STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
FEB 06 2020
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master-In-Equity

Appellate Case No.: 2019-000984

Michael Collins, Appellant,

v.

Norfolk Southern Corporation, Respondent.

RECORD ON APPEAL

Joseph O. Thickens
S.C. Bar No. 101398
J. Eric Cavanaugh
S.C. Bar No. 100044
Cavanaugh & Thickens, LLC
1324 Gadsden Street (29201)
Post Office Box 2409
Columbia, SC 29202
Attorneys for Appellant

INDEX

Orders

3/25/19 Order Granting Motion for Summary Judgment.....3

5/17/19 Order Denying Rule 59(e) Motion for Reconsideration.....11

Pleadings

Complaint filed by Michael Collins, 2017-CP-46-2574.....14

Answered filed by Norfolk Southern, 2017-CP-46-2574.....22

Norfolk Southern's Notice of Motion and Motion for Summary Judgment 32

Norfolk Southern's Memorandum in Support of Its Motion for Summary Judgment.....43

Michael Colllins' Memorandum in Opposition to Norfolk Southern's Motion for Summary Judgment.....137

Michael Collins' Motion to Alter/Amend.....147

Transcripts

Transcript of Hearing 5/8/19.....153

Transcript of Hearing 9/15/18..... 176

Transcript of Michael Collins' Deposition.....219

Other Documents

Deposition of Michael Collins Exhibit 1.....442

Deposition of Michael Collins Exhibit 2.....446

Deposition of Michael Collins Exhibit 3.....449

Deposition of Michael Collins Exhibit 4.....451

Deposition of Michael Collins Exhibit 5.....452

Deposition of Michael Collins Exhibit 7.....463

Deposition of Michael Collins Exhibit 10.....467

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP460257

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP46-02574

Michael Collins
PLAINTIFF(S)

Norfolk Southern Corp.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), ☐ SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on _____.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP460257

STATE OF SOUTH CAROLINA COUNTY OF YORK Michael Collins, Plaintiff, vs. Norfolk Southern Corporation, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-46-02574 **ORDER** **GRANTING SUMMARY JUDGMENT**

This matter came before the Court on Defendant's Motion for Summary Judgment requesting the Court to dismiss Plaintiff's claims involving the Federal Employees Liability Act ("FELA"). The Court conducted a hearing on the motion on November 15, 2018 attended by Joseph O. Thickens, attorney for Plaintiff, and Ronald K. Wray, attorney for Defendant. Based upon the record before the Court, the applicable law and arguments of counsel, I make the following findings and conclusions.

FINDINGS OF FACTS

Plaintiff, a carman for Defendant, brought this action under FELA, alleging he injured his neck, shoulder and/or back on March 31, 2016 while repairing a boxcar, and on August 13, 2016, while opening a door to an air compressor room. Plaintiff, an employee of Defendant for approximately thirty-five years, worked most if not all of his career as a carman, inspecting and repairing boxcars.

On March 31, 2016, Plaintiff was working day shift with another carman, tasked with the job of inspecting and repairing defective boxcars. The boxcar related to this incident was the first car Plaintiff inspected that day. Plaintiff was aware the boxcar was defective, but not the specific

problem. Sometimes Plaintiff was made aware of the problem prior to his inspection, by other employees or by the third party that rejected the car for repair. (Plaintiff's Depo. pp. 36, 194-198) Plaintiff admitted it was his job to determine what part of the car was defective. (Plaintiff's Depo. pp. 32-33, 39-40, 56, 198-199).

Plaintiff began his inspection and repair of the boxcar while the other carman was not present. Plaintiff started as usual with a visual inspection of the boxcar to make sure the car was safe to repair. No defects were noted. After inspection, Plaintiff attempted to open the boxcar door because it was "the only way" he could determine if there was an issue with the door. (Plaintiff's Depo. p. 39). Plaintiff grabbed the door handle (described to be wheel shaped) with both hands, pulled once, and the handle did not move. It was at this point Plaintiff felt pain through his neck, back and shoulder.

Plaintiff had experience with boxcar door handles locking up. According to Plaintiff, the problem was the handle's "inside mechanism", a problem not detected through visual inspection, but by pulling on the handle and noting if it does not move. (Plaintiff's Depo. at pp. 41, 50). Plaintiff explained that usually he could feel the handle loosen up, but sometimes it did not. "And, it just happened that time when I did, I felt all the pain..." (Plaintiff's Depo. at pp. 42-43).

Plaintiff was unsure what was ultimately discovered as the defect in this case. (Plaintiff's Depo. at p. 56). Plaintiff made no further inspection and was not present when the other carman made the repair. Plaintiff stated the work area did not contribute to him having difficulty in opening the door. (Plaintiff's Depo. at p. 194). When specifically asked what Defendant did wrong to cause his injuries, Plaintiff answered: "I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did." (Plaintiff's Depo. at p. 83).

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP460574

On August 13, 2016, Plaintiff was inspecting outbound cars which required compressed air for part of inspection. There was no compressed air available in the area Plaintiff was conducting the inspection, so he went to a room where such air is stored. When Plaintiff arrived, the door to the room was locked. The lock could be opened through a key pad. Plaintiff had been provided one keypad code that unlocked at least two other rooms in the facility. Plaintiff thought the same code would unlock the door for the air compressor room. Twice Plaintiff entered that code then turned the door handle; both times the door would not open. Plaintiff had a cell phone and did not call anyone to ask about the code or door. Plaintiff looked in the door jam and did not see a deadbolt engaged. Not seeing a deadbolt engaged, Plaintiff thought the door was stuck. On his third attempt to open the door, Plaintiff pulls the door (without attempting a key code), the door flies open and he feels a jerk in his back. Plaintiff pulled open the door with force enough that the lock on the door broke off and fell to the floor inside the compressor room.

CONCLUSIONS OF LAW

A summary judgment motion involving a FELA action brought in state court is controlled by federal procedural law. *Bean v. South Carolina Cent. R. Co., Inc.*, 392 S.C. 532, 709 S.E.2d 99 (Ct. App. 2011). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). The role of the Court is to determine if "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party". *Id.* (citation omitted). Federal policy strongly favors FELA claims be heard by a jury. *Id.*

To prevail under FELA, the employee must prove the common law elements of negligence (duty, breach, causation and damages), and that the employer's negligence contributed in some way, no matter how small, to the injury. *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 656 S.E.2d

20 (2008) (citations omitted). FELA requires employers provide a safe work environment and prescribe reasonably safe work methods. *Id.* Though a safer method may exist, this fact does not automatically render the employer's method unsafe or negligent. *Id.* The question is whether the employer exercises reasonable care for the safety of the employee. *Stillman v. Norfolk & Western Ry. Co.,* 811 F.2d 834 (4th Cir. 1987). Also, employers are not liable if there was no reasonable way to foresee the danger that lead to the employee's injury. *Rogers v. Norfolk Southern Corp.,* 356 S.C. 85, 588 S.E.2d 87 (2003).

First, Plaintiff argues the Defendant was negligent in failing to inform him of the specific defect with the boxcar prior to his repair. However, there is no evidence that Defendant failed to exercise reasonable care for Plaintiff's safety or that the work method used in this case was unsafe. Further, there is no evidence the Defendant could reasonably foresee this injury would occur from Plaintiff's inspection.

Plaintiff was an experienced repairman proceeding with his routine inspection of a defective boxcar. He admitted it was his duty to find the defect and was aware the defect could involve the door handle sticking. Plaintiff made no mention of experiencing pain or injury in this task before stating, "it just so happened that time", he felt pain. Plaintiff chose to conduct the inspection alone (although help was available) and admitted nothing in the work area contributed to the incident. Plaintiff stated at times he was made aware of the issue prior to repairing a car (by the yard crews or others), but provided nothing further. Instead, when asked what Defendant did wrong, Plaintiff made no mention regarding lack of notice, and denied wrongdoing by the Defendant.

Next, Plaintiff claims the Defendant was negligent in failing to provide Plaintiff with the code to the air compressor room. "When an employee's own negligence is the sole proximate

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

cause of his injuries, the employer cannot be found liable pursuant to FELA." *Hurley v. Patapsco & Back Rivers R. Co.,* 888 F.2d 327 (4th Cir. 1989). It is neither a breach of duty nor foreseeable that Plaintiff, following two failed attempts to open a door after entering a key code and turning the handle, would on a third attempt, open the door with enough force that he broke the lock off the door. Any injury Plaintiff alleges he received from this incident is solely attributed to his own negligence.

Plaintiff did not oppose summary judgment as to his third cause of action.

ORDER

Based on the findings and conclusions herein, the arguments presented, the exhibits submitted for the Court's consideration, and the applicable law, it is ordered that Defendant's Motion for Summary Judgment be granted.

AND IT IS SO ORDERED.

(JUDGE'S E-SIGNATURE PAGE TO FOLLOW)

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP460574

ELECTRONICALLY FILED - 2019 Mar 25 12:21 PM - YORK - COMMON PLEAS - CASE#2017CP4602574



York Common Pleas

Case Caption: Michael Collins VS Norfolk Southern Corporation

Case Number: 2017CP4602574

Type: Order/Summary Judgment

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2019-03-25 12:07:56 page 8 of 8

ELECTRONICALLY FILED - 2019 May 17 8:20 AM - YORK - COMMON PLEAS - CASE#2017CP4602574

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP46-02574

Michael Collins
PLAINTIFF(S)

Norfolk Southern Corp.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), ☐ SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

This matter came before me on May 8, 2019 upon Plaintiff's motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed March 25, 2019. Representing the parties were: Joseph O. Thickens and Charles Edward Sorey, II, for Plaintiff; and, Ronald K. Wray for Defendant.

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

"[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)(emphasis in original).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP, be denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on _____.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 May 17 8:20 AM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2019 May 17 8:20 AM - YORK - COMMON PLEAS - CASE#2017CP4602574



York Common Pleas

Case Caption: Michael Collins VS Norfolk Southern Corporation

Case Number: 2017CP4602574

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2019-05-16 20:31:15 page 3 of 3

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF YORK	**THE SIXTEENTH JUDICIAL CIRCUIT**
Michael Collins,	**Civil Action No.:** 2017CP46 2574
Plaintiff,	
v.	**COMPLAINT**
Norfolk Southern Corporation,	**(Jury Trial Demanded)**
Defendant.	

FILED-RECEIVED
2017 SEP -1 AM 11:55
DAVID HAMILTON
C.C.C.P. & GS, S.C
YORK COUNTY, S.C

Comes now the Plaintiff, Michael Collins, by and through his attorneys of record, and for his complaint against the Defendant, Norfolk Southern Corporation, hereby states the following:

JURISDICTION AND VENUE

1. This is an action arising under the provisions of the Federal Employers' Liability Act, 45 U.S.C.A. §§ 51 et seq., to recover damages for personal injuries sustained by the Plaintiff.

2. Plaintiff, Michael Collins, is now, and at all times mentioned in this complaint was, a resident of Rock Hill, York County, in the State of South Carolina.

3. Defendant, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern",), is now, and at all times mentioned in this complaint was, a corporation engaged in the business and operation of the freight transportation in the State of South Carolina and other states as a common carrier by railroad, with its principle offices in Norfolk, VA.

4. At all times mentioned herein, Michael Collins was employed as a Carman by Norfolk Southern and as such was in the scope and course of his employment engaged in inspection, maintenance and repair of locomotives.

5. At all times mentioned herein, the Defendant was a common carrier of freight for hire by rail, and was engaged in interstate commerce.

6. At all times mentioned herein, the Plaintiff and the Defendant were engaged in interstate commerce or in activities that substantially affected and were in furtherance of interstate commerce.

7. Venue is proper pursuant to §15-7-30 of the South Carolina Code of Laws Amended.

8. The Court has subject matter jurisdiction over this matter and *in personam* jurisdiction over the parties.

COUNT I

Injury to Plaintiff's Neck, Back, and Shoulder

9. Plaintiff hereby incorporates by reference paragraphs 1 through 8 above.

10. On or about March 31, 2016, Michael Collins was working in or around York County, South Carolina.

11. At the above mentioned time, Mr. Collins was attempting to close a boxcar door overhead which was not properly closing.

12. While attempting to close the door, the door "locked up" causing the door to stop mid pull.

13. When the door "locked up" Plaintiff felt a pull in his neck, shoulder, and back area causing injuries to those areas.

14. Plaintiff's incident and resulting injuries and damages were caused in whole or in part by the negligence of the Defendant through its agents and employees acting within the scope of their employment and authority.

15. The injuries sustained by the Plaintiff were caused, in whole or in part, by the negligence of the Defendant in one or more of the following particulars:

(a) Defendant failed to furnish Plaintiff with a reasonably safe place in which to work;

(b) Defendant failed to furnish Plaintiff with reasonably safe equipment with which to perform his assigned duties;

(c) Defendant failed to furnish Plaintiff with reasonably necessary and proper personal protective equipment;

(d) Defendant failed to furnish Plaintiff with necessary and proper supervision in the performance of his assigned duties;

(e) Defendant failed to warn Plaintiff of reasonably foreseeable hazardous conditions existing with Defendant's equipment;

(f) Defendant allowed unsafe practices to become the standard practice;

(g) Defendant failed to furnish Plaintiff with adequate mechanical assistance in the performance of his assigned duties;

(h) Defendant negligently allowed the aforementioned boxcar door to become unreasonably hard to close;

(i) Defendant negligently allowed the aforementioned boxcar door to become unsafe to operate leading to the door "locking up" on Plaintiff.

16. As a result of the injuries sustained by Plaintiff, he has been caused to undergo medical treatment to the aforementioned parts of his body.

17. Plaintiff further states that prior to the onset of these injuries, Plaintiff was an able-bodied man, capable of performing heavy, strenuous manual labor and had been doing so while working for the Defendant. In the event Plaintiff did have any infirmities to the aforementioned parts of his body of which he was not aware, Plaintiff claims that said condition was aggravated, activated and accelerated by the trauma to which Plaintiff was exposed on Defendant's property. Plaintiff's psychological injuries have impaired him significantly as well.

18. Plaintiff further states that his ability to work in labor in the future has been diminished. In this regard, Plaintiff would show that he has suffered a decrease in his past and future wage earning capacity. Plaintiff also states that he will sustain medical expenses in the future. Additionally, Plaintiff also seeks compensation for his pain and suffering. His injuries have further caused him mental anguish.

COUNT II

Injury to Plaintiff's Neck

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 above.

20. On August 13, 2016, Michael Collins was employed as a Carman by Norfolk Southern and as such was in the scope and course of his employment engaged in inspection, maintenance and repair of locomotives.

21. At the above time, Michael Collins was working in or around Mecklenburg County, North Carolina.

22. On August 13, 2016, while working within the scope of his employment, Mr. Collins was attempting to open the door to the air compressor room when he began to believe it to be stuck.

23. After coming to believe the door was stuck, Mr. Collins pulled harder on the door in an attempt to open it injuring his neck.

24. Plaintiff's incident and resulting injuries and damages were caused in whole or in part by the negligence of the Defendant through its agents and employees acting within the scope of their employment and authority.

25. The injuries sustained by the Plaintiff were caused, in whole or in part, by the negligence of the Defendant in one or more of the following particulars:

(a) Defendant failed to furnish Plaintiff with a reasonably safe place in which to work;

(b) Defendant failed to furnish Plaintiff with reasonably safe equipment with which to perform his assigned duties;

(c) Defendant failed to furnish Plaintiff with necessary and proper supervision in the performance of his assigned duties;

(d) Defendant failed to warn Plaintiff of reasonably foreseeable hazardous conditions existing with Defendant's equipment;

(e) Defendant allowed unsafe practices to become the standard practice;

(f) Defendant negligently kept the air compressor door locked without having given the code to open the door to Plaintiff who needed to access it during his work.

26. As a result of the injuries sustained by Plaintiff, he has been caused to undergo medical treatment to the aforementioned parts of his body.

27. Plaintiff further states that prior to the onset of these injuries, Plaintiff was an able-bodied man, capable of performing heavy, strenuous manual labor and had been doing so while working for the Defendant. In the event Plaintiff did have any infirmities to the aforementioned parts of his body of which he was not aware, Plaintiff claims that said condition was aggravated, activated and accelerated by the trauma to which Plaintiff was exposed on Defendant's property. Plaintiff's psychological injuries have impaired him significantly as well.

28. Plaintiff further states that his ability to work in labor in the future has been diminished. In this regard, Plaintiff would show that he has suffered a decrease in his past and future wage earning capacity. Plaintiff also states that he will sustain medical expenses in the future. Additionally, Plaintiff also seeks compensation for his pain and suffering. His injuries have further caused him mental anguish.

COUNT III

Cumulative Trauma to Plaintiff's Hips

29. Plaintiff hereby incorporates by reference paragraphs 1 through 28 above.

30. Plaintiff was assigned to work Norfok Southern's Rock Hill yard from approximately 1981 to July of 2016 where he sustained a substantial amount of stressors. Aside from this time period, Plaintiff sustained stressors in the Norfolk Southern's Charlotte, North Carolina yard from July of 2016 until August 13, 2016 due to Plaintiff transferring after the Rock Hill yard was closed.

31. Plaintiff sustained injuries to both his hips which have become known by the Plaintiff in September of 2016 due to cumulative trauma, repetitive stress, overuse, and lack of sound ergonomic practices by Norfolk Southern, including a substantial amount of exposure to hazardous work conditions contributing to his injuries.

32. Plaintiff was required to perform ergonomically unsafe work, using unsafe methods, tools, and equipment. Further, Defendant negligently required Plaintiff to perform heavy, strenuous activities without adequate manpower or mechanical assistance.

33. As a result of the aforementioned actions, Plaintiff suffered injuries to his hips which are of a permanent nature.

34. Defendant was aware of the hazards associated with exposure to such unsafe working conditions, as well as repetitive motion injuries caused in such a manner sustained by other railroad employees.

35. Defendant failed to warn Plaintiff of the hazards associated with and the potential for exposure to such hazards.

36. Plaintiff's injuries accrued within three years prior to the filling of this lawsuit.

37. Plaintiff's incident and resulting injuries and damages were caused in whole or in part by, and were the direct result of, the negligence of Defendant, through its agents and employees acting within the scope of their employment and authority.

38. The injuries sustained by Plaintiff were caused directly, in whole or in part, by the negligence of the Defendant in one or more of the following particulars:

(a) Defendant failed to furnish Plaintiff with a reasonably safe place in which to work;

(b) Defendant failed to furnish Plaintiff with reasonably safe equipment with which to perform his assigned duties;

(c) Defendant failed to furnish Plaintiff with reasonably necessary and proper equipment with which to perform his assigned duties;

(d) Defendant failed to furnish Plaintiff with reasonably necessary and proper personal protective equipment;

(e) Defendant failed to furnish Plaintiff with necessary and proper supervision in the performance of his assigned duties;

(f) Defendant failed to warn Plaintiff of reasonably foreseeable hazardous conditions existing with Defendant's equipment;

(g) Defendant allowed unsafe practices to become the standard practice;

(h) Defendant assigned Plaintiff work which Defendant knew or, in the exercise of reasonable care, should have known would result in injury to Plaintiff; and

(i) Defendant assigned Plaintiff duties which Defendant knew or should have known were beyond his physical capacity or would aggravate prior injuries or would otherwise cause injury to Plaintiff.

39. As a result of the injuries sustained by Plaintiff, he has been caused to undergo medical treatment to the aforementioned parts of his body.

40. Plaintiff further states that prior to the onset of these injuries, Plaintiff was an able-bodied man, capable of performing heavy, strenuous manual labor and had been doing so while working for the Defendant. In the event Plaintiff did have any infirmities to the

aforementioned parts of his body of which he was not aware, Plaintiff claims that said condition was aggravated, activated and accelerated by the trauma to which Plaintiff was exposed on Defendant's property. Plaintiff's psychological injuries have impaired him significantly as well.

41. Plaintiff further states that his ability to work in labor in the future has been diminished. In this regard, Plaintiff would show that he has suffered a decrease in his past and future wage earning capacity. Plaintiff also states that he will sustain medical expenses in the future. Additionally, Plaintiff also seeks compensation for his pain and suffering. His injuries have further caused him mental anguish.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the defendant be cited to appear and answer herein and that upon final hearing, judgment be rendered in favor of this Plaintiff and against this Defendant for an amount in excess of jurisdictional limits, for all actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper, together with prejudgment and post-judgment interest and his costs herein expended.

PLAINTIFF REQUESTS TRIAL BY JURY.

Respectfully submitted,

Joseph O. Thickens, S.C. Bar No. 101398
J. Eric Cavanaugh, S.C. Bar No. 100044
Cavanaugh & Thickens, LLC
1324 Gadsden Street (29201)
Post Office Box 2409
Columbia, SC 29202
Tel: (803) 888-2200
Fax: (803) 888-2219
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
August 29, 2017

STATE OF SOUTH CAROLINA COUNTY OF YORK Michael Collins, Plaintiff, vs. Norfolk Southern Corporation, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-46-2574 **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT** **(Jury Trial Requested)**

Defendant Norfolk Southern Railway Company (incorrectly named in the Complaint as "Norfolk Southern Corporation") (hereinafter referred to as "Norfolk Southern") answering the Complaint of the Plaintiff herein, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 of the Plaintiff's Complaint states a legal conclusion that does not require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern admits that Plaintiff purports to bring this action pursuant to the Federal Employers Liability Act ("FELA"). Norfolk Southern denies that Plaintiff is entitled to relief under the FELA or on any other basis.

2. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 2 of the Plaintiff's Complaint and therefore denies them.

3. Paragraph 3 of the Plaintiff's Complaint states a legal conclusion that does not require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern admits so much of the allegations of Paragraph 3 as allege that it is a Virginia corporation with its principal place of business in Virginia and that it is a common carrier by rail

that operates trains in South Carolina and other states. Norfolk Southern denies any remaining and inconsistent allegations contained in Paragraph 3 of the Plaintiff's Complaint.

4. In response to the allegations contained in Paragraph 4 of the Plaintiff's Complaint, Norfolk Southern admits only that Plaintiff was employed by Norfolk Southern as a carman. Norfolk Southern is without sufficient information to either admit or deny the remaining allegations contained in Paragraph 4 of the Plaintiff's Complaint and therefore denies them.

5. Paragraph 5 of the Plaintiff's Complaint states a legal conclusion that does not require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern admits that it is a common carrier by rail that is engaged in interstate and intrastate commerce. Norfolk Southern is without sufficient information to either admit or deny the remaining allegations contained in Paragraph 5 of the Plaintiff's Complaint and therefore denies them.

6. Paragraph 6 of the Plaintiff's Complaint states a legal conclusion that does not require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern admits only that it engages in interstate and intrastate commerce. Norfolk Southern is without sufficient information to either admit or deny the remaining allegations contained in Paragraph 6 of the Plaintiff's Complaint and therefore denies them.

7. Paragraph 7 of the Plaintiff's Complaint states a legal conclusion that does not require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern denies that venue is proper in York County under S.C. Code Ann. § 15-7-30 for all claims raised in Plaintiff's Complaint. However, for purposes of this action only, pursuant to

S.C. Code Ann. § 15-7-50, Norfolk Southern consents to the claims raised in Plaintiff's Complaint being heard in York County.

8. Paragraph 8 of the Plaintiff's Complaint states a legal conclusion that does require a response from Norfolk Southern. To the extent that a response is required, Norfolk Southern admits that the Court has subject matter jurisdiction over this matter but denies that the Court has *in personam* jurisdiction over all claims raised in Plaintiff's Complaint. However, for purposes of this action only, Norfolk Southern consents to the claims raised in Plaintiff's Complaint being heard in York County.

9. In response to the allegations contained in Paragraph 9 of the Plaintiff's Complaint, Norfolk Southern reasserts and realleges its responses contained in paragraphs 1 through 8 above as if set forth herein verbatim.

10. Upon information and belief, Norfolk Southern admits the allegations contained in Paragraph 10 of the Plaintiff's Complaint.

11. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint and therefore denies them.

12. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 12 of the Plaintiff's Complaint and therefore denies them.

13. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 13 of the Plaintiff's Complaint and therefore denies them.

14. Norfolk Southern denies the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

15. Norfolk Southern denies the allegations contained in Paragraph 15 of the Plaintiff's Complaint, including subparts (a) through (i).

16. Norfolk Southern denies the allegations contained in Paragraph 16 of the Plaintiff's Complaint.

17. Norfolk Southern denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

18. Norfolk Southern denies the allegations contained in Paragraph 18 of the Plaintiff's Complaint.

19. In response to the allegations contained in Paragraph 19 of the Plaintiff's Complaint, Norfolk Southern reasserts and realleges its responses contained in paragraphs 1 through 18 above as if set forth herein verbatim.

20. In response to the allegations contained in Paragraph 20 of the Plaintiff's Complaint, Norfolk Southern admits only that Plaintiff was employed by Norfolk Southern as a carman. Norfolk Southern is without sufficient information to either admit or deny the remaining allegations contained in Paragraph 20 of the Plaintiff's Complaint and therefore denies them.

21. Upon information and belief, Norfolk Southern admits the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

22. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 22 of the Plaintiff's Complaint and therefore denies them.

23. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 23 of the Plaintiff's Complaint and therefore denies them.

24. Norfolk Southern denies the allegations contained in Paragraph 24 of the Plaintiff's Complaint.

25. Norfolk Southern denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint, including subparts (a) through (f).

26. Norfolk Southern denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

27. Norfolk Southern denies the allegations contained in Paragraph 27 of the Plaintiff's Complaint.

28. Norfolk Southern denies the allegations contained in Paragraph 28 of the Plaintiff's Complaint.

29. In response to the allegations contained in Paragraph 29 of the Plaintiff's Complaint, Norfolk Southern reasserts and realleges its responses contained in paragraphs 1 through 28 above as if set forth herein verbatim.

30. In response to the allegations contained in Paragraph 30 of the Plaintiff's Complaint, Norfolk Southern admits only that upon information and belief, Plaintiff has worked as an employee for Norfolk Southern in Rock Hill and Charlotte through 2016. Norfolk Southern denies the remaining allegations contained in Paragraph 30 of the Plaintiff's Complaint.

31. Norfolk Southern denies the allegations contained in Paragraph 31 of the Plaintiff's Complaint.

32. Norfolk Southern denies the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

33. Norfolk Southern denies the allegations contained in Paragraph 33 of the Plaintiff's Complaint.

34. Norfolk Southern denies the allegations contained in Paragraph 34 of the Plaintiff's Complaint.

35. Norfolk Southern denies the allegations contained in Paragraph 35 of the Plaintiff's Complaint.

36. Norfolk Southern is without sufficient information to either admit or deny the allegations contained in Paragraph 36 of the Plaintiff's Complaint and therefore denies them.

37. Norfolk Southern denies the allegations contained in Paragraph 37 of the Plaintiff's Complaint.

38. Norfolk Southern denies the allegations contained in Paragraph 38 of the Plaintiff's Complaint, including subparts (a) through (i).

39. Norfolk Southern denies the allegations contained in Paragraph 39 of the Plaintiff's Complaint.

40. Norfolk Southern denies the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

41. Norfolk Southern denies the allegations contained in Paragraph 41 of the Plaintiff's Complaint, including the WHEREFORE paragraph, those being the remaining allegations contained in the Plaintiff's Complaint.

42. Norfolk Southern denies each and every allegation of the Plaintiff's Complaint not hereinabove specifically admitted, modified, or explained.

FOR A SECOND DEFENSE

43. Norfolk Southern alleges that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against it, and should therefore be dismissed.

FOR A THIRD DEFENSE

44. Norfolk Southern alleges that the Court lacks personal jurisdiction over it in this action, and Plaintiff's Complaint should therefore be dismissed.

FOR A FOURTH DEFENSE

45. Norfolk Southern alleges that venue is improper, and Plaintiff's Complaint should therefore be dismissed.

FOR A FIFTH DEFENSE

46. Norfolk Southern alleges that Plaintiff's claims are barred by the applicable statute of limitations contained in 45 U.S.C. § 56.

FOR A SIXTH DEFENSE

47. Plaintiff's claims are barred by the doctrines of laches, estoppel, and unclean hands.

FOR A SEVENTH DEFENSE

48. Norfolk Southern alleges that Plaintiff's injuries and damages, if any, were the direct and proximate result of Plaintiff's own negligence which combined and concurred with any negligence on the part of Norfolk Southern, which is specifically denied and admitted solely for the purpose of this defense only, and Plaintiff's alleged injuries would not have occurred if Plaintiff had not been guilty of such negligence. Plaintiff's recovery should be reduced by the percentage of his comparative negligence.

FOR AN EIGHTH DEFENSE

49. Norfolk Southern alleges that if Plaintiff suffered injuries as claimed, such injuries resulted solely from the acts of Plaintiff or of persons other than Norfolk Southern, which acts were not foreseeable, and Plaintiff is, therefore, not entitled to recover from Norfolk Southern.

FOR A NINTH DEFENSE

50. Norfolk Southern alleges that if it was negligent, which is denied, then its negligence was not a proximate cause of Plaintiff's alleged injuries or damages in that any injuries or damages sustained or alleged by Plaintiff were caused by separate intervening acts or omissions of parties other than Norfolk Southern and said intervening acts or omissions intervened and superseded any negligence of Norfolk Southern, and such intervening and superseding negligence is pleaded as a bar to Plaintiff's right to recover.

FOR AN TENTH DEFENSE

51. While denying that it is liable to Plaintiff in any amount, Norfolk Southern alleges that to the extent that it has paid or funded Plaintiff's medical expenses, Plaintiff cannot recover the same from Norfolk Southern again.

FOR AN ELEVENTH DEFENSE

52. While denying it is liable to Plaintiff in any amount, Norfolk Southern alleges that to the extent Plaintiff's alleged hospital, doctor, medical and pharmaceutical expenses have been paid under the health plan for railroad workers, such claims should be stricken.

FOR A TWELFTH DEFENSE

53. While denying it is liable to Plaintiff in any amount, Norfolk Southern alleges that to the extent that it has paid or funded Plaintiff's Railroad Retirement Board benefits, Plaintiff cannot recover the same from Norfolk Southern again.

FOR A THIRTEENTH DEFENSE

54. Norfolk Southern alleges that Plaintiff has failed to mitigate his damages in the manner required by law. Such failure to mitigate is plead as a bar to Plaintiff's claim, and any amount awarded to Plaintiff should be reduced or diminished by the amount Plaintiff could have

reasonably avoided, including the amount he could have reasonably earned in other available, gainful employment.

FOR A FOURTEENTH DEFENSE

55. Norfolk Southern alleges that it is not liable to Plaintiff because any claims asserted by him are preempted and precluded as a matter of law by the Supremacy Clause of the Constitution of the United States and by regulations promulgated by the Federal Railroad Administration and the United States Department of Transportation.

FOR A FIFTEENTH DEFENSE

56. Norfolk Southern took all reasonable measures and precautions to provide Plaintiff with a reasonably safe place to work and reasonably safe equipment to perform his work and did provide Plaintiff with a reasonably safe place to work and reasonably safe equipment to perform his work.

FOR A SIXTEENTH DEFENSE

57. To the extent that Plaintiff seeks to recover punitive or exemplary damages in this case from Norfolk Southern, such damages are non-pecuniary and not recoverable under the FELA, 45 U.S.C. §§51-60.

WHEREFORE, having fully answered Plaintiff's Complaint herein, Norfolk Southern prays that Plaintiff's Complaint be dismissed with costs, and for such further and other relief as the Court deems just and proper.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	C.A. NO.: 2017-CP-46-2574
	)	
Michael Collins,	)	
	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Norfolk Southern Corporation,	)	
	)	
Defendants.	)	
	)	

The undersigned hereby certifies on October 6, 2017, she served a copy of Defendant, Norfolk Southern Corporation's Answer on all known counsel of record by placing a copy in the United States Mail with due and proper postage affixed thereto and addressed as follows:

Joseph O. Thickens
J. Eric Cavanaugh
Cavanaugh & Thickens, LLC
1324 Gadsden Street (29201)
PO Box 2409
Columbia, SC 29202

Stacy Said

STATE OF SOUTH CAROLINA COUNTY OF YORK Michael Collins, Plaintiff, vs. Norfolk Southern Corporation, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-46-2574 **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: JOSEPH O. THICKENS AND CHARLES E. SORREY, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendant Norfolk Southern Railway Company (incorrectly named in the Complaint as "Norfolk Southern Corporation") (hereinafter referred to as "Norfolk Southern"), by and through its undersigned counsel, will move before the resident or presiding judge of the York County Court of Common Pleas, at a date and time to be set by the Court but not sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting summary judgment in Norfolk Southern's favor as a matter of law on one or more of the following grounds:

1. Norfolk Southern Corporation is incorrectly named as a defendant in this case. Norfolk Southern Railway Company is the operating subsidiary of Norfolk Southern Corporation for whom Plaintiff worked and should be substituted as the named defendant;

2. Plaintiff has not produced any evidence that Norfolk Southern breached a duty of care as alleged in Count I of his Complaint. Plaintiff admits that Norfolk Southern did nothing wrong with respect to the March 31, 2016 incident alleged in Count I. *See Pltf.'s Dep.* 83:7-11

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP460574

("I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did.");

3. Plaintiff has not produced any evidence that Norfolk Southern breached a duty of care as alleged in Count II of his Complaint. Plaintiff admits that on August 13, 2016, he tried to open a keypad lock on a door twice before forcefully pulling it open and breaking the lock. *See Pltf.'s Dep.* 104:15-19. (Q. "So if I understand what you're telling me, Mr. Collins, then you tried it twice. It didn't open. The third time you didn't even try the code. You just forcefully pulled it open?" A. "Yes, sir, correct.");

4. Plaintiff has not produced any evidence that Norfolk Southern breached a duty of care as alleged in Count III of his Complaint. Plaintiff's allegations regarding the regular tasks that were merely part of his job and his allegations stating that having more manpower would have made his job easier are not evidence of negligence on the part of Norfolk Southern under the FELA. *See Tootle v. CSX Transp., Inc.*, 746 F. Supp. 2d 1333, 1338 (S.D. Ga. 2010) (finding that "Plaintiff's testimony as to the physical demands of her position is 'only a description of her job and is not evidence that she [was] required to perform her job in an unsafe manner.'"); *Lafevers v. Norfolk Southern Ry.*, C.A. No. 6:13-1460-TMC, 2014 U.S. Dist. LEXIS 84778, at *6 - *7 (D.S.C. June 23, 2014) ("Norfolk's decision not to assign additional workers to assist [Plaintiff] does not constitute negligence.");

5. With respect to all Counts in Plaintiff's Complaint, there is no evidence that any alleged breach of duty by Norfolk Southern acted as the proximate cause of Plaintiff's alleged injuries and damages;

6. With respect to all Counts in Plaintiff's Complaint, Plaintiff has not produced any admissible expert evidence showing a causal connection between any alleged negligence and his

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

alleged injuries and damages. *See Myers v. Illinois Cent. R.R. Co.*, 629 F.3d 639, 643 (7th Cir. 2010 ("For most cumulative trauma injuries, courts follow the general principle that a layman could not discern the specific cause and thus they have required expert testimony about causation."); *McCarthy Dep.* 41:10-14 (Q. "And if you were asked in this case do you have an opinion as to a reasonable degree of medical certainty as to the cause of Mr. Collins' osteoarthritis, would you be able to express one?" A. "No, sir.");

7. Count III of Plaintiff's Complaint is barred by the applicable statute of limitations contained in 45 U.S.C. § 56; and

8. Plaintiff cannot recover punitive damages in this case, as such damages are non-pecuniary and not recoverable under the FELA, 45 U.S.C. §§51-60.

This motion will be based upon the pleadings in this matter, affidavits filed with this motion or to be filed in advance of the hearing, depositions and discovery in the case, a memorandum of law to be filed by Norfolk Southern in support of this motion, and upon applicable common and statutory law.

August 6, 2018

s/Ronald K. Wray, II

Ronald K. Wray, II (S.C. Bar # 65246)
James A. Bradshaw (S.C. Bar #100548)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-5362
Facsimile: (864) 271-7502

Attorneys for Defendant,
Norfolk Southern Railway Company

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT A

pain?

A. No, sir, I don't.

Q. Any other details relating to the March 31, 2016 incident that you want to tell me about that we've not yet discussed?

A. No, sir.

Q. What do you think that Norfolk Southern did wrong that caused your injuries that day?

A. I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did.

Q. Let's talk about the next incident then. According to your complaint, count two says that on August 13, 2016, while employed as a carman, you were injured while trying to open a door, and I think it was the air compressor room, is that right?

A. Correct.

Q. Do you remember that incident?

A. Yes, sir.

Q. So let's talk about that. Again, on that date, you were working as a carman?

A. Correct.

Q. And my understanding was at that time, had you already been transferred from Rock Hill

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT B

fair to say?

A. Correct, yes.

Q. And then, as I understand it, you tried a third time, still didn't open, correct?

A. The third time, I -- that's when it -- when I pulled it open.

Q. Well, I'm saying it didn't open automatically when you punched in the code?

A. I don't think I did it a third time. I done it twice, the code twice, and didn't open. And I didn't see the lock in. That's when I looked at the top of it and saw that it was stuck in the jam a little bit, and I said, well, it's just stuck a little bit. I'll just pull it open.

Q. So if I understand what you're telling me, Mr. Collins, then you tried it twice. It didn't open. The third time you didn't even try the code. You just forcefully pulled it open?

A. Yes, sir, correct.

Q. And when you opened the door, did you do it using both hands pulling on it, one hand?

A. No, I didn't use but one hand.

Q. Which hand did you use?

A. My right.

Q. And when you did that, did the door

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT C

osteoarthritis is not clearly defined. As I stated previously, there is a genetic component to it. There can be contributing factors such as activity levels, but the clear-cut explanation for why someone gets it is not understood.

Q. I may have asked you this earlier, is it fair to say that most often the cause of osteoarthritis is unknown?

A. Yes, sir.

Q. And if you were asked in this case do you have an opinion as to a reasonable degree of medical certainty as to the cause of Mr. Collins' osteoarthritis, would you be able to express one?

A. No, sir.

MR. WRAY: That's all I have.

EXAMINATION

BY MR. SOREY:

Q. I just have a few questions, I won't be long. But following up on the last question, would you be able to give an opinion about his hip and the condition of his osteoarthritis as his ability to work. I thought you said earlier you would need more data or an FCE to be able to do that, is that correct?

A. I would need the data to determine

ELECTRONICALLY FILED - 2018 Aug 06 12:44 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Certificate of Electronic Notification

Recipients

James Bradshaw - Notification transmitted on 08-06-2018 12:45:18 PM.

Ronald Wray - Notification transmitted on 08-06-2018 12:45:19 PM.

Joseph Thickens - Notification transmitted on 08-06-2018 12:45:18 PM.

Michael Chase - Notification transmitted on 08-06-2018 12:45:18 PM.

Nathan Earle - Notification transmitted on 08-06-2018 12:45:18 PM.

ELECTRONICALLY FILED - 2018 Aug 06 2:09 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Aug 06 2:09 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2017CP4602574

Official File Stamp:	08-06-2018 12:44:16 PM
Court:	CIRCUIT COURT Common Pleas York
Case Caption:	Michael Collins VS Norfolk Southern Corporation
Document(s) Submitted:	Motion/Summary Judgment - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits
Filed by or on behalf of:	Ronald K. Wray, II

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Ronald K. Wray, II for Norfolk Southern Corporation

Michael E. Chase

Nathan A. Earle

James Andrew Bradshaw for Norfolk Southern Corporation

Joseph Odell Thickens for Michael Collins

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-46-2574
Michael Collins, Plaintiff, vs. Norfolk Southern Corporation, Defendant.	**DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

INTRODUCTION

This is a personal injury case filed by a former railroad worker against his employer under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§51-60. Plaintiff Michael Collins (hereinafter "Plaintiff") brings three separate counts under the FELA against Norfolk Southern Railway Company (incorrectly named as "Norfolk Southern Corporation") (hereinafter "Norfolk Southern") alleging that he sustained a variety of injuries while working as a carman from 1981 through 2016 in Norfolk Southern's yards in Rock Hill, South Carolina and Charlotte, North Carolina. However, Plaintiff has failed to prove that Norfolk Southern was negligent in any way, and, in fact, admits Norfolk Southern did nothing wrong with respect to Count I of his complaint. Although Plaintiff did not make a specific admission of no negligence with respect to Count II, he essentially did so by conceding that he forcefully broke the lock on a locked door that he was unable to open because he repeatedly entered the wrong lock code. Moreover, Plaintiff presents no evidence of negligence with respect to Count III of his complaint. This claim also fails because the only physician who treated Plaintiff for his alleged osteoarthritis in his hips admitted that he has no opinion as to the cause of this condition, and Plaintiff's claim

regarding his hips is barred by the applicable statute of limitations. Finally, despite Plaintiff's prayer in his Complaint, punitive damages are not recoverable under the FELA. As such, Norfolk Southern is entitled to summary judgment on all of Plaintiff's claims.

STATEMENT OF FACTS

Plaintiff worked as a carman for Norfolk Southern from 1981 through 2016. He was assigned to work at Norfolk Southern's Rock Hill yard from 1981 through July of 2016 and in Norfolk Southern's Charlotte, North Carolina yard from July of 2016 through August 13, 2016. *See Compl.* ¶ 30. As a carman, Plaintiff's duties included "inspection of locomotives, inspections of cars, and repairing of cars." *See* Ex. 1, *Pltf. Dep.* 10:19-11:3. Plaintiff would inspect boxcars for any defects or issues, and it was his responsibility to fix them and make sure they were safe to operate. *Id.* at 11:12-12:3.

Count I of Plaintiff's Complaint alleges that Plaintiff injured his neck, back, and shoulder on March 31, 2016 when he was attempting to open a boxcar door, and the door "locked up" causing it to stop mid pull. *See Compl.* ¶¶ 9-18. Plaintiff admitted that this alleged incident occurred when he was inspecting a box car that had been sent for repair, and that it was his job to inspect and find any defects in the car, including the door, and repair them. *See* Ex. 1, *Pltf. Dep.* 32:19-33:5; 39:16-40:5. When asked specifically what Norfolk Southern did wrong to cause any alleged injuries related to this incident, Plaintiff candidly admitted: "I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did." *Id.* at 84:7-11. Given this admission, there is no basis for this claim.

Count II of Plaintiff's Complaint stems from an incident that occurred on August 13, 2016 in the Charlotte Yard when Plaintiff forced open and broke a keypad-protected door to the air compressor room. *See Compl.* ¶¶ 19-28. Plaintiff was inspecting outbound cars on that date,

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

and he did not have any compressed air in the yard, so he went to the air compressor room. *See* Ex. 1, *Pltf. Dep.* 91:9-94:4. The door to the room was locked and had a key pad lock on it. *Id.* Plaintiff did now know the code for the door lock, and entered the incorrect code into the key pad twice. Not surprisingly, because Plaintiff had the wrong code, the door did not unlock. *Id.* at 104:7-14. At that point, Plaintiff decided not to call anyone at Norfolk Southern on his radio or cell phone to ask for the correct code, but determined to continue to try to get the door open himself. *Id.* at 103:23-104:2. Plaintiff then forcefully pulled open the door so hard that the lock broke off and fell to the floor inside the compressor room. *Id.* at 104:15-19; 105:7-15. Again, Norfolk Southern did nothing to cause Plaintiff's alleged injuries.

Finally, Count III of Plaintiff's Complaint relates to Plaintiff's longstanding osteoarthritis in his hips. Plaintiff admitted that he began to notice problems with his hips during the "last couple years" he worked for Norfolk Southern. *Id.* at 151:14-21. In fact, Plaintiff's medical records from 2016 and 2017 indicate that Plaintiff stated the pain in his hips had "been going on for years" and that he had a "long-standing history of pain in the right hip." *See* Ex. 2, *8/31/16 McCarthy Record (504-000194-504-000195)*; Ex. 3, *1/26/17 McCarthy Record (504-000464-504-000466)*. Plaintiff attempts to claim in Count III of his Complaint that the pain in his hips is "due to cumulative trauma, repetitive stress, overuse, and lack of sound ergonomic practices by Norfolk Southern," during his work as a carman from 1981 through August 2016. *See Compl.* ¶¶ 29-41. Plaintiff's only real claim of any "lack of sound ergonomic practices" utilized by Norfolk Southern during his career is that he would have liked to have had more manpower to perform his tasks as a carman in Rock Hill. Ex. 1, *Pltf. Dep.* 144:5-22; 147:6-20. However, as set forth below, a claim that more manpower would have made his work easier is not a cognizable claim of negligence under the FELA. Moreover, Plaintiff's treating physician, Dr. William G.

McCarthy, Jr., who treated Plaintiff's hip condition, testified that he was unable to give an opinion to a reasonable degree of medical certainty as to the cause of Plaintiff's osteoarthritis. *See* Ex. 4, *McCarthy Dep.* 41:10-14. Absent any evidence of actionable negligence by Norfolk Southern, and without any admissible medical evidence linking his osteoarthritis to his work at Norfolk Southern, this claim cannot go forward.

STANDARD OF REVIEW IN FELA CASES

While generally state procedural law and federal substantive law apply to FELA actions brought in state court, summary judgment motions involve the sufficiency of the evidence, and courts apply federal procedural law. *Bean v. S.C. Cent. R.R. Co.*, 392 S.C. 532, 545, 709 S.E.2d 99, 106 (Ct. App. 2011). Rule 56(a) of the Federal Rules of Civil Procedure provides, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). "The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Bean*, 392 S.C. at 545, 709 S.E.2d at 106 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* In other words, "before the case may be properly left to the jury there must be more than a scintilla of evidence establishing defendant's liability." *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 92, 588 S.E.2d 87, 90 (2003). "[U]nder the federal standard both the trial and appellate courts must ask whether a fair, impartial, and reasonable juror could return a verdict for the non-moving party." *Id.* The court "must ask whether more than a scintilla of evidence was presented which 'justify with reason the conclusion that employer negligence

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

played any part, even the slightest, in producing the injury or death for which damages are sought.'" *Id.* (quoting *Rogers v. Missouri Pac. R. Co.*, 352 U.S. 500, 506 (1957)).

DISCUSSION

I. Plaintiff Has Admitted that Norfolk Southern Was Not Negligent with Respect to the Allegations in Count I of His Complaint

Plaintiff alleges in Count I of his Complaint that he injured his neck, back, and shoulder on March 31, 2016 when a boxcar door "locked up" and stopped mid pull while he was attempting to open it. *See Compl.* ¶¶ 9-18. However, this alleged injury came from Plaintiff doing a normal physical requirement of his job, and Plaintiff admits that there was no negligence on the part of Norfolk Southern. Courts have long held that "FELA is not a workers' compensation scheme and does not make the employer the insurer of the safety of his employees while they are on duty." *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 49, 656 S.E.2d 20, 26 (2008). The basis of an employer's liability under the FELA "is his negligence, not the fact that injuries occur." *Id.* In other words, "[t]o prevail on a FELA claim, the plaintiff must prove 'the traditional common law elements of negligence (i.e., duty, breach, causation and damages) and that the employer's negligence 'contributed, in whole or in part, to the worker's injury.'" *Montgomery*, 376 S.C. at 47, 656 S.E.2d at 25 (quoting *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369 n.5, 635 S.E.2d 97, 101 n.5 (2006)).

A railroad's duty to exercise reasonable care under the FELA means "reasonable in light of the normal requirements of the job." *Conway v. Consolidated Rail Corp.*, 720 F.2d 221, 223 (1st Cir. 1983); *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 94, 588 S.E.2d 87, 91 (2003) ("Norfolk Southern had a duty to provide its employees with a safe workplace. . . . Nevertheless, 'the employer is not held to an absolute responsibility for the reasonably safe condition of the place, tools and appliances, but only to the duty of exercising reasonable care to that end, the degree of

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

care being commensurate with the danger reasonably to be anticipated.'"). Thus, a plaintiff does not state a claim under the FELA by alleging that he was injured while performing tasks that were merely "part of the work" or a normal physical demand of his job. *Parson v. CSX Transp., Inc.*, 714 F. Supp. 2d 839, 843 (N.D. Ohio 2010); *see Tootle v. CSX Transp., Inc.*, 746 F. Supp. 2d 1333, 1338 (S.D. Ga. 2010) ("Plaintiff's testimony as to the physical demands of her position is 'only a description of her job and is not evidence that she [was] required to perform her job in an unsafe manner.'"); *Zarecki v. National R.R. Passenger Corp.*, 914 F. Supp. 1566, 1572 (N.D. Ill. 1996) (finding that a plaintiff's testimony was "only a description of her job and not evidence that she is required to perform her job in an unsafe manner").

With respect to the March 31, 2016 incident alleged in Count I of Plaintiff's Complaint, Plaintiff testified that this incident occurred on the repair track at the Rock Hill yard as he was inspecting a boxcar that was a "reject car" that had been sent from the Bowater facility to the yard to be repaired. *See* Ex. 1, *Pltf. Dep.* 28:1-6; 31:12-18. He stated that in his job as a carman, he always first inspects cars that come in for repair to make sure everything is safe prior to working on them and always looks at car doors to make sure that the doors are safe to open. *Id.* at 30:2-31:5. Thus, Plaintiff's alleged injury occurred while he was performing a task that was merely part of his work as a carman, as he was responsible for inspecting and finding issues with boxcars and making necessary repairs. Plaintiff admitted as much in his deposition when he testified:

> Q. And you understand before you ever go out and look at them that I'm [sic] looking at cars that have been rejected for some reason?
>
> A. Yes, sir.
>
> Q. And it's your job as the carman to look at the car and find out why it's been rejected, is that right?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

A. Yes, sir.

Q. And then to repair it and fix it, as you told me earlier, once you discover what the defect is?

A. Correct.

Id. at 32:19-33:5. In fact, Plaintiff explicitly acknowledged that it was his job as a carman to determine whether there was a problem with the door. *Id.* at 39:16-40:5. As such, when asked what Norfolk Southern did wrong with respect to the March 31, 2016 incident, Plaintiff admitted:

Q. What do you think that Norfolk Southern did wrong that caused your injuries that day?

A. I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did.

Id. at 84:7-11.

This case is much like *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 588 S.E.2d 87 (2003). In *Rogers*, the plaintiff was an assistant track supervisor who was sent to inspect a hole beneath the tracks as part of his job duties and then claimed he was injured while he was inspecting the hole. *Id.* The South Carolina Supreme Court found that there was no negligence on the part of Norfolk Southern with respect to the plaintiff's injuries, as "Rogers was Norfolk Southern's first responder following advisement by its employees of the obvious problem at the site. Rogers' job was to inspect the area around the track and to inform Norfolk Southern of any danger." 356 S.C. at 94, 588 S.E.2d at 91. Here, Plaintiff was employed by Norfolk Southern to inspect and repair railcars; he admittedly knew that the railcar he was inspecting had an issue; and now he claims that he was injured while inspecting the very railcar he was assigned to repair. As in *Rogers*, this does not constitute negligence on the part of Norfolk Southern, and Norfolk Southern is entitled to summary judgment with respect to Count I of the Complaint.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP460574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

II. Plaintiff's Own Negligence Was The Sole Proximate Cause of Any Injuries Alleged in Count II of the Complaint, and He Fails to Provide Evidence of Any Negligence on the Part of Norfolk Southern.

With respect to Count II of the Complaint, the evidence has revealed that Plaintiff's own negligence was the sole proximate cause of any injuries he allegedly sustained and his alleged injuries were not the result of any wrongdoing by Norfolk Southern. "When an employee's own negligence is the sole proximate cause of his injuries, the employer cannot be found liable pursuant to FELA." *Hurley v. Patapsco & B. R. R. Co.*, 888 F.2d 327, 330 (4th Cir. 1989); *see Toth v. Grand Trunk R.R.*, 306 F.3d 335, 345 (6th Cir. 2002) ("If the employee's own negligence was the sole cause of the accident, then it is proper to conclude that employer negligence played no role in causing the injury."). In other words, "[a]n employer is not liable under FELA if the evidence establishes that the sole cause of an employee's injuries is the employee's failure to exercise reasonable care for his own safety. . . . An employer is not liable where it has no reason to believe its employees will be careless about their own safety." *Lanham v. CSX Transp.*, No. 92-2310, 1993 U.S. App. LEXIS 13045, at *6-*7 (4th Cir. June 2, 1993); *see Chesapeake & O. R. Co. v. Burton*, 217 F.2d 471, 474 (4th Cir. 1954) (finding that a plaintiff failed to state a claim against a railroad where the employee's train stopped, but the employee stepped in front of a truck).

For instance, in *Lanham*, the plaintiff suffered serious injuries after a tire on his company-assigned truck blew while he was en route to repair a malfunctioning signal. The plaintiff alleged that CSXT was negligent in providing him a truck with defective tires. *Lanham*, 1993 U.S. App. LEXIS 13045 at *2. However, the plaintiff had been informed that the tires on the truck were worn and needed to be replaced, and it was his responsibility to maintain the

vehicle. As such, the Fourth Circuit upheld the trial court's grant of summary judgment and held as follows:

> From the time he obtained the truck, Lanham knew that the tires needed to be replaced. For at least three days prior to the accident, Lanham knew where to purchase the new tires. Instead of replacing the tires or driving his own truck, Lanham chose to drive Beklehimer's truck. In our view, the accident was solely due to Lanham's failure to replace the tires and CSX is not liable for its failure to anticipate Lanham's careless disregard for his own safety.

Id. at *7-*8.

Similarly, in *Hurley*, the plaintiff was a machinist in a railroad's Locomotive Repair Shop and suffered severe injuries when he was pulled into a lathe after his loose-fitting sweater became caught in the lathe. *Hurley*, 888 F.2d at 328. The plaintiff alleged that the railroad was negligent in failing to provide adequate lighting in the repair shop. *Id.* However, the Fourth Circuit found that the plaintiff presented no evidence "as to why the lighting in the repair shop made operation of the lathe dangerous or how direct lighting could have prevented this accident." *Id.* at 330. The court went on to find:

> Given the evidence presented, the district court properly concluded that plaintiff's negligence was the sole proximate cause of the accident. Appellant was injured because he wore a loose-fitting sweater and "leaned in" too close to the lathe. Absent speculation, no act or omission of appellee can be said to have played any role in causing appellant's injuries.

Id.

Count II of Plaintiff's Complaint alleges that Plaintiff injured his neck on August 13, 2016 when he believed the door to the air compressor room in Norfolk Southern's Charlotte, NC yard was stuck and Plaintiff "pulled harder on the door in an attempt to open it." *See Compl.* ¶¶ 19-28. Plaintiff explained that as he was inspecting outbound cars on August 13, 2016, he did not have any compressed air, which is needed to inspect the cars. *See* Ex. 1, *Pltf. Dep.* 91:9-94:4. He went to the air compressor room, and the door to the room was locked with a key pad

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

lock. *Id.* Plaintiff did not know the code to unlock the door and entered an incorrect code into the key pad twice. Not surprisingly, the door did not open. *Id.* at 104:7-14. Plaintiff testified that he understood when he went to the compressor room on August 13, 2016 that the reason there was a keypad lock on the door was so that door would remain locked unless someone entered the proper code. *Id.* at 105:16-23. However, after the code failed twice, and even though he had both a radio and a cellphone that would have allowed Plaintiff to call someone to get the correct code, Plaintiff admittedly did not call his co-worker who was working with him, his supervisor, or any other individual in the Charlotte yard to tell them that he could not get the door open or ask what the correct code was. *Id.* at 100:3-103:22. Plaintiff testified:

> Q. So you made the decision not to call anybody by radio, not to use your cell phone, but to continue trying to get the door open, is that fair to say?
>
> A. Correct, yes.

Id. at 103:23-104:2. Instead, Plaintiff assumed the door was stuck and made the decision to "just pull it open." *Id.* at 104:14. In fact, Plaintiff admitted:

> Q. So if I understand what you're telling me, Mr. Collins, then you tried it twice. It didn't open. The third time you didn't even try the code. You just forcefully pulled it open?
>
> A. Yes, sir, correct.

Id. at 104:15-19. Plaintiff pulled so hard on the door that the lock broke off and fell to the floor inside the compressor room. *Id.* at 105:7-15. Thus, it was Plaintiff's own negligence in making the decision to force open and break a locked door and not obtain the proper code that solely caused any alleged injuries he is now claiming from the August 13, 2016 incident.

Plaintiff has presented no evidence of any negligence on the part of Norfolk Southern with respect to this incident. It is not negligence to have a lock on a door. And it is not negligence by the railroad when an employee decides to tear a door down rather than call

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

someone to get the combination for the lock. *See Hurley v. Patapsco & B. R. R. Co.*, 888 F.2d 327, 329 (4th Cir. 1989) (finding that a railroad's employee's conclusory allegations that his workplace was unsafe is insufficient to survive a motion or directed verdict); *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 94, 588 S.E.2d 87, 90 (2003) (stating that a railroad employer's duty under the FELA "to provide a safe working environment extends only to foreseeable dangers"); *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 703 (2011) (citation omitted) ("[I]f a person has no reasonable ground to anticipate that a particular condition . . . would or might result in a mishap and injury, then the party is not required to do anything to correct [the] condition."); *Gallick v. B & O R.R.*, 372 U.S. 108, 117 (1963) (finding that "reasonable foreseeability of harm is an essential ingredient of Federal Employers' Liability Act negligence"); *Alberti v. National R. Passenger Corp.*, No. 90-2439, 1991 U.S. App. LEXIS 14123, at *7 (4th Cir. July 2, 1991) ("[E]vidence of employer negligence offered by the FELA plaintiff must rise above mere speculation and conjecture; in short, only reasonable inferences of negligence and causation may be drawn from probative facts which the plaintiff has the burden of presenting."); *Sheppard v. CSX Transp., Inc.*, 78 F. App'x 878, 883 (4th Cir. 2003) ("It is the duty of the court to withdraw the case from the jury when the necessary inference is so tenuous that it rests merely upon speculation and conjecture."). Again, Plaintiff has admitted that he was the one trying to force the door open on August 13, 2016, and he is the one who broke the door. *Id.* at 129:9-13.

Accordingly, because any injuries with respect to the August 13, 2016 door-breaking incident alleged in Count II of Plaintiff's Complaint were solely caused by Plaintiff's own negligence and not by any negligence of Norfolk Southern, Norfolk Southern is entitled to summary judgment with respect to Count II of the Complaint.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

III. Plaintiff's Claims With Respect to Count III That He Had Insufficient Manpower and Had to Bend and Stoop As Part of His Job Do Not Constitute Negligence Under the FELA.

Count III of Plaintiff's Complaint alleges that he sustained injuries to his hips in September 2016 "due to cumulative trauma, repetitive stress, overuse, and lack of sound ergonomic practices by Norfolk Southern," during his work as a carman for Norfolk Southern from 1981 through August 2016. *See Compl.* ¶¶ 29-41. When asked to explain what he meant by "lack of sound ergonomic practices," Plaintiff testified that larger repair shops had "more manpower" than he had in Rock Hill to perform his job tasks as a carman. Ex. 1, *Pltf. Dep.* 147:6-20. In fact, Plaintiff stated that this lack of man power or insufficient help was his main complaint with respect to "lack of sound ergonomic practices" and testified:

> Q. So you've told me that you think maybe they could have elevated the railcars a little bit to make that task easier. What else, if anything, do you believe the railroad did that you would characterize as unsound or a lack of sound ergonomic practices?
>
> A. Well, not so much that, but help. We asked for help numerous times. Numerous times we asked for help. And ours was [sic] they'll be here tomorrow, you know, that type of thing. And we told them then that, you know, we really need some help doing this stuff. And I did, myself, because Jerry, at the time, he was kind of – Jerry was slowing down, and I'd been taking a bunch of it, so. Yeah, so we – you know, help would have been the biggest thing we could have had. And at the time they're making the cuts and stuff, that was not going to happen.

Id. at 144:5-22.

FELA negligence may be predicated on the railroad's failure to furnish sufficient help only if, but for that failure, the injury would not have occurred. *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 55, 656 S.E.2d 20, 29 (2008). Moreover, the United States Supreme Court has made clear that a plaintiff's claim that he has been given "too much" work to do rather than "too dangerous" of work does not constitute a claim under the FELA. *Conrail v. Gottshall*, 512 U.S.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP402574

532, 558 (1994). As such, the mere fact that a FELA plaintiff's "job would have been easier if there had been more workers does not constitute negligence on the part of [a railroad], nor does it create an unreasonably unsafe work environment." *McKennon v. CSX Transp.*, 897 F. Supp. 1024, 1027 (M.D. Tenn. 1994). To survive summary judgment, a plaintiff must present evidence that "they were forced to perform a particular task that usually required more assistance and that under the circumstances, it was unreasonable to require the plaintiff to perform the task without assistance." *Lewis v. CSX Transp., Inc.*, 778 F. Supp. 2d 821, 840 (S.D. Ohio 2011). The *McKennon* court provided a thorough explanation of the distinction between cognizable lack of manpower claims under the FELA and those lack of manpower claims that do not state a claim and stated:

> Once again, the fact that Plaintiff's job would have been easier if there had been more workers does not constitute negligence on the part of Defendant, nor does it create and unreasonably unsafe work environment. Assuming arguendo that Defendant's failure to supply more workers was a breach of its duty, Plaintiff still has not shown how the absence of additional workers caused his injury. Plaintiff has admitted that the task he was performing was a two-person job. This is different from a case in which the Plaintiff was injured because he was required to lift or drag a 600 pound barrel by himself. . . . The lifting of a huge object obviously requires more than one person, whereas Plaintiff has admitted that driving spikes requires only two persons. In this case, more workers simply would have meant that the crew finished its job more quickly. It is too tenuous to argue that more workers would have prevented Plaintiff's injury.

McKennon, 897 F. Supp. at 1027; *see Miller v. CSX Transp., Inc.*, No. L-07-1103, 2007 Ohio App. LEXIS 4806, at *4 (Ohio App. Oct. 12, 2007) ("An employer is not required to provide an employee with additional help simply to make his tasks easier. . . . A task must be inherently unsafe for an employer to be negligent for failing to provide additional help.").

For instance, in *Lafevers v. Norfolk Southern Ry.*, C.A. No. 6:13-1460-TMC, 2014 U.S. Dist. LEXIS 84778 (D.S.C. June 23, 2014), the plaintiff was a flagging foreman and installed and uninstalled a number of derails over the course of two days without help that weighed

between 38 and 43 pounds and subsequently claimed that he sustained a back injury. He subsequently brought an FELA claim against Norfolk Southern based on the fact that Norfolk Southern had denied his request for additional manpower. Norfolk Southern moved for summary judgment based on the above-quoted authority, and Judge Timothy Cain of the District of South Carolina held as follows:

> In this case, Lafevers does not dispute that installing derails is a one person job and that, even if more than one person is assigned to the job, a single person carries each derail. Thus, assigning an extra worker to that task may decrease the number of derails each worker has to carry and the time it would take to complete the job, but it would not change the nature of the work. Under these circumstances, Norfolk's decision not to assign additional workers to assist Lafevers does not constitute negligence.

Id. at *6; *see also Montgomery*, 376 S.C. at 43-45, 54-55, 656 S.E.2d at 23-24, 29-30 (holding that the plaintiff presented sufficient evidence to raise a jury question as to whether CSX was negligent in failing to provide sufficient manpower where the plaintiff submitted the affidavits of two expert witnesses who states that it was unreasonable and went against common industry practice for the railroad to assign the plaintiff to a particular task without any assistance).

Here, Plaintiff has provided no explanation as to what tasks he was assigned to perform over his career as a carman with Norfolk Southern that were inherently dangerous and required more manpower to decrease the danger of the work. His biggest complaint was that larger repair shops had more carmen at them than the shop in Rock Hill, but he admitted that those carmen did the exact same job tasks he did. *See* Ex. 1, *Pltf. Dep.* 147:6-20. Plaintiff mentioned that he often carried knuckles by himself while performing his job, but he provided no evidence that this task or any other task he performed was something that required more manpower to make the task safer rather than simply making the task easier and quicker. *Id.* at 148:14-149:9. In other words, Norfolk Southern providing more manpower to assist Plaintiff "would not change the

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP460574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

nature of the work" Plaintiff was required to perform, and the decision by Norfolk Southern to not provide additional employees at the Rock Hill yard does not constitute negligence. *See Lafevers*, 2014 U.S. Dist. LEXIS 84778, at *6.

Further, to the extent that Plaintiff complains that he was required to bend or stoop down constantly in his job as a carman, such an allegation does not constitute negligence on the part of Norfolk Southern. When discussing the "ergonomic practices" Plaintiff believed caused his hip injuries, Plaintiff testified that in order to change brake shoes, "You have to get in a position where you have to just about fold yourself up to get down to be able to put a brake shoe on on a car or on a locomotive." *See* Ex. 1, *Pltf. Dep.* 140:16-18. This is simply a "description of [his] job and is not evidence that [he was] required to perform [his] job in an unsafe manner." *Tootle v. CSX Transp., Inc.*, 746 F. Supp. 2d 1333, 1338 (S.D. Ga. 2010). Plaintiff has presented no evidence that having to stoop or bend to change brake shoes is anything other than a normal physical requirement of the job of a carman. In fact, courts have held that a carman "cannot recover simply by showing that his injury is in some way related to his job . . . or merely because his job as a carman required 'bending, crawling, kneeling, squatting, climbing and walking on ballast.'" *Portykus v. CSX Transp., Inc.*, C/A No. 3:09CV744, 2010 U.S. Dist. LEXIS 73722, at *12 (N.D. Ohio July 21, 2010).

IV. Plaintiff Has Presented No Expert Medical Testimony That His Osteoarthritis Was Caused By Any Negligence of Norfolk Southern.

Plaintiff has also failed to provide any cognizable evidence that his injuries were proximately caused by any negligence on the part of Norfolk Southern. Under the FELA, a plaintiff must prove that his injuries were caused "in whole or in part from the negligence" of the railroad employer. 45 U.S.C. § 51. In offering such evidence, the plaintiff must provide opinion testimony from a medical expert stating that the railroad's negligence "with a reasonable degree

of medical certainty" caused or contributed to his injuries. *See Cash v. Norfolk S. Ry. Co.*, C/A No. 6-13-CV-00056, 2015 U.S. Dist. LEXIS 4293, at *20 (W.D. Va. Jan. 14, 2015) (finding that a plaintiff had failed to show a railroad's negligence played any part in his injury when he had "no medical witness that his thermite welding work, with a reasonable degree of medical certainty, caused or contributed to the torn left rotator cuff"). "[N]othing in the [FELA] alters the accepted fact that unless the connection between the negligence and the injury is a kind that would be obvious to laymen, expert testimony is required." *Myers v. Ill. Cent. R.R. Co.*, 629 F.3d 639, 643 (7th Cir. 2010). In fact, "[f]or most cumulative trauma injuries, courts follow the general principle that a layman could not discern the specific cause and thus they have required expert testimony about causation." *Id.*; *see Moody v. Maine C. R. Co.*, 823 F.2d 693, 695 (1st Cir. 1987) ("Expert evidence is often required to establish the causal connection between the accident and some item of physical or mental injury unless the connection is a kind that would be obvious to laymen, such as a broken leg from being struck by an automobile."); *Rayner v. CSX Transp., Inc.*, No. 92-1143, 1993 U.S. App. LEXIS 7719, at *9 (4th Cir. Apr. 8, 1993) ("That is not to say that expert testimony may not be needed in some FELA cases. Indeed, where the alleged negligence involves highly technical machinery or conditions, expert testimony may well be required.").

Plaintiff has presented no expert testimony from any physician that the injuries he claims he has sustained to his hips were caused to a reasonable degree of medical certainty by any negligence of Norfolk Southern. Plaintiff began seeing Dr. William G. McCarthy, Jr. of Carolina Orthopedic Surgery Associates in Rock Hill, SC on August 31, 2016 for osteoarthritis and pain in his hips. *See* Ex. 4, *McCarthy Dep.* 13:12-21. Dr. McCarthy continued to see Plaintiff through April of 2017. *Id.* at 40:7-11. Dr. McCarthy admitted that most often the cause

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

of osteoarthritis is unknown. *Id.* at 41:6-9. He further explained that "the exact cause of osteoarthritis is not clearly defined. As I stated previously, there is a genetic component to it. There can be contributing factors such as activity levels, but the clear-cut explanation or why someone gets it is not understood." *Id.* at 40:22-41:5. Thus, Dr. McCarthy was unable to provide an expert opinion on the causation of Plaintiff's alleged injuries and testified:

> Q. And if you were asked in this case do you have an opinion as to a reasonable degree of medical certainty as to the cause of Mr. Collins' osteoarthritis, would you be able to express one?
>
> A. No, sir.

Id. at 41:10-14. Accordingly, without expert testimony linking Plaintiff's injuries to any alleged negligence of Norfolk Southern, Plaintiff's claims fail, and Norfolk Southern is entitled to summary judgment as a matter of law.

V. Count III of Plaintiff's Complaint is Precluded by FELA's Statute of Limitations.

Count III of Plaintiff's Complaint is also precluded by the FELA's statute of limitations, which states, "[n]o action shall be maintained under this act . . . unless commenced within three years from the day the cause of action accrued." 45 U.S.C. § 56. "Under FELA, when an accident is not the cause of the injury, the 'discovery rule' is applied. Under this rule, an action accrues when the plaintiff knew or should have known of his injury and its cause." *Moore v. CSX Transp., Inc.*, Nos. 91-1819 & 91-1848, 1992 U.S. App. LEXIS 6490, at *6 (4th Cir. Apr. 7, 1992). Thus, "the FELA statute of limitations begins to run as soon as the plaintiff knows or should know of the existence of the injury and its cause." *Id.* at *7.

Plaintiff testified that he first discovered that he was having issues with his hips a few years prior to the time he stopped working for the railroad in 2016. He testified:

Q. Tell me when you first started having issues with your hips that caused you any problems, whether you could work through it or not, but when you just first realized my hips aren't doing right?

A. The last years. My last years.

Q. Last few years with the railroad?

A. Yes, sir, the last couple years with the railroad.

Ex. 1, *Pltf. Dep.* 151:14-21. In fact, when Plaintiff saw Dr. McCarthy for his alleged hip pain on August 31, 2016, the record states, "The patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down." *See* Ex. 2, *8/31/16 McCarthy Record (504-000194-504-000195).* In a January 26, 2017 record, Dr. McCarthy further noted that Plaintiff "has had long-standing history of pain in the right hip." *See* Ex. 3, *1/26/17 McCarthy Record (504-000464-504-000466).* As such, it appears that Plaintiff knew or should have known of his issues with his hips for years prior to stopping work with Norfolk Southern in 2016. However, Plaintiff did not file his Complaint in this case until September 1, 2017. Accordingly, Plaintiff has failed to comply with the applicable three-year statute of limitations, and Norfolk Southern is entitled to summary judgment on Count III.

VI. Punitive Damages Are Not Available Under the FELA.

Finally, Norfolk Southern is entitled to summary judgment on Plaintiff's prayer for punitive damages, as punitive damages are not available under the FELA. Only compensatory damages are available under the FELA, and "[i]t has been the unanimous judgment of the courts . . . that punitive damages are not recoverable under the Federal Employers' Liability Act." *Miller v. American President Lines*, 989 F.2d 1450, 1457 (6th Cir. 1993); *see Kozar v. Chesapeake & O.R. Co.*, 449 F.2d 1238, 1240 (6th Cir. 1971) (holding that "punitive damages are not recoverable under the Federal Employers' Liability Act"). Therefore, Plaintiff cannot

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

seek punitive damages in this FELA action, and Norfolk Southern is entitled to summary judgment on any claim for punitive damages.

CONCLUSION

There is no genuine dispute as to any material facts pertaining to Plaintiff's claims. Norfolk Southern prays that this Court grant it summary judgment and dismiss Plaintiff's Complaint in its entirety with prejudice.

November 9, 2018

s/Ronald K. Wray, II
Ronald K. Wray, II (S.C. Bar # 65246)
James A. Bradshaw (S.C. Bar #100548)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-5362
Facsimile: (864) 271-7502

Attorneys for Defendant,
Norfolk Southern Railway Company

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT 1

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF YORK

MICHAEL COLLINS,

Plaintiff,

vs. CASE NO. 2017-CP-46-2574

NORFOLK SOUTHERN CORPORATION,

Defendant.

DEPOSITION OF: MICHAEL W. COLLINS

DATE: April 24, 2018

TIME: 11:00 a.m.

LOCATION: Law Offices of
Mickle & Bass, LLC
930 Oakland Avenue
Rock Hill, SC

TAKEN BY: Counsel for the DEFENDANT

REPORTED BY: SARAH E. YOUNG

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

A W R
A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
MICHAEL COLLINS:

CAVANAUGH & THICKENS
BY: JOSEPH O. THICKENS
1324 Gadsden St.
Columbia, SC 29201
803-888-2200
Joe@ctlawsc.com

ATTORNEYS FOR THE DEFENDANT
NORFOLK SOUTHERN CORPORATION:

GALLIVAN, WHITE & BOYD, PA
BY: RONALD K. WRAY, II
55 Beattie Place, Suite 1200
Greenville, SC 29603
864-271-9580
Rwray@gwblawfirm.com

Also Present:
Ronald Spradlin

MICHAEL W. COLLINS
being first duly sworn, testified as follows:
EXAMINATION
BY MR. WRAY:

Q. State your full name for the record, please.

A. Michael Wayne Collins.

Q. Mr. Collins, my name is Ron Wray. We met this morning, just a minute ago. I am one of the attorneys representing Norfolk Southern in the lawsuit you filed, and I'm going to be asking you some questions today about your lawsuit, injuries and damages you're claiming and information that might be related to your claims, okay?

A. Yes, sir.

Q. During the course of the deposition today, I'm going to ask you to give me verbal answers to any question I ask you so that Sarah can get an accurate transcript today, is that agreeable with you?

A. Yes.

Q. Let me start off, just get some background information on you. Tell me what your current home address is.

A. 6291 Williamson Road. That's Rock

Hill, South Carolina.

Q. How long have you lived at the Williamson Road address?

A. Hey, let me see. I done been there, oh -- I better get this right. Let's see, eight years.

Q. Where did you live before that?

A. Kemper Circle, here in Rock Hill.

Q. Also in Rock Hill?

A. Yes, sir.

Q. Does anyone live with you at the Williamson Road address?

A. Wife.

Q. What is your wife's name?

A. Robin.

Q. What was Robin's maiden name?

A. Adams.

Q. How long have you and Robin been married?

A. Now, you're going to get me -- making me think here. We've been married eight years.

Q. Do you and Robin have any children?

A. No, sir.

Q. Do you have any children by any other relationships?

A. Yes, I do.

Q. How many children do you have?

A. I have one.

Q. And what's your child's name?

A. Chuck. Chuck Collins.

Q. How old is Chuck?

A. Chuck is 36.

Q. Where does he live?

A. He lives in Charleston.

Q. And who is Chuck's mother?

A. Cynthia. Cynthia Collins.

Q. You and Cynthia were divorced when?

A. Oh, Lord. Long time ago.

Q. Does she still keep the last name Collins, though?

A. No, she's been remarried. It's Ashley.

Q. Does Robin work outside the home?

A. Yes, sir, she does.

Q. Where does she work?

A. She works for Mesa Engineering.

Q. What does she do there?

A. She's a programmer. She draws programs for power plants and stuff for engineers.

Q. Did you grow up in Rock Hill?

A. Yes, sir, I did.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 6

Q. Go to high school here?
A. Yes, sir.
Q. Which school did you attend?
A. Rock Hill High.
Q. Did you graduate?
A. Yes, sir.
Q. What year?
A. '73.
Q. When you finished high school, did you go on to any further education?
A. No, sir.
Q. What did you do when you graduated?
A. What did I do? I did a bunch. I went -- I worked for a body shop just for a little while, about a half a year or so, and then I started working for the railroad.
Q. Did you ever serve in the military?
A. No, sir.
Q. And you said you began with the railroad not long after you finished high school. What year did you start?
A. The railroad?
Q. Yes.
A. Oh, in '76.
Q. Who did you hire on with?

Page 7

A. Southern, Southern Railway.
Q. And what craft did you start?
A. I was a -- in the -- I was in the track department, maintenance of way.
Q. How long did you stay in track?
A. I was there for about three and a half years.
Q. Where did you move from there?
A. I went to the mechanical department in Rock Hill.
Q. And is that where you still hold your seniority?
A. Yes, sir.
Q. So you started in the mechanical department about 1979 or 1980?
A. Something in that area, yes, sir.
Q. And what position did you have in the mechanical department?
A. A carman.
Q. Have you ever held any supervisory position?
A. No, sir. Lead carman would be the only one, but not supervisor, no.
Q. Every position you've had with the railroad's been as an agreement employee?

Page 8

A. Yes, sir.
Q. You ever hold any positions with the union?
A. Well, I was representative in Rock Hill. Yes, sir.
Q. And when you say representative --
A. Committeeman. I was outside committeeman from Rock Hill. I never held a position in as you say, like a shop foreman, something like this. No, sir. No, I didn't. No.
Q. And let me tell you one other thing I should have told you at the outset. Let me finish my question before you answer, and I'll try to let you finish your answer before I ask the next question.
A. Okay.
Q. Okay?
A. All right. Yes, sir, that'll work.
Q. Because if you and I are both talking at the same time, she's going to yell at us.
A. She can write fast.
Q. So I was -- you said you were a committeeman. Is that the same as local chair, or is that something different?
A. It's a little different because our

Page 9

local chairman was out of Lynwood. You know, I didn't have enough people in our shop to be a local chairman, so I was just a representative. Local representative.
Q. And what union are you a member of?
A. Oh, Brotherhood of Railway Carmen. I think it's -- I think it's Local 200 out of Lynwood. I'm thinking. I'm not positively sure about that. Not positively sure about that.
Q. Now, you told me you were born and raised here in Rock Hill. Are you folks still living?
A. My father's passed. My mother is.
Q. When did your father pass?
A. Oh, he passed in '99, 1999.
Q. And what was the cause of death?
A. Cancer. He had cancer.
Q. You said your mother is still living here in Rock Hill?
A. Yes, sir.
Q. And how old is she now?
A. She's 92.
Q. Do you have any brothers or sisters that live here in York County?
A. I have a sister.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 10

Q. And what's her name?
A. That's Ann Glosson.
Q. Last name was what?
A. Glosson.
Q. How do you spell that?
A. G-l-o-s-s-o-n.
Q. What does Ann do?
A. She works for the school district.
Q. Do you have any other relatives that live here in York County who are over the age of 18 years old?
A. Yes, sir.
Q. Who else?
A. Bobby Powell.
Q. What relationship is Bobby to you?
A. He's a cousin. He's a cousin of mine.
Q. Anyone else?
A. That's it.
Q. And you told me you've been a carman for quite a number of years now. Tell me what the job duties of a carman are.
A. Well, our duties are inspection of locomotives, inspections of cars, repairing of cars. Well, used to be derailments. Any type of work dealing with a car and a train operation.

Page 11

Inspection of them, keeping them going. We've done pretty much everything in Rock Hill from derailments to repairing boxcars.
Q. What is your role in connection with a derailment as a carman?
A. I'd have to get it up, get it back on the tracks.
Q. So if a car had been overturned on the tracks, your job as a carman was to help get it back on the track so it could be moved?
A. Yes, sir.
Q. You said you also inspected locomotives and cars. What were you inspecting for?
A. Well, any -- any defect. Any RFA defect in the cars or the locomotives. And you know, when we found them we had to either have to take care of them, have them repaired, fixed.
Q. And when you say you're looking for FRA defects, does that include issues or problems with the doors on the car?
A. Oh yeah. Yes, sir. Yes, sir.
Q. And what was your responsibility if you found a defect on a car door?
A. Was to fix them.
Q. Were you supposed to make sure it was

Page 12

fixed properly and safe to operate before the car continued down the track?
A. Yes, sir.
Q. Now, when you first hired on back in 19 -- I'm sorry, when you became a carman, let's stick with that, in 1979 or 1980, where were you working?
A. In Rock Hill.
Q. And did you ever work anywhere else other than Rock Hill up until let's say the last year that you worked with the railroad?
A. Yes, sir.
Q. Where else did you work?
A. I worked in Augusta, Georgia, and I also worked in Charlotte for a short time.
Q. And your time in Charlotte, was that just near the end?
A. No, sir. That was toward the -- basically, it was toward the start of my carman if I had to get out -- get out of your time. So they put me in a couple places to help me get out of my time so I could be a full-fledged carman instead of a student. So they moved me around a couple places. They were doing some cuts at that time, so they moved me around so I'd be able to come out of my time and start as a carman so somebody couldn't

Page 13

come and roll me.
Q. And you'll have to help me understand that. You're using some terminology I'm not familiar with. When you said help you get your time, what are you talking about?
A. Well, when you first start as a carman, you have to work almost four years as a student, so many days, then you went so many different levels. And each level, you got a little bit more, 80 percent, you know, 90 percent, like this. Well, you could actually back then in six months, if they said you had met all your requirements to be a carman, they would set you up. In other words, they'd take you from a student and you wouldn't have to go all this time and put you straight into a carman so you'd be in full carman's pay. So that's what they done. They moved me around a couple different places so I could get in that position so I could be a full-fledged carman, and then, too, they couldn't have anybody come up and take my job. I would have -- I would form my seniority there in Rock Hill, so no one else could come in. And I didn't hold -- I was not able to hold seniority anywhere else either.
Q. Let's kind of talk through the time

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 14

period. You began as a carman in Rock Hill and then they transferred you to Augusta?

A. Yes, sir.

Q. So when did you go to Augusta?

A. Oh man, I can't -- I'm not sure about those dates. I'm not really sure about when that was.

Q. Give me your best approximation. Was it in the 1980s?

A. It had to be. It probably had to be.

Q. And how many years --

A. Oh, I -- I wasn't there but probably -- I think I was there maybe two months. Maybe.

Q. So that was just a short-term transfer?

A. Yes. Yes, sir. Yes, sir.

Q. And then did you leave Augusta and come back to Rock Hill?

A. Yes, sir.

Q. And then at some point you said you went to Charlotte. When did you first go to Charlotte?

A. Now, the Charlotte was in between both of them, you know, that I went to Charlotte, and then I went -- and then I -- I went to Charlotte first. I'm thinking that's what it was. Then I

Page 15

went to Augusta, and then I went back to Rock Hill. I think that's the way it went.

