

1 VIRGINIA:
 2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
 3
 4 FRANCES A. CAREY,
 5 Plaintiff ,
 6 vs. AT LAW NO.
 7 NATIONAL RAILROAD PASSENGER LC-1323-4
 8 CORPORATION,
 9 Defendant.

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 11
 12 The deposition of DARRYL P. BUTLER was
 13 taken on Tuesday, December 2, 1997, commencing
 14 at 1:40 p.m., at the offices of Amtrak, 900
 15 Second Street, Washington, D.C., before Donna E.
 16 Mize, Certified Shorthand Reporter and Notary
 17 Public.
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A P P E A R A N C E S

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3 ON BEHALF OF THE PLAINTIFF:

4 JOHN M. COOPER, ESQ.

5 Wilson, Hajek & Shapiro, P.C.

6 P.O. Box 5369

'7 Virginia Beach, Virginia 23455

8

9 ON BEHALF OF THE DEFENDANT:

10 AUBREY R. BOWLES, III, ESQ.

11 Bowles & Bowles

12 Two North Fifth Street

13 Richmond, Virginia 23219

14

15

16 ALSO PRESENT:

17 Frances Carey

18

19

20

21 (Index appears following the transcript.)

2 2

P R O C E E D I N G S

2
3 Whereupon

4 DARRYL P. BUTLER
5 a witness, called for examination, having been
6 first duly sworn, was examined and testified as
7 follows:

8 EXAMINATION

9 BY MR. COOPER:

10 Q. Please state your full name for the
11 record?

12 A. Darryl Phillip Butler.

13 Q. Mr. Butler, as you know I'm John Cooper.
14 I'm one of the attorneys representing Ms. Carey
15 in this personal injury action. I'm going to ask
16 you some questions, and if I ask one that is not
17 clear it wouldn't be the first time. I simply
18 ask if you don't understand my question to ask me
19 to rephrase it before answering, so that way I
20 can be sure you understood any questions that I
21 did ask you; is that all right?

22 A. Yes.

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1 Q. What is your job title?

2 A. Manager claims services.

3 Q. What are your basic duties in that role?

4 A. I supervise the claims office and those
5 claims that fall under the responsibility of the
6 office.

7 Q. And this claim of Ms. Carey's would be
8 one of those?

9 A. Yes.

10 Q. We are talking about Amtrak here
11 obviously?

12 A. Yes, that is my employer.

13 Q- How long have you been in that position,
14 job title?

15 A. Technically, the title changed from
16 supervisor to manager about a year ago, but I
17 have had the same responsibility for 10 years.

18 Q. And with respect to Ms. Carey's case have
19 you -- you are the claims agent handling it, or
20 are you supervising somebody else who is in
21 charge of it?

22 A. I am handling it directly now.

1 Previously, I supervised someone else who was
2 handling it.

3 Q. Who was that?

4 A. First it was Greg Temple, and then about
5 a year ago he left this office, and it was taken
6 over by Monica Davis, and subsequently she has
7 left this office.

8 Q. How long did Monica Davis have the file?

9 A. Approximately 12 months.

10 Q. And how long did Mr. Temple have the file
11 approximately?

12 A. From its inception.

13 Q. So if this accident is two and a third
14 years ago, how long have you been on the file
15 directly?

16 A. Directly about two months.

17 Q. Have you taken statements from anyone or
18 has Monica Davis or Mr. Temple to your knowledge?

19 A. I don't know the answer to that. I would
20 have to look at the file.

21 Q. Do you have the file? I need you to
22 bring it out because I'm going to ask you about

1 all the documents in it anyway.
2 MR. BOWLES: Except for the ones that are
3 going to be privileged.
4 MR. COOPER: If they are privileged I
5 will need you to state them on the record.
6 MR. BOWLES: Any correspondence between
7 Mr. Butler and myself is privileged.
8 MR. COOPER: I don't want that. If he
9 will get the file though I think it will speed
10 things along.
11 BY MR. COOPER:
12 Q. I take it you have obtained your file?
13 A. Yes.
14 Q. Is Monica Davis still with Amtrak?
is A. Yes.
16 Q. And Mr. Temple as well?
17 A. Yes.
18 Q. What statements have you taken, anyone in
19 your department?
20 MR. COOPER: Mr. Bowles, are you going to
21 object to his providing me copies of those?
22 MR. BOWLES: I don't think there are any.

1 As I interpret your statement that means
2 recording what somebody tells you occurred.

3 MR. COOPER: I'm going to clarify that.

4 THE WITNESS: There aren't any recorded
5 statements.

6 BY MR. COOPER:

7 Q. Are there any handwritten statements that
8 you have in your file?

9 A. No.

10 Q. I take it when we talk about your file
11 everything that Amtrak has about this
12 investigation and claim is in your records right
13 there. There wouldn't be any other place where
14 statements would be other than in your file,
15 would there?

16 A. No.

17 Q. Are there any other statements that were
18 taken where it was neither recorded or
19 handwritten and simply you took interviews of
20 somebody and took down notes or somebody in your
21 department did?

22 A. It would be here, and I don't see

1 anything like that, but let me just say that if
2 there was a statement that was taken from someone
3 in connection with this, yes, it should be here.
4 To categorically say it could not be anywhere
5 else --
6 Q. I understand that, but to the best of
7 your knowledge?
8 A. That's right.
9 Q. There is no handwritten statement from
10 Ms. Carey given on the date of the accident
11 either standing alone or as part of some incident
12 report?
13 A. By that do you mean an accident report?
14 Q. Yes.
15 A. There is an accident report that is
16 assigned by Ms. Carey.
17 MR. COOPER: Is it possible to get a copy
18 of that, Mr. Bowles? I don't believe we have
19 been provide that previously.
20 MR. BOWLES: Yes.
21 MR. COOPER: While we are at it to make
22 ir- easier if there is any other officiall

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1 Amtrak reports beyond that I'm going to want to
2 get copies of them so you might want to check
3 now.

4 MR. BOWLES: I think there is the 10-day
5 report.

6 THE WITNESS: And Ms. Carey's report, the
7 supervisor's report, Mr. Rao's report.

8 MR. BOWLES: The personal injury accident
9 report, that is the same document to my
10 knowledge. They are the only three plus
11 exhibit 1.

12 MR. COOPER: Yes, sir. Let me ask the
13 court reporter to please mark a two-page document
14 entitled Injury/Illness report as Butler
15 number 1, and while she is at it a document
16 one-page entitled, National Railroad Passenger
17 Corporation Mid-Atlantic Division, and it goes on
18 from there. It appears to be a memo from
19 Mr. Rao, R A 0, to a Mr. Lundy dated August 25,
20 1995. That will be number 2, and then as
21 number 3 a document entitled, Injured Employees
22 10-day report, a one-page document as number 3.

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1 (Butler Deposition Exhibit
2 Numbers 1-3 were marked for identification.)

3 BY MR. COOPER:

4 Q. Mr. Butler, I take it that other than
5 exhibits 1, 2, and 3, which are just identified,
6 you are not aware of any other official reports
7 or memoranda from Amtrak about the investigation
8 of this incident which brings us here today?

9 A. I'm not aware of any other materials. I
20 would want to correct the answer that I gave
11 earlier. It looks like I took this -- whenever
12 Greg left I took this file over, and I didn't
13 give it to Monica.

14 Q- How long did Mr. Temple have it?

15 A. Until November of '96.

16 Q. Since that time it has been in your
17 direct possession?

18 A. Yes.

19 Q. With respect to any investigation by
20 Mr. Temple, I take it that you are able to
21 answer -- you have his file so if he took any
22 statements you would see it there?

