

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

DANNY R. ATKINSON, :
 :
 Plaintiff, :
 :
 vs. : 08-CVC02-2429
 :
 NORFOLK SOUTHERN RAILWAY CO., :
 :
 Defendant. :

DEPOSITION UPON ORAL EXAMINATION OF
JOHN KNECHT

October 16, 2008 - 10:15 a.m.

Norfolk, Virginia

APPEARANCES: Shapiro, Cooper, Lewis & Appleton
By: Richard N. Shapiro, Esquire
Counsel for the Plaintiff

Willcox & Savage
By: Samuel J. Webster, Esquire
and
Porter, Wright, Morris & Arthur
By: R. Leland Evans, Esquire
Counsel for the Defendant
(Appearing by telephone)

REPORTED BY: Selina S. Sanders, RPR

1 I N D E X

2 WITNESS

3		Examination by:	Page
4	JOHN KNECHT	Mr. Shapiro	4
5		Mr. Webster	61

5

6 EXHIBITS

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8		Knecht Exhibits for Identification:	Page
9	1	Document dated 5/4/07 entitled Road Conductor	4
10	2	Letter to Dr. Fisco from John Knecht dated 5/8/07	4
11	3	Document dated 11/20/99 entitled New Hire	4
12	4	Letter to D.R. Atkinson from M.L. Crawley dated 7/25/07	4
13	5	E-mail to Paula J. Lina from Mel Crawley dated 7/24/07; e-mail to Mel Crawley from Paula J. Lina dated 7/24/07	4
14	6	E-mail to Jerry W. Hall from Mel Crawley dated 7/25/07	4
15	7	Document entitled Statement of Sickness dated 7/23/07	4
16	8	E-mail to Don R. Browning from Jerry W. Hall dated 7/20/07	4
17	9	Document entitled Personal Injury Report, document entitled Occupational Progress Note dated 7/15/06	4
18	10	Two-page document entitled Authorization/Report of Medical Examination dated 11/3/99	4

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EXHIBITS (cont'd)

	Knecht Exhibits for Identification:	Page
1		
2		
3	11 E-mail to Mel Crawley from Paula J. Lina	
4	dated 7/24/07; proposed letter to	
	Mr. Atkinson	4
5	12 Notes on Danny Atkinson written by	
6	John Knecht dated 6/1/07	4
7	13 E-mail to Charles M. Irvin, Jr. from	
	John Knecht dated 6/6/07	4
8	14 Notes on Danny Atkinson written by	
9	John Knecht dated 6/26/07	4
10	15 Three-page Personal Injury Report	
	dated 7/12/07	4
11	16 Two-page Report of Employee Personal	
12	Injury Illness/Incident dated 7/15/06	4
13	17 Two-page letter to Dr. Fisco from	
	John Knecht dated 6/1/07	4
14	18 Ten-page document entitled Functional	
15	Capacity Evaluation Report	
	dated 5/24/07	4
16	19 MRI report dated 7/31/06	4
17	20 Two-page MRI report dated 8/3/07	4
18	21 Functional Capacity Evaluation Report	
19	dated 12/10/07	4
20	22 Two-page MRI report dated 7/28/08	4
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1 Deposition upon oral examination of JOHN
2 KNECHT, taken before Selina S. Sanders, RPR, a Notary
3 Public in and for the Commonwealth of Virginia at Large,
4 pursuant to notice and agreement, commencing at 10:17
5 a.m. on October 16, 2008, in the law offices of Willcox &
6 Savage, One Commercial Place, Suite 1600, Norfolk,
7 Virginia; and this in accordance with the Rules of the
8 Supreme Court of Virginia, 1950, as amended.

9 -----oOo-----

10

11 [Knecht Deposition Exhibit Nos. 1 - 22
12 were marked for identification.]

13

14 JOHN KNECHT, called as a witness on
15 discovery, having been first duly sworn, was examined and
16 testified as follows:

17

18 EXAMINATION

19 BY MR. SHAPIRO:

20 Q Can you please state your full name.

21 A John Knecht.

22 Q And you are employed by Norfolk
23 Southern?

24 A Yes.

25 Q What business office do you work out

1 of, sir?

2 A The Three Commercial Place office.

3 Q Norfolk, Virginia?

4 A Norfolk, Virginia.

5 Q And are you employed in the medical
6 department of Norfolk Southern?

7 A Yes.

8 Q How long have you been employed with
9 Norfolk Southern in the medical department?

10 A Since March of 1999.

11 Q Tell me about your educational training
12 after high school. Have you had any college-level
13 training?

14 A Yes, I've had four years of college,
15 where I was a pre-med major, biology major. I had two
16 additional postgraduate years of college to become a
17 physician assistant. I have a Bachelor's degree in
18 business administration in 1996, and a Master's degree in
19 business administration in 1999.

20 Q Where did you get your physician's
21 assistant training?

22 A From Hahnemann University in
23 Philadelphia, Pennsylvania.

24 Q Did you hold any other jobs with any
25 other corporations before you came to Norfolk Southern

1 after you became a physician's assistant?

2 A Yes.

3 Q Where were you?

4 A I was employed by Conrail Consolidated
5 Rail Company from January of 1989 through March of 1999.

6 Q What functions did you do in your
7 position at Conrail?

8 A I was a health services manager at
9 Conrail. Functions would be disability management,
10 returning employees back to service, medical case
11 management.

12 Q Did that take you up to the job down
13 here with Norfolk Southern?

14 A Yes.

15 Q But prior to '99 you didn't have your
16 physician's assistant specific training?

17 A Physician assistant training was -- in
18 1984 I received my physician assistant training.

19 Q So you did have it the whole time in
20 both of those?

21 A Yes.

22 Q Today's October 17, 2008. We're
23 conducting your deposition in a case called Atkinson
24 versus Norfolk Southern. You realize that this is a
25 deposition in a court action --

1 MR. WEBSTER: I think the date is
2 October 16th.

3

4 BY MR. SHAPIRO:

5 Q Thank you. October 16th. You realize
6 this is part of a deposition in a court case pending in
7 Ohio?

8 A Yes.

9 Q Did you have an opportunity to meet
10 with Norfolk Southern's retained lawyers before this
11 deposition?

12 A Yes.

13 Q Did they discuss with you that we might
14 cover issues relating to the medical department and some
15 of the materials in the case?

16 MR. WEBSTER: I'm going to object to
17 the question on the grounds that it goes into
18 attorney/client privilege, and I'm going to instruct him
19 not to answer. The discussions between Norfolk
20 Southern's counsel and the witness are privileged.

21 MR. SHAPIRO: Why would they be
22 privileged?

23 MR. WEBSTER: Because Mr. Knecht is an
24 employee of the company. The company is the defendant in
25 the case. He's also, I believe, an officer of the

1 company, and therefore, our conversations with him are
2 privileged.

3

4 BY MR. SHAPIRO:

5 Q You know, I don't think that this is
6 going to be a problem. I don't want to know what you
7 discussed with him. The question really said is did you
8 have an opportunity to meet with the lawyers for Norfolk
9 Southern before the deposition?

10 MR. WEBSTER: He can answer that
11 question.

12 THE WITNESS: I believe I answered that
13 question yes.

14

15 BY MR. SHAPIRO:

16 Q What are the general duties of your
17 position at the present time?

18 A I --

19 Q And state it. I don't know if you've
20 stated the position.

21 A My current position is manager of
22 medical case management, and the goal of that activity of
23 my position is to ensure the timely and safe return to
24 work for employees that have occupational injury or
25 illness.

1 I perform that activity by interacting
2 with internal personnel members, external facilities to
3 provide assistance and ensure that issues involving
4 return to work problems are resolved and/or involving
5 disability management.

