

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

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IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND
EXLINE-HASSLER
Plaintiff
v. Civil Docket
No. 10-C-12-000410
PENN NATIONAL INSURANCE, ET AL.,
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL - DAY FOUR)

Frederick, Maryland
January 25, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:
LAURA C. ZOIS, ESQUIRE
JOHN B. BRATT, ESQUIRE

For the Defendant:
WALTER E. GILLCRIST, JR., ESQUIRE
ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:
GUIDO PORCARELLI, ESQUIRE

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T A B L E O F C O N T E N T S

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	REXCROSS:
For the Plaintiff:				
Ms. Exline-Hassler	7	68/175	182	--
For the Defendant:				
Brittany Renne	211	216	--	--
Dr. McGrail	221/355	279	364	373
EXHIBITS:				
		IDENTIFICATION:		
For the Plaintiff:				
Exhibit No. 2	PRE-MARKED		229	
(Dr. McGrail's resume)				
Exhibit No. 2(a)	PRE-MARKED		--	
(Dr. McGrail's case list)				
Exhibit No. 3		186		193
(McGrail fee schedule)				
Exhibit No. 3(a)		188		193
(Plaintiff's property damage photos)				
Exhibit No. 4	PRE-MARKED		--	
(Report of records reviewed)				
Exhibit No. 5(a)		196		198
(Dr. McGrail's invoices)				
Exhibit No. 5(b)		196		198
(Dr. McGrail's invoices)				
Exhibit No. 5(c)		196		198
(Dr. McGrail's invoices)				

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T A B L E O F C O N T E N T S

P A G E

EXHIBITS:	IDENTIFICATION:	EVIDENCE:
For the Plaintiff:		
Exhibit No. 9	186	193
(Plaintiff's medical expense index)		
Exhibit No. 10	PRE-MARKED	--
(Medical Bates stamp)		
Exhibit No. 13	PRE-MARKED	70
(Enlarged version of Exhibit 38(a)(1))		
Exhibit No. 20	186	193
(Plaintiff's past prescription history)		
Exhibit No. 20(a)	197	200
(Plaintiff's past prescription history)		
Exhibit No. 21	186	193
(Dr. Naff's CV)		
Exhibit No. 22	186	193
(Dr. Naff's fee schedule)		
Exhibit No. 23	188	193
(Dr. Sloan's demonstrative photos)		
Exhibit No. 25	188	193
(Dr. Sloan's letter)		
Exhibit No. 26	PRE-MAKED	202
(Summary of narcotic medications)		

T A B L E O F C O N T E N T S

		I D E N T I F I C A T I O N :	E V I D E N C E :
1			
2			P A G E
3	EXHIBITS:		
4	For the Plaintiff:		
5	Exhibit No. 27	61	--
6	(Lost wage summary)		
7	Exhibit No. 33	PRE-MARKED	21
8	(Collection of photographs)		
9	Exhibit No. 35	188	193
10	(MRI Slices)		
11	Exhibit No. 39(a)	188	193
12	(Plaintiff's exhibit of Defendant Sapp)		
13	Exhibit No. 40	58	--
14	(Leave slips)		
15	Exhibit No. 42	PRE-MARKED	NOT ADMITTED
16	(Performance evaluations)		
17	Exhibit No. 50	188	193
18	(Dr. Sloan deposition transcript)		
19	Exhibit No. 52	188	193
20	(Attachment to Dr. Naff's deposition)		
21	Exhibit No. 56	188	193
22	(Before calendar)		
23	Exhibit No. 57	188	193
24	(After calendar)		
25			

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T A B L E O F C O N T E N T S

P A G E

MR. PORCARELLI'S OPENING STATEMENT 218

EXHIBITS: IDENTIFICATION: EVIDENCE:

For the Defendant:

Exhibit No. 13	PRE-MARKED	70
(Enlarged version of 38(a)(1))		
Exhibit No. 19	PRE-MARKED	393
(Packet of records from Binder 10)		
Exhibit No. 20	393	NOT SPECIFIED
(Nerve conduction test)		
Exhibit No. 22	PRE-MARKED	374
(Videotaped deposition - disk one)		
Exhibit No. 22(a)	PRE-MARKED	375
(Videotaped deposition - disk two)		

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(Whereupon, at 9:03 o'clock, a.m., January 25, 2013 before The Honorable Julie S. Solt, Judge, in Circuit Courtroom Number Four, the following commenced:)

P R O C E E D I N G S

(Jury not present.)

THE CLERK: All rise. The Circuit Court for Frederick County is now in session. The Honorable Julie Stevenson Solt is presiding.

THE COURT: And good morning again, everyone. Please be seated.

MR. BRATT: Good morning, Your Honor.

MS. ZOIS: Good morning, Your Honor.

MR. PORCARELLI: Good morning, Your Honor.

THE COURT: Back on the record in Exline-Hassler v. Sapp.

MS. ZOIS: Good morning, Your Honor.

THE COURT: And good morning, and are we ready?

MS. ZOIS: Yes, Your Honor.

MR. GILLCRIST: Yes, Your Honor.

THE COURT: Okay. Bring the ladies and gentlemen in.

(Jury entered the courtroom.)

THE COURT: And good morning again, everyone. Note for the record we have all of our jurors present. You may proceed.

MS. ZOIS: Thank you, Your Honor. Um, Plaintiff would

1 call Jacqueline Exline-Hassler to the stand.

2 JACQUELINE EXLINE-HASSLER,
3 a witness produced on call of the State, having
4 first been duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MS. ZOIS:

8 Q Can you give us your full name, please?

9 A Jacqueline Exline-Hassler.

10 Q And where do you live?

11 A I live in Keedeysville, Maryland.

12 Q And what's your address there?

13 A 18941 Gidding Road.

14 Q How long have you lived in that area?

15 A Um, I've been there since 1999, so what, 14 years.

16 Q And where did you live before that?

17 A Um, in Sharpsburg.

18 Q How far aware are those two towns from each other?

19 A Um, probably five, six miles.

20 Q Okay. And how old are you?

21 A I am 46.

22 Q When's your birthday?

23 A Yesterday.

24 Q Do you have any kids?

25 A I have three boys.

- 1 Q And what are their names?
- 2 A Chadrick, Denton and Peyton.
- 3 Q Do you have any grandkids?
- 4 A I have five grandkids and then one on the way
- 5 Monday.
- 6 Q And what's the oldest grandchild?
- 7 A He is six.
- 8 Q And what's the youngest grandchild?
- 9 A Uh, eight months.
- 10 Q How often do you see them?
- 11 A They're in and out of the house all the time, so at
- 12 least, a minimum two or three times a week.
- 13 Q How close does your family live to where you are
- 14 now?
- 15 A Um, both of my boys live in, with maybe a five mile
- 16 radius at that.
- 17 Q Do any of them live at home with you?
- 18 A Um, my youngest still lives at home.
- 19 Q And which one's that?
- 20 A Peyton.
- 21 Q Where do you work?
- 22 A I live in, uh, work in, uh, Glen Burnie, Maryland.
- 23 Q What's the name of the office where you work?
- 24 A American Postal Workers Union Health Plan.
- 25 Q And who's your supervisor?

1 A Sharon Hamilton.
2 Q How long has she been your supervisor?
3 A Um, I've been under her, I think 10 years now.
4 Q And --
5 A No, I'm lying, uh, 2006 I think I went back there.
6 Q How, and how long have you worked at, with your
7 current employer?
8 A I've been there almost 18 years.
9 Q Where is your office located?
10 A Glen Burnie, Maryland.
11 Q How far of a commute do you have every day?
12 A I drive 82 miles one way to work.
13 Q So, it's 82 there, 82 back?
14 A Correct.
15 Q I want the jury to see some of your house and some
16 of your motorcycles and that sort of thing --
17 A Okay.
18 Q -- (To the Court) we'll bring up Exhibit 33, Your
19 Honor.
20 THE COURT: Okay.
21 BY MS. ZOIS:
22 Q Now, I'm gonna' turn this so you can see it, too.
23 MS. ZOIS: Can every . . .
24 BY MS. ZOIS:
25 Q Can you see that picture?

1 A Yes.

2 Q Okay. Can you describe for the ladies and
3 gentlemen of the jury what's shown in that photograph?

4 A Uh, that's a trailer that we trailer our bikes to
5 bike week, and that's my middle son with him, uh, moped.

6 Q And where was this picture taken?

7 A Uh, that was taken in Saint Augustine. That's
8 where we stay when we go to Daytona.

9 Q (To Ms. Harveson) And next photo please, Ms.
10 Harveson. (To the witness) And can you describe what's shown
11 in this photograph, please?

12 A That's my dad's house and both of my boys. One's
13 on my bike and the other one is a, our 1960 Harley Sportster.

14 Q Next photo. And who's shown in this picture?

15 A That is me and Chadrick. That's, uh, that's an old
16 picture.

17 Q Okay.

18 A That was one of 'em, our Kaw (sic), that was a
19 Kawasaki that we had.

20 Q Okay, next photo, please. And what is this a
21 picture of?

22 A Um, I believe Steve took that picture. That's at
23 Daytona one year.

24 Q And who's the --

25 A When Peyton, Peyton was small.

1 Q Next picture, please. And how about this one?

2 A Um, that's our bikes.

3 Q And how about this one?

4 A That's my brother and Steve at my dad's house with
5 our '60.

6 Q And tell me a little bit about the '60.

7 A Um, my dad, my brother and I did a little bit of
8 work on it, and we rebuilt it.

9 Q Okay. And what's shown in this photograph?

10 A That one is both my boys, my brother, my brother's
11 bike, my bike's back 'er, and Steve's bike.

12 Q Okay. And what's this a photograph of?

13 A That's my garage, and that's all of our bikes, my
14 oldest son and then that's Peyton settin' on a dirt bikes,
15 and then we have smaller bike that he used to ride that now
16 my grandchildren ride.

17 Q Next photograph, please. And what's that?

18 A That's my bike.

19 Q And how long have you had your bike?

20 A Uh, '98.

21 Q And what kind of bike is it?

22 A Sportster 883.

23 Q And can you tell the ladies and gentlemen of the
24 jury how many pieces of equipment do you have on your land
25 that you use for fun? What do you have?

1 A For fun?

2 Q Yes.

3 A We have, uh, dirt bikes.

4 Q How many?

5 A We have two (sic) 50, we have one 50 a 70 then we
6 have an 80, which is a cross trail. Um, we have four
7 wheelers, we have a 70 four wheeler and then we have two 220
8 Bayou's made by Honda.

9 Q And does that include your bike and your --

10 A No, that's just out, that's more of ATV stuff that
11 we have.

12 Q Okay. So, you have the dirt bikes and the four
13 wheelers?

14 A Correct.

15 Q And then how many road bikes do you have?

16 A We have three.

17 Q And can you tell us about those?

18 A Um, one's a '96, which is mine, Steve's is a '99,
19 and then, uh, my son has the, uh, 2000-and, I think it was a
20 2003, but yes it's a 883 low.

21 Q How'd you get into riding motorcycles and ATV's and
22 dirt bikes? How did that become a hobby of yours?

23 A Uh, my parents have always rode us. They used to
24 put me in between them when I was little and we used to ride
25 all the time, and then as growing up I continued to ride via

1 dirt bikes or, as I got older, street bikes.

2 Q And what are your memories as a child about riding
3 on a bike, how'd you feel?

4 A Well, as a kid it's really fun, you know, you're,
5 especially when you're riding with your dad it's just really
6 cool, the air, you know, nothing to worry about and the air
7 going through your head.

8 Q What about, do your, uh -- and you said your
9 brother, does he ride also?

10 A Yes, he does. Used to dirt, do, uh, um, dirt bike
11 and then, uh, he progressed on to street bikes.

12 Q And how's old your brother?

13 A Uh, he just turned 40.

14 Q And is it something that you and your family did
15 growing up?

16 A Yes.

17 Q Is it something that you and your family before
18 June of 2009 did together as a family?

19 A Yes, we used to ride at least, if not every, every
20 other weekend, at least once a month we'd all go together,
21 depending on schedules after they got older and got
22 girlfriends, got kids, and . . .

23 Q How often did you and your husband ride together
24 before June of 2009?

25 A We tried ourselves to go every other weekend.

1 Q And how, how do you care for all these bikes?
2 That's a lot of equipment. Do you take them into shops or --

3 A No, my husband does most the work on everything.

4 Q And when you and your brother were rebuilding the
5 1960 who, who did that?

6 A My dad taught us.

7 Q Um, now -- (To Ms. Harveson) next picture, please,
8 Ms. Harveson. (To the witness) Can you tell us what that's a
9 picture of?

10 A That's our home.

11 Q And, uh, we understand from your husband you have
12 about nine acres only?

13 A Correct.

14 Q How much of the nine acres, if you know, is cleared
15 and how much is forest, if you know?

16 A Um, I don't know. My measurements are bad. I want
17 to say three to four acres is all grass that is mowable.

18 Q All right. And tell us about some of the projects
19 that you've done at your home. Your husband told us a little
20 bit about a retaining wall, I believe, that you built?

21 A We have several retaining walls that we have around
22 our house that we built.

23 Q And was it done all at once or in a, in a
24 progression?

25 A .In progression. The last one that we finished was

1 up around the back of our house. Uh, we link (unclear - one
2 word) concrete, and, um, it's --

3 Q What's it, I, I don't know anything about how to
4 build a retaining wall, I gotta' be honest.

5 A (Chuckles.)

6 Q Can you tell me how to build a retaining wall --

7 A You gotta' dig out --

8 Q -- I mean, what do you do?

9 A -- and you gotta' level it, and then you gotta' put
10 rebar down with, uh, then you gotta' put stone on, stone dust
11 --

12 Q And --

13 A -- and you put sand.

14 Q -- did you participate in these activities?

15 A Yes.

16 Q And was this before June of 2009?

17 A Yes.

18 Q Okay. Um, next slide, please. And can you tell us
19 what that shows?

20 A Um, that was just a picture we took that you can
21 see the corn, some of the corn anyway.

22 Q And is that, uh, part of your garden?

23 A Yes, it's on the outer side of the garden, yeah.

24 Q And tell us, for people that know, don't know how
25 to do this, how do you, what's, in order to get the ground

1 ready for a garden that's the size a hundred by a hundred,
2 what do you have to do? What does it involve?

3 A You have to lime it, you have to disc it, you need
4 to plow it.

5 Q I don't know what that means either. What it, what
6 it, how, how do you, what do you use to plow it?

7 A You have -- we use a tractor.

8 Q Okay.

9 A Some, I know, I mean, we also have the, uh, the,
10 um, I can't even think of the name, you gotta' hold it by
11 your hand, but we use the tractor most of the time.

12 Q And do you attach something to the tractor to do
13 it?

14 A Yeah, there are attachments, we have farm trac
15 (sic), attachments.

16 Q And what about, how do you fertilize it, do you
17 have to pull bags of fertilizer in, or does that go on back
18 of the tractor or . . .

19 A We usually put them on the back of the, one of the
20 tractor parts and carry them over to, and then we dump it out
21 and till it in.

22 Q And are these things that you did before June of
23 2009?

24 A Correct.

25 Q And how did you learn how to do all of this?

1 Where, where did, where did, where did, how did you learn to
2 like this?

3 A I grew up on a farm.

4 Q And --

5 A A dairy farm.

6 Q -- tell us about that.

7 A Uh, we had a dairy farm up until I was probably 16.
8 Uh, after that we just maintained livestock, like chickens,
9 and we had several cow and then we also had horses, and we
10 used to ride horses all the time.

11 Q And were you responsible for doing work on the
12 farm?

13 A Yeah. In order to have animals you have to do
14 work. My grandfather was very stern about that.

15 Q And after you had a house on, of your own did you
16 plan to have a garden?

17 A Yes.

18 Q And --

19 A I've always had a garden, even in when in a
20 townhouse.

21 Q Can you describe for the ladies and gentlemen of
22 the jury the types of things that you planted in your garden
23 before June of 2009?

24 A Pepper, corn, squash, tomatoes, um, we had
25 different kinds of peppers, and then we'd have, um, spaghetti

1 squash, onions, potatoes.

2 Q Pumpkins?

3 A We always had pumpkins. The kids like to cut
4 pumpkins every year.

5 Q Watermelon?

6 A We do do watermelon, and, uh, um, cantaloupe.

7 Q And, part of my understanding from what your
8 husband says, part of the garden is for that sort of thing
9 and the other part of the garden is the corn?

10 A He usually put the corn out for the deer, I put
11 corn out for us.

12 Q So, there's two different kinds of corn?

13 A There's two different kinds. One's a sweet corn
14 and one just a, I call it a junk corn, is what I call it.
15 It's cheaper.

16 Q Okay. Fair enough. And how's responsibility was
17 it before June of 2009 to, to maintain the garden, to harvest
18 the fruit and the vegetables, take care of it, who did all of
19 that before June of --

20 A I did it most of the time.

21 Q And when would you do it?

22 A Oh, in the evenings when I got home from work or on
23 the weekends.

24 Q And how much time did you spend doing that?

25 A Uh, I love to garden so it would be at least every

1 night, if not, every other night. You (unclear - one word),
2 I try to put out, um, I have hoses, I got hoses that I poked
3 holes in that, I could open that up and it would help
4 watering them.

5 MS. ZOIS: Next photograph, please, Ms. Harveson.

6 BY MS. ZOIS:

7 Q Is that pool still at your house?

8 A No, that one's gone now, we have a, an above ground
9 that we had, uh, put in it's a 24. That was just one we had

10 --

11 Q And --

12 A -- for the kids meanwhile.

13 Q -- when did you put in the new pool?

14 A 2006, I believe.

15 Q And what did you do to put in the pool?

16 A Um, because it's the back of our house and we have
17 a steep slope we had to clear out the slope, um, with our
18 skid loader and tractor, we leveled it up, stone, dust, sand,
19 got it ready for the pool guy to come in and do his thing.

20 Q And after the pool guy came in and did his thing
21 what happened next?

22 A Then we, um, put white stone around it so we go get
23 that on the trailer and then we'd unload it. Sometimes we
24 use the tractor, other times we had to do it by hand.

25 Q And did you help in doing this?

1 A Yes.

2 Q And you helped complete the pool?

3 A Correct, because then we put a retaining wall
4 there, too.

5 Q And did you help do that?

6 A Yes.

7 Q And this was in 2006?

8 A Yes.

9 Q After 2005, obviously?

10 A Yes.

11 Q Before June of 2009 what other pieces of quip
12 (sic), of equipment did you have on your land that, that
13 weren't the fun stuff, but the other stuff, the stuff that
14 helps you mow the lawn and --

15 A Our tractor equipment?

16 Q Yes.

17 A Um, we have a brush hog, we have a, uh, digger, we
18 have a hole drill. Um, we also have a plow. We have the
19 tiller, they're all three point hitch attachments.

20 Q Did you use all this equipment before June of 2009?

21 A Yes.

22 MS. ZOIS: Your Honor, we would offer into evidence
23 Plaintiff's 33, which is a collection of photographs.

24 MR. GILLCRIST: No objection, Your Honor.

25 MR. PORCARELLI: No objection.

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THE COURT: Be received.

(Item admitted into evidence as
Plaintiff's Exhibit Number 33.)

BY MS. ZOIS:

Q Taking you back a little bit to 2005.

A Okay.

Q Were you involved in a car accident in 2005?

A I got, a hit and run, a bump and tag that, um,
happened on 695 when I was coming home from work.

Q Okay. And can you describe what your car looked
like after the hit and run?

A Uh, it was above the tag on the right side it had
a, a mark just where her car had hit it, a white mark.

Q Let's back up a little bit. So, you're on 695 in
2005 --

A Correct.

Q -- and you were hit from behind?

A I was hit on an angle, yes.

Q And did that vehicle stay at the scene?

A No, she left the scene, when I pulled over she took
off.

Q And where'd you go (unclear - three words)?

A Uh, I pulled off the next exit, uh, which is 372, I
think it's Catonsville. Went to the 7-11. Tried to call the
police department. They told me they couldn't come out for

1 two hours. I had to go, so I asked them if I could give a
2 police report later in the evening and they said yes that'll
3 be fine. I drove home to show, you know, at that time Peyton
4 was playing baseball so we made it to the baseball game.
5 Then I called the police from there to get a, um, police
6 report so that I could call my insurance and turn it in.

7 Q And did you do that?

8 A I did.

9 Q And did you end up gettin' the car fixed?

10 A I did.

11 Q And can you tell us how much the damage was from
12 that?

13 MR. GILLCRIST: Objection, Your Honor. Relevance.

14 MR. PORCARELLI: Hearsay.

15 THE COURT: I'm gonna' overrule.

16 THE WITNESS: It was \$485.

17 BY MS. ZOIS:

18 Q And why'd you get it fixed if it was just a little

19 --

20 A The car was on six, what I bought it in September
21 so it was still brand, still a new car.

22 Q And at the time did you have the kind of coverage
23 that if you were injured by a hit and run vehicle of a
24 (unclear - one word) vehicle --

25 MR. GILLCRIST: Objection, Your Honor.

1 MR. PORCARELLI: Objection, Your Honor.

2 THE COURT: I'm gonna' sustain.

3 MS. ZOIS: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Counsel approached the bench and the following
6 occurred:)

7 (Husher turned on.)

8 THE COURT: Whether she has coverage or not doesn't have
9 anything to do with was she injured. Just ask her if she was
10 injured as a result. The reason why I allowed her to testify
11 as to the amount of damage is for comparative purposes versus
12 the testimony as to the amount of damage in this accident.
13 Don't get into insurance, don't get into coverage, don't get
14 into a claim for personal injury, just ask if she was injured
15 in this accident.

16 MS. ZOIS: Here's why, um, my proffer, Your Honor.

17 THE COURT: Okay.

18 MS. ZOIS: My proffer for why it is crucial to this case

19 --

20 THE COURT: Just make your proffer.

21 MS. ZOIS: -- for me -- I'm tryin' to do that. The
22 reason is because they're claiming that she was chronically
23 injured in this 2005 car crash and have three years of back
24 pain. They've also brought up the issue of secondary gain
25 for personal injury claims. So, in order for this jury to

1 properly evaluate the credibility of this witness and whether
2 or not she's, in this case, making a claim for secondary gain
3 based on an insur (sic), or based on an auto accident claim,
4 it's imperative that this Court allow her to be afforded the
5 opportunity to say that she, she could have if she had been
6 chronically in, injured in this case that required three
7 years of chronic back pain. If she did have the coverage for
8 that she did not make the claim in that case, but she is in
9 this case. So, Your Honor, I would ask that you reconsider
10 considering that this is, her credibility's on the line with
11 this.

12 THE COURT: Okay. I, I reconsidered, my med (sic), my
13 old ruling stands. I'm sustaining the objection. No
14 discussion of coverage. You may ask her if she was injured,
15 the extent of the injury --

16 MS. ZOIS: If she made --

17 THE COURT: -- and if she had any treatment, but nothing
18 about insurance or making a coverage claim --

19 MR. GILLCRIST: Thank you, Your Honor.

20 THE COURT: -- for personal injury --

21 MS. ZOIS: Wait, wait, wait, did you sue --

22 THE COURT: -- in this incident.

23 MS. ZOIS: -- did you sue anyone for any back pain from
24 that claim? Can I ask that?

25 THE COURT: Did you bring any kind of claim --

1 MS. ZOIS: Claim for bodily injury.

2 THE COURT: -- any kind of lawsuit for that.

3 MR. GILLCRIST: Oh, I'm sorry, wait a minute. Your
4 Honor --

5 THE COURT: She's --

6 MR. GILLCRIST: -- I thought that was out of bounds --

7 MS. ZOIS: Well, it shouldn't be.

8 MR. GILLCRIST: -- and they wouldn't bring that up.

9 THE COURT: So.

10 MR. GILLCRIST: If you'd let me talk, please, Counsel.
11 Um, I thought that it was out of bounds, uh, any, any, we are
12 contending she made a claim --

13 THE COURT: So.

14 MR. GILLCRIST: -- so, if, if --

15 THE COURT: Exactly.

16 MR. PORCARELLI: It wasn't disputed.

17 THE COURT: So, so, if that's not disputed that she
18 never made a claim that's clear.

19 MS. ZOIS: Then I'm gonna' ask for a stipulation --

20 THE COURT: Counsel, I've made my ruling you're not to
21 talk about that. You can ask if she was injured as a result
22 of this accident. Has she received any medical treatment,
23 and then move on.

24 MS. ZOIS: Let me ask a question.

25 MR. GILLCRIST: Okay.

1 MS. ZOIS: Can I get a stipulation then from these two
2 Defense attorneys that she did not make a bodily injury claim
3 for the 2005 crash?

4 MR. GILLCRIST: Um, not to go to the jury, but yeah.

5 THE COURT: So.

6 MS. ZOIS: So, what's the point?

7 THE COURT: That's, it --

8 MR. GILLCRIST: This is the type of historyonics, Your
9 Honor, that just is really troubling.

10 THE COURT: This, I'm, Counsel, I'm going to rule right
11 now. I have never seen such unprofessional stuff in my life
12 with you making faces on my rulings. That is not admissible.
13 I'm not going to allow you to bring it up. I'm not going to
14 allow you to talk about that. She can testify to that, you
15 can argue those facts to the jury and go on from there.
16 Let's move on.

17 MR. GILLCRIST: Thank you, Your Honor.

18 MR. PORCARELLI: Thank you, Your Honor.

19 (Counsel returned to the trial tables and the following
20 occurred:)

21 (Husher turned off.)

22 BY MS. ZOIS:

23 Q Were you injured in that accident?

24 A No, I was not.

25 Q Did you see, receive any medical treatment at all

1 for that accident?

2 A No, I did not.

3 Q Did you go to your primary care doctor?

4 A No.

5 Q Did you get any x-rays?

6 A No.

7 Q See a neurosurgeon?

8 A No.

9 Q See an orthopedic surgeon?

10 A No.

11 Q See an orthopedic surgeon?

12 A No.

13 Q Get pain injections?

14 A No.

15 Q See anybody at all after the 2005 car crash or any

16 kind of medical treatment at all?

17 A No, I wasn't injured. It was just a bump and tag.

18 Q What'd you do that night?

19 A I went to my son's ball game.

20 Q Taking you back to Christmas time 2007/2008.

21 A Yes.

22 Q Did you injure your back at that time period?

23 A After Christmas I was cleaning up Christmas stuff,

24 I carried a box, I slipped, I fell down the st (sic), one

25 steps.

1 Q And can you describe for the ladies and gentlemen
2 of the jury the kind of steps you fell down? Where in your
3 house were you?

4 A I have, I don't know, five steps on each stair, I
5 have two of 'em, I was carrying it down and I slipped, and I
6 fell.

7 Q After the fall did you get any medical treatment?

8 A I waited a couple weeks and I still had some side
9 pain so I did go to my urgent care about t.

10 Q And did you go to the emergency room or your urgent
11 care?

12 A It's an urgent care it's an, it's an office, urgent
13 care.

14 Q And what did they do for you there?

15 A He told me that, you know, I probably pulled a
16 muscle, you know, sprained my tail, whatever, and that he
17 gave me some medicine, he wanted me to follow up with the GP.
18 Um, I didn't have one at that time so I had to find one.

19 Q Okay.

20 MS. ZOIS: Um, Court's indulgence for a moment, Your
21 Honor.

22 THE COURT: Mm-hmm, certainly.

23 MS. ZOIS: Do we have the calendars from yesterday? I
24 don't see 'em around here.

25 THE WITNESS: They're up here.

1 MS. ZOIS: They're up there, okay.

2 BY MS. ZOIS:

3 Q So, back in 2007/2008 you did not have a GP?

4 A I did not have a GP.

5 Q All right. And -- oh, let me back up just
6 slightly. Back in, uh, 2005 when you had the bumper tap on
7 695.

8 A Correct.

9 Q Can you tell us what time of year that took place?

10 A Um, I think it was May or June when that happened.

11 Q All right. From May or June in 2005 up through
12 January 2008 did you seek any medical treatment for any back
13 pain?

14 A No.

15 Q In January of 2008 you went to the urgent care,
16 correct?

17 A Correct.

18 Q And they said follow up with your PCP if you have
19 any problems?

20 A Yes.

21 Q And at the time you didn't have one.

22 A Correct.

23 Q So, did you make arrangements to find one?

24 A I did. I called my husband's group at Robinwood,
25 and they, um, that's when I think they assigned me Stephanie

1 Brown.

2 Q And did you make an appointment with her office?

3 A I did.

4 Q Were you able to get in at your first appointment?

5 A No, they had cancelled one of them and had me come
6 in another day.

7 Q And did you end up going into the office on another
8 day?

9 A I did.

10 Q And, uh, was that date March 26, 2008?

11 A According to all the records, yeah, it was.

12 Q All right. So, taking you to that date, have you
13 ever, had you ever met Stephanie Brown before, Dr. Stephanie
14 Brown before?

15 A No, I hadn't met Stephanie before.

16 Q And were you there to be established as a new
17 patient?

18 A Yes.

19 Q When you went in there, um, on March 26, 2008 did
20 you, did she do a full history with you?

21 A She went over history and asked me questions, yes.

22 Q And did she ask you about any allergies that you
23 have?

24 A She did, 'cause I always tell what I have, because
25 penicillin, I have to tell it.

1 Q And did you tell her how old you were?

2 A I did.

3 Q All right. And, uh, why is it that -- what happens
4 if you have penicillin?

5 MR. GILLCRIST: Objection, relevance, Your Honor.

6 THE COURT: Overruled. You may answer it.

7 THE WITNESS: Answer it?

8 BY MS. ZOIS:

9 Q What happens if you have penicillin, what, what
10 happens?

11 A I go into like an apthalactic (sic) shock, and can't
12 breathe. The last time it happened to me I was like maybe
13 10-years-old and I almost died.

14 Q So, when you went in to do your history with Ms.
15 (sic) Brown, did you tell her this information?

16 A I did.

17 Q And you told her how old you were.

18 A Correct.

19 Q And did you tell her whether or not you were taking
20 medications?

21 A I told her I was taking Advil.

22 Q And did you tell her, um, why you were there?

23 A I told her that I had fallen in January and that
24 the urgent care told me to come find a GP, and the pain was
25 still a little bit when I setting certain ways.

1 Q So, did you tell her that -- well, so you told her
2 about the fall three months earlier?

3 A Yes.

4 Q And did you, uh, did she do any kind of physical
5 exam on you at all?

6 A She didn't touch me, she just went over different
7 things.

8 Q Did she ask you about other things in your past?
9 Did she ask you about other car accidents, and --

10 A She asked me history, you know, had you been in a
11 car accident, and I had told her about, um, the bump and tag
12 in 2005. I also told her about my other one.

13 Q The one that happened like 20 years ago?

14 A Twenty years ago, yes.

15 Q Okay. And did you, um, also tell her that you
16 wanted to try and quit smoking?

17 A That's why I got the Chantix.

18 Q All right. And, um, did anybody take any
19 information from you other than Ms. (sic) Brown?

20 A Not that I remember.

21 Q Have you ever seen her again?

22 A No.

23 Q That was the only time you ever saw her?

24 A That's the only time I ever saw her.

25 Q Do you know if she's even still at this practice?

1 A I don't know. I don't think she is.

2 Q All right. And did she, um, test, did she do any
3 of the straight leg raising tests, or range of motion, or
4 anything like that or --

5 A I don't remember any of that, no.

6 Q All right. Did she touch your back at all?

7 A No, she sit across the room on the computer.

8 Q Okay. And was she putting in information?

9 A Yeah, she was typing in as we were talking.

10 Q All right. When'd she find out about what this
11 record says?

12 A When all this went on. That's what I found out.
13 I've never seen that record until recently.

14 Q Okay. And she prescribes the medications for you
15 on that day?

16 A She did.

17 Q And one of the medications that she prescribed was
18 Percocet.

19 A Correct.

20 Q Did you get that filled?

21 A No.

22 Q Um, you did get the other two filled though, the
23 Ultram, which we know as also Toradol (sic) --

24 A Correct.

25 Q -- Tramadol, and Skelaxin?

1 A Yes.

2 Q All right. And did you get that filled on this day
3 or around that day of March 26th?

4 A Around that time, yes.

5 Q All right. So, now, after March 26th of 2008, uh --
6 oh, I'm sorry, what did she recommend for you?

7 A She told me to go to PT that, you know, I needed
8 some PT, a couple PT sessions to see if it would go away.

9 Q And did you make a PT appointment?

10 A I did. They got me in later.

11 Q And was that April 28th, 2008?

12 A I believe it is, yeah.

13 Q And back on April 28th of 2008 did you have a PT
14 consultation and evaluation?

15 A I did.

16 Q All right. And what did they recommend for you?

17 A That I not sit crooked.

18 Q All right. So, back in, back on April 28th of 2008,
19 um, you were working full time, right?

20 A Correct.

21 Q And what was your functional level at the time?
22 Were you having any problems with, uh, doing anything that
23 you enjoyed doing before?

24 A No, I was still riding my motorcycle and
25 everything.

1 Q All right. So, you were still riding your
2 motorcycle, were you still gardening?

3 A Correct.

4 Q Was your lower back pain having any inter (sic),
5 interference at all with your daily activities?

6 A No, because that time, by that time it started, it
7 was only at certain ways I sat in the chair that it bothered
8 me.

9 Q All right. So, in April 20 (sic), April of 2
10 (sic), April 28th, of 2008 you were still riding a motorcycle?

11 A Correct.

12 Q Still gardening?

13 A Correct.

14 Q Your lower back wasn't interfering with any of your
15 daily activities?

16 A That's correct.

17 Q And the pain would bother you when?

18 A I had a habit of sittin' crooked at my kitchen
19 table, because I was doin' a big project during the time, so
20 in between we were talking back and forth at work, so --

21 Q All right. So, they -- you had the PT evaluation?

22 A Mm-hmm.

23 Q And then you actually had one physical therapy
24 visit, is that correct?

25 A That's correct.

1 Q All right.

2 A I never went back.

3 Q And at, at your physical therapy visit that you
4 had, what did they teach you how to do?

5 A Um, posture and to sit straight in a chair instead
6 of crooked.

7 Q Okay. Well, let's, let -- so, and those were the
8 functional goals of your physical therapist, right, they
9 wanted you to improve postural, postural awareness and
10 sitting is that right?

11 A Correct.

12 Q And you were going to be educated and demonstrating
13 proper posture, body mechanics --

14 A Correct.

15 Q -- and lifting principles, is that correct?

16 A Correct.

17 Q Okay. So, when you went to the physical therapy
18 appointment on May the 6th, 2008 did they teach you how to do
19 all those things?

20 A They did.

21 Q All right. And after May 26th of 2008 and before
22 the date of this crash --

23 A Correct.

24 Q Well, let me ask you this, how were you feeling in
25 May of 2008?

1 A I was fine. We had gone to, uh, Myrtle Beach if
2 I'm not mistaken.

3 Q And how would you describe, um -- strike that --
4 so, from May 6th of 2008 up until the date of this crash at
5 the end of June in 2009, did you ever see an orthopedic
6 surgeon?

7 A No.

8 Q Did you ever see a neurosurgeon?

9 A No.

10 Q Did you ever get any back injections?

11 A No.

12 Q Did you ever have any physical therapy?

13 A No.

14 Q Did you ever have any chiropractic treatment?

15 A No.

16 Q Did you ever go back to Robinwood?

17 A No.

18 Q Did anybody ever recommend surgery?

19 A No.

20 Q Did anybody ever recommend an MRI?

21 A No.

22 Q Did anybody ever recommend x-rays?

23 A No.

24 Q Stephanie Brown prescribed to you Ultram and
25 Skelaxin.

1 A Correct.

2 Q At your visit, correct?

3 A Correct.

4 Q And she gave you refills on those prescriptions,
5 didn't she?

6 A She did.

7 Q Did you get those refills filled?

8 A I did.

9 Q Did you take those refills?

10 A I took 'em during the first part, but I didn't take
11 'em after that. I guess after the, it was like the first
12 therapy visit, and then I didn't take any more after that.

13 Q But you kept, kept gettin' the prescriptions
14 refilled though, right?

15 A I filled all of them, yes.

16 Q Did you take all of 'em?

17 A No, I put 'em my basket in case I ever had another
18 issue.

19 Q Okay. Did you have back pain from May twen (sic),
20 May eight (sic), uh, the May 2008 time period up through June
21 of 2009?

22 A No.

23 Q You sure?

24 A Positive.

25 Q Okay. Were you still riding a motorcycle?

1 A I was still riding a motorcycle.

2 Q Were you still gardening?

3 A Yes.

4 Q Were you still working?

5 A Yeah.

6 Q Did you have a 2008 evaluation that year at work?

7 A Yes.

8 Q How'd you do?

9 A I believe it was good.

10 Q All right.

11 MR. GILLCRIST: I'm sorry, Your Honor, can I just
12 clarify. This is a work evaluation or medical evaluation?

13 MR. BRATT: Work.

14 MS. ZOIS: Physical, uh, the evaluation testified to by
15 Ms. Sharon Hamilton (unclear - two words.)

16 MR. GILLCRIST: Work, work evaluation.

17 THE COURT: So, work, work evaluation.

18 MR. GILLCRIST: Thank you, I'm sorry, I just wanted --

19 MS. ZOIS: Yeah, that's okay.

20 THE COURT: That's okay.

21 BY MS. ZOIS:

22 Q How were you doing at work before June of 2009?

23 A Um --

24 MR. PORCARELLI: Objection. Your Honor, I don't even
25 know where this (unclear - two words) Hamilton in detail

1 (unclear - one word.)

2 THE COURT: Just, why don't you summarize that, because
3 we went through that with a lot of detail yesterday.

4 BY MS. ZOIS:

5 Q So, in 2008 were you working full time?

6 A Yes.

7 Q Were you missing a lot of time from work for any
8 problems that you were having?

9 A No.

10 Q Uh, were you working over time?

11 A Yeah --

12 Q And you --

13 A -- and we always work over time.

14 Q So, and we heard yesterday this was a bad year in
15 the economy for everybody, but, um, were you working from
16 home during that time period?

17 A Yes, I always work from home some, in the evenings
18 or on weekends, whenever something's going on.

19 Q Okay. Taking you up to what we're here about
20 today, can you tell the ladies and gentlemen of the jury
21 where you were headed at the time of this crash on June 26th,
22 2009?

23 A I left work at 3:30, 4 o'clock, came up 70, um, I
24 was on my way home. Want me to keep going?

25 Q Sure.

1 A It was pouring down rain, and then all of a sudden
2 it started clearin' up some as we got closer into Frederick.
3 Traffic ahead started, you know, throwing on their brakes and
4 comin' to a stop, so I downshifted, because I only drive
5 stick cars, I down shifted my car and I brought my car to a
6 stop. So that I could see around I had the car slightly over
7 to the yellow line at the median so that I could see what was
8 going on. I sat there for, I don't know how long, I saw a
9 truck go out around me, 'cause these lanes were still moving,
10 both lanes, middle lane and the far right lane.

11 Q All right. So, just so we're clear, there's three
12 lanes where you were?

13 A Correct.

14 Q And you were in the left hand lane?

15 A I was in the left hand lane.

16 Q And that was the lane that was stopped?

17 A Correct.

18 Q And then in lane two and in lane three they were
19 somewhat open?

20 A They were still moving, 'cause cars were (unclear -
21 one word) going out around me. There was a truck that went
22 out around me, a light colored car, and then I saw a dark car
23 go around me. And, I mean, they were still moving in the
24 middle. And I'm settin' there, and then all of a sudden I
25 felt this, this bang that jarred the car and me, and pushed

1 me, and then it went flying by in the middle lane, and then
2 it came to a stop.

3 Q So, let me back up a minute.

4 MS. ZOIS: Um, Your Honor, may I ask the witness to come
5 down and use the rail to show how her car was positioned when
6 she was driving?

7 THE COURT: Any objection, Counsel?

8 MR. GILLCRIST: No objection.

9 MS. ZOIS: Okay.

10 THE COURT: You certainly may.

11 MS. ZOIS: Come on down (unclear.) Can I borrow your
12 tissue box?

13 MR. GILLCRIST: Sure.

14 BY MS. ZOIS:

15 Q So, if, it's probably easier if we go this way.

16 So, if this is lane number one.

17 A Okay.

18 Q Right?

19 A Yes.

20 Q This is lane number two, this is lane number three.

21 A Correct.

22 Q Can you show the ladies and gentlemen of the jury
23 with your tissue box how your vehicle was positioned when you
24 came to a stop?

25 A I came to a stop like this so that I could see

1 around the other cars.

2 Q And --

3 A I was slightly, I'm still in my lane, but I was
4 still at the yellow line, uh, towards the median. This, this
5 would be the stone wall here. There's a median and a stone
6 wall.

7 Q Okay. And can you show the ladies and gentlemen of
8 the jury the position of your vehicle after you were hit?

9 A After I was hit it was like this, it was over the
10 yellow line, and then my front was this way.

11 Q All right. And can you show the ladies and
12 gentlemen, on the tissue box, what part of your vehicle was
13 struck?

14 A Um, all the A arm was broken, the undercarriage
15 part was, um, I guess it was bent, because they had to
16 replace it. This side was all buckled.

17 Q Okay.

18 A So, it came underneath, it was like underneath here
19 and lifted and moved.

20 MS. ZOIS: Ms. Harveson, can I see the property damage
21 photo of Ms. Hassler's?

22 BY MS. ZOIS:

23 Q Okay, is that a picture of your vehicle?

24 A It is.

25 Q All right. And the next one, please. And is that

1 the undercarriage?

2 A Yes, that's one of the pictures that they had given
3 us, yeah.

4 Q Okay. Now you can, you can go back up. Now, you
5 said that your vehicle was stopped, is that correct?

6 A Correct.

7 Q And you don't know exactly how long it was stopped,
8 but some cars went around your vehicle (unclear - three
9 words.)

10 A Yeah, I mean, to me, right now, everything's in
11 slow motion, but I'm sure it was much quicker than --

12 Q And you said that traffic in front of you was
13 puttin' on brakes when you were bringing your vehicle to a
14 stop?

15 A Correct, it was still raining.

16 Q Now, describe for the ladies and gentlemen of the
17 jury how you stopped your vehicle? What did you do to stop
18 your vehicle? Did you slam on your brakes?

19 A No, I drive a stick, and I never ride tail, so I
20 downshifted to come to a stop.

21 Q Why do you downshift?

22 A Well, when you have a manual transmission it's
23 better on the brakes, it's better on the transmission.

24 Q Okay.

25 A I mean, I don't know, I've been driving, I've been

1 driving sticks all my life. I started on three on the tree
2 and worked down to other ones, so.

3 Q Now, at, after the crash how far down the road, if
4 you know, did the other vehicle go?

5 A Uh, after she hit me?

6 Q Yes.

7 A I want to say at least one to two car, I wanna' say
8 two car lengths.

9 Q And --

10 A Because she was down this way then.

11 Q Going back up slightly?

12 A Mm-hmm.

13 Q When you brought your vehicle to a stop how far was
14 the next vehicle in front of you?

15 A At least a half to a car length ahead.

16 Q And were there stopped vehicles all up into that
17 lane?

18 A Yeah, I could only see like maybe three cars from
19 where I was positioned when I had stopped.

20 Q Mm-hmm.

21 A That's all I could see, because of course other
22 people were right there to in the line looking out to see why
23 we were stopping.

24 Q So, the left hand lane was that stopped?

25 A Left, yes, the fast lane.

1 Q All right. And when you came to a stop there was a
2 half a car length between you and the car in front of you?

3 A Correct.

4 Q All right. At the scene after everything settled
5 down.

6 A Mm-hmm.

7 Q Did you get out of your car?

8 A I did.

9 Q Did you go talk to the other driver?

10 A I did when, uh, the little girl got out of her car,
11 and then there was other little girls in it. She was
12 screaming and crying that her arm was hurt, and then I
13 started walking towards them, and then eventually they start
14 walking back toward me at mine, where I was. And I asked her
15 if she was okay, and she was still crying, and finally she
16 got settled down. The other little girls were shook up, too,
17 I mean, they were kids, and I have kids, too, so I
18 understand. So, eventually, they, they calmed down.

