

STATE OF SOUTH CAROLINA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RECEIVED

Feb 18 2022

SC Court of Appeals

4	Kyle Bagley,)	
5	Employee-Claimant,)	HEARING OF
6	vs.)	KYLE BAGLEY
7	Sun Fiber, LLC.)	SEPTEMBER 28, 2020
8	Employer)	WCC#1908703
9	and)	
10	Great American Alliance)	
11	Insurance Company,)	
12	Carrier,)	
13	Defendants)	
14	_____)	

16 The below hearing, reported by Kathryn Bostrom, Court
 17 Reporter and Notary Public in and for the State of South
 18 Carolina; pursuant to Rule 30 of the South Carolina Rules
 19 of Civil Procedure; said hearing was taken before the
 20 Honorable Gene McCaskill at the Workers' Compensation
 21 Commission, 1333 Main Street, Columbia, South Carolina,
 22 Monday, the 28th day of September, 2020, commencing at the
 23 hour of 12:27 p.m.

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APPEARANCES

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3 Representing the Claimant

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- Claimant's Exhibit No. 2 - Depo of Dr. DuPuy
- Claimant's Exhibit No. 3 - Depo of Dr. Brown
- Claimant's Exhibit No. 4 - Notes/records from Insurance Co.
- Employer's Exhibit No. 1 - Depo of Dr. Gunter
- Employer's Exhibit No. 2 - Depo of Mr. Bagley
- Employer's Exhibit No. 3 - Video

* * * * *

Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- [ph] Denotes phonetically written
- [sic] Written as said

P-R-O-C-E-E-D-I-N-G-S

1
2 COMMISSIONER MCCASKILL: Today's date is September 28,
3 2020. This is Workers' Compensation Commission
4 file number 1908703. This is th case of Kyle R.
5 Bagley versus Sun Fiber, LLC. The carrier is
6 Great American Alliance Insurance Company. Our
7 claimant is represented today by Bryan N. Sanchez
8 and the employer/carrier are represented today by
9 C. Barrett Burley. The date of the accident is
10 June 14, 2019. And we have an average weekly wage
11 of -- hold on here it is. And this is what I
12 wrote down. \$877.79 with a corresponding
13 compensation rate of 585.20. Since I wrote that
14 down and I don't remember who I got that from,
15 you have issue with that if I got it wrong?

16 MR. SANCHEZ: No, no, Your Honor.

17 COMMISSIONER McCASKILL : You stipulate that's correct?

18 MR. SANCHEZ: We both stipulate that that's correct.

19 COMMISSIONER MCCASKILL: Perfect. Do you stipulate that
20 that's correct?

21 MR. BURLEY: That's correct.

22 COMMISSIONER MCCASKILL: All right, just want to make
23 sure. Never hurts to take a second to get it
24 right. All right, now wait a minute. Let's go
25 back to what I'm reading from. Here we go. All

1 right, are there any objections to jurisdiction,
2 venue, APA submissions or any other item?

3 MR. SANCHEZ: None from the claimant, Your Honor.

4 MR. BURLEY: None from the defendants. Commissioner.

5 COMMISSIONER MCCASKILL: All right. Commission file
6 becomes part of the record with the exception of
7 self-serving declarations and unstipulated
8 medical reports. We're here today, Mr. Sanchez,
9 pursuant to a Form 50 you filed on behalf of your
10 client. If you would please, sir, place your
11 client's position on the record.

12 MR. SANCHEZ: Thank you Your Honor. My client was
13 working for Sun Fiber back on June 14, 2019 when
14 a large, 600, 700 pound bale of fiber hit him on
15 the top of his head as he was bent over doing
16 some welding at work.

17 COMMISSIONER MCCASKILL: Mr. Sanchez, I forgot one
18 thing. We talked about this in the pre-hearing. I
19 made you aware that when I was Senior Executive
20 Assistant at the Attorney General's Office I
21 participated in Mr. Barrett's -- Mr. Burley's
22 hiring as a student law clerk. It was my
23 understanding at that time you had no objection.
24 Is that still your position?

25 MR. SANCHEZ: Correct Your Honor. In speaking with my

1 client he stated that he did not have an
2 objection.

3 COMMISSIONER MCCASKILL: All right, very good. Just
4 wanted to make sure we captured that on the
5 record. Sorry to interrupt you. Please proceed.

6 MR. SANCHEZ: Okay. As I indicated, back on June 14th
7 he was bending doing some welding when a large
8 600 to 700 pound bale of fiber came down the
9 line, so to speak, and hit him as he was bent
10 down in the top of his head. As a result, it
11 knocked him back some number of feet. He was
12 initially seen at the Chester Regional Medical
13 Center that Monday, the 17th. And then he was
14 seen by a chiropractor for one day, the 20th. And
15 after that Workers' Comp finally sent him to
16 Riverview, and which he was seen there for a
17 little while and was referred to an orthopedic, I
18 mean a neurosurgeon, Midlands Ortho. Dr. Brown.
19 Dr. Brown saw him two times and my client is
20 going to testify about the evaluation and, or
21 examinations or lack thereof that he did for him.
22 He gave him a couple injections to his occipital
23 nerve in his head and top of his spine areas. On
24 June 11 had ordered some physical therapy for my
25 client and then said that my client was released

1 from a neurosurgical standpoint and to continue
2 receiving medical treatment for his injuries from
3 a non-neurosurgical provider. My client was seen
4 by Your Life Wellness Physical Therapy for about
5 three months or so, upon which it was cancelled
6 by Workers' Compensation right around the time of
7 his deposition on September 30th of last year. He
8 was then seen by Carolina Neurosurgery and Spine,
9 Dr. Jarell, who wrote him back into work pending
10 an ortho appointment, date to be determined. He
11 was then seen by the ortho, Dr. DuPuy, who wrote
12 him out of work and indicated that he had
13 contractures and a left foot drop as a result of
14 this head injury and that he needed to be seen by
15 a neurologist. Dr. Rao was the neurologist who
16 saw him two times. My client has not been able to
17 get additional treatment or diagnostics with Dr.
18 Rao due to financial limitations. Dr. Rao has
19 indicated that his EEG indicated some frontal
20 slowing and that he needed a further 96-hour EEG
21 in the brain, comprehensive head injury program
22 to further help treat and diagnose the extent of
23 what is going on with this impact. Defendants had
24 sent my client to see Dr. Gunter initially for a
25 lumbar spine evaluation, paying about \$2500 or so

1 for that evaluation, and then eventually sent him
2 for a cervical and head evaluation paying that
3 same amount of money. They also had sent him to
4 Dr. Paz, who is a child psychologist, and Dr. Paz
5 indicated that he had some difficulties adjusting
6 to his new body, his new him, and that he needed
7 some psych therapy for him and his family to help
8 him get through this and treat that. Dr. Gunter
9 has essentially thrown up his hands saying hey, I
10 don't know what's going on. This is for you and
11 the judge to determine, you know. Dr. Gunter, you
12 know, did indicate that he had some appositional
13 tone issues about his left upper extremity and
14 left lower extremity. He just could not opine as
15 to the etiology of such, upon which Dr. DuPuy had
16 added the fact that it did come from this and Dr.
17 Rao indicated that it could come from this. He
18 needs to examine him further to diagnose the
19 extent of this issue that he is having. My client
20 initially tried to report back to work around
21 September, and around that time his job indicated
22 that he could not come with his assisted device
23 into work. He tried to report that day and he was
24 walked out by a supervisor and he hasn't been
25 able to work since due to these out of work

1 notes. And, you know, unfortunately my client is
2 here today with his cane, with his left brace and
3 his left foot device to help straighten out the
4 curvature that he has in his hands and his feet.
5 You know, he's trying to get the treatment he
6 can, but due to lack of finances we're here today
7 asking the Court to further provide treatment for
8 his injuries.

9 COMMISSIONER MCCASKILL: Okay. That's it?

10 MR. SANCHEZ: Yes, Your Honor.

11 COMMISSIONER MCCASKILL: All right, very good. All
12 right Mr. Burley.

13 MR. BURLEY: Thank you Commissioner. This is an
14 admitted injury from June 14, 2019. We contend
15 that it is a, albeit he did get hit with a 650
16 pound bale as he was welding on an assembly line,
17 that he has reached maximum medical improvement
18 as of July 11, 2019 per Dr. Brown. Some context,
19 we went through this in depth in the pre-trial
20 conference. He was originally seen three days
21 after the accident, which is the first time he
22 had sought medical care. He continued to work the
23 remainder of his shift. He was initially
24 diagnosed with a contusion of the lower back. For
25 Dr. Brown's part he released him with maximum

1 medical improvement on July 11, 2019 with a five
2 percent impairment rating to the neck for non-
3 verifiable radiculopathy, zero percent to the
4 lumbar and zero percent to the thoracic spine. No
5 work restrictions were provided at that time. We
6 take the position that that still is the case.
7 There has been no treatment or evaluation that
8 has happened since then that would credibly
9 differ from Dr. Brown's initial report, and that
10 is for impairment, MMI and work restriction.
11 Despite the fact that Dr. Brown does say there's
12 some occupational treatment needed for what he
13 called muscle tension, we will provide that a)
14 has been developed by further evaluations, this
15 is for a contraction of the left hand which is
16 for all accounts not related to this injury. But
17 he did receive physical therapy despite
18 claimant's allegations that he didn't, from July
19 22, 2019 through September 23, 2019. And that was
20 per Brown's orders and paid for by my client.
21 Again, point out that all diagnostic testing has
22 been done to date, which includes multiple CT
23 scans and MRIs, are all negative. There's not one
24 that has come back abnormal. He has seen Dr.
25 DuPuy and Dr. Rao. Those are both claimant's

1 experts and both of those doctors confirm the
2 same thing, which is there's nothing, at this
3 point, surgically or structurally wrong with the
4 neck or the back. They have essentially said he
5 has left hand contracture due to a head injury.
6 Dr. DuPuy admits he's an orthopedic specialist
7 and not qualified to give an opinion on the head.
8 Dr. Rao, as we testified or we discussed at the
9 pre-trial conference, has been charged criminally
10 with fraud by the United States government.
11 Therefore, we would maintain that the best
12 opinion would be that of Dr. Brown, which was
13 confirmed later by Dr. Gunter in July of 2020.
14 Therefore, we take the position that MMI is July
15 11, 2019 per Dr. Brown, confirmed by Dr. Gunter
16 later and that there is no verifiable impairment
17 related to his work injury.

18 COMMISSIONER MCCASKILL: Anything else Mr. Sanchez?

19 MR. SANCHEZ: I just want to re-note for the record my
20 objection to any allegations about Dr. Rao's
21 prior settlement with the federal government. I
22 noted that in the record of the deposition while
23 it was being taken. I just wanted to re-emphasize
24 that.

25 COMMISSIONER MCCASKILL: And it's so noted here. Thank

1 you. Anything else, Mr. Sanchez?

2 MR. SANCHEZ: No, Your Honor.

3 COMMISSIONER MCCASKILL: Anything else Mr. Burley?

4 MR. BURLEY: Nothing further from the defense,
5 Commissioner.

6 COMMISSIONER MCCASKILL: All right Mr. Sanchez, you
7 want to call your first witness?

8 MR. SANCHEZ: Yes. I'm going to call Jessica Bagley.

9 COMMISSIONER MCCASKILL: All right.

10 MR. SANCHEZ: Kyle Bagley's wife.

11 COMMISSIONER MCCASKILL: All right, you can have your
12 other witness wait outside while she testifies.

13 MR. SANCHEZ: That's not a witness.

14 COMMISSIONER MCCASKILL: Okay. You got the other one
15 sequestered?

16 MR. SANCHEZ: Correct.

17 COMMISSIONER MCCASKILL: Perfect. You're ahead of the
18 game, Mr. Sanchez. That's a good thing. Good
19 morning, ma'am.

20 MS. BAGLEY: Good morning.

21 COMMISSIONER MCCASKILL: Have a seat right there,
22 please. I've got two requests for you.

23 MS. BAGLEY: Yes, sir.

24 COMMISSIONER MCCASKILL: First one is, speak up. There
25 are no microphones out there, and these are not

1 even on. Okay. So speak up. It's imperative that
2 the attorneys hear you, this young lady's who is
3 making record has to hear you and I have to hear
4 you. And I'm old, so speak up. Second thing, if
5 you're asked a yes or no question, please answer
6 with a yes, a verbal yes, or a verbal no. If you
7 shake or nod your head, and I do that all the
8 time, but if you do that here, she actually has
9 to put that in the record, that's going to slow
10 her down. And if you answer with anything other
11 than yes or no, like uh-huh or huh-uh, those are
12 just too easily misunderstood. If you do that,
13 one of the attorneys or I almost assuredly will
14 say is that a yes or is that a no. Don't let that
15 throw you, we're just trying to get clarify for
16 us here today and clarity in the record for
17 anyone who might read it in the future. All
18 right?

19 MS. BAGLEY: Yes, sir.

20 COMMISSIONER MCCASKILL: All right, please raise your
21 right hand.

22 Jessica Marie Bagley, being duly sworn and
23 cautioned to speak the truth, the whole truth and
24 nothing but the truth, testifies as follows:

25 COMMISSIONER MCCASKILL: All right Mr. Sanchez, your

1 witness.

2 DIRECT EXAMINATION

3 BY MR. SANCHEZ:

4 Q. Ms. Bagley, if you could state your full name for the
5 record please?

6 A. Jessica Marie Bagley.

7 Q. And are you married to Kyle Bagley, the claimant in
8 this matter?

9 A. Yes.

10 Q. How long have ya'll been married?

11 A. It'll be 11 years October 24th.

12 Q. And we're today for an injury that occurred June 14,
13 2019, are you familiar with that date and that injury?

14 A. Yes, sir.

15 Q. Okay. And I believe that date was a Friday, is that
16 your understanding?

17 A. Yes, sir.

18 Q. And I believe that Sunday was Father's Day. Do you
19 recall that weekend?

20 A. Yes.

21 Q. Okay. What did you observe my client doing over that
22 weekend?

23 A. He didn't do anything. He stayed in the bed the whole
24 weekend.

25 Q. And ever since his injury, have you observed my client

1 being physically able to do certain things that he
2 used to be able to do?

3 A. No, sir. He's got a lot of limitations since then.
4 He's not able to help around the house really. He
5 requires help sometimes with certain things and
6 personal grooming. He can't do anything with his kids
7 as far as physical activities. Walking, he goes
8 walking, which is required with his therapy. He can't
9 do any work. He can't help with the laundry. He
10 doesn't help with grocery shopping. A lot of
11 limitations now since his accident.