1 A Yes
2 Q. And there are none?
3 A. That's correct.
4 Q. Did you interview any witnesses about
5 this incident?
6 A. I believe that Greg had a conversation
7 with Ms. Carey.
8 Q. Other than that, any?
9 A. No.
10 Q. Have you conducted any surveillance on
11 her?
12 A. It doesn't appear so.
13 Q. I take it you are not personally aware of
14 any?
15 A. It should be here if there were any, but
16 I don't have any.
17 Q- And I take it that she, Ms. Carey,
18 reported this incident as required by Amtrak on
19 the very day of the accident, August 25, 1995, as
20 reflected in exhibit 1, for instance?
21 A. I'm sorry, would you ask that again?
22 Q. Did Me. Carey report this injury as she

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1 was supposed to?

2 A. Yes.

3 Q. She didn't commit any rules violation or
4 other infraction related to this incident, did
5 she?

6 A. Not that I'm aware of.

7 Q. Were the lockers that fell on her
8 unbolted at the time of her injury?

9 A. That is my understanding, yes.

10 Q. Do you know why they were unbolted?

11 A. My understanding with regard to that from
12 talking with James Briscoe was that the ladies
13 who went into the locker room to take possession
14 of lockers did so before the locker room --
15 technically they hadn't completed the locker
16 room. They hadn't fixed all the lockers to the
17 wall, and when people put locks on the lockers
18 that prevented them from being able to get into
19 the lockers to be able to bolt them to the wall
20 from the inside of the lockers, and that
21 accounted for the fact that all of the lockers
22 were not fixed to the wall. That is my

1 understanding.
2 Q. So you had an interview of some sort with
3 Mr. Briscoe some time shortly after the incident?
4 A. I spoke with Mr. Briscoe about a week
5 ago.
6 Q. Anything else that he told you about this
7 that you recall?
8 A. Only that Dave Sisson had carpenters go
9 in and fix the lockers to the wall.
10 Q. Subsequent to the accident?
11 A. Yes. He indicated that was not his
12 responsibility, that it was Mr. Sisson's
13 responsibility to fix the lockers to the wall.
14 His responsibility was for maintainance.
15 Q. What is Mr. Briscoe's full name?
16 A. James.
17 Q. What is his title?
18 A. I don't know what his title is.
19 Q. Do you know what department he is in?
20 A. I think he is in fixed property. I think
21 that is what it is called. I'm not certain.
22 Q. Whatever department, when he was saying

1 this isn't my responsibility and that it was
2 somebody else's, what did he indicate was his
3 responsibility?

4 A. He said that the locker room had not been
5 turned over to him is what he said and that the
6 fixing of lockers or the construction of the room
7 that was not his responsibility. His
8 responsibility was for maintenance, mopping
9 floors, emptying the garbage, keeping it clean
10 and sanitary.

11 Q- Is it possible that he is in charge of
12 station cleaning, does that sound right, given
13 what you just described?

14 A. I think that would fall under his
15 responsibility, yes.

16 Q. And Mr. Sisson, I assume that that is
17 S I S S B N?

18 A. I believe it is S I S S O N.

19 Q. What is that fellow's department, do you
20 know?

21 A. That would be fixed property.

22 Q. Fixed property does like repair or

1 renovation work among other things?

2 A. I don't have a depth of knowledge of what
3 fixed property does. They are responsible for I
4 believe putting up some light fixtures and things
5 of that nature, but, you know, really technically
6 that is a little bit over my head.

7 Q- I take it that lockers though are part of
a fixed property?

9 A. It was explained to me by Mr. Briscoe
10 that this was the construction there -- not that
11 construction there, but that the fixing of those
12 lockers to the wall was Mr. Sisson and his
13 carpenter's responsibility. That is what I know.

14 Q. Do you know who was in charge of the
15 construction of that room?

16 A. I don't know that, no.

17 Q. Do you know what department that would
18 be?

19 A. No.

20 Q. Who is it above you who would know

21 answers to those sort of departmental questions;

22 who is on first as to any given project?

1 A. Dave Sisson I would think would know,
2 Mr. Briscoe might know.

3 Q. In their own department?

4 A. Milton Lundy might know.

5 Q. What is Mr. Lundy's title?

6 A. He is the manager of crew report
7 services, Phyllis McClinton.

8 Q. What is her title?

9 A. I don't know what her title is, but I
10 believe she is the person and Mr. Lundy who is
11 the supervisor essentially for that building.

12 Q. Phyllis, what is her last name?

13 A. McClinton.

14 Q. Do you know when the construction work
15 was begun on that room, just approximately?

16 A. No, I don't know.

17 Q. If someone had advised us that it was
18 sometime in 1994, does that sound correct to you,
19 or do you have any reason to know one way or the
20 other?

21 A. I don't know.

22 Q. The only thing you know about the

1 construction is that Mr. Briscoe advised you that
2 he didn't really believe the construction was
3 fully finished as of the date of this injury?

4 A. That is what he indicated to me.

5 Q. Did he indicate when it did finish up
6 after that?

7 A. No.

8 Q. Briscoe is basically the one that gives
9 out locker assignments?

10 A. I don't know that to be the case. He
11 didn't indicate that would have been his
12 responsibility.

13 Q. Do you know who would have been that for
14 conductors such as Ms. Carey?

15 A. No.

16 Q. Do you know why someone gave her that
17 locker if the room wasn't yet finished?

18 A. No.

19 Q. Mr. Briscoe didn't have any answers to
20 that question?

21 MR. BOWLES: That assumes he was asked
22 the question.

1 BY MR. COOPER:

2 Q. Was Mr. Briscoe asked why? In other
3 words, it doesn't seem very logical if the room
4 is not complete to be giving out lockers in a
5 room that is not quite ready; did he indicate why
6 that would be?

7 A. He only indicated that the room, the
8 locker room, had not been turned over to him.
9 That is what he stated.

10 MR. BOWLES: I think for the record
11 because I was party to this conversation, there
12 were no discussion of responsibility as to giving
13 out lockers. That topic did not come up so it
14 was not discussed with Mr. Briscoe.

is BY MR. COOPER:

16 Q. Is it fair to say that Ms. Carey herself
17 did not choose her locker?

18 A. I don't know the answer to that.

19 Q. Do you know who would?

20 A. No, I don't.

21 Q. Is it fair to say that it is Amtrak's
22 position that the lockers should have been

1 affixed to the wall?

2 MR. BOWLES: I don't think he is in a
3 position to speak for what Amtrak's position is.

4 BY MR. COOPER:

5 Q. From your investigation in discussing it
6 and your paperwork here, have you made a
7 determination as to whether or not it should or
8 shouldn't have been bolted?

9 A. Based on my investigation the only
10 determination that I made is that they were not
11 fixed to the wall.

12 Q. Are there any Amtrak company documents,
13 and by that I mean in the broadest sense,
14 manuals, books, any sort of records that would
15 indicate whether lockers should or should not
16 have been affixed to a wall?

17 A. I'm not aware of it, there may be. That
18 is beyond my technical expertise.

19 Q. Who would be the person most
20 knowledgeable at your company about those kinds
21 of safety rules and documents?

22 A. I would think that would be the

1 engineering department, fixed property, something
2 like that.

3 Q. Are you aware of any prior claims of
4 injury due to lockers or other objects not being
5 secured to a wall, prior to Ms. Carey's?

