

---

---

IN THE  
**Supreme Court of the United States**

BRADLEY LEDURE,  
*Petitioner,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Respondent.*

---

**On Writ of Certiorari  
to the United States Court of Appeals  
for the Seventh Circuit**

---

**JOINT APPENDIX**

DAVID C. FREDERICK <i>Counsel of Record</i>	J. SCOTT BALLENGER <i>Counsel of Record</i>
BRADLEY E. OPPENHEIMER	TYCE R. WALTERS
MATTHEW J. WILKINS	CHARLES S. DAMERON
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.	MICHAEL CLEMENTE W. TAZEWELL JONES
1615 M Street, N.W. Suite 400	LATHAM & WATKINS LLP 555 11th Street, N.W. Suite 1000
Washington, D.C. 20036	Washington, D.C. 20004
(202) 326-7900	(202) 701-4925
(dfrederick@kellogghansen.com)	(jscottballenger@gmail.com)
<i>Counsel for Petitioner</i>	<i>Counsel for Respondent</i>

January 31, 2022

*(Additional Counsel Listed On Inside Cover)*

---

---

**PETITION FOR WRIT OF CERTIORARI FILED: DECEMBER 10, 2020  
CERTIORARI GRANTED: DECEMBER 15, 2021**

NELSON G. WOLFF  
JEROME J. SCHLICHTER  
SCHLICHTER BOGARD &  
DENTON, LLP  
100 South Fourth Street  
Suite 1200  
St. Louis, Missouri 63102  
(314) 621-6115  
*Counsel for Petitioner*

J. TIMOTHY EATON  
JONATHAN B. AMARILIO  
TAFT STETTINIUS &  
HOLLISTER LLP  
111 East Wacker Drive  
Suite 2800  
Chicago, Illinois 60601  
(312) 527-4000  
*Counsel for Respondent*

## TABLE OF CONTENTS

	Page
Relevant Docket Entries:	
United States District Court for the Southern District of Illinois, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS.....	1
United States Court of Appeals for the Seventh Circuit, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 19-2164.....	9
First Amended Complaint, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #22 (Feb. 21, 2018).....	12
Mem. of Law in Support of Def.'s Mot. for Summ. J. on Pl.'s First Am. Compl., <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #49 (Oct. 23, 2018):	
Ex. A (Dep. of Bradley LeDure (Feb. 2, 2018)), ECF #49-1 (excerpts).....	19
Pl.'s Mot. for Partial Summ. J. and Incorporated Mem. of Law in Support, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #50 (Oct. 24, 2018):	
Ex. F (Accident/Incident Report), ECF #50-6.....	67
Ex. G (Signed, Handwritten Statement of Bradley LeDure (Aug. 12, 2016)), ECF #50-7 .....	69
Ex. H (Mechanical Inspection Report (Aug. 12, 2016)), ECF #50-8 .....	70
Pl.'s Resp. in Opp. to Def.'s Mot. for Summ. J. Regarding "Tread Pattern" on the Locomotive Walkway, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #54 (Nov. 29, 2018):	

Ex. 4 (Union Pacific Railroad Air Brake and Train Handling Rules (effec. date May 2, 2018)), ECF #54-4.....	71
Pl.'s Resp. in Opp. to Def.'s Mot. for Summ. J. on Pl.'s First Am. Compl., <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #55 (Nov. 29, 2018):	
Ex. 11 (Dep. of Thomas Kennedy (Apr. 11, 2018)), ECF #55-1 (excerpts).....	76
Ex. 12 (Dep. of Steve Hotze (Mar. 21, 2018)), ECF #55-2 (excerpts).....	90
Ex. 13 (Union Pacific Salem Track Map), ECF #55-3 .....	95
Union Pacific Railroad Company's Mem. of Law in Support of Its Mot. To Bar the Opinions of Dr. Matthew Gornet Regarding Causation, the Credibility and Bias of Other Witnesses and Previously Undisclosed Expert Opinions, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #72 (Jan. 11, 2019):	
Ex. B (Dep. of Matthew Gornet (Dec. 11, 2018)), ECF #72-2 (excerpts).....	96
Transcript of Proceedings Before the Hon. J. Phil Gilbert (Jan. 17, 2019), ECF #87 (excerpt) ....	107
Pl.'s Mot. To Alter or Amend 1/31/19 Judgment (Doc. 85) Pursuant to Fed.R.Civ.P. 59(e) and Incorporated Mem. of Law in Support, <i>LeDure v. Union Pac. R.R. Co.</i> , No. 3:17-cv-00737-JPG-GCS, ECF #88 (Feb. 27, 2019):	
Ex. 1 (Dep. of Marshall Boswell (Mar. 28, 2018)), ECF #88-1 (excerpts).....	126

Ex. 4 (Union Pacific Railroad Inspection Record Form (July 2016)), ECF #88-4 .....	133
Order of the United States Supreme Court granting petition for a writ of certiorari in part (Dec. 15, 2021).....	135

NOTICE

The following documents have been omitted in the printing of this Joint Appendix but may be found in the appendix to the petition for a writ of certiorari in this case:

Opinion of the United States Court of Appeals for the Seventh Circuit, *LeDure v. Union Pac. R.R. Co.*, No. 19-2164 (June 17, 2020) ..... 1

Memorandum and Order of the United States District Court for the Southern District of Illinois Granting Motion for Summary Judgment, *LeDure v. Union Pac. R.R. Co.*, No. 3:17-cv-00737 (Jan. 31, 2019) ..... 7

Memorandum and Order of the United States District Court for the Southern District of Illinois Denying Motion To Alter or Amend, *LeDure v. Union Pac. R.R. Co.*, No. 3:17-cv-00737 (May 20, 2019)..... 23

Order of the United States Court of Appeals for the Seventh Circuit Denying Rehearing, *LeDure v. Union Pac. R.R. Co.*, No. 19-2164 (July 16, 2020)..... 29

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

---

No. 3:17-cv-00737-JPG-GCS

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

CIVIL DOCKET

---

Date Filed	#	Docket Text
7/13/17	1	COMPLAINT against All Defendants (Filing fee \$400 receipt number 0754-3293695.), filed by All Plaintiffs. (Attachments: #1 Civil Cover Sheet, #2 Summons) (Beatty, Mark) (Entered: 7/13/2017)
7/13/17	2	Notice of Judge Assignment. Judge J. Phil Gilbert and Magistrate Judge Donald G. Wilkerson assigned. All future documents must bear case number 17-cv-737-JPG-DGW. If the parties consent to Magistrate Judge assignment, the consent form with instruction is attached for your convenience. (cds) (Entered: 7/13/2017)

\* \* \*

7/31/17 9 ANSWER to 1 Complaint by Union Pacific Railroad Company. (Jones, Thomas) (Entered: 7/31/2017)

\* \* \*

2/1/18 20 First MOTION to Amend/Correct to File First Amended Complaint by Bradley LeDure. (Beatty, Mark) (Entered: 2/1/2018)

2/20/18 21 ORDER GRANTING 20 Motion to Amend/Correct. There being no objection filed, the Court GRANTS Plaintiff's Motion to File First Amended Complaint. Signed by Magistrate Judge Donald G. Wilkerson on 2/20/2018. (jkb2) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 2/20/2018)

2/21/18 22 AMENDED COMPLAINT against Union Pacific Railroad Company, filed by Bradley LeDure. (Beatty, Mark) (Entered: 2/21/2018)

\* \* \*

3/1/18 26 ANSWER to 22 Amended Complaint by Union Pacific Railroad Company. (Jones, Thomas) (Entered: 3/1/2018)

\* \* \*

10/23/18 46 MOTION for Summary Judgment on any Claims Regarding the Tread Pattern on the Locomotive Walkway by Union Pacific Railroad Company.



Responses due by 11/29/2018 (Jones, Thomas) (Entered: 10/23/2018)

- 10/23/18 47 MEMORANDUM in Support re 46 MOTION for Summary Judgment on any Claims Regarding the Tread Pattern on the Locomotive Walkway filed by Union Pacific Railroad Company. (Attachments: #1 Exhibit A, #2 Exhibit B) (Jones, Thomas) (Entered: 10/23/2018)
- 10/23/18 48 MOTION for Summary Judgment on Plaintiff's First Amended Complaint by Union Pacific Railroad Company. Responses due by 11/29/2018 (Jones, Thomas) (Entered: 10/23/2018)
- 10/23/18 49 MEMORANDUM in Support re 48 MOTION for Summary Judgment on Plaintiff's First Amended Complaint filed by Union Pacific Railroad Company. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F) (Jones, Thomas) (Entered: 10/23/2018)
- 10/24/18 50 MOTION for Partial Summary Judgment and Incorporated Memorandum of Law in Support by Bradley LeDure. Responses due by 11/29/2018 (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F, #7 Exhibit G, #8 Exhibit H, #9 Exhibit I) (Wolff, Nelson) (Entered: 10/24/2018)

\* \* \*

- 11/20/18 53 RESPONSE in Opposition re 50 MOTION for Partial Summary Judgment and Incorporated Memorandum of Law in Support filed by Union Pacific Railroad Company. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E) (Jones, Thomas) (Entered: 11/20/2018)
- 11/29/18 54 RESPONSE in Opposition re 46 MOTION for Summary Judgment on any Claims Regarding the Tread Pattern on the Locomotive Walkway filed by Bradley LeDure. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Exhibit 9, #10 Exhibit 10, #11 Exhibit 11, #12 Exhibit 17) (Wolff, Nelson) (Entered: 11/29/2018)
- 11/29/18 55 RESPONSE in Opposition re 48 MOTION for Summary Judgment on Plaintiff's First Amended Complaint filed by Bradley LeDure. (Attachments: #1 Exhibit 11, #2 Exhibit 12, #3 Exhibit 13, #4 Exhibit 14, #5 Exhibit 15, #6 Exhibit 16) (Wolff, Nelson) (Entered: 11/29/2018)
- 12/13/18 56 REPLY to Response to Motion re 46 MOTION for Summary Judgment on any Claims Regarding the Tread Pattern on the Locomotive Walkway filed by Union Pacific Railroad Company. (Jones, Thomas) (Entered: 12/13/2018)

12/13/18 57 REPLY to Response to Motion re 48 MOTION for Summary Judgment on Plaintiff's First Amended Complaint filed by Union Pacific Railroad Company. (Jones, Thomas) (Entered: 12/13/2018)

\* \* \*

1/8/19 60 Case Reassigned to Magistrate Judge Gilbert C. Sison. Magistrate Judge Donald G. Wilkerson no longer assigned to the case. (cds) (Entered: 1/8/2019)

\* \* \*

1/17/19 73 Minute Entry for proceedings held before Judge J. Phil Gilbert: Motion Hearing held on 1/17/2019 regarding 50 MOTION for Partial Summary Judgment and Incorporated Memorandum of Law in Support filed by Bradley LeDure; 48 MOTION for Summary Judgment on Plaintiff's First Amended Complaint filed by Union Pacific Railroad Company AND 46 MOTION for Summary Judgment on any Claims Regarding the Tread Pattern on the Locomotive Walkway filed by Union Pacific Railroad Company. After hearing arguments, the Court reserves ruling on the motions. Written Order to follow. Final Pretrial Conference is Reset for 1/30/2019 at 1:30 PM with a Jury Trial date of 2/4/2019 at 9:00 AM in Benton Court-house before Judge J. Phil Gilbert. (Court Reporter Stephanie Rennegarbe.) (tag) (Entered: 1/17/2019)

\* \* \*

- 1/31/19 85 MEMORANDUM AND ORDER, The Court GRANTS Union Pacific's motion for summary judgment (ECF No. 48), FINDS AS MOOT Union Pacific's motion for summary judgment on any claims regarding the tread pattern on the locomotive walkway (ECF No. 46), FINDS AS MOOT LeDure's motion for partial summary judgment (ECF No. 50), FINDS AS MOOT any other pending motions, DISMISSES this case WITH PREJUDICE and DIRECTS the Clerk of Court to enter judgment accordingly. Signed by Judge J. Phil Gilbert on 1/31/2019. (jdh) (Entered: 1/31/2019)
- 1/31/19 86 CLERK'S JUDGMENT. Approved by Judge J. Phil Gilbert on 1/31/2019. (jdh) (Entered: 1/31/2019)
- 2/8/19 87 Transcript of Motion Hearing held on 1-17-2019, before Judge J. Phil Gilbert. Court Reporter Stephanie Rennegarbe, Telephone number 618-439-7735. NOTICE: Attorneys and unrepresented parties have 7 calendar days to file a Notice of Intent to Request Redaction of this transcript and 21 calendar days to file a Redaction Request. If redactions are not requested, the transcript will be made remotely available to the public without redaction after 90 calendar days. See the full Transcript Policy on the website at

<http://www.ilsd.uscourts.gov/forms/TransPolicy.pdf> Transcript may be viewed at the public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/1/2019. Redacted Transcript Deadline set for 3/11/2019. Release of Transcript Restriction set for 5/9/2019. (skr) (Entered: 2/8/2019)

2/27/19 88 MOTION to Alter Judgment or Amend by Bradley LeDure. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5) (Wolff, Nelson) (Entered: 2/27/2019)

\* \* \*

4/24/19 93 RESPONSE in Opposition re 88 MOTION to Alter Judgment or Amend filed by Union Pacific Railroad Company. (Eaton, J.) (Entered: 4/24/2019)

5/20/19 94 MEMORANDUM AND ORDER, denying 88 MOTION to Alter Judgment or Amend filed by Bradley LeDure. Signed by Judge J. Phil Gilbert on 5/20/2019. (jdh) (Entered: 5/20/2019)

6/17/19 95 NOTICE OF APPEAL as to 94 Memorandum & Opinion, Terminate Motions, 85 Memorandum & Opinion ,, Terminate Motions,, by Bradley LeDure. Filing fee \$505, receipt

number 0754-3907462. (Wolff, Nelson)  
(Entered: 6/17/2019)

\* \* \*

6/18/19 99 USCA Case Number 19-2164 for 95  
Notice of Appeal filed by Bradley  
LeDure. (Attachments: #1 Notice)  
(amv) (Entered: 6/18/2019)

\* \* \*

7/24/20 102 MANDATE of USCA as to 95 Notice  
of Appeal filed by Bradley LeDure.  
The judgment of the District Court is  
AFFIRMED, with costs, in accordance  
with the decision of this court entered  
on this date. (Attachments: #1 Final  
Judgment, #2 Order, #3 Certified  
Order) (amv) (Entered: 7/24/2020)

9/23/20 103 APPEAL NOTICE Supplemental  
record on appeal filed. Contents of  
record: 1 CD of Exhibits; 47 (amv)  
THIS TEXT ENTRY IS AN ORDER  
OF THE COURT. NO FURTHER  
DOCUMENTATION WILL BE  
MAILED. (Entered: 9/23/2020)

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

No. 19-2164

BRADLEY LEDURE,  
*Plaintiff-Appellant,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant-Respondent.*

---

Date Filed	Docket	Text
6/18/19	1	Private civil case docketed. Fee paid. Docketing statement filed. Transcript information sheet due by 7/2/2019. Appellant's brief due on or before 7/29/2019 for Bradley LeDure [1] [7012054] [19-2164] (AP) [Entered: 6/18/2019 3:03 PM]
		* * *
9/5/19	14	Appellant's brief filed by Appellant Bradley LeDure. Paper copies due on 9/12/2019 Electronically Transmitted. [14] [7028177] [19-2164] (DRS) [Entered: 9/5/2019 11:34 AM]
9/5/19	15	Filed Appendix by Appellant Bradley LeDure. [15] [7028178] Paper copies due on 9/12/2019 [19-2164] (DRS) [Entered: 9/5/2019 11:36 AM]

\* \* \*

11/20/19 26 Appellee's brief filed by Appellee Union Pacific Railroad Company. Paper copies due on 11/27/2019 Electronically Transmitted. [26] [7045171] [19-2164] (CAH) [Entered: 11/20/2019 3:40 PM]

\* \* \*

1/9/20 33 Appellant's reply brief filed by Appellant Bradley LeDure. Paper copies due on 1/16/2020 Electronically Transmitted. [33] [7055102] [19-2164] (SK) [Entered: 1/9/2020 2:14 PM]

\* \* \*

2/12/20 38 Case heard and taken under advisement by panel: William J. Bauer, Circuit Judge; Michael S. Kanne, Circuit Judge and Amy C. Barrett, Circuit Judge. [38] [7061945] [19-2164] (PNR) [Entered: 2/12/2020 1:54 PM]

\* \* \*

6/17/20 40 Filed opinion of the court by Judge Bauer. AFFIRMED. William J. Bauer, Circuit Judge; Michael S. Kanne, Circuit Judge and Amy C. Barrett, Circuit Judge. [40] [7087737] [19-2164] (FP) [Entered: 6/17/2020 5:16 PM]

6/17/20 41 ORDER: Final judgment filed per opinion. With costs: yes. [41] [7087739] [19-2164] (FP) [Entered: 6/17/2020 5:25 PM]

\* \* \*



7/1/20 43 Filed Petition for Rehearing and  
Petition for Rehearing Enbanc by  
Appellant Bradley LeDure. Paper  
copies due on 7/6/2020 [43] [7090550]  
[19-2164] (CAH) [Entered: 7/1/2020  
11:01 AM]

\* \* \*

7/16/20 45 ORDER: Appellant Bradley LeDure  
Petition for Rehearing and Petition  
for Rehearing Enbanc is DENIED.  
\*Circuit Judge Amy J. St. Eve did not  
participate in the consideration of this  
petition for rehearing. [45] [7093988]  
[19-2164] (FP) [Entered: 7/16/2020  
9:33 AM]

7/24/20 46 Mandate issued. No record to be  
returned. [46] [7096005] [19-2164]  
(GW) [Entered: 7/24/2020 10:08 AM]

FOR COURT USE ONLY: Certified  
copy of 6/17/2020 Final Order with  
Mandate sent to the District Court  
Clerk. [7096008-2] [7096008] [19-  
2164] (GW) [Entered: 7/24/2020 10:19  
AM]

\* \* \*

12/16/20 48 Filed notice from the Supreme Court  
of the filing of a Petition for Writ  
of Certiorari. 20-807 [48] [7129007]  
[19-2164] (PS) [Entered: 12/16/2020  
2:23 PM]

\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**FEDERAL EMPLOYERS' LIABILITY ACT  
JURY TRIAL DEMANDED**

---

**FIRST AMENDED COMPLAINT**

Plaintiff Bradley LeDure, by and through his attorneys, Schlichter Bogard & Denton, and for his First Amended Complaint against Defendant Union Pacific Railroad Company, states as follows:

**Jurisdiction**

1. This action arises under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60.
2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.

**Venue**

3. Venue of this action properly lies in the United States District Court for the Southern District of Illinois pursuant to 28 U.S.C. § 1391(b) because:

- (a) The Defendant resides within this district;  
and

- (b) Plaintiff was injured in Salem, Illinois, therefore a substantial part of the events or omissions giving rise to the claims occurred within this district.

**Parties**

4. At all times relevant, Defendant was a corporation organized and existing under the law and operates a railroad business in several states, including the State of Illinois, and is engaged in interstate transportation and commerce in Illinois.

5. At all times relevant, and at the time he was injured, Plaintiff was a resident and citizen of Scott City, Missouri.

6. Plaintiff, an engineer employee of Defendant, was working in furtherance of Defendant's interstate transportation and commerce at the time of his injury on or about August 12, 2016.

