

1 [REDACTED]  
2 Plaintiff  
3 vs.  
4 MARY P. PREISINGER  
5 Defendant

IN THE  
CIRCUIT COURT  
FOR  
HOWARD COUNTY  
No. 13-C-05-063121



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10 The videotaped deposition of [REDACTED].  
11 [REDACTED] was held on Thursday, September 28,  
12 2006, commencing at 4:30 p.m., at the Offices of  
13 Advanced Centers for Orthopaedic Surgery & Sports  
14 Medicine, 10 Crossroads Drive, Suite 210, Owings  
15 Mills, Maryland 21117, before Carol A. Chess, a Notary  
16 Public.

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21 REPORTED BY: Carol A. Chess

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF [REDACTED]

LAURA G. ZOIS, ESQUIRE

Miller & Zois, L.L.C.

Empire Towers, Suite 615

7310 Ritchie Highway

Glen Burnie, Maryland 21061

410-553-6000

llgesq@aol.com

ON BEHALF OF DEFENDANT MARY P. PREISINGER:

PATRICK A. FERRIS, ESQUIRE

H. Barritt Peterson, Jr. & Associates

One West Pennsylvania Avenue, Suite 500

Towson, Maryland 21204-5025

410-832-8003

410-832-8080 - fax

patferris@aol.com

ALSO PRESENT:

JANET A. THOMAS, Videographer

## STIPULATIONS

1  
2           It is stipulated and agreed by and between  
3 counsel for the respective parties that the reading  
4 and signing of this deposition by the witness be and  
5 the same are hereby waived.

6           It is further stipulated and agreed that the  
7 filing of this deposition with the Clerk of Court be  
8 and the same is hereby waived.

9                               - - - - -

10           MR. FERRIS: What I would like to do is  
11 briefly go on the record but stay off of the video  
12 deposition with regards to the subpoena for records if  
13 that's okay?

14           MS. ZOIS: Sure. Off the video but on the  
15 record, right?

16           MR. FERRIS: Yeah. And then we can swear  
17 in the witness and all of that other stuff.

18                               (Examination of the witness commenced at  
19 3:54 p.m. off of the video record as follows.)

20           EXAMINATION BY MR. FERRIS:

21           Q       Doctor, do you have in front of you a

1 subpoena that was issued by the Circuit Court for  
2 Howard County?

3 A Yes.

4 Q And, Doctor, do you have any recollection  
5 of actually being served that subpoena?

6 A I don't have an independent recollection  
7 of that. It was served on, it looks like it was  
8 issued on the 14th of July, or at least that's the --  
9 it doesn't say it was served that date, but that's the  
10 date it was listed as issued.

11 Q And when is it asking you to appear?

12 A 28th of August, 2006.

13 Q And where was that?

14 A In my office here at Crossroads.

15 Q Did anyone appear -- did anyone ask for  
16 use of your facilities for that subpoena?

17 A No.

18 Q Okay. Did that deposition go forward on  
19 that date? Did anyone appear for it?

20 A No.

21 Q Now, Doctor, in that, you were asked to

1 produce certain documents?

2 A Yes.

3 Q Okay. Let's go through the list.

4 It says any and all documents reviewed by  
5 you as category number 1.

6 Do you have with you and in front of you  
7 for this video deposition all of the documents that  
8 have been reviewed by you?

9 A Yes.

10 Q Okay. The second is any and all documents  
11 generated by [REDACTED] including written reports,  
12 notes, patient information, forms, correspondence and  
13 telephone messages.

14 Do you have those documents within your  
15 file present with you?

16 A Yes.

17 Q Okay. The third is the copy of the entire  
18 chart for Mary Tover and April Tover in your  
19 possession.

20 I assume that you don't have those with  
21 you.

1 A I have the chart from [REDACTED]

2 Q But clearly, though, we're not here for  
3 Mary Tover and April Tover.

4 A No.

5 Q Okay. Now, Doctor, number 4 is a copy of  
6 your most recent curriculum vitae.

7 Is this a copy of your most recent  
8 curriculum vitae?

9 A Yes.

10 Q I'm going to be asking the Court to  
11 mark -- the clerk to mark that as Exhibit 1 for the  
12 video deposition.

13 Next, a copy of all 1099s received from  
14 law firms or insurance companies for providing expert  
15 testimony on behalf of the plaintiff or defendant for  
16 the last five years.

17 Doctor, does your outfit keep the 1099s?

18 A No. We're not required to utilize them  
19 for tax purposes. The 1099s are just generic. They  
20 mention our office name. They don't break down any  
21 physician or types of services or whether it's

1 patients we're treating or not treating or what  
2 they're treating for or PIP claims or whatever. We  
3 don't keep them, so we don't have any here; we don't  
4 have to file them.

5 Q But they don't differentiate to be able to  
6 tell how much was paid by various firms for expert  
7 witness testimony.

8 A No, they -- all they are, it just tells  
9 how much was paid to our office by that carrier for  
10 all services rendered to that carrier. It could be  
11 PIP claims. Those carriers that have specific  
12 insurance policies as well that insure would be  
13 included in that.

14 It's whatever payment that carrier paid to  
15 us regardless of what the source was. So it doesn't  
16 break that down at all.

17 Q And there are multiple doctors and other  
18 employees providing various services that are billed?

19 A There's 13 doctors and several PAs that  
20 would be rendering bills. I don't remember -- I've  
21 seen some, some attorneys have brought them in in the

1 distant past that they've gotten from a carrier but  
2 could make no sense of it other than saying, yeah,  
3 that's apparently what they say they've paid our  
4 office for that, that fiscal year.

5 Q Okay. And, Doctor, they also ask in  
6 category 6 for an up-to-date list of all cases you've  
7 provided expert testimony for, either for the  
8 plaintiff or defendant, by way of trial, video or  
9 deposition.

10 Do you keep a list of cases in general?

11 A No. The only cases we have to keep are  
12 those from federal court for like the last three years  
13 or something like that, whatever that federal court.  
14 And I have not been in federal court for the last  
15 three or four years so I have none.

16 Only because I've been asked this a lot of  
17 times, and I give them a generalized number, so I  
18 decided to contemporaneously go over some cases as I  
19 did them so I'd have something. Because I've always  
20 said that I average about one and a half a month, and  
21 that's been what I thought.



1                   So I started like in November 1st, 2004,  
2     and I went for about 19 months consecutively. And it  
3     was about 33 cases, so it was about what I thought the  
4     numbers would be. And so I kept those, but I didn't  
5     do any more than that because we don't, don't have to,  
6     and I did that as a convenience for the people who  
7     were asking for it.

8                   I have it available, and I stopped doing  
9     that probably in May of this year because there was  
10    just no reason to do it anymore.

11           Q        So you have that list, and this is the  
12    list, a copy of it in my hand?

13           A        Yes, yes.

14           Q        Okay. We'll be providing that to  
15    Miss Zois.

16                   And, just so I'm clear, there's no other  
17    real list of cases that's in existence.

18           A        No.

19           Q        Okay.

20           A        And I don't know that any of my associates  
21    even have lists. I just did this as something that I

1 just did as I was doing them. I decided, okay, I was  
2 asked enough, and rather than try to get any  
3 contention, I just said, look, let me just do this for  
4 a while and then get it over with.

5 MR. FERRIS: Okay. I'm going to ask that  
6 that be marked as Exhibit 3 for purposes of the  
7 transcript.

8 Q Doctor, you were also asked for a fee  
9 schedule regarding your expert witness testimony?

10 A Yes.

11 Q Is this your current fee schedule?

12 (Document tendered.)

13 A Yes. And this has all the expert  
14 witness -- expert testimony fees, and it has nothing  
15 to do with, you know, plaintiff or defense. It's just  
16 this is our standard charge.

17 Q Okay. Now, Doctor, I'm going to ask that  
18 be marked as Exhibit 4 and attached to the transcript.

19 Doctor, you were also asked for your  
20 personal federal and state income tax returns for the  
21 last five years.

1                    Doctor, do your personal federal and state  
2 income tax returns have private information within  
3 them?

4            A        Yes, they do.

5            Q        Do they have information relating to your  
6 wife within them?

7            A        Yes, they do.

8            Q        Do they have any relationship to be used  
9 by a court to determine the percentage of work you do  
10 for IME work versus your other activities that earn  
11 you income?

12           A        None.

13           Q        Okay. And, Doctor, it's my understanding  
14 that you feel that that information is private.

15           A        Yes.

16           Q        Why?

17           A        It's my own personal returns, how much  
18 money I donate, to whom I donate, other trusts that I  
19 may have, and other outside sources of income that  
20 really have no bearing on anything I do professionally  
21 one way or the other.

1                   So it doesn't shape my opinions one way or  
2 the other what my personal life is like, and I don't  
3 see the need to release them.

4           Q        Okay. Do you find that they're intrusive?

5           A        I do. It's intrusive, and it doesn't make  
6 a difference in my opinions. My opinions stand for  
7 what my opinions are, and it has nothing to do whether  
8 it's a plaintiff or defendant. I justify my own  
9 opinions, and I give my reasons for each one of them.

10          Q        Doctor, the business federal and state  
11 income tax returns, do you have an individual business  
12 where you practice orthopedic surgery?

13          A        No, I'm a member of a corporation, and  
14 those would be corporate taxes. I'm not privy to just  
15 release our corporate taxes. There's other doctors  
16 involved.

17                   But those, those tax returns similarly  
18 just give a general revenue statement of how much the  
19 group makes with 14 people. And that's for  
20 everything, our surgeries, whether we have X-rays or  
21 other sources of revenue.

1           It does not break down the sources of  
2 revenue into different components, and I have been  
3 very open in the past, and still am, to discuss that  
4 portion of my percentage of my practice that has to do  
5 with medical evaluations, and I would be happy to do  
6 so if asked.

7           Q       But do the business tax returns help in  
8 any way in determining what portion of your practice  
9 is through IME work?

10          A       No. Our records, just even if you went  
11 further than the tax returns, we don't break down our  
12 records into plaintiff or defense.

13                 So even forgetting this, if you just went  
14 into our charges, you know, it doesn't say this is the  
15 plaintiff and this is the defense, and this charge is  
16 for that, this is for that. It's not broken down even  
17 at the next level, but it's certainly not at the tax  
18 return level.

19          Q       Okay. So there would be no way for an  
20 individual in reviewing those business tax returns to  
21 determine how much money you generated for the firm?

1 A In the tax returns? No.

2 Q Now, Doctor, as to the billing records for  
3 review of this matter, you're fully willing to provide  
4 them, right?

5 A Yes. I have a copy of the, this one sheet  
6 here. It has the specific billing sheet.

7 Q For your IME?

8 A That's associated with the IME, and  
9 there's no other bills associated with that other than  
10 the testimony today, which is outlined in the fee  
11 schedule.

12 Q And you've received a payment to your firm  
13 for the testimony for today?

14 A Yes.

15 MR. FERRIS: Do you have any questions  
16 regarding the subpoena for records before we start?

17 MS. ZOIS: Lots.

18 EXAMINATION BY MS. ZOIS:

19 Q Doctor, have you seen the Court's order  
20 requiring the production of documents attached to the  
21 subpoena?

1           A       I just saw that today.

2           Q       Do you intend to comply with the Court's  
3 order?

4           A       I complied with everything I felt I could.  
5 I cannot, I cannot supply the office corporate  
6 returns, state and federal. It's a corporation. I'm  
7 not entitled to do that, and I don't have a desire to  
8 make my personal finances known, and I don't feel it's  
9 relevant, so I'm not doing that.

10          Q       So you've decided that it's not relevant,  
11 so you've made the decision that you are not going to  
12 comply with the Court's order to provide your  
13 financial documents under seal to the Court.

14          A       That is correct.

15          Q       Okay. Taking you back to the beginning of  
16 where this conversation began, the subpoena that you  
17 received, you said you can't -- you don't have an  
18 independent recollection as to whether or not you were  
19 personally served.

20                    Are you saying that you were unaware of  
21 this subpoena?

1           A       Actually, I don't know that I was aware of  
2 the subpoena when the subpoena came through.  
3 Apparently, the initial subpoena said it was sent in  
4 the mail, and the following week I was in Chicago the  
5 whole week giving the oral exams for the Board of  
6 Orthopedic Surgery, and then I was away on vacation  
7 subsequent to that, and I never saw this.

8                   This was handled by my secretaries. I  
9 never saw that subpoena. My secretary apparently  
10 discussed this with Mr. Ferris. I have not -- today  
11 was actually the first time I saw the subpoena.

12           Q       Okay. So you were aware of the subpoena  
13 before August 28th of 2006, correct?

14           A       I just said I was not. My office was  
15 aware of it. I was not personally aware of the  
16 subpoena until today when I came in the office this  
17 afternoon.

18           Q       So you were not aware that Mr. Ferris had  
19 filed a Motion for Protective Order on your behalf?

20           A       I was not. My secretary was. I was not.

21           Q       Okay. And you've been served with



1 subpoenas like this before in the past; is that  
2 correct?

3 A A few.

4 Q And you have refused to comply with court  
5 orders requesting and requiring the production of  
6 these documents before in the past.

7 A I have never, in my entire practice, had a  
8 court that requested that I had to do my state and  
9 local taxes and my corporate taxes, I've never had  
10 that decision made in all the years I've been in  
11 practice.

12 Q How about the production of 1099s; are you  
13 aware of a court order generated out of the Baltimore  
14 County Circuit Court requiring the production of your  
15 1099s for the last five years?

16 A I've been asked that, but they require it  
17 if it's in our possession, and it's not in our  
18 possession. We don't have them. I've stated that on  
19 every occasion. We don't keep our 1099s. I don't  
20 have the 1099s.

21 I've commented upon them when the

1 attorneys have shown me 1099s, the data of the  
2 subpoena from the insurance carriers. They can get  
3 them, if they need them, they have to go to the  
4 individual carriers, and that's apparently where they  
5 got them. They didn't get them from us. We don't  
6 have it.

7 Q The question was, Doctor, are you aware of  
8 a court order out of the Circuit Court for Baltimore  
9 County requiring the production of your 1099s? Are  
10 you aware --

11 A They were --

12 Q Are you aware --

13 A They were --

14 Q Can I finish the question, please, Doctor?

15 A Go ahead.

16 Q Are you aware of a court order from the  
17 Baltimore County Circuit Court requiring you to  
18 produce your 1099s? Are you aware of that order?

19 A I'm not aware of any specific order that  
20 requires you to do it, only to say that if you have it  
21 in your possession that you have to present it.

1           And I've always stated that I don't have  
2   it in my possession. And, to my knowledge, it's never  
3   been an issue ever that that has disqualified anything  
4   that I've done, because we don't keep the 1099s.  
5   We're not required to by law, and we don't have them.

6           Q     Who is your accountant?

7           A     My accountant is Howard Moffet.

8           Q     And how long has he been your accountant?

9           A     30 years.

10          Q     Who's the corporate accountant for --

11          A     Same.

12          Q     Same individual? So the same person that  
13   does the corporate tax returns also does your personal  
14   tax returns?

15          A     Yes.

16          Q     Have you been in contact with him about  
17   this court order requiring the production of your  
18   financial returns?

19          A     No.

20          Q     So you haven't requested your financial  
21   returns at all from him, or you haven't gotten --

1 A No.

2 Q -- copies of them from your home?

3 A I just saw the subpoena today, and I have  
4 not been in contact with him about it. And, as I  
5 stated, the only issues would be that the state and  
6 local ones and the corporate returns, and I stated  
7 that I don't have any intention to submit those.

8 Q But he would be in possession of both of  
9 those documents.

10 A I would be in possession of them. I just  
11 have no desire nor have I given my authorization for  
12 that to be released.

13 Q Okay. So you're in possession of both the  
14 corporate tax returns and --

15 A No, not the corporate, my personal.

16 Q Okay. So you're in possession of your  
17 personal tax returns, and he's in possession of your  
18 personal tax returns and your corporate tax returns.

19 A That is correct. I probably have -- I'm  
20 not even sure if I have it five years out. I  
21 certainly have it four years out. I think you have to

1 keep it for three years, your personal taxes? So I  
2 think I keep it a fourth year but --

3 Q Where did the 1099s go that come into the  
4 office?

5 A The shredding machine, I'm sure, over  
6 there.

7 Q Is that an office practice policy to shred  
8 1099s?

9 A Yeah, we don't need them. Mr. Moffet says  
10 we never need them so there's no reason to keep them.  
11 And, since it has information in them, we don't, we  
12 don't store them. So we shred them just like we do  
13 any other records we don't need.

14 Q When did you start shredding your 1099s,  
15 what year?

16 A When we bought a shredder. Years ago we  
17 didn't have to shred them, so we just threw them in  
18 the garbage. But I can't tell you when that is, but  
19 probably over 10 years ago we had a shredder, I would  
20 think, maybe not that long.

21 Q So you've been, as far as you know,

1 shredding 1099s that come into the office since --

2 A Well, my assumption is they've been  
3 shredding it rather than throwing it out. We don't  
4 keep it, whether it's just gone in the garbage or in  
5 the shredder, I can't say with independent knowledge.

6 My assumption is that they are being  
7 shredded, but it could have been thrown in the  
8 garbage, I don't know.

9 Q Who opens the mail in this office?

10 A We've got a dozen secretaries that can  
11 open the mail depending on who it's addressed to.

12 Q Are they instructed to shred the 1099s or  
13 discard the 1099s?

14 A They don't deal with the 1099s. It goes  
15 into the bookkeeping department.

16 Q Is the bookkeeping department instructed  
17 to discard or shred the 1099s?

18 A Anything that's not needed is discarded.  
19 So I don't think we have the specifics on the 1099s, a  
20 specific policy on 1099s, but if it's not needed for  
21 our accountant, it's not needed for our office tax

1 returns, it's not filed with our office tax returns;  
2 therefore, we don't keep them.

3 We have enough paperwork as it is that we  
4 have to keep. We don't need it.

5 Q Who is in charge of the bookkeeping  
6 department?

7 A Jeff Fowler (phonetic) is our main --  
8 Leslie is our head bookkeeper right now, head of the  
9 bookkeeping department. She has been here with us for  
10 about five months.

11 Q Who was in charge before she was?

12 A Denise -- I'm trying to think of the last  
13 name. I'm blanking on the last name. She's been in  
14 charge with us -- Leslie has been more than five  
15 months. Leslie's been with us for about a year, I'm  
16 sorry. Denise -- I can't think of her last name --  
17 but anyway, she was with us for about five or six  
18 years.

19 Q And what kind of software program do you  
20 use for bookkeeping? QuickBooks?

21 A No, I don't know what software. I can't

1 answer that.

2 Q You don't know what kind of software you  
3 use?

4 A I just know we have a computer. We have a  
5 computer with NextGen computer. And, before that, we  
6 had another computer called MegaWest. And I don't  
7 know if there's a software program on that, but we use  
8 NextGen computer software now, and before that, we  
9 used MegaWest to do all our office work. And that's  
10 what we've had, MegaWest first and then NextGen,  
11 NextGen about a year.

12 Q But you don't know what kind of accounting  
13 software your bookkeeping department uses?

14 A It would be whatever the NextGen system  
15 is. Otherwise, I don't know the specifics of the  
16 accounting program. Everything is done on NextGen.

17 Q And I'm assuming that, on an annual basis,  
18 you send some sort of statement to your accountant.

19 A About what?

20 Q Well, a summary of the income, a summary  
21 of your expenses?



1           A       Yes. There's a monthly summary that's  
2 generated, and he gets a copy of that; and at the end  
3 of the year we get a return.

4           Q       Do you ever review the monthly statements  
5 or the yearly statements?

6           A       I look at the monthly statements, not in  
7 detail with each one of them, but I do review the  
8 monthly statements.

9           Q       So you're familiar with that format.

10          A       Yes.

11          Q       And you're familiar with the yearly  
12 format.

13          A       Yes.

14          Q       On your monthly statements or your yearly  
15 statements, is there any category indicated for  
16 forensic legal activity?

17          A       No.

18          Q       Is there any category for Pat Ferris'  
19 office?

20          A       No.

21          Q       Is there any category -- well, when a

1 check comes in from an attorney's office for forensic  
2 work, how is it categorized?

3 A It's categorized by the individual, under  
4 the name of the individual.

5 Q So, in this case, the check would come in,  
6 and it would be categorized under [REDACTED]  
7 name?

8 A Yeah, it would have to be under that name  
9 so we could, you know, there's a patient  
10 identification number on the thing, and it's under  
11 that identification number.

12 Q Is there any distinction between  
13 identification numbers and patient numbers to  
14 distinguish between an exam that you do for a medical  
15 examination versus treating a patient?

16 A No.

17 Q So they're all lumped together.

18 A All lumped together, and they're all, as  
19 you can see from the charge sheet here, there's this  
20 one charge sheet, and they're all put into various  
21 codes depending on the level of service, and it

1 doesn't differentiate between IMEs or individual  
2 patients.

3           It has to do with CPT codes that are  
4 approved by the AMA. There's no separate codes for  
5 one or the other.

6           Q       So, at the end of every year or at the end  
7 of every month, you have no way as a businessman to  
8 distinguish what your income is for treating patients  
9 versus what your income is for doing forensic work?

10          A       In general, no. I just have a generalized  
11 sense of how many IMEs I do, but that's about all I  
12 can tell you.

13                 We don't break it down nor do we really  
14 need to do that. So it doesn't serve us any purpose  
15 to do it, and we don't go through the thing of setting  
16 up separate categories for different things that just  
17 don't make any difference to us.

18          Q       Okay. How is the company that you work  
19 for structured? You said you have 13 doctors that  
20 work for you, or work with you?

21          A       We have 13 doctors; 9 of us are partners.

1 Q Okay. So there's nine partners and then  
2 four associates.

3 A Yes.

4 Q Right?

5 And the nine partners, are you paid based  
6 on a salary or based on, do you get together at the  
7 end of the year and agree on some distribution of  
8 funds? How does it work?

9 A There's a distribution of funds, some  
10 based on our productivity and some based on the fact  
11 that we're equal shareholders in the partnership. So  
12 it's not all --

13 Q How many of the nine are equal  
14 shareholders?

15 A All nine.

16 Q I'm sorry?

17 A All nine.

18 Q All nine. So each one of you has a  
19 one-ninth partnership in the company.

20 A That's correct.

21 Q And, at the end of the year, the

1 distributions are made, you said based in some part on  
2 productivity.

3 A Some is based on productivity and some  
4 based on our equal sharing of revenues.

5 Q Is there some pot of money at the end of  
6 the year that's whacked up nine ways?

7 A It's usually done by bonussing during the  
8 course of the year.

9 Q And, as far as your part of the practice,  
10 can you give me some idea as to your productivity as  
11 opposed to the other orthopedic doctors that you're  
12 partners with?

13 A I'm probably about one-ninth of the  
14 partners, about where I would be normally, evenly with  
15 the other associates given all the revenue that I  
16 bring into the group.

17 It used to be more, but as I stopped doing  
18 ERs, I'm a little less. But I'm in that range.

19 Q So you're about even with the other nine  
20 partners.

21 A Yeah, in the total revenue brought in,

1. yeah.

2           Q       And, at the end of the year, how do you  
3 account for the revenue you brought in as opposed to  
4 the revenue that somebody else brought in?

5           A       We don't account for it. We just, you  
6 know, we know that revenue is brought in, and then we  
7 make a decision; a lot of things are split evenly.  
8 And then, if not, then we split a portion of it by  
9 productivity, and the rest of it is split evenly.

