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¹ This report is based on the 'Model Form of Expert's Report' prepared by the Judicial Committee of the Academy of Experts and by the Expert Witness Institute.

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1. THE WRITER

2. Background

3. I am Keith John Barkclay Rix. I am a registered medical practitioner approved under section 12 of the Mental Health Act 1983 and registered with the General Medical Council as a specialist in general psychiatry and as a specialist in forensic psychiatry. I have been a consultant psychiatrist for twenty-two years of which seven were spent in liaison psychiatry. Full details of my qualifications and experience entitling me to give expert opinion evidence are in **Appendix 1**.

4. Conflicts of interest

5. I do not know the claimant professionally or personally. I do not know any of the parties involved. There are no conflicts of interest in respect to any of the identified parties. I have no other interest which might cause a conflict based upon the nature of the dispute.

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6. SUMMARY OF THE CASE AND SUBSTANCE OF ALL MATERIAL INSTRUCTIONS¹

7. My instructing solicitors act on behalf of Charles Dickens ('the claimant'), the well-known author and playwright, who was involved in an accident on 9th June 1865. The claimant was returning from a short holiday in Paris and was a passenger on the Folkestone Boat Express (the 'tidal' train) when it was derailed at Staplehurst. It was known as the 'tidal train' because as the Channel packet docked at the top of the tide, the train's departure time changed from day to day.

8. On the long straight stretch between Headcorn and Staplehurst, the foreman of a gang of platelayers had miscalculated the alteration in time and the leading carpenter, who had also been issued with a copy of the timetable, had dropped his on the rail, where it had been destroyed by a passing train, so he could not correct the foreman's error.

9. As the train approached, almost fifty feet of track were out of place. A platelayer's labourer was protecting the up line just 554 yards from the viaduct. He had been issued with only two detonators (fog signals) and told not to use them unless it was foggy. It was a bright and sunny afternoon. He should have placed six fog signals

¹ This should be read in conjunction with 'Issues to be addressed' which sets out the issues I have been instructed to address.

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at strategic positions and he should have been positioned with his flag 1,000 yards from the viaduct.

10. The driver could do nothing to avoid a wreck. The express was travelling at fifty miles an hour. Her driver acted promptly as soon as he saw the platelayer's red flag but in so short a distance he could not hope to bring his train of thirteen vehicles to a halt. The leading van and the first two coaches were fitted with Cremer's patent brakes but unfortunately the guard in charge did not himself see the platelayer's frantic signal and in response to the brake signal he applied only his ordinary screw brake. Not until half the critical distance had been covered did he realise the urgency and apply the patent brakes. By that time the locomotive was practically upon the bridge. This was a very modest structure that carried the line a mere ten feet above a muddy stream.

11. The locomotive, its tender and the leading brake van actually succeeded in crossing the rail-less gap on the timber baulks but the following train was less fortunate. The first coach, in which the claimant was travelling, came to rest at a perilous angle, supported by the van coupling, and hung over the ruined bridgework. The next five coaches fell through the gap into the muddy bed of the stream where they lay in a confusion of splintered wreckage. Ten passengers in these coaches were killed and forty-nine injured.

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12. The claimant was able to climb out of his compartment through a window and with the assistance of a workman he rescued his travelling companions from their precarious perch. When the immediate shock wore off, the claimant realised that he had left the manuscript for the next part of *Our Mutual Friend* in the compartment and he managed to get back into the wreckage and retrieve it. Although his clothing was soiled, the claimant was physically unhurt.

13. For a period following the accident the claimant was in a state of distress. He is nervous about travelling in trains and now prefers slow trains.

14. My instructing solicitors have issued proceedings and require a report dealing with the matter of psychiatric injury.

15. ISSUES TO BE ADDRESSED

16. I have been asked to examine the claimant and provide a full and detailed report dealing with any relevant pre-accident medical history, the injuries sustained, treatment received and present condition, dealing in particular with the capacity for work and prognosis. Since it is central to the assessment of the claimant's injuries to establish the extent and duration of any continuing disability, in the prognosis section I have been asked to comment specifically on any areas of continuing complaint or disability or impact on daily living. If there is such continuing disability I have been asked to comment upon the level of suffering or

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inconvenience caused and, if I am able, give my view as to when or if the complaint or disability is likely to resolve.

17. INVESTIGATION OF THE FACTS AND ASSUMED FACTS

18. I regard what the claimant has told me and what is contained in the medical records and other documents as 'assumed facts'. The only facts of which I have personal knowledge are my findings on examination of the claimant and as set out below in the section 'psychiatric examination'.

19. Interview and examination

20. I have interviewed and examined the claimant. Information attributed in this section to the claimant was provided by the claimant at the consultation.

21. The claimant was unaccompanied. I saw him on his own. There was no informant for me to interview.

22. It is necessary to consider the claimant's background history and medical history prior to the accident. This is in order to be able to indicate whether or not he was a person of normal phlegm and fortitude, to ascertain whether or not there was any psychiatric disorder present prior to or at the time of the accident and in order to ascertain whether or not there is anything in his personality or previous adjustment

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which would explain any atypical reaction to the accident. His history subsequent to the accident is set out in order to try and distinguish the effects of the accident from emotional disturbance due to unrelated causes.