12 COMMISSIONER MCCASKILL: Ms. Bagley, how about pull
13 your mask up --

14 MS. BAGLEY: I'm sorry.

15 COMMISSIONER MCCASKILL: -- Over your nose please,
16 ma'am. Thank you.

17 CONTINUED BY MR, SANCHEZ:

18 Q. All right, and did you observe him having any of those
19 limitations you just mentioned before this date, June
20 14, 2019?

21 A. No, sir.

22 Q. As far as his mental well-being after this incident on
23 June 14, 2019, has it changed substantially from
24 anything before this incident?

25 A. Yes, sir, it has.

1 Q. And I guess another question that I have for you, have
2 you realized that Mr. Bagley has been consistent in
3 his complaints that he's had ever since this incident
4 of June 14, 2019?

5 MR. BURLEY: Object to the form. It's leading, for one.

6 COMMISSIONER MCCASKILL: How about rephrase that for me
7 please.

8 MR. BURLEY: Thank you, Your Honor.

9 Q. Have you noticed anything about Mr. Bagley and the way
10 he's complained about problems as being the same
11 complaints or are they different?

12 A. The same. Headaches, he shakes a lot at nighttime when
13 he's sleeping. He doesn't get a whole lot of sleep.
14 Walking on the one leg, it just, it's been consistent
15 since day one. Nothing different.

16 Q. And I believe you were present when Mr. Bagley
17 attended an appointment with Dr. Brown, did you attend
18 an appointment with him and Dr. Brown?

19 A. I took him to the first appointment.

20 Q. Okay. So, I believe the first appointment would be,
21 the record will reflect, July 5, 2019. Did you observe
22 Dr. Brown physically examining my client?

23 A. Looking at him and going over the MRIs or the CT
24 scans, which I don't remember which one exactly it
25 was, explaining those to us going down that. But to

1 physically exam, no, sir.

2 Q. Okay, so did you observe Dr. Brown touching his hands
3 and the strength of his hands or his legs?

4 A. No, sir. The only thing that he did was try to ask
5 Kyle to push, he was like can you stick both of your
6 hands out for me, and at that time his left arm was
7 drawn up. He couldn't even pull that down by himself.
8 And would try to just tell him to push back as, you
9 know as much as he could without it hurting with his
10 arms. And I believe he tried to get him to do it with
11 his feet, like he just turned his feet up, Dr. Brown
12 did, and asked him could he push with his feet on
13 there as hard as he could. But other than that, that
14 was it.

15 Q. Okay. And did Kyle have any issues doing that?

16 A. Well with his arm for one thing, he cried when he did
17 that. And his reply, Dr. Brown's reply to that was --
18 MR. BURLEY: Objection to what Dr. Brown said.

19 COMMISSIONER MCCASKILL: Yeah you can't tell me what he
20 said.

21 MS. BAGLEY: I'm sorry.

22 COMMISSIONER MCCASKILL: That's all right.

23 CONTINUED BY MR. SANCHEZ:

24 Q. Okay so Ms. Bagley, you observed some issues?

25 A. He, yeah he was hurting. Yes, sir.

1 Q. All right. No more questions.

2 COMMISSIONER MCCASKILL: All right. Mr. Burley.

3 CROSS-EXAMINATION

4 BY MR. BURLEY:

5 Q. Thank you. Ms. Bagley I'll be brief. You are not a
6 doctor, is that correct?

7 A. No, sir.

8 Q. Okay. And the only thing that you testified to here
9 today are about changes that you've observed with your
10 husband, is that correct?

11 A. Yes.

12 Q. Okay so you don't know whether those issues are
13 medically verifiable, do you?

14 A. No.

15 Q. You can just tell us that you see him and observe what
16 you see, correct?

17 A. Yes.

18 Q. And your testimony's limited to that, isn't it?

19 A. Yes.

20 Q. Do you and your husband share finances?

21 A. Not now.

22 Q. Okay. But you live together?

23 A. Yes.

24 Q. Okay. Is it fair to say anything that would
25 financially benefit him would benefit you?

1 MR. SANCHEZ: Objection.

2 COMMISSIONER MCCASKILL: Excuse me.

3 MR. SANCHEZ: Objection.

4 COMMISSIONER MCCASKILL: Sustained.

5 MR. SANCHEZ: Thank you.

6 COMMISSIONER MCCASKILL: We're not going there.

7 CONTINUED BY MR. BURLEY:

8 Q. You testified earlier that he, that Dr. Brown didn't
9 do a physical exam, is that correct?

10 A. Yes.

11 Q. Okay. But then you just described, upon questioning,
12 pushing and with hands. Isn't that correct?

13 A. He asked Kyle to do that. Yes. I'm sorry. Yes.

14 Q. So that's a physical exam, is it not?

15 A. I don't understand the question.

16 Q. Asking him to physically push, that's a physical exam
17 isn't it?

18 A. Yeah, he asked him to. I didn't say he was able to.

19 Q. Okay, and he also did the same thing with the feet. Is
20 that correct?

21 A. Yes.

22 Q. You testified your husband is having, is not the same
23 from a mental standpoint. Is that correct?

24 A. Yes.

25 Q. But he's had issues prior with mental issues, isn't

1 that correct?

2 MR. SANCHEZ: Objection. I mean he just said blanket
3 statement of prior mental issues. What are we
4 speaking about specifically?

5 COMMISSIONER MCCASKILL: Let's rephrase that please.

6 CONTINUED BY MR. BURLEY:

7 Q. Okay, you testified earlier that He's having mental
8 issues now, is that correct? Mentally.

9 A. Yes.

10 Q. Okay, and he's had, my question to you is, because of
11 your testimony, isn't it true that he's had issues
12 prior to this?

13 A. Not that I'm aware of.

14 Q. Okay. So you're not aware that he treated at Lawrey's
15 Family Medicine for anxiety and depression resulting
16 in decreased activity and fatigue and muscle tension
17 about 2014 to 2018?

18 A. I mean, I don't know what he's talked to his doctor
19 about when I'm not there, so I can't answer that
20 question.

21 Q. Okay. You've been married for 11 years, correct?

22 A. Correct.

23 MR. BURLEY: Bear with me just a minute, Commissioner.

24 COMMISSIONER MCCASKILL: Take your time.

25 MR. BURLEY: Commissioner, I'm referencing Defendant's

1 page 363. Page 363.

2 MR. SANCHEZ: Did you bring me a copy?

3 MR. BURLEY: We sent you a copy.

4 MR. SANCHEZ: I'll pull it up on my phone.

5 COMMISSIONER MCCASKILL: Mr. Sanchez if you want to
6 borrow the copy from up here and look at it.

7 MR. BURLEY: I think I have an extra, Commissioner.
8 Give me just a moment.

9 COMMISSIONER MCCASKILL: That'd be fine.

10 CONTINUED BY MR. BURLEY:

11 Q. Were you married to Mr. Bagley in 2014?

12 A. Yes, sir.

13 Q. Okay. This is a report, and it's dated December 16,
14 2014. And this is Mr. Kyle R. Bagley, is that your
15 husband?

16 A. Yes, sir.

17 Q. Okay. And he was diagnosed with anxiety and
18 depression. Symptoms worse in the evening. Unable to
19 maintain relationships. Interference at work. Also
20 having trouble at work with anxiety and muscle tension
21 and palpitations. Do you recall him having those
22 issues in 2014?

23 A. Is that a yes or a no question?

24 Q. It is.

25 A. Or? I mean I really don't, I don't recall. That's --

1 Q. Okay.

2 A. I don't.

3 Q. And just briefly, he was also seen in 2000, in March
4 of 2018, and this is Defendant's page 370. Okay and
5 this is again March 13, 2018, Defendant's page 370.
6 And then on to page 371. This is what he's complaining
7 of in 2018. Increased agitation, anger, mood swings,
8 feeling down and depressed for the last six months. He
9 reports depression and stress and fatigue. Lack of
10 concentration, agitated anger spells. He states that
11 he even gets to the point where he flips out at times,
12 punching walls or throwing things. He was diagnosed,
13 again on page 372, from his doctor with major
14 depressive disorder. Were you married to Mr. Bagley
15 and living with him in 2018?

16 A. Yes, sir.

17 Q. So you don't recall him being diagnosed with major
18 depressive disorder that affected his home and work to
19 the point where he was punching things in 2018? You
20 don't recall that?

21 A. No. Like I said, I wasn't, what he discusses with his
22 doctor, if I'm not there, I don't know about that. And
23 I'm not a medical doctor, so.

24 Q. But you testified that since this injury he's become
25 all of those things, correct?

1 A. Yes.

2 Q. Angry, depressed.

3 A. Yeah, I didn't say angry.

4 Q. Okay, but depressed.

5 A. Yes.

6 Q. Okay, and that's since this injury?

7 A. Yes.

8 Q. The one we're here discussing from 2019, correct?

9 A. Yes.

10 Q. But your testimony is you didn't, haven't noticed any
11 of those issues before?

12 A. But you were asking me about documents and I'm not
13 going to testify that I knew about those documents
14 when I wasn't with him, so.

15 Q. That's not, let me clarify my question. I'm not asking
16 you about the documents. I'm asking you about, you're
17 testifying to what you observe. I'm asking did you
18 observe any of these things that your husband had,
19 that you lived with for 11 years, any of those issues
20 prior to this accident?

21 A. Not ever punching and hitting walls. Not ever, I mean
22 if he was going through things that he discussed with
23 his doctor, no sir, I did not. That's my answer to
24 that, no.

25 Q. Did you observe any of those behaviors prior to his

1 2019 injury at Sun Fiber?

2 A. Maybe stress from work sometimes.

3 Q. But nothing like major depressive disorder?

4 A. No, sir.

5 MR. BURLEY: No further questions. Thank you.

6 COMMISSIONER MCCASKILL: Alright. Mr. Sanchez, any
7 other questions for this witness?

8 RE-DIRECT EXAMINATION

9 BY MR. SANCHEZ:

10 Q. Just so we're clear for the record, nothing jumped out
11 at you in the four to five years before this incident
12 that Mr. Burley was talking about in his prior medical
13 records a couple times, is that correct?

14 A. No, sir.

15 Q. Okay. But since this incident things have jumped out
16 at you as being different, is that what I understand
17 your testimony to be?

18 A. Yes.

19 MR. SANCHEZ: Okay. All right. All right, no more
20 questions.

21 COMMISSIONER MCCASKILL: Mr. Burley?

22 MR. BURLEY: No follow up.

23 COMMISSIONER MCCASKILL: Alright, thank you ma'am. You
24 may step down. Call your next witness.

25 MR. SANCHEZ: Okay. Can I call my client and the next

1 one here, like we said?

2 COMMISSIONER MCCASKILL: Y'all approach.

3 (Attorney Sidebar: Off the record)

4 COMMISSIONER MCCASKILL: You've testified. You can
5 stay. Do you have any objection to her staying
6 Mr. Burley?

7 MR. BURLEY: No objections.

8 COMMISSIONER MCCASKILL: All right. If you'll come have
9 a seat up here please, ma'am.

10 MR. SANCHEZ: I'm calling Karlissa Bagley to the stand.

11 COMMISSIONER MCCASKILL: All right. Have a seat in that
12 chair please, ma'am. First things first, ma'am.
13 You need to speak up because there are no
14 microphones down there and as I was pointing out
15 a while ago these don't even work right now. And
16 if you're asked a yes or no question, please give
17 us a verbal yes or a verbal no. If you do
18 anything other than that one of the attorneys or
19 I are probably going to say, well almost
20 assuredly going to say, is that a yes or is that
21 a no. Don't let that throw you, we're just trying
22 to get clarity for us here today and clarity for
23 anyone who might read it in the future. Okay.

24 MS. BAGLEY: Okay.

25 COMMISSIONER MCCASKILL: Okay, please raise your right

1 hand.

2 Karlisa Parker Dean, being duly sworn and
3 cautioned to speak the truth, the whole truth and
4 nothing but the truth, testifies as follows:

5 COMMISSIONER MCCASKILL: All right Mr. Sanchez, your
6 witness.

7 DIRECT EXAMINATION

8 BY MR. SANCHEZ:

9 Q. All right. Karlisa, what is your relationship to Mr.
10 Bagley?

11 A. I'm his mother.

12 Q. Okay. And are you currently working?

13 A. No, I'm retired.

14 Q. Okay. What did you do for work?

15 A. I was the economic development director for Chester
16 County.

17 Q. The economic development director?

18 A. Yes.

19 Q. Oh, okay. What is that?

20 A. I recruit business for, on behalf of Chester County
21 into the County. I recruited, I mean I finished up the
22 career of about \$1.2 Billion and created 5000 jobs and
23 I actually helped, I mean I recruited Sun Fiber.

24 Q. Sun Fiber the employer here?

25 A. Yes.

1 Q. Oh, okay. All right. And I believe recently, what is
2 the Order of the Palmetto?

3 A. Yes, sir. As I retired I received the Order of the
4 Palmetto from the Governor. It was such an honor for
5 the work that I did for Chester County and the State
6 of South Carolina.

7 Q. Excellent. And I believe you physically went to the
8 last appointment with Mr. Bagley with Dr. Brown on
9 July 11, 2019. Is that right?

10 A. I did.

11 Q. Okay. And how long did the doctor spend with Mr.
12 Bagley?

13 A. It took more time, I mean I can approximately, but it
14 took more time to get Kyle out of the car and into the
15 visit and from the doctor's office back into the car.
16 It was probably about 15 minutes all together.

17 Q. And did he physically examine him and touch Mr. Bagley
18 in that appointment you with him with?

19 A. No, it was more he was questioning Kyle and was asking
20 about his head and was he still having the issues with
21 his neck and head.

22 Q. I believe he gave some occipital nerve root block
23 injections?

24 A. He gave four.

25 Q. All right. And were you physically present for that?

1 A. Yes, sir I was.

2 Q. Did you see anything or hear anything that jumped out?

3 A. Yes. As Kyle was telling him about the, he kept
4 hearing like shards of glass in his head and his neck.
5 And when Dr. Brown actually bent him over to give him
6 those shots, I could hear it. And the doctor even
7 looked over at me kind of we were both like in shock
8 that you could hear it out loud as he inserted the
9 needle into his and down into the base of the neck.

10 Q. Okay. And at that appointment did you observe Kyle's
11 hand and feet in the contracted position that it's at
12 currently?

13 A. Yes, sir. It was exactly as it was. Actually it was
14 worse then. Because that's what took us so long
15 getting into the office and back to the car again was
16 his limp and the time it took him just to right
17 himself to get in there.

18 Q. And we're here for an incident that occurred on June
19 14, 2019. Are you familiar with that incident date, so
20 to speak?

