

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Susan S. Barden, Aisha Taylor and T. Scott Beck, Commissioners

Case No. 2014-000225 (WCC FILE NO. 1023410)

Michael W. Dority, Claimant, Appellant,

v.

CTR of the Carolinas, Inc., et al., Employer, and Twin City Fire
Insurance Company, Carrier, Respondents.

RECORD ON APPEAL
Volume I of III

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DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1023410

Michael W. Dority,		)
	Employee,	)
	Claimant,	)
vs.		)
		)
CTR of the Carolinas,		)
		)
	Employer,	)
and		)
		)
Twin City Fire Insurance Company,		)
		)
	Carrier,	)
	Defendants.	)

HEARING:

Held in Rock Hill, South Carolina on March 26, 2013 and April 23, 2013.

APPEARANCES:

Claimant represented by Jeffrey T. Eddy, Esquire of Charleston, South Carolina.

Defendants represented by Jason A. Griggs, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

PURPOSE OF HEARING:

To determine the issues as set forth on the Forms 50 and 51.

DECISION AND ORDER:

By Avery B. Wilkerson, Jr., Commissioner

FILED:

August 19, 2013

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

BY CLAIMANT:¹

- APA #1: Expert Report of Jerrold L. Abraham, M.D., dated 1/15/2013, consisting of pages 1-2.
- APA #2: Curriculum Vitae: Jerrold L. Abraham M.D., dated 12/20/2012, consisting of pages 3-21.
- APA #3: Particle Analysis/SUNY Upstate Medical, dated 1/14/2013, consisting of pages 22-25.
- APA #4: Report of Richard L. Kradin, M.D., dated 7/27/2012, consisting of pages 26-28.
- APA #5: Curriculum Vitae: Richard L. Kradin, M.D., dated 3/1/2012, consisting of pages 29-43.
- APA #6: Radiology Report of Lancaster Imaging, dated 6/29/2010, consisting of page 44.
- APA #7: Radiology Report of Lancaster Imaging, dated 7/6/2010, consisting of page 45.
- APA #8: Records of John D. Doty, M.D., dated 7/22/2010 – 8/1/2012, consisting of pages 46-67.
- APA #11: Report of Mark K. Reames, M.D., dated 9/14/2010, consisting of pages 68-72.

- APA #12: CMC Operative Report, dated 9/23/2010, consisting of pages 73-75.
- APA #13: CMC Surgical Pathology Report, dated 9/23/2010, consisting of pages 76-78.
- APA #14: CMS Discharge Summary, dated 10/4/2010, consisting of pages 79-81.
- APA #15: American Thoracic Society Official Statement: Idiopathic Pulmonary Fibrosis, consisting of pages 82-100.
- APA #17: Chemical Test Report of Applied Technical Services, Inc., dated 4/23/2012, consisting of pages 112-113.
- APA #18: Material Safety Data Sheet for BRAZEIT A-56T (Bellman-Melcor, LLC), dated 11/1/2007, consisting of pages 114-122.
- APA #19: Material Safety Data Sheet for SILVALOY A-56T (Wolverine), dated 7/5/2011, consisting of pages 123-132.
- APA #20: Material Safety Data Sheet for SAFETY-SILV 56 (Harris), dated 7/30/2010, consisting of pages 133-144.
- APA #21: Material Safety Data Sheet for SILVERBRAZ 56 (SRA), dated 12/2006, consisting of pages 145-149.
- APA #22: Material Safety Data Sheet for MONEL (Special Metals), dated 12/2/2002, consisting of pages 150-151.
- APA #23: Vocational Evaluation Report of Joel E. Leonard, dated 9/19/2010, consisting of pages 152-155.
- APA #24: Curriculum Vitae: Joel D. Leonard, consisting of pages 156-158.
- APA #27: E-mails admitting no Air Monitoring or Employee Hazard Communication Program at

¹ Based on Defendants' objections, Claimant's APAs #9, #10, #16, #25, #26, #32, #33, #34, and #35 were excluded from evidence and not made a part of the record.

- CTR, dated 9/11/2012, consisting of pages 320-321
- APA #28: ACGIH Statement of Position Re: TLVs, dated 2/12/2008, consisting of pages 322-323.
- APA #29: Report of Victor L. Roggli, M.D., dated 2/1/2013, consisting of pages 324-327.
- APA #30: *Electron Microprobe Analysis in Metal-Induced Lung Disease*, Victor L. Roggli, M.D., (1999), consisting of pages 328-335.
- APA #31: *Excerpt of Pneumoconiosis, Mineral and Vegetable*, Victor L. Roggli, M.D., (2008), consisting of pages 336-348.
- APA #36: Power Point Presentation by Jerrold Abraham, M.D., dated 3/11/2013, consisting of pages 416-458.
- APA #37: Addendum to Curriculum Vitae of Jerrold L. Abraham M.D., consisting of page 459.
- APA #38: "Lung Pathology and Mineralogy in a Pheumoconiosis Database," *Ann. Occup. Hyg.*, Vol. 41, Supplemental 1, pp. 522-530 (1997), consisting of pages 460-468.
- Exhibit #1: Site Operations Safety Manual from CTR of the Carolinas, Inc., dated 10/5/2005.
- Depositions: A) John D. Doty, II, MD, taken on 10/3/2012.
- B) Gregory Feldman, MD, taken on 10/4/2012.
- C) Charlie Edward Glenn, taken on 10/29/2012.

BY DEFENDANTS:

- APA #37: Reports of Dr. Victor Roggli, dated 2/1/2013 – 2/27/2013, consisting of pages 459-464.
- APA #38: Curriculum Vitae: Dr. Victor Roggli, consisting of pages 465-488.
- APA #39: Records of Dr. Gregory Feldman, dated 9/21/2012, consisting of pages 489-492.
- APA #40: Curriculum Vitae: Dr. Gregory Feldman, consisting of pages 493-499.
- APA #41: Industrial Hygiene Assessment of Betty S. Harris, MPH, CIH, CHMM, CMC, dated 10/2/2012 – 10/15/2012, consisting of pages 500-523.
- APA #42: Curriculum Vitae: Betty S. Harris, consisting of pages 524-547.
- APA #43: Correspondences between Claimant's counsel, Dr. Gregory Feldman's office, and Defendants' counsel, dated 2/19/2013 – 3/6/2013, consisting of pages 529-547.

STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. That the purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That Claimant's average weekly wage was \$668.81 with a corresponding compensation rate of \$445.90;
3. That Notices were timely and properly served upon all parties of interest;
4. That Venue, set in York County, is proper; and
5. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

STATEMENT OF THE CASE

Michael W. Dority ("Claimant") filed a Form 50, Request for Hearing, on August 1, 2012, alleging an injury and illness to his lungs due to the inhalation of silver solder fumes, dust, and other airborne contaminants during the course of his employment with CTR of the Carolinas. ("CTR"). On August 29, 2012, CTR and its workers' compensation carrier, Twin City Fire Insurance Company, (collectively "Defendants") timely filed a Form 51 denying that Claimant sustained any injury by accident or occupational disease arising out of and in the course of his employment.

This claim was initially scheduled for hearing before Commissioner Gene McCaskill on October 19, 2012, but prior to the case being called, the parties entered into a Consent Order to remove the hearing from the docket due to the need for additional discovery. The claim was subsequently scheduled for hearing before Commissioner Melody L. James on February 5, 2012. However, prior to the scheduled hearing, the parties again agreed that additional discovery was needed before the claim could be adjudicated, and the scheduled hearing was removed from the docket pursuant to the parties' Consent Order, January 29, 2013. On February 1, 2013, Claimant's attorney sent a letter to the Commission requesting that the case be reset for hearing, and a hearing on the parties' Forms 50 and 51 was ultimately held before the undersigned on March 26, 2013 and on April 23, 2013 in Rock Hill.

At the hearing, Claimant took the position that he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. Claimant sought a finding of compensability and argued that he was permanently and totally disabled as a result of his severe end stage lung disease. Claimant sought causally-related medical treatment, including reimbursement for all causally-related medical treatment to date and payment for any and all future causally-related medical treatment. In support of his position, Claimant relied on the opinions of his retained experts: Dr. Richard Kradin and Dr. Jerrold Abraham.

Additionally, Claimant contended that his claim was supported by Dr. John Doty, his treating physician.

Defendants denied that Claimant sustained an occupational disease arising out of and in the course of his employment with CTR. In support of their position, Defendants relied on the opinions of their retained experts: Dr. Victor Roggli and Dr. Gregory Feldman. Defendants contended that Claimant's allegations regarding the conditions of the work environment and his job duties at CTR were not accurate. With regards to Claimant's expert opinions, Defendants argued that Dr. Kradin's opinion and Dr. Abraham's opinion were not reliable and should be given limited weight because both opinions were based on inaccurate facts provided by Claimant. Defendants also argued that Dr. Doty's opinion that Claimant's job at CTR "could have" contributed to Claimant's lung disease was not sufficient to satisfy Claimant's burden of proof.

EVIDENCE OF THE CASE

CLAIMANT'S TESTIMONY²

Upon direct examination by his attorney, Claimant testified that he is fifty-six years old and that he lives in Fort Lawn, South Carolina. He testified that he completed the ninth grade and that he subsequently obtained a GED. With regards to his employment history, Claimant testified that from 1975 to 1996, he worked for Springs Industries at the Grace Bleachery in Lancaster, South Carolina. He testified that the Grace Bleachery was a plant that finished raw cotton materials. He testified that when he was hired by Springs Industries, he worked as an operator for a short period of time and that he subsequently moved into the Industrial Maintenance and Instrumentation Department, where his job duties required him to maintain and repair machinery throughout the plant. When asked about the conditions and his exposure at the Grace Bleachery, Claimant testified that he was exposed to "a little bit of dust," but not a whole lot of fumes. He further testified that he did not have any breathing problems and that he never failed any of his yearly breathing tests while working at Springs Industries. Claimant

² Claimant testified during the first day of the hearing, March 26, 2013, and his testimony is contained in "Part One" of the hearing transcript.

testified that from 1996 to 1999 he worked at the Georgia Pacific plant in Catawba, South Carolina, where they manufactured hardboard siding and plasterboard. When asked by his attorney if he was exposed to any airborne particles while working for Georgia Pacific, Claimant testified that his only exposure was to the resin that was used in the plasterboard. Claimant testified that when he left Georgia Pacific in 1999, he returned to Springs Industries, where he again worked in the maintenance department until June of 2007.

Claimant testified that he started working for CTR at its Rock Hill plant on July 9, 2007. He testified that CTR manufactured and restored tanks and equipment that were used by hospitals and other companies to hold oxygen and other types of gases. When asked about CTR's plant in Rock Hill, Claimant testified that the facility had several departments but that all of the departments were contained under one roof. He testified that the different departments inside the plant included Bulk Tank, Tanker Restoration, Final Line, the O2 cleaning room, the Electrical Department, the paint booth, and the sandblasting area. Claimant testified that when he was hired by CTR, he worked in Final Line and that he worked in Final Line for approximately a year and a half before being transferred to the electrical department.

When questioned about each department, Claimant testified that Final Line was located in the back right corner of the plant and was where CTR manufactured piping that was used to reduce gas pressure and to deliver gas from the tanks. He testified that Bulk Tank, which was located in the front right side of the plant, was where CTR restored and manufactured large tanks that held three hundred (300) to nine thousand (9000) gallons of gases. He testified that he believed the bulk tanks were made out of aluminum and stainless steel. Claimant further testified that while he did not work in Bulk Tank, it was located near Final Line and that there was only a partial wall that separated the Bulk Tank and Final Line. Claimant testified that Tank Restoration was located in the front left side of the plant and was where CTR restored and repaired large tanker trucks. He testified that an employee's duties in the Tanker Department included grinding and removing truck rear ends, changing tires, cutting and welding

metals to repair sections of the tanks, and installing new brake systems. Claimant testified that the air in the plant flowed throughout Tanker Restoration, Bulk Tank, and Final Line areas because they were not completely sealed off from each other. He further testified that the O2 cleaning room was where the silver soldered copper tubing and other parts were cleaned. He testified that the O2 cleaning room, the Electrical Department, and the paint booth were both completely sealed off from the other areas in the plant.

When questioned about his daily job duties in Final Line, Claimant testified that he cut and soldered pipes together. He testified that the pipes he worked with in Final Line were made of a variety of different metals, including copper, stainless steel, and brass. Claimant testified that the soldering process required him to put flux on the pipes, to heat the pipes with a rosebud torch, and to feed the solder wire around the pipe. He testified that he did not know what components or substances were contained in the solder wire. Claimant testified that when he heated the solder, it would create smoke that he could see rising up to the ceiling. He also testified that he had to cut pipes on a daily basis while working in Final Line and that cutting the pipes created dust.

Additionally, Claimant testified that after he soldered the pipes together, he would take the pipes to an employee in the sandblasting department so that the pipes could be sandblasted. Claimant testified that he would actually have to perform the sandblasting a couple of times per week when the department was backed up with work. He testified that even though the sandblasting was performed in an enclosed cabinet, he would be exposed to the dust when he opened the cabinet to remove the pipes. Claimant further testified that once the pipes had been sandblasted, he would perform an inspection and then deliver the pipes to an employee in the O2 room so that the pipes could be cleaned. He testified that the O2 room would return the pipes to him in a bag after they had been cleaned and that he would then assemble the final product on the tanks aluminum frame racks. Claimant testified that at least two times per week he had to grind and sand some of the aluminum parts in order to make them fit properly and that he inhaled the dust from the aluminum parts during that process.

Claimant testified that there were two work stations in Final Line directly across, and approximately eight to ten feet away, from his work station that used tubing called Monel to build high pressure gas panels. He testified that those employees cut the Monel with band saws, which created dust, and that they used an air hose to blow dust off of the tubing after it had been cut. Claimant testified that the Monel was not a product that was used every day.

While Claimant testified that most of the dust in Final Line was created from the cutting of pipes at each work station, he also testified that sand and dust would be blown into the plant from the outdoor sandblasting area, where the large tanks that would not fit inside the sandblasting cabinets were sandblasted, when the doors to the plant were open. He testified that the tanks that were sandblasted outside were made out of different metals, including aluminum, stainless steel, black steel, and carbon steel and that the outside sandblasters wore respiratory protection. Claimant testified that he believed he inhaled the sand and dust from the outside sandblasting area when it was blown into the plant.

Claimant testified that he never wore any type of respiratory protection while working in Final Line. He also testified that the atmosphere in Final Line was "horrible" during the winter months. When asked by his attorney what ventilation CTR had in the plant during the winter months, Claimant testified "They didn't have none." He alleged that during the winter months, CTR kept the plant doors closed and that there were no fans to ventilate the smoke and dust out of the plant. He testified that the atmosphere was better during the summer months because the doors were open which provided ventilation.

Claimant testified that he did not notice any respiratory problems while working in Final Line. He testified that around December of 2009, he was transferred to the Electrical Department, where he built electrical panels for Final Line. He testified that the Electrical Department was closed off from other areas of the plant but that he was exposed to the conditions in the main part of the plant when he delivered the panels to Final Line. Claimant testified that he worked in the Electrical Department for approximately a year and a half. He testified that his last day of employment with CTR was September

19, 2010.

When asked about his medical treatment, Claimant testified that he first treated with his family physician, that he had complaints of shortness of breath when he initially saw his family physician, and that his family physician ordered chest x-rays. He testified that his chest x-rays showed three spots on his lungs and that he was subsequently referred to Dr. John Doty. Claimant testified that Dr. Doty first examined him on July 22, 2010, and that he did not complain of any pulmonary symptoms to Dr. Doty during his initial visit because he did not know what was exactly wrong with him. He testified that Dr. Doty performed a saline flush, which caused his symptoms to worsen, that Dr. Doty subsequently ordered a biopsy, and that he had to be hospitalized for the biopsy. Claimant testified that he is still treating with Dr. Doty, that he has to wear oxygen all of the time, and that his current medications include Spriva and a hand held inhaler.

On cross-examination, Claimant was asked about the dimensions of CTR's Rock Hill plant, and he testified that while he did not know the exact square footage, it was a "pretty good size," and that he believed the ceiling inside the plant was approximately twenty to twenty-five feet high. When asked about the ventilation inside the plant, Claimant testified he believed the plant had five to six large, garage type roll-up doors and that the doors were wide and tall enough to drive a tractor-trailer through. He admitted that CTR opened these doors throughout the spring, summer, and fall months when it was not raining or extremely cold and that when these doors were open, there were some cross-breezes throughout the plant. Claimant testified that the air in the facility was clear when the doors were open and the wind was blowing. He alleged that the doors remained shut the majority of the time during the winter months, but he admitted that even during the winter months, the doors were opened and closed throughout the day. Claimant testified that he only spent one winter working in Final Line. Claimant specifically testified that there was a large roll-up door next to Final Line and that he could feel a breeze when that door was open.

Claimant testified that on the roof of the plant, there were ceiling and suction fans that ventilated

air and particles outside of the plant; however, he alleged that those fans were located over the Tanker Restoration and Bulk Tank areas and that there was not a suction fan over the work stations in Final Line. He further alleged that even though Tanker Restoration and Bulk Tank had ventilation fans that sucked the air out of the plant, the dust and shavings from those departments still flowed into Final Line. Claimant admitted that there was a fan on the wall of Final Line that was also used for ventilation.

When asked about his previous employment at Springs Industries, Claimant testified that he worked for Springs Industries for approximately thirty years and that during that time, he was exposed to different bleaches, dyes, and dust. Claimant testified that he did not work with aluminum during his employment with Springs Industries, and he testified that if medical reports indicated he worked with aluminum at Springs Industries, then the reports were not accurate. Further, Claimant specifically testified that he did not perform any welding while working at Springs Industries. When asked about Dr. Richard Kradin's report, dated July 27, 2012, which indicated that his job duties at Springs Industries included "extensive welding with rods containing nickel, stainless steel, aluminum, galvanized steel, lead, and cadmium," Claimant testified that Dr. Kradin's report was incorrect. Additionally, when asked about the portion of Dr. Kradin's report that indicated he "participated in firefighting at the [Springs Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals," Claimant admitted that he did do some firefighting during his employment with Springs Industries, but that Dr. Kradin's report was incorrect because he did not participate in firefighting on a "regular basis." Claimant also testified that he was exposed to various resins while working as a mechanic at Georgia-Pacific.

With regards to his employment with CTR, Claimant testified that he worked in Final Line for approximately fifteen months and that he moved from Final Line to the Electrical Department in October of 2008. Claimant testified that a normal workday was eight hours and that he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. Claimant testified that during his fifteen months on Final Line, he silver soldered everyday but that he did not do it all day

long because he spent part of the day cutting tubing and other materials that he needed to build the parts for the tanks. Claimant also admitted that he performed a number of other tasks throughout the day. Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems.

Claimant testified that on average, he would perform soldering for four hours a day. He testified that when he refers to soldering, he is referring to actually having the torch lit and using the silver solder wire. Even though he testified that he soldered an average of four hours per day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.

When questioned about his specific job duties during a normal day in Final Line, Claimant testified that he would use the torch for a period of time and then he would perform other activities for a period of time. He testified that he was not soldering when he was performing these other activities. With regards to his job duties other than soldering, Claimant testified that he would occasionally have to go to different areas of the plant to get parts that he needed and that when he finished soldering a certain part together, he would have to turn off the torch, blow the parts off, and place the parts in a bucket of water so that the parts could cool. He also testified that he had to take parts to the sandblasting area, that he had to take parts to the O2 room for cleaning, and that he had to assemble parts with hand tools. Again, he specifically testified that he was not soldering while doing these activities. Additionally, Claimant testified that he would have to put labels and stickers on certain components he manufactured and that he was not soldering while applying the labels and stickers. Claimant further testified that when he finished manufacturing a component, he would have to secure the final components to a Unistrut on the tanks and that after he secured the final components to the Unistrut, a Quality Control employee would come to his station and perform a pressure test on the components. He testified that he would stand with the Quality Control employee while the testing was being performed. Claimant specifically testified that he was not perform any soldering while securing the final components to the Unistrut and while waiting on the Quality Control employee to perform the necessary tests.

After being questioned about his specific job duties in Final Line, Claimant testified that he would perform a number of tasks, other than soldering, throughout his workday during the fifteen months he worked in Final Line. He testified that there were times where all of the employees in Final Line were soldering, but that it did not happen all of the time because everyone had different tasks that needed to be performed.

When asked about the occasional sandblasting that he performed, Claimant testified that he would put the parts into a cabinet, which was completely closed while the sandblasting was being performed, and that he would use rubber gloves that were attached to the cabinet to manipulate the part while sandblasting. He testified that the door to the sandblasting cabinet was on the side of the cabinet, that the door was approximately two feet tall by two and a half feet wide, and that when he was standing, the door was slightly above his chest area. Claimant testified that when he opened the side door of the sandblasting cabinet, a lot of dust would just come out of the cabinet.

Claimant testified that he did not have any trouble remembering the events and details of his employment at CTR. Claimant was then asked about the vocational report from Joel Leonard, his vocational expert, which stated that "during the interview, he demonstrated difficulty recalling details and events. He experienced difficulty responding to the specific intent of questions and was prone to providing stories and extraneous information not relevant to my inquiry," and Claimant testified that he thought Mr. Leonard's report was inaccurate on this point.

Claimant testified that while working in Final Line, he never complained about the air quality issues to his supervisor. Claimant testified that after working in Final Line for fifteen months, he started working in the Electrical Department, which was enclosed with its own door, walls, and ceiling. He testified that he did not perform any work in the Electrical Department that produced fumes, dust, or particles. He further testified that the only time any smoke was produced in the Electrical Department was when he had to drill holes in panels and brackets, which he testified "produced a little bit of smoke." When shown his deposition testimony where he testified that there was no work in the

Electrical Department that produced smoke, Claimant admitted that his deposition testimony was incorrect.

Claimant testified that while working in the Electrical Department, the only time he was exposed to the general plant conditions was when he went into the plant to install panels in Final Line. Claimant testified that on average, he spent approximately three hours per day installing panels, but he also testified that there were some days where he did not install any panels.

MICHAEL HORNBACK'S TESTIMONY³

Defendants called Michael Wayne Hornback to testify as a witness in this matter. Mr. Hornback testified that he has worked for CTR for fifteen years and that his current job title is Production Manager. He testified that when he was initially hired by CTR, he worked in Final Line and that he worked in Final Line for approximately five years. He testified that his job in Final Line was the same job Claimant was performing when he started working at CTR. Mr. Hornback testified that when he worked in Final Line, one of his job duties was soldering. When asked about the soldering process, Mr. Hornback testified that soldering is the joining of two metals using silver solder wire. He testified that in order to perform this process, an employee would need to clean the two metals, apply flux, heat the metals with a torch, and then fill in the joint with solder. He testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke," which he testified dissipates quickly. He specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke. He further testified that solder that is used at CTR is cadmium free, which is an industry standard.

When questioned about Claimant's employment with CTR, Mr. Hornback testified that he hired Claimant and was his supervisor during the time Claimant worked in Final Line. He testified that Claimant did not perform soldering all day and that his job in Final Line required him to perform a

³ Michael Hornback testified during the second day of the hearing, April 23, 2013, and his testimony is contained in "Part Two" of the hearing transcript.

variety of tasks. In fact, Mr. Hornback testified that it was not possible for Claimant to solder eight hours a day, five days a week, because of the number of other tasks Claimant would have to perform during the day. Mr. Hornback specifically testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals.

With regards to Claimant's other daily duties, Mr. Hornback testified that Claimant would have to occasionally leave his work station during the day to get parts and to interact with other departments. He also testified that before Claimant could solder the metal, he had to have it blasted with glass beads in order to remove the rough edge and to clean the metal. He testified that Claimant would have occasionally performed some of the bead blasting. When asked about the bead blasting process, Mr. Hornback testified that it is performed in an enclosed case, which has a vacuum system to catch all the dust and the fine particles. He testified that he has performed bead blasting in the past and that when the parts are removed from the enclosed case, there is no exposure to particles or dust because the vacuum system sucks out the majority of it.

Mr. Hornback testified that after Claimant soldered the metals together, he would have to take the part to the O2 cleaning room, where it would be dipped into an acid. He testified that once the O2 cleaning room returned the part to Claimant, he would have to reassemble the piping. Mr. Hornback testified that the piping was normally assembled by hand and that the reassembling process took the majority of Claimant's time. He testified that after the part was reassembled, Claimant would have to get it pressure tested, and once the pressure testing was complete, Claimant would have to label the parts.

When asked about dimensions and layout of CTR's Rock Hill plant, Mr. Hornback testified that the plant was approximately 50,000 square feet and that the ceilings in the plant were approximately forty feet tall at the highest point and twenty-five feet tall at the lowest point. He testified that the departments inside the plant are divided with floor to ceiling walls in some places. With regards to the plant's ventilation, Mr. Hornback testified that the plant has fourteen garage type roll-up doors in the

plant that are large enough for a tractor-trailer to driver through. Mr. Hornback testified that the large, roll-up doors are located on each wall of the plant, and he specifically testified that there are six large, roll-up doors in Final Line. He also testified that there are twenty to thirty fans in the plant. He testified that there are large industrial fans (approximately three foot in diameter) in the plant and that Final Line has two or three of these fans. He also testified that each work station in Final Line has its own smaller, individual fan. Additionally, he testified that the plant had four wall fans and two ceiling fans. He testified that the fans on the walls suck the air out of the building and are turned on year round. He testified that the two ceiling fans are in the central part of the building and that they pull air out of the building. He specifically testified that one of the wall fans was near Final Line of the plant and that it was operable when Claimant was working there. Mr. Hornback testified that the fans occasionally breakdown, but they are repaired within one week.

Mr. Hornback testified that if the temperature is above forty degrees outside, all fourteen of the roll-up doors are kept open for ventilation purposes, which produces a cross-breeze throughout the plant. He further testified that while there are times during the winter months where the fourteen large roll-up doors are shut, the doors are constantly opened and closed in order to bring materials in and take materials out of the plant. He testified that the fans are never turned off during the winter months. Mr. Hornback testified that there is no dust, fumes, or smoke hanging in the air inside of the plant.

Mr. Hornback testified that while there is some welding performed in the plant, it is done in an area that is separated from Final Line by a twenty to twenty-five foot wall, and he testified that there are doors and ventilation fans in the welding area of the plant.

With regards to the layout of Final Line, Mr. Hornback testified that are five work stations: three work stations that perform all of the copper work, one work station on the back wall that performs all of the high pressure brass work, and one work station in the middle of the department that performs more specialized work.

Mr. Hornback also testified that Claimant performed "very little" work with aluminum in Final

Line. He specifically testified that while each of the units that are fabricated in Final Line have some aluminum on them, such as the brackets to secure the unit down at the customer's location, there is very little drilling or sanding of aluminum, and he further testified that certainly the employees in Final Line did not sand, grind, cut, or drill aluminum on a daily basis.

Mr. Hornback testified that following the Claimant's initial fifteen months at CTR, he was transferred to the Electrical Department, where he manufactured electrical components. He testified that the Electrical Department was located in an enclosed room in the plant. He testified that there are not any fumes, dust, or smoke in the Electrical Department and there was no active cutting, soldering, sawing, grinding, or sanding performed in the Electrical Department. He further testified that the only drilling that is performed in the Electrical Department is drilling small holes in the electrical box that the employees assembled. Mr. Hornback testified that when Claimant worked in the Electrical Department, he would have spent approximately six hours out of an eight hour day inside the Electrical Department... He testified that Claimant would come to Final Line periodically to deliver, and to occasionally attach, the electrical components to the fabricated units.

Mr. Hornback testified that during the five years he worked in Final Line, he never experienced any coughing fits. He also testified that he has never had an employee complain to him about the air quality in Final Line or in the plant in general. He specifically testified that Claimant never complained to him about the air quality in the plant and that during the fifteen months that he supervised Claimant in Final Line, he never witnessed Claimant choking up.

During cross-examination by Claimant's attorney, Mr. Hornback testified that Final Line was separated from the area where the welding was being performed by a partial wall that was approximately fifty feet long by twenty five feet tall. He testified that the wall did not extend all the way to the ceiling. He also testified that the wall did not extend all the way to the front of the plant and that there was approximately forty feet from the end of the wall to the front of the building. When asked about the work performed in the welding area, Mr. Hornback testified that the welders fabricated skids and

mounts out of carbon steel and aluminum and that during the fabrication process, the metals would have to be sawed, drilled, cut, occasionally sanded, grounded at times, and welded.

With regards to Claimant's employment in Final Line, Mr. Hornback testified that he was estimating Claimant worked fifteen months in that department and that he may have worked a couple more months in that area of the plant. He testified that he was not aware of Claimant ever using any respiratory protection inside the plant. He also testified that he did not know the exact metals that were contained in the silver solder that CTR uses, but that it was his understanding the silver solder did not contain cadmium since the box it came in said it was cadmium free. When asked about the other materials Claimant used in Final Line, Mr. Hornback testified that Claimant would have used copper tubing, very little stainless steel tubing, and very little brass tubing. He testified that Jason Threatt was the only employee in Final Line that worked with Monel, a type of stainless steel that was used in pure oxygen applications. He further testified that while Mr. Threatt would cut the Monel, any particles created from the cutting would simply drop to the floor.

ROBERT THREATT'S TESTIMONY⁴

Defendants called Robert Jason Threatt to testify. Mr. Threatt, who is currently employed by CTR, testified that he has worked for CTR for fifteen years and that he has worked in Final Line since August of 2007, approximately six years. Mr. Threatt testified that his job in Final Line required him to solder on a regular basis, but he testified he had a number of other duties and tasks that he had to perform during a regular workday, including going to other parts of the plant to get parts, cutting pipes and panels, bending tubing, taking pipes to the O2 room for cleaning, assembling parts by hand, pressure testing parts, bolting components to tank stands, and affixing labels to parts. He testified that on average, he would spend approximately an hour per day actually soldering parts, but that there were times where he would go a day or more without performing any soldering.

⁴ Robert Threatt testified during the second day of the hearing, April 23, 2013, and his testimony is contained in "Part Two" of the hearing transcript.

Mr. Threatt testified that he was familiar with Claimant's job, that the two of them performed similar jobs, and that there was no way possible Claimant could have soldered eight hours a day, five days a week. He further testified that he worked side-by-side Claimant in Final Line, that he witnessed Claimant doing his job, and that he never saw Mr. Dority experience a coughing fit or spitting up things while in Final Line. Mr. Threatt also testified that he has never experienced a coughing fit, that he has never had any complaints about the air quality in the plant, and that he has never talked to anyone that had complaints about the plant's air quality.

Mr. Threatt testified that CTR's plant is a pretty large plant and that there is ventilation to move air in and out of the plant in the form of large, garage type roll-up doors and fans. Mr. Threatt testified that there are fourteen roll-up doors that are large enough to drive a tractor-trailer through. He testified that these doors are left open all the time during the spring and summer months. He further testified that during the fall and winter months, the doors are up and down depending on weather. However, he testified that the doors are never closed for more than an hour or two during the cooler months because they have to be opened constantly to bring equipment and materials in and out of the plant. He specifically testified that there is a large roll-up door in or close to Final Line. Mr. Threatt testified that CTR also has ventilation fans in the ceiling, as well as in the walls, that exhaust air out of the plant. He testified that the wall unit fans are 5 ft. x 5 ft. and that there is a wall unit fan in Final Line that is constantly running. He testified that there are times when the fans in the plant will break down or have motor problems but that the fans are fixed and are not left inoperable for an extended period of time. Finally, Mr. Threatt testified that he has never seen any type of fog or fume cloud hanging inside of the plant.

On cross-examination by Claimant's attorney, Mr. Threatt testified that the plant has floor fans that circulate air around a particular area of the plant. When asked about his job duties, he testified that he does not see any smoke when soldering metals together. He further testified that he would have to cut parts and that occasionally, he would have to drill holes in aluminum panels. He testified that when

he drilled holes in the aluminum panels, he would have to perform some light sanding with a DA, which is a sander for light finish on materials, and that the sanding would create "a little" dust that would drop to the floor. Mr. Threatt further testified that he occasionally worked with Monel, that he would have to bend, cut, and solder the Monel, and that when he worked with Monel, Claimant would be approximately fifteen to twenty feet away from him. He testified that he only worked with Monel about four times per year.

DEPOSITION TESTIMONY OF CHARLIE GLENN

Claimant submitted the deposition transcript of Charlie Glenn, dated October 29, 2012, into evidence. During direct examination by Claimant's attorney, Mr. Glenn testified that he was a high school graduate, that he took some college courses, but that he did not complete his college degree. He testified that he was hired by CTR in February of 2007 and that prior to working for CTR he spent 15 years working as a project manager in telecommunications.

With regards to his employment with CTR, Mr. Glenn testified that he was initially hired as Project Manager in CTR's I.T. Department. He testified that his job duties as Project Manager included maintaining and upgrading software on CTR's automatic fill systems and ensuring that the tanks and vessels were filled with the appropriate mixture of gases. He testified that he worked as Project Manager for approximately three years before being promoted to CTR's I.T. Director, and he testified that his job duties as I.T. Director were similar to his duties as Project Manager. He testified that in the Spring of 2011, he was promoted to Director of Quality Control and Safety ("Safety Director"), a position he held until he was laid off by CTR in November of 2011. He testified that his job duties as Safety Director required him to ensure the tanks in Final Line were inspected, pressure tested, and safe to ship to the customers. He further testified that CTR gave him a "crash course" in workplace safety and that he was responsible for employee safety, including hard hats, safety shoes, safety harnesses, and step ladders.

When asked about the details of CTR's plant in Rock Hill, Mr. Glenn testified that the facility

was approximately 30,000 square feet, that it was mainly one large open space, and that it had a number of doors that raised in order for tractor trailers to enter the plant. He further testified that the Final Line area of the plant contained five tables and that soldering was performed at each of the tables. He specifically testified that employees at three of the tables spent most of the day using silver solder and soldering copper tubing and stainless steel tubing. Mr. Glenn testified that he observed the soldering work performed in Final Line on a daily basis and that smoke was produced whenever soldering was being performed in Final Line. He further testified that the employees in Final Line would occasionally grind excess solder off of pipes and that the grinding process created a lot of dust. He testified that the dust and smoke was not limited to Final Line and that there was dust and smoke throughout the plant.

Mr. Glenn also testified that he believed the ventilation in the plant was inadequate and that the amount of dust and smoke in the plant depended on the time of year. He specifically testified that the plant had six large overhead doors, that there was one large door close to Final Line, but that the other doors were "a pretty good distance away" from Final Line. He testified that these doors that would be raised during the spring, summer, and fall months but that they would be closed the majority of the time during the winter months (which he defined as November – February). In addition to the large doors, Mr. Glenn testified that there were also three large fans on the walls of the plant, as well as two ceiling fans, that took air out of the plant. With regards to the ceiling fans, he testified that one of them did not work and the other one was very slow. He also testified that one of the three wall fans was inoperable. Mr. Glenn testified that during his time as CTR's Safety Director, he received three or four complaints about the smoke and fumes in the plant. He further testified that CTR never performed any air quality testing during his employment.

Mr. Glenn further testified that he was familiar with Claimant and that Claimant worked as a Brazer in Final Line when he started with CTR. While he testified that he was not familiar with Claimant's job description, Mr. Glenn testified that Claimant performed soldering, grinding, and assembling all day long in Final Line. Mr. Glenn testified that was sure he had seen Claimant having a

coughing spell while working in Final Line but that he did not remember him having "a bad spell." He further testified that he would have coughing spells himself and that there were times when he would have to go outside because the smoke in the plant would irritate his eyes. Mr. Glenn testified that Claimant worked in Final Line for a period of time before being transferred to CTR's Electrical Department, where he assembled control panels with relays, switches, and timers for Final Line. He testified that once Claimant assembled the control panel, he would have to go out into the main part of the plant to install and test the control panels.

During cross-examination by defense counsel, Mr. Glenn testified that he had never been employed as an environmental or safety director prior to working for CTR. He further testified that he does not have a college degree in any environmental science or safety related field and that the extent of his formal safety training was one course taken at a community college in 1981. Mr. Glenn testified that he was offering his testimony in this claim as lay testimony and that he is "definitely not an expert by no means."

With regards to Claimant's job as a Brazer, Mr. Glenn testified that Claimant soldered parts each day, but that he spent a significant portion of his day performing other activities, including chasing parts throughout the plant, taking parts to the cleaning room, assembling parts by hand, screwing fittings together, reviewing drawings, cooling soldered parts off in water, testing components, sandblasting parts, blowing parts down, securing parts to tanks, and labeling parts. He specifically testified that Claimant was not actively soldering for eight hours per day.

As to the ventilation conditions, Mr. Glenn testified that there were no ventilation problems during the majority of the year and that the air and the facility was essentially clear during the spring, summer, and fall months since the large doors were left open. He also testified that the doors were raised during the winter months when the temperature was warmer. Finally, Mr. Glenn testified that to his knowledge, CTR had not been cited for any OSHA violations.

MEDICAL RECORDS

On June 29, 2010, Dr. Frank Sharp, Claimant's primary care physician, referred Claimant to Lancaster Imaging Center for a CT scan of his abdomen due to complaints of abdominal pain. The CT of his abdomen showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion," and a chest CT was recommended for further evaluation. (Claimant's APA #6). A CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (Claimant's APA #7).

Due to the abnormal findings in Claimant's chest CT, Dr. Sharp referred Claimant to Dr. John D. Doty, of Charlotte Medical Clinic for a pulmonary consultation. In his initial report, dated July 22, 2010, Dr. Doty noted that Claimant developed left upper abdominal pain approximately one month ago, that he was eventually diagnosed with diverticulitis, and that his pain subsequently subsided following a course of antibiotics. While Claimant's recent CT scan of the chest was abnormal, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint. Claimant denied having any dyspnea with his usual activities of daily living or with his occupation, and he also denied any wheezing. Dr. Doty noted that while Claimant complained of an occasional cough, he indicated that his cough had been decreasing in both frequency and productivity since he stopped smoking a week earlier. Dr. Doty further noted that Claimant had a 60-pack-year smoking history, that he was currently working in maintenance on electronic instruments at a local company, and that he previously worked approximately 35 years in the maintenance department at Springs Manufacturing, where he was exposed to dye, cotton dust, and some asbestos. Dr. Doty performed pulmonary function tests, which showed mild airflow obstruction with a significant reduction in his defusing capacity. Dr. Doty diagnosed Claimant with evidence of COPD based on his spirometric findings and an abnormal CT scan of the chest. While Dr. Doty did not have actual image of the CT scan of the chest, he noted that the differential diagnosis could include idiopathic pulmonary fibrosis ("IPF"), asbestosis, or a hypersensitivity reaction to an occupational or environmental exposure. Dr. Doty referred Claimant for some lab work, including a

hypersensitivity panel, and he also opined that Claimant would likely need a bronchoscopy and possible biopsy of the lungs. (Claimant's APA #8).

On September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular Institute examined Claimant and noted that Claimant had findings of interstitial lung disease of unknown etiology on his chest CT scan and that he recently underwent a bronchoscopy, which was negative. Dr. Reames also noted that Claimant had a 60-pack-year history of tobacco abuse, as well as known diagnoses of dyslipidemia, questionable obstructive sleep apnea, obesity, and COPD. Following his examination, Dr. Reames recommended a thoroscopic lung biopsy in an attempt to determine a definitive diagnosis. (Claimant's APA #11; *See also* Claimant's APA #8).

On September 23, 2010, Claimant was admitted to Carolinas Medical Center in Charlotte, North Carolina, where he underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block. (Claimant's APA #12). On October 4, 2010, Dr. Kiran Adlakhia of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar metaplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlakhia opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (Claimant's APA #13). Following his lung biopsy, Claimant was discharged from Carolinas Medical Center on October 4, 2010, and the discharge note indicates that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. Claimant was instructed to use oxygen at home and to follow-up with Dr. Reames. (Claimant's APA #14).

Following his open lung biopsy, Claimant returned to Dr. Doty on November 2, 2010 with complaints of periodic, significant dyspnea, particularly with exertion. He also reported that he had

been on home oxygen since being released from the hospital and that he continues to use oxygen at two liters continuously. Dr. Doty noted that the pathology results from Claimant's lung biopsy were most likely consistent with Usual Interstitial Pneumonitis ("UIP"), and following his examination, Dr. Doty diagnosed Claimant with interstitial lung disease, chronic hypoxemia, and evidence of obstructive lung disease. Dr. Doty specifically noted that the likeliest etiology of Claimant's interstitial lung disease appeared to be UIP since his extensive workup for secondary causes was negative. Dr. Doty instructed Claimant to continue his home oxygen, and he opined that Claimant was unable to return to work. (Claimant's APA #8).

On December 10, 2010, Claimant returned to Dr. Doty and reported that his breathing was fairly stable, but that he becomes dyspneic with modest exertion. Claimant also reported that he had experienced very little cough and no wheezing. Dr. Doty performed repeat pulmonary function tests, which he noted was stable. Following his examination, Dr. Doty diagnosed Claimant with interstitial lung disease, and he again noted that the most likely diagnosis was UIP since the extensive workup for secondary causes of his lung disease that was negative. He instructed Claimant to continue using home oxygen, and he recommended another CT scan of the chest. Dr. Doty also noted that Claimant was complaining of a great deal of stress due to his financial situation, and he diagnosed Claimant with anxiety and prescribed Xanax. (Claimant's APA #8).

On February 2, 2011, Dr. Doty examined Claimant, again diagnosed him with interstitial lung disease, and instructed him to continue using his home oxygen. On May 23, 2011, Dr. Doty noted that Claimant was doing reasonably well, but that he continued to have some complaints of shortness of breath with exertion. Claimant denied having a chronic cough, any wheezing, or chest pain. Dr. Doty diagnosed Claimant with interstitial lung disease and chronic respiratory failure, and he recommended ongoing conservative management, including continued use of home oxygen. (Claimant's APA #8).

On August 31, 2011, Claimant returned to Dr. Doty for a follow-up appointment. Dr. Doty noted that Claimant was using 2 to 3 liters of oxygen continuously and that he complained of increased

shortness of breath with exertion during the summer when both the temperature and humidity were high. Claimant underwent repeat pulmonary function tests and another CT of the chest on August 31, 2011, and Dr. Doty noted that both appeared to be stable. Dr. Doty diagnosed Claimant with interstitial lung disease, chronic respiratory failure, and mild obstructive airways disease, and he instructed Claimant to continue using home oxygen. (Claimant's APA #8).

On March 1, 2012, Dr. Doty noted that Claimant had obtained a new primary care physician, who encouraged him to enroll in pulmonary rehabilitation, but that he discontinued pulmonary rehabilitation after his first session because he caught a cold and was afraid of getting sick again. Following his examination, Dr. Doty diagnosed Claimant with interstitial lung disease. While Dr. Doty opined that Claimant's pathology was most consistent with UIP, he further opined that his clinical course seemed to be a bit more benign than would be expected with UIP secondary to IPF and that it raised the question as to whether his lung disease may have been secondary to some sort of occupational exposure. (Claimant's APA #8).

In a letter to Claimant's attorney, dated July 27, 2012, Dr. Richard L. Kradin⁵ of Harvard Medical School issued an opinion regarding causation of Claimant's lung disease. Dr. Kradin performed a records review and noted Claimant's occupational history. Dr. Kradin noted that from 1978 to 1996, Claimant worked as a Maintenance Mechanic for Springs Industries. He noted that Claimant's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium" and "firefighting at the plant which occurred on a regular basis releasing fumes from the burning chemicals." With regards to his employment at CTR, Dr. Kradin noted that Claimant spent 18 months "soldering copper, brass, and stainless steel pipe and tubing," and he specifically noted that "he soldered 8 hours a day, 5 days a week." Additionally, Dr. Kradin noted that "there was minimal venting" in CTR's plant and that "fumes and dust were moved

⁵ Dr. Kradin's Curriculum Vitae was also submitted into evidence. (See Claimant's APA #5).

around the plant by fans.” After reviewing the medical records, the MSD Sheet for Wolverine Silvaloy, and the stained slides from Claimant’s lung biopsy, Dr. Kradin opined that “Mr. Dority’s occupational exposures to heavy metals, including the components of silver brazing allow, must be considered to a reasonable degree of medical probability causes of his chronic lung disease.” (Claimant’s APA #4).

On August 1, 2012, Dr. Doty noted that although he continued to complain of shortness of breath with exertion, Claimant was doing reasonably well from a pulmonary standpoint. Claimant reported that he always used oxygen with exertion and at night and that he would sometimes use oxygen during the day if it was especially hot or humid. Dr. Doty also noted that Claimant was losing his health insurance in October and that he was not eligible for any additional coverage at the present time. Again, Dr. Doty diagnosed Claimant with interstitial lung disease and instructed him to continue using his previously prescribed medications and oxygen. Dr. Doty noted that while Claimant’s pathology was most consistent with UIP, it was entirely consistent with what would be expected with UIP secondary to IPF since Claimant seemed a bit young to have IPF and since he had shown very little, if any, progression of his disease during the two and a half years he had treated him. (Claimant’s APA #8).

On September 14, 2012, Joel D. Leonard⁶ of Leonard & Associates Vocational and Rehabilitation Consultants, performed a vocational evaluation on Claimant at the request of his attorney. In his report, dated September 19, 2012, Mr. Leonard noted that “During the interview, [Claimant] demonstrated difficulty recalling details and events. He experienced difficulty responding to the specific intent of questions and was prone to providing stories and extraneous information not relevant to my inquiry.” Mr. Leonard also noted that Claimant used a portable oxygen unit throughout the interview and that he “was observed to become emotional and irritable at different times during the interview.” Following his interview of Claimant, Mr. Leonard opined that “Regardless of any other factor that accents his overall vocational profile, it is abundantly clear that Mr. Dority’s ability to access the open labor market and

⁶ Mr. Leonard’s Curriculum Vitae was submitted into evidence. (See Claimant’s APA #24).

engage in competitive employment is completely eroded by the nature of his pulmonary health. As such, I maintain the previously stated opinion that Mr. Dority is totally disabled.” Mr. Leonard also opined that Claimant should pursue both a psychological and neuropsychological evaluation to assess the nature of his emotional and cognitive standing since he presented with symptoms that suggested possible problems in both areas. (Claimant’s APA #23).

In a letter to Claimant’s attorney, dated January 15, 2013, Dr. Jerrold L. Abraham⁷ of Upstate Medical University in Syracuse, New York issued an opinion regarding causation of Claimant’s lung disease. Dr. Abraham performed a records review. He noted that Claimant’s occupational exposure at CTR included soldering copper, stainless steel, and brass tubing with silver solder. He further noted that Claimant’s job duties at CTR required him to grind completed welds, to sandblast parts on a regular basis, and to drill holes in and sand sheets of aluminum. Dr. Abraham also analyzed tissue samples from Claimant’s September 23, 2010 lung biopsy, and he noted that he found particulates from various metals in Claimant’s tissue samples. Dr. Abraham opined that based on the particulates he found in Claimant’s lung and based on Claimant’s exposure history, “his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis).” (Claimant’s APA #1). Dr. Abraham also prepared a Power Point presentation, dated March 11, 2013, regarding his studies of Claimant’s tissue samples. (Claimant’s APA #36).

On September 20, 2012, Claimant was examined by Dr. Gregory J. Feldman⁸ of Upstate Lung & Critical Care Specialists. In his report, dated September 21, 2012, Dr. Feldman noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. After examining Claimant and reviewing his prior medical records, Dr. Feldman

⁷ Dr. Abraham’s Curriculum Vitae was also submitted into evidence. (See Claimant’s APA #2).

⁸ Dr. Feldman’s Curriculum Vitae was also submitted into evidence. (See Defendants’ APA #40).

diagnosed Claimant with IPF and COPD, and he opined to a reasonable degree of medical certainty that “Mr. Dority’s clinical course is consistent with IPF and is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis.” Dr. Feldman specifically noted that Claimant “exhibits all of the cardinal features of IPF,” including “progressive dyspnea, bilateral interstitial fibrosis, with honeycombing on CT scan of the chest, and UIP pattern on histology,” and he also noted that the findings of mediastinal and hilar adenopathy on Claimant’s CT scan of the chest were commonly associated with advanced IPF. Dr. Feldman further noted that IPF is much more common in current or former smokers and that Claimant was a very heavy smoker with a documented history of sixty pack/year cigarette smoking. Finally, Dr. Feldman stated that “It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition.” (Defendants’ APA #39).

In a letter to Defendants’ attorney, dated February 1, 2013, Dr. Victor L. Roggli⁹ of Duke University Medical Center’s Department of Pathology indicated that he performed studies on the slides and paraffin blocks from Claimant’s lung biopsy. Dr. Roggli noted that the slides and paraffin blocks “show diffuse pulmonary fibrosis with spatial and temporal heterogeneity, fibroblast foci, and vascular remodeling,” that there were “areas of chronic inflammation,” and that “some areas have a ‘chicken wire’ pattern of fibrosis reminiscent of non-specific interstitial pneumonia.” He further noted that other findings included “centrilobular emphysema and small airways disease with mucous plugging.” Dr. Roggli specifically opined that the findings did not satisfy the histological criteria for asbestosis and did not demonstrate features of any recognized pneumoconiosis. Dr. Roggli opined that “the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features.” Dr. Roggli noted that there were some findings of aluminum silica particles but that this was a well recognized occurrence in cigarette smokers and that silica particles may be found in the lungs of most

⁹ Dr. Roggli’s Curriculum Vitae was also submitted into evidence. (See Defendants’ APA #38).

individuals from the general population. (Defendants' APA #37).