10          Q       Okay. Is there some way that, in the  
11 monthly statements or the yearly statements, your  
12 productivity versus another one of the partner's  
13 productivity is broken down?

14          A       Well, just to how much money we make. So  
15 that's how you know how much money, how much money  
16 we've charged to the group. You can see how much  
17 money individual doctors have charged and how much  
18 money individual doctors bring in depending on what  
19 format you want.

20          Q       Okay. So, at the end of the year, you can  
21 look at all nine of you and see how much

1 productivity -- what your productivity is versus what  
2 Dr. Berner's productivity would be.

3 A Yes.

4 Q Okay. And the number, your productivity,  
5 the number that is attributable to you at the end of  
6 the year, you're telling me there is absolutely no way  
7 that you can break that down to determine what the IME  
8 work is or forensic work is versus treating patients?

9 A Right. Because it's not listed in any  
10 format. We don't break that down for any of the  
11 doctors' IMEs. We just break it down by the codes,  
12 and the codes that we use, if you want to break down  
13 where your codes are, they're the standard codes for  
14 consultations, levels of visits.

15 And it could be individual patients, it  
16 could be plaintiffs, it could be ones who are not  
17 involved in any litigation at all. It's just CPT  
18 codes.

19 It would be the same thing with X-rays or  
20 the same thing with OR cases. Everything is broken  
21 down by CPT coding, and we can pull up how many, you

1 know, what level Level 2 office visits we have and  
2 Level 3 office visits and so forth.

3 Q Do you know what your productivity was in  
4 2005?

5 A Do I know what my productivity was?

6 Q Yes.

7 A I have a general idea.

8 Q Okay. What was your productivity in your  
9 general --

10 A I'm not interested in disclosing how much  
11 money I make.

12 Q Okay. Well, I'm asking for your total  
13 productivity in 2005. That doesn't necessarily mean  
14 that's how much money you make.

15 A I'm not interested in giving out my total  
16 revenue of how much money I bring into the group.

17 Q Okay. So the question --

18 A I don't think it's relevant.

19 Q Well, it's not really up to you to decide  
20 what's relevant, it's up to the Court.

21 A Well, that's, in my opinion, it's not



1 relevant to my opinions, and I'm not giving out that  
2 financial information.

3 Q Okay. So, just so we're clear, you're  
4 refusing to answer the question of what your  
5 productivity contribution to your practice was in the  
6 year of 2005.

7 A I just said I'm about equal as the average  
8 of the partners' productivity. But the absolute  
9 numbers I'm not going to give out.

10 Q But you have a general idea of what that  
11 number is.

12 A Yes.

13 Q Okay. And I'm guessing you have a general  
14 idea of what that number is for 2004.

15 A Yes, I do. That's going further back.  
16 I'd have to look up documents to see what it is for  
17 the year-end figures.

18 Q All right. And, as far as the forensic  
19 work that you do, what is your -- do you know what you  
20 estimate, what portion of your total productivity  
21 involves forensic work?

1           A           I don't have a specific number. I can  
2 just tell you that I average about 20 -- about 5 to 5  
3 and a half independent medical evaluations in the  
4 course of a week's time, and I've given you a list of  
5 my depositional time.

6                        So that's the forensic work that I do. I  
7 see about 100, 105 patients a week, and I operate two  
8 days a week. But that's all I can tell you.

9           Q           Okay, and that's why we need the financial  
10 information.

11           A           Well, you don't need it. I'm just telling  
12 you --

13           Q           We're beating a dead horse but --

14           A           Well, you don't need it. I've just told  
15 you that I do 20 -- I see about 5 to 5 and a half  
16 patients a week for IMEs. I see 100 patients a week,  
17 total, and I do surgery twice a week.

18                        So it's a portion of my practice. It's  
19 not the big portion of my practice in the sum of all  
20 my three offices here. Because I see patients five  
21 days a week. I operate two days a week. And I do see

1 5 to 5 and a half on average a week out of the 100.

2 So it's, of the patient encounters, it's about 5  
3 percent of my patient encounters.

4 Q Just so you don't claim you never saw this  
5 subpoena, here is another one for the next case you're  
6 involved in.

7 (Subpoena tendered.)

8 MS. ZOIS: And, with that, I want to look  
9 at his chart before we start on the video deposition.

10 MR. FERRIS: Okay.

11 (A discussion was held off the video and  
12 stenographic records.)

13 (Defendant's Deposition Exhibit Numbers 1  
14 through 4 were marked for purposes of identification.)

15 Q Doctor, I just want to show you the  
16 subpoena that we were discussing earlier. At the  
17 bottom there's a note on here that says, faxed to Pat  
18 Ferris, 832-8080, 714, slash 6. And it looks like the  
19 initials begin with a B.

20 Do you see where that's indicated on the  
21 subpoena?

1 A Yes.

2 MS. ZOIS: Can we get this marked and  
3 copied before I leave?

4 Q Do you know who made that note?

5 A One of the secretaries.

6 Q Is that your secretary?

7 A Yes.

8 Q And what is your secretary's name?

9 A Betty Plitt. She goes by the nickname  
10 Betty Re, R-E, but Betty Plitt is her natural name --  
11 or was Betty Plitt. She just was married.

12 Q And there is another document in your  
13 file, it's two pages. It says reasonable, not  
14 reasonable, page 1 and page 2.

15 Who prepared this document?

16 A I just saw that just this afternoon.  
17 Mr. Ferris said his secretary, based on my report,  
18 went and had those two things outlined. I didn't  
19 prepare that, and the first time I've seen it is about  
20 five minutes before I walked in here.

21 Q Okay. Have you done the math?

1           A       I have not looked at it completely. I  
2 have to have my report.

3           Q       Okay. There you go. Make sure everything  
4 is in the order that you want it to be in.

5                   (A discussion was held off the video and  
6 stenographic records.)

7                   (Plaintiff's Deposition Exhibit Number 1  
8 was marked for purposes of identification.)

9                   (The video portion of the deposition  
10 commenced at 4:30 p.m. as follows.)

11                   THE VIDEOGRAPHER: My name is Janet  
12 Thomas, with Gore Brothers Reporting & Video  
13 Conferencing, 20 South Charles Street, Suite 901,  
14 Baltimore, Maryland 21201. I will be the video  
15 operator for the taking of the deposition of  
16 [REDACTED] in the matter of [REDACTED]  
17 versus Mary P. Preisinger, now pending in the Circuit  
18 Court for Howard County, Case Number 13-C-05-063121.

19                   This deposition has been noticed by  
20 Patrick Ferris, counsel for the Defendant, and is  
21 commencing on Thursday, September 28, 2006 at

1 approximately 4:30. Our location is 10 Crossroads  
2 Drive, Suite 210, Owings Mills, Maryland 21117.

3 Our court reporter is Carol Chess, with  
4 Gore Brothers Reporting & Video Conferencing, and will  
5 now swear the witness.

6 Whereupon,

7 [REDACTED]  
8 called as a witness, having been first duly sworn to  
9 tell the truth, the whole truth, and nothing but the  
10 truth, was examined and testified as follows:

11 THE VIDEOGRAPHER: Will counsel please  
12 identify themselves and who they represent?

13 MR. FERRIS: Patrick Ferris on behalf of  
14 the Defendant.

15 MS. ZOIS: Laura Zois on behalf of the  
16 Plaintiff, [REDACTED]

17 THE VIDEOGRAPHER: You may proceed.

18 MR. FERRIS: Thank you.

19 EXAMINATION BY MR. FERRIS:

20 Q Doctor, you are a medical doctor, licensed  
21 to practice in the state of Maryland?

1 A Yes.

2 Q And, as part of your practice, do you  
3 perform independent medical examinations, meaning  
4 independent of the treatment of the patient?

5 A Yes.

6 Q And, at my request, did you perform an  
7 examination in this case of a [REDACTED]

8 A Yes.

9 Q As part of that, did you review medical  
10 records that I provided you?

11 A Yes.

12 Q Did you perform a medical exam with the  
13 help of an interpreter?

14 A Yes, I did.

15 Q And do you believe that, with your  
16 experience, that you have developed sufficient  
17 information to give opinions regarding [REDACTED]  
18 injuries in an automobile accident of October 1st,  
19 2002?

20 A Yes.

21 Q Now, Doctor, I'm going to go into more

1 detail as the basis for your opinions later, and I  
2 will be developing your qualifications later.

3 But so that the jury knows now, bottom  
4 line, what are your opinions to a reasonable degree of  
5 medical probability as to injuries sustained by  
6 [REDACTED] on October 1st, 2002?

7 A It appears from the records that she  
8 sprained her neck and her lower back.

9 Q Okay. And, Doctor, do you have an opinion  
10 as to whether or not she needs any continuing medical  
11 treatment as a result of this?

12 A Yes.

13 Q And what is that opinion?

14 A She does not need any continuing medical  
15 treatment, and from what I see in the records, she has  
16 not had any ongoing care from her orthopedic surgeons  
17 in just about two years.

18 Q And, Doctor, we're going to go through the  
19 appropriateness and the reasonableness of some of that  
20 treatment down the road.

21 But do you believe that some of the



1 treatment that [REDACTED] underwent or the billing  
2 for it was excessive?

3 A Some.

4 Q Okay. You do agree, though, that some of  
5 the treatment was reasonable and appropriate for her  
6 complaints of injury.

7 A Yes.

8 Q Okay. Doctor, let's go into your  
9 qualifications at this point.

10 Doctor, briefly describe for the ladies  
11 and gentlemen of the jury your educational background.

12 A Yes.

13 I went to [REDACTED] of  
14 Medicine after graduating magna cum laude from  
15 [REDACTED]. I finished in 1967.

16 I then entered the general surgical  
17 internship and residency at the then Baltimore City  
18 Hospitals, it's now [REDACTED] and then went  
19 into the orthopedic surgical residency at [REDACTED] in  
20 1969, finishing there as chief resident in orthopedic  
21 surgery in 1972.

1 I spent an additional two years in the  
2 United States Army as an orthopedic surgeon and chief  
3 of Lyster Army Aviation Medical Center.

4 And then, in 1974, I entered the private  
5 practice of orthopedic surgery, then with four  
6 orthopedists; now there's 13 or 14 of us in the group.

7 Q Doctor, do you hold any positions in any  
8 local hospitals?

9 A Yes. I'm on the staffs at [REDACTED], [REDACTED]  
10 and [REDACTED] Center, but I'm also [REDACTED]  
11 [REDACTED] Chief of the Department of Orthopedic  
12 Surgery, and I've been chief there since 1991.

13 We have about 25 orthopedic surgeons and a  
14 similar number of podiatrists on my staff, plus about  
15 four or five PAs as well.

16 Q Okay. And, Doctor, are you board  
17 certified in any field?

18 A I'm board certified in orthopedic surgery.  
19 I was originally certified in '73, and I don't have to  
20 recertify based upon the year that I was certified.

21 However, I've been a member of the Board

1 of Orthopedic Surgery and giving oral exams. This  
2 past July it was the 29th year I've been doing it.  
3 And, since I did that, I started recertifying, because  
4 we took part in a trial in 1983, and we recertified in  
5 1993 as we were starting to recertify individuals who  
6 have been in practice for years.

7 I recertified, and then I recently took  
8 another 8 hours of examination in April and  
9 recertified yet a third time. I don't think anybody  
10 in the country, except for maybe two of us, have  
11 recertified a third time.

12 Q So, Doctor, you're one of the people that  
13 has to certify other doctors to be qualified to be  
14 certified by the American Board of Orthopedic  
15 Surgeons.

16 A Yes, I'm one of them. There's about 600  
17 candidates who come to Chicago for oral examinations.  
18 So I may examine 35 or 40, but not 600.

19 Q And that's examining orthopedic surgeons  
20 from around the country.

21 A Yes. They're usually not from Maryland

1 unless it's someone from an area that I don't know the  
2 individual. You can't examine somebody, say, from the  
3 Baltimore area unless I don't know the person at all.

4 Q Okay. Now, Doctor, in this particular  
5 case, I requested that you render opinions regarding  
6 injuries -- oh, I'm sorry.

7 At this point in time, I would -- Doctor,  
8 you also treat people injured in automobile accidents?

9 A Yes, I do.

10 Q All right.

11 A I treat patients who are involved in all  
12 kinds of accidents. I actually see more who are  
13 involved in accidents than I do for this defense type  
14 work, but yes, I do see patients in accidents.

15 MR. FERRIS: Now I would move the doctor  
16 as qualified in the field of orthopedic surgery at  
17 this point in time.

18 MS. ZOIS: No objection.

19 Q And, Doctor, let's go into your assignment  
20 in this case.

21 Did you develop a history from

1 [REDACTED]

2 A Yes.

3 Q When you develop a history, that's when  
4 the patient comes into the exam room and you ask them  
5 questions about why they're there, correct?

6 A Yes.

7 Q Now, did you review the medical records  
8 before developing the history?

9 A What I normally do is skim the records.  
10 They're given to me a few days beforehand. Knowing  
11 that a significant number of individuals in these type  
12 of examinations do not show up or reschedule at the  
13 last minute, I don't do an extensive review.

14 What I do is I do a good review so that I  
15 can be familiar with the case, go through the exam in  
16 a fairly rapid situation so the individuals don't have  
17 to remember every single thing. I just want to make  
18 sure that the records I have are complete and get  
19 their general view, and then I look at them again  
20 before I issue my report.

21 Q And, Doctor, what was the history that you

1 obtained from [REDACTED]

2 A [REDACTED] was seen in the presence of a  
3 [REDACTED] (phonetic), who acted as her interpreter.  
4 She did understand some English and spoke, but it just  
5 made it easier to get it.

6 She states she was in a motor vehicle  
7 accident October 1st, 2002. She was wearing a belt,  
8 seat belt, in a Plymouth Voyager mini van. She was  
9 making a right turn, and her vehicle was struck in the  
10 rear by another vehicle. It wasn't pushed into any  
11 other cars or objects, and she did not strike her  
12 head, arms, chest, face or legs and didn't lose  
13 consciousness.

14 She tells me she was taken to [REDACTED]  
15 [REDACTED], where she was x-rayed,  
16 treated and released.

17 She had contacted an attorney and was  
18 referred to Maryland Orthopedics, and there she was  
19 diagnosed with sprains in the neck and the back  
20 according to [REDACTED]

21 She then started a course of therapy,

1 which she believes lasted a couple of months. She had  
2 injections into the neck and the back. She states  
3 that it didn't really give her long-term relief, maybe  
4 a day or two at most, and then the pain recurred.

5 She continued treating with [REDACTED]  
6 [REDACTED] for 2003, and then she wanted another  
7 opinion, because she was still having some neck and  
8 back pain, so she went to see a [REDACTED] who saw her  
9 for another six months or so, according to  
10 [REDACTED]. She wasn't exactly sure of all the  
11 sequence there.

12 She may have seen her family physician,  
13 [REDACTED] on a couple of occasions. She has not seen  
14 her [REDACTED] doctors in about three years  
15 from the time I saw her in July, and for [REDACTED] in  
16 over two years.

17 Q So you saw her on July 14th of 2006.

18 A Yes.

19 Q Okay. And, Doctor, did she give you  
20 any --

21 A I will say the second page of my report

1 says 2003. I think all the others are carried forth  
2 as 2003, which is incorrect. The cover sheet is 2006,  
3 and that's the day I saw her.

4 Q Okay. And, Doctor, did she give you any  
5 further history?

6 A Yes. She states -- I asked about her  
7 employment. She wasn't employed but did work  
8 occasionally as a bookkeeper for her husband's auto  
9 tech shop.

10 She denied prior or subsequent accidents  
11 motor vehiclewise and states she's had no pain in the  
12 neck or the back in the past. She states that she has  
13 some pain in the neck and the back now, more so the  
14 neck than the lower back. It tends to go to the right  
15 shoulder more so than the left shoulder. It does not  
16 go into the arms; it's not associated with any  
17 numbness or weakness in the arms.

18 As far as the back is concerned, she has a  
19 little pain in the right buttock, the back of the  
20 right buttock, but not down the leg, and she has no  
21 numbness or weakness in the legs.



1           As far as medication goes -- oh, she also  
2   has no bowel or bladder problems. And, as far as  
3   medication goes, she states she's not on any current  
4   medicines other than taking occasional  
5   over-the-counter pain medicines.

6           Q     Doctor, did you then develop a past  
7   medical history for her?

8           A     I asked about it. She's allergic to  
9   penicillin, but otherwise, her past history is  
10   unremarkable. She doesn't smoke or drink, and she has  
11   no major medical problems.

12          Q     Doctor, then did you perform an orthopedic  
13   physical examination on her?

14          A     Yes.

15          Q     When you perform that type of an  
16   examination, do you focus on any of the areas they're  
17   complaining about?

18          A     Well, you certainly do that, but in any of  
19   the associated areas that would go in context with  
20   that. I mean, when you examine the neck and the lower  
21   back, you have to examine the extremities as well,

1 because they can have problems.

2           You examine extremities on a neurologic  
3 basis rather than, say, a specific injury to it, like  
4 a knee joint, for instance, that they don't tear a  
5 cruciate ligament. So the examination of the knee is  
6 in light of the fact that she's had a back injury, not  
7 a primary knee injury. And she has no primary joint  
8 injury.

9           That being said, I did fully examine her,  
10 a complete examination.

11           Q       And what were the important aspects of the  
12 findings in the examination?

13           A       She's 41, 5 foot 3, 190 pounds. Her neck  
14 motion was -- she states she had pain, so I didn't  
15 passively move her. I just had her actively move  
16 herself. She extended 20 degrees bending back,  
17 forward 45 degrees, and she lacked about 50 percent of  
18 her rotation on lateral bending because she said it  
19 hurt, rotation being this way, and lateral bending  
20 side to side.

21           She had some tenderness in the trapezius

1 muscle, which is the muscle that comes down from the  
2 neck towards the shoulder blade area on the right side  
3 and a little bit on the left, some tenderness around  
4 the base of the neck along the muscles.

5 Q Now, Doctor, tenderness, that's when you  
6 touch or palpate an area, and she says that hurts.

7 A Yes.

8 Q Okay.

9 A Shoulders moved through a full range of  
10 motion. There was no impingement and Hawkin's signs  
11 were negative. In other words, she had no pain within  
12 the shoulder joints themselves to palpation, no  
13 subacromial or tenderness along the acromioclavicular  
14 joint.

15 She had good strength. She had normal  
16 sensation, motor function and reflexes to the upper  
17 extremities. Patrick's and Roos signs negative, and  
18 she had no neurologic findings in the wrists or the  
19 hands.

20 Her mid back and thoracic spine was  
21 nontender. It moved through a full range of motion.

1 She had no pain around the ribcage or rib compression  
2 or on palpation of the thoracic area, that's the mid  
3 back.

4 As far as the lower back goes, she moves  
5 that through a full range of motion. When she fully  
6 flexes forward and extends, she complains of some  
7 discomfort. She had some tenderness, not in the  
8 midline, but along the side paravertebrally from L5 to  
9 S1. That's the lower area of the spine, more so on  
10 the right, not on the left.

11 Her kidney area was nontender. She had  
12 normal neurologic exams of the lower extremity.  
13 Straight leg raising, Michele's flip signs were  
14 negative. With straight leg raising, she complained  
15 of some pain in the lower back but no pain down the  
16 legs.

17 The hips and the knees were normal, and  
18 she had normal examination to her lower extremities.

19 Q And, Doctor, then did you review medical  
20 records?

21 A Yes, the records and X-rays. She had MRIs

1 done at Advanced Radiology. The cervical spine was  
2 normal. There was no disc herniation. There was some  
3 very minimal degenerative disc disease in the lower  
4 cervical spine.

5 Q Did you actually look at the films?

6 A She had films with her.

7 Q Okay.

8 A The lumbar MRI had minimal degenerative  
9 changes, some disc desiccation, meaning the loss of  
10 water content. These are degenerative changes in the  
11 lower back. These are films taken also early on in  
12 the course of her treatment.

13 Q Doctor, when you say degenerative changes,  
14 is it important they were taken early on in the course  
15 of her treatment as to whether or not it was caused by  
16 this accident?

17 A Well, it certainly helps you make that  
18 decision that these are not caused by the accident,  
19 because these are longstanding changes that take time  
20 to occur.

21 The neck really didn't have much of

1 anything. Her plain X-rays did not show any  
2 significant findings either in the neck, in the neck  
3 area. She had no normal X-rays of the neck when she  
4 was seen at [REDACTED]

5 Q Did any of the X-rays that you reviewed or  
6 the reports that you reviewed display any injury  
7 caused by the accident that could be seen on the  
8 X-ray?

9 A No.

10 She then went to [REDACTED] in  
11 October, a couple days thereafter. She was given a  
12 cervical spine collar and back support, some muscle  
13 relaxants. She started on some trigger point  
14 injections, which you put in some medication around  
15 areas that bothered her.

16 She had nerve studies -- I mean, EEGs done  
17 on her head. These were normal. There was a question  
18 of some headaches at that time.

19 She did not have symptoms that radiated  
20 into the arms or the legs. She did not have any  
21 findings of, clinically of any carpal tunnel syndrome

1 or problems in the arms.

2 The -- she saw [REDACTED], [REDACTED] and  
3 [REDACTED], all at the [REDACTED] and she  
4 continued getting trigger point injections into May --  
5 into March, April, June of 2003 and then was  
6 discharged in July of 2003.

7 Q Doctor, then did you review [REDACTED]  
8 records?

9 A Yes. She had had some physical therapy  
10 also at Health South. She saw [REDACTED] in July 2003,  
11 after they felt she was maximally improved at Maryland  
12 Orthopedics. He gave her some Bextra, a Medrol  
13 Dosepak, but she didn't take the Dosepak. He felt  
14 that she should see a neurosurgeon.

15 I'm sorry, she did take the Dosepak, but  
16 that didn't help. She didn't get any epidural  
17 injections or see a neurosurgeon. She came back to  
18 see him. He recommended having a neurosurgeon see her  
19 again, but she didn't come back, she didn't do that.

20 And the last visit I saw from him on  
21 [REDACTED] was in March of 2004 where she complained

1 of some neck and back pain, no neurological findings.

2 Q Doctor, in your opinion, from your review  
3 of all of the records, has [REDACTED] ever been a  
4 surgical candidate?

5 A No.

6 Q What is the normal treatment for the types  
7 of injuries that she sustained?

8 A Well, there's a whole gamut, but some  
9 people don't use therapy because it's never been shown  
10 that it necessarily changes your condition a year  
11 later, whether you had therapy or not, for back and  
12 neck sprain. But other individuals feel comfortable  
13 with it, so you give that for a couple months or three  
14 months, and that's usual.

15 Pain medication, exercises at home, muscle  
16 relaxants and occasional trigger point injections can  
17 be tried, although the Public Health Service  
18 guidelines have never shown that that really has any  
19 benefit. People still utilize them some, but there's  
20 no indication for prolonged trigger point injections  
21 in the case of acute sprains.



1           Two or three times is fine, but if you're  
2 not showing -- you're not -- if there's no significant  
3 relief from that or change in the symptomatology,  
4 there's no indication to do that more than two or  
5 three times.

6           Q       And, Doctor, do you have opinions as to  
7 the amount of treatment that was fair and reasonable  
8 for [REDACTED] and could you explain to the jury and  
9 specify your opinions regarding that which you thought  
10 was successful?