6 Q Well, for people that aren't real
7 familiar with this particular industry, for example, a
8 member of a jury, what types of involvement does the
9 medical department have with its workers in regard to
10 whether they can work or are fit for working?

11 A Sure. When an employee is injured, and
12 we're talking about the disability management piece of
13 their injury, that's one area. And the other piece is
14 the return to work process. So on the disability
15 management area, I am the person that has to approve
16 requests for medical treatment on employees that have
17 been injured, physical therapy, surgeries, work capacity
18 evaluations. I also, under certain circumstances, write
19 treating physicians to request evaluations, when
20 necessary, or treatment. And I do that with the
21 oversight of the associate medical director, whom I
22 report to.

23 Q Who is that at the current time?

24 A That is Dr. Paula J. Lina.

25 Q She's a licensed medical doctor in

1 Virginia?

2 A Yes.

3 Q Any other medical doctors that you work
4 under in the medical department?

5 A No. Additionally, mentioning Dr. Lina,
6 in conjunction with her I write medical correspondence
7 letters to treating physicians. I prepare those letters
8 and I provide those letters to treating physicians. When
9 additional medical testing is necessary, I schedule and
10 coordinate the performance of functional capacity
11 evaluations, so that we can determine the employee's safe
12 physical capacities.

13 Also with Dr. Lina, I obtain
14 information from the treating physicians by providing
15 them with job tasks, listings of what the injured
16 employees do, with the functional capacity information of
17 what they do, and ask the treating physician, given that
18 information, if they can determine if that injured
19 employee can safely return back to service. And
20 additionally, that that employee can return without the
21 likelihood or the potential for re-injury. And I do that
22 under Dr. Lina's oversight.

23 Q Do you need her to review any of the
24 letters that you send for requesting medical care for the
25 workers or are there certain parts of your job that you

1 don't really need to run by her as a doctor?

2 A Generally speaking, she reviews all of
3 my medical correspondence that I write to treating
4 physicians requesting additional medical evaluations or
5 for treatment, and it is her oversight on all the letters
6 that I write.

7 Q Norfolk Southern has a lot of workers.
8 I mean, are there thousands of workers that are overseen
9 by the medical department?

10 A Norfolk Southern has thousands of
11 workers. I don't know -- the medical department is the
12 department to oversee the employees, employees' health.

13 Q We're here in Norfolk, Virginia. This
14 is the headquarters of the medical department, right?

15 A Yes.

16 Q So all of the fitness for duty and
17 return to work decision making for workers in any of the
18 states that you run in are made out of this office in
19 Norfolk?

20 A That's correct.

21 Q All right. Are there any other
22 physician assistants in the position you have or are you
23 the one physician's assistant for the work force?

24 A I am the physician assistant for return
25 to work management on injured employees, as well as that

1 disability management side, yes.

2 Q You've said this, I believe, but for
3 any worker throughout the entire rail line that's off
4 injured for any reason and misses work and needs to get
5 back to work, the medical department would need to
6 approve that person to return to work?

7 A That's correct. I would like to say
8 that the medical department has -- the medical department
9 and the medical director has ultimate approval on the
10 return to work of those injured employees.

11 Q We're here on this case, of course,
12 relating to Danny Atkinson. Mr. Atkinson, does he have a
13 file that's maintained by Norfolk Southern relating to
14 his employment, for example, and his medical exams to
15 become a worker?

16 A I'm not familiar with an employment
17 file on Mr. Atkinson, but I am familiar with a file in
18 the medical department on Mr. Atkinson.

19 Q Does every worker that is a rank and
20 file worker have a medical file created in the medical
21 department, which has their initial physical exam and
22 whatever else is pertinent to the medical department?

23 A They might.

24 Q Do you maintain a paper file on every
25 person like Mr. Atkinson or do you put these files on

1 disk? How do you maintain that many files?

2 A Those files are maintained
3 electronically.

4 Q Okay. You didn't mention Dr. Prible.
5 Dr. Prible is in charge of the medical department, right?

6 A Yes.

7 Q He's a medical doctor licensed to
8 practice in Virginia also, isn't he?

9 A Yes.

10 Q Are there any other medical doctors in
11 the medical department?

12 A No.

13 Q How many workers are in the medical
14 department? We just covered those two and yourself.

15 A Are you including employees and
16 contract services?

17 Q I don't know what you mean by contract
18 services, but the employees that work full time as part
19 of the medical department would certainly be the first
20 thing I would be asking.

21 A I would think there is probably six or
22 eight employees full time in the medical department.

23 Q And the contract type people, you just
24 mean people that you contract to do some sort of testing
25 or review?

1 A Yes, there might be another six
2 additional individuals that do some ancillary work,
3 secretary functions, things like that.

4 Q Let's return to the core thing that you
5 talked about, as far as your position, that is, fitness
6 for duty and return to work determinations. In order to
7 make those determinations about a worker like
8 Mr. Atkinson, is it important for you to have access to
9 medical records on the worker?

10 A Yes, it is, and actually on that second
11 area of my duties involving the return to work process,
12 the file is reviewed by myself to ensure that we have the
13 adequacy of current information in the file to make that
14 type of determination. We also review the file to make
15 sure that it has a work release from the treating
16 physician and that there is an updated sign-off from the
17 treating physician that, as I said earlier, would include
18 the treating physician's review of the job task list, of
19 the physical capacity evaluation, and a determination by
20 the treating physician, with sign-off that the employee
21 can return to service without the likelihood or potential
22 for re-aggravation or risk.

23 When there is not sufficient
24 information to perform that function, letters are sent to
25 the field staff requesting that the employees provide

1 current medical information, so that a return to work
2 determination can be made.

3 Q Okay. I would like to show you some
4 documents that I marked with an exhibit sticker before
5 the deposition. And just to save time, I'm going to hand
6 you Exhibits 1 through 16. They are the ones that were
7 previously provided. And this morning I've added 17 and
8 18. 17 being, for Mr. Evans' benefit, the Fisco typed
9 letter asking for opinions, and 18 being the functional
10 capacity evaluation of May 24, 2007.

11 And just see if you can tell me whether
12 you are familiar with all of these documents. And you
13 can review them all, if you'd like.

14 MR. WEBSTER: What is your definition
15 of familiar?

16 MR. SHAPIRO: I'm going to follow up
17 once he looks through them and ask about some of the
18 questions. I want to know if he can identify all the
19 documents. And if he can't, I'd like him to tell me
20 which ones.

21 THE WITNESS: This document Number 3, I
22 haven't seen this document before.

23

24 BY MR. SHAPIRO:

25 Q Please put aside any of the ones you

1 are unfamiliar with or you don't believe that are in the
2 files that you've reviewed.

3 MR. WEBSTER: That's two questions.

4 MR. SHAPIRO: I asked him to put both
5 aside.

6 THE WITNESS: Can you clarify for me
7 what you are asking me to do with looking at these
8 documents?

9

10 BY MR. SHAPIRO:

11 Q I need to know if you can identify
12 those documents as part of the files that you've had on
13 Danny Atkinson?

14 A In terms of identifying, are you
15 referring to had I previously seen this document or
16 recall seeing this document?

17 Q Either seen it or are confident that it
18 was part of the file on Mr. Atkinson.

19 A Well, I wouldn't testify under oath
20 that I was confident it was part of the file if I hadn't
21 seen it. I've separated this document out because it's
22 referring to an earlier fitness for service new hire
23 document that I don't recall seeing.

24 Q Yes, sir. I plan to go back and
25 clarify each one with you. Don't worry. I'm not going

1 to just pass over it. Okay.

2

3 [A discussion was held off the record.]

