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I N D E X

IN RE: LYNN STORRS
CLAIM NO. BB-02863

DOCKET NO. 1713883
TACOMA, WASHINGTON
NOVEMBER 28, 2017

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LYNN STORRS

Direct Examination (Claimant)

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: LYNN STORRS) DOCKET NO. 1713883
)
CLAIM NO. BB-02863) TACOMA, WASHINGTON
) NOVEMBER 28, 2017

(Scheduled: 9:30 a.m.) (Actual: 9:40 a.m.)

HOLLY A. KESSLER, Industrial Appeals Judge

APPEARANCES:

Claimant, Lynn Storrs, by
Washington Law Center, PLLC, per
Spencer Parr, Attorney at Law

Employer, Miles Resources, LLC, by
None

Retro Group, Associated General Contractors, by
None

Department of Labor and Industries, by
The Office of the Attorney General, per
Alexander Jouravlev, Assistant Attorney General

* * * * *

BY JUDGE KESSLER:

This is an original hearing before the Board of
Industrial Insurance Appeals in the matter of Lynn Storrs.
The claim number is BB-02863. The docket number is
1713883. Today's hearing is being held pursuant to due and
proper notice which was mailed to all interested parties
earlier this month. We're in Tacoma, Washington today on
November 28, 2017, scheduled to begin at 9:30; it's 9:41.
So we're pretty close to on time.

1 At this time and place the claimant, Lynn Storrs, is
2 present and represented by Washington Law Center, PLLC, per
3 Spencer Parr.

4 The employer, Miles Resources, LLC, is not
5 participating in this appeal.

6 The retrospective rating group, Associated General
7 Contractors, is officially represented by Carl Singleton, a
8 lay representative. However, I spoke with Mr. Singleton on
9 the phone before today's hearing began, and he confirmed he
10 will not be attending this hearing and, as such, the retro
11 group is essentially unrepresented today.

12 The Department of Labor and Industries is represented
13 by the Office of the Attorney General, per Alexander
14 Jouravlev.

15 * * * * *

16 JUDGE KESSLER: While I have Mr. Storrs here, you're
17 not on the witness stand or anything, but I do
18 want to let you know that the Board of Industrial
19 Insurance Appeals is an independent state agency
20 entirely separate from the Department of Labor
21 and Industries. What that means is the Board's
22 function is to adjudicate appeals that are filed
23 by interested parties such as yourself that are
24 unsatisfied with the order issued by the
25 Department. We are totally separate agencies.

1 And I don't have their file. I will be basing my
2 decision on the evidence that's presented today
3 at the hearing and at the depositions the
4 attorneys will be conducting outside of the
5 hearing.

6 Do you understand that we're separate
7 agencies, sir?

8 MR. STORRS: Yes.

9 JUDGE KESSLER: Thank you.

10 I also want to mention that at the hearing
11 we have AJ Vanderpol, who is an attorney with
12 Washington Law Center, PLLC. He's simply
13 observing today and not participating.

14 We also have the claimant's witness in the
15 room, Troy Sutter, who, I believe, will be the
16 first to testify today.

17 The issues before the Board are whether Mr.
18 Storrs sustained an occupational disease which
19 arose naturally and proximately out of
20 distinctive conditions of his employment with
21 Miles Resources, LLC within the meaning of RCW
22 51.08.140. And, if so, was Mr. Storrs
23 temporarily and totally disabled and entitled to
24 time-loss compensation from December 6, 2016,
25 through December 20, 2016.

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Gentlemen, the Jurisdictional History was stipulated to in this matter back in June of 2017. So that's taken care of. The Order on Appeal is dated April 6, 2017, denying Mr. Storrs' claim and time loss.

Any questions or corrections to those matters I just went through, Mr. Parr?

MR. PARR: No, Your Honor.

JUDGE KESSLER: Mr. Jouravlev?

MR. JOURAVLEV: No.

JUDGE KESSLER: With that, will the claimant please call its first witness?

MR. PARR: Claimant calls Troy Sutter.

JUDGE KESSLER: And would you speak up for me in the future?

MR. PARR: So sorry.

JUDGE KESSLER: You don't have to repeat it.

Mr. Sutter, will you please stand and raise your right hand and I'll swear you in?

(WITNESS SWORN)

JUDGE KESSLER: Thank you. Please have a seat.

Mr. Parr, please proceed.

* * * * *

Troy Sutter, being first duly sworn on oath,
testified as follows:

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DIRECT EXAMINATION

BY MR. PARR:

Q. Mr. Sutter, do you know the claimant, Lynn Storrs?

A. Yes.

Q. Approximately how long have you known Mr. Storrs?

A. Twenty years.

Q. How do you know Mr. Storrs?

A. We've worked both in the asphalt paving industry.

Q. What is your profession?

A. Asphalt paving operating engineer, roller operator.

Q. How long have you done that work?

A. Thirty-five years.

Q. Have you done that work full time or part-time for 35 years?

A. Full time.

Q. What does full time mean to you?

A. We work about nine, ten months out of the year. The other two or three months we do not work because the weather's bad. So we usually get a little bit of time off.

Q. As an operating engineer, what kind of days are we talking about during those periods when you're at work?

A. It's anywhere between 12 and 16 hours a day.

1 Q. What does that work consist of, as an operating
2 engineer?

3 A. Heavy work: shoveling, raking, twisting, bending over,
4 pulling whackers by hand, dragging them up from patch
5 to patch. We have -- You're on the roller you got to
6 -- when you're running the roller you have a vibratory
7 on there. So when you're -- if you are on a big job
8 you're on that thing and the vibrator is consistent
9 throughout the day. Hard to get off -- sometimes to
10 get off. Sometimes you got to get off and help out
11 shovel, broom, rake, get back on the equipment again.
12 So a lot of jarring, a lot of placement. Hand
13 tamping. It's heavy work.

14 Q. You used a bunch of phrases that an average person may
15 not know. So we should go over what those mean in
16 your testimony. What is a roller, sir?

