

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

 ORIGINAL

N.O. TURNER, JR.,  
Plaintiff,

vs

CA No.: 3:09-183-CMC

CSX TRANSPORTATION, INC.,  
a Virginia Corporation,  
Defendant.

D E P O S I T I O N

WITNESS: RICHARD TODD BARTON  
DATE: Tuesday, August 25, 2009  
TIME: 10:15 a.m.  
LOCATION: Law Offices of  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive,  
Suite 109  
Columbia, South Carolina  
TAKEN BY: Attorneys for the Plaintiff  
REPORTED BY: GINA M. SMITH  
Certified Shorthand Reporter  
Registered Professional Reporter

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1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF

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(INDEX AT REAR OF TRANSCRIPT)

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1                   STIPULATION: It is stipulated by  
2 and among Counsel that this deposition is being  
3 taken in accordance with the Federal Rules of Civil  
4 Procedure, and that the deponent does not waive the  
5 right to read and sign the deposition transcript.

6                   - - - - -

7                   RICHARD TODD BARTON, being first  
8 duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. APPLETON:

11           Q. Mr. Barton?

12           A. Yes.

13           Q. Can you hear me okay?

14           A. Yes, sir.

15           Q. My name's Randy Appleton. I represent  
16 N.O. Turner in a case we have filed concerning some  
17 injuries he suffered June 4, 2007.

18                   You may know something about the incident.  
19 I'm going to ask you some questions about what you  
20 know. If you don't understand something I ask you,  
21 just let me know that so I can rephrase my  
22 question. Okay?

23           A. Okay.

24           Q. First thing I need is your full name and  
25 your residential address.



1 A. Yes, sir.

2 Q. You said that you were in LaGrange,  
3 Georgia, for about three months and got cut off  
4 when you were initially hired. What craft did you  
5 initially hire into?

6 A. Trainman conductor.

7 Q. And then you were cut off three months,  
8 and then after those three months you went to  
9 engineer training school at Huntington?

10 A. I worked in LaGrange the whole time  
11 training as a trainman conductor, and what little  
12 time I was marked up, yes, I was a trainman  
13 conductor in LaGrange. When I got cut off, I'd  
14 already been set up to go to engineer school. So I  
15 really wasn't out for three months.

16 Q. And if you were hired on in November of  
17 '90, did you go to engineer training school in '91?

18 A. Yes.

19 Q. Do you have any idea when in '91 it would  
20 have been?

21 A. No, sir, not exactly. I would have to  
22 guess the end of February, March.

23 Q. And then you trained in Savannah. Would  
24 that also have been in '91?

25 A. Yes.

1 Q. And you said the end of February you went  
2 to Hamlet to finish training as a locomotive  
3 engineer. Would that be February of '91?

4 A. No, no, no. I went to Hamlet --

5 Q. I just want to get a context timewise when  
6 you were in Hamlet.

7 A. Went to Hamlet the end of June '91.

8 Q. And so you worked in Hamlet as an engineer  
9 from June of '91 until your promotion in April of  
10 2003?

11 A. Yes, sir.

12 Q. Did you work in the yard in Hamlet or on  
13 the road when you were an engineer?

14 A. Mostly road. I have worked a yard job a  
15 couple times off of what we call an extraboard, but  
16 not on any -- I did not work any particular job,  
17 per se.

18 Q. Any training either with the rail road or  
19 outside the rail road on CSX's maintenance of  
20 weight standards or procedures or policies?

21 A. No, sir.

22 Q. Any training concerning any type of  
23 governmental regulations or policies concerning  
24 maintenance of weight standards?

25 A. No.

1 Q. Do you know N.O. Turner?

2 A. No, sir, not personally I don't.

3 Q. Have you ever talked to him about this  
4 incident?

5 A. No.

6 Q. Have you ever talked to any of his crew  
7 members about this incident?

8 A. No, sir, not that I recall, no.

9 Q. Take any photographs concerning this  
10 incident?

11 A. I did take a couple photographs, yes, sir.

12 Q. Did you complete any documents concerning  
13 this incident?

14 A. No, sir.

15 Q. Did you take measurements concerning the  
16 incident?

17 A. Yes, sir.

18 Q. Did you do anything else in connection  
19 with your investigation of this incident other than  
20 take photographs and measurements?

21 A. I guess I was a model.

22 Q. A model? Your legs are in the  
23 photographs?

24 A. That is correct, sir.

25 Q. Who took those photographs, then, if your

1 legs are in them?

2 A. That I'm not positive of.

3 Q. Tell me where you were when you found out  
4 about Mr. Turner's incident and how you found out  
5 about it.

6 A. I was in my office in Florence, South  
7 Carolina. I was contacted and told to get on a  
8 conference call.

9 Q. Who contacted you?

10 A. Division office. I'm not particularly  
11 sure who contacted me at that time, but it would  
12 have been somebody out of division office.

13 Q. And who did you get on the conference call  
14 with?

15 A. Division office and several of the  
16 officials on the Florence division.

17 Q. Do you remember who those officials were?

18 A. Not particular names, no. It would just  
19 have been people in general. It was a common  
20 practice to get everybody on the bridge and discuss  
21 incidents and stuff.

