

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

S.C. SUPREME COURT

Appellate Case No. 2019-000647
Unpublished Opinion No. 2019-UP-023
Submitted October 1, 2018 - Filed January 9, 2019

Nikolay Gul, Claimant Petitioner,

v.

Kohler Company, ... Respondent.

**APPENDIX
VOLUME IV**

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0912295

EMPLOYEE/CLAIMANT: NIKOLAY GUL
EMPLOYER: KOHLER COMPANY
INSURER: SELF-INSURED

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 22ND DAY OF
APRIL, 2015, COMMENCING AT THE HOUR OF 10:15 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE T. SCOTT BECK,
ATTENDED BY COUNSEL AS FOLLOWS:

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ATTORNEY FOR THE EMPLOYER/CARRIER,

ALSO APPEARING:

VIKTOR TRUKOV, INTERPRETER

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER BECK:

7 ALL RIGHT. TODAY'S DATE IS APRIL 22ND, 2015.
8 THIS IS WORKERS' COMPENSATION FILE NUMBER 0912295.
9 THE CLAIMANT IS NIKOLAY GUL, REPRESENTED TODAY BY
10 ATTORNEY JEREMY DANTIN. THE EMPLOYER IS KOHLER.
11 THEY ARE SELF-INSURED, AND REPRESENTED TODAY BY
12 ATTORNEY GRADY BEARD AND ATTORNEY BOB HORNER. DATE
13 OF ACCIDENT IN THIS MATTER IS AUGUST 20, 2009.
14 AVERAGE WEEKLY WAGE IS \$719.70. COMPENSATION RATE
15 IS \$479.82.

16 WE ARE HERE TODAY ON CLAIMANT'S FORM 50. I'VE
17 RECEIVED APAS FROM BOTH THE CLAIMANT AND THE
18 DEFENDANT, AS WELL AS THE DEPOSITION TESTIMONY OF
19 DR. FOGERTY, BEEN MARKED AS DEFENDANT'S EXHIBIT
20 NUMBER 1, THE DEPOSITION TESTIMONY OF DR. FELDMAN,
21 MARKED AS DEFENDANT'S EXHIBIT NUMBER 2, I HAVE A
22 SURVEILLANCE DISC FROM PRIVATE SOLUTIONS, INC.,
23 MARKED AS DEFENDANT'S EXHIBIT NUMBER 3, ANOTHER
24 SURVEILLANCE VIDEO FROM PRIVATE SOLUTIONS, INC.,
25 MARKED AS DEFENDANT'S EXHIBIT NUMBER 4, AND A THUMB

1 DRIVE, MR. GRADY, I ASSUME IS FROM PRIVATE
2 SOLUTIONS, INC., AS WELL?

3 **BY MR. BEARD:**

4 YES, YOUR HONOR.

5 **BY COMMISSIONER BECK:**

6 AND THAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT
7 NUMBER 5. I ALSO HAVE THE DEPOSITION TESTIMONY OF
8 MR. MICHAEL DONALD MARKED AS CLAIMANT'S EXHIBIT
9 NUMBER 1, DEPOSITION TESTIMONY OF RODNEY HORNE
10 MARKED AS CLAIMANT'S EXHIBIT NUMBER 2, THE
11 DEPOSITION TESTIMONY OF CHARLES CLAYTON MARKED AS
12 CLAIMANT'S EXHIBIT NUMBER 3, AND THE DEPOSITION
13 TESTIMONY OF MICHAEL TOLLESON MARKED AS CLAIMANT'S
14 EXHIBIT NUMBER 4.

15 DURING THE PREHEARING CONFERENCE IN THIS
16 MATTER, DEFENDANT RAISED AN OBJECTION TO CLAIMANT
17 TAB 9. THE CLAIMANT HAS WITHDRAWN TAB 9 FROM HIS
18 APAS AND THOSE HAVE BEEN RETURNED. DEFENDANT
19 OBJECTED TO CLAIMANT TAB B. THAT OBJECTION IS
20 OVERRULED WITH THE UNDERSTANDING THAT THE M.S.D.S.
21 DEPICTED IN TAB B IS NOT REFLECTIVE OF WHAT KOHLER
22 USES. IT'S ONLY PRESENT TO DEFINE WARNINGS ON 100
23 PERCENT ACETIC ACID.

24 THERE WAS A CLAIMANT OBJECTION TO DEFENDANT
25 EXHIBIT NUMBER 5. I'VE OVERRULED THAT OBJECTION AS

1 I FIND IT WAS TIMELY SUBMITTED TO THE CLAIMANT IN
2 ADVANCE OF THIS HEARING. OTHER THAN THAT, ARE THERE
3 ANY ADDITIONAL OBJECTIONS TO APAS, JURISDICTION,
4 VENUE, OR ANY OTHER MATTER? MR. DANTIN?

5 **BY MR. DANTIN:**

6 NONE, YOUR HONOR.

7 **BY COMMISSIONER BECK:**

8 MR. BEARD?

9 **BY MR. BEARD:**

10 NO, SIR, YOUR HONOR.

11 **BY COMMISSIONER BECK:**

12 ALL RIGHT. WITHOUT FURTHER OBJECTION, THE
13 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
14 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND
15 UNSTIPULATED MEDICAL REPORTS. ALSO DURING THE
16 PREHEARING CONFERENCE IN THIS MATTER, THE RESPECTIVE
17 POSITIONS OF THE PARTIES WAS DISCUSSED. I WILL NOTE
18 THAT THIS MATTER IS BEFORE ME ON A VACATE AND REMAND
19 OF THE FULL COMMISSION FOR A HEARING DE NOVO.

20 IT IS THE CLAIMANT'S POSITION TODAY THAT HE
21 SUFFERS FROM AN ASTHMATIC CONDITION. THAT THAT
22 ASTHMATIC CONDITION ARISES OUT OF AND WITHIN THE
23 COURSE AND SCOPE OF HIS EMPLOYMENT WITH THE
24 DEFENDANT. HE IS SEEKING CAUSALLY-RELATED FUTURE
25 MEDICAL CARE, ASSERTS AN ENTITLEMENT TO TEMPORARY

1 TOTAL DISABILITY BENEFITS FROM 9-11-11 THROUGH 8-16-
2 12, ASSERTS THAT HE IS PERMANENTLY AND TOTALLY
3 DISABLED, AND I'VE ADVISED THE PARTIES THAT IF IN
4 FACT I FIND THAT THIS IS A COMPENSABLE CLAIM, WITH
5 THAT ASSERTION OF PERMANENT AND TOTAL DISABILITY,
6 THIS MATTER WOULD BE REQUIRED UNDER OUR MEDIATION
7 REGULATION TO BE MEDIATED.

8 **BY MR. DANTIN:**

9 COMMISSIONER, ONE QUICK CORRECTION. THE
10 UNEMPLOYMENT PERIOD WOULD BE FROM SEPTEMBER 18,
11 2011.

12 **BY COMMISSIONER BECK:**

13 WELL, I HAD 18, BUT CHANGED IT TO 11 FOR A
14 REASON. ALL RIGHT. 18TH. OKAY. MR. DANTIN, WITH
15 REGARD TO THE CLAIMANT'S POSITION, IS THERE ANYTHING
16 ELSE YOU'D LIKE TO BE ON THE RECORD OR ANY OTHER
17 MATTER YOU'RE HERE TO LITIGATE TODAY, SIR?

18 **BY MR. DANTIN:**

19 NOTHING FURTHER, YOUR HONOR.

20 **BY COMMISSIONER BECK:**

21 ALL RIGHT. WITH REGARD TO THE DEFENDANT'S
22 POSITION, IT IS THE DEFENDANT'S POSITION THAT THE
23 CLAIMANT, FIRST OFF, DOES NOT SUFFER FROM AN
24 ASTHMATIC CONDITION. SECONDLY, IF I FIND THAT HE
25 DOES, THEY ASSERT THAT THE CONDITION DOES NOT ARISE

1 OUT OF, NOR WAS IT CONTRACTED WITHIN THE COURSE AND
2 SCOPE OF HIS EMPLOYMENT. THEY ARE RAISING A NOTICE
3 DEFENSE IN THIS MATTER AND A LACHES DEFENSE.

4 MR. BEARD, ANYTHING IN ADDITION TO THAT, WITH
5 REGARD TO THE DEFENDANT'S POSITION YOU'D LIKE TO GET
6 ON THE RECORD OR ANY OTHER MATTER YOU'RE HERE TO
7 LITIGATE TODAY, SIR?

8 **BY MR. BEARD:**

9 NO, YOUR HONOR. OTHER THAN I THINK JUST FOR
10 THE RECORD TO MAKE SURE IT'S ON THE RECORD, I JUST
11 POINT IT OUT BECAUSE THIS IS A PULMONARY CLAIM, THAT
12 42-9-30 CANNOT APPLY TO THE CASE.

13 **BY COMMISSIONER BECK:**

14 THANK YOU. ALL RIGHT. MR. DANTIN, WE'RE HERE
15 ON YOUR 50, SIR. YOU MAY CALL YOUR FIRST WITNESS.

16 **BY MR. DANTIN:**

17 YES, WE CALL MR. GUL.

18 **BY COMMISSIONER BECK:**

19 ALL RIGHT. MR. GUL, IF YOU'D HAVE A SEAT RIGHT
20 HERE, PLEASE. MR. TRUKOV, I'VE GOT A FEW QUESTIONS
21 FOR YOU BEFORE WE GET STARTED.

22 **BY THE INTERPRETER:**

23 OKAY.

24 **BY COMMISSIONER BECK:**

25 NUMBER ONE, ARE YOU A FRIEND, ASSOCIATE, OR

1 RELATIVE OF A PARTY OR COUNSEL FOR A PARTY INVOLVED
2 IN THIS PROCEEDING?

3 BY THE INTERPRETER:

4 NO.

5 BY COMMISSIONER BECK:

6 HAVE YOU SERVED IN ANY INVESTIGATIVE CAPACITY
7 FOR ANY PARTY INVOLVED IN THIS CASE?

8 BY THE INTERPRETER:

9 NO.

10 BY COMMISSIONER BECK:

11 DO YOU OR YOUR SPOUSE OR CHILD HAVE ANY
12 FINANCIAL INTEREST IN THE OUTCOME OF THIS CASE?

13 BY THE INTERPRETER:

14 NO.

15 BY COMMISSIONER BECK:

16 HAVE YOU BEEN INVOLVED IN A CHOICE OF COUNSEL
17 OR LAW FIRM IN THIS CASE?

18 BY THE INTERPRETER:

19 NO.

20 BY COMMISSIONER BECK:

21 HAVE YOU PREVIOUSLY BEEN RETAINED FOR PRIVATE
22 EMPLOYMENT BY EITHER OF THE PARTIES HERE TODAY?

23 BY THE INTERPRETER:

24 NO.

25 BY COMMISSIONER BECK:

1 ANY REASON WHY YOUR INDEPENDENCE OF JUDGEMENT
2 WOULD BE COMPROMISED IN THE COURSE OF PROVIDING
3 SERVICES HERE TODAY?

4 BY THE INTERPRETER:

5 NONE.

6 BY COMMISSIONER BECK:

7 MR. DANTIN, ANY OBJECTION TO MR. TRUKOV ---

8 BY MR. DANTIN:

9 NO OBJECTION.

10 BY COMMISSIONER BECK:

11 --- SERVING? MR. BEARD?

12 BY MR. BEARD:

13 NO, YOUR HONOR.

14 BY COMMISSIONER BECK:

15 ALL RIGHT. WOULD YOU RAISE YOUR RIGHT HAND,
16 SIR. DO YOU SOLEMNLY SWEAR OR AFFIRM TO INTERPRET
17 THESE PROCEEDINGS TRULY, FAIRLY, AND IMPARTIALLY TO
18 THE BEST OF YOUR ABILITY, SIR?

19 BY THE INTERPRETER:

20 YES, I WILL -- I WILL DO.

21 BY COMMISSIONER BECK:

22 THANK YOU.

23 BY MR. DANTIN:

24 COMMISSIONER, WOULD YOU MIND IF I WALKED AROUND
25 HERE JUST SO ---

1 BY COMMISSIONER BECK:

2 I DON'T MIND AT ALL.

3 BY MR. DANTIN:

4 --- THE ANGLES -- OKAY. THANK YOU, SIR.

5 BY COMMISSIONER BECK:

6 ALL RIGHT. MR. GUL, WOULD YOU RAISE YOUR RIGHT
7 HAND, SIR.

8 NIKOLAY GUL

9 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

10 BY COMMISSIONER BECK:

11 ALL RIGHT. THANK YOU, SIR. YOU MAY PUT YOUR
12 HAND DOWN.

13 DIRECT EXAMINATION BY MR. DANTIN:

14 Q. MR. GUL, EXPLAIN TO THE COMMISSIONER WHERE IT IS
15 YOU'RE FROM.

16 A. FROM UKRAINE.

17 Q. AND WHEN DID YOU COME TO AMERICA?

18 A. JULY 2003.

19 Q. WHEN DID YOU BEGIN WORKING WITH KOHLER IN
20 SPARTANBURG?

21 A. 2004.

22 Q. DOES AROUND MAY 17TH, 2004, SOUND RIGHT?

23 A. YES.

24 BY COMMISSIONER BECK:

25 I NEED A CLARIFICATION. WHEN DID HE COME FROM

1 UKRAINE?

2 BY THE INTERPRETER:

3 2003.

4 BY COMMISSIONER BECK:

5 '03, I'M SORRY.

6 BY THE INTERPRETER:

7 STARTED TO WORK MAY 17TH, 2004.

8 BY COMMISSIONER BECK:

9 THANK YOU.

10 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

11 Q. WHEN DID YOU LAST WORK AT KOHLER?

12 A. AUGUST 25, 2009.

13 Q. AND WHAT DID YOU DO AT KOHLER?

14 A. MACHINE OPERATOR.

15 Q. AND I UNDERSTAND THAT YOU HAD DIFFERENT JOBS IN
16 DIFFERENT MACHINES. THAT YOU WORKED ON AT KOHLER; IS
17 THAT CORRECT?

18 A. YES.

19 Q. AND IT APPEARS THAT FOR THE LAST FOUR MONTHS YOU
20 WERE AT KOHLER YOU WORKED ON SOMETHING CALLED THE
21 KITCHEN SINK MACHINE; IS THAT CORRECT?

22 A. YES.

23 Q. NOW, WAS ACETIC ACID SOMETHING THAT WAS ACTUALLY
24 USED WITH THAT MACHINE?

25 A. NO.

1 Q. BUT DURING THAT LAST FOUR-MONTH PERIOD, DID YOU EVER
2 HAVE OCCASION TO HANDLE ACETIC ACID?

3 A. HE WAS HELPING ANOTHER WORKER, WHO WAS WORKING IN
4 ANOTHER MACHINE TO HELP HIM, AND HE HAD TO USE WORK
5 WITH ACETIC ACID.

6 Q. NOW, FOR OVER A YEAR, PRIOR TO THAT, YOU WORKED ON
7 SOMETHING CALLED THE COVER MACHINE NUMBER 5; IS THAT
8 CORRECT?

9 A. YES.

10 Q. AND DID YOU USE ACETIC ACID IN THAT PROCESS?

11 A. YES.

12 Q. AND FOR ALMOST A YEAR AND A HALF PRIOR TO THAT, YOU
13 WORKED ON SOMETHING CALLED SMALL MACHINES; IS THAT
14 CORRECT?

15 A. YES.

16 Q. AND DID YOU USE ACETIC ACID IN THAT PROCESS?

17 A. YES.

18 Q. AND FOR ABOUT ONE-AND-A-HALF YEARS PRIOR TO THAT,
19 YOU WORKED ON SOMETHING CALLED COVER MACHINE NUMBER
20 2, CORRECT?

21 A. YES.

22 Q. AND DID YOU USE ACETIC ACID IN THAT PROCESS?

23 A. YES.

24 Q. WHY DID YOU STOP WORKING AT KOHLER?

25 A. I RECEIVED HEALTH PROBLEMS, DEVELOPED HEALTH

1 PROBLEMS.

2 Q. WHAT KIND OF HEALTH PROBLEMS?

3 A. WITH BREATHING.

4 Q. NOW, PRIOR TO WORKING WITH KOHLER, HAD YOU EVER

5 WORKED OR LIVED IN A PLACE THAT EXPOSED YOU TO A LOT

6 OF DUST OR CHEMICALS?

7 A. NO.

8 Q. PRIOR TO WORKING WITH KOHLER, HAD YOU EVER BEEN

9 DIAGNOSED WITH ASTHMA?

10 A. NO.

11 Q. PRIOR TO WORKING WITH KOHLER, HAD YOU EVER

12 EXPERIENCED FOR ANY SIGNIFICANT PERIOD SHORTNESS OF

13 BREATH?

14 A. NO.

15 Q. WHEEZING?

16 A. NO.

17 Q. CHEST TIGHTNESS?

18 A. NO.

19 Q. COUGHING?

20 A. NO.

21 Q. SPUTUM PRODUCTION?

22 A. NO.

23 Q. DO YOU HAVE A HISTORY OF ASTHMA IN YOUR FAMILY?

24 A. NOBODY HAD IT.

25 Q. ARE YOU A SMOKER?

1 A. NO.

2 Q. HAVE YOU EVER BEEN A SMOKER?

3 A. NO.

4 Q. HAVE YOU HAD ANYONE WHO SMOKES LIVING IN YOUR HOUSE
5 IN THE LAST FIVE YEARS?

6 A. NO.

7 Q. HAVE YOU EVER LIVED WITH SOMEONE WHO SMOKES?

8 BY THE INTERPRETER:

9 CAN YOU PLEASE REPEAT IT.

10 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

11 Q. HAVE YOU EVER LIVED WITH SOMEONE WHO SMOKES?

12 A. NO.

13 Q. NOW, YOU'VE HAD PROBLEMS WITH HIGH BLOOD PRESSURE IN
14 THE PAST, RIGHT?

15 A. IT STARTED IN 2007.

16 Q. OKAY. AND WHAT TYPES OF PROBLEMS DO YOU HAVE WITH
17 YOUR HIGH BLOOD PRESSURE? WHAT DOES THAT DO?

18 A. HE EXPERIENCE TIGHTNESS IN CHEST AND VERTIGO AND
19 EXCESSIVE BREATHING, HARD TO BREATHE CONDITION.

20 Q. NO, I'M TALKING ABOUT RELATED TO THE HIGH BLOOD
21 PRESSURE.

22 A. THAT'S WHAT HE FELT, TIGHTNESS IN CHEST AND VERTIGO.

23 Q. OKAY. DID THEY GIVE YOU MEDICATIONS FOR HIGH BLOOD
24 PRESSURE?

25 A. YES.

1 Q. OKAY. AND DID THAT HELP WITH ANY OF THOSE ISSUES
2 THAT YOUR WERE FEELING?

3 A. IT HELPED WITH SOME OF THE SYMPTOMS, BUT NOT HELP
4 WITH BREATHING PROBLEMS.

5 Q. OKAY. WHICH SYMPTOMS DID IT HELP?

6 A. LESS VERTIGO, BETTER FEELING, THAT'S WHAT IT HELPED
7 WITH.

8 Q. AND WHEN DID YOU BEGIN TO NOTICE PROBLEMS AT WORK?

9 A. AROUND 2008.

10 Q. AND WHAT PROBLEMS WERE YOU ACTUALLY HAVING AT THAT
11 TIME?

12 A. TIGHTNESS IN CHEST, HARD TO BREATHE, AND STARTED TO
13 DEVELOP SPUTUM.

14 Q. DID YOU DISCUSS THIS PROBLEM WITH ANYONE AT WORK?

15 A. YES.

16 Q. AND WHO DID YOU DISCUSS THE PROBLEM WITH?

17 A. FOREMEN CHARLIE CLAYTON AND RODNEY HORNE.

18 Q. AND WHAT DID YOU DISCUSS WITH CHARLIE CLAYTON AND
19 RODNEY HORNE, SPECIFICALLY?

20 A. HE WAS ASKING FOR EQUIPMENT, FOR BREATHING MASK, AND
21 TOLD THEM THAT HE FEELS THAT THE ACID IS GETTING TO
22 HIM, AND FOR THAT, HE WAS ASKING FOR THE MASK.

23 Q. DO YOU RECALL EXACTLY WHEN YOU HAD THAT
24 CONVERSATION?

25 A. CANNOT REMEMBER EXACTLY THE DATES, BUT IT WAS IN

1 2008 AND 2009, AND ASKING ABOUT THE MASK WHEN HE WAS
2 WORKING AT MACHINE NUMBER 5, AND THE SMALL MACHINE,
3 A FEW TIMES ASK FOR MASK.

4 Q. DID YOU GET AT THAT TIME ANY TYPE OF MASK OR
5 ASSISTANCE FROM KOHLER WITH REGARD TO THIS ISSUE?

6 A. NO.

7 Q. DID YOU TRY TO DO SOMETHING ABOUT THIS PROBLEM
8 YOURSELF?

9 A. YES.

10 Q. AND WHAT DID YOU DO?

11 A. HE BOUGHT THE MASKS, THE PAPER MASKS AND THE RUBBER
12 STRAPS.

13 Q. LIKE A DUST MASK?

14 A. YES.

15 Q. AND WHERE DID YOU GET THIS DUST MASK?

16 A. LOWE'S.

17 Q. AND DID YOU ACTUALLY WEAR IT TO WORK AT SOME POINT?

18 A. YES.

19 Q. HOW LONG DID YOU WEAR IT? HOW MANY TIMES DID YOU
20 WEAR IT?

21 A. A FEW SHIFTS.

22 Q. AND DID IT HELP?

23 A. NO.

24 Q. WERE YOU ALLOWED TO CONTINUE WEARING IT?

25 A. NO, ACTUALLY, I WAS PROHIBITED FROM USING IT.

1 Q. WHO TOLD YOU IT WAS PROHIBITED?

2 A. RODNEY HORNE.

3 Q. NOW, YOU MENTIONED THAT YOU BELIEVED YOU WERE HAVING
4 A PROBLEM WITH THE ACETIC ACID THAT YOU WERE USING
5 AT WORK.

6 A. YES.

7 Q. WHAT I'M SHOWING YOU IS CLAIMANT'S EXHIBIT C.

8 **BY MR. DANTIN:**

9 THIS IS PART OF OUR SUBMISSIONS, YOUR HONOR.

10 **DIRECT EXAMINATION RESUMED BY MR. DANTIN:**

11 Q. CAN YOU IDENTIFY WHAT THAT IS?

12 A. (WITNESS VIEWING DOCUMENT.) THIS IS THE LABEL FROM
13 THE BARREL WITH THAT ACETIC ACID THAT THEY USED AT
14 WORK.

15 Q. OKAY. AND WOULD THIS BE THE ACETIC ACID THAT YOU
16 WERE ACTUALLY USING AT WORK?

17 A. YES.

18 Q. NOW, WHAT EXACTLY DID YOU USE THE ACETIC ACID FOR IN
19 YOUR JOB?

20 A. HE SPRAYED MOLDS IN MACHINE WITH THIS.

21 Q. MOLDS?

22 A. YEAH, WITH THAT ACID.

23 Q. OKAY. AND HOW OFTEN DID YOU USE ACETIC ACID IN AN
24 AVERAGE DAY?

25 A. FIFTEEN OR TWENTY TIMES IN A SHIFT.

1 Q. AND HOW DID YOU USE IT?

2 A. USE THE BOTTLE, SPRAY BOTTLES, THE SMALL SIZE AND
3 THE BIGGER SIZE, AND SPRAYED LIKE ANY KIND OF OTHER
4 CAN SPRAY.

5 Q. I'M SHOWING YOU NOW WHAT'S PART OF DEFENDANT'S
6 EXHIBIT D, AND LOOKING IN THE MIDDLE OF THAT PAGE,
7 THERE'S TWO PICTURES, ONE IS LABELED NUMBER 3, THE
8 OTHER LABELED NUMBER 4; DO YOU SEE THOSE?

9 A. YES.

10 Q. AND IN PICTURE NUMBER 3, IS THAT THE TYPE -- IS THAT
11 A TYPE OF BOTTLE THAT YOU USED TO SPRAY ACETIC ACID?

12 A. YES.

13 Q. AND LOOKING AT PICTURE NUMBER 4, PHOTO 4, IS THAT
14 ANOTHER TYPE OF BOTTLE YOU USED TO SPRAY ACETIC
15 ACID?

16 A. YES.

17 Q. OKAY. AND BOTTLE NUMBER 4 IS A BIGGER BOTTLE; IS
18 THAT CORRECT?

19 A. IT'S A HALF-GALLON SIZE.

20 Q. OKAY. WHEN YOU SPRAYED THESE MOLDS, ABOUT HOW LONG
21 DID YOU SPRAY EACH TIME YOU WERE DOING IT, ON
22 AVERAGE?

23 **BY THE INTERPRETER:**

24 YOU'RE TALKING ABOUT ONE MOLD, RIGHT, OR
25 MACHINE?

1 BY MR. DANTIN:

2 CORRECT. ONE MOLD.

3 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

4 A. MOLD TAKES A FEW SECONDS AND IF HE SPRAYED MACHINE
5 -- HE ALSO SPRAYED MACHINE, ---

6 Q. OKAY.

7 A. --- THEN IT TOOK LONGER.

8 Q. ALL RIGHT. HOW MUCH LONGER?

9 A. ONE AND A HALF OR TWO MINUTES.

10 Q. AND ON AVERAGE, IF YOU WERE USING SMALL BOTTLES, HOW
11 MANY OF THOSE WOULD YOU GO THROUGH IN A DAY -- SMALL
12 SPRAYER?

13 A. TEN OR A LITTLE MORE THAN TEN.

14 Q. AND IF YOU'RE USING THE BIGGER SPRAYER, HOW MANY OF
15 THOSE WOULD YOU USE IN A TYPICAL DAY?

16 A. AROUND FIVE.

17 Q. AND WHEN YOU WOULD SPRAY THIS, DID THE STREAM COME
18 OUT IN A CONCENTRATED STREAM OR WOULD IT COME OUT AS
19 A WIDER SPRAY?

20 A. THE WIDER SPRAY.

21 Q. WHEN YOU WERE USING THE SPRAY BOTTLES WITH THE
22 ACETIC ACID, WAS THERE A SMELL OR ODOR TO IT?

23 A. YES.

24 Q. AND WHAT DID IT SMELL LIKE?

25 A. IT RESEMBLES THE VINEGAR, BUT MUCH STRONGER.

1 Q. WHEN YOU WERE IN THE PLANT, GENERALLY, COULD YOU
2 SMELL THAT SMELL IN THOSE AREAS WHEN IT WAS BEING
3 USED?

4 A. YES, THE WHOLE DEPARTMENT HAD THAT SMELL.

5 Q. DID YOU HAVE A RESPIRATOR OR OTHER BREATHING
6 PROTECTION GIVEN TO YOU BY KOHLER WHILE YOU WERE
7 USING ACETIC ACID IN THIS PROCESS?

8 A. NO.

9 Q. WERE YOU GIVEN ANY PARTICULAR PROTECTIVE CLOTHING TO
10 USE WHILE YOU USED ACETIC ACID IN THIS PROCESS?

11 A. NO.

12 Q. BY THE TIME AUGUST 2009 CAME AROUND, HOW WERE YOU
13 FEELING?

14 A. BADLY. FEEL BADLY.

15 Q. AND WHAT IN PARTICULAR WAS CAUSING YOU TO FEEL
16 BADLY?

17 A. HE FELT DIZZINESS, TIGHTNESS IN CHEST, DIFFICULTY
18 BREATHING, WEAKNESS, THOSE SYMPTOMS.

19 Q. WOULD YOUR SYMPTOMS CHANGE AT ALL BETWEEN WHEN YOU
20 WERE AT WORK AND WHEN YOU WERE AWAY FROM WORK AT
21 THIS PERIOD?

22 A. YES.

23 Q. IN WHAT WAY?

24 A. WHEN AT WORK IT WAS WORSE THAN AT HOME.

25 Q. NOW, WHEN YOU STARTED HAVING PROBLEMS, YOU FIRST

1 WENT TO SEE A DR. NOWATKA; DOES THAT SOUND RIGHT?

2 A. YES.

3 Q. AND AFTER GOING TO DR. NOWATKA INITIALLY, WHAT WAS
4 YOUR UNDERSTANDING AS TO WHAT YOUR HEALTH PROBLEM
5 WAS AT THAT TIME?

6 A. HE TOLD ---

7 BY MR. BEARD:

8 COMMISSIONER, I WOULD OBJECT ---

9 BY COMMISSIONER BECK:

10 SUSTAINED.

11 BY MR. BEARD:

12 --- TO WHAT THE DOCTOR TOLD HIM.

13 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

14 Q. I'M JUST ASKING FOR WHAT YOUR UNDERSTANDING WAS
15 ABOUT YOUR CONDITION AFTER YOU SAW HER. NOT WHAT --
16 YOU CAN'T TELL ME WHAT SHE TOLD YOU. I JUST WANT TO
17 KNOW WHAT YOU UNDERSTOOD YOUR CONDITION WAS.

18 A. HE, HIMSELF, UNDERSTOOD THAT HIS MAIN PROBLEM IS
19 BREATHING -- WITH BREATHING.

20 Q. DID YOU HAVE ANY UNDERSTANDING AS TO WHAT THE NATURE
21 OF YOUR BREATHING PROBLEM WAS AT THE TIME?

22 A. YES.

23 Q. AND WHAT WAS THAT?

24 A. HE FELT AND UNDERSTOOD THAT THAT IS THAT ACETIC ACID
25 THAT DID IT FOR HIM.

1 Q. AND WAS DR. NOWATKA TREATING YOU FOR ANY ASTHMATIC
2 CONDITION AT THAT TIME?

3 A. NO.

4 Q. AND WHAT WAS YOUR UNDERSTANDING AS TO WHAT
5 DR. NOWATKA WAS TREATING YOU FOR?

6 A. AS HE UNDERSTOOD, IT WAS FOR HEART CONDITIONS.

7 Q. OKAY.

8 A. PROBLEMS WITH HEART.

9 Q. AND DID DR. NOWATKA PRESCRIBE ANY MEDICATION FOR A
10 HEART CONDITION?

11 A. YES.

12 Q. AND DID THAT MEDICATION HELP YOUR SYMPTOMS?

13 A. NO.

14 Q. NOW, ULTIMATELY, YOU WERE REFERRED FOR TESTS ON YOUR
15 HEART IN 2009. YOU SAW A DOCTOR IN GREENVILLE,
16 SOUTH CAROLINA, DR. CHATHAM; DO YOU RECALL THAT?

17 A. YES.

18 Q. AND WHAT WAS YOUR UNDERSTANDING AS TO WHETHER YOU
19 HAD A HEART PROBLEM FOLLOWING THAT EVALUATION?

20 A. HE UNDERSTOOD THAT IT WAS NO PROBLEM WITH HIS HEART.

21 Q. YOU ACTUALLY SAW ANOTHER CARDIOLOGIST LATER ON IN
22 2012, DR. MOBELY, CORRECT?

23 A. YES.

24 Q. AND WHAT WAS YOUR UNDERSTANDING REGARDING YOUR HEART
25 CONDITION AFTER SEEING DR. MOBELY?

1 A. DR. MOBELY CHECKED HIM AND HE UNDERSTOOD THAT THERE
2 IS NO PROBLEM WITH THE HEART.

3 Q. NOW, GOING BACK AFTER YOU SAW DR. NOWATKA, YOU SAW
4 ANOTHER FAMILY DOCTOR, DR. CANNON, CORRECT?

5 A. YES.

6 Q. AND DR. CANNON REFERRED YOU TO DR. FELDMAN, WHO IS A
7 PULMONOLOGIST; IS THAT CORRECT?

8 A. YES.

9 Q. YOU FIRST SAW DR. FELDMAN IN SEPTEMBER 2009; DOES
10 THAT SOUND RIGHT?

11 A. YES.

12 Q. AND WHAT WAS YOUR UNDERSTANDING OF THE PROBLEMS YOU
13 WERE HAVING AFTER SEEING DR. FELDMAN?

14 A. THAT HE HAS BREATHING PROBLEMS AND HAVING ASTHMA.

15 Q. OKAY. AND DID DR. FELDMAN PRESCRIBE ANY MEDICATION
16 FOR ASTHMA?

17 A. YES.

18 Q. AND WHAT MEDICATIONS DID HE PRESCRIBE OR PROVIDE TO
19 YOU?

20 A. ONE INHALER SPRAY AND DISC OF ADVAIR.

21 Q. AND DO YOU CONTINUE TO TAKE THOSE MEDICATIONS
22 PRESENTLY?

23 **BY COMMISSIONER BECK:**

24 ADVAIR OR ADVIL?

25 **BY THE INTERPRETER:**

1 ADVAIR. HE CAN SHOW.

2 BY COMMISSIONER BECK:

3 A PILL?

4 BY THE INTERPRETER:

5 THAT'S ANOTHER TYPE OF INHALER.

6 BY COMMISSIONER BECK:

7 DO YOU HAVE IT WITH YOU?

8 BY THE INTERPRETER:

9 IT'S NOT ADVIL. HE -- HE HAS IT.

10 BY COMMISSIONER BECK:

11 I JUST WANT TO MAKE SURE I UNDERSTAND WHAT IT
12 IS HE'S TAKING. LET ME SEE WHAT YOU HAVE.

13 BY THE INTERPRETER:

14 NOT ADVIL. NOT THAT -- THOSE PILLS, NO.

15 BY COMMISSIONER BECK:

16 ADVAIR. OKAY. ALL RIGHT. MR. DANTIN?

17 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

18 Q. OKAY. YOU HAVE THE MEDICATIONS HERE WITH YOU TODAY.
19 CAN I ASSUME THAT YOU CONTINUE TO TAKE THOSE
20 MEDICATIONS THAT DR. FELDMAN PRESCRIBED YOU FOR
21 ASTHMA?

22 A. YES, HE CANNOT GO WITHOUT THEM.

23 Q. OKAY. YOU'VE BEEN TAKING THOSE SINCE 2009?

24 A. YES.

25 Q. DO THEY HELP?

1 A. YES.

2 Q. EVEN WHILE TREATING WITH DR. FELDMAN THERE WAS
3 ACTUALLY A FEW OCCASIONS WHERE YOU HAD TO GO TO THE
4 HOSPITAL. IN FACT, YOU UNDERWENT A COUPLE OF
5 BRONCHOSCOPIES, CORRECT?

6 A. YES.

7 Q. AND YOU CONTINUE TO TREAT WITH DR. FELDMAN
8 CURRENTLY, IS THAT RIGHT?

9 A. IF I TOLD YOU THAT SINCE 2009 YOU'D SEEN HIM OVER 50
10 TIMES, WOULD THAT SURPRISE YOU?

11 A. HE THINKS IT'S MORE THAN 50.

12 Q. HOW MANY TIMES DID YOU SEE DR. FOGERTY?

13 A. ONE TIME.

14 Q. AND HOW LONG WERE YOU THERE WITH HIM WHEN YOU SAW
15 HIM?

16 A. MAYBE ONE OR TWO HOURS, HE DOESN'T REMEMBER EXACTLY,
17 IN THE OFFICE.

18 Q. WERE YOU TAKING YOUR ASTHMA MEDICINE AT THE TIME YOU
19 SAW HIM?

20 A. YES.

21 Q. DID THE ASTHMA MEDICINE HELP YOU?

22 A. YES.

23 Q. DID YOU TRY YOUR BEST ON THE TESTS THAT HE GAVE YOU?

24 A. HE TRIED HIS BEST AS HE COULD.

25 Q. HOW MANY TIMES DID YOU SEE DR. SAHN IN CHARLESTON?

1 A. ONE TIME.

2 Q. HOW MUCH TIME DID YOU SPEND WITH HIM?

3 A. THIRTY OR FORTY MINUTES.

4 Q. WERE YOU TAKING ASTHMA MEDICINE AT THAT TIME?

5 A. YES.

6 Q. DID THE ASTHMA MEDICINE HELP YOU?

7 A. YES.

8 Q. DID YOU TRY YOUR BEST ON THE TESTS GIVEN TO YOU BY
9 DR. SAHN?

10 A. HE TRIED THE MAXIMUM HE COULD.

11 Q. HAVE YOU EVER SEEN DR. FOGERTY AGAIN AFTER THAT ONE
12 VISIT?

13 A. NO.

14 Q. HAVE YOU EVER SEEN DR. SAHN AGAIN AFTER THAT ONE
15 VISIT?

16 A. NO.

17 Q. SINCE YOU LEFT KOHLER, HAVE YOU EVER RETURNED TO ANY
18 WORK?

19 A. NO.

20 Q. AND YOU RECEIVED UNEMPLOYMENT FOR A PERIOD; IS THAT
21 CORRECT?

22 A. YES.

23 Q. AND MY UNDERSTANDING IS THAT ENDED ON SEPTEMBER
24 18TH, 2011?

25 A. YES.

1 Q. AND WERE YOU ABLE TO GET ANY WORK DURING THAT
2 PERIOD?

3 BY THE INTERPRETER:

4 WORK?

5 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

6 Q. WERE YOU ABLE TO GET ANY WORK DURING THAT PERIOD?

7 A. NO.

8 Q. WERE YOU WILLING TO TRY TO WORK DURING THAT PERIOD?

9 A. IF HE WOULD BE ABLE TO, HE WOULD LIKE TO WORK, BUT
10 THIS HEALTH CONDITION, CANNOT, AND DOCTORS -- DOCTOR
11 ALSO PROHIBITS HIM FROM WORK.

12 Q. AND I MEAN DURING THAT PERIOD THAT YOU WERE
13 RECEIVING UNEMPLOYMENT, IF YOU WOULD HAVE BEEN GIVEN
14 THE OPPORTUNITY TO WORK, WOULD YOU HAVE TRIED IT?

15 A. MAYBE.

16 Q. NOW, AFTER SEPTEMBER 2011, DID DR. FELDMAN EVER
17 RELEASE YOU TO WORK?

18 A. NO.

19 Q. AND HAS DR. FELDMAN CONTINUED TO HOLD YOU OUT OF
20 WORK?

21 A. YES.

22 Q. WOULD YOU LIKE TO RETURN TO WORK?

23 A. IF THE HEALTH WOULD NORMALIZE, HE WOULD LIKE TO. IF
24 HE WOULD BE ABLE TO HAVE ENOUGH HEALTH, GOOD
25 CONDITION OF HIS HEALTH, BUT HE IS AFRAID THAT

1 DOCTOR TOLD HIM THAT IT'S A CHRONIC CONDITION.

2 **BY MR. BEARD:**

3 OBJECT TO WHAT THE DOCTOR TOLD HIM.

4 **BY COMMISSIONER BECK:**

5 SUSTAINED.

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

7 Q. WE CAN'T TALK ABOUT WHAT SOMEONE ELSE SAID, OKAY?

8 A. OKAY.

9 Q. WHAT PROBLEMS DO YOU HAVE THAT REALLY PREVENT YOU
10 FROM BEING ABLE TO DO THINGS?

11 A. ASTHMA.

12 Q. AND WHAT IS IT ABOUT ASTHMA THAT MAKES IT HARD FOR
13 YOU TO DO THINGS?

14 A. DURING PHYSICAL ACTIVITY, ---

15 Q. CORRECT.

16 A. --- DEVELOPS TIGHTNESS IN THE CHEST, HEAVY BREATHING
17 AND VERTIGO, SHORTNESS OF BREATH, AND, ULTIMATELY
18 WEAKNESS.

19 **BY MR. DANTIN:**

20 NO FURTHER QUESTIONS, YOUR HONOR.

21 **BY COMMISSIONER BECK:**

22 MR. BEARD OR MR. HORNER?

23 **BY MR. BEARD:**

24 I'LL BE CROSS-EXAMINING.

25 **CROSS-EXAMINATION BY MR. BEARD:**

1 Q. MR. GUL, MY NAME IS GRADY BEARD. I REPRESENT
2 KOHLER. YOU AND I HAVE NEVER MET.

3 A. YES, THAT'S CORRECT.

4 Q. WE'LL BEGIN FROM THE BEGINNING OF YOUR TESTIMONY.
5 YOU SAID THAT YOUR MEDICAL CONDITION AND YOUR HIGH
6 BLOOD PRESSURE FIRST DEVELOPED IN 2007; IS THAT
7 CORRECT?

8 **BY THE INTERPRETER:**

9 HIGH BLOOD PRESSURE, AND WHAT YOU SAID, SIR,
10 MEDICAL CONDITION?

11 **BY MR. BEARD:**

12 THE OTHER MEDICAL CONDITIONS THAT WE'RE HERE
13 FOR.

14 **BY THE INTERPRETER:**

15 OKAY.

16 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

17 A. HE'S SAYING, MAYBE, HE DIDN'T SAY CORRECTLY.
18 PROBABLY, STARTED IN 2008, ONE YEAR BEFORE THE
19 TERMINATION. HE HAD EMERGENCIES AND FINALLY GOT
20 TERMINATED, BUT IT STARTED ABOUT A YEAR BEFORE THE
21 TERMINATION OF EMPLOYMENT.

22 Q. AS I UNDERSTOOD HIS TESTIMONY UNDER DIRECT
23 EXAMINATION, HE TESTIFIED HIS HIGH BLOOD PRESSURE
24 ISSUES BEGAN TO DEVELOP IN 2007, WAS WHAT HIS
25 TESTIMONY WAS; IS THAT CORRECT?

1 A. HE DIDN'T SAY CORRECTLY. IT WAS AROUND 2008,
2 ACTUALLY. HE RETHOUGHT -- REMEMBERS THAT IT STARTED
3 A YEAR BEFORE AND BECAUSE HE WAS TERMINATED
4 EMPLOYMENT IN 2009, THEN IT'S SUPPOSED TO BE IN
5 2008.

6 BY MR. BEARD:

7 MAKE SURE HE UNDERSTANDS THIS QUESTION.

8 CROSS-EXAMINATION RESUMED BY MR. BEARD:

9 Q. HIGH BLOOD PRESSURE, DID HE HAVE HIGH BLOOD PRESSURE
10 BEFORE 2007 OR NOT?

11 A. NO, HE THINKS IT STARTED IN 2008.

12 Q. OKAY.

13 A. HE HAD HEADACHES SOMETIMES. MAYBE IT WAS BEFORE,
14 BUT HE NEVER WENT TO A DOCTOR OR ANYTHING LIKE THAT,
15 SO.

16 Q. ISN'T IT TRUE, MR. GUL, THAT WHEN YOU CAME TO THE
17 UNITED STATES OF AMERICA IN 2003, YOU WERE ALREADY
18 UNDER A PRESCRIPTION MEDICATION FROM RUSSIA FOR HIGH
19 BLOOD PRESSURE?

20 A. NO.

21 Q. ISN'T IT TRUE, MR. GUL, THAT YOU TOLD SEVERAL OF THE
22 DOCTORS IN THIS CASE THAT YOU HAD A MEDICATION FROM
23 RUSSIA THAT MADE YOU FEEL BETTER AND YOU TRIED TO
24 GET THE AMERICAN DOCTORS TO GET YOU THAT MEDICATION?

25 A. HE USED NONPRESCRIPTION RUSSIAN MEDICATION AND IT IS

1 SOLD IN RUSSIAN STORES. WE CAN BUY HERE. AND HE
2 USED IT WHILE HE HAD EMERGENCY AND WAS HOSPITALIZED
3 DURING THAT TIME.

4 Q. OKAY. WELL, HE JUST TESTIFIED THAT HE DIDN'T HAVE
5 ANY PROBLEMS BEFORE 2007, SO AM I NOW CORRECT THAT,
6 IN FACT, HE HAD TO TAKE SOME MEDICATION IN RUSSIA
7 FOR THE SAME TYPES OF SYMPTOMS THAT WE'RE HERE FOR
8 NOW?

9 A. HE USED THAT MEDICATION THAT HE GOT FROM RUSSIAN
10 STORE IN 2008, IN MAY. HE REMEMBERS THAT. I THINK
11 IT WAS IN -- HE THINK IT WAS IN MAY WHILE HE WAS
12 HOSPITALIZED, MARY BLACK HOSPITAL.

13 BY COMMISSIONER BECK:

14 MR. BEARD, JUST STOP FOR A MINUTE.

15 BY MR. BEARD:

16 SURE.

17 BY COMMISSIONER BECK:

18 I NEED TO SEE COUNSEL AND THE INTERPRETER
19 OUTSIDE A SECOND.

20 (OFF THE RECORD)

21 BY COMMISSIONER BECK:

22 MR. BEARD.

23 BY MR. BEARD:

24 THANK YOU, YOUR HONOR.

25 CROSS-EXAMINATION RESUMED BY MR. BEARD:

1 Q. MR. GUL, I'M GOING TO ASK YOU ABOUT SOME MEDICAL
2 RECORDS THAT WE'VE SUBMITTED.

3 BY MR. BEARD:

4 COMMISSIONER, THESE ARE UNDER TAB 2. PAGES 15
5 THROUGH 19 IS WHAT I'M FIRST GOING TO TALK ABOUT.

6 CROSS-EXAMINATION RESUMED BY MR. BEARD:

7 Q. AND THESE ARE RECORDS DATED MAY THE 13TH OF 2008,
8 FROM A -- LOOKS LIKE A GROUP CALLED REGENESIS. DO
9 YOU REMEMBER GOING TO A MEDICAL GROUP IN MAY OF
10 2008, CALLED REGENESIS.

11 BY THE INTERPRETER:

12 IN MAY OF WHAT YEAR, SIR?

13 BY MR. BEARD:

14 MAY 13TH, 2008.

15 CROSS-EXAMINATION RESUMED BY MR. BEARD:

16 A. HE DOESN'T REMEMBER THE NAME OF THE GROUP, BUT IF
17 YOU TELL THE DOCTOR AND WHERE IT IS.

18 Q. DR. IMTIAZ KAHN, K-A-H-N.

19 BY COMMISSIONER BECK:

20 MR. BEARD, WHERE ARE YOU AT?

21 BY MR. BEARD:

22 PAGE 15 THROUGH 19 OF EXHIBIT 2 ---

23 BY COMMISSIONER BECK:

24 OF YOURS?

25 BY MR. BEARD:

1 ---, OF DEFENDANT'S. YES, SIR.

2 CROSS-EXAMINATION RESUMED BY MR. BEARD:

3 Q. I THINK IT'S KAHN, K-A-H-N.

4 A. IN WHAT LOCATION OF THE ---

5 Q. I HONESTLY DON'T KNOW THE LOCATION. I JUST HAVE THE
6 DOCTOR RECORDS.

7 A. HE WAS IN MARY BLACK, AND AFTER MARY BLACK HOSPITAL
8 WAS REFERRED TO DR. NOWATKA, BUT HE DOESN'T REMEMBER
9 EXACTLY.

10 Q. OKAY. THIS WOULD ACTUALLY HAVE BEEN THE DAY BEFORE
11 HE WENT TO MARY BLACK HOSPITAL, MAY 13TH, 2008.

12 BY MR. BEARD:

13 CAN I APPROACH?

14 BY COMMISSIONER BECK:

15 YES, SIR.

16 CROSS-EXAMINATION RESUMED BY MR. BEARD:

17 Q. IS THAT YOUR SIGNATURE?

18 A. YES.

19 Q. OKAY. SO IS IT SAFE TO ASSUME ON MAY 13, 2008, YOU
20 FILLED OUT THIS PORTION OF THE DOCUMENT?

21 A. HE DOESN'T REMEMBER EXACTLY. HE WAS IN NOWATKA AND
22 MARY BLACK. IT PROBABLY IS LIKE YOU SAID, BUT HE
23 DOESN'T REMEMBER EXACTLY.