**COUNT I –**

**FEDERAL EMPLOYERS' LIABILITY ACT**

7. On or about August 12, 2016, Plaintiff was performing his duties as an engineer for Defendant and was acting in the course and scope of his employment in Salem, Illinois, when he was caused to lose his footing while walking on an engine (UP 5683) operated by Defendant, lost his balance, and sustained injuries to his knees, shoulders, spine, back, neck, left and right hand/ fingers, and head.

8. The walkway of the engine on which Plaintiff was injured was in a worn and defective state and failed to contain sufficient traction and secure footing.

9. Another engine (the NS 2564) within the locomotive consist in which Plaintiff was assigned to work had water on the floor of the locomotive cab.

10. Plaintiff's injuries were caused, in whole or in part, by one or more of the following violations of federal railroad safety laws and acts or omissions of negligence on the part of Defendant, in that Defendant, its agents, servants and/or employees:

- (a) Failed to provide Plaintiff with a reasonably safe place to work;
- (b) Failed to provide Plaintiff with reasonably safe conditions to work;
- (c) Failed to provide Plaintiff with reasonably safe and suitable equipment;
- (d) Failed to adequately maintain, inspect, and/or repair its equipment with which Plaintiff was required to work;
- (e) Failed to maintain its locomotive parts and appurtenances in a condition that was safe to operate without unnecessary danger of personal injury, in violation of 49 U.S.C. § 20701, 49 C.F.R. § 229.7; 49 C.F.R. § 229.9; and 49 C.F.R. § 229.45;
- (f) Permitted the use of a locomotive which had not been adequately inspected, in violation of 49 C.F.R. § 229.21; 49 C.F.R. § 229.23; and 49 C.F.R. § 229.25;
- (g) Permitted the use of a locomotive which was not free of conditions that endangered the safety of the crew, locomotive, and train, in violation of 49 C.F.R. § 229.45;
- (h) Failed to keep its floors of cabs, passage-ways, and compartments free from oil, water, waste, or any obstruction that creates a slipping, tripping, or fire hazard, in violation of 49 C.F.R. § 229.119(c), constituting negligence per se; and

- (i) Failed to properly treat the floors of its locomotive and provide secure footing, in violation of 49 C.F.R. § 229.119(c).

11. As a result, in whole or in part, of one or more of the foregoing negligent acts or omissions, Plaintiff suffered painful, progressive, permanent, and disabling injuries to his knees, shoulders, spine, back, neck, left and right hand/fingers, and head; he has sustained injuries to the soft tissues, ligaments, tendons, muscles, and blood vessels of his knees, shoulders, spine, back, neck, left and right hand/fingers, and head; he has been caused to undergo severe pain and suffering; he has sought and received medical care and attention and will continue to receive medical care and attention; he has suffered psychological and emotional injury, mental anguish, and anxiety and will continue to suffer psychological and emotional injury, mental anguish, and anxiety in the future; he has incurred medical expenses and will continue to incur medical expenses; he has lost and will continue to lose wages, benefits, and earning capacity, all to his damage.

WHEREFORE, Plaintiff Bradley LeDure, prays for judgment against Defendant Union Pacific Railroad Company on Count I of his First Amended Complaint, in an amount which is fair and reasonable in excess of \$75,000, plus all applicable court costs.

#### **COUNT II – LOCOMOTIVE INSPECTION ACT**

12. Plaintiff adopts and incorporates its previous allegations as set forth in paragraphs 1-11.

13. This count arises under the provisions of 49 U.S.C. § 20701 *et seq.*, commonly known as the Locomotive Inspection Act.

14. At the time of Plaintiffs injury, the engines on which he was injured were engaged in commerce and were being used to further Defendant's transportation commerce in Illinois.

15. Plaintiffs injuries were caused, in whole or in part, by one or more of the following conditions and defects existing on or about Defendant's locomotives, in violation of 49 U.S.C. § 20701 *et seq.*:

- (a) Defendant's locomotive parts and appurtenances were not in proper condition and safe to operate without unnecessary danger of personal injury, in violation of 49 U.S.C. § 20701, 49 C.F.R. § 229.7; 49 C.F.R. § 229.9; and 49 C.F.R. § 229.45, constituting negligence per se;
- (b) Defendant permitted the use of locomotives that were not in proper condition and safe to operate in the service to which it was put in violation of 49 C.F.R. § 229.7(a)(1) and (2), .9, and .45, constituting negligence per se;
- (c) Defendant permitted the use of locomotives that had not been adequately inspected in violation of 49 C.F.R. § 229.21; 49 C.F.R. § 229.23; 49 C.F.R. § 229.25, constituting negligence per se;
- (d) Defendant permitted the use of locomotives that were not free of conditions that endangered the safety of the crew, locomotive, and train in violation of 49 C.F.R. § 229.45, constituting negligence per se;
- (e) Defendant failed to keep its floors of cabs, passageways, compartments, and steps free from oil, water, waste, or any obstruction that creates a slipping or tripping hazard,

in violation of 49 C.F.R. § 229.119(c), constituting negligence per se; and

- (f) Defendant failed to properly treat the floors of its locomotives and provide secure footing, in violation of 49 C.F.R. § 229.119(c), constituting negligence per se.

16. That as a result, in whole or in part, of the foregoing violations of the Locomotive Inspection Act, Plaintiff suffered painful, progressive, permanent, and disabling injuries to his knees, shoulders, spine, back, neck, left and right hand/fingers, and head; he has sustained injuries to the soft tissues, ligaments, tendons, muscles, and blood vessels of his knees, shoulders, spine, back, neck, left and right hand/fingers, and head; he has been caused to undergo severe pain and suffering; he has sought and received medical care and attention and will continue to receive medical care and attention; he has suffered psychological and emotional injury, mental anguish, and anxiety and will continue to suffer psychological and emotional injury, mental anguish, and anxiety in the future; he has incurred medical expenses and will continue to incur medical expenses; he has lost and will continue to lose wages, benefits, and earning capacity, all to his damage.

WHEREFORE, Plaintiff Bradley LeDure, prays for judgment against Defendant Union Pacific Railroad Company on Count II of his First Amended Complaint in such sum which is fair and reasonable in excess of \$75,000, plus all applicable court costs.

Dated: February 21, 2018

SCHLICHTER, BOGARD &  
DENTON, LLP

[s] Mark A. Beatty

Nelson G. Wolff

Andrew D. Schlichter

Mark A. Beatty

100 South Fourth Street

Ste. 1200

St. Louis, Missouri 63102

Tel: (314) 621-6115

Fax: (314) 621-7151

nwolff@uselaws.com

aschlichter@uselaws.com

mbeatty@uselaws.com

*Attorneys for Plaintiff*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**Deposition of Bradley LeDure**

Date: February 2, 2018

---

\* \* \*

[34]

\* \* \*

Q. So it sounds like these other territories that you told me about composed the other 10 percent of the time that you worked as a locomotive engineer for Union Pacific, is that correct?

A. Yes.

Q. As far as the work that you did for Union Pacific as a locomotive engineer since 2006, did you always work when work was available?

A. Yes.

Q. In other words, did you remove yourself from the roster or the Board for any extended periods of time from 2006 until August of 2016?

A. I never – no, not from the roster.

Q. What about from the Board?

A. Yes. I had a couple of medical leaves.

[35]

Q. Approximately what years did you have medical leaves?

A. Approximately 2010 or 2011.

Q. How long were you off at that time?

A. It was around five months.

Q. What was the medical problem that you were off five months around 2010 or 2011?

A. Neck surgery.

Q. Was that your second neck surgery?

A. Yes.

Q. What did you determine to be the cause of you needing neck surgery in 2010 or 2011?

A. I really don't know the cause.

Q. So you didn't claim any type of an injury or anything?

A. No, sir.

Q. So you weren't collecting any – making any claims against anybody to recover money damages for that neck problem, is that correct?

A. That's correct.

Q. So you tried to get back to work as soon as possible, is that correct?

A. That's correct.

Q. So you were able to get back to work [36] in five months?

A. Yes.

Q. What was the other time that you said that you had to take an extended leave from Union Pacific?

A. It was around the very end of 2013, for like a month, month-and-a-half, and then I came back for a short period of time. And then I had to take another medical leave to fix the same problem. I finally found a doctor that figured out what was wrong in 2014.

Q. So in total, how long were you off work in the years 2013 and 2014 for this medical problem?

A. A little over a year, I guess.

Q. So some of it was in 2013 and some of it was in 2014, but a total of about a year off?

A. Correct. Maybe a little over a year.

Q. Was the medical problem thoracic outlet syndrome?

A. Yes, sir.

Q. Do you know what caused that?

[37]

A. No.

Q. You didn't have any claims against anybody for that, is that correct?

A. That's correct.

Q. So you tried to get back to work as soon as possible; correct?

A. Correct.

Q. I know we talked briefly about the fact that you had a lawsuit against Burlington Northern before you separated ways with them back in 1995. Other than that lawsuit and the lawsuit you are here on today, have you been involved in any other lawsuits?

A. No, sir, not that I can recall.

Q. In the lawsuit that you had against Burlington Northern, did that arise out of an incident that occurred in 1991?

A. Yes. Approximately that date.

Q. Did you ever return to work at Burlington Northern from the time of that injury in 1991 up until the time that you resigned from Burlington Northern in 1995 and received your settlement?

A. Yes. I did go back to work to take [38] the engineer promotion and try to continue to work, and I want to say it was in 1992.

Q. So you actually went back to work as a locomotive engineer?

A. In the program to become a locomotive engineer, and then I did qualify and worked as a locomotive engineer for some time; I don't remember the exact date.

Q. I just want to clarify something, so I make sure I understand. When you had your injury in 1991 at Burlington Northern, at that time you were working as a conductor?

A. Correct. Yes.

Q. And then after that injury, Burlington Northern gave you the opportunity to go into the locomotive engineers' program and you did go into that program and worked as a locomotive engineer for a period of time and then went back off work, is that correct?

MR. WOLFF: Objection. Compound. Subject to that, you can answer.

THE WITNESS: I can answer?

MR. WOLFF: You can answer if you understand and you are capable of answering.

[39]

THE WITNESS: They did not offer to make me an engineer, that it was by seniority, and they took a class, and it just happened to be my time to be taken through our union agreements for that. So that was how that became available.

BY MR. JONES:

Q. So while you were off work as a conductor because of the injury you sustained in 1991, you saw an opportunity to become a locomotive engineer for Burlington Northern, so you entered the locomotive engineers' program at some time in – did you say 1992?

A. Somewhere in that vicinity.

Q. How long after you completed – I know there had to be training for that; correct?

A. Correct.

Q. How many months training did you go through it to become a locomotive engineer at Burlington Northern?

A. I don't recall the exact time, but it seems like it was around six months.

Q. So after you completed your training in approximately six months, how long did you then work as a locomotive engineer before you marked [40] off from Burlington Northern and said "I can't work anymore"?

A. I don't recall the exact time length.

Q. So do you think you worked more than a year as a locomotive engineer after you completed your training?

A. I can't recall. Possibly. I am unsure.

Q. In any event, at some point, you felt that you could no longer be a locomotive engineer for Burlington Northern, and that is when you quit working

for Burlington Northern and settled your lawsuit; correct?

A. Well, the doctors decided that I was not fit to continue working with them.

Q. Right. So the doctor – you treated with a number of doctors for the injuries you sustained back in that 1991 incident?

A. Yes.

Q. Do you recall Dr. George Schoedinger?

A. Yes.

\* \* \*

[67]

Q. You sit in the recliner?

A. Most the time I sit on the couch. It is more comfortable.

Q. And as far as the living room, when you watch TV in the living room?

A. There is a couch and a recliner and I sit in that recliner quite a bit.

MR. WOLFF: Tom, let's get to a break point.

THE WITNESS: I'm ready.

MR. JONES: Okay.

THE VIDEOGRAPHER: Off the record at 11:27.

(Whereupon, a brief recess is taken at 11:27 a.m.)

(Resumed at 11:46 a.m.)

THE VIDEOGRAPHER: Back on the record at 11:46.

BY MR. JONES:

Q. Mr. LeDure, when you left Burlington Northern back in 1995 and signed your resignation, did you feel that you were physically capable of doing the job duties of a locomotive engineer?

A. No.

[68]

Q. So you felt that because of the conditions that Dr. Schoedinger had operated on you and the other ailments and problems that you had had, you didn't think that you could safely do your job?

A. That's correct.

Q. Since you left Burlington Northern around 1995, when you settled your case with them, did you do any other kind of work other than farming between that time and the time that you went to work for Union Pacific Railroad?

A. Yes. I worked in a factory called Biokywa.

Q. Can you do your best to spell it?

A. B-I-O-K-Y-W-O or something.

Q. Where was that located?

A. South of Cape Girardeau, Missouri.

Q. And even if you don't know the exact date, when did approximately you start working there?

A. Around the year 2000 or 2001.

Q. How long did you work there?

A. I think it was around a year.

\* \* \*

[76]

\* \* \*

Q. What kind of locomotive was that?

A. That was a Union Pacific locomotive.

Q. What was the number?

A. I don't recall.

Q. What was the occasion that caused you to be walking on that locomotive in the early morning hours of August 12th of 2016?

A. To hang shut-down tags on appropriate locomotives that were to be shut down.

Q. Who told you to do that?

A. Union Pacific Railroad.

Q. Who?

A. That is their rules.

Q. No. I mean, did some person tell you to do that?

A. I have been talked to by Ernie Lavtrup, MOP Ernie Lavtrup, that I am to do that. I was also contacted on a train prior to this by – I don't remember his name, but Ernie was with him at the time. They told me and instructed me – I have been around other managers that have [77] said this, and it was also put out in writing that we were to do this.

Q. I think I understand what you are saying. Nobody called you or told you in a job briefing the morning of August 12th of 2016 to put these tags on?

A. Correct.

Q. You are saying that you were told by management, including Ernie Lavtrup, that it is the policy of Union Pacific that you put these shut-down tags on locomotives that are shut down?

A. Yes. It is a violation of the rules if you do not put tags on each locomotive for shut-down fuel conservation.

Q. What does that mean when it is a shut down?

A. That means you are to look at your – I don't remember the exact formula. But you have got a formula. You look at your TPAs. It tells you how many engines you are to have online to run your train from Point A to Point B so they can save fuel.

Q. All I am trying to find out, so are you saying that basically when you got your train [78] orders,



you are supposed to look and see how much power you needed. And if you didn't need a locomotive and you were going to run it dead, then you are supposed to put this tag on.

A. Ask that again, please.

Q. I will have her read it back to you.

(Whereupon, the pending question is read by the court reporter.)

WITNESS: You are supposed to put it on the dead locomotive and plus the lead locomotive, informing the next engineer which engines are shut down.

BY MR. JONES:

Q. So basically, when you went on duty that day, do you recall what time you went on duty?

A. I think I was called for 2:10 a.m.

Q. Does that mean you arrived by 2:10 a.m.?

A. I try to always get to work before my on-duty time.

Q. As far as the train that you were assigned that day, just tell me about that train.

A. I was actually called for a [79] different train. And when I got to work, we was instructed that we were being swapped from our train to this train.

Q. Who is it that told you you were being swapped?

A. I don't remember. It was a new manager. I think his name was Nick, but I am unsure on that. But it was a manager that told us.

Q. And a manager who was actually physically present there in Salem?

A. Yes. At the depot.

Q. So you got to the depot in Salem, and when you showed up, you were expecting to take one train,

but you were informed that you were going to swap trains?

A. Correct.

Q. So the train that you were told that you were going to take, did you print out your train orders for that?

A. I don't recall if I did or not.

Q. Did your conductor?

A. I don't recall if he did or not. It would be a guess if I said "Yes" or "No".

[80]

Q. So isn't it required that you have train orders before you go out on a trip?

A. It is. Now, to make this clear, you are asking for the train I was called for?

Q. No. I'm asking about the train that – you said that you were then assigned by the manager?

A. Okay. Yes. The conductor did run off paperwork for that. Yes, yes. I'm sorry.

Q. And I assume that you had to look at that paperwork to determine how much power you needed?

A. Correct

Q. So you looked at the paperwork. Do you recall how many cars you were going to pull that day? What kind of cars they were?

A. I don't recall.

Q. So you don't recall whether they were loads or empties or how long a train it was?

A. I don't recall.

Q. But after you looked at those train orders, I assume you made the determination that you didn't

need all that power, so you were going to run one or more of those locomotives dead?

[81]

A. Correct. If I remember right, I was only to run the lead locomotive.

Q. So you determined that you were only going to run the lead locomotive. So on that date, what was the lead locomotive?

A. I don't recall. It was an NS engine. I don't recall the engine number.

Q. Do you recall that the other two locomotives that were in the consist that day were Norfolk Southern locomotives?

A. I recall that the second locomotive was a Norfolk Southern. The third, that I fell on, was a Union Pacific.

Q. Were there, in total of the three, were two of them Norfolk Southern locomotives and one Union Pacific?

A. Correct.

Q. And you understood that the one that was running in the lead was a Norfolk Southern locomotive?

A. Yes.

Q. And you were going to use for power just the lead Norfolk Southern locomotive?

A. Yes. I was just going to leave the [82] lead locomotive online.

Q. So it sounds like you probably determined that you didn't have a very heavy train that day? Is that a fair statement?

A. That's what it sounds like, yes.

Q. After you made the determination that you only needed the lead locomotive, as you had been previously instructed, you were going to put a tag on all three locomotives; two indicating that they were running dead, and you put one on the front to tell the next engineer that the other two are running dead; is that correct?

A. Correct.

Q. So do you have to do anything to shut those locomotives down? That morning did you have to do anything to shut them down? Or were they already shut down?

A. I don't recall every motion, but I remember the second locomotive was shut down. And the Union Pacific locomotive, I think, was actually running and I had to shut it down.

Q. Now, as far as at the time that you picked up that train that day, was it already connected to the rail cars?

[83]

A. Yes. It was connected to the rail cars.

Q. So your train was already put together for you that day. So the only thing that you had to do is to make the determination as to which locomotives are to be shut down and then tag those locomotives? Is that a fair statement?

A. The engines had to be tagged, like you said, but the train was not set up and ready to go. It was just brought into town. We had to make a couple of moves in the yard before we left.

Q. So it came in as a train, but you are saying that you might have had to cut off some cars or add some cars there in the yard at Salem?

A. Correct.

Q. Had you done that – had you cut off or added any cars there in Salem prior to you starting to tag the locomotives?

A. Repeat that, please.

Q. Had you done any of the switching to either cut off cars or add cars to your train before you tagged these locomotives?

A. No, sir.

Q. So basically, correct me if I'm [84] wrong, the first thing you did after you got your train list and determined that you were only going to run with one locomotive, was to start tagging the locomotives?

A. The first thing I did was had a job briefing with the conductor –

Q. Right.

A. – and talked to him about it. And then, yes, so I went to put my engines like proper.

Q. Was that the last thing you did on that date as far as work, putting the tags on?

A. No, sir.

Q. Did you complete your trip that day?

A. No, sir.

Q. What is the last thing you did as work for Union Pacific on August 12th of 2016?

A. The last thing I did was park my train where the manager instructed me to park it and showed – the MTO came after that, showed him the grease or oil or whatever it was, and then he took me back to the depot. We did a urine test, a drug test, I guess you would say, and asked me if I would write a statement on a piece of paper. [85] Then he allowed me to tie up and leave the depot

Q. So basically, if we look at Exhibits B, C and D, you made reference to there was oil on the platform of the Union Pacific locomotive?

A. I don't know exactly what the substance was, but it was greasy like.

Q. Grease and oil are two different things. So I just want to make sure, are you saying it was like grease? Or was it more like oil?

A. I don't know what the substance was exactly. I have no idea to tell you if it was a certain substance or another substance.