Q. So let's talk about the first time you went to Charlotte, before you went to Augusta. Was that, again, a very short-term transfer, --

A. Yes, sir. Yes, sir.

Q. -- just a few months?

A. Yes, sir. Yes, sir.

Q. So you were hired on in Rock Hill, and that's where you established your seniority?

A. Yes, sir.

Q. But then you did a little short-term transfer over to Charlotte to help get you some additional time, you were telling me?

A. Yes.

Q. Sometime during there, around that same time, they sent you to Augusta for a couple months, is that right?

A. Uh-huh. Yes, sir.

Q. Then you came back to Rock Hill, and that's where you spent most of your career until the last few months before you went out on medical?

A. Yes, sir.

Q. And your job duties when you were in Augusta and in Charlotte as a carman, were those

Page 16

the same as what you described for me earlier today?

A. Yes, sir.

Q. Since you became a carman in 1979, 1980, have you held any other positions with the railroad?

A. No, sir.

Q. How was your health prior to, let's say, 2015?

A. Good.

Q. Had you ever had any surgeries prior to 2015?

A. Yes, sir.

Q. What type of surgeries did you have?

A. I can't remember exactly when it was, but I had surgery on my elbow, my right elbow.

Q. What was wrong with your elbow; do you know?

A. Yeah, I can't really tell you. I don't know the terminology for it, but I had -- the tissue in it had gotten -- got hard in it and I wasn't able to move it. The -- it was Dr. Pat Carr. He's the physician for the Panthers. He done operation on it, and he said it was from the pulling and the snippet of wrenches, things like

Page 17

that the type of work I was doing caused it to inflame and get stuck. Tissue got hard, so they had to clean it all out. But he said it was definitely from the type of work I was doing.

Q. And I've seen some medical records on that. As I recall, that was maybe early 2000s, 2002-2003?

A. Something like that. And even on that one right there, too, they had -- I called them about the -- about my elbow and told them that I was going out for a number of time, that the fellow I was working with, maybe they needed to get somebody to help him. And they took me out of service for a week without pay because I let them know I was going to do this.

Q. And that was back 15 years ago?

A. Yeah. Yeah, and I went to the doctor. They sent me to a doctor, and he wanted to know why I was there to see him. And I said, well, they sent me here. They asked me have you been doing the work? I said yes, sir. They said what's the problem? I said, well, maybe you need to call my supervisor in Lynwood. So when he called him, he came back and looked at me, said you have no loyalty on the railroad, do you? I said here I am.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 18

So without pay, I tried to fight it. They wouldn't -- they just took me out of service. I said well, that's what I get for letting you know, you know, I'm going to be out, so.

Q. Who was the person that said there's no loyalty on the railroad? That was your doctor?

A. The doctor.

Q. Dr. Connor?

A. No. No, sir, it wasn't Dr. Connor. It was another one they had sent me to see.

Q. Who -- and you said that earlier. You said they sent you to the doctor. Who are you talking about sent you to a doctor?

A. The -- I forget what -- I can't remember the -- our master mechanic at that time, what his name was. It might have been -- I'm not sure what his name -- which one it was. But soon as I told him that I was going to be out, that I was going to have surgery, they -- they took me out of service. They said, you know, you're out. They just took me out without pay. I said, you know, I'm trying to help y'all and y'all are doing this to me. But anyway, that's the way that went.

Q. I'm a little bit confused on that. How were you going to continue to work if you were

Page 19

having surgery on your elbow?

A. Well, I wasn't going to continue with my surgery. I was going to be able -- I was going to continue to work up to that time. I told them the date that I was going to have it done, that I would be out for -- they told me maybe four or five months afterwards. So I was just letting them know that the fellow with me, he's going to have to have some help because there wasn't but two of us there. You know, he needed some help, you know, to do this type of work, so. And that's -- that's kind of the way it went.

Q. I got you. So your testimony is that you were letting your supervisor know you had a surgery scheduled sometime coming up, and rather than wait for your surgery, they told you to go ahead and mark off and it would be without pay?

A. Yeah, they took me out of the -- they took me out of service for a week, go see the doctor and stuff. And then when I went back and asked them was I going to get paid for that, they said oh no, we can take you out of service for a week. And I said, well, see if I had known that, I'd have never told them anything. I would have just waited until the surgery and said I'm out and

Page 20

go get surgery.

Q. Who was your supervisor that you were working with when that happened?

A. I don't think I -- we didn't have a supervisor, a standing supervisor. Our supervisor was out of Charlotte at that time, I'm thinking. And I think it was Eddie Hickman out of Spartanburg. He was over Spartanburg and Charlotte and Rock Hill at that time.

Q. Once you had your elbow surgery, did you come back to work full time at the railroad?

A. Yes, sir.

Q. And you were able to do your job --

A. Yes, sir.

Q. -- just as you had before?

A. Yes, sir.

Q. I thought I saw something maybe where you had some issues with your knee at one point, too? Did you have any surgery on your knee?

A. On my knee? Oh, Lord, that was when I was in the track department. And that was -- well, I had another issue with my knee, and general foreman, it was Ronnie Dodd. I was coming in. He said I saw you limping a little bit. And I said, well, my knee's bothering me a little bit. He

Page 21

said, well, we're going to have to write it up. I said why? I said I hadn't reported anything. He said, well, I saw you limping. We're going to have to write it up. I said, well, I've got a couple days off, and I'll take a couple days and, you know, it'll be okay. It should be okay because, you know, we got hurt out there. You know, this job, you get hurt. You mend and you heal. You go back to work. So I said okay. So he gets on the phone. He's talking, I think, to Mr. Taylor. He wants to report an injury. Okay. And I kept saying you don't have to do this. I'm going to be taking off. Well, them back and forth, and I could tell. Then he put the phone, he looked at me, and he said, well, you just want to take a couple days off? And I said I've been trying to tell you this all -- this is where he wouldn't have to report an injury. We have no lost time injury, okay? So that's -- that was that part of that. And I, well, okay, I'll take a couple days. He said we'll make it up to you. Made nothing up to me.

Q. And so this -- you were telling me it was when you were in track, so we're talking about late 1970s?

A. Now, this -- yeah, this was another

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 22

one. The track -- yeah, I said did have an operation on my knee then. This was another time in the mechanical department.

Q. So tell me when did the incident that you just described to me where they told you to take a couple days off, when did that happen?

A. I can't tell you the date. I don't remember.

Q. Give me your --

A. I wouldn't --

Q. -- range. 1980s? 1990s? 2000s?

A. Maybe -- maybe the latter 90s, maybe. I'm not sure.

Q. And what was the medical issue you were having that you were talking with your supervisor about at that time?

A. My knee, pain in my knee.

Q. Did you have surgery on your knee?

A. No, sir, I didn't.

Q. I also saw in some of your records that you've been involved in two automobile accidents, one, I think, in 2009 and the other one in 2013?

A. Yes, sir.

Q. Let's take those one by one. What happened in 2009?

Page 23

A. Oh, I had somebody run in the back of my truck. I was sitting at a stoplight and someone hit it.

Q. What type of injuries did you suffer in that accident, if any?

A. None.

Q. Didn't miss any time from work?

A. I don't even know if I did or not. I'm not even sure if I did.

Q. Did you file a claim --

A. I don't think so. I don't think I missed any time.

Q. Did you file a claim against the other driver?

A. Yeah.

Q. And what happened to that? Did it go to court? Was it settled out of court?

A. No, no. No, sir. No, no, nothing like that. They just paid for my, you know, truck and stuff.

Q. So you're telling me in 2009, somebody rear-ended you and you just had a property damage only claim?

A. Yeah, right.

Q. You didn't report any injuries or claim that you'd been injured in any way in that accident?

Page 24

A. No, sir. I went to the doctor, but nothing. It was nothing. I had no injuries.

Q. Why did you go to the doctor then?

A. Well, everybody said you need to go to the doctor when you get hit in the back, so I went to the doctor just to go to the doctor, but I -- you know, I said okay, I will, but that was really it. Everybody tell me, wife said you need to go to the doctor, so okay. I'm not -- you know, I'm good.

Q. When you got to the doctor, and he said why are you here, what did you tell him?

A. I said, well, everybody said I need to get a checkup after getting hit in the back, so I'm doing it. So he said you're fine.

Q. And I may have asked you this, or you may have said it. Do you remember if you missed any time from work following that accident?

A. No, sir, I don't. I don't -- I don't recall.

Q. How about in 2013, what happened in that accident?

A. I got hit head-on. Head-on there.

Page 25

Q. How fast was the other driver going, do you estimate?

A. I'm not really sure how fast he was going. I was -- it was at a -- I was at a stop. Well, I was going in the right lane. Car stopped here. He was stopping, and he came -- rear-ended this car, and this car hit me, knocked him into me.

Q. Where did that happen?

A. Sir?

Q. Where did it happen?

A. Where? It happened on I think Meadow Lakes Road. I think that's where it was at. Here in Rock Hill. Yes, sir, it was in Rock Hill.

Q. Were you injured in the 2013 accident?

A. No, sir. No, sir, I wasn't.

Q. Did you seek any medical care of any kind for that?

A. No.

Q. Were you --

A. I don't think I did.

Q. Well, you said in 2009, everybody said you ought to go to the doctor and so you went. Why didn't you do the same thing in 2013?

A. Well, I wasn't hurt. I didn't get hurt the last time. I didn't get hurt this time.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 26

Wasn't no use to go if I ain't hurt.
Q. Did you file any type of claim or lawsuit?
A. No, sir.
Q. So somebody head-on hit you and --
A. Well, they paid for my vehicle and stuff, yeah. They paid for my vehicle and stuff.
Q. So you settled, again, for property damage only?
A. Yes, sir. Well, I'm trying to remember all this stuff. I don't recall. I'll just put it that way because I can't be exactly sure. I don't recall.
Q. Where did the 2009 accident happen? I don't think I asked you that? Was it in Rock Hill also?
A. Yes, sir.
Q. For either of your motor vehicle accidents in 2009, 2013, were you represented by a lawyer?
A. No, sir.
Q. Well, those are the two that I saw in your medical records. Have you had any other motor vehicle accidents?
A. No, sir.

Page 27

Q. Have you had any other type of what I'm going to call a traumatic injury, a fall, a slip, anything like that where you suffered injuries?
A. No, sir.
Q. Any other type of incident where somebody hit you, struck you, caused you to be injured due to something they did to you?
A. No, sir.
Q. You told me that you missed some time for work for your elbow surgery. You missed some time for work maybe related to this knee issue that you described for me. Any other medical issues that you recall prior to 2015 that resulted in lost time from work?
A. No, sir.
Q. So I want to talk to you about the various claims you made in your lawsuit, and I'm just going to kind of take them in turn as they're set forth. And I'm looking at the complaint you filed in this case. The first claim or first count in your complaint says that you suffered injuries to your neck, back and shoulder as a result of an incident that happened on or about March 31, 2016. Do you know what I'm talking about there?
A. Yes, sir.

Page 28

Q. And that date you were working as a carman assigned to Rock Hill?
A. Yes, sir.
Q. And where were you when the incident occurred?
A. On the repair track there in Rock Hill.
Q. Was there anybody else working with you at the time that you were injured?
A. Yes, sir.
Q. Who was with you?
A. Jerry Davis.
Q. Mr. Davis also a carman?
A. Yes, sir, he is.
Q. Who was your supervisor on that day, if you remember?
A. Eddie Hickman.
Q. Was Mr. Hickman also onsite?
A. No, sir.
Q. Other than you and Mr. Davis, do you know anybody else that was present at the repair track at Rock Hill when the incident occurred?
A. No, sir, wasn't nobody.
Q. What time of --
A. No one else.
Q. What time of day did the incident

Page 29

occur?
A. I don't recall. Don't recall.
Q. I think I saw in some of your records towards the end of your career, you worked a lot of third shift, is that right?
A. I -- that was in Charlotte.
Q. When you came over to Charlotte, you were working third shift at that time? Is that yes?
A. Yes, sir.
Q. All right. When you were over in Rock Hill on March 31, 2016, do you know what shift you were on?
A. First shift.
Q. And what are the hours for first shift?
A. It was from 7:00 to 3:00.
Q. 7:00 a.m. to 3:00 p.m.?
A. Yes, sir.
Q. And you were telling me you don't recall exactly what time of day it was. Was it before lunch or after lunch?
A. Before lunch.
Q. And I don't know a lot about the repair track over there. Is this -- were you inside or outside when the incident occurred?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 30

A. All our work is outside.
Q. So tell me what happened.
A. Okay. Well, I, as usual, went to the car. The cars have been spotted. Went to the car and looked at it and made sure that all the doors were intact, the safety hanger's at the top, rollers in the bottom, nothing was broke, everything was intact so we could open the car door. Well, at that time, I was inspecting a car by myself. Jerry was still inside. And again, like I said, walked around the car to make sure everything was safe for us to, you know, to start working on it. And we always look at the car doors, look at the top. You have to make sure all the hangers, everything's intact, the bottom rollers, everything's intact, not broken. You know, just to make sure when you go to -- do open the door, it don't come loose. Okay, after inspecting the car, I found everything was okay. I went to proceed to open the car door. And as I did, I reached up to grab the -- grab the handle on the car door, when I went to pull it down, it didn't give. It was like it was stuck. And I felt -- I felt a real bad pain shoot from my neck down to -- down through my shoulder. And I just stopped

Page 31

right then. I walked inside and sat down. I said I'm done. Can't do this. I said I'm -- you know, I've hurt myself. So then I said I figured it'd be okay, so I just kind of sat there. I didn't go back out and work on the car.
Q. So let me follow up on some of that and make sure I understand the details. You said the cars were spotted, and that's on the repair track?
A. Yes.
Q. Here at Rock Hill facility?
A. Yes, sir.
Q. And are the cars that you're inspecting, are they set off separate from the train that's going to go out, or you're looking at the cars before they're made part of the train?
A. These cars are reject cars. These cars are rejected from Bowater to be repaired. Something's wrong with them. Yes, sir.
Q. So help me understand that then. I didn't understand that earlier. So these cars were actually picked up from Bowater sometime prior --
A. Yes.
Q. -- to when you looked at them?
A. Yes, sir, they had been Bowater they had been sent to -- to be loaded, and then when

Page 32

they -- when they did their process of looking at them, trying to open them, if they find something wrong with them, they reject the car, and that -- the rejected car comes to Rock Hill shop for us to look at and try to fix and repair it.
Q. And when they're rejected by Bowater, is that Bowater employees that are doing that?
A. Oh yeah. Yes, sir.
Q. And you know a lot more about this than I do, but -- so as I understand it, some cars are delivered to the facility in Bowater and Bowater employees go out and look at them, and they say those don't meet our standards, send them back to Norfolk Southern?
A. Yes, sir.
Q. And they come back here to the Rock Hill repair facility where you worked?
A. Yes, sir.
Q. And you understand before you ever go out and look at them that I'm looking at cars that have been rejected for some reason?
A. Yes, sir.
Q. And it's your job as the carman to look at the car and find out why it's been rejected, is that right?

Page 33

A. Yes, sir.
Q. And then to repair it and fix it, as you told me earlier, once you discover what the defect is?
A. Correct.
Q. And on this particular day, you and Mr. Davis were the two men assigned to that task?
A. Yes, sir.
Q. Now, you said -- well, let me ask you. The next question is what kind of car was it?
A. A boxcar.
Q. Was there anything in it that you know of?
A. No, sir.
Q. No, there wasn't, or you don't know?
A. No, sir, there wasn't anything in it.
Q. What was the car number; do you know?
A. I don't recall.
Q. Is there any way we could identify it? Do you know anything about it that would tell us which particular car it was?
A. Not really. All I can tell you it was a sliding door.
Q. When you and/or Mr. Davis are sent out to look at these cars that you call the reject

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 34

cars, are you given a list with car numbers that you're supposed to look at?
A. Sometimes.
Q. On this particular day, did you have a list that said go check these eight, ten, 12 cars, --
A. I don't recall.
Q. -- whatever it was?
A. I don't recall.
Q. Do you remember how many cars, I'm going to call it a cut of cars, maybe that's not the right way to say it, but how many cars were in the cut that you were inspecting?
A. Well, on our repair track, we couldn't hold no more than five anyway. So on that day, I think there might have been four cars on the repair track.
Q. Was this the first car you had looked at?
A. Yes, sir.
Q. So car number one you picked out, and that's the one where you say you got injured?
A. Yes, sir.
Q. You also told me, and I may have written this down wrong, but you said you were

Page 35

inspecting everything on the car to make sure it was intact. Is that right?
A. Yes, sir.
Q. And I thought you told me that you found everything to be okay initially?
A. Visually.
Q. So tell me what you're looking for visually that tells you this looks like this car's in acceptable shape?
A. Okay. Well, first thing we look at, again, I said the hangers. You have safety hangers on the top, one safety hanger. You have two more hangers that run on a rail, okay? And then at the bottom you also have two arms with wood hangers but rollers that roll on the bottom. So when you open the door, the door proceeds out, and then you slide it down, sliding door. So we look to make sure that all those rollers, the top and bottom's not missing, not broken, you know, the defects so when we come to open this door, it's not going to come out on us. We have to make sure of that before we even start. So you have to look at the safety aspect of it, what it's going to do and what it can do before you even get on it.
Q. And based on that visual inspection, it

Page 36

looked to be in good working order as far as you could see?
A. Yes, sir.
Q. One other thing I meant to ask you, so when they get rejected by Bowater, do they have to give a reason why they've been rejected?
A. That was sometimes. Sometimes they did and sometimes they didn't. So we -- a lot of times, we were guessing.
Q. On this particular date, with this particular car, when you went out to look at it, had you already been given some information as to why it was rejected by Bowater?
A. No, sir.
Q. So then you told me that you grabbed a handle on the car door and you were trying to open it, is that right?
A. Yes, sir.
Q. And is there just one handle on the door or more than one handle?
A. Just one, one per side.
Q. And are you doing this while standing on the ground, reaching up?
A. Yes, sir, correct.
Q. And how -- tell me where the handle is

Page 37

located in terms of -- how tall are you?
A. Around six foot.
Q. So you're about six foot. Where's the handle in relation? Is it about chest high? Is it above your head?
A. Well, they differed. This car here was probably about -- they have to pull it down, maybe seven and a half foot, maybe eight, something like that. You have to reach up. You have to reach up to get it.
Q. So you're reaching over your head?
A. Yes, sir.
Q. You grab onto the handle, and then you're going to slide it right to left or left to right?
A. Well, I'm trying to pull down, pull straight down.
Q. So it --
A. Pull down right -- yeah. Well, this one here, let me see. I've got to think of where the car opens. Yeah, it pulls -- pulling it down.
Q. So when you --
A. It's a wheel. This is a wheel we're talking about, a wheel. Okay, not just a handle. I said handle, but it's a wheel, round wheel. It

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP460574

Page 38

has holes in it where you can grab it.
Q. And when you grab the wheel, are you winding the wheel and that's what brings the door down?
A. Yes, sir, I'm unwinding it. It's geared inside.
Q. So I was thinking more of a handle like you'd grasp and then you're going to pull it down with your --
A. No, sir.
Q. -- arm.
A. No, sir, these are geared.
Q. So there's some type of wheeled gear that has a handle on it, and you're going to reach up and grab the handle and crank --
A. Unwind it, yes, sir.
Q. Unwind the handle or the crank, and the door's supposed to come down?
A. Correct.
Q. So when you walked up to the car door then, I didn't appreciate this earlier. When you walked up to this car to inspect it, the door was raised up, and you could see inside the car?
A. No, sir.
Q. Well, then why are you trying to wind

Page 39

it down to lower it?
A. Now, see the door, when you said -- you're getting confused. It's not lowering. The door, when we open it, the door comes out, moves right or left. It moves to the right -- you have a rail and a rail at the top. When you unload, when you unwind it, the door proceeds out, clears the side of the cars. Then you can roll it, roll it down. And it locks there, and then to close it, you proceed back, roll it back opposite way. It pulls the door back in, and it sits inside the car, sits flush inside the car like that.
Q. So when you went out there, was the door open or closed?
A. It was closed.
Q. And you were in the process of trying to open it when you got hurt?
A. Correct.
Q. Why were you trying to open the door?
A. You have to.
Q. Why?
A. That's the only way we can find out if something's wrong with it.
Q. Okay. And that was your job as the carman was to find out was there something wrong

Page 40

with this car?
A. Yes, sir.
Q. Including was there a problem with the door?
A. Yes, sir.
Q. So the door's shut. You grab hold of the handle and you're starting to unwind it to try to open the door, --
A. Correct.
Q. -- is that right? How many cranks did you do on it before you realized you'd hurt yourself?
A. No cranks. It didn't budge.
Q. Did you just pull on it the one time, or did you do it more than one time?
A. Didn't need but once.
Q. And so you told me you're reaching above you about -- it's about seven or eight feet from the ground?
A. Uh-huh.
Q. Is that yes?
A. Yes, sir.
Q. And are you using just one hand or two hands?
A. I used two hands.

Page 41

Q. Is that the way you're trained to do it, to put two hands on the handle?
A. Yes. Yes, sir.
Q. And then as I understand, what you're telling me is you've got both hands on the handle. Then you're trying to unwind it, and it's not coming?
A. Yes, sir, that's correct.
Q. So how did you get hurt?
A. Well, when you -- if you go to pull on those doors, and those -- just say once that inside mechanism, something like that stuck in it, it's not going to open. It's not going to give. And you can't visually see that. You have to -- you know, when you go to pull on it, and if it pulls down and it doesn't move at all, that's the first thing to note that something's wrong inside of the gears. So like I said, you have to take the covers off and all this stuff to actually see what's wrong with the inside of it. So you don't know until you grab it and pull on it, if that's the -- it's a possibility that that could be what's wrong with it.
Q. Well, I understand that part, Mr. Collins, but when you reached up and put both your

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 42

hands on the handle, did you yank it or jerk it?
A. No, sir, you just pull down.
Q. Well, if you're just applying steady pressure on it to pull down towards you, how did you get injured? Because you realize it's not coming with you when you're pulling on it, right?
MR. THICKENS: Object to the form.
BY MR. WRAY:
Q. Is that --
MR. THICKENS: You can answer.
BY MR. WRAY:
Q. Is that accurate? He just stated and objection for the record. My question was as you pulled on it and you're pulling it towards you, towards the ground?
A. Yes, sir.
Q. It wasn't moving?
A. That's right.
Q. So how did you get hurt then? If it's not moving and you're pulling on it --
A. You don't -- well, you don't understand pressure we put on these doors when we pull them down. I don't just do this. I grab it and I come down with it. That's what we do. And usually, if you feel it loosen up coming down, it's going to

Page 43

open up. Sometimes it doesn't. That one didn't. And it just happened that time when I did, I felt all the pain through my back up through here on my shoulders.
Q. Did you feel it immediately?
A. Yes, sir.
Q. In what part of your body did you feel pain?
A. My left, left top shoulder, came down into my arm and middle, right in the middle. From the middle to the left. It went right from the middle of my back all the way down to the left.
Q. So you felt pain in your left shoulder, you said down into your left arm?
A. Correct.
Q. And then also felt pain across the middle of your back --
A. Correct.
Q. -- to the -- on the left side primarily?
A. Yes, sir. Correct. Yes, sir.
Q. Any other areas where you felt pain or thought you'd been hurt?
A. No, sir.
Q. And what I wrote down is -- well, let

Page 44

me ask you a different question. So when you pulled on it and you felt this immediate pain, did you make any other effort to open the car door?
A. No, sir.
Q. You then said you went inside and sat down?
A. Correct.
Q. So tell me how far it is from the repair track where you were working on this car to where you went inside?
A. Oh, that's not, oh, maybe, I don't know, 50 feet. It's not far. It's right beside it.
Q. You walked on your own?
A. Yes, sir.
Q. Before you left the car where you were working and went inside, did you tell anybody what had happened?
A. No, sir.
Q. Where was Mr. Davis when this happened, if you know?
A. He was in the office.
Q. Did you ever ask him whether he saw what happened?
A. No, sir.

Page 45

Q. Do you know of anybody other than yourself that was a witness to what happened out there that day?
A. No, sir.
Q. When you got inside to sit down, was that in the area where Mr. Davis was?
A. Yes, sir.
Q. And then you told me, you said I can't do this or something to that effect?
A. Yeah.
Q. Who were you talking to?
A. Jerry.
Q. And did he ask you what had happened or why you were saying that?
A. Yes, sir.
Q. Now, in terms of you and Mr. Davis, were y'all same level co-workers? He wasn't your boss, you weren't his boss?
A. Well, no, we -- we were pretty much on a level.
Q. He was a carman just like you?
A. Yeah. Well, he was a lead carman. We both shared that position.
Q. What did you tell Mr. Davis had happened?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 46

A. I told him I just thought I had hurt myself. That's all I told him.

Q. Did you tell him how it happened?

A. I told him I just messed with the car. I pulled it, and I think I hurt myself. And that's all I said.

Q. You're going to have to say that for me again. You had your hand over your mouth.

A. I said that's -- that's all I said. I told him that I had pulled on a car door, and I think I -- I hurt my back. And that was it. Well, I didn't say I hurt my back. I said I just hurt myself. That's what I told him. And I left it at that.

Q. Did he ask you where you hurt, how were you hurt?

A. No.

Q. Did he ask you do you need some medication attention?

A. No.

Q. Did he say we better call Mr. --

A. No.

Q. -- Hickman and tell him about it?

A. No, sir.

Q. Did you say to him I better call Mr. Hickman and let him know?

A. No, sir.

Q. Why not?

A. Well, first of all, we had a safety record for about 28 years. We'd never had a injury one, period.

Q. Who is the we you're talking about?

A. Me and Jerry. Jerry and myself in Rock Hill. We've always stayed careful. We got hurt many times. Many times we've been hurt, and we felt like we could just kind of wash it out, take care of it, and we'd back to work, and we'd be good. So you know, for years, you know, we never reported every time we got hurt on the railroad. So I felt like give this enough time, maybe it'll just, you know, go away. You know, take care of it and I'll be fine. You know, so that's -- that's the reason because of safety record.

Q. So you and Mr. Davis had worked together for many years before this happened?

A. Yes, sir.

Q. And you're telling me that from time to time either you or him might get bumped or bruised or something, and y'all didn't report it to anybody?

Page 48

A. Exactly.

Q. And you followed the same procedure on this day?

A. Exactly.

Q. Now, tell me this, Mr. Collins. When you find a car that has an FRA defect, what are you supposed to do as a carman?

A. I have to bad order it.

Q. And when you say you have to bad order it, what does that involve you doing?

A. That's me putting a FRA standard card on it, card on the car, and I have to sign it, put the car down, car number down and a defect on it and put it on the right and left side of the car, and it's sent to our shop. It's cut out of the train, found, sent to our shop for repairs.

Q. And when you say sent to a shop, is it the shop right here in Rock Hill or somewhere else?

A. Yes, sir, in Rock Hill.

Q. The issue that occurred with this car door on March 31, 2016, would that be considered an FRA defect in that car?

A. No. No, sir, I don't think so.

Q. Why not?

A. Because it wasn't a-- basically, most

Page 49

of the FRA I -- you know, I'm not -- I'm not really sure. I'm not positively sure about that. I'm not sure about that, if that would be or not.

Q. Well, as I understand it, you had a car where the door would not open as intended, correct?

A. Yes, sir.

Q. It would not open with normal force being applied is what you told me earlier, correct?

A. Correct.

Q. How in the world could that not be a defect in that car?

MR. THICKENS: Object to the form. You can answer.

THE WITNESS: Huh?

MR. THICKENS: You can answer.

THE WITNESS: Well, this FRA stuff can be a lot of different standards, and there's some standards are cars that don't fall under FRA, but it's still not optional. They're not operational like you're supposed to be. So that's how we had cars sent to us. A lot of times, it'd be -- it wasn't so much the door was broke, but it would be bent. It's not sealed up correctly on the car. So we'd have to try to fix that to seal it up, but that's not FRA defect. That's not under FRA. It's

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 50

just the door is bent. So we had -- we had that type of stuff all the time.
BY MR. WRAY:
Q. Leave aside the FRA defect for a second then. Was there something wrong with this car in your view?
A. Visually no, at first, until we pulled the handle, then yeah, we knew that the inside mechanism was messed up.
Q. Yeah, I wasn't asking about visually. I'm just saying after you had tried to open it and you told me that you felt like you were injured, at that point in time, weren't you on notice that there was something not right about that car?
A. Oh yes, sir.
Q. Who did you report it to?
A. Well, I didn't have to report it to anyone.
Q. Why not?
A. Because Jerry knew there was something wrong with the car, too.
Q. Well, you and Jerry weren't going to be the only two dealing with that car, though, were you?
A. Yes, sir.

Page 51

Q. You were?
A. Yes, sir.
Q. So --
A. We were the only two there.
Q. Well, you were the only two there at that time. What happened to that car after you finished your inspection that day?
A. Jerry repaired it.
Q. Did you prepare any paperwork or write-up that reflected any problem you found with the car that day?
A. No, sir, I didn't -- I didn't write anything up. I didn't repair it so I didn't write the bill up.
Q. To your knowledge, did Jerry prepare any paperwork or write up anything to report the issue with this particular car?
A. Not sure.
Q. Isn't he supposed to or you supposed to?
A. Yes, sir. But I can't tell you that he did because I didn't see it.
Q. Have you ever asked him about it?
A. No, sir.
Q. What did Jerry do to repair it, if you

Page 52

know?
A. You know, not -- I don't recall what all he had to do.
Q. Do you know when he went in there, did he discover what the issue was, what the problem was?
A. I told him it wouldn't open.
Q. I mean why? I mean did he go in there and look at it and figure out why it wouldn't open?
A. Yes, sir.
Q. What was it?
A. I'm not sure. I didn't go back out there with him.
Q. Now, when you and Jerry do repairs on a car, are you supposed to report your time that you spend working on a particular car?
A. Yes.
Q. So there should be a record from that date showing the amount of time Jerry spent repairing the car that day?
A. Should be.
Q. And should that paperwork also show us exactly what Jerry did to repair it?
A. Should.
Q. So as I understand what you were

Page 53

telling me earlier, Mr. Collins, you didn't fill out any paperwork reporting any defect with this particular car where you say you were injured, correct?
A. Don't recall any.
Q. You didn't fill out any paperwork reflecting any repairs that were done to that particular car?
A. I don't recall any.
Q. Now, over the course of my work with railroad workers over the years, a lot of them I've dealt with keep a diary or notes about the work they do on a particular day. Are you one of those people?
A. No, sir.
Q. Do you have any type of log or paperwork that would show that work you did on any particular day?
A. No, sir.
Q. And if I wanted to see on March 31, 2016 what time you went on work, what time you went off work, what cars you worked on that day, would you personally have any paperwork that would give me that information?
A. No, sir.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 54

Q. How about when something like this happens that I'm going to call a little bit out of the ordinary. You encountered a car, and you tell me you were hurt. Do you make a note in a log or a diary or anything written to say on this day, this happened to me?
A. No, sir.
Q. So there's no written paperwork anywhere that you can point me to that you prepared or maintained that would document on March 31, 2016 you were hurt?
A. No, sir.
Q. And you didn't tell your boss?
A. No, sir.
Q. And the only person that you know that you did tell about it was Mr. Davis?
A. Well, I really didn't tell him. I just told him I got injured. Didn't tell him what. Didn't explain. We didn't explain stuff to each other sometimes.
Q. And Mr. Davis, does he still work for Norfolk Southern?
A. No, sir.
Q. Do you know where he is now?
A. He's retired.

Page 55

Q. Do you know where he lives?
A. I couldn't tell you where he's at right now. I haven't talked to him but one time since we retired.
Q. When you talked to him, where was he living?
A. He was living in York.
Q. York County?
A. York.
Q. Or town of York?
A. Yeah.
Q. Did you tell Mr. Davis that you had filed a lawsuit against the railroad?
A. Did I tell Davis?
Q. Yes.
A. I don't recall. He retired before that.
Q. Do you remember when he retired?
A. July -- I think it was July the 3rd.
Q. Of what year?
A. Was it 2016 or 2015? I'm not -- I'm not really sure. 2015 or 2016.
Q. Well, the incident, according to your complaint happened on March 31, 2016, so he couldn't have been retired then if he was there

Page 56

working with you.
A. Okay, okay. Well, all right then, it was in July -- July 3rd of '16.
Q. So you think he retired about three months, four months after this incident --
A. Uh-huh.
Q. -- supposedly occurred?
A. Correct.
Q. Why didn't you bad order the car when you found the defect like you had told me earlier you typically do?
A. It was already bad ordered.
Q. So it came in as a bad order car, and you didn't have to do anything further in that regard, is that what you're telling me?
A. Well, bad ordered, then we inspect it and find out -- try to find out what's wrong with it.
Q. And I think you told me this earlier. You never did determine or discover why the door wouldn't open when you pulled on it?
A. That's correct.
Q. If anybody knows the answer to that, maybe it's Jerry?
A. Maybe.

Page 57

Q. Doesn't Norfolk Southern have rules that require you to report when you're injured on the job?
A. Yes, sir.
Q. And those rules apply to you as a carman just as they do to other employees, do they not?
A. Yes, sir.
Q. Why did you not report to Mr. Hickman or anybody else in supervision that you had been injured that day?
A. Okay. Well, safety record. Again, we had 28 years of safety record without even a blemish, and I felt like -- like all the other times, I felt like maybe I could get it taken care of and wouldn't have to report it. It'd be okay, and I'd be back to work as usual. So basically, it was a safety thing, and I -- like I said, again, I felt like I could -- to get it taken care of and I'd be back to work and working again.
Q. You told me that you think this happened sometime before lunch, and your shift didn't end until 3:00 p.m. Did you continue on and stay at work until your shift ended at 3:00?
A. Correct. Yes, sir.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Q. Did you ever request medical attention that day?
A. No, sir.
Q. What did you do when you got off work?
A. Went home.
Q. Did you get -- seek any medical attention at any time for the pain you felt in your back and neck related to this incident?
A. Ice and heat.
Q. Did you go to the doctor for that particular incident? You're shaking your head, but I need you to verbally answer.
A. Did I go to the doctor for that incident?
Q. For this particular incident?
A. Yes, I finally had to. Yes, sir.
Q. When did you go to the doctor?
A. I don't recall the date.
Q. Well, if it happened on March 31, was it that -- within the next week? Was it two weeks later, or longer than that?
A. I don't recall.
Q. Who did you go see?
A. Alicia Lazeski.
Q. So Mr. Collins, I'm just looking at

some records I have. Looks like you went to see Alicia Lazeski, L-a-z-e-s-k-i, at OrthoCarolina? That's who you went to?
A. Correct.
Q. And you had already been seeing her for some period of months before this incident happened, is that fair to say?
A. Correct.
Q. And you were going to see her for pain in your neck and back, is that right?
A. Correct.
Q. Same area that you say that you were injured on March 31, 2016, is that right?
A. No, sir.
Q. Different area?
A. Different area.
Q. So tell me where you were feeling pain or some type of discomfort that led you to see Dr. Lazeski before March 31, 2016.
A. In the middle of my back, spine.
Q. Upper part of your back right in the middle?
A. Up in -- yes, sir. Correct, upper part.
Q. And how long had you been seeing her

for those particular issues with the upper part of your back in the middle?
A. I think -- I'm not exactly sure how long.
Q. Dr. Lazeski was not the only doctor you were seeing for issues with your back at that time, is that fair to say?
A. As pertinent to what?
Q. In terms of your back pain?
A. My back pain? I had saw a chiropractor previously.
Q. Yeah, I thought I saw you saw Dr. Kimble, I think it was, in November-December of 2015?
A. November.
Q. November of 2015, right?
A. Correct.
Q. And that was also for back pain, correct?
A. Well, what happened there was that, honestly, I'd had a friend that had retired, just retired, and he had had a little back pain. It wasn't bad. It was just a little aching. He went to the doctor, found out he had cancer. So honestly, it scared me to death. So during

Thanksgiving holiday, he was -- the chiropractor was about the only anybody I could get an appointment with. So I said, well, they'll take x-ray and all, too, and see if everything's okay. And I just had an ache. That's all it was. So I went to him and he looked it, and he said, well, you know, you don't have this, this and that. So you know, he said no cancer and stuff. So that -- that's the reason. That's where it started from. I was actually scared to death from a fellow employee having it. So that's what started me going to the doctor with -- that's why I went to the chiropractor.
Q. All right then, maybe I'm just completely confused. Why would you go see a chiropractor because some friend of yours had cancer?
A. Well, I went to him because it was the only way I could get a -- this was Thanksgiving week. I couldn't get a -- I couldn't get another appointment with anyone.
Q. Well, a chiropractor wasn't going to treat you for any issues potential with cancer.
A. Well, he would look and see. You know, an x-ray would tell if I had any type of mass,

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 62

anything back there. I felt like that was the quickest place right now for me to do. And I was actually worried about it, so that's the reason I went.

Q. So you're telling me you went to the chiropractor in November of 2015 and you told him the reason you were there is because you wanted to be evaluated for cancer? That's your testimony?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Is that what you're saying?

MR. THICKENS: Same objection.

THE WITNESS: Huh?

BY MR. WRAY:

Q. You can go ahead and answer. He's just stating an objection for the record.

A. And now, what did you -- ask me again, please.

Q. Are you testifying under oath today that you went to see the chiropractor in November of 2015 and that the complaint you told him you wanted him to evaluate was possibility you might have cancer?

A. No, sir.

Q. You went because you were having

Page 63

problems with your back?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Right?

A. I went because my friend had problems with his back, and he had a -- when they found out, when they looked at that x-ray, they found out he had a problem with it. So being me, thinking in my mind, I said I'm going to go just to check and make sure I'm okay. So I went to the chiropractor, and that was the fastest one I could get an appointment with, and he done x-rays.

Q. And then you went from Dr. Kimble, the chiropractor, over to Dr. Lazeski, right?

A. Correct.

Q. Also complaining of pain in your back and your neck, correct?

A. No, just my back.

Q. Just your back for Dr. Lazeksi, at that time?

A. At that time. Yes, sir.

Q. Let me ask you this. In your complaint, it has the date of March 31, 2016 as the date of that incident. Do you know if that was the date that this actually happened when you were

Page 64

trying to open the boxcar, when you say you got hurt?

A. Yes, sir.

Q. How do you -- how did you pinpoint that particular date if you didn't write it down and don't have any notes and didn't report it to anybody?

A. How did I pinpoint it to that date?

Q. Yeah.

A. The day before April fool's. That's how I remembered it.

Q. So that's what sticks out in your mind?

A. Yes, sir.

Q. Did you ever report to Norfolk Southern before you filed your lawsuit that you supposedly had been injured on March 31, 2016 while trying to operate a car door?

MR. THICKENS: Object to the form.

MR. WRAY: What's the objection to that form?

MR. THICKENS: You keep saying supposedly.

MR. WRAY: Oh, okay. I didn't --

MR. THICKENS: So I'm objecting to the form of the way you're asking the question.

Page 65

MR. WRAY: All right, I didn't realize I used that term there.

BY MR. WRAY:

Q. But let me ask you the question again. Did you ever report to anyone at Norfolk Southern, before you filed this lawsuit, that you had been injured on March 31, 2016 operating a car door?

A. No, sir.

Q. Doesn't Norfolk Southern have a procedure in place that when employees are injured on the job they want to investigate it to see if they can figure out what happened?

A. Yes, sir.

Q. How were they supposed to do that if you never told anybody what happened?

A. Well, they wouldn't be able to.

Q. Would you agree with me that it was a violation of the operating rules for you not to report the incident?

A. No, sir.

Q. So you -- as far as you understood the rules, if you were hurt on the job and were injured, you didn't have to report it to anybody? You could leave the premises that day and not let anybody know?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 66

A. Well, you know, I -- as I said earlier, I'll reiterate this, been hurt a thousand times out there and not reported it because that was the type of work we did. And it's rough, it's tough, it's hard. You're going to get injured. You can't report every nip, pop, pull, beat-up you have. If we did that anywhere on the railroad, it wouldn't be nothing but one big safety issue. That's all it would be. So no, sir, I didn't report it. I wasn't in the habit of reporting everything because when I could take care of it on my own, like a smashed finger or whatever, I knew it was going to be okay. I went back to work.

Q. I'm going to ask you to help me out if you can because I am very confused about this door. Can you kind of draw the boxcar for me and kind of how this door operated?

MR. THICKENS: He's not going to draw anything.

MR. WRAY: Why not?

MR. THICKENS: That's not part of testimony.

BY MR. WRAY:

Q. Are you able to do that?

A. No, sir, not correctly.

Page 67

Q. You can't draw a boxcar?

A. No, it wouldn't look like one.

Q. Well, I'm not here to --

A. I can't draw -- I can't draw good.

Q. I'm not going to judge your artwork. I'm just trying to understand because I -- as you saw earlier, I'm completely confused about how this door operated and how it worked. I was trying to get you to give me a visual of what --

MR. THICKENS: I'm going to instruct him not to draw it. If I have to file a motion on that, I will, but there's no rule that requires him to create an exhibit.

MR. WRAY: Well, there's not a rule that requires it, but I think as part of his testimony, I'm entitled to ask him questions and ask him to explain what he's described and --

MR. THICKENS: No doubt. And you can ask him questions, but he doesn't have to draw an answer.

MR. WRAY: Right. And I was going to finish that. And I think as part of that, if it would help to draw -- I mean I've done this in depositions for 26 years. I've never had anybody object, but I can't force him to do it over your

Page 68

objection, so if you're saying your position for the record is he doesn't have to draw me a diagram or show me where anything happened, I've just got to take the verbal testimony as best it comes.

MR. THICKENS: It's a verbal deposition, yes. And for the record, are you going to want to motions hearing on that, and do we need to go ahead and file a motion?

MR. WRAY: Not right now. Let me talk with my client, and we'll decide whether that's something we want to pursue or not.

MR. THICKENS: Okay.

BY MR. WRAY:

Q. And let me ask you this, Mr. Collins. I asked you about the date and how certain you were of the date. Are you also positive that you were actually trying to open the door when this happened?

A. Yes.

Q. And there's no doubt in your mind about that?

A. No doubt.

Q. Because when you walked up there, as you told me earlier, the door was actually down and closed?

Page 69

A. The door was in place and closed.

Q. Right, so you couldn't see inside the boxcar?

A. Correct.

Q. And it was when you were in the process of opening the door that you say you got hurt?

A. Yes, sir.

Q. And you're positive of that?

A. Positive.

Q. Other than the pain that you described to me in your neck and back, any other injuries that you associate with that particular incident on March 31, 2016?

A. No, sir.

Q. And how many times did you go to the doctor for that particular incident?

A. I don't recall.

Q. Did you miss any time from work?

A. No, sir.

Q. So whatever the issues were, problems you were having, you were able to work through those?

A. Yes, sir.

Q. What type of medical care or treatment did you get for the issues that you relate to the

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 70

March 31, 2016 incident?
A. Rehab. She sent me to a rehab.
Q. What did you do? You're talking about physical therapy?
A. Physical therapy, yes. Yes, sir. Yes, sir.
Q. Where did you do that?
A. Oh, they were here in Rock Hill.
Q. You know the name of the facility?
A. Oh, I can't -- I don't remember the name of it, to be honest with you. I think it was -- I can't give you the name of it. I'm not exactly sure which one it was.
Q. When did you go to physical therapy?
A. When? I think I'd have to go twice a week. I think that's what it was.
Q. Beginning in what month? This happened in March. When did you first go?
A. I don't recall the month when I started on it.
Q. You said you went twice a week?
A. I'm thinking that's what it was.
Q. For how long?
A. Oh, I think I went for a month.
Q. Did that resolve your issues?

Page 71

A. Somewhat.
Q. What problems did you continue to have despite the physical therapy?
A. Well, I'd still have a little ache every once in a while.
Q. Where?
A. Back.
Q. Did you get any injections from the doctor?
A. Yes, sir, she had gave -- she gave me, I think, three injections in my upper back.
Q. And do you know what it was? Was it steroid injections, or do you know?
A. I'm not sure exactly what it was, sir.
Q. Dr. Lazeski was the one that did that?
A. Yes, sir.
Q. What other medical care, if any, did you get for that particular incident?
A. That was -- that was it. That was it. Well, she did prescribe a prescription, I think -- what was it? I'm not sure, but I did have a prescription prescribed to me at that time. She had prescribed some Oxycodone, but I'm not sure if it was that time or after the last one. I think it was after the last one. It wasn't that one. She

Page 72

-- Pennsaid. Pennsaid, that's what it was. Pennsaid. It's a topical rub that you just rubbed on it, on the spine.
Q. At the time this incident occurred, on March 31, 2016, were you on any medication?
A. No, sir. Can we take a minute?
Q. Yes.
(Off-the-record conference.)
BY MR. WRAY:
Q. Mr. Collins, we're back on the record. At the time this incident happened in March of 2016, your regular, I'm going to say, family physician was Dr. Barron, is that right?
A. Correct.
Q. Was he the primary person you were seeing for medical issues for, let's say, the five years preceding this March 2016 incident?
A. Yes, sir.
Q. I also saw in some records that you had been referred over and received an evaluation for carpal tunnel, is that right?
A. Correct.
Q. And that was in 2015, I think?
A. I don't recall which one it was.
Q. Was that Dr. McCarthy?

Page 73

A. Yes, sir.
Q. And the carpal tunnel issues you were having, where was that?
A. Both wrists, both hands.
Q. Did you ultimately have surgery for carpal tunnel?
A. No, sir, I didn't.
Q. Do you still have issues with that today?
A. Yes, sir.
(EXH. 1, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you what I've marked as Exhibit 1, and this is a record from Kimble Chiropractic Center here in Rock Hill. Do you see that?
A. Yes, sir.
Q. And it shows a date of service of November 23, 2015. You see that?
A. Yes, sir.
Q. And I think you told me that you went there around the Thanksgiving break, which would be about that time of year, correct?
A. Correct.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 74

Q. And I'm just looking at history of present illness. It says you've worked 40 years as a carman for the railroad. It says approximately two weeks ago he was working with heavy wrenches and started having pain at the neck and into the upper back across tops of both shoulders. Did I read that correctly?

A. No, sir, I'll tell you what. I don't have my glasses. I can't really see exactly where you're at. I don't want to stretch your glasses.

Q. See if mine will work.

A. Okay. Where are you at now, please, sir?

Q. Under the section that says history of present illness.

A. Yes, sir, I see it.

Q. Did I read that correctly? It says approximately two weeks ago, he was working with heavy wrenches and started having pain at the neck and into the upper back across tops of both shoulders?

A. I don't remember telling him that. I don't recall that.

Q. Well, that's two different questions. First question was did I read it accurately, that's

Page 75

what it says on the record?

A. Yes, sir, you read it accurately.

Q. And then second question is, is that what you told Dr. Kimble?

A. I don't recall telling him that, no, sir.

Q. Do you recall how many times you went to see Dr. Kimble?

A. I don't recall, sir.

Q. Now, according to this record, you reported having pain at the neck and into the upper back across the tops of both shoulders. That's what the record says, right?

A. That's what the record says.

Q. Tell me what the difference in that was and the pain that you say you had following the March 31 incident?

A. I didn't -- I don't remember -- I do not remember telling him I had it in my upper back. I had it -- I went to him for my spine in the middle. That's what I went to him for. Now, he asked me what type of work I done, and I told him. So I'm thinking he's taking his prerogative that that's what I do and that's, you know, because that's the type of work I do. I don't recall

Page 76

telling him that I was hurt across the top of my back. It was my spine that he was looking at.

Q. Well, where do you --

A. That's what he treated.

Q. Whether you recall telling him that or not, my question is when this incident happened March 31, didn't you tell me that the pain you had was in your neck and across the upper part of your shoulder?

A. Yes, sir.

Q. And that's the same area that Dr. Kimble wrote that you reported to him you were having issues? At least that's what he wrote?

A. That's what he wrote.

Q. But you don't recall telling him that?

A. No, sir.

Q. Who referred you to Dr. Lazeski?

A. No one.

(EXH. 2, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Now, I've handed you what we've marked as Exhibit 2. And I was asking you about Dr. Lazeski. You said no one referred you over to her. How did you become -- how did you come to be a

Page 77

patient of hers?

A. I just called up there. That's it. I called and asked for an appointment.

Q. Had someone told you that was a particularly good group that you should go see?

A. Well, yes, sir. Well, I knew -- I knew that it was. I didn't have to be told that. I knew that it was.

Q. And if you look at this Exhibit 2, this is a record. At the top, you see it says encounter date, December 8, 2015. Do you see that?

A. Okay. Yes, sir.

Q. And it says, under history of present illness, it says Mr. Collins is a 60-year-old male who presents today as a new patient for evaluation of upper back pain. Do you see that?

A. Yes, sir.

Q. Then it says patient states his symptoms started November 2015, no preceding trauma. Did I read that correctly?

A. Yes, sir.

Q. Is that what you told Dr. Lazeski when you went to see her on the first visit?

A. I'm not exactly sure what this -- what that means.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 78

Q. Well, do you -- is that what you told her, that you had started having problems in November of 2015?
A. Yes, sir.
Q. And that was the same time you went to see Dr. Kimble, correct?
A. Yes, sir, that's correct. Yes, sir.
Okay, I'm following you.
Q. And it says he reports a sore-type pain in his upper back and between the shoulder blades, correct?
A. Yes, sir, that's correct.
Q. That's the same area that you told me that you felt pain in March or following the March 31 incident, correct?
A. Middle of my neck, correct.
Q. And then if we look down at the impression, and I know the doctors, we'll ask her about her diagnosis, but the impression, at least, reads cervical spondylosis. Do you see that?
A. Yes, sir.
Q. Do you recall ever talking with Dr. Lazeski and asking her what her diagnosis was or what your issue was?
A. Yes, sir.

Page 79

Q. What did she tell you?
A. That's what she told me, cervical spond -- whatever that is.
Q. Spondylosis?
A. That's what she said. That's what she told me.
Q. Did she explain to you what that is or what that condition is?
A. Not really. She didn't get into too much with that.
(EXH. 3, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. And, Mr. Collins, I've handed you what I've marked as Exhibit 3. This is, again, a record from Dr. Lazeski. And you see at the top, the encounter date says February 8, 2016?
A. Correct.
Q. So this is about six, seven weeks before the incident where you say you were hurt trying to open the car door, right?
A. Correct.
Q. And Dr. Lazeski, at that time, says that you described aching neck pain and tightness in the shoulders. Did you tell her that?

Page 80

A. Yes, sir.
Q. And that's the reason you were seeing Dr. Lazeski is because you had pain in your neck and in your shoulder area, correct?
A. And my neck. My neck.
Q. Right, I said that.
A. Neck. Yes, sir, neck.
Q. Well, the report -- the record says you described aching neck pain and tightness in the shoulders. Are you denying that you told her you had tightness in the shoulders?
A. I didn't -- at that time, I don't think I was telling her about my shoulder. It was neck.
Q. So you think the doctor maybe got that wrong?
A. Yes. Yes, sir.
Q. Other than Dr. Lazeski and Dr. Kimble, who else, if anyone, were you seeing with issues with your neck prior to March 31, 2016?
A. No one.
Q. Let me ask you to look at Exhibit 3 again. Flip to the second page there. And you see the section that says current meds?
A. Current med? Yes, sir.
Q. First item listed there is Clonidine HCL. Do you know what that is and why you were taking that?

Page 81

A. Yes, sir, it's blood pressure.
Q. And then it's got Viagra. I know what that is. And then the third one is Amlodipine?
A. That's -- yes, sir.
Q. What was that for?
A. That's also a blood pressure medicine.
Q. And you see it says under active problems, gout, high blood pressure, neck pain, overweight, spondylosis and upper back pain? Do you see that?
A. Yes, sir, I see that.
Q. Did you tell Dr. Lazeski that those were active problems that you had as of February 8, 2016?
A. No, sir, I didn't tell him anything about no overweight.
Q. She may have come up with that on her own. But let me ask you this. You have had issues with gout over the years?
A. I have, yes, sir.
Q. And you've taken Allopurinol for a long time to help you with your gout?
A. Yes, sir.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Q. You just told me you were taking two medications for high blood pressure?
A. Uh-huh.
Q. Is that yes?
A. Yes, sir, that's correct.
Q. You told me that you told Dr. Lazeski that you were having neck pain, right?
A. Yes, sir.
Q. She, according to her records, diagnosed you with cervical spondylosis, which is in this record, correct?
A. Correct.
Q. And your record, at least, says that you also told her you were having some upper back pain. At least, that's what she says.
A. That's what she says.
Q. And you deny that?
A. I deny that.
Q. Do you like Dr. Lazeski?
A. Yes, sir.
Q. You found her to be an honest and credible physician when you've dealt with her?
A. Yes, sir.
Q. Do you know of any reason why she would make up that you told her you were having back

pain?
A. No, sir, I don't.
Q. Any other details relating to the March 31, 2016 incident that you want to tell me about that we've not yet discussed?
A. No, sir.
Q. What do you think that Norfolk Southern did wrong that caused your injuries that day?
A. I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did.
Q. Let's talk about the next incident then. According to your complaint, count two says that on August 13, 2016, while employed as a carman, you were injured while trying to open a door, and I think it was the air compressor room, is that right?
A. Correct.
Q. Do you remember that incident?
A. Yes, sir.
Q. So let's talk about that. Again, on that date, you were working as a carman?
A. Correct.
Q. And my understanding was at that time, had you already been transferred from Rock Hill

over to Charlotte?
A. Yes, sir.
Q. How long had you been working at Charlotte when the incident happened on August 13?
A. Let me see. Oh, I think maybe -- maybe two months. Maybe. I'm not exactly sure about those dates. Maybe two months.
Q. Was the work that you did when you were transferred to Charlotte in the same -- this was at the intermodal yard, right?
A. Correct.
Q. Was your work when you went over to Charlotte, all of it in the intermodal yard?
A. Yes, sir. Yes, sir.
Q. And tell me about the transfer. Had they eliminated the position in Rock Hill?
A. Correct. Yes, sir.
Q. So you had to move over to Charlotte to keep working with the railroad?
A. Right. Yes, sir.
Q. So on this particular date, tell me -- this is the time you were transferred to third shift?
A. Correct.
Q. And third shift worked what hours?

A. We worked from -- let me see. I think it was -- worked from 11:00 -- 11:00 to 7:00.
Q. 11:00 p.m. to 7:00 a.m.?
A. Correct.
Q. Who was working with you on August 13th?
A. That's Smalls. I don't -- I can't tell you his first name. I don't really know. Just Smalls. That's what I called him.
Q. Mr. Smalls. Was he also a carman?
A. Correct.
Q. Was he same position as you? Was he lead carman?
A. Yes, sir, the same position, just carman.
Q. Your job duties out there as a carman, same as what you've told me about earlier today?
A. Yes, sir.
Q. About what time of night or early morning did the incident occur at the intermodal yard?
A. Not exactly sure. I don't remember exactly what time it happened. I don't recall.
Q. Was it after midnight?
A. Don't recall.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 86

MR. THICKENS: We'll go ahead and take our conference to just review this exhibit before we go over it.

MR. WRAY: Well, this was produced ahead of time. I don't think you have a right to -- I mean you can, but I can ask him questions about it.

MR. THICKENS: It wasn't identified two days prior to the deposition. I don't think there was any -- if I'm wrong about that, I mean let me know, but I don't think there's any identification of exhibits.

MR. WRAY: The notice says Defendant hereby gives notice that any and all documents and materials produced and identified by the parties in this action may be provided to the Plaintiff for questioning regarding the same.

MR. THICKENS: Like I said, are you contending that that's notice of particular documents of the over 7,000 documents that were produced in order to give sufficient notice of what you'll be asking?

MR. WRAY: Yes. I mean this is his incident report here, Joe. I mean I'm not ask -- I didn't pull a document out of the blue. This is

Page 87

his report. Clearly, he was on notice that I was going to ask him about it.

MR. THICKENS: You pulled it out of 7,000. Okay, go ahead. We'll see.

(EXH. 4, Incident Report, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 4. And I'll represent to you that my understanding is this is a personal injury report that you completed, is that right?

A. Correct.

Q. And you did not complete it on August 13, 2016, which is the day you say the incident occurred, right?

A. Correct.

Q. Looks like the date you completed it was August 31, 2016, which is 18 days later, right?

A. Correct.

Q. I was asking you about the time, and that's the only reason I handed you this document. On the -- well, let me ask you before I get to that question. Is that your signature at the bottom?

A. Yes, sir, it is.

Q. And did you fill out and complete this

Page 88

report?

A. Yes, sir, I did.

Q. Did you honestly and truthfully complete the report on the day that you completed it?

A. Best of my knowledge.

Q. And if we look kind of the middle of the page, it says incident time, 1:00 a.m. Do you see that?

A. Let me see. Yes, sir, I see that.

Q. And I'm not holding you to that. If you remember a different time or if you don't know, you can tell me. But that's what you wrote on the report?

A. Don't remember, honestly.

Q. Do you think your memory would have been better of when it occurred when you completed this form back on August 31, 2016, than it is as we sit here today?

A. I don't recall. Don't know if it would have been or not.

Q. Tell me what happened that day that caused you to be injured.

A. Well, it reads for itself right here.

Q. Well, don't worry about what you wrote

Page 89

down. I want you to tell me what you remember.

MR. THICKENS: Object to the form.

THE WITNESS: Okay. What I remember, well, we went to the yard earlier that night, checked in, looked through my emails, what I had. And they had wrote down -- they had sent me an email saying that the pump houses had been looked at. One of them had water in the floor, but the pump house was okay. And I want to think he -- best I can remember, he said it was in a classification yard. That's a yard down below -- I mean the -- I don't know if you call it the classification yard. But anyway, it was the tracks down below. We all had -- they had different compressor units in the yards, what's used there. So when I went to -- I think it was pad two, apply there, we had to put the blue flags up. We had to flag all the tracks. We get a single car test. Walked to the end of the train, turn the air on and then we'd do a walking brake test. As the air got up, get the air down, brake it, do a walking test.

BY MR. WRAY:

Q. So let me ask you this before you get there. When we talked about the earlier incident back in March, you said you were inspecting some

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

reject cars from Bowater?
A. Yes, sir, that's correct.
Q. What were you doing the night or morning when this incident occurred?
A. We were inspecting cars, outbound cars. These cars were outbound, would leave, I think it was a Chicago train. I'm not sure if it was 221 or which one would pick it up out of Charlotte, but it was -- we were inspecting cars that were going to be picked up and taken out.
Q. These cars that you were inspecting on August 31, 2016, as far as you know, were they in good working order? They had not been bad ordered or rejected?
A. Not yet. They hadn't been inspected.
Q. All right. And it was your job, as the carman, before they went out on the outbound train, to visually inspect them and make sure they were safe to go out on the train, is that right?
A. Correct. Yes, sir.
Q. And tell me about -- I didn't understand what you were talking about, pad two and the pads you referred to. What did they have to do with this -- what you were doing?
A. Well, that's the different tracks

they're in. They had four tracks where the cars were placed, and those tracks were the receiving -- you had a receiving yard, and then you had tracks where they would go out, outbound. And we were in charge of checking all outbound to make sure they were able to go. So that was our job.
Q. That was you and Mr. Smalls?
A. Yes, sir.
Q. So as you were doing that, you can pick up the story then, you said they -- the cars that you were inspecting were at pad two, you believe?
A. Yes, sir.
Q. And what happened?
A. Well, when I went to put the air down, we had no air. So you can't inspect the cars if you don't have the air. So I called Smalls on the radio and I asked him, I said, well, we don't have air over here on two. Do you have any air? I think -- I can't remember what track he was on, but we did separate tracks. Anyway, I said, well, maybe we need to go check the pump house, the compressor room. And I told him that I had gotten an email earlier that day that they had inspected them, looked at them and everything was good, but one of them had water in the floor. So basically,

he was telling us they were okay. You know, they were running, up and running. So when we went to it, well, of course, I didn't have any idea if it was on or not because we couldn't get inside of it. So I asked Smalls, said is there a valve outside, out here or something that maybe we can open up? So he didn't know either. So he walks around the back. So there at the -- in the yard, when we get in, we have a key punch we have to punch in to get in the gate and also to get into the office where we can do our paperwork and stuff, the carman. You have to key punch it in. And so that compressor room also had a key punch to open the door with.
So I thought, basically, it would be the same number as the gate and in the carman's room because at the office in Charlotte, the office, the general foreman's room, and also the carman's room has got a keypad, and it's the same -- same number. Both of them are the same. So I'm thinking -- I never had been told any different, never told about the compressors there. Never been instructed with them. Didn't know of any different number. So as I tried to put it in, of course, it didn't work. And I tried once more. I tried to open the door and put it in. It didn't work. And

I looked in the door jam. Well, I didn't see the lock in. All the other doors have like a deadbolt lock, and you can actually see them engaged in it, so you know you haven't opened the door. You haven't hit the right number. Well, this one didn't have it. Had a keypad just like the rest of them, but it didn't have it engaged. And I said, well, evidently, the door's open, but I see at the top of it, it looked like it was just stuck a little bit at the top. I said, well, it looks like it's just stuck up at the top. That's what I'm thinking to myself the whole time.
After -- you know, I said, well, evidently the door's definitely not locked, you know, because I don't see it, you know, a lock in the jam. So when I grabbed to pull the door again, I said well, it's just jammed a little bit. When I pulled the door, when I did, the whole thing just flew open at that time. And I knew right then, I said I felt the jerk in my back right then, when the whole thing come loose. And found out that the locking mechanism on this one was inside the door, so you couldn't really see it. And I had no -- I was not aware of that at all. No one had ever told me that at all. So I was thinking it was just like

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

all the rest of the doors, the configuration, and it wasn't. So when I pulled, it all give, and it gave away and when it did, the door just swung open, and I felt the jerk in my back right then.

Q. How far was the compressor room, this door you were trying to operate from where you'd been working on the -- or inspecting the cars?

A. I'm not exactly sure. Oh, maybe -- maybe -- I don't know, 50 feet, maybe more. I'm not exactly -- I can't -- I'm not exactly sure how far exactly it was from it.

Q. Do you know what Mr. Smalls' first name is?

A. No, sir.

Q. Do you know if he still works with Norfolk Southern?

A. No, sir, couldn't tell you.

Q. Have you seen him since the date this happened?

A. No, sir. No, sir. Oh yeah, I've seen him since then, since it happened. Yes, sir, we -- you know, we worked. But I haven't seen him since I left, no, sir.

Q. Did I understand you to say that Mr. Smalls came over to the compressor room door before

you tried to get it open? Or did I misunderstand that?

A. No, sir.

Q. So you were the only one over there at the door trying to get it open?

A. Yes, sir. Yes, sir.

Q. Any other witnesses that you know of that saw you trying to open that door?

A. None that I know of, sir.

Q. And Mr. Smalls, to the best of your knowledge, didn't see it?

A. No, sir, he was around the back.

Q. Before August 13, 2016, had you ever opened that door previously?

A. No, sir.

Q. Had it ever been required to be open while you were working at the intermodal yard there in Charlotte?

A. No, sir.

(EXH. 5, Photographs, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 5, which is a collection of photographs. And let me give you a minute to look through them first, and

then you let --

A. Okay.

Q. You let me know when you've had a chance, and I'll as you some questions.

A. Yes, sir. All right, sir.

Q. So let me tell you, if you'll look down in the right-hand corner of those photographs, you'll see a series of numbers beginning with 712, and it's got a bunch of zeros and then it starts with one and it goes from there. Do you see that?

A. Yes, sir.

Q. So while we're talking about these pictures, I'm going to refer to those numbers so we'll know we're looking at the same photograph, okay?

A. Yes, sir.

Q. And I'm going to make it easy because I'm going to start with number one. And I'm going to ask you, if we look at photo one in Exhibit 5, is that the compressor room where you were working or that you were trying to open the door on August 31, 2016?

A. I'm not sure if it is.

Q. Are there more than one --

A. Yes, sir.

Q. -- compressor rooms?

A. Yes, sir, it is.

Q. Let me finish my question, even when you know what I'm going to ask you, just to make sure Sarah can get it down.

Are there more than one compressor room at the Charlotte intermodal yard?

A. Yes, sir.

Q. I'll tell you that my understanding is it's the same one, but it's okay if you don't know for sure. Did it look like this?

A. Not totally sure.

Q. That's fair enough. Let me ask you to flip over to photograph five. And again, we're talking about as part of Exhibit 5.

A. Yes, sir.

Q. Is that the same type of door lock with keypad that was on the door you were trying to open that night?

A. Not sure.

Q. How about the door handle, does that appear to be the same type handle?

A. Yes, sir, I think so.

Q. And if you look at number six, photograph six, you see it's got a keypad on there

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 98

with numbers one through five. Do you recall, was that the number set that was on the keypad you were trying to open that night?
A. Not -- I can't -- I can't really recall if that was the exact type of keypad.
Q. Let me ask you this. I did understand you to say that it had a keypad number system on it?
A. Yes, sir, correct.
Q. And what you're telling me is you don't know whether it looked like photograph six or whether it had numbers one through five or maybe some more numbers on it? You just don't remember?
A. I don't remember.
Q. If someone were to testify that this was the door and the keypad, would you have any reason to dispute that?
A. No, sir.
Q. And if we look at Exhibit -- or photograph 11, which is the very last picture. You can just flip to the very end in Exhibit 5. That appears to be the interior of this compressor room. Do you know if that's what it looked like on the inside of that compressor room the night you got the door open?

Page 99

A. Don't -- don't recall.
Q. Do you remember what was inside the room, if anything?
A. All I remember was compressor.
Q. So you walked up to the door and did you try the handle to open it before you tried to input any code?
A. No, sir.
Q. You tried to input a code the first time, and the door wouldn't open, right?
A. Right.
Q. And I don't know if you told me, but I know it's in your statement or somewhere else I've read. The code you inputted was 315, is that right?
A. Yes, sir, that's it on here, 315.
Q. I'm reading that on your statement. It says I tried entering number 315 twice.
A. Yeah.
Q. But door wouldn't open. Is that right?
A. Yes, sir, correct.
Q. And each time you entered the code, did you try to turn the handle on the door to see if you could get it open?
A. Yes, sir.

Page 100

Q. What happened?
A. Didn't open.
Q. Did you call Mr. Smalls on the radio and say hey, I'm not able to get this door open, do you know what the code is over here?
A. No, sir, I didn't.
Q. Why not?
A. I just didn't.
Q. All right. And the night this happened, was Mr. Hickman still your supervisor?
A. No. No, sir, Hatcher. Tom Hatcher.
Q. Hatcher. I'm sorry, Hatcher.
A. Tom Hatcher.
Q. Was he the supervisor over you the night this happened?
A. Yes, sir.
Q. Did you try to call Mr. Hatcher or anyone else in supervision to say I'm having trouble getting this compressor door open, can someone give me the code?
A. No, sir.
Q. Why not?
A. Well, after I looked at it and -- and observed, looked at it, I thought the door was just jammed at the top because, again, I didn't see the

Page 101

door lock in. So all the rest of them, and the 315 is also the number for the carman's room. So I figured just like up at Charlotte yard, all of them were the same. They wouldn't change them. They're all going to be the same, so. As I visualized it and seen the lock in, I figured it was just jammed a little bit at the top.
Q. You told me that you had a radio in your possession, right?
A. Correct.
Q. And you were able to communicate by radio with Mr. Smalls?
A. Correct.
Q. Were you able to communicate with other Norfolk Southern employees that might have been working that night?
A. Well, I don't know if we was on that channel or not. I'm not sure if we was on the same frequency. We wasn't usually on the same frequency.
Q. Could you not change frequencies if you needed to contact someone else in the yard or someone else that was working that night?
A. Yes, sir, I could.
Q. And I don't know, is there a yardmaster

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 102

or someone on duty that's responsible for the intermodal yard at all times?
A. I'm not -- I'm not sure.
Q. You don't know?
A. No, I don't know.
Q. How about over the carmen? Other than you and Mr. Smalls, if y'all encounter a problem as carmen that you need some help with, who do you call?
A. Well, we would call a supervisor first.
Q. Mr. Hatcher?
A. Mr. Hatcher, yes, sir.
Q. And is he supposed to be on call 24-7?
A. Yes, sir, that's --
Q. If you've got a major issue, he's supposed to answer the phone?
A. Yes, sir, correct.
Q. But you didn't call Mr. Hatcher?
A. No, sir, I didn't.
Q. And you didn't contact anyone else at the intermodal yard to tell them I've tried this keypad twice and the door won't open, is there some other code?
A. No, sir, I didn't.
Q. You could have done that?

Page 103

A. Well, by a visual seeing that the lock wasn't in there, I felt like the door was just jammed at the top, and it wasn't locked.
Q. Well, I'm not --
A. That's why I didn't do it.
Q. Yeah. Well, I wasn't asking you what you felt like. My question was did anybody prohibit you from either using your radio -- well, let's stay there for a second. From using your radio to call somebody and see if you had the right code?
A. No, sir.
Q. And did you have a cell phone with you?
A. I don't think so.
Q. How would you have contacted --
A. Yes, sir, I did. I had -- yes, sir, I did. I had the railroad's -- the railroad's phone with me.
Q. And was there anybody that prohibited you or anything that prohibited you from using your cell phone to call somebody if you had wanted to?
A. No, sir.
Q. So you made the decision not to call anybody by radio, not to use your cell phone, but to continue trying to get the door open, is that

Page 104

fair to say?
A. Correct, yes.
Q. And then, as I understand it, you tried a third time, still didn't open, correct?
A. The third time, I -- that's when it -- when I pulled it open.
Q. Well, I'm saying it didn't open automatically when you punched in the code?
A. I don't think I did it a third time. I done it twice, the code twice, and didn't open. And I didn't see the lock in. That's when I looked at the top of it and saw that it was stuck in the jam a little bit, and I said, well, it's just stuck a little bit. I'll just pull it open.
Q. So if I understand what you're telling me, Mr. Collins, then you tried it twice. It didn't open. The third time you didn't even try the code. You just forcefully pulled it open?
A. Yes, sir, correct.
Q. And when you opened the door, did you do it using both hands pulling on it, one hand?
A. No, I didn't use but one hand.
Q. Which hand did you use?
A. My right.
Q. And when you did that, did the door

Page 105

pull to you?
A. Yes, sir. Yes, sir. Came -- swung out. Come out.
Q. The door swung to the outside where you were standing?
A. Yes, sir.
Q. And I thought you told me the lock actually broke off and fell onto the floor, is that right?
A. On the inside. Yes, sir.
Q. It fell on the inside of the compressor room?
A. Yes, sir, it was on the inside. It wasn't visible. You couldn't see it from the outside.
Q. Did you not understand when you went there that night that the reason they have a keypad lock on the door was so the door would be locked unless someone entered the proper code?
A. Exactly. Yes, sir.
Q. That's the purpose of a keypad lock, isn't it?
A. Exactly.
Q. Did you actually break the hinges on the door?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 106

A. No, sir.
Q. And when you pulled on it and the door came towards you, did you fall to the ground?
A. No, sir.
Q. What happened to you?
A. I fell back with it. I was holding onto the door, the door handle.
Q. Did the handle actually come off in your hand?
A. No, sir. No, sir, it didn't.
Q. And did you realize at that moment in time when the door pulled open towards you that you had been injured?
A. Yes, sir.
Q. Where were you hurt?
A. The middle of my back.
Q. Was that in the same area of your back as you're indicating that you had had pain in March of 2016 when you were operating the car door that you told me about this morning?
A. Not to that extent.
Q. Well, not -- whether it's the same pain or to the same extent, was it the same area of your body?
A. Same area.

Page 107

Q. So when you say in your back, describe for me more particularly. Right side, left side, upper back, lower back?
A. Upper.
Q. So you hurt in your back, upper? Which side? Or was it all across, left and right?
A. No, it was the upper back and left again.
Q. Between your shoulder blades?
A. Shoulder blades.
Q. And your spinal cord?
A. Right.
Q. Were you hurt anywhere else?
A. No, sir.
Q. What did you do once the door came open and kind of -- and the lock broke off and fell in the floor?
A. I said uh-oh.
Q. Just said it to yourself?
A. Yes, sir.
Q. Did you then tell Mr. Smalls what had happened?
A. Well, he came around and looked, and he said uh-oh, too.
Q. How did he know something had happened?

Page 108

A. Well, he could see it laying in the floor just when I pulled it out.
Q. But I'm saying he was working over on pad five, though, wasn't he?
A. No, sir. No, he was around the back side of the building.
Q. So did it make a noise? I mean kind of like a loud sound when the door finally gave through?
A. Well, I don't know how loud a sound it made, but you know, it was open.
Q. So Mr. Smalls came around from the back of the building, and he said uh-oh, this doesn't look good?
A. Uh-oh, yeah. Got a uh-oh, too.
Q. And did he ask you what happened?
A. Yes, sir.
Q. What did you tell him?
A. I told him I tried to put the keypad in and it wouldn't open, and I looked, and I didn't see the lock engaged, so I saw it up there at the top a little bit, so I figured I'd just try to pull it open. And I did, and it pulled the inside lock off of it.
Q. Did you tell Mr. Smalls that you had

Page 109

been hurt?
A. No, sir. No, sir.
Q. Did you tell him that you needed any medical treatment?
A. No, sir.
Q. Did you report to any of your supervisors that you had been hurt?
A. No, sir.
Q. At any time that night, did you ask for any medical care?
A. No, sir, I didn't.
Q. Did you report to your supervisors when the incident happened that you had broken the door in the compressor room?
A. I reported it to the lead carman the next day. I went that afternoon when we -- we was finished with our shift. I sent them an email telling them that I had broken the door when I opened it.
Q. And if the time on your incident report, Exhibit 4, is correct, it was 1:00 a.m., you would have continued working on until 7:00 a.m. until you were off duty?
A. Correct.
Q. Did you have any issues continuing your

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

work that night?
A. Did I have any?
Q. Yes.
A. Yes, sir, I did.
Q. What was the issues that you were having?
A. I was having pain.
Q. Just in the back where you described for me earlier?
A. My back, yeah.
(EXH. 6, Email, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you Exhibit 6. You told me that when you got off work that next morning or right around the time you got off work, you sent an email to the lead carman, is that right?
A. Yes, sir.
Q. And who was the lead carman at that time?
A. Well, I think Rodney and Ed Simpson, and I think Matthew Murphy.
Q. And Exhibit 6, is that a copy of the email you sent on August 13, 2016 following this

incident involving the compressor door?
A. I'm not sure. I see that I wrote it, but I'm not sure. I don't recall.
Q. It says from Mike W. Collins. That's your name, right?
A. Yes, sir, that's -- that's my name.
Q. And you did send an email, you told me, to Rodney Brewer --
A. Yeah.
Q. -- was the lead carman?
A. I did.
Q. And who are Matthew Murphy and Ed Simpson?
A. Right, they're lead carmen, too. All three of them.
Q. Is there some reason you think this might not have been the email you sent or you said something different?
A. Yeah, I -- I just don't -- I know I sent them an email. I can't say that's exactly what it said, but I did send them an email.
Q. Did you send more than one?
A. No, sir.
Q. Did you send an email to Mr. Hatcher, your supervisor, --

A. No, sir.
Q. -- and say hey, boss, let me tell you what happened?
A. No, sir, I didn't.
Q. Why not?
A. I sent it to the lead carmen. They'd take care of it. I figured they'd report it to Hatcher, and that it'd all be taken care of in line.
Q. After you sent the email to Mr. Brewer and the others on the email, did you have any follow-up discussion with them about what happened?
A. Don't recall. No, sir.
Q. Did anybody ever interview you or ask you any questions about what had happened and how the door got broken?
A. I don't recall.
Q. And I should have said, before you completed your Form 22 on August 31, 2016?
A. No, sir. I don't recall.
Q. Between the time of August 13, 2016, when the incident happened, and August 31, 2016, when you completed the Form 22, the personal injury report, did you have any discussions with anybody in supervision about what had happened to you that

night?
A. No, sir.
Q. Did you ever tell anybody in supervision prior to August 31, 2016 that you'd hurt yourself that night?
A. No, sir.
Q. Why not?
A. Just like all the rest. I figured I'd be able to take care of it, and I'd be back to work. So I wasn't going to report it. And they had I don't know how many years they had had in Charlotte they'd had a great track record safety. I didn't want to be up there for two months and blow it all out of the water for them. So I figured, you know, I could take care of it again, and it'd be taken care of, and I'd be able to go back to work, and it'd be all right, as usual.
Q. And the email you sent, Exhibit 6, it says air at intermodal yard wasn't working at all last night. I reset breakers and air came back on, and in process of getting in compressor shed, I broke inside door handle off door. So be careful not to get locked inside of shed until repair on door is made. Did I read that correctly?
A. Yes, sir, you did.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 114

Q. And you didn't say anything in the email to any of your colleagues about being hurt, is that --

A. No, sir.

Q. -- fair to say?

A. No, sir, I didn't. No, sir.

Q. How was it that you came about completing, I think it's Exhibit 4? Is that the personal injury report you've got in front of you? Yeah, Exhibit 4. Tell me how this came about. You didn't report it the night it happened. You didn't report it for the next 18 days. Why all of a sudden on August 31, 2016, did you fill out a report?

A. I -- well, that complicates some other stuff, too. But I went to -- I had gone to the doctor for check my hip, just to get a hip -- because it's been bothering me. And while at the doctor's office, he wrote me out of work. So when I called Mr. Hatcher to tell him that I had been wrote out of work, he asked me, you know, why, and I was telling him that, you know, I was -- my hip had been bothering me, so I mean I had got wrote out, got to check on it. And in the process, I said, well, you know, pulling on the thing the

Page 115

other day and hurt my back a little bit, too, but I've got my hip doing, so -- and then he asked me, he said what did you say? And I said I'm going to go on the hip. And he said, no, you said something about a door.

Q. Who were you talking to?

A. Hatcher, my supervisor. And he said what about the door? And I said, well, you know, I pulled it and hurt my back some then. But I said I'm going to go out with my hip so it's just -- let's just be done with that, and we're not going to do that. He said I've got to write it as a report. And I told him you don't really have to do this. And he said yes, I do. And I said, you know, I'm going out with my hip. This is, you know, I'm going to be out anyway, so. But anyway, that's how that started. He made me come in and do a report on it. And I tried to get him not to let me do it, but they said the FRA rules, can't do that, you got to be reported. Because I even whispered it to him, you know, even a whisper, him knowing that I had hurt a part of my body. And that's how that come about.

Q. Who else was present when you were talking to Mr. Hatcher on that date?

Page 116

A. Bobby Cox, and there was one other general foreman. I can't recall his name. I can't recall off the top of my head, but Mr. Cox was there, too.

Q. What was Mr. Cox's position at that time?

A. Mr. Cox is -- what was he, a general -- general manager, basically? He'd been promoted again. He's -- he -- I forget what position it was, but --

Q. General manager of the intermodal yard?

A. No, sir, he was over all of us, Lynwood and all of our --

Q. So Mr. Hatcher, Mr. Cox, and you think there was one other? Was it a supervisor?

A. There was another fellow there, but I can't remember his name. I mean I don't recall his name.

Q. To take a step back, though, you said you had been to the doctor. Was that also on August 31, to see Dr. McCarthy about your hip?

A. This was about my hip when I went to the doctor.

Q. Right, but I'm trying to figure out a date. Was it August 31? I think that's what the

Page 117

record says.

A. Yes, sir. Yes, sir. Yes, sir. I'm trying to get these dates straight myself.

Q. And you went to Dr. McCarthy about your hip?

A. Exactly.

Q. And Dr. McCarthy told you you're probably going to have to be out of work for hip issues?

A. He told me I would be out of work.

Q. Then you went to tell Mr. Hatcher because he was your boss, hey, I'm going to be out for my hip, is that right?

A. Correct.

Q. And somehow in that conversation, this issue with the door came up. So tell me about that. Why would that come up in that discussion?

A. Well, I just -- you know, I was just talking, and I said, well, you know, again, I was out with my hip. I'm going to be going out with my hip. And he said, you know, this is pretty bad and that -- and he said, well, you know, had you -- did it hurt like that? I said, well, no, it just -- it twisted a little bit the other night when I pulled that door and kind of twisted my back and my hip.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 118

That's how it come out. And then he said, well, your back? And I said, no my hip. He said what about your back? I said this is about my hip. He said no, it ain't. This is about your back, now, too. So he made me come in and do this for my back at the same time.

Q. Between August 13, the night the incident happened with the compressor door, and August 31, when you filled out this personal injury form, Exhibit 4, had you been working regularly at Norfolk Southern?

A. Yes, sir.

Q. Had you missed any time from work as a result of any injuries you suffered trying to open that compressor room door?

A. No, sir.

Q. Were you put on any additional medications following the incident with the compressor room door that you weren't already taking?

A. I can't remember. I don't really recall what it was. I don't recall. Not sure.

(EXH. 7, Medical Record, was marked for identification.)

BY MR. WRAY:

Page 119

Q. Mr. Collins, I've handed you what I've marked as Exhibit 7. This is a record from Dr. Barron, and it's dated June 29, 2016. Do you see that?

A. Yes, sir, I do.

Q. And I think you told me earlier that Dr. Barron had been your family physician for some period of time, a number of years before these incidents that we've talked about today at the railroad, right?

A. Yes, sir, he had.

Q. According to this record, it looked like you had -- it'd been a while since you had seen him, and it says you came back in to get reestablished. Do you remember that happening?

A. Do what now? Excuse me?

Q. I'm just reading from the record. If you look under the section that says HPI.

A. Yeah.

Q. It says former patient comes in to get reestablished. Do you see that?

A. Reestablished? Okay.

Q. Do you recall that you had been some period of time since you'd seen Dr. Barron and you went back with him to maybe get back in his

Page 120

treatment?