24 Q. OKAY. WHO IS BOGUSLAV PAVEL?

25 A. HIS RELATIVE.

- 1 Q. OKAY. DO YOU RECALL TELLING SOMEONE THAT HE WAS
2 YOUR EMERGENCY CONTACT FOR MEDICAL PURPOSES?
- 3 A. PROBABLY, YES.
- 4 Q. OKAY. WHAT I DON'T UNDERSTAND, AND TELL ME IF YOU
5 CAN EXPLAIN, MR. GUL, THERE IS A CHECKMARK ON MAY
6 13, 2008, THAT SAYS WORKERS' COMP, WHY DID YOU CHECK
7 WORKERS' COMP?
- 8 A. IN 2008, HE DIDN'T KNOW WHAT WORKMAN'S COMP WAS, AND
9 HE DOESN'T KNOW WHY THE MARK WAS THERE. HE DIDN'T
10 KNOW ABOUT IT AND DIDN'T HEAR ABOUT WORKMAN'S COMP.
- 11 Q. WHY DID YOU CHECK IT ---
- 12 A. I DON'T KNOW.
- 13 Q. --- BEFORE YOU SIGNED IT?
- 14 A. HE DOESN'T KNOW.
- 15 Q. OKAY. YOU WERE -- ACCORDING TO THE MEDICAL RECORD
16 THAT WE HAVE, MR. GUL, YOU WERE SEEN BY DR. KAHN ON
17 THAT DAY.
- 18 A. HE DOESN'T -- HE'S ASKING, WAS IT AN EMERGENCY?
- 19 Q. IT DOESN'T APPEAR TO BE. IT APPEARS TO BE AT
20 REGENESIS, WHATEVER THAT IS.
- 21 A. IS IT THE BUILDING OF DR. NOWATKA?
- 22 Q. I DON'T KNOW.
- 23 A. HE DOESN'T REMEMBER ANY OTHER PLACE EXCEPT
24 EMERGENCY.
- 25 Q. LET ME ASK A QUESTION THEN ABOUT THAT PERIOD OF

1 TIME. IN MAY OF 2008, IS THAT WHEN YOU ARE CLAIMING
2 ALL OF THESE BREATHING AND ALL OF THESE OTHER
3 SYMPTOMS DEVELOPED?

4 A. IN THAT TIME, HE STARTED TO DEVELOP PROBLEMS WITH
5 WORK. HE COULDN'T WORK THE WHOLE SHIFT. AND
6 STARTED TO DEVELOP THOSE MEDICAL PROBLEMS, AND HE
7 DIDN'T KNOW AT THAT TIME WHAT WAS HAPPENING. HE
8 STARTED TO GO FROM DOCTOR TO DOCTOR.

9 Q. THAT'S NOT MY QUESTION. MY QUESTION IS, SYMPTOMS,
10 ARE YOU CLAIMING IN MAY OF 2008, IS WHEN YOU STARTED
11 HAVING THE BREATHING PROBLEMS, THE VERTIGO, THE
12 DIZZINESS, THE CHEST TIGHTNESS, ALL OF THOSE THINGS
13 THAT YOU DESCRIBED EARLIER? IS THAT WHEN YOU CLAIM
14 THIS WAS GOING ON?

15 A. HE DIDN'T KNOW EXACTLY WHAT'S GOING ON, BUT HE
16 DEVELOPED HEADACHE AND WEAKNESS AND PALENESS AND
17 EVEN AT WORK, HIS FOREMAN, CHARLIE CLAYTON, GAVE HIM
18 SOME MEDICATIONS, AND NEXT HE WENT -- HE HAD TO GO
19 TO EMERGENCY ROOM WITH ALL THESE SYMPTOMS OF
20 HEADACHE AND REMEMBERS THAT WEAKNESS AND REMEMBERS
21 THAT HE WAS GIVEN THE MASK AT THE HOSPITAL, OXYGEN,
22 AND -- AND THAT'S WHAT HE REMEMBERS, AND EXCESSIVE
23 SWEATING AT THAT TIME IN THE HOSPITAL.

24 Q. THE REPORT I'M LOOKING AT, MR. GUL, STATES THE
25 FOLLOWING, AND CORRECT ME IF I'M WRONG, IN 2008,

1 WERE YOU 33 YEARS OLD?

2 A. YES.

3 Q. ALL RIGHT. IT SAYS YOU WERE THERE TO SEE THIS
4 DOCTOR FOR AN INITIAL EVALUATION OF HYPERTENSION.
5 DO YOU RECALL GOING TO A DOCTOR FOR THAT?

6 A. HE CANNOT REMEMBER THE DOCTOR.

7 Q. ALL RIGHT. DO YOU REMEMBER GOING TO A DOCTOR FOR
8 HYPERTENSION IN MAY OF 2008?

9 A. DOESN'T REMEMBER EXACTLY. HE REMEMBERS THE
10 EMERGENCY AND THEN OTHER DOCTORS AFTERWARDS.

11 Q. THIS REPORT GOES ON TO STATE THAT YOU WERE ALREADY
12 ON PROPRANOLOL, OR HOWEVER YOU SAY IT, P-R-O-P-R-A-
13 N-O-L-O-L, ALSO KNOWN AS INDERAL.

14 A. YES, HE HAD PROPRANOLOL AT THE -- AT THAT TIME. IT
15 WAS PRESCRIBED FOR HIM, FOR HIS HEART CONDITION FROM
16 OTHER DOCTOR.

17 Q. WHAT OTHER DOCTOR?

18 A. HE WAS IN MARY BLACK HOSPITAL, IN DR. NOWATKA'S
19 OFFICE, AND HE DOESN'T -- HE DOESN'T RECALL VISITING
20 ANY OTHER OFFICES AT ALL.

21 Q. OKAY. BUT WE'VE ALREADY ESTABLISHED THAT THIS
22 DOCUMENT -- THAT IS IN FACT YOUR SIGNATURE, CORRECT?
23 WHAT IS THE DATE ON THE DOCUMENT, MR. GUL? YOU
24 WROTE THE DATE; WHAT IS IT?

25 A. MAY 13TH, 2008.

1 Q. OKAY. AND THE CORRESPONDING DOCUMENT SAYS THAT YOU
2 WERE ALREADY ON PROPRANOLOL, ALSO KNOWN AS INDERAL.
3 YOU WERE ALSO USING MEDICATIONS FROM RUSSIA FOR YOUR
4 BLOOD PRESSURE, ACCORDING TO THIS REPORT.

5 A. CAN HE EXPLAIN?

6 Q. SURE. THAT'S WHAT I'M ASKING.

7 A. HE THINKS THAT THAT DOCTOR WAS IN MARY BLACK
8 HOSPITAL WHEN HE GOT INTO EMERGENCY ROOM. WHEN HE
9 GOT TO EMERGENCY ROOM, THE DOCTOR ASKED HIM, WHAT
10 ANY MEDICATIONS THAT YOU TOOK TODAY, AND HE SHOWED
11 HIM THE RUSSIAN MEDICATION THAT HE TOOK. DOCTOR
12 LAUGHED AND SAID, "THIS IS NOTHING. I WILL GIVE YOU
13 ANOTHER MEDICATION."

14 HE TOOK THE NAME OF THE MEDICATION, WENT TO
15 COMPUTER, TRANSLATED THE MEDICATION, LAUGHED, SAID,
16 "IT'S" -- "THIS IS NOT MEDICINE THAT YOU NEED,"
17 THREW IT IN THE GARBAGE AND GAVE HIM ANOTHER
18 PRESCRIPTION.

19 HE'S SAYING THAT THAT MEDICATION THAT HE SHOWED
20 TO THE DOCTOR IS NOT PRESCRIPTION MEDICATION. IT IS
21 THE SAME AS ADVIL OR IBUPROFEN THAT YOU CAN BUY
22 OVER-THE-COUNTER AND BUY IT IN ANY STORE, AND THAT'S
23 WHAT THAT TYPE OF MEDICATION WAS.

24 Q. OKAY. THE NEXT SENTENCE IS THE MOST IMPORTANT
25 SENTENCE TO ME, THOUGH, MR. GUL. IT SAYS THE

1 FOLLOWING: IT SAID, "YOU HAD NO CHEST PAIN, NO
2 SHORTNESS OF BREATH, NO HEADACHES", AND YOU STATED
3 THAT YOU "HAD NO HISTORY OF PALPITATION OR
4 ARRHYTHMIA DISORDER AT THAT TIME."

5 A. HE DOESN'T BELIEVE THE RECORDS, THAT, WHAT YOU SHOW,
6 BECAUSE SOMETIMES THE RECORDS WERE WRITTEN ABOUT HIS
7 BLOOD PRESSURE, BECAUSE DR. NOWATKA WROTE HIS BLOOD
8 PRESSURE 118 WHEN HE NEVER HAD THIS LOW BLOOD
9 PRESSURE AND IT'S STILL NOT AT THAT LEVEL, EVEN NOW
10 AFTER TREATMENT.

11 Q. WELL, I CAN APPRECIATE ALL OF THOSE EXCUSES AND
12 THOSE COMMENTS, BUT THIS IS NOT DR. NOWATKA AND MORE
13 IMPORTANTLY, THAT'S NOT WHAT I ASKED THE QUESTION
14 FOR. I'M NOT ASKING ABOUT THOSE THINGS. I'M ASKING
15 IS THIS TRUE: DID YOU IN FACT GO TO THE DOCTOR IN
16 MAY OF 2008 WITH NO CHEST PAIN, NO SHORTNESS OF
17 BREATH AND NO HEADACHES, AND TELL THEM YOU HAD NO
18 HISTORY OF PALPITATION OR ARRHYTHMIA DISORDER?

19 A. IT'S NOT TRUTH.

20 **BY THE INTERPRETER:**

21 THE CLAIMANT IS ASKING IF YOU WOULD ALLOW HIS
22 WIFE TESTIMONY HOW HE FELT WHEN HE WAS GOING TO
23 EMERGENCY ROOM.

24 **BY COMMISSIONER BECK:**

25 THOSE ARE GOING TO BE DECISIONS TO BE MADE BY

1 HIS COUNSEL. HE NEEDS TO ANSWER MR. BEARD'S
2 QUESTIONS.

3 CROSS-EXAMINATION RESUMED BY MR. BEARD:

4 A. HE DOESN'T THINK THAT IT'S CORRECT, AND HE DIDN'T
5 KNOW ABOUT WORKMAN COMP MARK, AND HE IS NOT -- DID
6 NOT MAKE THAT MARK. AT THAT TIME, HE DIDN'T KNOW
7 ABOUT WORK COMP, AND IF HE WOULD THOUGHT ABOUT IT AT
8 THAT TIME, THEN HE WOULD HAVE BE ABLE TO CALL 9-1-1
9 RIGHT AT WORK WHEN HE FELT SO BAD, AND WHEN HE WAS
10 ESCORTED FROM THE INTERNAL WORKPLACE TO OUTSIDE.
11 AND AT THAT TIME, IF HE WOULD WANT WORK COMP, THEN
12 HE WOULD CALL 9-1-1, AND IT WOULD HAVE BEEN MUCH
13 EASIER, BUT HE, AT THAT TIME, DIDN'T THINK ABOUT IT.

14 MANAGER SID, FROM KOHLER, HE ASKED -- MR. GUL
15 ASKED HIM A FEW TIMES THAT LET HIM CONTINUE TO WORK
16 AND NOT -- AND SAVE HIS POSITION, JUST BY THE FACT
17 THAT HE WAS ALREADY STARTING TO ---

18 Q. LET ME ASK -- LET ME ASK A QUESTION BECAUSE NOTHING
19 IS RESPONSIVE TO A QUESTION.

20 BY COMMISSIONER BECK:

21 ONE AT A TIME, PLEASE.

22 BY MR. BEARD:

23 NOTHING HAS BEEN RESPONSIVE TO A QUESTION.

24 BY THE INTERPRETER:

25 I AM TRANSLATING WHAT HE SAYS.

1 BY MR. BEARD:

2 I UNDERSTAND. I NEED YOU TO TELL HIM, PLEASE,
3 ANSWER MY QUESTIONS, AND I'LL ASK THE QUESTION
4 AGAIN.

5 BY THE INTERPRETER:

6 CAN YOU REPEAT THE QUESTION.

7 BY MR. BEARD:

8 YES.

9 BY THE INTERPRETER:

10 I NEED ---

11 BY COMMISSIONER BECK:

12 MR. GUL, YOU NEED TO BE RESPONSIVE TO MR.
13 BEARD'S ACTUAL QUESTION. ONCE YOU ANSWER THE
14 QUESTION, IF YOU WANT TO EXPLAIN YOUR ANSWER, YOU'RE
15 WELCOME TO DO THAT, BUT YOU NEED TO ANSWER THE
16 QUESTION FIRST.

17 BY COMMISSIONER BECK:

18 MR. BEARD?

19 BY MR. BEARD:

20 THANK YOU.

21 CROSS-EXAMINATION RESUMED BY MR. BEARD:

22 Q. AS I UNDERSTAND YOUR TESTIMONY, MR. GUL, CORRECT ME
23 IF I'M WRONG, YOU DISPUTE WHAT THE DOCTOR HAS
24 WRITTEN ON THIS REPORT THAT INDICATES YOU HAD NO
25 CHEST PAIN, NO SHORTNESS OF BREATH, NO HEADACHES,

1 AND THE INFORMATION ABOUT NO HISTORY OF PALPITATION
2 OR ARRHYTHMIA DISORDER; IS THAT CORRECT?

3 A. YES.

4 Q. ALSO, IN THIS DOCUMENT UNDER "REVIEW OF SYSTEMS," IT
5 INDICATES THE DOCTOR NOTED THAT YOU WERE NEGATIVE
6 FOR BREATHING DIFFICULTIES OR FOR ANY RESPIRATORY
7 SYMPTOMS; IS THAT TRUE OR NOT TRUE?

8 A. HE THINK IT'S NOT RIGHT BECAUSE HE WAS GIVEN OXYGEN.
9 HIS WIFE IS THE WITNESS, AND HE DOESN'T KNOW WHY IS
10 IT WRITTEN LIKE THIS, AND HE HAD INTERPRETER AT THE
11 TIME. AND HE WAS GIVEN OXYGEN AT THE TIME, AS WELL.

12 Q. ALSO, UNDER THE PHYSICAL EXAMINATION THAT WAS DONE
13 BY THE DOCTOR FOR RESPIRATORY ISSUES, THE DOCTOR
14 INDICATED THAT LUNG AUSCULTATION OR YOUR BREATHING
15 REVEALED NO RALES, NO RHONCHI, NO WHEEZING, AND NO
16 RUBS; IS THAT TRUE?

17 BY MR. DANTIN:

18 COMMISSIONER, BEFORE THAT ANSWER, LET ME JUST
19 -- I'M NOT SURE IF IT'S AN OBJECTION, BUT I JUST
20 WANT TO MAKE SURE THAT WE'RE CLEAR. WE'RE GOING TO
21 TAKE THE POSITION THAT THE RECORD SPEAKS FOR ITSELF.
22 TO THE EXTENT HE'S ASKING HIM IS THAT TRUE, I GUESS,
23 I'M WONDERING IS HE ASKING HIM IS IT TRUE THAT'S
24 WHAT'S WRITTEN HERE, ARE THOSE THE SYMPTOMS HE WAS
25 HAVING AT THE TIME, OR IS THAT WHAT THE DOCTOR

1 THOUGHT. I DON'T KNOW WHAT OBJECTION TO LODGE
2 BECAUSE I'M NOT CLEAR WHAT HE'S BEING ASKED.

3 BY MR. BEARD:

4 I DON'T KNOW HOW HE CAN OBJECT BECAUSE HIS
5 CLIENT HAS ALREADY ANSWERED UNDER OATH THAT HE
6 DISPUTES THE ACCURACY OR THE TRUTHFULNESS OF THE
7 DOCUMENT.

8 BY MR. DANTIN:

9 I'M TRYING TO UNDERSTAND WHAT THE QUESTION IS,
10 IS IT TRUE. I DON'T -- DOES HE MEAN -- I'M JUST
11 ASKING, ARE YOU ASKING HIM IF IT IS TRUE THAT THAT'S
12 WHAT'S WRITTEN, OR ARE THOSE THE SYMPTOMS HE WAS
13 HAVING AT THE TIME?

14 BY MR. BEARD:

15 WITH ALL DUE RESPECT, I THINK YOUR CLIENT
16 UNDERSTOOD AND TESTIFIED THAT HE DISPUTES THE
17 FINDINGS ON THIS PIECE OF PAPER.

18 BY MR. DANTIN:

19 THAT WASN'T THE QUESTION YOU JUST ASKED.

20 BY COMMISSIONER BECK:

21 MR. BEARD, ARE YOU ASKING IF HE TOLD THE DOCTOR
22 THAT?

23 BY MR. BEARD:

24 YES, SIR.

25 BY MR. DANTIN:

1 THANK YOU.

2 BY COMMISSIONER BECK:

3 OKAY.

4 BY THE INTERPRETER:

5 HE WANTS TO ASK QUESTION.

6 BY COMMISSIONER BECK:

7 MR. BEARD IS ASKING THE QUESTIONS. YOU JUST
8 NEED TO ANSWER.

9 BY THE WITNESS:

10 I'M SORRY. I'M SORRY.

11 CROSS-EXAMINATION RESUMED BY MR. BEARD:

12 Q. AS I UNDERSTOOD YOUR TESTIMONY, YOU BEGAN WORKING AT
13 KOHLEK IN 2004, CORRECT?

14 A. YES.

15 Q. AND BY MAY OF 2008, ACCORDING TO THE MEDICAL RECORDS
16 THAT I JUST SHOWED TO YOU, YOU HAD BEEN WORKING WITH
17 ACETIC ACID EVERY DAY FOR FOUR-AND-A-HALF YEARS; IS
18 THAT TRUE?

19 A. YES.

20 Q. AND IN FACT PRIOR TO MAY OF 2008, YOU HAD NEVER GONE
21 TO A DOCTOR FOR THOSE FOUR-AND-A-HALF YEARS TO
22 DISCUSS CHEST TIGHTNESS, BREATHING PROBLEMS,
23 WHEEZING, ANY OF THOSE TYPES OF THINGS THAT YOU
24 CLAIM TO BE RELATED TO WORKING WITH ACETIC ACID; IS
25 THAT CORRECT?

1 A. YES, IT'S TRUE HE DIDN'T GO TO THE DOCTOR, BUT AT
2 THAT TIME, HE ALREADY STARTED DEVELOPING SYMPTOMS,
3 BUT HE JUST DIDN'T KNOW WHAT'S GOING ON AND WHY.

4 Q. HOWEVER, THE DOCTOR REPORTED YOU HAD NO SYMPTOMS ON
5 MAY THE 13TH OF 2008, CORRECT? I JUST SHOWED YOU
6 THAT DOCUMENT.

7 A. HE DOESN'T AGREE WITH THAT DOCUMENT. IT'S NOT FAIR.

8 Q. BUT YOU WENT TO THAT DOCTOR ON YOUR OWN. KOHLER
9 NEVER SENT YOU TO THAT DOCTOR, DID THEY?

10 A. YES, IT WAS -- HE THINKS THAT'S EMERGENCY ROOM
11 DOCTOR.

12 Q. MY QUESTION IS, DID HE GO ON HIS OWN? NO ONE SENT
13 HIM THERE? HE DID IT ON HIS OWN?

14 A. YES.

15 Q. OKAY. NOW I'M GOING TO SHOW YOU PAGES 7 AND 8 FROM
16 THE SAME LOCATION, ALSO, THE REGENESIS DR. KAHN.
17 THIS IS MAY THE 27TH OF 2008, TWO WEEKS LATER.

18 **BY THE INTERPRETER:**

19 WHAT DATE ON IT?

20 **BY MR. BEARD:**

21 MAY THE 27TH, 2008.

22 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

23 A. YES.

24 Q. THIS REPORT ALSO INDICATES YOU HAD NO BREATHING
25 DIFFICULTIES, NO RESPIRATORY SYMPTOMS, AND NO RALES,

1 RHONCHI, WHEEZING, OR RUBS WHEN THEY EXAMINED YOUR
2 LUNGS. DO YOU DISAGREE WITH THIS DOCUMENT AS WELL?
3 A. THIS WAS THE SECOND TIME HE WENT TO EMERGENCY ROOM.
4 HE DOESN'T THINK THAT HE WENT TO EMERGENCY ROOM WITH
5 GOOD HEALTH.
6 Q. OKAY. SO DOES HE DISPUTE OR NOT DISPUTE WHAT IS
7 WRITTEN ON THIS REPORT BY THE DOCTORS? LET ME ASK A
8 BETTER QUESTION. DOES HE DISPUTE THAT HE DID -- DID
9 HE OR DID HE NOT HAVE THESE SYMPTOMS WHEN HE WENT TO
10 THE DOCTOR ON MAY THE 27TH, ACCORDING TO HIM, THAT
11 THE DOCTORS SAYS HE DID NOT HAVE?

12 BY MR. DANTIN:

13 JUST TO QUICKLY INTERRUPT. WHICH PAGE ARE YOU
14 ON? I'M SORRY.

15 BY MR. BEARD:

16 SEVEN AND EIGHT. MAY 27TH, 2008.

17 BY MR. DANTIN:

18 IN THE ---

19 BY MR. BEARD:

20 OF MY APAS.

21 BY MR. DANTIN:

22 --- APAS?

23 BY MR. BEARD:

24 YES.

25 BY MR. DANTIN:

PAGE 7 AND 8?

BY MR. BEARD:

YES.

CROSS-EXAMINATION RESUMED BY MR. BEARD:

A. HE HAD DIFFICULTY BREATHING AND THAT'S WHY HE WENT TO EMERGENCY ROOM. HIS WIFE DROVE HIM. HE WAS GIVEN OXYGEN, BUT HE DOESN'T KNOW WHO WROTE IT AND HOW OR WHY.

Q. WELL, WHO WROTE IT WOULD BE DR. KAHN.

A. HE DOESN'T KNOW.

Q. OKAY. WELL, LET ME ASK YOU THIS QUESTION, MR. GUL. YOU AND YOUR LAWYER HAVE HAD THESE MEDICAL RECORDS NOW SINCE AT LEAST 2012 FROM ANOTHER LAWYER. IF YOU DISAGREED WITH THESE RECORDS, WHY DIDN'T YOU DO SOMETHING LIKE GO AND ASK THE DOCTOR QUESTIONS?

BY MR. DANTIN:

OBJECTION. THAT'S A MATTER OF LEGAL STRATEGY. THAT'S FOR ME, NOT FOR MR. GUL.

BY COMMISSIONER BECK:

HE CAN ANSWER IF HE KNOWS.

BY THE INTERPRETER:

I NEED TO ASK HIM, RIGHT?

BY COMMISSIONER BECK:

HE CAN ANSWER IT.

BY MR. BEARD:

ROA 1263

1 DO YOU NEED ME TO ASK THE QUESTION AGAIN?

2 BY THE INTERPRETER:

3 NO, I REMEMBER QUESTION.

4 BY MR. BEARD:

5 OKAY.

6 BY THE INTERPRETER:

7 SINCE 2012, RIGHT, YOU SAID THEY HAD THE
8 DOCUMENTS ---

9 BY MR. BEARD:

10 CORRECT.

11 CROSS-EXAMINATION RESUMED BY MR. BEARD:

12 A. HE DOESN'T PAY ATTENTION TO THOSE RECORDS.

13 Q. OKAY. AND THE LAST ONE I WANT TO SHOW YOU FROM
14 DR. KAHN IS DATED JUNE THE 17TH OF 2008, AND IT,
15 AGAIN, INDICATES THAT YOU HAD NO BREATHING PROBLEMS
16 OR NO RESPIRATORY SYMPTOMS, AND THAT WHEN THEY
17 EXAMINED YOUR LUNG BREATHS, YOU HAD NO RALES, NO
18 RHONCHI, NO WHEEZING, OR NO RUBS; DO YOU DISPUTE
19 THAT, AS WELL?

20 A. HE DOESN'T AGREE WITH THIS. THIS IS THE THIRD TIME
21 HE WENT TO EMERGENCY ROOM, WHAT YOU SHOWED.

22 Q. ALL RIGHT. WE ALSO PRODUCED MEDICAL RECORDS,
23 MR. GUL, FROM MARY BLACK HOSPITAL.

24 BY MR. BEARD:

25 COMMISSIONER, THOSE ARE UNDER TAB NUMBER 10,

1 AND SPECIFICALLY I'M GOING TO BE STARTING AT PAGES
2 112 THROUGH 124, WHICH WOULD HAVE BEEN MAY THE 14TH
3 OF 2008.

4 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

5 Q. ACCORDING TO THIS REPORT, YOU TOLD THIS DOCTOR ON
6 MAY 14TH OF 2008 THAT YOU WERE THERE BECAUSE YOU HAD
7 CHEST PAIN?

8 A. YES.

9 Q. YOU TOLD THIS DOCTOR THAT YOU HAD CHEST PAIN FOR
10 ABOUT A MONTH, OFF AND ON, AND YOU WERE COMPLAINING
11 OF BEING DIZZY?

12 A. YES.

13 **BY COMMISSIONER BECK:**

14 MR. BEARD, WHERE ARE YOU READING FROM?

15 **BY MR. BEARD:**

16 PAGES 116, COMMISSIONER.

17 **BY COMMISSIONER BECK:**

18 116?

19 **BY MR. BEARD:**

20 YES, SIR.

21 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

22 Q. ALL RIGHT. YOU ACTUALLY HAD A X-RAY DONE OF YOUR
23 CHEST ON THAT DAY; IS THAT CORRECT?

24 A. YES.

25 Q. AND IS IT YOUR UNDERSTANDING THAT THAT CHEST X-RAY

1 EXAMINATION WAS NORMAL?

2 A. HE REMEMBERS THAT IS WAS TEST FOR THE HEART,
3 CARDIOLOGIST.

4 Q. OKAY. THIS IS THE REPORT ---

5 BY MR. BEARD:

6 AT PAGE 120, COMMISSIONER.

7 CROSS-EXAMINATION RESUMED BY MR. BEARD:

8 Q. --- IT SAYS THE HISTORY THAT WAS GIVEN WAS OBTAINED
9 FROM YOU AND FROM A TRANSLATOR. WHO WAS YOUR
10 TRANSLATOR?

11 A. MAYBE HIS SON. HE DOESN'T REMEMBER EXACTLY.

12 Q. IT SAID YOU TOLD THEM THAT YOUR SYMPTOMS BEGAN A
13 MONTH AGO. THEY BECAME -- THEY CAME ON GRADUALLY
14 AND BECAME PROGRESSIVELY WORSE, BUT YOU COULD NOT
15 RECALL ANY SPECIFIC ACTIVITY WHICH SEEMED TO
16 PRECIPITATE OR CAUSE YOUR PAIN; IS THAT CORRECT?

17 A. YES, HE DOESN'T -- HE DIDN'T -- HE DIDN'T KNOW WHAT
18 WAS CAUSING IT.

19 BY COMMISSIONER BECK:

20 AGAIN, MR. BEARD, WHERE ARE YOU READING FROM?

21 BY MR. BEARD:

22 PAGE 120, COMMISSIONER.

23 BY THE COURT REPORTER:

24 CAN I GET YOU TO SPEAK UP JUST A LITTLE BIT.

25 BY THE INTERPRETER:

1 LOUDER?

2 BY THE COURT REPORTER:

3 SPEAK UP.

4 CROSS-EXAMINATION RESUMED BY MR. BEARD:

5 Q. IMPORTANTLY, ON THAT DAY, UNDER "REVIEW OF
6 SYMPTOMS", MR. GUL, ON PAGE 120, IT SAYS, UNDER
7 RESPIRATORY SYSTEM, YOU HAD A NEGATIVE -- YOU WERE
8 NEGATIVE FOR COUGH, YOU WERE NEGATIVE FOR SHORTNESS
9 OF BREATH, YOU WERE NEGATIVE FOR HEMOPTYSIS.

10 A. MAYBE. HE DOES NOT DISPUTE WHAT ---

11 Q. BUT AS OF THIS DATE, YOU'D BEEN WORKING WITH ACETIC
12 ACID FOR FOUR-AND-A-HALF YEARS, CORRECT?

13 A. YES.

14 Q. ACETIC ACID IS THE CHEMICAL THAT YOU CLAIM HAS
15 CAUSED YOU TO HAVE ASTHMA, CORRECT?

16 A. YES.

17 Q. YET, THE DAY YOU WENT TO THE HOSPITAL, YOU HAD NO
18 SHORTNESS OF BREATH, NEGATIVE COUGH, AND YOU WERE
19 NEGATIVE FOR HEMOPTYSIS, ACCORDING TO THE DOCTOR'S
20 EVALUATION OF YOU, CORRECT?

21 A. HE DOESN'T -- HE CANNOT TALK FOR DOCTOR. HE --
22 WHATEVER HE WROTE, THAT'S WHAT DOCTOR WROTE, BUT HE
23 HAD SYMPTOMS. WHEN HE WAS EVALUATED BY THIS DOCTOR,
24 THE DOCTOR TOLD HIM THAT ---

25 Q. ____ I DIDN'T ASK HIM WHAT THE DOCTOR TOLD HIM. HE CAN'T

1 TELL ME WHAT HE TOLD HIM.

2 A. OKAY.

3 Q. DID YOU BELIEVE AT THAT TIME THAT WHATEVER PROBLEMS
4 YOU WERE HAVING WERE BECAUSE OF WORKING AT KOHLER
5 AND ACETIC ACID?

6 A. YES.

7 Q. IF THAT'S TRUE, MR. GUL, WHY DIDN'T YOU TELL THE
8 DOCTORS THAT?

9 A. HE DIDN'T TELL THE DOCTOR, BUT HE ASKED THE FOREMAN
10 TO PUT HIM ON ANOTHER MACHINE THAT DOESN'T HAVE
11 ACETIC ACID.

12 Q. I'M NOT ASKING HIM WHAT HE SAID TO THE FOREMAN. MY
13 QUESTION IS, YOU WENT TO THE HOSPITAL COMPLAINING OF
14 PROBLEMS YOU JUST TESTIFIED YOU BELIEVE WERE RELATED
15 TO YOUR JOB; WHY DIDN'T YOU TELL THE DOCTOR THAT?

16 **BY COMMISSIONER BECK:**

17 HANG ON. MR. GUL, WE CAN'T DO THIS IN ENGLISH
18 AND IN RUSSIAN. HE ASKS THE QUESTION. HE
19 INTERPRETS IT TO YOU. YOU ANSWER THE INTERPRETER,
20 AND THE INTERPRETER ANSWERS THE QUESTION.

21 **BY THE WITNESS:**

22 YEAH, OKAY.

23 **BY COMMISSIONER BECK:**

24 OKAY?

25 **BY THE WITNESS:**

1 I'M SORRY.

2 BY MR. BEARD:

3 CAN I MAKE ONE COMMENT WHILE WE'RE HERE?

4 BY COMMISSIONER BECK:

5 YES, SIR.

6 BY MR. BEARD:

7 I WOULD LIKE THE RECORD TO REFLECT, AND I
8 ASSUME IT WILL REFLECT, HE ANSWERED MY QUESTION
9 WITHOUT THE BENEFIT OF AN INTERPRETER AFTER A VERY
10 LENGTHY QUESTION.

11 BY COMMISSIONER BECK:

12 THAT'S THE PURPOSE FOR MY COMMENTS.

13 BY MR. BEARD:

14 THANKS.

15 CROSS-EXAMINATION RESUMED BY MR. BEARD:

16 A. DOCTOR DIDN'T ASK HIM ABOUT -- ABOUT THIS AND THAT'S
17 WHY HE DIDN'T TELL HIM.

18 Q. AND YOU DIDN'T THINK IT WAS IMPORTANT ENOUGH TO TELL
19 THE DOCTOR SINCE YOU ARE BELIEVING THAT THAT'S WHAT
20 WAS CAUSING YOUR PROBLEMS?

21 A. HE TELL THE DOCTOR THE SYMPTOMS THAT HE HAD AND --
22 AT THAT TIME, AND THAT HIS WIFE BROUGHT HIM, AND
23 THAT'S IT.

24 Q. OKAY. AND WHEN THE DOCTOR INDICATES ON THIS
25 PHYSICAL EXAMINATION, AT PAGE 121 UNDER

1 "RESPIRATORY", "HE HAD NO RESPIRATORY DISTRESS. HIS
2 LUNGS WERE CLEAR WITH EQUAL BREATH SOUNDS
3 BILATERALLY." HE CAN'T EXPLAIN THAT?

4 A. YES, HE CAN TRY. THE QUESTION IS, WHY DR. NOWATKA
5 NEVER WROTE THAT HE HAS -- HE HAD BREATHING
6 PROBLEMS, ALTHOUGH, MR. GUL TOLD HIM SEVERAL TIMES
7 ABOUT IT.

8 Q. THE PROBLEM WITH THAT RESPONSE, MR. GUL, IS I'M NOT
9 TALKING ABOUT DR. NOWATKA. I'M TALKING ABOUT THE
10 MARY BLACK HOSPITAL DOCTORS. THAT'S NOT DR.
11 NOWATKA.

12 A. HE DOESN'T BELIEVE THAT IT'S CORRECT.

13 Q. OKAY. AND THEN AT PAGE 123, WHEN THE NURSES WERE
14 DOING THERE ASSESSMENT, UNDER "RESPIRATORY", IT
15 SAYS, "AIRWAY IS PATENT. RESPIRATORY EFFORT IS
16 UNLABORED. LUNG SOUNDS BY AUSCULTATION REVEAL CLEAR
17 BREATH SOUNDS. THE PATIENT DENIES A COUGH." CAN HE
18 EXPLAIN THAT?

19 A. HE CANNOT ARGUE OR TELL ANYTHING ABOUT IT.

20 Q. OKAY. LOOKS LIKE YOU WENT BACK TO THE MARY BLACK
21 HOSPITAL ON MAY THE 24TH OF 2008.

22 **BY MR. BEARD:**

23 AND I'M LOOKING SPECIFICALLY AT PAGE 110,
24 COMMISSIONER.

25 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

1 Q. SIMILAR FINDINGS UNDER "RESPIRATORY" IT SAYS,
2 "AIRWAY CLEAR AND RESPIRATORY EFFORT UNLABORED.
3 PATIENT DENIES COUGH. BREATH SOUNDS ARE CLEAR
4 BILATERALLY TO AUSCULTATION." CAN HE EXPLAIN THAT?

5 A. HE CANNOT EXPLAIN IT.

6 Q. DO YOU RECALL HAVING ANOTHER CHEST X-RAY PERFORMED
7 AT MARY BLACK HOSPITAL ON MAY THE 14TH, 2008, THAT
8 WAS COMPLETELY NORMAL?

9 **BY MR. BEARD:**

10 PAGE 100 AND 101, COMMISSIONER.

11 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

12 A. HE REMEMBERS THAT IS WAS FOR HEART CONDITION, AND HE
13 DOESN'T THINK THAT IT WAS CHECKED FOR LUNG
14 CONDITION.

15 Q. OKAY. WHO SENT YOU TO DR. NOWATKA?

16 A. DR. CANNON.

17 Q. WHY WOULD DR. CANNON SEND YOU TO DR. NOWATKA?

18 A. BECAUSE DR. NOWATKA DIDN'T WORK CORRECTLY AND THAT'S
19 WHY HE CHANGED DOCTOR.

20 Q. I DON'T THINK HE UNDERSTOOD MY QUESTION. MY
21 QUESTION WAS HOW DID HE GET ORIGINALLY TO DR.
22 NOWATKA?

23 A. BECAUSE DR. CANNON SENT HIM TO. HE DOESN'T REMEMBER
24 EXACTLY, BUT THEY CHANGED THE DOCTOR ON HIM.

25 Q. IT'S MY UNDERSTANDING FROM YOUR DEPOSITION THAT DR.

1 NOWATKA WAS YOUR FAMILY DOCTOR?

2 A. YES.

3 Q. OKAY. BEFORE DR. CANNON EVER BECAME YOUR FAMILY
4 DOCTOR?

5 A. YES.

6 Q. OKAY. THAT'S WHAT MY QUESTION IS, SO ---

7 BY MR. BEARD:

8 LOOKING AT PAGE 93, COMMISSIONER, OF DR.

9 NOWATKA'S RECORDS, UNDER TAB NUMBER 7.

10 CROSS-EXAMINATION RESUMED BY MR. BEARD:

11 Q. THE FIRST TIME YOU SAW DR. NOWATKA, ACCORDING TO HER
12 RECORDS, WAS JUNE 25TH OF 2009.

13 A. YES.

14 Q. AND IT SAID YOU DENIED ANY COUGH, YOU WERE
15 ACCOMPANIED BY YOUR SONS, WHO DID TRANSLATE SOME
16 THINGS INTO ENGLISH FORM, ALTHOUGH YOU DID
17 UNDERSTAND ENGLISH FAIRLY WELL, CORRECT?

18 A. THAT DOCTOR HAS A NURSE THAT SPEAKS RUSSIAN AND MOST
19 OF THE TIMES HE WAS AT THE DOCTOR'S OFFICE, THAT
20 NURSE WERE TRANSLATING, BUT NOT HIS SON, MOSTLY THE
21 NURSE. THE SON TRANSLATED JUST A FEW THINGS.

22 Q. OKAY. MORE IMPORTANT TO ME THOUGH IS THE POINT THAT
23 HE DENIED HAVING ANY COUGH WHEN HE SAW DR. NOWATKA;
24 IS THAT CORRECT?

25 A. THAT'S NOT RIGHT. HE TOLD HIM ABOUT COUGH.

1 Q. OKAY. DR. NOWATKA REPORTS THAT SHE EXAMINED YOUR
2 LUNGS, AND THEY WERE COMPLETELY CLEAR WITH NO
3 PROBLEMS; IS THAT CORRECT?

4 A. ON HIS UNDERSTANDING, IT'S NOT CORRECT.

5 Q. OKAY. ON THE SAME PAGE ON JULY 22ND, 2009, A MONTH
6 LATER, DR. NOWATKA, AGAIN, EXAMINED YOUR LUNGS AND
7 THEY WERE COMPLETELY CLEAR; IS THAT ACCURATE OR NOT?

8 A. THIS IS NOT CORRECT, AND HE DISAGREES WITH IT.

9 Q. AND YOU WENT TO DR. NOWATKA, AS YOUR FAMILY DOCTOR,
10 ON YOUR OWN, CORRECT?

11 A. NO.

12 Q. WELL, WHAT DOES THAT MEAN? WHO SENT YOU TO DR.
13 NOWATKA?

14 A. HE WAS TOLD BY KOHLER TO GO TO THAT DOCTOR, THAT THE
15 DOCTOR COULD GIVE HIM TEMPORARY RELIEF FROM WORK,
16 AND SO HE CAN KEEP WORKING AFTER HE RETURNS.

17 Q. HOW DID YOU PAY FOR THE MEDICAL TREATMENT?

18 A. BY INSURANCE.

19 Q. HE PAID WITH HIS MEDICAL INSURANCE?

20 A. YES, FROM WORK.

21 Q. KOHLER DIDN'T SEND YOU THERE FOR WORKERS'
22 COMPENSATION PURPOSES, DID THEY?

23 A. HE DIDN'T KNOW ABOUT WORKMANS' COMPENSATION AT THE
24 TIME, AT ALL.

25 BY THE INTERPRETER:

26 HE'S ASKING IF IT'S LEGAL OR NOT TO WRITE ON

1 HIS BEHALF, WHICH HE DISAGREES WITH. HE DIDN'T MARK
2 THE WORK COMP, AND HE DIDN'T KNOW ABOUT WORK COMP,
3 AND HE DOESN'T KNOW HOW THAT MARK APPEAR ON THAT
4 DOCUMENT.

5 **BY COMMISSIONER BECK:**

6 MR. GUL, YOUR RESPONSIBILITY RIGHT NOW IS JUST
7 TO ANSWER MR. BEARD'S QUESTIONS, OKAY?

8 **BY THE WITNESS:**

9 OKAY.

10 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

11 Q. PAGE 92, JULY 29TH, 2009, YOU APPARENTLY NOW WERE
12 DEVELOPING DIABETES AND YOUR LUNGS WERE STILL CLEAR
13 WHEN YOU WERE EXAMINED; IS THAT CORRECT?

14 A. DOESN'T KNOW.

15 Q. DURING THAT PERIOD OF TIME WHEN YOU WERE SEEING
16 DR. NOWATKA, FROM JUNE UNTIL AUGUST OF 2009, YOU
17 WERE OUT OF WORK AT KOHLER, CORRECT?

18 A. NOT COMPLETELY DIDN'T WORK. HE WAS REFUSED FROM
19 WORK AND RETURNED AND REFUSED AGAIN.

20 Q. AND YOU WERE REFUSED BECAUSE YOU COULD NOT COME BACK
21 TO WORK UNLESS YOU HAD A DOCTOR'S EXCUSE THAT
22 RELEASED YOU 100 PERCENT TO WORK, CORRECT?

23 A. YES, IT WAS -- HE WAS EXCUSED AND THEN EXTENDED,
24 EXCUSED, EXTENDED.

25 Q. WERE YOU ON SHORT-TERM DISABILITY?

1 A. HE APPLY FOR IT, BUT IT WAS NOT GRANTED.

2 Q. OKAY. DR. NOWATKA NEVER DIAGNOSED YOU WITH ANY TYPE
3 OF PULMONARY OR RESPIRATORY PROBLEMS, DID SHE?

4 A. PROBABLY, YES.

5 Q. PROBABLY, YES, SHE DID, OR PROBABLY, YES, SHE DID
6 NOT?

7 A. HE CAN ONLY SAY THAT DR. NOWATKA ALWAYS POINTS TO
8 THE HEART PROBLEMS DESPITE THE FACT THAT MR. GUL
9 TOLD ABOUT BREATHING PROBLEMS. HE HAS WITNESSES AND
10 DOCUMENTS THAT SHOWS IT.

11 Q. MR. GUL, WE'VE NOW SHOWN YOU MEDICAL RECORDS FROM
12 MARY BLACK HOSPITAL, REGENESIS, THE MARY BLACK
13 HEALTH SYSTEM CENTER, AND DR. NOWATKA, AND ALL OF
14 THEM INDICATE YOU HAD NO BREATHING PROBLEMS, NO LUNG
15 ISSUES, HAD NEVER COMPLAINED TO THEM WITH SUCH
16 PROBLEMS; ISN'T THAT CORRECT?

17 **BY MR. DANTIN:**

18 YOUR HONOR, I WOULD OBJECT BECAUSE THE APAS
19 FROM DR. NOWATKA CLEARLY SHOW THAT HE DID COMPLAIN
20 OF SHORTNESS OF BREATH ON AUGUST 25TH, 2009.

21 **BY MR. BEARD:**

22 HAVEN'T GOTTEN THERE. NEVER EVER HAVE GOTTEN
23 TO AUGUST 25TH OF 2009.

24 **BY MR. DANTIN:**

25 I UNDERSTOOD HIM TO SAY THAT HE'D NEVER
26 COMPLAINED TO DR. NOWATKA ABOUT THAT.

ROA 1275

1 BY MR. BEARD:

2 I SAID THE RECORDS I'VE SHOWN YOU.

3 BY MR. DANTIN:

4 WITHDRAWN.

5 CROSS-EXAMINATION RESUMED BY MR. BEARD:

6 Q. IS THAT CORRECT?

7 A. YES.

8 BY THE INTERPRETER:

9 SIR?

10 BY COMMISSIONER BECK:

11 YES?

12 BY THE INTERPRETER:

13 HE'S ASKING IF HE CAN LEAVE FOR 30 SECONDS TO

14 INHALE.

15 BY COMMISSIONER BECK:

16 YES.

17 _____ (OFF THE RECORD)

18 BY COMMISSIONER BECK:

19 MR. BEARD?

20 CROSS-EXAMINATION RESUMED BY MR. BEARD:

21 Q. YOU WERE ACTUALLY SEEN BY A DR. HIREMATH, WHO IS A
22 CARDIOLOGIST, IS THAT CORRECT, ON JULY 27TH, 2009?

23 BY MR. BEARD:

24 PAGE 102.

25 BY COMMISSIONER BECK:

1 OKAY.

2 CROSS-EXAMINATION RESUMED BY MR. BEARD:

3 A. PROBABLY..

4 Q. OKAY. IT SAYS THAT YOU CAME IN TO DR. HIREMATH
5 COMPLAINING OF CHEST PAIN ON AND OFF FOR THE LAST
6 YEAR'S TIME; IS THAT CORRECT?

7 A. YES.

8 Q. THAT YOU COMPLAINED OF CHEST DISCOMFORT WHEN YOU
9 WERE WORKING; IS THAT CORRECT?

10 A. YES.

11 Q. THAT'S WHEN THE DOCTOR EXAMINED YOUR CHEST, IT WAS
12 CLEAR AS FAR AS YOUR BREATHING WAS CONCERNED,
13 AUSCULTATION.

14 BY MR. BEARD:

15 PAGE 103, COMMISSIONER.

16 CROSS-EXAMINATION RESUMED BY MR. BEARD:

17 A. PROBABLY, YES.

18 Q. AND THAT YOU PERFORMED A TREADMILL TEST WITHOUT ANY
19 PROBLEMS WHATSOEVER ON THAT DAY, CORRECT?

20 A. YES, HE COULDN'T FINISH COMPLETELY THE TEST AND WHAT
21 HE TOOK WAS SHOWING THAT HEART WAS NORMAL.

22 Q. THAT'S ACTUALLY NOT TRUE, IS IT, MR. GUL, BECAUSE
23 DR. HIREMATH SAID YOUR TREADMILL TEST WAS COMPLETELY
24 NORMAL? YOU DID COMPLETE THE TEST AND HAD NO
25 PROBLEMS WHATSOEVER.

26 A. HE HAD TO INTERRUPT THE TEST BECAUSE BLOOD PRESSURE

ROA 4277

1 WAS RISING HIGH AND RESUME THE TEST LATER. SO HE
2 COULD NOT COMPLETE IN ONE SET, AND IT SHOWED THAT
3 HEART WAS NO PROBLEM FOR HIM.

4 Q. WELL, MR. GUL, I BELIEVE IF THAT WAS CORRECT, AND
5 TELL ME IF YOU CAN EXPLAIN, WHY WOULD DR. HIREMATH
6 NOT PUT THAT IN HIS REPORT IF WHAT YOU JUST SAID
7 ACTUALLY HAPPENED?

8 **BY MR. DANTIN:**

9 OBJECTION. HE CAN'T POSSIBLY KNOW WHY DR.
10 HIREMATH DID OR DID NOT PUT SOMETHING IN THAT
11 RECORD.

12 **BY COMMISSIONER BECK:**

13 HE CAN ANSWER THAT WAY IF THAT'S WHAT HE
14 BELIEVES.

15 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

16 A. IT NEEDS TO BE ASKED OF DOCTOR, NOT FROM HIM.

17 Q. SO THIS IS NOW THE FOURTH OR FIFTH DOCTOR THAT YOU
18 SAY IS REPORTING INCORRECT INFORMATION ABOUT YOU; IS
19 THAT CORRECT?

20 A. THIS IS FOURTH OR FIFTH CARDIOLOGIST WHO CHECKED HIM
21 AND TOLD HIM THAT HEART IS NORMAL AND HE NEEDS TO GO
22 TO ANOTHER DOCTOR.

23 Q. LET ME SEE IF HE'LL ANSWER THE QUESTION IF I ASK IT
24 AGAIN. MY QUESTION WAS, THIS IS NOW THE FOURTH OR
25 FIFTH DOCTOR WHOSE RECORDS I'VE SHOWN YOU THAT YOU

1 INDICATED THEIR DOCUMENTS ARE NOT CORRECT; IS THAT
2 ACCURATE?

3 A. YES, HE FEELS THAT THEY DIDN'T GET -- DIAGNOSE HIM
4 CORRECTLY, BECAUSE WHEN HE WAS REFERRED TO
5 PULMONOLOGIST AND THE CORRECT TREATMENT WAS
6 PRESCRIBED, ALL THE EMERGENCY VISITS STOPPED AND IT
7 STARTED TO WORK.

8 Q. LAST ---

9 A. FOR HIM, IT'S JUST DOCUMENTS THAT HE CANNOT EXPLAIN
10 COMPLETELY.

11 Q. THIS IS THE LAST TIME I'M GOING TO ASK THE QUESTION.
12 THE QUESTION IS, I HAVE SHOWN YOU MULTIPLE DOCTOR'S
13 RECORDS, AND AS OF THIS TIME YOU HAVE DISPUTED EVERY
14 SINGLE MEDICAL RECORD I'VE SHOWN YOU; IS THAT
15 CORRECT?

16 A. HE DOESN'T -- HE WILL NOT DISPUTE, AND THAT'S IT.

17 Q. OKAY.

18 A. YES.

19 Q. THE ONLY THING THIS DOCTOR FOUND THAT MIGHT BE WRONG
20 WITH YOU WAS POSSIBLY LIVER FUNCTION ISSUES. THEY
21 FOUND SOME ABNORMAL LIVER FUNCTION TESTS; IS THAT
22 CORRECT?

23 A. YES.

24 Q. ALL RIGHT. NOW, THAT REPORT I JUST SHOWED YOU WAS
25 JULY 27TH OF 2009. DO YOU RECALL WHEN YOU HIRED

1 MR. DANTIN? DO YOU KNOW WHAT THE DATE OF THAT WAS?
2 LET ME ASK YOU A BETTER QUESTION. ARE YOU AWARE
3 THAT YOU HIRED MR. DANTIN ON SEPTEMBER THE 11TH --
4 EXCUSE ME -- YEAH, SEPTEMBER THE 11TH, 2009,
5 ACCORDING TO HIS LETTER OF REPRESENTATION TO THIS
6 WORKERS' COMP COMMISSION?

