

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA

Workers' Compensation Commission

—————
Appellate Case No.: 2019-000556
—————

Isaac D. Brailey, Claimant, Appellant,

v.

Michelin North America, Inc. , (US7), Employer, and Safety National Casualty Corp. , Carrier,
Respondents.

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RECORD ON APPEAL
—————

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1 Q. You didn't tell Michelin about any of that, did
2 you?

3 A. The erectile dysfunction?

4 Q. All the medications you were on.

5 A. Yeah, I told them about the --

6 Q. You told Michelin about all the medications --

7 A. -- I told Michelin --

8 Q. -- when you came to work for them?

9 A. -- yeah, high blood pressure and I wrote it down
10 to the Nurse when we had -- when a -- a thing there.

11 Q. So, you're just talking about only high blood
12 pressure?

13 A. Yeah, that's all --

14 Q. Okay.

15 A. -- high blood pressure.

16 Q. Then it says prior arthroscopy of your knee. It
17 says that on your doctor's report, procedure history,
18 prior arthroscopy of the knee; so -- and it says on the
19 right, it says remote. But my -- my question is, if
20 it's on Dr. Marom's report in January, why wasn't it on
21 this form that you filled out just a couple of months
22 later; why didn't you tell Michelin about it?

23 A. When was that knee thing?

24 Q. The report is January 3rd of 2017.

25 A. I don't have no knee problem.

- 1 Q. well, you told the doctor you did --
- 2 A. I mean, when --
- 3 Q. -- because he wrote it down.
- 4 A. -- yeah. When I -- when I had -- I think when I
- 5 -- when I -- when I had the back injury I had -- he
- 6 wanted to know whether I had fluid on my right -- right
- 7 knee or -- and where the fluid was at, and the reason
- 8 why the fluid was on -- the reason why I had the back
- 9 -- I had that back injury and when I had the back
- 10 injury the fluid, he said can come from the other side
- 11 --
- 12 Q. I didn't ask you what he said.
- 13 A. -- to the -- okay.
- 14 Q. Again, we're --
- 15 A. Oh.
- 16 Q. -- we're talking about six (6) months before June;
- 17 we're talking about January of 2017.
- 18 A. January?
- 19 Q. Yes, sir.
- 20 A. I thought you was talking twenty (20) --
- 21 Q. No, 2017 --
- 22 A. -- I didn't have no --
- 23 Q. -- I just said that.
- 24 A. -- I didn't have no -- you said I had fluid on my
- 25 --

1 Q. You told the doctor that --

2 Commissioner Wilkerson: Right.

3 Q. -- you had a prior arthroscopy --

4 Commissioner Wilkerson: Prior.

5 Q. -- of your knee.

6 Commissioner Wilkerson: He didn't say
7 you had it that day.

8 witness: Uh-huh.

9 Commissioner Wilkerson: You told him
10 you had it prior; that could be when you were
11 twenty-three (23), thirteen (13) or three (3)
12 years old.

13 Q. But you told the doctor?

14 Commissioner Wilkerson: I don't know.

15 A. Uh-huh.

16 Q. Why in the world if you told the doctor in January
17 couldn't you have told Michelin on the form you filled
18 out for them --

19 A. No.

20 Q. -- just a couple of months later?

21 A. I didn't tell them that.

22 Q. What?

23 A. No, I didn't tell them that.

24 Q. Okay. And the reason you didn't tell them any of
25 those prior problems: Right knee, the gout, the low

1 back, any of the doctor names; the reason you didn't do
2 that is because you knew or you were afraid that if you
3 told them all of that stuff you wouldn't get a job at
4 Michelin; isn't that true, that's why you didn't tell
5 them?

6 A. No, that's not true.

7 Q. Okay. But you can't explain why you didn't tell
8 them other than you just signed everything real fast?

9 A. I didn't --

10 Q. That's your excuse; that's what you're telling us
11 here today?

12 A. -- no, I didn't -- I didn't say I could just --

13 Q. You said --

14 A. -- the -- the gout --

15 Q. -- I just signed it real fast; that's exactly what
16 you said.

17 Mr. Samuels: Your Honor, I --

18 Q. True or false?

19 Mr. Samuels: -- object to counsel
20 interrupting the -- the answer.

21 Commissioner Wilkerson: We'll let him
22 answer. Go ahead and answer the question.

23 Mr. Beard: Okay.

24 Witness: Okay. Go back to the first
25 one where you -- what -- what was the first

1 one, you said something about the -- what --
2 what you were saying -- you threw so many
3 questions out there at one time I didn't --

4 Q. I threw one (1) question; I said the reason -- I
5 said you didn't them --

6 A. -- yeah.

7 Q. -- about the gout, you didn't tell them about the
8 knee, you didn't tell them about the low back because
9 you --

10 A. The gout --

11 Q. -- you didn't -- you didn't --

12 Commissioner Wilkerson: Let him finish.

13 Q. -- you didn't think they would hire you --

14 A. -- okay.

15 Q. -- isn't that true?

16 A. No, that's not true. I didn't -- I didn't -- as
17 far as not afraid of them not hiring me, because I
18 didn't have -- I -- I was checked -- I got checked out
19 because I wanted to be checked out myself, as far as
20 cardiologist, going to the cardiologist, making sure
21 everything is straight and, also, making sure I don't
22 have gout.

23 Q. Okay. It says at that time you were employed
24 doing quality control, according to this form, on June
25 3rd of 2017; you weren't doing quality control on June

- 1 3rd of '17, you weren't working at --
- 2 A. '17?
- 3 Q. -- Westinghouse anymore in January of '17, were
- 4 you?
- 5 A. Say what now?
- 6 Q. You weren't working at Westinghouse in January of
- 7 2017, were you?
- 8 A. January of 2017?
- 9 Q. Yes, sir. You weren't there anymore?
- 10 A. I think I -- yeah. I don't know. June of -- July
- 11 -- January you said?
- 12 Q. January of 2017, it says you were working in
- 13 Quality Control.
- 14 A. Yeah --
- 15 Q. You --
- 16 A. -- at Westinghouse.
- 17 Q. -- you were still there?
- 18 A. I think so, yeah. Yeah, if I remember.
- 19 Q. Do you remember filling out an employment
- 20 application when you came to work for Michelin?
- 21 A. That was, like -- it was way before we had gotten
- 22 -- we don't just -- it's several employment
- 23 applications; you just don't go in and fill out an
- 24 application and you get hired then, it's several
- 25 sequences you've got to go through.

1 Q. That's fine.

2 A. Yeah.

3 Q. I want to ask you, is --

4 A. Yeah.

5 Q. -- is this your employment applications that you
6 filled out on February 27th of '17, for Michelin?

7 Mr. Samuels: Can I be allowed to see
8 that, please?

9 Commissioner Wilkerson: Yes.

10 Mr. Beard: Sure.

11 Commissioner Wilkerson: Come on.

12 Mr. Beard: You've got it in the -- in
13 the subpoenaed documents that you got.

14 Commissioner Wilkerson: Do I have it or
15 no?

16 Mr. Beard: No.

17 A. You said January what now?

18 Mr. Beard: I didn't know this would be
19 an issue but it is, apparently, going to be
20 one.

21 Q. January 27th of '17.

22 A. Oh. No, that's February.

23 Q. I mean, February 27th of '17.

24 A. You said January.

25 Q. No. I said February the first time but I --

1 A. No, you didn't; you said January.

2 Q. -- all right. Is that your signature --

3 Commissioner Wilkerson: Answer the
4 question.

5 Q. -- at February 27th?

6 Commissioner Wilkerson: We're going --
7 do you want to get home --

8 Witness: Yeah.

9 Commissioner Wilkerson: -- tomorrow?
10 Answer the question. You're not -- you don't
11 argue, you just answer questions; that's your
12 job.

13 Witness: Yeah. But I was --

14 Commissioner Wilkerson: Just answer
15 them.

16 Witness: -- I'm correcting him what he
17 --

18 Commissioner Wilkerson: I --

19 Witness: -- okay.

20 Commissioner Wilkerson: -- just answer
21 the question.

22 A. February 27th? Yeah. I was --

23 Q. Is this your application?

24 A. -- that's my application --

25 Q. Okay.

1 A. -- yeah.

2 Q. All right. And on the application, when does it
3 say you stopped working at Michelin; does that say -- I
4 mean, Westinghouse; does that say December of 2016?

5 A. You said what now?

6 Commissioner Wilkerson: Read it --

7 A. This is --

8 A. -- yeah.

9 Commissioner Wilkerson: -- does it say
10 you stopped working at Westinghouse on -- in
11 December of 2016, was the question.

12 A. So, time employed from 8/07 to 2/12/16, yeah.

13 Q. Okay. So --

14 A. Yeah.

15 Q. -- on the application you filled out in February,
16 you said you were no longer at Westinghouse in
17 December, so you would not have been doing quality
18 control on January the 3rd of '17, because you didn't
19 work at Westinghouse anymore, correct?

20 A. Correct.

21 Q. Okay. Also, on this application, it goes back to
22 the year 19 -- it looks like '86 -- this is your
23 writing, correct; is that 1986?

24 A. Yeah.

25 Q. Okay. It's got a lot jobs on there. It's got UPS

1 from '86 to '89, Cooper Tools from '89 to '94, Inland
2 Container from '94 to '96 and from '96 to '01 it says
3 Dupont, correct?

4 A. Uh-huh.

5 Q. Okay. That's yes?

6 A. Yes.

7 Q. Where is Richtex Bricks?

8 A. Columbia.

9 Q. Where is it on this document?

10 A. 1997.

11 Q. 1997.

12 A. Yeah.

13 Q. Show me in 1997, where Richtex Bricks is on this
14 application. You remember where you had your workers'
15 Comp injury and workers' Comp claim; do you remember
16 that?

17 A. Yeah.

18 Q. Where -- where is that on that document?

19 A. It's not on that document.

20 Q. Okay. And the reason it's not on that document is
21 the same reason you didn't tell us about your back pain
22 on that questionnaire, you didn't want Westinghouse --
23 I mean, you didn't want Michelin to go and subpoena or
24 find out if there was something wrong with you; isn't
25 that correct?

- 1 A. No, that's not true.
- 2 Q. Okay. It just -- just happens to be --
- 3 A. Now --
- 4 Q. -- you conveniently didn't remember about your
5 workers' Comp back claim --
- 6 A. -- what happened --
- 7 Q. -- you conveniently don't remember about the --
8 the employer you used to work for?
- 9 A. -- well, I -- when we was filling out that
10 application they said you could -- you know, I told
11 them, hey, look, I'm not -- as far now '97 or either
12 you have -- I worked multiple jobs. So, filling out
13 multiple jobs where I couldn't fill out a lot of those
14 things. And they was, like, no, we just want to be --
15 they was only concerned with, you know, the recent
16 ones. So, that -- yeah, I couldn't --
- 17 Q. Well, you went back to '86 --
- 18 A. -- yeah.
- 19 Q. -- I assume you admit '97 would have been after
20 '86, correct; that would be more recent than '86?
- 21 A. Yeah, '97 was -- I didn't even do this --
- 22 Q. Am I correct?
- 23 A. -- yes.
- 24 Q. My question is, '97 is more recent than '86 --
- 25 A. Right.

1 Q. -- correct?

2 A. Right.

3 Q. So, Richtex should be on here; it's not though, is
4 it?

5 A. Right, it's not.

6 Q. Okay. That's a little suspicious isn't it, being
7 -- being what we're here for; isn't that a little
8 suspicious?

9 A. Well, I wouldn't -- I wouldn't -- I mean, it
10 depends on the situation but --

11 Mr. Beard: Commissioner, we would
12 request the -- the opportunity to provide you
13 with that application after the hearing.

14 Commissioner Wilkerson: Yes. And also
15 provide it to --

16 Mr. Beard: He's got a copy --

17 Commissioner Wilkerson: -- oh, does he?

18 Mr. Beard: -- in his --

19 Commissioner Wilkerson: I'm sorry; I
20 apologize.

21 Mr. Beard: -- pursuant to his subpoena
22 dated August 24th; it was provided to him in
23 that package.

24 Mr. Samuels: I assume it was; I have
25 just not been able to locate it.

1 Commissioner Wilkerson: No, that's
2 fine. Well, if not, he will provide it to
3 you as well?

4 Mr. Beard: Could we take a short break?

5 Commissioner Wilkerson: Yes. Now, I
6 told you --

7 Mr. Beard: I think our -- I think our
8 Court Reporter needs one too.

9 Commissioner Wilkerson: -- yes. I -- I
10 was going -- I was going to -- to --

11 Mr. Beard: I don't need one but I'm
12 going to take one if we get to take one.

13 Commissioner Wilkerson: -- yes, let's
14 take one.

15 Court Reporter: Are we going off --

16 Mr. Beard: Could -- would you instruct
17 the witness?

18 Commissioner Wilkerson: Please. You
19 can't speak to your attorney about the case,
20 okay?

21 Witness: Oh.

22 Commissioner Wilkerson: You can't --
23 right now. You can speak to him later but on
24 break you can't talk to him about anything.

25 Witness: Oh. Oh, okay.

1 Commissioner Wilkerson: That's the
2 rules.

3 Witness: All right. Where do -- what
4 do we do here now, just go?

5 Commissioner Wilkerson: We're just
6 going to take a break.

7 (Off The Record)

8 Commissioner Wilkerson: Madame Court
9 Reporter, let's go back on the record. Thank
10 you.

11 Mr. Beard: Thank you, Commissioner.

12 Commissioner Wilkerson: Please.

13 Mr. Beard: May I approach, again,
14 please?

15 Commissioner Wilkerson: Please.

16 Mr. Beard: Page 4 of the Claimant's
17 APA's, which would also be that January the
18 3rd --

19 Commissioner Wilkerson: Okay.

20 Mr. Beard: -- 2017, report.

21 Q. Your doctor reports -- you may want to put your
22 glasses on so you can read this too -- I highlighted it
23 here at the very top, your lawyer submitted this
24 document, it says, has a significant other -- I guess
25 you have a girlfriend -- one (1) adult daughter, lives

1 in Columbia, but it says you're on disability and you
2 were working at Westinghouse in Quality Control; what
3 were you on disability for?

4 A. High blood pressure.

5 Q. So, you got put on disability from Westinghouse?

6 A. Yeah. I was on disability for a year way before

7 --

8 Q. Did you tell --

9 A. -- oh.

10 Q. -- Michelin that you had been put on disability
11 for all that time?

12 A. While I was --

13 Q. Because of high blood pressure or whatever it was;
14 did you tell Michelin --

15 A. -- no, I didn't --

16 Q. -- about that?

17 A. -- no, I didn't tell them.

18 Q. Okay. So, that's why you weren't working at
19 Westinghouse anymore because you had been on disability
20 for so long they had to cut you loose?

21 A. No. No, I just -- no, I was on disability just --
22 they was trying to help me as far getting my blood
23 pressure under control, you know, that was where they
24 thought it was my heart thing but it was just -- just
25 medication they had to regulate.

- 1 Q. Why did you quit working at Westinghouse?
- 2 A. They had laid off.
- 3 Q. You got laid off?
- 4 A. Uh-huh.
- 5 Q. That's yes?
- 6 A. (Nodded head in an up-and-down motion).
- 7 Q. That's a yes?
- 8 A. Yes. Yes, I'm sorry.
- 9 Q. All right. Then you went to the hospital-- and
- 10 your lawyer pointed this out-- on June 24th, 2017,
- 11 which is the day that you claim you were injured on the
- 12 job, correct?
- 13 A. Correct.
- 14 Q. All right. Even though you had already been to
- 15 the doctor twice and said you were hurting from doing
- 16 your job for at least two (2) weeks up to that time you
- 17 had been to the doctor; so, now we're about three (3)
- 18 -- three and half (3 ½) weeks later from the time that
- 19 they all started, correct?
- 20 A. Correct.
- 21 Q. All right. So, on June 24th you go in and you
- 22 told the doctor, according to what it says in his
- 23 report, reports lower back pain to the left side, exact
- 24 same thing you told them on June the 11th and June the
- 25 20 -- I mean, June the 13th, correct, back pain on the

1 left side, right?

2 A. I don't --

3 Q. You don't remember just reading the two (2)
4 reports from June 11th and June 13th, both of them said
5 low back pain on the left side?

6 A. -- yeah.

7 Q. Okay.

8 A. Uh-huh.

9 Q. And it says, since he was working last night, is
10 what this says, it doesn't say since all the way back
11 like the other ones do, it says, he does a lot of
12 lifting and pulling and started hurting then; that's
13 basically what you had been doing the whole time,
14 right, lifting and pulling, correct?

15 A. At -- at Michelin?

16 Q. Yes.

17 A. I was --

18 Q. That's all you did on the -- that's all you ever
19 did out on the floor, wasn't it, lifting and pulling --

20 A. -- no.

21 Q. -- on the PAP?

22 A. No. On -- on the PAP sometimes you -- you
23 stretch.

24 Q. Okay.

25 A. I mean, stretching it, that's a whole different

1 thing.

2 Q. You didn't tell them you stretched; you just told
3 them about lifting and pulling?

4 A. No, I mean, I just -- they had just -- yeah, I
5 just --

6 Q. That's what you told them?

7 A. -- told them lifting -- lifting and pulling; I
8 guess that's what it is..

9 Q. And that's when you started hurting, is what it
10 said, correct?

11 A. Uh-huh. Yeah.

12 Q. Okay. Remember uh-huh -- you can't say uh-huh and
13 huh-uh and I'm --

14 A. Yes.

15 Q. -- I'm not trying -- I'm not being --

16 A. I understand.

17 Q. -- condescending --

18 A. I understand.

19 Q. -- I just want to make sure it's correct on the
20 record.

21 Commissioner Wilkerson: You've got to
22 say yes or no or I don't understand.

23 Witness: Okay.

24 Mr. Beard: Okay.

25 Q. And it says, you told the hospital doctor there --

1 at least they wrote down on this thing -- you had a lot
2 of questions about possible workers' Comp then; is that
3 correct? You told the doctor you were having questions
4 about workers' Comp?

5 A Say -- say that again now?

6 Q. It says, he has questions about possible workers'
7 Comp, is what the doctor wrote down on the consult
8 form.

9 A. Uh-huh.

10 Q. Did you tell the doctor you had questions about
11 possible workers' Comp?

12 A. On what day?

13 Q. June the 24th.

14 A. I don't --

15 Q. You don't remember that?

16 A. -- no, they asked -- they asked me about workman's
17 Comp.

18 Q. Okay.

19 A. Yeah.

20 Q. You don't remember telling the doctor and -- and
21 asking them questions about workers' Comp? It says,
22 you have questions about workers' Comp.

23 A. No. I don't remember that.

24 Q. Okay.

25 Mr. Beard: Commissioner, that's at page

1 17 of the Claimant's APA's; it's over on the
2 right hand side, in two (2) locations it
3 talks about has questions about workers'
4 Comp.

5 Commissioner Wilkerson: I've got you.

6 Q. It also says on page 18 --

7 Mr. Beard: -- Commissioner, may I
8 approach again, please?

9 Commissioner Wilkerson: Please.

10 Q. There's a question about radiating pain -- this is
11 on the 24th when you were at the hospital, page 18 --
12 it says radiates to -- can you -- can you read that or
13 do you need your glasses?

14 A. Radiate pain?

15 Q. Yes. The question says -- I mean, the --

16 A. Yeah.

17 Q. -- it says radiates to and then high bold, what
18 does it say?

19 A. Does not radiate.

20 Q. Okay. That's what the -- that's what you told the
21 doctor, right; you didn't have any radiating pain on
22 June 24th, correct?

23 A. I did though.

24 Q. In other words, you didn't have any pain going
25 into your legs?

- 1 A. You say radiate? I don't even know what -- I -- I
2 told them what my pain was on my leg, the left side of
3 my leg.
- 4 Q. You did tell them that?
- 5 A. Yeah.
- 6 Q. So, you don't --
- 7 A. On the 24th?
- 8 Q. -- yes, sir.
- 9 A. When I was in the emergency room?
- 10 Q. Yes, sir.
- 11 A. Yeah.
- 12 Q. So, you don't know why they wrote right there,
13 their -- their -- and I mean, it's dark bold writing --
- 14 A. Does not --
- 15 Q. -- does not radiate.
- 16 A. -- I mean --
- 17 Q. You don't know why?
- 18 A. -- yeah. what else does it say?
- 19 Q. Can you --
- 20 A. Okay.
- 21 Q. -- just answer that question?
- 22 A. Oh, okay.
- 23 Q. Do you know why?
- 24 A. Does not have -- yeah --
- 25 Q. Okay.

1 A. -- it says that but --

2 Q. It says -- says you're achy. It says you have
3 moderate severity of pain. So, with all due respect,
4 moderate pain is less than ten (10) out of ten (10).
5 So, you weren't even in as much pain on June the 24th
6 as you were when you were going to the emergency room
7 and your own doctor when you were ten (10) out of ten
8 (10) pain?

9 A. Okay. This is the --

10 Q. 24th.

11 A. -- oh, yeah. No. Yeah, I was -- well, what you
12 said, yeah, but from what it is --

13 Q. This is what -- your lawyer put a document into
14 evidence; this is the document.

15 A. -- oh, okay. Yeah.

16 Q. I'm asking you if all this is correct.

17 A. If it's there it's, I guess, correct.

18 Q. Okay. All right. At some point on June the 24th
19 you talked with -- you said, Troy Lowman, correct?

20 A. Uh-huh. Yes.

21 Q. Okay. And Mr. Lowman was in charge of all the
22 trainees; his job -- he was like the Bull or the boss
23 over all those folks, people who were in training or
24 people who were --

25 A. Right. Yes.

- 1 Q. -- still on probation?
- 2 A. Yes, sir.
- 3 Q. And you were on probation at this time, right?
- 4 A. Yes, sir.
- 5 Q. Okay. You had a like -- what, a ninety (90) day
- 6 or a hundred and twenty (12) days probation out at
- 7 Michelin? I don't know what --
- 8 A. Yeah, something -- I --
- 9 Q. -- I can't remember if it's ninety (90) or one
- 10 twenty (12).
- 11 A. -- I don't -- I can't remember neither.
- 12 Q. Okay. But you were still on probation?
- 13 A. I --
- 14 Q. You were still in that probationary period because
- 15 you only started at the end of April --
- 16 A. -- okay. Yes.
- 17 Q. -- correct?
- 18 A. Correct.
- 19 Q. All right. And so, that's who you called was Mr.
- 20 Lowman?
- 21 A. Yes.
- 22 Q. And eventually you said you got him?
- 23 A. Yes.
- 24 Q. And he instructed you with workers' Comp you were
- 25 supposed to go to the Nurse, not to the hospital,

1 correct?

2 A. He -- he instructed me what?

3 Q. You should have gone to the Nurse, not to the
4 hospital --

5 A. Correct.

6 Q. -- correct?

7 A. Correct.

8 Q. Or you should have gone to Security if the Nurse
9 wasn't there; he told you that, correct?

10 A. No.

11 Q. He didn't tell you that?

12 A. No.

13 Q. Okay. All right. So, anyway, you go to -- you
14 get a hold of him and -- and eventually, you talked to
15 the Nurse the same day; we've gone through those
16 documents when Mr. Samuels showed you what the Nurse
17 called and said --

18 A. Yeah.

19 Q. -- correct?

20 A. She called me after I got home --

21 Q. Correct.

22 A. -- Saturday.

23 Q. And told you you needed to go see Dr. Izard. You
24 weren't supposed to go on your own to doctors --

25 A. No.

- 1 Q. -- under workers' Comp if that's what you were
2 claiming --
- 3 A. No.
- 4 Q. -- correct?
- 5 A. No.
- 6 Q. Okay.
- 7 A. She didn't say that. She said -- that's -- yeah.
8 She said -- all she said was, go to -- come -- come in
9 -- she said, hey, look, just come in on Monday, you
10 know, don't work, don't do this, don't do that, take
11 Aleve. Those -- those doctors exaggerate. And I told
12 her what the doctor -- the emergency doctor said; told
13 her all that information. I'm on Oxycodone, you know,
14 this doesn't -- and she said --
- 15 Q. Well, you were already on all that stuff except
16 for Oxycodone; you were already on all the other
17 medications but you didn't tell her about that, did
18 you?
- 19 A. -- no, I told her about --
- 20 Q. You didn't -- you still didn't tell her --
- 21 A. -- yeah.
- 22 Q. -- on the 24th --
- 23 A. Okay. I wasn't --
- 24 Q. -- listen to me. You still did not tell her on
25 the 24th that you had been to the doctor and the

1 hospital two (2) times before you went to the hospital
2 that day, did you; you didn't have that communication
3 yet?

4 A. -- well, let me finish --

5 Q. Am I --

6 A. -- answering the first question.

7 Q. -- okay.

8 A. I ain't finished the first question --

9 Q. Okay.

10 A. -- okay? The first question what you asked me
11 was, what the Nurse told me.

12 Q. Right.

13 A. I'm -- let me finish that. Okay. She told me
14 that, hey, go to Dr. Izard Monday morning --

15 Q. Okay.

16 A. -- there's no problem. Hey, she didn't say
17 nothing about -- we didn't mention nothing about no
18 workman's Comp.

19 Q. Okay. So, that didn't even come up that day?

20 A. That didn't even come up.

21 Q. Okay.

22 A. We didn't even think -- nobody didn't say nothing
23 about no workman's Comp --

24 Q. Okay.

25 A. -- we didn't even say nothing. She told -- Tyrone

1 called me, then Tyrone said he was going to get in
2 contract with the Nurse.

3 Q. Okay.

4 A. Nurses don't work on the weekend. So, he let the
5 Nurse call me back and said -- called me up and said,
6 look --

7 Q. She called you on the weekend?

8 A. -- she called me that Saturday --

9 Q. Okay.

10 A. -- and she said --

11 Q. -- on the weekend?

12 A. -- on the weekend. She --

13 Q. Okay.

14 A. -- okay. She called me that Saturday --

15 Q. Right.

16 A. -- she said she was out of town. She said, hey,
17 just come in on Monday morning and see Dr. IZARD. And
18 I said, okay, I'll come in on Monday morning and see
19 Dr. IZARD and that was that.

20 Q. Okay. And that's what --

21 A. She said --

22 Q. -- I'm sorry.

23 A. -- go ahead.

24 Q. That's what you did?

25 A. That's what I did.

1 Q. Okay. And you went to see him on June the 26th;
2 so, that would have been Monday, two (2) days later?

3 A. Right.

4 Q. Okay.

5 Mr. Beard: Commissioner, again,
6 permission to approach?

7 Commissioner Wilkerson: Sure.

8 Mr. Beard: All right.

9 Q. I'm looking at your medical records that have been
10 submitted, starting at pages 26, which would be
11 Healthworks; that's where Dr. Izard is, correct?

12 A. Yes.

13 Q. Okay. And you were shown this earlier and you
14 said the date of injury or problem was June 24th, you
15 said you were in severe pain and you were asked some
16 questions. There's a question on here that says, have
17 you ever injured this part of your body before, you
18 put, no, correct?

19 A. Correct.

20 Q. Okay. But you have, you've injured your back
21 before; you had a workers' Comp claim, right?

22 A. Yeah.

23 Q. Okay. So, that was not true, was it?

24 A. No.

25 Q. Okay. There's also questions on the next page,

1 page 27. It says previous illnesses, back injuries or
2 problems; it says now, past or never. You put now you
3 were having it and you said as of June 24th, '17, and
4 you went to Lexington Emergency, correct?

5 A. Right.

6 Q. You didn't tell them about the past though, did
7 you?

8 A. No --

9 Q. Okay.

10 A. -- I didn't.

11 Q. It says, have you ever had surgery. Now, you've
12 never had back surgery but you have had right knee
13 surgery before; we've already looked and seen that
14 you've had an arthroscopy to your right knee before,
15 correct?

16 A. (Nodded head in an up-and-down motion).

17 Q. You didn't tell him about that either, did you?

18 A. No, I didn't tell him about my right knee as far
19 as -- because it was -- that was like when I was a -- I
20 can't even remember; that was like --

21 Q. Well, you --

22 A. -- when I was a teen.

23 Q. -- you remembered on January the 3rd, 2017, when
24 you told your family doctor that you'd had an
25 arthroscopy surgery on your right knee; why would you

1 not remember to tell that to Dr. Izard on his form --

2 A. Yeah --

3 Q. -- that's only five (5) --

4 A. -- yeah.

5 Q. -- months later?

6 A. Yeah. I -- I didn't remember that.

7 Q. Okay.

8 A. I -- I just didn't think of that.

9 Q. All right. That's the day you made that drawing
10 and showed Dr. Izard that you had fluid on your right
11 knee?

12 A. Was that -- you said January 3rd?

13 Q. No. Well, that's when you went to your doctor;
14 the -- the report your lawyer submitted --

15 A. Oh, okay.

16 Q. -- that I --

17 A. Okay.

18 Q. -- didn't understand why but it had a lot of
19 information in it.

20 A. Uh-huh.

21 Q. I'm asking about -- and in -- in that --

22 A. Yeah.

23 Q. -- in that information it said you had an
24 arthroscopic surgery on your right knee --

25 A. Yeah.

- 1 Q. -- which you've admitted --
- 2 A. Yeah.
- 3 Q. -- that you had.
- 4 A. Yeah.
- 5 Q. The only way --
- 6 A. I admitted that.
- 7 Q. -- that he could know that is if you told him --
- 8 A. You're right.
- 9 Q. -- when you were a kid, right?
- 10 A. Right. Right.
- 11 Q. So, you had to tell him?
- 12 A. Yeah. Yeah.
- 13 Q. If you could tell him, why couldn't you tell Dr.
- 14 Izard or why couldn't you tell Michelin or why couldn't
- 15 you tell Westinghouse all those answers when that was
- 16 even closer in time, at least Westinghouse; why
- 17 couldn't you tell all them that?
- 18 A. I -- it was on a questionnaire and I thought it
- 19 was relating to now. I --
- 20 Q. Okay.
- 21 A. -- you know, me and him probably was -- I don't
- 22 know, talking about something. I don't know.
- 23 Q. All right. But you told Dr. Izard that you were
- 24 having fluid on your right knee on June 26th and you
- 25 were claiming that was because of what was going on

1 with you, right?

2 A. This --

3 Q. You were claiming this was because of this June
4 24th stuff; isn't that right?

5 A. -- no, that's the left --

6 Q. No, sir. That's the right knee.

7 A. -- okay. I was perceiving it as the left.

8 Q. Oh, so you were having problems --

9 A. Yeah.

10 Q. -- in your left knee?

11 A. Yeah. So, I was perceiving it as the left. Hold
12 on now, let me see; I don't -- I'm trying to see
13 something here now. Yeah, I mean, I was doing the same
14 thing as -- let's see --

15 Q. And just to remind you, we've already gone through
16 this and you admitted that you said that was your right
17 knee --

18 A. -- yeah. Okay.

19 Q. -- and you admitted that you said you had fluid.

20 A. Okay. That's my right.

21 Q. Okay.

22 A. That's right, yeah.

23 Q. And --

24 A. I thought maybe I was -- something was --

25 Q. -- you were --

- 1 A. -- I had to look at that again.
- 2 Q. -- you were relating these right knee problems to
3 this workers' Comp incident you were claiming, right --
- 4 A. Yeah.
- 5 Q. -- you were saying that was part of that?
- 6 A. I didn't say it. I mean --
- 7 Q. well, were you?
- 8 A. -- I said, they --
- 9 Q. Are you?
- 10 A. -- huh?
- 11 Q. Are you claiming your right knee fluid problems is
12 related to this workers' Comp claim you're making?
- 13 A. No. They say that it might can be related to
14 that.
- 15 Q. I'm asking you are you --
- 16 A. I mean --
- 17 Q. -- claiming that?
- 18 A. -- I don't know. I don't know.
- 19 Q. well, on June 26th, two (2) days after you claimed
20 to have been injured, you told Dr. Izard on a form, at
21 least you drew it on there, were you claiming that to
22 be related? On June 26th you were making that claim,
23 two (2) days after this incident.
- 24 A. I mean, I don't -- as far as making a claim that
25 that's related to that?

1 Q. Yes.

2 A. I -- I don't know whether I was making that claim.
3 I just told them, you know, that was what's going on,
4 as happening now.

5 Q. Okay. And Dr. Izard instructed you to return to
6 work immediately under regular duty, correct?

7 A. Correct.

8 Q. And to come back and see him in two (2) days,
9 right? He gave you a two (2) day return to see him,
10 correct?

11 A. No. He just said go back to work and he'll get
12 back with me -- and go back to work and that's the last
13 I heard from Dr. Izard.

14 Q. Okay.

15 A. And -- and I -- and I -- and when I -- I got
16 another opinion and that's why I went out to the
17 emergency room.

18 Q. All right. You went to the emergency room, not
19 the same day as you got the opinion from Dr. Izard, but
20 you went to the emergency room the next day, on June
21 the 27th, correct?

22 A. Yes.

23 Q. You didn't tell Michelin you were going to get
24 another opinion, did you; you just went?

25 A. No. I did. I told --

1 Q. You did what?

2 A. -- I told -- I told Troy Lowman -- I told people
3 -- Troy Lowman and I told -- I forgot who else I told
4 but I told people that, hey, I'm not -- I can't come
5 back to work; no way I can come back to work. I wasn't
6 -- I wasn't just going to leave out of work. I always
7 told them -- I always kept -- I always told them what I
8 was doing prior -- after that 24th; I always told them
9 that.

10 Q. Okay. So, your testimony is, you told Troy Lowman
11 before you went to the hospital on the --

12 A. I know I told --

13 Q. -- let me -- let me finish my question.

14 A. -- go ahead.

15 Q. Before you went to the hospital on June 27th, your
16 testimony is you told Troy Lowman you were going to the
17 hospital on the 27th, even though you weren't working
18 that day?

19 A. I told -- I -- I'm trying to remember who I talked
20 to on the 27th. I talked to some higher up; I think it
21 was Troy Lowman or Kathy, one (1) out the two (2), I
22 was keeping informed on what was going on with me
23 because I was out of work. Because they didn't -- you
24 know, they didn't -- I mean, I had excuses for all
25 those days. So, I can't exactly -- I -- I know I

1 called Troy and told him -- I left a message; we'd been
2 going back-and-forth and also Kathy. I don't -- I
3 can't exactly say which one I was talking to, verbatim,
4 but it was one (1) out the two (2), you know?

5 Q. Okay. During all this time you were -- you were
6 having a -- you had a pretty bad -- you have bad
7 coughing issues. You have -- you were going to the
8 doctors for coughing all that time, as well, weren't
9 you?

10 A. Yeah. I was -- I had a -- I think I had a cold.

11 Q. And -- and, I mean, you were coughing a lot?

12 A. Yeah.

13 Q. Coughing hard?

14 A. Yeah. Cough -- I had a cold.

15 Q. Okay.

16 A. Uh-huh.

17 Q. And that was causing problems with your back,
18 wasn't it?

19 A. Cause -- causing problems? No.

20 Q. Well, it says here, he also states when he coughs
21 it hurts his back; did you tell the doctor that or not?

22 A. Yeah.

23 Q. I mean --

24 A. Yeah.

25 Q. -- what --

- 1 A. Yeah. Yeah. Yeah. Yeah.
- 2 Q. -- okay.
- 3 A. Yeah. Yeah.
- 4 Q. You don't think that's important?
- 5 A. well, they --
- 6 Q. You don't think that's important?
- 7 A. -- I was telling -- what I was saying was that I
- 8 was coughing so hard that -- that thing hurt my back;
- 9 it was just -- I was just --
- 10 Q. Coughing --
- 11 A. -- I mean, I --
- 12 Q. -- coughing so hard it could have even herniated
- 13 your back, couldn't it?
- 14 A. -- you know what I'm saying, it -- I just coughed
- 15 hard; you know what I'm saying?
- 16 Q. It could have herniated your back you were
- 17 coughing so much and coughing so hard during that
- 18 period of time; isn't that right?
- 19 A. Herniate?
- 20 Q. Yes.
- 21 A. what's -- what -- explain what you're saying. I
- 22 mean --
- 23 Q. You could have herniated your back. You could
- 24 have blown out a disk you were coughing so hard.
- 25 A. -- I mean, not -- not -- no. Okay. If that's --

1 if that's what you say.

2 Q. Okay.

3 A. Yeah.

4 Q. This says you told the doctor you were having
5 numbness into your right leg at the hospital, not your
6 left leg but your right leg; is that correct?

7 A. The doctor --

8 Q. It's what it says. You told him that?

9 A. -- the doctor?

10 Q. The doctor says you told him, patient states he
11 has numbness in his right leg --

12 A. Oh, yeah.

13 Q. -- and also states when he coughs it hurts his
14 back.

15 A. And that's the -- the 27th?

16 Q. Yes, sir.

17 A. Yeah. They might have gotten that wrong, you
18 know, because --

19 Q. Or maybe that's what you told them.

20 A. -- they got that wrong, probably, yeah.

21 Q. Well, then why did you submit this document into
22 evidence if it was wrong?

23 Mr. Samuels: Objection, Your --

24 Q. Do you know why your lawyer would have submitted
25 it?

1 Mr. Samuels: -- objection, Your Honor,
2 argumentative.

3 Commissioner Wilkerson: Yes. He
4 doesn't know why.

5 Mr. Beard: Okay.

6 Q. Did you know your lawyer submitted a document into
7 evidence that says -- that you submitted into evidence,
8 that says that you had numbness in your right leg on
9 June the 27th, 2017; did you know that?

10 A. No.

11 Q. Okay.

12 A. Because it should have -- can I -- oh.

13 Mr. Samuels: Your Honor, I think he is
14 allowed to answer the question.

15 Commissioner Wilkerson: Yes.

16 Witness: Yes. Can I say?

17 A. Because that's -- I mean, that's the -- they --
18 they got the -- that's the -- that's the same emergency
19 room doctor that I went to the 24th. So, everything
20 that was -- all the docs -- all the documents that --
21 like I said, that might have been a -- that's a type
22 error right there --

23 Q. Okay.

24 A. -- you know.

25 Q. It says on the 27th you had no problem with your

1 gait; in other words, you weren't limping. You were
2 walking normally according to -- the patient reports
3 ambulates with a normal gait; that's on page 35 of your
4 medical records. So, you weren't limping on that -- at
5 that time, correct?

6 A. The 27th?

7 Q. Yes.

8 A. Not limping but I was kind of --

9 Q. You were walking normally?

10 A. -- no, I wasn't walking normally.

11 Q. Okay. So -- so, when your doctor puts big old
12 bold writing on that page, patient ambulates, meaning
13 walks, with a normal gait, meaning you're not limping,
14 you --

15 A. Uh-huh.

16 Q. -- you dispute that?

17 A. No, I wouldn't dispute that. I -- I wasn't -- I
18 wouldn't say I would be limping.

19 Q. You were walking normal --

20 A. Oh.

21 Q. -- according to the doctor.

22 A. He said -- what he said was --

23 Q. You were walking normal.

24 A. -- what he said -- say that again; repeat what he
25 said.

- 1 Q. Patient ambulates with a normal gait; that means
2 you walk normal.
- 3 A. Oh, well, that's -- that's -- that's what he said.
- 4 Q. Okay. When you went to the hospital on the 27th,
5 it says you told them -- or it says, patient states he
6 was seen here three (3) days ago, that would have been
7 on the 24th, you didn't tell the hospital that you had
8 been to Dr. Izard the day before, did you; you didn't
9 relay that information to them, did you?
- 10 A. I don't remember --
- 11 Q. Okay.
- 12 A. -- but I -- I know they -- they referred me to
13 Lexington Brain and -- and I'd been -- I got a shot.
- 14 Q. That wasn't what I asked you.
- 15 A. Oh, okay.
- 16 Q. I said, you didn't tell the hospital that you had
17 been to Dr. Izard the day before, correct; you didn't
18 tell them that?
- 19 A. I -- I think I did mention it to them because --
- 20 Q. You don't know why it's not in your medical
21 records?
- 22 A. -- I don't know why but I think I did mention
23 that, hey, I -- because I've been -- I told them what
24 all the doctors I'd been to as far as the emergency
25 room, the first time I came there --

1 Q. Okay.

2 A. -- and also my --

3 Q. Urgent Care?

4 A. -- no. Dr. Izard, what he --

5 Q. Okay.

6 A. -- what he told me but -- but I think I did
7 mention that to him; I can't recall. I can't remember
8 but I think I did mention because I always -- you -- I
9 think I usually mentioned that I -- I go there and tell
10 them everything.