A. Yes. Yes, sir. Yes, sir.

Q. And it says you have a long history of hypertension, which you've already told me about, right?

A. Right.

Q. And you had some difficult controlling that?

A. Exactly.

Q. Then we go down to the second paragraph, if you look at Exhibit 7.

A. Yeah.

Q. It says lately, he's been having extreme difficulty with pain in his upper back and neck with radiculopathy in the left arm. Do you see that?

A. Yes, sir.

Q. And this is about six weeks before this incident with the compressor door, right?

A. Let me see. When was the compressor door? What was the date the compressor --

Q. August 13, according to your complaint and the Form 22 you filled out. Is that right?

A. Yes, sir.

Q. So about six weeks before you had this

Page 121

incident with the compressor door, you were telling Dr. Barron that you had extreme difficulty with pain in your upper back and neck, right?

A. Not extreme. No, sir.

Q. So he's wrong in using that word?

A. Well, I would say so. Yes, sir.

Q. Did you tell him you had difficulty with pain in your upper back and neck?

A. No, I told him I had -- I'd been having some difficulty sleeping. I think that's what it was about --

Q. And then the next paragraph says he also recently was told that his job with the railroad here in Rock Hill was being shut down.

A. Yeah.

Q. Was that about the time that you were transferred from Rock Hill over to Charlotte?

A. Yes, sir.

Q. And it says he has the option to retire or drive to Charlotte for third shift work, which he is not inclined to do. Did you tell Dr. Barron that?

A. At the time, I wasn't sure. I was not sure.

Q. And it says this is causing significant

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 122

stress. Do you recall being stressed out about the fact that your Rock Hill job was being eliminated and you were going to have to move over to Charlotte if you wanted to keep working?

A. Yeah, I was stressed some with that.

Q. And then I think you just touched on this. It says he complains of ongoing insomnia which has been a chronic problem as well, right?

A. Correct. Yes, sir.

Q. And so what was going on here was you were having some stress and insomnia because they were moving your job and you weren't happy about that, is that fair to say?

A. I'd say yes, sir.

Q. And you also were having problems with pain in your back and your neck, as the record reflects, right?

A. Not extreme, no, sir.

Q. Well, leave aside his use of the word extreme. You had problems with your back and neck, right? That's what you told the doctor?

A. Yeah.

Q. I don't think I asked you earlier. Have you ever been a smoker?

A. No, sir.

Page 123

Q. Anybody in your family ever have issues with their back that you know of, any family history?

A. None I'm aware of.

Q. How about hips? Any family history of issues?

A. None that I'm aware of. No. No, sir. Well, I'm sorry. I'm wrong with that. My brother. My brother has. My older brother.

(EXH. 8, Medical Record, was marked for identification.)

Q. Mr. Collins, I'm going to show you what I've now marked as Exhibit 8, and you were telling me this earlier, that you thought on August 31, you went to see Dr. McCarthy about issues with your hip. Do you see that in Exhibit 8 references that? First page says the patient states he is here for pain in his left hip?

A. Correct.

Q. And then it says the patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. Do you remember that?

A. Yes, sir.

Q. Did you tell the doctor that?

Page 124

A. Yes, sir.

Q. It says the patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down. Did you tell the doctor that?

A. Yes, sir.

Q. And how many years had you been having issue with pain that you attributed to your work on the railroad?

A. Really just toward the end of my -- a couple years I'd really had it. The last year is when I really had the pain, when it really got unbearable when I went to -- when I went to the doctor.

Q. Well, the record says the pain's been going on for years. Is that the terms you used with the doctor?

A. Slight pain, just nothing grave. Just little aches.

Q. Now, I don't see anything in this record, this is August 31, 2016, and the issue with the compressor door had happened about two weeks earlier. I don't see anything mentioned in here about this compressor door. Did you tell the doctor about that?

Page 125

A. No, sir, evidently not.

Q. And if we look at the next page, page two of Exhibit -- is this 8?

A. Okay.

Q. It says chief complaint, then it says left hip pain. Do you see that?

A. Yes, sir.

Q. And again, it says the patient states that he is here for pain in his left hip. The patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. The patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down. Do you recall all that?

A. Yes, sir.

Q. You didn't mention anything about this issue with the compressor door, right?

A. No, sir.

(EXH. 9, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 9, and this is a record from OrthoCarolina, again, Dr. Lazeski, and it's dated September 28, 2016. Do you

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 126

see that?
A. Yes, sir.
Q. And looks like, as best I could tell, this was the first reference I saw where you had told one of your doctors that you had some issue at work on August -- it says August 3, but it was August 13, 2016, right?
A. Uh-huh.
Q. Do you see that?
A. 8-3? 8-3-2016?
Q. Yeah. Well, she's got -- she's got that, but if you look at the top, it says date of injury, 8-13-2016.
A. Yes, sir.
Q. And then the -- under history of present illness, it refers to 8-3-2016, which must be --
A. Right, that's --
Q. -- a typo.
A. Right. Yes, sir.
Q. You didn't get hurt on August 3rd, 2016?
A. No, sir. No, sir.
Q. It says patient was working his normal job on the railroad when he attempted to open a

Page 127

door. That's what you told me earlier, right?
A. Correct.
Q. He had a difficult time opening the door and noticed it was jammed at the top of the doorway. Is that accurate?
A. Correct.
Q. He pulled the door aggressively. The door became ajar, and his arm jerked backwards. Is that accurate?
A. No, not -- not aggressively. I just pulled the door. Not aggressively.
Q. And you didn't use that term with Dr. Lazeski?
A. No, no.
Q. She just threw that in there?
A. No. Yeah, I reckon she just added that to make it sound good.
Q. So at this point in time, in August of 2016, were you still seeing Dr. Kimble, the chiropractor?
A. No, sir.
Q. You were seeing Dr. Barron, who we've already talked about, right?
A. Correct.
Q. You were seeing Dr. Lazeski. We just

Page 128

looked at her record, correct?
A. Correct.
Q. You were seeing Dr. McCarthy, correct?
A. Correct.
Q. Any other physicians you were seeing at that time?
A. No, sir.
Q. How about in terms of your prescription medications? Did you have a regular pharmacy that you used to get any prescriptions?
A. Yes, sir. Yeah, CVS.
Q. And where was that located?
A. On Celanese Bypass, here in Rock Hill.
Q. Was that the only pharmacy you used to fill prescriptions?
A. Yes, sir, that's right. No, I'm sorry. The Pennsaid was from an in-store pharmacy they had with Dr. Lazeski and them. They got it from somewhere. But I couldn't -- I don't have any idea where it was -- where it was coming from. It was through the mail.
Q. So you arranged with Dr. Lazeski's office to send you the Pennsaid topical cream?
A. Right. Yes, sir. Yes, sir, that's correct.

Page 129

Q. When I asked you earlier about the car door, you told me that you were the one operating the door when you had the issue, right?
A. Yes, sir, that's correct.
Q. Isn't the same true when you were working on the compressor room door on August 31, 2016?
A. Repeat that, please.
Q. You were the one that was trying to get the door open the night it happened, right?
A. Yes, sir.
Q. And you're the one that broke the door?
A. Yes, sir.
Q. What did Norfolk Southern do, if anything, wrong to cause that incident?
A. Well, I wasn't instructed in the correct keypad. I wasn't instructed that it was a different type of lock on the door. The houses should have been -- should have been going anyway. The had already been inspected that day. They had left -- evidently, they had -- he had left the compressor off. We wasn't instructed on any of that. Never had been instructed in opening and closing that door with that type of lock on it.
Q. Had you ever, not at Norfolk Southern,

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 130

but anywhere, at your home, a friend's house, at a relative's, ever had to use a keypad to unlock a door?

A. No, sir.

Q. What type of instruction do you think you should have been given to tell you how to punch a code into a door?

A. The code should have been given to us where the air compressor rooms in case something like this happened, we would know how to get into them.

Q. Well, you told me that the other doors there at the intermodal yard to the office and one other door that you named for me, both them had keypads as well, correct?

A. Yes, sir.

Q. So you were familiar with how a keypad lock works and punch in the code, right?

A. Correct. Yes, sir.

Q. And the code for those doors that you had was 315?

A. Yes, sir.

Q. And you had done that many times before August 31, 2016, punched in the code and the door opened, right?

Page 131

A. Yes, I had done it some.

Q. So you knew how to do it? I mean it wasn't --

A. Yes, sir.

Q. Nobody had to be there with you to say Mr. Collins, you've got to punch these numbers to enter a code?

A. Well, you had -- yeah, there was a certain sequence you had to do it in and do it correctly. If you didn't, then it was another something you had to hit to correct all that, and I can't remember exactly how that was. But I didn't do it all the time. Smalls did sometimes. You know, it wasn't an everyday thing for me to put it in there.

Q. I understand that. But in terms of knowing how to open a door using a keypad, you knew how to do it because you had done it many times on other doors?

A. Yes, sir, with the correct number.

Q. And that was the key, to unlock the door using a keypad lock, you've got to have the right code, right?

A. Exactly.

Q. And you never asked anybody after you

Page 132

tried it the first two times whether you had the right code or what the right code might be?

A. No, sir, I didn't.

Q. Did you ever ask anybody for any help in trying to get the door open before you pulled it open and the lock broke?

A. No, sir.

MR. WRAY: Why don't we stop there?

(A luncheon recess transpired.)

BY MR. WRAY:

Q. Mr. Collins, we're back on the record following our lunch break. Let me ask you a question. When you were working with Norfolk Southern, were you governed by the safety and general conduct rules?

A. Yes, sir.

(EXH. 10, General Safety Rule, was marked for identification.)

BY MR. WRAY:

Q. Let me show you what I've marked as Exhibit 10. And this is general safety rule 910, caption working safely. Let me give you a chance to read that. Just tell me when you're ready, or if you're already familiar with it, you can tell me that.

Page 133

A. 910, I've completed reading 910, yes, sir.

Q. When you were working as a carman for Norfolk Southern back in March of 2016 and August of 2016 on the date of the incidents we've talked about already this morning, were you familiar with this rule?

A. Yes, sir.

Q. Had you been trained on rule 910?

A. Yes, sir.

Q. And you understood that you were supposed to comply with that rule as an employee of Norfolk Southern, is that fair to say?

A. Yes, sir.

Q. The first sentence of rule 910 says employees must not do any work in a manner that will jeopardize their own safety or the safety of others. Is that something you were trained as a Norfolk Southern employee?

A. Yes, sir.

Q. The next sentence says they must know that appliances, tools, supplies and facilities used in performing their duties are in proper condition. Were you trained that as well?

A. Yes, sir.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 134

Q. The next sentence says if not, they must have them repaired or replaced before using them. Were you familiar with that requirement?
A. Yes, sir.
Q. And, in fact, I think you told me one of your jobs as a carman was to look and see if there was a defect, and if there was, you were supposed to repair it before some other employee used that piece of equipment, correct?
A. Yeah. Yes, sir.
Q. And then it says it is a duty of every employee to examine them to determine their condition. And by every employee, that would include you, right?
A. Correct.
Q. The second paragraph then says employees must not make repeated attempts to operate tools, equipment or appliances, and I'm going to leave off the examples there, that cannot be operated with a normal level of exertion or otherwise are not in proper working order. Such repeated attempts must be avoided. Did I read that correctly?
A. Yes, sir.
Q. Were you familiar with that rule?

Page 135

A. Yes, sir, I am.
Q. And you told me earlier today on this incident that happened on August 13, you tried two attempts to open the compressor room door before you actually pulled it and it broke off, right?
A. Correct. Yes, sir.
Q. Would you say that when you tried the first two times, you used a normal amount of force in trying to open the door?
A. Yes, sir.
Q. And then it says if it can't be operated with a normal level exertion, you're not supposed to try to force it. Is that -- I'm paraphrasing, but is that generally how you understood the rule?
A. Yes, sir.
Q. And it says such repeated attempts to try to get something to work when it won't work should be avoided. Must be avoided, right?
A. Correct.
Q. Do you agree with me that you didn't comply with rule 910 on the day when you broke the compressor door room?
A. No, sir. No, sir.
Q. Or compressor room door?

Page 136

A. No, sir, I don't agree.
Q. Well, how do you think you complied with that rule based on the way you described what happened that day?
A. Well, when I -- like I said, again, looking at the door, I didn't see that -- on my visual inspection of the door, other than that little place at the top, after I tried to open it, that was the only thing that was actually holding the door. So I had been trying to open it with the keypad, you know, pulling on it. Didn't work. So visually, I said, well, I can -- it shouldn't be much, you know, harder to pull open with that. It's not that bad. So that's when I pulled it open.
Q. But you knew after the first two times you tried it using what you told me was normal force that the door would not open?
A. Well, it wasn't. No, sir, it wasn't because, like I said, the keypad being locked inside, it wasn't open. Working against me. And I, like again, visually, I couldn't see that.
Q. And the rule says repeated attempts must be avoided, but you then tried it a third time?

Page 137

A. Sir, if we didn't repeat stuff on the railroad, we'd never get nothing done. Out of all honesty, we'd never get nothing done. We had to work to do what we had to do. And a lot of times, but never -- never in an unsafe manner. Never would put anybody unsafe in a manner, and I wouldn't put myself in an unsafe position. Never done that and never would.
Q. Let's talk about the last claim in your complaint. Count three says that while assigned to work Norfolk Southern's Rock Hill yard from approximately 1981 to July of 2016, you sustained a substantial amount of stressors. And I'm just reading that from the complaint. Have you ever read that before?
A. And what's this, now?
Q. I'm just going to read it as it's written.
A. Where are we at? Excuse me?
Q. This is a document I didn't hand you.
A. Oh, okay, you hadn't -- okay.
Q. Paragraph 30 -- I don't have extra copies of this. This is --
A. Okay.
Q. This is the lawsuit you filed.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 138

A. Yes, sir.
Q. Have you ever read your lawsuit?
A. Not totally.
Q. Have you read any of it?
A. Partial.
Q. I'm reading from paragraph 30 of the lawsuit you filed --
A. Okay.
Q. -- against Norfolk Southern. It says Plaintiff was assigned to work Norfolk Southern's Rock Hill yard from approximately 1981 to July of 2016, where he sustained a substantial amount of stressors.
A. Stressors? Stressors?
Q. S-t-r-e-s-s-o-r-s. Have you ever heard that term before?
A. Stressors? No, sir.
Q. Do you know what that is?
A. No, sir, I'm not familiar with that at all.
Q. Can you tell me what is meant by your complaint that you filed with the court, in which you say you were -- where you sustained a substantial amount of stressors?
MR. THICKENS: Object to the form.

Page 139

BY MR. WRAY:
Q. Can you tell me?
A. I've got to know what stressors is first before I can explain myself, and I do not know what stressors is.
Q. Well, this is in your complaint, so that's where it comes from. I don't know what was meant by it either. I just --
A. I don't use the word stressors.
Q. It then says aside from this time period, Plaintiff sustained stressors in the Norfolk Southern Charlotte, North Carolina yard from July of 2016 until August 13, 2016, due to Plaintiff transferring after the Rock Hill yard was closed. And I assume you've got the same answer there. You don't know what stressors this is talking about?
A. I have no unearthly idea what they was talking about there, what that's about, no, sir.
Q. Paragraph 31 then says Plaintiff sustained injuries to both his hips, which have been known by the Plaintiff in September of 2016 due to cumulative trauma, repetitive stress, overuse, and lack of sound ergonomic practices by Norfolk Southern, including a substantial amount of

Page 140

exposure to hazardous work conditions contributing to his injuries. Is that something that you believe to be true?
A. Yes, sir.
Q. Tell me what ergonomic practices you think Norfolk Southern should have had that they did not have that you believe caused your injury?
A. Okay. Well, a lot of the shops, larger shops, like the locomotives, they have pits, but they have places where you can actually walk down beside the locomotives. And you can actually change brake shoes and stuff without bending, crawling around, laying on the ground. You can actually get to the stuff. But the way ours is set up, there's no possible way that you can do that. You have to get in a position where you have to just about fold yourself up to get down to be able to put a brake shoe on on a car or on a locomotive. And then some of them, you can't even see them to do it. So the position we're in day after day after day after day, you know, my left hip -- caused stress on it because I have to get down. And it got to the place where I'd have to even pull myself up, and it would hurt so bad. My latter year, I'd have to pull myself up. I wasn't even

Page 141

able to -- and I wouldn't even put a brake shoe on in a yard hardly my latter year because my hip, it hurt me so bad. And that was one of the regulations to do out in the yard, inspection. So if it had to be totally really, really bad before I'd even put a brake shoe on. So my last year was -- I had a lot of problems with my last year.
Q. So help me understand what you're telling me, Mr. Collins. You're saying there are some Norfolk Southern facilities where a carman, in doing his inspections, actually walks below the level of where the cars sit up on the track?
A. Some of them's higher, in a higher position in the track yards, so you can get to it a lot easier without, you know, totally just folding yourself up to be able to get to what you have to do work. Some yards are. Yeah, the bigger yards, some of them are. Yes, sir.
Q. That's what I'm trying to understand. What is higher? The car stood up higher?
A. The higher. Yes, sir, the higher. So like if you're in a pit in Lynwood where they work on the locomotives, you're able to, you know, access under it, beside of it and stuff like this to change the brake shoes and do work on them. We

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

don't have that in Rock Hill. Never was -- it wasn't made like that. So our engine here, and you're almost with it. So the brake shoes and where they sit, you have to -- you have to go down in a bent position. That's the only way you can change it, the only way you can get to it, so. And that's, like I said, even out in the yard, the same way. You know, that's a day in and day out thing, you know, how many times a day you do it.

Q. So Lynwood yard is one example. Are there other yards that you know that have the cars elevated above the walkway?

A. Not all, no. No, sir. There's some.

Q. Yeah, I wasn't asking about all of them. I said were there others like Lynwood, as you described it to me?

A. Well, I feel sure there are. I haven't been there. I've seen pictures, but I haven't been to them. Lynwood's the only one I've been to.

Q. And how many hours per day did you spend on a normal -- let's say a normal eight-hour work shift, would you have spent replacing brake shoes or doing other tasks that required you to bend down or stoop over to do your work?

A. It all depends. On average, I'd say

probably maybe five hours a day, you know, I'd be in position, in them type of positions.

Q. The reason I ask is, you know, I understand from conductors and engineers, for example, that some of their day is spent riding in a locomotive from point A to point B. Some of the time, the conductor might be down on the ground checking the cars and air hoses and that sort of thing. And you may be -- are you familiar with those tasks?

A. Well, you know, some days with derailments, I could be on my hips eight hours total, all day.

Q. Right, and that's why I was asking you a normal day. A derailment would be what I would call an unusual event. You'd agree with that, wouldn't you?

A. Yes, sir.

Q. I mean most of your days were not spent working derailments in your 30 plus year year history with the railroad?

A. Exactly. Yes, sir.

Q. So I was asking your typical day, when you're at the car shop here in Rock Hill where you worked most of your career, you're saying about

five hours a day would have been --

A. Yeah, give or take --

Q. -- doing some type of repair work?

A. Yes, sir. Yes, sir.

Q. So you've told me that you think maybe they could have elevated the railcars a little bit to make that task easier. What else, if anything, do you believe the railroad did that you would characterize as unsound or a lack of sound ergonomic practices?

A. Well, not so much that, but help. We asked for help numerous times. Numerous times we asked for help. And ours was they'll be here tomorrow, you know, that type of thing. And we told them then that, you know, we really need some help doing this stuff. And I did, myself, because Jerry, at the time, he was kind of -- Jerry was slowing down, and I'd been taking a bunch of it, so. Yeah, so we -- you know, help would have been the biggest thing we could have had. And at the time they're making the cuts and stuff, that was not going to happen.

Q. During the period of time that you worked here at the Rock Hill car shop or mechanical facility, what was the range of employees in terms

of the most employees that ever worked at that shop and the fewest employees that ever worked at that shop?

A. We had -- at one time, we had four carmen at one time. And let me see when -- now, let me see if I'm right here. Hold on now. Three. I'm sorry, three. Three carmen total at one time. And a supervisor.

Q. And was that the same number throughout the period of time you worked here at Rock Hill?

A. No, sir. The latter part of the years, it was just two of us.

Q. And both the incidents you told me about, you described one other guy being with you. So there was two people on each shift for the last couple of years you worked?

A. Yes, sir.

Q. Who did you --

A. Just first shift. Just first shift. We didn't have a second.

Q. Who did you make the request to for more help, your supervisor?

A. Yes, sir.

Q. And were those just verbal, or did you ever do that in writing?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 146

A. Always verbal.
Q. Do you know whether the union ever sent anything in writing to Norfolk Southern at your request saying Mr. Collins says he needs more help, you guys need to get him some?
A. After a supervisor has denied it, wasn't no use sending it to the union.
Q. What else? You say you needed some more help, and you ask for that, and it wasn't provided. What other things would you describe as lack of sound ergonomic practices?
A. Well, a lot of the things we had in Rock Hill, you know, and some of the stuff we even made, had made. We didn't have a lot of the jacks. We didn't have a lot of the -- the mechanical stuff the bigger shops had to help you with your -- with the practice of what type of work we had to do. It's similar to straightening a boxcar. You know, we had use a torch and a ten-pound hammer to beat -- just to straighten them, straighten the doors out. You know, a lot of these other shops had these straighteners. They could hook up their forklift machines and they could help pull it out. We had none of that.
Q. The shops that you're describing, like

Page 147

Lynwood and some of the others that had this type of equipment you say you guys didn't have, would those be considered bigger shops than the Rock Hill shop?
A. Yes, sir.
Q. So is it fair to say that the larger shops perhaps had more manpower, number one, more tools and equipment, number two, than you had here in Rock Hill?
A. Didn't mean they do any more work.
Q. But I'm just asking, in general, was that true?
A. Yes, sir.
Q. But in terms of the work they did at the bigger shops and the work you did here at Rock Hill, you're saying the job task was the same?
A. Yes, sir.
Q. Just maybe more cars rolled through there?
A. Yes, sir.
Q. Were there other types of repairs that were done, let's say like at Lynwood, that you couldn't do here at Rock Hill?
A. Yes, sir, some.
Q. Tell me about those. What could they

Page 148

do at Lynwood that y'all couldn't do here?
A. Well, we -- some of the major draft systems, things like that. Wheels, we finally got -- we wasn't putting wheels in. They had to have a truck come in to do the wheels. And we'd have to send some up to Lynwood when it was so heavy or things had to be totally replaced that we didn't have the facility to do it. We'd have to send it to Lynwood to let them do it.
Q. What else? Anything else you can think of that you would describe as a lack of sound ergonomic practices by Norfolk Southern?
A. Not that I can think of right now.
Q. The complaint then says you were also exposed to a substantial amount of hazardous work conditions. Anything beyond the things you've already told me about there?
A. No, sir, just basically, you know, mainly was working by yourself. A lot of times, we're out on the weekends by ourself. You're carrying knuckles. You're doing stuff by yourself you should have two people with. And a lot of the rules said we needed two people. But to get the stuff done, a lot of times you was in a situation you had to -- you had to do it yourself. And to

Page 149

get it done and get the trains over the road. So we'd have to do stuff a lot of times we're by ourself, and you shouldn't have been by yourself. I was there at times from, on Saturday, from probably 12:00 to sometimes until 3:00 o'clock totally by myself. No one else was there. If something would have had me, happened to me, I would have just been there. I'd been laying there. No one would have been around.
Q. Now, the condition of the yard or the shop in terms of not having the elevated tracks that you described there at Lynwood, that was the same the entire time you worked at Rock Hill, right?
A. Yes, sir, that's correct.
Q. And the manpower issue, that was the same the entire time you worked at Rock Hill as well, correct?
A. Yes, sir.
Q. Your complaint also says you're required to perform ergonomically unsafe work using unsafe methods, tools and equipment. You've already told me about the ergonomically unsafe work. You described that. Tell me about any unsafe methods, tools or equipment you're required

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 150

to use.
A. Well, basically, it's the same range of having to doing the bending and stuff by yourself. You know, lifting by yourself a lot of times, picking stuff up by yourself. The total work effort by yourself was unsafe there. Totally, I mean. But it -- again, the railroad's cutting, so we wasn't going to -- we wasn't going to get anybody else. They wasn't going to let us have anybody else to help, which they should have, you know, a lot of times.
Q. Now, how old are you currently, Mr. Collins?
A. I'm sorry?
Q. How old are you currently?
A. I'm 63.
Q. And were you 62 when you went out on medical?
A. Yes, sir.
Q. And my understanding from looking at your records is the reason your doctor has written you out is your hip issues, is that correct?
A. Correct.
Q. Do you have any other medical conditions that any of your doctors have written

Page 151

you out of work for?
A. No, sir.
Q. You remember earlier I was showing you some records where your doctor said that you had told them that the work on the railroad had worn you out and that that had been going on for several years? Remember that?
A. Yes, sir.
Q. And I had asked you a little bit about when some of those problems occurred, and you said it was really only the last year or two that it got so bad you couldn't take it anymore?
A. Exactly.
Q. Tell me when you first started having issues with your hips that caused you any problems, whether you could work through it or not, but when you just first realized my hips aren't doing right?
A. The last years. My last years.
Q. Last few years with the railroad?
A. Yes, sir, the last couple years with the railroad.
Q. And you were 62 when you went out. You're saying when you were late 50s?
MR. THICKENS: Object to the form.
BY MR. WRAY:

Page 152

Q. Would it have been when you were in your late 50s when that first started happening?
A. Oh no, sir. No, sir. No, sir.
Q. Well, you -- I'll strike. You said the last few years with the railroad, and if you went out at 62, the last few years would be --
A. 60s.
MR. THICKENS: Object to the form.
THE WITNESS: Yes, sir.
BY MR. WRAY:
Q. Is Dr. McCarthy the only doctor you've ever seen for issues with your hips?
A. Yes, sir. Other than the one that gave me a shot in it. That's the only doctor, though.
Q. Let me ask you to assume something for me for a moment. Assume for me that your hips were fine and you didn't have any issues with your hip, would you still be able to do your job with the railroad currently?
A. No, sir.
Q. What would prevent you from doing your work?
A. My back.
Q. Well, when I asked you earlier whether any of your doctors had written you out for

Page 153

anything on your hips, you told me no.
A. Excuse me?
Q. I asked you earlier if any of your doctors had written you out for anything other than your hips, and I thought you told me no.
A. Well, I thought we was just talking about our hip, not my back either.
Q. What doctor has told you that your permanently disabled due to your back?
A. Permanently disabled?
Q. Yeah.
A. Well, she said I couldn't -- Dr. Lazeski said I couldn't do that type of work anymore because I can't reach over my head, and I was limitation to how much I could pick up and do it with my hip.
(EXH. 11, Physician Statement, was marked for identification.)
(EXH. 12, Physician Statement, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you what we've marked as Exhibits 11 and 12, and these are pretty similar documents. They're just dated differently. It says attending physician statement, and I don't

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 154

know if you can read the signature, but it's signed by Dr. McCarthy down at the bottom.
A. Right.
Q. Do you see that?
A. Yes, sir.
Q. My question really wanted to ask you on both of these forms, the first one's got a date of last visit, says October 20 -- I'm sorry. Yeah, October 20, 2016. Exhibit 11, in the middle of that paragraph, it says nature of treatment, conservative treatment included walking cane for ambulation. Do you see that?
A. I'm looking. Yes, sir.
Q. And then down a little bit further under prognosis, it says please explain why patient remains unable to work, and somebody wrote in unable to ambulate without assistance. And it's got in parentheses walking cane. Do you see that?
A. Right. Right.
Q. I didn't see you with a walking cane today.
A. No.
Q. Do you still use a cane of any sort?
A. No, I haven't used on in a while.
Q. Did you use one at one -- at some point

Page 155

in time?
A. I have at the house sometimes. Just kind of walking around and it would start hurting me, and I just -- I had an old stick I made up and I'd use it some.
Q. And if we look --
A. Yes, sir.
Q. And if we look at Exhibit 12, it says the same. I was basically going to ask you about the same thing. It says nature of treatment, limited weight bearing, use a cane for ambulation. Do you see that?
A. Yeah, I was still having a hard time getting up.
Q. What period of time did you have to use a cane to help you get around your house?
A. The last part of the year. My latter year.
Q. Last part of what year?
A. My latter year with the railroad would have been in '16.
Q. Have you used a cane to help you get around anytime after the end of 2016?
A. No, sir.
Q. What has Dr. McCarthy done to try to

Page 156

get you better?
A. Well, I've had shots. I had a shot. He -- I was given a -- I think -- I don't know what type, it was injection. He had given me those to try to heal it, heal it up.
Q. Have you had surgery?
A. No, sir. No, sir, I haven't.
Q. How many times have you had injections in your hip?
A. Just once.
Q. Do you know when that was?
A. No, sir, I don't recall the date.
Q. What current medications do you take?
A. I've taken Oxycodone sometimes when needed.
Q. Oxycodone for pain?
A. Yes, sir.
Q. Anything else?
A. Not for pain. No, sir.
Q. You still on your high blood pressure medication?
A. Yes, sir. Yes, sir. Yes, sir.
Q. Do you take anything for high cholesterol?
A. No, sir.

Page 157

Q. Were you sent at some point after you left work with the railroad in, I guess, September of 2016, were you sent for further physical therapy?
A. No, sir. With my hip. We're still talking about my hip, right?
Q. Well, no, for any -- were you sent to physical therapy at all, for any reason?
A. No, I don't recall.
Q. And I'm not trying to trick you. I'm looking at some records from Select Physical Therapy that look like they're dated January of 2017. Do you recall going over there for physical therapy?
A. Yeah, I did go there, but I'm not sure of the dates. At the timeframe you're talking about, I'm not really sure in that time, but I did go to Select. Yes, sir.
(EXH. 13, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've showed you what I marked as Exhibit 13, and this is just one record, I didn't pull all the records, but from Select Physical Therapy. It's dated January 18, 2017. Do

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 158

you see that date?
A. Yes, sir, I do.
Q. And under the section that says history of injury, says when he was forcefully trying to open a door on the train in March 2016 and then again in August 2016, injuring his neck. Did I read that correctly?
A. Forcefully, not correct, but date's correct.
Q. Well, my question was did I read it correctly?
A. Yes, sir, you read it correct.
Q. And you remember earlier, I showed you a record from Dr. Lazeski, where she said you aggressively tried to open the door, and you said you didn't tell her that. Is that -- you deny that, right?
A. Yeah, I'm still denying that. Yes, sir.
Q. And this is a separate, completely separate practice, looks like Dr. Lewis T. Savisky, physical therapist, and it says forcefully trying to open a door, and you deny you said that as well?
A. I didn't say that.
Q. You did not say that?

Page 159

A. No, sir.
Q. Well, if we look at page two under plan, it says the patient is discharged due to a plateau in progress. Do you see that?
A. Where is that at?
Q. Under the -- right before the signature block where it says plan.
A. Plan? Okay. Yes, sir, I see that at the bottom.
Q. Was January of 2017, to the best of your knowledge, the last time you went to Select Physical Therapy?
A. Yes, sir.
Q. Did they tell you that the reason they were discharging you was because you had reached the best they could get you?
A. Basically. I honestly -- wasn't much to this, but yes, sir.
(EXH. 14, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I'm now handing you what we've marked as Exhibit 14, and this is another record from Carolina Orthopedic. And it looks like that's Dr. McCarthy. Do you see that down at the

Page 160

bottom of the page?
A. Yes, sir, I do.
Q. And this one, the chief complaint, the date is January 26, 2017. Do you see that as the date of service?
A. Yes, sir.
Q. And it says patient presents here with right hip pain. He has had longstanding history of pain in the right hip. Did I read that correctly?
A. Yes, you did.
Q. Did you tell Dr. McCarthy in January of 2017 that you had a longstanding history of pain in your right hip?
A. No, sir.
Q. What do you recall telling him about how long you'd been having issues with your hips?
A. I told him that I'd history with it the last year aggressively hurt pain in my hip.
Q. When you went to see Dr. McCarthy, was anybody else with you on these visits?
A. No, sir.
Q. How about Dr. Lazeski or the physical therapist?
A. No, sir. No, sir.
Q. In terms of the conversations with your

Page 161

medical providers, was that between you and them?
A. Yes, sir, it was.
Q. For example, you told me you're married. Your wife wasn't the one telling them any information about you?
A. No, sir, no one was with me.
(EXH. 15, Answers, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you what we've marked as Exhibit 15, and this is a legal document that we, as lawyers, exchange. It's called answers to interrogatories. Have you ever seen this before?
A. Yes, sir, I think so.
Q. Do you recall assisting your lawyers with providing information we had asked for about your lawsuit and the injuries you're claiming?
A. Well, I'm not exactly sure if this is all of it, but I've tried to give them all the information they've asked me for.
Q. Have you looked over the answers that your lawyers provided me before today?
A. The answers provided you?
Q. Yes.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 162

A. No, sir.
Q. And the reason I'm asking is the answers are supposed to be your answers provided under oath, and --
A. Yes, sir.
Q. -- and/or verified by you.
A. Yeah.
Q. Are these your answers to our questions?
A. Oh yes, sir.
Q. All right. And is the information in these answers true and correct to the best of your knowledge?
A. The best of my knowledge, yes, sir.
Q. Did you tell us anything false or incorrect to try to trick us or fool us about the case?
MR. THICKENS: Object to the form.
BY MR. WRAY:
Q. Did you?
A. Did I do what, sir?
Q. Did you tell us anything false or incorrect to try to trick us about your lawsuit?
MR. THICKENS: Same objection.
THE WITNESS: Oh no, sir. No, sir.

Page 163

BY MR. WRAY:
Q. One of the things I was asking you earlier about who treated you for the injuries you're claiming in this lawsuit, and you will see both in response to question one and response to question four, we see Dr. McCarthy, Dr. Kimble, and Dr. Lazeski, all of whom we've talked about today, correct?
A. Yes, sir.
Q. There's also another name here, Dr. Kinjal, and that's K-i-n-j-a-l, Parikh, P-a-r-i-k-h. It says Charlotte Surgery Center.
A. I think he's -- I'm not positively sure, but I think he's the one that gave me the injections in my neck.
Q. Let me ask you to look on with me question 11. There's not a page number, so just flip to question 11.
A. Yes, sir.
Q. And we had asked you whether you were claiming as part of this lawsuit that you sustained any permanent injury or disability as a result of the injuries described in your complaint. And then you see the section that's labeled answer down there at the bottom of the page? Do you see that?

Page 164

A. Down here at the answer?
Q. Yes.
A. Yes, sir.
Q. And I'm just going to read it, and I want you to read along with me and make sure I'm reading it correct. It says Plaintiff has become permanently disabled due to his injuries listed in his complaint. He has permanent injuries to his neck, shoulder, back and hips as mentioned in his original complaint. Is all of that true?
A. Yes, sir.
Q. And then if we flip over to the next page at the top, it says Plaintiff's injuries made subject of this suit prevent him from engaging in numerous activities, including but not limited to, lifting over 40 pounds, lifting 20 pounds overhead, lifting 35 pounds from waist to shoulder, yard work, painting, running, squatting, sitting for long periods of time, looking down for long periods of time, playing with grandchildren, lying on left side while sleeping and sexual discomfort. Did I read that correct?
A. Yes, you did. Yes, sir.
Q. Is all of that true?
A. Yes, sir.

Page 165

Q. How long have you been limited in your activities to not lifting over 40 pounds?
A. Over my head, this last -- since my neck injury.
Q. And the neck injury you're talking about --
A. The one with the door.
Q. August 31 of 2016?
A. Uh-huh.
Q. Is that right?
A. Yes, sir.
Q. And the lifting restrictions that I just read from this answer, are those restrictions that have been put on you by your doctor?
A. Yes, sir.
Q. And your doctors told you not to lift over 40 pounds?
A. Yes, sir.
Q. Don't lift over 20 pounds overhead?
A. Right.
Q. And don't lift 35 pound from waist to shoulder, is that correct?
A. Exactly.
Q. Since August 31 of 2016, since you've told me that's when this began, had you lifted over

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 166

40 pounds?
A. Have I lifted over 40 pounds? I had at the time, yes, sir.
Q. When had you done that and where?
A. At home, probably.
Q. How about lifting 20 pounds overhead, have you done that?
A. I don't do that.
Q. You don't do that at all?
A. I don't do that.
Q. How about lifting 35 pounds from waist to shoulder?
A. I don't think so.
Q. And so you're --
A. Yes, sir, I have. Yes, sir, I have. I have, too.
Q. When did you do that and where?
A. I've done that in the gym.
Q. What gym are you talking about?
A. Gold's.
Q. Tell me about that. How long have you been a member of Gold's Gym?
A. Oh, I've been a long time.
Q. How far back?
A. Well, since it opened.

Page 167

Q. Give me a date range estimate.
A. Oh, I've been a member of this gym here since probably, oh Lord, I don't know. It's probably been maybe five years, something like that in that area.
Q. How often do you work out at the gym?
A. I try to go every day, if I can.
Q. And what do you do when you're there?
A. I do very low impact everything. Very low impact.
Q. Tell me -- I don't know what you mean by that. What do you mean by low impact?
A. Well, I don't do heavy weights. I do machines. Everything guided, you know, so I can actually control what I'm doing. I don't do anything to -- that hurts, put it that way.
Q. When you're there, how long do you normally work out?
A. About an hour. That's including talking.
Q. Who goes with you?
A. No one.
Q. And when you say you're doing the machines, what kind of machines do you work out on?
A. I do a cardio glider. It's low impact

Page 168

walking. I do a -- I try to do the leg machines, but I have to do just real light weight on them. I do basically what I was told by the doctor I could still do and they wanted me to keep doing, you know, the type exercises they told me to do. And they told me some to do that I still can't do and won't do.
Q. Like what?
A. Like overhead presses. I don't -- I can't do a certain overhead press. I can't do that because it hurts. I don't do -- well, I've -- that's it, really. I don't do any type overhead presses at all.
Q. And my understanding is that Dr. McCarthy has concluded that you're disabled due to your hips?
A. Yes, sir.
Q. What do you do, if anything, during your workout that would involve or require you to use your hips?
A. I do a low-impact press with my legs, but I do real light weight with it. And I don't do a full extension with it. Can't do a full extension. In other words, I can't -- I can't do it all the way in. I have to do it out so I don't

Page 169

have to -- to bend in the hip because it'll hurt.
Q. Do you do any -- you said you use only machines. Do you use any free weights like for curls or anything like that?
A. Very seldom.
Q. And how much weight can you -- when you do it, you say it's kind of seldom. How much weight to you lift?
A. I don't do -- I don't hardly do any weight lifting because I do -- I try to do all the machines with that. Sometimes I have tried it, and then when it hurts, I just quit.
Q. I know from some of your earlier medical records I looked at that you used to be a runner?
A. Yes, sir.
Q. I think it said you used to run maybe even up to two, three miles at times?
A. Yes, sir, I did.
Q. Do you do that anymore?
A. Oh no, sir. I've been quit that.
Q. When did you quit running?
A. When my hips started bothering me real bad.
Q. Which would have been when?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 170

A. In '16.
Q. When you go to the gym, as part of your workout, do you get on a treadmill or anything like that?
A. No, sir, no treadmills. No, sir.
Q. How about I call them an elliptical machine. Do you ever use that?
A. I get on a cardio glider. It's very low impact. You don't have any impact when you're doing that at all. It's just a stride. I can't do any type of impact.
Q. When you get on what you call the cardio glider, how long do you usually work out on that?
A. All depends on how I feel. I try to do it -- I try -- I try to do 30 minutes. That's pretty much one of the only ones I can do without any pain.
Q. Kind of how we got started on this path is I was asking you about the lifting restrictions. As part of your workout then, now that we know you're doing these workouts, do you or have you lifted over 40 pounds as part of your workout routine at the gym?
A. Yes, I have.

Page 171

Q. And how about lifting 20 pounds overhead, have you done that?
A. No, sir, I don't do that.
Q. Have you lifted 35 pounds from waist to shoulders as part of your workout?
A. Yes, sir.
Q. How often do you do that?
A. Maybe -- I don't do it every week. Once every -- every so. I don't -- and I don't do, you know, weights like that. A lot of times just machines. I don't know, maybe a couple times a month.
Q. And the Gold's gym that you're a member of, where is it located?
A. On -- right here on Cherry Road.
Q. When you go to work out, do you just go by yourself?
A. Yes, sir.
Q. What else do you do as part of your workout routine beyond what you've already told me?
A. That's pretty much it.
Q. Do you work out anywhere on a regular basis other than your time at Gold's Gym?
A. No, sir.
Q. Your interrogatory answer also says

Page 172

that you don't do any yard work. Has that been true since you've been out of work?
A. Very seldom. My wife does that.
Q. Don't do any painting?
A. Lord, no.
Q. We already talking about running. How about -- and it says you don't squat. So tell me about that.
A. Can't squat. Squatting hurts. Squat is something I don't do because the pain in my hip when I squat down a certain -- to a certain degree, I have pain in it. I have to just about help roll myself over trying to get myself up if I can get down.
Q. Tell me what the difference in that is and you told me you do some leg presses at the gym.
A. Yes, sir. I don't do -- like I said, I don't do full extension. I do just a short -- in other words, I never bend beyond a certain point. I don't go beyond a certain -- I stay out with my legs -- in other words, when I do the presses, I don't -- I don't -- doing that, say 90 degree with my hip. I don't let it come back where I'm folded up, where it's bending me. I keep it out. I keep it adjusted out. So basically what I'm doing is my

Page 173

-- basically, my calves. Nothing there, that part right there. But I don't -- I never do a complete squat. Can't -- so I can't -- okay, I can't lay on my side. If I lay on my side and sitting here in this chair bothers me. That's why I turn sideways any length of time. If I go on a trip, hurts. Can't run around with your young'uns anymore. That hurts. If I make a quick turn, I'm hurting. Sexual activity is kind of -- it gets painful sometime.
Q. How many grandchildren do you have?
A. I have three.
Q. And you told me you've got the one so, so are they all his children?
A. No, sir. I have one here.
Q. And how old are your grandkids?
A. Oh, I've got one seven, two and one. Seven, three and one. Let me get this straight.
Q. It says you have difficulty lying on your left side while sleeping. Is that true?
A. Yes, sir.
Q. And then it talks about sexual discomfort. Does that mean you just -- you can have sexual intercourse, but it's just painful when you do it?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 174

A. Hurts sometimes. Sometimes it hurts.
Q. I saw, and we looked at one of the records earlier, you were talking Cialis at some time before all this happened?
A. Uh-huh, yes.
Q. Are you still taking that medication?
A. Every once in a while.
Q. And not to pry too much into your business, but because it's alleged in your lawsuit, how often do you currently have sexual relations with your wife?
A. Really?
Q. Yeah. Well, I mean you've got in part of your complaint as part of your damages.
A. Yeah, okay. Let's say -- and this is probably pushing it. I don't want to make myself feel good here. Honestly, sometimes maybe once a month.
Q. And how -- has that changed since you've been out of work from what it was before you were out of work?
A. Has it changed?
Q. Yeah. Was it always a month, or has that changed?
A. No, it was more at times. It was more.

Page 175

Q. Tell me what's the frequency change from to now once a month.
A. Once a week.
Q. You've been out of work since September of 2016, is that right?
A. Yes, sir.
Q. And how much were you earning with the railroad?
A. How much was I earning at the time? I want to think my last -- that last year, it was like 74, maybe, $75,000.00, something like that, in that area. I'm not -- I'm not exactly sure. I'm thinking -- I'm pretty sure it was in the 70s.
Q. Does that include any overtime or additional pay you got?
A. Well, at the last time, no, sir, we don't -- we wasn't getting any overtime and all. They had cut it completely off. And holiday stuff. So that was pretty much straight time.
Q. Now, the job you had in Rock Hill was eliminated, and that's why you went to Charlotte?
A. Correct.
Q. Is the job that you had in Charlotte at the time you went on medical leave, does it still exist?

Page 176

A. Was it what, sir?
Q. Does it still exist; do you know?
A. I'm not sure.
Q. Do you know who, if anyone, has the position that you had before you went out on medical leave?
A. I couldn't tell you, sir.
Q. Since you've been out of work with the railroad, have you worked anywhere else?
A. No, sir.
Q. Have you earned any compensation from any source as a result of work --
A. No, sir.
Q. -- labor you've done?
A. No, sir.
Q. I understand you did apply for railroad retirement board benefits?
A. Yes, sir.
Q. And you're drawing those currently, is that correct?
A. Yes, sir, I am.
Q. What do you draw from the RRB?
A. Oh, let me see. I think I draw 38, I think 3,842. I'm not exactly sure of that number. It's 38 something.

Page 177

Q. Is that per month?
A. Yes, sir. Yes, sir.
Q. Let me ask you to look back at the Exhibit 15 again, the interrogatories.
A. Okay. We're going to go to where?
Q. Number 17.
A. Yes, sir.
Q. And that question asks you to describe in detail all activities in which you could engage prior to the injuries alleged in your complaint that you have been unable to perform since the injuries alleged in your complaint, and the answer is similar to what we read earlier. It says Plaintiff's injuries made subject of this suit prevent him from engaging in numerous regular activities, including but not limited to yard work, painting, running, squatting, sitting for long periods of time, looking down for long periods of time, playing with grandchildren, lying on left side while sleeping and sexual discomfort. Is that correct?
A. Yes, sir.
Q. Is all that true?
A. Yes, sir.
Q. Are there any other activities that you

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 178

can think of that you used to like to do that you now say you can't do due to injuries that you suffered on the railroad?
A. That's pretty much covered it.
Q. Have you ever been charged with any crime?
A. No, sir.
Q. And I asked you about the motor vehicle accidents earlier. You've never had another lawsuit besides this one?
A. I had a -- well, let me see, with my knee -- no, sir. No, sir.
(EXH. 16, Application, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you what I marked Exhibit 16. And I was asking you about whether you had applied for benefits with the RRB, and you told me you had, correct?
A. Yes, sir.
Q. If we flip to the last page of that, which is page 16 in the set, --
A. Last page?
Q. Yeah, is that your signature there?
A. Yes, sir, it is.

Page 179

Q. It's dated April 24, 2017?
A. Uh-huh.
Q. And just above that -- and I'm sorry, that was a yes, right?
A. Yes, sir. Yes, sir.
Q. Just above that, it says I know if make a false or fraudulent statement in order to receive benefits from the RRB or if I fail to disclose earnings or report employment of any kind to the RRB, I am committing a crime which is punishable under federal law. Do you see that?
A. Yes, sir.
Q. And you were truthful in your application to the RRB, is that fair to say?
A. Yes, sir. Yes, sir.
Q. If we look at page two, section six, it says describe the medical conditions causing you to file. Do you see that?
A. Yes, sir, I do.
Q. And you wrote gout and osteoarthritis of left hip. Do you see that?
A. Yes, sir.
Q. You didn't say anything there about your back, did you?
A. No, sir.

Page 180

Q. Didn't say anything there about your neck, did you?
A. No, sir.
Q. And the gout you had, that has nothing to do with your work with the railroad, correct?
A. No, sir.
Q. Then it says in section seven, enter the date this condition began to affect your ability to work, and you wrote September 1, 2016. Is that correct?
A. Yes, sir.
Q. You didn't mention either of the incidents in March of 2016 or August of 2016, did you?
A. No, sir.
Q. In section 12, it says describe how your condition prevents you from working, and you said not able to bend, squat, walk on uneven surfaces or climb without having pain. Is that what you said?
A. Yes, sir.
Q. Question 25, or I'm sorry, 26 asks you to describe any restrictions you have. And it says no squatting, bending or running. Do you see that?
A. On 26?

Page 181

Q. Yes.
A. I'll get there. All right, sir, I'm there.
Q. Do you see the answer you gave to question 26, which says restrictions, no squatting, bending, running?
A. Yes, sir.
Q. You do, in fact, do some squatting and bending as part of your workout, don't you?
A. No, sir.
Q. None of that?
A. No, sir. I don't do any squatting or bending or running.
Q. And then question 40 asks about any additional information that describes your daily activities during a normal day. And you wrote light workout. Do you see that?
A. Excuse me?
Q. Question 40.
A. Okay. 40, yes, sir.
Q. It says enter any additional information that describes your daily activities during a normal day, and you wrote light workout.
A. Yes, sir, that's correct.
Q. And you described what you told me you

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 182

do at Gold's Gym as a light workout?
A. Yes, that's it. Yes, sir. Light workout.
Q. According to Dr. Lazeski's records that we got, she discharged you as a patient on March 1, 2017. Is that consistent with what you recall, or do you know?
A. I don't -- I don't recall.
(EXH. 17, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Mr. Collins, I've handed you Exhibit 17, record from Dr. Lazeski dated March 1, 2017, and if you look down under the section that says plan at the bottom of the page, it says patient has completed a full course of conservative care, including physical therapy, anti-inflammatory medications, and facet joint injections. Do you see that?
A. Yes, sir, I do.
Q. And it says no further treatment options to offer him. Do you see that?
A. Yes, sir, I do.
Q. Do you recall Dr. Lazeski telling you that?

Page 183

A. Yes, sir.
Q. And it says he has completed a functional capacity evaluation and is able to do medium physical demand category work. Do you see that?
A. Yes, sir, I do.
Q. Have you tried to find some medium physical demand work that you can do?
A. No, sir.
Q. What efforts, if any, have you made to find employment since you've been out of work with the railroad?
A. I haven't.
Q. Why not?
A. Don't need to.
Q. Why not?
A. I don't need the money.
Q. And you're saying because of your retirement and the benefits you're drawing from the RRB?
A. Correct.
Q. And so you don't want to work anywhere else at this point?
A. No, sir. If I would have worked, I'd have stayed with the railroad.

Page 184

Q. And then the last sentence of that section says he will be released from my care today. And that's what I was asking you. You told me you didn't know the date, but at least according to this record, it looks like March 1, 2017. Is that right?
A. Yes, sir.
Q. Have you been back to see Dr. Lazeski since March of 2017?
A. No, sir.
Q. Are you seeing any other medical providers currently for any issues you relate to your work at the railroad other than Dr. McCarthy?
A. No, sir.
Q. Mr. Collins, we've talked about a variety of things today. You've told me about some pain that you had in various parts of your body. You told me you've missed some time from work. Are there any other out-of-pocket expenses that you're claiming you have suffered because of any injuries you had at the railroad?
A. Out-of-pocket?
Q. Yes.
A. Now, explain yourself, please.
Q. Something you've had to pay out of your

Page 185

own bank account due to the injuries you say you suffered at the railroad?
A. No, sir.
Q. Because my understanding is that you were covered by the railroad's health plan?
A. Yes. Yes, sir.
Q. And you've filed your medical claims with that provider?
A. Yes, sir.
Q. And the railroad has processed and paid those claims?
A. Yes, sir.
Q. You're not out-of-pocket anything for that?
A. No, sir. No, sir.
Q. You told me you lost some time from work and you were making about $75,000.00 a year, but you were 62 when you went out?
A. Yes, sir.
Q. So you were close to retirement anyway, is that fair to say?
A. Yes, sir. Well, I was, but things have changed at my wife's work. They have -- they started laying people off, and we was afraid she was going to get cut without any insurance because

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 186

she was on my insurance. And I was really concerned staying and working, you know, a little bit longer.

Q. What was your plan if you hadn't of gone out of work?

A. Well, I didn't really have a plan. That came up so quick with us, her, you know, the cuts and stuff. And it was just to try to get back, you know, if I could and, you know, keep working a little bit longer anyway, long as I could.

Q. Did you ever discuss with your wife what your kind of target date was to retire?

A. Not really. We had talked about it, but it changed so much, I mean because every time her -- every time we started talking about a retirement, she'd start talking about cuts at work. And I said it's always the best timing. So that was it about that. I wasn't any further with that because I knew she had to have insurance.

Q. How old is your wife?

A. She is 58.

Q. So if you had not had these incidents on the railroad you described for me, when do you think you would have quick working?

Page 187

A. I was going to go, try to go to 65.

Q. Are there any other injuries to any part of your body that we have no yet discussed already today that you attribute to your work at the railroad?

A. No, sir. No, sir.

MR. WRAY: Let me take a break.

(Off-the-record conference.)

BY MR. WRAY:

Q. Mr. Collins, just a few more questions to kind of finish up here. You were telling me about the workout you do over at Gold's Gym, and you described the machine as the cardio glider. You remember telling me about that?

A. Yes, sir.

Q. Does that machine have a setting on it that you can set a certain resistance level as you're doing it?

A. Yes, sir.

Q. What level do you typically use when you're setting?

A. Well, I start off at zero. No resistance.

Q. And what do you go up to?

A. Maybe three.

Page 188

Q. When you go into that gym, do you have to scan a card in or something that'll show when you've been there?

A. Yes, sir.

Q. And then as you're using the machines, does it record any of your progress or what you've done for a particular workout?

A. Excuse me?

Q. Do the machines --

A. No, sir. No, sir. No, sir.

Q. You don't have to enter a --

A. No, it --

Q. -- code or an ID number or anything?

A. -- does that. We don't have anything like that down there.

Q. When you're on the cardio glider, how would you describe your -- the pace of that workout? Do you just kind of walk slowly or --

A. Yes, sir, just -- just a slow fluid motion. Slow fluid, if that makes sense.

Q. A little bit. I'm just trying --

A. Smooth, not -- not -- maybe -- maybe faster than a walk.

Q. Do you ever get to a pace that appears or looks like you're running?

Page 189

A. No. No, you can't hardly do that on that machine.

Q. How about you told me you also do some leg presses, and you said you don't fully extend. Are you talking about when you push your legs out you don't fully extend them?

A. Right.

Q. How about when they come back in?

A. No, that's where they're not extended. That's when you -- when you're sitting in the machine, you push them out. When I come back, I don't -- they've got settings on it, okay, one -- like one through six. I won't get no -- really no further than really three because that's just far in as I want to come. I don't want to come any further. Six would be folding you up. Five would be fold -- four, but three's a comfortable area in there that it doesn't hurt me.

Q. I mean you're giving me these numbers, six, five, four, three. Those are settings on the machine?

A. Yes, sir.

Q. How much weight do you typically use when you're doing the leg presses?

A. Oh, I don't go up no more than --

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 190

usually, with those settings, I can -- you can go up to maybe 150-160 pounds comfortably without any, you know, without any trouble.

Q. Is that how much you do?

A. Yes, sir.

Q. And then other than the leg presses, do you do any leg curls?

A. I try to. I can't do -- I can't do much with leg curls.

Q. How much weight do you typically use on the leg curls?

A. I have a big problem with that. 30 to 45 pounds, maybe. Maybe. Most of the time, 30.

Q. It's been a long time since I've worked out. Is --

A. There's a problem with my knees. I can't do it because of my knees. My knees hurt when I do that, so I'm not able to do any weight with that hardly.

Q. As you can probably tell, I'm not one that works out a lot, but when you do leg curls, are you extending the legs forward, or do you wrap them behind you?

A. No. It's forward. It's just extension at your knees. You're sitting in an inverted

Page 191

chair. It's an extension of your knees.

Q. Who takes care of the yard work around your house?

A. Well, my wife and me, what little bit I do. Both of us.

Q. What size lot do you have?

A. We have an acre.

Q. And do you have a riding mower, push mower?

A. Yes, sir, riding mower.

Q. And since you've been out of work, have you been using your riding mower to take care of your grass?

A. Oh yeah. Yeah.

Q. How about the other -- I don't know if you have shrubs or hedges around your house. Who does all that?

A. She's been doing that. She wants me to do it, but I ain't squatting down to do it, so she don't push it.

Q. Have your doctors told you that you're going to need surgery at some point?

A. He -- he kind of reiterated that to me.

Q. Who did?

A. Dr. McCarthy.

Page 192

Q. But as we sit here right now, you don't have any surgery scheduled?

A. No, sir. I hope I don't have to.

Q. How often are you seeing Dr. McCarthy?

A. I'm not.

Q. Are you seeing anyone for your hips?

A. No, sir.

Q. And you're not seeing anyone for your back because we already talked about that?

A. No, sir. No, sir.

Q. So you're under no medical care currently other than maybe seeing Dr. Barron, your regular physician?

A. That's correct, like my physicals. Yes, sir.

Q. And as we sit here right now, do you have any further medical care planned?

A. No, sir. Other than physicals, no, sir.

MR. WRAY: That's all I have, Mr. Collins.

MR. THICKENS: I just have a few follow-ups.

EXAMINATION

BY MR. THICKENS:

Page 193

Q. Mr. Collins, I've got a few questions just to briefly follow up. Going back, if you can remember all the way to the beginning of the deposition, you were asked about a 2013 motor vehicle accident, is that right?

A. Yes, sir.

Q. And I believe you had one in 2009 and one in 2013, is that right?

A. Yes, sir, that's correct.

Q. Do you -- are you certain that you didn't go to the doctor after the 2013 accident, or do you just not recall as you sit here today?

A. I don't recall if I did. I just don't -- I don't think I did, but I really don't recall if I did or not.

Q. So you don't think you did, but you can't say with absolute certainty whether you went to the doctor?

A. Yes. Yes, sir.

Q. All right, related to that one which involved you opening the door on the side of the boxcar, do you remember that?

A. Yes, sir.

Q. Was there anything -- what kind of surface were you standing on at the time you were

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 194

opening the door?
A. Oh, that'd be a concrete surface.
Q. And how high did you have to reach up?
A. I want to think it was like seven and a half, maybe, feet, something in that area. I'm not exactly sure, but I'm thinking pretty much that. Because it was definitely over my head that I'd have to grab and pull down.
Q. Were there any issues with the work area that contributed to your difficulty in opening the door?
MR. WRAY: Object to the form.
THE WITNESS: Ask again, please?
BY MR. THICKENS:
Q. Sure. Were there any problems with the work area that contributed to you having difficulty opening that door?
A. No, sir.
Q. How did the car get to the train yard?
A. It comes in on a through freight, set off in Rock Hill. The Bowater crews, which we have two of them in the afternoon, they take the cars that cut down to Bowater. Bowater, they place them. We have a unit down there at Bowater, which is -- they use to place the cars in the mill. And

Page 195

what they do, they load them. They'll go through the cars and they open doors. And the ones that can't open or find something wrong, that's when they reject them to us. And then the cars rejected, sent back to Rock Hill and sent to our shop for us to examine.
Q. And who rejects the car?
A. Bowater.
Q. Okay. Who brings the car back to Rock Hill?
A. We do. Our crews, Norfolk -- yeah, NS crews.
Q. Do all of those cars come back on the same train?
A. Sometimes no. It can be different ones. You know, the different first shift or the second -- the third shift or the second shift, which crew. That'd be different crews that bring them back in.
Q. Do they all come back in the same group on the train? In other words, do you have just rejected cars spread throughout a train, or are they attached to the back?
A. They try to put them in the back, but sometimes the way they're situated in the train,

Page 196

they'll have this car loaded here and maybe this one was bad ordered. And then they loaded this one. Instead of cutting them out, they'll wait until they get to the yard and then the yard will cut the bad order out of it and then take it in to us, and they'll leave the loads, of course, together for pickup.
Q. Do you know what yard the cars are cut at?
A. That'd be the Rock Hill yard.
Q. Do you participate in cutting the bad cars out of the train?
A. No, sir, I don't. No, sir.
Q. Do you know what crew would participate in cutting bad cars out of the train?
A. It would the yard crew there.
Q. Is there any sort of report or identification done to say what's wrong with a car that's been cut?
A. Sometimes. They wasn't exactly 100 percent on that. We tried to get them to tell us what was wrong with the car so we'd have a heads-up before we started looking at it. But there were times that they had nothing on the cars, and we would have nothing to go by, you know. So it was

Page 197

just our own evaluation of the car to tell whether or not it was bad or not. And then a lot of times, we wouldn't know until we went through the process of trying to open and close them to see if it was -- if it was bad or what the problem was.
Q. Did anybody tell you what the problem was with the car that you got injured on?
A. No, sir.
Q. And so you were just expected to go do an evaluation of the car?
A. Exactly.
Q. And you did a visual inspection, I think you testified?
A. Yes, sir. Yes, sir.
Q. So seeing nothing visually wrong, you then just proceeded with the examination of the car?
A. Right. Yes, sir.
Q. And it was at that point that you got injured as you discovered --
A. Right.
Q. -- what was wrong with the car?
A. Yes, sir.
Q. Do you have -- did you have any history provided to you of the usage of the car from

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Norfolk Southern?
A. They probably do, but you know, I don't -- I don't know now, no.
Q. Were you handed a history of the car?
A. Oh, no. No, I wasn't. No, sir.
Q. So you weren't given anything to say where the car had been or how long it had been in service?
A. No, sir. No, sir.
Q. It just gets cut onto your yard, and then you're expected to --
A. Exactly. Yes, sir.
MR. THICKENS: That's all my questions.
EXAMINATION
BY MR. WRAY:
Q. Mr. Collins, just to follow up on that, the car came to the shop as a bad order, meaning Bowater, had reported something wrong with it, correct?
A. Rejected it, yes, sir.
Q. And your job as a carman was to find out what the problem was and to fix it and repair it, is that correct?
A. Yes, sir.
Q. And your testimony is that you were

injured while in the process of doing your job --
A. Exactly.
Q. -- as a carman, right?
A. Yes, sir.
MR. WRAY: Okay. That's all I have.
MR. THICKENS: Nothing further.
(The witness, after having been advised of his right to read and sign this transcript, waives that right.)
(The deposition was concluded at 3:20 PM.)

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

CERTIFICATE OF VERBATIM TRANSCRIPT

I, Sarah E. Young, Notary Public for the State of North Carolina at Large, do hereby certify that the foregoing transcript of MICHAEL W. COLLINS was taken by me and transcribed by me and is a true, accurate, and complete record.
I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
In witness whereof, I have hereunto set my hand this 24th day of April, 2018 at Rock Hill, South Carolina.

SARAH E. YOUNG NOTARY PUBLIC SOUTH CAROLINA

Sarah E. Young
My Commission expires
June 2025

I N D E X

	Page	Line
MICHAEL W. COLLINS	3	1
EXAMINATION	3	3
BY MR. WRAY:		
EXAMINATION	192	24
BY MR. THICKENS:		
EXAMINATION	198	14
BY MR. WRAY:		
CERTIFICATE OF VERBATIM TRANSCRIPT	200	4

E X H I B I T S

	Page	Line
EXH. 1, Medical Record	73	11
EXH. 2, Medical Record	76	19
EXH. 3, Medical Record	79	11
EXH. 4, Incident Report	87	5
EXH. 5, Photographs	95	20
EXH. 6, Email	110	11
EXH. 7, Medical Record	118	23
EXH. 8, Medical Record	123	10
EXH. 9, Medical Record	125	20

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

1	EXH. 10, General Safety Rule	132	17
2	EXH. 11, Physician Statement	153	17
3	EXH. 12, Physician Statement	153	19
4	EXH. 13, Medical Record	157	19
5	EXH. 14, Medical Record	159	19
6	EXH. 15, Answers	161	7
7	EXH. 16, Application	178	13
8	EXH. 17, Medical Record	182	9

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT 2

Nursing

Recorded Date	8/31/2016
Recorded Time	09:26 EDT
Recorded By	MILLER ,ASHLYN RMA

Procedure	Units
Recent Travel Outside of United States	See Below T2
Pregnant	N/A

Textual Results

T1: 8/31/2016 09:26 EDT (Ambulatory Intake Additional Information)
The patient states that he is here for pain in the left hip. The patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. The patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down.

T2: 8/31/2016 09:26 EDT (Recent Travel Outside of United States)
No travel/no contact within past 14 days

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

DOCUMENT NAME: Ambulatory Orthopedic Intake Text

Ambulatory Orthopedic Intake Form Entered On: 8/31/2016 9:32 EDT
Performed On: 8/31/2016 9:26 EDT by MILLER , ASHLYN RMA

Intake
Chief Complaint : Left Hip Pain
Ambulatory Intake Additional Information : The patient states that he is here for pain in the left hip. The patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. The patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down.
Preferred Language for Healthcare : English

MILLER , ASHLYN RMA - 8/31/2016 9:26 EDT

Travel History
Pregnant : N/A
Recent Travel Outside of United States : No travel/no contact within past 14 days

MILLER , ASHLYN RMA - 8/31/2016 9:26 EDT

Vitals
Height Actual or Stated? : Actual
Height Documented in (UOM) : feet/inches
Height : 182.88 cm
Height Contributor (ft) : 6 ft
Weight Actual or Stated? : Actual
Clinical Weight Documented in (UOM) : lbs/oz
Weight : 91.173 kg
Clinical Weight Contributor (lb) : 201 lb
Body Mass Index : 27.26 kg/m2
Body Surface Area : 2.15 m2
Weight (lbs.) : 201 lb
Height (ft.) : 6 ft

MILLER , ASHLYN RMA - 8/31/2016 9:26 EDT

Subjective
Cardiovascular Symptoms : None reported
Respiratory Symptoms : None reported
GI Symptoms : None reported
Genitourinary Symptoms : None reported
Musculoskeletal Symptoms : None reported
Skin Symptoms : None reported
Neurological Symptoms : None reported

MILLER , ASHLYN RMA - 8/31/2016 9:26 EDT

Orthopedic Intake Data
Activities of Daily Living : Independent
Incision/Wound/Drain Documentation : No Incisions/Wound Sites have been documented during this encounter.

MILLER , ASHLYN RMA - 8/31/2016 9:26 EDT

Communications
Primary Care Provider : BARRON , GEORGE TALBERT MD
OC Share Info with others : Denies
Cell Phone Number Redacted
Leave Voicemail : Yes

Admit Date: 8/31/2016 08:50 EDT
Disch Date: 8/31/2016 10:16 EDT
Admitting: MCCARTHY JR,WILLIAM G MD
Attending: MCCARTHY JR,WILLIAM G MD
Printed: 3/19/2018 13:09 EDT

Pt Name: COLLINS, MICHAEL
MRN: Redact Acct#: Redacted
DOB: Redacted Age: Redacte Sex: Male
Location: COSARH
Print ID: 181994655

504-000195

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT 3

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Carolinas HealthCare System

Carolina Orthopaedic Surg Rock Hill
134 Professional Park Dr
Rock Hill, SC 29732-
Phone: 803-329-3130 Fax: 803-985-4380

Office/Clinic Visit Notes

DOCUMENT NAME:

Ortho General

Patient: **COLLINS, MICHAEL** MRN: Redact FIN: Redacted
Age: Redacte Sex: Male DOB: Redacted
Associated Diagnoses: **None**
Author: **MCCARTHY JR, WILLIAM G MD**

Visit Information
Primary Care Provider: Primary Care Provider : Primary Care Provider
BARRON , GEORGE TALBERT MD .

Chief Complaint:
1/26/2017 9:41 EST Right Hip PAin

History of Present Illness
patient presents here with right hip pain. He has had long-standing history of pain in the right hip. He denies any specific injury. Symptoms are worse with prolonged standing, walking, kneeling, squatting, and climbing. He denies any radicular complaints. He's had no relief with over-the-counter medication._

Review of Systems
As per HPI, otherwise negative.

Health Status
Allergies:
Allergic Reactions (Selected)
No known allergies
Current medications: (Selected)
Prescriptions
Prescribed
amLODIPine-benazepril 10 mg-20 mg oral capsule: 1 capsule, ORAL, Daily, 90 capsule, 3 Refill(s)
cloNIDine 0.3 mg oral tablet: 0.3 mg, 1 tablet, ORAL, TID (3 times a day), 270 tablet, 3 Refill(s)
predniSONE 10 mg oral tablet: See Instructions, take as directed on pack, 21 tablet, 0 Refill(s)
Problem list:
All Problems
Osteoarthritis of left hip / SNOMED CT 1784940016 / Confirmed
Gout / ICD-9-CM 274.9 / Confirmed
HTN (hypertension) / ICD-9-CM 401.9 / Confirmed

Provider: MCCARTHY JR,WILLIAM G MD
Date of Service: 1/26/2017
Visit #R [redacted]

Pt Name: COLLINS, MICHAEL
Org MRN#: Redact
DOB: Redacted **Sex:** Male

Printed: 4/4/2018 15:42 EDT

Print ID: 184617115

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574
RECORD ON APPEAL - 119

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

RECORD ON APPEAL - 120

Carolinas HealthCare System

Carolina Orthopaedic Surg Rock Hill
134 Professional Park Dr
Rock Hill, SC 29732-
Phone: 803-329-3130 Fax: 803-985-4380

Office/Clinic Visit Notes

Histories

Family History:

Lung cancer....
Father
Hypertension....
Mother
Stroke....
Mother

Social History

Social & Psychosocial Habits

Home/Environment
10/20/2016 **Marital Status:** Married

Alcohol
08/31/2016 **Use:** Current
Frequency: Occasionally

Drug Abuse
08/31/2016 **Use:** Denies

Employment/School
10/20/2016 **Status:** Employed

Tobacco
12/10/2012 **Smoking Status:** Never smoker

Physical Examination

VS/Measurements

Measurements from flowsheet : Measurements - Standard

1/26/2017 9:41 EST	Height Contributor (ft)	6 ft
	Clinical Weight Contributor (lb)	200 lb

, BMI : Body Mass Index

1/26/2017 9:41 EST	Body Mass Index	27.12 kg/m2

General: Alert and oriented, No acute distress.

Provider: MCCARTHY JR,WILLIAM G MD
Date of Service: 1/26/2017
Visit #: Redacted

Pt Name: COLLINS, MICHAEL
Org MRN#: Redact
DOB: Redacted **Sex:** Male

Printed: 4/4/2018 15:42 EDT

Print ID: 184617115

Carolinas HealthCare System

Carolina Orthopaedic Surg Rock Hill
134 Professional Park Dr
Rock Hill, SC 29732-
Phone: 803-329-3130 Fax: 803-985-4380

Office/Clinic Visit Notes

Integumentary: Warm, Dry, Pink, Intact.
Neurologic: Alert, Oriented, No focal defects, Normal deep tendon reflexes.
Cognition and Speech: Oriented, Speech clear and coherent, Functional cognition intact.
Psychiatric: Cooperative, Appropriate mood & affect, Normal judgment.
Leg lengths are symmetrical. There is no bony tenderness over the right hip. He has flexion to 110°. Internal rotation is 10°. External rotation is 20°. Abduction is 20°. Straight leg raise is negative. Motor and sensory exam is normal. Pulses are intact. No lymphadenopathy.

Review / Management
Radiology results
AP and lateral views of the hip show moderate degenerative changes with loss of joint space, subchondral sclerosis, and marginal osteophyte formation.

Impression and Plan
Patient Instructions: Counseled: Regarding diagnosis, Regarding treatment, Regarding medications, Activity, Prognosis, Verbalized understanding.
Dx/Order Association Plan:

Diagnosis: Osteoarthritis of right hip
Comment:
Other status: Follow-Up Appt; As needed (Completed)
Est OV Level 3 - 99213; 01/26/17 10:40:00 EST, Osteoarthritis of right hip | Right hip pain (Completed)

Diagnosis: Right hip pain
Comment:
Other status: DX Hip Uni w or w/o Pelvis 2-3 VW; 01/26/17 10:06:00 EST, Routine, Once, 01/26/17 10:06:00 EST, Right, Reason: right hip, Dx: Right hip pain, Global, Transport Mode: Ambulate, RT, Rad Type (Completed)
Follow-Up Appt; As needed (Completed)
Est OV Level 3 - 99213; 01/26/17 10:40:00 EST, Osteoarthritis of right hip | Right hip pain (Completed)

Additional Orders:
Comment:
Ordered: predniSONE 10 mg oral tablet,See Instructions, take as directed on pack, 21 tablet, 0 Refill(s), Pharmacy: CVS/pharmacy #4288

End of Orders

X-ray images and treatment options were reviewed with patient. He is given a prednisone pack as he is unable to tolerate nonsteroidal medication. He will follow. As needed.

Provider: MCCARTHY JR,WILLIAM G MD
Date of Service: 1/26/2017
Visit #: Redacted

Pt Name: COLLINS, MICHAEL
Org MRN#: Redact
DOB: Redacted **Sex:** Male

Printed: 4/4/2018 15:42 EDT

Print ID: 184617115

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574
RECORD ON APPEAL - 121

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

EXHIBIT 4

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

MICHAEL COLLINS,

Plaintiff,

vs. CASE NO. 2017-CP-46-2574

NORFOLK SOUTHERN CORPORATION,

Defendant.

DEPOSITION OF: WILLIAM G MCCARTHY, JR, MD

DATE: June 25, 2018

TIME: 5:40 p.m.

LOCATION: Offices of
Carolina Orthopaedic Surgery
134 Professional Park Dr.
Rock Hill, SC

TAKEN BY: Counsel for the DEFENDANT

REPORTED BY: SARAH E. YOUNG

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
MICHAEL COLLINS:

LAW OFFICE OF CHRIS CHRISTY
BY: EDDY SOREY
100 Highland Colony Parkway, Suite 5203
Ridgeland, MS 39157
501-758-0278
Eddysorey@gmail.com

ATTORNEYS FOR THE DEFENDANT
NORFOLK SOUTHERN CORPORATION:

GALLIVAN, WHITE & BOYD, PA
BY: RONALD K. WRAY, II
55 Beattie Place, Suite 1200
Greenville, SC 29601
864-271-9580
Rwray@gwblawfirm.com

WILLIAM MCCARTHY, MD
being first duly sworn, testified as follows:
EXAMINATION
BY MR. WRAY:

Q. State your full name for the record, please.

A. William G. McCarthy, Jr.

MR. SOREY: Are we saving objections except to the form?

MR. WRAY: Yes.

MR. SOREY: Okay.

BY MR. WRAY:

Q. Dr. McCarthy, my name is Ron Wray. I'm a lawyer representing Norfolk Southern Railway Company in a lawsuit filed by a former patient of yours, Michael Collins, and we have asked you to come here today to give some deposition testimony about your treatment of Mr. Collins. I understand that you have given depositions before, so you understand how the process works, is that correct?

A. Yes, sir.

Q. If I ask you something during the course of the day, which I almost certainly will, that it is confusing or doesn't make any sense, please just ask me to repeat it or rephrase it and

I will try to say it in a way that makes more sense, okay?

A. Okay.

Q. We are here at your office in Rock Hill today, I believe?

A. Yes, sir.

Q. And where do you practice?

A. This is our main office. We have a total of four offices, but this is the majority of my practice is here.

Q. What is the name of the medical group?

A. Carolina Orthopedic Surgery Associates.

Q. And how long have you been with Carolina Orthopedic Surgery Associates?

A. Almost 28 years.

(EXH. 1, Medical Records, was marked for identification.)

BY MR. WRAY:

Q. As I mentioned to you, your deposition today concerns a patient by the name of Michael Collins and prior to the deposition, I marked as Exhibit 1, some records that my office received from your office relating to your treatment of Mr. Collins. I'm going to ask you some questions about that and hopefully we will be able to find the same

page in the record.

A. Okay.

Q. I see that a folder was brought in after we began today. Do you know what that is?

A. This is noted as office records and a laboratory report, but it looks like mainly office visits and they all have the billing and healthcare heading on it, so I would assume these are prior to 2016. I haven't looked through these to tell you for sure.

Q. The only reason I asked is sometimes I know that doctors feel more comfortable looking at their own records versus the photocopy set that I have, so either way that works for you is fine with me as long as we are looking at the same thing.

A. I've got a copy of the record from OrthoCarolina. So it doesn't appear that anything prior to April 13, 2017 looks like the earliest one.

Q. Let me ask you to refer to Exhibit 1 and if you need to look at your records, that's fine too.

A. All right.

Q. But let me tell you just at the outset, Dr. McCarthy, my understanding from the records

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 6

that we received was that Mr. Collins first became a patient of yours around January of 2015 when he saw you for an issue related to carpal tunnel.

A. That appears to be the case, yes sir.

Q. And if you look at in the bottom right-hand corner, you will see some numbers, I'm going to try to refer you to those numbers so that we're looking at the same page. The first one is the last digit is 3; do you see that?

A. Yep.

Q. This is actually a record from February 5, 2015, but I think if we flip a few more pages you will see that you actually saw him the first time on January 8, 2015.

A. Yes, sir.

Q. Let me ask you this. Let's go back to page 3 for a moment. It looks like when Mr. Collins first came to see you he was 60 years old?

A. Yes, sir.

Q. And one of the things that you do when you see a patient is obtain past medical history from them, is that fair to say?

A. Yes, sir.

Q. What history did you obtain from Mr. Collins as to, first why he was here to see you,

Page 7

what his complaint was?

A. This page is dated February 5th and it was a follow-up for the nerve test that was done. There's a -- but that initial visit was done on 1/8. It doesn't appear to be an initial page -- do you know where January 8?

Q. Yeah, I've given you everything that your office provided me.

MR. SOREY: And I didn't have one either.

THE WITNESS: And this is a whole different EMR system.

BY MR. WRAY:

Q. Let me ask you this. You said it was a follow up from a nerve test he had done. What was the nerve test looking at or what was it designed to address?

A. He was having bilateral wrist pain apparently with -- my assumption would be that he was having wrist pain with some numbness and tingling in his hands that would have been consistent the with nerve compression and that's why a nerve test would be ordered.

Q. And when you're referring to nerve compression there, to what part of the body?

Page 8

A. To the wrists.

Q. And as I mentioned at the outset, since this case doesn't involve his carpal tunnel claim, I'm not going to really delve into that other than I did want to ask you -- I did not see a record where you ultimately did surgery for that condition. Do you know whether you performed surgery for the carpal tunnel?

A. Not to my recollection.

Q. Now, in addition to him coming to you with a complaint of some carpal tunnel issues, did you obtain from him prior medical history in terms of any other issues that he had had previous to his visit to you?

A. It's noted in his surgical history that he had surgery on his elbow and his right knee. He had a history of osteoarthritis. It looks like the extent of this is probably from an orthopedic standpoint.

Q. So let's focus for a moment on the osteoarthritis. In the column under reviewed past medical history, I see it does say arthritis and next to that it says rheumatoid arthritis and then it's got a Y and a dash and osteoarthritis, are those two separate conditions?

Page 9

A. Well, they are, but I think what this indicates is that he had a history of osteoarthritis, not rheumatoid, I think it automatically spits out arthritis or rheumatoid arthritis as I remember from this EMR system and so whoever took the history noted that he did have a history of osteoarthritis.

Q. Could you tell us in laymen's term what is osteoarthritis?

A. It's the most common cause of arthritis, usually from -- there's a genetic component to it, there is a wear and tear phenomenon associated with it as well.

Q. Is it fair to say that most often the cause of osteoarthritis is unknown?

A. Of what kind?

Q. Of osteoarthritis.

A. Osteoarthritis. Like I said, there is a genetic component that people are predisposed to developing osteoarthritis. The exact mechanism of how all that happens, yes, is unknown at this time.

Q. And when you got this history from Mr. Collins, it was when he saw you in January of 2015, is that correct?

A. Yes, sir.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 10

Q. Do you have an indication as to how long he had had a diagnosis of osteoarthritis?
A. No, sir.
Q. Did you have any indication in your records as to whether he was getting medical treatment for that condition at the time when you saw him in 2015?
A. No, sir. Under his medications, I do not see anything that would be consistent with treatment for that.
Q. And did he indicate to you who gave him that diagnosis?
A. It's not noted and I do not recall.
Q. You did mention that in the surgical history, and I'm looking at page six now. It says orthopedic elbow right, orthopedic knee right; do you see that?
A. Yes, sir.
Q. Do you have any indication as to what condition or medical condition caused the need for those two surgeries?
A. No, sir.
Q. If we then flip forward, as best I can tell from the records we got from your office, you didn't see Mr. Collins again until August of 2016.

Page 11

I know you said in your folder you had some records. Do you have any records between February of 2015 and August of 2016?
A. I do not believe so. I can look again real quick, but that looks like the first -- August 31, 2016. But it says return visit, so he must have been seen before then.
Q. That's why I was curious, I saw that same reference but I could not find a prior visit between February 2015 and August of 2016.
A. Yes, sir. That was in the middle of our acquisition of the practice and we were switching EMR systems, so I'm assuming that it should have been in this EMR system, but it's not in this record that you've given me.
Q. In any event, when Mr. Collins came back in August of 2016, what was the medical complaint that he was reporting at that time?
A. Arthritis of his left hip and apparently he had been given some medication for it.
Q. Do you know whether you were the one that prescribed medication for the hip?
A. I do not know. It may have been his primary care physician since we don't have the --

Page 12

any prior documentation.
Q. And I do see that the primary care provider is listed as Dr. George Barron; do you see that?
A. Yes, sir.
Q. Do you know whether Mr. Collins came back to you as a referral from Dr. Barron or did he come to see you because you had seen him before for carpal tunnel or do you know?
A. I do not know.
Q. Let me ask you to look over at page 31 in the records I gave you.
A. Okay.
Q. And just so you know they may not be in numbered order because I tried to put them in chronological order, but you should still be able to able to find page 31. So when a patient comes to see you, Dr. McCarthy, do you attempt to obtain a history from them to find out what it is that's brought them to your office?
A. Yes, sir.
Q. And do you do that yourself or does a member of your staff usually take the history?
A. It can be both.
Q. Do you indicate in your notes whether

Page 13

the history came from the patient?
A. I'm sorry, I'm not sure I understand.
Q. In your notes, when you're dictating or when your office notes reflect the history provided, do you indicate whether that history came from the patient or from a family member who might have been with them or what the source was?
A. It can be a combination of the patient and any records that we have to refer to as far as would be pertinent to that problem and why they are there that day.
Q. If we look at the history that Mr. Collins gave you on August 31, 2016 when he came in, what did he tell you was the issue that he was experiencing?
A. He was complaining of pain in the left hip, that he works on the railroad and thinks the work on the railroad has taken a toll on his body. The patient states the pain has been going on for years, but is at the point that he is in constant pain and has trouble sitting down.
Q. Did Mr. Collins give any more specific reference as to when the issue began other than saying that the pain had been going on for years?
A. It's not noted and I do not have any

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 14

recollection of that.
Q. Do you have any other source that would tell us when that issue first began for him other than years prior to August 31, 2016?
A. No, sir.
Q. Did he indicate to you whether he had suffered any type of injury or traumatic event that had caused him problems with his hips?
A. It's not noted.
Q. And you told me a moment ago, if we flip back to page 28, which is a couple of pages before what I gave you. You told me when he returned on August 31 that he had been trying some medication. Can you tell me what medication he was on?
A. The record says its indomethacin and Pennsaid.
Q. Do you know whether you had prescribed either of those medications for him prior to August 31, 2016?
A. I do not recall.
Q. Tell me what -- first off what indomethacin is prescribed for.
A. It is used for both gout and arthritis.
Q. How about Pennsaid?