17 A. Its' two steel drums. There's a variation of a
18 couple. You got your -- let's start with the three-
19 to-five roller, which is a mid-range roller, finished
20 roller. And then you have your ten-ton roller.
21 That's another two steel drums but it's ten tons.
22 Basically, they use that for heavy compaction for all
23 the highways, compaction and stuff. So you go back
24 and forth. But that's not the only couple rollers
25 that you have. You have your pneumatic roller, which

1 is a rubber tire roller. It's not easy to drive. And
2 then of course you have your backhoes, you got your
3 graders. Tough work.

4 Q. You got good quality power-steering on all that
5 equipment?

6 A. You know, on the rollers you do, but not like the --
7 the backhoes don't have power-steering. The newer
8 ones might but not, you know -- typically, they're not
9 power.

10 Q. Now, you talked about a vibratory, and that sounds
11 kind of like an adjective or an adverb, but you used
12 it as a noun, you used it like a thing. Is it a
13 thing? What's a vibratory?

14 A. It actually -- What a vibratory is, is it actually
15 compacts the material down for density purposes for
16 the state so they actually have -- what they're
17 looking for is the percentage of what they're looking
18 for on -- the percentage of the compaction of
19 material.

20 Q. Does a vibratory come as a hand tool or just as a tool
21 that's associated with bigger vehicles?

22 A. No. You have it for other smaller vehicles, like the
23 three-to-five and the ten-ton rollers. And they do
24 have some mid-range rollers. Basically, it's a
25 button. When you're in the equipment, when you're

1 going back and forth -- So there's a lot of twisting
2 and turning. You have to hit the button. So when
3 you're hitting the button and the vibratory comes on
4 to give it that compaction, and then you have to turn
5 it off. But you're constantly going back and forth so
6 you can get that -- There's just a lot of movement,
7 you know. It's not -- It looks easy, but it's not,
8 you know. Typically how you run the equipment through
9 the years.

10 Q. With respect to the vibratory, when you flipped it on
11 with the button, is there any difference in how it
12 feels as the operator of the equipment?

13 A. Oh yeah. It beats you up.

14 Q. Tell me about that. How does it beat you up?

15 A. Your whole body -- The whole thing vibrates all the
16 way through your body, you know. So it's just hard on
17 you, especially if you're on it for -- anywhere
18 between 12 and 16 hours. You know, you have to get
19 off the machine once in a while to kind of get your
20 body to go back on there, but you don't get too much
21 time to really do that. Basically, your time off of
22 the roller is to go fill up with water, then you
23 stretch your legs a little bit, fill up your water,
24 get back on and you do it again, especially on the
25 bigger jobs, you know, the highway jobs and stuff.

1 It's very grueling.

2 Q. And you can do that all day?

3 A. We're used to it, but it's hard.

4 Q. Now, you talked about a whacker. What is a whacker?

5 A. Plate compactor whacker is another compaction tool,

6 but it's small for getting around smaller places,

7 around poles, around tight areas, you know, catch

8 spaces, other areas where the big roller or the

9 smaller roller can't get into, so we use whackers.

10 And/or patching, sometimes we use the whackers. And

11 that basically has a forward motion to it but it also

12 compacts. That one automatically compacts. It never

13 stops compacting. It's got a constant compaction on

14 it. And it's hard because you have -- you got to

15 bend, you got to turn, you got to gyro, you know.

16 There's a lot to do. It doesn't seem like a whole lot

17 but it is, to run a little whacker, which is -- I

18 don't even know how -- They're kind of awkward. I

19 think they're about, I don't know, a foot by -- one

20 foot by two feet. When it runs you just have to turn

21 and you got to bend over, then you got to turn the

22 water off, you know, as you're running the equipment,

23 and then you got to turn the water on.

24 Q. So doing the whacker is not inside of -- It's a piece

25 of equipment, but it's not --

1 A. Yes.

2 Q. -- inside the actual --

3 A. You're on your feet. You have to walk behind it.

4 Q. Okay.

5 A. It's actually kind of -- We call it handwork,
6 basically what it is.

7 Q. Okay. And you talked about hand tamping. Would you
8 describe what hand tamping is?

9 A. It's a long piece of metal pipe that's welded to a
10 flat piece of pipe on the end of the pipe and it's got
11 a flat surface on it. It probably weighs anywhere
12 between five and ten pounds. And you got to get all
13 the spots that you can, like around poles, catch
14 spaces, other tough spots, against the wall.
15 Sometimes you have to hand tamp it where you can't get
16 the whacker or the roller can't get in. You have to
17 use the hand tamper to smooth out the spots you can't
18 get.

19 Q. Are you working in a perfectly upright position when
20 you're doing this?

21 A. No.

22 Q. Why not?

23 A. Because you have to -- you have to -- you have to
24 pull. you have to be mobile. You have to have the
25 mobility to use that because it doesn't - that's why

1 you're not getting in with the roller and you got to
2 do it by hand. So it's very difficult. You got to do
3 a lot of bending over, there's a lot of stretching,
4 there's a lot of -- It's very difficult. It's very
5 hard to do.

6 Q. And how does that affect you in terms of your low back
7 or your neck?

8 A. It makes it very -- It's hard. It just is sore,
9 constantly sore all the time.

10 Q. How about your shoulders?

11 A. Sore.

12 Q. Now, you talked about shoveling and raking. What
13 would you be shoveling and raking?

14 A. Well, let's say that there's a lot of patchwork. So
15 they do patchwork in the parking lot and then doing a
16 commercial parking lot where they're doing -- where
17 it's -- where the parking lot's falling apart. So
18 they'll saw-cut it, dig it out with a backhoe. And a
19 lot of the times you can't use the paver, you got to
20 do the handwork. So you're gonna to take the
21 material, the asphalt, and you got to put it in the
22 hole, and you fill up the hole, then you got to shovel
23 the mix out. Now, the mix is a lot heavier than just
24 regular, like, dirt or five-eighth's crushed rock.
25 The asphalt product is a lot heavier to actually move

1 and flatten out. Not only do you shovel it out, then
2 you have to rake it to make it look flat and flush.
3 So there's a lot of bending over, you know. You have
4 to try to use your legs and stuff. But, you know,
5 when you're working a lot of hours, it's hard on your
6 body. It's just really tough to do it. It's not a
7 young man's game. It's just not. I mean, you being
8 young it may be a little bit different. But when you
9 do it through all the years, there's just no --
10 there's just no validity to your body, it just keeps
11 breaking down, breaking down. And when you're working
12 a lot of hours, it's just too much, you know. They
13 try -- They try to keep the laborers in to do the work
14 but it doesn't work that way. Everybody's got to
15 pitch in. So even if you have a pretty big crew, the
16 roller operators and/or topside guys, the
17 (unintelligible) guys --

18 (REPEAT ASKED FOR)

19 A. Topside, which is running the paving machine.

20 Topside, which is a paving machine.

21 JUDGE KESSLER: And then you said another one after
22 that.

23 A. The screed guys, S-C-R-E-E-D, have to get off and
24 help. So when you put a lot of hours in and you're
25 shoveling mix all day long, you know, it becomes very

1 hardening on the body, just really tough. It's a hard
2 business.

