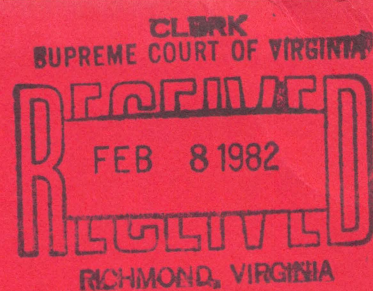


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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

RECORD NO. 811236

WILLIAM C. STEVENS,  
Appellant,

v.

FORD MOTOR COMPANY,  
Appellee.

WASHINGTON & LEE  
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JOINT APPENDIX

JAN 31 1984

J. Riley Johnson, Jr.  
WHITE, JOHNSON & LAWRENCE  
906 Plaza One  
Norfolk, Virginia 23510  
Counsel for Appellant

Allan S. Reynolds  
REYNOLDS, SMITH & WINTERS  
203 Plaza One  
Norfolk, Virginia 23510  
Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS, :

Plaintiff, :

v. : AT LAW NO. 80499

FORD MOTOR COMPANY :

Serve: Edward R. Parker :  
Registered Agent :  
5511 Staples Mill Road :  
Richmond, Virginia, :

Defendant. :

MOTION FOR JUDGMENT

The undersigned hereby moves the Circuit Court of the City of Norfolk, Virginia, for a judgment against the defendant in the amount of Two Million Dollars (\$2,000,000.00) for this, to-wit:

1. That on or about May 10, 1978, the plaintiff, while in his employ as a truck driver at Spector Industries, Incorporated, backed his trailer to the dock at Ford Motor Company in Norfolk, Virginia, so that Ford's employees could unload axles.

2. That due to the negligence of Ford Motor Company and its employees, a malfunctioning dock plate was dropped upon the plaintiff's foot.

3. That as a proximate result of the negligence aforesaid, the plaintiff sustained severe and permanent personal injuries; he suffered physical pain and mental anguish, and will so suffer for a long time in the future; he was required to expend monies in his endeavor to be healed and cured and will be so required for a long time in the future; he was prevented from attending to his lawful affairs, thereby losing wages, earnings and profits, and will be so prevented for a long time in the future; he has sustained a diminution of his earning power which will continue for the rest of his life. 1

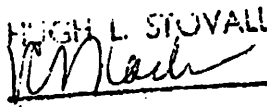
WHEREFORE, the plaintiff moves the Court for a judgment against the defendant in the amount of Two Million Dollars (\$2,000,000.00).

WILLIAM C. STEVENS

BY

  
Of Counsel

J. RILEY JOHNSON, JR., p.q.  
1608 United Virginia Bank Building  
5 Main Plaza East  
Norfolk, Virginia 23510

Filed in the Clerk's Office the 21<sup>st</sup> day of March, 1980  
With Tax \$ 21.20  
Fee \$ 30.00  
Law Libr. Tax 1.00  
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 D. C.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS,

Plaintiff,

v.

AT LAW NO. L80-499

FORD MOTOR COMPANY,

Defendant.

MOTION TO DISMISS

NOW COMES the defendant, Ford Motor Company, and says that the Court should not take further cognizance of the plaintiff's Motion for Judgment against this defendant and that the plaintiff ought not to have or maintain this action against this defendant for the following, to-wit:

1. That the Court lacks jurisdiction to render a judgment against the Ford Motor Company as this cause of action arises out of an industrial accident for which the plaintiff, William C. Stevens, has been compensated pursuant to the Virginia Workmens' Compensation Act.

2. The Virginia Workmens' Compensation Act provides an exclusive remedy for those engaged in industrial accidents.

WHEREFORE, the defendant, Ford Motor Company, prays judgment as to whether the plaintiff ought to have or maintain this action against the said defendant.

FORD MOTOR COMPANY

By

Alan S. Reynolds  
Of Counsel

ALLAN S. REYNOLDS, ESQ.  
White, Reynolds, Smith & Winters  
Post Office Box 3315  
Norfolk, Virginia 23514

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed  
this 31 day of Oct. 1980 to all counsel of record.

Alan S. Reynolds

SECRETARY, FORD MOTOR COMPANY

DMH



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS,

Plaintiff,

v.

AT LAW NO. L80-499

FORD MOTOR COMPANY,

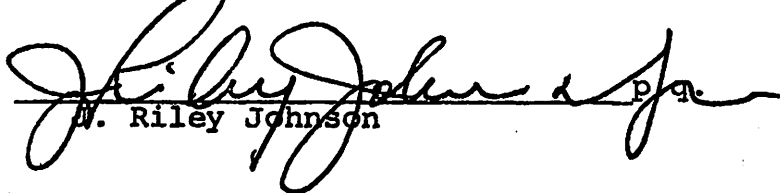
Defendant.

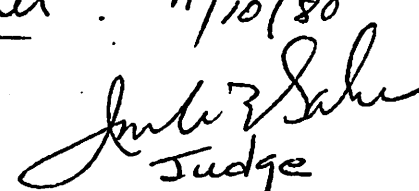
O R D E R

B112  
THIS DAY came the parties, plaintiff and defendant,  
by counsel, to be heard upon the defendant's Motion to Dismiss  
on the grounds that plaintiff's claim is barred by the pro-  
visions of the Virginia Workmen's Compensation Act and the Court  
having heard the argument of counsel and considered the pleadings  
doth overrule said Motion, to which action of the Court the  
defendant excepted.

Seen:

  
Robert H. Mills p.d.

  
W. Riley Johnson p.d.

Enter : 11/10/80  
  
Judge

Joseph E. Baker, Judge

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

3 -----

4 WILLIAM C. STEVENS,

5 Plaintiff,

6 v.

L-80-499

7 FORD MOTOR COMPANY,

8 Defendant.

9 -----

10

11

12

13 DATE: November 20th and 21st, 1980

14 BEFORE: The Honorable Morris B. Gutterman

15

16

17

18 APPEARANCES:

19 By: S. Riley Johnson, Esquire,  
Counsel for the plaintiff.

20 WHITE, REYNOLDS, SMITH & WINTERS,  
21 By: Allan S. Reynolds, Esquire,  
and Robert Mills, Esquire,  
22 Counsel for the Defendant.

22

23

24

25



\* \* \*

MR. JOHNSON: Mr. Stevens, please.

WILLIAM C. STEVENS,  
called as a witness, having been  
first duly sworn, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. State your name and address, please.

A. William C. Stevens, 1411 Hodges Ferry  
Road, Portsmouth, Virginia.

Q. What is your occupation?

A. Truck driver.

Q. How long have you been so employed?

A. 23 years.

Q. How old are you, Mr. Stevens?

A. I'm 42.

Q. What is your educational background?

1           A.       I graduated from Woodrow Wilson High  
2 School June 15th, 1956. I had one year of college  
3 at Tidewater Community College in seventy -- '71.

4           Q.       That was night school?

5           A.       No, sir. I was going to change my  
6 work shift so that I could work nights and go to  
7 school during the daytime. I was a full-time  
8 student and working full-time.

9           Q.       I see. Upon graduation from -- I'm  
10 sorry. Did you say you were working full-time?

11          A.       Yes, sir.

12          Q.       All right. Thank you. Upon  
13 graduation from Woodrow Wilson High School in 1956,  
14 Mr. Stevens, where did you obtain employment and  
15 when and as what?

16          A.       I obtained a job with Taylor-Parker  
17 Company, Incorporated of Norfolk, Virginia, as a  
18 receiving and stock clerk.

19          Q.       What does Taylor-Parker do?

20          A.       They are an industrial supply firm.

21          Q.       And you worked there when?

22          A.       Approximately two weeks after  
23 graduation, July 3rd, I believe it was.

24          Q.       How long did you stay at  
25 Taylor-Parker?



1 A. One year, one month.

2 Q. And where did you go from there?

3 A. I had started working with Hennis  
4 Freight Lines as a part-time employee on July 15th  
5 of 1957 and they had asked me several times to go  
6 with them full-time and on September 3rd I did go  
7 full-time with Hennis. And --

8 Q. In what capacity did you go to work  
9 for them?

10 A. Checker-switcher.

11 Q. What is that?

12 A. You put the trucks to the door for  
13 them to load and unload and you also unload trucks.

14 Q. How long did you stay in that  
15 employment?

16 A. I'm still in it.

17 Q. When did you become a truck driver?

18 A. When I went to work with them.

19 Almost from the first day.

20 Q. I may have misunderstood you. I  
21 don't understand the difference in the checker-  
22 switcher and the truck driver.

23 A. Switcher can move solid loads but  
24 can't make LTL deliveries to the customers.

25 Q. What is LTL?

1 A. Less than truckload.

2 Q. Do I understand that you are now a  
3 truck driver?

4 A. At present I'm unemployed.

5 Q. What was your last employment?

6 A. My last employment was Spector  
7 Industries.

8 Q. All right.

9 A. Spector Freight Lines, freight  
10 systems.

11 Q. I may have missed something in the  
12 translation. Would you explain that to me? When  
13 did Spector Industries come into the picture?

14 A. Well, it was Hennis Freight lines  
15 when I went to work with them and they merged with  
16 Spector Industries and because they were worth more  
17 money than Hennis, the Spector name was kept. But  
18 it's still basically the same company.

19 Q. All right. I'm having trouble  
20 understanding the difference between a  
21 checker-switcher and a truck driver and when you  
22 became a truck driver.

23 A. The checker-switcher was -- the  
24 switcher could drive to move the solid loads of  
25 freight but not LTL shipments, which is less than



1 truckload shipments. I was doing this from the  
2 first of my employment with them.

3 My designation as driver was changed  
4 about five years ago when the contract changed to  
5 indicate that all employees were combination  
6 employees and this meant that I could change the  
7 switcher-checker designation over to driver without  
8 losing my seniority.

9 Q. I see. So it was a union contracting  
10 designation that you are talking about?

11 A. Right.

12 Q. All right. How long had you been  
13 making deliveries to the Ford Plant?

14 A. Off and on from '57 on. Just very  
15 seldom until about '75, I believe I started going on  
16 a regular basis.

17 Q. And when you say that you were on a  
18 regular basis, how much time were you spending at  
19 the Ford Plant?

20 A. Approximately -- to begin with it was --  
21 it varied from 16 hours to 40 hours a week depending  
22 on how much -- how many truckloads we had, how much  
23 switching had to be done, what have you.

24 Q. Were you spending that much time at  
25 the Ford Plant itself?

1           A.       Yes, at the Ford Plant.

2           Q.       Mr. Stevens, were you familiar with  
3 the Ford Plant operation?

4           A.       Yes, sir.

5           Q.       Were you familiar with the loading  
6 docks?

7           A.       Yes, sir.

8           Q.       How many dock plates and loading  
9 docks are there at the Ford Plant?

10          A.       At the time of the accident there  
11 were eight doors at the main receiving dock, which  
12 is more or less the distribution point for incoming  
13 freight to be moved over. The entire system, which  
14 is less than truckload trailers, are unloaded there.  
15 And they have eight doors.

16                 And they have the paint warehouse  
17 where you just back your truck down between two  
18 stacks of freight and they tell you when to stop and  
19 they open the doors to unload it there in the yard.  
20 There's no dock leveler or anything there and then  
21 there's the north receiving dock where they unload  
22 motors, transmissions, drive shafts and the  
23 extremely heavy equipment.

24          Q.       How many doors --

25          A.       There are four doors at the north

1 dock.

2 Q. You were injured at the north dock?

3 A. Yes, sir.

4 Q. Are you married, Mr. Stevens?

5 A. Yes, I am.

6 Q. To whom?

7 A. I married Shelby Jean Boyd on  
8 December 13th, 1963.

9 Q. Have you any children?

10 A. I have two; a son 13 and a daughter  
11 16.

12 Q. What was the date of the accident  
13 that we are talking about today?

14 A. May 10, 1957.

15 Q. You said, Mr. Stevens, that you are  
16 employed with Spector. What does Spector do  
17 specifically?

18 A. They are a common carrier of freight.  
19 In other words, they handle all different types of  
20 freight, just about anything you can put on a truck.  
21 They haul all over the country, the eastern half of  
22 the country.

23 Q. Referring specifically to May 10th,  
24 1978, Mr. Stevens, what was the condition -- what  
25 were conditions like at Spector? I'm asking you

1 specifically whether you were busy or not.

2 A. We were extremely busy. We had  
3 missed picking up several loads at Lambert's Point  
4 Dock the day before and had 18 loads scheduled for  
5 that day to pick up. And from the position of the  
6 cards on the dispatch board we only had two empty  
7 trailers. And consequently, they were hustling  
8 around trying to get empties as fast as they could.

9 Q. What was the situation with regard to  
10 the Spector trailers at the Ford Plant on that day?

11 A. The position of the trailers?

12 Q. Well, I'm talking about were there  
13 many trailers there or were there not?

14 A. When I arrived there were none at  
15 main receiving. There was about nine or ten sitting  
16 in the yard waiting to be unloaded, of Spector's  
17 trucks.

18 Q. What did this mean to Spector?

19 A. It meant we had nine or ten trailers  
20 tied up that we couldn't do anything with. They  
21 were just dead weight sitting there.

22 Q. Were they loaded or unloaded?

23 A. They were loaded with material  
24 waiting to be unloaded.

25 Q. How does that happen?

1           A.       Ford calls to specify what trucks  
2 they want and what time they want them and we send  
3 them over. If they've changed their mind by the  
4 time the truck gets there or they are tied up with  
5 something else, then they'll have the driver sit the  
6 truck down in the yard and he'll take his tractor  
7 from under the trailer and leave to go elsewhere to  
8 work. And this is what had happened on these that  
9 were sitting in the yard.

10           Q.       All right. Would you describe  
11 generally the process of the Ford Plant for getting  
12 trucks to the loading dock, that is, what happens  
13 when you come in with a truck?

14           A.       First you check in with the security  
15 guard and get a vehicle pass at the main gate. Then  
16 you go to the main receiving dock and check in with  
17 the supervisor who is working there and he tells you  
18 what to do with your truck, whether it's going to  
19 the dock, whether to put it in the yard, exactly  
20 what the disposition of the trailer is.

21           Q.       On the day in question as you came in,  
22 what did you have on your trailer and what did you  
23 do? Tell me specifically what happened.

24           A.       I had a headload of rims with LTL  
25 freight behind it.

1 Q. Less than truckload?

2 A. Less than truckload. And the -- Mr.  
3 Reeves was working in place of John Ellis at main  
4 receiving and he told me to go ahead and put the  
5 truck to the dock.

6 Q. Mr. Reeves was a Ford employee?

7 A. Yes.

8 Q. Go ahead.

9 A. And Mr. Reeves told me to put the  
10 truck to the dock, which I did, and went back --

11 Q. Which dock was this you put it at?

12 A. This was main receiving.

13 Q. All right. Go ahead. This was the  
14 one that has eight doors?

15 A. Right.

16 Q. Go ahead.

17 A. I went back in and asked Mr. Reeves  
18 how long it would be before they could start  
19 unloading the trailer, because if it was going to be  
20 any delay, I was to call in and leave to go to  
21 Lambert's Point Docks.

22 Q. You said before they could unload the  
23 trailer. Were they to do it or were you to do it?

24 A. They were to do it.

25 Q. All right.



1           A.       The trailers that come in, just about  
2 99 percent of all trailers going to Ford are with a  
3 special commodity rate. They ship a line, consignee  
4 can unload. This is justified through the towers. <sup>towers</sup>

5           Q.       What does that mean?

6           A.       That means they get a cheaper rate to  
7 have the freight moved because we don't have to tie  
8 up an employee to do it.

9           Q.       What does consignee unload mean?

10          A.       It means that Ford was to unload the  
11 freight.

12          Q.       All right. Go ahead.

13          A.       Where was I?

14          Q.       Well, I think you were just putting  
15 your truck -- you had just been told to put your  
16 truck to the main receiving dock with the LTL dock.

17                   MR. REYNOLDS: Your Honor, I haven't  
18 objected so far, but I object to any further hearsay  
19 testimony.

20                   THE COURT: Avoid hearsay, Mr.  
21 Johnson.

22                   MR. JOHNSON: I don't remember what  
23 he said but I won't dispute the ruling. Go ahead  
24 and tell me what happened.

25                   THE WITNESS: I asked Mr. Reeves how

1 long it would be before the truck would be started  
2 and he told me 15 minutes to 30 minutes. So I  
3 called my dispatcher and told him what the delay  
4 would be. And he told me he had another truck on  
5 the way to Ford.

6

7

8 BY MR. JOHNSON:

9 Q. Why did you call your dispatcher and  
10 tell him what the delay would be?

11 A. Because I was told before I left the  
12 terminal if there was going to be any delay, to call  
13 him, that he was going to run me to Mitchell and  
14 Smith to pick up an empty trailer and take it to  
15 Lambert's Point to load rubber.

16 Q. All right. Now, we've been cautioned  
17 not to get into hearsay, Mr. Stevens, and I want to  
18 make sure we don't. In any event, Mr. Reeves told  
19 you that it would be 15 to 30 minutes, I think you  
20 said, before the Ford people could begin to unload  
21 the truck?

22 A. 15, 30 minutes, yes, sir.

23 Q. All right. You called your  
24 dispatcher and told him about this?

25 A. Yes, sir.

1           Q.       All right. Did you then wait for  
2 your truck to be unloaded?

3           A.       The dispatcher told me he had another  
4 truck on the way to me and I was to send that driver  
5 to Mitchell and Smith and pick up the empty and let  
6 him go to Lambert's Point Dock and I was to stay and  
7 see that the two trucks were unloaded. And as they  
8 unloaded --

9           THE COURT: Just a minute, Mr.  
10 Johnson. This is what we are talking about. We're  
11 not interested in the outside matter unless it's  
12 going to be something that would be proven by direct  
13 testimony, in any event, so let's avoid it.

14           I think if you direct your question  
15 to your client without leading, it's possible, and  
16 let's keep it down to the nub of the evidence.

17           MR. JOHNSON: Your Honor, please, I  
18 submit that it was not hearsay, that it doesn't go  
19 to the truth of the matter, but I won't dispute it.  
20 It's all right.

21

22

23 BY MR. JOHNSON:

24           Q.       You then waited for another truck, is  
25 that correct?

1           A.       That's correct.

2           Q.       All right. Did one come?

3           A.       Yes.

4           Q.       And what did you -- what did Mr.

5 Reeves say to you at that time?

6           A.       Mr. Reeves told me that the --

7                   MR. REYNOLDS: I object to what Mr. --

8                   THE COURT: Mr. Johnson, it is

9 hearsay. It may not go to the truth of the matter,

10 but it is hearsay by any definition you want to give

11 it.

12                   MR. JOHNSON: Your Honor --

13                   THE COURT: Mr. Johnson, let's not

14 get into a dispute about it. I'll send out the jury.

15 If it's relevant and something to be proven and can

16 be substantiated thereafter, fine. If it's not

17 relevant, and hearsay -- in any event, let's forget

18 it.

19                   MR. JOHNSON: This is an employee of

20 Ford Motor Company.

21                   THE COURT: He can say what he was

22 advised to do by whom he was advised to do it. Is

23 this what you are saying, what Mr. Reeves, a Ford

24 employee, told him to do?

25                   MR. JOHNSON: Yes, sir.

1 THE COURT: All right. Go ahead.

2 MR. JOHNSON: Yes, sir, that's what I  
3 meant.

4  
5  
6 BY MR. JOHNSON:

7 Q. What did Mr. Reeves tell you to do?

8 A. He told me to stop the driver when he  
9 got there and have him put the truck to the dock  
10 because it had hot stock on it that was needed on  
11 the line. So I went out in the yard and waited for  
12 the truck to arrive and had the driver put it to the  
13 dock. And returned inside as soon as the -- he had  
14 dropped his trailer at the door and secured it.

15 I went back inside. And this time  
16 Mr. Reeves said a door had freed up at the north  
17 receiving dock and for me to put one of the Spector  
18 trailers back there to be unloaded. So I called my  
19 dispatcher to see if he wanted me to work back end,  
20 to get tied up with shifting the trailers back for  
21 them to load and unload.

22 Q. Don't say what the dispatcher told  
23 you. Just say what you did after that.

24 A. After calling my dispatcher, I went  
25 out to the outside, unhooked my tractor from the

1 trailer, went over and hooked to the Spector trailer  
2 that he wanted at the back end and took it out back.

3 Q. Did you have a conversation with Mr.  
4 Keeves about the condition of the dock plates at the  
5 time?

6 A. Yes, sir, I did.

7 Q. First off, why did you have any  
8 conversation with him at all about it?

9 A. The night before the maintenance crew  
10 was working on the dock plate and in door --

11 Q. Were these Ford employees?

12 A. At main receiving.

13 Q. Tell us whether these were Ford  
14 employees.

15 A. Yes, these were all Ford employees.

16 Q. Go ahead and tell me.

17 A. And I had asked him if he was going  
18 to work on the dock plates at the north receiving  
19 dock and he had answered in the affirmative. And  
20 told me as soon as he had finished at main receiving  
21 he was going right back there to work on the two  
22 that wasn't working at the back.

23 Q. Which two were they?

24 A. Door one, door three.

25 Q. Go ahead.

1 A. I was informed --

2 Q. By whom?

3 A. By Mr. Reeves. When I asked him if  
4 the dock plates was working, he told me, yes, but it  
5 didn't make any difference, there was a fork lift  
6 driver back there to handle the plate if -- if it  
7 wasn't working.

8 So I went out -- I went out and  
9 hooked to the trailer that he wanted back there and  
10 took it to the back end and started to back it to  
11 the dock. When I got out and walked to the back to --  
12 *open* on my doors, I noticed that the H-frame was back  
13 against the dock.

14 Q. By H-frame, what do you mean?

15 A. The part of the dock plate that comes  
16 in contact with the back of the trailer that  
17 elevates the shoe as it goes back. It was all the  
18 way in a back position so that there was no way that  
19 it could operate the mechanism to work the shoe.

20 Q. Would you come down and show the jury?  
21 Using plaintiff's exhibit number -- first off, when  
22 it's working normally, how does this dock plate or  
23 dock leveler work?

24 A. This yellow bar is what I call the  
25 h-frame. The back of the trailer comes in contact



1 with this and pushes it back and as it goes back,  
2 the dock plate comes up. When this is all the way  
3 back against the building, there's a mechanism in it  
4 to release the shoe to have it fall into the back of  
5 the truck.

6 Q. All right. Now, when you say -- what  
7 was the position of the H-frame, as you call it?

8 A. This, this was already pinned back  
9 against the dock.

10 Q. All right.

11 A. It was not in any position to move.

12 Q. Resume the stand, please. In your  
13 experience with your years of delivering stock to  
14 Ford, had you known of difficulty with the dock  
15 plates and dock levelers before?

16 A. Yes, sir. It was a hit and miss  
17 thing as to whether or not they would be working.  
18 They were not working more than they were working.  
19 After the first breakdown, it was a matter of it  
20 working one day and broken the next or working the  
21 next and not the next. It would be broken for two  
22 or three weeks and then working again for a day or  
23 two and then it would be down again.

24 Q. What would they do about it? When I  
25 say "they", I mean Ford.

1           A.       They would call maintenance and  
2 maintenance would work on them, Ford maintenance.

3           Q.       You say maintenance, who's  
4 maintenance?

5           A.       Ford maintenance.

6           Q.       Ford maintenance. How long had the  
7 dock levelers been on that dock, do you know?

8           A.       I believe --

9           Q.       By "that dock", I mean the north dock.

10          A.       I believe they built that dock in  
11 1961 or '62 and I believe that two of the portable  
12 ramps they were using prior to that was made  
13 stationary into the new dock.

14          Q.       Were the dock levelers at the main  
15 receiving, that is the eight door dock, the same  
16 dock levelers that these were and did they work the  
17 same way?

18                   MR. REYNOLDS: Objection. I don't  
19 see it has any relevancy, Your Honor, as to whether  
20 or not they had the same or different dock levelers  
21 in a different place.

22                   THE COURT: All right, Mr. Johnson,  
23 what about it?

24                   MR. JOHNSON: I withdraw the question.

25                   THE COURT: All right, sir.

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BY MR. JOHNSON:

Q. Was Ford personnel aware that the dock levelers on the north dock had not been working properly?

A. Yes, sir, they were.

Q. How do you know that?

A. I had reported it several times myself, roadway driver had reported it, and McLean driver had reported it.

Q. When the dock levelers were not working properly, what would the Ford people do about it?

A. They would call Ford maintenance and have them look at it. If they had time to work on it, they would. If they didn't, they'd leave it sit.

Q. Tell us whether or not they'd close the dock down.

A. No, sir, they continued working.

Q. All right.

A. They would continue to use the door where the dock plate was not functioning.

Q. All right. What is a checker? What does he do?

1           A.       A checker is responsible for being  
2       sure that the freight that comes off of a truck is  
3       the material that it is suppose to be and tallies  
4       with the packing slip and the purchase order.

5           Q.       Whose employee is he?

6           A.       Ford Motor Company.

7           Q.       Where is he found and what do you see  
8       him doing? How do you know a checker if you see him?

9           A.       Generally you find your checkers at  
10      the main receiving dock, but they are also used at  
11      the north receiving dock and at the paint plant and  
12      even unloading trucks in the yard.

13                 And they usually have a clipboard  
14      with their packing slips on it and check the freight  
15      from the truck, wherever they happen to be, with the  
16      papers on the clipboard, which is not the freight  
17      bill, by the way, but rather packing slips.

18          Q.       All right. When a dock plate wasn't  
19      working and Ford continued to use the dock anyhow,  
20      in what way would they use it?

21          A.       They would --

22                 MR. REYNOLDS: Your Honor, he's  
23      talking in generalities now and I don't think this  
24      man contends he's there all of the time. He can  
25      testify as to what he has seen on a prior occasion,

1 but I don't think that that has any relevancy to  
2 this matter. It's what happened on this particular  
3 occasion that we are interested in.

4 THE COURT: I think so, Mr. Johnson.

5 MR. JOHNSON: I think not, Your Honor,  
6 please. May I tell the Court why?

7 THE COURT: All right.

8 MR. JOHNSON: Maybe we better do it  
9 in chambers.

10 THE COURT: All right. Have the jury  
11 to retire, Mr. King.

12

13 (Jury was excused.)

14

15 MR. JOHNSON: Your Honor, please, my  
16 position is going to be this: That we can't  
17 identify this man, but there is circumstantial  
18 evidence that he was a Ford employee. But even if  
19 he was not a Ford employee, there is evidence that  
20 he was a borrowed employee by Ford.

21 In order to be a borrowed employee,  
22 he must be an employee engaged by Ford personnel  
23 with authority or he can be pressed <sup>INTD</sup> ~~in the~~ service  
24 by Ford personnel who do not have authority to press  
25 into service, if this is done as a matter of

1 practice and with the knowledge of Ford personnel  
2 with authority. And that's my purpose for proving  
3 the practice.

4 THE COURT: Mr. Reynolds.

5 MR. REYNOLDS: Well, I think that  
6 this man can testify as to what he has observed in  
7 the past, but for him to state generally that this  
8 is what they did sounds like he is giving maybe an  
9 opinion. I just think the question is too broad.

10 MR. JOHNSON: I don't intend -- I  
11 would not disagree with that. I will ask him --

12 THE COURT: You should rephrase the  
13 question.

14 MR. JOHNSON: I will rephrase the  
15 question.

16 THE COURT: That's all right, Mr.  
17 Johnson. Bring in the jury.

18  
19 (Jury returned to the  
20 courtroom.)

21  
22 THE COURT: All right, let's continue  
23 for a little bit.

24  
25

1 BY MR. JOHNSON:

2 Q. All right. I will rephrase my  
3 question, Mr. Stevens. What have you observed to be  
4 done when Ford used the dock at a door where the  
5 dock plate was not working?

6 A. There were several courses of actions  
7 that were followed. The first was they would pick  
8 it up with a fork lift. The second is they would --

9 Q. How would they do it with a fork lift?

10 A. They would put the blade of the fork  
11 lift into the side of the shoe. If there was --

12 Q. By the shoe, what do you mean?

13 A. The dock plate.

14 Q. All right.

15 A. If it was enough clearance where it  
16 was above the dock where the fork lift blade would  
17 go under it, they would use the fork lift to pick it  
18 up.

19 Q. All right.

20 A. If not, they would use a Johnson bar  
21 or two-by-four, four-by-four, whatever, to pry it up.  
22 The most common use was the strongarm hooked into  
23 the side of it to pry it up. That has a shorter  
24 metal blade on it and you can tilt it to get it  
25 under to move the plate up, whereas, sometimes the



1 plate is below the dock level where the fork lift  
2 cannot get it.

3 Q. Now, would you show us, using -- come  
4 down, if you will, please -- defendant's exhibit  
5 four? First off, what is a strongarm arm?

6 A. A strongarm arm is similar to a  
7 crowbar on wheels or a railroad car mover on wheels.  
8 And this is a metal plate with an angle on the end  
9 of it.

10 Q. Is that a strongarm arm?

11 A. Yes, this is a strongarm or a Johnson  
12 bar.

13 Q. Or a Johnson bar. All right.

14 A. And it's just for moving -- putting  
15 wheels on something that's too heavy to be picked up  
16 by light duty fork lift.

17 Q. All right. Would you tell us what we  
18 see in that photograph?

19 A. That is the manner in which the dock  
20 plates are usually picked up at Ford Motor Company  
21 when they are not working and the fork lift driver  
22 is not available.

23 Q. All right. Thank you. Resume the  
24 stand. Tell me who John Sanderlin is.

25 A. John Sanderlin is a material handler,

1 fork lift operator for Ford Motor Company.

2 Q. And --

3 A. He is usually the one that works the  
4 back end to unload the heavy equipment.

5 Q. What is his title, if you know?

6 A. Material handler, fork lift operator.

7 Q. You have testified as to the period  
8 of time that you have spent at Ford. Are you  
9 familiar with the hierarchy of the Ford employee-  
10 employer relationship?

11 A. The checkers are subordinate to the  
12 dock foreman or dock supervisor. They have them in  
13 different departments throughout the Ford Plant.  
14 And they are under the authority of Mr. Hamilton,  
15 Mr. Warren.

16 Q. Who are Mr. Hamilton and Mr. Warren?

17 A. They are material handling  
18 supervisors. They are over the entire operation of  
19 material handling.

20 Q. To whom do they report, if you know?

21 A. To the plant manager and assistant  
22 manager, I would imagine.

23 Q. Do you know the relationship between  
24 Mr. Hamilton and Mr. Warren's rank?

25 A. They are equal.

1 Q. And do you know why there are two?

2 A. One works days and the other one  
3 works nights. They work that system for three  
4 months and then trade for three.

5 Q. Do you know whether or not Mr.  
6 Hamilton and Mr. Warren have the right to hire and  
7 fire fork lift operators and material handlers?

8 MR. REYNOLDS: Objection.

9 THE COURT: Just a minute.

10 MR. REYNOLDS: Your Honor, I think  
11 this calls for speculation on his part. I think the  
12 Court ought to explore it out of the presence of the  
13 jury how he would have any knowledge or information  
14 on that point as to the authority that these people  
15 have.

16 THE COURT: Well, if he says he knows,  
17 Mr. Reynolds, then he says he knows. If he doesn't  
18 know, he would be speculating or thinking, he should  
19 so say he does not know. He could certainly be  
20 examined on cross-examination how he does know.

21 I'll permit the question if he's in a  
22 position and has knowledge and is knowledgeable and  
23 can answer it. If he's not knowledgeable and would  
24 be guessing or thinking or imagining, then I don't  
25 think he should answer the question. All right, Mr.

1 Johnson.

2

3

4 BY MR. JOHNSON:

5 Q. Within that direction and guideline,  
6 Mr. Stevens, do you know whether Mr. Sanderlin and  
7 Mr. Warren -- I'm sorry -- Mr. Hamilton and Mr.  
8 Warren have the right to hire and fire fork lift  
9 operators and material handlers?

10 A. I have seen Mr. Warren fire two  
11 different people, and if I'm not mistaken, I saw Mr.  
12 Hamilton fire a fork lift operator.

13 THE COURT: Is that your basis for  
14 your answer?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17

18

19 BY MR. JOHNSON:

20 Q. All right. Going back to the  
21 strongarm method of lifting the dock plate that you  
22 have described. Who have you seen perform this  
23 function?

24 A. The different fork lift operators at  
25 Ford Motor, the Ford Motor Company checkers and

1 drivers. I've also seen quality control personnel  
2 do it and the supervisors themselves.

3 Q. Will you tell us -- when you say  
4 drivers, you mean non-Ford employees?

5 A. That is correct.

6 Q. Would you tell us whether or not when  
7 this operation has been performed by non-Ford  
8 employees, truckers, drivers, who would ask them to --

9 MR. REYNOLDS: Objection.

10 MR. JOHNSON: Sorry.

11

12

13 BY MR. JOHNSON:

14 Q. Who have you observed ask them to do  
15 so?

16 MR. REYNOLDS: Objection. That  
17 presumes, Your Honor, that someone did ask them to  
18 do so and I think it's a leading question.

19 MR. JOHNSON: I'll ask him whether  
20 someone asked him to do so, some Ford employee asked  
21 him to do so.

22 THE COURT: All right.

23 THE WITNESS: Yes, sir. It was  
24 common practice that if -- whoever was closest to it,  
25 the supervisor or the person at hand, would ask the

1 truck driver, the checker or whoever was in, to  
2 raise it. It was, like I say, just a matter of who  
3 was close.

4  
5  
6 BY MR. JOHNSON:

7 Q. Well, tell us if you have ever  
8 observed any Ford employees ask truckers to do this  
9 task, and if so, who~~s~~ the Ford employees were?

10 A. I've seen Mr. Warren, one of the  
11 supervisors on the back end named Ringer, Wernell  
12 Wynn, John Ellis, Bill Reeves, Mr. Hamilton.  
13 There's just -- just about everybody over there. All  
14 the supervisors over there has asked people to do it  
15 at one time or another.

16 Q. Was this practice --

17 A. As a matter of fact, I've even seen  
18 Mr. Hamilton show a driver how to pick them up.

19 Q. Was the practice known to Mr.  
20 Hamilton? Do you know whether the practice was  
21 known to Mr. Hamilton?

22 A. Yes, it was. He was present when the  
23 request was made of various people.

24 Q. Will you tell us whether John  
25 Sanderlin had ever engaged in this practice or not --

1 A. Yes.

2 Q. -- of asking people to -- when I say  
3 "the practice" --

4 A. Quite frequently.

5 Q. All right. Do you know whether that  
6 practice was performed in the presence of Mr.  
7 hamilton?

8 A. Yes. Mr. Hamilton was present on two  
9 different occasions where truck drivers were used to  
10 raise the dock plates.

11 Q. Did you ever observe Mr. Hamilton  
12 forbid it or try to stop it?

13 A. No, sir. Mr. Warren has also been  
14 present when these requests were made at various  
15 times.

16 Q. All right. On the day of the  
17 accident -- I think you told us what had happened  
18 until you got to the back plate.

19 MR. JOHNSON: Has he not? I think he  
20 has.

21

22

23 BY MR. JOHNSON:

24 Q. When Mr. Reeves asked you to take the --  
25 to spot the truck at the back door, you had a



1 conversation with him. What transpired after that?

2 A. I took the truck to the back, backed  
3 it up, got out and opened my doors and noticed the  
4 H-frame standing against the dock. I knew that the  
5 plate would not operate in that position, so I  
6 backed the truck all the way up flush and then  
7 pulled forward.

8 Q. When you say flush, what do you mean?

9 A. All the way back against the dock.  
10 And then pulled forward about an inch so that there  
11 is a door catch on the bottom of the trailer and the  
12 shoe will hang underneath that catch. If you don't  
13 pull forward a little bit, there's no way you can  
14 move the shoe.

15 So I pulled forward to allow the shoe  
16 to be raised and went inside to get John Sanderlin  
17 to raise the shoe for me. And when I went in the  
18 main door, John Sanderlin was on the fork lift  
19 getting ready to go unload a truck in door two. And  
20 I asked him to raise the shoe for me to get my truck  
21 back and he turned to a man that was checking motors  
22 that was stacked on the dock and --

23 Q. Now, before you say what he said to  
24 him, describe the man to me and what he was doing.

25 A. The man had a clipboard and was --

1 had a packing slip or papers on the clipboard and he  
2 was checking off the tag numbers on the racks of  
3 motors against the numbers on his packing slip.

4 Q. All right. Now, go back and tell us  
5 what your conversation was with John Sanderlin.

6 A. I asked John to lift the dock plate  
7 and he immediately turned to this man and said, "Hey,  
8 raise the dock plate for this man so he can get his  
9 truck back to the dock." The man walked over, layed  
10 his clipboard down on the desk, went over in the  
11 corner and got the strongarm, brought it over, put  
12 it under the edge of the shoe and tried to break it,  
13 but --

14 Q. When you say "under the edge of the  
15 shoe", you mean as in the photograph?

16 A. On the side.

17 Q. On the side. All right. Go ahead.

18 A. And every time he would try to break  
19 it back, he wasn't strong enough to hold it forward  
20 and break down on it at the same time and it would  
21 slip back and the dock plate would fall back. So he  
22 moved inside of the truck and put it under the front  
23 lip and broke it down.