11          A       Well, again, the trigger points for two or  
12 three times would have been reasonable. More than  
13 that was not. And she had many more visits than two  
14 or three.

15                   The physical therapy for a two- to  
16 three-month period of time is reasonable. There was  
17 some charges there that I felt were higher than usual  
18 and customary, mainly on an accounting basis, if you  
19 will. Because when you lump, you continue to give  
20 multiple modalities, heat, electrical stimulation,  
21 massage, ultrasound, blah-blah-blah, and you keep

1 tacking them on, even though you put down the full  
2 charge for each individual one, there's reduction for  
3 multiple modalities given at the same time.

4           So the bills get up pretty high. It's  
5 like me doing an arthroscopy on the knee and operating  
6 on the knee cartilage both on the inner and on the  
7 outer side, charging full charge for both but not  
8 expecting to get full charge because there's a lot of  
9 overlap.

10           At any rate, on those occasions where she  
11 had four modalities, the charges were about 25 percent  
12 higher than usual and customary. On those occasions  
13 which she only had three modalities, the daily charge  
14 was within the reasonable and customary rates.

15           The key was really when she added more  
16 than the three modalities, there wasn't a reduction  
17 for that fourth one, so the rate was a little higher  
18 than usual and customary.

19           I felt the MRIs was a judgment call  
20 because of her complaints. There was no clinical need  
21 absolutely to do them, but I certainly felt that they

1 were justified based upon her complaints and the  
2 physician's opinions at that time.

3           The office visits at Maryland Orthopedics  
4 seemed to be spaced appropriately. Although I didn't  
5 agree with the trigger points, the visit codes are  
6 according to AMA Guidelines. They have to meet  
7 certain criteria, and the coding for the follow-up  
8 visits were coded as more of a comprehensive rather  
9 than complex, which is fine, Level 4 visits. But  
10 after the first two or three visits, that level is no  
11 longer there.

12           That involves continued comprehensive  
13 history, physical decision making, and it didn't  
14 require all that. So you step down the code on an  
15 individual unless they had certain specific problems.

16           Q       And that coding is based upon the amount  
17 of time spent with the patient on particular visits,  
18 correct?

19           A       Not necessarily. You can bill by time.  
20 Most orthopedic surgeons do not. Psychiatrists do.  
21 Some internists might on primary visits.

1                   Most orthopedic surgeons do it based upon  
2 the standards of what corresponds to that level of  
3 service, the type of history, the type of physical and  
4 the decision making rather than the time.

5           Q        But a code of 99214, which you said was  
6 appropriate for the first two or three visits, and you  
7 said it should have been 99213 thereafter, is that  
8 code billed out at a lesser rate?

9           A        Yes. It's billed out at a lesser rate  
10 because you don't have to do the same -- you're doing  
11 it in interval history. It's not like going over the  
12 same complex history, the interval history, there's an  
13 interval physical exam. It's not the same level of  
14 physical exam that you would do on the first two  
15 visits or three visits once the patient is stable.

16                   And the decision making also isn't -- you  
17 don't have that kind of complexity anymore in the  
18 decision making. It's carrying on from your last  
19 decision, have you gotten any better and so forth,  
20 rather than primary decision making.

21                   So you cut back on those coding. You may

1 increase it again on your final visit on your more  
2 comprehensive exam, but that's not needed for the  
3 patient; it may be needed for the legal process. So  
4 you may push your exam up a little bit more on the  
5 last visit. A lot of people do.

6 As far as trigger points go, the charge of  
7 \$250 to inject a couple trigger points is also higher  
8 than usual and customary. Usually the trigger point  
9 injections are in the range of 100 to 100 and a  
10 quarter; some people are a little bit higher when you  
11 add a second trigger point injection. And that's what  
12 it would be with the trigger points.

13 And, as far as the MRIs go, the reading  
14 charge that was submitted, at least the Maryland  
15 Orthopedics, not the radiologist, but the reading  
16 charge was probably two to three times more than the  
17 charge that the radiologist charges for reading the  
18 MRI to begin with.

19 Normally what you do in an MRI charge, for  
20 instance, is it's built into your code. So, when you  
21 have a more comprehensive examination, that takes into

1 account reviewing X-rays and records as part of the  
2 comprehensive nature of it.

3 But, if you're going to bill for it, it's  
4 a minimal charge. Because it's already been read and  
5 you're looking at it, it's built into the charge. And  
6 usually individuals are charging anywhere up to \$100  
7 to do it, if you're going to do it, otherwise, not  
8 \$300.

9 I know, in my particular case, when I  
10 looked at the two, my billing is \$75 to review both  
11 the cervical and the lumbar spine MRIs, and that's  
12 more than the usual range when you're doing these  
13 evaluations. The radiologist has done the primary.  
14 If you're doing the primary, then it's a different  
15 issue. If you're doing the secondary one, it's not.

16 Q Now, Doctor, we often refer to things as  
17 subjective versus objective. Could you explain the  
18 difference between subjective and objective findings  
19 when doing an evaluation of a person?

20 A Subjective means the individual has to  
21 tell you what's going on. This hurts, this is tender,

1 it hurts when I move this. I have a headache, I  
2 throb. You have to rely on the individual to tell you  
3 that.

4 Objective would be you have a fracture and  
5 the bone is bent, you have a reflex that doesn't work,  
6 you have the color of your hair, a burn, a scar.  
7 That's -- those are all objective findings rather than  
8 a subjective. All the examiners that see it can see  
9 that finding. It doesn't require an interpretation.

10 It's like looking at a picture. One  
11 picture is pretty to you and ugly to someone else.  
12 That's subjective. It may be blue and yellow for  
13 everybody, but it's subjective.

14 Q Now, Doctor, in rendering your opinions  
15 today, did you take [REDACTED] for her word as to her  
16 subjective complaints?

17 A Yes.

18 Q Now, did you find any objective findings  
19 of injury that could be attributed to the automobile  
20 accident?

21 A No, not when I examined her.

1 MR. FERRIS: Thank you, Doctor.

2 Witness with you.

3 MS. ZOIS: Thank you.

4 EXAMINATION BY MS. ZOIS:

5 Q [REDACTED] when were you first  
6 contacted by Mr. Ferris' office to render opinions in  
7 this case?

8 A I don't know when our office was first  
9 contacted. We received records on the 12th of July,  
10 2006. When the appointment was set up, I don't know.  
11 But I never spoke to anybody regarding it. She was  
12 just -- I just got the records, and she appeared on my  
13 schedule.

14 Q Okay. So the first piece of  
15 correspondence from Mr. Ferris' office came in on July  
16 12th, 2006; is that fair to say?

17 A The correspondence, correct. I mean,  
18 obviously this examination, there was some contact to  
19 set up the examination that was just made through the  
20 secretaries.

21 Q And your examination of [REDACTED] was on



1 July 14th of 2006, two days later.

2 A Yes.

3 Q Do you recall having any conversations  
4 with Mr. Ferris before you did the IME of [REDACTED]

5 A I've never had any conversations with  
6 Mr. Ferris about the IME of [REDACTED] until a few  
7 minutes before this deposition.

8 Q Okay. Are you aware that you were  
9 designated as an expert witness in this case on March  
10 24th of 2006, several months before the IME was ever  
11 done?

12 A I'm not aware of it. But that's one of  
13 the notes there, but I never, I never signed anything.  
14 I never saw anything that I can remember on  
15 [REDACTED] regarding this.

16 So, if I was named, I was named. It may  
17 have been that she was scheduled for an IME in the  
18 past and it was cancelled, I don't know.

19 Q Okay. But just to be clear, you never  
20 spoke to Mr. Ferris before rendering your opinions in  
21 this case about this case, correct?

1           A        I have no recollection of doing that, and  
2 there's nothing in my records to indicate that I even  
3 saw any records on this case beforehand.

4           Q        All right. And, when Mr. Ferris' letter  
5 came over to you, you knew that you were going to be  
6 doing an IME for the defense; is that fair to say?

7           A        Yes.

8           Q        And you've worked with a number of  
9 attorneys in Mr. Ferris' office. You've had the  
10 chance to do IMEs for a number of the attorneys in his  
11 office, correct?

12          A        I do IMEs for members of his office. As I  
13 mentioned to you before, I do about five to five and a  
14 half IMEs a week out of the hundred and some odd  
15 patients I see and the surgeries that I do, but some  
16 of them are from his office.

17          Q        And earlier, before the deposition, you  
18 provided a list of cases that you had testified in for  
19 the last 19 months, and I've had an opportunity to  
20 review and I just want to show it to you. It's been  
21 marked as Exhibit Number 3.

1                   Is that your list?

2           A        This is the list that I made for  
3 informational purposes for attorneys that may want it.  
4 I don't have to keep the list, but I did it  
5 contemporaneously, and this is the list that I made  
6 out.

7           Q        And out of those 33 attorneys, by my count  
8 13 -- 13 out of the 33 occasions you testified for  
9 attorneys that are with Pat Ferris' office.

10                   Does that sound about right?

11          A        If that's what you say, I mean --

12          Q        That wouldn't surprise you, would it,  
13 Doctor?

14          A        No, this was over, this was over a  
15 19-month period of time. To have 13 different  
16 deposition testimonies, no, that would be about one  
17 every -- two every three months. That would probably  
18 be correct.

19          Q        Well, that wasn't really my question.  
20                    My question was, is it fair to say that,  
21 on the 13 occasions out of your last 33 depositions,

1 you testified for attorneys that are also members of  
2 Mr. Ferris' firm?

3 A Yes.

4 Q And I can tell you -- does that sound  
5 accurate?

6 A That sounds accurate over that, over that  
7 time frame, for the 19-month time frame.

8 Q And you've testified on Mr. Ferris' behalf  
9 or for cases he was defending on at least two  
10 occasions before today.

11 MR. FERRIS: I counted three.

12 MS. ZOIS: Oh, thank you. Were you the  
13 question mark?

14 MR. FERRIS: I thought I saw three.

15 THE WITNESS: One, two.

16 MR. FERRIS: Only two.

17 A Two cases in that 19-month period of time,  
18 yes.

19 Q Okay. I'm also going to show you what's  
20 been marked for your deposition as Exhibit Number 4,  
21 which is a copy of your fee schedule?

1           A       Yes.

2           Q       Okay, and that's your current fee  
3 schedule?

4           A       Yes.

5           MS. ZOIS: Okay. At this time, I would  
6 offer into evidence Exhibits 3 and 4.

7           Q       And to go through your forensic practice,  
8 and when I say forensic practice, Doctor, I mean doing  
9 examinations at the request of somebody that you're  
10 not currently treating.

11                   Do you understand the definition?

12          A       Yes.

13          Q       All right. How often do you do a record  
14 review, where you're just asked to look at records and  
15 generate a report?

16          A       I probably do one or so, one or two in the  
17 course of a week. A lot of those record reviews are  
18 individuals that I often will do that are involved in  
19 those IMEs.

20                   They send me, some carriers or attorneys  
21 prefer me to do the records and do a formal review.

1 prior to doing the IME. So there's a significant  
2 overlap. Some do, some don't. So I would say about  
3 half the records reviews I do, ultimately I do the IME  
4 on anyway.

5 Q So you do about one or two record reviews  
6 a week?

7 A On average, something like that, yes.

8 Q And the records review, I think according  
9 to your fee schedule, is about \$400?

10 A That really varies. That \$400 is really  
11 an hour. Most, I would say the majority of the record  
12 reviews that I do, are in range of 150 to \$225.  
13 Because they're not -- most of the ones that come to  
14 me for a record review are asking me a specific  
15 question. They may be asking about just the fees,  
16 just the fee scale and nothing else, so it's not the  
17 same thing.

18 So it's, I don't, I don't raise -- it's  
19 rarely that the record reviews are 400. Almost all of  
20 them are in that range that I mentioned to you because  
21 they're usually individuals, they just want to know

1 the charges.

2 Even those that come on for IMEs later on,  
3 they've asked for the record reviews as part of that  
4 and not specifically asked in the IME for the review  
5 of the charges; whereas Mr. Ferris elected to ask for  
6 review of the charges all at once rather than  
7 separating it into two.

8 Q How many actual physical medical exams do  
9 you do a week?

10 A Physical medical. What do you mean? You  
11 mean examinations?

12 Q Well, record reviews are one thing, where  
13 you're just looking at the records. But an actual  
14 medical examination at the request of somebody else,  
15 how many of those do you do in a week?

16 A I would say about five to six in a course  
17 of -- an average of somewhere around 20 a month is  
18 what I average over the course of a year, and that  
19 involves all sources. It's not -- that can be from an  
20 employer, a case manager who has somebody they want to  
21 see whether they can go back to work and whether

1 they're capable of doing a certain job or another job.

2 I'm an arbiter for General Motors. I've  
3 been doing that for years, less now that they've kind  
4 of pulled away. But a lot of the reviews are short  
5 and sweet. People may have hurt themselves at home  
6 and are now looking to see whether they can get back  
7 into work or not. The capacity has nothing to do with  
8 litigation in the comp arena, but they just want to  
9 see capacity. And I do that on behalf of the UAW and  
10 General Motors, and they review that on a yearly basis  
11 to make sure that my decisions are reasonable.

12 Q And how much do you charge for the medical  
13 examinations?

14 A General Motors exams are cheap, you know,  
15 relative to what it is. They're not on the same as  
16 the other IMEs. General Motors are usually about 200  
17 to \$220.

18 Q Well, you don't do much GM work anymore,  
19 though, right?

20 A No, but there's occasional ones.

21 Q How many have you done in the last year?



1 A Probably three or four.

2 Q Okay.

3 A Now, they used to be somewhere about 20 to  
4 25 a year. I only do a smattering of them. I do --  
5 some of that 20 are reevaluations, people that I've  
6 seen already so that they don't have the same initial  
7 charge that they had before, they don't have the same  
8 records reviews so --

9 Q Your fee schedule says a medical  
10 examination is 350 to 650. Is that accurate?

11 A Yes. That would be the sum total of it.  
12 Most, almost all of them are in the 350 to 400 to 4  
13 and a quarter range.

14 Q What's this case?

15 A This case was 350, and then I was supplied  
16 the records at 150 and \$75 to review the MRIs. This  
17 particular case was 575.

18 Q This particular case was 575, okay.

19 A But, as I said, a lot of those are not in  
20 that range from the case managers or under the  
21 Workers' Comp arena. And they're kind of fixed more

1 on the Workers' Comp arena which is much less than  
2 that. But they're still independent evaluations, and  
3 those rates are usually about a third or less than  
4 that.

5 Q But this case didn't involve surgery or --

6 A This didn't, but if one is looking at the  
7 total charges, those IMEs, of the 20, are not all in  
8 that range, in my particular practice, because some of  
9 them are, as I said, permanency ratings for instance,  
10 and we don't charge a full IME charge for that. That  
11 would be \$200 to do a specific rating as opposed to --  
12 and that's part of that 20.

13 Q Okay. And the document that we discussed  
14 earlier, Deposition Number 3, is that a comprehensive  
15 list of every deposition that you have given in the  
16 last 19 months?

17 A As far as I know. As far as I can  
18 remember, these are every one that I put down. If I  
19 missed one, I missed one, but these are ones that I  
20 testified to. These are either my patients or others.

21 But these are that I could find. If

1 there's somebody that I missed, then there's somebody  
2 that I missed. But this is basically what it was that  
3 I put down as I did them.

4 Q Do you have the case of Miller versus  
5 Allstate where Larry Strom was the defense attorney on  
6 your list that you did back in April of 2005? Is he  
7 on this?

8 A Larry Strom?

9 Q Yes. Allstate house counsel.

10 A I don't remember that. Mitchell?

11 Q No. Larry Strom was the defense attorney,  
12 and the claimant was Rona Schrum, S-C-H-R-U-M.  
13 Deposition was taken April 28th, 2005.

14 A No, because as I said, I ended this  
15 sometime around April of 2005.

16 Q Okay.

17 A So this was not -- that may have been  
18 after.

19 Q Okay. And, for depositions, you charge a  
20 \$1400 minimum?

21 A For video depositions, and that includes

1 the preparation before this meeting with the attorney  
2 and the deposition time as well; more for court, less  
3 for discovery depositions.

4 Q All right. And you've testified in the  
5 past that you testify about 30 to 35 times a year.

6 Does that sound accurate still?

7 A No, that's not accurate.

8 Q You think it's less than that now?

9 A I just mentioned to you that I'm doing it  
10 about 20 times a year right now on average as opposed  
11 to -- it was 30 or 35 probably back about 4 or 5 years  
12 ago.

13 And, when I finally did this, I did it  
14 because the numbers were much less. And I think part  
15 of the reason is a lot are coming to litigation or  
16 things have been put on the list and we've had a much  
17 higher percentage of people that have cancelled  
18 depositions. So I suspect there's more settlements  
19 going on now than before.

20 Q Have you ever done three videotape  
21 depositions in one day?

1           A       That's certainly conceivable that I've  
2     done it. It would be rare, but it's conceivable. But  
3     I haven't done it during this period of time that I  
4     can, that I can remember but --

5           Q       Do you remember a day when you did do  
6     three in a row?

7           A       I would, because I try to do depositions  
8     on one day a week and not try to spread it out,  
9     because I operate Tuesday and Wednesday. I'm not in  
10    the office here on Monday afternoons and evenings. I  
11    operate. I'm in another office. I have evening hours  
12    Wednesdays up in Westminster, and I don't do things up  
13    there.

14                   And so I try to, try to do these  
15    depositions more towards the end of the week, so I'll  
16    block out an afternoon and try to get -- if I do them,  
17    I will try to do them all in one afternoon so it  
18    doesn't interfere with my schedule.

19           Q       How many times a year do you actually go  
20    to court to testify?

21           A       I don't remember the last time I was in a

1 courtroom.

2 Q Your fee schedule includes a charge for  
3 that. It's an \$1800 minimum?

4 A Right. And the reason, one reason why is  
5 because that's very disruptive to our schedule. It  
6 usually ends up being more than that, because you have  
7 to go. You don't know when you're going to be called.  
8 Court doesn't start at 7:30 in the morning when my  
9 hours starts.

10 So, you know, it involves -- I'm basically  
11 cancelling out a whole morning for something that I  
12 may testify for one hour. Where, in this, the video  
13 depositions are a lot easier to do.

14 Q When's the last time you did a video  
15 deposition?

16 A I did one -- I did one last week, and the  
17 one before that was probably sometime in the middle of  
18 August.

19 Q Is the one you did last week on your  
20 sheet?

21 A No, because I said, this only goes up to

1     sometime in 2006, but it doesn't go into, it doesn't  
2     go to this time. I stopped doing this sometime around  
3     April.

4             Q        Okay. Directing your attention to this  
5     case in particular, I noticed upon review of your file  
6     that you actually do have records in your possession  
7     that were subpoenaed by the defense. Is that correct?

8             A        I have records, I guess so.

9             Q        And some of the records that you have that  
10    were subpoenaed by the defense are from [REDACTED]  
11    [REDACTED], her family doctor, [REDACTED]  
12    Maryland Orthopedics, radiology studies.

13            Would you agree that those are the records  
14    that have been subpoenaed in this case that you have  
15    in front of you?

16            A        Yes.

17            Q        Is it fair to say that you reviewed those  
18    records before giving your testimony here today?

19            A        I reviewed those records.

20            Q        And would you agree with me, Doctor, that  
21    there is absolutely no indication that, before the

1 date of October 1st, 2002, that [REDACTED] ever made  
2 any complaints of pain to anyone about neck pain or  
3 back pain? Is that fair to say?

4 A That's what I testified to before. I  
5 haven't seen, at least I have not been supplied any  
6 records to that knowledge. I haven't seen any of her  
7 medical records from the 19 hundreds, 1990s.

8 But she told me she didn't, and I haven't  
9 seen anything to contradict that.

10 Q And you would agree that, based on the  
11 records that you've reviewed and your own physical  
12 examination, that she's had complaints of pain in her  
13 neck and back from the time of this accident up until  
14 the date that you saw her.

15 A That's correct.

16 Q Have you reviewed the records of [REDACTED]  
17 after your visit from July and August of this year?

18 A No.

19 Q Have you reviewed her results of the June  
20 2004 MRI that was done?

21 A June 2004. Not that I know of.



1 Yes. There is one of June 2004 that  
2 [REDACTED] has ordered that's in the chart showing no  
3 change from the study of 11-22-02.

4 Q Did you actually review the June 2004 MRI  
5 films themselves?

6 A I don't believe I did. I just went from  
7 the report from the chart showing no change from the  
8 one two years before.

9 Q And you agree that she did injure her neck  
10 in this accident, correct?

11 A According to what the records look like,  
12 yes.

13 Q And you agree she injured her back in this  
14 accident, correct?

15 A That's correct.

16 Q Is it fair to say that you also agree that  
17 her treatment and the bills associated with her visits  
18 to the hospital were fair, reasonable and necessary  
19 and causally related by the accident?

20 A The bills are controlled by state law. I  
21 didn't really look at the individual charges. The

1 hospitals charge what the hospitals charge. So I  
2 don't, I don't -- in this particular state, I don't  
3 really review the hospital charges because they're  
4 controlled by the course review commission.

5 Q How about her visit to the hospital; that  
6 was reasonable, right?

7 A Oh, the reason why she went is reasonable,  
8 yeah. I didn't really comment on the charges, but the  
9 reason why she was there was reasonable and the  
10 treatment there was reasonable.

11 Q And the treatment at Maryland Orthopedics,  
12 in your opinion, at least the first two or three  
13 trigger point injections, those were reasonable,  
14 right?

15 A Yes, it was reasonable to follow up on her  
16 and get the MRIs, yes.

17 Q And you testified that the trigger point  
18 injections beyond the first two or three injections  
19 were not, quote unquote, medically necessary. But  
20 they did provide her with some relief for a few days,  
21 didn't they?

1           A       One day or so for some of them. But it  
2 wasn't giving lasting relief. There's more down side  
3 that you can give with trigger point injections. It's  
4 not indicated to do that because you can have  
5 localized scarring and desensitized nerve roots, have  
6 some loss of fatty tone and defects. It's not in --

7           Q       There's no evidence of that in this case,  
8 though, is there?

9           A       No, but that's the reason why you don't --  
10 she didn't develop that. But those studies, it's not  
11 an indicated study of things to do on an ongoing basis  
12 because it has no basis of improving the quality for  
13 any length of time but has a marked down side that  
14 cannot be shown to have a benefit.

15          Q       You don't have any problem with her going  
16 to see [REDACTED] for a second opinion; that's  
17 certainly reasonable, isn't it?

18          A       She states she has problems, you know, I  
19 would have seen him before that period of time if she  
20 were having problems rather than going through all the  
21 injections, but that's when she chose to go see him.

1 Q And you don't think that any of  
2 [REDACTED] bills are unreasonable or not fair,  
3 correct? You didn't mention it in your report.

4 A I didn't mention that. It didn't seem  
5 like his billings -- I didn't make a mention of it so  
6 that's all I can say. I didn't mention that his bills  
7 were outside of any reasonableness.

8 MR. FERRIS: It's right here (document  
9 tendered).

10 A His visit charges were reasonable. His  
11 coding wasn't, but his visit charges were reasonable.  
12 He was coding her at the Level 4, and the last one is  
13 a complex visit on the end one.

14 Those charges were higher than usual. I  
15 mean, the codes were higher. The actual charges were  
16 not high enough to -- they were probably a little bit  
17 higher but not enough to make a big difference one way  
18 or the other to comment on.