Page 15

A. Pennsaid is a topical medication that is used for the treatment of arthritis.
Q. Did Mr. Collins indicate to you how long he had been on either indomethacin or Pennsaid prior to August of 2016?
A. It's not noted.
Q. When Mr. Collins came in on August 31, 2016, did he indicate to you that he had any other medical issues other than the problem with pain in his hip?
A. On which day was that?
Q. August 31, 2016.
A. It does not appear to be so. No, sir.
Q. You mentioned to me earlier that when Mr. Collins came back to see you in August of 2016, he informed you that his primary care physician was Dr. George Barron?
A. That's correct.
Q. Do you recall whether you received any medical records from Dr. Barron that would help you assess what was going on with Mr. Collins?
A. I do not recall if we received any.
Q. Did Mr. Collins tell you at that time that he was also being seen by a physician by the name of Dr. Alicia Lazeski?

Page 16

A. It's not noted and I have no recollection that he told me that.
Q. Do you know Dr. Lazeski?
A. No.
Q. Are you familiar with a practice group known as OrthoCarolina?
A. Yes, sir.
Q. And tell me what type of practice group they are or what specialties they have at OrthoCarolina, if you know.
A. It's a very large group based out of Charlotte, I think there's over a 150 of them now. They have the total gambit of orthopedic care.
(EXH. 2, Incident Report, was marked for identification.)
BY MR. WRAY:
Q. Dr. McCarthy, I'm going to show you what I marked as Exhibit 2 to your deposition and I'll tell you this was Exhibit 4 to Mr. Collins' deposition. You're certainly welcome to read through the whole thing, but you see the date at the top, August 31, 2016?
A. Yes, sir.
Q. And I guess about 4 or 5 lines down it shows an incident date of August 13, 2016; do you see that?

Page 17

A. Yes, sir.
Q. I'm going to represent to you that this is a personal injury report Mr. Collins prepared relating to an incident that he reported that occurred at the railroad on August 13, 2016.
Now, he came to see you on the same date this report is dated, August 31, 2016, is that correct?
A. Yes, sir.
Q. And did Mr. Collins, when he saw you on August 31, 2016, mention to you anything about having suffered a work-related injury on August 13, 2016?
A. It's not noted in the record and I do not have an independent recollection of it.
Q. Did Mr. Collins indicate to you that he was having any issues with his neck or back when he saw you on August 31, 2016?
A. Again, I don't see that it's noted in here and I don't have any independent recollection of that.
Q. Did Mr. Collins inform you that he was, at that time, under active care by Dr. Lazeski for the issues that he reported with his back and neck

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 18

that he associates with the August 13, 2016 incident?
A. Again, I don't see any notation of that and I have no recollection of that being discussed.
Q. Would it be important for you as an orthopedist to know if he was getting care for other orthopedic injuries when he came to see you on August 31, 2016?
A. Yes, sir.
Q. Why would that be significant to you as his treating physician?
A. To know what type of treatment he was having, if there was any overlap between the condition that he was seeing me for and the condition he was seeing another orthopedic surgeon for.
Q. Do you know whether OrthoCarolina has physicians on staff that would have been able to assess Mr. Collins and treat him for the issues with his hip that he was seeing you for?
A. They certainly do, yes, sir.
Q. They have medical specialists at that facility who specialize in hip-related issues?
A. Yes, sir.
Q. Did Mr. Collins ever indicate to you

Page 19

why he came to see you on August 31, 2016 instead of continuing to treat with Dr. Lazeski or any of the other doctors at her physician who might specialize in hip-related issues?
A. It's not noted and I do not have any independent recollection of that.
(EXH. 3, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Dr. McCarthy, I'm going to hand you what I've marked as Exhibit 3, which I will represent to you was Exhibit 7 to Mr. Collins' deposition, and I'm not going to ask you to read through this whole record, but it's a record from Piedmont Family Practice, Dr. Barron, and I just want to ask you about the third paragraph under where it says HPI dictation.
A. Yes.
Q. There's a paragraph that begins and I'm just going to read it, it says he also recently was told that his job with the railroad in Rock Hill was being shut down. He has the option to retire or drive to Charlotte for third shift work, which it says she, is not inclined to do. This is causing significant stress. Did I read that

Page 20

correctly?
A. Yes, sir.
Q. And this record is dated June 29, 2016, about a little bit less than two months before Mr. Collins came to see you in August of 2016, is that correct?
A. Yes, sir.
Q. When Mr. Collins came to see you, did he tell you that his job in Rock Hill with the railroad had been shut down?
A. Again, it's not noted and I don't have any independent recollection of that being discussed.
Q. Did he tell you that the railroad had offered him the option to either retire or to drive to Charlotte to continue working with the railroad?
A. Again, I don't have any independent recollection of that.
Q. Do you recall Mr. Collins telling you that he didn't want to drive from Rock Hill to Charlotte to continue working with the railroad?
A. I do not have any recollection of that, sir.
Q. Would that information have been important for you to know in ultimately assessing

Page 21

whether Mr. Collins could continue his work with the railroad?
A. It would certainly be a factor that would be part of any decision making.
(EXH. 4, Medical Record, was marked for identification.)
BY MR. WRAY:
Q. Dr. McCarthy, I'm going to show you what I marked as Exhibit 4 and this was Exhibit 9 to Mr. Collins' deposition. This is a record from OrthoCarolina and do you see that the date there is listed as September 28, 2016?
A. Yes, sir.
Q. That's a little bit less than 30 days after you saw Mr. Collins on August 31, correct?
A. That's correct.
Q. And my understanding from your testimony earlier was, you were not provided with any records from OrthoCarolina?
A. That is correct.
Q. And you weren't aware that he was actively getting treatment at OrthoCarolina at the same time he was seeing you, is that correct?
A. Yes, sir.
Q. Let me ask you just to take a moment

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 22

and read through Dr. Lazeski's record and then I'm going to ask you some questions about it.

A. Okay.

Q. Have you had a chance to read Dr. Lazeski's record from September 28 of 2016?

A. Yes, sir.

Q. Do you see in the first sentence under History of Present Illness, she refers to Mr. Collins as a 61-year-old male who is well known to me as I have treated him for the last nine months for cervical spondylosis?

A. Yes, sir.

Q. What is cervical spondylosis?

A. Arthritis in the neck.

Q. Did you have any knowledge that Mr. Collins had been under the care of Dr. Lazeski for nine months for cervical spondylosis when you saw him in August of 2016?

A. No, sir.

Q. I think you already told me Mr. Collins did not mention to you that he reported that he had injured himself attempting to open a door at the railroad, is that correct?

A. That is correct.

Q. He didn't tell you that he had been

Page 23

getting treatment for pain in his neck, shoulders and back, did he?

A. No, sir.

Q. I asked you earlier whether or not you had prescribed Pennsaid for him and you said you didn't have a record of that. Do you see where Dr. Lazeski says that he has been using Pennsaid before he ever came to see you?

A. Yes, sir.

Q. He was also on oxycodone?

A. That's what the record states.

Q. And he didn't report that to you, did he?

A. Not that I recall. It's not noted in the record.

Q. Would it have been important for you to know that Mr. Collins was reporting these type of injuries to Dr. Lazeski and had been prescribed oxycodone among other medications when he first came to see you?

A. Yes, sir.

Q. Why would that have been significant to you as his treating orthopedist?

A. Well, it's standard medical care to know what medication the patient is currently using

Page 24

as part of formulating any type of diagnosis and treatment plan.

Q. Is it also important to know what other medical issues he is reporting?

A. Yes, sir.

Q. At any time, while you were treating Mr. Collins or while he was under your care, do you have any note where he told you about the injuries that he reported to Dr. Lazeski for which she was treating?

A. I would have to look through the record. It does not appear to be noted anywhere.

Q. Did you see any reference in the record that I showed you from Dr. Lazeski from September of 2016, where Mr. Collins indicated to her that he had any reports of pain in his hip?

A. It appears her note is focused on his neck.

Q. Do you see any reference in her note to a reported history of pain in either hip?

A. No, sir.

Q. Did Dr. Lazeski perform a review of symptoms similar to what you did on August 31, 2016?

A. Yes, sir.

Page 25

Q. In terms of Mr. Collins' musculoskeletal function, was her description of how he performed in her office the same or different from what you noted in your records?

A. I'm not sure I understand.

Q. Well, you noted in your records -- when you saw Mr. Collins, did you evaluate him in terms of his ability to move forward, backwards, sideways?

A. In reference to his neck?

Q. To his hip.

A. To his hip, yes.

Q. Okay. And what did you note in terms of your evaluation of him?

A. That there was a loss of range of motion in his hip, that he was walking with a limp at that time.

Q. And when you say he was walking with a limp, is that based on your visual observations?

A. Yes, sir.

Q. Okay. Did you perform any testing to assess what the reason or cause for that was?

A. Well, based on the examination of his hips, that the loss of motion there certainly can cause someone to limp.

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 26

Q. And I was asking about Dr. Lazeski's record, did she indicate or document any limp or walking with a limp when she saw Mr. Collins less than 30 days later?

A. There's none noted in here.

Q. Did she note in her record any loss of motion in the hip that you see documented?

A. No, sir.

Q. Now, when Mr. Collins first came back to see you in August of 2016, is it fair to say that his issues at that time were focused on the left side?

A. Yes, sir.

Q. What radiographic films did he bring with him when you saw him, if any?

A. I believe his x-rays were made in our office.

Q. So you requested some x-ray imaging to be performed?

A. Yes.

Q. And when was that done?

A. On 8-31-2016.

Q. And I'm looking at page 30 in my records from August 31, 2016 where it says radiology results.

Page 27

A. Okay.

Q. What were the results of the x-ray that you had done?

A. It's noted that the x-rays of his hip showed end stage degenerative changes with complete loss of joint space, marginal osteophyte formation and subchondral sclerosis.

Q. Let's kind of break that down. You first mentioned end stage degenerative changes, what are degenerative changes?

A. That's what happens with osteoarthritis, the joint degenerates.

Q. When you refer to degenerative changes, does that usually refer to a breakdown over time?

A. Yes.

Q. Is that a fairly common condition in 60-year-old males?

A. I don't know if common would be the right answer. We do see it frequently in our office.

Q. And you said complete loss of joint space, tell me what that's referring to.

A. Well, on an x-ray a normal joint there is a space between the two bones that reflects the joint surfaces that lay against each other. So in

Page 28

this case there was no space left indicating that those joint surfaces were worn out and that he had bone against bone contact.

Q. Is there any way to know by looking at the films how long that condition had been present?

A. No, sir.

Q. And next it says marginal osteophyte formation, tell me what that is.

A. That refers to the formation of bone spurs on the edges of the joint.

Q. Is there any way to tell by looking at the x-rays how long the bone spurs have been present?

A. No, sir.

Q. And last, you referred to subchondral sclerosis, tell me what that is.

A. That is a change noted on the x-ray where the bone just under the joint surface is denser than normal.

Q. What did you recommend that Mr. Collins do to address his condition?

A. His treatment options were reviewed with him at that time and we scheduled him for an injection of his hip under x-ray guidance.

Q. What type of injection were you going

Page 29

to do?

A. It was basically a corticosteroid injection.

Q. Are you able to tell by looking at the x-rays what the cause of the issue was that Mr. Collins was experiencing?

A. Besides the fact that he had osteoarthritis, no, sir.

Q. And what I mean by that is more specifically, do you know what caused his osteoarthritis other than age?

A. No, sir.

Q. Is there any way to determine that?

A. No, sir.

Q. Did you do any other diagnostic imaging other than the x-rays?

A. Not that I'm aware of. On that visit?

Q. Well, we can start there. On that visit, anything other than the x-rays?

A. No, sir.

Q. And then subsequently, did you do any further diagnostic imaging?

A. I do not believe so.

Q. When did Mr. Collins come back to see you?

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 30

A. That would be October 20, 2016.
Q. Was he having the same complaint at that time about issues with his left hip?
A. Yes, sir.
Q. Any other medical conditions that he reported to you at that time?
A. No, sir.
Q. What did you do on that visit?
A. Besides the history and physical exam, we discussed his treatment options again. He did not want to proceed with surgery at that time and he was going to use a cane for his walking and that he will continue on his home exercise program and he was going to return as needed.
Q. And when Mr. Collins would come to your office, did he come with a cane?
A. I'm not clear whether he had a cane or whether he was going to get one from this note.
Q. Did you prescribe or suggest that he use a cane?
A. Well, we must have discussed it at that visit for me to note it in the record.
Q. You also said that you discussed with him the issue of potential surgery and he said he didn't want to pursue that at that time?

Page 31

A. That is correct.
Q. What was your thoughts in terms of whether surgery would be beneficial to him?
A. I'm sorry, I'm not sure I understand.
Q. Did you believe the surgery would be a recommended course of treatment for him?
A. It was a treatment option available to him if his pain level and functional limitation was such that he wanted to do something about it because he had exhausted his non-operative options, so at that point he was continuing the condition that he was or undergo surgery to hopefully improve that situation.
Q. Based on your evaluation of him and your observations of when he was in your office, did you recommend to him that he pursue surgery?
A. Well, it's not noted that I recommended it, it was just something that was discussed that that was his really only other option at that point.
Q. Well, let me ask you to flip, I think it should be the next page, number 20 in the stack.
A. Okay.
Q. During the course of your treatment of Mr. Collins, did he from time to time ask you to

Page 32

complete paperwork relating to his ability to work?
A. Yes, sir.
Q. If we look at page 20, is that a form that your office completed and that you signed, it looks like its dated October 21, 2016?
A. Yes, sir.
Q. At that time, what was your opinion as to whether or not Mr. Collins was going to be able to return to his work at Norfolk Southern Railway?
A. It appears he was written out of work for a period of six months.
Q. And there's a question that says prognosis; do you see that?
A. Prognosis not changed.
Q. I think that's progress. But then under there prognosis, there's a question that says, in your opinion is patient now impaired from and do you see that, where it says patient's occupation?
A. Yes, sir.
Q. And what did you indicate at that time?
A. No.
Q. So just to make sure the record is clear, your opinion at that time was that he should not be impaired from returning to his work at

Page 33

Norfolk Southern, is that fair to say?
A. That may be an error, I'm not sure because I was not the one that filled this out and that is a stamped signature that maybe she checked the wrong box. If we were to write him out for six months, I would assume he was not able to perform his occupation.
Q. Well, there's another question about when he would be able to return.
A. Yes.
Q. And the date there is indicated as April 20, 2017.
A. Yes, sir.
Q. So I was reading that to suggest that he would be able to return to work in his prior occupation as of April 20, 2017, but am I reading that incorrectly?
A. It was written out until that time in hopes that his condition would allow him to return, that his pain level would improve.
Q. Do you know whether or not his condition ever reached the point where he was able to return to work at Norfolk Southern?
A. I believe he did not.
Q. And if we look over a couple of more

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 34

pages, on page 42, there is another form, although this one doesn't have a date on it. Again, it looks like a -- it says Attending Physician's Statement at the top of the page; do you see that?

A. Yes, sir.

Q. And is that your stamped signature down at the bottom?

A. Yes, sir.

Q. Tell me how these forms are completed, Dr. McCarthy, in your office.

A. One of the technicians is in charge of filling out the disability forms.

Q. Do you -- go ahead.

A. And if there is a question as to length of how long a patient is going to be out of work or if there is any limitations, et cetera, they would ask the physician what those would be.

Q. Do you recall actually reviewing this form in Mr. Collins' case and signing off or approving of it?

A. I do not recall.

Q. Is that something that you would typically do?

A. Yes, sir.

Q. Now, in this form under prognosis it

Page 35

says, In your opinion is the patient now impaired from and under patient's occupation, someone checked yes; do you see that?

A. Yes, sir.

Q. And then if we look a couple of lines down, it says please explain why patient remains unable to work and someone wrote unable to ambulate without assistance, parenthesis, walking cane, close parenthesis; do you see that?

A. Yes, sir.

Q. Now, prior to this deposition, I showed you some video of Mr. Collins.

A. Yes, sir.

Q. That was taken right about the time this form was completed. Based on the video that you reviewed, does he look to you like he was unable to ambulate without the assistance of a walking cane?

A. He seemed to be exercising without any difficulty. I cannot recall if there was actual footage of him walking, but there was no footage of him moving around with the use of a cane.

Q. Would you expect that someone who was performing the tasks that you saw on the videotape to be able to walk without the walking cane?

Page 36

A. From what I saw could someone like that walk without the assistance of a cane, it's certainly possible, yes, sir.

Q. Do you recall on the video seeing Mr. Collins do leg presses?

A. Yes, sir.

Q. And I showed you his deposition testimony where he testified under oath he was lifting 150 to 160 pounds doing leg presses; do you recall that?

A. Yes, sir.

Q. Do you believe that someone who was able to do the activities that you saw on the videotape would be disabled from doing any work at all?

A. Any work at all?

Q. Yes.

A. No, sir.

Q. Do you know anything about what Mr. Collins' work duties at the railroad were?

A. As I recall, he told me that he was a mechanic involving the use of tools and climbing on the equipment or under the equipment.

Q. Have you ever been to a rail yard and watched the duties of a mechanic and what they

Page 37

perform?

A. No, sir.

Q. Have you ever seen a Job Demand form that would describe the essential duties of that particular job?

A. Not that I recall.

Q. Do you recall getting any further details from Mr. Collins as to what his job involved beyond using tools to work on locomotives?

A. Other than his telling me that he had to climb under, around and on top of the railroad cars or locomotives and whatever he was working on, no, sir.

Q. Based upon what limited information you have about Mr. Collins' work duties as he described them to you, do you believe that someone who could perform the physical exercises that Mr. Collins was seen on the video that you observed, do you believe he would be unable to perform his job duties with the railroad?

A. I don't know that I can form an opinion based on that video and without a more detailed knowledge of what his job requirements would be. Oftentimes we rely on a functional capacity evaluation to determine those factors paired with a

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

jobsite analysis done by the physical therapist that does the FCE.

Q. Did you ever request that an FCE be done for Mr. Collins?

A. Not that I recall.

Q. Based upon what you just told me a moment ago, then am I understanding you to say that without having the FCE done, you would not be in a position to form an opinion as to whether he would be disabled from his work at Norfolk Southern?

A. That's correct.

Q. So as we sit here today, based upon the information you have and the information you obtained from Mr. Collins, your treatment of him, do you have an opinion as to whether he would be capable of working at Norfolk Southern Railway, as we sit here today?

A. No, sir.

Q. Part of the reason I ask you that question, Dr. McCarthy, as we flip towards the end of that packet, I think it's the second to last page, it's number 53. Do you have that in front of you?

A. Yes, sir.

Q. You will see in the History of Present

Illness, this is a record from April 13, 2017, which I am told by your office is the last time you saw Mr. Collins.

A. Okay.

Q. It says no change in symptomology. Patient does not feel he can return to work as a locomotive mechanic. Do you see that?

A. Yes, sir.

Q. And is that fair to say that's what Mr. Collins indicated to you?

A. Yes, sir.

Q. But you don't have an opinion as to whether he could return to work as a locomotive mechanic, is that fair to say?

A. Today?

Q. Yes. And if we flip a couple of pages forward to page 51 or backwards in the stack.

A. Yes, sir.

Q. Do you see -- again this is from your April 13, 2017 visit, under the impression and plan, it says given the state of arthritis of his hips and his job requirements, it is my opinion to a reasonable degree of medical certainty that he will not be able to return to his job as a mechanic, even after total hip replacement. He is

written out of work permanently. Do you see that?

A. Yes, sir.

Q. Would you still stand by that opinion today based upon what you know and what you've seen?

A. Not without further data.

Q. Okay. And you have not seen Mr. Collins since April of 2017, at least based on what your office told us in the records they gave us, correct?

A. That's correct.

Q. You would have been happy to see him if he needed to come back to you for further care, is that fair to say?

A. Yes, sir.

Q. You didn't refer him to any other specialists?

A. No, sir.

Q. You didn't consult with anybody else about his care and treatment for his hip?

A. No, sir.

Q. Do you have any opinion as to the cause of the osteoarthritis that you diagnosed in Mr. Collin?

A. Well, again, the exact cause of

osteoarthritis is not clearly defined. As I stated previously, there is a genetic component to it. There can be contributing factors such as activity levels, but the clear-cut explanation for why someone gets it is not understood.

Q. I may have asked you this earlier, is it fair to say that most often the cause of osteoarthritis is unknown?

A. Yes, sir.

Q. And if you were asked in this case do you have an opinion as to a reasonable degree of medical certainty as to the cause of Mr. Collins' osteoarthritis, would you be able to express one?

A. No, sir.

MR. WRAY: That's all I have.

EXAMINATION

BY MR. SOREY:

Q. I just have a few questions, I won't be long. But following up on the last question, would you be able to give an opinion about his hip and the condition of his osteoarthritis as his ability to work. I thought you said earlier you would need more data or an FCE to be able to do that, is that correct?

A. I would need the data to determine

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 42

whether he was able to continue working, yes, sir.
Q. Right. Okay, that's what I thought you were saying, I was making sure. Now, what objective findings did you have of his hip problems? I know that you mentioned in one place about a space that you could see in his -- or not a space I should say that he had in his hip, is that correct?
A. Yes, sir.
Q. Is that an objective finding or a subjective finding?
A. Objective.
Q. Okay. And you were able to see that and determine that on your own, is that correct?
A. Yes, sir.
Q. Okay. Is it unusual for two different doctors to be treating one person for two different ailments in your opinion?
A. No, sir.
Q. If Mr. Collins had an injury at work that affected his neck and shoulders and cervical spine, but not his hip, would you necessarily expect him to relate that information to you?
A. Well, the subject may not come up if his main complaint was if he did not make any

Page 43

reference to his neck, but come here for the hip, then it may not come up.
Q. And the history part, I think you said your nurses or technicians usually take that down, is that correct?
A. Well, it's a dual responsibility, they take and then based on that I will add anything that I think is pertinent after talking to the patient about it.
Q. I assume that you looked at any complaints that are made and follow up on the complaints that are made, is that a fair statement?
A. That's correct.
Q. Now, at one point you said that you and Mr. Collins discussed home exercises?
A. Yes, sir.
Q. Do you recall any of that conversation, I didn't -- I guess it's not put down in your medical notes as such. Did Mr. Collins relate to you the type of exercises he was doing or anything?
A. Not that I recall.
Q. Okay. Do you know or do you recommend any of the exercises that you saw on the film for any of your patients, if they can do them? Would these exercises help?

Page 44

A. Well, certainly the use of the elliptical machine would certainly be one of them. Leg press to tolerance as far as how much weight they can tolerate to strengthen the muscles that control the hip can be beneficial for osteoarthritis.
Q. Okay. Now, at this time, he's been off the railroad a good while, has he not?
A. I believe so.
Q. Okay. So would the medication that you were giving him and stuff, would you hope for improvement?
A. From the medication he was on?
Q. Yes.
A. Hopefully.
Q. And you said a while ago you didn't know much about the railroad and I can appreciate that and understand it. Do you know what a ballast is?
A. A ballast?
Q. Yes, sir.
A. I know what it refers to in the Naval.
Q. Well, it's a little different than ships. I'm talking about the rocks they walk on at the railroad.

Page 45

A. Okay.
Q. How would that, in your opinion, affect Mr. Collins' ability if he had to work on ballast day in and day out as far as his hip, in your opinion? 4?
MR. WRAY: Object to the form.
THE WITNESS: Well, for someone who has osteoarthritis of the hips it may be difficult to walk on uneven surfaces.
MR. SOREY: I believe that's all the questions I have.
EXAMINATION
BY MR. WRAY:
Q. Dr. McCarthy, just a few in follow up. When you have a patient in and you're asking them for any medical problems that they are having, do you limit it to just what they are here to see you for?
A. I guess I would answer that in that if they were here for a hip complaint, that's what it is focused on, the review of symptoms would cover any other problems that they were having.
Q. I'll ask it a different way. Do you just ask questions about the problem that the patient comes to see you for or do you ask them

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

Page 46

more open-ended questions about what other issues do you have, if any?
A. It tends to be problem-focused.
Q. And you then do a review of symptoms to check any other issues they may have?
A. Yes, sir.
Q. And during the course of that, is it usual or common for your patients to share with you if they have other medical problems beyond the specific problem they are seeing you for?
A. It is common that they would, yes.
Q. In this case Mr. Collins was in fact seeing you and another orthopedic surgeon at the same time based on the records you saw, is that correct?
A. That is correct.
Q. Would you expect that a patient who was seeing two separate orthopedic surgeons to disclose to both of them the issues he was seeing the other provider for?
A. As his orthopedic surgeon, it would be helpful to know that he was being treated by another orthopedic surgeon and then it would be my determination whether there was any relevance to that condition as far as it affected what he was

Page 47

seeing me for.
Q. But the only way for you to know that would be for him to share it with you, correct?
A. Yes, sir.
Q. And Mr. Collins never shared with you that he was seeing Dr. Lazeksi at the same time he was seeing you?
A. Not to my recollection.
Q. You don't know anything as you've told us about the ballast that's used at the railroad, correct?
A. No.
Q. You don't know how often Mr. Collins had to walk on it, if at all?
A. No, sir.
Q. You don't know what his job duties might have involved that would relate to the walking on ballast at all, do you?
A. No, sir.
MR. WRAY: I think that's it.
THE WITNESS: Okay.
MR. WRAY: Thank you.
MR. SOREY: No questions. Thank you, doctor.
(The witness, after having been advised

Page 48

of his right to read and sign this transcript, waives that right.)
(The deposition was concluded at 6:40 PM.)

Page 49

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

CERTIFICATE OF VERBATIM TRANSCRIPT

I, Sarah E. Young, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript of WILLIAM MCCARTHY, MD was taken by me and transcribed by me and is a true, accurate, and complete record.
I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
In witness whereof, I have hereunto set my hand this 25th day of June, 2018 at Rock Hill, South Carolina.

SARAH E. YOUNG NOTARY PUBLIC SOUTH CAROLINA

Sarah E. Young
My Commission expires
June 2025

ELECTRONICALLY FILED - 2018 Nov 09 4:30 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

I N D E X

	Page	Line
WILLIAM MCCARTHY, MD	3	1
EXAMINATION	3	3
BY MR. WRAY:		
EXAMINATION	41	16
BY MR. SOREY:		
EXAMINATION	45	12
BY MR. WRAY:		
CERTIFICATE OF VERBATIM TRANSCRIPT	49	4

E X H I B I T S

	Page	Line
EXH. 1, Medical Records	4	16
EXH. 2, Incident Report	16	14
EXH. 3, Medical Record	19	7
EXH. 4, Medical Record	21	5

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MICHAEL COLLINS, Plaintiff, v. NORFOLK SOUTHERN RAILWAY COMPANY, Defendant.	Civil Action No.: 2017-CP-46-2574

COMES NOW Plaintiffs, by and through undersigned counsel, and hereby request the court to deny Defendant Norfolk Southern Railway's Motion for Summary Judgment as to Counts I and II. Plaintiff concedes that Count III of his complaint involving cumulative trauma to his hips should be dismissed.

I. Introduction

On August 6, 2018, Defendant filed its Motion for Summary Judgment alleging that Michael Collins's Complaint should be dismissed in its entirety. Specifically, Defendant alleges that Count I of Collins's Complaint should be dismissed because Norfolk Southern did not breach its duty to Plaintiff; Count II of Collins's Complaint should be dismissed because Norfolk Southern did not breach its duty to Plaintiff; and, Count III of Collins's complaint should be dismissed because Norfolk Southern did not breach its duty to Plaintiff. As shown below, Defendant's motion for summary judgement should be denied as to Counts I and II.

II. Statement of Facts

Plaintiff filed his case against Norfolk Southern on September 1, 2017, alleging injuries as

a result of his employment with Norfolk and due, in whole or in part, to the negligence of Norfolk. Plaintiff alleged three separate counts causing three injuries. Plaintiff's first count was for injuries to his neck, back and shoulder. On or about March 31, 2016, Plaintiff was working for Defendant in York County as a carman. On that date, Plaintiff was instructed by Defendant to inspect and repair a railcar. During the course of that task, Plaintiff was closing a box car door when it locked up unexpectedly, causing Plaintiff to injure his shoulder, neck and back. Defendant alleges that Plaintiff admitted that Norfolk Southern did nothing wrong with regard to the box car door. However, Plaintiff also stated that carmen routinely tried to get the yard crews to tell them what was wrong with a car when it was bad ordered, but there were times when there was nothing on the cars to identify any problems. *Collins Depo.* at 196:17-197:5 (Attached as Exhibit 1 to Defendant's Memorandum in Support of its Motion for Summary Judgment). This was one such instance that the yard crew failed to identify the problem to him and no one filled out the bad-order tag to inform him that there was a problem with the box car door. *Id.* at 197:6-198:12.

Plaintiff's second count was for injuries to his neck. On or about August 13, 2016, Plaintiff was working for Defendant as a carman in Mecklenburg County, North Carolina. On that date, Plaintiff was required to by Defendant to inspect and air test outbound cars. In order to accomplish this task, Plaintiff was required to use compressed air to ensure that the air brakes on the cars was operating correctly under the Federal Railroad Administration's required air tests. However, the compressed air was not operating correctly, so Plaintiff was required to go to the compressor room to trouble shoot the air. When Plaintiff got to the compressor room, there was a key pad lock. *Id.* at 91:14-92:13. There are other key pad locks in the yard, including to get into the gate, the carman's room, the office, and the general foreman's room. *Id* at 92:14-19. These key pads all have the same code. *Id.* Plaintiff had never been instructed otherwise, so he believed that the key

pad at the compressor room would have the same code. *Id.* Therefore, Plaintiff put in the code and tried to pull open the door. When that did not seem to work, he looked into the door jam and did not see a deadbolt, but at the top of the door frame it appeared that the door may have been stuck a little. *Id* at 93:1-12. He therefore pulled on the door with a little force, at which time it flew open, causing him to jerk back and injure his neck. *Id.* at 93:13-21. Even though carmen are required to use air in the performance of their duties, he had never been told or instructed that this door lock would be any different than any other door on property. *Id.* at 93:23-94:4. Norfolk failed to provide either Collins or his partner with the means to safely complete their tasks.

As stated above, Plaintiff agrees that Count III of the Complaint alleging cumulative trauma to his hips should be dismissed.

III. Standards for Summary Judgment in FELA Cases

1. FELA is an Avowed Departure from Common Law

The Supreme Court has made clear that the FELA represents, "an avowed departure from the rules of common law." *Sinkler v. Missouri Pacific R.R. Co.*, 356 U.S. 326, 329 (1958). The FELA is a "humanitarian" statute. *Metro-North Commuter Rail co. v Buckley*, 521 U.S. 424, 438 (1997). Recognizing the "special need" to protect railroaders from the inherently dangerous nature of their work, *Sinkler*, 356 U.S. at 329, Congress enacted the FELA to "shift part of the human overhead of doing business" from the employees to the employers. *Consolidated Rail Corporation v. Gotshall*, 512 U.S. 532, 542 (1994). Elsewhere, the Supreme Court has written that, "We have recognized generally that the FELA is a broad remedial statute and have adopted 'a standard of liberal construction in order to accomplish [Congress'] objects.'" *Atchinson, Topeka &Santa Fe Ry. Co. v. Buell*, 480 U.S. 557 (1987).

The Act strips employers of their common law defenses of assumption of risk and contributory negligence as a bar to recovery, *Rogers v. Missouri Pac. R.R.*, 352 U.S. 500, 506

(1957), and abandons general concepts of proximate cause. *Green v. River Term. Ry.*, 585 F. Supp. 1019, 1024 (N:D.Ohio 1984), *aff'd* 763 F.2d 805 (6th Cir. 1985). The Third Circuit has stated, "The FELA represented a *radical change from the common law* in an attempt to assure workers a more sure recovery by abolishing many traditional defenses." *Poleto v Conrail*, 827 F.2d 1270, 1278 (3d Cir. 1987) (emphasis added).

2. The Paramount Importance of Jury Determinations

Consistent with the humanitarian purpose of the FELA, the standard for submitting a FELA case to the jury is significantly less stringent than in the ordinary negligence action. *Rogers*, 352 U.S. at 506; *Mendoza v. Southern Pacific Trans. Co.*, 733 F.2d 631, 633 (9thCir. 1984). Under the FELA, "the test of a jury case is whether the proofs justify with reason the conclusion that employer negligence *played any part, no matter how slight*, in producing the injury or death for which damages are sought." *CSX Transportation, Inc. v. McBride*, 131 S. Ct. 2630 (2011)(emphasis added). *See also Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957). As a result, as the Third Circuit Court of Appeals has held:

> [A] trial court is justified in withdrawing such issues from the jury's consideration only in those ***extremely rare instances*** where there is a ***zero probability*** either of employer negligence or that any such negligence contributed to the injury of an employee.

Pehowic v. Erie Lackawana. Railroad Co., 430 F.2d 697, 699-700 (3rd Cir. 1970) (emphasis added). *See also, Mendoza v. Southern Pacific Transp. Co.*, 733 F. 2d 631 (9th Cir. 1984); *Hines v. Consolidated Rail Corp.*, 926 F.2d 262 (3rd Cir. 1991); *Eckert v. Aliquippa & Southern R. Co.*, 828 F.2d 183, 187 (3rd. Cir. 1987) (*citing Pehowic's* "zero probability" test); *Gans v. Mundy*, 762 F.2d 338, 343-44 (3rd Cir. 1985) (*citing Pehowic*).

The burden of proof necessary to present a case to a jury is "significantly lighter under FELA than . . . in an ordinary negligence case." *Smith v. Soo. Line R.R. Co.*, 617 N.W.2d 437, 439

(Minn. Ct. App. 2000) (citing *Habrin v. Burlington Northern Ry. Co.*, 921 F.2d 129, 132 (7th Cir. 1990)). The quantum of proof required to present a jury issue is described as a "scintilla" of evidence. *Id.* (citing *Hauser v. Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 346 N.W.2d 650, 653 (Minn. 1985)); *see also Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 500, 506 (1957) ("the test of a [FELA] jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, *even the slightest*, in producing the injury or death for which damages are sought")(emphasis added).

The Second Circuit Court of Appeals has stated that, "[u]nder the FELA, 'the case must not be dismissed at the summary judgment phase unless there **is absolutely no reasonable basis** for a jury to find for the plaintiff.'" *Gadsden v. Port Authority TransHudson Corp.*, 140 F.3d 207 (2d Cir. 1998), *quoting Syverson v. Consolidated Rail Corporation*, 19 F.3d 824, 828 (2d Cir. 1994). As put more colorfully by the Seventh Circuit Court of Appeals, numerous cases have affirmed submission of FELA claims to juries based on evidence "scarcely more substantial than *pigeon bone broth.*" *Green v. CSX Trans. Co.*, 414 F.3d 758, 766 (7th Cir. 2005), *quoting Habin v. Burlington Northern Railroad Co.*, 921 F.2d 129, 132 (7th Cir. 1990).

The corollary of these principles is that juries play a significantly greater role in FELA cases than at common law. *Eggert v. Norfolk & Western Railway Co.*, 538 F.2d 509 (2nd Cir. 1976), *citing, inter alia, Rogers, supra*; *Eaton v. Long Island R. Co.*, 398 F.2d 738, 741 (2d Cir. 1968) (under FELA, juries' right to pass upon issues of fault and causality "must be most liberally viewed."). This is because Congress *intended the FELA to be remedial legislation and under the Act*, and **"'trial by jury is part of the remedy.'"** *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 360, *reh. denied,* 369 U.S. 882 (1962), *quoted in Eggert*, 538F.2d at 511; *Boeing Co. v. Shipman*, 411 F.2d 365, 371 (5th Cir. 1969) (**"trial by jury is part of the**

remedy") (*quoting Atlantic & Gulf Stevedores, Inc., supra*); *Baily v. Central Vermont Ry.*, 319 U.S. 350, 354 (1943) (right to a **jury trial is "part and parcel of the remedy** afforded" under the FELA). To deprive FELA plaintiffs of the benefit of a jury trial in "close or doubtful cases" is to "take away a goodly portion of the relief ... Congress has afforded them." *Baily*, 319 U.S. at 345.

The Supreme Court's emphasis on the paramount importance of jury determinations in FELA cases emerges from a review of FELA cases reaching back to the 1940's.[1] In *Bailey v. Central Vermont Railroad,* 319 U.S. 350 (1943), the plaintiff's decedent was killed at work. At the close of all the evidence, the railroad moved for a directed verdict. The trial court denied the railroad's motion and submitted the case to the jury, which returned a verdict for the plaintiff. The railroad appealed, and the Supreme Court of Vermont reversed, holding that the trial court should have granted the motion for a directed verdict. 319 U.S. at 351-352. The Supreme Court of the United States reviewed the job performed by plaintiff's decedent, "the hazards which it entailed, the effort which it required, the kind of footing he had, the space in which he could stand, the absence of a guardrail . . ." and then stated ". . . all these were facts and circumstances for the jury to weigh and appraise in determining whether [the railroad] in furnishing [plaintiff's decedent] with that particular place in which to perform the task was negligent." *Bailey,* 319 U.S. at 354. The Supreme Court emphasized the importance of jury determinations in FELA cases:

> **It [the right to trial by jury] is part and parcel of the remedy afforded railroad workers under the Employers' Liability Act.** Reasonable care and cause and effect are as elusive here as in other fields. But the jury has been chosen as the appropriate tribunal to apply those standards to the facts of these personal injuries. . . . **To deprive**

[1] FELA and Jones Act cases are the only exceptions to the Supreme Court's general rule that it does not take cases turning solely on the evaluation of evidence. "The practice of not taking cases turning solely on the evaluation of evidence has been consistently adhered to... except in the special class of cases arising under the Federal Employers' Liability Act and its twin, the Jones Act." *Sentilles v. Inter-Carribean Shipping corp.*, 361 U.S. 107 (1959) (emphasis added) The Supreme Court has granted *certiorari* in many FELA and Jones Act cases – "the special class of cases" – to ensure that lower courts adhere to its special FELA jurisprudence.

> **these workers of the benefit of a jury trial in close or doubtful cases is to take away a goodly portion of the relief which Congress has afforded them.**

Bailey, 319 U.S. at 354 (emphasis added).

The Supreme Court underscored the paramount importance of jury determinations in FELA cases in *Tennant v. Peoria and Pekin Union Railway Co.,* 321 U.S. 29 (1943). In *Tennant,* the plaintiff's decedent was killed working in a railroad yard. There was no direct evidence as to the decedent's precise location when he was killed. While there was evidence of railroad negligence, there was no direct proof that the railroad's negligence proximately caused the decedent's death. The case was submitted to a jury, which returned a verdict in favor of the plaintiff. The railroad appealed, and the appellate court reversed this judgment, finding that there was no substantial proof the railroad's negligence proximately caused the plaintiff's death. The Supreme Court wrote that, "We granted *certiorari* [citation omitted] because of important problems as to **petitioner's right to a jury's determination of the issue of causation."** 321 U.S. at 29-30. As to the facts:

> Petitioner was required to present probative facts from which the negligence and the causal relation could reasonably be inferred. . . If that requirement is met, as we believe it was in this case, the issues may properly be presented to the jury. No court is then justified in substituting its conclusion for those of the twelve jurors.

321 U.S. at 32-33 (emphasis added).

Three years later, in *Lavender v. Kurn,* 327 U.S. 645 (1946), the Supreme Court once again reversed a FELA case where a reviewing court had set aside a plaintiff's verdict. In *Lavender*, the plaintiff's decedent was killed at work. The railroad's evidence suggested that the plaintiff's decedent had been murdered or that the accident could not have happened as the plaintiff's decedent claimed. The jury returned a plaintiff's verdict, the railroad appealed, and the Supreme

Court of Missouri reversed the judgment ". . . holding that there was no substantial evidence of negligence to support the submission of the case to the jury." *327* U.S. at 647.

Once again the Supreme Court reviewed the trial court record and admonished a lower court for permitting a railroad defendant to re-litigate the underlying factual dispute on appeal. The Supreme Court wrote:

> But such evidence has become irrelevant upon appeal, there being a reasonable basis in the record for inferring that the hook struck Haney. The jury having made that inference, the respondents were not free to relitigate the factual dispute in a reviewing court. Under these circumstances **it would be an undue invasion of the jury's historic function for an appellate court to weigh the conflicting evidence, judge the credibility of witnesses and arrive at a conclusion opposite from the one reached by the jury. . . .** Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear. But **where, as here, there is an evidentiary basis for the jury's verdict, the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion.** And the appellate court's function is exhausted when that evidentiary basis becomes apparent, it being immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable.

327 U.S. at 652, 653 (emphasis added).

In 1963 the Court once more granted *certiorari* in a FELA case to reverse an appellate court that had improperly usurped the jury's fact-finding function. In *Gallick v. Baltimore and Ohio Railroad Co.,* 372 U.S. 108 (1963), a bug bit a railroad worker who was working near a stagnant pool of water on a railroad's right of way. The wound became infected and eventually the worker's legs were amputated. The railroad worker's doctors characterized the plaintiff's condition as "secondary to insect bite." The railroad moved for a directed verdict, which the trial judge denied. The jury found for the railroad worker.

On appeal, the Ohio Court of Appeals deemed the evidence nothing but "a series of guesses and speculations . . . a chain of causation too tenuous to support a conclusion of liability" and

reversed the trial court's judgment. 372 U.S. at 112-113. The Supreme Court began its review with a pointed chastisement of the appellate court:

> We think that **the Court of Appeals improperly invaded the function and province of the jury in this Federal Employers' Liability Act Case. . .** We hold that the record shows sufficient evidence to warrant the jury's conclusion that petitioner's injuries were caused by the acts or omissions of respondent.

372 U.S. at 113 (emphasis added).

The Supreme Court used *Gallick* to again admonish trial and appellate courts tempted to disregard jury determinations in FELA cases. The Court began its review by examining *Tennant v. Peoria, supra,* which the Court labeled as, "one of the leading cases" regarding a railroad worker's right to a jury determination on the issue of causation. 372 U.S. at 114. The Supreme Court then re-affirmed *Tennant's* central holding:

> **It is the jury, not the court, which is the fact-finding body.** It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusions as to the facts . . . That conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored. Courts are not free to re-weigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.

372 U.S. at 115, *citing Tennant,* 321 U.S. at 35. After reviewing other similar holdings, the Supreme Court found the court of appeals to have, "erred in depriving petitioner of the judgment entered upon the special verdict of the jury." 372 U.S. at 122.

From *Tennant* to *Bailey* to *Lavender* to *Gallick*, the Supreme Court has steadfastly proclaimed the paramount importance of jury determinations in FELA cases. The jury – not the trial judge, and not an appellate court – is to be the fact-finding body. The Supreme Court's unique jurisprudence in FELA cases must be followed.

IV. Conclusion

The remedial nature of the FELA directs that the jury has been chosen as the appropriate tribunal to asses the facts of railroad personal injuries. To deprive these workers of the benefit of a jury trial in close or doubtful cases is to take away a goodly portion of the relief which Congress has afforded them. Defendant's motion for summary judgment as to counts I and II should be denied.

Respectfully submitted the 13th day of November, 2018.

s/ Joseph O. Thickens
Joseph O. Thickens, S.C. Bar No. 101398
J. Eric Cavanaugh, S.C. Bar No. 100044
Cavanaugh & Thickens, LLC
1324 Gadsden Street (29201)
Post Office Box 2409
Columbia, SC 29202
Tel: (803) 888-2200
Fax: (803) 888-2219

ATTORNEY FOR PLAINTIFF

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MICHAEL COLLINS, Plaintiff, v. NORFOLK SOUTHERN RAILWAY COMPANY, Defendant.	)	Civil Action No.: 2017-CP-46-2574

MOTION TO ALTER/AMEND

On March 25, 2019, the Court granted Defendant Norfolk Southern Railway Company's motion for summary judgment. Plaintiff respectfully requests this Court reconsider, alter or amend the judgment pursuant to Rule 59, SCRCP.

LEGAL STANDARD

A party may file a Rule 59(e) motion when they believe the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes the court to reconsider or rule on it. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9 at 24, 602 S.E.2d 772 at 780 (2004).

In deciding a motion for summary judgment, the court must determine if there is any genuine issue as to any material fact. *Montgomery v. CSX Transportation, Inc.*, 376 S.C. 37, 47, 656 S.E.2d 20 (2008). When determining if any triable issues of fact exist, the evidence and all inerences which ca be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* (citing *Wilson v. Style Crest Products, Inc.*, 367 S.C. 653;

656, 627 S.E.2d 733,735 (2006). "Moreover, even if there is no dispute regarding the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

To prevail on a FELA claim, the plaintiff must prove the "traditional common law elements of negligence and that the employer's negligence 'contributed, in whole or in part, to the worker's injury." *Id.* 376 S.C. at 47 (quoting *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369 n. 5, 635 S.E.2d 97, 101 n. 5 (2006) (quoting *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 93, 588 S.E.2d 87, 91 (2003)). It is firmly established that questions of the sufficiency of the evidence for the jury in cases arising under FELA in state courts are to be determined by federal rules. *Brady v. S. Ry.*, 320 U.S. 476, 479 (1943). A summary judgment motion involves analysis of the sufficiency of the evidence, and therefore federal law applies. *Bean v. Cent. R. Co., Inc.*, 392 S.C. 532, 544 (S.C. Ct. App. 2011); *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986); *see also Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 396-97, 618 S.E.2d 903, 905-06 (2005). To avoid summary judgment, the evidence must demonstrate that the employer's negligence played any part, even in the slightest, in producing the injury for which damages are sought. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 396-97, 618 S.E.2d 903, 905-06 (2005) (citing *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 506 (1957).

ARGUMENT

In granting Defendant's motion for summary judgment as to counts I and II, the Court made factual findings that inconsistent with the testimony in this matter. In Count I, Plaintiff contended that Norfolk Southern was negligent in assigning him to repair a railcar without informing him of the specific defects associated with that car. The Court found that Plaintiff was an experienced car man and that there was no evidence that that Defendant failed to use reasonable

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP460257

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

care for Plaintiff's safety or that the work method used was unsafe. The Court specifically noted that "Plaintiff stated at times he was more aware of the issues prior to repairing a car (by the yard crews or others), but provided nothing further." The Court failed to take into account Plaintiff's additional testimony that Plaintiff and other members of his craft had repeatedly tried to get the yard crews to be more consistent in their bad-order tagging of cars and tell the repairmen what was wrong with the car so "we'd have a heads-up before we started looking at it" so that they were not blindly walking into a dangerous situation. He also testified that despite the repairmen's requests for additional information when cars were bad-ordered, they routinely came into the yard with nothing written on them and the repairmen would have to use trial and error to determine what the problem may be.

Additionally, to find that Plaintiff was an experienced carman who should have been able to determine the problems with the car door prior to being injured is to find that Plaintiff assumed the risk of his employment; a defense stricken from the FELA by Congress. Every vestige of the doctrine of assumption of the risk has been eliminated as a defense in FELA. 45 U.S.C. § 53; *Tiller v. Atlantic Coast Line R. Co.*, 318 U.S. 54, 64 (1943). Assumption of the risk is when an employee is knowledgeable of a dangerous condition, yet voluntarily accepts the condition in order to perform his duties. That is what occurred in this case. Plaintiff was not informed of the defect in the car even though he and other individuals had requested the yard crews to identify the problems when they bad-ordered a car. He was forced to attempt to repair a car that he knew nothing about the defect because Norfolk failed to inform him of the problem. Norfolk Southern's failure to require or enforce rules informing its employees of potential hazards from bad-ordered cars is evidence of negligence that a reasonable juror could determine played some part, however slight, in causing Plaintiff's injury.

In Count II, Plaintiff alleged that Norfolk failed to provide him with information regarding the door to an air compressor that he needed in order to complete his job tasks. Plaintiff alleged that Norfolk failed to inform him that the door to the air compressor room required a code that he was not aware of and had no reason to believe or know was different from any of the other doors in the yard that all required the same code. The Court found that Plaintiff could not see a deadbolt in the door jam indicating that it was locked, unlike in all the other doors in the yard, and that Plaintiff believed the door was stuck. The Court found that Plaintiff's own negligence was the sole cause of his injuries. However, Plaintiff put forth evidence that he was never informed of a different code or provided any information to make him believe that he would not have access to an area of the yard that was necessary for him to complete his work. Defendant's failure to supply him with this information led him to believe that the door was stuck, requiring additional force to open, facts sufficient under the FELA standard to submit the case to the jury for determination as to whether Norfolk Southern was negligent in its assignment of tasks to Plaintiff..

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reconsider its ruling on Defendant's motion for summary judgment and find that Plaintiff claims should not be dismissed and reset this case for trial by jury.

Respectfully submitted the 4th day of April, 2019.

SIGNATURE PAGE FOLLOWS

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP460574

s/ Joseph O. Thickens
Joseph O. Thickens, S.C. Bar No. 101398
J. Eric Cavanaugh, S.C. Bar No. 100044
Cavanaugh & Thickens, LLC
1324 Gadsden Street (29201)
Post Office Box 2409
Columbia, SC 29202
Tel: (803) 888-2200
Fax: (803) 888-2219

ATTORNEY FOR PLAINTIFF

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP4602574

CERTIFICATE OF SERVICE

I, the undersigned attorney of the law offices of Cavanaugh & Thickens, LLC, attorneys for Plaintiff, do hereby certify that I have served a copy of the foregoing ***MOTION TO ALTER/AMEND*** in connection with the above-referenced case by **Electronic Filing Notification through the South Carolina Courts**, to the following:

1. Ronald K. Wray for Defendant Norfolk Southern Corporation.

s/ Joseph O. Thickens

Columbia, South Carolina
April 4, 2019

ELECTRONICALLY FILED - 2019 Apr 04 3:43 PM - YORK - COMMON PLEAS - CASE#2017CP460574

STATE OF SOUTH CAROLINA)
)
COURT OF APPEALS)

Michael Collins,

Plaintiff,

vs.

APPELLATE CASE NO.: 2019-000984
CASE NO.: 2017-CP-46-2574

Norfolk Southern Corporation,

Defendant.

BEFORE THE HONORABLE JENNY ABBOTT KITCHINGS

Transcription of Audio Recordings
Requested by:
Joseph O. Thickens, Esquire
Cavanaugh & Thickens, LLC
1324 Gadsden Street
Columbia, South Carolina 29201

CHARLES E. SOREY, II, ESQUIRE, for Appellant
JOSEPH O. THICKENS, ESQUIRE, for Appellant
RONALD K. WRAY, II, ESQUIRE, for Respondent

Transcribed by:
Megan R. Brown,
South Carolina Court Reporter and Notary Public

ABC TRANSCRIPTION SERVICE
257 Summerland Avenue
Batesburg, South Carolina 29006
1-803-730-3015 (cell)

(Start of Requested Transcription.)

THE COURT: This is Case No. 2017-CP-46-2574, Michael Collins versus Norfolk Southern. Present representing the plaintiff is Mr. Thickens and Mr. Sorey. Also present is Mr. Wray, representing defendant.

And, Mr. Thickens, I believe this is your motion for me to reconsider my ruling.

MR. THICKENS: Yes, Your Honor. Mr. Sorey is admitted pro hac vice and will be arguing the -- the motion.

THE COURT: Okay. Thank you, Mr. Thickens.

Mr. Sorey?

MR. SOREY: Judge, it's always fun to have to come to another state to argue, but it's not always fun to come to another state to try to tell the judge that perhaps there was an error made in --

THE COURT: You're going to tell me --

MR. SOREY: -- in the findings.

THE COURT: -- what I did wrong in my previous ruling?

MR. SOREY: Yeah. That -- I -- people asked me the other day and said, Where are you going?

I said, Well, I got to go to South Carolina.

What you going to do?

I said, Well, the judge issued a order up there, and I've got to complain about it and tell her I think something is wrong with it.

Lucky you, so.

Anyway, our -- and I guess the easiest way to explain it, we don't find fault in a lot of the things that you've found as far as of our client, Mr. Collins, and we do agree that he was contributory negligent, and I don't think there is any doubt about it, but I think the big topic or the big area that we're concerned about is that it doesn't seem to be a measure of negligence on behalf of the railroad at the same time. Of course, you're aware under the FELA it's all comparative negligence, and it's not like South Carolina, because Joe was telling me that you all have the 50 percent rule, or thereabouts, and in FELA it's 1 percent and 99 percent. If you have a plaintiff who's 99 percent contributory negligent and the railroad is 1 percent negligent, it still goes to the jury.

So that's what we're arguing here today. That, along with it -- it -- it appears that the finding was based upon a lot of the things that have been outlawed under the FELA. The assumption of the risk appears to be, to us, one of the main things that appeared here,

because throughout the theme of the order, throughout defendant's argument was this was part -- his job duties were things that he would normally do and so, therefore, it's his normal duties, then it -- the railroad couldn't have been negligent.

Well, obviously, that takes into consideration basically assumption of the risk, and assumption of the risk was abolished in 1929 under the FELA, so that no longer exists in any shape or form as far as the FELA is concerned. Now, we did write a small brief. It was actually a brief brief dealing with some of the things dealing with contributory negligence and -- and the definitions of it, and we cited a case here that says: Contributory negligence is a careless act or admission on the plaintiff's part tending to add a new danger to conditions that the employer negligently created or permitted to exist, and we cited Taylor versus Burlington Northern Railroad on that and the cite is there.

Following that it says: By contrast, an employee's voluntary knowledgeable acceptance of a dangerous condition that is necessary for him to perform his duties constitutes assumption of the risk. And that's what we think here, that in find -- in making some of the findings you consider we oppose defendants were in

favor of saying, Well, these were his normal job duties. Making an inspection of the train, trying to open the car, these are a part of his normal job duties, but he doesn't assume any risk and it doesn't prevent any negligence being found on behalf of the railroad because he's doing his normal duties. If that were true, then there would never be any accidents or any lawsuits under the FELA, because it would say, Well, he was doing his normal duties when this happened to him so, therefore, there is no claim.

We also cited a couple other cases. Buffalo versus B&O Railroad Company, and it's on about the next to the last page there, and we talk about in the quote, "Defendant's negligence cannot be determined by examining plaintiff's conduct. To do so would be to apply a contributory negligence as a defense under the guise of non-negligence on the defendant. It cannot be held that the failure of the injured party to perceive a negligent condition establishes the absence of negligence on the part of the defendant."

In other words, the fact that the plaintiff was negligent, which we've said we -- we can certainly understand, does not forego the looking into or the cause that set that in motion, whether that be the defendant's negligence or something else. But those

cases, we think, are important because I believe it's the basis behind the order. Now, in Count 1, this is the car door locking up, we feel like really there the first grounds of negligence was the failure of the Norfolk Southern to provide the air that was necessary for Mr. Collins to test the brakes on the train before it went out --

THE COURT: No. That would be --

MR. SOREY: -- the air compressor.

THE COURT: -- Count 2.

MR. SOREY: Pardon?

THE COURT: That would be Count 2's.

MR. SOREY: Oh, I'm sorry. I -- I -- I guess I flipped them here.

Anyway, no. I'm sorry. I was talking about the compressed air first. I'm sorry. I got them reversed. My pen ran out of ink a while ago so I couldn't -- couldn't keep writing. It was part of my problem.

Anyway, we feel that's the first grounds of negligence, in that particular count. The second ground for negligence on behalf of the Norfolk Southern was not furnishing the correct code to Mr. Collins when all the other doors had the same code. Now, if something happens like happened in Mr. Collin's position where the air went out, it is necessary for him to do

something to correct that situation.

Those trains are sitting there. They've been inspected. They're waiting for the locomotives to hook them up and take them off. They're under a time schedule, and believe me, that's something that the railroad is very adamant about, getting those trains out of there on time.

You can't send a train out until a brake test has been performed, and the only way that this brake test can be performed is by the carman taking the compressed air, hooking it into the train, and then each one of the cars will pump up. They have a register on the back, and that register has to equal to 80 Psi or better before that train can be taken out of there. So the fact that they didn't furnish him this compressed air that he would normally have is what caused this situation to begin with, causing him to seek out a repair of -- of the air compressor to begin with.

Now, the order had also said the Court states that Mr. Collins did not use his radio or cell phone to call his coworkers or his supervisor for the correct code, and I will just point out to the Court, at this time there is no evidence in the record before us that his coworker or that his supervisor had the correct code. That's just an assumption that apparently we've

all made or talked about or said that, well, he didn't do this or he didn't do that. We don't know that that would have rectified the problem, because there's no evidence of it one way or the other.

Now, the Court also found, and we agree, that Mr. Collins did not see a dead bolt engaged and thought the door was just stuck, and I've done that before. I know I can certainly understand that. Now, the question of whether this assumption was correct, no dead bolt, therefore it was stuck, and his further action of pulling on the door should be a jury question to see if that action and reaction was reasonable.

This -- this is -- it's a question of whether this is -- his actions were reasonable or not under the circumstances. He looked, didn't see a dead bolt attached and -- and pulled on the door. Now, he was a strong man, and when he pulled it open, we know that the door handle came off in his hand.

Now, the question is, did he use too much pressure or not. That would be a question of contributory negligence, not the complete negligence. It would be negligence on his part. Now, then, we want to jump back over now to the door locking up on the car when he tried to pull it.

Now, the situation is, and we've talked about this

before, the -- normally these cars come in, and, yes, they are -- if they come into the carman, there is supposed to be some type of defect with the car. We will all -- we'll all agree to that. Normally they come in with a bad-order tag, and we explained before it's a little 4-by-6 card that's attached to the train -- oh, excuse me, it's attached to the car with a wire, and on this it'll list the defect that they're sending the car in for: lock-up door, bad brakes, hand brake doesn't work, seal step is bent, or whatever the issue is.

And when it comes in, the carman can look at the tag and have some idea as to what the problem is with the car, and we all know in this particular case, there was no bad-order tag. There was no one who said anything to Mr. Collins about, Here is the problem with this car, so watch out. So, therefore, the only way that he could find out what was wrong with the car was trial and error, and in this particular case, when he tried to open the door, it locked up, as he said, and injured his back.

Now, if he would have been made aware of that, he would have had a -- a different method of trying to open the door. Now, I -- I noticed that some of the arguments was, Well, his coworker wasn't there and he

didn't wait until his coworker came back to start working on the car. On the railroad, you don't sit around and wait for someone else to come help you unless it's a situation that you've been instructed that it takes two men to -- to do the job.

You don't just sit around as a carman. You start doing your job, and that's what he was trying to do in this particular case. Now, if he had known that door was dangerous or had locked up, obviously he would have gone about it in a different manner.

Now, in the court order on page 2, it says -- and it's not numbered. It's just a 2. It says, "After inspection, plaintiff attempted to open the boxcar door, because it was" quote "the only way he could determine if there was an issue with the door." And that is correct to the extent that it applies to Mr. Collins, but it is not the only way he could have known whether that door was defective or not.

If it had a bad-order tag on it telling him that, he would have been aware of it, or if he had just been called in and said, The door is defective, that would have been another method of knowing. The Court also found that by a visual inspection of the door you couldn't determine that anything was wrong with it because it was an inside mechanism that was defective

or broken.

So the fact that he had scanned it with his eyes, walked around it and looked at it, there was no way for him to pick up the fact that this car door was defective so, therefore, when he opened it, it was -- he was subjected to the fact that it locked up. Oh, there was a case in here cited that when I first read it I kept thinking it was the old Rogers versus Missouri Pacific case, which basically was a 1947 one, but this was a 2003 case, and it was a South Carolina case, and it talked about the plaintiff being made aware or -- or the plaintiff getting injured while he was basically doing his normal job. I read the case, and in this Rogers versus Norfolk Southern case, the man was told that there was a hole in the yard and he was to go inspect it and see how to go about making a correction for it for the protection of everyone else.

He went there. He got hurt, and the Court sent him out on summary judgement saying that was part of his duties. There is a big difference between that case and Mr. Collins' case.

No one told Mr. Collins, That door is defective, like they did in the Rogers case when they said, There is a hole in the ground out there, go inspect it and

fix it. He had advance knowledge of the defect.

Mr. Collins didn't have any advance knowledge of the defect, and we think that would make it a jury question. And, Judge, with that simple argument, I'm through.

THE COURT: Thank you.

Mr. Wray?

MR. WRAY: Thank you, Your Honor. May it please the Court. It probably will not surprise you one bit to hear me say that I think you got it entirely right, and I don't think there is anything for you to alter, amend or reconsider.

You know, it's interesting in this case that Your Honor took a good bit of time to go through the record, and it's demonstrated by your order. You obviously read all the materials that were provided to you. You quoted from them, cited specific testimony, and cited the applicable law.

That's what you're supposed to do, and I commend you on the job you did. There is a reason why in the Rules of Civil Procedure the drafters provided a process by which the moving party gets to argue, the responding party responds, they get a reply, and usually we're done. That's because as lawyers, without those rules we'd be here forever, because that's their

nature.

MR. SOREY: I agree.

MR. WRAY: And so, likewise, the Courts have provided a very similar narrow framework for motions to alter or amend, and they're not designed just because somebody thinks she got it wrong or disagrees with the Court's ruling, and that's really what we're here for today. If I could play back the hearing transcript from when we were with you last November, you would hear basically the same argument you heard today. That's not a motion to reconsider or alter or amend.

The conditions for a motion to alter or amend are really three situations. One is, there has been some new evidence that was stumbled upon or learned that was unavailable at the time of the hearing. You didn't hear any argument about that today because there is none. The second is that there's been some intervening change in the law; the Supreme Court or some binding authority has come out with a new decision that you didn't have the chance to consider. That didn't happen here.

In fact, up until just a moment ago, the first time the plaintiff has ever addressed the one controlling decision, the Rogers case, was today. They didn't talk about it at the last hearing and they

didn't talk about it in any of -- any of their motion papers, which we noted, and we think that's fatal to the argument. But there's been no change in the law. And the third is if they can demonstrate that the Court overlooked or misapprehended some fact, that failure to address that would create some sort of manifest injustment would be a clear error of law.

I guess that's the closest argument they've made, is prong three, but the problem with that is, as I've said, Your Honor did such a good job with your order in going through all the facts, that it's clear you didn't overlook anything. You didn't misapprehend anything. With all due respect to Mr. Sorey, I understand he disagrees with your conclusion, but that's not the basis for a Rule 59 motion. Otherwise, as I've said, they can file this motion today and say, We think you got it wrong, and I hope this doesn't happen, but if you were to say, You know what, maybe I did get it wrong, then I come back to you, and I say, Well, Judge, let's argue this one more time, I -- I think you missed it.

That's not the way our system is supposed to be. There -- there's supposed to be a clear pointing to something in the record to say, Judge, we argued point X and you didn't consider point X. Perhaps you didn't

hear us, perhaps you missed it, or we cited this particular case which is controlling authority and for some reason you didn't address it in your order and we think you need to do that.

As lawyers, as the Court is certainly aware, we have to do some of those things because when we go up on appeal, if you didn't address it in your order, it's not preserved for appeal. That's what Rule 59 is for, is to say, Here is something we argued. You didn't address it. We think you need to. Or, You didn't address it, and if you had addressed it, you would have reached a different decision.

None of that applies here. When we were here last November, we heard the exact same argument. Mr. Collins was working at his job. Nobody told him what the problem was with the railcar. No one told him what the defect was. He was trying to figure it out and got hurt. Should go to the jury.

On Count 2, we heard the same thing, that this is a time-sensitive job. We got to move these trains out of here. He didn't have the air. He didn't have the code. For some reason, I still can't figure out, that justifies him breaking our door down.

We probably should have counter-claimed against him, but -- but we didn't. But he breaks our door down,

he says he hurts his back, and that ought to go to the jury. All that's addressed in your order. There -- there's nothing new on either point. So, you know, the simplest argument for me to make is -- is just to point that out, that they have not met the criteria for the rules or for the rule to -- to be invoked under Rule 59. And, of course, you just stand by its prior order, and if they believe there has been some error, then there is obviously a -- a remedy available to them, and that's to take it up on appeal and see if the Court agrees with them.

I do want to address a couple of things, one of which was mentioned in the brief and then a couple things that came up today, because I think it is very important. Most of the focus of the plaintiff's motion and the argument today was to suggest that the Court and Your Honor converted this or ruled on this case based on the assumption of the Risk Doctrine.

As I noted in our response, those words never appear in your order. It's clear you didn't rule in that fashion. I know they're trying to find a hook or something to give them something new to argue, but it's just not a fair characterization of what you did.

When we read your order, what you did was set forth some basic undisputed facts about what the

plaintiff's job was, the historical circumstances that led to this incident occurring, but nowhere did the Court ever say, imply, or rule that Mr. Collins's claim is barred because he knowingly and willingly went into some dangerous situation and then came out later and said, I'm hurt and I knew I was going to get hurt, but I did it anyway because that was my job.

We never argued that the first time, and you didn't rule that the first time. All we argued initially and all the Court's order found was that there is no negligence on either count by Norfolk Southern. And so to respond to my -- my friend Mr. Sorey's argument today and his suggestion or invitation to the Court that you undo what you correctly did the first time, and he says, Well, the problem is that we should allow the jury to consider all these contributory negligence arguments which we can see, and I think that's the first time I've heard that, but I appreciate, we can see our client was contributory and was negligent, and where we think the Court errored is not allowing the jury to consider the case on the merits.

Well, as the Court knows, you don't get to contributory negligence unless you first find negligence. That would be a standard jury charge in

any case. The jury never has to consider the defendant's -- or, I'm sorry, the plaintiff's degree of comparative negligence unless and until they first find that the defendant is negligent.

If you try a jury case, that's the first question on the verdict form, Do you find that the defendant was negligent? Yes or no. If you check no, end your deliberations and you're done. If you check yes, then go to the second question, Do you find that the plaintiff was negligent and that his negligence contributed or was a proximate cause of the accident?

That's the way it works. On this case, you did the right thing the first time. When you look at the evidence in the record at the hearing before you, there is no evidence here of any negligence by Norfolk Southern, so the case ends there.

We pointed out, of course, all the things that you said in your order that are in the record in terms of the absence of any negligence by Norfolk Southern, and then you couple on top of that the plaintiff's own admission when I asked him at deposition, What did Norfolk Southern did wrong, and he said, I don't think they did anything wrong. That's to Count 1. So when you put all that together, there is no reason to -- to reconsider or do anything different with respect to

Count 1.

Count 2 is the one that I said remains a mystery to me. I thought maybe they would concede that today, because I just can't fathom, any way, shape or form, how a gentleman who goes to a locked door, who sees a key padlock on it, who tries to enter a key -- a key code that's clearly not the right code, can justify tearing up the door and then suing somebody else for that accident. There was no emergency. The building wasn't on fire. Nobody was trapped inside.

Mr. Sorey says, We don't know whether anyone else that he could have called would have had the code or not. Well, that's irrelevant. He can't cause his own injuries and damages and then sue the railroad for that, and that's -- that's pretty clear under the law, and I think the Court correctly got that right.

I've just noted in our reply brief that they said that the issue was that he should have had the right -- same right of access to the yard as everybody else did. Well, he did. You've just got to have the right code, and there is no reason for him to -- to tear down the door and hurt himself.

The only other point I was going to mention is, Mr. Sorey mentioned today that one of the issues of negligence on the Count 2 should have been the fact

that they ran out of air to begin with. Well, that didn't harm Mr. Collins. If there had been some issue there that the air ran out, that -- that's just a remote issue, because like I say, if they hadn't called him in for work that day, obviously he wouldn't have gotten hurt, but that has nothing to do with -- with what happened or the circumstances.

As I said, Your Honor, we appreciate the time and attention that you spent on the case. It's obvious that you delved deeply into the record. You -- you went through all the issues that should have been addressed. We think you ruled correctly, and we would urge the Court to stand by your ruling, to deny the motion to reconsider or alter or amend, and allow this case to stand where it is. And I -- if you've got any questions, I'll be happy to answer them.

THE COURT: Thank you, Mr. Wray. And I -- I do agree with the defense. I don't -- I -- I did not -- for -- for the purposes of what -- that I need to -- to put this on the record, as far as the assumption of risk, my order came from looking through the exhibits that were -- that were put forth, determining whether or not negligence had been shown, so I did not review it for any assumption of risk, and so any facts that I pointed out that were -- that were

stated in plaintiff's deposition, which was the main exhibit that was handed up with the summary judgment motion, it was whether or not plaintiff had established negligence in these two cases, and I found they did not, and I haven't heard anything that -- that I did not take into consideration or anything different than what I took into consideration the first time.

I -- I understand that there are arguments to be made as far as what you -- what you can sort of take from -- from my order, but my order was -- did -- were there facts sufficient to establish negligence in these two counts, and I did not -- I did not find it in plaintiff's deposition, and so I don't know that anything further needs to be stated. But written -- or does there need to be a written order as far as --

MR. WRAY: I think you can just do a Form 4 indicating the motion was denied, unless there's something specific --

MR. SOREY: If he says Form 4 is okay --

THE COURT: Form 4 is fine.

MR. SOREY: -- that's fine with me, if it's okay with him.

MR. WRAY: Yes, sir.

THE COURT: Okay. Okay. And hopefully this won't take me as long --

MR. SOREY: Thank you, Your Honor.

THE COURT: -- to send that Form 4. And I will say thank you -- thank -- thank you all for giving me the time to really look through this, and like I say, it was my first case in dealing with this and giving me the time to research it and -- and work my way through it, and I appreciate it.

MR. SOREY: Okay.

(End of requested transcription.)

CERTIFICATE OF TRANSCRIPTIONIST

I, Megan Brown, do hereby certify that the audio recording provided to me were transcribed by me; that the foregoing document as typed is a true, accurate and complete transcription of the audio recording done to the best of my ability under the circumstances prevailing at the time; and that some proper names may be spelled phonetically; that UNINTELLIGIBLE may be used when audio is unclear; and certain speakers will be identified only as SPEAKER due to lack of verbal identification on audio recording.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Megan Brown, 9/1/2019
Notary Public State of South Carolina at Large
My Commission expires October 18, 2028

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF COMMON PLEAS

Michael Collins,

Plaintiff,

vs.

CASE NO.: 2017-CP-46-2574

Norfolk Southern Corporation,

Defendants.

Transcription of Audio Recordings
Requested by
Joseph O. Thickens, Esquire
Cavanaugh & Thickens, LLC
1324 Gadsden Street
Columbia, South Carolina 29201

BEFORE THE HONORABLE TEASA K. WEAVER

Transcribed by:
ABC Transcription Service
Megan R. Brown
South Carolina Court Reporter and Notary Public

ABC TRANSCRIPTION SERVICE
257 Summerland Avenue
Batesburg, South Carolina 29006
1-803-532-5255
1-803-730-3015 (cell)

(Start of transcription.)

THE COURT: Okay. This is Case No. 2017-CP-46-2574, Michael Collins versus Norfolk Southern Corporation. Present for plaintiff is Mr. Joseph Thickens; present for defendant is Mr. Ron Wray. And I'm not quite sure which motion we need to start off with first, so.

MR. THICKENS: Your Honor, Eddie Sorey is -- is also in this case as a pro hac vice admission, and that order has been entered, and he's going to order -- argue the summary judgement motion, which I believe is going to proceed first.

THE COURT: Okay. What was your name?

MR. SOREY: I'm -- I'm Eddie Sorey, S-O --

THE COURT: Eddie --

MR. SOREY: -- R-E-Y. Yes, ma'am.

THE COURT: -- Sorey?

MR. SOREY: Yes, ma'am.

THE COURT: Okay.

MR. WRAY: Thank you, Your Honor. May it please the Court, I'm Ron Wray on behalf of Norfolk Southern Railway Company. This is an action brought by a railroad employee against his railroad employer alleging that he suffered personal injuries on the job. This is a claim brought under Federal Statute, the

FELA, Federal Employers' Liability Act. I don't know if Your Honor has ever had a FELA case before.

THE COURT: I have not. This will be my first.

MR. WRAY: So I'm going to talk a little bit about that, but I didn't want to tell you things you've already -- you -- you might already know. First, although this is an employee suing his employer, this is not worker's comp. The FELA is a special statute that was enacted many, many years ago, 1930s, I think, and allows railroad employees to bring actions against their employers.

The one big difference that we're going to talk about today is that unlike in comp, where if you're hurt on the job, you recover, under the FELA, you have to prove the traditional common-law elements of negligence, and so the employer -- or the employee may recover from an injury on the job, but only if he can prove that his injuries were caused by negligence of his employer. There is another significant difference about FELA Law that's going to be important to this motion, because we're here on summary judgement, and I know Your Honor has heard a lot of summary judgement motions and you've probably heard many, many times opposing counsel say, Well, Judge, all I've got to show

is the scintilla of evidence and I get to the jury, and, in fact, my colleagues on the other side included some language in their brief suggesting that that's the standard for this case.

I would point out, we cited in our brief the Bean versus South Carolina Central Railroad case, which is a South Carolina Supreme Court decision which is binding authority on this Court, and in that case, our Court said specifically, and I'm quoting, The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient. There must be evidence on which the jury could reasonably find for the plaintiff. And then the Court quoted from a couple other cases: the Brady case where it said, The weight of the evidence under the Employers' Liability Act must be more than a scintilla before the case may be properly left to the discretion of the trier of fact; in this case, the jury. It also quoted from the Hancock case, which is another South Carolina -- I think it's a Supreme Court case, but it's certainly an Appellate Court decision, quoting: In cases applying Federal Law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgement.

So I want to start there, because this is not a

scintilla standard, and our Court made clear in the Bean case and also in the Rogers case, which we cite in our brief, that because this is a Federal Statute, the Court actually applies the Federal Evidentiary Standard, and that standard, and the one we're going to be talking about today, is whether a fair, reasonable, and impartial juror could find for the plaintiff. In this case, I don't think they could even meet the scintilla standard, but -- but that wouldn't get them there even if they could. They certainly can't meet the higher burden of whether a fair and impartial and reasonable juror could find for the plaintiff.

The -- the complaint in this case actually alleged three separate causes of action, Your Honor, and I don't know if you've had a chance to read all the briefing, but in response to a briefing filed by the plaintiff, and I also conferred with counsel before we came in here this morning, Count 3 of the complaint has been dismissed or withdrawn, and I am told that's not going to be opposed today, so, obviously, summary judgment will be appropriate on that case -- or on that claim, and I'm just going to talk about Counts 1 and 2. Count 1 is a claim where Mr. Collins says he was working for the railroad and he injured his back, or shoulder, trying to repair a boxcar door that had come in

the -- the facility where he was working.

Mr. Collins's job was what's called a carman. His responsibilities were that when there was a defect in a car, he was supposed to identify the defect and he and his coworkers, fellow carmen, were to repair those defects. Mr. Collins says that the car came in. It was what was called a bad-order car, meaning something is wrong with it; that's why we're sending it to the car shop.

As he was examining that car, he pulled down on a doorway, and he said he wrenched his back and shoulder. That's his claim. I asked Mr. Collins at deposition, because I knew what the standard was, he has to prove negligence,

I said, What did the railroad do wrong to cause your injury?

And his answer, and I quote is, I don't think Norfolk Southern did anything wrong.

That should be the end point of that cause of action. When the plaintiff has the burden of proof in convincing the jury that there was employer negligence that caused his injury and he concedes at deposition that I don't think the defendant did anything wrong, that's the end of the case, but even if you could get past that, the law doesn't allow the claim. We cited

to Your Honor a South Carolina Supreme Court case, Rogers versus Norfolk Southern, which is -- and I was -- I probably shouldn't say identical to this case, but it is so similar it's almost scary. Mr. Rogers was a railroad employee who was a track supervisor, and the allegation in that case was, he was out -- sent out to find a hole that was located alongside the tracks, because they were concerned it might undermine the track or cause a train derailment or cause some damage.

His job was to go out and find the hole and fix it if it was there. While Mr. Rogers was out looking for the hole, he fell in the hole and he got hurt, and he sued Norfolk Southern and he got a pretty good verdict from a jury in Fairfield County, and his allegation was: They sent me out to find this hole and they were negligent in not giving me enough information and I fell into it. Our Supreme Court took that verdict away, and then that's the standard that I've already talked about; that could a fair, reasonable, and impartial juror have found employer negligence, and our Supreme Court said, As a matter of law, that claim fails, because the guy who is sent out to find the hole, who falls in the hole, can't prove that was caused by employer negligence.

Well, we have the same situation here.

Mr. Collins's job was to find the defect and to repair it, and according to him, he was injured in the process of doing that. Well, if he's got a claim, then Norfolk Southern can't have carmen repair cars, because that's what they're supposed to be doing. He told me at deposition he knew when the car came in it had something wrong with it.

He didn't know exactly what it was, but that was his job, to find out what's wrong with it and fix it. So I -- I think Rogers couldn't be more on point. It's a precedent from our South Carolina Supreme Court, and that -- and the Court there said, This is not a jury issue. As a matter of law, there is no recovery.

Count 2 of the complaint is even worse than that. Mr. Collins says he was out working one night at a facility, and part of his job required that he get air from a compressor room to do the job he was doing, and the compressor went out, so he was going to go over to the door where the compressor -- the room where the compressor was and check on it, see if he could figure out what was happening. Well, when he got to the door, similar to what you have here in the courthouse, there was a keypad lock where you punch in a code, it opens the door.

Mr. Collins went there, punched in a code. The

door didn't open. He punched in the code again, rattles the door, door doesn't open. Well, that's because Mr. Collins had the wrong code, had the wrong lock combination. He assumed that the lock code, or combination, for that door was the same as it was for some other doors that he knew about that were at the facility.

He was wrong. So what did Mr. Collins do? He -- he told me at deposition he had a radio, had a cell phone, had a boss he could have called and said, Hey, I can't get this door open. Have I got the right code? Can you give me the code? He didn't do any of that.

He said, I looked up at the door. It looked like to me maybe it was stuck, maybe it was jammed. So he rips it open forcefully, tears the lock off the door, broke the lock, and says, I hurt my shoulder doing that. Well, okay. There -- there might have been negligence that night, but it wasn't negligence by the railroad.

It's not negligent for an employer to have a lock on a door. In fact, it's prudent to have a lock on a door. It's not negligent for an employer to have a code for that lock. There is just no claim there, Your Honor. I mean, I appreciate the efforts my

colleagues have made, just trying to make something out of nothing in this case, but there's nothing there.

There's nothing in a law. There's nothing that Norfolk Southern did wrong. An employee can't show up and tear the door off the hinges. He actually damaged his employer's property and then bring a claim and say, You guys now need to pay me for this.

That's neither here nor there. For purposes of the motion, perhaps, I will point out, Mr. Collins didn't report either of theses instances when it happened. He didn't tell anybody that it happened. They came up later, as he was looking to resign from the railroad and was talking with his boss about some other things, that he -- he then shared, Oh, by the way, months ago I was hurt.

I don't know if that matters for summary judgement, but I do think it's important in terms of talking about whether a fair, reasonable, and impartial juror could find for this plaintiff. But the bottom line, Your Honor, is, the -- the two remaining claims simply don't have any support factually, they don't have any support legally, and our Supreme Court has spoken in this particular area of the law. Most of the plaintiff's brief, if you had the chance to read it, talks nothing about this case, understandable.

Instead, they go on for pages and pages, with what I'll call general language from FELA cases, trying to urge the Court to deny the motion on this theory that FELA claims, because they're different, a jury trial is part of the right the employee has and that he ought to have his right to tell his claim to a jury. Well, again, I would point out, that same argument was made in the Bean case, and our Supreme Court said, and I'm quoting here, We disagree that a FELA case must always be submitted to a jury. Flat rejected that argument.

And then they cited some of the same cases the plaintiff cited in their brief, and I'm quoting again. Quote: "Not withstanding the strong federal policy in favor of jury trials when there is any evidence to support an employer's negligence, the South Carolina Supreme Court affirmed to grant summary judgement in the FE -- FELA action in Peterson case." So the Court just pointed out, we -- we understand there is this general policy, we understand there is a -- there is a -- a view that FELA cases have a more liberal perception by the courts, but that doesn't mean every case gets to the jury, and this is a case that shouldn't get to a jury. There is no reason for Norfolk Southern to continue to incur further costs defending this case. There is no

reason for the citizens of York County to be burdened with a trial in the case, and the facts of the law simply doesn't -- it doesn't merit going forward. So we would ask the Court to grant out motion for summary judgment. Thank you.

MR. SOREY: May it please the Court, to start with, I've got to thank Mr. Wray for bringing me up here to lovely South Carolina on such a lovely day, driving down from Charlotte in a deluge of rain, listening to the newscaster say there's going to be snow and ice coming. I've been up here before a couple of times, and I've been caught in Charlotte by Hurricane Florence, then I was caught by Hurricane Michael, so the people of this area probably don't want me coming here, because it seems like every time I come here, there is 4 or 5 inches of rain.

But anyway, this is an FELA case. I've been handling FELA cases for 40 years or more. The -- the uniqueness of the FELA is -- is considerably different. I don't know if you've ever had an experience with Jones Act cases, but the laws dealing with FELA and Jones Act cases are intertwined in -- in that they use the similar statutes, and, in fact, in a lot of cases of -- of Jones Act cases will refer to railroad cases, and vice versa, for standards of

law.

In this particular case, Mr. Collins was a carman and a car inspector. A carman actually repairs the cars. A car inspector is a person who has the duty of checking over cars when they're brought into the yard, normally, brought in to make sure nothing has been done to them and transporting them to the Norfolk Southern yard, and then their second duty is when they get ready to go out, to be transported out, under Federal Law, they're required to inspect the cars to make sure that they're in a condition that they won't do harm by breaking apart or that there is a coupling that's loose or air hoses, all that has to be checked, and brakes have to be checked also, and as part of our case today, we're going to talk a little bit about what Mr. Collins was doing at the time of his claim, under Count 2.