24 Q. How did he do that?

25 A. I pulled forward about an inch --

1 Q. Incidentally, Mr. Stevens, you've  
2 said you backed all the way against the dock. Did  
3 you mean that --

4 A. Yes, sir.

5 Q. -- or the plate?

6 A. Well, the plate. This was as far  
7 back as the truck would go.

8 Q. All right.

9 A. Like I said, the plate would catch  
10 between the bottom of the truck and the door latch.

11 Q. All right. So you couldn't back all  
12 the way to the dock?

13 A. No, no, sir.

14 Q. Excuse me. Go ahead.

15 A. So when the man found out he couldn't  
16 raise it from the side of the plate, he moved into  
17 the back of the truck and put the bib of the  
18 strongarm under the front edge and raised it that  
19 way and told me to go back to the truck and back it  
20 up, which I did.

21 Q. Do you know who this man was?

22 A. I assumed he was a Ford employee.

23 MR. REYNOLDS: Objection.

24 THE COURT: Sustained.

25 MR. REYNOLDS: Move to strike.

1 THE COURT: Jury will disregard the  
2 response given by the witness.  
3  
4

5 BY MR. JOHNSON:

6 Q. Was he a Spector employee?

7 A. No, sir.

8 Q. Go ahead.

9 A. When I locked the truck down in  
10 position to take the cab out from under it, I went  
11 back inside before jacking my landing gears down to  
12 make sure that it was flush with the dock and in  
13 alignment, because with these wide pallets, you only  
14 have about an inch of plate. If it isn't just about  
15 perfectly straight aligned, the pallets will not  
16 come out of the door, so I went back inside to check.

17 Q. Hold it right there for a second.  
18 Going back to what John Sanderlin said to the  
19 unknown man. What other instructions, if any, did  
20 John Sanderlin give the unknown man about lifting  
21 the dock plate?

22 A. Before it happened, none. He just --  
23 just said, "Hey, raise the dock plate so that man  
24 can get his truck in there."

25 Q. All right.

1           A.       Before I got the truck in this -- in  
2 the position to put the plate in the back.

3           Q.       All right. Now, go back to where you  
4 were. You got out of your truck to see if it was  
5 flush.

6           A.       I went back inside to see if it was  
7 flush. And John Sanderlin was on the fork lift  
8 right by the door. He says, "The man's got the  
9 strongarm hung under the dock plate. Help him get  
10 it out. I've got to get this truck unloaded."

11                   So I went over and Mr. X and myself  
12 pulled separately and together on it and everything  
13 we knew to try to get it out and couldn't. John  
14 Sanderlin had come out of the truck with a load of  
15 engines on his blades and saw us still struggling.

16           Q.       On his blades?

17           A.       Fork lift blades.

18           Q.       All right.

19           A.       He got off the fork lift and came  
20 over and the three of us tried to pull it loose and  
21 couldn't. So he said, "I haven't got time to mess  
22 with it. You help him get that out from under there  
23 before you drop it," which meant before I took my  
24 tractor out from underneath of it.

25           Q.       All right. Now, at this point, Mr.

1 Stevens, with the strongarm under the dock plate,  
2 what was the position of the dock plate in?

3 A. The dock plate was elevated with the  
4 entirety of the metal and about three inches of the  
5 wooden arm underneath of the dock plate.

6 Q. Would you come down here and give us  
7 an idea and let me suppose that this table is the  
8 loading dock although we know that this is somewhat  
9 higher because it's not level. Let's suppose my pad  
10 here is the dock plate. Can you show us -- and, of  
11 course, your truck is up under here, is it not?

12 A. Right.

13 Q. Can you show us what the position of  
14 the dock plate was?

15 A. The dock plate was elevated. The  
16 hook and the front of the strongarm was trapped  
17 between the floor and the shoe barrel.

18 Q. What, if anything, was there to keep  
19 John Sanderlin from sticking the blades of his fork  
20 lift under the edge of the plate and placing it to  
21 release the Johnson bar?

22 A. Nothing that I know of.

23 Q. All right. Resume the stand. All  
24 right. At that point after Mr. Sanderlin told you  
25 that he didn't have time to mess with it, what did

1 you do?

2 A. I went and got a two-by-four and put  
3 under there and tried to just lift the shoe off and  
4 the two-by-four broke. Had a knot hole in it where  
5 it broke and I assumed that's why it broke.

6 So I went and got two pieces of  
7 four-by-four from the trash bin -- one was about 18  
8 inches long, the other one about four and a half,  
9 five feet long -- and went back to the truck. I  
10 told the man, I said, "Don't touch the strongarm.  
11 Don't move it. Don't do anything until I tell you  
12 to." And he said that he wasn't.

13 So I turned my back to him and layed  
14 the short piece of four-by-four on the floor to use  
15 as a fulcrum and put -- was going to use the other  
16 piece to go under the dock plate and pry down on it  
17 to elevate it so I could get the strongarm out.

18 But before I could get the second  
19 piece -- get the first piece -- of wood up  
20 underneath the dock plate, the strongarm went flying  
21 through the air, hit the top of the truck and the  
22 freight and ended up halfway inside of the trailer.

23 The two-by-four that I was holding  
24 was kicked out from under the plate like a tiddly  
25 wink and it went flying and the shoe came down on my --

1 the dock plate came down on my foot.

2 A man was standing at the side of the  
3 truck wide-eyed and came over to me and said, "My  
4 God --

5 MR. REYNOLDS: Objection, objection,  
6 Your Honor.

7 THE COURT: Sustained.

8 MR. REYNOLDS: Pure hearsay, now.

9 MR. JOHNSON: I believe it's part of  
10 the Res gestae Your Honor.

11 THE COURT: Send out the jury if you  
12 want to argue to the Court.

13 MR. JOHNSON: Yes, sir, I do.

14 THE COURT: All right, Mr. King.  
15 Have the jury retire.

16  
17 (Jury was excused.)

18  
19 MR. JOHNSON: Maybe we should hear  
20 the answer before the objection.

21 THE WITNESS: Repeat the question,  
22 please.



1 BY MR. JOHNSON:

2 Q. You were giving a narrative of what  
3 happened. The dock plate had just --

4 A. Yeah.

5 Q. -- flown through the air.

6 A. The man was standing wide-eyed and he  
7 came over to me and said, "My God, I just twisted it  
8 and it flew out. I'm sorry. Are you hurt?" And  
9 put his arm around me to help me outside to sit down.

10 MR. JOHNSON: Your Honor, please, I  
11 believe that is Res gestae, and if it's not, there  
12 is evidence that this is a Ford employee or a  
13 borrowed Ford employee. In either event, it would  
14 be admissible.

15 THE COURT: All right, sir. Mr.  
16 Reynolds.

17 MR. REYNOLDS: Your Honor, we have a  
18 man here that he has only testified had a clipboard  
19 in his hand and an employee of Ford Motor Company  
20 asked him to help in this situation. I don't think  
21 under the circumstances that that, under any stretch  
22 of the imagination, could make him a Ford employee.

23 The event which has happened is over  
24 with and he is now coming in and going to have this  
25 unknown man make an admission against interest, I

1     suppose, and I think if I got the quote correct is,  
2     "My God, I just twisted it," and I don't think that  
3     that is a part of the Res gestae. The event had  
4     already happened. It's all over and done with.

5                     THE COURT: Well, as far as sequence  
6     of time, Mr. Reynolds, as the individual has  
7     described it, there seems to be just about --  
8     couldn't say simultaneous -- but it's certainly  
9     right been the quick framework.

10                    In other words, the man sees  
11    something and utters something as to what he did.  
12    This is the way I get the sequence of time. It  
13    isn't as if three minutes elapsed or a while elapsed  
14    or something of that nature.

15                    But I am not satisfied that the  
16    person who was helping is necessarily -- nor can I --  
17    I can't say I can infer or let the jury infer at  
18    this point that that man was, in fact, a Ford  
19    employee.

20                    MR. JOHNSON: Your Honor, please, I  
21    agree with you about the Res gestae rule. And I  
22    have the case of Nicholaou versus Harrington, 217  
23    Virginia to back me up. But the Court is, in my  
24    judgment, ruling on that and I agree with the ruling.

25                    MR. REYNOLDS: 217 Virginia?

1 MR. JOHNSON: It's 217 Virginia. All  
2 right. It's Nicholaou versus somebody. I've got it  
3 right here. Nicholaou versus Harrington, 217  
4 Virginia, 618. The Court said page 622 under the  
5 Res gestae exception to the hearsay rule, cited  
6 utterances by a startling event and not the product  
7 of premeditation, reflection of design are  
8 admissible in evidence. Spontaneity of others is  
9 continuing to guarantee its trustworthiness. But  
10 returning to the other --

11 THE COURT: Maybe we are premature on  
12 the other, Mr. Johnson. So it may be that we'll  
13 wait on the other. I'm going to permit the remark  
14 and the question, in any event, he's testifying  
15 about this checker. It may not be the appropriate  
16 time -- I wonder if we're not premature on that  
17 facet of it, Mr. Reynolds.

18 MR. JOHNSON: I think so.

19 THE COURT: I wonder if this wouldn't  
20 be a proper time to go ahead and recess for lunch.

21 MR. JOHNSON: All right with me.

22 THE COURT: All right. Have the jury  
23 come on out. I'm going to let them go to lunch and  
24 ask them to be back at quarter after two. It's ten  
25 after one.

1  
2 (Jury returned to courtroom.)  
3

4 THE COURT: Members of the jury, it  
5 is now ten after one. We're going to recess for  
6 lunch and the Court will ask you if you will, be  
7 back at quarter of two. That gives you 65 minutes  
8 for your lunch period.

9 The Court will caution you now again  
10 as to what I related to you earlier this morning at  
11 the beginning of this case. Don't discuss what  
12 you've heard here with anybody. That way ears that  
13 shouldn't hear, won't hear.

14 And secondly, during your lunch hour,  
15 wherever your business may take you, in any event, I  
16 want you to stay away from the Ford Plant, loading  
17 docks of any kind anywhere, wherever they may, Ford  
18 Plant or otherwise, so that you won't be going  
19 around making any personal inspections on your own.

20 Because if you do, you will be  
21 violating this Court order and we may have to -- we  
22 would have to declare a mistrial and we'd have to  
23 hold you in contempt. Any other instructions you  
24 want the Court to give to the jury?

25 MR. JOHNSON: No, sir.

1 MR. REYNOLDS: No, sir.

2 THE COURT: You are excused for lunch.  
3 Please be back at quarter after two. Report to Mr.  
4 King. Go right into the jury room. Anything you  
5 gentlemen want to take up with me before lunch?

6 MR. JOHNSON: No.

7 MR. REYNOLDS: No, sir.

8 THE COURT: All right. Thank you.

9 MR. JOHNSON: Your Honor, I guess we  
10 are fortunately running late on Doctor Kirk. He's  
11 not here, although I understand he's on his way. He  
12 was supposed to be here at two and Doctor Adelaar at  
13 2:30. With luck, maybe they will both be late.

14 THE COURT: Should they arrive and if  
15 it's agreeable with counsel for the defendant and  
16 you'd want to interrupt a witness of yours, as such,  
17 and counsel for the defendant doesn't object, the  
18 Court certainly doesn't object to putting on a  
19 doctor out of turn if need be. How about it, Mr.  
20 Reynolds?

21 MR. REYNOLDS: That's all right.

22 THE COURT: That's what you had in  
23 mind, Mr. Johnson?

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25 MR. JOHNSON: Yes, it was.

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(Whereupon, lunch recess was taken.)

MR. JOHNSON: Resume the stand, Mr. Stevens.

THE COURT: All right. Mr. Johnson.

BY MR. JOHNSON:

Q. Mr. Stevens, at the time we recessed, you were just telling the narrative of laying the four-by-four on the rear deck of the trailer and what happened. I think we can pick the story up from there if it's all right with everyone.

A. I believe I left off with where I was just starting to put the long piece of four-by-four under the board, the dock plate. The strongarm flew out from under. And the man came over and said, "Oh, my God. I just twisted it and it flew out. Are you all right? Are you okay?" And put his arm around me and assisted me outside.

John Sanderlin was coming out of the trailer in door two with a load on his fork lift and he jumped off the fork lift and came over and he got

1 on the other side of me and they assisted me to a  
2 place to sit down. And he went over and got on the  
3 telephone. I don't know who he called. And then  
4 Wernell Wynn came in.

5 Q. Who is Wernell Wynn?

6 A. He is another material supervisor.  
7 And he came in and he also made a phone call.

8 Q. All right. Let's go back a little  
9 bit. Mr. Stevens, why was it that you undertook to  
10 call for this assistance in the first place?

11 A. I needed the empty trailer. I had to  
12 get the trailer unloaded. Couldn't get it unloaded  
13 with the strongarm holding the shoe up. There was a  
14 gap underneath of the shoe and the fork lift  
15 wouldn't have been able to get out. He could have  
16 gotten in, but he couldn't have gotten out.

17 Q. Now, I want you to tell me again,  
18 because I'm not sure it was clear before, who at  
19 lord was present when you had witnessed John  
20 Sanderlin press other truck drivers into the service  
21 of lifting dock plates.

22 A. Mr. Hamilton, Mr. Warren.

23 Q. What are their positions?

24 A. They are superintendants, material  
25 handling superintendent.

1 Q. All right.

2 A. Then the whole range of supervisors  
3 and material handling was aware of it. From Garnet  
4 Gaither, John Ellis, Wernell Wynn, Ringer, Bill  
5 Reeves, the entirety of the material handling  
6 supervisors was aware of it. They had been present  
7 when John Sanderlin had asked different people to do  
8 it.

9 Q. Messiers Hamilton and Warren, what  
10 are their titles?

11 A. Material handling superintendant.

12 Q. And are they above or below the  
13 supervisors?

14 A. They are above.

15 Q. All right.

16 A. Two levels.

17 Q. Are they --

18 A. What I'm saying is Bill Reeves, John  
19 Ellis is at one level, Garnet Gaither is at another  
20 level and then Hamilton and Warren.

21 Q. Now about Mr. Sanderlin, what level  
22 is he?

23 A. He is a material handling, fork lift  
24 operator is all I know.

25 Q. Is he under the supervision of Mr.



1 Hamilton and others, as far as you know?

2 A. Yes.

3 Q. All right. All right. After the  
4 accident, how did you get your foot out from under  
5 that plate, do you know?

6 A. I don't know. I assume that with the  
7 plate being spring loaded that it bounced when it  
8 hit my foot and that it came out between bounces.  
9 But I really don't know.

10 Q. Where did it strike your foot and  
11 which foot was it in the first place?

12 A. It was my right foot across the top  
13 of the ankle and then about an inch and a half above  
14 the big toe across the foot.

15 Q. All right. What happened then?

16 A. Mr. Wynn told me that the dispensary  
17 was sending a golf cart around to transport me back  
18 to the dispensary for the doctor to look at me. And  
19 when Henry Williams came up on a golf cart, for me  
20 to go. And I moved back over to get in the golf  
21 cart and I noticed that the shoe had a wide crack in  
22 it from where it was supposed to be.

23 Q. What do you mean by that?

24 A. The shoe has about a quarter of an  
25 inch, half an inch space between the frame and the

1 plate.

2 Q. What frame and what plate?

3 A. The dock plate.

4 Q. maybe you better come down here and  
5 show us on this diagram. Let's use plaintiff's  
6 exhibit number five which Mr. Krome has drawn.

7 A. This is the dock plate. Now, all of  
8 this in here is cement and it has an angle iron  
9 around it and it's about a quarter of an inch space  
10 all the way around. When I went to get in the golf  
11 cart I noticed that the shoe, instead of being a  
12 quarter of an inch or half an inch from the angle  
13 iron to the shoe, was approximately four inches. So  
14 it --

15 Q. Draw that in with this red pen, if  
16 you will. Use this one.

17 A. So the angle iron was back here  
18 rather than right up against it like it was supposed  
19 to be.

20 MR. JOHNSON: Let the record show  
21 he's drawn the angle iron in in red ink.

22

23

24 BY MR. JOHNSON:

25 Q. Do you know whether the shoe was back

1 up against the dock plate angle iron before this  
2 operation began?

3 A. It was before I went into the truck.  
4 If it hadn't of been I would have noticed it  
5 immediately. I'd only seen it separate one time  
6 before and that's when the fork lift got stuck in it  
7 and they had to use another fork lift to lift the  
8 one that was stuck out. This was only the second  
9 time I'd ever seen this happen.

10 Q. All right. Well, what happened in  
11 the dispensary?

12 A. Henry Williams drove me around to the  
13 dispensary and --

14 Q. Ford maintains a dispensary, I take  
15 it.

16 A. Yes, uh-uh.

17 Q. Go ahead.

18 A. I went in. The person in attendance --  
19 I'll call him the doctor -- had me remove my boot  
20 and sock and he examined the foot and --

21 Q. Mr. --

22 A. -- noticed --

23 Q. Mr. Stevens, let me interrupt you.  
24 Was he a medical doctor, do you know?

25 A. I was told when the depositions was

1 taken that he was a first aid corpsman.

2 Q. All right.

3 A. Anyway, he examined the foot and said  
4 there was nothing wrong with it, it was just  
5 severely bruised, to put my shoe back on or the  
6 swelling would be so bad I wouldn't be able to get  
7 it back on.

8 Q. What did it look like then?

9 A. It was discolored and the ankle was  
10 swollen and had a big knot right where the foot and  
11 the ankle come together. A little bit above the  
12 ankle and down onto the top of the foot. I put the  
13 boot back on but was unable to zip it. I had to  
14 have the extra room for the swelling that had  
15 occurred.

16 So he told me to go home and stay off  
17 of it a week or ten days and it would be all right.  
18 Said if I had any problems to go see my doctor. And  
19 Henry Williams then took me back to the north  
20 receiving dock where I proceeded to shut down my  
21 tractor and went to main receiving and called in to  
22 tell them that I was going to be unable to continue  
23 work. And they dispatched someone else to come over  
24 to take my place and I left to go back into the  
25 terminal.

1                   As soon as I got back to the terminal,  
2 I reported in with the dispatcher and the terminal  
3 manager and went on home. And two days later my --

4                   Q.       What day of the week was this?

5                   A.       This was on a Wednesday, May 10th.

6                   Q.       All right.

7                   A.       And on Friday, May 12th, I had to go  
8 see Doctor Mayo, who is the company physician,  
9 because the pain was so bad I couldn't put any  
10 weight on it whatsoever. And, well, I have to take --

11                  Q.       I want you to be careful.

12                  A.       I was able to move around without  
13 crutches so I was able to stand some weight on it,  
14 but it was extremely painful.

15                  Q.       I don't want you to tell what Doctor  
16 Mayo said to you, but I want you to tell what he did  
17 for you after you went to see him.

18                  A.       Doctor --

19                  Q.       This was Friday the 12th when you  
20 went to see him, I believe.

21                  A.       That's correct. Doctor Mayo examined  
22 the foot and sent me to Portsmouth General for  
23 X-rays, with instructions to return to his office on  
24 Monday the 15th. I returned on the 15th.

25                           He had a report from Portsmouth

1 General Hospital and he picked up the phone and  
2 called the hospital and asked about specific bones  
3 in the foot and ankle and they indicated to him that --

4 A. I don't want you to tell me what they  
5 indicated. I want you to tell me what Doctor Mayo  
6 did then.

7 A. He sent me back to Portsmouth General  
8 for more X-rays.

9 Q. When was this?

10 A. This was on Monday the 15th.

11 Q. All right.

12 A. He sent me to the hospital with  
13 instructions to return to his office on the 17th  
14 which was the following Wednesday. I went to  
15 Portsmouth General, had the X-rays taken and  
16 returned home. Went to his office on the 17th. He  
17 again examined the foot and told me to --

18 Q. Be careful not to tell what he told  
19 you. You can say what he --

20 A. Well, he -- he examined the foot and  
21 I returned home. I returned to his office the  
22 following week and he examined the foot again and  
23 indicated he wanted me to go to physical therapy and  
24 called Maryview Hospital physical therapy department  
25 and arranged for me to go over there for physical

1 therapy on the foot.

2 Q. All right. Did you do so?

3 A. Yes, sir, I did.

4 Q. How often did you do that and --

5 A. I went over there every weekday. And  
6 was given different exercises to do with the foot  
7 using an ace bandage to force the foot in different  
8 directions and what have you. And also a tub of  
9 water that had a positive and negative current that  
10 would flow through it that I had to bathe the foot  
11 in for half an hour before I started the exercises.

12 And I finished the physical therapy  
13 program and was sent back to Doctor Mayo, who  
14 examined me again and indicated that he wanted me to  
15 return to work on July 5th. He said -- well, I  
16 can't testify to what he said.

17 Q. Did you return to work on July 5th?

18 A. I did return to work July 5th.

19 Q. Had you worked between the time of  
20 the accident and July 5th?

21 A. No, sir.

22 THE COURT: Mr. Johnson, I think  
23 you've got a physician here.

24 MR. JOHNSON: I see that. What I  
25 would like to do is introduce these two bills, Your

1 Honor. I will let Mr. Stevens come down with Mr.  
2 Reynold's concurrence.

3  
4  
5 BY MR. JOHNSON:

6 Q. Do you recognize this bill and can  
7 you tell me what it's for?

8 A. These are for the X-rays.

9 Q. Of the foot?

10 A. Right, of the right foot.

11 Q. All right. Do you --

12 MR. JOHNSON: I ask this be  
13 introduced as plaintiff's six.

14 THE COURT: All right.

15

16

17 (Whereupon, the document

18 referred to was marked

19 Plaintiff's Exhibit 6.)

20

21

22 BY MR. JOHNSON:

23 Q. Do you recognize this billing? Can  
24 you tell me what that's for?

25 A. This is the bill from Maryview



1 hospital, physical therapy.

2 MR. JOHNSON: I ask that it be marked  
3 as plaintiff's seven.

4 THE COURT: All right.

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(Whereupon, the document  
referred to was marked  
Plaintiff's Exhibit 7.)

MR. JOHNSON: All right. Come down,  
Mr. Stevens. With the court's permission, we'll  
introduce Doctor Kirk.

THE COURT: All right. Call Doctor  
Kirk, please, sir.

(Whereupon, Doctor Kirk's testimony  
was taken.)

THE COURT: You finished with Doctor  
Kirk? He's excused to go about his calling,  
gentlemen?

MR. JOHNSON: Yes, sir.

THE COURT: Thank you, doctor. You  
are excused. You may go about your business.

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WILLIAM C. STEVENS,  
recalled as a witness, having been  
previously duly sworn, was examined  
and testified as follows:

BY MR. JOHNSON:

Q. All right. Mr. Stevens, I believe  
when we stopped you were at the point of being in  
physio therapy and you had identified two bills from  
physio therapy from radiology and physio therapy  
from Maryview Hospital.

A. Right.

Q. You were under the care at that time  
of Doctor Mayo?

A. Right. I was sent for physical  
therapy back to Doctor Mayo who returned me to work  
on July 5th.

Q. That was 1978?

A. That's correct.

Q. And you did return to work?

A. I returned to work. I still had  
severe pain, especially after I had been on my foot

1 for awhile. I don't think I worked more than three,  
2 four weeks and the -- over the next year, where I  
3 got in a 40 hour week because of the pain and just  
4 plain soreness of the foot. But I did as the doctor  
5 had instructed me and returned to work.

6 In June 21 of 1979 it was hurting me  
7 so bad again that I had to go back to Doctor Mayo  
8 who sent me for X-rays again and then sent me to  
9 Doctor Kirk. And that was on June 25th, Monday,  
10 that I was -- went to see Doctor Kirk. And he  
11 examined me and -- when Doctor Mayo had told me to  
12 go to Doctor Kirk he sent me over to Portsmouth  
13 General to pick up my X-rays that had been taken for  
14 June 12th -- I mean May 12th -- and May 15th and  
15 also the ones that were taken on June 22nd.

16 Q. All right. Once again, Mr. Stevens,  
17 let me caution you that you may testify what Doctor  
18 Kirk did for you but not what he said to you because  
19 he has been here and has testified.

20 A. Well, it's pretty much as he stated  
21 as to his treatment and it got to the point that --  
22 he never did, by the way, tell me to go back to work.  
23 He never did send me back to work. He got to the  
24 point where he said he didn't know what to do for me,  
25 he was going to have to send me to someone else.

1                   I said, "If you are going to send me  
2 somewhere else, then send me to the best, send me to  
3 MCV." So his secretary called me at home and told  
4 me they had set up an appointment for me with Doctor  
5 Charles A. Cohen at MCV and I was to go to see him  
6 on -- I'm not sure of the date of that one. I  
7 believe it was the -- it was the first part of  
8 November or the last part of October that I went to  
9 see Doctor Cohen.       He examined me and told me he  
10 wanted --

11               Q.       Let's not say what he told you. You  
12 can say what he did for you.

13               A.       He put me in Nelson Clinic as soon as  
14 a bed became available, which was right after  
15 Thanksgiving, and had a five doctor panel do  
16 independent workups on me and each one came back  
17 with the same --

18               Q.       All right. Now, you can't say what  
19 they came back with.

20               A.       I can't tell what they told me was  
21 wrong with me?

22               Q.       No, you can not.

23               A.       Okay.

24               Q.       But you can tell what they did for  
25 you.

1           A.       During the course of the week that I  
2 was there that the doctors were doing the workup on  
3 me, they ran extensive X-rays, extensive lab work.  
4 They did an EMG test, they did an --

5           Q.       What is an EMG, if you know?

6           A.       EMG is a neurological test to  
7 determine the flow in between nerves.

8           Q.       All right.

9           A.       In the foot and ankle. And the Echo  
10 test is for the external nerves and the EMG is for  
11 the internal nerves. And they at that time ordered  
12 the short leg brace because the tendons on --

13                   MR. REYNOLDS: I object to him giving  
14 a medical opinion.

15                   THE COURT: Sustained.

16                   MR. JOHNSON: I think that's right.

17

18

19 BY MR. JOHNSON:

20           Q.       You can say what they did but not why.

21           A.       They give me the short leg walking  
22 brace and turned me over to Doctor Amir Rafii who is  
23 the anesthesiologist at Medical College of Virginia.  
24 It was determined that --

25           Q.       Wait a minute. Be careful. You

1 can't say what their conclusions were, Mr. Stevens.

2 A. Okay.

3 Q. You can say what they did for you.

4 A. They handed a report to Doctor Rafii  
5 who examined me and rescheduled me for three weeks  
6 from the initial visit to -- from a tubular block to  
7 the ankle which is a series of needles into the  
8 ankle which injects various medications.

9 And I underwent -- I had to undergo  
10 this operation every Friday for a month. And it was  
11 determined that it was causing more pain and more  
12 swelling. They sent me to Doctor Barnes and Doctor  
13 Barnes sent me back to Doctor Rafii, Doctor Rafii  
14 performed another tubular block to be certain that  
15 the tubular block would not help me.

16 And when this was determined again,  
17 he sent me to -- he called Doctor Robert S. Adelaar,  
18 who was the original orthopaedic I had seen at MCV  
19 and who had already done a workup on me. And he was  
20 called back in and I was turned back over to Doctor  
21 Adelaar, as the tubular blocks were not effective.  
22 And Doctor Adelaar --

23 Q. Can you describe in your own  
24 observation what a tubular block is? I don't want  
25 you to tell medically what it is, but can you

1 describe physically what they do to you when they --

2 A. They hurt you, that's what they do to  
3 you.

4 Q. Well --

5 A. It's six needles in the ankle, two on  
6 each side and two in the top of the ankle with  
7 injections. That's what a tubular block is.

8 Q. All right. What period of time are  
9 we talking about now? When was this being done?

10 A. The end of December, first of January,  
11 on the first floor, I believe it was. Then there  
12 was a two week lapse or three week lapse before the  
13 fifth tubular block was done.

14 Q. How long were you in the Nelson  
15 Clinic?

16 A. The first time I was in for one week.

17 Q. And when was that?

18 A. That was in the latter part of  
19 November. It was just after Thanksgiving. I  
20 believe it was the -- I went up on Monday after  
21 Thanksgiving and was there five days.

22 Q. And when was the second time you were  
23 back?

24 A. The second time I was back was July  
25 of this year. I was admitted on July 17th and

1 underwent what is called a veer block or a V block.

2 Q. All right. Tell us whether you  
3 continued to see Doctor Adelaar all this time and  
4 what, if anything --

5 A. I continued to see Doctor Adelaar at  
6 the beginning twice a week and it dropped to once a  
7 week and then to every other week until it was  
8 determined that --

9 Q. Be careful about what was determined,  
10 Mr. Stevens.

11 A. That he was going to do the veer  
12 block on me.

13 Q. Now, what is a veer block?

14 A. They drain the blood out of my leg,  
15 put -- start with an IV in the foot, elevated the  
16 leg for the blood to run out, then they put a  
17 pneumatic tourniquet around the thigh to hold the  
18 blood out and replace the blood with medication and  
19 left it that way for a period of time and then  
20 slowly returned the blood supply to the foot and  
21 ankle.

22 After this was done, that night I was  
23 extremely sick and extremely chilled and feverish  
24 and everything. Like I had come down with the flu  
25 from the -- this operation. My blood pressure



1 dropped. They kept me in the recovery room because  
2 of this for an extended period of time.

3 Q. All right. Have you continued to see  
4 Doctor Adelaar and what period -- what basis? How  
5 frequently?

6 A. After the veer block was done, he  
7 wanted to give the medication a chance to do  
8 whatever it was going to do and I was to return to  
9 him in one month for him to examine the results.

10 But after a two week period I had  
11 swollen from my neck all the way down to my toes and  
12 I called him and had to go back in. Both legs were  
13 swollen. My stomach, my chest. My arms and above  
14 my neck were not affected by it, but it had  
15 increased the pain. Like I say, the swelling was up  
16 and I thought maybe I might be having a reaction to --

17 Q. Never mind what you thought. Let's  
18 don't get into what you thought. Mr. Stevens, you  
19 were still living in Portsmouth and traveling to  
20 Richmond?

21 A. Yes.

22 Q. How frequent a basis?

23 A. When it started I was going two and  
24 three times a week and it gradually tapered off to  
25 once a week and then to every other week. And then

1 when the veer block was done, I was scheduled for a  
2 month after the veer block, but had to return in two  
3 weeks rather than the month that had been scheduled  
4 and it was two weeks after that that I returned for  
5 the next visit.

6 Q. Did there come a time, Mr. Stevens,  
7 when a -- well, let me ask you first, Mr. Stevens:  
8 Is this the bill which you have received from the  
9 Medical College of Virginia?

10 MR. JOHNSON: May we use your pen to --

11 THE WITNESS: This is the majority of  
12 the bills, yes, from Medical College of Virginia.  
13 The second hospitalization bill is not included in  
14 that.

15 MR. JOHNSON: Doctor Adelaar will  
16 know about that.

17 THE COURT: Plaintiff's exhibit nine.

18  
19  
20 (Whereupon, the document  
21 referred to was marked  
22 Plaintiff's Exhibit 9.)  
23

24 MR. JOHNSON: Do I understand Doctor  
25 Adelaar is here? May we interrupt again, Your Honor?

1 THE COURT: All right.

2  
3  
4 BY MR. JOHNSON:

5 Q. Mr. Stevens, would you tell us  
6 whether at the Medical College of Virginia an  
7 electronic device was prescribed for you to use and  
8 what it was?

9 A. Yes. Doctor Amir Rafii ordered an  
10 electrical stimulator for my foot from Mace  
11 Scientific Equipment, I believe it's called. I know  
12 it's Mace. And this was to -- a battery, little  
13 battery pack, that sends electrical impulses to the  
14 foot and it's to stimulate the blood flow and to  
15 help block out the pain that's --

16 Q. Tell us how it's physically attached  
17 to your body or to your foot.

18 A. It has adhesive patches that stick to  
19 the skin with an electrode in the middle of it with  
20 a connection for the lead wire to go on it and it  
21 has a jelly substance in the center of it that  
22 causes it to make contact with the skin and  
23 transfers the electrical impulse to the area where  
24 the patch is placed.

25 MR. JOHNSON: Do I understand Doctor

1 Adelaar is here? May we interrupt now?

2 THE COURT: All right. Suppose we  
3 take -- you say you want to talk to Doctor Adelaar?

4 MR. JOHNSON: Yes, sir, if I may.

5 THE COURT: It s 3:15. Suppose we  
6 recess. Have the jury tire and we'll take a 15  
7 minute break. Give Mr. Johnson an opportunity to  
8 talk to the doctor.

9  
10 (Whereupon, a recess was taken.)

11  
12 (Whereupon, Doctor Adelaar's  
13 testimony was taken.)

14  
15 WILLIAM C. STEVENS,  
16 recalled as a witness, having been  
17 previously duly sworn, was examined  
18 and testified as follows:

19  
20  
21 DIRECT EXAMINATION (continuing.)

22

23

24 BY MR. JOHNSON:

25 Q. Mr. Stevens, Doctor Adelaar mentioned

1 an electrical device, a stimulator, I think he  
2 called it.

3 A. Yes, sir.

4 Q. Did you purchase one of those?

5 A. Yes, sir.

6 Q. I will ask you whether you recognize  
7 this bill?

8 A. Yes, sir. This is the bill --  
9 receipt of the stimulator.

10 Q. What is the amount of that bill?

11 A. \$520.

12 MR. JOHNSON: I lost track of my  
13 plaintiff's exhibit number, Your Honor.

14

15

16 BY MR. JOHNSON:

17 Q. All right. Here's another Mace  
18 Medical bill. Can you tell me what that is?

19 A. Yes, sir. This is a bill from Mace  
20 Scientific for the electrodes, the adhesive patches  
21 that go to the skin, the four lead wires and the  
22 batteries.

23 MR. JOHNSON: I offer this as number  
24 12, Your Honor.

25 THE COURT: Number 12.

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(Whereupon, the documents  
referred to were marked Plaintiff's  
Exhibit 11 and 12, respectively.)

BY MR. JOHNSON:

Q. I show you another bill from Mace  
Medical and ask you what that is.

A. The -- my ankle gave with me and the  
handle broke off of the battery pack and they give  
me a leather pouch to carry it in rather than try to  
replace the handle. This is for the leather pouch  
and patches.

MR. JOHNSON: All right. I ask this  
be marked Plaintiff's 13.

THE COURT: Be 13.

(Whereupon, the document  
referred to was marked  
Plaintiff's Exhibit 13.)

1 BY MR. JOHNSON:

2 Q. I show you another bill from Mace  
3 Medical and ask you what that is.

4 A. This is the one for the carrying case  
5 here. That one was just for patches. This is for  
6 the carrying case and patches.

7 MR. JOHNSON: Number 14.

8 THE COURT: All right.

9

10

11 (Whereupon, the document  
12 referred to was marked  
13 Plaintiff's Exhibit 14.)

14

15

16 BY MR. JOHNSON:

17 Q. I show show you a bill from Zett's  
18 Orthopedic Appliances and I ask you what this is for.

19 A. This is for the Jobst surgical  
20 stockings, special made surgical hose.

21 MR. JOHNSON: All right. I think  
22 this is number 15, Your Honor.

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(Whereupon, the document  
referred to was marked  
Plaintiff's Exhibit 15.)

BY MR. JOHNSON:

Q. Another bill from Thomas G. Powell.  
I ask you what this is?

A. This is a bill for orthopedic shoes.

MR. JOHNSON: This is 16, Your Honor.

(Whereupon, the document  
referred to was marked  
Plaintiff's Exhibit 16.)

BY MR. JOHNSON:

Q. A bill from Medic-Center Pharmacy?

A. This is for a prescription of --  
prescription that Doctor Adelaar gave me is all I  
can tell you.

Q. All right.

A. I can't read that.

MR. JOHNSON: I think this is -- is



1 this 16? 17?

2 THE COURT: 17.

3

4

5 (Whereupon, the document

6 referred to was marked

7 Plaintiff's Exhibit 17.)

8

9

10 BY MR. JOHNSON:

11 Q. I show you now a page with two bills  
12 on it. Could you tell us what those are?

13 A. This is a prescription for Buro-Sol  
14 from Doctor Adelaar and a bill from Zett's  
15 Orthopedic for arch supports.

16 MR. JOHNSON: Be 18, I think.

17 THE COURT: All right.

18

19

20 (Whereupon, the document

21 referred to was marked

22 Plaintiff's Exhibit 18.)

23

24

25

1 BY MR. JOHNSON:

2 Q. I show you a bill --

3 MR. REYNOLDS: Mr. Johnson, you need  
4 not go through the litany with him with those. I'm  
5 assuming that you are telling me that those are the  
6 bills from the doctors in Richmond at the pain  
7 clinic.

8 MR. JOHNSON: At the pain clinic.

9 MR. REYNOLDS: If you'll just read  
10 them into the record, that will save us some time.

11 MR. JOHNSON: We have a bill from  
12 Doctor Cohen for \$45.

13 THE COURT: Can we staple them all as  
14 one item so it will be exhibit number ten? I think  
15 we skipped ten, as I'm going over these bills. Make  
16 it all exhibit number ten, if I may.

17 MR. JOHNSON: Fine. Bill for Doctor  
18 Cohen for \$45. Bill from Doctor Cohen for \$110. A  
19 bill from University radiologists for \$92, a bill  
20 from University radiologists for \$24, a bill from  
21 peripheral vascular lab, MCV, for \$150 and a bill  
22 from Doctor Barnes for \$80.

