

APPENDIX TABLE OF CONTENTS

Per Curiam Opinion of the Fifth Circuit (December 11, 2018)	1a
Judgment of the Fifth Circuit (December 11, 2018)	3a
Judgment of the District Court of Louisiana (September 7, 2017)	4a
Finding of Fact and Conclusions of Law (September 6, 2017)	6a
Order of the Fifth Circuit Denying Petition for Rehearing En Banc (January 15, 2019)	35a
Trial Testimony of Kevin Dunn (July 11, 2017)	37a
Oral Deposition of Junious Brown (January 26, 2017)	98a
Oral Deposition of Corey Crespo (January 26, 2017)	123a
Written Statement of Corey Crespo (August 21, 2015)	154a

**PER CURIAM* OPINION OF THE FIFTH CIRCUIT
(DECEMBER 11, 2018)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

KELVIN DUNN,

Plaintiff-Appellee,

v.

MARQUETTE TRANSPORTATION
COMPANY, L.L.C.,

Defendant-Appellant.

No. 17-30889

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:16-CV-13545

Before: SMITH, BARKSDALE,
and HO, Circuit Judges.

Kelvin Dunn sued Marquette Transportation Company for unseaworthiness, maintenance and cure, and Jones Act negligence after an injury sustained on the vessel owned by Marquette. After a two-day bench trial, the district court awarded damages for past

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

and future wages, future medical costs, past and future fringe benefits, and an award for pain and suffering. Marquette appealed the damages award, arguing that Dunn's negligence should mitigate the damages, the evidence does not support the damage award, and the district court incorrectly found unseaworthiness.

We have reviewed the briefs, the applicable law, and relevant parts of the record, and heard oral argument. The district court committed no reversible error. The judgment is **AFFIRMED**, essentially on the basis carefully explained by the district court in its 26-page September 6, 2017 Order.

**JUDGMENT OF THE FIFTH CIRCUIT
(DECEMBER 11, 2018)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

KELVIN DUNN,

Plaintiff-Appellee,

v.

MARQUETTE TRANSPORTATION
COMPANY, L.L.C.,

Defendant-Appellant.

No. 17-30889

D.C. Docket No. 2:16-CV-13545

Appeal from the United States District Court
for the Eastern District of Louisiana

Before: SMITH, BARKSDALE,
and HO, Circuit Judges.

This cause was considered on the record on appeal
and was argued by counsel.

It is ordered and adjudged that the judgment of
the District Court is affirmed.

IT IS FURTHER ORDERED that defendant-
appellant pay to plaintiff-appellee the costs on appeal
to be taxed by the Clerk of this Court.

**JUDGMENT OF THE
DISTRICT COURT OF LOUISIANA
(SEPTEMBER 7, 2017)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

v.

MARQUETTE TRANSPORTATION

Civil Action No. 16-13545

Section: L (5)

Before: Eldon E. FALLON,
United States District Judge

Considering the Court's Findings of Fact and Conclusions of Law entered herein on September 6, 2017, accordingly:

IT IS ORDERED, ADJUDGED AND DECREED that on the basis of the above Findings of Facts and Conclusions of Law, there be judgment in favor of Plaintiff Kelvin Dunn and against Defendant Marquette Transportation Company, LLC, in the total amount of \$3,359,718.87. This amount does not include deductions for past wages or other benefits Defendant paid Plaintiff after the date of the accident, which should be deducted.

IT IS FURTHER ORDERED that Plaintiff is entitled to pre-judgment interest on the above-mentioned past losses at the rate of 3% percent per

annum from the date of judicial demand until satisfied. Furthermore, the Plaintiff is entitled to post-judgment interest at the federal judicial rate from the date of judgment until paid.

New Orleans, Louisiana, this 7th day of September, 2017.

/s/ Eldon E. Fallon
United States District Judge

**FINDING OF FACT AND CONCLUSIONS OF LAW
(SEPTEMBER 6, 2017)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

v.

MARQUETTE TRANSPORTATION
COMPANY, LLC

Civil Action No. 16-13545

Section: "L" (5)

Before: Eldon E. FALLON,
United States District Judge

I. Factual and Procedural History

This case arises out of injuries allegedly sustained by Plaintiff Kelvin Dunn ("Plaintiff") on or about August 21, 2015 while he was employed as a relief captain on the M/V ST. RITA, which at the time of the accident was located in the intracoastal waterway in Bolivar, near Galveston, Texas. Specifically, Plaintiff alleges that he slipped and fell on diesel fuel that had accumulated in the engine room due to a fuel leak on the vessel and sustained injuries to his leg, hip, and back.

On August 3, 2016, Plaintiff filed a complaint against Defendant Marquette Transportation Company,

LLC (“Marquette”), the owner of the ST. RITA, and Plaintiff’s employer at the time of the accident. He seeks damages under the Jones Act, 46 U.S.C. § 30104, and general maritime law for Defendant’s alleged negligence and vessel unseaworthiness. Defendant denies liability claiming that Plaintiff’s injuries were caused in whole or in part by Plaintiff’s own actions.

This matter came on for trial without a jury on July 10, 2017. The trial lasted two days. The Court has carefully considered the testimony of all of the witnesses, the exhibits entered into evidence during the trial, as well as the record. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court hereby enters the following findings of fact and conclusions of law. To the extent that any findings of fact may be construed as conclusions of law, the Court hereby adopts them as such. To the extent that any conclusions of law constitute findings of fact, the Court adopts them as such.

II. Findings of Fact

(1) Plaintiff Kelvin Dunn is an individual of the age of majority and a resident of Louisiana.

(2) Defendant Marquette Transportation is the owner of the M/V ST. RITA, a tug boat which was maneuvering loaded chemical barges into their proper position in the fleeting area, more specifically, the Kirby Fleet area in the intracoastal waterway in Bolivar, near Galveston, Texas at the time of Plaintiff’s accident.

(3) At all relevant times, Plaintiff was employed by Defendant Marquette Transportation, as a seaman or member of the crew of the M/V ST. RITA, in the

capacity of relief captain. Plaintiff's job duties required him to steer the vessel and supervise the crew, as well as walk up and down stairs, along with some other moderate physical activity.

(4) The M/V ST. RITA has a two-level engine room, with a center stairway that leads from the upper/mezzanine level of the engine room to the lower engine room. The stairway lands on the lower engine room deck just aft of the front of the port and starboard engines, and directly between the port and starboard engine.

(5) The engine room contains the two generators for the vessel. The M/V ST. RITA relies on one generator at a time, and automatically switches between these generators every twelve hours. The generators can also be shut off manually. In that case, the running generator would be turned off, and power would be manually switched to the other generator. The vessel is also equipped with an emergency shut off switch, which will shut off both generators, and thus all power to the vessel, simultaneously.

(6) The switch to shut off individual generators is located on the generators themselves. The emergency shut-off switch is located outside of the engine room near the door.

(7) When the emergency shut-off switch is activated, the vessel's engines are shut off. The vessel does have some back-up battery power, but this will only run the emergency lights and radio. Without power, the vessel can still maneuver its rudders, but the rudders are insufficient to adequately and safely steer the vessel.

(8) The morning of the accident, the M/V ST. RITA was pushing two loaded chemical barges, at a speed of five knots. These barges had a ten foot draft, four feet wide and three hundred feet long. The M/V ST. RITA was approaching the Kirby Fleet where it would maneuver the loaded barges into the proper position in the fleeting area.

(9) Just before 5:00 a.m., Plaintiff was awakened by the sound of the vessel's engines "backing down" as the on-duty pilot was struggling to align the chemical barges in the fleeting area. Plaintiff left his bunk room, and went to the helm to assist Pilot Julius Brown. When he arrived at the helm, Plaintiff found the M/V ST. RITA was "sideways" trying to swing the head of the tow around to land a single barge level in the fleet. Plaintiff temporarily took over the controls and radioed for another tug in the fleet to come act as an assist boat. With an assist tug alongside and Plaintiff operating the controls, the tow was straightened back out and landed in an ordinary manner alongside the fleet.

(10) As Plaintiff was preparing to return to his bunk room to get ready for his shift, Corey Crespo, a deckhand on the M/V ST. RITA, radioed and said, "there's some diesel or some fluid spraying from a generator in the engine room." Plaintiff left the helm and proceeded down the stairs to the mezzanine deck of the engine room to investigate the fuel leak. Upon assessing the leak, Plaintiff determined the safest response was to switch generators, rather than using the emergency cut-off switch, which would shut off power to the entire vessel. To shut off the leaking starboard generator and switch power to the port generator, Plaintiff would need to use the shut off

switch located on the generator itself, which was only accessible from the floor of the engine room.

(11) Plaintiff entered the engine room on the mezzanine level, then proceeded down the stairs to the first floor of the engine room, where the generators were located. When Plaintiff reached the bottom of the stairs, he turned to his left (towards the starboard engine) and then proceeded between the stairway and the starboard engine forward towards the running starboard generator. Corey Crespo had followed Plaintiff into the engine room and down the stairs. As soon as Plaintiff and Crespo reached the decking, they slipped on the accumulated diesel fuel. Crespo nearly fell, but was able to catch himself on nearby equipment. Plaintiff fell and landed hard on his right hip resulting in a severely fractured femoral head.

(12) After the fall, Plaintiff was unable to move and another deckhand came down into the engine room to assist with the transfer of generator power. When the starboard generator was shut down, the fuel leak stopped. Pilot Brown then returned the vessel to the fleet and called for an ambulance. Within the hour paramedics arrived and Plaintiff was evacuated to a hospital in Galveston, where he underwent emergency treatment and a surgery where four screws were placed in his hip to stabilize and reduce the hip fracture.

(13) At the time of the accident, Plaintiff was wearing a pair of athletic Nike slide shoes with rubber soles. These slide shoes were not in compliance with Marquette's safety requirements for working on the deck or in the engine room. However, Corey Crespo testified that he was wearing safety work boots with rubber soles when he entered the engine room. Both

Plaintiff and Crespo slipped when they attempted to enter the engine room.

(14) While Plaintiff was not on duty at this time, he was the captain of the vessel and was well aware of Marquette's safety regulations which required employees to wear closed-toed shoes while on deck and in the engine room. However, even if Plaintiff had been wearing steel-toed shoes, he still would have slipped. Corey Crespo slipped while wear steel-toed boots. While he was able to catch his fall, he did so by grabbing on to adjacent equipment, and not because his footwear completely prevented a slip. Further, steel-toed boots are generally effective at preventing injury caused by heavy objects dropping on an employee's foot; generally, they are not required because of their anti-slip properties. As Captain Nichols testified, if Plaintiff had been wearing steel-toed boots he still would have slipped; once there is diesel fuel on the bottom of your shoes, you are going to slip. While it is undeniable that closed-toe boots were required footwear for crew members working in the engine rooms, Corey Crespo, who was wearing boots, also slipped because of the diesel fuel. Captain Dunn was in violation of company safety policy and therefore negligent in not wearing the required boots; however, his negligence, in this regard, was not the cause of his fall or injury.

(15) Further, the Court expressly finds that Plaintiff's decision to enter the lower-engine room to shut down the starboard generator and stop the fuel leak was a reasonable choice under the circumstances. The tug was approaching a barge fleeting area, pushing two loaded chemical barges. If Plaintiff had used the emergency shut-off switch outside of the engine room,

he would have killed all power on the vessel. The tug had only recently regained complete control of the two barges, as the current had pushed them sideways and a second assist tug was required to get the barges back in place. Cutting off power, and the ability to navigate, would have resulted in two loaded chemical barges and a tug with a diesel leak in the engine room floating—uncontrolled—towards an entire fleet of chemical barges.

Rather than make a choice which would have exacerbated the dangerous situation already unfolding on the vessel, Plaintiff decided to enter the engine room to, as he phrased it, “fix the situation.” He could not see the source of the leak from the top of the stairs, so proceeded down the stairs to the main level of the engine room when he slipped and fell on the accumulated fuel.

(16) The Court has reviewed the evidence presented regarding the fuel leak and finds that the factual issues surrounding this aspect of the case are not significantly in dispute. Port engineer, Walter Hayes, who was responsible for coordinating and performing the maintenance aboard the ST. RITA, testified at trial. He explained that three days prior to the accident, he went aboard the M/V ST. RITA to repair one of the main engine gears. While working, he noticed that the fuel filter housing to the starboard generator appeared to be worn, so Hayes ordered a new fuel filter housing and replaced it at the same time that the main engine gear repair was underway. After installation, Hayes inspected the fitting, found it was acceptable, cleaned it, placed Teflon on its threads and reinstalled it to the new housing. Hayes then said that he restarted the generator and tested the new assembly

and found that all the fittings were holding tight and not leaking diesel fuel.

(17) Hayes also repaired the fuel pressure gage after the leak and the resulting accident. He explained that the leak began when the stem which connects the valve to the fuel filter housing broke in half. He had never known one of these stems to fail before, and had no reason to believe it would break after he completed the initial repair. Nonetheless, the broken fuel pressure gauge was the direct cause of the dangerous condition which rendered the vessel unseaworthy. Plaintiff's fall and injuries were caused directly by the unseaworthy condition of the broken fuel pressure gauge and the Defendant's negligence in failing to provide the Plaintiff with a safe place to work.

(18) Plaintiff has undergone significant medical treatment as a result of the accident. This treatment included an emergency surgery to stabilize his broken hip, injections in the facet joints of the lower back, an epidural steroid injection, as well as physical therapy and medication. Plaintiff underwent emergency surgery under general anesthesia to place four 7.3mm stabilizing screws in the broken hip. He then attended 25 physical therapy sessions.

On August 25, 2015, he was discharged from University of Texas Medical Branch and returned to his home in Denham Springs, Louisiana. He followed up with Dr. David Pope at the Bone and Joint Clinic in Baton Rouge, Louisiana. Dr. Pope was a physician selected by Marquette to follow Mr. Dunn's recovery. Dr. Pope testified (by deposition) that he was familiar with Dr. Craig Greene as a hip and trauma specialist, and that he would defer to Dr. Greene regarding future medical treatment as it related to Mr. Dunn's hip,

since Dr. Greene had taken over Dunn's care. Dr. Pope also stated that he would defer to his partner, Dr. Kevin McCarthy (a spine specialist), regarding opinions relating to Mr. Dunn's lumbar spine. Although Dr. Pope did release Mr. Dunn to return to work, Mr. Dunn's consistent complaints of lumbar spine pain while treating with Dr. Pope were never addressed. Mr. Dunn also underwent extensive physical therapy at Peak Performance Physical Therapy between September, 2015 and March, 2016 which involved electrical stimulation, flexibility exercises, isometric hip abduction exercises, and dynamic and stabilization training.

(19) On April 4, 2016, Kelvin Dunn sought a second opinion with Dr. Craig Greene, a hip and trauma specialist at Baton Rouge Orthopedic Clinic. Dr. Greene performed an extensive evaluation on Dunn and opined Mr. Dunn will need a total hip replacement before he reaches the age of 50, and since the hardware will not last the rest of his life, he will need a revision surgery, i.e., a second total hip replacement surgery somewhere down the road. Dr. Greene also testified that, prior to any hip replacement surgery, he would recommend hardware removal surgery, whereby Mr. Dunn would be placed under general anesthesia in a hospital setting, and Dr. Greene would remove the four large screws from plaintiff's femur. Dunn testified that he remains in significant pain in his right hip and he is ready to proceed with the hardware removal surgery. Dr. Green referred Dunn to Dr. Jeremy Comeaux, a physical medicine and rehabilitation specialist.

(20) Dr. Jeremy Comeaux first saw Kelvin Dunn on May 5, 2016, at which time he ordered a CT scan of the lumbar spine. This CT scan was performed at

Imaging Center of Louisiana on June 20, 2016, and it revealed multiple abnormalities including a herniated lumbar disc at the L4-5 level, lumbar retrolisthesis, and facet hypertrophy. Dr. Comeaux opined that all of Mr. Dunn's ongoing hip and lumbar spine complaints are indeed related to the August 21, 2015 accident in question, and that the need for ongoing care as it relates to the lumbar spine would also be related to that traumatic event. On December 2, 2016, Dr. Comeaux performed a lumbar epidural steroid injection under fluoroscopic guidance. Dunn testified that this injection helped with his pain for approximately one month. Dr. Comeaux eventually referred Mr. Dunn to orthopedic spine surgeon, Dr. Kevin McCarthy, who also practices at the Bone and Joint Clinic with Dr. David Pope.

(21) Dr. Kevin McCarthy saw Kelvin Dunn for the first time on December 15, 2016. Dr. McCarthy's examination and treatment focused on Mr. Dunn's facet joints in his lower back. He also felt that the retrolisthesis (shifting of the vertebrae) could definitely be a source of pain for Mr. Dunn. Dr. McCarthy gave Mr. Dunn his first round of facet injections on January 20, 2017. He injected two joints on each side of the spine with an anesthetic and a steroid medication under fluoroscope. Plaintiff did receive temporary relief from the injections, which suggested to Dr. McCarthy that his back pain was coming from the facet joints. Plaintiff underwent a second round of facet joint injections on June 20, 2017, which appear to have provided him with some relief. Dr. McCarthy testified that Mr. Dunn would benefit from additional treatment for the lumbar spine in the form of rhizotomies over the next ten-year period. Rhizotomy

is a procedure that utilizes radio frequency waves to produce heat on the nerves surrounding the lumbar spine. This prevents the nerve from being able to transmit pain signals to the brain. Dr. McCarthy further testified that Kelvin Dunn will eventually need a lumbar spine fusion at some point in his lifetime as a result of the subject accident and resulting injuries. Dr. McCarthy also related all of the symptoms for which he was treating Kelvin Dunn, as well as the need for the future care (office visits, diagnostic studies, rhizotomies and ultimately a lumbar spine fusion) to the subject accident.

(22) Plaintiff was also seen by the Defendant's independent medical expert, Dr. Christopher Cenac, Jr., in Houma, Louisiana. After examining Plaintiff, Dr. Cenac opined that Mr. Dunn would benefit from hardware removal from his hip. He also testified that he agrees with Dr. Greene in that he feels Mr. Dunn will eventually require a total hip replacement of the right hip, although he did not give a specific timeline, nor did he comment on Mr. Dunn's need for a revision hip surgery at some point in the future. Dr. Cenac further testified that the facet injections and subsequent rhizotomies being recommended by Dr. McCarthy were reasonable and necessitated by symptoms arising from the subject accident; however, he testified that there was no indication that Plaintiff's injuries would require a lumbar fusion in the future.

(23) Marquette's Claims Manager, Ronnie Dupuy, testified that Marquette initiated maintenance payments as of the date of incident and has continued these payments through the date of trial. Aside from the outstanding medical expenses submitted by Plaintiff at trial, the Court finds that Marquette continually

and systematically paid all medical expenses and maintenance obligations up-through the date of trial.