7 BY THE INTERPRETER:

8 SEPTEMBER 11TH, RIGHT?

9 BY MR. BEARD:

10 CORRECT, 9-11-09.

11 CROSS-EXAMINATION RESUMED BY MR. BEARD:

12 A. YES.

13 Q. ISN'T IT TRUE THAT IMMEDIATELY AFTER RETAINING
14 MR. DANTIN YOU STOPPED GOING TO SEE DR. NOWATKA?

15 A. HE ALREADY CHANGED THE DOCTOR AND HE ALREADY HAD
16 APPOINTMENT SET UP BEFORE. HE JUST -- HE WAS
17 LOOKING FOR ANOTHER DOCTOR.

18 Q. ISN'T IT TRUE YOU DID NOT SEE DR. CANNON UNTIL AFTER
19 YOU WENT TO MR. DANTIN?

20 A. HE DOESN'T REMEMBER EXACTLY. DOCUMENT IS AT HOME.
21 POSSIBLY, IT'S TRUE.

22 Q. IF THE FIRST TIME YOU SAW DR. CANNON WAS SEPTEMBER
23 THE 21ST OF 2009, WOULD YOU AGREE THAT THAT WAS TEN
24 DAYS AFTER YOU FIRST STARTED SEEING MR. DANTIN?

25 BY THE INTERPRETER:

1 MR. WHO?

2 BY MR. BEARD:

3 MR. DANTIN, HIS ATTORNEY.

4 BY THE INTERPRETER:

5 CAN YOU PLEASE REPEAT THE QUESTION.

6 CROSS-EXAMINATION RESUMED BY MR. BEARD:

7 Q. IF HE HIRED MR. DANTIN ON SEPTEMBER THE 11TH OF
8 2009, AND HE DIDN'T SEE DR. CANNON UNTIL SEPTEMBER
9 21ST OF 2009, WOULD HE AGREE THAT HE DIDN'T SEE DR.
10 CANNON UNTIL AFTER HE HAD RETAINED LEGAL COUNSEL?

11 A. HE WAS WAITING A MONTH, 30 DAYS, BEFORE HE COULD SEE
12 THE DOCTOR AND HIS APPOINTMENT WAS MADE BEFORE HE
13 HAD MR. DANTIN.

14 Q. WHO SENT HIM TO DR. CANNON?

15 A. HE WAS LOOKING FOR DOCTORS AND HE SAW THE OFFICE
16 CLOSE TO WHERE HE LIVES FROM THE ROAD, CAME TO THE
17 OFFICE, AND THEY TOOK HIM.

18 Q. WHO SENT HIM TO DR. FELDMAN?

19 A. DR. CANNON.

20 Q. WELL, WHY WOULD DR. CANNON SAY IN HIS VERY FIRST
21 REPORT ON SEPTEMBER 21ST, 2009, THAT YOU ALREADY HAD
22 AN APPOINTMENT WITH DR. FELDMAN BEFORE YOU EVEN CAME
23 TO SEE DR. CANNON? YOU ALREADY HAD AN APPOINTMENT
24 SCHEDULED ON SEPTEMBER 23RD WITH DR. FELDMAN.

25 BY MR. BEARD:

PAGE 69.

CROSS-EXAMINATION RESUMED BY MR. BEARD:

A. HE SAID THAT INITIALLY WHEN HE WAS IN DR. NOWATKA'S OFFICE, DR. NOWATKA WAS NOT PRESENT. THERE WAS ANOTHER DOCTOR AND THAT DOCTOR REFERRED HIM TO, LIKE THE DOCTOR SAID, INDEPENDENT DOCTOR AND THAT'S HOW IT ALL STARTED, EVEN BEFORE HE GOT TO DR. CANNON, WHEN HE WENT TO DR. CANNON, AND IT JUST CONTINUED FROM THERE.

Q. WHAT WAS THAT DOCTOR'S NAME?

A. HE CANNOT SAY. THE ONLY THING HE REMEMBERS, THERE WAS A MATURE MAN, BUT HIS DOCUMENTS ARE AT HOME AND HE CANNOT SAY IT RIGHT NOW.

Q. OKAY.

A. HE HAS ALL HIS DOCUMENTS AND HE CAN SEND FAXES ABOUT THOSE -- THOSE DOCUMENTS.

Q. AT PAGE 71 OF DR. CANNON'S VERY FIRST REPORT ON SEPTEMBER 21ST, 2009, HE ALSO DID AN EXAMINATION OF YOUR LUNGS, AND ACCORDING TO HIS EXAMINATION, YOUR LUNGS WERE CLEAR BILATERALLY, MEANING BOTH OF THEM, AND THERE -- TO BREATHING SOUNDS, YOU WERE HAVING NO DISTRESS AND NO PROBLEMS WHATSOEVER, ACCORDING TO HIS EXAMINATION; CAN YOU EXPLAIN THAT?

A. MAYBE IT WAS CLEAR AT THE TIME.

Q. IN FACT, IT'S BEEN CLEAR EVERY SINGLE TIME WE'VE

1 LOOKED AT A RECORD SO FAR, HASN'T IT?

2 A. POSSIBLY. HE DIDN'T READ THOSE RECORDS.

3 Q. HE DIDN'T READ THE RECORDS THAT I SHOWED HIM WHEN WE
4 WERE GOING THROUGH THEM?

5 A. NOW HE SAW IT. TODAY.

6 Q. OKAY. ISN'T IT TRUE THAT EVERY SINGLE RECORD I'VE
7 SHOWN HIM TODAY SAYS THAT HIS LUNGS WERE COMPLETELY
8 CLEAR EVERY SINGLE TIME A DOCTOR EVALUATED HIM?

9 A. YES.

10 Q. WHO SENT HIM TO DR. FELDMAN?

11 A. HE ALREADY SAID IT. IT WAS IN NOWATKA'S OFFICE, BY
12 HIS OTHER DOCTOR, THE ELDERLY DOCTOR, MATURE, AND
13 THAT DOCTOR REFERRED HIM TO DR. FELDMAN.

14 Q. RATHER THAN GO THROUGH EVERY SINGLE ONE OF DR.
15 CANNON'S RECORDS, LET'S LOOK AT THE VERY LAST TIME
16 WE HAVE A RECORD OF YOU SEEING DR. CANNON. HAVE YOU
17 SEEN DR. CANNON SINCE JULY 16TH OF 2010?

18 **BY MR. BEARD:**

19 PAGE 45, COMMISSIONER.

20 **BY THE INTERPRETER:**

21 JULY WHAT?

22 **BY MR. BEARD:**

23 JULY 16, 2010.

24 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

25 A. NO, HE DIDN'T GO 'CAUSE HE DIDN'T HAVE INSURANCE.

1 Q. ACCORDING TO DR. CANNON ON THAT DATE, ---

2 BY MR. BEARD:

3 AND THIS IS AT PAGE 46.

4 CROSS-EXAMINATION RESUMED BY MR. BEARD:

5 Q. --- YOU DENIED ANY CHEST PAIN OR DISCOMFORT, ANY
6 RACING, SKIPPING OF HEARTBEATS. YOU DENIED
7 LIGHTHEADEDNESS, SHORTNESS OF BREATH WITH EXERTION,
8 AND YOU DENIED ANY SWELLING OF YOUR HANDS OR FEET;
9 IS THAT CORRECT?

10 A. DOESN'T REMEMBER EXACTLY.

11 Q. DENIED ANY COUGH OR ANY SHORTNESS OF BREATH?

12 A. HOW HE COULD DENY IT IF HE ALREADY HAD TAKEN
13 MEDICATION FOR A YEAR?

14 Q. AND ---

15 A. HE DOESN'T KNOW WHAT YOU REFER TO, BUT HE ALREADY --
16 MEDICINE HELPS HIM AND THAT'S TREATED HIS PROBLEMS.
17 HE FEELS THAT IT NEEDS TO BE DONE WITH A
18 PULMONOLOGIST, NOT GENERAL PRACTITIONER.

19 Q. AND WHEN HE EXAMINED YOUR LUNGS, THEY WERE
20 COMPLETELY CLEAR BILATERALLY TO AUSCULTATION,
21 MEANING YOUR BREATHING, AND YOU WERE UNDER NO
22 DISTRESS AT PAGE 47 OF THAT LAST REPORT; IS THAT
23 CORRECT?

24 A. IF HE WROTE IT, THEN IT'S WHAT HE WROTE.

25 Q. DOES HE DISAGREE WITH THAT?

1 A. HE'S NOT A SPECIALIST.

2 Q. DO YOU REMEMBER NOW WHO SENT YOU TO DR. FELDMAN?

3 A. THE START WAS FROM DR. NOWATKA'S OFFICE, AND THEN IT
4 WENT THROUGH DR. CANNON'S OFFICE.

5 Q. THE FIRST TIME YOU WENT TO DR. FELDMAN ACCORDING TO
6 THE RECORDS THAT WE'VE BEEN PROVIDED BY YOUR OFFICE
7 -- OR BY YOUR ATTORNEY'S OFFICE WAS SEPTEMBER THE
8 23RD OF 2009; IS THAT CORRECT?

9 **BY THE INTERPRETER:**

10 WHAT DATE, SIR?

11 **BY MR. BEARD:**

12 SEPTEMBER THE 23RD, 2009.

13 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

14 A. YES. DOESN'T REMEMBER EXACTLY, BUT ---

15 Q. 23RD.

16 A. 23RD OR 27TH, HE SAID.

17 **BY MR. BEARD:**

18 COMMISSIONER, I'M LOOKING AT PAGES 114 AND 115
19 OF THE CLAIMANT'S APAS.

20 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

21 Q. THESE ARE DOCUMENTS THAT YOUR LAWYER AND YOU
22 SUBMITTED INTO EVIDENCE TODAY. DID DR. FELDMAN TAKE
23 SOME SORT OF HISTORY FROM YOU TO FIND OUT WHAT YOUR
24 PROBLEMS WERE?

25 A. YES. PROBABLY. HE DOESN'T REMEMBER EXACTLY. HE

1 REMEMBERS THAT HE WAS ASKED BY A NURSE AND THE
2 DOCTOR, BUT DOESN'T REMEMBER EXACTLY WHAT. HE
3 DIDN'T FEEL GOOD AND DOESN'T REMEMBER EXACTLY WHAT
4 WAS GOING ON.

5 Q. I'M LOOKING AT THE REPORT AND SHOWING YOU THE
6 REPORT, MR. GUL. THE ONLY THINGS THAT ARE INDICATED
7 ON THIS DOCUMENT ARE HOW MUCH YOU WEIGH, HOW TALL
8 YOU ARE, WHAT YOUR BLOOD PRESSURE WAS, WHAT YOUR
9 HEART RATE WAS. THEY DIDN'T EVEN TEST YOUR OXYGEN
10 IN THE OFFICE; IT SAYS "NOT APPLICABLE." AND
11 THERE'S NO HISTORY WHATSOEVER; WOULD YOU AGREE WITH
12 THAT?

13 A. THAT NEEDS TO BE ADDRESSED TO A DOCTOR, NOT HIM. HE
14 DOESN'T KNOW WHY, AND SO.

15 Q. OKAY. AND THEN SOMEONE WROTE, QUESTION MARK -- IT
16 LOOKS LIKE OCCUPATIONAL. I'M NOT SURE WHAT THE WORD
17 IS AFTER THAT.

18 BY THE INTERPRETER:

19 SO WHAT'S YOUR QUESTION, SIR?

20 CROSS-EXAMINATION RESUMED BY MR. BEARD:

21 Q. MY QUESTION IS, IS THAT WHAT THE REPORT SAYS?

22 BY MR. DANTIN:

23 WE'LL STIPULATE THAT THAT'S WHAT THE REPORT
24 SAYS. THE DOCUMENT SPEAKS FOR ITSELF. IT'S GETTING
25 RIDICULOUS.

1 BY COMMISSIONER BECK:

2 EXCUSE ME, MR. DANTIN?

3 BY MR. DANTIN:

4 I'M SORRY? I SAID, I THINK IT'S GETTING
5 RIDICULOUS TO ASK HIM REPEATEDLY TO SAY, "IS THIS
6 WHAT THE DOCUMENT SAYS" WHEN THE DOCUMENT SPEAKS FOR
7 ITSELF. WE'RE GOING TO STIPULATE THAT THE DOCUMENT
8 SAYS WHAT IT SAYS. TO THE EXTENT THAT HE'S BEING
9 ASKED WHAT SOMEONE ELSE'S HANDWRITING IS OR
10 SOMETHING LIKE THAT, I DON'T THINK HE'S QUALIFIED TO
11 ANSWER THAT.

12 BY COMMISSIONER BECK:

13 YOU JUST APPEARED TO HAVE DONE THAT.

14 BY MR. DANTIN:

15 I'M SORRY?

16 BY COMMISSIONER BECK:

17 YOU JUST APPEARED TO HAVE DONE THAT.

18 BY MR. DANTIN:

19 IN WHAT SENSE?

20 BY COMMISSIONER BECK:

21 IF YOU'RE STIPULATING THAT THAT SAYS
22 "OCCUPATIONAL ASTHMA," BECAUSE I COULDN'T READ THAT.

23 BY MR. DANTIN:

24 I DIDN'T SAY THAT IT SAID OCCUPATIONAL ASTHMA.
25 I'M JUST SAYING THAT THE DOCUMENT SAYS WHAT IT SAYS

1 TO WHAT -- I MEAN, ARE WE ASKING HIM TO INTERPRET
2 DR. FELDMAN'S HANDWRITING OR SOMEONE ELSE'S
3 HANDWRITING?

4 BY COMMISSIONER BECK:

5 MR. BEARD?

6 CROSS-EXAMINATION RESUMED BY MR. BEARD:

7 Q. MY QUESTION IS SIMPLY THIS, MR. GUL, DID YOU
8 ACTUALLY SEE DR. FELDMAN ON SEPTEMBER THE 23RD,
9 2009, OR DID SOMEONE JUST CREATE THIS REPORT AND WE
10 HAVE IT? BECAUSE THE FIRST TIME WE HAVE A RECORD OF
11 ANY HISTORY FROM YOU, IT'S TWO DAYS AFTER THIS. DID
12 YOU ACTUALLY EVEN SEE DR. FELDMAN THAT DAY?

13 A. HE WAS AT APPOINTMENT.

14 BY COMMISSIONER BECK:

15 HE WAS WHAT?

16 BY THE INTERPRETER:

17 AT THE -- AT THAT APPOINTMENT.

18 CROSS-EXAMINATION RESUMED BY MR. BEARD:

19 Q. YOU CANNOT EXPLAIN WHY THERE'S NO ACTUAL MEDICAL
20 REPORT THAT TELLS US ANYTHING ABOUT WHAT WAS DONE TO
21 YOU OR FOR YOU ON THE VERY FIRST TIME YOU WENT TO
22 THIS PULMONARY EXPERT? YOU CAN'T EXPLAIN THAT?

23 A. WHY ARE YOU ASKING THIS QUESTION? HE'S NOT A DOCTOR
24 TO EXPLAIN THAT.

25 Q. SO THE ANSWER IS YOU CANNOT EXPLAIN WHY YOUR EXPERT

1 DOCTOR HAS GOT NO REPORT FROM SEPTEMBER THE 23RD OF
2 2009?

3 BY MR. BEARD:

4 AGAIN, I'LL ASK THE RECORD TO REFLECT THAT HE'S
5 OBVIOUSLY ABLE TO UNDERSTAND MY QUESTION BECAUSE
6 HE'S RESPONDING TO THE INTERPRETER WITHOUT GOING
7 THROUGH THE INTERPRETER.

8 BY MR. DANTIN:

9 AND, COMMISSIONER, I WOULD OBJECT TO THE
10 EXTENT, AGAIN, THAT HE'S BEING ASKED TO EXPLAIN
11 WHAT'S IN SOMEONE ELSE'S MIND. HE IS NOT -- THERE
12 IS NO POSSIBLE WAY HE CAN TESTIFY TO THAT. HE
13 CANNOT TESTIFY AS TO WHY DR. FELDMAN MAY OR MAY NOT
14 HAVE DONE SOMETHING. THAT'S A QUESTION FOR DR.
15 FELDMAN. IN FACT, IT WAS ASKED OF DR. FELDMAN IN
16 HIS DEPOSITION.

17 BY COMMISSIONER BECK:

18 I UNDERSTAND, BUT IF HE DOESN'T KNOW, HE
19 DOESN'T KNOW.

20 CROSS-EXAMINATION RESUMED BY MR. BEARD:

21 Q. ARE YOU AWARE THAT DR. FELDMAN IN HIS DEPOSITION
22 CAN'T EXPLAIN WHY THERE'S NO MEDICAL RECORD EITHER?

23 A. HE WAS NOT AT THE DEPOSITION. HE CANNOT EXPLAIN.

24 Q. HAVE YOU EVER READ THE DEPOSITION?

25 A. WITH DOCTOR, NO, BUT WITH OTHERS, YES. YOU ARE

1 ASKING QUESTIONS ABOUT THE DOCTOR THAT HE CANNOT
2 ANSWER.

3 Q. KOHLER HAD NOTHING TO DO WITH SENDING YOU TO DR.
4 FELDMAN, CORRECT?

5 A. HE DIDN'T ASK KOHLER TO SEND HIM TO DR. FELDMAN. HE
6 WAS REFERRED BY ANOTHER DOCTOR AND THAT'S -- THAT'S
7 HOW HE WENT THERE.

8 Q. ARE YOU AWARE THAT DR. FELDMAN PERFORMED PULMONARY
9 FUNCTION TESTS ON YOU IN THIS CASE?

10 A. YES, HE HAD A FEW TESTS DONE, BREATHING
11 (DEMONSTRATING), AND THEN COUGHING, QUITE A FEW
12 TESTS.

13 Q. ARE YOU AWARE THAT DR. FELDMAN'S OWN RECORDS
14 INDICATE THAT THE PULMONARY FUNCTION TESTS HE FIRST
15 PERFORMED ON YOU WERE INVALID?

16 A. DOESN'T REMEMBER.

17 **BY MR. DANTIN:**

18 AND, COMMISSIONER, I WOULD OBJECT TO THE
19 CHARACTERIZATION OF THAT FIRST PULMONARY FUNCTION
20 TEST IS INVALID. WHAT THE DOCUMENT ACTUALLY SAYS IS
21 THAT ---

22 **BY COMMISSIONER BECK:**

23 WHAT PAGE ARE YOU ON?

24 **BY MR. DANTIN:**

25 I'M SORRY? OH, PAGE 113. THE DOCUMENT

1 ACTUALLY SAYS THERE WAS ONE ACCEPTABLE MANEUVER TO
2 INTERPRET WITH CARE. DR. FELDMAN ALSO ADDRESSED
3 THAT IN HIS DEPOSITION.

4 **BY COMMISSIONER BECK:**

5 ALL RIGHT. SO NOTED.

6 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

7 Q. ALL RIGHT. SO YOU'RE UNAWARE IN HIS DEPOSITION THAT
8 DR. FELDMAN ACKNOWLEDGED THAT YOUR PULMONARY
9 FUNCTION TEST WAS INVALID BECAUSE IT DID NOT MEET
10 THE AMERICAN THORACIC STANDARDS FOR PULMONARY
11 FUNCTION TESTS, AND THAT HE DID NOT HAVE THREE TESTS
12 PERFORMED THAT GAVE SOMEWHAT CLOSE RANGES OF
13 BREATHING; ARE YOU AWARE OF THAT?

14 **BY MR. DANTIN:**

15 AGAIN, I WOULD OBJECT. THERE IS NO SUCH
16 TESTIMONY BY DR. FELDMAN.

17 **BY COMMISSIONER BECK:**

18 OKAY. MR. BEARD?

19 **BY MR. BEARD:**

20 I APOLOGIZE. I SAID DR. FELDMAN.

21 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

22 Q. ARE YOU UNAWARE OF DR. FOGERTY'S TESTIMONY THAT THE
23 PULMONARY FUNCTION TESTS WERE INVALID BECAUSE OF THE
24 FAILURE TO PERFORM MULTIPLE TESTS UNDER THE AMERICAN
25 THORACIC STANDARDS?

1 A. HE DIDN'T KNOW.

2 Q. WHY DID DR. FELDMAN SCHEDULE YOU FOR AN M.R.I. OF
3 YOUR BRAIN IN 2010?

4 A. HE WAS -- BECAUSE HE WAS COMPLAINING OF THE STRONG
5 HEADACHES AND THE LIGHTHEADEDNESS AND VERTIGO, AND
6 THAT'S WHY HE WAS SENT FOR THAT M.R.I.

7 Q. WHEN YOU WENT TO DR. FELDMAN AND TOLD HIM WHAT YOUR
8 PROBLEMS WERE, DID YOU TELL HIM HOW OFTEN YOU USED
9 ACETIC ACID, HOW MUCH YOU SPRAYED ON THESE ITEMS AT
10 THE PLANT, LIKE YOU DID HERE TODAY? DID YOU TELL
11 DR. FELDMAN ALL OF THOSE THINGS?

12 A. WHEN HE WAS AT THE DR. FELDMAN'S OFFICE, DR. FELDMAN
13 TOLD HIM THAT HIS SYMPTOMS ARE CONSISTENT WITH
14 ASTHMA, AND DR. FELDMAN ASK HIM IF MR. GUL EVER
15 WORKED WITH ANY CHEMICALS OR DRASTIC CONDITIONS OR
16 LIVED IN THE DRASTIC CONDITIONS, AND MR. GUL TOLD
17 HIM THAT HE WORKS WITH ACETIC ACID, AND DOCTOR ASKED
18 HIM TO SHOW HIM THE LABEL OR NAME -- NOT LABEL, NAME
19 OF THE CHEMICAL, WHICH MR. GUL TOLD HIM, AND TOLD
20 HIM MORE WHAT -- HOW HE WORKED WITH THAT ACID.

21 Q. SO IF I UNDERSTAND YOUR TESTIMONY, DR. FELDMAN IS
22 ACTUALLY THE ONE WHO DECIDED WHAT WAS WRONG WITH YOU
23 BEFORE HE EVEN KNEW WHAT YOU HAD DONE OR WHAT YOUR
24 WORK WAS OR BEFORE YOU'D EVEN GIVEN HIM ANY HISTORY;
25 IS THAT CORRECT? HE'D ALREADY MADE THE DECISION

1 WHAT WAS WRONG WITH YOU?

2 A. IT LOOKS AS IT'S TRUE; ALTHOUGH, HE ALSO TOLD ABOUT
3 THIS TO DR. CANNON, TOO, BEFORE DR. FELDMAN.

4 Q. WHAT ABOUT DR. CANNON?

5 A. HE TOLD DR. CANNON THAT HE FEELS THAT THE PROBLEM HE
6 DEVELOPS, HEALTH PROBLEM, RELATED TO WORK, AND DR.
7 CANNON INSISTED THAT HE WOULD -- HE NEEDS TO GO TO
8 DR. FELDMAN BECAUSE DR. FELDMAN IS THE BEST
9 PULMONARY SPECIALIST IN TOWN.

10 Q. WELL, WAIT A MINUTE. WAIT A MINUTE. YOU TESTIFIED
11 EARLY IN THIS CASE THAT -- YOU DIDN'T SAY -- DID YOU
12 SAY DR. CANNON REFERRED YOU TO DR. FELDMAN?

13 A. DR. CANNON TOLD HIM HE'S GOING TO DR. FELDMAN.

14 Q. AGAIN, I DIDN'T ASK HIM WHAT DR. CANNON TOLD HIM.
15 ALL I ASKED HIM WAS DID HE SAY DR. CANNON REFERRED
16 HIM TO DR. FELDMAN?

17 A. IT STARTED WITH DR. NOWATKA'S OFFICE. LIKE HE TOLD
18 BEFORE, IT WAS THE MATURE DOCTOR WHO REFERRED HIM.
19 PROBABLY, THAT INFORMATION WAS ALSO SUBMITTED TO
20 DR. CANNON, AND DR. CANNON KNEW THAT THERE WAS
21 APPOINTMENT FOR DR. FELDMAN, AND WHEN THAT TIME OF
22 APPOINTMENT APPROACHED, DR. FELDMAN TOLD HIM THAT HE
23 -- I MEAN, DR. CANNON TOLD HIM THAT HE'S GOING TO
24 THE BEST PULMONOLOGIST, AND THAT'S ALL WHAT HE
25 KNOWS.

26 Q. OKAY. SO YOU DON'T KNOW WHETHER DR. CANNON REFERRED

1 YOU TO -- YOU DON'T KNOW WHO REFERRED YOU TO DR.
2 FELDMAN?

3 A. HE CANNOT TELL EXACTLY BECAUSE, AS HE TOLD SEVERAL
4 TIMES, IT STARTED WITH -- IN DR. NOWATKA'S OFFICE.
5 HOW THEY FORWARD PAPERWORK BETWEEN EACH OTHER, HE
6 DOESN'T KNOW.

7 Q. OKAY. ALL RIGHT. THE FIRST TIME WE ACTUALLY HAVE A
8 HISTORY OF ANYTHING FROM YOU TO DR. FELDMAN IS AT
9 PAGES 110 THROUGH 113 OF DR. FELDMAN'S SEPTEMBER THE
10 25TH, 2009, REPORT. IN DR. FELDMAN'S REPORT ON THAT
11 DATE, IT SAYS, YOU WERE COMPLAINING OF FATIGUE, LOSS
12 OF SLEEP, MALAISE, NERVOUSNESS.

13 A. YES.

14 Q. ALL RIGHT. IT ALSO SAYS YOU WERE COMPLAINING OF
15 COUGH, LOUD SNORING, AND WHEEZING, TO DR. FELDMAN,
16 CORRECT?

17 A. YES.

18 Q. OKAY. ON THE EXAMINATION, DR. FELDMAN'S OFFICE HAS
19 NOTED -- AND LET ME ASK YOU, DID YOU SEE DR.
20 FELDMAN, OR DID YOU SEE SOMEONE NAMED DR. ANGELA
21 MORIN?

22 A. SOMETIMES IT'S DR. FELDMAN, HIMSELF. SOMETIMES IT'S
23 ANOTHER DOCTOR WHO IS IN THE OFFICE.

24 Q. I'M ASKING HIM ON SEPTEMBER THE 25TH, 2009, IT
25 INDICATES THAT DR. GREGORY FELDMAN, M.D. AND SOMEONE
26 NAMED ANGELA MORIN, BOTH, WERE AUTHORS OF THIS

1 DOCUMENT. I'M ASKING HIM, WHO DID HE SEE IN THAT
2 OFFICE?

3 **BY THE INTERPRETER:**

4 YOU SAY IN SEPTEMBER, BUT IT SHOWS OCTOBER.

5 **BY MR. BEARD:**

6 NO, THAT IS A FAX STAMP.

7 **BY THE INTERPRETER:**

8 FAX, OKAY.

9 **BY MR. BEARD:**

10 THE REPORT IS DATED SEPTEMBER 25TH, 2009.

11 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

12 A. DOESN'T REMEMBER EXACTLY. IT'S SO MANY YEARS
13 BEFORE, HE CANNOT REMEMBER EXACTLY.

14 Q. OKAY.

15 A. HE DOESN'T REMEMBER EXACTLY.

16 Q. ALL RIGHT. AND UNDER DR. FELDMAN'S REPORTS, UNDER
17 THE EXAMINATION UNDER "RESPIRATORY", IT SAYS YOU
18 WERE HAVING WHEEZING AND RHONCHI WITH REGARDS TO
19 YOUR LUNG FUNCTION, AND IT DOESN'T APPEAR TO BE ANY
20 OTHER PROBLEMS, CORRECT?

21 A. PROBABLY, YES.

22 Q. OKAY. NOW, I DON'T KNOW IF YOU RECALL THIS OR NOT,
23 MR. GUL, BUT AT PAGES 125 OF DEFENDANT'S APAS ON THE
24 SAME DAY YOU WENT TO DR. FELDMAN, ON SEPTEMBER THE
25 25TH, 2009, YOU WENT TO A CARDIOLOGIST NAMED DR.

1 CHANDLER?

2 A. YES.

3 Q. WENT THERE THE SAME DAY THAT YOU FIRST GOT A HISTORY
4 TO DR. FELDMAN, CORRECT?

5 A. YES.

6 Q. ALL RIGHT. AND ---

7 BY COMMISSIONER BECK:

8 WHAT PAGES?

9 BY MR. BEARD:

10 PAGES 125 THROUGH 127 OF DEFENDANTS.

11 BY COMMISSIONER BECK:

12 I'VE GOT BANK OF AMERICA RECORDS.

13 BY MR. BEARD:

14 YOU'RE IN THE EXHIBITS. I'M SORRY. THEY'RE --
15 IT'S UNDER THE ---

16 BY MR. DANTIN:

17 I'VE GOT 124 HERE.

18 BY MR. BEARD:

19 TAB -- IS IT TAB 11? I THINK IT'S UNDER TAB
20 11, COMMISSIONER.

21 BY COMMISSIONER BECK:

22 I'VE GOT IT.

23 BY MR. BEARD:

24 YOU FOUND IT?

25 BY COMMISSIONER BECK:

1 YES, I'VE GOT IT.

2 CROSS-EXAMINATION RESUMED BY MR. BEARD:

3 Q. AND APPARENTLY YOU HAD TAKEN A FRIEND WITH YOU AS AN
4 INTERPRETER THAT DAY; IS THAT CORRECT?

5 A. ALEX, YES.

6 Q. OKAY. IT SAYS YOUR MAIN COMPLAINT THERE WAS CHEST
7 PAIN; IS THAT CORRECT?

8 A. YES.

9 Q. APPARENTLY, YOU HAD TAKEN SOME SORT OF TEST CALLED A
10 NUCLEAR PERFUSION SCAN RECENTLY, WHICH SHOWED THAT
11 YOU DID HAVE SOME SORT OF REVERSIBLE ISCHEMIA OR
12 SOME SORT OF ISSUE GOING ON WITH YOUR HEART; IS THAT
13 CORRECT?

14 A. THAT WAS NOT DIAGNOSES. IT WAS THAT WHAT THEY
15 SUSPECTED. THE RECORDS OF THE SAME DOCTORS WILL
16 SHOW IT LATER.

17 Q. OKAY. WELL, IT SAYS YOU HAD A NUCLEAR PERFUSION
18 SCAN RECENTLY, WHICH RETURNED TO SHOW THAT YOU DID
19 IN FACT HAVE REVERSIBLE ISCHEMIA AT THE APEX OF YOUR
20 HEART.

21 A. OKAY.

22 Q. ALL RIGHT. AND IT SAID THAT YOU WERE IN THERE
23 COMPLAINING ABOUT CHEST PAINS, PALPITATIONS, DYSPNEA
24 ON EXERTION, DIZZINESS; DO YOU REMEMBER COMPLAINING
25 ABOUT THOSE THINGS?

- 1 A. YES.
- 2 Q. BUT YOU DENIED HAVING ANY COUGH, DYSPNEA,
3 HEMOPTYSIS, WHEEZING, SNORING, OR ANY OTHER SLEEP
4 APNEA TYPE PROBLEMS; IS THAT CORRECT?
- 5 A. OKAY. WHAT DATE?
- 6 Q. 9-25-09.
- 7 A. IT'S 9-16.
- 8 Q. NO, 9-25-09.
- 9 A. OH, OKAY. I'M SORRY.
- 10 Q. SAME DAY YOU SAW DR. FELDMAN?
- 11 A. YEAH, OKAY.
- 12 Q. OKAY. YOU AGREE THAT'S WHAT YOU TOLD HIM?
- 13 A. YES.
- 14 Q. ALL RIGHT. THEY DID AN EXAMINATION OF YOU, PHYSICAL
15 EXAM, AT PAGE 126, UNDER "RESPIRATORY", THE SAME DAY
16 YOU JUST SAW DR. FELDMAN, AND THEY FOUND NO
17 RESPIRATORY DISTRESS, AND YOUR LUNGS WERE COMPLETELY
18 CLEAR TO AUSCULTATION OR BREATHING; IS THAT CORRECT?
- 19 A. HE ALREADY TOOK THEM -- WAS TAKING THE MEDICATION
20 AND PROBABLY FEEL BETTER AFTER THAT.
- 21 Q. SO YOUR TESTIMONY IS THAT DR. FELDMAN SHOWED
22 PROBLEMS, YOU THEN TOOK ADVAIR, AND WENT STRAIGHT
23 OVER TO THIS OTHER DOCTOR, AND IT WAS COMPLETELY
24 CLEARED UP; IS THAT YOUR TESTIMONY?
- 25 A. HE WAS ALREADY TAKING IT. YES. SINCE HE STARTED TO

1 USE MEDICATIONS, HE STARTED TO FEEL BETTER.

2 Q. MY QUESTION -- BUT YOU DIDN'T GET THESE MEDICATIONS
3 YET, MR. GUL, BECAUSE YOU JUST SAW DR. FELDMAN THAT
4 DAY, FIRST TIME YOU SAW HIM.

5 A. HE GAVE HIM MEDICATION IN THE OFFICE AND MADE HIM
6 BREATHE THROUGH SOME KIND OF MACHINE. THIS WAS THE
7 SECOND VISIT, NOT THE FIRST ONE.

8 Q. YOU RECENTLY HAD A PULMONARY FUNCTION AT DR.
9 FELDMAN'S OFFICE ON FEBRUARY THE 24TH OF THIS YEAR;
10 IS THAT CORRECT?

11 A. YES.

12 Q. AND ARE YOU AWARE THAT THAT PULMONARY FUNCTION TEST
13 WAS NORMAL?

14 A. YES, HE KNOWS.

15 Q. ALL RIGHT. SO, APPARENTLY, THE MEDICATION MAKES YOU
16 BETTER AND MAKES YOU WELL; IS THAT CORRECT? IS THAT
17 WHAT I'M HEARING FROM YOU TODAY? MEDICATION MAKES
18 YOU WELL?

19 A. YES, THEY HELP HIM.

20 Q. WHY AREN'T YOU WORKING, MR. GUL?

21 A. THEY'RE NOT HELPING TO COMPLETELY FEEL TO BE HEALTHY
22 TO WORK.

23 Q. YOU HAVEN'T MADE ANY EFFORT TO FIND A JOB SINCE
24 2009, HAVE YOU, MR. GUL? YOU HAVEN'T MADE ANY
25 EFFORT TO FIND A JOB?

1 A. HE WAS TRYING. HE WAS TRYING TO FIND SOMETHING.

2 Q. YOU REPRESENTED TO OUR UNEMPLOYMENT FOLKS FOR TWO
3 YEARS THAT YOU WERE READY, WILLING, AND ABLE TO
4 PERFORM A JOB AND, IN FACT, RECEIVED UNEMPLOYMENT
5 FOR THE ENTIRE TWO YEARS TO THE TUNE OF ALMOST
6 \$33,000; IS THAT CORRECT?

7 A. YES.

8 Q. ALL RIGHT. YET, DURING THAT ENTIRE TWO-YEAR PERIOD
9 OF TIME, YOU NEVER GOT A JOB, DID YOU?

10 A. DIDN'T WORK.

11 Q. WE ASKED YOU IN YOUR DEPOSITION TO TELL US SOME OF
12 THE PLACES YOU APPLIED TO WORK. YOU COULDN'T
13 REMEMBER A SINGLE COMPANY THAT YOU WENT AND APPLIED
14 TO WORK FOR, COULD YOU?

15 A. HE CANNOT REMEMBER EXACTLY THE NAMES, BUT HE TRIED
16 TO GO TO DIFFERENT PLACES AND TRIED TO GET EMPLOYED.

17 Q. YOU WERE REPRESENTING TO UNEMPLOYMENT FOLKS AND TO
18 POTENTIAL JOB FOLKS OUT THERE THAT YOU COULD WORK.
19 YOU WERE READY, WILLING, AND ABLE TO DO THAT; YET,
20 YOU'VE JUST TESTIFIED TO THIS COMMISSIONER THAT
21 DR. FELDMAN ADVISED YOU YOU COULDN'T WORK SINCE THE
22 DAY YOU LEFT WORK AND YOU HAVEN'T BEEN ABLE TO WORK
23 SINCE THEN; ISN'T THAT CORRECT?

24 A. HE WAS TRYING TO FIND THE WORK BECAUSE HE HAS A BIG
25 FAMILY, BUT IT WAS UNSUCCESSFUL, AND DR. FELDMAN

1 TELL HIM THAT HE REALLY CANNOT WORK MUCH BECAUSE OF
2 HIS HEALTH PROBLEM.

3 Q. SO WERE YOU COMMITTING FRAUD FOR TWO YEARS WHEN YOU
4 WERE DRAWING A CHECK FROM THE EMPLOYMENT SECURITY
5 COMMISSION FOLKS?

6 A. HE WAS TRYING TO GET WORK, WHAT HE COULD DO, BUT HE
7 WAS NEVER HIRED BY ANYONE, AND THE DOCTOR ALSO
8 CONSIDERS THAT HE CANNOT REALLY WORK.

9 Q. WELL, YOU DIDN'T TELL THE FOLKS AT THE STATE
10 UNEMPLOYMENT DEPARTMENT THAT YOUR DOCTOR HAD ADVISED
11 YOU NOT TO WORK, DID YOU? YOU DIDN'T GIVE THEM THAT
12 INFORMATION.

13 A. THE DOCTOR TOLD HIM THAT HE SHOULD NOT BE TRYING TO
14 FIND THE WORK AFTER 2011.

15 **BY COMMISSIONER BECK:**

16 ALL RIGHT. HANG ON A SECOND. MR. GUL, I NEED
17 YOU TO ANSWER THE QUESTION THAT IS DIRECTLY ASKED OF
18 YOU AND YOU'RE NOT DOING THAT RIGHT NOW.

19 **BY THE WITNESS:**

20 IT'S DIFFICULT FOR HIM TO WORK WITH ENGLISH AND
21 RUSSIAN AND ---

22 **BY COMMISSIONER BECK:**

23 DID YOU TELL THE UNEMPLOYMENT SECURITY
24 COMMISSION THAT YOU WERE ON RESTRICTIONS AND COULD
25 NOT WORK?

1 BY THE WITNESS:

2 HE DOESN'T REMEMBER AND DOESN'T THINK THAT
3 ANYONE WAS ASKING HIM THAT. HE WAS TRYING TO FIND
4 SOMETHING THAT HE COULD DO AND TRYING TO FIND A JOB,
5 WAS DRIVING AROUND AND TRYING TO FIND SOMETHING, AND
6 -- AND WHEN HIS LIMIT WAS OVER, IT WAS OVER.

7 BY COMMISSIONER BECK:

8 ALL RIGHT. MR. BEARD?

9 CROSS-EXAMINATION RESUMED BY MR. BEARD:

10 Q. MR. GUL, YOU DID YOUR UNEMPLOYMENT PROCESS ON THE
11 TELEPHONE, CORRECT?

12 BY THE INTERPRETER:

13 WHAT YOU MEAN BY UNEMPLOYMENT PROCESS?

14 BY MR. BEARD:

15 WHEN HE FILED FOR UNEMPLOYMENT AND RECEIVED HIS
16 BENEFITS EVERY WEEK, HE WOULD CALL IN ON THE
17 TELEPHONE TO TALK TO THE UNEMPLOYMENT FOLKS?

18 CROSS-EXAMINATION RESUMED BY MR. BEARD:

19 A. YES, IT WAS THROUGH TELEPHONE.

20 Q. AND FROM ---

21 BY MR. BEARD:

22 AND, COMMISSIONER, I'M LOOKING UNDER EXHIBIT C,
23 PAGES 21 THROUGH 29 OF THE UNEMPLOYMENT -- THE
24 S.C.D.E.W. RECORDS.

25 CROSS-EXAMINATION RESUMED BY MR. BEARD:

1 Q. FROM OCTOBER THE 24TH, 2009, UNTIL SEPTEMBER THE
2 17TH, 2011, EVERY SINGLE WEEK YOU REPRESENTED TO
3 THEM THAT YOU WERE READY, WILLING, ABLE, AND HAD NO
4 PHYSICAL PROBLEMS WORKING, EXCEPT ONE WEEK; ISN'T
5 THAT CORRECT?

6 A. YES.

7 Q. AND THE ONLY WEEK THAT YOU WERE NOT ABLE TO DO THAT,
8 ACCORDING TO THE RECORDS, WAS THE WEEK OF APRIL
9 24TH, 2010. DO YOU KNOW WHY YOU COULDN'T WORK APRIL
10 24TH, 2010?

11 A. CANNOT EXPLAIN EXACTLY. DOESN'T REMEMBER EXACTLY.

12 Q. THERE'S ALSO A QUESTIONNAIRE THAT IS SUBMITTED AT
13 PAGE 36, THAT SAYS WHETHER YOU'RE ELIGIBLE OR NOT.
14 AND ON FEBRUARY THE 6TH, 2010, WHEN THEY REVIEWED
15 YOUR CASE, YOU DIDN'T TELL THEM ANYTHING ABOUT A
16 MEDICAL CONDITION OR GIVE ANY EXPLANATION OF A
17 CONDITION THAT PROHIBITED YOU FROM DOING ANY KIND OF
18 WORK, DID YOU?

19 A. YES, IT'S TRUE, AND HIS SON WAS HELPING HIM TO DO
20 THIS AND ---

21 Q. SURE. AND YOU TOLD THEM THAT YOU WOULD WORK
22 ANYTIME, AND YOU SAID VARIED, AND THAT YOU WERE
23 WILLING TO WORK ANY HOURS; IS THAT CORRECT?

24 A. YES.

25 Q. AND YOU DIDN'T TELL THEM THAT YOU HAD ASTHMA OR HIGH

1 BLOOD PRESSURE OR WHEEZING OR SHORTNESS OF BREATH OR
2 ANYTHING ELSE, DID YOU?

3 A. WHEN HE APPLIED FOR UNEMPLOYMENT, HE SHOWED THE
4 UNEMPLOYMENT OFFICE THE MEDICAL DOCUMENTS, WHAT
5 DOCTORS HE VISIT AND WHAT THEY FOUND, BUT HE DIDN'T
6 REALIZE THAT HE NEEDS TO REPORT IT EVERY SINGLE
7 TIME.

8 Q. OKAY. AT PAGE 41 OF THE EMPLOYMENT SECURITY
9 COMMISSION RECORDS -- AND LET ME ASK YOU, IS THAT
10 YOUR SIGNATURE?

11 A. YES.

12 Q. AND IT SAYS OCTOBER 27TH, 2009. ALL RIGHT. AND IT
13 SAYS YOU COMMUNICATED WITH YOUR JOB CONSTANTLY AND
14 YOU FAXED IN ALL THE NOTES THAT YOU RECEIVED FROM
15 DOCTORS, AND THEN YOU WROTE, "THE DOCTOR DID NOT
16 WRITE A LETTER TO SAY THAT I SHOULD NOT GO BACK TO
17 THAT DEPARTMENT, HE JUST VERBALLY TOLD ME." YOU
18 DON'T HAVE A REPORT FROM DR. FELDMAN THAT SAYS YOU
19 SHOULDN'T GO BACK TO WORK THERE, DO YOU?

20 A. DOESN'T REMEMBER.

21 Q. OKAY. YOU WERE DENIED WORKERS' -- EXCUSE ME. YOU
22 WERE DENIED UNEMPLOYMENT BENEFITS INITIALLY BY THE
23 UNEMPLOYMENT FOLKS AND ACTUALLY APPEALED THEIR
24 DECISION; ISN'T THAT CORRECT?

25 A. YES.

- 1 Q. OKAY. AND AT PAGE 67, WHEN YOU FILED YOUR APPEAL,
2 THAT SAID YOU "DISAGREE WITH BEING DISQUALIFIED
3 INDEFINITELY BECAUSE YOU DID NOT QUIT OR ABANDON
4 YOUR JOB. I PROVIDED THE REQUIRED DOCTOR NOTES AND
5 WHEN I TRIED TO RESOLVE THE ISSUE BY REQUESTING
6 DIFFERENT WORK HOURS OR A POSITION IN A DIFFERENT
7 DEPARTMENT, MANAGEMENT COULD NOT EVEN GIVE ME A
8 MEETING. I AM ABLE TO WORK AND I WANT TO WORK.
9 I'VE MADE EVERY EFFORT TO KEEP MY JOB"; IS THAT
10 CORRECT?
- 11 A. YES, THAT'S WHAT HE WAS TOLD. WHEN HE WAS DENIED,
12 HE APPEALED BECAUSE HE WAS TOLD BY THE OFFICE THAT
13 HE CAN APPEAL, AND THEN HE APPEALED AFTER THAT.
- 14 Q. THIS DOCUMENT WAS SIGNED BY YOU ON NOVEMBER THE
15 24TH, 2009, CORRECT?
- 16 A. YES.
- 17 Q. THAT'S TWO MONTHS AFTER YOU FIRST STARTED SEEING
18 DR. FELDMAN, AND YOU'VE INDICATED THAT DR. FELDMAN,
19 AT LEAST THROUGH ALL REPRESENTATIONS HERE TODAY, HAS
20 SAID YOU WERE NEVER ABLE TO WORK.
- 21 A. HE DOESN'T REMEMBER THAT DR. FELDMAN TOLD HIM RIGHT
22 AWAY THAT HE CANNOT WORK EVER.
- 23 Q. SO DID DR. FELDMAN FIRST TELL YOU THAT YOU COULD NOT
24 WORK EVER, AFTER YOU RAN OUT OF YOUR UNEMPLOYMENT
25 BENEFITS FOR TWO YEARS?

1 A. HE REMEMBERS THAT DR. FELDMAN WROTE PAPERS FOR HIM
2 TO BE TRANSFERRED TO ANOTHER DEPARTMENT, BUT HE WAS
3 TERMINATED BY KOHLER, AND THEN HE STARTED TO DO THE
4 UNEMPLOYMENT APPLICATIONS. HE TRIED TO DO WHAT HE
5 WAS ABLE TO UNDERSTAND.

6 Q. LISTEN TO MY QUESTION. YOU RECEIVED UNEMPLOYMENT
7 BENEFITS FOR TWO YEARS ---

8 A. YEAH. YES.

9 Q. --- AFTER YOU WERE TERMINATED.

10 A. YES.

11 Q. YOU OBVIOUSLY UNDERSTAND MY QUESTIONS WITHOUT THE
12 NEED OF AN INTERPRETER.

13 BY THE INTERPRETER:

14 CAN I SAY SOMETHING, SIR, AS AN INTERPRETER?
15 ANY IMMIGRANT FROM ANY COUNTRY UNDERSTANDS SOME
16 ENGLISH AND DOESN'T UNDERSTAND EXACTLY. SO IF HE
17 UNDERSTANDS SOME WHAT YOU SAY, IT DOESN'T MEAN HE
18 UNDERSTAND EVERYTHING, INCLUDING EVERY -- EVERY
19 IMMIGRANT IN THE COUNTRY OF ANY LANGUAGE ACTUALLY.
20 SO IF HE -- IF YOU SEE THAT THE PERSON UNDERSTANDS
21 SOMETHING, IT DOESN'T MEAN HE UNDERSTAND EVERYTHING.

22 BY MR. BEARD:

23 MY POINT BEING, YOU NEED TO SAY IT BEFORE HE
24 ANSWERS THE QUESTION BECAUSE THAT'S THE RECORD WE'RE
25 MAKING.

1 BY COMMISSIONER BECK:

2 WE'VE HAD THIS DISCUSSION ONCE.

3 BY MR. BEARD:

4 I'M NOT BEING DEFENSIVE.

5 BY COMMISSIONER BECK:

6 WE'VE HAD THIS DISCUSSION ALREADY. IT'S CLEAR
7 TO ME HE UNDERSTANDS SOME ENGLISH, BUT, MR. GUL, ---

8 BY THE WITNESS:

9 YEAH. I'M SORRY. CAN YOU TALK SLOW?

10 BY COMMISSIONER BECK:

11 HE'LL BE THE ONE ACTUALLY ASKING YOU THE
12 QUESTION. IT DOESN'T MAKE ANY DIFFERENCE HOW FAST

13 ---

14 BY THE WITNESS:

15 YEAH. I'M SORRY.

16 BY COMMISSIONER BECK:

17 --- MR. BEARD TALKS.

18 BY THE WITNESS:

19 MY FAULT. I'M SORRY.

20 BY COMMISSIONER BECK:

21 AS LONG AS THE INTERPRETER UNDERSTANDS THAT,
22 THAT'S ALL THAT REALLY MATTERS, BUT WE NEED TO DO
23 THIS IN THE PROPER SEQUENCE. YOU KNOW, WE CAN'T DO
24 IT HALF IN ENGLISH AND HALF THROUGH AN INTERPRETER.