Q. Did you reach down and touch it at all?

A. Yes.

Q. What did it feel like?

A. It was slick.

Q. So it felt like it was slick?

A. Uh-huh.

Q. So more like an oil?

A. I don't know. I don't know exactly what the substance was. I would be speculating to answer that question.

[86]

Q. Well, you have been around the railroad a number of years; right?

A. Uh-huh.

Q. That is a "Yes."

A. Yes.

Q. Do you have any idea what kind of substance this was and where it could have possibly come from?

A. No, I don't. It was – no, I do not.

Q. It didn't look like it was – from what you are telling me, it didn't look like it was oil that had come from the locomotive itself; correct?

MR. WOLFF: Object to the form. Calls for speculation. Lack of foundation. Subject to that, you can answer.

THE WITNESS: There are different oils. It looks – different colors. So I do not know exactly where that oil come from or what substance it was.

BY MR. JONES:

Q. Did you see, when you were doing your inspection of the locomotives and doing the [87] tagging, did you see anywhere on the locomotives where there was any what appeared to be some leaking oil coming from any of the locomotives?

A. I was not required to do an inspection.

Q. I'm not asking whether you were required to do it. You walked around, and when you are walking around, you are inspecting, aren't you?

A. I'm looking for any unsafe conditions –

Q. Sure.

A. – in the environment. And I did not see anything that looked like it was coming out of the engine compartments.

Q. Okay. Obviously, if you see something that indicates there is oil or something amiss with any of those locomotives, you are required to report that; correct?

A. Correct.

Q. So as far as the location where you are doing this tagging, where was the locomotive at that point? In other words, what track and where on the track was it located?

[88]

A. I believe we was on the backtrack north of the engine servicing tracks.

Q. How far north?

A. I don't recall the exact distance. A little distance from it, not right at it.

Q. What time of the day were you doing this tagging?

A. Approximately around 3:30 in the morning.

Q. So if it is 3:30 in the morning, as far as outside, it is dark out; correct?

A. Correct.

Q. In the location where your train was, is there any overhead lighting or any other type of lighting that was illuminating the area?

A. No, sir, not to my recollection.

Q. So if it was dark then, I assume you had your lantern with you?

A. No, sir.

Q. You didn't have your lantern with you?

A. Union Pacific Railroad does not give the engineers lanterns.

Q. Did they give you a flashlight?

[89]

A. I had a flashlight, yes.

Q. So you utilized that flashlight to illuminate your path; correct?

A. Yes.

Q. Because that is required of you; correct?

A. Yes.

Q. Not only is it required under the rules, that is just good common sense, isn't it?

A. Yes.



Q. As you are doing this tagging, did you start on the lead locomotive?

A. As I recall, I believe I did. Wherever I started walking from, I believe I tagged it first.

Q. So you put the tag on the lead locomotive. Where are you supposed to put these tags?

A. On the isolation switch.

Q. So you put your first tag on the lead locomotive, which indicated that you – or the other two locomotives were going to be dead; correct?

A. Correct.

[90]

Q. Then after you tagged the lead locomotive, take us through the path that you took.

A. I left the lead locomotive, walked back to the second locomotive. I –

Q. How is the second locomotive positioned?

A. It was facing forward.

Q. And I assume the lead locomotive, Norfolk Southern, that you were going to use that day, was also facing forward?

A. Yes, sir.

Q. In geographic directions, what direction was it facing?

A. The lead and the second locomotive was facing south.

Q. And you were going to go south that day?

A. Correct.

Q. So you walked from the lead locomotive to the second Norfolk Southern locomotive. Did you just walk across the crossover platform? Or did you climb off the locomotive and climb back on the steps?

[91]

A. I went down the platform and through the cab.

Q. And those Norfolk Southern locomotives, to enter the cab, did you enter the cab through the nose of the locomotive?

A. I don't recall on the second NS if it was on the nose or up on the side.

Q. So you don't recall?

A. I don't recall.

Q. But in any event, do you remember accessing the cab of the locomotive? The second locomotive?

A. Yes. And I do believe it was a door up on the side. It was not in the nose.

Q. So you would have entered it, I assume, if it was facing forward, on the conductor's side of the locomotive?

A. Yes.

Q. And you had to take, what, a couple steps up to do that on that locomotive? Or was it level with the platform?

A. I don't recall. Most of those do have a step.

Q. While you are doing that, just as [92] far as – I assume you were wearing your standard work boots?

A. Correct.

Q. You didn't have any slick soles, did you?

A. No.

Q. So you had good work boots with good grips on them?

A. Yes.

Q. The treads were good?

A. Yes.

Q. Were they in good condition, your boots?

A. Yes.

Q. And I assume you also, because this is August, I assume you didn't have any heavy coat on or anything like that, did you?

A. No, sir.

Q. It is probably warm out; correct?

A. Yes.

Q. How were you dressed that day?

A. In a short-sleeve shirt, I presume, and I would have had my safety vest on.

Q. Why would you have your safety vest [93] on?

A. Because it is required.

Q. If you are in the yard?

A. Any time an engineer is outside the cab.

Q. So you had your safety vest on. Is that a green one?

A. Yes.

Q. So you have your safety vest on. You've got your work boots on that are in good condition with good soles, good tread, and then you had your flashlight, and then you had these tags?

A. Yes.

Q. Anything else that you were carrying with you?

A. Not that I recall.

Q. So you weren't carrying anything heavy?

A. No.

Q. And you weren't in any hurry, were you?

A. No.

Q. So you basically walked across the [94] platform from the lead Norfolk Southern locomotive,

entered the second locomotive through the door on the conductor side of the locomotive, went inside the cab and attached the tag to that locomotive?

A. To the best of my remembrance, that is the door that I went in on that, yes.

Q. But you do remember attaching the tag to the second locomotive?

A. Yes, sir.

Q. Then when you left that second locomotive, did you exit out the engineer's door, the door behind the locomotive engineer?

A. Yes.

Q. And you walked down the platform on that side of the locomotive?

A. Yes.

Q. When you got to the end of that side of the locomotive, did you climb off that locomotive, down the steps and climb up to the Union Pacific? Or did you walk across the crossover platform?

A. I walked across the crossover platform.

[95]

Q. And when you are walking across that crossover platform to the Union Pacific locomotive, at that point, you have – the long nose is facing forward; correct? Or facing south?

A. The Union Pacific locomotive was facing north.

Q. The short cab. But the long nose is facing south?

A. South, correct. Correct.

Q. So when you crossed over there, which side of that locomotive did you walk down?

A. I went to walk down the engineer's side.

Q. So you walked down the engineer's side? And I assume you did that because it was your intention to then enter that cab through the engineer's door?

A. Correct.

Q. And on that Union Pacific locomotive, did you have to take a couple of steps up to go into the engineer's compartment or the cab'?

A. I don't recall exactly how that platform was up towards the cab.

[96]

Q. And as you are walking across these locomotives and walking across these crossover platforms and using your sense of sight and using your flashlight to illuminate your path, did you encounter any difficulty seeing where you were walking?

A. Ask that one more time, please.

Q. As you walk from the lead locomotive all the way back to the cab of the Union Pacific locomotive, you describe that you are walking on the platforms of those locomotives. You might have climbed some steps; you went across the crossover platform. And my question is, as you did that and you used your flashlight to illuminate your path, did you encounter any problems seeing your path?

A. I didn't detect anything at that point that was a concern.

Q. And was your flashlight, did it have enough power that you could illuminate the path and make sure you had good view of where you were walking?

A. It was a normal flashlight. It could have been brighter.

\* \* \*

[98]

\* \* \*

Q. So you are saying that you fell before you entered the cab of the lead locomotive?

A. Yes. When I went back and crossed, I fell at that time.

Q. So if I'm understanding you correctly, you are saying that after you crossed over on the crossover platform to the Union Pacific locomotive, it is at that point that you fell before you got to the cab of the Union Pacific locomotive, is that correct?

A. Ask that again, please.

Q. Let me ask it this way; at the time you fell, had you tagged the third locomotive?

A. At the time I fell –

Q. Had you tagged the third locomotive, the Union Pacific locomotive?

A. No, not to my knowledge.

Q. So the only locomotives you had [99] tagged at the time that you fell were the two Norfolk Southern locomotives?

A. Correct.

Q. And then you crossed across the platform to the Union Pacific locomotive, and it was your intention to walk along the platform of the Union Pacific locomotive on the engineer's side and enter the cab on the engineer's side of the Union Pacific locomotive and put a tag on it?

A. Yes.

Q. That was your intention?

A. Yes.

Q. But you're saying that you fell before you got there?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When you said that you fell before you got to the cab of the lead locomotive, was it in the vicinity of what is depicted in Exhibits B, C, D and E?

MR. WOLFF: I am going to just object to the vague and confusing form. You are saying to the lead locomotive. I think you are [100] referring to the Union Pacific –

MR. JONES: I will rephrase the question.

BY MR. JONES:

Q. As far as the location where you claim to have fallen on August 12th of 2016, is that depicted in Exhibits B, C, D and E?

A. Yes, sir.

Q. Are you saying that where you slipped on that day was in the area that is depicted in those photographs?

A. Yes.

Q. Are you saying that what you believe caused you to slip was what is depicted in Exhibits B, C and D on the platform?

A. Yes.

Q. So you weren't intending to go down the steps at that location; correct?

A. Correct. I was not.

\* \* \*

[104]

\* \* \*

Q. I know you said you didn't remember. But I'm just asking you, could you actually have either one of those flashlights in your hand and walking along the platform and still be gripping the handrail of the locomotive?

A. Yes, you could, but it would not be as good a grip as you would have if you wouldn't have had to carry a flashlight.

Q. Sure. Now, as far as the location that you indicated you fell, which is depicted on Exhibits B, C, D and E, just describe when you first had a sensation that you were falling.

A. Well, when I fell, it happened in a split second. I went from standing up to being down. So there was no anticipation I was going to fall. It just happened immediately.

Q. So what you are saying is you are just walking along; you see absolutely nothing on the platform that indicates that there is any oil or grease or any slippery substance by doing your [105] visual inspection with the flashlight; correct?

A. That's correct.

Q. Everything looked normal just as it is depicted in Exhibits B, C, D and E; correct?

MR. WOLFF: Object to the compound form. Lack of foundation.

BY MR. JONES:

Q. Did everything – when you looked at that platform with your flashlight, did it look just like what you see in Exhibits B, C, D and E?

A. With the flashlight, I did not see the substance on the walkway or I would not have been on it.

Q. So you didn't see what is depicted on Exhibits B, C, D and E, when you looked at it with your flashlight, is that correct?

A. Not at the time I fell, no.

Q. Did you look at it at a later point?

A. Yes.



Q. Did you see anybody put anything on that platform?

A. No.

Q. Did you put anything on the platform?

[106]

A. No.

Q. So if from the time you fell to the time you saw it, was that immediately after you fell?

A. It was not immediately after I fell. When I fell, I got back up, walked to the cab of the rear locomotive. I was a little bit disoriented. And then when I came back, I shined my light on it just to see what happened, and that is when I noticed the substance.

Q. So whatever the substance was, you walked through it and went all the way into the cab of the Union Pacific locomotive?

MR. WOLFF: Objection. Compound.

BY MR. JONES:

Q. Is that correct?

MR. WOLFF: Misstates his prior testimony.

THE WITNESS: When I stepped in it, I fell.

BY MR. JONES:

Q. I understand that. But I thought you said before you inspected it, you said you walked back into the cab of the locomotive. Are [107] you saying you walked in the cab of the Union Pacific locomotive or the lead locomotive?

A. The Union Pacific locomotive.

Q. And that would be the closest cab available to you at that point; correct?

A. Correct.

Q. And when you walked into the cab of the lead locomotive, you would have had to continue to walk down the platform of that locomotive; correct?

A. Correct.

Q. And so whatever you would have slipped in, if there was anything there, you would have expected to have tracked that down that walkway of that locomotive; correct?

A. Well, I wouldn't have expected anything because I have no clue what would have happened afterwards by me walking.

\* \* \*

[109]

\* \* \*

Q. When you – did you have a radio with you?

A. No.

Q. So I assume at the time that you fell, you didn't radio anybody or tell anybody that you had fallen; correct?

A. Correct.

Q. So when you got into the cab of the Union Pacific locomotive, did you use the radio in there to call anybody?

A. No.

Q. Did you proceed to tag that locomotive?

A. Yes.

Q. After you tagged that locomotive, what did you do?

A. I was slightly disoriented when I went back and did all that. But when I went – I went and tagged that locomotive, went out the door, down the walkway and looked to see what was on – looked to see why I fell. I mean, I didn't [110] I understand.

Q. So when you exited the cab of the Union Pacific locomotive after you went in and tagged it, you walked across the same platform that you had entered the cab, is that correct? On the engineer's side?

A. The best I recall – I was a little disoriented.

Q. So you walked back to the location of what is depicted in Exhibits B, C, D and E; correct?

A. Correct.

Q. And you said you still had your flashlight with you; correct?

A. Correct.

Q. And you used the flashlight to illuminate the area where you had thought you had fallen; correct?

A. Correct.

Q. Did you see what is depicted on Exhibits B, C, D and E at that point?

A. I did, but I had to kind of lean over and get the light down closer to it to notice that there was a little something there.

[111]

Q. At the time you are doing this, did you have gloves on?

A. I don't recall.

Q. Do you typically wear gloves when you are walking out there around the platforms of locomotives?

A. Yes, I do.

Q. And you would wear, what, Union Pacific issued gloves?

A. Yes.

Q. The leather?

A. Some are leather, some are another material.

Q. What did you have that day?

A. I don't recall which ones I had on that day.

Q. Did you take the glove off to kind of wipe across that surface that is depicted in Exhibits B, C, D and E, to see what it was?

A. I don't recall if at that time if I had had my glove on or off when I leaned down to look at it.

Q. Well, how do you know it was slippery?

[112]

A. Because I slipped on it.

Q. So you didn't wipe your hand across it to see what it was; you just – you concluded that the substance that is depicted in Exhibits B, C, D and E was slippery because you fell?

A. Exactly.

Q. Going back to Exhibit A, what is the significance of that, if you know?

A. I don't know.

Q. Do you see anything in Exhibit A that depicts anything that indicates that it was a location where you fell?

A. Well, just by looking at the picture, it is a black locomotive. So it looks like part of the – one of the NS engines.

Q. Do you see anything of significance on Exhibit A?

A. The only significance I can see is it shows a different type of tread on the walkway than is on the Union Pacific locomotive.

\* \* \*

[119]

Q. And from what you have just described in those photograph, it shows that you have scratches below your knee. Which knee was it?

A. My left knee had the scuff. That is what is in the picture. My right knee had some pain, but no cut.

Q. Right. And I'm not asking about your claim for injuries. I'm just trying to find out from the photographs where there were any scratches or any bruises or abrasions indicating an injury.

A. Okay.

Q. So the mark that you identified which was below your knee, and did you say that was your right knee?

A. My left knee.

Q. Left knee, excuse me. And then the others are all of your forearms, and some of them you just can't tell which forearm it was; but you said there was scratches on both of your forearms, is that correct?

A. Correct.

Q. Do you have any idea what it was [120] that you actually – how you scratched your yourself when you fell? In other words, did you scratch it on the platform? Did you scratch it on the railing? Do you have any idea?

A. I really don't recall what happened. It was so fast that I just – I don't know what hit what as I was going down the steps.

Q. Do you have a pretty vague memory about this accident as to what led up to it and what happened?

A. No. It is not vague. I –

Q. So you have a pretty clear recollection of it?

A. – what went up to it. There is things that I don't recall, which I've told you.

Q. Right. But I mean, as far as – you have a pretty vivid recollection then of what happened?

A. Pretty vivid.

Q. So you said you slipped and in almost an instant you were down?

A. Correct.

Q. You didn't fall to the ground, did you?

[121]

A. No.

Q. You actually landed on the platform, didn't you?

A. Part of me went down the steps. I actually went down the steps and landed somewhere down on the lower steps.

Q. And let's go ahead and talk about that. I think if we look at Exhibit E, that shows that it is taken, it looks like from the platform down, there is one, two, three, four, five steps; correct?

A. That is what it appears, yes.

Q. Just so that we will be able to communicate for the deposition, if we use the first step down from the platform, we'll call that Number One. Okay?

A. Pardon that? Repeat that.

Q. The first step down from the platform, we'll call Number One.

A. Okay.

Q. The second step down will be Number Two. And we will go all the way down so that the bottom step will be actually Number Five.

A. Okay.

[122]

Q. Tell me on which step any portion of your body ended up after you fell.

A. I can't recall exact steps I was down. It was – I can say that part of my middle to upper body was down on the step areas. My bottom half and knees was down towards the lower half steps.

Q. At the time you fell, was any portion of your body on the platform?

MR. WOLFF: Object to the vague form.

WITNESS: Yes. I just can't recall.

BY MR. JONES:

Q. So you don't recall after you fell whether any part of your body was resting on the platform at that point?

A. No. It wasn't resting. Part of it may have hit and come up, but I couldn't tell you exactly what part hit what. It was that fast.

Q. I'm not asking about what part hit what. I'm asking you, after you fell, at some point, your body quit moving; correct?

A. Correct.

[123]

Q. I know you said then you got up and you walked into the locomotive cab. At the point that your body came to a stop, was any part of your body resting on the platform of the locomotive?

A. I was a little disoriented. I don't know that resting would be a word that I would use for that question. I don't know how to answer that.

Q. Well, where were your feet?

A. My feet was towards the lower half of the steps.

Q. So basically, although you didn't go all the way to the ground, your feet were at the lowest point of where you fell?

A. Correct.

Q. How tall are you, sir?

A. Six foot two.

Q. How much do you weigh?

A. Around 245.

Q. Is that pretty much what you weighed at the time of this incident?

A. I may have been a little lighter; somewhere around there.

[124]

Q. In any event, so your feet would have been at the lowest point on the steps; correct?

A. Correct.

Q. You just don't recall which step that they were resting on; correct?

A. Correct.

Q. As far as your back, you don't know which area of the steps your back was; correct?

A. No, I don't know 100-percent which area. My back was towards the upper part of the steps and platform. You know, towards the upper steps.

Q. So your back was more closer to the top, closer to the platform?

A. Yes. What part of my back, I don't know exactly where my lower back was and where my middle back was compared to that.

Q. What about your buttocks? Where were they?

A. It could have been towards the top few steps somewhere.



Q. So your buttocks were resting pretty much closer on either steps one or two?

[125]

A. I'm guessing. Like I say, I was a little dis-oriented. I really don't know exactly the position that I was in exactly to tell you.

Q. Now, you said you were disoriented. Do you have any reason why you were disoriented that day? Did you have one of your dizzy spells that day or something?

A. No. I hit my head when I fell.

Q. Oh, you did?

A. Yes.

Q. Where did you hit your head?

A. On something as I was going down. I don't know if it was the platform or the side. I hit the left side of my head.

Q. Show me on the left side of your head.

A. Right up here in the temple area (indicating).

Q. Did you have any mark or abrasion or scar for that?

A. It was sore and a little – it was bruised right there.

Q. I'm not asking if it was sore. I am asking, did it leave any scratch, mark or scar?

[126]

A. No scratch or scar, no.

Q. I mean, you saw a lot of people, including medical doctors immediately after this; correct?

A. Yes, sir,

Q. And you don't remember any of them saying, "Well, we have got to address this scratch or cut or something on your head," correct?

A. No scratch. I remember the first doctor, Mark Kasten mentioned something he could see a blemish or a bruise there.

Q. Dr. Kasten, he has been your family doctor for years; correct?

A. Yes.

Q. As a matter of fact, he treated you when you claimed that you had a head injury and memory problems back in the 1990s; correct?