23.Documents

24.The documents I have seen are listed in **Appendix 2**.

25.Where it seems appropriate I have taken verbatim quotations from the records and these are in quotation marks (“ “). Where I have missed out seemingly irrelevant words or phrases these are shown with a series of stops (.....). Where words, parts of words or figures are missing or illegible I have shown these with dashed lines (-- --). If I have been able to make a reasonable but not necessarily correct interpretation of something which is only partly legible I have shown the words in parentheses { }. Where symbols or abbreviations have been used I have put my interpretation of the symbol or abbreviation in square brackets []. Spelling and typing errors, where recognized, have been corrected unless doing so would alter the significance of what has been written.

26.I do not intend to keep copies of the claimant’s medical records for any longer than is necessary for the purposes of this claim or any subsequent claim or complaint relating to it. It is my intention to destroy copies of the claimant’s medical records five years after the claimant’s case is discontinued or settled.

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27. Medical terms and explanations

28. I have indicated any medical or related terms in **bold type** when first introduced. I have defined these terms and included them in a glossary in **Appendix 3**.

29. The parties involved

30. Charles Dickens - the claimant

31. Mrs. Frances Ternan - fellow passenger and mother of Ellen Ternan

32. Miss Ellen Ternan - the claimant's paramour and fellow passenger

33. CHRONOLOGY

34. Background history as given by the claimant

35. Family background

36. As far as the claimant is aware there is no family background of criminality but there appears to have been a family history of psychiatric disorder in that his mother suffered some psychiatric disorder in old age.

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37. He is the second and oldest surviving of five children.

38. The oldest was Fanny who was a musician by training, worked as a teacher and was married to a singer. She died from **tuberculosis** at the age of 38 years.

39. Next after the claimant is Letitia who is aged 52 years. She is the widow of a civil engineer and now living in poor circumstances.

40. Fourth was Harriet Ellen, who was seven years younger than the claimant, and she died as a child when the claimant was 12 years old.

41. Fifth was Frederick who died just six months ago aged 49 years. He had been a clerk in the Treasury, poorly paid and always sponging off the claimant. He was married but separated and the claimant had for a while supported his wife.

42. The youngest was Alfred who died at the age of 33 years from **pleurisy**. He was a hard-working civic engineer and, although he had also married, he deserted his wife when she became blind and went off to the U.S.A. with another woman leaving the claimant to support yet another abandoned sister-in-law. The claimant said that when he went on tour to the U.S.A., he had to avoid Chicago as there was such press hostility towards him because Alfred had left his common-law wife and three children without support when he had died the previous year.

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43. His father died at the age of 66 years from what seems to have been a cancer of the bladder. He was a pay clerk in the naval dockyard at Chatham when the claimant was born but fancied himself as an eighteenth century gentleman, he tried to dress stylishly and talked with a condescending verbosity that was an attempt at wit. He had the ingratiating charm of the habitual sponger which was much needed to compensate for his fecklessness. However, he was also a resilient man, with a gift of exclamatory self-renewal which enabled him to avoid the realities of life, and when improvidence led to a crisis, he was always confident that someone or something would turn up to rescue him.

44. His mother died two years ago at the age of 74 years. He was not sure of her cause of death but remarked that her condition was frightful. She had a particular gift for mimicry and shared her husband's taste for songs and recitations. She was also garrulous, somewhat spoilt, more than a little vain and trivially snobbish, and her social pretensions were a hindrance to managing a house on a limited income. In old age the claimant said that she had become difficult and had suffered from senility and delusions of grandeur.

45. Birth, development, childhood and family life

46. Born on 7th February 1812 the claimant believes that his birth was normal,

although he added that as his mother was a sociable and pleasure-loving woman

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who had gone about in company all through her pregnancy, and it was not surprising that she had gone into labour at a dance and delivered him only hours later.

47. As far as he is aware, his early childhood development was normal. He did not admit to possible childhood neurotic traits such as thumb-sucking bed-wetting, nail-biting, sleep-walking, fear of the dark or temper tantrums.

48. The claimant has a vague recollection of a house in a respectable neighbourhood of Chatham where they let rooms to 'superior naval persons' but this was before they moved to London when he was just two years old.

49. When he was five years old the family moved back to Chatham. The claimant looks back on this as the golden age of his childhood. This was a period of relative prosperity and it was the peak of the family fortunes. He has a number of fond memories of this period: childhood friendships; parties for all occasions; special treats when his father took him on his yacht, *Chatham*, as he sailed round to Sheerness on business. He remarked about Chatham that in twenty minutes a boy could walk from one century to another. He also recalled his father taking the children down to the *Mitre Inn* where they were put onto a table, as an impromptu stage, and sang duets and popular songs such as sea shanties for rewards such as a snack of salmon or fowl or a tip. From the age of eight years he went fairly often to the theatre.

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50. He looks back on himself at this time as having been “a very small and not-over-particularly-taken-care-of boy”. He said that he was not so much neglected by his parents as put aside like a plaything as the whim took them. He said that his parents put sentiment in place of love and carelessness in place of authority. So he grew up with feelings of emotional uncertainty and a sense of neglect.

51. When he was aged nine years they moved to a cramped cottage close to the parish church and the dockyard entrance. It stood in a mean thoroughfare called The Brook. It was full of taverns, beer shops and lodging houses. From his attic room the claimant looked out on the graveyard of the Baptist chapel. There he recalls spending a lot of time reading.