On February 27, 2013, Dr. Roggli issued a second letter to Defendants' Counsel and indicated that he reviewed Dr. Jerrold L. Abraham's report, dated January 15, 2013. With regard to the findings of aluminum silicates in Dr. Abraham's laboratory, Dr. Roggli again opined that aluminum silicates are found in smokers, that silica is also commonly found in lung samples in the general population, and that it also occurs in cigarette smoke. While he noted that Dr. Abraham's laboratory also identified a variety of metal particles, Dr. Roggli opined that this case does not meet the criteria for any of the metal induced lung diseases that have been described and that "there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." For these reasons, Dr. Roggli opined that Dr. Abraham's opinion that Claimant's lung disease was due to "exposure of a multitude of different toxic dust particulates over his working career and including his exposures at CTR" was sheer speculation and not supported by scientific evidence. In conclusion, Dr. Roggli opined to a reasonable degree of medical certainty that Claimant's case does not fit the pattern of any recognized pneumoconiosis and that "it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease [in Claimant]." (Defendants' APA #37).

DEPOSITION TESTIMONY OF JOHN D. DOTY, II, M.D.

Dr. John D. Doty, was deposed in this matter on October 3, 2012, and the transcript of his deposition testimony was submitted into evidence.¹⁰ Dr. Doty testified that he is board certified in Internal Medicine, Pulmonary Disease, and Critical Care Medicine and that he has been practicing Pulmonary Medicine for eight years.

Dr. Doty testified that Usual Interstitial Pneumonitis ("UIP") a pathological description seen on lung biopsies that is associated with areas of the lung with lots of fibrosis next to areas of the lung that are completely normal, and he testified that UIP is often used synonymously with Idiopathic Pulmonary

¹⁰ The deposition of Dr. Doty lasted 2 hours and 15 minutes.

Fibrosis ("IPF"). He testified that patients with IPF usually present with non-specific breathlessness, have some physical exam findings, and have an oxygen requirement most of the time. He specifically testified that the cause of IPF is unknown. Dr. Doty testified that hypersensitivity pneumonitis is a lung disease caused by the inhalation of organic particles and that pneumoconiosis is a lung disease caused by the inhalation of non-organic particles, such as fumes, asbestos, or dust from metals. Dr. Doty further testified that there are a lot of conditions, including pneumoconiosis, that will give a UIP appearance on lung biopsies. He testified that the clinical course of a patient that had UIP as a result of end-stage pneumoconiosis would be hard to predict but that he would expect the patient's clinical course to stabilize if removed from the environment that is resulting in the exposure.

With regards to his treatment of Claimant, Dr. Doty testified that he initially examined Claimant in July of 2010, and that Claimant was referred to him by Dr. Sharp, his primary physician, due to an abnormal CT of the chest. Dr. Doty testified that the abnormalities in Claimant's initial CT scan included some emphysematous changes with interstitial fibrosis and wide-spread honeycombing. He testified that during his initial evaluation, Claimant reported that he was working in maintenance on electronic instruments at a local plant and that he previously worked at Springs Industries, where he was exposed to several different dyes, cotton dust, and asbestos. He further testified Claimant reported that he had a 60 pack years smoking history (2 packs/day x 30 years) but that he had stopped smoking a week prior to his initial appointment. Dr. Doty testified that Claimant underwent a bronchoscopy in August of 2010 and that in September of 2010, he was admitted to the hospital, where Dr. Mark Reames performed a lung biopsy. Dr. Doty testified that based on the biopsy results, and based on the negative hypersensitivity panel that was previously performed, he was initially leaning towards a diagnosis of IPF.

Dr. Doty testified that he continued to treat Claimant and that he has examined him seven times since following his lung biopsy, with his most recent examination occurring on August 1, 2012. He testified that while Claimant has had an oxygen requirement since being released from the hospital

following his biopsy, his condition has not progressed that much in the past two years. Dr. Doty testified that Claimant's condition has not behaved as he would expect in a case of IPF and that due to the lack of progression in Claimant's condition, he suspects Claimant may suffer from something else. While he testified that "at the end of the day it's very hard to predict exactly what causes UIP," Dr. Doty testified that he believed Claimant's clinical course was more consistent with a benign pneumoconiosis as opposed to IPF. Furthermore, Dr. Doty testified that Claimant suffers from smoking-related lung disease based on his pulmonary function tests and the emphysematous change in his pathology report but that he believes the interstitial fibrosis is playing a bigger role in his current condition.

Dr. Doty testified that he believed Claimant was totally disabled based on his current lung condition and oxygen requirement. He further testified that he reviewed Dr. Richard Kradin's report, and when asked if there was anything in Dr. Kradin's report that he found to be of importance, Dr. Doty testified:

It was educational to me because, again, I do not have expertise in occupational lung disease, so hearing his description of some of the pathologic changes that he saw being consistent with inhalational injury was educational to me; I mean, that's the first time I heard that.

Upon examination by Defendants' attorney, Dr. Doty again testified that he does not have any particular expertise in occupational lung disorders, and he testified that he does not specialize in pneumoconiosis. When asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitial Lung Disease. However, he testified that there are several different types of Interstitial Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time.

Dr. Doty testified that IPF is due to unknown causes and that both Dr. Reames (the thoracic surgeon that performed Claimant lung biopsy) and the pathologist that interpreted the biopsy believed Claimant suffered from IPF. Dr. Doty testified that while Claimant's clinical course has not been the

usual for a patient with IPF since his condition has not progressed fairly quickly, he has seen and treated patients who suffer from IPF and who have remained stable and followed the same course as Claimant. When asked about his knowledge of Claimant's alleged occupational exposure at CTR, Dr. Doty testified that he was not aware of the ventilation or exposure levels inside of the plant. He further testified that he does not know exactly what Claimant has been exposed to over his work history. After reviewing the Industrial Hygiene report prepared by Betty Harris, Dr. Doty testified that according to the report, the exposure levels at CTR were below OSHA standards. He testified that it takes a number of years for fibrosis to develop in a person's lungs and that it usually takes a person more than two or three years to develop an occupational lung disease.

At the conclusion of his deposition, Dr. Doty testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis and that Claimant's job with CTR "could have" contributed to his current lung disease:

Q: [Mr. Griggs] To a reasonable degree of medical certainty, we cannot rule out IPF, Idiopathic Pulmonary Fibrosis, correct?

A: It's still on the list, yes.

Q: [Mr. Eddy] I just need to make sure that I understand what you mean by that. Would you agree that the work at CTR contributed to his lung disease?

A: [Dr. Doty] Could have contributed, yes.

Q: Assuming that he worked with the silver sauder and was exposed to the dust and fumes for a year and a half directly using the silver sauder, and then for a year and a half just coming into that site, would you, to a reasonable degree of medical certainty, believe that that would have contributed to his lung disease?

A: Yes.

Q: Okay. Thank you.

Q: [Mr. Griggs] Could have contributed or did?

[Mr. Eddy] Object to form.

[Mr. Griggs] Answer the question.

A: [Dr. Doty] I'll go with could have contributed.

(Depo. at 87:10-13 & 87:21 - 88:16.)

DEPOSITION TESTIMONY OF GREGORY FELDMAN, M.D.

The deposition transcript of Dr. Gregory Feldman, dated October 4, 2012, was submitted into evidence. Upon examination by Claimant's attorney, Dr. Feldman testified that he examined Claimant on September 20, 2012, that he reviewed a number of records prior to his examination of Claimant, including the pathology report of Dr. Kradin, and that Claimant provided him with a history regarding his work at CTR and the conditions inside CTR's plant. Dr. Feldman testified fibrosis in the lungs takes decades to develop and that it does not develop over a five to six year period. He further testified that because of the length of time it takes for fibrosis to develop in the lungs, the most important factor in determining whether Claimant's condition was related to an occupational exposure would be what happened to him while working at Springs Industries twenty to thirty years ago.

Dr. Feldman testified that he disagreed with Dr. Kradin's opinion that Claimant's pathological changes were due in part to his occupational exposures. He further testified that Dr. Kradin's opinion was pure speculation and that Dr. Kradin did not identify any features of pneumoconiosis. Dr. Feldman testified that Dr. Kradin is a pathologist, and not a clinician, and that pneumoconiosis is not a pathological diagnosis unless it is seen on a pathology slide. Dr. Feldman testified that the concentration levels of metals Claimant was exposed to (silver, tin, zinc, cadmium, etc.) during his employment would be important if the pathologist would have noted particulate matter in his lungs; however, he testified the pathologist in the present case did not describe any of these materials.

Dr. Feldman testified that Claimant has Usual Interstitial Pneumonitis ("UIP"), which is a pathological description of the findings in his lungs. He testified that there are a number of causes of UIP. He further testified that he does not believe Claimant suffers from pneumoconiosis. He also testified that he cannot state to a reasonable degree of medical certainty that Claimant's UIP has been caused by his alleged occupational exposure.

Dr. Feldman specifically testified that he believes Claimant has IPF, that he has the classic features for IPF, and that, by definition, the causes of IPF are unknown. Dr. Feldman testified that patients with

IPF usually have a "falling off the cliff" event and their lungs never recover. He also testified that after a "falling off the cliff" event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his "falling off the cliff" event was his lung biopsy in 2010. He further testified that Claimant's clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until he has his next "fall."

Following Dr. Feldman's deposition, Claimant's attorney wrote a letter to Dr. Feldman, dated February 19, 2013, requesting that he review the findings in Dr. Abraham's report dated, January 15, 2013, and that he issue an opinion regarding any role Claimant's employment at CTR may have played in causing his lung disease. On March 5, 2013, Dr. Feldman forwarded the correspondence he received from Claimant's attorney to Defendants' attorney, and he asked Defendants' attorney which party should be invoiced. In an email dated March 5, 2013, Defendants' attorney informed Dr. Feldman that he could respond to the request of Claimant's attorney if he so desired, but that any invoice or bill for such response should be forwarded to Claimant's attorney. On March 6, 2013, Claimant's attorney emailed Dr. Feldman and instructed him to disregard his prior request. (See Defendants' APA #43).

OTHER EVIDENCE

Claimant submitted CTR's Site Operation Safety Manual, dated October 5, 2005, into evidence. This manual outlines CTR's policies and procedures, including CTR's policies regarding personal protective equipment and safe work procedures. (See Claimant's Exhibit #1).

The Material Safety Data Sheets for Brazeit-A-56T, Silvaloy A-56-T, Safety-Silv 56, Silverbraz56, and Monel were submitted into evidence by Claimant's attorney. (See Claimant's APAs #18-22).

On April 23, 2012, Applied Technical Services, Inc., performed a test on "Silver Solder" that was "similar to AWS Classification BAg-7" to determine its composition. The Silver Solder was "analyzed by ICP atomic emissions techniques." The test results indicated that the silver solder was comprised of 54.6% silver, 22.4% copper, 19.0% zinc, 4.0% tin, and 27 parts per million of cadmium. (Claimant's APA

#17).

Email correspondence between Claimant's attorney and Defendants' attorney, dated September 5, 2012 and September 11, 2012, regarding Claimant's subpoena to CTR were submitted into evidence by Claimant. On September 11, 2012, Defendants' attorney advised Claimant's attorney that he was unaware of any air sampling/monitoring done at CTR's plant, that CTR did not have any "Employee Exposure Records," and that the only "Written Hazard Communication Program" CTR had was the Material Safety Data Sheets that were previously provided. (Claimant's APA #27).

On September 13, 2012, Betty S. Harris, MPH, CIH, CHMM, CMC¹¹ of Bureau Veritas North America, performed an Industrial Hygiene Assessment at CTR's plant in Rock Hill, South Carolina. In her report dated October 2, 2012, Ms. Harris noted that the sampling was performed on a day that was reported be representative of normal working conditions. Ms. Harris further noted that the results of her testing revealed that the measured concentrations of the selected metals (i.e., cadmium, copper, silver, tin, and zinc) in CTR's plant were less than their respective Occupational Safety and Health Administration ("OSHA") Permissible Exposure Limits and less than their respective Threshold Limit Values guidelines recommended by the American Conference of Governmental Industrial Hygienists ("ACGIH"). Additionally, on October 15, 2012, Ms. Harris prepared an addendum to her initial report, and she specifically noted that the employee engaged in brazing on the day of the survey had exposure "well below both the OSHA PEL and 2012 ACGIH TLV for fluorides and total particulate." She further opined that "Results of this industrial hygiene assessment indicate current work practices and procedures are adequate to control employee exposures to the monitored air contaminants below regulatory limits and recommended guidelines" and that "No recommendations to modify existing work practices or procedures are deemed necessary at this time." (Defendants' APA #41).

A record such as was necessary for a decision was made of the proceeding and after careful

¹¹ Betty S. Harris's Curriculum Vitae was also submitted into evidence. (See Defendants' APA #38).

consideration and study of all the evidence, the following Findings of Fact are accordingly made.¹²

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Michael W. Dority as Employee-Claimant and CTR of the Carolinas as Employer and Twin City Fire Insurance Company as Carrier, Defendants.
2. That Claimant alleges he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. This is a denied claim.
3. That Claimant's average weekly wage was \$668.81, and his compensation rate was \$445.90. This finding is based on the stipulation of the parties.
4. That Claimant is fifty-six years old (DOB: 10/10/1956). This finding is based on Claimant's testimony.
5. That Claimant completed the ninth grade, and he subsequently obtained a GED. This finding is based on Claimant's testimony.
6. That Claimant was a heavy smoker, and he smoked two packs of cigarettes per day for thirty years (equating to a sixty pack-year smoking history). It was not until Dr. Sharp, his primary care physician, referred him to Dr. Doty for a pulmonary consultation in July of 2010 that Claimant decided to quit smoking cigarettes. This finding is supported by the evidence in the record as a whole, including but not limited to, Claimant's testimony, the medical reports, and the deposition testimony of Dr. Doty.
7. That prior to his employment with CTR, Claimant worked for Springs Industries for approximately thirty years at the Grace Bleachery, a plant that finished raw cotton materials. Claimant

¹² The undersigned's Order Directives were sent to the parties via email on May 30, 2013.

was initially hired by Springs Industries to be an operator, but after a short period of time, he was moved into plant's maintenance department, where he worked as a maintenance mechanic. His job duties as a maintenance mechanic required him to maintain and repair machinery throughout the plant. He also performed some firefighting during his employment with Springs Industries. Claimant's last date of employment with Springs Industries was in June of 2007. This finding is based on Claimant's testimony.

8. That while working for Springs Industries at the Grace Bleachery, Claimant was exposed to a number of different bleaches, dyes, and dust. Additionally, he was also exposed to fumes from burning chemicals. This finding is supported by Claimant's testimony.

9. That Claimant's work history also includes working as a mechanic at the Georgia Pacific plant in Catawba, South Carolina for approximately four years. While working as a mechanic at Georgia-Pacific, Claimant was exposed to various resins that were used in the manufacturing of the plasterboard. This finding is based on Claimant's testimony.

10. That Claimant started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. During the first fifteen to eighteen months of his employment with CTR, Claimant worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. In late 2009, Claimant was transferred to the Electrical Department, where he manufactured electrical components for tanks. Claimant worked in the Electrical Department until his employment with CTR ended on September 19, 2010. This finding is based on the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

11. That CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases.

12. That CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. This finding is supported

by the testimony of Mr. Hornback and Mr. Threatt.

13. That there are a number of departments inside CTR's Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. The Electrical Department, the O2 cleaning room, and the paint booth were completely sealed off from the other areas of the plant. This finding is supported by the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

14. That Claimant's normal workday at CTR was eight hours long, and he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. This finding is based on Claimant's testimony.

15. That Claimant's job in Final Line required to him perform a number of different tasks throughout the day. These tasks included soldering parts together, cutting tubing and other materials that he needed to build the parts for the tanks, bending tubing, walking to other areas of the plant to get parts, taking parts to the sandblasting area to be blasted, taking parts to the O2 room for cleaning, assembling parts by hand, applying labels and stickers to parts he manufactured, securing the final components to the tanks, and waiting on Quality Control employees to pressure test the parts he manufactured. This finding is supported by the testimony of Claimant, Mr. Hornback and Mr. Threatt.

16. That the soldering process required Claimant to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

17. That Claimant also had to perform some sandblasting when the employees in the sandblasting department were backed up with work. This finding is supported by the testimony of Claimant and Mr. Hornback.

18. That Defendants' witnesses, Michael Hornback and Jason Threatt, were credible. This

finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing. This finding is further supported by the general consistency of their testimonies.

19. That Claimant's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged "exposure" was exaggerated and inconsistent, and therefore, was neither probative nor reliable. The following list of examples is not exhaustive, but merely illustrative:

- Claimant alleged that he performed soldering for four hours a day on average while working in Final Line, and he testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. However, Mr. Hornback (Claimant's supervisor in Final Line) testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. Additionally, Mr. Threatt testified that his position in Final Line was similar to Claimant's and that on average, he would spend approximately one hour per day actually soldering parts.
- Even though Claimant testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.
- While Claimant testified that he never went an entire day without soldering during his time in Final Line, Mr. Threatt testified that there were times when he would go a day or more without performing any soldering.
- Claimant alleged that when he heated the solder wire, it created smoke that he could see rise up to the top of the ceiling. However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke in the plant.
- Claimant was inconsistent when testifying about the ventilation in the plant, and his testimony that there was a visible cloud of smoke and dust throughout the plant is clearly exaggerated and purely self-serving. (See *infra* Finding of Fact #21).
- During direct examination, Claimant initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. Notably, Mr. Threatt, who worked next to Claimant in Final Line, never saw Claimant experience a coughing fit or spitting up things.

- Claimant alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is no exposure to dust or particles.

This finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing.

20. That I give little weight to Eddie Glenn's deposition testimony. Mr. Glenn's testimony, like Claimant's testimony, is exaggerated. Additionally, Mr. Glenn's testimony is inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt. This finding is based on the evidence in the record as a whole.

21. That despite Claimant's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailor through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Claimant worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans. I give great weight to the credible and consistent testimony of Mr. Hornback and Mr. Threatt regarding the ventilation in the plant. While Claimant alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. Claimant admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. Additionally, during direct examination, Claimant alleged that the atmosphere in Final Line during the winter months was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. However, on cross-examination, Claimant admitted that even during the winter months, the large roll-up doors in the plant were opened and closed

throughout the day. Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. In fact, Mr. Threatt specifically testified that the doors are never closed for more than an hour or two during the winter months. Finally, even though Claimant testified that CTR did not have any fans to ventilate the air out of the plant during the winter months, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final Line area ran constantly throughout the year and was operable when Claimant was working there. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

22. That Mr. Hornback previously worked in Final Line for five years performing the same job Claimant had in Final Line, he never experienced any coughing fits during that time. Mr. Hornback also testified that neither Claimant nor any other employee has ever complained to him about the air quality in Final Line or in the plant in general. This finding is based on Mr. Hornback's testimony.

23. That Mr. Threatt has worked in Final Line since August of 2007, approximately six years, and has never experienced a coughing fit or had any complaints about the air quality in the plant. He also testified that he has never talked to anyone that had complaints about the air quality in the plant. This finding is based on Mr. Threatt's testimony.

24. That Claimant worked in Final Line for fifteen to eighteen months before being transferred to the Electrical Department, where he manufactured electrical components. Once transferred to the Electrical Department, Claimant spent five to six hours of each working day inside the enclosed Electrical Department, and he spent two to three hours in the main area of the plant attaching the electrical components to the tanks. This finding is based on the testimony of Claimant, Mr. Hornback.

25. That Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems. This finding is

based on Claimant's testimony.

26. That the CT of his abdomen, dated June 29, 2010, showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion." (*See* Claimant's APA #6).

27. That the CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (*See* Claimant's APA #7).

28. That Dr. Doty initially examined Claimant on July 22, 2010, and in his report, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint, that Claimant denied having any dyspnea with his usual activities of daily living or with his occupation, and that Claimant ~~also denied any wheezing.~~ (*See* Claimant's APA #8).

29. That on September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular Institute noted that Claimant had recently undergone a bronchoscopy, which was negative, and he recommended a thoroscopic lung biopsy in an attempt to determine a definitive diagnosis. (*See* Claimant's APAs #8 & #11).

30. That Claimant was admitted to Carolinas Medical Center and underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block on September 23, 2010. His discharge note from the hospital, dated October 4, 2010, states that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (*See* Claimant's APA #12).

31. That on October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar metaplasia with some honeycomb features, patchy chronic

inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlaka opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (See Claimant's APA #13).

32. That Claimant's breathing problems worsened following his lung biopsy, and he has been on home oxygen ever since his lung biopsy. This finding is based on the evidence in the record as a whole.

33. That following his lung biopsy on September 23, 2010, Dr. Doty has provided the majority of Claimant's treatment. This finding is based on the evidence in the record as a whole.

34. That five physicians have issued causation opinions in this matter. Claimant relied on the opinions of his retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham, and he also contended that his claim was supported by Dr. John Doty, his treating physician. Defendants relied on the opinions of their retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. Defendants also asserted that Dr. Doty's opinion was not sufficient to satisfy Claimant's burden of proof.

35. That the Dr. Doty's medical opinion is not sufficient to support causation in this matter. First, at his deposition, Dr. Doty admitted that he did not have expertise in occupational lung disease. Additionally, when asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitial Lung Disease. However, he testified that there are several different types of Interstitial Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time. Dr. Doty specifically testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis, and Dr. Doty would only go so far as to testify that the claimant's job with CTR, Inc. could have contributed to the lung disease. When viewed in its entirety, Dr. Doty's testimony is not sufficient to satisfy Claimant's burden in this matter. This finding is based on the evidence in the record as a whole, including the deposition testimony of Dr. Doty.

36. That Dr. Richard Kradin (Claimant's expert) performed a records review, and on July 27,

2012, he opined that “Mr. Dority’s occupational exposures to heavy metals, including the components of silver brazing allow, must be considered to a reasonable degree of medical probability causes of his chronic lung disease.” (See Claimant’s APA #4).

37. That I give little weight to the causation opinion of Dr. Kradin since his opinion is clearly based on inaccurate information. First, Dr. Kradin noted that Claimant worked as a Maintenance Mechanic for Springs Industries from 1978 to 1996 and that Claimant’s job duties at Springs Industries included “extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium,” Claimant specifically testified at the hearing that Dr. Kradin’s report was inaccurate because he did not perform any welding while working at Springs Industries. Additionally, while Dr. Kradin also noted in his report that Claimant “participated in firefighting at the [Springs Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals,”

Claimant testified that Dr. Kradin’s report was incorrect because he did not participate in firefighting on a “regular basis.” Most importantly, with regards to Claimant’s employment at CTR, Dr. Kradin’s report states, “He soldered 8 hours a day 5 days a week” and that “There was minimal venting in the shop; instead fumes and dust were moved around the plant by fans.” However, these statements on which Dr. Kradin’s opinion is based are clearly inaccurate. Claimant admitted at the hearing that he did not solder “8 hours a day 5 days a week,” and the testimony of Mr. Hornback and Mr. Threatt establishes that Claimant only soldered thirty minutes to an hour per day. Additionally, as outlined above in Finding of Fact #21, the ventilation in CTR’s plant was substantially more than “minimal.” This finding is based on the evidence in the record as a whole.

38. That Dr. Jerrold L. Abraham (Claimant’s expert) performed a records review and analyzed tissue samples from Claimant’s September 23, 2010 lung biopsy, and he opined that “Mr. Dority’s lung disease is not idiopathic and that his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis).” (See Claimant’s APA #1).

39. That Dr. Gregory J. Feldman (Defendants' expert) examined Claimant on September 20, 2012, and noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. Dr. Feldman noted that Claimant was a very heavy smoker with a documented sixty pack-year history of cigarette smoking. After examining Claimant and reviewing his prior medical records, Dr. Feldman diagnosed Claimant with Idiopathic Pulmonary Fibrosis ("IPF") and COPD, and he opined to a reasonable degree of medical certainty that "Mr. Dority's clinical course is consistent with IPF and is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis." He also opined that Claimant "exhibits all of the cardinal features of IPF." In conclusion, Dr. Feldman stated that "It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition." (Defendants' APA #39).

40. That Claimant's attorney deposed Dr. Feldman on October 4, 2012. At his deposition, Dr. Feldman maintained his opinion that Claimant suffered from IPF. Dr. Feldman testified that patients with IPF usually have a "falling off the cliff" event and their lungs never recover. He also testified that after a "falling off the cliff" event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his "falling off the cliff" event was his lung biopsy in 2010. He further testified that Claimant's clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until he has his next "fall." This finding is based on Dr. Feldman's deposition testimony.

41. That Dr. Victor L. Roggli (Defendants' expert) performed a records review and analyzed tissue samples from Claimant's lung biopsy. On February 1, 2013, Dr. Roggli opined that based on his review of the records and his testing of Claimant's tissue samples, "the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." On February 27, 2013, Dr. Roggli noted that he reviewed Dr. Abraham's report, dated January 15, 2013, and he opined that

“there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern.” He further opined that “it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease [in Claimant],” and that Dr. Abraham’s opinion that Claimant’s lung disease was due to “exposure of a multitude of different toxic dust particulates over his working career and including his exposures at CTR” was sheer speculation and not supported by scientific evidence. (Defendants’ APA #37).

42. That I give greater weight to the causation opinions of Defendants’ experts (Dr. Feldman and Dr. Roggli) than to the causation opinions of Claimant’s experts (Dr. Kradin and Dr. Abraham). This finding is based on the preponderance of the evidence in the record as a whole.

~~43. That there is insufficient evidence to establish that Claimant’s lung disease was caused or~~
aggravated by the work environment at CTR. This finding is based on the evidence in the record as a whole.

44. That there is insufficient evidence to establish that Claimant was exposed to any hazard in excess of those ordinarily incident to employment. This finding is based on the evidence in the record as a whole.

45. That Claimant’s assertion that his lung disease is causally related to the silver solder, the flux, and the other particles he worked with at CTR is purely speculative. This finding is based on the evidence in the record as a whole.

46. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. This finding is based on the evidence in the record as a whole.

47. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to carry his burden of proving a compensable occupational disease as contemplated in S.C. Code Ann. § 42-11-10; therefore, Claimant’s request for benefits is denied.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-11-10, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that he sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to her particular employment with CTR.
3. Under § 42-11-10, Claimant failed to prove a compensable occupational disease resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein.

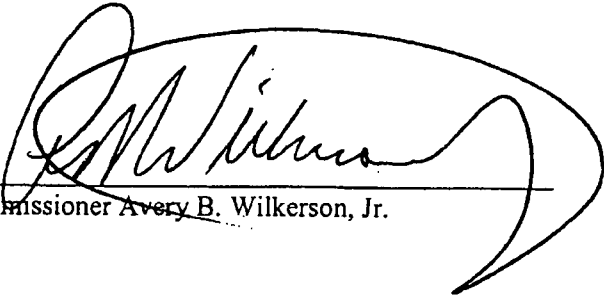
ORDER

IT IS HEREBY ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

August 19, 2013

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1023410

Michael W. Dority,

CLAIMANT
APPELLANT,

vs.

CTR of the Carolinas, Inc., et al.,

EMPLOYER,

AND

Twin City Fire Insurance Company,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on December 16, 2013, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
_____, 2014

APPEARANCES:

Appellant Michael W. Dority, Claimant of Fort Lawn, South
Carolina represented by Jeffrey T. Eddy, Esquire, of
Charleston, South Carolina.

Defendants/Respondents represented by Jason A. Griggs,
Esquire of Willson Jones Carter & Baxley, P.A. of
Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on March 26, 2013 and April 23, 2013, in Rock Hill, South Carolina. On August 19, 2013, Commissioner Wilkerson issued his Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order:

Single Commissioner's Findings of Fact

It is found as fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Michael W. Dority as Employee-Claimant and CTR of the Carolinas as Employer and Twin City Fire Insurance Company as Carrier, Defendants.

2. That Claimant alleges he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. This is a denied claim.

3. That Claimant's average weekly wage was \$668.81, and his compensation rate was \$445.90. This finding is based on the stipulation of the parties.

4. That Claimant is fifty-six years old (DOB: 10/10/1956). This finding is based on Claimant's testimony.

5. That Claimant completed the ninth grade, and he subsequently obtained a GED. This finding is based on Claimant's testimony.

6. That Claimant was a heavy smoker, and he smoked two packs of cigarettes per day for thirty years (equating to a sixty pack-year smoking history). It was not until Dr. Sharp, his primary care physician, referred him to Dr. Doty for a pulmonary consultation in July of 2010 that Claimant decided to quit smoking cigarettes. This finding is supported by the evidence in the

record as a whole, including but not limited to, Claimant's testimony, the medical reports, and the deposition testimony of Dr. Doty.

7. That prior to his employment with CTR, Claimant worked for Springs Industries for approximately thirty years at the Grace Bleachery, a plant that finished raw cotton materials. Claimant was initially hired by Springs Industries to be an operator, but after a short period of time, he was moved into plant's maintenance department, where he worked as a maintenance mechanic. His job duties as a maintenance mechanic required him to maintain and repair machinery throughout the plant. He also performed some firefighting during his employment with Springs Industries. Claimant's last date of employment with Springs Industries was in June of 2007. This finding is based on Claimant's testimony.

8. That while working for Springs Industries at the Grace Bleachery, Claimant was exposed to a number of different bleaches, dyes, and dust. Additionally, he was also exposed to fumes from burning chemicals. This finding is supported by Claimant's testimony.

9. That Claimant's work history also includes working as a mechanic at the Georgia Pacific plant in Catawba, South Carolina for approximately four years. While working as a mechanic at Georgia-Pacific, Claimant was exposed to various resins that were used in the manufacturing of the plasterboard. This finding is based on Claimant's testimony.

10. That Claimant started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. During the first fifteen to eighteen months of his employment with CTR, Claimant worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. In late 2009, Claimant was transferred to the Electrical Department, where he manufactured electrical components for tanks. Claimant worked in the Electrical Department until his employment with CTR ended on September 19, 2010. This finding is based on the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

11. That CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases.

12. That CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. This finding is supported by the testimony of Mr. Hornback and Mr. Threatt.

13. That there are a number of departments inside CTR's Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. The Electrical Department, the O2 cleaning room, and the pain booth were completely sealed off from the other areas of the plant. This finding is supported by the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

14. That Claimant's normal workday at CTR was eight hours long, and he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. This finding is based on Claimant's testimony.

15. That Claimant's job in Final Line required him to perform a number of different tasks throughout the day. These tasks included soldering parts together, cutting tubing and other materials that he needed to build the parts for the tanks, bending tubing, walking to other areas of the plant to get parts, taking parts to the sandblasting area to be blasted, taking parts to the O2 room for cleaning, assembling parts by hand, applying labels and stickers to parts he manufactured, securing the final components to the tanks, and waiting on Quality Control employees to pressure test the parts he manufactured. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

16. That the soldering process required Claimant to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

17. That Claimant also had to perform some sandblasting when the employees in the sandblasting department were backed up with work. This finding is supported by the testimony of Claimant and Mr. Hornback.

18. That Defendants' witnesses, Michael Hornback and Jason Threatt, were credible. This finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing. This finding is further supported by the general consistency of their testimonies.

19. That Claimant's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged "exposure" was exaggerated and inconsistent, and therefore, was neither probative nor reliable. The following list of examples is not exhaustive, but merely illustrative:

- Claimant alleged that he performed soldering for four hours a day on average while working in Final Line, and he testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. However, Mr. Hornback (Claimant's supervisor in Final Line) testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. Additionally, Mr. Threatt testified that his position in Final Line was similar to Claimant's and that on average, he would spend approximately one hour per day actually soldering parts.
- Even though Claimant testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.
- While Claimant testified that he never went an entire day without soldering during his time in Final Line, Mr. Threatt testified that there were times when he would go a day or more without performing any soldering.
- Claimant alleged that when he heated the solder wire, it created smoke that he

could see rise up to the top of the ceiling. However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke in the plant.

- Claimant was inconsistent when testifying about the ventilation in the plant, and his testimony that there was a visible cloud of smoke and dust throughout the plant is clearly exaggerated and purely self-serving. (See *infra* Finding of Fact #21).
- During Direct examination, Claimant initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. Notably, Mr. Threatt, who worked next to Claimant in Final Line, never saw Claimant experience a coughing fit or spitting up things.
- Claimant alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is not exposure to dust or particles.

This finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing.

20. That I give little weight to Eddie Glenn's deposition testimony. Mr. Glenn's testimony, like Claimant's testimony, is exaggerated. Additionally, Mr. Glenn's testimony is inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt. This finding is based on the evidence in the record as a whole.

21. That despite Claimant's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailer through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Claimant worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans. I give great weight to the credible and

consistent testimony of Mr. Hornback and Mr. Threatt regarding the ventilation in the plant. While Claimant alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. Claimant admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. Additionally, during direct examination, Claimant alleged that the atmosphere in Final Line during the winter months was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. However, on cross-examination, Claimant admitted that even during the winter months, the large roll-up doors in the plant were opened and closed throughout the day. Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. In fact, Mr. Threatt specifically testified that the doors are never closed for more than an hour or two during the winter months. Finally, even though Claimant testified that CTR did not have any fans to ventilate the air out of the plant during the winter months, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final line area ran constantly throughout the year and was operable when Claimant was working there. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

22. That Mr. Hornback previously worked in Final Line for five years performing the same job Claimant had in Final Line, he never experienced any coughing fits during that time. Mr. Hornback also testified that neither Claimant nor any other employee has ever complained to him about the air quality in Final Line or in the plant in general. This finding is based on Mr. Hornback's testimony.

23. That Mr. Threatt has worked in Final Line since August of 2007, approximately six years, and has never experienced a coughing fit or had any complaints about the air quality in the plant. He also testified that he has never talked to anyone that had complaints about the air quality in the plant. This finding is based on Mr. Threatt's testimony.

24. That Claimant worked in Final Line for fifteen to eighteen months before being transferred to the Electrical Department, where he manufactured electrical components. Once transferred to the Electrical Department, Claimant spent five to six hours of each working day inside the enclosed Electrical Department, and he spent two to three hours in the main area of the plant attaching the electrical components to the tanks. This finding is based on the testimony of Claimant, Mr. Hornback.

25. That Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems. This finding is based on Claimant's testimony.

26. That the CT of his abdomen, dated June 29, 2010, showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion." (See Claimant's APA #6)

27. That the CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (See Claimant's APA #7)

28. That Dr. Doty initially examined Claimant on July 22, 2010, and in his report, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint, that claimant denied having any dyspnea with his usual activities of daily living or with his occupation, and that Claimant also denied any wheezing. (See Claimant's APA #8)

29. That on September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular

Institute noted that Claimant had recently undergone a bronchoscopy, which was negative, and he recommended a thoracoscopic lung biopsy in an attempt to determine a definitive diagnosis. (See Claimant's APAs #8 & #11)

30. That Claimant was admitted to Carolinas Medical Center and underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block on September 23, 2010. His discharge note from the hospital, dated October 4, 2010, states that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (See Claimant's APA #12)

31. That on October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed [sic] emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar metaplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlakha opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (See Claimant's APA #13)

32. That Claimant's breathing problems worsened following his lung biopsy, and he has been on home oxygen ever since his lung biopsy. This finding is based on the evidence in the record as a whole.

33. That following his lung biopsy on September 23, 2010, Dr. Doty has provided the majority of Claimant's treatment. This finding is based on the evidence in the record as a whole.

34. That five physicians have issued causation opinions in this matter. Claimant relied on the opinions of his retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham, and he also contended that his claim was supported by Dr. John Doty, his treating physician. Defendants relied

on the opinions of their retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. Defendants also asserted that Dr. Doty's opinion was not sufficient to satisfy Claimant's burden of proof.

35. That the Dr. Doty's medical opinion is not sufficient to support causation in this matter. First, at his deposition, Dr. Doty admitted that he did not have expertise in occupational lung disease. Additionally, when asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitial Lung Disease. However, he testified that there are several different types of Interstitial Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time. Dr. Doty specifically testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis, and Dr. Doty would only go so far as to testify that the claimant's job with CTR, Inc. could have contributed to the lung disease. When viewed in its entirety, Dr. Doty's testimony is not sufficient to satisfy Claimant's burden in this matter. This finding is based on the evidence in the record as a whole, including the deposition testimony of Dr. Doty.

36. That Dr. Richard Kradin (Claimant's expert) performed a records review, and on July 27, 2012, he opined that "Mr. Doty's occupational exposures to heavy metals, including the components of silver brazing allow [sic], must be considered to a reasonable degree of medical probability causes of his chronic lung disease." (See Claimant's APA #4)

37. That I give little weight to the causation opinion of Dr. Kradin since his opinion is clearly based on inaccurate information. First, Dr. Kradin noted that Claimant worked as a Maintenance Mechanic for Springs Industries from 1978 to 1996 and that Claimant's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium," Claimant specifically testified at the hearing that Dr. Kradin's report was inaccurate because he did not perform any welding while working at

Springs Industries. Additionally, while Dr. Kradin also noted in his report that Claimant “participated in firefighting at the [Spring’s Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals,” Claimant testified that Dr. Kradin’s report was incorrect because he did not participate in firefighting on a “regular basis.” Most importantly, with regards to Claimant’s employment at CTR, Dr. Kradin’s report states, “He soldered 8 hours a day 5 days a week” and that “There was minimal venting in the shop; instead fumes and dust were moved around the plant by fans.” However, these statements on which Dr. Kradin’s opinion is based are clearly inaccurate. Claimant admitted at the hearing that he did not solder “8 hours a day 5 days a week,” and the testimony of Mr. Hornback and Mr. Threatt establishes that Claimant only soldered thirty minutes to an hour per day. Additionally, as outlined above in Finding of Fact #21, the ventilation in CTR’s plant was substantially more than “minimal.” This finding is based on the evidence in the record as a whole.

38. That Dr. Jerrold L. Abraham (Claimant’s expert) performed a records review and analyzed tissue samples from Claimant’s September 23, 2010 lung biopsy, and he opined that “Mr. Dority’s lung disease is not idiopathic and that his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis).” (See Claimant’s APA #1)

39. That Dr. Gregory J. Feldman (Defendants’ expert) examined Claimant on September 20, 2012, and noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. Dr. Feldman noted that Claimant was a very heavy smoker with a documented sixty pack-year history of cigarette smoking. After examining Claimant and reviewing his prior medical records, Dr. Feldman diagnosed Claimant with Idiopathic Pulmonary Fibrosis (“IPF”) and COPD, and he opined to a

reasonable degree of medical certainty that "Mr. Dority's clinical course is consistent with IPF and is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis." He also opined that Claimant "exhibits all of the cardinal features of IPF." In conclusion, Dr. Feldman stated that "It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition." (Defendants' APA #39)

40. That Claimant's attorney deposed Dr. Feldman on October 4, 2012. At his deposition, Dr. Feldman maintained his opinion that Claimant suffered from IPF. Dr. Feldman testified that patients with IPF usually have a "falling off the cliff" event and their lungs never recover. He also testified that after a "falling off the cliff" event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his "falling off the cliff" event was his lung biopsy in 2010. He further testified that Claimant's clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until has his next "fall." This finding is based on Dr. Feldman's deposition testimony.

41. That Dr. Victor Roggli (Defendants' expert) performed a records review and analyzed tissue samples from Claimant's lung biopsy. On February 1, 2013, Dr. Roggli opined that based on his review of the records and his testing of Claimant's tissue samples, "the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." On February 27, 2013, Dr. Roggli noted that he reviewed Dr. Abraham's report, dated January 15, 2013, and he opined that there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." He further opined that "it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed

pattern of interstitial lung disease [in Claimant],” and that Dr. Abraham’s opinion that Claimant’s lung disease was due to “exposure to a multitude of different toxic dust particulates over his working career and including his exposures at CTR” was sheer speculation and not supported by scientific evidence. (Defendants’ APA #37)

42. That I give greater weight to the causation opinions of Defendants’ experts (Dr. Feldman and Dr. Roggli) than to the causation opinions of Claimant’s experts (Dr. Kradin and Dr. Abraham). This finding is based on the preponderance of the evidence in the record as a whole.

43. That there is insufficient evidence to establish that Claimant’s lung disease was caused or aggravated by the work environment at CTR. This finding is based on the evidence in the record as a whole.

44. That there is insufficient evidence to establish that Claimant was exposed to any hazard in excess of those ordinarily incident to employment. This finding is based on the evidence in the record as a whole.

45. That Claimant’s assertion that his lung disease is causally related to the silver solder, the flux, and the other particles he worked with at CTR is purely speculative. This finding is based on the evidence in the record as a whole.

46. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. This finding is based on the evidence in the record as a whole.

47. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to carry his burden of proving a compensable occupational disease as contemplated in S.C. Code Ann. § 42-11-10; therefore, Claimant’s request for benefits is denied.

Single Commissioner’s Conclusions of Law

Accordingly, as provided in S.C. Code Ann § 42-17-40 (1976), as amended, it is the

determination of this Commission that:

1. Under § 420-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-11-10, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that the sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to his particular employment with CTR.

3. Under § 42-11-10, Claimant failed to prove a compensable occupational disease resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein.

Single Commissioner's Order

IT IS, HEREBY, ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

On August 23, 2013, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on December 16, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Is finding of fact number 35 (treating pulmonologist's medical opinion is not sufficient to support causation) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) the hearing commissioner excluded Dr. Doty's opinion supporting the claim (APA No. 9, p. 67.1) and (b) Dr. Doty testified Claimant's

lung disease was caused by his occupational exposures including those at CTR (dep. Dr. John Doty dated 10/03/12, pp.9-10, 18-19, 21-32, 45, 50, 55-56, 60-61, 79, 81-82 & 88)?

2. Is finding of fact number 38 (regarding Dr. Jerrold Abraham) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann § 1-23-380(g) (1986) in that: it completely ignores the fact that Dr. Abraham (APA No. 1, pp. 1-2) analyzed claimant's actual lung tissue using electron microscopy (SEM) and x-ray spectroscopy (EDS) and found particulate matter comprised of metals to which claimant was exposed at CTR and Springs?
3. Are findings of fact numbers 39 and 40 (regarding the opinions of Dr. Gregory J. Feldman) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: they completely omit Dr. Feldman's opinion that many metals cause lung disease and a pathological finding of particulate matter in the tissue would definitively prove claimant's lung disease was due to his occupational inhalation of dust and fumes (Dr. Feldman dep. dated 10/04/12, pp. 6, 17-18, 20-21, 27-28, 38-39, & 61-62)?
4. Is finding of fact number 34 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant also relies on the opinions of the defendants' retained expert, Dr. Gregory Feldman.
5. Are finding of facts numbers 41 and 42 (regarding Dr. Victor L. Roggli) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) Dr. Roggli did not "analyze" tissue samples from claimant's lung biopsy but merely reviewed existing slides under a light microscope; (b) Dr. Roggli first opined claimant does not have asbestosis when he thought this was an asbestos case; (APA No. 37, pp. 459-464) and (c) Dr. Roggli has authored medical articles stating SEM and EDS are important tools in detecting the types of disease-producing metals found in claimant's lung tissue, and he cites Dr. Jerrold Abraham in support of these statements (APA Nos. 29, 30 & 31, pp. 324-348)?
6. Is finding of fact number 37 (regarding the opinion of Dr. Richard Kradin) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: Dr. Kradin's opinion (APA No. 4, pp. 26-28) is based on his review of the pathology materials (lung tissue biopsy) and any confusion regarding the respective exposures at Springs or CTR does not detract from his opinion that claimant's lung

disease was due to his occupations exposures generally?

7. Is finding of fact number 6 (regarding smoking) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the medical evidence (dep. Dr. John Doty dated 10/03/12 at pp. 32-34, 50, 75, 77, & 83) established claimant's occupationally-related pulmonary fibrosis, not smoking, is the cause of his disability?
8. Is finding of fact number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant alleged an accidental injury and/or occupational lung disease as a result of over 30 years exposure/employment and not just exposure "while working for CTR." (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
9. Is finding of fact number 46 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by his employment with CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
10. Is finding of fact number 43 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by the work environment at CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
11. Is finding of fact number 18 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
12. Is finding of fact number 19 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
13. Is finding of fact number 20 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)/

14. Is finding of fact number 21 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
15. Is finding of fact number 44 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
16. Is finding of fact number 45 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
17. Is finding of fact number 47 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
18. Is conclusion of law number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?
19. Is conclusion of law number 3 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Facts and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and

Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Michael W. Dority as Employee-Claimant and CTR of the Carolinas as Employer and Twin City Fire Insurance Company as Carrier, Defendants.

2. That Claimant alleges he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. This is a denied claim.

3. That Claimant's average weekly wage was \$668.81, and his compensation rate was \$445.90. This finding is based on the stipulation of the parties.

4. That at the time of the hearing, Claimant was fifty-six years old (DOB: 10/10/1956). This finding is based on Claimant's testimony.

5. That Claimant completed the ninth grade, and he subsequently obtained a GED. This finding is based on Claimant's testimony.

6. That Claimant was a heavy smoker, and he smoked two packs of cigarettes per day for thirty years (equating to a sixty pack-year smoking history). It was not until Dr. Sharp, his primary care physician, referred him to Dr. Doty for a pulmonary consultation in July of 2010 that Claimant decided to quit smoking cigarettes. This finding is supported by the evidence in the record as a whole, including but not limited to, Claimant's testimony, the medical reports, and the deposition testimony of Dr. Doty.

7. That prior to his employment with CTR, Claimant worked for Springs Industries for approximately thirty years at the Grace Bleachery, a plant that finished raw cotton materials. Claimant was initially hired by Springs Industries to be an operator, but after a short period of time, he was moved into plant's maintenance department, where he worked as a maintenance mechanic. His job duties as a maintenance mechanic required him to maintain and repair machinery throughout the plant. He also performed some firefighting during his employment with Springs Industries. Claimant's last date of employment with Springs Industries was in June of 2007. This finding is based on Claimant's testimony.

8. That while working for Springs Industries at the Grace Bleachery, Claimant was exposed to a number of different bleaches, dyes, and dust. Additionally, he was also exposed to fumes from burning chemicals. This finding is supported by Claimant's testimony.

9. That Claimant's work history also includes working as a mechanic at the Georgia Pacific plant in Catawba, South Carolina for approximately four years. While working as a mechanic at Georgia-Pacific, Claimant was exposed to various resins that were used in the manufacturing of the plasterboard. This finding is based on Claimant's testimony.

10. That Claimant started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. During the first fifteen to eighteen months of his employment with CTR, Claimant worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. In late 2009, Claimant was transferred to the Electrical Department, where he manufactured electrical components for tanks. Claimant worked in the Electrical Department until his employment with CTR ended on September 19, 2010. This finding is based on the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

11. That CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases.

12. That CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. This finding is supported by the testimony of Mr. Hornback and Mr. Threatt.

13. That there are a number of departments inside CTR's Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. The Electrical Department, the O2 cleaning room, and the pain booth were completely sealed off from the other areas of the plant. This finding is supported by the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

14. That Claimant's normal workday at CTR was eight hours long, and he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. This finding is based on Claimant's testimony.

15. That Claimant's job in Final Line required him to perform a number of different tasks throughout the day. These tasks included soldering parts together, cutting tubing and other materials that he needed to build the parts for the tanks, bending tubing, walking to other areas of the plant to get parts, taking parts to the sandblasting area to be blasted, taking parts to the O2 room for cleaning, assembling parts by hand, applying labels and stickers to parts he manufactured, securing the final components to the tanks, and waiting on Quality Control employees to pressure test the parts he manufactured. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

16. That the soldering process required Claimant to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire.

This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

17. That Claimant also had to perform some sandblasting when the employees in the sandblasting department were backed up with work. This finding is supported by the testimony of Claimant and Mr. Hornback.

18. That Defendants' witnesses, Michael Hornback and Jason Threatt, were credible. This finding is based on the evidence in the record as a whole, including the Single Commissioner's observations of the witnesses' demeanor and delivery of their testimony at the hearing. This finding is further supported by the general consistency of their testimonies.

19. That Claimant's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged "exposure" was exaggerated and inconsistent, and therefore, was neither probative nor reliable. The following list of examples is not exhaustive, but merely illustrative:

- a. Claimant alleged that he performed soldering for four hours a day on average while working in Final Line, and he testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. However, Mr. Hornback (Claimant's supervisor in Final Line) testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. Additionally, Mr. Threatt testified that his position in Final Line was similar to Claimant's and that on average, he would spend approximately one hour per day actually soldering parts.
- b. Even though Claimant testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.
- c. While Claimant testified that he never went an entire day without soldering during his time in Final Line, Mr. Threatt testified that there were times when he would go a day or more without performing any soldering.
- d. Claimant alleged that when he heated the solder wire, it created smoke that he could see rise up to the top of the ceiling. However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke

in the plant.