A. He seen me back in the 1990s.

\* \* \*

[139]

Q. So is the next one Y? Is that what you are looking at now?

A. Y, yes.

Q. And is Y also a copy of a medical questionnaire that you filled out in conjunction with your physical examination when you applied for employment with Union Pacific?

A. That's what it looks like, yes.

Q. Do you see your signature on there?

A. I do.

Q. Do you see any problems with it?

A. Let me finish the very bottom, please.

Q. Okay. Go ahead.

A. Yes. Y is fine.

Q. Exhibits V and W, are those questionnaires that you filled out at Dr. Schoedinger's office? You mentioned V?

A. V is fine, as in "Vase." Exhibit W is fine.

Q. And I'm showing you what has been marked as Exhibit Z. Is that a questionnaire that you filled out for Dr. Thompson's office back in 2014?

[140]

A. (Reviewing document.)

Q. I think to expedite it, if you look at the last page, you'll see your signature.

A. Yes. I recognize Exhibit Z.

Q. That is something you filled out and signed –

A. Yes.

Q. – for Dr. Thompson –

A. Yes.

Q. – in 2014; correct?

A. Yes.

Q. Now, in this lawsuit that we are here on today, I know you are not a medical doctor; I just want you to tell me what injuries you are claiming you sustained as a result of this fall that you experienced on August 12th of 2016.

A. A traumatic head injury to my left side.

Q. You say a traumatic head injury?

A. Yes.

Q. Go ahead.

A. My left shoulder, my left thumb, my right pinky.

Q. Your right what?

[141]

A. Pinky. My little finger. My neck, my lower back and both knees.

Q. You are claiming that you sustained all those injuries because you slipped on a locomotive?

A. Yes.

Q. Let's start with – I will just take it in the order in which you gave it to me. This claimed traumatic head injury, how many traumatic head injuries did you have before August 12th of 2016?

A. I don't recall any traumatic head injuries. I did have a slight concussion back in 1991.

Q. Well, what do you define as a traumatic head injury?

A. I am not a doctor. I don't define it. That is what the doctor told me.

Q. So some doctor told you you had a traumatic head injury?

A. Yes.

Q. Who?

A. That is what Dr. Jordan, that I recall, said and also Dr. Gardner, Jr.

[142]

Q. Dr. Gardner, Jr.?

A. Gardner, Jr.

Q. Who is Dr. Jordan and who referred you to him?

A. Dr. Gardner, Jr., referred me to him. He is like a psychologist, and I had to do a lot of tests to see how much damage I had.

Q. So what damage do you think you had?

A. I have a memory loss, a lot of forgetfulness. I have headaches.

Q. So you remember having memory loss before August 12th of 2016?

A. Only back in 1991, and it was just for a very short period of time; and the concussion got better and I had no more problems.

Q. Do you remember forgetfulness prior to August 12th of 2016?

A. There was a little bit, just for a small period of time in 1991. That cleared up in a short period of time and got better.

Q. Did you have any headaches before August 12, 2016?

A. Yes. I have had them –

Q. Throughout your life, haven't you?

[143]

A. Well, not completely throughout my life, no. I had them with that concussion in 1991, and I have had them some with my neck issues.

Q. And you have not reviewed your medical records.

A. No. What I have seen here.

Q. Just what you saw here?

A. Yes, sir.

Q. So you remember having headaches back in 1991, and then headaches in conjunction with your neck problems? Is that it?

A. And I had some headaches when I had the TOS, when I had all these blood clots on my right side, I had a little dizziness and some headaches then because I wasn't getting the proper blood flow.

Q. Dizziness is another symptom that you have complained of for years; correct?

A. Not for years, no.

Q. So when do you think you first recall having complained of any dizziness?

A. I recall during the TOS having it some. I don't recall having it any other time.

[144]

Q. When you say you have memory problems or memory loss, who told you you had memory loss?

A. Well, I can tell I have some memory loss. My wife can you tell you I have some and doctors have told me.

Q. So what have you forgotten?

A. Just things people tell me. They tell me later, "I've already told you that three times." I can't remember phone numbers like I used to. Like I say, I took testing with Dr. Jordan for hours, and he has on record there probably what answered your question, what type of loss is there.

Q. Do you remember any of the doctors at any time doing a scan on your brain?

A. Dr. Kasten did a CT Scan, and I believe I had an MRI also.

Q. Did Dr. Kasten tell you what they found on that?

A. I think Dr. Gardner actually, I think, is the one that told me the results on those and said I had no fractures that I recall. But he said that head injury doesn't always have [145] to have that type of – seems to have the type of symptoms that I am having.

Q. Did he indicate that the scans that they did on you showed an old problem?

A. No, they did not say that. No.

Q. So nobody told you that?

A. No. And there was no old problem still. That old problem had been fine since shortly after the accident in 1991.

Q. So the only old problem you can think of is what happened in 1991?

A. As far as my head injury part of it, yes.

\* \* \*

[157]

\* \* \*

Q. So is Dr. Gornet still treating you?

A. Yes.

Q. What is he treating you for?

A. I am scheduled to have a back surgery this next month.

Q. Is that on the same disc that Dr. Schoedinger diagnosed as being herniated?

A. I don't recall Dr. Schoedinger saying any of that, so I couldn't answer that question.

Q. So you just don't know?

A. I just don't know. I can't recall.

Q. We just have to look at Dr. Schoedinger's records?

MR. WOLFF: Object to form. Calls for speculation.

[158]

WITNESS: It is up to you.

BY MR. JONES:

Q. As far as – so the treatment you received since this accident of August 12, 2016, included seeing Dr. Calfee for your left thumb and pinky finger; you saw Dr. Jordan and Dr. Gardner for this claimed traumatic head injury; you saw Dr. Gornet for your neck and low back problems, and you saw Dr. Crane; and you are not sure if you saw him for both neck or back or what you saw Dr. Crane for?

A. I went for my low back. I don't believe I mentioned my neck to him.

Q. Okay.

A. Because it was not seriously bothering me.

Q. Were you satisfied with the care and treatment of Dr. Crane?

A. Yes. I had no complaints about his care the first time. His personality was pretty dry, but –

Q. Did you think he got you a good result when he got you the next surgery?

A. I did.

[159]

Q. I'm just curious, why wouldn't you go back to him for the low back?

A. Well, that is why I went to him the first time, and I just – my daughter-in-law's family just talks so great about Dr. Gornet that I just decided to go let him take a look at me. I just heard too many good things.

\* \* \*

[175]

\* \* \*

Q. But I thought you told me you didn't see anything on that locomotive where there was any leaking oil or anything coming from the locomotive?

A. I did not see any other substance, oil, whatever leaking out of that engine, no.

Q. And so as to why this substance, whether it was a greasy, oily substance, why it was just in that particular location, just above the steps on the Union Pacific locomotive that day, you have no idea why?

A. No, sir.

Q. That is a correct statement?

A. Yes.

Q. And so you also have no idea how it got there; correct?

A. Correct.



\* \* \*

[182]

Q. Did you mark it on your accident report, by the way? Or in your logbooks?

A. I don't know if I did. I don't recall if I did or didn't. I had it on my BUs that I had from my paperwork, but I don't know if I had it when I wrote down that incident report or not.

Q. Well –

A. But that engine number rings a bell. I am pretty sure that is it.

Q. Does that – even if you don't think that is the locomotive that you were operating that day, does that depict the type of locomotive you were operating that day?

A. Yes. I wasn't operating it. It wasn't in my consist.

\* \* \*

[192]

Q. I think we can agree, if we look at those photographs, those were taken in daylight; right?

A. Yes. Well, I was still on duty in daylight. I mean, we went – it was daylight when I got off the train.

Q. So it was daylight when you got off the train. What time was that?

A. I don't know the approximate time. It seems like it was somewhere in the vicinity of 7:00. I'm unsure exactly, but it was daylight.

Q. So even your incident happened around 3:00 in the morning, you continued to work until 7:00?

A. No, I did not. I worked – we had – I don't remember if it was a short pickup or set out. I think

it was a set out to make. We were blocking out a hotshot Z train coming down the siding. At that time, I didn't know how bad I was hurt. I just knew that I was hurt. I told the conductor, "Let's just get this set out done, stay off that third unit, and let's get out of that Z train's way, and let's see how I feel after we do this, and we'll get in touch with a manager [193] then." So that's what we did.

Q. So after you walked down with them after the accident and pointed it out from the ground, you then went and both of you got back on the lead locomotive and started doing some switching?

A. I don't recall if I walked him back from the ground at that point or if I – I know I told him at that point, but I don't know if I walked him back then, or if we had a job briefing and went ahead and done our work, and then when we got stopped, I walked him back and showed him. I don't remember which, but it was one of the two.

Q. So you showed him at some time either before or after you had completed your switching?

A. Correct.

Q. Just tell me what switching you did that morning.

A. I can't recall if we set out or we picked up, but we had to make a couple of moves on a couple of different tracks and then put our train back together.

Q. Were you able to do that safely?

[194]

A. I thought I did, yes.

Q. So how many different moves did you have to make to do that switching?

A. I would be estimating because I don't recall exactly.

Q. What is your estimate?

A. More than three.

Q. So after you did this switching to either add or cut off some cars from your train, what did you do next?

A. We went, pulled up and did our amount of work there, setting up, picking up. First we pulled our train up to clear the siding, so that hot shot Z train could go north to get out of his way. Then we stopped and did all of our safety rules on setting brakes and all. We uncoupled from our train and did our two or three moves we had to make. And then when we coupled back up to the train, I contacted – hollered for the –

Q. Contacted who?

A. The MYO, Steve Hotzie at the depot. I called for him. The way this was going, I was getting stiffer and sorer. I called Steve and I [195] said, “I need you to come over here on the backtrack now”. I didn’t want to say nothing over the radio. There is so much traffic and so much congestion there. And he said, “I will be over in a minute.”

When he got over there, I told him what had happened. I took him back and showed him the grease or oil, whatever it was. And the first thing he did was stuck his work boot down on his foot, and he wiped his foot across it about two or three times and said, “Damn, that’s slick.” And I said, “Tell me about it.”

And we went back to the head end, and I told Steve, I said, “Steve, I will do whatever management wants me to do. If they want me to take this train, I will take it. But if I continue to get worse and have to be got off of it or have to be sent back home at the other end of the road, I don’t want any repercussions,

you know.” And he said, “Let me go make some phone calls and see what they want to do.”

He got on the radio and called me and said, “No, they don’t want you to take the train. If you don’t mind, pull it down to the [196] south end,” which wasn’t very far from where we was at. He said, “Would you pull it down there for me?” And I said yes. So we pulled it down to the south end of the yard and that is where we left it.

Q. So what time of the morning was it that you first contacted Steve Hotzie and told him that you wanted him to come down to meet you?

A. I didn’t look at my watch, so I don’t know approximate times.

Q. Was it light out?

A. It was not daylight yet when I called him on the radio. It took him a while to get over there. It was very busy that night, and it took him a little while to come around there and get to me.

Q. Well, when he got over there, was it light out?

A. To my recollection, no.

Q. So when he got over there, it was still dark, is that correct?

A. As I recall, yes.

Q. And you described what he did and what you told him, and then you said you then [197] proceeded to make some moves to move the train down to the other end of the yard?

A. Yes. One move. I just pulled it straight ahead, right down to the end of the yard and stopped.

Q. Then did you climb off your lead locomotive?

A. No. We didn’t have a ride. We was set on the locomotive, and it turned daylight. And MTO

Boswell at that time – I don't remember if they didn't have any vans available, someone was using them or what. But MTO Boswell came over there and I got off and took him back there and showed it to him, the grease or oil.

And then we got our stuff, and I can't recollect if he took us back to the depot or if a van showed up. But we went back to the depot at that time.

Q. Now, you talked about Mr. Boswell. When Mr. Boswell, when you took him out to show the location of where this occurred, was it daylight?

A. I believe so, yes.

\* \* \*

[209]

\* \* \*

Q. So what prompted you to believe that in 2003, when you applied for work at Union Pacific Railroad, that you could safely do the job duties of a conductor?

A. Over time, I think the injuries I have sustained on the BN Railroad, they continued to heal. I continued to feel better each year. And it got to that point that I needed to go to work. Farming just wasn't working. And I loved working for the railroad. I enjoyed my job. And I decided that is what I wanted to try to do again. And I thought I could honestly do that job safely and efficiently.

Q. Did you go back to BNSF and say, "Hey, look, I took this \$850,000 from you, and I am really not disabled anymore," and give that money back?

MR. WOLFF: Objection. Argumentative.

[210]

THE WITNESS: No, I did not.

BY MR. JONES:

Q. So when you filled out your application for Union Pacific Railroad, did you tell Union Pacific Railroad that you had had a lawsuit and you had been determined that you couldn't safely do the job duties of a conductor or a locomotive engineer?

A. I don't recall every word that I used, but I did fully let them know that I had had an injury on another railroad, and I did specifically tell them what happened and what injuries I had.

Q. So you told them that you had the lawsuit and that you had – weren't having any problems whatsoever, is that correct?

MR. WOLFF: Objection. Compound.

THE WITNESS: I don't know that I used the word "lawsuit." I don't recall that. And I don't remember what other question you asked me.

BY MR. JONES:

Q. All I am trying to find out, sir, is that you have looked at the forms and the [211] documents that you filled out for the Union Pacific Railroad and the medical questionnaires that you filled out; correct?

A. Correct.

Q. And you believe that you accurately told them everything about your past medical history and background; correct?

MR. WOLFF: Objection. Misstates his prior testimony. There is a lack of foundation. He simply answered the questions that were asked.

THE WITNESS: Yes. I told them to the best of my knowledge that I recalled and remembered.

BY MR. JONES:

Q. So all the answers that you filled out on those forms, you're saying, were accurate?

A. Yes.

Q. Did you tell the Union Pacific Railroad that you had a diagnosed herniated disc at L5-S1?

MR. WOLFF: Objection. Lack of foundation.

THE WITNESS: I don't recall exactly [212] what I told them on my lower back. I just answered the questions as they asked me.

BY MR. JONES:

Q. And you saw on the questionnaire that they asked you about your low back; correct?

A. Yes, I think I seen it on there.

Q. And you indicated that you didn't have – never had any low back problems; correct?

MR. WOLFF: Object to the form. The document is the best evidence of itself.

THE WITNESS: At that time, I don't recall that I had any serious back injury in the past. I never had surgery and it was never an issue.

BY MR. JONES:

Q. You also didn't mention on that form that you had had this left shoulder injury, did you?

MR. WOLFF: Same objection.

THE WITNESS: I don't recall if I did or didn't.

BY MR. JONES:

Q. If the forms, you would agree with your attorney, that what is recorded on the form [213] is what you filled out; correct?

A. Yes. If I did not put something on that form, I thought it was too minor, that it was never going to be an issue again to mention.

Q. So you kind of decided what you wanted to – thought was significant and what you wanted to put on the form, is that correct?

A. I decided what to put on the form by the way I felt and the way doctors addressed it when I was going to them, that I remembered.

Q. By the way, Dr. Kriegshauser did your knee surgery before this accident; correct?

A. Could you ask that again?

Q. Did Dr. Kriegshauser do knee surgery on you?

A. Yes.

Q. Why didn't you go back to see Dr. Kriegshauser about your knees?

A. I actually called him – called the office, and I recall them telling me that he was no longer there or retired.

\* \* \*



# Accident/Incident Report

Form 20810 (Rev. 01/01/2013)

Incident Number: 0816SL009

**General Incident Information**

<b>Basic</b>	Service Unit / Reporting Unit:	St. Louis SU	Inc. Date:	08/12/2016	Inc. Time:	03:50 AM
	Cost Center:	SL999	Incident Number:	0816SL009		
	Incident Type:	Personal Injury				

<b>Location</b>	Circ-7:	2C252	Station:	SALEM	Track Seg:	
	City:	SALEM	County:	MARION	State:	Illinois
	Subdivision:	SALEM SCB	AltEpost:	252	Zip Code:	
	Latitude:	0	Longitude:	0		
	On Company Property?	Yes	Zone/Track:	500		
	Specific Site Where Incident Occurred:					

<b>Environment</b>	Weather:	Clear
	Visibility:	Dark
	Temperature:	75
	Artificial Lighting:	

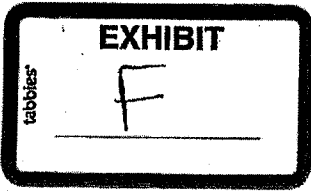
<b>RCL</b>	Was Remote Control Involved: No
------------	---------------------------------

<b>3rd Parties</b>	If not UPRR, Track Maintenance:	
	If not UPRR, Other Involved:	
	Joint Facility:	Recollectible
	Work Order Number:	

<b>Narrative</b>	While working on MPIPB-11 at Salem on the Backtrack, Engineer reported he slipped on a slick spot near the rear steps on the engineer side of UP5683 as he was tagging the 2nd (NS2564) and 3rd (UP5683) as shutdown for fuel conservation. Employee reported he slipped part ways down the walkway and down the steps. The rear 2 motors were back to back. Employee declined medical attention.
------------------	---

Claim Rep Notified:	Yes	Name:	W. Underwood
Reporting Manager:	Boswell, Marshall	Title:	SMTO
Created Date:	08/14/2016	Phone:	616-548-7101

67



**Accident/Incident Report**  
Form 20816 (Rev. 01-01-2013)

Incident Number: 0816SL009

**Injured Person - Injury Information**

<b>Injured Person</b>	Injured Person Type:	Employee on duty				
	Employee ID:	0404925				
	Name: F/AM:	Bradley J LeDure				
	Address:	575 County Highway 321				
	City/State/Zip:	Scott City Missouri 63788				
	Age:	49	Date of Birth:	04/16/1967	Gender:	Male
	Department/Function:	Trans - Thru-Freight				
	Employee Specific Job Title at Time of Incident:	Engineer Thru				

<b>Injury</b>	Body Part(s):	Arm - Lower	Nature of Injury:	Cut/laceration or abrasion
	Extent of Injury:			
	Exposed to Hazardous Materials:	No		

**Injured Person - Circumstance Information**

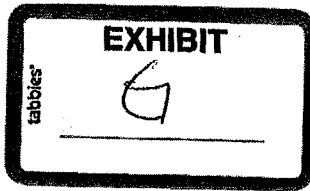
<b>Circumstances</b>	Describe what the person was doing when injured:	
	Walking on platform of locomotive.	
	Describe the location where the incident occurred:	
	Yard track.	
	What railroad equipment or other self-propelled vehicle was involved? Was it moving or standing?	
	Locomotive	
	Where was the person when injured:	
On walkway of locomotive		
What event caused the injury:		
Slipped on slick spot.		
What object(s)/surface interacted with the employee at the time of the injury:		
Grab iron / ladder.		
What was the probable cause of the incident:		
RCL involvement: No RCL involvement/usage		

**Injured Person - Employee Information**

<b>Injured Employee Info</b>	<b>FOR EMPLOYEE INJURIES ONLY</b>			
	Did the employee lose consciousness?	No		
	Facility where the employee reports to work:			
	Address:			
	City / State / Zip:			
	Shift Started:	Date: 08/12/2016	Time:	02:10 AM
	Previous Shift Ended:	Date: 08/10/2016	Time:	10:25 PM
	Supervisor Employee ID:	0418339	Supervisor Name:	Lautrup, Ernest H
	Train Symbol:			
	Gang Number:			
	Company Rep Notified:	Date: 08/12/2016	Time:	05:00 AM
	Company Rep Name:	S. Hotze	Company Rep Title:	MYO

Note: This report is part of the reporting railroad's accident report pursuant to the accident reports statute and, as such shall not "be admitted as evidence or used for any purpose in any suit or action for damage growing out of any matter mentioned in said report..." 49 U.S.C. 20903. See 49 CFR 225.7 (b).

