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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

v.

**MARQUETTE
TRANSPORTATION
COMPANY, LLC**

Docket No. 16-CV-13545
Section "L"
New Orleans, Louisiana
Monday, July 10, 2017

TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE
VOLUME I

APPEARANCES:

FOR THE

PLAINTIFF: SAUNDERS & CHABERT
BY: HENRI M. SAUNDERS, ESQ.
SCOTTY E. CHABERT, JR., ESQ.
CHEYENNE MOELLER, ESQ.
6525 Perkins Road
Baton Rouge, LA 70808

FOR THE

DEFENDANT: SCIALDONE LAW FIRM
BY: JOHN A. SCIALDONE, ESQ.
ANNE S. WARREN, ESQ.
1319 24th Avenue
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Official Court

Reporter: Karen A. Ibos, CCR, RPR, CRR, RMR
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New Orleans, Louisiana 70130
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Proceedings recorded by mechanical stenography,
transcript produced by computer.

* * *

[46] MR. SAUNDERS: Your Honor, at this time the plaintiff calls Mr. Byron Thompson to the stand.

THE DEPUTY CLERK: Before you have a seat, would you raise your right hand.

(WHEREUPON, BYRON THOMPSON, WAS SWORN IN AND TESTIFIED AS FOLLOWS:)

THE DEPUTY CLERK: Please have a seat. And for the record, state and spell your name, sir.

THE WITNESS: My name is Byron Thompson, spelled B-Y-R-O-N, last name is Thompson, T-H-O-M-P-S-O-N.

CROSS-EXAMINATION
BY MR. SAUNDERS:

Q. Good morning, Mr. Thompson.

A. Good morning.

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Q. We met several months ago when you testified on behalf of Marquette. Why don't you start by telling us your position with the company.

A. Sure. I am the director of compliance and the company's security officer.

Q. And when we took the corporate deposition, you were designated as the individual to testify on the facts surrounding the accident and Marquette's investigation into it, correct?

A. I am – not the investigation into it. The investigation into it has been conducted because of the legal process, but I manage the safety management system.

* * *

[58] verifying it is the relevant one. But it is a fire drill, generator room. Okay.

Q. I've read them all and this is the closest one to the so-called fire that you're suggesting in this particular case.

A. All right. Correct.

Q. Okay. So this is Marquette's own policies regarding fire drill, right?

A. It's a – yes, training outline.

Q. Okay. Let's talk about – let's go to the drill – well, let's go ahead and talk about the scenario first. The scenario is a fire in the generator room, correct?

A. Correct.

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Q. And the problem on the ST. RITA on August 21, 2015, was in the generator room, correct, which is also the engine room?

A. The lower level of the engine room, yes, sir.

Q. Let's talk about the drill. The drill is actually what Marquette tells its crew to do in a situation like this, right?

A. Uh-huh.

Q. Okay. That's a "yes"?

A. Yes.

Q. "Notify wheelhouse of location of fire. Sound general alarm. Don proper PPE." And the PPE listed is a life jacket, correct?

A. That's one example of PPE.

Q. Okay. "Inform the crew of the situation and assign fire team positions." And what's the highlighted one say?

[59] A. "Gather the proper type extinguishers and simulate the use on fires by using the PASS method."

Q. So let me ask you this. How are you going to put out a fire if you're not in the engine room?

A. Sir, this is for incipient fires. We don't train the crews and the crews aren't expected – in fact, if you look at fire in the engine room, our other drill, it talks

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about secure for ventilation, secure fuel, and prepare for evacuation of the vessel log of the barge.

This is for incipient fires. You're confusing a small incipient fire maybe that hasn't really fully engulfed into a major fire. There is a big difference between the two and we don't train them – we don't even have the gear on board to enter the engine room. In fact, all our drills talk about evacuating the engine room and prepare to evacuate the boat.

Q. So let me get this straight. You're telling us that Marquette's position is you can enter the engine room when there is a fire, but Mr. Dunn should not have entered the engine room for a fuel leak?

A. If you go back, sir, it says, "Gather and come up with a plan." That's the first and most important thing you're supposed to do. He didn't do that.

And the other thing is, again, let's go back to the fact. If he is worried about the engine room catching on fire, that's not an incipient fire which is something routinely handled by a fire [60] extinguisher. That's going to cause the vessel to become engulfed and he needs to plan to evacuate the boat as per our drills and our instructions.

THE COURT. Could this leak have caused a fire or resulted in a fire?

THE WITNESS. Absolutely, sir. From my past experience, anytime you have spraying fuel, it atomizes. That's how it burns and ignites in the engine

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room. So if it's spraying, it's atomizing, then there is a severe risk of fire.