3 Q. How does working as an operating engineer, as you've
4 described, doing paving and those kinds of jobs, how
5 does that compare to the activities you do of daily
6 living?

7 A. There is no comparison.

8 Q. Why?

9 A. There just isn't. The work's way too heavy. You're
10 working all day. You have a job, your livelihood at
11 hand too because you're doing a job for a company.
12 You want to keep your work. But even if you're doing
13 stuff at the house it's not -- you know, you can go in
14 the house and take a break and you're not on the
15 clock. Typically, you really have some time to rest
16 and hydrate and all that stuff. Not that you don't at
17 work, but it's not -- it's never the same, you know,
18 because you got to be there consistently. Again, it's
19 anywhere between 12 and 16 hours, usually the peak of
20 the seasons -- season.

21 Q. How does that intensity compare with just the
22 activities of daily living?

23 A. I still don't think there's no comparison. There just
24 isn't. I mean, you can go up there and you can put
25 some hard work into your house, in your yard and all

1 that stuff. But to do roadwork and asphalt paving,
2 there's nothing like it. You can't -- You won't find
3 the young out there anymore. They don't want to do
4 it. There's just nobody out there. All the people
5 that are paving now or in the construction business,
6 even the dirt work, they're all in their 40s and 50s
7 now. There's no -- it's a different world.

8 Basically, that's why it gets bounced to the operating
9 engineers, even though they have two different unions,
10 and they typically go out and do the work, but we have
11 to do the work. So we continue to help. Everybody
12 pitches in but, still, even at that it's heavy, you
13 know, especially when you're paving anywhere between
14 2,500 ton to 5,000 ton. It's grueling on your body.
15 If you do that for 30-plus years, it takes its toll.
16 There's only so much you can do. So there's no
17 comparison at the house. To me, it's not -- A day at
18 the house is like a day at the park. It typically
19 really is.

20 Q. Well, you're observing Mr. Jouravlev and myself, and
21 we have this kind of job where we come in and we
22 present things to a Court. My question to you is,
23 based on the observation you're making and based on
24 your experience as an operating engineer, what is your
25 perception as to how your profession compares to other

1 professions, generally?

2 MR. JOURAVLEV: Objection; irrelevant.

3 JUDGE KESSLER: Mr. Parr, I'm wondering how that's
4 relevant, too. I think his testimony's been
5 pretty clear so far as to the difficulty.

6 MR. PARR: The occupational disease is about
7 proximately and naturally. The "naturally"
8 element, courts have held that you should "show
9 that the particular work conditions are more
10 probably caused by the disease" -- that's fine,
11 that's medical -- "or diseased-based conditions
12 in everyday life or all employments in general."
13 And that comes from Dennis v. Department of Labor
14 and Industries. So the supreme court case says
15 that's relevant.

16 JUDGE KESSLER: Overruled.

17 He's right. You can answer.

18 A. In comparison to other work, where it's blue collar
19 work or white collar work, it -- How to explain this.
20 When you're work in the asphalt paving industry, it's
21 just -- it's really hard. It's hard. It's hard on
22 your body, it's hard on your joints, it's hard on your
23 neck, it's hard on your lower back. You're on your
24 feet a lot, sometimes you're not, but most often
25 you're on your feet a lot. And then if you have

1 other, you know, like, you know -- I'm not going to
2 say it's like landscaping, but it's not the same. I
3 mean, I've done some landscaping in my time, you know,
4 and it's just -- it's just not the same. Paving is a
5 hard industry to be in. You know, of course, you got
6 your -- the white collar workers. Typically, they're
7 using more of their brain, you know. They're more
8 methodical of what they're doing and what -- how
9 they're processing their job and stuff. They're a
10 little more wired that way. But when you're in the
11 construction industry it's very hard to, you know,
12 tell somebody that's a white collar worker, this is,
13 you know, completely different than what you do and
14 how you experience it because they just -- they just
15 don't understand. And of course, I wouldn't
16 understand being able to put the time in for that.

17 Q. What is your belief --

18 MR. JOURAVLEV: I'm sorry, I'm going to object and
19 move to strike the last response. I have no
20 problem with the lay witness testifying as to his
21 experience and his observations in his daily
22 life, but I think this goes beyond the scope of
23 permissible testimony for the witness.

24 JUDGE KESSLER: Overruled.

25 Q. What is your belief -- In terms of physical impact on

1 your body, with respect to operating engineer and
2 paving work, as you've testified, what is your belief
3 as to whether or not that's physically harder than
4 other employments?

5 A. The consistency of the asphalt paving and operating
6 engineers, it's just harder. It just is. It's
7 physically demanding on your body. It's just -- It
8 pounds you. It wears you down. There's just -- To
9 me, there just is no comparison. There's nothing more
10 that you can do than maybe a couple other jobs that I
11 can give you examples of that are even close to
12 asphalt paving. And if you want me to tell you those
13 jobs: from concrete worker to roofer. I mean,
14 typically, and stuff like that.

15 But even at that, you know, if you take a 16-hour
16 day and you're shoveling mix all day, I guarantee when
17 you get in your car and then you get out of your car,
18 you can't get out of your car because you have to
19 literally -- your body's so beat up. How do you do
20 that for 30 years? We typically do that for, you
21 know, even for the season. And as you get older, you
22 know, your body -- your head says yes and your body
23 says what are you doing? That's what it comes down
24 to. But then also you got to take care of, you know,
25 you want your work, you got to take care of your

1 livelihood, you got to do your job of what you do for
2 your life, you know.