68



8-12-2016

Was called to work the MPTPB 11  
o. 8-12-16 called for 0210. Went around to  
back track to get on train. It was just  
north of the engine service track. Had  
job briefing with conductor & told him I  
had to get shut down tags on all locomotives  
for rear two eng. When walking back &  
when crossing on third eng. had three  
point contact. It was dark where engines  
were located & there was some kind of  
film of grease or oil or something slick  
on part of walk way & top of steps.  
When walking my foot slipped on the  
slick stuff & ~~fell~~ ~~down~~ I fell  
down. Part on the walkway & part  
down steps.

Bradley J. LeDure



# Mechanical Inspection Report

EXHIBIT  
A

tabbies

70

Unit Number: UP 5683 Download taken by: \_\_\_\_\_ Craft: \_\_\_\_\_  
 Date of inspection: 08-12-16 Reason for report  Personal injury  
 Time: 13:40  Demerit  
 Inspection requested by: Scott Hawkins  Grade crossing accident  
 Location of inspection: Kell, IL  Other  
 Last PM inspection date: 04-07-16 Location: North Platte, NE

Horn operating? <input type="checkbox"/> Yes <input type="checkbox"/> No	Condition of windows <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair
Type & Model _____	Windshield wipers operating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Direction of chimes <u>D.I.C.</u>	Condition of mirrors <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair
Where mounted _____	Condition of cab seats <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair
Crossing bell operating? <input type="checkbox"/> Yes <input type="checkbox"/> No	Condition of cab floor <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair
Type _____	Sanders operational? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Where mounted <u>D.I.C.</u>	Condition of sand <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Wet
RR Equipped? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Normal flow to rail <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
RR Operational? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sand levels Front <u>ok</u> Rear <u>ok</u>
Headlight operating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Nightlights operating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Rear headlight operating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Result of air brake test <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair	
Handbrake operational? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Condition of brake shoes <input checked="" type="checkbox"/> Good <input type="checkbox"/> Repair	

Brake cylinder (travel) by individual cylinder:

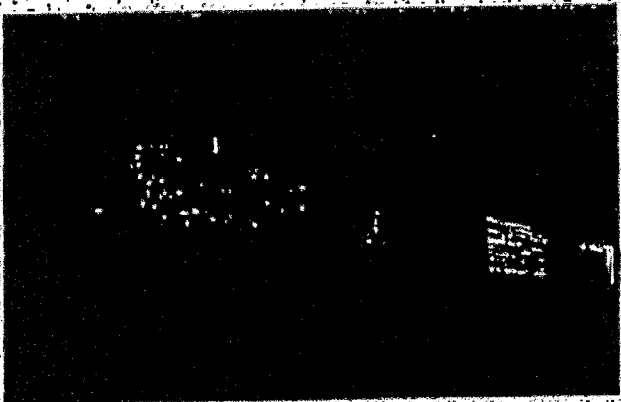
1 <u>ok</u>	R1 <u>ok</u>
2 <u>ok</u>	R2 <u>ok</u>
3 <u>ok</u>	R3 <u>ok</u>
4 <u>ok</u>	R4 <u>ok</u>

Chad Loo Emp. ID 0402408  
 Signature of employee making inspection  
Jay Eiler Emp. ID 0402318  
 Signature of employee making inspection  
 \_\_\_\_\_  
 Manager / Supervisor in charge

Repairs noted: wiped up small amount of oil on rear  
right end of walk way

# EXHIBIT

4



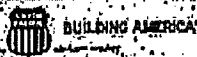
## Union Pacific Railroad Air Brake and Train Handling Rules

---

Effective Date: May 02, 2016  
PB-20282

---

These rules become effective at 0800, on Monday, May 02, 2016. At that time, all previous rules and instructions that are inconsistent with these rules become void.



**31.8.7**

Reference  
Rule  
SSI Item 5-C  
Glossary

**Locomotive Fuel Conservation and TPA Compliance**

**A. Locomotive Shutdown**

Shut down locomotive when:

- Left standing unattended for 15 minutes or longer.
- The trailing locomotive(s) in lead consist are isolated.

Locomotive should be left running when:

- The temperature is expected to drop below 35 degrees F in the next 12 hours.
- Necessary to maintain the air supply, one locomotive may be left running.
- Distributed power locomotives are actively linked.

**B. Fuel Conservation**

Trains are subject to the Fuel Conservation Speed (FCS) requirements below:

- FCS Train Operations: Exceeding throttle position 5 while in power is prohibited at a speed greater than specified below.

Fuel Conservation Speed			
Train Type:	Coal Trains (loaded or empty)	Freight Trains (including light engine movements)	Passenger and Business Car trains are exempt. Freight trains that are exempted by track bulletin.
Speed:	40	50	No FCS Restrictions

**Locomotive Consist Requirements**

Coal trains may be authorized to operate at FCS 50 by timetable or subdivision general order.

Higher throttle positions may be used, up to and including Run 8, to achieve and maintain FCS-authorized speed.

The train dispatcher may cancel fuel conservation speed restrictions.

**C. Tons Per Powered Axle (TPA)**

Trains must be operated as required by TPA limits for the current crew district as indicated on the train list (BC), and not to exceed those limits. Non-working status codes (DG, DB, PD, IB) are assigned to locomotive units which are not to be used for power, in order to comply with TPA limits and maximize fuel efficiency. Locomotives with non-working status codes on the BC must always be either isolated or shut down, depending on ambient air temperature, and according to the instructions in Part A of this rule.

When train list (BC) recommendations for locomotive shutdown/isolation are not indicated, or train tonnage is changed significantly en route, crews operating freight trains including local and transfer train movements must:

1. Determine the minimum total EPA needed for route using the following formula:

$$\text{Train Tonnage} + \text{TPA Limit (as indicated on BC)} = \text{Total EPA needed.}$$

2. Determine the minimum number of locomotive(s) which are needed to handle train tonnage without exceeding the train TPA limit.
3. Verify correct EPA is online for route by recalculating TPA:

$$\text{Total Train Tonnage (including isolated/DIC locomotives)} + \text{Total EPA} = \text{TPA}$$

4. Confirm TPA does not exceed route TPA.

**5. Start or shutdown/isolate locomotives and tag as required.**

Each head-end locomotive isolated or shut down for fuel conservation purposes must be identified by placing a fuel conservation tag on the isolation switch. The lead unit must also be tagged identifying all of the locomotives in the head-end consist that are isolated or dead. Any changes made must be noted on the lead unit's tag.

At each crew change point, inbound engineers must communicate the configuration of their head-end locomotive consist to the relieving crew, either in person or by using appropriate tags attached to isolation switches. If unable to ascertain in person from an inbound engineer if the head-end locomotives are set up according to the BC, the outbound engineer must first examine any tags attached to the isolation switch on the lead unit, and then compare that information with the BC train list for their crew district.

Adjustments to the head-end consist configuration must only be made as necessary to ensure compliance with locomotive status codes and crew district TPA limits.

If it is necessary to go through the locomotives in order to release handbrakes, the engineer must verify that the correct units are running and on line at that time.

Locomotive axles / traction motors must not be cut-out to comply with TPA restrictions. Additional locomotive(s) may be on line if the engineer determines that the train may stall due to locomotive defects, not to exceed system or subdivision maximum powered axle limitations. DG units that are used for power must be reported using the locomotive inspection reporting process at tie-up.

74

Locomotive Consist  
Requirements



The controlling unit of each consist, including DP consist(s), must not be manually isolated or shut down to comply with these instructions. This does not prohibit the isolation or shutdown of other units in remote consists.

**Note:** When calculating TPA/TPDBA, do not round off EPA/EDBA numbers used in making the calculation. After completing the calculation, if the final number is not a whole number, round up the result to the nearest whole number.

**Example:** A train has 10,469 tons and three locomotives with a total of 36.3 EPA. The detail train consist indicates the following TPA limit:

**MAXIMUM TPA BETWEEN SX263 AND NX039 IS 430, CURRENT TPA IS 289. If one unit was isolated weighing 200 tons, the train would then have 24.2 EPA, and TPA will increase to 441. This exceeds the maximum TPA for the territory to be operated over. Therefore, all three locomotives must be left on line.**

**D. Energy Management Systems (EMS)**

When the controlling locomotive on a train is equipped with an EMS, the engineer must initialize the system and utilize it to the fullest extent possible during the entire trip, consistent with safe train operations. The engineer must logout of the EMS at end of trip except for Smart Consist.

Any EMS initializing or en route failure must be promptly reported to the Mechanical Help desk and an EMS Feedback Form completed and submitted by the assigned engineer.

Superintendent bulletins will designate EMS type, location and class of train allowed to be operated with the system.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**Deposition of Thomas Kennedy**

Date: April 11, 2018

---

\* \* \*

[16]

\* \* \*

Q. Did EMD or General Motors manufacture locomotives back in 2004 that had diamond-shape patterns for its passageway surfaces?

A. I would have to research that. I did not look at that as part of this.

Q. When you last worked at EMD, that would have been sometime around 2006, 2007?

A. That would have been 2001 to 6.

Q. And during that period of time, you're aware that EMD manufactured locomotives with diamond-shaped patterns on its exterior passageways?

A. I don't honestly recall. My focus was on engines and engine systems.

Q. Are you aware of whether or not Union Pacific has ever evaluated the efficacy of non-slip surface patterns, whether it's the raised diamond or whether it's the nibs?

A. I'm not aware of any studies in that area.

Q. Let's take a look at item number 3 of the deposition notice, which asks for Union Pacific to identify the movement of Union Pacific 5683 locomotive for the period of 30 days before and after this incident, which happened on August 12th of 2016. Are you prepared to address that?

[17]

A. Yes.

Q. All right. Can you tell us generally where that locomotive had been in the 30 days before the August 2, 2016 incident reported by Brad LeDure?

A. It was off UP property.

Q. Can you be specific?

A. I believe it's on Norfolk Southern.

Q. For the entire 30 days before August 12th of 2016, the Union Pacific 5683 locomotive had been loaned out to and was being used by Norfolk Southern Railway?

A. It was being used as foreign power by Norfolk Southern.

Q. Is that an agreement that Union Pacific has to allow other railroads to use its locomotives?

A. It is an agreement that all Class 1 railroads have with each other and coordinated law by the ARR, American Association of Railroads.

Q. If I understand what you're saying is that all the big railroads, including Union Pacific and Norfolk Southern, have agreements whereby they can, and do, use –

A. You broke up.

MR. HARLA: Nelson?

THE WITNESS: Hello. You broke up. (Pause in proceedings.)

[18]

(The last question was read back.)

BY MR. WOLFF:

Q. Okay. Well, let's just continue with that. Each other's locomotives; is that correct?

A. Yes.

Q. Even though the locomotive was off property, meaning Union Pacific had lent that locomotive to Norfolk Southern, can you identify where it was while Norfolk Southern was using it during the 30 days before Brad LeDure's reported injury?

A. No. I don't have visibility into the NS system.

Q. What steps have you taken to contact Norfolk Southern to obtain the records that would show the movement of that locomotive, as well as any service and maintenance of it during the 30 days before the incident?

A. None.

Q. Why not?

A. It was on NS property and they're responsible for maintaining it. It was not – the requirements was not UP's responsibility at that time.

Q. Do you understand that Brad LeDure is a locomotive engineer who reported being injured on August 12, 2016, when he slipped on oil that was on the passageway of Union Pacific locomotive 5683 on [19] August 12th of 2016?

A. I understand that is his claim, yes, sir.

Q. All right. And he reported that, and an inspection was done that same day by the mechanical department, and they confirmed the presence of oil in that walking area. Are you aware of that?

A. I'm aware that an inspection was done.

Q. Are you aware that that was the result of that inspection, that they did confirm the presence of a small amount of oil on the rear right end of that locomotive walkway?

A. Yes.

Q. Has Union Pacific done anything to try to identify where that oil came from, and why it was on the walking area?

A. Not to my knowledge.

\* \* \*

[22]

\* \* \*

Q. And how long had Union Pacific had possession of this locomotive before the time that Brad reported his injury having occurred at approximately 3:30 in the morning on August 12th of 2016?

A. It came back on UP property the day before.

Q. What time?

A. I would have to look at the shopping – or the history on that.

Q. Okay, go ahead. And just let us know what document number you're on.

A. I don't have those in front of me.

Q. Well, feel free to go ahead and do what you need to do to get 'em in front of you.

A. Well, I'm off-site. I would have to go back to the office and research it.

Q. Do you have the written notice of deposition in front of you? We've previously marked it as Exhibit No. 8.

A. Yes.

Q. Did you actually have this document to help you prepare for today's deposition?

A. Yes.

\* \* \*

[25]

\* \* \*

Q. Would you agree with me, sir, that the railroad does keep records that shows the specific movement of locomotives on its system and what time they are in use?

A. Yes.

Q. What are those records called?

A. I don't know that. That's not part of my job responsibilities.

[26]

Q. Do you know that this reported incident took place in or near Salem, Illinois?

A. Yes.

Q. Do you know where geographically Union Pacific took back possession of its locomotive the day before the injury event?

A. I believe it's Chicago.

Q. What happened to the locomotive once Union Pacific retook possession in Chicago, the day before Brad's injury?

A. It was put in service.

Q. Okay. But can you be more specific to tell us the movement of that locomotive during that period of time?

A. No, I'm not prepared to do that. I'd have to get with Ian Richardson to determine exact placement and location and movement.

Q. Do you know the railroad track route for Union Pacific that goes from Chicago to Salem, Illinois?

A. No, that's not my area either. I know we have track, but I don't know the specifics.

Q. Did this locomotive undergo any service or maintenance from the time that Union Pacific retook possession on August 11th, until the time of the injury on August 12th?

[27]

A. I did not find anything, as I recall, in that shopping history on that. The next thing I saw was on the 13th.

Q. These locomotives run on diesel fuel, correct?

A. Yes.

Q. Approximately, how large are the fuel tanks on each locomotive?

A. Approximately 5,000 gallons; use about 4800, 4700.

Q. And how long, when those engines are in use, does it take for the engines to be refueled?

A. That varies, depending on duty cycle.

Q. Well, can you tell us for the Union Pacific 5683, when was the last time it had been fueled before August 12th at 2:30 a.m.?

A. No, I cannot tell that. That's when it goes across service tracks – any locomotive that's going across service tracks, the fueling is not cash, it's just a basic servicing.

Q. All right. So when you said that you looked at some records to try to see whether or not this locomotive had been serviced or undergone any kind of maintenance, are you talking about the shopping history records?

A. Yes.

\* \* \*

[37]

\* \* \*

A. The first responsibility is to prevent the spill. And if there was one, all employees have a responsibility to clean that up. Even – I have a responsibility if I'm on a locomotive, I see something, I clean it up even if I didn't make the mess.

Q. But I'm asking you about specifically the employees who are tasked with the responsibility for fueling and lubricating locomotives, okay? Let's talk about them for a moment, okay?

A. Okay.

Q. Do you agree that if they encounter spillage of oil, or fuel, or any kind of lubrication, that they are responsible for cleaning it up?

A. Yes.

Q. Let's take a look at these shopping history records for the Union Pacific 5683 locomotive. Have you looked to identify the first recorded inspection and/or maintenance after the incident?

A. Which exhibit are you looking at?

Q. Well, it's not marked as an exhibit, but it's the shopping records that are hundreds of pages long, and we can go ahead and break it out here in a moment, but I'm [38] looking at page 3596.

A. That's Bates?



Q. Yes.

A. 3596, yes.

Q. Let's go ahead and mark this page as Exhibit No. 9.

(Exhibit No. 9 marked for identification.)

MR. WOLFF: Let's go through these first, and then we'll decide what we're going to add as the exhibit. Right now we just have the first page.

BY MR. WOLFF:

Q. Do you see anything that reflects shopping history or regular maintenance or inspection between the dates of June 27th and August 13th of 2016?

A. No.

Q. And does that coincide with your belief that this locomotive was being provided to and used by a different railroad during that period of almost two months?

A. Yes. It was on foreign power.

Q. Where does this record show that the engine had last been used on Union Pacific on June 27, 2016? Looks like – it says North Platte service track.

A. Came through North Platte service track.

Q. North Platte, that's in Nebraska?

[39]

A. Yes.

Q. Then the next entry that we have is August 13th of 2016, which would be one day after the reported injury incident to Brad LeDure?

A. Yes.

Q. Are these records supposed to accurately indicate what kind of inspection, maintenance and repair was done, and at what location?

A. Yes.

Q. According to Union Pacific's record, this locomotive was at the Pine Bluff service track on August 13th, at 4:19 p.m.?

A. I show 8/13 of '16 at 5:30, it was placed.

Q. I see.

What does it mean when it says "This locomotive was placed in the Pine Bluff service track on August 13th, at 5:30 a.m.?"

A. That means when it was at the service track, it was entered into the computer system. That's the time stamp.

Q. And what was the reason it was inspected in Pine Bluff at that time?

A. Because it came back on UP property and our MCS, our maintenance control system, work order system, generates tasks that need to be conducted.

[40]

Q. Anytime a locomotive that has been lent out to another railroad comes back to Union Pacific, it's supposed to be inspected?

A. No. There's just certain tasks that are going to be – dependent upon how long – our system is going to automatically trigger certain inspections and maintenance and service.

Q. Why was that inspection and maintenance service not done as soon as Union Pacific retrieved this locomotive from Norfolk Southern?

A. I don't know that.

Q. Does Union Pacific have service facilities in Chicago?

A. They do.

Q. Do you also see on this exhibit that there was a request by the claims department to do a mechanical inspection?

A. Yes.

Q. Was that the main reason or the primary reason why this locomotive underwent an inspection and maintenance on this date in Pine Bluff, or was it because it was already scheduled to be done?

A. There was other tasks scheduled also.

\* \* \*

[42]

Q. Well, I'm just wondering, in your review in preparing for today, did you make any assessment as to whether or not this oil that was discovered on the walkway could have leaked out of the locomotive, as opposed to just being left there the last time it was fueled or serviced?

A. I looked at the report that Brad LeDure said he had the material on the end of the walkway, whether it was oil or not, I can't tell. Just from his report. I looked at the general architecture of the locomotive and there is nothing in location of that area that Brad LeDure reported that would have leaked out.

Q. Are you aware of whether or not anybody from Union Pacific determined that the oil must have come from another mechanical employee or service employee when they were most recently servicing that unit?

A. No.

(Exhibit No. 1 marked 19 for identification.)

BY MR. WOLFF:

Q. Do you have Exhibit No. 1 near you, which we've previously marked as the mechanical inspection report?

A. Yes, I have it.

Q. Do you have that in front of you now?

A. Yes, I do.

[43]

Q. All right. That's Document 3911?

A. Yes.

Q. Did you talk to any of those mechanical employees who did that inspection?

A. No.

Q. Item number 18 of the deposition notice asks for the railroad to tender somebody to testify about the locomotive daily inspection. Have you looked at those daily inspection cards?

A. Yes.

Q. Specifically, let's look for the date of August 11th and August 12th.

A. Okay. You looking at Bates 42?

Q. Well, actually I'm trying to figure out where they are. So what's the Bates number?

A. Forty-two.

Q. Fifty-two?

A. Forty-two.

Q. Well, my Bates 42 are photographs.

A. Yes, of the daily inspection card.

Q. Okay. Hang on just a second.

All right. When does this card show the last inspection had taken for the time of this injury?