- e. Claimant was inconsistent when testifying about the ventilation in the plant, and his testimony that there was a visible cloud of smoke and dust throughout the plant is clearly exaggerated and purely self-serving. (See *infra* Finding of Fact #21).
- f. During Direct examination, Claimant initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. Notably, Mr. Threatt, who worked next to Claimant in Final Line, never saw Claimant experience a coughing fit or spitting up things.
- g. Claimant alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is not exposure to dust or particles.

This finding is based on the evidence in the record as a whole, including the Single Commissioner's observations of the witnesses' demeanor and delivery of their testimony at the hearing.

20. That we give little weight to Eddie Glenn's deposition testimony. Mr. Glenn's testimony, like Claimant's testimony, is exaggerated. Additionally, Mr. Glenn's testimony is inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt. This finding is based on the evidence in the record as a whole.

21. That despite Claimant's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailer through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Claimant worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans. We give great weight to the credible and consistent testimony of Mr. Hornback and Mr. Threatt regarding the ventilation in the plant.

While Claimant alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. Claimant admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. Additionally, during direct examination, Claimant alleged that the atmosphere in Final Line during the winter months was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. However, on cross-examination, Claimant admitted that even during the winter months, the large roll-up doors in the plant were opened and closed throughout the day. Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. In fact, Mr. Threatt specifically testified that the doors are never closed for more than an hour or two during the winter months. Finally, even though Claimant testified that CTR did not have any fans to ventilate the air out of the plant during the winter months, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final line area ran constantly throughout the year and was operable when Claimant was working there. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

22. That Mr. Hornback previously worked in Final Line for five years performing the same job Claimant had in Final Line, he never experienced any coughing fits during that time. Mr. Hornback also testified that neither Claimant nor any other employee has ever complained to him about the air quality in Final Line or in the plant in general. This finding is based on Mr. Hornback's testimony.

23. That Mr. Threatt has worked in Final Line since August of 2007, approximately six

years, and has never experienced a coughing fit or had any complaints about the air quality in the plant. He also testified that he has never talked to anyone that had complaints about the air quality in the plant. This finding is based on Mr. Threatt's testimony.

24. That Claimant worked in Final Line for fifteen to eighteen months before being transferred to the Electrical Department, where he manufactured electrical components. Once transferred to the Electrical Department, Claimant spent five to six hours of each working day inside the enclosed Electrical Department, and he spent two to three hours in the main area of the plant attaching the electrical components to the tanks. This finding is based on the testimony of Claimant and Mr. Hornback.

25. That Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems. This finding is based on Claimant's testimony.

26. That the CT of his abdomen, dated June 29, 2010, showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion." (See Claimant's APA #6)

27. That the CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (See Claimant's APA #7)

28. That Dr. Doty initially examined Claimant on July 22, 2010, and in his report, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint, that claimant denied having any dyspnea with his usual activities of daily living or with his occupation, and that Claimant also denied any wheezing. (See Claimant's APA #8)

29. That on September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular Institute noted that Claimant had recently undergone a bronchoscopy, which was negative, and he

recommended a thoracoscopic lung biopsy in an attempt to determine a definitive diagnosis. (See Claimant's APAs #8 & #11)

30. That Claimant was admitted to Carolinas Medical Center and underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block on September 23, 2010. His discharge note from the hospital, dated October 4, 2010, states that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (See Claimant's APA #12)

31. That on October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed [sic] emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar metaplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlakha opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (See Claimant's APA #13)

32. That Claimant's breathing problems worsened following his lung biopsy, and he has been on home oxygen ever since his lung biopsy. This finding is based on the evidence in the record as a whole.

33. That following his lung biopsy on September 23, 2010, Dr. Doty has provided the majority of Claimant's treatment. This finding is based on the evidence in the record as a whole.

34. That five physicians have issued causation opinions in this matter. Claimant relied on the opinions of his retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham, and he also contended that his claim was supported by Dr. John Doty, his treating physician. Defendants relied on the opinions of their retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. Defendants

also asserted that Dr. Doty's opinion was not sufficient to satisfy Claimant's burden of proof.

35. That the Dr. Doty's medical opinion is not sufficient to support causation in this matter. First, at his deposition, Dr. Doty admitted that he did not have expertise in occupational lung disease. Additionally, when asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitial Lung Disease. However, he testified that there are several different types of Interstitial Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time. Dr. Doty specifically testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis, and Dr. Doty would only go so far as to testify that the claimant's job with CTR, Inc. could have contributed to the lung disease. When viewed in its entirety, Dr. Doty's testimony is not sufficient to satisfy Claimant's burden in this matter. This finding is based on the evidence in the record as a whole, including the deposition testimony of Dr. Doty.

36. That Dr. Richard Kradin (Claimant's expert) performed a records review, and on July 27, 2012, he opined that "Mr. Doty's occupational exposures to heavy metals, including the components of silver brazing alloy, must be considered to a reasonable degree of medical probability causes of his chronic lung disease." (See Claimant's APA #4)

37. That we give little weight to the causation opinion of Dr. Kradin since his opinion is clearly based on inaccurate information. First, Dr. Kradin noted that Claimant worked as a Maintenance Mechanic for Springs Industries from 1978 to 1996 and that Claimant's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium," Claimant specifically testified at the hearing that Dr. Kradin's report was inaccurate because he did not perform any welding while working at Springs Industries. Additionally, while Dr. Kradin also noted in his report that Claimant

"participated in firefighting at the [Spring's Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals," Claimant testified that Dr. Kradin's report was incorrect because he did not participate in firefighting on a "regular basis." Most importantly, with regards to Claimant's employment at CTR, Dr. Kradin's report states, "He soldered 8 hours a day 5 days a week" and that "There was minimal venting in the shop; instead fumes and dust were moved around the plant by fans." However, these statements on which Dr. Kradin's opinion is based are clearly inaccurate. Claimant admitted at the hearing that he did not solder "8 hours a day 5 days a week," and the testimony of Mr. Hornback and Mr. Threath establishes that Claimant only soldered thirty minutes to an hour per day. Additionally, as outlined above in Finding of Fact #21, the ventilation in CTR's plant was substantially more than "minimal." This finding is based on the evidence in the record as a whole.

38. That Dr. Jerrold L. Abraham (Claimant's expert) performed a records review and analyzed tissue samples from Claimant's September 23, 2010 lung biopsy, and he opined that "Mr. Dority's lung disease is not idiopathic and that his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis)." (See Claimant's APA #1)

39. That Dr. Gregory J. Feldman (Defendants' expert) examined Claimant on September 20, 2012, and noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. Dr. Feldman noted that Claimant was a very heavy smoker with a documented sixty pack-year history of cigarette smoking. After examining Claimant and reviewing his prior medical records, Dr. Feldman diagnosed Claimant with Idiopathic Pulmonary Fibrosis ("IPF") and COPD, and he opined to a reasonable degree of medical certainty that "Mr. Dority's clinical course is consistent with IPF and

is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis.” He also opined that Claimant “exhibits all of the cardinal features of IPF.” In conclusion, Dr. Feldman stated that “It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition.” (Defendants’ APA #39)

40. That Claimant’s attorney deposed Dr. Feldman on October 4, 2012. At his deposition, Dr. Feldman maintained his opinion that Claimant suffered from IPF. Dr. Feldman testified that patients with IPF usually have a “falling off the cliff” event and their lungs never recover. He also testified that after a “falling off the cliff” event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his “falling off the cliff” event was his lung biopsy in 2010. He further testified that Claimant’s clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until has his next “fall.” This finding is based on Dr. Feldman’s deposition testimony.

41. That Dr. Victor Roggli (Defendants’ expert) performed a records review and analyzed tissue samples from Claimant’s lung biopsy. On February 1, 2013, Dr. Roggli opined that based on his review of the records and his testing of Claimant’s tissue samples, “the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features.” On February 27, 2013, Dr. Roggli noted that he reviewed Dr. Abraham’s report, dated January 15, 2013, and he opined that there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern.” He further opined that “it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease [in Claimant],” and that Dr. Abraham’s opinion that Claimant’s

lung disease was due to “exposure to a multitude of different toxic dust particulates over his working career and including his exposures at CTR” was sheer speculation and not supported by scientific evidence. (Defendants’ APA #37)

42. That we give greater weight to the causation opinions of Defendants’ experts (Dr. Feldman and Dr. Roggli) than to the causation opinions of Claimant’s experts (Dr. Kradin and Dr. Abraham). This finding is based on the preponderance of the evidence in the record as a whole.

43. That there is insufficient evidence to establish that Claimant’s lung disease was caused or aggravated by the work environment at CTR. This finding is based on the evidence in the record as a whole.

44. That there is insufficient evidence to establish that Claimant was exposed to any hazard in excess of those ordinarily incident to employment. This finding is based on the evidence in the record as a whole.

45. That Claimant’s assertion that his lung disease is causally related to the silver solder, the flux, and the other particles he worked with at CTR is purely speculative. This finding is based on the evidence in the record as a whole.

46. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. This finding is based on the evidence in the record as a whole.

47. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to carry his burden of proving a compensable occupational disease as contemplated in S.C. Code Ann. § 42-11-10; therefore, Claimant’s request for benefits is denied.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 420-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-11-10, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that the sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to his particular employment with CTR.

3. Under § 42-11-10, Claimant failed to prove a compensable occupational disease resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

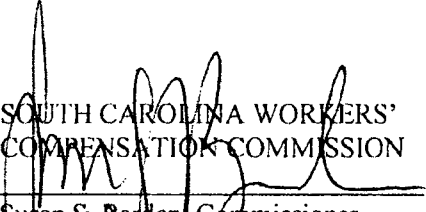
IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on August 19, 2013, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

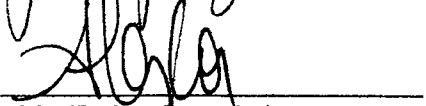
IT IS FURTHER ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Susan S. Barden, Commissioner


Aisha Taylor, Commissioner


T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on January 30, 2014

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1023410

Michael W. Dority, Employee,)
Claimant,)
v.)
CTR of The Carolinas, Inc.,)
Employer,)
and Sentinel Insurance Company, Ltd.,)
Carrier,)
Defendants.)

CONSENT ORDER

A hearing was scheduled to be held by the undersigned Commissioner on October 19, 2012. The parties have agreed to resolve the issues raised by the Forms 50 and 51 through this Consent Order. Pursuant to the stipulations of the parties, **IT IS HEREBY ORDERED:**

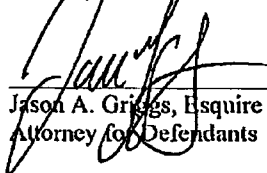
- 1) Additional discovery is needed before claim is ready for adjudication;
- 2) All other issues to be held in abeyance;
- 3) The case will be returned to the general files, to be reset upon the request of either party.

IT IS SO ORDERED.

Dated: October 19, 2012

WE SO CONSENT:


Jeffrey T. Eddy, Esquire
Attorney for Claimant


Jason A. Griggs, Esquire
Attorney for Defendants

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Kelle Lindler on October 19, 2012

WCC FILE NO. 1023410

CONSENT ORDER

- 1) Additional discovery is needed prior to the adjudication of this claim;
- 2) All issues held in abeyance;
- 3) The case will be returned to the general files, to be reset upon the request of either party.

Dated: January 29, 2013

Melody L. James

WE SO CONSENT:

Jason A. Chiggs, Esquire
Attorney for Defendants

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

83



WCC File #: _____
Carrier File #: _____
Carrier Code #: 01110
Employer FEIN #: _____

Claimant's Name: Michael W. Dority SSN: 249-11-7660 Employer's Name: CTR OF THE CAROLINAS INC
Address: 1108 Dority Farm Road Address: 298 Porter Road; PO Box 11369
City: Fort Lawn State: SC Zip: 29714 City: Rock Hill State: SC Zip: 29730
Home Phone: (803) 872 - 4583 Work Phone: () - Insurance Carrier: Twin City Fire Insurance Company
Preparer's Name: Jeffrey T. Eddy Law Firm: _____ Preparer's Phone #: (843) 795 - 5666

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: September 17, 2010

☒ Injury ☒ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to lungs/whole body (Part(s) of Body Injured) On 09/17/10 (Month/Day/Year) in York county, state of SC.
- 1b. Body part(s) affected are: lungs.
Briefly describe how the accident occurred. severe interstitial lung disease due to the inhalation of silver solder fumes/dust and other airborne contaminants.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on May 10, 2012 (Month/Day/Year) in the following manner:
Claimant was first informed his lung disease was due to his occupation on May 8, 2012 by his pulmonologist, John Doty, MD.

- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: interstitial lung fibrosis and decreased diffusing capacity.
- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
- ☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☐ Partial ☒ (2) Specific Disability: ☒ Total ☐ Partial
☐ (3) Wage Loss ☐ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ 1,200.00, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.
- 11a. Further grounds or unusual aspects of claim: _____
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
John Doty, MD (pulmonologist), 1001 Blythe Blvd, Charlotte, NC 28203; Mark Reames, MD (surgeon), 1001 Blythe Blvd, Charlotte, NC 28203; Frank Sharp, MD (family) 1025 W. Meeting St., Lancaster, SC
- 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☐ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Jeffrey T. Eddy Attorney for Claimant jeddylaw@bellsouth.net 05/10/2012
Preparer's Signature Title Email Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

Employee's Notice of Claim and/or
Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 1023410
Carrier File #: YZEC 95077
Carrier Code #: 01110
Employer FEIN #: 81-9368923

Claimant's Name: Michael W. Dority SSN: 249-11-7660 Employer's Name: CTR OF THE CAROLINAS INC
Address: 1108 Dority Farm Road Address: 298 Porter Road; PO Box 11369
City: Fort Lawn State: SC Zip: 29714 City: Rock Hill State: SC Zip: 29730
Home Phone: (803) 872-4583 Work Phone: () - Insurance Carrier: Twin City Fire Insurance Company
Preparer's Name: Jeffrey T. Eddy Law Firm: _____ Preparer's Phone #: (843) 795-5666

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: September 17, 2010

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to lungs/whole body (Part(s) of Body Injured) On 09/17/10 (Month/Day/Year) in York county, state of SC.
- 1b. Body part(s) affected are: lungs.
- Briefly describe how the accident occurred. severe interstitial lung injury due to the inhalation of silver solder fumes/dust and other airborne contaminants.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on May 10, 2012 (Month/Day/Year) in the following manner:
Claimant was first informed his lung disease was due to his occupation on May 8, 2012 by his pulmonologist, John Doty, MD.

- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: interstitial lung fibrosis and decreased diffusing capacity.

- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

- ☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial ☒ (2) Specific Disability: ☒ Total ☐ Partial

- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ 1,200.00, and demands accounting of days worked and wages earned as provided by law.

- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.

- 11a. Further grounds or unusual aspects of claim:
Claimant's last day in the plant was on 09/17/2010.

- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
John Doty, MD (pulmonologist), 1001 Blythe Blvd, Charlotte, NC 28203; Mark Reames, MD (surgeon), 1001 Blythe Blvd, Charlotte, NC 28203; Frank Sharp, MD (family) 1025 W. Meeting St., Lancaster, SC

- 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

- ☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Jeffrey T. Eddy Attorney for Claimant: jeddylaw@bellsouth.net Title: _____ Email: _____ Date: 08/01/2012

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

Employee's Notice of Claim and/or
Request for Hearing

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1023410
Carrier File # YZE95077C
Carrier Code #
Employer FEIN

Michael W. Dority 249-11-7660
Claimant's Name SSN
1108 Dority Farm Road, Fort Lawn, SC 29714
Address City State Zip
(803) 872-4583
Home Phone Work Phone

CTR of Charlotte, Inc.
Employer's Name
298 Porter Rd., Rock Hill, SC 29731
Address City State Zip
Twin City Fire Insurance Company
Insurance Carrier

Jason A. Griggs

(864) 527-3288

Preparer's Name

Phone #

**Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:**

1. It is (admitted) (DENIED) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: _____
2. It is (ADMITTED) (denied) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is (ADMITTED) (denied) that the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is (admitted) (DENIED) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
5. It is (admitted) (DENIED) that notice of injury was given the employer. The reasons for denial are: _____
6. It is (admitted) (DENIED) that the employee needs or is entitled to additional medical care as a result of injury. The reasons for denial are: _____
7. It is (admitted) (DENIED) that the employee is entitled to temporary total disability for the period(s) of: _____
8. It is (admitted) (DENIED) that the employee is permanently disabled. The reasons for denial are: _____
9. It is (admitted) (DENIED) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of **\$668.81** applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: Additionally, Defendants assert a defense based upon §42-11-70. Defendants reserve the right to amend and to assert defenses as they become aware of them.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to Jeffrey T. Eddy, Esquire,
Name

109 Wappoo Creek Drive, Charleston, SC 29412 and Virginia Crocker, Judicial Director, SC WCC, P.O. Box 1715, Columbia, SC 29202
Address

on the 29th day of August, 2012, by ☒ first class mail; ☐ personal service; ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature, Attorney for Defendants

Cheri E. Coon, Certifier

August 29, 2012
Date

Jason A. Griggs
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1023410

Michael W. Dority,	)	
	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
CTR of Charlotte, Inc.,	)	MOTION TO POSTPONE
	)	SCHEDULED HEARING
Employer,	)	
and	)	
	)	
Twin City Fire Insurance Company,	)	
	)	
Carrier,	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; AND
JEFFREY T. EDDY, ESQUIRE, ATTORNEY FOR CLAIMANT

Pursuant to Regulations 67-215 and 67-613, Defendants hereby request an Order postponing the hearing scheduled on February 5, 2013. The grounds for this Motion are as follows:

1. This is a denied claim. Claimant filed a Form 50 request for hearing on August 1, 2012, alleging total disability due to interstitial lung disease/fibrosis. Defendants filed a Form 51 in response.
2. A hearing was previously scheduled for October 5, 2012.
3. The parties executed a Consent Order removing the hearing from the docket on the grounds that additional discovery was needed. Specifically, Claimant's attorney requested to take the deposition of a fact witness, Eddie Glenn. See October 18, 2012 email attached as Exhibit 1.

4. On November 5, 2012 and November 26, 2012, counsel for Defendants requested Claimant's counsel to set forth when he would request a hearing and whether he intended to conduct additional discovery. See emails attached as Exhibit 2.

5. As part of Claimant's medical care, "blocks" from Claimant's lung biopsy were taken and maintained by Carolinas Medical Center, from which slides could be made for pathology review.

6. On December 19, 2012, paralegal for Defendants' counsel held a telephone conference with Sandy Knight at Carolinas Medical Center regarding production of lung biopsy slides. Paralegal for Defendants' counsel faxed a subpoena request to Carolinas Medical Center, which was originally sent on September 6, 2012.

7. On December 20, 2012, Defendants' counsel sent an email to Claimant's counsel requesting identification of additional evidence subsequent to Claimant's recent request for hearing. See email attached as Exhibit 3.

8. On December 21, 2012, paralegal for Defendants' counsel sent Claimant's counsel a voicemail regarding the request for lung biopsy slides, or the "blocks" from which slides could be made, due to the fact that Carolinas Medical Center reported to paralegal for Defendants' counsel that Claimant's counsel had possession of the "blocks" from which the lung biopsy slides had to be made.

9. In late December 2012, the blocks were in the possession of Claimant's attorney, or his expert, Dr. Abraham, to be used as reflected in Dr. Abraham's report that has been submitted as Claimant's APA 1.

10. On December 26, 2012, paralegal for Defendants' counsel sent an e-mail to claimant's attorney regarding need for original "blocks" (lung biopsy material) to be returned to

Carolinas Medical Center in order for duplicate slides to be produced. See email attached as Exhibit 4.

11. On January 8, 2013, Claimant's counsel sent an email that the "blocks" were being returned to the Carolinas Medical Center Pathology Department to be received within 1 or 2 days. See email attached as Exhibit 5.

12. On January 9, 2013, paralegal for Defendants' counsel had a telephone conference with CMC regarding receipt of "blocks", which were not received as of that date.

13. On January 15, 2013, Defendants' counsel received a report from claimant's attorney authored by Dr. Abraham (APA 1). A note at the end of said report stated the "blocks" were being returned to CMC by Dr. Abraham's office.

14. January 15, 2013 was the first date that Defendants were in possession of the expert pathologist report from Dr. Abraham.

15. On January 17, 2013, paralegal for Defendants' counsel held telephone conferences with Carolinas Medical Center in which CMC advised that it had not received the "blocks" for production of slides.

16. On January 18, 2013, paralegal for Defendants' counsel sent an e-mail to claimant's attorney requesting tracking number for return shipment of "blocks". See email attached as Exhibit 6.

17. On January 18, 2013, Defendants' counsel received an email showing correspondence with Dr. Abraham's office regarding their possession of "blocks", returning the "blocks" via FedEx, and the "blocks" not being shipped out until the afternoon of January 17, 2013. See email attached as Exhibit 7.

18. On January 22, 2013, paralegal for Defendants' counsel received information that the "blocks" had been received at Carolinas Medical Center.

19. On January 23, 2013, paralegal for Defendants' counsel prepared and sent an amended subpoena, per Carolinas Medical Center's request, for all materials related to claimant's lung biopsy and testing.

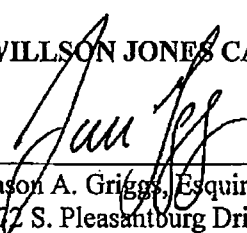
20. Defendants assert that, pursuant to the grounds above and Regulation 67-613, the Commissioner has good cause to postpone the scheduled hearing to allow Defendants to conduct additional discovery and review of Dr. Abraham's report and the "blocks" used in the creation of the report. Due to the circumstances described above, Defendants have been unable to timely procure the "blocks" for review in advance of the scheduled hearing.

21. Given the issues in this case, and the necessity of medical opinion to decide this case, Defendants assert that it is appropriate and necessary to have the "blocks" reviewed by a pathologist to determine whether Defendants may offer medical evidence that necessitates a review of the slides.

For the foregoing reasons, Defendants CTR of Charlotte, Inc. and Twin City Fire Insurance Company move for an Order postponing the hearing set for February 5, 2013.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Jason A. Griggs, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Defendants

Date: January 25, 2013

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1023410
Carrier File #: YZEC 95077
Carrier Code #:
Employer FEIN #:

Claimant's Name: Michael W. Dority, Appellant SSN: 249-11-7660 Employer's Name: CTR OF THE CAROLINAS, INC., Respondent
Address: 1108 Dority Farm Road Address: 298 Porter Road; PO Box 11369
City: Fort Lawn State: SC Zip: 29714 City: Rock Hill State: SC Zip: 29730
Home Phone: (803) 872-4583 Work Phone: Insurance Carrier: Twin City Fire Insurance Company
Preparer's Name: Jeffrey T. Eddy Law Firm: Preparer's Phone #: (843) 795-5666

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 09/17/2010 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see the attached "Grounds of Appeal."

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason A. Griggs, Esquire

address 872 S. Pleasantburg Drive, Greenville, SC 29607

on the 22nd day of August 20 13

by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney for Claimant
Title

jeddylaw@bellsouth.net
Email

8/23/2014
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC Form # 30
Revised 7/13

30

REQUEST FOR COMMISSION REVIEW

GROUND OF APPEAL IN RE: DORITY V. CTR (WCC FILE NO. 1023410)

1. Is finding of fact number 35 (treating pulmonologist's medical opinion is not sufficient to support causation) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) the hearing commissioner excluded Dr. Doty's opinion supporting the claim (APA No. 9, p. 67.1) and (b) Dr. Doty testified claimant's lung disease was caused by his occupational exposures including those at CTR (dep. Dr. John Doty dated 10/03/12, pp. 9-10, 18-19, 21-32, 45, 50, 55-56, 60-61, 79, 81-82 & 88)?
2. Is finding of fact number 38 (regarding Dr. Jerrold L. Abraham) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: it completely ignores the fact that Dr. Abraham (APA No. 1, pp. 1-2) analyzed claimant's actual lung tissue using electron microscopy (SEM) and x-ray spectroscopy (EDS) and found particulate matter comprised of metals to which claimant was exposed at CTR and Springs?
3. Are findings of fact numbers 39 & 40 (regarding the opinions of Dr. Gregory J. Feldman) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: they completely omit Dr. Feldman's opinion that many metals cause lung disease and a pathological finding of particulate matter in the tissue would definitively prove claimant's lung disease was due to his occupational inhalation of dust and fumes (Dr. Feldman dep. dated 10/04/12, pp. 6, 17-18, 20-21, 27-28, 38-39 & 61-62)?
4. Is finding of fact number 34 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant also relies on the opinions of the defendants' retained expert, Dr. Gregory Feldman.
5. Are finding of facts numbers 41 & 42 (regarding Dr. Victor L. Roggli) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) Dr. Roggli did not "analyze" tissue samples from claimant's lung biopsy but merely reviewed existing slides under a light microscope; (b) Dr. Roggli first opined claimant does not have asbestosis when he thought this was an asbestos case; (APA No. 37, pp. 459-464) and (c) Dr. Roggli has authored medical articles stating SEM and EDS are important tools in detecting the types of disease-producing metals found in claimant's lung tissue, and he cites Dr. Jerrold Abraham in support of these statements (APA Nos. 29, 30 & 31, pp. 324-348)?

6. Is finding of fact number 37 (regarding the opinion of Dr. Richard Kradin) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: Dr. Kradin's opinion (APA No. 4, pp. 26-28) is based on his review of the pathology materials (lung tissue biopsy) and any confusion regarding the respective exposures at Springs or CTR does not detract from his opinion that claimant's lung disease was due to his occupational exposures generally?
7. Is finding of fact number 6 (regarding smoking) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the medical evidence (dep. Dr. John Doty dated 10/03/12 at pp. 32-34, 50, 75, 77 & 83) established claimant's occupationally-related pulmonary fibrosis, not smoking, is the cause of his disability?
8. Is finding of fact number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant alleged an accidental injury and/or occupational lung disease as a result of over 30 years exposure/employment and not just exposure "while working for CTR." (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
9. Is finding of fact number 46 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by his employment with CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
10. Is finding of fact number 43 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by the work environment at CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?
11. Is finding of fact number 18 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

12. Is finding of fact number 19 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

13. Is finding of fact number 20 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

14. Is finding of fact number 21 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

15. Is finding of fact number 44 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

16. Is finding of fact number 45 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

17. Is finding of fact number 47 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

18. Is conclusion of law number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

19. Is conclusion of law number 3 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION**

Susan S. Barden, Aisha Taylor and T. Scott Beck, Commissioners

Case (WCC File) No. 1023410

CTR of the Carolinas, Inc. and
Twin City Fire Insurance
Company,

Respondents,

v.

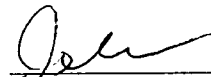
Michael W. Dority,

Appellant.

NOTICE OF APPEAL

Michael W. Dority appeals the undated decision of the Appellate Panel of the South Carolina Workers' Compensation Commission. Appellant received a copy of this decision via e-mail on January 30, 2014.

February 3, 2014



Jeffrey T. Eddy
109 Wappoo Creek Drive, Suite 1-A
Charleston, SC 29412
(843) 795-5666
Attorney for Appellant

Other Counsel of Record:
Jason A. Griggs, Esquire
872 S. Pleasantburg Drive
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Susan S. Barden, Aisha Taylor and T. Scott Beck, Commissioners

Appellate Case No. 2014-000225 (WCC File No. 1023410)

Michael W. Dority, Claimant, Appellant,

v.

CTR of the Carolinas, Inc., et al., Employer, and Twin City Fire Insurance
Company, Carrier, Respondents.

AMENDED NOTICE OF APPEAL

Michael W. Dority appeals the undated decision of the Appellate Panel of the South Carolina Workers' Compensation Commission. Appellant received a copy of this decision via e-mail on January 30, 2014.

Appellant specifies the following grounds in support of this appeal:

1. Is finding of fact number 35 (treating pulmonologist's medical opinion is not sufficient to support causation) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) the hearing commissioner excluded Dr. Doty's opinion supporting the claim (APA No. 9, p. 67.1) and (b) Dr. Doty testified claimant's lung disease was caused by his occupational exposures including those at CTR (dep. Dr. John Doty dated 10/03/12, pp. 9-10, 18-19, 21-32, 45, 50, 55-56, 60-61, 79, 81-82 & 88)?
2. Is finding of fact number 38 (regarding Dr. Jerrold L. Abraham) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of

discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: it completely ignores the fact that Dr. Abraham (APA No. 1, pp. 1-2) analyzed claimant's actual lung tissue using electron microscopy (SEM) and x-ray spectroscopy (EDS) and found particulate matter comprised of metals to which claimant was exposed at CTR and Springs?

3. Are findings of fact numbers 39 & 40 (regarding the opinions of Dr. Gregory J. Feldman) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: they completely omit Dr. Feldman's opinion that many metals cause lung disease and a pathological finding of particulate matter in the tissue would definitively prove claimant's lung disease was due to his occupational inhalation of dust and fumes (Dr. Feldman dep. dated 10/04/12, pp. 6, 17-18, 20-21, 27-28, 38-39 & 61-62)?

4. Is finding of fact number 34 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant also relies on the opinions of the defendants' retained expert, Dr. Gregory Feldman.

5. Are finding of facts numbers 41 & 42 (regarding Dr. Victor L. Roggli) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) Dr. Roggli did not "analyze" tissue samples from claimant's lung biopsy but merely reviewed existing slides under a light microscope; (b) Dr. Roggli first opined claimant does not have asbestosis when he thought this was an asbestos case; (APA No. 37, pp. 459-464) and (c) Dr. Roggli has authored medical articles stating SEM and EDS are important tools in detecting the types of disease-producing metals found in claimant's lung tissue, and he cites Dr. Jerrold Abraham in support of these statements (APA Nos. 29, 30 & 31, pp. 324-348)?

6. Is finding of fact number 37 (regarding the opinion of Dr. Richard Kradin) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: Dr. Kradin's opinion (APA No. 4, pp. 26-28) is based on his review of the pathology materials (lung tissue biopsy) and any confusion regarding the respective exposures at Springs or CTR does not detract from his opinion that claimant's lung disease was due to his occupational exposures generally?

7. Is finding of fact number 6 (regarding smoking) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the medical evidence (dep. Dr. John Doty dated 10/03/12 at pp. 32-34, 50, 75, 77 & 83) established claimant's occupationally-related pulmonary fibrosis, not smoking, is the cause of his disability?

8. Is finding of fact number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant alleged an accidental injury and/or occupational lung disease as a result of over 30 years exposure/employment and not just exposure "while working for CTR." (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

9. Is finding of fact number 46 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by his employment with CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

10. Is finding of fact number 43 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by the work environment at CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

11. Is finding of fact number 18 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

12. Is finding of fact number 19 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

13. Is finding of fact number 20 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

14. Is finding of fact number 21 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

15. Is finding of fact number 44 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

16. Is finding of fact number 45 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

17. Is finding of fact number 47 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

18. Is conclusion of law number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

19. Is conclusion of law number 3 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?



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February 26, 2014

Michael Dority,
Claimant,
v.
CTR of the Carolinas,
Employer,
and
Twin City Fire Insurance
Company,
Carrier/Defendants.

* * * * *

The Commission Hearing before Commissioner Susan S. Barden; Commissioner Aisha Taylor; and Commissioner T. Scott Beck, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 16th day of December, 2013 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

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1 THE COURT REPORTER: Today is Monday, December 16th,
2 2013. This is South Carolina Workers'
3 Compensation case number 1023410. This is the
4 case of Michael DORITY, Claimant, versus CTR of
5 the Carolinas, Employer and Twin City Fire
6 Insurance Company, Carrier. The Appellant is
7 the Claimant represented by Jeff Eddy and the
8 Respondent is represented by Jason Griggs.
9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes in
11 reply. You are requested to argue the grounds
12 of exception and stay within the record.

13 COMMISSIONER BECK: Mr. Eddy?

14 ARGUMENT BY MR. EDDY:

15 MR. EDDY: Thank you. May it please the commission?

16 I represent Michael DORITY, who has several
17 different kinds of metals, unusual metals, in
18 his lung tissue that -- that you don't find in
19 the general population. Copper, aluminum,
20 zinc, tin, iron, nickel, manganese, titanium,
21 among other types of metals. It's uncontested
22 that he worked with and around these metals in
23 his occupation, including at the Defendant's
24 place of employment in Rock Hill, CTR. All of
25 the experts, both for the Claimant and for the

1 Defendant, agree that these metals cause lung
2 disease, in the form of pulmonary fibrosis
3 referred to as pneumoconiosis, dust disease of
4 the lung. There's no dispute but that these
5 metals were -- that there was cutting,
6 grinding, brazing, welding, and other
7 fabrication of these metals at the Defendant's
8 place of employment, at CTR. That no
9 respiratory protection was worn by my client or
10 the other workers there. Dr. Doty is a
11 pulmonologist in Charlotte, who's the treating
12 lung doc. Dr. Richard Kradin is a board-
13 certified pathologist and pulmonologist at Mass
14 General, that teaches at Harvard University.
15 Dr. Gerald Abraham is another expert
16 pathologist at Syracuse University in New York.
17 He is the leading -- the foremost expert in the
18 area of particle analysis in the diagnosis of
19 pneumoconiosis. All three of these doctors
20 believe that Mr. DORITY's lung disease was
21 caused by his occupation. Now, there are two
22 defense experts in this case. One was Dr.
23 Gregory Feldman, he did the independent medical
24 evaluation for the Defendant. And when I took
25 his deposition, the testing on the lung tissue

1 by Dr. Abraham had not yet been done. Dr.
2 Feldman testified that you can't say what
3 causes -- caused his lung condition without a
4 finding of particulate matter and metals in the
5 lung tissue. So we got the tissue sent up to
6 Dr. Abraham and had it tested and he found the
7 multiple, unusual metals that you -- unusual to
8 find in the lung. And so the Defendant got --
9 so anyway, Dr. Feldman, the IME -- defense IME
10 said that the particulate -- finding of

11 particulate matter in the lung tissue, you
12 could say the causation is established with --
13 conclusible. Dr. Roggli -- Victor Roggli, then
14 was retained by the defense to offer author
15 another opinion. And Dr. Roggli, he agrees
16 that these metals cause pneumoconiosis. He --
17 before he got involved in this case, he'd
18 authored some various documents, papers, texts,
19 a paper entitled dust or metal disease, dust
20 disease, it's in my APA, I don't recall it --
21 the exact title of that document. But the
22 point is that he had authored documents that --
23 in which he expressed his opinion that the very
24 types of testing done by Dr. Abraham, electron
25 microscopy, scanning electron microscopy called

1 SEM, and energy dispersive x-ray spectroscopy,
2 EDS. I'll refer to them as SEM and EDS, for
3 shorthand. This type of testing, Dr. Roggli,
4 the other defense expert has written are
5 valuable tools. That's what you do in looking
6 at lung tissue to determine whether or not an
7 individual's pulmonary fibrosis was due to his
8 occupation. Dr. Roggli, before he got involved
9 in this case, authored a paper that I've
10 submitted. Table One to that paper, lists the
11 metals that cause lung disease, the very metals
12 most -- many of which, on that table, were
13 found in my client's lung tissue. What you
14 have here -- I don't get many cases like this,
15 but we have proverbial smoking gun -- smoking
16 guns in the form of different metals unusual to
17 find in someone's lung tissue not found in the
18 general population. The employment that this
19 man had over a 30-year -- in excess of a 30-
20 year period of time, left a metallic
21 fingerprint in his lung tissue. Including
22 metals that he used, he worked with hands-on at
23 CTR. So, you know, that's the good news as a
24 fact finder in this case, this is great news
25 for the commission because you don't have to

1 get bogged down in a lot of, kind of,
2 collateral issues that have been floating
3 around in this case. You don't have to address
4 how much silver soldering or brazing Mr. DORITY
5 did at CTR. You don't have to get into how bad
6 working conditions the atmospheric air
7 conditions at CTR. The Claimant says there was
8 a cloud of smoke. The Defendant says there
9 wasn't. You don't have to worry about that.
10 You don't have to worry about the credibility
11 of the lay witnesses because their testimony
12 all goes to how bad the conditions were in that
13 plant. You don't have to get into issues about
14 whose deposition was taken or whose wasn't
15 taken, or what history was provided this expert
16 or that expert because we have, in this case
17 that you don't usually have in other cases,
18 lung tissue. And not just a needle biopsy but
19 open lung biopsies that were sent to the
20 leading expert in the country, Dr. Abraham,
21 that revealed the smoking guns. So, why are we
22 here? Well, because the -- I think the hearing
23 Commissioner addressed the wrong issue. The
24 defense wants to frame this -- the issue in
25 this case as, did the three-year employment at

1 CTR cause the lung disease. That is not the
2 contention and that is not the law. He worked
3 for Springs Industries for roughly 20-something
4 years and had the exposures there, there's no
5 denying that. And then, his final three years
6 of employment was at CTR where he had the more
7 precise metallic exposure. But the totality of
8 these exposures caused his lung disease. And
9 so we have never alleged that CTR alone caused
10 the lung disease. We just -- the issue first
11 is does he have a -- can he make out a case of
12 a compensable occupational lung disease or an
13 accidental injury under the act. The Mohasco
14 case. On accidental injury we got Hyers and
15 Sturkie versus Ballinger, I've cited them in my
16 brief. The facts make out that case. So then
17 the issue -- only -- the evidence that's a
18 medical question and a medical evidence both on
19 the side of the Claimant and on the side of the
20 Defendant is overwhelming in favor of the
21 Claimant. The only remaining issue is who's
22 liable to pay compensation. And the case law
23 that I've cited, Glenn versus Columbia Silica
24 Sand, Hanks versus Blair Mills, Reese versus
25 CCI, say in cases like this where you have

1 successive employer/carriers, you look to the
2 employer, carrier on the risk at the time of
3 disability, which in this case is CTR. That's
4 why CTR is the Defendant in this case. That's
5 why when we were at the hearing with
6 Commissioner Wilkerson, CTR didn't dispute --
7 didn't, you know -- Commissioner Wilkerson
8 says, should we enjoin Springs here. And
9 Springs was not named because the law is so
10 clear. It's an employment of a kind
11 contributing to the disease; therefore, date of
12 disability, CTR is liable to pay. In Hanks
13 versus Blair Mills, this gentleman, Mr. Hanks,
14 worked in the cotton mills for 30 years, but
15 when he got disabled, the Carrier had been on
16 the risk for 24 days, and the court said that's
17 our law. It sets forth policy reasons behind
18 it, and there are policy reasons behind it.
19 The court said because of a kind of employment
20 contributing to the disease, Commerce Insurance
21 Company, we're sorry. You've only been on the
22 risk four days but you have to pay. Reese
23 versus CCI is even more illustrative. Mr.
24 Reese was a carpenter, had worked in -- as a
25 carpenter in construction for about 20-

1 something years -- 20 years. Then goes to work
2 for CCI. On day three of his employment with
3 CCI he sustains a wrist injury. And the
4 evidence was that vibratory tools caused this
5 type of injury of the wrist and the Court of
6 Appeals said CCI, sorry, you've only got three
7 days on the risk but you pay under our law.
8 And that's CTR in this case. So, I would just
9 close by saying that the record contains what
10 the comp rate is and CTR should be required to
11 pay benefits for a total and permanent
12 disability. Thank you.

13 COMMISSIONER BECK: Thank you, sir. Mr. Griggs?

14 ARGUMENT BY MR. GRIGGS:

15 MR. GRIGGS: Sir, may it please the commission?

16 Obviously, we have disputes that -- to listen
17 to Mr. Eddy, you -- you know, there's no reason
18 to be here. We're here for a reason. And the
19 reason is that CTR is not responsible in this
20 case and I'll tell you why. It comes down to
21 the fact that there's five medical experts,
22 okay, five medical opinions that you can review
23 and all the evidence is there. He retained two
24 experts, I retained two experts and then the
25 treating doctor is Dr. John Doty, who's in

1 Charlotte, North Carolina. He had a doctor
2 from Harvard, a doctor from Syracuse. I had a
3 doctor from Spartanburg and a doctor from Duke
4 and then Dr. Doty is in Charlotte. My two
5 doctors say no. He tries to make it as if Dr.
6 Feldman says yes. Dr. Feldman, in his
7 deposition, said things consistent with what
8 Mr. Eddy said but then we never went back -- it
9 was never clarified back with Dr. Feldman. So
10 it's sheer speculation to say what Dr. Feldman

11 would have said if he was asked again. It's
12 similar to, you know, the commission cannot
13 make a medical finding that's not there. So,
14 it was never asked back to Dr. Feldman, what's
15 your opinion now. So Dr. Feldman's on my side,
16 Dr. Roggli's on my side. He has Dr. Abraham
17 and Dr. Kradin, those opinions are based on
18 incorrect fact. It's laid out in my brief.
19 His own Claimant disputed the information
20 provided to their experts. I've cited cases in
21 the brief that says that the opinions of the
22 expert are only as valid as the facts that they
23 have, similar to that or there about, you can
24 read it in the brief. Dr. Doty is the treating
25 doctor. He was deposed for two and a half

1 hours. You can look through that deposition
2 and find pieces, good for me, good for him.
3 You can go through that deposition, it went
4 back and forth. At page 87 is the last page of
5 the deposition, and he went with "could have
6 contributed". That was the final thing. His
7 employment at CTR could have contributed. Mr.
8 Eddy tried to get him to say did instead of --
9 or did instead of could, and he wouldn't do it.
10 So and I pointed it out in my brief, I cited
11 it. He said it could have contributed, that's
12 not enough. So, I think the medical experts
13 support us. Also, the fact witnesses are
14 important. It's not a situation necessarily
15 that says, hey, you know, the conditions are
16 important, what the witnesses said and what --
17 well, it is important. And the Commissioner
18 made findings that the fact witness they put up
19 and the Claimant were not credible. And that
20 the witnesses that we put up were credible.
21 And that was about the atmospheric conditions,
22 the materials used, the amount of materials
23 used, all that stuff is important and the
24 Commissioner found that my witnesses were
25 credible, that the Claimant and his witness

1 were not credible. That's not even challenged
2 on appeal. As I put in my brief, that's the
3 law of the case because it was put in the Form
4 30 as a contention that those credibility
5 findings were wrong but then it was never
6 briefed. And I've cited case law in my brief
7 that says if you cite something as a ground of
8 appeal then you don't brief it and don't argue
9 it, then it's invalid. It's -- the law of the
10 case stands as to what the Commissioner said.

11 So that's -- goes to that, I think the
12 credibility is important. Also, you have a
13 gentleman, Mr. Dority, who did work for an
14 extended period of time at other places. There
15 is other things that the doctors point to that
16 said could be the cause here. Their own
17 vocational expert said that Mr. Dority has
18 moments where he's not -- his memory is not
19 clear, and that's in their report from their
20 vocational expert that Mr. Dority's memory is
21 not clear. So, his -- it's called into
22 question there. As far as being -- CTR being
23 on the hook, the doctor, Doty, also says in his
24 deposition that there's this thing called --
25 and it's very technical, it's very confusing,

1 there's a lot of acronyms floating around, IPF,
2 which is idiopathic pulmonary fibrosis. And
3 idiopathic as you all mean -- as you all know
4 from idiopathic falls means of unknown cause or
5 really no cause at all, just unexplained. Dr.
6 Doty says, to a reasonable degree of medical
7 certainty to this day, we cannot rule out IPF
8 as the cause. So my argument is pretty simple.
9 Dr. Doty says, CTR could have contributed,
10 that's not enough. Dr. Doty says, you can't
11 rule out IPF to a reasonable degree of medical
12 certainty. IPF means idiopathic. It's
13 explained in the deposition, and it's gone
14 through very lengthy, that idiopathic, you
15 don't know the cause. He says you can't rule
16 that out. This gentleman has a lung problem
17 but is the cause of his lung problem his
18 employment or is it some other cause. And
19 they're saying you can't rule it out. You've
20 got tons of things going on here. The all --
21 doctors all pointed to 60 year of pack smoking.
22 They said that smoking is -- he does have COPD,
23 he does have other things that the doctors
24 indicate that smoking, maybe, is not the -- is
25 not a cause of the IPF or the pulmonary disease

1 that he has. Certainly, it's contributing to
2 some of the disability but it's not something
3 that can be pointed to directly as the cause.
4 But again, you've got five doctors at best, at
5 best, it's three to two in my favor. That's my
6 argument and that's what I believe and that's
7 what I think the evidence shows. And that's
8 the best case for them but I think you could
9 make an argument of this. I've got three and
10 they've got one that's totally flawed if you
11 look at the evidence it's based on. And then
12 the other one, the foremost expert, again, his
13 opinion, I don't think that that's -- nobody's
14 -- you know, that's not testified to or written
15 in stone. You know, he's got the expert he
16 says that examined -- but you can read his
17 report. He's got 300, or something, particles
18 in the lung and my doctor says that those are
19 particles that can be found in the general
20 public as well. There's trace amounts of
21 metals but there's 95 of them that are silica
22 particulate and 95 that are mica and it's in
23 the evidence. But again, I think the case law
24 supports, and the Commissioner was correct in
25 his finding that CTR is not liable for this

1 claim and I would expect and I would
2 respectfully request that his decision be
3 upheld.

4 COMMISSIONER BECK: Thank you, sir. Mr Eddy?

5 REPLY BY MR. EDDY:

6 MR. EDDY: Thank you. Just to, kind of, reply to
7 what he had to say about Dr. Doty, he was
8 deposed for over two hours. And -- you do have
9 to look at his testimony in it's entirety
10 because he did say that one thing at page 87.
11 I've been practicing law long enough to not
12 make a mistake like that but I pushed him too
13 far. Anyway, if you look at his testimony, and
14 you at the -- if you don't want to read the
15 whole thing, the pages that I've cited in my
16 brief, he without -- the whole deposition
17 testified that this man's lung disease was
18 caused by his occupation. This doctor said
19 that before the lawyers ever got involved. If
20 you look at his medical records on day one he
21 was questioning occupational lung disease.
22 Okay. Now -- and in his deposition, he
23 testified it's occupationally related. Page 87
24 was dealing with, again, that red herring issue
25 of this -- was CTR employment alone the cause

1 of the lung disease. And he said it could have
2 been but he clearly says it's occupationally
3 related. But -- in all those other places he
4 says it's due to the occupation and the CTR
5 exposure contributed. And the particle dust
6 exposure at CTR contributed to the overall
7 total lung -- dust burden, in the lungs. So I
8 would just submit that his testimony speaks for
9 itself. Dr. Roggli who he says is one of his
10 two or three on his side, if you -- I made his
11 articles and his text a part of my APA. And
12 you'll -- oh, first of all, Dr. Roggli, they
13 knew he was going to help their case before he
14 even looked at this case. And then he authors
15 a report, says, no he doesn't have asbestosis.
16 Why? Because Dr. Roggli does ordinarily
17 asbestos disease cases. And before he looks at
18 the case, he says no asbestosis. And then he's
19 told, oh, it's not an asbestosis case. So he
20 says, well then, Dr. Abraham is wrong even
21 though he'd written all about Dr. Abraham. And
22 if you'll look at his medical articles, he
23 cites Dr. Abraham, my expert, continuously.
24 Multiple times he cites Dr. Gerald Abraham in
25 support of using SEM and EDF in determining the

1 cause of somebody's lung disease like this.
2 And then IPF is their -- kind of like their
3 last straw. Dr. Roggli cites the IPF article
4 saying he doesn't have asbestosis. IPF by
5 definition, unknown cause. You look -- I made
6 another part of my APA the ATS criteria for the
7 diagnosis of IPF. The number one criteria by
8 the American Thoracic Society to diagnosis IPF
9 is the exclusion of other causes based on the
10 detailed occupational exposure history. Dr.
11 Roggli said it's IPF not asbestosis and cites
12 the ATS article and admits he never had
13 history. So thank you.

14 COMMISSIONER BECK: Thank you. That concludes this
15 proceeding.

16 (There being nothing further, the hearing concluded
17 at 2:00 p.m.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1023410

MICHAEL W. DORITY	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
	)	
VS.	)	
	)	HEARING OF
CTR OF THE CAROLINAS	)	MICHAEL W. DORITY
	)	
EMPLOYER,	)	
	)	VS
AND	)	
	)	
TWIN CITY FIRE AND	)	CTR OF THE CAROLINAS, INCORPORATED
INSURANCE COMPANY	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Michael W. Dority versus CTR of the Carolinas, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 3:09 P.M., Tuesday, March 26, 2013, at Rock Hill City Hall, 155 Johnston Street, Council Chambers, Rock Hill, South Carolina.

PART ONE**COPY****REPORTED****BY****GLORIA DAVIS**

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APPEARANCES

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FOR THE EMPLOYER/CARRIER:

Jason A. Griggs, Esquire
Willson Jones Carter & Baxley, PA
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ALSO PRESENT:

Mr. Mike Hornback

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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STIPULATIONS

Commissioner Wilkerson: Today's date is March the 26th, 2013. We're here in reference to workers' comp file number 0123410. The Claimant is Michael W. Dority; his attorney is Jeffrey T. Eddy. The Employer is CTR of The Carolinas, Incorporated, the Carrier is Twin City Fire and Insurance Company, which is a Hartford Company -- no, Centennial Insurance Company; is that right, Jason?