19 Q Was everybody friend --

20 A But she was still upset about her arm.

21 Q -- was everybody friendly at the scene? Was
22 everybody --

23 A They were nice kids.

24 Q All right. Did she apologize for (unclear - one
25 word?)

1 A She did eventually, after she calmed down, she
2 apologized. So did the other little girls.

3 Q Okay.

4 A And then they stood beside my car, and then one of
5 'em hit me up for a cigarette, I don't know which one, but
6 they stood there and they talked to me.

7 Q All right.

8 A After, 'cause I went back to my car and sit down,
9 'cause I had, I was kind of shaking, and I had a terrible
10 headache.

11 Q Did you, uh, request an ambulance to leave the
12 scene?

13 A No, because I figured it was just, it would go
14 away, I mean, it was emergency, to me it wasn't a dire
15 emergency.

16 Q Can you describe how you felt in the car when your
17 car was hit?

18 A Um, I felt like my teeth rattled, that's what I
19 felt like, because when she hit me I kind of moved over this
20 way.

21 Q Did you hit anything on the inside of the car?

22 A My door. I mean, it was, it was a (sic) impact.

23 Q Okay.

24 A I've never been in an impact like that before, so.

25 Q Now, afterwards, you didn't request to leave in the

1 ambulance?

2 A No.

3 Q You, who'd you call to come get you?

4 A I called my husband.

5 Q And did he come get you?

6 A He did.

7 Q And did he have anybody with him?

8 A Um, my youngest son, Peyton, was with him.

9 Q And where'd you go from there?

10 A Um, we went home.

11 Q After you went home, what did you do?

12 A Uh, I was still kinda' shaking, eventually, you
13 know, I laid down then a little while later.

14 Q And how was, how'd you sleep that night?

15 A It kept gettin' worse, the pain just kept goin' and
16 goin' and goin'. And I didn't, I don't know how to explain
17 it, it was like you were just shaken.

18 Q Where was the pain?

19 A It was just in the backside, all down through my
20 legs and my feet, from my neck all the way down, and then I
21 had this headache.

22 Q How'd you feel the next morning?

23 A I was really stiff and I was still kind of shaky.
24 And then still had that weird feeling in the back down
25 through my feet and legs.

1 Q Had you ever felt anything like that before?

2 A No, I've never had nothing like this in my life.

3 Q When you woke up the next morning where'd you go?

4 A Um, I had my husband take me to the ER, at the, uh,
5 urgent care center at Robinwood.

6 Q And what'd they do for you there?

7 A He told me that it was just a, probably a back
8 strain, that it would go away in a couple weeks. Um, they x-
9 rayed my neck, 'cause he thought that I had, you know,
10 whiplash. And then the headache he said would eventually go
11 away.

12 Q Did it?

13 A The headache did go away in a couple days, yeah.

14 Q How about your neck, did that get better?

15 A The neck went b (sic), away, too.

16 Q Now, did you follow up with anybody after that
17 visit?

18 A Um, I don't know the date, but I think it was like
19 two or three days later, because they told me to go back to
20 GP. So, I called, uh, Robinwood --

21 Q Did you go?

22 A -- and got an appointment.

23 Q Who'd you see when you went back for the next
24 couple of visits?

25 A Um, I started seeing Heath (sic), Heather Hall.

1 Q And, so you saw Stephanie Brown one time, and then
2 the other times after that first visit you saw Heather Hall?

3 A Yeah, I've seen Heather Hall.

4 Q And what, if anything, did she recommend?

5 A Well, she said maybe an MRI, and then --

6 Q And, let me ask you this, what did she want you to
7 do first, have the MRI or start physical therapy?

8 A I don't think (unclear - one word), Heather didn't
9 send me for --

10 Q That was my question.

11 A -- physical therapy. Oh, okay.

12 Q (Chuckles.)

13 A I was tryin' to think, I was like, no, she didn't
14 send me for any physical therapy. She said that she thought
15 maybe something was going on to be safe. Um, even though
16 they thought maybe it was this back strain thing, so then
17 they sent me for the MRI and I had the MRI done.

18 Q And the MRI was done about 18 days after the crash,
19 is that what (unclear - two words?)

20 A Something like that, yeah,

21 Q And what's your understanding of what the MRI
22 showed?

23 MR. GILLCRIST: Objection, Your Honor.

24 THE COURT: I'm gonna' overrule, 'cause we've already
25 heard testimony about it.

1 MR. GILLCRIST: Thank you.

2 THE COURT: So, you may answer.

3 THE WITNESS: Answer?

4 THE COURT: Mm-hmm.

5 THE WITNESS: They, um, told me that I had, uh, tears in
6 some of my discs, and that's why the leak, there was that
7 leakage, and that's why I was feeling so much pain down
8 through my backside into my feet.

9 BY MS. ZOIS:

10 Q How'd you feel about getting that news?

11 A I was really upset, because I've never had anything
12 like that before. I mean, I didn't know what to expect from
13 there, because then I went back to Heather Hall. Heather
14 Hall said sometimes it's surgery, you know, sometimes it's,
15 you know, it heals on it's own, we'd have to see, and that's
16 when she referred me then to Parkway.

17 Q So, Heather Hall referred you to Parkway?

18 A Yes.

19 Q Did you like Parkway?

20 A I did not like Parkway. I suffered for, I guess,
21 eight or nine months with them, 'cause they kept saying it
22 was gonna' go away, it was muscles, it'll go away. Um, I
23 saw, I think it was Radley, and he said, aw, don't worry
24 about it, everybody has tears, you know, it'll be okay.

25 Q And then --

1 A Chiro, I went to physical therapy, I went to chiro,
2 'cause I went to physical therapy for several visits. Then
3 the physical therapists, because they couldn't work out the
4 knots at the top of my back that they sent me then to the
5 chiropractor to try to get it to loosen up, which is in the
6 same office, and they're in conjunction.

7 Q Did that work?

8 A I got a little relief, but I didn't get a whole lot
9 of relief.

10 Q So, what did you do?

11 A Well, eventually, you know, I told Dr. Huang, I was
12 like, you know, something's wrong, we gotta' figure out
13 what's goin' on. You know, she had given me an injection in
14 between, at the end to like I don't even know when I left
15 them, I guess in spring. She gave me a (sic) epidural, she
16 said let's see if that works. That didn't work. I still had
17 pain. So, eventually she's like there's nothing else I can
18 do, but if you want to seek another opinion it's your option
19 to do.

20 Q And did you do that?

21 A I did. I found, um, Spine Center, which is where
22 I've been going ever since.

23 Q And, so when, when, by the time that you go to the
24 Spine Center you had already had a little bit of, you had so
25 physical therapy, you had some chiropractic treatment and you

1 had an injection or two?

2 A I have one epidural, yeah, with her.

3 Q All right. And by the time, when you got to Dr.
4 Sloan's office did he do anything in addition to what Parkway
5 did? Did he try anything different then what Parkway tried?

6 A Well, when I got to Dr. Sloan he read all the
7 results, and then if I'm not mistaken, 'cause I always carry
8 my CD's, everywhere they've sent me I have CD's of all my
9 pictures for the doctors to read.

10 Q The films?

11 A Yeah, well, I have the CD's.

12 Q Right.

13 A Um --

14 Q The films are on the CD's?

15 A Yes.

16 Q Okay. So, he read those and he said I most
17 definitely had --

18 MR. GILLCRIST: Objection as to what he said, Your
19 Honor.

20 THE COURT: I'll sustain that.

21 BY MS. ZOIS:

22 Q What's your understanding of what Dr. Sloan was
23 going to be treating you for?

24 A For the tears in my back.

25 Q And did he give you, did he also do epidural

1 injections?

2 A I had several epidurals, I had my nerves burnt
3 several times, because of the shooting pain down through my
4 feet and stuff. Uh, in inject (sic), in addition they've
5 given me, um, facet joints injections.

6 Q Did you have a disc decompression done?

7 A That was later on that was my option, because then
8 in between there I went to Dr., um --

9 Q Naff.

10 A -- Naff.

11 Q Okay. Let me, let's back up a little bit just so
12 we can follow along chronologically. So, you went to Dr.
13 Sloan's office --

14 A Yes.

15 Q -- and Dr. Sloan started trying some other things
16 that Parkway hadn't tried, right?

17 A Correct.

18 Q Now, after he had tried several different types of
19 procedures did he recommend that you follow up with a
20 different kind of doctor?

21 A He wanted me to see, um, Dr. Naff and Dr. Khanna.
22 One is, both of them are with John (sic) Hopkins. One is a
23 (sic) orthopedic and one is a neurosurgeon.

24 Q Okay. And at the point in time where he sent you
25 to see Dr. Khanna and Dr. Naff had you had the disc

1 decompression or the discTRODE surgery yet?

2 A Um --

3 Q Do you remember?

4 A I believe I did. I don't re, I don't remember.

5 Q That's all right. So, when Dr. Sloan -- well, let
6 me, well let's back up a little bit, did he do a discogram?

7 A Yeah, he did.

8 Q Can you tell us about that?

9 A It' real painful.

10 Q How do they do it?

11 A Um, they, uh, put a rod in, they put injection in
12 and then they test your pain.

13 Q And did you have that procedure done?

14 A Yes.

15 Q After that procedure was done, is that when you had
16 the disc decompression and the, and the, uh, discTRODE
17 procedure?

18 A Yes.

19 Q All right. After talking to Dr. Naff and talking
20 to Dr. Khanna, what was your understanding of what your
21 options were?

22 A Um, they wanted me to keep on, they agreed with the
23 path I was taking. That, um, surgery is definitely something
24 --

25 MR. GILLCRIST: Objection, Your Honor. As to what the

1 doctor said.

2 MR. PORCARELLI: Same.

3 MS. ZOIS: She didn't -- that wasn't (unclear - one
4 word.)

5 THE COURT: Just rephrase the question.

6 MS. ZOIS: Thank you, Your Honor.

7 THE COURT: Mm-hmm.

8 BY MS. ZOIS:

9 Q What's your understanding of whether or not you're
10 gonna' need surgery on your back?

11 MR. GILLCRIST: Again, Your Honor, this is hearsay just
12 in a different form.

13 THE COURT: I'll allow it, 'cause we've already heard
14 testimony from Dr. Naff.

15 MR. GILLCRIST: Okay. Thank you, Your Honor.

16 BY MS. ZOIS:

17 Q What's your understanding of what you're eventually
18 gonna' need surgically?

19 MS. ZOIS: Ms. Harveson.

20 THE WITNESS: Um, eventually, I'm gonna' have to have
21 some kind of, um, discectomy something, where they wanna' put
22 the rods and pins in.

23 BY MS. ZOIS:

24 Q Okay. Um, before you get to that place, uh, you're
25 still treating with Dr. Sloan's office, right?

1 A Correct.

2 Q Now, as far as the disc decompression surgery and
3 the discTRODE procedure, how was the recovery from that?

4 A Um, it was long, it was three months. I had to
5 wear a back brace the whole time.

6 Q And were you allowed to, to do any lifting or --

7 A No, I wasn't allowed to lift, I wasn't allowed to
8 go up and down the steps for I don't know how many weeks, I
9 wasn't allowed to drive my car or anything.

10 Q And did you go to work?

11 A No, I s (sic), home --

12 Q And --

13 A -- I worked a little bit from home.

14 Q -- did you do what you could from home?

15 A I did.

16 Q And was your office flexible with you in allowing
17 you to do some of that?

18 A Yeah, they were, they were really great during that
19 time.

20 Q And after these two procedures, did that help?

21 A I got some relief from it, yes.

22 Q Good. And, so, has your condition changed -- so,
23 you have a disc decompression?

24 A Mm-hmm.

25 Q You had the discTRODE procedure done?

1 A Yes.

2 Q From that point up until now, have you had any, uh,
3 change, dramatic change in whether or not you feel better,
4 worse or the same?

5 A Um, I still had injections and, and nerve burns,
6 because I still have shooting pain at times. Evidently the
7 nerves grow back or they're -- I don't know. Um, but I still
8 have a lot of pain in my back, through my tail, though my
9 back.

10 Q And how are you treating the pain now? What, what
11 are you doing every month?

12 A Um, I go in every month for medication.

13 Q All right. And is -- do you know whether or not
14 Dr. Sloan -- well, strike that -- is Dr. Sloan, what, when's
15 the last time you saw Dr. Sloan?

16 A I saw Dr. Sloan I think it was October/November.

17 Q And you haven't seen him since then?

18 A No, I was surprised to hear that he had moved to
19 his own partnership, 'cause he hadn't told me that in
20 October.

21 Q So, he's no longer your doctor?

22 A Evidently. I'd just been seeing the, uh, nurses
23 for my medicine at so far.

24 Q And which facility do you go to for the Spine
25 Center?

1 A Uh, the one in Hagerstown.

2 Q All right. Uh, during, from the time of the crash
3 up until today did you have a hysterectomy?

4 A I did.

5 Q And were you out of work at that time?

6 A I was out three, four weeks, something like that I
7 think.

8 Q Are you claiming that time in this case?

9 A No.

10 Q Do you have any ongoing problems from that surgery?
11 Are you feeling any pain from that surgery?

12 A No.

13 Q From the time of this crash up until now did you
14 have a carpal tunnel surgery?

15 A I did.

16 Q How's the carpal tunnel doing now? Any pain in
17 your right arm or anything?

18 A No, my right arm's fine now.

19 Q How about your left? Any pain in your left arm?

20 A No.

21 Q And did you take some time off from work with the
22 carpal tunnel?

23 A I did.

24 Q Are you claiming any of that time here today --

25 A No.

1 Q -- in this case? Following both of those surgeries
2 did you fill any additional pain medication from those
3 doctors?

4 A I filled -- you mean, from my doctors, like my GYN?

5 Q Did you take any additional pain medication for
6 either one of those surgeries, other than --

7 A Oh, no, 'cause I told them, and they knew that I
8 was already on a lot of medicine for my back. There was no
9 reason for them to give me more medicine when I already had
10 medicine.

11 Q All right. So, just so we're clear, did you get
12 any additional pain medication --

13 A No.

14 Q -- for either one of those --

15 A Just what I take normally for my back.

16 Q Okay. Did you lose time from work following this
17 crash?

18 A I did.

19 Q I'm gonna' show you what's been marked for
20 identification -- (To the Court) May I approach the witness,
21 Your Honor --

22 THE COURT: You may.

23 BY MS. ZOIS:

24 Q -- as Plaintiff's Exhibit Number 27, and ask you to
25 identify that for the jury.

1 A Yeah, this is a lost wage summary.

2 Q And tell us how you were keeping track of your time
3 following this crash in general.

4 A Well, when it started I just had notes down, but as
5 it progressively kept gettin' worse and worse and worse I
6 started gettin' scared. Um, so, I started keepin' better
7 notes and writin' down my time. So, as I took time off and
8 handed my paper leave slips in I would write it down on my
9 chart.

10 Q So, you had a chart you were keeping at home?

11 A Yes.

12 Q All right. And I'm gonna' show you what's been
13 marked as Plaintiff's Exhibit Number 40 and ask you to
14 identify that.

15 A These are my leave slips that I sign and I fill out
16 and give to whoever I report to that time, Sharon or
17 Margaret, either one.

18 Q Okay.

19 A 'Cause I report both the dental and vision in
20 manager.

21 Q And was this a required process at your office?

22 A Yeah, that's a normal process up until about early
23 2011 we implemented a, uh, online version of time track.

24 Q So, these times slips, according to page 18, these
25 handwritten ones go through November 18, 2011?

1 A Yeah, so that might be when we actually went live
2 on, uh, our new time machine.

3 Q And is there also a way to keep track of your daily
4 time at your office?

5 A This one here is from --

6 Q This is Exhibit Number 41?

7 A Yeah, this is from our old system. And then this
8 one underneath, I don't know what page, and I don't see
9 pages, let me see. Page 30 is where I would start. That's
10 our net time, that's individual detail list.

11 Q All right. Now, so, these are the hand written
12 leave requests on 40?

13 A Yes, they're from the old days.

14 Q And this is the computerized system that tracks day
15 by day by day?

16 A Correct.

17 Q So, this would also show time that you were at
18 work?

19 A Yes.

20 Q And this would also show time that you took off for
21 the carpal tunnel --

22 A That's correct.

23 Q -- and the other issues, right?

24 A That's correct.

25 Q All right. Um, and this summary, presented as

1 Exhibit Number 27, does that summary have any time on it for
2 the carpal tunnel?

3 A No, it does not.

4 Q Does that summary have any time on it for the
5 hysterectomy?

6 A No.

7 Q Okay. And does that summarize your lost time from
8 work for doctors' appointments and pain and time that you had
9 to take off for this accident --

10 A Yes.

11 Q -- June 26th, 2009?

12 A Yes.

13 Q Can you tell us what you were earning per hour?

14 A From what date?

15 Q Well --

16 A If you start from like 2009 up.

17 Q Were you making 37.87 an hour?

18 A In 2 (sic), in 2009, yes.

19 Q All right. And how many hours did you miss in this
20 case?

21 A Uh, 756, and a half.

22 Q And what's your total lost wages in this case?

23 A 28,648 . . . \$28,648.

24 MS. ZOIS: Court's indulgence for a moment, Your Honor.

25 THE COURT: Certainly, mm-hmm.

1 BY MS. ZOIS:

2 Q How do you feel about having to take pain
3 medication every day?

4 A I hate it. I despise taking pills every day. I
5 take a lot of medicine.

6 Q How do you feel about it, I mean, do you, do you
7 always take it, do you, or do you suffer through it, where,
8 where's your line? Where do you draw the line?

9 A I have to take it. If I don't take I'm miserable.

10 Q Can you get to work if you don't take it?

11 A No.

12 Q Can you enjoy your weekend if you don't take it?

13 A No. I, I'm pretty much couched because I'm
14 actually so miserable I can't move.

15 Q When --

16 A Medicine helps me.

17 Q -- is there a certain time of day that you try to
18 take it?

19 A Um, the doctors have me taking, um, several pills
20 at night.

21 Q Does that help? Does that taking pills at night
22 help you through the day?

23 A I have several time released ones that they have me
24 on, and then they've increased it. I have another time
25 release during the day in addition to some other medicines.

1 Q Do you want to stop taking it?
2 A I'd love to get rid of them
3 Q How do you feel about the surgery?
4 A I don't wanna' have a surgery.
5 Q You goin' to?
6 A You know they told me that I only had a 50/50
7 chance, 50 get better, 50 get worse. I don't wanna' get
8 worse.
9 Q Are you gonna' have some though?
10 A If I absolutely have to and I can't stand it no
11 more.
12 Q Have you been on your bike since June 26th, 2009?
13 A No, because my legs are numb, my feet, and anybody
14 that rides knows that's not a safe mode to do.
15 Q How about, how do you feel, have you been on your
16 husband's bike --
17 A I don't -- yeah.
18 Q -- after this?
19 A I have rode a couple times, several times.
20 Q How'd you feel afterwards?
21 A I'm miserable. The vibration just, it sets me off,
22 I mean, my back just, it's terrible. My back into the legs.
23 Q How do you feel about your work performance these
24 days?
25 A It's not very good, coming from a managerial point

1 of view. I try very hard, but I'm not the person I used to
2 be. I can't work 60, 80 hours a week anymore. I just can't
3 do it.

4 Q Are you doing the best you can on what you got?

5 A I do.

6 Q How do you feel about the condition that you're in
7 and the cards you've been dealt at this point? What are you
8 doing?

9 A Well, you know, the only thing you think is the
10 Lord just gives you what you can take. So.

11 Q Why are you keeping your bike?

12 A Give me a minute. Okay.

13 Q Why are you keeping your bike?

14 A Why would I get rid of it? My kids ride. And one
15 day I hope to get better, I don't think it's gonna' happen,
16 but I never saw a V (sic), DVD thing he had the other day.
17 Dr. Sloan never told me all that.

18 Q Are you able to toss your grandkids around like you
19 used to?

20 A No.

21 Q You able (unclear) --

22 A The little ones I'll, you know, pick up a little
23 bit, but I can't hold them very long.

24 Q And what's happening Monday?

25 A I have another grandbaby coming.

1 Q Are you claiming any permanent neurological damage
2 in this case?

3 A No.

4 MS. ZOIS: Court's indulgence for a moment, Your Honor.

5 THE COURT: Certainly.

6 (Brief pause while Counsel and witness confer off the
7 record.)

8 MS. ZOIS: Your Honor, at this time we would offer into
9 evidence Plaintiff's 27, 41, 40, 33, the photographs of the
10 vehicles, Your Honor, I think they were 34(1) and 38, 38(a),
11 and 39(a). And Court's indulgence for just a moment.

12 MR. GILLCRIST: Your Honor, could we, um, just so that I
13 don't -- I'm not sure what all these exhibits are, I need to
14 look at the numbers, can we do this during a break perhaps?

15 THE COURT: We sure can.

16 MR. GILLCRIST: Okay. I don't think I have objections
17 to 'em I just wanna' make sure.

18 THE COURT: Just to make sure.

19 MS. ZOIS: No further questions, Your Honor.

20 THE COURT: Cross examine.

21 MR. GILLCRIST: Thank you, Your Honor. Can I have a
22 couple minutes just to set up a little bit here, Your Honor?

23 MS. ZOIS: Absolutely. Yeah, I'll get it out of your
24 way. I got it.

25 (Long pause while Counsel setting up.)

1 MR. BRATT: Your Honor, may I step out briefly?

2 THE COURT: Certainly. Mm-hmm.

3 MR. BRATT: Thank you.

4 CROSS EXAMINATION

5 BY MR. GILLCRIST:

6 Q Good morning, Ms. Exline-Hassler.

7 A Good morning.

8 Q Um, I do have some questions of you about the
9 accident, about your medical history and about your history
10 and about your injuries, and, uh, please if I ask you
11 something that's confusing or you'd like me to repeat or
12 rephrase, for any reason at all, please stop me and let me
13 know.

14 A Okay.

15 Q Okay? And, also, if you don't know the answer,
16 please say you don't know.

17 A Okay.

18 Q I don't want you to guess or speculate on any of my
19 questions, please, okay?

20 A Okay.

21 Q Um, now, uh, ma'am, let me start with the accident
22 itself. The attorney, uh, introduced the photographs, this
23 may have been one of them, but just to be safe.

24 MR. GILLCRIST: Can I get this marked as --

25 THE CLERK: Mm-hmm.

1 MR. GILLCRIST: Exhibit (unclear?) Thank you.

2 BY MR. GILLCRIST:

3 Q Uh, let me show you what's been marked as
4 Defendant's Exhibit Number 13.

5 A Okay.

6 Q I believe this is just a slightly enlarged --

7 A Version.

8 Q -- uh, version of Plaintiff's Exhibit 38(a)(1).

9 A That is correct.

10 Q Is that correct? And, so, this would accurately
11 reflect how your car, um, looked from the outside after the
12 accident?

13 A Correct. See, it's buckled back through here, the
14 tail end is underneath.

15 Q Okay.

16 A You can't see the underneath part of the carriage
17 or nothing.

18 Q I understand it's not a photo from underneath.

19 A A arm.

20 Q But it is a photo from the outside?

21 A From the outside, you are correct.

22 Q And it would, it would accurately reflect how your
23 vehicle would have looked on the scene to the police officer
24 or to my client, correct?

25 A That is correct, except there was, uh, A arm laying

1 down inside, you don't have the underneath part, the A arm is
2 laying down on the floor --

3 Q Fair enough.

4 A -- the road.

5 Q Okay. Um --

6 MR. GILLCRIST: Your Honor, may I move to admit, uh,
7 Defendant's Exhibit Number 13?

8 MS. ZOIS: No objection, Your Honor.

9 THE COURT: Certainly. Be received.

10 (Item admitted into evidence as
11 Defendant's Exhibit Number 13.)

12 BY MR. GILLCRIST:

13 Q Now, uh, Ms. Exline-Hassler you were, um, going
14 home from work, correct?

15 A Correct.

16 Q Uh, the roads were wet?

17 A Correct.

18 Q And, um, it was not, according to your deposition,
19 it was not actually raining at the time of you're the
20 accident?

21 A That's correct. It is start, it starting slowing,
22 it was pouring down rain and then it started slowing and it
23 eventually had stopped.

24 Q Okay. While you're driving you're on 70 westbound?

25 A Correct.

1 Q While you're driving along you're not, um, eating
2 anything inside the car, would you agree with that?

3 A No, I wasn't eating anything.

4 Q You were smoking a cigarette at the time?

5 A Yes, I was.

6 Q At the time of the impact?

7 A Yes, I was.

8 Q Okay. And, um, how long had you been smoking a
9 cigarette before the impact?

10 A Um, I don't know.

11 Q Okay.

12 A I lit it up when I was driving.

13 Q All right. How, um, how long had you been on the
14 road before the impact?

15 A Well, I left work at 4, uh, 3:30/4:00 and it
16 happened about 5:00/5:15, so.

17 Q Okay. Now, at some point, while you were driving
18 you were speaking to your mother on your cell phone, (unclear
19 - two words?)

20 A I spoke with my mother when I left out of work,
21 yes, that's correct. Twenty minutes, I believe.

22 Q About 20 minutes out of work?

23 A When I left work I was talking to my mother on my
24 ear bud.

25 Q Okay, while you were driving?

1 A Correct.

2 Q And how long did that conversation last?

3 A Maybe 20 minutes.

4 Q Okay, so, for 20 minutes of your drive and, on, on
5 the way you did have an ear bud in your ear?

6 A Correct.

7 Q And you were having a conversation with your
8 mother, is that correct?

9 A That is correct, when I left work, yes.

10 Q Okay. But that, just to be clear, that's not while
11 you were sitting in the parking that's while you were
12 actually on the road?

13 A Sitting in what parking lot, work?

14 Q I'm s --

15 A Oh, no.

16 Q -- yeah, I'm sorry.

17 A No, it would have been when I was coming probably
18 around Ellicott City.

19 Q Okay. All right, now, um, it was, was it raining
20 at that time?

21 A It was not raining when I left work.

22 Q Um, in your deposition on Page 36 do you remember
23 saying that you didn't know how long that conversation was?

24 A Yes, but I believe I pulled my cell phone bills
25 and, and, uh, gave them to you guys and it was 20 minutes.

1 Q Okay. On page, uh, 37, excuse me, of your
2 deposition, line six, "How long did that call last?" Answer,
3 "I can't really tell you, I really don't remember."

4 A That is correct. At that time I didn't know until
5 I pulled my cell phone bills.

6 Q Okay. So this deposition was taken on June 27th of
7 2012, right?

8 A Correct.

9 Q And at that time you had not pulled your cell phone
10 record --

11 A That is correct.

12 Q -- to find out how long you were on the phone?

13 A That is correct, because I would talk to my mother
14 when I was coming out of work on 97 or 100, and I believe the
15 conversation ended around Ellicott City.

16 Q Okay.

17 A But to set there and time that --

18 Q All right --

19 A -- I --

20 Q -- I'm not, I'm not saying you were on the phone
21 when the accident happened.

22 A Okay.

23 Q You gave different testimony at your deposition,
24 I'm just asking.

25 A Okay.

1 MS. ZOIS: Objection, misstates the testimony, Your
2 Honor.

3 THE COURT: So. Let's move on.

4 BY MR. GILLCRIST:

5 Q Ma'am, you continued on westbound 70 at some point,
6 um, and you came upon, uh, you were in heavy traffic at the
7 time, would you agree with that?

8 A As you get in Hager (sic), in, as you enter
9 Frederick it was slowing down, it was gettin' heavy.

10 Q Okay. In your deposition you referred to the
11 traffic as being heavy.

12 A It was.

13 Q And you were going with the flow of traffic,
14 correct?

15 A Correct.

16 Q And this would have been about 65 to 75 miles per
17 hour?

18 A That is correct.

19 Q So, you were going the same speed that Ms. Sapp was
20 going approximately (unclear - two words?)

21 A If she was travelling in traffic, yes, it would
22 have been.

23 Q And you were in the far left lane, correct?

24 A Correct.

25 Q And all of a sudden traffic stopped suddenly, did

1 it not?

2 A The traffic stopped suddenly, yes.

3 Q Um, and it surprised you that it stopped sudden,
4 correct?

5 A Well, you start slowin' down.

6 Q Well --

7 A I started downshifting when I got towards it.

8 Q -- well, you described in your deposition that the
9 traffic really did stop suddenly, didn't it?

10 A And that's -- I agree with you on that. The
11 traffic did stop suddenly.

12 Q All right. And when it stopped suddenly it kind of
13 caught you by surprise, didn't it?

14 A Well, you know, when you're driving for 25 years
15 you know to watch for the roads. I knew that the traffic was
16 stopped and I needed to stop.

17 Q Okay. So, when it stops suddenly you're saying it
18 didn't catch you by surprise at all?

19 A You have to pay attention when you're drivin' 70,
20 especially on Friday night, it always --

21 Q I --

22 A -- stops suddenly.

23 Q -- I appreciate that. I just was trying to ask you
24 did it catch you by surprise when it (unclear - three words?)

25 A Not really, no, 'cause 'round that area it always

1 stops, starts stoppin' and stoppin' and stoppin'.

2 Q Okay. Well, you learned there was an accident up
3 there, correct?

4 A I didn't know that 'til I left the scene.

5 Q Okay, but you learned it after the fact that --

6 A After I left the scene, yes.

7 Q -- that there was an accident up ahead?

8 A Yes.

9 Q Okay. While you're driving on 70 westbound going
10 about 65 to 70 miles an hour --

11 A Correct.

12 Q -- in the flow of traffic you were not aware at the
13 time that there was a traffic (sic) up ahead?

14 A No.

15 Q And when you --

16 A I had not heard on the radio.

17 Q When the traffic ahead of you stopped suddenly it
18 stopped suddenly in the left lane that you were in as well,
19 correct?

20 A The traffic did start studden (sic), suddenly
21 stopping, yes.

22 Q All right, and at the time that it stopped suddenly
23 you were not aware that there was a traffic accident ahead,
24 is that correct? At the time that it stopped suddenly.

25 A I didn't know that there was an accident 'til I

1 left the scene.

2 Q You said that, I apologize, let me move on. Um,
3 but not only did the traffic ahead of you stop suddenly, but
4 you stopped suddenly as well, correct?

5 A I down shifted my car to stop. I drive a shift.

6 Q Okay. In your deposition I don't remember you ever
7 saying that you down shifted your car.

8 A Um, in my deposition I said I came to a stop.

9 Q Okay. Do you agree that you don't --

10 A Never suddenly.

11 Q -- all right. Uh, ma'am, I'm sorry, in your
12 deposition would you agree that you were asked questions by
13 the attorney, your attorney was present, right?

14 A Correct.

15 Q Um, and during the entire deposition you were asked
16 a lot of questions about the accident, correct?

17 A That is correct.

18 Q And at no point in your entire deposition did you
19 ever say you downshifted, would you agree with that?

20 A That may be so.

21 Q Well, you read your deposition before coming on the
22 stand today, right?

23 A Uh, the other week, yeah.

24 Q Okay. And you read your entire deposition, and at
25 no point did you ever tell the attorneys that you down

1 shifted, would you agree with that?

2 A But I never said I came to a sudden stop. I did
3 not come to a sudden stop. The traffic stopped. I don't
4 ride on top of cars.

5 Q Okay.

6 A So, I bring my car down slow to stop, I don't --

7 Q All right, well, ma'am, let me then -- I'm sorry, I
8 didn't mean to cut you off.

9 A No, no, no, that's fine.

10 Q Just now you said, "I never said I said I came to a
11 sudden stop."

12 A Does it say I came to a sudden stop, 'cause I do
13 not remember me saying that?

14 MS. ZOIS: Page, Counsel.

15 MR. GILLCRIST: With the Court's indulgence.

16 THE COURT: Mm-hmm.

17 BY MR. GILLCRIST:

18 Q In your deposition on page 142 --

19 A Okay.

20 Q -- question, "So, the traffic ahead of you came to
21 what you described as a sudden stop, correct?" Answer,
22 "Right." Question, "And you saw they were stopping and you
23 responded, correct?"

24 A Correct.

25 Q Okay. And then you brought your vehicle to a

1 complete stop, correct?

2 A Correct.

3 Q And then you saw a little black car fly by you,
4 correct?

5 A You've -- there's some parts missin' there.

6 Q Okay, well, I was just reading (unclear - one word)

7 --

8 A Okay.

9 Q -- (unclear - one word) other question.

10 A Okay.

11 Q You responded to the car ahead of you stopping
12 suddenly, correct?

13 A Correct.

14 Q And isn't it true that you responded by you
15 yourself stopping suddenly?

16 MS. ZOIS: Objection, Your Honor, asked and answered.

17 MR. GILLCRIST: I'm asking not about the deposition --

18 THE COURT: So.

19 MS. ZOIS: And --

20 MR. GILLCRIST: -- I'm asking now.

21 MS. ZOIS: Asked and answered.

22 BY MR. GILLCRIST:

23 Q Didn't you respond --

24 THE COURT: I'm allow this one last time (unclear - one
25 word.)

1 MS. ZOIS: Thank you, Your Honor.

2 THE COURT: Mm-hmm.

3 BY MR. GILLCRIST:

4 Q Ms. Exline-Hassler, the cars in front of you
5 stopped suddenly.

6 A They started coming to a sudden stop, yes.

7 Q Okay. And isn't it a fact that you also responded
8 to that by bringing your car to a sudden stop?

9 A I didn't throw on my brakes and come to a stop
10 though.

11 Q Okay.

12 A I mean, I didn't do that, that's what I'm tryin' to
13 say to you. I didn't, all of a sudden the lights come on and
14 I throw on my brakes. That's not how it happened.

15 Q Okay. Well, you testified that you brought your
16 car to a stop at an angle, correct?

17 A At a slight angle, yes, I did.

18 Q To the left?

19 A Correct.

20 Q And --

21 A At the yellow line.

22 Q All right. And you testified that you did so that
23 you could see what's ahead of you?

24 A I don't know what's in there, but, yes, that's what
25 happened.

1 Q Well, I'm sorry, ma'am, I'm just referring to your
2 testimony earlier today.

3 A That's what happened, yes.

4 Q You did testify a few minutes ago that you brought
5 your car to an angle to the left, correct?

6 A That is correct.

7 Q And, I mean --

8 A It was --

9 Q -- in other words, you were no longer directly
10 behind the vehicle in front of you.

11 A I was not straight up and down, is that what you're
12 askin' --

13 Q (Unclear - one word.)

14 A -- like back to back?

15 Q Right.

16 A No, I was over towards the yellow line.

17 Q All right. So, in using the, the -- and, if I can,
18 just briefly just use my hands.

19 A You wanna' use this?

20 Q Um, that's, uh, well, thank you.

21 A (Laughs.)

22 Q Good idea though.

23 A If we had --

24 Q (Unclear - one word) same (unclear - one word.)

25 A -- little cars it'd probably been easier.

1 Q But I'm sorry to do this, but I just wanna' make
2 sure, okay? The car ahead of you is stopped in your lane and
3 you bring your vehicle, my hand is your vehicle, you bring
4 your vehicle to a stop at an angle like this.

5 MS. ZOIS: Your Honor, I'm gonna' object to the --

6 THE COURT: So.

7 MS. ZOIS: -- demonstration as to the relationship
8 between his hand and the box, she said she's a half car
9 length away. So, it's just the, for demonstrative objection.

10 THE COURT: Uh, uh, just -- I'm gonna' just, he's just
11 showing the angle not the length.

12 MR. GILLCRIST: I, I really am just (unclear - two
13 words.)

14 THE WITNESS: When I came to a stop, okay, here's the
15 pillars --

16 BY MR. GILLCRIST:

17 Q Yeah.

18 A -- here's the yellow line.

19 Q Yeah.

20 A So, when I came down traffic was stopping. You
21 could still, uh, you could see, I always watch cars ahead,
22 and I'm sure, she saw cars throwing on their brakes so she
23 was coming if she was behind me. As the car brakes were
24 hitting you come to a stop, but I didn't come to a sudden
25 stop, because I don't ride on top the back of cars. I was --

1 the roads were wet, and you hadda' be careful.

2 Q I'm just asking you, you've already testified you
3 didn't come to a sudden stop, okay? What I'm asking you now
4 is about the angle that you brought your vehicle to. When
5 you came --

6 A At the yellow line, I was angled over to the yellow
7 line, that is correct.

8 Q All right, and that would have been --

9 A I'm not disputing that.

10 Q -- and that would have been to the left, correct?

11 A Correct.

12 Q And (unclear - one word) you --

13 A Towards the pillar.

14 Q Okay. And you testified that you angled to the
15 left because you wanted to see around the vehicle in front of
16 you, correct?

17 A That is correct.

18 Q All right. Now, do you remember in your deposition
19 ever saying that you angled your vehicle to look around the
20 vehicle in front of you?

21 A I believe I called it tuck.

22 Q Okay. And in your deposition you in fact said that
23 you tucked the car --

24 MS. ZOIS: Page, Counsel.

25 MR. GILLCRIST: Page 142.

1 MS. ZOIS: Thank you.
2 BY MR. GILLCRIST:
3 Q You tucked the car -- and 59, and 39, excuse me --
4 you tucked --
5 MS. ZOIS: I'm sorry?
6 BY MR. GILLCRIST:
7 Q -- the car to the side, correct?
8 MR. BRATT: 59 and 39.
9 MS. ZOIS: 59, 39.
10 THE WITNESS: To the line.
11 BY MR. GILLCRIST:
12 Q Okay.
13 A I believe I said white line.
14 Q But you meant to say the yellow line, correct?
15 A Whatever color that line is --
16 Q On the --
17 A -- and then I describe it there's --
18 Q -- on the left side?
19 A Correct.
20 Q All right. Fair enough. Um, so, when you brought
21 your vehicle to a stop, now you've talked about down
22 shifting, you purposely put your car at an angle to the left,
23 can we agree on that?
24 A I always do.
25 Q All right.

1 A So, I can see the cars ahead.

2 Q Okay. So, my question is then, when you earlier
3 testified that you wanted to see the cars ahead --

4 A Correct.

5 Q Is that because you were wondering why they're, why
6 they stopped so suddenly?

7 A I was wondering why we stopped, yes.

8 Q But you --

9 A I always wonder why we stop every day.

10 Q Okay, I'm sorry, can I -- were you wondering why
11 you stopped, they stopped suddenly in front of you?

12 A Yeah.

13 Q Okay. And in your deposition, um, you testified
14 that you always tuck your car over to the left, correct?

15 A So, I can see when traffic comes to a stop, yes.

16 Q Okay. And my understanding of your testimony, I
17 believe you said in your deposition is that every time you're
18 in traffic and you come to a stop behind the vehicle in front
19 of you, you tuck your car to the left at an angle like that,
20 correct?

21 A Yes, 'cause most the time I'm in that, the far left
22 lane.

23 Q Okay. So, on the way --

24 A I prefer that lane.

25 Q Okay. Fair enough. On the way to Court today when

1 you're in your -- you drove the car, your car to court?

2 A No, my husband brought me today.

3 Q Sorry.

4 A Yesterday.

5 Q Um, when was the last --

6 A Yesterday, do yesterday.

7 Q Yesterday you drove to court, okay. When you, and
8 I am sure on the way to court yesterday at some point you
9 were behind another vehicle in front of you at a light, is
10 that fair to say?

11 A That's correct.

12 Q Okay. And on that -- yesterday when you did that
13 you also tucked your vehicle to the left?

14 A No, you're talking two situations here. When
15 you're drivin' on highway, beltway traffic, it, it's constant
16 flow.

17 Q Okay.

18 A Okay, and when you're in two lane traffic out here
19 at a light that's a totally different situation.

20 Q All right, so, I'm sorry. Let me limit it to when
21 you're on the highway. Did you take the highway to get down
22 here yesterday?

23 A Uh, yes.

24 Q And at some point did you have to come to a stop?

25 A No, traffic was good coming through.

1 Q All right. Would you agree that at least
2 occasionally when you're on a highway there might be traffic
3 and you'd have to bring your car to a stop?
4 A You always have to when --
5 Q Okay.
6 A -- I come out a city, I mean, I drive --
7 Q Fair enough.
8 A -- in rush hour traffic every day of my life.
9 Q And on every occasion, as I understand it, that you
10 bring your car to a stop on a highway you tuck your vehicle
11 to the left, correct?
12 A I always, when I come to a stop I always go to the
13 side to see what was goin' on, yes. I always try to watch
14 the cars ahead of me.
15 Q Okay.
16 A Because the car in front of you, you never know
17 when I tire's gonna' blow, you never know when something's
18 gonna' happen. So, yes, I watch the cars ahead.
19 Q Always, but just, so (unclear - two words) --
20 A Always.
21 Q -- always tuck your vehicle --
22 A Always.
23 Q -- always puts the car at an angle to the left?
24 A I always get to that line and look, to look ahead.
25 Q Okay.

1 A I even drive on the further side so that I can see
2 the cars ahead, 'cause you never know when the cars ahead are
3 gonna' stop and the one in front of you's not paying
4 attention.

5 Q But in this case, in this instance you look to the,
6 around the car, because you were tryin' to find out why they
7 stopped so suddenly, agreed?

8 A That's correct.

9 Q All right. And, um -- okay. When you were driving
10 on 70 going 65 to 70 miles per hour how far were you behind
11 the vehicle in front of you, in the left lane?

12 A I was at least one to two car lengths.

13 Q Okay. So, you're driving down I-70 westbound and
14 you're going 65 to 70 miles per hour, correct?

15 A Correct.

16 Q And you're at least one to two car lengths behind
17 (unclear - two words?)

18 A That's correct.

19 Q And do you remember taking driver's ed, education?

20 A Yes, I do.

21 Q And do you remember being --

22 A It's been a long time, but yes.

23 Q -- all right, do you remember being told that you
24 should keep at least one car length for every 10 miles per
25 hour?

1 A I don't remember any of that.

2 Q So, even though you're going 60 to 70 miles per
3 hour, you're traveling behind that car in front of you at a
4 distance of one to car lengths, correct?

5 A Correct.

6 Q All right. And, uh, now you don't know how long
7 you were stopped before you were struck, do you?

8 A No, I can't, I can't give you no idea about that,
9 'cause you know now everything's just --

10 Q Okay.

11 A -- remembrance and slow motion.

12 Q The vehicles in the right, the lane to your right
13 and the vehicles in the second lane to the right, in other
14 words, if you're going one, two, three in terms of the lanes?

15 A Correct.

16 Q The lane one would be the far right lane, two the
17 middle lane, three would be your lane?

18 A That's correct.

19 Q Okay. The lanes in two and one, that traffic kept
20 moving after you stopped, right?

21 A That traffic was moving, 'cause there was cars
22 darting out behind me. I saw 'em in my mirror.

23 Q Okay. And you, I wanted to ask you about that, um,
24 you, uh, when you came to a stop your car was still in gear,
25 right?

1 A Yeah, I was in first gear.

2 Q Okay. And, um, when you came to a stop you
3 immediately looked in your rear view mirror, didn't you?

4 A I always watch my rear view mirror.

5 Q Okay, well --

6 A Especially when you stop like that, because you
7 look back just to make sure that somethin's not comin'.

8 Q Is that the first thing that you did when your car
9 came to a complete stop, look in your rear view mirror?

10 A Yeah, from what I remember and what I'd normally
11 do, yes, I looked in my rear view mirror to see the truck and
12 I saw a car and another dark car.

13 Q All right. Now, I thought you said just a second
14 ago that you angled your car in order to see what was going
15 on with ahead?

16 A I don't understand the question. If you're asking
17 me this, if I came to a stop, did I glance up to see? Yes,
18 because the cars in front were stopping.

19 Q Okay, I just want to get --

20 A And then, then I looked in my rear view mirror. Is
21 it, am I answering it the way you want it?

22 Q What I'm tryin' to do is just get the chronology
23 correct from you (unclear - two words.)

24 A Okay.

25 Q A second ago you said that you looked around the

1 car, you angled your car to the left in order to see what was
2 ahead.