4

5 BY MR. SHAPIRO:

6 Q Did you get a chance to go through
7 everything, sir?

8 A Yes.

9 Q And you've placed a few documents out
10 here to the side that you --

11 A I don't recall having seen those
12 documents before.

13 Q Okay. Well, the first thing I want to
14 ask you about, that you sat off to the side, is Exhibit
15 Number 10. And it's a Norfolk Southern Corporation form
16 and it says Authorization/Report of Medical Examination,
17 and you have certainly seen that type of document before
18 in the medical file on a worker, haven't you?

19 MR. WEBSTER: For identification
20 purposes, can we at least state the date?

21 MR. SHAPIRO: Date of November 3,
22 1999. And it appears to be a two-page medical exam
23 report.

24

25

1 BY MR. SHAPIRO:

2 Q So my question is isn't that the type
3 of document that you've seen in files you review for
4 fitness for duty?

5 A Yes.

6 Q And based on your experience and your
7 position, are you aware of whether the form, not so much
8 what's on this particular one here, but the form is a
9 standard Norfolk Southern form?

10 A Yes.

11 Q Okay. And so what this document is, is
12 it's the result of a physical examination on a worker
13 connected with pre-employment, right?

14 A Yes.

15 Q Okay. Now, whether you have ever
16 studied it or not, do you see that this appears to be the
17 pre-employment examination on Mr. Atkinson and it's
18 stamped with Norfolk Southern's stamps on it, correct?

19 A Yes.

20 Q And a worker like Mr. Atkinson would
21 have had a pre-employment physical, just like any other
22 rank and file worker, right?

23 A Yes.

24 Q So are you saying that Exhibit 10 is
25 likely in or not in the Norfolk Southern medical file of

1 Mr. Atkinson?

2 MR. WEBSTER: We'll stipulate that it's
3 stamped Medical Services Department.

4 MR. SHAPIRO: I want to clarify that
5 we're not having a disagreement that this is a business
6 record that's in Mr. Atkinson's file. I'm really not
7 concerned with whether the witness is familiar with it.

8 MR. WEBSTER: I'll agree that it's in
9 the medical department file.

10 MR. SHAPIRO: Then I will not need
11 another witness to authenticate this as being a medical
12 record in that file?

13 MR. WEBSTER: No.

14 MR. SHAPIRO: Okay. That's Exhibit
15 10. There is a document marked Exhibit 3 and it's a
16 Norfolk Southern form entitled New Hire. And --

17 MR. WEBSTER: It's stamped Medical
18 Services Department also, and we'll stipulate that
19 Exhibit 3 is found in the medical department file.

20

21 BY MR. SHAPIRO:

22 Q And this is -- is this just a standard
23 filled out form, Mr. Knecht, that is part of someone
24 getting employed with Norfolk Southern outlining some of
25 the basic data on the person?

1 A I can only speak to the form itself.
2 It says new hire and it has Norfolk Southern letterhead.
3 I haven't seen it before and I'm trying to determine --

4 Q It just has some identifying data
5 and --

6 A I don't even know what the basis for
7 that form is.

8 Q That's Number 3. Now, is it common to
9 have the medical records that are completed by medical
10 examinations on workers become a part of a medical file
11 of a worker at the railroad?

12 A Yes.

13 Q Okay. And when you are reviewing
14 fitness for duty examinations, do you ever see documents,
15 such as what's marked as Number 15, which is a --
16 actually, let me ask you about Number 16 first, to go in
17 order.

18 Number 16 is on an injury report form.
19 It's dated July 15, 2006. And it includes injury and
20 treatment on the form.

21 A I'm sorry. Would you repeat that
22 question?

23 Q Would this type of form outlining the
24 illness or incident -- and this one particularly outlines
25 a July 15th, 2006 injury or incident to Mr. Atkinson.

1 Would this typically, outlining some of the treatment and
2 some of the other details, become part of a medical file
3 on a worker?

4 A It may.

5 Q You are just telling us you can't
6 recall if you've seen this in the file?

7 A I'm stating I don't recall seeing this
8 in the medical file.

9 Q Okay.

10 A There appears to be a stamp at the
11 bottom of this that this was a road foreman's office
12 document that was completed perhaps by the road foreman.

13 Q Okay.

14 A I don't know if it was ever transmitted
15 to the medical file, and I can't say with certainty that
16 it is in the medical file.

17 Q Okay. Number 9, which was an injury
18 report for the July 15th, 2006 injury with a description
19 of the worker, behind it it has a one-page Adena Health
20 Systems medical record for the same date. Again, any
21 idea whether this is in Mr. Atkinson's medical file?

22 A I do not know.

23 Q Okay. And the same for Number 15.
24 Number 15 is the injury report relating to the July 12,
25 2007 incident. Now, you are familiar with what these

1 reports look like, an injury report, right?

2 A Yes, generally speaking, I am familiar
3 with the personal injury report.

4 Q Right.

5 A But I can't say that those reports and
6 those initial documents become part of the Norfolk
7 Southern medical file.

8 Q Did you review Mr. Atkinson's medical
9 file before this deposition?

10 A I did.

11 Q And you are telling us in your
12 deposition that this document is likely not in that file?

13 A Yes.

14 Q Okay. But what about the second?
15 There is two more pages back here that focus on the
16 injury itself and whether there is medical care. What
17 about these two pages? Wouldn't these normally become
18 part of the medical file?

19 MR. WEBSTER: I'll object to the form
20 of the question, to the extent that they were provided by
21 you, all part of Exhibit 15.

22 MR. SHAPIRO: Well, it's true. These
23 documents were produced --

24 MR. WEBSTER: Treated as a whole, I'm
25 objecting to the form of the question.

1 BY MR. SHAPIRO:

2 Q Let me clarify the question. I'm going
3 to represent to you, sir, that these were produced by
4 Norfolk Southern to me in this litigation.

5 MR. WEBSTER: I think they were
6 produced by Norfolk Southern's counsel, Mr. Evans.

7 MR. SHAPIRO: I think that's fair to
8 say.

9

10 BY MR. SHAPIRO:

11 Q And I would assume that Mr. Evans
12 didn't have these materials without getting them from the
13 client, Norfolk Southern. So that's what we know about
14 this document. So my question to you is wouldn't it be
15 routine for this form 11131, Report of Employee Personal
16 Injury Illness/Incident to become part of a worker's
17 medical file?

18 A When you say "routine," I need you to
19 describe or define for me what you are referring to as
20 routine, because I'm not familiar with the handling of
21 the noted document form 11131. I know it's handled by a
22 division road foreman on the exhibit, but I don't know
23 what the handling process is from the division road
24 foreman that may have penned that document.

25 Q Well, let me ask you this question

1 about Mr. Atkinson's medical file. Prior to Mr. Atkinson
2 suffering an injury in July of 2006, did Norfolk Southern
3 maintain a medical file on him?

4 A Yes.

5 Q And that medical file would have had
6 his pre-employment medical exam, for one?

7 A Yes.

8 Q It would have had any other medical
9 exam that Norfolk Southern specifically request that he
10 undergo, right?

11 A Yes.

12 Q If he was off injured some other time
13 for something, whether it was on the job or off the job,
14 and had to get permission to return to work, that would
15 be in his medical file, right?

16 A Yes.

17 Q And what you are testifying to is that
18 if Mr. Atkinson has an on-the-job injury where he's out
19 of work in July of 2006, which is the first instance here
20 we're concerned about, you are not sure that the
21 notification of the injury report would be in your
22 medical department file?

23 A That's what I'm testifying under oath,
24 yes.

25 Q All right. What standard form do you

1 receive when someone makes out an injury report and is
2 missing work?