52. At the age of nearly eleven years the family moved back to London. He recalled the gloomy wet morning near Christmas when he was packed off to London in a carrier’s cart, padded like game. He was upset by this move and, although his sister Fanny escaped to the Royal Academy of Music, the claimant was kept at home to run errands, clean boots, look after the younger children and generally make himself useful. To make matters worse, Harriet died, the family slipped into debt and the cruelest sacrifice the claimant was called upon to make was to sell his treasured books for a few shillings to a drunken bookseller in Hampstead Road.

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53. On his twelfth birthday the claimant was shocked to find that two days later he was going out to work.

54. Very shortly his father was committed to a debtors' prison and the claimant was boarded out to a family acquaintance who took in homeless boys. Again it was the sense of abandonment that hurt him. He had been cast into premature manhood and he hankered for the childhood he had so traumatically lost.

55. Education

56. At the age of six years the claimant was sent to a dame-school over a dyer's shop. The mistress of the school frightened him and knuckled facts into his head with painful effect. When the family moved two years later to The Brook the claimant and his older sister were sent to the Classical, Mathematical and Commercial School run by a young man, William Giles, whose father was minister of the local Zion chapel and a friend of his parents. He said that he liked the school and enjoyed his friendships there although he was not robust enough to be good at games and preferred to watch the other boys at play. He recalls feeling somewhat detached.

57. When the claimant was nearly eleven years old his father was called back to work in London and the family removed there leaving the claimant on his own to finish the autumn term with Mr. Giles.

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58. Once in London, he had no further schooling for a while. He said that his father seemed to have utterly lost the idea of educating him.

59. In June 1824, at the age of 18 years, and after a period of menial employment (see below), the claimant resumed his education at Wellington Academy. It catered for the sons of aspiring trades people, publicans and prosperous shopkeepers. Although the claimant was not particularly distinguished at the school, he did well enough to scrape a Latin prize and before he left three years later he had become first boy. However, he had to leave before the end of the summer term as his father was unable to pay the fees.

60. Employment

61. At the age of 12 years, the claimant went to work in a factory which made paste-black for boots and firegrates. He worked there until he was 19 years old and, with an improvement in his father's financial circumstances, was able to go back to school.

62. When the claimant finally finished at school at the age of 21 years, he went to work as a clerk to a firm of solicitors in Gray's Inn. He disliked this work from the start: the slow and stuffy ways of a law office frustrated him. However, since he

had been at school he had been writing small news items, for which he received a
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penny a line, and he was soon supplementing his income with earnings from reporting. He also did some freelance reporting of Parliament.

63. Very soon he was working as a parliamentary shorthand writer. He also worked as a freelance journalist. He was soon able to give up shorthand writing and devote himself completely to journalism. His *Sketches by Boz* brought him success and he quickly followed this with his serialised *Pickwick Papers* when he was just 21 years old. *Oliver Twist* soon followed. He has since written innumerable novels and he has also written and produced plays.

64. After the death of his son, Walter, the year before the accident, the claimant admitted that he had found it hard to settle to his new story, *Our Mutual Friend*. When he got down to work he said that he was writing in a rather dull, slow way. He managed to complete the first instalment but felt very unwell and out of sorts. He said that he was finding writing an effort. Then in October 1864 an old friend died. He found this a great shock and he said that he felt that he was losing his old resilience.

65. In spite of some physical ill-health in early 1865, he said that by March 1865 he was “working like a dragon” and sufficiently recovered physically to be walking ten miles a day.

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66. Relationships, marriage and children

67. The claimant had one serious girlfriend when he was 20 years old. He became engaged to be married to Catherine Hogarth in May 1835 when he was aged 23 years. They married on 2nd April 1836 when the claimant was aged 24 years.

68. He described his marriage as having been a good one until the birth of their second child Mamie (Mary). He referred to his wife thereafter as being almost constantly pregnant. He said that she irritated him with her lethargy, nervousness, clumsiness and complaints. As time went by she took less and less exercise and indulged herself in food and drink. The claimant implied that he ceased to be physically attracted to her. It was more than symbolic that he had the staircase leading to Catherine's bedroom blocked off with a set of bookcases. At the same time he had his dressing room at their house in Tavistock Square converted into a bedroom. However, the state of the marriage was a skeleton that he kept in the cupboard. He could not divorce his wife. Any domestic scandal was bound to jeopardize his social position and damage his professional reputation. However, reports of domestic trouble in the Dickens household did spread throughout London society. He said that for many years they lived unhappily together. In retrospect, he said that, looking back on twenty years of married life, he had made a miserable mistake.

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69. In the meantime he had met Ellen Ternan. He was 47 years old and she was 20 years old. She came from a theatrical family. Her mother had put her three daughters on the stage as soon as they could walk and talk. The claimant said no more about his relationship with Ellen Ternan except to indicate that he paid the rent for her cottage and he hinted that they had a child who died.

70. The claimant and his wife have eight children.

71. The oldest is Charley who is aged 32 years, married and in publishing although he had started out in banking, had tried his hand as a tea trader and had then run a paper mill, unsuccessfully, before the claimant refused to bail him out but got him the office job at *All The Year Round*.