3 A Okay.

4 Q And now you're saying that the first thing that you
5 did upon coming to a complete stop is looking in your rear
6 view mirror. I just know, wanna' know which one you did.

7 A Sorry. I guess the first thing I did was to make
8 sure to kind of glance up and see why we stopped.

9 Q Okay.

10 A Then the second thing would be glance and see
11 what's goin' on behind me.

12 Q Okay. So that puts it into chronol (sic), you
13 know, like a proper order.

14 A Yes.

15 Q Okay. Now, and when you looked in your rear view
16 mirror you're still angled to the left, to the left, correct?

17 A I hadn't moved.

18 Q All right. And you, the first thing you noticed
19 was that there was a car darting around you, isn't that
20 correct?

21 A I saw a truck, I believe it was gray or white, and
22 then another car, gray, white, whatever color, and then a
23 dark color car.

24 Q Okay. Do you remember a dark colored car darting
25 around you?

1 A Yes.

2 MS. ZOIS: Objection, asked and answered.

3 THE COURT: O --

4 MR. GILLCRIST: I'm sorry.

5 THE COURT: She did say that, so.

6 MR. GILLCRIST: Okay.

7 BY MR. GILLCRIST:

8 Q And when you say darting around you, that was a

9 vehicle, because you're looking in your rear view mirror,

10 right?

11 A Mm-hmm.

12 Q In your rear view mirror it's the mirror that's

13 right above your, your dashboard, right.

14 A Yes.

15 Q That mirror is not gonna' show you what's over in

16 the center lane, it's gonna' show you what's behind you,

17 correct?

18 A Well, as you're settin' (sic) there though you

19 glance, know what I mean, you set (sic) there in traffic, you

20 kinda' glance, you see the stuff goin' on, and --

21 Q All right.

22 A -- I saw what was goin' in the lanes.

23 Q Okay. And, but, but the dark, the car you

24 described as darting around you, that came from behind you in

25 your lane, right?

1 A Yes, but . . .

2 Q Okay. So, it came around you quickly, right?

3 A Yes, and it kept goin', it went in through the
4 second lane.

5 Q All right. This car that came around you was a
6 dark colored car.

7 A Correct.

8 Q Do you know how close that dark color car got to
9 you?

10 A No.

11 Q Um --

12 A No.

13 Q All right.

14 A I mean, visually, you know --

15 Q But if you're --

16 A -- they're just dartin' out around, I don't know.

17 Q Okay. You didn't see a turn signal on that car,
18 did you?

19 A I didn't see, I, I didn't glance at that kind of
20 stuff.

21 Q Okay.

22 A I just --

23 Q All right.

24 A -- saw the cars.

25 Q Fair enough. But that car went around and kept

1 goin'?

2 A Yeah, they kept goin', 'cause that middle lane and
3 the far lane, they were still movin'.

4 Q That car is not the car that hit you?

5 A That is correct, that wasn't her --

6 Q That's not Ms. --

7 A -- car, no.

8 MS. ZOIS: Your Honor, if she could finish her answer.

9 THE COURT: It --

10 MR. GILLCRIST: I apologize, I did cut her off.

11 THE COURT: You, certainly, yes.

12 MR. GILLCRIST: Okay.

13 BY MR. GILLCRIST:

14 Q That was not Ms. Sapp's car?

15 A No, it wasn't her car.

16 Q You also described seeing a white truck, correct?

17 A Correct.

18 Q And was that white truck also in your lane?

19 A Behind me?

20 Q Yeah.

21 A Yeah.

22 Q Okay. And that white truck also went around you?

23 A That is correct.

24 Q And would you describe that white truck also
25 darting around you?

1 A Yeah, I mean, in traffic if you're settin' (sic)
2 and the other lane's movin', they don't set (sic) there they
3 dart around.

4 Q All right, so --

5 A They get, try to get out in that lane, it's movin'.

6 Q Okay. Now we have two cars darting around you?

7 A Three.

8 Q All right. There was another, and the third car
9 would be Ms. Sapp's car?

10 A You had a, you had a truck, you had a light colored
11 car and a dark colored car.

12 Q Okay.

13 A And I believe I said that in my thingamajig.

14 Q The white color, was, was that the white color car
15 was that the one that was the truck?

16 A No.

17 Q That you (unclear - one word?)

18 A The truck was like a gray or white, and then there
19 was another car that was like a gray or white, and then a
20 dark color.

21 Q All right. Now, when you were talking earlier,
22 when your counsel was asking you what happened, you didn't
23 mention anything about three vehicles darting around.

24 A I believe it did, but . . .

25 Q Well, that'll be subject to something else, but --

1 A Okay.

2 Q -- um, so, it does appear that there was then three
3 vehicles that dart around you, correct?

4 A Correct.

5 Q Um, and Ms. Sapp's car was not one of those three
6 vehicles?

7 A No, she didn't, I didn't see her coming up behind
8 me.

9 Q Okay. All right. Now, these vehicles that darted
10 around you were all from your lane, right? They weren't from
11 the middle.

12 A That's correct.

13 Q All right. And do you remember saying in your
14 deposition that when you looked up cars were going
15 everywhere?

16 A Wait a minute, I think you took it out of context
17 though.

18 Q All right, let me read it then, because I --

19 A That's fine, but I think you're after the accident.

20 Q Okay.

21 MS. ZOIS: Page, Counsel.

22 THE WITNESS: Because at the same time we had an 18-
23 wheeler that was comin' after us.

24 BY MR. GILLCRIST:

25 Q Let me read your answer.

1 A Okay.

2 Q Um, in your deposition, on page 35, you initially
3 described you were going west and you stopped, okay.

4 A Correct.

5 Q And then the question on line six was, "Then what
6 happened?" "Then we had sit there, I don't know how long, it
7 wasn't very long. All of a sudden I felt banged and moved.
8 When I looked up then I saw a little black car flying by."

9 A Okay, but you've missed parts. You've missed where
10 I've described about the vehicles going around me, and it's
11 in there --

12 Q Okay, but I, I didn't --

13 A -- 'cause I know we talked about it.

14 Q -- let me finish the answer, okay?

15 A Okay.

16 Q Right after you said, "When I looked up then I saw
17 a little black car fly by."

18 A Correct.

19 Q Your next sentence was, "Then I remember looking in
20 my rear view mirror and cars were everywhere going different
21 directions."

22 A That was after she hit me, that's correct.

23 Q Okay. Then I looked up and the back side of an 18-
24 wheeler was sliding past my car, trying to avoid traffic I
25 guess, but the truck had went sliding by."

1 A That is correct.

2 Q Okay. So, at some point you observed, in your
3 description, "When I looked up then I saw a little black car
4 fly by."

5 A Correct.

6 Q And then the very next thing you say, and that's
7 not the car that hit you?

8 A Yes, that was her --

9 MS. ZOIS: Objection.

10 THE COURT: So.

11 THE WITNESS: That was her car in the description.

12 BY MR. GILLCRIST:

13 Q Okay, that was the car that hit you?

14 A That was her in that description, yes.

15 Q Fair enough, all right.

16 A Your, you've --

17 Q Fair enough.

18 A -- kind of skipped a part there.

19 Q Uh, ma'am, I'm just reading, I can show you, I just
20 read --

21 A No, no, that's the part after Ms. Sapp had hit me.

22 Q Okay.

23 A That's what we were talking about it. That,
24 there's --

25 Q Fair enough.

1 A -- other parts you've missed.
2 Q Well, I, I read this exactly as you answered it.
3 A And I will agree with that 100%.
4 Q Okay.
5 A You're at the accident though.
6 Q I'm --
7 A You're not asking --
8 Q -- I --
9 A -- me about the description of the vehicles behind
10 me.
11 Q Okay.
12 A You're acks (sic), asking me once I was hit by Ms.
13 Sapp what happened.
14 Q Okay.
15 A That's where you are in there.
16 Q Ma'am, all right, we've gone through this, you saw
17 the three vehicles fly by --
18 MS. ZOIS: Objection.
19 MR. GILLCRIST: (Unclear - one word.)
20 THE COURT: Let's move on.
21 BY MR. GILLCRIST:
22 Q All right, Ms. Sapp (sic) --
23 THE COURT: Please.
24 BY MR. GILLCRIST:
25 Q -- you saw after you were hit cars or trucks going

1 everywhere, correct? And then --

2 A Do you want me to start from there and tell you?

3 THE COURT: No, just answer his question. Okay?

4 THE WITNESS: Okay.

5 THE COURT: Please.

6 BY MR. GILLCRIST:

7 Q Is that true?

8 A Say it again, I'm sorry.

9 Q Af (sic), you put the chronology in context. After
10 you were hit you saw trucks and cars going everywhere.

11 A After I was hit cars were trying to go everywhere,
12 and then the 18-wheeler with a seed container where I saw the
13 whole back side came by car.

14 Q All right. And you thought that that 18-wheeler
15 was trying to avoid traffic, right?

16 A I know he was.

17 Q Okay. Um, and it was after that that you felt --
18 I'm sorry -- it was after that, uh, you got out of car, I
19 mean, after the impact --

20 A After everything settled down then I got out.

21 Q Okay. The 18-wheeler had pulled off to the side of
22 the road, correct?

23 A Correct.

24 Q And the driver of the 18-wheeler came over to you,
25 correct?

1 A He ran back, 'cause he thought, he didn't know if
2 he had hit me, he couldn't tell, because he --

3 Q Okay.

4 A -- he was tryin' not jackknife.

5 Q And, and, and did you actually see the 18-wheeler
6 jackknife?

7 A He didn't jackknife. He was avoiding the
8 jackknife. That's why he was sliding by me.

9 Q Okay.

10 A He was tryin' --

11 Q All right.

12 A -- to straighten' up.

13 Q All right. So, the 18-wheeler was in the second
14 lane, right?

15 A No, that 18-wheeler had to be the third lane in for
16 (sic), in order for his trailer to come over that close to my
17 car in measurement wise.

18 Q Okay. All right, then, you've been hit --

19 A Yes.

20 Q -- did you strike the vehicle in front of you?

21 A No.

22 Q Okay. Um, your vehicle did not strike the concrete
23 median, did it?

24 A No, it did not.

25 Q Um, my understanding from your testimony was that

1 when you were hit you, you moved over in your seat and struck
2 the door, or something like that --

3 A Yeah, when after --

4 Q -- (unclear - two words.)

5 A -- I was hit on impact I hit the driver's side.

6 Q Okay. Um, then you got out of the vehicle on your
7 own, correct?

8 A Correct.

9 Q And, um, you remember the police officer coming to
10 the scene, correct?

11 A Yes, I do.

12 Q And that was Officer Chiccarelli who testified
13 earlier, correct?

14 A Yes.

15 Q And while you were on the scene about how long was
16 it that you were on the scene?

17 A We were on the scene at least an hour, something
18 like that. It might have been more than that.

19 Q And my client got out of the car as well, Ms. Sapp
20 --

21 A She did --

22 Q -- got out of the car?

23 A -- she was very upset, 'cause her, her arm was
24 hurtin', she wrecked her car, she had a bunch of kids with
25 her.

1 Q Oh. Was she polite to you?

2 A She was very polite, she's a nice kid, they're all
3 nice kids.

4 Q All right. And you had discussions with her,
5 correct?

6 A Yeah, we had talked back and forth.

7 Q Okay.

8 A 'Cause she was hurt, I was tryin' to calm 'em down.

9 Q But you did not tell her that you were hurt, did
10 you?

11 A I told her I was okay.

12 Q Okay.

13 A Same thing I tell everybody else, I'm fine.

14 Q All right. And you told the police officer that as
15 well?

16 A I told him that, yes.

17 Q All right. Now, while you were on the scene a fire
18 truck came by, correct?

19 A Correct, they stopped.

20 Q And an ambulance came by?

21 A They stopped.

22 Q And isn't it true that the ambulance was actually
23 going to the other accident?

24 A That's my assumption, 'cause I think we even
25 chuckled about it, that they had stopped, they asked me, they

1 asked her if they were okay. They got in the ambulance and
2 they were responding to the other accident.

3 Q While you were talking to Ms. Sapp you did not
4 suspect that there was any alcohol involved or drugs
5 involved?

6 A Oh, no, no, I expected (sic) any of that with those
7 kids.

8 Q All right. Um, now, you did not have any cuts or
9 bleeding or bruises from the impact, right?

10 A No.

11 Q Your head did not strike the steering --

12 A No.

13 Q -- wheel or the dash board?

14 A No.

15 Q Um, you did not have any, um, did not need to get
16 any stitches, you were not diagnosed with a concussion or
17 anything, correct?

18 A No.

19 Q Your head didn't hit the side window, did it?

20 A No.

21 Q And I understand your vehicle was towed from the
22 scene, your husband came to pick you up eventually, your
23 husband and your son I think you said.

24 A That's correct.

25 Q Okay. And then at that point you went and you went

1 home from there (unclear - two words?)

2 A Yes.

3 Q At no point while you were on the scene did you
4 ever report to either Ms. Sapp or her passengers, the police
5 officer or the ambulance that came, um, that you were
6 injured, correct?

7 A No, 'cause at that time I just felt kinda' shoooken
8 (sic) up --

9 Q Okay.

10 A -- from the impact, and, and I had a, a headache, a
11 pounding headache. That's all I had then.

12 Q Fair enough. All right, now, uh, let me ask you if
13 I can about you talked about, uh, to some degree, I'm gonna'
14 go into your medical history for in a second --

15 A That's fine.

16 Q -- okay, but I do want to ask you, you talked about
17 you were shown photographs regarding your, your work at home,
18 the, the things that you love to do riding motorcycles,
19 gardening, things of that nature, correct?

20 A Correct.

21 Q And you talked a lot about that on your, when your
22 attorney was asking questions about how this accident's
23 impacted your ability to do those things, do you remember
24 that?

25 A Yeah.

1 Q Um, now, you talked about having surgery for
2 something I'm not even gonna' ask you about that's not
3 related to this accident. But let me ask about, you had
4 carpal tunnel surgery, correct?

5 A I did.

6 Q And when was that?

7 A Last year I can't give you a date right off the top
8 of my head.

9 Q And you were out of commission because of that? I
10 mean, you were out of action for a while anyway.

11 A Uh, two weeks I think it was. Two or three weeks,
12 maybe.

13 Q All right, now, um, you still have numbness in your
14 fingers and your hands because of that condition, right?

15 A In my left hand, yes I do, but I have no pain.

16 Q All right, and you (sic) attorney very succinctly
17 asked you your not claiming that in this accident?

18 A That's correct, I'm not.

19 Q Okay. Have you ever claimed that in this accident?

20 A Are you talk --

21 MS. ZOIS: Objection, Your Honor.

22 THE WITNESS: What are you talking --

23 MS. ZOIS: May we approach?

24 THE COURT: I'll sustain, let's --

25 MS. ZOIS: Thank you, Your Honor.

1 THE COURT: -- go on.

2 MR. GILLCRIST: Your Honor, can I approach, please?

3 THE COURT: Sure.

4 (Counsel approached the bench and the following
5 occurred:)

6 (Husher turned on.)

7 MR. GILLCRIST: Your Honor, I this is, I think a very
8 important area. Um, in answers to interrogatories under oath
9 she said in deed that she was claiming this. This goes to
10 her credibility, what claims she's advanced, and she's signed
11 those answers, and it described the condition in hands as
12 being related to this occurrence. And I think it's very
13 important in this case, because her credibility it at stake
14 in this case, and if she's advancing that claim in this
15 litigation under oath, I submit that I'm entitled to ask her
16 that.

17 MR. PORCARELLI: (Unclear - two words.)

18 THE COURT: If I may. I want to move on this. I'm
19 gonna', you can note your objection, but you ask her at one,
20 even though now you are not claiming, at one point you did
21 make that allegation, correct? Yes.

22 MR. GILLCRIST: Right.

23 THE COURT: And that was later withdrawn so that that is
24 clear.

25 MS. ZOIS: Yes, Your Honor.

1 MR. GILLCRIST: And if she's -- and if -- I'll make that
2 clear.

3 THE COURT: So, that is clear.

4 MR. GILLCRIST: And if she says no I didn't then I can
5 show her answers to interrogatories? Okay.

6 MS. ZOIS: And, Your Honor, just --

7 THE COURT: So.

8 MS. ZOIS: -- so I don't get out of bounds, because I
9 don't wanna' get out of bounds any more. Um, what happened
10 was at her deposition she was asked the question tell us
11 about all the things --

12 THE COURT: Mm-hmm.

13 MS. ZOIS: -- that bothered you after this crash.

14 THE COURT: Mm-hmm.

15 MS. ZOIS: She's not a medical doctor --

16 THE COURT: So.

17 MS. ZOIS: -- and I put on the record we're gonna' talk
18 about this --

19 THE COURT: You certainly can clar (sic), if he asks
20 that question you can clarify that on redirect.

21 MS. ZOIS: Okay.

22 THE COURT: That that's the reason again that she was
23 not and she (unclear - one word), and whatever.

24 MS. ZOIS: And one last --

25 MR. GILLCRIST: Thank you, Your Honor.

1 MS. ZOIS: -- thing, Your Honor.

2 THE COURT: Mm-hmm.

3 MS. ZOIS: Is that I sent a letter to Counsel on August
4 24th, 2012, which was the day of our expert designation --

5 THE COURT: So.

6 MS. ZOIS: -- deadline amending our answers to
7 interrogatories withdrawing that claim.

8 THE COURT: Absolutely clear that it's been, that's it
9 been withdrawn --

10 MS. ZOIS: It's been withdrawn.

11 THE COURT: -- that's why I said, that's why I said --

12 MR. GILLCRIST: Okay.

13 THE COURT: -- ask it that way so we can move it along.

14 MS. ZOIS: Thank you, Your Honor.

15 THE COURT: Okay?

16 (Counsel returned to the trial tables and the following
17 occurred:)

18 (Husher turned off.)

19 BY MR. GILLCRIST:

20 Q Ms. Exline-Hassler, at one point in this litigation
21 you did contend that your carpal tunnel syndrome and your
22 symptoms from it were related to this accident, didn't you?

23 A It came on at the same time, yes, during the same
24 time.

25 Q So, you did make that allegation in this case?

1 A I did.

2 Q Okay. But then your attorney subsequently withdrew
3 it, or you subsequently withdrew it on your recommendation of
4 your attorney?

5 A No, no, no.

6 Q You did not withdraw it?

7 A I withdrew it.

8 Q Okay. Um --

9 A Because then after I started going to the doctor
10 they told me it was carpal tunnel.

11 Q Okay. And --

12 A 'Cause at first I thought it was from the accident,
13 'cause it happened at the same time.

14 Q Okay, well, you still maintained that that carpal
15 tunnel was related to this accident even --

16 MS. ZOIS: Ob (sic) --

17 BY MR. GILLCRIST:

18 Q -- after you had the surgery, did you not?

19 MS. ZOIS: -- objection, Your Honor.

20 THE COURT: Ss, I, uh, sustained, move on.

21 MR. GILLCRIST: Okay.

22 BY MR. GILLCRIST:

23 Q Ms., uh, Exline-Hassler, let me ask you about your
24 prior medical records, okay, for a second?

25 A Mm-hmm.

1 Q uh, maybe not so much a second, but, um, you had,
2 your attorney asked you you had an accident in 2005, correct?

3 A That is correct.

4 Q And this was a very minor incident, can we agree on
5 that?

6 A Yeah, it was \$485.

7 Q Okay. And after that accident you continued, you
8 went to the ball game for your son, right?

9 A I continued my life, yeah.

10 Q All right.

11 A It was not a big deal.

12 Q Was not a big deal.

13 A No.

14 Q All right. You got your property damaged paid and
15 that was it.

16 A That was it, got my car fixed and kept going.

17 Q All right. Never important after that, correct?

18 A No, I never went and had any problems in 2005,
19 2006.

20 Q All right. So, from 2005 and 2006 you wouldn't
21 have thought about that accident, in 2007 you wouldn't have
22 thought about that accident?

23 A No.

24 Q 2008 you wouldn't have thought about that accident?

25 A That accident didn't cause any problem here.

1 Q No injuries, I'm, that's why I'm agreeing with you.
2 It didn't cause any injuries, right?

3 A I, no.

4 Q Okay. Um, so, in essence, that accident would
5 essentially have left your mind, right?

6 A Yeah, it woulda' left my mind.

7 Q Now, in 2008, in January of 2008 you had a fall
8 right around Christmas time was it?

9 A Right after Christmas, yes.

10 Q All right. Um, and you injured your low back in
11 that fall, correct?

12 A I fell down the steps carrying a box, that's
13 correct.

14 Q And I understand that a couple weeks later it was
15 still bothering you so that you went to, uh, was it Urgent
16 Care?

17 A Urgent care, yes.

18 Q And upon going to Urgent Care, um, you, they gave
19 you some medication, they didn't recommend physical therapy
20 any real, anything really significant.

21 A No.

22 Q Okay. Um, did you also aggravate your low back
23 somehow by moving boxes in Christmas time or something?

24 A No, you have it broken up into two separate things
25 and it's one. I was carrying a box from Christmas down the

1 steps and I slipped.

2 Q Okay.

3 A It wasn't multiple injuries, it was one incident.

4 Q Now, you also, and I know this was a long accident,
5 but you had a T-bone accident that you referred to, or your
6 doctor referred to, I forget which.

7 MS. ZOIS: Objection, may we approach?

8 THE COURT: Okay.

9 (Counsel approached the bench and the following
10 occurred:)

11 (Husher turned on.)

12 MS. ZOIS: There's a case --

13 THE COURT: Is that the, the accident that was like 20
14 years ago?

15 MR. GILLCRIST: This is, this is an accident --

16 MS. ZOIS: Yes.

17 MR. GILLCRIST: -- of 20 years ago she's gonna' say, but
18 her husband never mentioned it, it's relevant to, um, her
19 husband's knowledge of her medical condition when she
20 testified about it. Her husband has never mentioned --

21 THE COURT: But 20 years ago, I think he testified
22 they've only been together for 18.

23 MS. ZOIS: Eighteen.

24 MR. GILLCRIST: And are you telling me that this lady
25 never told her husband about fracturing her pelvis? That's

1 why, that's why (unclear - one word) --

2 THE COURT: Just, just --

3 MS. ZOIS: And, Your Honor, there's actually a case on
4 point.

5 THE COURT: -- hey, (unclear - one word) --

6 MR. GILLCRIST: I'm sorry to direct it in that way, Your
7 Honor. That's the source of my concern.

8 MS. ZOIS: And there's also --

9 THE COURT: However, you're impeaching the husband's
10 testimony through the testimony of this witness.

11 MR. GILLCRIST: Only by inference in what this witness
12 will acknowledge.

13 THE COURT: How about this you can ask her, she
14 mentioned that she had an accident 20 years ago.

15 MS. ZOIS: Correct.

16 THE COURT: You can ask her about the accident 20 years
17 ago.

18 MR. GILLCRIST: And that's all I'm gonna' do.

19 THE COURT: And then you can argue --

20 MR. GILLCRIST: Okay.

21 THE COURT: -- that he didn't mention it.

22 MS. ZOIS: Your --

23 THE COURT: But that's an argument --

24 MR. GILLCRIST: And can I just --

25 THE COURT: -- that's not a question --

1 MS. ZOIS: -- Your, Your Honor --

2 THE COURT: -- to be asked.

3 MR. GILLCRIST: I'm sorry. I just want to establish
4 that she had a fractured pelvis.

5 MS. ZOIS: There's a case on point, it's Canter v. Ash
6 (phonetic) that says that if there is a (sic) injury that's
7 older than 15 years ago it's inadmissible in the present
8 case, so, I'll just cite Canter v. Ash.

9 MR. GILLCRIST: (Unclear - three words) I doubt that it
10 says that.

11 THE COURT: And, honestly --

12 MS. ZOIS: Yeah.

13 THE COURT: -- if she hadn't mentioned an accident 20
14 years ago --

15 MS. ZOIS: Yeah.

16 THE COURT: -- but she did mention that on direct, which
17 is why I'm gonna' let him ask her about that, because that
18 did open the door for him to at least ask about that.

19 MS. ZOIS: Understood, Your Honor.

20 THE COURT: Okay?

21 MS. ZOIS: Okay. Thank you, Your Honor.

22 THE COURT: Mm-hmm.

23 (Counsel returned to the trial tables and the following
24 occurred:)

25 (Husher turned off.)

1 BY MR. GILLCRIST:

2 Q Um, Ms. --

3 A Can you (unclear - two words?)

4 (Counsel approached the bench and the following
5 occurred:)

6 (Husher turned on.)

7 MS. ZOIS: She's asking if she can stand up?

8 THE COURT: Oh, sure.

9 MS. ZOIS: Should we take a few minute break?

10 THE WITNESS: No, just stand, I answer, just as long
11 (unclear - three words).

12 THE COURT: She just wants to be able to --

13 MS. ZOIS: Can she do that?

14 THE COURT: She just wants to be able to stand up for
15 her back.

16 MR. GILLCRIST: Oh, absolutely, yeah.

17 THE COURT: Certainly.

18 (Counsel returned to the trial tables and the following
19 occurred:)

20 (Husher turned off.)

21 THE WITNESS: All right. I don't wanna' be rude to ya'.

22 BY MR. GILLCRIST:

23 Q You're not being rude at all. Um, if you need
24 water or anything.

25 A I'm good.

1 Q Okay.

2 A Just need to stand up for a minute.

3 Q Ms. Exline-Hassler, um, you had an a, I think it
4 came out through your testimony that you had an accident
5 about 20 years ago?

6 A Uh, it was 1996, '97, somewhere around there.

7 Q And, and that accident actually resulted in a
8 fractured left hip, didn't it?

9 A I think it was a fracture line, wasn't it.

10 Q In your, uh, deposition I think you referred to it
11 as a fractured left hip.

12 A Okay.

13 Q Is that right? Is that what you remember?

14 A That may, I may --

15 Q Um --

16 A -- have said fracture.

17 Q -- um --

18 A I know it was something like that, yeah.

19 Q Okay. Just to clarify, your deposition on page
20 109, question, "What body parts did you explain about?
21 Answer, "I had a fracture of my left hip."

22 A Ok.

23 Q Okay? You did not injure your low back?

24 A No.

25 Q Okay. Now, um, you were off work for six weeks

1 because of that injury.

2 A Something like that, yeah.

3 MS. ZOIS: Objection, Your Honor.

4 THE COURT: Move on.

5 BY MR. GILLCRIST:

6 Q Now, Ms. Exline-Hassler, uh, let me move ahead to
7 the 2-5 (sic), 2005 accident.

8 A Okay.

9 Q Um, into 2008, January 2000 (sic) -- and I
10 apologize (unclear - four words.)

11 A You're okay, keep goin'.

12 Q In January 2008 we talked about how you got --

13 A To the Urgent Care.

14 Q -- to the Urgent Care.

15 A Mm-hmm.

16 Q When you went to your primary care in March of 2008

17 --

18 A Mm-hmm.

19 Q -- this was Robinwood, right?

20 A Yes, it's, it's Med --

21 Q Dr. Stephanie --

22 A -- Med Center, yeah.

23 Q -- Stephanie Brown, right?

24 A Yes.

25 Q And Dr. Brown was also your husband's primary care

1 doctor?

2 A No, he sees Dr. Royster, it's a group.

3 Q It's the same group though?

4 A It's a, it's a group, yeah, it's a group.

5 Q All right. And your testimony is you went there,
6 you had an appointment scheduled that got cancelled for some
7 reason?

8 A Correct.

9 Q And then you had another appointment shortly
10 thereafter, right?

11 A Mm-hmm.

12 Q And, can I have you, if you don't mind, I know your
13 back is hurting, but could you step down for a second just so
14 I can show you the record?

15 A Okay.

16 Q While she's marking that Hassler, um, when you went
17 to Dr. Brown -- if you can stand a little bit just over here
18 so everybody can see.

19 A Oh, sorry.

20 Q When you went to Dr. Brown it was to establish a
21 primary care, right?

22 A Yes, 'cause I didn't have one.

23 Q Okay. And your attorney has pointed out that
24 there's a, some errors in the report, um, and I want to ask
25 you about those. Here it refers to your date of birth, is

1 that correct?

2 A 1/24/67.

3 Q Okay. And it gives the wrong age here. You were
4 not 45, right?

5 A I suppose not if it was in 2008, 'cause I'm 46 now.

6 Q But they did give you your correct date of birth,
7 right?

8 A That's correct.

9 Q They did give you, they took down your telephone
10 and work numbers correctly, correct?

11 A That's correct, yes.

12 Q They took down your address correctly, correct?

13 A That's correct.

14 Q All right. They took down the date and time
15 correct, (unclear - one word?)

16 A I suppose, I --

17 Q All right. Well, all right, then one of the things
18 you pointed out is that they didn't put medications in here,
19 right? I, I'm sorry, they didn't took (sic), put allergies,
20 maybe it's on the second page?

21 A I have no idea what you're talking about.

22 Q I'm sorry.

23 A I'm sorry.

24 Q Okay. On the second page of, uh, the March 26, '08
25 exhibit -- (To the Court) And just for the Court's

1 edification, this is, uh, ex (sic), uh, Defendant's Exhibit
2 Number 3.

3 A Okay.

4 Q Um, you see how it's left blank there at allergies?

5 A Correct.

6 Q And you had a penicillin allergy, right?

7 A Yeah, I tell every doctor anywhere I go.

8 Q Okay. And --

9 A So they can have it listed.

10 Q All right. The next time that you went to the
11 Robinwood facility af (sic), it was actually after this
12 accident, right?

13 A (Unclear.)

14 Q After this visit on March 20 (sic), or was there
15 another visit to her afterwards?

16 A No, I went January 8th --

17 Q Yeah.

18 A -- I suppose the date -- I went to Urgent Care.
19 They told me to find a follow up with a film.

20 Q Okay.

21 A So, I made an appointment with them, but I took a
22 while to get in, because new patients making time. I got an
23 appointment with them, and then later on, in April or May
24 whenever I went to the P.T., I didn't go back to this office
25 --

1 Q Until after the accident?

2 A I suppose so, yeah.

3 Q Okay. You, you do remember --

4 A I mean, I might have called in and got a -- I had
5 a, I had a cold or bronchitis (unclear - two words) and I
6 called in to (unclear - one word), but I don't remember when
7 that was.

8 Q When you went in on March 26th you were giving a
9 history to the doctor, right?

10 A She took history, yes.

11 Q She took, the doctor herself took the history,
12 right?

13 A Yes.

14 Q Okay. And you did your best to provide the
15 information accurately to her, correct?

16 A I gave her everything that, you know, I --

17 Q Now -- I'm sorry if I interrupted you.

18 A No, no, no, no, you're fine.

19 Q From the time that you went to Dr. Brown on March
20 26, '08 until you saw her after the accident did you ever
21 call up Dr. Brown and tell her that you had a penicillin
22 allergy?

23 A No, because I would assume she would have put it
24 down that day when we went over it. Because when you go in
25 for any doctor visit that's the main thing they ask you about

1 allergies, 'cause they --

2 Q All right, (unclear - one word.)

3 A -- tag it in red.

4 Q All right. And my question is you didn't call her
5 after that to tell her that, right?

6 A I didn't even know it wasn't on there.

7 Q When you went in to her after the accident you
8 didn't tell her again that you had a penicillin allergy, did
9 you?

10 A Heather, Heather Hall knows I have a penicillin
11 allergy, because I'm tagged.

12 Q Okay. My question is when you went in there after
13 the accident you didn't have that conversation again about an
14 allergy, correct?

15 A They always ask me about allergies.

16 Q Okay. Let's, let's look at --

17 A They make sure, I mean --

18 Q Fair enough. Let's, let's look at the, um, this is
19 a June 20 (sic), if you don't mind just stand there for a
20 second.

21 A No, no, no.

22 Q This is where you went after the accident,
23 Robinwood, and you see how it says June 29, 2009?

24 A Okay.

25 Q Okay, this would have been after the accident,

1 right?

2 A Correct.

3 Q And --

4 A It would have been the next week.

5 Q Okay. And on here they do list your allergies as
6 penicillin, correct?

7 A Correct.

8 Q Okay. So, you, you don't have any doubt that
9 Robinwood actually knew when you went in March of 2008 that
10 there were allergies?

11 MS. ZOIS: Objection, Your Honor.

12 THE WITNESS: I don't understand.

13 THE COURT: I, sus (sic), I'll sustain. He'll ask you
14 another question.

15 BY MR. GILLCRIST:

16 Q Okay. Now, let me ask you about this --

17 A Okay.

18 Q -- you talked about, I think you testified that
19 when you were giving this history to Dr. Brown --

20 A Correct.

21 Q -- you actually did tell her about the motor
22 vehicle accident.

23 A I also told her about my other one. She asked me
24 have you had any previous accidents, there was, you know, I
25 mean, when you go into the doctor they take a general

1 history, you know, what's your history, who'd you see before.
2 And the question I have is your accident in 2005 did not
3 cause any injuries by your testimony?

4 A No.

5 Q And it was --

6 A (Unclear - two words.)

7 Q -- so minor that you testified a few moments ago
8 that it was out of your mind in 2006 you weren't thinking
9 about it, in 2007 you weren't thinking about it, in 2008 you
10 weren't thinking about it, but when you're asked about it by
11 the doctor you do mention your car accident, correct?

12 A If you ask me did you have any, a car accident, I
13 told her about the one back in 1990 and that one.

14 Q Okay. So, even though you weren't injured and had
15 no treatment whatsoever for the 2005 accident you still told
16 her about that accident, correct?

17 A She asked me if I was in any accidents, so yeah.

18 Q So the ans (sic), so the answer would be yes?

19 A Yes.

20 Q Okay. So, it was in your mind in March of '08 to
21 tell them about an accident three years earlier that resulted
22 in no injuries and was so minor you could go immediately to
23 your baseball game, your son's baseball game?

24 A She asked me the question and I answered.

25 Q Okay.

1 A So, I guess I'm answering yes to your question.

2 Q Fair enough.

3 A She asked, I answered.

4 Q Now, here it says, "Patient has low back pain since
5 being in MVA three years ago." Are you testifying that that
6 was inaccurately taken down by the doctor?

7 A That's not correct.

8 Q It also say, "It has gotten worse this past year
9 and worse in the a.m."

10 A No.

11 Q All right. And --

12 A This past year would have been when I fell in
13 December.

14 Q Okay. It says, "Worse this past year and worse in
15 the a.m.," correct? So --

16 A December's when I fell, January's when I went to
17 Urgent Care, March is when I went to her.

18 Q Says, "Patient....," um, excuse me, "...takes si
19 (sic), six Advil a day." That's correct, right?

20 A Yeah, I took three in the morning and three at
21 night, because it was hurting on the side.

22 Q It said, "No numbness or tingling," that's correct
23 --

24 A That's correct.

25 Q -- right?

1 A That's correct.

2 Q It says it's occasionally into your buttock, that's
3 correct?

4 A Correct, because it ran from here up into my side
5 into the front.

6 Q And it says, "No weakness," that's correct?

7 A That's correct.

8 Q It says, "Had an ulcer when she was younger,"
9 correct?

10 A And I still do, yes.

11 Q But that's correct, right?

12 A That's correct.

13 Q So, of the history that's reported in March of '08,
14 the thing that's wrong is that when you said the only thing
15 that's wrong about the history in this report is when it says
16 you have low back pain since a motor vehicle three years ago,
17 and that it worse this past years?

18 MS. ZOIS: Objection to the characterization that that's
19 the only thing that's wrong, Your Honor.

20 MR. GILLCRIST: Yeah, I'm talking about the history.

21 THE COURT: So, about the history.

22 BY MR. GILLCRIST:

23 Q Isn't that true?

24 MS. ZOIS: It's, that's my objection, Your Honor, 'cause
25 it's missing.

1 THE COURT: She can clarify.

2 MS. ZOIS: Thank you, Your Honor.

3 THE WITNESS: I, I don't understand.

4 BY MR. GILLCRIST:

5 Q All right.

6 A If you're asking me -- I'm gonna' repeat that so I
7 understand --

8 Q Okay.

9 A -- that I told her I had low back pain since three
10 years ago?

11 Q That's correct.

12 A I would have seen a doctor in between there.

13 Q (Unclear - one word.)

14 A I can guarantee it.

15 Q Okay, that's the wrong, you said that that's wrong.

16 A Yes.

17 Q But everything else is right --

18 A Yes.

19 Q -- correct? And the only other errors in this
20 report is that somebody put down 45 above your correct date
21 of birth and they didn't put in there penicillin, that you
22 have an allergy?

23 A I don't know what all's wrong. Okay?

24 Q Uh, well --

25 A All I know is --

1 Q -- can you look at this --

2 A -- that I have penicillin allergy --

3 MS. ZOIS: If she could finish her answer, Your Honor?

4 THE COURT: Please let her finish, Counsel.

5 MR. GILLCRIST: I'm sorry.

6 BY MR. GILLCRIST:

7 Q I'm sorry, ma'am.

8 A Can I finish?

9 Q There's --

10 MS. ZOIS: Yes, you can.

11 BY MR. GILLCRIST:

12 Q Go ahead, I apologize.

13 THE COURT: Mm-hmm.

14 BY MR. GILLCRIST:

15 Q Go ahead.

16 A Only thing I know from what you pointed out is my
17 penicillin is missing, my date of birth's wrong, and then
18 this part here, yeah, I do disagree, because she asked me
19 general history, a review of my general history, the back
20 pain would have fell here, last year would have been 2000-and
21 what was it seven, eight, whatever dates.

22 Q Okay (unclear - one word.)

23 A And then I went to Urgent Care and then I went to
24 her.

25 Q Okay. So, can we agree that the, we, you've talked

1 about what's incorrect in this record?

2 A Mm-hmm.

3 Q And everything else is correct?

4 MS. ZOIS: Objection.

5 THE COURT: So.

6 BY MR. GILLCRIST:

7 Q Well, you tell me, Ms. Hassler --

8 THE COURT: If, if she --

9 BY MR. GILLCRIST:

10 Q -- because I'm getting these objections.

11 THE COURT: -- can answer. If she can answer.

12 BY MR. GILLCRIST:

13 Q You tell me, is there anything else in this entire
14 record, and you're, you're welcome to spend some time with it
15 that you believe is incorrect, besides the 45 being
16 referenced here --

17 A Mm-hmm.

18 Q -- as your age and the absence of the allergy right
19 here that's blank, and the references to the low back pain
20 since three years ago.

21 A Okay. Do you want to know what else is wrong?

22 Q Yeah.

23 A I did not get this script. She didn't hand it to
24 me. She may have wrote it out, but they didn't hand it to
25 me. They type on the computer --

1 Q Okay.

2 A -- it prints out in another office, you pick it up
3 on your way out.

4 Q Okay.

5 A I got the Skelaxin and the Ultram.

6 Q So --

7 A And the Chantix. I never even got my lab order
8 that day. So, I mean, these were ordered, I never got 'em.

9 Q Okay. So, if we add to what's wrong with this
10 you're saying that she did write a prescription for Percocet,
11 but you never picked it up?

12 A No, what I said is, if she ordered this through her
13 computer it was never prescribed, never given to me when I
14 was discharged.

15 Q Okay.

16 A These were give (sic), this one and this one and
17 this one, these three were given to me, Ultram, Skelaxin --

18 Q Okay.

19 A -- and the Chantix.

20 Q All right, and the Ultram is the same thing as
21 Tramadol, right?

22 A I assume, that's what you guys are saying, so.

23 Q All right. And the plan says labs ordered, right?
24 Did you not have the labs after that?

25 A No.

1 Q Okay. So, those are the things that you know to be
2 wrong with this record?

3 A Yes.

4 Q Everything else is correct?

5 A I don't know I guess.

6 Q Thank you.

7 A I have no idea.

8 Q Thank you, ma'am. I'm sorry, you can resume --

9 A That's okay.

10 Q -- you can resume your seat. I appreciate it. Um,
11 now, I understand that about a, was it about a month after
12 that visit in March of '08 that you went to PT,
13 approximately?

14 A Something like that, yeah.

15 Q Um --

16 A I went to an eval and then went to PT.

17 Q I'm sorry. (Brief pause.) Could you -- and I know
18 you testified that there two separate incidents in the
19 Christmas time. I'm sorry, you, you --

20 A No, there's, there's one incident.

21 Q -- you, I apologize, you said one incident. I, I
22 misspoke.

23 A I don't know how it's broke across in those
24 records, but I can tell you I was packing Christmas box up
25 from my tree upstairs and I carried a box down.

1 Q All right. I just wanna' ask you that, okay?

2 A Okay.

3 MR. GILLCRIST: Um, yeah, do you mind? Thank you.

4 (Long pause.)

5 BY MR. GILLCRIST:

6 Q Ma'am, the physical therapy consult was on April
7 28th --

8 A If that's what it says.

9 Q -- if don't mind looking at --

10 A No, no, no.

11 Q -- at Defendant's Exhibit 15, okay? And when --

12 MS. ZOIS: What page, Counsel?

13 MR. GILLCRIST: Uh, your medical record is page, uh,
14 00109.

15 THE WITNESS: Okay.

16 MS. ZOIS: Thank you.

17 BY MR. GILLCRIST:

18 Q Okay. Um, this was the total rehab care at
19 Robinwood, correct?

20 A Mm-hmm.

21 Q And when they, when you saw the physical therapist
22 did they also take an initial history from you?

23 A He went through and we talked about things. We
24 talked about a lot of things, but yes, history.

25 Q All right. Let me just, read along with me if you

1 could. "Patient is a 41-year-old female who presents today
2 with right sided lower back pain." Do I have that right?

3 A That is, it was up through my hip, yes.

4 Q It says, "Patient reports around Christmas 2007 she
5 was moving something and injured her back, then shortly after
6 that around Christmas..." I'm sorry, "...then shortly after
7 that she fell down the stairs." Do you see that?

8 A Okay. Yeah, I see it.

9 Q All right. It seems that your physical therapy
10 history, to say that there were two separate incidents.

11 A Well, it may appear that way, but I was moving
12 Christmas stuff. So --

13 Q So, this is wrong?

14 A I was moving Christmas stuff and I carried it down
15 the steps and slipped.

16 Q Okay, so just so it's clear --

17 A I mean, that's what happened.

18 Q -- the physical therapy note with your history is
19 also wrong?

20 MS. ZOIS: Objection, Your Honor.

21 THE COURT: Sustained.

22 MS. ZOIS: It's up for -- thank you.

23 BY MR. GILLCRIST:

24 Q Um, now, have you, Ms. Exline-Hassler, you learned
25 about the March 2008 visit record, the one, the blow up that

1 I had you come down here, you learned about that after this
2 litigation was sued (sic), ensued, right?

3 A Yeah, I never saw any of that stuff until after the
4 fact when everything --

5 Q All right.

6 A -- was got from the other.

7 Q All right. Are you still with that practice?

8 A Uh, I assume so, they're the only ones we have
9 around.

10 Q Have you ever asked Dr. Brown to go back and
11 correct the record?

12 A No, I haven't. Do you want me to call her? I
13 mean, I can have her correct it, but what's it gonna' do, I
14 mean, I could have it corrected now or, or later.