19 Q The physical therapy that she had with  
20 Health South, that wasn't in the unreasonable length  
21 of time to be in physical therapy. In fact, I think

1 you said two to three months is reasonable, and she  
2 was actually seen in physical therapy for less than  
3 three months.

4 A That's right.

5 Q Less than two months.

6 A I normally use it for less than six weeks  
7 to eight weeks, but I don't -- that doesn't mean that  
8 you can't give it up to three months. Two to three  
9 months, in that range, would be a reasonable range.

10 Q So she actually had less physical therapy  
11 than a reasonable range.

12 A No, she was in the reasonable range. Up  
13 to two or three months is reasonable.

14 Q And your opinion is the MRI was justified  
15 based on the complaints that she was having.

16 A Based on her complaints. There weren't a  
17 lot of physical findings to go along with it, but she  
18 continued to complain of pain. So it was done.

19 Whether somebody would have done them in  
20 November of 2002 or December or January 2003, you  
21 know, that could be debated. But she ultimately, with

1 her complaints, would have had it anyway, so there's  
2 really no reason to --

3 Q And you would agree that a trauma such as  
4 a car accident could aggravate or worsen an otherwise  
5 asymptomatic condition. Would you agree with that?

6 A It can. There's no evidence that it's  
7 doing it here, but it can do that.

8 Q That's funny, Doctor, that's exactly what  
9 you said in another deposition.

10 The question was: Can we agree that  
11 trauma like a motor vehicle collision can aggravate or  
12 worsen an otherwise asymptomatic condition. And your  
13 answer was: It can do that. It didn't do that in  
14 this case, but it can do that.

15 A Well, that's right.

16 Q Okay.

17 A That's, that is exactly -- I don't know of  
18 that other case what it is. Sometimes it is the case  
19 if someone has, say, a disc problem with a  
20 degenerative disc that herniates, you can say that she  
21 aggravated a herniated disc.

1           In this particular case, the symptoms were  
2 basically soft tissue in nature. Doctor -- the  
3 doctors in Maryland Orthopedics were treating for soft  
4 tissue injury, because you wouldn't do trigger points  
5 for disc problems, they don't work.

6           So she had soft tissue. The findings were  
7 very soft on the studies, almost basically normal  
8 anyway.

9           Q       Spasms can be painful, can't they, Doctor?

10          A       They can be.

11          Q       And soft tissue injuries can be painful,  
12 can't they, Doctor?

13          A       They can be.

14          Q       And you can have a lack of an objective  
15 finding. That doesn't necessarily mean there's no  
16 pain, correct?

17          A       That is correct.

18          Q       And she told you she was in pain when she  
19 came to see you, didn't she?

20          A       That's correct.

21          Q       Do you consider a bulging disc an

1 objective finding?

2 A No.

3 Q Okay. Can a bulging disc cause pain?

4 A A bulging disc -- bulging discs in and of  
5 themselves are not an abnormality. It has to be more  
6 than just a bulging --

7 Q That wasn't my question.

8 Can a bulging disc cause pain?

9 A In my opinion, bulging discs are not  
10 painful in and of themselves, no.

11 Q Can a bulging disc cause the tissues  
12 surrounding that disc to become painful?

13 A No. If the disc is a protrusion, where  
14 it's pushing on the surrounding tissues and  
15 compressing the surrounding tissues, or the protrusion  
16 or herniation, then it can cause that. Otherwise,  
17 it's not the disc that's the problem, it's the soft  
18 tissues around it --

19 Q That was my question.

20 A -- that have been sprained.

21 So in this, in her particular case, again,



1 looking at the treatment rendered at Maryland  
2 Orthopedics, she was being treated for the muscular  
3 issues from her sprain rather than the disc problems  
4 because she wouldn't, it wouldn't be indicated to give  
5 trigger point injections if she had a disc problem.

6 Q Well, aside from this particular case, you  
7 would agree with the general premise, though, that a  
8 bulging disc can cause surrounding tissue to become  
9 painful, correct?

10 A No, a protruding disc, if it's pushing up  
11 against some tissues can cause it. But a bulging disc  
12 in and of itself, no.

13 Q Okay. So a protruding disc can cause  
14 surrounding soft tissues to be painful. We can agree  
15 on that, right?

16 A If it's compressing something in the  
17 surrounding soft tissues, being the nerve root.

18 Q Okay.

19 A Otherwise, it's not -- otherwise, it is  
20 not causing pressure on the -- it won't cause the  
21 ligament pain, it won't cause muscular pain --

1 Q You're taking me to my next question.

2 A -- it may cause nerve root pain.

3 Q And my next question is, can the narrowing  
4 of the foraminal nerve root cause pain?

5 A A foraminal narrowing in majority of  
6 individuals does not cause pain unless --

7 Q I didn't ask you about the majority of  
8 individuals.

9 A In her case, no.

10 Q I'm not asking you about her case. I'm  
11 asking you a general question.

12 Can the narrowing of a nerve root cause  
13 pain?

14 A Of the foramen?

15 Q Yes.

16 A Anything is possible, and that's possible.

17 Q Okay. And muscle spasms are an objective  
18 finding, correct?

19 A Yes.

20 Q And she had objective findings of muscle  
21 spasms on almost every occasion when she was seen at

1 Maryland Orthopedics, correct?

2 A Well, that's what they stated. It's  
3 usually -- which is unusual to have, and we question  
4 whether or not that was all muscle spasm. You'd have  
5 to ask those doctors.

6 Because, in my experience, the people who  
7 have muscle spasms usually have that in the acute  
8 phase in the first two or three months. After that,  
9 you may feel tight and stiff, and someone may be  
10 mistaking that for spasm and calling it spasm. And  
11 muscle spasm is usually seen in the acute phase and  
12 not in the chronic phase.

13 Q Well, you based your opinion in reliance  
14 of the -- relied on the accuracy of these records,  
15 correct?

16 A That's correct.

17 Q Okay. And counsel was asking you earlier  
18 about X-rays. Well, her X-rays didn't reveal that she  
19 fractured anything, right?

20 A Correct.

21 Q Okay. Do you keep a calendar?

1           A        I have a palm, but I don't -- I kind of  
2 get rid of it after the next year, why?

3           Q        So it's computerized in your palm? How do  
4 you know where to be today? Does Betty keep your  
5 calendar? Who keeps your calendar?

6           A        No, I have it in my palm.

7           Q        Okay. And what -- so you use palm  
8 software for your calendar?

9           A        Yes.

10          Q        Would your calendar tell you how many TMEs  
11 you did this week?

12          A        No.

13          Q        Why not?

14          A        Because I don't -- the calendar says I'm  
15 in the office tomorrow, I'm in the office this day.  
16 It tells me meetings, surgeries and office hours. It  
17 doesn't break -- I don't -- it doesn't go into my  
18 individual patient load.

19          Q        Does Betty keep a separate calendar for  
20 you?

21          A        Not for patient load, no.

1           Q       How does Betty know that Pat Ferris has  
2       scheduled an IME for you on [REDACTED] on July 16th  
3       of 2006?

4           A       That's put into, that's put into the, into  
5       the software that we know we have that IME. I mean,  
6       not the IME. The IME was scheduled. That goes into  
7       the office schedule, you know. She -- that's put  
8       in --

9           Q       So she keeps your office schedule.

10          A       She doesn't keep it. There's an office  
11       schedule that's put in as this is what your schedule  
12       is this day, these are your patients. I don't, I  
13       don't see that until I come into the office. I just  
14       know that tomorrow I've got to be here at 7:30 in the  
15       morning.

16          Q       So she keeps your schedule.

17          A       She doesn't, but it's kept in the office.  
18       She only, she just basically takes care of some of the  
19       more medical-legal aspects of it.

20          Q       So --

21          A       She doesn't take care of the general

1 patient work.

2 Q So you have a separate medical-legal  
3 calendar.

4 A No, she takes -- it's not just mine. It's  
5 on a regular calendar. She just takes care of that  
6 aspect of our office. We have five secretaries and  
7 three appointment schedulers and three surgical  
8 schedulers taking care of the, that's in this office,  
9 aside from our other two offices, taking care of those  
10 needs.

11 Q She's the point person for setting up IMEs  
12 and depositions.

13 A Correct.

14 Q And does she keep this on a hard calendar,  
15 like a regular calendar that you would write in, or is  
16 it a software calendar?

17 A She puts it in -- it's all entered into  
18 the computers so that anybody can have access to it.  
19 We have access to it, seeing it. Everything is  
20 entered into computers.

21 Q Okay. And you're one of nine partners of

1 your practice, correct?

2 A Yes.

3 Q And the nine of you that are partners are  
4 essentially equal partners.

5 A We are all equal partners.

6 Q And, at the end of every year, you know  
7 essentially what your productivity is that you brought  
8 into the practice, correct?

9 A Yes.

10 Q What was your productivity in 2005?

11 A As I mentioned beforehand, what, how much  
12 I make in my practice is not relevant, and I don't  
13 choose to talk about my particular productivity any  
14 more than I find relevant to find out what the guys in  
15 Maryland Orthopedics or ██████████ makes in a year. It  
16 doesn't make a difference. The records are what the  
17 records are.

18 Q What percentage of your productivity is  
19 based on doing legal forensic work?

20 A I mention again, I don't, we don't mention  
21 that to you. We do not break our records down into

1 medical and legal or not. We break it down purely  
2 into codes by CPT, and they don't, they don't  
3 differentiate patients who we see.

4 As I say, I see over 100 patients a week,  
5 and I do surgeries. So it just has to do with the  
6 coding and not with the individual patients.

7 MS. ZOIS: Okay. No further questions.

8 EXAMINATION BY MR. FERRIS:

9 Q Doctor, you were asked about [REDACTED]  
10 On page 4 of your report, you say she went  
11 to see [REDACTED], and seeing him on two or three  
12 occasions would be reasonable, but at that point, he  
13 recommended some other second opinions which she did  
14 not go to and the treatment was not indicated.

15 So it's your opinion that two or three  
16 visits to [REDACTED] would have been appropriate and  
17 not the seven that she underwent?

18 A Yes.

19 Q Okay. Doctor, I've had marked as Exhibit  
20 1, just so you can identify it, is that a current copy  
21 of your curriculum vitae?



1           A        Yes, it's as of January of this year, the  
2 most current one that we've put through, yes.

3           Q        And has there been any major change since  
4 January of this year?

5           A        I recertified in April of this year,  
6 another board recertification.

7           Q        Other than that, has there been any other  
8 major change?

9           A        For me, that was major.

10          Q        Okay.

11          A        I had to take an exam again in my 60s, you  
12 know, for eight hours, to take the same exam as the  
13 guys coming into practice.

14          Q        Doctor, I've also had marked as Defense  
15 Exhibit Number 2 a copy of your report.

16                    Is this the report that you generated in  
17 this case?

18          A        Yes.

19          Q        And is that a copy of the report that you  
20 were referring to when you testified in your direct?

21          A        Yes. And then I just mentioned that the

1 date is correct on the front page, and the other  
2 summary carried 2003 on the other pages, but it's 2006  
3 is the date.

4 Q And it's five pages of typewritten?

5 A Yes.

6 Q Thank you.

7 MS. ZOIS: Nothing based on that.

8 Q She asked you a question about whether or  
9 not you had a Schrum as a deposition for a plaintiff.

10 I see a Ronda Schrum on your list on the  
11 first page. I don't know if that's the same one or  
12 not.

13 A Ronda Schrum?

14 Q Yes.

15 A Jackie Bunty was an attorney. That  
16 wasn't -- I don't know who Jackie Bunty is, but Jackie  
17 Bunty was the attorney who contacted me. It wouldn't  
18 be Miss Schrum's attorney. But there is a Ronda  
19 Schrum.

20 THE WITNESS: Is that the one you were  
21 talking about? If it is, it's on the list.

1 MS. ZOIS: Larry Strom.

2 THE WITNESS: Larry Strom?

3 MS. ZOIS: Was the attorney from April  
4 2005, and the plaintiff in that case was Miller.

5 MR. FERRIS: Miller?

6 MS. ZOIS: Oh, wait. No, no, no. Hold  
7 on. Oh, sorry. Plaintiff in that case is Rona  
8 Schrum?

9 MR. FERRIS: Rona Schrum.

10 THE WITNESS: This is Ronda Schrum. So  
11 that is on the list. That is the one that you're  
12 talking about. There's an attorney Jackie Bunty.  
13 That was probably the defense attorney that was  
14 involved. So that is on the list.

15 MR. FERRIS: So it's probably somebody  
16 from her office.

17 THE WITNESS: Yeah. I don't know who  
18 Jackie Bunty is. So whether she was here or someone  
19 else, I would just take that from maybe the one who  
20 decided to schedule that, or I don't know.

21 MR. FERRIS: Thank you, Doctor.

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MS. ZOIS: Nothing else based on that.

THE VIDEOGRAPHER: This concludes the deposition of [REDACTED] at approximately 5:26.

(Deposition concluded at 5:26 p.m.)

1 State of Maryland  
2 County of Baltimore, to wit:

3 I, CAROL A. CHESS, a Notary Public of the  
4 State of Maryland, County of Baltimore, do hereby  
5 certify that the within-named witness personally  
6 appeared before me at the time and place herein set  
7 out, and after having been duly sworn by me, according  
8 to law, was examined by counsel.

9 I further certify that the examination was  
10 recorded stenographically by me and this transcript is  
11 a true record of the proceedings.

12 I further certify that I am not of counsel  
13 to any of the parties, nor in any way interested in  
14 the outcome of this action.

15 As witness my hand and notarial seal this  
16 29th day of September, 2006.

17 \_\_\_\_\_  
18 CAROL A. CHESS  
19 Notary Public

20 My Commission Expires:  
21 August 1, 2009

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18  
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INDEX

Deposition of [REDACTED].

September 28, 2006

Examination by:	Page
Mr. Ferris	3, 38, 96
Ms. Zois	14, 64

Exhibit No. Marked

Defendant's:

(Defendant's Exhibits were retained by Mr. Ferris.)

1 Curriculum Vitae	35
2 Deponent's report dated 7/14/06	35
3 List of court cases	35
4 Fee schedule	35

Plaintiff's:

(Plaintiff's exhibit was retained by Ms. Zois.)

1 Subpoena	37
------------	----

A				
able 7:5	92:2 101:7	approved 27:4	76:10	belt 46:7,8
abnormality 88:5	afternoon 16:17 36:16	approximately 38:1	Aviation 42:3	bending 50:16,18,19
about 8:20 9:2,3,3	77:16,17	100:3	aware 16:1,12,15,15,18	benefit 56:19 83:14
17:12 19:16 20:4	afternoons 77:10	April 5:18 6:3 43:8	17:13 18:7,10,12,16	bent 63:5
23:10,15,17 24:11,19	again 45:19 55:19	55:5 75:6,13,15 79:3	18:18,19 65:8,12	Berner's 31:2
27:11 29:13,14,19	57:11 61:1 88:21	97:5 99:3	away 16:6 72:4	better 60:19
33:7 34:2,2,7,15 35:2	95:20 97:11	arbiter 72:2		Betty 36:9,10,10,11
36:19 40:17 42:13,14	against 89:11	area 44:1,3 51:2,6 52:2		92:4,19 93:1
43:16 45:5 47:14	aggravate 86:4,11	52:9,11 54:3		between 3:2 26:12,14
48:6 49:8,17 50:17	aggravated 86:21	areas 49:16,19 54:15		27:1 62:18
58:11 65:6,21 66:13	ago 21:16,19 76:12	arena 42:8 73:21 74:1		Bextra 55:12
67:10,16 70:2,5,9,15	agree 28:7 41:4 59:5	arms 46:12 48:16,17		beyond 82:18
71:16 72:16 73:3	79:13,20 80:10 81:9	54:20 55:1		big 34:19 84:17
74:3 76:5,10,11 80:2	81:13,16 86:3,5,10	Army 42:2,3		bill 59:19 62:3
82:5 90:7,10 91:18	89:7,14	around 43:20 51:3 52:1		billed 7:18 60:8,9
95:13 96:9 98:8,21	agreed 3:2,6	54:14 71:17 75:15		billing 14:2,6 41:1
99:12	ahead 18:15	79:2 88:18		62:10
absolute 33:8	Albert 41:13	arthroscopy 58:5		billings 84:5
absolutely 31:6 58:21	allergic 49:8	aside 89:6 94:9		bills 7:20 14:9 58:4
79:21	Allstate 75:5,9	asked 4:21 8:16 10:2,8		81:17,20 84:2,6
access 94:18,19	almost 70:19 73:12	10:19 13:6 17:16		bit 51:3 61:4,10 84:16
accident 39:18 46:7	87:7 90:21	48:6 49:8 69:14 71:3		bladder 49:2
53:16,18 54:7 63:20	along 51:4,13 52:8	71:4 96:9 98:8		blade 51:2
80:13 81:10,14,19	85:17	asking 4:11 6:10 9:7		blah-blah-blah 57:21
86:4	already 62:4 73:6	32:12 70:14,15 90:10		blanking 23:13
accidents 44:8,12,13,14	although 56:17 59:4	90:11 91:17		block 77:16
48:10	always 8:19 19:1	aspect 94:6		blue 63:12
according 46:20 47:9	AMA 27:4 59:6	aspects 50:11 93:19		board 16:5 42:16,18,21
59:6 70:8 81:11	American 43:14	assignment 44:19		43:14 97:6
101:7	amount 57:7 59:16	associated 14:8,9 48:16		bone 63:5
account 30:3,5 62:1	annual 24:17	49:19 81:17		bonussing 29:7
accountant 19:6,7,8,10	another 24:6 30:12	associates 2:14 9:20		bookkeeper 23:8 48:8
22:21 24:18	35:5 36:12 43:8	28:2 29:15		bookkeeping 22:15,16
accounting 24:12,16	46:10 47:6,9 72:1	assume 5:20		23:5,9,20 24:13
57:18	77:11 86:9 97:6	assuming 24:17		both 20:8,13 58:6,7
accuracy 91:14	answer 24:1 33:4 86:13	assumption 22:2,6		62:10
accurate 68:5,6 73:10	anybody 43:9 64:11	asymptomatic 86:5,12		bothered 54:15
76:6,7	94:18	attached 10:18 14:20		bottom 35:17 40:3
acromioclavicular	anymore 9:10 60:17	attention 79:4		bought 21:16
51:13	72:18	attorney 46:17 75:5,11		bowel 49:2
acted 46:3	anyone 4:15,15,19 80:2	76:1 98:15,17,18		break 6:20 7:16 13:1
action 101:14	anything 11:20 19:3	99:3,12,13		13:11 27:13 31:7,10
actively 50:15	22:18 54:1 65:13,14	attorneys 7:21 18:1		31:11,12 92:17 95:21
activities 11:10	80:9 90:16 91:19	66:9,10 67:3,7,9 68:1		96:1
activity 25:16	anyway 23:17 70:4	69:20		briefly 3:11 41:10
actual 71:8,13 84:15	86:1 87:8	attorney's 26:1		bring 29:16 30:18
actually 4:5 16:1,11	anywhere 62:6	attributable 31:5		32:16
44:12 53:5 77:19	apparently 8:3 16:3,9	attributed 63:19		broken 13:16 30:13
79:6 81:4 85:2,10	18:4	August 4:12 16:13		31:20
acute 56:21 91:7,11	appear 4:11,15,19	78:18 80:17 101:21		Brothers 37:12 38:4
add 61:11	appeared 64:12 101:6	authorization 20:11		brought 7:21 29:21
added 58:15	appears 40:7	auto 48:8		30:3,4,6 95:7
additional 42:1	appointment 64:10	automobile 39:18 44:8		built 61:20 62:5
addressed 22:11	94:7	63:19		bulging 87:21 88:3,4,4
Advanced 1:13 53:1	appropriate 41:5 60:6	available 9:8		88:6,8,9,11 89:8,11
after 41:14 55:11 59:10	96:16	Avenue 2:15		Bunty 98:15,16,17
75:18 80:17 91:8	appropriately 59:4	average 8:20 33:7 34:2		99:12,18
	appropriateness 40:19	35:1 70:7 71:17,18		burn 63:6