72. Second is Mamie (Mary) who is aged 30 years and unmarried.

73. Third is Kate who is aged 29 years old. She is married to Charles Collins, a painter, and younger brother of the novelist Wilkie Collins. The claimant spoke somewhat disparagingly of his son-in-law and his Anglo-Catholic views.

74. Fourth was Walter who died at the age of 23 years in Calcutta from an **aneurysm**. He had been in the process of being invalided home from India where he was an Army officer and where had become burdened with debts. This was only last year and the claimant said that he had not been able to share his grief with his wife.

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75.Fifth is Francis who is aged 25 years old. He had caused some anxiety to the claimant some years ago with his stammer, recurrent deafness and sleep-walking. He had worked with the claimant and the claimant thought that he had a natural literary taste. However, he became a barrister and then went out to India and was commissioned into the Bengal Mounted Police.

76.Fifth is Alfred aged 23 years who was going into the Army but now has a sheep station in Australia.

77.Sixth is Sydney aged 21 years. He said that he is a spendthrift but he is proud of him having been the youngest to be promoted to second lieutenant in the Army.

78.The youngest is Henry aged 19 years who has just finished at Rochester Grammar School and is at Cambridge University where he is showing great promise.

79.Interests and recreation

80.In his spare time the claimant said that he enjoyed going to the theatre and socializing with friends. It was also clear that he is involved in a great deal of philanthropic work. Indeed it seems that he was constantly in demand from charities.

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81. Alcohol and substance

82. With regard to alcohol, he recalled how difficult it had been as a young man to abstain from porter and other malt liquor. He had occasionally got drunk as a young man. In recent years he has had only the occasional glass of gin punch.

83. He gave no history of the use of other recreational, illicit or non-prescribed drugs apart from tobacco which he smokes in the form of the occasional cigar.

84. Personality as described by the claimant

85. As a child the claimant says that he was quick, eager, delicate and soon hurt, bodily or mentally.

86. As an adult the claimant said that he was of resilient temper and someone who was able to work himself into a cheerful mood even when he was weary and unwell.

87. Medical records prior to the accident

88. I have not seen any medical records in this case.

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89. Medical history prior to the accident as given by the claimant

90. The claimant said that as a small boy he was rather puny and was plagued by bouts of **renal colic** and **migraine**-like attacks which came on when he was particularly anxious. He said that long before he was an adult he had slipped into the family habit of self-centred complaint.

91. He recalled feeling chagrined and depressed at the age of 11 years when the family moved back to London.

92. When the family fell into debt a year later, he recalls having a fresh bout of his feverish spasms.

93. At the age of 29 years the claimant had an operation for an **anal fistula**. He said that it was a painful experience - "the cutting out root and branch of a disease caused by working over much".

94. A few months before the accident the claimant developed a painful swelling of his left foot. The doctor said that it was gout. The claimant thought that it was frostbite from walking continually in the snow. However, by two months before the accident he was able to walk ten miles a day although he still had to sit shoe-less all evening.

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95.Claimant's account of the accident on 9th June 1865

96.Just before the accident the claimant was completing *Our Mutual Friend*. By the end of May 1865 it was almost complete but the claimant felt that “work and worry, without exercise, would soon make an end of me”. He had therefore resolved to go to Paris for a short holiday. He said: “If I were not going away now, I should break down. No one knows as I know today how near it I have been”.

97.He returned from Paris on 9th June and caught the ‘tidal’ train from Folkestone. He was accompanied by Mrs. Frances Ternan and her daughter, Ellen.

98.The claimant said that suddenly they were off the rail and beating the ground as the car of a half emptied balloon might. Mrs. Ternan cried out: “My God” and Ellen screamed. The claimant caught hold of both of them and reassured them. By this time the carriage was tilted and they were in a corner. The claimant reassured them that the danger must be over and he asked them to remain still while he got out of the window.

99.Once out of the carriage the claimant surveyed the scene. He said that no imagination could conceive the ruin of the carriages or the extraordinary weights under which people the people were lying or the complications into which they were twisted up among iron and wood and mud and water.

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100. With the assistance of a workman the claimant assisted his travelling companions from their coach. He then went to assist the casualties. One man, he said, had “such a frightful cut across the skull that I couldn’t bear to look at him. I poured some water over his face and gave him some drink, then gave him some brandy and laid him down in the grass.”

101. As the immediate shock wore off, he realised that he had left the manuscript of *Our Mutual Friend* in the carriage and he scrambled back into the wreckage to retrieve it.

102. For two or three hours the claimant rendered assistance to the injured and dying. The sights were terrific. He noticed that his hand became unsteady.

103. The claimant went on to explain that in their scramble to escape, Ellen lost her gold watch-chain, some trinkets and a seal with her name engraved on it. He had to write to the station master at Charing Cross to ask if these personal items had been found.

104. Medical history since the accident as given by the claimant

105. The claimant explained that the accident was an emotional shock as it had broken open his secret life. All that he had so carefully hidden was at risk of discovery. He implied the relationship with Ellen Ternan.

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106. He said that by 29th June 1865 he was able to thank God that he felt quite right again.

107. Then he went on to say, somewhat in contradiction to his previous statement, that for some time he was in a state of distress. He said that he felt curiously weak as if recovering from a long illness. He said that even his watch had palpitations for six months after the accident.