23 THE COURT: All right, sir. I'll  
24 staple those and they'll be marked plaintiff's  
25 exhibit number ten.

1 MR. JOHNSON: Yes, sir.

2

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9 BY MR. JOHNSON:

10 Q. All right. What was the last year  
11 you worked a full year before this accident?

12 A. 1977.

13 Q. What was your total income that year?

14 A. May I refer to my notes?

15 Q. Please.

16 A. According to my w-2 form, which I  
17 have with me, 1977, my income for the year was  
18 \$19,583.52.

19 Q. All right. Do you have the w-2 form  
20 with you?

21 A. Yes, sir. I have them for '79, '78  
22 and '77.

23 MR. JOHNSON: May we introduce this  
24 as a group?

25

1  
2 BY MR. JOHNSON:

3 Q. Mr. Stevens, have you handed me w-2  
4 forms for the years '77, '78 and '79?

5 A. Yes, sir, that was correct.

6 THE COURT: Plaintiff's exhibit  
7 number 19.

8  
9  
10 (Whereupon, the document  
11 referred to was marked  
12 Plaintiff's Exhibit 19.)  
13  
14

15 BY MR. JOHNSON:

16 Q. Would you tell us -- you have given  
17 us your income for '77. What was your hourly wage  
18 in 1977?

19 A. January 1st of 1977 the hourly rate  
20 was \$7.76 per hour. It went to \$8.50 per hour on  
21 April 1st of 1977.

22 Q. All right. What was it on the date  
23 of your accident?

24 A. The date of my accident I was making  
25 \$8.50 per hour.

1 Q. That would be May 10th, 1978?

2 A. Yes, sir. It was \$9.38 in '78. I  
3 was giving you the figures for '77.

4 Q. When did it go to \$9.38?

5 A. April 1st, 1978.

6 Q. All right. What was your annual  
7 income in 1978?

8 A. \$14,577.65 including vacation time  
9 and sick leave.

10 Q. I'm sorry.

11 A. Including vacation time and sick  
12 leave.

13 Q. What does that mean?

14 A. That means about \$3,000 of that was  
15 from accumulated time, leave time, that I had on the  
16 books.

17 Q. Were you absent from work during much  
18 of that period of time?

19 A. I missed from May 10th of '78 until  
20 July 5th of '78 and then my work was just spasmodic  
21 as I could tolerate it throughout the rest of the  
22 year and into '79.

23 Q. In 1979, what was your income  
24 according to your W-2 form?

25 A. 1979, according to the W-2 form was

1 \$6,767.44.

2 Q. Give me that again, please.

3 A. \$6,767.44.

4 Q. Did that include any vacation and/or  
5 sick leave?

6 A. In '79, no, sir.

7 Q. What was your hourly wage in 1979?

8 A. In April 1, 1979 it was \$10.18 and on  
9 October 1st, 1979 it went to \$10.67 an hour.

10 Q. What has your income been in 1980?

11 A. I have had no income in 1980 at all.

12 Now, these figures I'm giving you are from the W-2  
13 form and does not include the hidden job benefits of  
14 health and welfare and retirement and pension which  
15 is over \$3,000 for each year.

16 Q. If you had worked during 1980, what  
17 would your hourly wage have been?

18 A. \$11.87 per hour. That was effective  
19 April 1 of 1980. October 1 of 1980 it went to \$11.97  
20 per hour. April 1st of '81 it will go to \$12.32 an  
21 hour, plus cost of living.

22 Q. Now, you heard Doctor Adelaar mention  
23 the kind of truck you drove. What kind of truck did  
24 you drive?

25 A. I was driving a U-model Mack at the

1 time of the accident.

2 Q. Could you describe this to us with  
3 regard to the clutch and the brake and the  
4 accelerator pedal?

5 A. This is a standard Mack diesel with a  
6 Cummings engine in it. It has a 94 pound pressure  
7 clutch. In other words, it takes 94 pounds of  
8 pressure to put the clutch to the floor.

9 Q. What about the brake and the  
10 accelerator, you use the clutch with your left foot,  
11 don't you?

12 A. Yes, on the clutch. The brakes are  
13 air brakes on it. And the accelerator pedal, I  
14 couldn't estimate what pressure they are. I  
15 couldn't tell you.

16 Q. Have you attempted to operate a truck  
17 recently?

18 A. No, sir. I would not be permitted to  
19 operate a truck. I can not return to work until I'm  
20 qualified to do all three of the jobs that are  
21 covered under the union classification, which  
22 includes dock work, switching or driving. Under the  
23 union classification everyone is classified as an  
24 accommodation employee. And to be qualified to do  
25 one job, you have to be qualified to do them all.

1 They will not take you back on any limited basis.

2 Q. Have you sought other employment?

3 A. Yes, sir, I have.

4 Q. Would you tell us what other  
5 employment you have sought?

6 A. I took a Pace exam to go with the  
7 Federal government. I have answered -- written  
8 answers to four ads in the Virginian-Pilot. I have  
9 been to Nu-car Carriers for a job that was  
10 advertised in the paper. I have been to Milcome  
11 Corporation of Virginia Beach in response to an ad  
12 in the paper and I have been to the Coastal  
13 Personnel of Virginia Beach in reply to an ad.

14 Q. With regard specifically to the  
15 federal government, what sort of job have you  
16 applied for and what sort of job would you be  
17 eligible for, if you know?

18 A. The Pace exam would qualify you for  
19 several positions with the Federal government,  
20 starting at a GS-4, GS-5 level, which would be  
21 slightly over \$10,000 a year income. The range  
22 would be treasury agent, board of patrol, forest  
23 ranger, just several different positions that come  
24 under that, including customs.

25 Q. What would be the opportunity for



1 promotion and advancement in these jobs to the level  
2 at which you found yourself?

3 A. This day and time, unless you are a  
4 college graduate with a degree, your federal  
5 employment is pretty much held at the GS-5 level.

6 Q. And what does that pay?

7 A. Slightly over 10,000 a year, I  
8 believe.

9 Q. As far as advancement is concerned,  
10 what sort of advancement would you expect?

11 MR. REYNOLDS: Your Honor, there's  
12 been no showing that this man is qualified to tell  
13 us all of these things.

14 THE COURT: That's right, Mr. Johnson.  
15 Haven't laid any foundation. I sustain the  
16 objection.

17 MR. JOHNSON: All right.

18  
19  
20 BY MR. JOHNSON:

21 Q. With regard to the job at Nu-car  
22 Carriers, did you interview them?

23 A. They interviewed me. They informed  
24 me --

25 MR. REYNOLDS: Objection.

1 THE COURT: Sustained. Don't be a  
2 volunteer. You answered the question. Wait till  
3 your lawyer asks the next question and we won't  
4 climb into trouble.

5 THE WITNESS: Yes, sir.

6  
7  
8 BY MR. JOHNSON:

9 Q. Were you offered a job by them?

10 THE COURT: Don't tell us what they  
11 told you.

12 THE WITNESS: Had I been able to  
13 stand on my feet for a long period of time, I would  
14 have been offered the position.

15  
16  
17 BY MR. JOHNSON:

18 Q. What was the position paying?

19 A. It was traffic controller.

20 Q. What did it pay? Annual salary?

21 A. He indicated the salary would be low  
22 to begin with with a --

23 THE COURT: Just a minute.

24 MR. REYNOLDS: Objection, Your honor.

25 THE COURT: Sustained.

1 MR. REYNOLDS: I think if they are  
2 going to do this, they ought to bring people from  
3 Nu-car Carriers here.

4 THE COURT: Sustained.  
5  
6

7 BY MR. JOHNSON:

8 Q. All right. What are the things that  
9 you cannot do now that you were able to do prior to  
10 the time of this accident?

11 A. I can not climb a ladder, walk up a  
12 grade of any length or any steepness to it. I'm  
13 limited to how long I can be on the foot. Anything  
14 that requires you to be on your feet for any length  
15 of time, I can't do.

16 Anything that requires extreme  
17 pressure, bringing the foot up, I can't do. I have --  
18 I can't hunt because I can't be on my feet that long.  
19 I can't do any grocery shopping or anything like  
20 that unless there's a place I can sit down to rest  
21 in between times. If it's going to take more than  
22 running in and picking up one or two items or  
23 something like that, if it's going to be any length  
24 of time, I can't do it.

25 Q. What is your position -- what was

1 your position in 1978 with your union?

2 A. In 1978 I had been with the union for  
3 21 years. I was number four man on the seniority  
4 board at Spector industries.

5 Q. what does that translate to you in  
6 dollars and cents to you?

7 A. That meant job security. They would  
8 probably have to close the terminal down before I  
9 would be effected by layoff or anything of that  
10 nature.

11 Q. What about pension and retirement?

12 A. Do you want to know the amounts that  
13 were contributed to retirement pension?

14 Q. What I want to know, Mr. Stevens, is  
15 whether your inability to continue to work, if  
16 that's the case, as a truck driver for Spector,  
17 affects your pension and retirement, your position  
18 with the union.

19 A. I have enough years in to draw  
20 retirement but I don't have the age to draw it. I'd  
21 have to freeze my retirement until I had enough age  
22 to apply for it.

23 Q. When would that be?

24 A. That would be in ten years if I would  
25 take an early retirement.

1 Q. When would you be entitled to full  
2 retirement?

3 A. At age 60.

4 Q. And how much --

5 A. Would be 18 years.

6 Q. How much would that be?

7 MR. REYNOLDS: Objection, Your Honor.  
8 I don't think that is relevant because he says he's  
9 got that, so it can't be a loss he's suffered on  
10 account of this accident.

11 THE COURT: That's right.

12 MR. JOHNSON: I'm not claiming it as  
13 a loss, Your Honor.

14 THE COURT: What's the point of the  
15 question?

16 MR. JOHNSON: In fairness to Mr.  
17 Reynolds, I am pointing out that age 60 he would be  
18 entitled to a certain amount of money. Mr. Reynolds  
19 objects to that.

20 THE COURT: He says he's entitled to  
21 full retirement at 60.

22

23

24 BY MR. JOHNSON:

25 Q. If you retired now, what would your

1 retirement be?

2 THE COURT: He can't retire now. He  
3 said he's got to wait until at least ten more years  
4 to retire, as far as getting retirement money on the  
5 particular retirement we are talking about. Is that  
6 correct?

7 THE WITNESS: Yes, sir. On standard  
8 requirement. On disability retirement I can not  
9 draw it unless I'm 100 percent disabled, which I am  
10 not.

11

12

13 BY MR. JOHNSON:

14 Q. Mr. Stevens, what's the condition of  
15 your foot today as it compares to the condition of  
16 your foot at the time of the injury and during the  
17 period of time, say, mid-summer of 1979?

18 A. It has improved as far as the pain is  
19 concerned. I had times that I would be laying with  
20 tears streaming down my face from the pain from the  
21 foot and it was so bad that on three different  
22 occasions I asked Doctor Adelaar twice and Doctor  
23 Rafii once to amputate it. And today, the foot is  
24 more or less -- the pain level and the swelling is  
25 more or less governed by how long I'm on it and to

1    what degree I use it.

2                   The -- if I'm going to be on it for  
3   more than 15 or 20 minutes, I wear the brace to  
4   transfer the pressure upward. If I'm just going to  
5   be on my feet, ten, fifteen minutes and sit down,  
6   then I don't really have to have it to walk.

7                   Q.       What about the stimulator, you are  
8   not using that?

9                   A.       The stimulator, Doctor Adelaar.

10                  Q.       Please don't say what anybody told  
11   you. Do you use the stimulator?

12                  A.       Only when the pain is intensified,  
13   which is usually later -- later on during the day of  
14   the evening. If I'm on it a great deal in the  
15   morning, then the earlier I put the stimulator on in  
16   the evening.

17                   MR. JOHNSON: I thank you, Mr.  
18   Stevens. Answer Mr. Reynolds.

19                   THE COURT: Gentlemen, we are at five  
20   o'clock. I think this would be a good time to  
21   recess tonight and we can meet again tomorrow  
22   morning at ten o'clock, if that's agreeable.

23                   MR. JOHNSON: That's agreeable.

24                   THE COURT: Members of the jury, can  
25   you all make it and be here by ten o'clock tomorrow

1 morning or attend to whatever business you may have  
2 to tend to by that time because you will probably be  
3 tied up most of the day?

4 All right. Again, the Court will  
5 caution you again. You are dismissed for this  
6 evening and go about your business, but don't  
7 discuss what has transpired here in the courtroom  
8 today with anybody.

9 You are only to discuss it when all  
10 of you are among yourselves. And, of course, you  
11 have not heard all the evidence so you certainly  
12 can't come to any conclusions, recommendations,  
13 because you not only haven't heard the evidence but  
14 you haven't got all the instructions of law upon how  
15 to assess or weigh that evidence.

16 Again, don't go anywhere near the  
17 scene of this particular accident. We're bound by  
18 the evidence that we've got in front of us. And so  
19 don't make any private views of that or any other  
20 similar installation that you may have heard  
21 testified to today. Any other instructions to give  
22 the jury?

23 MR. JOHNSON: I think not.

24 THE COURT: All right. If you will  
25 report in tomorrow morning so we can be ready to go



1 at ten o'clock. So if you will be in a little bit  
2 earlier, it will be appreciated by the Court. The  
3 jury is dismissed for tonight.

4                   You may come down, Mr. Stevens. All  
5 right, gentlemen, I know it's a little early in the  
6 game but I think it would help that in any event,  
7 regardless of which direction this case will  
8 ultimately go, of course, what course it will take,  
9 if you have instructions prepared on the assumption  
10 that it would get to the point of the jury, I'd  
11 appreciate it very much that you will make an  
12 exchange of your instructions so that those  
13 instructions that you would be agreed on, that would  
14 be out of the way and those that you would want to  
15 present to the Court that are objected to by either  
16 counsel, those are the ones we would have to maybe  
17 go over together.

18                   So if you'll make an exchange of your  
19 law instructions the Court would appreciate it.  
20 That way we can cut down a lot of wasted time.  
21 Anything you would like to suggest to the Court that  
22 would be of any help tonight?

23                   MR. REYNOLDS: No, sir.

24                   MR. JOHNSON: The only thing I might  
25 say is I think that I've got to evaluate the

1 question of bringing Doctor Scutero at all. And in  
2 light of Doctor Adelaar's testimony, which was a  
3 surprise to me, I question the wisdom of bringing  
4 Doctor Scutero or the need for it and I will review  
5 with my client whether to do so.

6 THE COURT: That's your case and, of  
7 course, you know you are governed by the rules.

8 MR. JOHNSON: I know. The question,  
9 of course, of whether I want to put on his testimony,  
10 to preserve it, I don't know the answer to that at  
11 this moment.

12 THE COURT: All right, sir. Anything  
13 else before we recess for tonight?

14 MR. REYNOLDS: No, sir.

15 THE COURT: If not, we stand in  
16 recess. Thank you very much. Mr. King, would you  
17 let me have the exhibits on the table? I'll put  
18 those together with this.

19

20 (Whereupon, court was recessed until  
21 10:00 a.m., November 21, 1980.)

22

23 THE COURT: Good morning. Are we  
24 ready for the jury?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: Bring in the jury. Good  
2 morning, members of the jury. Are we ready?

3 JURORS: Ready.

4 THE COURT: I believe we had recessed  
5 yesterday evening, didn't we, Mr. Johnson, with your  
6 client having finished direct testimony?

7 MR. JOHNSON: That's correct, Your  
8 honor.

9 THE COURT: All right. If you will  
10 resume the stand, please, sir, Mr. Stevens.

11  
12 WILLIAM C. STEVENS,  
13 recalled as a witness, having been  
14 previously duly sworn, was examined  
15 and testified as follows:  
16  
17

18 CROSS EXAMINATION  
19  
20

21 BY MR. REYNOLDS:

22 Q. Mr. Stevens, you said that for about  
23 three or four years prior to this accident you were  
24 regularly at the Ford Plant in Norfolk, isn't that  
25 correct?

1 A. Yes, sir.

2 Q. And sometimes you spent as much as 40  
3 hours a day there at the Plant?

4 A. Per week.

5 Q. Per week. 40 hours per week. I'm  
6 sorry. And that was because you were sometimes  
7 assigned to do what you were doing on the day of  
8 this accident, that is, that you would not only take  
9 a trailer with your tractor there but you would stay  
10 there and spot other trailers out of the yard up to  
11 the various loading docks as they became available?

12 A. Yes. I was told to do so by my  
13 dispatcher, yes, sir.

14 Q. And --

15 A. Quite a number of times the work was  
16 refused.

17 Q. Refused. What was refused?

18 A. To move the trailers.

19 Q. You refused to move them?

20 A. My dispatcher refused to have them  
21 move them.

22 Q. I see. All right. But that would  
23 necessitate your being at the main loading dock  
24 sometimes and at the north loading dock sometimes?

25 A. That is correct.

1 Q. And that's how you became familiar  
2 with all these people that you have named throughout  
3 the course of this testimony by reason of the fact  
4 that you were there at the Ford Plant while you were  
5 there working and they were there working, is that  
6 correct?

7 A. That is correct.

8 Q. Now, you testified yesterday that you  
9 had seen Mr. Hamilton fire a fork lift driver. Who  
10 was that fork lift driver?

11 A. I do not know.

12 Q. When did that happen?

13 A. I believe it was around 1968. I  
14 don't know exactly.

15 Q. Where were you when you observed or  
16 heard this? What part of the Plant?

17 A. Main receiving dock. Mr. Hamilton  
18 came over on his golf cart and he talked with the  
19 supervisor, who was Wernell Wynn at that particular  
20 time.

21 Q. Where were you at this time?

22 A. I was standing by the phone. I was  
23 on the phone to my dispatcher who had me on hold.

24 Q. Were you in an office or out on the  
25 dock?

1           A.       I was on the dock.

2           Q.       On the dock?

3           A.       Yes, sir.

4           Q.       And Mr. Wynn was the supervisor, you

5 say?

6           A.       Yes, sir.

7           Q.       And he was also on the dock?

8           A.       Yes, sir.

9           Q.       And Mr. Hamilton came up in a golf

10 cart and had a conversation with Mr. Wynn in your

11 presence while you were on the phone, is that right?

12           A.       I did not overhear the conversation

13 between Mr. Hamilton and Mr. Wynn, but immediately

14 after their talk, Mr. Hamilton went over and told

15 the boy to come with him, he was going to get his

16 pay check. They took him over to the office to pick

17 up his pay check.

18           Q.       All right. And he indicated that he

19 was firing him, is that right?

20           A.       Yes, sir. He told him he was

21 finished.

22           Q.       Told him he was finished. Do you

23 know whether or not they have a union at the Ford

24 Plant?

25           A.       Yes, sir.

1 Q. Do they or do they not?

2 A. They do.

3 Q. You're telling the jury Mr. Hamilton  
4 had authority to fire that fork lift driver and he  
5 told him he was finished right there at that time?

6 A. Yes, sir.

7 Q. And you have also seen Mr. Wynn fire  
8 someone, I believe.

9 A. Mr. Warren.

10 Q. Warren.

11 A. Yes, sir.

12 Q. Who was that that was fired?

13 A. I don't know.

14 Q. When did --

15 A. It was a borrowed employee that had  
16 come over to unload trucks and she was assigned to  
17 unload tires and they were too heavy for her to  
18 handle and Mr. Warren came over and said, 'If you  
19 can't do the work, you can't have the job. Let's go  
20 pick up your pay check. You're through.'

21 Q. But that was not a regular Ford  
22 employee that you are talking about?

23 A. Not a regular material handler that  
24 works on the platform there. She worked somewhere  
25 else in the plant and was moved to that job. They

1 have a policy of moving people around to fill in  
2 where they need them. If they can go light in one  
3 department to fill in strategic jobs, they do so.

4 Q. I see. Now, this Mr. X, the  
5 unidentified helper at the time of this accident,  
6 would you describe him for the jury, physically?

7 A. Physically. He was about five foot  
8 nine inches tall. His hair was turning gray, just  
9 about completely gray. He weighed about 145, 150  
10 pounds. Wearing a plaid shirt, white, orange and  
11 brown. A pair of levis.

12 Q. All right. Now, you didn't know his  
13 name?

14 A. No, sir.

15 Q. And you had never seen him before the  
16 day of the accident, had you?

17 A. No, sir.

18 Q. And you never saw him again in the  
19 year that you worked after the accident, did you?

20 A. No, sir.

21 Q. Now, he could have been another  
22 driver checking equipment or material that he had  
23 hauled on his truck, couldn't he?

24 A. Yes, sir. He could also have been a --

25 Q. Wait a minute. Don't add anything.



1 You answered the question.

2 A. I beg your pardon.

3 Q. At the time that you arrived with  
4 your truck and first saw John Sanderlin, he was  
5 unloading engines off of another truck, wasn't he?

6 A. Yes, sir.

7 Q. And he was placing those engines on  
8 the dock right behind the truck?

9 A. Yes, sir.

10 Q. Okay. Now, in the past, you have  
11 helped other drivers raise these dock plates,  
12 haven't you?

13 A. Yes, sir.

14 Q. And on occasion, because your  
15 familiarity with how it worked, you have raised the  
16 dock plates yourself without any help, some of the  
17 others, haven't you?

18 A. Yes, sir.

19 Q. In other words, you could take this  
20 Johnson bar or strongarm and pry the plate up and  
21 hook the strongarm under one of the other doors in a  
22 way that would leave it up so you didn't have to  
23 have anyone with you to do it, isn't that right?

24 A. On the majority of the shoes, yes,  
25 sir.

1 Q. Okay. So every time that you went in  
2 and moved one of these plates, you didn't have to  
3 have Mr. Sanderlin or some other fork lift driver to  
4 tell you to do it, did you?

5 A. I wouldn't voluntarily do it. I had  
6 to be told by someone to do it.

7 Q. You mean to tell me that if you'd go  
8 in there and there wasn't anyone around at the time --  
9 say the fork lift driver was off somewhere taking a  
10 load down -- and you had a truck there and you saw  
11 that it needed to be done and you could do it by  
12 yourself, you would never go in and just do it by  
13 yourself?

14 A. Only under directions of my  
15 dispatcher would I do it.

16 Q. You mean to tell me you would call  
17 your dispatcher and say, "Mr. Dispatcher, the plate  
18 needs to be lifted, am I instructed by you to do it?"  
19 Is that the way it would go?

20 A. No, sir. I would call the dispatcher  
21 and tell them a trailer had to be put at such and  
22 such a place and the shoe was not working properly  
23 and there was no one there to lift the shoe, did he  
24 want me to do it.

25 Q. How many times would you say you had

1 done that?

2 A. Every time I was asked to put one  
3 there that there wasn't anybody to raise the shoe.

4 Q. All right. How many times would you  
5 say that was? Was this once a week or twice a day  
6 or --

7 A. Three or four times a week.

8 Q. Three or four times a week?

9 A. Yes, sir.

10 Q. On each occasion you would call the  
11 dispatcher, your dispatcher, to get permission to do  
12 that, is that what you are saying?

13 A. Yes, sir. Not -- let me clarify that  
14 a little bit. If I called once and he told me that  
15 it was okay to do it, then if it was two trucks that  
16 had to be put up, I'd put up two trucks. But it was  
17 only an hour break between the two shifts that this  
18 would occur that there wasn't somebody there to  
19 raise it.

20 Q. Well, you're saying that there were  
21 times when there wasn't a fork lift there to pick it  
22 up for you?

23 A. Yes, sir.

24 Q. Okay. Now, if Sanderlin were there  
25 on a particular day and another driver was coming in

1 and the shoe wouldn't come up and he said to you,  
2 'hey, man, would you pick that shoe up for him, you  
3 didn't have to do it, did you?

4 A. No, sir.

5 Q. Suppose he asked you to help another  
6 man pick a shoe up, would you first go call your  
7 dispatcher and ask if it was all right to help that  
8 man pick it up?

9 A. No, sir, I'd use my own judgment.

10 Q. Okay. And if another truck driver  
11 was asked to help you pick up the shoe, as far as  
12 you know, there was no reason why he had to do it,  
13 was it?

14 A. No, sir.

15 Q. Going now to the accident. You came  
16 in and you backed your truck up in the vicinity of  
17 the loading dock and got out and opened the back  
18 doors of your trailer, is that correct?

19 A. Yes, sir.

20 Q. Pinned them back against the side so  
21 that you wouldn't be cramped or unable to do it if  
22 you got it in? You had to do that first?

23 A. Yes, sir.

24 Q. And you looked and you saw that the  
25 h-frame was pushed all the way back so you knew that

1 this shoe was not in operation?

2 A. That's correct.

3 Q. And you backed it on up against the  
4 bumpers and then pulled off an inch so that it would  
5 be unimpeded by the trailer?

6 A. Correct.

7 Q. Then you got out and you went into  
8 the loading area, up on the loading dock, is that  
9 right?

10 A. Yes, sir.

11 Q. At the time there were other trucks  
12 there other than yours because you had taken the  
13 only empty space, isn't that correct?

14 A. That's correct.

15 Q. And as far as you knew, those trucks  
16 were there to be unloaded?

17 A. Yes, sir, so far as I knew.

18 Q. You can't tell me now whose trucks  
19 they were, can you?

20 A. No, sir. One of them was a Roadway,  
21 and mine, and I don't know what the other two were.

22 Q. Did you know the Roadway driver?

23 A. No, sir, I did not see him.

24 Q. And Sanderlin, at the time, was in  
25 the process of unloading engines off of the trailer

1 in number two bay, is that right?

2 A. That's correct.

3 Q. And he was doing this on a fork lift  
4 because the engines were on pallets, is that right?

5 A. Yes, sir.

6 Q. And so that meant he was going back  
7 and forth? Or was he going back and forth when you  
8 saw him?

9 A. He was sitting on the fork lift  
10 reading a packing slip when I entered.

11 Q. He had a packing slip?

12 A. Yes, sir.

13 Q. Did you go over and look at what he  
14 was reading?

15 A. No, sir.

16 Q. Then the reason you say it's a  
17 packing slip is because that's what you would expect  
18 him to be looking at?

19 A. No, sir. It was the standard pink  
20 Ford packing slip.

21 Q. You saw he had a pink piece of paper,  
22 that's all you saw?

23 A. Yes, sir.

24 Q. And you inferred from that that he  
25 was checking a standard Ford packing slip?

1           A.       Yes, sir.

2           Q.       Okay. And then what did you say to

3 him?

4           A.       I asked him to raise the shoe for me

5 so I could get my trailer up.

6           Q.       Did he have anything on his fork lift

7 at that time?

8           A.       No, sir.

9           Q.       How far was it from where you were

10 talking to him to where the shoe was behind your

11 trailer?

12          A.       About four feet behind the fork lift.

13          Q.       He was four feet from your plate?

14          A.       Right.

15          Q.       Okay. And had you ever seen them

16 raise a dock lift with a fork lift?

17          A.       Many times.

18          Q.       But you say he wouldn't do it at that

19 time?

20          A.       No, sir.

21          Q.       Did he tell you he wouldn't do it or

22 why he wouldn't do it?

23          A.       No, sir. All I know is what he said

24 to the other man.

25          Q.       The other man, how far -- well, let

1 me ask you this: When you were talking to Sanderlin,  
2 where were you with reference to Sanderlin?

3 A. I was standing beside of him on the  
4 fork lift slightly in front to the side.

5 Q. As close as I am to you?

6 A. Closer.

7 Q. Closer. Where was the man who turned  
8 out to be Mr. X? Was he on the loading dock?

9 A. Yes. He was about ten to twelve feet  
10 to my right checking engines.

11 Q. Okay. And there were some engines  
12 back there on the loading dock is what you are  
13 telling me?

14 A. Yes, sir.

15 Q. And this man who you have described  
16 had a clipboard in his hand --

17 A. Yes, sir.

18 Q. -- you didn't read his clipboard, did  
19 you?

20 A. No, sir.

21 Q. And you saw him looking at some tags  
22 on some engines?

23 A. Yes, sir.

24 Q. Okay.

25 A. Checking them against what he had on



1 his list.

2 Q. Well, now, that's an inference that  
3 you draw, isn't it? You saw him look at a tag and  
4 look at a list, isn't that what you saw?

5 A. And put a check on his list.

6 Q. He had a pencil in his hand?

7 A. Yes, sir.

8 Q. What color pencil was it?

9 A. It wasn't a pencil, it was a ball  
10 point pen. Regular Bic pen, I would assume.

11 Q. What color was it?

12 A. Clear casing.

13 Q. Clear casing. Okay. Now, do you  
14 have exact recall as to the very words that  
15 Sanderlin said to this man?

16 A. Word for word, no, I could not quote  
17 exactly what he said.

18 Q. He may have said --

19 A. I believe -- I believe I can, but I  
20 could possibly be wrong.

21 Q. All right.

22 A. But it would be extremely close.

23 Q. When did you first try to recall what  
24 this man said after the accident?

25 A. After depositions. Mr. Johnson

1 called me at home and told me I needed to think the  
2 thing through and know exactly what everybody said,  
3 when they said it and every thing that had come  
4 about.

5 Q. All right. You mean this is in  
6 preparation for your deposition?

7 A. This was after the deposition.

8 Q. Well, you had already told us what he  
9 said before at the time your deposition was taken?

10 A. Right. I was just working off of  
11 memory.

12 Q. All right. That was the first time  
13 you had tried to remember it?

14 A. Yes, sir.

15 Q. All right. And that was on October  
16 1st, 1980?

17 A. Yes, sir.

18 Q. Over two years after the accident?

19 A. Yes, sir.

20 Q. All right.

21 A. Now, let me back up. I remember that  
22 right after I engaged Mr. Johnson as my attorney, he  
23 asked me to see if I could find out who the other  
24 man was and I pursued that endeavor. But as far as  
25 thinking about what was said and everything, that

1 was not done. That had not crossed my mind as being  
2 important.

3 Q. All right. You asked Ford Motor  
4 Company to check back on the truck driver that had  
5 been there to see if they could identify which truck  
6 driver it was, didn't you?

7 A. Yes, sir.

8 Q. Now, with regard to the conversation  
9 that Sanderlin had with this man -- the fork lift  
10 motor, they keep it running all the time, don't they?  
11 I mean while he's working.

12 A. Yes, sir.

13 Q. To be more specific, it was running  
14 while you were there having this conversation with  
15 him, wasn't it?

16 A. Yes, sir.

17 Q. All right. And so he's got to yell  
18 to this man, Mr. X, and might he have said, 'hey,  
19 will you help him lift this plate'?

20 A. No, sir, he did not say that.

21 Q. Tell me exactly what he said, as best  
22 you remember.

23 A. He turned to the man and said, 'hey,  
24 raise the shoe for this man so he can get his truck  
25 up.'

1 Q. Okay. And what response did Mr. X  
2 make?

3 A. He walked over to the desk, laid his  
4 clip --

5 Q. I'm sorry. Your answer is entirely  
6 correct because that is a response. But what I want  
7 to know is did he say anything.

8 A. No, sir.

9 Q. Okay. He walked over to Sanderlin's  
10 desk and laid down his clipboard, is that right?

11 A. Yes, sir.

12 Q. Then he went to the end of the dock  
13 there and this strongarm was standing in the corner,  
14 wasn't it?

15 A. Yes, sir.

16 Q. And he came back. And what did he do  
17 first?

18 A. He hooked the edge of the strongarm  
19 under the side and tried to lift the plate that way.

20 Q. Now, that is the way that you have  
21 done many times before, isn't it, to lift it?

22 A. Yes, sir.

23 Q. He apparently knew what he was doing  
24 because he did it the same way that you and other  
25 people have done it using that strongarm, isn't that

1 right?

2 A. Yes, sir.

3 Q. Okay. But he apparently was unable  
4 to get it to come up, is that right?

5 A. That's correct.

6 Q. Where were you at that time?

7 A. I was standing behind him watching  
8 him.

9 Q. All right.

10 A. Or off to the side of him.

11 Q. You've described him as being about a  
12 hundred and fifty pound man. What do you weigh?

13 A. I -- at that time I weighed 283.

14 Q. How tall are you?

15 A. Six foot three.

16 Q. If he wasn't strong enough to lift  
17 this thing up, why didn't you take hold of it and  
18 lift it up?

19 A. Because that is the shoe you can't  
20 lift from the side. It's been lifted so many times  
21 that the sides are rounded and you have to keep  
22 playing with it until you can find the spot where  
23 the strongarm will stay under it. It's a useless  
24 endeavor.

25 Q. I thought you told me you had lifted

1 that shoe many times by putting it there.

2 A. I told you I had lifted other shoes.

3 Q. Oh.

4 A. I did not specify I lifted that shoe.

5 Q. All right. But you let him come down  
6 and try to lift that one when you knew he couldn't  
7 lift it there?

8 A. The man acted like he knew what he  
9 was doing. I assumed he knew something I didn't.

10 Q. But when you saw him having trouble  
11 there, did you say to him, "You can't lift this  
12 shoe, at that point?

13 A. Yes, sir.

14 Q. You did. And what did you suggest  
15 that he do?

16 A. I suggested he get Sanderlin to raise  
17 it with the fork lift.

18 Q. Okay. And did he make any response  
19 to that?

20 A. He said, That's okay, I can get it.  
21 And proceeded to take the strongarm inside the truck  
22 to raise the shoe.

23 Q. I thought he took it over on the  
24 other side and tried to lift it from the other side.  
25 Didn't he do that?

1           A.       Yes, sir, he tried both sides before  
2 he went inside.

3           Q.       Was the other side rounded too?

4           A.       Yes, sir.

5           Q.       Where is this rounded part that you  
6 are talking about?

7           A.       The edge of the shoe is supposed to  
8 be -- the metal is supposed to be flat and the edge  
9 on the bottom is wore off under here from being  
10 raised that way so much.

11          Q.       Does that keep the blade of the  
12 strongarm from going under there?

13          A.       No, sir, it prevents it from getting  
14 a grip enough to break it back properly.

15          Q.       Why would an edge be any easier to  
16 grasp than if it was rounded? Why couldn't you get  
17 it under there more if it was rounded?

18          A.       It's not a matter of getting the  
19 strongarm under there. It's a matter of being able  
20 for it to hold the weight. And with it rounded, it  
21 just slips off of the strongarm. But the strongarm  
22 being on wheels and the dock plate so heavy, it  
23 causes the strongarm to roll back away from the  
24 plate.

25          Q.       In other words, you can start it up

1 but then it slips off?

2 A. That's correct.

3 Q. Did that happen that day?

4 A. Yes, sir.

5 Q. All right. And when it slipped off,  
6 did the plate fall back down?

7 A. Yes, sir.

8 Q. Okay. And you say it was very heavy,  
9 heavy plate?

10 A. Yes, sir. It was heavier than the  
11 others.

12 Q. Okay. So at that time before you had  
13 gotten hurt or anybody had gotten hurt, you were  
14 aware of the fact that if the strongarm slipped out  
15 from under the plate, the plate was going to come  
16 down and the plate was very heavy?

17 A. Yes, sir.

18 Q. Now, whose idea was it for him to go  
19 in the truck?

20 A. His.

21 Q. Well, now, that was your trailer.  
22 You were in charge of the trailer, weren't you?

23 A. Yes, sir.

24 Q. Did you --

25 A. On a technicality.



1 Q. Did you have anything to say about  
2 him going in the trailer?

3 A. No, sir. Once it enters Ford's  
4 property, it s Ford's truck until it's empty and  
5 reloaded and leaves Ford's property.

6 Q. And he went in -- and just for sake  
7 of orientation for the jury, assuming you're in the  
8 trailer and you're looking out the back toward the  
9 dock -- you say he went in and put the strongarm  
10 under the front lip of the dock plate, is that  
11 correct?

12 A. That's correct.

13 Q. Where on the dock plate did he do  
14 that?

15 A. Right --

16 Q. Middle? Right side? Left side?

17 A. Right side about six inches from the  
18 edge.

19 Q. Six inches from the edge on the right  
20 as you stand in the trailer looking at the dock, he  
21 put the lip of the strongarm under the lip of the  
22 dock plate and pried it up?

23 A. Yes, sir.

24 Q. And he got it up himself?

25 A. Yes, sir.

1 Q. And now, it's up and where is the  
2 working end of the strongarm, that is, the hand end?  
3 Is it still up in the air or has he got it half way  
4 down or has he got it all the way down on the ground?

5 A. To where he could hold his arms  
6 straight.

7 Q. hold his arms straight. And how high  
8 up in the air then, off of the bed of the trailer,  
9 does that place the nearest edge, the front edge of  
10 the dock plate?

11 A. Repeat the question, please.

12 Q. When he's got the strongarm down at  
13 what you indicated about hand high level, how high  
14 does that raise the dock plate above the bed of the  
15 trailer?

16 A. It was approximately four or five  
17 inches.

18 Q. Four or five inches. Let me let you  
19 look at exhibit number four and ask you if that is  
20 the strongarm that we're talking about.

21 A. Yes, sir, it is.

22 Q. Okay. And it would have been  
23 approximately in the position that we see it in that  
24 photograph, although I understand it's not at the  
25 same point on the dock plate, is that correct?

1           A.       No, sir. The handle would have been  
2 up a little more.

3           Q.       Little higher?

4           A.       Yes, sir.

5           Q.       Okay. Now, at that point it was not  
6 over the trailer, was it?

7           A.       No, sir.

8           Q.       And so you knew that the truck had to  
9 be backed in order for the truck to be in the  
10 position to be unloaded?