In the military we always treated it as spraying fuel as if it's a main engine room fire, well beyond incipient, which is a small trash can style fire.

THE COURT. Fuel, oxygen, and an ignition source.

THE WITNESS. It's hot in there and there's two engines running, and there's plenty of opportunity for it to ignite.

BY MR. SAUNDERS:

Q. Isn't it true, Mr. Thompson, that had Mr. Dunn shut down the emergency fuel valve that the boat would lose power?

A. Yes, sir. But he also would have kept fuel from going to the generator removing any spraying fuel, the atomization of fuel, and reducing the likelihood of fire.

Q. Well, but the boat was not tied off. So you're saying that he should have shut down the fuel, leaving a free-floating tow boat with two chemical barges attached to it?

A. No, sir. To my understanding he was a light boat. He had [61] already dropped off the barges.

Q. Okay. Let's talk about that.

A. And if he hadn't, he's still in Bolivar. So what our procedures require is for him to secure the boat – life over property. He could have put it in the mud.

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There's plenty of assist boats. Move the boat in a safe area. But actually, I would prefer for him to shut down the boat if it means the safety of the crew as opposed to anything else. Bottom line.

Q. Shutdown the boat and just let it free flow in a busy channel?

A. First of all, sir, there's plenty of assistance. Everyone understands SOS. He was on the bridge. He was the senior-most person on the boat – I'm sorry, on the wheelhouse. It's a force of habit. He is in the wheelhouse. He's the senior-most person on the boat. He should be directing the efforts. And even if he shuts down the generators, we have back up – radios are on battery back up. He can contact another boat for assistance. There are other boats right there in assistance.

Bolivar is a busy area as far as lots of vessels in the vicinity, but it's a holding area before you go through the Bolivar pass from the fleet in Bolivar out into the Texas Y ship channel. Only one boat at a time generally goes through there per the Coast Guard VTS. So there are lots of boats holding there waiting for their turn to pass out – I'm sorry, to go through and enter the Houston ship channel.

Q. What's the document that we're looking at here?

[62] A. Scroll down. I'm sorry. Never mind, it's at the bottom. It's the 2692, US Coast Guard 2692.

Q. You're familiar with this type of document?

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A. I am, sir.

Q. What is it?

A. It is an initial report of an incident.

Q. It's very important to Marquette to provide accurate information to the Coast Guard, is it not?

A. It is.

Q. What does this document show as far as the vessel being towed? Box –

A. Two loaded. Manner of vessels towed, two loaded. Okay.

Q. What does that mean to you?

A. Means he was hooked up – I'm sorry. It means he was tied into two barges.

Q. Two loaded chemical barges?

A. Correct.

Q. Hazardous chemicals like benzene?

A. Could have been. I don't know what the product was. But it's not more important than the crew. So his first instinct he has to preserve – make sure he can get the crew. As far as fire procedures, we tell them to evacuate to the barge if they have to evacuate the boat. He was in the Houston ship channel. He had no one bearing down on him. He is in a tight area. He had plenty of places to maneuver the boat.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

VS.

CIVIL ACTION NO.

MARQUETTE
TRANSPORTATION
COMPANY, LLC

2:16-CV-13545-EEF-MBN

SECTION L, DIVISION 5

DEPOSITION OF DR. RACHEL WISSNER,
M.D., taken on Wednesday, April 26, 2017, at
the offices of Ochsner Health Center-Sherwood,
170 McGehee Drive, Baton Rouge, Louisiana.

REPORTED BY: Tamra K. Kent, C.C.R.

Court Reporters of Louisiana, LLC
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BY: MR. HENRI M. SAUNDERS

Representing the Defendant:

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Gulfport, Mississippi 39501

BY: MS. ANNE S. WARREN

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Reported by: Tamra K. Kent, #83070,
Certified Court Reporter in and for
the State of Louisiana.

* * *

[86] A. 12 – 12/5 of 2016, he had called again for lorazepam.

Q. And was it filled?

A. Yes, I filled him for 20.

Q. And the next entry?

A. It was a phone call on 12/7, but I believe it just – it's a request, but it had already been refilled so it was refused.

Q. Are there any other records you have on Mr. Dunn?

A. No.

Q. So is it fair to say the last time you actually saw him was March of 2016?

A. That's correct.

Q. And do you have any plans to see him, any scheduled appointments?

A. I don't have any scheduled – there's no scheduled appointments for him.

Q. So at this point – additionally, rather, the last medication was filled in December of last year – well, December of last year?

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A. That's correct.

Q. What future medical treatment do you think he might need if any?

MR. SAUNDERS:

* * *

[91] THE WITNESS:

Same answer I guess that I – at the time that I saw him, on July 13th of 2015, I did not expect that he would not be able to continue doing his work.