Mr. Griggs: It's the Hartford.

Commissioner Wilkerson: Okay. That's what I thought. Okay. All right. I don't want to do Centennial if it's Hartford, okay; Jason Griggs is their attorney. The date of accident on the case today is 9/18/2010. The average weekly wage is six sixty-eight, eighty-one (\$668.81); thus the comp rate would be four forty-five, ninety (\$445.90). We're here to determine the issues that are set forth on a Form 50 and 51. I understand this is a denied case. I think we have actually been through the objections on the APA's and -- and actually went through all of those prior to bringing everyone in to start the hearing. So, I'm guessing there are no objections

1 to APA's, jurisdiction, venue or any other item by
2 the moving party --

3 Mr. Eddy: That's correct.

4 Commissioner Wilkerson: -- is that correct?

5 Mr. Eddy: Correct.

6 Commissioner Wilkerson: Okay. Is there any
7 by --

8 Mr. Griggs: That's correct, Commissioner.

9 Commissioner Wilkerson: -- okay. Without
10 objection the Commission's file becomes a part of
11 the record with the exception of self-serving
12 declarations and unstipulated medical reports. At
13 this time I'm going to ask Mr. Eddy if he would
14 please put his client's position on the record and
15 then likewise I'll have Mr. Griggs do the same.

16 Mr. Eddy: Thank you.

17 Commissioner Wilkerson: Mr. Eddy?

18 Mr. Eddy: Thank you. Commissioner
19 Wilkerson, Mr. Dority, Michael W. Dority, is
20 totally and permanently disabled from severe end
21 stage lung disease. He brought this claim based
22 on the treating physician's opinion that it's due
23 to his occupation. In preparing this case for a
24 hearing we sent the pathology materials to an
25 expert at Harvard, who is board certified in

1 Pathology and Pulmonology, Dr. Richard Kradin, who
2 looked at the slides and said, yes, the appearance
3 of this pathology -- it supports his opinion that
4 this -- like Dr. Doty -- is related to the
5 occupation including exposures at CTR. The
6 Defendant then had Mr. Dority sent or seen by
7 Gregory Feldman, a Pulmonologist in Spartanburg.
8 Dr. Feldman said, no, I -- I don't think you can
9 say what the cause of this case is without a
10 finding of particulate matter in the lung tissue.
11 So, we got the lung tissue and we sent it to the
12 leading expert, if not in the world, in the
13 country, a Dr. Gerald Abraham, who is in Syracuse,
14 New York, part of the New York University system,
15 Upstate Medical University. He -- he does
16 analysis of lung tissue, particulate analysis, in
17 the diagnosis of mixed dust pneumoconiosis; dust
18 disease of the lungs. He analyzed the tissue
19 using sophisticated electron microscopy and energy
20 dispersive x-ray analysis and found an unusual
21 number and type of metal particles in the lung
22 tissue that he says clearly indicates that this
23 gentleman's lung disease was occupational in
24 origin including his exposures at CTR; so, that
25 was prior to the hearing that had been scheduled

1 in February. When Mr. Griggs and CTR got that
2 report they said we need more time to get another
3 defense expert. I questioned at the time how they
4 knew necessarily that another defense report was
5 going to support their case but I got the answer
6 to that question when I saw it was sent to Dr.
7 Roggli, who just summarily denied the case. First
8 he said this is not a case of asbestosis, the
9 gentleman doesn't have asbestosis, he has IPF,
10 which is Idiopathic Pulmonary Fibrosis, which just
11 means a scarring of the lung tissue from unknown
12 cause. And when he first issued that report
13 thinking this -- this was an asbestos case he
14 cited a very important article that's a part of my
15 APA, its by the American Thoracic Society and the
16 European Respiratory Society, they issued a joint
17 statement, consensus statement, in 19 -- or in
18 2010, I think, 2000 -- the most recent was 2010.
19 It's a part of our APA and that document says the
20 most important aspect of diagnosing IPF is
21 exclusion of other causes based on a detailed
22 exposure history; that's the first thing you have
23 to do in order to diagnosis IPF. Dr. Roggli
24 diagnosed IPF without having a shred of evidence
25 regarding exposure history; according to the

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1 article that he cited you can't do that. So, when
2 Dr. Roggli was told this is not an asbestos case
3 he then authors another report and says, no, it
4 ain't so. He said the type of particulate matter
5 found by Dr. Abraham, up in New York, is not the
6 type that would cause Pneumoconiosis like Mr.
7 Dority has. Well, fortunately for Mr. Dority Dr.
8 Roggli authored some articles before he knew about
9 this case, and including the one that we argued
10 about a moment ago, its -- well, I skipped over
11 something. I wanted to show you some important
12 parts of Dr. Doty's deposition testimony that's
13 been submitted; he's the treating lung doctor.
14 This is how this case got started. He's in
15 Charlotte, he went to MUSC in Charleston, he's at
16 the Charlotte Medical Clinic and he is the
17 treating doc. And he says, "Do you have an
18 opinion to a reasonable degree of medical
19 certainty as to whether or not his lung condition
20 was likely related to his employment? I think it
21 is more likely that his lung condition is from
22 something other than Idiopathic Pulmonary Fibrosis
23 and I would be most suspicious of an occupational
24 exposure of some sort. Question: Do you think
25 more likely than not it was -- that his work with

1 silver solder at CTR would have contributed to his
2 lung condition? Yes. Would you say that -- what
3 -- what percentage likelihood is it that his
4 occupational exposure is contributed to or caused
5 his lung condition? Sixty-five percent (65%)
6 occupational." This is before Dr. Abraham had --
7 had even found anything in the lung tissue. "So,
8 then, would you agree that Mr. Dority's
9 occupational lung disease was most likely caused
10 by the combined exposures at both Springs and
11 CTR?" He worked at Springs Industries first for
12 many years, okay? Had exposures there; we don't
13 deny that, okay? But then he goes to CTR and has
14 a -- a unique exposure I'm going to tell you a lot
15 about, okay, to metals. And the doctor says,
16 "Yes, it would seem that Fibrosis would take a
17 while to -- to develop; so, yes, I think so. And
18 would you agree that the three (3) years of
19 exposure to the fumes and the dust from the silver
20 solder, the first year and a half actually doing
21 it himself and the second year and a half as a
22 bystander exposure, coming into that plant would
23 have contributed to the total particulate burden
24 in his lungs? Most likely, yes. Question:
25 Assuming that he worked with the silver solder and

1 was exposed to the dust and fumes for a year and a
2 half directly using silver solder and then for a
3 year and a half just coming into that side would
4 you, to a reasonable degree of medical certainty,
5 believe that that would have contributed to his
6 lung disease? Yes." All right. So, anyway, I
7 was talking about Dr. Roggli, the only person here
8 who says it ain't so but he authored and -- and he
9 -- and what does he say? He says the type of
10 particulates found by Dr. Abraham would not likely
11 have caused this disease but he wrote an article
12 before he saw this case and it's in -- its -- its
13 APA pages 324 through 327, entitled "Metal Induced
14 Lung Disease". Table one (1), if you'll read the
15 article it refers to Table One (1), these are the
16 types of metals that cause Pneumoconiosis and Dr.
17 Abraham found several of these metals in this
18 man's lung tissue including: chromium, copper,
19 nickel, titanium, zinc -- I don't know if he found
20 cadmium it's -- if it was in the plant -- he found
21 silicone, he found aluminum, he found iron; he
22 found all these metals or most of these metals in
23 this man's lung tissue. That's -- that's what
24 enables him to say that this is not IPF. IPF by
25 definition is you exclude other causes; this is

1 the other cause, okay? So, the medical evidence
2 is -- oh, and a couple of other things. Dr.
3 Roggli also cited in his first report a chapter
4 that he wrote, its entitled "Pneumoconiosis
5 Mineral and Vegetable", and in that chapter he
6 talks about the importance of the very thing that
7 Dr. Abraham did in this case and that's the SEM,
8 the electron microscopy, and the EDS, the energy
9 dispersive x-ray analysis. Dr. Roggli, when he
10 wrote that chapter, before he knew anything about
11 this case said, these are the tools that you use
12 to look for these metal particulates in the lung
13 tissue in the diagnosis of mixed dust
14 Pneumoconiosis. And do you know what he did? He
15 cited Dr. Abraham's article. He -- he cited six
16 (6) articles by Dr. Abraham, the foremost expert,
17 and one (1) of them was Dr. Abraham's article
18 setting forth the criteria for the pathological
19 diagnosis of mixed dust Pneumoconiosis. So,
20 before he knew anything about this case he was
21 writing articles and chapters in text books that
22 fully supports Mr. Dority's claim. Something else
23 he wrote in the chapter is how important it is to
24 take a detailed work history and exposure history;
25 he didn't have any of that in this case. He just

1 immediate said -- immediately said, no, it ain't
2 so, even though he'd written these articles that
3 totally directly contradict his opinion in this
4 case. So, you know, like I've said all along, the
5 medical turns -- in this case turns on the medical
6 evidence, which fortunately fully supports Mr.
7 Dority's claim. But I can't skip over completely
8 the work conditions at CTR, that their own defense
9 expert described as pathetic. The Safety Director
10 testified, deplorable, clouds hanging in the air.
11 That's why I was so hot and bothered about this --
12 this bogus industrial hygiene report where they
13 open up all the doors and they put one (1) guy in
14 -- at -- at a work station doing some soldering
15 totally unlike what happened in the plant when Mr.
16 Dority was working there and then crank out this
17 -- this self-serving report. They didn't do
18 exposure data, employee exposure or air
19 monitoring, when it was important, when the cloud
20 of dust and fumes was hanging in the air; Mr.
21 Schumach will testify to that as well. Just to
22 finish up, there is a couple of kind of --

23 Commissioner Wilkerson: You've got an hour
24 and a half.

25 Mr. Eddy: -- what?

1 Commissioner Wilkerson: You all can take it
2 all telling me --

3 Mr. Eddy: I --

4 Commissioner Wilkerson: -- but go ahead
5 you've got an hour and a half.

6 Mr. Eddy: -- I -- how long -- am I taking
7 too long?

8 Commissioner Wilkerson: Oh, I didn't -- take
9 as long as you need --

10 Mr. Eddy: That's right.

11 Commissioner Wilkerson: -- I'm just saying
12 we can resume --

13 Mr. Eddy: Well, I'm trying to hurry.

14 Commissioner Wilkerson: -- the case another
15 day --

16 Mr. Eddy: All right.

17 Commissioner Wilkerson: -- but I'm going to
18 try to get as much as I can in because they will
19 run me out of here about five o'clock.

20 Mr. Eddy: Okay. So, Your Honor, the --

21 Mr. Griggs: Okay. I understand.

22 Mr. Eddy: -- the factual data is
23 overwhelming in his -- in his support of his
24 claim. And the legal issues also are in his favor
25 because the legal issues are not was the CTR

1 employment the sole cause of the injury or the
2 disease; the question is, first, does he have an
3 occupational lung disease within this -- the
4 jurisdiction of the Workers' Comp Commission and
5 then if -- and that's based on the Springs
6 exposure and the CTR exposure and then if the
7 answer to that question is yes, and I think is a
8 -- it is a resounding yes based on the medical
9 evidence, then the question becomes, well, who is
10 liable to pay? And the case law is clear, we've
11 got Glenn versus Columbia Silica Sand, the seminal
12 case by the Supreme Court on -- in this area says
13 in cases like this where you have successive
14 employers and successive insurers you look to the
15 date of disability if the employment was of a kind
16 contributing to the disease, okay? And clearly
17 here not only was it of a kind contributing to the
18 disease the -- the particles found by Dr. Abraham
19 shows that the employment at CTR left a
20 fingerprint, a fingerprint in this man's lungs.
21 And you compare what Dr. Abraham found with what
22 he was exposed to at CTR, the CTR employment left
23 a fingerprint in his lung tissue.

24 Commissioner Wilkerson: And I said -- I
25 think you said earlier he was employed there three

1 (3) years; is that --

2 Mr. Eddy: Right.

3 Commissioner Wilkerson: -- okay. I'm fine.

4 Mr. Eddy: From July of 2007 until September
5 of 2010.

6 Commissioner Wilkerson: Okay. That's fine.
7 I had --

8 Mr. Eddy: A little over three (3) --

9 Commissioner Wilkerson: -- I think that's
10 three (3).

11 Mr. Eddy: -- a little over three (3) years.

12 Commissioner Wilkerson: Okay. I'll add that
13 in my notes here.

14 Mr. Eddy: And so -- and then there's another
15 case, Hanks versus Blair Mills, which talks about
16 how it's date of disability controls liability,
17 okay? In Hanks versus Blair Mills the company
18 that had to pay Mr. Hanks had been on the risk for
19 twenty-four (24) days and the evidence -- the
20 evidence was that for that twenty-four (24) day
21 period of employment there was no -- the exposure
22 caused no measurable damage but, nonetheless,
23 because we are a --

24 Commissioner Wilkerson: Last injurious
25 exposure.

1 Mr. Eddy: -- last injurious exposure state

2 --

3 Commissioner Wilkerson: Right.

4 Mr. Eddy: -- Geathers and Hanks, that -- the
5 -- the -- the carrier on the risk for only
6 twenty-four (24) days had to pay the entire claim
7 and -- even though there was no measurable damage
8 during that period of time because that's when the
9 disability occurred. Here -- here the -- if -- if
10 the CTR exposure wasn't the sole cause, because we
11 know it left a fingerprint in his lungs, it was
12 certainly the -- the substantial contributing
13 factor. And so, the case law makes it clear that
14 the CTR employer and its carrier is liable to pay
15 Mr. Dority benefits. Mr. Dority was a cigarette
16 smoker up until the time he got sick. They did
17 find a mild amount of Emphysema in the lung tissue
18 on the pathology but the physicians say that that
19 doesn't have anything to do with his problems.
20 The treating lung doc says smoking doesn't cause
21 Interstitial Lung Disease, Pulmonary Fibrosis; Dr.
22 Doty testified to that. That's his problem,
23 Interstitial Lung Disease or ILD for short, okay.
24 The interstitial lung disease, which is a
25 Pneumoconiosis, dust disease of the lungs, is

1 what's causing his problems. It's -- it's caused
2 a severe decrease in his diffusing capacity, in
3 the -- in the ability of his lungs to -- to get
4 oxygen into the blood. He can't walk to the
5 mailbox. We almost didn't get him in here today.
6 He has a severe impairment and it's due to his
7 Interstitial Lung Disease that's got nothing to do
8 with smoking. Dr. Doty testified that the type of
9 impairment you get from smoking or Emphysema,
10 COPD, is an obstructive defect that you measure on
11 air flow, which is you breathe into the -- you
12 breathe into the tube, they measure FEV1, that's
13 Forced Expiratory Volume in one (1) second; how
14 much air can you blow out in the first second.
15 And if that's decreased then you've got some
16 impairment due to Emphysema or COPD. And his is
17 not increased, his is within normal limits; it's
18 two point eight (2.8) liters. Dr. Doty testified
19 that before Emphysema would cause a -- an
20 impairment requiring oxygen that FEV1 would be
21 down to one (1) liter; his is almost three (3)
22 times that. So, smoking is a red herring if it's
23 raised in this case; it's got nothing to do with
24 -- with this case. Just to go back to the Springs
25 issue or if it's -- if they're going to make an

1 issue of it, the fact is that he never had any
2 breathing problems when he worked for Springs, he
3 was never diagnosed with any kind of problems,
4 never short -- any shortness of breath. He had --
5 they had annual breathing tests there; this was a
6 -- a more -- this was a place where industrial
7 hygiene was actually considered. And his
8 breathing tests were always normal; he never had
9 any problems. He was fine when he went to work at
10 CTR; it wasn't until after three (3) years of CTR
11 that he became disabled. Another kind of issue
12 floating around in this case that was probably
13 attorney created and I'll take responsibility for
14 it, was whether or not -- well, the first half the
15 period of time that he worked there was on the
16 final line side. The principal job was as a
17 Brazer or Solderer; they use silver solder
18 containing zinc, copper, tin, cadmium, silver to
19 -- to weld together all this pipes -- brass,
20 copper, stainless steel -- that they would cut and
21 he -- his primary job was soldering these pipes
22 together. At some point during discovery we got
23 into a -- an issue about whether that's all he did
24 or whether he had some ancillary duties. Well, if
25 you look at his deposition testimony he made it

1 clear that that was his primary job but he did
2 other things like: Build racks, help assemble
3 racks, he had to do sandblasting; there was also
4 found silica particles in his lung tissue. He
5 had to mount legs on frames. He had to make
6 aluminum frames where he would actually sand and
7 drill aluminum; they found aluminum in his lung
8 tissue. And -- and so, he testified that even
9 though his main job was that silver solder for the
10 first year and a half, he -- he testified that --
11 that he did other things. I just -- just want to
12 show you, the last part of the APA submissions are
13 actually photographs of the slides that Dr.
14 Abraham prepared and I'm not -- I can't tell you
15 without looking at his report whether this is from
16 electron microscopy or light microscopy and there
17 is a bunch of these photos, I just picked one (1).
18 This is how they know he has a mixed dust
19 Pneumoconiosis or one (1) of the ways because the
20 -- a -- a typical pathological finding of mixed
21 dust Pneumoconiosis is they find what's called a
22 dust macula; that's short for dust in the
23 macrophages. Macrophages are cells in the lung
24 that gobble up foreign material; they attack
25 foreign material and sometimes they can't digest

1 it all, particularly when it's like an asbestos
2 fiber that's indestructible or iron particles that
3 are also hard to get rid of. And Dr. Abraham find
4 -- found all these dust particles in these Pac Man
5 cells, I call them, in fibrotic areas of the
6 lungs; so, as a result of all this stuff he
7 breathed in at CTR and -- and I'll say and at --
8 at Springs too, maybe he got predisposed, it
9 doesn't matter within the law, this is what put
10 him over the edge, clearly. And there is a bunch
11 of these photos and if you look at this and you
12 look -- take a -- even a cursory review of the
13 medical evidence and its impressive; it -- it
14 really is. So, you know, I -- I know CTR feels
15 strongly about this case, they have defended it
16 like I haven't seen in twenty-eight (28) years of
17 practicing law; I'm not really sure why. We're
18 not alleging negligence. We don't -- we're not
19 saying that CTR is a bad company; we're just
20 saying the facts under the -- the facts in this
21 case and the law when applied requires that they
22 pay this man. And so, that's -- that's all I have
23 to say at this time.

24 Mr. Griggs: Commissioner, if I could --

25 Commissioner Wilkerson: Yes, sir.

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1 Mr. Griggs: -- just address a couple of
2 points that Mr. Eddy said. I -- I don't -- we've
3 got to be careful when we're doing our opening
4 statements if we're actually testifying or just
5 recounting the evidence because Mr. Eddy obviously
6 knows a lot about this stuff but I just would put
7 on the record that I think he -- that -- that some
8 of the stuff came close to almost testifying
9 himself as to what's going on here. But this case
10 is also factual and medically driven, okay? And
11 the fact of the matter is, is that we believe that
12 the evidence will show that this, you know,
13 hellish picture of a work environment that they're
14 trying to create is just not the case, okay? So,
15 that's the first thing. Factually, if you believe
16 that this is just not the case then a lot of this
17 evidence is based on representation to experts
18 that this thing is just a -- a hell hole, okay?
19 Pardon the language. And if you don't agree after
20 listening to everything here that that's the case
21 then all the evidence that they've gathered has to
22 be looked at with a bit of a grain of salt, okay?
23 So, that's one (1) thing. And as far as -- he
24 said that the Safety Director, former Safety
25 Director, Mr. Glenn, testified the conditions were

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1 deplorable, I would just point out that when that
2 statement was made in doctor -- in Mr. Glenn's
3 deposition -- and there's an objection and you'll
4 read it -- it's -- it's on a leading question that
5 Mr. Eddy asked him, he said, "In some notes of
6 conversation I've taken with you over the past
7 several weeks you've described the -- the -- the
8 conditions as deplorable; isn't that right?" This
9 was his own -- this was his own witness, you can't
10 lead your own witness; so, I made an objection on
11 the line of questioning, okay? He had talked to
12 Mr. Glenn umpty-ump times because he said himself,
13 "The conversations I've had with you over the past
14 several weeks, do you still agree with this", what
15 you told me out of court. So, I would just say
16 look at that with a grain of salt. As far as --
17 and I'm going to get to my position on the medical
18 evidence but as far as Dr. Roggli goes, Mr. -- Mr.
19 Eddy could have deposed Dr. Roggli. He could have
20 asked him all this stuff about test books and all
21 this stuff about, you know, testifying for
22 Defendant, everything that he said he could have
23 deposed him and asked him that; he -- he did not
24 do that, he did not do that. So, anything that
25 he's trying to say about Dr. Roggli is not

1 evidence, that's just his opinion; that's not
2 evidence it's opinion in this case. And as far as
3 the recent Supreme Court case, the Burnett case, I
4 know you're probably familiar with, it took to
5 task a Commissioner for going too far and looking
6 at reports and looking at MRI's and looking at
7 things and trying to make a -- draw a conclusion.
8 I would represent that in this case reading
9 articles and going back and looking at the report
10 from Dr. Roggli is kind of the same thing, you
11 know, you're trying to make -- you're trying to
12 draw your own medical conclusion from two (2)
13 different pieces because that's what the
14 Commissioner did in Burnett that the Supreme Court
15 took issue with; they looked at two (2) different
16 MRI's and compared them and said, hey, wait a
17 minute, there's some differences here. What about
18 this? What about this? And they made findings
19 according to that. So, I think that we've got to
20 be careful as to calling Dr. Roggli out too much
21 by trying to compare and contrast things in the
22 reports because, you know, that's stuff that all
23 -- that all could have been gathered in a
24 deposition of Dr. Roggli, which, again, we had set
25 for yesterday, which was taken off the table by

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1 the Claimant's counsel in this case. As far as
2 the articles are concerned, you know, I know you
3 will read the entire articles; I mean, he's done a
4 good job of pulling up one (1) table here. The
5 issue here is that there's -- there's particulate
6 matter that has been found, apparently by Dr.
7 Abraham, within the lungs but where did all that
8 particular matter come from; where did it come
9 from? We've got a bunch of stuff -- a bunch of
10 work at Springs where the actual things that he
11 found in the lungs were there, okay? And did it
12 all -- did it come from CTR? If the conditions
13 are not deplorable, if you don't find them
14 deplorable or if you don't think they're as bad as
15 they're trying to make out to be then we, you
16 know, we have a -- a problem there.

17 Commissioner Wilkerson: Do you think Springs
18 ought to be enjoined?

19 Mr. Griggs: No. No.

20 Commissioner Wilkerson: Well --

21 Mr. Griggs: No, I don't -- I just don't
22 think that that's --

23 Commissioner Wilkerson: -- no, I -- I don't
24 disagree.

25 Mr. Griggs: -- I don't --

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1 Commissioner Wilkerson: Yes.

2 Mr. Griggs: -- I think that under the law, I
3 mean, if you find that -- that it's CTR, its CTR.
4 I don't --

5 Commissioner Wilkerson: No, I understand.

6 Mr. Griggs: -- I don't disagree with the way
7 that he presented the case to you.

8 Commissioner Wilkerson: Yes. Okay, good. I
9 don't --

10 Mr. Griggs: The Springs -- the -- the --

11 Commissioner Wilkerson: -- I just wanted to
12 make sure it wasn't a --

13 Mr. Griggs: -- the Hanks and the Silica --

14 Commissioner Wilkerson: -- yes.

15 Mr. Griggs: -- I mean, I don't disagree with
16 that.

17 Commissioner Wilkerson: Okay.

18 Mr. Griggs: But there's factual problems as
19 well here. As far as the -- well, he mentioned
20 the breathing tests from Springs, we don't have
21 those; so, you know, what that -- for that's worth
22 that's a small thing. Dr. Doty is the treating
23 physician, okay? Dr. Doty is based in Charlotte,
24 North Carolina. He's the only doctor in this case
25 that offered an opinion that was not retained by

1 either me or Mr. Eddy. Dr. Doty was deposed for
2 two (2) hours -- two (2) hours and fifteen (15)
3 minutes, I may have said two and a half (2 ½); I
4 think the deposition shows two (2) hours, fifteen
5 (15) minutes. There are two (2) reasons that I
6 believe Dr. Doty's opinion does not provide the
7 evidence they need, okay? And you can almost take
8 doctor -- I mean, you can -- if you take a two and
9 a half (2 ½) hour deposition I -- you know, you
10 can pick -- you can pick lines here and there and
11 you can draw up a demonstrative evidence exhibit
12 to show you and read off to you. The main things
13 that Dr. Doty said that I think supports my case
14 of why this is not compensable is Dr. Doty said at
15 the end of the deposition, at page 87, okay, and
16 88, he said that he could -- to a reasonable
17 degree of medical certainty he could not rule out
18 IPF; that's what he said, he could not rule out
19 IPF and IPF is Idiopathic Pulmonary Fibrosis. And
20 as you read Dr. Doty's deposition and -- and all
21 the other -- probably some of the material he has
22 provided you with, Mr. Eddy, Idiopathic Pulmonary
23 Fibrosis is a lung disease but of unknown cause,
24 it's the same thing as an idiopathic fall;
25 idiopathic means of unknown origin. And Dr. Doty

1 said at the end of the deposition, regardless of
2 whatever else he said, he said to a reasonable
3 degree of medical certainty I can not rule out
4 IPF; he said it as clear as day. He said he could
5 not rule it out and it's at page 87, I'll cite it;
6 you're looking confused, at number 10.

7 Mr. Eddy: Well -- well, why is that
8 relevant?

9 Mr. Griggs: I didn't --

10 Mr. Eddy: I'm sorry; I interrupted you.

11 Mr. Griggs: -- did you interrupt --

12 Mr. Eddy: I apologize.

13 Mr. Griggs: -- did I interrupt you?

14 Mr. Eddy: I apologize.

15 Mr. Griggs: It's relevant -- and -- and I'll
16 just do an answer. It's relevant because you
17 can't rule it out to a reasonable degree of
18 medical certainty; it's still on there. Dr. Doty
19 essentially said we don't know what he has; I
20 can't rule this out to a reasonable degree of
21 medical certainty. IPF is Idiopathic Pulmonary
22 Fibrosis, if it's still on the table and you can't
23 rule it out to a reasonable degree of medical
24 certainty, then its still -- then that's what it
25 could be still, okay? And that's to a reasonable

1 degree of medical certainty. The second thing is
2 this thing about working at CTR. Mr. Eddy asked
3 him a question, at page 87, line 21, and he said,
4 "I just want to make sure I understand what you
5 mean by that. Would you agree that the CTR work
6 contributed to his lung disease?" Dr. Doty said,
7 "Could have contributed, yes." Then Mr. Eddy
8 asked him again, "Assuming he worked with the
9 silver solder and exposed to the dust and fumes
10 for a year and a half and then for a year and a
11 half coming into that cite" -- I think this is on
12 his evidence -- "Would you believe it contributed?
13 Yes." He said thank you and ended his questions.
14 And then I said -- I picked up on what Dr. Doty
15 said back at line number -- number 23, where he
16 said could have and I said, "Could have
17 contributed or did?" And the doctor said -- well,
18 Mr. Eddy objected first and then the doctor said,
19 "I'll go with could have contributed." That's the
20 final word in the deposition.

21 Mr. Eddy: Jason, no, it's not.

22 Mr. Griggs: Before -- Jeff -- Jeff --

23 Mr. Eddy: I'm sorry.

24 Mr. Griggs: -- Jeff.

25 Commissioner Wilkerson: Yes.

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1 Mr. Griggs: Before he got up and stormed out

2 --

3 Mr. Eddy: There is a rule of --

4 Mr. Griggs: -- when you asked him again.

5 Mr. Eddy: -- there is a rule of completeness
6 and --

7 Mr. Griggs: Well, he's going to read it.

8 Commissioner Wilkerson: I'll read the whole
9 deposition.

10 Mr. Griggs: He's going to read it.

11 Commissioner Wilkerson: I'm going to read
12 the whole thing.

13 Mr. Griggs: Well, he got up --

14 Mr. Eddy: -- but then --

15 Mr. Griggs: -- and stormed out after --
16 okay, that's fine.

17 Mr. Eddy: -- but then he -- but then he
18 comes back in the room and he says --

19 Mr. Griggs: Okay.

20 Mr. Eddy: -- "I mean, I don't -- I mean,
21 it's not up to me to decide who gets sued here;
22 all I can tell you is that I don't think that his
23 clinical course goes with IPF; there's something
24 else going on here." Okay.

25 Mr. Griggs: You can read the entire

1 deposition.

2 Commissioner Wilkerson: I'm going to read
3 the entire thing.

4 Mr. Griggs: But after two and a half (2 ½)
5 hours, almost, he says I'll go with contributed.
6 My position is I don't have a burden here, I don't
7 have to push back, I don't have a burden; he's got
8 to meet the burden.

9 Commissioner Wilkerson: That's fine.

10 Mr. Griggs: And could have does not meet the
11 burden, okay? Dr. Kradin, Dr. Kradin is their
12 expert retained in this matter; he's in Boston,
13 Massachusetts. It doesn't really matter because
14 Dr. Roggli did a records review too. Dr. Feldman
15 saw him. Dr. Kradin or Krydin never saw the
16 Claimant; he just did a records review and that's
17 fine, that's how these cases are generally tried.
18 But Dr. Kradin's report -- because it's important
19 what you put in these reports and Dr. Kradin's
20 report should be viewed with a grain of salt for
21 two (2) reasons; it's -- it's based on incorrect
22 facts. He says -- it says in there, he soldered
23 eight (8) hours a day, five (5) days a week, and
24 that's just not factual and the -- the evidence
25 will bear this out. Mr. Glenn, their own fact

1 witness that they deposed in this matter, Eddie
2 Glenn, I asked Mr. Glenn the exact same question.
3 I asked him at page -- and I'll -- I'll give you
4 the page because I think this is important. I
5 asked him at page 98, when I -- when I asked Mr.
6 Glenn questions. This is what Dr. Kradin is
7 basing his report on, okay? And I asked him at
8 page 98, I said, "If the statement was made Mr.
9 Dority soldered forty-eight (48) hours a week with
10 no ventilation is that a misrepresentation? Do
11 you solder without no -- do you solder that long?"
12 He says, "No, he did not, that's inaccurate." He
13 didn't solder for the length of time that was
14 represented to Dr. Kradin; so, I think his report
15 should be viewed with a grain of salt. Dr.
16 Abraham is an expert they retained in New York; he
17 performed records review, analyzed the tissues,
18 did the microscope work from the biopsy and
19 offered the opinion. And his opinion is, "His
20 exposure is to a multitude of different toxic dust
21 particulates over his working career, including at
22 CTR, contributed to the development of his
23 pulmonary lung disease, Pulmonary Fibrosis." Take
24 it for it's worth, you know, that's -- that's why
25 we're here. He says that his exposures to a

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1 multitude of different toxins, including CPR --
2 CTR contributed, okay? And I don't know if there
3 is a direct cause problem with that statement but
4 he says contributed; the language in the Act says
5 you've got to find that it's a direct, you know,
6 direct cause and he says that the pulmonary -- the
7 exposures contributed and I -- I don't know if
8 that's enough for the direct cause; that's the
9 only thing with Dr. Abraham. Dr. Feldman is an
10 expert that I retained; he's in Spartanburg. He
11 saw Mr. Dority face-to-face and also reviewed the
12 records and I will point out -- and you'll read
13 Dr. Feldman's deposition -- but Mr. Eddy spent an
14 inordinate -- spent some time trying to discredit
15 Dr. Feldman and -- and accuse him like he has
16 testified -- like he's represented of being a -- a
17 hack and that didn't go over too well and you can
18 read what doctor -- what Dr. Feldman and how he
19 backs that up. He -- you know, he took -- takes
20 real issue with that and he takes issue with
21 doctor -- with Mr. Eddy calling him out and trying
22 to say that he was a bought opinion. In fact, he
23 tells Mr. Eddy I think your client is a nice guy,
24 I'll help him out in any way I can, if he needs
25 anything he can come see me; I'm not a bought --

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1 I'm not a bought -- he tells him straight out,
2 this is not a bought opinion. He makes a big deal
3 about Dr. Feldman and what he's saying that if you
4 find particulates -- if you find some particulate
5 matter then maybe we're not here -- we can
6 reconsider but that wasn't done, okay? That
7 wasn't done. We didn't go back to Dr. Feldman and
8 say, hey, look. Look at this, here's what Dr.
9 Abraham says he's found; what do you think about
10 that? What he did try to do is the same thing he
11 did with Dr. Doty, he sent a -- a questionnaire to
12 Dr. Feldman trying to get him to clarify and
13 strengthen his opinion; he sent it to February
14 19th, 2013. He doesn't have to copy me but I
15 wasn't copied on it, okay? This is, again,
16 another doctor we had deposed back in October and
17 now on February of '13, he's trying to send him a
18 questionnaire. Dr. Feldman's office emailed it to
19 me and said, hey, look, what do you do with this?
20 And I -- and it's in the APA. I said, I can
21 either tell you to respond or not to respond; if
22 you do want to respond, here's is what I got from
23 Dr. Roggli. And I just said, you can do whatever
24 you want to do. And then as soon as I sent that
25 back, and I copied Mr. Eddy on it, Mr. Eddy said

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1 disregard my request. So, Dr. Feldman's opinion
2 still does not support his causation, okay?
3 Finally, we've got Dr. Roggli, we've talked about
4 him a lot; he doesn't support it. His first
5 report mentions asbestosis but also mentions other
6 things. It says, "This report does not -- this
7 case does not demonstrate futures of any
8 recognized Pneumoconiosis, the most appropriate
9 diagnosis is IPF with some discordant features."
10 And that -- that's what he talks about. So, it's
11 not clear -- it's not just a standard asbestosis
12 letter as been led to believe. Finally, there's
13 some -- this case was -- was driven by, driven by,
14 driven by silver solder; that was the bad -- that
15 was the culprit for most of the time but Dr.
16 Abraham in his report that -- it's the last report
17 -- no, next to the last -- Dr. Abraham is the last
18 report they got. Dr. Abraham starts talking about
19 aluminum a lot, okay? And I -- and I believe that
20 the facts will bear out that aluminum was just not
21 something that was -- that was regularly used; it
22 was used on a rare occasion by Mr. Dority as far
23 as cutting and sawing and using the aluminum in
24 that fashion. It is noted by Dr. Kradin that he
25 used at Springs all of these things that were

1 found in his lungs: Aluminum, steel, lead,
2 cadmium, nickel. So, he used extensive welding --
3 he did all this stuff at Springs. He didn't use
4 aluminum extensively at CTR. I -- I don't know
5 how you can say that the stuff that's in his lungs
6 is from CTR. And I believe that you've got five
7 (5) doctors to look at, three (3) -- two (2) of
8 them are deposed, one (1) of them is the treating
9 physician, the other two (2) are people that we
10 went out and got. And I believe if you look at
11 Dr. Doty's deposition at page 87, line 10 through
12 13, and page 87 through 88, that you'll find in
13 our favor. Mr. Glenn, again, is their fact
14 witness; he doesn't support some of the history
15 given to the doctors. He's pretty clear that the
16 air there is -- is clear most -- by far and away
17 the majority of the time of the year that there is
18 no fog at all the majority of the year and we're
19 going to take issue with his characterization just
20 to the other year and then -- other parts of the
21 year. And then, the testing that was done, for
22 what's it worth, I know they have an -- not an --
23 I know they had an objection and it's more of a,
24 kind of, take it with a grain of salt but the
25 testing that was done is representative of a day,

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1 a normal day, and we believe that as far as the
2 testing is concerned it was done by a reputable
3 Industrial Hygienist and -- whose CV you have --
4 and it came back as being below the OSHA
5 permissible exposure levels, way below the
6 permissible exposure levels.

7 Commissioner Wilkerson: And my
8 understanding, that's just a one (1) day report?

9 Mr. Griggs: I -- that -- that's a one (1)
10 day report.

11 Commissioner Wilkerson: Okay. That's fine.

12 Mr. Griggs: That -- yes, I don't have any --
13 you're right.

14 Commissioner Wilkerson: No, I understand.
15 No, I just -- yes.

16 Mr. Griggs: But it came back as being below
17 --

18 Commissioner Wilkerson: That's fine.

19 Mr. Griggs: -- so, that's -- that's what we
20 do with that and that's our case. We believe that
21 the five (5) medical doctors, two (2) clearly --
22 two (2) that support them that were retained
23 opinions, one (1) of them is based on very flawed
24 facts, two (2) support me and I believe the
25 treating physician supports us as well based on

1 the deposition.

2 Mr. Eddy: Could I have ninety (90) seconds
3 of rebuttal?

4 Commissioner Wilkerson: You can have as long
5 as you all take --

6 Mr. Eddy: I --

7 Commissioner Wilkerson: -- you all --

8 Mr. Eddy: -- I'm going to make it quick.

9 Commissioner Wilkerson: -- you all --

10 Mr. Eddy: I'm going to make it quick.

11 Commissioner Wilkerson: -- but before we
12 start I'm going to take a bathroom stop.

13 Mr. Eddy: This is Dr. Feldman, their IME,
14 "would it be important to you as to the levels of
15 concentration he was exposed to silver, tin, zinc,
16 cadmium? Yes. If it would be a Pathologist's
17 report a particulate matter in his lungs it would
18 be extremely important but the Pathologist doesn't
19 describe any of that. So, if you have a high
20 concentration in the air and no particulate matter
21 in lung you can't connect it? The only way to
22 connect that is if the Pathologist described
23 particulate matter seen in the biopsy; that
24 becomes extremely important." Okay. And then he
25 goes on to say, "Do you know what he did? Yes.

1 He was exposed to massive stuff, bad stuff. I
2 can't tell what caused it, okay, because it's
3 impossible unless you see in the lung particulate
4 matter like welders." And he goes on -- and he --
5 he says it a number of times in just as definitive
6 a manner as he did there. Dr. Roggli, I don't
7 need to take his deposition; if you read what he
8 wrote before he saw this case I didn't need to
9 take it. Okay. Dr. Feldman, I did send him a
10 request for him -- I -- you know, because he's
11 testified if you find particulate matter in the
12 lung tissue what -- he -- he testified we wouldn't
13 be sitting here arguing. So, I got -- I sent the
14 lung tissue off to the expert, they found a ton of
15 unusual type and level of particulate matter; so,
16 I wanted to see what Dr. Feldman had to say
17 because I -- he'd already said it, really. And
18 so, what happened was, Mr. Griggs said, well, if
19 you're going -- if you're going to reply I want
20 you to also review Roggli's article and your two
21 hundred (200) page deposition and send Mr. Eddy
22 the bill. That's when I said -- that's when I
23 said, never mind because I already knew what he'd
24 -- I already had his opinions. And then, his
25 characterization of -- of Mr. Glenn's testimony, I

1 -- I can't agree with and I would just ask you to
2 read the deposition testimony of their Safety
3 Director because --

4 Commissioner Wilkerson: And he's not here to
5 testify, right?

6 Mr. Eddy: -- no, because he's up in
7 Tennessee.

8 Commissioner Wilkerson: That's okay.

9 Mr. Eddy: Okay?

10 Commissioner Wilkerson: I just -- I've got
11 the deposition here.

12 Mr. Eddy: But see, it's so important, and
13 I'll close with this --

14 Commissioner Wilkerson: That's Feldman.

15 Mr. Eddy: -- he talked about aluminum.
16 Actually, Mr. Dority did work with aluminum.
17 There was aluminum in the silver solder he was
18 using that went up in the air in the form of dust,
19 aluminum. Okay. He ground -- he ground -- he
20 sanded and drilled aluminum for building these
21 legs on these racks and probably most importantly,
22 that -- the work that Mr. Dority did wasn't any
23 less -- or any more important than the work that
24 everybody else was doing in this plant because
25 you'll hear it, it was a zoo. And they're

1 restoring bulk tanks that are either made of
2 stainless steel or aluminum and they're
3 sandblasting it, they're grinding it, they're
4 welding it, they're chipping it, they're burning
5 it. I mean, they -- I would just ask you to take
6 a look at the -- at the volumes of information
7 regarding what a -- what an exposure this was.
8 This issue about direct versus contributes; those
9 are two (2) different issues. The direct in the
10 Statute talks about direct cause by the
11 occupation, not one (1) of the two (2) successive
12 employers; it's just was the occupational exposure
13 a direct cause and that -- the medical evidence
14 here is that, yes, it was the cause, not the
15 direct -- the -- the direct cause, the cause.
16 Then there is a separate issue as to whether or
17 not CTR is the responsible employer; that's Hanks
18 and -- and Glenn. Thank you, that's all I have.

19 Mr. Griggs: And --

20 Commissioner Wilkerson: And --

21 Mr. Griggs: -- and --

22 Commissioner Wilkerson: -- go ahead.

23 Mr. Griggs: -- go ahead -- go ahead,
24 Commissioner.

25 Commissioner Wilkerson: No. And my

1 understanding is the opportunity to resolve this
2 issue through any other matters is out of the
3 question; is that fair? I mean --

4 Mr. Eddy: The Claimant tried.

5 Commissioner Wilkerson: -- no mediation or
6 no -- I just want to make sure because as this
7 mediation moves forward -- I don't -- don't know
8 where it's going to fall by the time this thing
9 gets to Full Commission but I just want to make
10 sure that no mediation -- nobody believes that
11 mediation is beneficial, I guess is the point?

12 Mr. Griggs: And it's --

13 Mr. Eddy: I -- at this point I can't say
14 that I -- I would consider it.

15 Commissioner Wilkerson: No, I'm fine.

16 Mr. Eddy: If -- if it had any chance of
17 success I'd say let's do it.

18 Commissioner Wilkerson: I'm fine with that.
19 I just want to get that on the record from both
20 sides.

21 Mr. Griggs: -- I -- it's -- there's other --
22 there's considerations with Medicare; I mean, it's
23 -- it's very complicated at this point.

24 Commissioner Wilkerson: I understand. I
25 just want to make sure --

1 Mr. Eddy: We -- we tried it early on --

2 Commissioner Wilkerson: -- no, I understand.

3 That's fine.

4 Mr. Eddy: -- both sides --

5 Mr. Griggs: And --

6 Mr. Eddy: -- I think both attorneys --

7 Commissioner Wilkerson: Because I think the
8 mediation is going to pass sometime in the next
9 month or two (2) --

10 Mr. Eddy: -- right.

11 Commissioner Wilkerson: -- and I don't know
12 where this is going to fall in the life of
13 mediation, okay?

14 Mr. Eddy: CYA.

15 Mr. Griggs: -- if -- if I just --

16 Commissioner Wilkerson: I don't -- I don't
17 know --

18 Mr. Eddy: Yes.

19 Mr. Griggs: -- if I -- if I could just --

20 Commissioner Wilkerson: -- of everybody.

21 Mr. Griggs: -- if I could just have one half
22 second.

23 Commissioner Wilkerson: Yes.

24 Mr. Griggs: As far as Dr. Feldman, look, the
25 bottom line is it wasn't followed up on, he didn't

1 -- you don't know what Dr. Feldman would say when
2 he's presented with all the other evidence. He
3 tried to present it to him and the only -- and he
4 brought this up; so, I'm just going to -- I'm just
5 going to put it out there; it's at page 547. On
6 March 5th they sent me a letter, and I put it in
7 here, they sent me an email, it's from doctor --
8 it's in your submissions I gave to you. It's from
9 Dr. Feldman's Assistant and it says, "Good
10 afternoon. See the attached correspondence from
11 Mr. Eddy. He asked Dr. Feldman to review a report
12 and provide an opinion. Please advise if you
13 would like Dr. Feldman to do as requested." I
14 guess because I retained him that's what they
15 asked me. "If show -- if so, who should we
16 invoice?" And I responded -- and Mr. Eddy says
17 read the deposition. He had sent Dr. Feldman
18 portions of the deposition, along with Dr.
19 Abraham's report, along with the questionnaire
20 that he offered that he authored himself. So, I
21 sent back to Dr. Feldman's office and I said,
22 "Thank you for providing me with this
23 correspondence. You can answer or not answer, I
24 can't tell you want to do; whatever you want to do
25 is fine but if you do choose to respond I think it

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1 would be best for you to have a complete copy of
2 your deposition. I've also attached the reports
3 I've retained from Dr. Roggli in contradiction to
4 Dr. Abraham." And I said, "You can do as you see
5 fit." And at the end I just said, "Obviously, if
6 you want to respond the bill should go to Mr.
7 Eddy." If he's asking -- I mean, I'm not going to
8 pay for it. I mean, they're asking me who should
9 pay for it. He's the one brought it -- bringing
10 it up. So, at the end of the day he -- he went
11 around and tried to -- why do you think he sent
12 the questionnaire to doctor -- to Dr. Feldman? To
13 shore up his case. If he didn't need it why would
14 he do it? He needed it to shore up his case; he
15 doesn't have it. He sent it to Dr. Doty to shore
16 up his case; he doesn't have it. This case --

17 Mr. Eddy: Oh, I did have it.

18 Mr. Griggs: -- should be -- it's not -- if
19 you want to talk about what the evidence is and
20 maybe prejudice the Commissioner then that's fine,
21 the evidence that you withdrew on the record
22 earlier; if that's what you want to do that's fine
23 because I think your comment you just made may
24 have prejudiced this Commissioner. I don't have
25 anything else, Commissioner.

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1 Commissioner Wilkerson: Now, we've got
2 another appeal problem. Sometimes -- I tell the
3 attorneys stop talking but you all don't listen
4 sometimes. I'm just telling you.

5 Mr. Griggs: We're ready to go.

6 Commissioner Wilkerson: Well, that will be a
7 number one (1) appeal. I'm going to go to the
8 bathroom first.

9 Mr. Griggs: We're ready to go, sir.

10 Commissioner Wilkerson: I can see that
11 coming down the road.

12 (Off The Record)

13 Commissioner Wilkerson: So, who are we going
14 to hear from first since we've got an hour --

15 Mr. Eddy: Just --

16 Commissioner Wilkerson: -- the Claimant?

17 Mr. Eddy: -- yes, sir.

18 Commissioner Wilkerson: Definitely. Yes.

19 Mr. Eddy: Okay. I'm going to suggest that I
20 -- Mr. -- obviously we're running out of time, Mr.
21 Dority is limited on air and he's getting tired
22 and so I'd like to submit his deposition that --
23 that was taken so I don't have to ask him so many
24 questions. Do you have any problem with that?

25 Mr. Griggs: I don't -- I don't want to be

1 bothersome but it --

2 Commissioner Wilkerson: I don't -- I don't
3 --

4 Mr. Griggs: -- it wasn't de benne esse --

5 Commissioner Wilkerson: -- I don't have it
6 yet, right?

7 Mr. Griggs: -- I didn't even -- I didn't
8 even take it. So, I --

9 Commissioner Wilkerson: And it hasn't been
10 submitted yet; is that fair?

11 Mr. Eddy: Not yet.

12 Mr. Griggs: -- no. I --

13 Commissioner Wilkerson: Okay.

14 Mr. Griggs: -- I would --

15 Commissioner Wilkerson: I've got so much
16 stuff over here I wasn't sure.

17 Mr. Griggs: -- I would prefer not to just
18 because I didn't take it, it's not de benne esse,
19 we didn't make objections, it wasn't -- it wasn't
20 contemplated back in August of 2012 that this was
21 going to be handed up at the hearing.

22 Mr. Eddy: Well, you know, I mean, my
23 understanding of the Rules of Procedure now is
24 there -- the distinction between a discovery dep
25 and de benne esse is a thing of the past and it's

1 a part of the record in this case and I would move
2 that it be --

3 Mr. Griggs: I would just --

4 Mr. Eddy: -- because --

5 Mr. Griggs: -- I would just say for the
6 record, Commissioner, it's obviously your call but
7 I --

8 Mr. Eddy: -- right.

9 Mr. Griggs: -- I did not -- when this was
10 taken in August by an Associate in our firm I --
11 and I have all the facts -- she's a great
12 attorney, Sarah took it; you know Sarah Alphin
13 don't you?

14 Commissioner Wilkerson: Yes. But --

15 Mr. Griggs: But -- but I don't --

16 Commissioner Wilkerson: -- I understand your
17 objection but -- but --

18 Mr. Griggs: -- I didn't know that --

19 Commissioner Wilkerson: -- but it's such a
20 medically driven case, I mean, to be honest --

21 Mr. Griggs: -- it's -- it's very factual for
22 --

23 Commissioner Wilkerson: -- at the end of the
24 end of the day it's important we hear from the
25 Claimant from work conditions, those type

1 scenarios, but since it's so medically driven the
2 greater weight of most of these cases has got to
3 fall on the side of the doctor anyway; am I wrong?