6 A. That is an awfully broad question. Am I
7 aware of any injuries to any employees as a
8 result of lockers or other objects not being
9 affixed to the wall?

10 Q. Let's start with lockers to make it a
11 non-compound question. Are you aware of any
12 injury to an Amtrak employee or anyone with
13 lockers falling?

14 A. No.

15 Q. Both before and after you are not aware?

16 A. That's correct.

17 Q. Are you aware of any injury or claimed
18 injury from any other type of object not being
19 properly fastened to a wall?

20 A. Not that I can recall.

21 Q. Have you made any inquiry as to whether
22 or not that is so?

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1 A No.
2 Q. If you wanted to make such an inquiry
3 what resources are available to do that?
4 A. I would go to the safety department and
5 ask if they could provide any information on
6 that.
7 Q. And who is in charge of the safety
8 department, who is the head?
9 A. I believe Mark Meanna is the director of
10 the safety department.
11 Q. Do you know how to spell his last name?
12 A. M E A N N A.
13 Q. M E A N N A?
14 A. Yes.
15 Q. What would Mr. Meanna and his department
16 do to research prior injuries?
17 A. They would run some kind of test or
18 program or something that would -- I don't really
19 know what they do. I just know where to go to
20 inquire whether such an inquiry would come up if
21 someone asked such a question.
22 Q. Is there someone else in your department,

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1 any other resource available to your department
2 to do that either in-house or at another
3 department of Amtrak?

4 A. To determine whether or not similar kinds
5 of injuries had occurred?

6 Q. Yes, sir, exactly.

7 A. The only way I know how to respond to
8 that would be go to the safety department.

9 Q. Have you previously done that in any
10 other situations or cases?

11 A. Yes.

12 Q. And what kind of information do they give
13 it back to you? Is it in a printout by claims or
14 descriptions, what do you get back?

15 A. That's hard to answer. I don't really
16 have a vivid recollection. It isn't something I
17 do every day. As an example, if you were to ask
18 have there ever been any electrical burn injuries
19 then I would go to them and say are there any
20 electrical burn injuries, and eventually I would
21 get some kind of a list of names of people. I
22 cdn't tell you categorically whether dates would

1 be attached to that. Likely, there would be
2 dates. I don't have a specific recollection in
3 response to this, but they would produce records
4 of some sort that would be responsive to the
5 question.

6 Q. Do these have a name that you are
7 familiar with?

8 A. Not that I'm aware of.

9 Q. It is not an official document that you
10 work with every day that you would recollect?

11 A. Not at all.

12 Q. I take it Amtrak does keep track of any
13 employee injuries reported in some data bank of
14 some sort?

15 A. That would be the responsibility of the
16 safety department.

17 Q. What kinds of rule books are you aware of
18 that would address questions of whether or not
19 lockers should be secured to the wall, and I know
20 that you don't know particularly if there is such
21 a rule, but what resources, what books are out
22 there that govern such things that you can go to

1 and look it up in?

2 A. I wouldn't know anything about that.

3 Q. Who would know how to do that?

4 A. I wouldn't know the answer to that.

5 Q. Is there one master safety manual for the
6 company?

7 A. No, I don't believe that there is.

8 Q. Are you aware of any policies or
9 procedures that indicate that objects like
10 lockers should be fastened to the wall?

11 A. On the safety manual thing just to follow
12 up, I think there are different safety rules or
13 different sets of safety rules for different
14 classes and categories of employees. For clerks
15 there might be one, for on-board employees there
16 might be one, or for mechanical employees there
17 might be another, so depending on their drafts
18 there is different safety rules. But as to the
19 lockers and their being fixed I would imagine
20 that there are construction codes that would
21 apply to that. I don't think that is Amtrak's
22 safety rules, I don't know.

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1 Q. It would be whoever either fixed property
2 or the department that installed them. Let me
3 ask you a different question. Do you know who
4 installed these, who put them there?

5 A. No, I don't.

6 Q. Were they Amtrak employees?

7 A. I don't know.

8 Q. Is it safe to say that they were either
9 Amtrak employees or they were independent
10 contractors hired by Amtrak to install them?

11 A. I would be making an assumption to tell
12 you the truth.

13 Q. What assumptions would you be making?

14 A. Whatever I gave would be an assumption
15 because I don't know who did it.

16 Q. Is there any other way that anything is
17 constructed here at Union Station other than by
18 Amtrak's own employees or by somebody hired by
19 Amtrak; there is only two possibilities, right?

20 A. Then I would agree that would appear to
21 be the only two possibilities.

22 Q. Is it safe to say that this locker room

1 is not an area that the general public is allowed
2 access to?

3 A. No, it would not be an area that the
4 general public would be allowed access to.

5 Q. I have really quite a lot of questions
6 about, you know, who put them in and when they
7 were put in and that sort of thing, who would
8 know the answer to that?

9 A. I would think you would want to talk to
10 perhaps Ted Rao and Milton Lundy and maybe
11 Phyllis McClinton. In terms also Dave Sisson,
12 perhaps James Briscoe, those are the people who
13 seem to be knowledgeable.

14 Q- Are you aware of any facts that would
15 lead you to believe that Frances Carey was
16 responsible for her own injury?

17 A. Only --

18 MR. BOWLES: To the extent that it calls
19 for a legal conclusion then I would object. You
20 can go ahead and answer.

21 MR. COOPER: I'm really only asking about
22 facts, but he can go ahead and answer to the best

1 of his ability.

2 THE WITNESS: No, I'm not aware of any
3 facts that support that she caused the injury.

4 BY MR. COOPER:

5 Q. Are you aware of any facts that would
6 lead you to believe that she knew about or should
7 have known about the instability of the lockers
8 prior to her fall, or prior to them falling on
9 her?

10 A. I would think that she would be aware if
11 the lockers were unstable.

12 Q. How would she know that?

13 A. I would imagine if the locker was
14 unstable it would appear to be unstable.

15 Q. Have you ever inspected these lockers
16 yourself?

17 A. I have been to the ladies locker room,
18 yes.

19 Q. Did you look at -- I take it you never
20 got the chance to see her locker in the condition
21 it was on the day of her fall because it had
22 already been repaired by the time you got down

1 there. It had already been fastened to the wall?
2 A. I did not go there at that time.
3 Q. when have you inspected the locker room
4 there?
5 A. Sometime this summer.
6 Q. Let me ask you about Butler number 3.
7 What is the purpose of the injured 10-day report?
8 A. It is an indication of whether or not the
9 employee worked or not in the 10 days immediately
10 following the date of the injury.
11 Q. On this form what does OI mean?
12 A. off injured, which is indicated on this
13 ledger.
14 Q. on the key, I could have figured that
15 out, probably could have figured that out with
16 more time, thank you. With respect to anything
17 else about the how and when and whys of the
18 installation of the lockers, I take it you have
19 no further information beyond what you already
20 provided me?
21 A. No, I have no further information.
22 Q. Based upon your investigation, do you

1 know what was done to stabilize or fasten these
2 lockers to the wall?

3 A. This summer when I went into the locker
4 room and looked at them there was a piece of wood
5 that appeared -- I believe it was nailed to the
6 wall that was on top of the lockers at the rear
7 of the locker. That is the only mechanism that I
8 saw that was holding it stationary.