3 MR. WEBSTER: Object to the form of the
4 question.

5 MR. SHAPIRO: What's the objection?

6 MR. WEBSTER: The objection is it
7 assumes that he does receive some notification of that.
8 That hasn't been established.

9

10 BY MR. SHAPIRO:

11 Q Mr. Knecht, do you receive notification
12 by means of any particular form when a worker files an
13 injury report and is missing time from work?

14 A I do not.

15 Q What is the normal manner in which you
16 are notified or asked to become involved in any medical
17 management of a worker who is off injured and may have
18 filed an injury report?

19 A My first knowledge of the employee
20 having an injury may very well come from a request for
21 the approval of medical treatment on the injured
22 employee. Such as I mentioned earlier, in the process of
23 the disability management, when a request for medical
24 treatment, such as physical therapy or surgery or work
25 hardening or work conditioning, that would be my first

1 knowledge that an employee was receiving any type of
2 medical service.

3 Q Okay. Let's turn to Exhibit 10.

4 MR. WEBSTER: Excuse me. Do you have
5 copies of 15 and 16 for us?

6 MR. SHAPIRO: Yes, you have them all
7 right there. There is an extra copy of the ones that are
8 17 on, and you can pick one up. They are all together.

9 THE WITNESS: What number?
10

11 BY MR. SHAPIRO:

12 Q I would like you to look at Number 10,
13 16 and 3.

14 A I don't see 10, 16 and 3 in front of
15 me. I don't have 10 and 16.

16 Q That's because they are all up here.
17 I'm sorry.

18 A That's fine.

19 Q 10, 16 and -- okay. Let's just go to
20 Number 1 and 2 then. You might want to put them side by
21 side. At some point the medical department began to look
22 at whether Mr. Atkinson might be medically qualified to
23 return to work as a conductor, right?

24 A Yes.

25 Q And was that somewhere in the spring of

1 2007?

2 A Yes.

3 Q And by the spring of 2007 you certainly
4 had documentation in your file that indicated that he had
5 suffered an injury at work on July 15th, 2006?

6 A Yes.

7 Q And essentially the medical department
8 had some of the basic information that he had been
9 tightening a brake wheel and experienced a right lower
10 back pain with radiation down the calf, correct?

11 A Yes.

12 Q His primary doctor at that time was
13 Dr. Fisco, correct?

14 A Yes.

15 Q Dr. Fisco's up in Jackson, Ohio?

16 A Yes.

17 Q And Norfolk Southern had reviewed
18 certainly some number of medical records relating to the
19 treatment that had been ordered by Dr. Fisco?

20 A Yes.

21 Q Do you recall whether you had access to
22 the MRI reports that had been done on his back?

23 A I do not recall access to the MRI
24 reports.

25 Q You may have, you may have not?

1 A May have not.

2 Q You were able to get any medical
3 records the medical department wanted at that time,
4 right? I mean, you had an authorization to get the
5 records if you wanted to see them, right?

6 A You'll have to explain to me what
7 authorization you are referring to.

8 Q Well, Norfolk Southern got these
9 medical records that we just alluded to, right?

10 A There is a process -- a return to work
11 process that requires an employee to provide a document
12 from his treating physician that he has been released to
13 service. When that document is received, it starts the
14 process of reviewing the file to see if all of the
15 current adequate medical record information is contained
16 in the file.

17 If the information is insufficient,
18 then a notice of instruction is sent to the field
19 supervisor requesting additional medical information to
20 complete that process.

21 Q And in some cases Norfolk Southern
22 obtains what's called a Medical Authorization Form from
23 the worker allowing records to be sent directly to
24 Norfolk Southern?

25 A In some cases. I don't know in this

1 particular case if that form was completed.

2 Q And at this time we're talking about --
3 we're getting ready to talk about more details of a
4 letter here that was in May of 2007. At this time, in
5 May of 2007, Mr. Atkinson had not notified Norfolk
6 Southern that he had a lawyer representing him, correct?

7 A I'm unaware of the specific time at
8 which Mr. Atkinson had an attorney or didn't have an
9 attorney, and it would not have had any bearing on my
10 handling of Mr. Atkinson or any other employee with
11 respect to the disability management process or the
12 return to work management process that I talked about
13 today.

14 Q Well, I just want to clarify the time
15 line here, because there is some other references to
16 lawyers in this chart and the materials that were
17 produced. As of this time you don't have anything in the
18 file that indicated he had a lawyer, correct?

19 A I don't believe I was aware he had a
20 lawyer at this time.

21 Q Okay. So you drafted a letter to
22 Dr. Fisco dated May 8, 2007 that was sent to him about
23 Danny Atkinson?

24 A Yes.

25 Q And this is Exhibit 2. You are

1 familiar with that?

2 A Yes.

3 Q Okay. And Exhibit 1 is an attachment
4 that you referred to in the letter entitled Road
5 Conductor?

6 A Yes.

7 Q Did you have to type up the road
8 conductor job description or did you have that from
9 handling other road conductor medical issues in other
10 cases?

11 A I had that from handling other road
12 conductor cases with conductors.

13 Q So you didn't need to make a special
14 inquiry to a supervisor to determine whether Mr. Atkinson
15 did A, B, C, D items? You had a standard description
16 that you forwarded to Dr. Fisco?

17 A No, that's not correct.

18 Q Correct me. You did talk to a
19 supervisor about the job's duties?

20 A Yes, I had to take the job task listing
21 for the position of a conductor and send it, forward it
22 to the division superintendent to have the division
23 superintendent advise regarding the current description
24 of activity that Mr. Atkinson performs. And on the
25 bottom of that description it references Danny Atkinson,

1 his employee ID number, and his date of incident that
2 we're referring to. And the e-mail is sent to the
3 supervisor so this document can be verified that it
4 accurately represents his general task duties.

5 Q Did you get an affirmative response
6 back from his supervisor that this was a fair
7 description?

8 A Yes.

9 Q You didn't have to make any changes to
10 it?

11 A I don't recall if changes were made or
12 not made. I recall sending the document. I recall
13 receiving the document. I don't know if there was
14 changes made to the document.

15 Q Let me ask you a few questions about
16 Exhibit 1. It says there is frequent bending, stooping,
17 squatting, climbing, pushing and pulling. Did I read
18 that correctly on that part of the description? It's
19 toward the middle.

20 A I see that.

21 Q Do you know, Mr. Knecht, how much
22 pushing and pulling is required in terms of pounds or
23 weight for this job?

24 A I do not know.

25 Q It references what's called a train

1 knuckle and a weight of 75 pounds a couple lines below
2 that.

3 A Yes.

4 Q Have you ever had to get a verified
5 weight on a train knuckle to determine whether it's more
6 or less than 75 pounds?

7 A I haven't specifically gotten a
8 verified weight on a train knuckle. I have sent this
9 document to the division superintendent to see if it
10 accurately represents that employee's job duties.

11 Q And a knuckle is some part of a cuppler
12 mechanism that is stored, for example, on locomotives,
13 among other places?

14 A I have a general understanding of what
15 a conductor does, having worked for the company for
16 almost 20 years, but I don't know exactly where this
17 device is stored, exactly its primary function. I know,
18 according to this document, a train knuckle weighs 75
19 pounds.

20 Q Let me take you to the bottom of the
21 document. It says: A yard conductor position requires
22 frequent throwing of ground to waist level switches. On
23 that particular task do you know how much force or
24 pressure is required to throw ground level switches?

25 A I do not.

1 Q It then says mounting cars. Well,
2 mounting cars requires climbing vertical ladders or
3 nearly vertical ladders regularly, doesn't it?

