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C O N T E N T S

WITNESSES:		PAGE
KEITH AUSTIN		
Examination by Mr. Rafi		4
Examination by Ms. Dobur		None
Examination by Mr. Harrison		None

EXHIBITS

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PROCEEDINGS

COURT REPORTER: Same
stipulations?

MR. RAFI: Yes.

MR. HARRISON: He will waive
on the last one. We will decide at the
end.

KEITH AUSTIN, having been duly
sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. RAFI:

**Q. This is the deposition of Keith Austin. It
is Friday, January 9th, 2015 at 3:23 PM. This
deposition is taken pursuant to notice and
agreement of parties.**

**Mr. Austin, your attorney just gave
you a real quick run down of how this is going to
work. I will ask you questions you answer them.
If you do your best to give verbal word answers,**

1 "yes" or "no" as opposed to "uh-huh" or
2 "unt-huh." Makes it easier for the court
3 reporter.

4 A. Okay.

5 Q. Okay works, too.

6 If you don't understand my
7 question, if you don't understand a word I use,
8 the language I use or a document I am going to
9 show, you let me know and I will clarify it for
10 you. If you do answer a question, I will assume
11 that you understood it; is that fair?

12 A. That is fair.

13 Q. You need a break, you just let me know and
14 we will deal with that then.

15 If your attorney objects during any
16 of my questions, unless he specifically instructs
17 you not to answer then you go ahead and answer.
18 Make sense?

19 A. Yes, it does.

20 Q. Have you been deposed before?

21 A. No.

22 Q. Let's start by getting your full.

23 Please state your full name for us.

24 A. Samuel Keith Austin.

25 Q. And what is your title with Roto-Rooter

1 **right now?**

2 A. General Manager of Roto-Rooter Atlanta.

3 **Q. What was your title in August of 2012?**

4 A. General Manager of Roto-Rooter Atlanta.

5 **Q. Same title?**

6 A. Yes.

7 **Q. Other than the name you just provided, have**
8 **you ever gone by any other previous names?**

9 A. No.

10 **Q. Do you have any nicknames? I heard some**
11 **good ones from Mr. Boland. Do you have any?**

12 A. No.

13 **Q. What year were you born or what is your full**
14 **date of birth for us?**

15 A. 11/26/1964.

16 **Q. And where were you born?**

17 A. Rome, Georgia.

18 **Q. Where do you currently live?**

19 A. Atlanta, Georgia.

20 **Q. What is your full address?**

21 A. 2806 Mabry Road, Atlanta 30319.

22 **Q. What county is that in?**

23 A. DeKalb.

24 **Q. Who do you live with in DeKalb?**

25 A. My family; my wife and children.

1 Q. What is your wife's name?

2 A. Lisa.

3 Q. The reason why I am asking, does she share
4 the same last name as you?

5 A. Yes.

6 Q. Just a jury qualification question. Lisa is
7 not going to sit on this jury, so be sure to tell
8 her that.

9 Are any of your kids above the age
10 of 18?

11 A. No.

12 Q. How old are they?

13 A. 8, 10.

14 Q. What kind of activities or social
15 organizations are you involved in that are based
16 in Dekalb County?

17 A. Murphy Candler Sports Association and I am a
18 member of Chamblee United Methodist Church. My
19 wife is a Girl Scout leader.

20 Q. Do you have a boy and a girl?

21 A. No. Two girls.

22 Q. What kind of sports do they play at the
23 Murphy --

24 A. Softball.

25 Q. And the girls I guess are involved in the

1 **Girl Scout Organization?**

2 A. That is correct.

3 **Q. I bet you get a lot of cookies. I wouldn't**
4 **look as thin as you if went into your house.**

5 **How long have you lived there?**

6 A. 10 years. No. 10, 15. 10, 12 years.

7 **Q. Do you have any other family that live in**
8 **Dekalb County above the age of 18?**

9 A. No.

10 **Q. And you said you just live with your wife**
11 **and two children?**

12 A. That is correct.

13 **Q. Do you have any intentions of moving out of**
14 **Dekalb County or out of that address?**

15 A. No.

16 **Q. Can you tell me your home telephone number,**
17 **if you have one?**

18 A. I don't. I don't have one.

19 **Q. What about your cell phone number?**

20 A. 678.614.9590.

21 **Q. Now, the circumstances for this case might**
22 **arise where Roto-Rooter is no longer involved in**
23 **this lawsuit, but I might want to still call you**
24 **and have you come down and give testimony or I**
25 **might just try and call you. I would make sure**

1 **that before I do that I would check with your**
2 **attorney, that it was okay there were no rules I**
3 **would be violating. If I were to give you a**
4 **call, would you answer for me?**

5 MR. HARRISON: Do you
6 understand what he is asking? It's not
7 asked often, but I think he is trying
8 to ask you a straight question about if
9 Roto-Rooter is not a defendant and I am
10 not longer representing you, if he
11 calls you would you pick up the phone?

12 THE WITNESS: I don't pick up
13 everybody's call.

14 BY MR. RAFI:

15 Q. **And Mr. Boland, he said he doesn't pick up**
16 **numbers he doesn't know. So if I was to leave a**
17 **voicemail and said, hey, do you remember this**
18 **deposition, would you give me a call back as best**
19 **you could?**

20 A. After I spoke with him or my corporate
21 attorney.

22 Q. **That is very fair. I appreciate that**
23 **answer.**

24 **And then as your attorney said,**
25 **this is a uncommon situation that I just need to**

1 ask that question.

2 What is your highest degree of
3 formal education?

4 A. Bachelor's Degree in business.

5 Q. Where is that from?

6 A. Florida State University.

7 Q. All right. I was a Georgia fan. I am sorry
8 about that. I will try to keep it under wraps.

9 A. It could be worse.

10 Q. It could be a lot worse.

11 What year did you graduate from
12 Florida State?

13 A. 1988.

14 Q. Did you finish in four years?

15 A. I finished in five.

16 Q. And football season I hope?

17 A. Yes.

18 Q. Did you receive any formal training after
19 that, after 1988?

20 A. No.

21 Q. Did you receive any technical training?

22 A. No.

23 Q. Do you have any other degrees besides that
24 one, whether from some sort of technical
25 institute, some other sort of college or school?

1 A. I have no other degrees. I have licenses
2 but no other degrees.

3 **Q. Can you tell me what you're licensed in?**

4 A. I am a master plumber and I am a certified
5 water restoration and applied science drying
6 technician.

7 **Q. I understand that Mr. Boland was also a
8 certified plumber?**

9 A. Yes.

10 **Q. And he is the license holder for Roto-Rooter
11 in Atlanta?**

12 A. Correct.

13 **Q. And when I refer to Roto-Rooter, I mean the
14 Atlanta office unless I distinguish corporate or
15 otherwise; is that fair?**

16 A. That is fair.

17 **Q. It makes it easier.**

18 A. That is fair.

19 **Q. Is there any reason why he is the license
20 holder and not you?**

21 A. No specific reason other than most general
22 managers are not master plumbers within our
23 company. Only a few of us actually carry a
24 license.

25 **Q. And you asked Mr. Boland to be the license**

1 **holder, right?**

2 A. Yes.

3 **Q. And that's because you trust him?**

4 A. Yes.

5 **Q. He is a good employee?**

6 A. That is correct.

7 **Q. He is good at what he does?**

8 A. Yes.

9 **Q. Always does his job well?**

10 A. Yes.

11 **Q. Do you have any criticisms that we should**

12 **know about about Mr. Boland in his time at**

13 **Roto-Rooter?**

14 A. No.

15 **Q. Has he ever been reprimanded?**

16 A. No.

17 **Q. Are you the person that would know if he had**

18 **been reprimanded?**

19 A. Prior to being a license holder and my
20 Safety Manager, he was a field technician and
21 there could be a reprimand -- reprimands because
22 of work related incidents. I can go back and
23 look and Ii am sure being an employee that long,
24 I am sure there is some type of action against
25 him for either sales performance or something

1 like that one.

2 Q. And he had mentioned that and I honestly
3 forgot about it. I wasn't trying to remember --

4 A. No.

5 Q. Do you know of any reprimands involving
6 safety and Mr. Boland?

7 A. Probably not.

8 Q. Do you have a driver's license?

9 A. Yes.

10 Q. Is it a Georgia driver's license?

11 A. Yes, it is.

12 Q. Bears that home address that you have in
13 Dekalb County?

14 A. That is correct.

15 Q. Do you have any other driver's license in
16 other states?

17 A. No.

18 Q. What about commercial driver's license in
19 any state?

20 A. No, I do not.

21 Q. Have you ever held a commercial driver's
22 license?

23 A. No, I have not.

24 Q. I have to ask you this.

25 Have you ever been convicted of a

1 **crime?**

2 A. No.

3 **Q. After you graduated from Florida State in**
4 **1988, where did you work? We will do this. We**
5 **will go the whole way. So if you can, which way**
6 **is easier for you?**

7 MR. HARRISON: You can give an
8 overview.

9 THE WITNESS: Okay. I worked
10 for -- I worked at Walt Disney World
11 for a couple of years. Then I went to
12 Tucson, Arizona and I worked for Dollar
13 Rent-A-Car. I worked there for
14 approximately three years. Then I
15 worked -- and I worked for Rescue
16 Rooter, which is the competition. That
17 is how I got into the plumbing
18 industry. Upon that, I worked there
19 for 10 years and then I came to work
20 for Roto-Rooter.

21 BY MR. RAFI:

22 **Q. What did you do at Walt Disney?**

23 A. I managed the stroller rentals.

24 **Q. How long were you there?**

25 A. Two years.

1 Q. And that's Walt Disney in Orlando?

2 A. Yes. Correct.

3 Q. In Tucson, how did you get start working for
4 Dollar Rent-A-Car?

5 A. Chased a girl out there.

6 Q. I won't ask the next question, who was that
7 girl. I don't want to know.

8 You were there for three years.

9 What were your job responsibilities and titles
10 while you were there?

11 A. Start off as a rent-a-car agent, stepped up
12 to a general manager.

13 Q. When you were a general manager, did you
14 have safety responsibilities ensuring that your
15 employees in the public are made safe?

16 A. Not directly, but it was encompassing under
17 the umbrella of me.

18 Q. What kind of safety training, if any, did
19 you receive from Dollar Rent-A-Car concerning
20 motor vehicle accidents or operation?

21 A. I do not remember.

22 Q. If you had received training of that kind,
23 is it safe to say you don't rely on it now?

24 A. I would say it's safe to say, but I do not
25 remember, so...

1 Q. Why did you leave Tucson, Arizona?

2 A. I was transferred.

3 Q. Were you transferred within Dollar
4 Rent-A-Car to another location?

5 A. Yes.

6 Q. Why did you leave Dollar Rent-A-Car?

7 A. I chased that girl again to Dallas, Texas,
8 to go to work for Rescue with her.

9 Q. How long were you in Dallas?

10 A. I was in multiple states. Did you want to
11 go back all that?

12 Q. No. When I say Dallas, I apologize, I
13 assume that you are at the same place. Let me
14 ask you a better question and if you don't
15 understand something, I appreciate you telling
16 me.

17 How did you start at Rescue group?

18 A. I started off in a management training
19 position.

20 Q. How did you hear about them?

21 A. I read it in the newspaper.

22 Q. What year would you say you started with
23 them?

24 A. April -- April 1996.

25 Q. What did that job listing say, do you

1 **remember?**

2 A. Management training.

3 **Q. And what was your -- what did your training**
4 **consist of?**

5 A. Six months operations management training
6 through P&L statements, selling, dispatching,
7 mild technical.

8 **Q. Were you a certified plumber at that point?**

9 A. No.

10 **Q. Did you have any plumbing knowledge when you**
11 **first showed up at Rescue Rooter besides what you**
12 **may have done around the house?**

13 A. No.

14 **Q. When did you become a licensed plumber? A**
15 **certified plumber?**

16 A. I became a journeyman like in 2004.

17 **Q. Were you always in the management training**
18 **program or management at Rescue Rooter?**

19 A. Yes.

20 **Q. But you became a licensed plumber while in**
21 **that position?**

22 A. That is correct.

23 **Q. What was the reason for that?**

24 A. Hands on knowledge of my employees in the
25 company I worked for.

1 Q. What were all the positions that you held at
2 Rescue Rooter?

3 A. Assistant Manager and General Manager.

4 Q. And you became a plumber while either an
5 Assistant Manager or General Manager?

6 A. While a General Manager.

7 Q. What were your responsibilities as a General
8 Manager?

9 A. Oversee the facility, oversee employees and
10 dispatching, oversee the P&L statements, oversee
11 the operations, maintain the financial
12 responsibilities of the company, assist employees
13 with customer service, handled those financial
14 statements at my level, send those up to
15 corporate headquarters, work with the regional
16 vice presidents and presidents and such as that
17 to run the employment company, the service
18 employment company who did the construction.
19 Similar to Roto-Rooter.

20 Q. Were you working at a franchise location or
21 corporate location?

22 A. Corporately held.

23 Q. How many, for background, how many corporate
24 locations did Rescue Rooter have at the time? Do
25 you have any idea?