3 So when you go out there and tell somebody that
4 doesn't have any idea about asphalt paving and go out
5 there, you just -- it's very difficult to tell them
6 how to do the work and make them last. So they don't
7 want to -- People say -- My opinion? They don't want
8 come out and do it because it's hard work. And you
9 get wore out. You just get beat down, everything you
10 do, you know.

11 Q. Now, you testified earlier that you've known Mr.
12 Storrs for a long period of time.

13 A. Yes, sir.

14 Q. My question is, have you seen him doing that same
15 work?

16 A. Yes.

17 Q. Describe how you've seen him doing that work.

18 A. Well, he's on a piece of equipment, he's on a grader,
19 he gets off, he helps shovel, he helps rake, we've
20 jack-hammered, we've picked up asphalt together, we've
21 put mix down, shoveled, raked, broom, hand-tamped
22 consistently for years.

23 Q. Have you seen him use the roller, the vibratory, the
24 whacker, the other tools that you described here
25 today?

1 A. Yeah. Yes. He's very good at what he does.
2 MR. PARR: That's all my questions.
3 JUDGE KESSLER: Mr. Jouravlev?
4 MR. JOURAVLEV: I have no questions for the witness.
5 JUDGE KESSLER: None?
6 MR. JOURAVLEV: No.
7 THE WITNESS: Is that it?
8 JUDGE KESSLER: That's it. I have no questions for
9 you, sir.
10 THE WITNESS: Are you buying lunch today?
11 JUDGE KESSLER: I am not buying lunch.
12 THE WITNESS: What?
13 JUDGE KESSLER: Let's go off the record. Well,
14 actually, you're excused as a witness.
15 Show us off the record for just a moment,
16 please.
17 (OFF THE RECORD)
18 (BACK ON THE RECORD)
19 JUDGE KESSLER: Show us back on the record.
20 Will the claimant please call his next
21 witness?
22 MR. PARR: Claimant calls claimant, Lynn Storrs.
23 JUDGE KESSLER: Mr. Storrs, will you please raise your
24 hand and stand?
25 (WITNESS SWORN)

1 JUDGE KESSLER: Thank you. Please have a seat. Did
2 you hear the instructions that I gave your
3 friend?

4 THE WITNESS: Yes.

5 JUDGE KESSLER: And you're okay with those?

6 THE WITNESS: Yes.

7 JUDGE KESSLER: With that, please proceed, Mr. Parr.

8 * * * * *

9 Lynn Storrs, being first duly sworn on oath,
10 testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. PARR:

14 Q. Mr. Storrs, were you in the room when Mr. Troy Sutter
15 was testifying?

16 A. Yes.

17 Q. Did you hear everything that he testified to?

18 A. Yes.

19 Q. Is there any change or modification or slight
20 clarification of any nature or kind that you'd like to
21 add to his description of what operating engineers and
22 pavers do?

23 A. Yes.

24 Q. What do you think should be added?

25 A. Gosh, I should probably start from the beginning.

1 Q. Okay.

2 A. Because I feel there's things he left out.

3 Q. Okay. Then before we get there, was there anything
4 that you heard that you thought was inaccurate in his
5 testimony?

6 A. No.

7 Q. What additional information would you like to include
8 about what operating engineers and pavers do?

9 A. Well, first off, it's fairly labor-intense. Just
10 because they call it operating engineers, there's
11 oftentimes -- and it kind of depends on what company
12 you're working for. But he talked about patching
13 sometimes or doing parking lots, there's planters in
14 the way, and the paving machine doesn't put all the
15 asphalt down, it's put down by hand. And, you know,
16 this could be one or two days a week.

17 Early on in my career -- I've been doing this
18 almost 30 years. Early on in my career it was a
19 regular job for me. Before I became an operating
20 engineer I was a laborer, and that was my daily job,
21 and it took a toll on my body.

22 As he said, you're twisting, turning, lifting
23 heavy things. One thing he mentioned, the plate
24 whacker, it weighs over 100 pounds. Sometimes we're
25 required to lift it, pick it up on something, bend

1 over. Sometimes you're required -- If you picture a
2 lawnmower without wheels, just the flat steel plate,
3 you're dragging that around sometimes up to 100 feet
4 by yourself. I'm not a big guy. It's heavy when I
5 have to drag it. And you're squeezed tight onto the
6 handle. And it vibrates pretty good. If you see the
7 thickened edges on the streets to contain the water,
8 that we generally have to plate whacker sometimes up
9 to a half mile a day, and you're holding your entire
10 body while it's vibrating and pushing down and you're
11 pushing up on it --

12 Q. At an angle?

13 A. Yes, at a 45-degree angle, and you're trying to hold
14 it, it wants to vibrate down onto the road.

15 Q. So you're holding a vibrating piece of equipment --

16 A. Yes.

17 Q. -- the weighs 100 or more pounds.

18 A. Yes.

19 Q. You're holding it on an angle and you're trying --

20 A. Yeah.

21 Q. -- to keep it elevated on the side where --

22 A. And if you don't properly hold it it's going to fall
23 down, make your asphalt look bad, and then you're not
24 going to have a job. So it takes all my effort for my
25 size to hold onto that thing and whacker down a

1 thickened edge. It's probably the hardest part of
2 whackering.

3 Troy didn't mention the asphalt's generally --
4 MR. JOURAVLEV: I'm going to object right now because
5 it's not unclear to me what the question is
6 anymore. It just seems like a narrative back and
7 forth.

8 JUDGE KESSLER: He's correcting the initial witness's
9 description of the job and adding anything the
10 initial witness left out.

11 Would that be a clear --

12 MR. PARR: Correct, Your Honor.

13 JUDGE KESSLER: So at that point the objection's
14 overruled.

15 Keep going.

16 THE WITNESS: Okay.

17 A. When we lay it, it's typically 270 to 300 degrees. So
18 you're standing on that. If it's 90 degrees out you
19 can put another 20 or 30 degrees on what your body is
20 dealing with standing on the heat like that.