4 Mr. Griggs: -- in --

5 Mr. Eddy: I think you're right.

6 Mr. Griggs: -- in this case I believe that a
7 lot of the representations if you believe my
8 witnesses then --

9 Commissioner Wilkerson: No --

10 Mr. Griggs: -- as to the conditions then
11 that's -- I think that the facts matter a lot in
12 this case. I mean, the med -- just the medical --
13 just saying the factual testimony of the witnesses
14 matters --

15 Commissioner Wilkerson: -- I think it
16 matters but --

17 Mr. Griggs: -- a lot.

18 Commissioner Wilkerson: -- but -- but the
19 question is I don't know how I'm going to know
20 what deplorable is. I mean, I used to do
21 inspections inside turkey plants in wallace, North
22 Carolina; to me that was deplorable but I
23 understood it was one of the best turkey plants in
24 the southeast and won all kind of awards. So, is
25 deplorable based on my vision or the vision of the

1 individuals? That's -- you know, I think
2 deplorable is meant different in all situations,
3 okay?

4 Mr. Eddy: And I can -- you know, I -- I'm
5 not so much concerned about making the word
6 deplorable or pathetic or unbelievable a part of
7 the record; I -- I'm satisfied with just going
8 with the -- the recount of the facts of what they
9 observed and no -- no opinions, you know, I mean,
10 that's -- because that's really what I think
11 you're interested in.

12 Commissioner Wilkerson: Yes, because without
13 me seeing the location --

14 Mr. Griggs: I can't --

15 Commissioner Wilkerson: -- I don't know, I
16 mean.

17 Mr. Griggs: -- I -- I didn't --

18 Commissioner Wilkerson: I understand.

19 Mr. Griggs: -- I didn't take it. I -- I
20 didn't -- it's not contemplated at the time. I
21 don't think it's fair.

22 Mr. Eddy: So, you're not going to use it
23 today?

24 Mr. Griggs: There's a big difference between
25 using the deposition to impeach and just saying

1 here, here is his testimony, have at it. I don't
2 -- I don't think that that's a -- I don't think
3 that's the -- that's the proper way.

4 Mr. Eddy: Well, you just tell me what you
5 want to do and I'll just live with your --

6 Mr. Griggs: Yes, you -- you make the
7 decision.

8 Mr. Eddy: -- with your ruling.

9 Commissioner Wilkerson: I mean, I just think
10 it's best if I've somebody to testify let's
11 testify to it.

12 Mr. Eddy: Okay.

13 Commissioner Wilkerson: And -- and -- and --

14 Mr. Griggs: Yes.

15 Mr. Eddy: I was going to have him testify; I
16 was just going to --

17 Commissioner Wilkerson: -- and if you get
18 tired just let me know --

19 Mr. Eddy: Okay.

20 Commissioner Wilkerson: -- okay?

21 Mr. Eddy: All right.

22 Mr. Griggs: We can get the other guy to
23 testify in between --

24 Commissioner Wilkerson: We -- we can get
25 somebody else in here --

1 Mr. Griggs: -- Schumach.

2 Commissioner Wilkerson: -- I mean, I'm --
3 I'm okay with that.

4 Mr. Eddy: I'm ready to go.

5 Commissioner Wilkerson: I do that all the
6 time --

7 Mr. Griggs: -- I want to see Schumach's.

8 Commissioner Wilkerson: -- in other cases.
9 We take breaks if -- and if you don't run me out
10 of here I'm not going to leave. If they don't
11 knock on the door I'm going to keep on going.

12 Mr. Eddy: You're a hard worker.

13 Mr. Griggs: Well, they -- you don't want
14 them to leave us in here.

15 Commissioner Wilkerson: We can get out the
16 door, can't we or is there an alarm system?

17 Mr. Griggs: Oh, I don't know.

18 Mr. Eddy: I'll get us out.

19 Mr. Griggs: You just said -- you just said
20 if they don't knock on the door. I don't want
21 them to leave us in here and then we can't get
22 out.

23 Mr. Eddy: Can -- can we move that -- can I
24 move the microphone?

25 Commissioner Wilkerson: Oh, I --

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1 Mr. Eddy: No.

2 Commissioner Wilkerson: -- no.

3 Mr. Griggs: It's that one (indicating).

4 Mr. Eddy: If you'll move down just a little.

5 Commissioner Wilkerson: No, he -- no, it'll
6 pick him up.

7 Mr. Griggs: It's that one (indicating).

8 Court Reporter: He has --

9 Commissioner Wilkerson: He's got one right
10 there (indicating).

11 Court Reporter: -- he has --

12 Mr. Griggs: Remember, the short one?

13 Court Reporter: -- he has a microphone.

14 Mr. Eddy: Oh, I'm sorry.

15 Commissioner Wilkerson: Yes, he's got one.

16 Mr. Eddy: I apologize.

17 Court Reporter: I have them set perfectly
18 right.

19 Commissioner Wilkerson: She's got them in --

20 Mr. Griggs: Remember, I was hitting it
21 earlier --

22 Commissioner Wilkerson: -- yes, she's got
23 them set.

24 Court Reporter: Yes.

25 Mr. Griggs: -- and she got mad at me?

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1 Commissioner Wilkerson: I don't --

2 Court Reporter: Don't -- don't --

3 Commissioner Wilkerson: -- I don't move

4 mics.

5 Court Reporter: -- don't touch the

6 microphones.

7 Mr. Eddy: Okay. Just get ready there and

8 I'll try to make it short.

9 Court Reporter: Are we ready to swear him
10 in?

11 Commissioner Wilkerson: Yes, we're going to
12 have to -- I wanted to make sure you're back on
13 the record.

14 Court Reporter: I've been on the record ever
15 since you came back in the room.

16 Commissioner Wilkerson: Oh, I'm sorry. I'm
17 sorry. Sir, I'll get you to raise your right
18 hand; I'm going to have the Court Reporter swear
19 you in. I'm sorry.

20 Whereupon;

21 Michael W. Dority, being duly sworn and cautioned to
22 speak the truth, the whole truth and nothing but the truth,
23 testified as follows:

24 Court Reporter: Please state your full
25 name for the record.

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1 Witness: Michael W. Dority.

2 Court Reporter: Thank you, sir.

3 Mr. Eddy: Okay. And would it -- do you mind
4 if I lead him on some of this stuff like date of
5 birth so he doesn't have to talk much?

6 Commissioner Wilkerson: Yes, that's fine.
7 All right.

8 Mr. Eddy: Okay.

9 Commissioner Wilkerson: Just --

10 Mr. Griggs: That's fine.

11 Commissioner Wilkerson: -- just stop him
12 when you think he's gone too far --

13 Mr. Eddy: right.

14 Commissioner Wilkerson: -- how about that?

15 Mr. Griggs: That's fine with me. That's
16 fine with me.

17 Michael W. Dority DIRECT EXAMINATION

18 By Mr. Eddy:

19 Q. Mr. Dority, is your -- your date of birth 10/10 -- or
20 October 10, 1956?

21 A. Yes, sir.

22 Q. Are you fifty-six (56) years of age today?

23 A. Yes, sir.

24 Q. Do you live in Fort Lawn, South Carolina?

25 A. Yes, sir.

1 Q. Have you lived there since 1985?

2 A. I've lived there all my life.

3 Q. All of your life. And you presently live in a -- a
4 home that's part mobile home, part --

5 A. Part mobile home and I --

6 Q. -- built onto a mobile home?

7 A. -- built onto the front of it.

8 Q. Okay. Could you give us the extent of your educational
9 background?

10 A. I went to work with Springs in 1979.

11 Q. No, no, no. I'm talking about had you -- did you go
12 throw the ninth (9th) grade?

13 A. Oh, yeah, I finished --

14 Commissioner Wilkerson: Go ahead and read
15 that in.

16 A. -- I got a GED, yeah.

17 Mr. Eddy: Okay.

18 Commissioner Wilkerson: Go ahead and read
19 that in.

20 Mr. Griggs: Yes.

21 Commissioner Wilkerson: Yes, I think he'll
22 let you read all that in.

23 Mr. Eddy: Okay.

24 Commissioner Wilkerson: Just -- just go
25 through his education process.

1 Mr. Eddy: Okay. All right.

2 Q. All right, Mr. Dority, you -- you attended school
3 through the ninth (9th) grade and then you got a high
4 school diploma through correspondence, correct?

5 A. Right, yeah.

6 Q. All right. Then you took some tech courses at a local
7 college related to your employment in things like
8 electrical, hydraulic and maintenance, correct?

9 A. Yes.

10 Q. You're divorced?

11 A. Yes, I am.

12 Q. Do you have any children?

13 A. No, I do not.

14 Q. Okay. Now, your general employment background, before
15 we get into the specifics, was the first real job that
16 you had was with Springs Industries; is that correct?

17 A. Yes, sir.

18 Q. And you worked for Springs at the Grace Bleachery in
19 Lancaster, South Carolina, didn't you?

20 A. Yes, sir.

21 Q. And did you work for Springs from 1975 to 1996 and then
22 again from 2000 to 2007?

23 A. Yes, I did.

24 Q. Okay. And from 1990 -- and in that -- that gap, '96 to
25 '99, you worked for Georgia-Pacific in Catawba, didn't

1 you?

2 A. Yes, I did.

3 Q. All right. And then after Georgia-Pacific you go back
4 to Springs until some -- what -- when did you last work
5 for Springs?

6 A. June of 2007.

7 Q. Okay. And then you started at CTR, which is in Rock
8 Hill, on July the 9th, 2007; is that right?

9 A. Yes, sir; that's correct.

10 Q. And it's our -- our belief that you worked there from
11 July 9, 2007 until your last day was September 17 of
12 2010; is that correct?

13 A. Wait a minute.

14 Q. Is that right?

15 A.. Yes, sir.

16 Q. All right. Was your first job at Springs as an
17 Operator?

18 A. Yes, sir. I was an Operator --

19 Q. But then shortly after that you moved into maintenance;
20 is that correct?

21 A. -- yes, sir; I did. I moved into industrial
22 maintenance in industrial instrumentation in the
23 mechanic and electrical field.

24 Q. And is that what you did primarily the whole time you
25 were there, maintenance and instrumentation?

1 A. Yes, sir; it was.

2 Q. All right. And that mill is a cotton mill, right,
3 where they do -- they bleach cotton materials?

4 A. It's a finishing plant; it finishes --

5 Q. All right.

6 A. -- raw material that comes from the gray mills.

7 Q. Can you give us a -- a little information about what
8 your job duties were at Springs?

9 A. I was the Trouble Shooter on the second shift, which we
10 trouble shooted the machinery that went down; we had to
11 go out there and find out what was wrong with it and
12 get it up and get it back running.

13 Q. Okay. Now, this case is about inhalation to some
14 extent. Were you around or exposed to any dust or
15 fumes at Springs?

16 A. No, sir. I mean, some, a little bit of dust but, you
17 know --

18 Q. Well, was -- you --

19 A. -- there was not a whole lot of fumes.

20 Q. -- there was cotton dust -- was there cotton dust out
21 there?

22 Mr. Griggs: Object to leading.

23 Mr. Eddy: Okay. I'm trying to help you.

24 Commissioner Wilkerson: Yes, I know. That's
25 fine.

1 Mr. Eddy: Okay. All right. Okay, never
2 mind.

3 Commissioner Wilkerson: Just a little
4 leading.

5 Q. Did you ever have any breathing problems, experience
6 any shortness of breath or -- or breathing problems at
7 all when you worked at Springs?

8 A. No, sir; I did not.

9 Q. Okay. Did you ever have -- fail any breathing tests at
10 Springs?

11 A. No, sir; I did not. We took them every year.

12 Q. Okay. Now, at Georgia-Pacific did they manufacture
13 hardboard siding?

14 A. Yes, they did.

15 Q. Did you have any exposure to airborne particulate
16 matter at Georgia-Pacific?

17 A. No. No, just -- no, not really, just plain resin that
18 they put into the --

19 Q. All right.

20 A. -- fiber --

21 Q. Let's talk about --

22 A. -- the plaster board.

23 Q. -- CTR, does that stand for Cryogenics Technology
24 Resources?

25 A. Yes, sir.

1 Q. Is that a plant located on Porter Road in Rock Hill?

2 A. Yes, sir.

3 Q. And you told us the dates that you worked there. What
4 was your first job there?

5 A. Gosh. The first job?

6 Q. What was your first job at CTR?

7 A. I set -- I worked on the final line for Mike Hornback,
8 silver soldering and whatever they needed me to do, you
9 know. I started out silver soldering, final line
10 silver soldering, because I had never silver soldered
11 before.

12 Q. Okay. And -- and this is Mr. Hornback sitting across
13 the table from you?

14 A. Yes, it is, Mike.

15 Q. Okay. And if we could just talk real briefly about
16 CTR, they -- they manufactured final line type
17 equipment; is that correct?

18 A. Yes, sir. It was for oxygen and different gases and --

19 Q. So --

20 A. -- whatever you want to --

21 Q. -- so, when we say final line we're talking about a
22 type -- some type of a equipment made out of piping
23 that's used by either hospital or -- or industry to
24 deliver different types of gas, like say oxygen?

25 A. -- yes, sir. It was for different type gases; oxygen

1 was one (1) of them.

2 Q. And part of this equipment was to take the gas or
3 whatever type of element we're talking about and to
4 reduce it down to a usable pressure?

5 A. Yes, sir. That was what I was building.

6 Q. Okay. And -- and then, there were other aspects to CTR
7 in terms of what they did there; is that correct,
8 besides final line?

9 A. Yes, sir.

10 Q. Okay. What else did they do there?

11 A. You had the bulk tank and then you had tanker the
12 department it started in.

13 Q. All right. And when you say bulk tank, what kind of
14 work was that?

15 A. Bulk tank is the big tanks that you see outside the
16 hospitals and places that you pipe it down and it comes
17 through regulator stations and goes into the -- to the
18 hospitals where the --

19 Q. All right.

20 A. -- you -- you get different gases can be used though;
21 it's not just oxygen.

22 Q. Okay. And these bulk tanks, how -- how -- would they
23 be as many as a thousand (1,000) gallons or more?

24 A. Well, there were big tanks; there were smaller tanks
25 too.

1 Q. Okay. I looked at their website the other day, it
2 showed something like a three hundred (300) gallons to
3 upwards of -- of nine thousand (9,000) gallons; does
4 that sound possible that they work on tanks that big
5 there?

6 A. Yes, sir.

7 Q. Okay. And these bulk tanks, do you know what kind of
8 metal they were made out of?

9 A. They're made out of different metals.

10 Q. Do you know if any of them were made out of --

11 Mr. Griggs: I'm going to object to leading
12 here --

13 Commissioner Wilkerson: Yes.

14 Mr. Griggs: -- I mean --

15 Mr. Eddy: -- all right.

16 Mr. Griggs: -- I think we've got to be
17 careful.

18 Commissioner Wilkerson: Yes.

19 Mr. Eddy: Okay.

20 Q. Do you know what kinds of metals these bulk tanks were
21 made out of?

22 A. Stainless and aluminum, I'm assuming.

23 Q. Okay.

24 A. I didn't -- didn't work out there on those tanks
25 actually but they were worked on inside the plant the

1 other side of the wall where I was working on.

2 Q. Well, let's talk about the facility real quick. Can
3 you describe -- was it all under one (1) roof, these
4 various departments you've talked about?

5 A. Yes, sir; pretty much.

6 Q. Okay. Were there partitions or walls that would divide
7 one department from the other?

8 A. There was a wall between us and we had three (3) tables
9 here (indicating); three (3) of us silver soldering on
10 this side and three (3) silver soldering on this side,
11 you know.

12 Q. So, am I understanding --

13 A. There was a wall, a partial wall, between us.

14 Q. -- okay. But so --

15 A. It wasn't closed, sealed off.

16 Q. -- the -- the workstations, three (3) and three (3),
17 was that in the final line section?

18 A. Yeah, I was on the middle table and it was two (2) guys
19 across in the ally from me and they were soldering,
20 three (3) actually; at times there would be three (3)
21 soldering over there.

22 Q. Okay. I was going to talk about that in just a minute.
23 But just to get an overall idea of what -- what this
24 plant or facility is like, you just talked about final
25 line side, where was, like, bulk tank restoration in

1 relationship to the final line side?

2 A. Bulk tank was in the front, right hand side of the
3 building, and then tanker department was kind of on the
4 left hand side when you come in from the -- from the
5 road frontage; I say from the road going into the --

6 Q. Okay. And then, the final line said was where in
7 relation -- in the middle or over in the corner?

8 A. -- over on the back -- back side of the wall back there
9 but there was a partial wall between it, it didn't go
10 all the way across; it was like a wall went half way
11 across through there.

12 Q. This wall you're referring to, did it go all the way
13 from the floor to the ceiling?

14 A. Yes, sir.

15 Q. And at least part of the way?

16 A. It went from the floor to the ceiling but it was not
17 closed -- we were not sealed off from any other area;
18 both areas partial -- I'd say part of it was open and
19 the other half was closed in.

20 Q. All right. So, if I understand what you're telling me
21 then, this partial wall, are you saying that it
22 extended part of the way from one side of the building
23 to the other but not the whole way?

24 A. That's right; that's what I'm saying.

25 Q. So, could the air in the bulk tank department flow into

1 the final line side?

2 A. Yes, sir.

3 Q. There was no wall all the way across that would impede
4 that air flow?

5 A. Not all the way; no, sir.

6 Q. All right. Were there any sections of the plant --
7 plant that were totally enclosed off?

8 A. The only thing that was closed off was the small
9 electrical shop and a paint booth where they paint the
10 tankers and the panels and different stuff that we
11 built.

12 Q. What about O2 cleaning?

13 A. O2 cleaning was in a wall back behind us where we were
14 silver soldering.

15 Q. But it was in -- was in totally enclosed off, O2
16 cleaning?

17 A. It's small, I reckon it was closed off; yes, sir.

18 Commissioner Wilkerson: What is O2 cleaning?

19 Mr. Eddy: Oxygen -- O2 is oxygen.

20 Commissioner Wilkerson: Okay. So, it's just
21 O2, okay.

22 Q. And -- and what did -- what did they do in O2 cleaning?

23 Commissioner Wilkerson: It's closed off.

24 A. We had to silver the copper tubing and stuff together
25 and then we would take it down there to a guy to

1 sandblast it if he had time and if we were really
2 pushed we had a small sandblaster that we could do it
3 our self to get a job out. And he would bring it back
4 to us and we would blow it out and inspect it, put in
5 on a cart and carry it around there to the lady that
6 done the O2 cleaning.

7 Q. So, this sandblasting cabinet you're referring to, was
8 that in the O2 cleaning section?

9 A. It was on the outside wall of it.

10 Q. Okay. Right now I want to just try to get a feel for
11 the overall plant. So, you told us about bulk tank
12 restoration section and then the tanker section?

13 A. Uh-huh.

14 Q. What was done in the tanker section?

15 A. There were tankers would be -- they brought them in
16 there and repaired them, I mean, whatever needed
17 fixing; if they needed axles cut out -- we'd do axles
18 and tires and brake systems and repaired tanks if they
19 had leaks in them.

20 Q. Okay. And when you -- when you're saying tankers
21 you're talking about the tanker trucks that you see
22 going down the road?

23 A. Tanker trucks that you see going down the road; yes,
24 sir.

25 Q. Okay. So, that -- that's the type of tanker you're

1 talking about that was worked on in the tanker section?

2 A. Yes, sir.

3 Q. All right. And then, was there -- did you say fab
4 shop?

5 A. What they called the fab shop is the -- you had the
6 welders and stuff in one corner; they built and fabbed
7 up the metal and the aluminum frames and stuff for --
8 that was needed.

9 Q. Okay. All right. So, let's -- let's -- what kind of
10 work would they actually do on these bulk tanks; what
11 did they do to them?

12 A. Well, I seen them, you know, grind them off and take
13 all the back rear ends and tires and all that out from
14 them, put new brakes, recondition them and send them
15 back out, test them for leaks.

16 Q. What -- what -- so, were they basically restoring the
17 tank?

18 A. Restoring it, yeah.

19 Q. Okay. And was welding work done?

20 A. Yes, sir; there was welding and heat off of those from
21 the other side of the wall.

22 Q. And you mentioned grinding, what -- what kind of
23 grinding work would be done?

24 A. With a -- Grinders with grinders where they had hand
25 grinders and they also had saws that cut them around

1 there to cut the metal with.

2 Q. All right. And would this take place in both the
3 tanker section and the bulk tank section?

4 A. Yes, sir. It was kind of up in the corner, up in there
5 --

6 Q. All right. So --

7 A. -- and then --

8 Q. -- we're talking about the -- the tanks, would they --
9 they would cut them for some reason: why would they cut
10 the tanks?

11 A. -- well, I mean, if they're split or something or, you
12 know, they would have to, you know, cut the tank to fix
13 it and go inside and weld cracks or whatever.

14 Q. What kind of tool would they use to cut the tanks?

15 A. Well, they were using grinders and different saws,
16 sawzalls or whatever.

17 Q. And when you say grinder, is this like a pneumatic
18 power type of drill or -- or -- or tool or manual?

19 A. It's an electric -- electrical grinder.

20 Q. Okay.

21 A. A side grinder, they call it.

22 Q. All right. And so, when the work -- when the work
23 ended, let's say the bulk tank section of the shop was
24 going on; do you observe this work from time-to-time?

25 A. In the bulk tank?

1 Q. Yes.

2 A. No, sir. I never worked in the bulk tank.

3 Q. Did you observe it? Were you in the --

4 A. Oh, yeah.

5 Q. -- plant where you could see it?

6 A. Yeah, we went around there and cut material and stuff.

7 Q. Okay. And when they would be doing the cutting and the
8 grinding and the welding, would there be any effect on
9 the air or the work environment?

10 A. Well, you could see the metal. I mean, the building
11 was closed up in the winter time when it's cold. We
12 didn't have any ventilation; so, you could see dust in
13 there or particles; I don't know what it was, I mean.

14 Q. I'm not asking you what it was. I -- I'm asking you
15 was there an effect on the air when they would be doing
16 the welding, the grinding and cutting work in the
17 various parts of the plant?

18 A. Yes.

19 Q. Okay. Did you see smoke in the air?

20 A. Yes.

21 Q. Did you see dust in the air?

22 A. Yes.

23 Q. All right. Now, was this -- how often did that type of
24 work go on in the three (3) year period of time that
25 you were there?

1 A. It was a day-to-day thing, I mean, you know, whatever
2 they was -- depending on what they were doing that day.
3 Depending on where they were --

4 Q. Right.

5 A. -- it could be both of them going on at one (1) time or
6 it might just be one (1) of them going on at one time.

7 Q. So, sometimes it was worse than other times?

8 A. Yes.

9 Q. All right. And now, the final -- let's go to the final
10 line section. What would you do on any given day?
11 Tell me what your job duties entailed.

12 A. I had a table there and I cut copper tubing and -- and
13 sweated it -- silvered it together.

14 Q. For -- how did you cut it? Let's take it one (1) step
15 at a time.

16 A. I cut it with a porter band.

17 Q. A porter band, what is that?

18 A. That's a saw that goes in a circular motion, porter
19 band.

20 Q. Okay. And now --

21 A. It cuts copper or whatever you might be working -- cuts
22 stainless, brass, whatever.

23 Q. -- so, you used either copper, stainless steel or -- or
24 brass type of pipes?

25 A. Yes.

- 1 Q. Tube -- you call it tubing right?
- 2 A. I call it tubing, copper tubing, but it copper pipes.
- 3 Q. Okay. What diameter are we talking about, generally
- 4 speaking?
- 5 A. It could be an inch to an inch and a half --
- 6 Q. Okay.
- 7 A. -- two (2) inch.
- 8 Q. And when you'd use this power saw to cut the -- the
- 9 various metal type pipes or tubing, would there be any
- 10 dust or -- or metal -- or particles created?
- 11 A. Oh, yeah. The metal -- the metal was coming out of
- 12 whatever you was cutting; you could see it falling out
- 13 on your table, I mean, at then end of the day when you
- 14 cleaned up your work station.
- 15 Q. All right. Now, once you've cut these pipes what would
- 16 you do with them?
- 17 A. Well, we take them and put flux around them, put them
- 18 together after I had them cut to specified lengths,
- 19 flux it and then light the torch and silver solder the
- 20 pipes together --
- 21 Q. Okay.
- 22 A. -- and then I had to take it around there to be cleaned
- 23 after that --
- 24 Q. Would this --
- 25 A. -- to be sandblasted.

1 Q. -- all right. Describe the silver solder material that
2 you were working with.

3 A. It was a wire type silver solder and you heated the
4 pipe with one (1) hand and fed your silver in with the
5 other hand but you, you know, you had that flux around
6 the pipes.

7 Q. All right. Well, did this silver solder wire come on a
8 spool or how did it -- what form of packaging did it
9 come in?

10 A. It was in like a box, like a roll, you know, a small
11 roll.

12 Q. And you would use a torch, did you often -- did you
13 refer to that in your -- have you referred to that
14 previously as a rosebud?

15 Mr. Griggs: Object to leading.

16 Mr. Eddy: All right.

17 Commissioner Wilkerson: Yes.

18 Q. Well -- well, what's a rosebud?

19 A. A rosebud is the end of the tip on the -- the heating
20 that you're using off the soldering outfit.

21 Q. Okay. Its part of the torch you're using in this
22 silver solder process?

23 A. Yes, sir.

24 Q. Okay. So, you're using a rosebud torch --

25 A. Yeah.

1 Q. -- with a silver solder type of wire material to join
2 these --

3 A. Making joints is what you call it.

4 Q. -- pieces of tubing together --

5 A. Yes, sir.

6 Q. -- in constructing what's eventually known as a final
7 line; is that right?

8 A. Yes, sir.

9 Q. All right. Do you remember -- well, let me just see --
10 you have provided me previously with a sample of that

11 silver soldering didn't you?

12 A. Yes, I did.

13 Q. Okay. How did you come into possession of it; from
14 working there at the CTR?

15 A. A short piece that got throwed in a cup and it was just
16 left up in my tool box and --

17 Q. Okay.

18 A. -- and when my tool box got loaded up I found it after
19 I got home there was some short pieces that got throwed
20 in a cup.

21 Q. Do you remember the brand name of -- of the silver
22 solder that you used there at CTR?

23 A. I want to say Sil Flux or --

24 Q. Do you remember Silvaloy?

25 Mr. Griggs: I'm going to object to leading.

1 Commissioner Wilkerson: Yes.

2 Mr. Griggs: He asked him --

3 Commissioner Wilkerson: He can remember.

4 Mr. Eddy: Okay.

5 Commissioner Wilkerson: Yes.

6 Q. All right. Do you remember?

7 Commissioner Wilkerson: It's in the records
8 isn't it?

9 Mr. Griggs: -- he just said it.

10 Commissioner Wilkerson: Yes. He said he
11 thought it was --

12 A. It was silver that come in a box and --

13 Q. Do you know what it contained; do you know what it was
14 made out of, what metal constituents it was made out
15 of?

16 A. -- no.

17 Q. Okay.

18 A. I was never --

19 Q. Anyway --

20 A. -- told all that.

21 Q. -- so -- so, all right. So, you told us that this is
22 what -- on the final line side that was your primary
23 job --

24 A. Yes, sir.

25 Q. -- soldering together these pipes? Did it have -- when

1 you would use the silver solder to solder together
2 these pieces of pipe would it have any effect on the
3 air?

4 A. Yes, sir. You could see when you hit it with the
5 soldering outfit it would start smoking and sometimes
6 it -- I would get choked up and I'd just have to cut
7 the rosebud and the torch off and go over there and get
8 some water. And this man that worked across the ally
9 over there, his name was Black Manly, he would come
10 over there and ask me --

11 Mr. Griggs: I'm going to object to --

12 Mr. Eddy: Yes. Let me just --

13 Commissioner Wilkerson: You can't tell me
14 what Mr. Manly said.

15 Mr. Eddy: -- okay.

16 Q. All right. You -- you -- before you talked about the
17 final line section being six (6) work stations and you
18 worked in one (1) of the middle stations, I think; is
19 that what you said?

20 A. Uh-huh.

21 Q. Were -- generally were all six (6) stations -- was work
22 going on in all six (6) stations at any given point in
23 time or --

24 A. Yeah.

25 Q. -- how did that break down?

- 1 A. Yeah.
- 2 Q. Is that a yes?
- 3 A. Yes, sir.
- 4 Q. Okay. All right, I'm sorry. And so, would smoke be
- 5 created at each of these six (6) stations when the
- 6 soldering work was being done?
- 7 A. Well, sure it would. Uh-huh.
- 8 Q. Okay.
- 9 A. Coming off the flux.
- 10 Q. All right. And let's talk a little bit about what it
- 11 was you saw in the air. Are we talking dust or fumes
- 12 or smoke; can you describe it for us?
- 13 A. Smoke is all I seen and I had it blow a certain way and
- 14 it would blow up my face and choke me and --
- 15 Q. Well, where did it go; where did the smoke go?
- 16 A. -- up to the top of the ceiling.
- 17 Q. Was any dust created from that work?
- 18 A. Yes, sir.
- 19 Q. Where would it go?
- 20 A. If you walk in the next morning and see it on the
- 21 floor; it had done settled back down.
- 22 Q. Settled down from where?
- 23 A. Well, it had to go up.
- 24 Q. Into the air?
- 25 A. Yeah.

1 Q. All right. So, can you describe for us the atmospheric
2 conditions on the final line side on a typical day,
3 let's say in the winter, at -- at CTR?

4 A. It was horrible in the winter because it -- you didn't
5 have any fans running to pull the exhaust smoke out.

6 Q. Was it worse in the winter than in the summertime?

7 A. Yes.

8 Q. Why?

9 A. Because you could open doors and stuff around there in
10 the summertime to get ventilation through there.

11 Q. Okay. In -- in the winter what was the ventilation?

12 A. They didn't have none. If you got too smoky you just
13 had to go over there and crack a big door and try to
14 get some of the smoke out of there.

15 Q. All right. When -- did you ever wear respiratory
16 protection when you worked at C -- CTR?

17 A. Excuse me. No, sir, I didn't know that I needed it; I
18 was never told that.

19 Q. I'm just asked so -- is it -- that's a no, right?

20 A. Right.

21 Q. You -- you did not wear any respiratory protection when
22 you worked at CTR?

23 A. No, sir.

24 Q. Okay. Take a minute. In addition to doing soldering
25 work when you worked -- I think -- let me make sure I

1 -- I've asked you this question. Did you work on the
2 final line side or how long did you work on the -- how
3 long did you work on the final line side?

4 A. I want to think about a year and a half.

5 Q. Approximately fifty percent (50%) of the time that you
6 were there, total?

7 A. Yeah.

8 Q. Okay. Besides doing the cutting of the tubing that you
9 told us about -- all right -- well -- all right, let's
10 -- let's go through the process: You cut the tubing,
11 you solder it together with the rosebud torch and --
12 and the solder material. Once you've completed the
13 actual joining of these materials together what would
14 you do with it?

15 A. Take it to the sandblaster and they would sandblast it,
16 if he was available, and then it had to come back and
17 you had to re-inspect it and it would go to the 02 room
18 to be cleaned, brought back out to you in bags, it was
19 sealed off and you would assemble it on aluminum frame
20 racks.

21 Q. Did you ever do any of the sandblasting work?

22 A. Yes, sir.

23 Q. Okay. How often did you do sandblasting?

24 A. Well, at least, you know, a couple times a week
25 because, I mean, that guy would -- that did it would

1 get so backed up and they'd holler, we've got to have
2 this, it's got to go out the door today; I mean, you've
3 got to do whatever you've got to do to get the job out.

4 Q. And I think you said earlier that this was done in a
5 cabinet of sorts?

6 A. Right. You open it up from the side and the top, put
7 your work in there and you can lay your hands up there
8 in gloves and you've got a light on in there and you
9 look through the holes and sandblast it.

10 Q. So, when the sandblasting work takes place it's in an
11 enclosed cabinet?

12 A. Yes, sir.

13 Q. So, would there -- would you have had any exposure to
14 airborne respirable silica or sand dust that -- in that
15 work?

16 A. You would when you opened the door to take it back out
17 when you was finished with it.

18 Q. All right. well, describe that. Describe what --

19 A. It was just like a --

20 Q. -- what you saw.

21 A. -- little bit of dust would come up out of that
22 cabinet, you know, when you -- when you get through
23 sandblasting you'd pull your hands out, then you'd
24 reach there and unlock the door -- cut the machine off
25 and then unlock the door and then it comes up, you'd

1 see some come up or come out the side of the door.

2 Q. All right. All right. Well, don't -- don't pay
3 attention to them; just listen to me, all right? Okay.
4 So, the -- the material sandblasted and -- and you
5 would then take it to someone to be cleaned; is that
6 what you said?

7 A. Yes, sir. It had to be cleaned and then I had to get
8 it back from them before I started reassembling the
9 final product.

10 Q. Did you ever have to do any grinding work when you
11 worked on the final line side?

12 A. I did some and I also did some sanding on panels with
13 --

14 Q. Well, let's talk one (1) at a time. What kind of
15 grinding work did you do?

16 A. -- you had to grind the -- if the legs wasn't just
17 right you may have to grind the tab -- tab on it.
18 You'd have an aluminum plate, probably two (2) by three
19 (3), then you had to lay it down there and sand it with
20 a DA sander, that aluminum, and flip it over and sand
21 it good. Then you took it back there, the aluminum, to
22 the paint booth and that got painted.

23 Q. Okay.

24 A. Then you --

25 Q. Let -- let me -- so, when you would sand the aluminum,

1 what kind of a sander would you use?

2 A. -- it was just a DA sander, it was a regular sander, it
3 didn't have any kind of bag catching the -- the
4 anything --

5 Q. Did it create --

6 A. -- the dust or anything from it --

7 Q. -- did it --

8 A. -- it was just in the air.

9 Q. -- what was?

10 A. The dust from the aluminum where you was sanding the
11 face of it.

12 Q. Did you inhale that aluminum dust?

13 A. I'm sure you did; yes, sir.

14 Q. And -- and this was from the -- okay, strike that. Let
15 me go back, I -- I never really asked you the key
16 question. When you worked on the final line side doing
17 the soldering that you told us about, created the dust
18 and the -- the smoke and you didn't wear respiratory
19 protection, did you breathe in that dust and -- and
20 smoke?

21 A. Yes, sir.

22 Q. And how regularly were you breathing in dust and smoke
23 when you worked on the final line side?

24 A. Well, I guess, if you was cutting tubing or cutting it
25 in lengths or you was silver soldering; so, you know,

1 it was --

2 Q. Every day?

3 A. -- every day, yeah.

4 Q. All right. And how often were you sanding this
5 aluminum material that created the dust you breathed
6 in?

7 A. You know, it might come -- you might do two (2) a week
8 or you might do two (2) and you might not do two (2)
9 for another week or two (2), just whenever; depending
10 on demand of the orders is what you did.

11 Q. Okay. What is Monel?

12 A. Monel is a tubing that the two (2) guys across from the
13 table from the ally from me; they used Monel to build
14 high pressure gas panels, high gas panels.

15 Q. How far across -- how far were they from you?

16 A. Eight (8) to ten (10) foot.

17 Q. Eight (8) to ten (10) feet. And what were they doing
18 with the Monel?

19 A. They were sawing it up in pieces and making panels with
20 it.

21 Q. What were they using to saw the Monel with?

22 A. Porter -- porter band saws.

23 Q. When they sawed the Monel with the porter band saw
24 would there be any dust created?

25 A. Yeah. Some because they -- they had to -- once they

1 got everything cut then they had to take an air hose
2 that had nitrogen and actually blew through the tube
3 to make sure it was clean before they carried it around
4 there and they would sandblast it also but they also
5 would bring it back and he'd re-inspect it and blow it
6 out with a nitrogen air hose and then take it, the
7 pieces, on a buggy to go to cleaning.

8 Q. Would the dust from the Monel that was cut get into the
9 air?

10 A. I have to tell you; yes, sir.

11 Q. Did you breathe in the Monel dust?

12 A. I sure did.

13 Q. All right. Did CTR have a hazardous communication
14 program; do you know?

15 A. Not that I'm aware of.

16 Q. Well, did they have material safety data sheets
17 available to the employees?

18 A. I never seen them. They were never showed to me. I
19 never knowed that I was supposed to wear a -- a
20 respirator.

21 Q. All right. How frequently do you breathe -- did you
22 breathe in the dust from the Monel that was cut?

23 A. Well, I think they might build panels like that every
24 day and then they might not build but -- it depended on
25 the -- the specifications that the customer wanted,

1 they might build them out of stainless steel some too.
2 So, they just varied back and forth depending on the
3 demand of the customer --

4 Q. All right.

5 A. -- what the customer ordered.

6 Q. So, they used stainless steel tubing as well to do this
7 type of work in addition to Monel; is that what you're
8 saying?

9 A. Yes, sir.

10 Q. The sandblasting work you did in the enclosed cabinet,
11 was that the only sandblasting work done out at CTR
12 when you worked there?

13 A. No, sir. There was a -- a -- where they blasted --
14 sandblasted the tanks, they were right out the back
15 door. We worked on the back side of the plant and they
16 were just right behind us and they did the bulk tanks
17 and -- and tankers, whatever -- whatever the bigger
18 stuff that needed that couldn't be got into the
19 sandblasting --

20 Q. Was this --

21 A. -- cabinets had to go out there to be done.

22 Q. -- this sandblasting a larger scale operation than what
23 you were doing in -- with the enclosed cabinet and the
24 gloves?

25 A. Oh, yeah. Yes, sir.

1 Q. And could you see the outdoor sandblasting from your
2 advantage point in the plant?

3 A. Yeah, you could see the doors open at the back and you
4 could see the wind get up and it would just blow the
5 sand right in there where we were at.

6 Q. The sand coming from where?

7 A. From off the pile of the sand -- where the sanding
8 booth was at, the blasting booth.

9 Q. Well, they were --

10 A. It was two (2) walls and a top; it wasn't enclosed.

11 Q. -- were these sandblasters wearing respiratory
12 protection when they were doing this outside --

13 A. Yes, sir.

14 Q. -- the plant -- behind the plant?

15 A. The people that did it, yeah, they did actually wear
16 it.

17 Q. Okay. And the -- was the -- what was the purpose of
18 sandblasting this -- the outside of these tanks?

19 A. They took them around and took them to the paint
20 department and repainted them.

21 Q. No, no, no. Why were they sandblasting these tanks?

22 A. To get the old paint off and refurnish the tank to take
23 it back around to the painting booth and get it
24 preparation to be painted.

25 Q. So -- so, do you know whether or not the dust generated

1 from this activity included both the sand and the
2 coating on the -- on the tank that was being blasted
3 off?

4 A. Well, it had to be, it just -- with no -- it wasn't
5 enclosed.

6 Q. Did that blow into the plant?

7 A. Yeah, if the doors was open in the summertime.

8 Q. And did you breathe in that dust?

9 A. I had to, all of us; everybody that was there.

10 Q. And these were the aluminum and stainless steel tanks
11 you told us about before?

12 A. Yeah, and some black steel, carbon steel stuff was done
13 out there on racks.

14 Q. If the silver solder that you were working with contain
15 -- contained zinc, tin, copper, cadmium and silver
16 metals would you have breathed those metals in from
17 working with that material?

18 A. Yeah. I mean, I really had no choice; you're sitting
19 here right by and heating it up and you're right there
20 at it and the wind blows it's going to blow it back on
21 you.

22 Q. Can -- can you give us a feel for -- when you were
23 working on the final line side can you give us a feel
24 for where was most of the dust you breathed in coming
25 from, the work you were doing or the work other people

1 were doing?

2 A. We had six (6) people in that area at one (1) time
3 working. So, you know, all six (6) people were
4 working; so, you know, everybody is cutting and sizing
5 up their metal to build their job, whatever it might be
6 or whether it was a panel or final line or whatever,
7 you know.

8 Q. You mentioned earlier choking or coughing, which one is
9 -- what -- what was it that you said earlier about
10 that?

11 A. About what?

12 Q. When you were doing work on the silver -- with the
13 silver solder on the final line side did you say that
14 you were -- that it would cause you to cough or choke?

15 Mr. Griggs: I'm going to object to leading
16 here.

17 Mr. Eddy: I'm just trying to remember.

18 Q. You tell me what you said.

19 Mr. Griggs: Well, he -- you -- it's -- it's
20 a leading question; I'd like a ruling.

21 Commissioner Wilkerson: Yes.

22 Mr. Eddy: All right.

23 Commissioner Wilkerson: Yes, just don't --

24 Mr. Eddy: Okay.

25 Commissioner Wilkerson: -- when -- when you

1 inhaled any particles or you inhaled any dust what
2 symptoms did you feel?

3 A. I started choking and I couldn't get my breath and I
4 would go over there and sit down and a guy named Manly
5 that worked on further back, further from where the
6 food table was across from the ally --

7 Mr. Griggs: I'm going to object to him --

8 A. -- he'd come over there and get water.

9 Mr. Griggs: -- to Manley.

10 Commissioner Wilkerson: Yes, I don't know
11 who Manly is.

12 Q. Okay. Are you done?

13 A. He's a gentleman that worked on -- worked over there
14 was assembling -- gosh, he'd be assembling the racks
15 for these fuel tanks.

16 Q. How often would your inhalation of this dust and smoke
17 cause you to cough when you worked on the final line
18 side?

19 A. At least once or twice a week and even Gary or Billy or
20 Dan, the guy that worked beside of me down there, he
21 would come and ask me --

22 Mr. Griggs: I'm going to --

23 A. -- was I okay.

24 Mr. Griggs: -- object to anything that --

25 Mr. Eddy: Okay.

1 Q. Well, let me ask you this.

2 Commissioner Wilkerson: You can't --

3 Mr. Griggs: -- we've done this several
4 times..

5 Q. Did you see other people coughing?

6 A. Yes, sir.

7 Q. All right. Did -- now, you transferred to the
8 electrical department after -- about midway during your
9 period of employment at -- at CTR; is that true?

10 A. Yes, sir.

11 Q. Is that the electrical department you told us about
12 earlier that was an enclosed part of the shop?

13 A. Yes, sir.

14 Q. What did you do in there?

15 A. I built line electrical panels for the final line side
16 and I would go back and forth during the day when I had
17 the panels built and line them on the frames so we
18 could test them back there in the final line side.

19 Commissioner Wilkerson: When did you
20 transfer into the electrical department; do you
21 remember what month and year or just what year?

22 A. I'd say around December.

23 Commissioner Wilkerson: Of what year?

24 A. It must have been -- let's see -- December of '09, I'm
25 thinking?

- 1 Commissioner Wilkerson: 2009?
- 2 A. '08, '09. Well, I was about a year and a half there --
- 3 Mr. Griggs: Can --
- 4 A. -- on the final line side; so, I'd have went there in
- 5 July --
- 6 Mr. Griggs: -- can we get a stipulation --
- 7 A. -- Christmas would have been a year --
- 8 Mr. Griggs: -- can we --
- 9 A. -- Christmas the next year would have throwed it --
- 10 Commissioner Wilkerson: Okay.
- 11 Mr. Griggs: -- can we talk about a
- 12 stipulation as to this?
- 13 Mr. Eddy: I don't think it's necessary.
- 14 Q. All right.
- 15 Mr. Griggs: Okay.
- 16 Q. Let's -- let's talk about that.
- 17 Mr. Eddy: Thanks anyway though.
- 18 Mr. Griggs: All right.
- 19 Q. The -- so, you built electrical panels and you would --
- 20 and tell me the -- what would you do with them once you
- 21 finished building them?
- 22 A. Once I finished building them I'd take them back out
- 23 there to the final lines and those guys out there where
- 24 I used to work, they would be putting the -- the final
- 25 line copper tubing and stuff together and I would have

1 aluminum plates that I had to put up there and mount up
2 and finish, you know, ready for it. When it got
3 shipped out, the customer, all he had to do was go to
4 the LB and run his conduit and flex and then he would
5 wire the --

6 Q. How often --

7 A. -- panels up.

8 Q. -- so, this would be out in the main part of the plant
9 or the -- when you would take -- finish the panel and
10 take them to where ever it was that you were doing, at

11 -- at the -- to the final line side; is that what you
12 said?

13 A. Yeah, I'd take it to the final line side.

14 Q. Would you have to walk from the electrical department
15 through the main part of the plant to get there?

16 A. Well, you'd walk -- you'd walk across that wall where
17 there wasn't no wall that divided plant; we had a half
18 a wall.

19 Q. Were you exposed -- you described earlier the
20 conditions in the tanker truck section, the bulk tank
21 section, the fab shop; when you would go from
22 electrical to final line with the electrical panel were
23 you exposed to the conditions in those sections you
24 described earlier?

25 A. Yes, sir.

1 Q. And when you got to the final line department were you
2 exposed to similar conditions there that you described
3 earlier when you actually worked in that section?

4 A. Yes, sir.

5 Q. And -- and, again, and I apologize for being
6 repetitive, but at any time did you ever wear a dust
7 mask, a respirator or any other form of respiratory
8 protection at -- at CTR?

9 A. No, sir.

10 Q. Okay. When you would get home from work for -- after
11 working on -- when you worked on the final line side,
12 did you have any respiratory symptoms or problems?

13 A. No, not that I was aware of but, I mean, you know, I --
14 I did notice that I would get -- you know, I could go
15 at home and do whatever I had to do around the house.

16 Q. Did you ever have a productive cough?

17 Mr. Griggs: Object to leading, Commissioner.
18 He asked the individual what the -- what problems
19 he had and now he's suggesting problems.

20 Mr. Eddy: I'm just asking him what he has
21 testified to before.

22 Mr. Griggs: Could I get a ruling on that,
23 please?

24 Commissioner Wilkerson: Yes. I mean, you
25 can't --

1 Mr. Eddy: All right.

2 Commissioner Wilkerson: -- don't answer
3 that.

4 Mr. Eddy: I -- I'll rephrase the question.

5 Commissioner Wilkerson: Wait -- wait a
6 minute he's got a --

7 Witness: Can I go outside and change this
8 tank?

9 Commissioner Wilkerson: -- yes, sir.

10 Mr. Eddy: Yes, let -- let -- can I -- do you
11 want me to just go get it for you?

12 Witness: It doesn't matter to me.

13 Mr. Eddy: Yes, well, it will be --

14 Mr. Griggs: Why don't you just bring it in
15 --

16 Mr. Eddy: -- whatever is easier.

17 Mr. Griggs: -- it'll be easier for him.

18 Mr. Eddy: Let me go get it and do you just
19 want to take a break?

20 Witness: Well, yeah, for a minute or two
21 (2).

22 Mr. Griggs: We'll go off the record.

23 Commissioner Wilkerson: That's fine. We'll
24 go off the record. I'm sorry.

25 (Off The Record)

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1 Commissioner Wilkerson: We're back.

2 Mr. Eddy: Okay. All right. I'm going to
3 try to wrap this up as quickly as I can.

4 Commissioner Wilkerson: Are you okay?

5 Witness: Uh-huh.

6 Commissioner Wilkerson: Yes, I want to make
7 sure you're okay; that's the main thing.

8 Mr. Eddy: He's running low on oxygen.

9 Commissioner Wilkerson: Yes.

10 Witness: Okay. I've got it.

11 Commissioner Wilkerson: Yes.

12 Mr. Eddy: That's -- we -- he -- we're down
13 to the little bottles; so, I'm going to try to
14 wrap up with the direct.

15 Mr. Griggs: Those other big bottles are
16 empty?

17 Mr. Eddy: Yes. He's been through it. Okay.
18 Have -- okay. All right. So --

19 Witness: The case is empty.

20 Mr. Eddy: -- it -- it's okay with you for me
21 to start?

22 Commissioner Wilkerson: Oh, yes, go ahead.

23 Mr. Eddy: Okay.

24 Q. Were you having -- you went -- well, let me see if I
25 can get this straight. How did you come to see Dr.

1 Doty?

2 A. I went to my family physician. I had been sick and
3 they did x-rays on me and found three (3) spots on my
4 lungs, okay? That's while I was in the electrical
5 department. And then I -- he made -- my family doctor
6 made me an appointment up there to see a lung doctor.

7 Q. What kind of symptoms were you having at that time?

8 A. Well, at the time I had fatigue and a shortness of
9 breath; I noticed I'd get short of breath but, you
10 know, I also had quit smoking at that time too.

11 Q. So, when you -- when you first saw Dr. Doty was -- do
12 you remember if that was in like July of 2010?

13 A. I think it was just the beginning of August.

14 Q. Okay. Well, if the record said July 22nd of 2010, you
15 wouldn't disagree with that would you?

16 A. No, I wouldn't disagree with that.

17 Q. Okay. Now, his -- his records indicate you weren't
18 really complaining of any pulmonary symptoms when he
19 first saw you; does that sound about right or was it
20 just fatigue?

21 A. Well, I -- I didn't complain to him because I really
22 just didn't know what was wrong with me. I mean, I
23 didn't, you know, I didn't complain the first time I
24 went to him and then I went back and he done a saline
25 solution flush that flushed my lungs and then it -- it

1 got worse.