1 A. They had about 60 at the time.

2 **Q. How many does Roto-Rooter have currently?**

3 A. Currently corporately held locations, I
4 think they are around 40, 45.

5 **Q. Has that number changed much since August of**
6 **2012?**

7 A. Maybe one either way.

8 **Q. We will circle back to that when we talk**
9 **about Roto-Rooter in Atlanta.**

10 **Were you responsible for training**
11 **employees while with Rescue Rooter?**

12 A. No.

13 **Q. Were you involved or tasked with anything**
14 **having to do with safety while at Rescue Rooter?**

15 A. No, other than underneath my duties as the
16 General Manager having Safety Managers and such
17 as that, but I have never been responsible --
18 never been a Safety Manager. Director of safety.

19 **Q. Does Safety Manager report directly to you?**

20 A. Yes.

21 **Q. So it fell under your heading in that you**
22 **had a Safety Manager, he or she was primarily**
23 **responsible for that aspect but you oversaw it?**

24 A. I oversaw them.

25 **Q. At Rescue Rooter, did you ever handle**

1 situations like motor vehicle accidents and
2 employees being involved in them?

3 A. Yes.

4 Q. What kind of experience do you have, if you
5 can give me a brief overview as best you can
6 about what it was like there with motor vehicle
7 accidents? What you would do?

8 A. You would fill out the incident report, have
9 them drug tested and see the results upon that
10 one.

11 Q. What was the purpose of an incident report?

12 A. Rescue Rooter --

13 Q. I mean with Rescue Rooter.

14 A. -- owned the vehicle, but those were company
15 owned vehicles.

16 Q. Would you agree with me that the purpose of
17 an incident report or at least one purpose is to
18 make sure an investigation of some sort is done?

19 A. I don't know if I agree with you because the
20 standard was done by the protocol.

21 Q. So an incident report was done with every
22 motor vehicle accident?

23 A. Yes.

24 Q. Were you responsible for reprimanding,
25 disciplining or anything of that nature with

1 **employees involved in motor vehicle wrecks with**
2 **Rescue Rooter?**

3 A. Yeah. I would coordinate that through our
4 headquarters, human resources department and then
5 follow up through them when I execute their
6 policies.

7 **Q. So ultimately it was a corporate decision**
8 **regarding reprimands or discipline?**

9 A. Correct.

10 **Q. And then you installed or put that policy in**
11 **effect, whatever it was?**

12 A. Whatever, yes.

13 **Q. So it seems like you were tasked with the**
14 **fact claiming part because you were probably**
15 **local to the accident, right?**

16 A. Either myself or one of my assistant
17 managers.

18 **Q. And I assume your business is like most**
19 **where a supervisor essentially is responsible for**
20 **everything their underlings do; is that right?**

21 A. I am responsible for the performance of the
22 branch, if the employee fails to do something,
23 you know. I am not ultimately held responsible
24 for their failure to do a task. I am just
25 responsible for how the performance is of the

1 branch.

2 **Q. Were you responsible for making sure that**
3 **whoever as your Safety Director was at the time**
4 **did what he or she was supposed to do?**

5 A. I would advise them to do it and follow up
6 with them such as that. So yes.

7 **Q. At Rescue Rooter, was there a policy on when**
8 **a drug test should be done?**

9 A. I do not remember.

10 **Q. Why did you leave Rescue Rooter?**

11 A. I saw a career advancement opportunity with
12 Roto-Rooter.

13 **Q. How did that advancement opportunity come to**
14 **you?**

15 A. Knowing people in the industry and one of my
16 managers had actually left me and he knew during
17 the time and had been offered a position with
18 Roto-Rooter and I advised him to take it. I
19 thought it was a good thing and good time, and he
20 got over there and then my name started
21 circulating -- my name circulated within the
22 company and that is when they came and recruited
23 me to come over.

24 **Q. When was that?**

25 A. July of 2006.

1 Q. And you have been with Roto-Rooter ever
2 since?

3 A. That is correct.

4 Q. What position did you begin at with
5 Roto-Rooter?

6 A. Assistant General Manager.

7 Q. And this is all -- everything we will talk
8 about in your history is Roto-Rooter Atlanta, the
9 corporate owned?

10 A. That is correct.

11 Q. Let me get some background about Roto-Rooter
12 so we don't talk past each other because I am
13 honestly a little confused about how you all
14 operate. I need you teach me here.

15 A. Okay.

16 Q. You have corporate owned locations?

17 A. That is correct.

18 Q. Between 40 or so and 45?

19 A. Yes.

20 Q. Are there any in Georgia besides the Atlanta
21 location, that you know of?

22 A. There is no Roto-Rooter Services Company
23 locations in Atlanta except the Atlanta branch.

24 Q. What about outside Atlanta, but still within
25 Georgia?

1 A. We have a -- we have corporately held
2 locations which we call Roto-Rooter Services
3 Company. We have franchises which is a
4 franchisee base. We have a -- I would call it a
5 hybrid type of a company that is called a
6 Contractor. A Contractor is where Roto-Rooter I
7 would say owns a position -- Roto-Rooter is a
8 self-owned -- maintains the zip codes in the
9 business and they provide -- and they support a
10 Contractor and a person will sign a contract
11 which they will run a location. They run that
12 location and then Roto-Rooter and that contractor
13 will split the revenues, some of the places and
14 then the Contractor will take that, when we have
15 a Contractor that is down in Columbus, Georgia.

16 **Q. So my understanding is, you have your**
17 **Roto-Rooter Services Company which is the Atlanta**
18 **Corporate Office?**

19 A. Correct.

20 **Q. Then across the state from my research and**
21 **correct me if I am wrong, you have franchises,**
22 **franchisees who are located and they are**
23 **responsible for themselves except that they have**
24 **the Roto-Rooter name?**

25 A. That is correct.

1 Q. Do they need to follow Roto-Rooter policies
2 or do they have their own? Do you have any idea?

3 A. They do not follow policies in regards to
4 that.

5 Q. So the only thing that they have to do as
6 far as you know, is pay probably for the name?

7 A. Pay the franchisee fee.

8 Q. Then there is this hybrid down, at least one
9 in Columbus, where it's a mixed effort,
10 Roto-Rooter does some sort of, maybe it's
11 advertisement for the hybrid, the hybrid does the
12 work and Roto-Rooter and the hybrid, Contractor,
13 split the profits somehow?

14 A. That is correct.

15 Q. Does Roto-Rooter in one way, shape or form,
16 whether it's a corporate, a franchise or this
17 Contractor, do you service all of Georgia?

18 A. No.

19 Q. Is it easier for you to tell me where you do
20 service or where you don't?

21 A. There is places I do not know. So I can
22 only tell you --

23 Q. Are their pockets around within the State or
24 is it we don't service south of Macon?

25 A. There is pockets within the State and the

1 pockets would be areas that -- I mean, I don't
2 know. There would be certain areas that I
3 wouldn't even know if they do or not, if there is
4 a franchisees or not there, so...

5 **Q. Do you have any interaction with the**
6 **franchisee or the Contractor here in Georgia?**

7 A. No.

8 **Q. While working for Rescue Rooter, were you**
9 **ever involved in a motor vehicle accident?**

10 A. Me personally?

11 **Q. Yes.**

12 MR. HARRISON: Would you
13 clarify? I know what you mean. I
14 think you mean on duty for them?

15 MR. RAFI: Yes.

16 BY MR. RAFI:

17 **Q. When you were working for Rescue Rooter, did**
18 **you drive a company vehicle?**

19 A. No.

20 **Q. That is easy then.**

21 **While working for Roto-Rooter, have**
22 **you driven a company vehicle?**

23 A. No.

24 **Q. Never?**

25 A. Oh, I have driven them but --

1 Q. Not assigned one?

2 A. No. I don't have an assigned company
3 vehicle.

4 Q. Have you ever been in a Roto-Rooter vehicle?

5 And when I say "Roto-Rooter vehicle," I mean a
6 vehicle with a label of Roto-Rooter on the
7 outside? Can we agree to that?

8 A. Yes.

9 Q. And I will distinguish between the two as
10 best I can. If I fail to, you please tell me
11 where I failed later in questions.

12 A. I will.

13 MR. HARRISON: Just to
14 clarify. I went over this with Joel,
15 but you are distinguishing between a
16 Roto-Rooter Corporate owned vehicle and
17 a Roto-Rooter labeled vehicle not own
18 by Corporate?

19 MR. RAFI: Yeah. It's owned
20 by an employee.

21 MR. HARRISON: Is that fair?

22 MR. RAFI: Yes.

23 MR. HARRISON: You understand
24 what he is asking?

25 THE WITNESS: He will

1 distinguish if it's a Corporate owned
2 vehicle or employee owned vehicle.

3 MR. HARRISON: The two types
4 of vehicle we are talking about.

5 BY MR. RAFI:

6 Q. If I just say a Roto-Rooter vehicle, I mean
7 any vehicle that says Roto-Rooter on the side.
8 Someone like me who doesn't know your business
9 model would think, oh, that is a Roto-Rooter
10 truck. Does that make sense?

11 A. Yes.

12 Q. If I need to distinguish or you think I
13 should distinguish between the two types, you
14 tell me.

15 A. You distinguish as we go forward, right?

16 Q. I try to. You know your business better
17 than I do, so we will work together here.

18 A. All right.

19 Q. Have you ever been involved in a motor
20 vehicle accident as the driver or an passenger in
21 a Roto-Rooter vehicle at any time?

22 A. No.

23 Q. Head nod yes and then a no.

24 A. No, I have not. I understood your question.

25 No, I have not.

1 Q. I have a friend that does that and it kills
2 me.

3 Has your driver's license ever been
4 suspended or revoked?

5 A. No.

6 Q. Have you ever gotten a moving violation
7 let's say -- you haven't driven a motor vehicle.
8 Never mind.

9 Have you ever been disciplined at
10 Roto-Rooter?

11 A. Yes.

12 Q. What for?

13 A. For -- disciplined for relationships with an
14 outside vendor.

15 Q. That didn't have anything to do with the
16 motor vehicle?

17 A. That is correct.

18 Q. Was that while you were an Assistant Manager
19 or General Manager?

20 A. General Manager.

21 Q. Who disciplines you? You are the General
22 Manager of Roto-Rooter Atlanta. Does it have to
23 come from Corporate?

24 A. The Regional Vice President.

25 Q. Who is your Regional Vice President?

1 A. Mike Polyak, P-O-L-Y-A-K.

2 **Q. That is a name I never heard before. Tell**
3 **me what his job duties are within Roto-Rooter?**

4 A. He oversees the region. I am a corporately
5 held location, I am part of a region, I am a
6 central region, there is nine branches. I report
7 to him. He is based out of Chicago.

8 MR. HARRISON: What was the
9 last name?

10 THE WITNESS: Polyak.

11 BY MR. RAFI:

12 **Q. Do the names Travis -- excuse me. Tinsley.**
13 **Is there --**

14 A. Walter Tinsley?

15 **Q. Walter Tinsley.**

16 A. Yes.

17 **Q. And who is that?**

18 A. Walter is our Regional Safety Coordinator.

19 **Q. Tell me one more time what Mike is. He is**
20 **your Regional --**

21 A. Regional Vice President.

22 **Q. He is in Chicago?**

23 A. That is correct.

24 **Q. And then we have Walter Tinsley who is your**
25 **Regional Safety --**

1 A. -- coordinator Manager. Regional Safety
2 Manager.

3 **Q. Is he responsible for the central region as**
4 **well?**

5 A. That is correct.

6 **Q. I have also seen the name Ohl, O-H-L?**

7 A. Kim Ohl. Kimberly Ohl.

8 **Q. What is her duty?**

9 A. She is -- she was Director of Safety. Now
10 she is the risk management. Vice President of
11 risk management.

12 **Q. Was she the Director of Safety back in**
13 **August of 2012?**

14 A. Correct.

15 **Q. Do you know when she became the VP of risk**
16 **management?**

17 A. I would say maybe in the last 60 to 90 days.

18 **Q. Very recently?**

19 A. Very recently.

20 **Q. Where is she located?**

21 A. Cincinnati.

22 **Q. Is that where your company's corporate**
23 **headquarters are?**

24 A. Yes.

25 **Q. Are there any other people that -- start**

1 over.

2 Do you report to Polyak?

3 A. Polyak.

4 Q. Is there anyone else that you report to?

5 A. No.

6 Q. Do you know who Polyak reports to?

7 A. Rick Arquilla.

8 Q. Do you know the last one?

9 A. A-R-Q-U-I-L-L-A.

10 Q. What is Rick's position?

11 A. He is the COO, Chief Operating Officer.

12 Q. And do you all have a CEO?

13 A. Yes.

14 Q. Is there anyone else that has a regional
15 position at your company?

16 A. Regional Vice Presidents?

17 Q. Something that covers the central region
18 that you would not necessarily report to, but
19 would be above you if we are talking a chain of
20 command?

21 A. No.

22 Q. So all the players we've just named, Rick --
23 I will use first names, Rick Arquilla, Mike
24 Polyak, Walter Tinsley, Kim Ohl. Did I miss
25 anyone?