9 Q. Do you know who did that, who put that
10 wood in?

11 A. From my conversation with Mr. Briscoe it
12 was Mr. Sisson's carpenters.

13 Q. Do you have any idea how much that cost
14 to do?

15 A. I have no idea.

16 Q- I take it -- I also saw when I went there
17 today, I also saw a little metal bracket
18 attaching it to the side wall and possibly some
19 bolts attaching it down at the bottom to the
20 floor. I take it you don't have any knowledge
21 about these two devices?

22 A. I don't have any recollection of them.

1 Q. I take it you are not aware of any
2 warning given to employees such as Ms. Carey
3 about potential instability of lockers?
4 A. No, I am not aware.
5 Q. Going back to safety books and manuals if
6 it is sort of on a department by department
7 basis, in other words, fixed property may have
8 certain rules about fastening things, do they
9 have their own book, or is that part of some
10 larger book for the company?
11 A. I don't know the answer to that.
12 Q. Are you aware of any particular building
13 code or construction code that applies on this
14 premises that pertains to whether there should or
15 shouldn't have been fasteners there?
16 A. I don't have any knowledge of that.
17 Q. Have you done any investigation about
18 that --
19 A. No.
20 Q. -- to determine if there are such codes?
21 A. No.
22 Q. The facility in question is that

1 considered part of or on the land of the District
2 of Columbia?

3 A. Yes.

4 Q. Not some federalized property or
5 something?

6 A. it is within the City of the District of
7 Columbia, that is what I'm saying. I'm not
8 certain where you are going with the question.
9 That is what my response means.

10 Q. I'm trying to figure out whose codes
11 would apply; it would either be the City or the
12 federal government, and those would be the only
13 two that you would be aware of?

14 A. Yes.

15 MR. BOWLES: Are you talking about
16 building codes?

17 MR. COOPER: Yes, sir.

18 MR. BOWLES: I have no idea whether the
19 building code applies to this or not.

20 MR. COOPER: I was hoping that Mr. Butler
21 would be ahead of me.

22 MR. BOWLES: I think that is beyond his

1 gcope. Some time ago you posed two alternatives
2 to him either that it was done by Amtrak or by
3 somebody employed out or an outside contractor by
4 Amtrak. I don't know who owns the facilities
5 here. if an entity other than Amtrak owns it the
6 work could have been contracted by the owner so
7 there is another alternative.

8 BY MR. COOPER:

9 Q. Is the land where this locker room is
10 owned by Amtrak?

11 A. That is my understanding, yes.

12 Q- And so if some one else owns it you all
13 were certainly occupying it as business of Amtrak
14 on the date of the injury?

15 A. It is an Amtrak facility.

16 MR. BOWLES: That still doesn't answer
17 the question as to who owns it.

18 THE WITNESS: I believe it is owned by
19 Amtrak.

20 BY MR. COOPER:

21 Q. Are you aware of any depictions of the
22 place of this injury, and by that I mean in the

1 sense of photographs, diagrams, videotapes, or
2 any other depiction that exists?

3 A. No, I'm not.

4 Q. None in your file?

5 A. No, we looked at the three documents.

6 Actually, the third one is a two-sided document
7 but we looked at the three.

8 Q. I see that you have got approximately
9 four plus inches of paper, and I was just
10 wondering if anywhere else if there would be any?

11 A. No.

12 MR. BOWLES: The only photographs I'm
13 aware of are the ones you took today, and I was
14 assured by Mr. Wilson that I would be provided a
15 copy of them.

16 MR. COOPER: I certainly wouldn't stand
17 between you and an agreement you made with
18 Mr. Wilson.

19 BY MR. COOPER:

20 Q. Do you know if the other lockers in this
21 locker room were fastened or bolted on the date
22 of her injury?

1 A. Well, because I was present when we were
2 talking with Ms. Humbles earlier today only
3 through her recounts of her knowledge that would
4 be my only frame of reference with regard to
5 that.

6 Q. Briscoe didn't mention anything about it?

7 A. No.

8 Q- How about in any other locker room of
9 Amtrak here at Union Station?

10 A. I don't have any knowledge of that.
11 There has never been any issue -- I don't have
12 any knowledge of it.

13 Q. Do you have a locker here?

14 A. No, I do not.

is Q- Are you aware of any other eyewitnesses
16 other than Ann Humbles?

17 A. Ann Humbles is the only eyewitness that
18 I'm aware of.

19 Q. What other witnesses are you aware of who
20 know anything about the incident, and why don't
21 we make it easier, beyond those who have already
22 been previously mentioned in this deposition thus

1 far. So I'm excluding Mr. Briscoe and Mr. Sisson
2 and Mr. Lundy. Anyone else that you would know
3 that your files would indicate that has any
4 indication of it?

5 A. The only other people that I am aware of
6 at this point is as a result of having spoken
7 with Ms. Humbles earlier today.

8 Q. So other than the people that she
9 mentioned in her deposition you are not aware of
10 anyone else?

11 A. That's correct.

12 Q- Did you look at the slope of the floor in
13 that locker room area?

14 A. When I was in there I looked at the
15 floor.

16 Q. Did you see anything about the slope of
17 it being unlevel in any regard?

18 A. I wasn't aware of it if it was so.

19 Q. Nobody mentioned that to you as a
20 causative element of the injury?

21 A. No.

22 Q. What else did you do in your

1 investigation of this matter, and I don't include
2 anything talking to your attorney Mr. Bowles; I'm
3 talking about factual investigation beyond what
4 you already told me?

5 A. I did -- I'm not certain what your
6 question is asking.

7 Q. I'm trying to figure out what other
8 things you have done as claims agent or your
9 department has done about investigating the --
10 let's limit it to the liability issue, why this
11 accident happened, was anyone negligent, and
12 issues surrounding the locker room beyond what
13 you have already told me?

14 A. I haven't done any additional
15 investigation in that regard.

16 Q. How about in regard to her injuries what
17 have you done?

18 A. I have read the medical reports in the
19 file.

20 Q. Anything beyond that?

21 A. I processed some medical bills.

22 Q. And you supervised the payment or

1 handling of them, what do you mean?

2 A. Yes. In some cases I have requested
3 support documentation for bills that were
4 submitted in order that we could process them for
5 payment. Most of the processing of bills was
6 done by Mr. Temple. What I mean is that the
7 bills come here, and we would forward them onto
8 AETNA for payment.

9 Q. Did you make any measurements or take the
10 weight of the lockers involved?

11 A. No.

12 Q. Or has anyone to your knowledge?

13 A. Not to my knowledge, no.

14 Q. You don't happen to know the make or
15 model or distributor or manufacturer of those
16 lockers, do you?

17 A. No, I don't.

18 Q. What sorts of documents are created about
19 maintainance repairs of those lockers? Is there
20 a sort of -- did you determine from Mr. Briscoe
21 what documents are created in the regular course
22 of his business or anyone else dealing with that

1 locker room?

2 A. I'm not aware of any maintenance
3 documents in relation to the lockers or the
4 locker room.

5 Q. Did Amtrak have any policy or procedure
6 for inspecting that locker room prior to this
7 injury to make sure it was safe?

8 A. I don't know.

9 Q. But I take it none to your knowledge?

10 A. I don't know. I would have to inquire.

11 MR. COOP2R: Mr. Bowles, I think we have
12 called for this in our discovery. Would you be
13 agreeable to have him make the discovery about
14 what maintenance records or repair records there
15 are, if any, about this particular room and agree
16 to provide those to us?

17 MR. BOWLES: Well, there is still
18 outstanding discovery that we haven't fully
19 complied with purely because of lack of knowledge
20 primarily. Today, we have learned more about
21 this case than we knew before, and our efforts to
22 respond to the discovery will continue.