But in Count 1, he was instructed to inspect and repair a car that had been brought in. It had a bad-order tag on it. Now, Mr. Wray kind of explained what a bad-order tag is, and it's literally a tag that's attached to the car and on it is written in big yellow markings, "Bad ordered car." Then there is a space underneath that, and the person who bad-orders a car, or takes it out of service, is supposed to write on there what's wrong with the car.

That way when it gets to the yard to be repaired, the person working on it, the carman in that particular case, will know what's wrong with the car and he'll go to that particular thing to fix it, and he will be careful in doing it because he knows that there is a problem.

Sometimes it's a coupler. Sometimes it's a air brake system. They -- they have hand-held couplings on the side of the car for the men to crawl on. Sometimes those are bent. All those type things can be a bad order, and generally, underneath a tag, it will say, Problem with door, door won't close, door is whatever.

In this case, we didn't have that, so then -- thus, it was necessary for Mr. Collins to inspect the whole car to see if he could find out what was wrong with it. He did a general walk-around inspection, which they normally do, and everything looked okay. He couldn't see anything wrong with the car.

When he attempted to open the door to get inside to look to see if there were other problems, as he was opening the door, it suddenly stopped and jerked, and, of course, that's what caused his injuries to begin with. He had neck injuries; he had shoulder injuries

from that. And if he would have known -- if he had had an opportunity to know that the problem was with the doors, a number of things he could have done.

He could have gotten extra help, knowing that these doors weigh several hundred pounds and you have to put a good bit of pressure on them to open them and -- and pull them out. He also could have used a scissor lift. There are a number of tools that they can use that they use when they're working on the door to make it more kindable to work with it and to keep it from flopping or keep it from stopping all of a sudden. So he -- that's -- that was his first cause of action, having to work on the car with no knowledge of what was wrong with it.

If he would have been advised that it was the door, then he could have taken extra precautions at that point. The railroad provided him no warnings. And that's one of the duties under the FELA; they're supposed to provide reasonable accommodations to the rail -- to the railroad employees. In this particular case, they didn't do that.

Under Count 2, the plaintiff was working in the Charlotte lot yard inspecting and air testing brakes. Now, this goes to the point I was telling you a while ago. When the car inspector gets ready for the cars to

come in, they give them a certain number of cars and a track, and they say, Okay, this car is an outgoing car. You need to check it to make sure it's okay.

One of the things they have to do is to make sure that the braking system is -- is working properly. They have -- all the cars are hooked together with air hoses at that point, and the way the brakes work on a train, you apply the compressed air and it pushes down on the brake, and that way they know that it will stop.

And they have to check each car before they go out. Before they can do that, though, they have to have compressed air to put into the system, and on this particular day, Mr. Collins didn't have the compressed -- the compressor was not working properly.

Now, he's not a person that normally works on the compressor, but in these situations, there is a schedule. These cars are put there on their track. They usually have two to three minutes to check each car before they go out. They check the pressure on the brakes by applying the compressed air. You have a gauge on the end of the trains, and it goes up to 80 pounds per square inch, and when it does that, then the train is okay, the brake system is working, but you can't let that train go out of there without applying the compressed air.

Because he had no compressed air and because he knew there was a schedule for these cars to be out of the yard to be hooked up and taken to wherever they were going, he went to the compressor room to see if he could figure out what was wrong with the compressor.

There were a number of doors that had keypads on them in the Charlotte yard. All of them use the same numbers to open.

In this particular case, apparently this -- this particular door had a different number. No one ever told the client that. No one ever told his coworker that. Neither one of them knew that that wasn't the same code that they've used on the other four or five doors around the yard. So that's one thing the railroad did; they didn't advise him of that.

Well, Mr. Wray said he rips open the door. Well, what he did, he tried to put the keypad in twice. It wouldn't work, so he looked in between the door and the door jamb to see if there was a bolt in there. In other words, was it locked.

He said he did not see a bolt. He did not see it locked. He looked up at the top of the door, and it appeared to be jammed, so his logical thought was, The door is jammed. I just need to pull it open. When he pulled it open, it finally came open with a jerk. He

reinjured his shoulder and his neck at that point.

The -- and -- and it is -- as -- he's -- he said it was unwitnessed, but at the time, he reported it to his coworker, who verified what had happened, because he brought him around there to show the door, showing him the problem they had. In the situation where a train doesn't go out on time, it's not the foremen that get chewed out, it's not the bosses that get chewed out, it's the car inspectors that get chewed out, so Mr. Collins knew that he needed to get to that compressor room. He knew that he needed to get to the air so he could test the brakes so that the train could go out on schedule.

Now, we think that the negligence in Count 1 was not advising Mr. Collins that the car door was defective so that he could have used the necessary help or use the machinery to have the door open and -- and fix it. Now, as to the second thing, we also said they didn't advise him of the -- they didn't advise him that the door pad would -- had a different lock, and that's really unusual.

It's unusual for all the door pads not to be the same in -- in a yard, but in this particular case, that's what happened and he wasn't advised of it.

Now, the -- we have presented to you a pretty

comprehensive brief, and there are a lot of cases in there. We cited a lot of cases because there are lots of cases on the FELA.

I thought I would pick out a few cases, and every case I'm going to cite to you and talk to you about briefly are United State Supreme Court cases. They are not the Supreme Court of South Carolina, they're not the Supreme Court of Mississippi, where I come from, but they're United State Supreme Court cases, and they're very relevant and they're very up-to-date.

Some of them are old, but I'm going to cite you, at the end, a 2011 case that says the same thing and summarizes everything. Now, the Supreme Court has made it clear that the FELA represents an avowed departure from common-law rules. In another words, the FELA is not your regular common-law cases, and that was Sinkler versus Missouri Pacific, which is 356-US-326, and it's a 1958 case. S-I-N-G-L-E-R(sic).

In another case, in another Supreme Court case, the Supreme Court stated, We've recognized generally that the FELA is a broad remedial statute and have adopted a standard of liberal construction in order to accomplish that what -- that which Congress wanted. And the style of that case is Atchison, Topeka, and Santa Fe Railroad versus Buelle. It's 480-US-557, and

it's a 1987 case. Under these cases, the FELA strips the employers of the defenses of assumption of a risk was abolished many, many years ago, and contributory negligence as a complete bar was also barred, and that was under Rogers versus Missouri Pacific, 352-US-500, and it's a 1957 case, and it's probably known as the standard for the FELA in general, and under the FELA, the test of a jury case is whether the proofs justify with reason the conclusion that employer negligence played -- played any part, no matter how slight, in producing the injury or depth for which the damages are sought, and that case is CSX Transportation versus McBride.

It's a 131 Supreme Court 2630, and it is a 2011 case, so it's fairly recent as far as coming out and saying what the standard is. Now, those are the Supreme Court cases I cited. I'm going to cite you one Third Circuit Court of Appeals case, and that states: A trail court is justified in with -- in withdrawing such issues from the jury's consideration only in those extremely rare instances where there is zero probability that either employer negligence contributed in any way to the injury of the employee. And that was the -- the Third Circuit Court of Appeals, and we've got the cite in the -- in our brief.

Further, it goes on to say, To deprive an FELA plaintiff of the benefit of a jury trial in a close or doubtful case is to take away a goodly portion of the relief that Congress has afforded them. And that is Bailey versus Central Vermont Railroad, 319-US-350, which is a 1943 case. In the following cases, Tennant versus Peoria and Pekin Union Railroad Company, 321-US-29, 1943, Lavender versus Kurn, which is 327-US-645, and Gallick versus Baltimore and Ohio Railroad, 372-108, 1963.

In all these cases, the US Supreme Court has advised the lower Courts: It is the jury, not the Court, that determines causation and is the fact-finding body. Now, in Gallick, just to give an example -- and all of these are in our brief, and there are more cases cited in our brief than these. In Gallick a trainman, or a maintenance away worker, and that's the people that actually work on the railroad to fix the tracks and the crossties and the ballast, and things like that, they were working next to a stagnant pond.

The mosquitos were bad, bit -- bit one of the men. The man got infected, and he was a diabetic and he wound up dying from that. He sued the railroad for failure to protect them from the insects in the

stagnant pool. The lower Courts denied it, and it was denied within the Circuit Court and went to the Supreme Court.

The Supreme Court reversed it and said it was for the jury to determine whether or not the railroad had provided reasonable protection for the man, and that is always a jury issue as to causation and -- and the jury is the fact-finder of the facts for each individual case. And unless you have some other question, I'm through. Thank you.

MR. WRAY: Thank you, Your Honor. Well, I would agree with my good friend, Mr. Sorey, that the law says the FELA is a departure from certain common-law rules, but it's not a departure from the rule the plaintiff has the burden of proving employer negligence causes injury. There are defenses that might be available in the common-law claims that are not available in the FELA claim, like the assumption of the risk or like pure contributory negligence.

I haven't argued those here today. We're here on the very basic and fundamental point of any FELA claim, and that is, is there proof of employer negligence. Mr. Sorey says the standard is whether employer negligence played any part, no matter how small, and he's correctly quoting from a Supreme Court case that

says that. The problem in this case is there is no negligence of any degree.

How do we know that. Well, to start with, Count 1, where I asked the plaintiff, What did Norfolk Southern do wrong? And he said, They didn't do anything wrong. That doesn't sound like any negligence, even so slight to me. It sounds like zero, which means no recovery for Mr. Collins on that cause of action.

Mr. Sorey says, and he quotes, The Supreme Court says -- the case that says that it shouldn't be taken from the jury when it's close or doubtful. This case is neither close nor doubtful. The plaintiff knew the railroad hadn't done anything wrong. He's the one bringing the case.

He's had his deposition to try to prove his case, and I said, What did we do? He said, Nothing. That's the end of that. Mr. Sorey, unlike his client, tries to save the case by saying, Well, where we think the negligence was here was, when this car came in as bad ordered, somebody could have written on the slip kind of where the problem was, and then maybe he could have gone on the record with that.

Well, there's a couple of problems there. Remember when I commented in my earlier presentation that Mr. Collins never reported anything to anybody?

Well, there is a beauty when you do that. When you don't tell anybody that you're hurt, even though the railroad rules say he's supposed to report it, and he told me that, because he did a deposition, yep, I'm supposed to tell them if I'm hurt, he didn't tell a soul, so who can go pull the blue card. Who can go look and see what's written on it or not written on it. Who can check anything. The answer is nobody, because Mr. Collins foreclosed that opportunity. But let's take him at his word, because we're here on summary judgement. That still doesn't create a claim, because he hasn't proved that the injury, that whatever was wrong with that door, was caused by Norfolk Southern's negligence, and more importantly, he hasn't proven or shown that there was any duty of anybody, some other crew member, to tell him what was wrong with it, when that was his job.

I -- I sat here trying to think as I was listening to the argument. It -- it -- it would be like if you took your car to the mechanic this afternoon because it wasn't running right, and you go to your mechanic, because he's going to fix the problem, and he said to you, What's wrong with your car?

And you said, I don't know. It's not running right. It doesn't sound right. It's not doing like

it's supposed to. And he gets in there and he hurts himself trying to fix your car, trying to find out what's wrong with it, and he sues you and says, Well, you should have told me it was this belt under here that was loose. When I put my hand on the belt, it snapped off and it hit me in the head. I'm going to sue you for that.

No court would allow that claim. That's what Mr. Collins is saying here. My job, as Mr. Sorey conceded, as a car inspector and car repairman is to look at cars, who he knew were coming to him because something was wrong with them, find out what's wrong and fix it.

You can't blame the railroad when he gets hurt in that process, because he didn't exercise whatever care he needed to do. It's just not a claim. The second claim, we hear this story about they've got locks all over the yard and most of them have the same combination. So what?

This one didn't, and he knew it didn't because when he tried it, it didn't work. And Mr. Sorey wants to paint this image as if the -- Mr. Collins was trapped inside and there were rising waters and he was about to drown, or maybe there was a burning baby inside. He had to get in there right away. That's not

the situation.

There was no urgency. There was no emergency. Maybe a train might have been delayed. I don't know. We -- we don't have anything in the record on that, but we do know is that when the plaintiff couldn't open the lock, he took it upon himself to break the door.

The negligence, according to Mr. Sorey, was they didn't tell him there was a different code. Okay. That's not a claim, but even if it was, that's not what hurt this gentleman. Not having the right code didn't hurt him.

It would be kind of like when I came, if your door here to the courtroom was locked and I tried to use my pad from my office, my security code, it didn't open and didn't open, so I said, Well, dog gone. I'm getting in that courtroom. I'm going to break the door. I'm going to go on in there.

That's the -- the court personnel was fair to provide me with a keypad, or the pass code, or whatever it is you use to enter these doors. That's not negligence. The negligence that occurred here that caused this man's injury was him taking it upon himself rather than calling somebody, getting further information, finding out what the code was, tearing the door off. So, you know, I appreciate, like I said, the

effort to make a claim here where one doesn't exist, but the Supreme Court has said time and time again, in South Carolina, citing these same Supreme Court cases, it's not like our Supreme Court isn't aware of this other law, they know it's there, but they said, Not withstanding that, you still have to prove employer negligence, and if you can't do that, then the case doesn't survive, and that's the situation here, Your Honor. We'd ask you to grant the motion.

THE COURT: Well, since this is my first delving into these particular cases, I'm going to take this under advisement and then I will let you know what my decision is on that. Was there another motion before me in this case?

MR. THICKENS: Yes, Your Honor. There is a -- there -- there is a couple more motions left on the roster of the last two. Both concern withdrawal of previous pro hac counsel, and I believe that's -- that -- that's consented to by both parties, and so a Form 4 would be appropriate on that, or I can submit an order, if Your Honor would prefer.

THE COURT: No. I -- I can do it like that.

MR. THICKENS: Okay. Your Honor, then the -- the remaining motion is the plaintiff's motion for discovery. It -- it's styled as a motion for

discovery sanctions, but the relief that is sought is the exclusion of a particular surveillance video. There was a surveillance video taken by Norfolk Southern of Mr. Collins, and there's two interrogatories that we're at point to discuss that asks for the disclosure of that video.

It was no disclosed in response to the plaintiff's discovery and it was subsequently produced after the deposition. If it would help Your Honor, I do have copies of the discovery that I'm going to be talking about, and I'd be happy to hand up if -- if --

THE COURT: Thank you.

MR. THICKENS: -- they --

THE COURT: (inaudible).

MR. THICKENS: Okay. I -- I think they were, at least to the defendant.

THE COURT: And -- and we're talking about the Interrogatories 9 and 10?

MR. THICKENS: We are, Your Honor. All right. As you know, based on the briefing, Interrogatories 9 and 10 sought the disclosure of -- and I'm not going to read through them, since you have them in front of you, but essentially any investigative materials, including motion pictures, videotaped recordings, and then 10

stated to identify anybody who had conducted surveillance of the plaintiff. This was objected to by the defendant on the basis of the Work Product Doctrine in preparation of litigation, and so there are two rules that then apply when something has been objected to on those bases, and Samples versus Mitchell is the case that both of us have cited in our briefs.

I believe it's -- it's the seminal case on the disclosure of surveillance videos prior to deposition testimony. The second rule is Rule 26 B5, I believe, which is the Privilege Log Rule in our Rules of Civil Procedure. Now, the defendant cites Samples versus Mitchell, and I want to read from their brief because I think they boil it down to the exact rule.

It states: Norfolk Southern did exactly what the Samples Court said to do. Samples Court explicitly stated that if -- if the defendant believed the Work Product Doctrine applied, he should have objected to the interrogatory or disclosed the existence but not the content of the evidence and move for a protective order. Norfolk Southern's discovery response followed this directive by stating it's work product objection. And, Your Honor, that is the case, if you read this objection. A work product objection was stated, but the problem is that the defendant also produced a

Privileged Log with its responses to discovery, and if -- I'm not sure if Your Honor has that in front of you. I do have a copy if you --

THE COURT: Yes.

MR. THICKENS: -- would like -- if you -- if I may approach?

THE COURT: That might be quicker.

MR. THICKENS: Yes, ma'am. Thank you.

THE COURT: Thank you.

MR. THICKENS: And, Your Honor, as -- as you can quickly see by looking at this Privilege -- Privilege Log, there are two items listed: emails between Wayne Freeman on behalf of Norfolk Southern and a redacted email from a Norfolk Southern claim agent to counsel, which clearly is privileged. The importance of this is that work product objections are cited throughout the answers to interrogatories and responses to request for production. And the first thing I do, and co-counsel does, of course, when we see a work product objection, is turn to the Privilege Log, that's provided pursuant Rule 26, and that gives us the opportunity, of course, to look and see what's objected to to ascertain whether we need to file a motion to compel prior to deposition being taken or to seek some other relief from the Court.

It allows those things to be addressed before the case proceeds to a point where it's prejudicial to one party or the other, and this Privilege Log did not disclose the existence of the surveillance video, which is highly problematic, because it essentially twists the Privilege Log from a disclosure to a weapon. It allows you to say, Well, here's a couple things where claimant privilege is, but we're not going to put everything on the Privilege Log, and that completely guts the whole purpose of the Privilege Log, because it appears that the privileges had been documented, but they weren't, so by omitting things from the log, it removes any usefulness of it.

You've still got to move to compel to find out what's -- what's even being withheld. But the problem is, there is no way to tell what was withheld to make a motion to compel, and so in my mind, Your Honor, the -- the real problem in this case is not so much with the wording of the objection. It's with the fact that an objection was cited, a log was provided that identifies other work product in anticipation of litigation materials, but a certain of those materials were omitted at the defendant's own discretion, and, Your Honor, because of that, I think the appropriate sanction is the exclusion of the evidence that was

withheld from the Privilege Log.

That's not so drastic a sanction as to remove the defendant's defenses in this case or to prevent them from litigating it, but it is a reasonable sanction that would prevent this type of conduct in the future from other defendants and in other cases, particularly the misuse of a Privilege Log to omit the disclosure of certain evidence. And so we think that Samples versus Mitchell, in conclusion, Your Honor, is very clear, that objecting to the interrogatory or disclosing the existence but not the content of the evidence is the appropriate way.

The defendant states that they objected to the interrogatory by stating its work product objection, which is true, but as we've discussed, that work product objection was not followed through with on the Rule 25 -- or, I'm sorry, Rule 26 B5 Privilege Law. Thank you.

MR. WRAY: Thank you, Your Honor. A couple of responses, and I'll start here: This, of course, is, in essence, an evidentiary request to exclude or preclude us from using certain evidence if this case goes forward to trial, which I'm hopeful it won't, based on the motion we argued previously, but if we get to that stage, I would just say that this is a matter that

the trial judge should and would deal with, what evidence is going to come into trial based on what is presented by the parties, and so I don't think this is an appropriate time or place for this particular motion because they're trying to keep out of trial evidence that the trial judge will need to consider whether that's appropriate or not.

I would also point out that you didn't hear much earlier today about Count 3 of the case because that was withdrawn. Count 3, Mr. Collins alleged that he is totally disabled due to his hip osteoarthritis and tried to blame the railroad for that as well. They wisely withdrew that part of the claim because there was no evidence to support it, but that's where the surveillance comes in.

Mr. Collins is a frequenter to a gym over in his hometown and was seen on videotape doing leg presses and arm presses, and everything under the sun that was completely inconsistent with what he told his doctor he could do, what he told Norfolk Southern he could do, and what he alleged in his complaint. My practice, for many, many years since the Samples case has come out, is that when I answer a discovery that asks for surveillance, as was done here, or ask whether or not a private investigator has looked at the plaintiff or

followed the plaintiff, is to object and state my objection plainly and say, You're not entitled to that until after the deposition of the plaintiff, because we're trying to test his credibility and his veracity. And I don't make any secret about it. It's not hidden. It's not a surprise. I write it right there in the response, which Mr. Thickens referred to.

We say specifically, We object to this request as seeking work product and attorney mental impressions and conclusions about what we've done to investigate the case. We cite a federal court case which says that procedure is proper, the Trexler case, and then we say, If we have some surveillance that we're going to use at trial, we understand the rules require us to disclose that prior to trial. We will give that to you following the deposition of the plaintiff.

That's what we did here. We sent that response to plaintiff's counsel. We never heard a word. We never heard, got a phone call saying, Hey, we don't think this objection is legitimate, Hey, under the Samples case, we think you need to update the Privilege Log and tell us if you've got some or not, We're not going to put our client up for a deposition until you tell us if you've got surveillance.

We could have had that discussion, and, ultimately, we could have had that hearing, with you or some other judge to hear it, to decide do they get it before or do they get it after. None of that occurred. Instead, the procedure that we set forth in our interrogatory response was apparently adhered to, agreed to, acquiesced by plaintiff's counsel, because we took Mr. Collins's deposition and at his deposition, to give him some credit, he didn't completely deny all the things he was doing on the videotape.

He minimized them, but he said, Yeah, I go to workout at the gym. I can't do certain things, which the video shows him doing, but -- but nevertheless, as I had said we would do, immediately after the deposition, we informed plaintiff's counsel: We've got this video. Here it is.

Fast-forward a few months. I move for summary judgment, because there is no claim, then we get a motion for sanctions. First it was filed under Rule 11, which I took great umbrage at, because that was completely inappropriate. Mr. Thickens, to his credit, withdrew that and then just filed this evidentiary motion for sanctions.

However he wants to frame it, it's not a meritorious motion, because Samples v. Mitchell,

which he and I both agree is the controlling case, says what you're supposed to do. What the lawyer in Samples did and what the Court didn't like, was the lawyer got a question, Do you have any surveillance, and the answer was, No, even though they had surveillance. They then went and took a bunch of depositions, having the surveillance in their back pocket, didn't tell anybody.

The eve of trial, week or two before trial, they said, Oh, aha, I've got this surveillance here, you might want to see it, and the trial court allowed him to do some things with it, and the appellate court said, That -- that's -- that's foul. That -- that's not fair play, not going to allow that.

You can't answer a discovery response saying we don't have it, take all these depositions, and then pull it out. We didn't do that here. The only deposition that was taken was the plaintiff. He, obviously, knew what he was doing and what he wasn't doing, so there's no surprise there.

There's nothing they needed to see on the video to know what he was doing. But we did what the Samples Court says. Samples says that if you've got surveillance, then the proper procedure is to object to the interrogatory, or you can disclose the existence but not the content of the evidence and move for a

protective order. You can do either one.

What you can't do is falsely answer a discovery request saying you don't have it when you do. We're nowhere close to that here. We did what Samples said. We objected to the interrogatory. That's what the Court said we should do.

We told the other side, We've got an objection to this. We're not going to tell you whether we've got surveillance. We're not going to give it to you right now, if we do, but after the plaintiff's deposition, we have had a chance to test his credibility and his veracity, we'll give it to you, and that's what we did, so there's -- there's just no basis for sanctions.

To be sanctioned, you have to do something wrong. How can you do something wrong when the Supreme Court lays out the procedure and you follow it? If they didn't like it, if they didn't think our answer was good enough, then they should have called us and said -- and I've had this happen before, actually.

I've litigated before and I've won in the trial court where the Court has followed the Trexler decision and said, You know what? If they've got surveillance, they've got to give it to you after the plaintiff's deposition, but until that point in time, they don't have to tell you what they've done, just like they

don't have to tell me what witnesses they've interviewed and what those witnesses said. They don't have to tell me that, but they have to answer in an interrogatory telling me who they are, and I can go do my own work.

Well, they could have called me up, and said, We want to have a hearing on this, and I would have said, Okay. And we would have come over here and I would have argued to you why I don't have to give it to them before the plaintiff's deposition and you could have made a ruling, but that didn't happen here, and having followed the procedure that the Supreme Court said we are to follow, there's just no basis for a -- for any sanctions, and so I would ask the Court to deny the motion. You can do it under either ground.

If you want to say it's a trial court decision based on what evidence is presented at trial, whether it's appropriate for the surveillance to be seen or not, or you can just deny it based on the fact that it's just not sanctionable conduct, so we would ask the Court to deny the motion.

MR. THICKENS: Your Honor, may I briefly --

THE COURT: Yes.

MR. THICKENS: -- respond?

All right. First of all, I -- I do want to look

at the exact language of Samples, which is cited in the defendant's brief, and they're relying on the objected to the interrogatory portion. This is on page 5. Objected to the interrogatory is bold and underlined.

Objecting to the interrogatory they have under the Work Product Doctrine isn't where our rules stop, and Rule 26 B5 says, A party that withholds information otherwise discoverable under these rules by claiming that it is privileged must not only make the claim expressly, but must describe the nature of the things not produced or disclosed in a manner that, without revealing the information itself, privileged or protected, will enable the other parties to assess the applicability of the privilege of protection. Mr. Wray said a couple of times that he never heard from us and that we could have just called him up, but we relied on and we looked at the Privilege Log that he provided, that he typed, and by omitting items from the Privilege Log, there is no way that we could have ascertained what to call him up about.

There is nothing on here that says that he is withholding that from work product or anticipation of litigation. I find it hard to believe that the Rules of Civil Procedure and our discovery rules would allow a defendant to pick and choose what to put on the

Privilege Log based on what they think it might end up being discoverable in a case. In fact, Samples does deal with discoverability or -- or expressly decline to do so.

The Court said: At the heart of the argument is the question of whether or not the contents of the surveillance video should be protected from discovery until the witness has been deposed in order to safeguard the defendant's ability to impeach the witness on cross-examination. That question is not properly before us, so this is all a question about what should have been done beforehand, and by making an objection based on work product, the defendant is necessarily under a duty to include it in a Privilege Log, particularly when a Privilege Log is provided that specifically asserts that the items withheld pursuant to those privileges are listed, and that's the problem here, is that they were picked -- they picked and chose what to list in their Privilege Log so we didn't know to call, and so that -- that's what -- that's what the basis of the plaintiff's motion goes, Your Honor.

MR. WRAY: Very briefly, if I can? I -- I just want to make it clear, we didn't pick and choose anything. We put on the Privilege Log the materials

that were privileged and that we were not going to produce, the attorney/client communications.

This was never anything that we were never going to produce. I said in the response, We'll give it to you after the plaintiff's deposition, and we did. We stated the objection, so they were on those. The Privilege Log is -- is the things that we were not going to produce.

These are absolutely privileged materials, communications. The surveillance video didn't fall within that category, and so it's just -- it's apples and oranges, and I want to make that clear. It's not like we played tricks on them.

If we had answered the interrogatory by saying, We don't have any surveillance, Mr. Thickens would have a point. Instead we said, We object under the Samples case, under the Trexler case. That's the procedure to follow, we object, and after the plaintiff's deposition, if we've got surveillance, we'll give it to you, so it's -- it's just different from a -- the way it's been characterized, and I want to make that clear.

THE COURT: What I'm going to do, since the request is to suppress the video from trial, I don't want to deny the motion. I -- I want you to be able to argue it in front of the trial court. I just think

it's -- that -- that this issue is better left for when it's trial time, to -- to do in front of the trial court when it comes to evidence. I don't want to make a ruling that's going to interfere with that or -- or preclude you from being able to argue this motion in front of a trial judge.

MR. WRAY: Thank you, Your Honor.

THE COURT: So I'm not quite sure how I need to -- is there a form for postponed, delayed, stayed? I'm not quite sure how I need --

MR. WRAY: A form for reserving the -- reserving the motion for a motion in limiting prior to trial would -- would be fine, I think.

THE COURT: Okay.

MR. THICKENS: I think that's fine, Your Honor. You could just say denied with leisure before trial judge.

THE COURT: Okay.

MR. WRAY: Thank you.

(End of requested transcription.)

CERTIFICATE OF TRANSCRIPTIONIST

I, Megan Brown, do hereby certify that the audio recording provided to me were transcribed by me; that the foregoing document as typed is a true, accurate and complete transcription of the audio recording done to the best of my ability under the circumstances prevailing at the time; and that some proper names may be spelled phonetically; that UNINTELLIGIBLE may be used when audio is unclear; and certain speakers will be identified only as SPEAKER due to lack of verbal identification on audio recording.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Megan Brown, 9/2/2019
Notary Public State of South Carolina at Large
My Commission expires October 18, 2028

In the Matter Of:

Michael Collins vs.
Norfolk Southern Corporation

Michael Wayne Collins

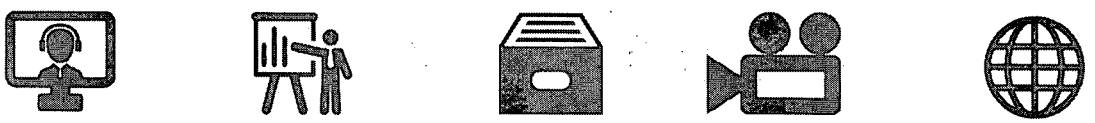
April 24, 2018



A. William Roberts, Jr. & Associates

Court Reporting & Litigation Solutions
www.scheduledepo.com | 800-743-DEPO

We're About Service ... Fast, Accurate and Friendly!



court reporting | trial presentation | document services | videography | nationwide scheduling

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF YORK

MICHAEL COLLINS,

Plaintiff,

vs. CASE NO. 2017-CP-46-2574

NORFOLK SOUTHERN CORPORATION,

Defendant.

DEPOSITION OF: MICHAEL W. COLLINS

DATE: April 24, 2018

TIME: 11:00 a.m.

LOCATION: Law Offices of
Mickle & Bass, LLC
930 Oakland Avenue
Rock Hill, SC

TAKEN BY: Counsel for the DEFENDANT

REPORTED BY: SARAH E. YOUNG

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376
Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
MICHAEL COLLINS:

CAVANAUGH & THICKENS
BY: JOSEPH O. THICKENS
1324 Gadsden St.
Columbia, SC 29201
803-888-2200
Joe@ctlawsc.com

ATTORNEYS FOR THE DEFENDANT
NORFOLK SOUTHERN CORPORATION:

GALLIVAN, WHITE & BOYD, PA
BY: RONALD K. WRAY, II
55 Beattie Place, Suite 1200
Greenville, SC 29603
864-271-9580
Rwray@gwblawfirm.com

Also Present:
Ronald Spradlin

MICHAEL W. COLLINS

being first duly sworn, testified as follows:

EXAMINATION

BY MR. WRAY:

Q. State your full name for the record, please.

A. Michael Wayne Collins.

Q. Mr. Collins, my name is Ron Wray. We met this morning, just a minute ago. I am one of the attorneys representing Norfolk Southern in the lawsuit you filed, and I'm going to be asking you some questions today about your lawsuit, injuries and damages you're claiming and information that might be related to your claims, okay?

A. Yes, sir.

Q. During the course of the deposition today, I'm going to ask you to give me verbal answers to any question I ask you so that Sarah can get an accurate transcript today, is that agreeable with you?

A. Yes.

Q. Let me start off, just get some background information on you. Tell me what your current home address is.

A. 6291 Williamson Road. That's Rock

Hill, South Carolina.

Q. How long have you lived at the Williamson Road address?

A. Hey, let me see. I done been there, oh -- I better get this right. Let's see, eight years.

Q. Where did you live before that?

A. Kemper Circle, here in Rock Hill.

Q. Also in Rock Hill?

A. Yes, sir.

Q. Does anyone live with you at the Williamson Road address?

A. Wife.

Q. What is your wife's name?

A. Robin.

Q. What was Robin's maiden name?

A. Adams.

Q. How long have you and Robin been married?

A. Now, you're going to get me -- making me think here. We've been married eight years.

Q. Do you and Robin have any children?

A. No, sir.

Q. Do you have any children by any other relationships?

A. Yes, I do.

Q. How many children do you have?

A. I have one.

Q. And what's your child's name?

A. Chuck. Chuck Collins.

Q. How old is Chuck?

A. Chuck is 36.

Q. Where does he live?

A. He lives in Charleston.

Q. And who is Chuck's mother?

A. Cynthia. Cynthia Collins.

Q. You and Cynthia were divorced when?

A. Oh, Lord. Long time ago.

Q. Does she still keep the last name Collins, though?

A. No, she's been remarried. It's Ashley.

Q. Does Robin work outside the home?

A. Yes, sir, she does.

Q. Where does she work?

A. She works for Mesa Engineering.

Q. What does she do there?

A. She's a programmer. She draws programs for power plants and stuff for engineers.

Q. Did you grow up in Rock Hill?

A. Yes, sir, I did.

Q. Go to high school here?
A. Yes, sir.
Q. Which school did you attend?
A. Rock Hill High.
Q. Did you graduate?
A. Yes, sir.
Q. What year?
A. '73.
Q. When you finished high school, did you go on to any further education?
A. No, sir.
Q. What did you do when you graduated?
A. What did I do? I did a bunch. I went -- I worked for a body shop just for a little while, about a half a year or so, and then I started working for the railroad.
Q. Did you ever serve in the military?
A. No, sir.
Q. And you said you began with the railroad not long after you finished high school. What year did you start?
A. The railroad?
Q. Yes.
A. Oh, in '76.
Q. Who did you hire on with?

A. Southern, Southern Railway.

Q. And what craft did you start?

A. I was a -- in the -- I was in the track department, maintenance of way.

Q. How long did you stay in track?

A. I was there for about three and a half years.

Q. Where did you move from there?

A. I went to the mechanical department in Rock Hill.

Q. And is that where you still hold your seniority?

A. Yes, sir.

Q. So you started in the mechanical department about 1979 or 1980?

A. Something in that area, yes, sir.

Q. And what position did you have in the mechanical department?

A. A carman.

Q. Have you ever held any supervisory position?

A. No, sir. Lead carman would be the only one, but not supervisor, no.

Q. Every position you've had with the railroad's been as an agreement employee?

A. Yes, sir.

Q. You ever hold any positions with the union?

A. Well, I was representative in Rock Hill. Yes, sir.

Q. And when you say representative --

A. Committeeman. I was outside committeeman from Rock Hill. I never held a position in as you say, like a shop foreman, something like this. No, sir. No, I didn't. No.

Q. And let me tell you one other thing I should have told you at the outset. Let me finish my question before you answer, and I'll try to let you finish your answer before I ask the next question.

A. Okay.

Q. Okay?

A. All right. Yes, sir, that'll work.

Q. Because if you and I are both talking at the same time, she's going to yell at us.

A. She can write fast.

Q. So I was -- you said you were a committeeman. Is that the same as local chair, or is that something different?

A. It's a little different because our

local chairman was out of Lynwood. You know, I didn't have enough people in our shop to be a local chairman, so I was just a representative. Local representative.

Q. And what union are you a member of?

A. Oh, Brotherhood of Railway Carmen. I think it's -- I think it's Local 200 out of Lynwood. I'm thinking. I'm not positively sure about that. Not positively sure about that.

Q. Now, you told me you were born and raised here in Rock Hill. Are you folks still living?

A. My father's passed. My mother is.

Q. When did your father pass?

A. Oh, he passed in '99, 1999.

Q. And what was the cause of death?

A. Cancer. He had cancer.

Q. You said your mother is still living here in Rock Hill?

A. Yes, sir.

Q. And how old is she now?

A. She's 92.

Q. Do you have any brothers or sisters that live here in York County?

A. I have a sister.

Q. And what's her name?

A. That's Ann Glosson.

Q. Last name was what?

A. Glosson.

Q. How do you spell that?

A. G-l-o-s-s-o-n.

Q. What does Ann do?

A. She works for the school district.

Q. Do you have any other relatives that live here in York County who are over the age of 18 years old?

A. Yes, sir.

Q. Who else?

A. Bobby Powell.

Q. What relationship is Bobby to you?

A. He's a cousin. He's a cousin of mine.

Q. Anyone else?

A. That's it.

Q. And you told me you've been a carman for quite a number of years now. Tell me what the job duties of a carman are.

A. Well, our duties are inspection of locomotives, inspections of cars, repairing of cars. Well, used to be derailments. Any type of work dealing with a car and a train operation.

Inspection of them, keeping them going. We've done pretty much everything in Rock Hill from derailments to repairing boxcars.

Q. What is your role in connection with a derailment as a carman?

A. I'd have to get it up, get it back on the tracks.

Q. So if a car had been overturned on the tracks, your job as a carman was to help get it back on the track so it could be moved?

A. Yes, sir.

Q. You said you also inspected locomotives and cars. What were you inspecting for?

A. Well, any -- any defect. Any RFA defect in the cars or the locomotives. And you know, when we found them we had to either have to take care of them, have them repaired, fixed.

Q. And when you say you're looking for FRA defects, does that include issues or problems with the doors on the car?

A. Oh yeah. Yes, sir. Yes, sir.

Q. And what was your responsibility if you found a defect on a car door?

A. Was to fix them.

Q. Were you supposed to make sure it was

fixed properly and safe to operate before the car continued down the track?

A. Yes, sir.

Q. Now, when you first hired on back in 19 -- I'm sorry, when you became a carman, let's stick with that, in 1979 or 1980, where were you working?

A. In Rock Hill.

Q. And did you ever work anywhere else other than Rock Hill up until let's say the last year that you worked with the railroad?

A. Yes, sir.

Q. Where else did you work?

A. I worked in Augusta, Georgia, and I also worked in Charlotte for a short time.

Q. And your time in Charlotte, was that just near the end?

A. No, sir. That was toward the -- basically, it was toward the start of my carman if I had to get out -- get out of your time. So they put me in a couple places to help me get out of my time so I could be a full-fledged carman instead of a student. So they moved me around a couple places. They were doing some cuts at that time, so they moved me around so I'd be able to come out of my time and start as a carman so somebody couldn't

come and roll me.

Q. And you'll have to help me understand that. You're using some terminology I'm not familiar with. When you said help you get your time, what are you talking about?

A. Well, when you first start as a carman, you have to work almost four years as a student, so many days, then you went so many different levels. And each level, you got a little bit more, 80 percent, you know, 90 percent, like this. Well, you could actually back then in six months, if they said you had met all your requirements to be a carman, they would set you up. In other words, they'd take you from a student and you wouldn't have to go all this time and put you straight into a carman so you'd be in full carman's pay. So that's what they done. They moved me around a couple different places so I could get in that position so I could be a full-fledged carman, and then, too, they couldn't have anybody come up and take my job. I would have -- I would form my seniority there in Rock Hill, so no one else could come in. And I didn't hold -- I was not able to hold seniority anywhere else either.

Q. Let's kind of talk through the time

period. You began as a carman in Rock Hill and then they transferred you to Augusta?

A. Yes, sir.

Q. So when did you go to Augusta?

A. Oh man, I can't -- I'm not sure about those dates. I'm not really sure about when that was.

Q. Give me your best approximation. Was it in the 1980s?

A. It had to be. It probably had to be.

Q. And how many years --

A. Oh, I -- I wasn't there but probably -- I think I was there maybe two months. Maybe.

Q. So that was just a short-term transfer?

A. Yes. Yes, sir. Yes, sir.

Q. And then did you leave Augusta and come back to Rock Hill?

A. Yes, sir.

Q. And then at some point you said you went to Charlotte. When did you first go to Charlotte?

A. Now, the Charlotte was in between both of them, you know, that I went to Charlotte, and then I went -- and then I -- I went to Charlotte first. I'm thinking that's what it was. Then I

went to Augusta, and then I went back to Rock Hill. I think that's the way it went.

Q. So let's talk about the first time you went to Charlotte, before you went to Augusta. Was that, again, a very short-term transfer, --

A. Yes, sir. Yes, sir.

Q. -- just a few months?

A. Yes, sir. Yes, sir.

Q. So you were hired on in Rock Hill, and that's where you established your seniority?

A. Yes, sir.

Q. But then you did a little short-term transfer over to Charlotte to help get you some additional time, you were telling me?

A. Yes.

Q. Sometime during there, around that same time, they sent you to Augusta for a couple months, is that right?

A. Uh-huh. Yes, sir.

Q. Then you came back to Rock Hill, and that's where you spent most of your career until the last few months before you went out on medical?

A. Yes, sir.

Q. And your job duties when you were in Augusta and in Charlotte as a carman, were those

the same as what you described for me earlier today?

A. Yes, sir.

Q. Since you became a carman in 1979, 1980, have you held any other positions with the railroad?

A. No, sir.

Q. How was your health prior to, let's say, 2015?

A. Good.

Q. Had you ever had any surgeries prior to 2015?

A. Yes, sir.

Q. What type of surgeries did you have?

A. I can't remember exactly when it was, but I had surgery on my elbow, my right elbow.

Q. What was wrong with your elbow; do you know?

A. Yeah, I can't really tell you. I don't know the terminology for it, but I had -- the tissue in it had gotten -- got hard in it and I wasn't able to move it. The -- it was Dr. Pat Carr. He's the physician for the Panthers. He done operation on it, and he said it was from the pulling and the snippet of wrenches, things like

that the type of work I was doing caused it to inflame and get stuck. Tissue got hard, so they had to clean it all out. But he said it was definitely from the type of work I was doing.

Q. And I've seen some medical records on that. As I recall, that was maybe early 2000s, 2002-2003?

A. Something like that. And even on that one right there, too, they had -- I called them about the -- about my elbow and told them that I was going out for a number of time, that the fellow I was working with, maybe they needed to get somebody to help him. And they took me out of service for a week without pay because I let them know I was going to do this.

Q. And that was back 15 years ago?

A. Yeah. Yeah, and I went to the doctor. They sent me to a doctor, and he wanted to know why I was there to see him. And I said, well, they sent me here. They asked me have you been doing the work? I said yes, sir. They said what's the problem? I said, well, maybe you need to call my supervisor in Lynwood. So when he called him, he came back and looked at me, said you have no loyalty on the railroad, do you? I said here I am.

So without pay, I tried to fight it. They wouldn't -- they just took me out of service. I said well, that's what I get for letting you know, you know, I'm going to be out, so.

Q. Who was the person that said there's no loyalty on the railroad? That was your doctor?

A. The doctor.

Q. Dr. Connor?

A. No. No, sir, it wasn't Dr. Connor. It was another one they had sent me to see.

Q. Who -- and you said that earlier. You said they sent you to the doctor. Who are you talking about sent you to a doctor?

A. The -- I forget what -- I can't remember the -- our master mechanic at that time, what his name was. It might have been -- I'm not sure what his name -- which one it was. But soon as I told him that I was going to be out, that I was going to have surgery, they -- they took me out of service. They said, you know, you're out. They just took me out without pay. I said, you know, I'm trying to help y'all and y'all are doing this to me. But anyway, that's the way that went.

Q. I'm a little bit confused on that. How were you going to continue to work if you were

having surgery on your elbow?

A. Well, I wasn't going to continue with my surgery. I was going to be able -- I was going to continue to work up to that time. I told them the date that I was going to have it done, that I would be out for -- they told me maybe four or five months afterwards. So I was just letting them know that the fellow with me, he's going to have to have some help because there wasn't but two of us there. You know, he needed some help, you know, to do this type of work, so. And that's -- that's kind of the way it went.

Q. I got you. So your testimony is that you were letting your supervisor know you had a surgery scheduled sometime coming up, and rather than wait for your surgery, they told you to go ahead and mark off and it would be without pay?

A. Yeah, they took me out of the -- they took me out of service for a week, go see the doctor and stuff. And then when I went back and asked them was I going to get paid for that, they said oh no, we can take you out of service for a week. And I said, well, see if I had known that, I'd have never told them anything. I would have just waited until the surgery and said I'm out and

go get surgery.

Q. Who was your supervisor that you were working with when that happened?

A. I don't think I -- we didn't have a supervisor, a standing supervisor. Our supervisor was out of Charlotte at that time, I'm thinking. And I think it was Eddie Hickman out of Spartanburg. He was over Spartanburg and Charlotte and Rock Hill at that time.

Q. Once you had your elbow surgery, did you come back to work full time at the railroad?

A. Yes, sir.

Q. And you were able to do your job --

A. Yes, sir.

Q. -- just as you had before?

A. Yes, sir.

Q. I thought I saw something maybe where you had some issues with your knee at one point, too? Did you have any surgery on your knee?

A. On my knee? Oh, Lord, that was when I was in the track department. And that was -- well, I had another issue with my knee, and general foreman, it was Ronnie Dodd. I was coming in. He said I saw you limping a little bit. And I said, well, my knee's bothering me a little bit. He

said, well, we're going to have to write it up. I said why? I said I hadn't reported anything. He said, well, I saw you limping. We're going to have to write it up. I said, well, I've got a couple days off, and I'll take a couple days and, you know, it'll be okay. It should be okay because, you know, we got hurt out there. You know, this job, you get hurt. You mend and you heal. You go back to work. So I said okay. So he gets on the phone. He's talking, I think, to Mr. Taylor. He wants to report an injury. Okay. And I kept saying you don't have to do this. I'm going to be taking off. Well, them back and forth, and I could tell. Then he put the phone, he looked at me, and he said, well, you just want to take a couple days off? And I said I've been trying to tell you this all -- this is where he wouldn't have to report an injury. We have no lost time injury, okay? So that's -- that was that part of that. And I, well, okay, I'll take a couple days. He said we'll make it up to you. Made nothing up to me.

Q. And so this -- you were telling me it was when you were in track, so we're talking about late 1970s?

A. Now, this -- yeah, this was another

one. The track -- yeah, I said did have an operation on my knee then. This was another time in the mechanical department.

Q. So tell me when did the incident that you just described to me where they told you to take a couple days off, when did that happen?

A. I can't tell you the date. I don't remember.

Q. Give me your --

A. I wouldn't --

Q. -- range. 1980s? 1990s? 2000s?

A. Maybe -- maybe the latter 90s, maybe. I'm not sure.

Q. And what was the medical issue you were having that you were talking with your supervisor about at that time?

A. My knee, pain in my knee.

Q. Did you have surgery on your knee?

A. No, sir, I didn't.

Q. I also saw in some of your records that you've been involved in two automobile accidents, one, I think, in 2009 and the other one in 2013?

A. Yes, sir.

Q. Let's take those one by one. What happened in 2009?

A. Oh, I had somebody run in the back of my truck. I was sitting at a stoplight and someone hit it.

Q. What type of injuries did you suffer in that accident, if any?

A. None.

Q. Didn't miss any time from work?

A. I don't even know if I did or not. I'm not even sure if I did.

Q. Did you file a claim --

A. I don't think so. I don't think I missed any time.

Q. Did you file a claim against the other driver?

A. Yeah.

Q. And what happened to that? Did it go to court? Was it settled out of court?

A. No, no. No, sir. No, no, nothing like that. They just paid for my, you know, truck and stuff.

Q. So you're telling me in 2009, somebody rear-ended you and you just had a property damage only claim?

A. Yeah, right.

Q. You didn't report any injuries or claim

that you'd been injured in any way in that accident?

A. No, sir. I went to the doctor, but nothing. It was nothing. I had no injuries.

Q. Why did you go to the doctor then?

A. Well, everybody said you need to go to the doctor when you get hit in the back, so I went to the doctor just to go to the doctor, but I -- you know, I said okay, I will, but that was really it. Everybody tell me, wife said you need to go to the doctor, so okay. I'm not -- you know, I'm good.

Q. When you got to the doctor, and he said why are you here, what did you tell him?

A. I said, well, everybody said I need to get a checkup after getting hit in the back, so I'm doing it. So he said you're fine.

Q. And I may have asked you this, or you may have said it. Do you remember if you missed any time from work following that accident?

A. No, sir, I don't. I don't -- I don't recall.

Q. How about in 2013, what happened in that accident?

A. I got hit head-on. Head-on there.

Q. How fast was the other driver going, do you estimate?

A. I'm not really sure how fast he was going. I was -- it was at a -- I was at a stop. Well, I was going in the right lane. Car stopped here. He was stopping, and he came -- rear-ended this car, and this car hit me, knocked him into me.

Q. Where did that happen?

A. Sir?

Q. Where did it happen?

A. Where? It happened on I think Meadow Lakes Road. I think that's where it was at. Here in Rock Hill. Yes, sir, it was in Rock Hill.

Q. Were you injured in the 2013 accident?

A. No, sir. No, sir, I wasn't.

Q. Did you seek any medical care of any kind for that?

A. No.

Q. Were you --

A. I don't think I did.

Q. Well, you said in 2009, everybody said you ought to go to the doctor and so you went. Why didn't you do the same thing in 2013?

A. Well, I wasn't hurt. I didn't get hurt the last time. I didn't get hurt this time.

Wasn't no use to go if I ain't hurt.

Q. Did you file any type of claim or lawsuit?

A. No, sir.

Q. So somebody head-on hit you and --

A. Well, they paid for my vehicle and stuff, yeah. They paid for my vehicle and stuff.

Q. So you settled, again, for property damage only?

A. Yes, sir. Well, I'm trying to remember all this stuff. I don't recall. I'll just put it that way because I can't be exactly sure. I don't recall.

Q. Where did the 2009 accident happen? I don't think I asked you that? Was it in Rock Hill also?

A. Yes, sir.

Q. For either of your motor vehicle accidents in 2009, 2013, were you represented by a lawyer?

A. No, sir.

Q. Well, those are the two that I saw in your medical records. Have you had any other motor vehicle accidents?

A. No, sir.

Q. Have you had any other type of what I'm going to call a traumatic injury, a fall, a slip, anything like that where you suffered injuries?

A. No, sir.

Q. Any other type of incident where somebody hit you, struck you, caused you to be injured due to something they did to you?

A. No, sir.

Q. You told me that you missed some time for work for your elbow surgery. You missed some time for work maybe related to this knee issue that you described for me. Any other medical issues that you recall prior to 2015 that resulted in lost time from work?

A. No, sir.

Q. So I want to talk to you about the various claims you made in your lawsuit, and I'm just going to kind of take them in turn as they're set forth. And I'm looking at the complaint you filed in this case. The first claim or first count in your complaint says that you suffered injuries to your neck, back and shoulder as a result of an incident that happened on or about March 31, 2016. Do you know what I'm talking about there?

A. Yes, sir.

Q. And that date you were working as a carman assigned to Rock Hill?

A. Yes, sir.

Q. And where were you when the incident occurred?

A. On the repair track there in Rock Hill.

Q. Was there anybody else working with you at the time that you were injured?

A. Yes, sir.

Q. Who was with you?

A. Jerry Davis.

Q. Mr. Davis also a carman?

A. Yes, sir, he is.

Q. Who was your supervisor on that day, if you remember?

A. Eddie Hickman.

Q. Was Mr. Hickman also onsite?

A. No, sir.

Q. Other than you and Mr. Davis, do you know anybody else that was present at the repair track at Rock Hill when the incident occurred?

A. No, sir, wasn't nobody.

Q. What time of --

A. No one else.

Q. What time of day did the incident

occur?

A. I don't recall. Don't recall.

Q. I think I saw in some of your records towards the end of your career, you worked a lot of third shift, is that right?

A. I -- that was in Charlotte.

Q. When you came over to Charlotte, you were working third shift at that time? Is that yes?

A. Yes, sir.

Q. All right. When you were over in Rock Hill on March 31, 2016, do you know what shift you were on?

A. First shift.

Q. And what are the hours for first shift?

A. It was from 7:00 to 3:00.

Q. 7:00 a.m. to 3:00 p.m.?

A. Yes, sir.

Q. And you were telling me you don't recall exactly what time of day it was. Was it before lunch or after lunch?

A. Before lunch.

Q. And I don't know a lot about the repair track over there. Is this -- were you inside or outside when the incident occurred?

A. All our work is outside.

Q. So tell me what happened.

A. Okay. Well, I, as usual, went to the car. The cars have been spotted. Went to the car and looked at it and made sure that all the doors were intact, the safety hanger's at the top, rollers in the bottom, nothing was broke, everything was intact so we could open the car door. Well, at that time, I was inspecting a car by myself. Jerry was still inside. And again, like I said, walked around the car to make sure everything was safe for us to, you know, to start working on it. And we always look at the car doors, look at the top. You have to make sure all the hangers, everything's intact, the bottom rollers, everything's intact, not broken. You know, just to make sure when you go to -- do open the door, it don't come loose. Okay, after inspecting the car, I found everything was okay. I went to proceed to open the car door. And as I did, I reached up to grab the -- grab the handle on the car door, when I went to pull it down, it didn't give. It was like it was stuck. And I felt -- I felt a real bad pain shoot from my neck down to -- down through my shoulder. And I just stopped

right then. I walked inside and sat down. I said I'm done. Can't do this. I said I'm -- you know, I've hurt myself. So then I said I figured it'd be okay, so I just kind of sat there. I didn't go back out and work on the car.

Q. So let me follow up on some of that and make sure I understand the details. You said the cars were spotted, and that's on the repair track?

A. Yes.

Q. Here at Rock Hill facility?

A. Yes, sir.

Q. And are the cars that you're inspecting, are they set off separate from the train that's going to go out, or you're looking at the cars before they're made part of the train?

A. These cars are reject cars. These cars are rejected from Bowater to be repaired. Something's wrong with them. Yes, sir.

Q. So help me understand that then. I didn't understand that earlier. So these cars were actually picked up from Bowater sometime prior --

A. Yes.

Q. -- to when you looked at them?

A. Yes, sir, they had been Bowater they had been sent to -- to be loaded, and then when

they -- when they did their process of looking at them, trying to open them, if they find something wrong with them, they reject the car, and that -- the rejected car comes to Rock Hill shop for us to look at and try to fix and repair it.

Q. And when they're rejected by Bowater, is that Bowater employees that are doing that?

A. Oh yeah. Yes, sir.

Q. And you know a lot more about this than I do, but -- so as I understand it, some cars are delivered to the facility in Bowater and Bowater employees go out and look at them, and they say those don't meet our standards, send them back to Norfolk Southern?

A. Yes, sir.

Q. And they come back here to the Rock Hill repair facility where you worked?

A. Yes, sir.

Q. And you understand before you ever go out and look at them that I'm looking at cars that have been rejected for some reason?

A. Yes, sir.

Q. And it's your job as the carman to look at the car and find out why it's been rejected, is that right?

A. Yes, sir.

Q. And then to repair it and fix it, as you told me earlier, once you discover what the defect is?

A. Correct.

Q. And on this particular day, you and Mr. Davis were the two men assigned to that task?

A. Yes, sir.

Q. Now, you said -- well, let me ask you. The next question is what kind of car was it?

A. A boxcar.

Q. Was there anything in it that you know of?

A. No, sir.

Q. No, there wasn't, or you don't know?

A. No, sir, there wasn't anything in it.

Q. What was the car number; do you know?

A. I don't recall.

Q. Is there any way we could identify it? Do you know anything about it that would tell us which particular car it was?

A. Not really. All I can tell you it was a sliding door.

Q. When you and/or Mr. Davis are sent out to look at these cars that you call the reject

cars, are you given a list with car numbers that you're supposed to look at?

A. Sometimes.

Q. On this particular day, did you have a list that said go check these eight, ten, 12 cars, --

A. I don't recall.

Q. -- whatever it was?

A. I don't recall.

Q. Do you remember how many cars, I'm going to call it a cut of cars, maybe that's not the right way to say it, but how many cars were in the cut that you were inspecting?

A. Well, on our repair track, we couldn't hold no more than five anyway. So on that day, I think there might have been four cars on the repair track.

Q. Was this the first car you had looked at?

A. Yes, sir.

Q. So car number one you picked out, and that's the one where you say you got injured?

A. Yes, sir.

Q. You also told me, and I may have written this down wrong, but you said you were

inspecting everything on the car to make sure it was intact. Is that right?

A. Yes, sir.

Q. And I thought you told me that you found everything to be okay initially?

A. Visually.

Q. So tell me what you're looking for visually that tells you this looks like this car's in acceptable shape?

A. Okay. Well, first thing we look at, again, I said the hangers. You have safety hangers on the top, one safety hanger. You have two more hangers that run on a rail, okay? And then at the bottom you also have two arms with wood hangers but rollers that roll on the bottom. So when you open the door, the door proceeds out, and then you slide it down, sliding door. So we look to make sure that all those rollers, the top and bottom's not missing, not broken, you know, the defects so when we come to open this door, it's not going to come out on us. We have to make sure of that before we even start. So you have to look at the safety aspect of it, what it's going to do and what it can do before you even get on it.

Q. And based on that visual inspection, it

looked to be in good working order as far as you could see?

A. Yes, sir.

Q. One other thing I meant to ask you, so when they get rejected by Bowater, do they have to give a reason why they've been rejected?

A. That was sometimes. Sometimes they did and sometimes they didn't. So we -- a lot of times, we were guessing.

Q. On this particular date, with this particular car, when you went out to look at it, had you already been given some information as to why it was rejected by Bowater?

A. No, sir.

Q. So then you told me that you grabbed a handle on the car door and you were trying to open it, is that right?

A. Yes, sir.

Q. And is there just one handle on the door or more than one handle?

A. Just one, one per side.

Q. And are you doing this while standing on the ground, reaching up?

A. Yes, sir, correct.

Q. And how -- tell me where the handle is

located in terms of -- how tall are you?

A. Around six foot.

Q. So you're about six foot. Where's the handle in relation? Is it about chest high? Is it above your head?

A. Well, they differed. This car here was probably about -- they have to pull it down, maybe seven and a half foot, maybe eight, something like that. You have to reach up. You have to reach up to get it.

Q. So you're reaching over your head?

A. Yes, sir.

Q. You grab onto the handle, and then you're going to slide it right to left or left to right?

A. Well, I'm trying to pull down, pull straight down.

Q. So it --

A. Pull down right -- yeah. Well, this one here, let me see. I've got to think of where the car opens. Yeah, it pulls -- pulling it down.

Q. So when you --

A. It's a wheel. This is a wheel we're talking about, a wheel. Okay, not just a handle. I said handle, but it's a wheel, round wheel. It

has holes in it where you can grab it.

Q. And when you grab the wheel, are you winding the wheel and that's what brings the door down?

A. Yes, sir, I'm unwinding it. It's geared inside.

Q. So I was thinking more of a handle like you'd grasp and then you're going to pull it down with your --

A. No, sir.

Q. -- arm.

A. No, sir, these are geared.

Q. So there's some type of wheeled gear that has a handle on it, and you're going to reach up and grab the handle and crank --

A. Unwind it, yes, sir.

Q. Unwind the handle or the crank, and the door's supposed to come down?

A. Correct.

Q. So when you walked up to the car door then, I didn't appreciate this earlier. When you walked up to this car to inspect it, the door was raised up, and you could see inside the car?

A. No, sir.

Q. Well, then why are you trying to wind

it down to lower it?

A. Now, see the door, when you said -- you're getting confused. It's not lowering. The door, when we open it, the door comes out, moves right or left. It moves to the right -- you have a rail and a rail at the top. When you unload, when you unwind it, the door proceeds out, clears the side of the cars. Then you can roll it, roll it down. And it locks there, and then to close it, you proceed back, roll it back opposite way. It pulls the door back in, and it sits inside the car, sits flush inside the car like that.

Q. So when you went out there, was the door open or closed?

A. It was closed.

Q. And you were in the process of trying to open it when you got hurt?

A. Correct.

Q. Why were you trying to open the door?

A. You have to.

Q. Why?

A. That's the only way we can find out if something's wrong with it.

Q. Okay. And that was your job as the carman was to find out was there something wrong

with this car?

A. Yes, sir.

Q. Including was there a problem with the door?

A. Yes, sir.

Q. So the door's shut. You grab hold of the handle and you're starting to unwind it to try to open the door, --

A. Correct.

Q. -- is that right? How many cranks did you do on it before you realized you'd hurt yourself?

A. No cranks. It didn't budge.

Q. Did you just pull on it the one time, or did you do it more than one time?

A. Didn't need but once.

Q. And so you told me you're reaching above you about -- it's about seven or eight feet from the ground?

A. Uh-huh.

Q. Is that yes?

A. Yes, sir.

Q. And are you using just one hand or two hands?

A. I used two hands.

Q. Is that the way you're trained to do it, to put two hands on the handle?

A. Yes. Yes, sir.

Q. And then as I understand, what you're telling me is you've got both hands on the handle. Then you're trying to unwind it, and it's not coming?

A. Yes, sir, that's correct.

Q. So how did you get hurt?

A. Well, when you -- if you go to pull on those doors, and those -- just say once that inside mechanism, something like that stuck in it, it's not going to open. It's not going to give. And you can't visually see that. You have to -- you know, when you go to pull on it, and if it pulls down and it doesn't move at all, that's the first thing to note that something's wrong inside of the gears. So like I said, you have to take the covers off and all this stuff to actually see what's wrong with the inside of it. So you don't know until you grab it and pull on it, if that's the -- it's a possibility that that could be what's wrong with it.

Q. Well, I understand that part, Mr. Collins, but when you reached up and put both your

hands on the handle, did you yank it or jerk it?

A. No, sir, you just pull down.

Q. Well, if you're just applying steady pressure on it to pull down towards you, how did you get injured? Because you realize it's not coming with you when you're pulling on it, right?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Is that --

MR. THICKENS: You can answer.

BY MR. WRAY:

Q. Is that accurate? He just stated and objection for the record. My question was as you pulled on it and you're pulling it towards you, towards the ground?

A. Yes, sir.

Q. It wasn't moving?

A. That's right.

Q. So how did you get hurt then? If it's not moving and you're pulling on it --

A. You don't -- well, you don't understand pressure we put on these doors when we pull them down. I don't just do this. I grab it and I come down with it. That's what we do. And usually, if you feel it loosen up coming down, it's going to

open up. Sometimes it doesn't. That one didn't. And it just happened that time when I did, I felt all the pain through my back up through here on my shoulders.

Q. Did you feel it immediately?

A. Yes, sir.

Q. In what part of your body did you feel pain?

A. My left, left top shoulder, came down into my arm and middle, right in the middle. From the middle to the left. It went right from the middle of my back all the way down to the left.

Q. So you felt pain in your left shoulder, you said down into your left arm?

A. Correct.

Q. And then also felt pain across the middle of your back --

A. Correct.

Q. -- to the -- on the left side primarily?

A. Yes, sir. Correct. Yes, sir.

Q. Any other areas where you felt pain or thought you'd been hurt?

A. No, sir.

Q. And what I wrote down is -- well, let

me ask you a different question. So when you pulled on it and you felt this immediate pain, did you make any other effort to open the car door?

A. No, sir.

Q. You then said you went inside and sat down?

A. Correct.

Q. So tell me how far it is from the repair track where you were working on this car to where you went inside?

A. Oh, that's not, oh, maybe, I don't know, 50 feet. It's not far. It's right beside it.

Q. You walked on your own?

A. Yes, sir.

Q. Before you left the car where you were working and went inside, did you tell anybody what had happened?

A. No, sir.

Q. Where was Mr. Davis when this happened, if you know?

A. He was in the office.

Q. Did you ever ask him whether he saw what happened?

A. No, sir.

Q. Do you know of anybody other than yourself that was a witness to what happened out there that day?

A. No, sir.

Q. When you got inside to sit down, was that in the area where Mr. Davis was?

A. Yes, sir.

Q. And then you told me, you said I can't do this or something to that effect?

A. Yeah.

Q. Who were you talking to?

A. Jerry.

Q. And did he ask you what had happened or why you were saying that?

A. Yes, sir.

Q. Now, in terms of you and Mr. Davis, were y'all same level co-workers? He wasn't your boss, you weren't his boss?

A. Well, no, we -- we were pretty much on a level.

Q. He was a carman just like you?

A. Yeah. Well, he was a lead carman. We both shared that position.

Q. What did you tell Mr. Davis had happened?

A. I told him I just thought I had hurt myself. That's all I told him.

Q. Did you tell him how it happened?

A. I told him I just messed with the car. I pulled it, and I think I hurt myself. And that's all I said.

Q. You're going to have to say that for me again. You had your hand over your mouth.

A. I said that's -- that's all I said. I told him that I had pulled on a car door, and I think I -- I hurt my back. And that was it. Well, I didn't say I hurt my back. I said I just hurt myself. That's what I told him. And I left it at that.

Q. Did he ask you where you hurt, how were you hurt?

A. No.

Q. Did he ask you do you need some medication attention?

A. No.

Q. Did he say we better call Mr. --

A. No.

Q. -- Hickman and tell him about it?

A. No, sir.

Q. Did you say to him I better call Mr.

Hickman and let him know?

A. No, sir.

Q. Why not?

A. Well, first of all, we had a safety record for about 28 years. We'd never had a injury one, period.

Q. Who is the we you're talking about?

A. Me and Jerry. Jerry and myself in Rock Hill. We've always stayed careful. We got hurt many times. Many times we've been hurt, and we felt like we could just kind of wash it out, take care of it, and we'd back to work, and we'd be good. So you know, for years, you know, we never reported every time we got hurt on the railroad. So I felt like give this enough time, maybe it'll just, you know, go away. You know, take care of it and I'll be fine. You know, so that's -- that's the reason because of safety record.

Q. So you and Mr. Davis had worked together for many years before this happened?

A. Yes, sir.

Q. And you're telling me that from time to time either you or him might get bumped or bruised or something, and y'all didn't report it to anybody?

A. Exactly.

Q. And you followed the same procedure on this day?

A. Exactly.

Q. Now, tell me this, Mr. Collins. When you find a car that has an FRA defect, what are you supposed to do as a carman?

A. I have to bad order it.

Q. And when you say you have to bad order it, what does that involve you doing?

A. That's me putting a FRA standard card on it, card on the car, and I have to sign it, put the car down, car number down and a defect on it and put it on the right and left side of the car, and it's sent to our shop. It's cut out of the train, found, sent to our shop for repairs.

Q. And when you say sent to a shop, is it the shop right here in Rock Hill or somewhere else?

A. Yes, sir, in Rock Hill.

Q. The issue that occurred with this car door on March 31, 2016, would that be considered an FRA defect in that car?

A. No. No, sir, I don't think so.

Q. Why not?

A. Because it wasn't a-- basically, most

of the FRA I -- you know, I'm not -- I'm not really sure. I'm not positively sure about that. I'm not sure about that, if that would be or not.

Q. Well, as I understand it, you had a car where the door would not open as intended, correct?

A. Yes, sir.

Q. It would not open with normal force being applied is what you told me earlier, correct?

A. Correct.

Q. How in the world could that not be a defect in that car?

MR. THICKENS: Object to the form. You can answer.

THE WITNESS: Huh?

MR. THICKENS: You can answer.

THE WITNESS: Well, this FRA stuff can be a lot of different standards, and there's some standards are cars that don't fall under FRA, but it's still not optional. They're not operational like you're supposed to be. So that's how we had cars sent to us. A lot of times, it'd be -- it wasn't so much the door was broke, but it would be bent. It's not sealed up correctly on the car. So we'd have to try to fix that to seal it up, but that's not FRA defect. That's not under FRA. It's

just the door is bent. So we had -- we had that type of stuff all the time.

BY MR. WRAY:

Q. Leave aside the FRA defect for a second then. Was there something wrong with this car in your view?

A. Visually no, at first, until we pulled the handle, then yeah, we knew that the inside mechanism was messed up.

Q. Yeah, I wasn't asking about visually. I'm just saying after you had tried to open it and you told me that you felt like you were injured, at that point in time, weren't you on notice that there was something not right about that car?

A. Oh yes, sir.

Q. Who did you report it to?

A. Well, I didn't have to report it to anyone.

Q. Why not?

A. Because Jerry knew there was something wrong with the car, too.

Q. Well, you and Jerry weren't going to be the only two dealing with that car, though, were you?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. So --

A. We were the only two there.

Q. Well, you were the only two there at that time. What happened to that car after you finished your inspection that day?

A. Jerry repaired it.

Q. Did you prepare any paperwork or write-up that reflected any problem you found with the car that day?

A. No, sir, I didn't -- I didn't write anything up. I didn't repair it so I didn't write the bill up.

Q. To your knowledge, did Jerry prepare any paperwork or write up anything to report the issue with this particular car?

A. Not sure.

Q. Isn't he supposed to or you supposed to?

A. Yes, sir. But I can't tell you that he did because I didn't see it.

Q. Have you ever asked him about it?

A. No, sir.

Q. What did Jerry do to repair it, if you

know?

A. You know, not -- I don't recall what all he had to do.

Q. Do you know when he went in there, did he discover what the issue was, what the problem was?

A. I told him it wouldn't open.

Q. I mean why? I mean did he go in there and look at it and figure out why it wouldn't open?

A. Yes, sir.

Q. What was it?

A. I'm not sure. I didn't go back out there with him.

Q. Now, when you and Jerry do repairs on a car, are you supposed to report your time that you spend working on a particular car?

A. Yes.

Q. So there should be a record from that date showing the amount of time Jerry spent repairing the car that day?

A. Should be.

Q. And should that paperwork also show us exactly what Jerry did to repair it?

A. Should.

Q. So as I understand what you were

telling me earlier, Mr. Collins, you didn't fill out any paperwork reporting any defect with this particular car where you say you were injured, correct?

A. Don't recall any.

Q. You didn't fill out any paperwork reflecting any repairs that were done to that particular car?

A. I don't recall any.

Q. Now, over the course of my work with railroad workers over the years, a lot of them I've dealt with keep a diary or notes about the work they do on a particular day. Are you one of those people?

A. No, sir.

Q. Do you have any type of log or paperwork that would show that work you did on any particular day?

A. No, sir.

Q. And if I wanted to see on March 31, 2016 what time you went on work, what time you went off work, what cars you worked on that day, would you personally have any paperwork that would give me that information?

A. No, sir.

Q. How about when something like this happens that I'm going to call a little bit out of the ordinary. You encountered a car, and you tell me you were hurt. Do you make a note in a log or a diary or anything written to say on this day, this happened to me?

A. No, sir.

Q. So there's no written paperwork anywhere that you can point me to that you prepared or maintained that would document on March 31, 2016 you were hurt?

A. No, sir.

Q. And you didn't tell your boss?

A. No, sir.

Q. And the only person that you know that you did tell about it was Mr. Davis?

A. Well, I really didn't tell him. I just told him I got injured. Didn't tell him what. Didn't explain. We didn't explain stuff to each other sometimes.

Q. And Mr. Davis, does he still work for Norfolk Southern?

A. No, sir.

Q. Do you know where he is now?

A. He's retired.

Q. Do you know where he lives?

A. I couldn't tell you where he's at right now. I haven't talked to him but one time since we retired.

Q. When you talked to him, where was he living?

A. He was living in York.

Q. York County?

A. York.

Q. Or town of York?

A. Yeah.

Q. Did you tell Mr. Davis that you had filed a lawsuit against the railroad?

A. Did I tell Davis?

Q. Yes.

A. I don't recall. He retired before that.

Q. Do you remember when he retired?

A. July -- I think it was July the 3rd.

Q. Of what year?

A. Was it 2016 or 2015? I'm not -- I'm not really sure. 2015 or 2016.

Q. Well, the incident, according to your complaint happened on March 31, 2016, so he couldn't have been retired then if he was there

working with you.

A. Okay, okay. Well, all right then, it was in July -- July 3rd of '16.

Q. So you think he retired about three months, four months after this incident --

A. Uh-huh.

Q. -- supposedly occurred?

A. Correct.

Q. Why didn't you bad order the car when you found the defect like you had told me earlier you typically do?

A. It was already bad ordered.

Q. So it came in as a bad order car, and you didn't have to do anything further in that regard, is that what you're telling me?

A. Well, bad ordered, then we inspect it and find out -- try to find out what's wrong with it.

Q. And I think you told me this earlier. You never did determine or discover why the door wouldn't open when you pulled on it?

A. That's correct.

Q. If anybody knows the answer to that, maybe it's Jerry?

A. Maybe.

Q. Doesn't Norfolk Southern have rules that require you to report when you're injured on the job?

A. Yes, sir.

Q. And those rules apply to you as a carman just as they do to other employees, do they not?

A. Yes, sir.

Q. Why did you not report to Mr. Hickman or anybody else in supervision that you had been injured that day?

A. Okay. Well, safety record. Again, we had 28 years of safety record without even a blemish, and I felt like -- like all the other times, I felt like maybe I could get it taken care of and wouldn't have to report it. It'd be okay, and I'd be back to work as usual. So basically, it was a safety thing, and I -- like I said, again, I felt like I could -- to get it taken care of and I'd be back to work and working again.

Q. You told me that you think this happened sometime before lunch, and your shift didn't end until 3:00 p.m. Did you continue on and stay at work until your shift ended at 3:00?

A. Correct. Yes, sir.

Q. Did you ever request medical attention that day?

A. No, sir.

Q. What did you do when you got off work?

A. Went home.

Q. Did you get -- seek any medical attention at any time for the pain you felt in your back and neck related to this incident?

A. Ice and heat.

Q. Did you go to the doctor for that particular incident? You're shaking your head, but I need you to verbally answer.

A. Did I go to the doctor for that incident?

Q. For this particular incident?

A. Yes, I finally had to. Yes, sir.

Q. When did you go to the doctor?

A. I don't recall the date.

Q. Well, if it happened on March 31, was it that -- within the next week? Was it two weeks later, or longer than that?

A. I don't recall.

Q. Who did you go see?

A. Alicia Lazeski.

Q. So Mr. Collins, I'm just looking at

some records I have. Looks like you went to see Alicia Lazeski, L-a-z-e-s-k-i, at OrthoCarolina? That's who you went to?

A. Correct.

Q. And you had already been seeing her for some period of months before this incident happened, is that fair to say?

A. Correct.

Q. And you were going to see her for pain in your neck and back, is that right?

A. Correct.

Q. Same area that you say that you were injured on March 31, 2016, is that right?

A. No, sir.

Q. Different area?

A. Different area.

Q. So tell me where you were feeling pain or some type of discomfort that led you to see Dr. Lazeski before March 31, 2016.

A. In the middle of my back, spine.

Q. Upper part of your back right in the middle?

A. Up in -- yes, sir. Correct, upper part.

Q. And how long had you been seeing her

for those particular issues with the upper part of your back in the middle?

A. I think -- I'm not exactly sure how long.

Q. Dr. Lazeski was not the only doctor you were seeing for issues with your back at that time, is that fair to say?

A. As pertinent to what?

Q. In terms of your back pain?

A. My back pain? I had saw a chiropractor previously.

Q. Yeah, I thought I saw you saw Dr. Kimble, I think it was, in November-December of 2015?

A. November.

Q. November of 2015, right?

A. Correct.

Q. And that was also for back pain, correct?

A. Well, what happened there was that, honestly, I'd had a friend that had retired, just retired, and he had had a little back pain. It wasn't bad. It was just a little aching. He went to the doctor, found out he had cancer. So honestly, it scared me to death. So during

Thanksgiving holiday, he was -- the chiropractor was about the only anybody I could get an appointment with. So I said, well, they'll take x-ray and all, too, and see if everything's okay. And I just had an ache. That's all it was. So I went to him and he looked it, and he said, well, you know, you don't have this, this and that. So you know, he said no cancer and stuff. So that -- that's the reason. That's where it started from. I was actually scared to death from a fellow employee having it. So that's what started me going to the doctor with -- that's why I went to the chiropractor.

Q. All right then, maybe I'm just completely confused. Why would you go see a chiropractor because some friend of yours had cancer?

A. Well, I went to him because it was the only way I could get a -- this was Thanksgiving week. I couldn't get a -- I couldn't get another appointment with anyone.

Q. Well, a chiropractor wasn't going to treat you for any issues potential with cancer.

A. Well, he would look and see. You know, an x-ray would tell if I had any type of mass,

anything back there. I felt like that was the quickest place right now for me to do. And I was actually worried about it, so that's the reason I went.

Q. So you're telling me you went to the chiropractor in November of 2015 and you told him the reason you were there is because you wanted to be evaluated for cancer? That's your testimony?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Is that what you're saying?

MR. THICKENS: Same objection.

THE WITNESS: Huh?

BY MR. WRAY:

Q. You can go ahead and answer. He's just stating an objection for the record.

A. And now, what did you -- ask me again, please.

Q. Are you testifying under oath today that you went to see the chiropractor in November of 2015 and that the complaint you told him you wanted him to evaluate was possibility you might have cancer?

A. No, sir.

Q. You went because you were having

problems with your back?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Right?

A. I went because my friend had problems with his back, and he had a -- when they found out, when they looked at that x-ray, they found out he had a problem with it. So being me, thinking in my mind, I said I'm going to go just to check and make sure I'm okay. So I went to the chiropractor, and that was the fastest one I could get an appointment with, and he done x-rays.

Q. And then you went from Dr. Kimble, the chiropractor, over to Dr. Lazeski, right?

A. Correct.

Q. Also complaining of pain in your back and your neck, correct?

A. No, just my back.

Q. Just your back for Dr. Lazeksi, at that time?

A. At that time. Yes, sir.

Q. Let me ask you this. In your complaint, it has the date of March 31, 2016 as the date of that incident. Do you know if that was the date that this actually happened when you were

trying to open the boxcar, when you say you got hurt?

A. Yes, sir.

Q. How do you -- how did you pinpoint that particular date if you didn't write it down and don't have any notes and didn't report it to anybody?

A. How did I pinpoint it to that date?

Q. Yeah.

A. The day before April fool's. That's how I remembered it.

Q. So that's what sticks out in your mind?

A. Yes, sir.

Q. Did you ever report to Norfolk Southern before you filed your lawsuit that you supposedly had been injured on March 31, 2016 while trying to operate a car door?

MR. THICKENS: Object to the form.

MR. WRAY: What's the objection to that form?

MR. THICKENS: You keep saying supposedly.

MR. WRAY: Oh, okay. I didn't --

MR. THICKENS: So I'm objecting to the form of the way you're asking the question.

MR. WRAY: All right, I didn't realize I used that term there.

BY MR. WRAY:

Q. But let me ask you the question again. Did you ever report to anyone at Norfolk Southern, before you filed this lawsuit, that you had been injured on March 31, 2016 operating a car door?

A. No, sir.

Q. Doesn't Norfolk Southern have a procedure in place that when employees are injured on the job they want to investigate it to see if they can figure out what happened?

A. Yes, sir.

Q. How were they supposed to do that if you never told anybody what happened?

A. Well, they wouldn't be able to.

Q. Would you agree with me that it was a violation of the operating rules for you not to report the incident?

A. No, sir.

Q. So you -- as far as you understood the rules, if you were hurt on the job and were injured, you didn't have to report it to anybody? You could leave the premises that day and not let anybody know?

A. Well, you know, I -- as I said earlier, I'll reiterate this, been hurt a thousand times out there and not reported it because that was the type of work we did. And it's rough, it's tough, it's hard. You're going to get injured. You can't report every nip, pop, pull, beat-up you have. If we did that anywhere on the railroad, it wouldn't be nothing but one big safety issue. That's all it would be. So no, sir, I didn't report it. I wasn't in the habit of reporting everything because when I could take care of it on my own, like a smashed finger or whatever, I knew it was going to be okay. I went back to work.

Q. I'm going to ask you to help me out if you can because I am very confused about this door. Can you kind of draw the boxcar for me and kind of how this door operated?

MR. THICKENS: He's not going to draw anything.

MR. WRAY: Why not?

MR. THICKENS: That's not part of testimony.

BY MR. WRAY:

Q. Are you able to do that?

A. No, sir, not correctly.

Q. You can't draw a boxcar?

A. No, it wouldn't look like one.

Q. Well, I'm not here to --

A. I can't draw -- I can't draw good.

Q. I'm not going to judge your artwork. I'm just trying to understand because I -- as you saw earlier, I'm completely confused about how this door operated and how it worked. I was trying to get you to give me a visual of what --

MR. THICKENS: I'm going to instruct him not to draw it. If I have to file a motion on that, I will, but there's no rule that requires him to create an exhibit.

MR. WRAY: Well, there's not a rule that requires it, but I think as part of his testimony, I'm entitled to ask him questions and ask him to explain what he's described and --

MR. THICKENS: No doubt. And you can ask him questions, but he doesn't have to draw an answer.

MR. WRAY: Right. And I was going to finish that. And I think as part of that, if it would help to draw -- I mean I've done this in depositions for 26 years. I've never had anybody object, but I can't force him to do it over your

objection, so if you're saying your position for the record is he doesn't have to draw me a diagram or show me where anything happened, I've just got to take the verbal testimony as best it comes.

MR. THICKENS: It's a verbal deposition, yes. And for the record, are you going to want to motions hearing on that, and do we need to go ahead and file a motion?

MR. WRAY: Not right now. Let me talk with my client, and we'll decide whether that's something we want to pursue or not.

MR. THICKENS: Okay.

BY MR. WRAY:

Q. And let me ask you this, Mr. Collins. I asked you about the date and how certain you were of the date. Are you also positive that you were actually trying to open the door when this happened?

A. Yes.

Q. And there's no doubt in your mind about that?

A. No doubt.

Q. Because when you walked up there, as you told me earlier, the door was actually down and closed?

A. The door was in place and closed.

Q. Right, so you couldn't see inside the boxcar?

A. Correct.

Q. And it was when you were in the process of opening the door that you say you got hurt?

A. Yes, sir.

Q. And you're positive of that?

A. Positive.

Q. Other than the pain that you described to me in your neck and back, any other injuries that you associate with that particular incident on March 31, 2016?

A. No, sir.

Q. And how many times did you go to the doctor for that particular incident?

A. I don't recall.

Q. Did you miss any time from work?

A. No, sir.

Q. So whatever the issues were, problems you were having, you were able to work through those?

A. Yes, sir.

Q. What type of medical care or treatment did you get for the issues that you relate to the

March 31, 2016 incident?

A. Rehab. She sent me to a rehab.

Q. What did you do? You're talking about physical therapy?

A. Physical therapy, yes. Yes, sir. Yes, sir.

Q. Where did you do that?

A. Oh, they were here in Rock Hill.

Q. You know the name of the facility?

A. Oh, I can't -- I don't remember the name of it, to be honest with you. I think it was -- I can't give you the name of it. I'm not exactly sure which one it was.

Q. When did you go to physical therapy?

A. When? I think I'd have to go twice a week. I think that's what it was.

Q. Beginning in what month? This happened in March. When did you first go?

A. I don't recall the month when I started on it.

Q. You said you went twice a week?

A. I'm thinking that's what it was.

Q. For how long?

A. Oh, I think I went for a month.

Q. Did that resolve your issues?

A. Somewhat.

Q. What problems did you continue to have despite the physical therapy?

A. Well, I'd still have a little ache every once in a while.

Q. Where?

A. Back.

Q. Did you get any injections from the doctor?

A. Yes, sir, she had gave -- she gave me, I think, three injections in my upper back.

Q. And do you know what it was? Was it steroid injections, or do you know?

A. I'm not sure exactly what it was, sir.

Q. Dr. Lazeski was the one that did that?

A. Yes, sir.

Q. What other medical care, if any, did you get for that particular incident?

A. That was -- that was it. That was it. Well, she did prescribe a prescription, I think -- what was it? I'm not sure, but I did have a prescription prescribed to me at that time. She had prescribed some Oxycodone, but I'm not sure if it was that time or after the last one. I think it was after the last one. It wasn't that one. She

-- Pennsaid. Pennsaid, that's what it was. Pennsaid. It's a topical rub that you just rubbed on it, on the spine.