21 MR. JOURAVLEV: And I'm going to object to this. The
22 previous witness did not mention anything about
23 heat. So I don't know -- I think this -- Is this
24 a correction to the previous witness's testimony?
25 Is it just an open-ended "what do you think about

1 the witness's testimony?" It's not really clear
2 to me what even -- how this changes.

3 JUDGE KESSLER: So Mr. Parr, please correct me if I'm
4 wrong. Initially, Mr. Parr asked if he felt any
5 of Mr. Sutter's testimony was inaccurate; the
6 witness responded it wasn't. He said is there
7 anything that you feel the witness left out about
8 your job that you feel is important in terms of
9 the activities and how the equipment and the
10 activities impact the body physically when the
11 activities are being done. It wasn't worded
12 exactly like that, but that is what the witness
13 is describing now, anything about his job as an
14 operating engineer or in the asphalt industry
15 that our initial witness did not describe. So
16 it's more of an addition to, and that's what
17 we're working on.

18 Is that correct?

19 MR. PARR: That's absolutely correct, Your Honor.

20 A. I'm just trying to --

21 JUDGE KESSLER: So you had left off about the asphalt
22 was between 270 and 300 degrees.

23 A. Right, when we lay it, when we dump it on the ground
24 and you're standing on top of it quite often, standing
25 in it. If you're shoveling, your boots are getting

1 covered with it. Sometimes they feel like they're on
2 fire to the point you have to step back for a minute
3 out of it. Troy was talking about being hydrated.
4 That dehydrates you quickly, and I've seen people in
5 the hospital for it five or six times over my years.
6 Let's see, the -- He mentioned that it's seasonal,
7 nine or ten months out of the year. It depends what
8 company you work for. Miles Resources was working me
9 year-round.

10 Q. And how long did you work for Miles Resources?

11 A. Four and a half years, I believe. And through the
12 wintertime, what happens, typically, is they will cut
13 one or two crews. My crew continued working through
14 the winter. Our hours get cut way back in the summer
15 when the weather's good.

16 Q. I'm sorry, when the weather's good your hours get cut
17 back, or --

18 A. No. In the winter when the weather's bad. It's
19 weather-sensitive so -- but we're still working. If
20 there's certain jobs we can do in the rain or the
21 freezing, we continue working.

22 In the summer, and this is when I had a lot of my
23 big health problems the last year I worked there, we
24 had three 70-hour weeks in a row that was mandatory,
25 and my body just didn't keep up with it. That's when

1 I ended up with a lot of my pains that got magnified
2 about five times over to where I could hardly work.
3 But I have bills to pay, so I continued getting up and
4 going to work until I couldn't take it, and I saw a
5 doctor for it.

6 Q. Were you at work between December 6, 2016, and
7 December 20, 2016?

8 A. Yes.

9 Q. What were you doing during that time period?

10 A. December?

11 Q. December 6, 2016, and December 20, 2016.

12 A. I was working for Miles Resources.

13 Q. Were you actually on the job or were you working for
14 them but not on the job?

15 A. No, I was working for Miles Resources on the job.

16 Q. Now, with respect to you talked about pain and other
17 problems that pushed you out of the work. Was there a
18 time period where you did go out of work?

19 A. Yes. December 5 --

20 Q. Okay.

21 A. -- was, I believe, my last day worked at Miles
22 Resources.

23 Q. December 5, 2016?

24 A. Yes.

25 Q. So that's that same period we were just trying to

1 clarify. So from December 6, the next day after you
2 worked at Miles Resources, what was going on be
3 December 6 and December 20?

4 A. Well, I was off with a doctor's note. They told me
5 light duty. I was getting physical therapy. I got
6 some injections -- or an injection in my neck to try
7 to take some of the pain away. I got an injection in
8 my right hand to try to take some of the pain away.

9 Q. Which doctor or doctors were treating you at that
10 time?

11 A. I first went to see Dr. Makovski in October -- I can't
12 remember exactly what the date was -- and told him
13 about my shoulder was in great pain, my neck was in
14 pain, my -- It turned out my neck, if I move it too
15 far this way --

16 Q. To your left?

17 A. Yes.

18 Q. Inclined as if you were trying to put your ear toward
19 your shoulder?

20 A. Yes.

21 MR. JOURAVLEV: Objection. Move to strike as leading.

22 THE WITNESS: Okay.

23 JUDGE KESSLER: Necessary leading at this point.

24 We're going to overrule it, only because he's
25 trying to help his witness get a clear record

1 here.

2 So just watch the leading, if you can. But
3 I'm not going to strike it.

4 A. If I bend my left too far down towards my shoulder, my
5 arm, hand, and fingers, they tingle like your foot
6 falls asleep.

7 Q. Now, what you're testifying -- And this is why I was
8 trying to lead you. As I was watching you testify,
9 you were making movements with your body. The court
10 reporter doesn't pick up any of those movements. Just
11 right now I think the record should reflect, and you
12 correct me if I'm wrong, you were referring to your
13 left hand?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. So sometimes our non-verbal communication is the way
18 we speak to people in everyday life. But in court,
19 all of the non-verbal stuff will be omitted from the
20 record, okay?

21 A. Okay.

22 Q. So if you find yourself feeling like you need to kind
23 of illustrate what you're talking about, try to
24 narrate it for us.

25 A. Gotcha. Okay. So I get a sharp pain if I bend too

1 far with my neck, either to the right or the left. If
2 I go too far there's a sharp pain that shoots in my
3 neck that feels like getting zapped with an electronic
4 device way to shock you. My job, for every motion
5 forward on a machine you have to go backwards. And
6 for the last almost about a year I can't move my neck
7 any much beyond that. So when I back up the machine I
8 have to look behind my left shoulder, which is
9 actually kind of dangerous in the business I'm in. If
10 you're on a giant -- Some of the rollers I run are 12
11 to 15-ton rollers, and you need to have good visual
12 sight behind you, and I'm just guessing a lot because
13 I can't look behind my right. Luckily nothing bad has
14 happened yet.

15 Q. Now, correct me if I'm wrong. You just described not
16 being able to rotate your head completely to the
17 right. Is that what your testimony is?