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1 I don't recall any specific requests
2 asking for documents regarding maintenance, but I
3 do think at some point we need to come up with
4 whatever documents exist as to who constructed
5 the room, when it was constructed, and what was
6 done and by whom.

7 MR. COOPER: I'm asking you though a more
8 limited question is can you, Mr. Butler, make an
9 inquiry about what maintenance or repair records
10 there are, if any, about this facility and
11 provide them to us if they exist.

12 MR. BOWLES: Yes, I will ask him to do
13 that.

14 THE WITNESS: I would ask because of the
15 fact that I have got a number of things that I'm
16 responsible for. If you would drop me a line and
17 let me know the things that you think I ought to
18 be doing.

19 MR. COOPER: We will make a list that
20 will be agreeable, purchase records with respect
21 to the lockers, if any.

22 MR. BOWLES: Provided that is --

1 MR. COOPER: Findable. Then all records
2 related to the installation of them, meaning who
3 put them in.
4 BY MR. COOPER:
5 Q. I take it you don't know whether any
6 warnings were issued by any manufacturer about
7 the lockers when they were purchased?
8 A. I don't know that.
9 MR. COOPER: We can include that in
10 purchase records, any literature from the
11 manufacturer or distributor.
12 MR. BOWLES: That assumes they were
13 purchased. They may have come from someplace
14 else.
is MR. COOPER: Understood.
16 MR. BOWLES: I mean like things like how
17 to install lockers.
18 MR. COOPER: Owner manual type literature
19 is what I'm looking for.
20 BY MR. COOPER:
21 Q. Mr. Butler, have you hired any outside
22 investigator to do any investigation about the

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1 liability in this case beyond your own staff?
2 A. No.
3 Q- Have you issued any reports to anyone
4 about your findings in this case?
5 A. No.
6 Q. What is your home address?
7 A. 94 15th Street, Northeast, Washington,
8 D.C.
9 Q. The zip?
10 A. 2 0 0 0 2 .
11 Q. Would you agree that Frances Carey was in
12 good standing with the company as far as her
13 duties as a conductor on the day before this
14 injury?
15 A. I would agree that she was an employee of
16 Amtrak as an assistant conductor.
17 Q. Was she an assistant conductor or a
18 full-blooded conductor?
19 A. My understanding is she was an assistant
20 conductor. The information that I received from
21 the personnel system indicated she was an
22 assistant passenger conductor 95 percent at the

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1 time of her injury.

2 Q. Are the basic duties the same of an
3 assistant conductor more or less the same of a
4 conductor in terms of the physical requirements
5 of the job?

6 A. Yes.

7 Q. Let me show you a letter dated March 17,
8 1994 to Mr. Baxter from a Mr. Pitt, a qualifying
9 officer. Let me ask you to review that.

10 A. All right.

11 Q. Would it appear then that she was in fact
12 a full-blooded conductor as of March 17, 1994?

13 A. No. It says that effective March 17,
14 1994, Amtrak assistant conductor Carey is
15 qualified as a conductor. So she is an assistant
16 conductor, but she has qualified which means she
17 could work conductor if there was a vacancy.

18 Q. Do you know if one ever became available
19 after she became qualified before the date of
20 this injury?

21 A. No.

22 Q. Was she able to perform the duties of a

1 conductor and assistant conductor to the best of
2 your knowledge just prior to this injury?

3 A. First of all, I can't vouch as to --
4 whether or not that document is one that was in
5 the normal course, I have never seen that
6 document before, therefore, I don't know where it
7 actually came from. I mean I'm not suggesting
8 that you created it, but I don't know that that
9 document was ever written so.

10 Q. You have been doing this too long. You
11 are a bit cynical. I value my bar license too
12 much to risk altering documents and presenting
13 them to you in a deposition.

14 Let me ask this, do you have access to
15 her personnel file, her entire personnel file?

16 A. Yes.

17 Q- Is that part of your file here?

18 A. No.

19 MR. COOPER: Mr. Bowles, can we add her
20 personnel file that you will agree to make an
21 effort to --

22 MR. BOWLES: I think I just got it the

1 other morning. I haven't presented it to you
2 yet. It is being copied at the moment.

3 BY MR. COOPER:

4 Q. Do you have any information that would
5 indicate that she was not capable of doing the
6 duties of an assistant conductor on the day
7 before this accident?

8 A. No. Clearly she was an employee of
9 Amtrak as an assistant conductor.

10 Q- Performing those duties without
11 restriction?

12 A. As far as I know.

13 MR. BOWLES: May I interject one thing.
14 As I understand, your client had been off for
15 some period of time prior to this first day of
16 returning to work.

17 MR. COOPER: Actually, I don't think that
18 is accurate, Mr. Bowles, and with all due respect
19 I don't think you can testify to help the
20 witness.

21 MR. BOWLES: I'm not trying to testify,
22 what I'm trying to do is establish she obviously

1 passed the medical qualification or she wouldn't
2 have been allowed to come to work although
3 whether she would have been able from being out
4 to do all the work, who knows.

5 MR. COOPER: Again, I don't think it is
6 for you or me to testify. I'm asking him about
7 his knowledge, and I think he has testified to
8 it.

9 BY MR. COOPER:

10 Q. Do you have any facts that would lead you
11 to believe that she is today capable physically
12 of performing the duties of a conductor or
13 assistant conductor on the railroad today?

14 MR. COOPER: Let the record reflect that
15 I'm giving Mr. Butler here as much time as he
16 needs to review his file in that record.

17 THE WITNESS: Your question is whether in
18 my file there is any document that indicates that
19 she is capable of working at this time?

20 BY MR. COOPER:

21 Q. Yes, sir.

22 A. I haven't received any documentation

1 concerning her condition since April of 197, and
2 prior to that I hadn't received anything since
3 November of 196, and as far as documentation in
4 the file I don't have anything that reflects her
5 present condition.

6 Q. As of April, 1997, was she capable of
7 working as a conductor?

8 A. The documentation that I received from
9 Dr. Addelar indicated that she had some
10 limitations.

11 Q- And would those limitations prevent her
12 from being able to serve as a conductor at
13 Amtrak?

14 A. Now that I can't answer.

15 Q. Who is in a position to answer that
16 question?

17 A. Either the medical department or the
18 transportation department.

19 Q. What they would do is look at what her
20 job duties were and see if those limitations
21 would prevent her from doing her job duties?

22 A. We would have to determine what her

1 present physical capabilities on what her limits
2 and restrictions are, if she has any, observe her
3 position as assistant conductor, look at her job
4 description, the physical requirements of the
5 position, and attempt to determine whether or not
6 she could return to assistant conductor with or
7 without accommodations. That would be the
8 process of determining whether she can work. it
9 is not simply this is yes or no.

10 Q- Have you or has anyone at Amtrak to your
11 knowledge made any effort to make a determination
12 as to whether she is capable of working or
13 whether you are going to make an accommodation to
14 her?

15 A. Employees normally, if they desire an
16 accommodation, request them. To my knowledge
17 Ms. Carey has not requested any accommodation,
18 and she has made no effort to return to work.

19 Q. Let me go back to my original request,
20 which is are you aware -- do you have any
21 information available to you from documents or
22 any other source that would lead you to believe

1 that in fact Ms. Carey does despite her claim
2 that she is not capable of working as an
3 assistant conductor or conductor that she does
4 have the capacity to do that?