BY MR. SAUNDERS:

Q. Okay.

A. I was treating him, going to recheck him in six months. Expecting that if he stayed on his long-term medication, that he would be able to avoid having the anxiety or panic attacks while at his work.

Q. That's a fair answer, Doctor. I appreciate that.

In fact, the anxiety and panic disorder, that's nothing new to you? You see that very often in your practice as a family physician?

A. Sure.

Q. Okay. And your patients that you see that have that, many of them are gainfully employed, right?

A. Yes.

Q. Okay.

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A. Yes.

Q. And I guess just – in July of 2015, you [92] didn't have anything in your mind telling you that you foresaw that Mr. Dunn was not going to be able to continue to work or – do you understand what I'm asking?

MS. WARREN:

I also object because it calls for speculation.

BY MR. SAUNDERS:

Q. You can answer, Doctor. You may have already answered, but you can answer.

A. The patient at the time that I saw him desired to return to work. He needed an evaluation. He felt he was doing better.

My impression was he should remain on his daily medication, and that he would do well if he did that. He was doing better maintained on that daily medication. And I expected to be able to have him go back to work and recheck him in six months. He had enough daily medication to last him for six months.

MR. SAUNDERS:

Thank you, Doctor. I would just, for the sake of completeness, I would like to tender the doctor as an expert medical physician in the field of family medicine.

* * *

App. 13

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* * *

[150] MR. SAUNDERS: Plaintiff calls Landry Kirk.

(WHEREUPON, MARK LANDRY KIRK, JR.,
WAS SWORN IN AND TESTIFIED AS FOL-
LOWS:)

THE DEPUTY CLERK: Please have a seat.
State and spell your name for the record, sir.

THE WITNESS. My name is Mark Landry Kirk, Jr. M-A-R-K, Landry, L-A-N-D-R-Y, Kirk, K-I-R-K, Jr., and I go by Landry.

CROSS-EXAMINATION
BY MR. SAUNDERS:

Q. Good afternoon, Mr. Kirk. We met previously. My name is Henry Saunders and I represent Mr. Kelvin Dunn. You're familiar with Mr. Dunn, are you not?

A. Yes, I am.

Q. How long have you been with Marquette?

A. March will make four years.

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Q. And what's your current position?

A. I am the director of human resources and crew management.

Q. What was your position in August of 2015?

A. I was the HR manager.

Q. And as HR manager, what were your duties?

A. At that time I was in charge of all wheelhouse and vessel hiring at the time.

Q. Okay. So you get to know your wheelman in that capacity, correct?

A. I also served as a crew manager before that in which I dealt

* * *

[156] vessel he never had any issues with anxiety, you would have no reason to disagree with that?

A. Correct.

Q. Now, in 2013, when he took a sabbatical, for lack of a better term, after he was taken off the boat for his anxiety, you guys had him evaluated by your physician, correct?

A. We have – yes. We have a common return-to-work practice for any employees that have been off for that period of time.

Q. Okay. And that doctor was Dr. Lisa Hawk at –

A. Pelican Outpatient.

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Q. – Pelican State Outpatient. You're familiar with that facility?

A. Sure am.

Q. You're familiar with that physician?

A. I am.

Q. Okay. And she evaluated Mr. Dunn and she actually received from – some records from his family physician, Dr. Rachel Wissner in Baton Rouge. Are you familiar with that?

A. I am not.

Q. Okay. Well, if the records from Dr. Wissner are contained in the personnel file – if I tell you that, you wouldn't disagree with me, would you?

A. Those files, depending on if it was for FMLA, would be kept by Patricia Owens who is our benefit manager in Paducah, Kentucky, and not in the personnel files that we keep in Harahan.

[157] Q. So there are some files that are kept in Harahan, some files kept in Paducah.

A. Regarding any FMLA leave of absence which he was on.

Q. But as far as being evaluated to return to the vessel, that's something you guys would be familiar with?

A. Correct. We would set up the return to work authorization for him to go.

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Q. And do you recall receiving the records from Dr. Hawk releasing him to full duty?

A. Yes.

Q. And he had also been – he had also told Dr. Hawk about the medications he was taking for his anxiety; is that a fair statement?

A. To my knowledge of the situation, correct.

Q. And this record from Dr. Hawk, which was in my client's personnel file, that's something that Marquette would have been familiar with?

A. Correct.

Q. And it says, "Patient seen and evaluated. Exam normal. Denies symptoms. May return to full duty. Had a long discussion with patient about more practical modalities to institute to deal with panic. Patient aware that he cannot take any sedating meds while at work. No hydroxyzine. Advised to consult his PCP." That was in your file?

A. Correct.

* * *