A. Shows on July there – 8/7.

Q. And who signed it?

[44]

A. It's hard to read his name. J.L. Noos (phonetic), I think. Nuss (phonetic).

Q. Well, who did the inspection on August 10th or August 11th?

A. Don't have that.

Q. I mean, the inspection card that's on Bates stamp Document No. 42, says it's to be used for the month of July 2016.

A. Yes.

Q. Is there a different card that has August on it?

A. There would be a – when this came back, it got a new card at Pine Bluff, ultimately.

Q. I'm sorry?

A. Yeah, there would be a card for August.

Q. Okay. Where is that?

MR. HARLA: There is no card. We – we went over this with the judge. These are all the daily inspection cards we have. The judge said produce what you have.

WITNESS: This is what we have.

BY MR. WOLFF:

Q. All right. So, Mr. Kennedy, even though you are the railroad's designated representative to testify about locomotive daily inspection cards, the railroad does not have any inspection card that shows an [45] inspection that took place on August 8th, August 9th, August 10th, or August 11th, any of these dates before Brad LeDure had a reported injury, correct?

A. We don't have that because that locomotive was still on foreign property.

Q. I assume that you have done nothing to try to obtain those specific inspection cards from Norfolk Southern?

A. I have not contacted NS.

Q. What about this date of August 7th that appears on this photograph number 42, is that signed by a Union Pacific employee?

A. I would not know that. Considering that it still on Norfolk Southern, the assumption is it's an NS employee.

Q. If you ask Norfolk Southern to provide you with the – any locomotive daily inspection cards or records showing the movement of this locomotive before the date of this incident, and if you said pretty please, would you expect that they would provide those?

A. I don't know. I can only ask.

Q. You plan to do so?

A. If requested by my legal counsel here.

(Exhibit No. 5 marked for identification.)

[46]

BY MR. WOLFF:

Q. Let's take a look at what we've previously marked as Exhibit No. 5.

A. I have it in front of me.

Q. Are you familiar with an MOIS report like this?

A. Yes.

Q. Does this reflect engineer defects to locomotive UP 5683?

A. This report does.

Q. This is the same locomotive that was involved in Brad LeDure's reported injury event?

A. Yes, approximately two and three-quarter years earlier.

Q. So about three years before the date of this incident there was another report of oil being on the catwalk on the engineer's side of this locomotive?

A. That's what the MOIS report shows.

Q. And the engineer side is the same side where Union Pacific identified and wiped up a small amount of oil after Brad LeDure's reported injury?

A. I thought he had reported that it was on the very rear end. I'd have to go back and look at his actual report.

\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**Deposition of Steve Hotze**

Date: March 21, 2018

---

\* \* \*

[7]

\* \* \*

Q Are you employed, Mr. Hotze?

A Yes, sir.

Q Where are you employed?

A Union Pacific Railroad.

Q And what is your current position?

A Conductor.

Q One thing I just forgot.

(Exhibit 1 was marked for identification by the court reporter.)

Q I'm going to show you what I've marked as Exhibit 1. It's a notice of videotaped deposition for this case, Bradley LeDure versus Union Pacific



Railroad Company, and you are appearing today pursuant to this videotaped deposition?

A Okay.

[8]

Q And do you understand that your testimony is under oath just like it would be in a courtroom?

A Yes, sir.

Q How long have you been working as a conductor?

A Well, I hired in 2012 minus three years. Let's just say three years.

Q And how long have you been working for Union Pacific Railroad Company?

A Five and a half years.

Q What did you hire out as with Union Pacific?

A As a conductor.

Q And then if you would, just walk me through your job history with Union Pacific. You hired out as a conductor. Then what other positions have you held?

A In 2015 I became – I went on the managerial side, so I was an MYO manager of yard operations there at Salem until November of 2016, and then I went back as a conductor again, I exercised my seniority and went back as a conductor.

Q When about in 2015 did you become or go into management?

A April.

\* \* \*

[21]

\* \* \*

Q Do you recall where the engine was located at the time?

A Yes, sir. It was on the back track, what we call the back track there at Salem. On the south end of the back track if you want to be specific.

Q What is a back track?

A The back track at Salem is a track, you know, you've got your – Salem's got, the way Salem is set up you've got a main line and the sighting and then we've got 14 yard tracks next to – you've got the main, the sighting, track one and they go up to number 14.

There's a track that comes off of the sighting on the north end of Salem that runs all the way around the back side of the yard and runs all the way down to the south end. That track is called the back track.

Q What is the lighting like back in that area of the back track?

MR. HARLA: Objection. If you're going to refer him to a section of the track. I'm assuming [22] track is quite some distance or length.

A Oh, it's – it is quite some length. I'm just trying to think August of 2016 because we did a major yard renovation and I'm trying to think when that was done and I'm trying to picture in my head where exactly – where exactly he was stopped on the back track. You know, I don't recall what the lighting was. I guess for me to tell you I don't recall exactly what the lighting situation was where he was at at that particular time.

Q (By Mr. Beatty) Can you just tell me generally are there large overhead lights in the back track area where the locomotive was?

A There is now.

Q And do you know when those were put in place?

A That was done with the yard expansion, and but, yeah, it was done with the yard expansion, and again, I don't recall exactly where Mr. LeDure's engines were parked at the time when we had the conversation to give you, you know, more specifics.

Q And let's just say prior to this yard expansion, there were not lighting – there were not overhead lights in the back track?

[23]

A None.

Q So prior to the yard expansion, what was the lighting like?

How would you describe the lighting in the back track?

A Minimal.

Q And in the early morning hours, what's the lighting like when it's dark outside?

A Now?

Q Prior to the yard expansion?

A Minimal.

Q Would you say you can't see very well, can't see at all?

A Not well at all is what I would tell you.

Q How many – how many main lines run through Salem?

A One main. Well, what you may consider as a main line, I guess you have your main line, your actual main line and your sighting, so there's two tracks at Salem.

Q And this back track that we were talking about earlier, does that have any specific name of it or is it just called the back track?

A I'm sure it's got a, you know, it may have a [24] track number assigned to it like track 1 all the way through 14. I know the south leg of the Y and north leg of the Y have numbers assigned to it, the engine tracks have numbers assigned to it. I just always have known it as the back track. That's what everybody calls it.

Q Is it a – is it a maintenance track or service track or anything like that?

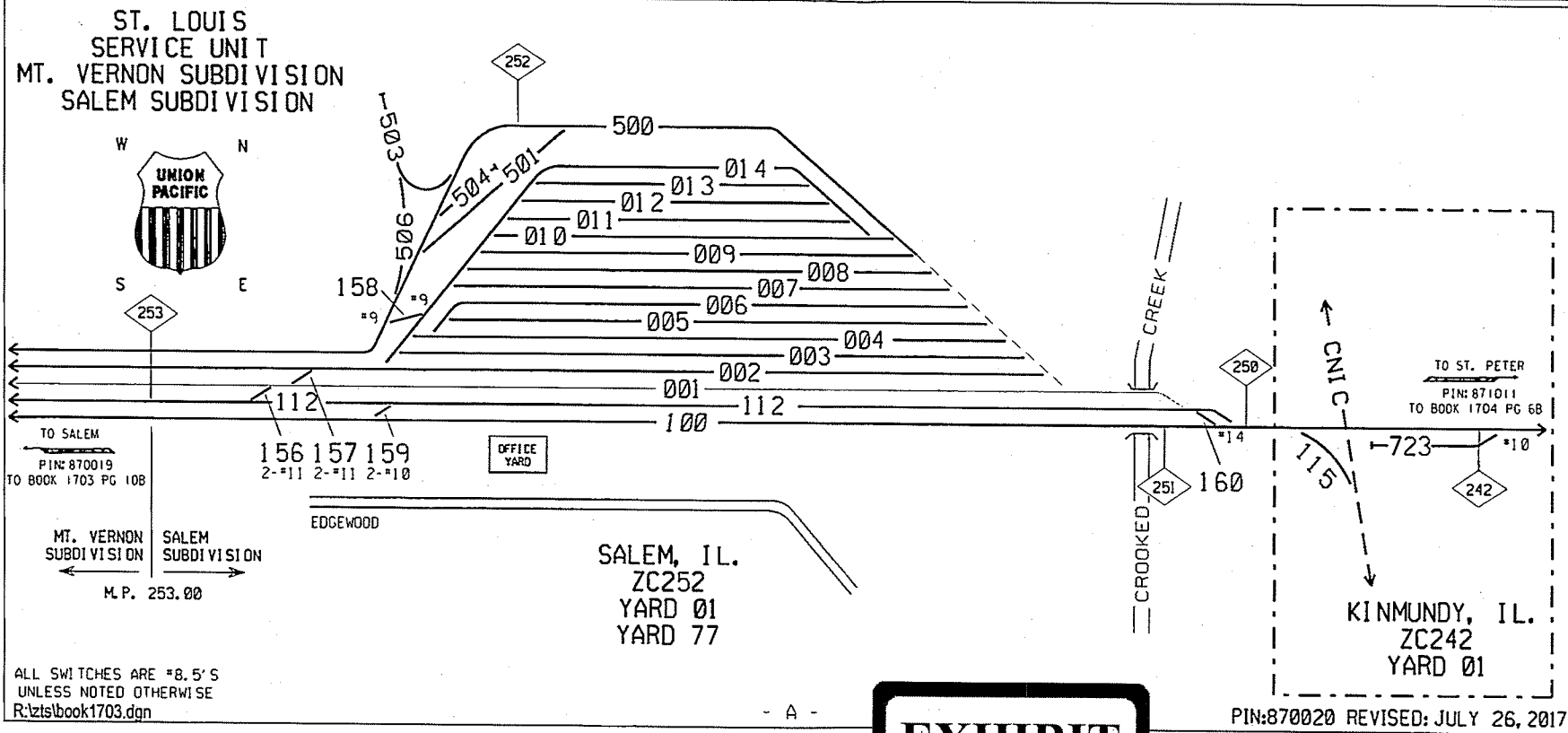
A No. It's an actual active, you know, it's an active track that you can bring trains from either direction that you can get from either end of the yard, from one end of the yard to the other end of the yard. It's mostly used for trains that do work at Salem.

Q And on that day on August 12 of 2016, do you remember where that train had come from that Brad was on at the time?

A No. I know it was a – I know it was a manifest train. I remember that it was a manifest train, but I don't recall which manifest train it was.

\* \* \*

ZTS TRK. NO. NAME SALEM, IL.	CONTRACT NO. YARD 01	ZTS TRK. NO. NAME 100 MAINLINE 112 SALEM SIDING 500 BACK TRK 501 ROUND HOUSE WEST 503 NORTH LEG WYE 504 ROUND HOUSE EAST 506 SOUTH LEG WYE	CONTRACT NO.	ZTS TRK. NO. NAME 163 X-OVER-00S	CONTRACT NO. YARD 01
001 CLASSIFICATION TRK 002 CLASSIFICATION TRK 003 CLASSIFICATION TRK 004 CLASSIFICATION TRK 005 CLASSIFICATION TRK 006 CLASSIFICATION TRK 007 CLASSIFICATION TRK 008 CLASSIFICATION TRK 009 CLASSIFICATION TRK 010 CLASSIFICATION TRK 011 CLASSIFICATION TRK 012 CLASSIFICATION TRK 013 CLASSIFICATION TRK 014 CLASSIFICATION TRK		SALEM, IL. 156 XOVER 112 - 001 157 XOVER 001 - 002 158 XOVER 500 - 014 159 X-OVER MP 252.14 M/L TO TRK 112 160 X-OVER SIMN-112	YARD 77	KINMUNDY, IL. 115 WYE TRACK 723 NOT IN USE	



- A -

**EXHIBIT**

PIN:870020 REVISED: JULY 26, 2017

BOOK 1703 PAGE -21, 11A-

LeDure/Union Pacific 004137

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**Deposition of Matthew Gornet**

Date: December 11, 2018

---

\* \* \*

[14]

\* \* \*

Q. All right. Let's go ahead and turn to Brad. And according to your records that you have provided to both sides in this case, did you first see him here in your office on November 17 of 2016?

A. Yes.

Q. When you first see a patient, do you take a history as to what's going on and then record that in these notes?

A. Yes.

Q. So referring to those, can you tell us what you noted on that first visit?

A. Well, his main complaint was low back and neck pain. He was referred from one of my former

patients. His main issues in his low back were to both sides. And I try to describe what he tells me, left greater than right with pain into his great toe, the top of his foot, and tingling in both feet. He also had some neck pain, headaches into both the neck muscles on the side of your neck, we call those the trapezius, and it was more in the left than right [15] shoulder.

He told me he felt his problem began on or around August 12th of 2016. He was working for Union Pacific as a locomotive engineer. He told me he was on the top of the train and apparently there was a slippery substance and he slipped and fell. His knee struck the step in front of him. He fell backwards. He grabbed one of the rails, and he feels during that activity, he feels he injured his low back, neck, and even his shoulder. And he's been off work at least at the time that I saw him between his injury and so forth.

Q. Did you make a note that he was already scheduled to have surgery on that shoulder within the next couple of weeks after this first office visit with you?

A. Yes.

Q. So then did you make a note that he was seeing another doctor for problems with regard to his knees as well as for a concussion?

A. Yes, sir.

MR. HARLA: I'll object, leading.

Q. Now, Doctor, just to be clear, as an orthopedic spine surgeon, did you provide any treatment to Brad for any head injury or shoulder [16] injury or knee injuries?

A. No, sir.

Q. So would you be willing to defer to the treating doctors with regard to the nature and the extent of those conditions?

A. Yes, sir.

Q. All right. Then did you ask Brad whether or not he had experienced any of these types of spine-related problems before the date of this railroad incident in August of 2016?

A. Yes.

Q. And what did you note based upon that discussion?

A. Well, he told me he didn't feel he had a significant history in his low back, but he did feel he had some issues in what he felt was 1991. He also had a previous neck surgery in the past, and that was treated, and then also another treatment again in 2011 for his neck, but he stated that after that he was doing well, working full duty until the current issue. He was also told he may have had a history of thoracic outlet syndrome.

\* \* \*

[38]

\* \* \*

(Plaintiff's Exhibit No. 6 was marked for identification.)

Q. All right. Now, the CT scan that we just used, that's been marked as Exhibit No. 6?

A. Yes, sir.

Q. So let's go ahead and talk about the surgery that you performed on Brad, if you have the operative report.

A. Yes. Somewhere. Okay.



Q. Looks like you did a two-part surgery, and they were both done in February of 2018. Let's go [39] ahead and take them one at a time and talk about in that first surgery what your plan was to do, and then we've got some illustrations that can actually explain what was done.

A. Well, the first part of the surgery is we come at the patient from the front to remove the disc irritant and provide structural stability, and then the second part, we come at them from the back and tie all that together.

\* \* \*

[68]

\* \* \*

Q. Gornet Enterprises is you and your wife?

A. Correct.

Q. Now, Doctor, when you first saw Mr. LeDure, it was back on July 17 of 2016; correct?

A. Yes.

Q. You really don't have an independent recollection of every time you saw him. You have to rely on these records; correct?

A. I think that's a fair statement, yes, sir.

Q. The history he gave you on November 17, 2016, you read that from your report; correct?

A. That's correct.

Q. Okay. You read this incident he told you about, August 12 of 2016; correct?

A. Correct.

Q. And nothing in that history says that he, during this fall, hit his head; isn't that true?

A. Nothing in my recorded history, that's correct.

Q. You did ask him about prior problems with his low back; correct?

A. Yes, sir.

Q. He said he does not recall a significant [69] history of low back pain. He feels he may have had some issues in 1991 after an injury; correct?

A. Yes.

Q. And I believe you told me in your prior deposition significant history would be continued low back complaints, continued treatment, diagnostic testing, physical therapy, off work, and disability. That would be significant; correct?

A. Yes.

Q. Okay. Now, you actually have Dr. Schoedinger's records; don't you?

A. Yes, sir.

Q. Were those sent to you by Mr. Wolff?

A. I do not know whether Mr. LeDure brought them in.

(Defendant's Exhibit No. 1 was marked for identification.)

Q. All right. Well, here. Take a look. I've marked these –

A. Thank you very much.

Q. We'll go through them.

A. Sure.

Q. But when I was here last time for your deposition, I got them because you had them on your computer.

[70]

A. Yes, sir.

Q. You know Dr. George Schoedinger; correct?

A. Yes, sir.

Q. He was an orthopedic surgeon that specialized in neck and back surgeries; correct?

A. Yes.

Q. Dr. Schoedinger first saw Mr. LeDure on June 11, 1991; correct?

A. Correct.

Q. On that date, Dr. Schoedinger got a history that he was injured while employed working in the course of his usual duties for the Burlington Northern Railroad, at which time he was working on a train which was pulling cars with a log chain. He states that the log chain came free when the attachment to the locomotive broke. He states that a portion of the chain struck him forcibly on the right side of his face as well as his anterior chest.

A. Correct.

Q. He sustained a fractured tooth, laceration of the chin, and was taken to a hospital.

A. Correct.

Q. He had exquisite pain in the right shoulder and he also felt a pop in that shoulder; correct?

A. Correct.

[71]

Q. And then if you look at the bottom of the history, Mr. LeDure indicated back in June of 1991, after this injury at the Burlington Northern Railroad, that following his return to home he began to note pain in and about his low back which has intermittently been associated with lower limb symptoms. That would be his legs; correct?

A. Correct.

Q. Same type of symptoms he told you about; correct?

A. Similar in the sense of tingling, yes, sir.

Q. Mr. LeDure, as a result of that injury, when he first saw Dr. Schoedinger was not working; correct?

A. That's what it states.

Q. And on Dr. Schoedinger's initial visit, he believed that Mr. LeDure's symptoms in June of 1991 suggested the presence of radicular irritation arising in both his neck and his lumbar spine, and he should be evaluated with cervical and lumbar MRIs; correct?

A. Yes, sir.

Q. To remain off work; correct?

A. As well as nerve tests, yes.

Q. Okay. The same type of complaints Mr. LeDure gave you when you first saw him and same type of plan, no rush to surgery, do the diagnostic testing; [72] correct?

A. Again, I think he's working him up. Yes, I think there's similarities.

(Defendant's Exhibit No. 2 was marked for identification.)

Q. That was Exhibit No., Defendant's Exhibit No. 1. Defendant's Exhibit No. 2 is Dr. Schoedinger's report of July 9, 1991 when Mr. LeDure returned after an MRI of his lumbar spine; correct?

A. Correct.

Q. Dr. Schoedinger, as a result of that lumbar MRI, indicated Mr. LeDure had a disc rupture at L5-S1; correct?

A. Correct.

Q. Also, an evoked sensory response test indicated right-sided C5 problems in his neck and left-sided L4 as well as bilateral L5 nerve root lesions; correct?

A. Correct.

Q. Okay. The L5 level and the L4 level, those were the levels you operated on; correct?

A. That was one of them, yes, sir, L4-L5.

Q. He had also, where Dr. Schoedinger indicated nerve root lesions, that was also at L5; correct?

A. Yes.

\* \* \*

[78]

(Defendant's Exhibit No. 11 was marked for identification.)

Q. Okay. Exhibit 11 is Dr. Schoedinger's report of July 12, 1994, indicating that he picked up some toys with his children and that they were not heavy, but the activity of forward flexion of the lumbar spine, he noted pain about his back for several days thereafter. He occasionally had a catch in his low back standing erect from seated position. Occasionally he noted anterior thigh pain on the right side as well as discomfort on the dorsal surface of his right foot; correct?