5 A. I don't have any document that addresses
6 her physical capability that will allow me or
7 Amtrak's medical department or transportation
8 officers to make a determination as to whether
9 she could or she couldn't.

10 Q. In terms of papers that are created, I'm
11 aware of a general document which I have seen in
12 other files called an Amtrak Investigation
13 Committee Report. Do you know what that document
14 is. Have you ever heard that title?

15 A. Yes, there is.

16 Q. Is there such a document in this case and
17 if not, why not?

18 A. I do not have one in my records.
19 Normally, that documentation is provided. Why it
20 was not provided in this case, I'm not aware.

21 MR. COOPER: Mr. Bowles, if we could add
22 that to the list I will remind you of it in my

1 letter; is that acceptable?
2 MR. BOWLES: To look for it?
3 MR. COOPER: To reproduce it if it can be
4 found.
5 MR. BOWLES: Or if it ever existed.
6 BY MR. COOPER:
7 Q. Likewise, there is another type of
8 document called a mechanical/facility inspection
9 report, you are not aware of seeing one in your
10 file, is there?
11 A. No.
12 Q. Would that normally have been produced in
13 this scenario?
14 A. Yes.
15 MR. COOPER: Mr. Bowles, if we could also
16 add that to your list of documents, you will
17 agree to investigate whether one exists if one
18 exist?
19 MR. BOWLES: If one exists we will
20 provide you with a copy.
21 MR. COOPER: I'm making a list of these
22 so I can be precise in my letter.

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1 BY MR. COOPER:

2 Q. Did Amtrak, to your knowledge, have any
3 practices or procedures related to the training
4 of its employees so that they would know to
5 fasten or secure lockers to walls?

6 A. I would not know the answer to that.

7 Q. Did Amtrak have any training practices or
8 procedures which would educate an employee about
9 a duty to report a condition such as an
10 unfastened or unbolted locker to management?

11 A. I would think. I'm not aware of a
12 specific rule, but I would think that there is a
13 rule that if there is an unsafe condition that an
14 employee should report it.

15 Q. Are you aware of what checks and balances
16 systems there are or systems there are so that
17 when these lockers were put in somebody comes
18 back around and makes sure that they are put in
19 properly; are you aware of such a system?

20 A. No.

21 Q. Any time that lockers are put in or any
22 changes made to something like this locker room

1 and these lockers, would a work form have to be
2 produced normally?

3 A. I do not know.

4 Q. This goes back to a question I asked you
5 earlier about going to the safety department to
6 find indications of similar prior injuries?

7 A. Yes.

8 Q. My question this time though is what
9 about similar prior complaints where no one
10 actually got hurt, but some employee said I
11 simply think we have a problem in this locker
12 room with these unfastened lockers, is there a
13 way you could access that information?

14 A. I would -- I'm not aware of any specific
15 source of record of such complaints. I would ask
16 the people who were involved, and try to find out
17 whether or not there would have been any
18 complaints in that way, or also I would inquire
19 of whether or not at the meetings between the
20 unions and the superintendent whether or not
21 there was a history of any complaints of such
22 literature.

1 Q. That wouldn't be the kind of thing you
2 would go to the safety director on; you would go
3 to the individual charged with this issue?

4 A. As far as complaints?

5 Q. Yes, sir.

6 A. Yes.

7 Q. I'm going to summarize to make sure I
8 understand, another possible source for me to get
9 the correspondence between the union
10 representative and the company about safety
11 issues?

12 A. Yes. There are meetings quarterly with
13 the local chairman, and at that time they voice
14 safety issues.

is Q. There are notes and minutes made and kept
16 by Amtrak?

17 A. I believe so.

18 Q- Do you know what they are called?

19 A. No, I don't.

20 Q. Based upon your conversation with
21 Mr. Briscoe, I take it that the unbolted,
Z2 untastened condition of these lockers was known

1 to him as of the date of Carey's injury?

2 A. I'm not certain of that.

3 Q. Did he imply that with what he was saying
4 though?

5 A. What I understood him to say was that it
6 wasn't his responsibility to fix the lockers to
7 the wall, and then at the time the incident
8 occurred the locker room had not been turned over
9 to him. That really doesn't address when he
10 learned of the condition.

11 Q. Did he admit to you that he at least knew
12 that the locker room was being used by employees
13 even though it was not in a finished condition as
14 of the date of her injury?

15 A. Same answer. He didn't indicate one way
16 or the other, and his answer didn't really
17 address when he gained knowledge of this or when
18 people began using the locker room.

19 Q. Have you all decided who will be your
20 corporate representative? We have requested a
21 deposition of a corporate representative; would
22 you bp- the person who would help select that

1 person, and if so has that person been
2 designated?

3 A. I might participate in that process.

4 MR. BOWLES: He will be offered up at the
5 same time the next round of depositions take
6 place.

7 BY MR. COOPER:

8 Q. I take it that Ms. Carey was an Amtrak
9 employee acting within the scope of her
10 employment and essentially doing what she was
11 allowed or supposed to be doing at the time of
12 her injury?

13 A. That would appear to be the case.

14 Q. And not only was the locker room itself
15 on Amtrak property, but Amtrak also owned the
16 locker itself on the date of the accident,
17 correct?

18 A. I don't really know the answer to that.

19 Q. It is personal property of the company is
20 what I'm driving at?

21 MR. BOWLES: It could be leased.

22 THE WITNESS: I don't want to

1 misrepresent myself. I don't really know.

2 BY MR. COOPER:

3 Q. By the way, Mr. Butler, I think it is
4 obvious, but I obviously may ask questions that
5 go beyond your actual knowledge. I'm only asking
6 you to answer any of these questions to your
7 knowledge. If it goes beyond that tell me and I
8 will try to find some other witness who does
9 know?

10 A. If I had information of another owner I
11 would give that to you, but to answer the
12 question as do I have the knowledge that we owned
13 on that date at those times those lockers, I
14 don't know the answer to this.

is Q. You don't have any information to the
16 contrary?

17 A. That's true.

18 Q. You don't have any plans to move any time
19 soon, do you?

20 A. No, I don't.

21 Q. How exactly do you refer to this locker
22 room where the injury occurred?

1 A. It is the lady's locker room in the
2 transportation building.

3 Q. Other than the possible fastening of
4 those lockers to the wall are you aware of any
5 other changes to the premises as it existed today
6 when I inspected it compared to when her injury
7 occurred?

8 A. I'm not aware.

9 MR. BOWLES: I think the record should
10 show that he never went there until sometime in
11 October of this year when he went there with me.

12 MR. COOPER: But he has information
13 beyond his firsthand knowledge in his
14 investigation. He is the person representing the
15 company handling the dealing with his claim, so I
16 would figure if anyone might know he might.

17 MR. BOWLES: But he has already told you
18 that Mr. Temple handled this claim from the
19 beginning.

20 BY MR. COOPER:

21 Q. Any indication in Mr. Temple's record
22 that you have there of any modification other

1 than that one modification that I have just
2 mentioned?

3 A. I haven't seen any other modification
4 other than fixing of the lockers to the wall.

5 Q. Was Ms. Carey working with Amtrak in good
6 standing as of the date of this injury?

7 A. I think you asked me that before, but as
a I said she was an assistant conductor in the
9 employ of Amtrak at the time of this incident.

10 Q. That was the answer you gave the last
11 time, and I'm reasking it because I don't think
12 that necessarily addresses it. What I mean by
13 good standing was there was no problem with her
14 employment such that absence and injury or
is something else unforeseen she could continue in
16 the employ of Amtrak indefinitely, and everything
17 was fine between her and her employer?