21 A. Yes.

22 Q. Okay. And since that incident, what have you observed
23 of Mr. Bagley that's been different physically?

24 A. My son was very energetic and he was a very hard
25 worker and what I have seen is that over this past

1 almost two years he's just changed drastically. We
2 just watched him start to bow over and his hand began
3 to be, I guess retracted to his side. The limp. He has
4 panic attacks. He can't -- sometimes he doesn't, he
5 can't understand instructions. It's been very hard for
6 us to watch, and to see. So it's been a very difficult
7 time for the family.

8 Q. And prior to this June 14, 2019 incident, did you
9 observe any of those things present with Mr. Bagley?
10 In other words did he have those things going on
11 prior?

12 A. No, sir. He did not.

13 Q. And do you know of any trauma that he has sustained
14 after this accident other than the bale of fiber in
15 question?

16 A. No, sir. Because he's pretty much been house-bound
17 until just recently, where the doctors were suggesting
18 that he walk a little bit, or I think it was the
19 physical therapist, that he try to walk.

20 Q. All right. And since the July 11, 2019 appointment
21 with Dr. Brown that you attended, have you taken him
22 to any other Workers' Compensation appointments or
23 appointments on your own only?

24 A. I took him to the one of the very first ones, the
25 Workmans' Comp, when we went to Riverview. There was a

1 Workmans' Comp nurse that was there. But we've been
2 taking him to all of his appointments that, when his
3 wife was working and can't take him. We, either his
4 dad or I take him.

5 Q. Okay. So, you know, the records will reflect that they
6 set up Mr. Bagley with a visit to Dr. Paez and then
7 with Dr. Gunter. Were you there with Dr. Gunter's
8 appointment as well?

9 A. I was. Yes.

10 Q. Okay. And did he examine my client the first time, in
11 March of 2020?

12 A. The very first time it was, I guess his PA that did
13 the examination. And then Dr. Gunter came in and did
14 an exam. And said he just didn't --

15 MR. BURLEY: I'm going to object to anything that the
16 doctor said.

17 COMMISSIONER MCCASKILL: You can't tell me what the
18 doctor said.

19 MS. BAGLEY: I'm sorry.

20 COMMISSIONER MCCASKILL: Well you probably have never
21 done this before. Because Dr. Gunter is not here
22 for Mr. Burley to cross-examine. Go ahead.

23 CONTINUED BY MR. SANCHEZ:

24 Q. Okay. Did you feel like Mr. Bagley received an
25 adequate evaluation that day?

1 MR. BURLEY: I'm going to object. She's not an expert
2 as to what would be an adequate exam.

3 COMMISSIONER MCCASKILL: Yeah you need to rephrase
4 that.

5 CONTINUED BY MR. SANCHEZ:

6 Q. What is your impression about how long was spent with
7 Mr. Bagley?

8 A. My impression was I left that office visit in tears
9 because I watched, we had hoped that we could find out
10 maybe what was wrong with Kyle, and we certainly
11 didn't receive that that day.

12 Q. And the record will reflect that that initial visit
13 was a low back evaluation?

14 A. Yes.

15 Q. Did Dr. Gunter evaluate his brain at that appointment,
16 or his head that appointment?

17 MR. BURLEY: Object. I'm not sure she can answer what
18 was evaluated in terms of body parts. I've had a
19 lot of leeway with what she's testified to but
20 we're at a critical mass here.

21 MR. SANCHEZ: That's fine. I'll withdraw that question.

22 COMMISSIONER MCCASKILL: Thank you.

23 MR. SANCHEZ: All right. No more questions.

24 COMMISSIONER MCCASKILL: All right Mr. Burley.

25 CROSS-EXAMINATION

1 BY MR. BURLEY:

2 Q. Thank you. Ms. Dean, is that correct?

3 A. Yes.

4 Q. I'll try to be brief. You are not a doctor, correct?

5 A. No.

6 Q. So you're not a doctor, isn't that correct?

7 A. No, I'm not a doctor.

8 Q. Okay, thank you. And so you're not familiar then with
9 what's standard protocols for evaluations and
10 diagnostic treatment are you?

11 A. No.

12 Q. You don't know whether Dr. Gunter or Dr. Brown, or any
13 doctors that your son has seen, you don't know what
14 they did outside of your presence, do you? In terms of
15 reviewing medical records and diagnostics?

16 A. No.

17 Q. Okay. Have you been to all of your son's Workers' Comp
18 appointments?

19 A. Not all of them, no.

20 Q. Okay, just the ones with Gunter and Brown?

21 A. And Paez.

22 Q. And Paez. Okay. Did you go to the ones --

23 A. And the child psychologist.

24 Q. Okay. Did you go to the ones with DuPuy or Rao?

25 A. No.

1 Q. So why would you go to some of your son's doctors
2 appointments but not all of them?

3 A. Because if his wife could take him, then she did.

4 Q. Okay. But you've gone to all the ones that were set up
5 by the Defendants, isn't that correct?

6 A. I just went to the ones that he asked me to take him
7 to because he didn't have a ride.

8 Q. You said since this injury your son has had panic
9 attacks, is that correct?

10 A. Yes.

11 Q. Did he have any other mental issues related to anxiety
12 prior to his 2019 incident that you observed?

13 A. Not that I observed.

14 Q. Okay. Are you aware that he treated from 2014 through
15 2018 at Lawrey's Family Medicine for anxiety,
16 depression, major depressive disorder, sleep
17 disturbance and bipolar disorder?

18 A. I was made aware of that after.

19 Q. Okay. Do you have a close relationship with your son?

20 A. I do.

21 Q. Okay so you never observed any of those prior to July
22 -- June of 2019?

23 A. No.

24 Q. Okay. So your son was diagnosed major depressive
25 disorder, bipolar disorder, general anxiety disorder,

1 sleep disturbance, requiring four plus years of
2 medical treatment, and you never observed any mental
3 issues prior to his injury at Sun Fiber?

4 MR. SANCHEZ: Objection Your Honor. That's a
5 mischaracterization of the records. It's not four
6 plus years of treatment.

7 MR. BURLEY: I can specify the dates. I just went
8 through them.

9 COMMISSIONER MCCASKILL: I understand that. We're
10 bordering on asked and answered, so let's -

11 CONTINUED BY MR. BURLEY:

12 Q. Are you, so --

13 MR. BURLEY: Can I ask the question, again.

14 Q. From December of 2014 through July of 2018 were you
15 aware that your son was in extensive treatment for
16 depressive and anxiety related issues?

17 MR. SANCHEZ: Objection Your Honor. Once again,
18 mischaracterizing the evidence. What is extensive
19 treatment?

20 MR. BURLEY: It's in the records.

21 COMMISSIONER MCCASKILL: Is the word extensive in the
22 record?

23 MR. SANCHEZ: No Your Honor, it is not.

24 MR. BURLEY: Okay, I'll rephrase the question.

25 COMMISSIONER MCCASKILL: Thank you.

1 CONTINUED BY MR. BURLEY:

2 Q. From December 2014 through July of 2018, are you aware
3 that he was receiving treatment for anxiety,
4 depression, major depressive disorder, bipolar
5 disorder, and other anxiety related issues?

6 A. No.

7 Q. Okay. You testified, and the reason you're here, is
8 because you have observed those types of behaviors
9 since June of 2019, isn't that correct.

10 A. That's correct.

11 Q. And you're telling us on the record that you never
12 observed anything like that prior to his injury at Sun
13 Fiber?

14 A. I am telling you that. Yes.

15 MR. BURLEY: Okay. No further questions.

16 COMMISSIONER MCCASKILL: All right. Anything else, Mr.
17 Sanchez?

18 MR. SANCHEZ: No further questions.

19 COMMISSIONER MCCASKILL: All right, thank you, ma'am.

20 You may step down. All right Mr. Sanchez, call
21 your next witness. The rise in the floor there is
22 marked by those two pieces of lighter carpet, so
23 be careful there.

24 MR. BAGLEY: Yes, sir.

25 COMMISSIONER MCCASKILL: You have been present for

1 speak up and answer yes and no and unless you
2 have a question about that we'll not go down that
3 road again. Raise your right hand, sir.

4 Kyle Bagley, being duly sworn and cautioned
5 to speak the truth, the whole truth and nothing
6 but the truth, testifies as follows:

7 COMMISSIONER MCCASKILL: Thank you Mr. Bagley. Mr.
8 Sanchez, your witness.

9 MR. SANCHEZ: Your Honor, real quick. There's one
10 matter that I forgot to address. On the pre-
11 hearing brief and APAs that I've handed up to the
12 Court, at the end of last week we received in Dr.
13 Gunter's deposition, which is Claimant's APA 13.
14 I, this morning, updated the numbering so I think
15 there's going to be some cross-referencing the
16 numbering. The bottom line of Claimant's 1
17 through 13 and through 379. I just wanted to make
18 the Court aware of that in case there was a page
19 number difference issue.

20 COMMISSIONER MCCASKILL: All right. Tell me what I need
21 to look out for again?

22 MR. SANCHEZ: Bottom line, I just handed up the pre-
23 hearing brief dated today. The updated one
24 reflects Dr. Gunter's deposition on APA 13, and
25 it ends on page 379. So Claimant's APAs are APA 1

1 through 13 and then it ends on page 379. I
2 believe the Defendants picked up the numbering on
3 a prior APA numbering.

4 COMMISSIONER MCCASKILL: All right.

5 MR. SANCHEZ: Before we had Gunter.

6 COMMISSIONER MCCASKILL: I believe I can get that
7 straight.

8 MR. SANCHEZ: I just wanted to make sure.

9 DIRECT EXAMINATION

10 BY MR. SANCHEZ:

11 Q. All right, Mr. Bagley. Can you please state your name
12 for the record?

13 A. Kyle Ray Bagley.

14 Q. All right, let's just jump right into it. Tell us what
15 happened that brings us here today?

16 A. On June 14th I was welding on the floor and got hit in
17 the head with a bale.

18 Q. And who were you working for back then?

19 A. Sun Fiber, LLC.

20 Q. All right.

21 MR. SANCHEZ: Your Honor if I may approach?

22 COMMISSIONER MCCASKILL: Certainly.

23 MR. SANCHEZ: This is Plaintiff's Exhibit 1.

24 MR. BURLEY: Give me just a minute Commissioner.

25 COMMISSIONER MCCASKILL: Let him find it. While you're

1 doing that, go off the record for a second.

2 (off the record)

3 CONTINUED BY MR. SANCHEZ:

4 Q. And we've marked this as Exhibit 4. Kyle I'm going to
5 hand this to you.

6 **(CLAIMANT'S EXHIBIT 4 MARKED FOR IDENTIFICATION PURPOSES)**

7 Q. Exhibit 4 is seventeen pieces of paper from Great
8 American Insurance Company and then there's two
9 pictures behind that. Do you see that? Those papers in
10 front of you?

11 A. Yes, sir.

12 Q. All right and this -- the first seven pages just for
13 sake of brevity is what we call a first report of
14 injury that details your, the issues or the injury,
15 the incident that you had. Is that correct?

16 A. Correct. Yes, sir.

17 Q. All right. And then the very last page before the
18 picture said you were welding at the conveyer when the
19 bale came down the conveyer, knocking you about 15
20 feet. You see that?

21 A. Yes, sir.

22 Q. Okay. So how many pounds does this bale of fiber
23 weight?

24 A. 600, 700 pounds.

25 Q. Okay. And the last two pages of that exhibit that I

1 gave you, could you identify what those are?

2 A. Those are the bale that would make the bales of fiber.

3 Q. Okay. Because I know this isn't the exact bale of
4 fiber that hit you, but is this representative of the
5 bale of fibers that's coming down the line that did
6 hit you on the day in question?

7 A. But tremendously bigger, yes, sir.

8 Q. Okay. All right.

9 COMMISSIONER MCCASKILL: All right, help me. What,
10 because I'm not looking at those pictures. The
11 one that hit you is bigger?

12 THE WITNESS: Sir, they're about four foot by four foot
13 and three foot tall.

14 COMMISSIONER MCCASKILL: All right, that's all I need
15 to know. Pull your mask up a little bit. Thank
16 you. All right Mr. Sanchez, sorry.

17 CONTINUED BY MR. SANCHEZ:

18 Q. All right, so you were bending welding at work for Sun
19 Fiber and then according to this First Report of
20 Injury it knocked you about 15 feet backwards. Is that
21 right?

22 A. Yes, sir.

23 Q. Okay. What happened right after you got hit? Did you
24 go take a break, what?

25 A. Yeah I got up and made my way through the inside of

1 the machines, told the supervisor, kind of just
2 laughed it off and I went and sat in my truck.

3 Q. Okay. How long do you estimate you sat in your truck
4 after that?

5 A. Probably about two and a half hours.

6 Q. Okay. Did you lose consciousness? Did you see stars? I
7 mean what did you experience right after you got hit?

8 A. Everything went black and I seen my daughter's eyes,
9 the color of her eyes, and my first reaction in my
10 mind was I thought the guy ran me over with the
11 forklift.

12 Q. Okay. So after that, what exactly is your job there at
13 Sun Fiber?

14 A. Maintenance Mechanic.

15 Q. Okay. So do you work all 12 hours that your shift is,
16 or do you sometimes not have anything to do, or what?

17 A. It's 12 hour rotating shifts, so it's on call.

18 Q. Okay. So after this, how long could you estimate that
19 you worked for?

20 A. Right after that, if I got the next call, it just
21 depends on what it would be. So, out of a 12 hour
22 shift, you know, I could work three hours versus
23 sometimes you work all 12 hours.

24 Q. Okay, so after sitting in your car catching, you know
25 gathering yourself, how many minutes do you estimate

1 you worked?

2 A. After that?

3 Q. Correct.

4 A. I'll probably say another 40 minutes.

5 Q. Okay. All right, and that was a Friday. So explain to
6 me, did you report it that day? What happened?

7 A. Talking to one of my friends there I told him what
8 happened and also talked to my mom and told her what
9 happened and she said the best thing to do is make
10 Chris aware of what happened.

11 Q. Okay. And who's Chris?

12 A. Chris Winters.

13 Q. Okay and he's sitting here in the courtroom today?

14 A. Yes, sir.

15 Q. Okay. All right, and what did you and Chris talk about
16 with this incident?

17 A. I told him I wanted him to be aware of what happened,
18 so I made him and the other supervisor aware.

19 Q. Okay. Was that the same day that this happened?

20 A. The previous morning, the next morning out of my
21 shift.

22 Q. Okay, just so we're clear for the record, you work
23 7:00 P.M. to 7:00 A.M., is that right?

24 A. Correct.

25 Q. Okay and this incident happened around midnight so the

1 early morning hours of the 14th of that Friday.

