 November 27, 2001, and he was referred to us by his
20 primary care physician, Dr. Eric Watson.

21 Q. Do you know Dr. Watson?

22 A. I know of him. I have not met him
23 directly. I've spoken with him, I believe, on the
24 phone in the past.

25 Q. Did you ever speak to him about

1 Mr. Moorner, do you know?

2 A. I do not recall speaking to him on the
3 phone. I believe I mainly communicated with him by
4 sending him a copy of this consultation.

5 Q. Okay. Tell me, if you will, what you
6 saw as your role in trying to help Mr. Moorner with
7 his health.

8 A. Well, I believe Dr. Watson was
9 concerned that he had a couple of episodes of acute
10 renal failure, and he wanted to get my opinion,
11 from a nephrology standpoint, if there was anything
12 that I may recommend for Mr. Moorner to do
13 differently perhaps that would lessen his chance of
14 developing acute renal failure.

15 Q. And that was actually one of the things
16 I was going to ask you probably towards the end,
17 but have you made or did you make specific
18 recommendations about things he should do in order
19 to avoid future episodes?

20 A. Well, I believe the main
21 recommendations would be to -- in situations where
22 he potentially could be dehydrated, such as working
23 outside, again in perhaps areas of high humidity
24 and or high temperature, to stay hydrated, to take
25 plenty of fluids, perhaps to take breaks at times

1 during his work schedule. I mean, I commented
2 about him not taking nonsteroidal anti-inflammatory
3 agents. The issue with that is that taking those
4 type of agents, particularly if you're dehydrated,
5 could exacerbate or increase the chance you might
6 develop worsening renal failure, because that can
7 sometimes effect kidney function.

8 Q. What are nonsteroidal anti-inflammatory
9 agents?

10 A. Those are actually relatively common
11 medications that people take to decrease pain and
12 inflammation from various conditions such as
13 arthritis or muscle aches and pains. I mean,
14 common over-the-counter nonsteroidal
15 anti-inflammatory agents are Motrin, Aleve, Advil.

16 Q. But there was no evidence really that
17 that was tied to any of his events that he suffered
18 on the job?

19 A. According to my notes, it does not
20 appear he was.

21 MR. TECKLENBURG: I'm going to go ahead
22 and mark this as Exhibit 2 since we're referring to
23 your report.

24 (DFT. EXH. 2, Three-page 11-27-07
25 Consultation Report, Bates Stamp

1 NS-MOOR 000728 Through 000730, was
2 marked for identification.)

3 BY MR. TECKLENBURG:

4 Q. This is a three-page report marked as
5 Exhibit 2. Is this the report you generated as a
6 result of your review and seeing Mr. Moorer?

7 A. Yes.

8 Q. Now, on this third page, you talk not
9 only about these anti-inflammatory agents, but you
10 make the comment after that about liquid vitamin
11 supplements. Why did you put that in your report?

12 A. Well, as a nephrology, I always have
13 concern sometimes when people are taking either
14 over-the-counter types of herbal supplements or
15 natural supplements or, you know, other types of
16 supplements that would not be perhaps part of your
17 normal diet; but on the other hand, it's not a
18 prescription type of medication. And my concern is
19 that sometimes these supplements that people take
20 have not been looked at in people that have, say,
21 chronic kidney disease, and it's not been looked at
22 to the degree that, say, prescription medicines
23 have been looked at as far as what their effects
24 may be, not perhaps on the kidney, but other parts
25 of the body as well.

1 So any time somebody has acute renal
2 failure, I mean, you're always thinking about
3 things that might be affecting the kidney. And
4 anything that's out of the ordinary, whether it's
5 a -- prescription medicines can effect the kidney,
6 but it's possible that sometimes supplements can
7 affect kidney function as well. And what leaves us
8 a little bit in a bind is that a lot of -- there
9 has not been a lot of -- most of these supplements,
10 oftentimes there have not been scientific studies
11 to look at -- you know, they don't give these
12 supplements to a thousand people and check their
13 kidney function tests and liver function tests and
14 see if it has any effect on organs. Several years
15 ago, there was a Chinese herb supplement that
16 people were taking that in rare cases could lead to
17 acute renal failure.

18 So any type of herbal supplements or
19 things of that sort, again, is a little bit of a
20 flag that, if you don't have to take it or you
21 don't need to take it, then if you could hold off
22 taking it, that would oftentimes be the best
23 scenario.

24 Q. Before we get into a discussion talking
25 about these anti-inflammatory agents and

1 supplements, you were talking about when you're
2 working outside, drinking plenty of fluids. With
3 respect to Mr. Moorner, did you make any
4 recommendation that he should not work outside
5 anymore?

6 A. No, I did not make a recommendation
7 that he should not work outside at all, no.

8 Q. And in fact, in your history, does he
9 indicate to you he's been playing basketball since
10 these events? I think it's on the first page down
11 at the bottom.

12 A. I did mention in my note in the third
13 paragraph of the History of Present Illness that,
14 since he's taken a leave of absence from the
15 railroad, he'd been doing such physical activity
16 such as playing basketball, yes. I think the point
17 I was -- maybe that I was probably alluding to in
18 that sentence is I was trying to get a feel as to
19 whether, you know, moderate -- all physical
20 activity or moderate physical activity could lead
21 to problems with weakness or cramping and things of
22 that sort. And the suggestion was that he can do
23 physical activity and seems to do okay with that.

24 Q. So with respect to his future prospects
25 in being employed, do you think that it is -- as

1 long as he receives and is able to take rest when
2 he needs to and stays hydrated, that he can do work
3 outside?

4 A. Based on the history I took from him,
5 the fact that he had done other things outside such
6 as, you know, in terms of physical activity and
7 playing basketball, I think it would be reasonable
8 to assume that he could at least do moderate type
9 of physical activity without significant danger to
10 his muscles or his kidneys. Nothing would be 100
11 percent. But the only two incidences that he
12 describes having these problems is when he
13 presented to the hospital these two instances in
14 2007. But he had been doing some other, looks
15 like, physical work outside in the Middle East
16 between 2004 and 2006, and, at least by symptoms,
17 did well with that.

18 So from the history I took, I don't see
19 anything that would at this point recommend that he
20 doesn't do any type of physical activity outside
21 from -- of a mild to moderate nature.

22 Q. All right. So I sort of jumped forward
23 to what your goal was, which was to identify
24 limitations, and we sort of walked through that.

25 A. Right.

1 the urine. 3 to 5 white blood cells is fairly
2 nonspecific in terms of what might be going on in
3 the kidney.

4 Q. And then on the second page of this
5 report we marked as Exhibit 2, it looks like you --
6 you call it Review of Systems, but you -- is that a
7 history, or is that some of your testing that you
8 did?

9 A. This is a history I took from the
10 patient about various symptoms involving various
11 organ systems in terms of what might -- what he may
12 or may not be exhibiting.

13 Q. Did they appear to be normal?

14 A. In this review of systems, there does
15 not appear to be anything abnormal that I listed in
16 the review of systems.

17 Q. And it appears as though you did a
18 physical exam; correct?

19 A. Correct.

20 Q. And did you find that normal?

21 A. The physical examination was normal by
22 my exam.

23 Q. And then it appears that you did a
24 urinalysis yourself, and it was negative, meaning
25 normal; correct?

1 A. Correct.

2 Q. All right. And did you take some blood
3 work?. It looks like you did a chemistry panel?

4 A. Yes, I drew a comprehensive metabolic
5 panel.

6 Q. What were those results?

7 A. The CMP levels fell within normal
8 limits. The CK, which is the muscle enzyme that I
9 was referring to, was 292, which is mildly
10 elevated. But that's not a level where you would
11 see damage to the kidney or that type of issue.

12 Q. Now, I see the normal limits are --
13 they want an upper limit, at least the lab, of 204.
14 But it's at 292; right?

15 A. Right.

16 Q. What are the types of things that cause
17 that to be elevated?

18 A. Mildly elevated in this instance?

19 Q. Yes, sir.

20 A. Well, it may just be sometimes a normal
21 variation. Particularly I've seen in
22 African-Americans that they may have a CK that's
23 mildly elevated above the normal range. Sometimes
24 in people that have hypothyroidism, you may have a
25 mild elevation in creatine kinase. In some of

1 Q. After you went through the tests, it
2 looks like we pretty much went over your
3 recommendations, so we don't need to repeat those.
4 Let me see here. How did he describe his job to
5 you?

6 A. The job with the railroad company?

7 Q. Right.

8 A. I'll have to refer to my notes here.

9 Q. Yeah, I understand that.

10 A. Well, according to my notes, he
11 formerly worked with the Department of Defense to a
12 large degree overseas. And then a few months
13 before I saw him, he took a job with the railroad.
14 And according to my history, he worked for a period
15 of time as a conductor, and then later as a
16 brakeman. I'm not familiar with the jobs that all
17 are entailed with the different positions with the
18 railroad, so I can't comment exactly specifically
19 what -- this was mainly what he was telling me.
20 But according to what he described to me, that this
21 change in job led to increased physical activity.

22 And then I commented on the two
23 specific episodes that led up to him coming into
24 the hospital. One was in May 2007 where there was
25 a particular instance where he was working around a

1 train engine, around a fair amount of heat, and
2 there was a fairly large degree of physical
3 exertion with this and sweatiness. This went on
4 for several hours, according to what he described.

5 Q. In your report, you say 11 to 12 hours;
6 correct?

7 A. And this is based on the history he
8 gave me.

9 Q. You're recounting what he's told you?

10 A. Correct, exactly.

11 Q. And based upon that, did you conclude
12 that he's doing manual labor 11 to 12 hours?

13 A. That was my understanding from what he
14 told me.

15 Q. And did you -- in trying to pair this
16 all up as a heat exertion injury, would you
17 consider walking in 80 degrees to be a type of
18 activity that would lead to overexertion?

19 MR. MOSS: Object to form.

20 THE WITNESS: Simple walking in 80
21 degree weather, I would not expect that that would
22 typically lead to rhabdomyolysis unless there were
23 other factors that I'm not aware of. But the vast
24 majority of times, walking out in 80 degree weather
25 would not lead to rhabdomyolysis and subsequent

1 renal failure.

2 BY MR. TECKLENBURG:

3 Q. So let's say 80, 90 percent of his
4 physical exertion was the task of walking, and it
5 was probably limited closer to four or five hours a
6 day. Is that something you would expect to cause
7 rhabdo?

8 MR. MOSS: Objection.

9 THE WITNESS: You mean if he was
10 walking for 11 or 12 hours a day and then just
11 three or four hours was exertion?

12 BY MR. TECKLENBURG:

13 Q. No, if he was really working six hours
14 a day and walking four to five hours out of those
15 six hours, is that something you think would cause
16 rhabdo?

17 MR. MOSS: Objection.

18 THE WITNESS: Not in the scenario you
19 described, assuming there is not other extenuating
20 circumstances, but just walking for a few hours,
21 you know, a day --

22 BY MR. TECKLENBURG:

23 Q. The exertion level you're really
24 talking about for this type of illness, Doctor,
25 isn't it things like law enforcement training like

1 the folks you were describing down at the --

2 MR. MOSS: Objection.

3 THE WITNESS: The instances I've seen,
4 yes, are instances where there are fairly intense
5 physical activity over a period of time, oftentimes
6 in -- you know, it may be seen in people who aren't
7 normally in that type of situation, or, you know,
8 perhaps they were not fully trained. And then all
9 of a sudden, they started doing something that is
10 out of the ordinary fairly intensely. That's the
11 scenario we commonly see rhabdomyolysis.

12 BY MR. TECKLENBURG:

13 Q. Marathons, things like that?

14 MR. MOSS: Objection, leading.

15 THE WITNESS: Marathon running could
16 predispose you, more commonly, to rhabdomyolysis.

17 BY MR. TECKLENBURG:

18 Q. Now, it says also, quote: He was
19 drinking some Gatorade, but according to the prior
20 notes, his PO solid intake was minimal, end quote.
21 Tell me what you mean by his PO solid intake. What
22 does that indicate? What is PO?

23 A. PO means by month.

24 Q. Okay. All right. So does that just
25 say he didn't eat much?

1 A. Yes.

2 Q. Okay. And did he tell you he didn't
3 eat much?

4 A. Yes.

5 Q. And if someone doesn't properly nourish
6 themselves and then goes and works outside, is that
7 a good thing?

8 A. Oftentimes instances of rhabdomyolysis
9 is due to perhaps several factors. In addition to
10 exertion, another factor that can increase your
11 risk of renal failure is volume depletion or
12 dehydration. Solid food maybe to a certain extent,
13 but particularly fluids. If a person does not take
14 in enough fluids, that can certainly increase your
15 risk of acute renal failure, particularly in the
16 instances where someone may have rhabdomyolysis.

17 Q. Now, you recount, again, in the middle
18 of the first page on him going back to work. You
19 say: The patient went back to working with the
20 railroad. Again, while working outside, he
21 developed symptoms of cramping, dehydration, and
22 dizziness.

23 Do you recall what he described to you
24 as the type of work he was doing on the second
25 episode?

1 A. All I can recall from that specific
2 question is what I wrote down here. I think I --
3 I'm assuming that it was the same or similar job
4 that he was doing before, but I don't know that for
5 sure.

6 Q. Let me ask you this. If you were -- if
7 you had a 90 degree day and your air conditioner in
8 your car doesn't work and you've got to go down the
9 highway 50 miles an hour with your windows open on
10 that 90 degree day, is that the type of condition
11 you think would cause rhabdomyolysis?

12 A. No, I would not normally expect to get
13 rhabdomyolysis in that scenario.

14 Q. Have you looked at or is there any
15 study that you're aware of that deals with the
16 impact of air conditioning and the effect on
17 causing rhabdo?

18 A. The effect of the lack of air
19 conditioning?

20 Q. Or lack of air conditioning, yeah,
21 versus having it.

22 A. I'm not aware of any specific study
23 comparing -- you know, a formal study comparing two
24 groups of people doing the same activity, one in
25 like an air conditioned place and one not. But I

1 A. Part of what I did here is develop a
2 differential diagnosis. And during that, I listed
3 or thought through things that I thought were more
4 likely versus things that are less likely and rare.
5 I would consider in my evaluation of Mr. Moorer
6 that this type of -- these type of metabolic
7 conditions in this instance would be a rare or very
8 unlikely cause of his presentation.

9 Q. Okay. Well, then let's talk about the
10 more likely scenario. By history -- and I'm just
11 going to look real quickly at your note --
12 Mr. Moorer had no prior medical history of having
13 any heat-related episodes in his life until May of
14 2007 working for the railroad. Is that right?

15 A. According to the history I got from
16 him, that's correct.

17 Q. And that included the two-year stint
18 working in the desert for the Department of
19 Defense. He didn't have any problems while doing
20 that job; right?

21 A. Yes.

22 Q. And even though he was back engaging in
23 somewhat exertional activity playing basketball, he
24 had had no heat-related events after these two
25 events in May of 2007; correct?

1 A. Not by the history I got from him.

2 Q. And I don't just mean events where he
3 had to go to the hospital. By history, Mr. Moorer
4 never had any complaints of any kind relating to
5 heat events in his life, other than these two,
6 according to the history that he gave you?

7 A. Correct, according to the history he
8 gave me.

9 Q. And, specifically, he said that when he
10 was working at the railroad -- and I'm reading
11 about six lines down -- his physical activity did
12 increase in degree after the brakeman left earlier
13 this year. Do you see that?

14 A. Yes.

15 Q. And he also said, following along, that
16 he was working outside; right?

17 A. Yes.

18 Q. And he was working near the engine. I
19 presume that's the locomotive engine; is that
20 right?

21 A. I presume so, yes.

22 Q. And he told you that that yielded a
23 fair amount of heat; is that right?

24 A. Yes.

25 Q. All right. Now, when Mr. Tecklenburg

1 was asking you about environmental temperature, is
2 it true that when you're assessing the -- as
3 opposed to the less likely, the more likely cause
4 and effect, you should look at the totality of the
5 work environment to not just include the
6 atmospheric temperature. Is that fair?

7 A. That would be fair.

8 Q. And so it would be important to know if
9 there were any additional factors that were adding
10 to the heat in the workplace; is that right?

11 A. Correct.

12 Q. To include that he was in, what he
13 describes at least, as a hot engine; right?

14 A. Yes.

15 Q. How he was dressed; right?

16 A. Correct.

17 Q. Because if you're wearing rain gear,
18 that tends to increase the amount of fluid loss,
19 which is one of the first things you look for in
20 making a diagnosis of, initially, a heat event and
21 then, ultimately, rhabdomyolysis?

22 MR. TECKLENBURG: Object to the form.

23 THE WITNESS: Dehydration of any cause,
24 including what you described, can increase your
25 chance of developing acute renal failure related to

1 rhabdomyolysis.

2 BY MR. MOSS:

3 Q. It sounds like what you're really doing
4 is, instead of looking at the environmental
5 temperature, you're looking at a variety of factors
6 to see what is going on with this man. Is that
7 fair?

8 A. Yes.

9 Q. So if we include all those factors,
10 we're looking at environmental temperature plus
11 other sources of temperature, in this case the
12 engine; right?

13 A. Correct.

14 Q. We're looking at what he's wearing and
15 the extent to which it's causing him to sweat
16 profusely; is that right?

17 A. Correct.

18 Q. We should also look at the humidity,
19 because I think you said that was also an important
20 factor in determining the work environment and the
21 likelihood that someone would have extensive fluid
22 loss; right?

23 A. Correct.

24 Q. Should we also consider the amount of
25 air circulation and air flow in the environment if

1 we're trying to really get to the bottom of this?

2 A. Air circulation or lack of air
3 circulation could play a role in how well or how
4 poorly someone may remain -- you know, able to cool
5 off.

6 Q. No different than when you go to the
7 beach, when the wind blows, you cool off quicker
8 than when it doesn't blow?

9 A. Correct.

10 Q. Would you also like to know whether the
11 person who was working with him for at least part
12 of the day in the same environment, that is, within
13 the engine cab, had their own complaints of a
14 heat-related problem?

15 A. That would be a factor.

16 Q. And I do think that -- I thought I saw
17 in your note where he had mentioned that to you.
18 Yeah, if we look down there about eight lines from
19 the bottom, I'm going to read this. Tell me if I
20 read it right.

21 The patient states there were other
22 employees working with him that had symptoms of
23 dehydration, as well as one individual also had to
24 take two to three days off from work.

25 Did I read that right?

1 A. Yes.

2 Q. And that would be a -- again, going to
3 likely causes as opposed to less likely causes,
4 that would be one factor to consider; is that
5 right?

6 A. Yes.

7 Q. I'll tell you that Mr. Moorer has
8 testified that the day before this incident, he
9 worked a full shift, either ten or 12 hours. And
10 as he left the railroad and got home, he was having
11 cramping in his hands. Is that a sign of
12 dehydration?

13 A. It could be.

14 Q. And so if someone is asked to do simple
15 walking, as described by Mr. Tecklenburg, would the
16 amount of exertion maybe depend on what he was
17 walking on, whether it was a nice, smooth carpeted
18 area or ballast or rocks along the railroad?

19 A. It may, at most, play a mild role. I
20 don't know if the nature of what you're walking on
21 in and of itself would really play in that. And if
22 you slipped and fell down a cliff and...

23 Q. All right. Is it fair that if we're
24 going to try and get to the more likely cause as
25 opposed to the less likely cause, we have to look

1 at the totality of the circumstances and not single
2 out any one of his environmental factors or his
3 work-related activities; we have to look at the
4 entire picture?

5 A. The entire picture would be the best
6 way to take a look at it, that's correct.

7 Q. And we don't know of any genetic
8 predisposition he had to rhabdomyolysis; is that
9 right?

10 A. Not known.

11 Q. And given that he was actually
12 diagnosed with acute renal failure, does that mean
13 that the muscles themselves were damaged to the
14 point that they were -- I misunderstood. How do
15 your muscles become damaged to the point that they
16 get into your blood? How does that happen?

17 A. Well, the muscles, like any organ, are
18 made up of cells. And within those cells
19 themselves, which are small microscopic
20 compartments filled with water and electrolytes and
21 enzymes and proteins, if you damage or interrupt
22 the integrity of the cell membranes of those muscle
23 cells, then you can have the substances within
24 those cells released. And those, when they're
25 released, with blood flow through the muscle, then

1 those released enzymes, in this instance, or
2 proteins are picked up by the blood and get
3 distributed throughout the body.

4 Q. Have you dealt with heat stroke
5 patients who come to you later for kidney problems
6 in your practice?

7 A. Usually the people that we see that
8 have renal failure related to heat stroke, in these
9 instances of rhabdomyolysis, they're typically the
10 ones that we mostly see are in the hospital. This
11 is a little bit -- a little bit unusual to see a
12 patient come to us after the fact. We normally see
13 this in the hospital.

14 Q. How dangerous or life-threatening is
15 the heat stroke event itself and the subsequent
16 physical problems that relate to the heat stroke?

17 A. Well, it depends. Again, sometimes if
18 you can -- if you see somebody just finishing a
19 marathon and you draw their blood, they may have an
20 elevation in this muscle enzyme but not even be
21 aware of it. If you draw blood from somebody
22 that's just finished a heavy football scrimmage
23 game and checked their blood, you might find a
24 total CK that's elevated above normal that will
25 subsequently fall, you know, over the next day or

1 two. In that, it's asymptomatic.

2 On the other hand, you can have such a
3 severe crush injury or instance of rhabdomyolysis
4 where you can get a whole series of potentially
5 life-threatening instances such as high potassium
6 that can affect your heart, other electrolyte
7 abnormalities, acute renal failure. You can get
8 swelling in one part of the limb that can threaten
9 the limb.

10 Q. Compartment syndrome?

11 A. Yes, called compartment syndrome. So
12 there is kind of a wide array of clinical outcomes
13 in people that suffer this condition.

14 Q. Was it your impression that the reason
15 you saw Mr. Moorner was because he had had two
16 serious enough events that Dr. Watson wanted some
17 additional assistance to be sure that there was not
18 a third event that could ultimately be a
19 life-threatening or very, very serious -- with
20 serious implications to Mr. Moore?

21 MR. TECKLENBURG: Object to the form.

22 THE WITNESS: It's my understanding he
23 was asking my opinion of what -- to examine the
24 factors of what went on in these instances with
25 Mr. Moorner, and coming from a kidney standpoint,

1 what are some mitigating activities that that
2 patient could do to lessen the chance that that
3 might happen again.

4 BY MR. MOSS:

5 Q. Did everything from the history to the
6 examination to the labs point to exertional
7 rhabdomyolysis brought on by those two events at
8 work?

9 A. Based on the history that I obtained
10 and the records that I reviewed, it seemed to me
11 that the most likely cause of his rhabdomyolysis
12 was an exertional-related event.

13 Q. Did the fact that he had one event
14 predispose him toward having another event, because
15 as it turns out, it was the second day back to work
16 for him, although almost two weeks later? If you
17 understand that question.

18 A. Say that again now.

19 Q. Sure. He had a serious heat event in
20 early May 2007 with acute renal failure,
21 hospitalization. The question is, did that
22 predispose him in any way toward having a second
23 event when he again engaged in the same exertional
24 activity in the same work environment with the same
25 heat exposure, similar, the same job at the same

1 facts we described earlier. And then the scenario
2 he describes to me again is that he went back to
3 the railroad and did similar types of activities
4 and again developed similar symptoms leading to
5 similar findings at a different hospital with acute
6 renal failure and a rise in his muscle enzymes
7 consistent with rhabdomyolysis. I'm not sure if
8 that fully answers your question, but --

9 Q. Here it is. If at some point, we wave
10 a magic wand, and he's released to go to work and
11 tries this again. Because he's had two events now,
12 is he more susceptible to a third event because
13 he's had one and two, or are we writing on a clean
14 slate?

15 A. If at all possible, I would not try to
16 put him in the exact same or similar episodes that
17 he was in before, given the previous history that
18 he had happen the previous two times.

19 Q. But is it okay -- here is what I'm
20 trying to get to. He can play basketball without
21 restriction. Is that right?

22 A. Seems to be. He seems to be fine with
23 that.

24 Q. And is it as simple as he can play
25 basketball by history and be okay, but when he goes

1 in this springtime heat near an engine while
2 walking and sometimes wearing rain clothes in high
3 humidity, that that's what causes the problem?
4 Simply because that's what caused it before, we
5 should try to keep him from doing it again?

6 MR. TECKLENBURG: Object to the form.

7 BY MR. MOSS:

8 Q. That was a terrible question.

9 A. If at all possible, I would not have
10 him do the exact same things that he did before.
11 By that, if that means that maybe the next time
12 he's in maybe a similar situation that he takes
13 more breaks and drinks more fluids, you know, maybe
14 that may be enough to lessen the chance that he
15 would develop this condition again.

16 Q. It sounds like his ability to cool
17 himself is fundamental in the analysis of what he
18 can do?

19 A. That would be -- that is a factor, one
20 of the factors that could contribute to this
21 rhabdomyolysis is your heat loss or difficulty with
22 heat loss and heat regulation.

23 Q. And Mr. Tecklenburg asked you about air
24 conditioning. And the question is, if he had, for
25 example, in the perfect world, an air-conditioned

1 place to go if he got hot, felt himself getting hot
2 and could sit down in an air-conditioned place,
3 whatever it is, let his body cool off, if that was
4 possible for him, might that be just the right
5 prescription such that he could actually go back to
6 work and work a job, even under these very same
7 circumstances?

8 MR. TECKLENBURG: Object to form.

9 THE WITNESS: I think any scenario that
10 you describe where there would be less exposure to
11 the high heat and more exposure to cooler
12 temperatures would lessen the chance that he would
13 develop rhabdomyolysis, whatever scenario you come
14 up with, whether it be spray him down with water,
15 any kind of scenario where you promote cooling of
16 the body.

17 BY MR. MOSS:

18 Q. Promote cooling of the body or reducing
19 the warming of the body through exertion. Is it
20 that simple?

21 A. Yes.

22 Q. Okay. Has this exertional
23 rhabdomyolysis been known in the medical community
24 for a long time, that is, if you exert yourself
25 without the ability to cool yourself, this type of

1 exertional rhabdomyolysis is going to occur?

2 A. As long as I've been training, it has
3 been.

4 Q. This isn't a new concept?

5 A. No.

6 Q. In fact, many employers train
7 specifically to try to reduce the incidence of
8 heat-related injuries by education and things like
9 that; is that right?

10 A. I can't comment on the statement of
11 many employers. I don't know that for sure.

12 Q. That's fair. That's fair. I guess the
13 idea of exertional rhabdomyolysis, what we call
14 getting too hot, has been something that's been
15 well-documented in the medical community for
16 certainly as long as you've been practicing?

17 A. Yes.

18 Q. Should we look at these as two separate
19 events, two separate heat-related events, or are
20 they a continuation of the first?

21 A. I'm not sure what that means. You
22 mean, is it two -- I mean --

23 Q. By history, it looks like he made a
24 recovery?

25 A. By history, from what I can tell, he

1 had one event and, from a kidney standpoint,
2 developed renal failure from that. Seemed to
3 resolve, and then he had a second event where he
4 developed acute renal failure that resolved. So it
5 seems to be two separate events of renal failure,
6 if that's what you're referring to.

7 Q. It is. I will tell you that the
8 railroad's medical department has disqualified
9 Mr. Moorner from work. I'm reading from Dr. C. Ray
10 Pribble, the director of medical services, says,
11 quote: He has been disqualified from service due
12 to his unusual susceptibility to serious
13 life-threatening heat-related illness:

14 My question is, do you believe he in
15 fact does have an unusual susceptibility to serious
16 life-threatening heat-related illness?

17 A. I did not receive enough in my history
18 to be able to make that conclusion.

19 Q. That's fair. You defer to Dr. Pribble
20 on that matter?

21 A. Yes.

22 Q. Is it your opinion, Doctor, expressed
23 more likely than not, that what Mr. Moorner suffers
24 from is exertional rhabdomyolysis caused by the
25 environmental factors at work that are in his

1 history?

2 A. Yes.

3 Q. And is your recommendation to him that,
4 for the rest of his life, he pay attention to the
5 fact that he had these events and try to govern
6 himself accordingly by trying to take breaks,
7 trying to monitor his temperature, trying to
8 evaluate his exertion such that he can try to
9 prevent another of these very serious incidents?

10 Is that fair?

11 A. Yes.

12 Q. And you did not reach the opinion that
13 any supplement he was taking caused any of his
14 problems; right?

15 A. No, I did not reach -- I could not say
16 that with any degree of certainty, no.

17 Q. And I think you said to
18 Mr. Tecklenburg, you're comfortable making the
19 recommendation -- and this is your opinion, I'm
20 asking -- that he can do mild to moderate physical
21 activity in the future?

22 A. That was my opinion based on the
23 history he gave me.

24 Q. Is that opinion expressed more likely
25 than not?

1 A. Yes.

2 Q. And is that a recommendation that you
3 would make for him in the future going forward on a
4 permanent basis?

5 A. Based on what I know to this point.

6 MR. MOSS: Thank you, sir. That's all
7 the questions I have.

8 EXAMINATION

9 BY MR. TECKLENBURG:

10 Q. I have a couple more questions. Let me
11 ask you this. With respect to the words mild to
12 moderate, would walking be in that category, mild
13 to moderate activity?

14 A. In general, yes.

15 Q. And with respect to heavy activity,
16 tell me things that you would call heavy activity,
17 things that he should avoid. I'm guessing, based
18 upon some of our discussions already, marathons may
19 be one of them; right?

20 A. That would -- yeah, that would probably
21 be one of them.

22 Q. But what would be heavy?

23 A. Well, that's probably a pretty
24 nonspecific term. But, I mean, lifting heavy
25 objects for, you know, 25, 30 minutes on end, that

1 he perhaps would not be used to or not trained to,
2 particularly in a hot setting, a hot, humid
3 setting; any kind of use of muscle -- heavy use of
4 muscle where it could lead to overexertion. I
5 don't exactly know what is called for in this job
6 that he had with the railroad, but basically
7 anything that uses a lot of muscle power for an
8 extended period of time, particularly without
9 breaks, I would consider heavy. I don't know if I
10 can give you a number, like a number of pounds. Of
11 course it depends on the person, too. What would
12 be heavy to one person may --

13 Q. But the cooperation of the employer in
14 allowing you to take breaks, is that important in
15 avoiding these injuries?

16 A. Yes.

17 Q. And if the employer allows breaks and
18 allows you to drink water or Gatorade or the liquid
19 of your choice to re-nourish, is that something an
20 employer should do?

21 A. Yes, to lessen the -- these episodes.

22 Q. And one of the mitigating activities
23 you actually talked about in your report is to
24 stay -- when he's out, to drink plenty of fluids;
25 right?

1 A. Correct.

2 Q. Now, you were asked earlier about his
3 return to work after the first episode. If, based
4 upon the history -- first of all, I didn't see in
5 your history that he was wearing a rain jacket. Do
6 you remember that in your history? Did he report
7 to you he was wearing rain gear on the first
8 incident?

9 A. I don't remember him specifically
10 saying that to me. Again, this is based on what
11 I've written in the -- in my history.

12 Q. But it looks like you did put in there
13 that he reported to you that he didn't eat much.

14 MR. MOSS: Object to form.

15 THE WITNESS: That's what I reported in
16 my history.

17 BY MR. TECKLENBURG:

18 Q. So if a person has a rhabdomyolysis
19 event who is wearing rain gear, reports not eating
20 much, and recovers within two days after IV
21 treatment in a hospital --

22 A. You're talking about the renal function
23 recovery?

24 Q. Yeah, yeah.

25 A. Um-hum.

1 Q. Would it be reasonable to attribute the
2 event to the lack of nutrition and what he was
3 wearing on that day as part of what was causing
4 this gentleman's problems?

5 MR. MOSS: Object to form, predicate.

6 THE WITNESS: Those could be factors,
7 potential factors.

8 BY MR. TECKLENBURG:

9 Q. Okay. And if you have someone who's,
10 as I said, wearing the rain gear, not eating, and
11 his physician that he has clears him to go back to
12 work, do you think it's reasonable for the man to
13 return back to work, in your medical opinion?

14 A. If he follows the recommendations about
15 staying hydrated and --

16 Q. Yeah.

17 A. That would be reasonable.

18 Q. Okay, all right. Now, I'm just curious
19 about this, because I'm trying to understand
20 rhabdomyolysis a little bit more. But does the
21 fact that you have one event of rhabdomyolysis,
22 does that lead to a predisposition to having it
23 again for the rest of your life?

24 A. Not necessarily.

25 Q. Okay. All right. And in this case, we

1 temperature outside, I mean, you can't really make
2 a statement that you can never have rhabdo outside
3 with a temperature of 78. I mean, if you were --
4 you know, I could maybe consider a scenario where
5 you were working out in Alaska in the winter with a
6 big parka on lifting a bunch of heavy material and
7 perhaps develop rhabdomyolysis from that. So I
8 wouldn't say -- I'm not fully sure what you're
9 asking. But just the fact that he had -- the
10 outside temperature was 78 wouldn't necessarily
11 mean that it would be impossible for him to develop
12 exertional-related rhabdomyolysis in this setting.

13 Q. Okay. It sounds though -- and you get
14 back to sort of the weight lifting again -- as far
15 as the exertion goes, you as part of your analysis
16 are expecting that what Mr. Moorer does during the
17 day is pretty heavy work; right?

18 A. That was the history that I received
19 from him.

20 Q. And that would involve heavy lifting of
21 objects or --

22 MR. MOSS: Object to form.

23 THE WITNESS: I can't recall the
24 specific activities he said he did. But in a
25 general sense, I got the impression that there was

1 a fair amount of physical exertion that perhaps
2 included lifting materials or -- I mean, I don't
3 know what a brakeman does. I don't know if they
4 shovel coal now or what. I don't know. But what
5 he described, he exerted himself and felt
6 dehydrated. I mean, that was the impression I got
7 from him. It was not independently verified.

8 BY MR. TECKLENBURG:

9 Q. Okay, all right. So in the process
10 of -- he didn't describe to you what it may
11 involve, for example, to change or throw a switch
12 to you?

13 A. No, not specifically.

14 Q. And he didn't describe to you what it
15 may involve to uncouple a car?

16 MR. MOSS: Object to form.

17 THE WITNESS: I do not recall him
18 describing that.

19 BY MR. TECKLENBURG:

20 Q. And he didn't describe to you what may
21 be involved in what we call tying a brake on a car?

22 MR. MOSS: Object to form.

23 THE WITNESS: I don't remember him
24 describing that.

25 MR. TECKLENBURG: All right. That's

1 all I have. Thanks.

2 EXAMINATION

3 BY MR. MOSS:

4 Q. It sounds like from Mr. Tecklenburg's
5 questions that Mr. Moorner were doing some things --
6 in addition to the walking described here, he was
7 doing some physical things like tying a brake and
8 releasing a brake and throwing a switch. Is that
9 what you gained?

10 A. That was my understanding.

11 Q. So with respect to the activity, I'll
12 just tell you that Mr. Moorner has testified, in
13 addition to walking, he was in fact climbing on
14 rail cars and releasing hand brakes and throwing
15 switches and twisting and turning and doing some
16 form of lifting and climbing in addition to
17 walking. Would that be the kind of exertional
18 activity that would be consistent with the type of
19 heat injury that you've described here?

20 A. Potentially, yes.

21 Q. It sounded like eating, eating is much
22 less important than drinking when we talk about
23 this particular condition?

24 A. Probably so. The main thing is fluid
25 intake.

1 Q. And it also sounds like, despite this
2 exhibit with the relative humidity and the
3 temperature, what we really need to know is what
4 other heat sources Mr. Moorer was exposed to and
5 for how long. Is that fair?

6 A. Yes, that would give you a fuller
7 picture.

8 Q. You would need maybe a measurement by
9 the railroad of how hot it is when you ride an
10 engine or stand next to an engine; right?

11 A. Yes, that would be important.

12 Q. It would be very helpful in trying to
13 assess what the actual work environment was as
14 opposed to simply the environmental work
15 environment; right?

16 A. That would be important to know.

17 Q. Because the more heat that comes from
18 an engine, whether it's from being inside the
19 engine or being next to the engine, that would
20 increase the likelihood your body temperature would
21 go up and your hydration would decrease?

22 A. Yes.

23 Q. And just sitting in a hot engine, even
24 if you're not exerting yourself, depending on the
25 heat, would be enough to get your body temperature

1 humidity, for trying to get the whole picture?

2 A. Given what you told me, yes.

3 Q. It sounds like, in summary, that we
4 need to look at the whole picture as opposed to one
5 slice or snapshot in order to determine what the
6 heat source was, how long he was exposed to it, and
7 the amount of exertion that he had to actually put
8 forth to do his job?

9 A. It would be important to examine all
10 factors that could potentially --

11 Q. And at least given the factors that you
12 were told about, it's still your opinion that he
13 had exertional rhabdomyolysis caused by exertion at
14 work and exposure to heat?

15 MR. TECKLENBURG: Object to form.

16 THE WITNESS: I think that's the most
17 likely diagnosis based on the history I received.

18 MR. MOSS: Thank you, Doctor.

19 MR. TECKLENBURG: Thank you, Doctor.

20 (The witness, after having been advised
21 of his right to read and sign this transcript,
22 waives that right.)

23 (The deposition was concluded at 6:23
24 p.m.)

25

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

3 (Witness complies.)

4 THE CLERK: State your name for the record.

5 THE WITNESS: My name is Athena Moorers.

6 ATHENA MOORER,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MOSS:

10 Q Hello, Ms. Moorers.

11 A Hi.

12 Q You are related to Trumaine Moorers?

13 A I am.

14 Q How?

15 A He's my husband.

16 Q How long have you been married?

17 A This July will be six years.

18 Q Where do y'all live?

19 A In St. George, South Carolina.

20 Q You have children?

21 A Yes, we do.

22 Q Tell us about what.

23 A Together we have a daughter. She is nine. And we
24 have two sons from my husband's first marriage, 17
25 and 14.

1 Q Where are you from?

2 A I was born and raised in a small town called
3 Sanderson, Florida. It is about 25 miles west of
4 Jacksonville.

5 Q How did you end up up here, I guess?

6 A I was visiting with a friend who I worked with who
7 was from South Carolina, which is from Trumaine's
8 hometown of St. George, and she took me to a
9 gathering at his mom's house Christmas 2000. And
10 that is where I first saw and met Trumaine.

11 Q Y'all have been married how long?

12 A This July will be six years.

13 Q Do you work, ma'am?

14 A We've -- I was running our car wash, but we closed
15 it down in January of this year.

16 Q Why did you close it down?

17 A It was -- business was very slow.

18 Q Why did you start the car wash?

19 A At the time that was our only source of employment.

20 Q What was it called?

21 A Kingdom Car Wash.

22 Q Kingdom. Where was it located?

23 A In -- 5507 Memorial Boulevard located in St.
24 George.

25 Q Did you have employees or what?

- 1 A We did. We had a few of Trumaine's friends from
- 2 the neighborhood, and I myself -- myself and
- 3 Trumaine of course were there as well.
- 4 Q Did you wash cars or did you run the register?
- 5 A Both.
- 6 Q You did?
- 7 A Yes.
- 8 Q Were you ever on anybody's surveillance camera that
- 9 you knew?
- 10 A I was made aware that we were being watched.
- 11 Q Did y'all have anything to hide, Athena?
- 12 A Nothing at all.
- 13 Q Do you have a business license?
- 14 A Yes.
- 15 Q Filed your taxes?
- 16 A Yes.
- 17 Q Are you proud of what you did?
- 18 A Yes.
- 19 Q So we have heard a lot, and I am not going to
- 20 belabor any of this, but, you know, you got the
- 21 call that we all think about that says your husband
- 22 is not well?
- 23 A Right.
- 24 Q It happened twice?
- 25 A Right.

1 Q Tell us -- just tell us what happened.

2 A The first incident I was on my way to Florida. And
3 my usual routine is I hit the road, turn on church
4 music and I start singing, and whatnot. And I just
5 felt a need to pray. I didn't know who I was
6 interceding for, but I knew something was wrong and
7 I just began to pray. And shortly after I finished
8 praying, I got a call from Trumaine. And when he
9 called, his speech was distorted. So I could -- I
10 thought he was clowning. So I was like, you know,
11 stop clowning, stop playing on the phone, or
12 whatnot.

13 But then once his co-workers got on the phone,
14 they were like, Ms. Moorer, your husband has been
15 hurt at work and he wants you to come.

16 And so at that point I turned around on 95
17 South and came back up to -- at that time it was
18 Orangeburg.

19 The second incident, I was at work and got a
20 call. Same thing. And went and got my daughter.
21 And we -- at this time we was in Columbia.

22 Q There has been a lot of talk about this May 8th,
23 the night he came home --

24 A Uh-huh.

25 Q -- cramping and sweating?

- 1 A Uh-huh.
- 2 Q Tell us what happened.
- 3 A Well, he came home. It was at night. And when he
4 went to sleep -- well, he did mention that his
5 hand -- he was cramping really bad. And when he
6 went to sleep that night, he sweat a lot. I have
7 never seen anything like that before in my life.
8 It was as if someone poured a bucket of water on
9 him. That is because he sweated so bad that night.
- 10 Q Did you tell him to eat a banana or something?
- 11 A Yes. Because I heard that -- because the potassium
12 from the banana would help with cramps. So that is
13 why I told him to eat a banana.
- 14 Q When he woke up the next morning, was he able to go
15 to work and did he appear fine to you?
- 16 A To me, yes.
- 17 Q And then later that afternoon is when you got the
18 call that he had had a problem?
- 19 A Yes.
- 20 Q After the first incident, was it your impression
21 that Trumaine was trying to get back to work, that
22 he wanted to go back?
- 23 A Yes.
- 24 Q And did you play some kind of role in getting
25 medical records to the railroad when they were

1 inquiring about needing more information?

2 A Yes, I did.

3 Q Tell us about that.

4 A I faxed over some documents, I'm assuming to their
5 medical department.

6 Q Was it your understanding that you gave them what
7 they asked for, or did they make some additional
8 request of you?

9 A I was under the impression that I gave what was
10 requested, what they asked for.

11 Q How has -- how has it been, life after the
12 railroad, since all this has gone down, for the
13 jury, from his perspective. I'd like your
14 perspective on him. Tell us about what you have
15 seen Trumaine go through.

16 A It has been hard. It is hurtful to see him go
17 through the things that he went through, and is
18 going through.

19 God has helped us get through, through it all.
20 I mean, at the end of the day we believe in God,
21 and that is who has kept us, even through the most
22 difficult times. We remain thankful and
23 appreciative of God that he is still here. I
24 appreciate Trumaine's willingness to work to be a
25 provider for us. And, I mean, I have no regrets

1 any decision that he made.

2 Q Has it been an easy road working for him both at
3 the Police Department and trying to get the job at
4 Kinder Morgan, getting it, going back to the Police
5 Department? How has that been? And I'm only
6 talking about your perspective of watching him?

7 A Almost unbearable. It was too much. And I would
8 tell him -- I mean, I know he took it for benefits,
9 because of course we needed benefits, but at the
10 same time, the back and forth, it -- overall, I
11 mean, it just wasn't worth it. The money that he
12 would put in for gas, commuting back and forth, and
13 then back in the heat, and then leaving there and
14 trying to still work at the Police Department to
15 try to make ends meet. It was just too much for
16 one person to have to do.

17 Q How about life now? He's got one full-time job.
18 It sounds like he's doing pretty well.

19 A He -- he -- he does good. He does good there. I
20 admire the fact that he -- he gives it his all. He
21 has been recognized. He got two awards from the
22 town because of his work there. I like his rapport
23 with his co-workers. They love him. They look up
24 to him. He does good there. But of course he
25 wants more, you know, so he would be able to give

1 us, you know, more and better.

2 Q What more does he want?

3 A Benefits, for one. And of course he would want the
4 money to be better.

5 Q From your perspective, does he seem healthy to you?

6 A Pretty much. It is just since those two incidents
7 I just -- even when we had the car cash, I would be
8 like, okay, you know, you have just got to watch
9 it. When he is in the heat, he just has to watch
10 it.

11 Q Finally, what is your take -- what have you seen
12 him do to try to get back to work at the railroad
13 specifically?

14 A He -- he has -- he has been on their website
15 applying. He has tested for jobs. He has shown
16 more than enough interest in that he would like to
17 come back to work. He has tested for certain
18 positions, but nothing has happened yet.

19 Q And y'all even considered and agreed to move, did
20 you not?

21 A Yes.

22 Q Tell us about that.

23 A He was told a couple of times that there were
24 positions in Atlanta. And so I told him if he
25 moved, I said of course I'm going to support him,

1 and but, like I said, he would be told, okay, this
2 is available in Atlanta, and then that would be it.
3 Just like we are still waiting.

4 Q So you all, you as a family, have you limited
5 yourself geographically to saying, oh, no, we have
6 to have -- he has to have a job in Orangeburg, St.
7 George area, or in this little pod. Are you
8 willing to go?

9 A We are.

10 Q And you've been willing to go?

11 A Uh-huh.

12 Q Please say yes for the court reporter.

13 A I'm sorry. Yes.

14 Q I have no more questions, ma'am.

15 THE COURT: Please answer any questions that
16 Mr. Jenkins may have.

17 CROSS-EXAMINATION

18 BY MR. JENKINS:

19 Q Good afternoon, Ms. Moorers.

20 A Good afternoon.

21 Q I am Rivers Jenkins. Good to see you again.

22 A Same here.

23 Q This will be very quick. I just have a few
24 questions. Mr. Moss covered a good bit of what I
25 wanted to ask you about.

1 You mentioned at the beginning of your
2 testimony that when you were driving you had -- you
3 felt like something was wrong?

4 A Uh-huh.

5 Q And this was right before you heard about that
6 first incident on May 9th, 2007, is that correct?

7 A Correct.

8 Q Now, you felt like something was wrong because you
9 knew what you knew from the night before on May 8th
10 when the bed was soaking wet with sweat, is that
11 right?

12 A Not -- not necessarily. When he got up the next
13 morning, I think we might have exchanged words.
14 And that's when I told him about eating the banana,
15 or whatever. He seemed okay. I have never seen --
16 as far as the sweating, never experienced anything
17 like that before in my life. But he got up and I
18 thought that he was okay. And then I was headed to
19 Florida. And, like I said, when I got that
20 urgency, he didn't come to mind.

21 Q Yes, ma'am. Now, in addition to the sweating, he
22 was also cramping that night before, the first
23 incident?

24 A He mentioned his -- I think his hands were
25 cramping.

- 1 Q And you already mentioned that you told him to eat
- 2 a banana?
- 3 A Uh-huh.
- 4 Q But you are not really sure whether he actually did
- 5 that, are you?
- 6 A Not -- I'm not 100 percent.
- 7 Q In fact, he doesn't even always eat breakfast
- 8 before he goes in to work, does he?
- 9 A No.
- 10 Q So did you have any discussions at all about
- 11 whether he ought to go in to work before that first
- 12 incident? You didn't, did you?
- 13 A Not that I remember.
- 14 Q Because you didn't think there was anything wrong?
- 15 A Right.
- 16 Q So he goes in to work and then you hear that he is
- 17 in the hospital.
- 18 At that point were you having -- you were
- 19 having second thoughts about his having gone in to
- 20 work based on what you knew at that time, right?
- 21 A Say it again?
- 22 Q At that point when you found out that he had had an
- 23 incident at work, did it occur to you that perhaps
- 24 it had something to do with what was going on the
- 25 night before?

- 1 A Yes, possibly.
- 2 Q All right. So you get to the hospital. He
- 3 recovers. And it seems like everything is okay.
- 4 A Uh-huh.
- 5 Q Correct?
- 6 A Yes.
- 7 Q And at that point did you have any discussions
- 8 about whether or not he should return to work?
- 9 A We didn't like discuss it very much. After we
- 10 spent a couple of days in the hospital he seemed to
- 11 be okay. After he got hydrated and released, he
- 12 seemed to be okay to go back to work.
- 13 Q And you didn't have any problem with him going back
- 14 to work after that first incident, did you?
- 15 A No.
- 16 Q And you thought it was a good idea?
- 17 A (Nods affirmatively.) Yes.
- 18 Q Okay. Now, you don't have any specialized medical
- 19 training or anything like that, do you?
- 20 A No. No, I don't.
- 21 Q All right. So after the first incident but before
- 22 the second incident, you just thought it was okay,
- 23 based on your common sense at the time, right?
- 24 A Yes.
- 25 Q All right. Now, I'm going to ask you a few

1 questions about what y'all had been doing with your
2 car wash.

3 Trumaine has been right in the thick of that,
4 hasn't he?

5 A Initially. When we first opened in 2009.

6 Q Okay. And he was working -- when you first opened,
7 that was right in the heat of the summer, wasn't
8 it?

9 A Yes. Well, it was opened in March of '09.

10 Q But he did work through the --

11 A Yes, he did.

12 Q -- hot part of the summer?

13 A Yes. Yes, he did.

14 Q Okay. And he worked as hard as anyone, washing and
15 waxing and putting his all into it, didn't he?

16 A Yes.

17 Q And, let's see, since that second incident, the end
18 of May, your husband, he has also mowed the grass,
19 at least until your lawnmower broke, he's been
20 doing that, hasn't he?

21 A He has mowed the lawn.

22 Q And that was in the summertime also?

23 A More than likely, yes.

24 Q Okay. Ms. Moorner, thank you very much. That's all
25 the questions I have.

1 MR. MOSS: No questions, Your Honor.

2 THE COURT: All right. You may step down,
3 ma'am.

4 (Witness steps down.)

5 MR. MOSS: Your Honor, if I put in a little
6 bit of evidence, I can rest.

7 Your Honor, I move into evidence without
8 objection, Plaintiff's Exhibit Numbers 12; cell
9 phone records, Numbers 20 and 19; as well as
10 Exhibit 14, which are the Dr. Dantzler notes.

11 Ms. Court Reporter, this has a highlight on
12 it, and we are going to get you a clean copy off of
13 14.

14 And, for the record, I'm out of sequence
15 because three of my exhibits have not been entered
16 intentionally. Number 21 not been entered, 22 has
17 not been entered, 23 has not been entered. And 18.
18 It has not been entered.

19 THE COURT REPORTER: They marked a 14,
20 Plaintiff's 14. Is that the same one?

21 MR. MOSS: That's it. That is the same one.
22 They have already marked it. It is already in.

23 THE COURT: All without objection?

24 MR. TECKLENBURG: With respect to the exhibits
25 he referred to as being entered, they are without

1 objection.

2 THE COURT: All right.

3 (WHEREUPON, Plaintiff's Exhibit No. 12
4 was marked for identification and
5 received into evidence.)

6 (WHEREUPON, Plaintiff's Exhibit No. 19
7 was marked for identification and
8 received into evidence.)

9 (WHEREUPON, Plaintiff's Exhibit No. 20
10 was marked for identification and
11 received into evidence.)

12 MR. MOSS: The Plaintiff rests.

13 THE COURT: All right, thank you.

14 MR. MOSS: Thank you.

15 THE COURT: All right, ladies and gentlemen of
16 the jury, at this time there are some matters of
17 law that I need to take up with the attorneys
18 outside of your presence. I am going to send you
19 out for a break. It may be for about 15 or 20
20 minutes. If it is going to be longer I will let
21 you know. But I am going to go ahead and send you
22 all out for a break. I don't know if we have any
23 smokers on the jury, but if you do, if you all have
24 I guess the manpower to take someone out to go
25 smoke, that should not be a problem.

1 Thank you.

2 (WHEREUPON, the jury retires to the jury
3 room at 4:13 p.m.)

4 THE COURT: All right. I will be glad to hear
5 motions.

6 MR. TECKLENBURG: Thank you, Your Honor.

7 THE COURT: Let me just ask. I told them
8 about -- I was thinking maybe about 4:30 to come
9 back. Do you have witnesses prepared to put up
10 this afternoon?

11 MR. TECKLENBURG: Your Honor, I have one
12 witness. Well, I have two, but I have one that is
13 going to take probably, I'm guessing with cross
14 about 45 minutes, and then another is probably up
15 to 45 minutes, so my hope will be just to put up
16 one witness and not split them.

17 THE COURT: Okay.

18 MR. TECKLENBURG: I have two available, but I
19 think we will only get to one.

20 THE COURT: Okay.

21 MR. TECKLENBURG: Thank you.

22 THE COURT: Yes, sir, Mr. Jenkins.

23 MR. JENKINS: Thank you, Your Honor. I
24 suspect the Court knows where I'm going to be
25 coming from based on our last experience, but I

1 need to go ahead and get this on the record.

2 THE COURT: Yes, sir. Please make your
3 record.

4 MR. JENKINS: I would remind the Court that in
5 this case brought under the FEOLA that we are going
6 to be operating on this judgment as a matter of law
7 standards under the federal standard, which is
8 different from the traditional state standard, and
9 that difference of course is that under the federal
10 standard, unlike the state standard, what is
11 required to be shown by the Plaintiff in presenting
12 their case is more than a scintilla of evidence, as
13 opposed to under the state standard, which is just
14 a scintilla of evidence.

15 And when I say evidence, obviously I mean such
16 that reasonable and fair-minded persons could not
17 reasonably return a verdict for the Plaintiff.

18 Now, our position is that essentially the
19 Plaintiff's case can be broken down into two main
20 claims. And they track of course with their causes
21 of action in the amended complaint.

22 The second cause of action essentially is a
23 negligent assignment claim. And there are subparts
24 to that. But basically it seems that the proof
25 that the Plaintiff has attempted is to show that

1 the railroad was negligent in assigning Mr. Moorer
2 to return to work after that first incident.

3 Additionally, there have been intimations that
4 perhaps he wasn't acclimatized properly before
5 doing that.

6 Additionally, it seems that -- and some of
7 these factors overlap, but field testing perhaps
8 could or should have been done. And I'm going to
9 address those individually.

10 Now, the Plaintiff -- I remember earlier in
11 the week the position was that they are not
12 claiming negligence by the medical department, but
13 they just believe that the process used was not
14 appropriate nonetheless.

15 And I'm -- frankly, I'm not sure what the
16 distinction is between those, but in this case we
17 don't have a situation where the medical department
18 ever undertook to treat the Plaintiff.

19 And, therefore, to the extent that Plaintiff's
20 case is based on suggestions that the railroad
21 should have obtained additional evidence or, excuse
22 me, additional records of Mr. Moorer's medical
23 situation or, for that matter, dispensed advice to
24 him about what he ought to be doing, we would
25 submit that they have no duty to do that.

1 And, in fact, what we have instead is what is
2 essentially a clean return-to-work authorization
3 from the Plaintiff's own treating physician, Dr.
4 Dantzler.

5 And it is important to recognize that Dr.
6 Dantzler was not employed by the railroad;
7 therefore, anything that he knew about Mr. Moorer's
8 situation does not impute over to the railroad like
9 in so many of the -- the many FELA cases where
10 there is an actual railroad doctor in the mix of
11 things.

12 We don't have that here. Really, what we've
13 got is Dr. Casa doing Monday morning quarterbacking
14 based on standards that he has pronounced.