Q. At the time this incident occurred, on March 31, 2016, were you on any medication?

A. No, sir. Can we take a minute?

Q. Yes.

(Off-the-record conference.)

BY MR. WRAY:

Q. Mr. Collins, we're back on the record. At the time this incident happened in March of 2016, your regular, I'm going to say, family physician was Dr. Barron, is that right?

A. Correct.

Q. Was he the primary person you were seeing for medical issues for, let's say, the five years preceding this March 2016 incident?

A. Yes, sir.

Q. I also saw in some records that you had been referred over and received an evaluation for carpal tunnel, is that right?

A. Correct.

Q. And that was in 2015, I think?

A. I don't recall which one it was.

Q. Was that Dr. McCarthy?

A. Yes, sir.

Q. And the carpal tunnel issues you were having, where was that?

A. Both wrists, both hands.

Q. Did you ultimately have surgery for carpal tunnel?

A. No, sir, I didn't.

Q. Do you still have issues with that today?

A. Yes, sir.

(EXH. 1, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you what I've marked as Exhibit 1, and this is a record from Kimble Chiropractic Center here in Rock Hill. Do you see that?

A. Yes, sir.

Q. And it shows a date of service of November 23, 2015. You see that?

A. Yes, sir.

Q. And I think you told me that you went there around the Thanksgiving break, which would be about that time of year, correct?

A. Correct.

Q. And I'm just looking at history of present illness. It says you've worked 40 years as a carman for the railroad. It says approximately two weeks ago he was working with heavy wrenches and started having pain at the neck and into the upper back across tops of both shoulders. Did I read that correctly?

A. No, sir, I'll tell you what. I don't have my glasses. I can't really see exactly where you're at. I don't want to stretch your glasses.

Q. See if mine will work.

A. Okay. Where are you at now, please, sir?

Q. Under the section that says history of present illness.

A. Yes, sir, I see it.

Q. Did I read that correctly? It says approximately two weeks ago, he was working with heavy wrenches and started having pain at the neck and into the upper back across tops of both shoulders?

A. I don't remember telling him that. I don't recall that.

Q. Well, that's two different questions. First question was did I read it accurately, that's

what it says on the record?

A. Yes, sir, you read it accurately.

Q. And then second question is, is that what you told Dr. Kimble?

A. I don't recall telling him that, no, sir.

Q. Do you recall how many times you went to see Dr. Kimble?

A. I don't recall, sir.

Q. Now, according to this record, you reported having pain at the neck and into the upper back across the tops of both shoulders. That's what the record says, right?

A. That's what the record says.

Q. Tell me what the difference in that was and the pain that you say you had following the March 31 incident?

A. I didn't -- I don't remember -- I do not remember telling him I had it in my upper back. I had it -- I went to him for my spine in the middle. That's what I went to him for. Now, he asked me what type of work I done, and I told him. So I'm thinking he's taking his prerogative that that's what I do and that's, you know, because that's the type of work I do. I don't recall

telling him that I was hurt across the top of my back. It was my spine that he was looking at.

Q. Well, where do you --

A. That's what he treated.

Q. Whether you recall telling him that or not, my question is when this incident happened March 31, didn't you tell me that the pain you had was in your neck and across the upper part of your shoulder?

A. Yes, sir.

Q. And that's the same area that Dr. Kimble wrote that you reported to him you were having issues? At least that's what he wrote?

A. That's what he wrote.

Q. But you don't recall telling him that?

A. No, sir.

Q. Who referred you to Dr. Lazeski?

A. No one.

(EXH. 2, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Now, I've handed you what we've marked as Exhibit 2. And I was asking you about Dr. Lazeski. You said no one referred you over to her. How did you become -- how did you come to be a

patient of hers?

A. I just called up there. That's it. I called and asked for an appointment.

Q. Had someone told you that was a particularly good group that you should go see?

A. Well, yes, sir. Well, I knew -- I knew that it was. I didn't have to be told that. I knew that it was.

Q. And if you look at this Exhibit 2, this is a record. At the top, you see it says encounter date, December 8, 2015. Do you see that?

A. Okay. Yes, sir.

Q. And it says, under history of present illness, it says Mr. Collins is a 60-year-old male who presents today as a new patient for evaluation of upper back pain. Do you see that?

A. Yes, sir.

Q. Then it says patient states his symptoms started November 2015, no preceding trauma. Did I read that correctly?

A. Yes, sir.

Q. Is that what you told Dr. Lazeski when you went to see her on the first visit?

A. I'm not exactly sure what this -- what that means.

Q. Well, do you -- is that what you told her, that you had started having problems in November of 2015?

A. Yes, sir.

Q. And that was the same time you went to see Dr. Kimble, correct?

A. Yes, sir, that's correct. Yes, sir. Okay, I'm following you.

Q. And it says he reports a sore-type pain in his upper back and between the shoulder blades, correct?

A. Yes, sir, that's correct.

Q. That's the same area that you told me that you felt pain in March or following the March 31 incident, correct?

A. Middle of my neck, correct.

Q. And then if we look down at the impression, and I know the doctors, we'll ask her about her diagnosis, but the impression, at least, reads cervical spondylosis. Do you see that?

A. Yes, sir.

Q. Do you recall ever talking with Dr. Lazeski and asking her what her diagnosis was or what your issue was?

A. Yes, sir.

Q. What did she tell you?

A. That's what she told me, cervical spond -- whatever that is.

Q. Spondylosis?

A. That's what she said. That's what she told me.

Q. Did she explain to you what that is or what that condition is?

A. Not really. She didn't get into too much with that.

(EXH. 3, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. And, Mr. Collins, I've handed you what I've marked as Exhibit 3. This is, again, a record from Dr. Lazeski. And you see at the top, the encounter date says February 8, 2016?

A. Correct.

Q. So this is about six, seven weeks before the incident where you say you were hurt trying to open the car door, right?

A. Correct.

Q. And Dr. Lazeski, at that time, says that you described aching neck pain and tightness in the shoulders. Did you tell her that?

A. Yes, sir.

Q. And that's the reason you were seeing Dr. Lazeski is because you had pain in your neck and in your shoulder area, correct?

A. And my neck. My neck.

Q. Right, I said that.

A. Neck. Yes, sir, neck.

Q. Well, the report -- the record says you described aching neck pain and tightness in the shoulders. Are you denying that you told her you had tightness in the shoulders?

A. I didn't -- at that time, I don't think I was telling her about my shoulder. It was neck.

Q. So you think the doctor maybe got that wrong?

A. Yes. Yes, sir.

Q. Other than Dr. Lazeski and Dr. Kimble, who else, if anyone, were you seeing with issues with your neck prior to March 31, 2016?

A. No one.

Q. Let me ask you to look at Exhibit 3 again. Flip to the second page there. And you see the section that says current meds?

A. Current med? Yes, sir.

Q. First item listed there is Clonidine

HCL. Do you know what that is and why you were taking that?

A. Yes, sir, it's blood pressure.

Q. And then it's got Viagra. I know what that is. And then the third one is Amlodipine?

A. That's -- yes, sir.

Q. What was that for?

A. That's also a blood pressure medicine.

Q. And you see it says under active problems, gout, high blood pressure, neck pain, overweight, spondylosis and upper back pain? Do you see that?

A. Yes, sir, I see that.

Q. Did you tell Dr. Lazeski that those were active problems that you had as of February 8, 2016?

A. No, sir, I didn't tell him anything about no overweight.

Q. She may have come up with that on her own. But let me ask you this. You have had issues with gout over the years?

A. I have, yes, sir.

Q. And you've taken Allopurinol for a long time to help you with your gout?

A. Yes, sir.

Q. You just told me you were taking two medications for high blood pressure?
A. Uh-huh.
Q. Is that yes?
A. Yes, sir, that's correct.
Q. You told me that you told Dr. Lazeski that you were having neck pain, right?
A. Yes, sir.
Q. She, according to her records, diagnosed you with cervical spondylosis, which is in this record, correct?
A. Correct.
Q. And your record, at least, says that you also told her you were having some upper back pain. At least, that's what she says.
A. That's what she says.
Q. And you deny that?
A. I deny that.
Q. Do you like Dr. Lazeski?
A. Yes, sir.
Q. You found her to be an honest and credible physician when you've dealt with her?
A. Yes, sir.
Q. Do you know of any reason why she would make up that you told her you were having back

pain?

A. No, sir, I don't.

Q. Any other details relating to the March 31, 2016 incident that you want to tell me about that we've not yet discussed?

A. No, sir.

Q. What do you think that Norfolk Southern did wrong that caused your injuries that day?

A. I don't think Norfolk Southern did anything wrong because Norfolk Southern didn't work on the cars, I did.

Q. Let's talk about the next incident then. According to your complaint, count two says that on August 13, 2016, while employed as a carman, you were injured while trying to open a door, and I think it was the air compressor room, is that right?

A. Correct.

Q. Do you remember that incident?

A. Yes, sir.

Q. So let's talk about that. Again, on that date, you were working as a carman?

A. Correct.

Q. And my understanding was at that time, had you already been transferred from Rock Hill

over to Charlotte?

A. Yes, sir.

Q. How long had you been working at Charlotte when the incident happened on August 13?

A. Let me see. Oh, I think maybe -- maybe two months. Maybe. I'm not exactly sure about those dates. Maybe two months.

Q. Was the work that you did when you were transferred to Charlotte in the same -- this was at the intermodal yard, right?

A. Correct.

Q. Was your work when you went over to Charlotte, all of it in the intermodal yard?

A. Yes, sir. Yes, sir.

Q. And tell me about the transfer. Had they eliminated the position in Rock Hill?

A. Correct. Yes, sir.

Q. So you had to move over to Charlotte to keep working with the railroad?

A. Right. Yes, sir.

Q. So on this particular date, tell me -- this is the time you were transferred to third shift?

A. Correct.

Q. And third shift worked what hours?

A. We worked from -- let me see. I think it was -- worked from 11:00 -- 11:00 to 7:00.

Q. 11:00 p.m. to 7:00 a.m.?

A. Correct.

Q. Who was working with you on August 13th?

A. That's Smalls. I don't -- I can't tell you his first name. I don't really know. Just Smalls. That's what I called him.

Q. Mr. Smalls. Was he also a carman?

A. Correct.

Q. Was he same position as you? Was he lead carman?

A. Yes, sir, the same position, just carman.

Q. Your job duties out there as a carman, same as what you've told me about earlier today?

A. Yes, sir.

Q. About what time of night or early morning did the incident occur at the intermodal yard?

A. Not exactly sure. I don't remember exactly what time it happened. I don't recall.

Q. Was it after midnight?

A. Don't recall.

MR. THICKENS: We'll go ahead and take our conference to just review this exhibit before we go over it.

MR. WRAY: Well, this was produced ahead of time. I don't think you have a right to -- I mean you can, but I can ask him questions about it.

MR. THICKENS: It wasn't identified two days prior to the deposition. I don't think there was any -- if I'm wrong about that, I mean let me know, but I don't think there's any identification of exhibits.

MR. WRAY: The notice says Defendant hereby gives notice that any and all documents and materials produced and identified by the parties in this action may be provided to the Plaintiff for questioning regarding the same.

MR. THICKENS: Like I said, are you contending that that's notice of particular documents of the over 7,000 documents that were produced in order to give sufficient notice of what you'll be asking?

MR. WRAY: Yes. I mean this is his incident report here, Joe. I mean I'm not ask -- I didn't pull a document out of the blue. This is

his report. Clearly, he was on notice that I was going to ask him about it.

MR. THICKENS: You pulled it out of 7,000. Okay, go ahead. We'll see.

(EXH. 4, Incident Report, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 4. And I'll represent to you that my understanding is this is a personal injury report that you completed, is that right?

A. Correct.

Q. And you did not complete it on August 13, 2016, which is the day you say the incident occurred, right?

A. Correct.

Q. Looks like the date you completed it was August 31, 2016, which is 18 days later, right?

A. Correct.

Q. I was asking you about the time, and that's the only reason I handed you this document. On the -- well, let me ask you before I get to that question. Is that your signature at the bottom?

A. Yes, sir, it is.

Q. And did you fill out and complete this

report?

A. Yes, sir, I did.

Q. Did you honestly and truthfully complete the report on the day that you completed it?

A. Best of my knowledge.

Q. And if we look kind of the middle of the page, it says incident time, 1:00 a.m. Do you see that?

A. Let me see. Yes, sir, I see that.

Q. And I'm not holding you to that. If you remember a different time or if you don't know, you can tell me. But that's what you wrote on the report?

A. Don't remember, honestly.

Q. Do you think your memory would have been better of when it occurred when you completed this form back on August 31, 2016, than it is as we sit here today?

A. I don't recall. Don't know if it would have been or not.

Q. Tell me what happened that day that caused you to be injured.

A. Well, it reads for itself right here.

Q. Well, don't worry about what you wrote

down. I want you to tell me what you remember.

MR. THICKENS: Object to the form.

THE WITNESS: Okay. What I remember, well, we went to the yard earlier that night, checked in, looked through my emails, what I had. And they had wrote down -- they had sent me an email saying that the pump houses had been looked at. One of them had water in the floor, but the pump house was okay. And I want to think he -- best I can remember, he said it was in a classification yard. That's a yard down below -- I mean the -- I don't know if you call it the classification yard. But anyway, it was the tracks down below. We all had -- they had different compressor units in the yards, what's used there. So when I went to -- I think it was pad two, apply there, we had to put the blue flags up. We had to flag all the tracks. We get a single car test. Walked to the end of the train, turn the air on and then we'd do a walking brake test. As the air got up, get the air down, brake it, do a walking test.

BY MR. WRAY:

Q. So let me ask you this before you get there. When we talked about the earlier incident back in March, you said you were inspecting some

reject cars from Bowater?

A. Yes, sir, that's correct.

Q. What were you doing the night or morning when this incident occurred?

A. We were inspecting cars, outbound cars. These cars were outbound, would leave, I think it was a Chicago train. I'm not sure if it was 221 or which one would pick it up out of Charlotte, but it was -- we were inspecting cars that were going to be picked up and taken out.

Q. These cars that you were inspecting on August 31, 2016, as far as you know, were they in good working order? They had not been bad ordered or rejected?

A. Not yet. They hadn't been inspected.

Q. All right. And it was your job, as the carman, before they went out on the outbound train, to visually inspect them and make sure they were safe to go out on the train, is that right?

A. Correct. Yes, sir.

Q. And tell me about -- I didn't understand what you were talking about, pad two and the pads you referred to. What did they have to do with this -- what you were doing?

A. Well, that's the different tracks

they're in. They had four tracks where the cars were placed, and those tracks were the receiving -- you had a receiving yard, and then you had tracks where they would go out, outbound. And we were in charge of checking all outbound to make sure they were able to go. So that was our job.

Q. That was you and Mr. Smalls?

A. Yes, sir.

Q. So as you were doing that, you can pick up the story then, you said they -- the cars that you were inspecting were at pad two, you believe?

A. Yes, sir.

Q. And what happened?

A. Well, when I went to put the air down, we had no air. So you can't inspect the cars if you don't have the air. So I called Smalls on the radio and I asked him, I said, well, we don't have air over here on two. Do you have any air? I think -- I can't remember what track he was on, but we did separate tracks. Anyway, I said, well, maybe we need to go check the pump house, the compressor room. And I told him that I had gotten an email earlier that day that they had inspected them, looked at them and everything was good, but one of them had water in the floor. So basically,

he was telling us they were okay. You know, they were running, up and running. So when we went to it, well, of course, I didn't have any idea if it was on or not because we couldn't get inside of it. So I asked Smalls, said is there a valve outside, out here or something that maybe we can open up? So he didn't know either. So he walks around the back. So there at the -- in the yard, when we get in, we have a key punch we have to punch in to get in the gate and also to get into the office where we can do our paperwork and stuff, the carman. You have to key punch it in. And so that compressor room also had a key punch to open the door with.

So I thought, basically, it would be the same number as the gate and in the carman's room because at the office in Charlotte, the office, the general foreman's room, and also the carman's room has got a keypad, and it's the same -- same number. Both of them are the same. So I'm thinking -- I never had been told any different, never told about the compressors there. Never been instructed with them. Didn't know of any different number. So as I tried to put it in, of course, it didn't work. And I tried once more. I tried to open the door and put it in. It didn't work. And

I looked in the door jam. Well, I didn't see the lock in. All the other doors have like a deadbolt lock, and you can actually see them engaged in it, so you know you haven't opened the door. You haven't hit the right number. Well, this one didn't have it. Had a keypad just like the rest of them, but it didn't have it engaged. And I said, well, evidently, the door's open, but I see at the top of it, it looked like it was just stuck a little bit at the top. I said, well, it looks like it's just stuck up at the top. That's what I'm thinking to myself the whole time.

After -- you know, I said, well, evidently the door's definitely not locked, you know, because I don't see it, you know, a lock in the jam. So when I grabbed to pull the door again, I said well, it's just jammed a little bit. When I pulled the door, when I did, the whole thing just flew open at that time. And I knew right then, I said I felt the jerk in my back right then, when the whole thing come loose. And found out that the locking mechanism on this one was inside the door, so you couldn't really see it. And I had no -- I was not aware of that at all. No one had ever told me that at all. So I was thinking it was just like

all the rest of the doors, the configuration, and it wasn't. So when I pulled, it all give, and it gave away and when it did, the door just swung open, and I felt the jerk in my back right then.

Q. How far was the compressor room, this door you were trying to operate from where you'd been working on the -- or inspecting the cars?

A. I'm not exactly sure. Oh, maybe -- maybe -- I don't know, 50 feet, maybe more. I'm not exactly -- I can't -- I'm not exactly sure how far exactly it was from it.

Q. Do you know what Mr. Smalls' first name is?

A. No, sir.

Q. Do you know if he still works with Norfolk Southern?

A. No, sir, couldn't tell you.

Q. Have you seen him since the date this happened?

A. No, sir. No, sir. Oh yeah, I've seen him since then, since it happened. Yes, sir, we -- you know, we worked. But I haven't seen him since I left, no, sir.

Q. Did I understand you to say that Mr. Smalls came over to the compressor room door before

you tried to get it open? Or did I misunderstand that?

A. No, sir.

Q. So you were the only one over there at the door trying to get it open?

A. Yes, sir. Yes, sir.

Q. Any other witnesses that you know of that saw you trying to open that door?

A. None that I know of, sir.

Q. And Mr. Smalls, to the best of your knowledge, didn't see it?

A. No, sir, he was around the back.

Q. Before August 13, 2016, had you ever opened that door previously?

A. No, sir.

Q. Had it ever been required to be open while you were working at the intermodal yard there in Charlotte?

A. No, sir.

(EXH. 5, Photographs, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 5, which is a collection of photographs. And let me give you a minute to look through them first, and

then you let --

A. Okay.

Q. You let me know when you've had a chance, and I'll as you some questions.

A. Yes, sir. All right, sir.

Q. So let me tell you, if you'll look down in the right-hand corner of those photographs, you'll see a series of numbers beginning with 712, and it's got a bunch of zeros and then it starts with one and it goes from there. Do you see that?

A. Yes, sir.

Q. So while we're talking about these pictures, I'm going to refer to those numbers so we'll know we're looking at the same photograph, okay?

A. Yes, sir.

Q. And I'm going to make it easy because I'm going to start with number one. And I'm going to ask you, if we look at photo one in Exhibit 5, is that the compressor room where you were working or that you were trying to open the door on August 31, 2016?

A. I'm not sure if it is.

Q. Are there more than one --

A. Yes, sir.

Q. -- compressor rooms?

A. Yes, sir, it is.

Q. Let me finish my question, even when you know what I'm going to ask you, just to make sure Sarah can get it down.

Are there more than one compressor room at the Charlotte intermodal yard?

A. Yes, sir.

Q. I'll tell you that my understanding is it's the same one, but it's okay if you don't know for sure. Did it look like this?

A. Not totally sure.

Q. That's fair enough. Let me ask you to flip over to photograph five. And again, we're talking about as part of Exhibit 5.

A. Yes, sir.

Q. Is that the same type of door lock with keypad that was on the door you were trying to open that night?

A. Not sure.

Q. How about the door handle, does that appear to be the same type handle?

A. Yes, sir, I think so.

Q. And if you look at number six, photograph six, you see it's got a keypad on there

with numbers one through five. Do you recall, was that the number set that was on the keypad you were trying to open that night?

A. Not -- I can't -- I can't really recall if that was the exact type of keypad.

Q. Let me ask you this. I did understand you to say that it had a keypad number system on it?

A. Yes, sir, correct.

Q. And what you're telling me is you don't know whether it looked like photograph six or whether it had numbers one through five or maybe some more numbers on it? You just don't remember?

A. I don't remember.

Q. If someone were to testify that this was the door and the keypad, would you have any reason to dispute that?

A. No, sir.

Q. And if we look at Exhibit -- or photograph 11, which is the very last picture. You can just flip to the very end in Exhibit 5. That appears to be the interior of this compressor room. Do you know if that's what it looked like on the inside of that compressor room the night you got the door open?

A. Don't -- don't recall.

Q. Do you remember what was inside the room, if anything?

A. All I remember was compressor.

Q. So you walked up to the door and did you try the handle to open it before you tried to input any code?

A. No, sir.

Q. You tried to input a code the first time, and the door wouldn't open, right?

A. Right.

Q. And I don't know if you told me, but I know it's in your statement or somewhere else I've read. The code you inputted was 315, is that right?

A. Yes, sir, that's it on here, 315.

Q. I'm reading that on your statement. It says I tried entering number 315 twice.

A. Yeah.

Q. But door wouldn't open. Is that right?

A. Yes, sir, correct.

Q. And each time you entered the code, did you try to turn the handle on the door to see if you could get it open?

A. Yes, sir.

Q. What happened?

A. Didn't open.

Q. Did you call Mr. Smalls on the radio and say hey, I'm not able to get this door open, do you know what the code is over here?

A. No, sir, I didn't.

Q. Why not?

A. I just didn't.

Q. All right. And the night this happened, was Mr. Hickman still your supervisor?

A. No. No, sir, Hatcher. Tom Hatcher.

Q. Hatcher. I'm sorry, Hatcher.

A. Tom Hatcher.

Q. Was he the supervisor over you the night this happened?

A. Yes, sir.

Q. Did you try to call Mr. Hatcher or anyone else in supervision to say I'm having trouble getting this compressor door open, can someone give me the code?

A. No, sir.

Q. Why not?

A. Well, after I looked at it and -- and observed, looked at it, I thought the door was just jammed at the top because, again, I didn't see the

door lock in. So all the rest of them, and the 315 is also the number for the carman's room. So I figured just like up at Charlotte yard, all of them were the same. They wouldn't change them. They're all going to be the same, so. As I visualized it and seen the lock in, I figured it was just jammed a little bit at the top.

Q. You told me that you had a radio in your possession, right?

A. Correct.

Q. And you were able to communicate by radio with Mr. Smalls?

A. Correct.

Q. Were you able to communicate with other Norfolk Southern employees that might have been working that night?

A. Well, I don't know if we was on that channel or not. I'm not sure if we was on the same frequency. We wasn't usually on the same frequency.

Q. Could you not change frequencies if you needed to contact someone else in the yard or someone else that was working that night?

A. Yes, sir, I could.

Q. And I don't know, is there a yardmaster

or someone on duty that's responsible for the intermodal yard at all times?

A. I'm not -- I'm not sure.

Q. You don't know?

A. No, I don't know.

Q. How about over the carmen? Other than you and Mr. Smalls, if y'all encounter a problem as carmen that you need some help with, who do you call?

A. Well, we would call a supervisor first.

Q. Mr. Hatcher?

A. Mr. Hatcher, yes, sir.

Q. And is he supposed to be on call 24-7?

A. Yes, sir, that's --

Q. If you've got a major issue, he's supposed to answer the phone?

A. Yes, sir, correct.

Q. But you didn't call Mr. Hatcher?

A. No, sir, I didn't.

Q. And you didn't contact anyone else at the intermodal yard to tell them I've tried this keypad twice and the door won't open, is there some other code?

A. No, sir, I didn't.

Q. You could have done that?

A. Well, by a visual seeing that the lock wasn't in there, I felt like the door was just jammed at the top, and it wasn't locked.

Q. Well, I'm not --

A. That's why I didn't do it.

Q. Yeah. Well, I wasn't asking you what you felt like. My question was did anybody prohibit you from either using your radio -- well, let's stay there for a second. From using your radio to call somebody and see if you had the right code?

A. No, sir.

Q. And did you have a cell phone with you?

A. I don't think so.

Q. How would you have contacted --

A. Yes, sir, I did. I had -- yes, sir, I did. I had the railroad's -- the railroad's phone with me.

Q. And was there anybody that prohibited you or anything that prohibited you from using your cell phone to call somebody if you had wanted to?

A. No, sir.

Q. So you made the decision not to call anybody by radio, not to use your cell phone, but to continue trying to get the door open, is that

fair to say?

A. Correct, yes.

Q. And then, as I understand it, you tried a third time, still didn't open, correct?

A. The third time, I -- that's when it -- when I pulled it open.

Q. Well, I'm saying it didn't open automatically when you punched in the code?

A. I don't think I did it a third time. I done it twice, the code twice, and didn't open. And I didn't see the lock in. That's when I looked at the top of it and saw that it was stuck in the jam a little bit, and I said, well, it's just stuck a little bit. I'll just pull it open.

Q. So if I understand what you're telling me, Mr. Collins, then you tried it twice. It didn't open. The third time you didn't even try the code. You just forcefully pulled it open?

A. Yes, sir, correct.

Q. And when you opened the door, did you do it using both hands pulling on it, one hand?

A. No, I didn't use but one hand.

Q. Which hand did you use?

A. My right.

Q. And when you did that, did the door

pull to you?

A. Yes, sir. Yes, sir. Came -- swung out. Come out.

Q. The door swung to the outside where you were standing?

A. Yes, sir.

Q. And I thought you told me the lock actually broke off and fell onto the floor, is that right?

A. On the inside. Yes, sir.

Q. It fell on the inside of the compressor room?

A. Yes, sir, it was on the inside. It wasn't visible. You couldn't see it from the outside.

Q. Did you not understand when you went there that night that the reason they have a keypad lock on the door was so the door would be locked unless someone entered the proper code?

A. Exactly. Yes, sir.

Q. That's the purpose of a keypad lock, isn't it?

A. Exactly.

Q. Did you actually break the hinges on the door?

A. No, sir.

Q. And when you pulled on it and the door came towards you, did you fall to the ground?

A. No, sir.

Q. What happened to you?

A. I fell back with it. I was holding onto the door, the door handle.

Q. Did the handle actually come off in your hand?

A. No, sir. No, sir, it didn't.

Q. And did you realize at that moment in time when the door pulled open towards you that you had been injured?

A. Yes, sir.

Q. Where were you hurt?

A. The middle of my back.

Q. Was that in the same area of your back as you're indicating that you had had pain in March of 2016 when you were operating the car door that you told me about this morning?

A. Not to that extent.

Q. Well, not -- whether it's the same pain or to the same extent, was it the same area of your body?

A. Same area.

Q. So when you say in your back, describe for me more particularly. Right side, left side, upper back, lower back?

A. Upper.

Q. So you hurt in your back, upper? Which side? Or was it all across, left and right?

A. No, it was the upper back and left again.

Q. Between your shoulder blades?

A. Shoulder blades.

Q. And your spinal cord?

A. Right.

Q. Were you hurt anywhere else?

A. No, sir.

Q. What did you do once the door came open and kind of -- and the lock broke off and fell in the floor?

A. I said uh-oh.

Q. Just said it to yourself?

A. Yes, sir.

Q. Did you then tell Mr. Smalls what had happened?

A. Well, he came around and looked, and he said uh-oh, too.

Q. How did he know something had happened?

A. Well, he could see it laying in the floor just when I pulled it out.

Q. But I'm saying he was working over on pad five, though, wasn't he?

A. No, sir. No, he was around the back side of the building.

Q. So did it make a noise? I mean kind of like a loud sound when the door finally gave through?

A. Well, I don't know how loud a sound it made, but you know, it was open.

Q. So Mr. Smalls came around from the back of the building, and he said uh-oh, this doesn't look good?

A. Uh-oh, yeah. Got a uh-oh, too.

Q. And did he ask you what happened?

A. Yes, sir.

Q. What did you tell him?

A. I told him I tried to put the keypad in and it wouldn't open, and I looked, and I didn't see the lock engaged, so I saw it up there at the top a little bit, so I figured I'd just try to pull it open. And I did, and it pulled the inside lock off of it.

Q. Did you tell Mr. Smalls that you had

been hurt?

A. No, sir. No, sir.

Q. Did you tell him that you needed any medical treatment?

A. No, sir.

Q. Did you report to any of your supervisors that you had been hurt?

A. No, sir.

Q. At any time that night, did you ask for any medical care?

A. No, sir, I didn't.

Q. Did you report to your supervisors when the incident happened that you had broken the door in the compressor room?

A. I reported it to the lead carman the next day. I went that afternoon when we -- we was finished with our shift. I sent them an email telling them that I had broken the door when I opened it.

Q. And if the time on your incident report, Exhibit 4, is correct, it was 1:00 a.m., you would have continued working on until 7:00 a.m. until you were off duty?

A. Correct.

Q. Did you have any issues continuing your

work that night?

A. Did I have any?

Q. Yes.

A. Yes, sir, I did.

Q. What was the issues that you were having?

A. I was having pain.

Q. Just in the back where you described for me earlier?

A. My back, yeah.

(EXH. 6, Email, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 6. You told me that when you got off work that next morning or right around the time you got off work, you sent an email to the lead carman, is that right?

A. Yes, sir.

Q. And who was the lead carman at that time?

A. Well, I think Rodney and Ed Simpson, and I think Matthew Murphy.

Q. And Exhibit 6, is that a copy of the email you sent on August 13, 2016 following this

incident involving the compressor door?

A. I'm not sure. I see that I wrote it, but I'm not sure. I don't recall.

Q. It says from Mike W. Collins. That's your name, right?

A. Yes, sir, that's -- that's my name.

Q. And you did send an email, you told me, to Rodney Brewer --

A. Yeah.

Q. -- was the lead carman?

A. I did.

Q. And who are Matthew Murphy and Ed Simpson?

A. Right, they're lead carmen, too. All three of them.

Q. Is there some reason you think this might not have been the email you sent or you said something different?

A. Yeah, I -- I just don't -- I know I sent them an email. I can't say that's exactly what it said, but I did send them an email.

Q. Did you send more than one?

A. No, sir.

Q. Did you send an email to Mr. Hatcher, your supervisor, --

A. No, sir.

Q. -- and say hey, boss, let me tell you what happened?

A. No, sir, I didn't.

Q. Why not?

A. I sent it to the lead carmen. They'd take care of it. I figured they'd report it to Hatcher, and that it'd all be taken care of in line.

Q. After you sent the email to Mr. Brewer and the others on the email, did you have any follow-up discussion with them about what happened?

A. Don't recall. No, sir.

Q. Did anybody ever interview you or ask you any questions about what had happened and how the door got broken?

A. I don't recall.

Q. And I should have said, before you completed your Form 22 on August 31, 2016?

A. No, sir. I don't recall.

Q. Between the time of August 13, 2016, when the incident happened, and August 31, 2016, when you completed the Form 22, the personal injury report, did you have any discussions with anybody in supervision about what had happened to you that

night?

A. No, sir.

Q. Did you ever tell anybody in supervision prior to August 31, 2016 that you'd hurt yourself that night?

A. No, sir.

Q. Why not?

A. Just like all the rest. I figured I'd be able to take care of it, and I'd be back to work. So I wasn't going to report it. And they had I don't know how many years they had had in Charlotte they'd had a great track record safety. I didn't want to be up there for two months and blow it all out of the water for them. So I figured, you know, I could take care of it again, and it'd be taken care of, and I'd be able to go back to work, and it'd be all right, as usual.

Q. And the email you sent, Exhibit 6, it says air at intermodal yard wasn't working at all last night. I reset breakers and air came back on, and in process of getting in compressor shed, I broke inside door handle off door. So be careful not to get locked inside of shed until repair on door is made. Did I read that correctly?

A. Yes, sir, you did.

Q. And you didn't say anything in the email to any of your colleagues about being hurt, is that --

A. No, sir.

Q. -- fair to say?

A. No, sir, I didn't. No, sir.

Q. How was it that you came about completing, I think it's Exhibit 4? Is that the personal injury report you've got in front of you? Yeah, Exhibit 4. Tell me how this came about. You didn't report it the night it happened. You didn't report it for the next 18 days. Why all of a sudden on August 31, 2016, did you fill out a report?

A. I -- well, that complicates some other stuff, too. But I went to -- I had gone to the doctor for check my hip, just to get a hip -- because it's been bothering me. And while at the doctor's office, he wrote me out of work. So when I called Mr. Hatcher to tell him that I had been wrote out of work, he asked me, you know, why, and I was telling him that, you know, I was -- my hip had been bothering me, so I mean I had got wrote out, got to check on it. And in the process, I said, well, you know, pulling on the thing the

other day and hurt my back a little bit, too, but I've got my hip doing, so -- and then he asked me, he said what did you say? And I said I'm going to go on the hip. And he said, no, you said something about a door.

Q. Who were you talking to?

A. Hatcher, my supervisor. And he said what about the door? And I said, well, you know, I pulled it and hurt my back some then. But I said I'm going to go out with my hip so it's just -- let's just be done with that, and we're not going to do that. He said I've got to write it as a report. And I told him you don't really have to do this. And he said yes, I do. And I said, you know, I'm going out with my hip. This is, you know, I'm going to be out anyway, so. But anyway, that's how that started. He made me come in and do a report on it. And I tried to get him not to let me do it, but they said the FRA rules, can't do that, you got to be reported. Because I even whispered it to him, you know, even a whisper, him knowing that I had hurt a part of my body. And that's how that come about.

Q. Who else was present when you were talking to Mr. Hatcher on that date?

A. Bobby Cox, and there was one other general foreman. I can't recall his name. I can't recall off the top of my head, but Mr. Cox was there, too.

Q. What was Mr. Cox's position at that time?

A. Mr. Cox is -- what was he, a general -- general manager, basically? He'd been promoted again. He's -- he -- I forget what position it was, but --

Q. General manager of the intermodal yard?

A. No, sir, he was over all of us, Lynwood and all of our --

Q. So Mr. Hatcher, Mr. Cox, and you think there was one other? Was it a supervisor?

A. There was another fellow there, but I can't remember his name. I mean I don't recall his name.

Q. To take a step back, though, you said you had been to the doctor. Was that also on August 31, to see Dr. McCarthy about your hip?

A. This was about my hip when I went to the doctor.

Q. Right, but I'm trying to figure out a date. Was it August 31? I think that's what the

record says.

A. Yes, sir. Yes, sir. Yes, sir. I'm trying to get these dates straight myself.

Q. And you went to Dr. McCarthy about your hip?

A. Exactly.

Q. And Dr. McCarthy told you you're probably going to have to be out of work for hip issues?

A. He told me I would be out of work.

Q. Then you went to tell Mr. Hatcher because he was your boss, hey, I'm going to be out for my hip, is that right?

A. Correct.

Q. And somehow in that conversation, this issue with the door came up. So tell me about that. Why would that come up in that discussion?

A. Well, I just -- you know, I was just talking, and I said, well, you know, again, I was out with my hip. I'm going to be going out with my hip. And he said, you know, this is pretty bad and that -- and he said, well, you know, had you -- did it hurt like that? I said, well, no, it just -- it twisted a little bit the other night when I pulled that door and kind of twisted my back and my hip.

That's how it come out. And then he said, well, your back? And I said, no my hip. He said what about your back? I said this is about my hip. He said no, it ain't. This is about your back, now, too. So he made me come in and do this for my back at the same time.

Q. Between August 13, the night the incident happened with the compressor door, and August 31, when you filled out this personal injury form, Exhibit 4, had you been working regularly at Norfolk Southern?

A. Yes, sir.

Q. Had you missed any time from work as a result of any injuries you suffered trying to open that compressor room door?

A. No, sir.

Q. Were you put on any additional medications following the incident with the compressor room door that you weren't already taking?

A. I can't remember. I don't really recall what it was. I don't recall. Not sure.

(EXH. 7, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you what I've marked as Exhibit 7. This is a record from Dr. Barron, and it's dated June 29, 2016. Do you see that?

A. Yes, sir, I do.

Q. And I think you told me earlier that Dr. Barron had been your family physician for some period of time, a number of years before these incidents that we've talked about today at the railroad, right?

A. Yes, sir, he had.

Q. According to this record, it looked like you had -- it'd been a while since you had seen him, and it says you came back in to get reestablished. Do you remember that happening?

A. Do what now? Excuse me?

Q. I'm just reading from the record. If you look under the section that says HPI.

A. Yeah.

Q. It says former patient comes in to get reestablished. Do you see that?

A. Reestablished? Okay.

Q. Do you recall that you had been some period of time since you'd seen Dr. Barron and you went back with him to maybe get back in his

treatment?

A. Yes. Yes, sir. Yes, sir.

Q. And it says you have a long history of hypertension, which you've already told me about, right?

A. Right.

Q. And you had some difficult controlling that?

A. Exactly.

Q. Then we go down to the second paragraph, if you look at Exhibit 7.

A. Yeah.

Q. It says lately, he's been having extreme difficulty with pain in his upper back and neck with radiculopathy in the left arm. Do you see that?

A. Yes, sir.

Q. And this is about six weeks before this incident with the compressor door, right?

A. Let me see. When was the compressor door? What was the date the compressor --

Q. August 13, according to your complaint and the Form 22 you filled out. Is that right?

A. Yes, sir.

Q. So about six weeks before you had this

incident with the compressor door, you were telling Dr. Barron that you had extreme difficulty with pain in your upper back and neck, right?

A. Not extreme. No, sir.

Q. So he's wrong in using that word?

A. Well, I would say so. Yes, sir.

Q. Did you tell him you had difficulty with pain in your upper back and neck?

A. No, I told him I had -- I'd been having some difficulty sleeping. I think that's what it was about --

Q. And then the next paragraph says he also recently was told that his job with the railroad here in Rock Hill was being shut down.

A. Yeah.

Q. Was that about the time that you were transferred from Rock Hill over to Charlotte?

A. Yes, sir.

Q. And it says he has the option to retire or drive to Charlotte for third shift work, which he is not inclined to do. Did you tell Dr. Barron that?

A. At the time, I wasn't sure. I was not sure.

Q. And it says this is causing significant

stress. Do you recall being stressed out about the fact that your Rock Hill job was being eliminated and you were going to have to move over to Charlotte if you wanted to keep working?

A. Yeah, I was stressed some with that.

Q. And then I think you just touched on this. It says he complains of ongoing insomnia which has been a chronic problem as well, right?

A. Correct. Yes, sir.

Q. And so what was going on here was you were having some stress and insomnia because they were moving your job and you weren't happy about that, is that fair to say?

A. I'd say yes, sir.

Q. And you also were having problems with pain in your back and your neck, as the record reflects, right?

A. Not extreme, no, sir.

Q. Well, leave aside his use of the word extreme. You had problems with your back and neck, right? That's what you told the doctor?

A. Yeah.

Q. I don't think I asked you earlier. Have you ever been a smoker?

A. No, sir.

Q. Anybody in your family ever have issues with their back that you know of, any family history?

A. None I'm aware of.

Q. How about hips? Any family history of issues?

A. None that I'm aware of. No. No, sir. Well, I'm sorry. I'm wrong with that. My brother. My brother has. My older brother.

(EXH. 8, Medical Record, was marked for identification.)

Q. Mr. Collins, I'm going to show you what I've now marked as Exhibit 8, and you were telling me this earlier, that you thought on August 31, you went to see Dr. McCarthy about issues with your hip. Do you see that in Exhibit 8 references that? First page says the patient states he is here for pain in his left hip?

A. Correct.

Q. And then it says the patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. Do you remember that?

A. Yes, sir.

Q. Did you tell the doctor that?

A. Yes, sir.

Q. It says the patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down. Did you tell the doctor that?

A. Yes, sir.

Q. And how many years had you been having issue with pain that you attributed to your work on the railroad?

A. Really just toward the end of my -- a couple years I'd really had it. The last year is when I really had the pain, when it really got unbearable when I went to -- when I went to the doctor.

Q. Well, the record says the pain's been going on for years. Is that the terms you used with the doctor?

A. Slight pain, just nothing grave. Just little aches.

Q. Now, I don't see anything in this record, this is August 31, 2016, and the issue with the compressor door had happened about two weeks earlier. I don't see anything mentioned in here about this compressor door. Did you tell the doctor about that?

A. No, sir, evidently not.

Q. And if we look at the next page, page two of Exhibit -- is this 8?

A. Okay.

Q. It says chief complaint, then it says left hip pain. Do you see that?

A. Yes, sir.

Q. And again, it says the patient states that he is here for pain in his left hip. The patient states that he works on the railroad and thinks that the work on the railroad has taken a toll on his body. The patient states that the pain has been going on for years, but it is at the point that he is in constant pain and has trouble sitting down. Do you recall all that?

A. Yes, sir.

Q. You didn't mention anything about this issue with the compressor door, right?

A. No, sir.

(EXH. 9, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 9, and this is a record from OrthoCarolina, again, Dr. Lazeski, and it's dated September 28, 2016. Do you

see that?

A. Yes, sir.

Q. And looks like, as best I could tell, this was the first reference I saw where you had told one of your doctors that you had some issue at work on August -- it says August 3, but it was August 13, 2016, right?

A. Uh-huh.

Q. Do you see that?

A. 8-3? 8-3-2016?

Q. Yeah. Well, she's got -- she's got that, but if you look at the top, it says date of injury, 8-13-2016.

A. Yes, sir.

Q. And then the -- under history of present illness, it refers to 8-3-2016, which must be --

A. Right, that's --

Q. -- a typo.

A. Right. Yes, sir.

Q. You didn't get hurt on August 3rd, 2016?

A. No, sir. No, sir.

Q. It says patient was working his normal job on the railroad when he attempted to open a

door. That's what you told me earlier, right?

A. Correct.

Q. He had a difficult time opening the door and noticed it was jammed at the top of the doorway. Is that accurate?

A. Correct.

Q. He pulled the door aggressively. The door became ajar, and his arm jerked backwards. Is that accurate?

A. No, not -- not aggressively. I just pulled the door. Not aggressively.

Q. And you didn't use that term with Dr. Lazeski?

A. No, no.

Q. She just threw that in there?

A. No. Yeah, I reckon she just added that to make it sound good.

Q. So at this point in time, in August of 2016, were you still seeing Dr. Kimble, the chiropractor?

A. No, sir.

Q. You were seeing Dr. Barron, who we've already talked about, right?

A. Correct.

Q. You were seeing Dr. Lazeski. We just

looked at her record, correct?

A. Correct.

Q. You were seeing Dr. McCarthy, correct?

A. Correct.

Q. Any other physicians you were seeing at that time?

A. No, sir.

Q. How about in terms of your prescription medications? Did you have a regular pharmacy that you used to get any prescriptions?

A. Yes, sir. Yeah, CVS.

Q. And where was that located?

A. On Celanese Bypass, here in Rock Hill.

Q. Was that the only pharmacy you used to fill prescriptions?

A. Yes, sir, that's right. No, I'm sorry. The Pennsaid was from an in-store pharmacy they had with Dr. Lazeski and them. They got it from somewhere. But I couldn't -- I don't have any idea where it was -- where it was coming from. It was through the mail.

Q. So you arranged with Dr. Lazeski's office to send you the Pennsaid topical cream?

A. Right. Yes, sir. Yes, sir, that's correct.

Q. When I asked you earlier about the car door, you told me that you were the one operating the door when you had the issue, right?

A. Yes, sir, that's correct.

Q. Isn't the same true when you were working on the compressor room door on August 31, 2016?

A. Repeat that, please.

Q. You were the one that was trying to get the door open the night it happened, right?

A. Yes, sir.

Q. And you're the one that broke the door?

A. Yes, sir.

Q. What did Norfolk Southern do, if anything, wrong to cause that incident?

A. Well, I wasn't instructed in the correct keypad. I wasn't instructed that it was a different type of lock on the door. The houses should have been -- should have been going anyway. The had already been inspected that day. They had left -- evidently, they had -- he had left the compressor off. We wasn't instructed on any of that. Never had been instructed in opening and closing that door with that type of lock on it.

Q. Had you ever, not at Norfolk Southern,

but anywhere, at your home, a friend's house, at a relative's, ever had to use a keypad to unlock a door?

A. No, sir.

Q. What type of instruction do you think you should have been given to tell you how to punch a code into a door?

A. The code should have been given to us where the air compressor rooms in case something like this happened, we would know how to get into them.

Q. Well, you told me that the other doors there at the intermodal yard to the office and one other door that you named for me, both them had keypads as well, correct?

A. Yes, sir.

Q. So you were familiar with how a keypad lock works and punch in the code, right?

A. Correct. Yes, sir.

Q. And the code for those doors that you had was 315?

A. Yes, sir.

Q. And you had done that many times before August 31, 2016, punched in the code and the door opened, right?

A. Yes, I had done it some.

Q. So you knew how to do it? I mean it wasn't --

A. Yes, sir.

Q. Nobody had to be there with you to say Mr. Collins, you've got to punch these numbers to enter a code?

A. Well, you had -- yeah, there was a certain sequence you had to do it in and do it correctly. If you didn't, then it was another something you had to hit to correct all that, and I can't remember exactly how that was. But I didn't do it all the time. Smalls did sometimes. You know, it wasn't an everyday thing for me to put it in there.

Q. I understand that. But in terms of knowing how to open a door using a keypad, you knew how to do it because you had done it many times on other doors?

A. Yes, sir, with the correct number.

Q. And that was the key, to unlock the door using a keypad lock, you've got to have the right code, right?

A. Exactly.

Q. And you never asked anybody after you

tried it the first two times whether you had the right code or what the right code might be?

A. No, sir, I didn't.

Q. Did you ever ask anybody for any help in trying to get the door open before you pulled it open and the lock broke?

A. No, sir.

MR. WRAY: Why don't we stop there?

(A luncheon recess transpired.)

BY MR. WRAY:

Q. Mr. Collins, we're back on the record following our lunch break. Let me ask you a question. When you were working with Norfolk Southern, were you governed by the safety and general conduct rules?

A. Yes, sir.

(EXH. 10, General Safety Rule, was marked for identification.)

BY MR. WRAY:

Q. Let me show you what I've marked as Exhibit 10. And this is general safety rule 910, caption working safely. Let me give you a chance to read that. Just tell me when you're ready, or if you're already familiar with it, you can tell me that.

A. 910, I've completed reading 910, yes, sir.

Q. When you were working as a carman for Norfolk Southern back in March of 2016 and August of 2016 on the date of the incidents we've talked about already this morning, were you familiar with this rule?

A. Yes, sir.

Q. Had you been trained on rule 910?

A. Yes, sir.

Q. And you understood that you were supposed to comply with that rule as an employee of Norfolk Southern, is that fair to say?

A. Yes, sir.

Q. The first sentence of rule 910 says employees must not do any work in a manner that will jeopardize their own safety or the safety of others. Is that something you were trained as a Norfolk Southern employee?

A. Yes, sir.

Q. The next sentence says they must know that appliances, tools, supplies and facilities used in performing their duties are in proper condition. Were you trained that as well?

A. Yes, sir.

Q. The next sentence says if not, they must have them repaired or replaced before using them. Were you familiar with that requirement?

A. Yes, sir.

Q. And, in fact, I think you told me one of your jobs as a carman was to look and see if there was a defect, and if there was, you were supposed to repair it before some other employee used that piece of equipment, correct?

A. Yeah. Yes, sir.

Q. And then it says it is a duty of every employee to examine them to determine their condition. And by every employee, that would include you, right?

A. Correct.

Q. The second paragraph then says employees must not make repeated attempts to operate tools, equipment or appliances, and I'm going to leave off the examples there, that cannot be operated with a normal level of exertion or otherwise are not in proper working order. Such repeated attempts must be avoided. Did I read that correctly?

A. Yes, sir.

Q. Were you familiar with that rule?

A. Yes, sir, I am.

Q. And you told me earlier today on this incident that happened on August 13, you tried two attempts to open the compressor room door before you actually pulled it and it broke off, right?

A. Correct. Yes, sir.

Q. Would you say that when you tried the first two times, you used a normal amount of force in trying to open the door?

A. Yes, sir.

Q. And then it says if it can't be operated with a normal level exertion, you're not supposed to try to force it. Is that -- I'm paraphrasing, but is that generally how you understood the rule?

A. Yes, sir.

Q. And it says such repeated attempts to try to get something to work when it won't work should be avoided. Must be avoided, right?

A. Correct.

Q. Do you agree with me that you didn't comply with rule 910 on the day when you broke the compressor door room?

A. No, sir. No, sir.

Q. Or compressor room door?

A. No, sir, I don't agree.

Q. Well, how do you think you complied with that rule based on the way you described what happened that day?

A. Well, when I -- like I said, again, looking at the door, I didn't see that -- on my visual inspection of the door, other than that little place at the top, after I tried to open it, that was the only thing that was actually holding the door. So I had been trying to open it with the keypad, you know, pulling on it. Didn't work. So visually, I said, well, I can -- it shouldn't be much, you know, harder to pull open with that. It's not that bad. So that's when I pulled it open.

Q. But you knew after the first two times you tried it using what you told me was normal force that the door would not open?

A. Well, it wasn't. No, sir, it wasn't because, like I said, the keypad being locked inside, it wasn't open. Working against me. And I, like again, visually, I couldn't see that.

Q. And the rule says repeated attempts must be avoided, but you then tried it a third time?

A. Sir, if we didn't repeat stuff on the railroad, we'd never get nothing done. Out of all honesty, we'd never get nothing done. We had to work to do what we had to do. And a lot of times, but never -- never in an unsafe manner. Never would put anybody unsafe in a manner, and I wouldn't put myself in an unsafe position. Never done that and never would.

Q. Let's talk about the last claim in your complaint. Count three says that while assigned to work Norfolk Southern's Rock Hill yard from approximately 1981 to July of 2016, you sustained a substantial amount of stressors. And I'm just reading that from the complaint. Have you ever read that before?

A. And what's this, now?

Q. I'm just going to read it as it's written.

A. Where are we at? Excuse me?

Q. This is a document I didn't hand you.

A. Oh, okay, you hadn't -- okay.

Q. Paragraph 30 -- I don't have extra copies of this. This is --

A. Okay.

Q. This is the lawsuit you filed.

A. Yes, sir.

Q. Have you ever read your lawsuit?

A. Not totally.

Q. Have you read any of it?

A. Partial.

Q. I'm reading from paragraph 30 of the lawsuit you filed --

A. Okay.

Q. -- against Norfolk Southern. It says Plaintiff was assigned to work Norfolk Southern's Rock Hill yard from approximately 1981 to July of 2016, where he sustained a substantial amount of stressors.

A. Stressors? Stressors?

Q. S-t-r-e-s-s-o-r-s. Have you ever heard that term before?

A. Stressors? No, sir.

Q. Do you know what that is?

A. No, sir, I'm not familiar with that at all.

Q. Can you tell me what is meant by your complaint that you filed with the court, in which you say you were -- where you sustained a substantial amount of stressors?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Can you tell me?

A. I've got to know what stressors is first before I can explain myself, and I do not know what stressors is.

Q. Well, this is in your complaint, so that's where it comes from. I don't know what was meant by it either. I just --

A. I don't use the word stressors.

Q. It then says aside from this time period, Plaintiff sustained stressors in the Norfolk Southern Charlotte, North Carolina yard from July of 2016 until August 13, 2016, due to Plaintiff transferring after the Rock Hill yard was closed. And I assume you've got the same answer there. You don't know what stressors this is talking about?

A. I have no unearthly idea what they was talking about there, what that's about, no, sir.

Q. Paragraph 31 then says Plaintiff sustained injuries to both his hips, which have been known by the Plaintiff in September of 2016 due to cumulative trauma, repetitive stress, overuse, and lack of sound ergonomic practices by Norfolk Southern, including a substantial amount of

exposure to hazardous work conditions contributing to his injuries. Is that something that you believe to be true?

A. Yes, sir.

Q. Tell me what ergonomic practices you think Norfolk Southern should have had that they did not have that you believe caused your injury?

A. Okay. Well, a lot of the shops, larger shops, like the locomotives, they have pits, but they have places where you can actually walk down beside the locomotives. And you can actually change brake shoes and stuff without bending, crawling around, laying on the ground. You can actually get to the stuff. But the way ours is set up, there's no possible way that you can do that. You have to get in a position where you have to just about fold yourself up to get down to be able to put a brake shoe on on a car or on a locomotive. And then some of them, you can't even see them to do it. So the position we're in day after day after day after day, you know, my left hip -- caused stress on it because I have to get down. And it got to the place where I'd have to even pull myself up, and it would hurt so bad. My latter year, I'd have to pull myself up. I wasn't even

able to -- and I wouldn't even put a brake shoe on in a yard hardly my latter year because my hip, it hurt me so bad. And that was one of the regulations to do out in the yard, inspection. So if it had to be totally really, really bad before I'd even put a brake shoe on. So my last year was -- I had a lot of problems with my last year.

Q. So help me understand what you're telling me, Mr. Collins. You're saying there are some Norfolk Southern facilities where a carman, in doing his inspections, actually walks below the level of where the cars sit up on the track?

A. Some of them's higher, in a higher position in the track yards, so you can get to it a lot easier without, you know, totally just folding yourself up to be able to get to what you have to do work. Some yards are. Yeah, the bigger yards, some of them are. Yes, sir.

Q. That's what I'm trying to understand. What is higher? The car stood up higher?

A. The higher. Yes, sir, the higher. So like if you're in a pit in Lynwood where they work on the locomotives, you're able to, you know, access under it, beside of it and stuff like this to change the brake shoes and do work on them. We

don't have that in Rock Hill. Never was -- it wasn't made like that. So our engine here, and you're almost with it. So the brake shoes and where they sit, you have to -- you have to go down in a bent position. That's the only way you can change it, the only way you can get to it, so. And that's, like I said, even out in the yard, the same way. You know, that's a day in and day out thing, you know, how many times a day you do it.

Q. So Lynwood yard is one example. Are there other yards that you know that have the cars elevated above the walkway?

A. Not all, no. No, sir. There's some.

Q. Yeah, I wasn't asking about all of them. I said were there others like Lynwood, as you described it to me?

A. Well, I feel sure there are. I haven't been there. I've seen pictures, but I haven't been to them. Lynwood's the only one I've been to.

Q. And how many hours per day did you spend on a normal -- let's say a normal eight-hour work shift, would you have spent replacing brake shoes or doing other tasks that required you to bend down or stoop over to do your work?

A. It all depends. On average, I'd say

probably maybe five hours a day, you know, I'd be in position, in them type of positions.

Q. The reason I ask is, you know, I understand from conductors and engineers, for example, that some of their day is spent riding in a locomotive from point A to point B. Some of the time, the conductor might be down on the ground checking the cars and air hoses and that sort of thing. And you may be -- are you familiar with those tasks?

A. Well, you know, some days with derailments, I could be on my hips eight hours total, all day.

Q. Right, and that's why I was asking you a normal day. A derailment would be what I would call an unusual event. You'd agree with that, wouldn't you?

A. Yes, sir.

Q. I mean most of your days were not spent working derailments in your 30 plus year year history with the railroad?

A. Exactly. Yes, sir.

Q. So I was asking your typical day, when you're at the car shop here in Rock Hill where you worked most of your career, you're saying about

five hours a day would have been --

A. Yeah, give or take --

Q. -- doing some type of repair work?

A. Yes, sir. Yes, sir.

Q. So you've told me that you think maybe they could have elevated the railcars a little bit to make that task easier. What else, if anything, do you believe the railroad did that you would characterize as unsound or a lack of sound ergonomic practices?

A. Well, not so much that, but help. We asked for help numerous times. Numerous times we asked for help. And ours was they'll be here tomorrow, you know, that type of thing. And we told them then that, you know, we really need some help doing this stuff. And I did, myself, because Jerry, at the time, he was kind of -- Jerry was slowing down, and I'd been taking a bunch of it, so. Yeah, so we -- you know, help would have been the biggest thing we could have had. And at the time they're making the cuts and stuff, that was not going to happen.

Q. During the period of time that you worked here at the Rock Hill car shop or mechanical facility, what was the range of employees in terms

of the most employees that ever worked at that shop and the fewest employees that ever worked at that shop?

A. We had -- at one time, we had four carmen at one time. And let me see when -- now, let me see if I'm right here. Hold on now. Three. I'm sorry, three. Three carmen total at one time. And a supervisor.

Q. And was that the same number throughout the period of time you worked here at Rock Hill?

A. No, sir. The latter part of the years, it was just two of us.

Q. And both the incidents you told me about, you described one other guy being with you. So there was two people on each shift for the last couple of years you worked?

A. Yes, sir.

Q. Who did you --

A. Just first shift. Just first shift. We didn't have a second.

Q. Who did you make the request to for more help, your supervisor?

A. Yes, sir.

Q. And were those just verbal, or did you ever do that in writing?

A. Always verbal.

Q. Do you know whether the union ever sent anything in writing to Norfolk Southern at your request saying Mr. Collins says he needs more help, you guys need to get him some?

A. After a supervisor has denied it, wasn't no use sending it to the union.

Q. What else? You say you needed some more help, and you ask for that, and it wasn't provided. What other things would you describe as lack of sound ergonomic practices?

A. Well, a lot of the things we had in Rock Hill, you know, and some of the stuff we even made, had made. We didn't have a lot of the jacks. We didn't have a lot of the -- the mechanical stuff the bigger shops had to help you with your -- with the practice of what type of work we had to do. It's similar to straightening a boxcar. You know, we had use a torch and a ten-pound hammer to beat -- just to straighten them, straighten the doors out. You know, a lot of these other shops had these straighteners. They could hook up their forklift machines and they could help pull it out. We had none of that.

Q. The shops that you're describing, like

Lynwood and some of the others that had this type of equipment you say you guys didn't have, would those be considered bigger shops than the Rock Hill shop?

A. Yes, sir.

Q. So is it fair to say that the larger shops perhaps had more manpower, number one, more tools and equipment, number two, than you had here in Rock Hill?

A. Didn't mean they do any more work.

Q. But I'm just asking, in general, was that true?

A. Yes, sir.

Q. But in terms of the work they did at the bigger shops and the work you did here at Rock Hill, you're saying the job task was the same?

A. Yes, sir.

Q. Just maybe more cars rolled through there?

A. Yes, sir.

Q. Were there other types of repairs that were done, let's say like at Lynwood, that you couldn't do here at Rock Hill?

A. Yes, sir, some.

Q. Tell me about those. What could they

do at Lynwood that y'all couldn't do here?

A. Well, we -- some of the major draft systems, things like that. Wheels, we finally got -- we wasn't putting wheels in. They had to have a truck come in to do the wheels. And we'd have to send some up to Lynwood when it was so heavy or things had to be totally replaced that we didn't have the facility to do it. We'd have to send it to Lynwood to let them do it.

Q. What else? Anything else you can think of that you would describe as a lack of sound ergonomic practices by Norfolk Southern?

A. Not that I can think of right now.

Q. The complaint then says you were also exposed to a substantial amount of hazardous work conditions. Anything beyond the things you've already told me about there?

A. No, sir, just basically, you know, mainly was working by yourself. A lot of times, we're out on the weekends by ourself. You're carrying knuckles. You're doing stuff by yourself you should have two people with. And a lot of the rules said we needed two people. But to get the stuff done, a lot of times you was in a situation you had to -- you had to do it yourself. And to

get it done and get the trains over the road. So we'd have to do stuff a lot of times we're by ourself, and you shouldn't have been by yourself. I was there at times from, on Saturday, from probably 12:00 to sometimes until 3:00 o'clock totally by myself. No one else was there. If something would have had me, happened to me, I would have just been there. I'd been laying there. No one would have been around.

Q. Now, the condition of the yard or the shop in terms of not having the elevated tracks that you described there at Lynwood, that was the same the entire time you worked at Rock Hill, right?

A. Yes, sir, that's correct.

Q. And the manpower issue, that was the same the entire time you worked at Rock Hill as well, correct?

A. Yes, sir.

Q. Your complaint also says you're required to perform ergonomically unsafe work using unsafe methods, tools and equipment. You've already told me about the ergonomically unsafe work. You described that. Tell me about any unsafe methods, tools or equipment you're required

to use.

A. Well, basically, it's the same range of having to doing the bending and stuff by yourself. You know, lifting by yourself a lot of times, picking stuff up by yourself. The total work effort by yourself was unsafe there. Totally, I mean. But it -- again, the railroad's cutting, so we wasn't going to -- we wasn't going to get anybody else. They wasn't going to let us have anybody else to help, which they should have, you know, a lot of times.

Q. Now, how old are you currently, Mr. Collins?

A. I'm sorry?

Q. How old are you currently?

A. I'm 63.

Q. And were you 62 when you went out on medical?

A. Yes, sir.

Q. And my understanding from looking at your records is the reason your doctor has written you out is your hip issues, is that correct?

A. Correct.

Q. Do you have any other medical conditions that any of your doctors have written

you out of work for?

A. No, sir.

Q. You remember earlier I was showing you some records where your doctor said that you had told them that the work on the railroad had worn you out and that that had been going on for several years? Remember that?

A. Yes, sir.

Q. And I had asked you a little bit about when some of those problems occurred, and you said it was really only the last year or two that it got so bad you couldn't take it anymore?

A. Exactly.

Q. Tell me when you first started having issues with your hips that caused you any problems, whether you could work through it or not, but when you just first realized my hips aren't doing right?

A. The last years. My last years.

Q. Last few years with the railroad?

A. Yes, sir, the last couple years with the railroad.

Q. And you were 62 when you went out. You're saying when you were late 50s?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Would it have been when you were in your late 50s when that first started happening?

A. Oh no, sir. No, sir. No, sir.

Q. Well, you -- I'll strike. You said the last few years with the railroad, and if you went out at 62, the last few years would be --

A. 60s.

MR. THICKENS: Object to the form.

THE WITNESS: Yes, sir.

BY MR. WRAY:

Q. Is Dr. McCarthy the only doctor you've ever seen for issues with your hips?

A. Yes, sir. Other than the one that gave me a shot in it. That's the only doctor, though.

Q. Let me ask you to assume something for me for a moment. Assume for me that your hips were fine and you didn't have any issues with your hip, would you still be able to do your job with the railroad currently?

A. No, sir.

Q. What would prevent you from doing your work?

A. My back.

Q. Well, when I asked you earlier whether any of your doctors had written you out for

anything on your hips, you told me no.

A. Excuse me?

Q. I asked you earlier if any of your doctors had written you out for anything other than your hips, and I thought you told me no.

A. Well, I thought we was just talking about our hip, not my back either.

Q. What doctor has told you that your permanently disabled due to your back?

A. Permanently disabled?

Q. Yeah.

A. Well, she said I couldn't -- Dr. Lazeski said I couldn't do that type of work anymore because I can't reach over my head, and I was limitation to how much I could pick up and do it with my hip.

(EXH. 11, Physician Statement, was marked for identification.)

(EXH. 12, Physician Statement, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you what we've marked as Exhibits 11 and 12, and these are pretty similar documents. They're just dated differently. It says attending physician statement, and I don't

know if you can read the signature, but it's signed by Dr. McCarthy down at the bottom.

A. Right.

Q. Do you see that?

A. Yes, sir.

Q. My question really wanted to ask you on both of these forms, the first one's got a date of last visit, says October 20 -- I'm sorry. Yeah, October 20, 2016. Exhibit 11, in the middle of that paragraph, it says nature of treatment, conservative treatment included walking cane for ambulation. Do you see that?

A. I'm looking. Yes, sir.

Q. And then down a little bit further under prognosis, it says please explain why patient remains unable to work, and somebody wrote in unable to ambulate without assistance. And it's got in parentheses walking cane. Do you see that?

A. Right. Right.

Q. I didn't see you with a walking cane today.

A. No.

Q. Do you still use a cane of any sort?

A. No, I haven't used on in a while.

Q. Did you use one at one -- at some point

in time?

A. I have at the house sometimes. Just kind of walking around and it would start hurting me, and I just -- I had an old stick I made up and I'd use it some.

Q. And if we look --

A. Yes, sir.

Q. And if we look at Exhibit 12, it says the same. I was basically going to ask you about the same thing. It says nature of treatment, limited weight bearing, use a cane for ambulation. Do you see that?

A. Yeah, I was still having a hard time getting up.

Q. What period of time did you have to use a cane to help you get around your house?

A. The last part of the year. My latter year.

Q. Last part of what year?

A. My latter year with the railroad would have been in '16.

Q. Have you used a cane to help you get around anytime after the end of 2016?

A. No, sir.

Q. What has Dr. McCarthy done to try to

get you better?

A. Well, I've had shots. I had a shot. He -- I was given a -- I think -- I don't know what type, it was injection. He had given me those to try to heal it, heal it up.

Q. Have you had surgery?

A. No, sir. No, sir, I haven't.

Q. How many times have you had injections in your hip?

A. Just once.

Q. Do you know when that was?

A. No, sir, I don't recall the date.

Q. What current medications do you take?

A. I've taken Oxycodone sometimes when needed.

Q. Oxycodone for pain?

A. Yes, sir.

Q. Anything else?

A. Not for pain. No, sir.

Q. You still on your high blood pressure medication?

A. Yes, sir. Yes, sir. Yes, sir.

Q. Do you take anything for high cholesterol?

A. No, sir.

Q. Were you sent at some point after you left work with the railroad in, I guess, September of 2016, were you sent for further physical therapy?

A. No, sir. With my hip. We're still talking about my hip, right?

Q. Well, no, for any -- were you sent to physical therapy at all, for any reason?

A. No, I don't recall.

Q. And I'm not trying to trick you. I'm looking at some records from Select Physical Therapy that look like they're dated January of 2017. Do you recall going over there for physical therapy?

A. Yeah, I did go there, but I'm not sure of the dates. At the timeframe you're talking about, I'm not really sure in that time, but I did go to Select. Yes, sir.

(EXH. 13, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've showed you what I marked as Exhibit 13, and this is just one record, I didn't pull all the records, but from Select Physical Therapy. It's dated January 18, 2017. Do

you see that date?

A. Yes, sir, I do.

Q. And under the section that says history of injury, says when he was forcefully trying to open a door on the train in March 2016 and then again in August 2016, injuring his neck. Did I read that correctly?

A. Forcefully, not correct, but date's correct.

Q. Well, my question was did I read it correctly?

A. Yes, sir, you read it correct.

Q. And you remember earlier, I showed you a record from Dr. Lazeski, where she said you aggressively tried to open the door, and you said you didn't tell her that. Is that -- you deny that, right?

A. Yeah, I'm still denying that. Yes, sir.

Q. And this is a separate, completely separate practice, looks like Dr. Lewis T. Savisky, physical therapist, and it says forcefully trying to open a door, and you deny you said that as well?

A. I didn't say that.

Q. You did not say that?

A. No, sir.

Q. Well, if we look at page two under plan, it says the patient is discharged due to a plateau in progress. Do you see that?

A. Where is that at?

Q. Under the -- right before the signature block where it says plan.

A. Plan? Okay. Yes, sir, I see that at the bottom.

Q. Was January of 2017, to the best of your knowledge, the last time you went to Select Physical Therapy?

A. Yes, sir.

Q. Did they tell you that the reason they were discharging you was because you had reached the best they could get you?

A. Basically. I honestly -- wasn't much to this, but yes, sir.

(EXH. 14, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I'm now handing you what we've marked as Exhibit 14, and this is another record from Carolina Orthopedic. And it looks like that's Dr. McCarthy. Do you see that down at the

bottom of the page?

A. Yes, sir, I do.

Q. And this one, the chief complaint, the date is January 26, 2017. Do you see that as the date of service?

A. Yes, sir.

Q. And it says patient presents here with right hip pain. He has had longstanding history of pain in the right hip. Did I read that correctly?

A. Yes, you did.

Q. Did you tell Dr. McCarthy in January of 2017 that you had a longstanding history of pain in your right hip?

A. No, sir.

Q. What do you recall telling him about how long you'd been having issues with your hips?

A. I told him that I'd history with it the last year aggressively hurt/pain in my hip.

Q. When you went to see Dr. McCarthy, was anybody else with you on these visits?

A. No, sir.

Q. How about Dr. Lazeski or the physical therapist?

A. No, sir. No, sir.

Q. In terms of the conversations with your

medical providers, was that between you and them?

A. Yes, sir, it was.

Q. For example, you told me you're married. Your wife wasn't the one telling them any information about you?

A. No, sir, no one was with me.

(EXH. 15, Answers, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you what we've marked as Exhibit 15, and this is a legal document that we, as lawyers, exchange. It's called answers to interrogatories. Have you ever seen this before?

A. Yes, sir, I think so.

Q. Do you recall assisting your lawyers with providing information we had asked for about your lawsuit and the injuries you're claiming?

A. Well, I'm not exactly sure if this is all of it, but I've tried to give them all the information they've asked me for.

Q. Have you looked over the answers that your lawyers provided me before today?

A. The answers provided you?

Q. Yes.

A. No, sir.

Q. And the reason I'm asking is the answers are supposed to be your answers provided under oath, and --

A. Yes, sir.

Q. -- and/or verified by you.

A. Yeah.

Q. Are these your answers to our questions?

A. Oh yes, sir.

Q. All right. And is the information in these answers true and correct to the best of your knowledge?

A. The best of my knowledge, yes, sir.

Q. Did you tell us anything false or incorrect to try to trick us or fool us about the case?

MR. THICKENS: Object to the form.

BY MR. WRAY:

Q. Did you?

A. Did I do what, sir?

Q. Did you tell us anything false or incorrect to try to trick us about your lawsuit?

MR. THICKENS: Same objection.

THE WITNESS: Oh no, sir. No, sir.

BY MR. WRAY:

Q. One of the things I was asking you earlier about who treated you for the injuries you're claiming in this lawsuit, and you will see both in response to question one and response to question four, we see Dr. McCarthy, Dr. Kimble, and Dr. Lazeski, all of whom we've talked about today, correct?

A. Yes, sir.

Q. There's also another name here, Dr. Kinjal, and that's K-i-n-j-a-l, Parikh, P-a-r-i-k-h. It says Charlotte Surgery Center.

A. I think he's -- I'm not positively sure, but I think he's the one that gave me the injections in my neck.

Q. Let me ask you to look on with me question 11. There's not a page number, so just flip to question 11.

A. Yes, sir.

Q. And we had asked you whether you were claiming as part of this lawsuit that you sustained any permanent injury or disability as a result of the injuries described in your complaint. And then you see the section that's labeled answer down there at the bottom of the page? Do you see that?

A. Down here at the answer?

Q. Yes.

A. Yes, sir.

Q. And I'm just going to read it, and I want you to read along with me and make sure I'm reading it correct. It says Plaintiff has become permanently disabled due to his injuries listed in his complaint. He has permanent injuries to his neck, shoulder, back and hips as mentioned in his original complaint. Is all of that true?

A. Yes, sir.

Q. And then if we flip over to the next page at the top, it says Plaintiff's injuries made subject of this suit prevent him from engaging in numerous activities, including but not limited to, lifting over 40 pounds, lifting 20 pounds overhead, lifting 35 pounds from waist to shoulder, yard work, painting, running, squatting, sitting for long periods of time, looking down for long periods of time, playing with grandchildren, lying on left side while sleeping and sexual discomfort. Did I read that correct?

A. Yes, you did. Yes, sir.

Q. Is all of that true?

A. Yes, sir.

Q. How long have you been limited in your activities to not lifting over 40 pounds?

A. Over my head, this last -- since my neck injury.

Q. And the neck injury you're talking about --

A. The one with the door.

Q. August 31 of 2016?

A. Uh-huh.

Q. Is that right?

A. Yes, sir.

Q. And the lifting restrictions that I just read from this answer, are those restrictions that have been put on you by your doctor?

A. Yes, sir.

Q. And your doctors told you not to lift over 40 pounds?

A. Yes, sir.

Q. Don't lift over 20 pounds overhead?

A. Right.

Q. And don't lift 35 pound from waist to shoulder, is that correct?

A. Exactly.

Q. Since August 31 of 2016, since you've told me that's when this began, had you lifted over

40 pounds?

A. Have I lifted over 40 pounds? I had at the time, yes, sir.

Q. When had you done that and where?

A. At home, probably.

Q. How about lifting 20 pounds overhead, have you done that?

A. I don't do that.

Q. You don't do that at all?

A. I don't do that.

Q. How about lifting 35 pounds from waist to shoulder?

A. I don't think so.

Q. And so you're --

A. Yes, sir, I have. Yes, sir, I have. I have, too.

Q. When did you do that and where?

A. I've done that in the gym.

Q. What gym are you talking about?

A. Gold's.

Q. Tell me about that. How long have you been a member of Gold's Gym?

A. Oh, I've been a long time.

Q. How far back?

A. Well, since it opened.

Q. Give me a date range estimate.

A. Oh, I've been a member of this gym here since probably, oh Lord, I don't know. It's probably been maybe five years, something like that in that area.

Q. How often do you work out at the gym?

A. I try to go every day, if I can.

Q. And what do you do when you're there?

A. I do very low impact everything. Very low impact.

Q. Tell me -- I don't know what you mean by that. What do you mean by low impact?

A. Well, I don't do heavy weights. I do machines. Everything guided, you know, so I can actually control what I'm doing. I don't do anything to -- that hurts, put it that way.

Q. When you're there, how long do you normally work out?

A. About an hour. That's including talking.

Q. Who goes with you?

A. No one.

Q. And when you say you're doing the machines, what kind of machines do you work out on?

A. I do a cardio glider. It's low impact

walking. I do a -- I try to do the leg machines, but I have to do just real light weight on them. I do basically what I was told by the doctor I could still do and they wanted me to keep doing, you know, the type exercises they told me to do. And they told me some to do that I still can't do and won't do.

Q. Like what?

A. Like overhead presses. I don't -- I can't do a certain overhead press. I can't do that because it hurts. I don't do -- well, I've -- that's it, really. I don't do any type overhead presses at all.

Q. And my understanding is that Dr. McCarthy has concluded that you're disabled due to your hips?

A. Yes, sir.

Q. What do you do, if anything, during your workout that would involve or require you to use your hips?

A. I do a low-impact press with my legs, but I do real light weight with it. And I don't do a full extension with it. Can't do a full extension. In other words, I can't -- I can't do it all the way in. I have to do it out so I don't

have to -- to bend in the hip because it'll hurt.

Q. Do you do any -- you said you use only machines. Do you use any free weights like for curls or anything like that?

A. Very seldom.

Q. And how much weight can you -- when you do it, you say it's kind of seldom. How much weight to you lift?

A. I don't do -- I don't hardly do any weight lifting because I do -- I try to do all the machines with that. Sometimes I have tried it, and then when it hurts, I just quit.

Q. I know from some of your earlier medical records I looked at that you used to be a runner?

A. Yes, sir.

Q. I think it said you used to run maybe even up to two, three miles at times?

A. Yes, sir, I did.

Q. Do you do that anymore?

A. Oh no, sir. I've been quit that.

Q. When did you quit running?

A. When my hips started bothering me real bad.

Q. Which would have been when?

A. In '16.

Q. When you go to the gym, as part of your workout, do you get on a treadmill or anything like that?

A. No, sir, no treadmills. No, sir.

Q. How about I call them an elliptical machine. Do you ever use that?

A. I get on a cardio glider. It's very low impact. You don't have any impact when you're doing that at all. It's just a stride. I can't do any type of impact.

Q. When you get on what you call the cardio glider, how long do you usually work out on that?

A. All depends on how I feel. I try to do it -- I try -- I try to do 30 minutes. That's pretty much one of the only ones I can do without any pain.

Q. Kind of how we got started on this path is I was asking you about the lifting restrictions. As part of your workout then, now that we know you're doing these workouts, do you or have you lifted over 40 pounds as part of your workout routine at the gym?

A. Yes, I have.

Q. And how about lifting 20 pounds overhead, have you done that?

A. No, sir, I don't do that.

Q. Have you lifted 35 pounds from waist to shoulders as part of your workout?

A. Yes, sir.

Q. How often do you do that?

A. Maybe -- I don't do it every week. Once every -- every so. I don't -- and I don't do, you know, weights like that. A lot of times just machines. I don't know, maybe a couple times a month.

Q. And the Gold's gym that you're a member of, where is it located?

A. On -- right here on Cherry Road.

Q. When you go to work out, do you just go by yourself?

A. Yes, sir.

Q. What else do you do as part of your workout routine beyond what you've already told me?

A. That's pretty much it.

Q. Do you work out anywhere on a regular basis other than your time at Gold's Gym?

A. No, sir.

Q. Your interrogatory answer also says

that you don't do any yard work. Has that been true since you've been out of work?

A. Very seldom. My wife does that.

Q. Don't do any painting?

A. Lord, no.

Q. We already talking about running. How about -- and it says you don't squat. So tell me about that.

A. Can't squat. Squatting hurts. Squat is something I don't do because the pain in my hip when I squat down a certain -- to a certain degree, I have pain in it. I have to just about help roll myself over trying to get myself up if I can get down.

Q. Tell me what the difference in that is and you told me you do some leg presses at the gym.

A. Yes, sir. I don't do -- like I said, I don't do full extension. I do just a short -- in other words, I never bend beyond a certain point. I don't go beyond a certain -- I stay out with my legs -- in other words, when I do the presses, I don't -- I don't -- doing that, say 90 degree with my hip. I don't let it come back where I'm folded up, where it's bending me. I keep it out. I keep it adjusted out. So basically what I'm doing is my

-- basically, my calves. Nothing there, that part right there. But I don't -- I never do a complete squat. Can't -- so I can't -- okay, I can't lay on my side. If I lay on my side and sitting here in this chair bothers me. That's why I turn sideways any length of time. If I go on a trip, hurts. Can't run around with your young'uns anymore. That hurts. If I make a quick turn, I'm hurting. Sexual activity is kind of -- it gets painful sometime.

Q. How many grandchildren do you have?

A. I have three.

Q. And you told me you've got the one so, so are they all his children?

A. No, sir. I have one here.

Q. And how old are your grandkids?

A. Oh, I've got one seven, two and one. Seven, three and one. Let me get this straight.

Q. It says you have difficulty lying on your left side while sleeping. Is that true?

A. Yes, sir.

Q. And then it talks about sexual discomfort. Does that mean you just -- you can have sexual intercourse, but it's just painful when you do it?

A. Hurts sometimes. Sometimes it hurts.

Q. I saw, and we looked at one of the records earlier, you were talking Cialis at some time before all this happened?

A. Uh-huh, yes.

Q. Are you still taking that medication?

A. Every once in a while.

Q. And not to pry too much into your business, but because it's alleged in your lawsuit, how often do you currently have sexual relations with your wife?

A. Really?

Q. Yeah. Well, I mean you've got in part of your complaint as part of your damages.

A. Yeah, okay. Let's say -- and this is probably pushing it. I don't want to make myself feel good here. Honestly, sometimes maybe once a month.

Q. And how -- has that changed since you've been out of work from what it was before you were out of work?

A. Has it changed?

Q. Yeah. Was it always a month, or has that changed?

A. No, it was more at times. It was more.

Q. Tell me what's the frequency change from to now once a month.

A. Once a week.

Q. You've been out of work since September of 2016, is that right?

A. Yes, sir.

Q. And how much were you earning with the railroad?

A. How much was I earning at the time? I want to think my last -- that last year, it was like 74, maybe, $75,000.00, something like that, in that area. I'm not -- I'm not exactly sure. I'm thinking -- I'm pretty sure it was in the 70s.

Q. Does that include any overtime or additional pay you got?

A. Well, at the last time, no, sir, we don't -- we wasn't getting any overtime and all. They had cut it completely off. And holiday stuff. So that was pretty much straight time.

Q. Now, the job you had in Rock Hill was eliminated, and that's why you went to Charlotte?

A. Correct.

Q. Is the job that you had in Charlotte at the time you went on medical leave, does it still exist?

A. Was it what, sir?

Q. Does it still exist; do you know?

A. I'm not sure.

Q. Do you know who, if anyone, has the position that you had before you went out on medical leave?

A. I couldn't tell you, sir.

Q. Since you've been out of work with the railroad, have you worked anywhere else?

A. No, sir.

Q. Have you earned any compensation from any source as a result of work --

A. No, sir.

Q. -- labor you've done?

A. No, sir.

Q. I understand you did apply for railroad retirement board benefits?

A. Yes, sir.

Q. And you're drawing those currently, is that correct?

A. Yes, sir, I am.

Q. What do you draw from the RRB?

A. Oh, let me see. I think I draw 38, I think 3,842. I'm not exactly sure of that number. It's 38 something.

Q. Is that per month?

A. Yes, sir. Yes, sir.

Q. Let me ask you to look back at the Exhibit 15 again, the interrogatories.

A. Okay. We're going to go to where?

Q. Number 17.

A. Yes, sir.

Q. And that question asks you to describe in detail all activities in which you could engage prior to the injuries alleged in your complaint that you have been unable to perform since the injuries alleged in your complaint, and the answer is similar to what we read earlier. It says Plaintiff's injuries made subject of this suit prevent him from engaging in numerous regular activities, including but not limited to yard work, painting, running, squatting, sitting for long periods of time, looking down for long periods of time, playing with grandchildren, lying on left side while sleeping and sexual discomfort. Is that correct?

A. Yes, sir.

Q. Is all that true?

A. Yes, sir.

Q. Are there any other activities that you

can think of that you used to like to do that you now say you can't do due to injuries that you suffered on the railroad?