Having considered the testimony of all the doctors, the Court finds that Plaintiff will not reach maximum medical improvement until he has had the hardware surgically removed from his hip, and has had adequate time to recover from that surgery. Thus, Defendant is responsible for paying maintenance from the date of trial up until Plaintiff recovers from the removal surgery. Based on the testimony of the doctors, the Court finds Plaintiff will reach maximum medical improvement three months from the date of the removal surgery.

(24) Marquette shall have 60 days to review the charges which have been incurred by the Plaintiff, but not yet submitted, and to reimburse Plaintiff for same.

(25) At the time of his injury the plaintiff was 39 years old. He attended some high school, although he did not graduate. Recent vocational testing indicates that Plaintiff has 6th grade reading comprehension and 4th grade math proficiency. Plaintiff has never obtained a GED. Kevin Dunn had an extensive maritime work history. He began working on boats at the age of 19 and started as a deckhand trainee and worked until finally promoted to captain. Dunn worked on the ST. RITA for four years.

(26) The Court finds that Plaintiff's work life expectancy is 16.4 years and his life expectancy is 37.8 years. His post-tax wages for the year of the accident annualize to \$124,500. He worked through August 21, 2015 and has not worked since that date. Based on the medical expert testimony presented by both

parties, the Court finds that Plaintiff's injuries will prevent him from ever returning to his position as a captain aboard vessels. However, the evidence supports the conclusion that he is not permanently, totally disabled. After a time he will be able to return to some gainful activity requiring less physical demands.

(27) Plaintiff's life care planner and economic expert, Stephanie Chalfin testified that if and when Mr. Dunn was able to return to work, based on his work history, his limited education, and his physical limitations as a result of the subject accident, Mr. Dunn would likely be relegated to sedentary/light duty employment earning between \$8.55 to \$9.00 per hour. In particular, the Court notes that Plaintiff does not have a high school diploma and tested well-below the twelfth-grade level in both reading and math. Based on this evidence, the Court finds that Plaintiff could earn \$18,000 annually in a new occupation given his limited education, training, experience, and physical limitations.

Defendant's vocational rehabilitation expert, Ronnie Ducote, testified Dunn was qualified for a range of medium level jobs ranging from a scale operator to a custodial supervisor with earnings in the range of \$40,000.00-\$50,000.00 per year. However, the Court finds that these salaries are unrealistic given Plaintiff's education, training, and experience. The entirety of Plaintiff's work experience has taken place on vessels. Due to his physical limitations as a result of the accident, he is no longer able to perform this type of work. He does not have skills or experience that will transfer into most other land-based positions that are available to someone with his work restrictions. Additionally, while Mr. Ducote testified Plaintiff could earn

up to \$125,000 if he opened his own tattoo parlor, the Court finds this is not a reasonable future salary based on Plaintiff's training, experience, and education level.

(28) Using Chalfin's figures on loss of earnings as applied by Plaintiff's expert forensic accountant, John Theriot, the Court finds that Plaintiff's annual salary for the purposes of computing his past and future lost wages is \$124,000.00, plus fringe benefits that his employer paid such as 401K contributions and food. These figures are based on Mr. Dunn's well-documented earnings history as a boat captain.

Plaintiff has not worked since the date of the accident on August 21, 2015 through the date of trial on July 10, 2017. This represents 1.89 years, at an annualized salary of \$124,000 a year. Therefore, Plaintiff is entitled to recover \$234,360 in lost wages. Any wages that Defendant paid to Plaintiff after the date of his accident shall be deducted from this amount.

The Court finds that Plaintiff lost fringe benefits and the cost of meals during this period. Specifically, Plaintiff lost fringe benefits, such as 401K contributions and health care that would have been paid by his employer during this period. According to Plaintiff's economist, these benefits amount to 14.61% of his annual wages. Thus, Plaintiff is entitled to an additional \$34,240 in past loss of fringe benefits. Finally, the evidence demonstrated that Plaintiff was provided meals as another benefit of his employment. Plaintiff received meals on the days he was on a hitch, which amounts to \$2,392 annually. This total is based on the total number of meals provided each year, multiplied by the average cost of a home meal as determined by the Department of Agriculture. Thus, Plaintiff shall

receive an additional \$4,520.88 to compensate him for lost meal benefits from his accident to the date of trial, less the maintenance payments paid to him until he reaches MMI.

Plaintiff will also sustain future losses of wages, fringe benefits, and meals. First, Plaintiff is not yet employed, and must endure additional surgeries before he is fit to return to work. Given his required future medical treatment, the Court finds it is unlikely Plaintiff will return to work within two years from the trial date. Thus, the Court will not assume any offsets to Plaintiff's future lost wages due to alternate employment during the next two years. Based on an annual wage of \$124,000, Plaintiff is entitled to future lost wages in the amount of \$248,000 for the next two years. Reduced to present value, this amounts to \$244,329.

Additionally, during the next two years Plaintiff will suffer losses of fringe benefits and meals. As discussed above, Plaintiff received a benefit of \$2,392 annually in meals. His fringe benefits amounted to 14.61% of his base salary. Together, his fringe benefits and meals are valued at \$20,508.40 annually. Reduced to present value, this amounts to \$40,409.75 for the two year period before Plaintiff returns to work.

Both parties agree that Plaintiff's work-life span is at least 16.4 years from the date of trial. The Court finds that after Plaintiff has the hardware removal surgery and has had adequate time to recover, he will be able to secure alternative employment with earnings of \$18,000 annually. This amount will reduce his loss of wages accordingly. Therefore, for the 14.4 remaining years in Plaintiff's work life, his annual lost wages will be \$106,000. Adjusted to present value,

the Court finds that Plaintiff is entitled to \$1,420,792.00 in lost wages for the remaining 14.4 years of his work life.

Moreover, Plaintiff will sustain losses of fringe benefits and meals during this time. Fringe benefits amount to 14.61% of his salary; however, it is reasonable to assume that any new employment would also include some of these benefits. As such, Plaintiff is entitled to compensation for 14.61% of the difference between his former salary and the salary he earns in alternate employment. Thus, Plaintiff is entitled to 14.61% of \$106,000, or \$15,486 annually, in lost fringe benefits. He is also entitled to \$2,392 annually for lost meals. These benefits total \$17,878 annually. Adjusted to present value, Plaintiff is entitled to receive \$239,631.35 in fringe benefits and lost meals for the remaining 14.4 years of his work life expectancy.

(29) Plaintiff's prior medical history indicates he was treating for anxiety and panic disorder in the few years before the accident. In relation to this treatment, Dr. Rachael Wissner prescribed Plaintiff a generic form of Ativan, which he explained he took as needed, but never while he was on the vessel. While Defendant argued this medication would have prevented him from continuing as a captain, the Court disagrees. The evidence demonstrates that Mr. Dunn was a long term and excellent employee for Marquette, and its predecessor company, Eckstein Marine. Other than a brief stint with Crosby, Dunn testified he spent his entire work life on the water with Eckstein and Marquette. While employed with Marquette, Dunn was promoted through the ranks from deckhand ultimately ending up as a relief captain. He never had any disciplinary issues while employed at the com-

pany. Dunn provided consistent service as a captain to the company between 2010 and 2015, and he never failed a single random drug test. There was no evidence of any alcohol or controlled substances in his system following the subject accident.

III. Conclusions of Law

(1) This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1333, which provides original jurisdiction over admiralty or maritime claims, and the Jones Act, 46 U.S.C. § 688. Venue is proper because the Defendants are subject to the personal jurisdiction of this Court.

(2) Plaintiff has designated this matter as an Admiralty and Maritime claim within the meaning of Federal Rule of Civil Procedure 9(h), and as such, this matter is appropriately being tried to the bench as opposed to a jury.

(3) The testimony presented clearly establishes that Kelvin Dunn was a Jones Act seaman at the time of the August 21, 2015 accident. Defendant did not contest Plaintiff's status as a seaman at trial. The substantive law applied to this case is the Jones Act and general maritime law.

(4) The matters before this Court include determination as to whether the vessel was unseaworthy under general maritime law, whether Defendant was negligent under the Jones Act, whether Plaintiff was contributorily negligent, and the nature and extent of Plaintiff's injuries.

(5) "To establish a claim for unseaworthiness, the injured seaman must prove that the owner has failed to provide a vessel, including her equipment and

crew, which is reasonably fit and safe for the purposes for which it was intended to be used.” *Boudreaux v. United States of America*, 280 F.3d 461, 468 (5th Cir. 2002) (quoting *Jackson v. OMI Corp.*, 245 F.3d 525, 527 (5th Cir. 2001)). “The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm but a vessel reasonably suited for her intended service.” *Boudoin v. Lykes Bros. S.S. Co.*, 348 U.S. 336, 339 (1955). “A vessel’s condition of unseaworthiness might arise from any number of circumstances. Her gear might be defective, her appurtenances in disrepair, her crew unfit. The number of men assigned to perform a shipboard task might be insufficient. The method of loading her cargo, or the manner of its stowage, might be improper.” *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 499-500 (1971) (internal citations omitted); see also *Webb v. Dresser Indus.*, 536 F.2d 603, 606 (5th Cir. 1976), cert. denied, 429 U.S. 1121 (1977). A vessel is unseaworthy when an unsafe method of work is used to perform vessel services. *Rogers v. Eagle Offshore Drilling Serv.*, 764 F.2d 300, 303 (5th Cir. 1985); *Burns v. Anchor-Wate Co.*, 469 F.2d 730 (5th Cir. 1972). The duty of the vessel owner to provide a seaworthy vessel is an absolute non-delegable duty.

(6) To recover damages from an unseaworthy condition, the plaintiff is required to establish a causal connection between his injury and the breach of duty that rendered the vessel unseaworthy. *Id.*; see also *Gavagan v. United States*, 955 F.2d 1016, 1020 (5th Cir. 1992) (quoting *Johnson v. Offshore Exp., Inc.*, 845 F.2d 1347, 1354 (5th Cir. 1988)) (“To establish the requisite proximate cause in an unseaworthiness claim, a plaintiff must prove that the unseaworthy

condition played a substantial part in bringing about or actually causing the injury and that the injury was either a direct result or a reasonably probable consequence of the unseaworthiness.”).

(7) Defendants had a non-delegable duty to provide Plaintiff with a safe place to work and provide seaworthy equipment on the vessel. The credible evidence supports the finding that Marquette breached this duty as it failed to properly maintain its vessel, the M/V ST. RITA, specifically the fuel gauge on the starboard generator. This unseaworthy condition directly caused the fuel leak and the dangerous condition Plaintiff encountered on August 21, 2015.

The Court hereby concludes that the vessel was unseaworthy and Plaintiff’s injuries and resulting damages were proximately caused by the vessel’s unseaworthiness, as well as the defendant’s negligence in failing to provide him with a safe place to work.

(8) Comparative negligence may apply to decrease the amount of a plaintiff seaman’s recovery on a Jones Act claim for negligence. *Jauch v. Nautical Services, Inc.*, 470 F.3d 207, 213 (5th Cir. 2006). “A seaman’s contributory negligence will not bar his recovery, but may reduce the amount of damages owed proportionate to his share of fault.” *Id.* “The standard of care for a seaman under the Jones Act is to act as an ordinarily prudent seaman would act in similar circumstances.” *Jackson*, 245 F.3d at 528; *Gautreaux*, 107 F.3d at 338-39; *see also Norfolk Southern Ry. Co. v. Sorrell*, 127 S.Ct. 799 (2007).

(9) Having considered the testimony of the fact witnesses and expert witnesses presented by both sides, the Court has determined that Plaintiff violated the

company's safety rule regarding proper footwear in the engine room and was therefore negligent.¹ However, his negligent actions were not a cause of his fall and resulting injury.² The evidence clearly supports the conclusion that the cause of his fall, as well as his fellow crew member's fall, was the slippery condition of the engine room decks which rendered the vessel unseaworthy.

(10) Furthermore, the Court does not find that Plaintiff was contributorily negligent in his decision to enter the engine room and shut off the starboard generator. A seaman is "obligated under the Jones Act to act with ordinary prudence under the circumstances," which circumstances take account of the seaman's "experience, training, [and] education." *Martinez v. Offshore Specialty Fabricators, Inc.*, 481 Fed. App'x. 942, 947 (5th Cir. 2012) (quoting *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (*en banc*)). However, "[w]here one is confronted through no fault of his own with a sudden emergency, his actions in extremis are not to be judged as they would be in ordinary circumstances." *Fruit Indus., Inc. v. Petty*, 268 F.2d 391, 394 (5th Cir. 1959). Captain Dunn was faced with an emergency. He had to choose between shutting off all power to the vessel, which was pushing two loaded chemical barges towards the fleeting area, after already been pushed off course

¹ Company policy requires crew members to wear steel-toed boots. However, the purpose of this policy is to prevent injury if something falls on a crew member's foot, rather than to prevent them from slipping on diesel fuel.

² "To establish that a seaman is contributorily negligent, an employer must prove negligence and causation." *Johnson v. Cenac Towing, Inc.*, 544 F.3d 296, 302 (5th Cir. 2008) (emphasis added).

by the current or entering the engine room to see if he could stop the leak. The Court finds that Captain Dunn's response to this emergency was reasonable under the circumstances. He chose the response which, based on his training and experience, would expose the other crew members and the vessel to the least amount of risk.

(11) Under the Jones Act and general maritime law, an injured seaman is entitled to monetary recovery for past, present and future loss of earning capacity and wages, medical expenses, and pain and suffering resulting from an injury caused by negligence and/or unseaworthiness. *Cortes v. Baltimore Insular Line*, 287 U.S. 367, 377, 1933 AMC 9, 14 (1932).

(12) As discussed in full above, the evidence supports the conclusion that Plaintiff has after-tax past lost earnings of \$234,360.00 and future wage loss (after commuting to present value and accounting for earnings in non or light laborious work) of \$1,665, 121.00 (Pl. Report of John Theriot, Report of Kenneth J. Boudreaux, Ph.D.).

(13) Defendant has paid all of Plaintiff's past medical bills which were submitted at the time of trial. Plaintiff submitted additional medical expenses on the day of trial. Therefore, Marquette shall have 60 days to review the charges which Plaintiff recently submitted, and to reimburse Plaintiff for same.

(14) Regarding future medicals, the evidence indicates that the hardware removal surgery and post-surgery physical therapy are estimated to cost \$11,992.00. Both Dr. Greene and Dr. Cenac agree that Mr. Dunn will require a total hip replacement in the future. Dr. Greene testified this surgery will take

place before Mr. Dunn reaches the age of 50, and as hip replacements only last 10-12 years, he will ultimately need another hip replacement revision surgery.

Based on the report of Plaintiff's forensic accountant, John Theriot, the cost of Plaintiff's first hip replacement will be \$52,444. That surgery will take place in approximately ten years; thus, once adjusted to present value, the cost of that hip surgery will be \$59,434. The Court finds that the expected life of a hip replacement is ten years; Plaintiff has an estimated life expectancy of 37.8 years. Thus, he will need—at minimum—one revision hip replacement during his lifetime. According to the evidence, this procedure will cost \$78,973 and take place when Plaintiff is in his late 60s. Adjusted for future value, this procedure will cost \$114,947.

Next, the credible evidence indicates that Plaintiff will require a bilateral endoscopic rhizotomy every 12-18 months for the next ten years. While the Court agrees that Plaintiff will need ongoing treatment, the evidence demonstrates that the need for these procedures will decrease as Plaintiff improves following the hardware removal procedure. Thus, the Court finds that Plaintiff will only require this procedure every 24 months for the next ten years. According to Plaintiff's life care planner, each bilateral endoscopic rhizotomy will cost \$33,910. This averages to an annual cost of \$16,955 every year for the next ten years. Thus, the present value of this treatment is \$160,585.89.

Additionally, the evidence demonstrates that Plaintiff will require follow-up orthopedic treatment, physical medicine, rehabilitation and injections for the remainder of his life. While Plaintiff estimates these treatments may need to occur up to six times

per year, the Court finds that the evidence demonstrates Plaintiff's condition will substantially improve after the hardware is removed from his hip, and again after each of his hip replacement surgeries. Thus, the Court finds Plaintiff will need to attend orthopedic follow-up visits twice a year, for a discounted cost of \$10,408. Likewise, Plaintiff will need to seek follow-up care in physical medicine three times per year, for a total cost of \$21,886. Finally, Plaintiff will need annual lumbar injections for a total cost of \$81,061. The total cost of this lifetime treatment \$113,355.

Further, Plaintiff's injuries will require ongoing physical therapy and medication. Plaintiff's life care planner indicates that he will need physical therapy for ten years; the Court finds this is reasonable based on the nature and extent of his injuries. However, the Court finds that Plaintiff will likely only require 6-12 weeks of therapy every two to three years during this period, as his condition will improve with his additional surgical procedures. The cost for this therapy is \$32,415. Finally, Plaintiff will require medication, specifically Mobic and Tramadol for the duration of his life. The annual cost of these prescriptions is \$641; adjusted to present value this amount is \$31,426.

Regarding the lumbar spine, the weight of the evidence presented at trial shows that Dr. McCarthy, Dr. Comeaux, and Dr. Cenac all agree that Mr. Dunn would benefit from long-term pain management care in the form of facet joint injections and rhizotomies. Although one doctor disputes Mr. Dunn's need for surgery, two-level lumbar spine fusion, the weight of the evidence supports Dr. McCarthy's conclusion that the surgery is required as a result of his injuries. Mr.

Dunn was an outstanding worker for 12 years and there is no indication of back problems prior to the hip injury; the lumbar spine injury occurred subsequent to the fall. Dr. McCarthy is uncertain as to the exact time Plaintiff will require this surgery, but it is likely that it will be needed in the near future. Based on the report of Plaintiff's forensic accountant, John Theriot, the cost of Plaintiff's lumbar fusion surgery will be \$148,707. Due to a lack of certainty regarding the timing of this procedure, the Court will use the present cost rather than increasing it.

Plaintiff's future medicals are summarized as follows:

- Hardware Removal Surgery: \$11,992
- Hip Replacement Surgery: \$59,434
- Hip Revision Surgery: \$114,947
- Bilateral Endoscopic Rhizotomy: \$160,585.89
- Orthopedist, Physical Medicine, Lumbar Injections: \$113,355
- Physical Therapy: \$32,415
- Medication: \$31,426
- Lumbar Fusion Surgery: \$148,707

Total: \$641,435.89.

Thus, the Court finds that an award of \$641,435.89 for future medical expenses is appropriate.