11 Q. You can't explain why they only mention that you
12 had been to the hospital three (3) days before --

13 A. Well, I --

14 Q. -- but they didn't mention the day before you had
15 been to Dr. Izard?

16 A. -- I can't explain it. The same reason why I
17 can't explain that -- that they said the right leg
18 fluid.

19 Q. It's kind of strange how all the things that are
20 hurtful to your case are not in any of these records
21 every time I ask you something; have you noticed that?

22 Mr. Samuels: Objection, Your Honor,
23 argumentative.

24 Commissioner Wilkerson: It doesn't
25 matter; if I've noticed it that's what

1 counts.

2 Mr. Beard: Okay.

3 Q. The hospital put you on restrictions for three (3)
4 days from June the 27th; is that correct?

5 A. Yeah.

6 Q. Okay. All right. So, three (3) days later, on
7 June the 30th, did you go back to work when the
8 restrictions ended?

9 A. No.

10 Q. Okay. Instead you started going somewhere else.
11 You went to Doctor's Care on your own, correct?

12 A. Right.

13 Q. Okay.

14 A. I went to Doctor's Care, yeah.

15 Q. So, you picked a whole another doctor to go
16 through and then I look --

17 Mr. Beard: -- and those records,
18 Commissioner, start at page 43 of Claimant's
19 APA's.

20 Q. At page 44, on June 30th, 2017 --

21 Mr. Beard: -- can I approach,
22 Commissioner?

23 Commissioner Wilkerson: Please.

24 Q. Page 44 there's a big box at the top that says,
25 Workers' Compensation; do you see that box?

1 A. Uh-huh.

2 Q. That's yes?

3 A. Yes.

4 Q. Is this a workers' Compensation Claim? Did you
5 check yes on that box?

6 A. I didn't check nothing on it.

7 Q. Correct. You didn't check yes, though, did you?

8 A. I didn't check nothing.

9 Q. You didn't tell that doctor it was a workers' Comp
10 claim, did you?

11 A. What, you're talking about Doctor's Care?

12 Q. Yes, sir.

13 A. It wasn't a Workman's Comp claim.

14 Q. Okay. And that is your signature on June 30th,
15 correct?

16 A. Yeah.

17 Q. Okay. It says, interestingly, you told them on
18 your report at page 45, it says, fifty (50) year old
19 with work-related, left sided, low back pain, he has
20 been seen four (4) times since June 11th, 2017; is that
21 what it says?

22 A. Yeah.

23 Q. All right. And then it's got right under it, the
24 four (4) times: June 11th, that would have been the
25 hospital, correct?

1 A. Uh-huh.

2 Q. That's yes?

3 A. Yes. I'm sorry.

4 Q. June 16th, I assume you've got the date wrong and
5 it was June 13th, it would have been to your personal
6 doctor, correct --

7 A. Correct.

8 Q. -- or did you go somewhere on June 16th that we
9 don't know about?

10 A. I -- I don't -- I don't know what he did.

11 Q. Okay.

12 A. I don't know.

13 Q. June 24th would have been the hospital on June
14 24th the first day, right?

15 A. Uh-huh.

16 Q. That's yes?

17 A. Yes.

18 Q. June 27th would have been the hospital three (3)
19 days before this when they told you to go back to work
20 three (3) days later, right?

21 A. Right.

22 Q. Where's doctor --

23 A. Yes, sir.

24 Q. -- where's -- where's Dr. Izard's? You didn't
25 tell them about Dr. Izard either, did you?

- 1 A. (Shook head in a side-to-side motion).
- 2 Q. That's amazing. Dr. Izard is not there either, is
- 3 he?
- 4 A. I -- like I said, I did -- I think I did tell
- 5 Doctor's Care.
- 6 Q. So -- so, they go and make a point of writing down
- 7 every single time you said you went to the doctor and
- 8 the only one that's missing, the only one, is Dr.
- 9 Izard?
- 10 A. No. what they can do is pull up what he did -- he
- 11 did before I set up -- let me -- let me --
- 12 Q. Go ahead. I'm listening.
- 13 A. -- okay.
- 14 Q. I'm -- I'm not --
- 15 A. Don't interrupt me now.
- 16 Q. -- go ahead.
- 17 A. what he did -- what he told me what he did before
- 18 I even saw him --
- 19 Q. I didn't ask you what he told you.
- 20 A. -- oh.
- 21 Q. You can't tell me that.
- 22 A. Okay. Okay. well -- well, I can't say nothing.
- 23 Q. Is Dr. Izard's --
- 24 A. No, it's not on that.
- 25 Q. -- office visit on the report?

1 A. No.

2 Q. Okay. And, again, this was a doctor you went to,
3 again, on your own, without Michelin's authority or not
4 under Workers' Comp, correct?

5 A. Correct.

6 Q. Okay.

7 Commissioner Wilkerson: And didn't I
8 hear you testify to earlier that the reason
9 you went to Doctor's Care -- it wasn't work
10 related, right?

11 Witness: Say what?

12 Mr. Samuels: If I may, Your Honor, I
13 think he said it wasn't --

14 Commissioner Wilkerson: I thought he
15 said --

16 Mr. Samuels: -- wasn't work --

17 Commissioner Wilkerson: -- it was not
18 under --

19 Mr. Samuels: -- wasn't under workers'
20 Comp.

21 Witness: Yeah.

22 Commissioner Wilkerson: -- I'm sorry?

23 Witness: No, it wasn't -- it wasn't
24 under workman's Comp.

25 Commissioner Wilkerson: Is why he went

1

to Doctor's Care?

2

Witness: No. I went to Doctor's Care to -- to see about my back. I just went to Doctor's Care but it wasn't on no Workman's Comp.

3

4

5

6

Commissioner Wilkerson: It wasn't on Workers' Comp, is what he said.

7

8

Witness: No. I didn't -- I didn't even have Workman's Comp; I didn't have nothing.

9

10

Commissioner Wilkerson: That's what he said, it wasn't on Workers' Comp?

11

12

Witness: Right.

13

Commissioner Wilkerson: Okay. That's what -- I mean, I thought that's what he said.

14

15

16

Mr. Samuels: Well, that goes to the -- the -- the payment; it's not --

17

18

Commissioner Wilkerson: Oh, I --

19

Mr. Samuels: -- the reason for going there. The record --

20

21

Commissioner Wilkerson: -- don't have a clue what it goes to.

22

23

Mr. Samuels: -- the record speaks for itself as to --

24

25

Mr. Beard: You have no idea --

1

Mr. Samuels: -- if he's there for an injury.

2

3

Mr. Beard: -- that that's what it goes to.

4

5

Commissioner Wilkerson: I -- I don't have --

6

7

Mr. Beard: You can't testify, Stephen.

8

9

Commissioner Wilkerson: -- because he doesn't check the workers' Comp box; that's why I'm confused. If -- if he --

10

11

Witness: Yeah. I didn't check the Workers' Comp because I never had workman's Comp. I never -- I didn't -- I was never had it.

12

13

14

15

Commissioner Wilkerson: -- it doesn't ask you have you ever had it; that's where my concern is with the whole process.

16

17

18

Mr. Samuels: But, Your Honor, he hasn't checked anything.

19

20

Witness: Yeah.

21

Commissioner Wilkerson: I agree.

22

Witness: Yeah.

23

Commissioner Wilkerson: It's just his name and signed the form; I agree.

24

25

Witness: Yeah.

1 Commissioner Wilkerson: I don't think
2 there's any dispute, yeah.

3 Mr. Samuels: Yeah.

4 Q. Page 45 of the report says, he -- that the doctor
5 told you and your wife that you needed to see an
6 orthopedic. Now, I thought you were separated from
7 your wife?

8 A. Yeah.

9 Q. Was your wife with you at this visit?

10 A. No.

11 Q. Well, who is your wife?

12 A. The -- Larissa.

13 Q. Who?

14 A. Larissa.

15 Q. So, it wasn't your wife?

16 A. No. It was --

17 Q. It was somebody else?

18 A. -- yes.

19 Q. Girlfriend?

20 A. Friend.

21 Q. Okay. All right. It said, your wife -- I guess
22 that would be the friend -- had already called Midlands
23 Black and Blue Clinic but they do not see backs there;
24 is that correct?

25 A. The Black and Blue Clinic?

- 1 Q. I'm just telling you what the report says.
2 Apparently your wife, Larissa, told them that she had
3 already called Midlands Black and Blue Clinic but they
4 do not see backs there. I'm just reading the --
- 5 A. Oh.
- 6 Q. -- report --
- 7 A. Yeah.
- 8 Q. -- your lawyer put into evidence.
- 9 A. The Midlands Ortho -- we -- we called them from
10 there and they didn't see people that -- we just had --
11 we had to wait until -- because we couldn't get in
12 Lexington Brain -- we had to try to get in Lexington
13 Brain and Spine.
- 14 Q. It says he gave you a list of orthopedic doctors
15 to go to; did -- you didn't go to any of those
16 orthopedic doctors either, did you --
- 17 A. Couldn't get --
- 18 Q. -- on the list that he gave you?
- 19 A. -- couldn't get into them.
- 20 Q. Okay. All right. And that's the only time you
21 went to Doctor's Care, correct, June the 30th? You
22 didn't go again to Doctor's Care, did you?
- 23 A. Not after June 30th, no.
- 24 Q. Okay. And it says, their plan was you were going
25 to be out of work on Friday, Saturday and Sunday; so,

1 it looks like that would have been three (3) days,
2 correct?

3 A. Correct.

4 Q. Did you go to -- go back to work three (3) days
5 later?

6 A. No. That was -- that was the -- no. And the 4th
7 of July came up -- the --

8 Q. well, this says return --

9 A. -- the -- the vacation.

10 Q. -- this says return to work on July 3rd, the --

11 A. Yeah. It was --

12 Q. -- this is page 49. Did you go back to work on
13 July 3rd?

14 A. -- no.

15 Q. And you didn't go back to work ever again after
16 that, all the way up till ever; you've never gone back
17 to work, right?

18 A. Right. Because -- right.

19 Q. Okay. And you didn't see any doctors at all
20 between June the 30th and July the 24th when you went
21 to doctor -- or to Lexington Brain and Spine, correct;
22 you didn't see any doctors between there?

23 A. June 30th till what?

24 Q. July 24th.

25 A. June 30th till July --

- 1 Q. Yes.
- 2 A. -- 24th?
- 3 Q. Yes.
- 4 A. I -- I can't remember when I seen Dr. Boyd. We
5 had a --
- 6 Q. Well, you --
- 7 A. -- we had a --
- 8 Q. -- you saw Dr. Boyd's --
- 9 A. -- not Dr. Boyd but doctor -- the first --
- 10 Q. -- you saw Mr. Valdes --
- 11 A. -- the -- the -- the -- the first --
- 12 Q. -- the PA on July the 24th --
- 13 A. -- okay.
- 14 Q. -- that the first time --
- 15 A. Right.
- 16 Q. -- according to the records you submitted. My
17 question is, am I correct --
- 18 A. Right.
- 19 Q. -- you did not go to or see a doctor between June
20 the 30th and July the 24th, '17?
- 21 A. Right.
- 22 Q. Okay. What is Valtrex?
- 23 A. That's like if you have a bump on your lip, a cold
24 sore.
- 25 Q. Were you seeing Doctor's Care for that too?

1 A. Not -- not really.

2 Q. Well, why --

3 A. I mean, it --

4 Q. -- did your lawyer submit two (2) pieces of paper
5 at pages 50 and 51 saying you were calling in the
6 doctor's office for Valtrex --

7 A. -- yeah. I don't know.

8 Q. -- on both dates and they were apparently calling
9 in prescriptions for you for those; why --

10 A. Yeah.

11 Q. -- why is that in the record?

12 A. I don't know. Well, as far as the doctors were --
13 I mean, it was like a -- what you could take for cold
14 sores. I don't take that ever -- every day or nothing
15 like that.

16 Q. Then you got to Mr. Valdes on July the 24th of
17 '17, correct?

18 A. Correct.

19 Q. All right. And according to his history it says,
20 you told him you were injured while at work at the
21 Michelin plant on June 24th, stated he was lifting some
22 heavy materials when he felt a sharp pain in his lower
23 back; is that what you told him?

24 A. Yes.

25 Q. Okay. He had visits to primary care and Urgent

1 Care and eventually ended up in our emergency
2 department; is that what you told him?

3 A. Yeah.

4 Q. Okay. You didn't tell them about Dr. Izard, did
5 you?

6 A. I think I did tell them about -- I told them about
7 -- ever when I went there I told them that.

8 Q. Okay.

9 A. I think I did. I told them every doctor I went
10 to.

11 Q. All right. And it looks like he put you on -- the
12 only prescription he gave you was Flexeril; is that
13 correct?

14 A. Correct.

15 Q. Low back pain, it says Flexeril underneath it?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yeah. Yes, sir.

19 Q. And you had already been put on Flexeril as far
20 back as June the 11th, correct; two (2) weeks before --

21 A. Yes.

22 Q. -- more than two (2) weeks --

23 A. Yes, sir.

24 Q. -- before June 24th --

25 A. Yes, sir.

1 Q. -- or actually two (2) weeks before June 24th?

2 A. Yes, sir.

3 Q. Okay. And had been on Flexeril all that time,
4 correct?

5 A. Yes, sir.

6 Q. Then you saw Dr. Boyd, himself, for the first time
7 on August the 7th, correct?

8 A. Correct. Yes, sir.

9 Q. And for the first time in any medical report you
10 indicate that you injured yourself pulling rubber at
11 the Michelin plant as opposed to doing heavy lifting
12 and those other things; is that correct? Is that the
13 first time you told anybody specifically about pulling
14 on rubber?

15 A. I -- I told everybody that but -- well, everybody,
16 they just -- yeah, I told everybody -- anybody that I
17 seen what had happened.

18 Q. Would you agree that's the first medical report
19 that said you were pulling rubber?

20 A. Yeah, that's the first medical report --

21 Q. Would you agree all the other ones said you were
22 doing heavy lifting?

23 A. -- yeah, I'll agree to -- if they said it, yeah; I
24 agree with it if that's what they're saying.

25 Q. And somehow you remembered -- even though you

1 couldn't remember when you filled out the forms and you
2 said it was over twenty-one (21) years ago and those
3 kind of things -- you told Dr. Boyd that you'd had
4 previous back problems maybe -- it says maybe
5 twenty-five (25) years ago he had an episode that
6 resolved without any treatment; did you tell Dr. Boyd
7 that?

8 A. Twenty-five (25) years? I -- I don't --

9 Q. That's what you said --

10 A. -- yeah.

11 Q. -- that's what he said you told him.

12 A. Okay. If it's --

13 Mr. Beard: I'm looking at page 58,

14 Commissioner, of the Claimant's APA's --

15 Witness: -- okay.

16 Mr. Beard: -- on August the 7th.

17 Commissioner Wilkerson: Okay.

18 Q. It says, he states that he really --

19 A. Yeah.

20 Q. -- hasn't had previous back problems except maybe
21 twenty-five (25) years ago he had an episode that
22 resolved without any treatment --

23 A. Yeah.

24 Q. -- area of this pain --

25 A. Yeah.

1 Q. -- is made worse by bending over or picking
2 anything up.

3 A. I guess that's -- that's -- tell him that -- I did
4 tell him.

5 Q. So -- so, you remembered when you saw Dr. Boyd you
6 had a prior back problem but you didn't remember
7 anybody -- any other time when you had the opportunity
8 to answer that question; is that correct?

9 A. That's correct.

10 Q. Okay. And apparently you were going through
11 physical therapy -- I think your lawyer asked you all
12 this -- and physical therapy was actually helping you
13 and making you better; isn't that right?

14 A. Correct.

15 Q. And I think you said something about -- I think
16 you said you -- you -- you never finished physical
17 therapy --

18 A. Right.

19 Q. -- is that what you told him?

20 A. Right.

21 Q. Okay. The whole time you were going to Dr. Boyd
22 your pain level, according to him, was always around
23 three (3) out of ten (10); does that sound right?

24 A. Yeah. Whatever he put -- yeah.

25 Q. So --

- 1 A. whatever he put.
- 2 Q. -- the whole time you're seeing Dr. Boyd you're
- 3 three (3) out of ten (10); you would agree that's a
- 4 whole heck of a lot better than ten (10) out of ten
- 5 (10), isn't it?
- 6 A. Uh-huh.
- 7 Q. That's yes?
- 8 A. Yes. Yes, sir.
- 9 Q. And yet, when you were ten (10) out of ten (10)
- 10 you were still working at Michelin and when you're
- 11 three (3) out of ten (10) you're not working anywhere;
- 12 isn't that correct?
- 13 A. Correct.
- 14 Q. So -- so, you could work in ten (10) out of ten
- 15 (10) pain but you can't work in three (3) out of ten
- 16 (10) pain; that's your -- that's what you're telling
- 17 us?
- 18 A. No, I'm not telling you that.
- 19 Q. Okay. This also says that you have pain that
- 20 radiates down from -- to your right leg on August --
- 21 oh, excuse me -- September 14th, page 63. You don't
- 22 have radiating pain into your right leg, do you?
- 23 A. No.
- 24 Q. Okay.
- 25 A. That was from who?

1 Q. Dr. Boyd. Then you went to -- or you started
2 going to the Physical Therapist; Dr. Boyd sent you over
3 there, correct?

4 A. Correct.

5 Q. All right.

6 Mr. Beard: Commissioner, permission to
7 approach?

8 Commissioner Wilkerson: Please.

9 Mr. Beard: Claimant's page 73, I
10 believe, start -- or at least that's part of
11 the physical therapy; it actually looks like
12 it starts on page 72.

13 Commissioner Wilkerson: Okay.

14 Q. You went to Lexington Physical Therapy; is that
15 where you were going?

16 A. Yeah.

17 Q. Okay. Is that all your handwriting on page 73?

18 A. Uh-huh. Yeah.

19 Q. Okay. There's a question that says, if injury is
20 due to an accident, when was the date of accident; did
21 you answer that question?

22 A. Yeah. I didn't -- I didn't even see that, yeah.
23 No, I didn't answer that question.

24 Q. Okay. You answered every other question on there
25 but you just didn't answer that question?

1 A. Yeah. They knew what the date was -- they -- they
2 knew what the date was when I had the accident, it was
3 the 24th.

4 Q. You filled the form out?

5 A. Yes.

6 Q. Did you write on there the date of the accident?

7 A. No.

8 Q. Okay. And you started going to physical therapy;
9 it looks like -- the first time you went it looks like
10 was July 27th at page 76. It says -- they made sure to
11 put in there that you had a lawyer at that time
12 representing you; so, you had a lawyer on July 27th,
13 correct? It wasn't Mr. Samuels; you had another lawyer
14 before him, correct?

15 A. Correct.

16 Q. Okay. And you were going -- there's the report
17 update on August 25th. We've got all kind of dates
18 here that always say you're getting better; you were
19 getting better continuously, right?

20 A. Yes.

21 Q. That's a yes?

22 A. Yes.

23 Q. Okay. 9/7/17, it says --

24 Mr. Beard: -- page 79, Commissioner,
25 the very last entry.

1 Q. Patient no-showed, tried calling patient but
2 number is disconnected. So, you just quit going; is
3 that correct?

4 A. No. I mean, I -- I -- that -- that's the time
5 when my phone was off --

6 Q. Okay.

7 A. -- and I -- I told the instructor, the lady, that
8 I -- I wouldn't be coming back because I -- I could
9 have -- I couldn't afford it.

10 Q. Okay. Well, this says that you actually got
11 discharged on October 13th of 2017. It says condition
12 upon discharge -- this is page 80 of your medical
13 records -- you were significantly improved at the time
14 you were discharged. It says, potential for further
15 improvement is excellent. You were discharged to a
16 home exercise program; that means you weren't going to
17 be coming to physical therapy, they gave you exercises
18 to do at home --

19 A. No.

20 Q. -- and you were going to self-manage with your
21 home exercise program. And just so you understand
22 before you say no, you submitted this document into
23 evidence; you understand that?

24 A. Did I?

25 Q. Your lawyer did.

- 1 A. Oh, okay.
- 2 Q. You understand and --
- 3 A. Right.
- 4 Q. -- and that means you did.
- 5 A. Okay. Well, they got that -- I didn't never -- I
6 didn't -- all I -- I told the lady up front that I
7 couldn't come back.
- 8 Q. Okay.
- 9 A. So, they did them -- the other things as far as
10 discharging me or what may have -- because I've got a
11 bill now for them.
- 12 Q. You agree --
- 13 A. So, I couldn't --
- 14 Q. -- you agree this record says you were discharged
15 to a home exercise program --
- 16 A. -- no, I don't --
- 17 Q. -- is that what it says?
- 18 A. -- I don't agree on that.
- 19 Q. Is that what the document says?
- 20 A. That's what the document says.
- 21 Q. That's all I'm asking.
- 22 A. Okay. Yeah --
- 23 Q. Okay.
- 24 A. -- that's what the document says.

25

Mr. Beard: Stephen, just for the

1 record, earlier when you, I think were
2 questioning the application, you actually
3 have that in your evidence at pages 85, 86 of
4 the APA's; the application that I read from,
5 Commissioner.

6 Commissioner Wilkerson: The one -- the
7 employment application?

8 Mr. Beard: Correct, for Michelin. Mr.
9 Samuels --

10 Commissioner Wilkerson: Hold on.

11 Mr. Samuels: Right.

12 Mr. Beard: -- actually submitted that
13 at page 85 and 86 of the APA's and there is
14 -- it's the identical application that I
15 showed him. No indication of Richtex --

16 Commissioner Wilkerson: Oh, I see it,
17 yes.

18 Mr. Beard: -- from '97 --

19 Commissioner Wilkerson: Okay.

20 Mr. Beard: -- those kinds of things.

21 Commissioner Wilkerson: I've got you.

22 Mr. Samuels: Yes. Thanks -- thanks for
23 pointing that out because that was why I
24 couldn't find it.

25 Mr. Beard: Okay. Yes.

- 1 Q. Your attorney, again, submitted another record at
2 page 88 that is a Michelin chart that indicates who you
3 talked to, in which I talked about; he showed you that
4 a little earlier, remember, it talked about Nurse
5 Sirois?
- 6 A. No, sir.
- 7 Q. Or Sirois how he -- I think he pronounced it Nurse
8 Sirois; remember when we talked about that, the -- the
9 company Nurse and he showed you the form and said did
10 you call her and what did you all talk about; do you
11 remember all that?
- 12 A. Today?
- 13 Q. Today, yes, sir.
- 14 A. Okay.
- 15 Q. When -- when Mr. Samuels asked you questions about
16 it; you don't remember that?
- 17 A. About Nurses calling --
- 18 Q. Yes. About the Nurse --
- 19 A. -- okay.
- 20 Q. -- about Mr. Lowman, about all those --
- 21 A. Yeah. Yeah.
- 22 Q. -- kinds of things?
- 23 A. Uh-huh. Yeah.
- 24 Q. Okay.
- 25 A. Yeah. Uh-huh.

- 1 Q. All right. And he showed you some forms and he
2 asked you if you talked to her on the phone. And on
3 June the 24th this is what she said, it says, employee
4 stated on June 24th, around 5:30 A.M., that he was
5 working on PAP when his back started to ache; is that
6 what you told her?
- 7 A. Uh-huh.
- 8 Q. That's yes?
- 9 A. Yeah.
- 10 Q. Okay. It says, he said he continued to work and
11 the back pain got worse; is that what you told her?
- 12 A. Yes, sir.
- 13 Q. How -- how much longer did you continue to work if
14 you got off at six o'clock and you were at the hospital
15 by 6:00 something in the morning?
- 16 A. Well, I wasn't at the hospital at 6:00 something.
- 17 Q. How quick did you go to the hospital?
- 18 A. At first I went to the Nurse and then I went to
19 the family health center.
- 20 Q. They were closed.
- 21 A. I didn't -- I didn't get to the hospital until --
22 I can't remember what it is right now, 9:00 or 8:00 or
23 9:00 or something like that.
- 24 Q. How did you get there?
- 25 A. Drove.

1 Q. Yourself or did somebody take you?

2 A. I drove.

3 Q. Okay. All right. So -- all right, so you got to
4 the hospital several hours later, correct?

5 A. Uh-huh. Yeah.

6 Q. Okay.

7 A. Yes, sir.

8 Q. But you admit that you quit working at 6:00 A.M.
9 because you said that's when your shift ended, correct?

10 A. Yeah.

11 Q. Okay.

12 A. I'm thinking 6:00 A.M. or 7:00 I don't --

13 Q. Okay.

14 A. -- I can't remember. Go ahead.

15 Q. You told her you went to the Lexington Medical
16 Center ER, you said you -- this is what it says,
17 employee stated he left work and went to the Michelin
18 family health but they were closed, correct?

19 A. Correct.

20 Q. All right. He then went to Lexington Medical
21 Center ER, correct?

22 A. Correct.

23 Q. Employee did not report injury to anyone until
24 being released from Lexington Medical Center ER; that's
25 what the Nurse said that your lawyer submitted into

1 evidence.

2 A. Oh.

3 Q. So -- so, you didn't report it until you were
4 released by the Lexington Medical Center Hospital,
5 correct?

6 A. Well --

7 Q. And that's when you called Mr. Lowman?

8 A. -- no, sir.

9 Q. Okay. So -- okay. You were diagnosed with a
10 lumbar strain and given prescriptions for Percocet and
11 Flexeril; is that correct?

12 A. Correct.

13 Q. Okay. On that same report she indicates that you
14 denied anything specific starting the pain at work and
15 you denied anything personal outside of work during
16 your telephone conversation with her as causing your
17 low back problems; is that true?

18 A. It said I denied?

19 Q. You denied anything specific that started the pain
20 at work and you denied anything outside of work or
21 personal that caused your back pain; is that what you
22 told her?

23 A. No. I told her -- I told her what had happened --

24 Q. So -- so, you didn't --

25 A. -- so, I told her --

- 1 Q. -- go ahead.
- 2 A. -- let me finish.
- 3 Q. I'm sorry.
- 4 A. I told her that -- you know, she said, what
5 happened and I told her that I was stretching rubber --
- 6 Q. Okay.
- 7 A. -- you know --
- 8 Q. So, when she writes --
- 9 A. -- I told her several times when I did that.
- 10 Q. -- so, you deny what she wrote in the report, that
11 you didn't tell her that?
- 12 A. I -- I mean, I don't know what she wrote but I
13 know --
- 14 Q. I just told you what she wrote.
- 15 A. -- but I know what I told her.
- 16 Q. I just read it to you.
- 17 A. Yeah. I don't know. I -- no, I -- I deny what --
- 18 Q. Okay.
- 19 A. -- what she said, yeah.
- 20 Q. That's fine.
- 21 A. But I -- I -- I told her what had happened.
- 22 Q. All right. And she told you she was scheduling
23 you an appointment with Dr. Izard on -- on June the
24 26th or on Monday, correct?
- 25 A. Correct.

- 1 Q. All right.
- 2 A. Yes, sir.
- 3 Q. All right. She went with you to the appointment
4 with Dr. Izard; is that correct, on June 26th?
- 5 A. She met me there.
- 6 Q. Okay. Well, that's what I mean; she was there.
- 7 A. Okay.
- 8 Q. She was at the appointment, correct?
- 9 A. Correct.
- 10 Q. Okay.
- 11 A. Yeah.
- 12 Q. And then she reports on June the 28th -- it says,
13 she received a call from you on June 28th at 9:11 A.M.
14 Do you remember calling her two (2) days after you saw
15 Dr. Izard?
- 16 A. I -- I think so. I think I remember --
- 17 Q. It says you told her --
- 18 A. -- talking with her.
- 19 Q. -- you went to Lexington Medical Center the day
20 before and got an injection in your lower back --
- 21 A. Yeah.
- 22 Q. -- and you had been written out of work for three
23 (3) days?
- 24 A. Yes.
- 25 Q. He told me that he could not come to see Dr. Izard

- 1 today because he did not have a ride; that's what you
2 told her, right?
- 3 A. I don't know about that part.
- 4 Q. You -- did you tell her that or not?
- 5 A. I don't -- I can't remember what I told her.
- 6 Q. Okay. Well, why -- why did you tell her you
7 couldn't come to Dr. Izard?
- 8 A. You're saying --
- 9 Q. You can't remember what you told her?
- 10 A. -- no, I told -- what I --
- 11 Q. Well, you just told me you can't remember what you
12 told her.
- 13 A. -- okay. Well, let me -- let me say this. Now,
14 the last you said on the -- I'm trying to remember
15 verbatim what you be asking. So, I'm trying to --
- 16 Q. Well, she, verbatim, said that you told her you
17 could not come to doctor -- to see Dr. Izard today
18 because you did not have a ride; that's what you told
19 her?
- 20 A. -- yeah. I told her more things as well, too.
21 Because I was --
- 22 Q. But did you tell her that?
- 23 A. -- yeah.
- 24 Q. That's all I asked you.
- 25 A. Yeah.

- 1 Q. Okay.
- 2 A. I think so, yeah.
- 3 Q. It says, she asked you if you were treating this
4 personally and you said, no, that it was work-related;
5 is that correct?
- 6 A. She -- no, she didn't ask me that.
- 7 Q. Okay.
- 8 A. Personally and work-related, she didn't --
- 9 Q. All right.
- 10 A. -- she didn't really ask me about that.
- 11 Q. It says, she explained to you the workers' Comp
12 process and you told her you had never been notified --
- 13 A. Correct.
- 14 Q. -- is that correct?
- 15 A. Correct.
- 16 Q. Okay. Even though you've already admitted you
17 went through the PowerPoint that told you about the
18 workers' Comp process and all the safety rules that
19 you're supposed to go through; you've already admitted
20 that, correct?

21 Mr. Samuels: Your Honor, I -- I have to
22 object; that's facts not in evidence in the
23 --

24 Commissioner Wilkerson: That isn't
25 going to win the case.

1 Mr. Samuels: -- all right. I'll --
2 fine.

3 Commissioner Wilkerson: I promise you.
4 We're so -- we're at three (3) plus hours in
5 of witness one (1) with seven (7) more
6 waiting. We're not going to finish today;
7 you all know that. You all can just come
8 back Monday; I'm okay with that too.

9 Q. It says --

10 Commissioner Wilkerson: I don't think
11 we're going to finish are we, today?

12 Mr. Beard: -- we probably will. I
13 think we will. I hope we will.

14 Commissioner Wilkerson: I don't know.

15 Mr. Beard: I would hope so.

16 Commissioner Wilkerson: I don't believe
17 it.

18 Mr. Beard: I'm -- I'm a lot quicker
19 with my witnesses but we'll see. I haven't
20 gotten to mine yet.

21 Commissioner Wilkerson: And summer is
22 coming.

23 Q. She told you, you needed to talk to your
24 supervisor immediately, correct?

25 A. Correct.

1 Q. And --

2 A. I think --

3 Q. -- and --

4 A. -- yeah, she --

5 Q. -- and, in fact --

6 A. -- no.

7 Q. -- you really wouldn't even let her talk to you
8 and you hung up on her; isn't that right?

9 A. I hung up on her?

10 Q. Yes, sir.

11 A. No.

12 Q. You deny that?

13 A. Yeah, I deny it.

14 Q. Okay.

15 A. I didn't hang up on her.

16 Q. You did not show up for the appointment with Dr.
17 Izard at 2:30 that afternoon, did you?

18 A. No, sir.

19 Q. Okay. Now, you had been contacted, you said by
20 somebody you thought named Mark, that would be Mark
21 Gross. You were contacted by the safety person in
22 charge at Michelin in US 7, Mark Gross, and he told you
23 he would send a taxi to take you to Dr. Izard, he would
24 send somebody else to take you to Dr. Izard, he would
25 get you to Dr. Izard; isn't that correct?

1 A. Correct.

2 Q. And you refused that; isn't that correct?

3 A. I will -- can I answer it fully?

4 Q. Did you --

5 A. Oh.

6 Q. -- refuse it --

7 A. Yeah. Uh-huh.

8 Q. -- yes or no, and then you can answer it.

9 A. Yes, I refused it.

10 Q. Okay.

11 A. Okay.

12 Q. Go ahead --

13 Commissioner Wilkerson: Now, you can
14 answer it.

15 Q. -- if you've got something else you need to say.

16 Commissioner Wilkerson: Go ahead.

17 A. Yeah. I was under Oxycodone and I didn't feel
18 comfortable going out. I was very highly medicated and
19 I didn't feel comfortable going out by myself to --
20 with a -- yeah, I couldn't -- I couldn't barely -- you
21 -- you don't understand what I've been through. It --
22 I couldn't barely walk and I didn't feel comfortable
23 with that. And I was told, hey, look, you know, I -- I
24 mean, I didn't feel comfortable with that.

25 Q. You didn't feel comfortable going to a doctor for

1 medical problems?

2 A. No. Not the doctor who told me I would come to
3 work.

4 Q. Okay. That's -- that's the truth right there --

5 A. Yeah.

6 Q. -- isn't it?

7 A. Yeah.

8 Q. The reason you didn't go is because it was Dr.
9 Izard and you just didn't want to go to Dr. Izard --

10 A. Yeah.

11 Q. -- even though the company authorized and was
12 paying for you to do that; isn't that true?

13 A. To go to Dr. Izard?

14 Q. Yes.

15 A. Dr. Izard -- well, for what my instruction was,
16 Dr. Izard wanted me to come to work. He wanted me to
17 come to work. So, I got mis-confliction information
18 from when the doctors -- the Nurse told me on -- Troy
19 told me come back to work and then --

20 Q. Mr. Brailey, that's a whole different story than
21 --

22 A. -- and -- and --

23 Q. -- than what you just answered to.

24 A. -- okay. But --

25 Q. You just said --

1 A. -- let me --

2 Q. -- you didn't go --

3 A. -- let me show you how it ties in --

4 Q. -- because you were on Oxycodone --

5 A. -- can I finish all of that?

6 Q. -- go ahead.

7 A. Okay. But when Dr. Izard told me to go back to
8 work, that's the last I heard of Dr. Izard. The other
9 folks told me --

10 Q. I didn't ask you what other folks told you.

11 A. -- oh, okay.

12 Mr. Samuels: Your Honor --

13 Mr. Beard: In fact, I object to
14 anything --

15 Mr. Samuels: -- Your Honor --

16 Mr. Beard: -- other folks told him.

17 Commissioner Wilkerson: He asked him
18 why he didn't come see Dr. Izard. His
19 justification is, he didn't see Dr. Izard
20 because he thought he was going back to work,
21 right?

22 Witness: Huh-uh.

23 Mr. Samuels: -- he's not --

24 Witness: Yeah. Uh-huh.

25 Mr. Samuels: -- he needs to be able to

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answer the question.

Mr. Beard: Not by telling me what other people who aren't here --

Commissioner Wilkerson: We can't hear what other people said --

Mr. Beard: -- to testify to.

Witness: Yeah.

Commissioner Wilkerson: -- it's when -- it's a -- we're --

Witness: Right.

Commissioner Wilkerson: -- we're -- concentrating on the phone call from Mark, who was going to send a taxi, who told him they would send a taxi to get him there to see Dr. Izard. He said he didn't want to go because he was on Oxycodone, boom, boom, whatever, okay?

Witness: Uh-huh.

Commissioner Wilkerson: And then he said that Dr. Izard had already indicated that he was putting him back to work -- and correct me if I'm wrong -- and you believe if you went back to the plant that Dr. Izard was going to put you back to work; is that correct?

1 Witness: Yeah. That's sort of what --

2 Commissioner Wilkerson: That's what he
3 said.

4 Witness: -- that's -- I mean, that's --
5 that's sort of --

6 Commissioner Wilkerson: Not -- not that
7 -- I --

8 Witness: -- I'm not -- I'm not -- I'm
9 not -- I'm -- I'm saying that --

10 Commissioner Wilkerson: -- I --

11 Witness: -- Dr. Izard -- when -- when I
12 got too many conflicted things when they --
13 everybody was -- I mean --

14 Commissioner Wilkerson: -- this whole
15 thing is conflicted.

16 Witness: -- yeah.

17 Commissioner Wilkerson: Let me tell
18 you, this is a mess.

19 Witness: Yeah. You know, yeah -- yeah,
20 it is a mess. It is a mess and they made --
21 but anyway, I didn't -- I didn't want to be
22 no -- I wasn't even thinking about no
23 Workman's Comp. The Nurse indicated to me
24 about Workman's Comp.

25 Commissioner Wilkerson: We're not --

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wait a minute. Wait --

Witness: Well, anyway --

Commissioner Wilkerson: -- we're not here --

Witness: -- okay.

Commissioner Wilkerson: -- to give a speech.

Witness: Okay.

Commissioner Wilkerson: Your job, again --

Witness: Okay.

Commissioner Wilkerson: -- is to answer the questions --

Witness: Okay.

Commissioner Wilkerson: -- not give a speech about --

Witness: Okay.

Commissioner Wilkerson: -- what you believe to be right --

Witness: All right.

Commissioner Wilkerson: -- what you don't believe to be right.

Witness: Okay. All right. I've got you.

Mr. Samuels: But he is entitled, Your

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Honor --

Witness: Oh.

Mr. Samuels: -- to explain his reasons

--

Commissioner Wilkerson: On that --

Mr. Samuels: -- thoroughly.

Commissioner Wilkerson: -- I agree, on that issue, not -- not on issues that happened in 1492, not -- not on issues that happened in 2014; only on that specific issue has he got the right to explain.

Mr. Beard: Can I --

Mr. Samuels: But he did and Mr. Beard interrupted him --

Mr. Beard: -- because he --

Mr. Samuels: -- and would not let him answer the question.

Mr. Beard: -- because he tried to do it through hearsay and he can't do that.

Commissioner Wilkerson: That's right. He can't say somebody --

Mr. Beard: It doesn't matter. He can't --

Commissioner Wilkerson: -- I don't who somebody is.

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Mr. Beard: -- that door was not opened,
no hearsay -- no question that would ask for
-- that would open hearsay was -- was ever
asked in this case --

Mr. Samuels: And -- and, Your Honor,
that's the --

Mr. Beard: -- other than by Mr.
Samuels.

Commissioner Wilkerson: Right.

Mr. Samuels: -- that's the distinction
with hearsay. He is not offering it to -- to
prove --

Commissioner Wilkerson: I don't know
what he's offering it for.

Mr. Samuels: -- to prove --

Commissioner Wilkerson: That's your
opinion.

Mr. Samuels: -- to prove --

Commissioner Wilkerson: I don't -- your
opinion is he is not offering for that; I
don't know what he's offering it for.

Mr. Samuels: -- he's not offering it to
prove whether Dr. Izard was right or whether
the other doctors were right.

Commissioner Wilkerson: Okay.

1 Mr. Samuels: He's offering it to
2 explain what he is about to explain.

3 Mr. Beard: Which would be an excuse for
4 you to say it's reasonable, which is a legal
5 issue in the case --

6 Commissioner Wilkerson: It's not --

7 Mr. Beard: -- and that's improper.

8 Commissioner Wilkerson: -- yes. He
9 just needs to answer the question.

10 Mr. Beard: Nice try but improper.

11 Commissioner Wilkerson: Yes.

12 A. No, I didn't go see Dr. Izard.

13 Q. All right.

14 Commissioner Wilkerson: I'm fine with
15 that.

16 Q. And you were offered a ride to do so, correct?

17 A. Right.

18 Q. And you turned it down?

19 A. Right.

20 Q. And you told Mark Gross you weren't going,
21 correct? You told him don't send --

22 A. Right.

23 Q. -- don't send anybody; I'm not going?

24 A. No. Right.

25 Q. Okay.

1 A. Right.

2 Q. All right. Now, 1997, working at Richtex, didn't
3 tell us about it but you did work at Richtex, correct?

4 A. Correct.

5 Q. You had a workers' Comp claim with Richtex,
6 correct?

7 A. Correct.

8 Q. You got injured on the job lifting bricks,
9 literally, right after you started working there,
10 correct?

11 A. Correct.

12 Q. Okay. Sound pretty similar? It sounds exactly
13 like what we're doing here, doesn't it? You started
14 working for Michelin and right after you started
15 working, I mean, within weeks, the exact thing that
16 happened to you then is what's going on now; isn't that
17 correct?