<p><b>Burnie</b> 2:8  <b>business</b> 12:10,11 13:7 13:20  <b>businessman</b> 27:7  <b>buttock</b> 48:19,20</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:1  <b>calendar</b> 91:21 92:5,5 92:8,10,14,19 94:3,5 94:14,15,16  <b>call</b> 58:19  <b>called</b> 24:6 38:8 78:7  <b>calling</b> 91:10  <b>came</b> 16:2,16 55:17 64:15 66:5 87:19  <b>cancelled</b> 65:18 76:17  <b>cancelling</b> 78:11  <b>candidate</b> 56:4  <b>candidates</b> 43:17  <b>capable</b> 72:1  <b>capacity</b> 72:7,9  <b>car</b> 86:4  <b>care</b> 40:16 93:18,21 94:5,8,9  <b>Carol</b> 1:15,21 38:3 101:3,17  <b>carpal</b> 54:21  <b>carried</b> 48:1 98:2  <b>carrier</b> 7:9,10,14 8:1  <b>carriers</b> 7:11 18:2,4 69:20  <b>Carroll</b> 42:10  <b>carrying</b> 60:18  <b>cars</b> 46:11  <b>cartilage</b> 58:6  <b>case</b> 26:5 35:5 37:18 39:7 44:5,20 45:15 56:21 62:9 64:7 65:9 65:21,21 66:3 71:20 73:14,15,17,18,20 74:5 75:4 79:5,14 83:7 86:14,18,18 87:1 88:21 89:6 90:9 90:10 97:17 99:4,7  <b>cases</b> 8:6,10,11,18 9:3 9:17 31:20 66:18 68:9,17 102:15  <b>categories</b> 27:16  <b>categorized</b> 26:2,3,6  <b>category</b> 5:5 8:6 25:15 25:18,21  <b>causally</b> 81:19  <b>cause</b> 88:3,8,11,16 89:8 89:11,13,20,21 90:2 90:4,6,12  <b>caused</b> 53:15,18 54:7  <b>causing</b> 89:20</p>	<p><b>Center</b> 42:3,10,11  <b>Centers</b> 1:13  <b>certain</b> 5:1 59:7,15 72:1  <b>certainly</b> 13:17 20:21 49:18 53:17 58:21 77:1 83:17  <b>certified</b> 42:17,18,19 42:20 43:14  <b>certify</b> 43:13 101:5,9 101:12  <b>cervical</b> 53:1,4 54:12 62:11  <b>chance</b> 66:10  <b>change</b> 57:3 81:3,7 97:3,8  <b>changes</b> 53:9,10,13,19 56:10  <b>charge</b> 10:16 13:15 23:5,11,14 26:19,20 58:2,7,8,13 61:6,14 61:16,17,19 62:4,5 72:12 73:7 74:10,10 75:19 78:2 82:1,1  <b>charged</b> 30:16,17  <b>charges</b> 13:14 57:17 58:11 61:17 71:1,5,6 74:7 81:21 82:3,8 84:10,11,14,15  <b>charging</b> 58:7 62:6  <b>Charles</b> 37:13  <b>chart</b> 5:18 6:1 35:9 81:2,7  <b>cheap</b> 72:14  <b>check</b> 26:1,5  <b>Chess</b> 1:15,21 38:3 101:3,17  <b>chest</b> 46:12  <b>Chicago</b> 16:4 43:17  <b>chief</b> 41:20 42:2,11,12  <b>choose</b> 95:13  <b>chose</b> 83:21  <b>chronic</b> 91:12  <b>Circuit</b> 1:2 4:1 17:14 18:8,17 37:17  <b>City</b> 41:17  <b>claim</b> 35:4  <b>claimant</b> 75:12  <b>claims</b> 7:2,11  <b>clear</b> 9:16 33:3 65:19  <b>clearly</b> 6:2  <b>clerk</b> 3:7 6:11  <b>clinical</b> 58:20  <b>clinically</b> 54:21  <b>code</b> 59:14 60:5,8 61:20  <b>coded</b> 59:8  <b>codes</b> 26:21 27:3,4</p>	<p>31:11,12,13,13,18 59:5 84:15 96:2  <b>coding</b> 31:21 59:7,16 60:21 84:11,12 96:6  <b>Cohen</b> 55:2  <b>collar</b> 54:12  <b>College</b> 41:13  <b>collision</b> 86:11  <b>color</b> 63:6  <b>come</b> 21:3 22:1 26:5 43:17 55:19 70:13 71:2 93:13  <b>comes</b> 26:1 45:4 51:1  <b>comfortable</b> 56:12  <b>coming</b> 76:15 97:13  <b>commenced</b> 3:18 37:10  <b>commencing</b> 1:12 37:21  <b>comment</b> 82:8 84:18  <b>commented</b> 17:21  <b>commission</b> 82:4 101:20  <b>comp</b> 72:8 73:21 74:1  <b>companies</b> 6:14  <b>company</b> 27:18 28:19  <b>complain</b> 85:18  <b>complained</b> 52:14 55:21  <b>complaining</b> 49:17  <b>complains</b> 52:6  <b>complaints</b> 41:6 58:20 59:1 63:16 80:2,12 85:15,16 86:1  <b>complete</b> 45:18 50:10  <b>completely</b> 37:1  <b>complex</b> 59:9 60:12 84:13  <b>complexity</b> 60:17  <b>complied</b> 15:4  <b>comply</b> 15:2,12 17:4  <b>components</b> 13:2  <b>comprehensive</b> 59:8,12 61:2,21 62:2 74:14  <b>compressing</b> 88:15 89:16  <b>compression</b> 52:1  <b>computer</b> 24:4,5,5,6,8  <b>computerized</b> 92:3  <b>computers</b> 94:18,20  <b>conceivable</b> 77:1,2  <b>concerned</b> 48:18  <b>concluded</b> 100:4  <b>concludes</b> 100:2  <b>condition</b> 56:10 86:5 86:12  <b>Conferencing</b> 37:13 38:4  <b>consciousness</b> 46:13</p>	<p><b>consecutively</b> 9:2  <b>consider</b> 87:21  <b>consultations</b> 31:14  <b>contact</b> 19:16 20:4 64:18  <b>contacted</b> 46:17 64:6,9 98:17  <b>contemporaneously</b> 8:18 67:5  <b>content</b> 53:10  <b>contention</b> 10:3  <b>context</b> 49:19  <b>continue</b> 57:19  <b>continued</b> 47:5 55:4 59:12 85:18  <b>continuing</b> 40:10,14  <b>contradict</b> 80:9  <b>contribution</b> 33:5  <b>controlled</b> 81:20 82:4  <b>convenience</b> 9:6  <b>conversation</b> 15:16  <b>conversations</b> 65:3,5  <b>copied</b> 36:3  <b>copies</b> 20:2  <b>copy</b> 5:17 6:5,7,13 9:12 14:5 25:2 68:21 96:20 97:15,19  <b>corporate</b> 12:14,15 15:5 17:9 19:10,13 20:6,14,15,18  <b>corporation</b> 12:13 15:6  <b>correct</b> 15:14 16:13 17:2 20:19 28:20 45:5 59:18 64:17 65:21 66:11 67:18 79:7 80:15 81:10,14 81:15 84:3 87:16,17 87:20 89:9 90:18 91:1,15,16,20 94:13 95:1,8 98:1  <b>correspondence</b> 5:12 64:15,17  <b>corresponds</b> 60:2  <b>counsel</b> 3:3 37:20 38:11 75:9 91:17 101:8,12  <b>count</b> 67:7  <b>counted</b> 68:11  <b>country</b> 43:10,20  <b>County</b> 1:4 4:2 17:14 18:9,17 37:18 46:15 54:4 79:10 101:2,4  <b>couple</b> 47:1,13 54:11 56:13 61:7  <b>course</b> 29:8 34:4 46:21 53:12,14 69:17 71:16 71:18 82:4  <b>court</b> 1:2 3:7 4:1 6:10</p>	<p>8:12,13,14 11:9 15:13 17:4,8,13,14 18:8,8,16,17 19:17 32:20 37:18 38:3 76:2 77:20 78:8 102:15  <b>courtroom</b> 78:1  <b>Court's</b> 14:19 15:2,12  <b>cover</b> 48:2  <b>CPT</b> 27:3 31:17,21 96:2  <b>criteria</b> 59:7  <b>Crossroads</b> 1:14 4:14 38:1  <b>cruciate</b> 50:5  <b>cum</b> 41:14  <b>current</b> 10:11 49:3 69:2 96:20 97:2  <b>currently</b> 69:10  <b>curriculum</b> 6:6,8 96:21 102:13  <b>customary</b> 57:18 58:12 58:14,18 61:8  <b>cut</b> 60:21</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>daily</b> 58:13  <b>data</b> 18:1  <b>date</b> 4:9,10,19 80:1,14 98:1,3  <b>dated</b> 102:14  <b>day</b> 47:4 48:3 76:21 77:5,8 83:1 92:15 93:12 101:16  <b>days</b> 34:8,21,21 45:10 54:11 65:1 82:20  <b>dead</b> 34:13  <b>deal</b> 22:14  <b>debated</b> 85:21  <b>December</b> 85:20  <b>decide</b> 32:19  <b>decided</b> 8:18 10:1 15:10 99:20  <b>decision</b> 15:11 17:10 30:7 53:18 59:13 60:4,16,18,19,20  <b>decisions</b> 72:11  <b>defects</b> 83:6  <b>defendant</b> 1:5 2:12 6:15 8:8 12:8 37:20 38:14  <b>Defendant's</b> 35:13 102:11,12  <b>defending</b> 68:9  <b>defense</b> 10:15 13:12,15 44:13 66:6 75:5,11 79:7,10 97:14 99:13  <b>definition</b> 69:11</p>
---	---	--	--	--



<p><b>degenerative</b> 53:3,8,10 53:13 86:20</p> <p><b>degree</b> 40:4</p> <p><b>degrees</b> 50:16,17</p> <p><b>denied</b> 48:10</p> <p><b>Denise</b> 23:12,16</p> <p><b>department</b> 22:15,16 23:6,9 24:13 42:11</p> <p><b>depending</b> 22:11 26:21 30:18</p> <p><b>Deponent's</b> 102:14</p> <p><b>deposition</b> 1:10 3:4,7 3:12 4:18 5:7 6:12 8:9 35:9,13 37:7,9,15 37:19 65:7 66:17 67:16 68:20 74:14,15 75:13 76:2 78:15 86:9 98:9 100:3,4 102:2</p> <p><b>depositional</b> 34:5</p> <p><b>depositions</b> 67:21 75:19,21 76:3,18,21 77:7,15 78:13 94:12</p> <p><b>describe</b> 41:10</p> <p><b>desensitized</b> 83:5</p> <p><b>desiccation</b> 53:9</p> <p><b>designated</b> 65:9</p> <p><b>desire</b> 15:7 20:11</p> <p><b>detail</b> 25:7 40:1</p> <p><b>determine</b> 11:9 13:21 31:7</p> <p><b>determining</b> 13:8</p> <p><b>develop</b> 44:21 45:3 49:6 83:10</p> <p><b>developed</b> 39:16</p> <p><b>developing</b> 40:2 45:8</p> <p><b>diagnosed</b> 46:19</p> <p><b>difference</b> 12:6 27:17 62:18 84:17 95:16</p> <p><b>different</b> 13:2 27:16 62:14 67:15</p> <p><b>differentiate</b> 7:5 27:1 96:3</p> <p><b>direct</b> 97:20</p> <p><b>Direct</b> 79:4</p> <p><b>disc</b> 53:2,3,9 86:19,20 86:21 87:5,21 88:3,4 88:8,11,12,13,17 89:3,5,8,10,11,13</p> <p><b>discard</b> 22:13,17</p> <p><b>discarded</b> 22:18</p> <p><b>discharged</b> 55:6</p> <p><b>disclosing</b> 32:10</p> <p><b>discomfory</b> 52:7</p> <p><b>discovery</b> 76:3</p> <p><b>discs</b> 88:4,9</p> <p><b>discuss</b> 13:3</p> <p><b>discussed</b> 16:10 74:13</p>	<p><b>discussing</b> 35:16</p> <p><b>discussion</b> 35:11 37:5</p> <p><b>disease</b> 53:3</p> <p><b>display</b> 54:6</p> <p><b>disqualified</b> 19:3</p> <p><b>disruptive</b> 78:5</p> <p><b>distant</b> 8:1</p> <p><b>distinction</b> 26:12</p> <p><b>distinguish</b> 26:14 27:8</p> <p><b>distribution</b> 28:7,9</p> <p><b>distributions</b> 29:1</p> <p><b>doctor</b> 3:21 4:4,21 6:5 6:17 8:5 10:8,17,19 11:1,13 12:10 14:2 14:19 18:7,14 35:15 38:20,20 39:21 40:9 40:18 41:8,10 42:7 42:16 43:12 44:4,7 44:15,19 45:21 47:19 48:4 49:6,12 51:5 52:19 53:13 55:7 56:2 57:6 62:16 63:14 64:1 67:13 69:8 79:11,20 86:8 87:2,9,12 96:9,19 97:14 99:21</p> <p><b>doctors</b> 7:17,19 12:15 27:19,21 29:11 30:17 30:18 31:11 43:13 47:14 87:3 91:5</p> <p><b>document</b> 10:12 36:12 36:15 74:13 84:8</p> <p><b>documents</b> 5:1,4,7,10 5:14 14:20 15:13 17:6 20:9 33:16</p> <p><b>doing</b> 9:8 10:1 15:9 27:9 29:17 43:2 58:5 60:10 62:12,14,15,19 66:1,6 69:8 70:1 72:1 72:3 76:9 79:2 86:7 95:19</p> <p><b>Donald</b> 1:10 37:16 38:7 102:2</p> <p><b>donate</b> 11:18,18</p> <p><b>done</b> 19:4 24:16 29:7 36:21 53:1 54:16 62:13 65:11 72:21 76:20 77:2,3 80:20 85:18,19</p> <p><b>Dosepak</b> 55:13,13,15</p> <p><b>down</b> 6:20 7:16 13:1,11 13:16 27:13 30:13 31:7,10,11,12,21 40:20 48:20 51:1 52:15 58:1 59:14 74:18 75:3 83:2,13 95:21 96:1</p> <p><b>dozen</b> 22:10</p>	<p><b>Dr</b> 5:11 31:2 37:16 47:8,13,15 55:2,2,3,7 55:10 64:5 79:11 80:16 81:2 83:16 84:2 95:15 96:9,11 96:16 100:3</p> <p><b>drink</b> 49:10</p> <p><b>Drive</b> 1:14 38:2</p> <p><b>duty</b> 38:8 101:7</p> <p><b>during</b> 29:7 77:3</p>	<p><b>evening</b> 77:11</p> <p><b>evenings</b> 77:10</p> <p><b>evenly</b> 29:14 30:7,9</p> <p><b>ever</b> 19:3 25:4 56:3 65:10 76:20 80:1</p> <p><b>every</b> 17:19 27:6,7 45:17 67:17,17 74:15 74:18 90:21 95:6</p> <p><b>everybody</b> 63:13</p> <p><b>everything</b> 12:20 15:4 24:16 31:20 37:3 94:19</p> <p><b>evidence</b> 69:6 83:7 86:6</p> <p><b>exactly</b> 47:10 86:8,17</p> <p><b>exam</b> 26:14 39:12 45:4 45:15 60:13,14 61:2 61:4 97:11,12</p> <p><b>examination</b> 3:18,20 14:18 26:15 38:19 39:7 43:8 49:13,16 50:5,10,12 52:18 61:21 64:4,18,19,21 71:14 73:10 80:12 96:8 101:9 102:5</p> <p><b>examinations</b> 39:3 43:17 45:12 69:9 71:11 72:13</p> <p><b>examine</b> 43:18 44:2 49:20,21 50:2,9</p> <p><b>examined</b> 38:10 63:21 101:8</p> <p><b>examiners</b> 63:8</p> <p><b>examining</b> 43:19</p> <p><b>exams</b> 16:5 43:1 52:12 71:8 72:14</p> <p><b>except</b> 43:10</p> <p><b>excessive</b> 41:2</p> <p><b>exercises</b> 56:15</p> <p><b>exhibit</b> 6:11 10:6,18 35:13 37:7 66:21 68:20 96:19 97:15 102:10,19</p> <p><b>Exhibits</b> 69:6 102:12</p> <p><b>existence</b> 9:17</p> <p><b>expecting</b> 58:8</p> <p><b>expenses</b> 24:21</p> <p><b>experience</b> 39:16 91:6</p> <p><b>expert</b> 6:14 7:6 8:7 10:9,13,14 65:9</p> <p><b>Expires</b> 101:20</p> <p><b>explain</b> 57:8 62:17</p> <p><b>extended</b> 50:16</p> <p><b>extends</b> 52:6</p> <p><b>extensive</b> 45:13</p> <p><b>extremities</b> 49:21 50:2 51:17 52:18</p> <p><b>extremity</b> 52:12</p>	<p style="text-align: center;"><b>F</b></p> <p><b>face</b> 46:12</p> <p><b>facilities</b> 4:16</p> <p><b>fact</b> 28:10 50:6 84:21</p> <p><b>fair</b> 57:7 64:16 66:6 67:20 79:17 80:3 81:16,18 84:2</p> <p><b>fairly</b> 45:16</p> <p><b>familiar</b> 25:9,11 45:15</p> <p><b>family</b> 47:12 79:11</p> <p><b>far</b> 21:21 29:9 33:18 48:18 49:1,2 52:4 61:6,13 74:17,17</p> <p><b>fatty</b> 83:6</p> <p><b>fax</b> 2:18</p> <p><b>faxed</b> 35:17</p> <p><b>federal</b> 8:12,13,14 10:20 11:1 12:10 15:6</p> <p><b>fee</b> 10:8,11 14:10 68:21 69:2 70:9,16 73:9 78:2 102:16</p> <p><b>feel</b> 11:14 15:8 56:12 91:9</p> <p><b>fees</b> 10:14 70:15</p> <p><b>felt</b> 15:4 55:11,13 57:17 58:19,21</p> <p><b>Ferris</b> 2:13 3:10,16,20 10:5 14:15 16:10,18 25:18 35:10,18 36:17 37:20 38:13,13,18,19 44:15 64:1,6,15 65:4 65:6,20 66:4,9 67:9 68:2,8,11,14,16 71:5 84:8 93:1 96:8 99:5,9 99:15,21 102:6,12</p> <p><b>few</b> 17:3 45:10 65:6 82:20</p> <p><b>field</b> 42:17 44:16</p> <p><b>figures</b> 33:17</p> <p><b>file</b> 5:15 7:4 36:13 79:5</p> <p><b>filed</b> 16:19 23:1</p> <p><b>filing</b> 3:7</p> <p><b>films</b> 53:5,6,11 81:5</p> <p><b>final</b> 61:1</p> <p><b>finally</b> 76:13</p> <p><b>finances</b> 15:8</p> <p><b>financial</b> 15:13 19:18 19:20 33:2 34:9</p> <p><b>find</b> 12:4 63:18 74:21 95:14,14</p> <p><b>finding</b> 63:9 87:15 88:1 90:18</p> <p><b>findings</b> 50:12 51:18 54:2,21 56:1 62:18 63:7,18 85:17 87:6 90:20</p> <p><b>fine</b> 57:1 59:9</p>
<b>E</b>				
<p><b>E</b> 2:1,1</p> <p><b>each</b> 12:9 25:7 28:18 58:2</p> <p><b>earlier</b> 35:16 66:17 74:14 91:17</p> <p><b>early</b> 53:11,14</p> <p><b>earn</b> 11:10</p> <p><b>easier</b> 46:5 78:13</p> <p><b>educational</b> 41:11</p> <p><b>EEGs</b> 54:16</p> <p><b>eight</b> 85:7 97:12</p> <p><b>Einstein</b> 41:13</p> <p><b>either</b> 8:7 54:2 74:20</p> <p><b>elected</b> 71:5</p> <p><b>electrical</b> 57:20</p> <p><b>Empire</b> 2:6</p> <p><b>employed</b> 48:7</p> <p><b>employees</b> 7:18</p> <p><b>employer</b> 71:20</p> <p><b>employment</b> 48:7</p> <p><b>encounters</b> 35:2,3</p> <p><b>end</b> 25:2 27:6,6 28:7,21 29:5 30:2,20 31:5 77:15 84:13 95:6</p> <p><b>ended</b> 75:14</p> <p><b>ends</b> 78:6</p> <p><b>English</b> 46:4</p> <p><b>enough</b> 10:2 23:3 84:16 84:17</p> <p><b>entered</b> 41:16 42:4 94:17,20</p> <p><b>entire</b> 5:17 17:7</p> <p><b>entitled</b> 15:7</p> <p><b>epidural</b> 55:16</p> <p><b>equal</b> 28:11,13 29:4 33:7 95:4,5</p> <p><b>ERs</b> 29:18</p> <p><b>ESQUIRE</b> 2:4,13</p> <p><b>essentially</b> 95:4,7</p> <p><b>estimate</b> 33:20</p> <p><b>evaluation</b> 62:19</p> <p><b>evaluations</b> 13:5 34:3 62:13 74:2</p> <p><b>even</b> 9:21 13:10,13,16 20:20 29:19 58:1 66:2 71:2</p>	<p><b>Dr</b> 5:11 31:2 37:16 47:8,13,15 55:2,2,3,7 55:10 64:5 79:11 80:16 81:2 83:16 84:2 95:15 96:9,11 96:16 100:3</p> <p><b>drink</b> 49:10</p> <p><b>Drive</b> 1:14 38:2</p> <p><b>duty</b> 38:8 101:7</p> <p><b>during</b> 29:7 77:3</p>	<p><b>evening</b> 77:11</p> <p><b>evenings</b> 77:10</p> <p><b>evenly</b> 29:14 30:7,9</p> <p><b>ever</b> 19:3 25:4 56:3 65:10 76:20 80:1</p> <p><b>every</b> 17:19 27:6,7 45:17 67:17,17 74:15 74:18 90:21 95:6</p> <p><b>everybody</b> 63:13</p> <p><b>everything</b> 12:20 15:4 24:16 31:20 37:3 94:19</p> <p><b>evidence</b> 69:6 83:7 86:6</p> <p><b>exactly</b> 47:10 86:8,17</p> <p><b>exam</b> 26:14 39:12 45:4 45:15 60:13,14 61:2 61:4 97:11,12</p> <p><b>examination</b> 3:18,20 14:18 26:15 38:19 39:7 43:8 49:13,16 50:5,10,12 52:18 61:21 64:4,18,19,21 71:14 73:10 80:12 96:8 101:9 102:5</p> <p><b>examinations</b> 39:3 43:17 45:12 69:9 71:11 72:13</p> <p><b>examine</b> 43:18 44:2 49:20,21 50:2,9</p> <p><b>examined</b> 38:10 63:21 101:8</p> <p><b>examiners</b> 63:8</p> <p><b>examining</b> 43:19</p> <p><b>exams</b> 16:5 43:1 52:12 71:8 72:14</p> <p><b>except</b> 43:10</p> <p><b>excessive</b> 41:2</p> <p><b>exercises</b> 56:15</p> <p><b>exhibit</b> 6:11 10:6,18 35:13 37:7 66:21 68:20 96:19 97:15 102:10,19</p> <p><b>Exhibits</b> 69:6 102:12</p> <p><b>existence</b> 9:17</p> <p><b>expecting</b> 58:8</p> <p><b>expenses</b> 24:21</p> <p><b>experience</b> 39:16 91:6</p> <p><b>expert</b> 6:14 7:6 8:7 10:9,13,14 65:9</p> <p><b>Expires</b> 101:20</p> <p><b>explain</b> 57:8 62:17</p> <p><b>extended</b> 50:16</p> <p><b>extends</b> 52:6</p> <p><b>extensive</b> 45:13</p> <p><b>extremities</b> 49:21 50:2 51:17 52:18</p> <p><b>extremity</b> 52:12</p>	<p style="text-align: center;"><b>F</b></p> <p><b>face</b> 46:12</p> <p><b>facilities</b> 4:16</p> <p><b>fact</b> 28:10 50:6 84:21</p> <p><b>fair</b> 57:7 64:16 66:6 67:20 79:17 80:3 81:16,18 84:2</p> <p><b>fairly</b> 45:16</p> <p><b>familiar</b> 25:9,11 45:15</p> <p><b>family</b> 47:12 79:11</p> <p><b>far</b> 21:21 29:9 33:18 48:18 49:1,2 52:4 61:6,13 74:17,17</p> <p><b>fatty</b> 83:6</p> <p><b>fax</b> 2:18</p> <p><b>faxed</b> 35:17</p> <p><b>federal</b> 8:12,13,14 10:20 11:1 12:10 15:6</p> <p><b>fee</b> 10:8,11 14:10 68:21 69:2 70:9,16 73:9 78:2 102:16</p> <p><b>feel</b> 11:14 15:8 56:12 91:9</p> <p><b>fees</b> 10:14 70:15</p> <p><b>felt</b> 15:4 55:11,13 57:17 58:19,21</p> <p><b>Ferris</b> 2:13 3:10,16,20 10:5 14:15 16:10,18 25:18 35:10,18 36:17 37:20 38:13,13,18,19 44:15 64:1,6,15 65:4 65:6,20 66:4,9 67:9 68:2,8,11,14,16 71:5 84:8 93:1 96:8 99:5,9 99:15,21 102:6,12</p> <p><b>few</b> 17:3 45:10 65:6 82:20</p> <p><b>field</b> 42:17 44:16</p> <p><b>figures</b> 33:17</p> <p><b>file</b> 5:15 7:4 36:13 79:5</p> <p><b>filed</b> 16:19 23:1</p> <p><b>filing</b> 3:7</p> <p><b>films</b> 53:5,6,11 81:5</p> <p><b>final</b> 61:1</p> <p><b>finally</b> 76:13</p> <p><b>finances</b> 15:8</p> <p><b>financial</b> 15:13 19:18 19:20 33:2 34:9</p> <p><b>find</b> 12:4 63:18 74:21 95:14,14</p> <p><b>finding</b> 63:9 87:15 88:1 90:18</p> <p><b>findings</b> 50:12 51:18 54:2,21 56:1 62:18 63:7,18 85:17 87:6 90:20</p> <p><b>fine</b> 57:1 59:9</p>	