(15) Damages for pain and suffering may be awarded to a seaman who is injured due to the unseaworthiness of the vessel. *Sosa v. M/V Lago Izabal*, 736 F.2d 1028, 1034 (5th Cir. 1984). The Plaintiff has suffered physical pain due to his hip injury, surgery,

and recovery. He will undergo additional surgeries in the near future to remove the hardware from his hip, and both Plaintiff's treating physician and Defendant's IME agree Plaintiff will eventually require a full hip replacement. He is likely to have hip and back pain in the future. The Plaintiff also faces significant restrictions in his employment due to his injuries. The Court finds that the Plaintiff is entitled to an award of \$100,000.00 for past pain and suffering and \$400,000.00 for future pain and suffering. An award of \$500,000 for his past and future pain and suffering is appropriate given the nature and extend of Plaintiff's injuries. This award is consistent with other cases involving similar injuries.³

(16) A seaman injured in the course of his or her employment has a claim for maintenance and

³ See *Zeno v. Great Atl. & Pac. Tea Co.*, 803 F.2d 178, 181-82 (5th Cir. 1986) (looking to similar cases to determine award); *Klemetsen v. H & R Block, Inc.*, 569 So.2d 559, 559-60 (5th Cir. 1990) (awarding \$111,300 for broken hip); *Fromenthal v. Delta Wells Surveyors, Inc.*, 98-1525, p. 12-14 (La. App. 4 Cir. 10/4/2000); 776 So.2d 1, 12-14 (awarding \$250,000 for hip fracture requiring surgery and residual pain and disability); *Pate v. Skate Country, Inc.*, 96-0364, p. 1 (La. App. 4 Cir. 10/9/1996); 682 So.2d 288, 289 (awarding \$200,000 for hip fracture); *Keyworth v. Southern Baptist Hospitals, Inc.*, 524 So.2d 56, 57, 62 (La. Ct. App. 4 Cir. 1988) (awarding \$225,000 for hip fracture resulting in mobility restriction); *Graham v. Offshore Specialty Fabricators, Inc.*, 09-0117, p.21 (La. App. 1 Cir. 1/8/10); 37 So.3d 1002, 1019 (awarding \$225,000 for lumbar fusion with severe pain); *Bouquet v. Wal-Mart Stores, Inc.*, 06-1811 p.1-2 (La. App. 1 Cir. 12/21/07); 978 So.2d 447, 453-54 (awarding \$200,000 for lumbar injections and fusion); *Matos v. Clarendon Nat. Ins. Co.*, 00-2814 (La. App. 1 Cir. 2/15/02); 808 So.2d 841 (awarding \$265,000 for multilevel lumbar fusion); *Derouen v. Mallard Bay Drilling, L.L.C.*, 00-1268 p.13 (La. App. 1 Cir. 6/22/01), 808 So.2d 694, 707 (awarding \$300,000 for lumbar fusion with residual disability).

cure. Maintenance and cure is the implied right of the seaman arising from his or her employment relationship with the shipowner and is “independent of any other source of recovery for the seaman (e.g., recovery for Jones Act claims).” *Bertram v. Freeport McMoran, Inc.*, 35 F.3d 1008, 1013 (5th Cir. 1994). Thus, whether the seamen or employer was negligent is not at issue. *Brister v. AWI, Inc.*, 946 F.2d 350, 360 (5th Cir. 1991); *Jauch*, 470 F.3d at 212. Maintenance is the seaman’s right to food and lodging and cure is the seaman’s right to necessary and appropriate medical services, and both rights extend to the point at which the seaman reaches MMI. *See Breese v. AWI, Inc.*, 823 F.2d 100, 104 (5th Cir. 1987) (citing *Vaughan v. Atkinson*, 369 U.S. 527, 531 (1962)). Therefore, the maintenance and cure duty does not extend to treatment which is only palliative in nature and “results in no betterment in the claimant’s condition.” *Rashidi v. Am. President Lines*, 96 F.3d 124, 128 (5th Cir. 1996).

(17) The evidence demonstrates that Marquette has paid maintenance and cure from the date of Plaintiff’s injury until the date of trial. The credible evidence supports the conclusion that the Plaintiff sustained injuries to his hip and back on August 21, 2015 while working aboard the M/V ST. RITA and that he was unfit for duty as a result of this injury from that date until the time he is deemed to have achieved MMI. The weight of credible evidence indicates that Plaintiff has not yet reached MMI. However, Plaintiff will reach MMI three months after he has the hardware removal procedure. Thus, Defendant would ordinarily owe additional maintenance from the date of trial to the date Plaintiff reaches MMI. However, because the Plaintiff will receive the cost of the meals

which were furnished by his employer as part of his future damages, he is not entitled to any maintenance payments.

(18) Pre-judgment interest may be awarded in admiralty cases if appropriate, and the Court finds that an order of pre-judgment interest is appropriate in this case. “Prejudgment interest is compensation allowed by law as additional damages for lost use of the money due as damages during the lapse of time between the accrual of the claim and the date of judgment.” *Jauch*, 470 F.3d at 214-15. However, pre-judgment interest on future damages is not available. *Id.* The starting date and rate of interest is left to the sound discretion of the Court. *See Doucet v. Wheless Drilling Co.*, 467 F.2d 336, 340 (5th Cir. 1972); *Marathon Pipe Line Co. v. M/V Sea Level II*, 806 F.2d 585, 593 (5th Cir. 1986), *reh’g denied*, 811 F.2d 602 (1987). The Court finds that an award of prejudgment interest is warranted on Plaintiff’s past wages and past pain and suffering.

(19) On the basis of the above Findings of Facts and Conclusions of Law, the Court finds that Plaintiff Kelvin Dunn sustained damages due to Defendant’s negligence and the unseaworthiness of the vessel. Therefore, the Plaintiff is entitled to recover the following damages from the Defendants:

- (1) Past wage loss: \$234,360.00;⁴
- (2) Past fringe benefits and meal loss:
\$38,760.88;⁵

⁴ Any wage payments Defendant made to Plaintiff since the date of the accident shall be deducted from this amount.

- (3) Future wage loss: \$1,665,121.00;
- (4) Future fringe benefits and meal loss:
\$280,041.10;
- (5) Past medical expenses: Marquette paid all past medical bills it received before trial. It has 60 days to review and remit payment for the medical bills Plaintiff submitted on the date of trial.
- (6) Future medical expenses: \$641,435.89;
- (7) Past pain and suffering: \$100,000.00;
- (8) Future pain and suffering: \$400,000.00 and

Total: \$3,359,718.87. This amount does not include deductions for past wages or other benefits Defendant paid Plaintiff after the date of the accident, which should be deducted.

(20) Additionally, Plaintiff is entitled to pre-judgment interest on the above-mentioned past losses totaling at the rate of 3% percent per annum from the date of judicial demand until satisfied. Furthermore, the Plaintiff is entitled to post-judgment interest at the federal judicial rate from the date of judgment until paid.

⁵ Any payments Defendant made to Plaintiff for fringe benefits, such as health insurance, 401K contributions, or meal payments since the date of the accident shall be deducted from this amount.

New Orleans, Louisiana, this 6th day of September, 2017

/s/ Eldon E. Fallon
United States District Judge

**ORDER OF THE FIFTH CIRCUIT DENYING
PETITION FOR REHEARING EN BANC
(JANUARY 15, 2019)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

KELVIN DUNN,

Plaintiff-Appellee,

v.

MARQUETTE TRANSPORTATION
COMPANY, L.L.C.,

Defendant-Appellant.

No. 17-30889

Appeal from the United States District Court
for the Eastern District of Louisiana

Before: SMITH, BARKSDALE,
and HO, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

App.36a

Entered for the Court

/s/ Jerry E. Smith
United States Circuit Judge

**TRIAL TESTIMONY OF KEVIN DUNN
(JULY 11, 2017)**

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

Before: The Honorable Eldon E. FALLON
United States District Judge

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

Post Office Box 4080

Gulfport, Ms 30502

Official Court Reporter:

Karen A. Ibos, CCR, RPR, CRR, RMR

500 Poydras Street, B-275

New Orleans, Louisiana 70130

(504) 589-7776

[July 11, 2017 Transcript, p. 289]

THE COURT: Be seated, please. Let's call the next witness.

MR. SAUNDERS: Call Kelvin Dunn to the stand.

THE DEPUTY CLERK: Raise your right hand.

(WHEREUPON, KELVIN DUNN, WAS
SWORN IN AND TESTIFIED AS FOLLOWS:)

THE COURT: You can have a seat.

DIRECT EXAMINATION

BY MR. SAUNDERS:

Q. Kelvin, why don't you introduce yourself to the Court by, again, stating your name and your address, please.

A. Kelvin Dunn, 8608 Nottaway Street, Denham Springs, Louisiana.

Q. And, Kelvin, obviously, we're here to talk about your accident. Leading up to that accident—before that accident, what was your occupation?

A. I been a deckhand my whole life; worked my way up to a captain.

Q. Where did you go to high school?

A. Franklinton, Louisiana.

THE COURT: Try to speak up so we can all hear you.

THE WITNESS: Franklinton, Louisiana.

BY MR. SAUNDERS:

Q. And how far did you go in school?

A. Ninth.

Q. And after that, what did you do?

A. I went to get my GED and then I didn't do that. I went a few days, I quit, and went on the boats.

Q. You worked on the water your whole life?

A. Yes.

Q. Your father was a boat captain; correct?

A. Yes.

Q. What companies did you work for?

A. Marquette—well, I started with Eckstein, and I worked for Marquette, but I worked for Crosby for about three months.

Q. Other than that three-month period with Crosby, your entire work life was with—

A. Eckstein and Marquette.

Q. Okay. Thank you. And at the time of the accident you were a—

A. Relief captain.

Q. You were a relief captain. You had a license?

A. Yeah.

Q. And you had your master's license?

A. Yes.

Q. And you had been—you had been a captain for about how long?

A. Five years with my master's.

Q. All right. Tell me where you—what vessel were you assigned to, the ST. RITA?

A. Yes.

Q. And you would operate that vessel where?

A. Between Bolivar, Houston, and Corpus Christi, Freeport.

Q. And what would you tow?

A. Sometimes one barge, sometimes three, four barges, just depends on what Kirby gave us to push.

Q. And so Kirby was Marquette's customer?

A. Yes.

Q. And in doing that fleet work, the types of barges were mostly what?

A. Nothing but chemical.

Q. Hazardous chemicals?

A. Yes, sir. Red flags.

Q. Now, there's a difference between a chemical barge that's loaded and one that's light; correct?

A. Yes.

Q. How does that affect the maneuverability of your vessel when you're towing loaded barges as opposed to light barges?

A. Well, if you got light barges, they up out of the water. The wind bothers you; if you got loads, the current gets you.

Q. Okay. And if you got loaded barges and you're traveling—you're pushing ahead at, say, five knots, is it easy to stop that load?

A. No. Sometimes you might go to fully backing on it and it take you half a mile to stop it.

Q. Now, let's talk about your record with Marquette. Did you have any disciplinary issues with Marquette or in your file?

A. No.

Q. Were you given random drug tests?

A. Yes.

Q. Did you ever fail any of those?

A. Never.

Q. After the accident did anybody tell you you failed a drug or alcohol test?

A. No, sir.

Q. Did you ever get written up for any safety violations?

A. No.

- Q. In that regard, let's talk about your footwear. In the wheelhouse when you were on duty, what would you wear?
- A. My tennis shoes.
- Q. And when you would go out on the deck or go in the engine room, you also wore your tennis shoes, didn't you?
- A. Yes.
- Q. Now, did management come on the boat from time to time?
- A. Yeah, at least—between ours and Kirby's, at least every week.
- Q. And these people saw you in your tennis shoes; right?
- A. Yes.
- Q. Did they see you in your tennis shoes out on the deck?
- A. Yes.
- Q. Did anybody ever tell you that you should be wearing work boots?
- A. They was supposed to come out with a, like, mandatory, but they never did. They was giving away vouchers for people to start buying the—getting steel-toed boots, but they never gave me mine.
- Q. Did you ever have any problems before the accident when you were out on the deck with—or in the engine room with your tennis shoes, did you ever have any problems with—

A. No.

Q. —with slipping or anything like that?

A. No, not at all.

Q. Let's talk about the day of the accident. You were not on watch at the time of the accident; correct?

A. No, I was asleep. And then the vibration woke me up from him backing down on it, Junious Brown.

Q. And just for us lay people, when you say "backing down," that means trying to stop the vessel?

A. That means trying to stop. And I knew—sounded like he was in a bind. He is not really an experienced pilot. He is—just got his mate license. So I go upstairs to see if he's okay. When I got up there, he was getting sideways in the current.

Q. Okay. So—

A. I told him, Watch out, Jun—well, we call him J. I said, "Watch out, J. I got it."

Q. And you took over the sticks?

A. I took over the sticks. We was in the process of getting it back straight, and then they had one of our company boats offered an assistance. I said, "Yeah, you come push in on the head and I'll work against you and we'll get over towards the fleet."

Q. So that boat helped you get back in position?

A. Yes, he was pushing on the head. As he's pushing it, I am twisting against him. Junious said, "I got it from here," so I stepped outside, was smoking a cigarette.

Q. You had handed the sticks back to Mr. Brown?

A. Gave them back to Mr. Brown. Stepped outside, smoked a cigarette, threw it out. I told him, "I'mma go down, get ready. I'll be back." You know, it was getting close to five, 4:30, something like that.

So as I was gonna go down the stairs, that's when I hear Corey say there's diesel spraying in the engine room.

Q. And Corey's one of your deckhands?

A. Yeah.

Q. Corey Crespo?

A. Yes.

Q. So you hear about diesel spraying in the engine room, and what do you do in response to that?

A. I go down in the engine room and see what's going on, follow him. By the time I got down, he's coming in, too, in the side of the door and I'm coming through the inside of the boat.

THE COURT: Was your vessel still tied to the barge?

THE WITNESS: Yes, sir.

THE COURT: How many barges?

THE WITNESS: Two barges.

THE COURT: One in top—one in front of the other or side by side?

THE WITNESS: They were strung out.

MR. SAUNDERS: One in front of the other for the record.

BY MR. SAUNDERS:

Q. But to be clear, the boat and the barges were free floating, they were not tied to a fleet or tied to a dock?

A. No.

Q. Just for sake of completeness, you were still wearing your night clothes because you had addressed the other situation just prior to this situation; correct?

A. Yes, yes.

Q. And you had your Nike slippers?

A. Yes.

Q. They're some athletic slippers that go over your foot?

A. Yeah.

Q. Were they secure on your feet?

A. Yes.

Q. Did you have any trouble with them when going down to the engine room?

A. No.

Q. Did you have any trouble with them when you were walking across the deck to the engine room?

A. No. No, sir. They were Jordan slippers. I've got more grip than the boots do really.

Q. Okay. So you met Corey down at the engine room door?

A. Yeah.

Q. Or had he already gone into the engine room?

A. On the catwalk. And then he was going down and I was right behind him.

Q. Okay. So y'all were in the engine room together?

A. Yeah.

Q. And it's very loud in the engine room; correct?

A. Yes, yes.

Q. You cannot—it's very difficult to carry on a conversation in there; isn't it?

A. Yeah. So I was just following him and—

Q. Was it your impression that he was going down to try to show you where the leak was coming from?

A. Yes, that's what—

Q. When you were going down the stairs to the lower engine room, did you know exactly where the—

A. No, I did not know which side.

Q. —where the leak was coming from?

A. Which side, I did not know.

THE COURT: Could you see it from the catwalk?

THE WITNESS: No. Because you got your catwalk, stairs go down, and then you got to come around. You got your main engines, the generators are behind the engines. So I couldn't see them at all.

BY MR. SAUNDERS:

Q. Just so the Court can get a layout, where are the generators located as far as that engine room? What's the layout?

A. Like I said—

Q. Talk into the microphone, please.

A. You come down the stairs of the engine room. You got maybe eight-foot to the wall. You got your clutches—your shafts, clutches, generator—I mean, engines and the generators are in front of the engines.

THE COURT: Forward of the engine or stern?

THE WITNESS: Forward of the engines.

BY MR. SAUNDERS:

Q. It's difficult to see them from the catwalk?

A. Yes. Yes.

Q. And so tell us what happened when you went down to the lower level to go address the situation.

A. Well, I went down. He turned to the starboard side, so I went behind him, and I slipped. I'm talking about so quick I didn't even have time to put my hand down.

Q. Okay. So you slipped and fell right after you made the turn—made the left turn to go toward the starboard generator?

A. Yes, yes.

Q. And you were following your deckhand?

A. Yes.

Q. What happened next?

A. I was still trying to get up. I was hurting, but I was still trying to get up, but I knew something was wrong. So I am trying to tell him, "Crank the other generator up, kill this one, you know,

swap them,” but he couldn’t understand what I was saying. So then I am telling him, “Go get somebody. Go get somebody.” And that’s when he went and woke up my leadman.

Q. Okay. If the testimony shows that Marcus—who is Marcus?

A. Marcus was a green guy that just got on the boat that didn’t know nothing.

Q. Do you know if Marcus is the one that went and woke up the leadman?

A. I am not sure. I was in so much pain. I—and I am trying to hold myself still on the deck with my hands is slipping, because every time I moved it hurt.

Q. Do you know at that point you had broken something?

A. Yeah, I knew something had to be broke.

Q. Now, who came down and shutdown the generator?

A. My leadman.

Q. After that—so he swapped the generators; correct?

A. Yes.

Q. And what happened after that?

A. They got the barges tied off, broke the boat out, went to the dock, and then an ambulance come and got me.

THE COURT: How close were you to the generator when you slipped?

THE WITNESS: Probably here to that computer right there (INDICATING).

THE COURT: Ten feet?

THE WITNESS: Maybe eight.

THE COURT: Eight feet. Could you see the spray before you slipped?

THE WITNESS: I couldn't see nothing but my deck-hand in front of me. You know, we had, like, this much room in-between the sewer system and the main engine (INDICATING).

BY MR. SAUNDERS:

Q. Does this show the steps that you came down?

A. Yes.

Q. And then you took a left and turned the corner right around here (INDICATING)?

A. Yes.

Q. And you fell right around in this area somewhere (INDICATING)?

A. Yeah, that's where I slipped.

Q. And so, if you look back in the distance here, that's the bottom of the starboard generator (INDICATING)?

A. Yes.

THE DEPUTY CLERK: Try to talk a little bit louder, if you can.

BY MR. SAUNDERS:

Q. Why didn't you shutdown the emergency fuel shut off outside the engine room?

A. If I'd did that with an unexperienced pilot with two barges, we'd—he was already—that's why I

had to get up, the current was beating him up. We'd took out the whole fleet.

Q. You think the current would have caused some problems if you'd lost propulsion?

A. No doubt. Anybody that runs that area knows the water runs hard through Bolivar fleet right there.

Q. What was your intention in going down into the engine room?

A. Get the other generator running and shut off the one that was leaking and try to fix it. Or vice versa. To get it to stop.