1 A. Yeah. I only report to Mike Polyak. The
2 other people are dotted lines.

3 **Q. Do you communicate with Walter Tinsley**
4 **often?**

5 A. Yes.

6 **Q. What is the frequency that you all talk?**

7 A. I would say we communicate via email or via
8 phone once a week.

9 **Q. What are the nature of those conversations**
10 **typically?**

11 A. Safety related matters, how are -- you know,
12 he's following up on policies, you know, our
13 employees being trained, or employees getting
14 their training. He wants to make sure that they
15 are trained. He wants to follow up with any
16 operational procedures and I give safety related
17 matters to him.

18 **Q. Seems like everything you all do involves**
19 **safety, you know, you're inside people's homes or**
20 **working all kinds of things, driving vehicles.**
21 **So safety is a big part of your company?**

22 A. Yes.

23 **Q. Your company takes safety very seriously?**

24 A. Yes, sir.

25 **Q. The safety of your employees as well as the**

1 customers and the greater public is probably your
2 utmost concern, right?

3 A. Yes.

4 Q. How many vehicles do you all have in Atlanta
5 that are company owned?

6 A. I would say nine.

7 Q. So less than 10 company vehicles?

8 A. Yes.

9 Q. Who drives those generally? Is it a certain
10 kind of employee?

11 A. Yes.

12 Q. What is that kind of employee that would
13 drive a company owned vehicle?

14 A. I have a -- I have hourly employees that
15 work within my excavation department which are
16 the people that go out and drive the backhoes and
17 the dump trucks to the job sites when we do
18 intake and they pull backhoes and excavators.
19 And then I have employees that drive water
20 restoration trucks. I have a water restoration
21 division.

22 Q. Do you all -- are you familiar with the van
23 that Mr. James was driving?

24 A. Not specifically.

25 Q. Are you familiar with the minimum

1 specifications that that van has to meet?

2 A. In general, yes.

3 Q. I believe it has to be a white van?

4 A. That is correct.

5 Q. It has to have whatever the thing is called
6 at the head?

7 A. Bulkhead.

8 Q. I heard it as a headache something, but
9 bulkhead.

10 There were some other requirements,
11 but you are generally familiar with that and
12 those kind of vans?

13 A. Yes, sir.

14 Q. Those are generally the type of vans that
15 your employee owners drive?

16 A. That is correct.

17 Q. Do they get to choose their vehicle? Do
18 they get to choose a pick-up as opposed to van?

19 A. No.

20 Q. So it needs to be a van, whatever those
21 specifications are?

22 A. That is correct.

23 Q. How many employees do you have that drive
24 their own vans in Atlanta?

25 A. 50.

1 Q. Are there any other passenger vehicles, and
2 I am including vans as passenger vehicles, that
3 your company employees drive?

4 A. I have three sales persons now drive small
5 pick-up trucks.

6 Q. They say Roto-Rooter on the side?

7 A. That is correct.

8 Q. So by my count, we have three small pick-ups
9 where people are driving around trying to sell
10 things?

11 A. That is correct.

12 Q. We have 10 or less, nine, you counted nine,
13 company owned, are these vans?

14 A. No. They could be pick-up trucks and some
15 vans and dump trucks.

16 Q. Okay.

17 Do they all say Roto-Rooter on the
18 side? How about the dump truck?

19 A. They say Roto-Rooter on the side; that is
20 correct.

21 Q. So we have 10 or less, nine or less?

22 A. Yes.

23 Q. I don't mean to say 10 --

24 A. Understandable.

25 Q. Around nine company owned vehicles that

1 employees use?

2 A. Yes. That is correct.

3 Q. Then there is about 50 company owned --

4 excuse me, employee owned vehicles that employees

5 use to get around to their job sites?

6 A. That is correct.

7 Q. That is currently.

8 How did that relate to August of

9 2012? About the same?

10 A. Roughly I would say within five to seven

11 either way.

12 Q. Maybe?

13 A. Might have been up to -- I might have been

14 up to 56, 57 at that time, employees at that

15 time. I don't remember exactly.

16 Q. Would you say that you've gotten more
17 company owned vehicles in the last two and a half
18 years now?

19 A. Yes, because I started up a division that
20 has company owned vehicles.

21 Q. So in August of 2012, there was probably
22 less company owned vehicles than you all have
23 now?

24 A. That is correct.

25 Q. But that fleet has grown?

1 A. That is correct.

2 Q. And for vans owned by the employees, that
3 number is somewhere around 50 still?

4 A. That is correct.

5 Q. I will give you the GM. I have a feeling
6 you have a lot of job duties and responsibilities
7 that you do on a daily basis; is that correct?

8 A. Yes.

9 Q. We have to talk about all of these. I think
10 the best way to do it is for you to tell me in
11 what way are you responsible for Roto-Rooter
12 employee safety.

13 A. I would say I would assist the management in
14 their direct dealings with the employees on a
15 daily basis with how safety relates to them and
16 the function of their job.

17 Q. When you first started Roto-Rooter, did you
18 go through the -- any kind of training process
19 involving safety?

20 A. I have been to all the safety training
21 classes that they administered to my employees.

22 Q. One of those safety courses is an 8-hour
23 course; is that right?

24 A. Yes.

25 Q. And you sat through that 8-hour course?

1 **Sounds like it wasn't recent if you had.**

2 A. No. If I did it, it would have been eight
3 years ago.

4 **Q. So you are not sitting in Mr. Boland's**
5 **classes on a regular basis when he teaches new**
6 **employees?**

7 A. No.

8 **Q. Whose domain in the company, the Atlanta**
9 **company is training? Is it his?**

10 A. Yes.

11 **Q. So is it safe for me to say, he is the**
12 **person responsible for training new employees?**

13 A. He's one of them. They also have -- we do a
14 training period where you spend three to four
15 days a week with an actual field trainer, which
16 is actually a plumber. Hands on training. You
17 are in the van where they -- we call it a
18 certified field technician and then you will come
19 in, you will do a class, either one day a week or
20 one day every other week or sometimes two days a
21 week, and you will come in and go through
22 training classes with Joel, and sometimes the
23 classes might be more in a sales related matter
24 which might be with one of my other managers.
25 Joel would administer safety policies. The

1 majority of the technical training would come
2 from Joel as far as the classroom.

3 **Q. He called himself a paperwork kind of guy.**
4 **He deals a lot with the paperwork and that seemed**
5 **to come across that he -- would you agree that he**
6 **educates trainees on company policies? Paper**
7 **policies?**

8 A. Him as well as there are -- there are
9 certified field technicians.

10 **Q. Where do you all do training?**

11 A. In our branch. We have a technician room
12 which we go through all the video films and
13 slides such as that, and then we can go out to --
14 and then we have a trainee -- I would call it a
15 training studio where we have some plumbing
16 mockups. We call it a plumbing school.

17 **Q. Is this in Norcross?**

18 A. That is correct.

19 **Q. I heard you also have a location at College**
20 **Park?**

21 A. That is correct.

22 **Q. Did you have both of those locations in**
23 **2012?**

24 A. Yes.

25 **Q. I have heard that the Norcross location has**

1 moved a few times, but if we can call them a
2 north office and a south office; is that fair?

3 A. That is fair.

4 Q. Have you ever had an office besides a north
5 office and a south office?

6 A. No.

7 Q. I will show you, and we will go through this
8 stack here. I will show you what was premarked
9 as Exhibit 1. This is from your website. I went
10 to the home page and I clicked on your locations.
11 Are you familiar with what I am looking at?

12 A. Yes.

13 Q. This is all the areas that Roto-Rooter
14 Corporate or Roto-Rooter franchises service or I
15 guess the Contractor as well; is that right?

16 A. Yes. To the best of my knowledge.

17 Q. Are there any Roto-Rooter franchises in
18 metro Atlanta?

19 A. There are no Roto-Rooter franchises in
20 Atlanta.

21 Q. And when I say "Atlanta," Atlanta is a funny
22 word to use. A lot of people define differently.
23 Are there any inside the perimeter?

24 A. No.

25 Q. Do you know where of the closest Roto-Rooter

1 **franchise is outside of Atlanta?**

2 A. I know there is one in Athens and I think --
3 I know there is one in Rome. I don't know if he
4 goes all the way to Cartersville or not.

5 **Q. I heard you service Kennesaw?**

6 A. Yes.

7 **Q. When I say you all, I mean Roto-Rooter, you**
8 **service Kennesaw?**

9 A. Yes.

10 **Q. You go up to Buford depending on the zip**
11 **code or area code, whatever it is?**

12 A. Yes.

13 **Q. You do Decatur?**

14 A. Yes.

15 **Q. Do you service all Dekalb County?**

16 A. Yes.

17 **Q. Let me show you this. This is Exhibit 2. I**
18 **searched for Roto-Rooter in Decatur and this is**
19 **what came up. As you can see from the top left**
20 **corner, it says there is a Roto-Rooter location.**
21 **And when I say "it," I mean Google. It says it's**
22 **Decatur, Georgia. And do you see it has**
23 **Roto-Rooter.com there?**

24 A. Yes.

25 **Q. And a phone number. Are you familiar with**

1 **that phone number 404.377.4932?**

2 A. No.

3 **Q. I called it and it goes to Roto-Rooter.**

4 **Does that surprise you?**

5 A. I think I own 700 phone numbers.

6 **Q. When you say "you," do you mean Roto-Rooter?**

7 A. Yes.

8 **Q. Is there a Roto-Rooter office where this red**

9 **dot is where Google typically shows things exist?**

10 A. No.

11 **Q. Are you responsible for anything to do with**
12 **marketing of Roto-Rooter Services in Atlanta?**

13 A. I am not responsible. We have a marketing
14 division out of our headquarters.

15 **Q. Do you have anything to do with this Google**
16 **search result where it appears that there is a**
17 **Roto-Rooter location in Dekalb County?**

18 A. No, I do not have anything to do with that.

19 **Q. And I searched a couple of different ways.**
20 **I also searched for Roto-Rooter, Dekalb, Georgia.**
21 **Do you see that up here in Exhibit 3 --**

22 A. Okay.

23 **Q. -- as my search term? And I did this very**
24 **recently on purpose so that I was reliable. This**
25 **was just yesterday. It shows that there is a**

1 Roto-Rooter address, the Google search shows 467
2 North Indian Creek Drive in Clarkston, Georgia?

3 A. Okay.

4 Q. Do you all have a location there?

5 A. No.

6 Q. It also has a Google Plus page. Do you know
7 anything about that Google Plus page?

8 A. No, I do not.

9 Q. Are you responsible in any way for this
10 location appearing as per Google searchers to
11 show that you have a location in Clarkston,
12 Georgia?

13 A. No.

14 Q. Do you know who would be?

15 A. I would follow that -- if it was, it would
16 be in our marketing corporate or our corporately
17 held headquarters in Cincinnati.

18 Q. Assume that the corporate location, if that
19 is the case, puts Roto-Rooter locations in places
20 so that when people Google Roto-Rooter in
21 wherever, they will pop up?

22 A. Yes.

23 Q. And that's why we also have a listing for
24 Decatur, Georgia, and Lithonia, Georgia. Do you
25 see those?

1 A. Yes.

2 Q. And all those phone numbers work. They go
3 to Roto-Rooter. Does that surprise you?

4 A. No.

5 Q. You said you own 700 or something phone
6 numbers?

7 A. I think I heard some time it was like 700
8 phone numbers. They are able to -- when they
9 want to track demographics, they track it to the
10 phone number. That is how we track our
11 information.

12 Q. You can tell where someone called from and
13 then see where their service location was?

14 A. A lot of times -- I don't know if you follow
15 that, but you can follow which search engine --
16 which search path they had they found to get that
17 customer. You know what I mean?

18 Q. In this Exhibit 4, I searched for just
19 Roto-Rooter and I zoomed out in Atlanta.

20 A. Yes.

21 Q. It's a little grainy, but you can identify
22 the 285 perimeter around the City?

23 A. Yes.

24 Q. I counted 10 -- called about 10 red
25 Roto-Rooter locations that appear to show up?

1 A. Okay.

2 Q. I don't see your Norcross location on here.
3 Do you see a location that would be about where
4 it is?

5 A. Yep.

6 Q. So you are pointing to --

7 A. That one right there --

8 Q. I see that.

9 A. -- top right corner.

10 Q. So you believe that is your Norcross. That
11 looks to be about where it would be?

12 A. Yes.

13 Q. Do you see your -- the south location? Your
14 College Park location on that?

15 A. I don't see -- I mean, I see -- I know where
16 it should be. The closest one is that dot there.

17 Q. So that is not accurately reflected on the
18 map?

19 A. No, it's not.

20 Q. So out of these 10 Roto-Rooter locations,
21 one is correct, your main Norcross location?

22 A. Yes.

23 Q. And then the other nine are not to
24 Roto-Rooter locations?

25 A. From what I gather, this one and this one

1 are older Roto-Rooter locations prior to my
2 employment.

3 **Q. The one with your right index finger, what**
4 **location is that?**

5 A. I thought there was -- I thought there was
6 one one time over in Dekalb, and I will be
7 honest, I don't remember but I had heard there
8 was one there. And the other one there used to
9 be one over in Smyrna.