15 And it is interesting because he admits that
16 his athletic standard or military standard, no one
17 in the industrial setting has ever adopted this,
18 and yet he is purporting to impose on Norfolk
19 Southern that very duty in claiming additionally
20 that it was breached by allowing Mr. Moorer to
21 return to work and essentially because the railroad
22 didn't second-guess the return-to-work
23 authorization for Mr. Moorer's own treating
24 physicians, that somehow that is a breach of a
25 duty, which we don't think they have.

1 It is also important to note that when an
2 expert espouses a duty that is essentially contrary
3 for law, that is not an appropriate basis to move
4 forward on a claim.

5 Now, why would that be contrary to law? Well,
6 the reason is because there is no evidence
7 whatsoever in the record that Norfolk Southern had
8 any notice of what Mr. -- or Dr. Casa is saying the
9 railroad should have taken into account as it
10 conducted itself in putting or attempting to put
11 Mr. Moorer back to work. He instead jumps to
12 conclusions about essentially what he would do or
13 what he would like others to do.

14 But the fact is, there is nothing in the
15 record indicating that Norfolk Southern itself
16 actually knew or knows what he knows or things to
17 be true. So it just isn't adding up, Your Honor.

18 What he is really doing is he is quibbling
19 over the advisability of Dr. Dantzler's
20 return-to-work, which Norfolk Southern initially
21 wondered about but eventually acted on.

22 And, you know, if there is a problem here with
23 Dr. Dantzler, fine, but that is not Norfolk
24 Southern's doctor, or nor was he provided by
25 Norfolk Southern. And, therefore, to the extent

1 that Mr. Moorer is coming back to work, it sounds
2 like that is really the main problem that Dr. Casa
3 has. And it just doesn't stick to the railroad.

4 So really what we've got is a situation where
5 the only person who could truly say what was going
6 on with himself as he got back to work was Mr.
7 Moorer himself.

8 So, you know, there has been this talk about
9 the field test. Well, I would submit, Your Honor,
10 that Mr. Moorer, he did return to work on May 30th.
11 And he reported no problems whatsoever.

12 So to the extent that anyone is looking for a
13 field test, I would submit that most probably
14 May 30th served that purpose even if there was some
15 requirement to do it.

16 Certainly there was no requirement on the
17 railroad to add extra people to help Mr. Moorer
18 work his way back into work. That would
19 essentially be an accommodation situation that is
20 simply impractical and would violate the collective
21 bargaining situation. You know, an effort to put
22 him behind the desk, it just isn't going to work.
23 So really it is a matter of Monday morning
24 quarterbacking by Dr. Casa.

25 The third cause of action deals with failure

1 to render aid. Again -- this is interesting, Your
2 Honor, because what is happening here is an
3 effort -- if there is a duty here that could be
4 said to be violated, what it will mean is that
5 every time that there is any emergency situation,
6 that there is a theoretical failure to render
7 prompt enough aid claim, because there is no
8 question that when there is an emergency situation,
9 it is always better to get people there to the
10 emergency room as soon as possible. Nobody is
11 arguing about that. But the problem here is that
12 it was Mr. Moorer himself, he admitted that he
13 said, let's roll from Orangeburg, let's go on to
14 Columbia.

15 He said he didn't have any problems with folks
16 that were around him on the day of the second
17 incident. So it just isn't adding up. He is the
18 one who refused EMS at a time now when he is saying
19 it should have been provided to him.

20 So, in addition to that, there has really been
21 no evidence -- while there has been testimony from
22 some of the doctors that, yes, it would be better
23 to get him there as soon as you possibly can, there
24 is no evidence indicating how that has actually
25 made a difference in the effect that it had on Mr.

1 Moorer, who himself says that he is totally healed.

2 We're putting the jury in a situation of just
3 guessing at this and speculating as to what the
4 damage might be. So what we're having is Monday
5 morning quarterbacking. There aren't any
6 alternatives that have been put out there, at least
7 from the medical people, of what Norfolk Southern
8 should have done differently, other than by
9 Dr. Casa.

10 And an additional ground which I need to state
11 with regard to Dr. Casa is, obviously we objected
12 to the admission of his testimony in toto because
13 we don't think that his opinions were reliably
14 applied per the Watson case. I won't go back
15 through all of that. But it is not -- he is not
16 qualified as an expert in the industrial setting,
17 but even if he were, he didn't reliably apply any
18 kind of standard in this case because he didn't arm
19 himself with the information that was necessary to
20 give the opinions that he is seeking to give. And,
21 in fact, you even ruled on that and kept out some
22 of his testimony on that very basis.

23 So we would submit that in that connection
24 there is no proof of the -- of a duty that has been
25 breached.

1 Now, moving on to damages. I already
2 mentioned that Mr. Moorner has said himself that he
3 believes he is fully recovered.

4 What is more important perhaps, because Mr.
5 Moorner isn't himself a doctor, is there is really
6 no competent testimony that he is now worse off in
7 a permanent sense than he was before any of this.

8 In other words, what I'm getting at is that
9 there is no testimony that the second event itself
10 actually caused any change in him that prevents him
11 from being a conductor now.

12 Now, the railroad isn't willing at this point
13 to sign up for a third chance with Mr. Moorner.
14 That is not proof of what his physical injury or
15 damage is. That only indicates they don't want to
16 go there anymore. But it is not proof of either
17 his physical injury or of his damage. And that is
18 the Plaintiff's burden to prove that. And right
19 now we've got a sheer speculation situation. It is
20 particularly true considering the fact that there
21 is no duty to provide vocational services.

22 So, with regard to those future damages, I do
23 want to call to the Court's attention
24 specifically -- really, the closest that we would
25 come on that is Dr. Moseley indicated in his

1 testimony a recommendation that he should do and
2 monitor his situation when he is in a heat or heavy
3 work situation.

4 But what is important is that those
5 recommendations -- and Dr. Moseley testified to
6 this -- those are no different than the same
7 recommendations that would be true for any other
8 person that is part of the population, for you, me,
9 or anyone else in this courtroom. If you are
10 working in heat and a heavy work situation,
11 frequently hydrate, take breaks when you need them.

12 Well, that is not any different for anyone
13 than it is for Mr. Moorer. And there is no showing
14 that that recommendation is caused by anything that
15 happened here.

16 So, additionally, those -- I won't call them
17 restrictions, I would just call them common sense
18 recommendations that can apply to the world at
19 large, those were right in Norfolk Southern's
20 safety rule guidance.

21 And just because someone doesn't follow that
22 guidance and just because his work might be easier
23 if he has other people with him, that does not
24 establish negligence. It just doesn't.

25 The same was true with Dr. Dantzler. He

1 indicated perhaps a predisposition of Mr. Moorer to
2 have a heat-related event, but what he did not do
3 is attribute that to him on a permanent basis. So
4 Dr. Dantzler is essentially where Dr. Moseley is.

5 So, therefore, at the very least, aside from
6 whether there was negligence causing any damage at
7 all, certainly there is no evidence beyond
8 speculation that it is going to be causing future
9 economic damage because there is no permanent
10 injury as a result of any of this.

11 Thank you, Your Honor.

12 THE COURT: All right. As to the negligent
13 assignment claim, I am going to deny the motion for
14 directed verdict. I believe that it is an issue of
15 fact. Considering the federal standard of more
16 than a scintilla of evidence, there has been
17 testimony from Mr. Britt, Mr. Norwood, Mr. Chavis
18 and also Mr. Moorer regarding the difficulties of
19 the job, the assignments compared to other
20 assignments on this job. I believe it makes it an
21 issue of -- based on the testimony of those
22 witnesses, it is more than a scintilla of evidence,
23 and that as to the negligent assignment, the motion
24 is denied.

25 As to the issue regarding field testing, I

1 believe there is an issue regarding -- with the
2 Collective Bargaining Agreement, Dr. Casa's
3 testimony and Mr. Moorer's testimony. That
4 issue -- that motion will be denied.

5 Is there more than a scintilla of evidence, an
6 issue of fact regarding failure to render aid,
7 whether or not they should go back to Orangeburg,
8 stay in Columbia, how long it took for them to call
9 someone. I believe someone testified earlier as to
10 the amount of time that they were there. I am
11 going to deny the Defendant's motion for a directed
12 verdict as to the failure to render aid.

13 And as to damages, Dr. Johnson and Dr. -- or
14 the vocational counselor came in and testified as
15 to future damages. Mr. Moorer testified as to
16 future damages and economic loss. And for that
17 reason, I am going to deny the motion as to your
18 motion for directed verdict as to damages.

19 All right. We need to -- I think I covered
20 everything that you -- all of the issues that you
21 brought up. I believe I covered all of them.

22 MR. JENKINS: I think you did, Your Honor.

23 THE COURT: All right. Do you think it will
24 be about 45 minutes?

25 MR. TECKLENBURG: That is my best estimate,

1 Mason.

2 THE COURT: All right.

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

5 (Witness complies.)

6 THE CLERK: Do you solemnly swear or affirm
7 the testimony you are about give in this case will
8 be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. Have a seat in the
12 witness stand, please.

13 (Witness complies.)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Derrick Allen Mason.

16 DERRICK A. MASON,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TECKLENBURG:

20 Q Mr. Mason, good afternoon.

21 A Good afternoon.

22 Q Tell us a little bit about yourself. How old are
23 you? And where are you from? Where are you
24 currently living?

25 A I am 43 years old. And I currently live in

1 Atlanta, Georgia. I am working for Norfolk
2 Southern Railroad.

3 Q And how long have you been with Norfolk Southern
4 Railroad?

5 A August I will start my 15th year.

6 Q Tell us about your career in those 15 years. How
7 did you start? What did you start as? And what is
8 your position currently? If you can lead us
9 through that, please.

10 A Yes, sir. I started out as a conductor back in
11 '97. I did that for approximately three and a half
12 years. Moved on to a yardmaster. Did that for
13 about three and a half years also.

14 From yardmaster I then went into the
15 trainmaster position in Charleston. And then from
16 there I went to a chief dispatcher. And from the
17 chief dispatcher position, I am in my current job
18 now, which is manager of grade crossing safety.

19 Q So it sounds like you actually started out as a
20 conductor, just the same position Mr. Moorer was
21 doing at the time of this accident?

22 A Yes, sir.

23 Q Is that right? And when you were a conductor, did
24 you belong to a union?

25 A Yes, sir, that's correct.

1 Q And did you learn how to move rail cars and do what
2 conductors do? In other words, do you have
3 on-the-ground experience?

4 A Correct. I had the training that was provided for
5 me by Norfolk Southern down in McDonough, Georgia.
6 And then, as I stated, I also performed the
7 conductor job at various locations, but out of
8 Columbia for three and a half years.

9 Q So you were assigned here locally?

10 A Yes, sir, that's correct.

11 Q In Columbia. Now, I'm going to back you up to 2006
12 when Mr. Moorer was first hired. And let's talk a
13 little bit about that.

14 What was your position in 2006 with Norfolk
15 Southern, and where were you?

16 A I was the trainmaster in Charleston, South
17 Carolina. Part of my duties included daily
18 operations and also hiring new employees in order
19 for manpower just to keep a smooth operation going
20 to Charleston.

21 Q What does the trainmaster do?

22 A Basically we catch and do everything that needs to
23 be done to make sure that the freight moves between
24 Charleston and Columbia, in my position. It would
25 be the same anywhere else, but we -- daily

1 operations, including training and making sure that
2 they have got their personal protective equipment,
3 any kind of questions they may have answered, any
4 kind of issues that come up. We are basically the
5 catchall for anything that needs to be done as far
6 as the employees you have working for you.

7 Q Can you tell us about your position as trainmaster?
8 Do you hire people?

9 A Yes, we do the hiring. HR, or human resource
10 department, comes down and we actually partner with
11 them and go through the hiring process of new
12 employees.

13 Q And with respect to Mr. Moorer, did you hire him?

14 A Yes, sir.

15 Q Tell us about that process and what happened.

16 A The candidates will come in. Various numbers.
17 They will actually take certain tests that have to
18 be performed that are required by the company.

19 Once they complete those tests, they move on
20 to the next step, which would be to actually sit
21 down with us, if they make it that far, go through
22 a little interview. It is a real quick interview
23 just to try and get a quick snapshot of the
24 individuals themselves.

25 And from there we discuss with HR about the

1 actual hiring of the employee.

2 Q And with respect to this interview process, did Mr.
3 Moorer get to the point where he had an interview
4 for the conductor position?

5 A Yes, sir, he did. He was one of the final
6 candidates. I don't remember off the top of my
7 head how many people we hired that time, but, yes,
8 he was one of the final candidates.

9 MR. TECKLENBURG: I am going to ask them to
10 put up Exhibit 4.

11 Q And this is entitled -- again, it is kind of hard
12 to read, so --

13 A I have it on the screen.

14 Q It is entitled, employee history inquiry. I will
15 show you Exhibit 4. And actually I am going to
16 probably give you this binder to refer to from time
17 to time.

18 A Okay.

19 Q And if you could look at Exhibit 4 and tell us what
20 it is.

21 A This is a form that is filled out. And it is a
22 standard form that we have whenever the employee
23 has some kind of contact with their supervisors or
24 something like that. We'll actually document it in
25 the computer. That way we have records so that we

1 know what kind of training we provided to them and
2 what kind of safety contacts we have actually done.

3 MR. TECKLENBURG: And if we could turn to the
4 last page, please.

5 Q On the bottom of this page it shows the date of
6 August 9, 2006.

7 MR. TECKLENBURG: If we could blow up the last
8 two entries, please.

9 Q And it talks about an annual one-to-one safety
10 contact. Are you D.A. Mason?

11 A Yes, sir, I am.

12 Q And would that be the first contact ever made in
13 discussing and talking with Mr. Moorer about his
14 job?

15 A Yes, sir, that's correct.

16 MR. TECKLENBURG: Your Honor, I move Exhibit 4
17 into evidence.

18 THE COURT: Any objection?

19 MR. MOSS: No objection.

20 (WHEREUPON, Defendant's Exhibit No. 4
21 was marked for identification and
22 received into evidence.)

23 MR. TECKLENBURG: May I publish?

24 (Exhibit published to jury.)

25 BY MR. TECKLENBURG:

1 Q So after you get through the interview process, do
2 you have some paperwork that you go through with
3 the new employee?

4 A Yes, sir, we do. Personally I felt that was
5 important that the new employees knew about the
6 hazards that are out in the railroad. It is heavy
7 equipment that can be dangerous. I also wanted
8 them to know that I personally care about them
9 going home every night the way that they came to
10 work. So it was important that they understood
11 that we say safety and preach safety, but I also
12 wanted them to live as I did, take it home with
13 them and also use it there in the workplace.

14 Q If you could open the book and look at Exhibit 5,
15 please.

16 A Yes, sir.

17 MR. TECKLENBURG: And if we could put up
18 Exhibit 5.

19 Q What is that document?

20 A This is a document that we use. And it was just
21 conversation between myself and Trumaine that we
22 would say, hey, I care about your safety, but I
23 really would like you to think about it. Would you
24 please sign this document and say that you agree to
25 practice the safe procedures when you are working

1 out there everyday.

2 MR. TECKLENBURG: And if we could go to the
3 second page of Exhibit 5. And if you could also
4 blow that up.

5 Q Who drafted this particular document? Do you know?

6 A I actually drafted this myself. It was one more
7 way that I felt that I could get the employees to
8 understand that I honestly did care about their
9 well-being, that it was important every day that
10 they work safely. They have to be situationally
11 aware of what is going on. The equipment that we
12 deal with, the heavy rail cars are very
13 unforgiving, or can be, so it was important to me
14 to stress this to any new employee, not just Mr.
15 Moorer, but any employee that came in to Charleston
16 district.

17 Q I note Item 3 talks about requirements to work
18 holidays, weekends, and adverse weather conditions.
19 Is that something you came up --

20 A Yes, sir. Yes, sir. We run trains 24 hours a day,
21 7 days a week, 365 days a year. So we just wanted
22 them to be aware that there were conditions out
23 there that they need to understand that this could
24 possibly be happening.

25 MR. TECKLENBURG: Your Honor, Exhibit 5 I

1 think is already in evidence. If I may publish?

2 THE COURT: Yes.

3 (Exhibit published to jury.)

4 Q Now, after that happened, it looks like -- if we
5 could turn to Exhibit 6, again in your booklet.
6 And tell me what this is, this list, Exhibit 6.

7 A This list itself is actually some of the items that
8 the employees will be required to be familiar with
9 and also carry on their person as they perform the
10 duties as a conductor or as a trainee as they are
11 going through their training. It was important
12 that they had these items in order to perform their
13 job safely.

14 Q Okay. Thank you.

15 MR. TECKLENBURG: Your Honor, we move Exhibit
16 6 into evidence.

17 THE COURT: Any objection?

18 MR. MOSS: No objection.

19 THE COURT: No objection.

20 (WHEREUPON, Defendant's Exhibit No. 6
21 was marked for identification and
22 received into evidence.)

23 Q Now, once you meet with the employee, give them the
24 tools, it looks like you give them safety gear,
25 rule books, lanterns, safety glasses, the radio

1 holster, things of that nature, what does the
2 conductor do next as part of their training?

3 A Part of their training then is, once we provide
4 them with these items, they will actually go down
5 to McDonough, Georgia where we have our training
6 facility. They go through at the time was a 4-
7 phase process with different time increments for
8 each one. So that would have been -- Mr. Moorer's
9 next step would be to go down to McDonough and
10 begin Phase I training down there.

11 Q And how many weeks did that take?

12 A I believe the first Phase I was two weeks back
13 then.

14 Q And describe the other three phases.

15 A Phase I is of course they go down there for the two
16 weeks. They get familiar with our rules and
17 general railroad knowledge.

18 Phase II they actually come back to Charleston
19 or their district for the four weeks where we will
20 place them with a yard job or a local. We do
21 that -- and a conductor is with them -- we do that
22 so that they can see how the operation works. They
23 can see what will be required of them. And they
24 will also perform limited duty as far as they are
25 just going to do a little bit here until they get

1 familiar, because they haven't totally completed
2 their training down in McDonough.

3 Phase III they go back to McDonough. They get
4 a good dose of the rule books. They also take a
5 exit exam. When they have completed Phase III,
6 they will come back to Charleston. And then we
7 start putting them on all the jobs that we work out
8 of Charleston. I believe at the time it was 16
9 jobs.

10 So the employees will work those jobs. And as
11 they work them, there is a conductor with them. So
12 they are getting familiar, even more familiar with
13 what they have already learned in the past three
14 phases of the actual training down in McDonough.

15 Q If you could turn in your book please to Exhibit 8.
16 Tell us what Exhibit 8 is.

17 A This is a standard form that Norfolk Southern puts
18 out. And what it is, the conductor that the
19 trainee is working with will actually go through
20 and critique the new employee on how they are
21 performing the job itself. So basically it goes
22 through and just gives a general overview on what
23 they did during the job and actually how they did
24 the job itself.

25 MR. TECKLENBURG: If you can highlight the top

1 fourth of the page, please. Or blow up the top
2 fourth, please.

3 Q This particular exhibit shows the trainee to be Mr.
4 Moorer on what train?

5 A That is going to be the local P28 that runs from
6 Columbia, South Carolina, down roughly, I think its
7 limits go all the way to Branchville, but it
8 doesn't go that far, usually it is Orangeburg,
9 turns and comes back.

10 Q And it shows that Mr. Moorer was a trainee on that
11 job on October 13, 2006, is that correct?

12 A Actually he would have been the 9th through --

13 Q October 9th?

14 A Yes, sir.

15 Q For a week?

16 A Yes, sir.

17 Q And who was the conductor, coach, supervisor at
18 that time?

19 A That would have been a Mr. Roger Davis.

20 MR. TECKLENBURG: Your Honor, I move Exhibit 8
21 into evidence.

22 THE COURT: Any objection?

23 MR. MOSS: No, Your Honor.

24 THE COURT: Entered without objection.

25

1 (WHEREUPON, Defendant's Exhibit No. 8
2 was marked for identification and
3 received into evidence.)

4 MR. TECKLENBURG: May I publish?

5 (Exhibit published to jury.)

6 Q How did he do based upon your review of that
7 document?

8 A Looking at this, Mr. Davis scored him high, you
9 know, on every category with the exception of 13
10 where it says NA. At the time Charleston was a
11 territory that had no signal, so it didn't apply to
12 him. I would say based on this document here Mr.
13 Moorer was moving ahead steadily and in a positive
14 direction.

15 Q And you said, I believe, that the conductors worked
16 all the trains out of Charleston, is that right?

17 A Yes, sir, that is correct. They will work every
18 job. We actually had a little matrix set up where
19 we would -- we had more than one employee so you
20 had to schedule them so you didn't have all the
21 employees on one job. And they would run through
22 that whole process. After they finished that
23 process, they would come back to us and we allotted
24 some time in there where if they wanted to just
25 refresh themselves on a certain job they were more

1 than -- they were given the ability to do that.

2 Q Let's talk about your involvement specifically with
3 Mr. Moorer. You would have been his supervisor
4 during this hiring process, is that right?

5 A Yes, sir.

6 Q And do you teach any classes, or did you do
7 anything with Mr. Moorer?

8 A Yes, sir. We would -- throughout his training we
9 would of course at the end of it we would give him
10 a rules test. And we would also at some point I'd
11 have to go out there and evaluate the employees,
12 even after the conductors themselves had evaluated
13 them. It was important for me to go out there and
14 be a part of what they were doing and say, okay,
15 yes, he has got an understanding of what is going
16 on. So, yes, sir, I would. I would have had some
17 one-on-one contact with Mr. Moorer.

18 Q If you could look at Exhibits 14 and 15, please.
19 This says a rules -- 2007 rules class register,
20 dated January 6th, 2007, with Mr. Moorer's name on
21 there, and your name under instructor. Is that
22 correct?

23 A Yes, sir.

24 Q So based on this document, Exhibit 14, what does
25 that indicate?

1 A At this time, looking at this document, and 15, Mr.
2 Moorer was a member of the rules class that was
3 required to be taken annually by the Federal
4 Railroad Administration, and he successfully
5 completed the rules test for that year.

6 MR. TECKLENBURG: Your Honor, if it is not
7 already in, Exhibits 14 and 15 I move into
8 evidence.

9 THE COURT: Any objection?

10 MR. MOSS: No objection.

11 THE COURT: There is no objection.

12 (WHEREUPON, Defendant's Exhibit No. 14
13 was marked for identification and
14 received into evidence.)

15 (WHEREUPON, Defendant's Exhibit No. 15
16 was marked for identification and
17 received into evidence.)

18 Q Now, after the rules class, do you meet with the
19 employee again and talk?

20 A Yes, sir. We sit down and make sure that they feel
21 comfortable, because now we can technically say
22 that he has completed all his training, he has
23 taken his required tests, so now it is time to go
24 out in the field and actually perform the duties of
25 a conductor. That is why that week was put in

1 there in order to say, hey, do you want to refresh
2 something before we send you out there. It is
3 important, even if you don't think that you need
4 it, take a look at it.

5 And we would find a lot of times that they
6 would go back and say, you know, I would like to
7 look at this job again just to re-familiarize
8 myself with it.

9 Q What would be one of the more typical jobs that an
10 employee would say, hey, I think I'll go take a
11 refresher on that?

12 A Without a doubt it would have been Bowater up in
13 Rock Hill, South Carolina. We have employees that
14 work there. So a lot of times we would have them
15 go back to Bowater and they would say yes. Because
16 it was a second and third shift operation. And it
17 wasn't the easiest place. They are working at
18 night. So they like to go back and refresh on it.

19 Q So when you would make that offer, some people
20 would say, well, I'll look at Bowater?

21 A Yes, sir. It was up to them. At this point we
22 want them to feel comfortable, so that was a viable
23 option in order for them to feel comfortable and
24 say, oh, I need to go back up there, I just want to
25 refresh a little bit more on this.

1 Q Did Mr. Moorer do any jobs for more than one week?

2 A I believe Mr. Moorer did the P40 one other time.

3 Q Now, once you met with the employee and finished
4 the final interview, are they allowed to what has
5 been called, quote, mark up, unquote?

6 A Yes. I would have gone out with Mr. Moorer and
7 observed him in the yard throwing the switches and
8 everything. And then once he -- I decide that he
9 is good to go, he goes to Greenville, meets with
10 our division. The division says, yes, he is
11 qualified. And they move forward from there.

12 Once I get word from Greenville or a division
13 office, yes, he is qualified from that person, then
14 we go ahead and we start marking them up.

15 MR. TECKLENBURG: If you could put up Exhibit
16 103, please.

17 Q This document at the top says, subject, ACT
18 evaluation. It gives a date of January 11th. To
19 Mr. Bryson. And it seems to be at the bottom it
20 has your name. Tell us the significance of this
21 document, Exhibit 103.

22 A After Mr. Moorer completed all the training and
23 everything, this is what I would do to actually
24 send to Greenville that Mr. Moorer or any other new
25 employee would actually take up to Greenville with

1 them and give it to the division superintendent or
2 assistant division superintendent where he could
3 say, okay, now my supervisor has looked at this.
4 Now I have certain questions for Mr. Moorer or any
5 new trainee that I want answered. And basically it
6 is a letter stating what he has done.

7 MR. TECKLENBURG: If you can blow up the
8 second, third and fourth paragraphs, please.

9 Q This paragraph, the second paragraph, talks about
10 the ability to deal with bulletins. Is that an
11 important part of being able to interact with the
12 paperwork and also to engage in job briefings?

13 A Yes, sir, it is. Because what happens is on the
14 bulletins you find out where there is any slow
15 orders that may be out there, any kind of hazardous
16 footing conditions. So it is important to know
17 what is on the bulletins, and it is a requirement
18 by the Federal Railroad Administration.

19 Q The next paragraph, which is the third paragraph of
20 the document, talks about the ability to throw
21 switches and derails, also requesting 3-step
22 protection. Is that something that you personally
23 observed with Mr. Moorer?

24 A Yes. Yes. All the trainees would be required to
25 do that, especially the 3-step protection. At one

1 point they were required to request the engineer,
2 do I have 3-step protection? And before they did
3 that, they couldn't go in between the equipment.
4 So it was an important part of their training to
5 make sure they understood that it had to be done.

6 Q The jury is going to see a video probably tomorrow,
7 but tell us what 3-step protection is again?

8 A Basically it affords the conductor on the ground
9 the ability to go in between the equipment. And I
10 will try and make this in layman's terms. They go
11 in there and they actually have to pull cut levers.
12 Sometimes they have to couple air hoses or glad
13 hands. And in the video you'll see they actually
14 come together like this so the conductor is
15 required to almost kneel over and grab the two
16 hoses and bring them together. And when they do at
17 that point they are in between the equipment, we
18 don't want the equipment moving, the engineer
19 knows that the employee is in between the equipment
20 because they have requested a 3-step protection.

21 Q Thank you. And then finally this last paragraph
22 talks about identifying close clearance locations
23 and able to sit, step, stand and ride on equipment.

24 Tell me about that observation and what you do
25 as part of your duty and in hiring a new conductor.

1 A Part of the close clearance thing is we want the
2 employees going home. Sometimes we'll have areas
3 where there is just enough room that the car
4 itself, the rail car, will fit into a, what we'll
5 say a storage building. The walls or the door may
6 be too close. So we will have posted signs that
7 say, close clearance. The conductor stops to move
8 before they get to that point. They dismount the
9 equipment. And then they walk into the facility
10 ahead of the move and can actually bring it in
11 there without putting themselves in harm's way.

12 MR. TECKLENBURG: Your Honor, I move Exhibit
13 103 into evidence.

14 THE COURT: All right. It is entered without
15 objection.

16 (WHEREUPON, Defendant's Exhibit No. 103
17 was marked for identification and
18 received into evidence.)

19 MR. TECKLENBURG: And publish, Your Honor.

20 THE COURT: Yes, sir.

21 (Exhibit published to jury.)

22 Q And, Mr. Mason, when you issued that letter up to
23 the superintendent, sent Mr. Moorer up to
24 Greenville to meet with your boss, did you have any
25 doubt that he was ready to be a conductor?

- 1 A No, sir.
- 2 Q Had he gone through over four months of training by
3 then?
- 4 A Yes, sir.
- 5 Q Three and a half, something in that range?
- 6 A Close, yes, sir.
- 7 Q Close to four months. Did you believe that he was
8 a good conductor or would make a good conductor?
- 9 A Yes, sir.
- 10 Q Now, I'm going to change topics totally and not
11 talk about Mr. Moorer. I want to talk about the
12 P28 a second.
- 13 A Okay.
- 14 Q And specifically your involvement with the manning
15 of that job, okay?
- 16 A Yes, sir.
- 17 Q Have you had an opportunity to look at the
18 company's records about how this job was manned
19 over the, I think the six or seven years prior to
20 Mr. Moorer's incident?
- 21 A Yes, sir, I have.
- 22 Q And as part of that, have you participated in the
23 preparation of a summary indicating how the job was
24 manned?
- 25 A Correct.

1 Q From June 1, 2000?

2 A Yes, sir.

3 MR. TECKLENBURG: If we could put up Exhibit
4 81, please.

5 Q Tell us what this document represents.

6 A It actually represents the manning of whether we
7 had a single conductor or if we had put any kind of
8 brakeman on the job at some point during the time
9 period.

10 Q And it starts June 1, 2000. And I guess for that
11 first year was it a single conductor job based upon
12 your review of the records except one day?

13 A Yes, sir.

14 Q Okay. And in the following year, I guess it is
15 self-explanatory, but was there any evidence of a
16 brakeman being assigned on that job?

17 A No, sir.

18 Q And the next year, 2002 to 2003, was there any
19 evidence other than a single day of a brakeman
20 being assigned?

21 A No, sir.

22 Q And then finally we get to 2006. This was during
23 your tenure in Charleston, was it not?

24 A Yes, sir.

25 Q And it gives two periods of time, from March 21,

1 '06, to June 30, '06, and then again from July 18,
2 '06, to November 28th.

3 In looking at the records, did it look like
4 for that period of time a brakeman had been
5 assigned?

6 A Yes, sir.

7 Q And were you involved in that decision?

8 A Yes, sir.

9 Q Tell me about it.

10 A We had spent all this time training these
11 employees, and they are good employees, we want
12 them to stick around. The economy had slowed down
13 at the time. We don't want to lose the employees.
14 Like I said, we spent a great deal of time and
15 energy getting them to where they are at.

16 So what we did is, in order to keep them
17 working and add some income to their family, we
18 would put the brakeman job on the P28 so that they
19 didn't get furloughed. And when I say furloughed
20 in the railroad, basically they are laid off. So
21 in order to keep the employees working bringing in
22 some income, we would put this job on to subsidize
23 their income until the work came back.

24 Q Was there a group of conductors hired sort of in
25 the planning process around this time, 2006?

1 A Yes, sir. What we were seeing -- we hired these
2 people because we knew that we were about to have
3 an increase of import-export coal and also we had
4 some rock trains that were going to start. So we
5 were trying to be proactive versus reactive and
6 have our trains sitting there. We wanted to have
7 the people in place.

8 Q Did that business pan out, specifically those coal
9 trains?

10 A Yes, sir. It got to the point where we almost
11 didn't hire enough people as it was. We were
12 running so many import-export coal trains in and
13 out of Charleston and Columbia, the guys were
14 working on a very regular basis.

15 Q Okay. And did that -- as a result, in November of
16 '06, you made a decision to take it back to a
17 single conductor, is that right?

18 A Yes, sir.

19 Q Where did the brakeman go from this job? How did
20 that work?

21 A The brakeman in this job, we would have actually
22 used them and they would have gone back to the
23 conductor's board where they would have been
24 running these extra coal trains or rock trains that
25 we had coming in. Basically an operational

1 requirement.

2 Q Mr. Mason, that's all I have. Please answer
3 anything Mr. Moss may have.

4 A Yes, sir.

5 Q Thank you very much.

6 MR. TECKLENBURG: And to keep the court
7 reporter straight, I would enter that last exhibit,
8 I believe it was 85.

9 THE COURT: Any objection?

10 MR. MOSS: No, Your Honor.

11 THE COURT: It will be received.

12 MR. TECKLENBURG: 81. I apologize, Your
13 Honor.

14 (WHEREUPON, Defendant's Exhibit No. 81
15 was marked for identification and
16 received into evidence.)

17 CROSS-EXAMINATION

18 BY MR. MOSS:

19 Q Hi.

20 A Hello.

21 Q We have met before?

22 A Yes, sir.

23 Q You work in Atlanta?

24 A Correct.

25 Q You have been, it appears with good reason, a guy

1 who has come from the ranks being hired as a
2 conductor to a meaningful management job, correct?

3 A Right, yes, sir.

4 Q You have an important job now. What do you do?

5 A My actual title is manager of grade crossing
6 safety. What that entitles is I will go to
7 communities and talk to them about a consolidation
8 process for redundant crossings. We get rid of
9 redundant crossings. We limit our exposure. If we
10 limit our exposures we don't have collisions at
11 that crossing. So that is where my job comes into
12 play.

13 It is actually a safety action plan by the
14 Federal Railroad Administration to reduce
15 25 percent of all the crossings nationwide. So
16 that is where my job actually got its
17 responsibility from.

18 Q Can you break up your career in years? How long
19 were you a contract employee? And by that I mean a
20 union member? How long have you been in
21 management?

22 A Let's see here. I would say I was union
23 approximately seven years, give or take some, and
24 the rest of it has been management. So another --
25 going on eight years.

1 Q The contract jobs were the conductor and the
2 yardmaster?

3 A Yes, sir, that's correct.

4 Q And then the management jobs were trainmaster,
5 chief dispatcher, and now your current job?

6 A Yes, sir.

7 Q Have you continued to -- I don't mean to be too
8 personal, but have you continued to make money as
9 you progressed through the ranks?

10 A Yes, sir.

11 Q I mean, did you make more as a trainmaster than you
12 did as a contract employee, for example?

13 A No, sir.

14 Q Okay. What about as a chief dispatcher?

15 A No, sir, not at that point.

16 Q At what point did you start making some real money?

17 A Probably when I got into this job.

18 Q In your good years as a contract employee would you
19 make 60, 50? What kind of money?

20 A Roughly 50.

21 Q Okay. If you don't mind me asking, how much do you
22 make now?

23 MR. TECKLENBURG: Your Honor, objection. I
24 don't see the relevance to it.

25 MR. MOSS: There is a career progression path

1 that we are about to get to that I will link up,
2 Your Honor. The reason I'm asking these
3 questions -- excuse me.

4 THE COURT: Overruled.

5 BY MR. MOSS:

6 Q You spent enough time with Trumaine Moorner to
7 evaluate him and form opinions about his ability to
8 succeed at the railroad, right?

9 A Yes, sir.

10 Q Take your time. Tell the jury about what you
11 learned from Mr. Moorner and what opinions you
12 thought would apply to him as he progressed up the
13 ladder like you have done.

14 A Mr. Moorner always seemed to be very genuine and
15 enjoyed working with him. Never had any safety
16 issues with him. He always worked within the
17 rules. Overall good employee. Not a bad thing to
18 say about him. He was always available for work.
19 Never was sick or had issues that came up. Overall
20 good employee.

21 Q Specifically, sir, you thought he had management,
22 strong management potential, didn't you?

23 A If he desired to go that route I wouldn't be
24 surprised at all.

25 Q And in that context -- that is why I was asking

1 you. I don't mean to be personal to you. I really
2 don't want to know what you make. But a manager at
3 Norfolk Southern as you progress into the 10, 15
4 year mark, you can make \$100,000 or so, can't you?
5 More?

6 A You are going to have to get up there pretty good
7 as far as management, sir.

8 Q Okay. But you can make more than 60 as a manager
9 as you progress up the food chain, right?

10 A As well as a conductor, engineer, correct.

11 Q Right. If you are willing to be a conductor,
12 engineer who really works hard, you can make a
13 bunch of money?

14 A Very much so.

15 Q In fact, the guys like Mr. Moorer who are in the
16 roughly six year time slot, they make less money
17 than the guys who have been there longer who really
18 want to work, right?

19 A Say that again. I'm sorry.

20 Q That is a bad question. If you have been there 15
21 years and you really want to work, you probably can
22 make more money than the junior guys because you
23 can pick your jobs and pick your amount of work?

24 A You can pick your jobs, you're right about that.
25 Your seniority affords you that option. So guys

1 base that on their quality of life.

2 Q Right. And if somebody has demonstrated the
3 ability and desire to work overtime, for example,
4 there are certain guys that really get after it to
5 make a bunch of money, right?

6 A They will be on those jobs that make the overtime,
7 correct.

8 Q And how much does a conductor who really is willing
9 to bust it, can they make \$100,000?

10 A Oh, to be honest with you, I don't know.

11 Q You don't know. We'll ask somebody else.

12 Engineers, can they make \$100,000 if they really
13 want to bust it? You don't know either?

14 A No. I mean, I'm not on the financial side. I
15 don't --

16 Q I get it. I guess my point is, from your
17 perspective as a guy who hired, trained and coached
18 Trumaine, you have nothing but good things to say
19 about him, his career path, and his career
20 progression?

21 A As far as his time when I was in Charleston from
22 2005 to 2007, you're absolutely right.

23 Q High integrity, super guy?

24 A Yes.

25 Q Good. You have him sign a personal commitment,

1 which I think was a great idea that you wrote, did
2 you have any reason to think that Mr. Moorner did
3 not make and keep his word on the personal
4 commitment for safety at the railroad?

5 A No, sir, not while I was in Charleston.

6 Q And just so we are clear on the record, how much
7 time did you overlap with Mr. Moorner so that we can
8 assess how much ability you had to see and evaluate
9 him?

10 A Roughly eight months to a year. I mean, and that
11 is drawing back pretty far.

12 Q Because you left the job, the trainmaster job, I
13 think in April of '07?

14 A Yes, sir, that's correct.

15 Q And that was when a young man named Will Deshazor,
16 who we'll meet, took your spot?

17 A Correct.

18 Q All right. So at the time that all this went down
19 with Mr. Moorner, you had already moved on?

20 A Correct.

21 Q And Mr. Moorner's safety and the management of the
22 railroad were left by you in the hands of David
23 Stinson and Will Deshazor?

24 A Correct.

25 Q Mr. Stinson in Columbia, Mr. Deshazor in

1 Charleston?

2 A Correct.

3 Q And when these guys were training on the P28 and
4 the other jobs, they were trained as part of the
5 three-man crew?

6 A No. All of our jobs were single and conductor with
7 an engineer, so technically it is a two-man job.
8 It is a two-man job. When you add the ACT, it
9 makes it a three-man job. So, no, it was a two-man
10 job.

11 Q I get it. That is a good distinction. ACT is
12 what?

13 A Accelerated conductor training.

14 Q But the point is, when Mr. Moorner would go to
15 training on, let's say the P28, there would have
16 been an engineer, a conductor, Roger Davis, for
17 example, and he would have been the third man?

18 A Correct.

19 Q Okay. But we have learned that this P28 job
20 specifically was at times manned by a three-man
21 crew, not a two-man crew?

22 A Correct.

23 Q Before Mr. Moorner's incident?

24 A Correct.

25 Q And by a three-man crew you would have an engineer,

1 a conductor, and a brakeman?

2 A Correct.

3 Q And did I understand you to say that the business
4 that you all were projecting, the rock trains and
5 something else?

6 A It was import-export coal and rock.

7 Q When did that business really take off?

8 A Without going back and looking, I would -- I would
9 hate to give you an answer and not be the right
10 answer, but it was during that timeframe that Mr.
11 Moorer was working, that it increased, then we lost
12 some business because of the economy, and all that.
13 So.

14 Q Okay. But y'all really -- y'all were a publicly
15 train company with obligation to your stockholders,
16 right?

17 A Yes, sir.

18 Q And you don't put people to work on jobs that you
19 don't need them for, do you?

20 A That we don't need them for?

21 Q Yes. You don't ask a man to come to work if you
22 don't need him, right?

23 A The conductor's extra board was a first in-first
24 out, as needed type of deal. So.

25 Q Right. But you weren't -- this wasn't a charity?

1 Y'all weren't putting people on the job simply
2 because you liked them? I mean, the needs of the
3 railroad are dictated by servicing customers,
4 right?

5 A Correct.

6 Q If you needed to service a customer with a
7 three-man crew, that is why you put three men on
8 the crew?

9 A Well, like I said before, we put them on there
10 because we have kind of invested a lot of time with
11 them in that training process. I wouldn't call it
12 charity, but we had good employees, and everybody
13 knows if you don't work good employees they go
14 somewhere else. So we try to keep the employees
15 around in order to survive and make it through this
16 time period, because we knew that the upswing was
17 coming.

18 Q The upswing like -- even like in 2008, 2009, has
19 the upswing continued? Do you know? Or is this --
20 I should ask somebody else?

21 A Well, it varies. With it being bulk commodities,
22 it changes every year. So some years will be more
23 than others. But it stays consistent.

24 Q You knew Jeff Norwood? You probably hired Jeff
25 Norwood, because he was the guy right above Moorer

1 on the seniority roster. Do you know him?

2 A I know Norwood, but I think -- was it Jeff?

3 Q Yes.

4 A Okay.

5 Q Military guy. Do you know him?

6 A Yes, sir.

7 Q Okay. Was he a good guy?

8 A Jay. Was it Jay?

9 Q I'm sorry, you're right. Jay.

10 A That is what was throwing me for a loop.

11 Q Jay.

12 A Okay.

13 Q He was a good guy too, from the same seniority
14 group?

15 A Yes, sir.

16 Q Okay. But ultimately, I guess the point I should
17 just make it and stop is, the decision on how to
18 staff the P28, whether it was with a two-man or
19 three-man crew, that was always a decision that was
20 in the hands of management?

21 A Yes, sir.

22 Q And if it was staffed as a two-man, two-man crew,
23 conductor-engineer, the conductor would have to go
24 to the job staffed that way, that was just the way
25 it was. If it was a two-man job, he has got to go

1 to the two-man job?

2 A Correct.

3 Q And sometimes guys would get forced to the P28?

4 A I believe at that time we didn't force too many
5 people to it. There was -- you could, but it was
6 an option if nobody bid on the job. But I believe
7 Mr. Roger Davis had bid on that job and he was on
8 it regular.

9 Q Okay. But do you know about that? Because there
10 has been some testimony that these young guys were
11 getting forced to the P28, and I just want to be
12 fair to you.

13 A Well, when I was there, we didn't force anybody to
14 it. Whether it happened after my watch, I couldn't
15 tell you.

16 Q Things might have changed after you left?

17 A Yes, sir. Changes every day.

18 Q A younger guy replaced you, right?

19 A He is younger, yes, sir.

20 Q Less experienced than you by a lot?

21 A I wouldn't say that, no. He came from a different
22 side than I did, but I wouldn't say that he is less
23 experienced than I am.

24 Q At the time that Mr. Stinson went down, he was
25 really new to the territory, right, having been

1 there since just April?

2 A Right.

3 Q You knew the territory, knew it well, knew the
4 people, knew the industries, you knew the lay of
5 the land very well, did you not?

6 A Correct.

7 Q You knew where the Congaree Swamp was in relation
8 to Columbia and Charleston?

9 A Correct.

10 Q Knew exactly where the mileposts were all the way
11 up from Dog Food all the way back up to the yard
12 board at Andrews Yard, didn't you?

13 A For the most part. There might have been some
14 times you couldn't remember exactly where it was,
15 but, yes, for the most part.

16 Q Right. And on the south side as you come up there,
17 you come out of Orangeburg right through the city,
18 then go to St. Matthews, and you are right through
19 the city, right?

20 A Actually slap-dab through the middle of the town
21 with some grade separations.

22 Q And at Fort Motte, that is kind of the last
23 civilized place before you go to the swamp?

24 A I'll take that, yes, sir.

25 Q And then you come out of the swamp on the other

1 side and there is a bunch of arteries and rail
2 crossings way before you get to the yard, right?

3 A Correct.

4 Q Right. And it is 49 miles an hour as you go from
5 Dog Food all the way up to the yard, and then you
6 slow down when you get in the yard limits to
7 ten miles an hour to the last three miles between
8 the yard board and Old Maude?

9 A Correct.

10 Q Got it. Thank you. Did y'all ever do rules checks
11 on your folks?

12 A We are required to by the federal government, yes,
13 sir.

14 Q And those are high visibility and low visibility
15 rule checks?

16 A Correct.

17 Q I think we know what that probably means. But high
18 visibility means they know you are watching, low
19 visibility means they don't know?

20 A They know that you are watching at some point. We
21 weren't sneaky about it. But you are required to
22 do both the high visibility and low visibility
23 checks in order to make sure that they are working
24 by the rules.

25 Q When you say sneaky, what do you mean? You weren't

1 sneaky about it?

2 A No. You go out there and you position yourself
3 where you can see the employee working and they may
4 not be able to see you working because hopefully
5 they are doing what they are supposed to be, they
6 are concentrating on their job looking at what is
7 going on around them. And you would watch them
8 work in a safe manner.

9 Q Y'all wouldn't like do surveillance on them, would
10 you?

11 A No, sir. You can call it surveillance, but it is
12 not. It is doing what is required by the federal
13 government as far as rule checks.

14 Q No, I get it. I'm with you on this. I'm not
15 throwing rocks at you, my friend. By surveillance
16 I mean like videoing somebody when they are not
17 watching?

18 A Oh, no, sir, never. No.

19 Q That would be sneaky, wouldn't it?

20 A Sure.

21 Q Do you know David Patton?

22 A Yes, sir.

23 Q How do you know him?

24 A I actually hired David Patton also.

25 Q Do you know him well enough to tell us his career

- 1 progression?
- 2 A No, sir, I do not.
- 3 Q Do you know if he works in Atlanta now?
- 4 A He does work in Atlanta.
- 5 Q Do you know where he worked before he lived in
- 6 Atlanta?
- 7 A No. I know he was in Alabama. What his capacity
- 8 was, no, I don't know.
- 9 Q If I said to you that David Patton was in Alabama
- 10 working as a railroad police officer before he got
- 11 transferred to Atlanta, would you have any reason
- 12 to doubt me?
- 13 A Do I have any reason to?
- 14 Q Yes, sir?
- 15 A I know that he was with the NS police and I believe
- 16 he was in Alabama, but, no.
- 17 Q Let's be real specific about Mr. Patton. January
- 18 of '06 you hired him as a conductor here, or --
- 19 A Charleston.
- 20 Q Charleston?
- 21 A Yes, sir.
- 22 Q So, close in time to Mr. Moorer. And then in
- 23 October of '08 Mr. Patton, who had prior law
- 24 enforcement experience, right? You know he has
- 25 been a police officer in South Carolina?

1 A No, I did not, but, okay.

2 Q Okay.

3 MR. TECKLENBURG: Your Honor, I am searching
4 for the relevance here. I would object.

5 THE COURT: Yes, sir?

6 MR. MOSS: The point, Your Honor, is that in
7 the exact same timeframe that Mr. Moorner was
8 looking for a job, Mr. Patton hired on at the same
9 job, became a trainmaster and became a police
10 officer, the same job Mr. Moorner --

11 MR. TECKLENBURG: It is another person. We
12 don't know his qualifications. There is no
13 foundation been laid. I'm just --

14 MR. MOSS: I'll be glad to ask the questions.
15 And --

16 THE COURT: Lay the foundation.

17 MR. MOSS: Sure.

18 Q You do know that David Patton was a conductor out
19 of here?

20 A Out of Charleston, yes, sir.

21 Q You know that he progressed -- progressed -- to a
22 management position very quickly out of a T&E
23 position here in Charleston?

24 A Well, when I was in Charleston, no, he was still a
25 conductor when I left.

1 Q All right. But you do know that he made a quick
2 progression from the contract side to management?

3 A I know he went to management, yes.

4 Q And then you know that he -- then his next
5 management move you understand was as a railroad
6 police officer in Birmingham, Alabama?

7 A I'm basing it on what you are saying because, no,
8 I --

9 MR. TECKLENBURG: Your Honor, that is not
10 laying a foundation. He is feeding him
11 information. It is not appropriate.

12 THE COURT: Just ask him what he knows.

13 Q Do you know if he was ever -- I think -- do you
14 know if he was a police officer or not?

15 A NS police, yes.

16 Q Okay. So what we can agree at a minimum is the
17 same guy hired on in T&E and quickly progressed to
18 management and became a police officer?

19 A He became a police officer is what I know with NS.

20 Q And then he progressed again and is now working in
21 management in the Gould Building in Atlanta,
22 Georgia?

23 A He is in Atlanta, yes.

24 Q Thanks. That's all my questions.

25 MR. TECKLENBURG: Just a couple of questions

1 to follow up.

2 REDIRECT EXAMINATION

3 BY MR. TECKLENBURG:

4 Q Mr. Mason, the jobs that you've gotten as you
5 progressed up the ladder and I guess risen from a
6 conductor to the management side, did you have to
7 apply for those jobs?

8 A Yes, you do apply for them. They are never -- they
9 are never just given to you. You do apply for
10 them, correct.

11 Q Okay. And are there jobs you applied for that
12 maybe you just couldn't even get?

13 A Happens all the time.

14 Q So there is no guarantee as you go through and work
15 for a company like Norfolk Southern --

16 MR. MOSS: Objection. Leading.

17 Q Is there any guarantee that you will get a job that
18 you apply for?

19 A No. I applied for other jobs and have not gotten
20 them.

21 Q Let's talk about your position as trainmaster that
22 you held while you were in Charleston.

23 You mentioned a low visibility, if you will,
24 inspection that you would do of employees. Tell me
25 why you would do those.

1 A We were required by the Federal Railroad
2 Administration to perform these rules checks
3 because they want to see the employees working
4 safely also and make sure as managers we are doing
5 our job. So we were required by basically the
6 Federal Railroad Administration --

7 Q It is late in the day.

8 A So, we were doing it in accordance with what I was
9 required to do. Just as I required the employees
10 to work by the rules, I have to do the same thing,
11 just different guidelines.

12 Q And are those federal requirements?

13 A Yes, sir.

14 Q And when you do those low visibility checks, do you
15 actually go outside near the areas where they work?

16 A Sometimes we would park the vehicle and walk to an
17 area and be able to observe the employees doing
18 their jobs in the manner they should be, yes.

19 Q Would you be required to expend long periods of
20 time outdoors?

21 A It can be very long outside sometimes. Depending
22 on what happens and the responsibilities as a
23 trainmaster, you could be outside for a while, yes,
24 sir.

25 Q And while you did that, would you be exposed to

1 whatever temperature that the day brought you?

2 A Yes, sir.

3 Q Hot or cold?

4 A Yes, sir.

5 Q Likewise, do you know what Norfolk Southern police
6 do?

7 A No, sir. Never been in the police, so I don't, no.

8 Q Do you know whether they work outside?

9 A They do work outside.

10 Q Thank you very much. That's all I have.

11 MR. MOSS: May I ask a question?

12 THE COURT: Yes, sir.

13 RECROSS-EXAMINATION

14 BY MR. MOSS:

15 Q You do know what yardmasters do, right?

16 A Correct.

17 Q Yardmaster is a light duty, inside job, right?

18 A It is an inside job, light duty. It is stressful,
19 which can be just as strenuous as lifting heavy
20 stuff.

21 Q No doubt about that. But as far as physically
22 demanding, the yardmaster job is a much lighter
23 one?

24 A I would compare it to an air traffic controller.
25 You basically have the operations of the job that

1 is going on inside the yard itself as is a
2 dispatcher.

3 Q Okay. And if Mr. Moorer qualified by taking tests
4 to be a dispatcher or a yardmaster, based on what
5 you know about him, would you think he would be
6 well suited for those jobs?

7 A I believe he could perform it, yes, sir.

8 Q And do it well? You have no reason to doubt it?

9 A No reason to doubt it.

10 Q And the clerk jobs too are light duty? When I say
11 light duty, I just mean inside office jobs.

12 A All the clerical positions have since been moved to
13 Atlanta. They are there. What they all are I
14 couldn't begin to tell you.

15 Q Okay. And the yardmaster and dispatcher jobs, are
16 there some of those in South Carolina?

17 A Yes, sir.

18 Q Like where?

19 A Let's see, yardmasters you have Charleston,
20 Columbia. The next closest one would probably be
21 Charlotte.

22 Q And those are seniority board, just like there is
23 for the conductors, where you have been on the job
24 and you get your shift depending on your seniority?

25 A Correct. You would be awarded it by your seniority

1 and fall right in with all the other yardmasters
2 and kind of be on extra board there also.

3 Q Did you like your job as a yardmaster -- or in your
4 other -- what was your other job?

5 A The chief.

6 Q Yes, chief.

7 A Yes. I have enjoyed all of them.

8 Q Thanks. I appreciate it.

9 A Yes, sir.

10 MR. TECKLENBURG: One question.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. TECKLENBURG:

13 Q Are the yardmaster jobs competitive?

14 A Yes, they are competitive. They are required to be
15 tested. And I believe now you even have to go down
16 to McDonough, Georgia again and actually go through
17 a training session there.

18 Q And if you are on the extra board, does it take a
19 while to build seniority to even get out and work?

20 A You have the first shift, second shift, third
21 shift. You have seniority for that position. As
22 they retire or move on to other things, positions
23 open, and it is based on seniority, correct.

24 Q Thank you very much.

25 THE COURT: All right. You may step down,

1 sir.

2 THE WITNESS: Thank you.

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

5 MR. MOSS: No, Your Honor.

6 (Witness steps down.)

7 THE COURT: You are free to leave.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: All right, ladies and gentlemen of
11 the jury, it is about 5:42 or 43, so we will go
12 ahead and take our evening break.

13 I'll go ahead and tell you, tomorrow I have
14 something, so we'll start about 9:45 tomorrow
15 morning. We will -- I will order lunch for you all
16 tomorrow. I don't know if anyone has been bringing
17 their lunch, but I will order lunch for you
18 tomorrow. And depending on how it is going, we may
19 stay a little bit later, maybe beyond 6:00 or so.
20 It just depends on how -- but I think if we order
21 lunch and y'all take a break for about 30 minutes
22 and eat lunch, we should be able to push through.

23 So you all have a good evening. And remember
24 everything I told you earlier this week regarding
25 research and discussing the case. And you can't

1 THE BAILIFF: Face the clerk. Place your left
2 hand on the Bible, and raise your right hand.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about to give in this case will
6 be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat in the
10 witness stand, please.

11 (Witness complies.)