18 A. Can I answer?

19 Q. True or false?

20 A. Oh, no.

21 Q. Yes or no?

22 A. No, it's not correct.

23 Q. Okay. It's not correct.

24 Mr. Beard: All right. Permission to
25 approach?

1 Commissioner Wilkerson: Sure.

2 Mr. Beard: I'm looking at pages 1 and 2
3 of Defendant's APA's.

4 Commissioner Wilkerson: Defendants.
5 Well, it wouldn't be 1 or 2, would it or is
6 it?

7 Mr. Beard: Yes, sir. My -- I --

8 Commissioner Wilkerson: You all marked
9 them same?

10 Mr. Beard: -- I think I submitted them
11 before I got Stephen's.

12 Commissioner Wilkerson: Oh, I'm sorry.

13 Mr. Beard: I may have -- or at least I
14 had not seen them yet.

15 Commissioner Wilkerson: I'm sorry.

16 Okay. 1 and 2, I've got you. Okay.

17 Q. All right. December 4th, 1997, so -- so, you saw
18 a Dr. Thomas Norris at Springwood Lake Family Practice;
19 is that correct?

20 A. Correct.

21 Q. You remember seeing him?

22 A. I think --

23 Q. You remember the doctor?

24 A. -- I don't remember.

25 Q. Okay. He says, you had been working for Richtex

1 for three (3) weeks and of note he had back pain for
2 three (3) weeks, meaning, from the first day you
3 started you had back pain; is that correct?

4 A. That -- they -- they writing it different than
5 what it's -- we -- we talked about.

6 Q. Well, that's exactly what --

7 A. Yeah.

8 Q. -- what you told the Lexington Medical Center
9 folks and what you told --

10 A. Well --

11 Q. -- Dr. Marom about working at Michelin.

12 A. -- no.

13 Q. As soon as you started doing physical work --

14 A. Uh-huh.

15 Q. -- immediately you had back pain; that's what you
16 told them.

17 A. Huh-uh. No, I -- it ain't like that, so.

18 Q. It's exactly like that in the record you
19 submitted; isn't that correct? I showed them to you;
20 we went through them.

21 A. Well, yeah, you showed them to me but it's --
22 things can be kind of -- things can be kind of iffy on
23 that but I just don't agree on how it is but if that's
24 what it says but it's a lot of variables in there that
25 needs to be connected and --

1 Q. Well, the only variables that seem to be getting
2 connected, Mr. Brailey, are when you need a --

3 A. -- yeah, I --

4 Q. -- when you need to create an explanation because
5 something doesn't sound right, that's the only time
6 we've had any variables; isn't that correct?

7 Mr. Samuels: Objection, argumentative.

8 Commissioner Wilkerson: Yes, that's
9 argumentative.

10 Mr. Beard: Okay.

11 Q. Well, the records speak for themselves. The
12 doctors aren't here to say anything.

13 A. Uh-huh.

14 Q. That's what we've got. Your lawyer submitted --

15 A. Uh-huh.

16 Q. -- a bunch of records.

17 A. Okay.

18 Q. I have only submitted two (2) medical records,
19 just two (2) --

20 A. Okay.

21 Q. -- correct? And -- and got lucky that I found
22 them.

23 A. Uh-huh.

24 Q. This has been worsening over the past couple of
25 days since a possible injury while lifting some bricks

1 on Tuesday of this week.

2 A. Okay.

3 Q. You lifted some bricks and hurt your back,
4 correct?

5 A. Right.

6 Q. You filed a workers' Comp claim; they accepted
7 your workers' Comp claim, I think. They sent you to
8 the doctor?

9 A. Well, yeah, they -- they offered that to me.

10 Q. Okay. You also told them that you were having
11 some right hand and arm tingling and, in fact, you were
12 diagnosed with carpal tunnel syndrome at some point in
13 your lifetime; you treated with Dr. Ugino out at
14 Midlands Orthopaedics, didn't you?

15 A. I didn't have it.

16 Q. Did you treat with Dr. Ugino at Midlands
17 Orthopaedics for carpal tunnel syndrome?

18 A. Not treated, he looked at me.

19 Q. Doctor -- Dr. Ugino?

20 A. I -- I don't know. I can't remember who it is; I
21 mean, that's over --

22 Q. Midlands Orthopaedics?

23 A. -- twenty-one (21) years ago.

24 Q. Midlands -- Midlands Orthopaedics?

25 A. I -- I can't -- maybe so. Yeah, I know I've been

1 to Midlands Orthopaedics, yeah.

2 Q. But you remember --

3 A. When -- when I --

4 Q. -- going out there to --

5 A. -- I went to a series of doctors when I was under
6 them.

7 Q. -- okay.

8 A. Yeah.

9 Q. And you remember going to --

10 A. Yeah.

11 Q. -- to Midlands --

12 A. Yeah.

13 Q. -- for carpal tunnel syndrome?

14 A. No, I don't remember carpal tunnel syndrome.

15 Q. Well --

16 A. I think it was something -- I thought it was
17 everything related to the -- what I was doing with
18 bricks.

19 Q. -- right hand and arm you think --

20 A. Yeah.

21 Q. -- well, you thought your right hand and arm were
22 being hurt by the bricks too, correct?

23 A. Yeah. Because I was just simultaneously --

24 Q. Right.

25 A. -- doing this a lot (demonstrating) but --

1 Q. You didn't tell Michelin when you came to work for
2 them that you had problems with your right hand and arm
3 and carpel tunnel syndrome back in the '90's either,
4 did you?

5 A. -- no.

6 Q. You didn't tell them about that?

7 A. Because I don't have it now. I mean, I never had
8 it.

9 Q. I didn't ask you about now.

10 A. Yeah. Yeah.

11 Q. You complained about it back then?

12 A. No. I didn't really complain. They -- they did
13 all that assessment on what -- what was going on with
14 me lifting bricks.

15 Q. Okay.

16 A. Okay. So, they tested for that and I don't have
17 no -- no carpel tunnel, you know. All that stuff
18 you're saying about cardiologist and stuff, that's -- I
19 don't have --

20 Q. It says you had an x-ray on 1997 -- well, wait a
21 minute. Are you testifying that Dr. Isbell is not a
22 cardiologist?

23 A. -- no, I ain't testifying he's not a cardiologist.
24 He is a cardiologist.

25 Q. well, you just said --

- 1 A. No, I was just saying that we had -- with the high
2 blood pressure thing earlier --
- 3 Q. -- yes.
- 4 A. -- they checked me out to see whether it was a
5 heart thing.
- 6 Q. I understand.
- 7 A. Okay. It wasn't that --
- 8 Q. I understand.
- 9 A. -- but now --
- 10 Q. okay.
- 11 A. -- this with the carpel tunnel and you're saying
12 about the carpel tunnel.
- 13 Q. Yes.
- 14 A. I -- I don't have no carpel tunnel.
- 15 Q. okay.
- 16 A. They checked that out because I was doing -- I
17 told them my motions was like this (demonstrating) and
18 I was doing it so much and it was new to me --
- 19 Q. okay.
- 20 A. -- you know what I'm saying? So, they checked
21 that out and they also had Richtex -- okay. I'm sorry.
22 Go ahead, finish what you're saying.
- 23 Q. It says -- your lawyer made some point about you
24 were having pain at L2,3 at a different part of your
25 back but then at the x-rays on this same page it says,

1 L -- LS spine films are obtained and show no
2 significant abnormalities, except for some questionable
3 abnormal posterior wedging at L5; do you know that L5
4 is what you're claiming is wrong with you now?

5 A. I -- I guess -- I know it's lower back left, 5, 6
6 or something like that.

7 Q. Yes.

8 A. Yeah. Uh-huh.

9 Q. And they found some wedging at L5 back in 1997, on
10 an x-ray; you didn't tell Dr. Boyd, you didn't tell any
11 doctor about that, did you?

12 A. No, because I -- I didn't have no -- no -- no
13 issues.

14 Q. Okay. It says you have a lumbar strain and then
15 here's what is important to me, Mr. Brailey, he says --
16 and this is the doctor telling you -- correct me if I'm
17 wrong --

18 A. Uh-huh.

19 Q. -- he is instructed on no heavy lifting times one
20 (1) week; did the doctor tell you that?

21 A. Uh-huh.

22 Q. Do you remember that?

23 A. Uh-huh.

24 Q. That's yes?

25 A. Yes.

- 1 Q. Okay.
- 2 A. I'm sorry. Yes.
- 3 Q. So, you do remember that?
- 4 A. Yes, sir.
- 5 Q. All right. I also discussed with this gentleman
6 in no uncertain terms, if he has been having back pain
7 for three (3) weeks, the entire time he has been
8 working for Richtex, if he does not respond very well
9 and very fast to some conservative treatment, it might
10 be in his and Richtex's best interest for him to find
11 new employment; now that's pretty specific information
12 from a doctor, isn't it? He told you you couldn't do
13 heavy duty work, based on your complaints; isn't that
14 what he told you?
- 15 A. Well, he -- verbally, he didn't tell me --
16 verbally, he didn't tell me that. So, verbally, he was
17 just saying -- you know, because he said that maybe you
18 can get -- you know, everybody, you know, it's -- it's
19 -- it can be recovered if you need time off or what may
20 have you. It wasn't like what -- I didn't -- this is
21 the first time I'm hearing this -- well, after my loss
22 -- well, this is the first time I'm hearing this --
- 23 Q. Okay.
- 24 A. -- on how he wrote it.
- 25 Q. And if you would have been truthful when you went

1 to Michelin and if you had told them the truth about
2 your back pain and you had a workers' Comp claim and
3 you'd been injured in 1997, we might have all seen this
4 report before you ever started work doing any kind of
5 heavy manual work or any lifting or any of those things
6 at Michelin. If you'd have just been truthful on that
7 form; isn't that right? They could have investigated
8 and seen if you were okay to do the job; isn't that
9 right?

10 A. You're saying that --

11 Q. If you'd have told the truth they could -- they
12 might have found this medical record before you started
13 working; isn't that true?

14 A. -- I -- I don't know; maybe it is.

15 Q. Okay.

16 A. Yeah.

17 Q. And if they would have found this record and had
18 read that to you, you would have then been able to say
19 to them, that's the first time I've ever heard that.
20 You know, I guess, maybe I can't do heavy duty work
21 because that's what the doctor told you, right, right
22 here in this report?

23 A. I've been working heavy duty work for twenty (20)
24 something years.

25 Q. Okay. Well, we'll get to that in a minute. But

- 1 that's what the doctor told you in the report --
- 2 A. Uh-huh.
- 3 Q. -- correct?
- 4 A. Uh-huh.
- 5 Q. Yes?
- 6 A. what? The doctor didn't tell me -- I mean --
- 7 Q. That's what he said in the report. That's what
- 8 the report says?
- 9 A. -- that's what's in the report.
- 10 Q. Okay.
- 11 A. I -- I haven't heard that.
- 12 Q. I understand.
- 13 A. This is the --
- 14 Q. I understand --
- 15 A. -- okay.
- 16 Q. -- that's what you're claiming.
- 17 A. Uh-huh.
- 18 Q. On December 11th you went back to Dr. Norris for
- 19 the second time; is that correct?
- 20 A. Right.
- 21 Q. All right. And it says, had been working for
- 22 Richtex for three (3) weeks; he had noted back pain and
- 23 soreness for three (3) weeks. Then he reported this
- 24 vague episode of lifting some bricks -- man, that
- 25 sounds exactly like our case, doesn't it? You went to

1 work for Michelin, within three (3) weeks you were
2 having back pain, going to the hospital, going to your
3 personal doctor and then all of a sudden you came up
4 with some vague accident exactly like this case right
5 here, isn't it? I'm it couldn't be any closer.

6 A. But let me just say this --

7 Mr. Samuels: Objection, Your Honor,
8 argumentative.

9 A. -- can I --

10 Witness: -- okay.

11 Commissioner Wilkerson: Yes.

12 Mr. Beard: Okay.

13 Commissioner Wilkerson: I understand.

14 Q. It says --

15 Commissioner Wilkerson: I'm already
16 bluing the report.

17 Mr. Beard: -- all right.

18 Q. And he felt that he may have injured himself at
19 that time, although he denied any significant change at
20 the time of this incident. Of note, three (3) days
21 after he saw me he was at Doctor's Care wanting a
22 second opinion. Wow. So -- so, you went to Dr. Izard;
23 you didn't like what he said so, you ran off to another
24 doctor. That's exactly what you did in 1997, wasn't
25 it? You didn't like --

1 A. I wanted to get a --

2 Q. -- what that doctor said, so you wanted another
3 opinion?

4 A. -- I wanted a second opinion --

5 Q. Okay.

6 A. -- on what it is --

7 Q. All right.

8 A. -- you know.

9 Mr. Beard: I do not have the record --
10 let's see --

11 Q. It says you weren't following that doctor's -- Dr.
12 Norris' instructions; is that true, you weren't
13 following his instructions at that time?

14 A. I don't remember. What you -- what -- what are
15 you --

16 Q. I don't know what his instructions were --

17 A. -- I --

18 Q. -- I'm just telling you what it says.

19 A. -- I follow all the instructions.

20 Q. Okay.

21 A. We -- I was at physical therapy.

22 Q. Okay.

23 A. I did physical therapy -- okay.

24 Q. Okay. It states he is having difficulty sleeping
25 at times, although, at the same time he tells me that

1 the Flexeril knocks him out at night; is that what you
2 told the doctor?

3 A. Yeah, I had a difficult time sleeping and the
4 Flexeril will knock me out sometimes.

5 Q. Okay. Is the Flexeril you've been taking from all
6 the doctors you've seen in this case, does that knock
7 you out?

8 A. If I take it enough. I mean, if I take it for --

9 Q. Did you take any before you came here today?

10 A. -- no.

11 Q. Are you still under it; are you still under a
12 prescription for Flexeril?

13 A. He can't give me none of that; Dr. Boyd can't
14 prescribe no more medicine to me because I don't -- I
15 mean, I've seen the --

16 Q. Okay.

17 A. -- I haven't been to him.

18 Q. I've got you. I do not have the records from the
19 Doctor's Care and he is unsure exactly what the
20 diagnosis was or what he was told. He mentions that he
21 knows something is wrong with his back and he wants to
22 go to a back specialist. So, you told Dr. Norris in
23 1997, you knew something bad was wrong with your back,
24 didn't you, and you wanted to see a specialist because
25 you were having bad problems in your back in 1997?

1 A. Not bad -- I don't know what it was, I just wanted
2 to make sure I didn't hurt me long term. So, the -- as
3 far as telling him I wanted to see a back specialist, I
4 don't remember saying that but that sounds -- you know,
5 I will -- you know, I -- I would definitely want to see
6 a back specialist to make sure that I'm not being --
7 won't hurt myself if I did.

8 Q. Okay. He then says, it seems today that Mr.
9 Brailey and I have a very difficult time communicating
10 and I certainly feel that with him having only been an
11 employee three (3) weeks at Richtex and mentioning a
12 back specialist after he had been improving on the
13 therapy I had recommended, he may very well be in a
14 litigation thought process; do you know what that
15 means?

16 A. No.

17 Q. It means he thinks that you're doing -- doing that
18 because you were going to file a lawsuit and try to get
19 some money.

20 A. No.

21 Q. That's what I think. That's what I think you're
22 doing here.

23 A. Well, you're wrong.

24 Q. Okay.

25 A. I didn't even want to be in no --

1 Q. Okay.

2 A. -- I wanted to be told about my back.

3 Q. Okay.

4 A. I didn't even want to be in no workman's Comp.
5 Chris -- I mean, what's the Nurse -- came to me with
6 that. I didn't say, oh, I want Workman's Comp. No.

7 Q. Okay.

8 A. I just went to the doctor to -- I went to Dr.
9 Izard -- if they would have had a doctor open on
10 Saturday and Sunday I'd have went to them.

11 Q. Well, it's --

12 A. But Dr. Izard told me -- hold -- let me -- look --
13 look, Dr. Izard told me go --

14 Q. -- I didn't ask you want Dr. Izard told you.

15 A. -- okay.

16 Q. Nobody asked you --

17 A. well, I --

18 Q. -- anything about what anybody told you.

19 A. -- he told -- okay.

20 Commissioner Wilkerson: That's the
21 part, Stephen, that we can't get through.

22 Witness: Okay.

23 Commissioner Wilkerson: We keep --

24 Witness: Yeah.

25 Commissioner Wilkerson: -- recreating

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what happened in 1492.

Witness: Well, not for --

Commissioner Wilkerson: He's not answering the questions. He's rambling all over the place. He answered them pretty clearly when you asked them; he clicked them off. These questions are close but not exact --

Witness: -- uh-huh.

Commissioner Wilkerson: -- and we jump all over the point with them. I don't know where we're coming from. I think we've gone from playing a football game to tennis. I don't know what we're doing. We've been on it three and a half (3 ½) hours but --

Q. You keep saying --

Commissioner Wilkerson: -- and have shed no more light than before we started, so.

Q. -- you keep saying you didn't bring up the workers' Comp process but the Commissioner has already read the records from the hospital and I showed them to you where you, at the very first consult on June the 24th, had questions of the doctor about the workers' Comp process, that was you that asked those questions,

1 not the Nurse, not anybody from Michelin; that was
2 Isaac Brailey asking the consult Nurse at Lexington
3 Medical Center. So, don't act like it was my people;
4 it was you, wasn't it?

5 A. No.

6 Q. You brought up this workers' Comp, you wanted
7 workers' Comp, you hired a lawyer to file a workers'
8 Comp before Mr. Samuels.

9 A. I did not want -- again, like I said, I didn't
10 want -- that's not -- that's not what I wanted.

11 Q. He then says I believe it certainly would be
12 prudent for both myself and Richtex Bricks to send him
13 to an orthopedic surgeon. Did you go to an orthopedic
14 surgeon in 1997?

15 A. I don't remember whether I went to an orthopedic
16 surgeon in 1997.

17 Q. All right. At the bottom here he goes -- at the
18 -- at -- still under the -- the S portion it says, he
19 reports the pain is in the middle of his back, hurts
20 sometimes when he is sitting and when he bends forward;
21 is that what you told him or do you remember?

22 A. Sitting and bending forward?

23 Q. Yes, hurt your back.

24 A. Yeah. I mean, as far as what I went to the doctor
25 for? Yeah.

1 Q. All right. He says he did not perform a physical
2 examination that day because he felt that you were
3 being very hostile with him in his office; is that
4 true?

5 A. No.

6 Q. Were you being hostile with the doctor?

7 A. No.

8 Q. Okay. He diagnosed you with both a lumbar and a
9 thoracic strain. He says, it seems he wants to be
10 evaluated by a back specialist. I feel like Dr. Bethea
11 at Moore Clinic would certainly put this to rest most
12 expediently; however, as stated above, I don't feel
13 that Richtex nor myself need to undertake any liability
14 with this young man who in my opinion is unable to
15 perform the job required at Richtex and he was even
16 told this the very first day. Do you remember having
17 that conversation with the doctor?

18 A. No, I don't remember having that conversation with
19 him.

20 Q. I restated that today and I placed him on no heavy
21 lifting until he sees the surgeon. Now, correct me if
22 I'm wrong, the only surgeon you have seen since 1997,
23 for your low back would be Dr. Scott Boyd at Lexington
24 Brain and Spine; is that correct?

25 A. Correct.

1 Q. So, from 1997, you've been under restrictions of
2 no heavy lifting and didn't tell anybody about that
3 when you were going to -- going to work at new jobs did
4 you; you didn't tell anybody about it?

5 A. When I was doing --

6 Q. Answer --

7 Commissioner Wilkerson: Answer the
8 question.

9 Q. -- answer my question.

10 A. -- no.

11 Q. I'm correct? You didn't tell anybody --

12 A. No, I didn't tell anybody.

13 Q. -- that you went to work for --

14 A. I didn't tell nobody.

15 Q. -- that you were under heavy duty lifting
16 restrictions?

17 A. No, I didn't tell nobody.

18 Q. Okay. Now, if you want to explain, go ahead.

19 A. Twenty (20) -- it -- it's -- well, the -- the
20 heavy lifting, I went -- went through physical therapy.

21 Q. Okay.

22 A. When I finished physical therapy with the doctor,
23 he -- they released me. It -- I got my back better; it
24 was no problem when I went to physical therapy, I --
25 twenty (20) something years ago.

1 Q. All right. You just read the report. He said
2 until you go to a surgeon you're under no -- you're
3 under heavy lifting restrictions, correct? That's what
4 it said.

5 A. Uh-huh. Okay. Yeah.

6 Q. And you just admitted you haven't been to a
7 surgeon since then, until you went to Dr. Scott Boyd,
8 correct?

9 A. Correct.

10 Q. And you did not tell Dr. Scott Boyd that in 1997,
11 you were placed under restrictions until you were seen
12 by a surgeon, did you; you didn't tell Dr. Boyd that?

13 A. No.

14 Q. He had no idea that you were injured --

15 A. No.

16 Q. -- in 1997, correct?

17 A. Well, I -- I -- I don't know whether he -- no, I
18 don't --

19 Q. Well, you didn't tell him?

20 A. -- no. No, I didn't tell him. Huh-uh.

21 Q. Okay. So, unless -- unless he is a genie or
22 unless he is some magical person and just knows
23 everything, there is no way he could possibly know that
24 unless you told him, correct?

25 A. Okay. Correct.

1 Q. Okay. All right. Now, earlier you were
2 describing your job at Westinghouse and you said -- I
3 think you said that it was actually heavy duty, you
4 said something about that was heavy work; is that
5 correct?

6 A. Yes. Some parts of it is heavy work --

7 Q. Were you --

8 A. -- when you start on certain areas.

9 Q. -- okay. Well, do you recall in your deposition
10 testifying that -- you were asked about the physical --
11 the -- a little bit about the physical demands of that
12 job and this is what you said, well, it really wasn't
13 no -- you know, it was basically only physical -- it
14 was not too much physical demand on that job; it was
15 just basic. We had rods we would pull on the table but
16 it just -- it was really light, you know, two (2) rods,
17 three (3) rods at a time to inspect them; do you
18 remember saying that?

19 A. Right.

20 Q. Well, where did -- where did you put heavy duty,
21 manual, hard; all those kind of things?

22 A. Well, I'm -- I was talking about in the beginning
23 where I started from different sections of
24 Westinghouse.

25 Q. Okay.

1 Mr. Beard: Page 16, Commissioner, of
2 Defendant's APA's, again.

3 Q. This is the questionnaire you filled out at
4 Michelin, correct?

5 A. Correct.

6 Q. That's your signature, correct?

7 A. Correct.

8 Q. It looks like March 21st of '17, correct?

9 A. Correct.

10 Q. All right. And you said they stuck the form in --
11 in front of you and you just, real quickly, just check,
12 check, check and turned it in, right; is that what you
13 said?

14 A. Yeah. Basically --

15 Q. But you did --

16 A. -- that's correct.

17 Q. -- you did take time to write high blood pressure

18 --

19 A. Uh-huh.

20 Q. -- on there, correct, or whatever that word is;
21 what is that word (indicating)?

22 A. High blood pressure.

23 Q. Okay. What's the last part of that word; what's
24 that other word that you wrote on there?

25 A. High -- I don't know. That's high blood -- I

1 don't know what that is. High -- controlled.

2 Q. Okay. All right. So -- so, you took the time to
3 tell them that you had high blood pressure that was
4 controlled but you didn't take the time to tell them
5 the truth about all these other things that Mr. Samuels
6 has already had you admit were not truthful, correct,
7 because you just -- said you just quickly filled in the
8 form because they stuck it in front of you?

9 A. What other things are you saying about?

10 Q. Well, your -- the lawyer actually asked you a
11 bunch of questions on here, he said --

12 A. Yeah.

13 Q. -- there's a question about back injury, back ache
14 or pain.

15 A. Okay.

16 Q. Do you have -- in fact, he went back and read it
17 really slowly.

18 A. Uh-huh.

19 Q. Do you have problems with or have you ever had
20 medical attention for any of the following. You
21 claimed that you stopped reading it when it said do you
22 have problems with; that's what you said --

23 A. Yeah.

24 Q. -- correct?

25 A. Correct.

1 Q. All right. And even though that's what the rest
2 of the statement says is --

3 A. Right.

4 Q. -- is have you ever had those problems because he
5 asked you, have you ever in your whole life ever had
6 that and you said, yeah, that wasn't true when I
7 answered the way I did; do you remember all that?

8 A. Yeah.

9 Q. Okay.

10 A. Uh-huh.

11 Q. And so, you just checked the boxes, no, no, no,
12 no, no, all the way down --

13 A. Uh-huh.

14 Q. -- correct?

15 A. Correct.

16 Q. And you did that because you were afraid if you
17 didn't do that you weren't going to get a job; isn't
18 that right?

19 A. No.

20 Q. Okay. You have had prior cervical -- surgical
21 procedures to your knee; we know that's true, correct?

22 A. Yeah.

23 Q. You didn't put that on the form, even though it
24 asked you, right?

25 A. Right.

1 Q. You have had prior back aches, prior back
2 injuries, prior back pain. In fact, you were on
3 restrictions for heavy duty, basically, since 1997; you
4 didn't put anything about that on the form, did you?

5 A. No.

6 Q. Okay. Have you ever experienced a -- he didn't
7 ask you this question, page -- number 21 -- have you
8 ever experienced a medical problem that affected your
9 ability to perform your work; you put no, didn't you?

10 A. Right.

11 Q. But you had to quit a job because you couldn't
12 perform the job at Richtex, correct? You physically
13 couldn't do it.

14 A. No. I quit that job but, you know, no, that's not
15 -- I quit that job because I didn't want to go through
16 more physical where they was really -- he -- they
17 didn't tell you, oh, I -- well, we -- we was lifting
18 bricks every day.

19 Q. Okay.

20 A. We was lifting --

21 Q. Because you had a medical problem that --

22 A. -- no.

23 Q. -- prevented you from being able to perform your
24 work?

25 A. No. Lifting bricks, that -- they knew that it was

1 -- that it was harmful to everybody; so, they -- they
2 -- and I didn't want to go back there and risk my back
3 getting really hurt bad, so.

4 Q. Okay.

5 A. You know, I didn't know and -- and it was only --
6 I'd only been there -- I haven't -- it -- it -- it --
7 it was where -- when I started Richtex it was like I
8 was working a machine and then they threw us on a
9 monorail --

10 Q. Okay.

11 A. -- so.

12 Q. When you went to Westinghouse it was apparently on
13 May the 16th of 2001, when you had to fill out their
14 medical history form --

15 A. Uh-huh.

16 Q. -- and examination; is that correct?

17 A. Correct.

18 Q. Is that --

19 A. Yeah.

20 Q. -- all that stuff is properly you; is that
21 correct?

22 A. Correct.

23 Q. Okay.

24 A. Yes, sir.

25 Q. Mr. Samuels asked you about this question, it

1 says, do you have or have you -- or are you troubled by
2 -- and it said recurrent low back pains, you said you
3 didn't have any back pains at that time; that's why you
4 said that?

5 A. Correct.

6 Q. Okay. And then, for some reason he went to page
7 20 and 21 but he skipped over page 19 and page 19 has
8 got some pretty good things on there, and this was in
9 2001, so this was a whole lot closer to 1997, than
10 twenty-one (21) years later; this was less than four
11 (4) years later, correct?

12 A. Uh-huh.

13 Q. About three and a half (3 ½) years later?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes. Yes, sir.

17 Q. All right. Have you ever -- it doesn't say -- it
18 doesn't start off with have you -- do you have a
19 problem now or have you ever had, the only question is,
20 have you ever.

21 A. Uh-huh.

22 Q. Now, ever means your whole life, correct; you
23 understand that?

24 A. Right.

25 Q. Okay. Question mark, any of the following:

1 Undergone a surgical procedure or operation, you put
2 no; that's not true is it because you had a surgical
3 operation, you said, from a young person, to your right
4 knee; so, you lied on that, correct?

5 A. well, I didn't know-- well, I didn't really
6 understand a surgical but I took it as now. I -- I
7 never -- I couldn't even remember my --

8 Q. Have you ever, I mean --

9 A. -- yeah.

10 Q. -- I mean, you --

11 A. I -- I know what you're saying, it's ever -- when
12 you said that it's ever but that -- I took it as now
13 but I never -- I couldn't remember the surgical thing.

14 Commissioner Wilkerson: well, help me
15 understand what forever means when it's typed
16 on the form.

17 witness: Yeah. Well, I can't remember
18 all the back thirty (30) years ago.

19 Mr. Beard: Okay. Well --

20 Commissioner Wilkerson: So, you can't
21 remember, is the answer now?

22 witness: No, I'm saying -- you're
23 saying now. Yeah, it's -- it's just --

24 Q. -- read for me, if you would, before I ask --
25 well, let me -- let me finish this. There's another

1 question that says, have you ever had a work-related
2 injury or illness; what did you check on that box?

3 A. -- no.

4 Q. Is that true?

5 A. Work-related injury?

6 Q. Injury or --

7 A. Illness?

8 Q. -- illness. Have you ever had a workers' Comp
9 claim? Yes, you just got --

10 A. Yeah.

11 Q. -- paid for one in -- from a -- from a 1997
12 workers' Comp claim.

13 A. Correct.

14 Q. Okay. So, you lied on that, correct?

15 A. I -- I -- if that's what you want to say, yeah.

16 Q. Well, how -- I mean, you can -- you can say all
17 this forever and make that excuse --

18 A. Yeah.

19 Q. -- but you can't make that excuse for that
20 question.

21 A. No. I can't make that excuse for that question.

22 Q. And you said no, correct?

23 A. I said no.

24 Q. Okay.

25 A. Uh-huh.

- 1 Q. Have you ever been restricted, medically, from
2 doing any part of your job? Now, we just read Dr.
3 Norris' 1997 report that said you couldn't do any heavy
4 work until you went to a surgeon. So, you put no
5 there; that's was also incorrect and not truthful,
6 right?
- 7 A. From what I understand, yes, that's -- well, on
8 paper, yes, that's what it says --
- 9 Q. All right.
- 10 A. -- so, I put that.
- 11 Q. Now, what I'd like for you to read is --
- 12 Commissioner Wilkerson: Are we still on
13 page 19?
- 14 Mr. Beard: -- yes, sir.
- 15 Q. There's a box, see this -- see this little --
- 16 Commissioner Wilkerson: I've got the
17 rest of it.
- 18 Q. -- black writing right above your signature and
19 your --
- 20 A. Uh-huh.
- 21 Q. -- what does the very first sentence of that say?
- 22 A. I certify that the above answers are true and
23 complete.
- 24 Q. Okay. Did you read that before you signed it; did
25 you read your certification? That's pretty big --

1 that's a pretty important statement that they put on a
2 piece of paper, isn't it?

3 A. Right.

4 Q. Did you read it?

5 A. Yeah.

6 Q. Okay.

7 A. I mean, as far as did I read the statement?

8 Q. So --

9 A. No.

10 Q. -- so, you certified and, in fact, you lied
11 because you knew what these questions were and you
12 certified them and you knew when you signed that
13 document going to work for Westinghouse that you were
14 putting them at risk if they found out about it and you
15 were afraid to tell the truth because you didn't think
16 they would hire you if you told the truth; isn't that
17 right?

18 A. No. I -- I didn't -- wouldn't say that, no.

19 Q. You were asked about something that happened --
20 apparently, you had another questionnaire and a
21 physical in -- in 2013, it looks like it was also done
22 at Healthworks, which is where Dr. Izard is; isn't that
23 right?

24 A. Correct.

25 Q. Okay. And on that form, while you were still

1 working at Westinghouse, there's a question that says,
2 do you have or have you ever had the following. It
3 went through all these things --

4 A. Right.

5 Q. -- and you said you just check marked them really
6 fast. Well, that's not true because you actually took
7 time to check mark some of these things under now,
8 correct; so you did read them, correct?

9 A. Correct.

10 Q. All right.

11 A. Uh-huh.

12 Q. So, you said you do have hypertension or high
13 blood pressure now; you told -- you told the truth
14 there, correct?

15 A. Correct.

16 Q. It says do you have any pain, numbness, limited
17 motion, injury or surgery of the -- check mark, knee
18 pain, with weather; is that what you said?

19 A. Right.

20 Q. So, you were having knee pain back then, you put
21 it on their form; why didn't you put it on Michelin's
22 form?

23 A. Because it was -- it was not -- it was -- it
24 wasn't a -- it's nothing steady and it wasn't nothing
25 -- it's something like I hit my knee; it was nothing --

1 it was not no -- no -- no, what you call it? It wasn't
2 no -- whatever. It wasn't --

3 Q. Okay.

4 A. -- serious in my opinion. It wasn't nothing. I
5 just said knee pain, whatever. It wasn't nothing where
6 I had a -- I can't -- go ahead.

7 Q. Do you have any pain, numbness, limited motion,
8 injury or surgery of -- again, you checked, yes, now,
9 and put knee pain.

10 A. Yeah.

11 Q. There's a specific question about back or neck
12 pain; what did you put?

13 A. No, I think. Well, what is it?

14 Q. You put no? Yes, straight across there would be
15 no.

16 A. Yeah. Uh-huh.

17 Q. All right. There's also one about hip, knee, leg,
18 ankle, foot; you put no on that, correct?

19 A. No. I put the -- yeah, now. It says now.

20 Q. I mean, now; I'm sorry.

21 A. Now.

22 Q. Then you wrote over here what that was, knee pain
23 with weather, correct?

24 A. Yeah.

25 Q. So, you knew enough to tell the truth about knee

1 pain.

2 A. No, no, no, no, no. This says, hip, knees -- then
3 -- and it says now.

4 Q. Correct.

5 A. And then, over here, it's on the other line over
6 here, shoulder, head, arm, hand and wrist, finger.

7 Q. That's a no; that's correct.

8 A. Okay.

9 Q. what I said was, you -- you took --

10 A. Yeah.

11 Q. -- you actually wrote on this thing --

12 A. Yeah.

13 Q. -- knee pain -- is that pain with weather?

14 A. Yeah, pain with weather.

15 Q. Okay.

16 A. Yeah.

17 Q. But then, they have a question and it doesn't say
18 do you have now or have you ever had -- question number
19 28, explicit, have you ever had a work injury, workers'
20 compensation claim, been given an impairment rating or
21 disability rating, applied for or received any type of
22 disability or pension including military VA, received
23 an award or a settlement for any injury, accident,
24 disease or other disorder; what did you say?

25 A. Never.

1 Q. That's a lie, isn't it?

2 A. It's a --

3 Q. You just had settled a workers' Compensation
4 claim.

5 A. -- no, I just now have; that's twenty-one (21)
6 years ago.

7 Q. No, sir. This -- this is not twenty-one (21)
8 years ago.

9 A. No, you're talking about this -- you say you -- I
10 just have settled.

11 Q. I'm talking about --

12 A. Yeah.

13 Q. -- when you filled out this form.

14 A. When I filled out that form?

15 Q. It just --

16 Commissioner Wilkerson: Stephen?

17 Q. -- it wasn't twenty-one (21) years ago?

18 A. Uh-huh. Yeah.

19 Mr. Samuels: Your Honor --

20 Commissioner Wilkerson: Can I meet with
21 the attorneys for a minute?

22 Mr. Samuels: -- the form he's asking
23 him about --

24 Commissioner Wilkerson: Let -- let me

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Mr. Samuels: -- is from 2013.

Commissioner Wilkerson: -- fine, let's go -- let's go in here a minute.

Court Reporter: Off the record?

Commissioner Wilkerson: Off the record.

Court Reporter: Thank you.

(Off The Record)

Commissioner Wilkerson: All right.

Let's go back on the record. The last notes I have is, we're on -- we were on page 19.

Mr. Beard: Yes, sir. And I had -- I had just finished with that, Commissioner.

Commissioner Wilkerson: Okay. That's fine. That's the last notes I've got. All right. We're back on the record. I think we also covered page 20, as well.

Mr. Beard: We did. I was about to say I think --

Commissioner Wilkerson: Yes.

Mr. Beard: -- I covered 20, as well.

Commissioner Wilkerson: We do. I've got it right here; I had to flip one more paper.

Q. All right. Mr. Brailey, I think you stated earlier, you at least started college at South Carolina

1 State, correct?

2 A. Correct.

3 Q. So, you know how to read and write, correct?

4 A. Correct.

5 Q. All these documents that we've shown you today,
6 you can read them?

7 A. Correct.

8 Q. You understand the difference between forever and
9 now --

10 A. Correct.

11 Q. -- now versus ever; you understand the difference
12 between all those words --

13 A. Correct.

14 Q. -- correct? Okay. It's my understanding you also
15 have training or have been trained -- you -- you've got
16 forklift training, safety training, counseling
17 training, first aid, CPR; all those kind of things
18 you've learned throughout your career and your life,
19 correct?

20 A. Correct.

21 Q. Okay. So, those are things that you can do if
22 need be, correct? Those are jobs you could go work at
23 --

24 A. Correct.

25 Q. -- potentially, correct?

- 1 A. Correct.
- 2 Q. Okay. We had looked at that application when you
3 came to work for Michelin that your lawyer put into
4 evidence; I think it was at pages 85 and 86. And you
5 said something about working at DJJ before you came --
- 6 A. Right.
- 7 Q. -- to Westinghouse and my client, correct?
- 8 A. Correct.
- 9 Q. Why is that not on the application?
- 10 A. I just -- I was --
- 11 Q. I don't see anything about DJJ.
- 12 A. -- no, I didn't put it on there.
- 13 Q. Okay.
- 14 A. I didn't.
- 15 Q. So -- okay. You don't know why you didn't put it
16 on there? It was the most recent job you had and you
17 didn't put it on there?
- 18 A. That was -- after that -- I'm trying to remember
19 because I filled out several applications for Michelin.
- 20 Q. Right.
- 21 A. So, the first one we had to fill out -- because I
22 just got that job at DJJ.
- 23 Q. Okay.
- 24 A. So, yeah, that's how I think I missed that one.
- 25 Q. All right. And when you had this workers'

1 Compensation claim back in '97, you claimed that you
2 had had an MRI scan but you could not remember where
3 you had that done when I asked you, correct?

4 A. No.

5 Q. And you couldn't --

6 A. Correct.

7 Q. -- and you --

8 A. Correct.

9 Q. -- and you couldn't remember if you ever went to a
10 specialist, correct?

11 A. Correct.

12 Q. You don't remember --

13 A. Correct.

14 Q. -- going to a specialist?

15 A. Correct.

16 Q. Okay. Now, I want to just make sure I am correct,
17 that I understood your testimony, because I had some
18 confusion. When you went to the hospital on June the
19 11th and told them that working -- you had been doing
20 hard work at Michelin for a couple of weeks and had
21 been having back pain for a couple of weeks, you never
22 told the folks at Michelin that you went to the
23 emergency room on that date, correct?

24 A. Correct.

25 Q. All right. At some point while you were in

1 training and before you went out onto the PAP machine
2 and doing that work, Mr. Brailey, you specifically
3 asked the folks at Michelin if you could do an x-ray
4 job out there because you had some training in that;
5 isn't that correct?

6 A. Yeah.

7 Q. And the reason you asked them to do the x-ray job
8 is because that's a -- pretty much a sedentary job, it
9 doesn't really require any manual work or any labor or
10 anything like that; isn't that true? It's like a
11 quality control job; isn't that true?