22 Q. Well, tell me what you were told during  
23 that telephone conference.

24 A. Basically it was in general that we had an  
25 employee in Columbia, South Carolina, that had

1 possibly slipped and had a personal injury.

2 Q. Were you told where he had slipped?

3 A. It was reported at an industry in  
4 Columbia. I didn't know where the industry was.

5 Q. Were you told why he slipped?

6 A. No.

7 Q. Were you told anything about his potential  
8 injury?

9 A. No, sir.

10 Q. Were you given any other information  
11 during that conference call?

12 A. Not that I can recollect.

13 Q. Did you have any discussions concerning  
14 Mr. Turner during that conference call?

15 A. Everything would have been in general,  
16 just employee name, that he had slipped, whatever  
17 the case may have been, and that there was a  
18 possible injury involved.

19 Q. Anybody during that conference call  
20 indicate that they knew Mr. Turner?

21 A. No, sir, I don't recall that.

22 Q. You get a conference call in your office.  
23 About how long does it take?

24 A. Would you repeat your question? I didn't  
25 quite understand what you was asking.

1 Q. I wanted to know about how long the  
2 conference call took that you initially received in  
3 your office in Florence.

4 A. I would have to guess. Probably 15, 20  
5 minutes.

6 Q. And once it was over with, what did you  
7 do?

8 A. Got prepared.

9 Q. Excuse me?

10 A. Got prepared and went to Columbia.

11 Q. When you say got prepared, what did you  
12 need to do to get prepared?

13 A. Basically give my yard master instructions  
14 that I was leaving, make sure I had everything that  
15 I may need, and go.

16 Q. And why is it that you were called to  
17 respond to this injury when you were the train  
18 master over at Florence?

19 A. It was just I was close to Columbia, I  
20 guess, than a lot of people were.

21 Q. And were you given any specific  
22 instructions as to what you were to do when you  
23 arrived at the scene during the conference call?

24 A. No, sir.

25 Q. You drove a vehicle to the site?

1 A. I did.

2 Q. Did you go by yourself?

3 A. Yes, sir.

4 Q. Did you go straight from your office in  
5 Florence to the site?

6 A. Yes.

7 Q. And when you arrived, who else was there?  
8 Do you recall?

9 A. Mike Wiley. Let's see. Serge Emelkin,  
10 Glenn Tarte, Matthew Sowers, Tom Wolfe, and Mark  
11 Mayo, Bill Egan.

12 Q. I just took the deposition of Mr. Sowers.  
13 He told me that he was with Wolfe and Russ McDonald  
14 when they got the call. Was Russ McDonald at the  
15 scene? Do you recall?

16 A. No, sir, I don't.

17 Q. Do you recall what each of those gentlemen  
18 were doing when you arrived?

19 A. No, sir.

20 Q. You arrived at the scene, and where were  
21 these -- the gentlemen that you just identified?

22 A. Around the location of the incident, just  
23 in general.

24 Q. Were they all standing between the train  
25 and -- or beside the train where the injury

1 occurred?

2 A. That I can't answer definitely. I'm sure  
3 it was probably a couple of them, but I can't  
4 answer that definitely.

5 Q. Do you remember if the crew was still  
6 there?

7 A. I don't recall seeing the crew.

8 Q. And tell me what you did once you arrived  
9 at the scene.

10 A. Once I got there, I attempted to -- well,  
11 I took a couple pictures, but the camera died on  
12 me. I believe I got a couple of them. And I took  
13 the measurements of the obstruction and posed in  
14 front of it for a picture.

15 Q. But you don't remember who took the  
16 photograph that you were standing in?

17 A. No, sir.

18 Q. And do you have there before you the  
19 personal injury report or the packet that's been  
20 produced in this lawsuit?

21 MR. MOON: I've got it here.

22 THE WITNESS: Mr. Moon has it, yes.

23 MR. APPLETON: Mr. Moon, can you show that  
24 to Mr. Barton so I can ask him a couple questions?

25 MR. MOON: Sure.

1 MR. APPLETON: Thanks.

2 THE WITNESS: What am I turning to?

3 BY MR. APPLETON:

4 Q. I'm trying to get the page right now.  
5 There's some photographs in the booklet that are  
6 on -- looks like they're the seventh page in and  
7 then eight, nine -- maybe six pages in.

8 A. I've got six, eight, nine.

9 Q. Well, I'm looking at two, four, five --  
10 looks like there's eight photographs in total. Are  
11 those the photographs that you just described for  
12 me that you took before your camera died and then  
13 the ones you posed in?

14 A. I see one, two, three, four, five, six,  
15 seven pictures.

16 MR. MOON: I'm missing a page out of my  
17 thing I think I just handed him, Randy. I didn't  
18 bring my file down here in the conference room.

19 MR. APPLETON: Okay.

20 BY MR. APPLETON:

21 Q. Did you take the photographs that are in  
22 the packet there before you, Mr. Barton, or did  
23 somebody else take them?