11          A.       That's correct.

12          Q.       Okay. So you went to back the truck  
13 up?

14          A.       Yes, sir.

15          Q.       And you told us he told you to back  
16 the truck up. He didn't have to tell you to back  
17 the truck up, did he?

18          A.       He told me that he would holler when  
19 he was ready for me to back it up. I had already  
20 started out the door when he first moved into the  
21 truck.

22          Q.       Okay.

23          A.       And he hollered he was ready, so I  
24 picked up my pace and moved on out to back it up so  
25 he wouldn't have to stand there and hold it.

1 Q. So he was going to hold it and you  
2 were going to back?

3 A. Yes, sir.

4 Q. And did he holler?

5 A. Yes, sir.

6 Q. What did he say?

7 A. He said, "Okay, come on back."

8 Q. All right. And then did you go back  
9 real quickly or slowly or --

10 A. I trotted back to the tractor.

11 Q. I m sorry.

12 A. I trotted back to the truck.

13 Q. I m sorry. I m talking about the  
14 truck. Now, when you moved it, did you slam it back  
15 or ease it back?

16 A. No, sir, eased it back very slowly.

17 Q. How far do you think you had to move  
18 it?

19 A. Approximately six inches.

20 Q. Okay. Until you felt it bump against  
21 the bumpers?

22 A. Right.

23 Q. Did he say anything else to you at  
24 that point?

25 A. No, sir.

1           Q.       So you got out of the truck, out of  
2 your tractor. And at that point was your trailer up  
3 against the dock building so that as you walk back  
4 from the truck you really couldn't see into it or --

5           A.       That is correct, yes, sir.

6           Q.       So what do you do, go up the steps  
7 and in the other door and --

8           A.       Yes, sir.

9           Q.       When you got around to the back of  
10 your trailer, was Mr. X still there?

11          A.       Yes, sir. John Sanderlin met me at  
12 the door and told me he had the strongarm hung -- he  
13 didn't let it roll back, he had held it stationary  
14 and the shoe had rode up on top of it.

15          Q.       Sanderlin told you all that?

16          A.       Yes, sir.

17          Q.       Was Sanderlin on the fork lift at  
18 that time?

19          A.       Yes, sir.

20          Q.       He met you at the door on the fork  
21 lift?

22          A.       Yes, sir.

23          Q.       All right. And did he have anything  
24 on the fork lift at that time?

25          A.       No, sir.

1 Q. Okay. Now, with that shoe up in the  
2 air on this strongarm, it would be a very simple  
3 matter just to run the fork of the fork lift under  
4 the shoe, wouldn't it, and lift it up a little bit  
5 more?

6 A. Yes, sir.

7 Q. And just pull this thing right out  
8 then?

9 A. Yes, sir.

10 Q. That would have freed it?

11 A. Yes, sir.

12 Q. And you're telling the jury that  
13 Sanderlin was there on his fork lift with nothing on  
14 the fork lift and he did not go over and lift that  
15 dock plate up at that time?

16 A. No, sir, he did not.

17 Q. Did you suggest to him that that  
18 would be a pretty easy way to get it out?

19 A. Yes, sir.

20 Q. What did he say to that?

21 A. He said he was too busy to mess with  
22 it.

23 Q. Too busy. And that would have  
24 involved him going approximately how many feet on  
25 the fork lift?

1 A. From where he's sitting this time?  
2 Q. Yes, sir.  
3 A. Be approximately ten feet.  
4 Q. Ten feet. From me to you?  
5 A. Yes, sir.  
6 Q. Did that make you mad?  
7 A. No, sir. I'm -- I'm accustomed to  
8 the idiosyncrasies that go on over there.  
9 Q. But it must have struck you as being  
10 kind of silly for this man and you to be pulling on  
11 that thing when they had a fork lift right there  
12 within ten feet that could have picked it up. Did  
13 that not strike you that way?  
14 A. Yes, sir.  
15 Q. Now, when you looked at it, what did  
16 you see? What was the position of the strongarm  
17 then?  
18 A. The plate was about two inches up on  
19 the wood handle over the metal plate.  
20 Q. All right. And just so that we can  
21 be sure of what you're saying then, you're talking  
22 about the metal plate that we can see in this  
23 photograph, number four, which has a curved lip at  
24 the end of it?  
25 A. Yes, sir. This plate right here,

1 this notch across here is where we had tried to pull  
2 it out. It was about two inches from that point.

3 Q. Two inches from the end toward the  
4 handle?

5 A. Yes, sir.

6 Q. All right.

7 MR. REYNOLDS: I'll, just if I may,  
8 show this to the jury.

9 MR. JOHNSON: Sure.

10 MR. REYNOLDS: Just refresh your  
11 recollection.

12

13

14

15 BY MR. REYNOLDS:

16 Q. What was the angle of the handle at  
17 that time?

18 A. The angle as to distance of the floor  
19 and the shoe?

20 Q. Um-um. If the shoe was on top of it,  
21 what was the angle that it was sitting?

22 A. I'd say about 30 or 35 degrees.

23 Q. Okay. And was Mr. X in the trailer  
24 at that time?

25 A. Yes, sir. He was wrestling with the



1 strongarm trying to get it from under the plate.

2 Q. All right. When you say wrestling  
3 with it, describe exactly what he was doing.

4 A. He had both arms wrapped around it in  
5 this manner with his hands on the handle and was  
6 trying to swing it from side to side.

7 Q. Was it moving?

8 A. It was moving side to side but the  
9 metal plate was catching on the lip of the shoe and  
10 wasn't allowing it to come out.

11 Q. All right. And did you get in there  
12 to try to help him?

13 A. Yes, sir. John Sanderlin told me to  
14 help him get it out.

15 Q. Sanderlin told you to help him get it  
16 out, is that right?

17 A. Right.

18 Q. And in response to that, did you call  
19 your supervisor to ask if it was all right?

20 A. No, sir. My supervisor had already  
21 told me to expedite the unloading of the trucks.

22 Q. Okay.

23 A. And we needed all the empties we  
24 could get that particular day and we needed to get  
25 it straight so they could unload it so we could get

1 it down to Lambert's Point.

2 Q. So the short answer to my question is,  
3 no, you didn't call him?

4 A. No, sir, I did not.

5 Q. And so you got in the trailer and how  
6 did you try to get it out?

7 A. The same way. I pushed forward on it  
8 to see if I could pry it that way, but the metal  
9 plate would catch on the floor or on the top of the  
10 shoe and wouldn't allow it to come out that way. I  
11 broke it down and pulled on it to see if the metal  
12 against metal would allow it to roll and it wouldn't  
13 come out.

14 Q. Now, when you say break it down, you  
15 mean you just pried it --

16 A. Pushed it all the way down close to  
17 the floor.

18 Q. So the plate was resting on the tip  
19 end of the strongarm?

20 A. Right. To see if the metal on metal  
21 would allow the Johnson bar to slide out.

22 Q. But you couldn't pull it out?

23 A. No, sir, I could not.

24 Q. All right. And then did you tell me  
25 that Sanderlin also tried to get it out?

1 A. Yes, sir. Sanderlin at this point  
2 got off of the fork lift and came over and all three  
3 of us tried to pull it.

4 Q. He brought his fork lift right up to  
5 the plate and he got off of the fork lift and got on  
6 the trailer is what you are telling the jury?

7 A. Yes, sir.

8 Q. And did all three of you pull on it  
9 then?

10 A. Yes, sir, we did.

11 Q. All three of you took hold of the  
12 handle of the strongarm and tried to pull the  
13 strongarm out?

14 A. Yes, sir.

15 Q. All right. And it didn't come?

16 A. No, sir.

17 Q. Okay. Approximately how long did the  
18 three of you work there together to try to get it  
19 out?

20 A. The -- the -- with all three of us  
21 there?

22 Q. Yes, sir.

23 A. Approximately two, three minutes.

24 Q. Okay. And you were still pulling it  
25 back and forth and lifting it and doing everything

1 trying to get it out and it wouldn't come out?

2 A. That's correct.

3 Q. And Sanderlin worked there two or  
4 three minutes there with you --

5 A. Yes, sir.

6 Q. -- with his fork lift sitting right  
7 there and all he had to do was put the blade under  
8 the thing to lift it up, is that right?

9 A. That's correct.

10 Q. Did y'all have any discussion about,  
11 "why are we doing this when we've got the fork lift  
12 here and all you got to do is put the blade of the  
13 fork lift under it and lift it up? Why are we doing  
14 that when that thing is sitting there?" Did you  
15 have any discussion like that?

16 A. No, sir.

17 Q. Nobody thought about the fork lift?  
18 Did you think about it?

19 A. Yes, sir, I thought about it, but he  
20 had already indicated he didn't want to do it.

21 Q. Well, he said he didn't have time  
22 before, isn't that what you told us?

23 A. Yes, sir.

24 Q. But now he's taking time, he's taking  
25 two or three minutes, you're telling us, to do this

1 with the fork lift sitting there, right?

2 A. That's correct.

3 Q. You never mentioned to him, why  
4 don't you use the fork lift?

5 A. No, sir, I did not.

6 Q. All right. So then he's told you  
7 what? What's the next thing Sanderlin said?

8 A. Sanderlin said, "Help him get the  
9 strongarm out before you drop the trailer. I've got  
10 to get the other truck unloaded."

11 Q. And with that, what did he do?

12 A. He got on the fork lift and went into  
13 door two to continue unloading.

14 Q. Okay. And did you and Mr. X continue  
15 to work on the -- try to pull it out?

16 A. No, sir. I went and got a  
17 two-by-four and tried to alleviate some of the  
18 pressure to see --

19 A. Where did you go to get the  
20 two-by-four?

21 A. To the trash bin just outside of the  
22 big drive-in door.

23 Q. All right. Where did you put the  
24 two-by-four?

25 A. Under the center of the plate.

1 Q. And tried to pry it up to relieve the  
2 pressure on the strongarm?

3 A. Yes, sir.

4 Q. And Mr. X was still there to pull the  
5 strongarm out if that had worked?

6 A. Yes, sir.

7 Q. After you got two-by-four under there,  
8 it broke, you said, because it had a knot in it?

9 A. Yes, sir.

10 Q. Okay. Did you try the other end that  
11 maybe didn't have a knot in it?

12 A. When it broke, it wasn't long enough  
13 to use.

14 Q. Okay. So then you went out to get  
15 the four-by-fours?

16 A. Yes, sir.

17 Q. Was that your idea?

18 A. Yes, sir.

19 Q. So you got an 18 inch four-by-four  
20 that you were going to use as the fulcrum and a  
21 longer five foot that you were going to put on top  
22 of the fulcrum to pry up the plate, is that right?

23 A. That's correct.

24 Q. Where with reference to the front of  
25 the plate did you put the 18 inch fulcrum?

1           A.       A little to the left of center.

2           Q.       Okay.

3           A.       Just enough room that I had -- could

4 work between the strongarm and when I was bent over

5 to get the thing on the floor. Just enough room to

6 clear the strongarm.

7           Q.       And were you standing up or squatting

8 down at the time the accident happened?

9           A.       I was bent over. I was getting ready

10 to put the long four-by-four under the plate when it

11 came down.

12           Q.       All right. Bent over sounds to me is

13 different from squatting down.

14           A.       Yes, sir.

15           Q.       You're standing holding this thing in

16 your hand, is that right?

17           A.       That's correct.

18           Q.       And you're in between Mr. X and the

19 strongarm, assuming the dock is that way now and the

20 trailer is running off this way. He's here behind

21 you, is that right?

22           A.       That's correct.

23           Q.       And you're moving up to put this

24 four-by-four down?

25           A.       That's correct.

1 Q. And you apparently put your foot  
2 under the edge of the dock plate in doing this?

3 A. I don't know.

4 Q. You don't know.

5 A. I don't know that I put my foot under  
6 there.

7 Q. Okay. How high was the dock plate  
8 above the bed of the trailer at that time?

9 A. Approximately six to eight inches.

10 Q. Six to eight inches. Okay. And I  
11 believe you told us that you said something to Mr. X  
12 at that time?

13 A. When I first came in with the  
14 four-by-fours I told him not to touch the strongarm  
15 or try to move it or anything until I told him to  
16 and he said that he wouldn't.

17 Q. All right. So at this point you're  
18 telling him what to do and he's agreeing he's going  
19 to do what you said?

20 A. That's correct.

21 Q. And as you are putting this  
22 four-by-four in, you said the four-by-four was like  
23 five feet long?

24 A. Four and a half, five feet, yes, sir.

25 Q. Four and a half to five feet long.



1 So you had plenty of length. All you're doing is  
2 putting it down underneath the edge, is that right?

3 A. That's correct.

4 Q. Did you actually get it under the  
5 edge of the --

6 A. No, sir. To clarify that one, the  
7 shoe came down and caught the edge of the  
8 four-by-four.

9 Q. Which four-by-four?

10 A. The long one. And flipped it back up  
11 into the trailer.

12 Q. Well then, you did get it under there  
13 for it to hit it when it come down?

14 A. Well, it was partially under.

15 Q. Partly under there.

16 A. The top edge anyway.

17 Q. Okay. And when it came down and hit  
18 it, the weight of the plate threw the four-by-four  
19 toward the front of the trailer, is that right?

20 A. That's correct.

21 Q. So the force when it came down, the  
22 force of the plate acted like a tiddly wink and  
23 flipped the four-by-four back out of your hand, is  
24 that right?

25 A. That's correct.

1 Q. Okay. Did you actually see what  
2 happened to the strongarm?

3 A. No, sir. I heard it hit the top of  
4 the roof and saw that it was rested on top of the  
5 freight halfway up in the trailer when everything  
6 had settled down.

7 Q. So it moved backwards also?

8 A. Yes, sir.

9 Q. So again we have the force of the  
10 plate forcing the four-by-four and forcing the  
11 strongarm in one direction toward the front of the  
12 trailer?

13 A. That's correct.

14 Q. Okay. And do you know for sure that  
15 it was the plate that hit your foot as opposed to a  
16 four-by-four?

17 A. The four-by-four was -- short one was  
18 still laying in the floor and the other four-by-four  
19 was laying up in the -- on top of the freight. If  
20 the four-by-four had hit the foot, I would assume  
21 that it would have been pinned under the plate.

22 Q. So you're saying you're sure it was  
23 the plate that hit your foot?

24 A. Yes, sir, I'm reasonably sure.

25 Q. And would you demonstrate -- let me

1 demonstrate on my foot where you say it hit you. I  
2 believe you told me it was above where your street  
3 shoe would be, is that right, up on the ankle up  
4 here?

5 A. Yes, sir.

6 Q. About where I have my hand.

7 A. That was the primary impact, yes, sir.

8 Q. I've got it maybe just a quarter of  
9 an inch above the top of my street shoe.

10 A. Yes, sir.

11 Q. Up on what we would call the ankle,  
12 top of the ankle?

13 A. Yes, sir.

14 THE COURT: Let the record show  
15 counsel is wearing what is known as an oxford type  
16 of shoe --

17 MR. REYNOLDS: All right.

18 THE COURT: -- rather than a high top  
19 shoe.

20

21

22

23 BY MR. REYNOLDS:

24 Q. And then the plate apparently bounced  
25 and hit your toe again and bounced and somehow you

1 were able to get your foot out?

2 A. Yes, sir. From the time the  
3 strongarm flew until I was standing with my -- both  
4 hands around my knee -- was just a very short period  
5 of time. And the thing is not too clear as to how  
6 my foot came out from under the shoe or any of that.

7 Q. Yes, sir. I understand.

8 MR. REYNOLDS: Excuse me just a  
9 minute, Your Honor.

10

11

12 BY MR. REYNOLDS:

13 Q. After the accident happened, what  
14 conversation, if any, did you and Mr. X have  
15 immediately after this happened?

16 A. Well, as soon as the strongarm had  
17 flown up and hit the freight, he -- I turned and  
18 looked at him and he came over to me and said, "Oh,  
19 my God. I just twisted it and it flew out. He  
20 asked me if I was hurt, if I was okay. Put his arm  
21 around me and assisted me out.

22 Q. Let me ask you if it wasn't later  
23 that he told you that and that immediately when it  
24 happened the only conversation you had was that he  
25 asked if you were okay and you told him you thought

1 so?

2 A. No, sir.

3 Q. This deposition that we've talked  
4 about earlier that was taken in October in my office  
5 with your attorney present --

6 A. Yes, sir.

7 Q. -- I'll ask you if at that time on  
8 page 52 at line 19 in response to my question -- and  
9 I'll go back a little bit just to lay the foundation --  
10 line 11, what happened to the man that was helping  
11 you?" "He was standing there with his -- in a state  
12 of surprise and shock, I think, because he was just  
13 standing there wide-eyed looking at me, but he was  
14 still in the trailer. "He was still in the trailer?"  
15 "Yes, sir." "What conversation, if any, did y'all  
16 have immediately after this happened?" Answer, he  
17 asked me if I was okay and I told him I thought so.  
18 And I hobbled on out to the back of the trailer. I  
19 was standing on the shoe. John Sanderlin was coming  
20 out of the truck in door two and he saw me limping  
21 and evidently heard the commotion. And you go on  
22 describing what he said and so forth.

23 MR. JOHNSON: Your Honor, please, I  
24 submit there's nothing inconsistent --

25 THE COURT: He hasn't finished yet.

1 He's making inquiry of him, Mr. Johnson.

2 MR. REYNOLDS: Yes, Your Honor,  
3 that's the inconsistency that I point to.

4 THE COURT: You want --

5  
6  
7 BY MR. REYNOLDS:

8 Q. Is that what you said at that time?

9 A. Yes, it is.

10 MR. JOHNSON: Your Honor, please, I  
11 submit that is not inconsistent with anything he  
12 said today.

13 MR. REYNOLDS: Your Honor, I don't  
14 think that's an objection.

15 THE COURT: It's not an objection at  
16 all, Mr. Johnson. It's argumentative.

17 MR. JOHNSON: Note my exception.

18  
19  
20 BY MR. REYNOLDS:

21 Q. And going back to page 42 in response  
22 to a question -- another question on page 42 at line --  
23 the answer begins at line five and you are  
24 describing the accident. Didn't you say at line 18,  
25 he grabbed it - evidently grabbed it -- and twisted

1 it. At least that's what he told me afterward, that  
2 he twisted it"?

3 A. Yes, sir.

4 Q. That's what you said at that time?

5 A. Yes, sir.

6 Q. So it wasn't immediately when it  
7 happened that he told you that, it was sometime  
8 afterwards, wasn't it?

9 A. No, sir, he told me immediately after  
10 it happened. He also told me again while I was  
11 sitting outside. You interrupted the trend of  
12 thought on the first question by asking was the man  
13 still in the truck and that broke my trend of  
14 thought.

15 Q. I see.

16 A. And I just told you that we did have  
17 an exchange there at first, that he asked me if I  
18 was okay. I just generalized. I didn't know you  
19 wanted specifics.

20 Q. Okay. Mr. Sanderlin, let me call  
21 your attention to the fact that the question about  
22 whether he was still in the trailer was the question  
23 that I asked before I asked you, what conversation,  
24 if any, did you all have immediately after this  
25 happened?" Does that change your answer as to what

1 broke your trend of thought?

2 A. No, sir. You had broken my trend of  
3 thought and I believe it was with another question  
4 as to the man was still in the trailer. But in some  
5 manner you had broken my trend of thought at that  
6 particular time.

7 MR. REYNOLDS: All right. I think  
8 that's all, your Honor. Let me make sure.

9 MR. JOHNSON: I have a couple of  
10 questions on redirect, if I may.

11 THE COURT: All right.

12

13

14 REDIRECT EXAMINATION

15

16

17 BY MR. JOHNSON:

18 Q. Directing your attention, Mr. Stevens,  
19 to Mr. Reynolds' question to you with regard to the  
20 time that you asked Mr. Sanderlin to -- yes, Mr.  
21 Sanderlin -- to raise the shoe the first time when  
22 you were present on the dock and asked him to raise  
23 the shoe for you and you said, I think in response  
24 to Mr. Reynolds' question, that he had nothing on  
25 the fork lift. How long would it have taken him in



1 terms of time to have raised that dock plate with  
2 the fork lift?

3 A. The total operation would take  
4 approximately two and a half, three minutes,  
5 allowing the time for me to walk out, in which case  
6 I wouldn't have been in any hurry because nobody  
7 would be there and backing it up and everything.

8 Q. And directing your attention to the  
9 second time at which time the Johnson bar was caught  
10 under the fork lift. I believe nothing was said at  
11 that time with regard to the fork lift, but Mr.  
12 Sanderlin was standing there with the fork lift and  
13 asked you to assist the unknown man. How long would  
14 it have taken him at that point to have raised the --  
15 he could have at that point raised the dock plate  
16 with the fork lift, could he not?

17 A. I assume so, yes.

18 Q. All right. How long would it have  
19 taken him to have raised the dock plate at that time  
20 and let you extricate the Johnson bar from under the  
21 dock plate?

22 A. 30, 45 seconds.

23 MR. JOHNSON: All right. Thank you.  
24 That's all I have.

25 THE COURT: Anything else, Mr.

1 Reynolds?

2 MR. REYNOLDS: (Shakes head  
3 negatively.)

4 THE COURT: You may come down, Mr.  
5 Stevens. Who is your next witness, Mr. Johnson?

6 MR. JOHNSON: Mr. Hamilton, please.  
7 As an adverse witness.

8 MR. REYNOLDS: I object, Your Honor,  
9 I don't think he's an adverse witness. He's an  
10 employee of the Ford Motor Company, but he's not a  
11 manager, director or agent.

12 MR. JOHNSON: He is the manager of  
13 Ford Motor Company attending the trial sitting at  
14 counsel table with Mr. Reynolds as the Ford's  
15 representative.

16 THE COURT: That does not put him  
17 within what the Court understands to be the  
18 definition of an adverse witness, Mr. Johnson.

19 MR. JOHNSON: You want me to send out  
20 the jury?

21 MR. JOHNSON: No.

22

23

24

25

EDWARD HAMILTON,  
called as a witness, having been

1 first duly sworn, was examined  
2 and testified as follows:

3  
4  
5 BY MR. JOHNSON:

6 Q. State your name, Mr. Hamilton.

7 A. Edward Hamilton, 124 Cottonwood Lane,  
8 Chesapeake.

9 Q. Where are you employed?

10 A. Ford Motor Company.

11 Q. How long have you been so employed?

12 A. 16 years.

13 Q. What is your position?

14 A. Material handling superintendent.

15 Q. As such, what is your position in the  
16 hierarchy of the Ford Plant in Norfolk?

17 A. I have the responsibility of all the  
18 unloading, line feeding, warehousing. Everything in  
19 general for material handling.

20 Q. You report directly to the assistant  
21 manager of the Ford Plant, do you not?

22 A. No, sir.

23 Q. To whom do you report?

24 A. I report to material handling manager.

25 Q. I see. Beneath you there are several

1 material handling supervisors, is that correct?

2 A. That's correct.

3 Q. How many would you say?

4 A. I have presently six supervisors and  
5 two general supervisors.

6 Q. At the time of this accident, how  
7 many supervisors were there?

8 A. I believe I had eight supervisors.

9 Q. All right.

10 A. Maybe nine.

11 Q. And beneath them are the material  
12 handlers, is that correct?

13 A. The hourly people, yes. We have  
14 different classifications.

15 Q. John Sanderlin is a material handler?

16 A. John Sanderlin is an industrial fork  
17 lift operator.

18 Q. At the time of the accident, was he  
19 not a material handler?

20 A. No, sir. We have no classification  
21 as material handler.

22 Q. He was certainly beneath the  
23 supervisors who were beneath you, is that correct?

24 A. That's correct.

25 Q. What is a dock leveler, Mr. Hamilton?

1 A. What is a dock leveler?

2 Q. What is a dock leveler?

3 A. It's a board that automatically comes  
4 up when the truck backs to the dock and then comes  
5 back down.

6 Q. You have sat in the courtroom as Mr.  
7 Krome and Mr. Stevens have both described the way  
8 those dock levelers work, is that correct?

9 A. That's correct.

10 Q. That a truck backs up to the bumpers  
11 and pushes the bumper under and raises the plate and  
12 then puts it back down, is that correct?

13 A. That's correct.

14 Q. have you had trouble with the dock  
15 levelers at the north receiving dock?

16 A. Yes, sir.

17 Q. Would you characterize this as  
18 consistent trouble?

19 A. I've been there 16 years and on  
20 occasion during the 16 years, we have had trouble  
21 with them.

22 Q. Are you aware that on the 10th day of  
23 May, 1978, at the time Mr. Stevens backed his truck  
24 up to dock leveler number three that it was not  
25 working properly?

1 A. No, sir.

2 Q. You were not aware of that?

3 A. I was not aware of it.

4 Q. You were not aware of it at the time  
5 or you are not aware of it now?

6 A. I'm aware of it since this accident.  
7 I mean on hearsay.

8 Q. All right. Was it reported to you as  
9 being not in operation?

10 A. Not to my recollection.

11 Q. After the accident, was it reported  
12 to you as being not in operation?

13 A. Mr. Sanderlin called me and reported  
14 that he had had an accident.

15 Q. All right. Is it fair to say that  
16 this is on again-off again operation that these dock  
17 levelers --

18 MR. REYNOLDS: I think that question  
19 is unclear, Your Honor.

20 THE COURT: Sustained.

21

22

23 BY MR. JOHNSON:

24 Q. Is it fair to say that the dock  
25 levelers at the north receiving dock -- and you know

1 what I mean by the north receiving dock --

2 A. Yes, sir.

3 Q. -- were frequently not in operation?

4 A. Well, at times one could be repaired  
5 and be operative for three months. One could be  
6 repaired and the next day, depending on the truck  
7 driver or now he backs up, be broken again.

8 Q. Who repairs that?

9 A. We have a local maintenance  
10 department.

11 Q. Employees of Ford?

12 A. Employed by Ford.

13 Q. Do you have any idea how heavy a dock  
14 plate is when it's not counterbalanced and working  
15 properly?

16 A. I have no idea. I think in the  
17 deposition I said -- or when you asked -- six, eight  
18 hundred pounds, but I have no idea how much one  
19 would weigh since it's fastened on the opposite end.

20 Q. Would you estimate that within the  
21 range --

22 A. It would be strictly a guess.  
23 However, I have performed this myself over ten years  
24 ago when I was supervisor in that area and it was a  
25 simple matter for me to place a four-by-four and pry

1 it myself and the truck back up.

2 Q. Makes a difference whether the  
3 counterbalancing is working or not, doesn't it?

4 A. I would say so, yes, sir.

5 Q. So that if the counterbalancing were --  
6 they are counterbalanced?

7 A. Yes, they are counterbalanced, but I  
8 mean, if they are broken they won't come up. We  
9 don't pry them if they are working.

10 Q. If the counterbalancing is not  
11 working, then they are obviously not  
12 counterbalanced and obviously heavier than if they  
13 were?

14 THE COURT: Do you understand the  
15 question? If you don't, just say you don't  
16 understand his question.

17 THE WITNESS: I don't know the answer  
18 to it.

19 THE COURT: All right.

20

21

22 BY MR. JOHNSON:

23 Q. Would you discontinue using a loading  
24 dock when it was not working?

25 A. No, sir.



1 Q. What would you do?

2 A. I would continue to load, unload,  
3 trucks and this maintenance work was performed  
4 during the hours that we were not working or on  
5 weekends. This was not a top priority repair job.

6 Q. Who do you normally get to raise the  
7 dock plates when they are broken?

8 A. We normally have a fork lift driver  
9 working in the area.

10 Q. And he raises it with a fork lift?

11 A. Normally, yes, sir.

12 MR. JOHNSON: I think that's all.

13

14

15 CROSS EXAMINATION

16

17

18 BY MR. REYNOLDS:

19 Q. You mentioned hourly workers?

20 A. Yes, sir.

21 Q. Was Sanderlin an hourly worker?

22 A. Yes, sir.

23 Q. Does Sanderlin have any authority to  
24 hire or fire anybody at Ford Motor Company?

25 A. None whatsoever.

1 Q. Do you have authority to hire and  
2 fire at Ford Motor Company?

3 A. None whatsoever, strictly on my own.

4 Q. Have you heard Mr. Stevens describe  
5 an incident where you fired a fork lift driver? Do  
6 you recall such an incident?

7 A. No, sir.

8 Q. Have you ever fired a fork lift  
9 driver?

10 A. It's impossible.

11 Q. Why is that so?

12 A. We have a United Auto Workers Union.  
13 Any -- if I wanted to fire a man, I would have to  
14 take him to the Labor Relations board and he would  
15 be represented by a union committee man and the  
16 decision would be made by Labor Relations whether to  
17 fire him or keep him.

18 Q. In light of that, would you ever tell  
19 someone that "You're finished, go pick up your  
20 check"?

21 A. No, sir.

22 MR. REYNOLDS: All right. That's all  
23 I have.

24 THE COURT: Anything else, Mr.  
25 Johnson?

1 MR. JOHNSON: No, sir.

2 THE COURT: All right, sir. You may  
3 come down. Next witness, Mr. Johnson.

4 MR. JOHNSON: Mr. Sanderlin, please.

5 THE COURT: Members of the jury,  
6 we've been at it about an hour and ten minutes.  
7 would you like a recess? Suppose we have a ten  
8 minute recess. Have the jury retire to the jury  
9 room.

10

11 (Whereupon, a recess was taken.)

12

13 THE COURT: We ready for the jury?

14 MR. REYNOLDS: Yes, sir.

15 THE COURT: All right. Bring in the  
16 jury. All right, Mr. Johnson.

17

18 JOHN H. SANDERLIN,  
19 called as a witness, having been  
20 first duly sworn, was examined  
21 and testified as follows:

22

23

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DIRECT EXAMINATION

BY MR. JOHNSON:

Q. State your name and address and occupation, please, Mr. Sanderlin.

A. My name is John M. Sanderlin. Fork lift driver, Ford Motor Company.

Q. Mr. Sanderlin, you remember the accident with Mr. Stevens and the dock plate at loading dock number three?

A. Yes.

Q. Do you remember the date of the accident?

A. No, I don't. Not offhand.

Q. On that day the dock plate was not working, was it?

A. Well, I guess not.

Q. How long prior to that date had the dock plate not been working?

A. I couldn't tell you offhand.

Q. Prior to that date how long had that dock plate not been working?

A. I couldn't tell you offhand.

Q. You knew prior to the accident it was

1 not working, did you not?

2 A. No.

3 Q. Excuse me just a minute. Had you not  
4 reported it prior to the accident that -- had you  
5 not reported to maintenance prior to the accident  
6 that it was not working?

7 A. At that particular time?

8 Q. On that occasion, yes.

9 A. I had reported it to maintenance.

10 Q. Previous occasions you had had  
11 trouble with these dock levelers in the past, had  
12 you not?

13 A. Yes, I had.

14 Q. What would you do when they were not  
15 working?

16 A. Call the maintenance -- call my  
17 supervisor and let them inform maintenance.

18 Q. Did they come promptly and repair  
19 them?

20 A. Sometime they do and other times they  
21 have to do it between shift time.

22 Q. In any event, when they are not  
23 working you continue to use them, do you not?

24 A. Yes.

25 MR. JOHNSON: All right. That's all

1 the questions I have.

2 THE COURT: Any cross-examination?

3 MR. REYNOLDS: If I may, I'll just go  
4 ahead with my examination.

5

6

7

CROSS EXAMINATION.

8

9

10 BY MR. REYNOLDS:

11 Q. Mr. Sanderlin, you say that from time  
12 to time these dock levelers are broken down?

13 A. Yes.

14 Q. And if they are broken down, you are  
15 still able to use them?

16 A. Still able to use them.

17 Q. Okay. And in this case you were  
18 asked if you remember the day of the accident, you  
19 do remember that Mr. Stevens got hurt back there on  
20 the north --

21 A. I do remember that, but not the date.  
22 I can't recall the date.

23 Q. Okay. On that day, what was your  
24 first recollection of being aware of the fact that  
25 Mr Stevens was there and that there was any problem

1 with a dock plate?

2 A. Repeat that again. I didn't quite  
3 understand.

4 Q. What's the first thing that you  
5 became aware of? What did you see or hear first  
6 with regard to Mr. Stevens being there and being a  
7 problem with a dock plate?

8 A. Oh, after I returned back carrying  
9 some stock to a warehouse and I saw him and another  
10 truck driver was standing over each other. His foot --  
11 he had his sock off, his shoe. Shoe and sock off.

12 Q. Before that happened, had you had  
13 anything to do with seeing that they were working on  
14 a dock plate?

15 A. No.

16 Q. Did Mr. Stevens make any request to  
17 you to lift the dock plate?

18 A. No. I was busy at the time working  
19 on another truck.

20 Q. The truck driver -- man that you've  
21 described as a truck driver -- was he an employee of  
22 Ford Motor Company?

23 A. No, he wasn't.

24 Q. Do you know now who he was employed  
25 by?

1           A.       No, I don't.

2           Q.       Do you know for what reason he was  
3 there, what capacity he was there as?

4           A.       Well, he was -- he was an independent  
5 truck from out of town. He brought in some freight.

6           Q.       Do you have any authority at Ford  
7 motor Company to employ helpers to help you work?

8           A.       No.

9           Q.       Did you on this occasion request this  
10 man, this unknown truck driver, to help Mr. Stevens?

11          A.       No.

12          Q.       Did you become aware of the fact that  
13 the Johnson bar, the strongarm that we're talking  
14 about, was hung up under the dock plate in a trailer?

15          A.       No.

16          Q.       I mean at any time before the  
17 accident, did you become aware of it?

18          A.       No. Not right offhand. I can't  
19 remember.

20          Q.       Do you recall -- well, let me put it  
21 this way: Mr. Stevens has testified that when the --

22                   MR. JOHNSON: Object to leading.

23                   MR. REYNOLDS: No, this isn't leading.

24                   THE COURT: He hasn't --

25                   MR. REYNOLDS: I haven't led him yet.



1 THE COURT: Let's get the question.  
2  
3  
4  
5 BY MR. REYNOLDS:  
6 Q. Mr. Stevens has testified that you  
7 got off of your fork lift and got in his trailer,  
8 and with this truck driver and him, pulled on the  
9 strongarm to try to pull it out from under the plate.  
10 Is that true or not?  
11 MR. JOHNSON: I think that is a  
12 leading question and I object to it.  
13 THE COURT: What about it, Mr.  
14 Reynolds?  
15 MR. REYNOLDS: The question is did he  
16 say that, yes or no.  
17 THE COURT: All right. Mr. Johnson.  
18 MR. JOHNSON: If Your Honor, please,  
19 he has told him about testimony during which he was  
20 excluded and he is asking him now for a question to  
21 which he is suggesting the answer.  
22 THE COURT: I don't think he  
23 suggested the answer. I overrule you, Mr. Johnson.  
24 Go ahead, Mr. Reynolds.  
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BY MR. REYNOLDS:

Q. Did that happen?

A. Repeat it again.

Q. Mr. Stevens has testified that after the strongarm got stuck under the dock plate, that you got off of your fork lift and you came into the trailer, and with the other truck driver and Mr. Stevens, tried to pull the Johnson bar out from under the dock plate. Did you do that?

A. No, I can't recall doing that.

Q. Okay. After you became aware of the accident, tell me where you were and how you became aware of it.

A. When I returned back from piling some stock and I was working in door two and I seen a little confusion over there. That's when I heard there was an accident and immediately then I returned, called one of my supervisors -- called my general foreman -- and he in turn called Mr. Williams in and Wynn in and picked him up in an ambulance and carried him to first aid.

Q. All right. In the past when the plates were broken down, do you ever request other truck drivers to help pick them up?

1           A.       No.

2           Q.       Do other truck drivers ever pick the  
3 plates up themselves?

4           A.       Yes, they have.

5           Q.       Have you ever seen Mr. Stevens do it  
6 on occasion?

7           A.       Yes, I have.

8           Q.       What would be the occasion when  
9 another truck driver might pick up a shoe that  
10 wasn't working otherwise?

11          A.       Well, I seen them try it different  
12 ways. Some truck drivers, independent truck drivers  
13 there, might be more than one back there, and they  
14 help each other pick it up. Unless they could get  
15 me, if I had time, pick it up with the fork lift  
16 blade there. And Mr. Stevens' company, they come --  
17 usually they keep a wrecker man over there and they  
18 use a wrecker. Little different than outside of the --

19          Q.       Say that again. Mr. Stevens' company,  
20 you say?

21          A.       Mr. Stevens and his other fellow  
22 workers, they work a little different than other  
23 truck drivers from other freight lines.

24          Q.       All right. What's the difference  
25 with the way Spector works?

1           A.       Well, they keep a man all times so  
2 they have a person when they pick it up. They  
3 usually pick it up from the front of the trailer  
4 with the Johnson bar and pinch it. Take a tractor  
5 out of gear when they raise up on it, it come back  
6 automatic. It fall right to the door. So they  
7 don't spend a bunch of time trying to get it into  
8 the door as another truck driver who's not there  
9 regular.

10           Q.       Okay. If you ask a truck driver to  
11 pick up the plate and he said, no, he didn't want to  
12 be bothered, would you have any authority over  
13 another truck driver?