10 **Q. I think I heard about that one and we will**
11 **just refer to that one as the north. But you**
12 **would agree then that, presently speaking, nine**
13 **of these supposed locations aren't real**
14 **locations? And don't worry about my math here.**

15 A. Okay.

16 **Q. All but the home location. And you have no**
17 **idea why Roto-Rooter shows up in 10 locations**
18 **across metro Atlanta with only one being a real**
19 **location?**

20 A. Well, I explained why. It was for Google
21 search purposes, for marketing purposes for
22 gathering because we try to solicit to the
23 customers over the internet. That is how, you
24 know --

25 **Q. Let's pick this one up in Smyrna that you**

1 mentioned. Do you see how it could be confusing
2 to a customer to believe there is a Roto-Rooter
3 location near them in Smyrna.

4 A. No.

5 Q. Let's use the Dekalb one where we had an
6 actual address. Do you see how people could
7 believe there was an address, a Roto-Rooter
8 location in Dekalb?

9 MR. HARRISON: If you know.

10 THE WITNESS: I don't.

11 BY MR. RAFI:

12 Q. Okay.

13 A. My customers don't call me to come visit my
14 office to fix their toilets, they call me to send
15 a plumber to their location to fix their toilets
16 at their places.

17 Q. Last one I've got for you. This was from
18 Exhibit 5. This is from the Better Business
19 Bureau. Are you familiar with the Better
20 Business Bureau?

21 A. Yes.

22 Q. I assume you all try to make it a point to
23 be in their good graces, right?

24 A. That is correct.

25 Q. They are the precursor to and Angie's List

1 and other services that rate companies like
2 yours?

3 A. Yes.

4 Q. Better Business Bureau is relied upon by
5 people to give people accurate information.

6 A. Yes.

7 Q. That is their whole point, right?

8 A. That is correct.

9 Q. On Page 2 of this document, you can see you
10 searched -- I searched Roto-Rooter Services
11 Company. That is the name of your company,
12 correct?

13 A. Correct.

14 Q. Besides the capital "O," did I spell it
15 correctly? Is everything done properly?

16 A. Yes.

17 Q. The first address that comes up is
18 Roto-Rooter Services Company located at 2968
19 North Decatur Road, either site or Suite A in
20 Decatur, Georgia, 30333. Do you see that?

21 A. Yes.

22 Q. And that is not a Roto-Rooter location?

23 A. Not to my knowledge.

24 Q. The second listing, Roto-Rooter Services
25 Company, a/k/a Roto-Rooter Plumbing and Drain

1 **Service located at Atlanta South Parkway?**

2 A. That is right.

3 **Q. Is that a real location?**

4 A. Yes.

5 **Q. So the first listing is not correct, but the**
6 **second listing is your actual north Norcross**
7 **location?**

8 A. No. That is my actual south.

9 **Q. I am sorry. That is south. Okay.**

10 MR. HARRISON: Mike, that is
11 the address that Joel gave --

12 THE WITNESS: That is my
13 satellite.

14 MR. HARRISON: -- earlier.
15 Yeah.

16 BY MR. RAFI:

17 **Q. Where do you service vehicles, if you have**
18 **to?**

19 A. I service them through an outside vendor.
20 Sometimes he does come there and do oil changes,
21 but for my corporate held vehicles, I service
22 them through two separate outside vendors.

23 **Q. Where do you do inspections of employee**
24 **owned vehicles when you do them?**

25 A. Within our office in Norcross.

1 Q. So they need to drive their vehicle to one
2 of the two offices that you all have to be
3 inspected?

4 A. That is correct.

5 Q. Where is your dispatch located?

6 A. Chicago.

7 Q. Do you have a dispatch center in Atlanta?

8 A. No.

9 Q. Do you drive a Roto-Rooter vehicle?

10 A. No.

11 Q. I apologize for asking that. You were
12 ultimately responsible in some degree for the
13 training of employees?

14 A. I have received the department that does
15 training for mine.

16 Q. If Mr. Boland isn't doing his job properly,
17 who would be the one who needs to find that out?
18 And I am not saying he is. I am trying to
19 understand your --

20 A. Yes.

21 Q. -- your structure here. Is he --

22 A. He reports directly to me. So in that
23 matter, I would be responsible for him.

24 Q. It seems like he speaks a lot with Mr.
25 Tinsley?

1 A. Yes.

2 Q. Who is a higher position, you or Mr.
3 Tinsley. Are they just different?

4 A. Yes.

5 Q. If I tell Mr. Boland to do something and Mr.
6 Tinsley tells him to do something that is
7 different, what happens?

8 A. He would come to me and we would discuss the
9 matter.

10 Q. Has he ever done that?

11 A. He has never come to me and said that.

12 Q. Has he ever voiced any problems with Mr.
13 Tinsley?

14 A. No, other than I would say maybe just the
15 frustration in the way sometimes he speaks to us.

16 Q. He has never -- he being Mr. Boland, has
17 never expressed concern about Mr. Tinsley telling
18 him not to follow company policies?

19 A. No.

20 Q. You agree with my statement, he's never come
21 to you -- Mr. Boland has never come to you and
22 said Mr. Tinsley has told me not to follow
23 company procedures and policies?

24 A. I do not remember that at any time.

25 Q. Do you think that would stick out in your

1 **mind?**

2 A. I would think it would, but I do not
3 remember.

4 **Q. Would that be significant if a manager or**
5 **somebody in a hierarchy in your corporate**
6 **structure was saying do not follow Roto-Rooter**
7 **policies?**

8 MR. HARRISON: Objection to
9 form. You can answer. He brought this
10 up earlier. Unless I tell you not to
11 answer, you can answer. I am just
12 making an objection for the record.

13 BY MR. RAFI:

14 **Q. My question is, would you find it**
15 **significant if an employee told you that somebody**
16 **in your corporate structure was telling them not**
17 **to follow Roto-Rooter policy?**

18 A. I think the severity of the policy would
19 make a difference in that.

20 **Q. Have you ever been told by someone in the**
21 **corporate office or a position higher than you to**
22 **ignore or otherwise not follow Roto-Rooter**
23 **policy?**

24 A. I do not remember that, ever.

25 **Q. So you don't remember a time when that has**

1 **happened?**

2 A. I am not remembering that right now is the
3 point I am -- you know what I am saying?

4 **Q. I understand.**

5 A. Okay.

6 **Q. Since you don't remember. I am confirming**
7 **that there is no time that you can name for us**
8 **right here today?**

9 A. That is correct.

10 **Q. And you can't name a time when Mr. Boland**
11 **came to you and said, Walter Tinsley is telling**
12 **me not to follow policy?**

13 A. That is correct.

14 **Q. If that would have happened, what would you**
15 **have done? Either one of those incidents.**

16 MR. HARRISON: Objection to
17 the form. You can answer.

18 THE WITNESS: I would have
19 looked at the situation, the policy
20 that they were describing and at that
21 point if I felt that it needed to be --
22 you know, if it was via the severity of
23 it, I would probably reach out to
24 Walter myself.

25 BY MR. RAFI:

1 Q. Do you have any control over what Mr. Boland
2 teaches or instructs in his training classes with
3 new employees?

4 A. I agree to the program that we have, so I
5 would say that I do oversee it. I do have a
6 process, I mean, a say so in the matter, but I do
7 agree with it. I am in agreement of the safety
8 and of the training program that we have, so...

9 Q. And Mr. Boland told us that in terms of
10 driver safety, that there is a ride along process
11 for new employees; is that true?

12 A. Yes.

13 Q. And that ride along does things other than
14 vehicle safety, but that is one component of it,
15 right?

16 A. Yes.

17 Q. And he says that there is an 8-hour safety
18 -- excuse me, there is an 8-hour course which
19 safety is a component of that. Do you agree?

20 A. That is correct.

21 Q. And you haven't sat in one of those classes
22 recently?

23 A. Not recently.

24 Q. He told us he teaches about accident
25 reporting; is that true, to your knowledge?

1 A. You mean he teaches it to the employees to
2 gather information, or are you intending that he
3 teaches it to the managers to gather information?

4 **Q. He teaches new employees about an accident
5 reporting policy.**

6 A. Yes.

7 **Q. He also shows a Smith System video, are you
8 aware of this?**

9 A. Yes.

10 **Q. Do you know what the Smith System is?**

11 A. I remember it from the past.

12 **Q. When do you remember it from?**

13 A. Probably seven or eight years ago.

14 **Q. While you were with Roto-Rooter?**

15 A. Yes. Also remember in my prior company,
16 Rescue Rooter. We also use the Smith Driving
17 System.

18 **Q. So Roto-Rooter employees must follow the
19 Smith Driving System?**

20 A. They are given that as one of their training
21 tools.

22 **Q. And you expect them to follow it?**

23 A. I expect them to follow safe methods of
24 driving, correct.

25 **Q. And the Smith System is the safe method of**

1 driving that you all teach there?

2 MR. HARRISON: Objection to
3 form.

4 THE WITNESS: We do administer
5 that.

6 BY MR. RAFI:

7 Q. Is there anything else besides the Smith
8 System that you all give to instruct employees
9 how to drive?

10 A. Not that I am aware of.

11 Q. Whose responsible for the hiring of new
12 employees at your location?

13 A. Russ Garman.

14 Q. Do you have any role in that?

15 A. Yes.

16 Q. What role is that?

17 A. I have final say so.

18 Q. And that's the final say so at what point,
19 to initially bring someone in the training
20 program, or at the 12 week mark or even the three
21 month mark to keep them on, or all of the above?

22 A. All of the above.

23 Q. What do you review at that initial decision
24 when you are going to decide if someone should
25 enter your training program?

1 A. They went through the initial interview with
2 Russ, they did a ride along interview with one of
3 my field personnel.

4 Q. So this is after they have already been in a
5 Roto-Rooter vehicle and done with that?

6 A. Yeah. We have done an office interview with
7 Russ, then they have done a ride along where they
8 go out and they spend half a day with one of the
9 plumbers, and they -- and then he interviews
10 them. Then during that time they go through a
11 background check. Company does an extensive
12 background check on their history, you know,
13 anything they did and their driving records.
14 Anything. Just very extensive. They go through
15 that background check. If they pass the
16 background check, then they get to come to me and
17 I will interview them to see if we want to hire
18 them, if we want to offer them a position. And
19 if we do that and then they have to go through a
20 drug testing, prior to employee drug testing.

21 Q. And this system that you have in place for
22 new employees, it's important because you want to
23 hire the right people, right?

24 A. Yes.

25 Q. You want to hire people that are capable of

1 doing the job or can become capable?

2 A. That is correct.

3 Q. You want to hire people who are going to
4 present well and present your business well,
5 right?

6 A. That would be correct.

7 Q. And you want to hire people that are going
8 to be safe to themselves, your customers and the
9 public at large?

10 A. That is correct.

11 Q. And this process helps you do that compiling
12 this information for the person and then you
13 reviewing it and determine if that person will
14 proceed on with your company?

15 A. Yes.

16 Q. That is after all the training is done, at
17 least the initial training or before?

18 A. That is way before. That is -- all of that
19 is done prior to even extending an offer of
20 employment to become employed.

21 Q. So that person goes through check one and
22 then does check two happen before or after they
23 meet with Mr. Boland for training?

24 A. You mean -- check one and check two? I am
25 sorry.

1 Q. Once you agree to extend them an offer, do
2 they immediately go through the training process?

3 A. They start the training process at that
4 point. They will come to work and begin in the
5 training program. We will look at their -- at
6 their work history, if they have history -- or
7 industry experience and that helps us determine
8 how long they are going to be in training. That
9 is the start of the platform, but then they all
10 start the training during which at that point
11 they spend like three to four days a week in the
12 field with a field trainer, then they spend one
13 day every week, two weeks, or could be two days
14 one week with Joel in classroom training.

15 Q. And then after all that is a second
16 determination of whether you want the person to
17 work for the company?

18 A. No. I mean, when you do a review with
19 them -- we do a review with them at times to see
20 how they are progressing during their training.

21 Q. And someone needs to be competent in all
22 areas of your business, including safety in order
23 to be able to get a truck and go on the road?

24 A. That is correct.

25 Q. And it's important -- training is important

1 because you need training to be able to do that,
2 correct?

3 A. Training is important.

4 MR. HARRISON: Do what?

5 BY MR. RAFI:

6 Q. To be able to go on the road and be adequate
7 and competent in all the aspects that your
8 company deals in. Training is important,
9 correct?

10 A. Training is important.

11 Q. Without training, a lot of your folks, a lot
12 of the employees wouldn't be able to do the job
13 that they need to do. That is a yes, correct?

14 A. That is a yes.

15 Q. And documenting training allows you to then
16 review how well training is going?

17 A. It is one aspect of it.

18 Q. You are not involved in the daily training
19 of anyone?

20 A. That is correct.

21 Q. And it's ultimately your decision that that
22 person proceeds on through the process of getting
23 a truck and going to work?

24 A. It's my decision based upon the information
25 I am given from my managers and my --

1 Q. And it's important that you have complete
2 information so that you can make a proper
3 decision?

4 A. Yes.

5 Q. Now, I will show you what has been marked as
6 Plaintiff's Exhibit 6. This is Daniel James'
7 training sign in sheet. Says he went to
8 training. I believe he is the third name down.