108. He said that the effect seemed to be delayed. He said that he did not feel quite right within. He found that he was affected more and more by what had happened rather than less and less as he had expected.

109. Nevertheless by the summer he was writing again and by September 1865 he had finished *Our Mutual Friend*.

110. The claimant said that he became nervous about travelling in trains and any unusual movement upset him. Indeed for a while he could not bear to travel by train and driving in Rochester one day he felt more shaken than he had been since the accident. He said that the physical sensation of the crash seemed to have fused with a debility that was beginning to affect the left side of his body. He remarked:

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111. "A perfect conviction, against the senses, that the carriage is down on one side and generally that is the left, (and *not* the side on which the carriage in the accident really went over), comes upon me with anything like speed, and is inexpressibly distressing".

112. He said that he felt curiously weak but slept and ate well. However, after writing half a dozen notes, he was feeling faint and sick.

113. In January 1866 the claimant noticed that his pulse was irregular. He got a prescription for **iron, quinine** and **digitalis**. He realised that he was lacking his usual buoyancy and hopefulness.

114. In May 1866 the claimant went on tour. He explained how he felt its strains towards the end. One evening he was billed to read the trial from *Pickwick* and in error he gave his audience *Nickelby*. When the tour ended he took a break in the country. He was worried about his health and felt that it had suffered from doing five readings a week. He developed pains in his left eye, a persistent cold and severe digestive discomfort. Twice one week he was seized in a most distressing manner, apparently in the heart, but he realised that it was his nervous system that was affected.

115. He went on another tour in 1867. He soon felt the strain. He found that he was having to rest after reading. He was fainter at night. He dashed back to London but

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the shaking of the train upset him. He had a curious feeling of soreness all round his body. His piles played up and he lost a lot of blood. In spite of all of this he remained cheerful and good humoured.

116. Soon he noticed that he was getting so tired that he could not undress himself at night.

117. In October 1868 the claimant went on tour again. This was at the time of the General Election. He had been approached to stand in both Edinburgh and Birmingham but had refused. The first evenings of his tour went well but he quickly felt the strain. Three weeks into the tour he felt unwell and complained of a heavy tiredness. Not long after this he heard of the death of his only surviving brother, Frederick. He reflected on his brother's wasted life. His health and spirits flagged further, he had trouble sleeping and he was troubled with nausea.

118. Although he completed *Our Mutual Friend*, he had trouble applying himself to another novel and it was four years before he managed to produce *The Mystery of Edwin Drood*. He said, with some obvious hurt, that Wilkie Collins had called it "the work of a worn-out brain" but seemed to accept that his brain was to some extent worn out.

119. As the claimant could not recall any other actual symptoms, I continued to try to elicit symptoms by systematic enquiry. However, I elicited none and when I

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pressed the claimant he said that he had told me everything about how he had been affected and he was anxious to get the consultation over.

120. Medical records since the accident

121. I have not seen any medical records.

122. Psychiatric examination of the claimant on 9th June 1869¹

123. On examination the claimant presented as a middle-aged Caucasian, bearded and with dark receding hair. He was dressed in jacket, waistcoat and trousers.

124. He looked desperately aged and worn. He gazed ahead, making little eye contact and wearing a worried frown. The lines in his cheeks and round the eyes were deep furrows.

125. He gave an articulate history. Questions were answered thoughtfully and without hesitation, delay or evident slowness.

126. There was a weariness in his gaze and a general air of fatigue and depression about him. He described his mood as 'tired'.

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127.I did not detect any evidence of an increased startle response although there were occasional loud and unexpected noises coming from the street outside the consulting room. I did not notice anything that suggested hypervigilance.

128.He was clearly uncomfortable about the consultation and was only a little reassured when I explained about the limits on the confidentiality of the report. He was concerned that if the case went to court his relationship with Miss Ternan would become even more widely known.

129.He kept referring to the accident as being “a dreadful significance” for him.

130.I noted that he became more distressed at certain points in the consultation: when talking about the deaths of his mother, his son and his old friend John Leech; when talking about having to write to the station master about the belongings Miss Ternan lost; when he told me about the symptoms affecting he left side of his body; and when talking about how he was nervous travelling by train.

131.There were no abnormal beliefs or perceptions suggestive of psychosis.

132.His higher faculties appeared intact and he appeared to be of superior intelligence.

¹ These are the only facts within my own knowledge.

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133.OPINION

134.This is a provisional opinion. I will need to see the claimant's medical records and I would like to interview an informant.

135.Any relevant pre-accident medical history

136.The claimant might have been what is sometimes termed 'a delicate child' but not to any great extent and only his migraine-like attacks brought on by anxiety suggest any childhood tendency to psychosomatic complaint.

137.As an adult the claimant appears to have been free of frank psychiatric illness or psychosomatic complaint. Indeed, he appears to have been a person of customary phlegm and fortitude.

138.The accident did occur at a time when the claimant's mental health seems to have been compromised. He himself recognised that he had been on the verge of some sort of nervous or mental breakdown and indeed this was the reason why he had gone to Paris for a holiday.

139.Not long before this holiday the claimant had been finding writing an effort and he had been unusually slow at writing. Also he had been physically unwell.