12 THE BAILIFF: Give your full name.

13 THE WITNESS: My name is William Kearin
14 Deshazor.

15 WILLIAM K. DESHAZOR,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. TECKLENBURG:

19 Q Mr. Deshazor, good morning.

20 A Good morning.

21 Q Tell us a little bit about yourself. Where do you
22 currently reside?

23 A I currently live in Virginia Beach, Virginia.

24 Q Are you married?

25 A I'm married. Married a girl from Charleston while

1 I was here.

2 Q And did you go to college?

3 A I did. I went to VMI, Virginia Military Institute.

4 Q And are you currently employed by Norfolk Southern?

5 A I am.

6 Q And how old are you, Mr. Deshazor?

7 A I am 28.

8 Q When did you start with Norfolk Southern?

9 A Just two weeks after college. That would be
10 June 1st, 2005.

11 Q And how old would you have been at that point?

12 A At that point I was 22.

13 Q How did you select Norfolk Southern as a career for
14 you?

15 A Well, actually I was studying finance and whatnot,
16 but given my experience at VMI, Norfolk Southern
17 came and recruited, talked about the job. It
18 seemed very interesting. You know, the dynamic
19 workplace, working with people, and management has
20 been something I enjoyed while at school, so it was
21 an interesting proposition, definitely something I
22 hadn't thought of doing. I mean, the railroad is
23 not something you think about very often, but I
24 felt like it was a good opportunity. So, like I
25 said, two weeks after graduation that is where I

1 went.

2 Q What leadership skills do you believe you may have
3 brought to the table from college?

4 A Well, you know, for those not familiar with VMI, it
5 is very familiar to the Citadel -- I think a
6 slightly better version, no offense intended -- but
7 it is a unique environment. And it is -- you know,
8 I think it is -- one of its strengths is producing
9 leadership skills.

10 Every year I was there following my training
11 the first year I kind of gave back by teaching and
12 bringing in the new cadets, you know, training them
13 every year. Every year, you know, your
14 responsibility grows exponentially towards, you
15 know, your senior year when you are overseeing the
16 training of a couple of hundred cadets and the
17 officers that are implementing that.

18 So I think, you know, I am -- it was a very
19 unique experience, something I'm thankful to have.
20 So.

21 Q And when you signed up to work for Norfolk
22 Southern, tell us about the training that you
23 received as a new manager.

24 A The training as a manager was ten months. There
25 was no timeline, though. That was one of the nice

1 things, you know. It was a complete training
2 experience. It kind of combined classroom stuff,
3 conductor training, you know, familiarizing myself
4 with the job.

5 Then the rest of that time was spent on the
6 job with other supervisors. And that was another
7 good piece because I went around, all around the
8 division, that is, you know, several states and
9 followed supervisors for a couple of weeks or a
10 month at a time taking, you know, their best
11 practices, and stuff like that. So you get a good
12 sampling. But ten months of classroom and
13 on-the-job training.

14 And, like I said, no timeframe. At that ten
15 months it was decided that I was ready to move into
16 a management role assistant trainmaster in
17 Gainesville.

18 Q Do you have to successfully complete the training
19 program in order to essentially be hired on
20 full-time?

21 A You do. You have to do -- you know, you have to do
22 your own write-ups as far as what you are learning,
23 and stuff like that. And I think that is a very --
24 you know, that indicates a lot about a person.

25 As well, the supervisor that you work with

1 provides evaluations and feedback to my superiors.
2 And after passing rules tests and other type -- and
3 those evaluations, like I said, a decision is made
4 based upon the needs and your performance, yes.

5 Q And as part of the training, do you also get any
6 hands-on on any of the equipment?

7 A Absolutely. I spent time down in McDonough doing
8 conductor training just like any conductor would.
9 And actually spent a couple of weeks down there
10 doing engineer training, which is something that
11 comes further along in a career, but, you know,
12 obviously if you intend to manage and work, you
13 know, out in train operations, there has to be a
14 good level of understanding of what exactly is
15 going on and what it takes to perform that work.
16 So, absolutely.

17 Q And your current position is what?

18 A Currently I am the manager of operations, planning
19 and budget in Norfolk.

20 Q And who do you report to?

21 A I report to Gerhard Thelen. He is the
22 vice-president of operations, planning and support.

23 Q So you report directly to a vice-president?

24 A Yes, sir.

25 Q Your predecessors in the job, how old were they?

1 A I believe 55 and 52 perhaps, with 30 years
2 seniority.

3 Q Let's talk a little bit about what you did before
4 you were assisting the vice-president. What was
5 your first job out of management school?

6 A Following my management training in Greenville, I
7 went and I was an assistant trainmaster in
8 Gainesville, Georgia. It was a very busy mainline
9 territory. I was very fortunate to be working
10 under a 20-year seniority supervisor, a very
11 intelligent, savvy operations manager. That was a
12 large district. Taught me a lot. You know, a lot
13 of employees, a lot of trains. And did that for
14 ten months to a year before I moved on to
15 Charleston.

16 Q How would you compare the size of the first
17 district you were assigned to as an assistant in
18 the Charleston district?

19 A The Gainesville, as they call it, Charlotte South
20 End, I don't know why they named it that, it is
21 Atlanta to Greenville, so the territory from a
22 mileage standpoint is a lot bigger, but the main
23 thing being an employee is that it is more than
24 double that size. And then there is just the time
25 sensitive nature. We move a lot of intermodal and

1 UPS traffic, so it is more of a high stakes gain
2 out there -- not a gain, more high stakes when you
3 are out on the mainline.

4 Q So you spend time in Gainesville. How long were
5 you there?

6 A About ten months to a year.

7 Q And your second assignment was in Charleston, is
8 that right?

9 A Yes, sir.

10 Q And what did you do in Charleston? What was your
11 responsibility?

12 A After being in Gainesville as an assistant
13 trainmaster and performing that work along with a
14 trainmaster, I moved on to my role in Charleston,
15 which was trainmaster supervising my own territory
16 at the next step in the progression. And, you
17 know, at that point, you know, given my performance
18 in Gainesville I was assigned that position in
19 Charleston to fulfill that role.

20 Q Okay. And describe for the jury a little bit about
21 the Charleston district. How many trains went out
22 of Charleston and Columbia approximately?

23 A Road train-wise you have three trains going
24 westbound from Charleston to Columbia per day and
25 three coming back. You know, every train has got a

1 sister or partner. So we had that.

2 And then I think maybe total of three yard
3 jobs, maybe five or six locals. So.

4 Q And out of the jobs, how many are conductor only
5 and how many are three-man crews?

6 A Conductor only jobs, your six road trains, three
7 twice daily, were all conductor only. And then
8 your two locals out of Columbia, P28 and P66, were
9 conductor only. Then as far as jobs with conductor
10 and brakeman, that would be your three yard
11 assignments. Then I believe you had the P21 and
12 P24, two locals in Charleston, that were conductor
13 and brakeman. So I think eight versus five, I
14 believe.

15 Q So eight were conductor only?

16 A That's right.

17 Q And why would you want a brakeman on the yard job,
18 for example?

19 A Well, you know, the yard job has a different --
20 definitely a different job than a local or yard
21 job. You know, you've got a yard which is set up
22 and designed to do switching work where you take an
23 inbound train, you know, which could be over a
24 hundred cars, and you classified it into different
25 tracks, build trains. You know, the P28 train in

1 Columbia is built by a yard job. They put it
2 together for the road and local crews. So it is
3 very switch intensive.

4 Q As part of your involvement in this case, have you
5 had an opportunity to look at some training videos?

6 A I have, absolutely.

7 MR. TECKLENBURG: If you could pull those up,
8 please. I believe they are Exhibit Number 116.

9 Q Now, tell us a little bit about training videos.
10 What are they used for?

11 MR. TECKLENBURG: And you can pause that and
12 get the volume set so we can hear it, please.

13 MR. MOSS: With respect to all these videos,
14 Your Honor, I have no objection.

15 THE COURT: You have no objection?

16 MR. MOSS: No objection to any of them.

17 THE COURT: And what is this?

18 MR. MOSS: These are training videos, Your
19 Honor.

20 THE COURT: He has no objection. Do you want
21 to go ahead and enter them?

22 MR. TECKLENBURG: I do, Your Honor. It is
23 Exhibit Number 116. I move it into evidence, Your
24 Honor.

25 THE COURT: Entered without objection.

1 (WHEREUPON, Defendant's Exhibit No. 116
2 was marked for identification and
3 received into evidence.)

4 BY MR. TECKLENBURG:

5 Q Now, while he is getting the volume correct and
6 that sort of thing, let's talk just generally about
7 training videos. What are they used for, just
8 training -- tell me how it -- when and how they
9 relate to this.

10 A Yes, training videos are used very extensively, you
11 know, especially early on and throughout, you know,
12 as things come up. They are used especially early
13 on, you know, we do training classes, like I said,
14 and then periodically after that.

15 You know, sometimes we'll pull crews all
16 together and watch a video. You know, I think the
17 value in a video, even though there is a lot of
18 hands-on and specific training, you know, a video
19 sometimes has a uniform message and you can insure
20 that everyone has the right information of what
21 they need.

22 So we definitely use them a lot early on and
23 then occasionally as needed.

24 Q Exhibit 4, which was published to the jury
25 yesterday, was an employee history. Does the

1 history contain a list of videos that the employee
2 watches?

3 A It does. Usually, for the most part, I don't know
4 that we secure a hundred percent of them,
5 especially if I, you know, go back and just do one
6 that, you know, may not have a code or wasn't
7 entered, but typically with a video you enter a
8 training code and an employee's history that
9 documents that training has been delivered.

10 Q Okay. So, if we could, this particular video is
11 called Coupled Air Hose, or this excerpt is, it is
12 called Couplers and Coupling.

13 (WHEREUPON, video was played in open
14 court.)

15 Q I want to ask you about coupling air hoses.

16 First of all, for the jury, what do air hoses
17 do on trains?

18 A The air hoses, you know, the engine is your air
19 compressor, it has your source of air so that the
20 air -- I'm getting messed up here. The air hose --
21 I'm thinking brake pipe. There is a brake pipe on
22 every car. But basically the air hoses put a
23 continuous stream of air throughout the train which
24 gives it its braking system.

25 Q Thank you.

1 MR. TECKLENBURG: The next video is entitled
2 Operating the Brake Stick. Play that, please.

3 (WHEREUPON, video was played in open
4 court.)

5 Q Have you ever operated a brake stick before?

6 A Absolutely.

7 Q And Exhibit 107, is that a brake stick?

8 A Yes, sir.

9 Q Why does Norfolk Southern issue a brake stick to
10 employees?

11 A Brake sticks are issued because it is ergonomic and
12 it is just an easier way of performing the task of
13 tying a handbrake. It prevents you from having to
14 climb up and down on a car. So, eliminating that
15 action.

16 And then furthermore -- I mean, it is easier.
17 You have it downward, the weight and leverage. You
18 know, I'm not a physics guy, but it makes that job
19 easier.

20 Q When you were in Charleston in April and May 2007,
21 were brake sticks issued to employees?

22 A Absolutely.

23 MR. TECKLENBURG: Next video.

24 (WHEREUPON, video was played in open
25 court.)

1 Q What do derails do?

2 A I was just thinking, derails are such a unique
3 concept. It is essentially a last line of defense.
4 It is a ramp essentially. If cars were to -- you
5 have your mainline where trains are going at track
6 speed, you know, 49 miles an hour. At these little
7 industries everything is protected by derails so
8 that should that equipment, for whatever reason,
9 roll away, start moving, that derail is going to
10 knock it off the track before it can get to the
11 mainline and cause serious damage to a road train.

12 So, you know, weird that that is the last line
13 of defense putting it on the side or over in the
14 woods, but it is better than having, you know, a
15 head-on collision.

16 Q And as part of your duties as trainmaster in
17 Charleston, did you have to visit the various job
18 sites?

19 A Yes, sir.

20 Q And did you visit the job sites for the P28?

21 A Yes, sir.

22 Q And does P28 have derails just like was depicted in
23 the video?

24 A Yes, sir. That, and there are two other styles,
25 but absolutely.

1 Q Okay.

2 MR. TECKLENBURG: Next is Operating a Hand
3 Brake, which I'm assuming is without this, so if
4 you can play that, please.

5 (WHEREUPON, video was played in open
6 court.)

7 Q And we've heard I think some people refer to tying
8 a handbrake. Is that the process of doing that?

9 A Yes, sir.

10 Q So as an alternative to using a brake stick, you
11 could physically climb on a car, it sounds like?

12 A Yes.

13 Q And do all rail cars have brake mechanisms?

14 A Yes, sir.

15 MR. TECKLENBURG: Play the next one.

16 (WHEREUPON, video was played in open
17 court.)

18 Q Have you ever operated the switch?

19 A I have.

20 Q In the area that P28 works, do they have switches
21 like that as well?

22 A Yes.

23 MR. TECKLENBURG: Next video, please.

24 (WHEREUPON, video was played in open
25 court.)

1 Q Maybe this is past the obvious, but part of a
2 conductor's duty, do they have to ride inside the
3 locomotives?

4 A Yes, sir.

5 Q All right. Have you ridden inside locomotives?

6 A I have spent many an hour in a locomotive, yes,
7 sir.

8 Q You know, I didn't really ask you that, but as part
9 of your trainmaster duties, why would you end up
10 inside a locomotive with a crew?

11 A You know, the primary reason you would do that is
12 every month you are required to ride at least four
13 trains, you know, varying in time length no less
14 than two hours, but you are riding with a train
15 crew to observe them, you know, in that
16 environment.

17 Also it is about familiarization, you know,
18 seeing it from that perspective, seeing how the
19 jobs are worked, maybe finding where we can do
20 something better or differently. You know, it is
21 about getting that experience and perspective.

22 MR. TECKLENBURG: Next video. Riding on Side
23 of Cars is the name of it.

24 (WHEREUPON, video was played in open
25 court.)

1 Q As part of a conductor's job, do they have to walk?

2 A Yes, walk and ride, any combination of that.

3 Q And would riding equipment like that potentially
4 shorten the walk depending on how you plan your
5 work?

6 A It would. And definitely depending on how you
7 choose to do it, yes.

8 MR. TECKLENBURG: Next. This is, A Roll-by
9 Inspection.

10 (WHEREUPON, video was played in open
11 court.)

12 Q Why did Norfolk Southern have that rule, that when
13 you are a stationary train that you have to be out
14 on the side of the track watching the passing
15 train?

16 A It is amazingly, you know, a simple concept, but it
17 has really helped us out a bunch. You know, a man
18 on the ground and not just watching from the
19 locomotive has a lot of opportunity to observe
20 those trains, and there could be a problem that has
21 not yet completely compromised the train. And
22 there is a lot of senses. You can smell brakes
23 rubbing, you can hear noises. And so you can
24 observe a problem with a passing train and stop
25 them and hopefully prevent an incident. And that

1 is definitely what this practice has given us.

2 Q Okay. And I may be losing count, but hopefully we
3 are about at the end.

4 MR. TECKLENBURG: Do we have any more videos?

5 Q I think we're done.

6 A All right.

7 Q Very good. Now -- oh, prior to today, have you
8 seen most of those videos before?

9 A In some form or the other. I mean, you know, I
10 definitely sat through many a rules class and
11 conductor training, so definitely in some form.

12 Q Understood. Now, let's talk a little bit about
13 your assignment in Charleston. You would have been
14 the supervisor over whom?

15 A I was a supervisor under -- over -- let's see, I
16 had two general yardmasters. Those are two other
17 company officers. Then your yardmasters in
18 Charleston who are managing the yard and movements
19 in the yard. And then all the training engine
20 employees, you know, the guys actually making the
21 trains move. And I think at that time there were
22 between 65 and 75, you know, in that number.
23 Obviously it fluctuates.

24 Q And did you participate in the decision of staffing
25 of trains?

1 A I do, yes. Absolutely.

2 Q And if an employee came to you and said, you know,
3 tomorrow looks really long, or, we have an issue
4 with tomorrow, or, this work week looks really
5 long, if they came to you and voiced concern, what
6 could you do as a supervisor?

7 A As a supervisor you can make a couple of decisions.
8 And one could be to increase the manpower on that
9 job, you know, with a brakeman. It could also be
10 to shift work between jobs and/or, you know, make
11 sure to have a relief job available, you know, for
12 when that one times out.

13 Q Okay. Did you ever get a request like that from
14 Trumaine Moorner?

15 A I didn't.

16 Q I want to ask you a little bit about the events
17 that you were involved with. And specifically
18 May 9th.

19 By the way, did you understand that Trumaine
20 Moorner was working the extra board in May 2007?

21 A I did.

22 Q And I'm going to get these two charts.

23 MR. TECKLENBURG: If we could put up Exhibit
24 109, please.

25 Q This is a timeline that has been prepared for this

1 case. It actually --

2 MR. TECKLENBURG: You can put that back down
3 because I've got a question or two before I get to
4 that. My apologies.

5 Q I don't want to go to May 30th. We'll get there.
6 Let's talk about May 9th, the first incident
7 involving Mr. Moorer. Tell me how you first
8 learned that Mr. Moorer had something going on that
9 day on May 9th.

10 A I was called by Engineer Forrest Britt who told me
11 they were at Doane Pet Products. You may have
12 heard it referred to as Dog Food or J57. But they
13 were there, and that Trumaine had had a heat
14 episode or had, you know, he was back switching
15 Doane Pet Products, and the Doane employees had
16 called the EMS, that he was back there at Doane and
17 EMS was on their way. And so Forrest called me,
18 notified me, and I started heading in that
19 direction.

20 Q Had you had any indication from Mr. Moorer or
21 anyone else that he had been ill in any way prior
22 to that?

23 A No, sir.

24 Q And what did you do next? You got in your car.
25 Where did you go?

1 A I got in my car and headed up to Orangeburg. I was
2 down in Charleston at the time. And I want to -- I
3 believe from that I went straight to the
4 Orangeburg-Calhoun County Medical Center there in
5 Orangeburg where Trumaine had been taken.

6 Q And what did you do once you got there?

7 A Once I got there, you know, I went to the waiting
8 room. And, you know, once the doctors had come out
9 or, you know, once I got in contact with someone
10 there, you know, asked if it was all right with
11 Trumaine if I went back and spoke with him, which
12 she said it was.

13 Q And tell me about your conversation with Trumaine
14 on May 9th, May 9th in the hospital.

15 A Yes. I met with Trumaine there at the Orangeburg
16 Hospital. I went back and talked with him. He was
17 laying there.

18 You know, we discussed the incident, you know,
19 make sure -- asked him how he is feeling. And, you
20 know, was definitely concerned about him.

21 Then he started talking through the incident.
22 You know, he stated at the time, you know, he was
23 kind of embarrassed about it, and, you know,
24 obviously he wasn't happy to be sitting there.

25 He kind of walked me through the events and

1 discussed some activities from the night before,
2 made a couple of statements to me that he hadn't
3 really eaten in the previous 36 hours, and actually
4 stated that the night before he had started to
5 experience some cramping at home and actually that
6 his wife had suggested that he eat some bananas for
7 the potassium for the cramps, and stuff like that.

8 But then he went through that he had shown up
9 for work and, you know, came -- came out on the
10 P28, you know, kind of looked at their movements,
11 went down and ran around the train at Rowesville.

12 And then, you know, he said that at Doane he
13 just started -- just started feeling badly and
14 cramping up.

15 MR. TECKLENBURG: If we could put up Exhibit
16 11, please.

17 Q As part of your responsibility, are you required to
18 report write-ups when things happen like this at
19 work?

20 A Yes, sir.

21 Q Okay. And I am going to show you this Exhibit 11.
22 Is this a contemporaneous write-up, in other words,
23 shortly near the time that it happened?

24 A Yes, absolutely.

25 Q Okay. And it appears in this --

1 MR. TECKLENBURG: If you could concentrate on
2 the second and third paragraph, please.

3 Q It appears on here that you recall the day or the
4 weather. Is that something you were interested in
5 or found out by yourself?

6 A I mean, absolutely. And, you know, I definitely
7 looked that up, you know, following the incident.
8 And, you know, obviously from being there not long
9 after the incident, but, you know, it was, you
10 know, 77 to 80 degrees and had a sprinkling or two.

11 Q And the, I guess the third full paragraph of the
12 document; which starts talking about -- tell me
13 what you are recounting there and what you were
14 writing to your supervisor.

15 A Right. That third paragraph right there I'm
16 accounting my conversation with Trumaine from the
17 from the hospital, like I said, where we discussed
18 the day before and, you know, what he had eaten or
19 not eaten and the fact that he had the cramping
20 there on May 8th.

21 So, like I said, that is just a summary of my
22 conversation with Trumaine.

23 Q It says you also -- this write-up also says, not
24 work related, those three words from the very
25 bottom there. Is that what he told you?

1 A Yes, sir.

2 MR. TECKLENBURG: Your Honor, I move Exhibit
3 11 in evidence.

4 THE COURT: Any objection?

5 MR. MOSS: No objection.

6 (WHEREUPON, Defendant's Exhibit No. 11
7 was marked for identification and
8 received into evidence.)

9 MR. TECKLENBURG: May I publish, Your Honor?

10 THE COURT: Yes, sir.

11 (Exhibit published to jury.)

12 Q So you visit with him in the hospital. By the way,
13 is that what you would do for any employee that had
14 an issue on the job and ended up in the hospital?

15 A Absolutely.

16 Q And tell me what your next interaction was with
17 Mr. Moorer.

18 A Next interaction, I believe I -- I believe may have
19 seen him on the 10th. Then following, you know,
20 his release from the hospital, my next interaction
21 was, you know, he communicated with me as he was
22 trying to get back to work. He had been -- I think
23 he had a follow-up appointment on the 17th, and
24 following that he was released for work and was
25 trying to actively get back to work.

1 Q When he met with you next, did he express -- what
2 did he express to you about going back to work?

3 A He was very eager to go back to work. And, you
4 know, he brought me, you know, medical
5 documentation from his doctor. And, you know, I
6 helped him to send that in to the medical
7 department. He was trying to get that process
8 moving as he really wanted to return to work.

9 Q I show you Exhibit 68.

10 MR. TECKLENBURG: If you can put that up,
11 please. If you could blow up the bottom e-mail.

12 Q This says, From Deshazor, William to Beverly
13 Dozier. Who is that?

14 A Beverly Dozier was a nurse in our medical -- you
15 know, in the medical department at Norfolk
16 Southern, one I had contact with in the past, so in
17 trying to expedite this process I just sent this
18 stuff directly to her.

19 Q Okay. And if you could look at -- there is a
20 binder up there -- or the binder is right here,
21 sir. I apologize. There you go. I know, it is
22 heavy. They are thinking the same thing.

23 Is this the package of documents that you
24 received from Mr. Moorer?

25 A Yes, it is.

1 MR. TECKLENBURG: Your Honor, I move Exhibit
2 68 into evidence.

3 THE COURT: Any objection?

4 MR. MOSS: No objection.

5 (WHEREUPON, Defendant's Exhibit No. 68
6 was marked for identification and
7 received into evidence.)

8 MR. TECKLENBURG: May I publish, Your Honor?

9 THE COURT: Yes, sir.

10 (Exhibit published to jury.)

11 Q So you sent what Mr. Moorer gave you up to the
12 medical department. What was the next thing that
13 happened in dealing with Mr. Moorer's return to
14 work?

15 A The correspondence I got back from the medical
16 department said that this information was
17 insufficient for him to come back to work. So it
18 was my job to communicate that to Trumaine, that he
19 needed to provide additional medical documentation
20 in order for them to make a return-to-work
21 decision.

22 Q And did you make that communication?

23 A I did. I did.

24 Q And were you privy to any of those communications
25 between Mr. Moorer and the medical department?

1 A I wasn't. That is, you know, a privacy issue.

2 Q So would it be your practice as a supervisor to get
3 involved with an employee and his physician?

4 A No, sir.

5 Q Now, was he released to come back to work?

6 A He was.

7 Q Did his doctor release him to come back to work?

8 A His doctor did, yes.

9 Q Based upon what Trumaine told you and what the
10 doctor's note that was given to you said, did you
11 have any reservation in allowing Mr. Moorner to come
12 back to work?

13 A No, not at all, given the circumstances he
14 described that day and the fact that he had been
15 cleared by his physician, you know, I had no
16 reservations about, you know, having come back at
17 all.

18 Q When he appeared to you, did he appear healthy and
19 motivated and interested?

20 A He did. Like I say, he was very, very eager to
21 come back.

22 Q Now, I think the records show he returned to work
23 on May 30th. All right. What did you do that day,
24 if anything, to, if you will, welcome him back or
25 talk to Mr. Moorner?

1 A Yes. Absolutely it was, you know, good to have
2 Trumaine back, and especially since, you know, it
3 is something he really wanted to do.

4 I made it a point that day, I took myself and
5 brought along one of my general yardmasters,
6 Saundra Jackson. We drove up to sync up with
7 Trumaine. You know, his job comes out of Columbia.
8 So it is a bit of a crapshoot trying to track him
9 down, it is a moving train, but we met up with him
10 in Rowesville, Rowesville, South Carolina, and got
11 up on the engine with him and -- him and his
12 engineer, and talked about the -- you know, talked
13 about his first day back, how it was going, how he
14 is feeling.

15 We actually brought him some Gatorade and
16 stuff, which, you know, he said he's got plenty of
17 that stuff, you know, he didn't want to turn us
18 down, but he said he was definitely on his Ps and
19 Qs with fluids and everything.

20 So just discussed, you know, him being back
21 and how he was doing.

22 Q And how was he doing? What did he tell you?

23 A He said great. Like I said, he said he was feeling
24 good, he was taking care of himself, and, you know,
25 everything was great, he was just happy to be back.

1 Q And Exhibit 4, which we referred to a minute ago --
2 I'll try to find a copy that is up here. It has
3 already been introduced into evidence. It is that
4 employee history inquiry.

5 A Yes.

6 Q This is the one that has the -- where you, if you
7 will, have communications with the new employees.
8 If you could turn to May 30, 2007, which is the
9 first page of Exhibit 4.

10 MR. TECKLENBURG: Can you put that up, please?

11 Q It says on here, Supervisor Safety Contact, W. K.
12 Deshazor.

13 Tell me why you would enter that entry in
14 going and visiting an employee?

15 A Yes. We do that for all employees. And it is a
16 way to, you know, make sure that you are
17 communicating, you know, safety and stuff
18 effectively and in a timely period.

19 So that day I went and saw Trumaine and met
20 with him. I, you know, that afternoon back at my
21 office would have documented that in the computer.
22 So that is what those three entries are.

23 Q And just to make it clear, your safety contacts,
24 which are what they are called, are they held on
25 any frequency?

1 A You know, I got the A28 there quarterly. I mean,
2 you absolutely need to make sure you are having
3 quarterly contact. It ought to be a lot more
4 recent -- a lot more frequent than that.

5 You know, the other one is a review of recent
6 incident. You know, at this point Trumaine has
7 been gone a couple of weeks. And inevitably there
8 is a few things that have happened out in the
9 districts and territories that you just want to
10 reinforce to him. You know, hey, this has
11 happened, and this is why we need to do this, and,
12 you know, just bring him up to speed.

13 Q With your offer of Gatorade, was there anything
14 from a safety perspective that you were trying to
15 emphasize?

16 A Definitely trying to emphasize the importance of
17 staying hydrated and, you know, working at your
18 pace and that aspect of our work, absolutely.

19 Q Now, do you know whether he ended the day without
20 any incident on May 30th?

21 A Yes. I mean, I was not given notice of any
22 incident and didn't know of any.

23 Q Okay. Did you hear anything negative that he had
24 any problems that day on May 30th?

25 A No, sir.

1 Q So we get to May 31st. And you have given up your
2 cell records as part of this case, is that right?

3 A Yes, sir.

4 MR. TECKLENBURG: And if we could put up
5 Exhibit Number 110.

6 Q You should also have a copy in your book,
7 Mr. Deshazor, if you need to refer to it.

8 Now, your name appears a few times on here, so
9 I would like to walk through this with you, okay?

10 A Okay.

11 Q It looks like your first -- your first entry or
12 first appearance of your name is at 2:26 p.m. on
13 May 31st.

14 Did you receive a telephone call?

15 A Yes. That is where Trumaine called me.

16 Q And tell me about that discussion.

17 A Trumaine was at Doane Pet Products, Dog Food. He
18 said that he wasn't feeling well.

19 You know, at which point I asked him, you
20 know, what did we need to do or what did he want to
21 do.

22 You know, he stated that he had his train
23 together, and at this point, you know, if it was
24 all right he would just as soon take his train back
25 to Columbia.

1 You know, obviously I reinforced that we
2 didn't need to worry about work or any of those
3 other considerations at that point, you know, what
4 was in his best interest.

5 And he said that, you know, he'd just like to
6 take his train back to Columbia.

7 Q Did he ask for any type of medical attention at
8 that point?

9 A No, sir.

10 Q If he had asked, what would you have done?

11 A Absolutely would have called medical, what do you
12 call it, called EMS. Probably would have notified
13 the dispatcher. That is our procedure. That is
14 something they do for crossing accidents or any
15 type of emergency. And get emergency help out
16 there.

17 Q But I guess that wasn't requested?

18 A No. Like I said, he just stated that he wasn't
19 feeling well, you know, which is -- I don't want to
20 say something common, but, you know, that is not
21 unlikely for someone to come to work and say, I
22 don't really feel well.

23 And, you know, at that point you ask them what
24 they want to do, what is in their best interest,
25 and proceed accordingly.

1 Q So it sounds like you relied upon what your
2 employee was telling you and how he felt?

3 A Absolutely. That is the only source of information
4 I have there.

5 Q Now, the next -- it looks like as soon as you hung
6 up with -- by the way, where were you? Do you
7 remember where you were on May 31st?

8 A I was actually returning from a rules compliance
9 check-up in Asheville, I believe it was.
10 Definitely off territory. So I was out of town, in
11 the process of driving back.

12 Q It sounds like you were a long way from Orangeburg?

13 A I was definitely a few hours away, yes, sir.

14 Q So it looks like as soon as you finished with Mr.
15 Moorer you called Mr. Stinson, basically at the
16 same time?

17 A Uh-huh.

18 Q First of all, who is Mr. Stinson?

19 A David Stinson at the time was the terminal
20 superintendent in Columbia, which would be my
21 direct superior, so I worked for David.

22 Q And as part of your work for Mr. Stinson, how often
23 do you communicate?

24 A With David it is, you know, it was every day,
25 several times a day.

1 Q So would this be unusual that you would call him?

2 A No, not at all.

3 Q And when you called him, you -- I know this is a
4 long time ago, but do you remember anything you
5 told Mr. Stinson after Mr. Moorer called you?

6 A It is -- it is a long time ago. I think I
7 definitely would have informed him, you know, any
8 time there is, you know, an operational, you know,
9 type thing going on, I think I definitely would
10 have told him, hey, the P28 is coming straight back
11 to Columbia, you know, the conductor said he is not
12 feeling well, so they will be arriving back in
13 Columbia shortly.

14 I think I definitely would have communicated
15 about, you know, the job I had just been doing up
16 in Asheville, it is a 12-hour assignment and, you
17 know, there is a lot of take-away from that. You
18 know, David would definitely be interested in that.

19 Q So when you were out of district and you do checks
20 outside of your area, is it your practice to
21 communicate your findings on to your supervisor?

22 A Absolutely. It has got to be done to actually
23 David's supervisor immediately following that, and
24 David reviews my monthly performance and those type
25 things, so I would have definitely communicated it

1 right then, you know, and then the different
2 circumstances around what happened out there.

3 Q Okay. And where was Mr. Stinson at that point?

4 A I believe he was, you know, in the Columbia area.
5 I couldn't pinpoint, but he was in Columbia.

6 Q So it sounds like Mr. Stinson could greet the
7 train, but you were too far away?

8 A Right. Right.

9 Q Now, at 2:58 the timeline shows you received three,
10 I believe the records will show, one-minute calls
11 with Mr. Connelly.

12 Who is Mr. Connelly?

13 A Tommy Connelly, the engineer on the Charleston
14 district. And he was Trumaine's engineer on that
15 day.

16 Q And what did he tell you?

17 A You know, at that point, let's see, they had gotten
18 up the road a little bit, and he called me to tell
19 me I guess they were somewhere around Kingville and
20 that Trumaine was still not feeling well and asked,
21 you know, if someone could meet them at Columbia.

22 Q Okay. And did Mr. Connelly ask for any emergency
23 assistance?

24 A He did not. You know, I remember asking him if we
25 needed to get Trumaine off the train right there.

1 And he said, no, we're, you know, we're making
2 good time. We're headed to Columbia. Just have
3 somebody meet us there.

4 Q Okay. And what did you mean -- when he said
5 somebody, what did you interpret that to mean?

6 A Right. I communicated that, you know, I would have
7 David Stinson meet him.

8 He said, yes, that would be great, just to
9 have him there.

10 Q In other words, he wanted to be greeted by some
11 supervisor?

12 A Right.

13 Q Was there any expression of direness, emergency,
14 anything like that from Mr. Connolly?

15 A Absolutely not.

16 Q And maybe I have asked, but it is important. Did
17 he ask for EMS help at all?

18 A He didn't. Like I said, and I asked, do we need to
19 get Trumaine off the train.

20 Q And I'm going to show you Exhibit 96. Where is
21 Kingville?

22 A Kingville -- you know, the Congaree River is right
23 about the 103. You see Kingville right here. So
24 just right in this area, right by the Congaree
25 National Park.

1 Q Okay. And how far would that be from Columbia?

2 A Going from the 103, the yard board at Columbia is
3 the 123.6, so we got about 20 miles.

4 Q And it looks like you had another call at 3:07. Do
5 you remember what that phone call was about?

6 A I don't. And, you know, given their location and,
7 you know, the choppiness of the call, you know, I
8 believe, you know, we were having some
9 communication issues as, you know, they are in the
10 middle of the Congaree Swamp and it is not unusual
11 to be dropping calls and calling back there.

12 Q And based upon this timeline, it looks like that
13 you didn't have any other communications with the
14 train?

15 A Right.

16 Q It does look like, though, you and Mr. Stinson
17 continued to talk from time to time?

18 A Right.

19 Q Fair enough. Now, you made these phone calls.
20 What was your next involvement with Mr. Moorner? Do
21 you recall?

22 A You know, from there I went to -- you know, I went
23 straight to Columbia. And I went to the -- I
24 believe I went to the hospital. You know, David
25 had been there and was handling those

1 communications. So, you know, I think following
2 that I -- nothing on that day.

3 Q Now, did you learn eventually that Mr. Moorer
4 brought a lawsuit against the company?

5 A Yes, sir.

6 Q How did you react to that?

7 A Well, you know, I was a bit surprised and, you
8 know, wondering about the nature of it or the
9 charges.

10 Q And the fact that you were surprised, did you
11 assist in trying to evaluate the situation?

12 A Absolutely.

13 Q Let me show you Exhibit 29. Tell us what Exhibit
14 29 is.

15 A Exhibit 29 is a -- it is an analysis of the P28 and
16 the work load from January 1st of 2007 to May 31st,
17 the day of the episode with Trumaine.

18 So that is a -- it is a compilation, an
19 average of the daily work load, how many cars they
20 take out of the yard, how many cars they bring
21 back, and, more importantly, how many customers
22 they worked in doing that.

23 Q And what were your -- and did you compile the
24 statistics that supported this?

25 A Yes, based off the daily scanner reporting for that

1 train.

2 Q So, explain that. Does the Norfolk Southern have
3 scanners that leave cars?

4 A Yes. Every car has got a tag, and when the train
5 leaves Columbia, every car is scanned, all in
6 order, everything is billed to a location. The
7 work is performed. And then on the way back the
8 cars are scanned in once again.

9 Supplementing that is actually the conductor
10 fills out a work order that says, you know, I have
11 put Car A at this location at this time, I brought
12 Car B out at that time. So all that data is
13 definitely captured from that. And that is what we
14 used here.

15 Q And based upon your review from January 1 of '07 to
16 May 31, '07, how many industries a day did the P28
17 have?

18 A The average there, you will see, it is fourth from
19 the left, it is 4.3 industries per day. And then
20 the industries are listed down below, and the big
21 hitters there to the right.

22 MR. TECKLENBURG: And if you could go to the
23 last page of Exhibit 29.

24 Q This spreadsheet appears to have days of the month
25 on the left-hand column, is that correct?

1 A That's right. That is May.

2 Q And how many industries were worked by the P28 on
3 May 30th?

4 A On May 30th they worked three industries.

5 Q And how about the day of the accident on May 31st?

6 A Just two.

7 Q And based upon I guess the data you compiled, what
8 did you conclude about the work loads on those
9 days?

10 A You know, you've got the number of industries, but
11 also the car counts, you know, leaving the yard and
12 returning. You know, you look at the 30th, the
13 11th -- 11 cars -- I mean, the 30th, 11 cars were
14 leaving and 13 coming back and three industries.
15 That is a slightly below average work load for that
16 job based upon the five-month period.

17 The 31st I would classify as a very light day.
18 It is seven cars leaving and six returning and just
19 two stops.

20 MR. TECKLENBURG: Your Honor, I move Exhibit
21 29 in evidence.

22 THE COURT: Any objection?

23 MR. MOSS: No.

24 (WHEREUPON, Defendant's Exhibit No. 29
25 was marked for identification and

1 received into evidence.)

2 MR. TECKLENBURG: May I publish?

3 (Exhibit published to jury.)

4 Q Finally, in addition to looking at those work
5 records, have you also looked at the wages of
6 persons that have been involved in this lawsuit?

7 A Yes, sir.

8 MR. TECKLENBURG: If we could put up Exhibit
9 104, I believe.

10 Q I'll show you Exhibit 104.

11 A All right.

12 Q Are you familiar with the employees listed on the
13 top here: Anthony, Brock, Walker, Rightmire, Blan,
14 Mitchell, Whaley, King?

15 A Yes, sir.

16 Q And were you there during the 2008 time period?

17 A I was.

18 Q Okay. And it looks like some of these employees,
19 for example, Mr. Blan did exceptionally well.

20 A (Nods affirmatively.)

21 Q Can you explain why that might be?

22 A Yes. Danny Blan is a guy, he actually lives up in
23 the Rock Hill-Charlotte area. We have three jobs
24 up there at the Bowater Paper Plant. It is around
25 the clock, 24-7, and those jobs work 12 hours a day

1 every single day, you know, with off days. And I
2 can't recall which of the jobs have which off days,
3 but 12 hours a day. So it is a considerable amount
4 of overtime there. So those jobs were definitely a
5 high -- a high-paying job, and, you know, Mr. Blan
6 worked those.

7 Q Mr. Deshazor, thank you for your time. And please
8 answer anything Mr. Moss has.

9 THE COURT: Yes, sir?

10 MR. MOSS: Sir, can you put up the cell phone
11 records, the actual records, please? Or just if
12 you'll have them ready, I'll tell you when, okay?

13 CROSS-EXAMINATION

14 BY MR. MOSS:

15 Q Hello, Mr. Deshazor.

16 A How you doing?

17 Q Fine, thank you.

18 Did you get a U.S. Army commission out of VMI,
19 or did you pay your way and then graduate with a
20 regular degree?

21 A I paid my way and went regular after that.

22 Q You didn't go to advanced camp with some of your
23 colleagues who were on ROTC scholarship and get an
24 army commission from the military?

25 A No, sir.

1 Q Because at VMI, some of the students you get to
2 train and then actually go on to active duty and
3 become a soldier, right?

4 A About 50 percent.

5 Q Right. You can go to airborne school or paratroop
6 school, ranger school, none of that stuff?

7 A No, sir.

8 Q Your management training came from Norfolk
9 Southern, not from the military?

10 A Yes, sir.

11 Q It sounds like you have had extensive training.

12 A Yes, sir, I would say so.

13 Q What about -- let me get organized here. What
14 about -- you have seen a lot of videos?

15 A Yes, sir.

16 Q Have you seen a video on how to properly manage
17 somebody who has had a heat injury?

18 A I can't directly recall one specifically.

19 Q Have you seen a video on how to properly counsel
20 somebody after they have a heat injury?

21 A Not that I recall specifically, no, sir.

22 Q Okay. Let's take videos aside. You have not
23 received any training at all from Norfolk Southern
24 personally on how to manage or counsel someone
25 after they have had a heat injury and they are

1 coming back to work, am I right?

2 A I just receive what is in the safety rules
3 regarding heat injuries.

4 Q Let's just answer my question, please. Have you
5 had any training of any kind whatsoever from
6 Norfolk Southern on how to properly manage and
7 counsel someone after they have had a heat injury?

8 A The training is from the rule book, but, no, not
9 classroom or anything like that. No, I have not
10 spoken to someone about it. I am just privy to
11 that information.

12 Q Well, do you know anything at all about how to
13 properly manage and counsel somebody who is coming
14 back from a heat injury?

15 A Like I said, aside from the normal practices of
16 hydration and work rest periods, no, sir.

17 Q Because I have asked you that exact same question
18 before, and your answer was, no, sir then; correct?

19 A Right. Nothing specific as far as, you know,
20 post -- right.

21 Q Heat injuries are different than broken legs and
22 cut injuries, right?

23 A Yes, sir.

24 Q How many days have you been assigned to work in
25 Charleston? What was your first day of work, I

1 guess?

2 A Well, I couldn't say with certainty. I got a call
3 one day in Georgia, said to be in Charleston that
4 evening, and I believe that was in early April.

5 Q Okay. And Mr. Moorers's first incident was in
6 early?

7 A May.

8 Q Maybe you had been on the territory 30 or so days
9 when the first incident occurred?

10 A Yes, sir.

11 Q You had been on the job there in Charleston less
12 than 60 days when the second incident occurred?

13 A Yes, sir.

14 Q I said -- I think you said the people that -- who
15 preceded you had been long-standing veteran
16 employees in the transportation department,
17 management specifically, right?

18 A Yes, sir, I said that.

19 Q Had you ever actually -- what was your exposure to
20 the P28 in this 30-day period?

21 A Oh. You know, I don't know that I could say
22 specifically. I would definitely have been out to
23 Orangeburg, observed the industries of that type,
24 possibly ridden the train out there. Like I say,
25 it being five years ago, I couldn't say with

1 certainty.

2 Q Okay. It sounds like you did a lot of hands-on
3 stuff. I mean, had you actually worked a day on
4 the P28 with the crew to know what they did?

5 A Like I said, prior to the incident, I couldn't say.
6 Certainly I would definitely have to familiarize
7 myself enough at that point to understand the job,
8 because that is the only way you can make
9 operational decisions.

10 Q Just answer the question. Had you worked a day on
11 the P28 before Mr. Moorer fell out or not?

12 A I had not worked an entire day with it, no.

13 Q He had been forced to that job, had he not?

14 A I believe so, yes, sir.

15 Q That means that he is the lowest man on the roster
16 and if nobody else claims the job he has to protect
17 it according to his work obligations, correct?

18 A Right, per the Collective Bargaining Agreement.

19 Q And then after he got hurt, the next man above him
20 on the roster would have taken over on June 1st,
21 would have been Jay Norwood?

22 A Well, at that point I think the job goes for bid
23 and once no one bids it, yes, once again the next
24 guy would be forced.

25 Q Forced. Not choose, forced?

1 A Right. If nobody bid that job.

2 Q And if Norwood said that he was forced after Moorner
3 was forced, you would have no reason to doubt that?

4 A No, sir.

5 Q It sounds like as a young up and coming manager you
6 had somewhat of a learning curve yourself to get
7 acclimated to the railroad?

8 A Yes, because the railroad is definitely a unique
9 environment. There is, you know, nothing that
10 trains you for that specifically as opposed to
11 general management skills.

12 Q Right. And so they put you in a classroom, but
13 then it sounds like most of what you had was
14 careful, good on-the-job training?

15 A Yes, sir.

16 Q Right. And that was because it takes time to get
17 your legs about you to be sure that you understand
18 things in context as opposed to just in the
19 classroom?

20 A Yes, sir, absolutely.

21 Q That is also true for these conductors. When they
22 go to a new job, they have got a learning curve so
23 that they know how to work the job efficiently,
24 well, and as safely as possible, right?

25 A Yes, sir.

1 Q And this job had been staffed with a conductor and
2 a brakeman before Mr. Moorer was -- had his
3 incident, correct?

4 A I believe it had, yes, before I was there.

5 Q Is it your opinion that it is safer with two or
6 with three people? That is, is it safer with a
7 conductor only or is it safer with a brakeman and
8 conductor?

9 A You know, that is a pretty big question. You know,
10 I think there is a lot of communication issues that
11 are resolved with only a conductor and engineer
12 which lends to the safety. And I think that is the
13 source of more incidents is communication
14 breakdowns.

15 Q All right. But it is not a big question, it is a
16 little question. Is it safer with a conductor and
17 an engineer, or is it safer with a brakeman and
18 conductor and engineer?

19 A For that I would say it is safer with a conductor
20 and engineer.

21 Q Okay. You are telling this jury that it is safer
22 with two people than three?

23 A Yes, sir.

24 Q It is safer with a conductor doing all the work
25 himself than if he has a brakeman with him, is that

1 what you are saying?

2 A Yes, sir, based upon my observations in that any
3 incidents generally arise between miscommunication,
4 moving, you know, three people as opposed to two.
5 So when you have direct communication, the
6 conductor telling the engineer, I want you to move
7 right now, I know I'm handling the derail -- you
8 know, a lot of times when you have a brakeman that
9 puts on a derail, the conductor didn't realize he
10 did it, and now he shoves equipment over and
11 derails.

12 Q When did you form this opinion?

13 A I've had this opinion, you know, over the years of
14 management, especially -- you know, take my work on
15 the Washington district. We had no brakemen on the
16 Washington district.

17 Q So when you came to the P28 you were delighted to
18 see that it was staffed with a brakeman -- I'm
19 sorry, with a conductor and engineer only because
20 you think that is the safest way to work the job,
21 right?

22 A I don't know that delighted -- you know, I --

23 Q Well, you think it was consistent with what you
24 thought was safe practice or the safest practice,
25 right?

1 A I already said I don't -- I don't -- that is not
2 something I'm actively, you know, looking at as far
3 as, you know, I don't know --

4 Q Well, we are. We are actively looking at that.

5 A Right. I believe the jobs were staffed accordingly
6 in Charleston when I arrived. I was not delighted.
7 I thought it was staffed accordingly.

8 Q So for a guy like Trumaine Moorner, do you know when
9 his first time on the P28 was, his first day?

10 A I believe, you know, since being marked up or
11 qualified, I believe it was the 7th or 8th.

12 Q So the four days that we know he worked this job
13 were really the only four days he ever worked this
14 job, right?

15 A Aside from his training, at which point he worked
16 the job.

17 Q And guess what? In his training, how many people
18 were on that job?

19 A I don't know.

20 Q If you learned that Roger Davis trained Trumaine,
21 Roger Davis would have been the conductor and
22 Trumaine would have been the brakeman and there
23 would have been an engineer, there would have been
24 three people on the job during training, right?

25 A That's right. However, a conductor trainee can't

1 leave more than an arm's length of a conductor. It
2 is just a -- it is an extension of the conductor.

3 It is not a --

4 Q They walk around and shadow the conductor?

5 A Right.

6 Q So under your two-man-is-the-safest-way-
7 to-do-the-job theory, it is really okay to have a
8 ACT with the conductor as long as he just stays
9 with him in the shadows, is that kind of what you
10 are saying?

11 A He has to stay there under his direct supervision,
12 absolutely.

13 Q You don't want him working because there might be a
14 communication issue?

15 A No, he works, he is just right there under direct
16 observation.

17 Q He works what, holding his hand? What does he do?

18 A He works there. You know, if you have got to tie a
19 hand brake, the conductor is standing there and the
20 conductor trainee gets up and ties the hand brake.
21 The conductor is able to observe him, his posture
22 and his form, you know, and things he does. That
23 is how we do it.

24 Q You do have to get up on the rail cars on the P28
25 to tie those hand brakes sometimes, right?

1 A If you weren't using a brake stick.

2 Q But you do have to. I think the point is you might
3 have to get up on those rail cars, right?

4 A Yes, absolutely.

5 Q How demanding is that P28 job? Or do you know? I
6 mean, I don't want to put you --

7 A I mean, I definitely -- I have ridden that job
8 beginning to end and ridden all the movements and
9 been there step for step. I mean, I would say it
10 is a normal local -- a normal local road job.

11 Q Is it a different job for somebody who has had a
12 prior heat injury, Mr. Deshazor? Or am I asking
13 you a question that is beyond the scope of your
14 expertise?

15 A I was about to say, I don't know that I have that
16 frame of reference.

17 Q That's not fair. I won't do it.

18 When you are inside of the engine -- I think
19 you said you actually went to the engine on the
20 30th with your assistant and saw Mr. Moorer late
21 that morning?

22 A Yes, sir.

23 Q It was hot inside that engine, was it not?

24 A I think it was hot outside generally, yes, sir.

25 Q I'm asking about inside the engine. Was it hot

1 inside the engine when you went there on the 30th?

2 A It was as hot as it was outside.

3 Q The same?

4 A Yes, sir.

5 Q Windows down?

6 A Yes, sir.

7 Q Ninety-one degrees is my recollection as the high
8 temperature on the 30th. Does that jibe with your
9 recollection?

10 A Yes, sir.

11 Q About 88 degrees the next day?

12 A Yes, sir.

13 Q When Trumaine said that his first incident wasn't
14 work related, you understand that he was trying to
15 work with you so that this didn't have to be
16 reported as an on-the-job injury, correct?

17 A You know, I maintain that there was absolutely no
18 pressure or direction --

19 Q I'm not saying that, that's not what I'm saying.

20 I'm saying he was working with you, wasn't he?

21 A I mean, in his mind he could -- yes, he could feel
22 that way.

23 Q It helps if it is not reported as on-the-job,
24 correct?

25 A Like I said, I think that is a stretch, it helps.

1 I don't think there is any --

2 Q For reporting purposes, it is better for the
3 railroad to not have an on-the-job injury, correct?

4 A It changes reporting, yes, sir.

5 Q Thanks. I think you also said that no matter how
6 he hydrated before the first incident, you had
7 every possible reason to believe that he hydrated
8 perfectly, beautifully and sufficiently before the
9 second incident?

10 A Oh, before the second incident, yes, sir.

11 Q You came out there with stuff and he said, I've got
12 all I need?

13 A He said, yes, I have been drinking a ton of stuff,
14 absolutely.

15 Q Water, Squinchers, Gatorade. You have no
16 criticisms of any kind of Mr. Moorer's hydration of
17 himself with the second incident?

18 A Not that, you know, I'm aware of or I definitely
19 did not observe it, so -- but no reason to
20 disbelieve that he was properly hydrated.

21 Q Speaking of that, if he would have done something
22 wrong in violation of one of these rules in Exhibit
23 Number 95, would you have been the person to charge
24 him with it?

25 A If I observed it, yes. I would have to have direct

1 observation.

2 Q Okay. You also can investigate, can't you?

3 A Yes, sir.

4 Q And then charge?

5 A Yes, sir.

6 Q You don't have to see it, you can follow up and
7 then charge if you think it is appropriate, right?

8 A Well, if there were an incident, you know, say a
9 derailment. Obviously that would be investigated
10 after the fact and charged.

11 Q And on-the-job injuries are all investigated?

12 A Yes, sir.

13 Q And one of those exhibits is all the big summary of
14 your investigation, isn't that right?

15 A Yes, sir.

16 Q Did you charge him with violating any of these?

17 A No, sir.

18 Q That is because you didn't think he did, right?

19 A Are we talking -- which one are we talking about?

20 Q You didn't charge him with any rule violations
21 either time because you didn't think he violated
22 any rules, right?

23 A Like I said, there is a safety rule regarding
24 hydration. I think when a guy has had an incident
25 like that I don't need to pour salt in the wound

1 and criticize, you know, how he went about it.

2 Q Mr. Blan made a lot of money because he works hard?

3 A Yes; sir.

4 Q And at the railroad conductors had the opportunity
5 if they had the motivation to work hard and make a
6 lot of money?

7 A Yes, sir, as long as the volume is there.

8 Q And what we see is a disparity in some of the
9 people's wages because some people like their days
10 off and some people like the money?

11 A Very well put, yes, sir.

12 Q Thank you. And if somebody works overtime
13 generally in their life, you do not expect them
14 whether they are at the railroad or some other
15 place to continue to work overtime?

16 A Yes, sir.

17 Q And you like Trumaine? Do you like him?

18 A Yes, sir.

19 Q Good guy?

20 A Yes. No, we got along. Like I said, I tried to
21 help him out when he was trying to come back. I
22 have no issues with Trumaine.

23 Q Great. Thank you.

24 MR. MOSS: Can you put up the cell phone
25 records, please? Would you highlight the 2:26

1 call, the initial call to Mr. Moorer's cell phone?
2 (843)437. Thank you.

3 Q That call lasted?

4 THE COURT: They can't see.

5 MR. MOSS: I'm sorry. My bad.

6 Q Okay. That was a one-minute phone call, so there
7 was a lot of information contained in that phone
8 call, right?

9 A Yes, sir.

10 Q I mean, we can't look at the minutes to know how or
11 how much information or how important the
12 information was that was conveyed, right?

13 A Yes, sir.

14 Q In that one-minute call you knew, you had a
15 discussion about how he was feeling, what he should
16 do about bringing the train back?

17 A Yes, sir.

18 Q And then the next call, I think one minute later, I
19 think you called your boss, I think you called
20 Mr. Stinson?

21 A Yes, sir.

22 Q Who was in charge of this situation at 2:26 p.m,
23 Mr. Deshazor? Was it you or was it Mr. Stinson?

24 A At 2:26 I received -- when I received the call from
25 Trumaine, he told me how he felt and what he wanted

1 to do. I was definitely in control or in charge of
2 that situation.

3 You know, I called David to inform him of what
4 was going on and then, as we discussed, to catch up
5 on other things. Like I said, at that point I
6 would say I was still in charge of the situation.

7 Q So you got a lot of information exchanged, you and
8 Mr. Stinson, in that one-minute phone call of 2:26,
9 right? You talked about work and you talked about
10 Trumaine?

11 A Well, if that one was one minute, I was referring
12 to, I guess we have mentioned earlier, I guess, the
13 later one for a couple more minutes, but, yes, I
14 think I was just giving him a heads-up that I had
15 the P28 coming back without, you know, without
16 doing any more work and the conductor had relayed
17 he wasn't feeling well.

18 Q Y'all talked at 2:34 for seven minutes?

19 A Yes. And that is what --

20 Q That is probably when you had your substantive
21 conversation?

22 A Yes.

23 Q At what point did you -- or did you ever pass the
24 responsibility for this moving train with Mr.
25 Moorer on to Mr. Stinson, or did you maintain

1 management control of this decision the whole time?

2 A I would say effectively when it was arranged that
3 David would meet the train due to the fact that he
4 was there in Columbia and could do so, I mean, I
5 guess at that point he would be in charge of the
6 movement and in charge of that operation.

7 Q Was that the 2:34 call?

8 A Like I said, I'm not positive. It would have been
9 following when I talked to Tommy Connelly, the
10 engineer, later.

11 Q Okay, great. 2:58. 2:58 is the first
12 communication you had with Mr. Connelly?

13 A Okay.

14 Q And, importantly, it was Mr. Connelly who called
15 you, not you who called Mr. Connelly?

16 A That's right.

17 Q Did you try to call Mr. Connelly in the interim
18 between 2:26 and 2:58, Mr. Deshazor?

19 A No, sir.

20 Q This is important. In that phone call he told you
21 then that Mr. Moorer was doing worse, did he not?

22 A He said he was still not feeling well and, yes, he
23 may have said he was getting a little worse, yes.

24 Q Now, this is really important. Your understanding
25 of where the train was at 2:58 is what?

1 A That it was near Kingville. You know, like I said,
2 around the Congaree Swamp area.

3 Q Milepost 103, 4, what?

4 A Yes, I would say 102 to 106, that little range.

5 Q 102 to 106. I'll give you a chance to take that
6 answer back if you want it.

7 A I mean, like I say, I believe they were in that
8 area. They were there in the Kingville-Congaree
9 area. Like I said, they left -- what is the
10 timeframe. They left Orangeburg about 30 minutes.
11 Orangeburg is around the 80 milepost. So that puts
12 them around the 100.