A. Correct.

Q. Again, low back problems with radicular complaints into his legs; correct?

A. Correct.

Q. Back on July 12, 1994 Dr. Schoedinger told Mr. LeDure in all likelihood he will have intermittent symptoms related to his back and told him – and also told him he had no specific treatment to recom-

mend, he was disabled from the standpoint of heavy industrial activity; correct?

A. Correct.

Q. Okay. So back in July 12 of 1994 Dr. Schoedinger said he couldn't return to work at the [79] railroad, another railroad, as far as working as an engineer or a conductor; correct?

A. Well, it says heavy industrial activity, but at this point that's his, what he described here. It doesn't specifically say "railroad person," but he says, "He is disabled from the standpoint of heavy industrial activity as noted previously."

Q. Okay. Mr. LeDure on the first visit told Dr. Schoedinger he worked for Burlington Northern Railroad and worked as a conductor and also as an engineer; correct?

A. Yes.

(Defendant's Exhibit No. 12 was marked for identification.)

Q. Then if you would look at Exhibit No. 12, this is an office note from Dr. Schoedinger –

A. Yes, sir.

Q. – for September 29, 1994.

A. Yes.

Q. He wanted to know whether he could have physical therapy directed to his lumbar spine; correct?

A. Yes.

Q. Because he was still having symptoms; correct?

[80]

A. Correct.

Q. Dr. Schoedinger told him, "I see no reason why he couldn't have that directed to his low back at that time"; correct?

A. Correct.

(Defendant's Exhibit No. 13 was marked for identification.)

Q. Exhibit No. 13, that's a report from Dr. Schoedinger of December 15, 1994. At that time Mr. LeDure was not working, and he noted that any activity requiring flexion, bending forward, or rotational motions of his back, side to side, caused him pain; correct?

A. Correct.

Q. He also noted pain in his right lower leg and catches in his right hip when standing erect from a seated position; correct?

A. Correct. That's what's noted.

Q. Dr. Schoedinger then again told Mr. LeDure December of 1994 that he didn't believe at the present or in the future he'd be a candidate to return to what he called heavy industrial activity and thus railroad employment; correct?

A. That's what it says here, yes, sir.

(Defendant's Exhibit No. 15 was marked for [81] identification.)

Q. Okay. Then Exhibit No. 15, this is a release Mr. LeDure signed with the Burlington Northern Railroad, and if you look at the last page of this exhibit, you see it's signed by Mr. LeDure on September 19, 1995; correct?

A. Okay.

Q. It's also signed by his attorney, Jerome Schlichter, again, the same law firm where Mr. Wolff presently works; correct?

A. Yes, sir.

Q. Then if you would look at the second page of Exhibit 15, paragraph four, Mr. LeDure stated that he has sustained injuries that will forever and permanently disable him from returning to work for Burlington Northern Railroad Company in any capacity. Do you see that? Paragraph four.

A. Yes.

Q. Okay. Now, that's dated September 19, 1995; correct?

A. Yes.

\* \* \*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE J. PHIL GILBERT  
UNITED STATES DISTRICT JUDGE

JANUARY 17, 2019

---

\* \* \*

[3]

\* \* \*

MR. VANDORN: Sure, I will come up.

So, good morning again, Your Honor. Eric VanDorn for Union Pacific. For my part of the argument, Union Pacific is entitled to summary judgment on each of Plaintiff's claims. I'm going to take them sort of in reverse order.

So, the first basis for summary judgment is on Count 2 of Plaintiff's complaint.

THE COURT: That's the LIA count?

MR. VANDORN: That's the LIA count. And the issue there is that, as a matter of law, the locomotive on which Mr. LeDure alleges he was injured was not

in use. It's clear and undisputed that under the LIA if the locomotive was not in use at the time of the alleged incident, then the absolute liability under the LIA does not attach. That does preclude the Plaintiff from bringing a straight, good old-fashioned FELA claim, but they can't bring an absolute liability FELA claim. That's the first basis.

On the second basis is that certain codes, certain regulations that the Plaintiff says UP violated simply don't apply here.

And the third basis, which is on Count 1 of Plaintiff's complaint, is that they can't make their claim under Count 1, which is the negligence claim, the FELA claim, [4] because Union Pacific did not have notice of this – the spot on the platform.

By way of background, on August 12, 2016, Mr. LeDure –

THE COURT: Yeah, just give me a little bit of the facts of this case.

MR. VANDORN: Yeah, Mr. LeDure was a locomotive engineer for Union Pacific on August 12, 2016. That day he arrived in Salem, Illinois at the UP depot at 2:10 a.m. to start his shift for that day. Importantly, this didn't happen in the middle of a shift at some pause or break in his shift. He had not been on this locomotive at all that day, the locomotive had not been used by UP that day.

THE COURT: What time did the train arrive in Salem?

MR. VANDORN: I believe it was 5 p.m. the previous day.

THE COURT: You believe? Is that in the record anywhere, or how do we know? What time did it arrive?

MR. HARLA: It came out on Union Pacific's tracks on August 11, around 5 p.m. It arrived in Salem shortly before Mr. LeDure came on duty. He was relieving the crew that had brought the train from the north to Salem. Mr. LeDure was going to take the train from Salem, Illinois to Dexter, Missouri.

THE COURT: Okay. So, the train arrived at its [5] location where this happened shortly before 2 a.m.?

MR. HARLA: Yes, in the early – Yes.

THE COURT: Okay. All right.

MR. VANDORN: It had not been used at that location until Mr. LeDure boarded it.

So, his assignment that day, as Mr. Harla said, was to take that train from Salem, Illinois to Dexter, Missouri. That's what he was doing.

THE COURT: And what time was that scheduled trip?

MR. VANDORN: Approximately 3:00 or 3:00 a.m., I believe. That's when he was getting on the locomotive to do his pre-locomotive, getting the locomotive ready to leave.

THE COURT: So, he was going to leave an hour later?

MR. VANDORN: Approximately.

MR. HARLA: Whenever he was done with – Whenever he was done with tagging the locomotive and doing the switching that had to be done before the train would leave. There are no schedules for the freight trains. The freight train would leave Salem – His train would leave Salem when everything was done regarding his inspections and making up the train.

THE COURT: Okay. Was there a train – Was he going to drive the train or was there another train crew that was going to drive it?

MR. VANDORN: He was the engineer that was going to take that train from Salem, Illinois to Dexter, Missouri along [6] with the conductor.

THE COURT: So, it came in about 2:00, and I understand they were going to – he had to tag some locomotives. And then was it – Who was going to do the inspecting? Was he the one to do the inspection?

MR. VANDORN: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MR. VANDORN: Okay. So, that train that he was – the locomotive consist – There were three locomotives in line.

THE COURT: So, basically LeDure was prepping the train for its next use in commerce, correct?

MR. VANDORN: That's exactly right. That's exactly what he was doing.

THE COURT: Okay.

MR. VANDORN: And there's a formula that they use when they have more than one locomotive to determine how many of those are going to be under power. So, Mr. LeDure used that formula and determined they only needed to use the first locomotive for power; the second two they would not use for power. And, as part of the UP's fuel conservation program, what they do is they mark or tag the locomotives that they are not going to use for power as not in use, okay, that they are not going to use those locomotives, so that crew and the next crew knows that that's the case.

[7]

So, Mr. LeDure entered the first locomotive, which happened to be a Norfolk Southern locomotive. The first two locomotives actually were Norfolk-Southern locomotives.

The third locomotive on which his alleged incident happened was a UP locomotive. So, he entered the first locomotive, the Norfolk Southern locomotive first, and that's the locomotive they were going to use for power that day. That's the locomotive that was going to be on and in use. And he tagged that one as the one they were going to use, he exited the first locomotive near the rear, entered the second locomotive, tagged it as not going to be used, shutdown tag, left through the engineer's side door near the back of the second locomotive, walked over a platform to the third locomotive. His task there was to put a tag on that third locomotive saying he was not going to use that third locomotive. As he crossed over the platform he's outside of the cab of the locomotive on the third unit, he slipped, and that's where the incident allegedly happened.

THE COURT: Were any of these locomotives still running?

MR. VANDORN: I think the testimony was that the third locomotive was idling at the time, and so his task was to shut it off and tag it, because they weren't going to use that third locomotive.

There's some other facts that I will go through [8] quickly that aren't as relative to the LIA claim, but some of the other claims, just briefly.

Mr. LeDure testified he was not rushing when he was working. He was a ten-year experienced UP engineer, he had seven years prior experience at the BNSF, wearing work boots at the time. He testified that those work boots he also used in his farming

activities. He testified he did not see any substance on the walkway before he fell, even though he said he was using his flashlight. He said that afterward he still didn't immediately see any substance on the ground, but upon close inspection he said that he saw, quote, a little something there, doesn't know what the substance was.

After the fall he didn't see any other path towards any pool of any substance, no indication of where this little half-dollar, approximately, size substance, whatever it was, came from. He doesn't know where it came from. The last inspection of the locomotive before this incident didn't find any defects on the locomotive, no leaks, nothing else, nothing on the walkways, no oil. A post inspection – Sorry, the post-incident inspection also found no defects, no sources of any leaks on the locomotive, just that half-dollar-size spot of whatever it was.

THE COURT: Did the locomotive – Did the train depart about 3:00, on schedule?

MR. VANDORN: Yeah, I don't think on schedule. They [9] had a hot train or a Z train, as they called it, that they had to get through, so they took this – And Mr. Harla probably knows this part better than I, but they essentially set this one out of the way so that a hot train could go through.

MR. HARLA: Your Honor, after this incident Mr. LeDure took the train from that location in the yard to the southern part of the Salem yard. He actually then had to do some switching.

THE COURT: Switching, I know; yeah. Okay.

MR. HARLA: And then after that was done he says that he started to feel bad, he called the manager, and at that point the manager came out. He was relieved, taken to the yard office, and another crew

later on that morning took the train from the Salem yard five miles down the main line to a siding, and the train was essentially parked in that siding when the inspection occurred with the car man.

THE COURT: Okay.

MR. VANDORN: And, so, those are the relevant facts, I think, Your Honor.

And, so, the issue is was this locomotive at the time of Mr. LeDure's alleged fall in use in interstate commerce.

THE COURT: What's the Seventh Circuit's test for being in use?

MR. VANDORN: In the *Lyle v. Atchison* case – and that's the Seventh Circuit case that we cite – it talks about [10] whether the locomotive was in use in interstate commerce. It's not entirely clear, because I don't think the Seventh Circuit has, aside from that, specifically said which factors it applies, but there's case law that suggests that you – that it's a multi-factor test. But the gravamen of it is whether this locomotive was in use in interstate commerce at the time.

And in the *Lyle* case, which is actually fairly similar circumstances there, we have got a hostler who's preparing the locomotive for use. And, as the Court there noted, he was getting the locomotive, quote, in readiness for future use on another run. That's the quote. Which is exactly what was happening here. Mr. LeDure was getting this locomotive ready for use on a future run.

THE COURT: Well, in the *Lyle* case the locomotive was in the roadhouse for inspection and repairs, wasn't it?

MR. VANDORN: That's right. And the case law has said – and I think this is pretty inconsistent

throughout the case law. You know, when they look at the two extreme, if this is a locomotive that's on the main line and running, well, that's clearly in use. If you have got a locomotive that is in a repair facility, that locomotive is clearly not in use. But, what is clear in the case law is that it doesn't have to be in a repair facility to not be in use, and we have cited several cases to that. One of them the locomotive was [11] actually in an industry doing work on a break and it was not in use; another it was on a siding out on the main line preparing for use and it was not in use.

So, the fact that the locomotive wasn't on a rep track, repair track, repair and replace track, or another repair facility is not dispositive. The issue was whether it was actually in use, as opposed to being prepared for use at the time the incident happened. And, as the Court in *Lyle* said in – You know, this, I think, is common sense, and the quote is to put a locomotive in readiness for use is the antithesis of using it. So, if you are getting it ready for use you are not using it.

Here we are actually one step more removed. The crew, including Mr. LeDure, was getting this train ready for use, was tagging it, still had to do the inspection, still had to make up the train, still had to drop cars off or pick cars up, but more than that he was not readying this locomotive that he was allegedly injured on for use at all. He was doing the opposite of that. He was tagging it as not in use because they weren't going to use the locomotive on which he was allegedly hurt.

THE COURT: Had the previous trip been completed, I presume?



MR. VANDORN: That's right; that's right. And Mr. LeDure candidly said in his deposition when he was asked, [12] you know, early on in the deposition, you know, "What were you doing? Was this train ready to go?" And he said on page 83 of his deposition, quote, that it was not set up and ready to go yet.

So, in the *Atchison* case the Court said to apply this mandatory liability in favor of one who puts an engine in readiness for use is to enlarge and extend the intent of Congress in the LIA. If this is an actual liability statute you have got to look at the actual words and limit it to the words of the statute. So, because the liability under the LIA is absolute, the circumstances under which liability attaches is accordingly limited to the words that Congress has applied in defining those limits.

And, in fact, there are also regulations that say you have to – I may talk about this more in a bit. But, you have to inspect this locomotive before you can put it in use. That's in the regs. And here we had not even gotten to the step of doing the inspection yet.

THE COURT: Okay. Now, the train came in on a trip, correct?

MR. VANDORN: Right.

THE COURT: So, it obviously had been inspected before it came. Every time a train completes a trip, does it need to be inspected before it goes out again?

MR. VANDORN: So, it's a 24-hour inspection [13] requirement, Your Honor. They have got 24 hours from when they take possession of the locomotive to inspect the vehicle. It came in at 5 p.m. the day before. They had 24 hours in which to inspect it or before the next run, and so here we are well within that time, because Mr. LeDure was out to inspect

this locomotive before he put it in use, which is presumably what he was going to do after he tagged it. He had just not gotten to that step yet.

THE COURT: Is there any case law that says that once a train completes a trip and before it starts another trip and you are in this inspection period that a train is not, quote/unquote, in use?

MR. VANDORN: Well, I mean, there's case law, and sometimes we cited where that was –

THE COURT: Be honest with you, there's cases all over the map on this thing.

MR. VANDORN: That's right.

THE COURT: Every circuit is all over the map.

MR. VANDORN: And there is some that we cite that among the factors, the Court said, they hadn't even gotten a chance to inspect this. And if you look at the rationale, the reason for the statute –

THE COURT: When was the next scheduled inspection? Of course, but he was doing the inspection?

MR. VANDORN: That's right. He would have needed – [14] He was required to inspect this vehicle before he put it in use, and so he would have done that in the normal course of what he was doing before they took off that day.

THE COURT: So, my question is when a run is complete before a next run begins, is the train in use or not in use?

MR. VANDORN: Yeah, and we have cited case law that said that is one of the factors used to determine that it's not in use. Several of the cases we cited the Court noted that the train had not yet been inspected, and because there's a requirement to inspect it

before you put it in use it's not in use before the inspection.

THE COURT: And how do you distinguish the facts from – Because the Plaintiff's counsel is going to get up and cite cases that say, "Well, it was in use."

MR. VANDORN: Yeah, and I think the point there is there's probably – and I think the cases that the Plaintiff cited, you know, there may be a case where the Court said that that's not enough; the fact that it wasn't yet inspected is not enough. Or, they point to the fact that it wasn't on a repair track. And those are among the factors that the Courts used. But none of those are enough, and nobody has cited any cases that says the fact that it is or isn't inspected is enough or the fact that it was on a repair track is enough. If you look at the totality of what was going on here, the fact that it wasn't made up yet, had not yet been inspected, [15] actually tagging this locomotive to not use, still had to make up the locomotive, and Mr. LeDure again –

THE COURT: What do you mean by making up?

MR. VANDORN: Yeah, so they had to – So, Mr. LeDure testified when he was asked was this train ready to go, and he said no. The quote –

Mr. LeDure said, quote, the train was not set up and ready to go, it was just brought into town. We had to make a couple of moves in the yard before we left.

So, what that meant was the train consist, locomotive and series of railcars that they were going to leave with, had not yet been put together. He wasn't exactly sure, but he thought they may have to either drop some cars off, get rid of some railcars, or pick some others up in this depot before it's sent out. So,

that train was not made up, the train consist was not ready to go yet, it did not have the railcars on it that they were actually going to leave and go to Dexter, Missouri with. That's what that means.

And, Your Honor, I could go through each of the cases that we have cited. You probably don't want me to do that. I'm sure you read them.

THE COURT: No, I don't want you to do that.

MR. VANDORN: I assumed not. But, that is the basis for it. And I will submit on that issue, Your Honor, that when you look at the facts of this case, the case law [16] overwhelmingly, I would submit, supports the fact that this train was not in use. There are a lot of factors, there are cases various ways. I would not say there are cases going both ways under facts similar to this. I don't think that's the case. I don't think there are any cases where you have got the facts that we have here; a train that you are actually taking out of use, a train that had not been used by this crew or was being used in the yard, a train that had not been inspected, a train that had not been made up, and a train that the Plaintiff said was not ready to go and not in use yet. I don't think there's any case law that under those facts have found the thing was in use.

THE COURT: Well, there's no bright-line test at least in the Seventh Circuit.

MR. VANDORN: Agreed.

THE COURT: What should it be? What should the test be?

MR. VANDORN: Well, I mean, I think the way that the Seventh Circuit put it is –

THE COURT: I will be asking the same question of Plaintiff's counsel, too. So, what's your answer to that?

MR. VANDORN: First of all, I think you look at the language of the statute. Is it yet in use in interstate commerce and what is the commonsense view of that, and you look at what is the rationale for this statute.

[17]

The rationale is they don't want trains barreling down a track that have not been inspected or that have a defect. On the other hand, before that train is ready to go and barreling down the track, they want the railroad to have an opportunity to do all the prep things that it needs to do before this absolute liability attaches. So, I think that's the common. Is it in use in commerce yet? If it's preparing for use, as the *Lyle* Court said, if you are getting it ready for use, well, that's the antithesis of in-use for the LIA, and so it's not in use. And then you look at these various factors. Had it been put in use that day for this trip yet? Here the answer is no. Had it been inspected yet? Here the answer is no. Had the actual train that's going to leave yet been put together? Here the answer is no. Did the actual train crew here, Mr. LeDure, think it was ready to go? He's testified no, it wasn't ready to go yet. All of those factors point to the fact that it was not in use at this time.

There is – And I just want to clarify one thing. In the Plaintiff's brief they – In their fact section they state – There's a sentence that states the train was prepared to depart UP's facility. That's not correct, again for all the reasons we talked, but also, more importantly, the fact that that belies Mr. LeDure's actual testimony where he said the train was not set up and ready to go yet.

That's our argument on the LIA issue.

\* \* \*

[43]

\* \* \*

MR. WOLFF: That is the Fifth Circuit. And I have not found and there's not been a report of any other Federal Circuit following the *Trinidad* line of cases which says what [44] they are espousing here, that only if a locomotive is part of a train, it's on the main line, it's gone away from the yard, and something happens during that time, then the locomotive is in use. And, by the way, the locomotive engineer would be sitting in the cab, would have no reason to be going outside the cab that this regulation is intended to provide absolute protection. So, that case should be disregarded. But, every other circuit that has reported on this, including the Fourth Circuit in the *Deans* case, which is really the seminal case that most of the other circuits look to, and the Eighth Circuit and the Sixth Circuit, the Courts in those cases and the District Courts in the Seventh Circuit, they all follow the *Deans* – the Deans – That's the name of the case – the factors that are involved. And there are effectively two factors or three factors for consideration. Number one is the location of this incident, where was the locomotive at the time. And these Courts pretty uniformly say that if the locomotive was in a repair facility, like a roundhouse, which is a repair shop, that is not in use.

Why is that? It's because the policy underlying this type of exception to the strict liability factor of this is that there wants to be an encouragement for the railroad to fix defective equipment and to conduct its mandatory mechanical inspections.