12 A. No.

13 Q. It's not true?

14 A. No. I -- I -- I did ask them but I -- I -- I had
15 some experience in x-ray. I didn't know what --

16 Q. Well, my question was --

17 A. -- I didn't know what their x-ray was there; I
18 just know --

19 Q. -- your experience in x-ray was at Westinghouse?

20 A. -- we did a lot of -- like I was saying, we did a
21 lot of things.

22 Q. Okay. X-ray is like quality control x-ray; is
23 that what you're talking about?

24 A. It could be in another area, as well, too.

25 Q. Okay. And that does --

1 A. Yeah.

2 Q. -- that's a sedentary type of job, correct? It's
3 not a manual job; it's --

4 A. No.

5 Q. -- it's a sedentary job. It's a light duty kind
6 of job, right?

7 A. Right.

8 Q. And you wanted --

9 A. You have to --

10 Q. -- and you wanted to do that at Michelin and you
11 asked to do that at Michelin because you knew you
12 couldn't do the physical job that you were about to go
13 try to do; isn't that correct?

14 A. -- no. I was just, basically, trying to find out
15 all the jobs there and since I had experience in that
16 job, I was like, hey, I could try that, whatever. I
17 didn't know -- we didn't know which job we was going
18 to.

19 Q. Okay.

20 A. We didn't.

21 Q. You --

22 A. I didn't tell nobody. I just -- they told us to
23 ask questions and, you know, what -- when we go to
24 these different areas ask questions about the job and
25 this, that and the other.

1 Q. -- okay.

2 A. So, that's what.

3 Q. You have not been to a doctor, at least from the
4 records or from what I can tell, to an actual doctor,
5 about your back since October of 2017, correct, almost
6 six (6) months; is that right?

7 A. Correct.

8 Q. Okay. You haven't been doing anything else in the
9 meantime to make yourself better physically; is that
10 correct?

11 A. Correct.

12 Q. You've made no efforts, whatsoever, to get a job
13 in any of those areas that I described earlier that you
14 were capable of doing; you haven't tried to get a job,
15 have you?

16 A. Not at -- I was -- are you talking about after I'd
17 done --

18 Q. I'm talking about right now --

19 A. -- no. I haven't --

20 Q. -- you haven't tried any of these other --

21 A. -- no, I couldn't -- no, I couldn't. I'm out of
22 work, no.

23 Q. -- well, you're out of work but -- but you haven't
24 tried to get a job doing anything, have you? Even the
25 jobs that are sedentary you haven't tried to do; is

1 that correct?

2 A. I've been looking. I haven't -- I haven't found
3 -- I haven't had no luck.

4 Q. Have you applied?

5 A. I applied at Verizon.

6 Q. Okay. So, you do -- well, you do believe that
7 there are jobs you can perform that are lighter duty
8 types of jobs?

9 A. Yeah.

10 Q. Okay. And you're trying to find those jobs?

11 A. Yeah.

12 Q. And you just haven't been successful at getting
13 any yet -- as of this time?

14 A. No.

15 Q. Okay.

16 A. Right.

17 Q. Did you file for unemployment after you were
18 terminated at Michelin?

19 A. No, sir.

20 Q. Okay. You testified earlier that on June 13th
21 when you went to the doctor, your personal doctor, that
22 -- and I'm quoting -- I put in quotes what you said,
23 you said you went to see him about some minor back pain
24 on that day, correct?

25 A. Correct.

1 Q. And you saw the report where it said the pain that
2 you had that day was a ten (10) out of ten (10) pain,
3 correct?

4 A. Correct.

5 Q. You would agree ten (10) out of ten (10) pain is
6 not minor back pain, wouldn't you?

7 A. I -- I agree.

8 Q. In fact, it's the worst pain you can have,
9 according to the very chart that was on your doctor's
10 report?

11 A. Correct.

12 Q. Okay. And on June the 24th, whenever you've said
13 that you were having the problems that you were having
14 that particular day, you didn't tell anyone in
15 management before you left that day that you had any
16 problems, did you? You just left and went --
17 eventually went to the hospital, correct? You tried
18 the medical facility, it wasn't open and then you went
19 to the hospital but you didn't tell anybody at Michelin
20 you were going to go do that, did you?

21 A. Right.

22 Q. You didn't even tell anybody you had hurt
23 yourself, did you, before you left?

24 A. I told -- like I say -- I mean, I was -- no, I
25 didn't tell nobody.

1 Q. Okay.

2 Mr. Beard: Commissioner, I believe
3 that's all the questions I have.

4 Commissioner Wilkerson: Mr. Samuels.

5 Mr. Samuels: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 By Mr. Samuels:

8 Q. Isaac, what's your work status with Dr. Boyd?

9 A. My work status with who?

10 Q. Has Dr. Boyd written you out of work?

11 A. Yes.

12 Q. Okay. Even with that, are you still trying to
13 find a job?

14 A. Exactly.

15 Q. When you were -- were you given a physical exam at
16 Michelin --

17 A. Yes.

18 Q. -- before they -- before you started working?

19 A. Yes, sir.

20 Q. Okay. Was it a thorough physical exam?

21 A. Yeah, pretty much, I mean, pretty much so.

22 Q. What was examined?

23 A. I -- where was it?

24 Q. What did -- what did the doctor examine?

25 A. Eyes, bending down; just as you do as on -- well,

1 just, you know, check your -- your reflexes, when you
2 can turn, bend or, you know, lifting; stuff like that.

3 Q. Turn, bend and lift with your back?

4 A. Lift -- I think it's lifting, I think; I can't
5 remember.

6 Q. Okay.

7 A. Lifting or something -- I think he was turning me
8 or whatever.

9 Q. And did you suffer any pain during that
10 examination?

11 A. No.

12 Q. Did you have to squat?

13 A. Yes. Squat, yeah, different things you done with
14 your upper body and lower body, he did.

15 Q. What doctor was it that gave you this physical
16 examination; do you remember?

17 A. No, I sure don't. I -- I don't know -- the Nurses
18 gave me one, then they did the eyesight and the doctor
19 came in and did some things.

20 Q. Okay.

21 A. Yeah.

22 Q. And -- and then, you were cleared to work full
23 duty for Michelin?

24 A. Yes.

25 Q. No -- no restrictions?

1 A. No restrictions.

2 Q. When you went to the doctor the first time you
3 were having back pain at work, Lexington Medical
4 Center, June 11th, 2017, did the doctor put you under
5 any work restrictions?

6 A. No.

7 Q. You were cleared to work full duty?

8 A. Cleared to work full duty.

9 Q. Now, when you went to Dr. Marom on June 13th, did
10 he put you on any restrictions?

11 A. No. No, sir.

12 Q. I'm looking at page 11; I will just read this.
13 From what we see on page 11 of Dr. Marom's medical
14 records: Exercise to lose weight, a need for
15 strengthening up of core muscles and proper lifting
16 techniques; was that discussed with you?

17 A. Yes.

18 Q. But no restrictions?

19 A. No restrictions.

20 Q. Okay. Now, the -- the first time you saw Dr.
21 Marom was even before you had applied at Michelin; is
22 that right?

23 A. Excuse me?

24 Q. The first time you saw Dr. Marom was before you'd
25 applied at Michelin?

1 A. Correct.

2 Q. And we have a record at page 1 of the APA
3 submissions dated January 3rd, 2007, oh, excuse me,
4 2017. Did you go there to establish care with Dr.
5 Marom?

6 A. Yes.

7 Q. He was going to be your family doctor?

8 A. Yes, sir.

9 Q. And did he ask you to discuss all of your medical
10 conditions?

11 A. Yeah, he did go over that with me. Yes, sir.

12 Q. Were you having any problem with your back when
13 you saw him?

14 A. No.

15 Mr. Samuels: And, Your Honor, simply
16 for the record, there is no mention of back
17 pain in that record.

18 Mr. Beard: In fact, there's not mention
19 of an examination of the back or any mention
20 of the back whatsoever; so, I'm not real sure
21 what Stephen's point of telling you that was.

22 Mr. Samuels: well, the -- the point is,
23 he's gone to his family doctor, talking about
24 his current problems and his history and back
25 pain is not one of them.

1 Commissioner Wilkerson: In January?

2 Mr. Samuels: In January.

3 Commissioner Wilkerson: Yes.

4 Mr. Samuels: Before he went to work at
5 Michelin.

6 Commissioner Wilkerson: But in July,
7 major back problems. He goes from nothing to
8 ten (10) out of ten (10) in June; in less --
9 in less -- in about six (6) months.

10 Mr. Samuels: Right.

11 Commissioner Wilkerson: Less than six
12 (6) months.

13 Mr. Samuels: Because he's doing heavy
14 work and it's hurting him.

15 Commissioner Wilkerson: But no workers'
16 Comp case filed until June the 24th?

17 Mr. Samuels: Correct.

18 Commissioner Wilkerson: And that's the
19 day the accident happened --

20 Mr. Samuels: Correct.

21 Commissioner Wilkerson: -- June 24th,
22 not June 11th or the 13th or May?

23 Mr. Samuels: Yes, sir. I mean, we're

24 --

25 Commissioner Wilkerson: Okay.

1 Mr. Samuels: -- we're not -- we're not
2 disputing what the medical records say --

3 Commissioner Wilkerson: Okay.

4 Mr. Samuels: -- that he was having back
5 pain or whether it had ripened into a true
6 injury --

7 Commissioner Wilkerson: Okay.

8 Mr. Samuels: -- and he hadn't had any
9 radiculopathy up to that point.

10 Commissioner Wilkerson: Okay. I'm
11 fine. I just wanted to make sure I didn't
12 miss it.

13 Q. From both June 11th and June -- June -- June 11th,
14 2017 and June 13th, 2017, those doctors released you at
15 full duty?

16 A. Correct.

17 Q. Okay. Isaac, how long was the probation period at
18 Michelin?

19 Mr. Beard: Commissioner, I believe
20 that's asked and answered and he said he
21 didn't know the answer to the question when I
22 asked him earlier. I asked him was it ninety
23 (90) or a hundred and twenty (120) days and
24 he said he didn't know.

25 Mr. Samuels: Between those two (2).

1 Commissioner Wilkerson: Yes. So, do
2 you know how many -- what's the probationary
3 period?

4 Witness: I can't remember but I'm
5 thinking it's -- you know, acceptable, like,
6 ninety (90) days, you know. I can't
7 remember.

8 Commissioner Wilkerson: You said
9 earlier it wasn't.

10 Witness: No, I said I don't -- I can't
11 remember. I don't know.

12 Commissioner Wilkerson: Well, either
13 you remember or you don't.

14 Witness: Yeah.

15 Commissioner Wilkerson: You can't -- if
16 you can't remember --

17 Witness: Yeah.

18 Commissioner Wilkerson: -- do you
19 understand that means you don't have any --

20 Witness: Yeah.

21 Commissioner Wilkerson: -- idea?

22 Witness: Yeah. I can't remember.

23 Commissioner Wilkerson: Okay.

24 Witness: Okay.

25 Commissioner Wilkerson: And if you do

1 remember, then that's the answer I want.

2 witness: Okay.

3 Commissioner Wilkerson: So --

4 witness: Yes, sir.

5 Commissioner Wilkerson: -- do you
6 remember or don't you remember or are you
7 just making up an answer?

8 witness: I don't -- I don't remember.

9 Commissioner Wilkerson: So, when you
10 said I thought it was ninety (90) days, you
11 just made that up?

12 witness: I just assumed everybody would
13 be ninety (90) days, sir.

14 Commissioner Wilkerson: Well, we can't
15 assume --

16 witness: Yeah.

17 Commissioner Wilkerson: -- you know
18 what that problem with that is. We can't
19 assume; we --

20 witness: Okay.

21 Commissioner Wilkerson: -- we've got to
22 have -- I want correct answers; I don't want
23 what somebody else told you or what we assume
24 to be the answer.

25 witness: Okay.

1 Commissioner Wilkerson: So, you don't
2 know; is that fair?

3 Witness: I don't know.

4 Commissioner Wilkerson: Okay.

5 Q. Isaac, did you delay filing your workers' Comp
6 claim till you were outside the probationary period?

7 A. Did I delay?

8 Q. Yes, sir. Did you delay filing your workers' Comp
9 claim or telling Michelin that you got hurt at work
10 until after you were outside the probationary period?

11 Commissioner Wilkerson: He doesn't know
12 what the probationary period is. So, how
13 would he know if he did or didn't?

14 Mr. Samuels: That's part of the point,
15 Your Honor.

16 Commissioner Wilkerson: I agree. So,
17 if he doesn't know what it is --

18 Witness: Yeah.

19 Commissioner Wilkerson: -- if he says
20 yes, he's wrong; if he says no he's wrong.

21 Mr. Samuels: It's -- it's been
22 suggested by Mr. Beard that he delayed --

23 Mr. Beard: Stephen, you're not --
24 you're not allowed to tell your client -- I
25 mean, you're basically telling your client

1 what he needs to answer a question; you can't
2 do that. with all due respect, you get to
3 ask questions; you don't get to just stand up
4 there and talk. You're testifying.
5 Objection.

6 Commissioner Wilkerson: He doesn't know
7 what it is. How do you ask him a question if
8 he doesn't know what the probationary period
9 is? A proper question would be, why did you
10 file a Workers' Compensation claim on the
11 24th day of June and not the 11th day of
12 June; that would be a proper question.

13 Q. Answer that question, Isaac.

14 A. I -- I didn't -- was not -- I -- I didn't -- my
15 pain wasn't that severe and I wasn't thinking about
16 Workman's Comp, you know, from on June 11th, June 13th;
17 I -- I wasn't even thinking about Workman's Comp no
18 time.

19 Commissioner Wilkerson: So -- so, let
20 me ask you a question. You would only file a
21 claim if you thought about Workers' Comp,
22 right?

23 Witness: Excuse --

24 Commissioner Wilkerson: Tell me what --
25 what -- tell me what you mean by, if you

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think about workers' Comp.

Witness: -- if I thought about
workman's -- I mean --

Commissioner Wilkerson: What do you
mean by when you say, if I thought about
workers' Comp?

Witness: -- it's just, like, if I
thought about -- I wasn't even thinking about
workman's Comp. I just --

Commissioner Wilkerson: Tell me what
you mean by, if you were thinking about
workers' -- I don't know what that means.

Witness: -- well --

Commissioner Wilkerson: I mean, I don't
come to work every day and say --

Witness: -- yeah.

Commissioner Wilkerson: -- I think I'm
thinking about workers' Comp --

Witness: Yeah. I was just referring to
your answer --

Commissioner Wilkerson: -- or I think
I'm thinking --

Witness: -- I was just referring to
your --

Commissioner Wilkerson: -- I don't have

1 an answer.

2 Witness: -- I mean, I'm just referring
3 to --

4 Commissioner Wilkerson: I asked you
5 what --

6 Witness: -- I'm just referring to what
7 everybody was saying. I -- I --

8 Commissioner Wilkerson: -- it doesn't
9 matter what -- I'm asking you. I don't care
10 what Mr. Samuels thinks. I don't care --

11 Witness: -- yeah.

12 Commissioner Wilkerson: -- what Mr.
13 Beard thinks.

14 Witness: Well, okay.

15 Commissioner Wilkerson: I want to know
16 what you think.

17 Witness: About Workman's Comp? About
18 filing a Workman's Comp claim?

19 Commissioner Wilkerson: Yes, sir.
20 That's all I -- that's all I'm asking, what
21 you think.

22 Witness: How I think it's done or how I
23 think it -- why -- why should I file it or
24 what -- that's what you're asking me?

25 Commissioner Wilkerson: No. I'm asking

1 you what your answer was; what do you mean by
2 that.

3 Witness: That it -- it just -- there's
4 no reason for it. I mean, I just didn't
5 think of it. I mean, you know, just replying
6 to your answer. I mean, I -- I'm -- make
7 sure --

8 Commissioner Wilkerson: I don't have
9 any answers.

10 Witness: -- I'm just trying to make
11 sure I understand what you're saying. You
12 said that why would I answer --

13 Commissioner Wilkerson: I asked you,
14 what do you mean by what you stated; that was
15 the question --

16 Witness: -- okay.

17 Commissioner Wilkerson: -- about --
18 you're the one that said I wasn't thinking
19 about workers' Comp; I didn't say that.

20 Witness: Right. Right.

21 Commissioner Wilkerson: I don't know
22 what you mean by, I wasn't --

23 Witness: Well, I was referring to --

24 Commissioner Wilkerson: -- thinking
25 about workers' Comp.

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Witness: -- because they meant --
because you all said that -- the previous
question was June 11th.

Commissioner Wilkerson: You're not
listening. You're not -- this has been
fairly consistent for five (5) hours that --
I don't know what you've been saying. I
don't know what -- tell me what you mean by
that statement. Nothing or --

Witness: Nothing, it's --

Commissioner Wilkerson: -- tell me what
that statement means.

Witness: -- it's telling -- it don't
mean nothing.

Commissioner Wilkerson: I -- I don't
know.

Witness: I don't mean nothing to me.
It don't mean nothing, sir.

Commissioner Wilkerson: well, when you
say I --

Mr. Samuels: Respectfully, Your Honor

--

Commissioner Wilkerson: -- never mind.
Go ahead.

Mr. Samuels: -- okay.

- 1 Q. All right, Isaac, your back was hurting at work
2 and you went to the doctor on June 11th, 2017?
- 3 A. Correct.
- 4 Q. Did you tell anybody at Michelin about it?
- 5 A. No.
- 6 Q. Did you discuss any pain you'd been having at work
7 with anybody at Michelin?
- 8 A. Yes.
- 9 Q. Did you discuss in the context of an injury or an
10 accident?
- 11 A. No.
- 12 Q. All right. So, June 11th, you didn't tell anybody
13 at Michelin you were going to the doctor?
- 14 A. No.
- 15 Q. Okay. June 13th, did you tell anybody at Michelin
16 you were going to the doctor?
- 17 A. No.
- 18 Q. Who paid for those first two (2) visits?
- 19 A. I did.
- 20 Q. Did you ask Michelin to pay for it?
- 21 A. No.
- 22 Q. If you had pain at work, and that's what you told
23 the doctors, June 11th of 2013 -- June 11th of -- June
24 13th, why didn't you tell the doctors that it was --
25 let me rephrase that. Why didn't you tell Michelin and

1 ask them to send you to the doctor or for them to pay
2 for your doctor visit?

3 A. Because I wasn't -- it was no -- it was no back
4 pain that was -- it was no severe back pain and I
5 didn't think nothing of it because they were -- they
6 said just give -- do some muscle relaxers --

7 Mr. Beard: Commissioner, object to what
8 they said, again.

9 Commissioner Wilkerson: I don't know
10 who they are.

11 Witness: -- oh. No --

12 Commissioner Wilkerson: I don't know if
13 it's --

14 Witness: -- well --

15 Commissioner Wilkerson: -- Jermaine or
16 the --

17 Witness: -- okay.

18 Commissioner Wilkerson: -- plant Nurse
19 or the Receptionist.

20 Witness: Oh.

21 Mr. Beard: I think he's talking about
22 the hospital or the doctor.

23 Witness: Yeah, that's what I'm talking
24 about --

25 Mr. Beard: That's the reason I object

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Witness: -- the doctors.

Mr. Beard: -- I object to that.

Witness: Okay.

Mr. Samuels: You won't be able to say
what the doctor said.

Witness: Okay.

Q. To pre-imp Mr. Beard, because I know he's going to
ask, you said it was no severe pain but you also told
one of the doctors that it was pain of ten (10) out of
ten (10)?

A Correct.

Q. Okay. Is that -- since he's going to ask you --

A. Yeah.

Q. -- if I don't.

A. Yeah.

Q. would you agree that's --

A. Yeah.

Q. -- that's pretty severe?

A. Correct. Yeah, I agree.

Q. Okay. why didn't you go to Michelin and tell them
you were having pain that bad at that time?

A. I didn't do it because the doctors -- well, I
can't say the doctor. well, I just didn't do it.

Q. Okay. Were you given any restrictions at that

1 time?

2 A. No.

3 Q. Okay. Did you continue working?

4 A. Yes.

5 Q. Did you miss any time from work?

6 A. No.

7 Q. On June 24th, what happened at 5:30 the -- in the
8 morning that was different from what had been happening
9 in the weeks before?

10 Mr. Beard: Commissioner, just, with all
11 due respect, this has already been covered on
12 regular direct; I don't know that he can just
13 go --

14 Commissioner Wilkerson: Yes.

15 Mr. Beard: -- redirect and say the same
16 thing over again. He's -- he has asked that
17 exact question, I think, on direct
18 examination.

19 Commissioner Wilkerson: I -- I mean, I
20 don't disagree.

21 Mr. Beard: I mean, he can only go into
22 new matter and this is -- that's not new
23 matter --

24 Mr. Samuels: Well --

25 Mr. Beard: -- and it has to be new

1 matter pursuant to my cross-examination.

2 Commissioner Wilkerson:

3 Cross-examination, yes.

4 Q. -- what was different on the 24th that made you
5 actually talk to Michelin about a work accident?

6 A. Okay. Well, it was very severe pain on June 24th.

7 Q. Now, you already had pain of ten (10) of ten (10).

8 A. Okay. Yeah.

9 Q. So, what was different?

10 A. It made a -- it just really -- I couldn't -- it
11 was hard to -- to bend down and it was -- it was just a
12 -- a sharp pain that was very different from the last.

13 Q. All right. And I'm going to show you page -- I
14 believe this is 16. So, see here on the left it's got
15 dates and time?

16 A. Uh-huh.

17 Q. June 24th looks like the first entry, patient
18 arriving in ED is 9:07 A.M.?

19 A. Right. Yes, sir.

20 Q. And is that about the time you arrived?

21 A. Yes, sir.

22 Q. And then, before you got examined you called
23 somebody at Michelin?

24 A. Yes, sir.

25 Q. And that's when you had the various discussions

1 with the Nurse, the supervisors and so forth; is that
2 right?

3 A. With Troy Lowman and Derrick Gibson.

4 Q. And then later, Christy --

5 A. Later on called my house.

6 Q. -- okay. After you had already left?

7 A. Exactly.

8 Q. And part of my question is, Mr. Beard asked you
9 about questions about possible workman's Comp. I'm
10 going to show you page 17, June 24th, 2017, that seems
11 to be at 11:02; so, that's after you've already been
12 there an hour and a half.

13 A. Correct.

14 Q. Had you spoken to --

15 Commissioner Wilkerson: How is 9:07 to
16 11:02 an hour --

17 Mr. Samuels: -- I'm sorry.

18 Commissioner Wilkerson: -- two (2)
19 hours and a half?

20 Mr. Samuels: Almost two (2) hours.

21 Thank you.

22 Commissioner Wilkerson: Okay.

23 Q. You'd already -- you'd been there almost two (2)
24 hours --

25 A. Uh-huh. Yes.

1 Q. -- in that two (2) hours had you already spoken to
2 Troy and Derrick?

3 A. Yes.

4 Q. To follow up on something Mr. Beard had asked you
5 about in Dr. Marom's record of June 13th, 2017, when
6 you'd had back pain in 1997, where was it?

7 A. In the middle.

8 Q. Middle --

9 A. Middle.

10 Q. -- at your ribs and just below?

11 A. Yeah, at my ribs and just below.

12 Q. Okay. And where was your back pain on June 13th,
13 2017, when you went to see Dr. Marom?

14 A. On the lower left side.

15 Q. Okay. And you've never had pain there in the
16 past?

17 A. Correct.

18 Q. Okay. Is that something you told Dr. Marom?

19 A. Correct.

20 Commissioner Wilkerson: Even though
21 there's a prior medical report that says L5?

22 Mr. Samuels: Well, Your Honor, I
23 disagree with that. The prior medical report
24 that you're talking about from 1997, says
25 x-ray shows a wedge on L5.

1 Commissioner Wilkerson: Okay. And it's

2 --

3 Mr. Samuels: It -- in the context --

4 Commissioner Wilkerson: -- and it's
5 different -- it's different than a wedge and
6 pain is what you're saying; is that fair?

7 Mr. Samuels: -- right. He's --

8 Commissioner Wilkerson: Okay.

9 Mr. Samuels: -- right.

10 Commissioner Wilkerson: That's fair.

11 Mr. Samuels: What I'm saying is --

12 Commissioner Wilkerson: That's fair.

13 Mr. Samuels: -- that record says
14 symptomatic at L2,L3.

15 Commissioner Wilkerson: That's fair.

16 Mr. Samuels: Forgive me for my pace
17 here, Your Honor.

18 Commissioner Wilkerson: No, no, no, no,
19 I -- no. Not a problem.

20 Q. And, Isaac, when you were terminated -- I'm going
21 to show you your record from Michelin.

22 Commissioner Wilkerson: Just give me
23 the page, Stephen; that'll help me.

24 Mr. Samuels: 83, Your Honor.

25 Commissioner Wilkerson: I mean, I don't

1 know where it is, just so I can document my
2 stuff here.

3 Mr. Samuels: Yes, sir.

4 Commissioner Wilkerson: Thanks.

5 Q. Apparently, this was signed by somebody at
6 Michelin, 7/6/17, 7/9/17 --

7 A. Uh-huh.

8 Q. -- and they told you, Isaac, you are being
9 terminated for not being a good fit during your
10 probationary period.

11 A. Uh-huh.

12 Q. Okay?

13 A. Yeah. Yes, sir.

14 Q. And then right after that, did you -- did you
15 receive a letter advising you that your Workers' Comp
16 case -- case was denied?

17 A. Yeah, I received a letter. Yes, sir; I received a
18 letter.

19 Commissioner Wilkerson: 7/13?

20 Mr. Samuels: Yes, Your Honor, page 83.

21 Q. Are Derrick and Troy people that you are supposed
22 to report a Workers' Comp injury to?

23 A. No. I don't think.

24 Q. Who are you supposed --

25 A. I don't -- I don't know.

- 1 Q. -- well, you had a question about the bosses --
- 2 A. Yeah.
- 3 Q. -- okay?
- 4 A. Uh-huh.
- 5 Q. Mr. Beard asked you about the bosses; who are the
- 6 bosses?
- 7 A. Troy Lowman is the person we -- that's our point
- 8 of contact, Troy Lowman.
- 9 Q. Okay.
- 10 A. Derrick is -- he was a -- we was working beside
- 11 them -- working with some of Derrick's team but he's
- 12 not the person that -- he said don't -- you can't call
- 13 me for any absentes or anything; you need to touch
- 14 base with Troy. But I get -- do the trainers that
- 15 we'll be training under -- training with. You'll be
- 16 training with some of my trainers, I mean, his
- 17 trainers.
- 18 Q. Who did you report your accident to originally on
- 19 June 24th?
- 20 A. Troy. Troy Lowman, I gave a call to him, I got a
- 21 answer machine. I called Derrick. Derrick said, don't
- 22 -- he'll keep -- put it out there too and Troy Lowman
- 23 called me back.
- 24 Q. Okay.
- 25 A. I wanted somebody to know.

1 Q. All right. Thank you.

2 Mr. Samuels: No further questions.

3 RECROSS-EXAMINATION

4 By Mr. Beard:

5 Q. You were asked, Mr. Brailey, about page 69 of the
6 medical records from Dr. Boyd and were you written out
7 of work was the way the question was asked; is that
8 correct?

9 A. Correct.

10 Q. Let's actually read what it says. It says --

11 Commissioner Wilkerson: Hold on. Let
12 me get to that one --

13 Mr. Beard: -- page --

14 Commissioner Wilkerson: -- I don't
15 remember that one. Okay.

16 Mr. Beard: -- page 69 of Claimant's
17 APA's.

18 Commissioner Wilkerson: Oh, we haven't
19 looked at that one yet. Okay.

20 Mr. Beard: Yes, I think he -- Stephen
21 just asked him about it on redirect.

22 Commissioner Wilkerson: Sure.

23 Q. Does this not say, I do not believe he can work at
24 his former occupation in his current condition so I'll
25 keep him out of work until next follow up. He -- he

1 said you can't work at your former occupation, correct?

2 A. Correct. That's what he said --

3 Q. Okay.

4 A. -- right there, yes.

5 Q. Okay. But you can certainly do other jobs because
6 you're applying for jobs that you think you can
7 physically do, correct?

8 A. Correct.

9 Q. And, in fact, you went from ten (10) out of ten
10 (10) pain before you filed a workers' Compensation
11 claim, about two (2) weeks before, and now only three
12 (3) out of ten (10) the whole time you've been treating
13 with Dr. Boyd and these other folks you've never been
14 ten (10) out of ten (10) --

15 A. Correct.

16 Q. -- according to their records; isn't that correct?

17 A. Correct.

18 Q. So, then, why did you file a workers' Comp claim
19 when you were only three (3) out of ten (10) and you
20 don't file a workers' Comp claim when you're ten (10)
21 out of ten (10); it makes no sense, does it?

22 A. It doesn't make any sense.

23 Q. Okay.

24 A. Yeah.

25 Q. You had a ten (10) out of ten (10) pain, told two

1 (2) doctors that you thought it was related to doing
2 your job at Michelin, you had a duty to tell your
3 employer that that was going on, didn't you? You had a
4 duty to tell your employer that you physically could
5 not be doing their job because it was killing your back
6 to a ten (10) out of ten (10) pain and you chose not to
7 do that; isn't that true?

8 A. I chose not to do that?

9 Q. Sure. You twice went to the doctor --

10 A. Uh-huh. Yeah.

11 Q. -- and twice didn't say a word to my client --

12 A. Correct.

13 Q. -- when you were telling them that you had been
14 having the problem for weeks; isn't that true?

15 A. Correct.

16 Q. You had a duty to tell them that so that you
17 wouldn't hurt yourself or some other co-employee,
18 didn't you?

19 A. I didn't look -- I didn't see it that way.

20 Q. Okay. What if you had been working with a
21 co-employee, Mr. Brailey, and suddenly your back went
22 out because you hadn't told my clients you couldn't do
23 this and that person got injured; would you feel bad
24 about that?

25 A. Yes, I would feel bad about that.

1 Q. You claim you told somebody -- you said Troy and
2 Derrick -- before you actually had any medical
3 treatment on June the 24th, correct?

4 A. Say that again now.

5 Q. You claim you told Troy and Derrick you were going
6 to have medical treatment at the hospital --

7 A. Not --

8 Q. -- before you had the treatment; that's what you
9 claim?

10 A. -- correct.

11 Q. You disagree with what Nurse Sirois said you told
12 her; is that correct? Because she said you didn't --
13 you didn't tell anybody until you got released from the
14 Lexington Medical Center emergency room?

15 A. Yeah, I disagree with what she said.

16 Q. Okay. And my last question or series of questions
17 is about your prior workers' Compensation claim.

18 Mr. Beard: Commissioner, again, page 1
19 of Defendant's APA's.

20 Q. Your attorney said your back problems were all at
21 L2,L3, correct; isn't that what he said?

22 A. Yes.

23 Q. That's not what this report says, though, is it?
24 This report says your back exam shows tenderness to
25 palpation at space at L2,3 but then it also goes on and

1 says, also there is pain with forward flexion. There
2 is tenderness and muscle spasm in the bilateral lumbar
3 region. It doesn't say your problems were restricted
4 to L2,L3, that just says that's one of the places,
5 doesn't it?

6 A. Yeah, that's what it said.

7 Q. Okay. And it also says you've got a problem at L5
8 on your x-ray and it also diagnosed you with a lumbar
9 strain, correct?

10 A. Correct.

11 Q. And then the next day or -- or the next report at
12 page 2, it's not only a lumbar strain but now we've
13 gone to the thoracic strain; you've got two (2) strains
14 going on at that time, correct?

15 A. Correct.

16 Mr. Beard: That's all the questions I
17 have.

18 Commissioner Wilkerson: Anything else
19 in the redirect questions?

20 Mr. Samuels: No, Your Honor.

21 Commissioner Wilkerson: Okay.

22 Mr. Samuels: That completes this
23 witness.

24 Commissioner Wilkerson: Can he be --

25 Mr. Samuels: I -- yes, he can come back

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and sit down and --

Commissioner Wilkerson: -- yes, sit with you. Yes, that's what I was going to say.

Mr. Samuels: -- yes, sir. Isaac --

Mr. Brailey: Huh?

Commissioner Wilkerson: Okay. Thanks. Sir, you may step down.

Mr. Brailey: Oh.

Commissioner Wilkerson: I just wanted to make sure. I guess we're going to call Jermaine next?

Mr. Samuels: -- yes, sir.

Commissioner Wilkerson: Well, I --

Mr. Samuels: We said we'd call Jermaine

--

Commissioner Wilkerson: -- well, I know

--

Mr. Samuels: -- so, we'll call Jermaine.

Commissioner Wilkerson: -- well, that's why -- that's why I asked. We need to get Jermaine.

(Off The Record)

Commissioner Wilkerson: Jermaine,

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what's your last name?

Mr. Lemon: Lemon, like the fruit --

Commissioner Wilkerson: Oh.

Mr. Lemon: -- L-E-M-O-N.

Commissioner Wilkerson: Well, I can actually spell that one. Some of these names that come in here I don't have a clue how to spell them. Thank you.

Mr. Lemon: All right.

Court Reporter: I've been saying Lowman all this time.

Commissioner Wilkerson: Lowman, I have too; that's okay. Sir, I'm going to get you to raise your right hand; the Court Reporter is going to swear you in and we'll take a little testimony from you. Thank you.

Whereupon;

Jermaine Ante Lemon, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

Court Reporter: Now, I'm going to ask you to state your full name for the record, one more time, please.

Witness: All right. Jermaine --

Court Reporter: You -- you don't need

1 to do that.

2 Commissioner Wilkerson: It'll get you.
3 It -- it -- you don't even have to touch it.
4 It will --

5 Court Reporter: That just goes to my
6 ears.

7 Witness: -- okay.

8 Commissioner Wilkerson: -- believe it
9 or not, she may have heard what you said
10 outside --

11 Witness: All right.

12 Commissioner Wilkerson: -- because
13 that's how sensitive it is, all right?

14 Witness: All right. I'm sorry.

15 Commissioner Wilkerson: I'm not joking.

16 Court Reporter: Okay. It's Jermaine?

17 Witness: Jermaine Ante Lemon.

18 Court Reporter: All right. Spell Ante
19 for me.

20 Witness: A-N-T-E--

21 Court Reporter: A-N-T --

22 Witness: -- E.

23 Court Reporter: -- E.

24 Commissioner Wilkerson: I like that.

25 Court Reporter: Thank you, sir.

1 Commissioner Wilkerson: I like that.

2 Court Reporter: All right.

3 Commissioner Wilkerson: Thank you, Mr.
4 Lemon.

5 Witness: All right.

6 Commissioner Wilkerson: Please.

7 Mr. Samuels: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 By Mr. Samuels:

10 Q. Mr. Lemon, my name is Stephen Samuels; I'm Isaac
11 Brailey's attorney.

12 A. How you doing, Steve?

13 Q. I'm doing fine; how about you?

14 A. I'm doing all right.

15 Q. Good. Nice to meet you; sorry for keeping you
16 having to wait here.

17 A. All right.

18 Commissioner Wilkerson: Just remember,
19 it's their fault, not mine; I'm just here to
20 listen, okay?

21 Witness: All right.

22 Mr. Beard: He was warned it was going
23 to be a while. I warned him long -- I warned
24 him, I mean; he was warned.

25 Commissioner Wilkerson: Okay.

1 Q. Mr. Lemon, where do you work?

2 A. Michelin.

3 Q. How long have you worked there?

4 A. Ten (10) years in September.

5 Q. What area do you work in?

6 A. Confin. I used to run the PAP; I'm on the PNS
7 right now.

8 Q. Okay. Where were you working in --

9 Court Reporter: Wait a minute, what was
10 that first thing you said?

11 Commissioner Wilkerson: Where you're
12 working now.

13 Witness: Confin on the --

14 Court Reporter: Confin?

15 Commissioner Wilkerson: Confin.

16 Witness: -- right, confin.

17 Court Reporter: C-O-N-F-I-N?

18 Witness: Yes, that's the area.

19 Court Reporter: Thank you.

20 Commissioner Wilkerson: Thank you.

21 She's just got to get it down for the record.

22 Witness: Okay.

23 Q. -- when did you leave PAP?

24 A. In -- on December 1st of last year.

25 Q. December 1st of 2017?

1 A. Yes.

2 Q. So, in March, April, May, June of 2017, you were
3 working at PAP?

4 A. Yes, sir.

5 Q. Okay. What is PAP?

6 A. It's basically where you make a -- the carcass,
7 that actual -- that's actually ends up being blown up
8 and made into the tire but you have to make it on the
9 PAP before it can move to what they a BNS to be made.

10 Q. Does that apply to all tires, small to big?

11 A. Yes.

12 Q. What's the largest tire Michelin makes in that
13 plant?

14 A. A 60/80.

15 Q. And tell me how big that is in regular terms for
16 those of us who know nothing about Michelin.

17 A. The best way I can describe it is it wouldn't fit
18 in this room.

19 Q. Okay.

20 Commissioner Wilkerson: Is it bigger --
21 is it taller than this building?

22 Witness: Not than the building but it
23 -- the height of it would not come in this
24 room; it would not --

25 Commissioner Wilkerson: Okay.

1 witness: -- fit in this room.

2 Commissioner Wilkerson: But it's --
3 when I say building, it's not taller than
4 this entire building, is it?

5 witness: No, sir.

6 Commissioner Wilkerson: Okay.

7 witness: No, sir.

8 Commissioner Wilkerson: All right.

9 okay.

10 Q. Is the work, is that pretty hard work working the
11 PAP?

12 A. Yes, sir.

13 Q. When you first started at Michelin were you doing
14 hard, physical, work?

15 A. Yes, sir.

16 Q. Do you have any -- ever have any aches and pains?

17 A. Yes, sir.

18 Q. Ever had to take any aspirin or Advil or anything
19 for your pain?

20 A. No, I never had to do that.

21 Q. Ever had any sense that -- especially when you
22 first started that this work is hard?

23 A. Oh, yes, sir. Yeah.

24 Commissioner Wilkerson: How old are
25 you?

1 Commissioner Wilkerson: -- no, he --
2 you called him.

3 Mr. Beard: -- he's a co-employee.

4 Commissioner Wilkerson: He's not
5 hostile; you called him.

6 Mr. Beard: He's a co-employee.

7 Commissioner Wilkerson: You called him,
8 he didn't.

9 Mr. Samuels: Okay.

10 Commissioner Wilkerson: He's not
11 hostile.

12 Mr. Samuels: Fair enough.

13 Q. Does it take any time to get used to the job?

14 A. Yes, sir.

15 Q. What do you have to get used to?

16 A. Just that -- probably the mental aspect of it
17 first, and then the physical.

18 Q. Would you say it's a young man's job or an old
19 man's job?

20 A. I would say that depends on the man.

21 Q. Okay. And was it -- what's the process of getting
22 used to the physical aspects of it?

23 A. Doing it over-and-over; that's what I would say
24 the process is.

25 Q. The more you do it the -- do you need to get in

1 shape to do it?

2 A. Yeah.

3 Q. When new people come on board do you tell them
4 what to expect about any aches and pains they may feel
5 on the job?

6 A. No, not about aches and pains but that it could be
7 hard.

8 Q. What could be hard in what way and what do you
9 tell somebody new?

10 A. Well, if you -- if you haven't done this before it
11 just takes time to get used to. So, that's, you know,
12 with almost anything.

13 Q. Used to the physical hard-work aspect of it?

14 A. Yes.

15 Q. How long do you figure it takes somebody, on
16 average, to get used to it?

17 A. Each person is different; I would say --

18 Q. How long would it --

19 A. -- some people pick it up, you know, faster than
20 others.

21 Q. -- do you know Isaac Brailey?

22 A. Yeah.

23 Q. Did you work with him?

24 A. Yes.

25 Q. When did you work with him?

- 1 A. I can't remember the timeframe but I knew -- I do
2 know that I work with him, though.
- 3 Q. Did you have anything to do with training him or
4 supervising him or anything like that?
- 5 A. I trained him; yes, sir.
- 6 Q. How did he do in the training?
- 7 A. He did pretty good.
- 8 Q. Did he seem like a hard worker?
- 9 A. Yes.
- 10 Q. Did he miss any time from work, up until he
11 ultimately left?
- 12 A. No.
- 13 Q. Always showed up on time?
- 14 A. Yes.
- 15 Q. Did he have any difficulty doing the job that you
16 observed?
- 17 A. Only just with what to do, kind of, like the
18 steps.
- 19 Q. Did he report any injuries to you?
- 20 A. No.
- 21 Q. Did he speak to you of any aches and pains he was
22 having?
- 23 A. No.
- 24 Q. Did you see him having any aches and pains?
- 25 A. No.