18 A. Yes. I can't look behind my shoulder to -- bending my
19 head to the right. I can only bend it to the left.

20 Q. And what happens if you try to go too far in rotation
21 to the right?

22 A. That shock feeling where it feels like somebody shocks
23 you or stabs you in the neck. It's not good. You
24 learn not to turn that far after awhile.

25 Q. Okay. Now, you described everything you do, that you

1 go forward and you go backward. Is it the same thing
2 with the hand tools, like the hand tamping and the
3 whacker plate?

4 A. Typically. Sometimes with the whacker you can go
5 forward and you don't have to go backwards. If you're
6 on a raised edge that I mentioned earlier, a lot of
7 times you'll have to go down one direction and come
8 back on the road and then back up on the thickened
9 edge a second time to finish it off and make it look
10 proper. That's not always the case though. On the
11 machine it's typically a forward motion. You have to
12 go in reverse, back up, move over a pass, forward,
13 back, and then you're doing that throughout the day.

14 Q. Back to the original question, because we're trying to
15 clarify if there's anything additional in your
16 occupation that you thought should be added to Mr.
17 Sutter's testimony. We kind of went into some
18 particulars, and I want to make sure you get a full
19 tell of any clarifications you would like, or
20 additions. So could you provide any additions?

21 A. He did mention how heavy the asphalt was. I don't
22 know if he made a good picture, but in order to keep
23 your job you need to learn to fill up that shovel
24 full. Sometimes you're required to throw it ten feet.
25 And I don't know if anybody knows how heavy rock or

1 dirt is, gravel or dirt. Asphalt is about double the
2 weight when it's in that shovel, and you're constantly
3 filling that shovel and working it.

4 Q. So when you're shoveling across a distance on the
5 ground, what position do your arms go through?

6 A. My body is typically bent over about a 45-degree
7 angle. And I'm using my back, legs, shoulders, and
8 arm muscles to throw the asphalt or -- If we're
9 dumping it on the ground, doing patching, or dumping
10 in a corner that the paver won't reach, it's always a
11 45-degree angle that my body's bent at and shoveling.
12 That way it's - When you're moving at short distance,
13 you're using your body and twisting and trying to
14 smooth it out the best you can before either I rake it
15 or somebody else rakes it. It's a lot of weight and
16 it's very heavy.

17 Q. What does a raking consist of?

18 A. It's rake -- Unlike a garden rake that you're probably
19 picturing, it has -- it's about three foot long. The
20 handle's five feet with a three-foot steel blade on it
21 that has no teeth, it's smooth. You use that to
22 smooth out the asphalt, level it out so that it can be
23 compacted.

24 Q. Do you push with that or do you pull with that?

25 A. I push with my body usually, pull with my arms. So a

1 lot of times there's a forward motion and a pull back
2 to smooth it out again.

3 Q. Are you working in front of yourself, are you working
4 aside of yourself?

5 A. Usually in front of myself. There again, a lot of
6 times you'll have to bend over, especially if you see
7 a roadway that has curb and gutter, how the curb steps
8 up six to eight inches. So you have to rake the
9 asphalt off of the curb. You're bent over in order to
10 properly get to the right angle to rake it. That can
11 be pretty painful on your body, bending over like that
12 for an entire day.

13 Q. Okay. And anything else you'd like to add to Mr.
14 Sutter's testimony?

15 A. Probably the last thing is I know Troy's quite a bit
16 bigger than me. I'm small. I've gained a few pounds.
17 But when I do rake and shovel, it's a little more
18 effort for my body because the asphalt's so heavy to
19 throw it and push it around. Just something, part of
20 the job. But also, if you can't keep up and do it
21 properly then you're not going to have a job. So I've
22 just kind of learned to make up for it in effort.

23 Q. How long have you been doing this work?

24 A. Close to three decades.

25 Q. Now, have you had prior labor and industries claims as

1 a result of doing this type of work?

2 A. Yes.

3 Q. What kind of claims have you had in the past?

4 A. Dates are a little bit hazy because some of it's been
5 so long ago. But I believe it was 16 or 17 years ago
6 I had both hands, carpal tunnel surgery. And the
7 doctor at that time told me it was related to work;
8 had those fixed and was released.

9 Q. Did the Department of Labor and Industries allow --

10 A. Yes.

11 Q. -- your carpal tunnel claim?

12 A. Yes.

13 Q. And they paid for bilateral hand surgery?

14 A. Yes.

15 Q. And that was whenever it was, even if it wasn't 16
16 years ago? It's just whenever it was?

17 A. Right.

18 Q. Any other injuries?

19 A. My neck -- We've been talking a lot about asphalt
20 paving. I've also run big dozers and loaders and
21 graders. It's part of the operating engineer's job;
22 it's just a different end of it. It's more of a dirt
23 work job. If you drive by and you see the big parking
24 lots or roads getting tore up, I've done that for
25 several years in my career, along with paving.

1 Typically, the ground is a lot rougher and more
2 uneven. One day I was on a large dozer and I dropped
3 off a three-foot bank and it crashed down. There were
4 a lot of pain in my neck at that time. I had a claim,
5 an L&I claim on my neck, and I was off for I think
6 almost four months.

7 Q. Did you receive a permanent partial disability rating?

8 A. Yes.

9 Q. As a result of that neck injury?

10 A. Yes.

11 Q. What approximately was that timeframe, if you know?

12 A. 2007, I believe.

13 Q. What happened after that?

14 A. Well, I went to physical therapy for a few months, and
15 the pain went away. There was a little bit of
16 numbness in the arm, but it wasn't like it does it
17 now, on demand. So I pretty much healed up from it
18 where the major pain went away, and the doctor
19 released me to work.

20 Q. Did you go back to work?

21 A. Yes, I did go back to work.

22 Q. Have you worked consistently since that time?

23 A. Yes.

24 Q. Now, aside from the carpal tunnel and the neck injury

25 --

1 A. Right.

2 Q. -- have you had any other L&I injuries or --

3 A. Yes.

4 Q. -- work related injuries? What else have you had?

5 A. Yes. My left shoulder. Gosh, what year was that? A
6 couple years after my neck was hurting a lot. I went
7 to the doctor. They gave me an MRI and said I had a
8 bad rotator cuff, work related from over-usage of my
9 left shoulder. They gave me a shot which helped the
10 pain to go away. The first one lasted about eight
11 months. The second time I was having pain they gave
12 me another shot, the doctors did, that lasted about
13 two months. So the doctor said we need to do surgery.
14 So I believe that was, I don't know, about seven years
15 ago, eight years ago maybe. They did rotator cuff
16 surgery.