Q. You did consider it an urgent situation?

A. Yes.

Q. Did anybody on your crew ask you if they could shut the emergency fuel shut off outside the engine room?

A. No, no.

Q. Nobody brought that up?

A. No.

Q. Junious Brown didn't bring it up?

A. No.

Q. The leadman didn't bring it up?

A. No.

Q. Corey Crespo didn't bring it up?

A. No.

Q. The other deckhand didn't bring it up?

A. No. You know, I been on several boats that have leaks, you know, I went down and fixed them. I didn't know how bad it was, you know, I went and fixed it.

Q. You just went down and dealt with it?

A. Yeah.

Q. Are you aware of any Marquette policy or procedure that you should treat a leak as a fire?

A. No.

Q. Did anybody ever tell you that you should treat a spray leak as a fire?

A. No.

Q. Are you aware of any Marquette policy that tells you should not go into the engine room to address a leak?

A. No.

Q. Now, you've heard some testimony about your medical condition of anxiety.

A. Yes.

Q. You did seek some treatment in 2013, 2014, 2015 for anxiety; correct?

A. Yes.

Q. Who was your doctor?

A. Rachel Wissner.

Q. And she prescribed you certain medications; right?

A. Yes.

Q. Did you talk to her about those medications?

A. She just told me do not bring them—I couldn't bring them on the boat.

Q. Okay. The one you're talking about is the Ativan?

A. Yes.

Q. And she instructed you not to bring that on the boat; correct?

A. Yes.

Q. And did you follow those instructions?

A. Yes.

Q. When you had taken a little time off in 2013 for the anxiety—

A. Yes.

Q. —before you went back on the boat, did you go see Marquette's doctor?

A. Yes. I went to Marquette's doctor, and I told her what I been taking.

Q. And she told you the same thing as Dr. Wissner, correct, that you—

A. Well, she gave me a drug test. I told her I haven't taken them in awhile. I only took them when I needed them.

Q. Okay.

A. And I passed everything and—

Q. She told you the same thing Dr. Wissner told you, though, you can't take the Ativan onto the boat?

A. Onto the boat.

MR. SCIALDONE: I'm sorry, I don't mind him leading some.

THE COURT: Yeah, you're leading, please. I got it. Let's not—I sustain the objection. Let's not lead your witness.

MR. SAUNDERS: I understand. I am just trying to keep it moving.

BY MR. SAUNDERS:

Q. So were you released to return back to work after that time off—

A. Yes.

Q. —in 2013?

A. Yes.

Q. And Marquette allowed you go back to work?

A. Go back to work.

Q. And you worked consistently—

A. Yes.

Q. —operating the vessel?

A. Yes. Never late. Never missed a day except for a few—couple of times I had to get off for anxiety.

Q. And that happened again in 2015 at some point; correct?

A. Yes.

Q. Now, the anxiety, would that happen while you were at the helm or would that happen when you were off duty?

A. Most of the time it was off duty.

Q. Did you ever have any problems operating the boat—

A. No.

Q. —because of anxiety?

A. No, no. That's what everybody on the boat used to trip out. They said, "You got anxiety," but put me under pressure, and I'm good.

Q. Did you have any trouble with anxiety when you were assisting Junious Brown when he got caught in the current?

A. No.

Q. Did you have any trouble with anxiety when you were going down the engine room to address the leak?

A. No.

Q. Was it your intention to—had you not had this accident, did you want to continue your work as a boat captain?

A. Oh, yeah, yeah. That's all I know. That's all I've ever done, you know, work on boats.

Q. You enjoyed that job?

A. Yeah, I love it.

Q. Did you have plans to do that for the rest of your work life?

A. Yes.

Q. Do you feel that you're physically capable of doing that work now?

A. No.

Q. Why not?

- A. My hip. I can't go up and down stairs like that; especially if something happens, I can't do it.
- Q. When something—when you say, “something,” like an emergency?
- A. An emergency happens, I got to run down the stairs or whatever. I can't do it.
- Q. Let's talk about your medical treatment. We know you had emergency surgery in the hospital and had screws placed in your hip; correct?
- A. Yes.
- Q. Who did you follow-up with when you got back to Baton Rouge?
- A. I believe it was Dr. Greene.
- Q. If the records show that you saw Dr. Pope before you saw Dr. Greene, would you disagree with that?
- A. I'm bad with names. It was Pope and Greene. I know that's the two I seen.
- Q. Okay. The first one you saw, who selected that doctor?
- A. Marquette.
- Q. And then the next one you saw, you got a second opinion with Dr. Greene; correct?
- A. Yes.
- Q. And what did Dr. Greene do for you?
- A. He—that's the one that ended up giving me shots in my spine.
- Q. Okay. If the records show that was Dr. Comeaux, that Dr. Greene referred you to Dr. Comeaux—

A. Yeah.

Q. —does that sound right?

A. Yeah, yeah.

Q. Okay. So Dr. Comeaux gave you shots in your spine. What did that do for you?

A. It helped for a little while, a few days, but then it started back hurting.

Q. Getting back to the first doctor you saw that Marquette selected for you, did he ever—did he ever workup your back or do anything for your back?

A. No. And I told him every time I went and seen him my back was hurting. He gave me an insert to put in my shoe.

Q. Now, you also saw Dr. Kevin McCarthy at the same clinic with Dr. Pope. Do you remember Dr. McCarthy?

A. Yes.

Q. And what's your understanding of the treatment that he's provided for you?

A. He put me to sleep and he put shots in my spine, and they last week-and-a-half, a couple of weeks. Real well. And it slowly comes back.

Q. Okay. And you've recently had the second round of those injections; correct?

A. Yes.

Q. And what did they do for you?

A. They—like, right now, my back it hurts a little bit, but not as bad, you know, but it's starting to wear off.

Q. Dr. McCarthy has testified that he's recommending some procedures called rhizotomies, and I believe they call it—they might have told you where they burn the nerves.

A. Yes.

Q. Are you willing to have those procedures?

A. Yes.

Q. A couple of doctors have talked about removing the hardware in your hip.

A. Yes.

Q. That might help you. Are you ready and willing to have that surgery?

A. Yes. No doubt.

Q. Tell the Court just some of the things that you would do before you were injured in your leisure time.

A. Like, when I was home?

Q. When you were off duty and you were at home.

A. I like riding four wheelers, going fishing, going out in the boat, working on old trucks.

Q. Do you do any of that now?

A. No.

Q. Why not?

A. I can't.

Q. What do you do on a daily basis?

A. Pretty much sit around my house, you know. I was flooded and my contractor was in jail, so I do a little bit, whatever I can do here and there when I am not hurting bad.

Q. You have some friends helping you with that?

A. Yes. You know, it ain't like I pick up sheetrock and hold it up and screw it, but, you know, whatever little bit I can do, I do.

THE COURT: Where do you live?

THE WITNESS: Denham Springs.

THE COURT: I'm sorry?

THE WITNESS: Denham Springs.

THE COURT: Who do you live with?

THE WITNESS: Myself.

BY MR. SAUNDERS:

Q. As far as what you intend to do, if you get better with this next surgery or at least get some pain relief, would you like to re-enter the work force?

A. I'd love to, you know. That's been my childhood dream was to work on boats. You know, I love it.

Q. Do you know what you're going to try to do as we sit here today?

A. If my pain goes away and I can, yeah, I'd love to go back on the boat.

Q. What if you can't?

A. Well, if I can't, I don't know. I don't know a whole lot about nothing else.

MR. SAUNDERS: Thank you, Kelvin. Please answer any questions that Mr. Scialdone has for you.

THE COURT: Let me ask you this. Before you went down, while were you in the wheelhouse and you were securing that—pushing that barge properly into place, how far were you from docking the barge? What were you intending to do? Bring the barges to, what, the fleet area?

THE WITNESS: Yeah, into the fleet area because he was crossways.

THE COURT: Yeah.

THE WITNESS: So I got it back straight, and then one of our other company boats asked on the radio, “Y’all need a hand?” I said, “Yeah.” So he come and was pushing. And that’s when Junious says, “I’ll take over.”

THE COURT: So you got him straightened out?

THE WITNESS: Yeah.

THE COURT: What was your intent? To do what with the barges?

THE WITNESS: To go into the fleet.

THE COURT: And then do what with them? Just secure them to the fleet?

THE WITNESS: Yeah, I think we was just dropping them.

THE COURT: Were you going to go back and pick up empty barges or what?

THE WITNESS: Yeah. We was dropping and then gonna be picking up.

THE COURT: And how close were you to the fleeting area?

THE WITNESS: A few hundred feet.

THE COURT: And you were still connected to the barges?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MR. SCIALDONE:

Q. Good morning, Mr. Dunn. I am John Scialdone.

A. Good morning.

Q. I think you and I met when I took your deposition in Baton Rouge. I would like to turn directly to the point that Judge Fallon just asked you about.

What was the location of the boat when you got the report from Corey Crespo that you needed to go down into the engine room? Well, that you had a fuel leak?

A. Yes.

Q. At that moment, isn't it true that the—you still had an assist tug on your side and that you were being landed in the fleet?

A. He was pushing us in.

Q. So at the moment that you got the radio call, you actually had an assist boat on you and you were still being landed in the fleet at that point; correct?

A. No, we weren't landing. He was pushing us into the fleet. No line on us or nothing.

Q. But that was my question, so I want to make sure it's clear. I'm looking at your deposition testimony, so I just want to make sure we have a clear exchange on that.

A. Yeah.

Q. And let me read and tell me if this is an accurate statement. At the time that you were headed down to the engine room, that they were still in the process of getting pushed into the fleet?

A. Yeah, that's what I just said.

Q. I know you and I know our—sometimes may know our answers, but if you'll just let me make it just to the end of that question.

A. Sorry.

Q. And I promise you I am going to try my best not to do the same to you.

Just to make sure it came across so the judge will be able to hear it and just let me make it to the end of it.

At the time that you got the radio call from Corey Crespo and that you proceeded down to the engine room, the location of the ST. RITA and its tow was that you were still in the process of getting pushed into the fleet with the other boat; is that correct?

A. No.

Q. Okay. So I'm going to—

A. Junious Brown had done took the wheel, and I had stepped outside and smoked a cigarette, and then stepped back in and told Junious I was going

down to get dressed and I'd be back up. That's how that happened.

Q. I understand that that's what you were doing, Mr. Dunn. But what I want to make clear is where the ST. RITA and its tow were in orientation to the fleet, where they were. And I am asking you if it's a correct statement that at that point, that is at the point that you were leaving to go downstairs to go down to the engine room, that at that point when I asked you, "Were you landed in the fleet already?" that your recollection and your answer today is, "No, they were still in the process of getting pushed into the fleet with the other boat"?

A. Yeah.

Q. That is accurate?

A. Yes.

Q. Okay. So at the time that you were going down to investigate the spill in the engine room, there was another Marquette boat assisting the tow already?

A. Yes.

Q. Thank you. So let me turn now and come back just to make sure so the point is clear. If you had shut the boat down, the tow boat down completely, you had another boat already on your side at that point; didn't you?

A. Yeah, with no lines and him on the side, he'd been useless. He'd had—

Q. But you had another boat right there standing next to you, didn't you? And you were very close to the—

A. He was—

Q. And you were—

A. Proceed—as he was pushing ahead, we was twisting against him to go into the fleet.

Q. Okay. But you were next to the fleet and you had an assist boat?

A. Yes.

Q. So let me take you now—I want to talk to you a little bit about your background, what it took. Your process of becoming a captain didn't happen overnight, did it? That took years of work on your behalf?

A. No. I spent 14 years on the deck.

Q. So the first thing you had to do was learn to be a deckhand trainee; correct?

A. Yeah.

Q. Then after that you had to learn skills and advance to a senior deckhand?

A. Yes.

Q. And then up to leadman?

A. Yeah.

Q. And then on to mate; correct?

A. Well, when I started everybody was just deckhands. They didn't have mates and second mates and all of that.

Q. But you made it to a senior deckhand position?

A. Yeah.

Q. And you did that by gradually learning your skills?

A. Yes.

Q. And I take it, as you entered into a steersman program eventually, it was because you also did a good job of mentoring other deckhands and teaching; right?

A. Yes. Well, people still brag on me decking and I been off the deck ten years.

Q. So you had—and that was something you were good at was learning—

A. I was proud of.

Q. Absolutely. So you were able to not only learn the procedures on deck and the operation of the boat yourself, but you were good at teaching other people?

A. Yes.

Q. And that's part of the reason that you advanced on to the steersman program; correct?

A. Yes.

Q. Now, to do that, you had to take tests with the United States Coast Guard, written tests; right?

A. Yes.

Q. You had to learn the rules of the road?

A. Yes.

Q. You had to learn navigational function?

A. Yes.

Q. Learn how to use radios?

A. Yes.

Q. Plot a radar course?

A. Yes.

Q. Okay. You had to learn safety rules and procedures as well of the vessels; correct?

A. Yes.

Q. Those were all written materials; right?

A. Yes.

Q. And you had to learn to organize those materials into weekly presentations for the crew; correct?

A. Yes.

Q. You had to learn to hold safety meetings?

A. Yes.

Q. You had to learn to manage drills?

A. Yes.

Q. As a captain, you ultimately—as you move from a steersman to becoming a pilot, you ultimately started to fall into a management role aboard the vessel; right?

A. Yes.

Q. And you know that as you advanced to becoming a captain that you were the final point of authority on that vessel, at least when you were on board it and you were running it; correct?

A. Yes.

Q. Do you have the final authority over the deck-hands?

A. Yes.

Q. As well as the authority over your pilot?

A. Yes.

Q. You were the one, at that point, as you started to continue functioning as the captain, you knew of your responsibilities to enforce safety rules aboard the vessel?

A. Yes.

Q. As part of your work as a captain, you also had to engage in a certain amount of recordkeeping such as the deck logs; right?

A. Yes.

Q. Also, the vessel had to maintain engine room logs so that the deck crew had to coordinate going and making readings aboard the vessel and keeping those logs on a regular basis; correct?

A. Yes.

Q. Then those logs, the deck logs, the engine logs, you had to coordinate getting that information back to a home office; right?

A. Yes.

Q. Part of working as a captain you also had to understand logistics. You had to be able to participate in knowing when to pick up a barge and when to drop it off?

A. Yes.

Q. Sometimes you also had to make decisions about how you built your tow—

A. Yes.

Q. —so that you would drop a barge off knowing where to put a barge depending on which barge would be dropped off first in your voyage; right?

A. Yes.

Q. So you engaged in I think what we would call logistics management, and so you knew that you would plan the orientation of your tow based on which destination was coming first and which barges you'd drop off—

A. Yes.

Q. Depending on how—

A. Yes.

Q. Okay. And you would maintain records of that kind of work and you would exchange those records with the traffic department of the company?

A. We had a Kirby computer and a Marquette computer.

Q. Right. So you would have a customer as well as the boat operator; right?

A. Yes.

Q. You were hauling barges for somebody else; right?

A. Yes.

Q. That's the whole business you're engaged in?

A. Yes.

Q. I think they call it being a power provider; right?

A. Yes.

Q. If somebody had barges that needed to be moved, so you had to coordinate two things in that job; you had to be able to coordinate both the physical operation, the plant operation of the vessel, and at the same time you had to successfully coordinate with a customer who needed to tell you where their cargos needed to be dropped off; right?

A. Yes.

Q. You were doing all of this with red flag barges, which are serious cargo; correct?

A. Yes.

Q. And you understood the value of the cargos you were handling—

A. Yes.

Q. —and the risks?

A. Yes.

Q. And those were all things that you had the management skills to be able to handle properly; right?

A. Yes.

Q. You never had an action against your Coast Guard license?

A. Yes.

Q. So you would agree with me, the mere fact that you fractured your hip, that hasn't taken away what you have up here, has it? You still have the

mental capability of doing all of those things; right?

A. Yes.

Q. Okay. If you had to go to another job, you haven't lost your intellect. You haven't lost that, have you?

A. No. Like the Kirby computer—Marquette computer ain't too hard. The Kirby computer, the captain that was teaching me how, he cussed and slung. It took a long time to learn that but I learned it.

Q. You learned it. The point I am making, it's kind of an optimistic—it's a complimentary point and an optimistic point. I understand, sir, that you fractured your hip and everybody is sorry that happened. But you didn't sustain a head injury. You still have your mental capabilities, don't you?

A. Yeah.

Q. And you still have the ability, with all of that management skill you learned being a captain, you can bring that to bear at another job; right?

A. Yes.

MR. SAUNDERS: I think that's argumentative, your Honor.

THE COURT: He is under cross. If he wants to keep saying, "Yes," that's fine.

THE WITNESS: If I can lose the pain in my hip and my back, yeah.

BY MR. SCIALDONE:

Q. Okay. Let me make a distinction there. If you— or if your back and your hip stops hurting, you have no concerns whatsoever going back out and working as a captain; right?

A. If I can't do it, I can't do it. I got five steps on front my house, and when I walk up them five steps, I got to stop and almost sit down.

Q. I completely understand that, Captain Dunn, and I am not suggesting otherwise. My question to you was: If you were pain free in your hip and your back, you would have no concerns today of going back?

A. Yeah, I would have no concern with going back. I'd love to.

Q. And the injury that you sustained to your hip hasn't affected your mental abilities or your management skills. You can still bring those skills to bear at a different job that didn't involve climbing stairs; right?

A. Yeah.

Q. True. Now, you've been an artist all your life, haven't you?

A. Yeah, I like to draw.

Q. You love to draw. You've done that since high school; right?

A. Yeah.

Q. If I remember right. And you love tattoos, don't you?

A. Yeah.

Q. And I know you have a number of them yourself. Some of those you've designed yourself; right?

A. Yes.

Q. Those are things that were meaningful to you, usually, of some important event in your life; right?

A. Yes. Yes.

Q. And you would commemorate it by designing a tattoo and having it put on your body; right?

A. Yes.

Q. So becoming a tattoo artist is something, as a personal endeavor, you would like to do, wouldn't you?

A. Yes. Takes practice, though. Drawing and tattooing, it's different. I'd have to practice for awhile.

Q. It's another skill set, but you're already a good artist, aren't you?

A. Yeah, yeah.

Q. Okay. And you would agree with me probably when you got your first tattoo in your life it was something that maybe only a few people did, but today it's much more common out there; right?

A. Yeah.

Q. It's a pretty decedent business today. You see tattoo parlors all over the place.

A. Right, all over.

Q. You don't doubt that you have the management skills. I mean, if you were able to work as a

captain, don't you think you have the management skills to run a tattoo parlor; don't you?