2 A. Thereabout, yeah. Right around in there.

3 Q. Okay and when did you speak with Chris about this
4 incident, that morning you said?

5 A. It'll probably been 8:30, 9:00, somewhere in there.
6 When he gets there.

7 Q. Okay.

8 A. Or he was probably already there before I came back to
9 the job.

10 Q. Okay. So you came back, and did he tell you to go
11 home, get treatment, what did he tell you?

12 A. He said a lot. But basically I look like crap, go home
13 and sleep it off.

14 Q. Did he say that he saw the video or you --

15 A. Yeah, we spoke later and he said he watched the video
16 and got my bell clocked, I believe those was his
17 words.

18 Q. Okay. Did he mention anything about you didn't
19 properly weld or you welded too slow or anything like
20 that?

21 A. Yeah, he laughed at me, said I needed to weld faster.

22 Q. Okay. All right. How long had you been working there,
23 at Sun Fiber?

24 A. I believe the first time was probably a year and a
25 half. And then my second time with them, so probably

1 close to three and a half, four years.

2 Q. Okay. The second time, so I guess you were on the
3 second time around in June of last year, is that
4 right? Like in other words, that was the second time
5 you'd worked for them?

6 A. When the incident happened was my second, yes, sir.

7 Q. Okay, and how long were you there with them the second
8 time around?

9 A. Probably about three and a half years.

10 Q. Okay. Did you work all year, take a week off or
11 anything?

12 A. For what?

13 Q. Touche. Do you work all the time? I mean did you take
14 time off?

15 A. I would work my schedule and, you know, when my
16 anniversary would come up I'd take a few days off.

17 Q. Okay, but aside from that you worked 40 hours plus,
18 even overtime?

19 A. I would work whatever they'd give me. If they let me
20 work other people's shifts I'd work their shift as
21 well.

22 Q. Did you like working there?

23 A. I loved to work there.

24 Q. Before this accident, did you ever miss work because
25 of any injuries, or you know, physical or mental

1 injuries?

2 A. No.

3 Q. Any issues relating to those things?

4 A. No.

5 Q. Okay. Sitting here today, can you work at Sun Fiber?

6 A. No.

7 Q. There was some indication that in the past that you
8 had gone and seen a doctor for depression or stress,
9 what was that related to?

10 A. As far as the 2014, that was a different job. A high
11 demand stressful job, and you know, I just made my
12 doctor aware of the stuff I was doing and she wanted
13 to try out a new medication.

14 Q. All right -

15 A. To help me with the anxiety, but the insurance
16 wouldn't cover it, so it never got took.

17 Q. Okay, so I guess over that four year period of time,
18 what, you talked to them about it just a couple times?

19 A. Just a few times. Nothing out of the norm, you know,
20 just here and there. It was driving a crane, so, you
21 know, you hit the wrong button you kill a lot of
22 people. You hit the wrong button, knock out millions
23 of dollars worth of equipment, so it was very
24 stressful. Demanding.

25 Q. Okay.

1 A. And that was 12 hour rotating shifts as well.

2 COMMISSIONER MCCASKILL: Mr. Bagley, how about you pull
3 your mask up.

4 MR. BAGLEY: Sorry.

5 COMMISSIONER MCCASKILL: It's All right.

6 CONTINUED BY MR. SANCHEZ:

7 Q. So then, in I guess the year leading up to this
8 incident, did you have any major depression or anxiety
9 that prevented you from, you know, functioning so to
10 speak?

11 A. No.

12 Q. All right, coming back around to this incident. Right
13 after that, after the incident, you talked to Chris.
14 He told you to go home and sleep it off. What ended up
15 happening over that weekend? That Saturday and Sunday?
16 I believe Sunday was Father's Day.

17 A. Sunday was that Father's Day. I spent 90 percent of my
18 time in the bed.

19 Q. All right. Is that after you went home that Friday
20 morning?

21 A. Yes.

22 Q. What, why did you end up going to Chester Regional
23 Medical Center on Monday, which is APA 1. Why did you
24 end up going there on the 17th?

25 A. I was to the point to where nauseous. Kind of like out

1 of it a little bit, so I didn't know if it was from
2 something that I ate or from what I had just went
3 through, and so I checked myself out and went into the
4 local hospital.

5 Q. And initially did you decline to go see a doctor or
6 something with work, or?

7 A. That morning when we spoke with Chris he asked me if I
8 thought I needed medical attention, if I felt like
9 anything was broken inside my body. I told him no, but
10 of course I'm not a doctor, I don't have a medical
11 degree, and he made me sign a piece of paper stating
12 that.

13 Q. Okay. But we haven't seen that piece of paper, right?

14 A. I haven't seen anything from them.

15 Q. Okay.

16 A. I haven't even seen the accident report.

17 Q. Now you got it in front of you.

18 A. No, the accident report that I signed.

19 Q. Oh, so there was another accident report that you
20 signed?

21 A. By two other supervisors and the supervisor that I
22 asked to take me to the hospital that told me no.

23 Q. Okay, so they haven't given that to us?

24 A. No.

25 Q. Okay. All right. So, my understanding is that nobody

1 was really telling you what to do after that Monday
2 visit to the Regional Medical Center so you ended up
3 going to a local chiropractor, Chester Chiro on APA 2,
4 is that right?

5 A. Yes, sir.

6 Q. All right. And did you tell the doctor what was going
7 on with you and did he look at you and examine you?

8 A. He looked at me, examined me, and said it was beyond
9 his scope, that I needed more professional help than
10 what he could possibly ever imagine giving up I guess.
11 And I'm just glad I went with it.

12 Q. All right. And then, I believe June 25th, you followed
13 up with Dr. Plyler Palouse. Who is Dr. Plyler Palouse?

14 A. That's my family doctor from 2014 till now.

15 Q. Okay. So that's APA 3. Did you indicate to him that
16 you had an incident at work?

17 A. Her. It's a her.

18 Q. Oh, sorry.

19 A. Yes, sir.

20 Q. Okay. And did they refer you out for more treatment
21 somewhere?

22 A. She wanted me to go do tests and scans but I believe
23 at that time it was right line in line with what they
24 were doing with their test and scans.

25 Q. Okay, and by they, who are they?

1 A. I guess Great American Insurance Company, the
2 Workmans' Comp people.

3 Q. Oh. Gotcha.

4 A. It was kind of hand-in-hand.

5 Q. Okay, so initially Workers' Comp had sent you to
6 Riverview Medical Center, APA 4.

7 A. Correct.

8 Q. Is that your understanding?

9 A. Yes, sir.

10 Q. Okay. And on page 29, there's a drawing, when you get
11 into Riverview Medical Center where you put down where
12 you're having issues and symptoms. I have it right in
13 front of me right here, if I may approach, Your Honor?
14 COMMISSIONER MCCASKILL: Yes.

15 Q. This is APA 4, if I may just stand here for a second.

16 COMMISSIONER MCCASKILL: Just don't get too close.

17 Q. Is that a drawing that you remember doing at Riverview
18 on June 27, 2019?

19 A. That's it, yeah I had my mother with, yes, sir.

20 Q. Okay. And so all those drawings where there's numbers
21 1, 6, this, on the body, on the figure of the human
22 being --

23 A. Correct.

24 Q. Are those where you were having issues?

25 A. Exactly. Yes, sir.

1 Q. Okay, so for the record, the head, your left shoulder,
2 your left arm, your left leg, etcetera. Is that what's
3 going, what's notated there?

4 A. Yes. Yes, sir.

5 Q. Okay. All right. So, tell me in your own words right
6 now, what are the issues that you're having? Let's
7 kind of start with your head.

8 A. Headaches all the time between the eyes and the top of
9 the head. Constant pain down the neck and the
10 shoulder. The ligaments and tendons are tight from the
11 elbow to the wrist. When you slip the hand inside over
12 you can see everything's all matted up and knotted
13 together. My fingers don't stretch out. And the foot
14 drop. The pain used to be excruciating from my groin
15 to my calf muscle, and from my calf muscle to my foot.
16 And that's when they figured out the drop foot aspect
17 of it. So I got braces for all that.

18 Q. Okay. What about memory? How's your memory been?

19 A. Not too good. I keep notebooks laying around, paper
20 laying around. My wife's with me a lot of the time
21 when she's not working as well my mom. And this is
22 another reason why they go with me everywhere that I
23 go for stuff that I forget and can't exactly wrap my
24 head around what's being said.

25 Q. What about when you move your head and neck? Does

1 anything happen, do you get lightheaded?

2 A. In the past it would be the sharp, like glass feeling.
3 And even in the first therapy from Workmans' Comp,
4 they would try to stretch me out, push me up against
5 the wall and tell me to breathe and it'd just get to
6 the point where they'd set me back down and I'd be
7 almost ready to pass out. The same thing.

8 Q. All right.

9 A. Seeing stars and stripes. They call it a medical term,
10 but you know that all kind of runs hand in hand with
11 the TBI.

12 Q. Okay. What about your ears?

13 A. Ringing in the ears.

14 Q. Okay.

15 A. And when I chew.

16 Q. Okay.

17 A. Especially when I chew.

18 Q. All right. Of those issues that we're talking about
19 involving your head, have you had similar issues like
20 that before June 14, 2019?

21 A. From then or behind that --

22 Q. Before this incident --

23 A. Oh, no, sir.

24 Q. -- Did you have issues of those, that we just talked
25 about?

1 A. No, sir.

2 Q. Okay. All right, what of, we talked about a little bit
3 of work-related stress and anxiety. Do you feel like
4 you're significantly more depressed and anxious now?

5 A. It's on me more now than ever.

6 Q. Okay. But you never needed treatment for any of those
7 things prior to this incident?

8 A. No. Like I said, when he's referring back to 2014,
9 that was some, you know, anxiety from my job. And they
10 wanted me to accept this medication that they was
11 pushing out and the insurance company was not paying
12 for it, so I did not take it.

13 Q. All right, and I believe Workers' Comp sent you to a
14 child psychologist, Dr. Paez. Is that right?

15 A. Yes, sir.

16 Q. All right. And she indicated that you needed some
17 psychological therapy for, to adjust to your new you,
18 is that right?

19 A. Well, you know, it was math --

20 MR. BURLEY: I'm going to object to that question. A,
21 it's leading.

22 THE WITNESS: Well it was --

23 COMMISSIONER MCCASKILL: Hold on.

24 MR. BURLEY: It's leading and B) it's hearsay.

25 MR. SANCHEZ: Every statement he's been making about

1 medical records earlier has been hearsay if think
2 about that. I'm just referencing what's in the
3 report.

4 COMMISSIONER MCCASKILL: All right, rephrase the
5 question and note that you're referring to the
6 report.

7 CONTINUED BY MR. SANCHEZ:

8 Q. All right. So in reference to Dr. Paez' report, let me
9 get you the exact page number. That's Defendants' APA
10 14. Did Dr. Paez indicate that you needed
11 psychological therapy and family therapy?

12 A. No.

13 Q. Okay. Did she not tell you that?

14 A. No she didn't.

15 Q. Okay. Because in her report one of the recommendations
16 is that psychotherapy is recommended to address, and
17 that's on page 360, your current adjustment issues. Is
18 that something that you heard from her before?

19 A. No.

20 Q. Okay. All right. So once again though, you never
21 needed psychotherapy or anything related to that prior
22 this June 14, 2019 incident?

23 A. No, sir.

24 Q. Okay. All right. So, we talked about your neck, what
25 about your, I'm sorry your head. What about your neck

1 and your back and your shoulder? What's going on with
2 those?

3 A. They're still pretty tight. I have limited mobility,
4 limited movement.

5 Q. Okay. And what about the base of your brain, top of
6 your neck area where they injected you? Are you having
7 problems there?

8 A. It still hurts. It still hurts. And I still have the
9 pain back there.

10 Q. Okay. Is that where Dr. Brown injected you?

11 A. I can't tell you exactly because I know, I know that
12 he said two up and two down. So I guess two up near
13 the brain and two down near the base of the neck.

14 Q. Okay.

15 A. And it just sounded like shattered glass.

16 Q. Okay. So Dr. Brown saw you two times. That's APA 5. He
17 saw you on July 5th and July 11th, is that right?

18 A. I believe so.

19 Q. Okay. And Workers' Comp, they assigned a nurse with
20 you to go to these appointments?

21 A. That's exactly right.

22 Q. Okay. How did Dr. Brown evaluate you? Was he there
23 with you for a while, or what?

24 A. The first one I would say he spent about 15 minutes
25 talking to the Workmans' Comp nurse. And about 15

1 minutes talking to me, and that's about it. He said
2 see you back, we're going to do some injections.

3 Q. Okay. Were you having -- I believe he may have had you
4 press up against the wall. Did he have you do that in
5 that appointment, or?

6 A. No, he was trying to get me to push my arms out.

7 Q. Okay, and were you able to do that?

8 A. My right arm. You couldn't get my left arm off my
9 chest.

10 Q. Okay. What exactly is wrong with your left hand?

11 A. It's all balled up in a ball.

12 Q. Do you mind talking off that sleeve and showing? So
13 for the record, your middle finger is essentially
14 trigger, like you're pulling a trigger. And so is your
15 ring finger, and your pinky a little bit. Compared to
16 your right hand, is your right hand normal?

17 A. Non verbal response.

18 Q. So those bendings of your fingers and your digits, so
19 to speak, is that something that occurred after this
20 incident?

21 A. Correct.

22 Q. Okay. I believe the doctors have indicated that it's a
23 contracture of your left hand, is that right?

24 A. Correct.

25 Q. Okay. And then what about your foot? You don't need to

1 pull off your shoe, but, are you having some issues
2 with your feet?

3 A. Same thing there. The medical terminology they told me
4 was a drop foot.

5 MR. BURLEY: I'm going to object to the form. He's
6 testifying to a medical diagnosis. I'm not sure
7 who.

8 A. Dr. DuPuy.

9 Q. Did, I'll clean that up.

10 COMMISSIONER MCCASKILL: He can tell me what his
11 understanding is.

12 MR. BURLEY: Right, I understand. That wasn't the
13 question, that's why I had to put an objection on
14 the record.

15 CONTINUED BY MR. SANCHEZ:

16 Q. All right, so what's your understanding of what's
17 going on with your left foot?

18 A. The, my understanding is the force trauma to the head
19 has pretty much, you have a fight or flight syndrome
20 and it went apart and when it came back together
21 nothing go back together right. And so that's why the
22 foot's dropped. That's why the hand was stuck to the
23 chest. And the fingers drew in.

24 Q. And your understanding of that is based on, I believe,
25 your meetings and appointments with Dr. DuPuy. Is that

1 right?