9 A. Okay.

10 Q. And he went -- the instructor was Joel.
11 Does that seem what you remember about Mr. James?

12 A. For the time that he was there, I do
13 remember the name Daniel James. I do remember
14 the employee.

15 Q. Have you ever met him before the accident?

16 A. Yes.

17 Q. During this training process and hiring
18 process?

19 A. Yes.

20 Q. Today if he was in a line up, would you be
21 able to point him out?

22 A. I think so. Yes. I would feel comfortable.

23 Q. It says that the topics covered, among
24 other, were safety work practices and accident
25 reporting; is that right?

1 A. Correct.

2 Q. And that is part of the training and that's
3 what Mr. Boland does, at least he did in this
4 instance assuming the paper is correct?

5 A. Yes.

6 Q. So Mr. Boland trained Mr. James in safe work
7 practices and accident reporting.

8 A. Yes.

9 Q. Among other things.

10 This next document is a safety
11 training and policy review and this is Mr.
12 James'. Is that your handwriting on Exhibit 7?

13 A. No.

14 Q. Do you know whose it is?

15 A. No.

16 Q. And this is a checklist of sorts to make
17 sure that all the appropriate training has been
18 given to Mr. James?

19 A. Yes.

20 Q. And obviously the checkmark means that
21 training was given and it's complete?

22 A. Yes.

23 Q. Part of the training in number 2, which is
24 dedicated solely to safety policy review, the
25 safety box?

1 A. Yes.

2 Q. That includes driving safety policy #58.

3 A. Yes, sir.

4 Q. Are you familiar with that policy?

5 A. I can't quote it word for word, but...

6 Q. Can you tell me generally what it says --

7 A. No.

8 Q. -- because we don't have it. Okay. Do you
9 have that policy -- strike that.

10 And this document shows that Mr.
11 Boland conducted the training for all of these
12 things that are check marked?

13 A. That is what it states.

14 Q. I will show you Exhibit 8, which is policy
15 #56. Policy 56 is the Vehicle Accident
16 Prevention Policy. Are you familiar with that?

17 A. I would say I have seen it over the course
18 of my employment.

19 Q. If an employee had a safety related question
20 and they came to you, what would you do?

21 A. Well, I would listen to it. Most likely I
22 would reach out to Joel and say, let's get Joel
23 involved, let's keep him in the loop of it.

24 Q. So in your offices, let's say the metro
25 Atlanta region, Joel is primarily concerned and

1 **responsible for training people for things like**
2 **safety training?**

3 A. That is his primary duties.

4 Q. **And if someone came to you with a safety**
5 **concern, you would certainly listen to them and**
6 **want to address their issue, but you most**
7 **times -- is it most times you bring Joel in or**
8 **all times?**

9 A. Yes.

10 Q. **All times?**

11 A. I want him involved in the process to keep
12 him -- to keep the communication within the
13 branch.

14 Q. **And given that this is Joel's primary**
15 **responsibility, would you say that you have a**
16 **superior knowledge to him or is he more**
17 **knowledgeable about safety policies than you are?**

18 A. I would say he is more knowledgeable about
19 safety policies than I am.

20 Q. **Is Joel the person in metro Atlanta most**
21 **familiar with safety policies within your**
22 **company?**

23 A. My opinion, yes.

24 Q. **If you will flip to Page 2 under Driving**
25 **Training in bold at the bottom.**

1 A. Okay.

2 Q. Number 1 is, employees must watch the
3 coaching the van driver safety training or must
4 complete -- excuse me. We are down even further.

5 A. Okay.

6 Q. All new drivers -- excuse me. Number 1,
7 "All new employee drivers will be required to
8 complete the coaching the van driver safety
9 training"?

10 A. Okay.

11 Q. Do you know what that is?

12 A. No.

13 Q. Do you know if you all do that?

14 A. I do not know.

15 Q. Joel would be the best person to answer that
16 question?

17 A. That would be correct.

18 Q. On Page 3 of that document which is
19 Plaintiff's Exhibit 8 or Deposition Exhibit 8,
20 there is a vehicle inspection list right in the
21 middle of the page?

22 A. Yes, sir.

23 Q. If you can take a second and read that 1
24 through 6 and let me know if that is the policy
25 that is in effect in metro Atlanta?

1 A. (Witness reviews document.) Yes.

2 Q. And that is accurate? In the safety
3 requirements is the same thing, 1 through 4,
4 number 1, "Employee must use a seat belt." That
5 is correct, right?

6 A. That is correct.

7 Q. Number 2, "An employee cannot operate a
8 motor vehicle under the influence of alcohol,
9 illegal drugs or medications that impair driving
10 abilities;" is that correct?

11 A. Yes.

12 Q. 3, "Employees must obey Federal, State and
13 local traffic regulations;" that is right?

14 A. Yes.

15 Q. And 4, my favorite. You can't pick up hitch
16 hikers; that is also correct?

17 A. That is correct.

18 Q. Then the last of pages that there is a
19 annual motor vehicle report check. Who handles
20 the annual motor vehicle report?

21 A. That is handled out of our corporate
22 headquarters. Our safety department.

23 Q. I will give you Exhibit 9. This is -- these
24 are a number of forms. And if you flip through,
25 they are all blank except for an applicant's name

1 or a certified field trainer's name or a date.

2 Are you familiar with these forms as you flip

3 through them?

4 A. Yes.

5 Q. The first one is the Ride Test Evaluation

6 Form, two pages.

7 A. Yes.

8 Q. The second two is a field, excuse me. The

9 Structured Interview Guide from a Field Training

10 Manager?

11 A. Yes.

12 Q. The next one is one from the General

13 Manager, meaning a Structured Interview Guide for

14 the General Manager?

15 A. Yes.

16 Q. And all of these documents relate to Daniel

17 James, correct?

18 A. Correct.

19 Q. See his name on these? Let's stay with the

20 General Manager document because you are the

21 General Manager, right?

22 A. That is correct.

23 Q. You are branch 125?

24 A. Yes.

25 Q. The applicant was Daniel James. When would

1 he have -- when would this have been written? Do
2 you have any idea?

3 A. States on there 2/20 of 2012.

4 Q. Would he have been offered a job at that
5 point?

6 A. No.

7 Q. So he is going through the initial interview
8 with you to decide if he gets an offer of
9 employment?

10 A. Well, it was during course of the interviews
11 I do -- I could have met with him during that
12 time.

13 Q. And it looks like you did given that this
14 form has your name and his and you're listed as
15 the General Manager, right?

16 A. It looks that way, doesn't it.

17 Q. Is that fair for me to assume that? They
18 are your documents. I am working with them now
19 years later.

20 A. Yes, sir.

21 Q. It's not filled in. Do you have any idea
22 why it's not?

23 A. No.

24 Q. Is it your typical practice to respond and
25 give detailed information in these documents?

1 A. Yes.

2 Q. And that's true for -- is that true for all
3 of the documents that are attached within
4 Plaintiff's Exhibit 9?

5 A. That is correct.

6 Q. So the field -- excuse me. The CFT, Test
7 Ride Evaluation Form should have been completed?

8 A. Yes.

9 Q. As well as all the other documents in nine
10 should have been -- should have been completed?

11 A. Should have been -- information should have
12 been placed at some point, you know.

13 Q. And this should have been information that
14 you relied on when making a decision whether to
15 hire Mr. James?

16 A. It would have been -- I would have used it.
17 That is some of the information I would have
18 used.

19 Q. It's a component of whether he gets hired or
20 not.

21 A. It is part -- yes. It is part of interview
22 process; that is correct.

23 Q. Did you have any hesitation about hiring Mr.
24 James?

25 A. I do not remember.

1 Q. If you had serious concerns about him, would
2 you have hired him?

3 A. If I had serious?

4 Q. Yes.

5 A. Not if I would have had serious.

6 Q. Safe to say you didn't have serious
7 concerns, therefore, he was hired?

8 A. That is correct.

9 Q. I want to talk a little bit about what Mr.
10 Boland teaches during the safety classes and the
11 policies that new drivers, in fact, all employees
12 need to abide by with your company.

13 A. Okay.

14 Q. Let's start with the Driving Safety Policy.
15 Are you familiar with this?

16 A. Yes, I read it.

17 Q. It comes out of the Roto-Rooter handbook?

18 A. That is correct.

19 Q. I see in the top left corner it was revised
20 in February of 2012?

21 A. Uh-huh.

22 Q. Do you know of any newer versions of this
23 policy?

24 A. Yes.

25 Q. You do?

1 A. Yes.

2 **Q. When was the policy revised?**

3 A. I can't tell you the exact day. I would be
4 surprised -- you mean the policy or the book?

5 **Q. I mean the policy.**

6 A. Okay. No, I do not. I can't confirm that
7 the policy was revised since then. I am just
8 saying the handbook gets revised periodically,
9 so...

10 **Q. Is there any reason that you have to believe**
11 **that on the date of the accident of August 2012,**
12 **that a policy besides this one was in effect?**

13 A. Not that I would have known.

14 **Q. So let's operate under the assumption that**
15 **this is the correct policy.**

16 A. Okay.

17 **Q. The driving record requirements, down about**
18 **2/3rds of the way down the page, Roto-Rooter**
19 **essentially assigns points very much like motor**
20 **vehicle does; is that right?**

21 A. Yes.

22 **Q. They look at driving incidents and depending**
23 **on the severity or the kind or type of incident,**
24 **Roto-Rooter assigns their drivers points,**
25 **correct?**

1 A. Yes.

2 Q. And this is a listing of some of those
3 points. 1 point for minor violation, there is
4 also a 2 and 3 point, 4 point minor violations?

5 A. Yes.

6 Q. On the next page there is major violations
7 which has 6 points?

8 A. Yes.

9 Q. Under minor violations, the 2 points on Page
10 1, the third thing down is "at fault accident."
11 Do you see that? It's on the right side there.

12 A. Yes, I do.

13 Q. Can you tell me what an "at fault accident"
14 is?

15 MR. HARRISON: In regard to
16 what it means on this form?

17 BY MR. RAFI:

18 Q. Yes, sir. Can you tell me what Roto-Rooter
19 means when in their Driving Safety Policy, when
20 they say that an at fault accident is a minor
21 violation that assigns 2 points?

22 A. No, I can't speak to that.

23 Q. Who would know that?

24 A. That would be Kim Ohl.

25 Q. Kim Ohl? O-H-L?

1 A. Yes, correct.

2 **Q. Does your office actually assign the points**
3 **to drivers?**

4 A. No.

5 **Q. You're told what points have been assessed**
6 **to someone and you're told the corrective action**
7 **to take?**

8 A. That is correct.

9 **Q. Whether it is additional training or**
10 **termination or something else?**

11 A. Correct.

12 **Q. How does Kim Ohl determine, if you know, if**
13 **an accident is at fault?**

14 A. Okay. I don't know if -- I said that Kim
15 Ohl can tell you what an at fault accident -- a
16 description of what that would mean. She would
17 be the one -- that is ran MVR -- during the MVR
18 checks. That is ran during the MVR checks and
19 they assign the points and they send those down
20 to the office. Russ Garman or Joel would review
21 that and look at their -- then they would go
22 through them and determine how that is handled,
23 disciplinary action or what form of any action
24 would be taken on that.

25 **Q. How does someone in corporate, whoever that**

1 person is, that makes the determination to apply
2 points? How do they do that? Do you have any
3 idea?

4 A. No.

5 Q. Do they do it solely based on the motor
6 vehicle report or do they consider other things?

7 A. I do not -- I can't answer on that. I am
8 sorry.

9 Q. If someone has a motor vehicle accident, are
10 they assigned points at the time of the accident
11 or do you have to wait until their motor vehicle
12 is run sometimes months later?

13 A. I do not know.

14 Q. How many of your employees have been
15 involved in a motor vehicle accident in the last
16 five years?

17 A. I do not know.

18 Q. Would you say this is the only one?

19 A. I can come to say this is not the only one.

20 Q. Right now, how many motor vehicle accidents
21 are you investigating one way or another
22 involving your location?

23 A. One.

24 Q. With that accident, what do you -- do you
25 see the problem with what could be a problem with

1 the policy, and that's that a driver can have an
2 at fault accident, whatever that means, and it
3 can take months for that to actually affect their
4 employment. Would you agree with that?

5 MR. HARRISON: Object to the
6 form.

7 THE WITNESS: I don't see the
8 problem in it.

9 BY MR. RAFI:

10 Q. Is it possible that someone can be involved
11 in a major motor vehicle accident in January and
12 not be reprimanded or assigned points until July
13 when their motor vehicle accident report is ran?

14 MR. HARRISON: Object to the
15 form.

16 THE WITNESS: It's possible.

17 BY MR. RAFI:

18 Q. How long does discipline usually take or how
19 long is it the time between when an accident
20 occurs, a motor vehicle accident involving a
21 Roto-Rooter employee, and any discipline that
22 results from that accident?

23 A. Are you stating an accident that was brought
24 to our attention or are you saying --

25 Q. Yes. Let's say you all find out about an

1 accident and the information gets passed up to
2 corporate as it's supposed to, correct?

3 A. Sure.

4 Q. How long does it typically take corporate to
5 get back to you guys and say, fire that driver,
6 if that's the case?

7 A. I don't have that specific answer. I don't
8 have that specific answer.

9 Q. Would you agree that it's important to
10 investigate accidents quickly?

11 A. Yes.

12 Q. And it's important that you investigate them
13 thoroughly as well?

14 A. I would think -- I would agree that it's
15 important to investigate them.

16 Q. Well, it's important that you do it quickly
17 and thoroughly because your goal I would think is
18 to limit future accidents, right?