14           A.       I never ask a truck driver to pick  
15 the plate up.

16           Q.       You never had one tell you, yes or no?

17           A.       No.

18                   MR. REYNOLDS: All right. That's all.  
19 Answer Mr. Johnson.

20

21                   REDIRECT EXAMINATION

22

23

24 BY MR. JOHNSON:

25           Q.       Mr. Sanderlip, have you ever been

1 fired by Ford Motor Company?

2 A. No.

3 Q. Have you ever been placed on  
4 probation by Ford Motor Company?

5 A. Yes, I have.

6 Q. Are you on probation by Ford Motor  
7 Company now?

8 A. No.

9 Q. What was the circumstances and when  
10 were you placed by --

11 MR. REYNOLDS: Objection.

12 THE COURT: He's your witness, Mr.

13 Johnson. <sup>Johnson</sup> I'm cross-examining him. Mr. Reynolds  
14 made him his own witness, if Your Honor, please. He  
15 went beyond the scope of my direct examination and  
16 made him his own witness.

17 THE COURT: You brought him in here  
18 and you vouched for him, Mr. Johnson. I overrule  
19 you. I sustain the objection.

20 MR. JOHNSON: Note my exception.  
21 That's all.

22 THE COURT: All right. Anything else?

23 MR. REYNOLDS: You may come down.  
24

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH, to wit:

I, Barbara A. W. Jenkins, CSR, RPR, do  
hereby certify that the foregoing pages are a true  
and correct transcript of my Stenotype notes of the  
proceedings had at the time and place in the caption  
mentioned.

This 1st day of December, 1980.

*Barbara A. W. Jenkins*  
Barbara A. W. Jenkins

I was commissioned as Barbara Ann walls  
My commission expires June 29, 1984

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V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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WILLIAM C STEVENS,

Plaintiff,

v.

L-80-499

FORD MOTOR COMPANY,

Defendant.

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EXCERPTS OF PROCEEDINGS

DATE: November 20th and 21st. 193

BEFORE: The Honorable Morris B. Gutterman

APPEARANCES:

By: S. Riley Johnson, Esquire,  
Counsel for the plaintiff.

WHITE, REYNOLDS, SMITH & WINTERS

By: Allan S. Reynolds, Esquire  
and Robert Mills, Esquire,  
Counsel for the Defendant.

1                                   ARTHUR A. KIRK,  
2                                   called as a witness, having been  
3                                   first duly sworn, was examined  
4                                   and testified as follows:  
5  
6

7                                   DIRECT EXAMINATION  
8  
9

10       BY MR. JOHNSON:

11                   Q.       Doctor, would you state your name and  
12       your address and your place of practice?

13                   A.       Arthur Ray Kirk, I practice at 3300  
14       High Street in Portsmouth, Virginia and practice  
15       orthopedic surgery.

16                   Q.       Would you state for us your  
17       educational background?

18                   A.       Well, I graduated from Virginia  
19       Polytechnic Institute in 1937 and Medical College of  
20       Virginia in 1941, after which I entered one year at  
21       Walter Reed General Hospital, Washington, D.C.

22                               Following that I served as medical  
23       officer in the Armed Forces for four years. And  
24       following that I returned to the Medical College of  
25       Virginia and took one year of pathology, one year of



1 general surgery and three years of orthopedic  
2 surgery. Of orthopedic surgery, eight months was  
3 accommodation of children's surgery and plastic  
4 surgery. About half and half.

5 And I've been practicing in Portsmouth,  
6 Virginia since 1951. And I received my Boards in  
7 orthopedic surgery in 1954.

8 Q. I was about to ask you in which  
9 states, if any, are you licensed to practice  
10 medicine. I presume Virginia. Others?

11 A. Only Virginia. I have not applied  
12 for any other license.

13 Q. Have you been certified to practice  
14 your specialty by the Board in charge of such  
15 specialty?

16 A. Yes, I stated that.

17 Q. What were the requirements for  
18 certification in your specialty?

19 A. Well, it required -- let's see. It  
20 was three years of orthopedic surgery and one year  
21 of general surgery, and in addition I took two  
22 additional years, and required you to practice for  
23 three years in your specialty and then take an  
24 examination which I've passed.

25 Q. Are you a member of any professional

1 organizations?

2 A Well, the Portsmouth Academy of  
3 Medicine, the Medical Society of Virginia, the  
4 American Medical Association, and several others  
5 American Academy of Orthopedic Surgeons.

6 Q. All right. Did you at some point  
7 and when did you, first see Mr. Stevens, who is the  
8 plaintiff here?

9 A. I first saw him in my office on the  
10 26th of June, 1979.

11 Q. What history did he give you?

12 A. He stated that a dock, D-O-C-K, plate  
13 fell on his right foot while he was working for the  
14 Ford Motor Company and he said that he was reported  
15 from -- and I have a copy of the report -- from  
16 Portsmouth General Hospital that said that they had  
17 no -- showed no fracture of the foot.

18 He was referred to me by Doctor  
19 Lemuel Mayo who practices general surgery in  
20 Portsmouth.

21 And he indicated that it hurt in  
22 front of his ankle and at the base of his metacarpal  
23 which would be the midportion of the foot on the top  
24 of the foot where the plate fell.

25 He also said he had pain on the -- in

1 the region of the tendons that raise the foot up,  
2 raise the ankle up, particularly at the end of the  
3 day when he was working.

4 On examination he had a three and a  
5 half by five inch area of discoloration on the top  
6 of his foot and he lacked 20 degrees flexing that  
7 is bending his right toes down compared to the left  
8 And had pain on doing this in the top of his foot  
9 when he was doing this.

10 Q. Why would that be Doctor? What is  
11 that? Is there any particular reason for that?

12 A. Well, I'm just -- I'll come to that  
13 in just a moment.

14 Q. All right. Thank you.

15 A. This is what he was complaining of.

16 Q. Yes, sir.

17 A. He said it hurt in front of his ankle  
18 on holding his foot up, that is bringing his foot  
19 back.

20 Review of X-rays taken at Portsmouth  
21 General Hospital on the 12th of May, 1978 of the  
22 right foot and there was -- I thought from that he  
23 may have had a rupture of the tendons that extend  
24 his toes.

25 He could have had a rupture of one of

1 the tendons, and I believe he probably did, but he  
2 still was able to work his toes well and each tendon  
3 that went down to his toes worked well.

4 This is because sometimes tendons  
5 that go down to the foot and go down to the toes,  
6 will be connected one to the other so you can cut  
7 one of them and still be able to straighten all of  
8 your toes.

9 I thought at the time that he also  
10 probably had a fracture of the inner side of his  
11 ankle, but in reviewing that since that time, it s  
12 my opinion that he did not have a fracture of the  
13 ankle. And that X-ray that he had originally did  
14 not show a fracture.

15 I thought it might have had a  
16 hairline fracture in there, but on since reviewing  
17 and then comparing together other X-rays, it s my  
18 opinion he did not have a fracture there.

19 He was walking with a limp at the  
20 time. And it was my opinion at the time that he had  
21 20 percent permanent partial disability of his right  
22 foot due to the pain and weakness that he was having.

23 I fitted him with an arch support on  
24 the second of July, 1979 and injected steroid that  
25 is a Cortisone into his foot which we frequently do

1 because it will sometimes get rid of pain that  
2 people have locally

3 But this did not seem to help him.  
4 It gave him temporary relief of some of the pain  
5 because of Xylocaine that I put in there which does  
6 give relief of pain.

7 I asked him to return in two weeks  
8 and to return to work sooner if he was able to.

9 On the 17th of July 1979 he stated  
10 that he used a truck in his work and his right ankle  
11 still hurt. The injection helped for about a day  
12 which was probably due to the Xylocaine and not due  
13 to the injection that I -- the Cortisone that I gave  
14 him.

15 It was then worse for about three  
16 days which you would normally expect after an  
17 injection. It usually is worse for about two or  
18 three days.

19 He was still tender in front of his  
20 ankle. I had some lab work run on him which was  
21 essentially normal. There was a slight variation in  
22 it, but one of the things that I considered was a  
23 possibility that he may have gout, because people  
24 with gout when they are hurt they do not respond and  
25 get well as fast as they ordinarily would. But I

1 treated him for gout and this did not help.

2 I gave him some Butazolidin which  
3 again, is a medicine we give for arthritis he said  
4 it helped a little bit but did not help enough to  
5 keep on taking it.

6 On the 31st of July 1979 I injected  
7 his ankle and that didn't -- wait a minute I  
8 didn't do it at that time, but I had injected his  
9 ankle and it did not help.

10 I put him on some Indocin, which  
11 again, is a medicine that we use for -- to cut down  
12 on inflammation, and it did not help.

13 On the 20th of August, 1979 I again  
14 checked his right foot. He still lacked 20 degrees  
15 bringing his foot back and he had limited bringing  
16 it down and he lacked 20 degrees turning his foot in.  
17 He could turn it out normally, but lacked 20 degrees  
18 turning it in.

19 He had satisfactory pulses in his  
20 foot. And he wasn't able to bend his toes all the  
21 way down as he did on the other foot. He still had  
22 the increased pigmentation. That is, the increase  
23 color of his foot which is present when people have  
24 an injury and have bled underneath the skin. And  
25 this was still present.

1 He also had increased color of his  
2 foot when he let his foot hang down that would  
3 become more purple than the other foot.

4 He had some irregularity of the bone  
5 between the -- of the ankle joint, which was not  
6 great in amount. A man his age, they frequently  
7 have this any way and they frequently will develop  
8 this after an injury.

9 And he complained of his foot running  
10 up along what we call the anterior tibial  
11 compartment which people complain of when they have  
12 shin splints in front of their leg.

13 His ankle was taped and the taping  
14 helped him temporarily. And I gave him something  
15 for pain.

16 And on the -- on September the 7th  
17 1979, I put him on some other medicine for gout and  
18 this did not help him either. The tape caused  
19 itching of the skin which it sometimes does in some  
20 people.

21 He still was tender in front of his  
22 ankle and the dorsalis pulse, which is the pulse of  
23 the artery that comes down in front of his foot  
24 Seemed to end just about where he was complaining of  
25 his pain in his foot.

1 I injected this again with a  
2 Cortisone and he wanted to have X-rays which I  
3 gave him to take to whoever he wanted to take them  
4 to.

5 I again saw him on the 14th of  
6 September, 1979. He had pain in front of the right  
7 foot in the ankle region. His ankle joint was  
8 swollen.

9 He said it was swollen, but I just  
10 wasn't quite sure whether it was swollen or not. It  
11 may have been a little swollen, but if it was, it  
12 was not greatly swollen at that time.

13 He stated that he exercised it and it  
14 became worse. So I put a short leg walking cast on  
15 him to immobilize the foot and the ankle.

16 And he came back -- and I was to see  
17 him back in two weeks. I gave him again another  
18 medicine that we give, which we give for arthritis  
19 and also gave him something for pain and referred  
20 him to Doctor Cohen at the Medical College of  
21 Virginia in Richmond, Virginia. I referred him to  
22 the Pain Clinic.

23 It was my opinion when I last saw him  
24 he had 20 percent permanent partial disability of  
25 his right lower extremity. As to an exact diagnosis,



1 I can't put an exact diagnosis on it.

2 In my opinion, it was due to the  
3 injury and the pain that he was having and  
4 disability that he was having. It was my opinion,  
5 again, that he did have a tendon which had been  
6 injured in his foot.

7 And I don't know what other injuries  
8 he had and I don't know why he did not respond  
9 normally as you would normally expect somebody to do  
10 but he did not.

11 Q. All right Doctor. Can you tell me --  
12 Doctor, is this your bill to date?

13 A Yes. Here's a copy of the bill  
14 without any marks on it.

15 Q. All right. I'll introduce that one.

16 A. Extra copy.

17 Q. All right.

18 MR. JOHNSON: I think this is  
19 plaintiff's number eight, Your Honor.

20 THE COURT: It is.

21  
22 (Whereupon, the document  
23 referred to was marked  
24 Plaintiff's Exhibit 8 )  
25

1 MR. JOHNSON: Thank you, Doctor.

2 Answer Mr. Reynolds.

3  
4  
5 CROSS EXAMINATION  
6  
7

8 BY MR. REYNOLDS:

9 Q. Your last visit was September 27th of  
10 1979?

11 A. Yes, sir.

12 Q. Not quite a year and a half after the  
13 accident. Is that correct?

14 A. That's right, yes.

15 Q. And during that period of time, did  
16 he have any medical problems other than the foot  
17 problems for which you were treating him?

18 A. I didn't treat him for any medical  
19 problems. I didn't refer him to anyone for medical  
20 problems.

21 Q. Okay.

22 A. I do know he has been in the hospital  
23 since that time for other problems, but --

24 Q. Since he was released by you?

25 A. Yes. But I have no personal

1 knowledge of exactly what it was for.

2 Q All right. And your rating of 20  
3 percent permanent partial disability of the right --  
4 is that of the right ankle?

5 A. No, that's the right lower extremity  
6 that is the right leg.

7 Q. Okay. And you base that on the fact  
8 that although you don't know exactly what it is he  
9 did not respond normally and continues to have some  
10 problem with a tendon in his foot?

11 A. That is right yes

12 Q. Did you prescribe any kind of a brace  
13 for him?

14 A. I put a cast on. I did not prescribe  
15 a brace for him.

16 Q. All right. And as far as you are  
17 concerned, that 20 percent rating is still a fair  
18 rating?

19 A. Yes, sir.

20 MR. REYNOLDS: Okay. Thank you very  
21 much.

## REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. One last question in rebuttal his last visit to you was what date?

A September 27th. September the 27th 1979.

MR. JOHNSON: Thank you, sir.

THE COURT: You finished with Doctor Kirk? He's excused to go about his calling, gentlemen?

MR. JOHNSON: Yes, sir.

THE COURT: Thank you, Doctor. You are excused. You may go about your business.

\* \* \*

1 MR. JOHNSON: Call Doctor Adelaar  
2 please. I thank the Court for its indulgence for  
3 letting me see Doctor Adelaar.

4 THE COURT: That s all right sir  
5 Bring in the jury.

6  
7 (Jury returned to courtroom )

8 ROBERT S ADELARR W D  
9  
10 called as a witness having been  
11 first duly sworn, was examined  
12 and testified as follows:

13  
14  
15 DIRECT EXAMINATION

16  
17  
18 BY MR. JOHNSON:

19 Q. Doctor, would you state your name  
20 please?

21 A. Robert S Adelaar

22 Q. Where do you reside?

23 A. Richmond Virginia.

24 Q. And where are you employed or in what  
25 capacity are you employed?

1           A.       I am an assistant professor of  
2 orthopedics at the Medical College of Virginia. I am  
3 chief of orthopedics at the McGuire VA Hospital in  
4 Richmond.

5           Q.       Would you tell us what your  
6 educational background is please, Doctor?

7           A       Starting at what point?

8           Q.       Probably college level.

9           A.       Four years -- five years of Lehigh  
10 University with a BS in engineering and applied  
11 science. Then four years of medical school at the  
12 University of Pennsylvania.

13                   Then postgraduate training at Duke  
14 University. Internship in medicine. Residency in  
15 general surgery and then four years of orthopedics  
16 and one year of hand surgery at Duke University  
17 Medical School.

18                   Then I joined the staff at the  
19 Medical College of Virginia as an assistant  
20 professor in July of 1976. And I've been there in  
21 that capacity since then.

22           Q.       In which, if any, states are you  
23 licensed to practice medicine?

24           A.       I am licensed to practice in the  
25 Virginia and North Carolina.

1 Q. Have you been certified to practice  
2 your specialty? Do you have a specialty?

3 A. Specialty of orthopedic surgery with  
4 a subspecialty in hand surgery and foot surgery

5 Q. Have you been certified to practice  
6 your specialty by the Board in charge of such  
7 specialty?

8 A. Yes, I have.

9 Q. What were the requirements for your  
10 certification in your specialty?

11 A. Well, the requirements were four  
12 years of orthopedic residency training, one year of  
13 practice, and you have to pass the Board's in  
14 orthopedic surgery, which were given in September  
15 1977 which I completed and passed.

16 Q. Are you a member of an organization  
17 called the Pain Clinic?

18 A. Yes, I am.

19 Q. Tell us where and what that is.

20 A. The Pain Clinic is a multispecialty  
21 clinic within the confines of the Medical College of  
22 Virginia for physicians who deal with problems  
23 related to pain and the consequences thereof.

24 It consists primarily of a  
25 rehabilitation specialist, an orthopedic surgeon, a

1 neurosurgeon, a neurologist, a psychiatrist and any  
2 other ancillary personnel that may be needed  
3 depending on the particular case.

4 Q. What part do you play in this Pain  
5 Clinic?

6 A. I'm the orthopedic specialist that is  
7 part of the orthopedic clinic and am called upon to  
8 evaluate people who have primary musculoskeletal  
9 problems.

10 Q. Is it fair to say that you and the  
11 rest of the clinic works as a team?

12 A. Yes.

13 Q. Did your Pain Clinic see Mr. Stevens  
14 and if so, when and under what circumstances?

15 A. Mr. Stevens was seen by the Pain  
16 Clinic and admitted in November -- actually November  
17 the 25th, 1979 -- and he remained until the 30th of  
18 November, 1979.

19 Q. During this time, were you called in  
20 consultation?

21 A. Yes, I was.

22 Q. Tell me what was done for him and to  
23 him during this period of time by the Pain Clinic?

24 A. During his evaluation at the Pain  
25 Clinic he was seen by several specialists. He was



1 seen by a psychiatrist. He was seen by a  
2 rehabilitation specialist. He was seen by myself  
3 A neurosurgeon, a neurologist.

4 And he also had a study called an  
5 electromyogram done, which is needle testing done in  
6 the lower leg muscles to determine if there's any  
7 neurologic deficit in the lower leg or problems in  
8 the conduction time of the nerves which run down the  
9 leg.

10 This test was normal. You want me to  
11 go into the evaluation of each individual or --

12 Q. Yes, I do. But first of all, what  
13 history did he give you?

14 A. The history he gave us is that in May  
15 of 1978 he had injured his right foot, he alleged,  
16 while working for Spector Industries, which was a  
17 trucking company in Portsmouth, Virginia.

18 He stated that an 800 pound steel  
19 plate fell directly on the top or the dorsum of his  
20 right foot. And since that time he had chronic pain  
21 in the foot and had been unable to bear weight  
22 effectively for ambulation.

23 Q. Based on that history, you then  
24 evaluated him?

25 A. That's correct.

1 Q. Did you hospitalize him during this  
2 evaluation?

3 A He was hospitalized at the diagnostic  
4 center at the Medical College of Virginia. It's  
5 really ancillary to the hospital. It's a diagnostic  
6 center for people who aren't ill.

7 Q. For what period of time was he  
8 hospitalized?

9 A. From the 25th of November through the  
10 30th of November, 1978.

11 Q. During that period of time, was he  
12 seen by the Pain Clinic, including you?

13 A. That's correct.

14 Q. An evaluation of him was done, is  
15 that correct?

16 A. That's correct.

17 Q. Tell us about the evaluation, if you  
18 will, please.

19 A. Our evaluation -- or my evaluation --  
20 was that I felt that this gentleman had a pain  
21 pattern which was compatible with a sympathetic  
22 dystrophy. Sympathetic dystrophy is a type of  
23 condition which can follow crush injuries to certain  
24 extremities. It can be seen in the upper  
25 extremities, as well as the lower extremities.

1 Q. What do you mean by the upper  
2 extremities?

3 A. The hands. Commonly seen in the  
4 hands and wrists, and also seen in the feet --

5 Q. All right.

6 A. -- after crushing type injuries. The  
7 problem with the sympathetic dystrophy is that there  
8 is a malregulation in the nervous supply to the  
9 blood vessels that go to the leg.

10 In this instance to Mr. Stevens  
11 ankle, and foot area, which caused his foot to react  
12 inappropriately to temperature, pressure, responses,  
13 which caused his feet to slowly empty and not empty  
14 his venous blood adequately, therefore, he'll have  
15 chronic swelling.

16 It also causes tenderness to touch  
17 and pressure. All of which Mr. Stevens  
18 demonstrated during our examination.

19 Q. Can you tell us more about the  
20 evaluation that was done by the clinic?

21 A. He was seen by a psychiatrist because  
22 of the problem with certain types of pain turns into  
23 certain types of neurosis, and for this reason it's  
24 important to differentiate whether the patient has a  
25 neurosis and exacerbation of the pain because of the

1 neurosis or whether he has true, what we call,  
2 organic type of pain.

3         The psychiatrist who evaluated him  
4 felt this was -- there was no underlying neurosis or  
5 anxiety reaction or hysteria and he felt there was  
6 an organic ediology for the pain that Mr Stevens  
7 was having.

8         He could not comment on how much pain  
9 he should have or how much the organic problem was.  
10 He was also seen -- had an electromyogram which I've  
11 already presented to you which was normal.

12         He was also seen at another time by  
13 Doctor Barnes, the vascular surgeon, because of the  
14 problem with the swelling.

15         And Doctor Barnes is also a member of  
16 the Pain Clinic. And Doctor Barnes also felt that  
17 there was no evidence of thrombophlebitis or  
18 significant venous disease or arterial disease and  
19 he felt he had a type of sympathetic dystrophy

20         Q.         What was done for the sympatnetic  
21 dystrophy by this clinic, by this Pain Clinic?

22         A.         The members of the Pain Clinic  
23 recommended two courses of treatment. One was to  
24 attempt to do a series of nerve blocks to improve  
25 the sympathetic or increase sympatnetic tone to his

1 foot.

2 This was evaluated by Doctor Ratli  
3 who is an anesthesiologist, and he felt that because  
4 of the thickness and the weight that Mr Stevens had  
5 around the waist that this would be a technically  
6 impossible task to do

7 So therefore, he had peripheral nerve  
8 blocks done, specifically the tibial nerve, in an  
9 attempt to decrease the amount of sympathetic flow  
10 to the foot.

11 Q. What is a tibial nerve block?

12 A. The posterior tibial nerve is a nerve  
13 that runs on the inside of the ankle just below the  
14 ankle bone and it is blocked at this point right  
15 here. See that? In an attempt to block not only  
16 the nerve, but the fibers of sympathetic quality  
17 that run with the nerve.

18 All the major nerves to the  
19 extremities have the sympathetic nervous fibers  
20 which go with it.

21 Q. How do you block it when you say you  
22 block it?

23 A. You block it with a local anesthetic  
24 such as Xylocaine, which was used in this particular  
25 case and a -- in other words, it is injected and acts

1 within one to two minutes.

2 He also had a long acting medication  
3 called Marcaine which was combined with the short  
4 acting to give him a longer lasting result. Similar  
5 to what the dentist would do when he tries to drill  
6 your teeth.

7 Q. All right. During the course of the  
8 following several months, how often, if you know,  
9 was he seen by members of your clinic, of your team?

10 A. I don't have the specific number of  
11 times that the other members saw him. I saw him  
12 from March of 1980 on about once a month.

13 Q. You personally saw him?

14 A. I personally saw him. Then he was  
15 also being seen by Doctor Rafii, and also by Doctor  
16 Barnes, the vascular specialist. Doctor Rafii was  
17 the anesthesiologist.

18 During this time, I also neglected to  
19 mention, the second thing which in addition to the  
20 blocks which were recommended by the Pain Clinic, we  
21 also recommended he have peripheral nerve stimulator  
22 applied.

23 And Doctor Rafii was both in charge  
24 of the blocks and of the peripheral nerve stimulator  
25 and did both of those things.

1 Q. What is a peripheral nerve stimulator?

2 A. Peripheral nerve stimulator is an  
3 electrical impulse which is by putting leads on the  
4 skin you can overload the nerve and block, similar  
5 to what you would do by blocking a radio transmitter

6 You would block the nervous input  
7 from the foot into the nerve by overloading the  
8 circuit by an external electrical stimulus

9 So that all you're feeling is the  
10 impulses from the stimulator, and hopefully,  
11 blocking the impulses from the ankle and the foot to  
12 enable the patient to be more comfortable and use  
13 his foot more effectively.

14 Q. What does this thing look like?

15 A. It is a box about three by four  
16 inches. It fits on the belt. It has two wires  
17 which -- two to four wires, depending on the number  
18 of leads -- which leads down to a pad which is one  
19 inch square and the pad is taped on the skin

20 And the box is on the belt fits on  
21 the belt. The wires run down the pant leg on the  
22 inside around where the nerve is or around where the  
23 tender area was.

24 The other thing which was recommended  
25 by Doctor Cohen, the rehabilitation specialist was

1 the brace which he is wearing now. The brace was  
2 given to Mr. Stevens in an attempt to unload the  
3 foot, to transmit the force to the knee and bypass  
4 the foot when he walks to allow him to walk more and  
5 bear more weight on his leg.

6 Q. Are there objective findings in  
7 connection with sympathetic dystrophy or is it all  
8 subjective?

9 A. There are objective findings.

10 Q. What are they?

11 A. Tenderness to pressure,  
12 hypersensitivity, discoloration of the skin,  
13 abnormal sweating of the skin. These are the  
14 primary findings.

15 Q. Has Mr. Stevens exhibited these  
16 findings?

17 A. Mr. Stevens has exhibited the  
18 tenderness to palpation, the discoloration and  
19 abnormal sweating.

20 Q. Can you demonstrate that to the jury?

21 A. We can demonstrate that if Mr.  
22 Stevens will bear his leg for us.

23 MR. REYNOLDS: I object to the  
24 performance of medical experiments in the courtroom.  
25 There's no way it can be controlled in front of the



1 jury and no way that we can control Mr. Stevens  
2 reactions to it. I think it would be highly  
3 improper.

4 THE COURT: Well, if the doctor feels  
5 that he can control it and if he feels he can keep  
6 his patient under control I think your objection is  
7 not wellfounded.

8 Doctor, can you control the  
9 experiment? Will the patient be controlled?

10 THE WITNESS: It will be an  
11 examination. I'll look at the foot and examine it  
12 with you. I can control that part of it. It is not  
13 an experiment.

14 THE COURT: It is not an experiment.  
15 Merely a demonstration.

16 THE WITNESS: Mr. Stevens asked me  
17 what my examination was and how I performed the  
18 examination and what my findings would be today if I  
19 examined it.

20 THE COURT: You may so examine sir  
21 Note objection to Court's ruling by defense counsel

22 MR. REYNOLDS: Yes, sir  
23  
24  
25

1 BY MR. JOHNSON:

2 Q. What will you have Mr Stevens do  
3 Doctor?

4 A. Why don t we bring two chairs up and  
5 he can take his brace off.

6 The first thing you note is the color.  
7 And this foot appears to me -- my opinion is that  
8 this foot slightly has more color to it, slightly  
9 redder than this one.

10 The pulses have been determined in  
11 the past to be present by Doctor Barnes.

12 As we move Mr. Stevens' ankle on this  
13 side, you will see there is a restriction of motion  
14 Okay? Compared to the ankle motion on the other  
15 side.

16 The restriction of motion is due to  
17 scarring and swelling about the ankle capsule. This  
18 causes him not to be able to -- as he steps he  
19 can't push over his foot, because as we normally  
20 take a step on the ground and as our body moves over  
21 our foot -- the foot comes up into what we call  
22 dorsiflexion like this.

23 Mr. Stevens foot does not come past  
24 neutral. The normal dorsiflexion is about ten to  
25 fifteen degrees. And this foot is normal.

1 In that regard, the other thing is  
2 the limited motion in what we call flexion or moving  
3 toward the ground. And this again is limited in the  
4 amount of flexion he can obtain.

5 Most of the swelling today, I would  
6 localize around the ankle capsule which is right in  
7 here.

8 All right. I think that's basically  
9 what we see today.

10 Q All right. Thank you. Doctor Have  
11 you addressed yourself to how this foot reacts with  
12 regard to temperature changes?

13 A. In the classical sympathetic  
14 dystrophy, the foot does not respond appropriately  
15 to the particular temperature, therefore, when it's  
16 cool outside -- and what your normal foot does when  
17 it's cool outside is it tries to increase the blood  
18 supply to the skin.

19 In a sympathetic dystrophy this does  
20 not occur. There is a constriction of the blood  
21 supply and less blood supply

22 And the reversal occurs when it s hot  
23 You try to get constriction in the normal foot of  
24 the blood supply to the skin. And a person who has  
25 a dystrophic pattern, there is an increase in the

1 blood supply so the foot gets hotter when it should  
2 be cooler and gets cooler when it should be getting  
3 hotter.

4 Q. Will you recite your own visits with  
5 Mr. Stevens the last few months and your  
6 observations?

7 A. I'm reading from my office notes. I  
8 saw Mr. Stevens initially after the Pain Clinic. He  
9 was discharged on the 30th of November.

10 I then saw him on March the 7th, 1980.  
11 And at that time I reported that he had increased  
12 sweating, cold intolerance and pain in and around  
13 the ankle and foot on the right side.

14 And then I saw him in April 16th of  
15 1980. And at that time I felt that there may be,  
16 because of the swelling that he was having,  
17 possibility of having venous disease, and therefore,  
18 I referred him to Doctor Barnes, who is a vascular  
19 surgeon.

20 And Doctor Barnes did not find any  
21 evidence for venous problems or thrombophlebitis, but  
22 did feel he had a dystrophy type pattern,  
23 sympathetic dystrophy type pattern.

24 We initiated some anti-inflammatory  
25 medication. Initially was put on Clinoril and then

1 later on was placed on Motrin. And this is -- he  
2 remains on his Motrin at this time, which is the  
3 only drug that I have prescribed for him.

4 Motrin is an anti-inflammatory agent  
5 It is not a narcotic. It is not thought to be  
6 addicting. It does have some painkilling qualities.  
7 I then saw him in May of 1980.

8 Q. Have we skipped over the veer block,  
9 Doctor?

10 A No not yet.

11 Q. All right. Thank you

12 A. In May he continued to have severe  
13 pain and was having multiple trigger point  
14 injections done by Doctor Rafii. Trigger points are  
15 localized points of pain.

16 Doctor Rafii, who is the  
17 anesthesiologist part of the Pain Clinic, was doing  
18 injections to try to decrease the pain at these  
19 what we call, trigger points.

20 And we recommended at that time that  
21 he be readmitted to have a Reserpine block and  
22 Reserpine is a medication which we inject into the  
23 venous system.

24 And it s done by placing a tourniquet  
25 on his right thigh. First before doing that you

1 try to drain the veins, by elevation, of all their  
2 blood supply.

3 Then you apply a tourniquet and you  
4 inflate the tourniquet to approximately 450  
5 millimeters of mercury and then you start an  
6 intravenous needle in one of the superficial veins  
7 in his foot and you inject Reserpine, which is a  
8 medicine which is supposed to block the neurologic  
9 or the sympathetic tone around the blood vessels.  
10 This was done on -- done on the 17th of June, 1930.

11 And he was kept in the hospital for  
12 observation because there were certain blood  
13 pressure problems with this medicine. He responded  
14 well to the medication.

15 He had a good -- a great deal of  
16 warmth in the foot and actually had increased pain  
17 which usually occurs with increased blood supply  
18 And we felt that it was a successful injection

19 And I followed him from that point on  
20 to see if he had any long term results from the  
21 injection.

22 I then saw him in July -- this was  
23 after his admission -- July the second. And at that  
24 time we got back his psychological testing, what we  
25 call an MMPI. It's a Minnesota multifacet

1 personality inventory, which we also do on all  
2 patients who are -- who complain of pain in a  
3 chronic nature. Once again, to rule out whether  
4 there is any underlying psychological component that  
5 may be potentiating the problem.

6 This was done, and the results of the  
7 psychological testing are available. These are all  
8 interpreted by a clinical psychologist. And his  
9 clinical scales on all the inventory tests were  
10 within normal limits and there was no evidence of  
11 any psychological disorder as a cause of this  
12 problem.

13 I then saw him on the 30th of July  
14 and my findings were essentially the same. At this  
15 time I elected to treat him strictly with  
16 anti-inflammatory agents. I didn't feel I was  
17 helping him at all with anything else.

18 And I last saw him on October the 7th  
19 1980, and recorded his range of motion, which was  
20 demonstrated here today, of zero amount of  
21 dorsiflexion or bringing the foot off the ground  
22 and 20 degrees of flexion or bringing the foot to  
23 the ground. That was his last visit.

24 Q. All right, Doctor. Based upon the  
25 history and your examinations and your workup on

1 this man, do you have a medical opinion as to his  
2 illness or problem at this time --

3 A. It is my opinion that this --

4 Q. -- based upon medical probability?

5 A. Based upon medical probability, that  
6 this represents a sympathetic dystrophy caused by  
7 the crush injury which occurred in May of 1978.

8 Q. Also based upon medical probability,  
9 what is your prognosis for his complete recovery?

10 A. The prognosis for complete recovery  
11 is fair. I feel that if there was going to be a  
12 complete recovery in a sympathetic dystrophy -- in a  
13 sympathetic dystrophy, you go through certain phases  
14 There's an acute phase which  
15 initially lasts from six months to a year after the  
16 initial injury in which the foot is just too tender  
17 to touch. It's very swollen.

18 And then this phase goes and then  
19 there's a chronic phase, which I put Mr. Stevens in  
20 at this time, in which there is persistent pain, but  
21 not as severe as it was during the acute phase.

22 And most people improve, reach their  
23 peak, at about two and a half to three years after  
24 the injury. In other words, they reach the plateau of  
25 where they are going to be for the duration.



1 Q. Well, we are about there, are we not?

2 A. Yes.

3 Q. All right. May I then ask you with  
4 reasonable medical probability, whether Mr Stevens  
5 has a permanent injury to his lower extremity?

6 A. Mr. Stevens has a permanent injury to  
7 his lower extremity.

8 Q. What is the extent? Can you say what  
9 the extent of the -- percentage wise -- what is the  
10 extent the permanency is?

11 A. It's my opinion, if we were going to  
12 give Mr. Stevens a disability rating that this  
13 injury would represent to me, based on several  
14 things; based on the limited motion of the ankle  
15 the subtalar joint, which is right below the ankle  
16 the midfoot or the midtarsal joint, which is just in  
17 front of the ankle and the metatarsal, based on the  
18 onleobosis and scarring and the limitation of motion  
19 in those areas, his disability rating would be 30  
20 percent.

21 And then based on the pain that he  
22 was having and the nervous disfunction, I gave him  
23 40 percent rating for the lower extremity right  
24 lower extremity.

25 Q. Doctor given that Mr Stevens was a

1 driver of a large tractor-trailer truck prior to the  
2 time of his injury, what is your prognosis within  
3 reasonable medical probability of his being able to  
4 return to such employment, and if so when?

5 A. You want to know when he can return  
6 to driving a truck? Does he have to load it unload  
7 it or --

8 Q. Well, does it make a difference to  
9 you?

10 A. Yeah.

11 Q. Tell me what the difference is

12 A. The difference is that long haulers  
13 have to load and unload their trucks themselves.  
14 And then they also -- you'd have to quantitate what  
15 type of vehicle it is, which you did. I'm assuming  
16 you are talking about a big semi.

17 Q. Yes, sir.

18 A. What type vehicle?

19 Q. A big semi.

20 THE COURT: Ten wheeler?

21 MR. JOHNSON: Yes.

22 MR. STEVENS: 18.

23 THE WITNESS: I feel with certain  
24 medical probability he would not be able to return  
25 to driving an 18 wheeler because of his, number one,

1 his right foot, his inability to put enough pressure  
2 on the clutch to drive effectively. His inability  
3 to move quickly between clutch and break. That  
4 would be a limitation, certainly.

5 And then the other limitation would  
6 certainly be the amount of time that he would have  
7 to have his foot on the gas pedal during the driving,  
8 which you didn't state how long he would be driving,  
9 for what periods.

10  
11  
12  
13 BY MR. JOHNSON:

14 Q What sort of jobs would Mr. Stevens  
15 be suited for, in your opinion?

16 A In my opinion, if we're going to talk  
17 about driving trucks, I think that Mr. Stevens could  
18 drive a pickup truck, he could drive a fork lift  
19 truck. He could drive trucks similar to that if he  
20 was going to be limited to driving.

21 Q Could you suggest other employment  
22 that he could be capable of doing and what  
23 limitations he could have on him?

24 A The limitations he would have with  
25 employment is he would not be able to do a job which

1 required him to move a foot pedal on a machine using  
2 his right leg.

3 He would not be able to do -- perform  
4 a function which involved him carrying greater than  
5 30 pounds from one station to another or going up  
6 and down steps repetitively, or working in an  
7 environment in which there was constant temperature  
8 alterations, such as in a very hot environment or in  
9 a very cold environment.

10 I feel he would be well suited for  
11 bench top work, inventory type work, where he would  
12 be in one station, or on an assembly line where he  
13 may be sitting. He has normal use of upper and left  
14 lower extremity.

15 Q. All right. Doctor, given Mr.  
16 Stevens' history and your own experience with his  
17 progress and his condition and based upon your  
18 examination and your knowledge of Mr. Stevens  
19 assuming all of those things, I ask you now to  
20 assume that in September of 1980 Mr. Stevens was  
21 diagnosed with a pulmonary embolism, in this case,  
22 pulmonary emboli. What is the difference?