15 Q Now, you testified, let me ask you about the
16 prescriptions. In March of 2008 you were prescribed the
17 Ultram --

18 A Mm-hmm.

19 Q -- and the Skelaxin, Percocet, but you never got it
20 or she didn't --

21 A I never got the order, no.

22 Q -- for whatever reason it didn't get to you?

23 A Correct.

24 Q Okay. Um, but you were prescribed Percs (sic), um,
25 uh, Skelaxin and the Ultram?

1 A Correct.

2 Q You heard your doctor, I think it was Dr. Naff who
3 said that Ultram is, is Tramadol, maybe it was Dr. London?

4 A Uh, yeah, I mean, it does come out, uh, it's a
5 different name on each, uh, bottle, I don't know.

6 Q You, you filled both of those prescriptions,
7 correct?

8 A I filled all the scripts, yes.

9 Q And I understand -- (To the Clerk) Can I have these
10 two exhibits this time. No, these are not marked.

11 THE CLERK: Oh.

12 MR. GILLCRIST: They were previously marked.

13 THE CLERK: Um . . .

14 MR. GILLCRIST: I'm sorry.

15 THE CLERK: That's all right, are they Plaintiff's or
16 Defendant's?

17 MR. GILLCRIST: They were Defendant's, I believe. Oh,
18 (unclear - three words.)

19 THE CLERK: Got it.

20 MR. GILLCRIST: Thank you.

21 BY MR. GILLCRIST:

22 Q All right, Ms. Exline-Hassler, I believe you
23 testified that you filled the prescriptions, correct?

24 A Mm-hmm.

25 Q Um, but you only used them for a very short time?

1 A Up through about the first visit of therapy, and
2 after that it started goin' away.

3 Q Okay.

4 A So, the second therapy visit it was gettin' there,
5 it was goin' away, and I never went back after that.

6 Q So, just in terms of the prescription, the Skelaxin
7 that you were prescribed and the Ultram that you were
8 prescribed you would have used those between your visit to
9 Dr. Brown in March and your physical therapy visit to Total
10 Rehab in April, right?

11 A Around that time, yes, I would have used them.

12 Q Okay.

13 A 'Cause I did have the pain.

14 Q And then at that point you didn't take any other
15 prescriptions until after this accident, correct?

16 A That's correct.

17 Q So, at no point after April of 2008 did you take
18 any prescriptions -- and I'm not talking about things that
19 might be for, and I'm not saying (unclear - one word) for
20 bronchitis or allergy or (unclear - two words) rash or
21 something.

22 A Anti (sic), antibiotics or such, mm-hmm.

23 Q I'm talkin' about muscle pain medication for, um,
24 uh, the other Tramadol or Skelaxin, mus (sic), muscle
25 relaxants and the pain medications, right?

1 MS. ZOIS: Object, objection, Your Honor, misstates
2 testimony. He said April, she said May, that's my objection.

3 BY MR. GILLCRIST:

4 Q Okay. All right. Then let's do this, can we agree
5 that from May 2008 until after June of 2009 you did not use
6 any medication?

7 A No, I had 'em up in my cupboard in my basket.

8 Q Okay. So, when you get to May of 2008 you've,
9 you've improved, you decided not to go to physical therapy
10 anymore --

11 A Correct.

12 Q -- you have these medications in your basket, up in
13 your cupboard.

14 A Correct.

15 Q Right? Is this the basket that your husband
16 testified he threw away?

17 A Yeah.

18 Q Okay. All right.

19 A He threw the whole thing away.

20 Q All right. So, you had, before he threw it away
21 you had how many remaining pills of these prescriptions?

22 A I had like three or four bottles in there, five
23 bottles, I don't know.

24 Q Of Ultram and Skelaxin?

25 A Whatever it was, yeah.

1 Q All right.

2 A I had 'em thrown up there, along with some other
3 stuff my son had had, and stuff, but yeah.

4 Q No, I'm just talking about you, not your son.

5 A I had that stuff in there, yes.

6 Q Okay. All right. Then, uh, I think you testified,
7 or maybe you didn't, did you go back and renew prescriptions

8 --

9 A I filled --

10 Q -- afterwards?

11 A -- all three of my scripts for those three items.

12 Q Okay. Then, and do you remember in -- let's start
13 -- you, you would fill your prescriptions at two places. One
14 would be Boonsboro Pharmacy, correct --

15 A Correct.

16 Q -- (unclear - one word) Boonsboro?

17 A Correct.

18 Q And the other would be the Weis Pharmacy on Chase
19 Six Boulevard?

20 A It depended where I dropped them off that day.
21 Weis was just new to our area. They just moved in Boonsboro,
22 so.

23 Q Okay. Let me show you Defendant's Exhibit Number
24 4, okay?

25 A Okay.

1 Q All right. And if you look at Defendant's Exhibit
2 Number 4, this is your record of prescriptions --
3 A Mm-hmm.
4 Q -- from, um, this --
5 A Boonsboro.
6 Q -- Boonsboro Pharmacy, right?
7 A Mm-hmm.
8 Q Okay. If you start, and it only goes back to,
9 well, it goes back to 2003, but let's start with, uh, January
10 8th, 2008 --
11 A Okay.
12 Q -- you were prescribed Hydrocodone, correct?
13 A Correct.
14 Q Now, that's the generic of, uh, Percocet, right?
15 A No, it's been, it's Vin (sic), it's Vicodin.
16 Q Vicodin, I'm sorry.
17 A That's what I take now during the day.
18 Q Is that a narcotic?
19 A Yes.
20 Q You, you obviously filled that prescription?
21 A Yes, it was like 20 some pills I think.
22 Q All right. All right. Then, um, there's something
23 that looks like it's unrelated --
24 A I think --
25 Q -- um --

1 A -- that Methocarbamol is that what you're showin'?

2 Q Yeah. What, what's Metha (sic), what's
3 Methacarbamol?

4 A I don't know what that one was.

5 Q Okay.

6 A But it had to be along with that.

7 Q All right. Now, here you go to March 26, 2008,
8 that would be the Skelaxin and the Tramadol that Dr. Brown
9 (unclear - one word.)

10 A That is correct.

11 Q You did fill those?

12 A And Chantix, yes.

13 Q Correct? All right, and if you go across the line
14 for Skelaxin, um, it says zero refills, right? You see here,
15 refill number?

16 A Okay. So, that would be initial, is that what
17 you're saying?

18 Q Right here --

19 A Okay.

20 Q -- see where it says zero.

21 A Uh-huh.

22 Q And you see over to the left of that it gives you
23 the quantity --

24 A Of 30.

25 Q -- dispensed.

1 A Mm-hmm.

2 Q Thirty pills. And for the Tramadol you had 60
3 pills with zero refills in March of '08, do you see that?

4 A Okay.

5 Q All right, now, in July of '08 you go ahead and you
6 renew a prescription or get a new prescription for Tramadol,
7 correct?

8 A Correct.

9 Q That would have been July 13, 2008.

10 A Correct.

11 Q And that gave you 60 pills with one refill --

12 A Okay.

13 Q -- right? All right, now, and you also, in
14 September of 2008, get Skelaxin.

15 A Mm-hmm.

16 Q Do you see how it says 30 pills and one refill --

17 A Correct.

18 Q -- do you see that? Now, you're, up, up, just, I'm
19 gonna' leave my pen right here.

20 A Okay.

21 Q Um, when did your husband throw away this basket of
22 pills?

23 A This past year.

24 Q Okay. So, you, you would have had them --

25 A I would had them --

1 Q -- back then?

2 A -- to bring in to you and show you, yes.

3 Q All right. Now, you testified, I believe, that you
4 refilled prescriptions after May of 2008 because you wanted
5 to make sure you had enough pills in case your back flared up
6 or was it because of some other (unclear - one word?)

7 A No, in case I have problems again with my hip and
8 my side. I didn't know what it was --

9 Q Okay.

10 A -- but it went away.

11 Q So, are you saying, ma'am, that in July, the two
12 that I just referenced --

13 A Mm-hmm.

14 Q -- in July of 2008 and in September 2008 you
15 specifically got a prescription, because there was no more
16 refills, you specifically contacted your --

17 A No, I was given three refills. On your paperwork
18 it even says. I was given three refills on it from Stephanie
19 Brown, originally. And that's where these come from.

20 Q Okay.

21 A March 26 was her visit.

22 Q All right, fair enough.

23 A And then the rest of them I filled off the script.

24 Q Okay, you may, you may be right, it may have said
25 that in the initial script. Um, so whether you --

1 MR. BRATT: It did, she is.

2 BY MR. GILLCRIST:

3 Q -- have a refill or not had a refill script, in
4 July you specifically went to Boonsboro Pharmacy for Skelaxin

5 --

6 A I did all these.

7 Q Okay.

8 A I refilled every one of these, yes, sir.

9 Q Okay. And I just want to be clear, is it your
10 testimony that you went to the pharmacy, paid for these
11 prescriptions, just in case?

12 A Just in case.

13 Q Even though --

14 A You never know when you need 'em.

15 Q Okay, you'll never know when you'll need 'em?

16 A Yes.

17 Q And even though you already had the four or five
18 bottles of these prescriptions that were in your cabinet?

19 A I --

20 MS. ZOIS: Objection, Your Honor. The, the timing isn't

21 --

22 THE COURT: Re, rephrase.

23 MS. ZOIS: -- that isn't --

24 BY MR. GILLCRIST:

25 Q You testified that your husband threw away these

1 prescriptions this past year.

2 A Correct.

3 Q Okay. So, we're talking 2012, we're back in to
4 2008 time frame.

5 A They were all in there.

6 Q Okay.

7 A Okay? These ones in March I would have taken
8 those. I would have taken (sic) all those scripts, because
9 I had my hip and side pain.

10 Q Okay. Ma'am, a second ago you testified that there
11 was still medicine left over from those scripts that you were
12 given.

13 A I had additional scripts.

14 MS. ZOIS: Objection, misstates testimony.

15 THE COURT: (Unclear - one word), approach, approach. I
16 think I can clarify this.

17 (Counsel approached the bench and the following
18 occurred:)

19 (Husher turned on.)

20 THE COURT: You're asking her whether she filled those
21 other prescriptions because --

22 MR. GILLCRIST: She's --

23 THE COURT: -- even though she had not taken the pills
24 in March. She's saying she took those pills in March and she
25 just filled them afterwards --

1 MR. GILLCRIST: Right.

2 THE COURT: -- because of --

3 MR. GILLCRIST: Right.

4 THE COURT: -- because of that.

5 MR. GILLCRIST: Right.

6 THE COURT: So, uh, let's clarify that.

7 MR. GILLCRIST: I do want to clarify that, Your Honor.

8 THE COURT: Clarify that, because that's what I
9 understand.

10 MR. GILLCRIST: Okay.

11 THE COURT: I think you're misunderstanding what she's
12 saying.

13 MR. GILLCRIST: Okay. Thank you.

14 MS. ZOIS: And, and, Your Honor --

15 MR. GILLCRIST: Let me clarify that.

16 THE COURT: So.

17 MS. ZOIS: -- he's -- if we can come back for a second.
18 She's already testified she filled every script, she got 'em
19 filled, she put 'em up there, I mean, I, I'm trying to be
20 disruptive --

21 THE COURT: So, yeah --

22 MS. ZOIS: -- because --

23 MR. GILLCRIST: I'll clarify that.

24 THE COURT: So, just --

25 MS. ZOIS: -- I think they're probably getting irritated

1 --
2 THE COURT: Just clarify --
3 MS. ZOIS: -- but I want to come --
4 THE COURT: -- that, because I, I think she took those -
5 -
6 MS. ZOIS: Yes.
7 THE COURT: -- and it was --
8 MR. GILLCRIST: All right. I thought she had said, I
9 thought she had, and I'm pretty sure she did say that that
10 she didn't take all of 'em.
11 THE COURT: So.
12 MR. GILLCRIST: And she still had some remaining.
13 THE COURT: So.
14 MR. GILLCRIST: So, that's why I was asking.
15 MS. ZOIS: And, and I'm --
16 THE COURT: But clarify that --
17 MR. GILLCRIST: I will.
18 THE COURT: -- and then we'll, 'cause --
19 MS. ZOIS: And I don't want to keep standing up with
20 asked and answered.
21 THE COURT: So, no. That's okay.
22 MS. ZOIS: Okay. Thank you, Your Honor.
23 THE COURT: Mm-hmm.
24 (Counsel returned to the trial tables and the following
25 occurred:)

1 (Husher turned off.)

2 BY MR. GILLCRIST:

3 Q Ms. Exline-Hassler, I apologize for --

4 THE COURT: I think we're --

5 BY MR. GILLCRIST:

6 Q -- having you go through these laboriously like
7 this, but I, I really, um --

8 A No, you're fine.

9 Q -- when you were prescribed the Skelaxin and the
10 Ultram in March of 2008 --

11 A Mm-hmm.

12 Q -- you filled those prescriptions --

13 A I did.

14 Q -- right? You went to the pharmacy and got those
15 pills?

16 A Correct.

17 Q Your testimony is that you took some of them until
18 you started feeling better?

19 A No.

20 MS. ZOIS: Objection, thank you. With, withdrawn, Your
21 Honor.

22 THE COURT: Okay.

23 BY MR. GILLCRIST:

24 Q Isn't it a fact you just said a few minutes ago?

25 A No, no, no, you're not understanding the script.

1 January 8th I had two scripts, I had my Hydrocodone and the
2 Methacarbo (sic). That's what I got at Urgent Care.

3 Q All right.

4 A There was like 20 each I think. Okay, in between
5 that time, until I got an appointment with Stephanie Brown I
6 had nothing but Advil.

7 Q Okay.

8 A So, in March 26 I went to Stephanie Brown, she
9 prescribed me the Skelaxin, the Tramadol and the Chantix.

10 Q Okay.

11 A I took those and had 'em filled.

12 Q Okay.

13 A Then in July, September, I thought you had another
14 date here --

15 Q Ma'am --

16 A -- February and --

17 Q -- I want to talk about July --

18 A -- I filled 'em.

19 Q -- and September. And, and please correct me if
20 I'm wrong --

21 A Mm-hmm.

22 Q -- but I, I'm pretty sure just a few minutes ago
23 when we were asking you how much of that March medication you
24 took you said you still had pills remaining. After you went
25 to physical therapy you didn't go to the second physical

1 therapy visit, remember saying that?

2 MS. ZOIS: Objection. From which prescription, this is

3 --

4 BY MR. GILLCRIST:

5 Q Uh, uh, Ma'am --

6 THE COURT: So, I, I --

7 BY MR. GILLCRIST:

8 Q -- isn't it true --

9 THE COURT: -- let him -- I'm gonna' give some leeway so
10 we can try to clarify this and then can move on.

11 BY MR. GILLCRIST:

12 Q Isn't it true --

13 MS. ZOIS: Understood, Your Honor, thank you.

14 BY MR. GILLCRIST:

15 Q -- isn't it true that just a few minutes ago I was
16 asking about this medication and I thought, I'm pretty sure
17 you said that there were still some pills left over and you
18 stopped taking them?

19 A I did stop taking 'em right after my first visit at
20 therapy.

21 Q Okay. That, that's what I'm getting to.

22 A Okay.

23 Q So, when you stopped taking those pills --

24 A Okay.

25 Q -- okay, you, you just put them in your, your

1 medicine cabinet in with the other pills you had up there?

2 A Correct.

3 Q Is that correct?

4 A That's correct.

5 Q And so there were still some pills left over from
6 May of 2008, correct?

7 A That I don't know. That, that question I cannot
8 answer. I don't know if I said it and didn't understand. I
9 don't know about that one. That would have been the script
10 that I had filled here from March.

11 Q Okay, so you're not sure --

12 A That would have been my script in March.

13 Q All right, s --

14 A So, I don't know.

15 Q All right, now --

16 A I could have finished 'em all and I could have had
17 some left.

18 Q Okay, but you talked about having, when I was
19 asking you about the pills you had, you talked about having,
20 I thought you said four or five pill bottles in your medicine
21 cabinet.

22 A Because I had the refills on the pills. I did the
23 refills, I don't know, four, five, whatever on this Skelaxin,
24 I had one or two on the Tramadol. I did fill those and --

25 Q All right. Then let me move on --

1 A -- put 'em in my basket.

2 Q Okay. Well, let me move on to the, just, and
3 specifically, in July of 2008 you specifically went to the
4 pharmacy and got Tramadol, correct?

5 A I called my order in.

6 MS. ZOIS: Objection, Your Honor, asked and answered.

7 THE COURT: Sustained.

8 BY MR. GILLCRIST:

9 Q All right. And then in September you specifically
10 went to Boonsboro and got Skelaxin.

11 MS. ZOIS: Objection, asked and answered.

12 BY MR. GILLCRIST:

13 Q All right. Then let me move on to January 12th of
14 2009. Do you see that prescription there?

15 MS. ZOIS: Objection, asked and answered.

16 THE COURT: I, I don't which, which one in January.

17 MR. GILLCRIST: I have not asked the same question about
18 January 2009, Your Honor. Okay?

19 MS. ZOIS: She said she filled all the scripts, Your
20 Honor. So, it's --

21 MR. GILLCRIST: Your Honor, may I please cross --

22 MS. ZOIS: -- answered.

23 MR. GILLCRIST: -- examine the witness?

24 BY MR. GILLCRIST:

25 Q Um, ma'am, could you look at Exhibit Number 4.

1 A Mm-hmm.

2 Q Do you see on January 12th, 2009 you got Skelaxin
3 800 milligrams, uh, a script written by Dr. Brown with 30
4 pills and two refills, do you see that?

5 A I only had three refills. Based on the
6 documentation, I had three refills on Tramadol and Skelaxin.
7 We just looked at that big chart settin' (sic) there.

8 Q Ma'am, I'm just gonna' draw the line here. I'm,
9 I'm gonna' put this --

10 A I don't understand your question, Hon, that's why
11 I'm --

12 Q And that's, that's very fair. I just wanna' know.
13 Let's see how I've put this here so maybe it's a little
14 easier to read.

15 A Okay.

16 Q January 12, 2009 do you see Skelaxin 800
17 milligrams?

18 A I do.

19 Q And Dr. Brown, right?

20 A Correct.

21 Q And you actually went to Boonsboro Pharmacy and
22 picked it up.

23 A Correct.

24 Q All right. Now, I understand your testimony, if
25 I'm correct, that in January of 2009 you got that

1 prescriptions just in case your problems acted up again?

2 A I filled all three of the scripts that Stephanie
3 gave me.

4 Q Please, I'm just asking about the one --

5 THE COURT: It, it, let me -- you filled every
6 prescription --

7 THE WITNESS: I filled every script, I did.

8 THE COURT: -- with all the refills that were
9 authorized?

10 THE WITNESS: Every refill. It may have been, I mean --

11 THE COURT: Just to clarify.

12 THE WITNESS: -- it in case of something, I needed 'em,
13 but --

14 BY MR. GILLCRIST:

15 Q But, but, and I just want to know, when you went to
16 the pharmacy in January of 2009 you went there out of
17 precaution that you might have problems, is that correct?

18 A I, I filled it in case it would come back between
19 my hip and my side, yes.

20 Q So, you weren't, so, your testimony is you weren't
21 having problems when you filled that prescription?

22 A That is correct.

23 Q Okay. Um, and then, um, let me show you the, the
24 Exhibit Number 5, okay? Now, you see in Exhibit Number 5 the
25 top two that I'm referring to, September 16, 2008.

- 1 A Mm-hmm.
- 2 Q You got Tramadol HCL?
- 3 A Mm-hmm.
- 4 Q At Weis Pharmacy, right?
- 5 A Correct.
- 6 Q And how many pills were dispensed?
- 7 A What does it say?
- 8 Q Sixty.
- 9 A Okay.
- 10 Q And you paid for those, right?
- 11 A I did.
- 12 Q Dr. Brown ordered them.
- 13 A Okay.
- 14 Q Okay? Then in February, February 28, 2009 you got
15 more Tramadol from Weis Pharmacy, right?
- 16 A Correct.
- 17 Q And this would have been, again, tablets of 60.
- 18 A Correct.
- 19 Q Correct? And that would have been the date
20 February 28, 2009?
- 21 A Correct.
- 22 Q Now, my --
- 23 A It would have been a transferred script from
24 Boonsboro to them, I believe.
- 25 Q Okay. So, my question to you, um, Ms. Exline-

1 Hassler is, is it your testimony that both in January of 2000
2 (sic), the accident was in June of 2009, correct?

3 A Yeah, they have nothing to do with this.

4 Q Okay.

5 A This is from my falls down the steps at Christmas.

6 Q Okay. But what I want to find out from you --

7 A Mm-hmm.

8 Q -- is wouldn't you agree that your testimony is
9 that in, for both the pharmacy refill that you picked up in
10 January of 2009 and the one in late February 2009 it wasn't
11 because you were having any active problems.

12 A I didn't have no problems, I just filled the
13 scripts in case I would ever need them, if it would ever
14 flare back up.

15 Q Just in case?

16 A Just in case.

17 Q Okay. And you spent money to do that? You had --

18 A I most definitely did.

19 Q Okay. And in the course of your, let's take 10
20 years before this accident, were there other occasions where
21 you would just go fill prescriptions just in case you have a
22 problem?

23 A I, I really haven't had a doctor's appointment I
24 don't think.

25 Q Okay.

1 A I didn't even have a regular doctor. If I did I
2 went to the Urgent Care. So, if they didn't have the records
3 when you requested them that means I hadn't been there.

4 Q Okay. All right, now, let me, uh -- (brief pause)
5 -- let me ask you about, and I'm gonna' go ahead and move
6 forward to about after the accident, okay?

7 A Okay.

8 Q We know you went to Urgent Care. That was the day
9 after the accident?

10 A From the June 26th, accident?

11 Q Yeah, yeah.

12 A Yes.

13 Q Yeah. Um, you went to Urgent Care the day after?

14 A 27th.

15 Q All right, and then you went back to Robinwood it
16 appears from the records, correct?

17 A 29th, yes.

18 Q And then you were referred to, um, Dr. Radley,
19 correct?

20 A Eventually, after the MRI results and such came
21 back they sent me to Parkway and Radley was assigned to me.

22 Q Okay. And, and who referred you to Parkway?

23 A Dr. Hall.

24 Q Dr. Huang?

25 A Hall.

1 Q Uh, how do you spell it?

2 A Heather Hall from Robinwood.

3 Q Oh, I'm sorry. So, it was from Robinwood, they
4 referred you to Dr. Radley?

5 A That's correct.

6 Q And Dr. Radley's a neurologist and neurosurgeon?

7 A No, I don't what he is, I really don't, they're,
8 they're a whole group.

9 Q Okay. But you submitted as part of your claim in
10 this case medical bills, um, uh, from Parkway Neuroscience,
11 right?

12 A That is correct.

13 Q And you are now unhappy with what they did?

14 A I was unhappy the whole time.

15 Q Okay.

16 A I wasn't gettin' better, they --

17 Q All right, but you saw them for eight or nine
18 months, correct?

19 A They kept telling me to work with them that they
20 would work with me, the therapy, they would get my back back
21 --

22 Q All right.

23 A -- they just kept it up.

24 Q And you, would you tell Dr. Radley that you were
25 unhappy?

1 A I never saw Dr. Radley again. He, they turned me
2 over the Huang --

3 Q Heather?

4 A -- and the PT and then PT turned me over to chiro.

5 Q Okay. And Dr. Hoang is H-O-A-N-G I think?

6 A Yeah, she, I think it is. She's --

7 Q She was the, um, uh, the, uh, not the acupuncturist

8 --

9 A She's a pain doctor.

10 Q -- (unclear - two words) -- pain doctor?

11 A Mm-hmm.

12 Q And your testimony was that Dr. Radley brought up
13 the subject of the annular tears and told you that everybody
14 has 'em, correct?

15 A He said not to worry about it, that I, it was
16 muscle problems I was having, the annular tears, no big deal,
17 everybody has 'em.

18 Q Okay.

19 A And --

20 Q And, and you talk about staying with Parkway for
21 eight or nine months.

22 A Well, I was tryin' to get better.

23 Q I understand.

24 A I wouldn't have went through all this and missed
25 all the time I have from work if I wasn't hurtin', I can tell

1 ya', it's not my way.

2 Q But, at no point, and you've read their medical
3 records, haven't you?

4 A I have recently read all the medical records, yeah.

5 Q And would you agree that at no point in any of
6 Parkway Science's (sic), uh, Neuroscience's medical records
7 does it ever say that you're unhappy?

8 A I was happy with my therapist. I loved the
9 therapist and the chiropractor. Dr. Huang did nothing for
10 me.

11 Q Okay.

12 A She kept giving me medicine and just filling me
13 with scripts, and none of it was helping me.

14 Q But you said that you were unhappy and you told
15 them.

16 A I did tell Dr. Huang that. That's why she told me
17 to go get a second opinion --

18 Q Do you --

19 A -- if I didn't like what she was doin'.

20 Q -- do you know where there's no reference in those
21 records to you being unsatisfied or unhappy with her care?

22 MS. ZOIS: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. GILLCRIST:

25 Q All right. Ma'am, eventually you did go somebody

1 else, right?

2 A Eventually I did, yes. I went to --

3 Q Okay, and you went --

4 A -- Spine Center.

5 Q -- do you remember going to a Dr. Nisenfeld?

6 A I did. I was sent to Dr. Nisenfeld, I think Dr.
7 Huang told me go see him.

8 Q Okay.

9 A 'Cause I still was complaining about the back pain
10 and the feelings I was having.

11 Q And you --

12 A I went to Nisen' --

13 Q -- and --

14 A -- whatever.

15 Q -- you talked to Dr. Nisenfled about the annular
16 tears as well.

17 A No, well, I brought all my records with me and
18 explained to them what was going on. He's an orthopedic
19 doctor.

20 Q All right. And isn't it --

21 A I think he is anyway.

22 Q -- and isn't it true you left his office
23 understanding that your MRI showed degenerative problems?

24 A I don't remember what he said, I really don't.

25 Q Okay.

1 A So many doctors have told me so many things, I
2 don't remember. But I do not that he told me to see Dr. Rao
3 or Ruo (phonetic), whatever, across the street. Instead I
4 had already gone to Spine Center, because Rao Pine (sic),
5 Spine Center is out of the way for me.

6 Q Dr. Huang, isn't it a fact that you learned from
7 Dr. Huang that you had arthritis in your spine that was a
8 result of the natural aging process?

9 A Is that when she took my x-ray and my took, my, um

10 --

11 Q I just wanna' --

12 A -- thorax --

13 Q -- I'm just --

14 A -- I think that was thorax x-ray.

15 Q -- I'm just goin' on your memory.

16 A I think it was a thorax x-ray and she says
17 everybody has it when you start gettin' old.

18 Q On page 103 of your deposition, line 10, question,
19 "Any doctor ever tell you that you have arthritis in your
20 spine?" Answer, "I believe Dr. Huang tried to tell me that."
21 Question, "That was at Parkway, right?" Answer, "Parkway."
22 Ques --

23 MS. ZOIS: Objection, Your Honor. That was her answer.

24 BY MR. GILLCRIST:

25 Q Question --

1 THE COURT: So, sh (sic), it is.

2 BY MR. GILLCRIST:

3 Q -- "And what did she say regarding that?" Answer,
4 "That she had seen slight, I guess, arthritis in what, is
5 what she said. I don't remember the terms that she used."
6 Is that consistent with what you recall --

7 A Yeah, I'm sorry --

8 Q -- Dr. Huang saying?

9 A -- if I didn't say it the same way, but, yeah.

10 Q No, that's okay, but that's basically what Dr.
11 Huang (unclear - one word) --

12 A That was of my thorax, yes. That was a thorax x-
13 ray.

14 Q All right. Now, after you went to Dr., um,
15 Nisenfeld, you only saw him once, right?

16 A Yeah, I was only there a few minutes.

17 Q All right. And at some point you came under the
18 care of Dr. Sloan, right?

19 A Because Dr. Nisenberg (sic) told me to go see the
20 pain doctor, which is across the street, I don't know, Dr.
21 Rio (sic), but Dr. Rio (sic) is not really convenient for me
22 so instead I went to the Spine Center in Hagerstown, which is
23 the same thing, they're all pain doctors.

24 Q All right. Then you went to, um, after that where
25 did you go, if your recall?

1 A I stayed at --

2 Q (Unclear - two words.)

3 A -- Spine Center. I'm still there.

4 Q You're still at The Spine Center?

5 A Mm-hmm.

6 Q And I think you testified you keep going back to
7 The Spine Center and he keeps giving you prescriptions?

8 A Yeah, because there's nothing more they can do
9 right now. They don't want to give me any more injections.
10 I've had so many steroids I can't have any more.

11 Q Okay. And Dr. Sloan has basically told you there's
12 nothing more he can do.

13 A Right at this time all I can do is injections and
14 medication.

15 Q Um, did, do you remember Dr. Radley telling you
16 that the MRI was, showed, the only thing the MRI showed was
17 something consistent with your age?

18 A I don't remember that. I just remember the tears
19 when he told me nothing's wrong.

20 Q Okay. All right. And then, um, and you've seen
21 Dr. Sloan, now he, you considered him your doctor up until
22 basically now?

23 A He's the pain doctor, yeah.

24 Q Okay, but you haven't gone back, you said something
25 about October?

1 A No, I go every single month. I just haven't seen
2 him. I see his nurse practitioners to give me my medication
3 every month.

4 Q Now, I want to take one step back, and I apologize
5 for doing it.

6 A You're fine.

7 Q Um, about whether you had low back pain before this
8 accident. And I want to refer to some of your deposition
9 testimony, okay?

10 A Okay.

11 Q On page 185 of your deposition, line 60 -- and,
12 just for the record, 'cause I think it's easier, I'm sorry.

13 A No, you're fine.

14 Q But let me, let me just show you, so, you know I'm
15 reading it (unclear - one word).

16 A You're good.

17 Q Um, question on line 16, "After you concluded your
18 physical therapy with Robinwood, after you attended the
19 physical therapy appointments, between that time in June 26
20 of 2009, which would have been the date of the accident, did
21 you have any lower back pain?" And your answer was, "No, not
22 that I remember not - nothing like this or like that, no."
23 Do you see that?

24 A I'm human yes.

25 Q Okay.

1 A If you're asking me between the 2005, I just wanna'
2 make sure (unclear - one word), 2005 and the June 26th.

3 Q Okay. Actually, no, I didn't ask you that.

4 A Okay.

5 Q And I'm glad you brought that up. The question
6 really concerned after you stopped the physical therapy in
7 May of 2008 --

8 A Okay.

9 Q -- between May of 2008 and June accident 2009, if
10 you had any low back pain, and your answer was, "During that
11 time frame no, not that I remember. Not - nothing like this.
12 Or like that no." Okay?

13 A Okay.

14 Q Now, isn't it true that what you were saying there
15 is that you had low back pain, but it was nothing like you
16 had after the accident?

17 A No. No.

18 Q Okay, so when you say --

19 MS. ZOIS: Objection, if she can answer the question,
20 Your Honor.

21 THE COURT: Let her --

22 BY MR. GILLCRIST:

23 Q Go ahead --

24 THE COURT: -- go ahead.

25 BY MR. GILLCRIST:

1 Q -- please, go ahead.

2 A I didn't have back pain, but I'm a normal person.
3 I may have aches and pains everywhere on my body, but I've
4 never had anything like this in my whole life.

5 Q All right. On page 188 on line 19, "I just want
6 you to say it as best you can," again in the same subject.
7 The answer, "As far as pain in my back..." --

8 MR. BRATT: Mm-mm.

9 BY MR. GILLCRIST:

10 Q -- "...no, I have never had..." --

11 MR. BRATT: Mm-mm.

12 BY MR. GILLCRIST:

13 Q -- "...pain like this or anything prior to 2009
14 when the accident was."

15 MS. ZOIS: Objection, Your Honor, this is, in the
16 doctrine of completeness there's a lot of testimony --

17 MR. BRATT: It's grossly inappropriate.

18 THE COURT: Okay.

19 MS. ZOIS: It's, this is --

20 THE COURT: Counsel, approach.

21 MS. ZOIS: We need to approach, yes.

22 THE COURT: Approach, please.

23 MS. ZOIS: Thank you.

24 THE COURT: Jesus.

25 (Counsel approached the bench and the following

1 occurred:)

2 (Husher turned on.)

3 THE COURT: Can use a deposition for any purpose. If he
4 doesn't read a complete thing you can certainly go through it
5 on redirect and read the whole passage.

6 MR. GILLCRIST: Thank you, Your Honor.

7 MS. ZOIS: Okay.

8 THE COURT: Let's please --

9 MS. ZOIS: Okay.

10 THE COURT: -- let's get going. Thank you.

11 (Counsel returned to the trial tables and the following
12 occurred:)

13 (Husher turned off.)

14 BY MR. GILLCRIST:

15 Q Okay. Where you read, where I was reading, "As far
16 as back pain, no. I'm sorry, as my pain in my back, no, I
17 have never had pain like this or anything prior to 2009 when
18 the accident was." Question on page 189, "And I just need to
19 follow up, because I'm not asking you is the pain the same
20 after the accident as it was before so I'm ask, I'm not
21 asking you is it pain like this, I'm asking you did you ever
22 have, did you have any back pain? That's the question. You
23 may have answered it, but that's the question." Answer, "I'm
24 going (unclear - two words), I'm going to say no."

25 A Okay.

1 Q Okay. Now, on the prior page, uh, line four of
2 188, "Up until the time of the car accident in June of 2009
3 did you have any back pain. I thought what you said was
4 nothing like this. I want to make sure specifically. Did
5 you have any back pain at all from the last time you saw the
6 physical therapist through June 26, 2009?" Answer, "Not that
7 I remember, but I am a normal person everybody has aches and
8 pains. So, I mean, not that I remember for back pain, no."

9 A Okay.

10 Q Okay.

11 A And then --

12 Q That was all your testimony.

13 A I agree with everything I said.

14 Q Okay. And when you earlier had referenced not like
15 this, were you trying to say that you did, but this accident
16 made it worse? Is that what you were trying to convey to us?

17 MS. ZOIS: Objection, Your Honor.

18 THE COURT: I'm gonna' sustain.

19 MS. ZOIS: (Chuckles.)

20 THE COURT: Since we've kind of gone through that.

21 MR. BRATT: Exactly.

22 MR. GILLCRIST: With the Court's brief indulgence.

23 THE COURT: Certainly.

24 (Brief pause.)

25 BY MR. GILLCRIST:

1 Q Um, you talked about your farm, uh, or your
2 property, um, things of that nature and the photographs that
3 showed the children, um, they're, your youngest is now 18-
4 years-old?

5 A Yeah.

6 Q And the photographs, were they taken earlier than
7 that?

8 A Some of 'em were taken earlier, so I had, 'cause --

9 Q Okay. But those (unclear - one word) --

10 A -- when I take pictureses (sic) of my grandchildren
11 and stuff like that.

12 Q Your three sons are now grown, right?

13 A Yes.

14 Q So you --

15 A Chadrick's 28, and --

16 Q -- so if you made reference to your children in the
17 photographs those would be pretty old photographs?

18 A 2005, 2006, Peyton's just 18.

19 Q Okay. Um, you still own your Harley --

20 A I do.

21 Q -- correct? And your husband testified yesterday
22 that you've ridden it with him, not, you've ridden on his
23 Harley about four times?

24 A That is correct. Not mine.

25 Q Now, and you hope, obviously, you hope to get back

1 to riding?

2 A I would like to, it's what I've done my whole life.

3 Q Has your problem with the numbness in your hand had
4 an impact on your garden? The carpal tunnel --

5 A Numbness in my hand?

6 Q -- symptoms?

7 A No. I will continue on doing that.

8 Q Okay.

9 A One handed if I have to.

10 Q Okay, but we talked about the carpal tunnel and you
11 had surgery that helped the condition. Before you had that
12 surgery, how long had you had the carpal tunnel?

13 A I have no idea, because I didn't even know it was
14 carpal tunnel. I just know that my arms and hands hurt after
15 the accident.

16 Q All right. And how long after, how long after --
17 let's see, how long did they hurt up until the time you had
18 surgery?

19 MS. ZOIS: Objection, Your Honor, for the reavons (sic),
20 reasons proffered before --

21 THE COURT: So.

22 MS. ZOIS: -- we're not claiming carpal tunnel.

23 THE COURT: I --

24 MR. GILLCRIST: (Unclear - five words.)

25 THE COURT: Understand that's with the, with the non-

1 economic damages, I'll allow her to answer that.

2 MS. ZOIS: Okay, Your Honor.

3 THE COURT: Mm-hmm.

4 BY MR. GILLCRIST:

5 Q Um, you had bad symptoms in your arms and your
6 hands, um, that led to the surgery, fair to say?

7 A Correct. I have, I still have numbness, but
8 numbness.

9 Q And, and, and your, your arms and hands is on both
10 sides?

11 A I had surgery on my right, because it kept gettin'
12 worse, it got really bad and hurt.

13 Q Did you, did you have surgery on your left?

14 A No, the left I'm not gonna' have surgery unless I
15 really have to.

16 Q Is that the one that's bothering you more now?

17 A They're not bothering me, I just have numbness.

18 Q Okay.

19 A It's not a big deal.

20 Q For a period of time before you had the surgery on
21 your right you did have arm and hand problems as well?

22 A Correct.

23 Q Did that have an impact on your ability to ride
24 your motorcycle?

25 A No, but I can't take vibration.

1 Q Okay.

2 A None.

3 Q All right. Did having problems with your hands and
4 your arms, up until the time you had the surgery, did that
5 impact your activities around the house at all?

6 A I don't understand. No.

7 Q Okay. You have not had to hire or pay anybody to
8 do any of the yard work or the other things that you
9 described --

10 A No --

11 Q -- (unclear - two words?)

12 A -- my husband does it and my boys jump in.

13 Q And you actually are part of your husband's
14 company, aren't you?

15 A I'm part owner, yes.

16 Q You're a part owner of his mech (sic), uh, his
17 floor, uh, mechanical floor business?

18 MS. ZOIS: Ob, objection, Your Honor.

19 THE COURT: So.

20 MS. ZOIS: Relevance and outside the scope.

21 THE COURT: I'm gonna' sustain.

22 MR. GILLCRIST: Has to do with, has to do with her
23 activity, Your Honor. I'll just ask her about her activity.

24 THE COURT: Ask, just ask her about the activities then.

25 BY MR. GILLCRIST:

1 Q Isn't it true that you do work for your husband's
2 company on the side?

3 A I do paper work, if that's what your question is,
4 yes, I do the paper work.

5 Q All right. At home?

6 A Yeah.

7 Q Okay. And does that take up a fair amount of time?

8 A No, it doesn't take much time it's only him and one
9 sub.

10 Q Okay. When, uh, you -- just a couple questions
11 about, uh, your boss was here yesterday to talk about your
12 work, it is true, is it not that the time that you missed
13 after the accident was related to attending doctors'
14 appointments, primarily?

15 A Primarily.

16 Q Okay.

17 A Yeah, I think --

18 Q All right.

19 A -- I would take a day if I was really feelin' bad.

20 Q Okay, but, but --

21 A But I try to go to work every day.

22 Q All right. And if you had to take some time off,
23 if, if it was a day that you weren't feeling so bad, but you
24 had to go to a doctor's appointment, for example, you went to
25 Dr. Sloan on a given day --

1 A Mm-hmm.

2 Q -- um, you'd make those appointments in advance,
3 right?

4 A Yeah, all my appointments are month to month.

5 Q All right. And they would work with you in terms
6 of scheduling the appointments that are re (sic), a good time
7 for you?

8 A Usually I always try to do early morning, because
9 it's hard in the evening. If I go in the evening I have to
10 take four hours of leave. If I go in the morning --

11 Q So, it's --

12 A -- I only have two hours.

13 Q All right. And if you went in the morning to a
14 doctor's appointment and you took two hours of leave, um,
15 your boss would have let you stay later that day to, to make
16 up those two hours.

17 A And I made time up if I felt like it. If I was
18 really in pain that day, no, I didn't make it up, I took
19 leave.

20 Q All right. But if, let's say, that day that you
21 missed two hours for a doctor's appointment, and, and you
22 weren't feeling really bad, when it came time to leave at the
23 end of the day you could have worked that extra two hours and
24 not have any leave?

25 A Yes, if I wasn't feelin' bad, yes, and I would make

1 my time up.

2 Q And when you, when you're talking about leave
3 you're talking about, is it sick leave or annual leave?

4 A Sick and annual.

5 MS. ZOIS: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. GILLCRIST:

8 Q All right. When you were feeling bad and you
9 couldn't return at all that day could you, later in the week,
10 if you were feeling better, make up the time?

11 A I have no idea.

12 Q Okay.

13 A I mean, I don't know what your question is. If
14 you're asking if I work and make up time, I make up my time
15 as much as I can.

16 Q When, um, you did work, were you allowed to work at
17 home sometimes as well?

18 A During my back surgery and everything else going on
19 my CEO suggested that I work from home, because they needed
20 me there.

21 Q All right. So, your, your employer was very
22 flexible in terms of trying to accommodate what you were
23 going through?

24 A Yes.

25 Q And you never had any problems in terms of, you

1 never had any type of confrontation with Ms. Hamilton or
2 anybody else about being able to make, uh, make up time?

3 A No, I, we're really close at my office and I've,
4 really good friends with them at work.

5 MR. GILLCRIST: Your Honor, I think I'm done, but if I
6 could just quickly check my notes, please?

7 THE COURT: Mm-hmm.

8 (Brief pause.)

9 BY MR. GILLCRIST:

10 Q Do you work overtime as well?

11 A Uh, well, we work extra hours. Yeah, we don't get
12 paid for it, because we're administrative management.

13 Q All right. Um, is wearing, does wearing, uh, I
14 apologize for asking, it's not my thing, but do you,
15 hopefully, um, do you wear, uh, do you wear high heels?

16 A I won't go any higher than an inch, inch and a
17 half, that's it.

18 Q Okay.

19 A Because if I go higher than that my back really
20 does hurt worse.

21 Q All right. And right now are you wearing high
22 heels?

23 A I'm wearing an inch, inch and a half, yeah. 'Cause
24 I'm a midget, that's why (chuckles).

25 (Long pause.)

1 BY MR. GILLCRIST:

2 Q Following up on what your counsel asked you, no
3 doctor has ever told you that you have a neurological injury?

4 A No, none of 'em's told me that. They've sent me to
5 different one, but no.

6 Q All right. Thank you very much, ma'am.

7 A You're welcome.

8 THE COURT: Mr. Porcarelli.

9 MR. PORCARELLI: Thank you, Your Honor. I'll try to be
10 brief, but I do have a couple questions.

11 THE COURT: Mm-hmm.

12 CROSS EXAMINATION

13 BY MR. PORCARELLI:

14 Q Good morning, Ms. Exline-Hassler --

15 A Hello.

16 Q -- how are you?

17 A Good morning.

18 Q There have been a lot of things covered, but I just
19 wanna' touch on a couple of issues that in my mind I don't
20 think that we've covered yet. Correct me if I'm wrong. Um,
21 we heard a lot from your attorneys about what you can't do.
22 I want to ask you, uh, some things that you still can do.

23 A Okay.

24 Q Okay? So, and you remember when we got together
25 back in June and I asked you some questions --

1 A Yes.

2 Q -- in deposition when you were under oath?

3 A Yep.

4 Q Your lawyers were there?

5 A Yep.

6 Q And, uh, you gave the answers and those answers
7 were under, under oath, and they were true, right?

8 A Yes.

9 Q Okay. So, I wanna' go back to that, that time and
10 ask you a few things about your activities that you, uh, are
11 still able to do around the house and with your family, okay?

12 A Okay.

13 Q Um, your sta (sic), still able to do the cooking
14 for the family, right?

15 A I still cook.

16 Q And grocery shopping.

17 A I still do it.

18 Q And the house work?

19 A Yes.

20 Q Such as the laundry?

21 A Yeah.

22 Q And the dusting in the house?

23 A Yes.

24 Q And taking out the garbage, too?

25 A Yes.

1 Q And, if I recall from where you live, like some of
2 us you don't get to take down to just the curb at the end of
3 the driveway, it's --

4 A Correct, we, we throw out on the truck or out in a,
5 a bin.

6 Q Okay. And how many bins are you generally hauling
7 down on a weekly or monthly or bi-weekly basis?

8 A Oh, I don't know, it depends how, how many times
9 the kids were there and how many times I cook supper with
10 them.