4 A Yes.

5 Q And it says applying wheel or lever
6 type hand brakes. A wheel hand brake is one of those
7 round hand brakes that are on many train cars, right?

8 A I have a general understanding of a
9 brake on a car as a round wheel. That's my extent of
10 knowledge.

11 Q Do you have any familiarity with
12 tightening or securing a hand brake? Like, did you ever
13 get any just -- you know, did anyone with Norfolk
14 Southern take you out to a yard to learn a few of these
15 things one time, so you might be familiar with them?

16 A I do not recall tightening a hand
17 brake.

18 Q Have you ever heard that there is an
19 AAR standard that says there should be 125 pounds of
20 pressure to a wheel hand brake to secure it?

21 A I'm not familiar with what you are
22 referring to as AAR.

23 Q Association of American Railroads.
24 It's a research and trade group.

25 A Okay. I'm not familiar with that.

1 Q Okay. And you mentioned that a worker
2 sometimes may have to hold on to the side of a freight
3 car with one arm and operate a brake with the other?

4 A I don't think I mentioned that. I
5 think the document reflects what the division
6 superintendent said was a description of the job tasks
7 for that position.

8 Q Well, maybe you're correct and I
9 shouldn't have said mentioned. It was included in a job
10 description that you forwarded to Dr. Fisco, right?

11 A Yes.

12 Q So this May 8, 2007 letter we marked as
13 Exhibit 2 states that you and Dr. Lina -- with oversight
14 of Dr. Lina were looking into whether Mr. Atkinson could
15 safely return to his road conductor position with Norfolk
16 Southern, right?

17 A Yes.

18 Q And one of the things that -- well, you
19 outlined some of the background here, that he got hurt --
20 he claimed he got hurt when he was tightening a brake
21 wheel, correct?

22 A The quote in my letter comes from a
23 review of the medical file, that in that file that was
24 stated as a quote.

25 Q He had had pain management, which

1 included left epidural steroid and trigger point
2 injections?

3 A Yes.

4 Q He entered into a functional
5 restoration program to decrease his pain, increase
6 flexibility and range of motion, correct?

7 MR. WEBSTER: If you are going to read
8 it and quote from it, read the entire phrase. I object
9 to the form of the question. It's incomplete.

10 MR. SHAPIRO: I left a word out.

11 MR. WEBSTER: You left three words out.

12

13 BY MR. SHAPIRO:

14 Q Mr. Knecht, your letter stated in one
15 sentence, "Additionally, he has been enrolled into a
16 functional restoration program consisting of formal
17 physical therapy to decrease pain, increase flexibility
18 and range of motion." Was that stated in there?

19 A Yes.

20 Q And then it -- basically, one of the
21 purposes of the letter was that Norfolk Southern wanted
22 to determine whether an injured worker could safely
23 return to his work activities? And you wanted to obtain
24 a functional capacity evaluation for this worker,
25 correct?

1 A Yes.

2 Q Okay. And you suggested in the letter
3 that Norfolk Southern would pay the bill for that
4 functional capacity evaluation?

5 A Yes.

6 Q And you suggested in the letter that
7 Norfolk Southern identified the specific facility, and it
8 was the Holzer Clinic in Jackson, Ohio?

9 A Yes.

10 Q In other words, Dr. Fisco didn't
11 suggest it. Norfolk Southern suggested it and thought
12 this was a reputable and good place that could do the
13 work?

14 A Yes.

15 Q And then in another paragraph you
16 stated to Dr. Fisco that the FCE will help better assess
17 Mr. Atkinson's functional components of work activities,
18 measure where his abilities and limitations appear,
19 correct?

20 A I said the functional capacity will
21 help us better assess. I referred to "us" as Dr. Lina
22 and myself, the oversight of Dr. Lina and myself writing
23 Dr. Fisco requesting his order for the performance of a
24 functional capacity evaluation.

25 Q Okay. Totally agreed. That's what the

1 whole purpose was, right?

2 A Yes.

3 Q And Dr. Fisco agreed to have
4 Mr. Atkinson, his patient, undergo the FCE, right?

5 A Yes.

6 Q And let me show you Exhibit 19, which
7 is an MRI report of a study ordered on August 1st, 2006.
8 Do you know, Mr. Knecht, whether you had the results of
9 the MRI report ordered by Dr. Fisco on the low back of
10 Mr. Atkinson at the time you wrote him in May of 2007?

11 A I don't recall having this document
12 when I wrote Dr. Fisco.

13 Q Would it have been normal for you to
14 have reviewed Dr. Fisco's office notes?

15 A Yes.

16 Q And he probably would have referred to
17 having an MRI done and a report back, wouldn't he?

18 MR. WEBSTER: I'm going to object to
19 the form of the question. I think it's speculative at
20 best. If you are going to refer to the notes, refer to
21 the notes.

22 MR. SHAPIRO: Okay. Well taken.

23

24 BY MR. SHAPIRO:

25 Q I'll rephrase the question this way.

1 Can you say, one way or the other, whether Dr. Fisco had
2 talked about the MRI by May 2007?

3 A He may have.

4 Q Okay. You don't know whether the
5 report itself was in Norfolk Southern's medical file?

6 A That's what I testified to.

7 Q All right. Do you have any
8 recollection of how you picked Holzer Clinic for the FCE,
9 Mr. Knecht?

10 A Generally speaking, we may -- I may
11 have utilized the Holzer Clinic to perform the functional
12 capacity on perhaps -- on another handling matter
13 involving an injured employee, and that the Holzer Clinic
14 could perform an adequate evaluation.

15

16 [A discussion was held off the record.]

17

18 BY MR. SHAPIRO:

19 Q And then if I could ask you to take a
20 look at Number 18, can you identify what that document
21 is, please?

22 A The document says it's a Functional
23 Capacity Report from the Holzer Clinic on May 24th of
24 '07.

25 Q So this report would have come to

1 Norfolk Southern, since Norfolk Southern agreed to pay
2 for this report, correct?

3 A Yes.

4 Q All right. And the therapist who did
5 the study was named Anthony Polcyn?

6 A Yes.

7 Q And under his recommendation -- if you
8 look on the summary on the first page under
9 recommendation, is it true that he said, "Results of this
10 test placed the patient in the medium heavy range of the
11 physical demand classification for occasional material
12 handling," the first sentence?

13 A Yes.

14 Q And then he said, "Test results showed
15 patient should be able to return to all previous
16 activity," correct?

17 A Yes.

18 Q He said, "He has increased discomfort
19 with static postures." Does static posture mean like a
20 stationary movement where you are lifting?

21 MR. WEBSTER: Stationary movement is an
22 oxymoron. I object to the form of the question.

23

24 BY MR. SHAPIRO:

25 Q Where the worker is stationary and

1 moving some material?

2 MR. WEBSTER: I think you are
3 combining --

4 MR. SHAPIRO: Okay. No speaking
5 objection. I'll rephrase it.

6

7 BY MR. SHAPIRO:

8 Q Mr. Knecht, do you know what static
9 posture means?

10 A Generally speaking, I would think
11 that's sitting.

12 Q Okay.

13 A But I don't --

14 Q Okay. So to read back, "He has
15 increased discomfort with static postures and being a
16 conductor, he will be sitting for extended periods." Is
17 that what Mr. Polcyn said, among other things?

18 A That's what the document says.

19 Q All right. Anyway, this study does a
20 wide range of testing on a worker where they do types of
21 lifting, types of tasks, and they are trying to get a
22 good objective feel for what the worker can do in the
23 workplace? Do you agree with that?

24 A Yes.

25 Q And typically this type of study is

1 provided to the worker or patient's treating doctor, who
2 ultimately will be the one who passes on the restrictions
3 for that worker, patient, correct?