2 A. Yes, sir.

3 Q. And Dr. Rao as well, the neurologist?

4 A. Most definitely, yes, sir.

5 Q. Okay. So we talked about those contractures and on
6 your foot. Do you wear braces? I believe you brought
7 your braces with us?

8 A. Yes. I was trying to wear them 90 percent of the time
9 and the doctor wanted me to turn around and go as long
10 as I can without it, then force everything into it.
11 Then back to kind of like in the evening times when
12 I'm resting and I'm not trying to put a strain or
13 really kind of be like mobile with it, strap it in
14 there, lock it down.

15 Q. Okay. So these braces, is that for your left hand and
16 then for your left foot?

17 A. Correct.

18 Q. Okay.

19 A. But I have my bands in there and I have my balls in
20 there. I brought everything.

21 Q. Okay. And those are things that you need to try and
22 help extend your fingers and --

23 A. From their therapy to my own therapy. Yes.

24 Q. Who's their therapy?

25 A. Workmans' Comp.

1 Q. Okay. I believe that's Your Life Wellness Physical
2 Therapy?

3 A. Yes.

4 Q. That's on APA 6. Okay. So when you were with Dr.
5 Brown, it's my understanding he just gave you some
6 injections, is that right?

7 A. That's it.

8 Q. Okay. I mean, in his own medical records, APA 5, it
9 indicated that you had your left hand flexed to your
10 chest and the digits running would be extended. Did he
11 indicate what that was?

12 A. No. Not really. He just said see back for some shots
13 in the head and we're going to send you straight
14 through to therapy.

15 Q. And do you know why his notes may indicate that you
16 had full strength on your left hand?

17 A. I believe it's a mistake. I had full strength in the
18 right hand because of course I can hold, you know I
19 can hold my hand out with my right hand and touch the
20 wall if I wanted to. The Workman's Comp nurse was with
21 me the whole time.

22 Q. Okay. And I believe Dr. Brown, on July 11th, indicated
23 that, you know, there was no surgery to help you, is
24 that right?

25 A. He said from his point of view he didn't think there

1 needed to be any surgery.

2 Q. And --

3 A. And was still the same way going in was the same way
4 going out.

5 Q. Did he tell you to go get further treatment under
6 Worker's Comp with other types of doctors, just not
7 from a neurosurgeon.

8 A. We didn't have any --

9 MR. BURLEY: I'm going object to the question.

10 A. -- Other conversation than that.

11 MR. BURLEY: I mean --

12 A. Other than him saying --

13 COMMISSIONER MCCASKILL: Hold on.

14 MR. BURLEY: My objection is that calls for hearsay.

15 He's asking if, what Dr. Brown told him to do in
16 the evaluation. If he wants to point him to a
17 medical report that's fine.

18 COMMISSIONER MCCASKILL: Yeah. You can't tell me what
19 the doctor said unless you got it in a medical
20 report.

21 MR. SANCHEZ: Just trying to speed things up. I
22 apologize Your Honor.

23 CONTINUED BY MR. SANCHEZ:

24 Q. All right, I'm going to hand you APA 5, page 64. At
25 the very bottom of it it indicates that there about

1 medical needs. Can you just read what it says about
2 your medical needs?

3 A. Yes, sir. As so, the medical care and treatment that
4 is needed. Patient is at a point of maximum medical
5 improvement from a neurosurgical perspective. We do
6 not anticipate that he will need any further
7 neurosurgical intervention or recommendations in the
8 future. But as previously noted, we do defer or deter
9 further non appropriate (sic) management for the
10 patient's muscular complaints to his occupational
11 medicine physician and team. In addition the statement
12 that the future medical care may be necessary or might
13 be necessary if not sufficient.

14 Q. Okay. That's just the standard language on that form.
15 So just to summarize, because you said a word that may
16 not have been correct, but it says will defer non-
17 operative management. Non-operative. Do you know what
18 that word means?

19 A. No, sir.

20 Q. Okay. All right. So did you ever get to see another
21 doctor that was not a surgeon, from Workers' Comp?

22 A. From him?

23 Q. Correct.

24 A. From Workmans' Comp doctor, the last doctor that I
25 seen.

1 Q. Sorry, for treatment though, other than just that
2 evaluation with Dr. Brown and Dr. Paez.

3 A. Their therapies.

4 Q. Okay. That therapy, All right. So APA 6 is Your Life
5 Wellness. On July 22nd is the initial note and it
6 indicates that, on page 72 from the initial
7 evaluation, that they were unable to test your muscle
8 and strength testing because of pain and functional
9 mobility and your gross MMS is 3 out of 5. Were you
10 having issues with the testing and the stretching of
11 your hands at that appointment?

12 A. To be honest with you, they wouldn't even touch my
13 left arm or hand.

14 Q. Okay. But they indicated that you were having these
15 deficits in their records because, were they treating
16 you at the time then?

17 A. Correct.

18 Q. Okay. And I believe the last date of treatment that
19 you have with them is September 26, 2019. Does that
20 sound about right?

21 A. I believe so. I'm not sure.

22 Q. Okay. And four days later you had your deposition
23 taken and were you still in therapy at the time?

24 A. Yes, sir.

25 Q. All right. What happened after your deposition?

1 A. A day or two after the deposition I go there, or on my
2 way there telling them I'm coming, and she told me
3 there's no need. Workmans' Comp called and cancelled
4 the rest of your appointments.

5 Q. Okay. So, you had seen a doctor, Dr. Jarell, after
6 that time, is that right?

7 A. Yes, sir.

8 Q. Okay. That's APA 7. Dr. Jarell and you were talking
9 about a work note for you to go back to work in your
10 attempt to try to return to work, is that right?

11 A. Yes sir.

12 Q. All right. I believe initially he wrote you out of
13 work August 22, 2018, that's APA 7. I'm sorry August
14 22, 2019. He wrote you out of work completely, is that
15 right?

16 A. Yes, sir.

17 Q. Okay. Then September 6, 2019, he wrote you back into
18 work from a neurosurgical standpoint date to be
19 determined by the orthopedic, is that right?

20 A. That's correct.

21 Q. Okay. So the orthopedic that you saw then was who?

22 A. Dr. DuPuy.

23 Q. Okay. So that's APA 8. Page 157. And did Dr. DuPuy
24 write you out of work completely?

25 A. Completely.

1 Q. Okay. And what did you indicate about what was going
2 on with your left upper extremities and left lower
3 extremities?

4 A. He said from --

5 MR. BURLEY: I'm going to object to any --

6 MR. BAGLEY: Okay.

7 MR. BURLEY: He needs to rephrase the question.

8 CONTINUED BY MR. SANCHEZ:

9 Q. Okay. So did Dr. DuPuy and you discuss, in other words
10 what do you recall discussing about what is going on
11 with you physically? You can go. He's not objecting.

12 A. He said that --

13 MR. BURLEY: Again, I hate to be a stickler, but he can
14 testify to his understanding but he can't --

15 COMMISSIONER MCCASKILL: He can't tell me what he said.

16 CONTINUED BY MR. SANCHEZ:

17 Q. All right. What is your understanding about what the
18 doctor diagnosed you with?

19 A. Closed head trauma, or TBI from taking like a 600 to
20 700 pound blow to the head, that when it did it
21 stretched the body out and did not come back together
22 the way that it was supposed to.

23 Q. Okay. And did he indicate that is reason for what is
24 going on with your left hand?

25 A. Correct.

1 Q. And just so we're clear, did you have any of these
2 issues with your left hand, your left foot, or your
3 neck or your shoulders before June 14, 2019?

4 A. Never.

5 Q. And then Dr. DuPuy referred you to an ortho, I'm sorry
6 to a neurologist, is that your understanding?

7 A. Yes, sir.

8 Q. Okay. And I believe you saw Dr. Rao of the
9 Neurological Institute October 31st and then again on
10 November 19th, is that correct?

11 A. Yes, sir.

12 Q. All right, and that's APA 9. Were you detailing what
13 issues you were having with him?

14 A. To Dr. Rao?

15 Q. Yes, sir.

16 A. Oh, yes, sir.

17 Q. Okay. And what is your understanding about what your
18 EEG showed when he took your EEG?

19 A. There again, it was blunt force trauma to the head?

20 Q. Did he indicate anything about a slowing like it was
21 --

22 A. He said it slowed down significantly from the right
23 side to the middle of the forehead.

24 Q. And did he want to have further evaluations for you to
25 diagnose the extent to the trauma?

1 A. He wanted to do a 96-hour test.

2 Q. And I believe some other program, head injury program?

3 A. Yes, sir. He said I would be a great candidate.

4 Q. Is that all to try to diagnose what's going on with
5 you and treat these issues?

6 A. To see what further, where we needed to go and how we
7 needed to go about it.

8 Q. All right. And have you been able to get any of those
9 extra testing and treatment that Dr. Rao recommended?

10 A. No, sir.

11 Q. Okay. And has Workers' Comp set you up with those
12 aside from just an evaluation with Dr. Gunter?

13 A. No, sir.

14 Q. All right.

15 A. I actually called back down to Dr. Brown's office and
16 tried to get ahold of him several times to no avail.

17 Q. Okay. Is it your understanding that Dr. Gunter charges
18 \$1500 for each one of these evaluations?

19 MR. BURLEY: Objection. What's the relevance of that?

20 COMMISSIONER MCCASKILL: What's the relevance of how
21 much it costs?

22 MR. SANCHEZ: I'm just referencing the fact that that's
23 how much it costs. It's above the fee schedule,
24 that's it.

25 MR. BURLEY: If we want to start talking about what

1 IMEs charges. Everybody plays that game. It's not
2 relevant in this line of questioning.

3 COMMISSIONER MCCASKILL: I agree. Sustain. Let's not go
4 there.

5 MR. BURLEY: Perfect.

6 CONTINUED BY MR. SANCHEZ:

7 Q. All right. So, All right hold on one second. You just
8 indicated that you called down to Dr. Brown a couple
9 times to try and get back in there for further
10 treatment, is that correct?

11 A. I even tried to reach out to the Workmans' Comp nurse.
12 And she told me that --

13 MR. BURLEY: Object. Calls for hearsay. The nurse is
14 not here.

15 COMMISSIONER MCCASKILL: Sustained.

16 CONTINUED BY MR. SANCHEZ:

17 Q. So were you able to get through and get another
18 appointment with Dr. Gunter or anybody related to
19 Workers' Comp?

20 A. No, sir.

21 Q. Okay. All right. I believe we kind of talked about
22 this a little bit earlier, but you tried to work back
23 around July, August, September ish, is that right?

24 A. With Sun Fiber.

25 Q. Correct, that's what I mean.

1 A. Yes, sir.

2 Q. All right, and did you indicate to the them that had a
3 cane that was prescribed to you by these doctors that
4 you're seeing?

5 A. Well at the time it was a walker, but I had a cane.
6 Yes, sir.

7 Q. Okay. And were you allowed to return to work with that
8 assistive device?

9 A. No, sir.

10 Q. Okay. Why?

11 A. He told me it was the insurance or something.

12 Q. Okay. So you were communicating with him about trying
13 to get back into work, is that right?

14 A. Yes, sir.

15 Q. Okay. And those communications were done via text
16 messages, is that right?

17 A. Yes, sir.

18 Q. All right. So have you been getting a little bit
19 better over the time?

20 A. Over time we've got my arm worked out, so my arm's not
21 clenched tight to my chest.

22 COMMISSIONER MCCASKILL: How about pull your mask up
23 again please. Thank you.

24 A. My arm's not clenched tight to my chest. And I'm
25 walking more.

1 Q. Okay. But Dr. DuPuy and Dr. Rao have indicated to you
2 that you're not able to work though currently, is that
3 right?

4 A. That's right. Yes, sir.

5 Q. And I believe, I mean you want to go back to work
6 though, right?

7 A. I would love to go back to work.

8 Q. You love working?

9 A. I love providing for my family.

10 Q. But you haven't been able to do that since June, of
11 last year?

12 A. I haven't been able to do that in a while.

13 Q. All right. Have you been fairly consistent with
14 everything that you've described here today --

15 A. From day one.

16 Q. -- Since day one with all your doctors?

17 A. Yes, sir.

18 Q. All right. So you indicated that they're currently
19 trying to work out your arm and whatnot, but we're
20 kind of on hold with the whole neurological testing
21 and further treatment though, right?

22 A. Dr. Reed said it would be very hard to find --

23 MR. BURLEY: Object to the testimony from the doctor.

24 Q. So, are we on hold for that treatment?

25 A. Yes, sir.

1 Q. Okay. All right. No further questions.

2 COMMISSIONER MCCASKILL: All right. Mr. Burley.

3 MR. BURLEY: Thank you Commissioner.

4 CROSS-EXAMINATION

5 BY MR. BURLEY:

6 Q. Mr. Bagley I want to talk a little bit about your
7 injury.

8 A. Yes, sir.

9 Q. Can you look at me please?

10 A. Do I have to?

11 Q. I would appreciate it. If you can't turn I can come to
12 you. Is this better?

13 A. Uh-huh.

14 Q. When you were hit you were welding on a conveyor belt,
15 isn't that correct?

16 A. A ramp.

17 Q. Okay, and it was a ramp that was sloped down and the
18 bale came off of it, isn't that correct?

19 A. Correct.

20 Q. And I want to show for the benefit of the Commissioner
21 what we're talking about. Commissioner may I approach?

22 COMMISSIONER MCCASKILL: Certainly.

23 MR. SANCHEZ: Your Honor I'm just going to note an

24 objection on the record about the method with

25 which this was stored, this video that he's going

1 to show.

2 COMMISSIONER MCCASKILL: Yeah, we talked about this in
3 the pre-hearing, but put your objection on the
4 record, please.

5 MR. SANCHEZ: Yeah, I just wanted to note an objection
6 on the record that I don't have a foundation for
7 this to see if it accurately and completely
8 records it in real time footage rather than
9 sparsing it out in segments. Sorry.

10 COMMISSIONER MCCASKILL: It's All right. All right, you
11 want to speak to that objection.

12 MR. BURLEY: I don't understand the objection, but what
13 I will proffer to you is Commissioner, that this
14 is surveillance footage which I believe Mr.
15 Bagley will be able to authenticate. In the
16 alternative, I have an employer representative
17 tat can authenticate it. It's, in terms of the
18 presentation of the video itself, you know,
19 they're second delay snapshots, but I don't think
20 it compromises the integrity of the video.