2 Q. Okay. Did he order a biopsy, Dr. Doty?

3 A. Yes, he did.

4 Q. And were you hospitalized for that?

5 A. Yes, I was.

6 Q. And how did your condition, was it affected at all by
7 the biopsy or hospitalization?

8 A. I don't remember other than him telling me that --

9 Mr. Griggs: I'm going to object here,
10 Commissioner.

11 Commissioner Wilkerson: He can't --

12 Mr. Eddy: Okay.

13 Commissioner Wilkerson: -- tell me what the
14 doctor said.

15 Mr. Eddy: Okay. That's all right; I'll
16 withdraw the question.

17 Q. Since this -- your last day of work at CTR I think was
18 September the 19th, to the best of your recollection,
19 2010?

20 A. -- that's close.

21 Q. Okay.

22 A. I --

23 Q. Close enough.

24 A. -- I did take a --

25 Q. What kind of -- what kind of medications -- now,

- 1 obviously, you're on oxygen, correct?
- 2 A. -- yes, sir.
- 3 Q. And how often do you have to wear your oxygen?
- 4 A. All the time.
- 5 Q. And are you on any other medications for your lungs?
- 6 A. Yes, sir. I take Spiriva once in the morning and I've
- 7 got a handheld inhaler that I have to use too.
- 8 Q. Okay. Spiriva, a handheld inhaler, oxygen; any --
- 9 anything else? Don't you use a nebulizer?
- 10 A. I think that's what they call it --
- 11 Q. That's what you just referred to?
- 12 A. -- its a little tube thing.
- 13 Q. Okay.
- 14 A. Yeah, you spray it.
- 15 Q. All right. Are you -- do you continue to -- to treat
- 16 with Dr. Doty?
- 17 A. Yes, I do.
- 18 Q. Were you terminated by CTR as a result of your
- 19 condition?
- 20 A. After we found out later on that I cannot -- that I
- 21 wasn't going to be able to go back to work.
- 22 Q. Because you weren't able to -- to -- to perform your
- 23 duties there anymore, right?
- 24 A. Right.
- 25 Q. All right. And did your health insurance run out at

1 some point?

2 A. It run out and then I Cobra-ed and then the Cobra run
3 out.

4 Q. Have you paid medical bills out of your own pocket?

5 A. Yes, sir.

6 Q. Were -- did you have a -- a beef cattle -- raising beef
7 cattle operation before you got sick?

8 A. I did before I got sick and once I got sick I had to
9 give it to my sister's brother --

10 Q. All right.

11 A. -- her son, my sister's son.

12 Q. And you're -- are you -- and so, you're -- you can't --
13 you couldn't do the beef cattle business anymore?

14 A. (Shook head in a side to side motion).

15 Q. All right.

16 A. Nope.

17 Court Reporter: I'm sorry; I didn't hear
18 you.

19 Mr. Griggs: He said no.

20 Court Reporter: Okay.

21 Mr. Griggs: He said no or nope.

22 Court Reporter: Thank you.

23 Mr. Eddy: Okay. You know, that's -- that's
24 -- that's all I have at this time. Thank you, Mr.
25 Dority, please answer any -- any questions that

1 Mr. Griggs may have for you.

2 Witness: Well, I'll do my best.

3 Mr. Griggs: What time is it? Are we --

4 Commissioner Wilkerson: I've got ten (10)

5 till but hold on let me check this; I always --

6 I'm always early with my watch. Well, no, it's

7 actually 4:52 so I must not be early today.

8 You've got eight (8) minutes.

9 Mr. Griggs: If you want to --

10 Mr. Eddy: I don't want to bring him back if

11 at all possible.

12 Mr. Griggs: -- I would prefer not to have to

13 start and -- and stop. I mean, I don't -- I think

14 that's -- I don't think that's unreasonable.

15 Mr. Eddy: Well, you -- how long do you think
16 you have?

17 Mr. Griggs: It's more than eight (8)
18 minutes.

19 Mr. Eddy: Well, why don't we just see if you
20 can get it done before they run us out of here
21 because he -- I --

22 Commissioner Wilkerson: I'm fine with that.

23 Mr. Griggs: Okay.

24 Commissioner Wilkerson: Just -- but once we
25 get started just --

1 Mr. Griggs: I -- I -- once we get --

2 Commissioner Wilkerson: -- I remind
3 everybody that once we get started he can't talk
4 to you about the case and you can't talk to him
5 about the case.

6 Mr. Eddy: Understood.

7 Mr. Griggs: -- so, if --

8 Commissioner Wilkerson: I -- I know you know
9 that but I was just --

10 Mr. Griggs: -- if we leave here without
11 being done he can't --

12 Commissioner Wilkerson: -- he can't --

13 Mr. Griggs: -- we can't --

14 Commissioner Wilkerson: -- I understand.

15 Mr. Griggs: -- he can't discuss, I mean.

16 Commissioner Wilkerson: I understand. Yes,
17 I mean, you know that; I'm not --

18 Mr. Griggs: Because he -- because he may --

19 Commissioner Wilkerson: -- telling you
20 anything you don't know; I apologize.

21 Mr. Griggs: -- because he may --

22 Mr. Eddy: No, no, no. I --

23 Mr. Griggs: -- because -- because he may --

24 Mr. Eddy: -- I think I -- you know, I need
25 to be reminded.

1 Mr. Griggs: -- he may recall.
2 Commissioner Wilkerson: Me too some days.
3 Mr. Griggs: He may need to recall him.
4 Commissioner Wilkerson: Yes. I -- I don't
5 know. Go ahead. Let me make sure I can get back
6 to my positions to where Mr. Dority started
7 talking to me. All right.

8 Michael W. Dority CROSS-EXAMINATION

9 By Mr. Griggs:

10 Q. Mr. Dority, my name is Jason Griggs and I represent
11 CTR, okay?

12 A. Yes, sir.

13 Q. And if you need to -- to take a break or anything or if
14 you get short of breath you let me know, all right?

15 A. Yes, sir.

16 Q. Earlier upon your testimony to your attorney you -- you
17 testified that there were some bulk tanks out there; is
18 that right? Bulk tanks you said that they were working
19 on; is that correct?

20 A. Yes, sir.

21 Q. And you testified that you assumed they were made out
22 of stainless and aluminum; is that correct?

23 A. That's correct.

24 Q. That's --

25 A. I saw -- I seen the stainless from the bottom of the

1 tank; I never seen the inside of the tanks or the
2 outside of the tanks.

3 Q. -- so, are you assuming they were made out of stainless
4 and aluminum or are you positive of that?

5 A. Well, all I -- I'm assuming they're made out of
6 stainless.

7 Q. Okay. And what about aluminum?

8 A. I seen stainless and aluminum where they were piping
9 them up from the bottom side inside the plant, the
10 smaller tanks.

11 Q. What about the bulk tanks?

12 A. That is the bulk tanks.

13 Q. What about the larger ones that you were talking about
14 all the work?

15 A. The larger ones are the same --

16 Q. Okay. So, you're sure --

17 A. -- I'm sure they were made --

18 Q. -- you're sure of that or your assuming?

19 A. -- I'm sure.

20 Q. Okay. So, you're changing your testimony?

21 A. No, I'm not changing my testimony.

22 Q. Okay. Now, you said that a lot of the bulk tank work
23 that you described, that's done outside isn't it?

24 A. Some of it is but some of it is also did inside the
25 building.

- 1 Q. Okay. But -- but a good -- but -- but a -- just as
2 much is done outside -- they do that outside year round
3 irregardless (sic) of the elements; isn't that correct?
4 A. They do the bigger ones because they can't get them in
5 the plant --
6 Q. Okay. So --
7 A. -- but the smaller tanks they brought inside the plant
8 to do.
9 Q. -- but -- but some of the work you described is done
10 outside year round; is that correct?
11 A. Some of the ones that won't come in the building; yes,
12 sir.
13 Q. Okay. Now, how large is this facility; do you know?
14 A. Its a pretty good size, I don't know the exact square
15 footage.
16 Q. How high is the ceiling?
17 A. I would say the ceilings is twenty-five (25) foot, just
18 guessing, twenty (20). In the middle it's a A roof,
19 so.
20 Q. If it -- if -- if the ceilings were -- if I said they
21 were thirty (30) foot would -- is that -- is that --
22 does that sound right or does that sound way off?
23 A. I -- I -- just guessing, I'm not a -- I'd say you were
24 close but I think that's a little tall.
25 Q. Okay. Now, you said -- are there six (6) final line

- 1 stations or five (5); is it three (3) and two (2) or is
2 it -- how many are there?
- 3 A. There's three (3) --
- 4 Q. Okay.
- 5 A. -- you had two (2) here (indicating) --
- 6 Q. Okay.
- 7 A. -- and then you had another guy doing brass right
8 behind Gary and Billy building the panels.
- 9 Q. Is that final line also?
- 10 A. Well, that's -- it's used as brass header used on the
11 tanks that the fill in with, each tank is made like --
- 12 Q. Is he brazing over there?
- 13 A. -- silver soldering.
- 14 Q. Okay. Would the -- that's the brazing with the solder,
15 right?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, you said -- Mr. Eddy asked you where all
18 the smoke went and you said it went to the ceiling; is
19 that correct?
- 20 A. Where else can it go if the doors is closed but up?
- 21 Q. And that's the thirty (30) foot ceiling?
- 22 A. Twenty-five (25) I'd say --
- 23 Q. Okay.
- 24 A. -- thirty (30), whatever.
- 25 Q. Now, you said that there is no ventilation in the

1 winter; is that correct?

2 A. That's correct.

3 Q. Okay. Isn't it true that during the -- let's take
4 spring, summer and fall out of it, okay? During
5 spring, summer and fall they have doors open almost all
6 the time; isn't that correct?

7 A. They have doors open when the weather permits and its
8 not raining and its not real cold, like in the winter
9 its eighteen (18) degrees, the doors are shut; you're
10 trying to stay warm in there.

11 Q. How many doors are there?

12 A. I -- there was one (1) up at this end (indicating), one
13 (1) yonder end (indicating) and three (3) or four (4)
14 on the back.

15 Q. Okay. Are these regular doors or are they big garage
16 roll-up doors?

17 A. Garage roll-up doors.

18 Q. Okay. Are they big enough that you can drive a
19 tractor-trailer through?

20 A. Yeah.

21 Q. Okay. And is it true -- would you -- if I said there
22 was twelve (12) doors that you could get either a car
23 through or a tractor-trailer through would you dispute
24 that, if I said there was twelve (12) doors?

25 A. I didn't count the doors. All I know is where I worked

1 at the back.

2 Q. Okay. Well, you've talked a lot about the other
3 facilities, the other departments. You didn't work in
4 tanker, did you?

5 A. No, but I had to go over there --

6 Q. I --

7 A. -- to cut metal.

8 Q. -- I understand. You didn't work in bulk tank, did
9 you?

10 A. No, I did not.

11 Q. Okay. And there is -- you didn't work in the paint
12 area, did you?

13 A. I had to carry stuff over there --

14 Q. Okay.

15 A. -- to be painted.

16 Q. Did you work there?

17 A. I didn't work inside there but I had to deliver --
18 whatever I had to be painted had to go over there and I
19 would have to go back the next day and pick it up when
20 it was ready --

21 Q. Now --

22 A. -- and bring it back to my workstation.

23 Q. -- you've described the conditions inside the plant,
24 with your attorney asking you questions, you've
25 described them pretty in depth but you don't -- you

1 didn't notice how many doors there were?

2 A. No. I didn't count no doors, no.

3 Q. Okay. But if I -- if I'm -- if I'm asking you if
4 there's twelve (12) doors what is your response to
5 that?

6 A. Whatever you say.

7 Q. Okay.

8 A. You might have counted them, I didn't.

9 Q. And if the doors are large -- and do you agree they're
10 all large enough to drive a car or a tractor-trailer
11 through?

12 A. Yes, sir.

13 Q. Okay. These aren't regular size doors like you have in
14 your house?

15 A. They're like garage doors.

16 Q. Okay. And when those doors are open you get some
17 cross-breezes, right?

18 A. Yeah.

19 Q. And during the wintertime, even, there's plenty of
20 times when those doors are open isn't it; aren't they
21 bringing in things, taking out things, bringing in
22 tankers, taking out tankers, opening doors, closing
23 doors; aren't those doors opening and closing a lot?

24 A. Them doors are being opened and closed. I can't tell
25 you what goes on on the back side of my wall; I looked

1 -- I stayed at my workstation on the back side of the
2 wall back there.

3 Q. Well, how are you --

4 A. All I can tell you is I could feel a breeze come
5 through there.

6 Q. -- okay. And a breeze would come through and -- and
7 blow things in and out of the building, right?

8 A. Yeah.

9 Q. Make the air not stagnant; is that right, blow things
10 around?

11 A. Do you not understand that we was in a corner?

12 Q. Well, I'm -- I'm asking you the question; you don't get
13 to ask me a question, okay? It would blow the air,
14 correct?

15 A. Not where I was at because I was in the corner of a
16 building, like this is the -- the corner or the
17 building, you know, the big door here (indicating), we
18 had our workstation set up here (indicating), this is a
19 end of the wall down here in this section, down here
20 next to the electric shop (indicating).

21 Q. You had a door in your section, right? You said you
22 had a big door here (indicating) right beside your
23 section?

24 A. Yeah.

25 Q. Okay. And you would feel the air come in through that

1 door, right?

2 A. I could feel it when you opened it on the other end; it
3 would blow it up in that corner where we were at.

4 Q. And if the other door was open in the corner it would
5 blow -- blow some stuff out, wouldn't it?

6 A. Right.

7 Q. Now, if you're not familiar with the doors in the other
8 section, you've testified what the conditions were and
9 what was going on over there, you didn't see them
10 opening doors all the time, even during the colder
11 months?

12 A. There was only two (2) doors open in the colder months
13 --

14 Q. Only two (2)?

15 A. -- no, sir. One (1) on each end where they're bringing
16 stuff in and out or taking stuff outside or bringing
17 stuff in, you know.

18 Q. So, during the colder months --

19 A. It wasn't all -- I don't think all twelve (12) doors,
20 just like you said, was open all the time, no.

21 Q. -- okay. But the twelve (12) doors were all open at
22 various times and there was a good amount of the time
23 when all those doors would have been open; isn't that
24 correct?

25 Mr. Eddy: Object to the form of the

1 question; its compound.

2 Mr. Griggs: Okay.

3 Q. Wasn't there times when all those doors would be open?

4 A. In the summertime; yes, sir.

5 Q. In the springtime?

6 A. In the springtime.

7 Q. In the fall?

8 A. Depending on the temperature outside.

9 Q. And some in the winter?

10 A. Some in the winter, not much --

11 Q. Okay.

12 A. -- because depending on the temperature.

13 Q. Well, Mr. Glenn testified that during good days and
14 during sometimes even in the morning during the winter
15 it was opened --

16 Mr. Eddy: I object --

17 Q. -- would you disagree with that?

18 Mr. Eddy: -- I object to the form, lacks
19 foundation.

20 Mr. Griggs: Well, let's go through the
21 foundation then. I'll get back to the
22 ventilation.

23 Q. Let me ask you a couple of more questions, okay?
24 There's ceiling fans, suction fans, on the roof; isn't
25 that right?

1 A. Yes.

2 Q. Okay. And those purpose you said the smoke goes to the
3 ceiling, correct? The smoke that you described goes to
4 the ceiling; that's what you testified to, correct?

5 A. That's what I testified to --

6 Q. Okay.

7 A. -- correct.

8 Q. And those fans on the ceiling, did they blow the smoke
9 back down or did they take it out of the ceiling?

10 A. Ever where we was at, where we worked at and did our
11 work at that table did not have any fans over our heads
12 there. There was fans in that plant in the front part
13 around there where the tanker and the bulk tank
14 division was, there was tanks there, and that area had
15 fans taking it out.

16 Q. Okay.

17 A. But not over those tables where we was silver soldering
18 at --

19 Q. Now --

20 A. -- there was no fans there. There was fans on the left
21 hand wall --

22 Q. -- we'll get to that.

23 A. -- and we complained and finally got them to move --
24 the two (2) on the end -- the one (1) back here had a
25 bad bearing. So, I said, well, take the motor -- they

1 said the one (1) in the front has got a bad motor on
2 it. Take the one with the good motor and put it up
3 here where the bad motor is and we finally got that
4 done. And we got the front fan working on the side of
5 the wall, not overhead, on the side of the wall.

6 Q. Now, you've talked about -- but you've said that --
7 that a lot of the shavings and dust and everything from
8 bulk tank and tanker, where you said the fans were
9 overhead, that would come into your area?

10 A. It would.

11 Q. But they also had fans above those areas that you said
12 were sucking air out, correct?

13 A. Not enough CE --

14 Q. Not enough?

15 A. -- not enough CE exhaust to suck it out; I can tell you
16 that.

17 Q. Now, you had a fan on your area in the wall that you
18 said you got working, correct?

19 A. (Nodded head in an up and down motion).

20 Q. Yes or no?

21 A. Yes.

22 Q. Okay. Now, you were on the final lines -- were you on
23 the final lines -- you started there in July of '07,
24 correct; you were hired July 9, right?

25 A. Yes.

- 1 Q. July 9th; is that right?
- 2 A. Yes.
- 3 Q. Okay. And you moved from the final lines to the
- 4 electrical in October of 2008; do you dispute that or
- 5 does that sound right?
- 6 A. Close, yes.
- 7 Q. Okay. So, that's about fifteen (15) months, one (1)
- 8 year and three (3) months; is that -- is that right?
- 9 A. Close, yes, sir.
- 10 Q. Okay. That's how long you worked on the final line
- 11 side, correct?
- 12 A. Yes, sir.
- 13 Q. Okay. Let's talk about Mr. Eddy talked to you and
- 14 asked you questions and you worked at Springs for close
- 15 to thirty (30) years; is that correct?
- 16 A. Yes, sir.
- 17 Q. Okay. And at Springs you were exposed to bleaches and
- 18 dyes and dust and things of that description, correct?
- 19 A. Yes, you was.
- 20 Q. Okay. And at Springs you did welding, correct?
- 21 A. No, I did not.
- 22 Q. You didn't do any welding at Springs?
- 23 A. No.
- 24 Q. Okay. Did you -- do you know who Dr. Kradin is, Dr.
- 25 Kradin; does that name ring a bell? He's an attorney

1 -- he's a -- he's a doctor, I'm sorry, up in Boston and
2 your attorney sent the records to him and got an
3 opinion from him and also Dr. Kradin got some
4 information about your work history and Dr. Kradin's
5 report, I want to read it to you, at page 27, and this,
6 again, is submitted by your attorney in this case. It
7 says, "From 1978 to 1996, he worked at Springs. His
8 duties included extensive welding with rods containing
9 nickel, stainless steel, aluminum, galvanized steel,
10 lead and cadmium." And you just testified you didn't
11 do any welding at Springs. Did you do welding at
12 Springs, yes or no?

13 A. No.

14 Q. Okay. So, that's wrong in this report, correct?

15 A. That's correct.

16 Q. Okay. Dr. Kradin's report is wrong at least as that
17 -- as far as that's concerned, correct?

18 A. That's correct.

19 Q. Well, let me go ahead and ask you this. Dr. Kradin's
20 report says you participated in firefighting at the
21 Springs plant, which occurred on a regular basis,
22 releasing fumes from burning chemicals. Did you do
23 firefighting at Springs?

24 A. We were first responders; we responded if somebody went
25 down in the plant and was sick.

1 Q. Okay.

2 A. And we also extinguished fires --

3 Q. Did --

4 A. -- as needed.

5 Q. -- did you participate in firefighting at the plant,
6 which occurred on a regular basis?

7 A. I did do firefighting but I don't think you would call
8 it a regular basis.

9 Q. Okay. So, that part is incorrect as well?

10 A. Yes.

11 Q. Okay. Let me ask you this. At Georgia-Pacific you
12 worked as an Instrumentation Mechanic and was exposed
13 to various resins; is that right or is that wrong?

14 A. That is correct.

15 Q. Okay. How much soldering when you were doing the final
16 lines did you do each day?

17 A. It depends on when I was doing it; I mean, I -- I --

18 Q. Give me a --

19 A. -- I silver soldered every day. It might have not been
20 all day long; I might have spent part of that day
21 cutting up tubing and material to build what I needed.

22 Q. -- let me ask you this. If I said soldering, is that
23 the actual torch lit using the silver; is that what
24 that means?

25 A. It does to me, yes.

1 Q. Okay. Each day how long would you spend with that
2 torch lit, on average; I need you to give me an
3 average?

4 A. An average --

5 Q. Yes.

6 A. -- four (4) hours a day, just guessing.

7 Q. Four (4) hours each day with that torch lit?

8 A. I'm just guessing, yeah.

9 Q. Okay.

10 A. Some days it was all day.

11 Q. If Dr. Kradin said you soldered eight (8) hours a day,
12 five (5) days a week; is that correct or is that
13 incorrect?

14 A. That is correct.

15 Q. That's correct?

16 A. Yeah.

17 Q. You soldered eight (8) hours a day, five (5) days a
18 week?

19 A. Sometimes, yes, sir.

20 Q. Okay. Did you do it for eighteen (18) months, eight
21 (8) hours a day, five (5) days a week?

22 A. However long I worked out there.

23 Q. If you were soldering eight (8) hours a day how did you
24 have time to go to the 02 cleaning and to do the bead
25 blasting and to do the -- putting the labels on the

1 machines and testing the machines and blowing off the
2 machines and cooling the -- the parts in water; how did
3 you have time to do any of that if you were soldering
4 eight (8) hours a day --

5 A. I did --

6 Q. -- five (5) days a week?

7 A. -- I did what my supervisor, Mike Hornback, instructed
8 me to do.

9 Q. Okay. So, you agree with the statement, he soldered
10 eight (8) hours a day, five (5) days a week, you -- you
11 agree with that even though you just told me it might
12 be four (4); do you agree with that?

13 A. Yes, I agree with it. Yeah.

14 Q. Okay. So, you're sticking by that statement there?

15 A. I'm saying it varies. You -- you -- you're going way
16 out --

17 Q. No, I'm not, Mr. Dority. This is important because
18 this is in a report that your attorney --

19 Mr. Eddy: I --

20 Q. -- has submitted --

21 Mr. Eddy: -- I --

22 Mr. Griggs: -- I'm going to ask -- I'm --

23 Commissioner Wilkerson: Let me finish --

24 Mr. Griggs: -- I haven't done anything.

25 Commissioner Wilkerson: -- and then, hold

1 on. Don't -- don't answer until we hear from Mr.
2 Eddy.

3 Q. This is a report that your attorney has submitted to
4 lay the foundation of your claim against my client and
5 the basis, the history given, to this doctor says he
6 soldered eight (8) hours a day, five (5) days a week,
7 and I want you to sit here, under oath, and tell me if
8 that's true, yes or no?

9 Mr. Eddy: -- I will object as --

10 Commissioner Wilkerson: Wait a minute.

11 Mr. Eddy: -- it lacks foundation and asked
12 and answered.

13 Mr. Griggs: Well, I got four (4) hours one
14 (1) time and I got eight (8) another; so, which one
15 is it?

16 Commissioner Wilkerson: I -- I would agree
17 with that but it has been asked and answered, so.
18 Wait a minute hold on.

19 Witness: I'm okay.

20 Commissioner Wilkerson: Okay. I saw you
21 looking down. I'm more concerned about that than
22 all these questions, all right?

23 Mr. Griggs: Okay.

24 Q. Now --

25 Witness: I am too. My health is number one

1 (1).

2 Commissioner Wilkerson: Yes, I agree.

3 Q. -- now, did -- did your -- so, you didn't do any -- you
4 didn't do any welding at Springs; is that what you're
5 saying?

6 A. No, sir.

7 Q. At Springs were you exposed to, at any time, nickel,
8 stainless, aluminum, cadmium or lead; were you exposed
9 to that as Springs?

10 A. ~~Not that I'm aware of; no, sir.~~

11 Q. All right. So, if that's in the report you take issue
12 with that, correct?

13 A. Correct.

14 Q. Okay. Now, again, CTR, July of '07, is when you
15 started, correct?

16 A. (Nodded head in an up and down motion).

17 Q. And you were hired on the final line and then after
18 about a year and three (3) months you moved to the
19 electrical department, correct?

20 A. Yes, sir.

21 Q. Okay. And is your -- do you feel that using the silver
22 solder is what caused your problems?

23 Mr. Eddy: I -- I object to the form of the
24 question; that's for -- that's a medical
25 conclusion.

1 Mr. Griggs: No, it's not. He's got to have
2 some basis for his claim.

3 Witness: I'm not a medical doctor.

4 Mr. Eddy: I -- I --

5 Mr. Griggs: I'm asking him --

6 Commissioner Wilkerson: whoa, whoa, whoa,
7 whoa, whoa, whoa.

8 Mr. Griggs: -- okay.

9 Mr. Eddy: -- I -- my -- my objection is --
10 the issue in the case is did the employment at --
11 at CTR was it a kind of employment contributing to
12 the disease or -- you know, plus, there -- was
13 there an injurious exposure there; that's a
14 medical question and he's asking him to -- to say
15 whether or not it was the silver solder or that
16 and everything else in the plant and I think that
17 requires a medical conclusion.

18 Mr. Griggs: I'm just asking him what -- at
19 some point in time he had to form -- form a
20 factual basis of his claim and I'm asking him what
21 he thinks caused the problem.

22 Commissioner Wilkerson: I don't have a
23 problem in answering what he thinks caused the
24 problem --

25 Mr. Eddy: Okay.

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1 Commissioner Wilkerson: -- that general
2 question.

3 Mr. Eddy: And just -- just that?

4 Mr. Griggs: Yes.

5 Commissioner Wilkerson: Yes.

6 Q. What do you think caused your problem?

7 Commissioner Wilkerson: Yes.

8 A. That's the only thing I know of.

9 Q. What?

10 A. Flux and silver solder and the nastiness, the stuff
11 that you bring --

12 Q. Okay.

13 A. -- breathe in your lungs in that plant.

14 Q. Okay. Now, during the time that you did the -- I'm
15 going to call it brazing or soldering, okay; is that
16 fair?

17 A. Yes, sir.

18 Q. Okay. You can call it either or -- either or. The
19 fact is, you would -- you would do the torch for a
20 period of time and then you would go do other things,
21 correct?

22 A. Yes, sir.

23 Q. Okay.

24 A. You was back-and-forth --

25 Q. You would --

- 1 A. -- depending on what needed to be done --
- 2 Q. -- I understand.
- 3 A. -- to finish the job.
- 4 Q. Okay. You would solder and then you would have to --
- 5 would you have to chase or go get parts?
- 6 A. They brought most of the parts to us but occasionally
- 7 you would have to go get a part if they were out and --
- 8 Q. And that would --
- 9 A. -- they didn't bring it to you.
- 10 Q. -- and that would require you to go somewhere and leave
- 11 your workstation, correct?
- 12 A. Yes, sir.
- 13 Q. And you would have to take parts to the 02 cleaning
- 14 room, correct?
- 15 A. Yes, sir.
- 16 Q. And you weren't soldering when you were doing that,
- 17 were you?
- 18 A. I couldn't have been if I was pushing a buggy.
- 19 Q. Okay. And you had to screw things together; you had to
- 20 do a lot of assembly by hand didn't you?
- 21 A. Yes, some.
- 22 Q. And when you were assembling -- well, did you do a lot
- 23 of assembly by hand or just a little bit?
- 24 A. A lot.
- 25 Q. Okay, a lot. If you did a lot of assembly by hand you

1 weren't soldering while you were doing that, were you?

2 A. I did both; whatever the job called for.

3 Q. Mr. Dority, just answer the question. When --

4 Mr. Eddy: He answered.

5 Mr. Griggs: -- no, no, no, no, no.

6 Q. The question --

7 A. How do you want me to do? Answer the question --

8 Mr. Griggs: Commissioner?

9 A. -- the way you want it or -- or what?

10 Mr. Griggs: Commissioner?

11 Commissioner Wilkerson: No, I just want you
12 to -- listen --

13 A. I'm telling you the truth.

14 Commissioner Wilkerson: -- just listen to
15 me. First of all, when he asks a question you've
16 got to say yes or no, okay, if it's a yes/no
17 question. Then you can tell me, okay?

18 Q. When --

19 Commissioner Wilkerson: So, listen to the
20 question and then answer yes -- and if you don't
21 know, just say I don't know; that's -- that's
22 fair.

23 Q. -- when you were assembling the parts by hand, screwing
24 the fittings together, assembling the parts by hand,
25 were you soldering when you were doing that?

1 A. No.

2 Q. Okay. How much time each day on average would you
3 spend assembling the parts by hand?

4 A. I don't know.

5 Q. Okay. When you finished soldering and brazing you
6 would have to cool the parts down, correct?

7 A. Yes.

8 Q. Turn off the torch, cool the parts down, correct?

9 A. Yes.

10 Q. How would you cool the parts down?

11 A. In a bucket of water that was down there.

12 Q. Okay. And when you did that you turned the torch off;
13 you weren't soldering, were you?

14 A. No.

15 Q. And then you would take the parts -- you've talked
16 about the sandblasting, correct?

17 A. Yes.

18 Q. When you did that you weren't soldering, were you?

19 A. No.

20 Q. Okay. Let's talk about sandblasting a little bit. You
21 said you put this in an enclosed cabinet; you put the
22 part in an enclosed cabinet, correct?

23 A. Yes.

24 Q. And then there's rubber gloves, thick rubber industrial
25 gloves, that you can put your hands in to hold and --

1 and manipulate the part to make sure it gets blast --
2 to make sure it gets touched everywhere, correct?

3 A. Yes.

4 Q. Okay. And, so, while the blasting is going on you've
5 got the thing closed up, correct?

6 A. Yes, sir.

7 Q. Okay. How big is this door that you would open to take
8 the part out?

9 A. I never measured it.

10 Q. Maybe a -- maybe a two (2) -- two and a half (2 ½) feet
11 by -- how -- two (2) feet?

12 A. Two (2), two and a half (2 ½) something like that.

13 Q. Okay. And where was the door, was it -- if you were
14 standing up where was the door, what level was the door
15 on; was it down at your waist?

16 A. The door was on the right hand side but you could also
17 unlatch it and take it out the top too. If it was a
18 bigger object and it wouldn't go in the side door you
19 had a latch you unlatched and raised the top up and
20 laid it down in the top --

21 Q. Right.

22 A. -- and did it. And when you got through you had to
23 unlatch the top and raise it up to take the piece out
24 because it wouldn't come through the smaller door.

25 Q. Were you -- when you would open the cabinet to take

1 your -- the parts out where -- were you standing up?

2 A. Yes.

3 Q. And where was the door when you're standing up, is it
4 -- is it at your waist or is it -- is it at your chest
5 or is it at your knee; where is the door?

6 A. The door was right along in here (indicating).

7 Q. Right along your chest area?

8 A. Uh-huh.

9 Q. Okay.

10 A. Right here, along in here (indicating).

11 Q. Okay.

12 Commissioner Wilkerson: A little further up,
13 okay.

14 Q. So, when you -- when you would take the part out and
15 open the door were you -- did you stick your face in
16 the door?

17 A. No.

18 Q. Okay.

19 A. It just come -- the dust come out of the cabinet.

20 Q. A lot of it just come out?

21 A. Yes.

22 Q. Okay. Now, you were required -- but you were required
23 to test the parts, correct, test the components?

24 A. Right.

25 Q. You had to hook them up and pressure test them, didn't

- 1 you?
- 2 A. Yes.
- 3 Q. Okay. And when you were hooking them up and pressure
- 4 testing them you weren't soldering, were you?
- 5 A. Not at that particular time --
- 6 Q. Okay.
- 7 A. -- but sometimes the guy that done the testing couldn't
- 8 be there; so, I would go ahead and get everything set
- 9 up and tell him to call me on the radio and tell me
- 10 whenever to come -- come by there when he got time and
- 11 I would go back to soldering.
- 12 Q. Okay.
- 13 A. It was on back-and-forth.
- 14 Q. I understand. How many hours a day did you work?
- 15 A. It just depended on whenever I was needed.
- 16 Q. Well, what -- give me -- give me some -- there had to
- 17 be some type of normal; what was -- what --
- 18 A. Well, a normal day was eight (8) hours.
- 19 Q. -- okay. And --
- 20 A. But a lot of time we'd get behind and we'd be there,
- 21 you know, five o'clock in the afternoon, whatever it
- 22 took to get the job down.
- 23 Q. -- how many -- how often did you work more than eight
- 24 (8) hours a day?
- 25 A. I can't tell you that. They've got records of it.

1 Q. Okay. What was your -- what's your -- what's your --
2 do you have any guess -- do you have any -- any guesses
3 to that?

4 A. I don't have any guesses to that.

5 Q. Okay. How many -- if you worked eight (8) hours a day
6 how many breaks did you get?

7 A. Thirty (30) minute unpaid lunch and two (2) fifteen
8 (15) minute breaks.

9 Q. So, about an hour of break time during the eight (8)
10 hour day?

11 A. Yes, sir.

12 Q. Okay. Now, you test the components and when you tested
13 the components you said you weren't brazing or
14 soldering and then at times also every time you did a
15 part you had to put labels and stickers and things on
16 these components, correct?

17 A. At times, yes; depending on the job.

18 Q. Okay. And when you did that you weren't actively
19 brazing either, were you?

20 A. No.

21 Q. Okay. And you had to blow the part down; is that
22 correct? Did you have to clean -- blow the part down;
23 did you ever have to blow the part off?

24 A. Yes.

25 Q. And that didn't require active soldering, did it?

1 A. No.

2 Q. Okay. And then you secured the part to a Unistrut; is
3 that correct?

4 A. Yes.

5 Q. And that didn't require active soldering, did it?

6 A. No, sir.

7 Q. Okay. And then after it was secured to the Unistrut
8 that's when you did the pressure test, right?

9 A. After we finished it --

10 Q. Right.

11 A. -- assembling, before it could be taken out to be
12 shipped --

13 Q. Okay.

14 A. -- it had to be tested by the Quality man, him standing
15 there with you.

16 Q. Okay. But you were there during the test?

17 A. Yes, sir.

18 Q. Okay. So, isn't it true that throughout your workday
19 and throughout your work week and throughout your
20 fifteen (15) months on the final line side you did
21 numerous different tasks, you did not solder eight (8)
22 hours a day; is that correct?

23 A. I did numerous tasks, yes. But there was days that I
24 did solder all day.

25 Q. There's days you soldered all day long?

1 A. Yeah.

2 Q. Okay. And you were one (1) of how many persons over
3 there on the brazing side or the soldering side?

4 A. There was three (3) tables here (indicating) --

5 Q. Two (2) and one (1)?

6 A. -- two (2) and one (1), yeah.

7 Q. But all of you are not brazing or soldering at the same
8 time, are you?

9 A. At times we were.

10 Q. Okay. Were you all brazing -- or just at times or all
11 the time?

12 A. There was somebody brazing all the time.

13 Q. Okay. But the -- but were all of you brazing all the
14 time?

15 A. No. We had different tasks that we had to do too.

16 Q. Okay. Were there ever times when you would go an
17 entire day without brazing?

18 A. No.

19 Q. That never happened?

20 A. I don't think so; not that I can recall.

21 Q. Okay. How much aluminum -- aluminum did you work with
22 when you were out there at CTR?

23 A. A good bit.

24 Q. How many -- how much -- how often did you sand -- you
25 talked about sanding aluminum and -- or grinding the

1 aluminum; did you do that every day?

2 A. Not every day.

3 Q. Did you do it every week or would there be times,
4 weeks, where you didn't do it?

5 A. At least -- I'd do it just about at least once a week
6 --

7 Q. There would --

8 A. -- sometimes more.

9 Q. -- there would never be weeks when you would not do it
10 at all?

11 A. It depended on what the orders was.

12 Q. Okay. Is it possible -- is -- was there weeks where
13 you would not do it all; yes or no?

14 A. No.

15 Q. Okay. So, it's not true that only every couple of
16 months you might do that a couple of times; you told --
17 you don't believe that's accurate?

18 A. No, I don't.

19 Q. Have you -- do you have any -- do you have any trouble
20 remembering all these recollects -- or all these events
21 and details; do you have trouble remembering details?

22 A. No, sir.

23 Q. Do you remember talking to Mr. Joel Leonard, who is
24 another expert that your attorney sent you to?

25 A. Yeah.

1 Q. You remember him?

2 A. I think I do, yes.

3 Q. If Mr. Leonard's report says, at page 154, "During the
4 interview he demonstrated difficulty recalling details
5 and events. He experienced difficulty responding to
6 intent of questions and was prone to providing stories
7 and extraneous information not relevant". Do you take
8 issue with that or do you have trouble sometimes
9 recalling things?

10 A. I take issue with that.

11 Q. Okay. So, you don't believe that doctor -- that Mr.
12 Leonard, who was obtained by your attorney, you don't
13 -- you don't believe that's accurate?

14 Mr. Eddy: Object, asked and answered.

15 Commissioner Wilkerson: Yes.

16 Mr. Griggs: Okay.

17 Commissioner Wilkerson: He says, no. Yes.

18 Mr. Griggs: Excuse me, Commissioner?

19 Commissioner Wilkerson: No. He -- he -- I'm
20 sorry. He said he takes issue with what Dr.
21 Leonard said.

22 Mr. Griggs: Okay.

23 Q. I want to ask you, you remember -- you've talked about
24 aluminum and you remember back in August when a -- a
25 female attorney in my office took your deposition; do

1 you remember that?

2 A. (Nodded head in an up and down motion).

3 Q. You went to Columbia?

4 A. Yes.

5 Q. And you sat there and a -- and a female attorney took
6 your deposition?

7 A. Yes.

8 Q. And she asked you all the detail about your jobs,
9 correct?

10 A. Yes.

11 Q. And she asked you to tell -- tell her everything you
12 did; is that correct?

13 Mr. Eddy: Object to the form. If you want
14 to show him the -- that.

15 Q. During -- did she ask you to describe your jobs at CTR?

16 A. Yes.

17 Q. And do you know why the word aluminum only appears in
18 this transcript one (1) time and its not talking about
19 sanding or -- or grinding? How often did you work with
20 aluminum?

21 A. On a regular basis.

22 Mr. Eddy: Objection.

23 Q. Why didn't you talk -- why didn't you --

24 Commissioner Wilkerson: whoa, whoa, whoa,
25 whoa.

1 Mr. Eddy: I -- I'll go -- I'll -- I'll
2 withdraw the objection.

3 Commissioner Wilkerson: Yes, that's -- so,
4 that one is fine, okay.

5 Q. If you --

6 Commissioner Wilkerson: Go ahead.

7 Q. -- why didn't you -- why didn't you mention it to the
8 attorney that asked you questions?

9 Mr. Eddy: Object to the --

10 Commissioner Wilkerson: Form.

11 Mr. Eddy: -- to the form. I mean, you've
12 got to show him a -- a question and an answer --

13 Mr. Griggs: Commissioner?

14 Mr. Eddy: -- that's inconsistent with his
15 testimony; you can't ask him -- only she can
16 answer that question.

17 Mr. Griggs: Can we -- Commissioner, he was
18 -- he was given a -- he gave a discovery
19 deposition for two (2) hours and was asked -- I
20 mean, we can go through the whole -- if you want
21 to we can go through all the times that he was
22 asked --

23 Commissioner Wilkerson: That's fine.

24 Mr. Griggs: -- what he did.

25 Commissioner Wilkerson: That's fine.

1 Mr. Griggs: He didn't mention the word
2 aluminum --

3 Commissioner Wilkerson: That's what we're
4 here for --

5 Mr. Griggs: -- a single time --

6 Commissioner Wilkerson: -- that's fine.

7 Mr. Griggs: -- and now he's talking about
8 all this aluminum.

9 Mr. Eddy: Well -- well, show us a question
10 that he answered incorrectly or that's
11 inconsistent with his testimony today; that's how
12 you use a deposition.

13 Mr. Griggs: Thanks, trail lab. I'll tell
14 you what; I'll withdraw that for now, okay?

15 Q. Did you work with aluminum at Springs; yes or no?

16 A. No.

17 Q. So, if that appears in the reports it's -- it's not
18 accurate; is that correct?

19 A. That's correct.

20 Q. Did you ever file a complaint about any of the air
21 quality issues; did you ever complain about air quality
22 issues?

23 A. Yes, to -- to the supervisor --

24 Q. To --

25 A. -- you know, when we were trying to get the fans fixed

1 and finally got Johnny Schumach to get the electrical
2 department out there to get the fans fixed on the end
3 down there.

4 Q. -- so, you complained to your supervisor about air
5 quality?

6 A. Not my supervisor; I told you Johnny Schumach.

7 Q. Why didn't you ever complain to your supervisor?

8 A. My supervisor didn't have nothing to do with the
9 electrical department. Johnny come out there and I
10 asked him could they move this motor that was good up
11 here on this fan; it had a bad motor because the fan
12 back here that had the good motor on it had bad
13 bearings on it.

14 Q. After working for the year and three (3) months you
15 went to the electrical department, correct?

16 A. Yes, sir.

17 Q. And the electrical department is in an enclosed space,
18 correct?

19 A. Yes, sir.

20 Mr. Griggs: Do you need to take a second
21 here?

22 Witness: Yes, sir.

23 Mr. Griggs: That's fine. We'll go off the
24 record.

25 (Off The Record)

1 Q. The -- Mr. Dority, the electrical shop was in an
2 enclosed space with its own door and walls and ceiling
3 and it was not in the general plant area; is that
4 correct?

5 A. Yes, sir.

6 Q. Okay. And there was no work done in the electrical
7 shop that produced dust or fumes, was there?

8 A. We would have to drill panels and drill brackets and
9 stuff to mount the panels on.

10 Q. Did that produce fumes, dust, particles or smoke?

11 A. It didn't -- it produced a little bit of smoke when you
12 were drilling the -- the bigger holes but nothing like
13 what it was outside --

14 Q. Okay.

15 A. -- and it was metal.

16 Q. So, at page 48 --

17 Mr. Griggs: -- I think is the proper way to
18 do it; Mr. Eddy will tell me if not --

19 Q. -- at line 25, if you were asked, is there any work
20 done in the electrical shop itself that produces fumes
21 or dust or particles or smoke and you said, no; is that
22 correct or incorrect?

23 A. Incorrect.

24 Q. Okay. So, that's a --

25 Mr. Eddy: Where was that, please?

1 Mr. Griggs: -- that's at page 48, line 25.

2 Is there any work done in the electrical shop
3 itself that produces fumes or dust or particles or
4 smoke?

5 Mr. Eddy: Thank you.

6 Mr. Griggs: Answer: No. That's from his
7 deposition.

8 Q. That's incorrect?

9 A. Yes, sir.

10 Commissioner Wilkerson: Yes.

11 Q. So, you gave incorrect testimony at this point,
12 correct?

13 A. That's correct.

14 Q. Okay. When you were in the electrical shop the only
15 exposures that you ever had are when you went into the
16 general plant into the -- into the climates that you've
17 alleged; is that correct? You've alleged that the
18 plant was in bad climatic conditions as far as the air
19 is concerned, when you worked in the electrical shop
20 you weren't in that area unless you went out into the
21 plant; is that correct?

22 A. When I went out into the plant --

23 Q. Okay.

24 A. -- yes, sir.

25 Q. How often did you go out into the plant?

1 A. It depended. I built panels for the final line side
2 and I had to take them out there and install them on
3 the frames.

4 Q. Did you spend hours each day out in the plant or did
5 you spend the majority of your time in the electrical
6 room?

7 A. I'd say probably, just guessing, maybe three (3) hours
8 a day out in the plant putting on panels and there
9 would be some days I wouldn't go out there, I'd build
10 panels and then go out the next day --

11 Q. Okay. Some --

12 A. -- and put them -- install them.

13 Q. -- so, some days you wouldn't go out there at all?

14 A. Once in a while, yes.

15 Q. Would you agree -- you've said that the air was worse
16 in the wintertime, correct?

17 A. Yes, I did.

18 Q. Would you agree that during the spring, summer, fall
19 when the doors are open that it's clear in the -- in
20 the facility?

21 A. When the wind is blowing.

22 Q. Okay. Was it clear -- did the wind have to be blowing
23 for it to be clear or was it clear when the doors were
24 open?

25 A. The wind would have to be blowing at times.

1 Q. Okay. And on the final line you were only there from
2 July of '07 till October of '08, correct? We've said
3 that's thirteen (13) months. So, you spent --

4 A. Yes.

5 Q. -- you spent one (1) winter on the final line side,
6 correct?

7 A. Yes.

8 Q. And even during the winter --

9 Commissioner Wilkerson: Fifteen (15) months.

10 Mr. Griggs: -- excuse me?

11 Commissioner Wilkerson: Fifteen (15) months,
12 isn't it?

13 Mr. Griggs: Fifteen (15) months.

14 Commissioner Wilkerson: You said thirteen
15 (13).

16 Mr. Griggs: I'm sorry.

17 Q. You spent fifteen (15) months -- you spent one (1)
18 winter in the final line, correct?

19 A. Yes.

20 Q. Okay. Were you -- you said you were in the middle --
21 you were on the middle table; is that correct?

22 A. Yes.

23 Q. Were you always in the middle table?

24 A. Yes.

25 Q. Okay. So, if your -- if your witness, Mr. Glenn,

1 testified there was a time when you were on the end
2 tables is that incorrect or is that -- or is that
3 correct? Did you ever --

4 Mr. Eddy: Objection. Asked and answered --

5 Commissioner Wilkerson: Answered.

6 Mr. Eddy: -- lacks foundation --

7 Commissioner Wilkerson: Yes.

8 Mr. Eddy: -- and pitting witnesses.

9 A. They was --

10 Commissioner Wilkerson: You don't need to
11 answer.

12 Mr. Griggs: Okay.

13 Commissioner Wilkerson: You can just
14 redirect or -- yes. You don't need to answer that
15 question.

16 Mr. Griggs: I don't believe I have anything
17 else. Any redirect?

18 Commissioner Wilkerson: Any redirect?

19 Mr. Eddy: No. No questions. No further
20 questions, thank you.

21 Commissioner Wilkerson: Okay. So, we're
22 going to stop right here.

23 Mr. Eddy: Before I forget. I think I left
24 my trial brief in that folder I gave you; I need
25 to get that out of there.

1 Commissioner Wilkerson: Okay. Is it in this
2 one or the other one or do we know?

3 Mr. Eddy: It'll be in that one, I think.

4 Commissioner Wilkerson: That one? Okay.
5 So, this is the stuff. We're going to go off the
6 record; I'm sorry.

7 (Off The Record)

8 (There being no further questions of this witness, the
9 hearing concluded at 5:35 P.M. to reconvene at a
10 different date)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Michael W. Dority, vs. CTR of the Carolinas, Incorporated;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

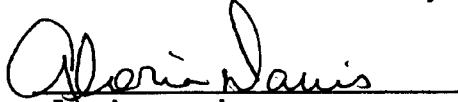
That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 142 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 20th Day of April, 2013.


 Gloria Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1023410

MICHAEL W. DORITY	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
	)	
VS.	)	
	)	HEARING OF
CTR OF THE CAROLINAS	)	
	)	MICHAEL W. DORITY
EMPLOYER,	)	
AND	)	VS
	)	
TWIN CITY FIRE AND	)	CTR OF THE CAROLINAS, INCORPORATED
INSURANCE COMPANY	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Michael W. Dority versus CTR of the Carolina, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 12:07 P.M., Tuesday, April 23, 2013, at Rock Hill City Hall, 155 Johnston Street, Rock Hill, South Carolina.

PART TWO**COPY****REPORTED****BY****GLORIA DAVIS**

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Mr. Mike Hornback

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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Stipulations

Commissioner Wilkerson: We're officially back on the record in reference to Workers' case -- Workers' Comp case number 1023410. We were here on March the 26th, 2013, and had taken the Claimant's -- under oath, put him under oath and we finished with the Claimant. There was another individual whom was here that day but I think, from what I understand now from Mr. Eddy, that he cannot be here today and that person's name was?

Mr. Eddy: Johnny Schumach.

Commissioner Wilkerson: Johnny Schumach and he is not here today. We also had gotten an exhibit, C-1, which is the CTR of The Carolinas Incorporated Sight Operations Safety Manual, dated October the 5th, 2005; prior to coming back on we did mark that as C-1 and that may -- that may need to be used today in some testimony. And I understand at this point in time Mr. Dority's, the Claimant through Mr. Eddy's, case rests at this point in time; is that correct --

Mr. Eddy: That's correct.

Commissioner Wilkerson: -- Mr. Eddy? Okay. So, I guess now we'll need to call any -- and, oh, another thing, both parties handed up to me today

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1 what I refer to as summaries, the Claimant's
2 pre-hearing brief and Defendant's medical
3 causation summary, these are not evidence in the
4 case; it references some evidence that I've
5 already seen in the case. I've marked them dated
6 today, 4/23/2013, and both of them I've put not
7 evidence but will be put into the record itself to
8 help me follow through when I go back and do my
9 reading. So, you have witnesses that are coming
10 today?