4 A Yes.

5 Q All right. So ultimately -- and it's
6 pretty apparent from some of the other records -- once
7 that was done, you actually talked to Mr. Polcyn about
8 his FCE, right?

9 A Yes.

10 Q Can you find Exhibit 12, please? And
11 can you identify what this one-page document is?

12 A This is a form that we use in the
13 medical department to document conversations with
14 employees or case activity. And I had spoken with
15 Anthony Polcyn on June 1st of '07 at 3:49 p.m. I had
16 reviewed the functional capacity evaluation and I asked
17 Mr. Polcyn to provide me with his opinion, given the
18 general understanding of the conductor's job task
19 listing, that I thought he had in front of him, with
20 respect to lifting 75 pounds and climbing vertical
21 ladders that we discussed, if there was a safe job match
22 for Mr. Atkinson returning to service. And Mr. Polcyn
23 said that he completed the FCE, and he confirmed a safe
24 job match for Mr. Atkinson returning to service.

25 And the plan was to forward to

1 Dr. Fisco a request for the updated return to work form
2 and a range for a MED-15 return to work exam, if
3 applicable. The form that I am referring to, to
4 Dr. Fisco, is the form that includes the composite of the
5 functional capacity evaluation, the job task listing, and
6 a letter that I wrote with the oversight of Dr. Lina,
7 asking that there is a safe job match for the employee
8 returning back to his position as a road conductor, and
9 that there is not the likelihood or probability -- excuse
10 me. Likelihood or potential for aggravation or
11 re-injury. That was sent to Dr. Fisco.

12 Q Okay. So that was Exhibit 12. And
13 then after you talked to Mr. Polcyn, was the next step,
14 vis-a-vis his medical providers, to write a letter to
15 Dr. Fisco asking him what his opinions were about the
16 ability to return to work?

17 A Yes.

18 Q So let me see. Can you look at Exhibit
19 17 and tell me if that's the letter that was sent from
20 the medical department to Dr. Fisco?

21 A Yes.

22 Q What was the date of that letter?

23 A June 1st, 2007.

24 Q And you outlined that the FCE had been
25 conducted. You outlined some of the findings from the

1 FCE. And you mentioned that you contacted Mr. Polcyn,
2 who gave the opinion that Mr. Atkinson demonstrated the
3 material handling abilities consistent with the safe job
4 match for returning to the position of road conductor,
5 right?

6 A Yes.

7 Q Okay. And you also -- as you pointed
8 out earlier, you talked to a division superintendent, you
9 had reviewed some -- to be sure that the job duties were
10 agreed by a supervisor, right?

11 A Yes.

12 Q And then you asked Dr. Fisco -- I guess
13 it's like four separate questions and to check off a box
14 for one of these, actually write any detail he wanted to
15 give, correct?

16 A Yes.

17 Q And he filled this out, and I guess he
18 FAXed it or mailed it back to Norfolk Southern?

19 A It appears at the top of the document
20 on June 6 there was a FAX transmission from the Holzer
21 Clinic.

22 Q And the upshot of this form was that
23 Dr. Fisco felt that Mr. Atkinson could return with his
24 present condition safely to his job?

25 A Yes.

1 Q Okay. So then just within a couple
2 days after that -- if you can look at Number 13, sir.
3 It's in the original batch of stuff. Looks like you sent
4 an e-mail to a supervisory person advising that you had
5 an updated work release for full duty with no restriction
6 from the treating physician, and then I think you talk
7 about some of the specific paperwork that's required to
8 get a worker approved then internally or something?

9 A Yes, and following the return to work
10 process, and given the information that was received from
11 Dr. Fisco at that point, it was sufficient to e-mail the
12 division superintendent regarding the findings that
13 Mr. Atkinson had been released by his treating physician,
14 who had addressed for us any concerns regarding the risk
15 of aggravation or the risk for re-injury, and given that
16 information, would they provide him with a MED-15/MED-14
17 return to work form to complete a return to work
18 examination.

19 Q And then those documents did get
20 processed through and Mr. Atkinson was approved to return
21 to work in the week or two or so after this, correct?

22 A I recall him returning to service.

23 Q And we just covered it, but when he
24 returned to service, his family doctor -- his treating
25 doctor nor Norfolk Southern imposed any partial

1 restrictions on him at all, did they?

2 A No.

3 Q And that was based on the fact that
4 medically it appeared that he was capable of doing the
5 road conductor job duties?

6 A Yes.

7 Q Can you look at Exhibit 14, please? Do
8 you have that?

9 A Yes.

10 Q Can you identify that, please, and tell
11 me what that appears to be?

12 A This is another MED form note, note
13 that I wrote, having spoken to Mr. Danny Atkinson on June
14 26th of '07 at 1:02 p.m. I contacted him, having
15 reviewed his return to work exam, asking for
16 clarification regarding his use of the medication Lyrica,
17 that he stated he had been taking or had used.

18 Q As a physician's assistant, do you have
19 to be familiar with basic types of medications when you
20 review medical charts?

21 A I have a general knowledge of basic
22 medications.

23 Q Do you know what Lyrica is prescribed
24 for, generally?

25 A I believe it's for pain.

1 Q Okay. So go ahead. What else
2 happened?

3 A I informed Mr. Atkinson that he could
4 not take Lyrica while performing his duties for six hours
5 before duty, and he acknowledged understanding of that,
6 and further stated he was not taking Lyrica for any pain
7 management, that he had clearly annotated Lyrica there
8 because he had been given a prescription by Dr. Fisco and
9 wanted to list that medication at the time of his return
10 to work exam. He didn't express to me any difficulty
11 with performing his duties. He had actually been back to
12 work, I think, six days working when I physically called
13 him, and had gotten the return to work exam from the
14 clinic that had performed it.

15 Q So he expressed to you that he wasn't
16 having any ongoing pain issues?

17 A At that time there was no ongoing pain
18 issues, to my knowledge. He told me over the phone that
19 he was not using Lyrica, which he had been using for
20 management of pain. And that he had returned back to
21 work.

22 Q Do you have Exhibit 15? Did I already
23 ask you about this?

24 MR. WEBSTER: 15 was one of the ones he
25 was not familiar with.

1 THE WITNESS: I don't think I have that
2 here.

3
4 BY MR. SHAPIRO:

5 Q I think you looked at it before. Do
6 you recall seeing the personal injury record filed by
7 Mr. Atkinson for a July 12, 2007 accident, which occurred
8 some weeks after he was back to work?

9 A No.

10 Q But sometime after the accident you did
11 become aware that he was back out of work with an injury,
12 correct?

13 A I became aware of a subsequent problem
14 with Mr. Atkinson, only having reviewed the file for the
15 purposes of this deposition. My last contact with
16 Mr. Atkinson was the June 26th of '07 note, where I had
17 confirmed with him that he was back to work and working.

18 Q Can you take a look at Exhibit 11,
19 please? Exhibit 11 is two pages. The first page is an
20 e-mail, which you are copied on from Dr. Lina, and it has
21 attached, I guess, a proposed letter to send to
22 Mr. Atkinson. And this was -- you were cc'ed on this
23 e-mail, right, from Dr. Lina, who you work under?

24 A Yes.

25 Q And in it she's asking about a recent

1 back injury to Mr. Atkinson, correct? I'm just trying to
2 clarify that you must have been brought back in the loop
3 to understand that he had a new injury.

4 A My recollection is I was not brought
5 back in the loop, because as I've defined the disability
6 management process, my involvement would have been
7 through requests for medical treatment or ongoing
8 disability management.

9 This appears to be a document that's
10 directed to Dr. Paula J. Lina on which I'm copied. And
11 the standard procedure for Dr. Lina would probably be to
12 put this document into the medical file, and it didn't
13 require any action by myself.