17 Q. On your left shoulder?

18 A. On my left shoulder. When they opened me up, the
19 muscle was tore at that point. So they repaired the
20 tore muscle and the rotator cuff.

21 Q. Did you have to pay for that surgery?

22 A. No.

23 Q. To your knowledge, who paid for that surgery?

24 A. Labor and industries.

25 Q. Any other work-related injuries or occupational

1 diseases that you can recall?

2 A. Gosh, I guess somewhere maybe in the early 90s my
3 lower back. I was shoveling asphalt one day and I
4 must have moved the wrong way. Something went out in
5 my back. I just took a week off to heal it up under
6 the doctor's instructions and I was okay to go back to
7 work.

8 Q. And that was your low back, did you say?

9 A. Lower back, yes.

10 Q. Any other L&I -- Let me just ask. Has all this work
11 that you've described here today, the up to three
12 decades or approximately three decades of work, has
13 that all taken place here in Washington State?

14 A. Yes.

15 Q. So any other injuries or disease issues that you've
16 had related to work that you can recall?

17 A. Nothing, other than what I'm addressing today.

18 Q. I want to make sure that you've had full opportunity
19 to describe other work activities, and I think you
20 said you had; is that correct?

21 A. Yes.

22 Q. What is your estimation of how your work compares to
23 activities of daily living, in general?

24 A. I want to go back. Did you say that -- have I
25 described all of my work?

1 Q. Have you described the work --

2 A. I thought I was doing some corrections on what Troy,
3 the other witness, was stating.

4 Q. Are you satisfied that we've got a complete picture of
5 what your work involved?

6 A. Yeah, I believe so. The vibrating from the roller and
7 the whacker, the shoveling and the raking, jack-
8 hammering. I haven't done any jack-hammering as much
9 as I did when I was young. I used to do a lot. And
10 that's very hard on your body. Like I say, when I did
11 dirt work years ago there was a lot more bouncing
12 around on heavy equipment.

13 Q. Now, with the heavy equipment, when you put the
14 vibratory tools on or you're just bouncing along over
15 pavement as you're working, even if you're on a roller
16 or something of that nature, my question is, how does
17 the vibration affect your body?

18 A. It shakes you up. If you're on the roller all day,
19 you're going forward and reverse. Typically, in order
20 to get compaction, there's a switch on the handle.
21 The handle that operates the roller on most all of
22 them is forward; you push the handle forward. The
23 middle is braking, and it slows it down from that
24 period. Then you pull it back; it's reverse. There's
25 a button on top that is the vibratory button. In

1 order to get compaction, you're normally running with
2 the vibratory switch on. When you turn that on your
3 whole body is being shaken along with the machine.

4 Q. Through your arm?

5 A. Through my hand, through my arm, through my seat.
6 It's a steel drum machine. There's no rubber tires to
7 absorb the bump. Sometimes we have to take it off of
8 the new asphalt and rode (sic) it through construction
9 sites. I've got some pretty good bumps and jars
10 moving the equipment from one place to another on --
11 it's called four-to-eight rock. It's what they use at
12 entrances of construction sites. It's large four to
13 eight-inch rock they used to keep the mud off of
14 sites. Sometimes we'll have to run the steel drums
15 through that. Basically, with a car you have a rubber
16 tire and shocks that absorbs the bumps. On these
17 rollers you have steel drum with no shocks. There's
18 no way to absorb the bumps, other than your body, when
19 it hits them. It's painful sometimes.

20 Q. Okay. How does that compare to activities of daily
21 living, generally?

22 A. I believe I heard it earlier. There's no comparison.

23 Q. So you agree with that part of the earlier testimony?

24 A. Yes. There's -- They pay us fairly well for what we
25 do, and they expect a lot of us -- a lot out of us.

1 And you aren't going to be working long if you're just
2 sitting there watching them shovel and rake and do all
3 the labor stuff. When my machine's stopped, I'm
4 required to be down on the ground shoveling, raking,
5 hand tamping, sweeping, yeah.

6 Q. How does it compare to employments in general, per
7 your own observations?

8 A. Other occupations?

9 Q. Yes.

10 A. I know a lot of people in construction, and they've
11 worked around my industry and I've worked around
12 theirs, and they tell me it looks harder than what
13 they do. I've looked at what they do and I think,
14 gee, I would rather be doing that. It's hard. It's,
15 you know, especially in the summer, all the physical
16 labor, all the bouncing around on the machine, all the
17 dust you're eating. When you are doing asphalt
18 paving, like I say, you add that you're standing on
19 minimum 270 degrees of heat. There's no way probably
20 anyone in this room would understand it until you're
21 out there for 16 hours shoveling on that hot stuff all
22 day, and very rarely getting a long break, you know,
23 especially when we do patching. Because the trucks
24 come to us quicker than we can lay it down and flatten
25 it out. So they seem to always be backed up. As soon

1 as one's empty we go to the next one. And it can be
2 like that for, you know, 12, 14, 16 hours sometimes.

3 MR. PARR: Okay. I have no further questions.

4 JUDGE KESSLER: Okay.

5 Mr. Jouravlev, cross-exam.

6 MR. JOURAVLEV: Just briefly.

7 * * * * *

8

9 CROSS-EXAMINATION

10 BY MR. JOURAVLEV:

11 Q. Good morning.

12 A. Hi.

13 Q. How long did you say you worked for Miles Resources?

14 A. Four and a half years, I believe.

15 Q. And before then who did you work for?

16 A. I've been a union worker since 1992. So it was pretty
17 consistent through -- since 1992. I did take five
18 years and I went to work for -- I believe it was '07
19 until 2012 I worked for a non-union company, Sutter
20 Paving. The pay just wasn't there and I wasn't making
21 ends meet as good as I wanted. Actually, they started
22 having financial problems, too. It was just time I
23 went back to a union job to get the benefits that I
24 have.