25 BY THE WITNESS:

1 I'M SORRY.

2 **BY COMMISSIONER BECK:**

3 MR. BEARD?

4 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

5 Q. MY QUESTION WAS, YOU RECEIVED UNEMPLOYMENT BENEFITS
6 FOR TWO YEARS FROM THE STATE OF SOUTH CAROLINA
7 BECAUSE YOU REPRESENTED YOU WERE READY, WILLING,
8 ABLE AND HAD NO PHYSICAL CONDITION THAT PREVENTED
9 YOU FROM WORKING; YET, AS I UNDERSTAND YOUR
10 TESTIMONY NOW, YOU'RE ASKING FOR WORKERS' COMP
11 BENEFITS SINCE THE DAY THOSE CHECKS STOPPED BECAUSE
12 DR. FELDMAN SAYS YOU NEVER CAN RETURN TO WORK. IS
13 THAT MY CORRECT UNDERSTANDING OF THE FACTS OF THIS
14 CASE?

15 A. YEAH, IT'S ABOUT RIGHT.

16 Q. SO FOR THE TWO YEARS IN TIME, CLOSER TO WHEN YOU HAD
17 WORKED AROUND THIS SO-CALLED CHEMICAL THAT CAUSES
18 YOU ASTHMA, YOU WERE READY, WILLING, ABLE, AND
19 PHYSICALLY HAD NO PROBLEMS; YET, TWO YEARS LATER,
20 WHEN YOU HAD NOT BEEN AROUND ACETIC ACID AT ALL, YOU
21 NOW ALL OF A SUDDEN CAN'T WORK; IS THAT YOUR
22 TESTIMONY?

23 A. HE CAN'T EXPLAIN EVERYTHING, BUT HIS DOCTOR FEELS
24 THAT HE CANNOT WORK.

25 Q. YOU JUST DO WHAT DR. FELDMAN TELLS YOU TO DO, RIGHT?

1 A. HE DOESN'T -- HE DIDN'T TALK TO DR. FELDMAN ABOUT
2 THIS EXACTLY, AND WHATEVER DOCTOR PRESCRIBED, THAT
3 HE DOES.

4 Q. WHAT DOCTOR IS WRITING YOU OUT OF WORK?

5 A. FELDMAN.

6 Q. DO YOU HAVE SOMETHING FROM DR. FELDMAN WRITING YOU
7 OUT OF WORK?

8 A. MAYBE HIS ATTORNEY HAS IT.

9 Q. HAS DR. FELDMAN DONE ANYTHING FOR YOU TO TRY TO HELP
10 YOU GET BACK TO WORK?

11 A. HE WAS TREATING HIM.

12 Q. YOU HARDLY EVEN SEE DR. FELDMAN NOW, CORRECT? YOU
13 ACTUALLY SEE OTHER PEOPLE WHEN YOU GO TO HIS OFFICE?
14 YOU DON'T REALLY SEE HIM MUCH, DO YOU?

15 A. WHEN DR. FELDMAN IS NOT PRESENT, THEN OTHER PEOPLE
16 SEE HIM.

17 Q. THE LAST SEVERAL TIMES YOU'VE GONE TO DR. FELDMAN'S
18 OFFICE, HE WASN'T PRESENT, WAS HE?

19 A. IN APRIL, THERE WAS ANOTHER DOCTOR HE REMEMBERS;
20 BEFORE THAT, DOESN'T REMEMBER. SOMETIMES HE GETS
21 CALLED FOR EMERGENCY AND LEAVES THE OFFICE, SO WHEN
22 HE'S PRESENT, HE'S PRESENT, WHEN NOT, NOT.

23 Q. LAST COUPLE OF QUESTIONS, I'M GOING TO ASK YOU ABOUT
24 THESE EMPLOYMENT SECURITY COMMISSION RECORDS.

25 BY MR. BEARD:

1 AND THIS IS PAGES 93 THROUGH 95, COMMISSIONER.

2 CROSS-EXAMINATION RESUMED BY MR. BEARD:

3 Q. ACCORDING TO THEIR RECORDS ON AUGUST THE 12TH OF --
4 EXCUSE ME, AUGUST THE 20TH OF 2012, THEY SENT YOU A
5 JOB REFERRAL TO BE A DRIVER OF A BAY TRUCK FOR
6 DELIVERY PURPOSES. DID YOU APPLY FOR OR TRY TO DO
7 THAT JOB?

8 A. YEAH, HE REMEMBERS.

9 Q. DID YOU APPLY FOR THE JOB?

10 A. YES.

11 Q. DID YOU TELL THEM YOU WERE READY, WILLING, AND ABLE
12 TO WORK FOR THEM ON AUGUST 20TH, 2012?

13 BY THE INTERPRETER:

14 AUGUST 20TH, RIGHT? WHAT NAME OF THE COMPANY?

15 BY MR. BEARD:

16 THEY WON'T TELL US THAT. THEY BLACK THAT OUT.
17 WE'RE NOT ALLOWED TO HAVE THAT INFORMATION.

18 CROSS-EXAMINATION RESUMED BY MR. BEARD:

19 A. THEY TRIED TO DO AN ONLINE AND THAT'S PROBABLY HOW
20 HE RECEIVED THAT. HIS KIDS TRIED TO HELP HIM, TOO,
21 TO APPLY. HE DOESN'T REMEMBER EXACTLY.

22 Q. AND ON OCTOBER THE 7TH OF 2013, THEY SENT YOU
23 ANOTHER JOB REFERRAL TO BE A MACHINE OPERATOR; DID
24 YOU APPLY FOR THAT JOB?

25 A. HIS KIDS HELPED HIM TO DO APPLICATIONS.

1 Q. DID YOU TELL THE MACHINE OPERATOR COMPANY OR THE
2 DRIVER BAY TRUCK COMPANY THAT YOU HAD ASTHMA OR ANY
3 KIND OF CONDITION THAT WOULD KEEP YOU FROM BEING
4 ABLE TO WORK?

5 A. HE DIDN'T CONTACT THEM.

6 Q. YOU'VE HAD NO INCOME, ACCORDING TO YOUR TESTIMONY
7 AND THE RECORDS THAT I'VE SEEN, SINCE 2011; IS THAT
8 CORRECT?

9 A. YES. DOESN'T HAVE ANY.

10 Q. OKAY. HOW HAVE YOU LIVED SINCE 2011 WITH NO INCOME?

11 A. HIS WIFE WORKS, OLDER KIDS WORKED IN CHICK-FIL-A
12 RESTAURANT, AND HIS CHURCH HELPS HIM TO PAY THE
13 BILLS, AND HE HAS DOCUMENTS TO PROVE, RELATIVES
14 HELPED, FRIENDS.

15 Q. WHEN DID YOUR WIFE START WORKING? IN YOUR
16 DEPOSITION LAST TAKEN, SHE WASN'T WORKING AT THAT
17 TIME.

18 A. JANUARY -- JANUARY 2014, SHE WORKS FOR A YEAR
19 ALREADY.

20 Q. WELL, IN YOUR DEPOSITION -- AND WHAT DOES SHE DO?

21 A. TAILORING JOB, ALTERATION FOR CLOTHING -- CLOTHING,
22 AND OLDER -- TWO OLDEST KIDS WORKING, TOO, TWO SONS,
23 FULL-TIME JOBS.

24 Q. HOW MANY CHILDREN DO YOU HAVE NOW, MR. GUL?

25 A. TEN.

- 1 Q. HOW MANY HAVE YOU HAD SINCE THIS WORKER'S
2 COMPENSATION CLAIM STARTED?
- 3 A. TWO.
- 4 Q. SO YOU'VE HAD TWO MORE KIDS SINCE THE LAST TIME YOU
5 HAD A JOB?
- 6 A. YES.
- 7 Q. DO YOU RECEIVE ANY MONEY FROM THE GOVERNMENT BECAUSE
8 YOU HAVE KIDS?
- 9 A. YES, HE HAD FOOD STAMPS FROM THE GOVERNMENT. WHEN
10 KIDS -- OLDER KIDS STARTED TO WORK, THEY WERE TAKEN
11 OFF OF THE HELP.
- 12 Q. DO YOU GET MORE MONEY THE MORE KIDS YOU HAVE?
- 13 A. ONLY FOOD STAMPS HE RECEIVES ON KIDS, NO MONEY.
- 14 Q. WE'VE SUBMITTED A LOT OF -- AND I'M NOT GOING TO GO
15 THROUGH ALL OF THEM BECAUSE THEY'RE VOLUMINOUS.
16 WE'VE SUBMITTED A LOT OF RECORDS FROM THE BANK OF
17 AMERICA WHERE YOU USED TO DO BANKING, AND THERE WERE
18 LOTS OF DEPOSITS IN YOUR BANK ACCOUNT. . CAN YOU
19 EXPLAIN WHERE ALL THOSE DEPOSITS CAME FROM?
- 20 A. THAT WAS HELP FROM CHURCH AND RELATIVES.
- 21 Q. THAT'S WHAT ALL THOSE DEPOSITS ARE?
- 22 A. YES, AND THERE WEREN'T THAT MANY DEPOSITS, AND EVEN
23 HIS ACCOUNT WAS CLOSED BECAUSE IT WENT TO NEGATIVE.
- 24 Q. WERE THERE ANY DEPOSITS, MR. GUL, THAT YOU RECEIVED
25 MONEY FOR DOING JOBS FOR ANYONE, ANY OF THOSE

1 DEPOSITS?

2 A. HE DIDN'T WORK ONE DAY AFTER KOHLER.

3 Q. DO YOU NOT HAVE A BANK NOW?

4 A. YES, THE WIFE OPENED AN ACCOUNT.

5 Q. NOT AT THE BANK OF AMERICA?

6 A. WELLS FARGO.

7 Q. OKAY. HE CHANGED BANKS? ALL RIGHT. THE ONLY
8 REASON I ASK IS, WE TRIED TO UPDATE YOUR BANKING
9 RECORDS, AND WE WERE TOLD THAT YOU CLOSED YOU'RE
10 ACCOUNT.

11 A. THAT ACCOUNT WAS CLOSED BECAUSE HE COULDN'T PAY IN
12 TIME FOR THE HOUSE PAYMENT, AND THAT WAS THE REASON
13 THE ACCOUNT WAS CLOSED.

14 Q. I'M GOING TO GET AWAY FROM ALL OF THESE DOCUMENTS
15 AND WE'RE JUST GOING TO TALK A LITTLE BIT NOW,
16 BECAUSE I'VE GOT TO ASK YOU SOME QUESTIONS. THE
17 LAST FOUR MONTHS YOU WORKED AT KOHLER IS THE LEAST
18 AMOUNT OF TIME YOU WERE EVER AROUND ACETIC ACID AT
19 THAT PLANT; ISN'T THAT CORRECT?

20 A. HE CANNOT SAY IT'S LESS. HE FEELS IT'S ABOUT THE
21 SAME.

22 Q. WELL, LET ME SEE IF I CAN ASK A BETTER QUESTION.
23 YOU STARTED IN 2004. YOU NEVER WENT TO A DOCTOR
24 UNTIL 2008 ACCORDING TO THE RECORDS THAT WE'VE SEEN
25 IN EVIDENCE TODAY. FROM 2004 UNTIL 2008, YOU WERE

1 WORKING WITH ACETIC ACID EVERY DAY, SPRAYING MORE
2 THAN YOU DID AT ANY OTHER TIME WHEN YOU WORKED AT
3 KOHLER; IS THAT CORRECT?

4 A. HE ALREADY ANSWERED, AND IT WAS ABOUT THE SAME --
5 ALWAYS THE SAME.

6 Q. WELL, THE LAST FOUR MONTHS THAT YOU WORKED AT
7 KOHLER, YOU WERE IN THE KITCHEN SINK DEPARTMENT; IS
8 THAT CORRECT?

9 A. YES.

10 Q. DID YOU USE ACETIC ACID IN THE KITCHEN SINK
11 DEPARTMENT?

12 A. NO.

13 Q. THE KITCHEN SINK WAS A BRAND NEW MACHINE AT KOHLER
14 WHEN YOU WENT TO WORK THERE, CORRECT?

15 A. YES.

16 Q. YOU WERE THE ONLY EMPLOYEE TRAINED ON THAT MACHINE
17 AT THE TIME; IS THAT CORRECT?

18 A. YES.

19 Q. SO IF THAT MACHINE WAS WORKING, WHICH WAS MOST OF
20 THE TIME, YOU WERE THE ONLY EMPLOYEE THAT COULD
21 PHYSICALLY DO THE JOB, CORRECT?

22 A. YES.

23 Q. SO HOW IS IT THAT YOU WERE EXPOSED TO ACETIC ACID
24 THE SAME AMOUNT OF TIME, IF YOU WEREN'T EVEN USING
25 IT IN THE JOB YOU WERE PERFORMING?

1 BY THE INTERPRETER:

2 YOU WANT HIM TO EXPLAIN THAT, RIGHT?

3 BY MR. BEARD:

4 I WANT HIM TO ANSWER THE QUESTION.

5 BY THE INTERPRETER:

6 YES, ANSWER.

7 CROSS-EXAMINATION RESUMED BY MR. BEARD:

8 A. IT WAS EXPERIMENTAL MACHINE AND HE WAS WORKING ON
9 IT. HE HAD LOTS OF TIMES TO TAKE A BREAK, KIND OF
10 LIKE FREE TIME. HIS MACHINE WAS NEXT TO THE COVER
11 MACHINE AND THE DISTANCE BETWEEN THEM WERE AS
12 BETWEEN HIM AND THE TABLE.

13 Q. OKAY.

14 A. WHEN THE COVER MACHINE WAS OPENING, HIS FOREMAN
15 ASKED HIM TO HELP ANOTHER PERSON, TO BE A SECOND
16 PERSON TO WORK ON COVER MACHINE, SO THEY WOULD NOT
17 CALL SOMEONE FOR OVERTIME, AND HE USED THE ACID ON
18 THAT SECOND MACHINE THE SAME WAY AS HE USED THE ACID
19 BEFORE, SO HE WAS DOING HALF OF THE JOB ON THAT
20 COVER MACHINE.

21 Q. BUT YOU NEVER DID THE SPRAYING WHEN YOU DID THAT,
22 CORRECT?

23 A. HE DIDN'T FINISH, HE SAID.

24 Q. OKAY.

25 A. PLUS ON THE LEFT SIDE -- THE COVER MACHINE WAS ON

1 THE RIGHT. ON THE LEFT SIDE, THERE WAS A BARREL
2 WITH ACETIC ACID, AND ABOVE THAT BARREL WERE FANS
3 THAT WOULD BLOW -- TWO BIG FANS THAT WOULD BLOW THE
4 AIR, AND SO THEY WOULD SPRAY THE ACID, AND HE WAS
5 RIGHT NEXT PRACTICALLY TO THAT ACID, AS WELL, AND HE
6 DIDN'T THINK THAT -- AND IF THE FAN IS PRESENT, THE
7 AIR CIRCULATES EVERYWHERE, AND THERE -- AT THE PLACE
8 WHERE HE WORKED, THERE WERE THREE COMMERCIAL BIG
9 FANS WORKING.

10 Q. DID -- YOU DID NOT SPRAY ANY ACETIC ACID FOR THE
11 FOUR MONTHS THAT YOU WORKED IN THE KITCHEN SINK
12 AREA, CORRECT?

13 A. YES, HE DID SPRAY DURING THAT TIME. WHEN ONE PERSON
14 TAKES THE ITEM OUT, THAT LID, THE SECOND PERSON IS
15 SPRAYING SO THE MACHINE WOULD KEEP WORKING. SO HE
16 DID USE SPRAY.

17 Q. YOU WERE THE ONE TAKING OUT THE PRODUCT. YOU
18 WEREN'T THE ONE DOING THE SPRAYING, WERE YOU?

19 A. THEY TOOK TURNS. ONE TIME, ONE PERSON TAKES THE LID
20 OUT AND OTHER SPRAYS. NEXT TIME, THE OTHER PERSON
21 SPRAYS AND ANOTHER PERSON TAKES THE LID. SO THEY
22 TOOK TIMES -- TURNS.

23 Q. WHEN YOU WERE WORKING IN THE KITCHEN SINK
24 DEPARTMENT, HOW MANY HOURS OF YOUR 12-HOUR DAY DID
25 YOU WORK DOING YOUR KITCHEN SINK JOB?

1 BY THE INTERPRETER:

2 IN ONE WEEK, YOU'RE ASKING?

3 BY MR. BEARD:

4 NO, AT -- IN A DAY.

5 CROSS-EXAMINATION RESUMED BY MR. BEARD:

6 Q. IN A TWELVE-HOUR DAY, HOW MANY OF THOSE HOURS DID HE
7 DO THE KITCHEN SINK JOB?

8 A. NOT MUCH. AROUND -- IF YOU PUT ALL THE TIME
9 TOGETHER, POSSIBLY, ONE-AND-A-HALF HOURS.

10 Q. WORKING ON THE KITCHEN SINK JOB?

11 A. ON THE KITCHEN SINK JOB, YES.

12 Q. THAT'S YOUR TESTIMONY?

13 A. THAT'S AROUND TIME THAT HE REMEMBERS, BECAUSE THAT
14 KITCHEN SINK MACHINE PERIODICALLY GETS CLOGGED UP,
15 SO THE MANAGEMENT AND OTHER PEOPLE WOULD COME CLEAN.
16 DURING THAT TIME, HE WOULD WORK ON ANOTHER MACHINE,
17 ON THE COVER MACHINE. WHEN HE WAS HELPING ON THE
18 COVER MACHINE, IT WAS BASICALLY THE SAME EXPOSURE TO
19 THE ACID, BECAUSE IN ORDER FOR MACHINE TO WORK
20 CONSTANTLY THERE NEEDS FOR TWO PEOPLE, NOT ONE, AND
21 EVEN IF HE DIDN'T SPRAY, HIMSELF, HE WAS RIGHT NEXT
22 TO THE PERSON WHO WAS SPRAYING.

23 BY COMMISSIONER BECK:

24 OKAY. MR. BEARD, I HATE TO INTERRUPT YOU. HOW
25 MUCH MORE CROSS-EXAMINATION DO YOU HAVE?

1 BY MR. BEARD:

2 I'M NOT POSITIVE. PROBABLY A GOOD BIT.

3 BY COMMISSIONER BECK:

4 WE'RE GOING TO HAVE A 15 OR 20 MINUTE RECESS.

5 (OFF THE RECORD)

6 BY COMMISSIONER BECK:

7 ALL RIGHT. MR. BEARD?

8 BY MR. BEARD:

9 THANK YOU, COMMISSIONER.

10 CROSS-EXAMINATION RESUMED BY MR. BEARD:

11 Q. MR. GUL, EARLIER IN YOUR TESTIMONY WITH MR. DANTIN,
12 YOU TESTIFIED YOU HAD WHEEZING, COUGHING, PHLEGM,
13 AND THOSE TYPES OF SYMPTOMS SINCE AT LEAST 2008,
14 CORRECT?

15 A. YES.

16 Q. YET, WE WENT THROUGH THE MEDICAL RECORDS, AND
17 THERE'S NOT A SINGLE MEDICAL DOCUMENT THAT REPORTS
18 ANY WHEEZING BY YOU BEFORE YOU SAW DR. FELDMAN,
19 CORRECT?

20 A. PROBABLY, YES.

21 Q. WE ALSO WENT THROUGH THE RECORDS, AND THERE'S NOT A
22 SINGLE RECORD THAT MENTIONS PHLEGM OR MUCUS BY YOU
23 UNTIL THE FIRST RECORD ON AUGUST 25TH, 2009, OF DR.
24 NOWATKA, CORRECT?

25 BY THE INTERPRETER:

1 WHAT DATE IS IT, SIR?

2 BY MR. BEARD:

3 AUGUST 25TH, 2009.

4 CROSS-EXAMINATION RESUMED BY MR. BEARD:

5 A. YES.

6 Q. NOW, WHAT'S IMPORTANT ABOUT THAT TO ME, MR. GUL, IS
7 ON AUGUST 25TH, 2009, YOU HAD NOT EVEN WORKED A FULL
8 DAY AT KOHLER SINCE SOME POINT ON JULY THE 20TH,
9 2009, CORRECT?

10 BY THE INTERPRETER:

11 FROM AUGUST 12TH?

12 BY MR. BEARD:

13 FROM JULY 20TH.

14 CROSS-EXAMINATION RESUMED BY MR. BEARD:

15 A. YES.

16 Q. ALL RIGHT. AND, IN FACT, YOU HAD NOT WORKED IN --
17 OR YOU HAD BEEN WORKING ON THE KITCHEN SINK MACHINE
18 WHEN YOU HAD, IN FACT, BEEN WORKING, SINCE FEBRUARY
19 OR MARCH OF 2009, CORRECT?

20 A. PROBABLY, YES.

21 Q. ALL RIGHT. AND AS I UNDERSTAND YOUR TESTIMONY,
22 CORRECT ME IF I'M WRONG, IT'S YOUR TESTIMONY THAT
23 EVERY SINGLE DOCTOR THAT I SHOWED YOU THEIR REPORTS
24 FAILED TO DOCUMENT YOUR COMPLAINTS OF WHEEZING,
25 COUGHING, AND MUCUS; IS THAT CORRECT?

1 A. HE TOLD DR. NOWATKA SEVERAL TIMES THAT HE HAS
2 PROBLEMS WITH BREATHING. IF HE DID NOT REFLECT IT
3 IN DOCUMENTS, MR. GUL DOESN'T KNOW WHY.

4 Q. MY QUESTION WAS EVERY DOCTOR. I SHOWED YOU A LOT OF
5 DIFFERENT DOCTORS RECORDS, AND YOUR TESTIMONY, AS I
6 UNDERSTOOD IT, WAS EVERY SINGLE ONE OF THOSE DOCTORS
7 FAILED TO DOCUMENT YOUR COMPLAINTS ABOUT WHEEZING OR
8 COUGHING OR MUCUS; IS THAT CORRECT?

9 A. YES.

10 Q. THE MAY 24TH, 2008, MARY BLACK REPORT INDICATED THAT
11 THE ONLY THING THAT HELPED YOU WAS THE MEDICINE THAT
12 WAS FROM RUSSIA; IS THAT CORRECT?

13 A. NO, IT'S NOT CORRECT BECAUSE HE TOOK IT TRYING TO
14 GET BETTER, BUT IT DIDN'T HELP, AND DOCTOR GAVE HIM
15 ANOTHER MEDICINE.

16 Q. SO IF THE DOCTOR REPORTED ON MAY THE 24TH, 2008, AT
17 MARY BLACK HOSPITAL, THAT YOU TOLD THEM THAT, IS
18 THIS ANOTHER DOCTOR THAT YOU ARE INDICATING HAS
19 INCORRECTLY REPORTED WHAT THEY TOLD THEM?

20 **BY THE INTERPRETER:**

21 YOU MEAN THE DOCTOR TOLD THAT THIS IS THE ONLY
22 MEDICATION THAT HELPED HIM?

23 **BY MR. BEARD:**

24 YES.

25 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

1 A. HE DOESN'T KNOW HOW TO SAY IT THE WAY THAT EVERYBODY
2 UNDERSTANDS, BUT HE DIDN'T TELL THE DOCTOR THAT IT
3 WAS THE ONLY MEDICINE THAT HELPED HIM.

4 Q. BUT YOU PRETTY MUCH ALWAYS HAD AN INTERPRETER WITH
5 YOU, DIDN'T YOU?

6 A. NOT ALWAYS. IN EMERGENCY ROOM, IT WAS HIS SON, 13
7 YEARS OLD.

8 Q. OKAY. YOU TESTIFIED EARLIER THAT YOU TOLD THE
9 FOREMAN AT KOHLER, IN 2008, THAT YOU THOUGHT ACETIC
10 ACID WAS CAUSING YOUR PROBLEMS; IS THAT CORRECT?

11 A. YES, HE SAYS HE SAID THAT.

12 Q. YET YOU WILL ACKNOWLEDGE, OR WILL YOU ADMIT, THAT
13 THERE'S NOT A SINGLE MEDICAL RECORD THAT HAS BEEN
14 PRESENTED BY YOU OR BY KOHLER IN THIS CASE THAT SAYS
15 THAT ACETIC ACID OR EVEN WORK EXPOSURE TO A CHEMICAL
16 WAS A PROBLEM UNTIL MANY MONTHS AFTER YOU HAD, IN
17 FACT, LEFT THE PLANT; ISN'T THAT CORRECT?

18 A. YES, HE DIDN'T DISCUSS THAT WITH DOCTORS BEFORE HE
19 TALKED TO DR. NOWATKA -- HE TOLD DR. NOWATKA ABOUT
20 THIS PROBLEM.

21 Q. BUT YOU'LL ACKNOWLEDGE THAT THERE'S NO RECORD OF ANY
22 OF THAT IN DR. NOWATKA'S REPORTS EITHER UNTIL MANY
23 MONTHS AFTER YOU HAD ALREADY LEFT THE PLANT,
24 CORRECT?

25 A. THIS IS NOT CORRECT.

1 Q. SO YOU ---

2 A. HE SAID THAT DR. NOWATKA DID NOT PAY MUCH OF THE
3 ATTENTION, AND HE HAS THE WITNESS, ALEX, THAT HE
4 WENT TO DR. NOWATKA TOGETHER WITH, AND AFTER A FEW
5 DAYS, DR. NOWATKA DIDN'T REMEMBER THAT DR. NOWATKA
6 EVEN TALKED TO MR. GUL.

7 Q. WELL, WITH ALL DUE RESPECT, YOU DIDN'T LIST A
8 WITNESS NAMED ALEX, AND WE DON'T HAVE ALEX HERE TO
9 WITNESS FOR THAT, AND WE'RE NOT PREPARED FOR ALEX.
10 MY POINT IS THAT'S NOT IN DR. NOWATKA'S REPORT, IS
11 IT?

12 BY THE INTERPRETER:

13 HE'S ASKING, CAN HE ASK HIS WIFE?

14 BY COMMISSIONER BECK:

15 NO.

16 BY MR. BEARD:

17 AND, AGAIN, I ASK THE QUESTION, HE'S ANSWERING
18 BEFORE THE TRANSLATOR IS TRANSLATING TO HIM WHAT I
19 SAY.

20 BY COMMISSIONER BECK:

21 AGAIN, MR. GUL, ---

22 BY THE WITNESS:

23 OKAY. I'M SORRY.

24 BY COMMISSIONER BECK:

25 WE'VE GOT TO KEEP THIS IN A PROPER FORMAT HERE.

1 IT'S GETTING A TAD BIT CONFUSING.

2 **BY THE WITNESS:**

3 HE'S SORRY, BUT SOMETIMES HE NEEDS TO EXPLAIN
4 SOMETHING, OTHERWISE, IT WILL NOT -- THE ANSWER
5 WOULD NOT MAKE SENSE.

6 **BY COMMISSIONER BECK:**

7 I UNDERSTAND, BUT HE ASKS, YOU ASK, HE ANSWERS,
8 YOU ANSWER.

9 **BY THE INTERPRETER:**

10 YEAH, I HAVE NO PROBLEM WITH THAT.

11 **BY COMMISSIONER BECK:**

12 HE CAN'T BE INTERFERING BETWEEN THAT. IF HE
13 WANTS TO THEN EXPLAIN HIMSELF, HE'S CERTAINLY ABLE
14 TO DO THAT.

15 **BY COMMISSIONER BECK:**

16 MR. BEARD?

17 **BY MR. BEARD:**

18 THANK YOU, COMMISSIONER.

19 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

20 Q. YOU INDICATED AND TESTIFIED EARLIER THAT YOUR
21 SYMPTOMS WERE WORSE IN 2008 AND 2009; YET, THE
22 MEDICAL EVIDENCE SHOWS YOU DIDN'T GO TO ANY DOCTORS
23 AT ALL FROM JUNE 17TH, 2008, UNTIL JUNE 25TH, 2009,
24 WELL OVER A YEAR; ISN'T THAT TRUE?

25 **BY THE INTERPRETER:**

1 FROM JUNE 2008?

2 BY MR. BEARD:

3 JUNE 2008 UNTIL JUNE 25TH, 2009.

4 CROSS-EXAMINATION RESUMED BY MR. BEARD:

5 A. IT'S TRUE, BUT HE DIDN'T WORK THE FULL-TIME --
6 COULDN'T WORK THE FULL-TIME SHIFTS AT THAT TIME. HE
7 WAS ASKING TO LET GO EARLIER, AND HE STILL HAD
8 SYMPTOMS AT THAT TIME, AND IT WAS DIFFICULT FOR HIM
9 TO WORK UNTIL HE GOT TO THE PULMONOLOGIST AND GOT
10 TREATMENT.

11 Q. SO WAIT A MINUTE, THEN. AM I NOW HEARING FOR THE
12 FIRST TIME THAT HE'S CLAIMING SOMEWHERE BETWEEN JUNE
13 OF 2008 AND JUNE OF 2009, HE WAS PARTIALLY DISABLED
14 FROM WORK?

15 A. NOT EXACTLY, BECAUSE HE WAS ASKING TO LEAVE -- IF HE
16 CAN LEAVE EARLIER IF HE DID THE JOB NORM -- IF HE
17 DID HIS NORM, SO FOREMAN COULD LET HIM GO TWO HOURS
18 EARLIER INSTEAD OF STAYING ALL THE WAY 'TIL THAT
19 SHIFT IS OVER.

20 Q. IF ALL OF THAT IS TRUE, MR. GUL, WHY IN THE WORLD,
21 THEN, WEREN'T YOU GOING TO THE DOCTOR BETWEEN JUNE
22 OF 2008 AND JUNE OF 2009 BECAUSE YOU HAD GROUP
23 MEDICAL INSURANCE AVAILABLE TO YOU?

24 A. BECAUSE THE DOCTORS HE WENT BEFORE DIDN'T HELP HIM
25 REALLY WITH THIS PROBLEM, AND SO HE KEPT WORKING AND

- 1 TRYING TO FIGHT OFF THAT PROBLEM, ITSELF -- HIMSELF.
- 2 Q. YOU WERE IN THE UNION AT KOHLER, WEREN'T YOU,
- 3 MR. GUL?
- 4 A. PROBABLY, YES. HE DOESN'T KNOW EXACTLY.
- 5 Q. DID YOU PAY DUES TO BE IN THE UNION?
- 6 A. HE THINKS THAT IT WAS TAKEN FROM THE CHECK.
- 7 Q. DID YOU EVER COMPLAIN TO ANYONE IN THE UNION ON YOUR
- 8 BEHALF ABOUT ANY OF THESE THINGS YOU'RE NOW CLAIMING
- 9 AS WORKERS' COMPENSATION, EVER?
- 10 A. HE ONLY SAID -- TALKED TO FOREMAN, BUT NOT BETWEEN
- 11 UNION LEADERS, 'CAUSE HE DIDN'T FEEL THAT -- DIDN'T
- 12 KNOW THAT HE NEEDS TO, OR SHOULD HE.
- 13 Q. YOU PERSONALLY WENT TO DR. NOWATKA IN AUGUST OF 2009
- 14 AND ASKED HER TO REFER YOU TO A PULMONARY SPECIALIST
- 15 EVEN THOUGH SHE HAD ADVISED YOU SHE DIDN'T BELIEVE
- 16 YOUR PROBLEM WAS PULMONARY, CORRECT?
- 17 A. NOT CORRECT. HE DIDN'T TALK TO DR. NOWATKA ABOUT
- 18 IT. IT WAS ANOTHER DOCTOR WHO WAS IN THE OFFICE,
- 19 WITH WHOM HE TALKED ABOUT AND FINALLY GOT REFERRED.
- 20 Q. YOU WERE AWARE THAT DR. NOWATKA DID NOT BELIEVE YOUR
- 21 PROBLEMS WERE RELATED TO YOUR LUNGS, CORRECT?
- 22 A. BY HIS OPINION, YES.
- 23 Q. AND -- I'M SORRY.
- 24 A. HE SAID HE DOESN'T KNOW WHAT DOCTORS THINK.
- 25 Q. OKAY. AND EVEN THOUGH YOU WERE MENTIONING LUNGS TO

1 HER, ACCORDING TO HER REPORT AND ACCORDING TO THE
2 EVIDENCE THAT'S BEEN SUBMITTED, YOU NEVER ONE SINGLE
3 TIME MENTIONED ACETIC ACID OR WORKING AT KOHLER AS
4 CAUSING YOUR PROBLEMS OR ANY OF THOSE TYPES OF
5 THINGS TO DR. NOWATKA, DID YOU?

6 A. HE TALKED TO DR. NOWATKA, AND EVEN BROUGHT THE
7 LETTER FROM KOHLER COMPANY, THAT WHICH IS -- WHICH
8 WAS RECOMMENDATION TO CHECK MR. GUL AT
9 PULMONOLOGIST. AND DR. NOWATKA WAS SURPRISED THAT
10 HE WENT AND GOT THIS LETTER FROM KOHLER TO CHECK
11 WITH PULMONOLOGIST.

12 Q. DO YOU HAVE THAT LETTER NOW, OR DOES YOUR LAWYER
13 HAVE THAT LETTER AVAILABLE FOR THIS HEARING?

14 A. IT SHOULD BE AT HIS LAWYER'S, YES, SIR.

15 Q. SO YOUR TESTIMONY IS YOU GAVE YOUR LAWYER A LETTER
16 THAT REPRESENTED THAT KOHLER SENT YOU THERE FOR
17 PULMONARY ISSUES?

18 A. YES, THE WORK -- AT WORK, THEY WERE CHECKING THE
19 BREATHING WITH THE WORKERS, AND AFTER THE CHECKING,
20 THEY GAVE HIM LETTER TO BE CHECKED BY PULMONOLOGIST,
21 AND HE GAVE THAT LETTER TO THE LAWYER AND LAWYER
22 SHOULD HAVE IT.

23 Q. IN FACT, IN JUNE OF 2009, YOU HAD A PULMONARY
24 FUNCTION TEST PERFORMED AT KOHLER THAT WAS
25 COMPLETELY NORMAL, CORRECT?

1 A. WHEN HE WAS DOING TESTS, HE HAD TO DO IT -- RETRY IT
2 SEVERAL TIMES 'CAUSE HE COULDN'T EXHALE COMPLETELY,
3 AND AFTER THAT, HE RECEIVED A LETTER THAT FOUND SOME
4 KIND OF LESION PROBLEMS THAT HE UNABLE TO EXPLAIN
5 WHAT IT IS, BUT IT'S LIKE FIVE MILLIMETERS
6 SOMETHING, AND THAT LETTER RECOMMENDED HIM TO BE
7 CHECKED AT THE PULMONOLOGIST.

8 Q. AND YOU DON'T KNOW WHERE THAT LETTER IS, OTHER THAN
9 YOU GAVE IT TO YOUR LAWYER?

10 A. HE HAS ANOTHER COPY AT HOME, AND LAWYER HAS IT, TOO.

11 Q. OKAY.

12 BY MR. BEARD:

13 JEREMY, DO YOU HAVE A LETTER IN THE RECORD, OR
14 IS THAT SOMETHING I DON'T KNOW ABOUT?

15 BY MR. DANTIN:

16 HANG ON. WE'LL GO OFF THE RECORD FOR A SECOND.

17 BY COMMISSIONER BECK:

18 ALL RIGHT. OFF THE RECORD.

19 (OFF THE RECORD)

20 BY COMMISSIONER BECK:

21 MR. BEARD?

22 CROSS-EXAMINATION RESUMED BY MR. BEARD:

23 Q. MR. GUL, WE'VE HAD DISCUSSIONS WITH YOUR ATTORNEY
24 AND WITH MY CLIENTS ABOUT THE LETTER YOU'RE
25 REFERRING TO, AND IT'S MY UNDERSTANDING THAT LETTER

1 INDICATES THAT YOU HAD A CHEST X-RAY, NOT A
2 PULMONARY FUNCTION TEST, A CHEST X-RAY PERFORMED
3 THAT SHOWED SOME SORT OF NODULE OR PROBLEM WRONG
4 WITH YOUR CHEST THAT HAD NOTHING TO DO WITH WORKING
5 AT KOHLER; IS THAT NOT YOUR UNDERSTANDING OF WHAT
6 THAT LETTER SAID?

7 A. BOTH TESTS WERE DONE IN THE SAME DAY, X-RAY PLUS
8 SPIROMETER TEST, AND THAT'S WHAT HE'S SAYING, AND HE
9 COULDN'T EXHALE COMPLETELY AND HAD TO DO IT A FEW
10 TIMES, AND THE LETTER SAID THAT HE NEEDED TO BE
11 CHECKED BY PULMONOLOGIST. HE SHOWED THAT LETTER TO
12 DR. NOWATKA AND DR. NOWATKA WAS SURPRISED, BUT
13 THAT'S HOW HE REMEMBERS IT.

14 Q. OKAY. AND DESPITE THE REPRESENTATION THAT'S BEEN
15 MADE BY YOUR COUNSEL DURING OUR OFF THE RECORD, THAT
16 THAT'S NOT WHAT THE REPORT SAYS, YOU DISAGREE WITH
17 THAT?

18 **BY THE INTERPRETER:**

19 CAN YOU REPEAT THAT QUESTION.

20 **BY MR. BEARD:**

21 SURE.

22 **BY THE INTERPRETER:**

23 I DIDN'T HEAR IT.

24 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

25 Q. WE HAD A REPRESENTATION THAT THE REPORT INDICATES

1 THAT THERE WAS A NODULE ON HIS CHEST THAT WAS NOT,
2 IN FACT, RELATED TO PULMONARY FUNCTION STUDIES BUT
3 RELATED TO A CHEST X-RAY, AND YOU WERE SUPPOSED TO
4 SEE YOUR FAMILY DOCTOR FOR THAT REASON; IS THAT NOT
5 CORRECT?

6 A. HE'D LIKE TO LOOK AT THAT LETTER HIMSELF, TOO.

7 BY MR. BEARD:

8 CAN I?

9 BY COMMISSIONER BECK:

10 ABSOLUTELY.

11 BY MR. BEARD:

12 COMMISSIONER, I'M SHOWING HIM A DOCUMENT THAT I
13 JUST RECEIVED FROM HIS ATTORNEY.

14 CROSS-EXAMINATION RESUMED BY MR. BEARD:

15 Q. IS THIS THE LETTER AND THE CHEST X-RAY YOU'RE
16 TALKING ABOUT?

17 A. YES.

18 Q. OKAY. IS THIS THE LETTER THAT YOU'RE TALKING ABOUT?

19 A. PROBABLY.

20 Q. WHERE IN THIS LETTER DOES IT SAY YOU NEED TO GO SEE
21 A PULMONARY DOCTOR?

22 A. THAT'S WHAT HE THOUGHT -- THAT ADDITIONAL REVIEW IS
23 NEEDED, THAT'S WHAT HE THOUGHT -- HE THOUGHT THAT
24 THAT WAS FOR SPECIALIST.

25 Q. ALL RIGHT. OKAY.

1 A. AND HE TRIED TO GET NOWATKA -- DR. NOWATKA TO REFER
2 HIM TO SPECIALIST PULMONOLOGIST, BUT HE REFERRED HIM
3 TO CARDIOLOGIST REPEATEDLY INSTEAD.

4 Q. BECAUSE THIS LETTER SAYS YOU WERE BEING REFERRED TO
5 DR. NOWATKA, NOT TO A PULMONARY SPECIALIST, CORRECT?

6 A. YES. OKAY.

7 Q. AND DR. NOWATKA NEVER THOUGHT YOU NEEDED TO SEE A
8 PULMONARY SPECIALIST; ISN'T THAT CORRECT?

9 A. BY RECORDS, IT'S TRUE, BUT HIS COMPLAINTS,
10 DR. NOWATKA IGNORED.

11 Q. AGAIN, HE DIDN'T ANSWER MY QUESTION. I DON'T CARE
12 WHAT YOUR OPINION OF DR. NOWATKA'S REPORT IS. WHAT
13 I CARE ABOUT IS, ISN'T IT TRUE DR. NOWATKA DID NOT
14 BELIEVE YOU NEEDED TO SEE A PULMONARY SPECIALIST?

15 **BY MR. DANTIN:**

16 COMMISSIONER, JUST -- I WOULD POINT OUT AGAIN,
17 I DON'T THINK HE CAN TESTIFY AS TO WHAT SHE BELIEVED
18 OR WHAT HER OPINION WAS ABOUT WHO HE NEEDED TO SEE.
19 HE CAN ANSWER WHETHER SHE REFERRED HIM TO A
20 PULMONOLOGIST, BUT THAT WOULD BE THE EXTENT THAT HE
21 CAN TESTIFY TO.

22 **BY COMMISSIONER BECK:**

23 AGAIN, HE CAN ALWAYS SAY "I DON'T KNOW," MR.
24 DANTIN.

25 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

1 A. YES.

2 BY MR. BEARD:

3 COMMISSIONER, IS THERE ANY WAY WE CAN GET A
4 COPY OF THIS MADE JUST TO BE SUBMITTED? I'D LIKE TO
5 OFFER THIS AS AN EXHIBIT FOR THE DEFENDANTS.

6 BY COMMISSIONER BECK:

7 MR. DANTIN?

8 BY MR. DANTIN:

9 NO OBJECTION.

10 BY COMMISSIONER BECK:

11 IS THAT -- HOLLY, WHAT ARE WE ON, 6?

12 BY THE COURT REPORTER:

13 I BELIEVE IT WAS SIX. I THINK THE FLASH DRIVE
14 WAS 5.

15 (WHEREUPON, THE ABOVE-DESCRIBED DOCUMENT WAS MARKED
16 DEFENDANT'S EXHIBIT NO. 6.)

17 BY THE COURT REPORTER:

18 IT'S JUST ONE?

19 BY COMMISSIONER BECK:

20 JUST ONE EXHIBIT. AND I'LL GET A COPY FOR BOTH
21 COUNSEL.

22 BY MR. BEARD:

23 OKAY. THANK YOU, COMMISSIONER.

24 CROSS-EXAMINATION RESUMED BY MR. BEARD:

25 Q. EARLIER, MR. GUL, YOU TESTIFIED WHEN WE TALKED ABOUT

1 THE M.R.I. SCAN TO YOUR BRAIN, THAT THE REASON YOU
2 WERE SENT FOR THAT SCAN BY DR. FELDMAN OF ALL PEOPLE
3 WAS BECAUSE OF LIGHTHEADEDNESS AND THE DIZZINESS; IS
4 THAT CORRECT?

5 A. YES.

6 Q. AREN'T THOSE THE EXACT SAME SYMPTOMS THAT YOU'D BEEN
7 COMPLAINING ABOUT ALL ALONG, WELL BACK BEFORE THERE
8 WERE ANY ASTHMA MEDICATIONS INVOLVED?

9 BY THE INTERPRETER:

10 CAN YOU REPEAT THE QUESTION?

11 BY MR. BEARD:

12 SURE.

13 CROSS-EXAMINATION RESUMED BY MR. BEARD:

14 Q. AREN'T THOSE SYMPTOMS, LIGHTHEADEDNESS AND
15 DIZZINESS, THE EXACT SAME SYMPTOMS YOU HAD
16 COMPLAINED ABOUT WAY BACK IN 2008 BEFORE YOU EVER
17 WENT ON ANY ASTHMA MEDICATIONS?

18 A. NOT EXACTLY. IN HIS UNDERSTANDING, HIS SYMPTOMS,
19 OTHER SYMPTOMS, SUBSIDED WHEN HE STARTED TO USE
20 MEDICATIONS. IT WAS ONE OF THE SIDE-EFFECTS OF THE
21 MEDICATION THAT HE WAS TRYING -- HE WAS TAKING.

22 Q. WELL, WHAT WAS CAUSING THE PROBLEMS WITH
23 LIGHTHEADEDNESS AND DIZZINESS BACK IN 2008, BEFORE
24 YOU EVER WENT ON ANY MEDICATIONS?

25 A. DOESN'T KNOW.

1 Q. YOU KNOW THE ANSWER REALLY IS THE SIDE EFFECTS FROM
2 THE MEDICATIONS YOU WERE TAKING THAT YOU BROUGHT
3 WITH YOU OVER HERE; ISN'T THAT CORRECT?

4 A. HE FEELS THAT WHEN MEDICATION WAS CHANGED, THOSE
5 SYMPTOMS WENT AWAY, SO MEDICATION HELPED HIM WITH
6 THAT.

7 Q. WELL, IF THAT'S TRUE, THEN, MR. GUL, YOU JUST,
8 AGAIN, HAVE COMPLICATED THIS CASE A LITTLE BIT. WHY
9 IN THE WORLD WOULD DR. FELDMAN SEND YOU FOR AN
10 M.R.I. OF YOUR BRAIN IN 2010 IF YOUR SYMPTOMS HAD
11 GONE AWAY? THAT MAKES NO SENSE.

12 A. INITIALLY, HE WAS TAKING ANOTHER DOSE OF THE
13 MEDICATION, 500, AND IT TOOK TIME TO ADJUST TO IT,
14 AND WHEN THE DOSE WAS CHANGED, THEN HE STARTED TO
15 FEEL BETTER.

16 Q. YOU NEVER EXPLAINED TO DR. FELDMAN THE PROCESS OF
17 THE ACETIC ACID AT KOHLER, DID YOU?

18 A. HE SHOWED THE DOCTOR THE NAME OF THE ACID, TELL THE
19 NAME OF THE ACID THAT HE WORKS WITH.

20 Q. YOU NEVER TOLD DR. FELDMAN THAT YOU HAD MOVED INTO
21 AN AREA WHERE YOU NO LONGER WORKED WITH ACETIC ACID
22 IN FEBRUARY OR MARCH OF 2009, AND, IN FACT, YOU
23 DIDN'T TELL DR. FELDMAN THAT YOU HAD NO EXPOSURE TO
24 ANYTHING AFTER JULY THE 20TH, 2009, DID YOU?

25 BY THE INTERPRETER:

1 WHAT WAS THE FIRST DATE, SIR?

2 BY MR. BEARD:

3 FEBRUARY OR MARCH OF 2009.

4 CROSS-EXAMINATION RESUMED BY MR. BEARD:

5 A. HE DOESN'T UNDERSTAND YOUR QUESTION BECAUSE WHEN HE
6 WENT TO DR. FELDMAN, HE ALREADY DIDN'T WORK.

7 Q. CORRECT. YOU DIDN'T EXPLAIN ANY OF THAT TO DR.
8 FELDMAN, DID YOU?

9 A. HE TOLD THE DOCTOR ABOUT THIS ACID AND PROBLEMS WITH
10 HEALTH, AND DOCTOR FAXED TO WORK THE EXCUSE FOR HIM
11 NOT TO WORK ANY LONGER.

12 Q. WHY WOULD THE DOCTOR FAX AN EXCUSE TO WORK FOR YOU
13 NOT TO WORK IF YOU HAD NOT BEEN TO WORK SINCE JULY
14 20TH, 2009, SOME TWO MONTHS BEFORE YOU EVEN SAW HIM?

15 A. BECAUSE BY DOCUMENTS, HE WAS NOT TERMINATED YET. HE
16 WAS ACCOUNTED AS A WORKER AT THE TIME ---

17 Q. WELL, -- I'M SORRY.

18 A. --- AND CONSIDERED TO BE A WORKER.

19 Q. MY POINT IS, MR. GUL, YOU DIDN'T TELL DR. FELDMAN
20 YOU HAD NOT BEEN WORKING AT KOHLER FOR OVER TWO
21 MONTHS, DID YOU?

22 A. WHEN HE TALKED TO DR. FELDMAN, HE TOLD HIM IN
23 GENERAL WHAT'S GOING ON, BUT HE DOESN'T REMEMBER
24 DISCUSSING PARTICULAR DETAILS.