18 A. That would be something that I think you
19 would either -- as to her physical, mental,
20 disciplinary personnel relationship with the
21 corporation, those things would have to be
22 addressed with those areas.

1 Q. Who would be able to answer that
2 question?

3 A. I wouldn't know if she was late for work
4 every day, and if she was to have an
5 investigation and be terminated because of
6 consistent absenteeism. That seems to be what
7 you are getting at with this good standing.

8 Q. Do you know who her immediate supervisor
9 was on the date of the accident?

10 A. Actually, I don't.

11 Q. General, in terms of category in the
12 hierarchy of workers, who would be her
13 supervisor; what would be the name of her
14 supervisor or the title of her supervisor be?

15 A. First of all, there is some question in
16 my mind because it hasn't been clearly indicated
17 to me as to whether or not she was working out of
18 the Richmond crew base or out of the Washington
19 crew base, and what an assistant conductor
20 considers to be their immediate supervisor in
21 Richmond might be different than it would be
22 Washington. I don't know whether they would

1 consider the terminal superintendent, one of the
2 terminal managers, or one of the train masters or
3 there is any number of titles. You kind of have
4 to address that to the individual or go to the
5 department and try to see exactly. It could be
6 any number of different people on any given day
7 because if it is a given position --

8 Q. I understand that. I'm talking about not
9 her working out of Richmond, I'm talking about
10 her working out of D.C., and on the day in
11 question I think she was actually acting as a
12 baggage person within her crew.

13 What I'm saying is as to her working in
14 D.C. what would be the name of the title of the
15 person who would be deemed by Amtrak to be her
16 supervisor while she is working in that capacity
17 here in D.C.?

18 A. I believe then the conductor of her crew
19 is her immediate supervisor.

20 Q. Is that a Mr. Teterman?

21 A. I don't know who the conductor was on the
22 crew.

1 Q. I'm going to read you a list of names and
2 you tell me if you know anything about what these
3 witnesses may or may not know about this case.
4 Deborjah Blackwell, do you know anything about
5 what she knows?

6 A. I only learned from Ms. Humbles that
7 Deborjah Blackwell was even there that day today.
8 I only learned that today.

9 Q. Gary Marshall?

10 A. I have no knowledge of what Gary Marshall
11 knows of this incident.

12 Q. Calvin Rippley?

13 A. I have no knowledge of what Calvin
14 Rippley knows or who Calvin Rippley is or Gary
15 Marshall.

16 Q. Mike Stensill?

17 A. I know that Mike Stensill was -- he
18 formerly was here in Washington and had gone to
19 Florida, and I think he may be back in
20 Washington. As to his knowledge of this incident
21 I don't know. If I did ever know I can't recall
22 now, but I am familiar with that name.

1 Q. Would you agree that the duties of a
2 conductor or an assistant conductor or a baggage
3 person require the ability to lift 75 pounds at
4 least occasionally?

5 A. I believe that is consistent with the
6 physical requirements of the job as listed
7 thereon, but each job in the work place is really
8 not necessarily exactly what they have listed as
9 the job description physical requirements. You
10 have to know what the requirements are of a given
11 assignment.

12 Q. But in terms of that job category as far
13 as Amtrak is concerned the person in order to
14 fill that is only required to lift 75 pounds at
15 least occasionally as part of the job
16 description?

17 MR. BOWLES: For the record the documents
18 that you are getting the information from are new
19 hire documents. In other words, if you are off
20 the street, yes, you have got to be able to do
21 that, but not necessarily if you were already
22 here.

1 BY MR. COOPER:
2 Q. Do you know what the compulsory
3 retirement age is for workers in her job
4 classification?
5 A. The compulsory, no, I don't.
6 Q. Do you have any reason to disagree with
7 it being 70 years of age?
8 A. I'm certain that the railroad worker
9 statistics show that railroad workers retire
10 between 60 and 65.
11 Q. What is the age that Amtrak says that you
12 can't work here anymore?
13 A. I don't know.
14 Q. Who would?
15 A. The personnel department.
16 Q. Do you know who the head of personnel is?
17 A. The manager of personnel here in
18 Washington is Andy Bell, if that is sufficient.
19 Q. Are you aware of any other facts about
20 this incident other than what you have already
21 indicated to me?
22 A. No.

1 Q. Do you have any reason to believe that
2 Ms. Carey is not as badly injured as she claims?

3 MR. BOWLES: I'm going to object to the
4 question. We don't know specifically at this
5 juncture what it is she does -- what specific
6 injury she does claim, other than the motion for
7 judgment and some medical reports that have been
8 supplied that are not up-to-date.

9 BY MR. COOPER:

10 Q. Have you reviewed the medical records
11 that have been provided to Mr. Bowles that have
12 been provided by our firm?

13 A. I don't know what medical records those
14 are.

is Q. Can you recite to me what medical records
16 you have in your file, but just rattle off to me
17 the health care providers that show up in your
18 records.

19 A. St. Mary Health Corporation, Virginia
20 Emergency Association, Laburn Medical Center,
21 Commonwealth Radiology, Westend Orthopedics, D.C.
22 Fire Department, Richmond Memorial Hospital,

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1 Commonwealth Radiology, Orthopedic Physical
2 Therapy, Ralph Hagen, M.D., Jordan Dalton, M.D.
3 It looks like he is at Westend Orthopedics.
4 Earnest Clemens, M.D. at Westend Orthopedics,
5 J.K. Wilson, M.D. at Westend Orthopedics.
6 Jackson Salven, M.D., Neurosurgical Associates.
7 J. Kim Harris, M.D., William F. Moore, M.D.,
8 Sheltering Arms Hospital, Albert Jones, M.D.,
9 R.S. Addelar, M.D., MCS Associates, Medical
10 College of Virginia. That's it.
11 Q. Have you read those records?
12 A. In some of them I have requested the
13 records but haven't received them.
14 Q- But as to all of those people you have
15 recited you have either reviewed their records or
16 requested their records, fair enough, at some
17 point in time?
18 A. Yes.
19 Q. And are you aware of any reason, any
20 facts which would give you reason to say that she
21 is not as injured as indicated in those records
22 that you have?

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1 MR. BOWLES: I think if your discovery is
2 done with we are reasonably entitled to an
3 independent exam, which has not been conducted.
4 Until we have the benefit of that he can't answer
5 the question.

6 MR. COOPER: I understand that
7 limitation, but you can go ahead and answer.

8 THE WITNESS: I can only look at the
9 records and testify as to what they show her
10 physical condition was at the point in time that
11 those records were taken. It has been about a
12 year since we have had any meaningful reports.

13 BY MR. COOPER:

14 Q. So I take it the answer to my question is
15 no, that you are not aware of any facts that
16 would give you reason to suspect that those
17 doctors are not accurately reflecting her injury
18 as of the date they saw her on those medical
19 records?

20 MR. BOWLES: For the record I would like
21 to state that in a case different than this case
22 I took the deposition of Dr. Addelar, and

1 Dr. Addelar testified to having performed an
2 operation on the patient that he has been
3 treating which he has never performed, so the
4 accuracy of these documents and the reports is no
5 better than the accuracy of the physician.

6 MR. COOPER: I think that borders on
7 coaching, and I'm just asking the witness to the
8 best of his knowledge are you aware of any reason
9 to say that she is not as hurt as indicated in
10 those records?