11 Q Okay. And that, all those activities continue even
12 to, today, right?

13 A It's part of life it goes, you got to, you have --

14 Q Un --

15 A -- no choice.

16 Q -- understood. Uh, I wrote something down that I
17 thought I heard you say in response to your lawyer's question
18 about this accident when you were talking about your car was
19 half a car length away from the vehicle ahead of you and, and
20 there were some conversations between yourself and Ms. Sapp
21 at the scene, and then you said you've never been in an
22 impact like that before.

23 A Correct.

24 Q Did I hear you correctly?

25 A You did.

1 Q And when you gave this jury that statement you were
2 talking about just how hard you were struck from behind by
3 Ms. Sapp's car.

4 A Correct.

5 Q And was this, was this impact harder than the one
6 in which you broke your hip?

7 A It felt like it. My hip wasn't broken.

8 Q Wasn't that fractured?

9 A It was a f (sic), it was a hairline fracture, but
10 it, yes, but it wasn't broken, I wasn't in a cast.

11 Q Fractured?

12 A I was not in a cast, I was walking around, so.

13 Q I understand --

14 A Okay.

15 Q -- we may disagree. Fracture, break, can we agree
16 they're the same thing?

17 MS. ZOIS: Objection.

18 THE WITNESS: I don't know about that.

19 THE COURT: Overruled.

20 BY MR. PORCARELLI:

21 Q Okay. When you, when you had your fractured hip,
22 you left the scene in an ambulance?

23 A I did.

24 Q You went to the hospital.

25 A I did.

1 Q But it was this accident that you characterized as
2 the one that is the most severe you've been in your life when
3 you suggested you've never been in an impact like that
4 before.

5 A The other one, I don't remember anything from. I
6 don't remember anything at all. All I remember is pulling
7 out from the road in the line of traffic, that's all I
8 remember. I didn't even know how I got to the hospital. I
9 don't remember anything like that. This one I remember.

10 Q And it was this accident, it was the strongest
11 impact you've ever had in a car.

12 A That I remember, yes.

13 MR. PORCARELLI: I don't have any further questions.
14 Thank you.

15 THE COURT: Redirect.

16 MS. ZOIS: Thank you, Your Honor, and I'm going to be
17 brief.

18 REDIRECT EXAMINATION

19 BY MS. ZOIS:

20 Q Um, on the date of the crash as you're paying
21 attention to traffic, correct?

22 A Correct.

23 Q The traffic in front of you came to a stop, right?

24 A That's correct.

25 Q So, three cars ahead of you, that car was able to

1 come to a stop, right?

2 A Correct.

3 Q That car didn't hit the car in front of it, did it?

4 A No.

5 Q The car behind that, that car was able to come to a
6 stop, right?

7 A Correct.

8 Q That car didn't hit the car in front of it, did it?

9 A Correct.

10 Q The car directly in front of you, that car was able
11 to come to a stop, right?

12 A That's correct.

13 Q That car didn't hit the car in front of it, did it?

14 A That's correct.

15 Q And you were able to come to a stop, correct?

16 A Correct.

17 Q You didn't hit the car in front of you?

18 A No.

19 Q And my understanding of the testimony is lanes two
20 and three were open, is that correct?

21 A They were still movin'.

22 Q So, the cars that you say came from behind you, car
23 number one, that car was able to safely change lanes and
24 continue on lane two, right?

25 MR. PORCARELLI: Objection, leading.

1 BY MS. ZOIS:

2 Q The car --

3 THE COURT: She, you are.

4 BY MS. ZOIS:

5 Q Car number one, did that car hit you?

6 A No.

7 Q Was that car able to pass by you?

8 A Yeah, they went out around, went through the middle
9 lane.

10 Q Car number two, did that car hit you?

11 A It went out around to the middle lane.

12 Q That car get in an accident up ahead?

13 A Not that I saw.

14 Q Car number three, is that, did that car hit you?

15 A No, it kept going, it went around me and kept
16 going.

17 Q So, your lane, cars coming up from behind you,
18 there were how many?

19 A I saw three in my rear view mirror.

20 Q The Sapp car?

21 A Correct.

22 Q Did she hit you?

23 A Well, I would assume so the way she went sliding by
24 and her car was tore up, so, yeah, I would assume she's the
25 one that hit me.

1 Q And that's when you saw the tractor trailer slide?

2 A Correct.

3 Q And the tractor trailer was in lane two?

4 A Uh, he had to be in lane three, because if you
5 notice (unclear - four words) to come down the lane and be
6 close to my car he had to be coming, I mean, they're pretty
7 big.

8 Q So, the only time you saw a vehicle not pass by you
9 and go around you into an open lane was after the impact with
10 the Sapp, Sapp vehicle, correct?

11 A Correct.

12 Q And that's when the tractor trailer you said was
13 trying not jackknife?

14 A Correct.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Um, and, Counsel, approach logistics
18 considering the time and what we have left to do.

19 (Counsel approached the bench and the following
20 occurred:)

21 (Husher turned on.)

22 THE COURT: (Unclear - four words.)

23 MS. ZOIS: I need to make a proffer for the record, too.

24 THE COURT: I just, I know there's gonna' be some other
25 stuff that comes, goes on. Uh, how long did the, is the

1 doctor's video?

2 MR. PORCARELLI: It's probably about two and a half
3 hours.

4 THE COURT: Okay. Um, I'm just looking -- do you want
5 to send them to lunch for about 45 minutes? We can do what
6 we need to do, have them come back, and we do the video, keep
7 things rolling along. Um, I also have to tell them that
8 they're letting schools out two hours early in case they need
9 to have, uh, day care, um, issues as well. But, uh, let me
10 tell 'em that. Let me excuse them for 45 minutes to go get
11 something to eat and then we'll do what we need to do, and
12 then we can take a break as well, and then, uh, we'll take 10
13 after they're out.

14 MR. BRATT: Thank you, Your Honor.

15 MS. ZOIS: Thank you.

16 THE COURT: Okay? Yeah, I know everybody's been pushing
17 this morning, so.

18 (Counsel returned to the trial tables and the following
19 occurred:)

20 (Husher turned off.)

21 THE COURT: Um, two things. One, um, we're gonna' go
22 ahead and, and, uh, give you a lunch break now, give you
23 another 45 minutes. Um, we know we have a video this after
24 that's going to be a little over two hours so we wanna'
25 kinda' get you back so we can get going. We're gonna' push

1 through to try to conclude everything today.

2 I also did get a note if anybody has kids that are
3 in school that they are going to close schools two hours
4 early, so if you need to make any arrangements for that to
5 take, take care of that. I have no idea what it's doing out
6 there, 'cause this is the only notice that I've gotten.

7 But I'm going to excuse you from here and ask you
8 to be downstairs in about 45 minutes, which is, um, let's say
9 20 after, and, um, we're gonna' be rolling right along.
10 Okay?

11 (Jury excused from the courtroom.)

12 MR. BRATT: Your Honor, I just have one request. Our
13 law clerk's here, would it be okay if she moved up and set up
14 here so she can --

15 THE COURT: Counsel have any objections?

16 MR. PORCARELLI: No objection.

17 MR. BRATT: She's a, a third year UB, Your Honor --

18 THE COURT: It's --

19 MR. BRATT: -- it's Ashley Tell (phonetic) --

20 THE COURT: -- it's absolute, absolutely fine with the
21 Court, so.

22 MR. BRATT: -- Your Honor.

23 THE COURT: Okay. And I'll give us all 10 minutes and
24 then we'll go from there.

25 MR. PORCARELLI: Thank you.

1 MS. ZOIS: Thank you, Your Honor.

2 THE COURT: Okay? And I -- we all will get a chance to
3 grab something to eat too, so.

4 MR. PORCARELLI: Great.

5 THE CLERK: All rise.

6 (Whereupon, from 11:36 o'clock, a.m. until 12:33
7 o'clock, p.m., a luncheon recess was taken.)

8 (Jury not present.)

9 THE CLERK: All rise.

10 THE COURT: And good afternoon again, everyone, please
11 be seated. And, of course, we're back on the record in
12 Exline-Hassler v. Sapp.

13 MS. ZOIS: Good afternoon, Your Honor. Um, we've been
14 working since Your Honor got off the bench to try to see if
15 we could figure out what we can agree on as far as exhibits
16 go, where our disagreements lie, so the first group of
17 exhibits that I'm going to offer into evidence for Your Honor
18 are exhibits that I believe come in without objection and
19 Counsel, of course, follow along, tell me if you think I'm
20 wrong.

21 FEMALE VOICE: Should I wait for Walter?

22 MS. HOWARD: No, you can go.

23 FEMALE VOICE: Okay.

24 MS. HOWARD: But don't just say the number, if you could
25 just say what it is.

1 MS. ZOIS: Yes.

2 MS. HOWARD: Okay, thanks.

3 MS. ZOIS: Okay. Um, it's, and, Madam Clerk, do you
4 have my list?

5 THE CLERK: I do have it.

6 MS. ZOIS: Okay, great. Exhibit ID 3 is McGrail fee
7 schedule.

8 MR. PORCARELLI: No objection.

9 MS. HOWARD: No objection.

10 THE COURT: Okay.

11 MS. ZOIS: Exhibit 9, Plaintiff's medical expense index.

12 MS. HOWARD: No objection.

13 MR. PORCARELLI: Okay.

14 THE COURT: Okay.

15 MS. ZOIS: Exhibit 20, Plaintiff's past prescription
16 history from the time period of October 2011 through October
17 2012.

18 MS. HOWARD: No objection.

19 MR. PORCARELLI: No objection.

20 THE COURT: Okay.

21 MS. ZOIS: Dr. Naff's CV, 21.

22 MR. PORCARELLI: No objection.

23 MS. HOWARD: No objection.

24 THE COURT: Mm-hmm.

25 MS. ZOIS: Dr. Naff's fee schedule, 22.

1 MR. PORCARELLI: No objection.
2 MS. ZOIS: Dr. Sloan's demonstrative photos, 23.
3 MR. PORCARELLI: No objection.
4 MS. HOWARD: No objection, sorry.
5 THE COURT: Okay.
6 MS. ZOIS: Dr. Sloan's 1/3/2013 letter, 25.
7 MS. HOWARD: No objection.
8 MR. PORCARELLI: No objection.
9 MS. ZOIS: Plaintiff's 27, Plaintiff's lost wage
10 summary.
11 MS. HOWARD: Uh, no objection.
12 MR. PORCARELLI: No objection.
13 THE COURT: Okay.
14 MS. ZOIS: Plaintiff's 33 motorcycle photographs.
15 MS. HOWARD: No objection.
16 MR. PORCARELLI: No objection.
17 THE COURT: Okay.
18 MS. ZOIS: Plaintiff's 35, MRI slices 2011.
19 MR. PORCARELLI: No objection.
20 MS. HOWARD: So, that's 35(a), Counsel, correct?
21 MR. PORCARELLI: That's true.
22 MS. ZOIS: No, I think there's just 35. I think 35 is
23 2011, 35(a) is 2009.
24 MS. HOWARD: Oh, the list I'm looking at --
25 MR. PORCARELLI: My list is backwards.

1 MS. HOWARD: -- is inverted, so.
2 MS. ZOIS: So, for clarity it would be the folder with
3 the 2011 slices.
4 MS. HOWARD: Correct, we, we have no objection to that.
5 MS. ZOIS: Okay.
6 THE COURT: Okay.
7 MS. ZOIS: We've agreed that the life table does not go
8 back to the jury room --
9 THE COURT: Okay.
10 MS. ZOIS: -- that her expected life expectancy is 37-
11 years.
12 THE COURT: Okay.
13 MS. HOWARD: Um --
14 MS. ZOIS: You wanna' check it?
15 MS. HOWARD: -- I just, if we could just check it again
16 --
17 THE COURT: You check it and then --
18 MS. HOWARD: -- quickly check it --
19 THE COURT: -- whatever, yeah, ex (sic) --
20 MS. HOWARD: -- the number we'll agree to, yeah.
21 THE COURT: -- exactly.
22 MS. ZOIS: I think I have it. Do you want to see it?
23 MR. BRATT: That's right.
24 MR. PORCARELLI: That's an average not as a stipulation?
25 THE COURT: Correct, it's --

1 MS. HOWARD: Yeah, thanks. We'll take a look at this in
2 a second.

3 MS. ZOIS: It goes into the life, it, into the jury
4 instructions.

5 THE COURT: It goes into the instruction.

6 MS. HOWARD: Yeah, right.

7 MS. ZOIS: Right, okay. Plaintiff's property damage
8 photos, 3(a).

9 MS. HOWARD: No object, and I think they're in.

10 THE COURT: Mm-hmm, yeah, they're already in.

11 MS. ZOIS: Defendant Sapp's property damage photos.

12 MS. HOWARD: No objection.

13 MS. ZOIS: Okay. Um, the Sloan transcript we would put
14 in, but not obviously go back to the jury.

15 THE COURT: That, obviously, does not go back.

16 MS. ZOIS: Right, that's 50. Um, 52, Exhibit 3, uh,
17 attachment to Naff's deposition, which is the summary of our
18 correspondence.

19 MS. HOWARD: No objection.

20 MR. PORCARELLI: What number?

21 MS. ZOIS: 52.

22 THE COURT: Fif (sic), 52.

23 MS. ZOIS: Oh, are you waiting for me.

24 MR. PORCARELLI: Yeah, I know, I just needed the number.

25 MS. ZOIS: Oh, oh, 52.

1 MR. PORCARELLI: No objection.

2 MS. ZOIS: Okay. Um, the before and after calendars,
3 which are 56 is the before calendar, 57 is the after
4 calendar.

5 THE COURT: Okay.

6 MS. HOWARD: No objection, sorry.

7 MR. PORCARELLI: No objection.

8 MS. ZOIS: So, I believe those are all the exhibits that
9 Plaintiff would offer without objection.

10 THE COURT: And that's --

11 MS. ZOIS: Do you wanna' take --

12 MS. HOWARD: Yes.

13 THE COURT: So, (unclear - two words), and I'm just,
14 just follow along to make sure that I'm with you. That's 3,
15 9, 20, 21, 22, 23, 25, 27, 33, 35 being the MRI slice dated
16 2011, 3(a), 50, 52, 56 and 57.

17 MS. ZOIS: And 39(a), which I believe are Plaintiff's
18 Exhibit of Defendant Sapp if they're, are they already in?

19 THE COURT: 39(a)?

20 MS. ZOIS: Yes.

21 MS. HOWARD: No objection to 39(a).

22 MR. PORCARELLI: No objection, I'm sorry.

23 THE COURT: Those are all received.

24 MS. ZOIS: Okay.

25 (Items admitted into evidence as

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Plaintiff's Exhibit Numbers 3, 9,
20, 21, 22, 23, 25, 27, 33, 35,
3(a), 50, 52, 56, 57 and 39(a).

MS. ZOIS: Um, the ones that we disagree on, I'll begin with, contained within Plaintiff's 10, which is the medical Bates stamp --

THE COURT: Mm-hmm.

MS. ZOIS: -- finder that we've all sort of been using, there are three separate reports in there that Plaintiff would offer. The first one is the attending physicians report at Bates stamp numbers 28 and 29. The next one is, um, Dr. Khanna's visit of 6/20/2011 at 359 through 361, and Dr. Naff's disk, discogram, which is 272 through 273.

MS. HOWARD: Your, Your Honor, our position on Plaintiff's 10, at least the portion of it that's the medical records is it's cumulative and hearsay. So, either it all comes in, the whole binder, or the, uh, um, none of it comes in. Thank you.

THE COURT: Mr. Porcarelli.

MR. PORCARELLI: We'd object to the same, uh, on the same basis. And I have a particular problem with Number 28 and 29 page Bates numbers, which is that attending report with the physician's assistant that says my client across the top. And I, I just think (unclear - one word) stay out of evidence.

1 MS. ZOIS: Obviously, we would have I go back in
2 redacted form that didn't have Penn National identified on
3 it. Do you, does Your Honor want to make a ruling on that or
4 do you want me to continue through?

5 THE COURT: Um, let me go ahead and, and, on the
6 contested ones I think it's easier if I'd make a ruling --

7 MS. ZOIS: Okay.

8 THE COURT: -- per exhibit, because then everything will
9 know where it is.

10 MS. ZOIS: Thank you, Your Honor.

11 THE COURT: Um, quite frankly, I, um, I agree with, um,
12 Ms. Howard, I think it all comes back, it all goes back or
13 none of it goes back. And, uh, I think, quite frankly,
14 there's been a lot of reference to it and it would be of
15 assistance to the jury and all of the experts reviewed all
16 those records. I think it's appropriate with the necessary
17 redaction of anything out of Penn National that all of 10
18 goes back.

19 MS. ZOIS: Okay. So, I, my preference would be that all
20 10 not go back, so I understand the Court's, um --

21 THE COURT: So.

22 MS. ZOIS: -- ob (sic), sustaining their objection as to
23 my three reports.

24 THE COURT: That's correct, and I'm, they're, your
25 reports are going to be contained in what's in that, but the

1 whole thing's gonna' go back with the redaction of Penn
2 National.

3 MS. ZOIS: I don't think they've, nobody's moved 10 in
4 though. Nobody's requesting that --

5 THE COURT: So.

6 MS. ZOIS: -- 10, the whole thing go back, at least not
7 yet.

8 THE COURT: So.

9 MS. ZOIS: But that might be coming.

10 THE COURT: That might be coming, but yeah.

11 MS. ZOIS: Okay.

12 THE COURT: I'm not -- like I said, it, it all goes back
13 or none goes back, so.

14 MS. ZOIS: Understood.

15 THE COURT: Okay?

16 MS. ZOIS: Okay. Um, as for 2(a), um, Dr. McGrail's, he
17 was deposed, um, we have a case list from him. It was
18 identified as 2(a). Um, I'll take all the McGrail things at
19 once. 2(a) is Dr. McGrail's case list that he's testified to
20 and we've laid the foundation for. 5(a) is, 5(a), (b) and
21 (c) are his invoices in this case and we would offer those
22 into evidence.

23 THE COURT: But he hasn't, I haven't heard Dr. McGrail's
24 deposition yet.

25 MS. ZOIS: I think maybe we can move it a, I think Mr.

1 --

2 MR. PORCARELLI: I don't have a problem --

3 THE COURT: I mean, I can't, so I can't rule, I mean, I
4 don't have any idea what it is so.

5 MR. PORCARELLI: I don't a problem with the invoices,
6 um, I would object, however, as Dr. McGrail's case list as
7 going in. He's talking about it on the, on videotape, but,
8 um, I just think that that that would be cumulative,
9 repetitive, duplicative and should stay out. But the
10 invoices I, I, I don't have a problem with.

11 THE COURT: I'll have to reserve on the cases, 'cause
12 I'm gonna' have to hear what happens during the deposition as
13 to whether I think that that's appropriate or collateral.

14 MS. ZOIS: Thank you, Your Honor. And I would just
15 direct the Court's attention when we talk about it, we, we
16 discussed it, but not the detail of it.

17 THE COURT: Okay.

18 MS. ZOIS: So, I want the detail of it to go back.

19 THE COURT: Okay.

20 MS. ZOIS: So, that's, that's (unclear - one word).

21 THE COURT: Like I said, but I'm gonna' have to hear to
22 know, 'cause I haven't heard it.

23 MS. ZOIS: So, Court's reserving on . . .

24 THE COURT: I'm reserving on the case list and there's
25 no objection to the invoice. So, that will be received.

1 MS. ZOIS: Okay.

2 (Items admitted into evidence as
3 Plaintiff's Exhibit Numbers 5(a),
4 5(b) and 5(c).)

5 MS. ZOIS: Plaintiff's 20(a) is the Plaintiff's past
6 prescription history. So, it's essentially a summary of her
7 prescription charges for this case. So it's a, it's a
8 summary that was provided and produced to Dr. Sloan at his
9 videotaped deposition, and I actually I offered them into
10 evidence and there was no objection, but today there is an
11 objection to 20(a).

12 MS. HOWARD: Your, Your Honor, and that's, I can speak
13 to that. Uh, 20, if you take a look at 20, uh, we're not
14 looking at it, but 20 is a one year's snapshot of all the
15 prescriptions and form the factual predicate for Dr. Sloan's
16 testimony at the time it was offered that this is, I think,
17 fair to say the type of prescription she'll be taking going
18 forward and it's about 4,000-something per year. So, it had,
19 I guess, um, you know, it's a supporting summary of the one
20 year, and I have no objection to that. But when they're
21 moved in, when I look at the transcript, it says 20, 20(a),
22 which is 20(a) is, no that's, that's the first prescription I
23 got it on the day of the accident going forward and every
24 prescription I've gotten filled by, even though it's
25 prescribed by any other doctor, including a lot from Dr.

1 Sloan, um, and I, I did not object, I guess I said no
2 objection, but I believe that was objected to another time,
3 um, Your Honor, through another witness then it was sort of
4 held open. But anyway, the point being, Dr. Sloan certainly
5 provided no authenticating testimony that he has any
6 awareness of the cost of prescriptions anywhere. He barely -
7 - remember that last piece at the end where he said about his
8 own office's charges was after he spoke to his office
9 manager. So, it was a mistake on my part it's, I would go
10 with plain error, if nothing else that it's clearly not
11 admitted through that supporting testimony, and I'll be right
12 back.

13 MS. ZOIS: And, Your Honor, may I respond?

14 THE COURT: You may.

15 MS. ZOIS: Okay. Um, 20 and 20(a) were at Dr. Sloan's
16 deposition. Um, 20 and 20(a) were offered in the deposition
17 without objection by Counsel. If Counsel's gonna' make a jec
18 (sic) an objection as to the foundation it has to be done on
19 the videotaped deposition at that time so I can cure any
20 defect that she may have to form or foundation.
21 Additionally, Dr. Sloan did testify at his deposition on
22 video that he was familiar with the charges of prescriptions,
23 he was familiar what his office charges for prescriptions,
24 and --

25 MR. BRATT: The basis of the opinion, even if hearsay,

1 can be discussed --

2 MS. ZOIS: The basis of his opinion even if hearsay --

3 MR. BRATT: -- as the basis for his underlying data of
4 his opinion, it's allowed, it's ruled -- I'm, I'm sorry, Your
5 Honor. Uh, well, like I --

6 THE COURT: If I may? If it came in through the
7 deposition there was no objection at the deposition, it's in.

8 (Item admitted into evidence as
9 Plaintiff's Exhibit Number 20(a).)

10 MR. BRATT: Best argument I ever made.

11 THE COURT: So, it's --

12 MS. HOWARD: It's in.

13 THE COURT: Unfortunately, that's --

14 MS. HOWARD: That's -- I understand completely --

15 THE COURT: Mm-hmm.

16 MS. HOWARD: -- Your Honor.

17 MR. GILLCRIST: We'll talk about that later.

18 MS. HOWARD: (Laugh.)

19 MS. ZOIS: Court's indulgence for a moment, Your Honor.

20 THE COURT: Mm-hmm.

21 MS. ZOIS: Also at Dr. Sloan's -- Can you see if offered
22 26, I think I did -- all, also at Dr. Sloan's, um, deposition
23 there was a document that was utilized at his deposition --

24 MR. BRATT: I'm looking.

25 MS. ZOIS: -- (To the clerk) can I see 26, Sam, just so

1 I can show the court what it looks like. (To the Court) I
2 think this would be very helpful and useful for the jury, um,
3 essentially, Your Honor, may I approach and show you 26?

4 THE COURT: 26 is the schedule of controlled substances.
5 I take pretty good notes.

6 MS. ZOIS: Thank you, Your Honor. So, it looks like
7 this. Um, and we would offer 26 into evidence, and Dr. Sloan
8 did use it and utilize it in his testimony, and I, it, it, it
9 also, uh, summarizes, uh, some of the more serious narcotic
10 medications, which I'm sure they want to talk about, but I
11 think it would be very useful for the jury to, to see what
12 the controlled dangerous substance (sic), substances are on
13 the DEA schedule and that Tramadol and Skelaxin are not, so
14 I'd offer 26. And I think I might have offered it, I'm
15 checking that now.

16 MS. HOWARD: Just the clari (sic), the basis for
17 offering that is that the expert relied on it. Is that
18 right, Counsel?

19 MS. ZOIS: The basis for offering it is the expert
20 relied on it, and that it's a demonstrative exhibit that
21 would be useful for the jury in considering the facts of this
22 case.

23 MS. HOWARD: That's fine. Thank you.

24 THE COURT: It's received.

25 MS. ZOIS: Okay.

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(Item admitted into evidence as
Plaintiff's Exhibit Number 26.)

MS. ZOIS: The next one we disagree about, Your Honor,
is the hardware in, uh, Plaintiff's Exhibit 36, the pedicle
screws and the rod.

MR. GILLCRIST: Oh, we don't have a problem with that.

MR. BRATT: Yeah, you did.

MR. GILLCRIST: Did we?

MS. HOWARD: We, we were just saying it's kinda' cheesy,
but --

THE COURT: (Unclear - two words.)

MS. HOWARD: -- I don't know if that's a formal --

MS. ZOIS: Objection.

MS. HOWARD: -- rule of evidence.

MS. ZOIS: I'm not aware of the cheesy objection.

(Laughter.)

THE COURT: Any, any potential objection's been
withdrawn, so.

MS. ZOIS: Thank you.

MR. BRATT: You, you did.

MS. ZOIS: I did offer it in 20, okay.

MS. HOWARD: That's funny, Your Honor.

MS. ZOIS: Thank you.

THE COURT: I believe it was offered before.

MS. ZOIS: Um, the Plaintiff's, uh, 42, Your Honor,

1 performance evaluations Plaintiff would offer into evidence,
2 the, the performance evaluations that were --

3 THE COURT: Mm-hmm.

4 MS. ZOIS: -- utilized by Sharon Hamilton that are, um,
5 business records kept in the usual course of business.

6 MS. HOWARD: Uh, Your Honor, we just -- they contain
7 hearsay, they're cumulative to what she testified to, you
8 recall she only testified to sort (sic), certain selected
9 highlights, but she, you know, her testimony was very brief
10 and to the point. I don't think the jury will have any
11 difficulty recalling that if they're directed to it in
12 closing argument, but it contains a lot of information that
13 wasn't discussed and some of the records are not prepared by
14 Ms. Hamilton, uh, she, she told us that Ms. Esposito prepared
15 one, uh, of the summary, of the evaluations.

16 MR. PORCARELLI: Same objection.

17 THE COURT: So. They certainly are business records,
18 but I do, do believe they are cumulative. Ms. Hamilton was a
19 very eloquent and expressive witness, and I think any
20 information contained in there, uh, the jury has already
21 heard. So, I'll sustain objection on 42 on the basis that
22 it's cumulative in light of her extensive testimony
23 yesterday.

24 MS. ZOIS: Um, I just want to be clear, I don't know
25 want to --

1 THE COURT: Mm-hmm.

2 MS. ZOIS: -- run afoul the Court instructions. Um,
3 I'm, I am free to use as demonstrative exhibits during
4 closing of the pages that she was referring to during the
5 (unclear - one word).

6 THE COURT: You can certainly talk about them. Quite
7 frankly, if you're gonna' use the pages of the exhibits that
8 we talked about we're never gonna' get this case over today,
9 but, but be as it may, she certainly testified to that, and
10 you could certainly refer that in your closing.

11 MS. ZOIS: And have it on the screen while I talk about
12 it.

13 THE COURT: So, for the parts that she identified when
14 she testified, yes.

15 MS. ZOIS: Perfect, thank you, Your Honor. And Court's
16 indulgence for a moment.

17 (Pause while Counsel confer off the record.)

18 MS. ZOIS: Um, and, Your Honor, just for the record, I
19 would offer the repair estimate for Plaintiff's vehicle and
20 the repair estimate for the Defendant's vehicle.

21 MS. HOWARD: We, we're objecting, hearsay. Needs expert
22 foundation.

23 MR. PORCARELLI: Same objection.

24 THE COURT: I'll sustain.

25 MS. ZOIS: Thank you, Your Honor.

1 MS. HOWARD: So, you didn't move it in?

2 MS. ZOIS: We can, oh, we can agree on eight. We, we've
3 a -- I'm sorry, no.

4 MS. HOWARD: Yeah.

5 MS. ZOIS: I can do that now though.

6 MS. HOWARD: Yeah.

7 MS. ZOIS: We've agreed that, um, Plaintiff's medical
8 record number eight, which is all the prior records date, uh,
9 from one through 130 can be utilized the parties --

10 THE COURT: Okay.

11 MS. ZOIS: -- however they deem appropriate. Uh, the
12 one thing about eight in specific is that the one that we've
13 been using does not have the health insurance information
14 redacted. So, we have gone through an exact duplicate that I
15 can provide Counsel have them look at it. The, um, insurance
16 information has been redacted.

17 THE COURT: Right.

18 MS. ZOIS: It's not pretty right now, it has like white
19 out and stuff all over it. So, I'm wondering if maybe with
20 the Court's assistance we can make clean copies of the
21 redacted pages.

22 THE COURT: While the video's playing we'll just check
23 and make sure everything's redacted and then we can go ahead
24 and make a clean copy.

25 MS. ZOIS: Okay, perfect.

1 THE COURT: Okay.

2 MS. HOWARD: And, Your Honor -- um, thank you -- part of
3 agreeing to eight is within eight there's, like for example,
4 the big blow ups that we had --

5 THE COURT: Um.

6 MS. HOWARD: -- there's certain pages regarding the '08
7 visits that Defendants have marked as various exhibits and
8 we're gonna' be moving in, I believe without objection, so
9 they're sort of . . .

10 THE COURT: If it's in it's in, whether it's little or
11 big. If it's in in a little one when the big one comes in,
12 that one's in as well. It's just --

13 MS. HOWARD: Okay.

14 THE COURT: -- so.

15 MS. HOWARD: All right. Thank you, Your Honor. (To Ms.
16 Zois) So, um, that's (unclear - two words), oh, is it our
17 copy?

18 MS. ZOIS: Yes, that's for you to look at and just make
19 sure that --

20 MS. HOWARD: Okay.

21 MS. ZOIS: But I think that in order for us to not draw
22 undue attention of some of the (unclear - one word) redacted
23 it needs to be a kind of clean copy.

24 MS. HOWARD: All right. So that's --

25 MS. ZOIS: Um --

1 THE COURT: That's eight.

2 MS. ZOIS: -- that's eight, right. Court's indulgence
3 for a moment, Your Honor?

4 THE COURT: Mm-hmm.

5 (Brief pause while Counsel confer off the record.)

6 MS. ZOIS: That's the Plaintiff's case, Your Honor.

7 (Brief pause while Counsel speak simultaneously off the
8 record.)

9 THE COURT: And, Counsel, Plaintiff just rested.

10 MS. HOWARD: Okay, uh -- oh, has rested? (Unclear - two
11 words) all right. Plaintiff's just rested.

12 MS. ZOIS: You wanna' go through exhibits now, or . . .

13 MR. BRATT: Here's her --

14 MS. ZOIS: I mean, you're not waiving anything by doing
15 exhibits now if you want, but it's up to you.

16 MR. GILLCRIST: Um, Your Honor, was your plan to -- can
17 I ask you just, is the jury waiting to be brought back into
18 court?

19 THE COURT: They're wait, back there waitin'. I was
20 hoping that we could start --

21 MR. GILLCRIST: Yeah, if I --

22 THE COURT: -- the video.

23 MR. GILLCRIST: -- if we may? I, I think what I'll do,
24 Your Honor, if I could just, uh, call, we have one very brief
25 witness, um, who, before Dr. McGrail, um, and if we could

1 call that witness then play Dr. McGrail.
2 MR. PORCARELLI: I don't have a problem. They just, the
3 officially rested --
4 THE COURT: Correct.
5 MR. PORCARELLI: -- correct? Did I hear that right?
6 THE COURT: That's correct.
7 MR. PORCARELLI: Okay.
8 MR. GILLCRIST: No motions at this time, Your Honor.
9 MR. PORCARELLI: No motions and, uh, if I could just say
10 a couple of words in my opening before we get to my half of
11 the case, I'll be brief.
12 MS. ZOIS: Your Honor, just my proffer for the record is
13 I would be objecting to --
14 THE COURT: Mm-hmm.
15 MS. ZOIS: -- the second opening, since they're being
16 collectively referred to as Defendant's Counsel.
17 THE COURT: Okay.
18 MS. ZOIS: But I understand the Court's ruling.
19 THE COURT: So. So noted. And I certainly have no
20 objection to calling the live witness first so they can get
21 out before --
22 MR. PORCARELLI: Yes.
23 THE COURT: I will tell you that it's snowed a little
24 bit, but it's not snowing right now, so --
25 MR. PORCARELLI: Great.

1 THE COURT: -- they're only calling for an inch or two,
2 so it's not --

3 MR. GILLCRIST: Okay. Thank you.

4 THE COURT: So.

5 MR. GILLCRIST: And Your --

6 THE COURT: We'll bring in, bring in the ladies and
7 gentlemen?

8 MR. GILLCRIST: -- and I'm sorry, once the -- I'm sorry
9 -- once the, uh, the doctor is playing would it be okay for
10 us sort of in turn to go grab something to eat?

11 THE COURT: Absolutely. And I, honestly, I was going to
12 suggest that that you do that. And also I also wanted to
13 mention, I suppose, am supposed to have a law clerk interview
14 at 1 o'clock. Uh, what I'm gonna' do is my clerk now is
15 gonna' interview him, but I may, during the video, step off
16 for just a second, be but, but be right outside, because I
17 don't like not being in here when the jury's on, but in the,
18 with the snow and it being a two and a half hour video, and
19 no way for me to get a hold of him before that I at least
20 wanna' --

21 MR. GILLCRIST: Sure.

22 THE COURT: -- lay eyes on this young man.

23 MR. GILLCRIST: No problem.

24 THE COURT: So, if Counsel has no objection to that, but
25 that would be during the playing of the video. And, again, I

1 have no objection to going out so that you all can get
2 something to eat, but we can roll through with the evidence.

3 MR. PORCARELLI: I'll be here on the video (unclear -
4 two words) with the mute button --

5 THE COURT: With the --

6 MR. PORCARELLI: -- you can go.

7 MR. BRATT: I'll be here.

8 THE COURT: Okay.

9 MS. ZOIS: I'll be here.

10 THE COURT: All right.

11 MR. GILLCRIST: Thank you.

12 MR. PORCARELLI: Thank you.

13 MR. BRATT: I'm in no danger of wasting away.

14 THE COURT: (Chuckles.) We have chocolate back there if
15 anybody gets really hungry. Judge Dwyer always keeps a good
16 stash.

17 MR. GILLCRIST: So, I think -- and then we'll move in
18 our exhibits, uh --

19 THE COURT: Ex, ex, exactly, and get all that squared
20 away.

21 MR. GILLCRIST: Okay.

22 THE COURT: Okay? All right.

23 (Jury entered the courtroom.)

24 THE COURT: Good afternoon again, ladies and gentlemen,
25 we've been working hard in here, believe it or not. Um,

1 Plaintiffs have rested their case, we're about to go into
2 Defense case, and I believe, uh, uh, Mr. Porcarelli has a few
3 things to say. You gonna' do it now or after the witness?

4 MR. PORCARELLI: If I could do it after the witness with
5 Your Honor's permission --

6 THE COURT: Okay.

7 MR. PORCARELLI: -- and then I'll just roll --

8 THE COURT: Thank you.

9 MR. PORCARELLI: -- right into what I'm gonna' do.

10 THE COURT: All right.

11 MR. GILLCRIST: Your Honor, the Defense calls, uh, uh,
12 Brittany Renne (phonetic).

13 THE COURT: Go on up the ramp, stand up by the chair.

14 THE CLERK: Stand up there and raise your right hand.

15 BRITTANY RENNE,
16 a witness produced on call of the Defense, having
17 first been duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. GILLCRIST:

21 Q Can you please state your full name?

22 A My name is Brittany Renne.

23 Q And where do you live?

24 A I live in Mt. Airy.

25 Q Uh, what's your address just for the record?

- 1 A Oh, 3801 Athleen Drive, Mt. Airy, Maryland 21771.
- 2 Q If you don't mind, how old are you now?
- 3 A I'm 24.
- 4 Q And, um, back when the accident happened you would
- 5 have been 21 or so?
- 6 A 21, yes.
- 7 Q Okay. Um, what do you, what do you do for a
- 8 living, ma'am?
- 9 A Um, I just graduated school so right now I'm just
- 10 working part time until I pass my boards.
- 11 Q Uh, and what boards are you taking?
- 12 A Physical therapist assistant.
- 13 Q And where did you graduate from?
- 14 A Carroll Community College.
- 15 Q And when was that?
- 16 A That was December 11th --
- 17 Q Okay.
- 18 A -- 2012.
- 19 Q I'd like to just quickly draw you back, uh -- you
- 20 know Kirsten Sapp, obviously?
- 21 A Yes.
- 22 Q You're friends?
- 23 A Yes.
- 24 Q And you're still friends?
- 25 A Yes.

1 Q Okay. Um, uh, let me just draw your attention back
2 to the accident --

3 A Mm-hmm.

4 Q -- June in 2009.

5 A Mm-hmm.

6 Q Okay? I understand you were a passenger in her
7 car?

8 A Yes, I was behind the driver's seat.

9 Q Okay. You were sitting, you're sitting in the back
10 seat?

11 A Yes.

12 Q So, you don't really know all the facts and
13 circumstances how the accident happened?

14 A No.

15 Q Okay. After the accident did you get out of the
16 car?

17 A Yes.

18 Q And when you got out of the car did you stay on the
19 scene?

20 A Yes.

21 Q All right. Um, and how long approximately were you
22 on the scene?

23 A Um, I wanna' say a good hour or so, it was a while.

24 Q Okay. While you were on the scene did you have an
25 opportunity to have any communication with the Plaintiff in

1 this case, Ms. Exline-Hassler?

2 A Yes.

3 Q And can you tell us what you talked to her about
4 and what she said?

5 A Um, we were standing outside and I remember she was
6 sitting in her car, um, smoking a cigarette. She, um,
7 Kirsten was hysterical.

8 Q Okay.

9 A Um, and she was very, very nice, very sweet, just
10 kept reassuring that everything was okay, she was fine. Um,
11 she told us that she wasn't going to show up to court, um,
12 for the court date. Um, and she just, I mean, she was very
13 nice.

14 Q Okay. While you were on the scene, um, uh, was Ms.
15 Exline-Hassler also, did she remain on the scene?

16 A Yes.

17 Q And I apologize if I asked you this already --

18 A That's okay.

19 Q -- but about how long were you on the scene?

20 A About an hour or so.

21 Q Okay. And was Ms. Exline-Hassler on the scene also
22 about an hour?

23 A Yes.

24 Q Okay. Now, while you were on the scene did, did
25 you have any discussion with Ms. Exline-Hassler about whether

1 she was injured?

2 A No, she, no she seemed fine to me --

3 Q Did she --

4 A -- relaxed.

5 Q -- did she ever express to you that she was
6 injured?

7 A No.

8 Q Did she ever tell you that she had severe
9 headaches?

10 A No.

11 Q All right. While, um, you were on the scene did
12 she ever, um, give you any physical demonstrations of a
13 physical injury, such as holding her neck or holding her low
14 back?

15 A Mm-mm, she was sitting in her seat with her legs
16 swung over on the side just kinda' leaning against her seat.

17 Q Okay.

18 A So, no.

19 Q Did you ever see her get out of her car and be
20 standing or walking along?

21 A (No response.)

22 Q If you know, know.

23 A I, I, I'm sure she was, but I don't, I just
24 remember that one --

25 Q You remember --

1 A -- she was sitting in the car.
2 Q -- her being in your car?
3 A Mm-hmm.
4 Q Okay, um, do you, you recall and if it's no, that's
5 fine. Do you recall ever seeing her while standing or
6 walking having any difficulty ambulating at the scene?
7 A No.
8 Q Um, that's all I have, thank you.
9 A Mm-hmm.
10 MS. ZOIS: Very briefly.
11 THE COURT: Mm-hmm.
12 CROSS EXAMINATION
13 BY MS. ZOIS:
14 Q Good afternoon. Um, the first time you and I spoke
15 --
16 A Mm-hmm.
17 Q -- was yesterday, is that right?
18 A Tuesday.
19 Q Or Tue (sic), Tuesday. Okay. And I, I did try to
20 contact you before --
21 A Mm-hmm.
22 Q -- today, correct?
23 A Mm-hmm.
24 Q I sent you a couple letters.
25 A You did.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Called you a couple times.

2 A You did.

3 Q And someone told you not to talk to me.

4 A I would rather, if I'm gonna' testify or say
5 anything I'd rather do it front of everybody just --

6 Q No.

7 A -- just once, yes.

8 Q Understood. But you talked to Ms. Howard a couple
9 times, right?

10 A I talked to the secretary.

11 Q And who told you not to talk to me?

12 MR. GILLCRIST: Objection, she didn't say that.

13 THE COURT: Sustained.

14 BY MS. ZOIS:

15 Q Did --

16 MR. GILLCRIST: Objection, relevancy, Your Honor.

17 BY MS. ZOIS:

18 Q -- did --

19 THE COURT: So. Just ask did anybody.

20 BY MS. ZOIS:

21 Q Did anybody tell you or advise you not to speak to
22 me?

23 A No.

24 Q Okay. Taking you back to the date you were with
25 two other girls on that day, correct?

1 A It, the car, the, three other.
2 Q Other -- right, other than Kirsten.
3 A Two other, yes.
4 Q Two others.
5 A Yes.
6 Q And they were younger than you are, right?
7 A Yes.
8 Q And their ages at the time were 18 and 17?
9 A They're younger than me, so I couldn't tell you
10 exactly, but yes.
11 Q Okay. And were you 20 or 21 at that time, I'm just
12 --
13 A Well, my birthday is July so this accident was
14 June, so I was 20.
15 Q Twenty? Okay.
16 MS. ZOIS: No further questions, Your Honor.
17 THE COURT: Anything?
18 MR. GILLCRIST: No redirect, Your Honor. May she be
19 excused?
20 THE COURT: And she may step down and be excused.
21 THE WITNESS: Thank you.
22 MR. GILLCRIST: Um, Your Honor, uh, we kind of have a
23 joint witness being Dr. McGrail, um, and I may have one or
24 two minor things after that, but, uh --
25 THE COURT: Okay.

1 MR. GILLCRIST: -- if that, if it's okay, I'm not
2 resting, but if I could just call Dr. McGrail in my case in
3 essence slightly out of turn Mr. Porcarelli does the video.

4 THE COURT: Okay. We, I mean, we've taken so many
5 things out of --

6 MR. GILLCRIST: I'm sorry, I just --

7 THE COURT: -- out of turn, but that's all right.

8 MR. GILLCRIST: In other words, I don't, I'm not resting
9 if that's okay.

10 MS. ZOIS: We wouldn't object, Your Honor.

11 THE COURT: Certainly.

12 MR. BRATT: We don't care.

13 THE COURT: Mr. Porcarelli.

14 MR. PORCARELLI: With Your Honor's permission may I
15 address the jury?

16 THE COURT: You may.

17 MR. PORCARELLI: Ladies and gentlemen, good afternoon,
18 you've seen me in the courtroom, I've asked some questions
19 and I haven't had an opportunity to formally interact with
20 you in this direct fashion. My name is Guido Porcarelli and
21 I'm over here with the Defense, obviously.

22 We want to keep things moving along. We know you
23 have professional time, personal schedules, we want to be
24 respectful of that so I'll just say a couple things, I'll sit
25 down, put a video on, and hopefully we can roll right through

1 that.

2 The video that you're gonna' see is Dr. Kevin
3 McGrail, and you're gonna' hear him testify on videotape,
4 because, frankly, because of his schedule as a head of
5 Department of Neurosurgery at Georgetown, teaching students
6 and in the operating room six times a week on average he
7 couldn't be here with us.

8 Um, as you listen to his testimony I'd ask you to
9 do the following. Think about the qualifications that he has
10 relative to everyone else who has testified for you with a
11 medical degree, okay? Ask yourselves what lengths did he go
12 to before he reached any opinions and, and what level of
13 research he did.