23 A Pulmonary embolus is one clot  
24 Pulmonary emboli are multiple or showers of clots  
25 which go up the venous system to the lung and cause --

1 depends on the number of clots -- cause an  
2 infarction to -- what happens to the heart in which  
3 there's an infarct to the lung. An infarct to the  
4 blood supply to the lung

Then one goes to the inflammation  
which that infarct causes and the lack of  
oxygenation to that particular area of the lung

Q. I ask you then to assume that in  
September of 1980 Mr. Stevens was diagnosed as  
having pulmonary emboli. Can you tell us as a  
matter of medical probability whether in your opinion  
that would have been likely to have been caused by  
the condition which he is currently suffering in his  
right foot?

MR. REYNOLDS: Objection Your honor  
I have to put a conditional exception in here  
because there s been no evidence before the Court to  
support the hypothetical question that he suffered  
any pulmonary emboli.

And without having the benefit of the  
testimony, which I assume he's going to try to tie  
in later, I can only make a tentative objection

I also would have to object on the  
grounds that I don't know whether there s any degree  
of pulmonary emboli or -- I think it s too much in

1 the dark to this doctor.

2 The question is too vague and too  
3 indefinite for him to give anything other than a  
4 guess or conjecture.

5 THE COURT: Mr. Reynolds, if the  
6 question is now being put to the doctor can be tied  
7 in by expert testimony, as far as the existence of a  
8 pulmonary emboli having occurred, I would permit it.

9 In so far as the question as to  
10 multiple clotting, the doctor has defined that as  
11 against an embolus.

12 Again, if the doctor thinks he's  
13 competent to comment on that, then that's in the  
14 doctor's realm and I will permit that. If the  
15 doctor feels he's not competent to comment on that  
16 with the way Mr. Johnson has put it to him, the  
17 doctor can so state and he won't make any comment.

18 MR. REYNOLDS: All right, sir. As I  
19 say, I don't know whether we are going to have  
20 evidence to support it.

21 THE COURT: Of course, if we don't,  
22 it will be out.

23 MR. JOHNSON: It's understood.

24 THE COURT: Assuming he can tie it in  
25 on that basis, I'll permit the question. But then

1 the answer lies within the realm of the doctor as to  
2 what Mr. Johnson is trying to get from him.

3  
4  
5 BY MR. JOHNSON:

6 Q. Would you like the question again  
7 Doctor?

8 A. Yes, please.

9 MR. JOHNSON: Would you read it back  
10 to him? I think I stated it as well as I could

11  
12 (Court Reporter read back  
13 the last question.)  
14

15 THE WITNESS: That would have been  
16 likely. The condition he has in his right foot  
17 would likely to cause a pulmonary emboli depending  
18 on the physical findings of the patient at the time  
19 that he had the pulmonary emboli.

20 In other words, if the doctor who was  
21 taking care of Mr. Stevens found that Mr. Stevens  
22 was having signs of thrombophlebitis, which is  
23 chronic inflammation of the deep venous system in  
24 his right lower extremity, then, yes.

25 It would depend on what the findings

1 were And you have have those findings I imagine.

2 THE COURT: I take it doctor, what  
3 you are saying is you can't really at this time  
4 state with any probability of medical certainty that  
5 it would so be caused?

6 THE WITNESS: Unless I'm given a  
7 physical exam of the patient at the time that this  
8 occurred.

9 THE COURT: I sustain Mr. Reynolds'  
10 objection, Mr. Johnson.

11 MR. JOHNSON: All right. Note my  
12 exception.

13  
14  
15 BY MR. JOHNSON:

16 Q. Doctor, what is your total bill to  
17 date?

18 A. The total bill, my secretary  
19 calculated out, to be \$600 since November of '79.

20 MR. JOHNSON: All right. Answer Mr  
21 Reynolds, please.

22  
23  
24 CROSS EXAMINATION  
25



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BY MR. REYNOLDS:

Q. Doctor Adelaar, in response to the question as to the prognosis for complete recovery I understood you to say there was a fair prognosis for complete recovery. Isn't that what you said?

A. In sympathetic distrophy, the condition sympathetic distrophy, there's a fair prognosis for complete recovery.

Q. All right. Well then in this case would you say there is a fair prognosis for complete recovery?

A. There is a fair prognosis for complete recovery if we'd not been two and a half to three years from the initial insult.

Q. All right. In other words you would not say to Mr. Stevens today, You re not going to get any better ?

A. What was the date of his injury? If you give me the date of his injury and how long we re sitting here today, then I can give you a better idea.

Q. May 10th, '78. and this is November of '80.

A. Two years -- be two and a half years

1 now. Are we two and a half years yet? Be -- yes,  
2 two and a half.

3 Q Just two and a half years

4 A. My opinion, in two and a half years,  
5 Mr. Stevens has improved to this point which we see  
6 him today, I would say with high medical probability  
7 that there would be very limited future improvement  
8 from this time.

9 Yes, there may be some improvement  
10 during the next six months up to three years, but it  
11 would be my opinion that his condition six months  
12 from now would be similar to what we're seeing here  
13 today

14 Q. All right. You found that he didn't  
15 respond to any of the therapy for pain that you had  
16 given him, is that right?

17 A. Well, we found that in the type of  
18 therapy which we recommended to him which primarily  
19 started with blocks of his peripheral nerves, he  
20 would get initial -- initially would get a good  
21 response, but it would not be long lasting response.

22 In other words, that one week to two  
23 weeks after the block he would then be back in his  
24 similar situation. The same went for the stimulator.  
25 While he was using the stimulator, he had good

1 relief of his pain.

2 But long term, there wasn't any  
3 difference from when he started using the stimulator  
4 to what we see today.

5 So, yes, he can use the stimulator  
6 and get -- still get good relief of his pain today  
7 but it has not decreased the intensity of his  
8 condition.

9 Q. Wasn't there some doubt in your mind  
10 as to just how much pain he really has from his  
11 organic problem?

12 A. Yes.

13 Q. And that's because you -- you really  
14 can't evaluate -- you don't have any means by which  
15 you can register that or record it --

16 A. In other words --

17 Q. -- measure it, do you?

18 A. We don't have -- I think what you're  
19 asking, we don't have a means to register how much  
20 pain those particular physical findings are causing.

21 We have no means to quantitate that  
22 amount. All we have the ability to do is to  
23 determine whether there is organic pain.

24 In other words, is it caused by  
25 anatomical structures which we are presented with or

1 is it inorganic or psychological?

2 And that's what we tried to  
3 differentiate. We can't tell -- I can't tell how  
4 much pain Mr. Stevens is having. I can only  
5 describe to you my findings in evaluating his foot.  
6 My objective findings.

7 Q. The fact that claim is pending  
8 arising out of the accident, didn't that in your  
9 opinion, have, perhaps, some part in his continuing  
10 complaints?

11 MR. JOHNSON: I object to that  
12 question.

13 THE COURT: I think if the doctor is  
14 capable of answering that he can answer it. If he  
15 has a medical opinion on that.

16 THE WITNESS: My medical opinion is  
17 that any patient who comes to us under compensation  
18 has -- it is up to us to try to show that he has an  
19 organic problem.

20 In other words, we are sceptical to  
21 all compensation cases that come to us with chronic  
22 pain patterns and findings similar to what Mr.  
23 Stevens had.

24 For that reason we go to lengths to  
25 make sure, with personality inventory testing and

1 psychiatric evaluations, to make sure that there is  
2 an organic problem before us.

3 Q. I believe you say in a letter of  
4 April 25th, 1980 that he will be very difficult to  
5 get back to work.

6 MR. REYNOLDS: Perhaps we ought to  
7 approach the bench just a minute.

8 THE COURT: All right.

9  
10 (Side bar conference held  
11 outside hearing of Court Reporter )  
12  
13

14 BY MR. REYNOLDS:

15 Q. I think my question, Doctor was  
16 didn't you in a letter, which I have now shown to  
17 you, suggest or say that he, meaning Mr. Stevens  
18 will be very difficult to get back to work, and if  
19 so, why did you say that?

20 A. Yeah. Yes, I said that. It is my  
21 prime feeling to get all our patients back to their  
22 normal physiologic state, which in Mr. Stevens case  
23 was back to work and back to doing whatever  
24 recreational pursuits he so desires.

25 I felt because of our experience with

1 sympathetic distrophy, that Mr. Stevens at that  
2 point was not going to get much better

3 I approached him on several occasions --  
4 because I try to send these people, ask them when  
5 they can go back to work -- Do you feel you can go  
6 back to work? I asked Mr. Stevens the same type of  
7 questions and I got negative responses because he  
8 felt he couldn't drive the particular vehicle which  
9 we talked about previously.

10 And, therefore, I felt at that time  
11 that the prognosis of getting Mr. Stevens back to  
12 his original form of work was not good.

13 Q. Certainly, you found that he was  
14 mentally capable of a number of types of employment  
15 didn't you?

16 A. I don't believe I'd be able to answer  
17 that question. I didn't -- as far as what --

18 Q. He's a bright individual?

19 A. The psychologist felt, yes, he was a  
20 bright individual. I can check the -- they do an IQ  
21 portion, if you'd like me to -- in his report.

22 Q. No, that's all right. Now, how about  
23 driving a tractor-trailer for short distances, say  
24 on the yard, say at the assembly plant, at the Ford  
25 Motor Company, moving it from a place in the yard to

1 back it up to a loading dock, not an extended drive.  
2 just transferring one trailer from one point to  
3 another, he could do that, couldn't he?

4 A Any type of driving, you'd have to  
5 really give me what the clutch ratio is, you know.  
6 That's something you have to -- I like to send the  
7 patient back to work and see if he can or cannot do  
8 it.

9 I don't have any idea of the type of  
10 truck you are talking about but I think -- I don't  
11 think it would be in Mr. Stevens' health -- what I'm  
12 trying to say is I feel he won't hurt himself by  
13 going back and trying to drive that particular truck  
14 you are talking about.

15 If he can't drive it -- in other  
16 words, he should go back to the Ford Company or  
17 whatever. The supervisor and -- foreman or whoever,  
18 the supervisor and the industrial engineer -- should  
19 stand there and watch him drive this truck and then  
20 determine then whether he would be able to drive it  
21 safely and how long he'd be able to drive it.

22 Q. You talking about the clutch? You  
23 operate the clutch with your left foot don't you?

24 A. Right. You're right. Mainly be the  
25 gas pedal and whether he could take his foot off

1 the gas pedal quick enough to be safe. That would  
2 be the main problem.

3 Q. All right.

4 A. I can't -- it would really depend on  
5 the truck. And I would not be that -- you'd need an  
6 industrial specialist to -- it would be my opinion  
7 he could try driving it under controlled  
8 circumstances to determine whether he could or not.

9 Q. But you're saying, in final analysis,  
10 you're not qualified to say?

11 A. I'm not qualified to say whether he  
12 can drive the particular vehicle that you're talking  
13 about because I'm not familiar with that.

14 MR. REYNOLDS: Thank you, Doctor.  
15 That's it.

16 THE COURT: Anything else of the  
17 Doctor?

18 MR. JOHNSON: Yes. Just one or two  
19  
20

21 REDIRECT EXAMINATION  
22  
23

24 BY MR. JOHNSON:

25 Q. We are talking more about dystrophy



1 are we not? There s loss of motion which he does  
2 have that is not related to distrophy?

3 A. That's correct.

4 Q. In your medical --

5 A. Let me qualify that In a  
6 sympathetic distrophy, you do get scarring and  
7 fibrosis and loss of motion. So it can all be tied  
8 in.

9 It's impossible for me to  
10 differentiate the actual crush injury and -- his  
11 loss of range of motion from the crush injury -- and  
12 to differentiate the sympathetic distrophy which  
13 caused the loss of motion.

14 Both are related to the original  
15 accident and both contributed to the loss of motion  
16 that he has.

17 Q. All right. Do I understand you to  
18 say that there is a loss of motion that would exist  
19 regardless of the sympathetic distrophy?

20 A. Yes. For example, we have  
21 sympathetic distrophy in the upper extremity when a  
22 person breaks their wrist. Typically, an elderly  
23 female gets a sympathetic distrophy in the upper  
24 extremity because of that.

25 The injury was at the wrist but the

1 problems which develop are in the fingers because  
2 they lose the motion of the finger joints which were  
3 not originally involved in the original injury.

4 This is the type of thing I'm trying  
5 to explain. Even though he was injured to the ankle  
6 and the foot, I can't tell you how much was due to  
7 the initial crush and how much was due to the  
8 sympathetic distrophy which evolved as a result of  
9 that crush.

10 Q. All right. In your opinion as a  
11 medical probability, is there a loss of motion  
12 resulting from the crush and not the sympathetic  
13 distrophy which is permanent in nature?

14 A. Yes.

15 Q. What is that percentage? Can you  
16 tell me?

17 A. I can't tell you the percentage.

18 Q. But there is some?

19 A. There is a portion of his loss of  
20 motion would be due to crush and a portion would be  
21 due to the sympathetic distrophy. And if you total  
22 those together we'd see what we saw on our  
23 examination today.

24 MR. JOHNSON: All right. I thank you

25 THE WITNESS: I can't tell you the

1 exact percentage how much of the crush caused --

2 THE COURT: Mr. Reynolds.

3 MR. REYNOLDS: I have no further  
4 questions of the doctor.

5 THE COURT: If we re finished with  
6 the doctor, Doctor Adelaar is free to go about his  
7 calling.

8 MR. JOHNSON: Exactly.

9 THE COURT: Thank you, doctor. You  
10 are excused. You may go about your calling

11

12

\* \* \*

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25

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH, to wit:

I, Barbara A W Jenkins CSR. NPR do  
hereby certify that the foregoing pages are a true  
and correct transcript of my Stenotype notes of the  
proceedings had at the time and place in the caption  
mentioned.

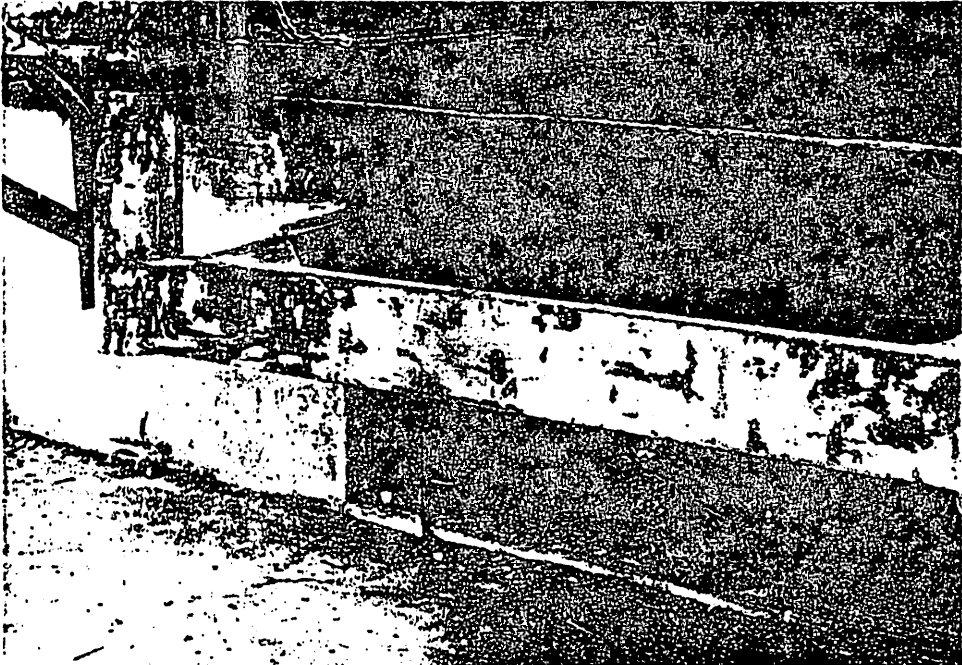
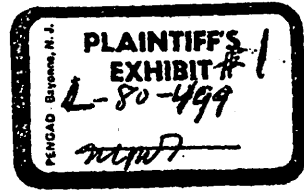
This *1st* day of *June* 1981.

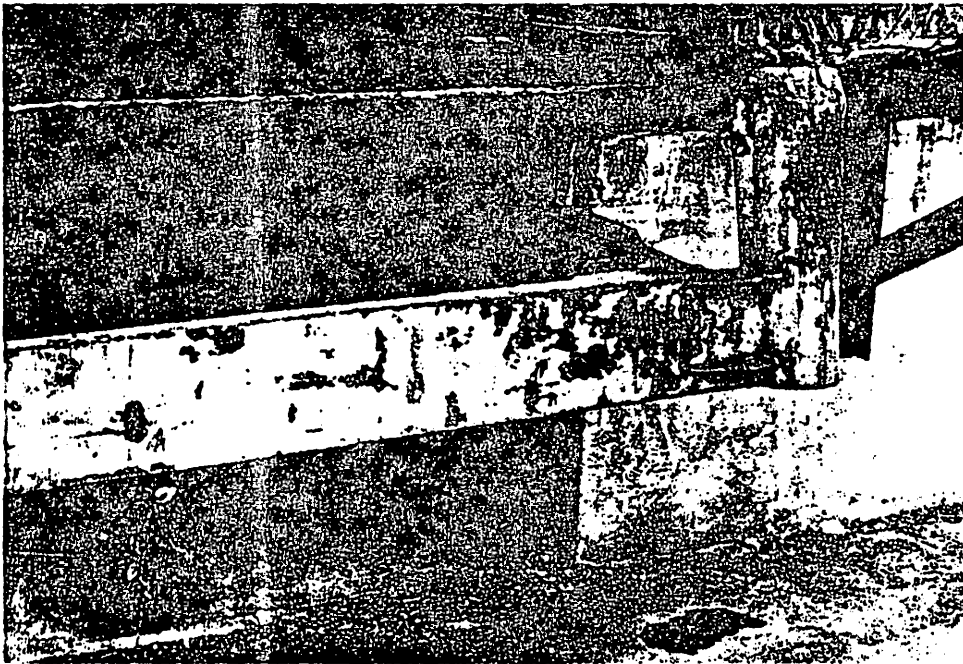
*Barbara A. W. Jenkins*

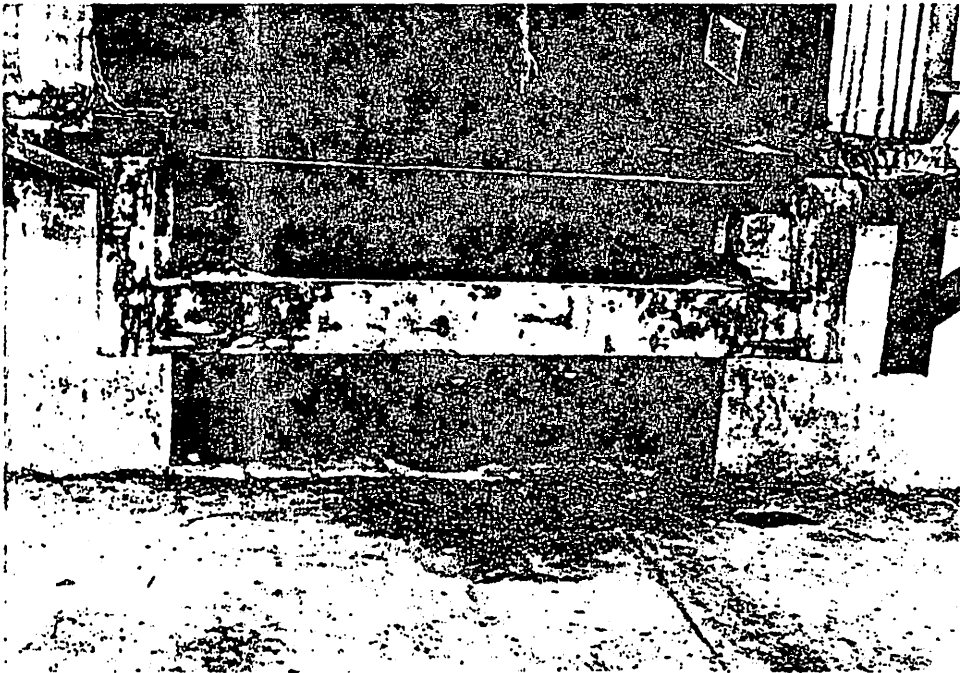
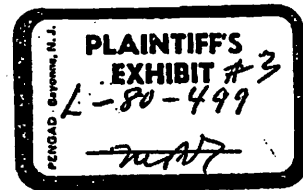
Barbara A. W. Jenkins

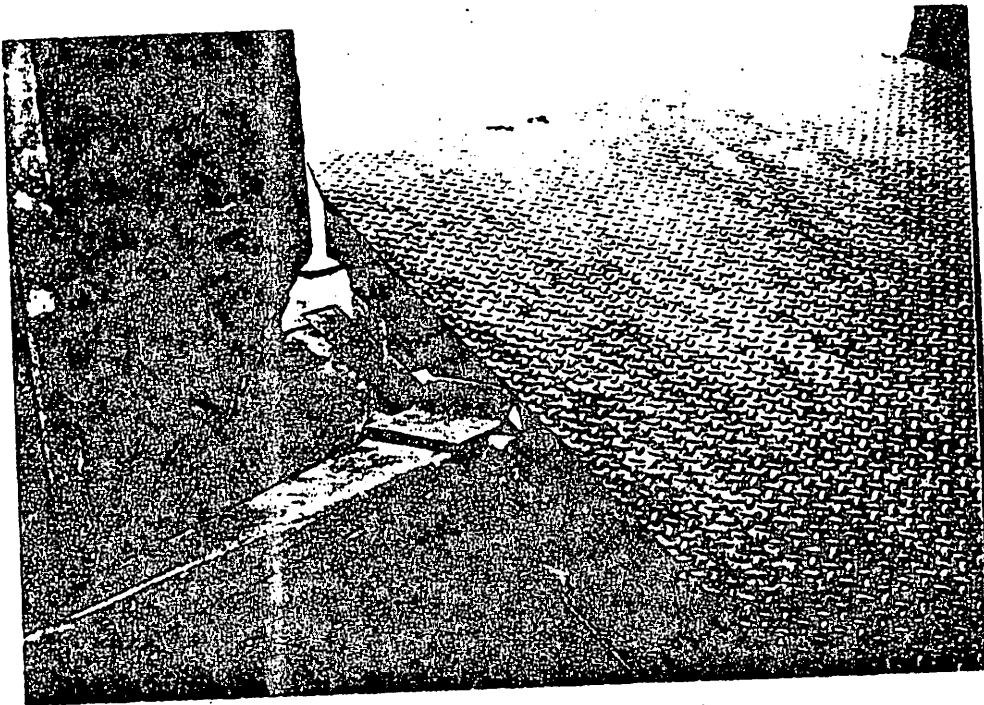
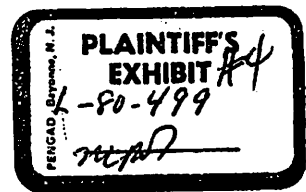
I was commissioned as Barbara Ann Walls

My commission expires June 29, 1984



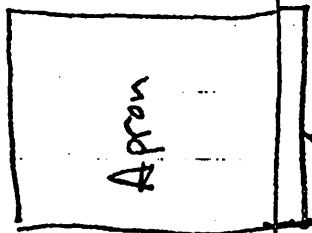




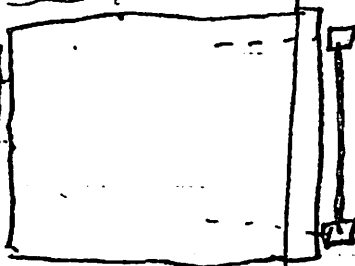




LOADING DOCK



LIP



PLAINTIFF/DEFENDANT EXHIBIT NO. 5

DATE: 11/20/72

CASE: 4-80-488

DOCKET NO. 11/20/72

INITIALED BY: [Signature]

Virginia:

37

In the Circuit Court of the City of Norfolk, on the 20th day  
of November , in the year 19 80 .

WILLIAM C. STEVENS

Plaintiff

vs

L80-499

FORD MOTOR COMPANY

Defendant

ORDER

This day came the plaintiff, in person, and by counsel,  
and the defendant by Edward Hamilton, a superintendant, and by  
counsel, and thereupon came a jury, to-wit: Robert H. Wilmer,  
Velton Brooks, George E. Herder, Roland C. Osborne, Melvin L.  
Odom, Gordon S. Nicely and Wilkins J. Brown who were duly sworn  
the truth to speak upon the issue joined.

Now the jury having heard a part of the plaintiff's  
evidence, Court was adjourned at 5:00 o'clock, P.M. until 10:00  
o'clock, A.M. Friday, November 21, 1980.



Morris B. Gutterman,  
Judge

B113

The Court instructs the Jury that it was the duty of the defendant, Ford Motor Company, to exercise ordinary care in maintaining its equipment on its premises; and if you believe from a preponderance of the evidence that Ford failed to exercise such care, then it was guilty of negligence; and if you further believe from such evidence that any such negligence was a proximate cause of Mr. Stevens' injuries, then you must find your verdict in favor of Mr. Stevens unless you also believe from a preponderance of the evidence that Mr. Stevens was guilty of negligence which proximately contributed to cause his injuries.

*of Ford  
1/11/47*

The Court instructs the Jury that it was Ford's duty to:

(1) Place the dock plate in proper position so that its employees could unload the trailer; and

(2) That the automatic placing device, not being in proper working condition, it was Ford's duty to either repair the device, direct the trailer to another unloading place, or use reasonable care to place the dock plate into position using equipment reasonably suited for such purpose taking into consideration the availability of such equipment.

And if you believe from a preponderance of the evidence that Ford failed in these duties or any of them and that such failure was a proximate cause of Mr. Stevens' injuries, then you must return your verdict in favor of Mr. Stevens unless you also believe from a preponderance of the evidence that Mr. Stevens was guilty of negligence which proximately contributed to cause his injuries.

*7 Feb*  
*A. M. (M)*

The Court instructs the Jury that if you believe from a preponderance of the evidence that the exercise of reasonable care required that Ford, through its employees, use a fork lift to place the dock plate in position and that such a fork lift and operator were readily available, then Ford was guilty of negligence in failing to use them. And if you further believe from such evidence that any such negligence was a proximate cause of the accident, then you must return your verdict in favor of Mr. Stevens unless you believe from a preponderance of the evidence that Mr. Stevens was also guilty of negligence which proximately contributed to cause the accident.

3rd  
X-HEM

The Court instructs the Jury that if you believe from a preponderance of the evidence that Ford Motor Company or any of its agents, servants or employees was guilty of negligence, and that any such negligence was the sole proximate cause of this accident, then the plaintiff, William C. Stevens, is entitled to recover and you must find your verdict in his favor.

*Steel*  
*X.M.P.*

The Court instructs the Jury that even if you believe from the evidence that the unidentified man was not a regular employee of Ford, if you believe from a preponderance of the evidence that he was instructed by Sanderlin to put the dock plate into position; that Sanderlin often <sup>Requested</sup> ~~non-employees~~ <sup>to do</sup> ~~such~~ such service and that this practice was done in the presence of Mr. Hamilton or other supervisory employees of Ford, who acquiesced in the practice, or through their silence failed to prohibit it, you have the right to believe from such evidence that the unidentified man was acting as an agent, servant or employee of Ford and that, therefore, Ford is liable for the negligence of the unidentified man, if any.

And if you believe from a preponderance of the evidence that the unidentified man was guilty of negligence which was the proximate cause of this accident, then you must return your verdict in favor of William C. Stevens unless you also believe from a preponderance of the evidence that William C. Stevens was also guilty of negligence which proximately contributed to cause the accident.

*2/12/77*  
*X/11/11/77*

The Court instructs the Jury it is not necessary that material facts be proven by direct evidence; they may be proven by circumstantial evidence, that is, the jury may draw all reasonable and legitimate inferences and deductions from the evidence adduced before them.

*St. J. Rep.  
xmas.*



The Court instructs the Jury that where the defendant relies upon contributory negligence as a defense, the burden is upon the defendant to prove by a preponderance of the evidence that the plaintiff was guilty of such negligence and that any such negligence was a proximate contributing cause of the accident and unless the defendant thus proves the existence of such negligence or unless such negligence appears from the plaintiff's own evidence or can fairly be inferred from all of the circumstances of the case, then you cannot find the plaintiff guilty of contributory negligence.

And if the jury are uncertain as to whether the plaintiff was guilty of contributory negligence or if you believe that it is just as probable that the plaintiff was not guilty of any such negligence as that he was, then you cannot find the plaintiff guilty of contributory negligence.

S. J. P.  
x 7/11/77

The Court instructs the Jury that the term "preponderance of the evidence" does not necessarily mean the greater number of witnesses, but means the greater weight of the evidence or the degree of proof which you find more convincing and worthy of belief. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

The jury are the sole judges of the weight to be given to the evidence and the credibility of the witnesses. And in ascertaining the preponderance of the evidence and the credibility of the witnesses, you may take into consideration the demeanor of the witness on the witness stand; his apparent candor, or fairness; his bias, if any; his intelligence; his interest, or lack of it, in the outcome of the case; his opportunity, or lack of it, for knowing the truth and for having observed the facts to which he has testified; and from all of these and taking into consideration all of the facts and circumstances of the case, you are to determine the credibility of the witnesses and the preponderance of the evidence.

*W. H. Hunt*  
~~W. H. Hunt~~

If you believe that any witness has knowingly testified untruthfully as to any material fact in this case, you do not have to accept any of the testimony of that witness; you may give that testimony such weight as you feel it is entitled to.

27-1-11  
1 207

The Court instructs the Jury that if from the evidence and the other instructions of the court you find your verdict in favor of the plaintiff, then in assessing the damages to which he is entitled, you may take into consideration any of the following which you believe from the evidence to have resulted from the accident:



1. Any bodily injury sustained and the extent and duration thereof;

2. Any effect of such injuries upon his health according to its degree and probable duration;

3. Any physical pain and mental anguish suffered by him in the past and any which may reasonably be expected to be suffered by him in the future.

4. Any disfigurement or deformity resulting to him and any humiliation or embarrassment associated therewith;

5. Any inconvenience and discomfort caused in the past and any which will probably be caused in the future;

6. Any doctors, hospital, nursing, and medical expenses incurred in the past;  

7. Any loss of earnings in the past by reason of being unable to work at his calling;

8. Any loss of earnings and/or lessening of earning capacity he may reasonably be expected to sustain in the future;

And from these as proven by the evidence your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained by him as a result of the accident, not to exceed the sum sued for in the motion for judgment.

*Atel. 1207.*

The Court instructs the Jury that at age forty-two years William C. Stevens has a life expectancy of thirty years.

37d 11P7.

You must not consider any matter that was rejected or stricken by the Court. It is not evidence and should be disregarded.

*SFD. wpd*

The statement of counsel for the plaintiff referring to the amount sued for is not evidence in this case; you should not consider it in arriving at the amount of your verdict, if any.

*J. H. A. 11/17*



You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

*J. H. [unclear]*

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

- (1) Was the defendant negligent?
- (2) If it was negligent, was its negligence a proximate cause of the accident?

On these issues the plaintiff has the burden of proof.

- 
- (3) Was the plaintiff negligent?
  - (4) If he was negligent, was his negligence a proximate cause of the accident?
  - (5) Did the plaintiff assume the consequences of a known risk?
  - (6) Was the risk assumed a proximate cause of the accident?

On these issues the defendant has the burden of proof.

- 
- (7) If the plaintiff is entitled to recover, what is the amount of his damages?

On this issue the plaintiff has the burden of proof.

Your decision on these issues must be governed by these instructions *and all other instructions given to you in this case.*

*9/21/11*  
*W. H. H.*

Negligence is the failure to use ordinary care.  
Ordinary care is the care a reasonable person would have  
used under the circumstances of this case.

*Stamps.*

The fact that there was an accident and that the plaintiff was injured does not, of itself, entitle the plaintiff to recover.

The plaintiff has the burden of proving by the greater weight of the evidence that the defendant was negligent and that his negligence caused the plaintiff's injuries.

*9 Feb 1967*

An intervening cause is an independent event, not reasonably foreseeable, that breaks the connection between the defendant's negligent act and the plaintiff's injury. An intervening cause breaks the chain of events so that the defendant's original negligent act is not the proximate cause of the plaintiff's injury.

*L. J. Webb  
L. J. Webb*

Contributory negligence is the failure to act as a reasonable person would have acted for his own safety under the circumstances of this case.

*9/14/11*

If you find from the evidence that both the plaintiff and the defendant were negligent and that their negligence proximately contributed to the accident, you may not compare the negligence of the parties. Any negligence of the plaintiff which was a proximate cause of the accident will bar the plaintiff from recovering.

*ef uet*  
*x mor.*

9th Nov 1957



The Court instructs the Jury that unless you believe from a preponderance of the evidence that the plaintiff, William C. Stevens, (1) fully appreciated the nature and extent of the risk and (2) that he thereafter voluntarily incurred it, then he was not guilty of assumption of the risk and the defendant may not rely upon that defense.

*9/12/2017  
+ 10/1/17*

An employer is a person who has the right to control the way his employee does his work.

An employee is a person whom the employer has a right to control in the way he does his work.

*Extd. 11/17*

If you believe from the evidence that John Sanderlin made a simple request to the unidentified helper and that the helper was simply performing a favor in response to the request, that does not make the unidentified helper the employee of Ford Motor Company.

*John Sanderlin*  
*1 near*

The Court instructs the Jury that Ford Motor Company was guilty of negligence in failing to properly maintain the dock plate which was involved in this accident; and if you believe from the evidence that such negligence was a proximate cause of Mr. Stevens' injuries, then you must find your verdict in favor of Mr. Stevens unless you also believe from a preponderance of the evidence that he was guilty of negligence which proximately contributed to cause his injuries.

*Recessed  
for 10:00  
X*

The Court instructs the Jury that if you believe from a preponderance of the evidence that John Sanderlin directed the unidentified man to put the dock plate into position; that the words and tone of such direction were such as to denote that such directive was an order to be obeyed; and that the man's appearance in obeying Sanderlin indicated acceptance of the command, then you have a right to infer that the unidentified man was a regular employee of Ford acting as such. If you further believe from a preponderance of the evidence that such unidentified man was guilty of negligence which proximately caused the accident, then you must find your verdict in favor of William C. Stevens unless you also believe from a preponderance of the evidence that Mr. Stevens was also guilty of negligence which proximately contributed to cause his injuries.

*Refused  
x m.p.*

Virginia:

In the Circuit Court of the City of Norfolk, on the 21st day  
of November , in the year 19 80.

WILLIAM C. STEVENS

Plaintiff

vs

L80-499

FORD MOTOR COMPANY

Defendant

ORDER


: This day came again the plaintiff, in person, and by counsel, and the defendant by Edward Hamilton, a superintendant, and by counsel, and came as well the same jury heretofore impanelled and sworn pursuant to adjournment on the 20th day of November, 1980.

Thereupon at the conclusion of the plaintiff's evidence and again at the conclusion of all of the evidence, the defendant, by counsel, moved the Court to strike the plaintiff's evidence and enter summary judgment in its behalf, which motions after having been fully heard and maturely considered by the Court, are overruled, to which actions of the Court, the defendant, by counsel, note its exception.

Now the jury having heard all of the evidence and argument of the parties, by counsel, retired to its chamber to consider its verdict, and after some time returned into Court with a verdict in the following words and figures: "We find for Plaintiff in the sum of \$704,000.<sup>00</sup>/<sub>xx</sub>."

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury as being contrary to the law and the evidence and errors of Court, and to enter summary judgment in its behalf, or in the alternative to grant it a new trial, the further hearing of which motions is continued.

B113  
Office of  
HUGH L. STOVALL  
Clerk of the  
Circuit Court  
Norfolk, Virginia

  
Morris B. Gutterman,  
Judge

250 A

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK.

WILLIAM C. STEVENS,

Plaintiff,

v.

AT LAW NO. L80-499

FORD MOTOR COMPANY,

Defendant.

MOTION TO SET ASIDE  
JURY VERDICT, ETC.

NOW COMES the defendant, Ford Motor Company, by counsel, and moves the Court to set aside the jury verdict heretofore rendered November 21, 1980, and enter final judgment in favor of the defendant or in the alternative to grant a new trial on the issues of liability and damages or in the alternative to require the plaintiff to make a remittitur of that amount by which the verdict is excessive. For its grounds for said motion, the defendant says:

1. That the evidence shows that this Honorable Court is without jurisdiction and that plaintiff's sole remedy is under the Workmen's Compensation Act of Virginia.
2. That the evidence shows that as a matter of law that the plaintiff was guilty of contributory negligence and assumption of the risk which proximately caused the accident.
3. That there was no competent evidence upon which the jury could make a finding that the unidentified helper, described as Mr. X, was a regular employee of Ford Motor Company or a temporary employee for whose negligence Ford Motor Company would be liable.
4. That there was no evidence of negligence on the part of any other employee of Ford Motor Company that could have

been a proximate cause of the accident.

5. That the Court erred in granting Instruction 1; Ford Motor Company had no duty to the plaintiff to exercise ordinary care in maintaining its equipment on its premises. The fact that the dock leveler was not functioning automatically was an open and obvious condition and therefore Ford Motor Company had no duty to warn plaintiff of it.