MR. SAUNDERS: Your Honor, I am going to object to that question. Again, that's something that the vocational rehabilitation experts can testify to. This man has never run his own business.

THE COURT: I understand. He can also testify as to his interests.

THE WITNESS: I can run a tattoo parlor. As far as, like, financial part, I'd be lost.

BY MR. SCIALDONE:

Q. You would have somebody do that for you?

A. Yeah, yeah.

Q. Today your mom runs your finances—

A. Because I've always worked and my woman paid the bills, you know. I brought home the bacon. She fried it.

Q. That's been your entire life?

A. My entire life.

Q. If it wasn't your girlfriend running your finances, your mom would do it for you?

A. Yeah, yeah.

Q. And you new if you went on to have your own tattoo parlor, you would just have somebody keep your books for you; right?

A. Yeah. But my momma, she ain't—wouldn't be able to do that.

Q. So let me go back. Let's talk a little bit about your authority on board the vessel. I think these are points that you and I will agree on.

The time that the fuel leak was reported by Mr. Crespo, if you wanted, you had—at that moment, you were the senior most officer on the boat. You had authority over the remaining crew; correct?

A. I had the what?

Q. You had the authority over all of the rest of the crew?

A. Yeah.

Q. If you wanted to, you had the authority to stay on the bridge and direct the response from there, if you wanted to?

A. Yeah.

Q. Okay. And if you didn't—

A. But—

Q. If you didn't have on the proper protective gear, you could have stayed on the bridge and done the same job that—same job that the pilot was doing and have the pilot or leadman respond to this. All I am asking you about is authority. If you wanted to you, you had the authority to do this?

A. Yes.

Q. And you certainly had the skill set to stay on the bridge and run the bridge if you wanted, you had the highest skill sets on the boat; right?

A. Yes.

Q. Okay.

A. I don't know any captain that would have stayed up there and did that, though. Every captain I know would have did the same thing.

Q. I understand. You believe you did the right thing, and my question, is it right—I think that's what you believe and I understand that. But my question to you is simply whether you had the authority to stay on the bridge and whether you had the skill set to stay on the bridge and run the radio and continue to operate the vessel, and I believe you're agreeing with me on that?

A. Yeah. But—

Q. Before you left the bridge—just to make sure. I think we covered this. But before you left the bridge and after you received a report from Corey Crespo of spraying fuel, did you sound the general alarm?

A. Junious was back at the wheel. I was headed down the stairs and I heard on the radio.

Q. Okay. Did you ask Junious to sound the general alarm?

A. I didn't ask nothing. I just went to the engine room where the trouble was.

Q. Did you attempt to marshal the crew into one location?

A. No. I was going to fix the situation.

Q. I understand. Did you stop to assess what protective gear you may need to put on before you entered the engine room?

A. No.

Q. I know you said you had your slippers on, so I think it's obvious you also didn't stop to change your shoes, did you?

A. I got a fuel leak in the engine room. My only concern is getting down there and fixing it.

Q. Is fixing it—

A. Stopping it.

Q. —as quickly as you could.

You made some comments to the Court earlier about whether or not other people may have seen you in the past wearing your tennis shoes on deck; right?

A. Yeah, on the boat. I don't go out on the deck.

Q. So just to make sure I am clear about that. Would you ever let one of your deckhands work out on a barge or on the deck—

A. No, no, no, no. Not at all.

Q. You wouldn't let them wear their tennis shoes; would you?

A. Not on the deck.

Q. Okay. Would you ever let your deckhands go in the engine room wearing their tennis shoes?

A. Yes. Company policy is they on watch, they wear steel toes.

Q. Okay. So you understand that that's what's required?

A. Yeah.

Q. I just want to make sure that's clear.

A. Yeah.

Q. The fact that you were wearing your tennis shoes, it doesn't mean that you would permit any other crew members to do that, would you?

A. Well, it's not company policy for me to wear steel toes in the wheelhouse.

Q. But more than it not being—in addition to it not being company policy, what I want to make clear is that you would know not to let one of your deckhands wear tennis shoes out on deck or in the engine room? You would know that anyway, wouldn't you?

A. Well, if they off watch and in the boat, they can wear tennis shoes.

Q. Right.

A. As long as they ain't out on the barges, building tow. Yeah.

Q. And you would know that regardless of whether somebody from management or an auditor coming on the boat told you that. I mean, that's something you've done your whole life. You've enforced that rule your whole life; haven't you?

A. Yeah.

Q. So let me go back and talk to you for a moment about any anxiety issues. Anxiety in one form or another has been something you've dealt with most of your life; true?

A. My whole life.

Q. This isn't new. You would agree with me that for most of your marine career, the real impact on you was—had to do with transportation. You didn't like flying?

A. No, I hate flying.

Q. You hate flying?

A. Yes.

Q. And you made that clear to the company?

A. Yes.

Q. And the company helped you with that; right?

A. Yes.

Q. You did not want to obtain a driver's license as well?

A. No.

Q. You had the ability to get a driver's license, but you've chosen not to get one?

A. Yes.

Q. And you agree driving is something that heightens your anxiety?

A. Yes. I was in a bad car wreck in '98 and don't want to drive no more.

Q. Okay. That experience changed your desire to want to drive again?

A. (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

Q. The anxiety that you have, though, predated that car accident; right? As we said, that's been a lifelong issue for you.

As we got into 2013, you agree with me that you started to sustain anxiety, not just in transportation, but you were starting to have anxiety on board the boat; right?

A. Yes.

Q. And you agree with me that as you entered the bridge and you started to work as a captain you found that also to be stressful?

A. Yes.

Q. And that stress was—

A. It kind of kicked up my nerves a little bit when I first started by myself. But that went away.

Q. And part of that is what would trigger some of the anxiety or panic attacks that you were having; right?

A. No. You could ask anybody that works with me. Put me in a bind, a bad situation, and I am cool as a cucumber.

Q. But being on board the vessel was causing you stress and becoming a captain was causing you stress, and that was having an impact on your anxiety. Just going off of what we talked about in your deposition.

A. I am saying when I first started, yeah, my anxiety was through the roof. I was up there by myself. I am used to having somebody up there telling me what to do. But the more experience I got, the more—finally all of that went away.

Q. Okay. By 2013, you took a six-month leave from working on board a vessel, didn't you?

A. Yeah. Sometime—I be just sitting there not doing nothing and the anxiety will kick in.

Q. Okay. So just being on board the vessel was causing you to have anxiety even though the anxiety related to becoming—of the captain—

A. I have them at home, too.

Q. —wasn't bothering you?

A. I have them at home, also.

Q. And do you get it at home as well?

A. I've had them since I was a kid.

Q. Okay. So the anxiety or the panic attacks started happening while you were on board the vessel?

A. No. I've had them since I was a kid before I ever even went on boats.

Q. I understand that. Let me clear up my question because I could have said that better.

As you came into 2013, you started to experience anxiety and panic attacks while you were on the vessel?

A. Yes.

Q. And by June, July of 2013, you made the decision that you needed to come off the vessel?

A. Yes. If I had anxiety attacks, I would call the office and get off.

Q. Okay. And you took six months off?

A. Yes.

Q. During that time you were treating with Dr. Wissner?

A. Yes.

Q. And Dr. Wissner was working with you with various medications to see what might work; right?

A. Yes.

Q. At some point Dr. Wissner recommended Ativan to you?

A. Yes.

Q. And Ativan turned out to be one of the medications that was effective?

A. Yes. She gave me—

THE COURT: You're going to have to speak in the microphone or we're not going to get this.

THE WITNESS: She gave me ten of them.

THE COURT: You can move it closer to you, sir.

THE WITNESS: She gave me ten of them, ten or 15, something like that. And she told me if I go back on the boat, do not take them. And I never did.

BY MR. SCIALDONE:

Q. So that was the medication that was prescribed to you and still prescribed to you today; right?

A. No, I don't take them today.

Q. When is the last time you had a prescription for Ativan?

A. Well, I've—I think I still got two from whenever the last time I got them filled.

Q. Okay. So you haven't had a need to refill them?

A. Yeah, just every now—I only take them if needed.

Q. If needed, okay. It's an effective medication for you, yes?

A. Is it what?

Q. It's an effective medication. It works; right?

A. Yes.

Q. But it's—you understand that even though it's effective, it's a medication you cannot take if you're going to work on vessels—while you're working on vessels?

A. And I did not take them on the vessel.

Q. And you understand that it's not allowed; right?

A. Yes. I think it was, like, the last three times I went on the boat before—before this, they gave me drug tests the last three times, and I passed every one.

Q. Do you know what those drug tests are for, what the panel—what they're screening for?

A. Kirby drug test is all I know.

Q. Okay. And you agree with me that you took a second leave in 2015 for about three months; right? Correct?

A. Something like that I guess, yeah.

Q. And before you took that leave in 2015, you actually had to leave the boat and go to the emergency room in Texas?

A. That was—yes.

Q. And then when you came back to the boat in August of 2015, that was your first hitch back when we had this incident?

A. Yes.

Q. Let's move and talk a few things about this—about safety program. I think you heard Byron Thompson go through the parameters of the safety calendar and the topics and what are on there. I take it, though, that was all something you were familiar with. You had seen that over your four years as a captain, hadn't you?

A. Yes.

Q. Now the—and I believe you told me earlier that you agree when you were on board the vessel as the captain, you were also the one who was running the 15-minute huddles and running the safety meetings—

A. Usually my mate did that.

Q. But you were in charge of them?

A. Yeah. But I sit there and run the boat and he would do the huddle.

Q. You agree with me that situational awareness is an important component for safety aboard a vessel for any job that you go do?

A. I didn't hear that.

Q. Do you agree with me that maintaining situational awareness is an important safety responsibility for any job you do on board the vessel?

A. Yes.

Q. You agree with me that monitoring and knowing environmental hazards that are around you is a critical part of working on a tow boat?

A. Yes.

- Q. And you agree with me that using the proper personal protective gear is a critical part of working on a tow boat?
- A. Yes. But at the time I did not have time to go put on boots, shoes, whatever.
- Q. I know. I understand why you did what you did. Some of these questions I am giving you are to make sure you and I agree on the same points.
- A. Yes.
- Q. You understand the importance of drills with the crew in order to teach routine?
- A. Oh, yes.
- Q. And that's to teach routine behavior?
- A. Yes.
- Q. Even under a stressful situation?
- A. Yes.
- Q. You appreciate and know that diesel fuel is a very real slip hazard and always has been?
- A. Yes.
- Q. You understand also that diesel fuel is combustible—
- A. Yes.
- Q. —and that it can create a fire risk?
- A. Yes. That's why I needed to get down there and stop it.
- Q. And when you left the bridge and you were going to the engine room, you knew that you had spraying diesel fuel already. That was what had been

reported by Corey Crespo. You knew that before you got there?

A. Yeah, I knew diesel was leaking.

Q. And you specifically knew from what Corey Crespo told you over the radio that diesel fuel was spraying?

A. Spraying or leaking. I knew I was going down there to try to stop it.

Q. You appreciated the fact that what you were responding to was a very real fire hazard. You knew that was a fire risk before you got there?

A. Yeah, that's why I was trying to get there to stop it.

Q. That was the whole reason that you were responding quickly is because you were worried that you could have a fire at any moment?

A. I wasn't thinking about fire. I was actually just thinking about stopping the leak.

Q. But didn't you have a concern that the whole thing could blow? Referring, again, to your deposition when you and I spoke earlier. You had a concern that the whole thing could blow or it could catch a fire at any point?

A. Yeah, it was blowing onto the turbos they said. I didn't know that at the time.

Q. And so you're well aware of the fire triangle, the three elements of the fire that are important to know?

A. Yes, yes.

Q. So if it was blowing—if fuel was blowing onto the turbo, you appreciated that you had both fuel and heat at the same time; right?

A. Yes.

Q. And that's why you would be very concerned of a fire risk?

A. Yes.

Q. And so the only reason that you were going into the lower engine room was for the purpose of stopping the fuel from spraying; right?

A. Yes. Shut down the generator, get the other one going, kill the fuel without losing my engines.

Q. So if you also wanted to maintain electrical power on board the vessel—

THE COURT: We have to do something. Either get Steve or something. I don't know what to do.

THE DEPUTY CLERK: I don't know, Judge.

THE COURT: Could you move it closer? If you speak over it, it's better.

THE WITNESS: How is this? Hello?

MR. SCIALDONE: You let me know. Are you having trouble hearing?

THE COURT: We have to get it down, otherwise it's . . .

THE WITNESS: How about this?

THE COURT: We'll just do what we can, Dean.

THE DEPUTY CLERK: He can't do anything.

THE COURT: Let's go with it. Turn it on as loud as you can. Go ahead.

MR. SCIALDONE: So what we need to do, Mr. Dunn, is just kind of pretend that microphone isn't there.

THE WITNESS: All right.

MR. SCIALDONE: And just try to speak in a little bit of a louder voice. They're just having trouble hearing you.

THE COURT: Just make sure this lady right over there hears you. That's the most important person here.

MR. SCIALDONE: So if you speak directly to her.

THE WITNESS: All right.

MR. SCIALDONE: And I will tell you what I will do. I'm going to stand off here to the side. If you can hear my voice when I speak to you and I can hear your voice, I'm pretty sure she can hear us in between the two of us.

THE WITNESS: Okay.

MR. SCIALDONE: Your microphone just isn't picking up that well.

BY MR. SCIALDONE:

Q. The last thing I was saying to you was that the reason that you went into the lower engine room was because you wanted to stop the spray of diesel fuel?

A. Yes.

Q. You also wanted to make—your intent was to maintain electrical power at the same time. You didn't want to shut the boat down; correct?

A. No, I did not want to shut the engines down. Period.

Q. And the only way for you to maintain electrical power on the boat was if you also started the port engine generator?

A. That was my plan.

Q. And you agree with me that that was your plan when you went there was to first—I promise I am going to try not to talk over you. Let me get the question out. It will be easier on the court reporter.

So your plan was to first start the port generator, then switch the electricity over to it? Yes?

A. (WITNESS NODS HEAD IN THE AFFIRMATIVE.) Yes.

Q. And then after that, you were going to shut off the starboard generator?

A. Shut off the fuel.

Q. Okay. And the reason you were going to do it in that order was because if you first turned off the starboard generator, you were going to at least temporarily lose electrical power aboard the vessel?

A. Well, we have battery lights that kick on when the generators are off, so.

Q. But—

A. I'd still been able to see. Whatever one I got to first, I was going to shut off, crank the other one, you know.

Q. The fuel that was spraying, it was spraying from the starboard generator onto the front of the starboard engine; correct?

A. Yes.

Q. The other side of the stairway, the port engine and the port generator, it didn't have diesel fuel on it, did it?

A. I did not know what side was leaking.

Q. So when you turned to the bottom of the stairway—

A. —as soon as I hit the diesel, I fell.

Q. But when you turned—you actually turned and you were facing the starboard generator when you fell; right?

A. I was following Corey.

Q. You were following Corey Crespo. Now, Corey Crespo was a deckhand with, what, six months or so experience but fairly young guy; right?

A. Six, seven, eight months, something like that.

Q. You agree with me that, obviously, he was the junior-most member aboard the vessel and you were the senior-most member aboard the vessel on that day?

A. Yes.

Q. Yes?

A. Yes.

- Q. When Corey was going forward, he was actually having diesel fuel spraying him and hitting him in the chest, wasn't he? I believe that's what you recalled was diesel fuel was spraying forward and actually physically hitting him.
- A. I remember him slipping and me falling at the same time.
- Q. Okay. You heard earlier from your liability expert that there was a point where Corey Crespo stood and blocked the diesel spray from hitting you?
- A. Yes.
- Q. And you recall that happening, don't you?
- A. I was hurting so bad I don't recall nothing really. My hip was spun in front of me. My only thing I was thinking my hands kept slipping and I was trying to hold myself up without them slipping.
- Q. Okay. But you know that Corey Crespo was there and Corey Crespo got diesel fuel sprayed on him?
- A. Yes. And I remember telling him go get the lead guy. At first I was telling him to crank the other generator, but he couldn't understand what I was saying because it's so loud.
- Q. All right. So it was difficult for you to communicate what you wanted him to do because you were both in an environment that had a lot of noise in it?
- A. Yes, sir. So then I said, "Go get the leadman."

MR. SAUNDERS: Excuse me. Let's pull that away from your body. Your sleeve is causing some interference.

THE COURT: Thank you. Go ahead.

BY MR. SCIALDONE:

Q. But to make sure that you and I are abundantly clear on this point. At the time that you had fallen in the engine room, Corey Crespo was also having diesel fuel sprayed directly on him?

A. I had it spraying on me after he moved.

Q. So the both of you were both in the engine room and you both had diesel fuel on your bodies—

A. Yes.

Q. —at the same time that the starboard generator was running and at the same time the boat's main engines were running?

A. Yes.

Q. Do you agree with me that that was a highly risky situation for the both of you, don't you?

A. Yes. But it was risky for everybody around there if I'd lost the power on my engines and hit a barge and had an explosion.

Q. At the same time—

A. It'd been a chain reaction.

Q. At the same time you were sitting in a fleet and you had an assist boat with you; correct?

A. I was not sitting in a fleet. We was not tied off. Had an assist boat that was not tied off to us.

Q. But you were not in any imminent danger of a collision at that moment, were you?

A. Yes, we was.

Q. You're saying that while you were trying to land—

A. It don't matter if we only doing half-a-mile an hour. We got two big barges. You hit, it's going to rip the whole fleet loose.

Q. So you believed at that moment that you were at a risk of collision when you left the bridge?

A. He said he got it. So I said, "All right. I'm going downstairs to get ready to come on watch." I didn't know that all of this other stuff was going to happen.

As I started to go down, that's when he said, "There's diesel spraying in the engine room."

So I said, "I'll go check it out."

Q. So before you entered the engine room, did you have any other communications with the bridge to understand what was the orientation of the boat or what was happening with the assist boat that was already on your barge?

A. No. I am going down to take the fuel leak.

Q. Before you entered the engine room, and I think this is abundantly clear, you knew there was a fuel leak and you knew it was a slip hazard?

A. Yeah.

Q. And you knew it was a fire hazard before you went down there?

- A. Them decks are slick anyway on that boat. There's no nonskid.
- Q. I'm sorry?
- A. No nonskid on the deck of that boat in the engine room.
- Q. There was raised diamond plating there, wasn't there?
- A. It's still supposed to be nonskid.
- Q. Did you ever fill out a report requesting—are you aware of any report to the engineering department that ever requested a change of the stairs or the diamond plate?
- A. No. Not sure. Maybe the head captain.
- Q. Now, did any other crew member get injured on this diesel fuel? Did any other crew member fall? Did any other crew members fall and injure themselves?
- A. No.
- Q. Same thing with the paramedics. They were able to come in and get you out without falling?
- A. Yes.
- Q. Same thing for Junious Brown?
- A. Yeah. By the end, they had done shut off the fuel and was wiping up all of the diesel.
- Q. But nobody else fell on this fuel other than yourself?
- A. Yes.