1 Q. Would you have expected him with being new at the
2 job to have some pain?

3 A. Yes.

4 Q. Now, was that something that was explained to
5 everybody that was put in that job?

6 Mr. Beard: Asked and answered already,
7 Commissioner. I object to the question.
8 He's already said they didn't talk about
9 aches and pains.

10 Commissioner Wilkerson: And he wouldn't
11 know if that's to be expected.

12 Mr. Beard: He specifically said that
13 answer.

14 Commissioner Wilkerson: He wouldn't
15 know if it's expected. So, you don't have to
16 answer that one; it's already been answered.

17 Mr. Samuels: All right.

18 Q. Mr. Lemon, do you know if you were working on June
19 24th, 2017?

20 A. No.

21 Q. What -- what shift were you working May/June,
22 2017, or do you all rotate shifts?

23 A. We rotate, so.

24 Q. Okay. What are the shifts?

25 A. Evening -- I mean, M-shift and E-shift, which is

1 the morning and a -- a evening shift.

2 Q. And what's the time of each -- starting/ending
3 time of each shift?

4 A. Morning shift, 7:00 A.M. to 7:00 P.M., evening
5 shift, 7:00 P.M. to 7:00 A.M.

6 Q. Okay. How do you feel at the end of that twelve
7 (12) hour shift?

8 A. Tired.

9 Q. Even now after doing that after ten (10) years?

10 A. Oh, yeah.

11 Q. Do you know off the top of your head how long the
12 probationary period is at Michelin?

13 A. No, I don't.

14 Mr. Samuels: That's all the questions I
15 have. Please answer any questions Mr. Beard
16 has for you.

17 CROSS-EXAMINATION

18 By Mr. Beard:

19 Q. Jermaine, did you ever lie on your application to
20 get a job at Michelin?

21 A. No.

22 Q. Do you remember when you went to work for Michelin
23 having to fill out the questionnaire about your medical
24 history and getting a physical and all those kind of
25 things?

1 A. Yes.

2 Q. Were you truthful to all the answers on the
3 questions that were asked of you?

4 A. Yes.

5 Q. Did you expect and the reason that you answered
6 the truth was because you knew that Michelin needed to
7 know whether you could perform these jobs or not?

8 A. Yeah.

9 Q. Okay. So, it was important to be truthful about
10 that; is that correct?

11 A. Right.

12 Q. Okay. Being someone who trains folks to do this
13 job, if a doctor had indicated to someone they could do
14 no heavy lifting until they had been seen by a surgeon,
15 could that person perform the job on the PAP?

16 A. Probably not.

17 Q. Okay.

18 A. No, sir.

19 Q. All right. Did Mr. Brailey ever tell you that he
20 had, in fact, had to give up a job in 1997, because he
21 physically couldn't perform the job because of back
22 problems?

23 A. No.

24 Q. Did he tell you that the last time he saw a doctor
25 because of his workers' Comp claim in 1997, was the

1 doctor told him that he would place him on no heavy
2 lifting until he saw a surgeon?

3 A. No.

4 Q. Did you know he'd never seen a surgeon all the way
5 up until the time he came to work for Michelin?

6 A. No.

7 Q. And if I understood your testimony, you don't
8 believe a person who had been told that by a doctor or
9 had been -- indicated that in a report would be
10 physically capable of doing that job; is that correct?

11 A. That's correct.

12 Q. Okay. Is it important for the folks -- well, let
13 me ask you, would you want to know if the person
14 standing beside you or helping you put together one of
15 these carcasses or doing some heavy manual labor, would
16 you want to know if that person was physically capable
17 of doing it?

18 A. Yes.

19 Q. Because if they're not and something goes wrong,
20 could you also get hurt?

21 A. Yes.

22 Q. Okay. Is that the reason Michelin asks all those
23 questions on -- on these questionnaires?

24 A. Yeah.

25 Q. So, Michelin relies upon what you and every other

1 person --

2 Mr. Samuels: Object.

3 Q. -- who applies for a job does; is that correct?

4 Mr. Samuels: Objection, Your Honor,
5 outside this witness' personal knowledge.

6 Mr. Beard: whether or not Michelin
7 relies on what he says?

8 Mr. Samuels: He cannot speak for
9 Michelin.

10 Mr. Beard: well, let's find out if he
11 knows.

12 Mr. Samuels: If he could speak for
13 Michelin he would be out -- he would a --
14 legally a hostile witness.

15 Q. Do you know whether or not Michelin relies --

16 Commissioner Wilkerson: You just need
17 to redirect the question --

18 Mr. Beard: -- yes, sir.

19 Commissioner Wilkerson: -- if he knows
20 --

21 Mr. Beard: Okay.

22 Commissioner Wilkerson: -- he may not
23 know.

24 Q. Do you know whether or not Michelin relies upon
25 the answers that people give on those questionnaires as

1 to whether or not they can perform the jobs?

2 A. Yes.

3 Q. Because -- because you're informed that as part of
4 the safety program that you go through, correct?

5 A. Yes.

6 Q. You're informed that because of the -- the -- day
7 one when you come to work for Michelin you have to
8 watch a PowerPoint that talks about Workers' Comp
9 safety, what you do if you have a workers' Comp claim,
10 immediately tell somebody when you get hurt, how the
11 process works; is that correct?

12 A. Yes.

13 Q. Every employee sees that and, in fact, you were
14 involved in training employees that probably had to see
15 that PowerPoint?

16 A. Yes.

17 Q. Okay. And does it make any sense to do a
18 questionnaire with all those questions about people's
19 physical capabilities if it's not going to be relied
20 upon; does that make any sense whatsoever?

21 A. No.

22 Q. And at no time did Mr. Brailey talk to you about
23 or discuss with you aches and pains on the job; is that
24 correct?

25 A. No.

1 Mr. Beard: That's all I have.

2 REDIRECT EXAMINATION

3 By Mr. Samuels:

4 Q. Mr. Lemon, have you ever pulled a muscle?

5 A. No.

6 Q. Never in your life, you never pulled a muscle?

7 A. No.

8 Q. Ever had any kind of injury at all?

9 A. Yes.

10 Q. What kind of injury have you had?

11 A. A knee injury.

12 Q. A knee injury?

13 A. Yes.

14 Q. How is your knee now?

15 A. It's fine.

16 Q. It got completely better?

17 A. Yes.

18 Q. How long ago was that knee injury?

19 A. I was, like, twenty-five (25).

20 Q. Twenty-five (25)?

21 A. Yeah.

22 Q. So, it was about ten (10) or eleven (11) years
23 ago?

24 A. Yes.

25 Q. Okay. It doesn't give you any problems now?

- 1 A. No.
- 2 Q. Did you see a doctor for it?
- 3 A. Yes.
- 4 Q. Did the doctor put you under any work
5 restrictions?
- 6 A. No.
- 7 Q. Okay. You saw a doctor because you were in pain?
- 8 A. Yes.
- 9 Q. But you got better?
- 10 A. Yes.
- 11 Q. Your knee doesn't bother you now at all?
- 12 A. No.
- 13 Q. If in the twenty (20) years that Mr. Brailey had
14 gone since he had a back injury in 1997, would you just
15 want to know that he didn't have anymore back pain?
- 16 A. Yeah.
- 17 Q. And would you want to know if he didn't have any
18 restrictions; no doctor was putting him on
19 restrictions?
- 20 Mr. Beard: Commissioner, object to the
21 form because he was under restrictions.
- 22 Commissioner Wilkerson: I understand
23 that.
- 24 Mr. Samuels: Not on June 11th or June
25 13th, Your Honor --

1 Mr. Beard: He sure was.

2 Mr. Samuels: -- he was not.

3 Mr. Beard: He sure was. He was -- he
4 was --

5 Mr. Samuels: The doctor took him off
6 restrictions; he was released to full duty.

7 Mr. Beard: -- no. No one took him off
8 restrictions. I object, Commissioner, that's
9 --

10 Commissioner Wilkerson: Not the -- he
11 wasn't taken off restrictions because he
12 never --

13 Mr. Beard: -- never saw a surgeon --

14 Commissioner Wilkerson: -- went to see
15 the surgeon.

16 Mr. Beard: -- that's correct.

17 Commissioner Wilkerson: He was still on
18 those restrictions for twenty (20) years
19 because he never saw the surgeon, unless
20 there's a report out there that he saw a
21 surgeon. I don't know. The information
22 before me still says he's on restriction from
23 1997.

24 Mr. Samuels: No doctor, currently, in
25 2017, put him on restrictions until June

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24th.

Mr. Beard: With all due respect, no doctor that he saw knows about 1997, and what the doctor said. I am -- with all due respect, we can sit here and --

Commissioner Wilkerson: I know; I understand.

Mr. Beard: -- play the games, I mean, chip up questions and semantics --

Commissioner Wilkerson: That's why we're probably going to have to go back and take Dr. Boyd's deposition --

Mr. Beard: -- I agree.

Commissioner Wilkerson: -- because once you tell him that I don't know what he's going to say but --

Mr. Beard: I don't either but we can play this semantical game all day and -- and twist and turn the words --

Commissioner Wilkerson: -- I understand.

Mr. Beard: -- but the bottom line is --

Commissioner Wilkerson: I understand.

Mr. Beard: -- these doctors didn't know because this gentleman didn't tell them and,

1 with all due respect, there's no way any of
2 us can know what they would say otherwise.

3 Commissioner Wilkerson: The -- the only
4 report I've got before me is a doctor put him
5 on restrictions until he saw a surgeon. So,
6 you -- that means I have no medical report
7 before me from 1997 until 2017, other than
8 that report, okay? Now, is there a doctor in
9 2017, that confirms that report? No.

10 There's not one in '16, '15, '14, '13, '12,
11 '11, '10, '09, '08, '07, '06, '05, '04, '03,
12 '02, '00, '99, '98 or '97, except that's the
13 only report I've got before me and I don't
14 know -- and if that wasn't covered in Dr.
15 Boyd's deposition of January the 15th, 2018,
16 I mean, I -- I know a motion was made and I
17 said I would wait and consider it at that
18 point in time but it sounds like, unless
19 something changes with the next witness, I
20 don't think it will because they have nothing
21 to do with this, I think we -- you've got to
22 go back to Dr. Boyd and ask him those
23 questions. Unless it's in there, I mean, you
24 all -- you all covered it; I -- I --

25 Mr. Beard: It's -- it's not because the

1 records weren't available; we didn't have the
2 records.

3 Commissioner Wilkerson: -- I don't
4 know. I -- as you know, I don't read the
5 entire thing; I just go to what you all tell
6 me when we're in here.

7 Mr. Samuels: No. Mr. Beard is correct.

8 Commissioner Wilkerson: Okay. Well,
9 then --

10 Mr. Samuels: Those records were not --

11 Commissioner Wilkerson: -- okay.
12 That's fine.

13 Mr. Samuels: -- available at the time
14 of Dr. Boyd's deposition.

15 Commissioner Wilkerson: well, I think
16 since we've opened that wide gate with those
17 questions, unless -- I -- I would say we've
18 got to take Boyd's -- we've got -- we've got
19 to patch '97 to '17. I don't know how we'd
20 patch it; I'll leave that up to you all.

21 Mr. Beard: I agree. I don't know how
22 he does it either and I'm going to withdraw
23 my motion to reconvene. I don't think at
24 this point we have to do that anymore; I
25 think the evidence has turned it around.

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Commissioner Wilkerson: Okay. I'll ask you that when we finish.

Mr. Beard: Okay.

Mr. Samuels: Based on your comments, Your Honor, if there is a -- if there is a question that those restrictions somehow from 1997, applied twenty (20) years with no complaints, no symptoms, no treatment after then, then I would at that point -- I think if that's where we're going, then Mr. Beard has made it necessary for us to depose Dr. Boyd.

Commissioner Wilkerson: The second hearing this week that --

Mr. Beard: Unbelievable.

Commissioner Wilkerson: -- that once the evidence is presented everybody changes their positions.

Mr. Beard: Somebody yesterday filed a

--

Mr. Samuels: Well --

Mr. Beard: -- a seven (7) or eight (8) or ten (10) page response of why I'm not entitled to it; it's unbelievable.

Commissioner Wilkerson: So, are you

1 saying you still have the option right now to
2 withdraw your 50?

3 Mr. Samuels: -- to withdraw my 50?

4 Commissioner Wilkerson: Yes.

5 Mr. Samuels: well, that's -- that's an
6 interesting question, Your Honor. I mean,
7 Preston McDaniel did have a case where --

8 Commissioner Wilkerson: Here or --

9 Mr. Samuels: -- he had wanted to
10 withdraw his Form 50 --

11 Commissioner Wilkerson: -- no.

12 Mr. Samuels: -- after the hearing and
13 after the record had been closed, after the
14 order instructions had come down but before
15 the -- an actual order was signed and the
16 Supreme Court, in that case, said no, you
17 cannot pull your 50 at that point.

18 Commissioner Wilkerson: Okay. So,
19 that's the law of the land.

20 Mr. Samuels: Right. So, no, I don't --
21 I don't believe I --

22 Commissioner Wilkerson: So, how can you
23 withdraw -- how can you withdraw what you've
24 said about the motion that you've already put
25 on the record at 2:50 this afternoon when

1 your position was totally different this
2 morning at 9:45?

3 Mr. Samuels: -- I --

4 Commissioner Wilkerson: Tell me what
5 the difference is in withdrawing your 50 and
6 now wanting to reconsider your opinion at
7 9:45 this morning on the motion.

8 Mr. Samuels: -- well, Your Honor, your
9 -- you indicated to us at --

10 Commissioner Wilkerson: I did.

11 Mr. Samuels: -- at the beginning of
12 this hearing that you would have the hearing
13 go forward and you would decide at the close
14 of the evidence whether to reconvene Dr.
15 Boyd's deposition.

16 Commissioner Wilkerson: And if he
17 withdraws it it's over or if I deny it it's
18 over, right?

19 Mr. Samuels: I think if you deny it
20 it's over but the -- the point about it as
21 what has come out is, you know, my -- my
22 position is this, my position has been that
23 records from 1997, are stale; they are not
24 probative evidence of Mr. Brailey's condition
25 at the time he went to work for Michelin or

1 his condition at the time he got hurt--

2 Commissioner Wilkerson: That's fair.

3 Mr. Samuels: -- particularly when there
4 are -- there is no history of any back
5 problems in the meantime. Mr. Beard has sent
6 out, I think, nine (9) subpoenas. There's no
7 history of an accident at any other job.

8 Mr. Beard: The only job that we've
9 gotten records from is -- would be
10 Westinghouse and --

11 Commissioner Wilkerson: Michelin.

12 Mr. Beard: -- DJJ, that's it --

13 Commissioner Wilkerson: DJJ.

14 Mr. Beard: -- the only two (2) and one
15 of which he didn't even tell us about but --

16 Commissioner Wilkerson: I understand.

17 Mr. Samuels: But there is -- there is
18 no evidence of -- of any other -- any other
19 accidents, any other Workers' Comp claims,
20 except for 1997, twenty (20) years ago --

21 Commissioner Wilkerson: I don't
22 disagree with that, what's before me.

23 Mr. Samuels: -- which had no surgery,
24 the treatment was physical therapy, settled
25 for a nominal amount.

1 Mr. Beard: -- that's because it was --

2 Commissioner Wilkerson: But we don't
3 know why the surgery wasn't done or was --
4 because he never got to somebody that could
5 tell him if it needed to be done; that's
6 what's before me. I don't know.

7 Mr. Samuels: To -- but --

8 Mr. Beard: -- what's before you is no
9 heavy work --

10 Commissioner Wilkerson: I understand.
11 That's --

12 Mr. Beard: -- until he sees a surgeon.

13 Commissioner Wilkerson: -- and I don't
14 know. I -- that's the problem sometimes with
15 Workers' Comp, and you all know this, is
16 there may be something out there or something
17 that's discovered two (2) years down the road
18 that could have turned or flipped the whole
19 case but we don't get to decide what's maybe
20 out there, what could be, what should be
21 there; we've got to make the determination
22 based on what I hear today. That's the only
23 thing I can do.

24 Mr. Samuels: -- but what my -- my
25 position is, you have indicated that you give

1 some weight to Mr. Beard's argument that
2 records from 1997, say no heavy lifting until
3 he sees a surgeon are permanent restrictions
4 covering --

5 Commissioner Wilkerson: I don't --

6 Mr. Samuels: -- twenty (20) years.

7 Commissioner Wilkerson: -- I don't know
8 until I read the whole thing. I haven't even
9 read the doctor's depo. I mean, I -- I mean
10 --

11 Mr. Samuels: And -- and my point is, if
12 that is -- if that is where you are --

13 Commissioner Wilkerson: -- I don't know
14 until I finish --

15 Mr. Samuels: -- but it's --

16 Commissioner Wilkerson: -- that's the
17 problem. That's where I am now because
18 that's what I'm looking -- that's all I've
19 got. If you all want to stop and let me read
20 all this stuff I can tell you where we are
21 but I'm not going to -- I mean, or we can
22 come back Monday and I can tell you where we
23 are. I mean, you all have had this stuff for
24 how long? How long have you had this case?

25 Mr. Samuels: -- how long have I had

1 this case?

2 Commissioner Wilkerson: Yes.

3 Mr. Samuels: Probably August, I think.

4 --

5 Commissioner Wilkerson: Okay. So --

6 Mr. Samuels: -- 2017.

7 Commissioner Wilkerson: -- you've had
8 it since August, I just got it today; how do
9 you expect to know where I am now? I mean,
10 we've learned stuff in here today that
11 neither party knew anything about. So, I
12 don't know how I would know what I know right
13 now until I read the whole stuff.

14 Mr. Samuels: I agree, Your Honor, but
15 the -- the -- the motion to reconvene the
16 deposition was made to -- as I understand it,
17 was made to question Dr. Boyd.

18 Commissioner Wilkerson: That's fine.
19 So, you -- you agree he can't withdraw it, is
20 what you're saying?

21 Mr. Samuels: I'm saying he can withdraw
22 it but I'm saying I'm not bound by the
23 withdrawal. I think --

24 Commissioner Wilkerson: Okay. I
25 understand.

1 Mr. Beard: He is bound by the
2 withdrawal when he --

3 Mr. Samuels: -- if he had good cause --

4 Mr. Beard: -- when he opposed it in the
5 first place. If he had agreed with me then
6 he -- then he could go forward. He hasn't --
7 in fact, he did everything in his power
8 forcing me to pay a lot -- my client to pay
9 me substantial money to draft a motion and to
10 go through all that process. He could have
11 very easily said, yeah, let's go take the
12 deposition; he said no. We had a date, he
13 said, no, I'm busy and I'm not going to let
14 you do it anyway; I mean, that's his
15 position.

16 Commissioner Wilkerson: I understand.
17 I just wanted to make sure. Let's get
18 through with this poor guy; he's probably --

19 witness: I'm all right.

20 Commissioner Wilkerson: -- he's
21 probably ready to go get something to eat.

22 witness: I'm all right.

23 Q. Mr. Lemon, when you were hired at Michelin --

24 A. Yeah.

25 Q. -- did you have to undergo a physical exam?

1 A. Yes, sir.

2 Q. And have you undergone other physical exams from
3 Michelin every year or is it just the one (1)?

4 A. Just the one (1).

5 Q. Okay. It was a doctor who examined you?

6 A. Yes.

7 Q. Did the doctor do a thorough exam?

8 A. Yes.

9 Q. Did he examine your back?

10 A. Yeah, I would say.

11 Q. Okay. Made sure that you could twist, turn, bend,
12 stoop, lift without any problems?

13 A. Right.

14 Q. And he -- and the doctor examined your back and
15 cleared you to work; is that right?

16 A. Yes.

17 Q. Even though you haven't any problem with your
18 back, the doctor still examined your back to determine
19 that you were able to work at Michelin?

20 A. Yes.

21 Mr. Samuels: Thank you. No further
22 questions.

23 RE-CROSS-EXAMINATION

24 By Mr. Beard:

25 Q. If you had had a prior workers' Comp claim where

1 you were advised by a doctor that you could not go back
2 to work and do heavy labor type of work, as I indicated
3 to you earlier, don't you think you need to tell the
4 doctor that so he can investigate that even more
5 thoroughly?

6 A. Yes.

7 Q. Just doing an examination -- I mean, you know
8 people; you've probably faked pain before yourself
9 because you wanted to make sure you got a job or -- or
10 things of that nature. If -- if you want the money, if
11 you want the job, sometimes you've got to eh, you know,
12 stretch it a little bit; isn't that true?

13 A. Yes, sir.

14 Q. Okay.

15 Mr. Beard: That's all I have. Thank
16 you.

17 Commissioner Wilkerson: Anything on
18 those two (2) questions or three (3)?

19 Mr. Samuels: No, sir.

20 Commissioner Wilkerson: Okay. Can this

21 --

22 Mr. Samuels: The Claimant --

23 Commissioner Wilkerson: -- witness be
24 excused to go where ever he needs to go next?

25 Mr. Beard: Yes, sir.

1 Commissioner Wilkerson: Okay. I just
2 wanted to make -- I'll ask you?

3 Mr. Samuels: -- no objection and -- and
4 --

5 Commissioner Wilkerson: Okay. Sir, you
6 may leave and go where ever -- whatever you
7 need to do next; you don't have to hang
8 around here --

9 Mr. Lemon: All right. Thank you, sir.

10 Commissioner Wilkerson: -- unless you
11 need to for rides with everybody else or
12 whatever --

13 Mr. Lemon: All right. Thank you.

14 Commissioner Wilkerson: -- it doesn't
15 matter to me. Thank you, sir. I appreciate
16 you being here. Any other -- I'm sorry.

17 Mr. Beard: Did you --

18 Mr. Samuels: No other witnesses, Your
19 Honor.

20 Mr. Beard: -- did you drive yourself to
21 my office?

22 Mr. Lemon: Yes.

23 Mr. Beard: I'll get a runner to come
24 pick you up and --

25 Mr. Lemon: Okay.

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Mr. Beard: -- so you can get on back.

Mr. Lemon: All right.

Commissioner Wilkerson: Have you got --
is that the Claimant's case?

Mr. Beard: Can I --

Mr. Samuels: Except for the possibility
of Dr. Boyd's deposition; yes, sir.

Commissioner Wilkerson: I don't know if
he heard that. I think I heard it but I'm not
sure he heard it. So, when he comes back
I'll just get you to repeat what I think I
heard you say.

Mr. Samuels: Okay. would this be a
good time for another two (2) minute bathroom
break?

Commissioner Wilkerson: Yes, if you
want to. Well, yes.

Mr. Samuels: Two (2) minutes.

Commissioner Wilkerson: Yes. I
understand. Go ahead. We'll just go off the
record real quick; that will make it easier
for everybody.

Mr. Beard: -- are -- that must be what
I missed --

Commissioner Wilkerson: Yes.

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Mr. Beard: I apologize.

Commissioner Wilkerson: No.

(Off The Record)

Commissioner Wilkerson: I told him -- he didn't understand what you said and I -- I said -- we're back on the record and I asked was this the Claimant's case --

Mr. Beard: Okay.

Commissioner Wilkerson: -- and, Stephen, I think -- you can go ahead and tell me what you said -- I think he said, except for if I allow Dr. Boyd's deposition to reconvene; is that correct?

Mr. Samuels: That's the gist of it --

Commissioner Wilkerson: Okay.

Mr. Samuels: -- yes, Your Honor.

Commissioner Wilkerson: Okay. All right. That's the only -- that's the only thing he said.

Mr. Beard: Okay. Do I need to respond to that?

Commissioner Wilkerson: I don't think so because I --

Mr. Beard: Well, I mean, my response will be, I'm withdrawing that motion --

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Commissioner Wilkerson: -- I understand.

Mr. Beard: -- because I think the evidence has taken us to a place that --

Commissioner Wilkerson: I understand.

Mr. Beard: -- they didn't want it to take us and I don't think I need the deposition anymore.

Commissioner Wilkerson: Okay. And -- and your position was that he cannot withdraw it --

Mr. Samuels: well --

Commissioner Wilkerson: -- is that right?

Mr. Samuels: -- I think he can but I will say this, if he -- if he has withdrawn the motion and cannot depose Dr. Boyd, then he cannot meet his burden of the third prong of the Cooper v. McDevitt and Street test --

Mr. Beard: I completely disagree.

Mr. Samuels: -- because he --

Mr. Beard: I've got a --

Mr. Samuels: -- he --

Mr. Beard: -- I've got a report that says he physically cannot do it and I've got

1 a doctor who says he physically cannot do it
2 now, a surgeon. I disagree with him.

3 Mr. Samuels: -- he --

4 Commissioner Wilkerson: I understand.

5 Mr. Samuels: -- he has to prove through
6 expert testimony a causal connection between

7 --

8 Commissioner Wilkerson: I understand.

9 Mr. Samuels: -- the alleged
10 misrepresentation and the injury and that's
11 got to be proven through medical evidence.

12 Commissioner Wilkerson: I understand.

13 Mr. Samuels: That's why I opposed
14 reconvening Dr. Boyd's deposition; he can't
15 meet the burden, he --

16 Commissioner Wilkerson: So, why do you
17 want to reconvene it? I mean, you can't --
18 you can't have your -- you can't have the --
19 you can't have your cake and eat it too.

20 Mr. Beard: Because he knows I have met
21 my burden. He knows that --

22 Commissioner Wilkerson: I -- well, I --

23 Mr. Beard: -- he knows that that final

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25 Commissioner Wilkerson: -- but you

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can't have two (2) positions; that doesn't work.

Mr. Beard: -- that final report counts as a causation report and its sufficient to do it and then -- and then what has transpired, you can look at the facts that transpired after the lying on the application and exactly what happened and you can compare 2017 to 1997, yourself, and you've got a medical report that says he shouldn't have been doing that job --

Commissioner Wilkerson: I --

Mr. Beard: -- with all due respect. I mean, we can -- again, we can --

Commissioner Wilkerson: -- argue that

--

Mr. Beard: -- hash it out here but --

Commissioner Wilkerson: -- till the cows come home.

Mr. Beard: -- Stephen and I both like to go to the big boy court and I don't mind going up there anytime --

Commissioner Wilkerson: I understand.

Mr. Beard: -- love to go up there.

Commissioner Wilkerson: We're glad you

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all take them up. We -- we rule on stuff five (5) years ago that we've found out we're now wrong on of course five (5) years from now we may find out we were right from five (5) years ago; I don't have a clue.

Mr. Beard: But that's not the only defense of this case.

Commissioner Wilkerson: I understand.

Mr. Beard: There's also credibility --

Commissioner Wilkerson: I --

Mr. Beard: -- if you believe anything that has been testified to here today.

Commissioner Wilkerson: -- I understand. I've got -- this will be fun sitting down and going through. We don't have many like this and I'm glad you all brought it. These are always fun. It's not the broken knuckle and is it the knuckle or did it go into the hand and -- those are -- those are aggravating; these are fun.

Mr. Samuels: And I don't want to be too repetitive, Your Honor, but the MRI shows a herniated disk at L4,5 --

Commissioner Wilkerson: That's -- I'll read it.

1 Mr. Samuels: -- he didn't have it
2 before.

3 Commissioner Wilkerson: I'm going to
4 read it.

5 Mr. Beard: We don't know that he had it
6 -- didn't have it before; we have no earthly
7 idea what he had before.

8 Commissioner Wilkerson: We'll read it
9 -- I'll read it, I promise; I'll read all of
10 it. So, other than that one issue, that is
11 the Plaintiff's case; is that fair?

12 Mr. Samuels: Yes, Your Honor.

13 Commissioner Wilkerson: Tell me how
14 many you've got left for the Defense side. I
15 hear -- the rumor is everybody is gone, which
16 I don't believe but --

17 Mr. Beard: No, they're not all gone.
18 I've got --

19 Court Reporter: Oh, I'm sorry.

20 Mr. Beard: -- Troy Lowman, I've got the
21 Nurse, I've got Derrick Gibson and I've got
22 Mark, so.

23 Court Reporter: -- okay. Just
24 understand -- you know this because you were
25 here the other day -- I like you all but I

1 don't love you all like I love my grandson
2 and he's got a baseball game this evening; we
3 -- I can come back after his baseball game or
4 I'll see you Monday, okay? Because I'm not
5 --

6 Mr. Beard: I'm going to be here Monday
7 anyway.

8 Commissioner Wilkerson: -- I'm not
9 giving up his little baseball game for you
10 all, okay? There's a lot of things -- I'll
11 give up missing a dinner or whatever but I'm
12 not giving up the five (5) year old's
13 baseball game, okay?

14 Mr. Beard: I understand.

15 Commissioner Wilkerson: So --

16 Mr. Beard: I'm with you.

17 Commissioner Wilkerson: -- at around
18 five o'clock-ish if we're not through -- I
19 mean, if we close -- I'm gone because he
20 plays at -- have I got it right? He -- they
21 move all over the place -- six o'clock; so,
22 Avery will be gone, okay?

23 Mr. Beard: The only thing I can say,
24 Commissioner, if you want -- if you want to
25 make a comment to the two (2) lawyers right

1 now, is if we stay on what is relevant to the
2 case we'll be through, I would presume, in
3 forty-five (45) minutes with these four (4)
4 people because every one of them are
5 miniscule in nature, in my opinion, and --

6 Commissioner Wilkerson: Well, can get
7 through as many as we want to --

8 Mr. Beard: -- Stephen --

9 Commissioner Wilkerson: -- I don't
10 care. I'm just trying to tell you all that
11 five o'clock-ish I'm going to go watch
12 grandson play baseball, so.

13 Mr. Beard: -- I've got you.

14 Commissioner Wilkerson: All right.

15 Mr. Beard: Do you want me --

16 Commissioner Wilkerson: Yes.

17 Mr. Beard: -- to call my first one?

18 Commissioner Wilkerson: Yes, let's keep
19 them going.

20 Mr. Beard: All right.

21 Commissioner Wilkerson: That's just me.
22 If not we're here Monday.

23 (Off The Record)

24 Commissioner Wilkerson: Stephen, I
25 don't know what your schedule is; I know he

1 is back Monday for that case that lasted
2 eight (8) hours earlier this week, so. I'm
3 not sure what schedule is. I apologize.
4 okay? we can check later; if we don't get
5 through we'll just check. I'm not saying --
6 okay, it wouldn't be fair to you. Sir, I'll
7 get you to raise your right hand; I'm going
8 to have the Court Reporter swear you in.

9 whereupon;

10 Troy Alton Lowman, being duly sworn and cautioned to
11 speak the truth, the whole truth and nothing but the truth,
12 testified as follows:

13 Court Reporter: Please state your full
14 name for the record.

15 Witness: Troy Alton Lowman.

16 Court Reporter: There's the Lowman; I
17 knew we had a Lowman in here somewhere.
18 Okay. Thank you, sir.

19 Commissioner Wilkerson: Alton, right,
20 is it?

21 Witness: Yes.

22 Commissioner Wilkerson: Troy Alton,
23 okay, thank you. Please, Mr. Beard.

24 DIRECT EXAMINATION

25 By Mr. Beard:

1 Q. Mr. Lowman, if you would please tell me where are
2 you employed.

3 A. Michelin Tire.

4 Q. How long have you been with Michelin?

5 A. Thirty-six (36) years.

6 Q. Okay. Are you in US 5 or 7?

7 A. Seven (7).

8 Q. All right. And what is your title there?

9 A. The Training Manager for the plant.

10 Q. Okay. What does that mean?

11 A. That means I'm responsible for on-boarding new
12 people and insuring the training takes place and it's
13 conducted right and -- and we're meeting our training
14 referentials and stuff.

15 Q. Okay. Does that include folks who are still in
16 the probationary part of their -- their hiring or their
17 employment process?

18 A. It includes up to the point of validation.

19 Q. Okay. What does validation mean?

20 A. Validation means you can do the job safely with
21 good quality while you're developing your speed.

22 Q. Okay.

23 A. So, at validation you can work alone.

24 Q. All right. And are you familiar with Isaac
25 Brailey?

- 1 A. Yes.
- 2 Q. And how do you know Mr. Brailey?
- 3 A. He was a new hire.
- 4 Q. Okay. And he worked at US 7?
- 5 A. Worked at US 7, came into the training department
6 training for PAP.
- 7 Q. Okay. Which means that he -- he was in your
8 department?
- 9 A. Yes.
- 10 Q. All right. Did he ever successfully make it
11 through validation?
- 12 A. No.
- 13 Q. All right. So, he was in -- under your
14 supervision the whole time?
- 15 A. Right.
- 16 Q. All right. New employees at Michelin, do they go
17 through any type of training on workers' compensation,
18 safety; those types of things?
- 19 A. Yes. All the new employees go through pre-work
20 before they get hired with E-Learnings --
- 21 Q. Okay.
- 22 A. -- that talks about safety and -- and different
23 personnel issues and stuff.
- 24 Q. Okay.
- 25 A. Then when they come into the plant, on their first

1 day, they've got that on-boarding process and we have a
2 -- a portion designed just for safety and we go through
3 how to report injuries and what to do.

4 Q. Okay.

5 A. And we go through the same thing with quality and
6 Michelin history and so on.

7 Q. All right. Does it include Workers' Comp as part
8 of the safety?

9 A. It --

10 Q. How do you report Workers' Comp --

11 A. -- yes.

12 Q. -- what you do on Workers' Comp?

13 A. It -- it --

14 Q. All right.

15 A. -- it includes how to -- how to report an
16 accident.

17 Q. All right. And do you have -- did you -- the job
18 you do, are you -- do you have an educational
19 background; did you go to college?

20 A. No.

21 Q. okay. The employees who are under you, are they
22 instructed to notify Michelin whenever someone has an
23 injury on the job or a workers' Comp claim?

24 A. Yes.

25 Q. All right. What is the protocol for doing that?

- 1 A. That all access report it when they happen --
- 2 Q. Okay.
- 3 A. -- and that you notify your shift Manager, you
- 4 Safety Spoke, you fill an accident investigation out.
- 5 If medical is not open, you go to -- you go to Security
- 6 because our Security Officers are trained EMT's and
- 7 they provide care for you.
- 8 Q. Okay. And all the new employees are notified of
- 9 that before they start?
- 10 A. Yes.
- 11 Q. All right.
- 12 A. And we even take a tour of the health center,
- 13 which is Michelin's Health Center we have on the
- 14 corner. It's a family health center and the first
- 15 thing the health center lady says is that you do not
- 16 bring work-related injuries to us; we cannot see you.
- 17 Q. Okay. And Michelin also has Plant Nurses?
- 18 A. Yes.
- 19 Q. All right. Does US 7 have a Plant Nurse?
- 20 A. Yes, US 7 --
- 21 Q. Who is it?
- 22 A. -- Christy.
- 23 Q. Okay. What's her last name?
- 24 A. Sirois.
- 25 Q. Okay. And let's -- let's get more specific about

1 this particular case.

2 A. Uh-huh.

3 Q. Mr. Brailey was working for Michelin back in --
4 sometime between April and -- and, I guess, September
5 of 2017; does that sound about right?

6 A. Uh-huh.

7 Q. Okay. You need to say yes or no instead of
8 uh-huh, just --

9 A. Yes.

10 Q. -- just to make sure --

11 A. I'm sorry.

12 Q. -- we get it on the record.

13 A. Yes.

14 Q. When did you first become aware that Mr. Brailey
15 was claiming to have filed or have -- to have injured
16 himself on the job and wanted to make a workers'
17 Compensation claim?

18 A. It was June, about lunchtime. It was in June on a
19 Saturday; I believe it was the 24th.

20 Q. Okay. And you said about lunchtime?

21 A. About lunchtime, right. I know that because I was
22 at the Town Square Market working the market when he
23 called me.

24 Q. Okay. And what did he tell you?

25 A. He told me he was at the emergency room with back

1 pains, that he'd -- had hurt his back.

2 Q. Okay.

3 A. And I asked him where he hurt his back and he said
4 he thought he hurt it at work.

5 Q. All right. When he told you he was at the -- at
6 the hospital, did he tell you this was before he was
7 being seen or this was after he had been seen?

8 A. I'm assuming it's after he'd been seen.

9 Q. Okay. And you said it was after -- it was
10 sometime in the -- around 12:00 or so?

11 A. Around 12:00.

12 Q. All right. So, if the medical records from June
13 24th indicate that the last time he saw anyone was
14 around 11:02 --

15 Mr. Samuels: Object to the leading,
16 Your Honor.

17 Q. -- according to the timeline that Mr. Daniels --
18 Mr. Samuels went through later with his client,
19 lunchtime would be after eleven o'clock in the morning;
20 is that fair to say?

21 A. Yes.

22 Q. Okay. And based upon that phone call, what did
23 you do?

24 A. Well, he and I talked and I explained to him the
25 proper procedure; that the health center was not the

1 place to go to. He said he stopped by the health
2 center in the morning and it was closed; I said, well,
3 that's not the right place to go to. I said you go see
4 -- you -- you report to medical and he said, well, the
5 medical was closed and it is closed. I said, but the
6 EMT's in Security, once you report the accident, the
7 EMT's and the Security Officers will take care of you
8 and -- and get the proper situation. And he was saying
9 he was at the hospital. And he then asked me how to
10 file Workers' Comp.

11 Q. Okay. So, he asked you about Workers' Comp,
12 himself, right then?

13 A. Right then.

14 Q. Okay. So, he was concerned about Workers' Comp?

15 A. Uh-huh.

16 Q. Yes?

17 A. Yes.

18 Q. All right. Prior to June the 24th --

19 A. Uh-huh. Yes, sir.

20 Q. -- did Mr. Brailey ever tell you that he had any
21 back problems before that day?

22 A. No, sir.

23 Q. Okay. Were you aware that Mr. Brailey had been to
24 both Lexington Medical Center on -- on June the 11th of
25 2017, and to his personal doctor on June the 13th,

1 2017, claiming to have ten (10) out of ten (10) severe
2 back pain as a result of his job at Michelin?

3 A. No, sir.

4 Q. He made no comments to you?

5 A. No.

6 Q. would he -- would the proper procedure be to
7 notify you?

8 Mr. Samuels: Object.

9 A. Yes.

10 Q. Should you have been notified of that?

11 Mr. Samuels: Object to leading, Your
12 Honor.

13 Mr. Beard: Okay.

14 Commissioner Wilkerson: Okay. Yes.

15 Just --

16 Q. what is the protocol --

17 Commissioner Wilkerson: -- proceed,
18 yes.

19 Q. -- when someone has an injury; who are they
20 supposed to report to?

21 A. Their Manager or the Spoke.

22 Q. Okay. You're the Manager?

23 A. I am the Manager.

24 Q. All right. The Safety Spoke would be who?

25 A. The people they work with. We have Spoke roles;

1 so, the -- the Safety Spoke is responsible for
2 reporting the accidents. So, you have the Manager; I'm
3 not there twenty-four/seven (24/7), I'm there Monday
4 through Friday. So, if you get injured on the weekend
5 or a back stick you report it to your Safety Spoke, the
6 Flow Manager in the plant who is responsible for the
7 plant flow and the environment and then they would get
8 in touch with medical to get the proper treatment.

9 Q. All right. The medical records indicate that Mr.
10 Brailey started complaining two (2) weeks before June
11 the 11th; so, somewhere in the -- to the end of May.
12 So, from May until June the 24th, 2017, did you work at
13 Michelin any of those days?