<p><b>finish</b> 18:14  <b>finished</b> 41:15  <b>finishing</b> 41:20  <b>firm</b> 13:21 14:12 68:2  <b>firms</b> 6:14 7:6  <b>first</b> 16:11 24:10 36:19  38:8 59:10 60:6,14  64:5,8,14 82:12,18  91:8 98:11  <b>fiscal</b> 8:4  <b>five</b> 6:16 10:21 17:15  20:20 23:10,14,17  34:20 36:20 42:15  66:13,13 71:16 94:6  98:4  <b>fixed</b> 73:21  <b>flexes</b> 52:6  <b>flip</b> 52:13  <b>focus</b> 49:16  <b>follow</b> 82:15  <b>following</b> 16:4  <b>follows</b> 3:19 37:10  38:10  <b>follow-up</b> 59:7  <b>foot</b> 50:13  <b>foramen</b> 90:14  <b>foraminal</b> 90:4,5  <b>forensic</b> 25:16 26:1  27:9 31:8 33:18,21  34:6 69:7,8 95:19  <b>forgetting</b> 13:13  <b>formal</b> 69:21  <b>format</b> 25:9,12 30:19  31:10  <b>forms</b> 5:12  <b>forth</b> 32:2 48:1 60:19  <b>forward</b> 4:18 50:17  52:6  <b>four</b> 8:15 20:21 28:2  42:5,15 58:11 73:1  <b>fourth</b> 21:2 58:17  <b>Fowler</b> 23:7  <b>fracture</b> 63:4  <b>fractured</b> 91:19  <b>frame</b> 68:7,7  <b>from</b> 6:1,13 8:1,12 18:2  18:5,16 19:21 20:2  26:1,19 40:7,15,16  41:14 43:20,21 44:1  44:2,21 46:1 47:15  51:1 52:8 55:20 56:2  57:3 60:18 64:15  66:16 71:19 73:20  79:10 80:7,13,17  81:3,6,7,7 89:3,6  94:9 99:3,16,19  <b>front</b> 3:21 5:6 79:15  98:1</p>	<p><b>full</b> 51:9,21 52:5 58:1,7  58:8 74:10  <b>fully</b> 14:3 50:9 52:5  <b>function</b> 51:16  <b>funds</b> 28:8,9  <b>funny</b> 86:8  <b>further</b> 3:6 13:11 33:15  48:5 96:7 101:9,12</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 2:4  <b>gamut</b> 56:8  <b>garbage</b> 21:18 22:4,8  <b>gave</b> 55:12  <b>general</b> 8:10 12:18  27:10 32:7,9 33:10  33:13 41:16 45:19  46:15 54:4 72:2,10  72:14,16 79:11 89:7  90:11 93:21  <b>generalized</b> 8:17 27:10  <b>generate</b> 69:15  <b>generated</b> 5:11 13:21  17:13 25:2 97:16  <b>generic</b> 6:19  <b>gentlemen</b> 41:11  <b>gets</b> 25:2  <b>getting</b> 55:4  <b>give</b> 8:17 12:9,18 29:10  33:9 39:17 47:3,19  48:4 56:13 57:19  83:3 85:8 89:4  <b>given</b> 20:11 29:15 34:4  45:10 54:11 58:3  74:15  <b>giving</b> 16:5 32:15 33:1  43:1 79:18 83:2  <b>Glen</b> 2:8  <b>GM</b> 72:18  <b>go</b> 3:11 4:18 5:3 8:18  18:3,15 21:3 27:15  37:3 39:21 40:18  41:8 44:19 45:15  48:14,16 49:19 61:6  61:13 69:7 71:21  77:19 78:7 79:1,2  83:21 85:17 92:17  96:14  <b>goes</b> 22:14 36:9 49:1,3  52:4 78:21 93:6  <b>going</b> 6:10 10:5,17  15:11 33:9,15 39:21  40:18 60:11 62:3,7  62:21 66:5 68:19  76:19 78:7 83:15,20  <b>gone</b> 22:4  <b>good</b> 45:14 51:15  <b>Gore</b> 37:12 38:4</p>	<p><b>gotten</b> 8:1 19:21 60:19  <b>graduating</b> 41:14  <b>group</b> 12:19 29:16  30:16 32:16 42:6  <b>guess</b> 79:8  <b>guessing</b> 33:13  <b>guidelines</b> 56:18 59:6  <b>guys</b> 95:14 97:13</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>H</b> 2:14  <b>hair</b> 63:6  <b>half</b> 8:20 34:3,15 35:1  66:14 70:3  <b>hand</b> 9:12 101:15  <b>handled</b> 16:8  <b>hands</b> 51:19  <b>happy</b> 13:5  <b>hard</b> 94:14  <b>having</b> 38:8 47:7 55:18  65:3 83:20 85:15  101:7  <b>Hawkin's</b> 51:10  <b>head</b> 23:8,8 46:12  54:17  <b>headache</b> 63:1  <b>headaches</b> 54:18  <b>Health</b> 55:10 56:17  84:20  <b>heat</b> 57:20  <b>held</b> 1:11 35:11 37:5  <b>help</b> 13:7 39:13 55:16  <b>helps</b> 53:17  <b>her</b> 23:16 36:10 40:8,8  40:16 41:5 46:3,9,11  47:3,8,12,14,15,17  48:3,6,8 49:7,9,13  50:9,13,15,15,18  51:20 52:11,18 53:6  53:12,15 54:1,15,17  55:12,18 58:20 59:1  63:15,15,21 79:11  80:6,12,14,19 81:9  81:13,17,17 82:5,15  82:20 83:15 84:12  85:16 86:1 88:21  89:3 90:9,10 91:18  99:16  <b>herniated</b> 86:21  <b>herniates</b> 86:20  <b>herniation</b> 53:2 88:16  <b>herself</b> 50:16  <b>high</b> 58:4 84:16  <b>higher</b> 57:17 58:12,17  61:7,10 76:17 84:14  84:15,17  <b>Highway</b> 2:7  <b>him</b> 19:16,21 20:4</p>	<p>55:18,20 83:19,21  96:11  <b>hips</b> 52:17  <b>history</b> 44:21 45:3,8,21  48:5 49:7,9 59:13  60:3,11,12,12  <b>hold</b> 42:7 99:6  <b>home</b> 20:2 56:15 72:5  <b>Hopkins</b> 41:18,19 42:9  <b>horse</b> 34:13  <b>hospital</b> 42:10,11 46:15  79:11 81:18 82:3,5  <b>hospitals</b> 41:18 42:8  82:1,1  <b>hour</b> 70:11 78:12  <b>hours</b> 43:8 77:11 78:9  92:16 97:12  <b>house</b> 75:9  <b>Howard</b> 1:4 4:2 19:7  37:18 46:14 54:4  79:10  <b>hundred</b> 66:14  <b>hundreds</b> 80:7  <b>hurt</b> 50:19 72:5  <b>hurts</b> 51:6 62:21 63:1  <b>husband's</b> 48:8</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 29:10 32:7 33:10  33:14  <b>identification</b> 26:10,11  26:13 35:14 37:8  <b>identify</b> 38:12 96:20  <b>IME</b> 11:10 13:9 14:7,8  31:7 65:4,6,10,17  66:6 70:1,3 71:4  74:10 93:2,5,6,6  <b>IMEs</b> 27:1,11 31:11  34:16 66:10,12,14  69:19 71:2 72:16  74:7 92:10 94:11  <b>impingement</b> 51:10  <b>important</b> 50:11 53:14  <b>improved</b> 55:11  <b>improving</b> 83:12  <b>included</b> 7:13  <b>includes</b> 75:21 78:2  <b>including</b> 5:11  <b>income</b> 10:20 11:2,11  11:19 12:11 24:20  27:8,9  <b>incorrect</b> 48:2  <b>increase</b> 61:1  <b>independent</b> 4:6 15:18  22:5 34:3 39:3,4 74:2  <b>INDEX</b> 102:1  <b>indicate</b> 66:2  <b>indicated</b> 25:15 35:20</p>	<p>83:4,11 89:4 96:14  <b>indication</b> 56:20 57:4  79:21  <b>individual</b> 12:11 13:20  18:4 19:12 26:3,4  27:1 30:17,18 31:15  44:2 58:2 59:15  62:20 63:2 81:21  92:18 96:6  <b>individuals</b> 43:5 45:11  45:16 56:12 62:6  69:18 70:21 90:6,8  <b>information</b> 5:12 11:2  11:5,14 21:11 33:2  34:10 39:17  <b>informational</b> 67:3  <b>initial</b> 16:3 73:6  <b>initials</b> 35:19  <b>inject</b> 61:7  <b>injection</b> 61:11  <b>injections</b> 47:2 54:14  55:4,17 56:16,20  61:9 82:13,18,18  83:3,21 89:5  <b>injure</b> 81:9  <b>injured</b> 44:8 81:13  <b>injuries</b> 39:18 40:5  44:6 56:7 87:11  <b>injury</b> 41:6 50:3,6,7,8  54:6 63:19 87:4  <b>inner</b> 58:6  <b>instance</b> 50:4 61:20  74:9  <b>instructed</b> 22:12,16  <b>insurance</b> 6:14 7:12  18:2  <b>intend</b> 7:12  <b>intend</b> 15:2  <b>intention</b> 20:7  <b>interested</b> 32:10,15  101:13  <b>interfere</b> 77:18  <b>internists</b> 59:21  <b>internship</b> 41:17  <b>interpretation</b> 63:9  <b>interpreter</b> 39:13 46:3  <b>interval</b> 60:11,12,13  <b>intrusive</b> 12:4,5  <b>involve</b> 74:5  <b>involved</b> 12:16 31:17  35:6 44:11,13 69:18  99:14  <b>involves</b> 33:21 59:12  71:19 78:10  <b>issue</b> 19:3 45:20 62:15  <b>issued</b> 4:1,8,10  <b>issues</b> 20:5 89:3</p>
--	--	---	---	---

<p style="text-align: center;"><b>J</b></p> <p><b>Jackie</b> 98:15,16,16 99:12,18 <b>Janet</b> 2:21 37:11 <b>January</b> 85:20 97:1,4 <b>Jeff</b> 23:7 <b>job</b> 72:1,1 <b>joint</b> 50:4,7 51:14 <b>joints</b> 51:12 <b>Jr</b> 2:14 <b>judgment</b> 58:19 <b>July</b> 4:8 43:2 47:15,17 55:6,10 64:9,15 65:1 80:17 93:2 <b>June</b> 55:5 80:19,21 81:1,4 <b>jury</b> 40:3 41:11 57:8 <b>just</b> 6:19 7:8 9:10,16,21 10:1,3,3,15 12:14,18 13:10,13 15:1 16:14 20:3,10 21:12,17 22:4 24:4 27:10,16 30:5,14 31:11,17 33:3,7 34:2,11,14 35:4,15 36:11,16,16 40:17 45:17 46:4 50:15 64:12,12,19 65:19 66:20 69:14 70:15,16,21 71:13 72:8 76:9 81:6 88:6 93:13,18 94:4,5 96:5 96:20 97:21 99:19 <b>justified</b> 59:1 85:14 <b>justify</b> 12:8</p>	<p>65:18 70:21 72:14 74:17 78:7,10 80:21 83:18 85:21 86:17 92:4 93:1,5,7,14 95:6 97:12 98:11,16 99:17 99:20 <b>Knowing</b> 45:10 <b>knowledge</b> 19:2 22:5 80:6 <b>known</b> 15:8 <b>knows</b> 40:3</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>lack</b> 87:14 <b>lacked</b> 50:17 <b>ladies</b> 41:10 <b>Larry</b> 75:5,8,11 99:1,2 <b>last</b> 6:16 8:12,14 10:21 17:15 23:12,13,16 45:13 55:20 60:18 61:5 66:19 67:21 72:21 74:16 77:21 78:14,16,19 84:12 <b>lasted</b> 47:1 <b>lasting</b> 83:2 <b>later</b> 40:1,2 56:11 65:1 71:2 <b>lateral</b> 50:18,19 <b>laude</b> 41:14 <b>Lauder</b> 55:2 <b>Laura</b> 2:4 38:15 <b>law</b> 6:14 19:5 81:20 101:8 <b>least</b> 4:8 61:14 68:9 80:5 82:12 <b>leave</b> 36:3 <b>left</b> 48:15 51:3 52:10 <b>leg</b> 48:20 52:13,14 <b>legal</b> 25:16 61:3 95:19 96:1 <b>legs</b> 46:12 48:21 52:16 54:20 <b>length</b> 83:13 84:20 <b>Leslie</b> 23:8,14 <b>Leslie's</b> 23:15 <b>less</b> 29:18 72:3 74:1,3 76:2,8,14 85:2,5,6,10 <b>lesser</b> 60:8,9 <b>let</b> 10:3 <b>letter</b> 66:4 <b>let's</b> 5:3 41:8 44:19 <b>level</b> 13:17,18 26:21 32:1,1,2 59:9,10 60:2 60:13 84:12 <b>levels</b> 31:14 <b>licensed</b> 38:20 <b>life</b> 12:2 <b>ligament</b> 50:5 89:21</p>	<p><b>light</b> 50:6 <b>like</b> 3:10 4:7 8:12,13 9:1 12:2 17:1 21:12 35:18 50:3 58:5 60:11 63:10 70:7 81:11 84:5 86:11 94:15 <b>line</b> 40:4 <b>list</b> 5:3 8:6,10 9:11,12 9:17 34:4 66:18 67:1 67:2,4,5 74:15 75:6 76:16 98:10,21 99:11 99:14 102:15 <b>listed</b> 4:10 31:9 <b>lists</b> 9:21 <b>litigation</b> 31:17 72:8 76:15 <b>little</b> 29:18 48:19 51:3 58:17 61:4,10 84:16 <b>lgesq@aol.com</b> 2:10 <b>load</b> 92:18,21 <b>local</b> 17:9 20:6 42:8 <b>localized</b> 83:5 <b>location</b> 38:1 <b>long</b> 19:8 21:20 <b>longer</b> 59:11 <b>longstanding</b> 53:19 <b>long-term</b> 47:3 <b>look</b> 10:3 25:6 30:21 33:16 35:8 45:19 53:5 69:14 81:11,21 <b>looked</b> 37:1 62:10 <b>looking</b> 62:5 63:10 71:13 72:6 74:6 89:1 <b>looks</b> 4:7 35:18 <b>lose</b> 46:12 <b>loss</b> 53:9 83:6 <b>lot</b> 8:16 30:7 58:8 61:5 69:17 72:4 73:19 76:15 78:13 85:17 <b>Lots</b> 14:17 <b>lower</b> 40:8 48:14 49:20 52:4,9,12,15,18 53:3 53:11 <b>lumbar</b> 53:8 62:11 <b>lump</b> 57:19 <b>lumped</b> 26:17,18 <b>Lyster</b> 42:3 <b>L.L.C</b> 2:5 <b>LS</b> 52:8</p>	<p><b>main</b> 23:7 <b>mainly</b> 57:18 <b>major</b> 49:11 97:3,8,9 <b>majority</b> 70:11 90:5,7 <b>make</b> 8:2 12:5 15:8 27:17 30:7,14 32:11 32:14 37:3 45:17 53:17 72:11 84:5,17 95:12,16 <b>makes</b> 12:19 95:15 <b>making</b> 46:9 59:13 60:4,16,18,20 <b>manager</b> 71:20 <b>managers</b> 73:20 <b>many</b> 27:11 28:13 31:21 57:13 71:8,15 72:21 77:19 92:10 <b>March</b> 55:5,21 65:9 <b>mark</b> 6:11,11 68:13 <b>marked</b> 10:6,18 35:14 36:2 37:8 66:21 68:20 83:13 96:19 97:14 102:10 <b>married</b> 36:11 <b>Mary</b> 1:4 2:12 5:18 6:3 37:17 <b>Maryland</b> 1:15 2:8,16 37:14 38:2,21 43:21 46:18 47:5,14 54:10 55:3,11 59:3 61:14 79:12 82:11 87:3 89:1 91:1 95:15 101:1,4 <b>massage</b> 57:21 <b>math</b> 36:21 <b>matter</b> 14:3 37:16 <b>maximally</b> 55:11 <b>may</b> 9:9 11:19 38:17 43:18 47:12 55:4 60:21 61:3,4 63:12 65:16 67:3 70:15 72:5 75:17 78:12 90:2 91:9,9 <b>maybe</b> 21:20 43:10 47:3 99:19 <b>McGovern</b> 55:3 <b>mean</b> 32:13 49:20 54:16 64:17 67:11 69:8 71:10,11 84:15 85:7 87:15 93:5 <b>meaning</b> 39:3 53:9 <b>means</b> 62:20 <b>medical</b> 13:5 26:14 34:3 38:20 39:3,9,12 40:5,10,14 42:3 45:7 49:7,11 52:19 71:8 71:10,14 72:12 73:9 80:7 96:1</p>	<p><b>medically</b> 82:19 <b>medical-legal</b> 93:19 94:2 <b>medication</b> 49:1,3 54:14 56:15 <b>Medicine</b> 1:14 41:14 <b>medicines</b> 49:4,5 <b>Medrol</b> 55:12 <b>meet</b> 59:6 <b>meeting</b> 76:1 <b>meetings</b> 92:16 <b>MegaWest</b> 24:6,9,10 <b>member</b> 12:13 42:21 <b>members</b> 66:12 68:1 <b>mention</b> 6:20 84:3,4,5 84:6 95:20,20 <b>mentioned</b> 66:13 70:20 76:9 95:11 97:21 <b>messages</b> 5:13 <b>Michele's</b> 52:13 <b>mid</b> 51:20 52:2 <b>middle</b> 78:17 <b>midline</b> 52:8 <b>might</b> 59:21 <b>Miller</b> 2:5 75:4 99:4,5 <b>Mills</b> 1:15 38:2 <b>mine</b> 94:4 <b>mini</b> 46:8 <b>minimal</b> 53:3,8 62:4 <b>minimum</b> 75:20 78:3 <b>minute</b> 45:13 <b>minutes</b> 36:20 65:7 <b>Miss</b> 9:15 38:16 39:17 40:6 41:1 45:1 46:20 47:10 55:21 64:21 65:4,6,15 80:1 98:18 <b>missed</b> 74:19,19 75:1,2 <b>mistaking</b> 91:10 <b>Mitchell</b> 75:10 <b>modalities</b> 57:20 58:3 58:11,13,16 <b>Moffet</b> 19:7 21:9 <b>Monday</b> 77:10 <b>money</b> 11:18 13:21 29:5 30:14,15,15,17 30:18 32:11,14,16 <b>month</b> 8:20 27:7 71:17 <b>monthly</b> 25:1,4,6,8,14 30:11 <b>months</b> 9:2 23:10,15 47:1,9 56:13,14 65:10 66:19 67:17 74:16 85:1,3,5,8,9,13 91:8 <b>more</b> 9:5 23:14 29:17 39:21 44:12 48:13,15 52:9 57:4,12,13 58:15 59:8 61:1,4,16</p>
<p style="text-align: center;"><b>K</b></p> <p><b>keep</b> 6:17 7:3 8:10,11 17:19 19:4 21:1,2,10 22:4 23:2,4 57:21 67:4 91:21 92:4,19 93:10 94:14 <b>keeps</b> 92:5 93:9,16 <b>kept</b> 9:4 93:17 <b>key</b> 58:15 <b>kidney</b> 52:11 <b>kind</b> 23:19 24:2,12 60:17 72:3 73:21 92:1 <b>kinds</b> 44:12 <b>knee</b> 50:4,5,7 58:5,6 <b>knees</b> 52:17 <b>knew</b> 66:5 <b>know</b> 9:20 10:15 13:14 16:1 21:21 22:8 23:21 24:2,4,7,12,15 26:9 30:6,6,15 32:1,3 32:5 33:19 36:4 44:1 44:3 62:9 64:8,10</p>	<p><b>least</b> 4:8 61:14 68:9 80:5 82:12 <b>leave</b> 36:3 <b>left</b> 48:15 51:3 52:10 <b>leg</b> 48:20 52:13,14 <b>legal</b> 25:16 61:3 95:19 96:1 <b>legs</b> 46:12 48:21 52:16 54:20 <b>length</b> 83:13 84:20 <b>Leslie</b> 23:8,14 <b>Leslie's</b> 23:15 <b>less</b> 29:18 72:3 74:1,3 76:2,8,14 85:2,5,6,10 <b>lesser</b> 60:8,9 <b>let</b> 10:3 <b>letter</b> 66:4 <b>let's</b> 5:3 41:8 44:19 <b>level</b> 13:17,18 26:21 32:1,1,2 59:9,10 60:2 60:13 84:12 <b>levels</b> 31:14 <b>licensed</b> 38:20 <b>life</b> 12:2 <b>ligament</b> 50:5 89:21</p>	<p style="text-align: center;"><b>M</b></p> <p><b>machine</b> 21:5 <b>made</b> 15:11 17:10 29:1 36:4 46:5 64:19 67:2 67:5 80:1 <b>magna</b> 41:14 <b>mail</b> 16:4 22:9,11</p>		