A. That's pretty much covered it.

Q. Have you ever been charged with any crime?

A. No, sir.

Q. And I asked you about the motor vehicle accidents earlier. You've never had another lawsuit besides this one?

A. I had a -- well, let me see, with my knee -- no, sir. No, sir.

(EXH. 16, Application, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you what I marked Exhibit 16. And I was asking you about whether you had applied for benefits with the RRB, and you told me you had, correct?

A. Yes, sir.

Q. If we flip to the last page of that, which is page 16 in the set, --

A. Last page?

Q. Yeah, is that your signature there?

A. Yes, sir, it is.

Q. It's dated April 24, 2017?

A. Uh-huh.

Q. And just above that -- and I'm sorry, that was a yes, right?

A. Yes, sir. Yes, sir.

Q. Just above that, it says I know if make a false or fraudulent statement in order to receive benefits from the RRB or if I fail to disclose earnings or report employment of any kind to the RRB, I am committing a crime which is punishable under federal law. Do you see that?

A. Yes, sir.

Q. And you were truthful in your application to the RRB, is that fair to say?

A. Yes, sir. Yes, sir.

Q. If we look at page two, section six, it says describe the medical conditions causing you to file. Do you see that?

A. Yes, sir, I do.

Q. And you wrote gout and osteoarthritis of left hip. Do you see that?

A. Yes, sir.

Q. You didn't say anything there about your back, did you?

A. No, sir.

Q. Didn't say anything there about your neck, did you?

A. No, sir.

Q. And the gout you had, that has nothing to do with your work with the railroad, correct?

A. No, sir.

Q. Then it says in section seven, enter the date this condition began to affect your ability to work, and you wrote September 1, 2016. Is that correct?

A. Yes, sir.

Q. You didn't mention either of the incidents in March of 2016 or August of 2016, did you?

A. No, sir.

Q. In section 12, it says describe how your condition prevents you from working, and you said not able to bend, squat, walk on uneven surfaces or climb without having pain. Is that what you said?

A. Yes, sir.

Q. Question 25, or I'm sorry, 26 asks you to describe any restrictions you have. And it says no squatting, bending or running. Do you see that?

A. On 26?

Q. Yes.

A. I'll get there. All right, sir, I'm there.

Q. Do you see the answer you gave to question 26, which says restrictions, no squatting, bending, running?

A. Yes, sir.

Q. You do, in fact, do some squatting and bending as part of your workout, don't you?

A. No, sir.

Q. None of that?

A. No, sir. I don't do any squatting or bending or running.

Q. And then question 40 asks about any additional information that describes your daily activities during a normal day. And you wrote light workout. Do you see that?

A. Excuse me?

Q. Question 40.

A. Okay. 40, yes, sir.

Q. It says enter any additional information that describes your daily activities during a normal day, and you wrote light workout.

A. Yes, sir, that's correct.

Q. And you described what you told me you

do at Gold's Gym as a light workout?

A. Yes, that's it. Yes, sir. Light workout.

Q. According to Dr. Lazeski's records that we got, she discharged you as a patient on March 1, 2017. Is that consistent with what you recall, or do you know?

A. I don't -- I don't recall.

(EXH. 17, Medical Record, was marked for identification.)

BY MR. WRAY:

Q. Mr. Collins, I've handed you Exhibit 17, record from Dr. Lazeski dated March 1, 2017, and if you look down under the section that says plan at the bottom of the page, it says patient has completed a full course of conservative care, including physical therapy, anti-inflammatory medications, and facet joint injections. Do you see that?

A. Yes, sir, I do.

Q. And it says no further treatment options to offer him. Do you see that?

A. Yes, sir, I do.

Q. Do you recall Dr. Lazeski telling you that?

A. Yes, sir.

Q. And it says he has completed a functional capacity evaluation and is able to do medium physical demand category work. Do you see that?

A. Yes, sir, I do.

Q. Have you tried to find some medium physical demand work that you can do?

A. No, sir.

Q. What efforts, if any, have you made to find employment since you've been out of work with the railroad?

A. I haven't.

Q. Why not?

A. Don't need to.

Q. Why not?

A. I don't need the money.

Q. And you're saying because of your retirement and the benefits you're drawing from the RRB?

A. Correct.

Q. And so you don't want to work anywhere else at this point?

A. No, sir. If I would have worked, I'd have stayed with the railroad.

Q. And then the last sentence of that section says he will be released from my care today. And that's what I was asking you. You told me you didn't know the date, but at least according to this record, it looks like March 1, 2017. Is that right?

A. Yes, sir.

Q. Have you been back to see Dr. Lazeski since March of 2017?

A. No, sir.

Q. Are you seeing any other medical providers currently for any issues you relate to your work at the railroad other than Dr. McCarthy?

A. No, sir.

Q. Mr. Collins, we've talked about a variety of things today. You've told me about some pain that you had in various parts of your body. You told me you've missed some time from work. Are there any other out-of-pocket expenses that you're claiming you have suffered because of any injuries you had at the railroad?

A. Out-of-pocket?

Q. Yes.

A. Now, explain yourself, please.

Q. Something you've had to pay out of your

own bank account due to the injuries you say you suffered at the railroad?

A. No, sir.

Q. Because my understanding is that you were covered by the railroad's health plan?

A. Yes. Yes, sir.

Q. And you've filed your medical claims with that provider?

A. Yes, sir.

Q. And the railroad has processed and paid those claims?

A. Yes, sir.

Q. You're not out-of-pocket anything for that?

A. No, sir. No, sir.

Q. You told me you lost some time from work and you were making about $75,000.00 a year, but you were 62 when you went out?

A. Yes, sir.

Q. So you were close to retirement anyway, is that fair to say?

A. Yes, sir. Well, I was, but things have changed at my wife's work. They have -- they started laying people off, and we was afraid she was going to get cut without any insurance because

she was on my insurance. And I was really concerned staying and working, you know, a little bit longer.

Q. What was your plan if you hadn't of gone out of work?

A. Well, I didn't really have a plan. That came up so quick with us, her, you know, the cuts and stuff. And it was just to try to get back, you know, if I could and, you know, keep working a little bit longer anyway, long as I could.

Q. Did you ever discuss with your wife what your kind of target date was to retire?

A. Not really. We had talked about it, but it changed so much, I mean because every time her -- every time we started talking about a retirement, she'd start talking about cuts at work. And I said it's always the best timing. So that was it about that. I wasn't any further with that because I knew she had to have insurance.

Q. How old is your wife?

A. She is 58.

Q. So if you had not had these incidents on the railroad you described for me, when do you think you would have quick working?

A. I was going to go, try to go to 65.

Q. Are there any other injuries to any part of your body that we have no yet discussed already today that you attribute to your work at the railroad?

A. No, sir. No, sir.

MR. WRAY: Let me take a break.

(Off-the-record conference.)

BY MR. WRAY:

Q. Mr. Collins, just a few more questions to kind of finish up here. You were telling me about the workout you do over at Gold's Gym, and you described the machine as the cardio glider. You remember telling me about that?

A. Yes, sir.

Q. Does that machine have a setting on it that you can set a certain resistance level as you're doing it?

A. Yes, sir.

Q. What level do you typically use when you're setting?

A. Well, I start off at zero. No resistance.

Q. And what do you go up to?

A. Maybe three.

Q. When you go into that gym, do you have to scan a card in or something that'll show when you've been there?

A. Yes, sir.

Q. And then as you're using the machines, does it record any of your progress or what you've done for a particular workout?

A. Excuse me?

Q. Do the machines --

A. No, sir. No, sir. No, sir.

Q. You don't have to enter a --

A. No, it --

Q. -- code or an ID number or anything?

A. -- does that. We don't have anything like that down there.

Q. When you're on the cardio glider, how would you describe your -- the pace of that workout? Do you just kind of walk slowly or --

A. Yes, sir, just -- just a slow fluid motion. Slow fluid, if that makes sense.

Q. A little bit. I'm just trying --

A. Smooth, not -- not -- maybe -- maybe faster than a walk.

Q. Do you ever get to a pace that appears or looks like you're running?

A. No. No, you can't hardly do that on that machine.

Q. How about you told me you also do some leg presses, and you said you don't fully extend. Are you talking about when you push your legs out you don't fully extend them?

A. Right.

Q. How about when they come back in?

A. No, that's where they're not extended. That's when you -- when you're sitting in the machine, you push them out. When I come back, I don't -- they've got settings on it, okay, one -- like one through six. I won't get no -- really no further than really three because that's just far in as I want to come. I don't want to come any further. Six would be folding you up. Five would be fold -- four, but three's a comfortable area in there that it doesn't hurt me.

Q. I mean you're giving me these numbers, six, five, four, three. Those are settings on the machine?

A. Yes, sir.

Q. How much weight do you typically use when you're doing the leg presses?

A. Oh, I don't go up no more than --

usually, with those settings, I can -- you can go up to maybe 150-160 pounds comfortably without any, you know, without any trouble.

Q. Is that how much you do?

A. Yes, sir.

Q. And then other than the leg presses, do you do any leg curls?

A. I try to. I can't do -- I can't do much with leg curls.

Q. How much weight do you typically use on the leg curls?

A. I have a big problem with that. 30 to 45 pounds, maybe. Maybe. Most of the time, 30.

Q. It's been a long time since I've worked out. Is --

A. There's a problem with my knees. I can't do it because of my knees. My knees hurt when I do that, so I'm not able to do any weight with that hardly.

Q. As you can probably tell, I'm not one that works out a lot, but when you do leg curls, are you extending the legs forward, or do you wrap them behind you?

A. No. It's forward. It's just extension at your knees. You're sitting in an inverted

chair. It's an extension of your knees.

Q. Who takes care of the yard work around your house?

A. Well, my wife and me, what little bit I do. Both of us.

Q. What size lot do you have?

A. We have an acre.

Q. And do you have a riding mower, push mower?

A. Yes, sir, riding mower.

Q. And since you've been out of work, have you been using your riding mower to take care of your grass?

A. Oh yeah. Yeah.

Q. How about the other -- I don't know if you have shrubs or hedges around your house. Who does all that?

A. She's been doing that. She wants me to do it, but I ain't squatting down to do it, so she don't push it.

Q. Have your doctors told you that you're going to need surgery at some point?

A. He -- he kind of reiterated that to me.

Q. Who did?

A. Dr. McCarthy.

Q. But as we sit here right now, you don't have any surgery scheduled?

A. No, sir. I hope I don't have to.

Q. How often are you seeing Dr. McCarthy?

A. I'm not.

Q. Are you seeing anyone for your hips?

A. No, sir.

Q. And you're not seeing anyone for your back because we already talked about that?

A. No, sir. No, sir.

Q. So you're under no medical care currently other than maybe seeing Dr. Barron, your regular physician?

A. That's correct, like my physicals. Yes, sir.

Q. And as we sit here right now, do you have any further medical care planned?

A. No, sir. Other than physicals, no, sir.

MR. WRAY: That's all I have, Mr. Collins.

MR. THICKENS: I just have a few follow-ups.

EXAMINATION

BY MR. THICKENS:

Q. Mr. Collins, I've got a few questions just to briefly follow up. Going back, if you can remember all the way to the beginning of the deposition, you were asked about a 2013 motor vehicle accident, is that right?

A. Yes, sir.

Q. And I believe you had one in 2009 and one in 2013, is that right?

A. Yes, sir, that's correct.

Q. Do you -- are you certain that you didn't go to the doctor after the 2013 accident, or do you just not recall as you sit here today?

A. I don't recall if I did. I just don't -- I don't think I did, but I really don't recall if I did or not.

Q. So you don't think you did, but you can't say with absolute certainty whether you went to the doctor?

A. Yes. Yes, sir.

Q. All right, related to that one which involved you opening the door on the side of the boxcar, do you remember that?

A. Yes, sir.

Q. Was there anything -- what kind of surface were you standing on at the time you were

opening the door?

A. Oh, that'd be a concrete surface.

Q. And how high did you have to reach up?

A. I want to think it was like seven and a half, maybe, feet, something in that area. I'm not exactly sure, but I'm thinking pretty much that. Because it was definitely over my head that I'd have to grab and pull down.

Q. Were there any issues with the work area that contributed to your difficulty in opening the door?

MR. WRAY: Object to the form.

THE WITNESS: Ask again, please?

BY MR. THICKENS:

Q. Sure. Were there any problems with the work area that contributed to you having difficulty opening that door?

A. No, sir.

Q. How did the car get to the train yard?

A. It comes in on a through freight, set off in Rock Hill. The Bowater crews, which we have two of them in the afternoon, they take the cars that cut down to Bowater. Bowater, they place them. We have a unit down there at Bowater, which is -- they use to place the cars in the mill. And

what they do, they load them. They'll go through the cars and they open doors. And the ones that can't open or find something wrong, that's when they reject them to us. And then the cars rejected, sent back to Rock Hill and sent to our shop for us to examine.

Q. And who rejects the car?

A. Bowater.

Q. Okay. Who brings the car back to Rock Hill?

A. We do. Our crews, Norfolk -- yeah, NS crews.

Q. Do all of those cars come back on the same train?

A. Sometimes no. It can be different ones. You know, the different first shift or the second -- the third shift or the second shift, which crew. That'd be different crews that bring them back in.

Q. Do they all come back in the same group on the train? In other words, do you have just rejected cars spread throughout a train, or are they attached to the back?

A. They try to put them in the back, but sometimes the way they're situated in the train,

they'll have this car loaded here and maybe this one was bad ordered. And then they loaded this one. Instead of cutting them out, they'll wait until they get to the yard and then the yard will cut the bad order out of it and then take it in to us, and they'll leave the loads, of course, together for pickup.

Q. Do you know what yard the cars are cut at?

A. That'd be the Rock Hill yard.

Q. Do you participate in cutting the bad cars out of the train?

A. No, sir, I don't. No, sir.

Q. Do you know what crew would participate in cutting bad cars out of the train?

A. It would the yard crew there.

Q. Is there any sort of report or identification done to say what's wrong with a car that's been cut?

A. Sometimes. They wasn't exactly 100 percent on that. We tried to get them to tell us what was wrong with the car so we'd have a heads-up before we started looking at it. But there were times that they had nothing on the cars, and we would have nothing to go by, you know. So it was

just our own evaluation of the car to tell whether or not it was bad or not. And then a lot of times, we wouldn't know until we went through the process of trying to open and close them to see if it was -- if it was bad or what the problem was.

Q. Did anybody tell you what the problem was with the car that you got injured on?

A. No, sir.

Q. And so you were just expected to go do an evaluation of the car?

A. Exactly.

Q. And you did a visual inspection, I think you testified?

A. Yes, sir. Yes, sir.

Q. So seeing nothing visually wrong, you then just proceeded with the examination of the car?

A. Right. Yes, sir.

Q. And it was at that point that you got injured as you discovered --

A. Right.

Q. -- what was wrong with the car?

A. Yes, sir.

Q. Do you have -- did you have any history provided to you of the usage of the car from

Norfolk Southern?

A. They probably do, but you know, I don't -- I don't know now, no.

Q. Were you handed a history of the car?

A. Oh, no. No, I wasn't. No, sir.

Q. So you weren't given anything to say where the car had been or how long it had been in service?

A. No, sir. No, sir.

Q. It just gets cut onto your yard, and then you're expected to --

A. Exactly. Yes, sir.

MR. THICKENS: That's all my questions.

EXAMINATION

BY MR. WRAY:

Q. Mr. Collins, just to follow up on that, the car came to the shop as a bad order, meaning Bowater, had reported something wrong with it, correct?

A. Rejected it, yes, sir.

Q. And your job as a carman was to find out what the problem was and to fix it and repair it, is that correct?

A. Yes, sir.

Q. And your testimony is that you were

injured while in the process of doing your job --

A. Exactly.

Q. -- as a carman, right?

A. Yes, sir.

MR. WRAY: Okay. That's all I have.

MR. THICKENS: Nothing further.

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

(The deposition was concluded at 3:20 PM.)

STATE OF SOUTH CAROLINA

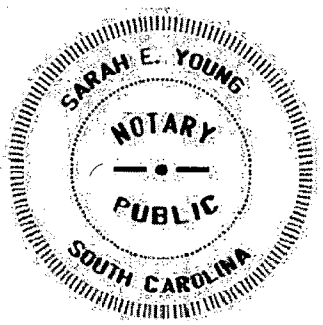
COUNTY OF LANCASTER

CERTIFICATE OF VERBATIM TRANSCRIPT

I, Sarah E. Young, Notary Public for the State of North Carolina at Large, do hereby certify that the foregoing transcript of MICHAEL W. COLLINS was taken by me and transcribed by me and is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

In witness whereof, I have hereunto set my hand this 24th day of April, 2018 at Rock Hill, South Carolina.



Sarah E. Young
My Commission expires
June 2025

I N D E X

	Page	Line
MICHAEL W. COLLINS	3	1
EXAMINATION	3	3
BY MR. WRAY:		
EXAMINATION	192	24
BY MR. THICKENS:		
EXAMINATION	198	14
BY MR. WRAY:		
CERTIFICATE OF VERBATIM TRANSCRIPT	200	4

E X H I B I T S

	Page	Line
EXH. 1, Medical Record	73	11
EXH. 2, Medical Record	76	19
EXH. 3, Medical Record	79	11
EXH. 4, Incident Report	87	5
EXH. 5, Photographs	95	20
EXH. 6, Email	110	11
EXH. 7, Medical Record	118	23
EXH. 8, Medical Record	123	10
EXH. 9, Medical Record	125	20

EXH. 10,	General Safety Rule	132	17
EXH. 11,	Physician Statement	153	17
EXH. 12,	Physician Statement	153	19
EXH. 13,	Medical Record	157	19
EXH. 14,	Medical Record	159	19
EXH. 15,	Answers	161	7
EXH. 16,	Application	178	13
EXH. 17,	Medical Record	182	9

Exhibits

COLLINS.EXH. 001
73:11,15 201:17

COLLINS.EXH. 002
76:19,23 77:9 201:18

COLLINS.EXH. 003
79:11,15 80:21 201:19

COLLINS.EXH. 004
87:5,8 109:21 114:8,10 118:10 201:20

COLLINS.EXH. 005
95:20,23 96:19 97:15 98:21 201:21

COLLINS.EXH. 006
110:11,14,24 113:18 201:22

COLLINS.EXH. 007
118:23 119:2 120:11 201:23

COLLINS.EXH. 008
123:10,13,16 201:24

COLLINS.EXH. 009
125:20,23 201:25

COLLINS.EXH. 010
132:17,21 202:1

COLLINS.EXH. 011
153:17 154:9 202:2

COLLINS.EXH. 012
153:19 155:8 202:3

COLLINS.EXH. 013
157:19,23 202:4

COLLINS.EXH. 014
159:19,23 202:5

COLLINS.EXH. 015
161:7,11 177:4 202:6

COLLINS.EXH. 016
178:13,17 202:7

COLLINS.EXH. 017
182:9,12,13 202:8

$

$75,000.00
175:11 185:17

1

1
73:11,15 180:9 182:5,13 184:5

10
132:17,21

100
196:20

11
98:20 153:17,23 154:9 163:17,18

11:00
85:2,3

12
34:5 153:19,23 155:8 180:16

12:00
149:5

13
83:14 84:4 87:14 95:13 110:25 112:21 118:7 120:22 126:7 135:3 139:13 157:19,23

13th
85:6

14
159:19,23

15
17:16 161:7,11 177:4

150-160
190:2

16
56:3 155:21 170:1 178:13,17,22

17
177:6 182:9,13

18
10:10 87:18 114:12 157:25

19
12:4

1970s
21:24

1979
7:15 12:6 16:4

1980
7:15 12:6 16:5

1980s
14:9 22:11

1981
137:12 138:11

1990s
22:11

1999
9:15

1:00
88:8 109:21

2

2
76:19,23 77:9

20
154:8,9 164:16 165:19 166:6 171:1

200
9:7

2000s
17:6 22:11

2002-2003
17:7

2009
22:22,25 23:21 25:21 26:14,19 193:7

2013
22:22 24:23 25:14, 23 26:19 193:4,8, 11

2015
16:9,12 27:13 55:21,22 60:14,16 62:6,21 72:23 73:20 77:11,19 78:3

2016
27:23 29:12 48:21 53:21 54:10 55:21, 22,24 59:13,19 63:23 64:16 65:7 69:13 70:1 72:5, 12,17 79:17 80:19 81:16 83:4,14 87:14,18 88:18 90:12 95:13 96:22 106:19 110:25 112:19,21,22 113:4 114:13 119:3 124:21 125:25 126:7,22 127:19 129:7 130:24 133:4,5 137:12 138:12 139:13,22 154:9 155:23 157:3 158:5,6 165:8,24 175:5 180:9,13

2017
157:13,25 159:10 160:4,12 179:1 182:6,13 184:5,9

22
112:19,23 120:23

221
90:7

23
73:20

24
179:1

24-7
102:13

25
180:22

26
67:24 160:4 180:22,25 181:5

28
47:5 57:13 125:25

29
119:3

3

3
79:11,15 80:21 126:6

3,842
176:24

30
137:22 138:6 143:20 170:16 190:12,13

31
27:23 29:12 48:21 53:20 54:10 55:24 58:19 59:13,19 63:23 64:16 65:7 69:13 70:1 72:5 75:17 76:7 78:15 80:19 83:4 87:18 88:18 90:12 96:22 112:19,22 113:4 114:13 116:21,25 118:9 123:14 124:21 129:6 130:24 139:20 165:8,24

315
99:14,16,18 101:1 130:21

35
164:17 165:21 166:11 171:4

36
5:7

38
176:23,25

3:00
29:16,17 57:23,24 149:5

3:20
199:10

3rd
55:19 56:3 126:21

4

4
87:5,8 109:21 114:8,10 118:10

40
74:2 164:16 165:2, 17 166:1,2 170:23 181:14,19,20

45
190:13

5

5
95:20,23 96:19 97:15 98:21

50
44:12 94:9

50s
151:23 152:2

58
186:22

6

6

110:11,14,24
113:18

60-year-old
77:14

60s
152:7

62
150:17 151:22
152:6 185:18

6291
3:25

63
150:16

65
187:1

7

7
118:23 119:2
120:11

7,000
86:20 87:4

70s
175:13

712
96:8

73
6:8

74
175:11

76
6:24

7:00
29:16,17 85:2,3
109:22

8

8
77:11 79:17 81:15
123:10,13,16
125:3

8-13-2016
126:13

8-3
126:10

8-3-2016
126:10,16

80
13:9

9

9
125:20,23

90
13:10 172:22

90s
22:12

910
132:21 133:1,9,15
135:22

92
9:22

99
9:15

A

a--
48:25

a.m.
29:17 85:3 88:8
109:21,22

ability
180:9

absolute
193:17

acceptable
35:9

access
141:24

accident
23:5 24:2,20,24
25:14 26:14 193:5,
11

accidents
22:21 26:19,24
178:9

account
185:1

accurate
3:19 42:12 127:5,9

accurately
74:25 75:2

ache
61:5 71:4

aches
124:19

aching
60:23 79:24 80:9

acre
191:7

action
86:16

active
81:9,15

activities
164:15 165:2
177:9,16,25
181:16,22

activity
173:9

Adams
4:17

added
127:16

additional
15:14 118:17
175:15 181:15,21

address
3:24 4:3,12

adjusted
172:25

advised
199:7

affect
180:8

afraid
185:24

afternoon
109:16 194:22

age
10:10

aggressively
127:7,10,11
158:15 160:18

agree
65:17 135:21
136:1 143:16

agreeable
3:19

agreement
7:25

ahead
19:17 62:15 68:8
86:1,5 87:4

air
83:16 89:19,20,21
91:14,15,16,18
113:19,20 130:9
143:8

ajar
127:8

Alicia
58:24 59:2

alleged
174:9 177:10,12

Allopurinol
81:23

ambulate
154:17

ambulation
154:12 155:11

Amlodipine
81:5

amount
52:19 135:8
137:13 138:12,24
139:25 148:15

and/or
33:24 162:6

Ann
10:2,7

answers
3:18 161:7,12,22,
24 162:3,8,12

anti-inflammatory
182:17

anymore
151:12 153:14
169:20 173:7

anytime
155:23

appears
98:22 188:24

appliances
133:22 134:18

application
178:13 179:14

applied
49:8 178:18

apply
57:5 89:16 176:16

applying
42:3

appointment
61:3,21 63:11 77:3

approximately
74:3,18 137:12
138:11

approximation
14:8

April
64:10 179:1

area
7:16 45:6 59:12,
15,16 76:11 78:13
80:4 106:17,23,25
167:5 175:12
189:17 194:5,10,
16

areas
43:22

arm
38:11 43:10,14
120:15 127:8

arms
35:14

arranged
128:22

artwork
67:5

Ashley
5:16

asks
177:8 180:22
181:14

aspect
35:23

assigned
28:2 33:7 137:10
138:10

assistance
154:17

assisting
161:16

associate
69:12

assume
139:15 152:15,16

attached
195:23

attempted
126:25

attempts
134:17,22 135:4,
17 136:23

attend
6:3

attending
153:25

attention
46:19 58:1,7

attorneys
3:10

attribute
187:4

attributed
124:8

August
83:14 84:4 85:5
87:13,18 88:18
90:12 95:13 96:21

110:25 112:19,21, 22 113:4 114:13 116:21,25 118:7,9 120:22 123:14 124:21 126:6,7,21 127:18 129:6 130:24 133:4 135:3 139:13 158:6 165:8,24 180:13

Augusta
12:13 14:2,4,16 15:1,4,17,25

automatically
104:8

automobile
22:21

average
142:25

avoided
134:22 135:19 136:24

aware
93:24 123:4,7

B

back
11:6,10 12:4 13:11 14:17 15:1,20 17:16,24 19:20 20:11 21:9,13 23:1 24:7,16 27:22 31:5 32:13,16 39:10,11 43:3,12,17 46:11, 12 47:12 52:12 57:17,20 58:8 59:10,20,21 60:2, 6,9,10,18,22 62:1 63:1,6,16,18,19 66:13 69:11 71:7, 11 72:10 74:6,20 75:12,19 76:2 77:16 78:10 81:11 82:14,25 88:18 89:25 92:8 93:20 94:4 95:12 106:6, 16,17 107:1,3,5,7 108:5,12 110:8,10 113:9,17,20 115:1, 9 116:19 117:25 118:2,3,4,5 119:14,25 120:14 121:3,8 122:16,20 123:2 132:11 133:4 152:23 153:7,9 164:9 166:24 172:23 177:3 179:24 184:8 186:9 189:8, 11 192:9 193:2 195:5,9,13,19,20, 23,24

background
3:23

backwards
127:8

bad
30:24 48:8,9 56:9, 12,13,16 60:23 90:13 117:21 136:14 140:24 141:3,5 151:12 169:24 196:2,5,11, 15 197:2,5 198:17

bank
185:1

Barron
72:13 119:3,7,24 121:2,21 127:22 192:12

based
35:25 136:3

basically
12:18 48:25 57:17 91:25 92:14 116:8 148:18 150:2 155:9 159:17 168:3 172:25 173:1

basis
171:23

bearing
155:11

beat
146:19

beat-up
66:6

began
6:19 14:1 165:25 180:8

beginning
70:17 96:8 193:3

bend
142:24 169:1 172:19 180:18

bending
140:12 150:3 172:24 180:24 181:6,9,13

benefits
176:17 178:18 179:8 183:19

bent
49:23 50:1 142:5

big
66:8 190:12

bigger
141:17 146:16 147:3,15

biggest
144:20

bill
51:14

bit
13:9 18:24 20:24, 25 54:2 93:10,17 101:7 104:13,14 108:22 115:1 117:24 144:6 151:9 154:14 186:3,10 188:21 191:4

blades
78:10 107:9,10

blemish
57:14

block
159:7

blood
81:3,8,10 82:2 156:20

blow
113:14

blue
86:25 89:17

board
176:17

Bobby
10:14,15 116:1

body
6:14 43:7 106:24 115:22 123:22 125:12 184:17 187:3

born
9:10

boss
45:18 54:13 112:2 117:12

bothering
20:25 114:18,23 169:23

bothers
173:5

bottom
30:7,15 35:14,15 87:23 154:2 159:9 160:1 163:25 182:15

bottom's
35:18

Bowater
31:17,21,24 32:6, 7,11 36:5,13 90:1 194:21,23,24 195:8 198:18

boxcar
33:11 64:1 66:16 67:1 69:3 146:18 193:22

boxcars
11:3

brake
89:20,21 140:12, 18 141:1,6,25 142:3,22

break
73:23 105:24 132:12 187:7

breakers
113:20

Brewer
111:8 112:10

briefly
193:2

bring
195:18

brings
38:3 195:9

broke
30:7 49:22 105:8 107:16 113:22 129:12 132:6 135:5,22

broken
30:16 35:19 109:13,18 112:16

brother
123:8,9

Brotherhood
9:6

brothers
9:23

bruised
47:23

budge
40:13

building
108:6,13

bumped
47:23

bunch
6:13 96:9 144:18

business
174:9

Bypass
128:13

C

call
17:22 27:2 33:25 34:11 46:21,25 54:2 89:12 100:3, 17 102:9,10,13,18 103:10,21,23 143:16 170:6,12

called
17:9,23 77:2,3 85:9 91:16 114:20 161:12

calves
173:1

cancer
9:17 60:24 61:8, 17,23 62:8,23

cane
154:11,18,20,23 155:11,16,22

capacity
183:3

caption
132:22

car
10:25 11:8,20,23 12:1 25:5,7 30:4,8, 9,11,13,19,20,22 31:5 32:3,4,24 33:10,17,21 34:1, 18,21 35:1 36:11, 16 37:6,21 38:20, 22,23 39:11,12 40:1 44:3,9,16 46:4,10 48:6,12, 13,14,20,22 49:4, 11,23 50:5,14,21, 23 51:6,11,17 52:15,16,20 53:3,8 54:3 56:9,13 64:17 65:7 79:21 89:18 106:19 129:1 140:18 141:20 143:24 144:24 194:19 195:7,9 196:1,18,22 197:1, 7,10,17,22,25 198:4,7,17

car's
35:8

card
48:11,12 188:2

cardio
167:25 170:8,13
187:13 188:16

care
11:17 25:16 47:12,
16 57:15,19 66:11
69:24 71:17
109:10 112:7,8
113:9,15,16
182:16 184:2
191:2,12 192:11,
17

career
15:21 29:4 143:25

careful
47:9 113:22

carman
7:19,22 10:19,21
11:5,9 12:5,18,21,
25 13:6,13,16,19
14:1 15:25 16:4
28:2,12 32:23
39:25 45:21,22
48:7 57:6 74:3
83:15,22 85:10,13,
15,16 90:17 92:11
109:15 110:17,20
111:10 133:3
134:6 141:10
198:21 199:3

carman's
13:16 92:15,18
101:2

carmen
9:6 102:6,8 111:14
112:6 145:5,7

Carolina
4:1 139:12 159:24

carpal
72:21 73:2,6

Carr
16:23

carrying
148:21

cars
10:23,24 11:13,15
30:4 31:8,12,15,
16,20 32:10,20
33:25 34:1,6,10,
11,12,16 39:8
49:18,21 53:22
83:11 90:1,5,6,9,
11 91:1,10,15 94:7
141:12 142:11
143:8 147:18
194:22,25 195:2,4,
13,22 196:8,12,15,
24

case
27:20 130:9
162:17

category
183:4

caused
17:1 27:6 83:8
88:23 140:7,22
151:15

causing
121:25 179:17

Celanese
128:13

cell
103:13,21,24

Center
73:16 163:12

certainty
193:17

cervical
78:20 79:2 82:10

chair
8:23 173:5 191:1

chairman
9:1,3

chance
96:4 132:22

change
101:4,21 140:12
141:25 142:6
175:1

changed
174:19,22,24
185:23 186:15

channel
101:18

characterize
144:9

charge
91:5

charged
178:5

Charleston
5:9

Charlotte
12:14,15 14:20,21,
22,23,24 15:4,13,
25 20:6,8 29:6,7
84:1,4,9,13,18
90:8 92:16 95:18
97:7 101:3 113:12
121:17,20 122:4
139:12 163:12
175:21,23

check
34:5 63:9 91:21
114:17,24

checked
89:5

checking
91:5 143:8

checkup
24:16

Cherry
171:15

chest
37:4

Chicago
90:7

chief
125:5 160:3

child's
5:4

children
4:22,24 5:2 173:14

Chiropractic
73:16

chiropractor
60:10 61:1,13,16,
22 62:6,20 63:10,
14 127:20

cholesterol
156:24

chronic
122:8

Chuck
5:5,6,7

Chuck's
5:10

Cialis
174:3

Circle
4:8

claim
23:10,13,23,25
26:2 27:20 137:9

claiming
3:13 161:18 163:4,
21 184:20

claims
3:14 27:17 185:7,
11

classification
89:11,13

clean
17:3

clears
39:7

client
68:10

climb
180:19

Clonidine
80:25

close
39:9 185:20 197:4

closed
39:14,15 68:25
69:1 139:15

closing
129:24

co-workers
45:17

code
99:7,9,14,22
100:5,20 102:23
103:11 104:8,10,
18 105:19 130:7,8,
18,20,24 131:7,23
132:2 188:13

colleagues
114:2

collection
95:24

Collins
3:1,7,8 5:5,11,15
41:25 48:5 53:1
58:25 68:14 72:10
73:14 77:14 79:14
87:8 95:23 104:16
110:14 111:4
119:1 123:12
125:23 131:6
132:11 141:9
146:4 150:13
153:22 157:22
159:22 161:10
178:16 182:12
184:15 187:10
192:21 193:1
198:16

comfortable
189:17

comfortably
190:2

committeeman
8:7,8,23

committing
179:10

communicate
101:11,14

compensation
176:11

complaining
63:16

complains
122:7

complaint
27:19,21 55:24
62:21 63:23 83:13
120:22 125:5
137:10,14 138:22
139:6 148:14
149:20 160:3
163:23 164:8,10
174:14 177:10,12

complete
87:13,25 88:4
173:2

completed
87:11,17 88:4,17
112:19,23 133:1
182:16 183:2

completely
61:15 67:7 158:20
175:18

completing
114:8

complicates
114:15

complied
136:2

comply
133:12 135:22

compressor
83:16 89:15 91:22
92:12 94:5,25
96:20 97:1,6
98:22,24 99:4
100:19 105:11
109:14 111:1
113:21 118:8,15,
19 120:19,20,21
121:1 124:22,24
125:18 129:6,22
130:9 135:4,23,25

compressors
92:21

concerned
186:2

concluded
168:15 199:10

concrete
194:2

condition
79:8 133:24
134:13 149:10
180:8,17

conditions

140:1 148:16 150:25 179:17

conduct 132:15

conductor 143:7

conductors 143:4

conference 72:8 86:2 187:8

configuration 94:1

confused 18:24 39:3 61:15 66:15 67:7

connection 11:4

Connor 18:8,9

conservative 154:11 182:16

considered 48:21 147:3

consistent 182:6

constant 124:4 125:14

contact 101:22 102:20

contacted 103:15

contending 86:19

continue 18:25 19:2,4 57:23 71:2 103:25

continued 12:2 109:22

continuing 109:25

contributed 194:10,16

contributing 140:1

control 167:15

controlling 120:7

conversation 117:15

conversations 160:25

copies 137:23

copy 110:24

cord 107:11

corner 96:7

correct 33:5 36:24 38:19 39:18 40:9 41:8 43:15,18,21 44:7 49:5,8,9 53:4 56:8, 22 57:25 59:4,8, 11,23 60:17,19 63:15,17 69:4 72:14,22 73:24,25 78:6,7,11,12,15,16 79:18,22 80:4 82:5,11,12 83:18, 23 84:11,17,24 85:4,11 87:12,16, 19 90:2,20 98:9 99:21 101:10,13 102:17 104:2,4,19 109:21,24 117:14 122:9 123:19 127:2,6,24 128:1, 2,3,4,25 129:4,17 130:15,19 131:11, 20 134:9,15 135:6, 20 149:15,18 150:22,23 158:8,9, 12 162:12 163:8 164:6,22 165:22 175:22 176:20 177:21 178:19 180:5,10 181:24 183:21 192:14 193:9 198:19,23

correctly 49:23 66:25 74:7, 17 77:20 113:24 131:10 134:23 158:7,11 160:9

count 27:20 83:13 137:10

County 9:24 10:10 55:8

couple 12:20,22 13:18 15:17 21:4,5,15,20 22:6 124:11 145:16 151:20 171:11

court 23:17 138:22

cousin 10:16

covered 178:4 185:5

covers 41:18

Cox 116:1,3,7,14

Cox's 116:5

craft 7:2

crank 38:15,17

cranks 40:10,13

crawling 140:13

cream 128:23

create 67:13

credible 82:22

crew 195:18 196:14,16

crews 194:21 195:11,12, 18

crime 178:6 179:10

cumulative 139:23

curls 169:4 190:7,9,11, 21

current 3:24 80:23,24 156:13

cut 34:11,13 48:15 175:18 185:25 194:23 196:5,8,19 198:10

cuts 12:23 144:21 186:8,17

cutting 150:7 196:3,11,15

CVS 128:11

Cynthia 5:11,12

D

daily 181:15,22

damage 23:22 26:9

damages 3:13 174:14

date 19:5 22:7 28:1 36:10 52:19 58:18 63:23,24,25 64:5,8 68:15,16 73:19 77:11 79:17 83:22 84:21 87:17 94:18 115:25 116:25 120:21 126:12 133:5 154:7 156:12 158:1 160:4,5 167:1 180:8 184:4 186:13

date's 158:8

dated 119:3 125:25 153:24 157:12,25 179:1 182:13

dates 14:6 84:7 117:3 157:16

Davis 28:11,12,19 33:7, 24 44:20 45:6,16, 24 47:19 54:16,21 55:12,14

day 28:14,25 29:20 33:6 34:4,15 45:3 48:3 51:7,11 52:20 53:13,18,22 54:5 57:11 58:2 64:10 65:24 83:8 87:14 88:4,22 91:23 109:16 115:1 129:20 135:22 136:4 140:20,21 142:8,9,20 143:1, 5,13,15,23 144:1 167:7 181:16,23

days 13:8 21:5,15,20 22:6 86:9 87:18 114:12 143:11,19

deadbolt 93:2

dealing 10:25 50:23

dealt 53:12 82:22

death 9:16 60:25 61:10

December 77:11

decide 68:10

decision 103:23

defect 11:14,15,23 33:4 48:6,13,22 49:11, 25 50:4 53:2 56:10 134:7

defects 11:19 35:19

Defendant 86:13

degree 172:11,22

delivered 32:11

demand 183:4,8

denied 146:6

deny 82:17,18 158:16, 23

denying 80:10 158:18

department 7:4,9,15,18 20:21 22:3

depends 142:25 170:15

deposition 3:16 68:6 86:9 193:4 199:10

depositions 67:24

derailment 11:5 143:15

derailments 10:24 11:3 143:12, 20

describe 107:1 146:10 148:11 177:8 179:17 180:16,23 188:17

describes
181:15,22
describing
146:25
detail
177:9
details
31:7 83:3
determine
56:20 134:12
diagnosed
82:10
diagnosis
78:19,23
diagram
68:2
diary
53:12 54:5
differed
37:6
difference
75:15 172:15
differently
153:24
difficult
120:7 127:3
difficulty
120:14 121:2,7,10
173:19 194:10,16
disability
163:22
disabled
153:9,10 164:7
168:15
discharged
159:3 182:5
discharging
159:15
disclose
179:8
discomfort
59:18 164:21
173:23 177:20
discover
33:3 52:5 56:20
discovered
197:20
discuss
186:12
discussed
83:5 187:3
discussion
112:12 117:17
discussions
112:24
dispute
98:17
district
10:8
divorced
5:12
doctor
17:17,18 18:6,7,
12,13 19:20 24:3,
5,7,8,11,13 25:22
58:10,13,17 60:5,
24 61:12 69:16
71:9 80:14 114:17
116:20,23 122:21
123:25 124:5,14,
17,25 150:21
151:4 152:11,14
153:8 165:14
168:3 193:11,18
doctor's
114:19
doctors
78:18 126:5
150:25 152:25
153:4 165:16
191:21
document
54:10 86:25 87:21
137:20 161:11
documents
86:14,20 153:24
Dodd
20:23
door
11:23 30:9,18,20,
22 33:23 35:16,17,
20 36:16,20 38:3,
20,22 39:2,4,7,11,
14,19 40:4,8 44:3
46:10 48:21 49:5,
22 50:1 56:20
64:17 65:7 66:15,
17 67:8 68:17,24
69:1,6 79:21 83:16
92:13,25 93:1,4,
16,18,22 94:3,6,25
95:5,8,14 96:21
97:17,18,21 98:16,
25 99:5,10,20,23
100:4,19,24 101:1
102:22 103:2,25
104:20,25 105:4,
18,25 106:2,7,12,
19 107:15 108:8
109:13,18 111:1
112:16 113:22,24
115:5,8 117:16,25
118:8,15,19
120:19,21 121:1
124:22,24 125:18
127:1,4,7,8,11
129:2,3,6,10,12,
18,24 130:3,7,14,
24 131:17,22
132:5 135:4,9,23,
25 136:6,7,10,18
158:5,15,23 165:7
193:21 194:1,11,
17
door's
38:18 40:6 93:8,14
doors
11:20 30:5,14
41:11 42:22 93:2
94:1 130:12,20
131:19 146:20
195:2
doorway
127:5
doubt
67:18 68:20,22
draft
148:2
draw
66:16,18 67:1,4,
11,19,23 68:2
176:22,23
drawing
176:19 183:19
draws
5:22
drive
121:20
driver
23:14 25:1
due
27:7 139:13,23
153:9 159:3 164:7
168:15 178:2
185:1
duly
3:2
duties
10:21,22 15:24
85:16 133:23
duty
102:1 109:23
134:11

E

earlier
16:1 18:11 31:20
33:3 38:21 49:8
53:1 56:10,19 66:1
67:7 68:24 85:17
89:4,24 91:23
110:9 119:6
122:23 123:14
124:23 127:1
129:1 135:2 151:3
152:24 153:3
158:13 163:3
169:13 174:3
177:13 178:9
early
17:6 85:19
earned
176:11
earning
175:7,9
earnings
179:9
easier
141:15 144:7
easy
96:17
Ed
110:22 111:12
Eddie
20:7 28:16
education
6:10
effect
45:9
effort
44:3 150:6
efforts
183:10
eight-hour
142:21
elbow
16:16,17 17:10
19:1 20:10 27:10
elevated
142:12 144:6
149:11
eliminated
84:16 122:2
175:21
elliptical
170:6
email
89:7 91:23 109:17
110:11,17,25
111:7,17,20,21,24
112:10,11 113:18
114:2
emails
89:5
employed
83:14
employee
7:25 61:11 133:12,
19 134:8,12,13
employees
32:7,12 57:6 65:10
101:15 133:16
134:17 144:25
145:1,2
employment
179:9 183:11
encounter
77:10 79:17 102:7
encountered
54:3
end
12:16 29:4 57:23
89:19 98:21
124:10 155:23
ended
57:24
engage
177:9
engaged
93:3,7 108:21
engaging
164:14 177:15
engine
142:2
Engineering
5:20
engineers
5:23 143:4
enter
131:7 180:7
181:21 188:11
entered
99:22 105:19
entering
99:18
entire
149:13,17
entitled
67:16
equipment
134:9,18 147:2,8
149:22,25
ergonomic
139:24 140:5
144:10 146:11

148:12
ergonomically
149:21,23
established
15:10
estimate
25:2 167:1
evaluate
62:22
evaluated
62:8
evaluation
72:20 77:15 183:3
197:1,10
event
143:16
everyday
131:14
everything's
30:15,16 61:4
evidently
93:8,14 125:1
129:21
exact
98:5
examination
3:3 192:24 197:16
198:14
examine
134:12 195:6
examples
134:19
exchange
161:12
Excuse
119:16 137:19
153:2 181:18
188:8
exercises
168:5
exertion
134:20 135:12
EXH
73:11 76:19 79:11
87:5 95:20 110:11
118:23 123:10
125:20 132:17
153:17,19 157:19
159:19 161:7
178:13 182:9
exhibit
67:13 73:15 76:23
77:9 79:15 80:21
86:2 87:8 95:23
96:19 97:15 98:19,
21 109:21 110:14,
24 113:18 114:8,
10 118:10 119:2
120:11 123:13,16
125:3,23 132:21
154:9 155:8
157:23 159:23
161:11 177:4
178:17 182:12
exhibits
86:12 153:23
exist
175:25 176:2
expected
197:9 198:11
expenses
184:19
explain
54:19 67:17 79:7
139:4 154:15
184:24
exposed
148:15
exposure
140:1
extend
189:4,6
extended
189:9
extending
190:22
extension
168:23,24 172:18
190:24 191:1
extent
106:21,23
extra
137:22
extreme
120:14 121:2,4
122:18,20

F

facet
182:18
facilities
133:22 141:10
facility
31:10 32:11,17
70:9 144:25 148:8
fact
122:2 134:5 181:8
fail
179:8
fair
59:7 60:7 97:13
104:1 114:5
122:13 133:13
147:6 179:14
185:21
fall
27:2 49:18 106:3
false
162:15,22 179:7
familiar
13:4 130:17
132:24 133:6
134:3,25 138:19
143:9
family
72:12 119:7 123:1,
2,5
fast
8:21 25:1,3
faster
188:23
fastest
63:11
father
9:14
father's
9:13
February
79:17 81:15
federal
179:11
feel
42:25 43:5,7
142:17 170:15
174:17
feeling
59:17
feet
40:18 44:12 94:9
194:5
fell
105:8,11 106:6
107:16
fellow
17:11 19:8 61:10
116:16
felt
30:23,24 43:2,13,
16,22 44:2 47:11,
15 50:12 57:14,15,
19 58:7 62:1 78:14
93:20 94:4 103:2,7
fewest
145:2
fight
18:1
figure
52:9 65:12 116:24
figured
31:3 101:3,6
108:22 112:7
113:8,15
file
23:10,13 26:2
67:11 68:8 179:18
filed
3:11 27:20 55:13
64:15 65:6 137:25
138:7,22 185:7
fill
53:1,6 87:25
114:13 128:15
filled
118:9 120:23
finally
58:16 108:8 148:3
find
32:2,24 39:22,25
48:6 56:17 183:7,
11 195:3 198:21
fine
24:17 47:17
152:17
finger
66:12
finish
8:12,14 67:22 97:3
187:11
finished
6:9,20 51:7 109:17
fix
11:24 32:5 33:2
49:24 198:22
fixed
11:17 12:1
flag
89:18
flags
89:17
flew
93:19
flip
80:22 97:14 98:21
163:18 164:12
178:21
floor
89:8 91:25 105:8
107:17 108:2
fluid
188:19,20
flush
39:12
fold
140:17 189:17
folded
172:23
folding
141:15 189:16
folks
9:11
follow
31:6 193:2 198:16
follow-up
112:12
follow-ups
192:23
fool
162:16
fool's
64:10
foot
37:2,3,8
force
49:7 67:25 135:8,
13 136:18
forcefully
104:18 158:4,8,22
foreman
8:9 20:23 116:2
foreman's
92:17
forget
18:14 116:9
forklift
146:23
form
13:21 42:7 49:12
62:9 63:2 64:18,
20,25 88:18 89:2
112:19,23 118:10
120:23 138:25
151:24 152:8
162:18 194:12
forms
154:7
forward
190:22,24
found
11:16,23 30:19
35:5 48:16 51:10
56:10 60:24 63:6,7
82:21 93:21

FRA
11:18 48:6,11,22 49:1,16,18,25 50:4 115:19
fraudulent
179:7
free
169:3
freight
194:20
frequencies
101:21
frequency
101:19,20 175:1
friend
60:21 61:16 63:5
friend's
130:1
front
114:9
full
3:5 13:16 20:11 168:23 172:18 182:16
full-fledged
12:21 13:19
fully
189:4,6
functional
183:3

G

G-l-o-s-s-o-n
10:6
gate
92:10,15
gave
71:10 94:3 108:8 152:13 163:14 181:4
gear
38:13
geared
38:6,12
gears
41:18
general
20:22 92:17 116:2,7,8,11 132:15,17,21 147:11
generally
135:14
Georgia
12:13
give
3:17 14:8 22:9 30:23 36:6 41:13 47:15 53:23 67:9 70:12 86:21 94:2 95:25 100:20 132:22 144:2 161:20 167:1
giving
189:19
glasses
74:9,10
glider
167:25 170:8,13 187:13 188:16
Glosson
10:2,4
Gold's
166:20,22 171:13,23 182:1 187:12
good
16:10 24:12 36:1 47:13 67:4 77:5 90:13 91:24 108:14 127:17 174:17
gout
81:10,21,24 179:20 180:4
governed
132:14
grab
30:21 37:13 38:1,2,15 40:6 41:21 42:23 194:8
grabbed
36:15 93:16
graduate
6:5
graduated
6:12
grandchildren
164:20 173:11 177:19
grandkids
173:16
grasp
38:8
grass
191:13
grave
124:18
great
113:12
ground
36:23 40:19 42:15 106:3 140:13 143:7
group
77:5 195:20
grow
5:24
guess
157:2
guessing
36:9
guided
167:14
guy
145:14
guys
146:5 147:2
gym
166:18,19,22 167:2,6 170:2,24 171:13,23 172:16 182:1 187:12 188:1

H

habit
66:10
half
6:15 7:6 37:8 194:5
hammer
146:19
hand
40:23 46:8 104:21,22,23 106:9 137:20
handed
73:14 76:22 79:14 87:8,21 95:23 110:14 119:1 125:23 153:22 161:10 178:16 182:12 198:4
handing
159:22
handle
30:21 36:16,19,20,25 37:4,13,24,25 38:7,14,15,17 40:7 41:2,5 42:1 50:8 97:21,22 99:6,23 106:7,8 113:22
hands
40:24,25 41:2,5 42:1 73:4 104:21
hanger
35:12
hanger's
30:6
hangers
30:15 35:11,13,14
happen
22:6 25:8,10 26:14 144:22
happened
20:3 22:25 23:16 24:23 25:11 27:23 30:2 43:2 44:18,20,24 45:2,13,25 46:3 47:20 51:6 54:6 55:24 57:22 58:19 59:7 60:20 63:25 65:12,15 68:3,18 70:17 72:11 76:6 84:4 85:23 88:22 91:13 94:19,21 100:1,10,15 106:5 107:22,25 108:16 109:13 112:3,12,15,22,25 114:11 118:8 124:22 129:10 130:10 135:3 136:4 149:7 174:4
happening
119:15 152:2
happy
122:12
hard
16:21 17:2 66:5 155:13
harder
136:13
Hatcher
100:11,12,13,17 102:11,12,18 111:24 112:8 114:20 115:7,25 116:14 117:11
hazardous
140:1 148:15
HCL
81:1
head
37:5,11 58:11 116:3 153:14 165:3 194:7
head-on
24:25 26:5
heads-up
196:22
heal
21:8 156:5
health
16:8 185:5
heard
138:15
hearing
68:7
heat
58:9
heavy
74:4,19 148:6 167:13
hedges
191:16
held
7:20 8:8 16:5
hey
4:4 100:4 112:2 117:12
Hickman
20:7 28:16,17 46:23 47:1 57:9 100:10
high
6:1,4,9,20 37:4 81:10 82:2 156:20,23 194:3
higher
141:13,20,21
Hill
4:1,8,9 5:24 6:4 7:10 8:5,8 9:11,19 11:2 12:7,9 13:22 14:1,17 15:1,9,20 20:9 25:13 26:15 28:2,6,21 29:12 31:10 32:4,17 47:9 48:18,19 70:8 73:16 83:25 84:16 121:14,17 122:2 128:13 137:11 138:11 139:14 142:1 143:24 144:24 145:10 146:13 147:3,9,16,23 149:13,17 175:20 194:21 195:5,10 196:10
hinges
105:24
hip
114:17,22 115:2,4,10,15 116:21,22 117:5,8,13,20,21,25 118:2,3 123:16,18 125:6,9 140:21

141:2 150:22 152:17 153:7,16 156:9 157:5,6 160:8,9,13,18 169:1 172:10,23 179:21

hips 123:5 139:21 143:12 151:15,17 152:12,16 153:1,5 160:16 164:9 168:16,20 169:23 192:6

hire 6:25

hired 12:4 15:9

history 74:1,14 77:13 120:3 123:3,5 126:15 143:21 158:3 160:8,12,17 197:24 198:4

hit 23:3 24:7,16,25 25:7 26:5 27:6 93:5 131:11

hold 7:11 8:2 13:23,24 34:15 40:6 145:6

holding 88:11 106:6 136:9

holes 38:1

holiday 61:1 175:18

home 3:24 5:17 58:5 130:1 166:5

honest 70:11 82:21

honestly 60:21,25 88:3,15 159:17 174:17

honesty 137:3

hook 146:22

hope 192:3

hoses 143:8

hour 167:19

hours 29:15 84:25 142:20 143:1,12 144:1

house 89:9 91:21 130:1 155:2,16 191:3,16

houses 89:7 129:18

HPI 119:18

hurt 21:7,8 25:24,25 26:1 31:3 39:17 40:11 41:9 42:19 43:23 46:1,5,11, 12,15,16 47:9,10, 14 54:4,11 64:2 65:22 66:2 69:6 76:1 79:20 106:15 107:5,13 109:1,7 113:5 114:2 115:1, 9,22 117:23 126:21 140:24 141:3 160:18 169:1 189:18 190:17

hurting 155:3 173:8

hurts 167:16 168:11 169:12 172:9 173:6,8 174:1

hypertension 120:4

I

Ice 58:9

ID 188:13

idea 92:3 128:19 139:18

identification 73:12 76:20 79:12 86:11 87:6 95:21 110:12 118:24 123:11 125:21 132:18 153:18,20 157:20 159:20 161:8 178:14 182:10 196:18

identified 86:8,15

identify 33:19

illness 74:2,15 77:14 126:16

immediately 43:5

impact 167:9,10,12,25 170:9,11

impression 78:18,19

in-store 128:17

incident 22:4 27:5,23 28:4, 21,25 29:25 55:23 56:5 58:8,11,14,15 59:6 63:24 65:19 69:12,16 70:1 71:18 72:4,11,17 75:17 76:6 78:15 79:20 83:4,12,19 84:4 85:20 86:24 87:5,14 88:8 89:24 90:4 109:13,20 111:1 112:22 118:8,18 120:19 121:1 129:15 135:3

incidents 119:9 133:5 145:13 180:13 186:23

inclined 121:21

include 11:19 134:14 175:14

included 154:11

including 40:3 139:25 164:15 167:19 177:16 182:17

incorrect 162:16,23

indicating 106:18

inflame 17:2

information 3:13,23 36:12 53:24 161:5,17,21 162:11 181:15,22

initially 35:5

injection 156:4

injections 71:8,11,13 156:8 163:15 182:18

injured 24:1 25:14 27:7 28:8 34:22 42:5 50:12 53:3 54:18 57:2,11 59:13 64:16 65:7,10,23 66:5 83:15 88:23 106:13 197:7,20 199:1

injuries 3:12 23:4,25 24:4 27:3,21 69:11 83:8 118:14 139:21 140:2 161:18 163:3,23 164:7,8, 13 177:10,12,14 178:2 184:20 185:1 187:2

injuring 158:6

injury 21:11,18 27:2 47:5 87:10 112:23 114:9 118:9 126:13 140:7 158:4 163:22 165:4,5

input 99:7,9

inputted 99:14

inside 29:24 30:10 31:1 38:6,23 39:11,12 41:11,17,20 44:5, 10,17 45:5 50:8 69:2 92:4 93:22 98:24 99:2 105:10, 11,13 108:23 113:22,23 136:21

insomnia 122:7,11

inspect 38:22 56:16 90:18 91:15

inspected 11:12 90:15 91:23 129:20

inspecting 11:13 30:9,19 31:13 34:13 35:1 89:25 90:5,9,11 91:11 94:7

inspection 10:22 11:1 35:25 51:7 136:7 141:4 197:12

inspections 10:23 141:11

instruct 67:10

instructed 92:22 129:16,17, 22,23

instruction 130:5

insurance 185:25 186:1,20

intact 30:6,8,15,16 35:2

intended 49:5

intercourse 173:24

interior 98:22

intermodal 84:10,13 85:20 95:17 97:7 102:2, 21 113:19 116:11 130:13

interrogatories 161:13 177:4

interrogatory 171:25

interview 112:14

inverted 190:25

investigate 65:11

involve 48:10 168:19

involved 22:21 193:21

involving 111:1

issue 20:22 22:14 27:11 48:20 51:17 52:5 66:8 78:24 102:15 117:16 124:8,21 125:18 126:5 129:3 149:16

issues 11:19 20:18 27:12 60:1,6 61:23 69:20,25 70:25

72:16 73:2,8 76:13 80:18 81:20 109:25 110:5 117:9 123:1,6,15 150:22 151:15 152:12,17 160:16 184:12 194:9

item
80:25

J

jacks
146:14

jam
93:1,16 104:13

jammed
93:17 100:25 101:6 103:3 127:4

January
157:12,25 159:10 160:4,11

jeopardize
133:17

jerk
42:1 93:20 94:4

jerked
127:8

Jerry
28:11 30:10 45:12 47:8 50:20,22 51:8,15,25 52:14, 19,23 56:24 144:17

job
10:21 11:9 13:21 15:24 20:13 21:8 32:23 39:24 57:3 65:11,22 85:16 90:16 91:6 121:13 122:2,12 126:25 147:16 152:18 175:20,23 198:21 199:1

jobs
134:6

Joe
86:24

joint
182:18

judge
67:5

July
55:19 56:3 137:12 138:11 139:13

June
119:3

K

K-i-n-j-a-l
163:11

keeping
11:1

Kemper
4:8

key
92:9,12,13 131:21

keypad
92:18 93:6 97:18, 25 98:2,5,7,16 102:22 105:17,21 108:19 129:17 130:2,17 131:17, 22 136:11,20

keypads
130:15

Kimble
60:13 63:13 73:16 75:4,8 76:12 78:6 80:17 127:19 163:6

kind
13:25 19:11 25:17 27:18 31:4 33:10 47:11 66:16 88:7 107:16 108:7 117:25 144:17 155:3 167:24 169:7 170:19 173:9 179:9 186:13 187:11 188:18 191:23 193:24

Kinjal
163:11

knee
20:18,19,20,22 22:2,17,18 27:11 178:12

knee's
20:25

knees
190:16,17,25 191:1

knew
50:8,20 66:12 77:6,8 93:19 131:2,17 136:16 186:20

knocked
25:7

knowing
115:22 131:17

knowledge
51:15 88:6 95:11 159:11 162:13,14

knuckles
148:21

L

L-a-z-e-s-k-i
59:2

labeled
163:24

labor
176:14

lack
139:24 144:9 146:11 148:11

Lakes
25:12

lane
25:5

larger
140:8 147:6

late
21:24 151:23 152:2

law
179:11

lawsuit
3:11,12 26:3 27:17 55:13 64:15 65:6 137:25 138:2,7 161:18 162:23 163:4,21 174:9 178:10

lawyer
26:20

lawyers
161:12,16,23

lay
173:3,4

laying
108:1 140:13 149:8 185:24

Lazeksi
63:19

Lazeski
58:24 59:2,19 60:5 63:14 71:15 76:17, 24 77:22 78:23 79:16,23 80:3,17 81:14 82:6,19 125:25 127:13,25 128:18 153:13 158:14 160:22 163:7 182:13,24 184:8

Lazeski's
128:22 182:4

lead
7:22 45:22 85:13 109:15 110:17,20 111:10,14 112:6

leave
14:16 50:4 65:24 90:6 122:19 134:19 175:24 176:6 196:6

led
59:18

left
37:14 39:5 43:9, 11,12,13,14,19 44:16 46:13 48:14 94:23 107:2,6,7 120:15 123:18 125:6,9 129:21 140:21 157:2 164:20 173:20 177:19 179:21

leg
168:1 172:16 189:4,24 190:6,7, 9,11,21

legal
161:11

legs
168:21 172:21 189:5 190:22

length
173:6

letting
18:3 19:7,14

level
13:9 45:17,20 134:20 135:12 141:12 187:17,20

levels
13:8

Lewis
158:21

lift
165:16,19,21 169:8

lifted
165:25 166:2 170:23 171:4

lifting
150:4 164:16,17 165:2,12 166:6,11 169:10 170:20 171:1

light
168:2,22 181:17, 23 182:1,2

limitation
153:15

limited
155:11 164:15 165:1 177:16

limping
20:24 21:3

list
34:1,5

listed
80:25 164:7

live
4:7,11 5:8 9:24 10:10

lived
4:2

lives
5:9 55:1

living
9:12,18 55:6,7

load
195:1

loaded
31:25 196:1,2

loads
196:6

local
8:23 9:1,2,3,7

located
37:1 128:12 171:14

lock
93:2,3,15 97:17 101:1,6 103:1 104:11 105:7,18, 21 107:16 108:21, 23 129:18,24 130:18 131:22 132:6

locked
93:14 103:3 105:18 113:23 136:20

locking
93:22

locks
39:9

locomotive
140:18 143:6

locomotives
10:23 11:12,15
140:9,11 141:23

log
53:16 54:4

long
4:2,18 5:13 6:20
7:5 59:25 60:4
70:23 81:23 84:3
120:3 160:16
164:19 165:1
166:21,23 167:17
170:13 177:17,18
186:10 190:14
198:7

longer
58:21 186:3,10

longstanding
160:8,12

looked
17:24 21:14 30:5
31:23 34:18 36:1
61:6 63:7 89:5,7
91:24 93:1,9
98:11,23 100:23,
24 104:11 107:23
108:20 119:12
128:1 161:22
169:14 174:2

loose
30:18 93:21

loosen
42:25

Lord
5:13 20:20 167:3
172:5

lost
21:18 27:13
185:16

lot
29:4,23 32:9 36:8
49:17,21 53:11
137:4 140:8 141:7,
15 146:12,14,15,
21 148:19,22,24
149:2 150:4,11
171:10 190:21
191:6 197:2

loud
108:8,10

low
167:9,10,12,25
170:9

low-impact
168:21

lower
39:1 107:3

lowering
39:3

loyalty
17:25 18:6

lunch
29:21,22 57:22
132:12

luncheon
132:9

lying
164:20 173:19
177:19

Lynwood
9:1,8 17:23 116:12
141:22 142:10,15
147:1,22 148:1,6,9
149:12

Lynwood's
142:19

M

machine
170:7 187:13,16
189:2,11,21

machines
146:23 167:14,24
168:1 169:3,11
171:11 188:5,9

made
21:21 27:17 30:5
31:15 103:23
108:11 113:24
115:17 118:5
142:2 146:14
155:4 164:13
177:14 183:10

maiden
4:16

mail
128:21

maintained
54:10

maintenance
7:4

major
102:15 148:2

make
11:25 21:20 30:11,
14,17 31:7 35:1,
17,21 44:3 54:4
63:9 82:25 90:18
91:5 96:17 97:4
108:7 127:17
134:17 144:7
145:21 164:5
173:8 174:16
179:6

makes
188:20

making
4:20 144:21
185:17

male
77:14

man
14:5

manager
116:8,11

manner
133:16 137:5,6

manpower
147:7 149:16

March
27:23 29:12 48:21
53:20 54:10 55:24
58:19 59:13,19
63:23 64:16 65:7
69:13 70:1,18
72:5,11,17 75:17
76:7 78:14 80:19
83:3 89:25 106:18
133:4 158:5
180:13 182:5,13
184:5,9

mark
19:17

marked
73:11,15 76:19,22
79:11,15 87:5
95:20 110:11
118:23 119:2
123:10,13 125:20
132:18,20 153:18,
20,23 157:19,23
159:19,23 161:7,
11 178:13,17
182:9

married
4:19,21 161:4

mass
61:25

master
18:15

materials
86:15

Matthew
110:23 111:12

Mccarthy
72:25 116:21
117:4,7 123:15
128:3 152:11
154:2 155:25
159:25 160:11,19
163:6 168:15
184:13 191:25
192:4

Meadow
25:11

meaning
198:17

means
77:25

meant
36:4 138:21 139:8

mechanic
18:15

mechanical
7:9,14,18 22:3
144:24 146:15

mechanism
41:12 50:9 93:22

med
80:24

medical
15:22 17:5 22:14
25:16 26:23 27:12
58:1,6 69:24 71:17
72:16 73:11 76:19
79:11 109:4,10
118:23 123:10
125:20 150:18,24
157:19 159:19
161:1 169:14
175:24 176:6
179:17 182:9
184:11 185:7
192:11,17

medication
46:19 72:5 156:21
174:6

medications
82:2 118:18 128:9
156:13 182:18

medicine
81:8

medium
183:4,7

meds
80:23

meet
32:13

member
9:5 166:22 167:2
171:13

memory
88:16

men
33:7

mend
21:8

mention
125:17 180:12

mentioned
124:23 164:9

Mesa
5:20

messed
46:4 50:9

met
3:9

met all
13:12

methods
149:22,25

Michael
3:1,7

middle
43:10,11,12,17
59:20,22 60:2
75:21 78:16 88:7
106:16 154:9

midnight
85:24

Mike
111:4

miles
169:18

military
6:17

mill
194:25

mind
63:9 64:12 68:20

mine
10:16 74:11

minute
3:9 72:6 95:25

minutes
170:16

missed
23:12 24:19 27:9,
10 118:13 184:18

missing
35:19

misunderstand
95:1

moment
106:11 152:16

money

183:17

month
70:17,19,24
171:12 174:18,23
175:2 177:1

months
13:11 14:13 15:7,
17,22 19:7 56:5
59:6 84:6,7 113:13

morning
3:9 85:20 90:4
106:20 110:16
133:6

mother
5:10 9:13,18

motion
67:11 68:8 188:20

motions
68:7

motor
26:18,23 178:8
193:4

mouth
46:8

move
7:8 16:22 41:16
84:18 122:3

moved
11:10 12:22,24
13:17

moves
39:4,5

moving
42:17,20 122:12

mower
191:8,9,10,12

Murphy
110:23 111:12

N

named
130:14

nature
154:10 155:10

neck
27:22 30:24 58:8
59:10 63:17 69:11
74:5,19 75:11 76:8
78:16 79:24 80:3,
5,7,9,13,19 81:10
82:7 120:15 121:3,
8 122:16,20 158:6
163:15 164:9
165:4,5 180:2

needed
17:12 19:10
101:22 109:3
146:8 148:23
156:15

night
85:19 89:4 90:3
97:19 98:3,24
100:9,15 101:16,
23 105:17 109:9
110:1 113:1,5,20
114:11 117:24
118:7 129:10

nip
66:6

noise
108:7

Norfolk
3:10 32:14 54:22
57:1 64:14 65:5,9
83:7,9,10 94:16
101:15 118:11
129:14,25 132:13
133:4,13,19
137:11 138:9,10
139:12,25 140:6
141:10 146:3
148:12 195:11
198:1

normal
49:7 126:24
134:20 135:8,12
136:17 142:21
143:15 181:16,23

North
139:12

note
41:17 54:4

notes
53:12 64:6

notice
50:13 86:13,14,19,
21 87:1

noticed
127:4

November
60:15,16 62:6,20
73:20 77:19 78:3

November-december
60:13

NS
195:11

number
10:20 17:11 33:17
34:21 48:13 92:15,
19,23 93:5 96:18
97:24 98:2,7 99:18
101:2 119:8
131:20 145:9
147:7,8 163:17
176:24 177:6
188:13

numbers
34:1 96:8,13 98:1,
12,13 131:6
189:19

numerous
144:12 164:15
177:15

O

oath
62:19 162:4

object
42:7 49:12 62:9
63:2 64:18 67:25
89:2 138:25
151:24 152:8
162:18 194:12

objecting
64:24

objection
42:13 62:12,16
64:19 68:1 162:24

observed
100:24

occur
29:1 85:20

occurred
28:5,21 29:25
48:20 56:7 72:4
87:15 88:17 90:4
151:10

October
154:8,9

off-the-record
72:8 187:8

offer
182:22

office
44:22 92:10,16,17
114:19 128:23
130:13

older
123:9

one's
154:7

ongoing
122:7

onsite
28:17

open
30:8,17,20 32:2
35:15,20 36:16
39:4,14,17,19 40:8
41:13 43:1 44:3
49:5,7 50:11 52:7,
9 56:21 64:1 68:17
79:21 83:15 92:6,
13,25 93:8,19 94:4
95:1,5,8,16 96:21
97:18 98:3,25
99:6,10,20,24
100:2,4,19 102:22
103:25 104:4,6,7,
10,14,17,18
106:12 107:15
108:11,20,23
118:14 126:25
129:10 131:17
132:5,6 135:4,9
136:8,10,13,15,18,
21 158:5,15,23
195:2,3 197:4

opened
93:4 95:14 104:20
109:19 130:25
166:25

opening
69:6 127:3 129:23
193:21 194:1,10,
17

opens
37:21

operate
12:1 64:17 94:6
134:18

operated
66:17 67:8 134:20
135:12

operating
65:7,18 106:19
129:2

operation
10:25,16:24 22:2

operational
49:19

opposite
39:10

option
121:19

optional
49:19

options
182:22

order
36:1 48:8,9 56:9,
13 86:21 90:13
134:21 179:7
196:5 198:17

ordered
56:12,16 90:13
196:2

ordinary
54:3

original
164:10

Orthocarolina
59:2 125:24

Orthopedic
159:24

osteoarthritis
179:20

ourself
148:20 149:3

out-of-pocket
184:19,22 185:13

outbound
90:5,6,17 91:4,5

outset
8:12

overhead
164:16 165:19
166:6 168:9,10,12
171:2

overtime
175:14,17

overturned
11:8

overuse
139:24

overweight
81:11,18

Oxycodone
71:23 156:14,16

P

P-a-r-i-k-h
163:12

p.m.
29:17 57:23 85:3

pace
188:17,24

pad
89:16 90:22 91:11
108:4

pads
90:23

paid
19:21 23:19 26:6,7
185:10

pain
22:17 30:24 43:3, 8,13,16,22 44:2 58:7 59:9,17 60:9, 10,18,22 63:16 69:10 74:5,19 75:11,16 76:7 77:16 78:9,14 79:24 80:3,9 81:10,11 82:7,15 83:1 106:18,22 110:7 120:14 121:3,8 122:16 123:18 124:3,4,8, 12,18 125:6,9,12, 14 156:16,19 160:8,9,12,18 170:18 172:10,12 180:19 184:17

pain's
124:15

painful
173:9,24

painting
164:18 172:4 177:17

Panthers
16:23

paperwork
51:9,16 52:22 53:2,6,17;23 54:8 92:11

paragraph
120:11 121:12 134:16 137:22 138:6 139:20 154:10

paraphrasing
135:14

parentheses
154:18

Parikh
163:11

part
21:19 31:15 41:24 43:7 59:21,24 60:1 66:21 67:15,22 76:8 97:15 115:22 145:11 155:17,19 163:21 170:2,21, 23 171:5,19 173:1 174:13,14 181:9 187:3

Partial
138:5

participate
196:11,14

parties
86:15

parts
184:17

pass
9:14

passed
9:13,15

Pat
16:22

path
170:19

patient
77:1,15,18 119:20 123:17,20 124:2 125:8,10,12 126:24 154:15 159:3 160:7 182:5, 15

pay
13:16 17:14 18:1, 21 19:17 175:15 184:25

Pennsaid
72:1,2 128:17,23

people
9:2 53:14 145:15 148:22,23 185:24

percent
13:10 196:21

perform
149:21 177:11

performing
133:23

period
14:1 47:6 59:6 119:8,24 139:11 144:23 145:10 155:15

periods
164:19 177:18

permanent
163:22 164:8

permanently
153:9,10 164:7

person
18:5 54:15 72:15

personal
87:10 112:23 114:9 118:9

personally
53:23

pertinent
60:8

pharmacy
128:9,14,17

phone
21:10,14 102:16 103:13,17,21,24

photo
96:19

photograph
96:14 97:14,25 98:11,20

photographs
95:20,24 96:7

physical
70:4,5,14 71:3 157:3,8,11,13,25 158:22 159:12 160:22 182:17 183:4,8

physicals
192:14,18

physician
16:23 72:13 82:22 119:7 153:17,19, 25 192:13

physicians
128:5

pick
90:8 91:9 153:15

picked
31:21 34:21 90:10

picking
150:5

pickup
196:7

picture
98:20

pictures
96:13 142:18

piece
134:9

pinpoint
64:4,8

pit
141:22

pits
140:9

place
62:2 65:10 69:1 136:8 140:23 194:23,25

places
12:20,23 13:18 140:10

Plaintiff
86:16 138:10 139:11,14,20,22 164:6

Plaintiff's
164:13 177:14

plan
159:3,7,8 182:15 185:5 186:4,6

planned
192:17

plants
5:23

plateau
159:4

playing
164:20 177:19

PM
199:11

point
14:19 20:18 50:13 54:9 124:4 125:13 127:18 143:6 154:25 157:1 172:19 183:23 191:22 197:19

pop
66:6

position
7:17,21,24 8:9 13:19 45:23 68:1 84:16 85:12,14 116:5,9 137:7 140:16,20 141:14 142:5 143:2 176:5

positions
8:2 16:5 143:2

positive
68:16 69:8,9

positively
9:8,9 49:2 163:13

possession
101:9

possibility
41:22 62:22

potential
61:23

pound
165:21

pounds
164:16,17 165:2, 17,19 166:1,2,6,11 170:23 171:1,4 190:2,13

Powell
10:14

power
5:23

practice
146:17 158:21

practices
139:24 140:5 144:10 146:11 148:12

preceding
72:17 77:19

premises
65:24

prepare
51:9,15

prepared
54:9

prerogative
75:23

prescribe
71:20

prescribed
71:22,23

prescription
71:20,22 128:8

prescriptions
128:10,15

present
28:20 74:2,15 77:13 115:24 126:16

presents
77:15 160:7

press
168:10,21

presses
168:9,13 172:16, 21 189:4,24 190:6

pressure
42:4,22 81:3,8,10 82:2 156:20

pretty
11:2 45:19 117:21 153:23 170:17 171:21 175:13,19 178:4 194:6

prevent
152:21 164:14 177:15

prevents
180:17

previously
60:11 95:14

primarily
43:20

primary
72:15

prior
16:8,11 27:13
31:21 80:19 86:9
113:4 177:10

problem
17:22 40:3 51:10
52:5 63:8 102:7
122:8 190:12,16
197:5,6 198:22

problems
11:19 63:1,5 69:20
71:2 78:2 81:10,15
122:15,20 141:7
151:10,15 194:15

procedure
48:2 65:10

proceed
30:20 39:10

proceeded
197:16

proceeds
35:16 39:7

process
32:1 39:16 69:5
113:21 114:24
197:3 199:1

processed
185:10

produced
86:4,15,21

prognosis
154:15

programmer
5:22

programs
5:22

progress
159:4 188:6

prohibit
103:8

prohibited
103:19,20

promoted
116:8

proper
105:19 133:23
134:21

properly
12:1

property
23:22 26:8

provided
86:16 146:10
161:23,24 162:3
197:25

provider
185:8

providers
161:1 184:12

providing
161:17

pry
174:8

pull
30:22 37:7,16,19
38:8 40:14 41:10,
15,21 42:2,4,22
66:6 86:25 93:16
104:14 105:1
108:22 136:13
140:23,25 146:23
157:24 194:8

pulled
42:14 44:2 46:5,10
50:7 56:21 87:3
93:18 94:2 104:6,
18 106:2,12 108:2,
23 115:9 117:24
127:7,11 132:5
135:5 136:14

pulling
16:25 37:21 42:6,
14,20 104:21
114:25 136:11

pulls
37:21 39:11 41:15

pump
89:7,9 91:21

punch
92:9,12,13 130:6,
18 131:6

punched
104:8 130:24

punishable
179:10

purpose
105:21

pursue
68:11

push
189:5,11 191:8,20

pushing
174:16

put
12:20 13:15 21:14
26:11 41:2,25
42:22 48:12,14
89:17 91:14 92:23,
25 108:19 118:17
131:14 137:6,7
140:18 141:1,6
165:14 167:16
195:24

putting
48:11 148:4

Q

question
3:18 8:13,15 33:10
42:13 44:1 64:25
65:4 74:25 75:3
76:6 87:23 97:3
103:7 132:13,
154:6 158:10
163:5,6,17,18
177:8 180:22
181:5,14,19

questioning
86:17

questions
3:12 67:16,19
74:24 86:6 96:4
112:15 162:9
187:10 193:1
198:13

quick
173:8 186:7,25

quickest
62:2

quit
169:12,21,22

R

radiculopathy
120:15

radio
91:17 100:3 101:8,
12 103:8,10,24

rail
35:13 39:6

railcars
144:6

railroad
6:16,20,22 12:10
16:6 17:25 18:6
20:11 47:14 53:11
55:13 66:7 74:3
84:19 119:10
121:14 123:21,22
124:9 125:10,11
126:25 137:2
143:21 144:8
151:5,19,21 152:5,
19 155:20 157:2
175:8 176:9,16
178:3 180:5
183:12,25 184:13,
21 185:2,10
186:24 187:5

railroad's
7:25 103:17 150:7
185:5

Railway
7:1 9:6

raised
9:11 38:23

range
22:11 144:25
150:2 167:1

reach
37:9 38:14 153:14
194:3

reached
30:21 41:25
159:15

reaching
36:23 37:11 40:17

read
74:7,17,25 75:2
77:20 99:14
113:24 132:23
134:22 137:15,17
138:2,4 154:1
158:7,10,12 160:9
164:4,5,22 165:13
177:13 199:8

reading
99:17 119:17
133:1 137:14
138:6 164:6

reads
78:20 88:24

ready
132:23

real
30:24 168:2,22
169:23

realize
42:5 65:1 106:11

realized
40:11 151:17

rear-ended
23:22 25:6

reason
32:21 36:6 47:18
61:9 62:3,7 80:2
82:24 87:21 98:17
105:17 111:16
143:3 150:21
157:8 159:14
162:2

recall
17:6 24:22 26:11,
13 27:13 29:2,20
33:18 34:7,9 52:2
53:5,9 55:16
58:18,22 69:17
70:19 72:24 74:23
75:5,7,9,25 76:5,
15 78:22 85:23,25
88:20 98:1,4 99:1
111:3 112:13,17,
20 116:2,3,17
118:22 119:23
122:1 125:15
156:12 157:9,13
160:15 161:16
182:6,8,24 193:12,
13,14

receive
179:7

received
72:20

receiving
91:2,3

recently
121:13

recess
132:9

reckon
127:16

record
3:5 42:13 47:5,18
52:18 57:12,13
62:16 68:2,6 72:10
73:11,15 75:1,10,
13,14 76:19 77:10
79:11,15 80:8
82:11,13 113:12
117:1 118:23
119:2,12,17
122:16 123:10
124:15,21 125:20,
24 128:1 132:11
157:19,23 158:14
159:19,24 182:9,
13 184:5 188:6

records
17:5 22:20 26:23
29:3 59:1 72:19
82:9 150:21 151:4
157:11,24 169:14
174:3 182:4

reestablished
119:15,21,22

refer
96:13

reference
126:4
references
123:16
referred
72:20 76:17,24
90:23
refers
126:16
reflected
51:10
reflecting
53:7
reflects
122:17
regard
56:15
regular
72:12 128:9
171:22 177:15
192:13
regularly
118:10
regulations
141:4
rehab
70:2
reiterate
66:2
reiterated
191:23
reject
31:16 32:3 33:25
90:1 195:4
rejected
31:17 32:4,6,21,24
36:5,6,13 90:14
195:5,22 198:20
rejects
195:7
relate
69:25 184:12
related
3:14 27:11 58:8
193:20
relating
83:3
relation
37:4
relations
174:10
relationship
10:15
relationships
4:25
relative's
130:2
relatives
10:9
released
184:2
remains
154:16
remarried
5:16
remember
16:15 18:15 22:8
24:19 26:10 28:15
34:10 55:18 70:10
74:22 75:18,19
83:19 85:22 88:12,
15 89:1,3,10 91:19
98:13,14 99:2,4
116:17 118:21
119:15 123:23
131:12 151:3,7
158:13 187:14
193:3,22
remembered
64:11
repair
28:6,20 29:23 31:8
32:5,17 33:2
34:14,16 44:9
51:13,25 52:23
113:23 134:8
144:3 198:22
repaired
11:17 31:17 51:8
134:2
repairing
10:23 11:3 52:20
repairs
48:16 52:14 53:7
147:21
repeat
129:8 137:1
repeated
134:17,22 135:17
136:23
repetitive
139:23
replaced
134:2 148:7
replacing
142:22
report
21:11,17 23:25
47:24 50:16,17
51:16 52:15 57:2,
9,16 64:6,14 65:5,
19,23 66:6,9 80:8
86:24 87:1,5,10
88:1,4,14 109:6,
12,21 112:7,24
113:10 114:9,11,
12,14 115:13,18
179:9 196:17
reported
21:2 47:14 66:3
75:11 76:12
109:15 115:20
198:18
reporting
53:2 66:10
reports
78:9
represent
87:9
representative
8:4,6 9:3,4
represented
26:19
representing
3:10
request
58:1 145:21 146:4
require
57:2 168:19
required
95:16 142:23
149:21,25
requirement
134:3
requirements
13:12
requires
67:12,15
reset
113:20
resistance
187:17,23
resolve
70:25
response
163:5
responsibility
11:22
responsible
102:1
rest
93:6 94:1 101:1
113:8
restrictions
165:12,13 170:20
180:23 181:5
result
27:22 118:14
163:22 176:12
resulted
27:13
retire
121:19 186:13
retired
54:25 55:4,16,18,
25 56:4 60:21,22
retirement
176:17 183:19
185:20 186:17
review
86:2
RFA
11:14
riding
143:5 191:8,10,12
right-hand
96:7
road
3:25 4:3,12 25:12
149:1 171:15
Robin
4:15,18,22 5:17
Robin's
4:16
Rock
3:25 4:8,9 5:24 6:4
7:10 8:4,8 9:11,19
11:2 12:7,9 13:22
14:1,17 15:1,9,20
20:9 25:13 26:15
28:2,6,21 29:11
31:10 32:4,16 47:8
48:18,19 70:8
73:16 83:25 84:16
121:14,17 122:2
128:13 137:11
138:11 139:14
142:1 143:24
144:24 145:10
146:13 147:3,9,15,
23 149:13,17
175:20 194:21
195:5,9 196:10
Rodney
110:22 111:8
role
11:4
roll
13:1 35:15 39:8,10
172:12
rolled
147:18
rollers
30:7,16 35:15,18
Ron
3:8
Ronnie
20:23
room
83:16 91:22 92:13,
16,17,18 94:5,25
96:20 97:6 98:22,
24 99:3 101:2
105:12 109:14
118:15,19 129:6
135:4,23,25
rooms
97:1 130:9
rough
66:4
round
37:25
routine
170:24 171:20
RRB
176:22 178:18
179:8,10,14
183:20
rub
72:2
rubbed
72:2
rule
67:12,14 132:17,
21 133:7,9,12,15
134:25 135:15,22
136:3,23
rules
57:1,5 65:18,22
115:19 132:15
148:23
run
23:1 35:13 169:17
173:7
runner
169:15
running
92:2 164:18
169:22 172:6
177:17 180:24
181:6,13 188:25