19 A. Yes.

20 Q. And it's also to determine if you have
21 people who are unsafe still working for you?

22 A. Yes.

23 Q. So if you investigate quickly and you
24 investigate thoroughly, you can root out the
25 unsafe people in Roto-Rooters?

1 MR. HARRISON: Object to the
2 form.

3 THE WITNESS: You can -- I
4 would say you can look at the matter
5 and find out and make and determine
6 from that one. I am not going to sit
7 here and say you are going to root out
8 employees, I am not going to do that.
9 You can, you know -- it is best
10 interest of all parties to follow up
11 what's going on with our employees.

12 BY MR. RAFI:

13 **Q. It is in the best interest of you, the**
14 **Roto-Rooter company?**

15 A. It's the best interest for me, it's the best
16 interest of anyone riding on the road, best
17 interest of the public at large.

18 **Q. You saw exactly where I was going with**
19 **that --**

20 A. Sure.

21 **Q. -- and that is my concern, it could take a**
22 **long time.**

23 **You would agree with me that if you**
24 **have a driver who is unsafe he should be off the**
25 **road?**

1 MR. HARRISON: Object to the
2 form.

3 THE WITNESS: Yes.

4 BY MR. RAFI:

5 Q. We are actually moving pretty quickly. Are
6 you good to keep going, Mr. Austin?

7 MR. HARRISON: Do you need a
8 bathroom break?

9 THE WITNESS: No.

10 BY MR. RAFI:

11 Q. Are you familiar with green hiring and
12 training folders?

13 A. Yes.

14 Q. What are those?

15 A. Those are the -- it's a folder that holds a
16 lot of the training, the training documents,
17 training forms that we have during an employee's
18 training.

19 Q. And then if an employee terminates within a
20 year, that and the personnel file goes to
21 corporate?

22 A. Yeah. Any time, all personnel forms upon
23 termination are requested to go to corporate.

24 Q. Let's talk about Roto-Rooter's service
25 technicians, regulations, rules and conducts and

1 liabilities.

2 A. Okay.

3 Q. And that is number 13 in the exhibit list.

4 Number 6 says that "A Roto-Rooter employee has to
5 maintain his or her van according to van
6 standards."

7 A. Yes.

8 Q. I got something that you posted a while ago
9 here. I will show it to you.

10 -----

11 (Whereupon, Plaintiff's
12 Exhibit 19, Google Search, was
13 marked for identification.)

14 -----

15 BY MR. RAFI:

16 Q. What I just handed you has been premarked as
17 Exhibit 19. This is something I printed out of
18 your -- I believe it's your Google Plus account;
19 is that right?

20 A. I do not know.

21 Q. Do you have a Google Plus account?

22 A. There is one that the company has put out.

23 Q. It updates a lot?

24 A. Yeah.

25 Q. Who controls your Google Plus account?

1 A. I think it's somebody out of headquarters.

2 Q. It's got your picture. Says Keith Austin?

3 A. That is me.

4 Q. A lot of people have viewed it, about 8,000
5 people, just under. You are pretty popular.

6 A. Yeah, in a heavier state.

7 Q. On the left side is just the identifying
8 information which shows that it's your Google
9 Plus account. On the right side it has a post
10 that you made in June 2000 -- June 21st, 2014.
11 Have you ever seen that before?

12 A. No.

13 Q. That post was made by Roto-Rooter's National
14 Google Plus account and then also put on a
15 different date.

16 A. Okay.

17 Q. It says that "Your Roto-Rooter plumber has a
18 van, is well equipped with the right tools and
19 parts to the handle the most plumbing, sewer and
20 drain problems." Flip to the next page. The
21 caption of that photo is an additional caption.
22 It says "Your Roto-Rooter plumber has a van and
23 is well equipped with the right tools." Do you
24 see that right at the top, it's so small, but the
25 best I could do.

1 A. Yes.

2 Q. And then it has a picture of a Roto-Rooter
3 van and what looks to be some sort of military
4 plane.

5 A. Okay.

6 Q. If I am not mistaken, this was originally on
7 your corporate page back on July 4th of 2013. So
8 it's just kind of a patriotic kind of thing.

9 Can you tell me -- I can identify
10 some of them, but can you tell me what is in the
11 Roto-Rooter van there?

12 MR. HARRISON: You mean on the
13 ground?

14 BY MR. RAFI:

15 Q. Yes. And here, what I will do is, I will
16 tell you what I can see and you tell me what I
17 might be missing; is that fair?

18 A. Yes.

19 Q. I see that there is a bucket, a red bucket.
20 And what are those three things?

21 A. Those look to be drain care.

22 Q. To the right of those you have some sort of
23 fluid and tubs?

24 A. More drain care.

25 Q. To the right of that is a toolbox with

1 **something?**

2 A. Just a toolbox. I don't know what is inside
3 of that.

4 **Q. All right.**

5 **Is this typical what a Roto-Rooter**
6 **vehicle has, this, what we talked about in the**
7 **other pictures, these tires and a winch and some**
8 **other things?**

9 A. Those are different sewer machines.

10 **Q. Different sewer machines?**

11 A. Those are drums that hold the sewer cables
12 in it.

13 **Q. All right.**

14 **So you are familiar with all these**
15 **things?**

16 A. Yes.

17 **Q. Are these standard kind of issue for**
18 **Roto-Rooter vans?**

19 A. Their standard issues for drain cleaners.
20 If you cover -- if you don't do drain cleaning,
21 you do plumbing, you may not have some of those
22 tools in your truck.

23 **Q. Okay. Thank you for going through that.**

24 **Now, Roto-Rooter is -- yes, thank**
25 **you. Roto-Rooter requires certain things of a**

1 **vehicle and the vehicle has to be clean on the**
2 **inside and outside, right? Is that true?**

3 A. Yes. We request our employees keep the van
4 clean.

5 **Q. Okay.**

6 **It has to have proper tires?**

7 A. I don't know that is exactly true. To be
8 honest, I don't have the policy in front of me.
9 I don't know exactly. I would agree, but I am
10 not going to say that is a fact.

11 **Q. The list I was about to give you is one that**
12 **Mr. Boland gave us that vehicles include. Would**
13 **you have any reason to doubt him as to what he**
14 **requires for vehicle maintenance?**

15 A. No, I would not.

16 **Q. Is that more his domain than yours?**

17 A. It's more of his domain, yes.

18 **Q. Have you ever disciplined a driver for a**
19 **safety related issue?**

20 A. Yes.

21 **Q. What were the circumstances surrounding**
22 **that?**

23 A. I don't remember.

24 **Q. It wasn't recent, or was it?**

25 A. Not recently.

1 Q. Mr. James had a cell phone. A rotary cell
2 phone.

3 A. Yes, correct.

4 Q. And when driving, he is only allowed to use
5 handsfree capabilities of that phone. Are you
6 aware of that policy?

7 A. Yes.

8 Q. You can't be texting, you can't be talking
9 with the phone in your hand, everything has to be
10 hands free; is that right?

11 A. That is correct.

12 Q. You can say yes.

13 A. Yes.

14 Q. Do you have any idea what his phone number
15 was?

16 A. No, I do not.

17 Q. Would you be able to find that out?

18 A. I could. I probably have to go through some
19 records, but I can go and find out what it was.

20 Q. Would you be willing to do that for us and
21 assuming your attorney told you to and said it
22 was okay?

23 A. If my attorney said it was okay.

24 Q. Would you also be able to tell us the
25 provider of the cell phone company at that time?

1 A. Yes.

2 **Q. We can find that out, but --**

3 A. I think we switched providers since then,
4 but I think I can tell you the provider.

5 MR. HARRISON: We will look
6 for that. I think Mr. James is
7 probably a better source for that
8 information, but we will look for it.

9 THE WITNESS: I don't know if
10 Mr. James would have his company cell
11 phone number.

12 MR. HARRISON: It's a
13 possibility.

14 THE WITNESS: He may not.

15 BY MR. RAFI:

16 **Q. This is document 14 and this is an important**
17 **document. It's your Vehicle Accident Reporting**
18 **Requirements. So this is -- would you agree this**
19 **is what Roto-Rooter employees must do after a**
20 **motor vehicle accident?**

21 A. Yes.

22 **Q. That first line, "Roto-Rooter Services**
23 **Company has outlined in the Driving Safety Policy**
24 **takes its responsibility seriously with regard to**
25 **the safe vehicle operating procedures;" is that**

1 right?

2 A. Yes.

3 Q. Now, from the top half of the page you have
4 what you do when a technician owned vehicle is
5 involved in an accident and there is five bullets
6 points. Then there is five bullet points for a
7 company vehicle involved in an accident. Do you
8 see that?

9 A. Yes.

10 Q. Here is what we are going to talk about the
11 differences between the two types of vehicles.
12 So I will try to be as clear as I possibly can in
13 my questions.

14 A. Yes.

15 Q. Let me start with a general question.

16 Why are these different?

17 A. I own one and I have -- we own one with the
18 company, we provide the insurance on that, we
19 take full responsibility. The other one is van
20 employee vehicle, they own an insurance policy,
21 an auto policy on that. They are responsible for
22 their vehicle, the upkeep, the maintenance as
23 part of that.

24 Q. They are required -- when I say they in this
25 instance, I mean an employee who owns a vehicle

1 is required to maintain and keep his vehicle up
2 to par, correct?

3 A. Yes.

4 Q. But that par is "Roto-Rooter par." It's the
5 rules and regulations that you all make them live
6 up to; is that right?

7 A. Yes.

8 Q. Who for -- for company owned vehicles, is
9 that essentially the same thing, the driver of
10 that vehicle, whoever it's assigned to, needs to
11 keep it clean and keep it safe?

12 A. Or the department that it reports to. There
13 could be a department that has three or four
14 vehicles or have three or four employees, so
15 there is not a specific employee assigned to that
16 vehicle.

17 Q. The drivers of Roto-Rooter technician owned
18 vehicles are employees?

19 A. Say that again.

20 Q. The drivers of technician owned vehicles are
21 employees of Roto-Rooter?

22 A. That is correct.

23 Q. And that is why you can require them to do
24 certain things involved in maintaining and
25 keeping their vehicle safe?

1 A. Yes.

2 Q. It's essentially a job duty of what they
3 must do?

4 A. It's a requirement to be an employee.

5 Q. Okay.

6 I want to go through these and talk
7 about them.

8 A. Okay.

9 Q. The first bullet point under, "Technician
10 Owned Vehicle. The employee must notify his or
11 her supervisor and/or General Manager immediately
12 of an accident." Of any accident?

13 A. Yes.

14 Q. Is that true and is that an accurate
15 statement of Roto-Rooter policy as it's in
16 practice?

17 A. It is a policy, correct.

18 Q. Do you all follow it?

19 A. We follow it if they follow it and the
20 employees do.

21 Q. So if an employee notifies you, and you
22 expect employees to notify you?

23 A. That is correct.

24 Q. So you require this policy be implemented
25 and employees have to follow it?

1 A. Yes.

2 Q. The next sentence, "The supervisor must
3 notify the General Manager immediately." Is that
4 a policy that your office follows?

5 A. Yes.

6 Q. So you are notified of every accident
7 because an employee will tell a supervisor or you
8 directly, if not, the employee will tell the
9 supervisor who tells you?

10 A. That is correct.

11 Q. "The employee involved must immediately
12 secure the names, addresses, license numbers and
13 insurance companies of other involved parties,"
14 and that is at the accident scene?

15 A. That is correct.

16 Q. Jump down to bullet one of the company owned
17 vehicle.

18 A. Uh-huh.

19 Q. Right there.

20 A. Yes, sir.

21 Q. "The employee is to notify the supervisor
22 immediately of any accident" phrased differently
23 but it's the same as the previous policy we
24 discussed regarding employee owned operation of
25 vehicles, right?

1 A. That is correct.

2 Q. "The supervisor must notify the General
3 Manager immediately." Same policy?

4 A. Yes.

5 Q. "The employee should secure the names,
6 addresses, license number and insurance companies
7 of the other parties and witnesses." Same thing?

8 A. Uh-huh.

9 Q. Then there is some sentence under the
10 Company Owned Vehicle Policy. "Do not give an
11 opinion as to the cause of the accident nor admit
12 guilt or liability."

13 A. Yes, sir.

14 Q. Why is that important for company owned
15 drivers but not important for technician owned
16 drivers?

17 MR. HARRISON: Objection to
18 form.

19 THE WITNESS: I am not -- I
20 didn't write the policy. I just
21 administer it, so I wasn't the author
22 of it.

23 BY MR. RAFI:

24 Q. So if a technician owned -- let me ask you.
25 Do you follow that policy, that company owned

1 vehicle driver -- let me start over.

2 Do you follow the policy, "that
3 company owned drivers should not give an opinion
4 as to the cause of the accident nor admit guilt
5 or liability"?

6 A. Yes.

7 Q. What if it conflicts with what the police
8 ask? What I mean by that is, what if the police
9 say what was the cause of the accident. They are
10 instructed by Roto-Rooter not to answer that
11 question, agreed?