21 COMMISSIONER MCCASKILL: All right. Anything else?

22 MR. SANCHEZ: No, Your Honor.

23 COMMISSIONER MCCASKILL: All right.

24 MR. BURLEY: I want the Commissioner to see it as well.

25 COMMISSIONER MCCASKILL: Here I'll walk over there.

1 CONTINUED BY MR. BURLEY:

2 A. Can you make it bigger?

3 Q. I cannot. This is as big as it goes, unfortunately.

4 Can you see it? I'll bring it to you a little bit.

5 Okay. Is this you?

6 A. Correct. That's me welding a leg down the side of the
7 ramp.

8 MR. BURLEY: Commissioner, did you see that?

9 COMMISSIONER MCCASKILL: Yep.

10 CONTINUED BY MR. BURLEY:

11 Q. All right. Mr. Bagley I'm going to ask you some
12 questions. We'll make this, this is going to be
13 introduced as a jump drive, so nothing to mark, but
14 let's just refer to this as Defendant's 3. Is that
15 correct, are we on 3? Thank you. For authentication
16 purposes Mr. Bagley, was that your work injury of June
17 14, 2019, that we just witnessed?

18 A. Yes.

19 Q. Okay. And for the record, you were welding when you
20 got hit by the bale, correct?

21 A. Correct.

22 Q. What was your immediate response?

23 A. Immediate response was, I thought the guy on the
24 forklift ran me over.

25 Q. Right, but you jumped up pretty quick, didn't you?

1 A. Oh, I don't know.

2 Q. Okay, but you just observed the video, did you not
3 just kind of jump up pretty quickly?

4 A. Oh I don't know that video goes like (Demonstrative
5 noise), so I don't know how many seconds, you know, I
6 don't know.

7 Q. There was enough for you to see what happened after
8 you got hit, so.

9 A. Yeah. But it could have been seven seconds, it could
10 have been 10 seconds. I don't know.

11 Q. Well --

12 A. Is there a time frame on that? I don't know. I can't
13 tell you. I don't know.

14 Q. So you don't recall whether or not you immediately
15 jumped up?

16 A. I don't know.

17 Q. Okay. Do you remember when I took your deposition, Mr.
18 Bagley? Do you recall that?

19 A. Yes.

20 Q. Okay. And at your deposition I asked you if you jumped
21 right up, and Commissioner I'm referring to the
22 Claimant's deposition. This is page 33. My question,
23 but you were able to jump right up. Question. And what
24 was your answer?

25 A. I jumped straight up.

1 Q. Okay. So you just saw the video that you jumped
2 straight up. You were able to testify at your
3 deposition that you jumped straight up. Can't you just
4 tell us today that as soon as you got hit --

5 A. Wait a minute. I thought you was asking me about the
6 video. You were just asking if I jumped straight up,
7 and I just said the video is jumping around. I didn't
8 know if I had jumped straight up or not. If I told you
9 I jumped straight up, then I jumped straight up. I
10 thought you was talking about the video.

11 Q. Okay. After everything you -- so you got straight up.
12 After everything we've reviewed and your deposition --

13 A. Yeah. I got up.

14 Q. You'll admit that you jumped straight up. And in fact
15 I think you kind of reacted by pushing over a box of
16 tools, isn't that correct?

17 A. Pushing.

18 Q. Right. And you walked around for let's say a minute,
19 maybe about --

20 A. Well that showed about 10 seconds, but okay.

21 Q. However long it was, but you walked about a hundred
22 yards and circled back, didn't you?

23 A. I was looking for the supervisor.

24 Q. Okay. Now the rest of that shift, this injury occurred
25 at about 12:00 A.M. ish June 14, 2019, which I believe

1 was a Friday. Is that correct?

2 A. Going into that Friday.

3 Q. All right, so you clocked in on a Thursday, you have
4 the overnight shift.

5 A. Correct.

6 Q. And this happened early morning hours of June 14th?

7 A. Correct.

8 Q. Maybe a little bit earlier, maybe a little bit later,
9 but that's about the time, right?

10 A. Yes, sir.

11 Q. All right. And you worked your entire shift, did you
12 not?

13 A. Yes.

14 Q. And your shift goes till 7:00 A.M. correct?

15 A. Yes.

16 Q. So after this injury, and well know that you jumped
17 straight up, isn't it true that you also did two more
18 welding jobs after that?

19 A. I believe it was one. It could have been two.

20 Q. Okay.

21 A. But remember like I said, I sat probably two, three
22 hours in my truck.

23 Q. Right. I believe you testified at your deposition that
24 you sat for an hour in the truck, is that right?

25 A. An hour.

1 Q. Okay. So you got injured, you jumped up, walked around
2 a little bit, sat in your truck --

3 A. A little dazed, yeah.

4 Q. Sat in your truck for an hour.

5 A. Uh-huh.

6 Q. Correct?

7 A. Correct.

8 Q. And then after that though, this is at 12:00 A.M., you
9 continue to stay on-site at the facility until 7:00
10 A.M. when it's time for you to clock out.

11 A. That's right.

12 Q. And then you do two more welding jobs after this
13 injury, correct?

14 A. I don't know if it was two or one more. I don't know.

15 Q. Okay. At your deposition you said two.

16 A. What's it say on the paperwork. I don't know.

17 Q. Let's just say but you're able to weld, correct?

18 A. I had to weld the same thing back again.

19 Q. Okay.

20 A. Where they ripped it out the floor again.

21 Q. You didn't go to the doctor that day, did you?

22 A. No. So I got off work that morning, took a shower and
23 went and seen Chris in his office.

24 Q. And so you clocked out at 7:00 A.M., you left and then
25 turned around and came back and met Chris Winters,

1 correct?

2 A. And Steve, yes, sir.

3 Q. And who is Chris Winters?

4 A. The guy sitting behind you.

5 Q. But what is his title as far as --

6 A. I have no idea.

7 Q. Okay. But he works at Sun Fiber, correct?

8 A. That's right. Yes, sir.

9 Q. And did he offer you medical treatment that day?

10 A. He asked me if I felt like anything was broken?

11 Q. And you declined medical treatment, correct?

12 A. I said I felt like nothing was broken.

13 Q. Okay. But he asked you -- but he did at least offer,
14 correct it?

15 A. I believe so, yeah, if you feel like anything is
16 broken we can go. I said I don't think anything's
17 broken, but there again I'm not a doctor.

18 Q. And just to clarify, at your deposition, page 39, when
19 I asked you the same question you said I told him no
20 because I didn't feel anything was broken. So is that
21 fair?

22 A. Yeah. He asked me if anything was broken. I don't
23 believe he asked me if I needed medical attention. I
24 believe he asked me did I feel like anything was
25 broken, and I said no, sir. And he said well since you

1 said no, write that on a piece of paper. So it should
2 be on that piece of paper.

3 Q. Okay. Let's clarify, because this is your deposition
4 where you were under oath, and this is page 38. And I
5 asked you about your encounter with Chris Winters. And
6 I asked you at that time, question, this is the bottom
7 of page 38. Did you ask him to do anything. Your
8 answer is no, he asked me if I thought needed medical
9 treatment. My question to you was what did you tell
10 him. Your answer was I told him no because I didn't
11 feel like anything was broke.

12 A. There you go.

13 Q. Okay, but just to clarify, because I think it matters.
14 He offered you medical treatment, correct?

15 A. Not like the way you're saying it though, no.

16 Q. Okay. Well that's your testimony not mine, Mr. Bagley.

17 A. Okay.

18 Q. Okay. So you're now testifying that he didn't offer
19 you medical treatment?

20 A. What did I say in your paperwork? Did I say he offered
21 me medical treatment?

22 Q. I get to ask the questions today, not you Mr. Bagley.

23 A. I'm saying, did you just sit there and say I said
24 that? Then if you said I said it, then I said it.

25 Q. Okay, then we'll go with that.

1 A. I felt like nothing was broken, correct.

2 Q. But it's important for you to acknowledge that he
3 offered you medical treatment the day of the accident.
4 And that's what you testified at your deposition --

5 A. Okay. Yes, sir.

6 Q. Okay, thank you. Now you didn't receive, that was a
7 Friday so you went home, you had your meeting with
8 Chris Winters, the weekend you didn't do anything,
9 correct?

10 A. Nope.

11 Q. Okay. And then, when's the first time you sought
12 medical treatment?

13 A. It'd have been that Monday night.

14 Q. Okay. And what caused you to go to the doctor?

15 A. Just like I said I was feeling sluggish. It was like
16 it was coming up on my back and, you know, I don't
17 know if it was something that I ate or the sheer fact
18 that everything was alluding me.

19 Q. So you sought medical treatment on the Monday
20 following your early Friday morning injury because you
21 had an upset stomach, you thought it made you sick?

22 A. Well I don't know if it was an upset stomach. It might
23 have just been like puking feeling, like nauseating.
24 But yes I sought treatment that Monday.

25 Q. That was three days after this incident, correct?

1 A. Correct. And then followed up with Riverview.

2 Q. You've seen how many doctors, Mr. Bagley?

3 A. A handful.

4 Q. And in fact you've seen Dr. Brown, correct?

5 A. Correct.

6 Q. Dr. DuPuy.

7 A. Yes, sir.

8 Q. Dr. Rao.

9 A. Yes, sir.

10 Q. Dr. Paez. And Dr. Gunter.

11 A. If you want to consider her a doctor then okay. It's a
12 child psychologist. Y'all sent me to sit with a bunch
13 of kids in a room. I don't think that's fair.

14 Q. You had the opportunity to depose Dr. Paez, or your
15 attorney, to question her qualifications and you
16 didn't do that, okay. So just answer my questions. You
17 saw Dr. Paez, correct? Correct.

18 A. Yeah I colored in the coloring book.

19 COMMISSIONER MCCASKILL: All right, let's go off the
20 record, sidebar with the attorneys. Meet me in
21 this room back here.

22 (OFF THE RECORD)

23 COMMISSIONER BURLEY: All right. Back on the record.

24 Mr. Burley.

25 MR. BURLEY: Yes, sir. Thank you Commissioner.

1 CONTINUED BY MR. BURLEY:

2 Q. My original question Mr. Bagley was, you've seen Dr.
3 Brown, Dr. DuPuy, Dr. Rao, Dr. Paez and Dr. Gunter,
4 isn't that correct?

5 A. Yes, sir.

6 Q. Okay. And as a result of that, is it fair to say that
7 you're main issues now are your left-hand contracture,
8 and your drop foot?

9 A. No, sir. Also head.

10 Q. Okay but --

11 A. They've all stated need further testing.

12 Q. And you think you need further testing?

13 A. They've all stated I need further testing to determine
14 how far the extent of the damage.

15 Q. Just for the record, do you know how many MRIs and CT
16 Scans that you've undergone?

17 A. Probably about 10, in the last year.

18 Q. The record reflect that you've undergone 14 either CTs
19 or MRIs to the neck, thoracic lumber, or the brain,
20 since June of 2019. Does that sound about right?

21 A. That sounds about right, yes, sir.

22 Q. And as a result of those, you are aware that Dr. Brown
23 and Dr. Gunter are of the opinion that this is no
24 physical explanation for your issues?

25 MR. SANCHEZ: Objection.

1 A. That's their opinion. But --

2 COMMISSIONER MCCASKILL: Hold on. What's your
3 objection?

4 MR. SANCHEZ: He asking him if he's aware of what their
5 opinion is. I mean frankly I don't think my
6 client has that personal knowledge about that,
7 other than what he's feeding him.

8 MR. BURLEY: If I can respond, A, it's his case but B,
9 we had a lot of leeway on direct with that. And
10 I'm just trying to, you know, for your benefit
11 and for the record's benefit, outline exactly
12 what the final diagnosis is.

13 COMMISSIONER MCCASKILL: All right.

14 MR. BURLEY: Thank you Commissioner.

15 CONTINUED BY MR. BURLEY:

16 Q. Of all those diagnostic testing that you've done, are
17 you aware that every one, every CT scan or MRI of
18 either your brain or your back has come back within
19 normal limits, which means normal?

20 A. No, sir.

21 Q. You're not aware of that, or you dispute that?

22 A. Both.

23 Q. Okay. Let's talk a little bit about your return to
24 work. Dr. Brown has indicated that he gave you a full
25 duty release when he released you in July of 2019,

1 isn't that correct?

2 A. I was never aware of that, no, sir.

3 Q. Okay but you'll defer to his medical records and
4 what's in the evidence, correct?

5 A. I have no idea. He never handed me anything.

6 Q. But you did attempt to return to work at Sun Fiber
7 sometime in September?

8 A. That is correct.

9 Q. Okay and you had a meeting with Chris Winters, is that
10 correct?

11 A. No. We talked on the phone.

12 Q. Okay. And at some point you provided him with
13 documentation from Dr. Jarell, is that correct?

14 A. That's correct.

15 Q. And that report is something that you sought out from
16 Dr. Jarell, is that correct?

17 A. That's correct.

18 Q. Because Dr. Jarell's not a Workers' Comp doctor,
19 correct?

20 A. I don't know.

21 Q. And on top of Dr. Brown releasing you at full duty
22 without restrictions in July, your doctor, Dr. Jarell
23 released to work full time without restrictions --

24 A. Under --

25 Q. Let me just finish my question, on September 6, 2019.

1 Isn't that correct?

2 A. Under.

3 Q. I'm sorry?

4 A. From what I gathered from him, it said pending to go
5 to Ortho Carolina.

6 Q. Okay so pending a follow up appointment with a doctor,
7 you had full duty and you are without restrictions,
8 correct?

9 MR. SANCHEZ: Objection. That's not what it states Your
10 Honor. I mean if he wants my client to read it,
11 it's APA 7 152, read the whole sentence.

12 MR. BURLEY: This says the patient may return to work
13 full time without restrictions pending an
14 appointment with Ortho Carolina.

15 MR. SANCHEZ: Okay, and what is the next sentence?

16 MR. BURLEY: Let me finish. Please.

17 MR. SANCHEZ: Okay.

18 CONTINUED BY MR. BURLEY:

19 Q. So, my question for you, Mr. Bagley is, this is
20 something that you sought out?

21 A. From Dr. Jarell.

22 Q. And you gave this to the people at Sun Fiber, correct?

23 A. Right, and they re-wrote it. Right.

24 Q. What do you mean they re-wrote it.

25 A. I'm pretty sure you have it. They re-wrote it in their

1 own words and made me sign it.

2 Q. Okay, but this is what you went out, and did you --

3 A. That's what I handed them.

4 Q. Okay. And did you hand this to them in an attempt to
5 return to work?

6 A. I certainly did.

7 Q. Okay and did you return to work after providing this
8 clearance with Mr. Winters?

9 A. I believe I had it emailed to his phone, and then by
10 the time I got to work that evening they re-wrote it
11 in their own words and told me basically to sign the
12 paper and go to work under no work restrictions and
13 full rights to work, or don't sign the paper, walk off
14 the premises and lose all your Workmans' Comp rights.
15 I signed the piece of paper, I went in to do my job, I
16 couldn't do it. The supervisor looked at me and said
17 you can't do it. He walked me out, he called my wife
18 to come pick me up. And that was the gist of it. But
19 they made me sign something that the doctor didn't --
20 they re-wrote in their words.