25 Q. TO YOUR KNOWLEDGE, DID DR. FELDMAN EVER GO OUT TO

- 1 KOHLER AND INVESTIGATE THE PREMISES OR TRY TO FIND
2 OUT ANYTHING ABOUT THE ACETIC ACID PROCESS?
- 3 A. HE DOESN'T KNOW. CANNOT ANSWER THAT QUESTION.
- 4 Q. OKAY. YOU KNEW THAT THERE WAS A PROCESS AT KOHLER
5 WHERE THEY POSTED OTHER TYPES OF JOBS THROUGHOUT THE
6 PLANT, DIDN'T YOU?
- 7 A. NO.
- 8 Q. YOU DIDN'T KNOW THAT?
- 9 A. NO.
- 10 Q. OKAY. YOU JUST STOPPED SHOWING UP FOR WORK AT
11 KOHLER ON JULY THE 20TH, 2009. OTHER THAN ONE DAY
12 WHEN YOU WENT BACK FOR FOUR HOURS, YOU JUST STOPPED
13 GOING TO WORK; ISN'T THAT CORRECT?
- 14 A. YES.
- 15 Q. YOU TESTIFIED THAT THE MEDICATIONS THAT YOU TAKE
16 HAVE MADE YOU BETTER OVER TIME; YET, FOR TWO YEARS
17 YOU WERE ABLE TO WORK, EVEN THOUGH YOU DIDN'T GET A
18 JOB, AND THEN SUDDENLY EVEN THOUGH YOU'RE TAKING THE
19 MEDICATIONS, NOW ALL OF A SUDDEN, YOU'RE CLAIMING TO
20 BE TOTALLY AND PERMANENTLY DISABLED; IS THAT
21 CORRECT, EVEN THOUGH YOU HAVEN'T BEEN AROUND ACETIC
22 ACID IN NOW SIX YEARS?
- 23 A. YES.
- 24 Q. YOU MENTIONED THE SIDE EFFECTS OF MEDICATIONS AND
25 THINGS OF THAT NATURE. YOU ADMIT THAT YOU AT ONE

1 TIME WERE TAKING THE MEDICATION PROPRANOLOL, ALSO
2 KNOWN AS INDERAL, CORRECT, YOU DID TAKE THAT?

3 A. ONE OR TWO TIMES AND IT DIDN'T HELP HIM.

4 Q. AND ARE YOU AWARE THAT THE SIDE EFFECTS OF THAT
5 MEDICATION ARE IRREGULAR HEARTBEAT, CHEST PAIN,
6 SHORTNESS OF BREATH WITH MILD EXERTION,
7 BRONCHOSPASMS, LIGHTHEADEDNESS, AND YOU BECOME VERY
8 TIRED?

9 A. HE UNDERSTANDS THAT EVERY MEDICATION HAS SIDE
10 EFFECTS, AND HE WAS PRESCRIBED TEN DIFFERENT
11 MEDICATIONS FOR HEART. NONE OF THEM WORKED. NONE
12 OF THEM HE TOOK CONSISTENTLY UNTIL FINALLY,
13 CARDIOLOGIST AGREES THAT HE DOESN'T HAVE HEART
14 PROBLEMS.

15 Q. THE INDERAL, OR PROPRANOLOL, THAT YOU WERE
16 PRESCRIBED OR THAT YOU HAD, THAT IS SOMETHING THAT
17 YOU GOT ON YOUR OWN LONG BEFORE ANY OF THESE
18 BREATHING PROBLEMS, CORRECT? BECAUSE THE FIRST TIME
19 YOU WENT TO THE DOCTOR, IT SAYS YOU WERE ALREADY ON
20 THAT PRESCRIPTION.

21 **BY THE INTERPRETER:**

22 FIRST TIME TO WENT TO WHAT DOCTOR?

23 **BY MR. BEARD:**

24 ANY DOCTOR THAT WE'RE HERE FOR IN 2008.

25 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

1 A. MANY DOCTORS PRESCRIBED HIM DIFFERENT MEDICATIONS.
2 AGAIN, NONE OF THEM HE TOOK CONSISTENTLY, AND HE WAS
3 NOT ON PRESCRIPTION OF PROPRANOLOL BEFORE HE WENT TO
4 ANY DOCTOR HERE.

5 Q. OKAY. SO WHEN THAT'S WHAT IS IN THE REPORT, AGAIN,
6 HE DISAGREES WITH THAT REPORT, AS WELL?

7 A. MAYBE IT IS WRITTEN SOMEWHERE, BUT HE DID NOT TAKE
8 ANY OF THE HEART MEDICATIONS CONSISTENTLY. HE WAS
9 PRESCRIBED SEVERAL OF THEM, CARVAVOL(phonetic),
10 PROPRANOLOL, AND OTHERS, AND NONE OF THEM HE TOOK
11 CONSISTENTLY ON A PERMANENT BASIS BECAUSE NONE OF
12 THEM HELPED HIM AT ALL. AND EVEN ONE TIME, DR.
13 NOWATKA PRESCRIBED MEDICATION AGAINST DEPRESSION FOR
14 HIM, BUT HE DIDN'T TAKE IT. ANOTHER CARDIOLOGIST
15 POINTED OUT THAT HE WAS PRESCRIBED ANTIDEPRESSANT,
16 AND HE DIDN'T TAKE THAT ANTIDEPRESSANT EITHER.

17 Q. AND AGAIN, I'M REALLY TRYING TO BE AS RESPECTFUL AS
18 I CAN TO MR. GUL WHEN I ASK THIS QUESTION. WE'VE
19 ALREADY GONE THROUGH THIS ABOUT TEN OR FIFTEEN
20 TIMES. I DIDN'T ASK YOU ABOUT ANY OF THAT. MY
21 QUESTION WAS, DO YOU DISPUTE THE DOCTOR REPORTING
22 THAT YOU WERE ALREADY ON A PRESCRIPTION FOR
23 PROPRANOLOL WHEN YOU CAME TO THE DOCTOR IN 2008?

24 **BY THE INTERPRETER:**

25 OKAY. I HAD TO ASK TWICE, TOO, 'CAUSE HE KEPT

1 SAYING ABOUT THE DOCTORS WHO WERE HERE. I ASK HIM
2 SPECIFICALLY IF HE GOT ANY PRESCRIPTION, AS YOU
3 SAID, BEFORE HE WENT TO ANY DOCTOR HERE IN UNITED
4 STATES AND THE QUESTION ABOUT PROPRANOLOL
5 PRESCRIPTION, AND THE ANSWER IS, NO, HE HAD NOT
6 PRESCRIPTION FOR PROPRANOLOL FROM ANY DOCTOR BEFORE
7 HE CAME TO UNITED STATES.

8 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

9 Q. OKAY. I'M NOW LOOKING AT THE FULL COMMISSION ORDER
10 THAT IS THE LAW OF THE CASE AS TO A LOT OF WHAT
11 WE'RE HERE ABOUT. IT'S AN UNAPPEALED FROM ORDER.
12 FINDING OF FACT NUMBER 4 SAYS THAT THE CLAIMANT, A
13 NATIVE OF RUSSIA, HAS BEEN TAKING RUSSIAN
14 MEDICATIONS FOR A NUMBER OF YEARS PRIOR TO HIS
15 WORKER'S COMPENSATION CLAIM; IS THAT TRUE OR FALSE?

16 **BY MR. DANTIN:**

17 LET ME OBJECT QUICKLY. THAT IS NOT THE LAW OF
18 THE CASE BECAUSE WE'RE *DE NOVO*.

19 **BY COMMISSIONER BECK:**

20 MR. BEARD? /

21 **BY MR. BEARD:**

22 IT IS THE LAW OF THE CASE AS TO CERTAIN
23 UNAPPEALED FROM FACTS. THOSE ARE UNAPPEALED FROM
24 FACTS, AND IT IS THE LAW OF THE CASE. WE ARE *DE*
25 *NOVO* ON CERTAIN ISSUES OF M.M.I. WE'RE *DE NOVO* ON

1 CAUSATION. WE'RE NOT *DE NOVO* AS TO THE FACTS THAT
2 WERE FOUND BY THIS FULL COMMISSION.

3 **BY MR. DANTIN:**

4 THIS IS REMANDED AS A COMPLETE REDO, AND I HAVE
5 MY OWN ISSUES WITH WHETHER THAT WAS APPROPRIATE, BUT
6 MR. -- THEY -- CAN -- I'M SORRY, YOU WERE
7 TRANSLATING. OKAY. I THOUGHT YOU WERE HAVING
8 ANOTHER CONVERSATION. MY POINT IS, WE'RE HERE ON A
9 COMPLETE REDO, IN ESSENCE, AND YOU'RE, AS I
10 UNDERSTAND IT, AT LIBERTY TO MAKE WHATEVER FINDINGS
11 OF FACT YOU WANT. I DON'T THINK THERE IS ANY LAW OF
12 THE CASE.

13 **BY COMMISSIONER BECK:**

14 ALL RIGHT. LET ME SEE THE LAWYERS OUTSIDE,
15 PLEASE.

16 (OFF THE RECORD)

17 **BY COMMISSIONER BECK:**

18 MR. BEARD?

19 **BY MR. BEARD:**

20 COMMISSIONER, I WITHDRAW MY LAST QUESTION AS IT
21 PERTAINS TO THE FULL COMMISSION ORDER.

22 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

23 Q. BUT YOU NEVER EXPLAINED TO DR. FELDMAN THE PROCEDURE
24 OF HAVING LEFT WORKING IN THE AREAS WHERE YOU WERE
25 EXPOSED TO ACETIC ACID CONSTANTLY TO THE ACETIC ACID

1 ISSUE WHEN YOU WENT TO THE KITCHEN SINK AREA; IS
2 THAT CORRECT? YOU NEVER EXPLAINED THAT TO DR.
3 FELDMAN?

4 A. THAT'S CORRECT. HE DIDN'T EXPLAIN THE DETAILS AND
5 DOESN'T REMEMBER EXACTLY.

6 Q. OKAY. HAVE YOU SEEN THE SURVEILLANCE VIDEOS?

7 A. YES.

8 Q. IS IT YOU?

9 A. YES.

10 Q. OKAY. SO EVERYTHING THAT IS ON THAT SURVEILLANCE
11 VIDEO IS, IN FACT, YOU PERFORMING WHATEVER IS BEING
12 PERFORMED ON THE VIDEO, CORRECT?

13 A. YES.

14 Q. YOU WASHED YOUR CAR OR YOUR VAN IN ONE OF THESE
15 PHOTOS ON A NICE, PRETTY SPRING DAY; IS THAT
16 CORRECT?

17 A. YES.

18 Q. YOU DIDN'T HAVE ANY PROBLEMS DOING THAT EITHER, DID
19 YOU?

20 A. WHAT PROBLEM ARE YOU ASKING ABOUT?

21 Q. ANY PROBLEM. YOU DIDN'T HAVE ANY PROBLEMS, DID YOU?

22 A. USUALLY THE KIDS DO IT, BUT THIS TIME HE DID IT
23 HIMSELF.

24 Q. SO WE WERE LUCKY THAT OUR PRIVATE INVESTIGATOR, ON
25 THE ONE OR COUPLE OF DAYS THAT THEY EVER WENT OUT TO

1 SEE YOU, CAUGHT YOU WASHING THE VAN INSTEAD OF YOUR
2 CHILDREN?

3 A. HE DOESN'T DENY THAT HE WASHED THE CAR. IT WAS --
4 HE HAD DIFFICULTY, BUT HE DID IT.

5 Q. YOU LIVE IN THE SPARTANBURG AREA?

6 A. INMAN.

7 Q. OKAY. A LOT OF POLLEN IN INMAN?

8 A. THE POLLEN IS EVERYWHERE.

9 Q. AND, IN FACT, THAT'S WHY YOU WERE WASHING YOUR VAN,
10 CORRECT, BECAUSE IT WAS COVERED WITH POLLEN?

11 A. MOST DIRT WAS ON RIMS, WHEEL RIMS, AND THAT -- ON
12 THE VIDEO IT SHOWS THAT HE WAS MOSTLY WASHING THE
13 WHEEL RIMS.

14 Q. OKAY. YOU ALSO WERE WORKING IN A FIRE PIT OR IN A
15 FIRE GRILL OR SOME SORT OF FIRE AND SMOKE COMING UP
16 INTO YOUR FACE, CORRECT?

17 A. HE HAD A BIRTHDAY AT THAT DAY, HIS OWN BIRTHDAY, AND
18 HIS WIFE WAS AT WORK, SO THE KIDS ASKED HIM TO GRILL
19 SOME MEAT, AND HE STARTED THE FIRE, AND THEN WHEN --
20 IN A SEPARATE PLACE, IN THE BARREL, THE FIRE, AND
21 WHEN IT WAS FINISHED AND THE RED COALS APPEARED,
22 THEN HE TRANSFERRED THOSE RED COALS TO THE GRILL TO
23 DO THE GRILLING, AND HE TRIED TO GET AWAY FROM THE
24 SMOKE, AND HE DOESN'T DISPUTE THAT HE DID IT. HE
25 DID IT FOR KIDS ON HIS OWN BIRTHDAY.

1 Q. ALL RIGHT. YOU WERE ALSO SEEN IN SOME OF THE VIDEO
2 DRIVING A FOUR-WHEELER. DO YOU OWN A FOUR-WHEELER?

3 A. YES.

4 Q. WERE YOU RIDING AND DRIVING AROUND ON A FOUR-
5 WHEELER?

6 A. A COUPLE TIMES AROUND THE HOUSE, YES.

7 Q. AGAIN, ALL WHEN OUR PRIVATE INVESTIGATOR JUST
8 HAPPENED TO BE OUT AT YOUR PLACE TAKING PHOTOS,
9 CORRECT?

10 A. HE DOESN'T KNOW WHEN THE PRIVATE INVESTIGATOR WAS
11 WATCHING HIM.

12 Q. OKAY. YOU ALSO -- BEHIND YOUR HOUSE THERE ARE FOUR
13 OR FIVE WHAT APPEAR TO BE RELATIVELY NEWER MODEL
14 MOTOR VEHICLES, AUTOMOBILES; WHAT ARE THEY?

15 A. PERSONALLY, HE HAS A VAN, BUT THREE OLDER KIDS
16 BOUGHT THE CARS FOR THEMSELVES, AND THEY'RE FIXING
17 IT AND DRIVING IT. THAT'S WHAT THOSE CARS ARE.

18 Q. NONE OF THE VEHICLES HAVE LICENSE PLATES ON THEM IN
19 THE VIDEO TAPE. WHY WOULD THEY BE DRIVING AROUND
20 VEHICLES WITHOUT LICENSE PLATES?

21 A. THOSE CARS WERE BOUGHT IN AUCTION. THOSE ARE
22 VEHICLES AFTER COLLISIONS. THEY ARE DAMAGED. SO
23 WHAT THEY'RE TRYING TO DO TO SAVE MONEY AND FIX IT,
24 AND THEN WILL REGISTER AND DRIVE IT.

25 Q. YOU DO THE WORK ON THOSE VEHICLES YOURSELF, DON'T

1 YOU? YOU'RE A MECHANIC.

2 A. HE'S NOT MECHANIC. HE NEVER STUDIED TO BE MECHANIC.
3 HE KNOWS SOME STUFF AND HE CAN SOMETIMES ADVISE THE
4 KIDS WHAT TO DO.

5 Q. BUT YOU DON'T DO ANY OF THAT WORK YOURSELF?

6 A. HE ADVISE THE KIDS WHAT TO DO AND THEY LEARN THE
7 REST ON INTERNET.

8 Q. YOU TOLD DR. FELDMAN THAT SOME SIGNIFICANT ONE-TIME
9 EXPOSURE IS WHAT CAUSED YOUR PROBLEMS AT KOHLER;
10 ISN'T THAT TRUE?

11 A. HE DIDN'T TELL HIM THAT IT WAS ONE-TIME EXPOSURE.
12 IN FACT, HE SAID THAT HE TOLD -- DR. FELDMAN ASKED
13 HIM IF HE WORKS WITH ANY CHEMICALS. HE TOLD HIM
14 WHAT CHEMICAL HE WORKS WITH, AND THEY -- HE DOESN'T
15 THINK THAT THEY DISCUSSED MINOR DETAILS OF MANY-
16 TIMES EXPOSURE OR ONE-TIME EXPOSURE.

17 Q. SO YOU'RE NOT AWARE THAT DR. FELDMAN WAS OF THE
18 OPINION THAT, IN FACT, HE THOUGHT THAT YOU HAD
19 ADVISED HIM YOU HAD HAD A SINGLE SPECIFIC EPISODE
20 THAT CAUSED WHY HE WAS SEEING YOU? YOU'RE NOT AWARE
21 THAT THAT WAS HIS OPINION OR UNDERSTANDING?

22 BY MR. DANTIN:

23 BEFORE YOU ANSWER, I'M GOING TO OBJECT TO THE
24 CHARACTERIZATION OF THE TESTIMONY. I THINK DR.
25 FELDMAN'S DEPOSITION TESTIMONY WILL SPEAK TO THAT.

1 BY COMMISSIONER BECK:

2 MR. BEARD?

3 BY MR. BEARD:

4 I MEAN, I THINK I SAID IT CORRECTLY. I THINK
5 IT DOES SPEAK TO THAT. I AGREE THAT IT SPEAKS TO
6 THAT. I'M JUST ASKING HIM, IS HE AWARE THAT THAT'S
7 DR. FELDMAN'S OPINION.

8 CROSS-EXAMINATION RESUMED BY MR. BEARD:

9 A. HE CANNOT ANSWER FOR DR. FELDMAN. IF -- YOU WOULD
10 HAVE TO ASK DR. FELDMAN ABOUT THAT OR LOOK IN THE
11 RECORDS.

12 Q. OKAY. WELL, WE DID ASK DR. FELDMAN. THAT'S WHY I
13 ASKED HIM THE QUESTION. WE HAVE DR. FELDMAN'S
14 TESTIMONY. YOU BELIEVE THAT YOUR HIGH BLOOD
15 PRESSURE AND YOUR HEARTBEAT ISSUES ARE ALL RELATED
16 TO YOUR WORK AT KOHLER; IS THAT CORRECT?

17 A. HE CANNOT ANSWER THAT QUESTION, BUT HE ONLY BELIEVES
18 THAT THE ACID WHAT CAUSED HIS ASTHMA.

19 Q. IS IT YOUR TESTIMONY THAT YOU ASKED BOTH CHARLIE
20 CLAYTON AND RODNEY HORNE FOR A RESPIRATOR?

21 A. YES.

22 Q. AND I HEARD YOU, EARLIER, SAY YOU DIDN'T READ THE
23 DOCTOR DEPOSITIONS, BUT YOU READ THE OTHER
24 DEPOSITIONS. YOU READ CHARLIE AND RODNEY'S
25 DEPOSITIONS, CORRECT?

1 A. YES, A WHILE AGO.

2 Q. AND YOU KNOW THAT THEY BOTH DENY WHAT YOU JUST SAID.
3 THEY DENY THAT YOU TOLD THEM.

4 A. YES, HE KNOWS ABOUT IT, AND IT'S -- HE'S NOT
5 SURPRISED.

6 Q. OKAY. AND YOU ALSO KNOW THAT THEY DENY THAT YOU
7 ASKED THEM FOR A RESPIRATOR, CORRECT?

8 A. HE ASKED ABOUT RESPIRATOR, BUT IF THEY REFUSED, THEY
9 -- THAT'S WHAT THEY SAY. HE CANNOT CONTROL THEM.

10 Q. YOU CLAIMED THAT YOU THEN WENT AND PERSONALLY BOUGHT
11 ONE OF THOSE DUST FILTER MASKS FROM LOWE'S ON YOUR
12 OWN, CORRECT?

13 A. YES.

14 Q. ISN'T IT TRUE, MR. GUL, THAT THOSE MASKS THAT YOU
15 WENT AND ALLEGEDLY PURCHASED FROM LOWE'S ARE
16 AVAILABLE TO ANY EMPLOYEE ALL OVER KOHLER? THEY'RE
17 LOCATED ALL OVER THE PLACE AT KOHLER; ISN'T THAT
18 TRUE?

19 A. HE DIDN'T -- IN HIS DEPARTMENT, THEY WERE NOT
20 AVAILABLE.

21 Q. THOSE DUST MASKS ARE SITTING RIGHT THERE WHERE THAT
22 55-GALLON DRUM OF ACETIC ACID WAS LOCATED, WEREN'T
23 THEY? THOSE DUST MASKS WERE RIGHT BESIDE THAT.

24 A. HE SAW THE GLOVES, BUT NEVER MASKS.

25 Q. YOU'RE AWARE THAT CHARLIE AND RODNEY BOTH DENY EVER

1 SEEING YOU WEAR A MASK LIKE YOU CLAIM YOU DID,
2 CORRECT?

3 A. YES.

4 Q. YOU NEVER ASKED THE SAFETY MANAGER AT KOHLER, MIKE
5 TOLLESON, YOU NEVER ONCE ASKED HIM FOR A RESPIRATOR,
6 DID YOU?

7 A. HE NEVER ASKED BECAUSE WHEN HE WAS EMPLOYED, HE WAS
8 TOLD THAT ANY QUESTIONS AND CONCERNS THAT HE HAS, HE
9 NEEDS -- HE NEEDS TO ADDRESS TO FOREMAN, FOREMAN
10 WILL ADDRESS TO SUPERVISORS. SO HE DID NOT HAVE
11 AUTHORIZATION TO GO DIRECTLY TO SAFETY MANAGER.
12 THAT'S WHAT, FOR HIS UNDERSTANDING, WERE THE
13 PROCEDURES AT THE KOHLER.

14 Q. DURING THIS PERIOD OF TIME IN 2008, 2009, THE
15 RECORDS SHOW THAT YOU WENT TO THE PLANT NURSE ON
16 FOUR OCCASIONS FOR VARIOUS REASONS. YOU NEVER ONCE
17 MENTIONED TO THE PLANT NURSE THAT YOU HAD A PROBLEM
18 OR THAT YOU HAD ANY KIND OF BREATHING ISSUES OR THAT
19 YOU NEEDED A RESPIRATOR, DID YOU?

20 A. HE WAS -- IT'S TRUE, AND HE WAS SENT TO THE NURSE BY
21 DR. NOWATKA, RECOMMENDED HIM TO CHECK BLOOD
22 PRESSURE, THAT'S WHY HE WENT, AND HE DIDN'T FEEL
23 THAT HE NEEDS TO ASK THE NURSE ABOUT RESPIRATOR,
24 BECAUSE THAT'S WHAT WAS GOING -- HE HAD TO ASK THE
25 SUPERVISOR, NOT THE NURSE -- FOREMAN, NOT THE NURSE.

1 Q. SO I AM CORRECT YOU DIDN'T SAY A WORD TO THE PLANT
2 NURSE EVEN THOUGH YOU SAW HER FOUR OR FIVE TIMES
3 DURING THIS PERIOD OF TIME? YOU NEVER ONCE
4 MENTIONED TO HER BREATHING PROBLEMS AND "I NEED A
5 RESPIRATOR"?

6 A. THAT'S CORRECT, BECAUSE HE WAS SENT TO CHECK BLOOD
7 PRESSURE, AND THAT WAS THE ONLY RECOMMENDATION FROM
8 DOCTOR THAT HE HAD -- HE FOLLOWED, AND HE WAS GIVEN
9 THREE MINUTES, FOUR MINUTES TO DO IT.

10 Q. AND IN YOUR DEPOSITION, YOU ACCUSED THE MEDICAL
11 DEPARTMENT -- YOU ACTUALLY ACCUSED THEM OF LYING
12 ABOUT YOUR BLOOD PRESSURE NUMBERS, AND SO YOU
13 STARTED DOING YOUR OWN BLOOD PRESSURE TESTS, YOU
14 CLAIM; IS THAT CORRECT?

15 A. YES. HE HAD A SMALL UNIT THAT HE -- THE BLOOD
16 PRESSURE MEASURING DEVICE, AND HE SHOWED THE
17 DIFFERENCE BETWEEN THAT DEVICE READING AND THE
18 READING THAT NURSE TOLD HIM.

19 Q. THE LAST SUPERVISOR YOU HAD AT KOHLER, WHEN YOU
20 WORKED IN THE KITCHEN SINK AREA, WAS A GENTLEMAN
21 NAMED DALE HUMPHRIES; IS THAT CORRECT?

22 A. YES, THAT SUPERVISOR WAS -- FOREMAN WAS AT THE
23 SHIFT.

24 Q. AND HE WAS THE FOREMAN OVER THE KITCHEN SINK AREA,
25 WHICH IS THE LAST PLACE YOU WORKED AT THE PLANT,

1 CORRECT?

2 A. HE WAS THE FOREMAN OF PRESSURE CAST NIGHT SHIFT.

3 Q. OKAY. WAS HE THE FOREMAN THAT YOU REPORTED TO?

4 A. YES.

5 Q. AND YOU TESTIFIED IN YOUR DEPOSITION, YOU CLAIM THAT
6 YOU TOLD MR. HUMPHRIES ABOUT YOUR CONDITION, AS
7 WELL; IS THAT CORRECT?

8 A. YES, THAT FOREMAN WAS PRESENT WHEN MR. GUL FELT WEAK
9 AND BAD AT THE WORK, AND HE WAS WITNESSING HOW
10 ANOTHER WORKER HELPED HIM TO GET OUTSIDE AND GET
11 FRESH AIR, AND KIND OF SPLASH THE FACE WITH WATER
12 AND STUFF.

13 Q. WHY DIDN'T YOU CALL MR. HUMPHRIES TO COME IN AND
14 TESTIFY ON YOUR BEHALF IF THAT WAS TRUE?

15 **BY MR. DANTIN:**

16 AGAIN, I'M GOING TO OBJECT. I DON'T THINK HE
17 CAN -- HE NEEDS TO ANSWER THAT. IT WOULD BE
18 ATTORNEY/CLIENT PRIVILEGE ANYWAY, TO THE EXTENT THAT
19 THAT'S OUR TRIAL STRATEGY.

20 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

21 Q. WELL, WERE YOU AWARE THAT MR. HUMPHRIES IS A CLIENT
22 OF THE VERY LAW FIRM THAT REPRESENTS YOU?

23 A. NO, THAT'S -- HE DOESN'T KNOW ANYTHING ABOUT HIM,
24 AND LAST TIME WHEN HE WENT TO WORK ON AUGUST 25TH,
25 AND THAT MR. HUMPHRIES GAVE HIM THIS LETTER THAT

1 RECOMMENDS THE FURTHER EVALUATION, AND THAT IS THE
2 LAST TIME HE SAW HIM, AND HE DOESN'T KNOW ANYTHING
3 MORE ABOUT HIM, AND DOESN'T SAW ANYONE ELSE FROM THE
4 PLANT EXCEPT CHARLIE AND RODNEY DURING DEPOSITIONS.

5 Q. SAY THAT AGAIN.

6 A. HE SAID, SINCE HE LEFT THE PLANT AUGUST 25TH, HE
7 LAST TIME SAW MR. HUMPHRIES, AND BESIDES HIM, HE
8 ONLY SAW CHARLIE AND RODNEY AT THE DEPOSITIONS, AND
9 THAT'S IT.

10 Q. MR. HUMPHRIES IS NOT HERE AND HAS NOT BEEN ASKED TO
11 TESTIFY ON YOUR BEHALF ABOUT WHAT YOU JUST SAID THAT
12 HE SAW; IS THAT CORRECT?

13 A. YES.

14 Q. YOU TESTIFIED TO THIS CASE ON DIRECT AND CROSS TO
15 THIS POINT THAT YOUR HIGH BLOOD PRESSURE PROBLEMS,
16 ALL OF THESE PROBLEMS, STARTED IN 2008; IS THAT
17 CORRECT?

18 A. YES, AROUND THAT TIME.

19 Q. DO YOU RECALL COMING TO THE WORKERS' COMPENSATION
20 COMMISSION IN SPARTANBURG IN 2012 BEFORE A DIFFERENT
21 JUDGE WHO HEARD YOUR WORKER'S COMPENSATION CASE?

22 **BY MR. DANTIN:**

23 JUST A SMALL POINT IN FACT, WE WERE HERE IN
24 COLUMBIA.

25 **BY MR. BEARD:**

1 OKAY.

2 CROSS-EXAMINATION RESUMED BY MR. BEARD:

3 A. YES.

4 Q. THAT HEARING TOOK PLACE IN 2012, CORRECT?

5 A. YES.

6 Q. IN THAT HEARING, YOU WERE ASKED AT PAGE 11, BY YOUR
7 ATTORNEY, I BELIEVE, "HOW LONG HAVE YOU HAD PROBLEMS
8 WITH HIGH BLOOD PRESSURE?" THE ANSWER YOU GAVE WAS,
9 "AROUND FIVE YEARS." LET ME FINISH. JUST
10 NUMERICALLY, THAT WOULD TAKE US BACK TO 2004 -- OR,
11 EXCUSE ME, 2007-ISH. SO WHEN DID THE HIGH BLOOD
12 PRESSURE START?

13 A. HE SAID -- HE ANSWERED AROUND 2008, SO THAT'S --
14 WHAT -- WHAT YOU DON'T UNDERSTAND?

15 Q. YOU'RE ASKING ME WHAT I DON'T UNDERSTAND? WAS THAT
16 WHAT HE SAID?

17 A. DO YOU UNDERSTAND THAT, AROUND 2008, THE ANSWER FOR
18 THAT QUESTION?

19 Q. NO, I UNDERSTOOD 2007, WHEN I DID MY CALCULATION.

20 A. HE DIDN'T SAY, EXACTLY. HE SAID AROUND 2008, BUT
21 THAT'S HIS ANSWER.

22 Q. IS IT YOUR TESTIMONY THAT YOUR SYMPTOMS GET WORSE
23 WITH ANY TYPE OF ACTIVITY, NO MATTER WHAT?

24 A. YES, FROM PHYSICAL EXERTION.

25 Q. OKAY. DID YOU EVER SEE ANY OTHER OF YOUR EMPLOYEES,

1 KOHLER EMPLOYEES, WEARING RESPIRATORS IN THE AREA
2 WHERE YOU WORKED?

3 A. DOESN'T REMEMBER SEEING.

4 Q. AND ARE YOU AWARE OF ANY OTHER EMPLOYEE WHO WORKED
5 IN YOUR AREA HAVING ANY KIND OF ASTHMA LIKE YOU
6 HAVE?

7 A. DOESN'T KNOW.

8 Q. AND MOST OF THE EMPLOYEES THAT YOU WORKED WITH IN
9 THE PRESSURE CAST DEPARTMENT HAD A LOT MORE
10 SENIORITY, HAD BEEN WORKING AT THAT PLANT FOR MANY,
11 MANY YEARS LONGER THAN YOU; IS THAT CORRECT?

12 A. YES.

13 Q. NOW, YOU'VE TESTIFIED HERE TODAY UNDER OATH, MR.
14 GUL, THAT YOU SPECIFICALLY TOLD DR. NOWATKA THAT YOU
15 WERE WORKING AROUND FUMES AND ACID AT THE PLANT THAT
16 MADE YOU SICK; IS THAT YOUR TESTIMONY?

17 A. HE REMEMBERS THAT HE TOLD DR. NOWATKA ABOUT
18 BREATHING PROBLEMS.

19 Q. DID YOU TELL DR. NOWATKA THAT YOU WORKED AROUND
20 FUMES OR ACETIC ACID AT KOHLER THAT YOU THOUGHT WAS
21 CAUSING YOUR BREATHING PROBLEMS?

22 A. HE TOLD THE DR. NOWATKA ABOUT BREATHING PROBLEMS,
23 AND WHEN HE BROUGHT THE LETTER WITH RECOMMENDATION
24 FOR FURTHER EVALUATION OF THE LUNGS, HE ASKS DR.
25 NOWATKA IF THAT WAS CAUSED BY THE ACID FUMES AND HE

1 REMEMBERS DR. NOWATKA SAID THAT HE DOES -- DR.

2 NOWATKA DOESN'T THINK THAT IT SHOULD BE.

3 Q. WELL, I'M GOING TO SHOW YOU YOUR DEPOSITION THAT WE
4 TOOK OF YOU.

5 A. MAYBE. HE SAID HE DOESN'T REMEMBER EXACTLY.

6 Q. WELL, WE'LL CLARIFY IT RIGHT NOW BECAUSE THAT ANSWER
7 IS DIFFERENT THAN THIS ANSWER.

8 **BY COMMISSIONER BECK:**

9 DEFENDANT'S 7.

10 (WHEREUPON, THE ABOVE-DESCRIBED DOCUMENT WAS
11 MARKED DEFENDANT'S EXHIBIT NO. 7.)

12 **BY MR. BEARD:**

13 COMMISSIONER, I'M AT PAGE 13 AND I'M GOING TO
14 START AT LINE NUMBER 16.

15 **CROSS-EXAMINATION RESUMED BY MR. BEARD:**

16 Q. MY QUESTION -- OR, EXCUSE ME, BOB HORNER, MY
17 ASSOCIATE'S QUESTION TO YOU ON THAT DATE IN YOUR
18 DEPOSITION, AND THE DEPOSITION WAS TAKEN ON OCTOBER
19 25TH, 2013, ---

20 A. OKAY.

21 Q. --- WHAT WAS THE ANSWER?

22 A. ___ HE SAID OKAY FROM THE DATE.

23 Q. OKAY. DO YOU REMEMBER THIS GENTLEMAN TAKING YOUR
24 DEPOSITION AT MR. DANTIN'S OFFICE THEN?

25 A. YES.

1 Q. ALL RIGHT. MR. HORNER ASKED YOU THE FOLLOWING
2 QUESTION: HE SAID, "IF YOU WERE AFRAID OF GETTING
3 FIRED BY GOING TO THE MEDICAL DEPARTMENT, IS THERE A
4 REASON YOU DIDN'T GO SEE A DOCTOR OUTSIDE OF THE
5 MEDICAL DEPARTMENT ABOUT THE FUMES?"

6 BY THE INTERPRETER:

7 MEDICAL DEPARTMENT MEANS AT THE PLANT, RIGHT?
8 IS IT MEDICAL DEPARTMENT AT THE PLANT?

9 BY MR. BEARD:

10 YES, SIR.

11 CROSS-EXAMINATION RESUMED BY MR. BEARD:

12 Q. YOUR ANSWER WAS, "I DID. WHEN I STARTED FEELING
13 SICK, THAT'S WHEN I STARTED GOING." MR. HORNER
14 ASKED YOU, "WOULD THAT BE DR. NOWATKA?" YOUR ANSWER
15 WAS, "YES." MR. HORNER ASKED YOU, "DID YOU TELL DR.
16 NOWATKA THAT YOU WERE WORKING AROUND FUMES THAT YOU
17 THOUGHT WERE MAKING YOU SICK?" YOUR ANSWER WAS, "I
18 DON'T REMEMBER. I DID REMEMBER TELLING HER I WAS --
19 I COULDN'T BREATHE. I HAD PROBLEM WITH BREATHING."
20 THE LAST QUESTION THAT MR. HORNER ASKED YOU ABOUT
21 WHAT I'M TALKING ABOUT IS, "DO YOU RECALL EVER
22 TELLING HIM THAT YOU THOUGHT IT WAS RELATED TO YOUR
23 JOB?" YOUR ANSWER WAS, "I DON'T REMEMBER RIGHT NOW.
24 IT WAS A LONG TIME AGO." NOW, MY QUESTION IS THIS,
25 MR. GUL, WE'RE NEARLY A YEAR-AND-A-HALF ALMOST GOING

1 ON TWO YEARS FROM THE TIME OF THIS DEPOSITION,
2 CORRECT?

3 A. YES.

4 Q. AND YOUR ANSWER TODAY IS THAT YOU DID TELL DR.
5 NOWATKA AND YOU TOOK SOME SORT OF FORM AND SOME SORT
6 OF DOCUMENT TO HER ABOUT FUMES AND PROBLEMS WITH
7 YOUR BREATHING AT WORK?

8 A. HE SAYING AS IT WAS IF HE REMEMBERED, HE DIDN'T
9 REMEMBER IT LAST TIME EXACTLY. THAT'S WHAT HE SAID.
10 IF HE REMEMBERS IT -- RECALLED IT LATER, THAT'S WHAT
11 HE SAYS. MAYBE HE WILL REMEMBER TOMORROW SOMETHING
12 THAT HE DIDN'T ANSWER TODAY.

13 Q. YOU ACKNOWLEDGE THAT THE TWO ANSWERS ARE DIFFERENT
14 ANSWERS, CORRECT?

15 A. HE DOESN'T FEEL THAT THEY'RE VERY DIFFERENT.

16 Q. OKAY., DURING THE TWO YEARS THAT YOU WERE DRAWING
17 UNEMPLOYMENT, YOU CAN'T REMEMBER A SINGLE JOB THAT
18 YOU APPLIED FOR, CAN YOU?

19 A. IT'S DIFFICULT FOR HIM TO REMEMBER THE NAMES 'CAUSE
20 -- BUT IF HE WOULD DRIVE AROUND THAT AREA WHERE HE
21 APPLIED, HE WOULD REMEMBER.

22 Q. SO YOUR TESTIMONY IS YOU DREW UNEMPLOYMENT FOR TWO
23 YEARS, YOU'RE REQUIRED TO NOTIFY THE UNEMPLOYMENT
24 FOLKS THAT YOU ARE APPLYING FOR SO MANY JOBS EVERY
25 SINGLE WEEK, AND YOU CAN'T REMEMBER A SINGLE

1 EMPLOYER THAT YOU'VE FILED AN APPLICATION WITH IN
2 TWO YEARS, NOT ONE SINGLE EMPLOYER?

3 A. IT'S -- IF HE WOULD TRY AND TAKE TIME, HE MIGHT
4 REMEMBER SOME, BUT IT'S DIFFICULT BECAUSE ENGLISH IS
5 NOT NATIVE LANGUAGE AND IT'S DIFFICULT TO REMEMBER
6 NAMES. FOR EXAMPLE, HE DOESN'T REMEMBER YOUR LAST
7 NAME EITHER, AND HE'S SORRY FOR THAT.

8 Q. OKAY. I'M EASILY FORGETTABLE.

9 A. IT'S DIFFICULT FOR HIM.

10 Q. OKAY. I UNDERSTAND. WHERE DO YOU GET YOUR
11 MEDICATIONS FROM NOW?

12 A. HE GETS A FEW MEDICATIONS, WHAT -- WHICH ONES ARE
13 YOU TALKING ABOUT?

14 Q. ANY MEDICATIONS. WHERE DO YOU GET THEM?

15 A. FROM BLOOD PRESSURE -- FOR BLOOD PRESSURE, IN WAL-
16 MART PHARMACY. FOR ASTHMA, IN DOCTOR'S OFFICE.

17 Q. WHO PRESCRIBES YOUR MEDICATIONS?

18 A. DR. FELDMAN.

19 Q. DOES HE ALSO PRESCRIBE YOUR HIGH BLOOD PRESSURE
20 MEDICATIONS?

21 A. YES.

22 Q. HOW DO YOU PAY FOR YOUR DRUGS?

23 A. HE PAYS BY CASH. WAL-MART GIVES DISCOUNT BECAUSE HE
24 DOESN'T HAVE INSURANCE, SO HE PAYS FOUR DOLLARS A
25 MONTH, SOMETHING LIKE THAT.

1 Q. WHAT ABOUT THE ASTHMA MEDICATIONS?

2 A. DOCTOR'S OFFICE GIVES IT TO HIM, DOES NOT REQUIRE
3 PAY FOR IT. WHEN HE HAD INSURANCE, THAT -- HE WAS
4 GETTING THIS MEDICATION IN WAL-MART PHARMACY, AS
5 WELL, BUT BECAUSE IT COST \$280-SOMETHING DOLLARS,
6 NOW HE'S NOT ABLE TO PAY, SO THE DOCTOR GIVES IT --
7 GIVES IT TO HIM.

8 Q. DR. FELDMAN?

9 A. HIS OFFICE, YES.

10 Q. THE 50 OR SO TIMES THAT MR. DANTIN REFERENCED
11 EARLIER, AND YOU'VE SAID -- OR I THOUGHT YOU SAID
12 THAT YOU HAD ACTUALLY BEEN MORE THAN THAT TO
13 DR. FELDMAN, WHO PAYS DR. FELDMAN'S BILLS?

14 A. DR. FELDMAN DOES NOT ASK HIM TO PAY, AND HIS INITIAL
15 UNDERSTANDING WAS THAT IT WAS A WORKMAN COMP THAT
16 PAYS, BUT OBVIOUSLY, IT'S NOT NOW, SO HE'S NOT -- HE
17 DOESN'T KNOW WHO PAYS THE -- FOR THE VISITS.

18 Q. YOU'VE BEEN GOING TO DR. FELDMAN FOR SIX YEARS. IS
19 IT YOUR TESTIMONY YOU'VE NEVER PAID HIM IN SIX
20 YEARS?

21 A. YES, FOR HE DOESN'T PAY AND DR. FELDMAN DOESN'T
22 REQUIRE HIM TO PAY.

23 Q. IS DR. FELDMAN RUSSIAN?

24 A. HE DOESN'T KNOW HIS NATIONALITY, BUT HE CAN SPEAK
25 RUSSIAN, AND HE IS FROM RUSSIA.

1 Q. WHO IS FROM RUSSIA? DR. FELDMAN IS FROM RUSSIA?

2 A. RIGHT. THAT'S WHAT HE HEARD. ONLINE HE READ ABOUT
3 IT.

4 Q. AND, IN FACT, ARE YOU AWARE THAT DR. FELDMAN DID HIS
5 MEDICAL TRAINING IN RUSSIA?

6 BY THE INTERPRETER:

7 WHAT YOU MEAN BY MEDICAL TRAINING?

8 BY MR. BEARD:

9 HE TRAINED TO BE A DOCTOR IN RUSSIA, SCHOOL,
10 MEDICAL SCHOOL.

11 CROSS-EXAMINATION RESUMED BY MR. BEARD:

12 A. PROBABLY.

13 Q. AND ISN'T IT TRUE THAT MOST OF THE NURSES IN
14 DR. FELDMAN'S OFFICE SPEAK RUSSIAN, AS WELL?

15 A. NOT ALL THE NURSES, BUT SOME, AND MAYBE A
16 RECEPTIONIST, BUT NOT ALL THE NURSES.

17 Q. WHO IS MELVIN MEDLOCK?

18 A. DOESN'T REMEMBER.

19 Q. YOU HAVE HAD NO HOSPITALIZATIONS FOR ANY REASON IN
20 SEVERAL YEARS; IS THAT CORRECT?

21 A. YES.

22 Q. YES, YOU HAVE OR, YES, YOU HAVE NOT?

23 A. YES, DIDN'T GO FOR HOSPITALIZATION.

24 Q. ALL RIGHT. AND YOU HAVE NOT LOOKED FOR A JOB
25 ANYWHERE SINCE THE UNEMPLOYMENT STOPPED, CORRECT?

1 A. YES.

2 Q. YOU DON'T EVER REMEMBER TALKING TO DR. FELDMAN ABOUT
3 WHETHER YOU CAN GO BACK TO WORK OR NOT, DO YOU?

4 A. DOESN'T REMEMBER EXACTLY.

5 Q. OKAY. AND YOU HAVE NOT BEEN TO ANY KIND OF
6 VOCATIONAL EXPERT OR ANYONE ELSE WHO IS TRAINED IN
7 HELPING FOLKS FIND JOBS? YOU'VE NOT DONE ANY OF
8 THAT, HAVE YOU?

9 A. NO, DIDN'T GO TO THOSE SPECIALISTS.

10 Q. WHEN YOU WENT TO DR. SAHN AT THE MEDICAL UNIVERSITY
11 OF SOUTH CAROLINA IN CHARLESTON, YOU SAID YOU WERE
12 WITH HIM, I THINK YOU SAID, FOR 30, 40, 50 MINUTES.
13 I CAN'T REMEMBER THE EXACT TIME. BUT IN YOUR
14 DEPOSITION, YOU TESTIFIED THAT YOU WERE IN DR.
15 SAHN'S OFFICE FROM START TO FINISH FOR THREE TO FIVE
16 HOURS BECAUSE OF ALL THE TESTS THAT WERE PERFORMED;
17 IS THAT CORRECT?

18 A. THAT'S CORRECT. HE WAS PHYSICALLY TALKING WITH
19 DR. SAHN FOR -- AND CONTACTED WITH HIM FOR ABOUT 30,
20 40 MINUTES, BUT IF YOU COUNT ALL THE TESTS, THAT
21 WOULD BE THREE TO FOUR HOURS.

22 Q. YOU TESTIFIED EARLIER THAT WHEN YOU WOULD SPRAY
23 THESE MOLDS, YOU WOULD SPRAY 15 TO 20 TIMES PER
24 SHIFT OR PER DAY; IS THAT CORRECT?

25 A. YES.

1 Q. YOU WORKED 12-HOUR SHIFTS AT KOHLER, CORRECT?

2 A. YES.

3 Q. SO BY MY CALCULATIONS, YOU WERE ONLY SPRAYING THESE
4 MOLDS A LITTLE AROUND ONE TO ONE-AND-A-HALF TIMES
5 PER HOUR; IS THAT CORRECT?

6 A. PROBABLY, YES.

7 Q. HOW IS IT POSSIBLE THEN, MR. GUL, THAT YOU USED FIVE
8 OF THE LARGE BOTTLES AND TEN OF THE SMALL BOTTLES
9 PER SHIFT WHEN YOU WERE SPRAYING?

10 A. THAT'S HOW -- THAT'S WHAT IT TAKES. THAT'S HOW HE
11 WORKED, AND HE WOULD SHOW YOU AT THE PLANT HOW IT'S
12 DONE. THAT'S HOW IT WAS REQUIRED TO DO. THAT'S
13 WHAT -- HOW MUCH HE WENT THROUGH.

14 Q. YOU ARE AWARE THAT BOTH DR. FOGERTY AND DR. SAHN DO
15 NOT BELIEVE YOU GAVE A FULL EFFORT WHEN YOU TOOK
16 PULMONARY FUNCTION TESTS IN THEIR OFFICE, CORRECT?

17 A. YES, HE KNOWS ABOUT IT.

18 BY MR. BEARD:

19 THAT'S ALL I HAVE.

20 BY COMMISSIONER BECK:

21 MR. DANTIN, ANY FURTHER?

22 BY MR. DANTIN:

23 NOTHING FURTHER.

24 BY COMMISSIONER BECK:

25 ALL RIGHT. YOU MAY STEP DOWN, SIR. THANK YOU

1 VERY MUCH. ANY OTHER WITNESSES ON BEHALF OF THE
2 CLAIMANT?

3 BY MR. DANTIN:

4 NONE ON BEHALF OF THE CLAIMANT.

5 BY COMMISSIONER BECK:

6 ANY WITNESSES ON BEHALF OF THE DEFENDANTS?

7 BY MR. HORNER:

8 WE THINK WE'RE GOING TO HAVE TWO, COMMISSIONER.

9 BY COMMISSIONER BECK:

10 TWO? CALL YOUR FIRST ONE.

11 BY MR. HORNER:

12 ALL RIGHT.

13 BY COMMISSIONER BECK:

14 WILL MR. TRUKOV'S SERVICES BE NEEDED?

15 BY MR. BEARD:

16 UNLESS HE JUST NEEDS TO INTERPRET FOR MR. GUL,
17 I -- OR I DON'T KNOW IF THEY'RE GOING TO CALL MR.
18 GUL BACK EITHER AS REBUTTAL TO WHATEVER HAPPENS
19 HERE.

20 BY MR. DANTIN:

21 WE'D LIKE HIM TO STAY.

22 BY COMMISSIONER BECK:

23 ALL RIGHT. PLEASE, HAVE A SEAT BACK THERE
24 AGAINST THAT BACK WALL, SIR.

25 BY THE INTERPRETER:

1 OKAY.

2 BY COMMISSIONER BECK:

3 MR. HORNER, YOUR WITNESS' NAME?

4 BY MR. HORNER:

5 CHARLIE CLAYTON.

6 BY COMMISSIONER BECK:

7 MR. CLAYTON, COME ON UP AND HAVE A SEAT,
8 PLEASE. COULD YOU RAISE YOUR RIGHT HAND, SIR.

9 CHARLES W. CLAYTON

10 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

11 BY COMMISSIONER BECK:

12 PLEASE, STATE YOUR FULL NAME FOR THE RECORD.

13 BY THE WITNESS:

14 CHARLES WILLIAM CLAYTON.

15 BY COMMISSIONER BECK:

16 MR. HORNER?

17 DIRECT EXAMINATION BY MR. HORNER:

18 Q. MR. CLAYTON, WHERE DO YOU WORK?

19 A. KOHLER COMPANY.

20 Q. AND HOW LONG HAVE YOU BEEN WITH KOHLER?

21 A. ALMOST 32 YEARS.

22 Q. NOW, WHAT IS YOUR JOB TITLE OR POSITION AT KOHLER
23 CURRENTLY?

24 A. CURRENTLY, I AM A PRODUCTION FOREMAN.

25 Q. ALL RIGHT. NOW, FROM 2004 ---

1 BY THE COURT REPORTER:

2 EXCUSE ME.

3 BY COMMISSIONER BECK:

4 MR. HORNER.

5 BY THE COURT REPORTER:

6 THERE'S A LOT OF CONVERSATION.

7 BY COMMISSIONER BECK:

8 YES, WE'RE GOING TO HAVE TO KEEP THIS DOWN BACK

9 HERE. IT'S REALLY CONFUSING THIS COURT REPORTER.

10 MR. HORNER?

11 DIRECT EXAMINATION RESUMED BY MR. HORNER:

12 Q. FROM 2004 TO 2009, YOU'RE AWARE THAT THOSE ARE THE
13 YEARS OF MR. GUL'S EMPLOYMENT?

14 A. YES.

15 Q. WHAT WAS YOUR JOB TITLE FROM 2004 TO 2009?

16 A. SAME.

17 Q. ALL RIGHT. AND AS A PRODUCTION FOREMAN WHAT PART OF
18 THE PLANT, WHAT WOULD YOU HAVE BEEN A FOREMAN OF OR
19 OVER?