14 Thirdly, and I address this only because when we
15 started this case in opening statement there was, there were
16 two occasions when the phrase professional witness was used
17 by the Plaintiff's attorneys. I would ask you to listen to
18 Dr. McGrail, look at him, think about what he's saying about
19 what he charges and how much work he does, and truly ask
20 yourself whether that's really different from anybody else
21 who has been in here testifying as a doctor for one side or
22 another, and, similarly, whether his charges are unreasonable
23 given the nature of work that he does and he otherwise
24 charges the, charges for outside the office. And then decide
25 for yourself whether he's truly the professional witness that

1 they have suggested that he is. Or, whether is he genuinely
2 giving you his opinions based on the evidence and the records
3 that he has. Thank you for your attention. And I'd like to
4 roll the videotape, if it's okay with you?

5 MALE VOICE: Your Honor, did you wanna' --

6 THE COURT: That's --

7 MALE VOICE: -- (unclear - four words)

8 THE COURT: -- they're the folks -- I, I can hear it,
9 and they're the folks that need to see it.

10 MALE VOICE: All right, Your Honor.

11 MR. GILLCRIST: (Unclear - one word) anybody not see?

12 (No audible response.)

13 (Videotaped deposition being played.)

14 DR. KEVIN MCGRAIL,

15 a witness produced on call of the Defendant,
16 having first been duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. PORCARELLI:

20 Q Good afternoon, Dr. McGrail. We've met
21 before, but I'd like you to please introduce
22 yourself to the Court and to the members of the
23 jury.

24 A My name is Dr. Kevin McGrail.

25 Q Dr. McGrail, are you a Board certified

1 neurosurgeon?

2 A Yes.

3 Q How long have you been a Board
4 certified neurosurgeon?

5 A Uh, since, uh, 1994 so I guess roughly
6 19 years.

7 Q And was that when you first became
8 eligible to sit for the Board examination?

9 A Uh, yes, that would have been my first
10 time that I would have been eligible to sit for
11 the Board, (unclear - one word) Board.

12 Q Did you pass the, your Board
13 examinations on the first time?

14 A I did, yes.

15 Q All parts?

16 A Yes.

17 Q Where do you work?

18 A Um, I work for MedStar Health, I work
19 here at Georgetown University Hospital, uh, and I
20 also work at the Washington Hospital Center.

21 Q In fact, Doctor, are you the chairman
22 of the Department of Neurosurgery here at the
23 Georgetown University Medical Center?

24 A Yes.

25 Q How long have you been the chairman of

1 the Department of Neurosurgery at the Georgetown
2 University Medical Center?

3 A I think I've been chairman probably,
4 it's been about 12 years or so.

5 Q Now, to become chief of the Department
6 of Neurosurgery did you have to go through a lot
7 of schooling and specialized training?

8 A Uh, yes.

9 Q Is all of that reflected on your
10 resume?

11 A It is.

12 Q During your specialty training in
13 neurosurgery did you receive any rewards, honors
14 and fellowships?

15 A Well, I was, during the time I was in
16 medical school I was, uh, uh, elected to the
17 medical school honor society, which is Alpha
18 Omega Alpha. Uh, I also received in college the
19 Paul Warren award in genetics when I was an
20 undergraduate.

21 Q Are your, uh, awards and honors and
22 fellowships reflected on your resume?

23 A Yes, sir.

24 Q As the head of the Department of
25 Neurosurgery here at Georgetown do you teach?

1 A I do.

2 Q Who do you teach?

3 A Uh, I teach the, uh, the neurosurgeons
4 in training who are our neurosurgery residents as
5 well as the medical students here at the
6 University.

7 Q How much of your professional time is
8 spent teaching tomorrows neurosurgeons?

9 A Uh, I'd say, uh, you know, it varies
10 quite a bit, but probably, uh, 20% to 25% of my
11 time is spent teaching.

12 Q Do you research, write, publish and
13 lecture in the field of neurosurgery?

14 A I do.

15 Q Is all of that reflected on your
16 resume?

17 A It is, yes, sir.

18 Q Do you belong to any professional or
19 medical societies?

20 A I do.

21 Q Have you engaged in public service and
22 university service?

23 A Yes.

24 Q And is much of all that detailed also
25 on your resume?

1 A It is.

2 Q As the head of neurosurgery are you
3 asked to review medical legal matters for
4 attorneys who represent Plaintiff's or
5 Defendant's?

6 MS. ZOIS: Objection, (unclear - one word.)

7 THE WITNESS: Yes.

8 BY MR. PORCARELLI:

9 Q Do you charge for your time when you
10 review records, examine patients and give
11 testimony?

12 A I do.

13 Q Are you charging us for your time here
14 today?

15 A Yes, sir.

16 Q Well, then let's keep things moving
17 along quickly. Um, do you have a license to
18 practice medicine?

19 A I do.

20 Q Where are you licensed to practice
21 medicine?

22 A I'm licensed to practice medicine in
23 the District of Columbia.

24 Q How long have you been licensed to
25 practice medicine?

1 A Uh, well I've been licensed to practice
2 medicine in, in numerous states over time. I
3 think I received my first medical license right
4 after, um, I finished medical school, uh, in
5 Massachusetts. I've been licensed in the
6 District of Columbia since I came here, which
7 would have been 1992.

8 Q Okay. And, uh, in addition to the
9 District of Columbia you mentioned that you were
10 licensed to practice in Massachusetts.

11 A At one time, yes.

12 Q Any other, uh, states or jurisdictions?

13 A Uh, Maryland at one time and Virginia
14 at one time.

15 Q And is there any reason that you don't
16 have those licenses in those other jurisdictions
17 anymore?

18 A Yes, I let those licenses lapse,
19 because I just wasn't practicing in those, in
20 those areas.

21 Q Okay. As a Board certified and
22 licensed neurosurgeon do you treat patients?

23 A I do.

24 Q What percentage of your time as the
25 head of the Neurosurgery Department is spent

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working with or on patients?

A I'd say 50% of my total professional time at the hospital I, I'm directly dealing with patients, either seeing them in clinic, uh, treating them on the floor or examining on, them on the neurosurgical wards or performing surgeries.

Q Do you treat patients with brain injuries?

A Yes, sir.

Q Do you treat patients with spinal injuries or spinal problems?

A Absolutely, yes.

Q Do you operate on the brain?

A Yes.

Q Do you operate on the spine?

A I do.

Q Do you operate on people who have disc bulges, tears and herniation's?

A I do.

Q Do you operate on people suffering from degenerative disc disease?

A Yes.

Q Do you operate on people with broken backs?

1 A Yes.

2 Q Are you able to give us, Dr. McGrail, a
3 sense of how much of your time in the Medical
4 Center is spent examining, treating or operating
5 on people with spinal problems or spinal
6 injuries?

7 A Well, I'd, I'd say that, that half of
8 my practice involves directly caring for, half of
9 my professional time at the hospital I directly
10 care for patients, um, and, uh, in the operating
11 room, and that includes all neurosurgery. Uh,
12 about half of my practice is spinal. So, half of
13 that 50% or 25% of my total time would be dealing
14 with spinal problems.

15 Q Now, of all the body parts, uh, that we
16 have, um, which one is the most common body part
17 that you find yourself examining when a patient
18 is in your examining room?

19 A The most common problems that any
20 neurosurgeon would see, unless their practice is
21 extremely specialized, uh, would be problems
22 involving a lumbar spine.

23 Q And --

24 A And that's me.

25 Q Okay. And the lumbar spine, uh, when

1 you say that you're referencing the lower back?

2 A That's correct.

3 Q How often are you in an operating room
4 in an average week?

5 A Uh, I typically operate on Monday's,
6 Wednesday's and Friday's. Um, and, and on those
7 days I'm in the operating room most of the day.

8 Q Dr. McGrail I'm gonna' show you, uh,
9 what's been previously marked as Plaintiff's
10 Exhibit Number 2. I think you've seen this as
11 recently as last week. Is that your resume?

12 A It is.

13 Q Okay. And, uh, have there been any,
14 any changes, sir, within the last week?

15 A No.

16 Q Okay.

17 MR. PORCARELLI: We'd like to move that into
18 evidence at this time.

19 MS. ZOIS: No objection.

20 MS. HOWARD: No objection.

21 (Item admitted into
22 evidence as Plaintiff's
23 Exhibit Number 2.)

24 MR. PORCARELLI: And I'd like to offer Dr.
25 Kevin McGrail as an expert in the field of

1 medicine and in the subspecialty field of
2 neurosurgery.

3 MS. ZOIS: I have a couple of questions on
4 voir dire.

5 VOIR DIRE

6 BY MS. ZOIS:

7 Q Um, Doctor, what did you do your
8 fellowship in?

9 A Uh, I did my fellowship in
10 cerebrovascular neurosurgery.

11 Q And what does that mean?

12 A That's a special area, specialized area
13 of neurosurgery that deals particular with the
14 blood vessels of the brain.

15 Q And that's what you specialize in, is
16 that correct?

17 A Uh, well, I specialize in neurosurgery
18 and I sub-specialize, in addition to general
19 neurosurgery and the area of cerebrovascular
20 neurosurgery.

21 Q And on your resume, um, on the articles
22 that you've written none of them deal with
23 chronic pain in the low back, is that correct?

24 A Um, I think that would be correct, yes.

25 Q And you don't manage patients for pain

1 medications for chronic pain, is that right?

2 A Uh, not over the long term, only over a
3 short term. Yeah, and over the long term I would
4 discharge that to a pain medica (sic), to a pain
5 management specialist.

6 Q And you don't do any kind of pain
7 injection procedures, is that correct?

8 A No, ma'am.

9 Q And you don't know what a discTRODE
10 procedure is, is that right?

11 A I do not, no.

12 Q And you don't discograms, is that
13 correct?

14 A I don't. I refer patients for
15 discograms, but I don't do them myself.

16 Q And you refer patients out for ongoing
17 pain management treatment, is that right?

18 A Yes, if it's chronic I typically would
19 just, I, I would, even if I'm maintaining that
20 patient under my own care and observation I would
21 delegate that aspect of their care to a pain
22 management specialist.

23 Q And Georgetown has a pain management
24 department, is that right?

25 A It does, yes.

1 Q And you're not familiar with the
2 charges for pain management procedures?

3 A Um, no.

4 Q And you would not testify as an expert
5 in pain management?

6 A Not as to the standard of care and pain
7 management I wouldn't.

8 Q And if a person was in need of a pain
9 management doctor you wouldn't be the one that
10 they would be coming to every 30 days is that
11 right?

12 A No.

13 Q And you're not familiar with the
14 standards of care in a day to day treatment plan
15 for pain management patients, is that correct?

16 A Uh, I wouldn't say that I'm not
17 familiar with it, I mean, I refer so many of my
18 patients and I get the follow up notes from the
19 pain management doctors, uh --

20 Q Well, let me rephrase the question.

21 A Mm-hmm.

22 Q Is it fair to say that you wouldn't
23 feel comfortable testifying about the standards
24 of care in that field, is that correct?

25 A Correct.

1 Q Okay.

2 MS. ZOIS: No objection to, um, Dr. McGrail
3 being offered for, um, his expert testimony in
4 the field of neurosurgery.

5 MR. PORCARELLI: And also in the general
6 field of medicine as well. I'll reoffer Dr.
7 Kevin McGrail as an expert in the field of
8 medicine and in subspecialty field of
9 neurosurgery.

10 MS. ZOIS: No objection to the neurosurgical
11 designation.

12 BY MR. PORCARELLI:

13 Q Dr. McGrail, in the fall of 2012 did I
14 contact you and ask whether you would be willing
15 to conduct an independent medical evaluation of
16 the Plaintiff?

17 A Yes, sir.

18 Q And, and we call that sometimes an I-M-
19 E, okay, and I may refer to an I-M-E, uh, from
20 time to time today, and when I do that I'm
21 referring to the independent medical evaluation.
22 By the way, Doctor, how many times before I
23 contacted you in the fall of 2012 had I or any
24 member of our law firm ever contacted you to
25 perform an I-M-E on a patient or to review

1 records in connection with a medical legal issue?

2 A Uh, I believe there was one other
3 occasion.

4 Q All right. Uh, let's go back to this
5 case and Ms. Exline-Hassler. Did I send you
6 records to review?

7 A Yes, sir.

8 Q Did you personally review them?

9 A I did.

10 Q Did you personally examine the
11 Plaintiff?

12 A Yes.

13 Q Do you recall when you did that?

14 A Uh, I'd have to check back the specific
15 date on my note.

16 Q Does November 1, 2012 refresh your
17 recollection in that regard?

18 A That's, uh, it, it s (sic), I, I know
19 it was November, and, uh, I think that sounds
20 correct.

21 Q And when you performed your examination
22 on her was anybody else present in room?

23 A Yes, sir.

24 Q Who else was present?

25 A Uh, her husband.

1 Q Did you look at films, scans and
2 diagnostic studies of the Plaintiff in connection
3 with your review of this case?

4 A I did.

5 Q And after doing all that did you reach
6 some conclusions regarding the Plaintiff's
7 complaints of back pain?

8 A I did.

9 Q Did you write those conclusions down?

10 A I submitted them in a written report,
11 yes.

12 Q Let me show you what I've, what's been
13 previously marked by opposing Counsel as
14 Plaintiff's Exhibit Number 4. Take a moment,
15 doctor, and review that.

16 (Brief pause.)

17 A Yes.

18 Q What is the date of that report?

19 A Uh, December 2nd, 2012.

20 Q Does that report list all of the
21 records you reviewed before arriving at your
22 opinions?

23 A It does.

24 MR. PORCARELLI: I would move, uh,
25 Plaintiff's Exhibit Number 4 into evidence.

1 MS. ZOIS: Objection, for the reasons I
2 stated previously.

3 BY MR. PORCARELLI:

4 Q Doctor, let me, uh, see if we can
5 quickly run through just how many records you
6 reviewed, okay? And, uh, you tell me if this is
7 consistent with what your report reflects. Did
8 you review records from the following facilities
9 or legal events? Number one, Washington County
10 Health System Meritus Medical Center?

11 A Yes.

12 Q Robinwood Family Practice?

13 A Yes.

14 Q Antietam Urgent Care?

15 A Yes.

16 Q Diagnostic Imaging Services?

17 A Yes.

18 Q Both films and the reports?

19 A That's correct.

20 Q Parkway Neuroscience and Spine
21 Institute?

22 A Yes.

23 Q Films and reports?

24 A Yes.

25 Q Progressive radiology, films on disc

1 and reports?
2 A Yes.
3 Q Parkway Surgery Center?
4 A Yes.
5 Q Ballenger Creek Chiropractic?
6 A Yes.
7 Q Neuro Health?
8 A Yes.
9 Q Orthopedic Associates of Frederick/Mid-
10 Atlantic Musculoskeletal Institute?
11 A Yes.
12 Q The Spine Center?
13 A Yes.
14 Q Total Rehab Care at Robinwood?
15 A Yes.
16 Q Chesapeake Neurosurgery?
17 A Yes.
18 Q Towson Orthopedic Associates?
19 A Yes.
20 Q The Neurology Center?
21 A Yes.
22 Q Mid-Atlantic Orthopedic Specialists?
23 A Yes.
24 Q Tri-State Neurology Center?
25 A Yes.

1 Q Boonsboro Pharmacy?

2 A Yes.

3 Q Weis Pharmacy?

4 A Yes.

5 Q Did you also look at some deposition
6 transcripts of Jacqueline Exline-Hassler?

7 A I did.

8 Q Kelsey Sapp, Kirsten Sapp?

9 A I reviewed those depositions.

10 Q Did you look at the complaint as well?

11 A Yes.

12 Q Did you look at answers to
13 interrogatories and property damage photos and
14 the police report and the leave log?

15 A I did.

16 Q Did you look at the deposition
17 transcript for Kirsten Sapp, which we already
18 covered, I'm sorry, that's a duplicative entry,
19 is it not?

20 A It is.

21 Q Did you look at answers to
22 interrogatories regarding property damage and
23 photos and the police report and the leave log,
24 which is also a duplicative entry?

25 A I did.

1 Q All right. Okay. Dr. Sloan's, uh,
2 medical report from September 11, 2012 and his
3 billing statements?

4 A Yes.

5 Q Did you look at records from Egis
6 Sciences Corporation regarding some billing?

7 A Yep, yes.

8 Q Dr. J. Khanna?

9 A Yes.

10 Q Diagnostic Imaging Services medical
11 records?

12 A Yes.

13 Q Towson Orthopedic Associates and Dr.
14 Dabbah?

15 A Yes.

16 Q And, uh, Johns Hopkins Medicine? Was
17 that a separate record or was that also, uh, Dr.
18 Khanna as we covered a moment ago?

19 A I think that was, that was Dr. Khanna's
20 records from Johns Hopkins.

21 Q Now, Doctor, would it assist you in
22 giving your testimony here today to be able to
23 refer to your report of December 2nd, 2012?

24 A Yes.

25 Q Okay. Well, feel free to do so as we

1 go through your exam. Dr. McGrail, tell us, uh,
2 to a reasonable degree of medical probability,
3 what the opinions are that you hold in this case
4 and then we'll explore in more detail the basis
5 for those opinions?

6 A I, I'd be happy to do that. I think
7 Ms. Exline-Hassler clearly, uh, has a history of,
8 uh, of some degenerative disease in her, uh,
9 lumbar spine. Um, she, uh, she was involved in a
10 medical -- and she was involved in a car
11 accident, which is the s (sic), it's the basis of
12 this litigation. Um, the motor vehicle accident,
13 which is the basis of the litigation occurred on
14 June 26th, 2009.

15 Uh, based on the history that I
16 obtained from her, um, as well as my review of
17 the medical records and the images I think it's
18 likely that that motor vehicle accident did
19 aggravate her underlying, uh, uh, uh, chronic
20 condition, which does involve, uh, degenerative
21 disease of the spine and a history of pain and
22 discomfort in the lumbar spine.

23 Um, I think that the, uh, injury that
24 occurred was most likely musculoligamentous
25 injury, uh, to the supporting structures of the

1 spine, and with such injuries and their symptoms
2 associated this (unclear - one word) would
3 typically be expected to resolve, uh, within a
4 matter of about six to eight weeks.

5 Uh, despite that she continues to
6 experience pain and discomfort in the spine, uh,
7 and particularly in the lumbar spine. Uh, she
8 has a normal neurologic exam, um, she has normal
9 electro diagnostic studies. I think that the
10 current pain and discomfort that she is
11 experiencing is more likely due to her chronic
12 degenerative disease in the spine and it's not
13 directly related, uh, or indirectly related to
14 the motor vehicle accident that is the subject of
15 this litigation.

16 I, I based, I further base that opinion
17 on the fact that she had two prior, uh, uh, uh,
18 histories of trauma to the lumbar spine
19 associated with the need, uh, for, uh, for, uh,
20 seeing physicians for that, and first of this,
21 that's referenced in a medical record was in
22 2005, uh, when she was in another motor vehicle
23 accident she sought medical attention for that,
24 and, uh --

25 Q And we'll get into that in just a

1 second, Doctor, and I certainly don't mean to cut
2 you off, but I just wanna' make sure that we kind
3 of have the overview understanding of, of your
4 general opinion.

5 A Mm-hmm.

6 Q So, and correct me if I'm wrong, but
7 you're saying, to a reasonable degree of medical
8 probability, that she sustained some type of
9 injury in this accident to her low back?

10 A In, yes, in June, uh, in June of 2009.

11 Q And that was, as you characterized, a
12 musculoligamentous injury?

13 A I think that's most likely.

14 Q Okay.

15 A Uh, she clearly had, uh, she clearly
16 told me that she had pain and discomfort, uh,
17 following that accident.

18 Q And then in addition to that she had
19 this underlying condition, which was there before
20 the accident, which you characterize as
21 degenerative disc disease?

22 A Yes, no question about. She had an MRI
23 shortly after the accident, uh, I think 18 days
24 following that, uh, the, the, the accident, which
25 occurred in June of 2009 she had an MRI scan that

1 was performed 18 days later, uh, and that MRI
2 scan demonstrated degenerative changes in the
3 lumbar spine. Such degenerative changes are not
4 changes you see with an acute trauma, they take
5 years to develop.

6 Q And, so, the car accident aggravated
7 those pre-existing conditions?

8 A I think the car accident did aggravate
9 it. I think it was responsible for some pain and
10 discomfort that she experienced afterwards.

11 Q So, the musculoligamentous portion of
12 her injury would have resolved to a reasonable
13 degree of medical probability within what
14 timeframe?

15 A Generally six to eight weeks is what we
16 normally -- now, there's could be some variance,
17 all patients are different.

18 Q Okay.

19 A Uh, but it certainly wouldn't be
20 something that should persist for, for months and
21 months or, or years.

22 Q Well, we know that, um -- let's look at
23 your exam, 'cause we know that you examined, um,
24 uh, Ms. Exline-Hassler. And before I have you
25 explain what your exam specifically consisted of

1 I'd like to direct your attention to some medical
2 records and ask you some questions about those
3 medical records.

4 Before you arrive at the cause of
5 someone's complaints is it important to know
6 their past medical history?

7 A Yes, sir.

8 Q Why is that important?

9 A Well, it's important, it forms a basis.
10 Uh, in order to treat the patients, and, and to
11 deal with whatever complaints they're dealing,
12 that they're coming to you with it's very
13 important to know what problems that they've had
14 in the past prior to that to formulate a
15 reasonable treatment plan.

16 Q Doctor, I would like to show you what
17 was Bates stamps Exline-Hassler Prior Medical
18 Records 0087 through Exline-Hassler Prior Medical
19 Records 00129, and I'd like to ask you some
20 questions about these records. Would you please
21 look at, uh, page 087 and 088.

22 A Yes, sir.

23 Q What's the date of, um, of those
24 documents?

25 A Uh, the date of this doc (sic), the

1 date of service, uh, on page 88, 0088 is, uh,
2 date of service is January 8, 2008. Um, and the
3 Urgent Care Washington County Hospital Urgent
4 Care, uh, is dated --

5 Q In the center of the top, Doctor?

6 A Yes, same time, same date January 8th,
7 2008.

8 Q And these two records, uh, came from
9 Washington County Hospital and Urgent Care at
10 Robinwood?

11 A Yes, sir.

12 Q Did you review these records in coming
13 to your opinions?

14 A Yes, sir.

15 Q What did you learn after you reviewed
16 these records about the Plaintiff's pa (sic),
17 past history of back trouble?

18 A Uh, well that she had, she had
19 sustained what I, what, what seems to be a
20 significant trauma to her, uh, to her back, um,
21 which necessitate this evaluation. Um, this was
22 something that we also discussed, uh, during her
23 IME, she did relay this, relate this to me in the
24 history that I obtained from her.

25 Q And did the doctors at, uh, Washington

1 County Hospital document anything with regard to
2 spasms at page 087?

3 A Yes they mentioned spasms.

4 Q What's the significance of a spasm,
5 Doctor?

6 A Well, it generally indicates that the
7 patient's having pretty significant pain and
8 discomfort, and that, it's a guarding mechanism
9 in the lumbar spine. When somebody injures the
10 spine the supporting muscles go in a spasm, and
11 it's a mechanism, a reflex mechanism to hold the
12 spine very, very still to prevent it from moving.

13 Q Doctor, take a look at page 0088. Was
14 there any evidence that, uh, the Plaintiff was
15 experiencing burning across her low back?

16 A (No response.)

17 Q Under the "History of Present Illness"
18 at page 088?

19 A Mm. Yeah, she had a burning sensation
20 across her low back. She was only -- well --

21 Q What's the significance of, of a
22 burning symptomatology in the low back?

23 A Well, I, I think it's in, in general,
24 it's, it's, it's indicate, it's indicative of a
25 significant injury to the back when a patient has

1 those symptoms. It can be an indication of, uh,
2 compression of the nerves, uh, uh, the
3 paraspinous nerves that innervate the muscles,
4 um, and, and I think that's typical of a back
5 injury.

6 Q Are you --

7 A Acute back injury.

8 Q -- are you able to show us on the spine
9 model that you have, uh, where those two areas
10 are that you just referenced?

11 A Well, a burning sensation in the lower
12 back, this is a model of the spine, and the
13 burning sensation would be in the, this, this is
14 the back of the spine right here, and this is the
15 front of the spine. Patient's back would be
16 here, abdomen or the belly area of the patient
17 would be here, and the burning sensation would be
18 something that they probably would be experienced
19 right here in the, in the soft tissues overlying
20 the spine.

21 Q Doctor, if you could put the model down
22 just for a moment, we'll be using that again.
23 I'd like to direct your attention to, uh, page
24 0100.

25 A Mm-hmm.

1 Q Do you see that report from Robinwood
2 Family Practice dated March 26th, 2008?

3 A Yes.

4 Q Did you, um, read this report and rely
5 on it?

6 A I did.

7 Q What did you learn from this report?

8 A Um, well, it, the report simply says
9 this is from Robinwood Family Practice, uh, and
10 it says, "The patient..." referring to Ms.
11 Exline-Hassler "...has low back pain since being
12 in a motor vehicle accident three years ago. Um,
13 it's gotten worse this past year, and worse than
14 (sic), um, in the morning. Take six Advil a day.
15 No numbness or tingling. Occasionally into the
16 buttocks. No weakness."

17 Q So, now we know that, um, there's a
18 medical record saying that she was in a car
19 accident in 2005 with a documented back complaint
20 and a fall down the stairs in about 2008, right?

21 A Yes, sir.

22 Q What else did Ms. Exline-Hassler tell
23 her primary care provider at the Robinwood Family
24 Practice regarding her low back at page 0100?

25 A Well, she mentioned that, uh, according

1 to what the doctor documented, she mentioned that
2 she had been in a motor vehicle accident three
3 years ago, and that the back pain had gotten
4 worse.

5 Q Was there any type of treatment that
6 you could see having been prescribed to address
7 those complaints, either at 0100 or at 0101?

8 A Yes.

9 Q What did, what did the doctor
10 prescribe?

11 A He prescribed Percocet, which is a
12 narcotic medication, uh, Ultram, which also is a
13 medication that's commonly used to treat back
14 pain, uh, and Skelaxin, which is a muscle
15 relaxant also used to treat acute back pain.

16 Q If you would, Doctor, turn to page 0102
17 I'd like to ask you a question as to whether
18 there's any evidence of any additional treatment
19 being prescribed to Ms. Exline-Hassler for that
20 low back injury.

21 A This is, uh -- you're referring to
22 00102?

23 Q 102, yes, Doctor. Last couple lines on
24 the, uh, tests ordered.

25 A Uh, physical therapy was ordered.

1 Q Okay.

2 A Common treatment.

3 Q Doctor, if you would bear with me and,
4 and turn to page 0109. Is that report dated
5 April 28th, 2008?

6 A Yes, sir.

7 Q Uh, who did she go see on that date?

8 A Um, this looks like she was seen at a,
9 uh, at Total Rehab Care at Robinwood, and it's
10 signed by Melissa Black and Ethan Roberts.

11 Q Now, as of April 28th, 2008 and this
12 report, what was significant, uh, with regard to
13 her complaints of low back pain?

14 A Well, I think just the fact that she
15 was having it is significant. Uh, it states
16 that, "She's a 41-year-old female who presents
17 today with right sided lower back pain. Um, she
18 reports around Christmas 2007 she was moving
19 something and injured her back then shortly after
20 that she fell down the stairs."

21 Q So, actually now we have a medical
22 reference to an injury from lifting something and
23 an injury to the low back from falling down
24 stairs. Doctor, at this point in her history how
25 many incidents do we have with low back

1 complaints being documented?

2 A Well, there are, there are, there are
3 three at this point, the, the motor vehicle
4 accident of 2005, the lifting, uh, incident, uh,
5 and, and also the, uh, fall down the stairs.

6 Q Take a look at, uh, 0109, Doctor, and
7 the first paragraph. Was there, uh, any
8 additional history provided or documented in this
9 report regarding prior back trouble?

10 A Uh, I'm sorry, I'm looking through the
11 report and forgot, I forgot your question
12 (chuckle).

13 Q That's okay, Doctor, objections
14 sometimes do that. Um, let's focus on 0109, uh,
15 the paragraph that says physical therapy initial
16 evaluation.

17 A Yes.

18 Q And if you could look at, uh, the
19 fourth line down where it says, "Patient has not
20 had any radiographs."

21 A "Patients has not had any radiographs,
22 she has had a previous episode like this that
23 occurred several years ago."

24 Q Okay. Doctor, what is a neural tension
25 sign?

1 A Neural tension sign?

2 Q Yes.

3 A I'm not sure, it's not a term I use
4 typically in my practice.

5 Q Okay. Um, under the assessment portion
6 of this medical record is there anything else of
7 significance that was documented back in April of
8 2008 regarding her back pain?

9 A Well, I, I think it's just noted that
10 she had a sig (sic), it appears to be a
11 relatively significant problem. It states in the
12 assessment the patient is limited in functional
13 mobility and transfers requiring increased time
14 secondary to pain levels. So, it seems that this
15 was quite problematic for her at this point in
16 time.

17 Q And if you turn to page 0111 are you
18 able to tell us whether she, in fact, got any
19 physical therapy for the low back pain?

20 A (No response.)

21 Q And you can look at 0113 as well,
22 Doctor.

23 A Yes, that's --

24 Q Okay. So, we talked about medical
25 records and the injuries that she had before her

1 accident. Let's talk about her use of
2 prescription medication before our car accident,
3 okay? I want to hand you what is identified as
4 D-Sapp (2) Boonsboro Pharmacy 001.

5 MR. PORCARELLI: Counsel, I have copies for
6 both of you as well.

7 MS. ZOIS: Thank you.

8 BY MR. PORCARELLI:

9 Q Please take a look at page 001, Doctor.
10 And let me hand you a second exhibit with copies
11 being provided to Counsel as well. Have you seen
12 these records before?

13 A I have.

14 Q Did these documents provide you with
15 any additional insight into the prior history of
16 low back trouble?

17 A They did.

18 Q Um, let's take a look at the Boonsboro
19 Pharmacy records first. Uh, does it, what does
20 that record reflect regarding prescription
21 medication?

22 A Well, it, it, it reflects that she was
23 on medication, um, and received multiple, uh, I
24 mean, medications include Tramadol and Skelaxin,
25 in particular, which are, are medications that

1 are, are most commonly prescribed for low back
2 pain. Uh, and she was on these medications, uh,
3 on a fairly regular basis, um, for a substantial
4 amount of time foreseeing the motor vehicle
5 accident, which occurred in June of 2009.

6 Q In your practice, Doctor, do you ever
7 have an opportunity to prescribe Skelaxin and
8 Tramadol?

9 A Sure.

10 Q How about Hydrocodone, was there any
11 evidence that she was, uh, uh, getting
12 prescriptions for Hydrocodone back in 2008?

13 A There was.

14 Q And do you ever prescribe Hydrocodone?

15 A I do. If the pain is particularly
16 severe I will prescribe Hydrocodone.

17 Q Hydrocodone are narcotic, Doctor?

18 A It is a narcotic.

19 Q Um, what do the records reflect
20 regarding, um, prescriptions in July of 2008 and
21 September of 2008, were there any?

22 A Yes.

23 Q How about in, uh, January of 2009 at
24 Boonsboro?

25 A Yes.

1 Q And take a look, Doctor, if you could
2 at the other pharmacy records from Weis Pharmacy,
3 and, uh, I'd like to direct your attention to
4 page 002 of that document. Is there any evidence
5 that she was obtained prescription medication
6 from Weis Pharmacy in February of 2009?

7 A (No response.)

8 Q Second line at the top, Doctor, on the
9 second page.

10 A Yes.

11 Q What kind of medicine was she getting?

12 A Tramadol.

13 Q When was that dispensed?

14 A Uh, February 28th, 2009.

15 Q How many pills were dispensed to her?

16 A Sixty.

17 Q And that was how many months away from
18 our accident of June 26th, 2009?

19 A Uh, just under four months.

20 Q Now, we covered her prior medical
21 records and her prior use of pain medicine, let's
22 talk about your examination for a few minutes.

23 A Mm-hmm.

24 Q Again, when did you do that examination
25 on Ms. Exline-Hassler?

1 A Um, it would have been November 1st,
2 2012.

3 Q And what did that consist of?

4 A Uh, it consisted of taking a history,
5 uh, from Ms. Exline-Hassler to learn a little bit
6 more about her problems and her complaints. Um,
7 it was a, a, um, s (sic), I, I had read a good
8 amount of the records so it was, it was fairly
9 focused, I had not read all of her records at
10 that point, so I gave her an opportunity to tell
11 her story, uh, just as I would any patient coming
12 into my office. Uh, and then I spent, uh, I
13 spent about 10 minutes after that, um, doing a
14 detailed neurological examination, which
15 generally takes about 10 minutes for a
16 neurosurgeon to do.

17 Q And what did you learn from that
18 examination?

19 A Um, well from the history I learned
20 that, uh, she, she, she did tell me about the
21 prior, uh, injury with the fall, uh, down the,
22 uh, the stairs, that I think it occurred, um, in
23 2008. Um, and she, uh, uh, also, uh, told me
24 about, of course, about the more recent, the car
25 accident, which was the subject of the litigation

1 and the treatment she had gotten, the treatments
2 that were, uh, recommended to her as potential
3 treatments. And then, um, uh, and then I spent
4 the rest of the time examining her.

5 Q Did she give you any other incidents or
6 episodes of having experienced back pain or
7 having injured her back beyond those two that you
8 just referenced?

9 A No.

10 Q How long --

11 A Let me just qualify that for a minute.
12 She -- I, I think in conjunction with the fall on
13 the stairs she, she did mention a lifting
14 incident which occurred. Uh, she did not mention
15 a previous motor vehicle accident in 2005, nor
16 did I ask her about it, because I had not
17 reviewed that part of the records at that point
18 in time.

19 Q Now, you mentioned that the
20 neurological portion of the exam took about 10
21 minutes.

22 A Yes, sir.

23 Q Um, as a lay person that sounds a
24 little short to me when you're trying to find out
25 what's going on. Um, so, give me some context,

1 how does that compare to new patients you may see
2 in an office here with, uh, low back complaints?

3 A Well, that's, that's very typical, I
4 mean, a com (sic), a complete thorough and
5 neurologic exam can easily be performed in 10
6 minutes, it doesn't take any longer to do that.

7 Q And that was only one portion of your
8 meeting with her?

9 A Correct.

10 Q You spent time speaking with her?

11 A Yes, I'd say probably the total visit
12 time was about a half an hour.

13 Q Walk us through, uh, quickly what you
14 checked and, uh, what you found. And feel free
15 to refer to your report if it would be helpful.

16 A Yes, um, the, uh, I found, I, I relayed
17 the history, um, I found the, uh, her neurologic
18 exam, uh, was completely within normal limits.

19 Q How was her gait, Doctor?

20 A Her gait appeared normal, uh, as she
21 walked in the exam, into the exam rooms down the
22 hall.

23 Q How was she presenting while she was in
24 your office? Uh, let me rephrase that. That was
25 poorly phrased. I just wanted to ask you an open

1 ended question, let me see if I can do a little
2 bit better on the focus. Um, how was she sitting
3 with you?

4 A Uh, she sit, appeared to sit
5 comfortably on the examination table.

6 Q What, if anything, did you notice about
7 her appearance?

8 A She was neatly dressed, she was
9 pleasant, uh, it was, uh, her husband was
10 pleasant as well. It was a nice interaction, uh,
11 in the office.

12 Q Did you note, um, any distress, um,
13 anywhere?

14 A Not, I mean, not particularly, I mean,
15 she certainly wasn't in agonizing pain, um, she
16 did tell me that she was experiencing some
17 discomfort when I, when I asked her about it.

18 Q Did you test the muscle groups of the
19 arms and legs?

20 A I did.

21 Q Reflexes?

22 A Yes, sir.

23 Q And, again, all those led you to what
24 conclusion?

25 A That her neurologic exam was normal.

1 Q Did the Plaintiff experience, uh --
2 does -- is there any evidence in this medical
3 chart anywhere that, um, Ms. Exline-Hassler has
4 or had some annular tears?

5 A There is.

6 Q And in what part of her spine, um, does
7 she have or did she have annular tears?

8 A I believe she had annular tears in the
9 lumbar spine, I think, I'd like to see the
10 report, but I believe the levels were L4/5 and
11 L5/S1.

12 Q Those are the correct levels in this
13 case, Doctor, so let me ask you, if I could, in
14 the next question, which is how often do you see
15 patients with annular tears?

16 A Uh, quite frequently.

17 Q What can cause an annular tear?

18 A Um, lots of different things can cause
19 annular tears they, they're quite typical in
20 patients who have degenerative disease in the
21 lumbar spine, we see them all the time. So, I
22 think the most frequent cause is, uh, is, um,
23 spontaneous, uh, without any provocation, just
24 part of the degenerative process. On occasion
25 they can be secondary to trauma as well.

1 Q All right. Can you ever see a "normal"
2 person walking around who may actually have
3 annular tears?

4 A Quite frequently you would, yes.

5 Q Have, have you ever had experience with
6 that exact phenomena?

7 A All the time.

8 Q Now, you looked at her prior medical
9 records and you looked at her prior pharmacy
10 records and you examined her. Did you look at
11 any films?

12 A I did.

13 Q And when I say look at films, I'm not
14 talking about just looking at the reports from
15 the radiologists who interpret those films, but
16 did you look at the films themselves?

17 A Yes, sir.

18 Q What did you learn -- did you look at
19 the MRI from, uh, July 13th of 2009?

20 A Yes, sir.

21 Q Okay. Let me show you what I've marked
22 as Bates stamped Exline-Hassler MR-010.

23 MR. PORCARELLI: Let the record reflect I'm
24 showing copies as well to Counsel.

25 BY MR. PORCARELLI:

1 Q You've seen that record before, have
2 you not, Doctor?

3 A I have.

4 Q What did you learn from that report and
5 from the film that you actually looked at?

6 A Uh, well I basically saw that there
7 were some abnormalities on the MRI scan, uh,
8 which I saw and which are reported by the
9 radiologist.

10 Q Was there any evidence of degenerative
11 disc disease on there?

12 A Yes.

13 Q And, again, what is degenerative disc
14 disease?

15 A Um, basically the degenerative disc
16 disease is when we see dehydration of the disc.
17 You can see some bony osteophytics first, um, and
18 these are quite, not unusual findings, and they
19 were present on her MRI.

20 Q How long does it take to develop those
21 types of things?

22 A Usually years.

23 Q Now, an annular tear, the jury's
24 already heard some other doctors in this case
25 talking about those and they've seen some

1 diagrams, you've treated patients with annular
2 tears, right?

3 A Yes, sir.

4 Q Have you operated on people with
5 annular tears?

6 A Not unless there's an associated
7 significant disc herniation. An annular tear is
8 not an indication to do a disc surgery, because
9 ironically, the first thing you're gonna' do when
10 you operate on a disc is you're gonna' incise the
11 annulus and you're gonna' cause a tear itself, so
12 that's part of the start of the surgery. So --

13 Q And what does incise mean, Doctor?

14 A Incise mean, would mean that you use a
15 scalpel to make a cut into the disc. So, you
16 wouldn't want to just operate an annular tear,
17 that's, that's not gonna' help the patient, uh,
18 and, generally, if that's the only problem those
19 things heal quite nicely on their own.

20 Q What is a disc bulge?

21 A A disc bulge is typically something we
22 see with degenerative disease in the disc when
23 they lose their fluid content, uh, they can bulge
24 out of their normal location.

25 Q Is that part of a degeneration process?

1 A It is quite commonly associated with a,
2 and part of the degenerative process.

3 Q Is there any evidence in this case that
4 she, uh, she, Ms. Exline-Hassler had a bulge in
5 her, in her spine?

6 A I, I thought she did on my review, I
7 thought they were, discs were bulging a bit.

8 Q If you have an annular tear and a
9 bulging disc, Doctor, what would you expect to
10 find during a neurological exam?

11 A Um, with just those findings the most
12 typical exam would be normal.

13 Q How about, uh, uh, would you check for
14 range of motion, radiating complaints?

15 A Yes.

16 Q Abnormal reflexes and abnormal EMG
17 nerve tests?

18 A Correct.

19 Q So, let's talk about that for a moment.
20 Um, in addition to looking at the Plaintiff's
21 prior medical records and her prior pharmacy
22 records and the films and the scans, and doing an
23 exam of the Plaintiff, you also looked at records
24 of all of the doctors who have seen the Plaintiff
25 since her accident on June 26th of 2009, have you

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not?

A I have.

Q Let me show you for example what we've marked, which is Exline-Hassler MR-00253.

MR. PORCARELLI: And let the record reflect I'm giving copies to Counsel.

THE WITNESS: Yes, sir.

BY MR. PORCARELLI:

Q I'd like to ask you some questions about that report, Doctor. Who wrote it?

A Uh, this report was written by Dr. Stephanie Brown.

Q Is it Stephanie Brown or Dr., uh, Nisenfeld?

A Uh, I'm sorry, uh, you're correct. I'm sorry, it's Dr. Frank Nisenfeld. It was a set, a copy was cc'd to Dr. Brown, the, the, uh, the doctor, uh, authoring report is Dr. Nisenfeld.

Q Okay. And the report date is February 1, 2010? A couple lines under his name, page one?

A That's correct.

Q And Dr. Nisenfeld is an orthopedic surgeon, is he not?

A He appears to be, yes.

1 Q What do orthopedic surgeons, what type
2 of problems do they, uh, usually treat?

3 A Generally problems related to the
4 skeleton.

5 Q Including the spine?

6 A Of course, yes.

7 Q Okay. Were there any sig (sic) --
8 (brief pause) -- nificant (sic) findings in this,
9 in his exam from February 1, 2010?

10 A No, there were no abnormal findings.

11 Q Okay. Did she have full range of
12 motion?

13 A Yes.

14 Q Were there any, uh, is there any
15 radiating pain documented by Dr. Nisenfeld?

16 A No.

17 Q Was there any significant tenderness
18 documented by Dr. Nisenfeld?

19 A No.

20 Q And was the range of motion for her
21 arms and legs normal or abnormal?

22 A He said it was within normal limits.

23 Q What was the diagnosis by Plaintiff's
24 orthopedic surgeon, Dr. Nisenfeld?

25 A Degenerative disc disease, degenerative

1 disc and joint disease of the thoracic and
2 lumbosacral spine, no evidence of radiculopathy.

3 Q And was that significant, uh, for you
4 in coming to your ultimate conclusions in this,
5 in this matter?

6 A It was one of many things that, that
7 were, that I reviewed and were contributed to my
8 opinions.

9 Q Okay. Let me show another, Exline-
10 Hassler 0345, with copies to all Counsel. Have
11 you seen this report from Chesapeake
12 Neurosurgery, Doctor?

13 A Oh, yeah.

14 Q It's dated June 2nd, 2011?

15 A Yes, sir.

16 Q And, uh, which doctor wrote this
17 report?

18 A Uh, this report was written by Dr. Neil
19 Naff of Chesapeake Neurosurgery.

20 Q And Dr. Naff's a neurosurgeon, right?

21 A He is.

22 Q Any significant findings in this
23 report, which you factored into your conclusions
24 in this case?

25 A No. The only findings were mild

1 tenderness to palpation over the lumbosacral
2 junction.

3 Q Okay.

4 A The neurologic exam was normal.

5 Q What did Dr. Naff conclude, if
6 anything, regarding degenerative, uh, changes in
7 the spine?

8 (Long pause.)

9 A Uh, he thought that her pain, uh, was
10 consistent with degenerative disc disease at L4/5
11 and L5/S1.

12 Q And, again, uh, that's the degenerative
13 disc disease that you've been speaking about
14 throughout your examination in which --

15 A Yes, sir.

16 Q -- you're relying on and saying that's
17 what's causing her problems?

18 A Correct.

19 Q Let me show you another pack of
20 records, Doctor, which is think you -- Exline-
21 Hassler MR-0351, with copies to Counsel. Have
22 you seen this record before, Doctor?