S

S-t-r-e-s-s-o-r-s
138:15
safe
12:1 30:12 90:19
safely
132:22
safety
30:6 35:11,12,22 47:4,18 57:12,13, 18 66:8 113:12 132:14,17,21 133:17
Sarah
3:18 97:5
sat
31:1,4 44:5
Saturday
149:4
Savisky
158:21
scan
188:2
scared
60:25 61:10
scheduled
19:15 192:2
school
6:1,3,9,20 10:8
seal
49:24
sealed
49:23
section
74:14 80:23 119:18 158:3 163:24 179:16 180:7,16 182:14 184:2
seek
25:16 58:6
seldom
169:5,7 172:3
Select
157:11,18,24 159:11
send
32:13 111:7,21,22, 24 128:23 148:6,8
sending
146:7
seniority
7:12 13:22,24 15:10
sense
188:20
sentence
133:15,21 134:1 184:1
separate
31:13 91:20 158:20,21
September
125:25 139:22 157:2 175:4 180:9
sequence
131:9
series
96:8
serve
6:17
service
17:14 18:2,20 19:19,22 73:19 160:5 198:8
set
13:13 27:19 31:13 98:2 140:14 178:22 187:17 194:20
setting
187:16,21
settings
189:12,20 190:1
settled
23:17 26:8
sexual
164:21 173:9,22, 24 174:10 177:20
shaking
58:11
shape
35:9
shared
45:23
she'd
186:17
shed
113:21,23
shift
29:5,8,12,14,15 57:22,24 84:23,25 109:17 121:20 142:22 145:15,19 195:16,17
shoe
140:18 141:1,6
shoes
140:12 141:25 142:3,23
shoot
30:24
shop
6:14 8:9 9:2 32:4 48:15,16,17,18 143:24 144:24 145:1,3 147:4 149:11 195:6 198:17
shops
140:8,9 146:16,21, 25 147:3,7,15
short
12:14 172:18
short-term
14:14 15:5,12
shot
152:14 156:2
shots
156:2
shoulder
27:22 30:25 43:9, 13 76:9 78:10 80:4,13 107:9,10 164:9,17 165:22 166:12
shoulders
43:4 74:6,21 75:12 79:25 80:10,11 171:5
show
52:22 53:17 68:3 123:12 132:20 188:2
showed
157:22 158:13
showing
52:19 151:3
shows
73:19
shrubs
191:16
shut
40:6 121:14
side
36:21 39:8 43:19 48:14 107:2,6 108:6 164:21 173:4,20 177:20 193:21
sideways
173:5
sign
48:12 199:8
signature
87:23 154:1 159:6 178:24
signed
154:1
significant
121:25
similar
146:18 153:24 177:13
Simpson
110:22 111:13
single
89:18
sir
3:15 4:10,23 5:18, 25 6:2,6,11,18 7:13,16,22 8:1,5, 10,18 9:20 10:12 11:11,21 12:3,11, 17 14:3,15,18 15:6,8,11,19,23 16:3,7,13 17:21 18:9 20:12,14,16 22:19,23 23:18 24:3,21 25:9,13,15 26:4,10,17,21,25 27:4,8,15,25 28:3, 9,13,18,22 29:10, 18 31:11,18,24 32:8,15,18,22 33:1,8,14,16 34:20,23 35:3 36:3,14,18,24 37:12 38:5,10,12, 16,24 40:2,5,22 41:3,8 42:2,16 43:6,21,24 44:4, 15,19,25 45:4,7,15 46:24 47:2,21 48:19,23 49:6 50:15,25 51:2,12, 21,24 52:10 53:15, 19,25 54:7,12,14, 23 57:4,8,25 58:3, 16 59:14,23 62:24 63:21 64:3,13 65:8,13,20 66:9,25 69:7,14,19,23 70:5,6 71:10,14,16 72:6,18 73:1,7,10, 18,21 74:8,13,16 75:2,6,9 76:10,16 77:6,12,17,21 78:4,7,12,21,25 80:1,7,16,24 81:3, 6,13,17,22,25 82:5,8,20,23 83:2, 6,20 84:2,14,17,20 85:14,18 87:24 88:2,10 90:2,20 91:8,12 94:14,17, 20,21,23 95:3,6,9, 12,15,19 96:5,11, 16,25 97:2,8,16,23 98:9,18 99:8,16, 21,25 100:6,11,16, 21 101:24 102:12, 14,17,19,24 103:12,16,22 104:19 105:2,6,10, 13,20 106:1,4,10, 14 107:14,20 108:5,17 109:2,5, 8,11 110:4,19 111:6,23 112:1,4, 13,20 113:2,6,25 114:4,6 116:12 117:2 118:12,16 119:5,11 120:2,17, 24 121:4,6,18 122:9,14,18,25 123:7,24 124:1,6 125:1,7,16,19 126:2,14,20,23 127:21 128:7,11, 16,24 129:4,11,13 130:4,16,19,22 131:4,20 132:3,7, 16 133:2,8,10,14, 20,25 134:4,10,24 135:1,6,10,16,24 136:1,19 137:1 138:1,17,19 139:19 140:4 141:18,21 142:13 143:18,22 144:4 145:11,17,23 147:5,13,17,20,24 148:18 149:15,19 150:19 151:2,8,20 152:3,9,13,20 154:5,13 155:7,24 156:7,12,17,19,22, 25 157:5,18 158:2, 12,19 159:1,8,13, 18 160:2,6,14,21, 24 161:2,6,15 162:1,5,10,14,21, 25 163:9,19 164:3, 11,23,25 165:11, 15,18 166:3,15 168:17 169:16,19, 21 170:5 171:3,6, 18,24 172:17 173:15,21 175:6, 16 176:1,7,10,13, 15,18,21 177:2,7, 22,24 178:7,12,20,

25 179:5,12,15,19, 22,25 180:3,6,11, 15,21 181:2,7,10, 12,20,24 182:2,20, 23 183:1,6,9,24 184:7,10,14 185:3, 6,9,12,15,19,22 187:6,15,19 188:4, 10,19 189:22 190:5 191:10 192:3,7,10,15,18, 19 193:6,9,19,23 194:18 196:13 197:8,14,18,23 198:5,9,12,20,24 199:4

sister
9:25

sisters
9:23

sit
45:5 88:19 141:12 142:4 192:1,16 193:12

sits
39:11,12

sitting
23:2 124:5 125:14 164:18 173:4 177:17 189:10 190:25

situated
195:25

situation
148:24

size
191:6

sleeping
121:10 164:21 173:20 177:20

slide
35:16 37:14

sliding
33:23 35:17

Slight
124:18

slip
27:2

slow
188:19,20

slowing
144:18

slowly
188:18

Smalls
85:7,9,10 91:7,16 92:5 94:25 95:10 100:3 101:12 102:7 107:21 108:12,25 131:13

Smalls'
94:12

smashed
66:12

smoker
122:24

Smooth
188:22

snippet
16:25

something's
31:18 39:23 41:17

sore-type
78:9

sort
143:8 154:23 196:17

sound
108:8,10 127:17 139:24 144:9 146:11 148:11

source
176:12

South
4:1

Southern
3:10 7:1 32:14 54:22 57:1 64:14 65:5,9 83:7,9,10 94:16 101:15 118:11 129:14,25 132:14 133:4,13, 19 138:9 139:12, 25 140:6 141:10 146:3 148:12 198:1

Southern's
137:11 138:10

Spartanburg
20:8

spell
10:5

spend
52:16 142:21

spent
15:21 52:19 142:22 143:5,19

spinal
107:11

spine
59:20 72:3 75:20 76:2

spond
79:2

spondylosis
78:20 79:4 81:11 82:10

spotted
30:4 31:8

spread
195:22

squat
172:7,9,11 173:3 180:18

squatting
164:18 172:9 177:17 180:24 181:5,8,12 191:19

standard
48:11

standards
32:13 49:17,18

standing
20:5 36:22 105:5 193:25

start
3:22 6:21 7:2 12:18,25 13:6 30:12 35:22 96:18 155:3 186:17 187:22

started
6:16 7:14 61:9,11 70:19 74:5,19 77:19 78:2 115:17 151:14 152:2 169:23 170:19 185:24 186:16 196:23

starting
40:7

starts
96:9

State
3:5

stated
42:12

statement
99:13,17 153:17, 19,25 179:7

states
77:18 123:17,20 124:2 125:8,10,12

stating
62:16

stay
7:5 57:24 103:9 172:20

stayed
47:9 183:25

staying
186:2

steady
42:3

step
116:19

steroid
71:13

stick
12:5 155:4

sticks
64:12

stood
141:20

stoop
142:24

stop
25:4 132:8

stoplight
23:2

stopped
25:5 30:25

stopping
25:6

story
91:10

straight
13:15 37:17 117:3 173:18 175:19

straighten
146:20

straighteners
146:22

straightening
146:18

stress
122:1,11 139:23 140:22

stressed
122:1,5

stressors
137:13 138:13,14, 17,24 139:3,5,9, 11,16

stretch
74:10

stride
170:10

strike
152:4

struck
27:6

stuck
17:2 30:23 41:12 93:9,11 104:12,13

student
12:22 13:7,14

stuff
5:23 19:20 23:20 26:7,11 41:19 49:16 50:2 54:19 61:8 92:11 114:16 137:1 140:12,14 141:24 144:16,21 146:13,15 148:21, 24 149:2 150:3,5 175:18 186:8

subject
164:14 177:14

substantial
137:13 138:12,24 139:25 148:15

sudden
114:13

suffer
23:4

suffered
27:3,21 118:14 178:3 184:20 185:2

sufficient
86:21

suit
164:14 177:14

supervision
57:10 100:18 112:25 113:4

supervisor
7:23 17:23 19:14 20:2,5 22:15 28:14 100:10,14 102:10 111:25 115:7 116:15 145:8,22 146:6

supervisors
109:7,12

supervisory
7:20

supplies
133:22

supposed
11:25 34:2 38:18 48:7 49:20 51:19 52:15 65:14

102:13,16 133:12 134:8 135:13 162:3

supposedly 56:7 64:15,22

surface 193:25 194:2

surfaces 180:19

surgeries 16:11,14

surgery 16:16 18:19 19:1, 3,15,16,25 20:1, 10,19 22:18 27:10 73:5 156:6 163:12 191:22 192:2

sustained 137:12 138:12,23 139:11,21 163:21

sworn 3:2

swung 94:3 105:2,4

symptoms 77:19

system 98:7

systems 148:3

T

takes 191:2

taking 21:13 75:23 81:2 82:1 118:20 144:18 174:6

talk 13:25 15:3 27:16 68:9 83:12,21 137:9

talked 55:3,5 89:24 119:9 127:23 133:5 163:7 184:15 186:14 192:9

talking 8:19 13:5 18:13 21:10,23 22:15 27:24 37:24 45:11 47:7 70:3 78:22 90:22 96:12 97:15 115:6,25 117:19 139:17,19 153:6 157:6,16 165:5 166:19 167:20 172:6 174:3 186:16,17 189:5

talks 173:22

tall 37:1

target 186:13

task 33:7 144:7 147:16

tasks 142:23 143:10

Taylor 21:10

telling 15:14 21:22 23:21 29:19 41:5 47:22 53:1 56:15 62:5 74:22 75:5,19 76:1,5,15 80:13 92:1 98:10 104:15 109:18 114:22 121:1 123:13 141:9 160:15 161:4 182:24 187:11,14

tells 35:8

ten 34:5

ten-pound 146:19

term 65:2 127:12 138:16

terminology 13:3 16:20

terms 37:1 45:16 60:9 124:16 128:8 131:16 144:25 147:14 149:11 160:25

test 89:18,20,21

testified 3:2 197:13

testify 98:15

testifying 62:19

testimony 19:13 62:8 66:22 67:16 68:4 198:25

Thanksgiving 61:1,19 73:23

that'd 194:2 195:18 196:10

that'll 8:18 188:2

them's 141:13

therapist 158:22 160:23

therapy 70:4,5,14 71:3 157:4,8,12,14,25 159:12 182:17

THICKENS 42:7,10 49:12,15 62:9,12 63:2 64:18,21,24 66:18, 21 67:10,18 68:5, 12 86:1,8,18 87:3 89:2 138:25 151:24 152:8 162:18,24 192:22, 25 194:14 198:13 199:6

thing 8:11 25:23 35:10 36:4 41:17 57:18 93:18,21 114:25 131:14 136:9 142:8 143:9 144:14,20 155:10

things 16:25 146:10,12 148:3,7,16 163:2 184:16 185:22

thinking 9:8 14:25 20:6 38:7 63:8 70:22 75:23 92:20 93:12, 25 175:13 194:6

thinks 123:21 125:11

thought 20:17 35:4 43:23 46:1 60:12 92:14 100:24 105:7 123:14 153:5,6

thousand 66:2

three's 189:17

threw 127:15

tightness 79:24 80:9,11

time 5:13 8:20 12:14, 15,19,21,23,25 13:5,15,25 15:3, 14,17 17:11 18:15 19:4 20:6,9,11 21:18 22:2,16 23:7,12 24:20 25:25 27:9,11,14 28:8,23,25 29:8,20 30:9 40:14,15 43:2 47:14,15,22,23 50:2,13 51:6 52:15,19 53:21 55:3 58:7 60:6 63:20,21 69:18 71:22,24 72:4,11 73:24 78:5 79:23 80:12 81:24 83:24 84:22 85:19,23 86:5 87:20 88:8,12 93:12,19 99:10,22 104:4,5,9,17 106:12 109:9,20 110:16,21 112:21 116:6 118:6,13 119:8,24 121:16, 23 127:3,18 128:6 131:13 136:25 139:10 143:7 144:17,21,23 145:4,5,7,10 149:13,17 155:1, 13,15 157:17 159:11 164:19,20 166:3,23 171:23 173:6 174:4 175:9, 16,19,24 177:18, 19 184:18 185:16 186:15,16 190:13, 14 193:25

timeframe 157:16

times 36:9 47:10 49:21 57:15 66:2 69:15 75:7 102:2 130:23 131:18 132:1 135:8 136:16 137:4 142:9 144:12 148:19,24 149:2,4 150:4,11 156:8 169:18 171:10,11 174:25 196:24 197:2

timing 186:18

tissue 16:21 17:2

today 3:12,17,19 16:2 62:19 73:9 77:15 85:17 88:19 119:9 135:2 154:21 161:23 163:7 184:3,16 187:4 193:12

told 8:12 9:10 10:19 17:10 18:18 19:4, 6,16,24 22:5 27:9 33:3 34:24 35:4 36:15 40:17 45:8 46:1,2,4,10,13 49:8 50:12 52:7 54:18 56:10,19 57:21 62:6,21 65:15 68:24 73:22 75:4,22 77:4,7,22 78:1,13 79:2,6 80:10 82:1,6,14,25 85:17 91:22 92:20, 21 93:24 99:12 101:8 105:7 106:20 108:19 110:15 111:7 115:13 117:7,10 119:6 120:4 121:9, 13 122:21 126:5 127:1 129:2 130:12 134:5 135:2 136:17 144:5,15 145:13 148:17 149:23 151:5 153:1,5,8 160:17 161:3 165:16,25 168:3,5, 6 171:20 172:16 173:13 178:19 181:25 184:3,16, 18 185:16 189:3 191:21

toll 123:22 125:12

Tom 100:11,13

tomorrow 144:14

tools 133:22 134:18 147:8 149:22,25

top 30:6,14 35:12,18 39:6 43:9 76:1 77:10 79:16 93:9, 10,11 100:25

101:7 103:3 104:12 108:22 116:3 126:12 127:4 136:8 164:13

topical 72:2 128:23

tops 74:6,20 75:12

torch 146:19

total 143:13 145:7 150:5

totally 97:12 138:3 141:5, 15 148:7 149:6 150:6

touched 122:6

tough 66:4

town 55:10

track 7:3,5 11:10 12:2 20:21 21:23 22:1 28:6,21 29:24 31:8 34:14,17 44:9 91:19 113:12 141:12,14

tracks 11:7,9 89:13,18 90:25 91:1,2,3,20 149:11

train 10:25 31:14,15 48:16 89:19 90:7, 17,19 158:5 194:19 195:14,21, 22,25 196:12,15

trained 41:1 133:9,18,24

trains 149:1

transcript 3:19 199:8

transfer 14:14 15:5,13 84:15

transferred 14:2 83:25 84:9,22 121:17

transferring 139:14

transpired 132:9

trauma 77:20 139:23

traumatic 27:2

treadmill 170:3

treadmills 170:5

treat 61:23

treated 76:4 163:3

treatment 69:24 109:4 120:1 154:10,11 155:10 182:21

trick 157:10 162:16,23

trip 173:6

trouble 100:19 124:4 125:14 190:3

truck 23:2,19 148:5

true 129:5 140:3 147:12 162:12 164:10,24 172:2 173:20 177:23

truthful 179:13

truthfully 88:3

tunnel 72:21 73:2,6

turn 27:18 89:19 99:23 173:5,8

twisted 117:24,25

type 10:24 16:14 17:1,4 19:11 23:4 26:2 27:1,5 38:13 50:2 53:16 59:18 61:25 66:3 69:24 75:22, 25 97:17,22 98:5 129:18,24 130:5 143:2 144:3,14 146:17 147:1 153:13 156:4 168:5,12 170:11

types 147:21

typical 143:23

typically 56:11 187:20 189:23 190:10

typo 126:19

U

Uh-huh 15:19 40:20 56:6 82:3 126:8 165:9 174:5 179:2

uh-oh 107:18,24 108:13, 15

ultimately 73:5

unable 154:16,17 177:11

unbearable 124:13

understand 13:2 31:7,19,20 32:10,19 41:4,24 42:21 49:4 52:25 67:6 90:22 94:24 98:6 104:3,15 105:16 131:16 141:8,19 143:4 176:16

understanding 83:24 87:9 97:9 150:20 168:14 185:4

understood 65:21 133:11 135:15

unearthly 139:18

uneven 180:18

union 8:3 9:5 146:2,7

unit 194:24

units 89:15

unload 39:6

unlock 130:2 131:21

unsafe 137:5,6,7 149:21, 22,23,25 150:6

unsound 144:9

unusual 143:16

unwind 38:16,17 39:7 40:7 41:6

unwinding 38:5

upper 59:21,23 60:1 71:11 74:6,20 75:11,19 76:8 77:16 78:10 81:11 82:14 107:3,4,5,7 120:14 121:3,8

usage 197:25

usual 30:3 57:17 113:17

V

valve 92:5

variety 184:16

vehicle 26:6,7,18,24 178:8 193:5

verbal 3:17 68:4,5 145:24 146:1

verbally 58:12

verified 162:6

Viagra 81:4

view 50:6

violation 65:18

visible 105:14

visit 77:23 154:8

visits 160:20

visual 35:25 67:9 103:1 136:7 197:12

visualized 101:5

visually 35:6,8 41:14 50:7, 10 90:18 136:12, 22 197:15

W

waist 164:17 165:21 166:11 171:4

wait 19:16 196:3

waited 19:25

waives 199:9

walk 140:10 180:18 188:18,23

walked 30:11 31:1 38:20, 22 44:14 68:23 89:19 99:5

walking 89:20,21 154:11, 18,20 155:3 168:1

walks 92:7 141:11

walkway 142:12

wanted 17:18 53:20 62:7, 22 103:21 122:4 154:6 168:4

wash 47:11

water 89:8 91:25 113:14

Wayne 3:7

week 17:14 19:19,23 58:20 61:20 70:16, 21 171:8 175:3

weekends 148:20

weeks 58:20 74:4,18 79:19 120:18,25 124:22

weight 155:11 168:2,22 169:6,8,10 189:23

190:10,18
weights
167:13 169:3
171:10
wheel
37:23,24,25 38:2,3
wheeled
38:13
wheels
148:3,4,5
whisper
115:21
whispered
115:21
wife
4:13 24:10 161:4
172:3 174:11
186:12,21 191:4
wife's
4:14 185:23
Williamson
3:25 4:3,12
wind
38:25
winding
38:3
witnesses
95:7
wood
35:14
word
121:5 122:19
139:9
words
13:13 168:24
172:19,21 195:21
work
5:17,19 8:18 10:25
12:8,12 13:7 17:1,
4,21 18:25 19:4,11
20:11 21:9 23:7
24:20 27:10,11,14
30:1 31:5 47:12
53:10,12,17,21,22
54:21 57:17,20,24
58:4 66:4,13
69:18,21 74:11
75:22,25 83:10
84:8,12 92:24,25
110:1,15,16
113:10,17 114:19,
21 117:8,10
118:13 121:20
123:22 124:8
125:11 126:6
133:16 135:18
136:11 137:4,11
138:10 140:1
141:17,22,25
142:22,24 144:3
146:17 147:10,14,
15 148:15 149:21,
24 150:5 151:1,5,
16 152:22 153:13
154:16 157:2
164:18 167:6,18,
24 170:13 171:16,
22 172:1,2 174:20,
21 175:4 176:8,12
177:16 180:5,9
183:4,8,11,22
184:13,18 185:17,
23 186:5,17 187:4
191:2,11 194:9,16
worked
6:14 12:10,13,14
29:4 32:17 47:19
53:22 67:8 74:2
84:25 85:1,2 94:22
143:25 144:24
145:1,2,10,16
149:13,17 176:9
183:24 190:14
workers
53:11
working
6:16 12:6 17:12
20:3 28:1,7 29:8
30:13 36:1 44:9,17
52:16 56:1 57:20
74:4,18 83:22
84:3,19 85:5 90:13
94:7 95:17 96:20
101:16,23 108:3
109:22 113:19
118:10 122:4
126:24 129:6
132:13,22 133:3
134:21 136:21
143:20 148:19
180:17 186:2,10,
25
workout
168:19 170:3,21,
23 171:5,20 181:9,
17,23 182:1,3
187:12 188:7,18
workouts
170:22
works
5:20 10:8 94:15
123:21 125:10
130:18 190:21
world
49:10
worn
151:5
worried
62:3
worry
88:25
wrap
190:22
Wray
3:4,8 42:8,11 50:3
62:10,14 63:3
64:19,23 65:1,3
66:20,23 67:14,21
68:9,13 72:9 73:13
76:21 79:13 86:4,
13,23 87:7 89:22
95:22 110:13
118:25 125:22
132:8,10,19 139:1
151:25 152:10
153:21 157:21
159:21 161:9
162:19 163:1
178:15 182:11
187:7,9 192:20
194:12 198:15
199:5
wrenches
16:25 74:4,19
wrists
73:4
write
8:21 21:1,4 51:12,
13,16 64:5 115:12
write-up
51:10
writing
145:25 146:3
written
34:25 54:5,8
137:18 150:21,25
152:25 153:4
wrong
16:17 31:18 32:3
34:25 39:23,25
41:17,19,22 50:5,
21 56:17 80:15
83:8,10 86:10
121:5 123:8
129:15 195:3
196:18,22 197:15,
22 198:18
wrote
43:25 76:12,13,14
88:13,25 89:6
111:2 114:19,21,
23 154:16 179:20
180:9 181:16,23

X

x-ray
61:4,25 63:7
x-rays
63:12

Y

y'all
18:22 45:17 47:24
102:7 148:1
yank
42:1
yard
84:10,13 85:21
89:4,11,13 91:3
92:8 95:17 97:7
101:3,22 102:2,21
113:19 116:11
130:13 137:11
138:11 139:12,14
141:2,4 142:7,10
149:10 164:17
172:1 177:16
191:2 194:19
196:4,8,10,16
198:10
yardmaster
101:25
yards
89:15 141:14,17
142:11
year
6:7,15,21 12:10
55:20 73:24
124:11 140:25
141:2,6,7 143:20
151:11 155:17,18,
19,20 160:18
175:10 185:17
years
4:6,21 7:7 10:11,
20 13:7 14:11
17:16 47:5,13,20
53:11 57:13 67:24
72:17 74:2 81:21
113:11 119:8
124:3,7,11,16
125:13 145:11,16
151:7,18,19,20
152:5,6 167:4
yell
8:20
York
9:24 10:10 55:7,8,
9,10
young'uns
173:7

Z

zeros
96:9

Kimble Chiropractic Center
518 North Ave.

Rock Hill, SC 29732
Phone: (803) 327-6155 Fax: (803) 327-5062

INITIAL EVALUATION

PATIENT NAME: Collins, Michael
DATE OF BIRTH: 12/22/1954
DATE OF INJURY: 11/09/2015
DATE OF SERVICE: 11/23/2015

The above-captioned patient was seen today for the purpose of initial consultation, examination and evaluation.

HISTORY OF PRESENT ILLNESS

Mr. Collins has worked 40 years as a carman for the railroad. Approximately 2 weeks ago he was working with heavy wrenches and started having pain at the neck and into the upper back across tops of both shoulders. He does feel that he is improving since 2 weeks ago. The patient reports improvement in his condition so far, but continues to have symptoms. Mr. Collins has been able to work and has not lost any time at work due to his condition. He reports being able to perform physical work activities at this time. The patient is having problems with pulling. The patient can go to sleep without any problem. The patient reports having prior sleep problems. Mr. Collins is a railroad carman.

SYMPTOMS

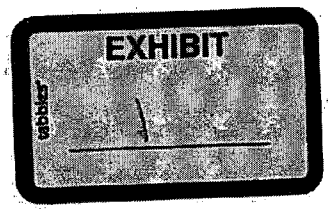
The patient reports the following complaints.

UPPER MIDBACK PAIN
This symptom came on gradually. It is progressively getting better. The intensity of this complaint is mild-moderate. This complaint is frequent, or occurs 50% to 80% of the time. On a scale from 0 to 10, with 10 being the highest possible level of pain, patient graded the pain as 3. Patient describes the feeling associated with this complaint as dull. Located on the right side. Aggravated by bending to the right. Relieved by heat, cold, resting, lying down, and medications. Radiates to neck.

PAST MEDICAL HISTORY

- Hypertension.

ALLERGIES



PATIENT NAME: Collins, Michael
DATE OF BIRTH: 12/22/1954
DATE OF INJURY: 11/09/2015
DATE OF SERVICE: 11/23/2015

• None.

CURRENT MEDICATIONS

• Blood pressure medication.

SOCIAL HISTORY

Mr. Collins is married and has one child. He states that he never smoked.

MUSCULOSKELETAL EXAMINATION

SPINE
There was tenderness to digital palpation and muscle tension on both sides of the spine. Cervical, upper thoracic. Digital palpation for trigger points was positive in the spine. Multiple active trigger points are stimulated with moderate digital pressure to the muscles in the spine area and are associated with consistent referred pain. Trigger points are located on paracervical bilateral, parathoracic bilateral, levator scapulae bilateral, and trapezius bilateral. Subluxations are noted at the following levels: LPD 3/4"; L4-R; L2-R; T12-R; T10-R; T6/4/2-R 1/2"; Left Medial Scapula; C7/5/AX-R 1/2".

RANGE OF MOTION

• **Cervical Spine:** Ranges of motion were reduced in all ranges with pain.
• **Thoracic Spine:** Ranges of motion were mildly reduced with pain.
• **Lumbar Spine:** Ranges of motion were within normal limits without pain.
• **Shoulders:** Ranges of motion were within normal limits without pain for both shoulders.
• **Hips:** Ranges of motion were within normal limits without pain for both hips.

ORTHOPEDIC SIGNS

CERVICAL TESTS

Cervical Compression Test: Vertical Cervical Compression was positive and elicited pain in the cervical spine. Manual downward compression is applied by the examiner to the top of the patient's head. A positive result of spinal pain may suggest ligamentous instability and/or osseous pathology in the spine frequently seen in sprain and strain injuries.
Maximal Cervical Compression Test: Maximum Cervical Rotary Compression with the patient passively rotating, laterally bending and extending the head, while the Doctor waits and watches for the patient's response, was positive on both sides. A positive result of spinal pain or radicular pain on the opposite side of rotation may suggest muscular strain in the cervical spine.

PATIENT NAME: Collins, Michael
DATE OF BIRTH: 12/22/1954
DATE OF INJURY: 11/09/2015
DATE OF SERVICE: 11/23/2015

Foraminal Compression Test: Cervical Foraminal compression test of the cervical spine was positive on both sides. A positive sign of spinal pain as a result of downward compression and applied rotation of the patient's head, may suggest foraminal encroachment.
Shoulder Depression Maneuver: Positive on both sides. Flexion of the head away from affected area while compressing patient's shoulder to point of pain. A positive sign may indicate adhesions of the nerve roots of dural sheath.
Soto Hall Test: The Soto Hall test was negative for pain at the cervico thoracic region level. A positive test of localized non-radiating pain in the cervico dorsal spine during passive flexion may suggest likely ligamentous sprain in the posterior spinal segments or possible vertebral fracture.
LUMBAR TESTS

Bechterew's Sitting Test: Bechterew's Test (seated straight-leg raising) was negative on both sides. A positive sign of low back pain during seated leg extension may suggest lumbosacral injury.
Kemp's Test: Kemp's test was negative on both sides. A positive result of localized non-radiating low back pain as the patient extends and rotates the trunk may suggest vertebral facet or pericapsular inflammation.
Straight Leg Raising Test: Negative on both sides. Positive sign is leg pain when the leg is lifted, possibly indicating sciatic neuralgia. The Doctor lifts the affected leg to the point of pain; patient flexes the head.
Observation: The patient can walk on heels and toes.
Milgram's Test: Negative. The patient should be able to raise the legs 2 or 3 inches above the table for at least 30 seconds without low back pain. If pain is present, suspect a space-occupying lesion inside or out of the spinal canal. Disc protrusion usually produces a positive test.
SHOULDER TESTS

Impingement Sign: Negative on both arms. Positive sign is pain on maximum flexion on the shoulders, possibly indicating supraspinatus or bicipital tendinitis. The Doctor slightly abducts the affected arm and passively flexes the arm maximally.
HAND TESTS

Grip Test: Grip strength measurements are observed and recorded after the patient is instructed and demonstrates ability to perform using a Grip Dynamometer Gauge. Protocols of testing as described in the AMA's "Guides to the Evaluation of Permanent Impairment", 2000, 5th edition, are incorporated in this evaluation. The test is measured in "pounds" of compression force.

Grip strength test results are in acceptable and normal limits as set forth by the American Medical Association's guidelines. The uniformity of the data collected in this test is a valid indication that the patient has put forth "maximum voluntary effort".

NEUROLOGICAL EXAMINATION

normal cranial nerve findings
pH 7.0.
REFLEXES
The deep tendon reflexes were evaluated and graded using the Wexler scale. (0 = absent with reinforcement, 1+ = hypoactive, 2+ = normal, 3+ = hyperactive, 4+ = hyperactive with transient clonus, 5+ = hyperactive with

PATIENT NAME: Collins, Michael
DATE OF BIRTH: 12/22/1954
DATE OF INJURY: 11/09/2015
DATE OF SERVICE: 11/23/2015

sustained clonus.)
• The upper and the lower extremities reflexes were tested and found to be 2+ bilaterally.

X-RAY RESULTS

Patient is 2 age 60. Essentially normal with all the cervical disc spacing. The C5/6 "vertebral motor unit" is aberrant as compared to all the other cervical vertabras. Typical general osteo athritis thru-out and typical 2 thls age. No other osseous pa (11/23/2015)
Cervical Spine APOM (11/23/2015)
Unremarkable.

DIAGNOSIS

• (M99.01) Segmental and somatic dysfunction of cervical region.
• (M54.2) Cervicalgia.
• (M99.02) Segmental and somatic dysfunction of thoracic region.
• (M99.03) Segmental and somatic dysfunction of lumbar region.

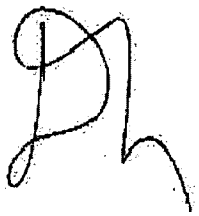
TREATMENT

Treatment today consisted of the following procedures and therapies:

• E/M Office/outpat visit, new, level 2,.
• Cervical; 2-3 views.
• Chiropractic adjustment 3-4 regions using Mechanically Assisted Manual Manipulation.
• K-Laser IV neck.

GOALS AND RECOMMENDATIONS

• I am recommending that this patient have X-Rays taken of his neck and upper mid back.



DC Donald G Kimble

OrthoCarolina

Patient:	MICHAEL COLLINS	Age/DOB:	61/Dec 22, 1954
	6291 WILLIAMSON ROAD	MRN:	10622801
		Home:	(803) 493-8732
	ROCK HILL, SC 29730	Work:	(704) 999-9999

Provider: Alicia Lazeski M.D. **Enc Date:** 12/08/2015
Document Type: New Visit

Chief Complaint
• Mr. COLLINS is a 60 year old male who presents with neck pain and upper back pain. Primary care physician is Dr. George Barron.

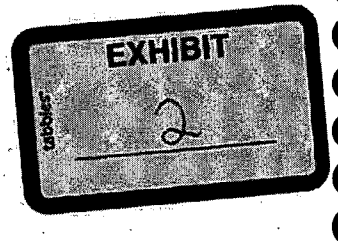
...
HISTORY OF PRESENT ILLNESS
Mr. Collins is a 60-year-old male who presents today as a new patient for evaluation of upper back pain. Patient states his symptoms started November 2015. No preceding trauma. He reports a sore, tight pain in his upper back and between the shoulder blades. Denies radiation into the upper extremities bilaterally. He does have numbness, tingling and pain in the median nerve distribution, right hand more affected than left however he carries a diagnosis of severe carpal tunnel syndrome. Symptoms are exacerbated by overhead reaching and doing manual labor at his job. Symptoms decrease when he is laying down. He has been seeing a chiropractor who performs laser therapy and heat therapy, both of which are helpful. He does not regularly take medications however he has tried indomethacin which was helpful. Unfortunately indomethacin causes GI upset. He does ice regularly which provides temporary relief of his pain. He notes that in March 2015, he had an EMG of the bilateral upper extremities as part of his carpal tunnel diagnostic workup and this was negative for radiculopathy. On 04/20 do not have the report reviewed today.

PHYSICAL EXAMINATION
General: Well-nourished male in NAD. A&Ox3.
HEENT: No scleral icterus. No facial asymmetry
Respiratory: Non-labored respirations
Cardiovascular: No peripheral edema.
Neuromuscular: Full cervical ROM. Full shoulder forward flexion, abduction, internal rotation and external rotation. Negative Spurling's BL. Manual muscle testing is 5/5 for C5-T1 myotomes. Sensation intact to light touch throughout bilateral C5-T1 dermatomes. Reflexes are +2 and symmetric at biceps, triceps and brachioradialis. Negative Hoffman's bilaterally. Positive Tinel's at the wrist bilaterally. Negative shoulder impingement signs

RADIOGRAPHS/ DIAGNOSTIC STUDIES
Two views of the cervical and thoracic spine obtained today. In the cervical spine, there is significant spondylosis with a osteophytes, decreased disc space and endplate changes. No spondylolisthesis. In a thoracic spine, no compression fractures noted. No significant scoliosis.

IMPRESSION
1. Cervical spondylosis

PLAN
1. Patient's history and physical exam is suggestive of cervical spondylosis with secondary myofascial pain. I do think he would benefit from physical therapy for cervical stabilization and development of a home exercise program. Additionally he may benefit from modalities including ultrasound, myofascial release and deep tissue massage. Referral given today
2. Patient carries a diagnosis of severe carpal tunnel syndrome. A previous physician has already recommended



OrthoCarolina

Patient: MICHAEL COLLINS Encounter: 12/08/2015
MRN: 10622801

surgery and patient is trying to determine when he is able to get the surgery
3. I provided patient with Duexis samples and a prescription. I do think he would benefit from an anti-inflammatory medication and hopefully Duexis will not cause GI upset. He is not on any anticoagulant therapy. He has never had ulcers, renal dysfunction or MI in the past.
4. If symptoms persist or progress; could consider further imaging at next office visit.
5. Patient follow up with me in 8 weeks

...

****

Vital Signs
Recorded by Ward,Lisa on 08 Dec 2015 10:25 AM
BP: 160/92, RUE, Sitting,
HR: 110 b/min,
Height: 6 ft , Weight: 200 lb , BMI: 27.1 kg/m2,
BMI Calculated: 27.13 ,
BSA Calculated: 2.13 ,
Pain Scale: 3.65
Recorded by PATIENT,PORTAL on 08 Dec 2015 10:08 AM
Height: 6 ft 0.00 in, Weight: 200 lb 0.00 oz, BMI: 27.1 kg/m2,
BMI Calculated: 27.12 ,
BSA Calculated: 2.13

Allergies
No Known Drug Allergies.

Current Meds
CloNIDine HCl - 0.3 MG Oral Tablet;; RPT
Viagra 100 MG Oral Tablet;; RPT
Amlodipine Besy-Benazepril HCl - 10-20 MG Oral Capsule;; RPT.

Active Problems
Gout (M10.9)
High blood pressure (I10)
Neck pain (M54.2)
Overweight (B66.3)
Upper back pain. (M54.9).

PMH
No pertinent past medical history.

PSH
Denied Surgery.

Family Hx
Family history of malignant neoplasm: Father (Z80.9)
Family history of malignant neoplasm: Father (Z80.9).

Personal Hx
Alcohol use (F10.99)
Married
Never a smoker
Occupation:

ROS
Systemic: No recurrent fever, no recent weight loss, and no recent weight gain.
Head: No headache.
Eyes: No vision problems.
Otolaryngeal: No hearing loss and no hoarseness.

OrthoCarolina

Patient: MICHAEL COLLINS Encounter: 12/08/2015
MRN: 10622801

Cardiovascular: No chest pain or discomfort and no palpitations.
Pulmonary: No dyspnea and no chronic cough.
Gastrointestinal: Appetite not decreased. No dysphagia and no heartburn. No nausea, no vomiting, no abdominal pain, and no hematochezia.
Genitourinary: No hematuria and no change in urinary frequency. No dysuria.
Endocrine: No polydipsia and no temperature intolerance.
Hematologic: No easy bleeding and no tendency for easy bruising.
Musculoskeletal: No localized joint pain, no localized joint swelling, and no localized joint stiffness.
Neurological: No dizziness, no convulsions, and no numbness.
Psychological: No psychological symptoms and no sleep disturbances.
Skin: No dry skin. No skin lesions and no rash.
M/S: See HPI.

...

****

Signature
Electronically signed by : Alicia Lazeski M.D.; 12/08/2015 12:31 PM EST.

OrthoCarolina

Patient: MICHAEL COLLINS
6291 WILLIAMSON ROAD

ROCK HILL, SC 29730

Age/DOB: 62/Dec 22, 1954
MRN: 10622801

Provider: Alicia Lazeski M.D.
Document Type: Follow Up Visit

Enc Date: 02/08/2016

Chief Complaint
• MICHAEL is a 61 year old male here for neck pain and upper back pain. Primary care physician is Dr. George Barron

...
HISTORY OF PRESENT ILLNESS
Mr. Collins is a 61-year-old male who presents today in follow-up regarding neck pain. In brief, I last visited with this patient on 12/08/2015. At that time he described aching neck pain and tightness in the shoulders. I felt his symptoms were secondary to underlying cervical spondylosis. I referred him to physical therapy and provided him with Duexis.

In the interim, patient states that his symptoms have not worsened but they have not gotten better either. He continues have midline neck pain that is described as a dull ache. He has some muscle tightness in the upper trapezius bilaterally. He has completed a full course of physical therapy. At 1st he thought the physical therapy was quite helpful but he seems to have plateaued. He continues doing his home exercise program at home. He notes that Duexis decreased his symptoms however he noticed an increase in his blood pressures therefore he discontinued this medication.

PHYSICAL EXAMINATION
Well-nourished male in no acute distress. Alert oriented x3. Nonlabored respirations. No peripheral edema. Full cervical and bilateral shoulder range of motion. Upper extremity strength is intact.

RADIOGRAPHS/ DIAGNOSTIC STUDIES
None obtained today

IMPRESSION
1. Cervical spondylosis

PLAN
1. Patient's neck pain and secondary myofascial pain is likely related to his underlying cervical spondylosis. At this time, he states the pain is tolerable. He will continue his home exercise program at home. He reports that his manual labor job does increase his symptoms, however he wants to continue working without restrictions, which I think is reasonable. He is not interested in more aggressive treatment at this time. He will call me if he would like to proceed with MRI for consideration of cervical injections.
2. Patient will use over-the-counter Tylenol as needed. I provided him a sample of Pennsaid 2% cream to be used over the affected areas as needed. With approximately 6% systemic absorption, I am hopeful this medication will not raise his blood pressure like other anti-inflammatories have done in the past. He may use ice or heat as needed.
3. Patient will follow up with me on a p.r.n. basis

...
****

EXHIBIT 3

Vital Signs
Recorded by Ward,Lisa on 08 Feb 2016 09:00 AM
BP: 158/93, LUE, Sitting,
HR: 110 b/min,
Height: 6 ft , Weight: 200 lb , BMI: 27.1 kg/m2,
BMI Calculated: 27.13 ,
BSA Calculated: 2.13 ,
Pain Scale: 5/27.

Allergies
No Known Drug Allergies.

Current Meds
CloNIDine HCl - 0.3 MG Oral Tablet;; RPT
Viagra 100 MG Oral Tablet;; RPT
Amlodipine Besy-Benazepril HCl - 10-20 MG Oral Capsule;; RPT

Active Problems
Gout (M10.9)
High blood pressure (I10)
Neck pain (M54.2)
Overweight (E66.3)
Spondylosis, cervical (M47.812)
Upper back pain (M54.9)

PMH
No pertinent past medical history.

PSH
Denied Surgery.

Family Hx
Family history of malignant neoplasm: Father (Z80.9)
Family history of malignant neoplasm: Father (Z80.9)

Personal Hx
Alcohol use (Z78.9)
Married
Never a smoker
Occupation.

ROS
Musculoskeletal: No localized joint pain, no localized joint swelling, and no localized joint stiffness.
Neurological: No dizziness, no tingling, no burning sensation, and no numbness.
M/S: See HPI.

...
****

Signature
Electronically signed by: Alicia Lazeski M.D.; 02/08/2016 11:42 AM EST.

NORFOLK SOUTHERN

PERSONAL INJURY REPORT

FORM 22 (REV. 11/94) (162612)

REPORT DATE: 8-31-16

REPORT TIME (____ AM) or (12:57 PM)

Medical DEPARTMENT

Piedmont DIVISION

Train No. (If applicable) ____ Is this incident related to a Train or Crossing Accident? [ ] Yes [✓] No

TO: Supervisory Officer: T.L. Hatcher

FROM: Injured Employee: [redacted] Employee SS No.: 029840

INCIDENT DATE: 8-13-16

INCIDENT TIME: (1:00 AM) or (____ PM)

LOCATION: Select one: Line of Road ____ Terminal ✓ Shop or Office Building ____ Off Railroad Property ____

INCIDENT CITY: Charlotte STATE: NC MILEPOST: (If applicable) 385

WEATHER: Select one: Clear ✓ Cloudy ____ Rain ____ Fog ____ Sleet ____ Snow ____ Does Not Apply ____ (Injury Occurred Indoors)

VISIBILITY: Select one: Dawn ____ Day ____ Dusk ____ Dark ✓ Indoors-Dark ____ Indoors-Dim ____ Indoors-Normal ____ Indoors-Other ____

TEMPERATURE: (85 PLUS) or (____ MINUS)

HEIGHT: 5 FT. 11 IN. WEIGHT 201 LBS. OCCUPATION Carman

REST DAYS: Select all that apply: Monday ✓ Tuesday ✓ Wednesday ✓ Thursday ____ Friday ____ Saturday ____ Sunday ____ None ____

ASSIGNMENT: REGULAR ✓ RELIEF ____ EXTRA ____

ON DUTY: [✓] Yes [ ] No HOURS ON DUTY AT TIME OF INCIDENT 2 hrs.

SAFETY ATTIRE WORN: Select all that apply: Head ✓ Eye ✓ Hearing ____ Respiratory ____ Foot ✓ Hand ✓ Other ____ None ____

BRAND OF EYE PROTECTION WORN: ____ AO F9949 ____ AO DEFENDER ____ ADEN OVYL ____ CREWES ENGINEER ____ CREWES FORMAR ____ CREWES INNOVATOR ____ NORTH 150 ____ UVEX CRICKET ____ UVEX ULTRASPEC 2000 ____ VISTALUX ____ WILSON TURED ____ RX ✓ OTHER

WAS ANY TYPE OF EQUIPMENT INVOLVED? [ ] Yes [✓] No STATIONARY ____ MOVING ____

EQUIPMENT TYPE: Select one: Freight ____ Passenger ____ Mixed ____ Work ____ Yard Switching ____ Light Locos ____ M/W Equipment ____ None ____

INITIAL AND NUMBER: ____

WITNESS NAMES	ADDRESSES
None	

DO YOU DESIRE MEDICAL ATTENTION AT THIS TIME? [ ] Yes [✓] No

DESCRIBE WHAT HAPPENED - GIVE SPECIFIC, DETAILED INFORMATION: While at Intermodal Yard - No air was on yard. While trying to put air on track #2 Rail. Air would not come so I went to Compressor Room to see what was problem. Compressor Door was seemingly stuck shut - sticking at the top. Door Locks seemed to be off not Locked. I tried Advance #315 twice But Door would open. So I pulled on Door and it seemed to be stuck at top of Jamb - So I pulled Again with Door opening and at that time I felt pull in upper Back.

[redacted]

SIGNATURE OF EMPLOYEE

Distribution: Original to Supervisory Officer
Photocopy to Injured Employee

EXHIBIT 4

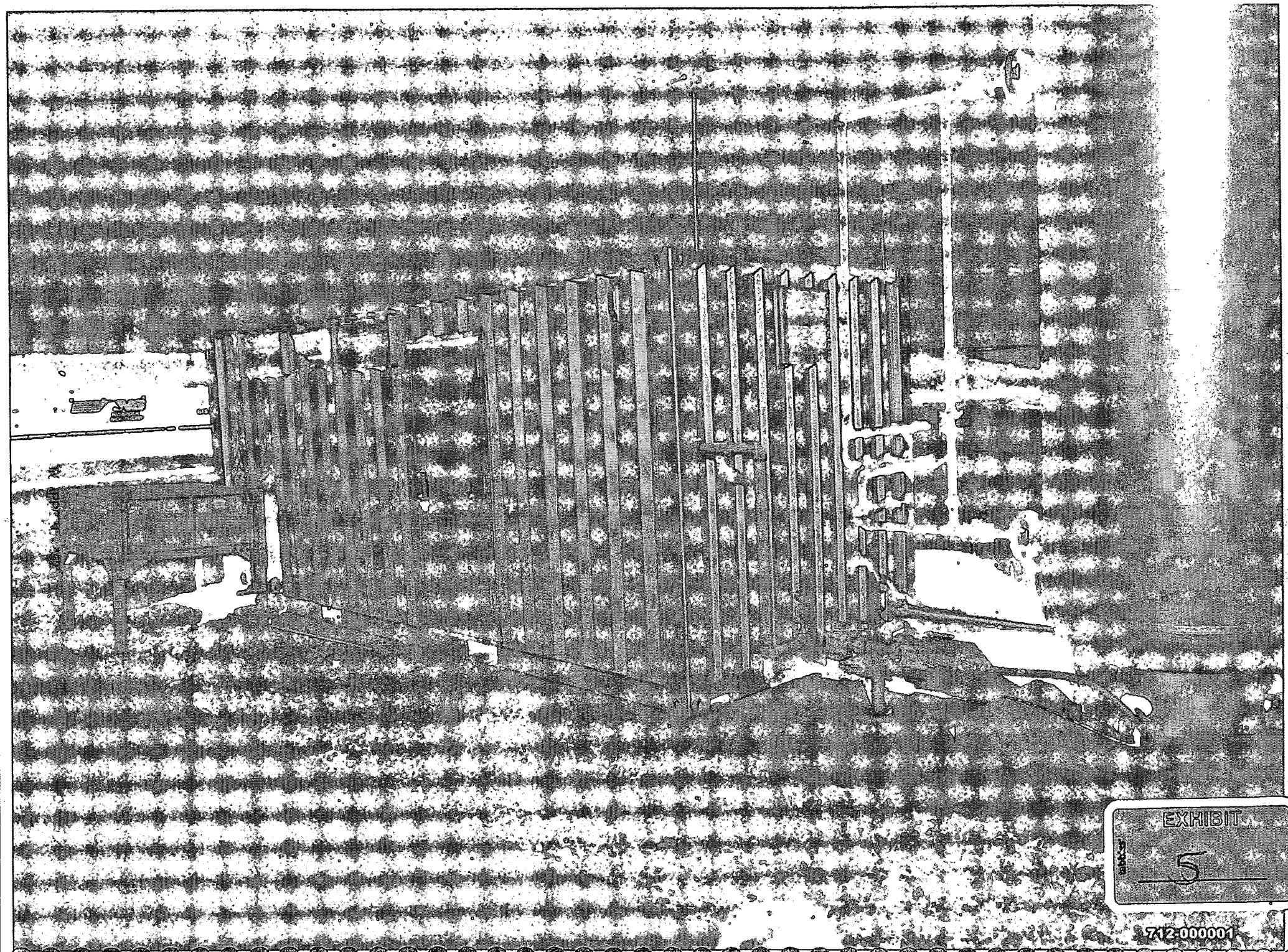
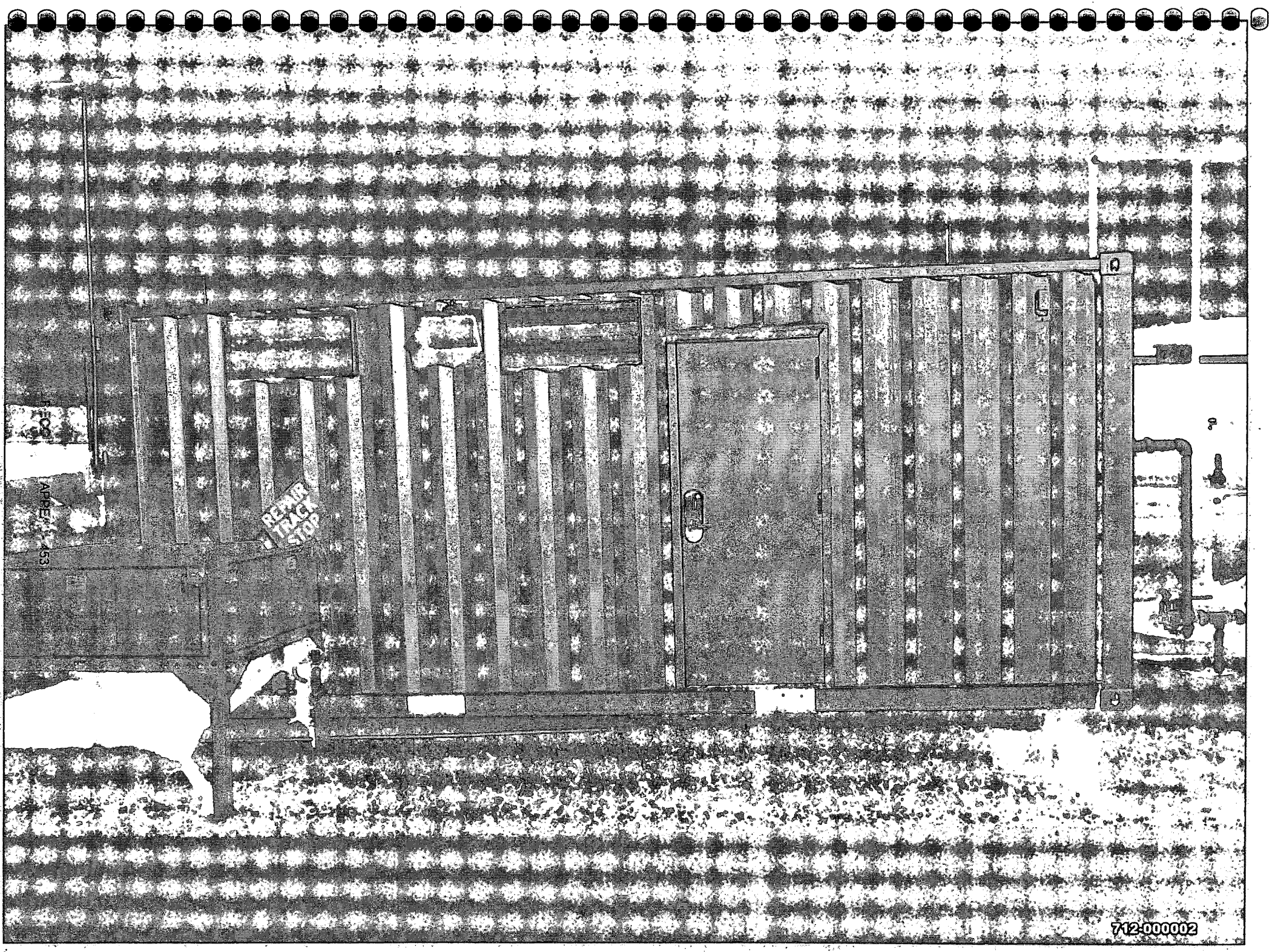
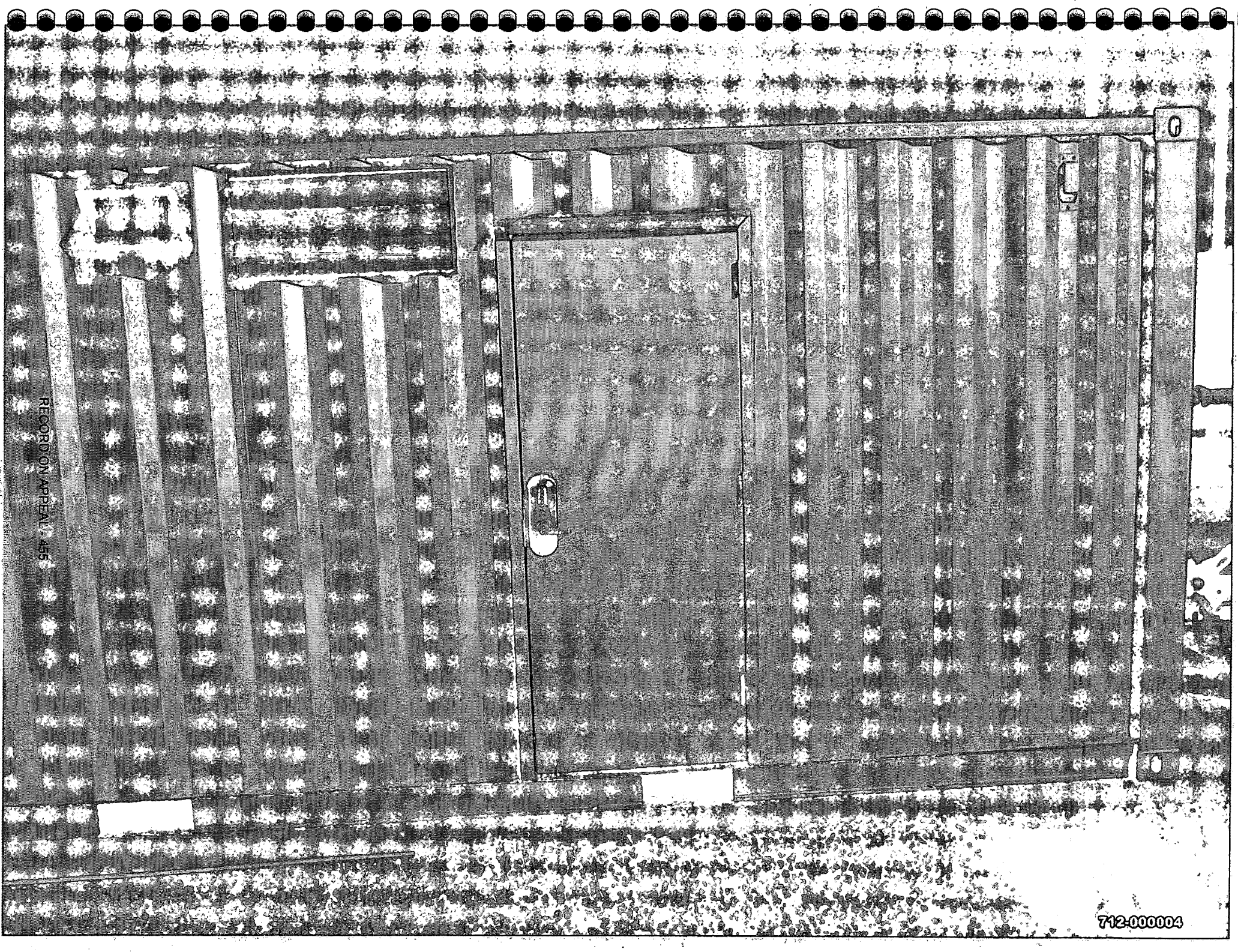


EXHIBIT
5

712-000001

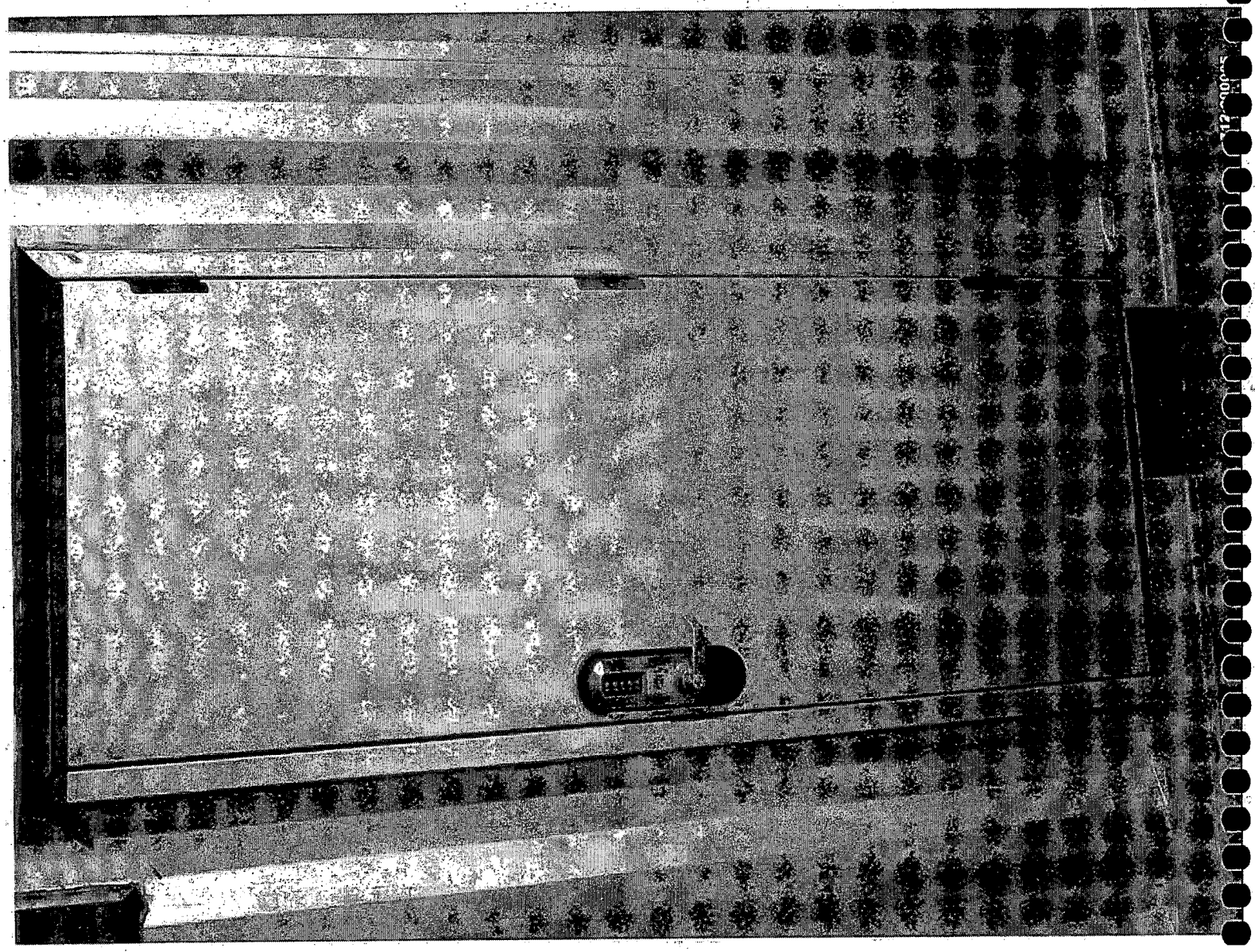

REAR TRACK STOP
712-000002

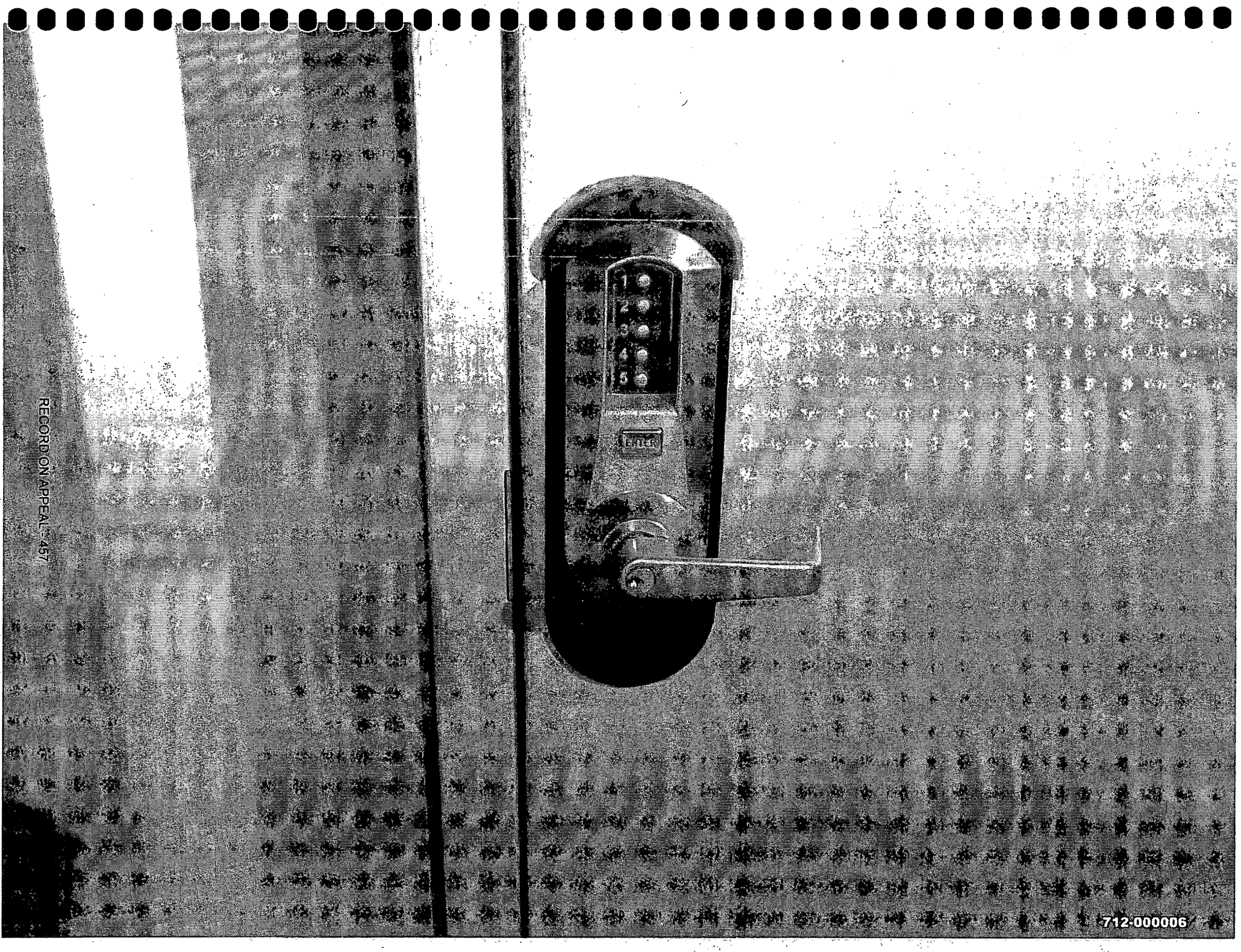
REPAIR
TRACK
STOP



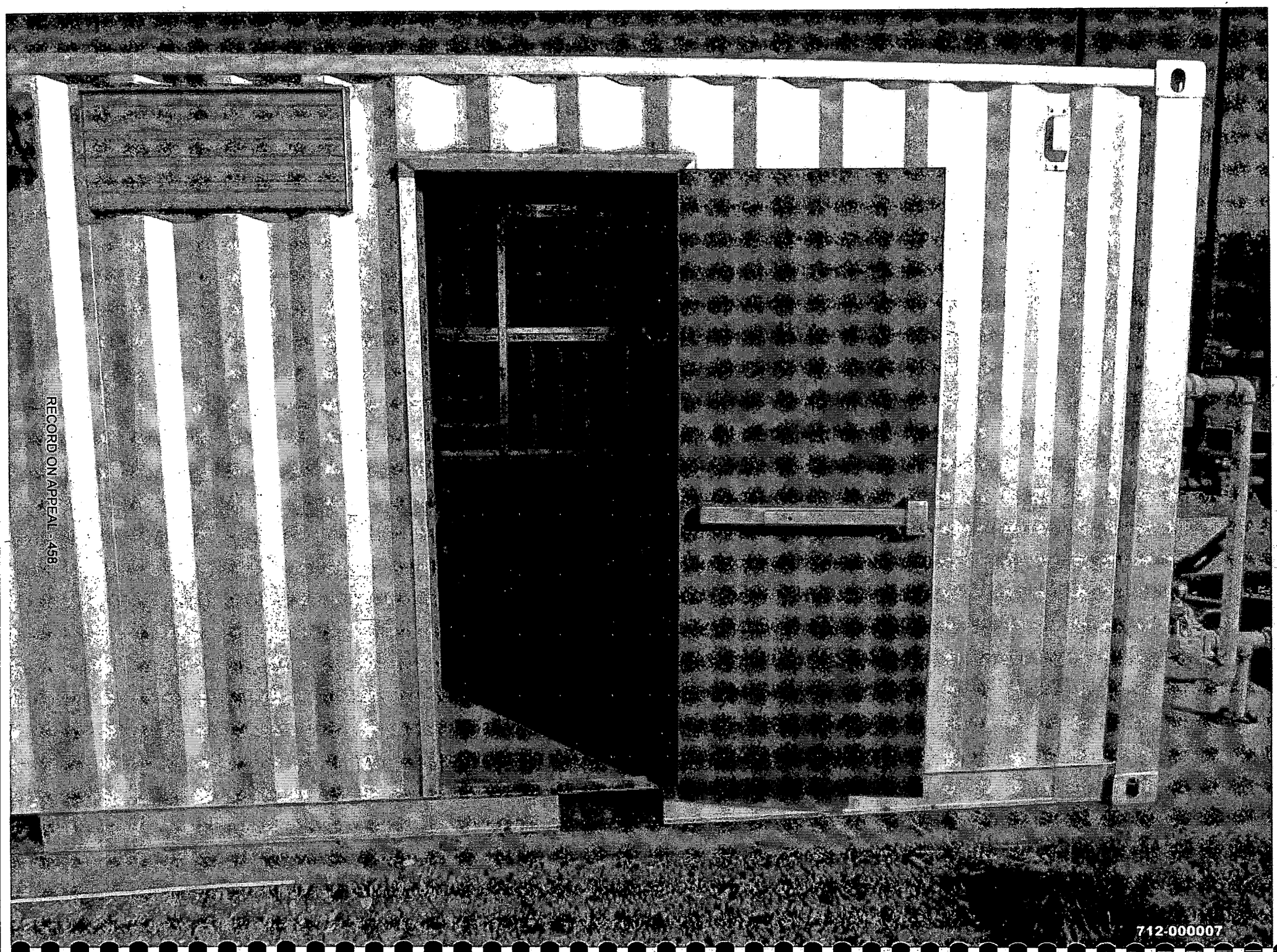
RECORD ON APPEAL - 455

712-000004





RECORD ON APPEAL - 457

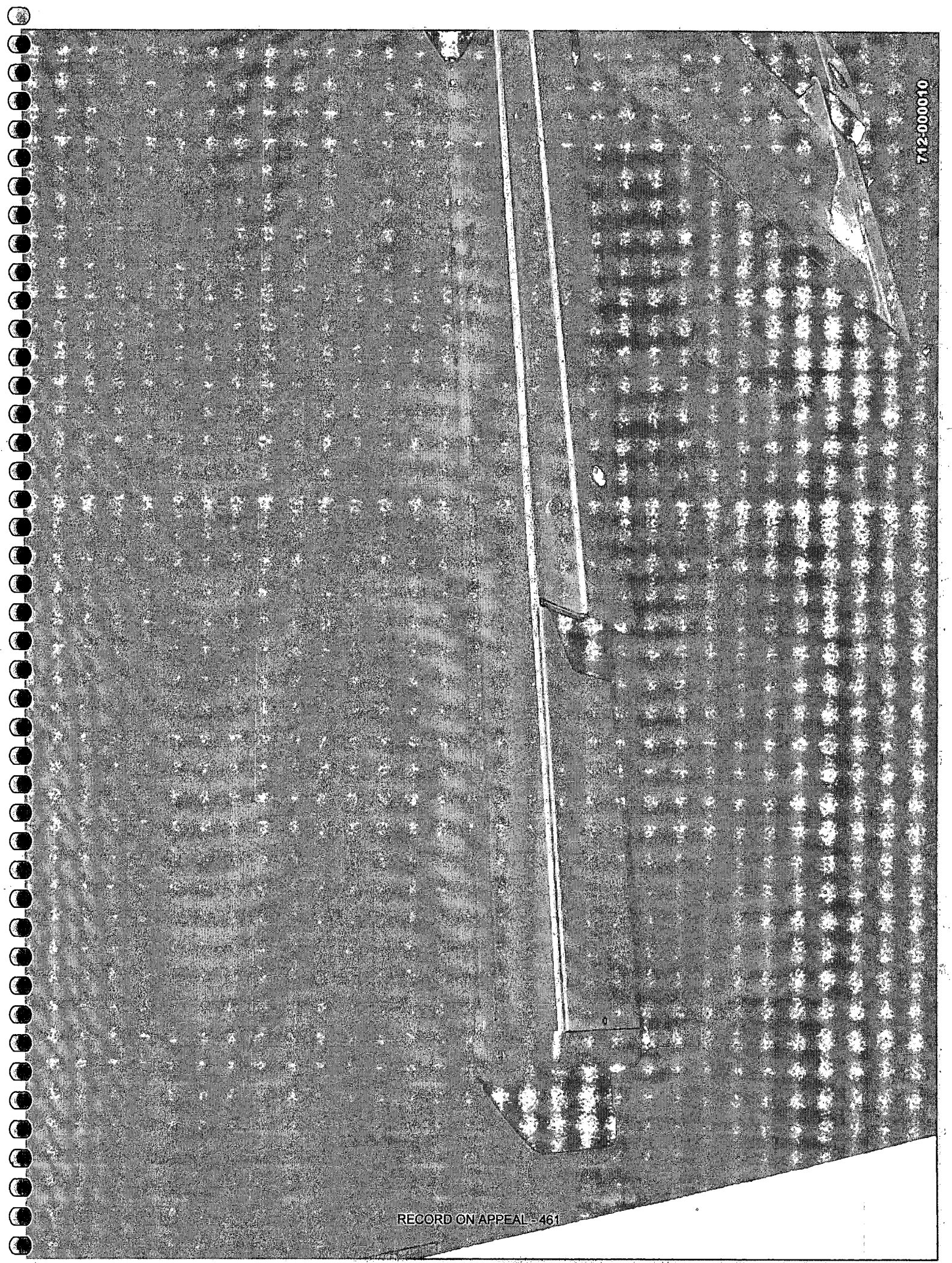


RECORD ON APPEAL - 458

712-000007

800000-214

712-000003


712-000010

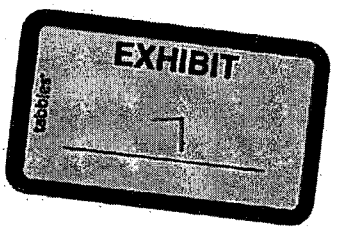


PIEDMONT FAMILY PRACTICE AT ROCK HILL
Affiliated with PMC Physician Network

George T. Barron, MD | Michael Curran, MD | Eric Johnson, MD | Learn Retsell, DO | Brandon Sick, MD

Patient:	Michael Collins
Date of Birth:	12/22/1954
Date:	06/29/2016 03:00 PM
Historian:	self
Visit Type:	Office Visit

This 61 year old male presents for back pain and Med Refills.



History of Present Illness

1. back pain
Location of pain is upper back.
2. Med Refills

HPI Dictation

Subjective: Former patient comes in to get reestablished. He has a long history of labile hypertension that has been extraordinarily difficult to control. He has seen cardiologist and nephrologist and has had an extensive workup in the past. He is currently on Lotrel and clonidine. 4 a fairly significant amount of time that was controlling his symptoms but over the last 6 months or so his blood pressures have been reading quite high. On occasion he has been doubling up on his clonidine dosage and taking 0.6 mg 3 times a day. This is the maximum dose and it does often get his blood pressure down into the normal range but he says it times it makes him feel jittery. He has some swelling in his legs due to the amlodipine in his Lotrel but it is not severe.

Lately he's been having extreme difficulty with pain in his upper back and neck with radiculopathy in the left arm. He has been seeing a spine specialist but apparently it is not a surgical problem at this time.

He also recently was told that his job with the railroad here in rock Hill was being shut down. He has the option to retire or drive to Charlotte for third shift work which she is not inclined to do. This is causing significant stress. He complains of ongoing insomnia which has been a chronic problem as well. We tried Ambien in the past that it only worked intermittently.

Past history family history and social history were reviewed in the computer

Objective: He appears well. Judgment orientation memory and mood are normal. Gait and station are normal. He is quite frustrated about his blood pressure control and this ongoing back pain. Heart rate and rhythm are regular. Air movement is good. Vitals are as recorded.

Assessment: Labile hypertension. History of gout. Ongoing back and neck pain. Chronic insomnia.

Plan: His allopurinol was renewed. His clonidine was renewed. His Lotrel was renewed but we increased the dose from 10/20-10/40. He will monitor his blood pressures. He will follow-up with the spine specialist. He is considering spinal injection but is unsure if he wants to go that route. In the meantime he was given a prescription for Zanaflex 4 mg 1-2 tablets at bedtime to help him sleep and possibly work as a preventative because a lot of the pain he is describing sounds like muscle spasm.

Problem List

Problem Description	Onset Date	Chronic	Notes
Chronic insomnia	06/29/2016	N	
Essential hypertension	06/29/2016	N	
History of gout	06/29/2016	N	

Past Medical/Surgical History (Detailed)

Disease/disorder	Onset Date	Management	Date	Comments
Hypertension				

Family History (Detailed)

Relationship	Family Member Name	Deceased	Age at Death	Condition	Onset Age	Cause of Death
Mother				Stroke		N
Mother				Diabetes mellitus type 2		N
Mother				Hypertension		N

Social History (Detailed)

Tobacco use reviewed.
The person's ethnicity is: Not Hispanic or Latino
Preferred language is English.
Smoking status: Never smoker.

Smoking Status

Use Status, Type	Smoking Status	Usage Per Day	Years Used	Total Pack Years
no/never	Never smoker			

ALCOHOL
The patient drinks alcohol.
Type: Wine. 1 glass consumed daily.

Medication Reconciliation

Reconciliation completed with: self

Medication	Start Date	Date Stopped	Sig Desc	Comment
allopurinol 300 mg tablet	06/29/2016		take 1 tablet by oral route every day	taking as directed
amlodipine 10 mg-benazepril 20 mg capsule	06/29/2016		take 1 capsule by oral route every day	taking as directed
clonidine HCl 0.3 mg tablet	06/29/2016		take 1 tablet by oral route 3 times every day	taking as directed
oxycodone-acetaminophen 10 mg-325 mg tablet	06/29/2016		take 1 tablet by oral route every 6 hours as needed	taking as directed
Pennsaid 20 mg/gram/actuation (2 %) topical soln in metered-dose	06/29/2016		apply 2 pump by topical route 2 times every day to the affected knee(s)	taking as directed

Allergies

No known allergies.

Ingredient	Reaction	Medication Name	Comment
NO KNOWN ALLERGIES			

VITAL SIGNS

HEIGHT

Time	ft	in	cm	Last Measured	Height Position	%
3:06 PM	5.0	11.00	180.34	06/29/2016	Standing	

WEIGHT/BSA/BMI

Time	lb	oz	kg	Context	%	BMI kg/m2	BSA m2
3:06 PM	199.00		90.2649	dressed with shoes		27.75	2.13

BLOOD PRESSURE

Time	BP mm/Hg	Position	Side	Site	Method	Cuff Size
3:06 PM	187/96	sitting	left	arm	automatic	adult

TEMPERATURE/PULSE/RESPIRATION

Time	Temp F	Temp C	Temp Site	Pulse/min	Pattern	Resp/ min
3:06 PM	97.0	36.1	oral	99		

PULSE OXIMETRY/FIO2

Time	Pulse Ox (Rest %)	Pulse Ox (Amb %)	O2 Sat	O2 LPM	Timing	FiO2 %	L/min	Delivery Method
3:06 PM	97							

MEASURED BY

Time	Measured by
3:06 PM	Heather Smith

HISTORICAL VITAL SIGNS ENTERED IN THIS ENCOUNTER

HEIGHT

Assessment/Plan

#	Detail Type	Description
1.	Assessment	Essential hypertension (I10).
2.	Assessment	History of gout (Z87.39).
3.	Assessment	Chronic insomnia (F51.04).

Medications (Added, Continued or Stopped this visit)

Started Today

Start Date	Medication	Sig Desc	Instruction	Stop Date
06/29/2016	clonidine HCl 0.3 mg tablet	take 1 or 2 tablet by oral route 3 times every day		
06/29/2016	oxycodone-acetaminophen 10 mg-325 mg tablet	take 1 tablet by oral route every 6 hours as needed		
06/29/2016	Pennsaid 20 mg/gram/actuation (2 %) topical soln,in metered-dose pump	apply 2 pump by topical route 2 times every day to the affected knee(s)		
06/29/2016	Lotrel 10 mg-40 mg capsule	take 1 capsule by oral route every day		
06/29/2016	Zanaflex 4 mg capsule	take 1 to 2 capsule by oral route every night		
06/29/2016	allopurinol 300 mg tablet	take 1 tablet by oral route every day		

Stopped Today

Start Date	Medication	Directions	Instruction	Stop Date
06/29/2016	amlodipine 10 mg-benazepril 20 mg capsule	take 1 capsule by oral route every day		06/29/2016
06/29/2016	allopurinol 300 mg tablet	take 1 tablet by oral route every day		06/29/2016

Provider: George T. Barron MD 06/29/2016 03:43 PM

Document generated by: George Barron 06/29/2016 03:43 PM EST

2633 Celanese Road Rock Hill, SC 29732
Phone: 803-325-1770 | Fax: 803-325-1790
www.piedmontpetrockhill.com



Electronically signed by George T. Barron MD on 06/29/2016 03:44 PM

GENERAL SAFETY RULES

910. Working Safely

Employees must not do any work in a manner that will jeopardize their own safety or the safety of others. They must know that appliances, tools, supplies, and facilities used in performing their duties are in proper condition. If not, they must have them repaired or replaced before using them. It is the duty of every employee to examine them to determine their condition.

Employees must not make repeated attempts to operate tools, equipment, or appliances (e.g. switches, derails, handbrakes, cut levers, bleed rods, doors, brake sticks, etc.) that cannot be operated with a normal level of exertion or otherwise are not in proper working order. Such repeated attempts must be avoided.

911. Care of Property

1. In case of danger to, loss of, or damage to railroad property by fire, theft, or other causes, employees must immediately notify the proper authority and join forces to protect the Company's interest.
2. Unauthorized possession, removal, or disposal of any material from railroad property or property served by the railroad is prohibited.
3. All articles of value found on railroad property must be cared for and promptly reported to the proper authority.
4. Employees are prohibited from disposing of non-railroad/ home generated trash or garbage in company containers.

912. Reporting Employee Injuries and/or Illness

1. When any person is injured, emergency medical assistance must be called if needed.
2. Every accident resulting in injury, death or damage to property must be reported to the proper authority by the quickest communication available.
3. An employee who sustains a personal injury while on duty or on Company property or equipment must, before leaving Company premises, report it to his/her immediate supervisor

EXHIBIT
RECORD ON APPEAL - 467
Collins 005541

RECEIVED
FEB 06 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Circuit Court Judge

Appellate Case No.: 2019-000984

Michael Collins, Appellant,

v.

Norfolk Southern Corporation, Appellee.

CERTIFICATION OF COUNSEL

I certify that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Joseph O. Thickens, S.C. Bar No. 101398