Therefore, notwithstanding the likely restorative effect of the holiday in Paris, it is
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reasonable to regard the claimant as having been vulnerable to psychiatric disorder at this time.

140. It is probable that this precarious state of his mental health had something to do with the various bereavements that had occurred and the strain of leading a double life in that he tried to represent his marriage as having the semblance of normality but at the same time he was in what seems to have been a clandestine relationship with Miss Ternan.

141. The nature of any injuries sustained

142. The symptoms the claimant has experienced since the accident fall into two categories: post-traumatic stress symptoms and physical symptoms.

143. The claimant describes an experience in which he relives the accident, with some attendant distress, he is nervous about rail travel and he is upset by any unusual movement. However, he does not report nightmares of the accident, he does not avoid rail travel now, although he did for a while and he still avoids express trains, he does not describe any other avoidance phenomena, he does not describe any loss of interest or numbing of emotional responsiveness and he does not describe a sense of a foreshortened future. Although he described being upset by any unusual movement he does not otherwise report or exhibit an increased startle response and

he does not have any other symptoms of persistently increased arousal. He has had

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some insomnia but not the sort of insomnia that is a manifestation of persistently increased arousal following trauma. Therefore, although he has some symptoms found in post-traumatic stress disorder, he is not suffering from a post-traumatic stress disorder as such.

144. I do need to point out that some clinicians would make a diagnosis of a form of non-specific adjustment disorder and this is a positive and recognisable form of psychiatric illness. However, strictly speaking these symptoms have lasted for too long to meet the strict criteria for an adjustment disorder and, as they are distressing but do not affect his functioning, it is arguable whether or not they are an actual mental disorder. I make this point in order to cover what I regard as a reasonable range of opinion on this aspect of diagnosis.

145. The claimant reports physical symptoms in the form of weakness, feelings of faintness, sickness, dyspepsia and what seem to be widespread muscular aches and pains. It is probable that these symptoms represent what is known as neurasthenia. This is a form of neurosis. He reports the typical complaint of increased fatigue and weakness after both mental and physical effort along with worries about decreased mental and bodily functioning. He has had typical accompanying symptoms in the form of muscular aches and pains and dyspepsia. In order to make this diagnosis, any depressive symptoms must not be sufficiently persistent and severe to fulfil the criteria for an actual depressive disorder. This appears to be the

case here. The claimant reports a lack of his usual buoyancy and cheerfulness and

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he does look depressed but he does not report any actual depression of mood and it should be noted that his sleep and appetite have been normal except that he has had some trouble sleeping since his brother's death.

146. Although he reports feeling shocked, the claimant does not seem to have had any of the symptoms of an acute stress reaction.

147. Causation

148. There does not seem to be any explanation for the claimant's nervousness about rail travel, his re-experiencing of the accident and his tendency to be upset by sudden movements other than the accident. However, these symptoms do not add up to any recognised mental disorder and in themselves, although distressing, they are not associated with any impairment of functioning. I therefore conclude that, insofar as they do not amount to a positive and recognisable psychiatric illness, they cannot be regarded as a psychiatric injury attributable to the rail crash.

149. The causation of the claimant's neurasthenia is problematic. It appears that it had been developing before the accident. I do not recall that I have previously encountered neurasthenia as a psychiatric disorder brought about by traumata such as road, industrial or railway accidents. For these two reasons I do not think that it could be proved on a balance of probability that the claimant's neurasthenia has been caused by the accident.

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150.I note that when asked to tell me about the psychological and emotional effects of the accident, the claimant immediately began to tell me about his worry about the public learning of his relationship with Miss Ternan. This is why the accident seems to have had deep significance for him. If the accident has made a contribution to his neurasthenia it has probably been mediated through the worry about people learning of the true state of his marriage and his relationship with Miss Ternan rather than the emotional trauma of the accident itself.

151.I note that although he described himself as shocked by his experience, he was able to act responsibly with regard to his fellow passengers and was not deterred from climbing back into the precariously balanced carriage to retrieve his manuscript. I do not think that he would have done this if he had been acutely traumatized by the accident as such. Thus, not only does it appear that he had an acute stress reaction but also it appears that at the time there is no evidence of any sudden and violent agitation of his mind. Of course, it will be for the court to decide whether or not he has had symptoms that have been mediated by what the law terms 'nervous shock' but it appears to me that it will not be possible to make a medical basis for such a formulation of his case.

152.I have taken into account the claimant's more recent bereavement, through the loss of his brother, but that has been too recent to account for his symptoms.

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153. On a strict view of this case, I do not think it will be possible to prove that there has been any psychiatric injury attributable to the accident.

154. Within a range of reasonable opinion some clinicians would credit that the accident did result in a period of worsening of his neurasthenia or had the effect of hastening its development. It is not possible to say to what extent it was made worse or to what extent the development of the condition has been accelerated.

155. Treatment received

156. The claimant has not received any treatment apart from some medication which has probably been of little or no value in his condition.

157. Present condition

158. I rate the claimant's condition as one of moderate degree. It is clear that he has not been able to apply himself to his writing as assiduously as he used to do. His performance on his promotional tours has been affected.