11 Mr. Griggs: Yes, sir; they're here. Yes,
12 sir.

13 Commissioner Wilkerson: Okay. So, you can
14 call your first witness.

15 Mr. Griggs: Okay.

16 Commissioner Wilkerson: Who is it -- I'm
17 going to -- is there something else I need to
18 know?

19 Mr. Griggs: Michael Hornback.

20 Commissioner Wilkerson: All right.

21 Mr. Griggs: H-

22 Commissioner Wilkerson: Spell that.

23 Mr. Griggs: -- H-O-R-N-B-A-C-K.

24 Commissioner Wilkerson: B-A-C-K, okay.

25 Court Reporter: I've got the microphone set

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1 up on this side (indicating) for the witnesses.

2 Mr. Griggs: Okay. So, you want him right
3 there (indicating)?

4 Court Reporter: Yes, sir.

5 Commissioner Wilkerson: That's fine. Just
6 stick him there, that's fine. You can slide your
7 stuff down here.

8 Mr. Eddy: Oh, he's going to sit right here?

9 Court Reporter: Yes, sir.

10 ~~Commissioner Wilkerson: Yes.~~

11 Mr. Eddy: Okay.

12 Commissioner Wilkerson: Just slide him down.

13 Court Reporter: Just in front of that
14 microphone.

15 Commissioner Wilkerson: Here I -- here come
16 -- come this way; I can slide you down.

17 Mr. Eddy: Okay.

18 Commissioner Wilkerson: I never know.

19 Mr. Eddy: I'll move my stuff. Hopefully I
20 won't need any of this; I'll just put it over
21 here.

22 (Off The Record)

23 Court Reporter: See that microphone over
24 there?

25 Mr. Griggs: Where Mr. Dority was sitting.

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1 Commissioner Wilkerson: I'm just going to
2 take all this off and leave this up here; it'll be
3 easier for me to do it this way. Mr. Hornback,
4 I'll get you to raise your right hand and I'm
5 going to have the Court Reporter swear you in.
6 Thank you.

7 Whereupon;

8 Michael Wayne Hornback, being duly sworn and cautioned
9 to speak the truth, the whole truth and nothing but the
10 truth, testified as follows:

11 Court Reporter: Please state your full name
12 for the record.

13 Witness: Michael Wayne Hornback.

14 Court Reporter: Thank you, sir.

15 Michael Hornback DIRECT EXAMINATION

16 By Mr. Griggs:

17 Q. Mike, spell your last name for us one (1) more time to
18 make sure I've got it right.

19 A. It's H-O-R-N-B-A-C-K.

20 Q. Okay.

21 Mr. Griggs: And I had it right for the
22 record.

23 Commissioner Wilkerson: You did.

24 A. Just like it sounds.

25 Q. All right. Give us your full name.

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- 1 A. Michael Wayne Hornback.
- 2 Q. And where do you work?
- 3 A. CTR, Incorporated.
- 4 Q. And what is your job there?
- 5 A. I'm the Production Manager.
- 6 Q. Okay. And how long have you been at CTR?
- 7 A. Fifteen (15) years.
- 8 Q. Okay. And have you always been the Production Manager?
- 9 A. No, I have not.
- 10 Q. Okay. What did you -- what other jobs have you held?
- 11 A. When I first came in I was on the production line, what
- 12 we call the final line area, doing -- building final
- 13 lines and panels.
- 14 Q. Okay. And how long did you do that?
- 15 A. For approximately five (5) years.
- 16 Q. Okay. And when you say building final lines and
- 17 panels, is that the job that Mr. Dority was doing when
- 18 he first worked at CTR?
- 19 A. That's correct.
- 20 Q. Okay. And you're familiar with Mr. Dority?
- 21 A. Yes, I am.
- 22 Q. And he's the Claimant in this matter?
- 23 A. Yes.
- 24 Q. And you were here last time and -- and heard his
- 25 testimony?

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- 1 A. Yes.
- 2 Q. When did Mr. Dority begin to work at CTR?
- 3 A. Roughly September of '07 to -- I mean, excuse me, May
- 4 of '07, I think, to September of 2010.
- 5 Q. Okay. If the evidence in this case showed that he was
- 6 hired July 9 of '07, does that sound accurate?
- 7 A. Yeah, that's -- that's --
- 8 Q. Okay.
- 9 A. -- approximately.
- 10 Q. Now, when he first began to work there what job did he
- 11 do; where was he working?
- 12 A. He was working in the final line area --
- 13 Q. Okay.
- 14 A. -- that's what I hired him for.
- 15 Q. And that's a job that you had done in the past?
- 16 A. That's correct.
- 17 Q. Okay. And that's known as -- I think it's been termed
- 18 fabrication?
- 19 A. Yeah, fabrication we use as a collective -- it includes
- 20 the steel shop, every -- all fabricated items --
- 21 Q. Okay.
- 22 A. -- everything that we build.
- 23 Q. But as far as the job he did initially, are we going to
- 24 refer to it as final lines --
- 25 A. I would --

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1 Q. -- is that going to be fair?

2 A. -- yeah, it would be more accurate to say final line.

3 Q. Okay. Now, when he was on the final line side were you
4 his supervisor?

5 A. Yes.

6 Q. And how long did he work under you on the final line
7 side?

8 A. Approximately, what, fifteen (15) months, maybe.

9 Q. Okay. And he started there, again, in July of '07, on
10 the final line side?

11 A. Yes.

12 Q. And then in October of '08, sometime, he left final
13 lines?

14 A. Yes.

15 Q. Okay. Now, you're familiar with that job and you're
16 familiar with the brazing and silver soldering process?

17 A. Yes, I am.

18 Q. Describe briefly, just in layman's terms, the process
19 of the silver soldering job itself.

20 A. Silver soldering is joining two (2) metals together
21 using silver solder. Basically, the way you do it, you
22 -- you clean your whatever two (2) metals you're
23 wanting to join, you apply flux, you join the two (2),
24 you heat it up using a torch and fill in the joint with
25 silver solder.

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1 Q. Okay. And you've done that in the past?

2 A. Yes.

3 Q. Is that the job you've done for about five (5) years?

4 A. That was one (1) of the jobs I did, yes.

5 Q. Okay. Now, when Mr. Dority was doing this job did he
6 braze with the flame to the metal or the material all
7 day long or would he do a variety of tasks?

8 A. No. The final line area you do a -- a variety of
9 tasks; that's -- that's the best way to describe it.
10 You -- you solder some of the time, you assemble the
11 item, there's cleaning to be done, there's testing to
12 be done; it's a process.

13 Q. Okay. So, what other tasks would he do besides actual
14 flame to metal brazing or soldering?

15 A. Well, you have to clean your metal before you solder
16 it, you solder it then it has to be what we call bead
17 blasted; we blast it with glass beads to remove the
18 roughage from it and clean it up. Then its -- we put
19 it through oxygen cleaning, which is dipped in an acid
20 bath in a special room that cleans it for use in oxygen
21 service. It's brought back to him; he reassembles the
22 whole thing, which is the majority of the job. Then
23 there is testing to be done; pressure testing of the
24 equipment making sure it doesn't leak, final labeling.

25 Q. Okay. When you're doing the -- you said assembly, is

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1 that -- what type of assembly is this; is this assembly
2 by hand --

3 A. Yes.

4 Q. -- or assembly with pneumatic -- what type of assembly?

5 A. It's normally assembly by hand.

6 Q. Okay. Would there be tasks that take him away from his
7 immediate work station or would he spend all day, every
8 day, in his immediate work area?

9 A. Yeah, now you -- you are away from your area; somewhat
10 during the day you have to go get parts, you have to
11 interact with other departments in order to get your
12 job done.

13 Q. How much time is spent during the -- during an average
14 work day with actual flame to solder -- flame to metal
15 brazing or soldering --

16 A. Okay.

17 Q. -- with the torch lit?

18 A. Yeah, with the torch actual -- torch actually lit
19 probably somewhere in the neighborhood of thirty (30)
20 minutes a day, actual torch to metal.

21 Q. Okay. Now, when you're doing the brazing does it --
22 does it emit smoke or a -- or a fume?

23 A. No.

24 Q. Okay. Is there -- is there any smoke or fume that --
25 that's visible when you're doing this?

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1 A. You know, there is a little puff of smoke; it
2 dissipates quickly and its -- no.

3 Q. Does the smoke or -- or fume, does it hang in the air?

4 A. No, it does not.

5 Q. Is there a visible cloud?

6 A. No, there is not.

7 Q. How many workstations do the brazing?

8 A. Let's see, we have five (5) workstations in fabrication
9 that do brazing.

10 Q. Okay. And are they brazing the entire time at the same
11 time?

12 A. No, they are not.

13 Q. Describe the layout of this area for me.

14 A. There's three (3) tables there together that are --
15 they do all of our copper work, we have another table
16 on the back wall that does our high pressure brass and
17 then we have another section in the middle that does
18 more specialized work.

19 Q. Okay. Are there times when -- when all those
20 workstations are -- are doing things other than actual
21 brazing?

22 A. Absolutely, yes.

23 Q. When you did this job for five (5) years did you ever
24 experience coughing fits?

25 A. Absolutely, not.

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1 Q. Have you ever had an employee complain to you about --
2 about air quality in that area --

3 A. No.

4 Q. -- or in the plant in general?

5 A. No, I have not.

6 Q. Did Mr. Dority ever complain to you?

7 A. No, he did not.

8 Q. If I took -- if I made the statement, Mr. Dority
9 soldered eight (8) hours a day, five (5) days a week,
10 would that be an accurate statement?

11 A. No, that's not possible.

12 Q. Okay. How much time do you actually spend soldering
13 with the torch lit?

14 A. Like I said, approximately thirty (30) minutes a day,
15 maybe.

16 Q. Now, on that job in the final line side does Mr. Dority
17 -- did he ever work with aluminum?

18 A. Yes, very little.

19 Q. Okay. How much -- how often would you work with
20 aluminum?

21 A. Each one of our units that we put out has some aluminum
22 on it, such as the legs that it is attached to that get
23 bolted to whatever area, you know, another plant that
24 they're going to be used at. As far as drilling holes,
25 as far as sanding, very little of that is done.

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1 Q. Is it -- do you work with aluminum sanding and grinding
2 and cutting and drilling on a daily basis even?

3 A. Not on a daily basis, no.

4 Q. The silver solder that's used there, is there -- is
5 there cadmium within that silver solder?

6 A. No, it's cadmium free.

7 Q. Okay.

8 A. It's an industry standard.

9 Q. Okay. Now, after fifteen (15) months under you in the
10 final line side, where did he go to work?

11 A. The electrical shop.

12 Q. Okay. And are you familiar with the electrical shop?

13 A. Somewhat, yes.

14 Q. Okay. Now, you weren't his supervisor over that --

15 A. Oh --

16 Q. -- electrical shop, were you?

17 A. -- not his direct supervisor, no.

18 Q. Okay. Describe the layout of the electrical shop for
19 me.

20 A. It's within an enclosed room; it has to be kept clean.
21 There's three (3) tables in there; we had three (3)
22 Electricians all day long putting together electrical
23 components.

24 Q. Okay. And the electrical department, it's actually in
25 a room by itself?

1 A. Yes, it is.

2 Q. With four (4) walls and a ceiling?

3 A. That is correct.

4 Q. Is it totally enclosed?

5 A. It is totally enclosed.

6 Q. Okay. How much time, on average, would Mr. Dority have
7 spent in that room during his approximate year and a
8 half in the electrical department?

9 A. Approximately half that time.

10 Q. Each day? How many hours --

11 A. Oh, you mean --

12 Q. -- how many hours each day?

13 A. -- I'm sorry. I would say, roughly, six (6) hours.

14 Q. Okay. Now, inside the electrical department --

15 Commissioner Wilkerson: And that's out of an
16 eight (8) hour shift?

17 A. That's correct --

18 Commissioner Wilkerson: Okay. That's what
19 -- everything --

20 A. -- out of an eight (8) hour day --

21 Commissioner Wilkerson: -- okay.

22 A. -- yes.

23 Commissioner Wilkerson: I just wanted to
24 make sure I got that right.

25 Q. -- and he was in the electrical department for

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1 approximately a year and a half?

2 A. Yeah.

3 Q. Okay. Now, in the electrical department that he was
4 in, are there any fumes or dust or smoke in that room?

5 A. No.

6 Q. Okay. Is there any active cutting or drilling or
7 soldering or sawing or grinding or sanding done in that
8 room?

9 A. The only thing that's really -- you -- you may have to
10 drill little small holes in that room into the -- the
11 electrical boxes that you're assembling but I -- most
12 of the drilling and all that is done outside.

13 Q. Okay. And out -- well, by outside do you mean outside
14 in the general plant or outside in the -- outside in
15 the elements?

16 A. No, outside in the general plant.

17 Q. Okay. Now, when he was transferred to the electrical
18 department to work inside that room, did he ever go
19 back on occasion -- have occasion to go back to the
20 final line side?

21 A. Yes. He would have to take the electrical components
22 that he built back to who needed them to put them on --
23 to add them to the equipment that was being built.

24 Q. Would he do that himself or would somebody else -- or
25 would he just deliver them and then have the person on

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- 1 the final line side assemble them to what they were --
- 2 A. Occasionally he would actually attach them to the
- 3 equipment but usually it was taken back and whoever was
- 4 building the equipment would attach the electrical
- 5 component.
- 6 Q. -- so he would hand it off --
- 7 A. Yes.
- 8 Q. -- discuss whatever needed to be discussed about it and
- 9 then go back?
- 10 A. Yes.
- 11 Q. The -- the plant out there, how large of a building is
- 12 this plant?
- 13 A. It's approximately fifty thousand (50,000) square feet.
- 14 Q. So, it's a large building?
- 15 A. It is a large building.
- 16 Q. How high are the ceilings at the highest point?
- 17 A. The highest point, approximately forty (40) feet.
- 18 Q. And at the lowest point?
- 19 A. Twenty-five (25) --
- 20 Q. Okay.
- 21 A. -- maybe.
- 22 Q. And describe the plant's ceiling or does it -- does it
- 23 go -- does it meet in the middle, I mean, how is --
- 24 A. Yeah, it's kind of like a barn; it goes up and has an
- 25 apex at the top.

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- 1 Q. -- okay. So, the -- the ceiling height rises as you
2 get closer to the middle of the building?
- 3 A. That's correct.
- 4 Q. Okay. Now, in this plant is it divided up or is it
5 pretty much an open area --
- 6 A. No, it's --
- 7 Q. -- a free flowing area?
- 8 A. -- it's divided, I mean, there -- there are large open
9 areas but it is divided.
- 10 Q. Okay. Is it divided with walls that go all the way
11 from floor to ceiling or is it just divided with kind
12 of partitions, I mean --
- 13 A. No, there are floor to ceiling walls in some places.
- 14 Q. -- okay. Is there ventilation within the building --
- 15 A. Oh --
- 16 Q. -- within the plant?
- 17 A. -- yes.
- 18 Q. Okay. And I want to clarify something. You said the
19 plant is approximately fifty thousand (50,000) square
20 feet; does that include an administrative office suite
21 or is that just the plant itself?
- 22 A. The -- yeah, the office suites are not a large majority
23 there; it's -- it's mostly -- it -- the building.
- 24 Q. Okay. And the -- the office suites, just for -- for
25 everybody's visualization, those are off the main

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1 plant, correct?

2 A. That is correct; they're separate, yes.

3 Q. And they are regular nine (9) or eight (8) foot
4 ceilings in a --

5 A. That is correct.

6 Q. -- enclosed area away?

7 A. That's correct.

8 Q. Okay. Now, the ventilation out there, what type of
9 ventilation is in the plant?

10 A. We have large industrial, four (4) foot, electrical
11 fans.

12 Q. Okay. Do you have doors?

13 A. Yes. There are fourteen (14) large roll-up doors.

14 Q. Okay. And when you say large roll-up doors, are these
15 garage type doors?

16 A. Yes.

17 Q. Are they large enough for a tractor-trailer to drive
18 through?

19 A. Yes.

20 Q. And, in fact, do you bring tractor-trailers through
21 those doors?

22 A. Yes, we do.

23 Q. Okay. And how many of those doors are there?

24 A. Fourteen (14).

25 Q. Okay. And they're stationed throughout the plant?

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1 A. Throughout the plant.

2 Q. Okay. So, are there some on -- on each wall or are
3 they all in one (1) area?

4 A. No, there's some on each wall; they're -- they're
5 pretty well evenly scattered throughout the building.

6 Q. Okay. How many doors are there in close proximity to
7 the panel shop or the final line side where Mr. Dority
8 was working at the beginning?

9 A. In that shop there's one (1), two (3) -- six (6) doors.

10 Q. Okay. And are those doors in close proximity to where
11 Mr. Dority would have been doing his brazing work?

12 A. Yeah, one (1) of them is right next to him.

13 Q. Okay. Now, are there also fans -- are there floor
14 fans; are there fans that are kept on the floor?

15 A. Yes, there are.

16 Q. And are these personal fans, are they larger fans, what
17 -- are they box fans; what are they?

18 A. It's a variety of different fans but there are some
19 large industrial size fans and each table has a -- its
20 own individual fan as well.

21 Q. Okay. Now, the --

22 Commissioner Wilkerson: How many total fans
23 are in the building on top? Did he say that
24 earlier?

25 Mr. Griggs: -- I -- right now my questions

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1 was just about more personal floor type fans; we
2 didn't get to the -- I have not asked him
3 questions about fans on ceilings or in walls --

4 Commissioner Wilkerson: Oh, I'm sorry. I
5 thought --

6 Mr. Griggs: -- at this point.

7 Commissioner Wilkerson: -- okay. I'm sorry.
8 I thought I wrote down electrical fans in the
9 building but I don't -- did he tell us how many
10 were in there, maybe?

11 Mr. Griggs: Okay. I did not ask that
12 question.

13 Commissioner Wilkerson: That's fine.

14 Mr. Griggs: I --

15 Commissioner Wilkerson: I just -- I just --
16 that doesn't make -- at this point in time that's
17 fine.

18 Mr. Griggs: -- yes.

19 Q. Right now let's just talk about the fans that are --
20 that are on the floor plugged into walls, essentially,
21 okay? How many of them are there out there; do you
22 know?

23 A. Oh, each individual person has their own and there's a
24 couple of -- well, you know, there's probably seven (7)
25 or eight (8) on the floor.

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1 Q. Of individual fans or bigger fans?

2 A. No, there's probably two (2), maybe three (3), of the
3 larger fans and then each individual table has a fan.

4 Q. At the brazing sight?

5 A. Yes.

6 Q. And are there fans in the other areas as well?

7 A. Oh, yeah, they're all over the plant.

8 Q. Okay. So, if you had to guess -- estimate how many
9 fans are in the entire plant?

10 A. Oh, the whole place? Oh, wow, you know, twenty (20),
11 thirty (30) maybe.

12 Q. Okay.

13 A. There's quite a few.

14 Q. Now, when you say there's some large industrial fans,
15 how -- how large are these fans?

16 A. So, that's the box fans, probably, you know, three (3)
17 feet across; it's large fans.

18 Q. I'm picturing something like you'd see on the sideline
19 of a football game; is that accurate?

20 A. That's correct, yes.

21 Q. Okay. And is there one (1) of those large fans in the
22 final line area?

23 A. Yes, we had a water-cooled fan in the final line area.

24 Q. Okay. And it was there when Mr. Dority was working?

25 A. Yes.

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- 1 Q. It's been there for some time?
- 2 A. It was there when I was working back there.
- 3 Q. And how large is that fan?
- 4 A. It's approximately -- the actual fan blade is probably
- 5 about three (3) feet wide.
- 6 Q. In diameter?
- 7 A. Yeah, diameter.
- 8 Q. Now, are there also fans within the walls of the
- 9 building?
- 10 A. Yes.
-
- 11 Q. Okay. And how many fans are within the wall of the
- 12 build -- the walls of the building?
- 13 A. I think we have -- I think we have four (4) wall fans
- 14 and two (2) ceiling fans; if I'm not mistaken.
- 15 Q. Okay. Is there a wall fan within the structure of the
- 16 building in or near the final line side?
- 17 A. Yes.
- 18 Q. Okay. Was -- is that fan operable?
- 19 A. Yes, it is.
- 20 Q. Have there been periods of time where the fan was
- 21 inoperable?
- 22 A. Occasionally they break down but they get repaired.
- 23 Q. Are they -- are they, in fact, repaired?
- 24 A. Yes.
- 25 Q. Are there extended periods of time where the wall fan,

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1 and again these are the fans that are in the exterior
2 walls, where they are inoperable for extended periods
3 of time?

4 A. What would an extended period of time be?

5 Q. Weeks, months?

6 A. Maybe a week, no longer.

7 Q. Okay. And these fans that are in the outside walls do
8 they -- do they take a -- do they -- do they emit
9 exhaust -- are they sucking air out of the building?

10 A. That is correct.

11 Q. Okay. And are those fans on and operable all year
12 round?

13 A. Yes.

14 Q. Do those fans on the outside walls ever close or -- or
15 are they ever left off intentionally?

16 A. Not intentionally, no. If they got left off it's
17 because someone forgot to turn it on.

18 Q. Okay. And there's three (3) or four (4) of those; how
19 many of those are there?

20 A. Of the wall fans?

21 Q. Right.

22 A. I'm thinking there's four (4) --

23 Q. Okay.

24 A. -- if my memory serves me correctly.

25 Q. Okay. But you testified there is one (1) in or near

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1 the final line side?

2 A. Oh, yes. Yes.

3 Q. Are there any fans on the ceiling?

4 A. Yeah, we have two (2) ceiling fans; they're more in the
5 central part of the building.

6 Q. Okay. And are those a ceiling or are those like an
7 attic fan?

8 A. It's the -- of the attic fan variety.

9 Q. Okay. So, it -- it pulls air through the building?

10 A. Correct. It's a vent.

11 Q. And are both of those fans operable?

12 A. Yes, they are.

13 Q. Are there times when those fans have been inoperable?

14 A. Again, things break down; so, I would have to say yes.

15 Q. Are they repaired or are they ignored and just left
16 inoperable?

17 A. No, they would be repaired.

18 Q. Now, this type of work that -- that you're doing on
19 these -- does CTR do -- do repair work on larger
20 vessels?

21 A. Yes.

22 Q. Okay. And does CTR do repair work on -- on vessels
23 that are pulled by -- by tractors or by eighteen (18)
24 wheelers?

25 A. That's correct, yes.

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1 Q. Okay. Now, this work that's done on these vessels, is
2 it done inside or is it done outside?

3 A. Mostly the -- probably eighty percent (80%) of the work
4 done on the -- the cryogenic tanks is done outside.

5 Q. Okay. Now, is it done outside year round or just
6 outside when conditions are favorable?

7 A. No, that's year round.

8 Q. If there was -- if it was twenty (20) degrees would
9 there people outside working?

10 A. Yes.

11 Q. So, is some of that work done outside irregardless
12 (sic) of the weather?

13 A. Absolutely. Sometimes its pouring rain and they have
14 to make the best of it.

15 Q. The blasting that's done, you said its bead blasting?

16 A. Yes.

17 Q. Okay. Describe that for us.

18 A. Well, the bead blasting that's done inside the building
19 is done in an enclosed case, it has a vacuum system set
20 up on it; its -- we use glass beads to take the
21 roughage off the metal, clean it up, before it goes
22 into the oxygen cleaning room.

23 Q. Okay. And is that -- describe how that's done. Does
24 -- was that something Mr. Dority would do?

25 A. He would have done it occasionally, yes.

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1 Q. Okay. And describe how that's done. How is the part
2 manipulated; is it in an enclosure or something?

3 A. Well, it's in an enclosed area; you have rubber gloves
4 that are able to reach inside of it that you put your
5 arms in so you can use the hose and, you know,
6 manipulate whatever you're -- you have inside the case.

7 Q. Okay. Now, that case, is it called a blaster, I guess,
8 or what?

9 A. Yeah. For lack of a better term, yeah.

10 Q. Okay. Is there a -- is there a vacuum pump or a vacuum
11 system?

12 A. Yeah, there is a vacuum system on it.

13 Q. And what's the purpose of that?

14 A. It catches the dust and fine particles.

15 Q. And pulls it out of the case?

16 A. And pulls it out of the case and catches it in a bag.

17 Q. Have you done the blasting before?

18 A. Yes.

19 Q. When you -- how large is the door that you would open
20 to remove and -- and insert a part?

21 A. Its approximately two (2) foot square.

22 Q. Okay. When you -- when you take -- when you open the
23 door after blasting do you -- do you -- are you hit
24 with particles or particulate matter or dust or --

25 A. No, you're not.

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- 1 Q. -- okay. And why is that?
- 2 A. A -- a majority of it gets sucked out of it with the
- 3 vacuum system --
- 4 Q. Okay.
- 5 A. -- and then it settles.
- 6 Q. And you've done that yourself?
- 7 A. Oh, yeah, many times.
- 8 Q. Now, during the -- during the -- the colder months of
- 9 the year, are the fourteen (14) large garages doors
- 10 you've testified to, are there times when they're shut?
- 11 A. Yes.
- 12 Q. Okay. And are there whole days where they stay shut
- 13 the entire time?
- 14 A. No, that's not possible.
- 15 Q. Okay. Are the doors -- tell me -- tell me how the
- 16 doors operate in the wintertime as far as opening and
- 17 -- and closing the doors.
- 18 A. Well, I mean, we have to bring material in. I mean,
- 19 ideally you'd like to keep them closed to keep the cold
- 20 out but we have to bring material in, we have to take
- 21 material out; they're -- they're constantly opening and
- 22 closing.
- 23 Q. Okay. And is there a -- is there a -- a temperature or
- 24 a -- a temperature you can estimate that during the
- 25 colder months when it reaches a temperature that the

1 doors come open for ventilation purposes?

2 A. If I had to -- I would -- something above forty (40)
3 degrees, in that realm.

4 Q. Something above forty (40) degrees and what? Then they
5 -- then they --

6 A. They'll come up, yeah.

7 Q. -- are the fans turned off during the winter months?

8 A. No.

9 Q. And each Brazer, each person brazing, they are -- they
10 are -- they have fans as well?

11 A. Yes.

12 Q. If -- when you walk into the plant do you -- do you see
13 a cloud of -- of dust or fume or smoke hanging in the
14 air?

15 A. No, you cannot.

16 Q. And, again, how high are the ceilings at its apex?

17 A. Well, approximately forty (40) feet.

18 Q. The other work that's done out there as far as cleaning
19 tanks, larger vessels and tank work, is some of that
20 done inside?

21 A. The cleaning of the tanks?

22 Q. When they're blasting or resurfacing them?

23 A. No, that's all done outside. We have a -- an -- a
24 larger outdoor blast booth for that purpose.

25 Q. Are there any type of -- of welding done in the plant;

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1 is there welding done in the plant?

2 A. Yeah, there is. Uh-huh.

3 Q. Is that done in an area near Mr. Dority or is that done
4 somewhere else?

5 A. Well, it's done in an area -- he -- there's a -- a wall
6 that separates his area from that area.

7 Q. Does that wall go from floor to ceiling?

8 A. It does.

9 Q. Does it go from wall to wall or is it a partial?

10 A. No, it's a partial. It completely, you know, it runs
11 -- it's hard for me to describe. The fabrication area
12 what -- the steel area where most of the welding is
13 done is on this side; the wall is here (indicating).
14 The fabrication or the final line area is on this side
15 (indicating). The wall runs, you know, about twenty
16 (20), twenty-five (25) feet, and then it stops.

17 Q. Okay. But does it -- does it -- does it join one (1)
18 outside wall?

19 A. Yes.

20 Q. So, it butts into one (1) wall --

21 A. That's correct.

22 Q. -- but it doesn't go across the whole building and --

23 A. Not across the entire building.

24 Q. -- to another wall?

25 A. That's right.

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1 Q. Okay. And in that welding area are there also doors
2 and -- and things in that area?

3 A. Yes, there are.

4 Q. Okay. And is there ventilation in that area as well?

5 A. Yes.

6 Q. And fans in that area?

7 A. Yes.

8 Q. During the -- during the -- are the doors, the
9 ventilation doors that are there, the -- the fourteen
10 (14) doors we've talked about, are those doors open
11 during the spring months?

12 A. Oh, yeah.

13 Q. During the summer months?

14 A. Yes.

15 Q. During the fall months?

16 A. Yes.

17 Q. And if those doors are opened and there is a -- do you
18 -- do you -- do you realize some type of cross breeze
19 in the plant?

20 A. Yeah. Sometimes it's a little annoying; when you're
21 actually trying to braze it'll put your torch out.

22 Q. Okay. Is that something you just have to deal with?

23 A. Well, you -- you screen yourself off a little bit to
24 prevent it, yeah.

25 Mr. Griggs: One (1) second, Commissioner, if

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1 I could?

2 Commissioner Wilkerson: Okay.

3 Q. Did you -- when you were -- when you were supervising
4 the Claimant on the final line side did you ever
5 witness a -- him choking up or complaining to you?

6 A. No, I did not.

7 Mr. Griggs: I don't think I have any
8 questions. You -- answer any questions that Mr.
9 Eddy has for you.

10 Michael Hornback CROSS-EXAMINATION

11 By Mr. Eddy:

12 Q. Hey, Mr. Hornback, I'm Jeff Eddy.

13 A. Hey.

14 Q. Nice to see you.

15 A. Nice to see you.

16 Q. Let's talk a bit about the various types of metals that
17 are used in the plant, okay?

18 A. Uh-huh.

19 Q. You say the fab shop; you referred to that as the steel
20 shop?

21 A. Yes.

22 Q. And just so that I am clear in terms of the layout, the
23 final line side is in one (1) corner of the plant; is
24 that fair to say?

25 A. Yeah, that's correct.

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1 Q. And this partial wall that separates the final line
2 side from the -- from the steel fab shop you said is
3 twenty (20) to twenty-five (25) feet long?

4 A. Well, no, it's longer than that. It extends
5 twenty-five (25) feet past the final line area.

6 Q. Okay.

7 A. So, overall it's probably about a fifty (50) foot wall.

8 Q. Okay. But it doesn't go all the way to the other side
9 of the exterior wall?

10 A. That's correct.

11 Q. What's the distance, approximately, from where the wall
12 ends to the other exterior wall that it doesn't reach
13 to?

14 A. Probably forty (40) feet.

15 Q. Okay. So, there's forty (40) feet of open area from
16 the -- and from -- width wise and then from the floor
17 to the ceiling there's however -- however tall the
18 ceiling is; I think you said was forty (40) feet tall?

19 A. Yes.

20 Q. So, there's a forty (40) by forth (40) foot opening for
21 particulate matter to go through between the final line
22 side and the steel fab shop; would that be fair to say?

23 A. There's a forty (40) foot area, yes.

24 Q. Okay. All right. In the -- I mean, the final line
25 side is in the corner and just on the other side of

1 this partial wall is the steel fab shop, correct?

2 A. Yes.

3 Q. And these floor fans are not sucking material -- and
4 I'm not talking about the ceiling or the wall fans;
5 we'll talk about that in a minute. But these floor
6 fans that you talked about that everybody has are just
7 circulating air in the plant and any kind of
8 particulate matter that might be in that air; is that
9 fair -- fair to say?

10 A. They're used to cool down and to ventilate the area.

11 Q. They move the air around inside the building, correct?

12 A. That's correct.

13 Q. All right. And in the steel fab shop you're working on
14 what, vessels, tanks?

15 A. No. That's where we fabricate steel such as skids to
16 mount tanks to, all of our aluminum work, carbon steel
17 work that needs to be welded together is done over
18 there.

19 Q. Okay. And the aluminum work that you're using to make
20 skids, that aluminum is sawed and drilled and cut,
21 correct?

22 A. That's correct.

23 Q. And what kind of -- what kind of tools are they using
24 to cut this aluminum material?

25 A. A large band saw, a punch.

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1 Q. Okay. And its -- and -- and it's drilled; so, you're
2 using power drills?

3 A. On occasion. Mostly --

4 Q. Okay.

5 A. -- most of our stuff is punched out.

6 Q. Okay. But there -- there are times then also when this
7 aluminum material must be sanded, correct?

8 A. Occasionally.

9 Q. And ground?

10 A. Very little.

11 Q. But ground nonetheless?

12 A. But sometimes.

13 Q. I'm not talking about how much right now; I'm just
14 talking about the -- there was grinding of aluminum,
15 right?

16 A. Yeah.

17 Q. And cutting of aluminum, right?

18 A. Yeah.

19 Q. Okay.

20 A. I mean, it has to be cut.

21 Q. All right. And -- and aluminum would be welded, right?

22 A. Yes.

23 Q. And there was actually aluminum welding rods used,
24 correct?

25 A. We tig and mig weld.

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1 Q. All right. What's tig and mig made out of?

2 A. It's -- it is a metal rod.

3 Q. Okay. What kind of metal?

4 A. It's a wire actually.

5 Q. What -- what kind of metal was in the rods?

6 A. That I'm not familiar with.

7 Q. All right. Now, I kind of jumped ahead of myself.

8 Let's talk a minute about the final line side. You
9 said he worked there from July of 2007 until September
10 of 2010; so, that's about, what? Three (3) years is
11 thirty-six (36) months; so, that would be roughly about
12 thirty-eight (38) months he was there total?

13 A. What do you mean, that -- that he worked at CTR?

14 Q. His total period of time there. He started in July of
15 20 -- or -- or 2007, and he stopped, I think you said,
16 in September of 2010; so, that's slightly about two (2)
17 years -- two (2) months more than three (3) years,
18 right?

19 A. Yes.

20 Q. Okay. So, that's my -- to my math, and you correct me
21 if I'm wrong, but that's gives us about thirty-eight
22 (38) months, right?

23 A. Okay.

24 Q. All right. And you said that he worked in the
25 electrical department for about a year and a half or

1 sixteen (16) months or eighteen (18) months, excuse me?

2 A. Yeah, maybe.

3 Q. Eighteen (18) months. So, then that leaves eighteen
4 (18) --

5 A. I'm approximating, I'm not --

6 Q. -- all right. But I just want -- because my math is
7 not adding up for me here. You said he was in final
8 line for fifteen (15) months and then a year and a half
9 in electrical, that only gets us thirty-three (33)
10 months; where were the other three (3) months spent?

11 A. -- I'm approximating.

12 Q. Okay. Isn't it true that he was about half and half --
13 Commissioner Wilkerson: Attorney -- attorney
14 math it was three (3) months; in the real world it
15 was five (5) months but go ahead.

16 Mr. Eddy: -- okay. Thanks.

17 Q. All right. We're missing five (5) months.

18 Commissioner Wilkerson: Attorneys can't do
19 math; we know that.

20 Q. We're missing five (5) -- I used to be able to.

21 Commissioner Wilkerson: Go ahead.

22 Mr. Eddy: All right.

23 Q. So, the -- the -- you don't really know if he was only
24 in final line for fifteen (15) months, right; it might
25 have been as many as eighteen (18) to twenty (20)

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1 months?

2 A. It wasn't that long but I'm approximating, yes.

3 Q. Well, all along during this case we've been breaking it
4 down roughly fifty/fifty (50/50) and so, if he's there
5 --

6 Mr. Griggs: Object to form.

7 Q. -- if he's there for thirty-eight (38) -- let's see,
8 thirty-six (36) and --

9 Commissioner Wilkerson: Thirty-eight (38).

10 Q. -- if he's there for thirty-eight (38) months and he's
11 in final line for approximately half that period of
12 time, we're talking about eighteen (18), nineteen (19)
13 months, right?

14 A. (Nodded head in an up and down motion).

15 Q. So, when you say fifteen (15) months in final line
16 you're not absolutely sure about that are you?

17 A. No, I'm not sure exactly when he made the transition.

18 Q. And you understand that this case isn't -- it's not a
19 products case that we're -- we're suing the silver
20 solder manufacturer and the case is linked solely to
21 the silver solder exposure; do you understand that?
22 This is alleging essentially that his employment at
23 CTR, the entire period of time, and all the exposures
24 in the plant, not just the --

25 Mr. Griggs: I'm going to object.

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1 Q. -- not just --

2 Mr. Griggs: I don't know if this is a
3 question or if he's testifying.

4 Mr. Eddy: -- I -- it'll -- I'll tie it up.

5 This is cross-examination.

6 Q. You understand that the claim here is that the
7 employment, and as the Form 50 says, all the -- the
8 airborne exposures in that plant, not just silver
9 solder, contributed to his lung disease; do you
10 understand that? Are you familiar with the -- the
11 complaint in this case?

12 A. Yes.

13 Q. Okay. So -- so, let's talk about the silver solder.
14 You -- you agree that he was working with silver solder
15 on a daily basis for approximately the first half of
16 the time that he was in the plant?

17 A. No, I don't agree to that. Not on a daily basis.

18 Q. He worked on the final line side, right?

19 A. Yes.

20 Q. Okay. And what was his primary duty on the final line
21 side?

22 A. Building the equipment that we --

23 Q. And wasn't --

24 A. -- manufacture.

25 Q. -- a principal --

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1 Commissioner Wilkerson: Let -- let him
2 finish answering --

3 Mr. Eddy: -- I'm sorry.

4 Commissioner Wilkerson: -- the question.

5 Mr. Eddy: I apologize.

6 Commissioner Wilkerson: She can't get both
7 of you at the same time.

8 Mr. Eddy: All right.

9 Q. Did he not regularly use silver solder to do brazing
10 work when he worked on the final line side?

11 A. Yes, but not every day.

12 Q. Okay. But regularly he did that, right?

13 A. Oh, absolutely.

14 Q. Okay. And are you familiar with the fact that that
15 material was made out of -- in addition to silver,
16 copper, zinc and tin?

17 A. I'm sure there's trace elements of that in it.

18 Q. Well, no. The material safety data sheet that your
19 company sent me in this case said that there was --
20 let's see if I have it here --

21 Mr. Griggs: Just let me know what page
22 you're going to when you get there.

23 Mr. Eddy: -- now I'm referring to the
24 chemical test report.

25 Q. We had a -- we had a piece of the solder tested by an

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1 outfit called Applied --

2 Mr. Eddy: -- that was 112 --

3 Q. -- Technical Services, Inc., okay, and it's the silver
4 solder that was used in the plant and it's made of --
5 it's -- it's comprised of primarily silver, fifty-five
6 percent (55%). And I -- and why don't I just go
7 through these percentages with you and get you to tell
8 me if I'm wrong or -- or if I'm right. It's fifty-five
9 percent (55%) silver?

10 Commissioner Wilkerson: Tell me how he would
11 know that.

12 Mr. Griggs: Commissioner, I don't --

13 A. Yeah, I'm not a --

14 Mr. Griggs: -- I don't --

15 Commissioner Wilkerson: He's not an expert.
16 If that's what the report says just -- I mean, I
17 --

18 Mr. Eddy: All right.

19 Commissioner Wilkerson: -- if the report
20 says that and it's not disputed that's what -- I'm
21 okay with that.

22 Mr. Griggs: -- the only thing I would add is
23 that he's just making representations to Mr.
24 Hornback about they had a piece of solder tested
25 and, I mean, chain of evidence; where did this

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1 solder come from?

2 Mr. Eddy: All right.

3 Q. Are you familiar with the fact that it was made out of
4 copper, silver, zinc and tin?

5 A. No.

6 Q. Okay. So, you don't know whether he was exposed to
7 copper from the silver solder?

8 A. No, I don't.

9 Q. You don't know whether he was exposed to zinc or tin
10 from the silver solder?

11 A. No.

12 Q. Okay. Are you familiar with the fact that -- that your
13 company, CTR, produced a material safety data sheet
14 that shows that this is what this material was made out
15 of?

16 A. Yes.

17 Q. But you don't know what its -- what -- what's -- what
18 it's made out of?

19 A. I don't read it every day. I don't -- I don't recall.

20 Q. You don't deny -- deny that it contained copper,
21 silver, zinc and tin?

22 A. I don't confirm or deny. I don't -- I don't remember.

23 Q. All right.

24 A. I don't -- I have read the sheet but I do not remember.

25 Q. Well, you testified today it doesn't contain cadmium --

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1 A. That's exactly right.

2 Q. -- if you know what -- you -- you --

3 A. Because on the box it says --

4 Q. -- well, did you --

5 A. -- cadmium free solder.

6 Q. -- did you know that this Industrial Hygienist that you
7 all sent in the plant and hired to test this material
8 reported that it contained a trace amount of cadmium;
9 did you know that?

10 A. The silver solder?

11 Q. Yes, sir.

12 A. Well, it should not, no.

13 Q. Well, it does.

14 Mr. Griggs: I'm going to object to the
15 testimony of Mr. Eddy.

16 Commissioner Wilkerson: Just remember, this
17 is not -- I've got to make the decision.

18 Mr. Eddy: I understand.

19 Commissioner Wilkerson: We're not trying to
20 get twelve (12) people to understand it, okay?

21 Mr. Eddy: All right. I'll -- I'll try to
22 keep that in mind.

23 Commissioner Wilkerson: It's hard in these
24 type cases. I understand. It's just --

25 Mr. Eddy: All right. Let me get back on

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1 script here.

2 Commissioner Wilkerson: -- but thanks for
3 pointing out the page; that helps me when I go
4 back --

5 Mr. Eddy: Oh, I'll try to --

6 Commissioner Wilkerson: -- and look at
7 reports, yes.

8 Mr. Eddy: -- I'll try to remember and if I
9 -- if I forget to do it just let me know.

10 Commissioner Wilkerson: Yes.

11 Mr. Eddy: All right.

12 Q. So, while he's working on the final line side we talked
13 about working with metals like copper tubing; is that
14 fair to say?

15 A. Yes.

16 Q. Stainless steel tubing?

17 A. Very little, but yes.

18 Q. Okay. Copper -- brass tubing?

19 A. Very little, but yes.

20 Q. Okay. And in order for him to do this work he would
21 have to cut these -- this metal tubing, correct?

22 A. Yes.

23 Q. With a -- what kind of tool?

24 A. A band saw, normally.

25 Q. Okay. All right. And you agree -- and I'm not talking

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1 about the extent to which -- but you agree that he also
2 was required to do work with aluminum when he worked on
3 the final line side, right?

4 A. Very little, yes.

5 Q. All right. And that included drilling the -- the
6 aluminum, correct?

7 A. Very little.

8 Q. But it did include drilling, didn't it?

9 A. Yes.

10 Q. And sanding?

11 A. Very little, but yes.

12 Q. And grinding?

13 A. No grinding.

14 Q. Okay. But sanding nonetheless?

15 A. Yes.

16 Q. Okay. When you sand -- well -- and you've already
17 mentioned the use of carbon steel in the plant; is that
18 fair to say?

19 A. Yes.

20 Q. All right. What's monel?

21 A. It's a type of stainless steel.

22 Q. All right. And that's a material that was used in the
23 -- in the fab shop, correct?

24 A. Very little. It's used only in oxygen -- pure oxygen
25 applications.

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1 Q. Okay. Certain of your more valued customers would get
2 the monel, right? What is it Air Gas or, what,
3 National Welders?

4 A. Only if it's an oxygen application.

5 Q. Okay. It's expensive stuff, right?

6 A. It is expensive.

7 Q. And that was -- when it was used it was used in the fab
8 shop, correct?

9 A. Yes. In the --

10 Q. Okay.

11 A. -- in the final line area.

12 Q. Okay. Oh, in the final line area near where Mr. Dority
13 was working?

14 A. Well, there was only one (1) guy that uses it and that
15 would be --

16 Q. What was his name?

17 A. Jason Threatt.

18 Q. Okay. All right. And he would have to cut this
19 material with a power or a band saw, correct?

20 A. Yes.

21 Q. Okay. And he would have to grind it or -- or sand it;
22 would he not?

23 A. No. There's no sanding involved.

24 Q. Oh, okay. But when he would use a power band saw on
25 this material, just like anytime you cut wood or

1 whatever else, there's -- there's particulate matter
2 created, correct?

3 A. I'm sure there is.

4 Q. Okay. And where does it go; either in the air or on
5 the floor, right?

6 A. On the floor.

7 Q. All right. Of course in -- to get to the floor it had
8 to go through the air, right?

9 A. Yeah.

10 Q. All right. It -- now --

11 A. It dropped to the floor; it didn't hang in the air.

12 Q. -- you've mentioned carbon steel. We've talked about
13 aluminum. We've talked about tin. Now, this monel,
14 are you -- and you may tell me the same thing as you
15 did -- this is a part of the Claimant's case but --

16 Mr. Griggs: What page are you at?

17 Mr. Eddy: -- I'm at page 150.

18 Q. Are you aware of the fact that it contained aluminum?

19 A. What we you speaking of --

20 Q. Monel.

21 A. -- the monel?

22 Q. The monel.

23 A. No. Again, I'm not an expert; I'm not an Allergist.

24 Q. Are you -- do you -- are you aware that it contained
25 copper?

1 A. No.

2 Q. What about iron, manganese, nickel, silicone or
3 titanium?

4 A. No.

5 Q. I'm going -- you all had a hazardous communication
6 program out at the plant, correct?

7 A. Oh, yes.

8 Q. And what was that, material safety data sheets?

9 A. Yes.

10 Q. Okay.

11 A. That are available to everyone.

12 Q. Right. And -- and it was certainly available to the
13 supervisor of the final line side, right, if that's
14 where the material is being used?

15 A. Yes.

16 Q. Okay. And yet you're telling me you're not familiar
17 with the material safety data sheet for --

18 A. I'm telling you I don't remember.

19 Q. -- for monel?

20 A. I have read all of these sheets; I don't -- I don't
21 remember the contents.

22 Q. All right.

23 A. It's been a long time.

24 Q. Would you agree -- well, you've already -- we've
25 already talked -- talked about welding; that was in the

1 steel fab shop, right? Oh, and before -- I'm sorry,
2 before I get into that. These -- these tanks and
3 vessels that were worked on in the plant, first of all
4 the plant consisted of not just the final line side and
5 the fab shop but there was a, what, bulk tank
6 restoration area?

7 A. Yeah. There's a small restoration area; most of it is
8 done outside.

9 Q. Okay. But there is a tank and vessel restoration area
10 inside the facility, correct?

11 A. Yes, it's in an -- its own enclosed area.

12 Q. There is a tanker section --

13 A. Yes.

14 Q. -- inside the fab shop?

15 A. Uh-huh.

16 Q. That's where you bring in these huge tanker trucks that
17 drive down -- we see driving down the highway --

18 A. Yes.

19 Q. -- and work on them inside the plant?

20 A. Yes.

21 Q. Okay. That area is not enclosed, is it?

22 A. No, it is not.

23 Q. Okay. It's wide open, right?

24 A. Yes.

25 Q. Where is it in proximity to final line?

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- 1 A. Approximately a hundred (100) feet away from it.
- 2 Q. All right. And these tankers, these tanker trucks,
- 3 that are worked on in the open shop, these are vessels
- 4 that are made of either stainless steel or aluminum;
- 5 would that be fair to say?
- 6 A. Stainless steel, carbon steel.
- 7 Q. And some of them --
- 8 A. Some --
- 9 Q. -- are aluminum?
- 10 A. -- some aluminum on them.
- 11 Q. Okay. And to do this restoration work on these vessels
- 12 inside the open shop there is grinding done, correct?
- 13 A. Well, sometimes.
- 14 Q. Yes, and -- and there's cutting?
- 15 A. Yes.
- 16 Q. And welding?
- 17 A. Yes.
- 18 Q. So, let me just go through the various types of
- 19 activities that are done in the plant. We've talking
- 20 about welding. You -- you've admitted to the grinding,
- 21 cutting; there's also chipping, burning, brazing and
- 22 blasting of various metals, correct?
- 23 A. Not inside the building, no.
- 24 Q. Which ones are not inside the building that I
- 25 mentioned? welding? That's inside the building.

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- 1 A. Welding is inside the building.
- 2 Q. Grinding is inside the building?
- 3 A. Yes.
- 4 Q. Cutting is inside the building?
- 5 A. Yes.
- 6 Q. Chipping?
- 7 A. No.
- 8 Q. Okay. Where is that?
- 9 A. Well, what do you mean by chipping?
- 10 Q. Well, I'm just reading your safety manual, sir. Let me
- 11 show you what's been marked as Claimant's Exhibit One
- 12 and ask you first of all; is that the CTR Sight
- 13 Operating Safety Manual?
- 14 A. Yes, it is.
- 15 Q. And that applies to the Porter Road, Rock Hill plant,
- 16 correct?
- 17 A. That's correct.
- 18 Q. All right. At page 6 does it not, up at the top, say
- 19 that eye and face protection must be worn where there
- 20 is a danger from flying objects or particles especially
- 21 during grinding, chipping, burning and welding
- 22 activities?
- 23 A. Correct.
- 24 Q. All right. So -- but you're not familiar with -- with
- 25 the chipping?

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1 A. I would like to have chipping defined because that
2 doesn't --

3 Q. Okay.

4 A. -- make sense to me.

5 Q. But -- all right, but you're familiar with the burning
6 and the welding, correct?

7 A. Yes.

8 Q. All right. And the -- and the grinding, correct?

9 A. Yes.

10 Q. And then, I believe, at page 23, at the very bottom,
11 the beginning of the first or the -- or the beginning
12 of the last paragraph does it not say, physical hazards
13 are common things like metal particles from grinding?

14 A. Yes.

15 Q. Okay. So, the -- the point is, sir, that there are a
16 multitude of different types of metals that are cut,
17 drilled, ground, burned, brazed in the plant, correct?