23 A Yes.

24 Q What medical organization generated
25 this report?

1 A Uh, Towson Orthopedic Associates.

2 Q And, uh, on page two who's the Doctor
3 that generated this report?

4 A Uh, it looks like Dr. Michael D.
5 Dabbah.

6 Q What was the date that Dr. Dabbah saw
7 her on the first page?

8 A 6/4 (sic), uh, June 14th, 2011.

9 Q Is Dr. Dabbah an orthopedic surgeon as
10 well?

11 A Yes, sir.

12 Q Does it appear from your review of this
13 medical record that he conducted an examination
14 of the Plaintiff?

15 A He did.

16 Q What did he document, uh, after, in
17 connection with his examination of the Plaintiff?

18 A Uh, it looks like it's essentially a
19 normal, um, examination.

20 Q Was there normal gait?

21 A Yes.

22 Q Did he, did he test, uh, walking with
23 heel toe?

24 A He did.

25 Q How do you do that, and what's the

1 significance of doing that?

2 A Uh, just to make sure that there's no
3 weakness in the muscle groups of the lower
4 extremities.

5 Q And if you had weakness there would
6 that indicate a disc problem in the spine?

7 A Uh, it could, yes.

8 Q What did he comment on in terms of, uh,
9 her neurological status? Or her neurovascular
10 status?

11 (Long pause.)

12 A Uh, about her neurovascular status?

13 Q Yeah, last little paragraph on page
14 351, under the physical exam regarding her legs.

15 A They were normal.

16 Q And her reflexes were tested?

17 A Normal.

18 Q Was that significant in any way for you
19 in writing out your conclusions?

20 A It would, again, it was one of many
21 documents, uh, that, that contributed and I used
22 in forming the basis of my opinion.

23 Q Please take a look at page 0352 of Dr.
24 Dabbah's exam and report. What if any, um,
25 evidence was there documented regarding nerve

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impingement?

A Uh, he did not feel the MRI showed any nerve impingement.

Q What did he say in his assessment?

A Uh, his assessment was low back pain, uh, and lumbar spine degeneration.

Q Again, the same degeneration that, that you've spoken about here today?

A Correct.

Q Did you rely on his report as one factor in arriving at your conclusions?

A Yes.

Q Let's look at, uh, what I've marked as (unclear - videotape goes blank) with copies to Counsel. Have you seen this report from, uh, Johns Hopkins Medicine Good Samaritan Hospital before, Doctor?

A Yes, I have.

Q What doctor wrote it?

A Dr. Khanna.

Q What kind of doctor is he, if you know?

A It appears he's a spine surgeon.

Q Okay. Saw the patient on what day?

A Uh, June 20th, 2011.

Q And he conducted an exam and what did

1 he document with regard to distress, gait,
2 heel/toe tandem writing and, and trunk rotation?

3 A (No response.)

4 Q At page 0360.

5 A Uh, the neurologic exam was
6 unremarkable.

7 Q Now, did he also take time to examine
8 the Plaintiff's neck and mid-back?

9 A Yes.

10 Q What, if anything, did he document
11 regarding the neck and mid-back as of June 20th,
12 2011?

13 A Uh, he didn't really find anything
14 abnormal or documented.

15 Q And did he specifically note that it
16 was non tender over the neck and thoracic region

17 --

18 A Yeah --

19 Q -- the middle of the back?

20 A Yes.

21 Q Was she neurologically intact?

22 A She was.

23 Q What, if any, significance was that in,
24 uh, for you in arriving at your opinions in this
25 case?

1 A Again, another piece of information
2 that I used.

3 Q Doctor, what's an EMG?

4 A And EMG is a, uh, it's an electro
5 diagnostic study, uh, that tests the function of
6 the nerves, um, that innervate the muscles of
7 the, uh, uh, of the extremities, and these are
8 the nerves that come out of the spine. It's a
9 very sensitive test for nerve abnormalities.

10 Q Can you show us, uh, for example, on
11 this spine model where they would be looking to
12 test those nerves on the Plaintiff's low back?

13 A Well, they wouldn't -- the nerves
14 aren't tested in the, in, in the, um, uh, it,
15 it's really a reflex study, but the nerves that
16 they'd be looking at in particular would be the
17 nerve roots that come out of the, uh, both the,
18 this would be L5 nerve root coming out of the
19 L4/5 disc space right here and the S1 nerve root,
20 which comes adjacent to the disc space below.
21 These are going to be the nerves in her condition
22 that would, if there were going to be a
23 neurologic problem those would be the nerves that
24 would be irritated and would have positive
25 findings on an EMG, which again is a very

1 sensitive nerve for nerve injury.

2 Q What's a nerve conduction study?

3 A Uh, again, that, that looks at, it
4 looks at the same, basically the same process in
5 a little bit different way. The nerve conduction
6 study is going to look at the sensory nerves and
7 the EMG is going to look at the motor portion of
8 the nerves.

9 Q And is there any evidence that the
10 Plaintiff, Ms. Exline-Hassler had both an EMG
11 done and a nerve conduction study done?

12 A She did.

13 Q All right, let me show you (unclear -
14 videotape goes blank), which is Exline-Hassler
15 MR-0126 with copies to Counsel. If you could
16 take a look at those documents, Doctor. Uh, did
17 she have EMG and nerve conduction studies down at
18 the Parkway Neuroscience and Spine Institute?

19 A Yes, sir, on, on March 17th, 2010.

20 Q What were the results of those EMG's
21 and nerve conduction studies?

22 A Uh, they were completely normal
23 according to the report.

24 Q What relevance to your opinion, uh, did
25 these documents have?

1 A Uh, I think they were part, uh, you
2 know, another, again another document that I
3 reviewed that contributed to my opinion.

4 Q Now, Doctor, I want to ask you are you
5 suggesting to this jury that, uh, the Plaintiff
6 did not injure her low back in some fashion in
7 this accident?

8 A No, I'm not suggesting that. I, I
9 think that she did have, uh, she did have, uh,
10 uh, aggravation of a, of, of a previous problem,
11 uh, by virtue of the accident.

12 Q And to a reasonable degree of medical
13 probability do you have an opinion as to how long
14 you would expect somebody who sustained the
15 musculoligamentous low back injury that you
16 referred to earlier to get back to the way it was
17 before the injury occurred?

18 A Again, the most typical situation that
19 we tell patients, 'cause we see this sort of
20 thing all the time and I usually tell my patients
21 expect that you're gonna' really improve and get
22 back to your baseline in about six to eight
23 weeks.

24 Q And again to, to just to be clear to a
25 reasonable degree of medical probability do you

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have an opinion as to the cause of the ongoing low back complaints that she has voiced to some of her healthcare providers?

A I do. I think for Ms. Exline-Hassler the most likely situation is that this is secondary to longstanding, uh, degenerative changes that she has in her lumbar spine.

Q To a reasonable degree of medical probability, Doctor, do you have any opinion as to whether she injured her middle back and neck in the car accident of June 26th, 2009?

A I think she transiently injured her neck. I mean, that was the main complaint that she actually complained of when she was first evaluated was she was complaining of neck pain and that seemed to clearly be the focus, um, of the, uh, of the medical evaluators at the point in time. Um, so I --

Q All right.

A -- think she did have some injury to that, but that quickly seemed to resolve on its own, which is typical. She had no fracture or dislocation.

Q Doctor, we're just about done. I want to go through one additional set of record it is

1 Exline-Hassler MR-0139 with copies going to
2 Counsel. Is this a report from Progressive
3 Radiology, Doc (sic), uh, Dr. McGrail?

4 A It is.

5 Q It's, uh, did they perform a study on
6 May 26th of 2011?

7 A They did.

8 Q What kind of study did they perform and
9 on what body part?

10 A Uh, they did an MRI of the lumbar
11 spine.

12 Q Is there anything significant in this
13 report from the radiologist that you relied on in
14 arriving at your conclusions in this case?

15 A Yes. Um, I think that the, the, uh,
16 there, there two important things. One is that
17 there seemed to be some degree of progression of
18 the degenerative disease, which is typical of
19 degenerative disc disease and degenerative spinal
20 disease so that, there was some progression, um,
21 since the, uh, study, which had been obtained,
22 uh, just under two years ago. I think you have a
23 study that's, uh, uh, was from July 2009. This
24 is almost two years later. There's some
25 continued progression of the degenerative

1 disease. I think it is consistent with her
2 ongoing complaints of low back pain.

3 Uh, the other thing that was notable on
4 this study is that there's, uh, the annular
5 tears, that were present on the prior, um, study,
6 uh, appeared to have healed. They're not a
7 significant finding on this study. Uh, I think
8 that's important, because, uh, she relayed to me
9 that her pain is pretty much as bad as it ever
10 was in the back. Uh, the annular tears have now
11 healed so I don't think that they're a major part
12 of her problem.

13 Q Doctor, those are, uh, all the
14 questions that I have for you right. I know
15 opposing Counsel has a lot of questions for you.
16 Just (unclear - videotape went blank) at this
17 time.

18 MS. ZOIS: (Unclear - one word) objection.

19 MR. PORCARELLI: Can we take a two minute
20 break?

21 MS. ZOIS: Sure.

22 VIDEO TECHNICIAN: We're going off the video
23 (unclear - two words) the time is 6:42, p.m.

24 (Brief pause.)

25 VIDEO TECHNICIAN: We are on the video

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record, the time is 6:47, p.m.

MS. ZOIS: Okay? Okay.

CROSS EXAMINATION

BY MS. ZOIS:

Q Um, Doctor, when is the last time you looked at the 5/26/2011 MRI films?

A Um, I think it was when I had received the file. I haven't reviewed it recently.

Q Okay. I want to direct your attention to Dr. Khahanna's (sic) report, the one that you were just referring to.

A Dr. Khanna?

Q Yes, and I believe it's Number 8. I just want to direct your attention to his review of the films.

A Mm-hmm.

Q Which I believe is on page 360.

A Oh, let me . . .

Q And while you're looking for it, she was there for a surgical consult with this doctor, is that correct?

A Yes, ma'am.

Q And this is a doctor out of Johns Hopkins?

A Yes.

1 Q All right, are you, are you with me on
2 360?

3 A No. (Chuckles.)

4 Q Sounds like we need to help him out.

5 A Let me just see if I can find this, uh,
6 the, uh, exhibit. Here it is, I've got it right
7 here, this Dr. Khanna's now?

8 A Yes.

9 Q And if you could refer to page 360,
10 please.

11 (Brief pause.)

12 A Yes.

13 Q And underneath where he says major
14 findings.

15 A Yes.

16 Q His review of the films, do you see
17 where he reviewed the imaging films from
18 5/26/2011, the MRI of her low back?

19 A Yes.

20 Q And do you see where he indicates that
21 he saw high intensity zones?

22 A Yes.

23 Q Would you agree that high intensity
24 zones are (unclear - one word) annular tears?

25 A Um, no.

1 Q So --

2 A I'm not sure what he's referring to in
3 a high intensity zone, that's --

4 Q Well, he goes on to explain it, if you
5 look under assessment in the last sentence it
6 says, "High intensity zone seem compatible with
7 annular tear." Do you see that?

8 A I do see that.

9 Q All right. So, he saw annular tears on
10 these films, on 5/26/2011, in his opinion,
11 correct?

12 A Yes.

13 Q Okay.

14 A I would agree with that.

15 Q All right. And turning back to page
16 61, if you would. I think Counsel, I, I kinda'
17 lost track of how many times, but Counsel asked
18 you numerous times what was a neurological exam?
19 It was normal, correct?

20 A (Unclear - one word.)

21 Q I think we went through six different
22 reports, we talked about your exam, we
23 continuously went over how she's neurologically
24 intact, right?

25 A Yes.

1 Q All right. You're a nerve doctor,
2 right, Doctor?

3 A A neurosurgeon, yeah.

4 Q Okay. Well, your thing is nerves,
5 right?

6 A Yes.

7 Q And just because someone doesn't have
8 any nerve damage doesn't mean that they don't
9 have pain, correct?

10 A That's correct.

11 Q So, a person can be neurologically
12 intact, as we've heard 17 times during your
13 deposition, but can still have pain, correct?

14 A That's correct.

15 Q And in fact on page 361 Dr. Khanna says
16 on physical examination she's neurologically
17 intact, right?

18 A He does.

19 Q And just below that he says, "We feel
20 that Ms. Exline is failing non-operative
21 management. We discussed with her the procedure
22 in detail consisting of a possible L4/L5 and
23 L5/S1 anterior lumbar inner body fusion depending
24 on results from her previous discogram," isn't
25 that correct?

1 A That's what he says, yes.

2 Q All right. So, even though she's
3 neurologically intact, which we all agree with,
4 nobody's claiming permanent nerve damage here
5 he's recommending the surgery because she has
6 failed her non-operative management, isn't that
7 correct?

8 A Uh, I'm not sure he's, he's, he's
9 giving it as an option, um --

10 Q Okay. Well, we'll, we'll just do that.

11 A -- I'm not sure that he's -- yes, I
12 mean, he did present it to her as an option,
13 that's correct.

14 Q Okay. Now, as far as annular tears go,
15 Doctor, you don't know what the Dallas scale is,
16 do you?

17 A No.

18 Q All right. Well the Dallas scale is a
19 scale that's used to measure how bad an annular
20 tear is. And you're not familiar with that?

21 A No, I don't -- I, if it is, I would say
22 it's something that's certainly not relevant to,
23 uh, day to day neurosurgical practice.

24 Q And I wouldn't disagree with that. You
25 don't know the difference between a one and a

1 five on the Dallas scale, do you?

2 A No, I don't, I don't use the Dallas
3 scale, I'm not familiar with it, I don't teach it
4 to my residents, I don't teach it to my medical
5 students, I've been a Board examiner and I've
6 never used it on a neurosurgery Board exam when
7 I've been examining a candidate. So, I don't, I
8 don't use it, I don't, uh, think it's clinically
9 important.

10 Q Because you're a (unclear - one word)?

11 A No, I'm a, I'm a spine surgeon.

12 Q Okay.

13 A I mean, I, (unclear - two words) --

14 Q If --

15 A -- but I don't, I don't think that's
16 an, it's no commonly used.

17 Q If you tear an annulus it can hurt,
18 correct?

19 A Yes, ma'am.

20 Q Any tear of an annulus can hurt,
21 correct?

22 A Yes, it can.

23 Q And it doesn't even need to be a big
24 tear, any tear can hurt, is that right?

25 A Yes, that's correct.

1 Q Now, Dr. Sloan did a discogram. You
2 don't do those, correct?

3 A I don't do them, but I do refer
4 patients for them occasionally.

5 Q And Dr. Sloan did the discogram at her
6 L4/L5, L5/S1, correct?

7 A Yes.

8 Q And the annular tears according to the
9 Dallas scale were a four and a five, and you
10 don't even know the significance of that, do you?

11 A No, I, I don't think that's -- I mean,
12 discograms can be helpful, but I, I think this
13 Dallas scale, I mean, this is the first time I've
14 ever heard of this was in this test, and I've
15 been practicing and teaching neurosurgery for
16 almost 20 years.

17 Q But not pain management, right?

18 A (No response.)

19 Q You're not an expert in pain
20 management?

21 A No, no, but this, but this is, pain
22 management isn't about the reading of MRI's and
23 the assessment of a scale on an annular tear,
24 pain management doesn't have any rel (sic),
25 relevance to that in Dallas scale.

1 Q But you do send your clients out, or
2 your patients out for discograms, correct?

3 A Occasionally, yes.

4 Q And that's to measure concordinate pain
5 certain levels, is that correct?

6 A That's correct. That is correct.

7 Q And that was done in this case?

8 A Yes.

9 Q And she had concordinate pain in L4/L5,
10 correct?

11 A That's correct.

12 Q And she had concordinate pain at L5/S1,
13 correct?

14 A That's correct.

15 Q And they were both rated at 9 out of
16 10, which is severe pain, is that correct?

17 A Yes.

18 Q All right. Now, as far as the
19 degenerative changes that I believe are the basis
20 of your opinion of what you've explained is what
21 her ongoing problem is and what her problem was
22 in the first place, is that right?

23 A Yes.

24 Q Now, most people in their forties have
25 mild degenerative changes in their spine, right?

1 A That's correct.

2 Q And it wouldn't be unusual for you to
3 see mild degenerative changes in someone's spine
4 who's in their forties, correct?

5 A That would not be unusual.

6 Q And most people have degenerative disc
7 disease as they age, isn't that right?

8 A They do.

9 Q And degenerative disc disease is
10 basically our discs shrinking, right? Losing
11 height?

12 A That's correct, the dehydration of the
13 discs, and then there's, because the bones lose
14 the cushioning effect at the disc the bones can
15 degenerate in, in addition to that.

16 Q And all of us in our forties could have
17 it now with no symptoms at all, right?

18 A That's correct, that's possible.

19 Q And you would agree that most people
20 aren't bothered by mild degenerative changes in
21 their spine, isn't that correct?

22 A Most people with mild degenerative
23 changes do just fine.

24 Q And on 7/18/2009 that's what was
25 showing up on her MRI was mild degenerative

1 changes, correct?

2 A Correct.

3 Q And (unclear - one word), do people
4 with degenerative disc disease have a pre-
5 existing condition that makes them more
6 susceptible to an injury, do you think?

7 A They can, yes.

8 Q So, someone that has this mild
9 degenerative problem that might not be having
10 problems with it, they could start to have
11 problems with it and it could be brought on by
12 trauma, is that right?

13 A That's correct.

14 Q Your prominent findings are for mild
15 degenerative changes, is that your testimony?

16 A Yes.

17 Q And in your report of your prominent
18 findings you didn't even mention the tears, is
19 that correct?

20 A I, I don't think I did mention that.

21 Q So, it's your opinion that her chronic
22 ongoing back pain that's required 146 visits
23 since the date of this crash was caused by the
24 same thing that most of us over 40 are sitting
25 here with right now that doesn't bother us?

1 A Well, yes, and that's, that's why, I, I
2 mean, I mean I must say that's one of the things
3 that stuck out at me in this case, a few things
4 that stuck out at me in this case you hit the
5 nail right on the head that, um, the changes in
6 the spine are very mild, and she has a normal
7 neurologic exam and the pain did (unclear -
8 videotape went blank) seem to be out of
9 proportion to the relatively mild changes that
10 are present on the MRI.

11 Q You're not questioning the voracity of
12 her complaints, are you?

13 A I'm not.

14 Q You believe she's in chronic pain,
15 don't you?

16 A That's what she told me, yeah. I mean,
17 it just did seem out of proportion to the
18 imagining studies that I reviewed, which you're
19 right, they were quite mild the changes.

20 Q Now, when I first took, took your
21 deposition though you thought they were moderate,
22 right?

23 A Um, yes, but I corrected myself in that
24 deposition, because I said in my report I
25 characterized them as mild and I did, I think I

1 did at one point say, uh, that I thought they
2 were moderate, um, but I, I did correct myself
3 and I, I, 'cause you did ask me that, I, I, I
4 think I would characterize them as mild.

5 Q Okay. Skipping for a minute to the, to
6 the surgery, a double discectomy and fusion, um,
7 with instrumentation, if that was done here at
8 this hospital the amount of that surgery would be
9 about \$125,000 is that correct?

10 A That's correct.

11 Q All right. So --

12 A Total charges.

13 Q -- so the surgery that Dr. Naff has
14 talked to her about and Dr. Dabbah and Dr.
15 Khanna, the double discectomy infusion, if she
16 chose to have it here that would be what it would
17 cost, is that right?

18 A That, that would be the total charges,
19 yes.

20 Q And this is a surgery that you do about
21 two or three times a week, I understand?

22 A Very common.

23 Q Okay. About two or three times a week?

24 A Oh, yes.

25 Q Okay. Doctor, in the beginning of

1 your, uh, testimony Counsel referred to your exam
2 as an independent medical exam, and I took
3 exception to the word independent. Um, you
4 weren't selected or appointed by the Court to do
5 this exam, correct?

6 A That's correct.

7 Q You were selected by the Defendant.

8 A That is correct, yeah, that's correct I
9 have.

10 Q You're not one of Jackie's doctors,
11 correct?

12 A I am not one of her treating doctors.

13 Q And you knew from your first contact
14 from Counsel that you were being asked to defend
15 the case, is that right?

16 A Um, I was asked to review the case, uh,
17 I wasn't asked to defend the case. Um, I was
18 asked if I would review the case, uh, to give my
19 opinions to them.

20 Q All right. Let me help you out. I'm
21 going to show you what's been marked as
22 Plaintiff's Exhibit Number 15, and this was a
23 packet that was produced to me at your last
24 deposition. If you could just direct your
25 attention to the first email that you received,

1 which is notated in the packet at the number one.
2 And the first email that you were seeing a lawyer
3 was dated October 3rd, 2012, is that right?

4 A Yes.

5 Q And --

6 MR. PORCARELLI: Do you have an extra copy
7 of that?

8 MS. ZOIS: I don't, but I would assume it's
9 your email you would have it.

10 BY MS. ZOIS:

11 Q And the first sentence says, "I'm
12 defending one of the parties in the captioned
13 matter," isn't that correct?

14 A Right, that's the attorney says that,
15 not me.

16 Q Okay.

17 A I'm just being asked to review the
18 records.

19 Q And --

20 A And perform an, and perform an exam.

21 Q Are you aware that you were designated
22 in, as an expert in this case on October the 5th,
23 2012?

24 A Uh, I, I was not sure, I didn't, I
25 wasn't aware of that date.

1 Q And that's before you had the first
2 shred of paper on medical records in this case,
3 is that right?

4 A I believe that's correct, yes.

5 Q And you didn't render your opinions in
6 this case until December the 2nd of 2012?

7 A That's right. I needed to, the, the,
8 the records were quite voluminous so not only did
9 I have to arrange to examine, uh, the, uh, to
10 examine Ms. Exline-Hassler, but I also had to get
11 through the, uh, quite voluminous records.

12 Q You used a lawyer before, right?

13 A On one single additional case, yes.

14 Q But you can't remember what that case
15 was about?

16 A I don't.

17 Q But you know it was a personal injury
18 case, correct?

19 A Uh, I believe so, yes.

20 Q So, it was one of those causation, did
21 this accident cause this problem type case,
22 right?

23 A I, I, again, I know it was a personal
24 injury case, I don't, I can't recall any more
25 details beyond that.

1 Q And you exchanged about 39 emails with
2 them, does that sound about right?

3 A I don't if it's 39 emails, but just in
4 terms of they -- there's a lot of email
5 communication involving transmitting records, uh,
6 getting reports done in a timely fashion,
7 scheduling depositions, scheduling video
8 testimony, so, uh, I wouldn't be surprised.

9 Q If there was 39?

10 A No, it wouldn't surprise me at all.

11 Q Well, they wanted to talk to you about
12 your report before it was drafted, isn't that
13 right?

14 A Um, I think they were interested in
15 what I was going to say.

16 Q And they wanted to talk to you before
17 you did the exam, isn't that correct?

18 A Um, I believe that was correct.

19 Q And they wanted to talk to you before
20 you issued your report, isn't that correct?

21 A I can't remember if that was correct.
22 I've had a number of conversations at, at, at
23 various times.

24 Q Okay. We're gonna' have to do this the
25 long way, email number nine, which is tabbed for

1 your convenience. Counsel said, "I'd like to
2 speak with you about the case before the exam,"
3 do you see that?

4 A Let's see, I'm sorry, Ms. Zois, it's,
5 uh --

6 Q Nine is on the other side, you're too
7 far ahead.

8 A Oh, okay.

9 Q Your tab, there you go.

10 A I get it.

11 Q That's --

12 A Thank you.

13 Q All right. "I'd like to speak with you
14 about the case before the exam," is that correct?

15 A Yes, and I, I think that was in
16 reference to, uh, Ms. Exline-Hassler, whether it
17 would be okay with me if Ms. Exline-Hassler's
18 husband attended, and I, I, I said it would be no
19 problem with that. I think that that's what that
20 email was regarding.

21 Q Directing your attention to email 10,
22 it says, "Please contact me to discuss that
23 request and to discuss the legal issues in the
24 case prior to your exam." So, it wasn't just if
25 the husband could attend, he wanted to talk you

1 about the legal issues in the case, isn't that
2 right? Well, that's what the email says anyway.

3 A That's what the email says.

4 Q Okay.

5 A That's it.

6 Q Now, directing your attention to email
7 number 19, um, Counsel routinely pointed out
8 records that he wanted you to focus on, isn't
9 that fair to say?

10 A (No response.)

11 Q He drew your attention to certain
12 records (unclear - two words)?

13 A He did draw my, he said, I, I, I, he
14 said, "Please note the records from Robinwood
15 Family Practice and Meritus Medical Center..."

16 Q And keep going, please.

17 A Uh, "...contain important information
18 for your evaluation."

19 Q Right.

20 A At the time I'd already reviewed those
21 records.

22 Q But this is the first of several
23 occasions where he draws your attention to very
24 specific records, isn't that correct?

25 A In this case there was a reference to

1 specific records, that's correct.

2 Q But that was, between the 39 emails it
3 was, and other correspondence, he continuously
4 drew your attention to certain records, isn't
5 that right?

6 A I wouldn't say continuously.

7 Q All right, we'll keep going.

8 A I would say --

9 Q All right. Um --

10 A -- I wouldn't say continue (sic).

11 Q -- directing your attention to, um,
12 email number 22, (unclear - two words) to have a
13 conference, or a call before completing the
14 report, isn't that correct?

15 A Yes.

16 Q So, he wanted to talk to you before you
17 pulled the trigger on printing the report, is
18 that right?

19 A I don't usually pull the trigger on a
20 report (chuckles).

21 Q Before you hit send, fax -- you
22 understand what I mean?

23 A I don't even own a gun. Uh, I guess --

24 Q He wanted to talk to you before you
25 finalized and sent your report, correct?

1 A Um, he says here let me, uh --

2 MS. HOWARD: (Unclear - two words) if we
3 could just go off the record.

4 VIDEO TECHNICIAN: We're going off the video
5 record, the time is 7:04, p.m.

6 (Off the record.)

7 VIDEO TECHNICIAN: We are on the video
8 record, the time is 7:05, p.m.

9 BY MS. ZOIS:

10 Q Doctor, directing your attention to
11 email number 26, after Counsel, he wanted a draft
12 of your report, you put "draft" in quotes, is
13 that correct?

14 A Yes, ma'am.

15 Q And you've offered drafts to attorneys
16 in the past, correct?

17 A Yes, some, some attorneys that
18 requested draft report, uh, some attorneys
19 requested draft report, um, uh, from, for various
20 reasons, uh, and I, and so I did ask Mr.
21 Porcarelli if he wished a draft report. He said
22 no he did not require a draft.

23 Q Um, but you did have some
24 correspondence with him before this report was
25 actually drafted that the two of you were

1 arranging to try and talk before the report was
2 sent, isn't that correct?

3 A Yes.

4 Q Okay. Um, directing your attention to
5 email number 34. Counsel specifically directs
6 your attention, wants to talk to you about the
7 most recent Naff report, is that correct?

8 A Yes.

9 Q And in email number 36 he specifically
10 wants to talk to you about the, talk to you about
11 the pharmacy records that he mailed to you, is
12 that correct?

13 A I, I don't have email 36. I mean, I go
14 from 34 to 39 on the tabs.

15 Q It's -- sir, they might be out of order
16 because of the chronology and how they were
17 printed.

18 A Oh, (unclear - one word) --

19 Q If you look for number 36 you should be
20 able to find it. I can share with you my copy.

21 A Yeah, that might be faster, thank you.

22 Q Sure. So, in email number 36 he wants
23 to talk to you about pharmacy records, correct?

24 A Yes.

25 Q And in email 38 he wants to talk to you

1 about the pharmacy records, correct?

2 A I'm gonna' give this back to you.

3 Q Thank you.

4 A Uh, yes.

5 Q Okay. And in the letter dated, which
6 is on a blue tab at the bottom, letter dated
7 December 12 (sic), uh, 17th, 2012 he writes, "I
8 draw your attention to the pharmacy records,"
9 isn't that correct?

10 A I'm sorry, this is a letter December
11 17, 2012?

12 Q Correct. And he says, "I draw your
13 attention to the pharmacy records," in that
14 letter?

15 A Right, I mean, he sent me the pharmacy
16 records, so I mean that was the, that was the
17 mail --

18 Q But --

19 A -- I didn't say, I, I, he sent me the
20 new, the records from the pharmacy.

21 Q But you had the records from the
22 pharmacy when you did your report of December 2nd,
23 2012. Counsel went through the long list of
24 everything that you reviewed, and on that list
25 were the Weis Pharmacy and Boonsboro Pharmacy,

1 correct?

2 A Correct.

3 Q Okay. And then there's another letter
4 in there December 26, 2012 where he specifically
5 says, "I would like to discuss with you any
6 opinions you have on what the documents show
7 regarding the history of pain medications
8 starting as early as January 2008 and continuing
9 on a fairly regular basis until February of 2009,
10 approximately four months before accident,"
11 correct?

12 A Yes, ma'am.

13 Q Okay. And just so I'm clear, you're
14 assuming that she was filling prescriptions,
15 taking the prescriptions, and it was because she
16 was having back pain, correct?

17 A Uh, yes.

18 Q Okay. So, you're making that
19 assumption, and that's part of the foundation for
20 your opinion, correct?

21 A It is, yes. Those are, I mean, she had
22 it -- and I base that on the fact that she had a
23 known history of, of pain and discomfort in the
24 lower back, and those, those medications are
25 commonly used to treat that. And, in fact, after

1 the fall down the stairs, uh, the, in addition to
2 receiving the narcotics she received the, um, uh,
3 the Skelaxin and the Tramadol and she continued
4 on that, so (unclear - two words) --

5 Q Right, Doctor, my question was simply
6 it's a part of the foundation for your opinion,
7 correct?

8 A That's correct, yes.

9 Q All right. Um, your billing for this
10 case, up until this point is about \$8300, is that
11 right?

12 A I, I'm not sure --

13 MS. HOWARD: We can (unclear - one word.)

14 THE WITNESS: -- are you including the, the
15 testimony here today?

16 BY MS. ZOIS:

17 Q No, I'm not actually, we were gonna'
18 get there. But your initial bills to Counsel was
19 about \$5,416, correct? I can show you if you
20 need to --

21 A Yeah, I, I'd --

22 Q -- refresh your recollection.

23 A -- just be happy to look.

24 Q All right. I'll show you what has been
25 marked as McGrail's five, which is your first

1 invoice in this case, is that right?

2 A Yes, ma'am.

3 Q And that's \$5,416?

4 A Yes, ma'am.

5 Q And I'll show you what's been marked as
6 5(a), which is your second bill in this case,
7 that was \$1500 for the discovery deposition that
8 I took, is that right?

9 A Right, but I mean that was from my
10 discov (sic), that was, that was for your
11 discovery deposition, yes.

12 Q Right, but you were paid for that,
13 correct?

14 A Yes.

15 Q Okay. And this is another bill for
16 \$379.17 marked as 5(b), is that right?

17 A Yes, ma'am.

18 Q And here's another bill marked as 5(c)
19 for \$1,031, correct?

20 A That's correct.

21 Q So, if you add all that up it's about
22 \$8300, is that correct?

23 A Yeah, I mean, if you throw in the cost
24 of you taking my three hour deposition I think
25 that probably adds up to about that.

1 Q And what are you billing for today?

2 A Um, I for, uh, testimony, where this is
3 lieu of court testimony, I bill a flat fee of,
4 uh, I think it's \$3900.

5 Q And did, how many hours did you prepare
6 for today's deposition?

7 A Um, probably in total about four to
8 five hours.

9 Q And what do you bill that per hour?

10 A That's \$375 an hour.

11 Q And did you meet with the attorneys
12 today or any other time after discovery
13 deposition?

14 A I met only met with Mr., uh, I, I, um,
15 met with Mr. Porcarelli, uh, 15 minutes before
16 this dep (sic), this testimony.

17 Q Did you meet with him any other time
18 after your discovery deposition (unclear - two
19 words) today other than the 15 minutes before --

20 A Um --

21 Q -- earlier this week?

22 A -- we had, we had one other meeting,
23 uh, which would have been for, I think roughly
24 about two hours.

25 Q Okay. So, that's -- in addition to the

1 \$8300 it's \$3900 for today, four or five hours,
2 um, to (unclear - one word), another two hour and
3 15 minute with the attorney -- my math skills
4 aren't very good I would have to actually get a
5 calculator out to do all that, but I think it's
6 clearly in excess of about \$12,000, would you
7 agree with that?

8 A It could be, yes.

9 Q Now, your professional witness work
10 does not get billed through the hospital,
11 correct?

12 MR. PORCARELLI: Objection.

13 THE WITNESS: Uh, no.

14 BY MS. ZOIS:

15 Q And you're a salaried employee at the
16 hospital, right?

17 A Yes.

18 Q And the checks that you get for, uh,
19 testifying in cases like this, they come to your
20 house paid directly to you, is that correct?

21 A That's correct, yes.

22 Q But you used the hospital to do the
23 exam is that right?

24 A I did, yes.

25 Q And you do most of your forensic work

1 at home I understand?

2 A I do.

3 Q And you don't keep track of how much
4 money you make every year doing this, is that
5 correct?

6 A No.

7 Q And you don't keep track of the time
8 you spend doing it, is that correct?

9 A Um, not hour by hour, no, I don't.

10 Q Well, I guess, I, that was a poorly
11 worded question. You keep track of each case
12 that you send a bill out for, but you don't keep
13 track of in total how much time you spend a year
14 doing forensic work or professional testimony
15 type work?

16 A No, I don't.

17 Q And you don't have a bookkeeping system
18 to follow up on these bills, correct?

19 A Not really, no, unfortunately I don't.

20 Q But you do have a year and a half worth
21 of invoices on your home computer, but that
22 computer crashed so you're unable to give those
23 to us.

24 A Correct.

25 Q And you testified with enough frequency

1 that you try to keep a case list, is that right?

2 A No, I don't try to keep a case list.
3 If, if, if, if you have to, if you, uh, on
4 occasion I have testified in federal court, and
5 that requires the generation of a case list, but
6 I have not tried to make a case list.

7 Q And we went over your case list at your
8 deposition last time, but, um, the list is
9 significantly incomplete and under represents how
10 often you testify in cases, isn't that right?

11 A I think that's correct, yes.

12 Q And when you do testimony for cases
13 like this 80 percent of the time you're
14 testifying a defendant defending a claim, isn't
15 that right?

16 A I'd say more of the work that I've done
17 has been for defense rather than plaintiff. I'd
18 say the breakdown in cases that I've reviewed are
19 about 60, uh, 60/40 to 70/30 defense versus
20 plaintiff. I think I, is it, and, um, and you
21 explored this in my deposition.

22 Q I did, and I'm gonna' hand it to you,
23 because you --

24 A Yeah.

25 Q -- might need it. It's been marked as

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Plaintiff's --

A I've got my own copy.

Q -- Exhibit (unclear - one word). Okay.
Directing your attention to page 95 of your, um,
deposition we explored it at some length.

A Yes.

Q And you agreed that 80/20 was for your
testimony, correct?

A Yes, and, and I think that as, as I
mentioned it's more, uh, it just more commonly
has been that, that, that, that the, uh, the
cases that I've, uh, in, in the cases that I've
been retained those cases, which are, uh, uh,
which I've been a defense witness have more
typically progressed on to, uh, deposition or
court testimony.

Q Okay. But 80 percent of the time when
your testifying your testifying for a defendant,
correct?

A Correct.

Q And you do about one defense medical
exam a week (sic), a month is that right?

A At the most.

Q And your testimony is about half of
those are for the Plaintiff, so six a year you're

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doing for plaintiffs' attorneys?

A I, I, I'm not even sure it amounts to a total of 12. I, I, uh, I mean, I do these type of IME exams occasionally.

Q I'm just using your deposition --

A Yeah.

Q -- testimony, would, would it surprise you that you testified that you do about an exam a month and about half of those are for the plaintiff?

A Yeah, I'd say, I'd say half are for the plaintiff, and I, I'd have to go back and see exactly how I answered that, uh, in terms of doing one. I, I, it's probably at most one a month, they're fairly infrequent.

Q And half of the ones that you do do you said were for the plaintiff?

A I think that's about right, yeah.

Q And when I asked you to give me the name of one of the plaintiffs that you had been examining in the last year you gave me the name of Rebecca Swandale (phonetic), do you remember that?

A Yeah.

Q Okay. And that's on page 89 in case

1 you want to follow along with your deposition.
2 So, the question was, "Can you give me a name of
3 a plaintiff's attorney or a plaintiff that you
4 examined in the last year?" And the name you
5 gave me was Rebecca Swandale, correct?

6 A Yeah, I, I think I did give you that
7 name.

8 Q Are you aware that --

9 A I just remember that case.

10 Q Okay, I'm sure you do.

11 A Yeah.

12 Q But do you know that she was injured in
13 2007?

14 A Right, but, but the case didn't go to
15 trial in 2007.

16 Q You examined her in August of 2009.

17 A Right, not in 2007.

18 Q Right, and that, so 2009 wasn't within
19 the last year, correct?

20 A Well, no, but it, it quite, they, they,
21 they pay, I don't, I think the case progressed on
22 way beyond that. So, um, my recollection in the
23 case was more recent, because as you know it
24 takes months and years for a case to, cases to
25 wind their way through the court system.

1 Q But that was the only example that you
2 could give me of a plaintiff that you had
3 examined in the last year.

4 A Right, because I just don't remember
5 these things that well, and I think the same
6 would hold true for, uh, defense cases, I, I
7 just, I, my, my practice is extremely busy, and
8 generally, on a day to day basis, my focus is on
9 my own patients in the hospital and not the IME
10 exams that I perform only occasionally.

11 Q I'm sure. Um, let's talk about the
12 exam of Ms. Exline-Hassler. You saw her on
13 November 1st, is that right?

14 A That's correct.

15 Q And your testimony is her exam took 30
16 minutes, is that correct?

17 A Total, yes, the history, the exam took
18 about 10 minutes, I spent about another 20
19 minutes getting the history from her.

20 Q Could it have been 15?

21 A No, I think it was at least 20 minutes.
22 I spent a fair amount of time with the, uh, with
23 her and her husband.

24 Q You took no notes, correct?

25 A No.

1 Q You see 50 patients of your own a week,
2 is that correct?

3 A That's correct.

4 Q And you didn't write this report until
5 December the 2nd, 2012, is that right?

6 A That's correct.

7 Q And you don't take notes during the
8 exam, correct?

9 A No.

10 Q Can we just -- okay. And you base all
11 your dictation off of memory, is that right?

12 A Yes, in this case it was quite clear
13 she had a, a entirely normal neurologic exam,
14 which is --

15 Q We've discussed that.

16 A -- quite easy to remember.

17 Q Right. She can still have chronic pain
18 though, even though she had a normal neurological
19 exam, correct?

20 A Absolutely.

21 Q All right. She didn't exaggerate any
22 of her symptoms during that exam, did she?

23 A I don't believe so. She seemed very
24 straight forward, honest, very nice person.

25 Q And nowhere in the chart has any of the

1 healthcare providers that she's seen in her 146
2 visits ever even mention or suggested that she's
3 malingering or exaggerating or doing anything for
4 secondary gain, is that correct?

5 A And that's correct, and neither am I.

6 Q And this case that you did the exam on
7 it's not a bumper tap fender bender, is it?

8 A No, I, I think that the, there was
9 significant damage to both vehicles at the time
10 of the accident.

11 Q And Jackie was at a stop when she was
12 hit, is that right?

13 A That's correct.

14 Q And very shortly after the crash she
15 had radiant pains into her legs, isn't that
16 correct?

17 A Uh, I'm not sure that's exactly what I
18 recall.

19 Q Well, let's see if we can't help
20 refresh your recollection. Do you have the
21 medical records from the Urgent Care in front of
22 you? Would that be of some significance to you,
23 Doctor, if the records would reflect that she did
24 have radiating pain?

25 A I think any, anything is potentially

1 significant. I just like to see the document
2 that you're referring to.

3 Q Okay. Marked for identification is
4 Exline-Hassler's medical record 004 at the top,
5 "Complaint MVC neck stiffness, back/pain
6 radiating down back." I'll just show you that,
7 004, Doctor.

8 MS. HOWARD: Can we go off the record for a
9 minute?

10 VIDEO TECHNICIAN: We're going off the
11 record, the time is 7:21, p.m.

12 (Off the record.)

13 (Videotape discs being changed.)

14 MR. BRATT: How long, how much is on the second disc?

15 MR. PORCARELLI: Because of the length of the deposition
16 and some (unclear - one word) we have -- (To the Court) Can I
17 say this to the members --

18 THE COURT: I --

19 MR. PORCARELLI: We're swapping discs, so we're just
20 moving to the second disc to continue, because it was a late
21 night.

22 (Videotape being played.)

23 VIDEO TECHNICIAN: We're back on the video
24 record, this is disc two, the time is 7:30, p.m.

25 MS. ZOIS: We're back on, okay.

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BY MS. ZOIS:

Q Um, Doctor, the medical record before you at 0004 would indicate that complaint was MVC, neck stiffness back/pain radiating down back, is that correct?

A It says at, it says, complaint, this is a nurse's note, not a doctor's, uh, I think it's a nurse's note.

Q Do you know?

A Um, no, I'm actually not sure.

Q Okay.

A I, I can't, it had an RN, but then it does look like it, it may, it may be (unclear - one word) physicians now. It says, uh --

Q That's okay, Doctor, I just wanted you to confirm that it says radiating.

A Right, it says, "Complaint MVC, neck stiffness/pain radiating down back."

Q Okay. And she was given discharge instructions for, uh, lumbar spine strain, isn't that right?

A Um --

Q I can show you that too, Doctor.

A Please. Thank you.

Q 0007 on top.

1 A Paraspinal muscular strain, yes, that's
2 correct.

3 Q And the (unclear - one word) --

4 A And I agree with that I think that's
5 what she had.

6 Q Okay. And so you would agree that she
7 was diagnosed with a lumbar strain in the
8 emergency room the day, or the urgent care
9 facility?

10 A Well, it doesn't, yeah, it doesn't
11 really say lumbar here, it's --

12 Q Well, let me (unclear - one word) --

13 A -- the focus seems to be on the
14 (unclear - one word) --

15 Q Upper right hand corner, Doctor.

16 A Yes, I see that. It says sprain,
17 strain, neck is circled and lumbar is circled as
18 well.

19 Q Okay. So, now does that refresh your
20 recollection?

21 A Yes.

22 Q All right, great. Eighteen days after
23 the crash she had the MRI, correct?

24 A That's correct.

25 Q And it showed tears at L4/L5, L5/S1,

1 correct?

2 A Annular tears, that's correct.

3 Q And a disc protrusion, correct?

4 A Yes.

5 Q Now, we agreed that she has chronic low
6 back pain, correct?

7 A Yes.

8 Q And my understanding is that you agree
9 that appropriate course for her right now is to
10 keep following pain management, is that right?

11 A That's correct.

12 Q And if she was your patient you would
13 recommend that course, correct?

14 A I would.

15 Q Now, pain can cause a person to be
16 distracted, isn't that true?

17 A Yes.

18 Q And chronic pain is known for being a
19 constant distraction, is that correct?

20 A It's, yes, it can be, that's correct.

21 Q And, doc (sic), uh, the Hershey's at,
22 oh, I'm sorry, the doctors are Hershey Medical
23 Center also agree that pain management's the
24 appropriate course for her, is that right?

25 A That's correct, yes.

1 Q Before June 26th, 2009 she never had an
2 x-ray of her back, isn't that correct?

3 A Not that I'm aware of.

4 Q No MRI of her back?

5 A That's correct.

6 Q No orthopedic referral?

7 A None that I'm aware of.

8 Q No neurosurgeon referral?

9 A No.

10 Q No back injections?

11 A Uh, no.

12 Q No pain management referral?

13 A No.

14 Q No ongoing physical therapy?

15 A Correct.

16 Q No ongoing chiropractic treatment?

17 A Correct.

18 Q No ongoing narcotic medications?

19 A Um, there were ongoing medications, um,
20 I think that, uh, she had had some narcotic, uh,
21 prior to this. Um, she certainly had ongoing
22 treatment with Ultram and Skelaxin prior to this.