14 A. Yes.

15 Q. Okay. So, Mr. Brailey would have had ample
16 opportunity --

17 A. Yes.

18 Q. -- to notify you --

19 A. Yes.

20 Q. -- and he never did?

21 A. No.

22 Q. Okay. Now, if someone is claiming to have ten
23 (10) out of ten (10) severe pain that they think is
24 related to their job at Michelin, is that something you
25 would want to know?

1 A. Yes, most definitely.

2 Q. Why would you want to know that?

3 A. For their safety and for the safety of Michelin,
4 sir.

5 Q. Okay. What about their co-employees; would you be
6 concerned about their safety?

7 A. I would.

8 Q. Okay. Some of the -- some of the jobs that these
9 folks do in US 7 require teamwork, not just single
10 individuals?

11 A. Virtually every job requires teamwork to some
12 degree.

13 Q. Okay. So, if someone has that kind of pain, it
14 could impact the other employees as well?

15 A. Yes, it could.

16 Q. All right. And it's your testimony that at no
17 time before June the 24th had you ever heard that Mr.
18 Brailey had been complaining of these problems for at
19 least almost a month?

20 A. At --

21 Mr. Samuels: Object to leading, Your
22 Honor.

23 A. -- at no time before --

24 Commissioner Wilkerson: Whoa.

25 A. -- June 24th --

1 Commissioner Wilkerson: whoa, whoa,
2 whoa --

3 A. -- June 24th was the first --

4 Commissioner Wilkerson: -- whoa, don't
5 answer.

6 Mr. Beard: Yes.

7 Commissioner Wilkerson: Just rephrase.

8 Mr. Beard: Yes, sir.

9 Q. Prior to June 24th, 2017, had you ever been given
10 any indication of -- of injury or accident by Mr.
11 Brailey?

12 A. -- no, sir.

13 Q. Okay. Are you familiar at all with the -- the
14 physical examinations and the questionnaires that are
15 filled out for safety purposes or for medical questions
16 -- medical history questionnaires that the employees
17 fill out?

18 A. No, sir.

19 Q. Okay.

20 Mr. Beard: Thank you, Mr. Lowman.

21 That's all I have.

22 Commissioner Wilkerson: Mr. Samuels?

23 Mr. Samuels: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 By Mr. Samuels:

- 1 Q. Mr. Lowman, do your employees at Michelin just
2 sort of day-to-day -- it's pretty physical work, isn't
3 it?
- 4 A. It is physical work.
- 5 Q. It requires a lot of lifting, pulling, stretching?
- 6 A. It requires lifting, pulling and stretching, yes.
- 7 Q. And a lot of employees, especially when they're
8 new and not used to it, they get pain, don't they?
- 9 A. Yes.
- 10 Q. I mean, that's a normal, expected, thing?
- 11 A. That's a normal, expected, thing.
- 12 Q. You don't want them filing a Workers' Compensation
13 claim just because they're sore from normal work, do
14 you?
- 15 A. If the pain is affecting their life and they can't
16 work -- they can't function properly; yes --
- 17 Q. Okay.
- 18 A. -- I'd want them to report an accident.
- 19 Q. Well, what if it's not an accident, what if it's
20 just --
- 21 A. Well --
- 22 Q. -- pain from just the normal work; do you guys --
23 would you want them to report that, would you accept
24 that as a Workers' Comp claim?
- 25 A. -- I'm not in the Workers' Comp; I just -- I just

1 take it as an accident to report and an accident
2 investigation. So, the accident investigation, it says
3 accident but pain could be an accident because you've
4 got pain from something.

5 Q. I just want to know that the -- the next time I
6 have a claim against Michelin with somebody who doesn't
7 have an accident but still has pain from working that
8 you all will accept it.

9 Commissioner Wilkerson: He -- that's
10 not his job.

11 Mr. Samuels: I know.

12 Commissioner Wilkerson: He said he
13 didn't do workers' Comp.

14 Mr. Samuels: It was --

15 Commissioner Wilkerson: He can't accept
16 it because he doesn't know what happened --

17 Mr. Beard: This --

18 Commissioner Wilkerson: -- that caused
19 the pain.

20 Mr. Beard: -- this is why we don't get
21 finished before five o'clock --

22 Commissioner Wilkerson: I understand.

23 Mr. Samuels: -- it was --

24 Mr. Beard: -- because we go down these
25 tangents.

1 Commissioner Wilkerson: I don't have a
2 clue. Pain --

3 Mr. Samuels: -- it was simply --

4 Commissioner Wilkerson: -- pain is not
5 an accident.

6 Mr. Samuels: -- it was simply a lighter
7 --

8 Commissioner Wilkerson: Oh, I
9 understand.

10 Mr. Samuels: -- a lighter question but
11 --

12 Commissioner Wilkerson: An accident
13 that causes pain is an --

14 Mr. Samuels: -- I think Your Honor made
15 my point.

16 Commissioner Wilkerson: -- is an
17 accident, okay? Pain is not an accident.

18 Mr. Samuels: That's -- and that's
19 precisely my point.

20 Q. Pain is not an accident and what they're taught to
21 do is how to report accidents, correct?

22 A. I would say pain is a accident, I mean, you -- you
23 could hurt your back and not have an accident. I mean,
24 you did something to cause your back to hurt; so, yes,
25 it's a accident. Pain is the result of some kind of

1 injury that happens. So, we were -- we are trained to
2 report injuries that happen when they happen. So, if
3 you notice pain in your back or if you notice some kind
4 of stiffness that you can't do your job function
5 properly and you can't function at home, you report it.

6 Q. But if you can do your job, then you don't need to
7 report it --

8 A. Are you having --

9 Q. -- if it is just pain?

10 A. -- pain; that's the question, are you having pain?

11 Commissioner Wilkerson: And you believe
12 if you're having pain you can't do your job?

13 Witness: If you're having pain --

14 Commissioner Wilkerson: And you --

15 Witness: -- where your back can't
16 straighten up and you're hunched over and you
17 can't do your job, you -- you can't do it.

18 Commissioner Wilkerson: -- okay.

19 That's fine.

20 Witness: I mean, but you may not have
21 -- you may not have had an accident, okay?

22 Commissioner Wilkerson: That's fair.

23 Witness: My knee has pain but did I
24 have an accident and cause my knee to hurt?

25 Q. And your -- you've already testified that people

1 new in the job are going to have pain but that's not
2 going to be considered an accident, right?

3 A. No.

4 Q. Just getting used to it because it's hard work?
5 You've got to get in shape --

6 Mr. Beard: Commissioner, again --

7 Q. -- work up to it?

8 Mr. Beard: -- I'm going to object.

9 He's already testified he doesn't do Workers'
10 Comp; he doesn't understand the nuances of
11 what we're talking about; that's a -- that's
12 an --

13 Commissioner Wilkerson: He doesn't do
14 workers' Comp.

15 Mr. Beard: -- that's actually a legal
16 question.

17 Commissioner Wilkerson: And he doesn't
18 do Workers' Comp.

19 Mr. Beard: Whether it's an accident or
20 not is a legal question.

21 Commissioner Wilkerson: And he doesn't
22 get to decide it nor does this gentleman get
23 to decide it; the insurance carrier gets to
24 decide it.

25 Mr. Samuels: That I understand but --

1 Commissioner Wilkerson: The Employer --
2 Mr. Samuels: -- the question --
3 Commissioner Wilkerson: -- does not get
4 to decide.

5 Mr. Samuels: -- but he's -- he's
6 testified about training people about
7 reporting accidents; he used the word
8 accident. So, if he is the Trainer then he
9 should be able to -- to testify that we
10 accept -- if -- if everybody who takes the
11 job is going to be sore and feel pain until
12 they get used to it, are they wanting them to
13 report that as an accident?

14 Commissioner Wilkerson: Well, it can't
15 be everybody; the last guy said he didn't
16 have any problem. So, it can't be everybody.
17 He's never

18 Witness: Everybody does not --

19 Commissioner Wilkerson: -- had a muscle
20 strain.

21 Witness: -- have pain, okay?

22 Mr. Beard: With all due respect --

23 Witness: A new person into the job
24 could develop pain if you're not in shape.

25 Mr. Beard: -- he's -- he's testified

1 that they should notify them if they are in
2 pain; that's-what he said.

3 Witness: Yes.

4 Mr. Samuels: I think counsel is
5 testifying --

6 Mr. Beard: No.

7 Mr. Samuels: -- to this guy's
8 testimony.

9 Mr. Beard: All right. Well -- well,
10 Commissioner, you heard it; with all due
11 respect, come on.

12 Commissioner Wilkerson: I'm here
13 Monday; I don't care.

14 Court Reporter: I am too.

15 Mr. Samuels: All right.

16 Q. And, Mr. Lowman, let's talk about what happened on
17 June 24th.

18 A. Uh-huh.

19 Q. So, you received a call from Mr. Brailey?

20 A. Yes.

21 Q. And he was reporting an accident to you?

22 A. Yes.

23 Q. And he told you it happened that morning at 5:30?

24 A. He was reporting to me that he was at the hospital
25 with pain in his back and thinks that he hurt it at

- 1 work around 5:30. I can't remember. I -- I put it
2 down in my notes but I can't remember what time it was.
- 3 Q. Do you have notes on this? Did you create a paper
4 record of his report of an accident?
- 5 A. Yes.
- 6 Q. Where is that, sir?
- 7 A. Where is it?
- 8 Q. Where is it? It's never been produced to me.
- 9 A. It's --
- 10 Q. Did you do an accident report?
- 11 A. -- no. I -- I did a documentation of what our
12 phone conversation was.
- 13 Q. Okay. Is there supposed to be an accident report
14 done when somebody makes a -- a claim?
- 15 A. There should be, yes.
- 16 Q. Okay. Who -- who does that?
- 17 A. The Safety Spoke and the employee who was injured.
- 18 Q. Okay. So, you've got this report now --
- 19 A. No, I don't have the report now.
- 20 Q. -- no, I don't mean now. I mean, you -- forgive
21 me, bad -- bad way to ask the question. You got this
22 phone call from Mr. Brailey reporting the accident at
23 work at Michelin?
- 24 A. Yes.
- 25 Q. You took some kind of notes?

- 1 A. Yes.
- 2 Q. And those are somewhere; do they still exist?
- 3 A. Yes.
- 4 Q. Michelin has there somewhere? Do you have them?
- 5 A. Yes.
- 6 Q. Do you keep them in a file?
- 7 A. Yes.
- 8 Q. Okay. Is it a file of accidents? Is it a safety
9 file? Is it Mr. Brailey's file?
- 10 A. It's just a list of documents that I maintain.
11 It's a coaching session, a document session; a
12 documented phone call.
- 13 Q. All right.
- 14 A. Yes, sir.
- 15 Q. So --
- 16 A. Yes, sir. Yeah.
- 17 Q. -- when Mr. Brailey reports to you that there is
18 an accident, was an accident report ever filled out at
19 Michelin?
- 20 A. No. Because Mr. Brailey has to be there to fill
21 one out so he can put the facts into it.
- 22 Q. All right. When he came to -- do you know if he
23 was ever asked to fill out an accident report?
- 24 A. He was asked to come back into work and then we
25 could fill an accident report out.

1 Q. Was he asked to come back and specifically to --
2 to fill out an accident report?

3 A. No. He was asked to come back to work.

4 Q. Did anybody --

5 A. He was asked to report the accident to Security,
6 which in turn would generate an accident investigation.
7 He was asked to report back to the plant to -- to
8 report to Security to let them know of his issue and
9 that would have initiated the accident report and
10 investigation going on.

11 Q. -- and I'm sorry, sir, you didn't testify to that
12 and I don't see any record of that in --

13 Commissioner Wilkerson: Yes, he did.

14 Q. -- the progress notes for a particular case,
15 Michelin records.

16 Commissioner Wilkerson: He did testify
17 to it. He said there was a three (3) prong
18 system that if nobody is there on the
19 weekends that their -- all their Security is
20 trained as EMT's, EMS's, and that's the last
21 resort of reporting anything and whomever
22 that is would take him to the proper place he
23 needed to go to; so, he did testify to it.

24 Mr. Samuels: He testified that that was
25 the procedure that, essentially, should have

1 happened.

2 Commissioner Wilkerson: But it didn't.

3 Mr. Samuels: It didn't.

4 Commissioner Wilkerson: Okay.

5 Mr. Samuels: But now that he has
6 reported -- now that Mr. Brailey has reported
7 to Mr. Lowman --

8 Q. -- did anybody do an investigation?

9 Commissioner Wilkerson: That's --
10 that's a fair question.

11 A. No, because he didn't report back to work.

12 Q. Even though he was sent to Dr. Izard?

13 A. He did not --

14 Q. You still didn't do -- you still didn't do an
15 investigation or create any kind of accident report?

16 A. -- no.

17 Q. If I understood your testimony, Mr. Brailey
18 telling you -- he was calling you from the emergency
19 room?

20 A. I believe that's correct.

21 Q. Were you aware he had left the emergency room by
22 11:02?

23 A. No.

24 Q. Did you have any involvement with any of his work
25 restrictions or getting him back to work or anything

1 interviewing him?

2 A. Yes.

3 Q. Okay. And did he ever give any explanation for
4 why he wasn't returning to work --

5 A. No. He didn't --

6 Q. -- or did you ever even hear from him again?

7 A. -- he didn't return my phone calls.

8 Q. Okay. Now, I asked you if he notified you about
9 his problems on June the 11th and June the 13th and you
10 indicated no; is that correct?

11 A. Correct.

12 Q. On June the 11th we have a report --

13 Mr. Beard: -- Commissioner, it's page
14 13 of the Claimant's APA's.

15 Q. He was there seeing the Lexington Medical Center
16 Hospital ER folks and this was his complaint: Back
17 pain after lifting at work. Does that sound like an
18 accident to you?

19 A. Back pain after lifting at work?

20 Q. Yes.

21 A. It could be.

22 Q. Okay. Would you want your employee who was severe
23 enough in back pain to go to the hospital claiming it
24 was lifting at work; would you want them to tell you
25 that?

1 A. I would want them to tell me that.

2 Q. Okay. And he didn't tell you that, did he?

3 A. No, sir.

4 Q. All right. And had he told you that, what kind of
5 precautions or actions would you have taken?

6 A. Had he have told me that we would have gotten him
7 in contact with medical to have him -- to have him
8 evaluated and provide the proper treatment.

9 Q. Okay. You could have determined whether he is
10 physically capable of doing the job?

11 A. Yes.

12 Q. All right. The report says, the patient was doing
13 some heavy lifting at work prior to the onset of his
14 pain. He didn't tell you that, did he?

15 A. No.

16 Q. To your knowledge did he ever tell anyone in
17 management that or anyone in that chain, the Spoke,
18 you, any of those folks?

19 A. Not that I'm aware of.

20 Q. Okay.

21 Mr. Beard: Commissioner, page 7 of

22 Claimant's APA's, June -- this is June the
23 13th of 2017.

24 Q. I think I understood you testified that Mr.
25 Brailey did not tell you he went to his personal doctor

1 on June 13th with low back pain; is that right?

2 A. Correct.

3 Q. It says, has had a new job at Michelin moving
4 heavy stuff, there now for about the past two (2)
5 weeks, having left lower back pain for the past two (2)
6 weeks, and I'm quoting the report, "Pain is ten (10)
7 out of ten (10)". Now, if you've got an employee with
8 pain that is ten (10) out of ten (10) that they are
9 saying has been going on for multiple weeks after
10 starting to lift heavy stuff, would you want to know
11 that?

12 A. Yes, I would.

13 Q. Does that make you question whether that person
14 would be physically capable of performing your job?

15 A. Yes.

16 Q. Okay. And had Mr. Brailey told you that, you
17 could have properly investigated it, correct?

18 A. Correct.

19 Q. It's hard to do that years after or a year after
20 the fact, isn't it?

21 A. Yes, it is.

22 Q. Okay. Are you aware that Mr. Brailey previously
23 worked at a company called Richtex Bricks in 1997?

24 Mr. Samuels: Your Honor, objection,
25 beyond the scope of cross.

1 Mr. Beard: I'll withdraw.

2 Commissioner Wilkerson: It is.

3 Mr. Beard: No further questions.

4 Commissioner Wilkerson: Thank you.

5 RECROSS-EXAMINATION

6 By Mr. Samuels:

7 Q. All right. So, Mr. Lowman, your testimony is that
8 if Mr. Brailey had told you he'd gone to the emergency
9 room on June 11th or actually Urgent Care on June 11th
10 and his family doctor on June 13th, you would have
11 filled out a report and investigated?

12 A. I would have had him report to Medical first
13 because everything that is work-related should go
14 through Medical first and not through your personal
15 physician; when you go through your personal physician
16 it's more personally related. Everybody is trained to
17 go through Medical to report it in the proper way.

18 Q. I've got that.

19 A. Okay.

20 Q. That's not really my question. My question is,
21 isn't it true that Mr. Brailey reported an accident on
22 June 24th and neither you nor anybody else at Michelin
23 did an investigation?

24 A. That is correct because Mr. Brailey did not return
25 back to work into the production environment, into the

1 plant.

2 Q. And isn't it also true that no one did the
3 Michelin Accident Report from that June 24th accident?

4 A. That is true.

5 Q. And I know you want to put this on Mr. Brailey but
6 he is a new employee, you're the Manager; don't you
7 guys have a responsibility to fill out reports?

8 A. We do.

9 Q. And you didn't do that in this case, did you?

10 A. We didn't because I couldn't --

11 Q. Even --

12 A. -- I could not determine if it was work-related.
13 I talked to Mr. Brailey, he was at his personal doctor;
14 I asked him to come back to Medical to report it to
15 Security, he failed to do that. So, at that point, in
16 my judgment, it's personal and it's not work-related.

17 Q. -- so, you don't fill out a report?

18 A. Correct.

19 Q. Even though he told you it was work-related?

20 A. He failed to come in to -- to even sit down and
21 talk about it. So, I could not call him back; I tried
22 calling him back and he didn't return my phone calls.

23 Q. Well, didn't he go to Michelin's company doctor?

24 A. He did but I don't -- I don't work with Michelin's
25 company doctor; I don't work with him, I'm not in an

1 office with him. The Michelin company doctor is over
2 here (indicating); I'm over here in this facility
3 (indicating).

4 Q. wouldn't somebody have met him when he was at the
5 Michelin company doctor?

6 A. Security, EP, would have sent him up to the
7 doctor. So, you come into a different gate at the US 5
8 facility, I'm at US 7, and security lets you into the
9 gate and you go up this -- up this walkway to the
10 doctor. So, I didn't know he was coming and it was
11 being handled through Medical; that's all I can say.

12 Q. Medical, is there a Nurse?

13 A. Yes.

14 Q. That's Christy -- I don't know how to pronounce
15 her name?

16 A. Christy Sirois or Janet Ruoff.

17 Q. Christy Sirois or Janet Ruoff?

18 A. Uh-huh.

19 Court Reporter: Could we get a spelling
20 on Janet's name -- last name, please?

21 Mr. Samuels: R-U-O --

22 Commissioner Wilkerson: I misunderstood
23 you, Mr. Beard --

24 Mr. Samuels: -- okay.

25 Commissioner Wilkerson: -- I thought

1 you said forty-five (45) minutes for four
2 (4), you meant forty-five (45) per the four
3 (4). I'm sorry I misunderstood you; so,
4 we're three (3) more hours. Okay. My fault.

5 Court Reporter: I never did get the
6 spelling for Janet's last name.

7 Mr. Beard: R-U-O-F-F, Ruoff.

8 Court Reporter: Thank you.

9 Q. So, if we have a letter from a lady named Sharon
10 West and she says we have investigated this claim,
11 talking about Mr. Brailey's claim; that's not a true
12 statement, is it?

13 Mr. Beard: Commissioner --

14 A. Who is Sharon West?

15 Mr. Beard: -- Commissioner, with all
16 due respect, he has already said he's not
17 part of the workers' Comp process, Sharon --

18 Commissioner Wilkerson: I don't think
19 he knows.

20 Mr. Beard: -- I will stipulate Sharon
21 West is the Adjustor --

22 Commissioner Wilkerson: Yes.

23 Mr. Beard: -- for workers' Comp and
24 this gentleman couldn't possibly answer this
25 question.

1

Commissioner Wilkerson: I mean, I don't know.

2

3

Mr. Beard: And Stephen knows --

4

Commissioner Wilkerson: He doesn't know anything --

5

6

Mr. Beard: -- he can't answer the question.

7

8

Commissioner Wilkerson: -- about workers' Comp. This is a procedure guy; the gist of his discussion is, your guy never followed the procedure. Since he never followed the procedure, he doesn't do any investigations; is that fair?

9

10

11

12

13

14

Witness: That's fair.

15

16

Commissioner Wilkerson: Okay. That's what I thought I'd heard for --

17

18

Witness: We have procedures to do but I

19

20

Commissioner Wilkerson: -- thirty-two (32) minutes.

21

22

Witness: -- I need to follow the procedure. If you don't --

23

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Commissioner Wilkerson: He didn't follow the procedure.

25

Witness: -- I don't know this -- Sharon

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West, I've never met her in my thirty-six (36) years with Michelin.

Mr. Samuels: Fair enough. Thank you, Mr. Lowman. No further questions.

Mr. Beard: One question, Mr. Lowman.

FURTHER REDIRECT EXAMINATION

By Mr. Beard:

Q. Healthworks, where Dr. Izard is located, that's downtown Columbia; that's not out at the plant, correct, or do you even know?

A. I have no idea where HealthWorks is.

Q. Okay. Thank you.

Mr. Beard: That's all I have.

A. I've never been there.

Mr. Beard: That's all I have. Thank you, sir.

Commissioner Wilkerson: Okay. Because I thought it was at Michelin. I learned something too. Thank you. Do we need to keep this gentleman for anything or can he be dismissed to go?

Mr. Samuels: He can be dismissed, Your Honor --

Commissioner Wilkerson: Okay.

Mr. Beard: Fine --

1 Mr. Samuels: -- as far as I'm
2 concerned.

3 Mr. Beard: -- fine by me to go.

4 Commissioner Wilkerson: Okay.

5 Mr. Beard: Yes, sir.

6 Commissioner Wilkerson: Sir, you --
7 you're dismissed. Thanks.

8 Mr. Lowman: All right. Thank you.

9 Commissioner Wilkerson: Who is next?

10 Mr. Beard: Nurse Sirois.

11 (Off The Record)

12 Commissioner Wilkerson: Ma'am, raise
13 your right hand; we're going to swear you in
14 and take some testimony.

15 whereupon;

16 Christy Sirois, being duly sworn and cautioned to speak
17 the truth, the whole truth and nothing but the truth,
18 testified as follows:

19 Court Reporter: Please state your full
20 name for the record.

21 Witness: Christy Sirois.

22 Court Reporter: Yes, we've had a lot of
23 people --

24 Commissioner Wilkerson: Spell it, just
25 for the record --

1 Court Reporter: -- spell the last name,
2 please.

3 Commissioner Wilkerson: -- we've got it
4 but --

5 Witness: S, as in Sam, I-R-O-I-S, as in
6 Sam.

7 Court Reporter: Thank you.

8 Witness: You're welcome.

9 Court Reporter: All right. I'm done
10 with her; you can have her.

11 Mr. Beard: Thank you, ma'am.

12 DIRECT EXAMINATION

13 By Mr. Beard:

14 Q. Do you care if I call you Christy?

15 A. That's fine.

16 Q. Okay.

17 A. Yes, sir.

18 Q. Christy, where are you employed?

19 A. I'm employed with Palmetto Health, Healthworks.

20 Q. Okay. And as part of your employment, where are
21 you actually -- where is the physical location that you
22 work?

23 A. It is at Michelin in Lexington.

24 Q. Okay. And are you in US 5 or US 7?

25 A. I'm at US 7.

1 Q. All right. And you serve as the Plant Nurse?

2 A. Yes.

3 Q. Okay. What are your days of work --

4 A. I --

5 Q. -- and hours?

6 A. -- I work Monday through Friday --

7 Q. Okay.

8 A. -- but I take calls twenty-four/seven (24/7).

9 Q. All right. And you have been the Plant Nurse at
10 the US 7 plant for how long?

11 A. For US 7 I've been there a little over four (4)
12 years but I started at 5 --

13 Q. Okay.

14 A. -- a year prior to that.

15 Q. All right. And you were the Plant Nurse
16 throughout the year 2017?

17 A. Yes.

18 Q. That would have included all of June of 2017?

19 A. Yes.

20 Q. All of May of 2017?

21 A. Yes.

22 Q. Okay. Do you know Mr. Brailey?

23 A. Not personally. I -- I saw him when he came into
24 Healthworks to see Dr. Izard. I may have done his new
25 hire drug screen and set him up for an appointment but

1 I cannot remember.

2 Q. All right. When you say when he came into his
3 appointment with Dr. Izard at Healthworks, are you
4 talking about the downtown office of Healthworks?

5 A. Yes.

6 Q. Okay.

7 A. The 1333 Taylor Street location.

8 Q. All right. So, that wouldn't have been out at the
9 plant?

10 A. That was out of the plant. That was the Monday
11 after the weekend of the incident.

12 Q. No. What I'm saying is -- so, you all came
13 downtown for the visit --

14 A. Yeah. I brought the chart --

15 Q. -- the visit that to doctor --

16 A. -- I brought the chart to Dr. Izard when he saw
17 him, so.

18 Q. -- okay. Downtown?

19 A. Downtown.

20 Q. All right. So, tell me, chronologically, what you
21 recall from June the 24th of 2017.

22 A. What I recall is, on a Saturday I received a call
23 from the Shop Manager asking me if I knew anything
24 about Mr. Brailey and an injury or anything and I did
25 not.

1 Q. Okay. And the Shop Manager would be who?

2 A. That would have been Tyrone Gilmore.

3 Q. Okay. All right. And then -- so, what happened
4 after that?

5 A. I told him I did not know. He asked me could I
6 try to follow up with that and he sent me Mr. Brailey's
7 number.

8 Q. Okay.

9 A. So, that was on a Saturday.

10 Q. All right.

11 A. I called Mr. Brailey and asked him, you know, what
12 happened and what was going on.

13 Q. Okay. There is a document that's been submitted
14 into evidence by Mr. Brailey and his attorney dated
15 June 24th, 2017.

16 Mr. Beard: Commissioner, this would be
17 page --

18 Commissioner Wilkerson: 88.

19 Mr. Beard: -- 88 of the Claimant's
20 APA's.

21 Commissioner Wilkerson: Yes.

22 Witness: Let me get my glasses.

23 Mr. Beard: Do you need those too?

24 Witness: Yeah, I'll need them.

25 Q. Let me ask if that's an entry you made on June

1 24th, 2017?

2 A. Okay. Okay.

3 Q. Did you make that entry?

4 A. I did.

5 Q. Okay. And so -- so, when did you ultimately
6 actually talk to Mr. -- this may help you -- did you
7 actually talk to Mr. Brailey?

8 A. I cannot remember -- I -- I cannot give you the
9 exact time; I just remember it was on a Saturday and it
10 was probably the afternoon. I actually had called and
11 called and called --

12 Q. Okay.

13 A. -- and I couldn't get in touch with him. And I
14 called Tyrone back and let him know I was not able to
15 get in touch with him and reach him. And I think
16 Tyrone finally got in touch with him or sent him a text
17 and let him know that I would be calling. And then, I
18 finally talked to him; so, it was probably later in the
19 afternoon on that Saturday.

20 Q. Okay. It says here, I called the employee on 6/24
21 around 3:57 P.M. --

22 A. Uh-huh.

23 Q. -- and what did Mr. Brailey tell you?

24 A. He had told me that -- well, looking at the note
25 -- that his back had started to ache when he was on the

1 PAP and he went to the Lexington ER -- he had actually
2 went to the Michelin Family Health Center, which was
3 the non-ops center but they were closed. And I
4 explained to him that, you know, you could have come to
5 US 7 Medical or Security; that would have been the
6 protocol. And I asked him if he had -- I think I
7 remember -- I can't say for sure if he had reported it
8 to anybody.

9 Q. Okay.

10 A. I don't remember.

11 Q. All right.

12 A. But -- and then, he had just told me -- I asked
13 him did he have anything radiating, any numbness, you
14 know, when it happened, how did it happen and then I
15 think afterwards he had -- he had stated they had
16 diagnosed him with a lumbar strain and he told me the
17 medication that he was given.

18 Q. Okay. Did he tell you how it happened?

19 A. Not specifics, no.

20 Q. Okay.

21 A. I -- he was very vague on how it happened, so.

22 Q. It says here in the report, employee denied
23 anything specific that started the pain at work and he
24 denies anything personal outside of work --

25 A. Right.

1 Q. -- is that what he told you?

2 A. Right.

3 Q. Okay.

4 A. That he didn't really know. That he denied any
5 specific incident; he just started having the back
6 pain.

7 Q. All right. Prior to June the 24th of 2017, had
8 you ever heard of or had any communications at all
9 about Mr. Brailey?

10 A. No.

11 Q. Were you aware that Mr. Brailey had been treating
12 with both the hospital and Lexington Medical Center and
13 his personal doctor before this June 24th, '17 incident
14 about his back?

15 A. No.

16 Q. Okay. If someone goes to the doctor or the
17 hospital or anywhere and claims to be having back pain
18 to the point that it's ten (10) out of ten (10) back
19 pain and they are relating it to the job that they do
20 out at Michelin, is that something that should have
21 been reported to you or the Bull or the Safety Spoke or
22 the Manager or someone?

23 A. Yes.

24 Q. Okay. To your knowledge had that ever happened
25 before June the 24th?

1 A. To my knowledge, no.

2 (Q. Okay. As a Nurse, in your opinion, is it safe for
3 someone who is claiming to be in ten (10) out of ten
4 (10) pain to continue to do the very thing that they
5 are claiming to cause them ten (10) out of ten (10)
6 pain?

7 A. No.

8 Q. Okay. Do you do some of the physicals and do
9 these medical questionnaires that the -- that the new
10 employees fill out?

11 A. No, I do not.

12 Q. Okay. If Mr. Brailey had contacted you prior to
13 June the 24th of '17, and told you that he was in ten
14 (10) out of ten (10) pain that he thought was related
15 to doing the lifting that he was doing out on the US 7
16 PAP Operator job, what would you have done?

17 A. I would have brought him in for an assessment and
18 then I would have referred him to Dr. Izard for further
19 evaluation.

20 Q. Okay. And when he did finally contact you on June
21 the 24th, is that what you did?

22 A. I did. I set him up for Monday, which was the
23 first business day that he could see Dr. Izard downtown
24 at Healthworks.

25 Q. All right. And you accompanied him to that visit;

1 is that --

2 A. I met him there at that visit, yes.

3 Q. -- okay. And did you -- were you notified of the
4 results of the visit?

5 A. Yes.

6 Q. Okay. Did Mr. -- was Mr. Brailey supposed to
7 return to see Dr. Izard after that?

8 A. He was, on Wednesday.

9 Q. So, two (2) days later on the 28th?

10 A. Yes.

11 Q. Okay. Did he do that?

12 A. No.

13 Q. Do you know why he didn't do that?

14 A. I called him, because Dr. Izard had come to the
15 plant, and he stated that he did not have a way.

16 Q. He, being Mr. Brailey, said that?

17 A. Mr. Brailey, yes.

18 Q. Okay. Were -- was Mr. Brailey notified that
19 Michelin would come and get him and make sure he got
20 there or that --

21 A. Yes.

22 Q. -- transportation would be provided?

23 A. Yes.

24 Q. And did he show up?

25 A. No.

1 Q. Okay. And this was on a day when Dr. Izard was
2 actually coming out to the plant on Wednesdays?

3 A. Yes.

4 Q. Is that the only day he comes to the plant?

5 A. Yes.

6 Q. Okay.

7 Mr. Beard: Commissioner, that's all I
8 have.

9 Commissioner Wilkerson: Okay. Please,
10 answer any questions that Mr. Samuels may
11 have.

12 Witness: Okay.

13 Commissioner Wilkerson: Thank you.

14 CROSS-EXAMINATION

15 By Mr. Samuels:

16 Q. Ms. Sirois, you received this phone call from
17 Tyrone Gilmore --

18 A. Yes, sir.

19 Q. -- that Mr. Brailey had been to the emergency room
20 and had reported a work accident, correct?

21 A. Yes.

22 Q. And you got that call about 9:30 in the morning?

23 A. I would estimate, yes, around that time.

24 Q. Okay. And -- and we know that because this record
25 that you created here at page 88, that was at 9:30,

1 right?

2 A. That is when I wrote -- put it in the next
3 business day that I come into work because I'm not at
4 work on Saturday.

5 Q. All right. Even though it's dated June 24th,
6 2017?

7 A. I put the date -- when I go in OHM I put the date
8 in there of when I actually had the conversation.

9 Q. Okay. So, you're thinking the conversation you
10 had was about 9:30?

11 A. And then I write in the time --

12 Q. Okay.

13 A. -- of what I remember from the conversation. I
14 may or may not have wrote a time on that one --

15 Q. Okay.

16 A. -- I would have to review it, look at it and see.

17 Q. And you understood that Mr. Brailey had called
18 Tyrone from the emergency room?

19 A. I do not recall that he called him from the
20 emergency room, no.

21 Q. Okay. And what he did report was a work-related
22 accident; is that correct?

23 A. I do not know.

24 Q. Well, he reported -- well, your notes -- left back
25 pain that started on 6/24/17, while stretching and

1 pulling rubber?

2 A. Yes.

3 Q. That would be something he would be doing at
4 Michelin, right?

5 A. Well, if that's -- yes.

6 Q. And that's what he told you as to when his back --

7 A. On that Saturday?

8 Q. -- yes, ma'am.

9 A. He was very vague that day when I was asking the
10 questions how it started and I will not -- I will let
11 them explain what happened. To start with he said
12 nothing specific and I said, well, is there's something
13 that happened out of work and he said, no. He was
14 very, kind of, backwards-and-forth. And then, I said,
15 you need to tell me where it happened because I can't
16 tell you where it happened. So, I said -- he said it
17 happened at work. And I said, well, then, how did it
18 happen at work. And then, that's what he told me.

19 Q. Stretching and pulling rubber?

20 A. That's what he told me, yes.

21 Q. And that's what you wrote down?

22 A. Yes. That was on Saturday.

23 Q. Did you do any investigation of his accident?

24 A. No.

25 Q. Who would normally --

- 1 A. I do not --
- 2 Q. -- do that?
- 3 A. -- that would be Safety.
- 4 Q. Okay. Did you speak to Safety about what had
- 5 happened with Mr. Brailey?
- 6 A. I updated them.
- 7 Q. And do you know whether they did any kind of
- 8 investigation?
- 9 A. They usually always do an investigation on that.
- 10 Q. Do they create a written report of an
- 11 investigation?
- 12 A. They should but I did not see that.
- 13 Q. Okay. You ultimately prepared a Form 12-A; is
- 14 that right?
- 15 A. Pardon me?
- 16 Q. You ultimately prepared a Form 12-A, a First
- 17 Report of Injury?
- 18 A. (Shook head in a side-to-side motion).
- 19 Q. You did not?
- 20 A. First -- is it the First Report of Occupational?
- 21 Q. Yes. I'll -- I'll show it to you.
- 22 A. The FROI?
- 23 Commissioner Wilkerson: Probably not.
- 24 Q. This form right here on page 87.
- 25 A. Yes.

- 1 Q. This?
- 2 A. Yes.
- 3 Q. Okay.
- 4 A. Yes, that one I created.
- 5 Q. On June 27, 2017?
- 6 A. Yes.
- 7 Q. And you wrote, employee stated that he was
- 8 stretching rubber and his lower back started to ache;
- 9 he kept working and the pain got worse. He did not
- 10 notify you?
- 11 A. Yes.
- 12 Q. I assume by not notifying anyone you're saying
- 13 that the first notification came when he was already at
- 14 the emergency room?
- 15 A. I do not know that. My notification came on
- 16 Saturday after he had been in the emergency room.
- 17 Q. Right. June 24th, 2017?
- 18 A. Uh-huh.
- 19 Q. If an employee had back pain coming from work,
- 20 went to a doctor, you would want to know that they were
- 21 under no work restrictions; isn't that true?
- 22 A. I would want to know, yeah, if they had
- 23 restrictions --
- 24 Q. Okay.
- 25 A. -- or no restrictions.

1 Q. All right. And if Mr. Brailey went to Lexington
2 Medical Center Urgent Care on June 11th, 2017, and his
3 family doctor on June 13th, 2017, and was not given
4 work restrictions, you would be comfortable relying on
5 those doctors to let him work --

6 A. No.

7 Q. -- would you not? No? You wanted him to go to
8 Dr. Izard?

9 A. Yes.

10 Q. Because Dr. Izard is the company doctor?

11 A. He is.

12 Q. And Dr. Izard -- so, you -- you took Mr. Brailey
13 to Dr. Izard --

14 A. I did not --

15 Q. -- or met him there?

16 A. -- take him; I told him that he would need to see
17 Dr. Izard and gave him the address and I went there
18 with the chart because it was first thing when they
19 opened and I did not have time to fax or mail; I went
20 straight from my home to Healthworks that morning.

21 Q. And you say the chart, what's the chart?

22 A. It would be my notes or his new hire charts, a
23 file --

24 Q. Okay.

25 A. -- and his new hire records and stuff that he

- 1 filled out would be in there.
- 2 Q. Okay. That would have included the -- being
3 cleared for full duty work after the physical exam?
- 4 A. No, because I did not have that.
- 5 Q. Okay. That's not part of the chart?
- 6 A. No. I didn't have -- I didn't know any of that
7 information. Oh, you mean the new hire?
- 8 Q. When he was hired.
- 9 A. The new hire? Yes. That would have been part of
10 the chart, yes.
- 11 Q. Okay. So, this document -- I will show this to
12 you. I'm going to show you a document received from
13 Michelin that is in response to a subpoena; do you --
14 are you familiar with this document?
- 15 A. Yes, I am.
- 16 Q. What is it?
- 17 A. This is whenever they are a new hire and they go
18 to Healthworks and get examined by a physician; this is
19 how I know that they are clear to work at Michelin.
- 20 Q. Okay. Do you recognize the signature?
- 21 A. That looks like possibly Dr. Tomarchio.
- 22 Q. Dr. Tomarchio?
- 23 A. Uh-huh.
- 24 Q. He's one of the doctors at Healthworks?
- 25 A. Yes.

1 Q. Okay. Is he a good doctor?

2 A. He is.

3 Q. He does a very thorough physical exam?

4 A. I'm not there at Healthworks but I would assume
5 so, yes.

6 Q. And when Mr. Brailey -- didn't you -- were you in
7 with Mr. Brailey when Dr. Izard examined him?

8 A. No, I was not.

9 Q. Do you know what Dr. Izard's diagnosis was?

10 A. Lumbar strain.

11 Q. Okay. Did you know he also seemed to think that
12 Mr. Brailey had a urinary tract infection?

13 A. Yes, based on the symptoms that he listed on his
14 injury report he had to fill out when he was there.

15 Q. He did not prescribe anything for the urinary
16 tract infection though, did he?

17 A. No. He referred him to see his doctor based on
18 the symptoms he was having --

19 Q. Okay.

20 A. -- to see if there was anything else going on.

21 Q. Did he order an MRI?

22 A. No.

23 Q. Are you aware that Mr. Brailey ultimately had an
24 MRI?

25 A. I do not remember. If I -- if he had had an MRI

1 it would have been after the incident and then I
2 received those results.

3 Q. Were you aware that he had an MRI that showed a
4 herniated disk at L4,5?

5 A. No.

6 Q. Were you aware that he has a Neurosurgeon who has
7 taken him out of work and is recommending he have
8 surgery?

9 A. When did that occur?

10 Q. That occurred -- I'm not going to look through and
11 give you the --

12 A. Was that after --

13 Q. -- exact date --

14 A. -- was that after --

15 Q. -- but I will tell you it was after --

16 A. -- if it was after --

17 Q. -- yes.

18 A. -- then I have it followed --

19 Q. Yes.

20 A. -- with the case --

21 Q. Yes.

22 A. -- so.

23 Q. Yes, it was after.

24 A. Yes.

25 Q. It was --

1 Commissioner Wilkerson: In September or
2 thereabout --

3 Mr. Samuels: -- okay.

4 Commissioner Wilkerson: -- I think.
5 That's when he saw the Neurosurgeon, I think.
6 He saw some other doctor in that. He didn't
7 see Dr. Boyd until, what, August or
8 September?