<p>61:21 62:12 73:21 76:2,18 77:15 78:6 83:2 88:5 93:19 95:14 <b>morning</b> 78:8,11 93:15 <b>most</b> 6:6,7 47:4 59:20 60:1 70:11,13 73:12 97:2 <b>motion</b> 16:19 50:14 51:10,21 52:5 <b>motor</b> 46:6 48:11 51:16 86:11 <b>Motors</b> 72:2,10,14,16 <b>move</b> 44:15 50:15,15 63:1 <b>moved</b> 51:9,21 <b>moves</b> 52:4 <b>MRI</b> 53:8 61:18,19 80:20 81:4 85:14 <b>MRIs</b> 52:21 58:19 61:13 62:11 73:16 82:16 <b>much</b> 7:6,9 11:17 12:18 13:21 30:14,15,15,16 30:17,21 32:10,14,16 53:21 72:12,18 74:1 76:14,16 95:11 <b>multiple</b> 7:17 57:20 58:3 <b>muscle</b> 51:1,1 54:12 56:15 90:17,20 91:4 91:7,11 <b>muscles</b> 51:4 <b>muscular</b> 89:2,21 <b>M.D.</b> 1:11 38:7 102:2</p>	<p><b>neck</b> 40:8 46:19 47:2,7 48:12,13,14 49:20 50:13 51:2,4 53:21 54:2,2,3 56:1,12 80:2 80:13 81:9 <b>need</b> 12:3 18:3 21:9,10 21:13 23:4 27:14 34:9,11,14 40:14 58:20 <b>needed</b> 22:18,20,21 61:2,3 <b>needs</b> 40:10 94:10 <b>negative</b> 51:11,17 52:14 <b>nerve</b> 54:16 83:5 89:17 90:2,4,12 <b>neurologic</b> 50:2 51:18 52:12 <b>neurological</b> 56:1 <b>neurosurgeon</b> 55:14,17 55:18 <b>never</b> 16:7,9 17:7,9 19:2 21:10 35:4 56:9 56:18 64:11 65:5,13 65:13,14,19 <b>next</b> 6:13 13:17 35:5 90:1,3 92:2 <b>NextGen</b> 24:5,8,10,11 24:14,16 <b>nickname</b> 36:9 <b>nine</b> 28:1,5,13,15,17,18 29:6,19 30:21 94:21 95:3 <b>none</b> 8:15 11:12 <b>nontender</b> 51:21 52:11 <b>normal</b> 51:15 52:12,17 52:18 53:2 54:3,17 56:6 87:7 <b>normally</b> 29:14 45:9 61:19 85:6 <b>Northwest</b> 42:10 <b>notarial</b> 101:15 <b>Notary</b> 1:15 101:3,18 <b>note</b> 35:17 36:4 <b>notes</b> 5:12 65:13 <b>nothing</b> 10:14 12:7 38:9 66:2 70:16 72:7 98:7 100:1 <b>noticed</b> 37:19 79:5 <b>November</b> 9:1 85:20 <b>number</b> 5:5 6:5 8:17 26:10,11 31:4,5 33:11,14 34:1 37:7 37:18 42:14 45:11 66:8,10,21 68:20 74:14 97:15 <b>numbers</b> 9:4 26:13,13 33:9 35:13 76:14</p>	<p><b>numbness</b> 48:17,21</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>objection</b> 44:18 <b>objective</b> 62:17,18 63:4 63:7,18 87:14 88:1 90:17,20 <b>objects</b> 46:11 <b>obtained</b> 46:1 <b>obviously</b> 64:18 <b>occasion</b> 17:19 90:21 <b>occasional</b> 49:4 56:16 72:20 <b>occasionally</b> 48:8 <b>occasions</b> 47:13 58:10 58:12 67:8,21 68:10 96:12 <b>occur</b> 53:20 <b>October</b> 39:18 40:6 46:7 54:11 80:1 <b>odd</b> 66:14 <b>off</b> 3:11,14,19 35:11 37:5 <b>offer</b> 69:6 <b>office</b> 4:14 6:20 7:9 8:4 15:5 16:14,16 21:4,7 22:1,9,21 23:1 24:9 25:19 26:1 32:1,2 59:3 64:6,8,15 66:9 66:11,12,16 67:9 77:10,11 92:15,15,16 93:7,9,10,13,17 94:6 94:8 99:16 <b>offices</b> 1:12 34:20 94:9 <b>often</b> 62:16 69:13,18 <b>oh</b> 44:6 49:1 68:12 82:7 99:6,7 <b>okay</b> 3:13 4:18 5:3,10 5:17 6:5 8:5 9:14,19 10:1,5,17 11:13 12:4 13:19 15:15 16:12,21 20:13,16 27:18 28:1 30:10,20 31:4 32:8 32:12,17 33:3,13 34:9 35:10 36:21 37:3 40:9 41:4,8 42:16 44:4 47:19 48:4 51:8 53:7 64:14 65:8,19 68:19 69:2,5 73:2,18 74:13 75:16 75:19 79:4 86:16 88:3 89:13,18 90:17 91:17,21 92:7 94:21 96:7,19 97:10 <b>once</b> 60:15 71:6 <b>one</b> 2:15 8:20 11:21 12:1,9 14:5 25:7 26:20 27:5 28:18</p>	<p>30:12 35:5 36:5 43:12,16 58:2,17 62:15 63:10 65:12 67:16 68:15 69:16,16 70:5 71:12 74:6,18 74:19,19 76:21 77:8 77:17 78:4,12,16,16 78:17,19 81:1,8 83:1 84:12,13,17 94:21 97:2 98:11,20 99:11 99:19 <b>ones</b> 20:6 31:16 70:13 72:20 74:19 <b>one-ninth</b> 28:19 29:13 <b>ongoing</b> 40:16 83:11 <b>only</b> 8:11,16 18:20 20:5 58:13 68:16 73:4 78:21 93:18 <b>open</b> 13:3 22:11 <b>opens</b> 22:9 <b>operate</b> 34:7,21 77:9 77:11 <b>operating</b> 58:5 <b>operator</b> 37:15 <b>opinion</b> 32:21 40:9,13 47:7 56:2 82:12 83:16 85:14 88:9 91:13 96:15 <b>opinions</b> 12:1,6,6,7,9 33:1 39:17 40:1,4 44:5 57:6,9 59:2 63:14 64:6 65:20 96:13 <b>opportunity</b> 66:19 <b>opposed</b> 29:11 30:3 74:11 76:10 <b>oral</b> 16:5 43:1,17 <b>order</b> 14:19 15:3,12 16:19 17:13 18:8,16 18:18,19 19:17 37:4 <b>ordered</b> 81:2 <b>orders</b> 17:5 <b>originally</b> 42:19 <b>Orthopaedic</b> 1:13 <b>orthopedic</b> 12:12 16:6 29:11 40:16 41:19,20 42:2,5,11,13,18 43:1 43:14,19 44:16 47:14 49:12 59:20 60:1 <b>Orthopedics</b> 46:18 47:6 54:10 55:3,12 59:3 61:15 79:12 82:11 87:3 89:2 91:1 95:15 <b>orthopedists</b> 42:6 <b>other</b> 3:17 7:17 8:2 9:16 11:10,18,19,21 12:2,15,21 14:9,9</p>	<p>21:13 27:5 29:11,15 29:19 43:13 46:11 49:4 51:11 56:12 72:16 84:18 86:18 94:9 96:13 97:7,7 98:1,2 <b>others</b> 48:1 74:20 <b>otherwise</b> 24:15 49:9 62:7 86:4,12 88:16 89:19,19 <b>out</b> 17:13 18:8 20:20 20:21 22:3 32:15 33:1,9 35:1 60:8,9 66:14 67:6,7,8,21 77:8,16 78:11 95:14 101:7 <b>outcome</b> 101:14 <b>outer</b> 58:7 <b>oufit</b> 6:17 <b>outlined</b> 14:10 36:18 <b>outside</b> 11:19 84:7 <b>over</b> 8:18 10:4 21:5,19 47:16 60:11 66:5 67:14,14 68:6,6 71:18 96:4 <b>overlap</b> 58:9 70:2 <b>over-the-counter</b> 49:5 <b>Owings</b> 1:14 38:2 <b>own</b> 11:17 12:8 80:11</p>
<hr/> <p style="text-align: center;"><b>P</b></p> <hr/>				
<p><b>P</b> 1:4 2:1,1,12 37:17 <b>Pabla</b> 47:8,15 55:10 80:16 83:16 95:15 96:9,11,16 <b>Pabla's</b> 55:7 84:2 <b>page</b> 36:14,14 47:21 96:10 98:1,11 102:5 <b>pages</b> 36:13 98:2,4 <b>paid</b> 7:6,9,14 8:3 28:5 <b>pain</b> 47:4,8 48:11,13,19 49:5 50:14 51:11 52:1,15,15 56:1,15 80:2,2,3,12 85:18 87:16,18 88:3,8 89:21,21 90:2,4,6,13 <b>painful</b> 87:9,11 88:10 88:12 89:9,14 <b>palm</b> 92:1,3,6,7 <b>palpate</b> 51:6 <b>palpation</b> 51:12 52:2 <b>paperwork</b> 23:3 <b>paravertebrally</b> 52:8 <b>part</b> 29:1,9 39:2,9 43:4 62:1 71:3 74:12 76:14 <b>particular</b> 44:4 59:17 62:9 73:17,18 74:8</p>				

<p>79:5 82:2 87:1 88:21 89:6 95:13 <b>parties</b> 3:3 101:13 <b>partners</b> 27:21 28:1,5 29:12,14,20 33:8 94:21 95:3,4,5 <b>partnership</b> 28:11,19 <b>partner's</b> 30:12 <b>PAs</b> 7:19 42:15 <b>passively</b> 50:15 <b>past</b> 8:1 13:3 17:1,6 43:2 48:12 49:6,9 65:18 76:5 <b>Pat</b> 25:18 35:17 67:9 93:1 <b>patferris@aol.com</b> 2:19 <b>patient</b> 5:12 26:9,13,15 35:2,3 39:4 45:4 59:17 60:15 61:3 92:18,21 94:1 <b>patients</b> 7:1 27:2,8 31:8 31:15 34:7,16,16,20 44:11,14 66:15 74:20 93:12 96:3,4,6 <b>Patrick</b> 2:13 37:20 38:13 <b>Patrick's</b> 51:17 <b>payment</b> 7:14 14:12 <b>pending</b> 37:17 <b>penicillin</b> 49:9 <b>Pennsylvania</b> 2:15 <b>people</b> 9:6 12:19 43:12 44:8 56:9,19 61:5,10 72:5 73:5 76:17 91:6 <b>percent</b> 35:3 50:17 58:11 <b>percentage</b> 11:9 13:4 76:17 95:18 <b>perform</b> 39:3,6,12 49:12,15 <b>period</b> 57:16 67:15 68:17 77:3 83:19 <b>permanency</b> 74:9 <b>person</b> 19:12 44:3 62:19 94:11 <b>personal</b> 10:20 11:1,17 12:2 15:8 19:13 20:15,17,18 21:1 <b>personally</b> 15:19 16:15 101:5 <b>Peterson</b> 2:14 <b>phase</b> 91:8,11,12 <b>phonetic</b> 23:7 46:3 <b>physical</b> 49:13 55:9 57:15 59:13 60:3,13 60:14 71:8,10 80:11 84:19,21 85:2,10,17</p>	<p><b>physician</b> 6:21 47:12 <b>physician's</b> 59:2 <b>picture</b> 63:10,11 <b>piece</b> 64:14 <b>PIP</b> 7:2,11 <b>place</b> 101:6 <b>plain</b> 54:1 <b>plaintiff</b> 1:2 2:3 6:15 8:8 10:15 12:8 13:12 13:15 38:16 98:9 99:4,7 <b>plaintiffs</b> 31:16 <b>Plaintiff's</b> 37:7 102:18 102:19 <b>please</b> 18:14 38:11 <b>Plitt</b> 36:9,10,11 <b>plus</b> 42:14 <b>Plymouth</b> 46:8 <b>podiatrists</b> 42:14 <b>point</b> 41:9 44:7,17 54:13 55:4 56:16,20 61:8,11 82:13,17 83:3 89:5 94:11 96:12 <b>points</b> 57:11 59:5 61:6 61:7,12 87:4 <b>policies</b> 7:12 <b>policy</b> 21:7 22:20 <b>portion</b> 13:4,8 30:8 33:20 34:18,19 37:9 <b>positions</b> 42:7 <b>possession</b> 5:19 17:17 17:18 18:21 19:2 20:8,10,13,16,17 79:6 <b>possible</b> 90:16,16 <b>pot</b> 29:5 <b>pounds</b> 50:13 <b>practice</b> 12:12 13:4,8 17:7,11 21:7 29:9 33:5 34:18,19 38:21 39:2 42:5 43:6 69:7,8 74:8 95:1,8,12 97:13 <b>prefer</b> 69:21 <b>Preisinger</b> 1:4 2:12 37:17 <b>premise</b> 89:7 <b>preparation</b> 76:1 <b>prepare</b> 36:19 <b>prepared</b> 36:15 <b>presence</b> 46:2 <b>present</b> 2:20 5:15 18:21 <b>pressure</b> 89:20 <b>pretty</b> 58:4 63:11 <b>primary</b> 50:7,7 59:21 60:20 62:13,14 <b>prior</b> 48:10 70:1</p>	<p><b>private</b> 11:2,14 42:4 <b>privy</b> 12:14 <b>probability</b> 40:5 <b>probably</b> 9:9 20:19 21:19 29:13 61:16 67:17 69:16 73:1 76:11 78:17 84:16 99:13,15 <b>problem</b> 83:15 86:19 88:17 89:5 <b>problems</b> 49:2,11 50:1 55:1 59:15 83:18,20 87:5 89:3 <b>proceed</b> 38:17 <b>proceedings</b> 101:11 <b>process</b> 61:3 <b>produce</b> 5:1 18:18 <b>production</b> 14:20 17:5 17:12,14 18:9 19:17 <b>productivity</b> 28:10 29:2,3,10 30:9,12,13 31:1,1,2,4 32:3,5,8 32:13 33:5,8,20 95:7 95:10,13,18 <b>professionally</b> 11:20 <b>program</b> 23:19 24:7,16 <b>prolonged</b> 56:20 <b>Protective</b> 16:19 <b>protruding</b> 89:10,13 <b>protrusion</b> 88:13,15 <b>provide</b> 14:3 15:12 82:20 <b>provided</b> 8:7 39:10 66:18 <b>providing</b> 6:14 7:18 9:14 <b>Psychiatrists</b> 59:20 <b>Public</b> 1:16 56:17 101:3,18 <b>pull</b> 31:21 <b>pulled</b> 72:4 <b>purely</b> 96:1 <b>purpose</b> 27:14 <b>purposes</b> 6:19 10:6 35:14 37:8 67:3 <b>push</b> 61:4 <b>pushed</b> 46:10 <b>pushing</b> 88:14 89:10 <b>put</b> 26:20 54:14 58:1 74:18 75:3 76:16 93:4,4,7,11 97:2 <b>puts</b> 94:17 <b>p.m</b> 1:12 3:19 37:10 100:4</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualifications</b> 40:2 41:9</p>	<p><b>qualified</b> 43:13 44:16 <b>quality</b> 83:12 <b>quarter</b> 61:10 73:13 <b>question</b> 18:7,14 32:17 33:4 54:17 67:19,20 68:13 70:15 86:10 88:7,19 90:1,3,11 91:3 98:8 <b>questions</b> 14:15 45:5 96:7 <b>QuickBooks</b> 23:20 <b>quote</b> 82:19</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R 2:1</b> <b>radiated</b> 54:19 <b>radiologist</b> 61:15,17 62:13 <b>radiology</b> 53:1 79:12 <b>raise</b> 70:18 <b>raising</b> 52:13,14 <b>range</b> 29:18 51:9,21 52:5 61:9 62:12 70:12,20 73:13,20 74:8 85:9,9,11,12 <b>rapid</b> 45:16 <b>rare</b> 77:2 <b>rarely</b> 70:19 <b>Raswaun</b> 46:3 <b>rate</b> 58:10,17 60:8,9 <b>rates</b> 58:14 74:3 <b>rather</b> 10:2 22:3 50:3 59:8 60:4,20 63:7 71:6 83:20 89:3 <b>rating</b> 74:11 <b>ratings</b> 74:9 <b>Re</b> 36:10 <b>read</b> 62:4 <b>reading</b> 3:3 61:13,15 61:17 <b>real</b> 9:17 <b>really</b> 11:20 27:13 32:19 47:3 53:21 56:18 58:15 67:19 70:10,10 81:21 82:3 82:8 86:2 <b>rear</b> 46:10 <b>reason</b> 9:10 21:10 76:15 78:4,4 82:7,9 83:9 86:2 <b>reasonable</b> 36:13,14 40:4 41:5 57:7,12,16 58:14 72:11 81:18 82:6,7,9,10,13,15 83:17 84:10,11 85:1 85:9,11,12,13 96:12 <b>reasonableness</b> 40:19 84:7</p>	<p><b>reasons</b> 12:9 <b>recall</b> 65:3 <b>received</b> 6:13 14:12 15:17 64:9 <b>recent</b> 6:6,7 <b>recently</b> 43:7 <b>recertification</b> 97:6 <b>recertified</b> 43:4,7,9,11 97:5 <b>recertify</b> 42:20 43:5 <b>recertifying</b> 43:3 <b>recollection</b> 4:4,6 15:18 66:1 <b>recommended</b> 55:18 96:13 <b>record</b> 3:11,15,19 69:13,17 70:5,11,14 70:19 71:3,12 101:11 <b>recorded</b> 101:10 <b>records</b> 3:12 13:10,12 14:2,16 21:13 35:12 37:6 39:10 40:7,15 45:7,9,18 52:20,21 55:8 56:3 62:1 64:9 64:12 66:2,3 69:14 69:21 70:3,8 71:13 73:8,16 79:6,8,9,13 79:18,19 80:6,7,11 80:16 81:11 91:14 95:16,17,21 <b>recurred</b> 47:4 <b>reduction</b> 58:2,16 <b>reevaluations</b> 73:5 <b>refer</b> 62:16 <b>referred</b> 46:18 <b>referring</b> 97:20 <b>reflex</b> 63:5 <b>reflexes</b> 51:16 <b>refused</b> 17:4 <b>refusing</b> 33:4 <b>regarding</b> 10:9 14:16 39:17 44:5 57:9 64:11 65:15 <b>regardless</b> 7:15 <b>regards</b> 3:12 <b>regular</b> 94:5,15 <b>related</b> 81:19 <b>relating</b> 11:5 <b>relationship</b> 11:8 <b>relative</b> 72:15 <b>relaxants</b> 54:13 56:16 <b>release</b> 12:3,15 <b>released</b> 20:12 46:16 <b>relevant</b> 15:9,10 32:18 32:20 33:1 95:12,14 <b>reliance</b> 91:13 <b>relied</b> 91:14 <b>relief</b> 47:3 57:3 82:20</p>
--	---	---	---	---

<p>83:2  <b>rely</b> 63:2  <b>remember</b> 7:20 45:17          65:14 74:18 75:10          77:4,5,21  <b>render</b> 44:5 64:6  <b>rendered</b> 7:10 89:1  <b>rendering</b> 7:20 63:14          65:20  <b>report</b> 36:17 37:2          45:20 47:21 69:15          81:7 84:3 96:10          97:15,16,19 102:14  <b>REPORTED</b> 1:21  <b>reporter</b> 38:3  <b>Reporting</b> 37:12 38:4  <b>reports</b> 5:11 54:6  <b>represent</b> 38:12  <b>request</b> 39:6 69:9          71:14  <b>requested</b> 17:8 19:20          44:5  <b>requesting</b> 17:5  <b>require</b> 17:16 59:14          63:9  <b>required</b> 6:18 19:5  <b>requires</b> 18:20  <b>requiring</b> 14:20 17:5          17:14 18:9,17 19:17  <b>reschedule</b> 45:12  <b>residency</b> 41:17,19  <b>resident</b> 41:20  <b>respective</b> 3:3  <b>rest</b> 30:9  <b>result</b> 40:11  <b>results</b> 80:19  <b>retained</b> 102:12,19  <b>return</b> 13:18 25:3  <b>returns</b> 10:20 11:2,17          12:11,17 13:7,11,20          14:1 15:6 19:13,14          19:18,21 20:6,14,17          20:18,18 23:1,1  <b>reveal</b> 91:18  <b>revenue</b> 12:18,21 13:2          29:15,21 30:3,4,6          32:16  <b>revenues</b> 29:4  <b>review</b> 14:3 25:4,7 39:9          45:7,13,14 52:19          55:7 56:2 62:10          66:20 69:14,21 70:8          70:14 71:4,6 72:10          73:16 79:5 81:4 82:3          82:4  <b>reviewed</b> 5:4,8 54:5,6          79:17,19 80:11,16,19  <b>reviewing</b> 13:20 62:1</p>	<p><b>reviews</b> 69:17 70:3,5          70:12,19 71:3,12          72:4 73:8  <b>Riaz</b> 47:13 79:11 81:2  <b>rib</b> 52:1  <b>ribcage</b> 52:1  <b>rid</b> 92:2  <b>right</b> 3:15 14:4 23:8          28:4 31:9 33:18          44:10 46:9 48:14,19          48:20 51:2 52:10          66:4 67:10 69:13          72:19 76:4,10 78:4          82:6,14 84:8 85:4          86:15 89:15 91:19  <b>Ritchie</b> 2:7  <b>road</b> 40:20  <b>Rochester</b> 41:15  <b>Rona</b> 75:12 99:7,9  <b>Ronda</b> 98:10,13,18          99:10  <b>room</b> 45:4  <b>Roos</b> 51:17  <b>root</b> 89:17 90:2,4,12  <b>roots</b> 83:5  <b>rotation</b> 50:18,19  <b>row</b> 77:6  <b>R-E</b> 36:10</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>S</b> 2:1  <b>salary</b> 28:6  <b>Saltzman</b> 1:11 5:11          37:16 38:7 64:5          100:3 102:2  <b>same</b> 3:5,8 19:11,12,12          31:19,20 58:3 60:10          60:12,13 70:17 72:15          73:6,7 97:12 98:11  <b>saw</b> 15:1 16:7,9,11 20:3          35:4 36:16 47:8,15          47:17 48:3 55:2,10          55:20 65:14 66:3          68:14 80:14  <b>saying</b> 8:2 15:20  <b>says</b> 5:4 21:9 35:17          36:13 48:1 51:6 73:9          92:14  <b>scale</b> 70:16  <b>scar</b> 63:6  <b>scarring</b> 83:5  <b>schedule</b> 10:9,11 14:11          64:13 68:21 69:3          70:9 73:9 77:18 78:2          78:5 93:7,9,11,11,16          99:20 102:16  <b>scheduled</b> 65:17 93:2,6  <b>schedulers</b> 94:7,8</p>	<p><b>Schrum</b> 75:12 98:9,10          98:13,19 99:8,9,10  <b>Schrum's</b> 98:18  <b>seal</b> 15:13 101:15  <b>seat</b> 46:8  <b>second</b> 5:10 47:21          61:11 83:16 96:13  <b>secondary</b> 62:15  <b>secretaries</b> 16:8 22:10          36:5 64:20 94:6  <b>secretary</b> 16:9,20 36:6          36:17  <b>secretary's</b> 36:8  <b>see</b> 12:3 26:19 30:16,21          33:16 34:7,15,16,20          34:21 35:20 40:15          44:12,14 47:8 55:14          55:17,18,18 63:8,8          66:15 71:21 72:6,9          83:16,21 87:19 93:13          96:3,4,11 98:10  <b>seeing</b> 94:19 96:11  <b>seem</b> 84:4  <b>seemed</b> 59:4  <b>seen</b> 7:21 14:19 36:19          46:2 47:12,13 54:4,7          73:6 80:5,6,9 83:19          85:2 90:21 91:11  <b>send</b> 24:18 69:20  <b>sensation</b> 51:16  <b>sense</b> 8:2 27:11  <b>sent</b> 16:3  <b>separate</b> 27:4,16 92:19          94:2  <b>separating</b> 71:7  <b>September</b> 1:11 37:21          101:16 102:3  <b>sequence</b> 47:11  <b>serve</b> 27:14  <b>served</b> 4:5,7,9 15:19          16:21  <b>service</b> 26:21 56:17          60:3  <b>services</b> 6:21 7:10,18  <b>set</b> 64:10,19 101:6  <b>setting</b> 27:15 94:11  <b>settlements</b> 76:18  <b>seven</b> 96:17  <b>several</b> 7:19 65:10  <b>shape</b> 12:1  <b>shareholders</b> 28:11,14  <b>sharing</b> 29:4  <b>sheet</b> 14:5,6 26:19,20          48:2 78:20  <b>shop</b> 48:9  <b>short</b> 72:4  <b>shoulder</b> 48:15,15 51:2          51:12</p>	<p><b>Shoulders</b> 51:9  <b>show</b> 35:15 45:12 54:1          66:20 68:19  <b>showing</b> 57:2 81:2,7  <b>shown</b> 18:1 56:9,18          83:14  <b>shred</b> 21:7,12,17 22:12          22:17  <b>shredded</b> 22:7  <b>shredder</b> 21:16,19 22:5  <b>shredding</b> 21:5,14 22:1          22:3  <b>side</b> 50:20,20 51:2 52:8          58:7 83:2,13  <b>signed</b> 65:13  <b>significant</b> 45:11 54:2          57:2 70:1  <b>signing</b> 3:4  <b>signs</b> 51:10,17 52:13  <b>similar</b> 42:14  <b>similarly</b> 12:17  <b>Sinai</b> 42:9  <b>since</b> 21:11 22:1 42:12          43:3 97:3  <b>single</b> 45:17  <b>situation</b> 45:16  <b>six</b> 23:17 47:9 71:16          85:6  <b>skim</b> 45:9  <b>slash</b> 35:18  <b>smattering</b> 73:4  <b>smoke</b> 49:10  <b>soft</b> 87:2,3,6,7,11 88:17          89:14,17  <b>software</b> 23:19,21 24:2          24:7,8,13 92:8 93:5          94:16  <b>some</b> 7:21,21 8:18          24:18 28:7,9,10 29:1          29:3,3,5,10 30:10          40:19,21 41:3,4 46:4          47:7 48:13 50:21          51:3 52:6,7,15 53:2,9          54:12,13,14,18 55:9          55:12 56:1,8,19          57:17 59:21 61:10          64:18 66:14,15 69:20          70:2,2 73:5 74:8 79:9          82:20 83:1,6 89:11          93:18 96:13  <b>somebody</b> 30:4 44:2          69:9 71:14,20 75:1,1          85:19 99:15  <b>someone</b> 44:1 63:11          86:19 91:9 99:18  <b>something</b> 8:13,19 9:21          70:7 78:11 89:16  <b>sometime</b> 75:15 78:17</p>	<p>79:1,2  <b>Sometimes</b> 86:18  <b>somewhere</b> 71:17 73:3  <b>sorry</b> 23:16 28:16 44:6          55:15 99:7  <b>sort</b> 24:18  <b>sound</b> 67:10 68:4 76:6  <b>sounds</b> 68:6  <b>source</b> 7:15  <b>sources</b> 11:19 12:21          13:1 71:19  <b>South</b> 37:13 55:10          84:20  <b>spaced</b> 59:4  <b>spasm</b> 91:4,10,10,11  <b>spasms</b> 87:9 90:17,21          91:7  <b>specific</b> 7:11 14:6          18:19 22:20 34:1          50:3 59:15 70:14          74:11  <b>specifically</b> 71:4  <b>specifics</b> 22:19 24:15  <b>specify</b> 57:9  <b>spent</b> 42:1 59:17  <b>spine</b> 51:20 52:9 53:1,4          54:12 62:11  <b>split</b> 30:7,8,9  <b>spoke</b> 46:4 64:11 65:20  <b>Sports</b> 1:13  <b>sprain</b> 56:12 89:3  <b>sprained</b> 40:8 88:20  <b>sprains</b> 46:19 56:21  <b>spread</b> 77:8  <b>stable</b> 60:15  <b>staff</b> 42:14  <b>staffs</b> 42:9  <b>stand</b> 12:6  <b>standard</b> 10:16 31:13  <b>standards</b> 60:2  <b>start</b> 14:16 21:14 35:9          78:8  <b>started</b> 9:1 43:3 46:21          54:13  <b>starting</b> 43:5  <b>starts</b> 78:9  <b>state</b> 10:20 11:1 12:10          15:6 17:8 20:5 38:21          81:20 82:2 101:1,4  <b>stated</b> 17:18 19:1 20:5          20:6 91:2  <b>statement</b> 12:18 24:18  <b>statements</b> 25:4,5,6,8          25:14,15 30:11,11  <b>states</b> 42:2 46:6 47:2          48:6,11,12 49:3          50:14 83:18  <b>stay</b> 3:11</p>
---	---	--	--	--