12 MR. HARRISON: Object to the
13 form.

14 THE WITNESS: I agree that
15 that was a policy, yes.

16 BY MR. RAFI:

17 Q. What would you instruct an employee to do
18 given that situation where the policy says, do
19 not give an opinion as to the cause of an
20 accident and the police officer asked for him or
21 her for the cause of the accident?

22 MR. HARRISON: Objection.

23 THE WITNESS: I tell them to
24 follow policy.

25 BY MR. RAFI:

1 Q. Follow the policy?

2 A. Follow the policy.

3 Q. Not the police officer?

4 A. I say follow the policy.

5 Q. And if a service technician who owns his
6 vehicle did provide police or someone else with
7 the cause of the accident, or he or she admitted
8 guilt or liability, that is totally okay as per
9 the policy?

10 A. We don't state that. We don't have an
11 opinion on that. We don't advise not to give or
12 not give an opinion as to the policy.

13 Q. If an employee who owned his own vehicle
14 like Mr. James asked you, if I am in an accident,
15 should I give an opinion as to the cause of the
16 accident, admit guilt or admit liability, what
17 would you say?

18 MR. HARRISON: Objection to
19 form.

20 THE WITNESS: I would tell
21 them he would have to make that
22 decision because that is not my policy.
23 My policy is that if he is -- if it's
24 an employee owned -- or a company owned
25 vehicle, he is not to give an opinion.

1 BY MR. RAFI:

2 Q. Let's go to the second bullet point. "The
3 employee involved in the accident must submit to
4 post-accident drug screen," per the requirements
5 outlined as we previously discussed?

6 A. Yes.

7 Q. Do you follow that policy in Atlanta?

8 A. Yes.

9 Q. Is that true, when an employee is involved
10 in any kind of accident or does it depend upon
11 the severity of the accident?

12 A. I will say depends upon the severity of the
13 accident.

14 Q. So sometimes an employee involved in an
15 accident doesn't have to submit to a
16 post-accident drug test in Atlanta?

17 A. It would depend upon the severity of the
18 accident.

19 Q. And if it wasn't severe enough, then the
20 employee does not have to submit to the
21 post-accident drug test?

22 A. Yes.

23 Q. The policy -- strike that.

24 Who decides if the accident is
25 severe enough to warrant the employee getting a

1 **drug test?**

2 A. Are you -- when you say the word "accident,"
3 I think I come across a different term. I want
4 to make sure. I mean --

5 **Q. Okay.**

6 A. An accident could be a slip and fall, or it
7 could be raise up and hurt himself, and say I am
8 hurting, an accident could be falling out -- fall
9 down a stairwell and that is severity. The
10 vehicle accident, if it was an auto vehicle
11 accident, we follow the policy.

12 **Q. Okay.**

13 **So all employees involved in an**
14 **auto vehicle accident do have to submit to a drug**
15 **test?**

16 A. That is what the policy states. That is
17 what is supposed to be followed.

18 **Q. Do you know of a situation where a employee**
19 **was involved in a auto accident but did not**
20 **submit to a drug test and was not required to by**
21 **Roto-Rooter?**

22 A. I don't remember at this point.

23 **Q. The fourth bullet point under Service**
24 **Technician Owned Vehicle, "The supervisor must**
25 **investigate the accident to determine if it was**

1 **presentable and take appropriate action according**
2 **to another Roto-Rooter policy."**

3 A. Uh-huh.

4 **Q. Who is Mr. James' supervisor as this bullet**
5 **point contemplates?**

6 A. That would be Joel Boland.

7 **Q. So it was Joel's job to investigate the**
8 **accident to determine if it was preventable and**
9 **take appropriate action according to Roto-Rooter**
10 **Policy 56?**

11 A. Yes.

12 **Q. If Mr. Boland does not do that, he does not**
13 **investigate, what happens?**

14 A. Well, if it's not brought to my attention, I
15 wouldn't know.

16 **Q. Have you heard of a time where Mr. Boland**
17 **determined that an accident, a motor vehicle**
18 **accident was preventable?**

19 A. I do not remember.

20 **Q. Okay.**

21 **But you believe that is something**
22 **he is supposed to do?**

23 A. Yes.

24 **Q. Does the term "preventable" involving a**
25 **motor vehicle accident, does that term mean**

1 anything in particular to you?

2 A. No.

3 Q. Are you familiar with the Federal Motor
4 Carrier Safety Regulations?

5 A. No, sir.

6 Q. Okay.

7 Presentable has a very specific
8 definition in those regulations, which is what
9 lawyers -- a lot of us sitting in the room deal
10 with a lot. Do you know what it means to be
11 "preventable" as per Roto-Rooter's policy?

12 A. No.

13 Q. Who would know that? Mr. Boland has to
14 because he has to do this, right?

15 A. I would state he's been in training for it.
16 I would state that a reasonable Safety Manager,
17 Walter Tinsley could -- would be more of a
18 authority or more -- have better knowledge of
19 that and I would say obviously Kim Ohl, the
20 Director of Safety.

21 Q. You said Mr. Boland had been in training for
22 it. What do you mean?

23 A. I would imagine he's been through some of
24 the --

25 Q. Training --

1 A. I don't know if that is the word. I would
2 say that maybe in his role as Safety Manager, he
3 would be -- he would have better knowledge of
4 what would be preventable for a company standards
5 as you asked in there.

6 Q. I am trying to find someone who knows what
7 that means in your company and I am having a
8 tough time, so I wanted to see if you knew and
9 you directed me to Ms. Ohl, Mr. Tinsley?

10 A. Yes.

11 Q. Anyone else that you can think of?

12 A. No.

13 Q. Okay.

14 What is also interesting to me in
15 the Company Owned Vehicle Policy, it's bullet
16 number three. And before we jump there, I am
17 sorry, let's go back up to three in Technician
18 Owned Vehicle at the top part.

19 It also says "The employee must
20 complete an Accident Investigation Form within 24
21 hours." Is that a standard and a policy that you
22 all follow in Atlanta?

23 A. Yes.

24 Q. Do you know if it was done regarding Mr.
25 James?

1 A. No.

2 Q. Do you have any idea why?

3 A. I do not know why.

4 Q. Whose responsibility would it have been to
5 ensure that your employee completed the Accident
6 Investigation Form?

7 A. It would have been to the -- it would have
8 been Joel Boland at the time that he was advised.

9 Q. And he is the Safety --

10 A. Safety.

11 Q. Branch Safety Coordinator?

12 A. Correct.

13 Q. Dropping back to bullet three. I jumped the
14 gun there. Dropping down to bullet three under
15 Company Owned Vehicle?

16 A. Yes, sir.

17 Q. It says "The employee must complete an
18 Accident Investigation Form," same thing, but it
19 also says, "in addition, the employee must
20 discuss how to prevent accidents in the future
21 with his supervisor." Why is that important to
22 do?

23 A. To protect Roto-Rooter properties, assets.

24 Q. Protect other people driving on the roads?

25 A. Protect other people.

1 Q. In terms of a motor vehicle accident, can
2 literally save lives, people talking about what
3 they did, why they did it and how to fix it?

4 A. Yes.

5 Q. Why don't you all require that for
6 technician owned vehicles?

7 A. I didn't draft this document.

8 Q. You have 40 plus technician owned vehicles,
9 only 10 or less company owned vehicles, right?

10 A. Yes.

11 Q. I am going to show you Plaintiff's Exhibit
12 15.

13 A. Okay.

14 Q. It is my understanding that the Accident
15 Investigation Form, that must be completed within
16 24 hours of any accident, including motor vehicle
17 accidents?

18 A. Yes.

19 Q. And if Mr. James' was required to do that,
20 that -- we would have a filled out copy of that,
21 right?

22 A. Yes.

23 (Whereupon, the last question
24 was read back.

25 BY MR. RAFI:

1 Q. After a motor vehicle accident involving a
2 Roto-Rooter employee, it is important to fill out
3 that incident report because it ensures that
4 there is an actual investigation done, right?

5 A. Correct.

6 Q. It makes somebody actually sit down and
7 answer the questions and think about why it
8 happened?

9 A. That is correct.

10 Q. And it is important because then you can
11 take precautions in the future and educate other
12 employees not to make the same mistake?

13 MR. HARRISON: Object to the
14 form.

15 THE WITNESS: Yes.

16 BY MR. RAFI:

17 Q. After a motor vehicle accident, are you
18 concerned about a lawsuit?

19 A. No.

20 Q. The policy for the company owned vehicle,
21 that an employee should not give an opinion to
22 cause of the accident or admit guilt or
23 liability, do you think that involves -- is
24 geared towards lawsuits?

25 MR. HARRISON: Object to the

1 form.

2 THE WITNESS: I didn't draft
3 the policy.

4 BY MR. RAFI:

5 **Q. Using your common sense, what do you think?**

6 MR. HARRISON: Same objection.

7 THE WITNESS: I don't have an
8 opinion on that.

9 BY MR. RAFI:

10 **Q. How did you first hear about the accident on**
11 **August 23rd involving Mr. James?**

12 A. I don't remember.

13 **Q. It's my understanding it happened about**
14 **12:45 AM on a Thursday morning, Wednesday night.**

15 A. Okay.

16 **Q. Does that sound familiar to you?**

17 A. From the descriptions we have spoken of,
18 yes, but I don't remember exactly the time and
19 when I was advised of it, so...

20 **Q. The policy that we were just talking about**
21 **requires that "the supervisor must notify the**
22 **General Manager immediately." You agree with me**
23 **that Mr. Boland knew of the accident pretty much**
24 **right when it happened. Is that safe to say?**

25 A. I do not know that.

1 Q. Are you aware that Mr. James called Mr.
2 Boland from the scene?

3 A. I do not remember.

4 Q. When Mr. Boland said he didn't call you or
5 Mr. Tinsley --

6 A. Okay.

7 Q. -- that is a violation of the company
8 policy, right?

9 MR. HARRISON: Object to form.

10 THE WITNESS: As stated there,
11 yes.

12 BY MR. RAFI:

13 Q. Mr. Boland said that Mr. Tinsley would
14 essentially direct him of what to do in that
15 situation. Is that typically how it works after
16 a motor vehicle accident?

17 A. We do -- we call him -- he asks that any
18 time there is an accident we call him and advise
19 him of it so he knows of it.

20 Q. Does he decide if an employee gets drug
21 tested or not?

22 A. I would think not, but --

23 Q. Who do you think would do it, Mr. Boland?

24 A. I think it would follow policy.

25 Q. Tell me everything you know about how the

1 **accident occurred.**

2 MR. HARRISON: Other than what
3 you and I have discussed, of course.
4 He is not asking you what you learned
5 from me.

6 THE WITNESS: At the time I
7 was advised, it was past the later
8 date, that he was driving home --

9 BY MR. RAFI:

10 **Q. Mr. James?**

11 A. Mr. James was driving home and his vehicle
12 had went broken down and got to an exit, and when
13 he got out of the vehicle and walked down the
14 road and the person driving down the road got off
15 the exit and struck his vehicle.

16 **Q. When you say that it's your understanding**
17 **his vehicle was broken down, can you elaborate on**
18 **what you mean by that?**

19 A. At this point, I can't. I don't remember if
20 it was a mechanical failure or a gas failure. I
21 just remember that the vehicle pulled over to the
22 side of the road, or tried to get off the side of
23 the road and it was struck by another vehicle. I
24 don't remember. I am sorry. I just don't
25 remember that.

1 Q. In your common language and vocab, if a car
2 is out of gas would you say it is broken down?

3 A. Me, no.

4 Q. Would you typically say the car ran out of
5 gas or something like that?

6 A. Yes.

7 Q. And you just said it was broken down, but
8 you are not sure if it was out of gas or
9 mechanical failure?

10 A. Yes.

11 Q. Did you ever find out what the answer was?

12 A. If I did, I don't remember.

13 Q. And sitting here today, you don't know why
14 Mr. James' van failed in one way or another, if
15 it did?

16 A. I don't remember why. So I would say I
17 don't know because I don't remember. I am sure
18 at the time.

19 Q. So it's possible at one point you did know
20 the full story?

21 A. I would know more of the story, that is
22 correct.

23 Q. And did you ever write it down for any sort
24 of investigation purposes or documentation
25 purposes?

1 A. Not that I remember.

2 Q. Okay.

3 It's your understanding that Mr.
4 James was on the exit ramp?

5 A. Yes.

6 Q. And that was on Route 20? I20?

7 A. Yes.

8 Q. Do you know if he immediately secured the
9 names, addresses, license numbers and insurance
10 companies of the parties involved?

11 A. No, I do not know.

12 Q. Do you know if he witnessed the accident?

13 A. No, I do not know.

14 Q. Do you know that he was not at his vehicle
15 at the time of the collision, the impact?

16 A. No, I do not know.

17 Q. Do you know if he left his vehicle at any
18 point after it was "broken down," whatever that
19 means?

20 A. I don't know specifically. Since that
21 vehicle struck it, I would -- and he was not
22 injured, I would have thought he was away from
23 it, but that is just -- I am assuming that.

24 Q. What is company policy when a vehicle breaks
25 down in a roadway?

1 A. I do not know.

2 Q. What should a driver do if his vehicle is
3 broken down in a travel lane, whether it is an
4 exit lane or regular ole travel lane, what should
5 an employee do?