20 A. AT THAT TIME, IT WOULD HAVE BEEN THE PRESSURE CAST.

21 Q. AND PRESSURE CAST, IS THAT WHERE MR. GUL WORKED?

22 A. YES.

23 Q. AND DID HE WORK UNDER YOU FOR A PERIOD OF TIME?

24 A. YES.

25 Q. NOW, IN THE PRESSURE CAST DEPARTMENT, WE'VE HEARD

1 TESTIMONY ABOUT THE VARIOUS MACHINES THAT ARE IN
2 THAT DEPARTMENT AND JUST TO MAKE IT EASY, I'M JUST
3 GOING TO RUN THROUGH THEM. IS THE COVER 2 MACHINE
4 IN THAT DEPARTMENT?

5 A. YES.

6 Q. AND IS THE COVER 5 MACHINE IN THAT DEPARTMENT?

7 A. YES.

8 Q. IS THERE A MACHINE IN THAT DEPARTMENT CALLED THE
9 SMALL MACHINES?

10 A. YES.

11 Q. AND IS THERE -- WAS THERE EVENTUALLY A MACHINE IN
12 THAT DEPARTMENT CALLED THE KITCHEN SINK MACHINE?

13 A. YES.

14 Q. AND JUST TELL ME GENERALLY AS A PRODUCTION FOREMAN,
15 WHAT WOULD HAVE BEEN YOUR ROLE AS OVER THE PRESSURE
16 CAST DEPARTMENT ON A DAILY BASIS?

17 A. IT WOULD HAVE BEEN JUST THE DAY-TO-DAY OPERATION AS
18 PRODUCTION, PROBLEM SOLVING, KEEPING THE GUYS TIME,
19 REPORTING PRODUCTION.

20 Q. WOULD YOU HAVE HANDLED ANY SORT OF COMPLAINTS THAT
21 ANYBODY IN THE PRESSURE CAST DEPARTMENT MAY HAVE HAD
22 WHETHER IT BE PERSONNEL TYPE COMPLAINTS OR WHETHER
23 IT BE INJURY COMPLAINTS, ANY OF THOSE TYPES OF
24 THINGS, WOULD THAT HAVE COME TO YOU FIRST?

25 A. YES.

1 Q. AND DO YOU HAVE ANY RECOLLECTION OF MR. GUL EVER
2 COMING TO YOU TO COMPLAIN ABOUT WORKING AROUND
3 ACETIC ACID?

4 A. NO.

5 Q. DO YOU EVER -- DO YOU HAVE ANY RECOLLECTION OF MR.
6 GUL EVER COMING TO YOU AND TELLING YOU THAT DUE TO
7 THE ACETIC ACID THAT HE WAS UNABLE TO BREATHE?

8 A. NO.

9 Q. DO YOU EVER HAVE ANY RECOLLECTION OF MR. GUL COMING
10 TO YOU COMPLAINING OF NOSE, EYE, OR THROAT
11 IRRITATION AS A RESULT OF WORKING IN THE PRESSURE
12 CAST DEPARTMENT?

13 A. NO.

14 Q. AND ASSUMING THAT MR. GUL HAD COME TO YOU WITH A
15 MEDICAL COMPLAINT ABOUT ACETIC ACID OR HIS JOB, WHAT
16 IS THE STANDARD PROTOCOL, STANDARD OPERATING
17 PROCEDURE FOR SUCH A COMPLAINT?

18 A. WE HAVE A SYSTEM WHERE WE DO AN INCIDENT REPORT, AND
19 IF IT'S SOMETHING WE CAN HANDLE OURSELVES, WHICH
20 WOULD BE LIKE SOMETHING MINOR, LIKE A BAND-AID CUT
21 OR SOMETHING, YOU KNOW, BUT IF IT'S SOMETHING MAJOR,
22 WE WOULD SEND THEM TO -- IF IT REQUIRED SOME KIND OF
23 MEDICAL, WE WOULD SEND THEM TO SEE THE PLANT NURSE.

24 Q. AND WOULD OTHER PEOPLE BE INVOLVED IN THAT PROCESS
25 IF IT WERE REPORTED AS A SERIOUS INJURY OTHER THAN

1 JUST THE NURSE?

2 A. WELL, ACTUALLY, OUR PROCEDURE IS IF WE DO AN
3 INCIDENT REPORT, THEY HAVE A -- IF IT'S DEEMED AN
4 INJURY, WITHIN 24 HOURS, WE HAVE TO SET UP A MEETING
5 WITH THE STAFF AND COVER ALL THE BASES OF, YOU KNOW,
6 WHAT HAPPENED AND -- AND THEN, ALSO, I'M NOT EXACTLY
7 SURE HOW OFTEN, BUT THEY HAVE A MEETING, MAYBE ONCE
8 A MONTH. I'M NOT REAL SURE OF HOW OFTEN, EVERY NEAR
9 MISS, SO IT WOULD -- YEAH, I MEAN, ANY NEAR MISS IS
10 COVERED, IT'S JUST IF IT'S AN INJURY, IT'S WITHIN 24
11 HOURS. IF IT'S SOMETHING MINOR LIKE A BAND-AID OR
12 SOMETHING, IN THAT CASE, WE WOULD COVER WHY IT'S --
13 WHAT COULD WE DO TO PREVENT IT FROM KEEP HAPPENING.

14 Q. AND YOU SAID THE STAFF WOULD MEET. WHO IS -- WOULD
15 YOU BE PART OF THAT STAFF?

16 A. NO, UNLESS IT WAS SOMEBODY THAT REPORTED TO ME, IT
17 WOULD BE PLANT MANAGER, MIKE TOLLESON, SID -- SID
18 DUVALL, AND I THINK THE AREA SUPERVISOR WOULD BE
19 THERE, ALSO.

20 Q. THAT WOULD BE MIKE DONALD, IN THIS CASE?

21 A. IN THIS CASE, IT WOULD BE MIKE DONALD.

22 Q. AT ANY POINT DURING MR. GUL'S TENURE, DID YOU EVER
23 GENERATE AN INCIDENT REPORT INVOLVING MR. GUL
24 COMPLAINING ABOUT BREATHING ACETIC ACID OR BEING
25 EXPOSED TO ACETIC ACID FUMES?

1 A. NO.

2 Q. ARE YOU AWARE OF AN INCIDENT WHERE MR. GUL SPILLED
3 SOME ACETIC ACID ON HIS HAND AND GOT A RASH?

4 A. I DON'T REMEMBER SEEING IT, BUT I HAVE HEARD --
5 HEARD ABOUT IT. I DON'T REMEMBER SEEING THE ACTUAL
6 REPORT.

7 Q. IN MR. GUL'S TIME THERE AT KOHLER, IS THAT THE ONLY
8 INCIDENT THAT YOU'RE AWARE OF INVOLVING MR. GUL,
9 WHETHER YOU KNOW OF IT DIRECTLY OR INDIRECTLY?

10 A. YES.

11 Q. NOW, THE AREA IN WHICH MR. GUL WORKED FOR, LET'S
12 JUST SAY BEFORE HE GOT ON THE KITCHEN SINK MACHINE,
13 THESE MACHINES, THESE COVER 2, COVER 5, WHAT DO
14 THESE MACHINES MAKE?

15 A. COVERS.

16 Q. AND WHEN YOU SAY THE WORD COVER, WHAT DOES THAT
17 MEAN?

18 A. IT'S THE TOP OF A TANK.

19 Q. OKAY, SO WE'RE TALKING ABOUT SOMETHING,
20 APPROXIMATELY 18 OR 24 INCHES LONG THAT WOULD SIT ON
21 THE TANK OF A TOILET?

22 A. CORRECT.

23 Q. AND THE COVER MACHINES, WHAT EXACTLY DOES THE
24 MACHINE ITSELF DO? CAN YOU JUST SORT OF BRIEFLY,
25 VERY BRIEFLY, EXPLAIN THE PROCESS.

- 1 A. THE -- WHAT HAPPENS, THE MACHINE, BASICALLY, IS --
2 IS AUTOMATICALLY -- AUTOMATIC FOR THE MOST PART.
3 WHAT THEY DO, THEY START THE MACHINE. IT PUMPS, WE
4 CALL, SLIP, WHICH IS A LIQUID MUD INTO THE -- INTO
5 THE MACHINE, AND THEN IT GOES TO THE PROCESS OF
6 PUMPS, WHICH IS A LOW PRESSURE PUMP, THEN HIGH
7 PRESSURE PUMP, WHICH THE PUMPS ACTUALLY PRESS THE
8 WATER OUT OF THE CLAY, WHICH MAKES IT FIRM INSIDE
9 THE MOLD. WE RUN A CYCLE TIME OF ABOUT 20, 25
10 MINUTES PER CYCLE ON THE BEAM MACHINE. WE'D
11 APPROXIMATELY BE MAKING -- THERE'S ABOUT EITHER 15 -
12 - 15 TO 18 MOLDS, THREE CAVITIES PER MOLD, AND ONCE
13 AT THE END OF THE CYCLE, LIKE I SAY, ABOUT 25
14 MINUTES, THE GUYS WOULD ACTUALLY HAND TAKE THE
15 PIECES OUT OF THE -- OUT OF THE MOLD.
- 16 Q. AND WHAT IS THE ROLE OF ACETIC ACID IN THIS PROCESS
17 -- OR WAS THE ROLE OF ACETIC ACID IN THIS PROCESS?
- 18 A. AT TIMES, THE CLAY WOULD HAVE A TENDENCY TO STICK TO
19 THE MOLD AND WHEN WE HAD THAT, WE WOULD GO IN AND
20 THEY WOULD USE A SANDPAPER AND SAND THE MOLD AND
21 SPRAY ACETIC ACID TO -- IT'S LIKE A RELEASING AGENT
22 BASICALLY IS WHAT IT WAS FOR.
- 23 Q. WHEN YOU SAY "RELEASING AGENT," RELEASING WHAT FROM
24 WHAT?
- 25 A. RELEASING THE CLAY FROM THE MOLD.

1 Q. AND WOULD THIS BE -- WOULD THE ACETIC ACID BE
2 SPRAYED BEFORE THE MUD IS INJECTED INTO THE MOLD?

3 A. YES.

4 Q. YOU SAID, FROM TIME TO TIME, THERE WERE -- IT WOULD
5 NEED THE RELEASING AGENT, WHICH WAS THE ACETIC ACID,
6 CORRECT?

7 A. YES.

8 Q. NOW, WOULD EVERY MOLD IN THE COVER 2 MACHINE OR THE
9 COVER 5 MACHINE HAVE TO BE SPRAYED WITH ACETIC ACID?

10 A. NO, IT SHOULDN'T, I MEAN, UNLESS WE WERE REALLY
11 HAVING A BIG PROBLEM, BUT, I MEAN, ON A NORMAL
12 BASIS, NO.

13 Q. OKAY. AND ON ANY GIVEN DAY, COULD ONE MOLD HAVE A
14 PROBLEM ON A TUESDAY AND NOT HAVE A PROBLEM ON A
15 WEDNESDAY, AND THEN HAVE A PROBLEM ON A THURSDAY AND
16 NOT HAVE A PROBLEM ON A FRIDAY?

17 A. YEAH, THAT'S POSSIBLE.

18 Q. OKAY. AND WHEN THE MOLDS ARE SPRAYED WITH ACETIC
19 ACID AS IT'S RELEASING AGENT, WHERE WAS THE ACETIC
20 ACID SUPPOSED TO BE SPRAYED IN RELATION TO THE MOLD?

21 A. BASICALLY, IN THE SPOT THAT YOU WAS HAVING THE --
22 THE TROUBLE WITH. I MEAN, YOU KNOW, IF YOU HAD A
23 CERTAIN SPOT, YOU WOULD SAND THAT CERTAIN SPOT AND
24 SPRAY THE ACETIC ACID IN THAT SPOT.

25 Q. ARE YOU AWARE OF ANY EMPLOYEE AT KOHLER AS PART OF

1 APPLYING ACETIC ACID SPRAYING EVERY MOLD FROM TOP TO
2 BOTTOM FROM LEFT TO RIGHT EVERY TIME?

3 A. I MEAN, I CAN'T SAY. I'VE SEEN THEM SPRAY MORE.
4 SOME GUYS SPRAY A LITTLE MORE THAN OTHERS, YOU KNOW,
5 BUT I DON'T KNOW THAT WE'VE EVER SPRAYED COMPLETELY
6 EVERY -- EVERY MOLD. I MEAN, I'M NOT GOING -- I'M
7 NOT GOING TO SAY, YES, I HAVE. I DON'T KNOW FOR
8 SURE. I MEAN, I KNOW SOME GUYS PUT A LITTLE MORE
9 THAN OTHERS.

10 Q. WHEN THE PEOPLE ARE -- WHEN THE GUYS ARE TRAINED ON
11 HOW TO RUN THE MOLD MACHINE, AT THE TIME, WERE THEY
12 TAUGHT THAT THE ACETIC ACID SHOULD BE SPRAYED WHERE
13 THERE WOULD BE A TROUBLE SPOT?

14 A. CORRECT. THAT -- CORRECT.

15 Q. NOW, THIS PRESSURE CAST DEPARTMENT, WHAT KIND OF
16 ENVIRONMENT IS IT SITTING IN?

17 A. IT'S INSIDE THE MAIN CAST SHOP OF THE PLANT, BUT
18 IT'S -- IT'S SORT OF IN ITS OWN -- I MEAN, IT'S SORT
19 OF LIKE A DEPARTMENT WITHIN A DEPARTMENT, I GUESS
20 YOU WOULD SAY. IT'S -- WE DON'T -- WE'RE NOT LIKE -
21 - WE'RE LIKE IN A CORNER, I GUESS YOU WOULD SAY, OF
22 THE MAIN CAST SHOP.

23 Q. DOES IT HAVE HIGH CEILINGS?

24 A. YES.

25 Q. DOES IT HAVE A HVAC SYSTEM RUNNING THROUGH THERE?

1 A. YES.

2 Q. BY ALL ACCOUNTS, WOULD YOU CONSIDER IT TO BE WELL
3 VENTILATED?

4 A. YES.

5 Q. IT DOESN'T HAVE WALLS ENCLOSING IT IN OR ANYTHING
6 LIKE THAT?

7 A. NO, JUST THE OUTSIDE WALLS OF THE PLANT AND ONE WALL
8 BETWEEN THE DEPARTMENTS.

9 Q. ARE YOU AWARE OF THE ALLEGATION THAT MR. GUL SAYS HE
10 CAME TO YOU AND ASKED YOU FOR A RESPIRATOR IN 2008
11 TO USE ON THE MACHINE THAT HE WAS USING AT THAT
12 TIME?

13 A. NO.

14 Q. DID MR. GUL EVER COME TO YOU -- AS FAR AS YOU CAN
15 RECALL, EVER COME TO YOU IN 2008 AND ASK YOU FOR A
16 RESPIRATOR?

17 A. I DON'T REMEMBER HIM EVER ASKING ME, NO.

18 Q. NOW, IF HE HAD COME TO YOU AND ASKED YOU FOR A
19 RESPIRATOR AS PART OF HIS JOB IN THE PRESSURE CAST
20 DEPARTMENT, IS THERE A PROCEDURE YOU WOULD HAVE
21 FOLLOWED TO DETERMINE WHETHER HE COULD USE A
22 RESPIRATOR?

23 A. IF HE WAS GOING TO WEAR A RESPIRATOR FROM A DAY TO
24 DAY -- YOU KNOW, FOR DAY-TO-DAY OPERATION, WE WOULD
25 PUT HIM IN THE OPERATION -- I MEAN, IN THE

1 RESPIRATOR PROGRAM, WHICH WOULD -- HE WOULD HAVE TO
2 BE FITTED AND TAKE A TEST ---
3 Q. OKAY.
4 A. --- FOR -- TO WEAR IT.
5 Q. SO YOU'RE SAYING KOHLER HAS A RESPIRATOR PROGRAM OUT
6 THERE?
7 A. YES.
8 Q. IS IT A BIG DEAL AT KOHLER TO PUT SOMEBODY INTO THE
9 RESPIRATOR PROGRAM?
10 A. NO.
11 Q. IS THERE ANY REASON YOU WOULD HAVE REFUSED TO SUBMIT
12 MR. GUL OR SEND MR. GUL TO BE EVALUATED AS PART OF
13 THE RESPIRATOR PROGRAM?
14 A. NO.
15 Q. WAS THERE ANYTHING ABOUT HIS JOB THAT MADE IT
16 IMPOSSIBLE FOR HIM TO WORK WITH A RESPIRATOR?
17 A. NO.
18 Q. AND WHO IS HEAD OF THAT RESPIRATOR PROGRAM?
19 A. MIKE TOLLESON.
20 Q. AND IF MR. GUL CAME TO YOU AND SAID, "I NEED A
21 RESPIRATOR. I FEEL LIKE I'M HAVING BREATHING
22 PROBLEMS," IS MIKE TOLLESON THE PERSON HE WOULD HAVE
23 BEEN SENT TO?
24 A. EITHER HE OR THE NURSE.
25 Q. AND DO YOU HAVE ANY KNOWLEDGE THAT MR. GUL EVER

1 ASKED TO BE PART OF THE RESPIRATOR PROGRAM OR
2 ACTUALLY PARTICIPATED IN THE RESPIRATOR PROGRAM?

3 A. NOT THAT I'M AWARE OF.

4 Q. NOW, IS THERE A CERTAIN AMOUNT OF ANNUAL FOLLOWUP
5 THAT GOES ON WITH THE RESPIRATOR PROGRAM?

6 A. YES, EVERYBODY THAT IS REQUIRED TO WEAR RESPIRATORS
7 HAS TO BE ANNUALLY TESTED.

8 Q. AND DO YOU HAVE A RESPIRATOR?

9 A. I DO.

10 Q. AND TELL US WHY YOU HAVE A RESPIRATOR.

11 A. EVERY WEEK -- WELL, BACK WHEN -- WHEN HE WAS -- WHEN
12 MR. GUL WAS THERE, WE WAS DOING IT EVERY TWO WEEKS,
13 BUT NOW WE DO IT EVERY WEEK, BUT WE GO IN AND WE
14 SPRAY THE MOLDS WITH CLOROX AND WITH PHOSPHORIC
15 ACID, AND I HAVE A FILTERED RESPIRATOR THAT I WEAR
16 DURING THIS PROCEDURE.

17 Q. AND SO WHEN YOU WEAR A RESPIRATOR, IT'S FOR A
18 COMPLETELY DIFFERENT ACID; IS THAT CORRECT?

19 A. CORRECT.

20 Q. NOW, WHEN Y'ALL BEGAN USING ACETIC ACID, TO YOUR
21 KNOWLEDGE, WERE YOU EVER INSTRUCTED THAT A
22 RESPIRATOR WAS REQUIRED TO BE USED FOR ACETIC ACID?

23 A. NO.

24 Q. AND HOW MANY EMPLOYEES WORK IN THAT PRESSURE CAST
25 DEPARTMENT?

1 A. NOW? WE -- IT'S, I GUESS, PROBABLY, ABOUT 20 NOW,
2 MAYBE 24.

3 Q. HAS IT FLUCTUATED OVER THE YEARS WITH THE ECONOMY?

4 A. IT HAS.

5 Q. NOW, IN THE YEARS THAT YOU HAVE BEEN THERE AND THAT
6 Y'ALL HAVE USED ACETIC ACID, HAS ANY OTHER EMPLOYEE
7 EVER COME TO YOU AND ALLEGED THAT HE WAS HAVING
8 EYES, EARS, NOSE, THROAT -- NOT EARS, SORRY, EYES,
9 NOSE, OR THROAT IRRITATION AS A RESULT OF USING THE
10 ACETIC ACID?

11 A. NO.

12 Q. HAS ANY EMPLOYEE EVER COME TO YOU AND COMPLAINED OF
13 ANY BREATHING DIFFICULTY WITH -- AS A RESULT OF
14 USING THE ACETIC ACID?

15 A. NO.

16 Q. AND HAD THAT COMPLAINT GOTTEN MADE BY SOMEONE, EVEN
17 IF IT WASN'T MR. GUL, WOULD THE PROCEDURES HAVE BEEN
18 FOLLOWED THAT YOU PREVIOUSLY DISCUSSED ABOUT EITHER
19 SENDING HIM TO THE NURSE OR SENDING HIM UP THE
20 CHAIN?

21 A. YES.

22 Q. AND YOU'RE NOT AWARE OF ANYBODY IN THE PRESSURE CAST
23 DEPARTMENT EVER BEING SENT UP THE CHAIN FOR AN
24 INJURY RELATED TO ACETIC ACID, CORRECT?

25 A. NOT THAT I'M AWARE OF, NO.

- 1 Q. DO YOU EVER RECALL SEEING MR. GUL IN THE PLANT,
2 WORKING ON THE MACHINES, WITH A WHITE PAPER MASK?
- 3 A. NO.
- 4 Q. IF HE WAS SPRAYING -- WELL, LET ME ASK YOU THIS, IS
5 A PAPER MASK, WOULD THAT HAVE BEEN EFFECTIVE FOR
6 BLOCKING FUMES?
- 7 A. IN MY OPINION, NO.
- 8 Q. OKAY.
- 9 Q. ARE THERE PAPER MASKS IN AND AROUND KOHLER AT
10 VARIOUS POINTS?
- 11 A. YES.
- 12 Q. AND WHAT ARE -- WHY ARE THOSE PAPER MASKS PROVIDED
13 AT KOHLER?
- 14 A. IN THE BENCH CAST AREA, IT'S A DUSTY ENVIRONMENT,
15 AND THEY -- ACTUALLY, THEY -- IT'S THE DUST OFF THE
16 CLAY, AND ALSO THEY USE A TALCUM POWDER TO PUT ON
17 THE MOLDS ITSELF. SO THEY WEAR THEM WHILE THEY'RE
18 DUSTING, AND ANY TIME THEY'RE BLOWING OFF WHERE IT'S
19 CREATING THE DUST, THEY'RE REQUIRED TO WEAR
20 RESPIRATORS.
- 21 Q. AND IS THAT TALCUM AND DUST UNIQUE PRETTY MUCH TO
22 THE BENCH CASTING DEPARTMENT?
- 23 A. YES.
- 24 Q. NOW, TOWARDS THE END OF MR. GUL'S EMPLOYMENT, WERE
25 YOU AWARE OF HIM HAVING ANY HEALTH ISSUES AT ALL OF

1 ANY TYPE?

2 A. THE ONLY THING I'M AWARE OF IS HE HAD A BLOOD
3 PRESSURE ---

4 Q. DID HE COME TO YOU? HOW WERE YOU MADE AWARE OF THE
5 FACT THAT HE HAD A BLOOD PRESSURE ISSUE?

6 A. WELL, HE HAD TOLD US THAT HE WAS HAVING BLOOD
7 PRESSURE TROUBLE, AND HE HAD GONE TO THE DOCTOR, AND
8 HE WAS -- HE WAS HAVING SOME HARD TIMES WITH IT,
9 'CAUSE I THINK HE WAS HAVING SOME TROUBLE WITH HIS
10 MEDICATION BEING REGULATED, 'CAUSE HE WOULD -- HE
11 WOULD HAVE PROBLEMS SWEAT -- HE WOULD BREAK OUT IN
12 SWEATS AND THINGS, YOU KNOW, AND WE SENT HIM TO THE
13 NURSE ON SEVERAL OCCASIONS BECAUSE OF IT.

14 Q. AND WAS THERE A PROBLEM, AT THIS POINT, WITH MR. GUL
15 GOING TO SEE THE NURSE WHENEVER HE FELT LIKE IT WAS
16 NECESSARY?

17 A. NO.

18 Q. IS THERE ANY REASON HE WOULD HAVE BEEN PREVENTED
19 FROM GOING TO SEE THE NURSE AT THIS POINT?

20 A. NO..

21 Q. NOW, WHAT YOU UNDERSTOOD TO BE BLOOD PRESSURE, THAT
22 CAME FROM MR. GUL, DID MR. GUL EVER RELAY TO YOU
23 THAT THE ACETIC ACID, HE THOUGHT, WAS THE CAUSE OF
24 ANY OF THE HEALTH PROBLEMS HE WAS HAVING?

25 A. NO.

1 Q. AND AT THE END OF HIS EMPLOYMENT, WERE Y'ALL
2 ACTUALLY TRYING TO WORK WITH MR. GUL AND SORT OF
3 CONSOLIDATE ALL THE TIME THAT HE HAD MISSED, SO THAT
4 HE WOULDN'T ACTUALLY END UP MISSING MORE DAYS THAN
5 HE COULD OTHERWISE HAVE MISSED?

6 A. YES, WE -- WE LET -- LIKE I SAY, WE LET HIM GO TO
7 THE NURSE ON SEVERAL OCCASIONS. WE WOULD LET HIM
8 REST, YOU KNOW, WHEN HE NEEDED TO, BASICALLY, AND,
9 ALSO, THEY COMBINED -- IT WASN'T LIKE CONSECUTIVE
10 DAYS, SO WE, BASICALLY, COMBINED SEVERAL OF HIS DAYS
11 OFF INTO LIKE -- LIKE A CONTINUATION DEAL, SO HE
12 DIDN'T GET IT COUNTED AGAINST HIM AS -- FOR THE
13 POINT SYSTEM OF HIM LOSING HIS JOB.

14 Q. IN THE PRESSURE CAST DEPARTMENT, WAS THERE SOME SORT
15 OF -- WERE THERE SOME MANDATED PERSONAL PROTECTION
16 EQUIPMENT REQUIRED?

17 A. YES.

18 Q. AND WHAT WOULD BE MANDATED IN THAT DEPARTMENT?

19 A. SAFETY SHOES, REALLY THAT'S ABOUT -- ABOUT IT.

20 Q. OKAY.

21 A. I MEAN, OF COURSE, WE USED -- AND SAFETY GLASSES IF
22 WE USED COMPRESSED AIR, WHICH THAT'S PLANT-WIDE.

23 Q. ALL RIGHT. DOES KOHLER HAVE A POLICY OF PROVIDING
24 PERSONAL PROTECTION EQUIPMENT TO ANYONE WHO REQUESTS
25 IT?

1 A. ANYTHING THAT THE COMPANY REQUIRES AS FAR AS SAFETY,
2 THEY SUPPLY. SHOES, GLASSES, RESPIRATORS, EARPLUGS,
3 ANYTHING THAT'S DEEMED A REQUIREMENT, THE COMPANY
4 SUPPLIES.

5 Q. SO MR. GUL SEEKING OUT A RESPIRATOR AT SOME POINT
6 WOULDN'T HAVE -- THAT WOULD HAVE ACTUALLY BEEN
7 PROVIDED BY KOHLER?

8 A. YES.

9 Q. AND IS IT THE POLICY OF KOHLER TO PROVIDE THAT
10 EQUIPMENT IF IT'S ASKED FOR AND MR. GUL WOULD HAVE
11 OTHERWISE BEEN QUALIFIED, I.E., YOU KNOW, THE FIT
12 TEST WAS SUFFICIENT, IS IT KOHLER'S POLICY TO
13 PROVIDE THAT EQUIPMENT WHEN IT'S ASKED FOR?

14 A. YES.

15 Q. AND, IN FACT, KOHLER IS A UNION PLANT, CORRECT?

16 A. YES.

17 Q. AND ARE YOU AWARE AS PART OF THE UNION CONTRACT THAT
18 KOHLER HAS TO PROVIDE ANY SAFETY EQUIPMENT THAT'S
19 REQUESTED BY AN EMPLOYEE?

20 A. I'M REALLY NOT SURE THAT THE UNION -- I DON'T KNOW.
21 I'M NOT SURE ABOUT THAT.

22 Q. ALL RIGHT. DO YOU KNOW IF AN EMPLOYEE HAS A RIGHT
23 TO REFUSE TO WORK IF HE FEELS LIKE HIS HEALTH OR
24 SAFETY IS IN DANGER?

25 A. YES.

1 Q. AND AT THAT POINT, WOULD THAT START A PROCESS TO ---

2 A. YES.

3 Q. --- EVALUATE WHATEVER THE CLAIM WAS?

4 A. YES, WE ACTUALLY HAVE A FORM WE FILL OUT IF A PERSON
5 REFUSES TO WORK. WE HAVE A FORM TO FILL OUT AND
6 IT'S INVESTIGATED.

7 Q. DID YOU EVER FILL OUT A FORM OR HELP MR. GUL FILL
8 OUT A FORM RELATING TO REFUSING TO WORK?

9 A. NO.

10 Q. AND WERE YOU AWARE OF ANY CLAIM INVOLVING MR. GUL
11 EVER BEING INVESTIGATED UNDER HIS RIGHT TO REFUSE TO
12 WORK?

13 A. NO.

14 Q. I'M GOING TO -- LET ME TALK BRIEFLY ABOUT THE
15 KITCHEN SINK MACHINE. WAS THAT A RELATIVELY NEW
16 MACHINE BY THE TIME -- AT THE END OF MR. GUL'S
17 TENURE AT KOHLER?

18 A. YES.

19 Q. AND HOW MANY OPERATORS DID IT TAKE TO RUN THE
20 KITCHEN SINK MACHINE?

21 A. I THINK IT WAS ONLY ONE PER SHIFT.

22 Q. OKAY. AND WHAT ABOUT LIKE THE COVER 2 MACHINE, HOW
23 MANY MEN WOULD RUN THAT?

24 A. ON THE -- ONE THE BIG MACHINE, WE HAD TWO OPERATORS.
25 ON THE LITTLE MACHINES, IT WAS ONE OPERATOR.

1 Q. AND THE KITCHEN SINK MACHINE, ARE YOU AWARE THAT MR.
2 GUL WAS TRAINED ON THAT?

3 A. YES.

4 Q. MR. GUL TESTIFIED, AND YOU WEREN'T HERE TO HEAR IT,
5 BUT HE TESTIFIED THAT OUT OF HIS 12-HOUR SHIFT, HE
6 ONLY SPENT ABOUT AN HOUR-AND-A-HALF A DAY WORKING ON
7 THE KITCHEN SINK MACHINE. DO YOU HAVE ANY KNOWLEDGE
8 OF THE KITCHEN SINK MACHINE ONLY RUNNING AN HOUR AND
9 A HALF OUT OF A 12-HOUR SHIFT?

10 A. I'M REALLY NOT -- I REALLY DIDN'T HAVE A WHOLE LOT
11 TO DO WITH THE KITCHEN SINK BECAUSE WE HAD A PROCESS
12 SPECIALIST DEPARTMENT THAT KIND OF OVERSAW THAT, BUT
13 THAT DOESN'T SOUND -- THAT DON'T SOUND RIGHT TO ME.
14 I MEAN, I DON'T -- I'M NOT A HUNDRED PERCENT SURE OF
15 THAT, BUT IT DOESN'T SOUND RIGHT TO ME.

16 Q. I'M GOING TO MOVE TO SORT OF MY LAST CATEGORY OR
17 TOPIC. WERE YOU ASKED TO PARTICIPATE IN AN
18 INDUSTRIAL HYGIENE ASSESSMENT?

19 A. I WAS.

20 Q. AND WHAT WERE YOU ASKED TO DO WITH RESPECT TO THAT
21 INDUSTRIAL HYGIENE ASSESSMENT?

22 A. WHAT I WAS ASKED TO DO IS, BASICALLY, TO TRY TO
23 REPEAT OR DO, EVEN PUT MORE ACETIC ACID ON THE MOLDS
24 THAN WHAT MR. GUL HAD SAID HE WAS USING AT THE TIME.

25 Q. OKAY. AND WAS THE IDEA AN ATTEMPT TO MEASURE THE

1 ACETIC ACID IN THE AIR USING THE PROCESS AS
2 DESCRIBED BY MR. GUL?

3 **BY MR. DANTIN:**

4 YOUR HONOR, I'M GOING TO OBJECT TO THE LEADING
5 AT THIS POINT.

6 **BY MR. HORNER:**

7 OKAY. I'LL REPHRASE.

8 **DIRECT EXAMINATION RESUMED BY MR. HORNER:**

9 Q. WERE YOU AWARE THAT THE INDUSTRIAL HYGIENE
10 ASSESSMENT WAS SET UP IN RESPONSE TO THIS CLAIM BY
11 MR. GUL?

12 A. I REALLY DON'T REMEMBER. IT'S BEEN SO LONG. I JUST
13 REMEMBER I WAS ASKED WOULD WE -- THAT -- I THINK HE
14 HAD -- SOMETHING ABOUT HE HAD HAD A CLAIM, AND, I
15 MEAN, I DIDN'T KNOW ALL THE DETAILS, BUT WE WAS
16 ASKED WOULD WE GO IN AND PUT ACETIC ACID ON THE
17 MOLDS, AND WE WORE SOME KIND OF LITTLE VAPOR THING,
18 A MONITOR, ON US AS WE SPRAYED THEM THAT NIGHT.

19 Q. OKAY. SO THE ACTUAL MONITOR OF THE ACETIC ACID WAS
20 ACTUALLY PINNED TO EACH EMPLOYEE?

21 A. YES.

22 Q. AND WHO ELSE WAS INVOLVED IN THIS, AS FAR AS RUNNING
23 THE MACHINES?

24 A. FOR THE TEST?

25 Q. FOR THE TEST.

1 A. IT WAS DICKIE GOODMAN, CHRIS THOMAS, AND MYSELF.

2 Q. AND WERE ANY OF THESE THREE FELLOWS -- WELL, TWO

3 OTHER FELLOWS AND YOU -- CHRIS AND DICKIE AND YOU,

4 WERE Y'ALL ACTUALLY RUNNING THE PRESSURE CAST

5 MACHINE ON A REGULAR BASIS AT THIS POINT?

6 A. AS ---

7 Q. AS ---

8 A. --- PART -- DURING THE TEST?

9 Q. NO. NO.

10 A. THE PRIOR TO -- PRIOR -- YOU TALKING ABOUT ---

11 Q. PRIOR TO.

12 A. --- AS A PRODUCTION?

13 Q. AS A PRODUCTION.

14 A. NO.

15 Q. ALL RIGHT. THAT BEING SAID, ARE YOU AWARE OF WHAT

16 CHRIS THOMAS' TITLE WAS?

17 A. YES.

18 Q. WHAT WAS HIS TITLE AT THAT TIME?

19 A. PROCESS SPECIALIST.

20 Q. OKAY. AND WAS CHRIS THOMAS FAMILIAR WITH THESE

21 MACHINES AS FAR AS YOU KNEW?

22 A. YES.

23 Q. ALL RIGHT. AND WERE YOU FAMILIAR WITH THE OPERATION

24 OF THESE MACHINES?

25 A. YES.

1 Q. AND THE SAME WITH DICKIE GOODMAN, AS FAR AS YOU
2 KNOW, WAS HE FAMILIAR WITH THE OPERATION OF THESE
3 MACHINES?

4 A. YES.

5 Q. DURING THE COURSE OF RUNNING THE INDUSTRIAL HYGIENE
6 ASSESSMENT, OR THE TEST, DID ANY OF THEM EVER
7 COMPLAIN THEY DIDN'T KNOW HOW TO RUN THE MACHINES?

8 A. NO.

9 Q. HOW LONG DID THIS TEST LAST?

10 A. I DON'T REMEMBER EXACTLY THE HOUR, BUT I KNOW WE --
11 WE -- WE BASICALLY LET THE MACHINES RUN THE CYCLE
12 TIME OF THE MACHINE. WE WOULD SPRAY THEM, LET IT
13 RUN THE CYCLE TIME OF THE MACHINE, BUT I'M NOT -- I
14 CAN'T REMEMBER EXACTLY THE HOURS THAT WE RAN IT.

15 Q. WAS IT AN ENTIRE SHIFT, THOUGH?

16 A. I DON'T THINK IT WAS AN ENTIRE SHIFT. I DON'T THINK
17 IT WAS.

18 Q. YOU CAN'T RECALL?

19 A. NO, I DON'T KNOW FOR SURE.

20 Q. WAS IT JUST ONCE OR TWICE OR WAS IT MORE THAN THAT?

21 A. NO, IT WAS MORE THAN THAT. I MEAN, IT JUST -- I
22 DON'T THINK IT WAS NO 12-HOUR SHIFT, BUT IT WAS MORE
23 THAN -- MORE THAN ONCE OR TWICE, BUT I JUST DON'T
24 KNOW. I DON'T -- I MEAN, I DON'T THINK IT WAS A
25 WHOLE SHIFT.

1 Q. ALL RIGHT. AND AS PART OF THE -- WERE YOU ACTUALLY
2 APPLYING THE ACETIC ACID AS PART OF THE INDUSTRIAL
3 HYGIENE ASSESSMENT?

4 A. YES.

5 Q. AND CAN YOU DESCRIBE FOR US HOW MUCH ACETIC ACID YOU
6 APPLIED WHILE RUNNING THIS TEST?

7 A. AS FAR AS THE AMOUNT, I DON'T KNOW, BUT I DO KNOW I
8 SPRAYED IT HEAVY. I MEAN, JUST -- THE MOLD WOULD
9 NOT TAKE ANY MORE. WE HAD IT ACTUALLY RUNNING OFF
10 OF THE MOLD. WE DIDN'T -- I MEAN, I DON'T KNOW IF
11 IT WAS TWO OUNCES OR FIVE OUNCES, BUT I DO KNOW WE
12 SPRAYED AS MUCH AS THE MOLD WOULD HOLD. I MEAN, IT
13 WAS LITERALLY RUNNING OFF THE MACHINE WHEN WE
14 STARTED IT UP.

15 Q. AND IN YOUR EXPERIENCE, WAS THAT THE WAY ACETIC ACID
16 WAS TYPICALLY APPLIED TO THESE MACHINES?

17 A. NO.

18 Q. SO WAS THIS DONE IN AN EFFORT TO SIMULATE MR. GUL'S
19 TESTIMONY, IF YOU KNOW?

20 A. I THINK WE TRIED TO DO WHAT HE DONE PLUS SOME MORE
21 SO THAT IT WOULD BE A GOOD READING. WE TRIED TO DO
22 -- LIKE I SAY, WE PUT ALL IT WOULD HOLD -- OR MORE
23 THAN IT WOULD HOLD, ACTUALLY.

24 Q. AND WOULD IT BE FAIR TO SAY THAT YOU TRIED TO CREATE
25 A SORT OF WORST-CASE SCENARIO?

1 A. YES.

2 **BY MR. DANTIN:**

3 AGAIN, I'M GOING TO OBJECT TO THE LEADING.

4 **BY COMMISSIONER BECK:**

5 MR. HORNER?

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

7 Q. AND, AGAIN, YOU HAVE NO RECOLLECTION OF MR. GUL EVER
8 COMING TO YOU ABOUT ANY MEDICAL COMPLAINTS RELATED
9 TO ACETIC ACID?

10 A. NONE.

11 Q. AND DO YOU HAVE ANY RECOLLECTION OF HIM EVER COMING
12 TO YOU WITH A REQUEST FOR A RESPIRATOR?

13 A. NO.

14 Q. WOULD YOU HAVE TURNED HIM DOWN FOR A RESPIRATOR ON
15 THE SPOT, ON THE FLOOR, HAD HE ASKED YOU FOR ONE?

16 A. NO.

17 Q. WOULD YOU HAVE STARTED THE PROCESS ASSOCIATED WITH
18 RESPIRATORS?

19 A. YES.

20 **BY MR. HORNER:**

21 THAT'S ALL.

22 **BY COMMISSIONER BECK:**

23 MR. DANTIN?

24 **BY MR. DANTIN:**

25 THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. DANTIN:

Q. MR. CLAYTON, GOOD TO SEE YOU AGAIN. YOU EXPLAINED TO ME AT YOUR DEPOSITION THAT YOU KNEW MR. GUL QUITE WELL, CORRECT?

A. YES.

Q. AND, IN FACT, YOU TOLD ME THAT YOU BELIEVED MR. GUL WAS A VERY GOOD WORKER.

A. YES.

Q. AND HE WAS VERY DEPENDABLE.

A. YES.

Q. I ALSO ASKED YOU IF YOU HAD EVER HAD AN ISSUE WITH MR. GUL BEING DISHONEST OR UNTRUTHFUL WITH YOU AND YOU TOLD ME YOU'D NEVER HAD ANY SUCH ISSUES; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. NOW, YOU DO UNDERSTAND THAT MR. GUL USED ACETIC ACID IN THE JOB THAT HE DID IN PRESSURE CAST, CORRECT?

A. YES.

Q. AND COULD YOU SMELL THE ACETIC ACID IN PRESSURE CAST WHEN IT WAS BEING USED AND SPRAYED?

A. IF YOU WERE CLOSE, YOU COULD SMELL IT. I MEAN, IT WASN'T LIKE YOU COULD -- IT WASN'T LIKE JUST PRESENT IN THE DEPARTMENT ALL THE TIME, BUT IF YOU WERE CLOSE TO IT BEING SPRAYED, YOU COULD SMELL IT.

Q. SO THE CLOSER YOU WERE TO THE PEOPLE SPRAYING, THE

1 MORE YOU COULD SMELL IT?

2 A. YES.

3 Q. I IMAGINE IF YOU WERE SPRAYING IT, YOU COULD SMELL
4 IT EVEN BETTER, CORRECT?

5 A. MOST LIKELY.

6 Q. WELL, YOU SPRAYED IT IN THAT INDUSTRIAL HYGIENE
7 ASSESSMENT; COULD YOU SMELL IT?

8 A. YES.

9 Q. HOW DID IT SMELL?

10 A. IT'S HARD TO DESCRIBE THE SMELL. IT'S -- I MEAN,
11 IT'S JUST GOT A DISTINCTIVE SMELL, BUT I DON'T --
12 IT'S HARD TO DESCRIBE IT.

13 Q. IS IT SOMETHING THAT YOU WOULD WANT TO BE AROUND A
14 LOT, DAY IN DAY OUT?

15 A. I MEAN, IT'S NOT LIKE -- IT'S NOT LIKE SOMETHING
16 THAT YOU'D HAVE TO HOLD YOUR NOSE TO GET AWAY FROM
17 SMELL, BUT IT'S -- I MEAN, IT'S JUST GOT A SMELL
18 THAT YOU -- YOU CAN TELL IT'S SOMETHING -- YOU KNOW,
19 SOMETHING'S THERE.

20 Q. OKAY. THAT'S FAIR. THIS WAS INCLUDED IN
21 DEFENDANT'S EXHIBIT D. WE LOOKED AT THIS EARLIER
22 WITH MR. GUL. THESE ARE SOME PICTURES THAT WERE
23 ACTUALLY PART OF THAT INDUSTRIAL HYGIENE ASSESSMENT.

24 A. UH-HUH.

25 Q. AND WHAT I WANT YOU TO LOOK AT -- IN PARTICULAR, AT

1 THIS POINT, ARE THE TWO PICTURES IN THE MIDDLE.
2 THEY'RE PHOTOS THREE AND FOUR. THOSE ARE THE TYPES
3 OF SPRAY BOTTLES THAT WERE USED TO ADMINISTER ACETIC
4 ACID IN THE PROCESS AT KOHLER; IS THAT CORRECT?

5 A. YES.

6 Q. AND IF MY UNDERSTANDING IS CORRECT, THE SPRAYER IN
7 NUMBER THREE IS A SMALLER SPRAYER; IS THAT RIGHT?

8 A. YES.

9 Q. AND YOU WOULD HAVE TO PULL THE TRIGGER EACH TIME TO
10 SPRAY WHEN USING THAT SMALLER SPRAYER, CORRECT?

11 A. YES.

12 Q. KIND OF LIKE A WINDEX BOTTLE?

13 A. YES.

14 Q. AND THE SPRAYER IN NUMBER FOUR IS THE BIGGER BOTTLE,
15 CORRECT?

16 A. YES.

17 Q. AND WITH THAT ONE, IT WOULD EMIT A CONTINUOUS SPRAY
18 WHEN THE TRIGGER WAS SQUEEZED AND HELD; IS THAT
19 CORRECT?

20 A. YES.

21 Q. NOW, NEITHER SPRAYER PRODUCED A STRAIGHT STREAM,
22 CORRECT?

23 A. YOU COULD ACTUALLY MAKE IT DO THAT, YES. I MEAN, IT
24 WOULD -- IT WOULD DO THAT.

25 Q. OKAY. IS THAT THE WAY IT WAS USED IN THE PROCESS?

1 A. NO.

2 Q. OKAY. IN FACT, I THINK YOU TOLD ME THAT BOTH
3 SPRAYERS PRODUCED A SPRAY SIMILAR TO WHAT WOULD COME
4 OUT OF A WINDEX BOTTLE WHEN YOU SPRAYED IT ON SPRAY.

5 A. YES.

6 Q. NOW, LOOKING AT THAT NOTATION ON PICTURE NUMBER
7 FOUR, IT SAYS THAT THE BIG SPRAYER THAT PUTS OUT A
8 CONTINUOUS SPRAY WASN'T ACTUALLY USED IN THE
9 INDUSTRIAL HYGIENE ASSESSMENT; YOU SEE THAT?

10 A. YES.

11 Q. WHY DIDN'T Y'ALL USE THAT BIG ONE THAT PUTS OUT A
12 CONTINUOUS STREAM?

13 A. I'M NOT -- I DON'T -- HONESTLY, I DON'T KNOW. I
14 KNOW WE HAD HAD A LOT OF TROUBLE WITH THOSE
15 SPRAYERS, AND FOR THE COST, WE HAD QUIT BUYING THEM.

16 Q. WELL, THERE'S ONE RIGHT THERE. IT WAS -- THE
17 PICTURE WAS TAKEN OF IT AT THE TIME Y'ALL DID THE
18 INDUSTRIAL HYGIENE ASSESSMENT. WHY DIDN'T Y'ALL USE
19 IT?

20 A. THAT, I'M NOT SURE.

21 Q. WHAT KIND OF PROBLEMS DID YOU HAVE WITH IT?

22 A. IT WOULD -- FOR SOME REASON THEY WOULD -- THEY WOULD
23 QUIT SPRAYING. I MEAN, THEY -- LIKE THEY WOULDN'T
24 HOLD THE AIR FOR SOME REASON, AND THEN, OF COURSE,
25 IF IT WOULDN'T HOLD AIR, IT WOULDN'T SPRAY.

1 Q. NOW, THE INDUSTRIAL HYGIENE ASSESSMENT WAS DONE IN
2 SEPTEMBER 2011, CORRECT?

3 A. IT'S BEEN SO LONG. I'M NOT SURE OF THE DATE.

4 Q. OKAY. IF I REPRESENTED TO YOU THAT IT WAS DONE ---

5 BY MR. HORNER:

6 WE'LL STIPULATE TO THAT.

7 BY MR. DANTIN:

8 OKAY.

9 CROSS-EXAMINATION RESUMED BY MR. DANTIN:

10 Q. AND I'LL JUST SAY WE'VE GOT THE REPORT THAT SAYS
11 THAT.

12 A. OKAY.

13 Q. DOES THAT SOUND ABOUT RIGHT?

14 A. YES.

15 Q. OKAY. AT THE TIME THE INDUSTRIAL HYGIENE ASSESSMENT
16 WAS ACTUALLY PERFORMED, KOHLER WASN'T USING ACETIC
17 ACID IN THE PROCESS ANY LONGER, WERE THEY?

18 A. I THINK WE WERE. I'M NOT -- I'M NOT A HUNDRED
19 PERCENT SURE ON THAT. WE HAD -- WE HAD TRIED TO GET
20 AWAY FROM IT, BUT I'M NOT SURE IF THAT -- IF THAT
21 WAS IN THE TIME FRAME OR NOT.

22 Q. DO YOU KNOW MIKE DONALD?

23 A. YES.

24 Q. WHO IS MIKE DONALD?

25 A. MIKE DONALD, HE WAS MY SUPERVISOR FOR SEVERAL YEARS,

1 BUT HE'S -- HE'S ON A NEW PRODUCT DEVELOPMENT NOW.

2 Q. OKAY. DID YOU KNOW THAT HE TESTIFIED THAT KOHLER
3 HAD STOPPED USING ACETIC ACID FOR ABOUT SIX TO EIGHT
4 MONTHS PRIOR TO THE TIME THAT THE INDUSTRIAL HYGIENE
5 ASSESSMENT WAS PERFORMED?