13 Q You are just doing the math in your head to try to
14 figure out where they are. Did Mr. Connelly tell
15 you? I want to be fair to you, because this is an
16 important question.

17 A Like I said, Mr. Connelly relayed, you know, we are
18 around Kingville, we, you know, we're in that area,
19 we're 20 miles or so from Columbia.

20 Q They were still on the, I guess they kind of made
21 the turn and they were right at the Charleston side
22 of the swamp, if you kind of take 102 as the break
23 there?

24 A Okay.

25 Q All right.

1 MR. MOSS: Sir, would you put up the timeline
2 which is the May 31st, 2007 timeline? Can you
3 highlight the entry, please, at 3:12?

4 Q What does that tell you, Mr. Deshazor?

5 A The track authority issued to P28 to proceed from
6 101 to Andrews Yard.

7 Q We know for sure that they were not on the Columbia
8 side of 101 until after 3:12, right?

9 A Yes, sir.

10 Q Because that authority means they cannot be beyond
11 101 until after 3:12? Will you agree about that?

12 A That is incorrect.

13 Q Okay.

14 A The track authority here gives them authority to
15 the 104.

16 Q Okay.

17 A So they have movements to the 104.

18 Q All right. So if anything they are farther up the
19 track?

20 A They can be as far as the 104 at that point.

21 Q All right. If we count backwards -- if we count
22 backwards --

23 MR. MOSS: Can you put the cell phone calls
24 back up?

25 Q We're working backwards from 3:12. Would you agree

1 that at 2:58 you learned from Mr. Connelly that
2 Trumaine was worse. At 2:59 you called him,
3 correct?

4 A I called Tommy?

5 Q Yes, sir?

6 A Like I said, I figured -- I can't recall directly,
7 but, I mean, I think it is very logical that our
8 call broke up, I called back, that type.

9 Q In that phone call he told you again that Trumaine
10 was worse?

11 A Yes, he said he was still doing badly. And I say
12 he may have said he is doing worse, you know.

13 I asked him specifically did we need to get
14 Trumaine off the train right there.

15 He said no. He said, we're fine, we're headed
16 to Columbia.

17 MR. MOSS: Would you highlight the
18 3:00 o'clock phone call also?

19 Q You called him back, right?

20 A Yes, sir.

21 Q He told you Trumaine was worse in that phone call
22 too, didn't he?

23 A I definitely don't think I could say that. Like I
24 say, we have three one-minute snippets where we
25 were probably losing communication.

1 Q I didn't hear you say anything about losing
2 communication when you were talking to
3 Mr. Tecklenburg.

4 A I think I said that given the area and one-minute
5 little short phone calls I think it is very
6 reasonable.

7 Q I tell you what, we'll ask Tommy.

8 A Okay.

9 MR. MOSS: 3:07. Would you highlight that,
10 please, sir?

11 Q That is a two-minute call. Is that a dropped call?

12 A I don't know, sir.

13 Q He told you that Mr. -- let's see, Connelly called
14 you back that time, right?

15 A Yes, sir, that is an incoming call.

16 Q You talked for two minutes and in that phone call
17 he told you that Trumaine was getting worse?

18 A Like I said, I don't know when that was conveyed in
19 that exchange.

20 Q And then at 3:12 there is permission right in here
21 to actually get up the road from the other side of
22 the swamp, correct?

23 A Right. Northwest of the 104.

24 Q So it is likely that these phone calls between 2:58
25 and 3:07 would have occurred when the train was not

1 up here, but actually at 49 miles an hour was back
2 here in the Fort Motte coming out of St. Matthews
3 area, correct?

4 A I mean, it would depend on, I guess, you know, the
5 way it broke out. I couldn't say certainly where
6 the train was.

7 Q If you do the math, at 49 miles an hour, if they
8 are at -- they are probably not past 101 and
9 certainly not past 104. If you work backwards,
10 they would have been back here in the Fort Motte
11 and St. Matthews area, correct?

12 A You don't know that they weren't stopped up there
13 at the swamp waiting to get the track authority.
14 You know, they have to contact the dispatcher to
15 get that authority. Very often a train runs up to
16 its limits, at which point it has to then get
17 additional authority. So --

18 Q We don't want to guess, do we?

19 A What's that?

20 Q We don't want to guess, do we?

21 A Absolutely.

22 Q You don't have any idea if that train was stopped?

23 A Like I said, aside from -- yes. Aside from my
24 recollection of the conversation that day, I have
25 no idea where that train was.

1 Q And if you knew the man was getting worse and
2 receiving phone calls, would you have the authority
3 from your supervisor to actually give them
4 authority so that they didn't have to stop?

5 A They don't need me to give them that authority.

6 Q Well, I thought you said they might have to stop.

7 A Stop as far as?

8 Q If you have got a man on a train who is not doing
9 well, is there a way that you can just let them
10 keep going so that they don't have to stop if they
11 are trying to get back to civilization?

12 A At that point -- I can -- I can -- I or they can
13 contact EMS and have that route, but I definitely
14 cannot give them dispatch authority to just
15 proceed. I don't know that there is not a
16 conflicting movement out there, so I definitely
17 can't tell them to go barreling down a track that I
18 know nothing about.

19 Q Right. So if Mr. Moorer is having a problem on the
20 engine and Mr. Connelly reports that he is having
21 problems, they might actually be stuck stopped
22 somewhere on the Orangeburg side of the Congaree
23 Swamp somewhere in the Fort Motte or St. Matthews
24 area, right?

25 A Yes, sir, that could be.

1 Q And there is a EMS facility right there in St.
2 Matthews, right?

3 A I don't know. I take your word for it.

4 Q Well, I mean, it goes right through the town, you
5 know that?

6 A Oh, yeah, absolutely.

7 Q That train goes right down the middle of St.
8 Matthews?

9 A Yes. Yes.

10 Q And there is civilization, if you will, certainly
11 paved rail crossings as far up the track as Fort
12 Motte, correct?

13 A Yes, there is definitely periodic crossings, yes.

14 Q And once you come around the turn you come out of
15 the swamp, I think it is about seven miles, do we
16 agree, the swamp roughly?

17 A Yes, that sounds right.

18 Q Cell service picks back up?

19 A Yes. Like I said, it is definitely spotty. I
20 spent two years in going through that area. It is
21 spotty.

22 Q Now, are there any paved rail crossings in here as
23 you start coming up towards Columbia, arteries, if
24 you will, before you get to the yard?

25 A I think there is a handful, six to eight that are

1 decent size. I think the biggest would be Bluff
2 Road about the 110.

3 Q Okay. Track speed when you get to the yard limits
4 goes down to 10 miles an hour for the last three
5 miles once you hit the yard limits to the Old Maude
6 shack, right?

7 A I think it is two and some change, yes, sir.

8 Q I'm sorry?

9 A I said I think it is two and some change.

10 Q Okay. Fair enough.

11 A Yeah.

12 Q But basically the speed limit is 49 the whole way
13 down to 10 once you get inside the yard limits?

14 A Yes, sir.

15 Q All right. I got -- you told me and I got
16 sidetracked. Stinson took control of this
17 situation when?

18 A Like I said, I would say when I called him and
19 after talking with the crew and, you know, said
20 that they'd like to have, you know, someone meet
21 them. And I told them that it would be David
22 meeting them. Like I said at that point, you know,
23 there is definitely no baton or anything that is
24 handed, but I would say at that point he is on
25 location and going to be handling that situation.

1 Q Did you tell Mr. Stinson that Mr. Connelly had told
2 you repeatedly that Mr. Moorner was getting worse?

3 A I don't know. I don't think I could say that he
4 said it repeatedly. That was one exchange. I
5 asked him if he needed help, if he needed to be
6 taken off the train.

7 They said, no, we are going to Columbia. That
8 is what I relayed to David.

9 Q We'll ask -- we'll ask Tommy about that.

10 A Fine.

11 Q Those are all my questions. Thank you.

12 THE COURT: Yes, sir, Mr. Tecklenburg.

13 MR. TECKLENBURG: Your Honor, just a couple
14 more questions.

15 REDIRECT EXAMINATION

16 BY MR. TECKLENBURG:

17 Q Mr. Deshazor, can you turn to Tab 3?

18 A Yes, sir.

19 Q Tell me what that is.

20 A Let's see, this is a work history for Trumaine.

21 Q And what is a work history?

22 A You know, conductors are -- or conductors and
23 engineers are called a crew call system from
24 Atlanta. You know, they are called and placed on
25 assignment. And that crew call system is a

1 computer-based system. And this documents every
2 job that he's been on, how long, how his pay is
3 generated, you know, just a kind of catch-all work
4 system.

5 Q All right. Could you turn to the entry for
6 March 13th, 2007?

7 A All right.

8 Q And look at the screen, please, as well. First of
9 all, who is this employee for? Is this for Mr.
10 Moorer?

11 A It is for Trumaine, yes, sir.

12 Q All right. Mr. Moss asked you whether you had made
13 any accommodations, if you will, for Mr. Moorer on
14 his, quote, first day, May 8th? What does his
15 record indicate in Mr. Moorer's work record for
16 March 13th?

17 A It shows him working the P28 on March 13th.

18 Q So he worked the P28 prior to May 8th?

19 A Yes, sir.

20 Q Based on his work records?

21 A Yes.

22 MR. TECKLENBURG: Your Honor, may I publish,
23 republish Exhibit 3?

24 THE COURT: Yes, sir.

25 MR. MOSS: No objection.

1 (Exhibit published to jury.)

2 Q And after he worked the P28 in March, did he convey
3 to you any problems he had with the job?

4 A No, sir.

5 Q In going back to the job in May, I think you have
6 already answered this, but did he ask for any help?

7 A No, sir.

8 Q And I want to move on to something else, which is
9 the geography that we've been going through here.
10 And with respect to the SC line on Exhibit 96,
11 whether Mr. Connelly is, you know, at Fort Motte
12 way up here or Kingville right here, when he was
13 making those calls, do you know exactly where he
14 was?

15 A No, sir.

16 Q Okay. All you knew is that based on the timeline
17 he had authority during that time to go to what
18 milepost?

19 A I think he had to the 104. And then following that
20 he got to the 101 to Columbia, which means when he
21 gets that he has got to be -- he's got to already
22 be past the 101 because when that authority hits,
23 you know, he would have lost previous. So he's got
24 to be --

25 Q So when he left Orangeburg at 2:28 --

1 A Yes.

2 Q -- he had authority to go to SC 104?

3 A Yes, sir.

4 Q So is it the practice of an engineer to get
5 additional authority before they get to that point?

6 A Definitely, you know, they attempt to. I mean,
7 that is the practice, before you can go past 104,
8 yes.

9 Q So when this track warrant was issued at 3:12, if
10 it was to proceed from 101, would he have to be
11 past the 101 at that point?

12 A Yes, because when you get that new track authority,
13 when you get it, it voids your old one, so you've
14 got to have that overlap where he actually is.

15 Q So we don't -- based on this timeline, at 3:12 p.m.
16 on May 31st, he would have been somewhere between
17 SC 101 and SC 104, would he not?

18 A Right, yes.

19 Q And what is the closest city to that area, if you
20 want to call it a city?

21 A I mean, you've got -- it is right in between
22 Kingville and Fort Motte, which, I mean, Kingville,
23 once again, a city is a stretch.

24 Q All right. So if Mr. Connelly tells you, I'm near
25 Kingville --

1 A Yes. I have been to Kingville. I don't enjoy
2 being in Kingville. It is pretty sparse.

3 Q All right. So by looking at the track warrants,
4 you could figure out where that span is the train
5 was at the time that authority was given?

6 A Right. Yes, definitely, give or take a little bit,
7 absolutely.

8 Q Do you give track warrants?

9 A I don't. The dispatcher does in Greenville.

10 Q Thank you very much.

11 RECROSS-EXAMINATION

12 BY MR. MOSS:

13 Q And so if we can put him in a little window, we can
14 then take the cell phone records and the speed of
15 the train and work backwards to see where the train
16 was when the calls were made to and from
17 Mr. Connelly to you, right?

18 A You know, without getting into a SAT math problem,
19 I think given the speed assumptions and stuff we
20 can put him in a window, yes.

21 Q And that window is somewhere on the Orangeburg side
22 of the swamp when those phone calls were coming
23 through?

24 A Right.

25 Q Who on the train was actually -- since we are

1 talking about track authority, two questions. Who
2 was actually doing it on this trip?

3 A Getting the track authorities?

4 Q Right?

5 A I don't know. I'd have to see them because it
6 definitely has, copy by, but I would have to see --

7 Q Well, it is a conductor's job to do that?

8 A I don't think that is fair. Conductors and
9 engineers get track authorities all the time.
10 Brakemen get track authorities.

11 Q Mr. Moorer wasn't actually getting any track
12 authorities because he couldn't get any track
13 authority, isn't that true, Mr. Deshazor?

14 A I don't think I could say that.

15 Q Well, he certainly wasn't calling you on the phone
16 because he couldn't call you on the phone
17 physically, right?

18 A I don't know that he couldn't. Like I said, the
19 engineer called me. You know, I don't know that
20 that was due to his ability or inability to do
21 that.

22 Q Did you ever ask to talk to Trumaine after you
23 learned from Mr. Connelly that he was -- that
24 Trumaine was getting worse?

25 A I didn't because, like I said, there was no

1 conveyance of an emergency situation. I -- you
2 know, Tommy, speaking with Tommy, he is right there
3 with Trumaine, I have no reason to -- there was no
4 alarm generated there from the conversations with
5 him.

6 Q Right. Three, four phone calls in a 9-minute
7 period for a guy who has been in the hospital 30
8 days before that doesn't generate any bells or
9 whistles to you, Mr. Deshazor?

10 A Like I said, a couple of calls. I -- like I said,
11 given what they were telling me, because I'm not
12 there, they did not convey that there was an
13 emergent situation.

14 And I had offered and asked, do we need to
15 stop the train and get him off.

16 They are right there. They said no.

17 Q They or he?

18 A Trumaine and Tommy in the engine. I'm speaking
19 with Tommy.

20 Q You can say the answer. Tommy said it, not
21 Trumaine?

22 A Tommy said it, absolutely.

23 Q Thanks.

24 THE COURT: All right, you may step down.

25 (Witness steps down.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, we will continue with the Defendant's
4 case. I will ask Mr. Tecklenburg to call his next
5 witness.

6 MR. TECKLENBURG: Thank you, Your Honor. We
7 call Tommy Connelly.

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

10 (Witness complies.)

11 THE CLERK: Do you solemnly swear or affirm
12 the testimony you are about to give in this case
13 will be the truth, the whole truth, and nothing but
14 the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Have a seat in the
17 witness stand, please.

18 (Witness complies.)

19 THE BAILIFF: State your full name.

20 THE WITNESS: My name is Thomas Connelly.

21 THOMAS CONNELLY,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. TECKLENBURG:

25 Q Good afternoon, Mr. Connelly. Tell us about

1 yourself. How old are you?

2 A I'm 57 years old.

3 Q Where are you from?

4 A Branchville, South Carolina.

5 Q Tell us about Branchville. What is it known for?

6 A It is the oldest railroad junction in the world.

7 Q How long have you lived there?

8 A Most all my life.

9 Q And are you employed by Norfolk Southern?

10 A Yes, sir, I am.

11 Q What do you do for them?

12 A I'm a locomotive engineer.

13 Q How long have you been an engineer?

14 A Approximately 20 years.

15 Q How long have you been with Norfolk Southern?

16 A Thirty-four years.

17 Q Congratulations. Tell me about the P28. Have you
18 worked that before?

19 A Yes, sir, I have.

20 Q How many years do you think you worked the P28?

21 A Off and on I have probably worked the P28 probably
22 15 years maybe.

23 Q Out of your 34 years at Norfolk Southern, I would
24 assume you are a pretty senior guy?

25 A Yes, sir.

- 1 Q And you can get the jobs you want?
- 2 A Yes, sir, pretty much.
- 3 Q On the P28, do you actually claim that job or go on
- 4 the extra board?
- 5 A Sometimes I can claim it. A lot of times, yeah, I
- 6 can bid it in as a regular engineer.
- 7 Q You can bid it in?
- 8 A Yes, sir.
- 9 Q And what does that mean?
- 10 A That when the vacancy is available that I can put a
- 11 written bid in to let that be my regular job.
- 12 Q And why would a person with your seniority bid the
- 13 P28?
- 14 A It is a good job. It is 5-day-a-week local freight
- 15 and gives you weekends off.
- 16 Q Now, we're here about events that happened in
- 17 May 2007. Who was your supervisor back then?
- 18 A Supervisor out of Charleston was Will Deshazor.
- 19 Q Tell me about him. How is he as a supervisor?
- 20 A He was a very good supervisor.
- 21 Q Why do you say that?
- 22 A Because he -- anything you -- if you had a problem
- 23 and you needed his help, he would help you. And if
- 24 he needed something, I would do for him because he
- 25 would do for me. He would do for everyone, so --

1 Q I think everyone just got a chance to meet him.
2 And right now he's 28 years old. Seems kind of
3 young. Do you agree with that?

4 A He is young, but he is a very good supervisor. You
5 can tell the people who know what they are doing
6 when they come by the way they act and how they --
7 the mannerisms they use. And he is a very good
8 supervisor. He is one of the best.

9 Q When you encountered him in 2007, did he give you
10 any feeling of whether he knew the job or not?

11 A Yes, sir. I felt that he did know his job.

12 Q Now, I want to talk about the P28 a little bit.
13 Have you worked that job with a number of
14 conductors, including Mr. Moorer?

15 A Yes, sir, I have.

16 Q And do you sometimes get assigned newer conductors,
17 folks that maybe are -- have been out of training
18 four, five, six months?

19 A Yes, sir.

20 Q And when that happens, tell me what you see your
21 role is as an engineer?

22 A As an engineer, I pretty much, if there is any way
23 I can help him, I will. I tell them all that I
24 know they are new and there is a way that they can
25 do things, that they want to -- they are going to

1 do it their way, but if there is a way I can help
2 them see the short -- another way to do it that
3 might be easier for him and take less time, I'm --
4 you know, or if there is something that he doesn't
5 understand about the way things should be done, all
6 you got to do is ask. I will be more than happy to
7 help.

8 Q I guess one thing that -- would you agree that one
9 thing that every crew member may have in common is
10 they want to get home at the end of the day?

11 A Yes, sir.

12 Q So as an experienced engineer out there, would you
13 offer advice to new conductors?

14 A Yes, sir, I would.

15 Q And engineers on the Norfolk Southern, does it take
16 a while to become one?

17 A Yes, sir.

18 Q And are the folks that are engineers, do they
19 usually have an experience doing another job before
20 they become an engineer?

21 A Yes, sir, they do.

22 Q And what job is that usually?

23 A Normally you would work from a conductor job to an
24 engineer's job.

25 Q So if you wanted to be an engineer now on the

1 Norfolk Southern, what is the typical waiting
2 period from the time you start a conductor to the
3 time you can really get some good engineer work?

4 A Well, when I came to Norfolk Southern, I worked as
5 a conductor, a freight man, a flag man for 20
6 years -- I mean, 14 years, excuse me, before I was
7 even eligible to go to engineer school.

8 I'm not sure how it is now as far as the exact
9 time length of period that they go through now from
10 the time that they work as a conductor until they
11 go to engineer training. They have changed things
12 I think a little bit and they do go to engineer
13 training a little bit, but I think a little bit
14 sooner, but not a whole lot.

15 Q And I guess what I'm getting at, if a conductor
16 gets on a train in the Charleston district, is
17 there usually someone on board that is the engineer
18 with a level of experience?

19 A Yes, sir, it is.

20 Q Now, I want to show you a timeline that is dated
21 May 30th. It is Exhibit 109. You have seen this
22 before?

23 A Yes, sir, I have.

24 Q And I want to ask you a little bit about this day.
25 Were you with Trumaine Moorer on May 30th, 2007?

1 A Yes, sir, I was.

2 Q She'll put it up -- or he'll put it up on the
3 screen. You can see it on your screen if you need
4 to refer to it, okay, if you can't read it. Can
5 you read it okay over here?

6 A Yes, sir, I can see it.

7 Q Okay, good. Now, I don't want to go through
8 everything on here, but I want to ask you a little
9 bit.

10 Before you leave Andrews Yard, which is here
11 in Columbia, is the locomotive supplied with a
12 cooler or water or anything like that?

13 A Yes, sir, it is.

14 Q And what do you do when you are getting ready to
15 leave? Tell me the tasks that are performed.

16 A First you report to the yard office, and that is
17 where the conductor and engineer get all their
18 paperwork and talk with the yardmaster and get a
19 job briefing from the yardmaster as to where our
20 train is located, whether or not our engine is on
21 the train or whether it is in the diesel shop, and
22 we're also told about any safety, the safety
23 statistics for not only the division but for the
24 district. And the rules of the day. And if there
25 is any -- just a full job briefing as to how things

1 go and as to where your train is at.

2 Q So when you start out the job, you have this
3 briefing. Tell me about what is the rules of the
4 day. What is that about?

5 A They have a -- usually they have a, like a calendar
6 that has rules printed on it, that today this is
7 the main rule that, you know, we want to emphasize
8 this rule to refresh your memory of the rules that
9 you work by.

10 Q And are those safety and operational rules?

11 A Yes, sir, they are.

12 Q The ones in this gray book that has been marked as
13 Exhibit 95?

14 A Yes, sir.

15 Q Do you have one of these?

16 A Yes, sir, I do.

17 Q All right. So you get your briefing. And then it
18 sound likes you go find your train.

19 A Yes, sir.

20 Q What happens next?

21 A Well, once you are through with your job briefing,
22 if the engine is not on your train, it is in the
23 diesel shop, you go to the diesel shop and get your
24 engine. And then you get on your engine and check
25 and make sure everything that you are supposed to

1 have is there. If not, you get hold of the service
2 attendant in the engine room and he'll make sure
3 that you have everything.

4 Then you come out of the -- you line yourself
5 up out of the diesel shop after getting permission
6 from the yardmaster, and he gives you a route to
7 take to whatever track your train is on.

8 Q A route for the yard?

9 A Yes, sir.

10 Q Okay. And then what happens?

11 A You come out and you conduct lines -- what
12 necessary switches and derails that are necessary
13 after you have done a engine brake test, day line
14 watch switches and derails that are necessary to
15 get to the location that you need to do, to get
16 where your train is at.

17 Q And do you receive these, what are referred to on
18 this timeline as track warrants?

19 A You do. Once you have already gotten your train
20 and are ready to leave the yard to depart, you have
21 to have a track warrant in order to leave the yard
22 and get on the mainline.

23 Q It indicates on May 30th at 9:34 that there was a
24 track warrant for a work-between between the SC71
25 and the SC78, which the SC71 and 78 would be where

1 on here, sir?

2 A It should be -- 71 is here, which is Rowesville.
3 And the 78 is right here, which is between
4 Rowesville and -- well, just almost to Orangeburg.

5 Q Okay. And what happens when you have that
6 work-between between 71 and 78?

7 A That means that you can work between those two
8 points going in either direction without having to
9 get another track authority.

10 Q And there is a description on here of running
11 around the train.

12 A Yes, sir.

13 Q Tell me what that is.

14 A That is where you pull your train down and you are
15 basically going from one end of the train to
16 another through another track.

17 Q Okay. And where is that done?

18 A Normally at Rowesville at the SC71.

19 Q And when you say there is another track, does that
20 mean there are two tracks?

21 A Yes, sir, there is two tracks, one right beside the
22 other.

23 Q What is the purpose of running around the train?

24 A Well, you have gone as far west -- east usually as
25 you need to go, so you are going to go back so you

1 can work the industries going back towards --
2 coming back towards Columbia. So you have to run
3 around it to get to the other end of the train to
4 do your work so you can go back to the industry to
5 do your work.

6 Q And you keep using the phrase run around, but I
7 think once I ask you this maybe you can tell us,
8 what do you do with your engine when you run around
9 the train?

10 A You -- after the conductor ties the train down and
11 you do a proper test to make sure that the hand
12 brakes that the conductor tied on holds, then you
13 detach -- turn out the air from between the engine
14 and the cars and do what we call cutting off, in
15 other words, just detach the engine from the cars.
16 We go to the end of the track to the switch where
17 the conductor lines the switch and derail if the
18 track has a derail. And you go in the track once
19 everything is lined and you go to within the track
20 and then conduct the lines, the switch and the
21 derail, if it has one, back. Then you go to the
22 other end of the track, which is meaning go by the
23 cars.

24 Q When you do that, sir, when you go to the other end
25 of the -- can we call it a siding track?

- 1 A Yes, sir.
- 2 Q Is that what it is?
- 3 A Yes, sir, most times, yes, sir.
- 4 Q So a siding would be where the train goes from one
5 track to two?
- 6 A Yes, sir.
- 7 Q All right. So is the object to get the engine
8 moved from one end of the train to the other?
- 9 A Yes, sir, that's -- yes..
- 10 Q Okay. So you leave the cars. When you take the
11 engine to the other end of that siding where the
12 switch is, does the conductor ride with you?
- 13 A Yes, sir, he does.
- 14 Q Okay. And then what happens when you get to the
15 other end of the siding?
- 16 A You stop and clear the conductor lines, his derail
17 and switch to where you can come out. And then you
18 come out of the switch, and switch and derail are
19 both lined back. And once they line the switch
20 back -- once the switch and derail are both lined
21 and locked back into normal position, which is for
22 movement -- most times movement on the mainline if
23 you were in the siding, you go in and couple -- you
24 take your engine and attach it back to the train.
- 25 Q So on this day, on May 30th, there were 11 rail

1 cars.

2 Based on your experience working this job, how
3 long did this run-around process take?

4 A Probably 10 or 15 minutes at the most.

5 Q Okay. And it looks like the first industry worked
6 was Doane?

7 A Yes, sir.

8 Q And it shows that it was pulled three cars and
9 placed five cars. And I believe this is Trial
10 Exhibit 33. Have you looked at the paperwork from
11 this?

12 A Yes, I have.

13 Q Does the conductor fill that out?

14 A Yes, sir, he does.

15 Q And put times on there when he pulls cars?

16 A Yes, sir, he does.

17 Q Fair enough. So it indicates pulling three and
18 placing five at Doane. What is your worst and best
19 time period for that type of job?

20 A Well, the worst could be an hour.

21 Q Okay.

22 A And the best could be --

23 Q Did it again.

24 A -- 20 or 30 minutes.

25 Q All right, let's say 30. Sorry.. Sixty to 30.

1 Okay. So we go -- and does that depend upon where
2 the empties are that you need to pull out?

3 A Yes, sir. The end of the track, exactly where
4 these cars that he's got to get out are in that
5 track.

6 Q And then at CSX it shows that you pulled one and
7 placed four?

8 A Yes, sir.

9 Q Tell me the duration of that.

10 A That probably, depending on where those cars are in
11 that track, it could take you -- the worst could be
12 an hour, hour and a half maybe.

13 Q Uh-huh.

14 A And best could be 20 minutes, 15 to 20 minutes.

15 Q Okay. Twenty? And 60 to 90 over here?

16 A Yes, sir.

17 Q And then Chemical Lime you are -- that was -- that
18 appears to be the last industry worked that day.

19 It was pulling three and placing six. Tell me
20 about that.

21 A Normally Chemical Lime is a very easy place to
22 switch. And I would say worse would be 20 minutes.
23 Best would be 10 or -- about 10 minutes.

24 Q Okay.

25 A Like I say, Chemical Lime is just, you know, a real

- 1 easy place to do what you have to do.
- 2 Q And then once you finish working the industries for
- 3 that day, I guess the object is to get back home?
- 4 A Yes, sir.
- 5 Q Do you remember any problems with Mr. Moorer that
- 6 day on May 30th, his first day that you worked with
- 7 him?
- 8 A No, sir, I do not.
- 9 Q Did he tell you he was sick in any way?
- 10 A No, sir, he did not.
- 11 Q As far as you knew, he was coming back the next day
- 12 to work?
- 13 A Yes, sir.
- 14 Q I'll show you May 31st. We don't need to go
- 15 through all this, but on this day you had seven
- 16 rail cars, according to the scanner.
- 17 A Yes, sir.
- 18 Q Okay. Which is smaller than the day before, right?
- 19 A Yes, sir.
- 20 Q Run-around about the same?
- 21 A Yes, sir.
- 22 Q Okay. Doane. Place five, pull four?
- 23 A Yes, sir.
- 24 Q Would that be about the same as the day before?
- 25 A Yes, sir.

1 Q So for the run-around we're looking at 15, 10. And
2 then for Doane we're looking at 60/30, right?

3 A Yes, sir.

4 Q And then -- I'm sorry, I skipped one. I apologize.
5 There was Okonite worked too?

6 A Yes, sir.

7 Q That was the second industry, Okonite and Doane.
8 There was two cars pulled and two cars placed at
9 Okonite. Tell me what your experience is on that
10 maneuver.

11 A Okonite usually, worst case scenario it could be 45
12 minutes to an hour.

13 Q Okay.

14 A And best case scenario, about 10 or 15 minutes.

15 Q Okay.

16 A And, again, it just depends on where the cars are
17 at in the tracks when you go in to switch the cars.

18 Q You worked this job, P28, it sounds like a number
19 of years?

20 A Yes, sir, I have.

21 Q If you were in the train orders for seven rail cars
22 working two industries, how would you describe that
23 day?

24 A Fantastic day.

25 Q Now, of course there was a hypothetical question.

- 1 A Yes, sir.
- 2 Q This day was different, right?
- 3 A Yes, sir.
- 4 Q All right... Now, this is important. We want to
5 talk about these phone calls, okay?
- 6 A All right, sir.
- 7 Q Now, 2:26. There is a phone call between Mr.
8 Moorer and Mr. Deshazor. Were you a witness to
9 that?
- 10 A No, sir, I was not.
- 11 Q Did you hear what was said?
- 12 A No, sir, I did not.
- 13 Q Now, Mr. Moorer comes on. Did he -- do you know
14 where he was when that call was made, Mr. Moorer?
- 15 A No, sir, I do not.
- 16 Q Okay. Fair enough. And what do you recall, if
17 anything, about what Mr. Moorer said about that
18 call?
- 19 A My only thing that I know about that call is that
20 when Mr. Moorer came up on the engine, he said that
21 Mr. Deshazor -- he had talked with Mr. Deshazor and
22 they had come to an -- my words are, come to an
23 agreement that, you know, that he needed to go to
24 Columbia and that he had no more work to do.
- 25 Q Okay.

1 A Not that he didn't have any, not to do anything
2 else but go to Columbia.

3 Q Okay. Did Mr. Moorer seem willing to go to
4 Columbia?

5 A Yes, sir.

6 Q Did he tell you that he had any reservation going
7 to Columbia?

8 A No, sir, he did not.

9 Q Did he ask you to radio anyone for any medical
10 help?

11 A No, sir, he did not.

12 Q If he had, what would you have done?

13 A I would have called somebody and got somebody for
14 him.

15 Q Now, there is a later call, 2:58. Hopefully I'm
16 not skipping one. It looks like I'm not. 2:58.
17 It looks like y'all had three -- and the record is
18 going to show -- one-minute calls. Do you
19 recall -- with Mr. Deshazor. Do you recall
20 telephoning Mr. Deshazor?

21 A Yes, sir, I believe I do, but, you know, it has
22 been a long time.

23 Q Sure. What is your best recollection of what you
24 told Mr. Deshazor as y'all were running back to
25 Columbia?

1 A My best recollection, I told him that -- well, I
2 asked him -- I said, do you want us to go all the
3 way to Columbia, not do anything else, is that
4 right?

5 And he said, yes, go to Columbia.

6 And to my recollection, I told him that
7 Trumaine said he was not feeling good.

8 Q Okay. So you told him that Trumaine was not
9 feeling good, right?

10 A Yes, sir.

11 Q Did Mr. Deshazor -- did Mr. Moorer at that point
12 ask you or tell you that he felt he needed some
13 medical help?

14 A No, sir.

15 Q Had he told you that at 2:58 when you were on the
16 phone or with Mr. Deshazor, what would you have
17 done?

18 A I would have told Mr. Deshazor that he was
19 requesting medical attention and that we needed
20 to -- well, they could come to me.

21 Q Okay. So it sounds like you would have stopped the
22 train?

23 A Yes, sir.

24 Q Mr. Moorer, how close was he to you in the cab?

25 A About as far as from where I'm sitting to this lady

1 here beside me.

2 Q To the court reporter?

3 A Yes, sir, just on the other side of her would be
4 about as far as I was from him.

5 Q Was he able to communicate with you?

6 A Yes, sir, he was.

7 Q Was he talking to you?

8 A Yes, sir. When I would ask him questions he would
9 talk to me and tell me that he was not -- he felt
10 like he was getting worse.

11 Q Okay. And in addition to telling you that, did he
12 tell you -- do you recall him saying anything about
13 needing a doctor?

14 A No, sir.

15 Q Okay. Now, next is another call. At this point --
16 at this point, Mr. Connelly, did you feel there was
17 an emergency going on, that you needed -- that you
18 needed an EMS?

19 A I didn't know. I'm not -- I don't have any way of
20 telling that. I know he wasn't feeling well, but
21 as to whether or not he needed EMS, I didn't know.
22 I'm not medically -- I don't have a medical -- know
23 anything about medical issues.

24 Q Sure. You're not a doctor?

25 A No, sir, I'm not.

1 Q Were you relying upon what Mr. Moorer was telling
2 you?

3 A Yes, sir.

4 Q Now, there is another call, it looks like the P28
5 Mr. Deshazor received a call from the crew phone.
6 Did you have two phones on board?

7 A Yes, sir, I did.

8 Q And then another call, it looks like you called
9 Mr. Stinson?

10 A Yes, sir.

11 Q And by that time we know that a track warrant had
12 been issued from 101 to Andrews Yard. So you
13 talked to Mr. Stinson it looks like at 3:21, and
14 you had a proceed from SC101. Do you see that?

15 A I had one proceed to the SC101, yes, sir, before I
16 talked to Mr. Stinson.

17 Q All right. So by the time you talked to
18 Mr. Stinson, were you past the 101?

19 A Let me look at this one more time to make sure.
20 The time I talked to Mr. Stinson -- let's see. I
21 already had the one from the 101 to Andrews Yard.
22 Yes, sir, I was already proceeding by the 101 by
23 that time, I'm sure.

24 Q Approximately where were you?

25 A We were at the -- between Fort Motte and Kingville,

1 which is almost to the Congaree -- almost to the
2 Congaree River.

3 Q Okay. So you had gotten past the 101. And ten
4 minutes later -- you are going how fast?

5 A Forty-nine miles an hour.

6 Q So a little less than one mile every minute? That
7 would be about right?

8 A Yes, sir, I think 49 miles an hour would take 73
9 seconds per mile.

10 Q So at 3:23, you would be past the 101, running
11 49 miles an hour?

12 A Yes, sir.

13 Q We are ten minutes past?

14 A Yes, sir.

15 Q We will have to look at it. The track warrant is
16 3:12. Eleven minutes you had been --

17 A Yes, sir.

18 Q What was your conversation with Mr. Stinson?

19 A I told him that Mr. Moorer had informed me that he
20 was feeling worse.

21 Q Okay. What else did you discuss?

22 A He asked me where he could meet me. And I told him
23 that by the time he could get to where I -- he
24 could meet me I could be in Columbia. It would
25 take him just as much time one way or the other.

1 Q Okay. And at that time, 3:23, did you tell
 2 Mr. Stinson -- or let me scratch that. At 3:23 --
 3 MR. MOSS: It is 3:21.
 4 MR. TECKLENBURG: I'm sorry.
 5 MR. MOSS: That's okay.
 6 MR. TECKLENBURG: You are absolutely right.
 7 Q At 3:21 when you talked to Mr. Stinson, at that
 8 time had Mr. Moorer asked for any emergency
 9 assistance?
 10 A No, sir, he had not.
 11 Q Had he asked for a doctor?
 12 A No, sir.
 13 Q Was he able to talk to you?
 14 A Yes, sir.
 15 Q So you were running 49 miles an hour towards
 16 Columbia. Tell me what happened next.
 17 A I kept going on to Columbia. And every time I was
 18 trying to keep Mr. Stinson and everybody apprised
 19 of what was being told to me if Mr. Moorer said he
 20 was feeling worse I would call and let them know
 21 that that is what he told me.
 22 Q So you were relaying on, as best you will recall,
 23 everything that Mr. Moorer told you?
 24 A Yes, sir.
 25 Q And as an engineer, do you think that is the right

1 thing to do?

2 A Yes, sir.

3 Q Now, when you got to the yard -- first of all, when

4 you get to the yard, what milepost is it?

5 A The yard on the board is about the SC123.8.

6 Q What is the speed limit once you get to the yard

7 limit?

8 A It is 20 miles an hour once we get to inside the

9 yard limits.

10 Q At 123.8?

11 A Yes, sir.

12 Q Twenty miles an hour. All right. And then what is

13 the speed limit after that?

14 A Once you get to the bottom of the yard, which when

15 you start in the yard tracks, you will

16 automatically go to 10 miles an hour.

17 Q And what milepost is that?

18 A The 125.6, I think it is, 5 or 6.

19 Q And the testimony is y'all stop at Old Maude shack?

20 A Yes, sir.

21 Q And what is the milepost for it?

22 A The 126.5, I think, 4 or 5.

23 Q Okay. So based on your description, it sounds like

24 you went 20 miles an hour for almost two miles and

25 10 miles an hour for less than one mile?

1 A Yes.

2 Q You get to the shack. What happens?

3 A Mr. Stinson comes there to Old Maude where we are
4 at. I'm not sure whether he was there when we got
5 there or whether he arrived shortly after we got
6 there.

7 And he comes up on the engine. And we try to
8 get Mr. Moorer off the engine.

9 Q You tried to assist Mr. Stinson?

10 A Yes, sir.

11 Q In getting Mr. Moorer off the engine?

12 A Yes, sir, I did.

13 Q Tell me how that process worked.

14 A We couldn't get him off the engine because the way
15 the running console of the engine is is a very
16 narrow gap between there to get between. And Mr.
17 Moorer was very limp and we could not get him
18 through to get him to where we could get him off
19 the engine.

20 Q So what happened next?

21 A The tower was called and told to call EMS.

22 Q What happened after that?

23 A I got off the engine and got on the ground to wait
24 for EMS.

25 Q Did any emergency personnel show up?

1 A Yes, sir, they did.

2 Q And the records will show that the fire department
3 responded at 4:03. Do you remember a fire
4 department there?

5 A Yes, sir, a fire truck showed up.

6 Q And then EMS showed up at 4:11, eight minutes
7 later. Do you remember that?

8 A Yes, sir.

9 Q Did they try to take care of things?

10 A Yes, sir, they did.

11 Q Were they able to get him off the engine?

12 A Using a chair type stretcher they got him off the
13 engine.

14 Q Now, as you sit here today, Mr. Connelly, is there
15 any reason you would not have passed on a request
16 for help by one of your crew members?

17 A No, sir.

18 Q Do you have any reservation about the decisions you
19 made that day?

20 A No, sir, I do not.

21 Q Do you believe you tried to look out for Mr.
22 Moorer?

23 A Yes, sir, I do.

24 Q Thank you.

25 THE COURT: Please answer any questions Mr.

1 Moss may have.

2 CROSS-EXAMINATION

3 BY MR. MOSS:

4 Q I don't have a lot for you, Mr. Connelly.

5 A That's fine.

6 Q Y'all were up here right at the edge of the swamp
7 where y'all would make a left-hand turn when you
8 talked to Stinson at about 3:21, is that what you
9 said?

10 A Yes, sir.

11 Q So when the first call was made, you made at 2:58
12 and then the next one at 3:00 o'clock and then the
13 next one -- I'm sorry, 2:59 and at 3:00 o'clock --
14 and at 3:07 y'all were back down here on the curve,
15 back down here on the Orangeburg side of the swamp,
16 because you would have been going 49 miles an hour
17 this way?

18 A Yes, sir.

19 Q Back here in St. Matthews?

20 A Well, we were probably between St. Matthews and the
21 swamp.

22 Q Okay. And the track goes right through St.
23 Matthews?

24 A Yes, sir.

25 Q And so the record is clear, at 2:58 you clearly

1 communicated to Mr. Deshazor that Mr. Moorer said
2 to you that he was worse?

3 A Yes, that he was getting worse. Felt like he was
4 getting worse.

5 Q He looked like he was getting worse to you?

6 A Well, I don't know. I can't be -- to be honest
7 about it, I can't say. I don't know. Because I
8 don't know what -- I don't know what -- if it was
9 heat, I don't know what heat does to people, what
10 heat does to a person.

11 Q He really wasn't actively working the train, you
12 did everything?

13 A Yes, sir, I was doing everything.

14 Q Usually he'd be the one getting the authority and
15 manning the radio, and that stuff. And you were
16 really on two different phones and running the
17 train, right?

18 A Yes, sir.

19 Q And there was a reason for that?

20 A Sir?

21 Q There was a reason for that? Because Trumaine was
22 not feeling well and getting worse?

23 A I was doing it because he wasn't feeling well, yes,
24 sir.

25 Q And because he was not feeling well and he was

1 getting worse?

2 A He said -- told me, yes, he was getting worse.

3 Q And is there a -- the Town of St. Matthews, is that
4 a pretty busy place where you have got access to
5 EMS and road crossings and stuff if you needed it?

6 A I would say so, yes, sir.

7 Q And if Mr. Deshazor would have said to you, Tommy,
8 why don't you stop the train and take the safest
9 course and let's get EMS to Trumaine, would you
10 have done that?

11 A Yes, sir, I could have -- I mean, we could have got
12 it to him.

13 Q And I guess my point is Mr. Deshazor --

14 A I don't --

15 Q -- had he said to you, Tommy, why don't y'all stop
16 the train in St. Matthews or in Fort Motte or in
17 this area in here at milepost 90.395, you could
18 have done that and had EMS come to the train,
19 right?

20 A Yes, sir, probably so.

21 Q And every single time that you communicated to
22 Mr. Deshazor between 2:58 and 3:07 you said to
23 them -- to him -- that Trumaine was getting worse,
24 didn't you?

25 A I told them that he said -- that what he told me

1 was that he felt like he was getting worse.

2 Q So each phone call was a step on top of the other
3 phone call? He is getting worse than the last
4 phone call and then he is getting worse than the
5 last phone call and then he is getting worse than
6 the last phone call? Isn't that right, Tommy?

7 A Well, that would be my guess, yes, sir.

8 Q He was declining?

9 A Sir?

10 Q He was declining with each call? That was the
11 message you were trying to convey?

12 A I was just telling what he told me.

13 Q All right. At what point did Deshazor pass you off
14 to Mr. Stinson?

15 A Probably -- I don't know what time it was till I
16 made the last phone call to him, then he told me
17 that I needed to -- that I needed to call
18 Mr. Stinson.

19 Q Great. I think the record will show that 3:07 was
20 your last call for two minutes to Mr. Deshazor.
21 And it is your belief at that point you then
22 belonged to Mr. Stinson?

23 A Well, he told me to call Mr. Stinson.

24 Q Correct. And that is exactly what you did at 3:21?

25 A Yes, sir.

- 1 Q Did Mr. Stinson ever call you?
- 2 A I don't know. I don't know right offhand right now
- 3 if he did or not.
- 4 Q Okay.
- 5 A I don't have a record to look at to see if he did.
- 6 I can't remember.
- 7 Q There has been testimony that the entire yard, from
- 8 the yard board all the way to Old Maude, was
- 9 10 miles an hour, and I just want to ask you --
- 10 A No, not from the yard board all the way to Old
- 11 Maude, it is not 10 miles an hour.
- 12 Q It was 20 and then 10?
- 13 A Yes, sir.
- 14 Q Thank you for correcting me. You said that when
- 15 Trumaine -- y'all actually stopped at Old Maude --
- 16 Trumaine tried to get up and couldn't get up,
- 17 Mr. Connelly?
- 18 A We tried to help him up to get him out the engine,
- 19 Mr. Stinson and I did.
- 20 Q Was the firetruck or the EMS there at the yard --
- 21 A No, sir.
- 22 Q -- at Old Maude waiting?
- 23 A No, sir.
- 24 Q Was Mr. Stinson at the yard at Old Maude waiting?
- 25 A Was he waiting? If he wasn't, he was there

1 momentarily.

2 Q He arrived after y'all did, didn't he?

3 A He may have. I can't say for sure.

4 Q Okay. We know for a fact that the call to EMS was
5 made after Stinson arrived, boarded the engine and
6 tried to get Trumaine off with you?

7 A Yes, sir, that's correct.

8 Q How long from the time y'all stopped until the call
9 was made to EMS, Tommy?

10 A I don't -- I don't know. It seemed like to me
11 forever, but I don't know. I can't answer that.

12 Q It felt like forever because of the situation?

13 A Because of the situation trying to get, you know,
14 get --

15 Q Had he gotten desperate and a little panicky?

16 A Maybe. For me it was. Probably.

17 Q What made you so uncomfortable?

18 A Because I don't know -- I didn't know what was
19 really going on.

20 Q You could tell Trumaine was not good?

21 A You know, I could tell that he probably was feeling
22 bad, but I didn't know what was wrong.

23 Q I understand. You had never seen him act this way
24 before?

25 A No, sir. I had never seen anybody act that way

1 before.

2 Q Why? What was it about the way he was acting,
3 Tommy?

4 A Just -- I mean, he just sat there. I mean, you
5 know, and I don't know what is going on, you know.
6 I just don't know.

7 Q At what point did he get that way on the trip back?
8 Or do you know?

9 A I don't know.

10 Q But you felt like he was declining basically from
11 the time y'all left down here?

12 A From his telling me he was, then I am. The only
13 thing I can say is what he told me, you know, that
14 he said he was not feeling good.

15 Q And he was steady getting worse all the way up?

16 A Well, that is -- would be an assumption. I, you
17 know, as I say, probably, but I don't know that for
18 sure. I don't know exactly --

19 Q Fair enough. We are not going to make you a
20 doctor. Based on what he told you he was getting
21 worse the whole time?

22 A Yes, sir.

23 Q Okay.

24 A Yes, sir.

25 Q Fair enough. Is the P28 safer with a conductor or

1 a conductor with a brakeman?

2 A Well, probably -- you would have to put that into
3 context depending on what all has to be done, but
4 in my mind it would probably be a little bit safer
5 with a brakeman and a conductor.

6 Q Thank you.

7 A But it can be done safely with a conductor.

8 Q Sure. If you had the preference you would have
9 both, right?

10 A Yes, sir.

11 Q Especially if you have got a guy who has never
12 worked the job or hadn't worked it much?

13 A Would I like it that way? Yes.

14 Q That's all my questions.

15 MR. TECKLENBURG: No further questions, Your
16 Honor.

17 THE COURT: All right, sir. You may step
18 down.

19 (Witness steps down.)

20 THE COURT: Any objection to this witness
21 being excused?

22 MR. TECKLENBURG: No, Your Honor.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you, ma'am.

25 (Witness excused.)

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: Apparently the lunch is not here.
5 We will work until it gets here.

6 All right, Mr. Tecklenburg, please call your
7 next witness.

8 MR. TECKLENBURG: Your Honor, we call Roger
9 Davis.

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

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Have a seat in the
19 witness stand, please.

20 (Witness complies.)

21 THE CLERK: State your full name for the
22 record.

23 THE WITNESS: Roger Davis, Jr.

24 ROGER DAVIS, JR.,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TECKLENBURG:

Q Mr. Davis, good afternoon. Tell us a little bit about yourself. Where are you from?

A I'm from St. George, South Carolina.

Q And what do you do?

A I'm a conductor and engineer from Norfolk Southern.

Q And tell me a little bit about yourself. How long have you been with Norfolk Southern?

A Fifteen years.

Q And are you familiar with a job called the P28?

A Yes.

Q Tell me what you -- tell me your experience with that job.

A I've been a conductor on the P28 for a good bit of five, six years, off and on.

Q So out of your career with Norfolk Southern you have been on that job how many years again?

A Off and on for about five or six -- five or six years.

Q Now, were you forced to that job or did you bid on it?

A I bid it in. I bid on it.

Q I want you to back up because we're really only talking about events from 2007 prior. Prior to

1 2007 how many years did you work on it?

2 A Maybe about two, three.

3 Q Two or three?

4 A Uh-huh.

5 Q Okay. If the record shows you worked nearly 200

6 times prior to May 30, 2007, would you disagree

7 with that?

8 A No.

9 Q Okay. And when you worked this job, did you --

10 were you forced to it or did you bid on it?

11 A I bid on it.

12 Q Okay. Why would an experienced conductor like

13 yourself bid on the P28?

14 A I like the job. I like the days off and it is a

15 good job.

16 Q And was it single conductor?

17 A Yes.

18 Q And I want to just go over some car loads with you.

19 And we're going to try to make this fast because we

20 are all trying to get to lunch, which isn't here

21 yet. You are lucky you are a filler witness

22 because Mr. Stinson was supposed to be next.

23 A Oh, okay.

24 Q Are you familiar with the industries?

25 A Yes.

1 Q If you saw an aerial of those industries, would you
2 be able to talk about what you do?

3 A Yes.

4 Q This particular day, May 30th, shows 11 rail cars.
5 And it first worked, I believe, Doane.

6 I'm going to show you an aerial of the Doane
7 plant, which has been labeled Exhibit 35B. Do you
8 see that?

9 A Yes, I see it.

10 Q Okay. Which way would be Columbia?

11 A At the top.

12 Q At the top. So going north? It says north here.

13 A I call it west.

14 Q I know you do. But at the top it shows it as
15 north, right?

16 A Yes.

17 Q So Columbia is up that way. And this particular
18 day you would pull three cars and place five.

19 Can you describe that procedure how you would
20 do that as a conductor?

21 A Well, the cars that we are bringing in we would cut
22 off from the mainline.

23 Q Cut off meaning you would leave the car.

24 A Leave the cars on the mainline.

25 Q Okay.

1 A And you go in and find out what cars you have
2 coming out.

3 Q Okay.

4 A Sometimes they are together, sometimes they are
5 not. And you pull them out.

6 MR. TECKLENBURG: Your Honor, may he stand?

7 THE COURT: He sure can.

8 Q Do you have room in there to stand?

9 A Yes.

10 (Witness stands.)

11 THE COURT: There might be a pointer right
12 behind him too.

13 A Well, I say leave the cars out. What we would do,
14 we would bring the cars in and couple up on these
15 cars here.

16 Q Okay.

17 A You want all your new cars on top. And you go in
18 here and find out what cars you have coming out and
19 pull them out. And sometimes you can just set
20 off -- like say if you had three coming out, if
21 they were all together, you set them out, but if
22 they were separate you have got to switch them out,
23 which means you might have one set out here, bring
24 some more in, set out, and bring more in. But that
25 is what we would do.

1 Q Okay. And if you are backing cars into the
2 industry, where would you place yourself to do that
3 as a conductor?

4 A We would be on the rear of the cars.

5 Q Rear of the cars. Riding it?

6 A Right. And before you get here you would stop and
7 get down.

8 Q Why would you do that?

9 A You don't want to ride under the chairs.

10 Q Is that known as a close clearance?

11 A Yes.

12 Q And with respect to this job, if you -- as far as
13 your experience with it, if you were to pull three,
14 place five at Doane, how long would that process
15 take?

16 A Normally about 30 minutes.

17 Q Thirty minutes. Now, what the other witnesses have
18 been doing, and I invite you to do the same thing,
19 is I understand at Doane that if the cars were
20 spread out, meaning the empties are in different
21 places, that it may take longer. Would you agree
22 with that?

23 A Yes, it could.

24 Q So what I've asked the other witnesses to do, and I
25 would ask you to do, is sort of give your -- I have

1 got to watch myself -- a best and a worst
2 timeframe.

3 So you have Doane. What is your best and
4 worst with the five and three, pulling three and
5 placing five, time-wise?

6 A My best would be about 30 minutes, if everything
7 went right.

8 Q Okay. And worst?

9 A Worst would be 45 minutes to an hour.

10 Q Forty-five to 60. Okay.

11 And then next is CSX. With CSX they were
12 pulling one and placing four. Tell me what your --
13 and if you could -- I'll show you that as well so
14 the jury gets a feel for these plants. Okay. I'm
15 getting confused now. All right. I am going to
16 present to you -- I think that is the mainline out
17 there.

18 A This is the mainline over there.

19 Q Yes. So with the CSX with one and four, tell me
20 what that involves.

21 A Well, with CSX you have to shove your -- you have
22 to shove all the way down here to get these cars.

23 Q Okay.

24 A You have to block traffic up here and right here
25 and then another spot, I think right here, to pick

1 these cars up right here. So that is a 30 or 40
2 minute move.

3 Q Thirty to 40 minute move. Okay.

4 And then finally, Chemical Lime. I believe I
5 have an aerial of that. Chemical Lime, Exhibit
6 35B. Again I am going to try to keep pointing
7 towards Columbia. And that one I think it was
8 three and six, three coming in -- I'm sorry, three
9 going out and six leaving. Tell me about those
10 moves.

11 A What we normally do is, you just hold on to them
12 and hold on to them and go ahead and get the three
13 cars that is coming out, set them out on the
14 mainline, and then the six cars what is going back
15 in, you can only spot five at a time, so spot five
16 and probably leave one up here, what we call the
17 gate. There used to be an old gate that sits right
18 here.

19 Q Okay.

20 A But you leave one at the gate.

21 Q And with respect to that work at Chemical Lime,
22 what would be your best and worst day?

23 A Best would be about 30 minutes, 30 minute move.

24 Q Thirty? Okay. And your worst?

25 A Worst, probably 40, 45 minutes.

- 1 Q Forty-five. Okay. And if you got this paperwork
2 on May 30th where you had to move 11 rail cars and
3 serve three industries, how would you rate that on
4 a scale of zero to ten in difficulty, with ten
5 being the most difficult?
- 6 A About a five.
- 7 Q About a five. Okay. Now, let's go to May 31st.
8 On May 31st it looks like the train is leaving with
9 seven cars. It works Okonite. Okonite has been
10 marked as Exhibit 35C. And hopefully it is
11 pointing north. Tell us about that. Two in and
12 two out.
- 13 A I don't know how the cars were set up, you know,
14 how the switch was, but it is normally about a 35,
15 40 minute switch.
- 16 Q Thirty-five to 40 minutes. Okay.
- 17 And then finally, Doane was also worked that
18 day. And Doane was placing five and pulling four.
19 Would that be similar to what you described already
20 with Doane?
- 21 A Yes.
- 22 Q Would the time be about the same?
- 23 A About the same time.
- 24 Q Okay. So if you were handed that paperwork to deal
25 with seven cars leaving the yard, work two

1 industries, on a scale of one to ten, how would you
2 rate that day?