Q. You were evacuated from the boat after they landed in the fleet. Said it took about 20 minutes for the paramedics to come and get you.

A. Yes.

Q. And since that time you've been provided with consistent constant medical care?

A. Yes.

Q. Marquette paid you advances as well. They advanced you about another \$15,000 over the top of what they paid you in maintenance?

A. Yeah, they paid me my regular pay at first.

Q. Okay. And even from the time of the accident through to today, you've received \$35 a day as a maintenance payment from them continuously; right?

A. Yes.

MR. SCIALDONE: If you give me just one moment, Mr. Dunn, I am going to check my notes. I stepped away from my notes to talk.

THE COURT: Sure, I understand. I appreciate it.

MR. SCIALDONE: If you give me just a moment.

THE COURT: Yeah, take your time.

BY MR. SCIALDONE:

Q. Mr. Dunn, you'd agree with me that the diesel fuel that was spraying off the starboard engine—off the starboard generator was also likely entering the bilge of the vessel; wasn't it?

A. Yes.

Q. And you agree with me that a bilge fire—potential for a bilge fire presents its own unique risk—

A. As long as it was going in the bilge, I wasn't worried about a fire.

Q. But if the diesel were to catch fire from another source, such as from the turbo chargers, you understand that a bilge fire, if it had been spread to the bilge, that has its own particular risk—

A. Yes.

Q. —because that can spread much more quickly as the oil spreads out across the water?

A. Everything on a tow vessel is a risk. Just driving down the canal is a risk. You know, making a bridge is a risk. It's all risk. You know, you can lose steering at any time, which I have had that happen several times.

Q. You agree with me that there's a 12-volt back-up power system that's available for maintaining emergency lighting and radios in the event—

A. Yes.

Q. —that you do shut down the generators; correct?

A. Yes.

MR. SCIALDONE: That's all the questions I have.

THE COURT: Any redirect? Let's see if we can finish before we take a break for lunch.

MR. SAUNDERS: Sure. Just a few.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. SAUNDERS:

Q. Kelvin, are you aware of any captains that worked on the ST. RITA, are you aware of any of them wearing steel-toed boots in the wheelhouse?

A. No. No.

Q. Including Mr. Brown?

A. No. None of them wore them.

Q. So what did Junious Brown wear in the wheelhouse? What kind of shoes?

A. Nikes.

Q. Okay. He would have had to wear those if he would have gone and checked on the engine room to check on the leak; correct?

A. Yeah.

Q. And you don't—when you are captaining a boat, I know you have different duties, but you don't do what the deckhands do; right?

A. No.

Q. You don't engage in operations where there's a risk of crushing your toes?

A. No.

Q. Just to be clear for the Court. When you have an assist vessel that's not tied to you, can that vessel control your tug and the load?

A. No, cannot.

THE COURT: Where was the assist vessel, on the lead barge or on the second barge?

THE WITNESS: The lead barge.

THE COURT: Were you underway at the time?

THE WITNESS: He was pushing the tow in like this, and as he was pushing, we was prying against him to work, you know—

THE COURT: Straighten it up.

THE WITNESS: Straighten it up and to go in sideways.

BY MR. SAUNDERS:

Q. So in order to control those two loaded barges, at that moment you needed two vessels?

A. Yeah. To shut mine down, yeah, I needed two vessels.

Q. Is there any way possible that if the ST. RITA lost power that an assist vessel up near the front barge could have controlled those three vessels?

A. No.

Q. And what's—if you know, when those barges are loaded with chemicals, what's the weight of those barges?

A. With the—

THE COURT: You don't know the weight. What's the draft of them?

THE WITNESS: Ten foot, 54-foot wide, 300-foot long, 295.

MR. SAUNDERS: Thank you, Kelvin. That's all I have.

THE COURT: Okay. We'll take a lunch break here and we'll come back at one o'clock. The Court will stand in recess until one. Thank you very much.

(WHEREUPON, A LUNCH RECESS WAS TAKEN.)

PROCEEDINGS

(AFTERNOON SESSION)

(OPEN COURT.)

**ORAL DEPOSITION OF JUNIOUS BROWN
(JANUARY 26, 2017)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

v.

MARQUETTE TRANSPORTATION
COMPANY, LLC

Civil Action No: 16-13545 L(5)

Before: Michael NORTH, Magistrate,
Eldon E. FALLON, United States District Judge

ORAL DEPOSITION OF JUNIOUS BROWN, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on January 26, 2017, from 11:54 a.m. to 12:25 p.m., before Jo Ann Kelley, CSR in and for the State of Texas, reporting by machine shorthand, at the offices of Marquette Corporate Office, 223 N. 10th Street, La Porte, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

[. . .]

APPEARANCES

FOR THE PLAINTIFF:

Mr. Henri M. Saunders

SAUNDERS & CHABERT

6525 Perkins Road

Baton Rouge, Louisiana 70808

Phone: 225-771-8100 - Fax: 225-771-8101

E-Mail: hsaunders@saunderschabert.com

FOR THE DEFENDANT:

Mr. John A. Scialdone

SCIALDONE LAW FIRM

2505 14th Street, Suite 500

Gulfport, Mississippi 39501

Phone: 228-822-9340 - Fax: 228-822-9343

E-Mail: jscialdone@frfirm.com

[. . .]

[January 26, 2017 Transcript, p. 4]

JUNIOUS BROWN, having been first duly sworn,
testified as follows:

THE REPORTER: Did you want to waive the 30(b)(5)
Rule?

MR. SCIALDONE: Yes.

MR. SAUNDERS: Yes.

THE REPORTER: Any stipulations?

MR. SAUNDERS: Usual stipulations is fine.

EXAMINATION

BY MR. SAUNDERS:

Q. Good morning, Mr. Brown. Why don't you start by giving us your full name and business address for the record?

A. Junious Anthony Brown, Jr., 17174 Beaver Springs Drive, Houston, Texas, 77090.

Q. And that's your home address?

A. Yes, sir.

Q. All right. And you don't have any plans on relocating any time soon, do you?

A. I don't know yet.

Q. Well, if you do, will you please notify—

A. Yes.

Q. —Mr. Scialdone here? Just hopefully we don't need to talk to you again, but we might somewhere down the road. We just need to know where to find you.

It's my understanding that you're employed with Marquette?

A. Yes, sir.

Q. What's your position?

A. I am a pilot, sir.

Q. In August of 2015, what was your position?

A. Pilot, sir.

Q. All right. Give me a quick rundown of your educational background.

A. I graduated high school '99, took a semester of college. I also went to Seaman's Church in Lafourche. And that's it.

Q. Where did you graduate high school?

A. Peoria High.

Q. That's—

A. Illinois.

Q. —Illinois?

A. Yes, sir.

Q. And where did you—where did you go to college for a semester?

A. ICC, Illinois Central College.

Q. Okay. And then you mentioned the school in Lafourche?

A. Yes, sir.

Q. Was that where you—

A. Got my maritime license, yes, sir.

Q. What was the name of the school?

A. Lafourche Merchant Marine.

Q. That's right. And where exactly in Lafourche Parish is that located?

A. Raceland, I believe.

Q. Raceland. I grew up in Thibodeaux right down the street.

When did you graduate from Lafourche Merchant Marine?

A. 2012, I think.

Q. And when did you first come on with Marquette?

A. 2007.

Q. Did you start up as a deckhand?

A. Yes, sir.

Q. That's usually how it goes.

So, you were a deckhand for a few years and then worked your way up. And I guess you were a steersman at some point?

A. Yes, sir.

Q. Was that before Lafourche or after?

A. No. It was after.

Q. So, you—

A. I got my license and then, after a while, became a steersman.

Q. And how long were you a steersman? What years, approximately?

A. About a year and a half, two years. I'm not 100 percent sure on that, sir.

Q. When did you become a pilot?

A. I went back to Lafourche in September 2013.

Q. All right. And just for the record, as a steersman, what's your understanding of what that means?

A. Excuse me?

Q. Well, as a steersman, you're not—you're not—you're not a pilot yet, right?

A. Right. I'm being trained.

Q. You're being trained. So, in other words, when you're in the wheelhouse, there has to be a pilot up there with you?

A. Yes, sir.

Q. Okay. Tell me what kind of work you are doing today. In other words, what—you working for Kirby, the same type of stuff that was going on back in August of 2015?

A. Yes, sir. The same exact runs they're running now.

THE REPORTER: Say that again.

A. The same exact runs they're running now, the ST. RITA was one.

Q. (By Mr. Saunders) Are you still piloting the ST. RITA?

A. No, sir. CORPUS CHRISTI right now.

Q. CORPUS CHRISTI. All right. Similar boat?

A. No, sir. Bigger boat.

Q. Bigger boat. All right.

How long did you have the opportunity to pilot the ST. RITA?

A. Till August of this year when they tied her up.

Q. Well, give me—give me a time frame. When were you piloting the ST. RITA? When did it start, and when did it end?

A. It started probably around 2012, and it ended August this year—last year about.

Q. August of 2016?

A. Yes, sir.

- Q. Okay. Just give me a general description of the ST. RITA.
- A. She's 26 feet wide, 66 feet long, 104 tons, 1250 horsepower. She was 38 feet tall.
- Q. What was the draft on the boat?
- A. The draft was 10 foot, sir.
- Q. Tell me about the generators on the boat.
- A. You had two generators. One was air. One was battery backup. Battery backup was on the port side. The air was on the starboard side.
- Q. Overall, did you have a lot of problems with the boat? Was it a good performing boat?
- A. It was a good performing boat, sir. It worked well.
- Q. How about the generators? I know they were swapped out in '16. But let's talk about 2012 to 2015. Did y'all have a lot of problems with the generators? Did they perform well, as expected or—
- A. They performed—as far as I can remember, they performed as expected.
- Q. Okay. And we know there was a problem with one of them on the day of Kelvin's accident. We are going to talk about that in more detail. I am talking about in general, you don't—you don't recall there being, like, consistent problems with the generators?
- A. Not as far as I can remember, sir.
- Q. Okay. Tell me about regular scheduled maintenance on the generators, who would perform that?
- A. The mate would.

Q. The deckhands?

A. Yes, sir.

Q. All right. And how would they know to do it?

A. We have a system where you do it every so many hours.

Q. I believe Walter testified it was every 250 hours, certain things are done to the generators?

A. Yes. Yes, sir.

Q. And those are—a record is kept of that in the engine logs, correct?

A. Yes, sir.

Q. So, how would the deckhands know to do that every 250 hours?

A. We will calculate the hours up. It was normally around the scheduled crew change or if needed to be before, but there was—the hours were kept on record.

Q. And is the—is that scheduled maintenance, is that something that you did in the past as a mate?

A. Yes, sir.

Q. And, so, what's your understanding of exactly what is done for that scheduled maintenance?

A. Scheduled maintenance is changing the oil filters, pretty much that's about it.

Q. And that would be the oil filter and the fuel filter?

A. Yes, sir.

Q. Let's talk about.

A. And the secondary filters as well.

Q. Secondary filter?

A. Yes, sir.

Q. Let's talk specifically about the fuel filters on the—on the generators. When those are changed, tell me how that's done.

A. Well, you shut your fuel off to the generator so that you don't have spillage or anything like that. You have two fuel filters on there. One is the BF 7600. The secondary one, I can't remember right off the top of my head. But it's tucked up under the backside of the generator. But you have to screw that one in manually.

Q. Okay. The primary fuel filler on the generator when that one is changed out, is there anything that's done with the pressure gauge and the fittings behind the gauge?

A. No, sir. You just shut your fuel off to it.

Q. You shut the fuel off and change the filter?

A. Yes, sir.

Q. Okay. In your years of—of piloting boats for Marquette-and just so we're clear, you haven't piloted for any other companies, have you?

A. No, sir.

Q. In your years of piloting boats for Marquette, have you ever seen failure of these fittings behind the fuel gauge?

A. I'm not 100 percent on that one, sir. I have seen a lot. So, I really can't answer that honestly.

Q. I see.

As we sit here today, do you know what was causing the fuel leak on August the 15th, 20—I'm sorry—August the 21st of 2015?

A. Just that the gauge was shooting out diesel. That's the report I got.

Q. You didn't—you didn't get down into it and figure out exactly what was causing the problem?

A. No. My main concern was getting Kelvin off the boat, sir.

Q. Sure.

And I'm not just talking about that day. I'm talking about afterward. I realize Mr. Hayes, he's the one that figured out what was—what the problem was. And he's testified to that.

I guess a better way to ask of you: You weren't involved in investigating exactly what happened with the equipment, were you?

A. No, sir. I just had to make the phone calls and make sure everybody was okay.

Q. Okay. It's my understanding that the accident occurred right when Kelvin was about to come on duty. Is that—is that accurate?

A. Yeah. He woke up early that day.

Q. Okay. What caused him to wake up, if you know?

A. I was coming into Bolivar, and I was tying off on the empty tier at Bolivar terminal. And he heard the engines and thought I was in trouble.

Q. Okay.

A. And he came up to make sure I was okay.

Q. Okay. And when he heard the engines—when you say he heard the engines, was it your impression that he heard a problem with the engines or were they—

A. I was backing down harder than normal.

Q. That's what I was asking.

Okay. So, that would suggest that you might be caught up in a current or something like that?

A. Yes, sir.

Q. So, he came up. And what—tell me, for the record, what exactly was going on at that point in time.

A. Well, I was trying to get it on the empty tier; and it just wouldn't get over there for me. So, Kelvin came up and saw what I was doing and he lent me a hand and helped get it on there for me.

Q. Okay. And that's what he said, he took the sticks and he helped maneuver the load in at that point?

A. The empty. It was the empty.

Q. It was one empty?

A. Yes, sir. He got a high low cup. And he got the empty in there for me and I fleeted the load.

Q. And it was a chemical barge?

A. Yes, sir.

Q. And what happened next? In other words, what—

A. After we got the barge tied off—well, after Kelvin got the barge tied off, I took the sticks back over, went and fletted our load. After fletting the load, we was coming back light boat because the LADY LORD was pushing that—or emptying it for us.

Q. Okay.

A. Coming back light boat, deckhand Corey said there's diesel shooting out of the main.

Q. He—sorry. When he—Corey said that where, where was Kelvin?

A. He was in the wheelhouse with me still.

Q. But you had taken the sticks back?

A. Yes, sir.

Q. Okay.

A. And we both heard that, but we didn't know what happened. So, I could not leave the wheelhouse. So, Kelvin went down to check it out for me because he was already up.

Q. Okay. And that's something that—that's something that the captain would normally do if there's a big problem like that—

A. If there's a problem, yes, sir.

Q. —in the engine room?

As we sit here today, you don't take issue with Kelvin going down and checking out the problem, do you?

A. No, sir. Because if he hadn't have done it, I would have had to wait till I tied off and then I would have went down there and checked it myself.

Q. Okay. Tell me what you recall happening next.

A. What happened next was, the deckhands—one of the deckhands woke up—woke up the other deckhands but didn't tell me what was going on. The other deckhand that they woke up came up to me and asked while I was coming up to a barge did he want me to get tied off.

I said: Just tie me off, what's wrong?

He said: Kelvin is down. I can't make it out, and he can't get up.

So, I told him to tie me off. I went down, saw Kelvin laying on the floor. I said: Are you okay?

He said: No.

I said: Do you think you broke something?

He said: Yeah.

I said: I'm going to call the police—call the ambulance, call the port captain and get you some help.

He asked me to prop him up because he had diesel in his face. So, I propped him up, gave him some water. He got the diesel out of his face. I went up and made the proper phone calls.

Q. Okay. Who was the other deckhand that notified you of the problem?

A. David Murphy.

Q. And, obviously, we're going to talk to Corey today. Is David still employed with the company?

A. I have no idea, sir.

Q. There was also a Marcus Harrison. Do you remember him?

A. Yes, sir.

Q. And it's my understanding, he's no longer with the company?

A. I have no idea.

Q. You have no idea.

Was Marcus Harrison involved in the operations at the time of the accident? What was he doing?

A. He was—he was involved, but he was a green deckhand.

Q. Okay.

A. So, he was working with Corey.

Q. I gotcha.

When you got down to the engine room, was the diesel still leaking or spraying?

A. No. Kelvin had—Kelvin had told—my understanding, Kelvin told Corey to swap the generators because the diesel was shooting out. And I believe they shut the valve off, sir.

Q. Okay. So, Corey or somebody shut the fuel valve off and turned the other generator on?

A. I believe, yes, sir, because I was in the wheelhouse. I could not leave.

Q. Sure. I understand.

And I know this goes without saying, but only one generator is powered at one time?

- A. Yes, sir. Unless there's certain circumstances like cold weather, high river, or anything serious of that nature, sir.
- Q. Typically, you just share time on the two generators?
- A. Yes.
- Q. And, again, since, you know, we're focused on generators, just for us lay people, tell us what the generator powers on a boat?
- A. That particular generator I was running?
- Q. Yes.
- A. That powers the whole entire vessel. That one was running at 18, I believe 18 rpms. The other was 12. I believe that's what it was.
- Q. When you—when you found Kelvin, tell us exactly where you were finding him on the—on the deck of the engine room.
- A. Between the mains and the MSDs.
- Q. Between the main engine?
- A. Starboard main engine and the sewage tank. There's a little catway you walk right there. He was there right when I found him.
- Q. Do you know what caused him to fall?
- A. No, sir. All I know, there was diesel all over the floor. That's all I can tell you.
- Q. Okay. Can we agree diesel is a slippery substance when it's on the floor?
- A. Yes, sir.

Q. And what was the deck made of? Was it steel diamond plate?

A. Some parts are and some parts are solid. The solid metals are covered with nonskid.

Q. Nonskid paint?

A. Yes, sir.

Q. Do you know the area where Kelvin was on the deck, was that diamond plate or was that solid metal with nonskid paint?

A. It was a combination of both.

Q. Okay. All right. And we are going to go take a look at the vessel. So, we'll get a better visual of that. I'm just trying to determine what you recall.

A. Yes, sir.

Q. Did Kelvin tell you exactly how he slipped and fell?

A. No, sir.

Q. And, obviously, you were really just concerned about getting him the help he needed.

A. Yes, sir.

Q. And I appreciate that. I'm just trying to cover everything.

A. No. I understand.

Once I saw him and I asked him those questions, once he told me he wasn't good and I got him to sit up, all I did was go upstairs, told Corey to stay with him and went upstairs to make the phone call, just called Bolivar terminal, asked for

the address, got the address and called the ambulance and the ambulance came.