6 A. NO, I'M NOT AWARE OF THAT.

7 Q. DO YOU HAVE ANY REASON TO DOUBT THAT?

8 A. NO.

9 Q. NOW, THEY ASKED YOU TO PARTICIPATE IN THIS
10 INDUSTRIAL HYGIENE ASSESSMENT, CORRECT?

11 A. YES.

12 Q. AND THE ROLE THEY ASKED YOU TO PLAY WAS THE GUY THAT
13 DOES THE SPRAYING, RIGHT?

14 A. YES.

15 Q. BUT THAT WASN'T PART OF YOUR JOB, WAS IT?

16 A. AS A DAY-TO-DAY OPERATION?

17 Q. CORRECT.

18 A. NO.

19 Q. YOU DIDN'T SPRAY MOLDS, DID YOU?

20 A. NOT WITH ACETIC ACID. ON A RARE OCCASION, I WOULD,
21 BUT NOT ---

22 Q. THAT WASN'T YOUR JOB DAY IN, DAY OUT?

23 A. NO.

24 Q. AND DICKIE GOODMAN, THAT WASN'T HIS JOB EITHER, WAS
25 IT?

1 A. NO.

2 Q. IT WASN'T CHRIS THOMPSON'S JOB EITHER, WAS IT?

3 A. NO.

4 Q. WHY DID THEY PICK THREE GUYS THAT DIDN'T SPRAY

5 ACETIC ACID TO DO THE TESTING?

6 A. I -- THAT, I CAN'T ANSWER.

7 Q. WERE THERE STILL PEOPLE EMPLOYED THERE THAT HAD

8 SPRAYED ACETIC ACID?

9 A. YES.

10 Q. BUT THEY DIDN'T ASK THEM?

11 A. NOT THAT I'M AWARE OF. I DON'T KNOW. I DON'T KNOW

12 THE ANSWER TO THAT.

13 Q. NOW, I'M CORRECT WHEN I SAY THAT KOHLER WOULD HAVE

14 NO WAY OF KNOWING WHETHER EACH EMPLOYEE USES THE

15 SAME AMOUNT OF ACETIC ACID WHEN THEY WERE DOING THE

16 SPRAYING, CORRECT?

17 A. YEAH, THERE WOULD BE NO WAY OF MEASURING IT.

18 Q. OKAY. KOHLER WOULD HAVE NO WAY TO KNOW WHETHER

19 EVERY PERSON HOLDS THE BOTTLE THE SAME DISTANCE FROM

20 THEIR FACE OR BODY WHEN SPRAYING ACETIC ACID,

21 CORRECT?

22 A. CORRECT.

23 Q. KOHLER WOULD HAVE NO WAY OF KNOWING WHETHER EVERY

24 EMPLOYEE USES THE SAME MOTIONS OR PATTERNS WHEN

25 SPRAYING?

1 A. NO.

2 Q. AND YOU'RE NOT AWARE OF KOHLER KEEPING ANY RECORDS
3 REGARDING HOW MUCH ACETIC ACID WAS ACTUALLY USED BY
4 EACH EMPLOYER -- EACH EMPLOYEE EACH DAY, ARE YOU?

5 A. NO.

6 Q. YOU DON'T PERSONALLY HAVE ANY IDEA HOW MUCH ACETIC
7 ACID EMPLOYEES USED PER DAY, DO YOU?

8 A. NO.

9 Q. IN FACT, YOU TOLD ME AT YOUR DEPOSITION, YOU DIDN'T
10 HAVE ANY IDEA WHETHER THEY USED TEN OUNCES OR TWO
11 GALLONS.

12 A. RIGHT.

13 Q. SO, OBVIOUSLY, YOU HAVE NO IDEA HOW MUCH ACETIC ACID
14 MR. GUL USED WHEN HE WAS SPRAYING MOLDS AT KOHLER,
15 DO YOU?

16 A. NO, NOT THE EXACT AMOUNT.

17 **BY MR. DANTIN:**

18 NO FURTHER QUESTIONS.

19 **BY COMMISSIONER BECK:**

20 MR. HORNER, ANYTHING FURTHER?

21 **BY MR. HORNER:**

22 VERY BRIEFLY, YOUR HONOR.

23 **REDIRECT EXAMINATION BY MR. HORNER:**

24 Q. DID THE LACK OF A CONTINUOUS STREAM SPRAYER AFFECT
25 THE AMOUNT OF ACETIC ACID YOU WERE ABLE TO APPLY TO

1 THE MOLDS WHEN YOU RAN THE STUDY?

2 A. I DIDN'T USE THE CONTINUOUS ---

3 Q. NO, I MEAN, DID THE LACK OF -- DID THE FACT THAT YOU
4 DIDN'T HAVE ONE INHIBIT YOUR ABILITY TO STILL COAT
5 THE MACHINE AS YOU'VE DESCRIBED?

6 A. NO.

7 Q. OKAY. DO YOU FEEL LIKE HAD YOU HAD A CONTINUOUS
8 STREAM SPRAYER, YOU COULD HAVE ACTUALLY PUT ANY MORE
9 ACETIC ACID ON THE MACHINE THAN WAS ALREADY ON THE
10 MACHINE?

11 A. NO.

12 Q. THE THREE FELLOWS WHO RAN THIS THAT NIGHT, YOU,
13 DICKIE, AND CHRIS, ARE Y'ALL ALL -- WERE Y'ALL ALL
14 IN SUPERVISORY ROLES?

15 A. YES.

16 Q. AND DO YOU HAVE ANY DOUBT IN YOUR MIND THAT ON THE
17 NIGHT YOU PARTICIPATED IN THIS STUDY THAT Y'ALL RAN
18 THE PROCESSES CORRECTLY?

19 A. NO, I'M SURE WE DID.

20 Q. HOW LONG IS THE RUN TIME ON THESE MACHINES?

21 A. ABOUT 25 MINUTES.

22 Q. AND HOW LONG BEFORE YOU SPRAY THE MOLD WITH ACETIC
23 BEFORE THE PROCESS STARTS?

24 A. USUALLY, THE GUYS WOULD SPRAY THE MOLDS RIGHT --
25 PRIOR TO STARTING THE MACHINE BACK, SO THEY WOULD --

1 BUT, I MEAN, YOU WOULD HAVE ON THE -- LIKE ON THE
2 BIG MACHINES, FOR INSTANCE, IF YOU HAD A 25-MINUTE
3 TIME, WHICH THAT'S THE RUN TIME OF THE MACHINE, THEN
4 THE GUYS WOULD HAVE TO TAKE -- THEY TAKE THEM OUT BY
5 HAND WITH -- THEY HAD, WE CALL IT A DE-MOLDER, WHICH
6 THEY TAKE EACH INDIVIDUAL COVER OUT BY HAND. SO YOU
7 GOT A DE-MOLD TIME, ALSO IN THERE, AND AFTER THAT,
8 THEY WOULD SPRAY THE MACHINE AND START THE MACHINE
9 BACK UP.

10 Q. AND SO ONCE THE MACHINE WAS STARTED, WOULD AN
11 EMPLOYEE STILL HAVE ANY NEED TO USE ACETIC ACID?

12 A. THERE WOULDN'T BE ANY WAY. I MEAN, I DON'T KNOW
13 WHAT HE WOULD DO WITH IT.

14 Q. ONCE THE MACHINE STARTED, WOULD THE ACETIC ACID --
15 WOULD THE EMPLOYEE STILL EVEN BE EXPOSED TO THE
16 ACETIC ACID ONCE THE PROCESS IS STARTED?

17 A. NO.

18 Q. SO UNDERSTANDING YOUR TESTIMONY, IT'S ONLY THE
19 LIMITED WINDOW OF TIME BEFORE STARTING THE NEXT
20 BATCH THAT YOU WOULD HIT THE MOLDS WITH THE ACETIC
21 ACID?

22 A. THAT'S RIGHT.

23 Q. AND THE MACHINE WOULD RUN 25-28 MINUTES, AND THEN IS
24 THERE ANY ACETIC ACID EXPOSURE IN PULLING THE LIDS
25 OFF, THE COVERS OFF?

1 A. NO.

2 Q. ONLY ON THE MOLD PRIOR TO STARTING THE MACHINE?

3 A. RIGHT.

4 **BY MR. HORNER:**

5 THAT'S ALL I'VE GOT.

6 **BY COMMISSIONER BECK:**

7 ANYTHING FURTHER, MR. DANTIN?

8 **BY MR. BEARD:**

9 YES, YOUR HONOR.

10 **RECROSS-EXAMINATION BY MR. DANTIN:**

11 Q. WITH REGARD TO ACETIC ACID EXPOSURE, YOU REALLY
12 CAN'T TALK ABOUT WHAT ACETIC ACID MAY HAVE BEEN IN
13 THE AIR AND IN THE ENVIRONMENT BETWEEN MOLDS, CAN
14 YOU? I MEAN, WHAT YOU'RE REALLY TALKING ABOUT, IN
15 OTHER WORDS, IS THEY WEREN'T SPRAYING ACTIVELY
16 BETWEEN WHEN THOSE MACHINES WERE STOPPING, CORRECT?

17 A. RIGHT.

18 Q. YOU'RE NOT REALLY TALKING ABOUT WHETHER THERE WAS
19 SOME LINGERING ABOUT IN THE ENVIRONMENT?

20 A. I MEAN, NO, I WOULDN'T -- I MEAN, ---

21 Q. OKAY. I JUST WANT TO MAKE SURE WE'RE CLEAR ON THAT.

22 A. RIGHT.

23 Q. AND WHILE WE'RE TALKING ABOUT THE ENVIRONMENT, LET
24 ME ---

25 **BY MR. DANTIN:**

1 THIS IS PAGES 110 AND 111.

2 RE CROSS-EXAMINATION RESUMED BY MR. DANTIN:

3 Q. THIS IS, AGAIN, PICTURES FROM THAT INDUSTRIAL
4 HYGIENE ASSESSMENT.

5 BY MR. DANTIN:

6 DO YOU MIND IF I COME AROUND HERE?

7 BY COMMISSIONER BECK:

8 I DON'T MIND AT ALL.

9 RE CROSS-EXAMINATION RESUMED BY MR. DANTIN:

10 Q. LOOKING AT THIS, AND WE'RE LOOKING AT PAGE 111 RIGHT
11 NOW, ARE THOSE THE AREAS THAT THE GUYS WHO DID THE
12 SPRAYING, LIKE MR. GUL, WOULD HAVE TO GO INTO TO
13 SPRAY?

14 A. YES.

15 Q. OKAY. AND IT LOOKS LIKE IN THE PHOTO 7, THERE'S
16 SOMETHING ON THREE SIDES OF THE PERSON SPRAYING
17 THERE; DOES THAT LOOK ABOUT RIGHT TO YOU?

18 A. YES.

19 Q. IS THAT YOU IN THAT PICTURE?

20 A. NO.

21 Q. OKAY. AND THEN IF WE LOOK DOWN AT PHOTOS 9 AND 10,
22 REALLY, AND 11, BELOW THAT THERE'S SORT OF A CAGE-
23 LIKE AREA THAT THE PERSON'S GOING INTO TO SPRAY; IS
24 THAT CORRECT?

25 A. YES.

1 Q. AND THERE'S STUFF KIND OF ON FOUR SIDES THERE;
2 WOULDND'T YOU AGREE?

3 A. OH, YEAH, THERE'S SOMETHING ON ALL FOUR SIDES,
4 RIGHT.

5 Q. OKAY. AGAIN, IF WE LOOK BACK AT PAGE 110 OF THAT
6 ASSESSMENT, LOOKING DOWN AT THE -- IT'S PHOTO 6,
7 WHICH IS IN THE BOTTOM RIGHT CORNER, THAT'S SOMEONE
8 SPRAYING ACETIC ACID AS WELL, CORRECT?

9 A. RIGHT.

10 Q. AND, AGAIN, IS THAT AN AREA WHERE -- IT'S A PRETTY
11 TIGHT AREA; YOU WOULD AGREE WITH ME?

12 A. IT'S PROBABLY FOUR FEET.

13 Q. FOUR FEET. OKAY. AND THERE'S SOMETHING ON THREE
14 SIDES OF THAT PERSON, CORRECT?

15 A. YES.

16 Q. AND THAT WOULD BE WHERE THE ACID WAS BEING SPRAYED?

17 A. YES.

18 **BY MR. DANTIN:**

19 NO FURTHER QUESTIONS.

20 **BY COMMISSIONER BECK:**

21 ANYTHING ELSE? YOU MAY STEP DOWN SIR. THANK.
22 YOU VERY MUCH. MR. HORNER, YOUR NEXT WITNESS,
23 PLEASE.

24 **BY MR. HORNER:**

25 WE'RE GOING TO CALL RODNEY HORNE, WHO I BELIEVE

1 COULD SORT OF COUNTER THE TESTIMONY THAT WE HEARD
2 EARLIER REGARDING RESPIRATORS. IT'S GOING TO BE
3 CUMULATIVE I GUESS IN SOME ASPECTS TO MR. CLAYTON,
4 BUT, OBVIOUSLY, NOT CUMULATIVE SINCE IT IS ALLEGED
5 TO BE A SEPARATE CONVERSATION.

6 BY COMMISSIONER BECK:

7 LET'S HAVE MR. HORNE COME ON IN. RIGHT HERE,
8 SIR. WOULD YOU RAISE YOUR RIGHT HAND, PLEASE.

9 RODNEY HORNE

10 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

11 BY COMMISSIONER BECK:

12 PLEASE, STATE YOUR FULL NAME FOR THE RECORD.

13 BY THE WITNESS:

14 RODNEY THOMAS HORNE.

15 BY COMMISSIONER BECK:

16 ALL RIGHT. MR. HORNE, PLEASE HAVE A SEAT. MR.
17 HORNER?

18 DIRECT EXAMINATION BY MR. HORNER:

19 Q. MR. HORNE, WHERE DO YOU WORK?

20 A. KOHLER.

21 Q. HOW LONG HAVE YOU BEEN THERE?

22 A. ROUGHLY, 24 YEARS.

23 Q. WHAT IS YOUR CURRENT JOB TITLE THERE?

24 A. FOREMAN IN PRESSURE CAST AND CELLULAR MANUFACTURE.

25 Q. AND YOU ARE AWARE OF WHETHER MR. GUL WORKED IN THE

1 PRESSURE CAST DEPARTMENT?

2 A. EXCUSE ME?

3 Q. DID MR. GUL WORK IN THE PRESSURE CAST DEPARTMENT?

4 A. YES, SIR.

5 Q. OKAY. AND WHEN MR. GUL WORKED IN THE PRESSURE CAST
6 DEPARTMENT, WOULD YOU HAVE BEEN HIS FOREMAN, ONE OF
7 HIS FOREMAN?

8 A. AT ONE TIME, I WAS.

9 Q. ALL RIGHT. AND AS PRESSURE CAST FOREMAN, WHAT ARE
10 YOUR GENERAL JOB DUTIES ON A DAILY BASIS?

11 A. WELL, WE HAVE TO TRY TO MAINTAIN PRODUCTION,
12 SCHEDULE PEOPLE, YOU KNOW, WORK ON CERTAIN MACHINES,
13 AND DAY-TO-DAY OPERATIONS OF GETTING WIRE, YOU KNOW,
14 TO THE SPRAY DEPARTMENT, AND COMMUNICATING WITH
15 OTHER DEPARTMENTS, AND TURNING IN PAYROLL, AND A
16 LITTLE BIT OF, I GUESS, EVERYDAY COMMUNICATION WITH
17 EMPLOYEES ON WHAT'S GOING ON IN THE DEPARTMENT AND
18 ---

19 Q. WOULD YOU BE AN EMPLOYEE'S FIRST LINE OF
20 COMMUNICATION IF THEY HAD SOME SORT OF ISSUE THAT
21 THEY NEEDED TAKEN UP?

22 A. YES, SIR.

23 Q. OKAY. AND IN THE PRESSURE CAST DEPARTMENT, WE'VE
24 TALKED ABOUT THIS, YOU WEREN'T IN HERE, BUT THERE
25 WAS A COVER 2 MACHINE; IS THAT RIGHT?

1 A. UH-HUH.

2 Q. COVER 5?

3 A. YES, SIR.

4 Q. SMALL MACHINES?

5 A. YES, SIR.

6 Q. AND THEN AT SOME POINT THE KITCHEN SINK MACHINE?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND ARE THESE MACHINES THAT MR. GUL
9 WOULD HAVE WORKED ON AT SOME POINT IN TIME?

10 A. AT SOME POINT IN TIME, YES.

11 Q. ALL RIGHT. AND ARE YOU AWARE OF HOW ACETIC ACID WAS
12 USED IN THE PROCESS ON THESE MACHINES?

13 A. YES, SIR.

14 Q. CAN YOU TELL ME THAT.

15 A. WELL, ACETIC ACID, THAT -- YOU USED IT -- YOU
16 SPRAYED IT IN CERTAIN AREAS THAT MIGHT HAVE HAD A
17 DEFECTED AREA ON THE MOLD, WHICH WOULD IN RETURN
18 RELEASE THE PRODUCT FROM THE MOLD AND IT WOULD HELP
19 IT, YOU KNOW, FIZZ-LIKE, TO MAKE IT -- GIVE IT A
20 RELEASE IN ANY DEFECTED AREAS.

21 Q. AS A GENERAL PRACTICE, WOULD JUST THE AREA THAT HAD
22 TROUBLE BE SPRAYED OR WOULD THE ENTIRE MOLD BE
23 SPRAYED?

24 A. YOU SHOULD JUST SPRAY THE AREA THAT'S GOT THE
25 PROBLEM.

1 Q. AND THE MOLDS THAT WE'RE TALKING ABOUT, WOULD EVERY
2 ONE OF THEM NEED ACETIC ACID ON EVERY SINGLE DAY?
3 HOW WOULD THAT WORK AS FAR AS WHAT MOLDS MAY OR MAY
4 NOT BE GIVING AN OPERATOR TROUBLE?

5 A. IT COULD VARY DAY TO DAY. I MEAN, IT COULD -- THIS
6 MOLD MIGHT NEED IT. THIS MOLD MIGHT NOT NEED IT.
7 YOU KNOW, IT WOULD VARY.

8 Q. AND THAT COULD VARY FROM DAY TO DAY?

9 A. YES, SIR.

10 Q. ALL RIGHT. WAS THERE EVER A PROCEDURE OR POLICY IN
11 PLACE WHERE AN EMPLOYEE WAS TO SPRAY EVERY MOLD,
12 EVERY TIME FROM ONE END TO THE OTHER? WAS THAT THE
13 PROCEDURE OR POLICY OF KOHLER OR THE PRESSURE CAST
14 DEPARTMENT?

15 A. NO, WE WOULD ONLY SPRAY IT ON AREAS THAT WAS
16 AFFECTED.

17 Q. OKAY. AND ARE YOU AWARE NOW THAT MR. GUL CLAIMS
18 THAT HE HAS SOME HEALTH PROBLEMS AS A RESULT OF
19 ACETIC ACID?

20 A. I MEAN, I DO NOW.

21 Q. RIGHT. NOW.

22 A. NOW.

23 Q. WHEN MR. GUL WAS WORKING FOR YOU, DID HE EVER COME
24 TO YOU WITH ANY COMPLAINTS RELATED TO THE USE OF
25 ACETIC ACID IN HIS JOB?

1 A. NO.

2 Q. DID MR. GUL EVER COME TO YOU AND COMPLAIN OF AN
3 INABILITY TO BREATHE BECAUSE HE WAS USING ACETIC
4 ACID?

5 A. NO.

6 Q. DID MR. GUL EVER COME TO YOU AND COMPLAIN THAT HE
7 WAS SUFFERING FROM EYE, NOSE, OR THROAT IRRITATION
8 AS A RESULT OF USING ACETIC ACID?

9 A. NO.

10 Q. ARE YOU AWARE OF MR. GUL HAVING ANY HEALTH PROBLEMS,
11 PARTICULARLY, TOWARD THE END OF HIS TIME WITH
12 KOHLER?

13 A. ONLY WHAT HE HAD TOLD ME.

14 Q. OKAY. AND WHAT DID YOU UNDERSTAND BY VIRTUE OF
15 TALKING TO HIM WHAT THOSE HEALTH PROBLEMS WERE?

16 A. HIGH BLOOD PRESSURE.

17 Q. AND AS A FOREMAN AT KOHLER, DID YOU ATTEMPT TO MAKE
18 ANY EFFORTS TO ACCOMMODATE HIS HIGH BLOOD PRESSURE
19 IN ANY WAY?

20 A. WE HAD TALKED TO THE PLAN NURSE AND SHE -- TO HAVE
21 IT OKAYED WITH HER FOR HIM TO GO ANYTIME HE FELT HE
22 NEEDED TO GO TO HER FOR CHECKING HIM OR ANYTIME HE
23 DIDN'T FEEL GOOD OR -- WE DONE ANYTHING TO ASSIST
24 HIM POSSIBLE.

25 Q. IF HE FELT LIKE HE WAS HAVING A HIGH BLOOD PRESSURE

1 INCIDENT, WOULD HE NEED PERMISSION FROM YOU?

2 A. NO, SIR.

3 Q. HE COULD GO DIRECTLY ON HIS OWN?

4 A. IF WE WAS NOWHERE AROUND, HE HAD PERMISSION TO GO
5 DIRECTLY TO THE NURSE, HIMSELF.

6 Q. ARE YOU AWARE OF HIM DOING THAT A COUPLE OF TIMES AT
7 SOME POINT?

8 A. I THINK HE DID. I WASN'T REALLY SURE, BUT I THINK
9 HE DID, 'CAUSE, LIKE I SAID, WHEN WE DISCUSSED THAT
10 WITH THE LOCAL NURSE, I MEAN, LIKE I SAID, HE DIDN'T
11 HAVE TO COME LOOKING FOR US. HE COULD GO DIRECTLY
12 TO HER, 'CAUSE SHE WAS AWARE OF THE SITUATION SINCE
13 HE HAD COME UP WITH HIGH BLOOD PRESSURE.

14 Q. IF MR. GUL HAD COME TO YOU COMPLAINING OF
15 RESPIRATORY PROBLEMS OR EYES OR NOSE OR THROAT
16 PROBLEMS FROM USING ACETIC ACID, WHAT WOULD HAVE
17 BEEN THE PROCEDURE YOU WOULD HAVE FOLLOWED IF YOU
18 HAD RECEIVED A COMPLAINT LIKE THAT FROM HIM OR ANY
19 EMPLOYEE?

20 A. I WOULD HAVE DISCUSSED IT WITH MY AREA SUPERVISOR,
21 PLUS THE SAFETY COORDINATOR.

22 Q. WOULD THAT HAVE STARTED SOME SORT OF PROCESS TO
23 EVALUATE HIS CLAIMS OR HIS ALLEGED INJURIES?

24 A. I WOULD SAY IT WOULD HAVE, YEAH.

25 Q. YOU WOULDN'T HAVE DONE NOTHING, WOULD YOU?

1 A. NO, I WOULDN'T HAVE JUST AVOIDED IT. NO.

2 Q. IS IT POSSIBLE -- I MEAN, IN THOSE SITUATIONS, IS AN
3 EMPLOYEE ALSO PERMITTED TO GO SEE A COMPANY NURSE IF
4 HE'S SUFFERING FROM SOME AILMENT AT WORK?

5 A. YEAH, THE NURSE WAS THERE TO HELP, YOU KNOW,
6 ANYBODY.

7 Q. DO YOU EVER RECALL MR. GUL COMING TO YOU REQUESTING
8 A RESPIRATOR?

9 A. NO, SIR.

10 Q. WERE THERE PEOPLE AT KOHLER WHO USED RESPIRATORS?

11 A. AS IN, I MEAN, ---

12 Q. IN THE BENCH CASTING DEPARTMENT, PERHAPS?

13 A. YEAH, YOU HAD BENCH CAST USE THEM. WELL, THE ---
14 DEPENDING ON WHAT TYPE OF RESPIRATOR YOU'RE TALKING
15 ABOUT. THEY DID.

16 Q. DID YOU HAVE A RESPIRATOR?

17 A. AS IN?

18 Q. TO USE WHEN CLEANING THE MACHINES EVERY TWO WEEKS OR
19 SO?

20 A. YES, SIR.

21 Q. WAS THAT THE ONLY TIME YOU WOULD HAVE WORN A
22 RESPIRATOR, IS WHEN USING THOSE ACIDS THAT WERE USED
23 TO CLEAN THE MACHINES?

24 A. WHEN WE USED THEM CERTAIN ACIDS, THEY WAS REQUIRED
25 TO USE THEM, THE MASK -- MASK RESPIRATOR.

1 Q. OKAY. BUT ACETIC ACID WAS NOT ON THAT LIST OF ACIDS
2 THAT YOU HAD TO WEAR A RESPIRATOR AROUND, CORRECT?

3 A. NO, SIR.

4 Q. IF MR. GUL HAD COME TO YOU REQUESTING A RESPIRATOR,
5 WHAT WOULD HAVE BEEN THE RESPONSE OR PROCEDURE HAD
6 HE COME TO YOU AND SAID, "I THINK I NEED A
7 RESPIRATOR BECAUSE I FEEL LIKE I'M GETTING SICK
8 AROUND ACETIC ACID" WHAT WOULD YOU HAVE DONE?

9 A. I WOULD HAVE HAD TO DISCUSS IT WITH THE SAFETY
10 COORDINATOR, 'CAUSE YOU COULDN'T JUST SAY, HERE'S
11 YOU A RESPIRATOR. THERE ARE PROCEDURES YOU HAVE TO
12 GO THROUGH. YOU'VE GOT TO BE FIT TESTED FOR IT AND
13 BE TRAINED ON PROPERLY HOW TO WEAR IT, AND,
14 ACTUALLY, STORE IT AT THE END OF THE -- WHEN YOU GET
15 DONE WITH IT.

16 Q. AND THOSE PROCEDURES, HAVE THEY BEEN IN PLACE SINCE
17 BEFORE MR. GUL HAS BEEN THERE?

18 A. TO THE BEST OF MY KNOWLEDGE, YES, SIR.

19 Q. WERE THOSE PROCEDURES IN PLACE IN 2009, AT LEAST?

20 A. I WOULD SAY, YES.

21 Q. OKAY. AND WHO HEADS UP THAT PROGRAM, THAT
22 RESPIRATOR PROGRAM?

23 A. MIKE TOLLESON.

24 Q. AND ASSUMING MR. GUL CAME TO YOU AND ASKED FOR A
25 RESPIRATOR, WOULD YOU HAVE SENT HIM TO MIKE TOLLESON

1 FOR AN EVALUATION?

2 A. HE WOULD HAVE HAD TO HAVE SEEN HIM TO ACTUALLY GET
3 ONE, TO USE ONE, YES SIR.

4 Q. AND I THINK I ASKED YOU, BUT DID MR. GUL EVER COME
5 TO YOU REQUESTING THE USE OF A RESPIRATOR?

6 A. NO.

7 Q. DO YOU RECALL MR. GUL EVER WEARING A PAPER MASK
8 WHILE OPERATING ONE OF THE MACHINES IN THE PRESSURE
9 CAST DEPARTMENT?

10 A. I WOULD SAY NO.

11 Q. IS THAT SOMETHING THAT WOULD HAVE STOOD OUT TO YOU,
12 HAD YOU SEEN IT?

13 A. IF I'D OF SEEN SOMEONE WEARING ONE, I WOULD HAVE HAD
14 TO ASK THEM.

15 Q. WHAT WOULD YOU HAVE ASKED THEM? WHAT WOULD BE THE
16 CONVERSATION?

17 A. WHY WAS YOU WEARING A DUST MASK, YOU KNOW, RUNNING
18 THE MACHINES AND, YOU KNOW, SUPPOSEDLY, YOU SAID
19 FUMES OR STUFF LIKE THAT, THAT WOULD NOT AFFECT, YOU
20 KNOW, FUMES AND ALL. YOU WOULD HAVE TO HAVE A
21 RESPIRATOR, ITSELF.

22 Q. AND WOULD YOU HAVE STARTED THE PROCESS AT THAT
23 POINT, HAD YOU HAD THAT CONVERSATION WITH MR. GUL OR
24 ANY EMPLOYEE?

25 A. YES, SIR.

1 Q. ARE YOU AWARE OF ANY OTHER EMPLOYEE IN THE PRESSURE
2 CAST DEPARTMENT COMPLAINING OF ANY RESPIRATORY
3 PROBLEMS AS A RESULT OF ACETIC ACID?

4 A. NO, SIR.

5 Q. ARE YOU AWARE OF ANY EMPLOYEE IN THE PRESSURE CAST
6 DEPARTMENT COMING TO YOU AND SAYING I HAVE EYE OR
7 NOSE OR THROAT IRRITATION FROM USING ACETIC ACID?

8 A. NO, SIR.

9 Q. YOU WERE NOT INVOLVED IN THE INDUSTRIAL HYGIENE
10 ASSESSMENT, CORRECT?

11 A. CORRECT.

12 Q. HOW WOULD YOU DESCRIBE THE AREA WHERE THE PRESSURE
13 CAST DEPARTMENT IS, AS FAR AS OPEN, CLOSED, WALLED
14 OFF? CAN YOU GIVE ME SORT OF A GENERAL DESCRIPTION
15 OF THAT PART OF THE PLANT?

16 A. I WOULD SAY IT'S VERY WELL OPEN. YOU KNOW, EVEN
17 THOUGH YOU GOT MACHINES IN THERE, YOU GOT PLENTY OF
18 ROOM, PLENTY OF SPACE, I MEAN, HIGH CEILINGS, AND I
19 GUESS YOU WOULD SAY, EVERY FOOT BY FOOT AIN'T
20 CLUTTERED. YOU'VE GOT VERY OPEN SPACE.

21 Q. AND THE CEILINGS ARE HIGH?

22 A. YES, SIR.

23 Q. IS THE AREA, THIS PART OF THE BUILDING, DOES IT HAVE
24 AIR CONDITIONING AND HEAT THAT RUNS?

25 A. YES, SIR.

1 Q. IS THE BUILDING, ITSELF, RATHER LARGE?

2 A. YES, SIR.

3 Q. DID YOU HAVE ANY CONCERNS ABOUT THE VENTILATION IN
4 THAT -- AS A FOREMAN, WOULD YOU HAVE HAD ANY
5 CONCERNS ABOUT THE VENTILATION IN THE PRESSURE CAST
6 DEPARTMENT?

7 A. NO.

8 BY MR. HORNER:

9 I DON'T HAVE ANYTHING ELSE.

10 BY COMMISSIONER BECK:

11 MR. DANTIN?

12 BY MR. DANTIN:

13 THANK YOU, YOUR HONOR.

14 CROSS-EXAMINATION BY MR. DANTIN:

15 Q. GOOD TO SEE YOU AGAIN, MR. HORNE. MY UNDERSTANDING
16 IS YOU SUPERVISED MR. GUL WHILE HE WAS WORKING ON
17 THE COVER MACHINE 2, SMALL MACHINES, AND COVER
18 MACHINE 5; DOES THAT SOUND RIGHT?

19 A. PRETTY MUCH. I MEAN, ACTUALLY -- I MEAN, I CAN'T
20 ACTUALLY REMEMBER THIS MACHINE, THIS MACHINE, BUT AT
21 ONE TIME, YES, SIR.

22 Q. OKAY. AND MR. GUL USED ACETIC ACID PARTICULARLY
23 WHEN WORKING ON MACHINE 2, MACHINE 5, AND THE SMALL
24 MACHINES, CORRECT?

25 A. YES, SIR.

1 Q. IN FACT, HE USED ACETIC ACID EVERY DAY IN THOSE
2 PROCESSES, CORRECT?

3 A. AT SOME POINT IN TIME, HE SHOULD HAVE USED -- HE
4 WOULD HAVE USED IT DURING THE DAY.

5 Q. OKAY. AND KOHLER DIDN'T REQUIRE EMPLOYEES SPRAYING
6 ACETIC ACID TO WEAR ANYTHING OTHER THAN EYE
7 PROTECTION; IS THAT RIGHT?

8 A. BASICALLY, YOU WORE EYE PROTECTION AND THEY HAD A
9 CHOICE FOR GLOVES.

10 Q. WELL, I'M JUST TALKING ABOUT THE REQUIREMENTS. THEY
11 HAD TO WEAR THE EYE PROTECTION; IS THAT RIGHT?

12 A. RIGHT. THAT WAS ONE OF THE REQUIREMENTS FOR ---

13 Q. OKAY.

14 A. --- SPRAYING STUFF.

15 Q. AND THEN KOHLER ALSO PROVIDED GLOVES TO PREVENT SKIN
16 IRRITATION WHEN HANDLING THE ACETIC ACID, CORRECT?

17 A. YES, SIR.

18 Q. OKAY. YOU TESTIFIED AT YOUR DEPOSITION THAT YOU
19 COULD SMELL THAT VINEGARY ODOR WHEN ACETIC ACID WAS
20 BEING USED. IN FACT, YOU TESTIFIED THAT THERE WERE
21 TIMES YOU COULD JUST WALK THROUGH THE AREA AND KNOW
22 EMPLOYEES WERE SPRAYING ACETIC ACID BECAUSE OF THE
23 SMELL; IS THAT RIGHT?

24 A. IF YOU WALK BY A AREA THAT IT WAS BEING USED, WITHIN
25 A COUPLE FEET YOU COULD ACTUALLY SMELL IT.

1 Q. OKAY. AND YOU'VE ACTUALLY SPRAYED ACETIC ACID ON
2 MOLDS AT KOHLER IN THE PAST, CORRECT?

3 A. AT ONE TIME, YEAH.

4 Q. AND WHEN YOU DID, YOU COULD SMELL IT MORE DISTINCTLY
5 WHILE YOU WERE ACTUALLY DOING THE SPRAYING THAN YOU
6 COULD WHEN YOU WERE SIMPLY IN THE AREA WHERE ACETIC
7 ACID WAS BEING SPRAYED, CORRECT?

8 A. WELL, THERE WAS A DIFFERENCE IN THE SPRAY. I MEAN,
9 IF I SPRAYED CONSTANTLY LIKE THIS (DEMONSTRATING),
10 I'M GOING TO SMELL MORE. IF I JUST GO LIKE A LITTLE
11 SQUIRT, YOU'RE NOT GOING TO SMELL IT MUCH AT ALL.

12 Q. SO, IN OTHER WORDS, THE MORE YOU SPRAY, THE STRONGER
13 THE SMELL WOULD BE TO YOU, CORRECT?

14 A. THAT'S MY OPINION.

15 Q. OKAY. IS THAT YOUR EXPERIENCE WITH IT?

16 A. THE TIMES I HAVE SPRAYED IT, YES.

17 Q. OKAY. DO YOU RECALL US TALKING ABOUT THIS WARNING
18 LABEL AT YOUR DEPOSITION?

19 **BY MR. DANTIN:**

20 AND, AGAIN, YOUR HONOR, THAT'S PLAINTIFF'S
21 EXHIBIT C.

22 **CROSS-EXAMINATION RESUMED BY MR. DANTIN:**

23 A. YES, I REMEMBER US -- US DISCUSSING THIS. YEAH.

24 Q. OKAY. AND YOU RECALL THAT IS THE WARNING LABEL OFF
25 THE DRUM OF ACETIC ACID FROM KOHLER, CORRECT?

1 A. WELL, I CAN'T ACTUALLY SAY IT WAS 'CAUSE, I MEAN,
2 IT'S BEEN SEVERAL YEARS AGO THAT WE ACTUALLY -- I
3 ACTUALLY SEEN THE LABEL ON ACETIC ACID.

4 Q. WELL, AT YOUR DEPOSITION, I ASKED YOU IF YOU EVER
5 SAW IT AND YOU SAID, YES.

6 A. I REMEMBER THAT. I MEAN, IF YOU'RE REFERRING TO
7 THIS, I WOULD ---

8 Q. YOU'VE SEEN THAT ON A DRUM OF ACETIC ACID AT KOHLER
9 WHEN IT WAS USED, CORRECT?

10 A. PRETTY SIMILAR, YEAH.

11 Q. OKAY. NOW, YOU TESTIFIED AT YOUR DEPOSITION, THE
12 ONLY HAZARD REGARDING ACETIC ACID ABOUT WHICH KOHLER
13 HAD MADE YOU AWARE WAS SKIN IRRITATION; DO YOU
14 REMEMBER TELLING ME THAT?

15 A. EXCUSE ME?

16 Q. OKAY. YES, AT YOUR DEPOSITION, YOU TESTIFIED THAT
17 THE ONLY HAZARD REGARDING ACETIC ACID ABOUT WHICH
18 KOHLER HAD MADE YOU AWARE WAS SKIN IRRITATION?

19 A. OH, YOU HAVE EYES -- I MEAN, YOU WORE EYEGLASSES.

20 Q. I'M TALKING ABOUT WHAT THEY TOLD YOU, WHAT KOHLER
21 TOLD YOU. I'M JUST SAYING WHAT YOU TOLD ME. DO YOU
22 RECALL THAT?

23 A. I DON'T RECALL. I MEAN, NOT TO THAT EXACT EXTENT,
24 NO.

25 Q. OKAY. THIS IS PAGES 20 AND 21 OF YOUR DEPOSITION,

1 AND IF YOU'LL LOOK DOWN AT THE BOTTOM OF PAGE 20,
2 STARTING AT LINE 24, I ASKED, "DID KOHLER MAKE YOU
3 AWARE THAT THERE WERE SOME DANGERS IN USING ACETIC
4 ACID", AND THEN ON PAGE 21, YOU SAID, "YEAH". I
5 SAID, "WHAT DID KOHLER DISCUSS WITH YOU IN TERMS OF
6 DANGER USING ACETIC ACID", AND YOU TOLD ME, "IT WAS
7 ALWAYS DETERMINED THAT ACETIC ACID COULD CAUSE AN
8 IRRITATION TO THE SKIN", AND I SAID, "DID THEY EVER
9 TELL YOU ANYTHING ABOUT VAPORS CAUSING SEVERE
10 RESPIRATORY TRACT IRRITATION AS IT SAYS ON THIS
11 WARNING LABEL", AND YOU SAID, "THIS IS -- WHAT YOU'RE
12 SAYING IS NOT WHAT -- THE HAZARD THING THAT WE HAVE
13 WAS ONLY LISTED AS IT MAY POSSIBLY IRRITATION TO THE
14 SKIN -- IRRITATE THE SKIN"; DO YOU RECALL THAT?

15 A. YEAH, THAT'S PRETTY MUCH -- YEAH.

16 Q. OKAY. AND AT YOUR DEPOSITION, YOU TESTIFIED THAT
17 GIVEN YOUR NEW UNDERSTANDING, SEEING THAT WARNING
18 LABEL, AND NOTING THAT ACETIC ACID VAPORS CAN CAUSE
19 RESPIRATORY TRACT IRRITATION, YOU'D WANT TO DISCUSS
20 DOING SOMETHING MORE WITH REGARD TO HANDLING ACETIC
21 ACID IF IT WAS BROUGHT INTO YOUR DEPARTMENT; DO YOU
22 REMEMBER TELLING ME THAT?

23 A. YEAH, I WOULD CHECK ON IT BEFORE I ACTUALLY USED IT.

24 Q. OKAY. AND HAS THAT EVER COME UP SINCE YOUR
25 DEPOSITION?

1 A. AS USING ACETIC ACID?

2 Q. UH-HUH.

3 A. NO, 'CAUSE WE DON'T USE IT NO MORE.

4 Q. OKAY. AND THAT WAS GOING TO BE MY VERY NEXT POINT.
5 KOHLER DOESN'T USE ACETIC ACID ANYMORE?

6 A. NO.

7 Q. IT'S BEEN YEARS SINCE KOHLER USED ACETIC ACID,
8 HASN'T IT?

9 A. YEAH.

10 Q. HAVING BEEN MR. GUL'S SUPERVISOR FOR A PERIOD, DO
11 YOU BELIEVE MR. GUL WAS A GOOD EMPLOYEE?

12 A. I WOULD SAY HE WAS.

13 Q. DID YOU EVER HAVE ANY ISSUES WITH HIM BEING
14 DISHONEST OR UNTRUTHFUL WITH YOU?

15 A. TO THE BEST OF MY KNOWLEDGE, NO.

16 Q. IN FACT, AT YOUR DEPOSITION YOU SAID MR. GUL WAS,
17 QUOTE, "A FINE FELLOW"; DO YOU REMEMBER THAT?

18 A. YES, SIR.

19 Q. NOW, YOU UNDERSTAND MR. GUL IS UKRANIAN, CORRECT?

20 A. YES, SIR.

21 Q. WELL, YOU KNOW THAT HE SPEAKS RUSSIAN ANYWAY, I
22 ASSUME?

23 A. YES, SIR.

24 Q. OKAY. AND YOU SEE WE HAVE AN INTERPRETER HERE
25 TODAY. I DON'T KNOW IF YOU KNOW THAT'S WHAT HE'S

1 DOING HERE, BUT ---

2 A. YES, SIR.

3 Q. -- HE'S HERE BECAUSE OF THAT LANGUAGE ISSUE. HAVE
4 YOU EVER HAD ANYONE AT KOHLER TO INTERPRET
5 COMMUNICATIONS BETWEEN YOU AND MR. GUL?

6 A. I DON'T RECALL EVER HAVING TO HAVE SOMEONE TO.

7 Q. OKAY. THINKING BACK ON IT NOW, WAS IT GENERALLY
8 MORE CHALLENGING TO COMMUNICATE WITH MR. GUL THAN
9 WITH AN EMPLOYEE FOR WHOM ENGLISH WAS THEIR FIRST
10 LANGUAGE?

11 A. AT SOME TIMES YOU MIGHT HAVE TO REPEAT SOMETHING
12 SEVERAL TIMES, BUT BEST OF MY KNOWLEDGE, WE ALWAYS
13 WAS IN THE CLEAR ONCE WE HAD A DISCUSSION.

14 Q. YOU WOULD MAKE THE ASSUMPTION THAT HE UNDERSTOOD
15 YOU?

16 A. YEAH, 'CAUSE I'D ALWAYS ASK, YOU KNOW, NOT JUST WITH
17 HIM, WITH EVEN THE SPANISH PEOPLE. IF THEY DIDN'T
18 UNDERSTAND, YOU KNOW, WE'D TRY TO GO THROUGH ANOTHER
19 ROUTE WITH GETTING SOMEBODY TO UNDERSTAND.

20 Q. I GUESS THE ONLY PROBLEM WOULD BE IF THEY DIDN'T
21 UNDERSTAND WHETHER YOU WERE ASKING THEM IF THEY
22 UNDERSTOOD.

23 **BY MR. DANTIN:**

24 OKAY. NO FURTHER QUESTIONS.

25 **BY COMMISSIONER BECK:**

1 ANYTHING FURTHER, MR. HORNER?

2 BY MR. HORNER:

3 OKAY. JUST BRIEFLY.

4 REDIRECT EXAMINATION BY MR. HORNER:

5 Q. IF MR. GUL HAD COME TO YOU ASKING FOR A RESPIRATOR
6 OR INDICATING HE HAD BREATHING PROBLEMS, DO YOU
7 THINK YOU WOULD HAVE HAD ANY TROUBLE UNDERSTANDING
8 THAT COMPLAINT?

9 A. I DON'T THINK HE WOULD.

10 Q. NO, WOULD YOU HAVE TROUBLE UNDERSTANDING WHAT HE WAS
11 ASKING YOU IF HE SAID, CAN I HAVE A RESPIRATOR?

12 A. NO, SIR.

13 Q. I MEAN, WAS THE LANGUAGE SO BAD YOU COULDN'T SPEAK
14 TO HIM AND YOU HAD TO HAVE A TRANSLATOR OR YOU COULD
15 CARRY ON CONVERSATIONS WITH HIM WITHOUT NEEDING A
16 TRANSLATOR?

17 A. I FELT THAT WE COULD COMMUNICATE WITH EACH OTHER
18 WITHOUT A TRANSLATOR.

19 Q. ABOUT MR. GUL BEING A GOOD EMPLOYEE, IS THAT WHY
20 Y'ALL WORKED WITH HIM WHEN HE CAME TO Y'ALL AND
21 COMPLAINED ABOUT THE BLOOD PRESSURE?

22 A. YEAH.

23 Q. YOU WANTED TO KEEP HIM ON IF YOU COULD?

24 A. VERY MUCH.

25 Q. WHEN HE WAS TALKING ABOUT HIS BLOOD PRESSURE, DID HE

1 EVER TELL YOU THAT HE THOUGHT HIS BLOOD PRESSURE
2 PROBLEM WAS RELATED TO WORK IN ANY WAY?

3 A. I DON'T EVER RECALL HIM DISCUSSING BLOOD PRESSURE
4 BEING JOB RELATED. IT WAS ALWAYS, "I WAS OUT
5 BECAUSE OF MY BLOOD PRESSURE."

6 Q. ALL RIGHT. AND AT SOME POINT, REGARDING THE ACETIC
7 ACID, WHEN IT WAS BEING -- FIRST BEING USED, DID
8 Y'ALL HAVE LIKE A MEETING ON THAT ABOUT WHAT SAFETY
9 EQUIPMENT SHOULD BE USED WITH THE ACETIC ACID?

10 A. YOU WOULD OF -- ANYTHING THAT'S IN YOUR AREA WOULD
11 LABEL -- WELL, ANYTHING BROUGHT IN YOUR AREA WITH A
12 LABEL, YOU CHECK ON IT BEFORE YOU ACTUALLY JUST PUT
13 IT OUT THERE FOR SOMEBODY TO USE.

14 Q. DO YOU REMEMBER LIKE A SUPPLIER COMING AND GIVING
15 Y'ALL A SEMINAR OR TALKING ABOUT IT OR ANYTHING LIKE
16 THAT?

17 A. ME PERSONALLY, NO. I HADN'T TALKED TO A SUPPLIER.

18 Q. ALL RIGHT. THE SMELL OF ACETIC ACID, WHAT DOES IT
19 SMELL LIKE?

20 A. JUST LIKE A VINEGAR.

21 Q. OKAY.

22 A. VINEGAR BASE.

23 BY MR. HORNER:

24 THAT'S ALL I HAVE.

25 BY COMMISSIONER BECK:

1 MR. DANTIN?

2 BY MR. DANTIN:

3 NOTHING FURTHER.

4 BY COMMISSIONER BECK:

5 ALL RIGHT. YOU MAY STEP DOWN, SIR. THANK YOU
6 VERY MUCH. ANYTHING ELSE ON BEHALF OF THE
7 DEFENDANTS?

8 BY MR. HORNER:

9 NO, THAT'S IT.

10 BY COMMISSIONER BECK:

11 ANYTHING ELSE ON BEHALF OF THE CLAIMANT?

12 BY MR. DANTIN:

13 NOTHING FURTHER, YOUR HONOR.

14 BY COMMISSIONER BECK:

15 ALL RIGHT. THAT WILL CONCLUDE THIS PROCEEDING.

16

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS

18 CONCLUDED AT THE HOUR OF 5:23 P.M.)

19

20

21

22

23

24

25

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0912295

EMPLOYEE/CLAIMANT: **NIKOLAY GUL**
EMPLOYER: **KOHLER COMPANY**
INSURER: **SELF-INSURED**

I, HOLLY K. GLEASON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 201 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **NIKOLAY GUL** TAKEN ON THE 22ND DAY OF APRIL, 2015.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 26TH DAY OF MAY, 2015.



HOLLY K. GLEASON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 06-04-2023

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

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0912295

Nikolay Gul,)
)
Claimant,)
)
v.)
)
Kohler Company,)
)
Employer,)
)
and)
)
Kohler,)
)
Carrier/Defendants.)
_____)

ORIGINAL

FULL COMMISSION HEARING

Tuesday, January 12, 2016
10:04 a.m. - 10:48 a.m.

The Full Commission Hearing was heard before Commissioners Melody L. James, Susan R. Barden, and R. Michael Campbell, II; Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 12th day of January, 2016, before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 1419

1545

APPEARANCES

David L. Williford, Esquire
 DAVIS, SNYDER, WILLIFORD & LEHN, P.A.
 5 Hawthorne Park Court
 Greenville, South Carolina 29615
 Attorney for the Claimant

Grady L. Beard, Esquire
 SOWELL GRAY
 1310 Gadsden Street
 Columbia, South Carolina 29211
 Attorney for the Defendants

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

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



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ROA 1420

1546

1. **COURT REPORTER:** Today is Tuesday. This is South
 2. Carolina Workers' Compensation case number
 3. 0912295. This is the case of Nikolay Gul,
 4. Claimant, versus Kohler Company, Employer, and
 5. Kohler, the Carrier. The appellant is the
 6. Claimant represented pro se. The Respondent is
 7. represented by Grady L. Beard. Each side is
 8. allowed two minutes for oral argument and the
 9. appellant three minutes in reply. You are
 10. requested to argue the grounds of exception and
 11. stay within the record.

12. **MR. BEARD:** Commissioner, before Mr. Williford
 13. speaks.

14. **COMMISSIONER CAMPBELL:** Yes.