159. Prognosis

160. The claimant's condition has been present for four years at least. It has run a fairly chronic, that is continuous, course. It is my experience that in people of his

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age, this condition tends not to remit spontaneously or respond to any drug or psychological therapy. I anticipate that his condition will continue indefinitely and will probably get worse.

161.I am concerned that this litigation will in itself make the claimant's condition worse as he is bound to worry about the publicity that even a county court case will attract.

162.No other serious or delayed long-term psychiatric sequelae of the accident are expected. I have no reason to believe that his life expectancy has been affected.

163.SUMMARY OF CONCLUSIONS

164.Only the claimant's migraine-like attacks brought on by anxiety suggest any childhood tendency to psychosomatic complaint.

165.As an adult he appears to have been a person of customary phlegm and fortitude.

166.However, it is reasonable to regard the claimant as having been vulnerable to psychiatric disorder at the time of the accident.

167.The symptoms the claimant has experienced since the accident fall into two categories: post-traumatic stress symptoms and physical symptoms.

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168. Although the claimant has some symptoms found in post-traumatic stress disorder, he is not suffering from a post-traumatic stress disorder as such.

169. Some clinicians would make a diagnosis of a form of non-specific adjustment disorder and this is a positive and recognisable form of psychiatric illness.

170. The claimant does not seem to have had any of the symptoms of an acute stress reaction.

171. It is probable that his physical symptoms represent what is known as neurasthenia which is a form of neurosis.

172. Insofar as the claimant's post-traumatic stress symptoms do not amount to a positive and recognisable psychiatric illness, they cannot be regarded as a psychiatric injury attributable to the rail crash.

173. The causation of the claimant's neurasthenia is problematic.

174. I do not think that it could be proved on a balance of probability that the claimant's neurasthenia has been caused by the accident.

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175.If the accident has made a contribution to his neurasthenia it has probably been mediated through the worry about people learning of the true state of his marriage and his relationship with Miss Ternan rather than the emotional trauma of the accident itself.

176.On a strict view of this case, I do not think it will be possible to prove that there has been any psychiatric injury attributable to the accident.

177.It appears to me that it will not be possible to make out a medical basis for formulating this as a case of 'nervous shock'.

178.Within a range of reasonable opinion some clinicians would credit that the accident did result in a period of worsening of his neurasthenia or had the effect of hastening its development.

179.The claimant has not received any treatment apart from some medication which has probably been of little or no value in his condition.

180.I rate the claimant's condition as one of moderate degree.

181.I anticipate that his condition will continue indefinitely and will probably get worse.

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182.I am concerned that this litigation will in itself make the claimant's condition worse.

183.No other serious or delayed long-term psychiatric sequelae of the accident are expected.

184.I have no reason to believe that his life expectancy has been affected.

**Keith J.B. Rix, MPhil, MD, FEWI, FRCPsych,
Consultant Forensic Psychiatrist.**

APPENDIX 1

QUALIFICATIONS AND EXPERIENCE

Qualifications

I am a medical graduate of Aberdeen University where I obtained a **Bachelor of Medical Biology (Honours)** degree in neurophysiology in 1972 and qualified **Bachelor of Medicine and Bachelor of Surgery** in 1975. I have obtained higher degrees of **Master of Philosophy** (Edinburgh) and **Doctor of Medicine** (Aberdeen) following study and research in psychiatry. I obtained the **Membership of the Royal College of Psychiatrists** in 1979 and was elected to the **Fellowship** in 1991. I became a **Chartered Biologist** and **Member of the Institute of Biology** in 1985. In 1995 I became a **Member of the Academy of Experts**. In 1997 I became a **Member of the Expert Witness Institute** and in 2002 I was one of the first Members elected **Fellow**.

Clinical training and experience

My general professional training in psychiatry was in Edinburgh from 1976 to 1979. This training included six months as **Registrar in Liaison Psychiatry** at the Royal Infirmary of Edinburgh. I undertook higher training as **Lecturer in Psychiatry** at Manchester University under Professor (now Sir) David Goldberg between 1979 and 1983 and during this time provided a liaison service to the Professorial Medical Unit and the Allergy Clinic of the University Hospital of South Manchester. Between 1983 and 1990 I was **Senior Lecturer and Consultant Liaison Psychiatrist** at St. James's University Hospital, Leeds. As a liaison psychiatrist I have worked with non-psychiatric specialists from a range of other disciplines. A liaison psychiatrist diagnoses and treats patients whose physical illnesses or injuries are complicated by psychiatric symptomatology, appear to be modified by psychiatric, personality or emotional factors or do not seem to be explicable by what is known of those illnesses or injuries in general. From 1990 to 2000 I was **Consultant Psychiatrist** and then **Consultant Forensic Psychiatrist** in the Leeds Community and Mental Health Services Teaching NHS Trust. I am now an independent **Consultant Forensic Psychiatrist** at The Grange where I have a medicolegal and clinical practice and undertake locum consultant positions in the NHS.

Research and publications

I am the author of books on alcohol problems and editor of *A Handbook for Trainee Psychiatrists*. My published research includes a number of articles and chapters on the interface between allergy and psychiatric disorder and on post-traumatic stress reactions to CS gas exposure. I am the author of 'Expert evidence and the courts' and 'The new Civil Procedure Rules' for the Royal College of Psychiatrists and a case report on capacity in relation to the Limitation Act 1980 in *The Journal of Forensic Psychiatry*.