6. That the Court erred in granting Instruction 2; placing the dockplate in proper position so that its employees could unload the trailer, repairing the device, directing the trailer to another unloading place or using reasonable care to place the dockplate into position using equipment reasonably suited for such purpose were not duties owed by Ford Motor Company to the plaintiff. The fact that the dockplate was not in proper position, that it was not working automatically, that no direction to another unloading place was given, and that the equipment used and its suitability or unsuitability for such a purpose were at all times open and obvious to the plaintiff. The instruction fails to qualify the duty of Ford Motor Company to an invitee with reference to open and obvious conditions.

7. That the Court erred in granting Instruction 3; there was no duty on Ford to use a forklift to place the dockplate in position. The Instruction is contrary to the evidence in the case which was to the effect that the use of the "Johnson bar" by Ford employees and others was a frequent acceptable and safe method of lifting the dockplate. This Instruction again misstates the law with regard to the duty owed by an owner to an invitee.



8. That the verdict, in the amount of \$704,000.00, is legally excessive indicating jury prejudice on the issues of damages and liability.

FORD MOTOR COMPANY

By

Allan S. Reynolds  
Of Counsel

ALLAN S. REYNOLDS, ESQ.  
White, Reynolds, Smith & Winters  
Post Office Box 3315  
Norfolk, Virginia 23514

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Set Aside Jury Verdict, Etc., was mailed this 19th day of December 1980 to all counsel of record.

Allan S. Reynolds  
Allan S. Reynolds

Dec 19 1980  
D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS,

Plaintiff,

v.

AT LAW NO. L80-499

FORD MOTOR COMPANY,

Defendant.

MEMORANDUM OF FACTS AND LAW IN SUPPORT  
OF THE MOTION OF FORD MOTOR COMPANY TO  
SET ASIDE THE JURY VERDICT, ETC.

ON BEHALF of the defendant, Ford Motor Company, the following Memorandum of Facts and Law in support of its motion to set aside the jury verdict and to enter final judgment in its favor or in the alternative to grant a new trial on the issues of liability and damages or in the alternative to require a remittitur by the plaintiff of that sum by which the verdict is excessive is respectfully submitted.

FACTS

Many facts in the case are undisputed. The defendant operates an automobile assembly plant in Norfolk which receives automobile parts by the truckload from time to time. Spector Freight Lines makes frequent deliveries to the plant and often there are several Spector trailers parked at the plant. The plaintiff was employed as a driver for Spector and for many years prior to the accident had made deliveries to the Ford Plant on a regular basis.

One of the facilities at the plant is the north loading dock at which heavy parts requiring the use of a forklift are offloaded. At each of the doors where trailers are received there is a dock leveler, a device which, when functioning properly, is activated by the trailer backing against and pushing against a frame which causes the dockplate to rise and then when the trailer is in position under the plate, it falls on the bed of the trailer. It frequently happened prior to the accident that these dock levelers would be broken so that they would not operate automatically. However, unloading operations were not stopped because of this. The dockplates could be pried up by a number of means including using the blade of a forklift, using a lever on wheels called a "Johnson bar" or "strongarm" to pry from either side or from the end nearest the trailer or by prying the dockplate up with a board. Stevens was familiar with all these methods and had observed Ford employees and other truck drivers using various levers to pry up the dockplates and had done so himself on many occasions.

Usually, when a forklift was available, that was the device used to raise the plate. On this particular day Stevens was told before he went to the north loading dock that a forklift would be available to raise the plate if the automatic leveler was not working. On other occasions he had observed and heard Sanderlin, the Ford Motor Company forklift operator, request other Ford employees and other truck drivers to raise or assist in raising the dockplates. Stevens testified that supervisory employees of Ford had been present on prior occasions when Sanderlin made such requests.

On the day of the accident, Stevens arrived at the plant and after dropping the trailer he had brought at the main receiving dock was told by a Ford employee to take another trailer to the north loading dock. He was told by the Ford employee that he thought the dock leveler was functioning but if it was not, a fork-

lift driver would be there to handle it. When Stevens arrived at the north loading dock and before he backed his truck up to the door he noted that the H-frame was pushed back against the dock and knew that the dock leveler would not operate automatically. He placed the trailer within inches of the dockplate and went to Sanderlin, who was on a forklift, and requested that he raise the dockplate. At the time there was an unidentified man on the dock nearby who had a clipboard in his hand and a packing slip or papers on the clipboard and he was checking off the tag numbers on the racks of motors that were on the dock. (Hereafter this unidentified man will be referred to as "Mr. X".) In response to Stevens' request, Sanderlin turned to Mr. X and said, "Hey, raise the dockplate for this man so he can get his truck back to the dock." (Tp 33) Mr. X then put his clipboard down on Sanderlin's desk, walked over to the corner and got the Johnson bar and attempted unsuccessfully to pry the dockplate up from both sides. Because the side of the dockplate was rounded it could not be pried from the side and kept slipping and falling back down. (Tpp 108-111) The conditions existing were open and obvious to Stevens.

✓  
"Q. Okay. So at that time before you had gotten hurt or anybody had gotten hurt, you were aware of the fact that if the strongarm slipped out from under the plate, the plate was going to come down and the plate was very heavy?

A. Yes, sir." (Tp 112)

Mr. X then went into the trailer and pried the plate up with the Johnson bar placed under the right side (as one looks from the trailer into the loading door) of the plate. While Mr. X was holding the plate in the air, Stevens backed the trailer under the plate and in the process the Johnson bar was hung up under the plate.

When Stevens went from his truck back into the building Sanderlin was on the forklift right by the door. Stevens attributes this statement to Sanderlin:

✓ "The man's got the strongarm hung under the dockplate. Help him get it out. I've got to get this truck unloaded." (Tp 36)

Stevens and Mr. X tried without success to free the strongarm. Sanderlin got off his forklift and came and all three pulled on it. Stevens quotes Sanderlin as saying at that time:

"I haven't got time to mess with it. You help him get that out from under there before you drop it." (Stevens says this meant before he took the tractor out from underneath the trailer.) (Tp 36)

Stevens then obtained a 2x4 and attempted to pry up the plate but the 2x4 broke. He then got a long and a short piece of 4x4 timber. Stevens described what happened next:

"Q. Okay. How high was the dockplate above the bed of the trailer at that time?

A. Approximately six to eight inches.

Q. Six to eight inches. Okay. And I believe you told us that you said something to Mr. X at that time?

A. When I first came in with the four-by-fours I told him not to touch the strongarm or try to move it or anything until I told him to and he said that he wouldn't.

✓ Q. All right. So at this point you're telling him what to do and he's agreeing he's going to do what you said?

✓ A. That's correct." (Tp 127)

Suddenly, just as Stevens was kneeling and placing the 4x4 lever under the dockplate, the dockplate fell striking his right foot first at the ankle and then across his toes. The strong-arm and the 4x4 were propelled into the trailer and Mr. X exclaimed,

"Oh, my God. I just twisted it and it flew out.

Are you all right? Are you okay?" (Tp 45)

✓ Stevens said he didn't know whether he put his foot under the edge of the dockplate (Tp 127) but the plate did hit him on his foot (Tp 129).

#### QUESTIONS INVOLVED

1. Is plaintiff's exclusive remedy under the Workmen's Compensation Act?
2. Was the plaintiff, as a matter of law, guilty of contributory negligence and/or assumption of the risk which bar his recovery?
3. What duty was owed by Ford Motor Company to Stevens, a business invitee?
4. Was there competent evidence that Mr. X was or temporarily became a Ford employee for whose negligence Ford Motor Company would be liable?
5. Was there competent evidence that any Ford employee or that even Mr. X was guilty of negligence which was a proximate cause of the accident?
6. Is the verdict of \$704,000.00 legally excessive?

## ARGUMENT

1. PLAINTIFF'S EXCLUSIVE REMEDY IS UNDER THE VIRGINIA WORKMEN'S COMPENSATION ACT BECAUSE AT THE TIME OF INJURY HE AND MR. X WERE ENGAGED IN THE BUSINESS OF FORD MOTOR COMPANY.

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This issue was briefed and argued before the Court in a pretrial motion and the ruling was adverse to the defendant. We rely here on the argument and authorities cited to the Court at that time.

In addition, we now have the plaintiff's evidence that it was the obligation of Ford Motor Company to unload the truck and to place the dockplate in the trailer. Plaintiff asserted, and probably got a verdict based upon the fact, that Mr. X became the employee of Ford Motor Company because Sanderlin requested him to assist in placing the dockplate. Just as directly, Sanderlin instructed the plaintiff to assist Mr. X in extracting the Johnson bar after it became snagged under the dockplate. If plaintiff is correct that Mr. X became an employee of Ford Motor Company, likewise Stevens became an employee of Ford Motor Company; he and Mr. X were fellow servants; they were both engaged in the work of Ford Motor Company in placing the dockplate in the trailer to facilitate unloading; and the sole remedy of each for injury is under the compensation act.

2. PLAINTIFF ASSUMED THE RISK OF A KNOWN DANGER AND WAS CONTRIBUTORILY NEGLIGENT IN PLACING HIS FOOT UNDER THE DOCKPLATE.

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Plaintiff knew that he was working with a heavy steel plate which he estimated weighed 800 pounds. He knew that if you pried it up and the pry bar came out the plate would fall. He knew that at the moment prior to his injury it was being held in place by a pry bar on wheels. He recognized the danger if it fell and instructed his fellow worker, Mr. X, not to do anything that might cause it to fall.

The Virginia Supreme Court has on many occasions defined and distinguished contributory negligence and assumption of the risk.

"The defense of assumption of risk is closely associated with that of contributory negligence but is distinguishable from it. The essence of contributory negligence is carelessness, but of assumption of risk, venturesomeness — the voluntary assumption of a known hazard. . .

Assumption of risk rests on two premises:

- (1) That the nature and extent of the risk are fully appreciated; and
- (2) that it is voluntarily incurred."

Shook Company v. Barksdale, 206 Va. 45, 141 S.E. 2d 738.

In Shook Company v. Barksdale, supra, a truck driver was held not to have assumed the risk when, as he had done on numerous prior occasions, he stood on the back of a forklift to act as a counterbalancing weight to keep the forklift from tipping with a load of lumber. He said that it had never tipped before with him on it and he didn't think it would tip this time.

Without conceding that this case is a correct interpretation of the law of assumption of risk currently in Virginia, it is distinguishable from the case at bar. There it could be found that the plaintiff was the innocent victim of the negligence of the forklift driver who had the superior knowledge of the tipping characteristics of the heavily loaded forklift. That case seems to say that Shook would have had to have known the weight of the load of lumber and the weight of the counterbalancing force in order to have assumed the risk.



In this case, Stevens had full knowledge that the dockplate was heavy, that it would fall down if the strongarm slipped out, that the strongarm was on wheels, and that it was hanging up on a piece of metal on top of the wooden strongarm. He certainly knew that the plate would fall down if the strongarm was removed. Whereas the forklift driver was directing the operation in Shook Company, in our case the plaintiff was directing the undertaking at the time the accident occurred.

Plaintiff nevertheless argues now that he could assume that the plate was not going to come down because three men had twisted and pulled on the strongarm without being able to dislodge it. However, Steven's assumption that there was no danger does not avoid the doctrine of the assumption of the risk as is well illustrated in McDowall & Wood v. Kilby, 211 Va. 476, 178 S.E. 2d 497. In that case, a state trooper elected to drive on a closed portion of a dual highway that was undergoing repairs. He was aware that there had been a ditch dug across the lanes he was driving on for the installation of a box culvert, but on the morning of the accident, he "presumed that the ditch was closed". In ruling against the plaintiff, the Court said, at page 478:

"Yet, aware of the situation Kilby elected to use the closed westbound lane instead of the eastbound lane that had been converted for two-way traffic. Kilby was in no way a stranger to the situation that existed. By voluntarily proceeding on the presumption that the ditch was filled Kilby assumed the risk that it might be unfilled. We conclude that the evidence conclusively establishes that Kilby fully

appreciated the nature and extent of the risk and that he voluntarily assumed it."

In High v. Coleman, 215 Va. 7, 205 S.E. 2d 408, at page 8:

". . . the plaintiff was in the act of pulling a rope tied to a 35 to 40 foot tall tree which was being felled. He was standing about 14 feet from the trunk at the time. It was evident that the tree would fall toward him and that he would be struck by it if he did not get out of its path. The danger was open and obvious and he was bound to have appreciated the existing hazard which was voluntarily assumed. We hold as a matter of law, that the plaintiff assumed the risk of injury and is barred from a recovery."

Here the plaintiff had to know that if the plate fell it would strike his foot, which had to be under the plate at the time it fell. He was guilty of contributory negligence as a matter of law in having his foot under the plate, and he assumed the risk with full knowledge of the hazards involved by undertaking to dislodge the strongarm by a makeshift arrangement when he had the option of doing nothing. Although plaintiff says that he was anxious to have the trailer unloaded, there was nothing compelling his action. The only thing that getting the dockplate in position would accomplish, would be to provide a path for the forklift. He could not and did not intend to unload the trailer himself. His actions were not going to make Sanderlin available any earlier to unload the trailer. Before any forklift could enter the trailer, by plaintiff's own testimony, it would not have taken more than a minute for the forklift to lift the plate and safely remove the strongarm.

3. NO DUTY WAS OWED BY FORD MOTOR COMPANY TO THE PLAINTIFF, AN INVITEE, AS TO THE DOCK LEVELER, THE CONDITION OF WHICH WAS OPEN AND OBVIOUS.

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The Court has by Instructions 1, 2 and 3 stated that there was a duty on Ford Motor Company to the plaintiff to exercise ordinary care in maintaining its equipment, to place the dockplate in proper position, to repair the dock leveler, to place it in position using proper equipment, which the jury could find necessitated the use of a forklift, or to direct plaintiff's trailer to another place for unloading. It is respectfully submitted that this is not a correct statement of the duty owed to an invitee. In Atlantic Company v. Morrisette, 198 Va. 332, 94 S.E. 2d 220, a case involving a truck driver who was loading sacks of potatoes from a hand truck onto his employer's truck, the Court stated the duty as follows, page 333:

"Since plaintiff was on defendant's premises as its invitee, it owed him the duty to use ordinary care to have its premises reasonably safe for his visit. In the instant case this duty of ordinary care required that defendant give plaintiff notice or warning of latent dangers which were known or should have been known to it and were unknown to plaintiff, but no notice or warning was required if the alleged dangerous condition was open and obvious to a person exercising reasonable care for his own safety. Therefore, in order for plaintiff to sustain his charge of negligence the unsafe condition relied on must be one of which defendant knew or should have known, and one of which plaintiff did not know and which he could not reasonably have discovered."

This statement of duty had been stated prior to and has consistently been restated subsequent to the Atlantic Company case. Julian E. Trimyer and Saint Paul-Mercury Indemnity Company v. Norfolk Tallow Company, Inc., and Virginia Electric and Power Company, A Corporation, 192 Va. 776, 66 S.E. 2d 441, The Great Atlantic and Pacific Tea Company v. Mattie Lee Rosenberger, 203 Va. 378, 124 S.E. 2d 26, Alex Gottlieb, Trading as Savemore Supermarket v. Lorene A. Andrus, 200 Va. 114, 104 S.E.(2) 743, Williamsburg Shop v. Weeks, 201 Va. 244, 110 S.E. 2d 189, Tazewell Supply v. Turner, 213 Va. 93, 189 S.E. 2d 347, Reliable Stores v. Marsh, 218 Va. 1005, 243 S.E. 2d 219.

First, let us consider the duty to have its premises reasonably safe for plaintiff's visit. The Court has equated this with a duty to maintain and repair the dockplate if it did not function automatically. However, there was no evidence of any negligence on the part of Ford Motor Company that caused the dock leveler to malfunction. Furthermore, there was no evidence that the dock leveler was unsafe when it did not function automatically. In fact, the evidence was to the contrary, that all of the dock levelers frequently failed to function automatically in which case the plates were raised by a number of different methods and thereafter functioned normally. Stated succinctly, there is no evidence of a duty to have an automatic dock leveler.

The more fundamental error is to ignore the fact that an owner's duty to an invitee is in the alternative. Either the owner must exercise ordinary care to maintain the premises or it must warn of latent conditions. And where the condition is open and obvious to the plaintiff there is no duty to warn. If the failure to exercise ordinary care resulted in an unsafe condition on the premises and that per se would place liability on the owner, then the owner would be an insurer of the safety of the premises.

Even assuming that a non-automatic dock leveler was unsafe, the defendant's only duty with reference to it was to warn the plaintiff, if the condition was not open and obvious. As stated in Tea Company v. Rosenberger, supra, at page 380:

"The defendant was under a duty, in the exercise of ordinary care, to have its premises in a reasonably safe condition for the plaintiff's visit. And the plaintiff had the right to assume that the defendant had discharged its duty and that she was upon safe premises until she knew, or should have known, of an unsafe condition.

In discharging its duty, the defendant was required to warn the plaintiff of hidden dangers which were, or ought to have been, known to it but which were unknown to her. And where the danger consisted of a foreign substance on the floor, although caused by the act of another customer, the defendant was required to remove the substance without unreasonable delay after it knew, or should have known, of its presence.

The defendant was not, however, required to warn the plaintiff of a dangerous condition that was open and plainly visible to a person reasonably alert for his own safety. Nor was it required remove the foreign substance in less time than ordinarily required for such a task." (citations omitted)

Stevens knew before he backed his trailer to the dock that the dock leveler would not function automatically. When the attempt was made to pry the plate up from the sides, he again observed

the fact that it was heavy and that it would fall down if the strongarm slipped out. When the strongarm was placed under the end of the dockplate and Stevens backed his truck under it he became aware of the fact that the strongarm was stuck under a very heavy metal plate. There is absolutely no evidence that Ford Motor Company had any knowledge about the conditions other than what plaintiff knew. Plaintiff was aware that a forklift could probably safely raise the dockplate. He was aware of the fact that a forklift was not being used and that the method employed was of his own invention.

Since everything about the dock leveler was fully appreciated by the plaintiff as a result of his prior experience, as a result of his participation in the efforts to raise it on the day of the accident and as a result of his own direction of the operation to remove the strongarm from under the dockplate, Ford Motor Company breached no duty owed to the plaintiff with regard to the dock leveler.

This is analogous to a claim for breach of an implied warranty of fitness when the product has an obvious defect. For example, in Brockett v. Harrell Brothers, 206 Va. 457, 143 S.E. 2d 897, plaintiff claimed a breach of an implied warranty of the fitness of a ham because it contained buckshot. The Court, in remanding the case for retrial, cautioned at page 463:

"However, if the condition of the ham of which the plaintiff complains was known, visible or obvious to her, there was no liability on an implied warranty of fitness by the defendants, or either of them, to her. This is so because the presumption is that the plaintiff contracted to buy this food product in its obvious or known condition. (citations omitted)

Instructions 1, 2 and 3 erroneously mislead the jury to believe that Ford was an insurer of its premises.

4. THERE WAS NO COMPETENT EVIDENCE THAT MR. X WAS OR TEMPORARILY BECAME AN EMPLOYEE OF FORD MOTOR COMPANY FOR WHOSE NEGLIGENCE, IF ANY, IT COULD BE HELD LIABLE.

The Court will recall what is not reflected in that part of the transcript of the evidence that has been presented with this Memorandum, that during the argument on Instructions doubt was expressed as to whether or not the plaintiff had presented sufficient evidence upon which to base an argument that Mr. X was a regular employee of Ford Motor Company. However, the Court finally stated that Mr. Johnson would be permitted to argue in the alternative that Mr. X was a regular employee or that he temporarily became an employee of Ford Motor Company. This argument was made in closing.

There was no direct identification of Mr. X. Although Stevens testified that he had been going to the Ford Plant regularly over a period of time and was thoroughly familiar with a number of the personnel there, he had never seen Mr. X before and had not seen him since the accident. He did not know his name nor by whom he was employed. The only evidence was that, "the man had a clipboard and was — had a packing slip or papers on the clipboard and he was checking off the tag numbers on the racks of motors against the numbers on his packing slip." (Tp 32-33) Stevens did not read what was on Mr. X's clipboard. (Tp 103) He admitted that the man could have been another driver checking equipment or material that he had hauled on his truck. (Tp 95) Nevertheless, the plaintiff asked the jury to infer from the fact that the man had a clipboard and was apparently checking tags on engines on the dock that the paper on the clipboard was a Ford Motor Company document and from that to infer that the man was checking the engines on behalf of Ford Motor Company and was therefore a Ford employee. Plaintiff also points to the fact that Sanderlin said to Mr. X, "Hey, raise the dock-

plate for this man so he can get his truck back to the dock.", and suggests that from this language an inference can be drawn that this was a command rather than a request and from this inference of a command can be drawn the inference that one who takes commands must be an employee. Plaintiff also points to the fact that Mr. X went and got the strongarm without further directions as to its location and attempted to raise the dockplate in the normal manner. From these facts he draws the inference that the man had had prior experience doing that act and from that inference would draw the inference that he must have had that prior experience as an employee. Such a frail foundation is not sufficient to support the contention that Mr. X was a regular employee of Ford Motor Company. As the Court stated in Lugo v. Joy, 215 Va. 39, 205 S.E. 2d 658,

"An inference cannot be founded on another inference or a mere guess. SEE Southern Ry. Co. v. Mays, 192 Va. 68, 76, 63 S.E. 2d 720, 725 (1951); Va. Elec. & Power Co. v. Courtney, 182 Va. 175, 184, 27 S.E. 2d 917, 921 (1943)."

Alternatively, plaintiff argues that Mr. X became a borrowed servant of Ford Motor Company by reason of the fact that Sanderlin made the request that he assist Stevens and because in the past Sanderlin had made similar requests in the presence of Ford supervisory personnel with their apparent consent. However, Stevens admits that if Sanderlin asked another truck driver to assist him in raising the dockplate, such other driver was not obligated to comply. Likewise, Stevens said that if he had been asked to help someone else, he would not have been obligated to comply. (Tp 99) Furthermore, Sanderlin did not give Mr. X any specific directions as to how to accomplish the work. Sanderlin did not attempt to exercise any control over the method of doing



the work. To the contrary, he is reported to have directed Stevens to help Mr. X extricate the strongarm. And, as has been pointed out before, it was Stevens who was directing Mr. X at the time the accident occurred.

In Jacobson v. Kirn, 192 Va. 352, 64 S.E. 2d 755, a case in which an attempt was made to charge the owner with the negligence of the helper employed by the janitor at a building, the Court set forth the following general rules:

"It may be stated as a general proposition of law that unless authorized expressly or impliedly the servant has no authority to employ other persons to assist him in the performance of his duties, or delegate the performance of such duties to others; and the master will not be held liable for the negligent acts of such sub-servants who are employed or allowed by the servant to assist him without the master's authority, consent or ratification."

\* \* \* \* \*

"A master is one who has the power to control, and a servant is one whose duty it is to obey. Plainly this relationship did not exist here. Kincheloe had no power to control Arrington and Arrington was not under the necessity of obeying him."

Although stated in a slightly different context where the question was whether or not the relationship of master-servant or independent contractor existed, the Court stated in N&W Railway v. Johnson, 207 Va. 980, 154 S.E. 2d 134, at page 183:

"In determining whether a master-servant relationship exists, the crucial question is whether the Railroad had the right to control not merely results but the progress and details of the work."

In this case, Sanderlin and his superior, Edward Hamilton, Material Handling Superintendent, both testified that Sanderlin did not have the authority to hire assistants. (Tp 144 and 152) In fact, Hamilton testified that even he had no authority to hire and fire at Ford Motor Company. (Tp 145)

Taylor v. Balto. & O. R. Co., 108 Va. 817, 62 S.E. 798, involved a plaintiff who contended that he became the servant of the railroad because the conductor, whose crew were out of place, called on the plaintiff to help him, saying, "Jump up here, Bill, and help me check this out. I am late and my men are out of place." The Court in ruling that the railroad was not responsible for the injury involving loss of the plaintiff's hand quoted with approval, at page 821, the following:

"More is essential than a mere order or request to couple cars at one time and place, or doing a single act, to constitute an employment within the scope of the implied authority of the conductor. It must be to render service to some extent continuous in its nature."

\* \* \* \* \*

"We are satisfied from the pleading and evidence, not only that the freight conductor had no authority to create the relation of master and servant between the company and the plaintiff, but also that he had no

intention of establishing any contractual relations between them. On the contrary, it is obvious that what occurred amounted merely to a request by the conductor of an acquaintance to perform a casual service for his accommodation, which was responded to in the same spirit of good-fellowship, without either promise or expectation of reward."

Certainly, Sanderlin's simple request to Mr. X that he render assistance to Stevens cannot be exaggerated into an intention, coupled with implied authority, to employ Mr. X on behalf of Ford Motor Company. If such a request is not of itself sufficient to establish the relationship of master and servant, certainly the fact that similar requests had been made in the past cannot, by simple multiplication, make any stronger case.

There was no competent evidence to support a contention that Ford Motor Company was in any way liable for the negligence, if any, of Mr. X. Instruction 4 was erroneous in the absence of any evidence upon which to base a finding of negligence on the part of any regular Ford employee. Likewise, Instruction 5, specifically directed to the temporary employment of Mr. X is without competent evidence to support it.

5. THERE WAS NO EVIDENCE THAT ANY  
FORD EMPLOYEE OR THAT MR. X WAS GUILTY  
OF NEGLIGENCE WHICH WAS A PROXIMATE  
CAUSE OF THE ACCIDENT, WHICH CAUSE  
THEREFORE LEFT TO SPECULATION.

The only evidence of any act of omission of any Ford employee specifically relating to the incident out of which plaintiff's injuries arose, was that of Sanderlin. There was no evidence that what he did, which was to attempt to assist Stevens and Mr. X to pull the strongarm out from under the dockplate, caused the accident. He had a duty to use ordinary care when he

undertook to assist Stevens, but, as has been pointed out above, Sanderlin owed no other duty to Stevens and therefore was not otherwise negligent.

The mere fact that Stevens told Mr. X not to touch the strongarm does not establish a duty for Mr. X. In other words, Stevens can't by his statement establish a duty on Mr. X to refrain from touching the strongarm, the violation of which would make Mr. X liable in damages. In view of the fact that first Stevens and Mr. X, and then Sanderlin, Stevens and Mr. X had pulled and twisted the strongarm without being able to extricate it raises a question as to whether or not it was foreseeable to Mr. X that his confessed act of twisting the strongarm was in fact the proximate cause of the fall of the dockplate. If, as counsel has argued, Stevens had no reason to think that the dockplate might fall in view of the fact that three strong men had pulled on it without success, by what stretch of the imagination should it have been foreseeable to Mr. X that his twisting the strongarm alone would cause it to fall. Furthermore, what duty was there on him to anticipate that Stevens would position himself so that his foot would be under the dockplate if it fell. Certainly, it was no more foreseeable to Ford Motor Company that such a result would occur from the undertaking.

In fact, the only evidence we have as to the cause of the strongarm coming out is an inference to be drawn from the exclamation of Mr. X following the accident that he twisted it and it came out. As noted, twisting the strongarm in the past had not caused it to come out and it is really only speculation that any action by Mr. X caused the bar to come out and the plate to fall. Plaintiff's own testimony is that he had the 4x4 lever partially under the dockplate, and it is equally probable that some action on his part caused the strongarm to become dislodged.

6. THE VERDICT OF \$704,000.00 IS  
SO DISPROPORTIONATE TO THE INJURIES  
PROVED THAT IT SHOULD SHOCK THE  
CONSCIENCE OF THE COURT.

Plaintiff suffered a painful injury which was at first felt to be nothing more than a severe bruise, but which developed over a period of time into, at worst, a permanent partial disability rated at 40% of the right lower extremity. He suffered a great deal of pain and inconvenience and underwent long and painful therapy in an attempt to be cured. He is now required to wear a right lower leg brace from time to time and is restricted in the amount of weight he can lift and in his ability to ambulate over rough terrain. He is unable to stand for long periods of time and has to avoid employment subjecting him to extreme temperature variations. Nevertheless, by his own testimony he is not totally disabled and has been seeking employment within the range of his capabilities. It is true at the time of the trial he had not found employment, but there is nothing to suggest that he will not be able to be gainfully employed in the future. The proven medical expenses totaled less than \$5,000.00.

The Supreme Court of Virginia in the recent, as yet unpublished, opinion of Rutherford v. Zearfoss, Record No. 781364, decided November 26, 1980, quotes the following principles regarding the function of the Court with regard to excessive verdicts:

"'But if it appears that the verdict is so excessive as to shock the conscience of the Court and to create the impression that the jury has been influenced by passion, corruption or prejudice, or has misconceived or misunderstood the facts or the

law, or if the award is so out of proportion to the injuries suffered to suggest that it is not the product of a fair and impartial decision, then it becomes the plain duty of the judge, acting within his legal authority, to correct the injustice.'"

Rutherford v. Zearfoss, supra, also stands for the proposition that when the trial judge has concluded that a verdict is excessive he has the discretion to decide whether a new trial should be on damages alone or on all issues ab initio. In this case we can only conclude that sympathy for the plaintiff, anger at a large corporate defendant because of a mistaken belief that it had a duty to protect and insure invitees, or both, affected the verdict as to both liability and damages. Therefore, as an alternative only, the defendant would move for a new trial on all issues because of the excessiveness of the verdict, or require the plaintiff to remit that amount by which the verdict is excessive.

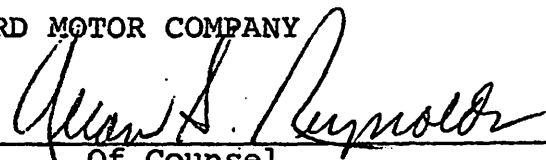
CONCLUSION

It is respectfully submitted that for all of the foregoing reasons this Honorable Court should declare that this matter falls within the Workmen's Compensation Act and that it is without jurisdiction, or set aside the verdict and enter final judgment for the defendant or grant a new trial on all issues or require the plaintiff to remit the amount by which the verdict is excessive.

Respectfully submitted,

FORD MOTOR COMPANY

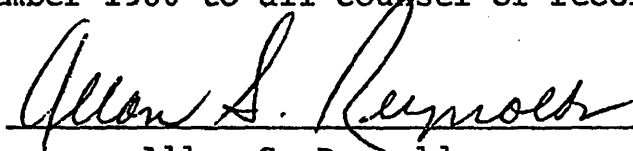
By

  
Of Counsel

ALLAN S. REYNOLDS, ESQ.  
White, Reynolds, Smith & Winters  
Post Office Box 3315  
Norfolk, Virginia 23514

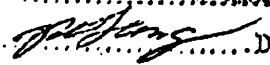
CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed this 19th day of December 1980 to all counsel of record.

  
Allan S. Reynolds

CIRCUIT COURT

FILED ~~1980~~ 19 1980

BY:  D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS,

Plaintiff,

v.

AT LAW NO. L80-499

FORD MOTOR COMPANY,

Defendant.

MEMORANDUM OF LAW IN REPLY TO THE PLAINTIFF'S  
MEMORANDUM IN OPPOSITION TO THE MOTION OF FORD  
MOTOR COMPANY TO SET ASIDE THE JURY VERDICT, ETC.

ON BEHALF of the defendant, Ford Motor Company, the following memorandum of law in reply to the memorandum which the plaintiff has submitted in opposition to the motion of Ford Motor Company to set aside the jury verdict and to enter final judgment in its favor or in the alternative to grant a new trial on the issues of liability and damages is respectfully submitted.

This memorandum will deal exclusively with those issues discussed by the plaintiff and in the order presented.

FACTS

The defendant will adopt the statement of facts submitted in its earlier memorandum for the purposes of this discussion.

QUESTIONS INVOLVED

1. Was the plaintiff as a matter of law guilty of contributory negligence and/or assumption of the risk which would bar his recovery?

2. What duty was owed by Ford to the plaintiff, Stevens, a business invitee?



3. Was there competent evidence that Mr. X was or temporarily became a Ford employee for whose negligence Ford Motor Company would be liable?

4. Was there competent evidence that any Ford employee or that even Mr. X was guilty of negligence which was a proximate cause of the accident?

ARGUMENT

1. PLAINTIFF ASSUMED THE RISK OF A KNOWN DANGER AND WAS CONTRIBUTORILY NEGLIGENT IN PLACING HIS FOOT UNDER THE DOCKPLATE.

A. ASSUMPTION OF THE RISK

In response to the argument that the plaintiff assumed the risk of a known danger while performing the operation that resulted in his injury the plaintiff makes the following assertion:

The evidence clearly discloses that no danger to Stevens existed prior to the act of "X" in twisting the Johnson bar. Therefore, there being no danger it cannot be said that Stevens assumed the risk of it. (PM 11)

This is a completely untenable position in light of the evidence. The plaintiff testified that he had been making deliveries to the Ford plant since 1957 and on a regular basis since 1975, during which time he lifted dockplates and put them into position "three or four times a week". (TP 5, 96-98) The plaintiff was cogently aware of the weight of the dockplate and the precariousness of his position as seen by his instructions to Mr. X, "don't touch the strong arm. Don't move it. Don't do anything until I tell you to." (TP 38) These instructions and the subsequent injury are a good indication that not only did danger exist, but Stevens had knowledge of it.

The defendant will not repeat all the distinctions between the present case and that of Shook Company v. Barksdale, 206 Va. 45 (1965), which plaintiff asserts controls the issue at hand, but will note that in Shook the Court ruled that the plaintiff did not assume the risk of the overloaded forklift tipping over because he had never seen this happen before and "had no idea" that it would. Stevens on the other hand, had seen identical dockplates drop into position three or four times a week for the past three years. His instructions to Mr. X in this situation show that he was aware of the precarious nature of his position and what might happen if Mr. X so much as "touched" the Johnson bar which was supporting the dockplate.

This brings us to the case of Amusement Slides v. Lehmann, 217 Va. 815 (1977) in which the plaintiff was riding an amusement slide and was injured by reaching excessive speed due to the failure of an employee to spray water on the slide. The plaintiff maintains that the act of Mr. X is comparable to the omission of the employee in Lehmann. However, the Court based its ruling in the Lehmann case on the absence of any warning to the plaintiff of the consequences of employee inattention:

And, contrary to the defendant's assertion, the evidence of the plaintiff's prior rides on similar slides, of the minor injury to a child rider witnessed by a plaintiff, and of reluctance by plaintiff's ailing companion to ride, is not sufficient to make assumption of the risk a question of law in this case. Those circumstances afforded no warning to plaintiff of employee inattention, which was the risk here involved. (Emphasis added) Lehmann at 820.

Again, the experience of the plaintiff, Stevens, has everything to do with the distinction between these two cases. In contrast to the hapless slider, Stevens had maneuvered dockplates two or three times a week for at least three years. He also had ample warning of all the present circumstances as seen by his instructions to "X". If the plaintiff in Lehmann had ridden this slide several times a week for three years and then stood at the top of the slide and said to the negligent employee, "now don't forget to spray that water when I come down" then the omission in Lehmann could be compared to the alleged action of "X" but not otherwise. The decision in Lehmann was a close one, as seen by the dissenting opinion and one might well guess what effect these added circumstances would have had on the outcome. The evidence in this case will not support a contention that Stevens was not aware or did not appreciate the risk involved because he had no idea that the dockplate might fall.

Plaintiff has cited the case of N&W Railway v. Chrisman, 219 Va. 184 (1978) in support of his argument that Stevens did not assume the risk of manipulating the dockplate with two 4x4's and in placing his foot in a position to be injured. The Chrisman case involved a boxcar door with a defective guide or track at the top which fell on the plaintiff as he was attempting to open the door through the use of a crank device called a "come-along". In that case N&W argued that the plaintiff neglected to inspect the upper guide of the door before attempting to open the door of the boxcar. In Chrisman, the plaintiff had used this method to open doors for nine years previous to the accident without a door ever falling and there was nothing to suggest that simple observation of the defect would have warned the plaintiff that the door might fall:

Furthermore, there is nothing in the record to suggest that, even if Chrisman had observed the "bulged out" area before he attempted to open the door, he, or any reasonable person in his position, would or should have known that the defect would cause the door to fall. Chrisman, supra at 189.

In contrast to Chrisman, Stevens had had opportunities several times a week for three years to observe the dockplates falling into position. He himself had assisted in prying the dockplate up and in attempting to get the dockplate to fall by removing the Johnson bar. Stevens was well aware that the plate would fall if the Johnson bar was removed and this was precisely what he was attempting to do at the time of the accident. There is nothing in the record to suggest that this was a freak occurrence caused by a defect which would require inspection to discover, but instead was an open and obvious condition, of which plaintiff was aware, had dealt with on many other occasions and which he was attempting to remedy at the time of the accident. The evidence was uncontradicted that Stevens assumed the risk of a known danger manifested by an open and obvious condition which he was attempting to remedy with the aid of his vast experience with the docklevelers at the Ford Norfolk Assembly Plant.

B. CONTRIBUTORY NEGLIGENCE

The plaintiff maintains the statement that Stevens' foot "had to be under the dockplate at the time it fell" is a misstatement of the evidence in that the uncontradicted evidence is that the plate fell inexplicably forward rather than straight down. (PM 14) The plaintiff did not offer any expert testimony on this peculiar ability of the eight hundred pound dockplate to defy the laws of gravity and physics. Instead, Stevens testified he observed the back edge of the dockplate to have been separated

between 1/4 and 1/2 inches from the angle iron before the accident and four inches after the accident. (TP 49) From this observation it is inferred that the dockplate fell forward, from a maximum height of six inches, at least 3 1/2 to 3 3/4 inches, thus trapping his foot which need not have been beneath the dockplate.