6 A. I would say he should try to call for
7 assistance. I would say he should put on his
8 hazards, personally, and then I would say at that
9 point I would be okay for him to exit the vehicle
10 in case there was a vehicle that came in the road
11 and hit it so he wouldn't be -- so he could be
12 injured.

13 Q. That is fair.

14 So put on his hazards, obviously
15 try and pull over in the safest place possible I
16 would assume, right?

17 A. Correct.

18 Q. Put on his hazard lights and any other
19 lights he could possibly do?

20 A. Yes.

21 Q. And then get out of the vehicle because it
22 is dangerous?

23 A. Yes.

24 Q. Because a vehicle stopped in a travel lane
25 is dangerous to other drivers?

1 MR. HARRISON: Object to form.

2 THE WITNESS: Yes.

3 -----

4 (Whereupon, Plaintiff's
5 Exhibit 20, Photograph, was marked
6 for identification.)

7 -----

8 BY MR. RAFI:

9 Q. I will show you this. This is a full image
10 of it. This is a roadway. It's actually 85, 75,
11 right near downtown Georgia Tech. This was
12 taken, I am not sure when, somewhat more
13 recently. And have you ever seen any of these
14 billboards? It says "Georgia law, move accidents
15 out of the travel lanes."

16 A. Yes.

17 Q. And these are frequently on major highway in
18 the State?

19 A. Yes.

20 Q. And it is for the reasons that you just
21 identified, because we need vehicles out of the
22 road because they are dangerous if they are left
23 there; is that right?

24 A. I didn't write the law, but I agree. I am
25 okay with moving vehicles out of the road.

1 Q. So as a Roto-Rooter General Manager, it's
2 your opinion that the vehicle can get out of the
3 road it should be, right?

4 A. As a driver.

5 Q. And in that same vein, it is dangerous for a
6 driver to leave his vehicle in the middle of the
7 roadway, a travel lane?

8 MR. HARRISON: Object to the
9 form.

10 THE WITNESS: If it's possible
11 to move that, to move an accident out
12 of a travel lane, I would recommend it.
13 If it's possible, I would recommend it.

14 BY MR. RAFI:

15 Q. Did you ever speak to Mr. James after the
16 collision?

17 A. I do not remember.

18 Q. And would it have been your standard
19 practice to interview him about the collision?

20 A. It may not have been my standard practice to
21 interview him. I would have spoken to him.

22 Q. Have you spoken to him about the accident,
23 or it your standard practice to speak to him
24 about the accident?

25 A. I would have asked him -- I mean, it's my

1 standard practice to speak to all my employees
2 coming into the office. He would have been in an
3 accident, I would have asked him, checked on him.

4 **Q. To your knowledge, what information was**
5 **given to your corporate office concerning this**
6 **vehicle accident?**

7 A. I do not remember.

8 **Q. Who made the determination to terminate Mr.**
9 **James, if that was the termination?**

10 A. He made that termination.

11 **Q. He quit -- my understanding is he quit,**
12 **because -- he didn't really quit, he stopped**
13 **working because he couldn't get a new van to**
14 **work?**

15 A. Which means he resigned.

16 **Q. Okay.**

17 **So he resigned because he wasn't**
18 **able to continue working for you?**

19 A. Yes.

20 **Q. Would you have all allowed him to continue**
21 **working for you if he was able to secure a new**
22 **van?**

23 A. Yes.

24 **Q. Would he have been disciplined for anything**
25 **having to do with this vehicle accident?**

1 A. After the investigation, I would say yes.

2 Q. When did he resign?

3 A. I do not remember.

4 Q. You said after the investigation. Did you
5 all do an investigation?

6 A. I do not know.

7 Q. If you did an investigation, would Mr.
8 Boland have been in charge of it?

9 A. Yes.

10 Q. What would you have liked Mr. Boland to do
11 in this kind of investigation? What should he
12 have done?

13 A. Follow the investigation policy.

14 Q. Okay.

15 Should have filled out the form and
16 obviously got all the information that is needed
17 to fill in that form. Should he have spoken to
18 Mr. James?

19 A. I would -- yes, I would say so.

20 Q. Should he have spoken to the police officer?

21 A. I don't know if he could have.

22 Q. If he could have, would that have been a
23 good thing for him to figure out?

24 A. If that's would have been one of the
25 questions on the Accident Investigation Form.

1 Q. You would agree with me, the more
2 information that you all can get about an
3 accident like this one, enables corporate to
4 decide whether to reprimand that person or not?

5 A. I agree.

6 MR. HARRISON: Object to the
7 form.

8 THE WITNESS: I believe to
9 follow the Accident Investigation Form,
10 that we have done what they requested
11 of us.

12 BY MR. RAFI:

13 Q. Do you know whose decision it was for Mr.
14 James to take a drug test?

15 A. I do not remember.

16 Q. Do you know if anyone from Roto-Rooter
17 attempted to determine the cause of the vehicle
18 failure, whatever it was?

19 A. I do not remember.

20 Q. You agree that a reasonable and prudent
21 person should fill up their gas tank when it is
22 low?

23 A. Can you restate the question?

24 Q. Sure.

25 Do you agree that a reasonable and

1 **a prudent person should fill up their gas tank**
2 **when it's low?**

3 A. No. You say low. I think there is a
4 degree. You know, you might say low, my mother
5 would say half a tank. My father -- my father
6 used to tell me it was a quarter of a tank and my
7 father used to tell me it must have been 1/12th
8 of a tank.

9 **Q. My girlfriend will tell you the light has**
10 **been on for five days.**

11 A. Yes.

12 **Q. I understand.**

13 **Let me ask you this. Do you agree**
14 **that it's dangerous to drive a vehicle on the**
15 **highway when the gas is at a point when you could**
16 **run out of gas?**

17 MR. HARRISON: Objection to
18 form.

19 THE WITNESS: I would not
20 states it's dangerous. I would not
21 agree with that.

22 BY MR. RAFI:

23 **Q. Okay.**

24 **Does Roto-Rooter have any policy**
25 **concerning maybe your dad or your mom, your**

1 **grandmom, that a policy like that which says that**
2 **employees need to fill up their gas tank at**
3 **certain points so that they don't run out of gas?**

4 A. Not that I am aware of.

5 MR. HARRISON: You mean when a
6 tank is at a certain level?

7 MR. RAFI: Yes.

8 BY MR. RAFI:

9 **Q. A quarter of a tank rule is what I grew up**
10 **with.**

11 A. No, I have never.

12 (Whereupon, a discussion
13 was held off the record at this
14 time.)

15 MR. RAFI: Bear with me for a
16 moment. I have a couple more.

17 THE WITNESS: Sure.

18 BY MR. RAFI:

19 **Q. It's Friday, I know we want to get home to**
20 **our families.**

21 **Are you aware where Mr. James was**
22 **coming from at the time of the accident?**

23 A. From what I remember, he had finished his
24 last job and he was going towards his home.

25 **Q. Your Roto-Rooter discovery responses, the**

1 way we get information before speaking to you,
2 says that he was traveling from Conyers where he
3 had done his last job, his most recent job and he
4 was traveling home. Does that comport with what
5 you remember?

6 A. Yes.

7 Q. Roto-Rooter also told us that Mr. James was
8 on call during this time period.

9 A. Yes.

10 Q. Let me give you number 17 and direct you to
11 Page 2.

12 A. Okay.

13 Q. Document 17. Actually, it's Page 3.

14 MR. HARRISON: Is this the
15 same.

16 MR. RAFI: Yes.

17 BY MR. RAFI:

18 Q. Go to Page 3. It's under Non-Work Time,
19 heading 2. Do you see that right at the top of
20 the page?

21 A. Yes.

22 Q. But when you go to C for on call time, which
23 was Mr. James was on, on call?

24 A. Yes.

25 Q. Basically that means -- maybe you can

1 explain it to me. It means he is on standby and
2 if he gets a call he goes to a job and that is
3 it, he is on call? Is that safe?

4 A. Yes.

5 Q. Am I missing the definition in any way?

6 A. No. How it works, if you are employed, at
7 the end of your shift, if you are not on call,
8 when you end your shift, when he ended his job at
9 Conyers, his shift ended.

10 Q. You are done, you can go get a beer, you can
11 do whatever you want?

12 A. He is off of work. He is also not paid
13 mileage to go home.

14 Q. It is like commuting to the office?

15 A. Yes. If he is on call and if he finishes --
16 they don't have a job for him, he is allowed to
17 stay in that standby time, whereas he gets to go
18 home and stays on call, which means he is still
19 compensated for his miles while on the drive
20 home.

21 Q. Since Mr. James is on call, and this is what
22 the policy says. It says when you are on call, a
23 technician's work time is spent traveling to and
24 from the job as well at the job?

25 A. Yes.

1 Q. So if he is on call and sitting at home and
2 that is possible, right?

3 A. Uh-huh.

4 Q. He can be on call and at home after his
5 regular shift?

6 A. Yes.

7 Q. So sitting at home and he gets a ring from
8 dispatch in Chicago and they say go to Conyers,
9 he then goes to Conyers on call, he drives there,
10 he does the drive and he drives home, that is the
11 plan at least, right?

12 A. Yes.

13 Q. And he is compensated the entire way for his
14 time?

15 A. Yes.

16 Q. And he is compensated for mileage?

17 A. Yes.

18 Q. And the way that your company does mileage,
19 and it's interesting, you guys use a GPS tracking
20 system?

21 A. That is correct.

22 Q. Mr. James had a GPS tracking system?

23 A. Yes.

24 Q. And it tracks employees when they are on
25 work time or working time?

1 A. Yes.

2 Q. So it would track him when he is on call
3 because he is working?

4 A. That is correct.

5 Q. And it shows where he is going and when he
6 gets there and how long he is at places?

7 A. Correct.

8 Q. And that information is kept by an outside
9 company as far as I understand?

10 A. Yes.

11 Q. That GPS data would have shown when he left
12 Conyers to travel home at the end of that day, at
13 the end of that job?

14 A. As long as he stayed on standby.

15 Q. And I am sure -- well --

16 A. He is able to program that in his phone and
17 do different things. If he programmed his phone
18 and he's in my shift, the system automatically
19 deattaches from the GPS -- and we already
20 established that that's their vehicle, when they
21 are not working, when they break that
22 establishment we don't know where they are at.

23 Q. And I really asking that -- I just want to
24 make sure I understand because I have never
25 actually heard of a company that does this. It's

1 pretty interesting.

2 But that GPS data, assuming it was
3 on, assuming he had it activated would have told
4 us when he got to the job in Conyers?

5 A. Yes.

6 Q. Would have told us how long he was there?

7 A. Yes.

8 Q. Because it could tell from the GPS data when
9 he left?

10 A. Yes.

11 Q. We would be able to tell exactly where his
12 vehicle stopped on I20, right?

13 A. As long as he didn't --

14 Q. Assuming it's on?

15 A. Yes.

16 Q. GPS data would tell us where the accident
17 occurred exactly?

18 A. Yes.

19 Q. And it would show how long his vehicle sat
20 there in the roadway before the collision?

21 A. I don't remember how much real time, is it
22 one minutes, did it every two minutes, is it one
23 that -- you know, I don't remember like you can
24 push a button and you can see a vehicle moving.

25 Q. But even if it gives us periodic updates --

1 A. I would think so.

2 Q. -- you would be able to get some idea how
3 long his vehicle was in the roadway before the
4 collision?

5 A. I would agree with that. Not that I have
6 the GPS program and knowledge of it.

7 Q. I understand. I am asking for your
8 knowledge of the GPS system that is on your
9 employees' vehicles?

10 A. Yes.

11 Q. Even when we talked about regarding safety
12 and your knowledge of the safety policies of
13 Roto-Rooter, do you think you will go back and
14 review any of the safety policies after this
15 conversation, after this deposition?

16 A. I would review them annually anyway.

17 Q. So is that a yes, you think after this
18 deposition you will go -- for instance, are you
19 going to watch the Smith driving video after this
20 deposition?

21 A. No.

22 Q. Are you going to go sit in a training class
23 after this deposition, because of -- to improve
24 your knowledge in any of the safety policies?

25 A. I do not plan to.

1 Q. Do you plan to review your Roto-Rooter
2 handbook and the safety policies that it
3 contains?

4 A. Yes, I will and as I do periodically review
5 my handbook.

6 Q. Do you plan to discuss the policies that
7 were or were not followed in Mr. James' case with
8 Mr. Boland?

9 MR. HARRISON: Object to the
10 form.

11 THE WITNESS: Not unless I
12 speak to my counsel and he advises me
13 to.

14 BY MR. RAFI:

15 Q. But leaving this office when we just
16 determined that proper procedure was not followed
17 after a vehicle accident with a serious injury,
18 are you going to go to your Safety Director and
19 make sure that this doesn't happen again?

20 MR. HARRISON: Object to form.
21 That mischaracterizes what may or may
22 not have happened. Subject to that,
23 you may answer.

24 THE WITNESS: I would do a
25 review with Mr. Boland about his

1 practices.

2 MR. RAFI: Thank you very much

3 I have no further questions for you.

4 (Adjourned.)

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I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on Friday, January 9, 2015, and that this is a correct transcript of same.

Celeste Perla, RPR, CSR, Merit
Reporter and Notary Public
Registered ID #19508
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