So, the first factor, which is a very important one [45] and would potentially be dispositive if this incident happened in a mechanical shop, they lose,

because it's no dispute that this happened in a rail yard with the locomotives already attached to railcars as part of a train and there was no mechanical repair or service being conducted at this time. So, that's the most important factor in *Deans*.

The second factor that's announced in *Deans* is the activity of the injured employee. So, even if this locomotive was out in the yard and was not in a mechanical repair facility or was on a main line or in a siding adjacent to a main line between point A and point B, but you send a mechanical officer out there because a locomotive is broken down and send somebody out there to fix it, there's something wrong with the engine, so that mechanic needs to tinker with it and he slips and falls on the same grease that Brad fell on, there's no strict liability. There may still be a negligence claim, but there's no strict liability because that injured worker was a mechanical employee. And here, of course, there's no dispute that Brad was a locomotive engineer, it was his job not to do mechanical inspections or to perform any repairs at this time, but simply to hang these tags up on locomotives that were not going to be in operation because of a fuel conservation policy, not because of some other operational reason or because the locomotive was in bad order or in disrepair, but because his job was to operate the [46] locomotive. So, the first and most important factors of the *Deans* test are in favor of Plaintiff to find in use. And then the type of employee, which I have already coupled in with the last thing, is that this was clearly a locomotive engineer.

THE COURT: Let me ask you a hypothetical.

Let's assume that this train comes in from Villa Grove – Is that where it came in from, Villa Grove?

MR. WOLFF: Yes.

THE COURT: – at 2:00 in the morning, and it wasn't scheduled to go out for two more days, so it just sat there, and then LeDure, before it gets ready to go out two days later, gets up and does – is doing his inspection. Is the train in use?

MR. WOLFF: Well, under that hypothetical what I would say, Your Honor, is apply the *Deans* test, which is he's still not a mechanical employee, he's still not assigned to do repair, and it's not located in a repair facility. So, under those – that hypothetical, and under the uniformly applied factors for in use, it would still be in use.

THE COURT: And even though it was sitting there for two days?

MR. WOLFF: Even though it was sitting there for two days.

THE COURT: Okay.

\* \* \*

[57]

\* \* \*

[MR. VANDORN:] Finally, on the LIA in-use issue, you know, the – we've got to look at the facts here, because it's multi-factorial. Not only was this engine not running, not being used in commerce, okay, it was not even being prepared for use. This locomotive – And Mr. Wolff candidly said the issue was was this locomotive in use. This locomotive was being taken out of use, they were turning it off. That's the opposite of what happened in the *Zanden* case, which is the one that Plaintiff relies on. There the crew was doing switching in the yard, so they were moving this – they were using this locomotive and engine, they took a break for lunch, they came back, he was start-



ing it up, same engine, and that was found to be in use. Here it's just the opposite. This crew hadn't used this train beforehand, and he was tagging this particular engine out of use.

THE COURT: Was this train ready for imminent use?

MR. VANDORN: It was not. It had not been made up. In other words, the railcars that were going to be transported to Missouri had not been attached yet. They had not completed their tagging of it and they had not completed the inspection that Mr. LeDure, by the way, is required to do. He's the one that looks at the inspection report. If the inspection had not been done within 24 hours, it's his duty to do that [58] inspection. That had not been done. It was not ready to use yet, so it was not in use.

And, that's all I have, Your Honor.

THE COURT: Okay. Mr. Wolff, I want to – You can come back up here a second.

Let me ask you this, Mr. VanDorn: Where does the 24-hour inspection occurrence come from? Is that an LIA regulation?

MR. VANDORN: Here I'm going to defer to my co-counsel who used to be a conductor on the railroad.

MR. HARLA: It's a regulation by the FRA. The inspection has to be done in a 24-hour period. If Mr. LeDure gets on this engine and, as Mr. Wolff has argued, there should have been an inspection, he's the one that does it. The engineers do the daily inspections, because these trains operate between diesel facilities. Salem does not have a diesel facility, Villa Grove does not have a diesel facility. It goes to the people that operate the trains every day, and that's the engineers, that's Mr. LeDure.

THE COURT: Okay. All right. Mr. Wolff, the *Deans* case – and I asked defense counsel – I’m going to ask you the same question: Was this train ready for imminent departure, which is the words that are used in the *Deans* case?

MR. WOLFF: So, it is used in the *Deans* case, but that is not one of its factors, and this train was not [59] imminently ready, although it was a series of locomotives that were coupled together. And I want to correct a statement that I think was just inadvertent by defense counsel. I understand that the record clearly reflects there were railcars coupled to those locomotives. That’s not to say that there weren’t additional cars that were still going to be added, but this was not hopping on the train and ready to go, but it doesn’t matter under the *Deans* test or any of the cases that apply those types of facts. So, even though *Deans* did not have those facts, the cases that have applied *Deans* since 1998, when that was decided, including the *Underhill* case that we reported to Your Honor from Indiana in 2006, where the locomotive wasn’t even running, was still found to be in use.

So, only *Trinidad* requires that the train either be in use or be imminently prepared. So, that would be a departure from the departure that we have from *Trinidad* across the country outside the Fifth Circuit.

With regard to the inspection of the locomotive, the railroad has not presented any evidence to show that this locomotive was inspected before it was given to Brad. Even though it had assigned another Union Pacific crew to bring it from Villa Grove and even though Union Pacific by their own testimony just received that locomotive back from the NS, how can they not have done an inspection of that locomotive when they got it back from another railroad, or how

could they not [60] have made sure that an inspection had been done in the previous 24 hours?

\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

---

Case No. 17-CV-737

BRADLEY LEDURE,  
*Plaintiff,*

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant.*

---

**Deposition of Marshall Boswell**

Date: March 28, 2018

---

\* \* \*

[6]

\* \* \*

Q. Good morning, sir.

Would you please state your full name for the record.

A. Marshall Bradley Boswell.

Q. And where do you live, sir?

A. [REDACTED]

Q. You live in Minnesota, but we're here today in Omaha, Nebraska, correct?

A. Correct.

Q. Are you currently employed with the Union Pacific Railroad Company?

A. Yes, I am.

Q. What's your current position?

A. Senior Manager, Terminal Operations.

Q. Today you're appearing as a representative speaking on behalf of the Union Pacific Railroad with respect to a few topics that were identified in a written notice of deposition; is that correct?

[7]

A. That's correct.

(Whereupon, a document was marked as Deposition Exhibit No. 1 for identification.)

BY MR. WOLFF:

Q. Let me hand you what I've marked as Exhibit No. 1 and ask you to take a look at that. And can you confirm that those are the topics on which you're appearing here today by agreement?

A. They are.

Q. Now, today you're a senior manager of terminal operations. Is that also known as an MTO?

A. It's a senior MTO, correct.

Q. Were you working in that title on the date of Brad LeDure's reported injury in August of 2016?

A. That position is now an MTO position. We've had a company retitling.

Q. What was your job on the date of the incident?

A. Senior Manager, Terminal Operations.

Q. What your territory at that time?

A. Salem, Illinois.

Q. Is that considered to be the territory where Brad was injured?

A. Yes, it is.

\* \* \*

[9]

\* \* \*

Q. And the incident itself was reported to have happened sometime around 3:30 in the morning?

A. Around between 3:00 and 3:30, correct.

Q. Given the fact that you're appearing today as the railroad's corporate representative, can you tell me what you've done to prepare to address these topics?

A. I have –

Q. Other than meeting with the railroad's attorney.

A. I have reviewed the – the rules associated with this, the incident report, the manager's report, the photographs, and this document here.

Q. Have you done anything else to prepare?

A. I've also talked to the carmen who inspected the locomotive, Chad Loosh (phonetic) and Jay Eschnier. Spoke to Mr. Hotze on the day of the incident. And talked to Mr. Ernie Lautrup, who obtained the 52032, which I also reviewed.

Q. The 52032 is the employee's report of personal injury?

A. Correct.

Q. Have you talked to Mr. Hotze since the date of the incident about this?

A. No, I have not.

\* \* \*

[17]

\* \* \*

Q. And when you got to the scene, who did you talk to first?

A. Mr. LeDure.

Q. And tell me, please, what he told you.

A. I first asked if he needed medical attention. He said he did not. I asked him – then asked him if he could show me where he had – what had happened and where it had happened.

Q. What did he tell you?

A. He told me that he had slipped on that Union Pacific motor, and that it was a slick spot on the walkway.

Q. So where did you meet with him when he told you that?

A. The south end of the Salem yard.

Q. Is that the location generally where this incident reported to have taken place?

A. It was reported to have taken place a little farther north in the yard.

Q. Was the locomotive, along with the rest of the train, moved after the incident?

A. To my knowledge, yes.

[18]

Q. Was that done in order to clear up the main line?

A. I do not recall that.

Q. In any case, by the time you arrived at the locomotive you said it was sometime around 6, 6:30 in the morning?

A. Correct.

Q. How far did you have to drive that it – when you didn't show up until that time?

A. I lived on the other side of Salem, maybe three-and-a-half miles.

Q. In any case, was it light when you showed up?

A. It was still dark.

Q. So what did you do when you got there after talking with Brad? Did you talk to anybody else?

A. Brad was the main point of contact there.

Q. What did you do after that?

A. After he showed me where it was, I mounted the locomotive and searched for anymore potential slick spots in the area. After not seeing any, I followed Mr. LeDure and his conductor back around to the yard office.

Q. Back up with me if you will. Did you actually walk out to the Union Pacific locomotive 5683 to identify the oil on the platform of the locomotive?

A. Yes.

[19]

Q. Did you put your hand on it?

A. No.

Q. Did anybody in your presence put their finger on it to fry to identify what the substance was?

A. No.

Q. How could you tell that it was oil?

A. I couldn't determine what the substance was.

Q. Well, what did you do when you got there? Did you just look at?

A. Just looked at it.

Q. What did it look like to you?

A. Looked like a dark spot on the walkway.

Q. And what did you do to try to determine what it was?

A. I did not try to determine what it was. My main focus was Mr. LeDure's condition.

Q. Okay. And he told you at that time he didn't think that he needed to go to the hospital, correct?



A. Correct, did not want to seek medical attention.

Q. You understand that sometimes employees can have an event where they don't seek medical treatment immediately, but will seek medical treatment at a later time?

A. That's possible.

\* \* \*

[21]

\* \* \*

Q. And what's Jay's last name?

A. I'm going to butcher this. Eschnier, Eschnar (phonetic).

Q. Can you spell it?

A. I believe it's E-S-C – or E-S-C-H-N-I-E-R, but I'm not a hundred percent on that.

Q. Did you ask Mr. Eschnier to try to analyze, or evaluate it, or touch it, or smell it, or do something to try to figure out what in the world it was?

A. No, I did not.

Q. Did anybody for the railroad undertake any further effort whatsoever to try to identify what that slippery substance was?

A. No.

Q. Why not?

A. It was a very small isolated substance of whatever it was. I couldn't determine even where it had come from.

Q. Does the railroad agree that even a small amount of slippery substance like that can be hazardous?

MR. HARLA: Objection, speculation. Go ahead, answer, if you can.

THE WITNESS: I would say no, if you're following the rules.

\* \* \*

[57]

Q. Did you ask them whether or not they had ever talked to Brad?

A. They had not said one way or another.

Q. Did you ask them when you talked to them yesterday why they didn't try to figure out where the oil had come from to begin with?

A. There was no other indication of an oil leak or any other – it almost looked like it had been put there, according to them.

Q. According to them.

Can you point out where in the mechanical inspection report that that's indicated?

A. There's nowhere on there it specifically says that.

Q. Did you ask those carmen whether or not when they did this inspection a year and-a-half ago, whether or not they kept any other notes of this?

A. I did not.

Q. And so now what you're saying is that after you had a chance to talk to them yesterday, less than one day before you're giving your deposition, that you're telling us now that they have suggested to you that it looked like somebody had simply put the oil on that locomotive walkway?

A. Correct.

\* \* \*

SEVENTH MONTH>>>>>>>

NO. 495653

USE THIS FORM FOR THE EIGHTH MONTH>>>>>>>

MONTH JULY 2016 UNIT NO UP 5683

FULL SIGNATURE

*[Handwritten signatures and initials]*

118209  
118137  
144025  
130354  
4467  
352420  
227325  
411841  
403457  
405621  
174144  
148113  
1409645  
2401364  
1880932  
3 Rome  
5 Wain

LOCATION	DATE	TIME	OK	N/C	QUAL M.I.	FULL SIGNATURE
Kenova, WV	7-9	14:15	✓			R.C. Hayes II
10234	7-12	12:19	✓			S. Dato
10451	7-13	10:30	✓			C.S. Kohari
10377	7-16	4:42	✓			G. Plow
12208	7-17	6:00				Ellis
Wil, WV	7/18	11:05 AM	✓			T.B. Rowel
Wil, WV	7/19	08:30 AM	✓			T.B. Rowel
Wasson, WV	7-23	3:35 P	✓			H. D. Triplett
Maydenough	7/24	2:00 A				By Skypman
Rosade	7/26	6:15 P				
10451	7/28	10:11				R. B. Landwehr
PEWLER	8-3	04:30				M.K. Rutherford
10451	8/7	7:00 P	✓			J. Stone

- BRAKES
- MAIN RESERVOIR
- BRAKE HEAD
- BRAKE SHOES
- PISTON TRAVEL
- INDEPENDENT BR
- CAB CONDITIONS
- AIR CONDITIONER
- REFRIGERATOR
- WEATHER STRIP
- INTERIOR LIGHTIN
- HEAD-END TELEM
- TOILETS
- TRASH
- SEATS
- DISTRIBUTED POW
- ELECTRICAL
- TRIPS GROUND RI
- AT 0 MPH
- WHEEL SLIP IN MC
- DYNAMIC BRAKE I
- DYNAMIC BRAKE T
- WARNING LIGHT C
- NOT LOADING AMI
- PACESETTER NIVE
- WILL NOT MAKE T
- TRACTION MOTOP
- ENGINE PROBLE
- LOW OIL BUTTON
- OVERSPEED TRIP
- CRANKCASE PREI
- OTHER ENGINE PI
- ENGINE HAS UNU
- EXHAUST LEAKS
- ENGINE HUNTS B
- ENGINE HAS HOT
- ENGINE MAKES B
- MISCELLANEOUS
- SANDERS
- WINDSHIELD WIPI
- SAFETY DEVICES
- FIRE EXTINGUISH
- OIL ON WALKWAY
- GRAFFITI
- HORN/BELL
- RADIO
- CODED CAB SIGN
- FLAGGING KITS
- WALKWAY LIGHTS
- BENT/MISSING ST
- SPEEDOMETER N
- BY 0 MPH AT 0 MI

133

**EXHIBIT**  
 4

**INSPECTION AREAS**

- BRAKES**
  - WASH PROTECTANT APPLICATION
  - SHAKE BEAC
  - SHAKE SWITCH
  - PISTON TRIP
  - NON-DEPENDENT BRAKE
- CAR CONDITIONS**
  - AIR CONDITONING
  - REFRIGERATOR
  - WEATHER STRIPPING
  - INTERIOR LIGHTING
  - HEAD END TELEPHONE
  - TRASH
  - SEATS
  - INTEGRATED POWER SYSTEM
- ELECTRICAL**
  - TRIP CHECKING DELAY IN MOTORING (DYNAMIC) ON BOTH AXLES AT 0 MPH
  - TRIP DELAY IN MOTORING (DYNAMIC) ON BOTH AXLES AT 0 MPH
  - DYNAMIC BRAKE NOT WORKING (NO AMPERAGE) (T)
  - DYNAMIC BRAKE TOO HEAVY ON (DYNAMIC) (T)
  - WARNING LIGHT COMES ON (T)
  - NOT LEAVING AMP NOW (INSUFFICIENT) (DYNAMIC) FREQUENTLY
  - PROTECTANT NOT
  - WILL NOT MAKE TRANSITION AT 0 MPH
  - TRACTION SWITCH (SMOKING) LOCKED UP (ALL) WHICH AXLE (1-2)
- ENGINE PROBLEMS - ENGINE (DES ACCOUNT)**
  - LOW OIL BUTTER TRIPPED
  - OVERSPEED TRIPPED
  - CHANGING AIR PRESSURE PROTECTOR TRIP
- OTHER ENGINE PROBLEMS**
  - ENGINE HAS UNUSUAL NOISE OR VIBRATION
  - ENGINE OIL LEAKS
  - ENGINE HEATS BADLY
  - ENGINE HAS HOT ENGINE ALARM
  - ENGINE MAKES BLACK SMOKE / FIRE / OIL OUT OF STACK (BT O)
- MISCELLANEOUS**
  - SAFETY
  - WORN/REAR WORN
  - SAFETY DEVICES
  - POW. EXTINGUISHER
  - OK ON WALKWAY
  - OSAFETY
  - REFRIG
  - EXCEED CAR SIGNAL
  - FLAGGING KITS
  - WALKWAY LIGHTS
  - FRONT SIGNALS NOT WORKING AT 0 MPH FAST SLOW (T) (S)
  - BY 0 MPH AT 0 MPH

- SHAKE PIPE PRESSURE
- SHAKE HOLDING
- FLAT SPOTS
- ALTERNATE BRAKE
- LAND BRAKE
- HEATER
- ALICE BIK PIPE VENT
- RAIL BIK PIPE VENT
- DOORS
- WINDOWS
- DRY
- NOISE LEVELS
- INTEGRATED LOW VOLTAGE DISPLAY

**UNION PACIFIC RAILROAD  
INSPECTION RECORD / FORM**

UPRR 2864  
REV. 10/17

Federal law requires that this form remain on the locomotive. It will be removed only at the UPRR day inspection. Each locomotive must be inspected each calendar day that it is in service. The location and time of the inspection, whether the locomotive is compliant or non-compliant and the full signature of the inspector must be provided as indicated on this form. All non-compliant tags must be kept on file at the repair facility for 90 days.

**RULES APPLIED**

- 31.2.1 Inspection Requirements
- 31.8 Locomotive Inspections and Procedures
- 31.8.1 Conducting a Locomotive Daily Inspection
- 31.8.2 Compliance Required Daily Inspection Form
- 31.2.5 Locomotive with Non-Compliant Classification Rate to Motor
- 31.2.6 Defects Other Than Non-Complying Conditions
- 31.2.7 Major Internal Defects
- 1.40 Reversing Engine Defects

**POWER DEFECT SCREEN**

POWER DEFECT SCREEN  
 YES NO  
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

MONTH: JANUARY UNIT NO: UP288  
 LOCATION: DATE: TIME: ON: N/C: MI: QUAL: FULL SIGNATURE: MUST HAVE SIGNATURE

MONTH: JANUARY UNIT NO: 28888  
 LOCATION: DATE: TIME: ON: N/C: MI: QUAL: FULL SIGNATURE: MUST HAVE SIGNATURE

MONTH: JANUARY UNIT NO: 28888  
 LOCATION: DATE: TIME: ON: N/C: MI: QUAL: FULL SIGNATURE: MUST HAVE SIGNATURE

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**SCOTT S. HARRIS**  
Clerk of the Court  
(202) 479-3011

December 15, 2021

Mr. Nelson G. Wolff  
Schlichter Bogard & Denton LLP  
100 South Fourth Street  
Suite 1200  
St. Louis, MO 63102

Re: Bradley LeDure  
v. Union Pacific Railroad Company  
No. 20-807

Dear Mr. Wolff:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition. Justice Barrett took no part in the consideration or decision of this petition.

Sincerely,

/s/ SCOTT S. HARRIS

**Scott S. Harris**, Clerk