<p><b>stenographic</b> 35:12 37:6</p> <p><b>stenographically</b> 101:10</p> <p><b>step</b> 59:14</p> <p><b>stiff</b> 91:9</p> <p><b>still</b> 13:3 47:7 56:19 74:2 76:6</p> <p><b>stimulation</b> 57:20</p> <p><b>stipulated</b> 3:2,6</p> <p><b>STIPULATIONS</b> 3:1</p> <p><b>stopped</b> 9:8 29:17 79:2</p> <p><b>store</b> 21:12</p> <p><b>straight</b> 52:13,14</p> <p><b>Street</b> 37:13</p> <p><b>strength</b> 51:15</p> <p><b>strike</b> 46:11</p> <p><b>Strom</b> 75:5,8,11 99:1,2</p> <p><b>struck</b> 46:9</p> <p><b>structured</b> 27:19</p> <p><b>studies</b> 54:16 79:12 83:10 87:7</p> <p><b>study</b> 81:3 83:11</p> <p><b>stuff</b> 3:17</p> <p><b>subacromial</b> 51:13</p> <p><b>subjective</b> 62:17,18,20 63:8,12,13,16</p> <p><b>submit</b> 20:7</p> <p><b>submitted</b> 61:14</p> <p><b>subpoena</b> 3:12 4:1,5,16 14:16,21 15:16,21 16:2,2,3,9,11,12,16 18:2 20:3 35:5,7,16 35:21 102:20</p> <p><b>subpoenaed</b> 79:7,10,14</p> <p><b>subpoenas</b> 17:1</p> <p><b>subsequent</b> 16:7 48:10</p> <p><b>successful</b> 57:10</p> <p><b>sufficient</b> 39:16</p> <p><b>Suite</b> 1:14 2:6,15 37:13 38:2</p> <p><b>sum</b> 34:19 73:11</p> <p><b>summary</b> 24:20,20 25:1 98:2</p> <p><b>supplied</b> 73:15 80:5</p> <p><b>supply</b> 15:5</p> <p><b>support</b> 54:12</p> <p><b>sure</b> 3:14 20:20 21:5 37:3 45:18 47:10 72:11</p> <p><b>surgeon</b> 42:2</p> <p><b>surgeons</b> 40:16 42:13 43:15,19 59:20 60:1</p> <p><b>surgeries</b> 12:20 66:15 92:16 96:5</p> <p><b>surgery</b> 1:13 12:12 16:6 34:17 41:21 42:5,12,18 43:1</p>	<p>44:16 74:5</p> <p><b>surgical</b> 41:16,19 56:4 94:7</p> <p><b>surprise</b> 67:12</p> <p><b>surrounding</b> 88:12,14 88:15 89:8,14,17</p> <p><b>suspect</b> 76:18</p> <p><b>sustained</b> 40:5 56:7</p> <p><b>swear</b> 3:16 38:5</p> <p><b>sweet</b> 72:5</p> <p><b>sworn</b> 38:8 101:7</p> <p><b>symptomatology</b> 57:3</p> <p><b>symptoms</b> 54:19 87:1</p> <p><b>syndrome</b> 54:21</p> <p><b>system</b> 24:14</p> <p><b>S-C-H-R-U-M</b> 75:12</p> <p><b>S1</b> 52:9</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tacking</b> 58:1</p> <p><b>take</b> 53:19 55:13,15 63:15 93:21 97:11,12 99:19</p> <p><b>taken</b> 46:14 53:11,14 75:13</p> <p><b>takes</b> 61:21 93:18 94:4 94:5</p> <p><b>taking</b> 15:15 37:15 49:4 90:1 94:8,9</p> <p><b>talk</b> 95:13</p> <p><b>talking</b> 98:21 99:12</p> <p><b>tax</b> 6:19 10:20 11:2 12:11,17 13:7,11,17 13:20 14:1 19:13,14 20:14,17,18,18 22:21 23:1</p> <p><b>taxes</b> 12:14,15 17:9,9 21:1</p> <p><b>tear</b> 50:4</p> <p><b>tech</b> 48:9</p> <p><b>telephone</b> 5:13</p> <p><b>tell</b> 7:6 21:18 27:12 34:2,8 38:9 62:21 63:2 68:4 92:10</p> <p><b>telling</b> 31:6 34:11</p> <p><b>tells</b> 7:8 46:14 92:16</p> <p><b>tender</b> 62:21</p> <p><b>tendered</b> 10:12 35:7 84:9</p> <p><b>tenderness</b> 50:21 51:3 51:5,13 52:7</p> <p><b>tends</b> 48:14</p> <p><b>testified</b> 38:10 66:18 67:8 68:1,8 74:20 76:4 80:4 82:17 97:20</p> <p><b>testify</b> 76:5 77:20 78:12</p> <p><b>testimonies</b> 67:16</p>	<p><b>testimony</b> 6:15 7:7 8:7 10:9,14 14:10,13 79:18</p> <p><b>thank</b> 38:18 64:1,3 68:12 98:6 99:21</p> <p><b>their</b> 45:19</p> <p><b>themselves</b> 38:12 51:12 72:5 81:5 88:5,10</p> <p><b>therapy</b> 46:21 55:9 56:9,11 57:15 84:19 84:21 85:2,10</p> <p><b>thing</b> 26:10 27:15 31:19,20 45:17 70:17 71:12</p> <p><b>things</b> 27:16 30:7 36:18 62:16 76:16 77:12 83:11</p> <p><b>think</b> 20:21 21:2,20 22:19 23:12,16 32:18 43:9 48:1 70:8 76:8 76:14 84:1,21</p> <p><b>third</b> 5:17 43:9,11 74:3</p> <p><b>Thomas</b> 2:21 37:12</p> <p><b>thoracic</b> 51:20 52:2</p> <p><b>though</b> 6:2 41:4 58:1 72:19 83:8 89:7</p> <p><b>thought</b> 8:21 9:3 57:9 68:14</p> <p><b>three</b> 8:12,15 21:1 34:20 47:14 56:13 57:1,5,12,14 58:13 58:16 59:10 60:6,15 61:16 67:17 68:11,14 73:1 76:20 77:6 82:12,18 85:1,3,8,8 85:13 91:8 94:7,7 96:11,15</p> <p><b>three-month</b> 57:16</p> <p><b>threw</b> 21:17</p> <p><b>throb</b> 63:2</p> <p><b>through</b> 5:3 13:9 16:2 27:15 35:14 40:18 45:15 51:9,21 52:5 64:19 69:7 83:20 97:2</p> <p><b>throwing</b> 22:3</p> <p><b>thrown</b> 22:7</p> <p><b>Thursday</b> 1:11 37:21</p> <p><b>tight</b> 91:9</p> <p><b>time</b> 16:11 34:4,5 36:19 43:9,11 44:7,17 47:15 53:19 54:18 57:16 58:3 59:2,17 59:19 60:4 67:15 68:7,7,17 69:5 76:2 77:3,21 78:14 79:2 80:13 83:13,19 84:21 101:6</p>	<p><b>times</b> 8:17 57:1,5,12 61:16 76:5,10 77:19</p> <p><b>tissue</b> 87:2,4,6,11 89:8</p> <p><b>tissues</b> 88:11,14,15,18 89:11,14,17</p> <p><b>today</b> 14:10,13 15:1 16:10,16 20:3 63:15 68:10 79:18 92:4</p> <p><b>together</b> 26:17,18 28:6</p> <p><b>told</b> 34:14 80:8 87:18</p> <p><b>tomorrow</b> 92:15 93:14</p> <p><b>tone</b> 83:6</p> <p><b>total</b> 29:21 32:12,15 33:20 34:17 73:11 74:7</p> <p><b>touch</b> 51:6</p> <p><b>Tover</b> 5:18,18 6:3,3</p> <p><b>towards</b> 51:2 77:15</p> <p><b>Towers</b> 2:6</p> <p><b>Towson</b> 2:16</p> <p><b>transcript</b> 10:7,18 101:10</p> <p><b>trapezius</b> 50:21</p> <p><b>trauma</b> 86:3,11</p> <p><b>treat</b> 44:8,11</p> <p><b>treated</b> 46:16 89:2</p> <p><b>treating</b> 7:1,1,2 26:15 27:8 31:8 47:5 69:10 87:3</p> <p><b>treatment</b> 39:4 40:11 40:15,20 41:1,5 53:12,15 56:6 57:7 81:17 82:10,11 89:1 96:14</p> <p><b>trial</b> 8:8 43:4</p> <p><b>tried</b> 56:17</p> <p><b>trigger</b> 54:13 55:4 56:16,20 57:11 59:5 61:6,7,8,11,12 82:13 82:17 83:3 87:4 89:5</p> <p><b>true</b> 101:11</p> <p><b>trusts</b> 11:18</p> <p><b>truth</b> 38:9,9,10</p> <p><b>try</b> 10:2 77:7,8,14,14 77:16,17</p> <p><b>trying</b> 23:12</p> <p><b>Tuesday</b> 77:9</p> <p><b>tunnel</b> 54:21</p> <p><b>turn</b> 46:9</p> <p><b>twice</b> 34:17</p> <p><b>two</b> 34:7,21 36:13,18 40:17 42:1 43:10 47:4,16 57:1,4,11,13 57:15 59:10 60:6,14 61:16 62:10 65:1 67:17 68:9,15,16,17 69:16 70:5 71:7 81:8 82:12,18 85:1,5,8,13</p>	<p>91:8 94:9 96:11,15</p> <p><b>type</b> 44:13 45:11 49:15 60:3,3</p> <p><b>types</b> 6:21 56:6</p> <p><b>typewritten</b> 98:4</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>UAW</b> 72:9</p> <p><b>ugly</b> 63:11</p> <p><b>ultimately</b> 70:3 85:21</p> <p><b>ultrasound</b> 57:21</p> <p><b>unaware</b> 15:20</p> <p><b>under</b> 15:13 26:3,6,8 26:10 73:20</p> <p><b>understand</b> 46:4 69:11</p> <p><b>understanding</b> 11:13</p> <p><b>underwent</b> 41:1 96:17</p> <p><b>United</b> 42:2</p> <p><b>University</b> 41:15</p> <p><b>unless</b> 44:1,3 59:15 90:6</p> <p><b>unquote</b> 82:19</p> <p><b>unreasonable</b> 84:2,20</p> <p><b>unremarkable</b> 49:10</p> <p><b>until</b> 16:16 65:6 80:13 93:13</p> <p><b>unusual</b> 91:3</p> <p><b>upper</b> 51:16</p> <p><b>up-to-date</b> 8:6</p> <p><b>use</b> 4:16 23:20 24:3,7 31:12 56:9 85:6 92:7</p> <p><b>used</b> 11:8 24:9 29:17 73:3</p> <p><b>uses</b> 24:13</p> <p><b>usual</b> 56:14 57:17 58:12,18 61:8 62:12 84:14</p> <p><b>usually</b> 29:7 43:21 61:8 62:6 70:21 72:16 74:3 78:6 91:3,7,11</p> <p><b>utilize</b> 6:18 56:19</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vacation</b> 16:6</p> <p><b>van</b> 46:8</p> <p><b>varies</b> 70:10</p> <p><b>various</b> 7:6,18 26:20</p> <p><b>vehicle</b> 46:6,9,10 86:11</p> <p><b>vehiclewise</b> 48:11</p> <p><b>versus</b> 11:10 26:15 27:9 30:12 31:1,8 37:17 62:17 75:4</p> <p><b>very</b> 13:3 53:3 78:5 87:7</p> <p><b>video</b> 3:11,14,19 5:7 6:12 8:8 35:9,11 37:5 37:9,12,14 38:4 75:21 78:12,14</p>
---	--	---	---	--

<p><b>Videographer</b> 2:21 37:11 38:11,17 100:2 <b>videotape</b> 76:20 <b>videotaped</b> 1:10 <b>view</b> 45:19 <b>visit</b> 55:20 59:5 61:1,5 80:17 82:5 84:10,11 84:13 <b>visits</b> 31:14 32:1,2 57:13 59:3,8,9,10,17 59:21 60:6,15,15 81:17 96:16 <b>vitae</b> 6:6,8 96:21 102:13 <b>Voyager</b> 46:8 <b>vs</b> 1:3</p>	<p><b>were</b> 4:21 9:7 10:8,19 15:18,20 16:12,18 18:11,13 35:14,16 43:5 50:11 51:11 52:13,17 53:14 54:17 57:17 58:11 59:1,8 64:5 65:8 66:5 68:12 76:14 79:7,10 81:18 82:13,19 83:20 84:7 84:10,11,14,15,15,16 87:1,3,6 96:9 97:20 98:20 102:12 <b>weren't</b> 85:16 <b>West</b> 2:15 <b>Westminster</b> 77:12 <b>We'll</b> 9:14 <b>we're</b> 6:2,18 7:1 19:5 28:11 33:3 34:13 40:18 <b>we've</b> 22:10 24:10 30:16 76:16 97:2 <b>whacked</b> 29:6 <b>When's</b> 78:14 <b>while</b> 10:4 <b>whole</b> 16:5 38:9 56:8 78:11 <b>wife</b> 11:6 <b>willing</b> 14:3 <b>wit</b> 101:2 <b>within-named</b> 101:5 <b>witness</b> 3:4,17,18 7:7 10:9,14 38:5,8 64:2 65:9 68:15 98:20 99:2,10,17 101:5,15 <b>word</b> 63:15 <b>words</b> 51:11 <b>work</b> 11:9,10 13:9 24:9 26:2 27:9,18,20,20 28:8 31:8,8 33:19,21 34:6 44:14 48:7 63:5 71:21 72:7,18 87:5 94:1 95:19 <b>worked</b> 66:8 <b>Workers</b> 73:21 74:1 <b>worsen</b> 86:4,12 <b>wouldn't</b> 67:12 87:4 89:4,4 98:17 <b>wrists</b> 51:18 <b>write</b> 94:15 <b>written</b> 5:11</p>	<p><b>Y</b> <b>yeah</b> 3:16 8:2 21:9 26:8 29:21 30:1 82:8 99:17 <b>year</b> 8:4 9:9 21:2,15 23:15 24:11 25:3 27:6 28:7,21 29:6,8 30:2,20 31:6 33:6 42:20 43:2 56:10 71:18 72:21 73:4 76:5,10 77:19 80:17 92:2 95:6,15 97:1,4,5 <b>yearly</b> 25:5,11,14 30:11 72:10 <b>years</b> 6:16 8:12,15 10:21 17:10,15 19:9 20:20,21 21:1,16,19 23:18 40:17 42:1 43:6 47:14,16 72:3 76:11 81:8 <b>year-end</b> 33:17 <b>yellow</b> 63:12</p>	<p><b>11-22-02</b> 81:3 <b>12th</b> 64:9,16 <b>13</b> 7:19 27:19,21 42:6 67:8,8,15,21 <b>13-C-05-063121</b> 1:5 37:18 <b>14</b> 12:19 42:6 102:7 <b>14th</b> 4:8 47:17 65:1 <b>150</b> 70:12 73:16 <b>16th</b> 93:2 <b>19</b> 9:2 66:19 74:16 80:7 <b>19-month</b> 67:15 68:7 68:17 <b>190</b> 50:13 <b>1967</b> 41:15 <b>1969</b> 41:20 <b>1972</b> 41:21 <b>1974</b> 42:4 <b>1983</b> 43:4 <b>1990s</b> 80:7 <b>1991</b> 42:12 <b>1993</b> 43:5</p>	<p><b>3:54</b> 3:19 <b>30</b> 19:9 76:5,11 <b>33</b> 9:3 67:7,8,21 <b>35</b> 43:18 76:5,11 102:13,14,15,16 <b>350</b> 73:10,12,15 <b>37</b> 102:20 <b>38</b> 102:6</p> <hr/> <p><b>4</b> <b>4</b> 6:5 10:18 35:14 59:9 68:20 69:6 73:12 76:11 84:12 96:10 102:16 <b>4:30</b> 1:12 37:10 38:1 <b>40</b> 43:18 <b>400</b> 70:19 73:12 <b>41</b> 50:13 <b>410-553-6000</b> 2:9 <b>410-832-8003</b> 2:17 <b>410-832-8080</b> 2:18 <b>45</b> 50:17</p>
<p><b>W</b> <b>wait</b> 99:6 <b>waived</b> 3:5,8 <b>walked</b> 36:20 <b>want</b> 30:19 31:12 35:8 35:15 37:4 45:17 66:20 67:3 70:21 71:20 72:8 <b>wanted</b> 47:6 <b>wasn't</b> 46:10 47:10 48:7 58:16 67:19 83:2 84:11,20 88:7 98:16 <b>water</b> 53:10 <b>way</b> 8:8 11:21 12:1 13:8,19 27:7 30:10 31:6 50:19 84:17 101:13 <b>ways</b> 29:6 <b>weakness</b> 48:17,21 <b>wearing</b> 46:7 <b>Wednesday</b> 77:9 <b>Wednesdays</b> 77:12 <b>week</b> 16:4,5 34:7,8,16 34:16,17,21,21 35:1 66:14 69:17 70:6 71:9,15 77:8,15 78:16,19 92:11 96:4 <b>weeks</b> 85:6,7 <b>week's</b> 34:4 <b>well</b> 7:12 22:2 24:20 25:21 30:14 32:12,19 32:21 34:11,14 42:15 49:18,21 53:17 56:8 57:11 67:19 71:12 72:18 76:2 86:15 89:6 91:2,13,18 <b>went</b> 9:2 13:10,13 36:18 41:13,18 47:8 54:10 81:6 82:7 96:10</p>	<p><b>X</b> <b>X-ray</b> 54:8 <b>x-rayed</b> 46:15 <b>X-rays</b> 12:20 31:19 52:21 54:1,3,5 62:1 91:18,18</p>	<p><b>Z</b> <b>Zois</b> 2:4,5 3:14 9:15 14:17,18 35:8 36:2 38:15,15 44:18 64:3 64:4 68:12 69:5 96:7 98:7 99:1,3,6 100:1 102:7,19</p> <hr/> <p><b>S</b> <b>\$100</b> 62:6 <b>\$1400</b> 75:20 <b>\$1800</b> 78:3 <b>\$200</b> 74:11 <b>\$220</b> 72:17 <b>\$225</b> 70:12 <b>\$250</b> 61:7 <b>\$300</b> 62:8 <b>\$400</b> 70:9,10 <b>\$75</b> 62:10 73:16</p>	<p><b>2</b> <b>2</b> 32:1 36:14 97:15 102:14 <b>20</b> 34:2,15 37:13 50:16 71:17 73:3,5 74:7,12 76:10 <b>200</b> 72:16 <b>2002</b> 39:19 40:6 46:7 80:1 85:20 <b>2003</b> 47:6 48:1,2 55:5,6 55:10 85:20 98:2 <b>2004</b> 9:1 33:14 55:21 80:20,21 81:1,4 <b>2005</b> 32:4,13 33:6 75:6 75:13,15 95:10 99:4 <b>2006</b> 1:12 4:12 16:13 37:21 47:17 48:2 64:10,16 65:1,10 79:1 93:3 98:2 101:16 102:3 <b>2009</b> 101:21 <b>210</b> 1:14 38:2 <b>21061</b> 2:8 <b>21117</b> 1:15 38:2 <b>21201</b> 37:14 <b>21204-5025</b> 2:16 <b>24th</b> 65:10 <b>25</b> 42:13 58:11 73:4 <b>28</b> 1:11 37:21 102:3 <b>28th</b> 4:12 16:13 75:13 <b>29th</b> 43:2 101:16</p> <hr/> <p><b>3</b> <b>3</b> 10:6 32:2 50:13 66:21 69:6 74:14 102:6,15</p>	<p><b>5</b> <b>5</b> 34:2,2,15,15 35:1,1,2 50:13 76:11 <b>5:26</b> 100:3,4 <b>50</b> 50:17 <b>500</b> 2:15 <b>575</b> 73:17,18</p> <hr/> <p><b>6</b> <b>6</b> 8:6 35:18 <b>60s</b> 97:11 <b>600</b> 43:16,18 <b>615</b> 2:6 <b>64</b> 102:7 <b>650</b> 73:10</p> <hr/> <p><b>7</b> <b>7/14/06</b> 102:14 <b>7:30</b> 78:8 93:14 <b>714</b> 35:18 <b>73</b> 42:19 <b>7310</b> 2:7</p> <hr/> <p><b>8</b> <b>8</b> 43:8 <b>832-8080</b> 35:18</p> <hr/> <p><b>9</b> <b>9</b> 27:21 <b>901</b> 37:13 <b>96</b> 102:6 <b>99213</b> 60:7 <b>99214</b> 60:5</p>