This assertion is contradicted in many places by plaintiff's testimony and is inconsistent with the fact that the dockplate struck him in the area of the right instep.

On page 48 of his testimony, Stevens said the dockplate struck his foot "right across the top of the ankle." (TP 48) On page 51 of his testimony, Stevens gave the following description of the appearance of his ankle immediately following the accident and as first-aid was being administered:

It was discolored and the ankle was swollen and had a big knot right where the foot and the ankle come together, a little bit above the ankle and down onto the top of the foot. (TP 51)

The plaintiff describes on page 53 his treating physician's inquiry about x-rays of his foot and ankle and later introduced medical testimony showing a blow or trauma in the area of his instep. Later, during cross examination Stevens had this to say:

Q. So you're saying you're sure it was the plate that hit your foot?

A. Yes, sir, I'm reasonably sure.

Q. And would you demonstrate-- let me demonstrate on my foot where you say it hit you. I believe you told me it was above where your street shoe would be, is that right, up on the ankle up here?

A. Yes, sir.

Q. About where I have my hand.

A. That was the primary impact yes, sir.

Q. I've got it maybe just a quarter of an inch above the top of my street shoe.

A. Yes, sir.

Q. Up on what we would call the ankle, top of the ankle?

A. Yes, sir. (TP 53)

Unless the plaintiff is contending that Stevens' foot was of childlike dimension - 3 1/2 inches to 3 1/4 inches from instep to toe - it is obvious from plaintiff's own uncontradicted evidence that Stevens' foot must have been at least partially beneath the dockplate at the time it fell. This is true despite the alleged forward leap of the dockplate. Further, Stevens never denied that his foot was beneath the dockplate but could only say he did not know. (TP 126)

The plaintiff attempts to bolster this novel interpretation of the evidence and refute the contributory negligence argument through the use of an analogy wherein a pedestrian walks in front of a standing vehicle with its motor running although the driver has been instructed not to move the car and has agreed not to. The argument is that the pedestrian, when run down, could not have been contributorily negligent. This analogy is inappropriate but serves effectively as an illustration if one crucial fact is added.

Unlike the pedestrian, Stevens was engaged at the time of the accident in actively trying to bring about the result which caused the injury, specifically, getting the dockplate to fall. If the pedestrian had been attempting to get the car into gear while standing in front of it and succeeded, then the analogy would be appropriate and the pedestrian would be just as negligent as Stevens. Whether the gear system became engaged through the

driver's act or the pedestrian's would not affect the application of the contributory negligence doctrine to bar recovery.

The final case cited by the plaintiff in reference to the contributory negligence problem is that of Marketing Cooperative v. Garber, 205 Va. 757 (1965). In this case a farmer brought a load of grain to a marketing cooperative for storage and distribution. An employee of the cooperative told the farmer to hold a cable which was attached to a cradle beneath his truck. Without warning the employee activated a mechanism which raised the cables which were threaded through pulleys one of which caught the farmer's hand. There was no evidence that the farmer was familiar with the operation involved or that he had ever been to this particular cooperative before. Rather, he was following the instructions of the employee in holding the cable as he was directed. The Court correctly sustained the marketing cooperative's motion to strike the evidence as to unsafe premises holding:

It is conceded that neither the premises nor the machinery was inherently dangerous. The only thing which made the situation dangerous to Garber was the command of Puccinelli to Garber to "hold the cable", and the subsequent activation of the machinery by Puccinelli without notice to Garber. Garber did as he was told. Puccinelli on activating the hoist without warning Garber, failed to exercise reasonable care. Puccinelli was charged with knowledge of the instruction he gave to Garber and that Garber was obeying that instruction. He was familiar with the operation of the lift. He knew, or ought to have known, that to start the movement of the hoist mechanism with Garber holding one of the cables would create a situation dangerous to the latter. Garber, supra at 760, 761.

And later:

. . . the negligence upon which the judgment against Puccinelli is predicated is his active negligence in failing to give notice to the plaintiff, a failure which transformed a safe situation into one of danger. Garber, supra at 762.

In Garber, the plaintiff was merely following the instructions of the negligent employee and it was not alleged that the plaintiff was familiar with the premises or the circumstances but that the employee was charged with the knowledge and familiarity with the circumstances and the mechanism involved. In our case, Stevens was thoroughly familiar with the premises and the particular mechanism and operation involved. It was Stevens who gave instructions to Mr. X, and not vice versa. In this situation, it was Stevens who was charged with the knowledge of the circumstances and a duty to take whatever measures were necessary, commensurate with his skill and capacity, to avoid injury to himself and others. The Garber case correctly states the law in Virginia, which is that a possessor of land must use reasonable care in providing for the safety of business licensees, "unless the licensees know or from the facts known to them, should know of the possessor's activities and of the risk involved therein." Garber, supra at 761.

Stevens testified that he had been making trips to the Ford plant since 1957 and on a regular basis since 1975, that he had lifted dockplates several times a week in a variety of ways and that he even had particular knowledge of the peculiar characteristics of this particular dockplate. (TP 108-110) He was not in the situation of Garber, a novice blindly following the instructions of an experienced employee, but an experienced truck driver voluntarily engaged in a joint venture with another person to whom he was giving instructions. If Stevens had been



new on the job and a Ford employee had said "stand here" and without warning dropped the dockplate on his foot, then perhaps Ford would be guilty of some active negligence under Garber or Shook, but not otherwise.

In short, none of the above cases may be cited for the purpose of absolving Stevens of the responsibility of knowingly assuming the risk of a situation with which he was intimately familiar and for his failure to take appropriate measures for his own safety while carelessly performing the activity which caused the injury.

2. NO DUTY WAS OWED BY FORD MOTOR  
COMPANY TO THE PLAINTIFF, AN INVITEE,  
AS TO THE OPEN AND OBVIOUS CONDITION  
OF THE DOCKLEVELER.

The plaintiff seeks to impose upon Ford Motor Company, both through Instructions 1, 2 and 3 and through its oral and written arguments to the Court, an affirmative duty on the part of Ford to insure against injury to any invitee which is contributed to by a condition of the Ford Motor Company premises and has cited Bradshaw v. Minter, 206 Va. 450 (1965) as authority. That case involved an owner of real estate who invited a guest to ride a horse while knowing that she was a novice and that the horse was too spirited for her to ride. The plaintiff is not asserting that there was anything about the dockplate which Ford knew and that he did not know. The plaintiff had ample experience in the manipulation of dockplates as opposed to the inexperienced rider in Minter, and even testified about his previous experience with the particular dockplate he was trying to lift. (TP 108)

The plaintiff has responded to the contention that Ford was not required to have a dockleveler that operated automatically with the following statement:

Such an argument is like saying that because you are not required to have a door on your office, you are not required to keep it from hanging from a single hinge, thus constituting a menace to the public. (PM 21)

This analogy invites exploration although in its present form it is not comparable to the case at bar.

The plaintiff is not maintaining that the dockleveler was waiting for Stevens in some menacing fashion like a door suspended by a single hinge. Rather, the plaintiff says that Ford was negligent in not maintaining a dockplate that operated automatically. Stevens knew exactly what the dockplate would and would not do and precisely how it was to be operated manually since he had done so on many occasions. If Ford was operating a grocery store which had doors that opened automatically and for some reason these doors ceased to function automatically but still could be operated manually would Ford be negligent in allowing them to be used? What if a delivery man, impatient to have his truck unloaded by the store's employees, props the door open in a makeshift fashion. If in the course of this operation the door should close on the delivery man's finger can he then be heard to say that Ford is negligent because it failed to keep the doors opening automatically and thus caused the accident? The duty to keep all equipment functioning automatically is simply not a duty that is owed by an owner of premises to every business invitee. This is particularly true when the business invitee has no obligation to operate the equipment in question. The fact that the dockplate did not function automatically could not have been a proximate cause of the accident. The only way in which this dockplate could have caused this injury was for it to be manipulated in a certain fashion, namely, being picked up and dropped.

The plaintiff asserts that the question of proximate cause is one of foreseeability and that it was not necessary that Ford foresee the precise injury involved but only that under the circumstances an injury was likely to occur. The plaintiff then reasons that since the jury could find from the evidence that it was foreseeable to Ford that a heavy dockplate when lifted manually had the potential for hurting someone that the failure to keep this dockplate working automatically was not only negligence but a proximate cause of the accident. This attenuated line of reasoning is not supported by the authorities cited.

Taylor v. A&P, 209 Va. 64 (1968), was a case in which the grocery store allowed water from a watermelon display to remain on the floor thus causing plaintiff's fall. The Court held that it was a reasonable inference for the jury to draw that this was not an open and obvious defect due to the color of the floor, etc. In the present case, the open and obvious nature of the dockplate's condition and the plaintiff's familiarity with it is not a disputed issue.

In Cox v. Mabe, 214 Va. 705 (1974), the defendant appealed from a judgment which found her negligent for parking her car on the traveled portion of a highway when two cars collided head-on as they attempted to pass. The Court held that because there was barely enough clearance for the cars to pass one another this did not mean that her action in leaving the car on the road in violation of statute could be excluded as a cause of the accident. In DeLawder v. Commonwealth, 214 Va. 55 (1973), two cars were speeding around a curve, one following the other closely, killing a pedestrian when the lead car went out of control. The defendant in the lead car said that his negligence could not have been the proximate cause since the following car struck him in the rear and

this was an intervening act. The Court held that when an intervening act is foreseeable it cannot be relied upon as breaking the chain of causal connection between the act of negligence and the injury.

In Vought v. Jones, 205 Va. 17 (1965), a child was struck by a motorist who was passing a parked ice cream truck. The Court denied the defendant's contention that the ice cream truck driver's negligence in parking illegally was a superseding cause of the accident, but held that it was a concurring cause and a question for the jury.

None of the above cases which the plaintiff has cited can be read as support for the proposition that a failure to maintain or to keep a dockplate working automatically was or could be a proximate cause of an accident such as this one. The well accepted definition of proximate cause, which is supported by a large body of Virginia authority, is as follows:

The proximate cause of an event is that act or omission which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred. Beale v. Jones, 210 Va. 519 (1970); Huffman v. Sorenson, 194 Va. 932, 937, 76 S.E. 2d 183, 187 (1953); Long's Baggage Transfer Co. v. Moore, 198 Va. 608, 611 95 S.E. 2d 221, 223 (1956); Smith v. Prater, 206 Va. 693, 698, 146 S.E. 2d 179, 183 (1966); Wells v. Whittaker, 207 Va. 616, 622, 151 S.E. 2d 422, 428 (1966).

While this definition can be applied to any of the negligent parties in the above line of cases cited by the plaintiff, it is very difficult to imagine how this definition can be applied to the failure of Ford to provide a dockplate that worked

automatically. There is simply no way that this dockplate, lying at rest as the plaintiff found it, could have caused any injury to Stevens, any more than any other heavy object which might be found at the Ford plant. The plaintiff might just as well argue that Ford was negligent in maintaining a dockplate that was too heavy and that but for the fact that the dockplate weighed 800 pounds he would not now be injured. The plaintiff has failed to produce a single Virginia case which would hold an owner of a premises liable for an injury that occurred in this or similar fashion.

The duty owed to a business invitee is succinctly stated in a long line of Virginia cases and it is the duty by the owner to keep his premises reasonably safe for the visit or in the alternative to warn of any dangerous conditions which are not open and obvious to a person exercising reasonable care for his own safety. Julian E. Trimyer and St. Paul-Mercury Indemnity Company v. Norfolk Tallow Company, Inc., and Virginia Electric and Power Company, A Corporation, 192 Va. 776, 66 S.E. 2d 441, The Great Atlantic and Pacific Tea Company v. Mattie Lee Rosenberger, 203 Va. 378, 124 S.E. 2d 26, Alex Gottlieb, Trading As Savemore Supermarket v. Lorene A. Andrus, 200 Va. 114, 104 S.E.(2), 743, Williamsburg Shop v. Weeks, 201 Va. 244, 110 S.E. 2d 189, Tazewell Supply v. Turner, 213 Va. 93, 189 S.E. 2d 347, Reliable Stores v. Marsh, 218 Va. 1005, 243 S.E. 2d 219.

The plaintiff next argues that even if Ford was not negligent in failing to provide a dockplate which worked automatically that it was negligent in failing to place the dockplate into position. This argument assumes erroneously that Stevens had no other choice but to place the dockplate into position when a Ford employee declined to do so immediately. This ignores the fact that the plaintiff's own evidence establishes that Stevens had no obligation to unload the trailer or to place a dockplate into position. It is uncontradicted that the trailer could not be

unloaded until the forklift operator was available to do so. For this reason the plaintiffs' quotations from the 57th Volume of American Jurisprudence 2d are useful from the point of view of analyzing the plaintiff's negligence but not that of Ford. According to the plaintiff's own testimony Ford did not undertake to place the dockplate into position right away with a forklift so the plaintiff elected to do this himself with the aid of "X". Here the quotation is particularly applicable:

Even a volunteer or stranger  
is liable for an injury  
negligently inflicted on the  
person or property of another.  
The law imposes an obligation  
upon everyone to attempt to  
do anything, even gratuitously,  
for another, to exercise some  
degree of care and skill in  
the performance of what he has  
undertaken. . . 57 AMJur 2d,  
424; NEGLIGENCE §45

For reasons of his own Stevens elected to place this dockplate into position for the Ford Motor Company. Had he exercised an appropriate degree of care and skill during this operation, he would not have been injured. If Ford had attempted to raise the dockplate and done so negligently, injuring Stevens, this would be a different case. However, Ford's failure to conform to the plaintiff's idea of how and when the dockplate should be placed into position did not entitle the plaintiff to perform this task negligently and then impose liability upon Ford.

This point is further illustrated by the New York case which the plaintiff cites on page 26 of his Memorandum, Hamblet v. Buffalo Library Garage Co., Inc., 225 N.Y. Supp. 716 (1927). In that case plaintiff put his car in a garage and asked to be directed to the toilet. A garage employee directed him to the rear of the garage and when the plaintiff followed these directions he fell down a darkened stairway. The New York Court said in that case:

. . .the defendant, through his employee, undertook to direct the plaintiff to the toilet. If the plaintiff, without instructions, had undertaken to find the toilet in the rear of the garage, and had been injured, a different question would have been presented. The plaintiff, however, followed instructions received from the employee and was injured. Hamblet, supra at 718.

If Stevens had been directed by Ford to the loading dock and was injured inadvertently while backing his truck to the dock, this too would be a different case. But the evidence shows that Stevens, unlike the plaintiff in Hamblet, did not receive or request instructions but knew the condition of the dockleveler the moment he looked at the loading dock. He even knew which dockplates were heavier than others. (TP 111) No one undertook to tell plaintiff how to raise the dockplate and Stevens acknowledged this was not something he was required to do. The New York case of Hamblet is similar to that of Garber but it is not similar to the case at hand. The plaintiff was not an inexperienced visitor. He was not taking instructions, he was giving them, and his actions bare very little resemblance to stumbling down a darkened stairway in a strange place.

On page 28 of the plaintiff's brief, it is stated that Mr. Reeves not only directed the plaintiff to the loading dock but "undertook on behalf of Ford to place the dockplate in proper position". (PM 28) The argument appears to be that either Mr. Reeves in his conversation with Stevens undertook a task on behalf of Ford which he did not complete and was therefore negligent or, in the alternative, Mr. X was the Ford employee who undertook the task and his negligence can be imputed to Ford. This argument relies upon several false premises and assumes facts which were

not in evidence. Not only is there a very obvious difference between a promise to perform an act and performing it negligently, but the negligence, if any, of Mr. X could not be attributed to Ford when plaintiff's own evidence showed that Mr. X could just as well have been an independent truck driver. (TP 95) If the plaintiff had never been to the Ford plant before, and an employee had directed plaintiff to the dockplate, raised the dockplate, and said to Stevens "stand here" and then the dockplate fell, we would have a situation similar to that of Garber or Hamblet, but such is not the case.

Instructions 1, 2, and 3 which collectively placed a duty upon Ford to exercise ordinary care in maintaining its equipment (that is to keep it operating automatically) to place the dockplate into position, which the jury could find would require a forklift to repair the docklever, to refrain from using the dockplate, or to direct the plaintiff to another place for unloading. This is not a correct statement of the duty owed to an invitee. These instructions place Ford in the position of being an insurer of its premises, even to the point of insuring against an injury to those who voluntarily undertake the work of Ford when it does not conform to their idea of how or when it should be done. The law has never provided such protection for officious intermeddlers.

Finally, the plaintiff maintains that the testimony by Hamilton that forklift operators would normally be working in the area of dockplates that were not functioning automatically established a standard of care which Ford violated in not using a forklift. A standard such as this ignores testimony by Stevens, Sanderlin and Hamilton that these dockplates were frequently and customarily lifted by other means. The plaintiff would compare



this to the case of Shiflett v. Timberlake, Inc., 205 Va. 406 (1964), in which the plaintiff testified she could not see any water on the floor of a drugstore in which she fell. The drugstore owner testified that in inclement weather he frequently mopped the floor of the store and placed a rubber mat inside the entrance. The Court said that this established the standard of care. Shiflett, supra at 410, 411. In the present case, the condition of the dockplate was open, obvious and known to Stevens who was also aware that forklifts and other devices were often used. His knowledge of these devices and the attendant circumstances distinguish him from the claimant in Shiflett and establish that a forklift was not required to meet the proposed "standard of care". If a forklift was required, and Stevens knew this, then it is clear that he assumed the risk of his own venturousness in acting in conscious disregarding of the alleged "standard".

3. THERE WAS NO COMPETENT EVIDENCE  
THAT MR. X WAS OR TEMPORARILY BECAME  
AN EMPLOYEE OF FORD MOTOR COMPANY FOR  
WHOSE NEGLIGENCE, IF ANY, IT COULD BE  
HELD LIABLE.

The plaintiff admits that the only evidence tending to show Mr. X was a Ford employee was circumstantial. All of the Virginia cases which the plaintiff cites with reference to the use of circumstantial evidence involve circumstantial proof of negligence in death cases in which the evidence shows that death occurred in a certain way although no eye witnesses were present. Bly v. Southern Ry. Co., 183 Va. 162, (1944), Northern Virginia Power Company v. Bailey, 194 Va. 464, (1952), Richardson v. Lovvorn, 199 Va. 688, (1958) and Sykes v. Langley Cabs, Inc., 211 Va. 202, (1970).

The only cases which plaintiff cites for circumstantial evidence of employment are from other jurisdictions and are readily distinguished. In the case of McAffee v. Travis Gas Corporation, 153 S.W. 2d 442 (Tex. 1941) the plaintiff was engaged in inspecting a gas line with an employee of Travis Gas Corporation when the latter lit a match which caused an explosion. In that case the question was not whether the match striker was employed by the defendant but whether he was acting within the scope of his employment. McAffee, supra at 446. In McAffee, the employee admitted that he was employed by the defendant as did his supervisors. The issue addressed by the Texas Supreme Court was whether or not a master/servant relationship existed at the time of the inspection since the employee had been told by his supervisor to stay at the well. While scope of employment is not an issue in this case, it is interesting to note that the Texas Court required evidence that:

The alleged servant was performing services peculiar to the defendant's business or affairs on or about the latter's property. McAffee, supra at 446.

The uncontradicted evidence in this case is that Mr. X was not performing services peculiar to Ford but could just as well have been a truck driver. (TP 95, 111, 150 and 151) Likewise in the case of Casey v. Sanborne's Inc. of Texas, 478 S.W. 2d 234 (Tex. App. 1972), the issue is not whether the negligent employee had an employment relationship with the defendant, but rather what the consequences of that situation were. This was a case in which a Texas travel agency employed a Mexican travel agent to provide services for its customers. The Court held that since the Mexican driver represented himself to be employed by the Texas travel agency and was performing services peculiar to that employment, that was enough to establish a respondeat superior relationship:

In the absence of evidence showing a different relationship between the parties, the fact that the alleged servant was performing services peculiar to the principal's business or affairs establishes prima facia that the relationship of master and servant exists between them. . .

Sanborne held out Romfel's employees as "our men in Mexico", and the driver represented that he was "from Sanborne's". Both were performing services peculiar to Sanborne's business. We conclude the evidence made out a prima facia case of respondeat superior. Casey, supra at 239.

There was no evidence that Mr. X represented himself to be an employee of Ford or that any agent of Ford hired or paid Mr. X. In addition, Stevens admitted that the duties performed by Mr. X were not "peculiar to Ford's business" but that he could have been a truck driver. There was also positive evidence from a Ford employee, Sanderlin, that Mr. X was in fact an independent truck driver. (TP 95 and 150)

The plaintiff also cites the Georgia case of Thomas v. Smith, 86 S.E. 2d 353 (1955), a case in which a customer who had never been to the service station in question before for business purposes spoke with an employee of the station who said that he would get the mechanic who would fix his brakes. Both the employee and the mechanic were wearing dark blue uniforms and the mechanic called for parts from the service station office. The station owner contended that since that mechanic had no actual authority to fix the car he should not be liable for the damage that ensued when the car rolled off the grease rack. The Court held that since the mechanic had been represented by an employee of the station to be a mechanic with authority to fix the car, and that since

other important indicia of employment were present, namely the use of the premises and a dark blue uniform, that it would be too much to require a customer to seek out the owner to assure himself that the mechanic was indeed employed.

Again, this is readily distinguishable from the present case in that Stevens was not a stranger to the plant, "X" wore no uniform or Ford insignia, and was not observed doing anything incompatible with being a truck driver. Rather, the jury was allowed to speculate based on the plaintiff's tentative assumption that this might have been a Ford employee in the face of positive evidence to the contrary from Ford.

Contrary to the frequent assertion of plaintiff's counsel, there was never any evidence presented to show that truck drivers or any other persons were ever "pressed into service" by Ford. Although the phrase "pressed into service" clearly implies a lack of free will, there was never any evidence of compulsion, obligation or coercion with regard to any task performed at the plant and no evidence of anything that was incompatible with simple compliance to a casual request.

The case of Nolde Bros.v. Chalkley, 184 Va. 553 (1945) is cited by the plaintiff in support of his theory that because supervisory personnel did not object to the practice of permitting truck drivers to assist in the positioning of the dockplates this made truck drivers employees or "borrowed employees" of Ford. In contrast, Chalkley was a case in which small boys were hired by bread truck drivers to ride with them and make deliveries. These boys were paid by the individual truck drivers and gathered every morning at the bakery for this purpose with the knowledge and acquiescence of the supervisory personnel. There is a readily discernible difference between independent truck drivers complying with simple requests from coworkers and employing young

children to work exclusively under one's direction and control and paying them for their services. As the Court said in Chalkley:

The ordinary test to determine whether one is an employee or an independent contractor is to ascertain "who has the power to control and direct the servants in the performance of their work." Crowder v. Haymaker, 164 Va. 77 (1935), Epperson v. Dejarnette, 164 Va. 482, 486 (1935), Hann v. Times Dispatch Publishing Co., 166 Va. 102 (1936).

It was equally significant that the Chalkley case was dismissed by the Virginia Supreme Court for lack of jurisdiction and the plaintiff directed to pursue his workmen's compensation remedy. Other than the compliance of "X" to Sanderlin's request, there was no evidence that Ford had any power to control and direct either Stevens or "X".

It is among the most elementary principals of the law of master/servant that the key to this relationship is the power to control and the duty to obey. Jacobson v. Kirn, 192 Va. 352 (1951), N&W Railway v. Johnson, 207 Va. 980 (1967) and Taylor v. Baltimore and Ohio Railway Co., 108 Va. 817 (1908). This point is well illustrated by the most recent case of Kay Management v. Creason, 220 Va. 820 (1980).

Creason is the only true "borrowed" employee case from Virginia which plaintiff has cited in support of this theory. Creason involved an injury to a pedestrian from a back hoe which was being operated by the owner's father who had leased the back hoe to a construction company. The lease provided that a back hoe would be furnished along with an operator and fuel. The owner-lessor gave no instructions to the operator as to the type of work to be done since the operator received his orders from Kay Management, the lessee, and its employees. The issue was

whether or not the back hoe operator was Kay's agent at the time of the accident so as to impose liability on Kay for the operator's negligence. The Virginia Supreme Court focused almost exclusively on control in determining the outcome:

The extent of Kay's power to control Beard's operation continued without variation, modification, or interruption throughout the period during which the equipment remained subject to Kay's use on property managed by Kay. The performance of services further indicates Kay's purposes began on November 19th when Beard started the engine of the back hoe. From that time Kay had the power to control Beard's actions. Kay's agent, Morrisette, could have ordered Beard to proceed to Building 3628 by a specified route at a prescribed speed...

Indeed he could have preceded to the unit on foot or directed a workman to do so, to control his course and speed, and to warn others of its approach...

There was evidence from which the jury could reasonably infer that Morrisette had the power to control all of Beard's continuing work on the apartment property, including his movement of the back hoe from its assigned parking spot to the site designated for work on the day of the accident. Therefore, the master/servant question was properly submitted to the jury for determination. Creason, supra at 828.

In the present case, unlike Creason, there was no such evidence of control and the question was not properly submitted to the jury. Stevens testified that neither he nor other truck drivers were obligated to raise or position the dockplates. He testified further that he would handle dockplates only upon receiving instructions from his dispatcher by telephone. (TP 97)

Stevens did not testify that Sanderlin or any Ford employee gave him any directions or instructions on how to perform the work or exercised any degree of control over himself or the other truck drivers. In contrast, he described the instructions that he gave to Mr. X while the dockplate was being positioned. (TP 38) Consequently, it would appear that according to the rule of Creason, the negligence, if any, of Mr. X should be imputed to Stevens since he was controlling both Mr. X and the work as it was being performed.

The plaintiff has cited cases from other jurisdictions in support for his theory that the forklift driver's request of Mr. X made Mr. X the "borrowed employee" of Ford for whose negligence Ford is liable. Brown v. Gallipeau, 75 A.2d 694 (1950) was an intersection accident in which a father sought to recover for the damage to his car which was being driven by his son at the time. The son was on his way to his sister's house to pick up and deliver some Christmas presents for the family. The Court found that the father could not avoid the consequences of his son's contributory negligence since a master/servant relationship existed at the time of the accident. The Court again focused on the issue of control:

Had Richard been the owner of the automobile, or had he been a bailee with the right to drive it whenever, wherever, or however he wished, it might be said that he was an independent contractor and not the plaintiff's servant. But the findings construed to support the ultimate finding, only showed that he had permission to use the car to drive to and from work and to drive to his sister's after work on the day of the accident. Under such an arrangement he had no more freedom of movement than he would have had had the plaintiff asked him to take the car to work and after work carry the family presents to his daughter's home. . . .

It cannot be said that he was under no compulsion to complete his voluntary mission. Brown, supra at 696, 697.

It is clear that in this context the Vermont Court based its finding upon the control which the father exercised over the son in the performance of these errands with the family car as a result of which the son's negligence would bar the recovery of the father.

In the Rhode island case of Lemieux v. Leonard Construction Co., et al., 56 A.2d 189 (1947), the plaintiff was injured at a railway crossing which was under the control of a construction company whose employees were acting as tenders in signaling to vehicles when it was safe to cross. The Court held with regard to the railway that:

...if it relied wholly upon the crossing tender to give the necessary warning, then it adopted him as its agent to perform that duty and would be answerable for his negligence. Lemieux, supra at 192.

In this case it has not been asserted that Ford had delegated control of the loading dock or the task of lifting dockplates to some other company or its employees. On the contrary, the only evidence is that it was Ford's obligation to place the dockplates into position and to unload the trucks. If the plaintiff persists in asserting that Mr. X was doing the work of Ford and was therefore Ford's employee then the same thing must be said for Stevens, his coworker, and there is absolutely no way to escape the application of the Workmen's Compensation Act as an exclusive remedy, as illustrated by the Chalkley case and the defendant's memorandum filed herein.

In the Louisiana case of Bates v. Lagars, 193 S.2d 375 (1966), a collision occurred while Lagars was attempting to pull



the vehicle of Samuels from a ditch using his own car. No lights or flares were used on a dark rainy night to warn of this operation and Lagars' vehicle was struck by Bates. The driver of the Bates vehicle did not recover due to his contributory negligence but his wife did. The defendants, Lagars and Samuels, appealed and again the Court used the accepted criteria for determining a master/servant relationship:

It is also obvious, under the circumstances of this case, that Samuels had the right to direct and control the operation of removing his car from the ditch; he was present and actively assisting in the effort. Therefore, whatever acts of negligence are chargeable to Lagars are imputable to Samuels. Bates, supra at 379.

The Louisiana Court went on to say that in the absence of a master/servant relationship Samuels would still be liable on a joint tortfeasor theory. Aside from the important master/servant issue it is interesting to note the similarity between the Bates case and the present situation. Instead of two volunteers trying to pull a car from a ditch, there are two volunteers trying to pull a Johnson bar from under a dockplate. Stevens was directing the removal of the bar from his truck just as Samuels was directing the removal of the car from the ditch. Any negligence of "X" resulting in an injury to a third person could be imputed to Stevens, according to the Bates case.

The plaintiff has yet to produce a single case, from any jurisdiction, in which a casual request by an employee to the employee of another to assist in some job or task has been construed to create a master/servant relationship which imposes liability upon the master whose servant made the request. In fact, an objective reading of almost every case cited by the plaintiff in support of the "borrowed employee" theory confirms

that the true test is whether the master, to whom the negligence is imputed, had an appropriate measure of direction and control over the servant. This is clearly the test in Virginia and one which the plaintiff has not met with regard to Mr. X.

As has been previously stated there were a variety of acceptable means by which to place the dockplate into position, and the plaintiff as a frequent visitor to the Ford plant was familiar with all of them. Nevertheless, the Johnson bar became trapped under the dockplate and Stevens now asserts on the final page of his brief that:

"X" knew (is charged with knowing) that if he caused the dockplate to fall an injury was likely to occur. (PM 50)

This is a curious statement. Exactly how could Mr. X have come by this knowledge that an injury was imminent if the dockplate fell? There was no evidence of any other injuries at the Ford plant caused by positioning the dockplates. The entire operation was centered around raising the dockplate and getting it to fall into position. Why should Mr. X or any other person have suspected that an injury was likely when this was finally accomplished? Stevens' warning not to move or touch the Johnson bar did not mention or imply that he was about to put his foot under the dockplate. If it was not foreseeable to Stevens that the dockplate might fall because three of them had previously been unable to budge it and "X" had agreed not to try, how was it foreseeable to "X" that if he touched the bar the dockplate would fall and injure Stevens? (PM 13) If Stevens was kneeling with his back to "X" and Stevens himself is still not certain whether his foot was beneath the dockplate, how can "X" be charged with the knowledge that an injury was likely? Clearly Stevens' instructions to "X" indicate that Stevens must have known something about the risk of the situation that "X" did not know, as events have shown.

The only conclusion which follows from the attempt to charge "X" with more knowledge than the person giving the instructions, Stevens, is to make "X" an intentional tortfeasor since he acted with the knowledge that an injury was likely. This would raise a serious question as to whether "X" was acting within the scope of his alleged "employment" at the time of the accident.

#### CONCLUSION

The logical extension of all of the arguments which seek to impose liability upon Ford for the carelessness of Stevens involve the plaintiff in a series of irreconcilable dilemmas.

Stevens knew from experience and observation that the dockleveler would not work automatically and he knew what needed to be done to unload his truck. He was aware that all he could be required to do was back the truck up to the dock. When he went beyond this, after the Johnson bar became stuck, he still knew that his only responsibility was to drive the truck.

When he undertook to help "X" remove the bar and to position the dockplate he voluntarily undertook the work of Ford. He cannot now argue passive negligence against Ford because there was nothing about the situation he did not know. He cannot argue active negligence because no Ford employee was involved. He cannot argue that "X" was a Ford employee because he admits he isn't sure and there is positive evidence from Ford that "X" was not so employed. He cannot say "X" is a borrowed employee based on the actions of "X" and the knowing acquiescence of Ford because the same criteria apply to him as well and his recovery would be barred by the Workmen's Compensation Act. He cannot argue premises liability because there was no allegation or proof of a hidden defect and nothing about the situation of which he was ignorant.

He cannot say that Ford was negligent in failing to have the dockleveler functioning automatically or to direct him to one that was because no authority has been cited as support for a duty such as this and if any was ever discovered a new definition of proximate cause would be required in order to impose liability upon Ford.

It is respectfully submitted that for all of the foregoing reasons this Honorable Court should declare that this matter falls within the Workmen's Compensation Act and that it is without jurisdiction, or set aside the verdict and enter final judgment for the defendant or grant a new trial on all issues or require the plaintiff to remit the amount by which the verdict is excessive.

Respectfully submitted,

FORD MOTOR COMPANY

By

Allan S. Reynolds  
Of Counsel

ALLAN S. REYNOLDS, ESQ.  
ROBERT L. MILLS, ESQ.  
White, Reynolds, Smith &  
Winters  
Post Office Box 3315  
Norfolk, Virginia 23514

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed this 5 day of March 1981 to all counsel of record.

Allan S. Reynolds  
Allan S. Reynolds

FILED  
MAR 5 1981

BY D. M. T. [Signature]



FOURTH JUDICIAL CIRCUIT OF VIRGINIA  
CIRCUIT COURT OF THE CITY OF NORFOLK

MORRIS B. GUTTERMAN  
JUDGE

April 17, 1981

100 ST. PAUL'S BOULEVARD  
NORFOLK, VIRGINIA 23510

J. Riley Johnson, Jr., Esquire  
906 One Main Plaza East  
Norfolk, Virginia 23514

Allan S. Reynolds, Esquire  
203 One Main Plaza East  
Norfolk, Virginia 23514

Re: William C. Stevens  
v. Ford Motor Company  
At Law No. L-80-499

Gentlemen:

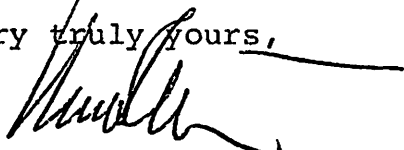
The court has carefully reviewed your memoranda, the transcript in the file and the pleadings, and after argument of counsel, the court is of the opinion the verdict given by the jury for the plaintiff should be set aside and that judgment be entered for the defendant.

The court is of the opinion that plaintiff was guilty of the assumption of risk as a matter of law.

The court will not in this letter reiterate what you have stated in your memoranda. In substance, in reaching its conclusion, the court agrees with the reasoning and cases cited contained in the memoranda filed by defense counsel.

Accordingly, please prepare draft of order carrying out court's decision as above stated and present it for entry.

Very truly yours,

  
Morris B. Gutterman  
Judge

MBG:dh

RECEIVED  
APR 20 1981  
CLERK OF COURT

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM C. STEVENS

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

:

:

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:

:

AT LAW NO. L80-499

1819-81

O R D E R

This action came on to be heard on the motion of the defendant to set aside the jury verdict of November 21, 1980 and to enter final judgment for the defendant, and the court having heard the argument and considered the memoranda of counsel, for the reasons stated in the court's letter of April 17, 1981, it is ORDERED that the verdict of the jury be, and hereby is, set aside and final judgment entered in favor of the defendant, Ford Motor Company, and the defendant shall recover its costs, to all of which action of the court the plaintiff, by counsel, objects and excepts.

And the plaintiff having indicated his intention to appeal this judgment to the Supreme Court of Virginia, it is ordered that the execution of this judgment be suspended so long as the petitioner timely prosecutes the appeal and thereafter so long as the matter is under consideration by the Supreme Court; provided that the plaintiff or someone for him shall file an appeal bond in the Clerk's Office of this court within twenty-one (21) days hereof, with surety to be approved by the Clerk of the Court in the penalty of \$1,000 which bond shall be conditioned to pay all damages, costs and fees which may be awarded against the appellant in the Supreme Court and all actual damages incurred in the consequence of the suspension.

And upon motion of the plaintiff it is further ORDERED that the transcript of the testimony of witnesses and other incidents at the trial of the case on file with this court be and hereby are a part of the record herein.

ENTER:

5/5/81

*Morris B. Gutterman*

\_\_\_\_\_  
Morris B. Gutterman, Judge  
J U D G E

WE ASK FOR THIS:

*Alan S. Reynolds*, p.d.

SEEN AND EXCEPTIONS NOTED:

*John L. Johnson* p.q.

IN THE  
SUPREME COURT OF VIRGINIA  
At Richmond

WILLIAM C. STEVENS,  
Petitioner,

v.

FORD MOTOR COMPANY,  
Respondent.

PETITION FOR APPEAL  
AND ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR

The Petitioner assigns as error the action of the Trial Court in setting aside the jury verdict in his favor in the sum of \$704,000.00 and entering summary judgment for the defendant.

PETITION FOR APPEAL

MATERIAL PROCEEDINGS IN THE LOWER COURT

This action came on upon a Motion for Judgment filed in the Circuit Court of the City of Norfolk by William C. Stevens, hereinafter plaintiff, against Ford Motor Company, hereinafter defendant, alleging that on May 10, 1978, he was injured as a result of the negligence of Ford Motor Company. In due course Ford Motor Company filed its Grounds of Defense and the case came on for trial on November 20 and 21, 1980. The defendant moved to strike the plaintiff's evidence at the conclusion of the plaintiff's evidence and again at the conclusion of all of the evidence, both of which motions