Q. Was Kelvin in obvious pain?

A. Yes, sir.

Q. What was he telling you? What was hurting him?

A. He said he can't move. He can't get up.

Q. Did he say what part of his body was hurting?

A. He said lower part, he can't move.

Q. Okay. You said he had diesel on his face. Was he covered in diesel?

A. Well, from what I heard, when he fell, the diesel was spraying on top of his face.

Q. Okay. Did diesel spray all over the engine room?

A. On that starboard side right where the generator and the main is, that little walkway was completely soaking wet. And the little walkway where Kelvin was completely soaked with diesel as well.

Q. Okay. Do you recall if you had any trouble walking on the surface that was covered in diesel?

A. I can't recall. It was a quick reaction to go check. And I really can't recall, sir.

Q. How long did it take for the ambulance personnel to arrive?

A. I don't know. But they got there pretty quick.

Q. Did you stay with Kelvin while waiting on them?

A. Yeah. I was going in between making the phone calls and checking on him and going back up and making sure that everybody was there.

- Q. And who got Kelvin out of the engine room?
- A. The—it was the ambulance people and all of us helped bring him up.
- Q. Okay. Did they put him on a spine board first, or did y'all carry him out of there?
- A. No. They put him on a board first.
- Q. There was enough room in the engine room—
- A. Yes.
- Q. —to put him on a spine board?
- After—after he was taken off the boat, what do you do next?
- A. I went—that's when I went down to go look to see what happened or what I could see happened.
- Q. Okay.
- A. And the gauge was down because we were told it was the engine. That's when I found out, of course it's not the engine. It's the generator.
- Q. Okay.
- A. That's when I found out that we had a problem.
- Q. All right. And when you said the gauge was down, what do you mean by that?
- A. It's like it got blown off, just broke off.
- Q. Okay. And it was just sort of hanging there?
- A. Yes, sir.
- Q. Do you have any idea what would have caused it to blow off?
- A. No.

Q. Have you ever seen that before?

A. No, sir, never.

Q. According to Mr. Hayes, the normal psi on the fuel pressure on the generator is around 40. Does that sound about right to you?

A. Yes, sir, about 20 or 40, yes, sir.

Q. Okay. Do you recall when you saw the pressure gauge hanging there, did you notice any broken fittings?

A. I—

Q. Or did you look at it that closely?

A. I didn't look at it that close. I just—that night, I can't even say I remember exactly everything. But I do recall that the gauge was down and that I was making phone calls and trying to make sure everybody was okay.

Q. All right. Walter testified when he got on the boat, I guess, soon thereafter, he found the gauge on the deck. Do you know if somebody took it off and put it on the deck? Did it fall on the deck?

A. I couldn't tell you.

Q. You just recall it was hanging there?

A. It was just, like, down. So, it probably fell off. I don't know.

Q. It wasn't where it was supposed to be?

A. Right.

Q. It wasn't—the usual position of the gauge would be what?

A. Facing straight at you.

Q. Facing straight at you.

Okay. My understanding is, it's screwed into the fuel filter housing. Is that—is that your recollection?

A. Yes, sir.

Q. Okay. What was done with the ST. RITA after the accident?

A. We cleaned—the deckhands went down there and cleaned up all the diesel so no one else could fall.

Q. Okay.

A. And we had tied up there and waited for the port captain and everybody to come out there and talk with us, whatever.

Q. Did y'all have a meeting on the boat about the accident?

A. We talked about it briefly. We talked about it briefly. But I was up for awhile trying to do all the paperwork and phone calls and stuff. Then I went to bed. I was up past my time.

Q. Did anybody tell you or tell the group that Kelvin did something he should not have?

A. No, sir. No.

Q. As we sit here today, do you know of any safety rules that Kelvin violated?

A. Sir, I couldn't tell you that.

Q. And do you know if Walter came on the boat or when did he come on the boat and when were the repairs made?

A. I couldn't tell you. I think the repairs were made right away. I'm not 100 percent. Like I said, I went to sleep. When I woke up, I think it was already in the midst of being taken care of or already taken care of. But I was sleeping, spunked out.

Q. Okay. Did you do anything to assist in preparation of any accident reports?

A. I had to do all the incident reports, sir.

Q. I'm sorry, what?

A. I had to do all that reports.

Q. You had to do all the reports because you were the captain on duty at the time.

A. Yes, sir.

MR. SAUNDERS: I apologize. I didn't make copies of this in advance. It's not much.

MR. SCIALDONE: Oh, the accident report?

MR. SAUNDERS: Yeah. Since he—since he identified it, let's go ahead—

MR. SCIALDONE: You have got second copies of that stuff in the files. It's in there with the—

MR. SAUNDERS: We don't even need to attach it. I'll just ask him to identify it.

Q. (By Mr. Saunders) This is Marquette 1 and 2. Is this the accident report that you prepared?

A. I believe I did write this.

Q. If you look at the second page, the document suggests that you're the one that completed the form. And I'm asking you to verify that for me.

A. Yeah. I believe I did write that.

Q. Again, we don't need to attach it. It's Marquette Bates stamped 1 and 2.

It's my understanding that Mr. Dunn underwent alcohol and drug tests. Did you also have to submit a sample?

A. I believe I did, sir.

Q. And obviously you passed. They were negative?

A. Yeah.

Q. You're still here?

A. Yeah.

Q. Counsel had produced some daily boat logs. Other than the daily boat logs, it's my understanding there's engine room logs. Are there any other logs maintained on the ST. RITA?

A. No, sir. Those were it.

Q. Business has been good since August of 2015, been consistent?

A. Yes. It's been very consistent.

Q. Can you tell me the current rate of pay for captains? You know, I know it may be a little different for certain ones depending on experience. But what's the range of pay for captains? What's the daily rate?

A. It depends what you are, sir.

Q. Okay.

A. You're asking about captain. There's three stages.

Q. Tell me about the three stages?

A. Captain, relief captain, pilot, they all have different pay.

Q. All right. What was Kelvin at the time of the accident?

A. He was a relief captain.

Q. All right. Do you know the rate of pay for relief captains today?

A. Today for relief captains, I think it's 580.

Q. And what—what benefits does Marquette provide to its relief captains? In other words, what type of fringe benefits—health insurance, 401(k)? Do you know?

A. I wouldn't know, sir.

Q. We will cover that in another deposition. I am just asking if you know.

In your years here at Marquette, other than Kelvin's accident, are you aware of any other accidents that occurred while you were at the helm?

A. No, sir.

Q. Have you been written up for any disciplinary issues in your years here at Marquette?

A. Not that I know. I probably have, but I couldn't tell you.

Q. That's fine. And I'm not asking to—

A. No. I understand.

Q. —insult you. I'm just trying to cover all the basis here.

How often did you have the opportunity to work with Kelvin?

A. I worked with him for a couple of years.

Q. Did you know him to be a competent relief captain?

A. No, sir.

Q. I'm sorry. When I say "competent," was he a good captain?

A. He was a great captain.

Q. He knew what he was doing?

A. Yes, sir.

Q. Was he a safe captain?

A. Yes, sir.

Q. Are you aware of any accidents involving Kelvin at the helm or other than this accident he was involved in, are you aware of any—

A. None.

Q. —issues or problems with Kelvin Dunn?

A. None.

Q. Did you provide a written or recorded statement?

A. I think I had to write a statement.

Q. Okay.

A. I'm not sure.

Q. The reason I ask, the only one that I have is one from Corey Crespo. And I'm just wondering if you—they gave you a piece of paper and said, "Hey, write out what happened"?

A. I don't think so because I wasn't involved. I did that one.

Q. We already looked at Marquette 1.

A. Yeah. I don't think I did another one. I am not sure.

Q. Okay. Fair enough.

Is there anything that we haven't discussed today that you want to tell me about this accident or about Kelvin? Is there—

MR. SCIALDONE: Object to the form of the question.

Q. (By Mr. Saunders) Did you understand my question? I'm just asking if there's anything glaring in your mind that we haven't discussed today relating to Kelvin or the boat or the accident?

A. (Moving head side to side.)

Q. That's a "no"?

A. Yes. No, sir.

MR. SAUNDERS: Okay. Mr. Brown, I thank you for your time. We are done.

MR. SCIALDONE: Good. No questions here.

(The deposition concluded at 12:25 p.m.)

**ORAL DEPOSITION OF COREY CRESPO
(JANUARY 26, 2017)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN DUNN

v.

MARQUETTE TRANSPORTATION
COMPANY, LLC

Civil Action No: 16-13545 L(5)

Before: Michael NORTH Magistrate,
Eldon E. FALLON United States District Judge

ORAL DEPOSITION OF COREY CRESPO, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on January 26, 2017, from 12:27 p.m. to 1:08 p.m., before Jo Ann Kelley, CSR in and for the State of Texas, reporting by machine shorthand, at the offices of Marquette Corporate Office, 223 N. 10th Street, La Porte, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

[. . .]

APPEARANCES

FOR THE PLAINTIFF:

Mr. Henri M. Saunders

SAUNDERS & CHABERT

6525 Perkins Road

Baton Rouge, Louisiana 70808

Phone: 225-771-8100 - Fax: 225-771-8101

E-Mail: hsaunders@saunderschabert.com

FOR THE DEFENDANT:

Mr. John A. Scialdone

SCIALDONE LAW FIRM

2505 14th Street, Suite 500

Gulfport, Mississippi 39501

Phone: 228-822-9340 - Fax: 228-822-9343

E-Mail: jscialdone@frfirm.com

[. . .]

[January 26, 2017 Transcript, p. 4]

COREY CRESPO, having been first duly sworn,
testified as follows:

THE REPORTER: Would you like to waive the 30(b)(5)
Rule?

MR. SCIALDONE: Yes.

MR. SAUNDERS: Yes.

THE REPORTER: And any stipulations?

MR. SAUNDERS: Usual stipulations.

EXAMINATION

BY MR. SAUNDERS:

Q. Good afternoon, Corey. Why don't you start by giving us your full name and address for the record?

A. It's Corey, C-o-r-e-y, Crespo, C-r-e-s-p-o. My current address right now is 7523 Hablo, H-a-b-l-o, Drive, Houston, Texas, 77083.

Q. Corey, have you ever given a deposition?

A. First time. Never.

Q. Okay. Very simple. I'm going to ask you a few questions. This nice lady is recording everything. She is going to print a transcript somewhere down the road. Please listen to my questions. When I'm done talking, you answer the question. If you don't understand the question, let me know; and I will be happy to rephrase it.

Try to give verbal responses because it's hard to get shaking and nodding of the head on the record.

A. You'll probably get a couple.

Q. We'll remind you if we need to.

A. All right.

Q. I'm not here to harass you. I'm here just to gather some facts, question-and-answer session.

You're employed with Marquette?

A. Yes.

Q. What is your position?

A. Relief mate.

Q. Tell us what you do as a relief mate.

A. I basically go with the crew, make sure they're learning what they need to, supervise them. I work mainly hand in hand with the captain on the boat. I have a senior mate that is above me. I'm relieving him when he is not on the boat, acting as the first mate when he is gone. I attend safety meetings. Basically, anything that needs to be done, I'm the one that the captain goes to and says, "Hey, man, make sure everything has been done." Supervising the deck crew basically.

Q. Was that your position in August 2015?

A. No.

Q. What was your position then?

A. To the best of my knowledge, I believe I was either deckhand or senior deckhand, one or the other.

Q. Okay. Are the levels of deckhands and mates the same now as they were in twenty—in August of 2015?

A. Yes.

Q. Tell me about that, you know, that hierarchy?

A. We've got deckhand trainee. From that, we have deckhands to senior deckhands, lead men.

Q. I'm sorry. What was that?

A. A lead man.

Q. Okay.

A. Relief mate to mates to senior mates.

Q. Lead men, relief mate, mate, and senior mate?

A. Yes. That's the positions.

Q. And do the duties change a lot as the level changes or is it just mean—does that just mean, if you have seniority, you're kind of in charge?

A. Are there differences in each levels? Is that what you're asking?

Q. Yes.

A. Yes. You are required to know—we have a book that has to get signed off for each position per level. And you have to have a superior, like a relief mate or a mate going off of the newer guys, like minimum—I mean, you've got to know so much to move up. It's like a promotion just like any job you go to.

Q. Sure.

A. So, they're not—they get evaluation after so many days, however long it normally takes. But, yes, there's different levels of different—you have different job duties for each level you go up to, more responsibilities.

Q. Sure. Okay.

Give me a quick rundown on your educational background. Where did you go to high school?

A. Stephen F. Austin in Fort Bend.

Q. Okay.

A. Sugar Land, Texas.

Q. All right.

A. Stephen F. Austin.

Q. Okay. Did you graduate?

A. Yes.

Q. What year?

A. '99, 2000. And then 2007, I went to University of Phoenix online for five, six months. And I dropped out due to a death in the family.

Q. Okay. And as far as working on the water, when did that start?

A. The first day I started out here with this company, I believe that was January or February 2015, I think it was. I've been here for two years and a couple of months or something.

Q. Okay. How often did you get to work with Kelvin Dunn?

A. The best of my knowledge, I do know it was probably a couple of days during the crew changes. So, he came on, like, towards the end of my hitch, I believe.

Q. Okay. Did you have any problems with Kelvin when he was captain?

A. I never really even talked to him other than: Hey, how are you doing? My name is such-and-such.

No, I didn't have no problems.

Q. Did you work with him enough to learn, you know, whether he was a good captain, a crappy captain? I mean—

A. Personally?

Q. As far as his performance.

A. Personally, like, from my personal experience, I was—I didn't work with him long enough to know. We didn't run into stuff. Like, we survived. He was a nice guy. I've heard good things about him. But—

Q. Okay.

A. —but I didn't work with him long enough to get my own personal reflection of him.

Q. Fair enough.

Tell me about what is done for regularly scheduled maintenance of the generators on the ST. RITA. What—

A. Like hours? I think it's 250 hours we're change filters—air filters, fuel filters, oil filters—swapping every 48 hours. Company policy.

Q. Swapping generators?

A. Uh-huh.

Q. And on the maintenance of changing the filters, is that something you have done?

A. Yes, I have.

Q. Okay. And let's—let's focus on the fuel filter on the generator, what do you do to change it out?

A. Turn off the fuel. There's a valve for that. Take the fuel filter off. And I get the new one and I bring the fuel up inside the filter to a certain level, twist it back on, wipe the excess off, make sure it's got a good tight fit on it, crank the valve up, start the generator to make sure there is no leaks.

Q. Okay. And when you do that process, do you ever—do you ever get involved with breaking this fuel gauge, pressure gauge down and inspecting these fittings behind it?

A. Do I—have I ever or did I then?

Q. Is that something that you would do in the normal course of changing the fuel filter?

A. I have got a question—

Q. Sure.

A. —before I answer that.

I did not do oil changes. I didn't swap generators probably months after that situation. I'm going off of what I know now compared to then. I do know—

MR. SCIALDONE: That's a good clarification. I think he understands. He is just talking about what you do today.

THE WITNESS: Okay.

MR. SCIALDONE: Not what you knew then.

A. I've got to be very observant on things. I check—I'm looking—I put my hands on lines to make sure there's no pressure buildup. We read the gauges. They're monitored every 12 hours in logbooks. Do I break those down and fix them myself, no, that's not my job.

Q. (By Mr. Saunders) Okay. And that's a very good explanation. I'm just talking in the normal course of changing a fuel filter. You described that process for us, and I understand that.

So, I was simply asking, in that process, you're obviously going to check the gauge. But do you actually take the gauge off of the fuel filter housing and look at these couplings and this nipple here?

A. I never have.

Q. Okay. Let's talk about the day of the accident. Approximately what time was Kelvin's accident, if you recall?

A. It was late evening.

Q. Okay.

A. I'm not for sure. Not mid morning. Early, super early morning.

Q. It was dark?

A. Yes.

Q. And where were y'all?

A. Bolivar Texas in the Kirby fleet.

Q. And it's my understanding that Kelvin had been sleeping and he was getting close to coming on duty. So, my question for you is: Were you on duty, or were you about to come on duty?

A. I was on duty for a couple of hours.

Q. Okay. And we heard testimony about Kelvin going up into the—into the wheelhouse to help Mr. Brown. It's my understanding that you discovered a leak in the engine room?

A. Yes, sir.

Q. Tell me how you came to discover that.

- A. Me and another deckhand, Marcus is his name, we were fleeing a barge, it was a load. And I was on the bottom deck of the boat. And I smelled something funny. You know, when you're out there in these fleets, you smell chemicals from other passing boats, barges, or barges next to the barges where we're going to.

It kept on getting a little stronger. I was like, something don't smell right. So, I said, "Hey, Marcus, do you smell that?"

He's like, "Yeah. But it's probably just the barge."

I said, "Yeah. I'm not sure. Let me go check."

So, I went in from the galley entrance of the boat through the hallway and opened up the engine doors from the galley—I'm inside the boat now—opened up the engine room door which would have been on the port side of that boat. And I looked over the rails and I could see—I could see the diesel. It was definitely leaking.

- Q. Okay. And when you saw that, you didn't physically go in the engine room. You just looked there; is that fair?
- A. I was physically in the engine room but just enough to open up a door and—within a couple of steps. And I could look down from the angle I was at, I could see the majority of the engine room bottom deck. I was on the top deck is what I'm talking about now, though.
- Q. And, so, you have to go down some steps to get down?
- A. (Moving head up and down.)

Q. And you were standing on the steps when you looked?

A. On the platform.

Q. On the platform?

A. Like, the platform. And then there's a stairwell going down in the middle of the walkway.

Q. Okay. Was the generator still on when the fuel was leaking? Was it still getting some fuel in order to operate?

A. It was running.

Q. It was running.

Okay. And tell me about the—tell me exactly what you saw as far as the fuel—the diesel spraying, like, where was it coming from? And describe the spray.

A. At that time when I looked into the engine room from the top deck when I noticed the diesel was spraying, it was ricocheting off the main which was right across from the generator that had the accident.

Q. Okay. And was it a wide spray or was it a stream? Can you describe it?

A. It was a very good amount, very well, like—

Q. Like, almost like a pressure washer kind of thing?

A. It had some pressure behind it, yes.

Q. Okay.

A. It wasn't just a couple of squirts. It was—it was spraying.

Q. And it was spraying toward the main engine, on a main engine. Is that a fair statement?

A. Yes, sir.

Q. What went through your mind when you saw that?

A. I was scared.

Q. Why?

A. Well, I've never been in a situation like that before. I was fairly new. They do—we do have our safety procedures and policies and rules we follow. We've gone over incidents and things like that more now through the time I've been with Marquette. You know, it was something new to me. It was, like—you know, I had a little bit of—

Q. Could you tell or did you make a mental note exactly where the fuel was coming from? In other words, did you see it coming from that fuel filter housing or did you—

A. When I first went in there, I did not know exactly where from the generator it was coming from. I know it was coming from the generator the way it was ricocheting off the main, though. But the location on the generator itself from the angle I was at, I couldn't see where exactly it was coming from.