3 A Two.

4 Q A two?

5 A Pretty good day.

6 Q All right. So Doane, repeat of 30, 45, 60.

7 Now, have you had an opportunity to train
8 folks on the P28?

9 A Yes.

10 MR. TECKLENBURG: If we could put up, I
11 believe it is Exhibit Number 8.

12 Q And is this document in your handwriting?

13 A Yes.

14 Q And what would that indicate that you filled that
15 out with Mr. Moorer's handwriting?

16 A That he came to the P28 to train on the job I was a
17 conductor on.

18 Q Okay. And during the training what would you have
19 shown him as the training conductor?

20 A The different industries we worked, the different
21 spots at the industries. Pretty much how you run
22 around your train. And stuff like that.

23 Q Would you show him the various industries?

24 A Yes.

25 Q How long is he on it? It looks like on that

1 particular -- this document says October 9th to
2 October 13th. Is that correct?

3 A About a week, yes.

4 Q And how did Mr. Moorer score as far as your rating
5 with him?

6 A For his first time on the job he did pretty good.

7 Q Mr. Davis, I appreciate your time. Thank you.

8 CROSS-EXAMINATION

9 BY MR. MOSS:

10 Q Mr. Davis, how are you doing?

11 A Pretty good.

12 Q Good. Where are you from?

13 A St. George.

14 Q You know Trumaine?

15 A Yes.

16 Q You think a lot of them?

17 A Yes.

18 Q You are both a conductor and an engineer?

19 A Yes.

20 Q Do the guys as they progress in seniority, if they
21 are really willing to work, have a chance to make a
22 good bit of money out there working for Norfolk
23 Southern?

24 A Yes, they do.

25 Q The guys that really get after it, what are they

1 making?

2 A About a hundred thousand as an engineer.

3 Q How about a conductor?

4 A About 70, 75.

5 Q More than 61? Seventy or seventy-five?

6 A Yes.

7 Q Okay. And it is simply a matter of if you want the
8 work it is there, if you don't mind showing up and
9 keeping up, if you will?

10 A Yes.

11 Q To make some money. Have you thought about doing
12 anything else at Norfolk Southern, another kind of
13 job, maybe even management?

14 A I have thought about going into management.

15 Q Has anything happened about that?

16 A Not yet.

17 Q What prompted that? Did they come to you?

18 A No.

19 Q Thinking about that?

20 A Just thinking about that.

21 Q You had the opportunity to bid on the P28, but also
22 bid off of it?

23 A Yes.

24 Q And in the summer of 2005, you worked it up until
25 it got hot and then you bid off the job for the

1 summer?

2 A Yes.

3 Q And then in 2006, the same thing happened. You had
4 the opportunity to work the P28, then you bid off
5 of it for the summer when it got hot, right?

6 A Yes.

7 Q That's a benefit of being a senior man?

8 A Yes. A job came open and I went to it.

9 Q Got to get it. The time that Mr. Tecklenburg
10 talked about, that is you, Roger Davis, as an
11 efficient experienced conductor, but it might be
12 very different than somebody who was somewhat new
13 to the job?

14 A Yes, could be.

15 Q Why, sir?

16 A Just not knowing the job well enough.

17 Q They were inefficient?

18 A Yes.

19 Q Inefficiency leads to more walking and a lot
20 more -- sometimes wasted moves, and those kinds of
21 things?

22 A Yes.

23 Q The job -- you think the job is safer with a
24 brakeman and conductor, don't you?

25 A Could be. I like working by myself.

1 Q Well, I have asked you that exact same question
2 before, Mr. Davis, and you told me that you thought
3 the job was safer with a brakeman and conductor,
4 right?

5 A I mean, it can be. You know, if you have a
6 brakeman it is less work on the conductor.

7 Q If you have a -- say that again. If you --

8 A If you have a brakeman, it is less work on the
9 conductor because --

10 Q Why is that?

11 A Well, the conductor don't have to do all the work
12 by himself.

13 Q And if a supervisor came in this court and
14 testified that it was safer with a conductor only,
15 you would disagree with that?

16 A I wouldn't disagree with it.

17 Q You wouldn't?

18 A I wouldn't.

19 Q Okay. Mr. Davis, I am going to show you Page 1011
20 of your prior testimony. Look at Line 14, if you
21 would. Do you see that question and answer?

22 A Yes.

23 Q Okay. It is true that I asked you specifically:
24 If the Norfolk Southern supervisor testified this
25 morning that the P28 with conductor only was safer

1 than with a conductor and a brakeman, would you
2 disagree?

3 And your answer was: I would. I would
4 disagree.

5 Isn't that true?

6 A Yes.

7 Q Thank you. That's all I got.

8 REDIRECT EXAMINATION

9 BY MR. TECKLENBURG:

10 Q Mr. Davis, operating with two versus three men, is
11 it a matter of -- would you agree that reasonable
12 minds could differ?

13 MR. MOSS: Objection. Leading.

14 BY MR. TECKLENBURG:

15 Q Let me ask you this.

16 THE COURT: Sustained.

17 MR. TECKLENBURG: Fair enough.

18 BY MR. TECKLENBURG:

19 Q Mr. Davis, do people hold different views on the
20 issue of whether two versus three--

21 MR. MOSS: Objection. Calls for speculation.

22 MR. TECKLENBURG: No, it does not. He has the
23 experience to answer that.

24 MR. MOSS: Objection to what everybody else
25 thinks.

1 THE COURT: Speculation. Objection sustained.

2 BY MR. TECKLENBURG:

3 Q Mr. Davis, could you see an argument either way?

4 A I could.

5 Q And why is that?

6 A Well, if you are a conductor and you have a
7 brakeman that is pretty brand new, then you have to
8 keep up with what he is doing too because he is
9 brand new. So at that point you might want to work
10 by yourself instead of having to keep up with him
11 too.

12 Q Are there radio communication issues that can arise
13 when you have a third man out in the field?

14 A Yes.

15 Q What are those issues?

16 A You may tell him to do something, one thing, and
17 then he does something else and not caring what you
18 are saying on the radio.

19 Q Thank you, Mr. Davis.

20 THE COURT: All right, sir, you may step down.
21 Any objection to this witness being excused?

22 MR. MOSS: None, Your Honor.

23 MR. TECKLENBURG: None, Your Honor.

24 (Witness steps down and is excused.)

25 THE COURT: All right, your lunch is here, so

1 a -- if we come back at 2:00, we'll take a break
2 around 3:15, 3:30. We can do it at a break or we
3 can come back about ten till, grab a bite to eat.
4 It will be a short 30 minute lunch. I was trying
5 to give y'all at least about 30 minutes, 30 or 40
6 minutes to eat.

7 MR. TECKLENBURG: Yes. I think it may take
8 ten minutes to argue.

9 THE COURT: All right. So about ten till?

10 MR. TECKLENBURG: If you want to eat that
11 fast, yes, that is fine with us. But I would like
12 to go ahead and knock that out so I have got some
13 flexibility.

14 THE COURT: All right. So about ten till.
15 But these are motions that I have already ruled on?

16 MR. TECKLENBURG: Well, yes. May I offer
17 something, Your Honor?

18 THE COURT: Yes, sir.

19 MR. TECKLENBURG: So you can think about it
20 over lunch. And that is on this issue, and I have
21 given it some thought, you will recall our argument
22 all along has been that Dr. Lina should be entitled
23 to explain her letter.

24 THE COURT: All right. I think I have already
25 ruled on that.

1 MR. TECKLENBURG: You have. There is a
2 different twist to that that I want you to think
3 about, and that is this. Dr. Lina working for a
4 corporation is making a decision on return to work.
5 And that decision is not subject to legal
6 thresholds of most probably or more than mere
7 possibility, whatever the threshold is. She is
8 making her opinion for a return-to-work evaluation.
9 So she can make that decision on pure speculation,
10 okay? She's entitled to do that as a corporate
11 medical doctor. Just like at TSA, if they suspect
12 you of being a terrorist, they don't have to meet
13 any requirement of the law as to, you know, more
14 probable than not or the standards that we apply in
15 the courtroom. So she is making a corporate
16 decision using very low standards because she
17 always errs on the side of making sure that the
18 railroad is safe, okay?

19 So I'm just planting that seed because I think
20 that really needs to be thought about as we go
21 through her testimony in a little while, so --

22 MR. MOSS: I have one comment that I will
23 make. Your Honor, they moved in the first trial to
24 exclude all Dr. Prible's opinions. They were very,
25 very good for me because they were related to

1 reportability. They were cloaked in reportability,
2 and therefore they were inadmissible. And they
3 made me cut all this really good testimony out
4 because of the context in which he was rendering
5 the opinions.

6 And now they take the argument that they used
7 against me on Prible and say, no, it is only for
8 purposes of return to work.

9 Well, Prible was only for purposes of
10 reportability. And I kind of disagreed with the
11 Court in that situation, but I bit my tongue, but
12 this is the old good-for-the-geese rule. They
13 totally hamstrung me on reportability with Prible.
14 And now it is, well, because it is just in the
15 context of coming back to work it is a different
16 legal standard.

17 Well, that legal standard worked against me on
18 Prible. The same exact sword has two sides. It
19 has cut me once and it can't come back to your
20 advantage this time.

21 MR. TECKLENBURG: The difference is
22 reportability is relevant -- is irrelevant, excuse
23 me, and return-to-work is relevant. But we will
24 talk about it in a little bit, Your Honor.

25 Thank you.

1 distinction between the two, if I'm reading that in
2 context.

3 MR. TECKLENBURG: That's incorrect, Your
4 Honor. It is referring to hydration and breaks.
5 So it would be the May 17th medical note.

6 THE COURT: All right, I am going to overrule
7 the objection. I'll let it in.

8 MR. TECKLENBURG: Next is Page 86, Your Honor.
9 Same deposition. For the record, 86, Line 18,
10 through 87, Line 13.

11 THE COURT: The objection is?

12 MR. MOSS: Well, I thought I was precluded
13 from talking about Mr. Moorer coming to work as a
14 conductor. That is what the question is about.

15 And then on top of that he starts with, this
16 is outside the realm. And then he says, what he
17 could maybe do, even though it is outside my realm,
18 which I thought we agreed it is out.

19 THE COURT: I thought we ruled on that
20 already. There was a motion in limine, and I ruled
21 on the motion in limine regarding genetic testing.
22 And you said if Mr. Moss got into testing regarding
23 him being a conductor, then him being able to get
24 the job back as a conductor, the only way he could
25 do it is through genetic testing that he refused to

1 do, which I said was not admissible.

2 And, therefore, so it seems as if now,
3 Mr. Tecklenburg, you are trying to put that issue
4 in under Dr. Casa.

5 MR. TECKLENBURG: Well, what we are trying to
6 do is talk about what medical procedures he can go
7 through for medical proof for the medical
8 department, and it talks about heat tolerance test.

9 The same designation on Page 88, Line 24, and
10 on Page 89, it talks about heat tolerance tests.
11 Because there is going to be an issue, I mean, he
12 has already made it an issue, why can't Mr. Moorier
13 be a police officer. And all of that deals with
14 the company's ability to evaluate someone's stress
15 during heat. And that is their own expert
16 essentially tells them how to evaluate that.

17 And I can tell Your Honor it is an issue. I
18 mean, their vocational case is dealing with
19 basically a failure to respond of the medical
20 department and dealing with the medical department
21 and his vocational work that has been going on.

22 And what this does is it gives the Court the
23 medical department's position that, we don't have
24 enough for Mr. Moorier, we need more. And his own
25 expert tells us how to do that.

1 THE COURT: All right. I believe I have
2 already ruled on that, and I'm not going to allow
3 it in, so that will be excluded. And that includes
4 Page 88 and also Page 89.

5 MR. TECKLENBURG: All right.

6 THE COURT: And the first line of 90.

7 MR. TECKLENBURG: Thank you, Your Honor. If
8 you will now turn to Tab 6.

9 THE COURT: All right.

10 MR. TECKLENBURG: Dr. Lina. This is where it
11 gets hard. Okay, if you could turn to Page 45,
12 Line 2.

13 Your Honor, if I may reflect a little bit on
14 where we have been on this issue. My recollection
15 is that you ruled that Dr. Lina could testify about
16 what she did in rendering this opinion. It seems
17 like rendering an opinion, but issuing her letter
18 on fit for duty service.

19 And this is exactly what -- these portions are
20 exactly what we're talking about. She is
21 explaining what she did.

22 As it works on past Page 46, Line 10, beyond
23 that, she talks more specifically about things that
24 she considered.

25 As I mentioned before the break, Norfolk

1 Southern takes the position that our medical
2 department in making its decisions does not need to
3 make a legal -- does not have to issue its medical
4 opinion regarding return-to-work on the basis of
5 any legal standard under the FELA or South Carolina
6 law because, in the end, any medical opinion of Dr.
7 Lina is offered for the purpose of talking about
8 the return-to-work decision. It is not offered for
9 the purpose of giving a medical opinion of
10 causation. There is a very big difference. There
11 is a very low threshold for what corporations can
12 use that are reasons in disqualifying a worker.

13 THE COURT: All right. I think I have already
14 ruled on that, and the ruling will remain the same.
15 I think even under the relaxed standard under FELA
16 she has to do more than just guess what it is not.
17 She says she knows what it is not, and then she
18 just guesses as to all the other things it could
19 possibly be.

20 So I'm going to -- any of that will be
21 excluded, and that was the ruling earlier, and it
22 will be the ruling.

23 MR. TECKLENBURG: And I understand that. So I
24 think the following excerpts either fit within your
25 ruling, from my opinion, or very close.

1 Again, starting at Page 45, Line 2, and going
2 to 46, Line 10. She is giving an explanation as to
3 what she did. And she is also giving essentially
4 what is the basis of the letter, which basically,
5 remember the letter talks about recurrent heat
6 illness. And that is exactly what she is talking
7 about, is recurrent heat illness.

8 And are you all agreeing to the testimony at
9 Page 43, 44, and the first line of 45?

10 MR. TECKLENBURG: That's correct, Your Honor.
11 Yes. And the part I want to read is 45, Line 2 to
12 46, Line 10.

13 And for the record, we have just marked the
14 designations we requested to be read at trial as
15 Court Exhibit Number 6, and the transcript itself
16 as Court Exhibit Number 5.

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

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

21 THE COURT: The interesting thing is you want
22 to put this in. She herself is saying she didn't
23 know -- this is preparation for the deposition,
24 which has nothing to do with the letter.

25 She said, I also went back and reviewed and

1 updated to see if there is an updated issue on what
2 could have been done.

3 And the response is in response to the
4 question as to, what did you do to prepare for
5 deposition, not for the letter.

6 I mean, you mentioned: You looked at a disk
7 to prepare for your deposition. Did you look at
8 anything else?

9 And she said -- she did say: I reviewed some
10 of the literature. Some of the literature I had
11 available, I previously had available and looked at
12 last year.

13 And then I went -- and on Line 10 of Page 45
14 she said: I also did a brief literature review to
15 see in particular if there was anything updated on
16 this issue of what I described as unexplained
17 rhabdomyolysis.

18 And what did you find in your updated review?

19 That has nothing to do with --

20 MR. TECKLENBURG: Your Honor, I will concede
21 it is an updated review.

22 THE COURT: But your argument is that you want
23 to get in what she used to make her decision to
24 send him back to work. This is what she used to
25 prepare for her deposition. She went back -- she

1 said: I went back to see if there is anything to
2 change in preparation for my deposition.

3 MR. TECKLENBURG: Well, I think my argument is
4 it is within your ruling. And, you know, I'm
5 still --

6 THE COURT: That this is within the ruling?

7 MR. TECKLENBURG: Yes. You said she couldn't
8 speculate. I don't think there is a lot of
9 speculation going on.

10 THE COURT: All right. And maybe I am
11 misunderstanding you, but I thought the original
12 reason for --

13 MR. TECKLENBURG: You are correct, Your Honor.

14 THE COURT: Okay. Is because of the letter
15 she should have the opportunity to explain what
16 decision she made in coming to the conclusion that
17 he could not go back to work.

18 MR. TECKLENBURG: That's correct. Your ruling
19 is she can't speculate. And I would submit this
20 testimony doesn't go there.

21 THE COURT: All right. Well, I am going to
22 exclude that. It will stop at Line, on Page 45,
23 Line 1.

24 MR. TECKLENBURG: Your Honor, next is on Line
25 52, Line 6 through 8.

1 THE COURT: What have y'all agreed, because I
2 can't -- I know you have got it all highlighted, so
3 I don't know what is agreed to. Is the stuff
4 highlighted agreed to?

5 MR. MOSS: Right.

6 MR. TECKLENBURG: Generally, Your Honor,
7 that's correct.

8 (Pause.)

9 MR. TECKLENBURG: Do you see the piece of the
10 answer that he wants to take out, Your Honor?

11 THE COURT: I was waiting on him to find out
12 what it is.

13 (Pause.)

14 MR. MOSS: I'm okay with that, Your Honor.

15 THE COURT: Okay.

16 MR. TECKLENBURG: Next, Your Honor, is Page
17 56, Line 1 through 8.

18 THE COURT: And your objection?

19 MR. MOSS: It is the same thing. She is
20 offering the benefit of hindsight. I still don't
21 know. It doesn't add up. Same thing --

22 MR. TECKLENBURG: Your Honor, I mean, she --

23 THE COURT: Hold on. Hold on. Are you
24 objecting to it?

25 MR. MOSS: Yes, Your Honor. It is the actual

1 question and answer.

2 All she is saying, with the benefit of 20/20
3 hindsight, it just doesn't add up, it is
4 unexplained rhabdomyolysis.

5 THE COURT: Well, I don't understand what the
6 objection is.

7 MR. MOSS: Well, if you don't understand it
8 I'll withdraw it.

9 THE COURT: She is just saying it doesn't add
10 up.

11 MR. MOSS: Okay. I'll withdraw it.

12 THE COURT: I'll allow that in.

13 MR. MOSS: Okay. Sure.

14 MR. TECKLENBURG: Your Honor, Page 65, Line 8
15 through 23.

16 THE COURT: I guess maybe my ruling isn't
17 clear, but my ruling is, does anything in
18 speculation to the point of her saying it doesn't
19 add up is saying that the symptoms and stress,
20 heat, and all that doesn't add up.

21 But the concern of yesterday, or whenever it
22 was, was that she was just throwing out stuff that
23 it could possibly have been, it could have been
24 genetic, it could be this or that, and that was the
25 ruling, that that was speculative.

1 But the last paragraph, I think she is just
2 trying to at that point figure out what is going
3 on.

4 MR. MOSS: And with that clarification, Your
5 Honor, I understand and agree.

6 THE COURT: Okay.

7 MR. TECKLENBURG: On Page 65, Your Honor, Line
8 1 through 23.

9 THE COURT: I think that would fall under my
10 ruling.

11 MR. TECKLENBURG: As excluded?

12 THE COURT: Yes. Because she said, it could
13 be some things I said, it could be some things I
14 haven't said, it could be such and such.

15 You know, you have to think about what an
16 expert is supposed to offer in terms of informing
17 the jurors. I think they can make that same
18 conclusion, that it could be, like I think I said
19 earlier, that it could probably be this, it could
20 be that. She is just not -- she is not giving any
21 medical opinion. It is highly speculative. So
22 that will stay out.

23 MR. TECKLENBURG: Your Honor, Page 67, Line 6
24 through 24.

25 THE COURT: You skipped 66. I didn't rule on

1 that one.

2 MR. TECKLENBURG: Oh, I'm sorry.

3 THE COURT: You had a little box there.

4 MR. TECKLENBURG: You are ahead of me. 66,
5 Lines 4 through 7.

6 MR. MOSS: I anticipated your ruling. I left
7 it. I started to object.

8 THE COURT: That kind of goes along with the
9 other pages. She was just saying she didn't know
10 what it is, but she didn't think that he --

11 MR. TECKLENBURG: Okay. So that stays, Your
12 Honor?

13 THE COURT: Yes.

14 MR. TECKLENBURG: Page 67, Line 6 through 24.

15 THE COURT: Do you have any objection?

16 MR. MOSS: It is how you see the world. That
17 looks to me more like: Well, I thought I looked at
18 the KM, I looked at the other potential causes, I
19 really don't know.

20 That looked to me more like consistent with
21 ruling as opposed to an objection.

22 MR. TECKLENBURG: Your Honor, I think she is
23 describing what she did to prepare for her letter.
24 Very clearly that is what the question is.

25 THE COURT: I don't have a problem with any of

1 it except for Lines maybe 19 through 23.

2 And the problem is she said, I looked at the
3 issue of nutritional and dietary supplements, but
4 then she didn't say that they caused rhabdo -- I
5 mean, she said, I looked at that issue. It
6 doesn't -- and so it implies -- it throws that out
7 there, oh, it could possibly be that. But she
8 didn't say -- I mean, what does the -- what did
9 her -- is there anything in here that says that
10 these dietary supplements would cause the
11 rhabdomyolysis?

12 MR. TECKLENBURG: No, Your Honor. And as we
13 pointed out, I don't think a corporate medical
14 officer needs to do that for what she is saying
15 here.

16 THE COURT: All right. So that part is -- I
17 mean, I don't have, like I said --

18 MR. MOSS: Do you want to leave that last
19 sentence, Your Honor, so I looked, but we take out
20 19 through half of Line 23?

21 THE COURT: Yes.

22 MR. MOSS: Okay.

23 MR. TECKLENBURG: Thank you, Your Honor.

24 Page 103, Line 9, through 104, Line 5. And my
25 recollection is, Your Honor, you ruled that this

1 opinion could come in.

2 MR. MOSS: I agree with that. I think that is
3 your ruling.

4 THE COURT: Okay.

5 MR. TECKLENBURG: Your Honor, Page 108, Line
6 20 through 109, Line 1.

7 THE COURT: Any objection? Same thing about
8 the --

9 MR. MOSS: Your Honor, I don't know why I
10 objected.

11 MR. TECKLENBURG: Yes, I don't know what the
12 objection is. That is why -- we'll argue it.

13 MR. MOSS: 108, Line 20 through 109, Line 1.

14 MR. TECKLENBURG: Yes.

15 MR. MOSS: I'm good with that. It continued.
16 And that is what my objection was. We agree.

17 MR. TECKLENBURG: Your Honor, just for the
18 record, we would proffer that we would also want to
19 read 109, Line 2 through 110, Line 8; however,
20 based upon your rulings, I think you would --

21 MR. MOSS: That was the confusion is I had
22 lumped it together with a part that I did disagree
23 on.

24 MR. TECKLENBURG: Let's see. And then
25 finally, last page, Page 114, Line 17.

1 THE COURT: You said 114?

2 MR. TECKLENBURG: Line 17, Your Honor.

3 THE COURT: Just that one line?

4 MR. TECKLENBURG:-- I'm sorry, through 25, to
5 the end.

6 THE COURT: Okay. Any objection?

7 MR. MOSS: That is the conductor thing, Your
8 Honor. That is the same as before. That is the
9 whole issue of -- well, if he presented more
10 medical records he could be a conductor, which is
11 the argument that he has been using against me the
12 whole trial. I thought we weren't going there.

13 THE COURT: I think that is the same ruling
14 from earlier, the motions in limine.

15 MR. TECKLENBURG: All right. So take that
16 out?

17 THE COURT: Yes, sir.

18 MR. TECKLENBURG: And I think that is based
19 upon the Plaintiff's stipulation that he is not
20 going to argue he should would be rehired as a
21 conductor.

22 MR. MOSS: Correct.

23 THE COURT: And he has not thus far.

24 MR. TECKLENBURG: Yes, well, unfortunately --

25 MR. MOSS: He might. You never know with him.

1 MR. TECKLENBURG: We have a vocational witness
2 indicating he has indicated that.

3 Your Honor, for the record, we argued over the
4 deposition designation of Dr. Casa a few minutes
5 ago where I believe you excluded Pages -- portions
6 of Pages 86, 87, 88, and 88 through 90. It is
7 Douglas Casa, taken February 5, 2010.

8 And, for the record, we marked it as another
9 Court Exhibit.

10 THE COURT: All right.

11 MR. TECKLENBURG: Thank you.

12 THE COURT: And here is your notebook back.

13 All right, can we bring them in?

14 MR. TECKLENBURG: I think we can, Your Honor.

15 (WHEREUPON, the jury came into open
16 court.)

17 THE BAILIFF: The jury is seated, Your Honor.

18 THE COURT: All right. I am going to ask Mr.
19 Tecklenburg to call his next witness.

20 MR. TECKLENBURG: Your Honor, we would call
21 David Stinson.

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

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat in the
6 witness stand, please.

7 (Witness complies.)

8 THE BAILIFF: State your full name for the
9 record.

10 THE WITNESS: David Houston Stinson.

11 DAVID H. STINSON,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TECKLENBURG:

15 Q Good afternoon, Mr. Stinson.

16 A Good afternoon.

17 Q Tell us a little bit about yourself. Where do you
18 live?

19 A I live in Mechanicsburg, Pennsylvania.

20 Q How long have you been in Pennsylvania?

21 A I moved there in December of last year. Just a few
22 months.

23 Q Tell us a little bit about your background. Where
24 did you go to school?

25 A I went to school at USC. I'm from North Augusta,

1 South Carolina originally. I finished high school
2 and attended USC Aiken. And I graduated high
3 school and went in the Army Reserves in Aiken, went
4 to Desert Storm, came back and started working for
5 Westinghouse, their plant. I worked there about
6 six years. Due to cutbacks and downsizing, the
7 railroad was hiring conductors in Augusta, and that
8 is where I hired in in 1997.

9 Q So you started in 1997. And what was your first
10 job at Norfolk Southern?

11 A It was a conductor, entry level train conductor.

12 Q You started as a conductor? How long did you do
13 that?

14 A Up until 1999.

15 Q And when you were a conductor, what district did
16 you work out of?

17 A It is the Savannah district based in Augusta. We
18 cover Augusta, Milan, Savannah, and the east side
19 of Macon.

20 Q And after two years, what did you decide to do?

21 A Well, the extra board wasn't turning a good bit.
22 And my wife was pregnant. And I had a good job.
23 And trying to determine what to do with a newborn.
24 Should she go back to work with her job. Her job
25 traveled some. So the best decision was to -- I

1 need to find a career, something long-term with
2 steady income. So I applied for some radiation
3 nuclear type work that I had done at SRP. And I
4 also applied for Norfolk Southern as a management
5 job.

6 So in August of '99 I was promoted to an
7 assistant trainmaster in St. Louis, Missouri.

8 Q So you spent some time in St. Louis?

9 A I spent two years in St. Louis, promoted to a job
10 in Champaign-Urbana, Illinois, further north.

11 Q Did you undergo management training before being
12 assigned to St. Louis?

13 A No, sir.

14 Q Has the management training changed over the years?

15 A Oh, yes, most definitely.

16 Q Okay. So it sounds like back then you could lead
17 yourself right into the job. Was it a union
18 position as trainmaster?

19 A No, it is non-union. It is non-agreement they call
20 it. Since then they have revamped the trainee
21 program for the -- anybody that is from within the
22 union that goes into management, they have a five
23 month training program for those folks. Previously
24 they didn't do that. They just, one day you are a
25 conductor, the next day you are an entry level

1 manager somewhere. Now, they had training
2 throughout the years, but it was not as
3 comprehensive as we have now.

4 Q So is it fair to say the training you have would
5 have been different than the training Mr. Deshazor
6 would have had coming out of college?

7 A Yes.

8 Q So let's talk a little bit about your assignments.
9 And you don't have to go through everywhere you
10 went.

11 A Okay.

12 Q But were you reassigned a number of places?

13 A Yes. I left Tilton, Illinois and went down to
14 Memphis, Tennessee as operation manager, and was
15 there about two years. Left there and went to
16 Bluefield, West Virginia, in coalfields, and spent
17 about two years there. Came to Columbia as a
18 terminal superintendent. It was close to home. I
19 really enjoyed this job.

20 THE COURT REPORTER: I'm sorry, you need to
21 speak into the microphone.

22 A I spent about two years in Columbia, South
23 Carolina, after that. And then my next job was in
24 Norfolk in a job based in Portsmouth, Virginia,
25 Hampton Roads, as president and general manager of.

1 a shortline railroad, Eastern Shore Railroad and
2 CSX and Norfolk Southern. Three years on that job.
3 I'm now back with NS as the assistant division
4 superintendent in Harrisburg, Pennsylvania.

5 Q What does a division -- assistant division
6 superintendent do in your current role?

7 A The total operation of the division, in terms of
8 safety you have got 80 to 100 trains operating
9 daily on our division. That is about 1,300
10 employees and about 70 supervisors that we have to
11 manage and safely move the freight and serve the
12 customers.

13 Q How does that compare to your job in Columbia?

14 A Different size scale, same priorities.

15 Q With respect to your job in Columbia, I want to
16 concentrate on the time period you were here.

17 A Okay.

18 Q And I respect you for all the moving you must do,
19 but let's talk about Columbia. How many years were
20 you here as the superintendent?

21 A Just at two years.

22 Q And what are those dates approximately?

23 A I want to say August of '06 to around August of
24 '08, something like that.

25 Q And tell us what you did as the superintendent in

1 Columbia, what your responsibilities were.

2 A You have a certain size territory and we cover the
3 trains and service all the customers that the crew
4 from Columbia are assigned to work. And a lot of
5 them, some go down towards Batesburg, Leesville,
6 some go farther line north towards Clemson Road,
7 any employees in our jurisdiction.

8 Q Hold on a second. The court reporter is looking at
9 me and you and you are talking fast.

10 A Okay.

11 Q So we are going to slow everybody down a little bit
12 and make sure we all keep her happy. She is
13 important.

14 A It is the safe movement of our customer freight and
15 customer service for the industries, in the
16 industries in the area we do serve.

17 Q Now, did you supervise people when you were
18 assigned to the Columbia terminal?

19 A We had a varying level of management assigned to
20 Columbia. We had some that moved on. We actually
21 moved management trainees under a training program,
22 but, yes.

23 Q And how many trains would run out of the Columbia
24 terminal? Is that known as Andrews Yard?

25 A Yes, sir, Andrews terminal.

1 Q Where physically is that?

2 A It is off of Shop Road. It parallels Shop Road,
3 Andrews Yard. It is pretty much -- you can
4 consider across from the -- between the airport and
5 Shop Road, next to the stadium.

6 Q Now, what trains run out of the Columbia terminal?

7 A What trains?

8 Q Yes, when you were there?

9 A There are some BMW trains, there are some pig
10 trains, there are container ice creams, roughly --
11 anywhere from 10 to 15. It varied based on the
12 business volumes.

13 Q And out of those trains that ran out of Columbia,
14 can you compare the ones that were two-man crews
15 versus three-man crews?

16 A The number I just gave you were the road trains
17 that take a train from say Columbia to Augusta or
18 Columbia to Greenville or Columbia to Rock Hill are
19 conductor only, unless there is a trainee, a
20 conductor trainee assigned to the crew. We
21 probably had seven or eight local assignments, and
22 those crews that worked the customers in and out of
23 Columbia, the majority of those were conductor only
24 crews.

25 Q And would that include the P28?

1 A Yes, sir.

2 Q Now, as part of your job over the last many years,
3 have you become familiar with the union agreements
4 involving Norfolk Southern?

5 A Yes, sir, various ones, yes.

6 Q I am going to show you what is Exhibit 19.

7 A Okay.

8 Q Tell me what that is.

9 A This is an agreement between Norfolk Southern and
10 the railroads here effective December 6, 1991. It
11 is a Crew Consist Agreement, we call it, which will
12 allow the railroad to operate conductor only crews.

13 Q And when was that agreement put in place?

14 A Effective December 6, 1991, on the front page.

15 Q And when did you start with Norfolk Southern?

16 A May 27th, '97.

17 Q Since the time you started in May 1997, have
18 conductor only trains been run under your watch and
19 supervision?

20 A Yes. As a conductor in Augusta, most of the jobs
21 were conductor only, some had two, but the majority
22 had one and in Columbia and every place I have
23 worked, which has been a variance.

24 Q Now, I want to talk a little bit about your
25 involvement with the events that happened on

1 May 31, 2007.

2 A Okay.

3 MR. TECKLENBURG: Oh, by the way, Your Honor,
4 I move Exhibit 19 into evidence.

5 THE COURT: Any objection?

6 MR. MOSS: No objection.

7 THE COURT: It will be entered without
8 objection.

9 (WHEREUPON, Defendant's Exhibit No. 19
10 was marked for identification and
11 received into evidence.)

12 Q I know there is a lot of entries on there,
13 Mr. Stinson, but can you see this?

14 A Yes, sir.

15 Q All right. And I'm not going to get into the
16 specifics of the train movements because I think
17 the jury has heard a lot of that from various
18 witnesses. I want to concentrate on your
19 involvement with Mr. Moorer.

20 A Okay.

21 Q You know Mr. Moorer over here?

22 A Yes, sir.

23 Q You have met him. It shows on this particular
24 timeline that Mr. Deshazor -- by the way, what is
25 your relationship with Mr. Deshazor back when you

1 were superintendent? How -- did he work for you or
2 how did that work?

3 A Yes. Will was a lead trainmaster in Charleston.
4 And he had a couple of assistant trainmasters or
5 terminal trainmasters that reported directly to
6 him. And then ultimately Will reported to me. I
7 gave him guidance, what have you.

8 Q So, as part of the managing process, how often
9 would you meet? How often would you talk to
10 Mr. Deshazor?

11 A That would vary too. We would probably meet at
12 least once a week at a minimum and then talk -- we
13 had conference calls daily with the division
14 levels, but independent of that, it would vary,
15 some couple of times a day maybe to double that or
16 not even at all.

17 Q Now, it looks like on this particular day, on May
18 31st, Mr. Deshazor called you at 2:26..

19 A Okay.

20 Q Do you know where Mr. Deshazor had been or was on
21 that day?

22 A I'm not sure what territory. I think he was
23 assigned to a saturation rule check team where they
24 go out as is required by the government to do rule
25 checks. And we do like one a month. I think he

1 had to travel somewhere north of Greenville or
2 north of Columbia to do his check.

3 Q So was he not in his, I guess in his office
4 location in Charleston?

5 A No, sir.

6 Q And do you remember what y'all talked about -- I
7 know it is a long time ago -- but at 2:28 p.m. on
8 May 31st?

9 A The call I got from Will I think he had relayed a
10 message to me that he received a call from the P28
11 crew and that Trumaine was not feeling well. And
12 he made a decision to send -- you know, I guess the
13 train was -- the work was almost complete and they
14 were headed back to Columbia. And they wanted to
15 meet an officer at the yard. And I assured him I
16 would do that.

17 At the time I was in Columbia. We had a new
18 trainmaster that just got promoted out of Savannah
19 to Columbia. So I'm just riding through the yard
20 pretty much getting him acclimated to names and
21 locations of how to get in the yard, that sort of
22 thing. So I assured Will I would do that.

23 Q In those communications with Mr. Deshazor, was
24 there any sense of emergency or something that has
25 gone completely awry that you have to deal with?

1 A No. No. Being that it was Trumaine, we knew that
2 there was a situation prior, so I asked him, is
3 this any emergency. He said, no.

4 I asked the same question. It is not
5 emergency, just he wanted to meet somebody at the
6 yard office because he wasn't feeling well.

7 And I continued on with what I was doing.

8 Q And it looks like, according to this timeline,
9 y'all may have talked a time or two after that, is
10 that right? At least that is what the cell records
11 show.

12 A Yes.

13 Q It says that you have three telephone calls.

14 A Okay.

15 Q Just because you have three calls with
16 Mr. Deshazor, were they all on the same topic? Do
17 you know? Do you remember?

18 A Typically, when a check team goes out, and they are
19 out probably eight or ten hours doing rule checks,
20 different various types checks, you know, Will
21 was -- I think the check was over -- getting his
22 report out of his checks, so -- to determine if
23 there is any rule violations or what type of
24 handling would be, you know, appropriate discipline
25 in this case or just getting a report out of his

1 check team.

2 I'm not sure where he was at. There might
3 have been a drop call or two, but in general just
4 give me his closing from his check team.

5 Q When he did the saturation checks, was it customary
6 for him to report to you?

7 A Yes, he reports directly to me, so he would be the
8 one that would have to make that call.

9 Q And just so the jury knows what a saturation check
10 is, explain why it would be important for you to
11 know the results.

12 A There might be something serious in nature where if
13 a train was speeding we're required to do radar
14 checks, just like the police check, you know,
15 people drive cars on the highways, we're required
16 to do certain checks on the railroad to ensure
17 safety as well.

18 So being that he had a check team, I have got
19 to find out whether any major issues or any -- what
20 the findings were.

21 Q Now, it looks like there is another call. Let's
22 see where you appear next. Make sure I get this
23 one right. It looks like your next involvement was
24 perhaps at 3:21. Does that sound right?

25 A Okay.

1 Q And according to this, Engineer Connelly called you
2 twice totaling three minutes?

3 A Okay.

4 Q Do you remember your first contact with
5 Mr. Connelly on this date, on May 31st?

6 A Yes. It was pretty much just verbatim almost --
7 well, not verbatim, but just kind of passing on the
8 same thing Will had said, that Trumaine was not
9 feeling well and that they were coming back to
10 Columbia and they -- could we have an officer meet
11 them at the yard office.

12 And I said, I'll be that person, I'm here
13 today, so we'll talk to the yardmaster and see what
14 time to arrive and we will meet you at the yard
15 office.

16 Q Was there any discussion about where the train was
17 or where it was going, what speed or anything like
18 that?

19 A No. Speed is pretty consistent out in that
20 territory. There is a maximum speed. I think they
21 were out of Orangeburg, if I'm not mistaken, which
22 is bad for cell phone coverage, but he just wanted
23 to be sure that I was going to meet him at the yard
24 office.

25 Q When Mr. Connelly talked to you, did he say that

1 EMS was needed?

2 A No. I asked him, I said, should I come to you? Is
3 this an emergency?

4 And he said, no, it is not.

5 And I said, okay, well, can I meet you at --
6 there is a paved road outside of Columbia called
7 Atlas Road. I said, I can meet you there. Is it
8 an emergency?

9 He said, no, the yard office is fine. We'll
10 just meet you there at the yard office -- well, the
11 Old Maude shack they call it. It is in the middle
12 of Andrews Yard.

13 Q So the rendezvous point, if you will, was Old Maude
14 shack, is that right?

15 A Yes.

16 Q And that is within the yard?

17 A Yes.

18 Q And it looks like the next contact you had -- you
19 had some additional calls with Mr. Deshazor. Do
20 you have any idea what you discussed at that point?

21 A I think Will, one of the calls he might have
22 followed up to be sure that somebody was going to
23 meet -- was the train P28 back or was I going to be
24 there.

25 And I told him I had Greg Simpson with me, a

1 new trainmaster, and we were at the yard and we
2 were just waiting for him them to get here.

3 Q And when the train pulled up, what was done? What
4 do you recall?

5 A They pulled through, I forget what track, but we
6 were sitting in the car behind the yard office, the
7 little Old Maude shack.

8 I boarded the engine fairly quick. It might
9 have took me 30 or 40 seconds to get out and climb
10 the locomotive to go inside. I spoke to
11 Mr. Connelly. He was on -- when I came in the door
12 he was right there in front of me. Spoke to him,
13 and then went and spoke to Trumaine.

14 Q And what did -- was Mr. Moorer able to talk to you?

15 A Briefly. Very briefly. He was sitting, you know,
16 in the seat leaned over and I think he was
17 clutching one of his legs. And I went over to
18 put -- I put my hand on his back. He was sweating.
19 And I think he said he was cramping. I could see
20 just in his forearm that his muscles were
21 twitching.

22 So I went back and said, call 9-1-1 to I think
23 Greg, the trainmaster at the door, and then went
24 back to Trumaine, got a bottle of water out of the
25 cooler and said, don't worry about it, we'll take

1 care of you. And I didn't try to engage in a
2 conversation with him.

3 Q Okay. Fair enough. And how eventually did he --
4 well, after a call was made, who arrived next? If
5 you remember?

6 A I think a firetruck, some EMS people came up. I
7 couldn't tell whether they were firemen or what,
8 but they were debating how to get him off. But in
9 between that, you know, I tried to -- Trumaine
10 tried to stand up. I think he wanted to, you know,
11 as well try to assist, but he is a big guy and
12 there was no way I would want to risk or he would
13 try to move him, so he just sat back down.

14 I said, it will be just a minute or so, but
15 we'll take care of you.

16 And then I think it was the firetruck came up.
17 They had a -- they were discussing how to get him
18 off the engine. And they had a special chair, I
19 think, that they sit him in, strap him to it, will
20 be easier to maneuver out the door and off the
21 locomotive.

22 Q And once he left, the records show he went to
23 Palmetto Baptist Hospital right down the street?

24 A Yes, sir.

25 Q Did you go visit him?

1 A Yes, sir, I went with him to the hospital.

2 Q And is that something you would do as a supervisor?

3 A I went down to Charleston and the Orangeburg
4 Hospital at the first incident to see how he was
5 doing, so, yes, that is common. And I remember
6 telling EMS, you might want to call the hospital
7 there because he was taken to the hospital probably
8 about a month prior, that they had records, or
9 whatever, trying to give them as much information
10 as I knew.

11 Q So you were trying to provide whatever assistance
12 you could?

13 A Yes, sir.

14 Q Thank you, Mr. Stinson. Please answer anything
15 Mr. Moss has.

16 A Yes, sir.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MOSS:

20 Q Hello, Mr. Stinson.

21 A Mr. Moss.

22 Q Did you have an understanding of how badly Mr.
23 Moorer was physically the first time that he had
24 fallen out and gone to the hospital in Orangeburg
25 earlier in the month?

1 A Other than the fact there was something mentioned
2 just from Trumaine through Will that it might have
3 something to do with his kidneys. So I'm not a
4 doctor. I just took it as personal. And we can't
5 ask. And if he is not -- you know, I didn't know,
6 no, sir.

7 Q You knew he had been in the hospital for a number
8 of days?

9 A Yes, sir. They had run some tests.

10 Q He had been taken out of Doane from -- by emergency
11 vehicle from Orangeburg the first time?

12 A Yes, sir.

13 Q Did you think it was a good idea that he be taken
14 by EMS the first time?

15 A Then again, I don't know what his condition was.
16 You know, somebody could have taken him or --
17 really it was a moot point. He got to the
18 hospital, they deemed it necessary, and that was
19 fine by me.

20 Q You do think it is important if somebody is -- they
21 don't have to actually be collapsed in the ballast
22 for you to call 9-1-1, if they are having a problem
23 that could escalate, you would agree with me that
24 the best and safest course is to go ahead and just
25 call 9-1-1, right?

1 A If -- yes. If they think that is necessary, they
2 can call 9-1-1.

3 Q And being a supervisor, have you learned from the
4 medical department that when someone is having a
5 heat-related event, that time is of the essence in
6 the sense that appropriate steps need to be taken
7 to get the person cooled down or to get them out of
8 a hot environment or get them medical treatment?
9 Have you learned that?

10 A Yes.

11 Q And you have also learned from your training from
12 Dr. Prible and his policies that if somebody is
13 having a heat event, when in doubt you should get
14 them to a facility as quickly as possible, correct?

15 A It is kind of common sense, but at this point
16 nobody said it was a heat event. They just said
17 Trumaine is not feeling well. So I didn't know
18 what the condition was.

19 Q All right. I'm just asking you a real simple
20 question, not even really about this case.

21 A Okay.

22 Q I just want to know what you feel like you
23 understand from your training. If somebody is
24 having a heat event, would you train Mr. Stinson,
25 when in doubt get them to a facility?

1 A If you are in doubt, yes, sir.

2 Q And if there is a doubt, if there is emergency
3 services available, you should bring the medical
4 facility to them, right?

5 A Well, if you call 9-1-1 they would come to you,
6 yes.

7 Q One way or the other, the goal is to get them
8 treatment whether you take them to the facility or
9 the facility comes to them, right?

10 A Right.

11 Q And the reason for that training that you perceive
12 is because you learned that heat injuries are very,
13 very serious and potentially life threatening,
14 right?

15 A They can progress that way, yes, sir.

16 Q I mean, you've been trained on that point by your
17 employer?

18 A Internally the heat-related illnesses can get
19 worse.

20 Q And if they progress to their logical conclusion
21 they can be life threatening?

22 A Yes.

23 Q You knew that at the time you were at work on the
24 31st of May, you knew all these concepts about the
25 magnitude and potential of life-threatening harm

1 for a heat injury, right?

2 A Yes, sir.

3 Q At what point on the timeline did you take control
4 of this situation? And I'm going to call it
5 situation. That is, at 2:26 the phone call was
6 placed by Mr. Moorer to Mr. Deshazor. At 2:26
7 Mr. Deshazor calls you.

8 At what point was this Mr. Deshazor's problem
9 and at what point did it become your problem?

10 A Well, I wouldn't call it a problem. You know, when
11 Will called me --

12 Q Well, I don't mean that. I mean this situation,
13 whatever that is. I don't mean that word.

14 A The first call Will made to me, you know, Will is
15 not even in the area, so pretty much the first
16 phone call that was made to me by Will to meet the
17 crew, which would be --

18 Q 2:26 on this board.

19 A Okay.

20 Q It says, Deshazor called terminal superintendent
21 and speaks with him during three telephone calls.

22 A Yes, sir.

23 Q Okay. This is important. So your understanding is
24 when that call was made, the crew was down here at
25 Orangeburg, right? I'll tell you they were at

1 Doane Pet Products when that call was made.

2 A All right. Yes, sir.

3 Q So from 2:26 until it finally ended, this was your
4 situation to handle?

5 A Yes, sir.

6 Q How many calls did Will Deshazor place to Tommy
7 Connelly or Tommy Connelly place to Will Deshazor
8 after you took control of the situation at 2:26?

9 A Without seeing the time, I have no idea.

10 Q Based on your recollection, how many -- let me ask
11 you this. Did Will Deshazor ever tell you that he
12 was continuing to talk to the engine and
13 Mr. Connelly specifically? Did you even know that?

14 A He did say he lost a couple of calls, probably
15 where the -- he -- the trainmaster rides trains
16 through the territory. He is pretty familiar with
17 that area and where there is no cell phone
18 coverage.

19 MR. MOSS: I am going to object and move to
20 strike. Non-responsive.

21 THE COURT: All right. What was his response?

22 MR. MOSS: I asked him did he know whether
23 Mr. Deshazor was communicating with Mr. Connelly,
24 and his answer was, there is bad cell service.

25 THE COURT: There is what?

1 MR. MOSS: There is bad cell service was the
2 answer to the question about whether he was -- he
3 knew that Deshazor was communicating to Connelly.

4 THE COURT: All right. Yes, sir?

5 MR. TECKLENBURG: It was just a little unusual
6 for him to repeat the question rather than the
7 court reporter.

8 MR. MOSS: I'm sorry.

9 MR. TECKLENBURG: That's fine, Your Honor.

10 MR. MOSS: I didn't mean to usurp your role,
11 ma'am.

12 THE COURT: Let me hear it one more time,
13 Debbie, the question and the answer.

14 (The court reporter complies.)

15 THE COURT: All right. The objection will be
16 sustained, so please answer the question that was
17 asked.

18 Yes, sir.

19 MR. MOSS: Thank you, Your Honor.

20 BY MR. MOSS:

21 Q After you took control of the situation at 2:26,
22 did you ever learn that Mr. Connelly and
23 Mr. Deshazor were talking as the train was moving
24 up towards the Congaree Swamp?

25 A Yes, sir.

1 Q Did Mr. Deshazor tell you that Mr. Connelly was
2 telling him in each telephone call that Trumaine
3 was getting worse?

4 A No, sir.

5 Q You were in charge of the situation and you did not
6 know from Mr. Deshazor that Tommy Connelly was
7 telling him every time that Trumaine was getting
8 worse?

9 A No, sir.

10 Q Can you give us any explanation on the planet why
11 Will Deshazor would not have been telling you who
12 was in charge that Mr. Connelly was telling him
13 that Trumaine was getting worse?

14 A That's a question for Mr. Deshazor. I have no
15 idea, sir.

16 Q He should have been telling you who was in charge
17 of this situation --

18 A Right.

19 Q -- that every time he talked to Connelly, Connelly
20 was telling him that he was getting worse? He
21 should have told you, right?

22 A If in fact Tommy told him that, yes, sir.

23 Q Because if you are in charge of the situation and
24 the person talking to the train knows that the man
25 is getting worse, you have got to have information

1 if you are going to intervene and help the man if
2 he needs it, right?

3 A Yes, sir.

4 Q Because if the phone calls, and the jury can
5 figure, were made in the St. Matthews area, when
6 Mr. Deshazor is talking to Mr. Connelly, there is
7 EMS services available at St. Matthews and up here
8 towards, a little more rural at Fort Motte, right?

9 A Okay.

10 Q Agreed?

11 A I have been there, so I would assume so, yes, sir.

12 Q You have been to St. Matthews?

13 A Yes, sir.

14 Q The tracks run right through town?

15 A Yes, sir.

16 Q It is not a big place, but a big enough place to
17 have a medical facility?

18 A I'm not familiar --

19 Q We'll leave it be.

20 A Yes, sir.

21 Q When you got the call at 3:21, the train was
22 somewhere between 101 and 104, I think, it was just
23 at the edge of the swamp?

24 A Okay.

25 Q Okay? Is there access roads, arteries on the other

1 side of the swamp, that is, the Columbia side of
2 the swamp, past SC101 where an emergency vehicle
3 could stop a train to get Mr. Moorer off? .

4 A Yes, sir.

5 Q How many?

6 A It is going to vary from -- there is probably a lot
7 of state roads that have crossings.

8 Q Right.

9 A Probably eight crossings at least.

10 Q If I tell you that Mr. Connelly called --
11 Mr. Connelly and Mr. Deshazor spoke at 2:58, at
12 2:59 and at 3:00 o'clock and at 3:07 on this side
13 of the swamp and in every one of those phone calls
14 Mr. Connelly said that Trumaine was worse, do you
15 think, Mr. Stinson, that at some point back here
16 you, had you known that, would have said, why don't
17 you guys stop the train and let's get an EMS
18 vehicle to Trumaine?

19 A Yes. The first phone call from Will was stating
20 that Trumaine was ill. And we had a conversation.
21 He is right there at Orangeburg at the hospital.
22 And he said no, they are just going to head back to
23 Columbia.

24 Q Okay. But then the problem is you go dark, no
25 offense to you, you go dark between 2:26 and 3:21?

1 A Right.

2 Q Had you known in here, 2:58, 2:59, 3:00 o'clock,
3 3:07, that Trumaine was getting worse with every
4 phone call, would you, in your management
5 prerogative and the terminal superintendent, have
6 stopped the equipment and got Mr. Moorers emergency
7 services?

8 A I would have asked the crew what he needed. If it
9 is an emergency -- you know, the first incident,
10 you know, I think that EMS was called, management
11 was notified later, but in this case they didn't
12 ask for any type of medical services.

13 Q Right. Trumaine was not well, right?

14 A When I saw him, he needed to have EMS.

15 Q Yes. And let's be real clear about that. When you
16 first laid eyes on Mr. Moorers up here, it wasn't
17 even close, he needed help, right?

18 A In my opinion, yes, sir.

19 Q Yet at no time before the train got there did the
20 crew ever call and say, this is an emergency,
21 right?

22 A I spoke to the engineer and asked him, do you need
23 an ambulance or can I meet you anywhere other --
24 outside of Columbia, and he said no.

25 Q And so what is happening in this situation is --

1 Tommy Connelly is a nice guy, but he has no medical
2 training, right?

3 A I trust him. I trust the employees.

4 Q Look, I do too. But Tommy is not in a position to
5 assess the situation properly, do you agree?

6 A I trust him. If he says he needed an ambulance, he
7 is going to take care of his co-worker, he
8 wouldn't -- anybody would.

9 Q Should Mr. Connelly have maybe called you when he
10 saw that Trumaine was in such a bad condition that
11 he couldn't move and couldn't do anything, just
12 like it was when you got on the train and saw him
13 when he arrived? Shouldn't somebody have called?

14 A That is up to that crew. I asked the question,
15 what do you need, I'm here to help, just tell me
16 what to do.

17 And all he asked for is to have an officer
18 meet him at the yard office.

19 Q I don't mean to belabor it, but in y'all's world,
20 when y'all tell these employees, these
21 transportation employees what to do, they do it,
22 right?

23 A Most of the time.

24 Q Supposed to?

25 A Supposed to.

1 Q And ultimately y'all can't delegate the authority
2 to intervene for somebody who is having an
3 emergency, you can't delegate that to a co-worker,
4 can you? That is y'all's decision?

5 A Repeat that question.

6 Q You can't delegate the decision about what to do
7 with your train in an emergency and a guy on there
8 to a co-worker? You can't do that, can you?

9 A Well, common sense will apply. At Doane Pet
10 Products they stopped and I think the industry
11 called 9-1-1 and took care of him.

12 So in this case -- if somebody saw a burning
13 building, they are going to call 9-1-1, they are
14 not going to call a supervisor to get permission to
15 call 9-1-1.

16 Q I get it.

17 A And if Tommy thought that his employee needed help,
18 he would ask for it.

19 Q And if you had known that there was a continuing
20 phone call indicating that Trumaine was worse, you
21 might have intervened yourself?

22 A That's possible, yes, sir.

23 Q Because the tenet at Norfolk Southern, the tenet,
24 the overriding rule is always take the safest
25 course, right?

1 A Safety first.

2 Q Safety first. Not convenience, not less hope, not
3 less -- when in doubt, safety first, right?

4 A Correct.

5 Q Did the railroad ever provide you any specific
6 training on how to manage your accounts with
7 somebody after they returned to work with a heat
8 injury?

9 A No, sir.

10 Q Thanks.

11 REDIRECT EXAMINATION

12 BY MR. TECKLENBURG:

13 Q Mr. Stinson, very briefly. Had Mr. Connelly told
14 you, we need EMS or we need to stop, would you have
15 honored his request?

16 A I probably would have questioned him, asked him,
17 you know, what do you need, Tommy, yes.

18 Q So it sounds like you asked him that question.

19 A Most definitely.

20 Q Did you feel that he was in a position meaning near
21 his co-worker and able to convey on what his
22 co-worker was saying?

23 A Yes. Crews are pretty tight. They work closely
24 day in and day out. And one is not going to let
25 one fall or even -- without taking care of him.

1 And I'm not Tommy Connelly, but I believe if Tommy
2 deemed it necessary, he would have said, Mr.
3 Stinson, we need an ambulance, we are not even
4 going to leave Orangeburg.

5 Q Finally, the gray rule book that the jury has seen
6 and you are familiar with, Exhibit 95, that rule
7 book, whether you are a supervisor or not, doesn't
8 allow an employee to always make the safest
9 decision?

10 A Yes.

11 Q And if a supervisor were to instruct an employee to
12 do something unsafe, doesn't it allow the employee
13 to take the safest course?