21 Q. So you walked off the job after providing that to Sun
22 Fiber?

23 A. No --

24 MR. SANCHEZ: Objection.

25 A. -- I provided that Sun Fiber. When I showed that

1 evening with the supervisor, the supervisor picked me
2 up. They called me in the office because he had the HR
3 lady waiting on me, to sign what they re-wrote in
4 their words stating I go to work without my walker or
5 my cane, no work restrictions whatsoever. If I don't
6 sign it I have to walk off the premises and lose all
7 my Workmans' Right Comp. So I signed it and went to
8 work the best I could. The supervisor came back there,
9 got me, seen me in agony in pain crying, tears coming
10 out my eyes. He called my wife and said Kyle can't do
11 it, come get him. So she come got me.

12 COMMISSIONER MCCASKILL: How about pull your face mask
13 up, thank you.

14 Q. And you haven't worked since, correct?

15 A. No, sir.

16 Q. Are you aware that Dr. DuPuy has released you from all
17 Orthopedic care?

18 A. No, sir.

19 Q. Okay. Dr. DuPuy was your doctor, correct?

20 A. That is correct.

21 Q. As was Dr. Rao?

22 A. Dr. Rao, yes, sir.

23 Q. You testified that you're having some depression type
24 issues, is that right?

25 A. Yes, sir.

1 Q. Okay. Have you ever had those issues prior to your
2 accident?

3 A. Like you said, year 2014.

4 Q. Did you have any since 2014?

5 A. Anxiety and depression?

6 Q. Yes.

7 A. Just anxiety from the job.

8 Q. And who did you see for that?

9 A. Ms. Plyler/Ms. Polous.

10 Q. So isn't it true that you initially saw Dr. Plyler in
11 December of 2014 for anxiety and depression?

12 A. I just said that. Yes, sir.

13 Q. And were you having any physical symptoms related to
14 your anxiety and depression at that time?

15 A. No, she wanted me to, you know, just a high demanding
16 job. Like I said, you hit a wrong button you kill
17 people. You hit the other wrong button you take out
18 millions of dollars worth of equipment. And, you know,
19 I just wanted to be -- I expressed my concerns. She
20 said try this medication. Ran it through the insurance
21 company and they kicked it out, they wouldn't pay for
22 it, so I never took it.

23 Q. So this was just work-related stress, is that correct?

24 A. That's correct.

25 Q. All right. This is your report from Dr. Plyler dated

1 December 16, 2014. Is that fair?

2 A. Yes, sir.

3 Q. Okay. And I'm going to read the highlighted portions,
4 and you let me know if I get anything wrong. This is
5 Defendant's page 363. You were diagnosed with anxiety
6 and depression. Symptoms worse in the evening. Unable
7 to maintain relationships. Interference with work. You
8 indicted that you were having trouble at work and your
9 symptoms were anxiety, muscle tension, palpitations,
10 excessive sweating, trembling and shaking and
11 headaches. Isn't that right?

12 A. Tense all the time.

13 Q. Okay. So you were having headaches at that time,
14 weren't you?

15 A. Yeah. Everybody has headaches.

16 Q. Okay. And that was in 2014.

17 A. That's correct.

18 Q. Now you said that you only got treatment in 2014, is
19 that right?

20 A. 2014. Like I said, whatever medication she wrote down
21 on there for me to try. She gave me some sample
22 packets. I tried to run the insurance and the
23 insurance kicked it out, so there was no way I could
24 do it. You see where it says the evening time, so that
25 would be me coming in off of work, from working

1 twelves. So, you know, you just have the workload on
2 you through the day, and you know, you don't want to
3 bring that home with you.

4 Q. Okay. I want to talk to you about this one. This is
5 March 13, 2018.

6 A. Okay.

7 Q. From Dr. Plyler, I mean Dr. -- how do you pronounce
8 her name?

9 A. Polous.

10 Q. So same doctor, she changed her name, right?

11 A. She's married now.

12 Q. Okay so Dr. Polous, this is March 13, 2020, I just
13 want to go through this with you briefly.

14 A. Uh-huh. That's March when?

15 Q. Of 2018.

16 A. Okay.

17 Q. All right. And then you were complaining of increased
18 agitation, anger and mood swings, feeling down and
19 depressed for a period of six months. You felt that
20 you had loss of energy and interest, lack of
21 concentration and you were agitated with anger spells.
22 Is that fair?

23 A. Yeah.

24 Q. Do you recall having those issues in 2018?

25 A. Yeah.

1 Q. Okay. You had fatigue, depression and stress, and you
2 were diagnosed with, according to your doctor, major
3 depressive disorder. Is that fair?

4 A. That's all her notes. I've never seen any of that.

5 Q. Okay. But you'll agree that you went to her for
6 treatment, correct?

7 A. I went to her to talk about some stuff, and that's
8 what we come up with.

9 Q. And she diagnosed you with major depressive disorder?

10 A. But I never knew about that, yeah.

11 Q. Okay, so you didn't have that conversation with her?

12 A. No. I've had talks with her. That's her notes. I never
13 knew that till we started gathering all our notes. I
14 never knew that. All this was new to me.

15 Q. Okay. And I'm just reading a little bit more. So then
16 you continue to treat up with her, this is page 347, I
17 mean 374 to 375. This is June of 2018.

18 A. Uh-huh.

19 Q. Okay and it's indicated here that persistent anxiety,
20 sleep disturbances, irritability and anger outburst.
21 And you were reporting excess weight loss and fatigue,
22 depression, anxiety, insomnia, stress and loss of
23 interest. Do you require that visit -- I mean do you
24 recall that visit

25 A. I don't recall. I mean if that's what she wrote down,

1 like I said, that's all of her notes. I've never seen
2 that till here recently.

3 Q. Okay.

4 A. It was all new to me.

5 Q. But you don't dispute that you went there, correct?

6 A. That's always been my doctor. But what she writes in
7 her notes, until I actually went and got them, I never
8 knew that.

9 Q. Okay.

10 A. But you know other than going in there and just
11 talking to her and say hey doc, you know, I feel like
12 this, or I feel like that.

13 Q. Sure.

14 A. You know, other than that, like I said, that's her
15 notes.

16 Q. And this is a questionnaire you completed, and this is
17 about the same time in 2018. And you were asked some
18 questions about depression, Defendant's page 373. And
19 you indicated that you have several days little
20 interest or pleasure in doing things, feeling down,
21 depressed or hopeless on more than half of the days.
22 Trouble falling asleep or staying asleep, you had that
23 for more than half the days in a week. And feeling
24 tired or having little energy, poor appetite or
25 feeling bad about yourself and trouble concentrating,

1 you have those nearly every day. Is that fair?

2 A. Yeah. That is very fair.

3 Q. Okay.

4 A. I mean that's 90 percent of people walking around this
5 world.

6 Q. Right. And I'm asking you because they're relevant to
7 the claim here --

8 A. I feel like that's irrelevant, but okay.

9 Q. Okay. So and then when you saw the doctor, again your
10 doctor, in June of 2018, you were diagnosed with major
11 depressive disorder and bipolar disorder, isn't that
12 correct?

13 A. If that's what she said.

14 Q. Okay --

15 A. Like I said all this was new to me.

16 Q. Right. I understand. I just need you to answer my
17 questions. And also sleep pattern disturbance. Do you
18 recall that?

19 A. Uh-huh.

20 Q. Say yes for me for the record.

21 A. Yes, sir.

22 Q. Okay thank you. Okay. So the reason I bring those up
23 because as it relates to your injury with Sun Fiber --

24 A. Right.

25 Q. You've talked about having trouble sleeping and just

1 pain, fatigue, those type of things. You were having
2 very similar symptoms in 2018, correct?

3 A. No, totally different.

4 Q. Okay, so you --

5 A. There's a difference in, you know, lack of sleep
6 versus not getting no sleep at all, being up days at a
7 time. There's a big difference. You're trying to paint
8 me into a corner when that's nothing like what I'm
9 going through right now, no, sir.

10 Q. Mr. Bagley I can promise I'm no here to intimate or
11 trick you or put you into a corner.

12 A. Well --

13 Q. I can assure you of that. But I did need, because
14 they're relevant, to address these issues.

15 A. Yes, sir.

16 Q. I'm going to ask you one more question. Do you admit
17 that you were having the symptoms that were outlined
18 in the medical reports in 2018, that I just showed
19 you. Do you admit that you were having those issues,
20 or do you deny those?

21 A. If they're on that paper then I admit it.

22 Q. Okay. Did you tell every doctor that you've seen all
23 the same problems that you told us here today?

24 A. Meaning what, sir?

25 Q. So when you go to the doctor, whether it be Dr. Brown

1 or Paez, Dr. Gunter, Dr. Rao, any of the doctors that
2 you've seen, have you told them all the same symptoms
3 that you told us here today about what you're feeling
4 currently?

5 A. I still don't understand what you're saying.

6 Q. Have you left any --

7 A. Are you talking about me talking about my accident?

8 Q. I just want to make sure you told the doctors all the
9 issues that you're having. Every single one you've
10 seen.

11 A. I'm not understanding. Can you help me.

12 Q. Yeah.

13 A. I'm not understanding what you mean.

14 Q. All right. So when you go to the doctor --

15 A. When I go see Dr. Gunter --

16 Q. Do you tell him all the problems you're having?

17 A. Dr. Gunter knows about my head, my back, my hand.

18 Q. Right, and is it because you told him --

19 A. And my foot.

20 Q. And you've told him all the problems you're having?

21 A. That's because that's what I told him.

22 Q. Okay good. And you did that with every doctor you've
23 seen, I assume, correct? This isn't a trick question,
24 Mr. Bagley, I'm just --

25 A. I don't understand what you mean I go see doctors. I

1 seen y'all's doctors and the doctors that I seen on my
2 own my story has been consistent all the way through
3 if that's what you mean. They all know about my head,
4 my back, my foot and my hand. Yes. They all know about
5 that. What you're talking about with my family doctor,
6 that's something totally different. Only my family
7 doctor knows that.

8 Q. Right. I'm not talking about that.

9 A. Okay.

10 Q. I'm talking about the issues you have with your arm --

11 A. Issues from work, yes. Every doctor knows the same
12 thing.

13 Q. And you haven't left anything out with any of the
14 doctors, correct?

15 A. As far as I know but --

16 Q. Okay. Do you know what Dupuytren's Contracture is?

17 MR. SANCHEZ: Objection. My client is not a doctor.

18 A. No, sir. I do not.

19 Q. Okay, I'll rephrase Commissioner if you'll just give
20 me a minute.

21 COMMISSIONER MCCASKILL: Thank you.

22 Q. This is Defendant's page 461 - 462. This is, you're
23 saying Dr. Plyler-Polous. I'm sorry if I'm butchering
24 that name. You went to see her on June 29, 2020, do
25 you recall that visit?

1 A. I believe so, yes, sir.

2 Q. Okay. And she diagnosed you with what she calls
3 Dupuytren's Contracture of the left hand.

4 A. That, like again, that's her notes. I don't know.

5 Q. Do you recall talking to her about your hand issue?

6 A. Oh she's seen it.

7 Q. Yeah. Did she tell you, I mean anything other than --

8 A. Well you see it says drop foot too, so she's seen it.

9 Q. Right.

10 A. I don't know what she called it or her terminology is.

11 Q. Okay. But you admit that you went to the doctor --

12 A. Oh yes. They wanted me to follow up with my family
13 doctor, and that's what I did.

14 Q. Are you aware that's a chronic condition unrelated to
15 any acute event.

16 A. No.

17 MR. SANCHEZ: Objection Your Honor. There's no
18 testimony in the record about that.

19 MR. BURLEY: We had this on the pre-trial. I wanted to
20 at least offer it up. It's from the Mayo Clinic,
21 the definition of Dupuytren's Contracture.

22 MR. SANCHEZ: Your Honor there's no indication that
23 there's anything related to this. There's no
24 medical opinion testimony. He could have deposed
25 my client's primary care doctor and got out

1 whatever he wanted.

2 MR. BURLEY: You know this is a complex traumatic brain
3 injury. His own doctor now has given a diagnosis.
4 Not our doctor, his doctor. I didn't know what it
5 was. I just want to put into the record at least,
6 and you can assign no weight to this at all
7 Commissioner, but this is the definition of what
8 he's been diagnosed with by his doctor.
9 Dupuytren's Contracture. And this is a Mayo
10 Clinic definition. We can toss it. We can not.
11 I'm asking to put in the record.

12 MR. SANCHEZ: I say toss it. He said we can toss it or
13 not, so.

14 MR. BURLEY: Well, I mean he can assign no weight to it
15 at all, but at least it's a definition of what
16 we're talking about. The man has a contracture.
17 The question is what's causing it.

18 MR. SANCHEZ: And that's a question for medical
19 testimony for which you needed to obtain if you
20 want to seek that --

21 MR. BURLEY: Well it's in, we've got medical testimony
22 of it. His doctor diagnosed him with it.

23 MR. SANCHEZ: Okay, but that's an out of court
24 statement. I haven't had a chance to cross-
25 examine the witness about that, if that's what

1 you're trying to say.

2 MR. BURLEY: Well that should have been addressed in
3 the pre-trial if you want to depose anybody.

4 MR. SANCHEZ: And I did address it in the pre-trial
5 when I objected to you referencing that.

6 MR. BURLEY: Commissioner, I just need a ruling from
7 you.

8 COMMISSIONER MCCASKILL: Yeah, we're not going to let
9 it in. He's got some valid points, plus, you
10 know, there is, I don't know, I understand it's
11 Mayo Clinic but don't know who wrote it. We
12 don't, it, technically it's hearsay.

13 MR. BURLEY: But the diagnosis is in the record, so
14 that's not. Thank you for ruling.

15 COMMISSIONER MCCASKILL: The diagnosis is the record,
16 and the record, the medical records speak for
17 themselves.

18 MR. BURLEY: Thank you, Commissioner.

19 CONTINUED BY MR. BURLEY:

20 Q. Do you recall when I took your deposition back in
21 September of last year, Mr. Bagley?

22 A. I believe so, yes, sir.

23 Q. Okay. And I asked if you were able to drive and you
24 said that you had not driven for four months. Do you
25 recall that?

1 A. I also remember saying I drove a couple times.

2 MR. SANCHEZ: Your Honor, I'm going to object to this
3 line of questioning. I believe we're going in to
4 some surveillance.