APPENDIX 2

DOCUMENTS STUDIED

MacKenzie, N & MacKenzie, J. (1979) Dickens – A Life. Oxford, Oxford University Press.

(I fully acknowledge my heavy reliance on this biography for almost all of the factual content of this report. The opinion is entirely mine and perhaps not consistent with the accepted view that he was badly affected by the accident, he did not recover from its effects and when he died prematurely five years to the day after the accident it was as a result of the accident that he died so prematurely)

Rolt, L.T.C. (1966) Red for Danger. Pan Books.

Trimble, M.R. (1981) Post-Traumatic Neurosis - From Railway Spine to the Whiplash. Chichester, John Wiley.

APPENDIX 3

GLOSSARY

anaemia - Anaemia is a reduction below the normal level in the number of red blood (oxygen-carrying) cells, the quantity of haemoglobin (oxygen transporter) and the concentration of packed red cells. Iron is necessary for the manufacture of red blood cells (which is a continuous process) and it may be caused by either inadequate absorption or excessive loss of iron. Iron deficiency anaemia is the most common form of anaemia and women aged between 15 and 45 are extremely vulnerable to iron deficiency. In adults acute or chronic bleeding is the principal cause. Trauma, excessive menses and bleeding from the gastrointestinal tract are the major causes of excessive blood loss. Inadequate absorption may be due to a diet deficient in iron-rich foods or defective absorption due to gastrointestinal disorders. In mild cases there may be no symptoms. In severe cases palpitations, dizziness, sensitivity to cold and tiredness may occur. Treatment depends on identifying the underlying cause and correcting the deficit.

anal fistula – A fistula is an abnormal communication between two surfaces. In this case it is channel that communicates between the inner surface of the anus (back passage) and the skin of the buttocks. It gives rise to local irritation and pain. There is a risk of infection.

aneurysm – An aneurysm is a defect in the lining of the wall of a blood vessel. It may not manifest in any symptoms although this does depend on the location of the blood vessel. If it bursts there may be such massive blood loss that death occurs.

Digitalis – Digitalis is a drug derived from the fox-glove plant. It strengthens the pumping of the heart and can regulate some irregularities of heart rhythm.

iron – Iron is used in the treatment of some forms of **anaemia (q.v.)**.

migraine - Migrainous headaches have their onset usually in puberty or the second and third decades of life and occur intermittently although with decreasing frequency and severity with advancing years. They seem to be caused by the constriction and then the dilatation of branches of the external carotid artery. There are various precipitants including fatigue, hunger, bright lights, excitement, alcoholic beverages, certain foods and oral contraceptives. Typically there is an aura or prodromal phase with depression, irritability and restlessness which may be accompanied by transient neurological symptoms such as flashes of light, bright spots, impaired vision etc. Minutes or hours later comes the increasingly severe and intense headache. However, there is considerable variability of symptoms.

quinine -

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renal colic – Renal colic is the pain caused by a stone that has formed in the collecting system of the kidney where urine is concentrated before making its way to the bladder through the urethra. It is usually a severe and debilitating pain.

tuberculosis - Tuberculosis is a communicable, infectious, inflammatory, bacterial disease caused by *Mycobacterium tuberculosis*. It can affect any part of the body but the lungs are most frequently affected and unqualified the term usually means pulmonary (lung) tuberculosis. Predisposing factors include overcrowding and poor living conditions. Insidious onset often means delayed diagnosis and residual lung damage may occur even with aggressive drug treatment.

APPENDIX 4

DECLARATION

I, KEITH JOHN BARKCLAY RIX, DECLARE THAT:

1. I understand that my overriding duty is to the court, both in preparing reports and giving oral evidence. I understand, have complied and will continue to comply with that duty. This report is addressed to the Court.
2. I have set out in my report what I understand from those instructing me to be the questions or issues in respect of which my opinion as an expert are required.
3. I have done my best, in preparing this report, to be accurate and complete. I have mentioned all matters which I regard as relevant to the opinions I have expressed. All of the matters on which I have expressed an opinion lie within my field of expertise.
4. I have drawn to the attention of the court all matters, of which I am aware, which might adversely affect my opinion.
5. Where I have no personal knowledge, I have indicated the source of factual information.
6. I have not included anything in this report which has been suggested to me by anyone, including the lawyers instructing me, without forming my own independent view of the matter.
7. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report.
8. At the time of signing the report I consider that it is complete and accurate. I will notify those instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification.
9. I understand that: (a) this report will be the evidence that I will give under oath, subject to any correction or qualification I may make before swearing as to its veracity; (b) I may be cross-examined on the report by a cross-examiner assisted by an expert; (c) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
10. I have stated in this report the substance of all facts and instructions given to me which are material to the opinions expressed in this report or upon which those opinions are based.
11. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the opinion I have given or the outcome of the case.
12. This report is provided to those instructing me with the sole purpose of assisting the court in this particular case. It may not be used for any other purpose, nor may it be disclosed to any third party, without my express written authority.
13. This report has been prepared in accordance with *Protocol for the Instruction of Experts to give evidence in civil claims (June 2005)*.

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APPENDIX 5

STATEMENT OF TRUTH

I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and the opinions I have expressed represent my true and complete professional opinion.