15. **MR. BEARD:** Just to protect potential issues going
 16. forward, I do need to make two statements.
 17. One, I don't think there's jurisdiction to hear
 18. this. I looked at the E-case again this
 19. morning. It reveals the Form 30's not proper.
 20. Form 30 is not timely. Form 30 was some 15
 21. days or so after -- or not 15 but 18 days or so
 22. after the Hearing Order came out. I don't know
 23. exactly what I am understood -- or what I've
 24. been informed is, is that the Form 30 was
 25. received. It did not have the proper filing



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ROA 1421

1547

1 fee. Once it was received, again, it was with
2 one of the Form 32s, which indicated needed
3 assistance to pay for this. That was not
4 timely either. It doesn't indicate when that
5 was received. So just to preserve the
6 jurisdictional argument, I have to at least
7 state that in advance of the argument. The
8 second issue is we have put in our brief and we
9 have noted to the Commission the grounds for
10 review are, we believe by case law, restricted
11 to the three issues that are put on the Form
12 30. The brief before you has nothing to do
13 with the issues that are in the Form 30, and we
14 would just note that for the record.

15 **COMMISSIONER BARDEN:** In the form of an objection?

16 **MR. BEARD:** In the form of they're improper. It is
17 improper to make the argument that I believe
18 will be made to you. In addition, I don't
19 think there's even jurisdiction to be here
20 because of the untimeliness of the Form 30.

21 **COMMISSIONER BARDEN:** Okay.

22 **MR. WILLIFORD:** Thank you, Commissioner. Again, my
23 name is David Williford and I present Mr. Gul,
24 the appellant. We addressed that issue, the
25 appeal of the timeliness and the substance of



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ROA 1422

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1 the Form 30 being filed pro se. As Mr. Clerk
2 -- court reporter stated initially, this was
3 Mr. Gul going pro se. In fact, he has hired me
4 subsequent to the Form 30. So, at the time, he
5 was a pro se ---

6 **COMMISSIONER JAMES:** And I understand that, Mr.
7 Williford, and I heard Mr. Beard's objection.
8 And if it is timely and, I mean, versus -- the
9 question would be payment versus nonpayment.
10 But let's say it's timely. Are we not still
11 restricted to the issues that are on the
12 appeal? So, that -- that may be very well what
13 we're restricted to hearing.

14 **MR. WILLIFORD:** Yes, Commissioner. I did address
15 that in my reply brief after the Respondent
16 fully briefed those issues among the
17 substantive issues as well. And I provided
18 some case law in that regard supporting pro se
19 appellants, pro se litigants; and there's some
20 latitude there in terms of what is filed in
21 terms of the substance of the claims, not
22 understanding the exact legal way of saying or
23 phrasing those claims. Now, I addressed that
24 in my reply brief basically tying in the brief
25 that I filed. The first initial full brief



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1 that I filed, essentially goes to those points
2 that Mr. Gul made pro se before -- I was hired
3 before I knew anything about the case. They do
4 tie together. I think I can address that. I
5 can do that now and perhaps I should.

6 **COMMISSIONER CAMPBELL:** Do y'all want him to go
7 ahead and address that now or do y'all want ---

8 **COMMISSIONER JAMES:** Actually, because procedurally
9 Mr. Beard raised this, and we've let him follow
10 up ---

11 **COMMISSIONER CAMPBELL:** Yeah. I was giving him time
12 to respond first and ---

13 **COMMISSIONER JAMES:** Yeah.

14 **COMMISSIONER CAMPBELL:** --- then not go into his
15 argument time.

16 **COMMISSIONER JAMES:** Okay. I'd rather hear him.

17 **COMMISSIONER BARDEN:** Go ahead.

18 **COMMISSIONER JAMES:** That's up to y'all. I think
19 I'd rather hear them separate, this particular
20 ---

21 **COMMISSIONER BARDEN:** Okay.

22 **COMMISSIONER JAMES:** --- this particular issues since
23 it sort of comes before the ---

24 **COMMISSIONER BARDEN:** Procedural.

25 **COMMISSIONER BARDEN:** --- the horse before the cart.



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ROA 1424

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1 So, if' you would finish with that issue. And
2 I know we're a little bit out of character with
3 this, and then if Mr. Beard has a response.
4 We'll just do it short and then go into the
5 arguments.

6 **MR. WILLIFORD:** Sure. Now, Mr. Gul filed a Form 30
7 and he alleged three specific errors of law
8 from Commissioner Beck, who was the single
9 Commissioner after the first Commissioner
10 awarded workers' comp and then it was appealed
11 to this Commission, which vacated that order to
12 have a De Novo hearing. Then Commissioner Beck
13 ruled against my client, Mr. Gul. At that
14 time, he was relieved of counsel. He did have
15 counsel prior to that. And he did not have
16 counsel and he filed a pro se Form 30. And
17 those three points are, number one -- three
18 errors alleged by Commissioner Beck were number
19 one, quote, No Dr. Feldman records were never,
20 S-I-C, sent to MUSC - Dr. Sahn. Number two,
21 quote, Recently found that Dr. Fogerty is in
22 ongoing litigation with my treating physician
23 Dr. Feldman and has big bias not disclosed in
24 accurate medical conclusions, unquote. And
25 three, Ineffective assistance of my attorney.



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ROA 1425

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1 Those were the three grounds specifically
2 raised by Mr. Gul who was filing pro se. I do
3 want to make a point for the record that Mr.
4 Gul is from the Ukraine, and so he doesn't
5 fully understand English. He knows a little
6 bit of English, doesn't know much English. In
7 fact, his family is here. His son, who has
8 learned English, is here to translate for him
9 as needed. So, there are a couple of issues in
10 terms of his ability to articulate grounds for
11 appeal. Language and then also knowing legally
12 what and what not to say and how to phrase
13 that. The issues that tie into the issues that
14 I wrote as appellate issues are number one, no
15 Dr. Feldman records were never sent to MUSC Dr.
16 Sahn. If I will -- if I may, I'll address
17 that.

18 **COMMISSIONER JAMES:** Actually, I think we're getting
19 into the issues. What I wanted to do is just
20 hear if you had anything else to say about the
21 procedural aspect, the case law that you've
22 quoted, and whether Mr. Beard had a response.
23 And then -- and then y'all can get into the
24 meat of the arguments.

25 **COMMISSIONER CAMPBELL:** Yeah. And then we get into



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ROA 1426

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1 your time.

2 **COMMISSIONER JAMES:** As far as the leniency with the
3 Claimant being able to argue additional issues
4 not raised in the 30, you've quoted a couple of
5 cases. So, that's just what you would rely on,
6 the Goodman and the -- I can't remember the
7 other one that you quoted now.

8 **MR. WILLIFORD:** City Financial Mortgage.

9 **COMMISSIONER JAMES:** Thank you. So, we can take a
10 look at those cases unless you have something
11 else to say about them. I was just giving
12 y'all an opportunity to -- if there was
13 something we needed to hear about the
14 procedural issues before we started. But
15 that's basically your position, right?

16 **MR. WILLIFORD:** Yes. Yes, Commissioner.

17 **COMMISSIONER CAMPBELL:** And then I was going to let
18 Mr. Beard have a moment to respond.

19 **MR. BEARD:** Sure. My response will be very brief.
20 Just responding to the Goodman case. The
21 Goodman case has nothing to do with what we're
22 here for. The Goodman case just simply said
23 that a claimant writing a letter saying I
24 intend to appeal every single issue that was
25 denied against me by the Commissioner was



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ROA 1427

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1 sufficient. But it didn't -- and it also said
2 that letter could replace a Form 30 as far as
3 our court system was concerned. When the
4 letter and the Form 30 essentially are one in
5 the same, that's not the case. The case law in
6 South Carolina, and I guess the reason I
7 remembered this, and luckily, or unluckily
8 depending on your perception, is it was one of
9 my cases. Creech versus Ducane, South Carolina
10 Court of Appeals case in 1995 holds that a
11 party may file an application for review of a
12 single Workers' Compensation Commissioner's
13 ruling; however, only issues within the
14 application for review are preserved for the
15 full commission. Then you have the case of
16 Hamm, which was an earlier case, probably the
17 first case that they'll -- with appeals. That
18 case says all findings of fact and law by the
19 hearing Commissioner become and are the law of
20 the case except only those within the scope of
21 the exception and the notice given to the
22 parties by the Commission. Meaning, if you
23 didn't specifically appeal a fact or
24 conclusion, that's the law of the case. He
25 didn't appeal virtually any of the findings or

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ROA 1428

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1 conclusions which are part of the brief. The
2 last case that we would cite to the Court or to
3 the Commission is Green versus City of
4 Columbia, and it's a 194- -- excuse me, it's a
5 1993 Court of Appeals case citing to the Hamm
6 case that I just cited. It again says findings
7 of fact and law by the hearing Commissioner
8 become and are the law of the case unless
9 within the scope of the appellant's exception
10 to the full Commission and it's notice to the
11 Respondent of the issues the Respondent would
12 be required to meet. That's not the brief
13 before the Commission. Leniency is not granted
14 for that portion anywhere in South Carolina
15 law. There is no leniency given to expand the
16 scope of appeal beyond what is written within
17 the grounds for appeal. These grounds are
18 specific. He's arguing about his ineffective
19 assistance of counsel. This isn't the right
20 place to do that, number one. His second
21 ground is that Dr. Sahn did not receive records
22 of Dr. Feldman. There's no evidence of that,
23 but I don't have a problem with him arguing
24 that. And the third is that he recently found
25 out that Dr. Fogerty is in ongoing litigation



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ROA 1429

1555

1 with his treating physician, Dr. Feldman, and
2 has big bias that was not disclosed. Well,
3 that's incorrect because they brief about it
4 and it was disclosed. And the two doctors
5 weren't involved in litigation against each
6 other and that was part of depositions of both
7 of them. So, that -- I don't have a problem
8 with him arguing that, but when they go into
9 the entire Dr. Feldman deposition and all the
10 opinions of Dr. Feldman. None of that is
11 within the scope of these three grounds for
12 review before this Commission. None of that,
13 and I think it's improper.

14 **COMMISSIONER JAMES:** Can we have a few minutes?

15 **COMMISSIONER CAMPBELL:** Yeah.

16 **COMMISSIONER JAMES:** We can excuse y'all for just a
17 few minutes. Thank you so much.

18 **MR. WILLIFORD:** May I be heard just very, very
19 briefly?

20 **COMMISSIONER CAMPBELL:** You can have -- give you one
21 second to respond.

22 **MR. WILLIFORD:** Sure.

23 **COMMISSIONER CAMPBELL:** Go ahead.

24 **MR. WILLIFORD:** Those issues do go to Dr. Feldman's
25 credibility and versus the other two



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ROA 1430

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1 physician's credibility, and that's what is at
2 issue and what I briefed as well.

3 **COMMISSIONER CAMPBELL:** Okay. Y'all want to let
4 them step our or we can step out here.

5 **COMMISSIONER BARDEN:** It might be easier to just go
6 into the conference room.

7 **COMMISSIONER CAMPBELL:** Let's just do that.

8 (A break was taken from 10:16 a.m. until 10:20
9 a.m.)

10 **COMMISSIONER CAMPBELL:** Okay. I think we've reached
11 a decision, but I'm going to let Commissioner
12 James address it.

13 **COMMISSIONER JAMES:** While we are cognizant of the
14 issues that have to be stated in the 30,
15 whereby they may not be eloquently stated,
16 which I'll give you an example that may be
17 something that we can hear is, where there's
18 this conflict issue raised. And there may be
19 some issues that are raised for the Claimant
20 now with regards to the credibility then,
21 because the Claimant may not be eloquent with
22 writing and that may be part of that, we're
23 just going to hear everything. With the
24 jurisdictional issue in mind, we are very
25 cognizant of that. However, the -- and I'm not



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ROA 1431

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1 sure whether you are going to argue this, Mr.
2 Williford, but the issue of the inassistance of
3 counsel, even though it is raised on the 30,
4 that is not something we have any jurisdiction
5 over and we cannot -- basically cannot even
6 address that. So, I'm not sure whether you
7 were going to present that argument or not. Is
8 that ---

9 **MR. WILLIFORD:** No, Commissioner, I will not argue
10 that.

11 **COMMISSIONER JAMES:** Okay. But we are -- we are
12 tied to -- we are tied to the 30. We're going
13 to allow some leniency with regards to the
14 argument because of the fact that maybe there's
15 something that may be tied to one of the issues
16 that has been raised. So, we'll just -- we'll
17 proceed that way.

18 **MR. WILLIFORD:** Thank you, Commissioner.

19 **COMMISSIONER CAMPBELL:** And you'll have your ten
20 minutes for oral argument and then your three
21 minutes to reply.

22 **MR. WILLIFORD:** Thank you.

23 **COMMISSIONER CAMPBELL:** Susan, do you have anything
24 to add?

25 **COMMISSIONER BARDEN:** (Shakes head negatively.)



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ROA 1432

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1 COMMISSIONER CAMPBELL: Okay. All right, sir.

2 MR. WILLIFORD: Madam Commissioners and Mister
3 Commissioner, may it please the Commission to
4 hear Mr. Gul, the appellant's, argument here on
5 appeal. First of all, I just want to give a
6 brief background on this case procedurally.
7 Mr. Gul is claiming that he suffered
8 occupational disease, namely asthma, as a
9 result of working over time at Kohler Company
10 up in the upstate. And he increasingly
11 incurred medical problems over time, and he
12 sought care for that, thinking it might be
13 cardiac or heart related. He got treatment for
14 it, ultimately did not work. Sought treatment
15 from lung specialists, pulmonologists, who
16 diagnosed him with asthma and then occupational
17 asthma as well. So, that is a very basic
18 factual basis for his claim. Now, it was
19 litigated, and the first time it was litigated
20 by Attorney Dantin on behalf of Mr. Gul, and it
21 was heard by Commissioner Williams the first
22 time. And Commissioner Williams held a
23 hearing, and there was testimony, and awarded
24 Workers' Compensation to Mr. Gul based on the
25 fact that he met the criteria for an



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1 occupational disease under the statutes and the
2 testimony supported that. He had medical
3 testimony as well, primarily through Dr.
4 Feldman, his treating pulmonologist who has
5 actually treated him many, many times. After
6 that, it was appealed. The Kohler Company, who
7 was the appellant at the time, appealed to the
8 full Commission. A hearing was held here. I
9 think it was in the other courtroom, but it was
10 held and issues were noted. And the ultimate
11 result was it was remanded down for a De Novo
12 hearing, which basically in turn allowed
13 different attorneys for Kohler Company to seek
14 Discovery and go from there. And Commissioner
15 Beck held a hearing as well after that, after
16 some additional Discovery, and held that Mr.
17 Gul should not get Workers' Compensation. And
18 that is the order that has been appealed. And
19 Mr. Gul has filed a Form 30 as we discussed.
20 His two main points that I will talk about are,
21 number one, that Dr. Sahn, a treating
22 physician, a pulmonologist down in Charleston,
23 Dr. Steven Sahn, was asked to give the IME
24 report, and saw Mr. Gul one time. Now, part of
25 his evaluation -- and really what was lacking



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ROA 1434

1560

1 with his evaluation was the fact that he
2 received no pulmonology records whatsoever of
3 Mr. Gul's treating physician, Dr. Feldman. So,
4 specifically what Mr. Gul raised in the Form 30
5 is that Dr. Sahn did not have all the records
6 to form and support the basis for his opinions.
7 Because Mr. Gul raised that as an error, it
8 goes to the credibility order -- the order in
9 terms of credibility that Commissioner Beck
10 relied on Dr. Sahn and Dr. Fogerty over Dr.
11 Feldman in this case. So it's a credibility
12 issue, and that's the ultimate issue in this
13 case. It's a credibility issue between Dr.
14 Feldman and his treating diagnoses, his
15 exclusion of other causes, which the office
16 called differential diagnosis. But Dr.
17 Feldman's exclusion of other causes and the
18 weight of his opinion versus Dr. Sahn and Dr.
19 Fogerty, that is the issue in case. Mr. Gul
20 has raised that, particular with Dr. Sahn not
21 having all the records. So how, in Mr. Gul's
22 way of saying it, how can his testimony be
23 weighty compared to that of his treating
24 physician, Dr. Feldman. The second issue is --
25 relates to Dr. Fogerty. And as Mr. Gul noted



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ROA 1435

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1 in his Form 30 and as I briefed as well on
2 behalf of Mr. Gul, that Dr. Fogerty and Dr.
3 Feldman were in current litigation at the time,
4 and that's in evidence. It's been discussed.
5 And that certainly goes to bias and weightiness
6 of Dr. Fogerty's opinion, again, against Dr.
7 Feldman. So, the primary issue that I've
8 briefed on behalf of Mr. Gul is the credibility
9 of Dr. Feldman versus the credibility of Dr.
10 Sahn and Dr. Fogerty. Mr. Gul has raised that
11 issue in so many words, in his Ukrainian way of
12 saying, filing pro se. Specifically, he has
13 addressed that. So because that is the issue
14 in the case, I would like just a few minutes to
15 address that. Because this is a credibility
16 argument, this Commission, as the full
17 Commission, can make -- can make findings of
18 fact; and as the ultimate finder of fact, you
19 have the full record before you, and you
20 certainly have the arguments today to weigh
21 that. So I want to focus on that credibility
22 issue. What is that error with Commissioner
23 Beck and his evaluation of the case and his
24 order as raised by Mr. Gul? Well, in his order
25 -- decision and order that was filed, he ruled



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1 and ordered that no weight -- quote/unquote, no
2 weight should be given to Dr. Feldman.
3 Instead, all weight was given to Dr. Fogerty
4 and Dr. Sahn. So, I'd like to address those.
5 It's important -- the credibility issue is
6 important because Dr. Feldman finds that Mr.
7 Gul had asthma that was work related, and
8 occupational asthma; and Dr. Sahn and Dr.
9 Fogerty did not. So, that's critical to his
10 case. And affording no weight to Dr. Feldman
11 but affording much weight -- in fact all the
12 weight in that medical decision making, was an
13 error. Why is that important? Because in
14 order for Mr. Gul to not be awarded Workers'
15 Compensation, it must be, and it follows, that
16 Dr. Feldman is not credible. It has to follow
17 that way if Mr. Gul is not to get that Workers'
18 Compensation like he did the first time. So,
19 how is Dr. Feldman -- how is he not credible?
20 Well, that is the argument that Respondent's
21 have made, and I want to go through and respond
22 to those arguments. Clearly, this is a
23 weighing of testimony between Dr. Feldman, and
24 Dr. Sahn and Dr. Fogerty. So let's start with
25 Dr. Feldman, who is he and what did he do in

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1 this case. Well, Dr. Feldman is the treating
2 physician. He's a pulmonologist, a lung
3 specialist in Spartanburg. He saw Mr. Gul for
4 the first time before litigation had ensued.
5 He diagnosed him with asthma, questionably
6 occupational. In his deposition he said, the
7 first time that he saw Mr. Gul, he can now look
8 back and say he had occupational asthma. At
9 the time however, he couldn't say that. He
10 diagnosed him with asthma but couldn't say it
11 was necessarily occupational. So, he -- he had
12 to wait a few months before that. He had to
13 see him over time. So he did that, and he was
14 patient and he waited. And he ultimately
15 diagnosed him with occupational asthma, and
16 that is backed up by the literature and that is
17 backed up by his continued evaluation of him.
18 So, Dr. Feldman saw Mr. Gul before litigation
19 had ensued. He was the treating physician. He
20 was not getting paid by anyone in the case. In
21 fact, he has treated Mr. Gul well over 50
22 times, and this was while I was initially
23 briefed before Commissioner Beck, and he has
24 seen him since then. So certainly more than 50
25 times, Mr. Gul has seen him. Dr. Feldman is



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1 certainly not getting paid to do that. And he
2 didn't even before litigation occurred. He has
3 clinically assessed Mr. Gul over time. You
4 know, he has seen him clinically. He has
5 performed tests. He has, in fact, performed --
6 and is the only pulmonologist to have performed
7 a bronchoscopy, which you may know as an
8 invasive procedure to look at the lungs and the
9 airways inside. It's a scope, so there's a
10 magnified camera to look inside the lungs. And
11 when he did that, he has removed mucous, he has
12 seen inflammation within the bronchioles and
13 the airways. And that -- those tests have
14 supported his clinical diagnosis that he has
15 seen over time, weeks, months and even years,
16 that Mr. Gul has asthma, occupational asthma.
17 Well, why occupational asthma? Well, Dr.
18 Feldman addresses in his depositions ---

19 **COMMISSIONER CAMPBELL:** Go ahead and finish your
20 statement.

21 **MR. WILLIFORD:** Dr. Feldman addresses in his
22 depositions -- in his deposition that he has
23 performed a differential diagnosis basically
24 excluding other causes. Mr. Gul was not born
25 with asthma. He was -- there was no other



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1 cause other than development over time based on
2 -- based on his work at Kohler, which is very
3 well documented in the records.

4 **COMMISSIONER CAMPBELL:** Okay. You'll have three
5 minutes in response.

6 **MR. WILLIFORD:** Thank you.

7 **COMMISSIONER CAMPBELL:** Mr. Beard?

8 **MR. BEARD:** Thank you, Your Honor. Obviously, and
9 just to make a statement -- and I'm old school
10 so I'm going to make sure I'm protecting myself
11 as well as the record. My arguments are noting
12 the objections I've already made, the
13 jurisdiction and the issues of the grounds of
14 appeal. What I would state -- I'm going to be,
15 I think, fairly brief. But what I would say is
16 this, is that 95 percent of what Mr. Williford
17 said has nothing to do with the grounds that
18 were raised. They had nothing to do with that.
19 In fact, it was mostly about why Dr. Feldman
20 should have been found to be credible. Now,
21 every single Commissioner in this room knows
22 Commissioner Scott Beck, knows that he pays
23 attention to the record, knows that he reads
24 depositions carefully. In this case, he issued
25 an order that was, I think, 39 pages long. It



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1 has multiple findings of fact relative to his
2 opinions on credibility of every single one of
3 these doctors and why. He gave his basis for
4 why he believed or did not believe certain
5 doctors. And Mr. Williford is correct: at the
6 first hearing, we were not the defense lawyer,
7 he was not the Claimant's lawyer. So, you had
8 two different groups. Commissioner Williams
9 issued a decision that was wrong as found by
10 this Commission, which included you
11 Commissioner Barden, you were on that first
12 full Commission panel that found that order
13 wrong and remanded it for a new hearing. And
14 then we were involved. Mr. Williford has never
15 been involved in this case. What I would point
16 out is this, and I think it has to be said, Mr.
17 Williford has to ---

18 **COMMISSIONER BARDEN:** That order was vacated was it
19 not, the original?

20 **MR. BEARD:** Yes, ma'am.

21 **COMMISSIONER BARDEN:** Okay. Because I don't want
22 you to characterize it as -- otherwise I would
23 recuse myself if I found that it should not be
24 ---

25 **MR. BEARD:** No, no. It was -- the Order was



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1 reversed and vacated for De Novo hearing.

2 **COMMISSIONER BARDEN:** Okay. All right. Thank you.

3 **MR. BEARD:** Mr. Williford has to come in here and

4 tell you Dr. Feldman is credible because his

5 law firm represents Dr. Feldman. Now, that

6 creates in my mind a little bit of an issue.

7 How is it that Mr. Dantin, the original

8 Claimant's lawyer, is no longer Mr. Gul's

9 lawyer, but Dr. Feldman, who they want you to

10 believe is the credible doctor in this case,

11 sends Mr. Gul to be represented by his lawyers

12 in a Workers' Comp proceeding with a law firm

13 that doesn't even do Workers' Comp law? That

14 ought to raise an issue as to this credibility

15 argument. Dr. Feldman is not credible when you

16 read this record. Despite what was just stated

17 to you in oral argument, Dr. Feldman testified,

18 in his deposition, the very first date he saw

19 this man, he said -- the question presented to

20 him was, and you didn't need to wait for those

21 two days to diagnose him with asthma. Answer:

22 No, he was wheezing; he was coughing; he had a

23 considerable problem, okay. He had obvious

24 asthma. He didn't do an exam. He didn't run

25 a test. He doesn't even have a medical report



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1 that they submitted to you from September the
2 23rd, 2009, other than two pieces of paper that
3 say occupational asthma, question mark, and
4 asthma. That's the extent of it. So then what
5 does he do? Then, he sees him two days later
6 and he runs pulmonary function tests. Guess
7 what? They're invalid. Despite the invalidity
8 of the PFTs, Dr. Feldman says, I don't need
9 PFTs anyway, I'm ruling -- I can just tell by
10 looking at him. I can tell by the way he's
11 wheezing. I can see all that. He was wheezing
12 so bad, I can diagnose him. Now, this is on
13 September 25th, 2009. Prior to this date,
14 there are a multitude of medical documents that
15 were submitted. Not one single medical record
16 anywhere ever says wheezing or anything like
17 wheezing as Dr. Feldman wants you to believe.
18 But more importantly, on the same day,
19 September 25th, 2009, that Dr. Feldman says, I
20 diagnosed him based on wheezing alone; I could
21 tell by how bad he was wheezing he had
22 occupational asthma. Now, he still at this
23 point has no idea what he was exposed to,
24 because he's never ever taking any kind of a
25 history from him. He has no idea about acidic



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1 acid. He has no idea about the volumes or
2 whatever that he was exposed to. He knows none
3 of that. But he makes this right up-front
4 decision. Dr. Feldman's also from Russia. You
5 need to know that. I think that's important to
6 note. And Dr. Feldman on that day makes that
7 opinion. Well, unbeknownst to Dr. Feldman, Mr.
8 Gul had also gone to a cardiologist that day.
9 And Dr. Chandler, the cardiologist, who also
10 knew the pulmonary issue was out there because
11 it had been raised by this other doctor, Dr.
12 Chandler checked his lungs. Guess what?
13 Completely normal. No rhonchi, no rales, no
14 wheezing, nothing: completely contradicts Dr.
15 Feldman's opinion. Dr. Feldman to this day has
16 not been able to explain that away. He can't.
17 Because he knows that that makes him look not
18 credible. Now, I can't tell you that Dr.
19 Feldman makes up all these medical records that
20 he has. I can't say that. He's not going to
21 admit that, obviously. But he certainly gave
22 an opinion that is not supported by one single
23 piece of evidence up to that point. Most
24 importantly, Dr. Fogerty did an IME exam after
25 we were told they were pursuing a claim for



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1 occupational asthma. Dr. Fogerty testified
2 with regards to the American Thoracic Society,
3 which he is a member of -- board member, as is
4 Dr. Feldman. And Dr. Fogerty said, Dr.
5 Feldman's testing was completely improper
6 because you have to have three tests that all
7 are within a certain range. And it said on his
8 own test -- and Dr. Feldman admits his tests
9 say they're invalid. Dr. Fogerty says you
10 can't do that. Dr. Fogerty also administered
11 bronchodilator, which he said is the gold
12 standard. He said, when somebody I believe is
13 faking -- and he said that. He said I thought
14 he was faking his attempts at my pulmonary
15 function testing because I couldn't get him to
16 do it. We give him a bronchodilator. If it is
17 asthma, it will show up based on a percentage
18 range of how they improve after the fact. He
19 went the other way. He got worse, which you
20 can't do. And that's what Dr. Fogerty said, it
21 can't happen. The final IME was done by
22 Consent Order, signed by Commissioner Derrick
23 Williams at his request to pick Dr. Sahn who is
24 -- I think if you've been in this --
25 Commissioner Campbell, you may not know, but I



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1 know Commissioner Barden knows and I think
2 Commissioner James probably knows, he was
3 considered the man when it came to pulmonary
4 cases. He is the professor who taught most of
5 the people in this state that do this. And in
6 fact Dr. Feldman admitted, I send patients to
7 Dr. Sahn when I can't figure out what's going
8 on. What did Dr. Sahn say? I tried to
9 administer pulmonary function tests. He was
10 faking. I don't know why he was faking. I
11 tried the bronchodilator. That didn't work.
12 He's not -- he has no occupational asthma. He
13 has no problems. I believe it might be a
14 cardiac issues. I'm not a cardiologist, but
15 it's not a pulmonary issue, which I am a
16 pulmonary expert. Two of the three doctors
17 have said those things. Commissioner Beck has
18 gone through and outlined in his findings of
19 fact -- he did this. These are not something
20 we created. These are notes from the
21 Commissioner. He told each and every one of
22 you why he ruled the way he ruled. There is
23 nothing wrong with the way he ruled. It is
24 supported completely by this record before you.
25 And if you take the time to read Dr. Feldman's



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1 deposition, which I'm sure you will, you will
2 see that he was not credible. His deposition
3 testimony is the most evasive deposition I have
4 ever seen from a doctor who wants to come in
5 here and tell you he is a triple board
6 certified doctor and therefore, because I saw
7 somebody more than anybody else, I ought to be
8 the one you believe and not everybody else. If
9 that were the rule, I would never lose a
10 Workers' Compensation case. If we lived off of
11 IMEs don't matter, my side would probably never
12 lose a Workers' Compensation case. That's not
13 the way it works. IMEs do matter. Doctors
14 have to be checked about what they say and do.
15 This doctor didn't like what he was checked
16 about. You go read Dr. Fogerty's IME report.
17 It couldn't have been any better report. I've
18 never seen a better report practicing for
19 almost 30 years in Workers' Comp. I've never
20 seen a more -- I've just never seen a better
21 report that was supported by what he said in
22 the record. The articles that have been
23 submitted, they're articles. They were not
24 peer review. There was not even testimony in
25 the deposition about the articles themselves



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1 other than here's some articles. Well, for
2 articles to be probative to the Court, you have
3 to testify about why they are probative to the
4 Court. There was no testimony and those
5 articles are general in nature, not specific to
6 anything. Nothing about acidic acid, which is
7 the whole issue of what we're here for. And
8 just so you'll know, acidic acid, if you put
9 vinegar on your french fries, if you put
10 vinegar on your barbeque, you have acidic acid
11 in you every time you do that. Ten percent of
12 vinegar is acidic acid, which is more than what
13 he was exposed to at this plant according to
14 the evidence. Thank you.

15 **COMMISSIONER CAMPBELL:** Thank you, Mr. Beard. Mr.
16 Williford?

17 **MR. WILLIFORD:** Thank you, Commissioner.
18 Commissioners, who I am has nothing to do with
19 Mr. Gul and his case. I have actually
20 represented Dr. Feldman's partner, Dr. Wan, in
21 a medical malpractice case. That is what he's
22 referring to. It has nothing to do with this
23 case. Who I am has nothing to do with the
24 records and testimony of this case. That's
25 just a -- just totally irrelevant. Dr. Feldman



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1 backs up everything he says with literature.
2 He offered that in the deposition. And I think
3 if you do read Dr. Feldman's deposition, which
4 is evidence in case, then you will see that
5 Respondent and Respondent's counsel did not
6 want to challenge him on that. But very
7 candidly, Dr. Feldman said read it, it backs up
8 my opinions. Feldman is the only one who has
9 supported his opinions with literature, and he
10 talks about it. Dr. Feldman obviously is
11 highly qualified, and Respondents have talked
12 about him being qualified. They cite that in
13 their brief, in their most recent full
14 Respondent brief. He's qualified. He backs up
15 his opinions with literature, and he has seen
16 this patient way more than Dr. Sahn and Dr.
17 Fogerty, who both saw him one time each. And
18 Mr. Beard is correct, IMEs do matter. He just
19 stated that, quote, IMEs do matter, of course
20 they do. That's exactly why Dr. Sahn -- that's
21 exactly why Mr. Gul raised the point that Dr.
22 Sahn didn't get all the records. In fact, he
23 got no records from Feldman. I wonder why? I
24 wonder why he didn't get his pulmonology
25 records from Feldman. Of course he's not going

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1 to have the full information. Of course his
2 testimony is not going to be as weighty as
3 someone who has seen him many, many, many more
4 times, who has done invasive bronchoscopies and
5 who has backed it up with literature unlike
6 anybody else in the case. And going to Dr.
7 Fogerty. Dr. Fogerty, what better way to get
8 after a rival in Spartanburg than to determine
9 that his patient is no longer a Workers' Comp
10 candidate based on what I decide to do during
11 current litigation? What better way to do
12 that? Now, I don't know Dr. Fogerty. I'm not
13 -- I don't know him but it's interesting ---

14 **COMMISSIONER JAMES:** Physicians take the Hippocratic
15 oath. Is what you're saying is that one doctor
16 would decide, because he didn't like another
17 doctor, to change the result on a patient or
18 somebody that he was evaluating?

19 **MR. WILLIFORD:** Commissioner, I think that's
20 certainly an inference that has been raised in
21 the evidence, and that's what I'm referring to.
22 That has been raised, and that has been raised
23 on appeal by Mr. Gul as well. And so, in that
24 regard, there is some question about that based
25 on the testimony and based on the evidence in



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1 terms of bias -- in terms of bias. Now going
2 back to pulmonary function tests, and I know
3 Mr. Beard and Respondents have talked about
4 pulmonary function tests being kind of the gold
5 standard. It's really not if you look at the
6 literature and talk to other pulmonologists.
7 It's important, but it's not the end all be
8 all.

9 COMMISSIONER CAMPBELL: You can finish your
10 statement.

11 MR. WILLIFORD: And the last thing I was going to
12 say is the testimony of Kohler and their
13 workers have said that Mr. Gul has been a good
14 and reliable worker and is an honest man. And
15 that is in testimony and certainly he wouldn't
16 be here if he was not that. So, thank you for
17 your time.

18 COMMISSIONER CAMPBELL: Thank you.

19 MR. BEARD: One thing for the record -- or two
20 things. Attached to the brief -- we got away
21 from that when we talked earlier. They have
22 attached yet another article that was never
23 presented to Commissioner Beck and was not part
24 of any part of the record. I would obviously
25 object to that document. I'm not sure why they



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1 attached that particular article.

2 **COMMISSIONER BARDEN:** If the article is outside the
3 record, we cannot consider it.

4 **MR. WILLIFORD:** I believe it is.

5 **COMMISSIONER BARDEN:** So, are you withdrawing that?

6 **MR. WILLIFORD:** Well, I attached it to the brief,
7 and if it's outside the record I certainly will
8 withdraw that.

9 **MR. BEARD:** Well, it sounds like he stipulated it's
10 outside the record. The second point is he
11 made a point again about Dr. Sahn, and I
12 mentioned this earlier. There is no evidence
13 in the record to support what he's saying. He
14 can say whatever he wants about Dr. Sahn. They
15 didn't depose Dr. Sahn. More importantly, it
16 was a Consent Order IME where he was
17 represented by legal counsel, who I assume sent
18 Dr. Sahn everything just like we sent Dr. Sahn
19 everything. There is no evidence in this
20 record Dr. Sahn did not have the medical
21 records that they just have stated in writing
22 and stated verbally as if it's a matter of
23 fact. It is not a matter of fact, and I object
24 to that kind of statement, just for the record.

25 **COMMISSIONER BARDEN:** All right. Thank you. That



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1 concludes -- go ahead.

2 COMMISSIONER CAMPBELL: That concludes the
3 proceeding. Thank you all.

4 (There being nothing further, the hearing concluded
5 at 10:48 a.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of thirty five (35) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 19, 2016.



M. Sean Cary
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 29, 2023



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ROA 1454

1580

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September 11, 2009

Kohler Company c/o Broadspire
2709 Water Ridge Parkway Suite 300
Charlotte, NC 28217

RE: **Nikolay Gul vs. Kohler Company**
WCC File No.: Pending

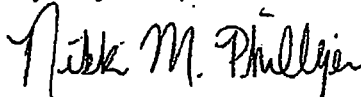
Dear Sir or Madam:

Please be advised that our firm represents Nikolay Gul for work related injuries of 8/20/09. A letter of representation submitted to the South Carolina Workers' Compensation Commission is enclosed.

We would appreciate a copy of the first report of injury and Form 20 regarding Mr. Gul.

If you have any questions, please feel free to contact our office.

Very Truly Yours,



Nikki Phillips
Paralegal to Jeremy A. Dantin

NMP/mes
Enclosure

ROA 1455

1581

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September 11, 2009

CERTIFIED MAIL RETURN RECEIPT REQUESTED

SC Workers' Compensation Commission
Claims Department
P O Box 1715
Columbia, SC 29202-1715
ATTN: GREG LINE

RE: WCC File No.: Pending
Employee: Nikolay Gul
Employee's Address: 155 Suttles Road
Inman, SC 29349
Telephone No.: 592-1819
Social Security No.: **REDACTED**
Date of Injury: 8/20/09
Type of Injury/Part of Body: L ungs, heart, liver
Description of Accident: Exposure to chemicals sprayed on molds.

Geographic Loc. Where
Accident Occurred (County): Spartanburg
Employer: Kohler Company
Address: 4000 South Pine Street
Spartanburg, SC 29302
Telephone No.: 582-3401

Insurance Carrier: Kohler Company c/o Broadspire
2709 Water Ridge Parkway Suite 300
Charlotte, NC 28217
(704) 367-2252

ROA 1456

1582

Dear Mr Line:

The injured employee has retained me for representation in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the expiration of the statute of limitations.

I am requesting the following documents if a file has been established:

(XXX)	First Report of Injury	12-A
(XXX)	Physician's Report	14
(XXX)	Agreement as to Compensation	15
()	Supplemental Agreement for Compensation	16
()	Application to Stop Pymt of Compensation	21
()	Any other information contained in the file	

A check in the amount of \$20.00 is enclosed herewith for the above requested information.

With best regards, I am

Yours very truly,


Jeremy A. Dantin

NMP/mes
Enclosure

cc: Nikolay Gul

Kohler Company

Kohler Company c/o Broadspire

ROA 1457

1583

Williams, Derrick

From: Williams, Derrick
Sent: Wednesday, December 19, 2012 11:01 AM
To: 'jdantin@spartanlaw.com'; rinfinger@nexsenpruet.com
Cc: rgsmith@wcc.sc.gov
Subject: Nikolay Gul v. Kohler Co. (WCC #0912295)

Attorneys,

When submitting the proposed Order, it is required that you e-mail it to rgsmith@wcc.sc.gov in Word format. Please see all of Commissioner Williams' preferences at <http://wcc.sc.gov>.

After reviewing the complete record, my decision is below. If there are any questions, please let me know.

1. Based on the evidence as a whole, including the Claimant's testimony and the medical reports, I find that the Claimant has sustained his burden of proving a compensable occupational disease from exposure to acetic acid.
2. Though the medical reports from both sides' experts are a close call, I give slightly more weight to Dr. Feldman's reports in this case. This is not to say I completely discount Dr. Sahn's reports (as he is a well-respected expert throughout the state), however, Dr. Feldman was not a paid IME doctor. Rather he has treated the Claimant continuously since his breathing problems developed. His testing and treatment, nearer to the alleged exposure, clearly shows Claimant's asthma condition was caused by his work at Kohler. Claimant was a non-smoker, never had asthma previously, and never had any breathing problems whatsoever. The weight of the evidence tips, ever so slightly, in the Claimant's favor in this instance.
3. While permanency is premature and has not been requested by the Claimant, I do find the Claimant has reached MMI in this case. MMI is a factual determination left to the discretion of the Commission. See Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006). Claimant testified that since he has been away from work, his condition has improved.
4. Defendants are responsible for reimbursement for all causally-related medicals to date.
5. Claimant is being followed by Dr. Feldman, and he is hereby designated as the authorized treating physician to comment on any additional medical treatment. Dr. Feldman has already assigned an impairment rating in this case.
6. Claimant is entitled to ttd from September 18, 2011 through December 5, 2012, the date of the hearing, as I do find he has reached MMI.
7. Permanency is held in abeyance pending any future hearings.

INSTRUCTIONS: Order to be written by Attorney Jeremy Dantin by January 21, 2013. Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter, or contact my assistant, Renee Smith, in writing at P.O. Box 1715, Columbia, SC 29202-1715 or via e-mail at rgsmith@wcc.sc.gov. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant

ROA 1458

1584

Grady Beard

From: Beard, Grady L.
Sent: Monday, November 03, 2014 3:14 PM
To: 'Dantin, Jeremy'; 'sdebruhl@wcc.sc.gov'; McDaniel, Alaina; Phillips, Nikki; Houston, Racheal; McAbee, Sheila A.
Subject: RE: Hearing Notice - WCC# 0912295; Gul (6457/8002)
Categories: Blue Category

Thanks Jeremy.

Talk to you soon.

Grady

-----Original Message-----

From: Dantin, Jeremy [mailto:jdantin@spartanlaw.com]
Sent: Monday, November 03, 2014 3:03 PM
To: Beard, Grady L.; 'sdebruhl@wcc.sc.gov'; McDaniel, Alaina; Phillips, Nikki; Houston, Racheal; McAbee, Sheila A.
Subject: RE: Hearing Notice - WCC# 0912295; Gul (6457/8002)

Thanks, Grady - we have no problem at all with Commissioner Beck hearing this case. No need for recusal.

Jeremy A. Dantin
Partner

HARRISON, WHITE, SMITH & COGGINS, P.C.
178 West Main Street
PO Box 3547
Spartanburg, S.C. 29304
Phone: (864) 585-5100
Toll free: (800) 543-2990
Fax: (864) 542-2993
jdantin@spartanlaw.com

This message may be protected by the attorney/client, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person.

-----Original Message-----

From: Beard, Grady L. [mailto:gbeard@sowellgray.com]
Sent: Monday, November 03, 2014 3:00 PM
To: 'sdebruhl@wcc.sc.gov'; McDaniel, Alaina; Dantin, Jeremy; Phillips, Nikki; Houston, Racheal; McAbee, Sheila A.
Subject: RE: Hearing Notice - WCC# 0912295; Gul (6457/8002)
Importance: High

Good Afternoon Jeremy:

I believe we have dealt with this issue before, but if not I previously represented Commissioner Beck approximately 17+ years ago in some non-WC litigation. As such, he requests that I always notify the other side regarding same, in case they wish to discuss with him his possible recusal from the case. Please advise whether you or your client would like to discuss this issue with Commissioner Beck before we proceed with the Hearing as scheduled.

Thanks-Grady

-----Original Message-----

From: sdebruhl@wcc.sc.gov [mailto:sdebruhl@wcc.sc.gov]

Sent: Monday, November 03, 2014 1:29 PM

To: SDEBRUHL@WCC.SC.GOV; McDaniel, Alaina; Beard, Grady L; JDANTIN@SPARTANLAW.COM; Davis, Kim; Waymer, Mimi; NPHILLIPS@SPARTANLAW.COM; Houston, Racheal; SMCABEE@SPARTANLAW.COM

Subject: Hearing Notice - WCC# 0912295: Gul

Attached please find Notice of Hearing before the SC Workers' Compensation Commission in the above referenced matter.

DeBruhl, Shawn

From: DeBruhl, Shawn
Sent: Friday, May 22, 2015 11:51 AM
To: Beard, Grady L.; Dantin, Jeremy
Cc: mwaymer@sowellgray.com; McDaniel, Alaina; Davis, Kim; Houston, Racheal;
'smcabee@spartanlaw.com'; 'Phillips, Nikki'
Subject: Nikolay Gul WCC # 0912295

Below please find Commissioner Beck's order instructions in the above case. Please email completed orders to me in Word format. Please do not mail hard copies. If you have any questions, please let me know.

HEARING DATE: 4/22/15
WCC FILE NO.: 0912295

CLAIMANT: Nikolay Gul
EMPLOYER: Kohler Company
CARRIER: Kohler Company

ATTORNEY(P): Jeremy A. Dantin
ATTORNEY(D): Grady L. Beard

AWW: \$719.70 **CR:** \$479.82 **MMI:** N/A
Period of TTD: N/A **Return to Work:** **DOI:** 8/20/09
Extent of Disability: N/A

COURT REPORTER:

Jan Whitworth
whitworjan@bellsouth.net

emailed on May 22, 2015

DIRECTIVES

Attorney Beard, please draft the order consistent with the below findings and return to this office within 45 days:

1. Defendants objected to claimant Tab 9. Documents were removed voluntarily by claimant.

2. Defendants objection to claimant Tab B is overruled with the understanding that the MSDS is not reflective of what Kohler uses. Its only purpose is to define warnings relative to 100% acetic acid.
 3. Claimant's objection to Defendant Exhibit 5 is overruled as it was timely submitted to claimant in advance of the hearing.
 4. I find Defendant's Notice or defense in this matter inapplicable. Defendants were served notice of the claim via letter from claimant's counsel on 9/11/09, within 90 days of alleged injury. I also note a 12A filed on 9/18/09.
 5. I also find the defense of laches inapplicable.
 6. I find the reports of Dr. Feldman highly suspect and afford them no weight in my determinations.
 7. I am also equally suspect of the claimant's testimony. His repeated disputes of any medical record not favorable to his case is extremely troubling.
 8. Based upon the greater weight of the evidence, I find, as it related to the alleged DOI, that claimant does not suffer from any asthmatic condition.
 9. Even if claimant suffered from asthma during the relevant period, the evidence is insufficient to establish causation.
 10. As a result of the preceeding findings, claimant's request for benefits is denied.
- Mr. Beard, please draft order consistent with your legal memorandum.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter listed above. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.

When submitting the proposed Order to the Commission, please EMAIL only, to sdebruhl@wcc.sc.gov. The Commission is now going paperless and no longer needs hard copies of the proposed order unless the claimant is pro se.

Matters To Include In The Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties, stated concisely)
4. Evidence of the Case (synopsis of the evidence, including testimony and medical reports)
5. Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

Shawnee DeBruhl
Administrative Coordinator to
Commissioner Beck
S.C. Workers' Compensation Commission
803-737-5698

DAVIS, SNYDER, WILLIFORD & LEHN, P.A.

ATTORNEYS AT LAW
5 HAWTHORNE PARK COURT
GREENVILLE, SC 29615

ASHBY W. DAVIS*
STEVEN A. SNYDER
DAVID L. WILLIFORD
COLLIE W. "TRIP" LEHN, JR.
KEITH D. KNOWLTON

*ALSO ADMITTED IN GEORGIA

TELEPHONE
(864) 335-3500

FAX
(864) 335-3505
dsandwlaw.com

April 19, 2016

Ms. Amy A. Bracy
Judicial Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Nikolay Gul v. Kohler Company
WCC File No.: 0912295
Date of Accident: 08/20/09
Claim No.: 2313030606
Our File No.: IND-15-123

Dear Ms. Bracy:

Please find enclosed for filing a notice of appeal.

Sincerely,

DAVIS, SNYDER,
WILLIFORD & LEHN, P.A.

Trip Lehn for David Williford

David L. Williford

*with express
permission*

Enclosures

cc: Grady L. Beard, Esq. / Robert E. Horner, Esq. (w/encl.)

SCWCC
APR 21 2016
JUDICIAL

ROA 1464

1590

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina Workers' Compensation Commission

WCC File No. 0912295

Nikolay Gul, ... Claimant/Appellant,

v.

Kohler Company, ... Defendant/Respondent.

NOTICE OF APPEAL

Nikolay Gul appeals the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission dated March 23, 2016. Appellant received written notice of entry of this order on March 23, 2016. The Appellate Panel adopted the Decision and Order of Hearing Commissioner T. Scott Beck, including his findings of fact and conclusions of law. The Appellate Panel and Commissioner Beck erred in concluding that Mr. Gul failed to establish that he suffers from asthma relative to his alleged Date of Injury and that he failed to establish that his asthma arose out of and in the course of his employment with Kohler.

April 19, 2016

Tip Lehn for David Williford with
David L. Williford express
Davis, Snyder, Williford & Lehn, P.A. permission
5 Hawthorne Park Court
Greenville, SC 29615
dwilliford@davissnyder.com
(864) 335-3500
Attorney for Appellant

Other Counsel of Record:

Grady L. Beard
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211
(803) 231-7829
gbeard@sowellgray.com
bhorner@sowellgray.com
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA ..
In the Court of Appeals

Appeal from the South Carolina Workers' Compensation Commission

WCC File No. 0912295

Nikolay Gul, ... Claimant/Appellant,

v.

Kohler Company, ... Defendant/Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Kohler Company by depositing a copy of it in the United States Mail, postage prepaid, on April 19, 2016, addressed to its attorneys of record, Grady L. Beard and Robert E. Horner, PO Box 11449, Columbia, SC 29211.

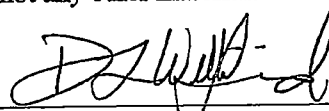
April 19, 2016

David L. Williford for David Williford with express permission
David L. Williford
Davis, Snyder, Williford & Lehn, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
dwilliford@davissnyder.com
(864) 335-3500
Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 19, 2017



David L. Williford (SC Bar #73129)
Davis, Snyder, Williford & Lehn, PA
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500
Email: DWilliford@davissnyder.com
Attorney for Appellant