14 Q But you would have received a copy of
15 that in your e-mail, wouldn't you, Mr. Knecht?

16 A Yes.

17 Q Can you tell me in the subject line of
18 the e-mail what's the injury date that it lists?

19 A 7/12/07.

20 Q This is certainly not the first injury
21 that we talked about that was in the summer of 2006, is
22 it?

23 A No.

24 Q So then you would agree with me that
25 there must have been something that you became aware of

1 that there was a new injury involving Mr. Atkinson?

2 A According to this document, something
3 else must have happened.

4 Q And of course, this letter that's
5 attached wouldn't be an unusual letter? That's the form
6 letter that's going to ask the worker to provide updated
7 medical records so the medical department can get an
8 understanding of what is going on with their medical
9 condition?

10 A Yes.

11 Q Okay. This document, document Number
12 7, can you tell us if you can identify it at all? It's a
13 redacted copy of a medical form.

14 MR. WEBSTER: I'm going to object to
15 any questions based upon that document due to its
16 incompleteness. Subject to that objection, I will permit
17 the witness to answer.

18 MR. SHAPIRO: The redactions are just
19 to take out the reference to the Railroad Retirement
20 Board, because of collateral sources generally. There
21 has been no change in any of the written material from
22 the physician.

23

24 [A discussion was held off the record.]

25

1 MR. WEBSTER: I'll stipulate that it's
2 in the medical department file in its full form.

3

4 BY MR. SHAPIRO:

5 Q Can you take a look at Number 5,
6 Mr. Knecht? Do you know who Mel Crawley is?

7 A I don't know who Mel Crawley is. I
8 believe he's in the transportation department, but I
9 don't know.

10 Q Transportation supervisor most likely?

11 A Some level of transportation.

12 Q And do you know who Jerry Hall is?

13 A Also some member of transportation.

14 Q In a supervisory capacity. And on this
15 e-mail you were copied from Mr. Crawley. It was to
16 Dr. Lina, correct?

17 A I was carbon copied, yes.

18 Q And Mr. Crawley, a transportation
19 supervisor, was sending this to Dr. Lina, correct?

20 A Yes.

21 Q And the subject was Mr. Atkinson's
22 injury of July 12, 2007?

23 A Yes.

24 Q And also Mike Linkinhoker got a copy of
25 this. And who is Mike Linkinhoker?

1 A The subject matter says DOI, if that's
2 consistent with date of illness or date of injury.

3 Q Right.

4 A Mr. Linkinhoker is a representative in
5 the claims department.

6 Q He's a claim agent, actually is
7 assigned to this case for Mr. Atkinson, right?

8 A Yes.

9 Q And then there is an e-mail also
10 included from Dr. Lina back to Mr. Crawley, and you are
11 copied on it as well, right?

12 MR. WEBSTER: I think you've got it in
13 reverse order. I would object to the form of the
14 question. To clarify things, I think if you refer to --
15 Exhibit 11 is the earlier e-mail from Dr. Lina to
16 Mr. Crawley. And Exhibit 5 is the e-mail from
17 Mr. Crawley back to Dr. Lina acknowledging it. So what's
18 at the bottom of Exhibit 5 is not an e-mail back from
19 Dr. Lina to Mr. Crawley. It actually came first in
20 time.

21

22 BY MR. SHAPIRO:

23 Q In any case, Exhibit 5, it has two
24 e-mails included on the same page, correct?

25 A There appear to be two e-mails.

1 Q And the earlier of the two is from
2 Dr. Lina to Mel Crawley, including yourself and
3 Mr. Linkinhoker, correct?

4 A I was copied on that e-mail from July
5 24th of '07 at 3:50 p.m.

6 Q And that was just Dr. Lina asking to
7 get updated records on Mr. Atkinson, right?

8 A Yes.

9 Q Then, as Mr. Webster pointed out, the
10 other one on the same page actually came an hour
11 and-a-half later, just thanking -- I'm not quite sure I
12 understand what's going on there, but from Mel Crawley to
13 Dr. Lina, correct?

14 A I would agree that I don't quite know
15 what's going on there too, sir.

16 Q Anyway, that is July 24. This is a
17 little more than -- twelve days after the accident,
18 correct?

19 A This date of incident is July 12 of '07
20 on this document.

21 Q Okay. Take a look at Number 8 and tell
22 me if you can identify Number 8, please.

23 A I can identify this document as being
24 in the medical file when I reviewed the file for my
25 deposition.

1 Q You are saying it was?

2 A Yes.

3 Q Okay. And who is Don Browning?

4 A I believe Don Browning is in the safety
5 department.

6 Q Handles reporting to the FRA, Federal
7 Railroad Administration?

8 A That may be one of his duties.

9 Q In the middle of this page there is an
10 e-mail from Mr. Hall, who we said is a transportation
11 supervisor, correct?

12 A (The witness nods head.)

13 Q There is three paragraphs here, but one
14 of the things he says -- and you tell me if I read this
15 correctly. The middle paragraph, last line: "It appears
16 to be a case where the employee was actually not
17 medically able to come back to work." Is that what
18 Mr. Hall said in this e-mail?

19 A I'm trying to find that exact verbiage.

20 Q Last line.

21 A That is what the e-mail states.

22 Q Okay. And Mr. Hall, the supervisor,
23 said that he was still investigating the facts
24 surrounding the incident. "If it can be determined
25 medically that this is the same back condition he

1 experienced in 2006, does this have any impact on
2 reportability?" Is that his question?

3 A That's what the document states.

4 Q Okay. Let me show you quickly. I
5 didn't cover 4 and 6. 4 is just another copy of the
6 letter to Mr. Atkinson asking for all of his medical
7 records. It's just a stand-alone copy, correct?

8 A Yes, this is the July 25th, '07 letter
9 that I think we looked at earlier, requesting he provide
10 medical information.

11 Q He provided that medical information as
12 requested, didn't he, to the medical department?

13 A I'm not certain if there is
14 documentation in the file past this July 25th of '07 date
15 regarding that incident. I don't recall.

16 Q You don't recall seeing the letter
17 where I wrote to the supervisor and said we're providing
18 all the records requested?

19 A I don't recall seeing that letter.

20 Q All right. And Number 6, can you
21 identify this document?

22 A You know, this is another document
23 where I'm not copied on it, just as though other
24 documents you were asking me questions, and I wasn't
25 copied on either. It appears to be a document from Mel

1 Crawley to Jerry Hall. "Dr. Lina has requested that we do
2 not allow D.R. Atkinson to work until medical department
3 has reviewed his medical records." I believe that would
4 be consistent with Dr. Lina requesting this document be
5 sent out to the employee.

6 Q Do you know of any change in
7 circumstances since that letter you just referred to
8 relating to Norfolk Southern passing on the capacity of
9 Mr. Atkinson to return to being a road conductor, since
10 then?

11 A I'm not certain I understand the
12 question.

13 Q Has there been any change in Dr. Lina's
14 determination on the status of Mr. Atkinson since the
15 July item you just referred to in 2007?

16 A I think you'd have to ask Dr. Lina that
17 question.

18 Q You reviewed the medical file to
19 prepare for your deposition, didn't you?

20 A Yes.

21 Q Is there anything that you saw in the
22 medical file, since that particular determination, that
23 indicates that there has been any change, that you were
24 able to see, in the file?

25 A I don't recall.

1 Q Okay. Let me show you what's been
2 marked as Exhibit 21 and ask you if you can identify
3 that. That's some pages relating to a repeat FCE of
4 Mr. Atkinson.