14 A Yes. The FRA just came out with a rule a while
15 back that lets the unions challenge management
16 without repercussion if a supervisor tells an
17 employee to do something that is against the rules,
18 so to speak.

19 So you are not going to have a supervisor tell
20 anybody to do anything that is not in accordance
21 with the rule book.

22 Q Thank you, Mr. Stinson.

23 A Yes, sir.

24 RECROSS-EXAMINATION

25 BY MR. MOSS:

1 Q Mr. Stinson, if they do something, one of your
2 employees does something that is not consistent
3 with the book, who has the authority to charge them
4 with violating some of these rules?

5 A Well, it is twofold. If a co-worker sees an
6 employee violating a rule, they are supposed to
7 stop the job, have a job briefing, and discuss with
8 the employee why they violated the rule.

9 If they are observed by management in
10 violation of a operating rule, then there is
11 different levels of management -- or discipline.
12 You might have your glasses off. That is different
13 than running down the tracks at excess speed. It
14 would be handled differently.

15 Q Well, I guess my point is, whether it is you or
16 Will Deshazor, if Mr. Moorer had done something in
17 violation of these rules, y'all had the management
18 authority prerogative to charge him with that,
19 right?

20 A Yes. There is disciplinary action taken if there
21 is rule violations for the severity, it depends on
22 the violation.

23 Q Y'all elected not to charge Mr. Moorer for doing
24 anything wrong on either one of these events,
25 right?

1 A No, sir.

2 Q Thank you.

3 THE COURT: All right, thank you, sir. You
4 may step down.

5 THE WITNESS: Thank you.

6 THE COURT: Any objection to this witness
7 being excused?

8 MR. MOSS: No, Your Honor.

9 MR. TECKLENBURG: No, Your Honor.

10 THE COURT: Sir, you are free to leave.

11 (Witness steps down and is excused.)

12 MR. TECKLENBURG: Your Honor, we would call by
13 deposition Linda Lanham from Kinder Morgan.

14 (WHEREUPON, the deposition of Linda
15 Lanham was read in open court.)

16 THE COURT: Call your next witness.

17 MR. TECKLENBURG: At this time we are going to
18 do a video. It may take a second or two for us to
19 set up. The witness is Kristen Cicero.

20 (WHEREUPON, the video deposition of
21 Kristen Cicero was played in open
22 court.)

23 THE COURT: Ladies and gentlemen of the jury,
24 at this time we're going to take a break, say about
25 10 or 15 minutes, and we'll come back.

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 LINDA
LANNAM TAKEN 9/14/11
READ AT TRIAL (771:12-15)**

The undersigned parties stipulate the following excerpts of the deposition of Linda

Lannam taken September 14, 2011, were read at trial:

03:15 - 03:19

04:21 - 05:10

05:20 - 06:02

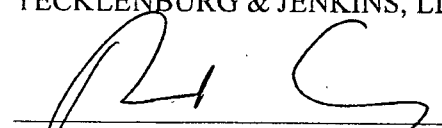
06:06 - 06:15

14:01 - 15:07

17:04 - 18:05

21:03 - 21:19

TECKLENBURG & JENKINS, LLC


Paul F. Tecklenburg – SC Bar #10295

1819 Meeting Street Road, Ste. A

Charleston, SC 29405

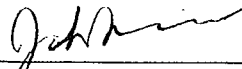
Telephone: (843) 534-2628

Facsimile: (843) 534-2629

Email: pft@tecklaw.net

Counsel for Defendant

STEEL & MOSS, LLP



John A. Moss, Esquire
15 Piedmont Center, Suite 1560
3575 Piedmont Road, NE
Atlanta, GA 30305
Counsel for Plaintiff

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

TRUMAINE V. MOORER,

Plaintiff,

vs.

CASE NO. 08-CP-3824

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

DEPOSITION OF: LINDA LANNAM (BY PHONE)

DATE: SEPTEMBER 15, 2011

TIME: 2:04 P.M.

LOCATION: TECKLENBURG LAW FIRM
1819 Meeting Street Road, Suite A
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: G. MICHAEL ALEXANDER, Registered
Professional Reporter, CSR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

LINDA LANNAM

being first duly sworn, testified as follows:

EXAMINATION

BY MR. TECKLENBURG:

Q. Could you identify yourself for the record, please.

A. Linda Lannam.

Q. Ms. Lannam, by whom are you employed?

A. Kinder-Morgan.

Q. And where is Kinder-Morgan located?

A. We're located in Houston, Texas.

Q. And do you have facilities in South Carolina?

A. We do, yes.

Q. And where are are those facilities?

1 A. We have them in a few different
2 locations. I can get them for you. Just one
3 moment. We have facilities in Belton,
4 Charleston, Greenville, Huger, North Augusta,
5 North Charleston, and Spartanburg.

6 Q. Very good. Thank you. Before I
7 proceed any further, I am required under our
8 local South Carolina rules to inform you that if
9 there are any questions that I ask that need
10 repeating or rephrasing or you find unclear,
11 please let me know so I can rephrase them. Okay?

12 A. Thank you.

13 Q. Likewise Mr. Moss may ask you some
14 questions after I do and the same will apply as
15 to him. All right?

16 A. All right.

17 Q. Very good. With respect to the
18 facility in North Charleston, South Carolina, do
19 you know what that facility does?

20 A. Not specifically, I do not.

21 Q. Tell me your title, if you don't mind,
22 please.

23 A. My title is senior benefits analyst.

24 Q. And what does a benefits analyst do at
25 Kinder-Morgan?

1 A. I'm at a high level. I'm responsible
2 for employee enrollment in our benefit providers
3 system.

4 Q. We're here today about an individual
5 by the name of Trumaine Moorner. Was Mr. Moorner
6 an employee of Kinder-Morgan?

7 A. Yes.

8 Q. And do you know when that employment
9 started?

10 A. The 9th of May of this year.

11 Q. Okay. I have a series of exhibits in
12 front of you that I'm going to identify by
13 number. And as to each one if you could, as I
14 identify them, please let me know whether --

15 MR. TECKLENBURG: As a matter fact, we
16 can avoid this. John, will you stipulate they're
17 business records made in the ordinary course?

18 MR. MOSS: yes.

19 BY MR. TECKLENBURG:

20 Q. I'm going to review a few records that
21 you have in front of you so that they can be
22 described for the jury that will be listening and
23 hearing this read to them.

24 The first exhibit is Exhibit 42, which
25 is a letter dated April 20, 2011. Can you tell

1 me what this letter is.

2 A. I appears to be an offer letter.

3 (DFT. TRIAL EXH. 42, Offer letter
4 dated 4/20/11, was marked for identification.)

5 BY MR. TECKLENBURG:

6 Q. Tell me what an offer letter is.

7 A. I don't work in the human resources
8 department. So this is nothing that I'm highly
9 familiar with. But to the best of my knowledge
10 it's something that's provided to employees once
11 they've verbally accepted an offer with the
12 company.

13 Q. Understood. And it mentions an hourly
14 rate of \$17 an hour. Is that correct?

15 A. Yes.

16 Q. It also mentions that there's an
17 opportunity to enroll in benefit plans. Is that
18 correct?

19 A. It is.

20 Q. Okay. And that sounds like that is
21 what you primarily concern yourself with, the
22 benefits of Kinder-Morgan.

23 A. Yes, it is.

24 (DFT. TRIAL EXH. 46, Acceptance
25 statement, was marked for identification.)

1 Q. Okay. And tell me about the top plan
2 UHC choice EPO medical plan. What is that?

3 A. That's a medical plan option that
4 Mr. Moorer elected. It's administered by United
5 Health Care. And it's the exclusive provider
6 option.

7 Q. Okay. And what are the limits of
8 coverage?

9 A. Let me get that for you. Just a
10 moment, please. The exclusive provider
11 organization option, there is no lifetime
12 maximum. There are no annual deductibles. There
13 are no annual out-of-pockets maximums. The plan
14 pays -- the employee pays a co-payment for a
15 primary care physician, a specialist, outpatient
16 surgery or a hospital visit. And then the
17 remainder of the cost is picked up by the plan,
18 provided the employee sees a United Health Care
19 EPO provider.

20 Q. So under that plan you said there's no
21 lifetime limit?

22 A. Correct.

23 Q. And no deductible?

24 A. Correct.

25 Q. Okay. And what is his cost per pay

1 period?

2 A. His cost per pay period is \$174.20.

3 Q. And what is the cost of Kinder-Morgan
4 that they came out of each pay period?

5 A.. On a biweekly basis, which is
6 consistent with what the employee paid, it's
7 \$455.58.

8 Q. Okay. And then the next page that's
9 listed here is the dental plan.

10 A. Yes.

11 Q. Do you know roughly what the benefits
12 are on that?

13 A. Yes. It's a \$1,750 individual annual
14 maximum. There's a \$50 individual deductible or
15 \$150 family deductible.

16 Q. Okay. And then there's a third
17 benefit listed on here, the vision plan. Did he
18 also have that?

19 A. Yes, he did.

20 Q. And what did that include?

21 A. That's primary vision coverage, eye
22 exams, glasses, contacts, that type of thing.

23 Q. Okay. And his cost was \$9.86 per pay
24 period?

25 A. Yes, it is.

1 disability actually is. But if there's an
2 accidental death it would pay the percentages
3 that I mentioned,

4 Q. Okay. Now, looking back at the
5 company cost, on the right-hand column on Exhibit
6 65. It has the medical cost you previously
7 stated of \$455.58, correct?

8 A. Yes.

9 Q. And the dental cost of \$23.01?

10 A. That's correct.

11 Q. If I total those I come to \$478.59.

12 And my question for you is if I wanted to
13 annualize that would I just multiply it times 26?

14 A. Yes, you would.

15 Q. Because he gets paid every other week.

16 A. Correct.

17 Q. Okay. And I'm not asking you to sit
18 with a calculator but would that number be
19 probably close to \$12,443?

20 A. Yes. The medical cost is actually
21 the -- are you looking at the company's cost?

22 Q. Yes.

23 A. For medical coverage it's -- I'm
24 sorry. Let me see. \$11,845.04 annually. And
25 the dental coverage is \$598.26 annually that the

1 company provides or pays.

2 Q. Okay. So those numbers you gave are
3 actually paid by the company.

4 A. Yes, they are.

5 Q. Not by the employee.

6 A. Correct. I have the employee's costs
7 if you want those.

8 Q. For that would I likewise just take
9 the numbers on this Exhibit 65 and multiply them
10 times 26?

11 A. Yes, you would.

12 Q. Very good. Thank you.

13 And then I only have one last exhibit
14 to review with you, which is Exhibit 83.

15 A. Okay. Let me get that. All right.

16 (DFT. TRIAL EXH. 83, Job submission
17 parameters, was marked for identification.)

18 BY MR. TECKLENBURG:

19 Q. Can you tell what that is?

20 A. Yes. These were provided by our
21 payroll department. But they're a summary of the
22 employee's gross pay and then how it nets out
23 according to the deductions, paid for benefits,
24 and a whole list of company deductions.

25 Q. For example on the second page of

1 1, 2011 he had 15.5 hours overtime.

2 A. Yes.

3 Q. And do you know if it was overtime or
4 time and a half times \$17? Do you know?

5 A. Let me take a look at something for a
6 moment, please. Yes, it would be 17 times 1.5.

7 Q. Okay. So for the overtime rate he
8 would be earning \$25.50 an hour. Is that
9 correct?

10 A. Yes.

11 Q. Then finally, the last page of this
12 Exhibit 83, do you know if this is a summary of
13 his pay?

14 A. To me it appears to be.

15 Q. Okay. And that would include from the
16 start of his employment, I guess, you said on May
17 9th to whenever he ended employment this past
18 August.

19 A. Yes.

20 Q. And is it your understanding
21 Mr. Moorer is no longer an employee of
22 Kinder-Morgan?

23 A. Yes, that's my understanding.

24 MR. TECKLENBURG: Let me look through
25 my notes. I don't think I have any further

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
KRISTAN CICERO TAKEN 9/16/11,
PLAYED AT TRIAL (771:17-22)**

The undersigned parties stipulate the following excerpts of the deposition of Kristan

Cicero taken September 16, 2011, were played at trial:

06:06 - 07:22

09:23 - 10:23

13:19 - 15:06

16:01 - 16:18

17:01 - 17:09

20:10 - 24:01

26:20 - 27:10

35:01 - 36:20

37:24 - 39:03

39:22 - 40:15

41:07 - 43:18

45:19 - 46:20

50:03 - 51:05

51:16 - 51:19

52:10 - 54:11

54:16 - 54:19

55:16 - 57:18

61:17 - 62:08

62:20 - 64:09

65:14 - 65:25

67:22 - 69:25

73:07 - 73:21

77:21 - 78:24

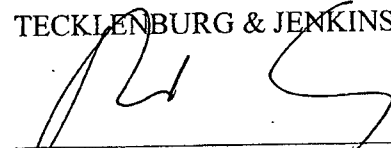
82:01 - 89:24

90:10 - 92:08

93:10 - 96:23

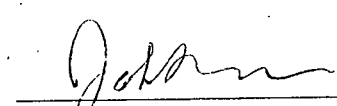
97:25 - 98:03
101:17 - 103:03
103:06 - 106:21
108:17 - 110:05
112:01 - 113:03
114:01 - 115:10
115:15 - 116:07
117:02 - 117:12
119:08 - 120:01
120:13 - 120:23

TECKLENBURG & JENKINS, LLC



Paul F. Tecklenburg – SC Bar #10295
1819 Meeting Street Road, Ste. A
Charleston, SC 29405
Telephone: (843) 534-2628
Facsimile: (843) 534-2629
Email: pft@tecklaw.net
Counsel for Defendant

STEEL & MOSS, LLP



John A. Moss, Esquire
15 Piedmont Center, Suite 1560
3575 Piedmont Road, NE
Atlanta, GA 30305
Counsel for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OR RICHLAND

COURT OF COMMON PLEAS

TRUMAINE V. MOORER,

Plaintiff,

VS.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

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) Case No. 2010-CP-40-05460

DEPOSITION VIA VIDEO TELECONFERENCE AND TELEPHONE OF

KRISTAN CICERO

TAKEN ON .

FRIDAY, SEPTEMBER 16, 2011

Reported by: MARLA GORLICK..

CSR No. 3767

1 Marla Gorlick for A. William Roberts Jr. &
2 Associates.

3 Would the court reporter please swear in
4 the witness.

5
6 KRISTAN CICERO,
7 having been first duly sworn, was
8 examined and testified as follows:

9
10 THE VIDEOGRAPHER: You may begin.

11
12 EXAMINATION

13 BY MR. TECKLENBURG:

14 Q. Good morning, Ms. Cicero.

15 A. Good morning, Mr. Tecklenburg.

16 Q. Would you identify your name for the
17 record, please.

18 A. Certainly. It's Kristan Cicero.

19 Q. And Ms. Cicero, could you tell us what you
20 do for a living, please.

21 A. I'm a rehabilitation counselor and a
22 vocational expert witness. I do medical and
23 vocational case management services for individuals
24 who are injured usually on the work or in some type
25 of accident. And I do different types of

1 vocational expert witness testimony and expert
2 witness work such as testifying for the Office of
3 Disability Adjudication and Review with the Social
4 Security Administration, and work such as this,
5 liability work, some divorce work, personal injury;
6 as I said, Workers' Comp. Those types of things.
7 And I also have a utilization review organization
8 where I contract physicians through my company, and
9 we provide peer review of Workers' Compensation
10 medical treatment. And, let's see. I think that's
11 it.

12 Q. Sounds like a lot of things.

13 A. It is.

14 Q. Can you tell us about your educational
15 background.

16 A. I have a bachelor's degree in Psychology
17 and Human Resources Management. That was a double
18 major. And I have a master's degree in
19 Rehabilitation Counseling. I furthered my
20 education. I was going for my Ph.D., and I did not
21 finish that. I finished all of the coursework, but
22 I did not finish the dissertation.

23 Q. The master's program that you attended,
24 tell us where that was and what the general course
25 study was.

1 A. Okay.

2 Q. Sure. Please.

3 A. When I first graduated from college, I
4 began working with a company called Keystone
5 Rehabilitation. And I worked there as a vocational
6 counselor and job developer and worked again with,
7 mostly with Workers' Compensation, individuals who
8 had been injured. And I provided medical and
9 vocational case management. That's pretty much
10 where I got the foundation for my career. And then
11 moved from there to Rehabit, Incorporated. Worked
12 at that company for several years as a
13 rehabilitation counselor and also supervised
14 approximately 16 case managers, vocational and
15 medical case managers in that organization. I then
16 worked for Penn Rehabilitation Services, which is
17 another private rehabilitation company, for several
18 years, and then went out on my own and began KVS
19 Consulting Services which is my company. It's a
20 small company that I started in approximately 2000.
21 And since then, I've been doing the work that I
22 described to you originally.

23 Q. And are you certified by any professional
24 organization?

25 A. I am. I'm a certified rehabilitation

1 counselor by the Commission on Rehabilitation
2 Counseling which is a national organization.

3 Q. And tell us -- and tell the jury what that
4 commission does.

5 A. Well, they're a national certification
6 organization. They're nonprofit. And they certify
7 rehabilitation counselors throughout the country.
8 Well, I guess I should say several countries, but
9 mostly the United States and probably some --
10 Canada. And there are several thousand
11 rehabilitation counselors that they test and make
12 sure that you have the correct credentials in order
13 to be a rehabilitation counselor. And once you
14 meet those criteria, then you're certified. And
15 then every five years you have to recertify with
16 them.

17 Q. And how long have you been certified with
18 this credential of CRC, of certified rehab
19 counselor?

20 A. When I graduated with my master's degree
21 in '92, I took the test and I was certified. So
22 since then I've been a certified rehabilitation
23 counselor.

24 Q. Now, I appreciate your appearing the week
25 before trial. I understand you're out of state and

1 capacities based upon some type of injury or
2 illness that they've had.

3 Q. That's correct.

4 THE VIDEOGRAPHER: Counsel --
5 BY MR. TECKLENBURG:

6 Q. And you evaluated those persons -- yes?

7 THE VIDEOGRAPHER: I'm sorry. I need to
8 pause momentarily. This is the videographer
9 speaking. Pausing briefly at 6:50.

10 (Brief recess.)

11 THE VIDEOGRAPHER: We are back on the
12 record at 6:51. Thank you, sir.

13 BY MR. TECKLENBURG:

14 Q. Ms. Cicero, I think we had just finished
15 going through your qualifications in testifying and
16 giving vocational rehabilitation expert testimony,
17 and at this point I'm going to tender you as an
18 expert to the court.

19 Now, at some point did you receive a
20 referral of a gentleman named Trumaine Moorner?

21 A. I did.

22 Q. And tell me what you do when you receive a
23 referral such as Mr. Moorner.

24 What is your course of action that you
25 take?

1 A. Well, I meet with the individual and
2 complete an initial, what we call an initial
3 rehabilitation survey in order to gather specific
4 information. So first I review the file contents
5 and then I schedule a meeting with the client, and
6 then meet with the client in order to obtain
7 information with regard to their medical status and
8 their vocational and educational history. And
9 subsequent to completing that survey with them, we
10 do some basic intelligence testing to get a feel
11 for where they're at intellectually. And then I
12 determine, based upon the transferrable skills
13 analysis and all of the relevant factors in the
14 case, what types of employment the individual would
15 be able to do based upon the specific restrictions
16 and abilities that have been laid out by the
17 physician or physicians in a case. And I then
18 proceed to determine what those jobs would be that
19 the person would be suited for, and then determine
20 the wages for the positions that they would be
21 suited for, and sometimes contact employers to
22 determine if those types of jobs are readily
23 available in the economy, and if so, at what wage
24 and so forth. And I complete a report and submit
25 that report.

1 Q. So did you actually interview Mr. Moorner?

2 A. I did.

3 Q. How much time did you spend with him here
4 in South Carolina?

5 A. It was about three hours and
6 fifteen minutes total including testing.

7 Q. Okay. And did you also review any medical
8 records or documents associated with Mr. Moorner?

9 A. I did. I had voluminous records in the
10 file. There were about seven depositions that were
11 submitted and medical records from Dantzler Family
12 Care, Trident Medical Center, Orangeburg EMS,
13 Orangeburg Regional Medical Center, Richland County
14 EMS, Columbia Palmetto Baptist Hospital, Dr. Lina,
15 Dr. Watson, Dr. Moseley, and there was a vocational
16 report that was from Dr. McClanahan as well.

17 Q. All right. Now, during your interview
18 with Mr. Moorner, do you review any physical
19 limitations that he may have?

20 A. I did. What I do when I meet with a
21 client is ask them to give me subjectively what
22 their physical limitations are, and I would provide
23 them with a question regarding their ability to
24 perform certain activities. So I did review those
25 with Mr. Moorner during our meeting.

1 Q. All right. And were there any physical
2 limitations that were of significance that he
3 reported to you as far as your vocational
4 assessment?

5 A. He didn't provide any significant physical
6 limitations. He mentioned, you know, that his
7 knees hurt from when he kneels or bends and so
8 forth from what he attributed to playing
9 basketball. And he indicated that from time to
10 time he had some left-shoulder numbness, but that
11 that was not a problem at the moment, and he didn't
12 believe that that would hinder his work activities
13 in any way. Essentially, he reported being healthy
14 other than the incidents, the heat incidents at
15 Norfolk Southern when he was working as a
16 conductor. So he didn't have any limitations at
17 the time of our meeting other than the concerns
18 that he had regarding the heat exposure.

19 Q. And with respect to his interview, did you
20 also review his job history?

21 A. I'm sorry. His? I didn't hear the word.
22 His?

23 Q. Did you review his -- did you inquire as
24 to what jobs he has had over the years?

25 A. Oh, yes, sir. Yes, I did.

1 Q. And what did he report -- what did he
2 report as his current job at the time you met with
3 him?

4 A. He was currently working -- he was
5 currently working with his wife at Kingdom Car
6 Wash. It was her business and he was essentially
7 helping her out. He described the job as more of a
8 supervisory type of role, but that he did do some
9 detailing work on the cars when necessary.

10 Q. Okay. And prior to that, was his job with
11 Norfolk Southern?

12 A. Yes.

13 Q. All right. And the jury will have heard
14 enough about that job by the time you testify.
15 What did he do before Norfolk Southern?

16 A. He was with the Department of --

17 Q. Excuse me. Yeah. Department of what?

18 A. -- Department of Defense, and he was an
19 independent contractor, and he was working in
20 Kuwait as a supply technician basically keeping
21 track of inventory of the equipment and supplies
22 for the military.

23 Q. And what was your understanding of that
24 job? Was it labor intensive or was it more
25 clerk-type work?

1 supervisory work, that was light. And when he was
2 detailing, that would be consistent with medium.

3 So overall, the job would be classified in
4 total as medium because we always go for the
5 heavier exertion when they're split or combination
6 jobs such as that. So that would be considered a
7 medium job. The Norfolk --

8 Q. If I may interrupt you, Ms. Cicero, you
9 talked in terms of light and medium.

10 Are there standards the Department of
11 Labor has that describe these various categories of
12 work?

13 A. There are. The Department of Labor puts
14 out definitions -- puts forth definitions for
15 sedentary, light, medium, heavy, and very heavy
16 work.

17 Q. Okay. And could you describe to the jury
18 what those various terms mean?

19 A. Sure. Sedentary work is essentially
20 seated work. So if you think of clerical workers,
21 receptionists and so forth. And that has --
22 consists of exerting up to 10 pounds of force
23 occasionally, which is up to one-third of the time,
24 and/or lifting or carrying a negligible amount
25 frequently. And the individual is sitting

1 throughout most of the day. There may be some
2 standing and walking for up to two hours or so, but
3 essentially, it's seated work.

4 Light work is work where the individual's
5 exerting up to 20 pounds of force which means
6 lifting or carrying, pushing or pulling, that type
7 of thing occasionally and up to 10 pounds
8 frequently to move objects. And, of course, light
9 exceeds the requirements of sedentary. So if an
10 individual is in a cashier position, even if
11 they're lifting five pounds all day long, it's
12 considered light because of the amount of walking
13 or standing that they're doing versus the seated
14 position for the sedentary.

15 Medium work is essentially lifting up to
16 50 pounds maximum occasionally and up to
17 25 pounds -- I'm sorry. Up to 20 pounds frequently
18 or 10 pounds constantly. And those are in excess
19 of the -- those jobs are in excess of the light
20 work. So anything that's more than light work
21 would be considered medium work.

22 And heavy work, essentially the same thing
23 only now we're going up to a hundred pounds. So if
24 an individual lifts a maximum of a hundred pounds,
25 then that would be heavy work.

1 And very heavy work would be more than a
2 hundred pounds where they're lifting, carrying,
3 pushing or pulling.

4 Q. Okay. That helps. Now, you said with
5 respect to the car wash, that it would be between
6 light and medium depending upon whether he was a
7 supervisor or working; is that right?

8 A. Correct.

9 Q: Tell us about these other jobs before
10 Norfolk Southern, Department of Defense, Richland
11 County, City of Columbia, where those jobs would
12 fall.

13 A. Okay. The Department of Defense job, the
14 inventory -- the supply technician would
15 essentially be an inventory clerk, and that would
16 be according to the Dictionary of Occupational
17 Titles. There are different jobs that we do that
18 aren't necessarily exactly as described by the
19 Dictionary of Occupational Titles, and so the
20 closest DOT code really is, from what I found, is
21 an inventory clerk, and that would have been
22 considered a medium-duty job.

23 However, because there was no lifting
24 involved, according to Mr. Moorer, I would reduce
25 that job to light as it's actually performed and as

1 it was actually performed by Mr. Moorer. The jobs
2 at Richland County and the City of Columbia were
3 sedentary jobs, and they're defined as sedentary
4 and they were performed at the sedentary level.
5 The customer service position with ADT Security was
6 sedentary. The -- let's see. He was selling alarm
7 systems for commission. The DOT defines that job
8 as medium. I don't know if it was actually
9 performed at the medium level. He didn't work
10 there for very long, but there would be no reason
11 to believe that it wouldn't be medium or somewhere
12 between light and medium as those jobs are
13 typically performed due to the amount of crawling
14 around and so forth an individual has to do to
15 actually assess putting in alarm systems and where
16 the alarm systems would be hooked up and so forth.
17 So that little bit of extra exertion, rather than
18 just the standing and perhaps lifting up to
19 20 pounds, would lead me to believe that that would
20 be classified as medium and that I agree with the
21 DOT regarding that.

22 Q. All right. There are some video clips of
23 a conductor performing work at Norfolk Southern.

24 Have you been given some of those video
25 clips?

1 A. I have. I have been.

2 Q. And do you have a CD with those?

3 A. I do.

4 Q. And is there a number on that CD before
5 you put it in?

6 A. There's a number. It's 1002.45.

7 Q. All right. Does it have an identifying,
8 any other identifying numbers?

9 A. Yes, sir. It says Shea videoclips, part
10 of N, as in Nancy, S, and then I'm not sure. It
11 looks like it says M-o-o-r 1966 --

12 Q. All right.

13 A. -- Tecklenburg & Jenkins.

14 Q. All right. When you -- after you take it
15 out of the computer, we'll ask the court reporter
16 to mark it and send it back with your transcript.
17 Okay?

18 A. Sure. Okay. I have it.

19 (The CD referred to was marked as
20 Trial Exhibit 37A for identification
21 and is attached hereto.)

22 BY MR. TECKLENBURG:

23 Q. And Ms. Cicero, the jury has probably
24 already seen these video clips by the time you
25 testify.

1 think the word "conductor" appears before these;
2 right?

3 A. Yes. I'm sorry. Okay. And then the
4 conductor is removing EOT from chlorine car.

5 Q. And next?

6 A. Conductor riding in loco cab.

7 Q. And next?

8 A. Riding -- conductor riding on side of
9 boxcar.

10 Q. And the next one?

11 A. Conductor standing in shade and guiding
12 engineers, and I couldn't -- I know it says
13 something else after that, but it's not showing up
14 on my disk. So there's --

15 Q. And next? And the final?

16 A. Conductor waiting in shade to conduct
17 roll-by inspection. Conductor walking and tying
18 hand brakes to set car out at AOC. I believe
19 that's the extent of the video.

20 Q. Very good. And have you watched each of
21 those clips --

22 A. I have.

23 Q. -- prior to your testimony today?

24 A. Yes, sir, I have.

25 Q. And based upon those clips, how would you

1 classify the tasks being performed on those clips
2 in terms of the Department of Labor standards?

3 A. The tasks would be considered light in
4 nature. So the exertional level would be light as
5 performed in the video.

6 Q. And in evaluating these tasks, is that
7 something you do as part of your work looking at
8 jobs to see what Department of Labor category
9 applies?

10 A. Yes, sir.

11 Q. And I do want to ask you in addition,
12 let's see, based upon what you observed there with
13 Norfolk Southern, how would you compare the jobs he
14 had there with the jobs he had previously?

15 A. How would I compare them in terms of the
16 exertional level? Is that what you're asking?

17 Q. Correct. Yeah.

18 A. Well, the positions based upon the clip,
19 the job would be light as opposed to a medium
20 detailer. So it would be less of an exertional
21 level than a detailer position. And it would be
22 probably comparable or slightly more exertion than
23 the inventory clerk, although there was walking in
24 that position. So I think it would be probably
25 comparable. They would both be considered light.

1 Q. And what do you believe is the best
2 indication for a person's future vocational
3 ability?

4 A. I think the best indication for future
5 success is based on the person's past experience
6 and what they've been able to accomplish in the
7 past, and that will tell you how they can function
8 in the future.

9 Q. And with respect to Mr. Moorer, how did
10 his past look in terms of his ability to be
11 vocationally achieved and successful in the future?

12 A. I think it was excellent and he worked in
13 a number of different settings. He had a lot of
14 different experiences, a lot of different
15 interests. He appears to be the type of person who
16 can adjust well to different work situations and
17 settings and has a lot of skills that he's acquired
18 and aptitudes that he's just been blessed with. He
19 performed well in the past. He was able to get
20 jobs. He networked well. And I think that in the
21 future, you know, that would be more important than
22 intelligence testing.

23 Q. I was noticing in the vocational history
24 he gave you that he had had a total of
25 approximately, I think, six jobs in about nine

1 years.

2 Did he give you reasons why he was moving
3 from one job to the next?

4 A. He did. We talked about that. For the
5 most part, he was leaving because he would find a
6 better opportunity and he would find a higher wage
7 at the next job or better benefits. And he was
8 looking to obviously get the best opportunity for
9 himself and his family. He was concerned because
10 he has four children and a wife to support, and he
11 needed good benefits, and he needed, you know, the
12 highest wage that he could get.

13 Q. And if you have a client or a referral
14 that applies for jobs on a regular basis while
15 they're currently employed, what, in your opinion,
16 is that indicative of?

17 A. I would say that that's indicative of
18 someone who's looking for another opportunity for
19 whatever reason that is. They're looking to move
20 on at some point.

21 Q. Now, in addition to the educational
22 testing you did, did you do what is known as a
23 transferability of skills analysis?

24 A. I did.

25 Q.. All right. And tell me what that is.

1 A. A transferability of skills analysis,
2 essentially we take the jobs that a person has held
3 in the past, and we look at all of the
4 characteristics of those jobs and all of the skills
5 that are required in those jobs, and then we
6 extrapolate the information using -- I don't think
7 anybody does this by hand anymore. There might be
8 somebody out there, but generally as vocational
9 counselors, we use computer programs that will
10 extrapolate that information, and then it will
11 determine the types of jobs that the person can do
12 given their past work, their skills, and their
13 current residual functional capacity, meaning, what
14 they can do now.

15 So if we do a transferability of skills
16 with the person before they're injured, they would
17 have the entire occupational base open to them,
18 potentially, for which their skills could transfer.
19 And after they're injured, then we look to see what
20 jobs those skills could transfer to given what they
21 can currently do and what they can currently --
22 types of jobs they could currently perform in the
23 workforce.

24 Q. And what types of skills did you identify
25 had been developed by Mr. Moorer as a result of his

1 work history?

2 A. He had a lot of skills. As I said, he
3 worked for a number of different types of jobs, so
4 he had clerical skills, computer skills, customer
5 service skills, he had shipping and receiving
6 skills, inventory. He also had record-keeping
7 skills, he had assembly skills, use of hand tools.
8 Just basic bookkeeping, scheduling, supervising.
9 He had an awful lot of skills that he was able to
10 transfer.

11 Q. And did Mr. Moorer describe to you his
12 vocational goals for the future when you met with
13 him, I believe, in 2010?

14 A. He did.

15 Q. And what were those goals?

16 A. He indicated at the time -- excuse me.
17 I'm sorry. I'm just looking. I want to make sure
18 that I have this correct. I know I had documented
19 that in my report someplace. Okay. At that time I
20 asked him what types of jobs he was looking for and
21 what he wanted to do in the future, what he thought
22 that he could do and so forth. And he indicated
23 that he was interested in at that time some type of
24 clerical job or administrative type of work. And
25 he needed -- he wanted to make \$25,000 a year, and

1 benefits, as I said, were important to him. So
2 that was his financial goal at the time that we
3 met.

4 He also indicated that he might want to
5 work in law enforcement, but at that point he did
6 not want to work as a police officer. Not because
7 he didn't think that he could physically do the
8 job, but because his children were concerned about
9 him as a police officer and the dangers that that
10 might impose. So he didn't really want to have to
11 return to that position at that time.

12 He did say that he would like to work as
13 an embalmer at a funeral home, and he had never
14 completed the internship for that or the -- yeah,
15 I'm sorry, not the internship, the apprenticeship
16 program. So in order to take the state boards to
17 get licensed as an embalmer, he wanted to be able
18 to complete that, and he had been attempting to do
19 that while he was at the railroad. So that was
20 something that was a potential career opportunity
21 for him that he was interested in.

22 Q. Since you saw him and he was working for
23 Kingdom Car Wash, do you have an understanding of
24 additional work he has been doing since working for
25 his wife at the car wash?

1 A. I understand that he's worked as a police
2 officer and also as a terminal manager since that
3 time. And that at one point he was working part
4 time as a police officer and working as a terminal
5 manager, and from what I understand, he is no
6 longer going to be working as a terminal manager.
7 He's now going to be doing full-time police work.

8 Q. Okay. And where did you get that
9 understanding?

10 A. From his deposition and some information
11 that was submitted to me from your office, from the
12 Criminal Justice Academy and also the town of
13 St. George and from Kinder Morgan. There were
14 employment records that were submitted from those
15 companies.

16 Q. And have you worked with referrals or
17 clients in the past that worked in law enforcement?

18 A. Yes.

19 Q. And I'm going to show you Trial Exhibit 54
20 which is from the South Carolina Criminal Justice
21 Academy.

22 (The document referred to was
23 previously marked as Exhibit 54 for
24 identification and is attached
25 hereto.)

1 BY MR. TECKLENBURG:

2 Q. Do you know the physical requirements that
3 are required for law enforcement officers to
4 complete the training in Columbia, South Carolina?

5 A. Yes. Just a moment. I'm sorry. Okay. I
6 found it. Yes, sir. You asked about --

7 Q. What type of -- in your role as a
8 vocational evaluator, what physical requirements
9 are significant to you in evaluating the law
10 enforcement position and the requirements for being
11 certified to be a law enforcement officer?

12 A. Okay. Okay. Well, let me start by saying
13 that the Dictionary of Occupational Titles
14 classifies police work, police officer work, patrol
15 work and so forth as medium in nature, meaning
16 maximum exertion level again of 50 pounds,
17 occasionally, or less than that on a more frequent
18 basis, as I had indicated before. In reality, from
19 my review of these types of jobs, the job, although
20 it's rare, does require an individual to have
21 strength that is in excess of 50 pounds. So they
22 have to either take down an individual, they might
23 have to lift someone, they might have to drag
24 someone out of a building or so forth, and so it
25 does exceed that medium level. I don't think that

1 I've spoken to too many police officers that
2 wouldn't agree with that unless they were working
3 in-house, so to speak.

4 So while the DOT classifies it at medium,
5 because of those extra things that a person might
6 have to do from time to time that's heavier than
7 medium, I would say that the job is at least heavy
8 in nature. And that would be more consistent with
9 the training requirements that I'm seeing in this
10 application -- I'm sorry. In this Exhibit 54. I'm
11 sorry, attorney --

12 Q. What are those training requirements?

13 A. Okay.

14 Q. What are the training requirements that
15 are significant to you in your vocational analysis?

16 A. Okay. The individual would have to run
17 various distances up to five miles in length
18 without stopping in a timely manner. They would
19 have to tolerate exposure to extreme heat, cold,
20 humidity, and inclement weather. They would
21 participate in 90-minute-long physical training
22 sessions. Let's see. Tolerate loud noises,
23 participate in physically rigorous defensive
24 tactics. And that's, again, what I was saying
25 about potentially having to use those tactics in

1 the field. And completing a physical agility
2 assessment course which would include running up
3 and down stairs, jumping through an open window,
4 and dragging a 170-pound deadweight bag. And they
5 would have to sit -- the ability to sit in a desk
6 chair for up to 10 hours at a time, tolerate
7 exposure to various gas and chemical elements, and
8 they must be able to sustain the level of
9 functioning for 12 to 14 hours per day at least
10 five days a week.

11 So those are -- I'm sorry. And
12 psychologically, of course, they would have to deal
13 with the psychological stresses of law enforcement.
14 They have to be able to drive because they have to
15 drive a motor vehicle. Let's see. They have to
16 physically be able to hold a weapon. So those are
17 the physical and psychological components that I
18 would look at if I were evaluating this position.

19 Q. And based upon your review of Mr. Moorers's
20 testimony, is it your understanding he completed
21 the training?

22 A. Yes, it is.

23 Q. And based upon records provided to you, I
24 believe we have Mr. Moorers's wage history we gave.
25 And that's Exhibit -- bear with me. Exhibit 55.

1 Q. All right. And how would you compare the
2 work levels described in Mr. Moorers's description
3 of the Kinder Morgan job to the work levels you
4 observed from the video of Norfolk Southern work?

5 A. It sounds -- excuse me. It sounds as if
6 the job is essentially the same from a physical
7 standpoint. The question that wasn't addressed, at
8 least I believe it wasn't addressed -- I don't
9 think that I saw it in the deposition, but I could
10 be wrong. But I don't believe that he addressed
11 whether he had to carry knuckles or be able to
12 carry knuckles which is part of the Norfolk
13 Southern job analysis that they complete, that they
14 completed. So that wasn't addressed.

15 Other than that issue which wasn't
16 addressed, it appears as if the job duties were
17 relatively the same, essentially the same as the
18 Norfolk Southern job.

19 Q. Have you also had an opportunity to review
20 the benefits offered by Kinder Morgan?

21 A. Yes, sir.

22 Q. I'll show you trial Exhibit 65.

23 (The document referred to was
24 previously marked as Exhibit 65 for
25 identification and is attached

1 hereto.)

2 THE WITNESS: Okay.

3 BY MR. TECKLENBURG:

4 Q. Do you have that in front of you?

5 A. I do.

6 Q. The first benefit on the top says UHC
7 choice medical plan. There's been testimony that's
8 going to be read to the jury prior to your
9 testimony about how that plan is a no-deductible
10 health plan with no lifetime cap.

11 Would you consider that to be a good
12 benefit?

13 A. It sounds great. It sounds great.

14 Q. And it also appears that Kinder Morgan, in
15 testimony with the court, it offered a dental plan,
16 vision plan, and life for the employee and his
17 family.

18 Would you consider those benefits to be
19 desirable benefits in the workplace?

20 A. Absolutely.

21 Q. And based upon your review of Mr. Moorers's
22 testimony, do you know whether the St. George
23 Police Department offered medical benefits?

24 A. I believe that he testified that it did
25 offer benefits, but that he had to pay more for

1 \$3,536 per month?

2 A. Correct. Correct. So it would -- yes.

3 Q. And as you look back at Mr. Moorers' goals
4 that he expressed to you when you met with him in
5 January 2010, from a wage earning perspective, do
6 you believe that he's met his goals?

7 A. Yes. He wanted to earn \$25,000 minimum
8 and have benefits. And it seems that he's met his
9 goals in that regard, yes.

10 Q. In fact, would you agree with me that
11 perhaps he's even exceeded his goals?

12 A. Definitely.

13 Q. Okay. Because if I do the math right and
14 multiply 12 times \$3,536, it looks like I come up
15 with \$42,420.

16 Would that be your math?

17 A. It would be. Yes, sir.

18 Q. Now, as part of your role, have you
19 gone out and identified potential jobs that if
20 Mr. Moorers was in the marketplace looking for
21 work, that he could potentially get based upon
22 your review of all his information?

23 A. Yes.

24 Q. And I'm going to show you and refer you to
25 Exhibit 100. Would you tell me what that is,

1 please.

2 A. These are the occupational employment
3 statistics wage estimates from May of 2010 for the
4 Charleston metropolitan statistical area from the
5 Department of Labor.

6 Q. Okay. And it has a list of occupational
7 titles starting at the top with switchboard
8 operator and going all the way down to tank car,
9 truck and ship loaders.

10 Is that the exhibit you have in front of
11 you?

12 A. Yes, sir.

13 Q. Okay. And on the right-hand column it has
14 the words "mean annual" and has a whole list of
15 numbers.

16 Can you give the range of the numbers from
17 low to high, please.

18 A. The range would be from \$18,490 per year
19 to 81,830 per year.

20 Q. All right. And it appears it includes
21 some things like he already has been doing like
22 police officer, detectives; is that correct?

23 A. That's correct.

24 Q. All right. And shipping receiving clerk,
25 is that things that Mr. Moorer has done in the

1 past?

2 A. Yes, sir.

3 Q. All right. And did he testify that at
4 Kinder Morgan he was doing tank carloading?

5 A. Yes, he did. I believe he did.

6 Q. The last position that you've identified
7 on here, tank car, truck and ship loaders, \$36,890,
8 did I read that correctly?

9 A. Yes, sir.

10 Q. Do you have an opinion whether Mr. Moorer
11 has the ability to perform the jobs that are listed
12 on this Exhibit 100?

13 A. Yes. I believe that he has --

14 Q. And what is your opinion?

15 A. I believe that he has the ability to
16 perform the jobs based on the fact that he has
17 successfully performed the conductor position and
18 the police officer position, and he's vocationally
19 and educationally suited for all of the positions,
20 and it appears as if he's been released to
21 employment for all of the positions given that I
22 believe it was -- is it Dr. Wimberly who released
23 him to the police officer position? Given that
24 Wimberly, that's the latest medical release that I
25 have from any physician, therefore, given that he

1 released him to that job which would actually be
2 considered very heavy as described because of the
3 training, I believe he's capable of performing all
4 of these jobs.

5 Q. In addition to looking at jobs
6 hypothetically that he may be able to go seek in
7 the workforce, did you also go and try to identify
8 current jobs that are available in South Carolina?

9 A. Yes.

10 Q. And I'll refer you to Exhibit 101.

11 A. Okay.

12 Q. Now, please, if you will, describe for me
13 what Exhibit 101 is.

14 A. These are jobs that were available in
15 an electronic job search that I did through the
16 South Carolina Department of Employment and
17 workforce. So basically, the job center. These
18 are the types of -- these are examples of jobs that
19 were listed recently that were available in the
20 Charleston area that would fall within the types of
21 jobs that I had indicated in the previous exhibit.

22 Q. And what are the range of pay for those
23 jobs, Ms. Cicero?

24 A. They range from a low of \$21,983 per year
25 to \$46,000 -- I'm sorry. 46,033 per year.

1 Q. And based upon this listing, do most of
2 these appear to be related to law enforcement?

3 A. Yes.

4 Q. And is that something that you, as part of
5 your vocational opinion, believe Mr. Moorner can do?

6 A. Yes, sir.

7 Q. And, in fact, just putting your opinion
8 aside, is the best evidence of what a person can do
9 what they're currently -- is what they are
10 currently doing?

11 A. Yes. Exactly. Yes.

12 Q. And your understanding is Mr. Moorner is a
13 police officer currently as we sit here in
14 September 2011?

15 A. That's my understanding.

16 Q. Are all the opinions that you've given
17 today within a reasonable degree of vocational
18 professional certainty?

19 A. Yes, sir.

20 MR. TECKLENBURG: At this time I'll move
21 into evidence Exhibits 99, 100 and 101.

22 (The documents referred to were
23 previously marked as Exhibits 99,
24 100 and 101 for identification and
25 are attached hereto.)

1 MR. TECKLENBURG: If you would please
2 answer any questions Mr. Moss has. Thank you.

3 THE WITNESS: Okay. Thank you.

4 MR. MOSS: Would it be okay if we took a
5 short break?

6 MR. TECKLENBURG: Sure, John. That's
7 fine.

8 THE VIDEOGRAPHER: Off the record, the
9 time is 7:53.

10 (Brief recess.)

11 THE VIDEOGRAPHER: We are back on the
12 record at 7:58.

13

14 EXAMINATION

15 BY MR. MOSS:

16 Q. Good morning, Ms. Cicero.

17 A. Good morning, sir.

18 Q. I've never had the pleasure of meeting or
19 talking to you before, so I might just ask you a
20 few questions about yourself, if you don't mind.
21 Okay?

22 A. Sure. No problem.

23 Q. Do you have any experience working with
24 any railroad at all and Norfolk Southern in
25 particular?

1 A. Do I have experience -- I'm sorry. Did
2 you say other than Norfolk Southern?

3 Q. No. With Norfolk Southern or any other
4 railroad.

5 A. The only experience that I've had is
6 dealing with the injured workers. I believe I
7 worked with two of them through the railroad. But
8 I haven't had experience working with the railroad
9 on the railroad, if that's what you mean.

10 Q. Well, in this case, you referred to
11 Mr. Moorner as your client, I think I heard you say;
12 right?

13 A. You know, I generally say client. I just
14 think it's nicer than claimant or -- it's -- I
15 usually refer to any individuals that I'm
16 interviewing as a client, but he's not -- he's not
17 paying me certainly. But, you know, he's not a
18 patient and I don't think -- I think it's kind of
19 cold to call someone a claimant so I just generally
20 refer to an individual as a client. You know, as
21 an injured worker as a client.

22 Q. If we define the person as the client as
23 the one who's paying you, who would be the client
24 in this case?

25 A. That would be Mr. Tecklenburg's firm.

1 Q. And the railroad in particular; correct?
2 Because he represents the railroad.

3 A. Yes, correct.

4 Q. And the other experiences you've had
5 working on these railroad cases, am I correct that
6 it was also a lawyer working on behalf of a
7 railroad client that hired you and paid you for
8 your work and your testimony?

9 A. Yes, sir, that's correct.

10 Q. Was it Norfolk Southern in those other
11 cases or was it some other railroad?

12 A. No, it was Norfolk Southern. I believe
13 I've only had two or three cases. I believe
14 maybe two cases, and they were both through
15 Mr. Tecklenburg's firm.

16 Q. Oh, it was Mr. Tecklenburg and Norfolk
17 Southern in particular.

18 A. That's correct.

19 Q. You said you had between 80 and 90 files a
20 month. What does that mean?

21 A. No, I said I testify on 80 to 90 cases per
22 month for Social Security Disability, Office of
23 Adjudication and Review. So I testify on 90, 80 to
24 90 cases per month for Social Security Disability
25 hearings.

1 medical status. They tell me who they're treating
2 with, what medications they're currently taking,
3 subjective complaints, subjective capabilities,
4 difficulties that they have, those types of things.
5 I don't expect that they have medical terminology
6 and so forth. I just ask them subjectively how
7 they are and what their medical status is.

8 Q. But then you go the additional step of
9 looking to see what the doctors say the person's
10 limitations are.

11 A. Absolutely.

12 Q. Correct?

13 A. Yes.

14 Q. And you did that in this case, did you
15 not?

16 A. Yes, sir.

17 Q. You prepared a report, and I'm not going
18 to refer to it by trial number. I'll refer to it
19 by Bates number. Mine has a 001616 at the bottom
20 of it. It's Page 2 of your report of January 17,
21 2010.

22 A. Okay.

23 Q. And am I correct that you looked at the
24 deposition of Dr. Paula Linā who was employed by
25 the Norfolk Southern Railway Company medical

1 department?

2 A. Yes, I did.

3 Q. And toward the bottom of the page there's
4 a paragraph that starts, "On August 1st, 2007."

5 Do you see that, ma'am?

6 A. I do.

7 Q. Would you please read that paragraph into
8 the record.

9 A. Certainly. "On August 1st, 2007,
10 Dr. Lina, medical director for Norfolk Southern,
11 indicated that Mr. Moorers's return to work would
12 put him at a substantial risk" --

13 MR. TECKLENBURG: Ms. Cicero, I'm sorry to
14 intervene, but let the record reflect this is the
15 subject of a motion that we filed, that will be
16 filed today, and therefore I have to object to the
17 question, John, and I'm sorry to interrupt the
18 witness. But with that being said, you can now
19 start over again and read it one more time.

20 THE WITNESS: Okay. I will. "On August
21 1st, 2007, Dr. Lina, medical director for Norfolk
22 Southern, indicated that Mr. Moorers's return to
23 work would put him at a substantial risk for
24 recurrent severe heat illness if he was exposed to
25 heat while performing heavy physical exertion. She

1 recommended Mr. Moorer be restricted from heat
2 exposure while performing heavy physical exertion
3 and is therefore medically disqualified as a
4 conductor."

5 BY MR. MOSS:

6 Q. Thank you.

7 A. You're welcome.

8 Q. Did you actually see Dr. Lina's letter
9 that she wrote to Mr. Moorer in which she told him
10 exactly that in August of 2007?

11 A. I may have. I'm not certain at the
12 moment. I could go through my file. But I believe
13 you.

14 Q. No, that's okay.

15 My question is: When you were deciding
16 what jobs suited Mr. Moorer, did you assume that
17 these two sentences from Dr. Lina imposing these
18 restrictions, did you assume that those
19 restrictions were, in fact, in place when you were
20 trying to decide what jobs he's suited for?

21 A. When I completed the first report, which
22 is the one that we're on now, January 17th, 2010, I
23 considered Dr. Lina's findings or her
24 recommendations that he not return to work as a
25 conductor, and I considered Dr. Moseley's

1 deposition. And so with the jobs that I gave,
2 you'll note that those jobs are more indicative of
3 sedentary to light-duty types of positions, more
4 clerical in nature, and that was based on a
5 combination of what the physicians had said and
6 also a combination of what Mr. Moorer had indicated
7 he was interested in. So I kind of gave credence
8 to both of those when I decided what jobs would be
9 suitable for him.

10 Q. Thank you. That's very helpful.

11 A. Okay.

12 Q. So am I correct that as a vocational
13 professional, you would never, ever recommend a job
14 for an employee that would be in excess of a
15 restriction that was imposed by a physician;
16 correct?

17 A. Correct, although sometimes there are
18 several different physicians. So I have to be
19 careful how I say this. Sometimes there are
20 several different doctors who are involved in a
21 case. Sometimes I'll be asked to write a report
22 based upon one doctor or another. For instance, in
23 Workers' Comp., it's not uncommon to have a
24 treating doctor say that the person can't work and
25 then you'll have an independent doctor who may say

1 the person can do, you know, medium-duty work. And
2 so sometimes when that file is referred, they'll
3 say base your findings on the independent doctor.

4 So I always note in my report what I'm
5 basing my findings on. I don't decide which doctor
6 is right or wrong. I just base my findings on the
7 medical doctors that I'm supposed to be looking at
8 for that specific report or for the work that I'm
9 assigned to do, like job placement or so forth for
10 the client.

11 Does that make sense?

12 Q. Okay. Yes, ma'am.

13 A. Okay.

14 Q. And so I'm just trying to be sure that if
15 we figure out which doctors you were relying on,
16 if you will, I think you said it was Dr. Lina and
17 Dr. Moseley to be supplemented with Mr. Moorer;
18 correct?

19 A. For the first report, yes, that's correct.
20 For the first jobs.

21 Q. You qualified that.

22 A. I would say that --

23 Q. And the second --

24 A. I'm sorry. We have a little lag here in
25 the video. Go ahead.

1 place when you're making your recommendations to
2 this jury about what Mr. Moorer can do. And I
3 think I heard you say you looked at Dr. Lina,
4 you looked at Dr. Moseley, you at least read
5 Dr. Dantzler, and then you combined that with
6 Trumaine.

7 Is that fair?

8 A. And also Dr. Wimberly because --

9 Q. Yes, ma'am.

10 A. -- because he had approved the training
11 program for the police position, police officer
12 position.

13 Q. Yes, ma'am.

14 A. And given that he had approved that
15 position that technically was defined at the very
16 heavy level and allowed an individual to, you know,
17 have heat exposure and so forth, based on that and
18 based on the fact that Mr. Moorer is currently
19 employed in jobs that originally I wouldn't have
20 indicated for him, that in combination led me to my
21 recent findings. Okay.

22 Q. I just want to be clear, ma'am.

23 Are you assuming that Mr. Moorer has any
24 restrictions at all or not?

25 A. At this point --

1 Q. Yes, ma'am.

2 A. -- I haven't received any current medical.

3 I believe that he has some -- certainly he has to
4 be careful. You know, he has to be careful of
5 the -- of overexerting himself. He has to take
6 breaks. He should be hydrated and so forth. And I
7 think he really has to be careful about the amount
8 of exertion that he does. But the physicians in
9 this case, Dr. Wimberly, as I said, has released
10 him without any restrictions, from what I can see,
11 unless there's something else that I don't have,
12 that I'm not privy to. It appears that he's
13 indicated that he can return to the police officer
14 position without any restrictions at all that I was
15 shocked about, actually, to be honest, because I
16 expected that at the very least he would have made
17 a note that overexertion could be a problem during
18 training or something. There was nothing.

19 So that's what I'm basing my current
20 findings on, and the fact that Mr. Moorer is
21 successful, apparently, at the positions that he's
22 worked. But I don't think that that means that he
23 doesn't have to be careful. I think he has to be
24 careful because it appears from the record --
25 again, I'm not a doctor, but it appears from the

1 record that they haven't made a final or accurate
2 diagnosis or one that everyone can agree on at the
3 very least. So I think that until he determines
4 exactly what's wrong, that he has to be, he has to
5 be really careful, and he should follow the advice
6 of his physicians.

7 So if his physician is telling him that he
8 can return to work without worrying about heat or
9 exerting 170 pounds and so forth, that's my
10 understanding that that's the latest medical
11 information that I have. But I would still go back
12 and be very cautious of him exerting himself and
13 not being hydrated and so forth based on the other
14 physicians in the file, in the file that I
15 reviewed.

16 Q. Can you give us the date of Dr. Wimberly's
17 record that you continue to refer to, please,
18 ma'am?

19 A. Sure. Let me see if I can find it. There
20 is -- there was an application for employment with
21 the town of St. George. I believe that was
22 Exhibit 54. And as part of that application --
23 let's see. Dr. Wimberly signed it on -- I'm
24 looking for a signature -- I'm sorry -- a date. He
25 signed it on 3-31-11.