24 A. I recall taking a couple of pictures, you  
25 know, two or three at the most.

1 Q. Do you see down beneath the bottom right  
2 corner of the photographs, it has a page of 28?

3 A. Yes.

4 Q. Which pages of 28 do you have?

5 A. Zero --

6 Q. I think that may be a six. Is the next  
7 page 7?

8 MR. MOON: That's actually six. I've got  
9 him six. I've got seven, eight, nine, and ten. I  
10 think I've got them all now, Randy.

11 MR. APPLETON: Yeah, that's all I have.

12 BY MR. APPLETON:

13 Q. Can you tell me which of those photographs  
14 you took, Mr. Barton?

15 A. I can't tell you definitely which ones I  
16 took, whether these are the ones I took or someone  
17 else took.

18 Q. I just want to make sure that I've got  
19 access to all the photographs that were taken. To  
20 me it doesn't make a whole lot of difference who  
21 took them.

22 A. No.

23 Q. Do you know of any other photographs being  
24 taken other than what's there in that packet?

25 A. No, sir, I don't.

1 Q. If you turn to page 9 of 28, that's a  
2 photograph that has some measurements on it?

3 A. Yes, sir.

4 Q. Are those the measurements that you took?

5 A. Yes, sir.

6 Q. Can you go through each one of those  
7 measurements and tell me what you were measuring to  
8 and from just so there's no confusion about what  
9 they represent?

10 A. Okay. The ten-feet six-inch measurement  
11 was from the switch stand to the obstruction. The  
12 98-inches measurement is the top of the pipe from  
13 one end to the other. Nine inches is from the top  
14 of the pipe to the ballast line. The 23- and  
15 25-inch measurement are also from the top of the  
16 pipe to the ballast line.

17 Q. Now, did the pipe or the top of that fence  
18 extension, did that extend all the way out to the  
19 cars?

20 A. It extended out to the end of the  
21 crossties.

22 Q. And other than taking the measurements and  
23 the photographs that you described, did you  
24 participate in the investigation of this incident  
25 in any other way?

1 A. No, sir, just like I've described here.

2 Q. Did you formulate any opinions as to  
3 whether or not Mr. Turner had violated any company  
4 policies or rules in connection with this injury?

5 A. No, sir.

6 Q. Did you formulate any opinions as to  
7 whether or not this fence constituted a slip, trip,  
8 or fall hazard as described by CSX in its policies  
9 and procedures?

10 A. No, sir.

11 Q. And did you formulate any opinions as to  
12 whether or not this fence extension constituted  
13 what's known as a close clearance?

14 A. No, sir.

15 Q. How long do you think you were at the  
16 scene?

17 A. Approximately an hour.

18 Q. And did you speak with any of the other  
19 investigating managers concerning what their  
20 investigations had revealed with regards to this  
21 incident?

22 A. Can you be a little bit more specific? I  
23 mean, I'm not --

24 Q. Yeah, I want to know if you talked to any  
25 of the other managers about what they had found out

1 in investigating the incident, for example, if they  
2 talked to the engineer, what the engineer told  
3 them, or if they saw something that caught their  
4 attention and they described it to you, they told  
5 you that, you know, something along those lines?

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

7 Q. So you took your photographs and your  
8 measurements and then you went on back to Florence  
9 and were not involved in this incident anymore?

10 A. No. I would have turned the measurements  
11 and the disks over, and that was basically my  
12 extent of it.

13 Q. You didn't speak to anybody from the  
14 industry?

15 A. No, sir.

16 Q. And you did not participate in the  
17 creation or the completion of any documents in  
18 connection with Mr. Turner's incident?

19 A. None other than providing the information  
20 that I told you.

21 MR. APPLETON: Mr. Barton, I don't have  
22 any more questions for you.

23 MR. MOON: I don't have any questions.

24 (The deposition concluded at 10:37 a.m.)

25

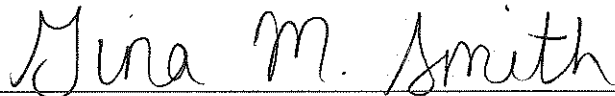
CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of August, 2009, at Columbia, Richland County, South Carolina.



Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

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E X H I B I T S

(None was proffered.)

1 CHANGES AND SIGNATURE

2 WITNESS NAME: RICHARD TODD BARTON, AUGUST 25, 2009

3 PAGE LINE CHANGE REASON

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17 I, RICHARD TODD BARTON, have read the foregoing  
18 deposition and hereby affix my signature that same is  
19 true and correct, except as noted above.

*Richard Todd Barton*

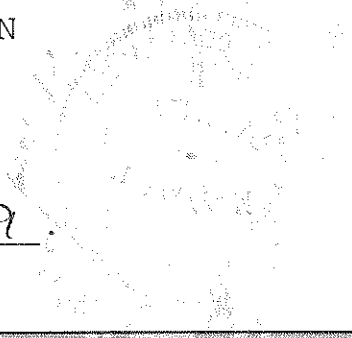
RICHARD TODD BARTON

22 Sworn to and Subscribed before me

23 *Gina M. Smith*, Notary Public.

24 This 21<sup>st</sup> day of September, 2009.

25 My Commission Expires: 8-24-2013



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