5 A I'm just trying to get oriented. You
6 say repeat FCE, the different times here and what time
7 frame this was actually performed. This document, 21,
8 appears to be a functional capacity evaluation on Danny
9 Atkinson from December 10th of '07.

10 Q Right. And my question was could you
11 identify it? Did it become part of the medical file with
12 Norfolk Southern?

13 A It may be in the file. I don't recall
14 seeing this document.

15 Q I guess before I even refer you back to
16 the document, did you become aware of whether Mr. Polcyn
17 did a follow-up FCE on Mr. Atkinson?

18 A I was not aware that that activity took
19 place.

20 Q All right.

21 A When I say I wasn't aware, that means I
22 didn't receive a request to approve the performance of a
23 functional capacity. I hadn't arranged or scheduled for
24 the functional capacity. These documents appear to be
25 perhaps handled by Dr. Lina versus myself.

1 MR. WEBSTER: Don't speculate.

2

3 BY MR. SHAPIRO:

4 Q Are FCE's helpful in determining the
5 work ability or the work status of a worker?

6 A Yes.

7 Q This follow-up FCE was by the same
8 therapist that had been selected by Norfolk Southern
9 earlier, correct?

10 A Yes.

11 Q Did you have access to a repeat MRI of
12 the low back that was done in August of 2007, a few weeks
13 after this second accident?

14 A I don't recall seeing that document
15 November or whatever the date was there.

16 Q August of '07.

17 A August of '07, I don't recall seeing
18 that.

19 MR. WEBSTER: What's the Exhibit
20 Number?

21 MR. SHAPIRO: 20.

22

23 BY MR. SHAPIRO:

24 Q And I'm guessing your answer is the
25 same on 22, which is a report of an MRI lumbar spine

1 radiology and EMG study by a Dr. Balturshot. That may be
2 2008.

3 A This is July 28th of 2008 from May 13th
4 of '08. That's a more recent document. I haven't seen
5 this before.

6 Q And did you become aware that
7 Mr. Atkinson underwent spinal surgery in September of
8 2008?

9 A I don't recall that.

10 MR. SHAPIRO: I think those are all my
11 questions. I want to go off the record and organize the
12 exhibits one more time and make sure that I know --

13 MR. EVANS: Rick, I would like to note
14 for the record that we've been requesting through your
15 office updated medical records for 2008, including
16 records regarding the most recent treatment and the
17 surgery in September, and we have yet to receive any
18 ourselves. I would just like the record to reflect that.

19 MR. SHAPIRO: Sure. And I don't have
20 them either, Lee. When I asked him about Balturshot,
21 that was a diagnostic test well before the surgery. You
22 should have that, because I think we already had gotten
23 all that. We don't have anything since like mid August
24 or something. But anything that I've got right here,
25 obviously you are going to get. That was like the EMG or

1 the CT or something, you know, discogram. I'm not sure
2 what it was called.

3

4 [A discussion was held off the record.]

5

6 MR. SHAPIRO: Lee, 9, 10, 15 and 16 are
7 the ones that are of some concern for me, because 9 is
8 the first injury report with a medical report attached to
9 it. 10 is the actual pre-employment physical. 15 and --
10 16 relates to the July '06. It's like the secondary form
11 relating to the injury. And then I think the PI report,
12 Number 15, someone else may have identified it. I don't
13 remember if we used it in Price. As long as I have it in
14 there, I don't care. I don't think the other three are
15 in evidence anywhere yet.

16 MR. WEBSTER: 10 we stipulated came
17 from the medical department file.

18 MR. SHAPIRO: Okay. I think we put in
19 the personal injury report in Doug Price's deposition,
20 but I'm not sure, but this one has a medical document
21 attached to it that apparently would have been sent to
22 the medical department, I think.

23 MR. EVANS: With respect to Exhibit 9,
24 that, of course, is the personal injury report that Danny
25 Atkinson prepared. He identified that. As to whether it

1 ever had the medical form attached to it that you have
2 attached with it as this exhibit, I can't speak to that
3 and I don't know if it made its way to the medical file
4 or not, but in terms of the personal injury report
5 itself, I think that's been authenticated through your
6 client.

7 MR. SHAPIRO: I don't really care. I'm
8 not really worried about 9. 10 you stipulated on. What
9 about --

10 MR. EVANS: 15 and 16?

11 MR. SHAPIRO: 15 also -- I think we put
12 in 15 in the other deposition, but 16 is the two-page --
13 it's on the first accident. It's like the secondary form
14 reporting illness/incident.

15 MR. EVANS: Again, it's a
16 transportation department document, in the sense that it
17 was prepared by the road foreman of engines, and I don't
18 know that this witness or the medical department can
19 authenticate it. It may or may not have found its way
20 into the medical file. I'm not sure that it did, but I
21 don't think there is any question that it's a Norfolk
22 Southern document and that it was prepared by a road
23 foreman after the first incident occurred. I don't think
24 there is going to be an issue there. I'm not sure what
25 you are asking.

1 MR. SHAPIRO: I'll go back. I'll
2 check. I think these other ones may have been put in in
3 Doug Price's deposition, so it's all ado about nothing.
4 So 10 is good. 10 we have an agreement that it's an
5 authentic business record. That's the main one I did not
6 cover in the prior depositions.

7 MR. EVANS: That's fine.

8 MR. SHAPIRO: I'm completed with my
9 exam.

10 MR. WEBSTER: I just have a couple
11 follow-up questions.

12

13 BY MR. WEBSTER:

14 Q If you can, find Exhibit 19, 18 and
15 21. I'm sorry. 17. Now, Exhibit 17 is the letter --
16 the response of Dr. Fisco to your letter to him of June
17 1, 2007, correct?

18 A Yes.

19 Q And where did that response come from?

20 A Dr. Fisco's office.

21 Q And where is Dr. Fisco's office?

22 A Jackson, Ohio.

23 Q Is he associated with the Holzer
24 Clinic?

25 A Yes.

1 Q And Exhibit 18, what is that?

2 A That is a functional capacity report
3 from May 24th of '07 by Anthony Polcyn at the Holzer
4 Clinic in Gallipolis, Ohio.

5 Q All right. Does that suggest to you
6 that Dr. Fisco and Anthony Polcyn are in related
7 practices?

8 MR. SHAPIRO: Objection, leading,
9 speculative.

10 THE WITNESS: Yes.

11 MR. WEBSTER: That's all.

12 MR. SHAPIRO: I have nothing further.

13 MR. WEBSTER: We're going to read and
14 sign the deposition.

15

16 [Whereupon, the deposition was

17 concluded at 11:47 a.m.]

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1 CHANGES REQUESTED TO THE DEPOSITION OF
2 JOHN KNECHT
3 TAKEN ON OCTOBER 16, 2008

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Date Signed

JOHN KNECHT

REPORTED BY: SELINA S. SANDERS, RPR

1 I hereby certify that I have read and
2 subscribe to the foregoing deposition.

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7 JOHN KNECHT

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9

10 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

11

12 Subscribed and sworn to before me

13

14 this day of 2008.

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18 Notary Public

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23 MY COMMISSION EXPIRES:

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COMMONWEALTH OF VIRGINIA AT LARGE, to-wit:

I, Selina S. Sanders, RPR, a Notary Public in and for the Commonwealth of Virginia at Large, whose commission expires May 31, 2012, certify that the foregoing deposition of JOHN KNECHT was duly taken and sworn to before me at the time and place in the caption aforementioned, and that the foregoing is a true and correct transcript to the best of my ability of the testimony given by the witness.

I further certify that I am not a relative or employee or counsel or attorney of any of the parties, or financially interested in the action.

Given under my hand this 27th day of October, 2008.

Selina S. Sanders
Notary Public
Notary Registration No. 212213