1 conductor, if there has been some change in his
2 medical status, that he would be allowed to
3 re-apply, go back for a refresher training, and
4 come back to work. Is that fair?

5 A. In an ideal world, that would be great. I
6 wish all employers would do that, yes.

7 Q. You want the employers to proactively help
8 the injured employee come back to work; correct?

9 A. I do.

10 Q. And it's especially good if a large
11 employer has a vocational department headed by a
12 professional like yourself who can actually take an
13 individualized approach and help an injured worker
14 get back to work if there is some change in the
15 medical status; isn't that true?

16 A. Yeah. It's great if they have somebody on
17 staff or if they hire somebody from outside from
18 another private rehab company the way that they
19 would hire myself or employees that I've had and so
20 forth to go in and manage the case and help the
21 person return to work.

22 Q. Do you know if there is currently a
23 qualified person who runs the program at Norfolk
24 Southern?

25 A. I know that I have received correspondence

1 relates to his vulnerability to heat and exertion;
2 is that fair?

3 A. That sounds fair, yes.

4 Q. Meaning that if he could be properly
5 stepped into a conductor's job by somebody
6 qualified like yourself with the advice of the
7 medical department, we could actually know whether
8 Trumaine Moorner could work as a conductor at
9 Norfolk Southern; isn't that true?

10 A. Yes. I believe so.

11 Q. Do you have any knowledge at all -- please
12 tell this jury if you can why it is that the
13 Norfolk Southern vocational department has not
14 contacted Mr. Moorner to see if he's willing to come
15 back, stair-step his way in with the supervision of
16 the vocational department and the medical
17 department, to see if he can be a conductor.

18 A. Again, I don't know. I don't have any --
19 I don't have any information about how they do what
20 they do or what that procedure is. I don't know.

21 Q. Okay. Meaning that you've never talked to
22 Dr. Lina yourself.

23 A. Correct. I have not.

24 Q. There's a Dr. Pribble as well. You have
25 not talked to him?

1 A. No, sir.

2 Q. Okay. But for the sake of completeness,
3 other than this one qualifying record to allow
4 Mr. Moorner to attend the police training, do you
5 agree with me that the entire medical record is
6 consistent with Mr. Moorner having physical
7 restrictions related to heat?

8 A. From a medical standpoint, yes. Yes.

9 Q. And this is where we got sidetracked
10 earlier. To make the point clearly, Dr. Lina
11 imposed restrictions about exposure to heat and
12 exertion; correct?

13 A. Yes.

14 Q. Dr. Moseley did as well; correct?

15 A. Correct.

16 Q. Dr. Dantzler did as well; correct?

17 A. Yes.

18 Q. And so up until Mr. Moorner was qualified
19 to the police academy, there was unanimity, if you
20 will, among the medical providers that Mr. Moorner
21 needed restrictions when exposed -- when he had
22 exposure to heat and exertion; correct?

23 A: Correct. According to the information
24 that I have, that is correct.

25 Q. And so at best, what we have is an unclear

1 Q. With Mr. Moorer, the problem really, his
2 problem has nothing to do with one particular lift
3 of 75 pounds or more from a vocational point of
4 view; isn't that true?

5 A. One lift, true. That's very true. Yeah,
6 that really shouldn't be a problem.

7 Q. We're talking in terms -- we're talking in
8 terms of sedentary, light, medium and heavy, but
9 those really are aimed at lifting; correct?

10 A. For the most part, yes.

11 Q. And his problem has more to do with heat
12 and exertion; isn't that true?

13 A. Correct.

14 Q. Have you had a chance or do you have in
15 front of you Defendant's Trial Exhibit Number 85?

16 A. Is that the job description?

17 Q. Yes, ma'am.

18 A. I do have it. Sorry about that.

19 (The document referred to was
20 previously marked as Exhibit 85 for
21 identification and is attached
22 hereto.)

23 BY MR. TECKLENBURG:

24 Q. Okay. It looks like the road conductor
25 job description requires prolonged walking on

1 uneven terrain called ballast a maximum distance of
2 two to four miles per day and approximately one to
3 two miles at any one time.

4 Do you see that?

5 A. I do.

6 Q. It also requires climbing on and off of a
7 vertical ladder to mount and dismount a railcar on
8 an occasional to frequent basis 10 to 12 times on
9 average.

10 Do you see that?

11 A. I do.

12 Q. And these local or yard conductors may
13 climb railcars 25 to 40 times a day; correct?

14 A. Correct.

15 Q. And during shoving movements, you might
16 have to ride the railcar for up to one to two
17 miles; is that right?

18 A. That's right.

19 Q. There's frequent stooping, squatting,
20 climbing, pushing and pulling; right?

21 A. That's correct.

22 Q. And those items that I've just
23 highlighted, those have more to do with exertion
24 than they do with lifting; correct?

25 A. That's correct.

1 Q. And it's your understanding that these
2 exertional activities that I've set forth, those
3 are done outside at Norfolk Southern; correct?

4 A. Yes. Yes.

5 Q. Do you know how the walking requirements
6 at Kinder Morgan compared to the walking
7 requirements at Norfolk Southern?

8 A. I don't. I don't. I don't have a job
9 description or job analysis, enough information to
10 know how it compares.

11 Q. Because the truth is at the time you
12 interviewed Mr. Moorner, he wasn't working at
13 Kinder Morgan; correct?

14 A. That's correct.

15 Q. Am I right that any information you have
16 or don't have about the Kinder Morgan job comes
17 from or doesn't come from Norfolk Southern and
18 Mr. Tecklenburg; correct?

19 A. And the deposition of Mr. Moorner.

20 Q. Yes, ma'am.

21 A. But that's all I have, yes.

22 Q. Right. Back to the Norfolk Southern
23 video. Is it your understanding of that video it
24 was an attempt to actually replicate a conductor on
25 P28 or was that some series of vignettes to explain

1 to the jury some of the things a conductor does?

2 A. You know, I'm not sure who created the
3 disk or why it was created. I just know that it
4 was sent to me to review. So I don't -- I don't
5 know. I don't know why or how or when.

6 Q. I'll tell you -- excuse me. I interrupted
7 you.

8 A. That's okay. I really don't have enough
9 information.

10 Q. Am I right that the best way for you as a
11 vocational expert to tell us about the requirements
12 of the Kinder Morgan job or the conductor job is to
13 actually look at the job yourself so that you can
14 give us factual information that's run through your
15 expertise?

16 A. Yes. That's correct. In an ideal
17 setting, I would do a job analysis of the position
18 on site while someone performed the job.

19 Q. Speaking of that, do you actually
20 sometimes get hired to go to a work site and
21 evaluate the work site to determine whether an
22 employee might be able to do the job?

23 A. Yes, frequently.

24 Q. When you were asked in this case by the
25 client to be hired, did they ask you ever to come

1 look at the job site to determine what the physical
2 requirements are and whether they match Mr. Moorer?

3 A. No, they did not.

4 Q. Did they ever ask you to determine what
5 the physical requirements were for the Kinder
6 Morgan position?

7 A. No, sir.

8 Q. Do you have the expertise as a vocational
9 expert to do that work had you been hired by the
10 client to do it?

11 A. Yes, of course.

12 Q. If you had done that, could you give us a
13 clearer picture about the requirements from a
14 vocational point of view about the conductor job at
15 Norfolk Southern?

16 A. Yes.

17 Q. Could you also give us a much clearer
18 picture about the physical requirements from a
19 vocational point of view about the job at Kinder
20 Morgan?

21 A. Yes.

22 Q. Do you have the skill and expertise to
23 actually work with the Norfolk Southern medical
24 department collaboratively on an interdisciplinary
25 basis to make a professional recommendation as to

1 whether or not Trumaine Moorner can work as a
2 conductor for Norfolk Southern?

3 A. I do.

4 Q. Were you asked to do that?

5 A. No.

6 Q. Do you know when the last contact was from
7 the Norfolk Southern vocational department with
8 Mr. Moorner?

9 A. Let's see. I have some letters, but I'm
10 not sure if this is all of the letters that he has
11 received or if they've contacted him since then. I
12 believe the last thing I have is -- let's see. I
13 see something dated 2009. The latest that I have
14 is the June 17th letter in my file, June 17th,
15 2010. I don't have anything after that, so I don't
16 know if -- I don't know if these are all the
17 letters or if they've contacted him in any way or
18 if this is the extent of it.

19 Q. My record shows that Mr. Moorner accepted
20 the railroad's invitation to be vocationally tested
21 and was actually tested on May 8th, 2009.

22 Do you agree with that?

23 A. I don't know when he was tested. I don't
24 believe that I have anything or if I do, it's not
25 ringing a bell. But I do know that he did indicate

1 that he was tested. And then I don't know what
2 happened after that.

3 Q. Okay. Well, I want you to assume for a
4 moment, ma'am, that he accepted the offer for
5 vocational testing and was tested in May of 2009.

6 A. Okay.

7 Q. Okay? And based on that testing, he
8 qualified for a few positions that you talked to
9 Mr. Tecklenburg about at Norfolk Southern.

10 A. Correct. Okay.

11 Q. Are we communicating with each other?

12 A. Yes.

13 Q. Do you know when Norfolk Southern actually
14 rendered the opinion about whether or not
15 Mr. Moorer was medically qualified to do those jobs
16 for which he vocationally qualified?

17 A. I have a vague recollection of seeing
18 something from a physician signing off on those
19 jobs from Norfolk Southern, but I could be
20 mistaken. But I have a vague recollection of
21 seeing that in all the records. But as I said, I
22 could be wrong. I'd have to go through everything
23 and look for it. But I don't remember when it was
24 offhand.

25 Q. All right. Let me try to help you.

1 A. Okay.

2 Q. Do you have Bates Number 001956?

3 A. I don't have anything with a Bates number
4 on it. So --

5 Q. All right. I'll tell you that I'm looking
6 at an e-mail from Susan Lafon to Dr. Lina --

7 A. Okay.

8 Q. -- dated June 14, 2010, in which she asked
9 whether or not Mr. Moorner physically qualified to
10 be in a clerical job, CYO, CMC, dispatcher, and
11 yardmaster.

12 Does that jibe with your recollection?

13 A. It does. You know, again, I don't
14 remember the date, but I do remember seeing it.
15 And as you're saying an email, I could picture it,
16 but I don't know where it is in this at the moment.
17 But that seems reasonable. And, I'm sorry, what
18 was the date of that? June of --

19 Q. June 14, 2010.

20 A. Okay.

21 Q. And I'll represent to you the same day
22 Dr. Lina replied and said yes, Mr. Moorner
23 physically qualifies for those jobs. Okay?

24 A. Okay.

25 Q. Do you have any explanation why it took

1 Norfolk Southern between May 2009, when Mr. Moorer
2 was tested, until June 2010 to medically qualify
3 him for those jobs?

4 A. I have no idea. Again, I don't know how
5 they work it. I could guess, but I would
6 completely be guessing. It really wouldn't be
7 meaningful.

8 Q. No, don't guess.

9 A. I won't guess.

10 Q. How about this: From your perspective as
11 a vocational expert, once the vocational testing is
12 done, do we agree that as quickly as possible, the
13 medical people involved, whether it's a treating
14 physician or a medical department, should see if
15 there's a match between the vocational aptitude and
16 the job and the physical restrictions?

17 A. It would seem to me if you wanted to
18 return the individual to work in an expedient
19 manner, then that's what would be done. From a
20 vocational standpoint, the vocational testing
21 shouldn't change over time. So the person's
22 aptitudes and intelligence won't change if you
23 wait. But if you want to return the person to work
24 in an expedient manner, then, yes, you would do it
25 as quickly as possible.

1 Q. I mean, there's no vocational reason to
2 wait more than a year to get a medical opinion
3 about whether or not a person's vocational
4 aptitudes meet a specific job that you can think
5 of, is there?

6 A. No.

7 Q. That's not good practice from a vocational
8 point of view, is it?

9 A. Well, no. I mean, if the person is
10 interested in working and is capable of working and
11 is physically capable of working and a job is
12 available, then it's important to get them back as
13 quickly as possible, traditionally. It's just
14 better for everyone to get them back as quickly as
15 possible.

16 Q. It's especially better for the person
17 that's out of work because they get back to work;
18 right?

19 A. Absolutely. Absolutely. And there's a
20 better chance of success.

21 Q. And Mr. Moorer -- why?

22 A. There's a better chance of success of
23 having the person return to work if you start early
24 than waiting for them. Just many reasons. From a
25 psychological standpoint, it's harder to go back to

1 work. From a physical standpoint, if it's a
2 physical injury, the person may be deconditioned.
3 Sometimes they start to have bad feelings about
4 their employer and they feel like they're not
5 valued and they're not cared for and they were
6 injured at work. It's just, all in all, it's a
7 better practice for an employer to attempt to
8 return the person as quickly as possible.

9 MR. TECKLENBURG: John, I've been asked to
10 terminate the video feed. I'm sorry. They have
11 another deposition starting at noon. So if we
12 could go off the record for a second, please.

13 MR. MOSS: Sure.

14 THE VIDEOGRAPHER: Off the record, the
15 time is 8:54.

16 (Brief recess.)

17 THE VIDEOGRAPHER: The time is 9:02 a.m.,
18 and we are back on the record.

19 BY MR. MOSS:

20 Q. Ms. Cicero, did Norfolk Southern ever
21 share with you the results, the actual results of
22 the vocational testing Mr. Moorer took in May of
23 2009?

24 A. No, sir, I've never seen it.

25 Q. Do you know what kind of vocational tests

1 were offered?

2 A. No, I do not.

3 Q. Do you have any idea how he did?

4 A. No idea. No.

5 Q. Do you know why it is that Norfolk
6 Southern felt that he qualified for the positions
7 of clerk, CYO operator, crew management positions,
8 dispatcher positions, and yardmaster positions?

9 A. No. I don't know what they base that on.

10 Q. I did notice that when you were looking in
11 the labor market about what jobs Mr. Moorner might
12 qualify for, you were primarily looking in the
13 Charleston, South Carolina area; is that right?

14 A. That's correct.

15 Q. Why did you choose that area?

16 A. I chose that area because it was the
17 closest metropolitan statistical area to
18 St. George. That's where it's a larger area.
19 There are more jobs there. That's where the labor
20 market statistics are from. And when I spoke to
21 Mr. Moorner, he indicated that he would be willing
22 to work in the Charleston area. And then I believe
23 also in his deposition he had indicated something
24 about considering Charleston a local area. So I
25 stayed in that area, and I didn't really branch out

1 any further than that.

2 Q. Is that also because just as a practical
3 matter, Mr. Moorer has his home in or at least
4 relatively nearby to Charleston, he's got his
5 family there, he's got his ties there, and his
6 church there, and so logically it makes sense for
7 him to look for and find employment in and around
8 his geographic area?

9 A. It would. I mean, generally, regardless
10 of the circumstances, you know, the person's
11 circumstances and their church and so forth, I
12 usually stay within, you know, a radius from a
13 person's house of about an hour or so, hour and a
14 half unless they're in an extremely rural area and
15 you have to go out further. I've had people really
16 in the boonies in Pennsylvania, and I've had to
17 take them a couple hours to get them into
18 Philadelphia or someplace. But here, Charleston is
19 relatively close, and that would be a reasonable
20 labor market area to look for jobs.

21 Q. And for those same reasons, you wouldn't,
22 for example -- since I'm in Atlanta, I'll just use
23 that as an example. You wouldn't do labor markets
24 for Trumaine Moorer, who lives in St. George, for
25 Atlanta, Georgia; right?

1 A. No, not unless he had indicated to me some
2 desire to move to Atlanta or to work in Atlanta, I
3 would not.

4 Q. So do you know whether a clerical position
5 at Norfolk Southern has come open since Mr. Moorer
6 was vocationally tested in May of 2009?

7 A. If it's come open. Well, I don't know. I
8 mean, the letter from Ms. Lafon was in June after
9 so I'm -- again, it would be an assumption, but I
10 would assume that those jobs were available
11 somewhere if they sent a letter to him about him
12 being approved for them. But again, that's an
13 assumption. I don't know if they were actually
14 available or if they were just letting him know
15 that these jobs, you know, existed and may become
16 available. I don't know.

17 Q. Well, let's be very clear about that. If
18 you look at the June 17, 2000 (sic) letter.

19 A. Okay. I have it.

20 Q. And it's a letter from Susan Lafon to you,
21 okay?

22 A. Okay.

23 Q. Nothing in that letter indicates that
24 those positions, those five positions are actually
25 available in Charleston, South Carolina as of

1 June 17, 2010; correct?

2 A. Correct. I don't see anything about that
3 in the letter.

4 Q. What that letter is saying is that
5 Mr. Moorer vocationally qualifies for those
6 positions, but that's all that it's really saying;
7 right?

8 A. Well, it says that he was cleared by the
9 medical department for the positions, and based on
10 the results of the personnel evaluation, he may be
11 considered for placement depending on a successful
12 completion of a return-to-work physical. And then
13 it doesn't say anything about -- it doesn't say
14 anything more than that. It doesn't say that the
15 jobs are currently available. It doesn't say where
16 they are or where they're located.

17 Q. Right. What it says --

18 A. I agree.

19 Q. -- is that he vocationally qualifies, that
20 he may be able to apply for a position if and only
21 if he passes a company return-to-work medical
22 physical; correct?

23 A. Correct.

24 Q. And if you look at the second paragraph in
25 that letter, the last sentence, it says,

1 "Regretfully, other than an evaluation testing
2 completed by Mr. Moorner, he has failed to apply for
3 a position since the evaluation or take advantage
4 of the other program benefits."

5 Did you see that? Do you see that
6 sentence?

7 A. Yeah, I'm sorry. You can't see me
8 anymore. I'm just reading, and I grabbed my
9 glasses. Let's see. That's what it says, yes.

10 Q. And if you assume that Mr. Moorner was
11 actually not qualified by the medical department
12 for those positions until that email that we talked
13 about earlier, the truth is he qualified for those
14 jobs vocationally, but was sitting for over a year
15 waiting for the Norfolk Southern medical department
16 to approve his -- him medically to work these jobs.

17 Is that your understanding?

18 A. I can't say what Mr. Moorner was doing or
19 why. So I'm not sure how to answer the question.

20 Q. All right. That's fair.

21 A. Okay.

22 Q. Let me now bring us up to the present
23 time.

24 A. Okay.

25 Q. We just have agreed that as of June 17th,

1. Mr. Moorer was qualified for five different
2 positions. Okay?

3 A. Yes.

4 Q. Let's now make it tangible.

5 Since June 17, 2010, has there been a
6 clerical opening at Norfolk Southern in Charleston?

7 A. I have no idea. I don't know.

8 Q. Same question if I say Columbia, South
9 Carolina, do you know?

10 A. No idea. No.

11 Q. With respect to the CYO, I'm going to ask
12 you the same series of questions.

13 A. Okay.

14 Q. Do you know whether since June 17, 2010,
15 there's been a CYO position in either Charleston or
16 Columbia?

17 A. No, sir, I do not know.

18 Q. Do you know whether there's been an
19 availability even of a CMC, crew management
20 position; in Charleston or Columbia?

21 A. No, sir, I don't know.

22 Q. Do you know if there's been a dispatch
23 position in Charleston or Columbia at Norfolk
24 Southern since June of 2010?

25 A. No.

1 anything like that or how they, you know, relate to
2 each other, if at all. Let's see. I'm reading --
3 I'm hesitating because I'm reading on Page 2
4 something about -- okay, let's see. It's my
5 understanding -- Ms. Lafon says something about how
6 "It's my understanding he would have the same step
7 rate for yardmaster and dispatcher positions that
8 he currently has as a conductor."

9 So that's really all I have. I don't know
10 how they -- I don't know how they work the unions
11 and whether the collective bargaining agreements
12 are the same, different, attached, not -- I don't
13 know.

14 Q. Okay. I'll clear that up with somebody
15 else. That's not a fair question for you. I think
16 you're right.

17 By the way, did you like Mr. Moorner?

18 A. Did I like Mr. Moorner? Oh, yeah. He
19 seems like a great guy. I mean, for the three
20 hours that we spent together, he was very pleasant,
21 just a really likeable person. I liked him, yeah.

22 Q. From a vocational point of view, were you
23 able to assess him with your trained eye to be able
24 to tell this jury about his motivation based on
25 what he's done?

1 Does he appear to be a motivated kind of
2 guy?

3 A. He seems to be very motivated, yes.

4 Q. Why do you say that, ma'am?

5 A. I say that because of the jobs that he's
6 held. I mean, if you look at his history, you
7 know, typically when you look at somebody that has
8 a high school education and really not much more
9 than that, he went to mortuary school and so forth,
10 but you have a high school education, average
11 intelligence, small town and so forth, and yet he
12 was motivated to go and get jobs that went up to
13 \$80,000 a year, you know. He was working in
14 Kuwait. He was working in law enforcement. He was
15 always looking for a better job, you know, for his
16 family. He applied for a ton of jobs. When we
17 met, he was applying for jobs. You know, it's not
18 often as a vocational counselor that I meet with
19 too many people that are actually currently looking
20 for work. The fact that he went back to work and
21 that the case is still pending and so forth, you
22 know, he's motivated. I don't think there's any
23 doubt about that. He's clearly motivated to work.
24 He's doing overtime. He's, you know, again,
25 applying for jobs. I think somebody sent me emails

1 regarding his job applications. There are hundreds
2 of them. He's just applying for jobs and looking
3 for work. He's motivated. He had a family. One
4 of his children was ill and needed -- he really
5 needed benefits and it was clear that, you know, he
6 wanted to work. He didn't want to sit home and
7 watch Oprah.

8 Q. Were you able to glean from the deposition
9 an understanding of why it is that he left the job
10 at Kinder Morgan?

11 A. There was some issue -- it was a little
12 confusing with the deposition, but it appears as if
13 there were some issues regarding the gas prices and
14 the distance from his home and how much it would
15 cost to get there, you know, just to travel to
16 Kinder Morgan. And I believe he said he had to
17 work part time with the police department just to
18 be able to afford getting to Kinder Morgan, you
19 know, with the gas prices and so forth.

20 Q. Do you recall if he mentioned that working
21 out in the elements, working in the climate,
22 working in the heat in particular was somewhat of a
23 problem?

24 A. Yes, I do, although he said -- I mean, I
25 remember a couple of things. He said he had the

1 opportunity to take breaks and go into an air
2 conditioned plant. I think it was a lime plant
3 that he was able to go into when he needed to. So
4 that was a little bit easier for him. But I do
5 believe that towards the end of his deposition, if
6 memory serves, that he did indicate, you know, it
7 was the benefit -- I'm sorry, it was the gas prices
8 and so forth and the heat. So it was, you know,
9 that was something that he had indicated, yes.

10 Q. I mean, being real candid, ma'am, do you
11 have any criticisms of Mr. Moorer for terminating
12 his employment relationship with Kinder Morgan and
13 defaulting to his job at the police department?

14 A. Do I have any criticisms of him?

15 Q. Yes, ma'am. That's right.

16 A. I don't know how. I don't know how I
17 could possibly criticize him for making a choice
18 that's best for his family. No.

19 Q. I think Mr. Tecklenburg said it best. Do
20 you agree that the best evidence of what someone
21 can do is what they're doing?

22 A. Yes, I do.

23 Q. And currently, what is Trumaine Moorer
24 doing?

25 A. You know, I believe at this point that he

1 has resigned from Kinder Morgan, although I don't
2 know that, but I know that was the plan. And that
3 he was going to be working full time as a police
4 officer. And that's my belief, but I don't have
5 any current information.

6 Q. Okay. Now that he's made it through the
7 police academy and the physical requirements that
8 that entails, do you think that he is well suited
9 to be a police officer in St. George, South
10 Carolina?

11 A. Yes. As long as he can -- as long as he
12 can handle the weather because he is going to have
13 to be outside, I'm assuming, in that South Carolina
14 heat, as we all know. As long as he can handle
15 that, I think that it's a great fit for him
16 vocationally. Yes.

17 Q. And it matches his goal of making about
18 \$25,000 a year and being fully employed; correct?

19 A. With benefits, yes. Yes.

20 Q. I think the benefits are a problem at the
21 police department, are they not?

22 A. Well, they are available. It's just that
23 they're expensive, I believe. I don't have any
24 information regarding the police benefits other
25 than --

1 Q. Okay.

2 A. -- other than that.

3 Q. So it is your vocational opinion that
4 Trumaine Moorner has been a motivated person ever
5 since he got injured to try to better himself and
6 find full-time employment; is that true?

7 A. I have no reason to believe other than
8 that. That's true.

9 Q. And it's your belief that as of September,
10 mid September 2011, Mr. Moorner has worked hard to
11 find a job at the St. George Police Department
12 working at a job for which he is vocationally well
13 suited; is that true?

14 A. Yes.

15 Q. It is also true that the conductors at
16 Norfolk Southern are making currently substantially
17 more money than Mr. Moorner is making as a police
18 officer for the City of St. George; correct?

19 A. I'm not sure what the current rate is for
20 the conductors. But I believe you. That would
21 seem reasonable.

22 Q. Okay. Well, I got produced to me a number
23 of pay records for the employees who are around
24 Mr. Moorner on the seniority roster --

25 A. Okay.

1 police officer; correct?

2 A. You know, I actually don't have the
3 benefit-package information from Norfolk
4 Southern --

5 Q. That's fair.

6 A. -- so I really can't answer. But I do
7 believe you. I'm assuming that it's similar to
8 Kinder Morgan, although maybe I shouldn't assume
9 that. But I'm assuming that it's a good package.
10 Usually they are.

11 Q. I'm thinking about that job at Kinder
12 Morgan. From a vocational point of view,
13 Ms. Cicero, is it true that just because you do a
14 job, it does not necessarily mean that you're even
15 well suited for it?

16 A. In what way?

17 Q. Is it not true that a lot of people do
18 jobs just in general that they're either not really
19 good at or they're not really well-qualified for,
20 but they get the job, they do it for reasons that
21 might not make sense because they gotta feed a
22 family, they gotta do the best they can, but it's
23 not necessarily a perfect match between every job
24 and every worker? Is that fair?

25 A. Oh, absolutely, yes. I agree.

1 Q. And whether or not there was a fit between
2 Mr. Moorer and the job at Kinder Morgan, you are
3 not rendering any opinion about that, are you?

4 A. Whether there was a fit?

5 Q. Yes, ma'am.

6 A. Well, from a vocational standpoint,
7 certainly he was vocationally qualified. So that
8 would be.

9 Q. Correct.

10 A. So that would be a fit. Whether it fit
11 his needs in other ways, you know, I can't say.
12 Clearly it didn't because he's not there --

13 Q. I see.

14 A. -- right?

15 Q. From a vocational point of view, you don't
16 expect people to work two jobs their whole life and
17 travel 50 miles one way to work one of those two
18 jobs, do you?

19 A. No, that would not be an ideal situation.

20 Q. Why not?

21 A. Because if the person is working two jobs,
22 they probably have very little time for their
23 families and their personal life. And that's, you
24 know, that's not a good way to live. I would agree
25 with that.

1 Q. We all have to do the best we can with
2 what we've got to maintain our balance and also
3 feed our families and keep it all together; is that
4 fair?

5 A. I would agree with that, yes.

6 Q. Lastly, you mentioned that there was
7 something about the job at Kinder Morgan that
8 suited Mr. Moorer. You mentioned that he could go
9 to the lime plant and get into the air
10 conditioning.

11 What do you mean by that?

12 A. There was a question in the deposition,
13 and I don't have it in front of me, but I do
14 remember that there was a question about whether he
15 could take breaks. And he did indicate that there
16 was some place where he could take breaks a couple
17 of times during the day when he needed to and that
18 there was air conditioning in there, and I believe
19 he said Gatorade and some other drinks and things
20 so that he could cool off. And I believe it was
21 called a lime plant, although I could stand to be
22 corrected. But I believe he called it the lime
23 plant. And I don't have any other additional
24 information about that.

25 Q. Okay. Do you believe that it's important

1 FURTHER EXAMINATION

2 BY MR. TECKLENBURG:

3 Q. Ms. Cicero, just a few questions to follow
4 up Mr. Moss's questions to you.

5 A. Okay.

6 Q. First of all, it sounds like there's been
7 a change in your original report that you gave in
8 January 2010; is that correct?

9 A. Yes.

10 Q. And the primary change, it sounds like, is
11 the addition of some medium-level jobs or perhaps
12 even heavier. Is that what you've got?

13 A. I've added positions that are -- that were
14 heavier than I had originally given, yes, in
15 relation to the types of jobs that Mr. Moorer has
16 either performed recently or, you know, would be
17 suited for based upon the current vocational
18 status, yes.

19 Q. And did you formulate this change of
20 opinion that you had now in 2011 as we saw in
21 Dr. Wimberly's release for Mr. Moorer to work in
22 law enforcement?

23 A. Yes, but not just law enforcement. It was
24 the fact that he went -- he approved all of the
25 physical requirements associated with the training

1 for law enforcement, and as part of that training,
2 essentially released him without any medical
3 restrictions.

4 Q. And what type of work, again, in terms of
5 Department of Labor categories, is law enforcement?

6 A. Well, a police officer is classified as
7 medium, but again, because of the lifting involved,
8 it's almost -- it's almost the same situation as
9 when you look at the conductor position. Although
10 most of the time it's performed at the light level,
11 there are times when you're going to have to do
12 more lifting. So it would be classified as heavy.

13 So in this case with law enforcement or
14 the police position, police officer position,
15 although it's classified as medium, in situations
16 where an individual has to go out and patrol and so
17 forth, they are going to have to lift more, they
18 may have to be involved in altercations, and so as
19 performed, in general, as I have evaluated those
20 jobs, they're heavy in nature because of that
21 potentiality.

22 Q. In addition to Dr. Wimberly's report, did
23 you also examine Mr. Moorer's own testimony he just
24 gave last month in August 2011?

25 A. I did.

1 Q. And did Mr. Moorer indicate that he was
2 able to successfully perform the law enforcement
3 job?

4 A. Yes.

5 Q. And in addition, did Mr. Moorer indicate
6 whether he could successfully perform his
7 railroad-type work that he was doing at Kinder
8 Morgan?

9 A. Yes, he did.

10 Q. And is it your understanding at Kinder
11 Morgan he was doing things like handling railcars,
12 decoupling railcars, loading railcars, things of
13 that nature?

14 A. Yes, sir.

15 Q. And based upon that information, did you
16 conclude that he could do more than the light-duty
17 work he originally came up with in January 2011?

18 A. Yes.

19 Q. So while Mr. Moss made a point ago (sic)
20 that all the doctors other than Dr. Wimberly had
21 made some, if you will, indication that he should
22 avoid heavy work, based upon Mr. Moorer's own words
23 in his deposition, did it become apparent to you
24 that he could do heavy work?

25 A. Correct. He's been successfully

1 performing at least at the medium-duty level. I
2 don't know if he has actually performed at the
3 heavy-duty level, but he has taken jobs that are --
4 that I would classify as heavy. Again, the Kinder
5 Morgan job, I have to just clarify, I don't know if
6 that's heavy or not because I don't know about the
7 requirements with the knuckles. But if I assume
8 that it's the same type of job and that he does
9 have to do the lifting, that will be considered
10 heavy.

11 Q. And Mr. Moorer has been doing that the
12 last year and a half, this medium work for law
13 enforcement and Kinder Morgan?

14 A. Correct.

15 Q. I want to change topics a little bit to
16 the issue of the long list of questions we heard
17 about the vocational department at Norfolk
18 Southern..

19 A. Okay.

20 Q. First of all, with respect to an injured
21 worker that wants to get back into the workplace,
22 would you agree that it's a two-way street where
23 not only the employer needs to be involved, but the
24 employee needs to express an interest in returning
25 to work as a conductor or his former position?

1 A. Yes.

2 Q. Do you know whether Mr. Moorer has
3 presented to the medical department at Norfolk
4 Southern any firm evidence, any evidence other than
5 this physical report of Dr. Wimberly that he is
6 indeed qualified to be a conductor again?

7 A. No. I don't know.

8 Q. In fact, if Mr. Moorer has testified
9 before you in this case that he left Kinder Morgan
10 because of the heat, would you agree with me that
11 it would probably be unlikely he wants to be a
12 conductor again?

13 MR. MOSS: Object to form.

14 THE WITNESS: Okay. Should I answer that?

15 BY MR. TECKLENBURG:

16 Q. Sure.

17 MR. MOSS: Yes.

18 THE WITNESS: Well, okay. While it may --
19 my first response would be yes, that makes sense.
20 However, in the deposition, I believe someone asked
21 him if he would take the job if he didn't have to
22 worry about the gas prices and so forth, and if the
23 job was available in Charleston, would he work for
24 Kinder Morgan in Charleston. And he had indicated
25 yes. So I believe that he would do the job if it

1 was closer.

2 BY MR. TECKLENBURG:

3 Q. From Mr. Moorers own testimony then, did
4 you conclude -- what did you conclude was the
5 primary reason he left Kinder Morgan?

6 A. It was just cost prohibitive because of
7 the gas prices.

8 Q. Getting back to this two-way vocational
9 street, you, of course, had been advised by
10 Mr. Moss that Mr. Moorers was a member of a union,
11 have you not?

12 A. Yes.

13 Q. Do you know whether under the union
14 contract, there is a right of a member of that
15 union to come to the medical department and to ask
16 to be reevaluated to submit medical evidence?

17 Do you know whether they have that right?

18 A. I don't know that.

19 Q. It would seem reasonable, though, wouldn't
20 it?

21 A. It would, but I have no knowledge. But it
22 would seem reasonable.

23 Q. And also, do you know whether Mr. Moorers
24 has submitted any new medical information to the
25 medical department in compliance with his rights

1 structures prevented that from happening at Norfolk
2 Southern, would it be reasonable then for them not
3 to have an available program where someone could
4 come in on an hour-by-hour, step-by-step basis?

5 A. Well, if it was against the union's rules,
6 then it would seem reasonable that their hands
7 would be tied.

8 Q. Finally, Mr. Moss went over the job
9 description with you where he described going two
10 to four miles a day over ballasts, climbing railcar
11 ladders 10 to 12 times a day. Tell me, if you
12 will, what type of work and exertion level those
13 activities are.

14 A. Light duty. Depending on how many times a
15 day he's actually climbing and so forth, it may
16 increase to medium. But I would have to do a full
17 job analysis to determine that. But somewhere
18 between light and medium.

19 Q. In the vocational experience that you
20 have, are there not jobs like meter readers or
21 working at Wal-Mart or other places that might be
22 considered light work where people work hours on
23 end or walk hours on end?

24 A. Yes. Usually all light jobs that are
25 classified by the DOT require a lot of walking or

1 standing for hours on end.

2 Q. Okay. So the fact that there's a lot of
3 walking or standing, that wouldn't increase or make
4 the exertional levels of a job up to a medium or a
5 heavy level, would it?

6 A. No, not the walking.

7 Q. And then finally I think Mr. Moss talked
8 to you about what I think everyone in this
9 courtroom would agree would be what is Mr. Moorer's
10 greatest attributes. He's a likeable person, I
11 think you said. He was motivated; correct?

12 A. Yes, sir.

13 Q. And based upon those qualities, what
14 in your professional opinion do you believe
15 Mr. Moorer's future vocational potential is?

16 A. Again, I always go back to the past
17 experience is the greatest indicator for future
18 success. And he has been motivated and he's
19 successfully gained employment in some pretty good
20 jobs in spite of a lot of odds. And I think that
21 in this economy, I think that his future success is
22 great based upon his past experience and his
23 success in the past.

24 Q. And would you be able to expect him to
25 apply for and potentially obtain many of the jobs

1 MR. TECKLENBURG: Yes. It is only -- I think
2 it is three redactions.

3 THE COURT: Okay.

4 MR. TECKLENBURG: I know how you are going to
5 rule, but you know how it is.

6 THE COURT: All right. Yes, sir.

7 MR. TECKLENBURG: Your Honor, if we could go
8 to Page 12, Line 5 through 22.

9 THE COURT: Line 5?

10 MR. TECKLENBURG: Yes, through 22. Your
11 Honor, based upon your prior ruling, I think that
12 this unfortunately you will exclude, but I just
13 need for you to confirm that on the record, if you
14 don't mind.

15 THE COURT: All right, the ruling would be the
16 same on that, Line 5 through 22 on Page 12. Those
17 will be excluded.

18 MR. TECKLENBURG: Thank you, Your Honor.

19 If we could go to Page 26, Line 14, to
20 Page 27, Line 7.

21 Mr. Moss and I have discussed this, and
22 basically at Line 14 after "add up," it was our
23 conclusion that based upon the prior ruling you
24 would likely exclude everything from after the word
25 "add up" at 26, Line 14, through 27, Line 7.

1 THE COURT: All right, that will be excluded.

2 MR. TECKLENBURG: Likewise, Your Honor, on
3 Page 29, Line 14, through Page 30, Line 20.

4 THE COURT: It will be excluded for the same
5 reasons as earlier.

6 MR. TECKLENBURG: Thank you, Your Honor. Just
7 make a note that it is the Defendant's desire to
8 designate those portions for the record.

9 Thank you.

10 THE COURT: All right. Mr. Moss made an
11 objection.

12 MR. TECKLENBURG: That's correct.

13 THE COURT: All right. Let's bring them in.
14 (WHEREUPON, the jury came into open
15 court at approximately 5:11 p.m.)

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

17 THE COURT: All right, we'll continue.

18 And just so you all know, we are probably
19 going to take two or three more witnesses for today
20 and hopefully we will be done by 6:15 or 6:30.

21 All right. Yes, sir, you may continue.

22 MR. TECKLENBURG: Thank you, Your Honor. The
23 Defendant calls Allon Wright, please.

24 (Witness approaches.)

25 THE BAILIFF: If you would place your left

1 hand on the Bible and raise your right hand for me,
2 and face the clerk.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about to give in this case will
6 be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat in the
10 witness stand, please.

11 (Witness seated.)

12 THE CLERK: State your name for the record.

13 THE WITNESS: Allon Wright.

14 ALLON WRIGHT,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. TECKLENBURG:

18 Q Mr. Wright, you get the award for tallest man in
19 the courtroom, I think. Tell us where you live.

20 A 317 Canaan Circle, Suffolk, Virginia.

21 Q And by whom are you employed?

22 A I'm employed with the Norfolk Southern Corporation.

23 Q Generally what is your job at Norfolk Southern,
24 your job title?

25 A Manager of Vocational Rehab Services.

1 Q How old are you?

2 A Forty-two.

3 Q And tell us where you went to college.

4 A I graduated from Old Dominion University and I
5 received a graduate degree from Norfolk State
6 University.

7 Q I have got to ask, did you ever play ball in
8 college?

9 A I did.

10 Q Okay. How tall are you?

11 A 6'11".

12 Q Did you play for Old Dominion?

13 A I did, yes.

14 Q Did you ever play beyond college?

15 A I played three years professional basketball in
16 Europe.

17 Q Interesting. So you said you went to grad school.
18 Tell me about your grad school degree. What did
19 you do there?

20 A I received a master's in community agency
21 counseling from Norfolk State.

22 Q And what is that, community counseling?

23 A Community agency counseling basically works in the
24 community, public sector, state government, city
25 government to assist individuals who are in need.

1 Q Prior to being at Norfolk Southern, what did you
2 do?

3 A I worked for the Virginia Department of
4 Rehabilitative Services as both a counselor for
5 five years and a manager for almost a year.

6 Q Tell me what you did there and what that Virginia
7 agency does.

8 A The Virginia Department of Rehab Services works
9 with individuals with significant disabilities to
10 return to work; either folks who have been in a
11 traumatic -- have suffered traumatic injuries or
12 illnesses, or folks who have substance abuse and
13 mental health disabilities. I work to try to get
14 them into the work force.

15 Q It sounds like you held a title of manager there as
16 well?

17 A Yes.

18 Q Did you have people that you supervised?

19 A Yes.

20 Q How many?

21 A Fourteen.

22 Q Do you hold any licenses in the area in which you
23 practice or do your profession?

24 A Yes. I'm nationally certified as a certified rehab
25 counselor, and I'm state certified as a substance

1 abuse counselor in Virginia.

2 Q Tell us about the national certification. What is
3 that about?

4 A National certification basically puts me in the
5 category of a professional who is able -- competent
6 professional who is able to make determinations and
7 assessment with regards to people's disabilities
8 and getting them into the work force.

9 Q Now, when did you join Norfolk Southern?

10 A September 2010.

11 Q And why did you decide to take a job there?

12 A I looked at the opportunity at Norfolk Southern as
13 an opportunity to do something different. Same
14 type of work. I have always been called for human
15 services, and I have always been in health and a
16 professional throughout my career. But I really
17 looked at the situation at Norfolk Southern as a
18 unique challenge to provide positive and lasting
19 change for people.

20 Q Had you ever worked for a railroad before?

21 A No.

22 Q When you look at your new job when you came to
23 Norfolk Southern, what did you learn about the
24 types of jobs that a company like Norfolk Southern
25 may offer to people that are disabled in some way

1 or another?

2 A That really the focus is more on the ability. Many
3 times the jobs that I discovered, there is a lot of
4 what we call transferable skills. Folks can
5 actually go into different positions based on their
6 railroad knowledge, as well as their aptitude or
7 potential, I'll say.

8 Q And tell us just generally what your job duties are
9 in your role at the Vocational Rehab Services Group
10 that you participate in.

11 A I assist sick and injured employees with making a
12 return to work, either within the company or
13 outside of the company.

14 Q And if you look at percentages of -- I know that
15 you said both sick and injured.

16 A Yes.

17 Q What does this program do for Norfolk Southern
18 employees that haven't been injured but have some
19 illness? Give some examples of people you might
20 talk to with illness.

21 A Sure. I have worked with a number of folks who,
22 for instance, have diabetes or heart attack with --
23 and I provide them with one-to-one guidance and
24 counseling to help them to discover some career
25 options.

1 It is all about establishing a positive
2 relationship with the employees in order to try to
3 get them to the next level.

4 The services that I provide are not merely a
5 placement service. It is really more about, you
6 know, understanding unique strengths and
7 competencies and also keeping in mind their
8 weaknesses.

9 And I try to assist them based on where they
10 want to go and try to move them into other
11 positions within the company that are currently
12 available.

13 Q So if you look at the number of people that you
14 have helped and you look at people that are ill
15 versus people that are claiming an injury of some
16 sort, what sort of percentage of case load do you
17 have?

18 A About 60 to 70 percent of the folks that I'm
19 working with right now are out due to a medical
20 illness.

21 Q And the rest of them would be out for what other
22 reason?

23 A On-duty injury, as well as there are some who are
24 out on LTD.

25 Q And tell us a little bit about other services that

1 might be available by your department, other than
2 the one-on-one from you. What other things can
3 your department do for an employee like you have
4 described as either sick or injured?

5 A I can assist them with getting additional education
6 or training. I actually have funds available in my
7 budget to help them to go to school, basically.

8 Many times folks have worked in a particular
9 job for a long period of time. Well, I have the
10 resources available to assist them with getting the
11 skills that they need in order to make them viable
12 for other positions within the company and outside
13 of the company as well.

14 Q And Mr. Moorer, who is the Plaintiff in this case,
15 is he still an employee of Norfolk Southern?

16 A Yes, he is.

17 Q And is he eligible to receive your services?

18 A Yes.

19 Q And have you tried to counsel him in any way since
20 going to Norfolk Southern?

21 A Yes.

22 Q Tell us what you have done.

23 A With Mr. Moorer we have arranged for testing for a
24 non-agreement -- or rather a non-union position, as
25 well as, again, the guidance and counseling which I

1 provided.

2 I have also arranged -- actually, we have one
3 interview in process, but arranged for an
4 interview, telephonic interview for a position that
5 is currently available, or was at the time
6 currently available in Atlanta.

7 Q Did Mr. Moorer actually have an interview for a job
8 in Atlanta?

9 A It was a telephonic interview.

10 Q How long ago was that?

11 A Approximately two months ago, two or three months
12 ago.

13 Q And what position was he applying for in Atlanta?

14 A It was the police command officer position.

15 Q What do they do?

16 A Basically with that position it is a dispatcher
17 position that works out of our central police
18 command center in Atlanta. The person is
19 responsible for -- if there is any problems
20 throughout the Norfolk Southern system, all 22
21 states, this position is responsible for
22 dispatching, relaying information via
23 telecommunications, as well as documenting and
24 logging critical incidents.

25 Q And did he get the position?

1 A He did not.

2 Q Well, let me ask you about that. If you help an
3 employee to get an interview for a position that
4 might open up within the company, are they given
5 any special treatment because they are working with
6 you?

7 A They aren't given any special treatment; however,
8 they are considered highly marketable based on
9 their prior experience with the company.

10 Q Okay. So are they in the same school, if you will,
11 as every other applicant?

12 A Yes.

13 Q And do they have to get a job within Norfolk
14 Southern based upon whatever the requirements of
15 that job may be?

16 A Yes.

17 Q And how is it helpful for someone like you to
18 facilitate those interviews? Tell us why that is
19 important for someone at Norfolk Southern like, for
20 example, Mr. Moorer.

21 A Well, when you look at the lowest common
22 denominator, I help to get that foot in the door.

23 A lot of that is based on the relationship
24 that is built and identifying what preferences are
25 and what challenges may be to coordinate an

1 interview for them.

2 Q What do you understand the physical restrictions
3 that you may have to deal with in trying to place
4 Mr. Moorer within the company?

5 A Being, though, that I don't deal with the medical
6 records, my understanding that there is a
7 heat-related illness or disability.

8 Q So in your searching for jobs, what types of jobs
9 have you been trying to find for Mr. Moorer?

10 A We're looking at sedentary to light duty positions.
11 In other words, we're looking at positions in which
12 Mr. Moorer would work in an office setting.

13 Q In your dealing with Mr. Moorer, has he been
14 motivated?

15 A Yes.

16 Q And how important is that to the process of what
17 you do for the employees?

18 A That is a key part of my process. I'd say, you
19 know, 80 percent of what we do in the program is
20 determined by the level of motivation that an
21 employee brings to the table.

22 Q Now, I think you mentioned that you had arranged
23 one interview for the dispatcher position in
24 Atlanta. Tell us about the -- I think you
25 described the interviewing process.

- 1 A Yes.
- 2 Q What is that?
- 3 A This is for the environmental compliance officer
- 4 position. It is a new position with Norfolk
- 5 Southern in the Safety and Environmental Department
- 6 based in Atlanta.
- 7 Q And do you know what that person would do?
- 8 A The person is -- what they are actually looking for
- 9 in a candidate is someone who has strong
- 10 investigative skill set. And in that position the
- 11 person is responsible for tracking and monitoring
- 12 permits within the environmental group.
- 13 Q Now, when you identify a job like that, do you try
- 14 to look at whatever skills Mr. Moorer may have to
- 15 bring to the table, so to speak?
- 16 A Yes.
- 17 Q Do you help employees such as Mr. Moorer with their
- 18 resume or make suggestions about interviews?
- 19 A Yes.
- 20 Q Would you consider yourself an advocate for the
- 21 employee?
- 22 A Yes.
- 23 Q Now, in terms of pay and benefits, do you know what
- 24 these jobs that you've been trying to get for him
- 25 would pay?

1 A The positions in which we targeted will be paying
2 somewhere around the mid-40s.

3 Q And as you look at Mr. Moorer and your dealings you
4 had with him, are you optimistic about him being
5 able to return to work in some capacity at Norfolk
6 Southern?

7 A Yes.

8 Q And even if this case is over, will you still help
9 Mr. Moorer?

10 A Absolutely.

11 Q Will he still be an employee?

12 A Yes.

13 Q And will he still be entitled to your services?

14 A Yes.

15 Q Thank you very much.

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

17 CROSS-EXAMINATION

18 BY MR. MOSS:

19 Q Hello, Mr. Wright.

20 A Good afternoon.

21 Q A pleasure to meet you.

22 A Likewise.

23 Q This case existed long before you came to work at
24 Norfolk Southern, right?

25 A Yes.

- 1 Q It was a vocation file opened by your predecessor,
- 2 a person named Susan Lafon?
- 3 A That's correct.
- 4 Q Did you know Ms. Lafon?
- 5 A No.
- 6 Q Did you ever meet her?
- 7 A No.
- 8 Q Did you know her background?
- 9 A You are --
- 10 Q Would you know her background at all?
- 11 A No.
- 12 Q Qualifications to be a vocational person?
- 13 A No.
- 14 Q By my calculations, before you came to the
- 15 railroad, this vocational file was open for about
- 16 3.5 years from May of '07 until about September of
- 17 2010. Does that math sound about right to you?
- 18 A Yes.
- 19 Q And then since you came to Norfolk Southern, it has
- 20 been open another 18 months, is that right?
- 21 A Yes.
- 22 Q When was your first contact with Trumaine Moorner?
- 23 A I don't have that information. I would have to
- 24 look at my log.
- 25 Q Do you have your log with you?

1 A I don't.

2 Q You didn't bring it?

3 A No.

4 Q Has it been recently, or like in the last --
5 certainly when you came to Norfolk Southern you
6 immediately called Trumaine because you saw that
7 this was an open file that the guy needed your
8 help, right?

9 A I'm sorry?

10 Q You came -- I would think you would have contacted
11 Trumaine like in September of 2010 or maybe took a
12 month to get acclimated, maybe October of 2010 or
13 something?

14 A I think it was more like -- it was more like the
15 summer. This last summer.

16 Q Of '11?

17 A Yes.

18 Q Why did you wait October, November, December,
19 January, February, March, April, May, June -- could
20 be June -- why did you wait that long to contact
21 him?

22 A Well, unfortunately, Mr. Moorner, like many other
23 employees, were not captured when I first came on
24 to the company. There were some -- our internal
25 case management system was somewhat limited, and so

1 when I noticed that Mr. Moorer was, like other
2 employees who haven't been captured, was kind of
3 hanging out there, I took the opportunity to reach
4 out to him and called him.

5 Q Captured, what does that mean?

6 A Can you repeat the question, please?

7 Q What does it mean that he wasn't captured? I'm not
8 sure of that term. Is that a vocational term?

9 A What it is, is he wasn't captured. In other words,
10 his name was not on the list of active participants
11 in the program.

12 Q Like he fell through the cracks maybe?

13 A I wouldn't say that, no.

14 Q Well, there is a list of people who were on your
15 radar and there were some that weren't, and those
16 that weren't fell through the cracks, didn't they?

17 A I wouldn't say that they fell through the cracks.

18 Q How would you describe it? If they weren't
19 captured, how else would you describe it if they
20 didn't fall through the cracks?

21 A Can you rephrase the question, please?

22 Q Sure. If he wasn't captured -- let's put it in
23 terms this jury can understand, lay terms.

24 Captured doesn't mean much. If he didn't fall
25 through the cracks, what -- how would you best

1 describe why he wasn't contacted for over nine
2 months when he wasn't on the active list of people
3 when he had been in the program for three and a
4 half years?

5 A Mr. Moorner was contacted when I identified him as
6 an active participant.

7 Q We'll leave it there. Have you looked at the
8 vocational assessment by Ms. Cicero, the railroad's
9 expert in this case?

10 A I'm not familiar with that person.

11 Q Did you even know that the railroad had Mr. Moorner
12 vocationally evaluated by an expert witness?

13 A No.

14 Q Is right at this moment the first time you have
15 ever come to realize that, sir?

16 A Yes, sir.

17 Q Really? They didn't share with you that Ms. Cicero
18 was a hired expert by the railroad who thought Mr.
19 Moorner was an extremely motivated, talented person
20 with a lot of vocational aptitude? They didn't
21 tell you that?

22 A No.

23 Q Did you ask if the railroad had ever had him
24 evaluated so that you could know what kind of guy
25 he was so that you could maybe help him so he

1 didn't fall through the cracks?

2 A Can you restate your question, please?

3 Q Did you ever ask the railroad, Mr. Tecklenburg or
4 any of this team over here, whether Mr. Moorer had
5 been vocationally tested by a paid expert for the
6 railroad years ago so that you could look at the
7 report and see what his skills and aptitudes were?

8 A Quite -- quite frankly, I don't -- I don't get
9 involved in this part of the business very much.
10 My primary responsibility is to the employee. I
11 reached out to Mr. Moorer. We established a
12 relationship pretty quickly, I think. And from
13 there we moved forward and tried to get Mr. Moorer
14 and his family where they needed be.

15 Q I get that, and I appreciate that. And I think he
16 does too. But I think we have got to talk about
17 the system.

18 Do you know when Mr. Moorer first took Norfolk
19 Southern up on its offer for any kind of vocational
20 testing?

21 A That would probably be reflected in the file.

22 Q I'll help you. Look, I know you came to this case
23 late, and I don't mean to be unfair to you, but I
24 need your opinion for this jury to know whether
25 this was handled properly.

1 I want you to assume that Mr. Moorer took
2 testing in May of 2009 at the request and offer of
3 Susan Lafon and passed that test, okay? Did you
4 know that?

5 A Quite honestly, I can't speak to events that took
6 place before September 2010..

7 Q Fair enough. Then I'll be fair to you. I mean, do
8 you even have the file with all of my letters to
9 Ms. Lafon, my letters to you, and at least
10 Ms. Lafon's letters back to me? Do you even have
11 the file?

12 A The file is established, yes, sir.

13 Q Do you have it with you?

14 A I don't have it with me, no, I don't.

15 Q There is a bunch of letters in there from me to
16 Ms. Lafon and letters to you as well, right?
17 Right?

18 A I'm sorry?

19 Q There is letters in your file, the established
20 file, there is letters?

21 A Yes.

22 Q Lots of them?

23 A Maybe two or three.

24 Q Hmm. Okay. Dating back to what, 2007, 2008?

25 A Letters -- letters to me?

1 Q No, not to you because you weren't there then. To
2 Ms. Lafon.

3 A I would have to look at the file.

4 Q We'll just leave it be. If one of these employees
5 who you are working with passes a vocational test
6 for a specific position, does the medical
7 department then have to get involved to determine
8 if they medically qualify based on their vocational
9 aptitudes?

10 A Can you restate your question, please?

11 Q Okay. I'll just make it real candy. Mr. Moorer
12 took a test in May of 2009 and was qualified for a
13 clerical position, a CYO position, a CMC position,
14 a dispatcher position, and a yardmaster position,
15 okay?

16 Is the logical next step, because according to
17 Dr. Lina the next step is, the medical department
18 then has to approve him physically for those jobs?
19 Is that the way you understand that it works?

20 A Yes.

21 Q In your world as a vocational counselor, would you
22 want the medical department to promptly evaluate
23 the person to see if they medically qualify for
24 those five jobs in this hypothetical example?

25 A Hypothetical example, I would really want to have a

1 conversation with the employee. Medical
2 qualification for a position doesn't necessarily
3 dictate that is fit for a position.

4 Q I agree. Right. But as a necessary first step,
5 there is not even a reason to have a conversation
6 about going forward unless they medically qualify,
7 right?

8 A Well, the medical file would have to be reviewed.

9 Q The medical department has to stamp and say yes,
10 then you can get involved and see if there is a
11 match, right?

12 A Yes. That sounds correct.

13 Q In this case I want you to assume, Mr. Wright, that
14 the medical department did not qualify Mr. Moorer
15 for those five jobs that he qualified for in
16 May 2009 until June of 2010.