5 MR. BURLEY: What's your objection?

6 MR. SANCHEZ: There's no foundation really for the
7 surveillance.

8 MR. BURLEY: Well, I could lay the foundation and
9 reserve the right to re-cross.

10 MR. SANCHEZ: There is no witness here to testify about
11 any --

12 MR. BURLEY: There is a witness here. I've got the
13 surveillance person outside.

14 MR. SANCHEZ: Oh, lay the foundation then.

15 MR. BURLEY: Okay. So I can continue?

16 MR. SANCHEZ: Go ahead.

17 MR. BURLEY: Thank you.

18 CONTINUED BY MR. BURLEY:

19 Q. Okay so just to clarify, and I'm reading from your
20 deposition. This is page 9 of your deposition. And I
21 asked you, we were talking about what kind of car do
22 you drive, and you told me you drive a Ford F150, is
23 that right.

24 A. Uh-huh. Yes, sir.

25 Q. And I said you have not driven that car. Your answer

1 was I haven't driven going on four months probably. I
2 said okay, would that be since your work injury, and
3 your answer was yes. And I said so you have not driven
4 that car since your work injury, you said well maybe
5 once but yes, since the work injury, no. And then you
6 said you've only driven once.

7 A. Like I said, a couple times.

8 Q. But that's not what you said, you just said once,
9 correct?

10 A. Well you said once up here and once down there. So
11 that'd be two times.

12 Q. No, but, just listen to the question. I clarified,
13 you've only driven that car once since, you would
14 estimate, since your work injury. Yes, sir.

15 A. Okay, wait a minute, what car are we talking about
16 again? We're talking about the blue truck, or the
17 green car? Or the beige truck. Which one.

18 Q. Well I'm asking you just generally have you driven and
19 you said no, is that correct.

20 A. I'm sorry what was the question before that question?

21 Q. Have you been able to drive since your work injury?

22 A. The blue truck. I think that's what you are asking,
23 the blue truck.

24 Q. Well, your answer was I haven't driven in the last
25 going on four months. You didn't qualify with any

1 specific --

2 A. That says blue truck before that, right?

3 Q. Well, we were talking about the truck, but you said
4 you hadn't driven.

5 A. Okay so then I say I drove it once. Right here. Maybe
6 once. Since the work injury, no. But just to clarify
7 I've driven it once.

8 Q. Okay.

9 A. Blue truck. The blue truck, right.

10 Q. Well your answer was not specific to any specific car.

11 A. So are you saying blue truck or red car?

12 Q. Let me just you this, were you able to, were you
13 driving your own car more than once prior to your,
14 after your work injury before your deposition? Were
15 you able to drive? Yes or no.

16 A. I mean I guess anybody could drive if they really
17 wanted to, yeah.

18 Q. I understand, but I'm asking you, specifically to you.

19 A. Specifically to me --

20 Q. Were you able --

21 A. Yes I've drove that car twice.

22 Q. Have you driven your wife's car at all, the Chrysler?

23 A. That's the car y'all got me in the videotape in, yeah.

24 Q. Okay. So you'll admit you're able to drive that car?

25 A. Yeah.

1 Q. At your deposition though, I asked you about the 2015
2 Chrysler, and have you driven that car, and you said -
3 -

4 A. Not lately.

5 Q. Okay.

6 A. So that says I drove it right?

7 Q. Okay. But --

8 A. I mean you're trying to, look man, I said in there
9 once or twice. I said that, you're about to pull
10 somebody out here with a photo that's going to show
11 you driving the car. I drove the car. I mean I didn't
12 have no choice but to drive the car. So I drove it.
13 Yes. I drove the car.

14 Q. So, let's clarify for the record today. Okay.

15 A. It was clarified in there. It says I drove it.

16 Q. Mr. Bagley.

17 A. I just feel like you're trying to make me out to be
18 something that I'm not. It says right there, you asked
19 me about the blue truck, then you asked me about me
20 the red car. And both of them I say once.

21 Q. Can you show me where it says you were driving the red
22 car?

23 MR. SANCHEZ: Aren't we kind of going through the same
24 question here?

25 A. No, not of lately.

1 MR. SANCHEZ: -- Asked and answered.

2 MR. BURLEY: I can't get an answer out of him.

3 A. No, not of lately.

4 MR. SANCHEZ: He just answered you.

5 MR. BURLEY: Okay so let's --

6 MR. SANCHEZ: Wait hold on, can we get a ruling on this
7 please?

8 COMMISSIONER MCCASKILL: All right. We're going to go
9 through this one more time, because I'm not sure
10 it's asked and answered. Okay. But, I'm ready to
11 move on.

12 MR. BURLEY: Yes, sir. And I'm just trying to --

13 THE WITNESS: I drove the red car.

14 CONTINUED BY MR. BURLEY:

15 Q. Okay.

16 A. I had to pick my daughter up. She was sick throwing
17 up, so I had to go get her. I was the only one there
18 to get her. I couldn't leave her at the school house,
19 so I had to go get her. And then I, you know, I mean -
20 -

21 MR. BURLEY: Bear with me just a minute, Commissioner.

22 COMMISSIONER MCCASKILL: Take your time.

23 THE WITNESS: Can I have some water.

24 COMMISSIONER MCCASKILL: Do we have any water.

25 MR. SANCHEZ: May I approach, Your Honor.

1 COMMISSIONER MCCASKILL: Certainly.

2 MR. BURLEY: I have no further questions.

3 COMMISSIONER MCCASKILL: Okay.

4 MR. SANCHEZ: All right, Your Honor. Just a few.

5 COMMISSIONER MCCASKILL: All right.

6 RE-DIRECT EXAMINATION

7 BY MR. SANCHEZ:

8 Q. Has any doctor restricted you from driving, saying you
9 cannot drive at all?

10 A. Not out and out saying it, but recommended I not.

11 Q. Okay, but you can use your right hand and your right
12 foot still?

13 A. Correct.

14 Q. Okay.

15 A. Yes, sir.

16 Q. All right. So if they, if you had driven one time, I
17 guess, you had to drive to your mom's house back on
18 September 1st, did that in any way present, I'm sorry,
19 were you able to do that despite the fact that you had
20 this left hand problem and left foot problem?

21 A. Very cautiously.

22 Q. Okay. But that was a need of yours that you needed to
23 go to?

24 A. Yes, sir.

25 Q. Okay, and there was no other options for you --

1 A. None.

2 Q. Okay. So you've been surveilled quite a few times
3 apparently, around 22 times, according to my records.
4 Is there anything else in those videos that we've
5 looked at or talked about aside from what we just
6 mentioned?

7 A. What do you mean?

8 Q. Like in other words, is there anything in there that
9 is shocking --

10 MR. BURLEY: I'm going to object to this, no
11 surveillance has been submitted.

12 MR. SANCHEZ: It's a subpoena response, I'm just simply
13 asking him what he observed.

14 MR. BURLEY: Then you need to put it in evidence.

15 COMMISSIONER MCCASKILL: It's not in evidence, so.

16 MR. BURLEY: It's not in evidence, you're asking a
17 question.

18 MR. SANCHEZ: Okay, that's fine. I'll withdraw.

19 CONTINUED BY MR. SANCHEZ:

20 Q. All right. So, earlier Barrett was asking you about a
21 visit that you had with your doctor, APA 15, page 379.
22 There was a visit that he was asking you about right
23 before that on June 14, 2018 where he's making those
24 comments about depression and the diagnosis. Do you
25 remember all that?

1 A. Non verbal response.

2 Q. Okay. The very next visit, which was the next month,
3 July 5, 2018, page 377. According to the record it
4 states that you're doing well and you noticed a
5 difference on medications. You're agitation is
6 decreased, mood's improved. Still working and no
7 issues or interfering with work. His wife notices a
8 difference. He's happy with the progress. Range of
9 symptoms, patient reports insomnia but no depression,
10 no anxiety, no stress. Does that seem like an accurate
11 reflection of your visit that day?

12 A. Yes, sir.

13 Q. Okay, that was July 5, 2018, just a couple weeks after
14 that visit that he was referencing. So on June 2019,
15 were you having any issues of anxiety, depression,
16 stress or anything that needed treatment?

17 A. No, sir.

18 Q. Okay. But now you are?

19 A. Yes, sir.

20 Q. All right. And you said that it's substantially
21 different that anything in the past record that you
22 may have made mention to your doctor about, is that
23 right?

24 A. Yes, sir.

25 Q. Okay. All right. So just for sake of brevity, APA 7,

1 152, that's a September 6, 2019 note of Dr. Jarell.
2 Just so we're clear, for the record, the note says
3 that you may return to work full time without
4 restrictions pending appointment with Ortho Carolina,
5 date to be determined.

6 A. Correct.

7 Q. Does that sound correct?

8 A. Yes, sir.

9 Q. Okay. I don't know why he was trying to not reference
10 that last sentence there, but just wanted to make sure
11 we were clear. So you went to the Ortho Carolina for
12 about a return to work date, and that's when Dr. DuPuy
13 wrote you out of work and you've been written out of
14 work ever since by him and Dr. Brown, is that right?

15 A. Right.

16 Q. Okay. And earlier you made a reference about how Chris
17 Winters indicated that you needed to sign something or
18 you'll lose all benefits on your Workers'
19 Compensation, what is that?

20 A. They should have that.

21 Q. Okay but we haven't seen that though, right?

22 A. I haven't seen it since I signed it, nor have I have
23 seen the accident report.

24 Q. Yeah I haven't either, I just didn't know what you
25 were referencing. Okay. All right. And then just so

1 we're clear again, so that things are not taken out of
2 context. You did not go to the Chester Regional
3 Medical Center, APA 1, for food poisoning alone, is
4 that right?

5 A. Not just for food poisoning.

6 Q. Okay. And in fact on APA page 2, it indicates that you
7 have issues in your cervical, thoracic and lumbar.
8 Began three days ago when you were hit on the head
9 with a bale of fiber, knocking you on your back, and
10 it's hurting your neck and your entire back. Patient's
11 symptoms are aggravated by movement. Does that sound
12 accurate?

13 A. Yes, sir.

14 Q. Okay. Just so we're clear again, when you got hit by
15 this bale, you were dazed, I believe you testified
16 earlier that you thought you saw your kid's eyes? Is
17 that right?

18 A. I did.

19 Q. All right. You went to go collect yourself in the
20 truck for a little while after you got hit, is that
21 right?

22 A. Yes, sir.

23 Q. All right. And then you continue to do a welding job
24 that you had done countless times before --

25 A. Hundreds of times.

1 Q. -- Didn't require much independent thought or --

2 A. No.

3 Q. Dexterity or anything like that?

4 A. No.

5 Q. Okay. And then there was some indication about a spot
6 on your MRI, do you remember that?

7 A. Yes, sir.

8 Q. Okay. Do you recall is that in connection with --

9 MR. BURLEY: This is an objection. This exceeds the
10 scope of my cross. We didn't talk about the spot
11 on the MRI.

12 MR. SANCHEZ: Yeah you did. You said all, you've had 14
13 CT scans and all of them had been negative.

14 That's an exact question of yours.

15 MR. BURLEY: I withdraw the objection.

16 CONTINUED BY MR. SANCHEZ:

17 Q. Okay so there was some indication of a spot on your
18 MRI, is that right?

19 A. Yes, sir.

20 MR. SANCHEZ: Thank you. All right. No more questions.

21 COMMISSIONER MCCASKILL: All right, Mr. Burley?

22 RE-CROSS EXAMINATION

23 BY MR. BURLEY:

24 Q. Just briefly, I just want to make sure I heard that
25 right. You're saying that welding doesn't require any

1 dexterity or --

2 A. For what I was doing.

3 Q. Okay, but you were welding?

4 A. With my right hand.

5 Q. Okay. And then the MRI that showed an infraction, you
6 were, you had MRIs since then, correct? Of the brain?

7 A. I'm not understanding the word, what do you mean?

8 Q. Okay, the, your attorney was talking about an MRI
9 showing something. You've had multiple MRIs correct?

10 A. Correct.

11 Q. And in fact Dr. Gunter did a couple of MRIs recently,
12 and a CT scan on the brain, correct?

13 A. I assume so, yes, sir.

14 Q. Okay. No further questions.

15 MR. SANCHEZ: Thank you Your Honor. Thank you Kyle.

16 COMMISSIONER MCCASKILL: All right. Thank you, sir. You
17 may step down.

18 MR. SANCHEZ: I'll grab the water, don't worry.

19 COMMISSIONER MCCASKILL: Yeah and watch your step now
20 going down, where it's marked --

21 MR. BAGLEY: Oh, yes, sir.

22 COMMISSIONER MCCASKILL: It's a little ramp there.

23 Other witnesses Mr. Sanchez?

24 MR. SANCHEZ: No, Your Honor.

25 COMMISSIONER MCCASKILL: That's your case?

1 MR. SANCHEZ: Yes.

2 COMMISSIONER MCCASKILL: All right, Mr. Burley?

3 MR. BURLEY: If you'll bear with me one minute, I'm --

4 COMMISSIONER MCCASKILL: Certainly. Take your time.

5 MR. SANCHEZ: I just want to make those APAs part of
6 the record and all that.

7 COMMISSIONER MCCASKILL: Yeah y'all handed all that up,
8 that's it.

9 MR. SANCHEZ: I just want to make sure we got that on
10 the record at the beginning because there was a
11 lot going on at the pre-trial.

12 COMMISSIONER MCCASKILL: Yeah, well y'all handed your
13 APAs up, I asked for objections, there were none.
14 Voila.

15 MR. SANCHEZ: Yep. I just got handed that exhibit,
16 that's why I was a little --
17 (off the record)

18 MR. BURLEY: The defense has no witnesses Commissioner.

19 COMMISSIONER MCCASKILL: All right. Then that concludes
20 this proceeding.

21 (There being no further questions, the
22 hearing concluded at 2:43 p.m.)

23

24

25

CERTIFICATE OF REPORTER

1

2

3 I, KATHRYN BOSTROM, COURT REPORTER AND NOTARY PUBLIC

4 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY

5 CERTIFY THAT I REPORTED THE HEARING OF KYLE BAGLEY ON

6 MONDAY, THE 28TH DAY OF SEPTEMBER, 2020, THAT THE WITNESS

7 WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 109 PAGES

8 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK

9 REPORT OF SAID DEPOSITION.

10 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR

11 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE

12 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY

13 INTERESTED IN SAID CAUSE.

14 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS

15 11TH DAY OF JANUARY, 2021.

16 _____

17 KATHRYN B. BOSTROM, COURT REPORTER

18 MY COMMISSION EXPIRES AUGUST 28, 2022

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