9 Mr. Samuels: I believe it was August.
10 He saw the PA July 24th.

11 Commissioner Wilkerson: In August of
12 '17, okay.

13 Q. As a Nurse, if somebody has a work accident, has a
14 herniated disk at L4,5 and should have surgery,
15 wouldn't you agree that person should be treated and
16 kept out of work?

17 A. That depends at -- yeah, they would need to be
18 restricted. I don't always necessarily agree with a
19 herniated disk as having surgery, you know, that's
20 based on the doctors and the doctor's opinion. It --
21 it all depends on the symptoms and, like I say, I have
22 not reviewed his chart and looked at anything; so, I
23 can't give you a solid answer on that one.

24 Q. Let's put it this way, wouldn't you agree that a
25 doctor who had an MRI and was a Neurosurgeon was better

1 placed to accurately diagnose Mr. Brailey's condition
2 as opposed to a doctor who did not order an MRI and do
3 that kind of diagnostic testing?

4 Mr. Beard: Commissioner, I -- I would
5 object to that. Other than to say, if that's
6 true, I want you to listen to what he just
7 said --

8 Commissioner Wilkerson: I got it.

9 Mr. Beard: -- then every IME he ever
10 gives you needs to be thrown in the trash
11 can.

12 Commissioner Wilkerson: I agree.
13 That's why I say --

14 Mr. Beard: I --

15 Commissioner Wilkerson: -- you've got
16 to be careful --

17 Mr. Beard: -- I object --

18 Commissioner Wilkerson: -- what you say
19 in one case --

20 Mr. Beard: -- yes.

21 Commissioner Wilkerson: -- it carries
22 over to the next case.

23 Mr. Beard: I object to the question,
24 though, as he -- he's improperly --

25 Commissioner Wilkerson: You may want

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her to answer it.

Mr. Beard: -- well, he's -- it's --
it's an improper question. There's no way
she can -- every single surgeon says
something different; they don't all agree on
everything.

Commissioner Wilkerson: I understand.
Do you want her to answer that or not.

A. No.

Mr. Samuels: If she's able. If she's
not able to answer it, that's fine --

Commissioner Wilkerson: Okay.

Mr. Samuels: -- I'll move on to
something else.

A. No.

Commissioner Wilkerson: Okay. So, we
should throw all IME's out, right, both
sides; is that right?

Mr. Samuels: That's not what I said,
Your Honor. What I -- what I said was --

Commissioner Wilkerson: That wasn't the
question.

Mr. Samuels: -- that --

Commissioner Wilkerson: I just asked.

Mr. Samuels: -- that --

1 Commissioner Wilkerson: And notice I
2 said both sides because we get them both
3 ways.

4 Mr. Samuels: -- what I'm saying and I
5 understand his argument, what I'm saying is
6 that Dr. Izard, who disagreed with --

7 Commissioner Wilkerson: A Neurosurgeon.

8 Mr. Samuels: -- a Neurosurgeon,
9 Doctor's Care and the --

10 Commissioner Wilkerson: But --

11 Mr. Samuels: -- and the emergency room,
12 is not as well placed as Dr. Boyd is, in
13 particular, because Dr. Boyd had the MRI.

14 Commissioner Wilkerson: -- when was the
15 MRI done?

16 Mr. Samuels: I'm going to say August
17 but I would have to look for sure.

18 Commissioner Wilkerson: So, none of
19 those other doctors had that?

20 Mr. Beard: Nor did Dr. Izard.

21 Commissioner Wilkerson: Yes, that's
22 what I'm saying. No -- no doctor had that,
23 so --

24 Mr. Samuels: The MRI was done July
25 29th, 2017.

1 Commissioner Wilkerson: -- and we don't
2 -- we don't know what happened between June
3 11th, 13th, 24th -- we don't have a clue what
4 happened.

5 Mr. Samuels: well, we do know what
6 happened on June -- July -- on June 24th,
7 Your Honor, and we have --

8 Commissioner Wilkerson: well, we had a
9 lot of coughing and hacking and all kind of
10 crazy things --

11 Mr. Beard: And no radiating --

12 Commissioner Wilkerson: -- we don't
13 know what caused it.

14 Mr. Beard: -- and no radiating pain on
15 June the 24th.

16 Commissioner Wilkerson: I don't know.
17 I just wanted to make sure I didn't miss it.

18 Mr. Samuels: And we had radiating pain
19 and numbness at Dr. Izard on June 26th, 2017,
20 which he ignored --

21 Commissioner Wilkerson: I understand.

22 Mr. Samuels: -- and did not properly
23 treat.

24 Commissioner Wilkerson: I understand.

25 Mr. Samuels: Ms. Sirois, that's all the

1 questions I have. Thank you.

2 Witness: Thank you.

3 Mr. Beard: Just a couple, Commissioner.

4 REDIRECT EXAMINATION

5 By Mr. Beard:

6 Q. Mr. Samuels showed you a physical exam note from
7 doctor -- how do you say his name?

8 A. Dr. IZARD.

9 Commissioner Wilkerson: No, the other
10 one.

11 Q. No. Dr. Tar --

12 A. Oh, Tomarchio.

13 Q. -- Tomarchio --

14 A. Tomarchio.

15 Q. -- that indicated that he was apparently -- he had
16 passed the physical and was fit to come work in the
17 plant, correct?

18 A. Correct.

19 Q. All right. You're a Plant Nurse, if somebody
20 wants a job bad enough at Michelin -- Michelin pays a
21 lot of money, don't they --

22 A. Uh-huh.

23 Q. You need to answer.

24 A. Yes.

25 Q. Okay.

1 A. I'm sorry.

2 Q. If somebody wants a job bad enough, can they fake
3 symptoms --

4 Mr. Samuels: Objection, calls for
5 speculation.

6 Q. -- can they fake --

7 A. Yes, sir.

8 Commissioner Wilkerson: Well, anybody
9 can fake --

10 Mr. Beard: He -- he started the process
11 by saying that, you as a Nurse --

12 Commissioner Wilkerson: -- no.

13 Mr. Beard: -- Dr. Tomarchio --

14 Commissioner Wilkerson: Yes.

15 Mr. Beard: -- is a great doctor.

16 Commissioner Wilkerson: Yes. I think
17 he gets to follow back up on that doctor's --

18 Mr. Beard: Sure.

19 Commissioner Wilkerson: -- issue.

20 Q. My -- my point is this, if somebody wants a job
21 bad enough, even when they're not physically capable or
22 if they -- they're not physically -- they are medically
23 not properly able to do that, can they pass that
24 physical?

25 A. If they do not tell the truth, yes.

1 Q. Okay. Now, are you aware that Mr. --

2 Mr. Samuels: Objection, Your Honor, she
3 has no way of knowing -- she has already
4 testified she doesn't know what the physical
5 is --

6 Commissioner Wilkerson: She doesn't
7 have any idea --

8 Mr. Samuels: -- or the problem.

9 Commissioner Wilkerson: -- if he told
10 the truth or not, though, does she?

11 Mr. Samuels: She said --

12 Commissioner Wilkerson: She said if
13 they're not -- she just said if they're not
14 telling the truth they can pass it. She
15 wasn't in here.

16 Mr. Samuels: -- she has no way of
17 knowing that.

18 Commissioner Wilkerson: She doesn't
19 know if he told the truth or --

20 Mr. Beard: No way of knowing what?

21 Commissioner Wilkerson: -- if he did
22 tell the truth. She didn't say he didn't
23 tell the truth. He just -- she said, if
24 somebody does not tell the truth that they
25 can get through that initial evaluation.

1 Mr. Samuels: And I would object that
2 she would have no way of knowing that because
3 she is not in the initial evaluation.

4 Commissioner Wilkerson: You're not
5 listening. You're not listening. If
6 somebody doesn't tell the doctor the truth,
7 there is no way for that doctor to properly
8 evaluate somebody. It doesn't matter if it's
9 your clients or Grady's client; if somebody
10 is lying -- I'm trying to be nice, a
11 bald-faced liar, never tells the truth --
12 she's saying that the doctor has no way to do
13 that and they can get through the physical if
14 they do all those things; is that not what
15 you testified to?

16 Witness: Yes.

17 Commissioner Wilkerson: Okay.

18 Witness: Yes.

19 Commissioner Wilkerson: If --

20 Mr. Samuels: Fair enough, Your Honor.

21 Commissioner Wilkerson: -- she's not
22 saying your client did that; I don't think.
23 She would have no way to know that; she's
24 been sitting outside for seven (7) hours, I
25 think, maybe eight (8) now.

1 Q. If someone who is giving that physical and asking
2 those -- answering the questions on that questionnaire
3 that Dr. Tomarchio is reviewing and making an
4 assessment base upon, can they withhold information
5 and, in fact, they lie about information from the past,
6 is it really possible for Dr. Tomarchio to do a proper
7 evaluation?

8 A. No.

9 Q. In fact, don't the doctors need to know that
10 information to follow up and investigate where
11 necessary --

12 A. Yes.

13 Q. -- because there may be a job that this gentleman
14 can do that's just not that job; is that --

15 Mr. Samuels: Object to leading, Your
16 Honor.

17 Q. -- fair?

18 A. Yes.

19 Mr. Beard: I'll -- I'll withdraw.

20 Commissioner Wilkerson: Withdraw that,
21 yes.

22 Mr. Beard: Okay.

23 Commissioner Wilkerson: Just strike
24 that from the record.

25 Q. If the record has established that Mr. Brailey has

1 not been truthful on multiple documents, is it possible
2 for Dr. Tomarchio to have done a proper, thorough,
3 investigation of his condition?

4 A. No.

5 Q. Okay.

6 Mr. Samuels: Objection, calls for
7 speculation.

8 Mr. Beard: That's all the questions I
9 have.

10 Commissioner Wilkerson: Tell me how it
11 can be speculation. She just testified
12 earlier if you -- if they don't tell the
13 truth there's a difference in don't tell the
14 truth and proper evaluation?

15 Mr. Samuels: She is not present when
16 the doctor does these examinations. There
17 has been testimony --

18 Commissioner Wilkerson: I don't
19 disagree with that.

20 Mr. Samuels: -- there has been
21 testimony by another Michelin employee, two
22 (2) Michelin employees, including Mr.
23 Brailey, that the physical exam -- even if
24 you have no complaints about your back, it's
25 still very thorough on the back.

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Commissioner Wilkerson: I understand. Those were lay-persons as you would be a lay-person to a doctor; I would be a lay-person. She is testifying to a medical person and as she is a medical person. Her testimony is that of a Nurse and what she does dealing with doctors. She would be in a better position to determine what medical is than anybody sitting in this room.

Mr. Samuels: Respectfully, Your Honor, she is not an expert; she has not been qualified as an expert.

Commissioner Wilkerson: That -- you're not listening. Do you have a medical degree?

Mr. Samuels: I do not, Your Honor.

Commissioner Wilkerson: I don't either. Mr. Beard, do you have a medical degree?

Mr. Beard: I do not.

Commissioner Wilkerson: Do you have a medical degree?

Witness: Yes, sir.

Commissioner Wilkerson: What is it in?

Witness: I have my Bachelors in Nursing.

Commissioner Wilkerson: That was what I

1 just said. The only person in this room that
2 can testify to a medical situation, I mean,
3 she's got a degree in nursing; nobody else
4 has that degree.

5 Mr. Beard: And -- and with all due
6 respect, her -- her answers were not as an
7 expert witness --

8 Commissioner Wilkerson: No.

9 Mr. Beard: -- her answers were as a
10 medical person.

11 Commissioner Wilkerson: I understand;
12 that's why I said that.

13 Mr. Beard: Mr. Samuels just, basically,
14 said all these other lay-people were experts
15 because they said it was a very thorough
16 examination; that's a factual dispute that
17 you will ultimately decide.

18 Commissioner Wilkerson: I understand.

19 Mr. Beard: You'll get to decide that.

20 Commissioner Wilkerson: That's why I
21 was just trying to make sure I didn't miss
22 it.

23 Mr. Samuels: They know and they
24 testified that the doctor gives them a very
25 thorough examination of their back and tested

1 their ability to twist, turn, bend, stoop and
2 lift.

3 Commissioner Wilkerson: But we don't
4 know if we listing -- lifting a gallon of
5 milk or pulling and stretching a tire on any
6 of those, do we?

7 Mr. Beard: I believe the -- this --
8 this witness just testified that anybody
9 could fake a -- could fake it --

10 Commissioner Wilkerson: I understand.

11 Mr. Beard: -- if they didn't tell the
12 truth --

13 Commissioner Wilkerson: I've just got
14 --

15 Mr. Beard: -- and they wanted the job.

16 Commissioner Wilkerson: -- remember it
17 all goes into the pot and I've got to figure
18 out what the preponderance of the evidence
19 is.

20 Mr. Samuels: If I may, Your Honor, I'd
21 like to introduce the work clearance from the
22 personnel file.

23 Mr. Beard: I have no objection.

24 Commissioner Wilkerson: Oh, that's --
25 that's the one you showed earlier, right?

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Mr. Samuels: Yes, Your Honor.

Commissioner Wilkerson: That's fair.

Mr. Beard: I have no objection.

Commissioner Wilkerson: Is it C-1?
Good point. We haven't done any C's, have we?

Court Reporter: No, sir.

Commissioner Wilkerson: Okay. I don't remember.

Court Reporter: We only have one exhibit and that's D-1 --

Commissioner Wilkerson: D-1, okay --

Court Reporter: -- and that would be that --

Commissioner Wilkerson: -- which is amazing in a case like this.

Court Reporter: -- it is.

Commissioner Wilkerson: Which is proper.

(CLAIMANT'S EXHIBIT NUMBER ONE WAS MARKED FOR IDENTIFICATION)

Commissioner Wilkerson: Any other questions --

Mr. Beard: None.

Commissioner Wilkerson: -- of this

1 witness? I'm sorry.

2 Mr. Beard: None from the Defense.

3 Commissioner Wilkerson: Any other
4 questions?

5 **RECROSS-EXAMINATION**

6 **By Mr. Samuels:**

7 Q. Ms. Sirois, you were not present when Dr.
8 Tomarchio did the physical examination of Mr. Brailey,
9 were you?

10 A. No, I was not.

11 Q. But you are aware that Mr. Brailey was cleared to
12 work full unrestricted duty by Dr. Tomarchio, correct?

13 A. Yes.

14 Q. And were not present when Jermaine Lemon would
15 have had a -- his pre-clearance physical exam, would
16 you -- were you?

17 A. No.

18 Q. And you wouldn't have any knowledge as to how
19 thorough either of those exams were, would you?

20 A. No.

21 Q. Thank you.

22 Mr. Samuels: Nothing further.

23 Commissioner Wilkerson: We need the
24 Jeopardy thing now. Any other questions?

25 Mr. Beard: None.

1 Commissioner Wilkerson: Oh, I'm sorry.
2 Okay. Is she -- she can leave?

3 Mr. Beard: She can unless she wants to
4 sit and wait for the last so we can all ride
5 together because this next witness --

6 Commissioner Wilkerson: Well, you've
7 got two (2) more.

8 Mr. Beard: -- just one (1).

9 Commissioner Wilkerson: Oh, I'm sorry.
10 Just one (1) more --

11 Mr. Beard: Just one (1).

12 Commissioner Wilkerson: -- okay.
13 whatever you want to do, ma'am, you --

14 Ms. Sirois: Okay.

15 Commissioner Wilkerson: -- you can go
16 outside.

17 Ms. Sirois: All right. Thank you.

18 (Off The Record)

19 Commissioner Wilkerson: Who is next?

20 Mr. Beard: Mark Gross, Your Honor.

21 Commissioner Wilkerson: Oh, so you are
22 calling Mark. Okay. I wasn't sure who -- I
23 wasn't sure -- I don't know who is outside.

24 Mr. Beard: No one is left outside.
25 This is the final witness --

1 Commissioner Wilkerson: That's the
2 happiest group --

3 Mr. Beard: -- that I will be calling.

4 Commissioner Wilkerson: -- here, the
5 ones that aren't outside. Mr. Gross, I think
6 you've been here long enough to know to raise
7 your right hand.

8 whereupon;

9 Mark Stephen Gross, being duly sworn and cautioned to
10 speak the truth, the whole truth and nothing but the truth,
11 testified as follows:

12 Court Reporter: Please state your full
13 name for the record.

14 Witness: Mark Stephen Gross.

15 Court Reporter: S-T-E-V or P?

16 Witness: S-T-E-P-H-E-N.

17 Court Reporter: Thank you, sir.

18 DIRECT EXAMINATION

19 By Mr. Beard:

20 Q. Mark, where are you employed?

21 A. I'm employed at Michelin Tire at US 7.

22 Q. How long have you been working there?

23 A. At US 7, I've been there since May of 2017.

24 Q. Okay.

25 A. Michelin for thirty-seven (37) years.

- 1 Q. All right. And what is your title at the US 7?
- 2 A. It's the Safety Manager.
- 3 Q. All right. And so, you would have been the safety
- 4 Manager about the time that Mr. Brailey actually
- 5 started working in -- in US 7?
- 6 A. That's correct.
- 7 Q. All right. And do you know Mr. Brailey?
- 8 A. No, sir.
- 9 Q. Okay. Have you ever met him before today?
- 10 A. I talked to him on the phone but I had not met
- 11 him.
- 12 Q. Okay. As the Safety Manager, are you notified
- 13 when someone files a workers' Comp claim or makes a
- 14 workers' comp allegation or how does that work?
- 15 A. As a Safety Manager if there's any injuries or
- 16 even near misses I am notified.
- 17 Q. Okay. Explain the process at Michelin, how are
- 18 new employees notified of the rules and the protocol
- 19 and those types of things?
- 20 A. Okay. Before a person comes to work for Michelin
- 21 there is approximately six (6) hours of computer based
- 22 training that they go through, which includes some
- 23 safety orientation and then the first day that they are
- 24 at the plant they start a on -- we call on-boarding
- 25 process and as part of that, on the first day the

1 Safety Department has a couple hours of training time.
2 In that training time they are given instructions of
3 what to do if there is an injury, the process to report
4 it.

5 Q. Okay. And once they come -- physically begin
6 working, how do they -- what other training do they
7 receive in safety and workers' Compensation protocol?

8 A. Once -- once they -- besides that initial
9 training, when they go to their specific departments
10 they get some training in that department, which will
11 include specifically who to notify if they have any
12 issues.

13 Q. All right. And would Mr. Brailey have -- have
14 been through that process prior to June the 11th of
15 2017?

16 A. Yes, sir.

17 Q. Okay. And you've, obviously, heard all the
18 testimony; you've heard the witnesses testify. To your
19 knowledge, did anyone in management at Michelin have
20 any idea that Mr. Brailey was claiming to have back
21 problems since somewhere around the end of May all the
22 way up until at least June the 24th?

23 A. No, sir.

24 Q. Okay. Was anyone notified that he had been to the
25 hospital at Lexington Medical Center on June the 11th

1 claiming to have severe back pains related to doing
2 lifting, heavy lifting, at -- at the plant?

3 A. No, sir.

4 Q. Was anyone notified that on June 13th he went to
5 his personal physician claiming to have ten (10) out of
6 ten (10) pain as a result of doing heavy lifting on the
7 job at Michelin?

8 A. No, sir.

9 Q. Is that something that should have been reported
10 under the protocol?

11 A. Yes, sir.

12 Q. Okay. Had he done so --

13 A. Uh-huh.

14 Q. -- what would have been the proper procedure?

15 A. If the -- if he would have been having issues at
16 work and he would have reported it there's a listing:
17 Daytime, we have the Nurse at the plant has been
18 testified. In the evenings and back-shifts we have
19 Flow Managers, a Flow Manager on every crew that would
20 be notified; they would, in turn, notify Security who
21 would provide whatever treatment was needed, including
22 calling the Nurse if necessary.

23 Q. What about the workers' Comp process; how -- what
24 kind of determination or what would have gone on as far
25 as whether that was Workers' Comp or not?

1 A. At that point we're -- we're really not looking to
2 -- at workers' Comp or not; what we're looking is to
3 get treatment -- treatment for this person.

4 Q. Okay. And whether it's workers' Comp or not is
5 not an issue?

6 A. That is correct.

7 Q. All right. Who ultimately decides whether
8 something is going to be accepted as workers' Comp or
9 not out at the plant?

10 A. It is determined by an Adjustor outside of the
11 company.

12 Q. Okay. And that person, you assume, is discussing
13 with your legal counsel?

14 A. Yes.

15 Q. All right. In this particular case, how did you
16 become aware that Mr. Brailey was claiming to have been
17 injured on June the 24th?

18 A. I got a phone call from our Plant Manager, who
19 happened to be in France at the time, because he had
20 been informed that there had been a possible injury,
21 asking me if I had any knowledge of it and -- which I
22 did not.

23 Q. Okay. And what day was that on?

24 A. That would have been on the 24th.

25 Q. All right. And do you have any idea or any

1 recollection of what time you got the phone call?

2 A. It would have been late in the afternoon.

3 Q. Okay. And when you got that phone call, what did
4 you do; what is the next process?

5 A. I called Troy Lowman to --

6 Q. Okay.

7 A. -- who is -- who -- who was his Direct Manager, to
8 make sure -- find out if he knew anything and what was
9 going on.

10 Q. All right. And did Troy know anything?

11 A. Yes, at that time he did.

12 Q. All right. And what was your understanding?

13 A. That Troy had gotten the Nurse involved and that
14 the Nurse had had contact with Mr. Brailey and that
15 there was an appointment set up for Monday morning.

16 Q. All right. And you've obviously seen the medical
17 records that have been -- or the medical documentation
18 that's the Michelin documents, page 88 of Claimant's
19 APA's; I mean, you've seen that document --

20 A. Yes.

21 Q. -- before, correct?

22 A. Yes.

23 Q. All right. And that's the normal -- that the
24 Nurse's notes, the --

25 A. Right.

1 Q. -- what the Nurses create?

2 A. That's correct.

3 Q. All right. What is the procedure following
4 someone making that claim and whether it's Workers'
5 Comp or not, what is the next procedure to take place?
6 In other words, Mr. Lowman explained about --

7 A. Uh-huh.

8 Q. -- coming back to the plant and filling out
9 accident reports, what happens?

10 A. Oh, okay. If a person reports an injury we do an
11 incident report; it typically is started by the safety
12 Spoke that Troy mentioned.

13 Q. Okay.

14 A. What is going to be done is a very quick
15 investigation to see if there is some kind of risk out
16 there that caused the problem.

17 Q. Okay.

18 A. Then -- and this would be with the person that has
19 made the report. If the person wasn't available, we
20 would wait till that person came back so we could
21 understand exactly what happened.

22 Q. Okay. So, you need the actual factual basis to do
23 your investigation?

24 A. That's correct.

25 Q. All right. And in this case, did Mr. Brailey, to

1 this day, ever come back out to the plant and give any
2 kind of a report or meet with you so that you could
3 fill out that investigation?

4 A. He did not.

5 Q. Okay. So, two (2) days later he goes to Dr. Izard
6 on June the 26th?

7 A. That's correct.

8 Q. All right. And has that evaluation, when did you
9 next become involved with his case?

10 A It would have been on the -- two (2) days later on
11 the 28th.

12 Q. How -- how did you become involved?

13 A. The Nurse informed me that Mr. Brailey had a -- an
14 appointment with Dr. Izard that afternoon but she had
15 been told that he could not come; he told her -- Isaac
16 told her he could not come because he did not have a
17 ride.

18 Q. Okay. And so, how -- what did you do then?

19 A. So, I called Mr. Brailey and we discussed -- you
20 know, we talked for a couple of minutes. I verified
21 that he didn't have a ride to come to the plant and
22 when he said that was correct, I offered to send a taxi
23 to his house to pick him up to come see the doctor and
24 then take him back home.

25 Q. Was it your understanding he lives fairly close to

1 the plant?

2 A. That's correct.

3 Q. All right. And what did he say when you made that
4 offer?

5 A. When he -- when I made that offer he immediately
6 said, you need to talk to my lawyer and hang up on me
7 --

8 Q. Okay.

9 A. -- hung up on me.

10 Q. So, on June the 28th, by then he already had a
11 lawyer or at least that's what he represented to you on
12 the phone?

13 A. That's what he represented to me on the phone.

14 Q. Okay. And you're aware he had another lawyer
15 before Mr. Samuels?

16 A. That's correct.

17 Q. All right. So, at any other time after that did
18 you ever contact with Mr. Brailey?

19 A. I did not.

20 Q. All right. And I -- I am assuming -- correct me
21 if I'm wrong -- did he come back and see Dr. IZARD on
22 the 28th?

23 A. He did not.

24 Q. All right. Now, you've heard about the physical
25 examination and the questionnaire information.

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Mr. Beard: Let me find it here.
Commissioner, I'm looking at page 16,
Defendant's APA's.

Commissioner Wilkerson: I can hardly
wait till we go paperless; that's the rumor,
one day we're all going paperless.

Mr. Beard: It would be nice if we had a
big old screen we could all just look at.

Mr. Samuels: I'd love it.

Mr. Beard: That's what they do in
Federal Court.

Commissioner Wilkerson: Yes.

Q. What is that document?

A. This is a health questionnaire for a post-offer
examination.

Q. Okay. Is that something that every employee at
Michelin is required to go through?

A. Yes.

Q. All right. And does that take place in
conjunction with the physical examination?

A. Yes.

Q. All right. And is this document done for a
reason?

A. Yes.

Q. What is the purpose of the document?

1 A. To find out if there's any concerns, health-wise,
2 physical -- any physical concerns.

3 Q. Okay. And do you rely on the answers that your
4 employees give you on those documents?

5 A. Yes.

6 Q. Okay. If, for instance in this case, if Mr.
7 Brailey had said, I do have prior back ache or injury
8 or pain, in fact, I had a workers' Comp claim,
9 etcetera, etcetera; would you have investigated that?

10 A. Yes.

11 Q. All right. Were you given the opportunity to
12 investigate that based upon his answer?

13 A. No.

14 Q. All right. Was any doctor given the opportunity
15 to investigate that based upon his answer?

16 A. No.

17 Q. All right. Would you have instructed a doctor to
18 do that had they brought that to your attention?

19 A. Yes.

20 Q. All right. Knowing what you know now, and hearing
21 all the testimony you've heard today, and all the
22 information about the prior workers' Compensation
23 claim, and the fact that he had been released from
24 heavy duty work until seeing a surgeon, if you had
25 known all the information and investigated all that

1 information, would that have concerned you about Mr.
2 Brailey?

3 A. Yes.

4 Q. Do you -- in reviewing what has transpired in this
5 case from late May, complaining immediately upon going
6 into physical work up until June the 24th, making no
7 contact to -- with you whatsoever, does this sound at
8 all like what happened in 1997, based on what you've
9 seen and heard?

10 A. Yes.

11 Q. And just because Mr. Brailey may have had
12 pre-existing problems and if he had been honest and
13 forthright, would then Michelin look to see if there
14 were other opportunities that he could have within the
15 plant?

16 A. No. Based on the questionnaire and his responses
17 to the questionnaire, what we would have done is to
18 seek further information on the condition itself.

19 Q. Okay. And let's assume the information came back
20 and said he can't do the PAP Operator job, would he
21 then have to go through the process of applying for yet
22 a different job or you all would have looked for a --
23 other jobs potentially he could perform?

24 A. Probably not.

25 Q. Okay.

1 Mr. Beard: Thank you, sir. That's all
2 the questions I have.

3 Commissioner Wilkerson: Mr. Samuels.

4 Mr. Samuels: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 By Mr. Samuels:

7 Q. Mr. Gross, are the physical examinations the
8 doctors do important to Michelin?

9 A. Yes.

10 Q. So, they want to make sure that the doctors do a
11 thorough exam?

12 A. Correct.

13 Q. And that thorough exam, every exam, is going to
14 include an examination of the back; isn't that true?

15 A. Personally, I'm not aware of exactly what the
16 physical exam is; so, I can't tell you how thorough it
17 is.

18 Q. Got it. But you did hear Mr. Lemon testify?

19 A. Uh-huh.

20 Q. And you would agree that Mr. Lemon described a
21 thorough examination of the back, testing whether
22 somebody can lift, bend, twist, stoop, squat and so
23 forth --

24 A. Correct.

25 Q. -- isn't that true?

- 1 A. That is true but I -- I don't know how much -- how
2 much weight they're picking up or how much twisting,
3 so.
- 4 Q. But the point is though --
- 5 A. Uh-huh.
- 6 Q. -- that you've heard actually two (2) witnesses --
- 7 A. Uh-huh.
- 8 Q. -- testify that the doctor gave them thorough
9 examinations of the back, right?
- 10 A. Yes, I heard that.
- 11 Q. And you can't dispute that, can you, because you
12 have not been in those exams?
- 13 A. That is correct.
- 14 Q. And, in fact, that examination by Dr. Tomarchio,
15 he cleared Mr. Brailey to work full unrestricted duty;
16 isn't that true?
- 17 A. That is correct.
- 18 Q. And that was what you needed to know --
- 19 A. Yes, sir.
- 20 Q. -- if the doctor cleared him; you were good to go,
21 right?
- 22 A. Yes, sir.
- 23 Q. And you relied on your doctors to be thorough?
- 24 A. Correct.
- 25 Q. And you've also, I know, heard a lot of testimony

1 but does Michelin want every single instance of pain or
2 soreness to be reported as a Workers' Comp claim?

3 A. We want everyone that has pain doing their job to
4 report it; yes, sir. I -- but we don't look at a
5 workman's Comp right off the bat.

6 Q. So, in fact, if somebody has pain, as long as they
7 go to the doctor, the doctor clears them to work,
8 they're getting treatment, getting medication, you're
9 okay with that?

10 A. If someone reports that they're having pain, we
11 want to investigate and see is it just work hardening
12 or is it something that we need to pursue with medical
13 treatment.

14 Q. Got you. So -- so, what you'd want to know is if
15 somebody has strained muscles due to heavier workload
16 at new job, no emergent signs of symptoms, exercise to
17 lose weight, a need for strengthening up the core
18 muscles and proper lifting techniques; that's what
19 you'd want to know, isn't it --

20 A. I'm -- I'm little confused --

21 Q. -- from a doctor?

22 A. -- what -- you're asking --

23 Q. You wanted to make sure that it's not an injury --

24 A. -- correct.

25 Q. correct?

- 1 A. Yes.
- 2 Q. That it's just pain --
- 3 A. Right.
- 4 Q. -- like pain from working a new job, not really
5 being in shape because you're new at the job --
- 6 A. Right.
- 7 Q. -- that kind of thing?
- 8 A. Uh-huh. Yes.
- 9 Q. And you -- you expect people who are new to the
10 job, a lot of them are going to have pain and be sore
11 just because it's hard work and they're not used to it?
- 12 A. Yes, minor, you know, soreness but --
- 13 Q. Right. So --
- 14 A. -- okay. Yeah.
- 15 Q. -- so, like, with Mr. Brailey, you know, his
16 doctor tells him, you need to strengthen up your core
17 muscles and use proper lifting techniques --
- 18 A. Uh-huh.
- 19 Q. -- but you can work?
- 20 A. Yeah.
- 21 Q. So, you have the information -- or I won't say you
22 have the information but Mr. Brailey has the
23 information, he's getting that taken care of and he's
24 cleared to work. You wouldn't know anything different
25 if you'd had that information, would you?

1 A. Probably not, no.

2 Q. It was actually on June 24th, 2017 --

3 A. Uh-huh.

4 Q. -- that you heard -- got a phone call from France,
5 that Mr. Brailey had had a work accident?

6 A. I heard that he had gone to the doctor and claimed
7 to have a work accident; yes, sir.

8 Q. And you've heard the testimony, you -- you've
9 looked at his medical records --

10 A. Uh-huh.

11 Q. -- you know now that he's been diagnosed with a
12 herniated disk and that surgery is recommended by his
13 Neurosurgeon; you're aware of that, right?

14 A. That's what the report says; yes, sir.

15 Q. Okay. And you would agree nobody before June
16 24th, 2017, while he was working at Michelin, had put
17 him under restrictions or recommended surgery?

18 A. One more time.

19 Q. You would agree --

20 A. Huh-uh.

21 Q. -- that no doctor, while Mr. Brailey was working
22 at Michelin, had put him under restrictions before June
23 24th, 2017?

24 A. No doctor that he saw after he came to work for
25 Michelin had; yes, sir.

1 Q. Right. Not Dr. Tomarchio, not his family doctor,
2 not Lexington Medical Center?

3 A. Correct.

4 Q. Only after June 24th, 2017, did they take him out
5 of work or put him under work restrictions, correct?

6 A. Yes.

7 Q. Okay.

8 A. That's when he was taken out of work.

9 Q. And --

10 Mr. Samuels: -- that's the only
11 questions I have. Thank you.

12 REDIRECT EXAMINATION

13 By Mr. Beard:

14 Q. If an employee claims to have ten (10) out of ten
15 (10) pain as a result of doing the job at your plant,
16 do you expect to hear that information?

17 A. Yes, sir.

18 Q. In fact, is it important for you to know that
19 information so that you can make sure they don't hurt
20 themselves or anyone else any further?

21 A. Yes, sir.

22 Q. And, in fact, if Mr. Brailey had honestly come in
23 and told you on the 11th or the 13th what he had told
24 the hospital or the -- his personal doctor, we probably
25 wouldn't be here, would we?

1 A. That's correct.

2 Q. Okay. It's because he failed to give you that
3 information that maybe we're here; isn't that correct?

4 A. That's correct.

5 Q. Based on everything else you've heard, based on
6 the review of those medical records from before, based
7 on the testimony, do you really believe anything Mr.
8 Brailey says at this point?

9 Mr. Samuels: Objection, Your Honor.

10 That is an absolutely improper question
11 eliciting a -- a witness' opinion regarding
12 other witnesses, pitting witnesses --

13 Mr. Beard: With -- with all due
14 respect, Mr. Samuels said, and I quote,
15 "You've heard two (2) people give testimony
16 about the strenuous things that they do in
17 these physical examinations." One of the two
18 (2) people would be this gentleman sitting in
19 the chair right here. I've got a right to
20 then follow up and say do you believe
21 anything this gentleman said; I've got a
22 right to do that. He opened that door.

23 Commissioner Wilkerson: Tell me how you
24 didn't open the door by pitting the other two
25 (2) people against another person.

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Mr. Samuels: Because --

Commissioner Wilkerson: He has a right to ask the question.

Mr. Samuels: -- because I -- because I was talking about the substance of the testimony that they gave.

Commissioner Wilkerson: How do I know what you're talking about? I keep reminding you, I don't have a clue what you all are talking about. You all talk in circles. I don't have a clue what you're talking about. If you're talking -- because you've got one opinion before we started about the depo, you've got another opinion now; it moves based on the question. I never know what you all are talking about on either side; that's why we have evidence. If we -- if we -- if I knew what you all were talking about why would I ask you to put your positions on the record; wouldn't I just read what you hand me? I never know what either side is talking about. So, if you open the door, he gets the right to ask a question.

Mr. Samuels: I -- I didn't open the door as to whether or not he believed

1 testimony. An opinion -- an attorney asking
2 a --

3 Commissioner Wilkerson: You asked about
4 the doctor who is not even here; do you
5 believe those doctors know what they're
6 doing, on several occasions. You asked
7 several times, do you believe what your
8 doctor tells you. So, I think you opened the
9 door. He gets to tell me what he believes of
10 your client; I don't know what it's going to
11 be.

12 Mr. Samuels: -- okay. Fair enough,
13 Your Honor.

14 Commissioner Wilkerson: I mean, I think
15 it's a fair question.

16 Q. Do you need me to repeat the question?

17 A. Please.

18 Q. Based on everything you've heard and everything
19 that you reviewed, do you believe anything that Mr.
20 Brailey is saying in this case?

21 A. I do not.

22 Q. In addition to relying on that physical
23 examination Mr. Samuels showed you, the physical exam
24 or -- or read to you and -- or you've heard about the
25 physical exam that he passed, and you said you do rely

1 on your doctors and you rely on those things; you rely,
2 on the employees to honestly answer the questionnaires
3 so that you can do the investigation that needs to be
4 done, correct?

5 A. That is correct.

6 Q. And your doctors, do they also rely upon the
7 questionnaires and the answers so that they can do the
8 thorough investigation?

9 A. Yes.

10 Mr. Samuels: Objection, Your Honor,
11 calls for speculation --

12 Q. Do you believe this --

13 Mr. Samuels: -- on evidence --

14 Mr. Beard: -- I'll withdraw it.

15 Mr. Samuels: -- not personally --

16 Mr. Beard: -- I'll withdraw it.

17 Commissioner Wilkerson: Yes.

18 Q. Do you believe it's possible for the doctor to do
19 a thorough investigation if the patient does not
20 truthfully answer the questionnaire?

21 Mr. Samuels: Objection, Your Honor, the
22 witness is unqualified to answer that
23 question.

24 Commissioner Wilkerson: well, he would
25 be unqualified to answer your questions about

1 his doctors, true? So, do we strike yours as
2 well?

3 Mr. Beard: Commissioner, he's the
4 safety --

5 Mr. Samuels: I reckon not --

6 Mr. Beard: -- Manager.

7 Mr. Samuels: -- that's fine, Your Honor.

8 Commissioner Wilkerson: I --

9 Mr. Samuels: I'll let the questions go;
10 it's fine.

11 Commissioner Wilkerson: -- I just --
12 you've got to -- you can't -- again, you
13 can't have your cake and eat it too; you've
14 either got to decide I want to keep it or I
15 want a bite of the cake. Come on now.

16 Q. Is it possible, Mr. Gross, for a doctor -- for
17 your company doctor or your plant doctor who is doing a
18 physical examination on a new perspective employee, do
19 a thorough investigation if they are lied to on a
20 questionnaire about someone's medical history?

21 A. They will not be able to.

22 Q. Thank you, sir.

23 Mr. Beard: That's all I have.

24 Commissioner Wilkerson: Any follow ups?

25 Mr. Samuels: Yes, sir.

RECROSS-EXAMINATION

1
2 By Mr. Samuels:

3 Q. Mr. Gross, you did believe Mr. Lemon's testimony
4 about how thorough the physical examination was,
5 though, didn't you?

6 A. Yes.

7 Q. Okay. And you would expect Michelin's doctors to
8 do a thorough physical examination?

9 A. Yes.

10 Q. That's what you want, isn't it?

11 A. Yes.

12 Q. And you know that they are going to always pay
13 particular attention to the back because that's -- it's
14 such a vulnerable important area, isn't it?

15 A. I do not know that.

16 Q. You now know that because of Mr. Lemon's
17 testimony, which you believe, correct?

18 A. In -- in Mr. Lemon's opinion, yes, but --

19 Q. And --

20 A. -- I've --

21 Q. -- your doctor, Dr. Tomarchio --

22 A. -- uh-huh.

23 Q. -- cleared Mr. Brailey to full duty work, didn't
24 he?

25 A. That's correct.

1 Q. You also heard testimony that Mr. Brailey was a
2 good worker, able to do the work and nobody noticed him
3 having any difficulty doing the work; isn't that true?

4 A. That's true.

5 Q. And even though he had pain, he had no difficulty
6 doing the work until June 24th, 2017; isn't that true?

7 A. That's true.

8 Q. And --

9 Mr. Samuels: -- no further questions,
10 Your Honor.

11 FURTHER REDIRECT EXAMINATION

12 By Mr. Beard:

13 Q. So, even though he had ten (10) out of ten (10)
14 pain, he was able to continue working and --

15 Mr. Samuels: I --

16 Commissioner Wilkerson: Wait a minute;
17 let him finish the question or are you
18 through?

19 Mr. Samuels: -- we -- we're getting
20 into re-redirect.

21 Mr. Beard: -- well, it doesn't matter.

22 Commissioner Wilkerson: It doesn't
23 matter.

24 Mr. Beard: I get to go if he lets me.

25 Commissioner Wilkerson: He still gets

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Mr. Beard: I think we've done that a lot today.