17 In your opinion is that acceptable vocational
18 practice at Norfolk Southern?

19 A I can't really speak to what took place prior to me
20 coming on board. That is not the way that things
21 are the way that I do business.

22 Q It seems -- I think I agree with you. Why don't
23 you do business that way? Tell us.

24 A Well, you know, one of the things that I try to
25 keep in mind -- again, this is all driven by the

1 employee's --

2 Q Right.

3 A -- commitment to the process and their need for

4 services. I don't -- I don't get involved in the

5 medical piece. So.

6 Q But you have to know the medical -- but the medical

7 piece has to happen as part of the process, right?

8 That is my only point.

9 A Well, the medical -- yes, the medical has to be

10 determined.

11 Q And in this case -- I have made my point.

12 You said a minute ago -- and I think you are

13 exactly right, and tell me if I get this -- it is

14 all about establishing a positive relationship with

15 the injured worker, right?

16 A Yes.

17 Q That builds trust, right?

18 A Yes.

19 Q It builds rapport?

20 A Yes.

21 Q It continues to motivate an already motivated

22 person, right?

23 A That's accurate. That is a fair statement.

24 Q A person, if you have a positive relationship,

25 doesn't feel like they fell through the cracks if

- 1 there is a gap in communication because you are
- 2 actively working with them to encourage them and
- 3 support them and do your job well, right?
- 4 A Well, it is actually a two-way street.
- 5 Q Right.
- 6 A With that support that is given out there is also a
- 7 level of desire and motivation.
- 8 Q I could not agree with you more.
- 9 A Of the employee.
- 10 Q In this case, if you are going this way and Mr.
- 11 Moorer is coming this way on the two-way street,
- 12 has he met you halfway?
- 13 A Yes.
- 14 Q Has he even maybe met you more than halfway?
- 15 A I think halfway is a good descriptive. There are
- 16 still things in process and we're still working.
- 17 Q Would you think that for a guy as motivated as
- 18 Trumaine Moorer between May of -- or I guess he got
- 19 disqualified in August of '7, August of '7 to March
- 20 of '12, that is the timeline you are operating
- 21 under, with a guy as motivated as Trumaine who is
- 22 meeting you halfway, is that an acceptable amount
- 23 of time for y'all to really get involved and try to
- 24 help the guy get back to work?
- 25 A I'm not quite sure what you are asking.

- 1 Q I think they understand. Do you know who David
- 2 Patton is?
- 3 A No.
- 4 Q There has been a security -- I mean, a railroad
- 5 police position open in Birmingham in the last two
- 6 or three years, hasn't there? Do you know?
- 7 A Not that I'm aware of. I can only speak to what
- 8 took place before.
- 9 Q I've got it.
- 10 A Okay.
- 11 Q Not that you would because I'm just a lawyer, but I
- 12 have written you a couple of letters about
- 13 Mr. Moorer since you came into the file, right?
- 14 A Yes.
- 15 Q Did you have the courtesy to reply to my letters?
- 16 A I replied directly to Mr. Moorer.
- 17 Q I have called you on the telephone. Have you
- 18 returned my phone calls?
- 19 A I don't contact attorneys, I work directly with the
- 20 employees. Lawyers talk to lawyers.
- 21 Q I'm sorry?
- 22 A I said lawyers speak to lawyers.
- 23 Q I sent you an e-mail. You haven't replied to my
- 24 e-mail, right?
- 25 A I don't -- I don't reply to attorney

1 correspondence.

2 Q Given that I have never met you before and I do a
3 lot of this work, am I to understand, Mr. Wright,
4 that your policy is that you are not going to
5 respond to me either on the phone, in writing, or
6 e-mail if I try to reach out to you?

7 A No. The policy is that I contact the employee and
8 inform the employee of your correspondence.

9 Q Well, I copy all my clients with my correspondence.
10 I mean, it is already in evidence. You know they
11 know I write to you, right?

12 A I'm sorry?

13 Q The stuff I have written to you I have copied
14 Trumaine on all of that, right?

15 A Right..

16 Q Well, maybe for you and me dealing with Trumaine
17 going forward, how would you like me to best deal
18 with you so that I can get in the loop and try to
19 help him help himself? How do I get involved?

20 A You work directly with the employee, as I work with
21 the employee.

22 Q Thank you.

23 MR. TECKLENBURG: No questions, Your Honor.

24 THE COURT: All right, you may step down. Any
25 objection to this witness being excused?

1 MR. MOSS: None.

2 (Witness steps down and is excused.)

3 THE COURT: Call your next witness.

4 MR. TECKLENBURG: Thank you, Your Honor. We
5 call Dr. Paula Lina via deposition. There are two
6 depositions, Your Honor. One regretfully has to be
7 read and the second is video deposition. So we'll
8 proceed with the read deposition first, Your Honor.

9 (WHEREUPON, the deposition of Dr. Paula
10 Lina was read into the record.)

11 MR. TECKLENBURG: That concludes the
12 deposition of Dr. Lina.

13 THE COURT: All right, ladies and gentlemen of
14 the jury, there is another video that is 18
15 minutes, but I think y'all are ready to go.

16 We'll start at 9:00 in the morning I'm not
17 sure about lunch. I'm just going to see. I think
18 Mr. Tecklenburg may have a couple more witnesses
19 and a video that is about 17 or 18 minutes. So we
20 will start at 9:00 o'clock in the morning. I'll go
21 ahead and release you all for the evening.

22 All right. Thank you. And thank you all for
23 being such good sports.

24 (WHEREUPON, the jury was excused for the
25 evening.)

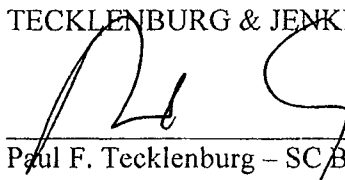
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2010-CP-40-05460
	)	
TRUMAINE V. MOORER,	)	
	)	
Plaintiff,	)	STIPULATION OF DEPOSITION
	)	DESIGNATIONS OF PAULA LINA
vs.	)	TAKEN 9/30/08, READ AT TRIAL
	)	(802:04-12)
NORFOLK SOUTHERN RAILWAY	)	
COMPANY,	)	
	)	
Defendant.	)	
	)	

The undersigned parties stipulate the following excerpts of the deposition of Paula Lina taken September 30, 2008, were read at trial:

05:09 - 05:13
 05:25 - 08:13
 10:23 - 10:25
 14:10 - 18:22
 14:10 - 18:22
 24:06 - 24:04
 28:11 - 29:01
 31:18 - 37:11
 41:24 - 42:20
 43:02 - 45:01
 49:17 "are" - 56:08
 59:21 - 60:15
 60:21 - 61:17
 64:06 - 65:07
 66:17 - 67:04
 67:06 - 67:18
 67:23 "so" - 67:24
 69:18 - 70:18
 96:20 - 98:22
 99:03 - 100:22
 100:23 - 103:13
 103:15 - 103:24
 104:01 - 106:21
 108:20 - 109:01

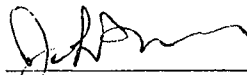
[SIGNATURES ON NEXT PAGE]

TECKLENBURG & JENKINS, LLC



Paul F. Tecklenburg – SC Bar #10295
1819 Meeting Street Road, Ste. A
Charleston, SC 29405
Telephone: (843) 534-2628
Facsimile: (843) 534-2629
Email: pft@tecklaw.net
Counsel for Defendant

STEEL & MOSS, LLP



John A. Moss, Esquire
15 Piedmont Center, Suite 1560
3575 Piedmont Road, NE
Atlanta, GA 30305
Counsel for Plaintiff

1 IN THE COURT OF COMMON PLEAS
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG

4 TRUMAINE V. MOORER,)
5 Plaintiff,)
6 v.) No. 2008-CP-24
7 NORFOLK SOUTHERN RAILWAY)
8 COMPANY,)
9 Defendant.)

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12
13 DEPOSITION UPON ORAL EXAMINATION OF

14 PAULA J. LINA, MD

15 TAKEN ON BEHALF OF THE PLAINTIFF

16 NORFOLK, VIRGINIA

17 SEPTEMBER 30, 2008
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25

Lina, Paula, M.D. 9/30/08

1 so that we can communicate with each other, because
2 we're trying to make a written transcript. Okay?

3 A. Okay.

4 Q. If you can answer out loud, that would help
5 the court reporter, and if you forget, we'll remind you
6 to say "yes" or "no" instead of nodding your head.
7 Okay?

8 A. Okay.

9 Q. Would you please state your name and
10 professional address.

11 A. My name is Paula Jo Lina. My professional
12 address is Norfolk Southern Corporation,
13 Three Commercial Place, Norfolk, Virginia 23510-9202.

14 Q. And you are a resident of the state of
15 Virginia?

16 A. I am.

17 (Curriculum vitae of Dr. Lina marked as
18 Plaintiff's Exhibit No. 1)

19 BY MR. MOSS:

20 Q. You have been kind enough to bring a copy of
21 your CV, which I have marked as Exhibit No. 1 to the
22 deposition. I wonder if you might simply, without even
23 me asking questions, tell me in summary form what this
24 is so that I can understand your background, please.

25 A. Would you just like me to summarize my

1 education?

2 Q. Sure. Education, training, and experience.

3 A. Sure. I went to -- I'll start with college.
4 I went to college at Duke University and graduated in
5 1983 with a Bachelor of Science degree in biology; went
6 right on to medical school at Bowman Gray School of
7 Medicine and obtained my medical degree in 1987.

8 I then completed an internship in internal
9 medicine at Moses Cone Hospital in Greensboro,
10 North Carolina. And I also completed my residency
11 training in the United States Army in occupational
12 medicine from 1991 to 1993. As part of my residency
13 training, I also obtained a Master's degree in public
14 health at Johns Hopkins University. I'm board
15 certified in occupational medicine.

16 Would you like me to tell you a little bit
17 about my military experiences after my residency, up to
18 my employment --

19 Q. Please, yes, ma'am.

20 A. -- with Norfolk Southern?

21 Q. Sure.

22 A. Okay. I'll keep it brief. After I graduated
23 from my residency, I was still on active duty with the
24 U.S. Army, and I was assigned as the director of
25 occupational health services for the U.S. Army in

1 Korea, where I served a one-year tour. And my job
2 duties -- well, I was basically responsible for
3 facilitating occupational health services for the
4 approximately 60,000 military and civilian folks who
5 were there at the time.

6 And after I finished the one-year tour --
7 again, I was still on active duty -- I came back to the
8 States and was assigned as the occupational medicine
9 consultant for -- at Fort Monroe, Virginia, which is
10 near here, and at one of the -- it's one of the Army's
11 major command centers; it's called the Training and
12 Doctrine Command, or TRADOC for short.

13 And when I was there, it was -- it oversaw
14 about 19 army training installations nationwide, and my
15 job was to be an occupational medicine consultant to
16 the other occupational medicine and preventive medicine
17 doctors who were out at these field training
18 installations, as well as the supervisors and
19 commanders. And part of my job duties included
20 reviewing medical surveillance data, including lead
21 testing, heat injury data on our training recruits at
22 these installations, and assessing their impact on the
23 command.

24 I finished my Army obligation in September of
25 1995, and that's when I came on board with Norfolk

1 Southern as their associate medical director, and I've
2 held that position since.

3 Q. Did you allow the military to put you through
4 school? Is that how you incurred an obligation?

5 A. I obtained -- well, they put me through
6 school. I basically was awarded this opportunity
7 provided that I give them four years of my time, my
8 service time. They paid for my residency training and
9 internship.

10 Q. I've done that myself, so I'm in touch with
11 that.

12 A. It was a scholarship. It's called an Army
13 scholarship.

14 Q. Different than an ROTC scholarship?

15 A. Yeah.

16 Q. For professionals?

17 A. Yes.

18 Q. And you've been at Norfolk Southern since
19 1995, that entire time as the associate medical
20 director?

21 A. I have.

22 Q. That name implies that there is somebody, at
23 least, to whom you report?

24 A. There is.

25 Q. Since 1995, has that always been Dr. Prible?

1 residency training. In occupational medicine, heat
2 injuries was and is -- I'm assuming still -- a command
3 emphasis in the United States Army, particularly with
4 their training recruits. And when I was in the
5 position at the Army's training command, that was a
6 particular emphasis, and it was part of my job to
7 review medical surveillance data that was provided --
8 required to be provided by the installations
9 periodically regarding their heat injuries.

10 Q. Medical surveillance data would be what?

11 A. It's been a long time ago, and I can't tell
12 you exactly what it looks like, but medical
13 surveillance data could, for example, be the number of
14 injuries, the type of injuries, the location of the
15 injury. It may include more information, but it's been
16 too long for me to remember.

17 Q. Okay. So not a situation where you would
18 actually evaluate the workplace setting via video or in
19 person; you would actually be evaluating almost like
20 epidemiological data, if you will, those numbers?

21 A. At that level, that's what it would involve,
22 more of an overview, a general overview of the data.

23 Q. Fine. You're licensed to practice medicine
24 in the state of Virginia?

25 A. Yes.

1 Q. Thank you. That's very helpful.

2 As it relates to Mr. Trumaine Moorer,
3 obviously you've done some evaluation of work on this
4 file.

5 A. I have.

6 Q. Was it within the context of an evaluation of
7 his ability to perform his job duties and whether there
8 were reasonable accommodations?

9 A. Yes.

10 Q. Okay. Earlier you mentioned your background
11 and work with heat injuries, particularly occupational
12 heat injuries. Can we just define that term so that we
13 are sure we are communicating with each other? When
14 you say "heat injury," what do you mean?

15 A. I don't know whether to give you the long or
16 short version, so I'll just start.

17 Q. You're doing fine. Thank you.

18 A. Okay. I look at exertional heat illnesses as
19 a spectrum of disorders that are characterized by
20 changes in the body's -- certain of the body's
21 processes, like the circulatory system or the metabolic
22 pathways, that occur as a result of its response to
23 exercise and the body's thermal regulatory process.

24 These illnesses, these exertional
25 heat-related illnesses consist of, as I said, a

1 spectrum of disorders, including dehydration, heat
2 cramps, heat exhaustion, exertional heat injury, heat
3 stroke, rhabdomyolysis, and acute renal failure.

4 Q. Can you spell the "R" word for the court
5 reporter, please?

6 A. R-H-A-B-D-O-M-Y-O-L-Y-S-I-S.

7 Q. I'm sorry, and the last one you said?

8 A. Acute renal failure.

9 I'm not quite sure what kind of detail to get
10 into. I can go wherever you'd like me to go.

11 Q. You're doing terrific, and I'll ask you just
12 a few more questions and keep it organized.

13 The spectrum that you've just outlined for
14 me, is that basically a continuum from least to most
15 severe heat injuries? Or is it -- am I --

16 A. In a sense, in that some of these conditions
17 in individuals can progress in severity. There are
18 different levels of severity, and I can describe how I
19 would define those but with the caveat that the borders
20 between the levels of severity are really somewhat
21 arbitrary in that there's no well-defined border. But
22 I do have a sense of what I would consider mild,
23 moderate, severe.

24 Q. Is it fair to say that someone who ends up in
25 acute renal failure began with dehydration?

1 A. No, not necessarily.

2 Q. Okay. Then I need you to explain because I'm
3 envisioning this as a continuation from -- you start
4 with dehydration and end at acute renal failure, and
5 apparently that's not the case.

6 A. That's not necessarily the case.

7 Q. Within the general guidelines of how you
8 organize it, can you please categorize these for me?

9 A. Okay. From a clinical standpoint, I
10 generally look at three severity levels. And this,
11 again, is somewhat arbitrary.

12 Q. Okay.

13 A. On the mild end, I would consider mild
14 dehydration, heat cramps, and heat exhaustion --

15 Q. Okay.

16 A. -- to fall within that category.

17 A little more information under there:
18 Clinically, I could expect to potentially see some
19 laboratory changes, for example, in creatine and CK
20 levels, but they're mild and quickly resolve; and the
21 body temperatures would be usually less than 104, if
22 there's an elevation at all.

23 Q. Okay.

24 A. The next level -- let's call it moderate or
25 intermediate -- I would place exertional heat injury,

1 and that is a syndrome, by its definition, that is
2 characterized by organ damage, particularly kidney and
3 muscle and occasionally liver. Also, by definition, it
4 is not associated with severe mental status changes; a
5 fancy word doctors use is encephalopathy, but what I
6 mean by that is severe mental status changes such as
7 prolonged confusion, delirium, agitation,
8 combativeness, obtundation, severe lethargy, minimally
9 responsive, and coma.

10 Q. Okay.

11 A. You may also in that syndrome, as I alluded
12 to, see mild kidney and muscle changes such as mild
13 rhabdomyolysis.

14 Q. You would see mild kidney --

15 A. Insufficiency.

16 Q. And mild rhabdomyolysis?

17 A. Mild rhabdomyolysis. And the temperatures --
18 again, temperatures are highly variable and not always
19 elevated in these disorders, but temperatures ranging
20 from 104 to 106, if in fact there is an elevation.

21 Q. It sounds like the body temperature, whether
22 it's -- at least the heat injuries in the mild to
23 moderate range, is extremely variable in these cases?

24 A. Body temperature is not a good indicator of
25 the severity of an illness because it varies so

1 drastically in different cases. And I don't use it
2 typically as the sole indicator of severity level,
3 meaning that if it's not there, that doesn't mean it
4 can't be a more severe or less severe case.

5 Q. Okay. And we're now to the third category.

6 A. Which I would call severe. And I would
7 generally categorize heat stroke, which by my
8 definition, and generally accepted definition --
9 although I will admit that there is much variation in
10 this definition among other doctors -- is associated
11 with severe encephalopathy that I previously described
12 as those mental status changes, including delirium,
13 obtundation, coma.

14 I would also put in this category severe
15 rhabdomyolysis with life-threatening complications as
16 opposed to a more mild or moderate case. I would put
17 in this category acute renal failure. I would also
18 include cardio -- this is more general and obviously
19 much more at the end of the severe spectrum, but
20 cardiovascular collapse, shock, and a condition known
21 as disseminated intravascular coagulation, which is
22 serious and life threatening.

23 Q. That sounds like some form of clotting.

24 A. It is.

25 Q. You mentioned that temperature is not a good

1 intermediate, or severe heat event at work at Norfolk
2 Southern, is there a first thing that should happen?
3 And that is, should they be put in a cool environment?
4 Should they be given something to drink? Or is it not
5 that simple?

6 I guess my question is: Is there kind of
7 like a bright-line rule about the first thing or first
8 few things that should happen if somebody is having a
9 heat event at work?

10 A. Well, again, that's what the guidelines
11 outline, and I'm happy to go through those with you if
12 you would like.

13 Q. Certainly.

14 A. Okay. For heat cramps, it discusses that in
15 addition to describing what they are and what they're
16 usually caused by, that the treatment is -- oftentimes
17 all that is necessary is hydrating with water and
18 generous salting of food at mealtimes. And the reason
19 for this is because heat cramps are considered to be
20 caused by excessive salt loss from sweating. And also
21 it may require resting, stopping the muscle activity in
22 a cooler place while hydrating. Again, every case is
23 going to be individual, and not everyone is going to
24 fit in a neat little box.

25 Q. I understand. At what point -- let me ask

1 Q. Let's now turn our attention to Mr. Moorer,
2 and we'll see if we can't get through this pretty
3 quickly.

4 I'm going to mark the Safety and General
5 Conduct Rules that we referred to earlier, which are
6 Bates Nos. 1052 through 1056. I'll make those
7 Exhibit No. 2.

8 (Safety and General Conduct Rules marked as
9 Plaintiff's Exhibit No. 2)

10 BY MR. MOSS:

11 Q. We're going to now talk specifically as we
12 can about the role you played in this case with
13 Trumaine Moorer. You've never met Trumaine Moorer, I
14 take it?

15 A. Not to my knowledge.

16 Q. Okay. How did you become involved in this
17 case, from a medical point of view?

18 A. In reviewing the records in preparation for
19 this deposition, it appears that I became involved on
20 or around July 9th, 2007.

21 Q. How is it that you became involved?

22 A. I was provided with a draft letter prepared
23 by the physician's assistant whom I supervised, John
24 Knecht, to Mr. Moorer's primary care doctor,
25 Dr. Dantzler, that I reviewed for any possible

1 suggested changes.

2 Q. Before I mark this, let me ask you if what
3 I'm handing you -- it's three pages -- appears to be a
4 letter that was prepared and sent to Dr. Dantzler?

5 A. Well, this is a fax of the letter that was
6 prepared and sent to Dr. Dantzler that includes his
7 responses that ultimately came back to us, and it also
8 includes the notation at the bottom of the first page
9 in my handwriting.

10 MR. MOSS: Okay. And just because I don't
11 want to confuse anybody with Bates numbers, in light of
12 the handwritten production this morning, I'm going to
13 mark, Paul, three pages, which is the July 9th, 2007,
14 letter to Dr. Dantzler, with Page 1 including
15 Dr. Lina's handwritten notes, also John Knecht's
16 signature at the top; Pages 2 and 3 contain what appear
17 to be Dr. Dantzler's check marks, initials at the
18 bottom, and date 4/20/07, as well as his remarks on
19 Pages 2 and 3. I'll make that Exhibit No. 3.

20 MR. TECKLENBURG: Very good. Thank you.

21 (7/9/07 letter to Dr. Dantzler from

22 Mr. Knecht marked as Plaintiff's Exhibit

23 No. 3)

24 BY MR. MOSS:

25 Q. Earlier you mentioned your involvement

1 from your perspective?

2 A. At this point in this case, the medical
3 records had been received and reviewed regarding
4 Mr. Moorers's second incidence of acute -- or exertional
5 heat illness on May 31st. In addition to his medical
6 records, I believe that -- and I'd have to check the
7 records, but I believe that there may have been a work
8 release received as well. I'm not sure of that without
9 checking the records.

10 Q. Okay.

11 A. The purpose of this letter was to interact
12 with Mr. Moorers's treating physician, Dr. Dantzler, and
13 provide him with a description of job tasks of a
14 conductor, that had been approved by Mr. Moorers's
15 supervisors, and ask him a number of questions to
16 assist us in determining Mr. Moorers's ability to safely
17 return to work in that capacity.

18 MR. MOSS: I'm going to mark as Exhibit No. 4
19 what appears to be the road conductor job description,
20 Bates No. 387.

21 (Road conductor job description marked as
22 Plaintiff's Exhibit No. 4)

23 BY MR. MOSS:

24 Q. Does that appear to be the copy of the job
25 description that was forwarded to Dr. Dantzler?

1 A. It appears to be.

2 Q. Okay. To your knowledge, does that road
3 conductor job description accurately describe the
4 position of road conductor at Norfolk Southern, if you
5 know?

6 A. Well, the purpose of this description was to
7 focus on Mr. Moorer's job as a conductor on a local,
8 and while the title says "Road Conductor," there is
9 reference within to job duties of local conductors. So
10 with that in mind, it generally captures duties of a
11 conductor and, in some areas, more specifically that of
12 a local conductor. A conductor on a local is the same
13 thing.

14 Q. Do you know from experience that the job
15 duties of a road conductor can vary in some cases
16 dramatically from that of either a yard conductor or a
17 conductor doing local service work?

18 A. There can certainly be differences in the
19 amount of physical exertion between the two -- three.
20 I think you said three.

21 Q. I did. But Mr. Moorer was on local service
22 at the time of his heat incidents; is that right?

23 A. Yes.

24 Q. And that job in particular does, in fact,
25 require much more physical exertion than would be

1 expected in the road conductor job description which is
2 Exhibit No. 4?

3 MR. TECKLENBURG: Object to the form.

4 THE DEPONENT: I can't agree with that.

5 BY MR. MOSS:

6 Q. Okay. Do you have a knowledge, specifically,
7 Dr. Lina, of the amount of physical exertion required
8 on the local job that Trumaine Moorner was performing at
9 the time of his two heat incidents?

10 A. Yes and no. "Yes" in that I am aware of the
11 specifics of his job duties. Particularly, I focused
12 on the May 31st incident. And what I'm referring to is
13 information that I reviewed in preparation for this
14 deposition that describe the specifics of actually what
15 he was doing that day.

16 The "no" part was that at the time that I
17 reviewed this case, while I didn't know the specifics
18 of what Mr. Moorner was doing on that day, I had a very
19 good understanding, and still have a very good
20 understanding, of what a local conductor's job duties
21 consist of.

22 Q. Okay. And his job duties on that day -- that
23 is, the May 31st incident -- did they generally fit in
24 the expected job duties of a local conductor?

25 A. Yes. And in terms of typical job

1 requirements, I think that they did. I think that, you
2 know, certainly the days can differ depending on the
3 assignments, and whether it's the P-28 job or a
4 different job, that can change some of the physical
5 activity. But generally, those duties seem to fit
6 within what I would have expected on a day-to-day
7 basis.

8 Q. Was there anything about the work on the day
9 that you reviewed, the May 31st day -- that is, by way
10 of amount of work -- that exceeded what you would have
11 normally expected of a local conductor?

12 A. Actually, when I was reviewing the specifics
13 of that job, I thought it actually was somewhat less
14 than what I would have expected.

15 As I reviewed and did some mental
16 calculation, looking at what he had to do, you know,
17 how many loads he had to pull and place, meaning how
18 many -- for those who may not be familiar with those
19 words, the description that I read was that he had to,
20 in addition to pulling the train into a siding to move
21 the locomotive engine from one end of the train to the
22 other so they could pull it in the opposite direction,
23 when they reached an industry, the first industry, they
24 had to separate out, disassemble from the train, or
25 place -- those are all words that can be used -- I

1 think it was two cars, and then pull or pick up or
2 assemble into the train two empty cars.

3 And then they moved to the -- they rode the
4 train to another industry, and it's my understanding
5 that at that industry, they disassembled or placed, I
6 believe it was five cars, and pulled or reassembled
7 into the train three of the empty cars. I was also
8 aware that the length of the train was about 15 cars,
9 according to the description I read.

10 And so going back to what I said earlier,
11 when I was kind of doing some mental calculation to get
12 an idea of the level of exertion that those job duties
13 that day fell in, it appeared that he was not walking
14 very long distances, certainly. I mean, the average
15 length of a car is about 50 feet, probably add 5 feet
16 for the coupling; so 55 feet. If the train was about
17 15 train cars and you have to walk it up and back,
18 that's about 1,660 feet. It's a little over 1,600
19 feet. So that's not an extensive amount of walking.
20 So from that standpoint, that was not very heavy -- it
21 certainly wasn't heavy physical exertion.

22 As far as the amount of other duties that are
23 listed on here, that a local conductor has to do with
24 the activities of the day that I described, would be to
25 pull cut levers, and those are the levers that, when

1 they are pulled, allow a train car to separate from
2 another train car. And I estimated that he would
3 probably have to pull, maybe, about half a dozen cut
4 levers to do those activities.

5 He would also -- has to be able, as part of
6 his job, to couple the air hoses and uncouple air hoses
7 between the train cars. I estimated that that probably
8 would be not a very high number, certainly not as high
9 as I think I saw on this description, definitely not up
10 to 75. Probably in the lower 20s, is what I would
11 estimate.

12 And what else am I going to talk about? Oh,
13 applying and releasing hand brakes. It is a
14 conductor's job to apply and release hand brakes,
15 tighten or release them, and they're typically located
16 on the side of the train car, sometimes on the end of
17 the train car. And they have to apply and release a
18 sufficient number of brakes to either let the train
19 move or hold it in position.

20 And again, I was trying to see if that was
21 described here. I don't really see that described, but
22 I would estimate, again, maybe about -- certainly --
23 probably around 20, is a guess. My sense from that --
24 and he would be doing other things. He would be
25 sitting while he was moving between -- going to the

1 siding and moving in between the industries; so
2 periodic rest, although some likely short runs. And he
3 would be standing on the ballast. He would be climbing
4 on and off the train cars, balancing on the train cars.
5 He may have had to ride on the side of a train car.
6 That wasn't described there, but that's a possibility.

7 Long-winded way, really, of getting to the
8 point that I first made, that when I reviewed the
9 specifics of this, I really didn't consider that day to
10 be extremely strenuous in terms of what local
11 conductors do.

12 Q. What document did you review to gain this
13 factual understanding of what Mr. Moorer did that day?

14 A. I saw -- I was provided with -- in
15 preparation for this deposition, I was given a disk,
16 and I looked at the disk, and there were a number of
17 entries on it, including some medical records, and
18 there was -- it was legal things, answers -- I don't
19 know the right words, but answers or responses.

20 Q. Yes, ma'am.

21 A. And questions. And that's where I saw that
22 information.

23 Q. So this is --

24 A. Not the details. Some of the detail just
25 comes from my knowledge. I'm just saying the general

1 Q. Sure. But other than a general understanding
2 of what a local conductor does, you don't know whether
3 Trumaine Moorner actually serviced a dog food plant or
4 not on the first day -- the first heat incident; is
5 that fair?

6 A. No, nor would I actually be interested in
7 whether it was a dog food plant. That wouldn't be
8 relevant to me medically.

9 Q. But if sometimes they skip the dog food plant
10 and some days they work the dog food plant, that would
11 be relevant to you?

12 A. In terms of if I needed to have an -- boy,
13 dog food. If I needed to have an answer to a question
14 related to that specific detail, I would have explored
15 that.

16 Q. Fine. Just like you explored it with respect
17 to the May 31st incident so that you knew how many
18 cars, how many cut levers, how many couplings
19 specifically he was performing that day, right?

20 A. It wasn't in response to a specific question
21 I had. It was in preparation for the deposition and
22 material that I was provided as I was reviewing the
23 case.

24 Q. Have you formed any medical opinions with
25 respect to Trumaine Moorner's ability to work as a

1 conductor at Norfolk Southern?

2 A. I have. And they're identified to some
3 extent in the medical records.

4 Q. I have the August 2, 2007, letter that you
5 wrote to Mr. Moorner, which I'll mark as Exhibit No. 5.

6 (8/2/07 letter from Dr. Lina to Mr. Moorner
7 marked as Plaintiff's Exhibit No. 5)

8 BY MR. MOSS:

9 Q. Dr. Lina, I'm handing you the August 2, 2007,
10 letter.

11 MR. MOSS: And, Paul, for you it's Bates
12 No. 179.

13 MR. TECKLENBURG: Thank you.

14 MR. MOSS: Yes, sir.

15 BY MR. MOSS:

16 Q. This is a letter that you authored to
17 Mr. Moorner on August 2nd, 2007, right?

18 A. Yes. It actually is more somewhat of a
19 template letter. I didn't create this de novo, but I
20 tailored it to Mr. Moorner.

21 Q. And you copied Rob Fender at the bottom of
22 the letter?

23 A. I did.

24 Q. Who's that?

25 A. I believe his title is regional claims

1 manager.

2 Q. At the time you wrote this letter, had you
3 had the opportunity to review all of Mr. Moorers
4 medical and hospital records relating to both the first
5 and the second heat incident?

6 A. I had.

7 Q. You felt like you had a complete
8 understanding of Trumaine Moorers's medical conditions
9 as it related to his heat exposure at work?

10 A. I felt I had sufficient medical information
11 related to his heat illnesses to determine his fitness
12 for service as a conductor.

13 Q. And the decision about his fitness for duty
14 is actually part of your job description at Norfolk
15 Southern as the associate medical director?

16 A. In that it is my job to evaluate and make
17 decisions about an employee's ability to work safely
18 with respect to their medical condition.

19 Q. And after making that determination, you
20 then, again, used a template but tailored this letter
21 to inform Mr. Moorers about what your medical opinions
22 were with respect to his ability to work and work
23 safely at Norfolk Southern?

24 A. As a conductor.

25 Q. Yes, ma'am.

1 A. Yes.

2 Q. Prior to you authoring or tailoring this
3 template, did you seek the advice or counsel of
4 Dr. Prible, or is this all your own medical judgment?

5 A. Before making a final determination, I did
6 several things.

7 Q. You know I'm going to ask you what they are.
8 So can you tell me what they were, please?

9 A. As previously mentioned, I received, and at
10 that time had reviewed, all available medical records
11 and information related to the May 9th and May 31st
12 work incidents in which Mr. Moorner was involved. And I
13 also conducted a literature review focused on
14 heat-related illnesses in general and rhabdomyolysis in
15 particular.

16 Q. Okay.

17 A. I formed an opinion regarding Mr. Moorner's
18 fitness for service as a conductor related to his
19 recurrent heat illnesses -- related illnesses.

20 Q. Okay.

21 A. I reviewed the case, my assessment, and my
22 recommendation with Dr. Prible.

23 Q. Okay.

24 A. He agreed with my recommendations, and I then
25 documented my assessment and recommendation and had the

1 letter prepared to Mr. Moorer on August 2nd.

2 Q. Fine. You mentioned you looked at a disk to
3 prepare for your deposition. Did you look at anything
4 else to prepare?

5 A. I reviewed some of the literature that I had
6 available for -- that I had previously had available.
7 and looked at last year.

8 Q. Yes, ma'am.

9 A. I also did a brief literature review to see,
10 in particular, if there was anything updated on this
11 issue of what I described as unexplained
12 rhabdomyolysis.

13 Q. What did you find in your updated review?

14 A. Well, this may be a long answer.

15 Q. Okay. Let me not do that. Thank you for
16 warning me.

17 Because you've just used a term that I've not
18 heard before in this deposition, which is "unexplained
19 rhabdomyolysis," what does that mean?

20 A. Well, this gets to my assessment of this
21 case.

22 Q. Okay.

23 A. When I reviewed the medical records, it
24 documented that Mr. Moorer had a second episode of
25 rhabdomyolysis with severe dehydration and acute renal

1 There are other genetic disorders that if
2 someone has a case of recurrent rhabdomyolysis,
3 particularly after mild or moderate exertion, which the
4 more recent documents that I reviewed about his
5 specific activity on that day certainly, in my mind, is
6 more of a moderate than heavy physical exertion, that
7 those individuals should strongly be considered for
8 having a possible genetic muscle enzyme disorder. Up
9 to 50 percent of those individuals may have such a
10 disorder, and these are muscle enzyme disorders that
11 involve -- I don't want to get into -- I can answer a
12 little more about it if you'd like me to describe it
13 further.

14 Q. I guess what I'm trying to understand is, are
15 you expressing medical opinions about what underlying
16 genetic explanation there is for Trumaine Moorner to
17 have his heat episodes at work, or are you simply
18 saying that you reviewed literature and it's possible
19 that it could be malignant hyperthermia or it could be
20 this enzyme disorder that you've described? Are you
21 talking in terms of probability, or are you talking in
22 terms of possibility?

23 A. What I'm saying is, I don't know what his
24 condition is, but what I have reviewed strongly
25 suggests, in my opinion, based on my review of the

1 literature, that there may likely be an underlying
2 susceptibility to exertional rhabdomyolysis.

3 The second episode of rhabdomyolysis simply
4 does not add up. He's a fit individual; he's
5 conditioned; he exercises; the temperatures were not
6 excessive. As I review it in more detail now, he was
7 not performing heavy physical exertion that day, and he
8 even admitted that he was frustrated by it at the time.
9 He said, I don't get it, more or less. And the ER doc
10 said, This is unusual for this to occur when it's not
11 that hot. Well, she was right, in my opinion.

12 And I think that another possibility I saw
13 that -- was the potential for nutritional supplements
14 to play a role, but there's clearly something that
15 is not -- that is occurring, that exists -- existed or
16 exists that created that episode of rhabdomyolysis, in
17 my opinion.

18 Q. Did the heat contribute at all, in your
19 opinion, in Mr. Moorer's -- in either of Mr. Moorer's
20 heat events as described by him?

21 A. Well, in that he was working outside, doing
22 his job in weather. It was not cold, but I will tell
23 you, the first incident, the temperature was 78. And
24 by most accounts, I think people would not call that
25 excessively high. So I don't think the ambient

1 temperature in the first place played a significant
2 role.

3 I think more likely what occurred in the
4 first incident, if you'd like me to tell you --

5 Q. Sure.

6 A. -- is that several factors combined to result
7 in his heat-related illness, and those factors, from
8 what I saw, were that he had skipped meals, he had only
9 eaten one meal the day prior, he hadn't eaten any meals
10 the day of the incident on May 9th. It was raining
11 early that day and cloudy the rest. He was wearing his
12 rain gear even when it wasn't raining. He was noted to
13 be excessively sweating.

14 And I believe that those factors, the fact
15 that he had skipped meals, was not able to replace the
16 salt loss, which most Americans can do at mealtime --
17 and which our employees are encouraged to generously
18 salt their food at mealtimes related to heat-illness
19 prevention -- that he had created a situation where
20 his -- his internal body heat was not able to be
21 readily dissipated because he was wearing impermeable
22 gear for the remainder of the day when it wasn't
23 raining.

24 And he was not able to keep up -- he was
25 excessively sweating. He was described as being

1 drenched in sweat. And it appears to me that those
2 combination of factors, coupled with the fact that he
3 clearly could not keep up with the fluid loss from
4 sweating, resulted in his presentation. I think that
5 that is a reasonable assessment of what happened that
6 day. When I look at the episode on May 31st, it -- as
7 I said before, it doesn't make sense. It just doesn't
8 add up.

9 Q. You said that the temperature was not a
10 significant role in the first heat event?

11 A. Ambient temperature, in that it was
12 78 degrees.

13 Q. I understand.

14 A. I think that temperature played a role in
15 that he created his body heat. I mean, in a way, you
16 can look at -- he had created almost a little sauna
17 where he was working. He was not allowing his body
18 heat to be dissipated because he was wearing
19 impermeable clothing. And our employees are encouraged
20 to wear light, loose-fitting clothing. Some of it is
21 common sense. But I think that that contributed to it.
22 I also said it was not just one thing.

23 Q. What about -- was the fact that he was
24 physically exerting himself -- in your medical opinion,
25 was that also a contributing factor in the first heat

1 incident at all?

2 A. Well, in that it was part of what he was
3 doing that day. He was performing his work as a
4 conductor. It's part of the picture, but, you know,
5 the way I look at this, the triggering -- I really
6 think the causative factors, the triggering factors
7 were what I described.

8 Q. I understand. But there's also contributing
9 factors that might not be causative, in your opinion,
10 however you define that term?

11 A. Well, the fact is that he was working outside
12 in rainy, cloudy conditions, with maximum temps of 78,
13 and performing his job duties as a conductor. Those
14 facts do not mean that he was -- that I believe was
15 going -- I mean, it wasn't presumed that he was going
16 to have a heat injury just simply because of those
17 facts. I think the heat illness that he experienced
18 was because of the three factors that I described
19 earlier.

20 Q. I thought -- did he have his rain gear on the
21 entire day?

22 A. I saw documents that he kept his rain gear on
23 even when it wasn't raining.

24 Q. Pants and a jacket?

25 A. I didn't see that detail.

1 Q. Would that matter to you?

2 A. Well, not specifically. I mean, rain gear, I
3 would look at as probably the jacket. But the point is
4 that if he at some point was wearing gear, whether it
5 was pants and/or jacket, that was not allowing his body
6 heat to dissipate, that's a fact. And he was observed
7 to be excessively sweating in temperatures that were
8 not hot.

9 Q. What was the humidity like that day?

10 A. The humidity, from what I recall, it was
11 obviously higher when it was raining, but overall I
12 wouldn't call it extreme humidity conditions.

13 Q. What do you define as "extreme humidity
14 conditions," Dr. Lina?

15 A. Well, I think high humidity is somewhere over
16 60 or 70; extreme, 80 plus. The majority of the day, I
17 think it was below 80, but I'd have to review the
18 record.

19 Again, this issue of the temperature and
20 humidity, he -- I don't think it played a
21 significant -- it wasn't the primary factor in leading
22 to that heat illness.

23 Q. I understand that, and I think we've got to
24 be sure we're talking to each other. Whether it was
25 the primary factor -- I'm making a distinction between

1 primary factors, which you believe are: The fact that
2 he skipped meals; he was wearing rain gear; and he was
3 excessively sweating.

4 I think I've said that correctly; is that
5 right?

6 A. And was not -- he didn't keep up with his
7 fluid losses.

8 Q. Okay. Those were the primary factors, you
9 believe, correct?

10 A. Yes. And again, this is with blinders on and
11 without taking into consideration the second one, which
12 somewhat changes this.

13 Q. Okay. But then we have to also add -- my
14 question is: Do we have to add the contributing
15 factors, which are: He was working in the springtime
16 at, I think you said, at about 78 degrees; he was
17 exerting himself; he was working in humidity -- I'm
18 trying to look at the data here, but it was consistent
19 with rain or rainy temperatures -- would those factors
20 be contributive factors to the ultimate outcome, do you
21 believe?

22 MR. TECKLENBURG: Object to the form.

23 THE DEPONENT: I'd really have to say no, in
24 that, in my opinion, if he had not had those other
25 three factors, I do not believe he likely would have

1 experienced a heat illness. And as I said, the other
2 thing is, now it's 20/20 hindsight, and I'm aware now
3 that he had this second episode of heat illness with,
4 what I really considered to be an unexplained
5 rhabdomyolysis, and it certainly raises the question
6 of, with the two episodes occurring, is there likely
7 the whole issue of -- this doesn't add up. There's
8 likely something else going on, in my opinion.

9 BY MR. MOSS:

10 Q. And what that other thing is that's going on,
11 is that still an open question for you?

12 A. Yes, it is, absolutely.

13 Q. Did you ever inquire or attempt to find out
14 what the temperature was on the engine, inside the cab,
15 when Mr. Moorer was riding from one location to the
16 other on either date?

17 A. No, I did not.

18 Q. Do you know specifically how much time he
19 spent on the engine within the cab on either date?

20 A. I don't know specifically how much time he
21 spent.

22 Q. Do you know how much time he had to take a
23 break outside the locomotive cab itself in an attempt
24 to cool himself off on either date?

25 A. No, I don't know specifically what he did.

1 Q. What is your understanding of his efforts to
2 hydrate himself on the second incident?

3 A. That he was -- according to the reports, he
4 was reportedly drinking a lot of water and Gatorade.
5 There was another report that he may have just been
6 drinking Gatorade, which was a little inconsistent with
7 the earlier statement that I just referenced. But he
8 indicated that he was drinking -- I don't remember if
9 the word "a lot" was used at that time, but a good bit
10 of fluid.

11 Q. Consistent with the recommendations from the
12 Norfolk Southern Safety and General Conduct Rules?

13 A. I don't know if he followed those guidelines.

14 Q. Have you attempted to see, by talking to a
15 co-worker or his supervision, whether he complied with
16 the Norfolk Southern Safety and General Conduct Rules
17 on either day with respect to his hydration?

18 A. No. Because that's not necessary for me to
19 make my clinical assessment and medical decision in
20 this case.

21 Q. How many meals did he skip before the first
22 incident?

23 A. According to the medical records, he had not
24 eaten on the day of the incident, and according to the
25 records, from my recall, he also had only eaten one

1 meal the day prior, I believe in the evening, but the
2 records document that.

3 Q. Meaning, is it your assumption, as we sit
4 here and that you've based your opinion on, that he
5 skipped breakfast on the morning of the incident of the
6 first day?

7 A. I'm basing my knowledge of that on what the
8 medical records report.

9 Q. Factually, are we in agreement that you are
10 assuming that those records indicate that he missed
11 breakfast on the first day?

12 A. The records indicate that he had not eaten on
13 the day of the incident.

14 Q. Okay.

15 A. If you'd like, I can find the medical report
16 that shows that.

17 Q. Maybe, when we take a break, you can, because
18 there's a large stack of documents. I know it doesn't
19 seem like it, but I really am making quick progress
20 here.

21 Exhibit No. 5, we're back to that. It
22 appears in the first sentence that you informed
23 Mr. Moorer that he, in your medical opinion, was not
24 approved to continue in his present position as
25 conductor; is that right?

1 A. Yes, related to his heat illnesses.

2 Q. And you describe those conditions to him in
3 this letter as recurrent, severe heat-related
4 illnesses, correct?

5 A. Yes.

6 Q. And you believe that those recurrent, severe
7 heat-related illnesses were severe enough that he could
8 not safely perform the essential functions of his job
9 as a conductor within the Norfolk Southern medical
10 guidelines, correct?

11 A. It wasn't really necessarily an only issue of
12 the severity of the illnesses. It was a fact that they
13 were recurrent and that the second episode, as I've
14 described in somewhat detail, of rhabdomyolysis simply
15 didn't add up and wasn't -- and strongly suggested to
16 me the presence of an underlying susceptibility to heat
17 illness.

18 Q. Did you ever write Mr. Moorer and tell him
19 that you thought that he might have an underlying
20 susceptibility to heat illness?

21 A. No, I did not.

22 Q. Did you write to him and tell him that you
23 thought that he should follow up with his primary care
24 physician with this possibility of an underlying heat
25 susceptibility?

1 Q. Thank you.

2 MR. MOSS: We've been going here for a bit.

3 If we can take a short break.

4 (Recess)

5 BY MR. MOSS:

6 Q. Dr. Lina, we got a little sidetracked when we
7 were talking about contributing causes versus causes of
8 the first incident, but I think we talked through all
9 of that.

10 With respect to the second incident, I'm
11 going to ask a similar set of questions, and that is:
12 Do you basically hold the same opinion with respect to
13 the causative factors of event No. 2 that you held with
14 respect to the causative factors of event No. 1? Is
15 there any difference in what caused event No. 2 than
16 caused event No. 1?

17 A. Well, first of all -- and I may be going back
18 over some things here, but when I looked at event
19 No. 1, as an isolated event, without considering the
20 second event, it was reasonable, in my opinion, that it
21 could be explained by the combination of factors that
22 I've described.

23 Q. Okay.

24 A. When I now look at event No. 2 on May 31st,
25 the -- those factors were not -- did not appear to be

1 present, based on my review of the medical reports, in
2 that there was no reference to rain gear, there was no
3 reference to missed meals, there was -- well, basically
4 those two things.

5 And so, yes, the causative factors in the
6 second case are not, in my opinion, the same ones I had
7 identified at first look on the first case.

8 Q. Okay. Great. What are they?

9 A. I don't know what they are, and that's the
10 whole issue that this -- I believe that this -- I
11 consider this an unexplained -- unexplained by the
12 exertion, by the temperature, the weather -- case of
13 rhabdomyolysis that was recurrent.

14 And I think that the factors -- I don't know
15 specifically what they are, but I believe that there is
16 likely some underlying susceptibility. It can be due
17 to a number of things I've discussed and some things I
18 haven't discussed. I don't know what that is, but I
19 think that the fact -- the presence of the second
20 illness, that is not logically explained, in my
21 opinion, clinically -- make any clinical sense with
22 respect to just solely exertion and weather, that
23 there's some other thing going on.

24 Q. Do you believe that exertion and weather were
25 at least contributing factors to event No. 2?

1 A. Not in that -- I would have to say no in that
2 the -- it was not excessively hot, the humidity was not
3 excessively high, he was not performing heavy physical
4 exertion. This doesn't add up. I don't believe that,
5 in the absence of some other factor as of yet unknown,
6 that he would have experienced a recurrent heat
7 illness.

8 Q. Did the heat event No. 1 make Mr. Moorer more
9 susceptible to heat event No. 2?

10 A. No, not in my opinion, based on the fact that
11 it was -- simply the fact that he had a heat illness.
12 If there was some underlying factor that I had not
13 identified -- and I'm now -- I think that that may
14 quite be possible -- that also contributed to No. 1,
15 then -- actually, I'm sorry. I just lost my train of
16 thought. I just lost it.

17 Q. What I was asking was: Did the heat event
18 No. 1 make Mr. Moorer more susceptible to heat event
19 No. 2?

20 A. And my answer is that just the fact that he
21 had a heat illness, an initial heat illness that was
22 characterized by dehydration, rhabdomyolysis, acute
23 renal insufficiency, no.

24 What I was trying to get at is -- a possible
25 link I could see is if there was -- you know, again,

1 this is hindsight, 20/20 -- that there -- I believe
2 that there's likely some other factor and that that
3 factor may likely have also -- not be logical to say
4 that it may not have contributed to the first one in
5 addition to the three areas but . . .

6 Q. Did you investigate the other factor
7 theory -- that is, the underlying susceptibility
8 theory -- before you wrote Mr. Moorer the letter in
9 Exhibit No. 5, August 2, 2007?

10 A. Well, yes. And the way I did that was
11 carefully reviewing the medical records, reviewing my
12 material, my existing material on heat illnesses, and
13 doing a literature search, in particular looking for
14 rhabdomyolysis. And that was a similar -- looking for
15 a similar situation where you have unexplained
16 rhabdomyolysis in a guy who is very physically fit, has
17 never had any prior episodes in the past of problems
18 related to working out.

19 And so that's what I focused my review on,
20 but I also looked at other potential causes of
21 rhabdomyolysis, which are many, and I also took a look
22 at, among those causes, the issue of nutritional and
23 dietary supplements. So I looked at a range of things
24 before making my assessment and recommendation.

25 Q. The August 2nd assessment and recommendation?

1 detailed review and consideration that I undertook to
2 get to that point.

3 BY MR. MOSS:

4 Q. You described his renal failure in this
5 Exhibit No. 6 as acute. Why did you describe it that
6 way?

7 A. It was noted on the second diagnosis --
8 excuse me, on the second incident on May 1st [sic] in
9 the discharge summary as that specific diagnosis.

10 Q. Based on your review of the documents, did
11 you agree with that diagnosis?

12 A. Yes.

13 Q. You then describe that he had likely early
14 heat stroke. Did you gain that information from the
15 medical records as well?

16 A. That was pulled from what the records
17 documented on his last admission.

18 Q. Did you agree, in your medical opinion, that
19 Mr. Moorer did, in fact, have an early heat stroke?

20 A. No.

21 Q. You did not agree with that?

22 A. I did not agree with that, if that's what the
23 records document, but I didn't agree with that specific
24 diagnosis.

25 Q. Are there any other diagnoses that you

1 disagreed with, Dr. Lina?

2 A. No.

3 Q. Did you discuss whether Mr. Moorner actually
4 had an early heart stroke with Dr. Prible?

5 A. I don't recall the details of the discussion.

6 Q. Why do you believe that Mr. Moorner did not
7 have an early heart stroke?

8 A. Because it doesn't meet the definition of
9 "heart stroke" as I am accustomed to using it.

10 Q. You do believe that Mr. Moorner, in fact, does
11 have severe heart-related, recurrent illness, correct?

12 A. Yes, I believe that he has -- had recurrent,
13 severe heart-related illnesses.

14 Q. And that opinion is expressed to within a
15 reasonable degree of medical certainty, that it's more
16 likely than not?

17 A. Yes. As I've defined these illnesses in
18 prior questions.

19 Q. You then said in Exhibit No. 6 that, quote:
20 "I consider him to be at a substantial risk of
21 recurrent, severe heart illness should he be exposed to
22 heart while performing heavy physical exertion."

23 Why did you write that in the Exhibit No. 6,
24 Dr. Lina?

25 A. What I was trying to capture is that I felt

1 expected under this job description for a local
2 conductor to perform air hose couplings?

3 A. This description indicates that coupling on
4 average occurs for about 75 hoses per day.

5 Q. Okay. And then finally, the next bullet
6 point talks about switching yards. I guess in yard
7 conductors, it says that they can pull a cut lever up
8 to -- or 250 or more times a day. Would you expect a
9 local conductor to perform that slightly less?

10 A. Significantly less.

11 Q. All right. And then finally, the final
12 bullet point talks about conductors working in all
13 weather conditions; is that right?

14 A. Yes.

15 Q. And, I mean, we're here about someone who
16 works outside. So when we are talking about persons
17 like Mr. Moorner, it's part of his job duties to work on
18 the outside; is that right?

19 A. Yes.

20 (Answers of Defendant to Plaintiff's First
21 Set of Interrogatories marked as Defendant's
22 Exhibit A)

23 BY MR. TECKLENBURG:

24 Q. Okay. Now, I want to go through probably the
25 source -- but maybe you can confirm it -- of the

1 description you gave of Mr. Moorers's duties on
2 May 31st, 2007, and I want to refer you to Defendant's
3 Exhibit A.

4 MR. DUFFEY: She has it.

5 BY MR. TECKLENBURG:

6 Q. Which is the Answers to Interrogatories. And
7 if you could specifically turn to Page 5, which is the
8 response to Interrogatory No. 11. Please take a minute
9 and familiarize yourself with it.

10 A. Okay.

11 Q. Do you recall reviewing this in advance of
12 your deposition?

13 A. I did, and I was primarily focusing on the
14 May 31st description when I was reviewing for the
15 deposition.

16 Q. I understand that. Now, I want to review
17 with you what you would consider to be the physical
18 exertion associated with the activities on this Answer
19 to Interrogatories. Okay? And according to this
20 Answer to Interrogatories, on May 9th, the first event
21 involving Mr. Moorers, it says that: "The crew was to
22 stop at Gulbrandsen Industries . . . and pull two
23 empties and place two loads."

24 From an exertion point of view, what do you
25 understand that to entail?

1 A. Well, the conductor would have had to
2 dismount the engine, identify the train cars that were
3 to be disassembled from the train, pull the cut levers
4 to disassemble the train cars, release any brakes, and
5 then after the two cars had been spotted or placed at
6 the site where they were supposed to be placed, he
7 would then mount the locomotive engine and do their
8 next run.

9 Q. Okay. During the mounting of the engine to
10 the next run, ordinarily is the conductor -- does the
11 conductor have a seat on a locomotive?

12 A. Yes.

13 Q. And do you know if there are windows in the
14 locomotive that allow air to come through?

15 A. Yes, there are windows in the locomotive that
16 can be opened for circulation.

17 Q. And with respect to the first work that they
18 did at Gulbrandsen, describe, if you will, if they're
19 leaving two cars and picking up two loaded cars, tell
20 me just generally what you believe would be the number
21 of air hoses and brakes and that sort of thing that
22 would be involved as far as his exertion level.

23 MR. MOSS: Let me just object to the form.
24 We might be a little far afield of Dr. Lina's expertise
25 here.

1 But you're welcome to answer if you can,
2 Doctor.

3 THE DEPONENT: Well, similar to what I've
4 described for the May 31st specific tasks that I
5 reviewed, the number of air hoses and air brakes,
6 coupled -- I'm sorry, I'm -- my brain is starting to go
7 on me. I'm sorry.

8 The number of air hoses that would be
9 required to be coupled, the number of hand brakes that
10 would need to be placed would be a small number. I
11 mean, I'm estimating probably ten or less. It's
12 certainly not up to the numbers that were noted as
13 maximums on the job description that was provided to
14 the doctor.

15 BY MR. TECKLENBURG:

16 Q. Okay. And likewise, on this May 9th event
17 where there was a run around, as they've described, the
18 train, which requires the conductor to walk the length
19 of the train of 20 cars, what was, again, your distance
20 that you generally understand a car to be?

21 A., I've roughly used 55 feet. So I need someone
22 with a calculator, but you multiply 55 feet times the
23 20 cars times two, and that's an estimated distance for
24 the distance walked when the conductor is inspecting
25 his train.