11 THE WITNESS: I think there are records
12 that allow for a question as to the degree of her
13 injury.

14 BY MR. COOPER:

15 Q- Can you name which ones you are thinking
16 of ?

17 A. Some of the records from Sheltering Arms
18 Physical Rehabilitation Hospital, Albert H.
19 Jones, Jr., M.D.

20 Q. Any particular reference in those records
21 that you are thinking of?

22 MR. COOPER: Off the record for just a

1 second.

2 (Discussion off the record.)

3 BY MR. COOPER:

4 Q. Back on the record.

5 Did you see anything particular in those
6 Sheltering Arms records that give you concern?

7 A. I think there is various places within
8 the medical records but as to the May 9, '96
9 report of Dr. Jones he included in his impression
10 under that she has psychological stress and
11 difficulty with coping, and he says that we have
12 to see if we can't very gradually reduce her
13 narcotic consumption. There is an indication
14 that her use of narcotics was abnormal, and there
15 were concerns about what remedies might be, what
16 strategies they might use to solve her problems
17 based on her dependency.

18 Q. You don't have any indication that she
19 was addicted to drugs prior to this injury, do
20 you?

21 A. I don't know the answer to that. Do I
22 have any, no.

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1 Q. Do you have any knowledge about her
2 having any psychological stress that was
3 preventing her from functioning at least in her
4 job at Amtrak prior to this injury?

5 A. Prior to this I know that she had some
6 surgery and whether that caused her stress or
7 not, I would imagine it did.

8 Q- Other than the Dr. Jones' Sheltering Arms
9 records are there any other particular records
10 which you think may factually challenge her
11 claimed injuries as reflected in the other
12 medical records?

13 A. I wish I had known you were going to ask
14 me this question.

15 MR. BOWLES: For the record I think in
16 order to adequately respond to the question he
17 would have to review all the medicals that he has
18 in his file. If you want him to take the time to
19 do that.

20 MR. COOPER: I have no objection to that.
21 I have nowhere particularly to be. I think he
22 needs to take what time he feels he needs.

1 THE WITNESS: In Dr. William Moore's
2 records on May 1, 196 he indicates she will need
3 drug withdrawal program and possibly
4 psychotherapy. Dr. Moore relates there is a
5 consistency where she seems -- she doesn't
6 appear -- she doesn't get prescribed physical
7 therapy.

8 When she comes back in she says she just
9 wasn't able to do it for one reason or another,
10 and she consistently and continually requests
11 more and more of these drugs such as Percocet,
12 and there is just a number of -- this is just
13 repeated within these medical records. So there
14 would be reason for any reasonable person who
15 would review these things over a period of time
16 to question whether or not she is as badly
17 injured as she has indicated or not.

18 BY MR. COOPER:

19 Q. Other than that category, and I will just
20 lump it as a category of psychological
21 overlay/drug dependency issues, are there any
22 other categories of information that you are

1 aware of that would cause you to question her
2 injury?

3 A. Shortly after the injury occurred her
4 son, I believe it to be her son, son or
5 son-in-law -- I believe her son was killed in an
6 accident, and I'm certain that was stressful.
7 There is reason to look at that as possibly a
8 part of her disability.

9 Q. Anything else other than what you have
10 already mentioned?

11 A. Just that there might be other entries in
12 the medical records but nothing else.

13 Q. In terms of her job duties, let me show
14 you some documents which I think were produced by
15 Mr. Bowles to us, and I will show them to him as
16 well so he can tell us if that is true.

17 The question that I'm going to ask you
18 ultimately is do these documents reasonably
19 portray the duties and requirements of a
20 conductor/assistant conductor as of today to the
21 best of your knowledge?

22 MR. BOWLES: Somebody in the personnel

1 department is better able to determine whether
2 what you have handed me are current ones. When
3 you say today, they apparently bare no date other
4 than it looks like 4/29, and it may be 175 or
5 '95, I can't tell which, although it is 4/29/95.
6 Whether that is in effect today I don't know, and
7 I don't know whether Mr. Butler knows.

8 BY MR. COOPER:

9 Q. Take a look at them and see if they
10 portray, accurately portray, what the job duties
11 are as required by Amtrak?

12 MR. BOWLES: Furthermore, I don't recall
13 supplying those documents in this case.

14 THE WITNESS: I can't speak for the
15 personnel department. I can't speak for the
16 transportation department to say that these are
17 the requirements, but generally speaking they
18 appear to be the type of documents that reflect
19 the duties of an assistant conductor.

20 BY MR. COOPER:

21 Q. So to the best of your knowledge after
22 taking a look at them they appear to be the

1 description of the issued duties and
2 requirements?

3 A. I would rather provide you with the
4 document and say these are the documents that
5 indicate the duties and then look at some
6 documents that I don't know are the ones.

7 MR. COOPER: In fact, I can't swear to
8 it, Mr. Bowles, but I believe that you provided
9 them to us in this case. Do you have access to
10 those documents similar to these that you do
11 believe in fact reflect it? That will save us
12 some time and we can simply mark them and say
13 those are the current documents. We will add
14 that to the list.

15 That is all the questions that I have for
16 you, sir. I appreciate your patience with me.

17 (Reading and signing not waived.)

18 (Time Noted: 3:25 p.m.)

19 -

20

21

22

1 DISTRICT OF COLUMBIA, to wit:

2 I, Donna E. Mize, before whom the
3 foregoing deposition was taken, do hereby certify
4 that the within-named witness personally appeared
5 before me at the time and place herein set out,
6 and after having been duly sworn by me, according
7 to law, was examined by counsel.

8 I further certify that the
9 examination was recorded stenographically by me
10 and this transcript is a true record of the
11 proceedings.

12 I further certify that I am not of
13 counsel to any party, nor an employee of counsel,
14 nor related to any party, nor in any way
15 interested in the outcome of this action.

16 As witness my hand and notarial seal
17 this ---- day of ... 1998.

18
19
20 DONNA E. MIZE
21 Notary Public
22 MY COMMISSION EXPIRES: 12/14/01

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I N D E X
DEPOSITION OF DARRYL P. BUTLER
DECEMBER 2, 1997

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EXAMINATION BY: PAGE
MR. COOPER 3

EXHIBITS: PAGE MARKED
I..... 10

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

DARRYL P. BUTLER

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this day of 1 1998, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

MY COMMISSION EXPIRES:

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1 WITNESS: DARRYL P. BUTLER
2 DATE: DECEMBER 2, 1997
3 CASE: CAREY VS NATIONAL PASSENGER RAILROAD CORP.
4 Please note any errors and the corrections
5 thereof on this errata sheet. The rules require
6 a reason for any change or correction. It may be
7 general, such as "To correct stenographic error,"
8 or "To clarify the record," or "To conform with
9 the facts."

10 PAGE LINE CORRECTION REASON FOR CHANGE

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February 2, 1998

Aubrey R. Bowles, III
Bowles & Bowles
Two North Fifth Street
Richmond, VA 23219

Re: No. LC-13234 CIRCUIT COURT, CITY OF RICHMOND
Frances A. Carey vs. N.R.P.C.
Deposition of Darryl P. Butler

Dear Mr. Bowles, HI:

Enclosed please find the copy of the transcript you ordered,
containing the deponent
certificate page and errata page for the deponent to complete.

After the signature page has been signed and the signature has
been notarized by a
Notary Public, please forward them to the Custodial Attorney
within 30 days for
proper filing.

Thank you for your assistance and attention to this matter.

Sincerely,

No. 1-13699
Enclosure
cc: John M. Cooper V/

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