18 A. Yes. Not often but, yes.

19 Q. Not often but you -- you have a steel fab shop?

20 A. But it does happen.

21 Q. Okay. All right. And there -- you've already talked
22 about the -- the bead blasting and I -- I made a note
23 here where you said that -- well, first of all, to do
24 the bead blasting Mr. Dority would have had to -- to
25 take the work that he did on the final line side to

1 some other location in the -- in the plant?

2 A. Yes, normally we have another person that does that
3 full time.

4 Q. Okay. I'm talking about the times when he would do it,
5 okay?

6 A. Yes.

7 Q. Does he take -- you -- you agree that there were times
8 when he would do that work?

9 A. Yes.

10 Q. Okay. And so how would -- where was the box that the
11 bead blasting was done in?

12 A. On the other side of the wall that we have mentioned?

13 Q. In the steel fab shop?

14 A. Yes.

15 Q. Okay. And you said that -- well, first of all, how --
16 how would you get the -- the whatever part that was
17 being blasted, how would it -- how would you get it
18 inside the box; open the lid?

19 A. You open the door, put it in, close the door.

20 Q. All right. And so -- and when Mr. Griggs asked you
21 would you get hit with particles when you opened that
22 up, you said, no, that, "A majority would get sucked
23 out." Do you remember that testimony?

24 A. I do.

25 Q. Some of it would -- would not get sucked out, would it?

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1 A. No, but it falls to the bottom.

2 Q. Some of the dust would get in the air wouldn't it, sir?

3 A. No.

4 Q. All right. The sandblasting operations that were done
5 outside were -- that was behind the plant?

6 A. Yes.

7 Q. How far was it from the actual plant structure?

8 A. It's probably a hundred (100) yards.

9 Q. Okay. And this wind that you talked about, at times
10 this -- well, strike that. You would -- would you
11 agree that sandblasting is where an abrasive like --
12 like sand or free silica is forcibly applied to a
13 surface?

14 A. Yes.

15 Q. Okay. And that the people doing that work would wear
16 respirators, correct?

17 A. Correct.

18 Q. All right. And that there would -- a dust hazard --
19 well, they would wear respirators due to the dust
20 hazard from actual -- the actual abrasive material
21 itself and the surface coating on the material that was
22 being blasted, correct?

23 A. Yes.

24 Q. Because the surface material on these big tanks they're
25 working on outside, they were sandblasting with their

- 1 -- their blasters, is made of what is -- paint?
- 2 A. Yes.
- 3 Q. And various metallic types of paint, correct?
- 4 A. I'm not sure about that.
- 5 Q. Well, what -- what's your understanding of the coatings
- 6 on these vessels that they're blasting off?
- 7 A. That its paint.
- 8 Q. Okay. And this sand that's hit and used and blasted
- 9 onto these tanks takes the -- the painting or the
- 10 coating off of these vessels, correct?
- 11 A. That's correct.
- 12 Q. And this cross breeze you're talking about are you
- 13 familiar with -- are you -- are you aware of the fact
- 14 that there has been testimony in this case that the
- 15 dust from this activity would blow through the plant?
- 16 A. I heard Mr. Dority say that.
- 17 Q. And did you know that Mr. Glenn testified to that?
- 18 A. No.
- 19 Q. Okay. How -- do -- have you seen that happen?
- 20 A. The dust from the blast booth outside blowing through
- 21 the plant?
- 22 Q. Yes.
- 23 A. No.
- 24 Q. Why is that; because air didn't blow through the plant?
- 25 A. Because the -- it's far enough away that it does not

1 happen.

2 Q. All right. Would you -- let me make sure I understand
3 what your testimony is on this. That the coatings on
4 these vessels that were sandblasted outside the plant
5 contained toxic metals that added to the seriousness of
6 the dust exposure; would you agree with that?

7 A. I don't know -- no, I would not agree to that.

8 Q. All right. Now, let me ask you to refer to the safety
9 manual at pages --

10 A. I -- I'm going to say I don't know. When I say I don't
11 agree I say -- I -- I don't know; I have no knowledge
12 of that.

13 Q. -- well, let me just put it this way then. You're not
14 going to disagree with the fact that your safety manual
15 says that the coatings on these vessels that were being
16 blasted, sandblasted, contain toxic metals that added
17 to the seriousness of dust exposures; you're not going
18 to disagree with --

19 Mr. Griggs: What page are you at?

20 Mr. Eddy: -- I'm at pages 40 and 41. I -- I
21 -- I'll point right to it for you if you'd like.
22 It's on page 41 about middle of the page,
23 "Coatings containing toxic metals will add to the
24 potential seriousness of the dust exposures."

25 Q. Do you see that? It then goes on to say, "Examples of

1 such coatings are antifouling paints containing
2 mercury, lead paints on structural steel, cadmium
3 plating and lead deposits on pistons of internal
4 combustion engines."

5 Q. Do you see that testimony, I mean, that -- that portion
6 or excerpt of the manual?

7 A. Uh-huh.

8 Q. All right. Would you agree that the most common route
9 of entry into the human body of these metals and dust
10 is by inhalation? Mr. Hornback?

11 A. Oh, one (1) moment, please.

12 Q. Oh, sure.

13 A. Okay.

14 Q. All right. Would you agree that these metals and dust,
15 that the most common route of entry into the body --
16 human body would be through the lungs?

17 A. Yes.

18 Q. All right. And that's what it says at page 23 of your
19 manual, correct? Mr. Hornback?

20 A. Give me a moment.

21 Q. Oh, okay. I'm sorry. At the very top.

22 A. Okay.

23 Q. In fact, this -- this manual says, "In occupational
24 settings the most common route of entry of chemicals
25 into the body is by inhalation. In some cases the

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1 chemical, like many mineral dusts, may directly damage
2 the lungs." And then at the end of the -- it goes on
3 to say in that paragraph, "This is why most
4 occupational exposure limits, like the OSHA permissible
5 exposure limits, are the recommended threshold limit
6 values of the American Conference of Governmental
7 Industrial Hygienists list workplace exposures in terms
8 of airborne concentrations." First of all, did I read
9 that correctly?

10 A. You did.

11 Q. All right. Did you ever do air sampling or air
12 monitoring during the period of time that Mr. Dority
13 worked in the plant?

14 A. I'm not involved in that; so, I can't say yes or no.

15 Q. All right. Were you aware of the fact that in this
16 case your company represented that they did not do any
17 such testing?

18 A. No, I was not aware of that.

19 Q. Okay. But this manual then in the next paragraph says
20 that, "Using -- use of a respirator provides excellent
21 protection." End of the last paragraph --

22 Mr. Griggs: That's --

23 Q. -- or the second paragraph. Do you want me to -- I'll
24 read the whole thing if you'd like.

25 Mr. Griggs: -- please do because you left

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1 some words out.

2 Mr. Eddy: Okay. I'll -- I'll read the whole --
3 it says, "Usually it's best to avoid breathing harmful
4 substances by engineering out the problem." And we're
5 going to talk about ventilation in a minute, I promise.
6 "One of the best ways to control harmful airborne
7 substances is by local exhaust ventilation but if
8 ventilation hasn't yet been installed or there is an
9 emergency using the correct respirator can provide
10 excellent protection."

11 Q. First of all, did I read that correctly?

12 A. I'm sorry, I'm not even on -- I'm not where you're at.

13 Q. Oh, I'm at the second paragraph on page 23.

14 Commissioner Wilkerson: Let me ask a
15 question. If it's in the safety manual why does
16 it matter what he says?

17 Mr. Eddy: Well --

18 Commissioner Wilkerson: Because if he -- he
19 could say yes, it's in there, no, it's in there,
20 he didn't write the safety manual, I don't think.

21 A. No.

22 Commissioner Wilkerson: So, why does it
23 matter what he says?

24 Mr. Eddy: -- right. I'll withdraw the
25 question.

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1 Commissioner Wilkerson: Yes. I mean, I
2 don't think anybody has disputed that the safety
3 manual is evidence and if that's what it says,
4 that's what it says.

5 Mr. Eddy: All right.

6 Q. Do -- do you understand that -- you said you've
7 reviewed or you're familiar with the complaint in this
8 case?

9 A. Yes.

10 Q. And I take it you don't think much of this -- of this
11 case?

12 A. I do not.

13 Q. All right. Why is that?

14 A. This is -- in the fifteen (15) years that I've worked
15 there and this is the only person that's ever had --
16 brought up anything like this.

17 Q. Right.

18 A. I did the same work for five (5) years. I run three
19 and a half (3 ½) miles a day.

20 Q. Okay.

21 A. I bike about fifty (50) miles to a hundred (100) miles
22 on the weekends when I have time.

23 Q. Okay.

24 A. My lungs have no problems. I did the exact same work.

25 Q. Do you have aluminum, iron, tin, nickel, titanium,

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1 manganese, zinc, copper and silica in your lungs?

2 A. I can't answer that question.

3 Q. Are you aware of the fact that the medical -- that --
4 that at least the Claimant's medical evidence indicates
5 that Mr. Dority has a Pneumoconiosis?

6 Mr. Griggs: Object. He hasn't reviewed the
7 medical evidence in this case.

8 Mr. Eddy: He says he doesn't think much of
9 this case.

10 Q. Are you aware of that?

11 A. No.

12 Q. And --

13 A. I'm not aware of that.

14 Q. -- and are you aware of the fact that your material
15 safety data sheet, your hazardous communication program
16 --

17 Commissioner Wilkerson: Time out. Time out.
18 Time out. Why does it matter what he thinks of
19 the case?

20 Mr. Eddy: -- because he's in here testifying
21 that the guy wasn't exposed to anything.

22 Commissioner Wilkerson: I'm guessing he
23 doesn't think much of the case. I'm guessing you
24 think a lot of it. But that doesn't mean that's
25 what I think. I don't care what he thinks of the

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1 case.

2 Mr. Eddy: All right.

3 Commissioner Wilkerson: Because if I take
4 what he just said, your guy worked there eighteen
5 (18) months; he worked there five (5) years. So,
6 if he worked there five (5) years would not he
7 have been exposed two and a half (2 ½) to three
8 (3) times to the same level your guy is exposed to
9 and he didn't get it, why? I don't know. And the
10 way I understood his testimony is he doesn't think
11 much of the case because he doesn't have any of
12 those symptoms but it doesn't matter that he
13 doesn't have any of those symptoms because I don't
14 care that he doesn't have any of those symptoms
15 because he's not the Claimant.

16 Mr. Eddy: All right. I'll -- I'll try to --

17 Commissioner Wilkerson: So, let's move on.

18 Mr. Eddy: -- okay.

19 Commissioner Wilkerson: I --

20 Mr. Eddy: All right.

21 Commissioner Wilkerson: -- I've got to get
22 to Christmas, okay?

23 Mr. Eddy: Okay. All right.

24 Commissioner Wilkerson: I mean, we're going
25 to be here another nine (9) hours if we keep

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1 reading every piece of the manual.

2 Mr. Eddy: Okay.

3 Q. Mr. Hornback, let's talk about the ventilation in the
4 plant. You said that there were some doors and there
5 were some industrial fans and then there were floor
6 fans?

7 A. Uh-huh.

8 Q. All right. The floor fans I think you said were --
9 they didn't exhausted out to the outside air, right;
10 they just circulated air in -- around inside the plant?

11 A. The floor fans, yes.

12 Q. All right. And these doors I believe you said at least
13 during the winter ideally they'd be shut to keep -- to
14 keep the -- the heat in, correct, but there were times
15 when they had to be open?

16 A. Yeah, often times they had to be open.

17 Q. Okay. But there were times when they were closed?

18 A. Sometimes.

19 Q. Okay. And there were times when the fans were broken;
20 I think you testified to that, right?

21 A. Yeah, right, for short periods of time.

22 Q. Okay. All right. And so, was there ever any
23 respiratory protection used inside the plant by Mr.
24 Dority?

25 A. Not that I'm aware of.

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1 Q. Okay. So, during the winter when the doors were closed
2 and the fans were broken Mr. Dority wasn't wearing a
3 mask?

4 A. It's not required.

5 Q. So, that's a no, right?

6 A. That's a no.

7 Q. And there were, in fact, times when -- you're familiar
8 with Charlie Glenn, right?

9 A. Yes.

10 Q. Mr. Glenn worked at CTR for quite a number of years?

11 A. I wouldn't say quite a number.

12 Q. He worked there when Mr. Dority worked there --

13 A. Three (3) or four (4) years.

14 Q. -- right?

15 A. Yes.

16 Q. And, in fact, he was the Safety Director for a period
17 of time, right?

18 A. A short period of time.

19 Q. And your -- your safety manual says that the Safety
20 Director should have authority to ensure the safe --
21 for the safety of the employees, correct; you wouldn't
22 dispute that would you?

23 A. I would have to read that but, no.

24 Q. Well, I'll -- okay. I'm trying to save time but I'll
25 be glad to --

1 Commissioner Wilkerson: If it's in the
2 manual --

3 Mr. Eddy: -- all right.

4 Commissioner Wilkerson: -- it's in the
5 manual.

6 Mr. Eddy: All right. Well, here is --

7 Commissioner Wilkerson: Point out -- time
8 out, time out, time out. I'm talking; you're not
9 going to talk. Tell me where it is in the manual,
10 Mr. Eddy.

11 Mr. Eddy: -- all right.

12 Commissioner Wilkerson: I do not want to
13 read this manual and get this man to tell me what
14 the word, is, means. Point it out and let's move
15 on.

16 Mr. Eddy: All right. Page 6 -- well -- says
17 -- under the -- the part that says Safety
18 Director's responsibilities, "In order for the
19 safety to be effective one (1) person must be
20 assigned full responsibility for safety activity."

21 Commissioner Wilkerson: I didn't say read
22 it.

23 Mr. Eddy: Oh, I'm sorry.

24 Commissioner Wilkerson: I said point out --

25 Mr. Eddy: Oh, okay.

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1 Commissioner Wilkerson: -- what page it's
2 on.

3 Mr. Eddy: Page 6. I apologize.

4 Commissioner Wilkerson: Because if we're
5 going to do reading we're going to get that lady
6 back in here and we can go to her summer reading
7 program. We -- we've got to move --

8 Mr. Eddy: All right.

9 Commissioner Wilkerson: -- tell --

10 Mr. Eddy: All right. Okay.

11 Commissioner Wilkerson: -- tell me what the
12 purpose of what we're doing now is. I am totally
13 confused.

14 Mr. Eddy: Well, because he's in here
15 testifying to the effect that there's all this
16 ventilation in the plant and yet the Safety
17 Director that -- that the manual says the Safety
18 Director should have authority --

19 Commissioner Wilkerson: He's not the Safety
20 Director.

21 Mr. Eddy: -- to carry out the safety
22 program.

23 Commissioner Wilkerson: He's not the Safety
24 Director. Pin his ears back on --

25 Mr. Eddy: All right.

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1 Commissioner Wilkerson: -- that there's no
2 ventilation; that's what you need to do, not say
3 what the manual says.

4 Q. Are you aware of the fact that the Safety Director for
5 CTR has testified that he was not given the money
6 necessary to fix the broken fans in the ventilation
7 system and that the conditions in the plant were
8 deplorable?

9 A. Am I aware that he said that?

10 Q. Yes, sir.

11 A. Yes. I read his testimony.

12 Q. All right. And are you aware of the fact that one (1)
13 of the experts you hired in this case has described it
14 as horrifying?

15 Mr. Griggs: I'm going to object to that
16 characterization.

17 Mr. Eddy: well, I'll give you the page then.

18 Mr. Griggs: Yes, you put the words in
19 Feldman's mouth and he spit them back to you.

20 Mr. Eddy: No, no. well -- well, we can go
21 to that then because that's not true. It's at
22 page --

23 Mr. Griggs: well, let's do if the
24 Commissioner wants to because that's not correct.
25 Has Mr. Feldman been to the plant, Mr. Eddy? How

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1 did he get any knowledge of the plant? From what
2 you told him; he spit it back to you. It's --

3 Commissioner Wilkerson: Is this in his
4 deposition?

5 Mr. Griggs: -- disingenuous.

6 Mr. Eddy: Yes, sir.

7 Commissioner Wilkerson: What page?

8 Mr. Eddy: All right. It's page 20.

9 Commissioner Wilkerson: In Feldman's
10 deposition?

11 Mr. Eddy: Yes.

12 Commissioner Wilkerson: What line?

13 Mr. Eddy: 8, line 8.

14 Commissioner Wilkerson: And -- and read it
15 into the record.

16 Mr. Eddy: "Horrifying terrible exposures to
17 many things in his life. If you really want to
18 know" --

19 Mr. Griggs: "Horrifying terrible exposures
20 to many, many things in his life. If you really
21 want to know you go back twenty (20) or thirty
22 (30) years. You go back five (5), six (6) years
23 ago and its irrelevant data; that just doesn't
24 happen."

25 Mr. Eddy: -- I think -- all right. Well, I

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1 was going to go into what he says later on in the
2 page. "He was exposed to massive bad stuff and"
3 and he says, "But I cannot tell you what caused it
4 because it's impossible unless you see in the lung
5 particulate matter, like welders."

6 Commissioner Wilkerson: So, he's saying he
7 can't tell what caused it?

8 Mr. Eddy: Without seeing particulate matter
9 in the lung tissue --

10 Commissioner Wilkerson: Okay.

11 Mr. Eddy: -- yes, sir.

12 Commissioner Wilkerson: Okay.

13 Mr. Griggs: My whole point, just for the
14 record, is my objection is that Mr. Feldman -- Dr.
15 Feldman has not been to the plant, any exposure
16 information that he received is from Mr. Eddy in
17 the beginning of the deposition and he spit it
18 back.

19 Mr. Eddy: No, that is not -- now you're
20 testifying.

21 Commissioner Wilkerson: Is the doctor --
22 where -- now, Dr. Feldman, is he the one in
23 Chicago?

24 Mr. Griggs: No, he's the one in Spartanburg
25 that I --

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1 Commissioner Wilkerson: Spartanburg, okay.

2 Mr. Griggs: -- retained --

3 Mr. Eddy: He's the one who did the --

4 Mr. Griggs: -- to actually --

5 Mr. Eddy: -- IME for the Defendant --

6 Mr. Griggs: -- put his hands on Mr. Dority.

7 Commissioner Wilkerson: Okay. That's fine.

8 Mr. Eddy: -- and interviewed the Claimant.

9 I'll try to wrap it up.

10 Q. You would agree that when he worked in the electrical
11 department he spent a number of hours, at least
12 approximately two (2) hours each day, in the main part
13 of the plant?

14 A. Yes, on average.

15 Q. Sometimes the -- the ventilation fans -- well, first of
16 all, the fans in -- there were two (2) in the ceiling?

17 A. Yes.

18 Q. Was one (1) of them directly overhead the final line
19 side?

20 A. No.

21 Q. Was there an actual wall fan in the final line side?

22 A. Yes.

23 Q. How many?

24 A. One (1).

25 Q. Do you recall how many times that fan broke down?

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1 A. I do not recall.

2 Q. Would you agree that all of the fans at some point in
3 time would break down, the fan motors?

4 A. Would they at some point in time?

5 Q. Yes, sir.

6 A. Would they at the same time?

7 Q. No, no. I mean, just --

8 A. Yes. At some point in time all mechanical things break
9 down.

10 Q. -- all right. And you said there were how many
11 stations --

12 Commissioner Wilkerson: And so far there is
13 no evidence of when they broke down, where these
14 people were when they weren't working; is that
15 right?

16 A. (Nodded head in an up and down motion).

17 Commissioner Wilkerson: Okay. Is that fair?
18 Because I don't know when they broke down; I don't
19 know if they broke down in January, they broke
20 down in February, I don't know if -- who was at
21 work that day or who wasn't at work that day. I
22 mean, I understand clearly that they broke down
23 and that they were fixed, typically, within a
24 week; so, I don't know who was working during that
25 period of time.

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1 Mr. Eddy: Well --

2 Commissioner Wilkerson: But I've got to read
3 the medical evidence. I just want to make sure
4 that's what I understand about that.

5 Q. -- I guess all -- all I'm asking you is, there were
6 times when Mr. Dority was working when the fans would
7 break down?

8 A. Yes.

9 Q. Okay. Do you know at what point in the year; were
10 there times during the winter when the fans would break
11 down when Mr. Dority was there?

12 A. I don't recall.

13 Q. All right.

14 Mr. Eddy: Those are all the questions I
15 have. Thank you.

16 Mr. Griggs: Just briefly.

17 Michael Hornback REDIRECT EXAMINATION

18 By Mr. Griggs:

19 Q. You talked about Eddie -- Eddie Glenn, that's who
20 Charlie Glenn is, right?

21 A. That's correct.

22 Commissioner Wilkerson: Oh, okay. Yes,
23 because I was --

24 Q. And he's --

25 Commissioner Wilkerson: -- that was my

- 1 question at the end. Go ahead.
- 2 Q. -- he's the Safety -- he was a Safety Director,
3 correct?
- 4 A. That's correct. At -- for a short time.
- 5 Q. And his --
- 6 A. He had other jobs.
- 7 Q. -- let me ask you this. Mr. Glenn, at page 9 of his
8 deposition, his record, says that he began being Safety
9 Director in the spring of 2011; is that correct or if
10 that's what it says Mr. Glenn said do you dispute that,
11 spring of 2011?
- 12 A. I don't -- I don't recall but --
- 13 Q. Okay.
- 14 A. -- if he said that, that's probably true.
- 15 Q. And -- and Mr. Dority quit working there in when?
- 16 A. Quit working?
- 17 Q. Yes.
- 18 A. 2010, I think.
- 19 Q. Okay. October of 2010?
- 20 A. Yeah, somewhere in that area.
- 21 Q. So, if Mr. Glenn became Safety Director in spring of
22 '11 and Mr. Dority quit working in October, 2010, was
23 Mr. Glenn ever the Safety Director when Mr. Dority was
24 working?
- 25 A. According to that, no, but I can't say that for sure; I

1 don't know.

2 Mr. Griggs: No further questions.

3 Mr. Eddy: Just one (1) follow up.

4 Michael Hornback RECROSS-EXAMINATION

5 By Mr. Eddy:

6 Q. You -- you just said that if that's what he said it's
7 probably true --

8 A. I -- I'm -- I don't know when he was -- I don't know.
9 I --

10 Q. -- but did you --

11 A. -- that's what I'm saying.

12 Q. -- did you say that because you found Mr. Glenn to be
13 --

14 A. No. I said it because it's written right there
15 (indicating). I don't know.

16 Q. -- well, I'm asking you --

17 A. And I'm telling you --

18 Q. -- was Mr. --

19 A. -- I do not know.

20 Q. -- I'm asking you now about Mr. Glenn's credibility.
21 would you -- would you agree that he is generally an
22 honest individual?

23 A. Eddie, generally, yes.

24 Q. All right.

25 Mr. Eddy: Thank you.

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1 Michael Hornback FURTHER REDIRECT EXAMINATION

2 By Mr. Griggs:

3 Q. The only thing I'll add is that you've read -- you
4 reviewed Mr. Glenn's deposition testimony?

5 A. Yes.

6 Q. And his statements about conditions and things of that
7 nature, do you -- do you as a fifteen (15) year
8 employee think that those are accurate representations
9 --

10 A. No.

11 Q. -- about the air and the ventilation and this --

12 A. No, I do not.

13 Mr. Griggs: -- no further questions,
14 Commissioner.

15 Mr. Eddy: No further questions.

16 Commissioner Wilkerson: Okay.

17 Mr. Griggs: Thank you, Mr. Hornback.

18 Commissioner Wilkerson: Do we need to keep
19 him here or can he go back?

20 Mr. Griggs: Yes, we're going to keep him
21 here. I've just got one (1) -- one (1) more.

22 Commissioner Wilkerson: How long?

23 Mr. Griggs: My part, maybe about ten (10)
24 minutes.

25 Commissioner Wilkerson: No. Bathroom break,

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1 time out.

2 Mr. Griggs: All right.

3 Mr. Hornback: Yeah, I need some water.

4 Commissioner Wilkerson: And I know you all's
5 ten (10) minutes.

6 Mr. Hornback: Thanks.

7 Mr. Griggs: Well, my ten (10) minutes will
8 be ten (10) minutes.

9 Commissioner Wilkerson: That -- that means
10 there's ten (10) minutes left in this hour --

11 Mr. Griggs: Put me on the clock.

12 Commissioner Wilkerson: -- I wasn't talking
13 about the ten (10) minutes --

14 Mr. Griggs: We'll have our --

15 Commissioner Wilkerson: -- on the other side
16 of the hour.

17 Mr. Griggs: -- we'll have our witnesses put
18 me on the clock. I can promise you.

19 Commissioner Wilkerson: I forgot about the
20 ten (10) minutes on the other side of the clock.

21 Mr. Griggs: I'll stop at ten (10) minutes;
22 how about that?

23 Commissioner Wilkerson: That can't happen.

24 (Off The Record)

25 Commissioner Wilkerson: All right. We're

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1 back on -- are you ready?

2 Court Reporter: Yes, sir.

3 Commissioner Wilkerson: -- we're back on the
4 record. Have we got another witness here?

5 Mr. Griggs: Jason Threatt.

6 Court Reporter: Please raise --

7 Commissioner Wilkerson: Mr. Threatt, if
8 you'd raise -- oh, go ahead. I'm sorry.

9 Mr. Griggs: She's going to swear you in,
10 Jason.

11 Commissioner Wilkerson: Raise your right
12 hand and she'll swear you in. Excuse me.

13 whereupon;

14 Robert Jason Threatt, being duly sworn and cautioned to
15 speak the truth, the whole truth and nothing but the truth,
16 testified as follows:

17 Court Reporter: Please state your full name
18 for the record.

19 Witness: Robert Jason Threatt.

20 Court Reporter: Thank you, sir.

21 Commissioner Wilkerson: Thank you, Mr.
22 Threatt.

23 Robert J. Threatt DIRECT EXAMINATION

24 By Mr. Griggs:

25 Q. Mr. Threatt, spell your last name for us.

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- 1 A. T-H-R-E-A-T-T.
- 2 Q. Okay. And where do you work?
- 3 A. At CTR.
- 4 Q. Okay. And how long have you been there?
- 5 A. Fifteen (15) years.
- 6 Q. Okay. And what is your job?
- 7 A. I work in the panel shop.
- 8 Q. Okay. And do you do the brazing and things of that
- 9 nature?
- 10 A. Yes, sir.
- 11 Q. Okay. And you work on the final line side?
- 12 A. Uh-huh.
- 13 Q. Okay. And you're familiar with Michael Dority?
- 14 A. Yes, sir.
- 15 Q. And did you work with Mr. Dority?
- 16 A. Yes, sir.
- 17 Q. Side-by-side with him?
- 18 A. Yep.
- 19 Q. And you do the same job -- you do -- you do the same
- 20 things that he was doing at this point in time,
- 21 correct?
- 22 A. Uh-huh.
- 23 Q. And have done for some time?
- 24 A. Oh, yeah.
- 25 Q. Since you've been at CTR have you done anything else

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1 besides final line work?

2 A. Yeah, I worked in bulk tank.

3 Q. Okay. Now, how long have you been doing final line
4 work?

5 A. Six (6) years.

6 Q. Okay. Now, you braze on a regular basis still with the
7 silver solder?

8 A. Yeah.

9 Q. Okay. Describe that process for me.

10 A. ~~Well, you start turning your bottles on; turning your~~
11 two (2) knobs to the desired pressure and strike your
12 -- take your striker and strike the arc and then turn
13 the temperature that you need for the piece of pipe
14 you're working on.

15 Q. Okay. And do you braze with the actual torch on the --
16 on the material all day or are you doing other things?

17 A. Other things.

18 Q. Okay. And what other things will you do?

19 A. Cut pipe, break my kit down, go get parts, take parts
20 to -- to the OCD room.

21 Q. What OCD room?

22 A. That's our cleaning room for our -- to clean our 02 --
23 clean our parts.

24 Q. Okay. 02 cleaning?

25 A. Yeah.

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- 1 Q. Okay.
- 2 A. O2 cleaning our parts.
- 3 Q. What else?
- 4 A. Cutting my panel or cutting my parts or getting
- 5 everything ready to start brazing. Bend my parts, I
- 6 need to be bent -- my tubing needs to be bent.
- 7 Q. Do you assemble by hand?
- 8 A. Assemble everything, yeah, by hand.
- 9 Q. Do you test the part?
- 10 A. Yeah.
- 11 Q. Do you have to hook it up to a pressure system, a
- 12 pressure test system?
- 13 A. Yeah, high pressure.
- 14 Q. Do you have to clean the part itself once you get it
- 15 ready to --
- 16 A. Once I -- yeah, once I'm completed with it; yeah, I
- 17 have to clean it -- get it cleaning and then reassemble
- 18 it back together and bolt it back to the stand or
- 19 whatever I'm bolting it to and then get ready to test.
- 20 Q. -- do you affix labeling?
- 21 A. Yeah.
- 22 Q. Now, do your other tasks take you to other areas of the
- 23 plant?
- 24 A. Yeah.
- 25 Q. Are you constantly in your workstation or are you

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- 1 moving throughout the plant?
- 2 A. No, I'm moving throughout the plant.
- 3 Q. But you -- but you spend a majority of the time at your
- 4 --
- 5 A. Yeah.
- 6 Q. -- in your area?
- 7 A. In my area, yeah.
- 8 Q. Now, do -- how long in each day on an average eight (8)
- 9 hour day would you spend with the flame lit to the
- 10 material actual soldering or brazing?
- 11 A. About an hour.
- 12 Q. Okay. And that's approximate?
- 13 A. Yeah.
- 14 Q. Okay. If somebody had made the statement, Mr. Dority
- 15 soldered eight (8) hours a day, five (5) days a week,
- 16 is that accurate?
- 17 A. No.
- 18 Q. Is that possible?
- 19 A. No, there's no way.
- 20 Q. Okay. And you worked with Mr. Dority?
- 21 A. Yeah.
- 22 Q. So, you witnessed him --
- 23 A. Yeah.
- 24 Q. -- doing his job?
- 25 A. Uh-huh.

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1 Q. Would -- is it -- do you -- do you sometimes and the
2 other Brazers or other people on the final lines go an
3 entire day without striking the torch and doing any
4 brazing?

5 A. Yeah, of course.

6 Q. Would you -- is there times where you may go more than
7 one (1) day without doing any brazing?

8 A. Of course.

9 Q. Is that -- is that uncommon or is that common or is it
10 --

11 A. Yeah, that's -- it's common.

12 Q. -- okay. Have you ever had a coughing fit --

13 A. No.

14 Q. -- from brazing or from anything in the air?

15 A. No.

16 Q. Did you ever experience Mr. Dority doing that?

17 A. No.

18 Q. Did you ever experience him spitting up -- spitting up
19 things out there?

20 A. No.

21 Q. Have you ever had any complaints of the air quality?

22 A. No.

23 Q. Have you ever talked to anybody else that had a
24 complaint about air quality?

25 A. No.

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- 1 Q. How is the -- how large -- is this a large plant or is
2 it a --
- 3 A. Yeah, it's a pretty large plant.
- 4 Q. -- okay. Are the ceilings pretty high?
- 5 A. Yeah. Twenty (20) foot, twenty-five (25), thirty (30)
6 foot; somewhere around in there.
- 7 Q. Okay. How many -- do the ceilings get -- go up to an
8 apex, they get higher in the center and --
- 9 A. Yeah.
- 10 Q. -- okay. How many -- how is the ventilation; what's --
11 what do you use for ventilation out there as far as
12 moving air in and out?
- 13 A. Well, we've got roll-up doors. We've got ventilation
14 fans in the ceiling and on the walls.
- 15 Q. Okay. And the roll-up doors, are these garage type
16 doors?
- 17 A. Yeah.
- 18 Q. Okay. And how many of them are there; do you know?
- 19 A. Fourteen (14).
- 20 Q. Are they large enough to put a vehicle through?
- 21 A. Yeah.
- 22 Q. A tractor-trailer?
- 23 A. A tractor-trailer, yeah.
- 24 Q. Can you drive --
- 25 A. A tanker, you can drive through them and take pick-up

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1 trucks through, eighteen (18) wheelers through.

2 Q. -- and that -- people drive through these doors?

3 A. Yeah.

4 Q. Now, during the spring months are the doors open?

5 A. Yeah, all the time.

6 Q. During the summer months are they open all the --

7 A. All the time.

8 Q. -- during the fall months?

9 A. They're up and down.

10 Q. Okay. During the winter months?

11 A. Up and down.

12 Q. Okay. Are they -- when are they down; is it -- when --
13 when would they be put down?

14 A. Mostly in the afternoons or it really depends on the
15 job if they -- well, as soon as they bring their
16 equipment in, take everything out, bring something else
17 in, they may shut it down and then a few minutes they
18 have to open the doors right back up to take equipment
19 -- bring new equipment in and take new -- old equipment
20 back out.

21 Q. Are all the doors closed for -- are -- are the doors
22 down for a large amount of time during the cooler
23 months?

24 A. Not necessarily, about an hour, an hour and a half, two
25 (2) at the most.

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- 1 Q. Okay. And then they're open and shut?
- 2 A. Open and shut and constantly, yeah.
- 3 Q. When they're open and shut is there breezes throughout
- 4 the plant?
- 5 A. Oh, yeah.
- 6 Q. Are there entire days where the plant just stays closed
- 7 up --
- 8 A. No.
- 9 Q. -- without opening doors?
- 10 A. No.
-
- 11 Q. Are there fans -- what type of fans are there?
- 12 A. Well, we've got ventilation fans in the ceiling. We've
- 13 got -- I think they're five by five (5x5) wall units in
- 14 --
- 15 Q. They're actually --
- 16 A. -- in the walls.
- 17 Q. -- okay. Fans in the walls?
- 18 A. Yeah.
- 19 Q. Okay. And is there a fan in the wall on the final line
- 20 side?
- 21 A. Yeah.
- 22 Q. Okay. And is that fan on --
- 23 A. Yeah.
- 24 Q. -- constantly?
- 25 A. Constantly, yeah.

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- 1 Q. Okay. Now, the fans that are in the walls, do they
2 exhaust out of the building?
- 3 A. Outside of the building.
- 4 Q. Okay. And are there times when those fans have broken
5 down?
- 6 A. No.
- 7 Q. They've never -- they've never had motor problems?
- 8 A. Not on our side, no.
- 9 Q. Not on the final line?
- 10 A. Not on the final line side, no.
- 11 Q. Okay. Have there been times when the fans have broken
12 down, though --
- 13 A. Oh, yeah.
- 14 Q. -- the fans --
- 15 A. Yeah.
- 16 Q. -- in the walls and in the ceilings?
- 17 A. In the -- yeah, in the -- in the -- yeah, on the walls.
- 18 Q. Are they fixed?
- 19 A. Oh, yeah, they're fixed.
- 20 Q. Okay. So, are they left inoperable for an extended
21 period of time?
- 22 A. No.
- 23 Q. Are there -- there's ceiling fans, you said?
- 24 A. Yeah.
- 25 Q. Are those like a -- is it a ceiling fan like in a house

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1 or is it --

2 A. No, it's like a --

3 Q. -- like an attic fan or --

4 A. -- attic fan.

5 Q. -- okay. Are there other areas of the plant that you
6 go to that -- that are -- that are bothersome for you?

7 A. Not at all.

8 Q. When you walk out in the plant do you -- do you
9 experience or see a fog or a fume cloud hanging?

10 A. Not at all.

11 Q. Is there a door -- are there doors in the final line
12 side or close to the final line side?

13 A. Yeah.

14 Q. Did the Claimant ever complain about air quality to
15 you?

16 A. No.

17 Mr. Griggs: I don't think I have any further
18 questions.

19 Commissioner Wilkerson: Please, Mr. Eddy.

20 Robert J. Threath CROSS-EXAMINATION

21 By Mr. Eddy:

22 Q. Mr. Threath, I'm Jeff Eddy. You were talking about
23 your work as a Brazer?

24 A. Uh-huh.

25 Q. And that's the title, Brazer; is that right?

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- 1 A. (Nodded head in an up and down motion).
- 2 Q. You have to answer out loud for the Reporter.
- 3 A. Oh, yeah.
- 4 Q. Okay. So, the people like you or Mr. Dority who work
- 5 on the final line side are referred to as Brazers?
- 6 A. Brazers, uh-huh.
- 7 Q. Well, what is brazing?
- 8 A. You're taking flux and silver and putting a piece of
- 9 pipe into a joint and making that joint as one (1).
- 10 Q. Okay. So -- and flux is something that you use before
- 11 you actually use the solder?
- 12 A. No. You have to flux your pipe up but, yeah, before
- 13 you use the solder.
- 14 Q. Okay. And then the torch is also referred to, I think
- 15 at times, as a rosebud maybe?
- 16 A. Yeah.
- 17 Q. Have you ever heard --
- 18 A. Yeah, a rosebud.
- 19 Q. -- heard of it called a rosebud?
- 20 A. Yeah.
- 21 Q. And this -- and so, this torch is -- runs on gas; what
- 22 is it propane?
- 23 A. Oxygen acetylene.
- 24 Q. Oxygen acetylene?
- 25 A. Uh-huh.

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- 1 Q. Okay. So, you take the pipe, which is what, either
2 like --
3 A. Copper --
4 Q. -- copper --
5 A. -- or stainless.
6 Q. -- of stainless --
7 A. Yeah.
8 Q. -- and the flux and the silver solder and you use your
9 torch and you join these materials together?
10 A. Uh-huh. Yeah.
- 11 Q. And when you would melt the solder and burn the flux
12 would there be any effect to the air?
13 A. No.
14 Q. No smoke at all?
15 A. No smoke at all. No.
16 Q. You couldn't see any smoke?
17 A. No.
18 Q. No dust?
19 A. No dust.
20 Q. All right. You said you also cut pipe; you were
21 referring to the pipe you were soldering together?
22 A. Yes, sir.
23 Q. So, that's like the copper or the stainless pipe?
24 A. Yeah.
25 Q. And what do you use to cut it with?

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- 1 A. A porter band.
- 2 Q. All right. And is that done right there in the final
3 line side?
- 4 A. Yeah, a few feet from it.
- 5 Q. Okay. Now, there's five (5) -- how many workstations
6 in the final line side?
- 7 A. Six (6).
- 8 Q. Okay. Five (5) or six (6), a handful, basically?
- 9 A. Yeah.
- 10 Q. Okay.
- 11 A. Uh-huh.
- 12 Q. And each -- each station would belong to a separate
13 Brazer?
- 14 A. Yeah.
- 15 Q. Okay. And there are times when -- on average how many
16 Brazers would be working at -- at any given point in
17 time?
- 18 A. Around about half.
- 19 Q. Anywhere from three (3) to four (4) maybe --
- 20 A. Yeah, maybe --
- 21 Q. -- three (3) or four (4) at a time?
- 22 A. -- if that, yeah.
- 23 Q. Okay. And all these tables or workstations that the
24 Brazers are working at all in the same general area of
25 the -- the final line side?

- 1 A. Yeah.
- 2 Q. All right. And there are floor fans in there too,
3 right?
- 4 A. Yeah.
- 5 Q. And the floor fans would circulate or move the air
6 around in that particular area?
- 7 A. Yeah.
- 8 Q. Okay. They weren't vented to the outside, were they?
- 9 A. No.
- 10 Q. All right. And you also would cut panels and parts,
11 did you say?
- 12 A. Yeah.
- 13 Q. And what -- what kind of panels were you cutting?
- 14 A. Aluminum panels.
- 15 Q. Okay. And using the same power or band saw for the --
- 16 A. No.
- 17 Q. -- how -- how --
- 18 A. A hole saw.
- 19 Q. -- I -- I'm sorry?
- 20 A. A hole saw.
- 21 Q. A hole saw?
- 22 A. Yeah.
- 23 Q. It's like a -- like you would use, maybe, to drill --
24 drill a --
- 25 A. Drill a --

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- 1 Q. -- kind of similar to like drilling a hole in a door --
- 2 A. -- yeah.
- 3 Q. -- to put a knob in or something?
- 4 A. Yeah.
- 5 Q. And where was that work done?
- 6 A. In the final line side.
- 7 Q. Okay. And so, would it be fair to say all of the
- 8 Brazers would have to drill holes in aluminum to make
- 9 panels?
- 10 A. Not every one.
- 11 Q. Did Mr. Dority?
- 12 A. On some occasions, yeah.
- 13 Q. Okay. And after -- after drilling these -- or cutting
- 14 these holes in the aluminum panels, were there times
- 15 when you would have to do any sanding or grinding of
- 16 the aluminum?
- 17 A. A little sanding, yeah.
- 18 Q. What would you use to sand it with?
- 19 A. A DA.
- 20 Q. What's a DA?
- 21 A. It's a sander for light finish on material.
- 22 Q. All right. Some -- sort of an abrasive pad or disk?
- 23 A. Yeah, like a little pad that -- all right, you --
- 24 you're getting the scratches out.
- 25 Q. Okay. Would it create any dust or particulate matter

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1 when you would do that?

2 A. A little.

3 Q. Okay. And so, the -- the dust or the particulate
4 matter was -- was the actual aluminum coming off the
5 aluminum sheet of --

6 A. Yeah.

7 Q. -- that -- that you were sanding?

8 A. That and a pad --

9 Q. Okay.

10 A. -- or a pad.

11 Q. Okay. Where would that dust go?

12 A. In the floor.

13 Q. Okay. And I got the impression when you were giving
14 your testimony that these -- these are the sorts of
15 things that you would do on a regular basis in addition
16 to -- to brazing; is that right?

17 A. Yeah.

18 Q. Cutting aluminum panels; is that right?

19 A. Yeah.

20 Q. Okay. Now, you worked with monel, didn't you?

21 A. Yeah.

22 Q. Right there in the final line side?

23 A. Uh-huh.

24 Q. Right there next to Mr. Dority?

25 A. Yeah.

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- 1 Q. Okay. Do you know what it was made out of?
- 2 A. No.
- 3 Q. Did you know that the plant had material safety data
- 4 sheets for the employees to look at to make sure they
- 5 stayed safe in the plant?
- 6 A. Yeah.
- 7 Q. Did you ever look at them?
- 8 A. No.
- 9 Q. Okay. What would you do with the monel?
- 10 A. Bend it and solder ends on it.
- 11 Q. And I'm sorry, what?
- 12 A. Solder ends on it, silver ends on it.
- 13 Q. Okay. And you would cut it too, right?
- 14 A. Yeah.
- 15 Q. Using that same --
- 16 A. Porter band.
- 17 Q. -- porter band?
- 18 A. Uh-huh.
- 19 Q. How often would you work with the monel in the final
- 20 line side?
- 21 A. Probably, maybe, four (4) times a year.
- 22 Q. Okay. But there were times when you were cutting monel
- 23 when Mr. Dority was in the final line side, wasn't
- 24 there --
- 25 A. Yeah.

- 1 Q. -- wasn't there? Okay. And how far away would he be
2 from you, ten (10), fifteen (15) feet maybe?
- 3 A. Probably twenty (20) -- yeah, fifteen (15) to twenty
4 (20) feet from me at that time.
- 5 Q. All right. Did you ever have to do any grinding of --
6 when you would do your welds in the -- on the -- or
7 your soldering, your brazing, on the final line side;
8 use a small little pneumatic grinder to -- to --
- 9 A. A file.
- 10 Q. -- a file?
- 11 A. Yeah.
- 12 Q. Okay. What would you do with the file?
- 13 A. Just run it across the run on the silver if you had
14 that.
- 15 Q. Okay. Because it --
- 16 A. It's rare.
- 17 Q. -- yes, but just kind of like you would do that if you
18 had a little bit too much of a build up?
- 19 A. Too much of a run on the side of it. Yeah, your fit --
- 20 Q. Okay. So, you --
- 21 A. -- yeah, you take a final run across it and --
- 22 Q. -- and what --
- 23 A. -- knock it down.
- 24 Q. -- were you actually filing, the solder material --
- 25 A. Yeah.

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1 Q. -- or the pipe itself or --

2 A. Just the solder material.

3 Q. -- okay. To make it smooth?

4 A. Yeah.

5 Q. Now, Mr. -- it's -- information in the case indicates
6 that Mr. Dority worked on the final line side for
7 roughly an eighteen (18) month -- fifteen (15) to
8 eighteen (18) month period from July of 2007 until
9 let's say the end of 2008, somewhere there about. Now,
10 were you on the final line side that whole period of
11 time, the summer of 2007 through the end of 2008?

12 A. The first -- well, July, no.

13 Q. When did you go first work on the final -- final line
14 side?

15 A. August.

16 Q. Okay.

17 A. And I've been there ever since.

18 Q. All right.

19 Commissioner Wilkerson: August of 2007?

20 A. Yes, sir.

21 Commissioner Wilkerson: Okay.

22 Q. Okay. Now, there has been testimony in this case that
23 the fan motor on the wall in the final line side did --
24 did go bad at -- at times but you're saying it didn't?

25 A. No, not on the final line side it didn't.

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- 1 Q. All right. Well, where did it go bad?
- 2 A. In tanker side.
- 3 Q. Okay. At -- tanker side is where they would -- there
- 4 would be some smoke in that area at times, wouldn't
- 5 there?
- 6 A. A little bit.
- 7 Q. What was that from --
- 8 A. The --
- 9 Q. -- some kind of vacuum pumps --
- 10 A. -- it'd be --
- 11 Q. -- or something?
- 12 A. -- well, it'd be from the eighteen (18) wheeler backing
- 13 the trailer in. The vacuum pumps are run outside --
- 14 Q. Okay.
- 15 A. -- the exhaust is on the outside of --
- 16 Q. -- and there were never times --
- 17 A. -- the vehicle.
- 18 Q. -- when the vacuum pumps would actually --
- 19 A. No.
- 20 Q. -- omit smoke into the --
- 21 A. Not into the plant --
- 22 Q. -- into the plant?
- 23 A. -- it shouldn't, no.
- 24 Q. Okay. And is it your testimony that using this flux
- 25 and this solder with a -- a settling torch didn't

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1 create any smoke --

2 A. No.

3 Q. -- or fumes whatsoever?

4 A. No.

5 Q. Did you know Dan Dance?

6 A. Excuse me?

7 Q. Did you -- do you know who Dan Dance is?

8 A. Yeah. Yeah.

9 Q. He worked there for a period of time, right?

10 A. Uh-huh. Yeah.

11 Q. And he was on the final line side?

12 A. Yeah.

13 Q. And it -- do -- do you know why he doesn't work there
14 anymore?

15 A. No.

16 Q. You don't know anything about his health?

17 A. No.

18 Q. Do you know whether or not he has a kidney disorder?

19 Mr. Griggs: I'm going to object --

20 A. No.

21 Mr. Griggs: -- to this question; I don't
22 know what evidence has been introduced.

23 Commissioner Wilkerson: Yes.

24 Mr. Griggs: I don't even know who Dan Dance
25 is.

1 Mr. Eddy: I'm not asking you. I'm asking --

2 Q. -- do you -- do you know when he quit working there?

3 A. Six (6) months ago, maybe.

4 Q. Do you know when he first started working there?

5 A. No, I wasn't there.

6 Q. Do you -- okay, so he started working there before you
7 started?

8 A. Uh-huh.

9 Q. So, sometime prior to August of 2007?

10 A. Yeah, he was there then.

11 Q. Okay. So -- all right. When he worked there he worked
12 on the final line side, right?

13 A. Yeah. I would -- at -- at the --

14 Q. As far as you know?

15 A. -- yeah. So, far as I know of, yeah. Because when I
16 first come there, no, I -- I have no idea.

17 Q. All right. Thank you. Thank you, Mr. Threatt.

18 Mr. Eddy: That's all I have.

19 Mr. Griggs: I don't have any other
20 questions, Commissioner.

21 Commissioner Wilkerson: Okay. Can he leave
22 or are you all just all out there together?

23 Mr. Griggs: He can go.

24 Commissioner Wilkerson: Okay. Sir, you may
25 -- you are dismissed.

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1 Mr. Threatt: Okay.

2 Mr. Griggs: Thank you, Jason.

3 Mr. Threatt: Uh-huh.

4 Commissioner Wilkerson: Any other witnesses?

5 Mr. Griggs: No, sir.

6 Commissioner Wilkerson: None?

7 Mr. Griggs: No, sir.

8 Commissioner Wilkerson: Okay. So, I guess
9 we're through?

10 Mr. Griggs: That's correct.

11 Mr. Eddy: We're done.

12 Commissioner Wilkerson: Okay. This
13 concludes the case. Let me meet with the
14 attorneys for a few minutes. Thank you all.

15 (There being no further questions, the hearing concluded at
16 2:21 P.M.)

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State OF SOUTH CAROLINA)
COUNTY OF YORK)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Michael W. Dority, vs. CTR of the Carolinas, Incorporated;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

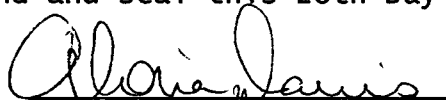
That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 101 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 28th Day of April, 2013.



Gloria Davis
Notary Public for South Carolina
My Commission Expires 12/21/21

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