Q. I see. And were you concerned about a possible fire?

A. Honestly, I'm not even sure I thought about a fire, to be honest. I just knew there was—hey, I need to get back inside the boat and let the captain know, hey, we've got a situation going on.

Q. Okay.

A. That was my biggest thing to do first.

Q. Okay. And it's my understanding you did exactly that. Did you hustle up to the wheelhouse to let them know what was going on?

A. (Moving head side to side.)

Q. What did you do?

A. Called on the radio.

Q. Who did you speak with?

A. J.J.

Q. What did you tell him?

A. I said, "We have an incident going on in the engine room."

He said, "What are you talking about?" "Hey, man, there's some diesel or some fluid spraying from the engine room."

Q. Okay. And what happened next?

A. I think I even went to the front of the boat to get Marcus. From there, I went back into the engine room. And then basically towards the end of the stairwell I realized Kelvin was right behind me.

Q. So, you went down in the engine room and Kelvin followed you?

A. At the very first time I went into the engine room was just, I noticed something. I never went down, the second—once I radioed up to the captain. And the deckhand was kind of in the boat. I mean, from here to here is where the engine room door would be at to where the galley door would be from the outside inside the boat.

I went to get his attention. I go back to the engine room by the stairs. My foot was at the bottom of the stairs was when Kelvin was right up on me.

Q. Okay. So, you descended the stairs in the engine room and Kelvin descended them behind you?

A. Uh-huh.

Q. That's a "yes"?

A. Yes.

Q. And when you got to the bottom of the stairs and you stepped on the deck of the engine room floor, was it covered with diesel?

A. Yes, sir.

Q. Was it slippery?

A. Yes.

Q. Did you almost fall?

A. Yes.

Q. And tell me what happened next.

A. By the time my feet hit the actual engine room floor, somehow—however it happened, because it was so quick—but me and Kelvin pretty much were side by side somehow. And I kind of caught my fall a little bit. I noticed Kelvin kind of slid forward in front of me. And I went to go catch him. Ain't much I could have done because I started sliding just a little bit more. I caught myself. And that's when Kelvin went to the right side of me. He was on the ground.

Q. Is it fair to say, basically his feet came out from underneath him?

A. He slipped. Yeah.

Q. And he fell. Did you see how he landed?

A. I saw the right side at first. And then he rolled to the back.

Q. And what happened next?

A. By then, I think the lead man—I think he was a lead man at the time, David Murphy, he came down. I hadn't swapped a generator yet on that boat. I'm not going to go start turning valves or turning stuff off that I don't know how.

So, I stood in front of the generator that was spraying diesel to keep Kelvin from, you know, keep on getting drenched because it was spraying a good amount. And that's just until David went over there and swapped the generators to cut power off from that, you know, to keep it from leaking, to get power from the boat. I was standing in front of Kelvin.

Q. You were trying to block the diesel?

A. Yeah. The diesel was spraying on me.

Q. You were just blocking it with your body?

A. Yeah, with my back.

Q. Okay.

A. I don't know if that was the right thing to do or not. But diesel was spraying on Kelvin.

Q. When Kelvin fell, did he say anything to you?

A. He yelled loud.

Q. Did he yell? Did he scream?

A. What he was actually telling me to do was swap the generators. But it was so loud, I couldn't make it out. But the lead man, he swapped generators. As soon as he came downstairs, he knew—he didn't think twice about it. It was boom, boom, boom.

Q. And at that point, the spray stopped?

A. Yes.

Q. And I realize it's loud down in the engine room. Could you tell if Kelvin was hurt?

A. Yes.

Q. Did he appear in obvious pain?

A. Yes.

Q. Did you try to help him up? Or did he say, "I can't get up"? "I can't"—

A. He said he couldn't get up.

Q. Okay.

A. I did put my hand down, but he—he couldn't get up.

Q. What kind of shoes were you wearing at the time?

A. Steel toe, my proper PPE.

Q. What brand? Is that like Red Wings or—

A. I got them from Red Wings. I think they are Red Wing boot at the time, the ones the company issued out to us.

Q. Rubber sole?

A. Yeah. Nonskid, metatarsals, steel toe, lace-up boots.

Q. Do you know, if you know, at the time of that accident, were captains required to wear any particular type of shoe?

A. At that time, I don't know if they were or not.

Q. Do you know if anything has changed since then?

A. They should wear steel toe shoes.

Q. Do you think there's been a change in the policy?

A. I don't know, because I don't know if that was the situation or it was, you know, enforced then or not. But they're required to.

Q. Okay. After—after the leak was stopped and that problem was rectified, what—what happened next?

A. Can you say it one more time?

Q. Well, after the—after Murphy swapped the generators and the leak stopped, the spray stopped, what happened at that point? What did you do?

A. Once the diesel quit spraying, J.J. was down there. Basically, the whole crew was down in the engine room.

Q. The boat was tied up at that time, or do you know?

A. I don't know because I was in the engine room. I don't know. I don't know. I'm pretty sure it had to have been because the captain wouldn't have come and left the wheelhouse. I'm positive it was.

But from there, I was told to go upstairs. And I don't know who called ambulance or paramedics or whatever, but they were out there shortly after. And I assisted them.

Q. Okay. You helped get Kelvin out of there?

A. Just to hold—once—the paramedics put him on the stretcher. But going upstairs, everybody gave a hand to help support going up the stairs.

Q. Did you participate in any investigation after the accident to determine, you know, what caused it or what happened?

A. After—I was—that was like an hour and a half after my watch.

Q. Okay.

A. Some time went by. I went and got cleaned up. And by then, I was told, you know, just go ahead and go to bed and get ready for my next watch. By then, they had already did what they had to do in the engine room to clean up the mess.

Q. And I've been provided with a—with a written statement dated August 21, 2015. Can you take a look at that and tell me if that's a statement you wrote out?

A. It clearly is. That's my signature and my handwriting. I do remember writing this.

Q. For the record, that's Marquette Bates stamp No. 3. Will you take a minute to just read over it and tell me if there is anything in there that you wanted to change or if that's an accurate recollection of your memory of that—that accident?

A. It's accurate to me.

Q. And we will mark and attach this as Crespo No. 1.

Who asked you to write that?

A. It would have to have been J.J. at the time, because we had to sit there in Bolivar because he had to call the port captains and follow up with the incident report or situation. It was J.J.

Q. And for the record, J.J. is Junious Brown, correct?

A. That what I—yes, sir.

Q. That's fine. I just want to make sure, when somebody is reading this, they know who you are talking about.

A. Yes.

Q. Were there any safety meetings after this where y'all talked about the accident?

A. We have safety meetings every day.

Q. Okay.

A. Yeah. We did go over, like: Man, what happened? What's going on? Like, who was there?

Q. Did you—did you go back down there and figure out where the diesel was coming from?

A. I never—I never—I mean, from the time the generator, you know, had its accident, other than hearsay, I—

Q. You weren't involved in figuring out what caused the leak?

A. Huh-uh.

Q. That's a "no"?

A. I was not involved with that at all.

Q. And you weren't involved in repairing any issue that may have caused the leak?

A. No, sir.

Q. Okay. Fair enough.

What is your understanding of what caused the leak? Did anybody ever tell you?

A. I still don't know. I don't feel comfortable staying either. I'm just being honest. I don't want to say the wrong thing or the right thing. I still today don't know what—

MR. SCIALDONE: Look, "I don't know" is a perfectly fine answer.

THE WITNESS: Okay.

Q. (By Mr. Saunders) We've already talked to Mr. Walter about that issue. I'm just asking what you know. If you don't know, that's what—that's what you should say. That's fair.

A. I don't know.

Q. Did anybody tell you or did you overhear anybody say that Kelvin did anything wrong in causing this accident?

A. Yes.

Q. Okay. Tell me what you heard.

A. He said he came downstairs in his sandals or Croc's, whatever they're called.

Q. Okay.

A. He should have been wearing the proper steel toe shoes, boots required to do our job.

Q. Anything else?

A. No, not that I can recall.

Q. And who told you that?

A. It was kind of, like, we're in a group. It was, J.J. talked about it, because they asked what he had been wearing. We told him he was in his sandals.

Q. That was sort of a group discussion in a safety meeting?

A. Yes. Yes, sir.

Q. Okay. Did Marcus Harrison have any involvement in the, I guess the maintenance of the engine room or finding the leak or, you know, fixing the problem? In other words, what was he doing when all this was going on?

A. He was the one out there on the bottom deck helping me fleet a barge. He's the one I asked, I said, "Do you smell this" or "do you recognize this smell?"

That's who I was standing there with. No, he didn't have no part of this accident.

Q. Okay. Tell me about the engine room logs. Who—who fill those out?

A. Normally, the mate on the boat. If not, if the mate is not there, then the next person below him would be, like a relief mate or lead man. David Murphy was in charge of the logbooks at the time.

Q. And where are the engine logs kept on the boat?
In the engine room or in the wheelhouse?

A. In the galley.

Q. In the galley. I see.

A. Some boats are different. But at that time, it
was in the galley.

Q. All right. Getting back to the actual accident,
can you tell us, just so we have a visual, where
exactly did Kelvin fall?

A. Like, he fell in the engine room.

Q. Well, was he on the stairs? Was he on the deck?
Was he—

A. Yeah. His feet came off the last step and went to
the actual floor, the platform of the engine room.
And we came down. I was in front of him. And I
turned this direction going towards the starboard
side of the engine room and somehow—somehow
we did this number in between the stairway
(indicating).

Q. And you're moving your hands from side to side.
What do you mean by that?

A. I mean, somehow we kind of came around together
maybe and kind of—

Q. Well, I'll tell you what, do you want to draw it
for us? And give us a rough drawing of, you know,
the engine room layout and where y'all were.

A. There's a platform right here and top deck.

Q. Write "platform" there.

- A. Okay. Steps going down. Everything right here is going to be bottom, basically, the main engine room deck. You have got a main here. I'm just going to put "M." And some—right about here, kind of if you're standing from the top deck looking down, you can see just a little bit of the generator. Not very much. Basically, you can recognize the difference of the color between main engine and the generator (indicating).
- Q. For the record, he's marked the main engines with the "M." And mark the port and starboard side, please?
- A. Okay.
- Q. Okay.
- A. And I came this direction, walked down. Kelvin was behind me. Somehow we—
- Q. It's not—
- A. —turned in this together, we kind of turned in the same degree, same angle. Here is Kelvin. There is Corey. And he went forward this direction in between the main engine. I slipped over here and came back, grabbed onto the—there's like a—kind of like tool tray, tool desk stand, like a bench grinder in the engine room, that's what I grabbed onto over here below the stairs. And this is where he laid at.
- Q. Why don't you put a larger "X" where he fell?
- A. (Witness complies.)
- Q. Between the main engine and the generator?

A. Uh-huh.

Q. That's a "yes"?

A. Yes.

Q. Okay. And why don't you circle where you were slipping and trying to grab ahold of something, if you would just put a circle in that area?

A. (Witness complies.)

Q. Okay. And, so, where you just circled, what was the deck floor made of?

A. It's got diamond plate with nonskid on it.

Q. Diamond plate with nonskid paint on it?

A. Is that what you're asking, what it was made of?

Q. Yes, what it was made of.

A. Diamond plate.

Q. With nonskid paint or was it just steel?

A. I don't recall exactly where this was. But there was a couple spots that had nonskid there. I don't know if it was right here or not. But diamond plate is in all the engine room floors.

Q. Okay.

A. Right here from the circle to the steps is only like a foot to 2 foot difference. So, the picture might make it look bigger. But it seems like the step, a turn, a simple twist like this, that's where I started to slide as well.

Q. Okay.

A. It's a very small engine room.

Q. And over there where Kelvin slipped and fell, was that also diamond plate?

A. I don't know.

Q. What else could it have been if it wasn't diamond plate?

A. Just steel decking floor.

Q. Okay. Do you know if—where he slipped and fell, if it was nonskid paint?

A. I don't know.

Q. Corey, is it fair to say that even with the boots you were wearing, you could have easily fallen?

A. Is that fair to say? I think—

MR. SCIALDONE: I'm going—this is a technical objection to the form of the question.

But go ahead.

Q. (By Mr. Saunders) Okay. Well, there were times when you were walking on that diesel you had to grab ahold of something to keep from falling?

A. Yes.

Q. So, even with your boots you were wearing, it was a very slippery surface?

A. I never lost my balance. He did.

Q. Okay. That wasn't my question.

A. Okay.

Q. It was a slippery surface to you even with the boots, correct?

A. Yes, it was.

Q. We're almost done. Let me flip through my notes here and—

A. No problem.

Q. Jeffrey Nobles, he is listed as a witness, a captain. Was he—was he off duty at the time, or do you know?

A. I think that was the captain on the boat that was next to us, I believe.

Q. Okay.

A. Hold on. I know that name. I mean, I'm not for sure. I do know the name is familiar. I don't—

Q. You don't recall him being on duty on the ST. RITA at the time of this accident?

A. I clearly don't remember if that was—yeah. But there was another captain that came over on the boat to see if he could help.

Q. Okay.

A. But he didn't go in the engine room or nothing like that. It was kind of like—I don't know if that's the same dude or not. I want to make sure that's clear.

Q. That's fine.

A. There was an extra guy there that I didn't work with.

Q. Okay. And I'm just trying to find out if there's anybody else that was actively involved in the operations at the time. We talked about J.J. We've talked about Kelvin. We've talked about Marcus Harrison. We've talked about David Murphy. Anybody else that you can recall involved?

A. Other than the paramedics being in the engine room.

Q. Okay. Are you aware of any other serious accidents involving Marquette while you've been employed with the company?

A. Besides this one?

Q. Yes.

A. That I've been a part of or that I know of?

Q. No, no. That you know of.

MR. SCIALDONE: Object to form of the question, overbroad.

Q. (By Mr. Saunders) You can answer. If you've heard of anything, are you aware of any other accidents?

A. Not that I recall.

Q. And don't take this the wrong way, but do you have a good record with Marquette? Any writeups, any disciplinary issues with your couple years here?

A. I've never been wrote up. I love my job.

Q. Congratulations. Keep it up. I hope you keep climbing the ladder.

MR. SAUNDERS: Thank you for your time. We're done.

MR. SCIALDONE: I've got a couple.

MR. SAUNDERS: Sorry.

EXAMINATION

BY MR. SCIALDONE:

Q. Corey, I've got a couple of questions for you.

A. Okay.

Q. How long had you been on the boat just roughly, if you recall, before this accident happened?

A. Been on RITA?

Q. Uh-huh.

A. The ST. RITA?

I—I'm honestly thinking it was my first hitch on that boat.

Q. In terms of days.

A. Oh, days?

Q. More than a couple? Three, four?

A. I want to say just a couple of days.

Q. A couple of days before the accident?

A. I believe so.

Q. All right. During that time, did you make rounds in the engine room?

A. Yes.

Q. When you made rounds in the engine room, did that also include checking the starboard and port generator?

A. Yes.

Q. Did you see any problems with the starboard generator in the couple of days leading up to this accident?

A. No.

Q. Did you see any problems with fuel leaking or spraying from it?

A. No.

Q. Did you report or see any maintenance issues that you thought needed to happen to the starboard generator before this accident?

A. No.

Q. You made a note about fuel shutoff, that you could just turn off the fuel when you were changing the fuel filters. Is that valve you're talking about inside the engine room?

A. Yes.

Q. Is there an exterior fuel shutoff for the fuel on the ST. RITA—

A. Yes.

Q. —something outside the engine room?

A. Yes, sir. Outside.

Q. Where is that located?

A. Port side, I believe, was the port on that boat.

Q. And what happens if you—if you trigger that, what does it do?

- A. It totally shuts all the fueling system down, allowing everything to no longer be able to work. You have to let the captain know first.
- Q. And—okay. I think you just answered. So, what do you have to do before you shut that down?
- A. You clearly have to let the captain know because—that there would be a situation.
- Q. Is that—that exterior fuel shutoff located in the lower engine room, upper, or tell me where it is on the boat, if you know?
- A. The emergency shut off?
- Q. Uh-huh.
- A. Outside the boat, I believe it's on the port side right there by the main entrance to the galley from the outside going into the boat.
- Q. You don't have to go into the engine room to shut that off; is that correct?
- A. Correct.
- Q. Okay.
- A. Not to my knowledge.
- Q. Were there any other assist boats available around you at the time of this accident? Were there any other Marquette boats—
- A. I don't know.
- Q. —around you?
- A. I do know that there was a Marquette boat that was tied up to the dock. I don't know if it got there after the situation or before. But while the

paramedics were there, I saw a Marquette boat on the port side.

Q. Okay. I know you said you ran into the engine room first and Captain Dunn came behind you, right?

A. Uh-huh. Yes.

Q. Looking back on that today, the same situation, would you do the same thing?

A. No.

Q. Why is that?

A. I think we would have took some time to actually assess the situation, what could be properly done for situations do not occur like this.

Knowing what I know now, I definitely would have made sure that—because I was the one in the engine room first before anybody. Slip strips involved is a big thing we talk about. It has been since I started, even now. Clearly, I would have—hey, let someone else come down here. You know, I definitely would have said—I would have been more aware of the situation. I was new. I definitely think we could have took a couple seconds longer—what's the right word I'm looking for—assess the situation better for a better outcome, safer outcome.

MR. SCIALDONE: That's all I've got.

MR. SAUNDERS: We're done.

(Crespo Exhibit Nos. 1 and 2 marked.)

(The deposition concluded at 1:08 p.m.)

**WRITTEN STATEMENT OF COREY CRESPO
(TRANSLATION OF HANDWRITTEN STATEMENT)
(AUGUST 21, 2015)**

I Corey Crespo was walking back on to the vessel and suddenly smelt [sic] diesel. Promptly asked the other deckhand if he as well smelled it. Went to engine room to see what the smell was coming from. Noticed the generator spraying out diesel. I called up to the captain to notify him of the problem. From there I went to the lower level of engine room and behind me Kelvin (Relief Capt.) Came down the stairs to assist. I started to slip and braced myself from falling. Turned around at [sic] witnessed Kelving [sic] slipped as well from the diesel on the floor. He fell [sic] onto the floor. I stayed with him until I could get (Marcus) the deckhand's attention. I had him call out to the leadman to come down to help with swapping generator. Waited for EMS to show up to help w/ Kelvin on to the ambulance.

/s/ Corey Crespo
Senior Deckhand



App.155a