25 Q. So --

1 A. I was doing basically the same work.

2 Q. But for a different company?

3 A. Yes. I've been a union employee since 1992. Before
4 that my dad owned an asphalt paving company, and I
5 worked for him as a laborer for several years is how I
6 learned the business to get in with a union company.

7 Q. Before this claim, how often has your work led to back
8 injuries?

9 A. Before this claim?

10 Q. Yes.

11 A. How often has my work --

12 Q. Led to back injuries.

13 A. For me or somebody else?

14 Q. For you.

15 A. Well, I had -- My back went out when - Oh, before this
16 work, never.

17 Q. You never had back issues before this claim?

18 A. No. No. Oh, before this claim?

19 Q. Yeah. So let me restate the question.

20 A. I thought you meant before I started doing this type
21 of work.

22 Q. I think my question was confusing. Before this claim
23 for which we're here today, how -- Well, let me
24 restate it. During your work in the asphalt industry,
25 how often has that work led to back injuries for you?

1 A. As far as injuries?

2 Q. Yes.

3 A. Only the one time when it knocked me out of work.

4 Q. Which was?

5 A. Gosh, I think it was around 2000 or something.

6 Q. Okay.

7 A. As far as pain in my lower back, it's part of the job.

8 Q. Okay.

9 A. It's not just me. Yeah, it's a daily thing, if you're
10 working hard. If you're sitting on a machine getting
11 vibrated and pounded around, it's a daily thing. It's
12 usually not until the end of the day when I get home
13 and I sit down. Right now, especially. At the end of
14 a long day, I'll sit down and I'm limping and it hurts
15 to get up. It's only after long days of work.

16 Q. Would you see a doctor or get treatment for it?

17 A. Yes.

18 Q. Like a regular thing?

19 A. Well, in October when I saw the doctor for my lower
20 back -- for my right hand, my shoulder, and my neck, I
21 was also complaining of some pain in my lower back. I
22 went through physical therapy for a couple of months
23 for my lower back, try to strengthen it, and it's
24 better.

25 Q. So other than that physical therapy that you did

1 following your visit with the doctor, what treatment
2 would you usually -- Sorry. Would you usually do some
3 kind of treatment for your back issues?

4 A. Well, if it goes out, like it did around 2000, they
5 said just rest it for a while. The doctor did
6 recommend doing crunches and exercises, and I try to
7 exercise a little, just to build your core strength.

8 Q. Any treatment other than home exercises?

9 A. No.

10 Q. Are you currently working?

11 A. Yes.

12 Q. For Miles?

13 A. No.

14 Q. What do you currently do?

15 A. I do asphalt paving for Icon Materials.

16 Q. How long have you worked for them?

17 A. Six months.

18 Q. Is it full-time work?

19 A. Yes. We're coming up on the slow time right now. But
20 it's full time with required overtime.

21 Q. Okay.

22 A. So it's more than full time when we're busy.

23 MR. JOURAVLEV: I don't have any further questions for
24 Mr. Storrs.

25 JUDGE KESSLER: Mr. Parr, redirect?

1 MR. PARR: No, Your Honor.

2 JUDGE KESSLER: If you don't mind, I have one
3 question.

4 Mr. Storrs, how old are you?

5 THE WITNESS: Fifty-five. I had to think about that
6 one.

7 JUDGE KESSLER: Thank you. Just in case the medical
8 doesn't have it.

9 That's all I have, sir. You are excused as
10 a witness. You are free to stay in that seat, if
11 you'd like, or use any of the others that are
12 available.

13 Mr. Parr, with the filing of your witness
14 depositions, does the claimant rest?

15 MR. PARR: Yes, Your Honor.

16 JUDGE KESSLER: Mr. Jouravlev, with the filing of --
17 No. You have a witness coming up that's going to
18 be here at noon. I'm sorry, I just jumped right
19 to you resting. My apologies on that. Your
20 witness is to join us at approximately 12:00;
21 correct?

22 MR. JOURAVLEV: Yes. I would like to take a break
23 right now and call him and see where he's at.

24 JUDGE KESSLER: Great. We'll do that.

25 Please show us off the record.

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(BRIEF RECESS TAKEN)
(BACK ON THE RECORD)

JUDGE KESSLER: We are back on the record in the matter of Lynn Storrs.

After a brief break I am informed by counsel that instead of continuing with the hearing we are in fact going to enter a stipulation of the parties. I'm told that stipulation will include that the parties stipulate that Mr. Storrs did in fact sustain an occupational disease which arose naturally and proximally out of distinctive conditions of his employment with Miles Resources, LLC, within the meaning of RCW 51.08.140, and that conclusion would be testified to per the claimant's treating physician, Dr. Makovski, and he's an M.D.

Did I pronounce that correctly?

MR. JOURAVLEV: Mikhail Makovski.

JUDGE KESSLER: Mr. Parr, does that reflect -- accurately reflect the parties' stipulation and agreement?

MR. PARR: I believe it does, Your Honor.

JUDGE KESSLER: Mr. Jouravlev, does that accurately reflect the parties' agreement?

MR. JOURAVLEV: Yes.

1 JUDGE KESSLER: Thank you. Anything else we need on
2 the record?

3 MR. PARR: No. Thank you, Your Honor.

4 MR. JOURAVLEV: No.

5 JUDGE KESSLER: Great. Gentlemen, thank you for your
6 time today. I will get that order issued just as
7 soon as I can. Most likely, as soon as the
8 transcript comes in, you should have an order.
9 I'll type it up this week.

10 MR. PARR: Thank you.

11 JUDGE KESSLER: This hearing is adjourned.

12 We are off the record.

13 (HEARING ADJOURNED AT 11:05 A.M.)

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1 IN RE: LYNN STORRS

2 CLAIM NO. BB-02863

3 DOCKET NO. 1713883

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A F F I D A V I T

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I, Christina Sabado, Certified Court Reporter, do
hereby certify that the foregoing transcript prepared by me
is a true and accurate record of the proceedings taken on
November 28, 2017, in Tacoma, Washington. This document
has been digitally signed in accordance with Washington
Court Rules GR 30(D)(2)(B).

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