Commissioner Wilkerson: -- yes.

Mr. Samuels: Fair enough.

Commissioner Wilkerson: Yes.

Q. So, even though he was in ten (10) out of ten (10) pain, he was able to continue to do his job and convince everybody out there and not tell anybody what was going on; is that correct?

A. That's correct.

Q. Just like he probably did when he did the physical examination to get the job in the first place, correct.

A. Correct.

Q. All right. So, Mr. Lemon, you heard him testify, right?

A. Yes, sir.

Q. What did Mr. Lemon say when he was asked the question, did you tell the truth on all the questions on your questionnaire; what was his answer?

A. Yes.

Q. You've read Mr. Brailey's questionnaire and you've heard his testimony, are those two (2) things consistent? Did -- did Mr. Brailey tell the truth on his questionnaire?

1 A. He did not.

2 Q. Okay. So, there's a big difference between those
3 two (2) individuals, correct?

4 A. That is correct.

5 Q. It would have been a lot easier for the doctor to
6 make an examination of the person who told the truth,
7 thoroughly, than the person who lied, thoroughly,
8 correct?

9 A. That is correct.

10 Mr. Beard: That's all I have.

11 FURTHER RECROSS-EXAMINATION

12 By Mr. Samuels:

13 Q. would you agree that between 1997 and 2017, a
14 period of twenty (20) years, that there is no evidence
15 of Mr. Brailey having any back pain or going to any
16 doctor for back problems?

17 A. There is no evidence, no; you're correct.

18 Q. And wouldn't you agree that there is no evidence
19 that Mr. Brailey was currently having any back pain at
20 the time he was examined by Dr. Tomarchio and at the
21 time that he filled out the questionnaire?

22 A. That's correct.

23 Q. When people fill out the questionnaire, do you
24 expect them to answer all the questions?

25 A. Yes, sir.

1 Q. Fill in all the blanks?

2 A. Yes, sir.

3 Q. And is there somebody there with the employee as
4 they're filling this out making sure they fill in all
5 the blanks and answer all the questions?

6 A. No, sir.

7 Q. Does somebody check afterwards to make sure that
8 everything is properly filled out?

9 A. That I do not know.

10 Q. Because I -- I've got to ask you --

11 A. Uh-huh.

12 Q. -- I mean, I'm looking at it, page 16, it's got
13 his name --

14 A. Right.

15 Q. -- and there are answers to some of the questions
16 but there's no address, phone number, emergency
17 contact, relationship to emergency contact, phone or
18 family doctor?

19 A. That is correct.

20 Q. Is that information not equally important?

21 A. On that form, I would say not.

22 Q. You would say not?

23 A. That's correct.

24 Q. You don't know what it -- you don't want to know
25 who his family doctor is so you can obtain medical

1 records if you need to? So, a part of this --

2 A. Huh-uh.

3 Q. -- so, this form really isn't as important as it
4 has been said, is it?

5 A. It's very important to understand the physical --
6 the physical conditions of the perspective employee.

7 Q. But nobody goes back and makes sure that this is
8 properly filled out, do they?

9 A. I was not there when that was done --

10 Q. Right.

11 A. -- and I can't tell you.

12 Q. They fill out a ton of paperwork, right, when
13 they're hired?

14 A. I think there's quite a few, yes.

15 Q. Quite a lot?

16 A. Yeah.

17 Q. And they go through it pretty fast?

18 A. There's nothing that creates a need for speed when
19 they're filling it out.

20 Q. Okay.

21 Mr. Samuels: No more questions, Your
22 Honor.

23 Commissioner Wilkerson: Oh, I'm sorry.

24 Mr. Beard: One --

25 Commissioner Wilkerson: I'm still

1 writing.

2 Mr. Beard: -- one --

3 Commissioner Wilkerson: I apologize.

4 Mr. Beard: -- one follow up. Page 16.

5 Commissioner Wilkerson: I had not
6 fallen asleep.

7 FURTHER REDIRECT EXAMINATION

8 By Mr. Beard:

9 Q. Page 16, Mr. Gross.

10 A. Uh-huh.

11 Q. There's a box that says, Declaration and
12 Authorization; do you see that?

13 A. Yes, sir.

14 Q. Can you just read into the record, slowly --

15 Commissioner Wilkerson: Page 16? Hold
16 on, let me get to it.

17 Mr. Beard: -- yes, sir.

18 Commissioner Wilkerson: Is it your 16
19 or --

20 Mr. Beard: Yes, sir. I'm sorry, my 16,
21 the -- this is the -- the questionnaire.

22 Mr. Samuels: Your Honor, I'll stipulate
23 that it says what it says.

24 Mr. Beard: That's fine.

25 Commissioner Wilkerson: -- okay.

1 Mr. Beard: I still want him to read it
2 for the record.

3 Commissioner Wilkerson: Okay, for the
4 record.

5 Q. If you would, just read into the record what that
6 says.

7 A. It says, I declare that all information contained
8 herein is true and complete to the best of my
9 knowledge. I understand and agree, thus, that any
10 false, misleading or incomplete information will make
11 me subject to disqualification from employment or
12 subject to dismissal at any time. I hereby authorize
13 Michelin to make any investigation it deems appropriate
14 and, expressively, authorize any physician, hospital,
15 clinic or other persons or entity Michelin may contact
16 to release particulars of my health, medical health
17 other than gastric information or any claim to
18 Michelin. A photocopy of this authorization shall be
19 valid as the original.

20 Commissioner Wilkerson: Let me ask a
21 question. Is that gastric or genetic? I
22 can't read it.

23 Mr. Samuels: It's --

24 Witness: My contacts are fuzzy --

25 Mr. Samuels: -- it's genetic.

1 Witness: -- it says genetic.

2 Commissioner Wilkerson: what?

3 Mr. Samuels: It's genetic.

4 Mr. Beard: It's genetic.

5 Witness: It's genetic.

6 Commissioner Wilkerson: Okay. I
7 couldn't read it --

8 Witness: It's genetic.

9 Commissioner Wilkerson: -- I was going
10 to ask you. That's okay. I thought --

11 Witness: Sorry, fuzzy contacts.

12 Commissioner Wilkerson: -- no, no,
13 that's okay. I -- mine's a little fuzzy too
14 and it's -- it is late in the day.

15 Mr. Beard: My head --

16 Commissioner Wilkerson: So, I thought
17 --

18 Mr. Beard: -- my head --

19 Commissioner Wilkerson: I just wanted
20 to get it right.

21 Mr. Beard: -- my head is fuzzy right
22 now.

23 Commissioner Wilkerson: I apologize.

24 Q. Did -- sentence number 1, was the information
25 contained in the report true and accurate?

1 A. No.

2 Q. All right. And Mr. Brailey has admitted that
3 today, correct?

4 A. That is correct.

5 Q. Could Mr. Brailey, in fact, could be fired for
6 that reason alone; is that not true?

7 A. That is correct.

8 Q. All right. And he acknowledged that?

9 A. That is correct.

10 Q. And it also says that that authorizes you,
11 Michelin, to have any doctor investigate the condition;
12 you weren't given that opportunity in this case, were
13 you?

14 A. That is correct.

15 Q. Because Mr. Brailey withheld the information?

16 A. That is correct.

17 Q. And, in fact, we now know that Mr. Brailey was
18 restricted from doing any heavy duty work since at
19 least 1997, until seen by a surgeon, correct?

20 A. That is correct.

21 Q. Thank you, sir.

22 Mr. Beard: That's all I have.

23 Commissioner Wilkerson: Anything else?

24 FURTHER RECROSS-EXAMINATION

25 By Mr. Samuels:

1 Q. Sir, Mr. Brailey was terminated on July 9th, 2017;
2 isn't that correct?

3 A. You -- I'm not positive of the date but, yes.

4 Q. Okay.

5 A. Okay.

6 Q. That had nothing to do with his questionnaire, did
7 it?

8 A. That is correct.

9 Q. Okay. And when this case was denied in July of
10 2017, that had nothing to do with this questionnaire,
11 did it?

12 A. I'm not part of that process --

13 Q. Okay.

14 A. -- so, I can't tell you.

15 Q. You understand that this questionnaire did not
16 even become an issue in this case until this hearing
17 had been continued twice?

18 A. Again, I don't know --

19 Q. Okay.

20 A. -- exactly when it became important.

21 Mr. Beard: That's actually incorrect.

22 It's on the first Form 51 filed, fraud in the
23 application, affirmative defenses raised.

24 Mr. Samuels: Your Honor, it's on every
25 application but it --

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Mr. Beard: It's raised.

Mr. Samuels: -- it's on every 51 that Mr. -- Mr. Beard files. My -- my point about that is, he amended his pre-hearing brief and APA months after the original hearing was set; that's my point.

Mr. Beard: Read the first Form 51 -- Commissioner Wilkerson: All right.

Mr. Beard: -- that's all I can tell you; it's on the Form 51.

Commissioner Wilkerson: Okay. How could it be months? I didn't -- I didn't have the hearing until, what, January?

Mr. Beard: Yes, sir.

Commissioner Wilkerson: So, it couldn't be months.

Mr. Samuels: That was not an issue at the --

Commissioner Wilkerson: what?

Mr. Samuels: -- at the -- when we convened for the hearing in January.

Mr. Beard: It actually was amended when you allowed me to get the workers' Comp file --

Commissioner Wilkerson: That was in

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February?

Mr. Beard: -- correct.

Commissioner Wilkerson: Okay. So, it's been less --

Mr. Beard: That's the only time I've amended my pre-hearing brief --

Commissioner Wilkerson: -- it's been less than two (2) months.

Mr. Beard: -- just because Stephen had raised some issue about the Form 51 was improper to begin with --

Commissioner Wilkerson: Okay.

Mr. Beard: -- some --

Commissioner Wilkerson: Okay.

Mr. Beard: -- some issue like that.

Commissioner Wilkerson: I don't know. That's fine. Because you had -- you at that point also raised 11-B had not been answered; so --

Mr. Beard: Correct.

Commissioner Wilkerson: -- the hearing doesn't count --

Mr. Beard: Correct.

Commissioner Wilkerson: -- basically.

Mr. Beard: That's exactly what I did.

1 Commissioner Wilkerson: Okay.

2 Mr. Beard: And he --

3 Commissioner Wilkerson: I understand.

4 Mr. Beard: -- he amended that --

5 Commissioner Wilkerson: I understand.

6 Mr. Beard: -- just on his last
7 pre-hearing brief.

8 Commissioner Wilkerson: I understand.

9 That's why I was going there. I -- I know
10 it's scary --

11 Mr. Beard: Again, I -- with all due
12 respect --

13 Commissioner Wilkerson: -- I'm reading
14 it.

15 Mr. Beard: -- I mean, it's the constant
16 I did something but it's okay if he does
17 something; he's done it all day long today.

18 Commissioner Wilkerson: It's fine.
19 I've got to make the decision, then you all
20 can go before the next group and then you all
21 can decide who wants to carry it to -- to the
22 Court of Appeals; I'm fine with that.

23 Q. Sir, one of the questions on this questionnaire
24 is, number 26, are you presently being treated for any
25 condition --

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Mr. Beard: Commissioner --

Q. -- that may inhibit your ability to work.

Mr. Beard: -- and just -- I -- I just -- the only reason I'm doing this is because we're going to keep going all night long.

Commissioner Wilkerson: You are.

Mr. Beard: I only asked him about the declaration portion, that's it. We've been through the other stuff earlier.

Commissioner Wilkerson: Yes.

Mr. Beard: Stephen is now reopening or trying to reopen beyond that and I object to that. I don't think we just to keep going on, and on, and on.

Commissioner Wilkerson: No.

Mr. Beard: And I object.

Commissioner Wilkerson: I understand. We just -- we need to wrap it up.

Mr. Samuels: I'm wrapped up, Your Honor.

Commissioner Wilkerson: As long as -- yes -- as long as there's nothing else specifically to the last questions that were asked.

Mr. Beard: No further questions. No

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further witnesses from the Defense. The Defense withdraws its motion to depose or reconvene the deposition --

Commissioner Wilkerson: I understand.

Mr. Beard: -- of Dr. Boyd.

Commissioner Wilkerson: Okay. And your position is on that?

Mr. Samuels: My position is that we should be allowed to reconvene the deposition based on the evidence presented today.

Commissioner Wilkerson: Even though before we started you didn't want to take that?

Mr. Samuels: That is correct, Your Honor.

Commissioner Wilkerson: You did one live yesterday?

Mr. Samuels: That is correct, Your Honor.

Commissioner Wilkerson: Because you wanted the hearing to take place. And I said after the hearing I would decide if I need Dr. Boyd's deposition taken to determine -- I never said what I needed to determine -- but I always wait and see what has taken place

1 today to see if I need it. I don't need it.
2 So, I would say, I'm not going to allow it to
3 be taken at this point in time. I'll let you
4 all argue can you withdraw? I don't think
5 you did. Can you change your position? I'll
6 let somebody else decide that. That will be
7 a great Supreme Court action. Because if
8 that's the case there's no need to prepare
9 APA's and opinions; just come in here and
10 argue at the end what you want. So -- but I
11 understand clearly. This concludes our
12 hearing. Let me meet with the attorneys,
13 briefly, because I've got to be gone in
14 fifteen (15) minutes. So, I thank everybody
15 for being here. I appreciate it.

16 (THERE BEING NO FURTHER QUESTIONS OR DISCUSSION, THE
17 HEARING CONCLUDED AT 4:40 P.M.)
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Isaac Brailey, vs. Michelin;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 435 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

witness my hand and seal this 5th Day of May, 2018.

Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1708221

Isaac Brailey,)
Claimant,)
v.)
Michelin,)
Employer,)
and)
Safety National Casualty)
Corporation,)
Carrier/Defendants.)

COPY

FULL COMMISSION HEARING

Monday, October 22, 2018
1:29 p.m. - 1:54 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, T. Scott Beck and Gene McCaskill, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 22nd day of October, 2018, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



1 **CALL TO ORDER:**

2 **COURT REPORTER:** Today is Monday October 22nd, 2018.
3 This is South Carolina Workers' Compensation
4 Case Number 1708221. This is the case of Isaac
5 Brailey, claimant versus Michelin, employer and
6 Safety National Casualty Corporation, carrier.
7 The appellant is the claimant represented by
8 Stephen B. Samuels. The respondent is
9 represented by Grady L. Beard. Each side is
10 allowed 10 minutes for oral argument and the
11 appellant three minutes in reply. You are
12 requested to argue the grounds of exception and
13 stay within the record.

14 **COMMISSIONER BECK:** Now prior go going on the record
15 there was a discussion off the record regarding
16 Mr. Beard's prior representation of me in a
17 matter 22 years ago. Mr. Samuels, it's my
18 understanding you've had an opportunity to
19 contemplate whether or not you'll ask for a
20 recusal or not. You've chosen to proceed with
21 me on the panel, sir. Correct?

22 **MR. SAMUELS:** That is correct, Your Honor.

23 **COMMISSIONER BECK:** All right. Mr. Samuels.

24 **ARGUMENT BY MR. SAMUELS:**

25 **MR. SAMUELS:** May it please the Commission. I



1 represent Isaac Brailey in this appeal to the
2 Single Commissioner. There were primarily
3 three issues on appeal. This is a denied case.
4 The Single Commissioner found quote, I find the
5 claimant was unable to return to work after
6 June 24th, 2017 due to a separate incident.
7 That finding, Your Honor, refers to the June
8 24th work injury that's pled in this case.
9 Point being that finding confirms that there
10 was an accident on that date that did arise out
11 of the course of employment. So in fact with
12 that finding with the evidence presented, Mr.
13 Brailey did prove his prima facie case of
14 proving the work related accident. What really
15 happened here is that the Single Commissioner
16 denied the case under two affirmative defenses
17 pled by the defendants specifically under the
18 Cooper and Capers cases. And we would contend
19 that they did not meet their burden of proof to
20 prove those affirmative defenses and that is
21 the core of this appeal. To give Your Honors
22 some sense of the background facts, 20 years
23 ago when Bill Clinton was President of the
24 United States it was a different world Isaac
25 Brailey had a lumbar and thoracic sprain while



1 working for Richtex Bricks. He was -- saw the
2 company doctor twice, he was out of work for
3 two weeks and five days and he clinchered that
4 case for a nuisance value of \$2,500. For the
5 next 20 years Mr. Brailey worked, 15 years of
6 which he spent at Westinghouse and he had no
7 back problems what so ever. He received no
8 treatment for any back pain or back injuries.
9 He was laid off from Westinghouse after 15
10 years there and went to apply at Michelin, the
11 company he hoped to retire with. He was given
12 the standard questionnaire and he was asked in
13 March of 2017, do you have problems with or
14 have you ever had medical attention for the
15 following, back injury, headache or pain or
16 have you ever experienced a medical problem
17 that would affect your ability to work? We
18 acknowledged he checked no to those questions.
19 That is the only evidence about that issue.
20 There is no medical record of a physical exam,
21 no statement from a company doctor, nothing.
22 Just simply the fact that he signed the
23 questionnaire where he did not -- admittedly
24 did not disclose that 20 years before he'd had
25 a minor back injury that had affected his work



1 for two and a half weeks. He started working
2 for Michelin and in June -- June 11th, 2017 he
3 was experiencing back pain. He talked to his
4 co-workers and they said, well, you know, it's
5 a new job, this is hard physical work, you
6 should expect this. And then he went to urgent
7 care on June 11, 2017 on his own. Did not
8 claim it under Michelin workers' comp. He
9 reported low back pain from heavy lifting at
10 work with no radiation. He was given some
11 medication, released to work full duty no
12 restrictions. June 13th, 2017 he goes back to
13 -- this time to his family doctor, essentially
14 the same thing. New job at Michelin, doc says,
15 likely strained muscles due to heavier work
16 load at job, no restrictions, no radiation,
17 nothing of significance. On June 24th, 2017
18 early hours Saturday morning he is working, he
19 is stretching rubber and he now has what he
20 feels is an injury, feels sudden pain. He
21 reports it to his supervisor, medical is closed
22 at that point in time so he went, after he
23 left, to the ER. Through texts and
24 communications he had with the plant nurse and
25 supervisors at that time. This time the doctor



1 at the emergency room was concerned, put him
2 under work restrictions, referred him to a
3 neurosurgeon at Lexington Brain and Spine. He
4 was asked to come back in to see Dr. Izard, the
5 company doctor, on June 26th, 2017. Dr. Izard
6 frankly gave him some pretty highly
7 inappropriate recommendations. Told him not to
8 take the medication he'd been prescribed, told
9 him not to go to the neurosurgeon and told him
10 that he had a urinary tract infection. Perhaps
11 not surprisingly his inappropriate
12 recommendations created some conflict between
13 Michelin management and Mr. Brailey. In any
14 case he went on and followed up, got an
15 appointment with a neurosurgeon, went back to
16 the emergency room and saw Dr. Scott Boyd at
17 Lexington Brain and Spine where he'd been
18 referred. He had an MRI, which showed a
19 herniated disc, he was not presenting with
20 radiculopathy, in fact he presented to Dr.
21 Izard with radiculopathy even though Dr. Izard
22 never documented it, but it is documented in
23 the hand-written pain diagram. And this was a
24 new symptom that began June 24th, 2017 and
25 that's what accounts for the finding with



1 accident and causation in this case. And Dr.
2 Boyd was extensively deposed and he stuck by
3 his opinion that there was an incident on June
4 24th, 2017, that to a reasonable degree of
5 medical certainty was in injury that lead to
6 the need for surgery. So we move forward, the
7 case is tried. As I said, I believe the
8 finding from the Single Commissioner confirms
9 that there was an injury by accident and that's
10 proven by the medical evidence. The question
11 is did the defendants present sufficient
12 evidence to prove their affirmative defenses?
13 Now the Cooper case has three elements.
14 Employee must knowingly and willfully make a
15 false representation as to his physical
16 condition, the employer must rely upon the
17 false representation and it must have been a
18 substantial factor in the hiring, and there
19 must be a causal connection between the false
20 representation and the injury. So objectively
21 acknowledge Mr. Brailey did not disclose his
22 back injury from 20 years before. I would
23 suggest quite frankly that that having had such
24 a minor incident and no problems for 20 years
25 tends to show that this was not a knowing and



1 willful misrepresentation but I understand that
2 is something that's up for y'all to decide. I
3 think the significance here is there's no proof
4 of reliance. The safety manager testified just
5 generically that company and its doctor are not
6 able to investigate the extent of the injury,
7 and it's impossible for plant doctors to
8 conduct investigations and examinations of the
9 employee. But they never produced documents of
10 a physical examination, they never produced
11 evidence of clearance from work, they never
12 presented the person who actually hired or
13 interviewed Mr. Brailey. So to say that this
14 was a significant or substantial factor in
15 hiring, there's no proof of that. This is
16 merely an allegation where they want to paint
17 this guy as a bad guy because they got a bad
18 answer on a questionnaire. And, you know, this
19 is not a minor thing. You've got to present
20 evidence to prove this defense. And the second
21 thing that they cannot prove is a causal
22 connection because you've got to prove it by
23 medical evidence. You can't simply say, well
24 he didn't disclose this on his examination, now
25 he's got an injury. Well, you know, there is



1 no evidence to prove causal connection and in
2 fact when you think that Mr. Brailey saw two
3 doctors, June 11th and June 13th, who cleared
4 him to return to work without restrictions, he
5 was cleared. You cannot say that there is
6 evidence to show that there's any causal
7 connection between what happened 20 years ago,
8 not when he's cleared by two doctors who know
9 he's having back pain. There's no evidence to
10 support this defense and for that reason should
11 be reversed. The other defense the Single
12 Commissioner found is one I've seen raised many
13 times but never seen proven in any workers'
14 compensation case in my 20 years in practice.
15 That is the Capers defense. Capers, if Your
16 Honors recall, was a dishwasher who was
17 allergic to dish soap. He got contact
18 dermatitis, he filed a workers' compensation
19 claim because of this, claimed he was
20 permanently and totally disabled. That claim
21 ended and sometime thereafter he went back with
22 a new employer, developed the exact same
23 condition as he knew he would because he was
24 allergic to dish soap. That is deemed not to
25 be an accident because you have certainty that



1 if you expose yourself to dish soap it is going
2 to trigger your allergy. So ---

3 **COMMISSIONER BECK:** Finish your thought.

4 **MR. SAMUELS:** Thank you. Merely because Mr. Brailey
5 had a back sprain 20 years ago, there is no way
6 that other than speculation one can say that he
7 knew with certainty that he would have
8 developed a herniated disc working at Michelin.
9 Therefore Capers cannot be proven. Thank you.

10 **COMMISSIONER BECK:** Mr. Beard.

11 **ARGUMENT BY MR. BEARD:**

12 **MR. BEARD:** Thank you, Commissioners. It's always
13 amazing when you go to these hearings and we
14 come in here and argue to the Full Commission
15 how it always feels like we're all in a
16 different room and we were all in a different
17 area. Stephen said on June the 13th, '17, 11
18 days before the date of accident alleged in
19 this case, he had gone to his family doctor and
20 there was nothing of significance other than a
21 lumbar strain. What he didn't say is, read the
22 medical record, it says his client was having
23 10 out of 10 pain. When we deposed Dr. Boyd,
24 Dr. Boyd was asked, what does 10 out of 10 pain
25 mean, Dr. Boyd? This would have been 11 days



1 before this alleged accident. Dr. Boyd said,
2 that means you're in the worst pain that you
3 could ever possibly be in according to the
4 scales that we use to measure that. That was
5 the claimant's statement to his personal family
6 doctor of which he did not notify Michelin. So
7 Stephen laid the background out pretty well
8 with regards to what happened in this case.
9 What he left out were some pretty important
10 facts. He left out that his client denied any
11 kind of preexisting back problems on his Form
12 50, his client denied any preexisting back
13 problems on his application to come to work for
14 us where the specific questions are asked, have
15 you ever had or do you have back pain, ever,
16 any kind of back pain in your life? No. Have
17 you ever had back pain that kept you from
18 working or put you out of work? Answer, no.
19 Well during the course of the discovery in the
20 case he said he worked at Westinghouse after he
21 worked at this place in 1997, Richtex Bricks.
22 We didn't know anything about Richtex Bricks
23 because he didn't tell us about it during
24 discovery. We found out about it when we came
25 over here for hearing number one that didn't go



1 forward because we found out there was a prior
2 workers' comp claim. So we got that
3 information and found out he did have a prior
4 workers' comp claim, did have a settlement. It
5 was a denied claim as well and in a minute I'm
6 gonna tell you how it's almost identical to
7 what we're here for now. So we get this
8 information, we find out about this prior back
9 claim, we get Westinghouse's personnel file.
10 Well they had a lot better questions on there
11 than Michelin did, I'll grant that. They asked
12 him point blank, you ever settle a workers'
13 comp case, ever had a workers' comp case, ever
14 had a back -- this is just a couple of years
15 after he left the job at Richtex Bricks.
16 Course he answered, no, no, no, no all the way
17 down the road and he lied to them as well. Now
18 his job at Westinghouse admittedly was not
19 heavy duty work. He admitted in his deposition
20 it was more sedentary type work, less than
21 anything he was doing at Michelin or had done
22 at Richtex Bricks. But he shows a history in
23 his applications of being an untruthful person.
24 He admitted in the hearing eventually on cross-
25 examination that he lied to everybody, he



1 acknowledged that. He said, yes I lied. I
2 lied on my application. What he didn't do was
3 initially he said, I didn't lie when Stephen
4 asked him questions, and finally under cross-
5 examination he did -- he was admitting of not
6 being truthful about these things. The
7 importance of all the facts as they were laid
8 out are this, the Commissioner found that this
9 gentleman didn't meet his burden of proof that
10 he got hurt on June the 24th. Not -- the
11 Commissioner's finding says there was an
12 incident. There's no doubt he claims an
13 incident. There's no doubt about that. We
14 don't dispute that he said that later after he
15 went to a doctor and came back and called some
16 folks on that particular day. Of course he
17 violated protocol when he did that. This
18 gentleman worked for Michelin, he was still on
19 probationary status when this supposedly
20 happened. He worked for us for less than two
21 months when all of this happened. The first
22 three weeks was nothing but orientation sitting
23 in a classroom learning how to do it. He then
24 goes on June the 11th, June 13th before all of
25 this complaining of back problems which if you



1 read the medical records he said, I think it's
2 because I'm doing some work, I'm doing manual
3 labor, I'm not used to it. My back's sore.
4 And he says that. But then he tells his
5 doctor, I've got 10 out of 10 pain doing this
6 stuff. Not one single time has he ever come
7 back and tell a single individual at Michelin,
8 I have 10 out of 10 pain, I think it's being
9 caused by the job that I'm doing for you, so
10 I'm just gonna come on back and keep on doing
11 that 10 out of 10 pain job until something like
12 this ultimately happens and we have to deal
13 with denying a workers' comp claim because he
14 has not been truthful, he has fabricated things
15 throughout all of his applications and done
16 this type of information. We got lucky after
17 we got the report from the Commission about
18 Richtex Bricks, so we subpoenaed some records.
19 And we end up getting some medical records back
20 from this Richtex Bricks case. And I guess
21 there's no other way to do it but just to read
22 these records from Dr. -- says Dr. Norris in
23 1997. He saw him a couple of times. But what
24 he says is, patient will be placed on orvel,
25 Flexeril, heat and stretching. He is



1 instructed on no heavy lifting times one week
2 and he is to return to clinic in one week. I
3 also discussed with this gentleman in no
4 uncertain terms if he has been having back pain
5 for three weeks, the entire time he has been
6 working for Richtex, if he does not respond
7 very well and very fast to some conservative
8 treatment it might be in his and Richtex's best
9 interest for him to find new employment. Comes
10 back a week later and sees the doctor, still,
11 of course, having severe pain, being in all
12 types of pain. He states he is having
13 difficulty sleeping at times all though at the
14 same time he tells me that the Flexeril knocks
15 him out at night. I do not have the records
16 from the Doctors Care, and he is unsure exactly
17 what the diagnosis was or what he was told. He
18 mentions that he knows something is wrong with
19 his back and he wants to go to a back
20 specialist. It seems today that Mr. Brailey
21 and I have a very difficult time communicating
22 and I certainly feel that with him having only
23 been an employee three weeks at Richtex and
24 mentioning a back specialist after he had been
25 improving on the therapy I had recommended, he



1 may very well be in a litigation thought
2 process. I believe it certainly would be
3 prudent for both myself and Richtex Bricks to
4 send him to an orthopedic surgeon. Then he
5 says, he reports the pain in the middle of his
6 back also down the low back. Diagnosed with
7 lumbar and thoracic problems. It seems he
8 wants to be evaluated by a back specialist. I
9 feel like Dr. Bethea at Moore Clinic would
10 certainly put this to rest more expediently,
11 however as stated above I don't feel that
12 Richtex nor myself need to undertake any
13 liability with this young man who, in my
14 opinion, is unable to perform the job required
15 at Richtex and he was even told this the very
16 first day. I restated that today. I will
17 place him on no heavy lifting until he sees a
18 surgeon. He never saw a surgeon, he never did
19 what he was supposed to do. He was terminated
20 from this job by general employment release
21 along with a clincher because he could not
22 physically perform heavy manual labor, which is
23 what he applied to do with my client. So the
24 Commissioner found, because Dr. Boyd said that
25 he did not stand by his questionnaire, and of



1 course there's no way the two of us can stand
2 here and read to you 50 something pages of a
3 deposition. But what he did say was, I can't
4 tell you whether he got hurt on June the 24th
5 or not, which is what he's claiming because
6 you've presented to me history that's not what
7 I was told. In fact he thought it was his
8 impression there were no problems prior to June
9 the 24th. Not only did he not know about June
10 the 11th or June the 13th just a couple of
11 weeks before the alleged date of accident, he
12 didn't know about this prior 24 years although
13 he finally read something in his record where
14 the claimant had said something about maybe 25
15 years ago I had some problem that went away
16 with no medical treatment whatsoever. Also an
17 untruth that he told to Dr. Boyd. So Dr. Boyd
18 did not stand by the date of accident. He
19 stood by all the things he thought needed to be
20 treated. He said that has nothing to do with
21 causation. He said I -- this is how I would
22 treat this person regardless of the cause of
23 his problems, but he did not stand by the date
24 of accident on causation. We have met every
25 single thing that is required by the McDevitt



1 and Street case assuming you even get there.
2 You don't get there unless you disagree with
3 Commissioner Wilkerson that there is an injury
4 by accident. There is no injury by accident
5 because they can't meet the date of accident
6 proof required to a reasonable degree of
7 medical certainty from a doctor. More
8 importantly the Commissioner pointed out three
9 other things. He did point out that the Cooper
10 case would have defeated this claim. We met --
11 we put up four witnesses who testify, we rely
12 on the answers. If they don't tell the truth
13 then there's nothing the doctors can do, but
14 doctors can't do examinations on something that
15 you don't tell them about. The nurse said it
16 is easy to fake a physical examination if you
17 want a job bad enough for the job. You just go
18 in and you suck it up and you suck up the pain
19 and you get the job. So we've got reliance,
20 we've got a lie and we got the medical records
21 from this doctor right here that says he cannot
22 do heavy labor work, should not ever be doing
23 heavy labor work and was supposed to go to a
24 surgeon which he never did. Capers case,
25 again, Stephen says he's never seen it happen.



1 I think I've probably seen it happen 50 times
2 in my workers' comp cases. So maybe when
3 you're on the defense side you see that a
4 little bit more. But in Capers it says that
5 when you have a condition like Capers had, and
6 he explained it do you, the gentleman who was
7 trying to wash the dishes and is allergic to
8 the dishwasher detergent. You do not have an
9 unlooked for event if you've had that kind of
10 situation in the past. So therefore it is not
11 an injury by accident. This gentleman -- it is
12 almost identical what he did at Richtex Bricks
13 and what he's now doing at Michelin except he
14 didn't lie on an application back then because
15 he didn't have to fill out one where he'd had
16 a preexisting accident.

17 **COMMISSIONER BECK:** All right. Your ---

18 **MR. BEARD:** Commissioner, also on the intentional
19 42-9-60, that wasn't addressed, but he also
20 ruled that that would have barred him for not
21 telling him about 10 out of 10 pain and going
22 forward. Thank you.

23 **COMMISSIONER BECK:** Mr. Samuels.

24 **REPLY BY MR. SAMUELS:**

25 **MR. SAMUELS:** Thank you, Commissioner. I get that



1 Mr. Beard wants to make my guy look like a bad
2 guy, I know that. That's what we see when the
3 evidence supports an injury. If you can't win
4 on the evidence then you try to paint the
5 claimant as a bad guy. I get that, I know that
6 tactic. I know that my guy struggled on cross-
7 examination. He was confused, beat up,
8 whooped, I've seen that with Mr. Beard many
9 times. He's an excellent excellent attorney at
10 cross-examining these people. But let's get a
11 few things straight. First off, they knew
12 about Richtex because Mr. Brailey testified to
13 it in his deposition at November 25th, 2017.
14 So he was forthcoming. And he did go to a
15 doctor and the comments about how and why he
16 resigned, there's no evidence to any of that.
17 Second off let's talk about Dr. Boyd's opinion.
18 Dr. Boyd's opinion -- Dr. Boyd knew about the
19 previous stuff from June, 2017. He knew about
20 those previous exhibits. They were in his
21 record. Dr. Boyd said to a reasonable degree
22 of medical certainty in a questionnaire and in
23 his deposition that this was causally related.
24 The statement that he backed away from that is
25 simply false. There are other false statements



1 in defendant's brief that I think very
2 important. For example, at page 7 of their
3 brief they say, he chose ---

4 **COMMISSIONER BARDEN:** Where are you on page 7 so we
5 can follow along?

6 **MR. SAMUELS:** I'm sorry.

7 **COMMISSIONER BARDEN:** That's okay?

8 **MR. SAMUELS:** I'm trying to get through my three
9 minutes here ---

10 **COMMISSIONER BARDEN:** I understand.

11 **MR. SAMUELS:** --- talking too fast.

12 **COMMISSIONER BARDEN:** I'm not holding you up, just
13 tell me where you are.

14 **MR. SAMUELS:** Sure.

15 **COMMISSIONER BARDEN:** On page 7.

16 **MR. SAMUELS:** On page 7, top of the first full
17 paragraph.

18 **COMMISSIONER BARDEN:** Okay.

19 **MR. SAMUELS:** They say, he chose to treat at Doctors
20 Care where he neglected to report that there's
21 a workers' compensation injury that he
22 previously met with Dr. Izard. In fact it
23 says, on the hand-written intake form he simply
24 wrote his name and signed it. But in the
25 narrative report from that they said that he



1 was seen by the company doctor at Michelin who
2 gave him no restrictions and this -- and the
3 question is, was it filed under workers'
4 compensation? He said, yes. So they are
5 misrepresenting in their brief what is in the
6 medical records and what my client did. On the
7 physical therapy intake form there's a question
8 whether it was related to a work accident. I
9 would agree that that was blank but he also
10 checked yes as to whether a workers'
11 compensation claim was filed. I would close,
12 Your Honor, by saying there's a lot of
13 arguments from counsel but there is no evidence
14 to refute Dr. Boyd's testimony and there's no
15 evidence to support any of these affirmative
16 defenses. Therefore as a matter of law they
17 have failed in their burden to prove their
18 affirmative defenses, Mr. Brailey has proved
19 his through medical evidence to a reasonable
20 degree of medical certainty. Therefore this
21 claim should be accepted and the Single
22 Commissioner's Order should be reversed. Thank
23 you.

24 (There being nothing further, the full commission
25 hearing concluded at 1:54 p.m.)

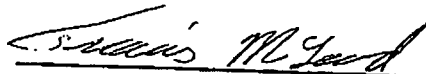


CERTIFICATE

This is to certify that the within hearing consisting of twenty three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 1, 2019.



Travis McLeod
Notary Public for South Carolina
My Commission Expires: January 3, 2027



MICHELIN NORTH AMERICA

Confidential Health Questionnaire for Post-Offer Examination

Name	Isaac D. Bradley	Emergency contact
Address		Relationship
Phone		Emergency contact phone
		Family Doctor

Do you have problems with, or have you ever had medical attention for any of the following:

This section for Employee		YES	NO	Comment
1. Eye sight, color vision or depth perception		0	0	
2. Nose, throat, ear, sinus, balance or hearing problem		0	0	
3. Headaches or migraine		0	0	
4. Breathing or lung problems, asthma, bronchitis, emphysema, lung surgery or shortness of breath.		0	0	
5. Have you ever had a heart attack or any other kind of heart, circulation, or blood pressure problems?		0	0	
6. Stomach, ulcer, digestive, or bowel problem		0	0	
7. Kidney, or bladder problem		0	0	
8. Hernia or rupture		0	0	
9. Skin rashes, eczema, or dermatitis		0	0	
10. Joint problems, e.g. shoulder, elbow, wrist, hand, finger		0	0	
11. Arthritis or recurrent joint problems, e.g. hip, knee, ankle, foot		0	0	
12. Bone fracture or disease		0	0	
13. Back injury, backache or pain		0	0	
14. Blood disorder or anemia		0	0	
15. Diabetes, thyroid or other gland problems		0	0	
16. Drug allergies, hay fever, or general allergy		0	0	
17. Emotional disorder, anxiety, depression, sleep disorder or chronic fatigue		0	0	
18. Seizures, fits, fainting spells, dizziness, sudden loss of balance, epilepsy, impaired coordination or dexterity.		0	0	
19. Are you currently taking any medication?		0	0	
20. Have you previously worked in an industry exposing you to dust, chemicals, or solvents?		0	0	High Blood Pressure Controller
21. Have you experienced a medical problem that affected your ability to perform your work?		0	0	
22. Have you been hospitalized? When? Why?		0	0	
23. List any surgical procedures you have undergone		0	0	
24. Have you smoked tobacco any time in the past 10 years?		0	0	
25. Have you ever experienced claustrophobia or panic attacks?		0	0	
26. Are you presently being treated for any condition that may inhibit your ability to work?		0	0	
27. Have you ever worn a respirator? Please describe usage.		0	0	
28. Do you wear dentures?		0	0	
29. Have you ever suffered heat stroke or illness related to a hot environment?		0	0	

Declaration and Authorization

I declare that all information contained herein is true and complete to the best of my knowledge. I understand and agree that any false, misleading or incomplete information will make me subject to disqualification from employment or subject to dismissal at any time. I hereby authorize Michelin to make any investigation it deems appropriate and expressly authorize any physician, hospital, clinic, or other person or entity Michelin may contact, to release particulars of my health, medical history, (other than genetic information) or any claim to Michelin. A photocopy of this authorization shall be as valid as the original.

Signature of Employee

Isaac D. Bradley

Date

3/20/17

NA/EP Instruction: Clearance for PIV Operators (Form 2)

Name: Isaac Briley Chorus ID: _____ Date: 1 / 1

Based on my examination, this individual is:

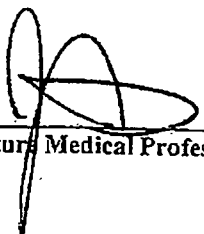
NOT MEDICALLY CLEARED to operate PIV.

MEDICALLY CLEARED to operate a PIV.

Without restrictions

With Restrictions:

Comments (ex. further proficiency demonstration needed?)


Signature: Medical Professional - RN, NP, PA, MD/DO

Date: 3/21/17

This section to be completed by SP

Medically Accommodated – Company and employee have agreed that the employee can safely perform the essential functions of the job.

SP AGREEMENT _____

EMPLOYEE AGREEMENT _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JAN 10 2020
SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2019-000556

Isaac Brailey, Employee/Claimant, Appellant,

v.

Michelin North America, Inc., (US7), Employer,
and Safety National Casualty Corp., Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Attorney for Appellant

January 10, 2020
Columbia, S.C.