23 Q No ongoing narcotic medications,
24 correct?

25 A Uh, uh, Tramadol's kind of in-between

1

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Q Mm-hmm. Let me, um --

3

A -- uh, it's, uh, it's, uh, it's not, it does have some narcotic like effects, but I don't think it's the same schedule as a narcotic.

4

5

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Q It's not. Let me show you what's been marked as Plaintiff's Exhibit Number 26. This is the DEA schedule of controlled subs (sic), uh, controlled substances. And see where Tramadol and Skelaxin at the bottom say none?

7

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11

A Right.

12

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Q They're not scheduled, would you agree with that?

14

15

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A Right, but they, but, but Skelaxin is a, is a, uh -- was this something from the DEA or is this your exhibit?

17

18

Q This is research material that was provided to me (unclear - four words.)

19

20

21

22

Q Well, you know what, if you want to see the DEA I have that, too. Do you want to take the time to look through it?

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A Sure.

MS. ZOIS: Okay. Let's go off the record and let the doctor do that.

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VIDEO TECHNICIAN: We're going off the record the time is 7:30 (sic) (videotape goes off record before stating full time).

(Brief pause.)

VIDEO TECHNICIAN: We are on the video record. The time is 7:36, p.m.

BY MS. ZOIS:

Q Doctor, I happened to bring with me a copy of the, um, DEA scheduled substances off of the DEA research, and you would agree with me that Tramadol and Skelaxin are not scheduled narcotics, correct?

A They're not, yeah, that's correct.

Q Okay. No one ever discussed surgery before June 26th, 2009?

A Uh, that is correct.

Q No one did any back injections before June 26th, 2009?

A I think we already mentioned that, yes.

Q No discograms were performed?

A No.

Q No documentation of any excessive absences from work before, that you're aware of?

A Not that I'm aware of.

Q And the records that you reviewed in

1 2008 would indicate that she's still riding her
2 motorcycle, is that right?

3 A I don't recall that.

4 Q Okay.

5 A But I, I'm not disputing it either.

6 Q Um, Doctor, when you were being
7 questioned by lawyer, you discussed three dates
8 of treatment, January 8th, 2008, March 26th, 2008
9 and April 28th, 2008, is that correct?

10 A I believe that's correct.

11 Q All right. Well, you left one out, but
12 we'll talk about it. I want to show you a
13 calendar for your convenience.

14 A Mm-hmm.

15 Q You didn't discuss May 6th, 2008,
16 correct?

17 A I don't believe so.

18 Q Okay. Going through those dates, the
19 January 8th, 2008 record, that doctor actually
20 lost his dictation and had to go back and redo
21 it, is that correct?

22 A I have to check back, I'm not certain
23 about it. I'm not disputing it, but I'm --

24 Q Okay. So, when the doctor said that it
25 was sort of two separate instances this is also

1 in the same record that the doctor sent that the
2 transcript was lost in the dictation process, and
3 he's doing this to the best of his memory, do you
4 recall reading that in the record?

5 A I'd have to go back and look at it, I
6 can't be certain.

7 Q Okay. Let me show you, no radiate --

8 A Thank you.

9 Q -- first paragraph -- sure.

10 (Brief pause.)

11 A Yes, he does say that.

12 Q Okay. And the narcotic medication that
13 she was prescribed and as directed would have
14 been a couple of days worth of medicine, is that
15 right?

16 FEMALE VOICE: I'm sorry, (unclear - three
17 words?)

18 MS. ZOIS: Worth medicine.

19 THE WITNESS: Uh, the narcotic would have
20 lasted about five days.

21 BY MS. ZOIS:

22 Q Now, the record from March 26th, 2008,
23 do you have that in front of you?

24 A Did you hand it to me?

25 Q I didn't, but Counsel did earlier.

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A Oh, okay.

Q So, I'm assuming you still have it.

A Then, then let me see, I might still have it here. Uh, Washington, yeah, I've got that. Okay.

MS. HOWARD: It's page 00100 (unclear - three words.)

THE WITNESS: 00100?

MS. HOWARD: Yeah, I think.

THE WITNESS: Got it.

BY MS. ZOIS:

Q Okay. And this record's dated March 26th, 2008?

A Yes.

Q And this record indicates she's 45-years-old, that's a mistake, correct?

A Um, 45 -- let's see the date is March 20th, so I've gotta' do the math, 2008 so that's, uh, 33 and eight, it should be 41, isn't it?

Q Yes.

A Is my math correct?

Q I'm never one to second guess anyone's math.

A (Chuckles.) So I think the 45 is incorrect, is that correct?

1 Q Okay, so that's wrong. Um, her chief
2 complaint was she was, uh, new patient to get
3 established and low back pain, is that right?

4 A Correct.

5 Q And this is three months after the
6 incident during Christmas, is that correct?

7 A It's, uh, yes.

8 Q And there's absolutely no mention of
9 that fall in here at all, isn't that right?

10 A No, it, there's a mention of the motor
11 vehicle accident three years ago --

12 Q Right.

13 A -- but no mention of the fall.

14 Q Right. So, there's a motor vehicle
15 accident three years ago, but no mention of the
16 fall three months ago, correct?

17 A That's correct.

18 Q And the prior medical history portion
19 of this is left entirely blank, is that right?

20 A (No response.)

21 Q First page?

22 A That's correct.

23 Q Medications is listed entirely blank.

24 A Correct.

25 Q Allergies is listed entirely blank.

1 A Yes.

2 Q And she's allergic to penicillin, did
3 you know that?

4 A Um, I, I think I saw some reference to
5 that in her record.

6 Q That's an important thing to have in
7 your primary care doctor's records, isn't it, an
8 allergy to penicillin that might cause you to
9 have shortness of breath?

10 A I, if, I would list it in my records.

11 Q Okay. And would, would you do a
12 physical examination of someone's lower back if
13 they were there for lower back complaints?

14 A I would, yes.

15 Q And they didn't do a physical exam of
16 her lower back, did they?

17 A Well, they examined her gait, which is
18 part of her neurologic exam.

19 Q Do you see anywhere where they examined
20 and palpated her lower back?

21 A I don't see where they did that. They
22 examined the cranial nerves, which is part of a
23 detailed neurologic exam. They did, they, they
24 did the gait.

25 Q Would you have --

1 A Uh, they did range of motion.

2 Q But you would have examined her back if
3 she was in there for a lower back complaint,
4 correct?

5 A I would have exam, done a detailed
6 neurologic exam, yes.

7 Q And there's no indication they examined
8 her lower back on this date, is that correct?

9 MS. HOWARD: Objection.

10 THE WITNESS: No.

11 BY MS. ZOIS:

12 Q Okay. No, you agree with me?

13 A Yes.

14 Q All right. Now, they ordered one PT
15 consult, is that correct?

16 A Yes.

17 Q Now, this is interesting, verification
18 at the bottom of the page, "Verification of
19 ancillary documentation. The following portions
20 of the chart were completed by ancillary
21 personnel and reviewed by the physician. Vitals
22 and chief complaint." Is that correct?

23 A Yes.

24 Q So the chief complaint, according to
25 this document wasn't taken by the doctor it was

1 taken by ancillary personnel, is that right?

2 A Yeah, I mean, that, that's common, we
3 do that same thing in our office, too.

4 Q And the chief complaint in this case
5 was low back pain?

6 A Correct.

7 Q Okay. Um, Doctor, directing your
8 attention to the April 28th, 2008, uh, record at
9 page 109.

10 A Mm-hmm.

11 Q I asked you earlier if you remembered
12 whether or not she was able to ride her
13 motorcycle. According to this record of
14 4/28/2008, she enjoys riding her motorcycle and
15 gardening, is that right?

16 A That's correct.

17 Q And in the subjective report what she
18 was telling the physical therapist on this day
19 was, "Patient states the pain generally doesn't
20 bother her when she's up and moving. It seems to
21 be the worst when going from sit to stand.
22 Generally, after she gets up and walks around for
23 about five minutes the pain subsides." Is that
24 correct?

25 A Yeah, she says that the pain hits her

1 at times and makes her feel like an 80-year-old
2 woman.

3 Q It also says that it goes away after
4 five minutes after she stands up, is that
5 correct?

6 A It subsides.

7 Q Okay. And the functional goals, page
8 two, were that she's was going to be educated on
9 body mechanics and awareness and sitting. Those
10 are two of the goals, is that right?

11 A Yes.

12 Q And she attended a physical therapy
13 appointment on May the 6th, 2008. Do you have
14 that in your packet?

15 A Um, I probably do.

16 Q Page 124.

17 A 124.

18 Q This is -- you didn't discuss this with
19 Counsel, this is a May 6th, 2008 date.

20 A Okay, I'm looking at it now. Is this
21 total rehab by Washington County Health System
22 that you're looking at?

23 Q Yes, on the top it says --

24 A Yes, I have that document.

25 Q -- and it says, "Has had a couple of

1 flair ups with pain, but they have all been
2 related to sitting crooked in chairs." Is that
3 correct?

4 A That's what it says.

5 Q Okay. "Patient advised on proper
6 alignment during sitting." Is that right?

7 A Yes.

8 Q So, at physical therapy they taught her
9 how to sit right in a chair, is that correct?

10 A It appears that's, they did do that,
11 yes.

12 Q And do you have page 128 in that packet
13 in front of you?

14 A I do.

15 Q She never went back to physical therapy
16 after the first visit on learning how to sit
17 correctly, did she?

18 A "Patient did not return after first
19 follow up session."

20 Q And if you could just discontinue
21 reading.

22 A "At that time she noticed minimal
23 discomfort."

24 Q So, as of May the 6th, 2008 the medical
25 records would indicate that she was having

1 minimal discomfort, is that right?

2 A Yes, that's, that's what it says on
3 this report. That's correct.

4 Q Now, taking you to this 2005 incident
5 that we've been discussing, the car accident,
6 you're unaware of any medical record, as we sit
7 here, from 2005 that shows she went to see any
8 doctor for that car accident, is that right?

9 A At the time of the accident?

10 Q Yes.

11 A Yes. I didn't see any documentation of
12 that.

13 Q So, nothing from 2005, right?

14 A Not that I'm aware of.

15 Q Nothing from 2006.

16 A Correct.

17 Q Nothing from 2007 that says she was
18 injured and had chronic pain from a back (unclear
19 - one word)?

20 A No, it's, the first report of that is
21 the, when she evidently mentioned it to the
22 doctor in 2008.

23 Q Okay. So, the first mention of any
24 problem relating back to the 2005 car crash
25 doesn't show up until March 26th of 2008?

1 A That's correct.

2 Q There's no doctor's visits that you've
3 seen that are before that for back pain?

4 A Correct.

5 Q There's no pharmacy prescription that
6 you've seen for anything before March 26th --

7 A None --

8 Q -- 2008 for a car crash in 2005?

9 A -- none that I've seen.

10 Q Okay. And you read the Plaintiff's
11 deposition before you did your report, didn't
12 you?

13 A Yes.

14 Q Sir, you know that she says she wasn't
15 injured in the 2005 car crash, correct?

16 A That's what she said in her deposition.

17 Q And you haven't seen any other
18 corroborating evidence at all, other than that
19 one report from March of 2008 to indicate that
20 she was injured in that 2005 car crash?

21 A That's the only report that I'm aware
22 of that's been, that, that I've seen.

23 Q So -- strike that -- now, in your
24 report itself, we went over this, there's, you
25 would agree with me there's many typographical

1 errors in your report, wouldn't you agree with
2 that?

3 A There's several.

4 Q Okay. And you have (unclear - two
5 words) the accident wrong in your report,
6 correct?

7 A I could have been, I might have been
8 off a day.

9 Q Yeah, I mean, it was more than a day,
10 but you got the date of the accident correct?
11 Uh, wrong, correct?

12 A Uh --

13 Q It's on page three of your report?

14 A Yeah, but I got it right in the first
15 page, I mean, I just when I referred back to it
16 the, uh, let me just look at my report just so
17 that --

18 Q Doctors make mistakes in reports
19 sometimes, don't they?

20 A Well, let me just, let me just be
21 specific about what the mistake was.

22 MR. PORCARELLI: Plaintiff's Exhibit 3.

23 BY MS. ZOIS:

24 Q Which one do you want to start with?

25 A In the rep (sic), if I could just have

1 my report.

2 Q Well, we can go through all of them if
3 you want, unless you want to do --

4 A I just, I just want my report. (Brief
5 pause.) Great. Okay. So, I, I have my report
6 in front of me.

7 Q Can we agree that you made mistakes in
8 the report, Doctor?

9 A No, I would not agree with that.

10 Q Okay.

11 A Let me, let me just, since you
12 mentioned the date of the accident, page two of
13 my report, "Ms. Exline-Hassler reported a, a, an
14 injury, third injury to her lumbar spine, which
15 occurred when she was involved in an additional
16 motor vehicle accident on June 26, 2009." That's
17 page two of my report. (Unclear - one word) --

18 Q It's on page four.

19 A I'm sorry?

20 Q The, your mistake is on page four.

21 A Right, but, but what, what I'm pointing
22 out, just so the jury understands, the date on
23 that second page is correct. When I referred
24 back to the accident on page four, um, uh, let's
25 see I think that's where I, it was a

1 typographical and I put that was not the correct
2 date, but the, in the initial body of the report
3 the date is correct.

4 Q Would you agree with me that there are
5 several mistakes in your report?

6 A There are several typographical
7 mistakes in the report.

8 Q Including the date of the accident?

9 A The date of the accident is initially
10 correct. So that was correct, and when I
11 referred back to it -- and, again, if you could
12 just, just so we can agree what the typographical
13 error with the wrong date was.

14 Q It's on page four, Doctor.

15 A Which paragraph?

16 Q Third sentence, first paragraph.

17 A Yeah, right. And I, I said in that
18 third paragraph, which occurred on 6/9/2009, but
19 then again in the subsequent paragraph that,
20 that, that follows that I said the correct date
21 again twice. That's the first sentence of that
22 paragraph, the, the motor vehicle accident of
23 6/26/2009. Again, the same paragraph, the last
24 sentence, the motor vehicle accident, which
25 occurred on 6/26/2009, so I mention the date four

1 times in my report, and you're correct on one of
2 those four occasions I typographically put in the
3 9th instead of the 26th of June 2009.

4 Q Okay. And you listed answers to
5 interrogatories, property damage photos, and
6 police report twice, correct? At number 23 and
7 26.

8 A Right, I, I listed them twice, uh --

9 Q And you listed (unclear - two words)
10 twice too, correct?

11 A Yes.

12 Q And you listed Dr. Kahanna's (sic)
13 record office note twice, correct?

14 A Correct.

15 Q And you said you reviewed progressive
16 radiology medical records from 1/8/08 to 4/8/08,
17 and you didn't, correct?

18 A I'm, I'm not sure, where are you
19 referring to?

20 Q Number 38.

21 A Well, I reviewed the correct, yeah, I
22 mean, that's a, an obvious typographical error
23 and it was part of the word processing I was
24 doing, and, and I said, I used those date
25 erroneously, but I did review the progressive

1 radiology medical records, I did review them.
2 Just the dates that were put on were
3 typographically put in there by mistake.

4 Q And then you made the same
5 typographical error one, two, three, four, five,
6 six times, correct?

7 A Yeah, it's a simple and obvious
8 typographical error.

9 Q Right. So, my initial question was,
10 Doctor, you can agree that are several mistakes
11 in your report, and I think --

12 A I think they're minor trivial mistakes
13 in the report.

14 Q Like --

15 A They're typographical errors.

16 Q -- like dates of records.

17 A (Unclear - three words) -- I'm sorry.

18 Q Like the dates of records, like the
19 dates of reviewing radiology reports from 2005,
20 that's a minor typographical error?

21 A That's an obvious simple typographical
22 error.

23 Q Okay.

24 A There's no major errors in the content
25 of that report.

1 Q Well, we're gonna' get to the content.
2 Um, the medical records and the history I
3 obtained indicate that Ms. Exline-Hassler has a
4 history of problems relating to her lumbar spine
5 dating back to 2005. Is that first sentence?

6 A That's correct.

7 Q And, but that's not true, Doctor, she
8 didn't tell you that. That's not the history
9 that you obtained from her is it?

10 A It, well, if you read the sentence
11 carefully it says the medical records and the
12 history I obtained. Those are, those are
13 additive in my mind. They're not, they're not
14 singular. So, the, the, you're correct, she did
15 not mention the accident when I took her history,
16 but the medical records did indicate the doctor's
17 note, um, which I think at this point the jury's
18 familiar with, it does reference an automobile
19 accident in 2005 and back pain secondary to that.

20 Q She reported that the vehicle in which
21 she was a passenger was struck from behind, do
22 you see that in your report?

23 A Yes, that's in the medical records that
24 I reviewed.

25 Q Where?

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A Um --

Q Uh, you're (unclear - one word) --

A I'd have to go back to the doctor's note. I think it referenced it in the doctor's note, that's my recollection.

Q But your report says she reported that the vehicle in which she was a passenger was struck from behind. And I'd like to give you and afford you as much time as you think is necessary for you to find the report that says she was a passenger, 'cause there's only one note about the 2005 car crash.

A That's, that's correct, there's only one singular note.

Q Okay.

A So, I'll go back and I'll, and if I'm incorrect about that I'll take this opportunity to correct the record.

Q Okay.

A Um, but I'll just need to look at that note from 2008 again.

Q And then the pain was severe enough it just --

A Well, well, can we just --

Q Sure, it's page 100.

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A -- can we just, uh --

Q Sure.

A -- go back to that note, so it --

Q The note's on page 100.

MS. HOWARD: Isn't it 100 Dr. Brown's record?

MS. ZOIS: Yeah, that's the only note that discusses the 2005 crash.

MS. HOWARD: Oh, I thought we were talking about being a passenger.

MS. ZOIS: In the 2005 crash.

MR. PORCARELLI: Are we off the record?

VIDEO TECHNICIAN: We are going off the video record, the time is 7:55, p.m.

(Off the record.)

VIDEO TECHNICIAN: (Audio begins mid-sentence) . . . video record, the time is 7:55, p.m.

BY MS. ZOIS:

Q Doctor, I gave you the opportunity to find the only medical record that exists about the 2005 car crash, did you find that record?

A I did.

Q And did she report that the vehicle in which she was travelling as a passenger was

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struck from behind?

A No, that's incorrect.

Q Okay. Now, further down it says, "The pain was severe enough that she sought medical evaluation by her prior care physician." That's what your report says, correct?

A Correct.

Q Where are you getting that information?

A From the 2008 note.

Q So, the 2 (sic), you're referring to the 2008 note as her waiting from 2005 until 2008 to see a primary care doctor about the crash?

A That's correct, yes.

Q And you say she was prescribed Skelaxin as well as narcotic medication.

A That's correct.

Q Is, so, you're saying from a, for a 2005 car crash she was prescribed medication for it in 2008?

A She was, yes, that's right.

Q Okay.

A That's right. I, I should have been more explicit than that.

Q So, this 2008 note, your position on this is that she's there for the car crash not

1 for the fall, is that right?

2 A No, the only thing I'm d (sic), I'm
3 deriving from that note is the mention of the
4 motor vehicle accident. You're absolutely
5 correct, that's the only time that that motor
6 vehicle accident is referenced in the medical
7 record. And, and that was the basis for me
8 mentioning that in the report, was that singular
9 report by the, uh, Robinwood Family Practice.
10 My, my supposition was that, that I, I don't see
11 any other way that the, uh, doctor would have
12 been aware of it unless the patient herself
13 mentioned that to him. I don't know why he would
14 make something up like that. And in fact, I, I
15 guess there, there was an accident in 2005.

16 Q Correct. And doctors will routinely
17 ask about --

18 A Right.

19 Q -- car accidents and other things like
20 that, and, well, especially when you're a new
21 patient and you're getting established, right?

22 A Correct.

23 Q All right. So, but you put in your
24 report she was prescribed Skelaxin as well as a
25 narcotic medication for the 2005 crash, right?

1 A Yes, because it, again, that's (unclear
2 - three words) --

3 Q So, it was not for the fall?

4 A Yeah, I mean, it, it, it, you're
5 correct. I mean, it appears that, that the
6 reason I put in her report the doctor mentions
7 the back, he (sic) references the accident --

8 Q It's a she?

9 A -- which occurred in 2005 -- or she
10 did. And, uh, and, yeah, so, I mean, that's, my,
11 my take on that was the, the way I read this is
12 that's what Ms. Exline-Hassler told the doctor
13 I've got back pain, and it's bothering me and I
14 had a car accident in 2005.

15 Q And then --

16 A It's the only way I can read that.

17 Q But what about, you read her deposition
18 testimony, right?

19 A Yes.

20 Q You read her sworn testimony in this
21 case.

22 A I did.

23 Q And her sworn testimony was she was not
24 injured in the 2005 car crash, isn't that
25 correct?

1 A I, I believe that's what she said, yes.

2 Q You don't know anything about the
3 severity of the impact from the 2005 crash?

4 A I don't.

5 Q You don't know anything about the
6 property damage?

7 A Correct.

8 Q You don't know how soon, if at all, she
9 went to any other doctor after the 2005 crash?

10 A That's correct.

11 Q And are you sure that she didn't
12 mention the 2005 car crash to you at your history
13 that you took of her?

14 A Yeah, I'm certain she never mentioned
15 it, and I never brought, but I, in fairness, I
16 never brought it up either.

17 Q So, if she were to testify in court
18 that she told you that she was not injured in the
19 2005 car crash that would be different than what
20 you remember?

21 A We never talked about it period as far
22 as I remember. I, she never volunteered, I never
23 questioned her about it, because I hadn't come
24 across that part of the record before so I, I
25 never brought it up in the, in, in the, when I

1 was taking the history, uh, and she did not
2 mention to me either.

3 Q Well, when I asked you this at your
4 discovery deposition you said, "Positive, I don't
5 recall." So, do you know which one it is? I
6 mean, you've seen 550 patients since you've seen
7 her. Do you really sit here and remember --

8 A I, I --

9 Q -- whether or not (unclear - three
10 words?)

11 A Yeah, I do remember that, because for
12 the purposes of this case that would have been a
13 very important piece of information to remember.
14 I would have taken that away. I mean, I
15 certainly remember we talked about the fall down
16 the stairs, I, I, I certainly remembered that.
17 And I, that's the first thing I ask any patient
18 when there's a personal injury case, because it's
19 so important, what was the prior history prior to
20 this accident is regards your back, and I, and I
21 did this, did not come up, now she did not bring
22 it up, but in fairness I did not bring it up
23 either, because I haven't heard this one note in
24 the chart.

25 Q But before you generated your report

1 you did review her deposition.

2 A That's correct.

3 Q So, you knew, before generating this
4 report, that her testimony was she was not
5 injured in a 2005 car crash, isn't that correct?

6 A That's what she said, but this note is
7 --

8 Q In conflict with that.

9 A -- in somewhat in conflict with that.

10 Q You don't mention anywhere in your
11 report that her testimony is that she was not
12 injured, do you?

13 A I do not mention it.

14 Q So, you pick this report over her
15 testimony, isn't that right?

16 A I cited this report as part of the, uh,
17 uh, again, when I do a, uh, an eye and ear
18 medical report it's primarily based on medical
19 records and my examination. Depositions are more
20 of a legal issue with regarding something more
21 for the jury to decide in terms of her stating
22 whether she was injured in that accident or not.
23 When I do a, a, a medical examination I'm, I am
24 looking at what the history, um, and that was
25 certainly an appropriate time for her to bring up

1 the fact that an accident occurred and she wasn't
2 injured, and if she had said that at the time I
3 examined her I certainly, without any question,
4 would have question would have put that back in
5 the report. What I got was a, a medical record
6 here that indicates that there was an issue
7 relating to that accident.

8 Q But you completely ignored her
9 testimony and did not put it in your report,
10 correct?

11 A I didn't ignore that testimony. I
12 think it's (unclear - one word) --

13 Q It's not in your report.

14 A -- it's -- well, it's not in the
15 report.

16 Q Okay.

17 A It's perfectly appropriate if, I think
18 it's perfectly appropriate for you to bring it up
19 now, that's your job as her counsel, and I think
20 that's appropriate that you ask me that, and I
21 think that, that, that is something for the jury
22 to decide. That's a very appropriate line of
23 questioning, she did say that in her report and
24 she did not say it in my office, did not bring up
25 the car accident. Um, I did not bring it up, but

1 she certainly didn't volunteer it. That would
2 have been a very appropriate setting to let me
3 know that this occurred and she wasn't injured.
4 Um, uh, so I think that's, this is an appropriate
5 time to ask me about that.

6 Q Can you look at page --

7 A Is that important? I think it is.

8 Q Okay. Can you look at page 138 of your
9 deposition?

10 A Yes.

11 Q The question initially was, "You're
12 sure it didn't come up?" Your answer is,
13 "Positive. I don't recall." And then later down
14 the page --

15 A Wait, wait a second.

16 Q You can read the little --

17 A Sure, I, I, I --

18 Q -- (unclear - one word) pages (unclear
19 - three words.)

20 A -- I, okay, I, I said positive, I do
21 not recall, meaning I do not recall it coming up.
22 I recall specifically the first, I recall
23 specifically the first incident she mentioned to
24 me was that, was the fall down the stairs. She
25 did mention at, that as a time she hurt herself,

1 hurt her back it did come up, the fall down the
2 stairs. She didn't mention that other incident.

3 Q Okay. And later on on page 139 you'd
4 go on to say, "I mean, my recollection of that
5 would be completely different. I don't recall
6 that coming up. My memory isn't, my memory isn't
7 100 percent, but I don't recall that coming up."
8 Is that fair?

9 A Yeah, I, I, no recollection of that
10 ever came up. I wouldn't forget, because I
11 would, that's something I would have remembered,
12 it would have been important information.

13 Q Now, your testimony today is that she
14 was in chronic pain in 2005, 2006 and 2007, and
15 had chronic pain leading up to this accident is
16 that right?

17 A I think she certainly had pain prior to
18 the accident, yes.

19 Q Okay. But yet there's no medical
20 records from 2005, 2006, 2007 and there's only
21 four dates of service in 2008, isn't that
22 correct?

23 A That's correct.

24 Q Okay. And your opinion is that she had
25 some musculoskeletal problems after the crash and

1 that should resolve within eight weeks?

2 A Most typically.

3 Q Okay.

4 A Everybody's different. Not everybody
5 resolves within eight weeks, and most people get
6 better from these sort of things.

7 Q And o (sic), after those eight weeks
8 she would have gone back to her baseline of how
9 she was before the crash?

10 A Most typically, yes.

11 Q All right. I'm gonna' show you what's
12 been marked as Plaintiff's Exhibit Number 29, and
13 I'm taking the liberty of marking in red all of
14 her visits to doctors following this car crash
15 with complaints of lower back pain. Can you draw
16 a line where her musculo sprain ended and she
17 went back to her normal chronic pain? Can you
18 tell me where that line would be on that chart?

19 A No, I can't tell you by this chart. I,
20 I, I, I mean this is, this, this, this (unclear -
21 one word) no make that determination.

22 Q Okay. But your testimony to the jury
23 is eight weeks following this crash is how long
24 her problems should have resolved, right?

25 A Most typically, yes.

1 Q And then after the first eight weeks
2 she went back to the way she was before the
3 crash?

4 A I, I'm saying that would be the most
5 typical situation.

6 Q But that's your --

7 A I mean, without a major disc herniation
8 or a fractured dislocation, um --

9 Q But this is your opinion on the case,
10 correct?

11 A Correct.

12 Q Okay. Doctor, do you have in front of
13 you the medical chart, you don't do you?

14 A (No response.)

15 Q Okay. So, Doctor, you put a lot of
16 weight in that Robinwood March 26, 2008 record
17 as, far as that 2005 car crash goes, correct?

18 A Yes, that was the only source of that
19 information.

20 Q Okay. Have you seen these two, I'm
21 sure you have, because they're the medical
22 records. I'm gonna' show you what's been marked
23 as Plaintiff's Medical Records 28 and 29, and
24 give you a second to look at that.

25 MR. PORCARELLI: Bates numbers?

1 MS. ZOIS: Twenty-eight and 29.

2 MR. PORCARELLI: Oh, (unclear - three
3 words.)

4 MS. ZOIS: The medical records one through
5 368.

6 THE WITNESS: Yes.

7 BY MS. ZOIS:

8 Q This is a, this is a form, is that
9 correct?

10 A Yes.

11 Q And it's signed and filled out by Ms.
12 Hassler's primary care doctor, is that correct?
13 Primary care doctor facility, Robinwood, right?

14 A Yes.

15 Q Same place she went to in March of
16 2008, correct?

17 A That's correct.

18 Q And it's stamped from the Robinwood
19 Family Practice, right?

20 A Yes.

21 Q Box 5, "The history of the occurrence
22 as described by patient." This is from Robin
23 (sic) --

24 A It says, "Back and neck pain from car
25 accident June 26, 2009."

1 Q Box seven, "When did symptoms first
2 appear?" Tell us what box, what Robinwood told
3 us to when her symptoms first appeared.

4 A Uh, they said, "June 26, 2009."

5 Q Box 10, "Is this condition solely as a
6 result of this accident?" Tell the jury what
7 Robinwood told them as to whether or not -- all
8 right, I'll let you read it.

9 A Yes.

10 Q Can you read that answer to the jury,
11 please?

12 A "Is condition solely result of the
13 accident?" Box 10 they said, "Yes."

14 Q And this was signed on July 30th of
15 2009?

16 A Um, yes, it was.

17 Q And this is from Robinwood, her primary
18 care doctor to Defendant --

19 A That's correct.

20 Q Did you put any weight in this note,
21 Doctor? Or did you ignore this?

22 A I didn't ignore it.

23 Q So, Penn (unclear - videotape goes
24 blank) has told, and in the records it says that
25 her current condition is solely caused by the

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June 26, 2009 car crash --

A Right.

Q -- correct? And there's another box on there --

A Mm-hmm.

Q -- "Has the patient ever had similar complaints?" Correct?

A I'm sorry, which, uh, which box are you talking about?

Q You have copy.

A Oh. (Chuckles.) I'll refer.

Q All right. So, Box 7, "When did symptoms first appear?" "6/26/2009."

A Yes.

Q Correct?

A That's correct.

Q Box 9, "Has patient ever had same or similar condition?" The answer was, "No." Correct?

A That's correct.

Q "Condition solely is the result of the accident?" Answer, "Yes." Correct?

A Yes.

Q Okay.

MS. ZOIS: Let's go off the record for a

1 second.

2 VIDEO TECHNICIAN: We're going off the video
3 record. The time is 8:09, p.m.

4 (Off the record.)

5 VIDEO TECHNICIAN: We are now on the video
6 record, the time is 8:11, p.m.

7 BY MS. ZOIS:

8 Q You've reviewed 35 sets of subpoenaed
9 medical records from the Defendants, correct?

10 A Yes.

11 Q And in those 35 sets of subpoena,
12 subpoenaed records that date back to 1980 there's
13 only one record that says she was injured in a
14 2005 car crash, correct?

15 A That's correct.

16 Q And that record is replete with things
17 you wouldn't even do in your own practice,
18 correct?

19 A Right, but I'm the neurosurgeon. In
20 fairness I think they were more primary care
21 type, uh.

22 Q Would you expect a primary care doctor
23 to examine a person's lower back if they were
24 there for lower back complaints?

25 A I would typically, yes.

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Q Okay.

MS. ZOIS: No further questions.

DIRECT EXAMINATION

BY MS. HOWARD:

Q Doctor, I have a couple of questions.
In the, uh, 35 pages of subpoenaed records and
the n, numerous medical records you reviewed and
talked about earlier today, um, you saw a record
from Dr. Nisenfeld, correct?

A I did.

Q An orthopedic doctor. You saw a
record, two records from Dr. Naff, correct?

A Yes.

Q And, uh, records from Doctor, the
doctor at Johns Hopkins, and, uh, Dr. Dabbah and
Dr. Khanna, correct?

A Yes.

Q One of those is from Hopkins. And it's
correct that in each of those occasions when the
doctor did examine the patient it was essentially
a normal orthopedic examination and essentially a
normal neurological examination, correct? Is
that correct, Doctor?

A Yes.

Q All right. And is it also correct that

1 when you reviewed those records that, at least as
2 recorded by those medical practitioners I just
3 mentioned, Ms. Exline-Hassler didn't tell them
4 anything about any pain in her low back that pre-
5 dated the June 26, '09 accident? The prior
6 history recorded by those practitioners was not
7 in, correct?

8 A That's correct.

9 Q All right. Now, we've just talked at
10 length about, uh, you just talked at length with,
11 uh, Ms. Zois about the actual records of Ms., um,
12 Exline-Hassler, um, well, what we do know, let's
13 just leave any '05 accident out for a second, we
14 do know that in '0 (sic), late '07 and certainly
15 January '08 Ms. Exline-Hassler fell down a set of
16 stairs on a Wednesday and the pain continued to
17 bother her so much that on Sunday she went to the
18 emergency room, correct?

19 A That's correct.

20 Q All right. And that would be on
21 January 8th, '08. And, uh, is it also correct,
22 Doctor, that in the records from Washington
23 County Hospital, the Urgent Care Center on
24 January 8, '08 some of them are handwritten, like
25 hospital intake-type records, and then some of it

1 is that typed report by the doctor who lost his
2 notes.

3 A That's correct.

4 Q Is that correct? All right. All
5 right, and, um, nonetheless, Ms. Exline-Hassler
6 had low back pain in January '08, that we know.

7 A That's correct.

8 Q All right. And that's in a record
9 that's handwritten, not a typed re (sic), a
10 record that was dictated a week later after
11 dictation was lost, correct?

12 A That's correct.

13 MS. ZOIS: (Unclear - one word) go off the
14 record for a (unclear - one word?)

15 VIDEO TECHNICIAN: We are going off the
16 video record, the time is 8:14, p.m.

17 (Off the record.)

18 VIDEO TECHNICIAN: Video record, the time is
19 8:14, p.m.

20 BY MS. HOWARD:

21 Q I think that objection's going to be
22 longer than my questions, Doctor. All right, so
23 then, then we know that there was some
24 prescription medication, um, given to Ms. Exline-
25 Hassler, the prescription I should say, this is

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now January '08, and then we know in March of '08 she presented at her primary care physician, Dr. Brown, um, for a new patient visit and had, is, as recorded is chief complaint of lumbar pain, correct? Or low back pain, correct?

A Correct.

Q Okay. And, um, we also know on that occasion that Ms. Exline-Hassler was given three prescriptions, Percocet, Ultram and Skelaxin, correct?

A That's correct.

Q All right. And we know that those prescriptions at least for the Ultram or the, uh, Tramadol that's pain medication, right?

A It is.

Q Okay. And Skelaxin's a muscle relaxer, correct?

A That's correct.

Q And this is, uh, muscle relaxer does what, Doctor?

A Uh, it, it, it's a treatment for back spasms, it obviously helps break back spasms and relax the muscles.

Q All right. And, um, directing your attention to this physical thera (sic), I mean,

1 uh, prescription records that you had seen, I
2 think they're Exhibits 2 and 3, Boonsboro and
3 Weis, uh -- or strike that question. When Dr.
4 Brown first gave those prescriptions they had
5 corresponding refills, correct? Three refills of
6 the Ultram, three refills of the Skelaxin,
7 correct, that's page 101.

8 A That's correct.

9 Q When she gave the prescription. And
10 when you take a look at Exhibits 2 and 3, the
11 records from the pharmacy is it correct that the
12 person --

13 A Mm-hmm.

14 Q -- uh, getting the prescription is the
15 Plaintiff in this case, Jacqueline Exline-
16 Hassler?

17 A That's correct.

18 Q And is it correct that on those
19 records, the doctor, the prescribing doctor
20 issuing the prescription is, at least after March
21 26th, '08 it's Doctor Brown, correct?

22 A That's correct.

23 Q All right. And is it correct that you
24 can see at least on the records, uh, from, uh, we
25 can see on the records from the pharmacy at

1 Boonsboro that it's the sec (sic), the first
2 refill then the second refill you can sort of
3 track it along as those prescriptions were, um,
4 filled, correct?

5 A Yes.

6 MS. ZOIS: Objection.

7 BY MS. HOWARD:

8 Q Okay. We talked, you talked earlier
9 about the dates that she actually went in to get
10 the prescription, but I'm asking about keeping
11 track and seeing specific refill, correct?

12 A That's correct.

13 Q All right. So, while we don't know who
14 actually took the medication and we don't know
15 why Ms. Exline-Hassler was taking these
16 medications, what we do know, isn't it correct,
17 Doctor, that she was filling the refills of the
18 prescriptions that Dr. Brown had given her on
19 March 26th, 2008?

20 A According to the pharmacy records, yes.

21 Q And, now, you talked a little bit about
22 the physical therapy that it's what, oh, it is
23 true with it Dr. Brown -- oh, I wanted to ask you
24 about her examination, this is page 101 in those
25 records before you. Isn't it correct, Doctor,

1 that in a physical examination Dr. Brown records
2 M-S, which would be multal (sic), musculoskeletal
3 F-R-O-M times four, correct?

4 A Right. I think I mentioned that full
5 range of motion.

6 MS. ZOIS: (Unclear - one word.)

7 Q Okay. Times four?

8 A Yeah.

9 Q So, the doctor did examine Ms. Exline-
10 Hassler's range of motion on that date, correct?

11 A Correct.

12 Q And musculoskeletal would indicate to
13 you, as a medical provider, what, Doctor?

14 A Well, the (unclear - two words)
15 extremities.

16 Q (Unclear - one word) all right, that
17 she examined? All right. And, um, now, Doctor,
18 we do you know that Dr. Brown recommended that
19 she proceed with physical therapy for, um, lumbar
20 strain, that's 102, correct?

21 A Correct.

22 Q So, again, now if you look at the
23 picture we know at least from January '08 Ms.
24 Exline-Hassler has low back pain and is
25 continuing on, or she has low back pain in March

1 of '08, we know that too, right? We know she had
2 low back pain in March '08?

3 A That's correct.

4 Q And we know she got medications and she
5 got physical therapy, correct?

6 MS. ZOIS: Objection.

7 BY MS. HOWARD:

8 Q And we know that, correct?

9 A That's correct.

10 Q All right. So, we seem to have low
11 back pain that's not going away, correct? At
12 least in '08, correct?

13 A Correct.

14 Q All right. And, um, and, finally,
15 Doctor, when you take a look at the physical
16 therapy records, um, from Total Rehab Care
17 Facility we see some typed records there,
18 correct?

19 A Yes.

20 Q All right. And we see some handwritten
21 records or like a chart with certain things
22 circled, correct?

23 A Yes.

24 Q All right. And is it correct, Doctor,
25 that on page 109, which is the typed, uh, and

1 this is not Dr. Brown's records, but it says,
2 "She has had a previous episode like this that
3 occurred several years ago," correct?

4 A That's correct.

5 Q Now I'm on page 109. And, Doctor,
6 isn't it correct that, that, that the Total Rehab
7 Care Facility indicates that Ms. Exline-Hassler
8 told them that several years before April of '08
9 she had a previous episode similar to the one
10 that she was having that pre (sic), caused her to
11 come and see them?

12 A Correct.

13 Q All right. And is it also correct that
14 on page 111 on the handwritten charts that she,
15 uh, there's a specific type question about the
16 middle or the right hand side previous episodes?
17 And it says years ago.

18 A Yes.

19 Q All right. So, now, we have a scenario
20 where it's not just Dr. Brown who references low
21 back pain from several years prior to her coming
22 in to see Dr. Brown, we have the physical
23 therapists records containing a similar
24 reference, albeit without any reference to a
25 motor vehicle accident, is that correct, Doctor?

1 A Correct.

2 MS. ZOIS: Objection.

3 BY MS. HOWARD:

4 Q Okay. This is a key witness. Thank
5 you. Thank you, Doctor, no further questions.

6 REDIRECT EXAMINATION

7 BY MR. PORCARELLI:

8 Q Dr. McGrail, I have a few follow up
9 questions. Ms. Zois, uh, pulled out a packet of
10 emails and took out of context the sum of
11 substance of those emails, and I wanna' put some
12 context on those emails.

13 MS. ZOIS: Objection.

14 BY MR. PORCARELLI:

15 Q Now, Dr. McGrail, when you look at a
16 set of records and examine somebody are you
17 specifically aware of the various deadlines that
18 are in the court case that require attorneys to
19 identify experts by certain periods of time
20 within a case?

21 A Not always.

22 Q No. Are you even aware when you're
23 first contacted of when the trial is or when
24 discovery events must wrap up, such as
25 depositions of experts or the exchange of

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paperwork?

A No.

Q Now, to be fair, I want you to take a look at this stack of emails, which are alleged to be about 39. Do you recall whether any of these attempts to speak with you pertain to arrangements that the Plaintiff or her lawyers wanted in order to comply with my request that she appear in your office for examination?

A Yes.

Q For example, with regard to whether she was going to be allowed to fill out a qu (sic), a questionnaire that is typically filled out by new patients who come to see you?

A That's correct.

Q And how about whether there was going to be an argument or a dispute over whether you were going to be allowed to take any x-ray's or films to (unclear - one word) as part of your examination here, do you remember that?

A That's correct.

Q And how about whether, um, she was going to be allowed to have her husband present in the examination room. Wasn't that one of the reasons I was contacting you?

1 A Right. You contacted me and I
2 indicated I had no problem with her husband being
3 present.

4 Q And as far as emails regarding
5 production of materials, since there are 39, but
6 it was characterized as so frequently pointing
7 out to you specific records, there were only
8 really about three or four mailings out of the
9 alleged 39, because I'm not gonna' sit here and,
10 and, and take up the jury's time counting them
11 up, uh, where records were actually forwarded to
12 you.

13 A That's correct.

14 Q Now, do you recall if, if any of those
15 occasions included Dr. Naff's report, which had
16 just been issued a short time before?

17 A That was certain occasions.

18 Q And in any of those emails in that
19 stack in front of you, which also, by the way,
20 contains other documents, does it not, Doctor?

21 A Yes.

22 Q In any of those emails is there even a
23 suggestion that I told you how to conduct your
24 examination?

25 A No.

1 Q Any suggestion in terms about how I
2 told you to go about conducting a review of these
3 records?

4 A No.

5 Q Is there even a suggestion in terms of
6 telling you what to say, what to conclude or what
7 to find?

8 A No.

9 Q You spent time on this file, obviously,
10 and you're entitled to, to bill for your time are
11 you not?

12 A Yes, sir.

13 Q Are you aware if the other experts in
14 this case are billing for their time?

15 A I, I assume they are.

16 Q Let's show the jury just part of the
17 records that you were asked to review in this
18 case. Is that the stack that came down to your
19 office?

20 A Yes, sir.

21 Q And on top of the stack what is there?

22 A Uh, radiographic images.

23 Q Films?

24 A Yes.

25 Q And in addition to that you spent time

1 doing an exam?

2 A Right, and that doesn't include a lot
3 of the documents that had been sent to me that
4 were, I've had other documents sent to me on
5 email transmission so there are a hundred page
6 manuscripts, uh, that aren't here, they were just
7 forwarded electronically.

8 Q So even more documents that what we're
9 looking at.

10 A Yeah, if we printed those out it would
11 be significantly more than what we're seeing
12 here.

13 Q And as far as how much time you spent
14 on this file, which contributed, obviously, to
15 the size of your bill, now Ms. Zois took your
16 deposition, um, part one, and how long did that
17 last?

18 A Uh, she took it, I think the initial
19 part was three hours and then 22 minutes more
20 this evening (unclear - four words.)

21 Q For a second part?

22 A Yes.

23 Q And then you did a report?

24 A Yes, sir.

25 Q And, obviously, you prepared before

1 going into these depositions and before coming
2 into today's video deposition to testify.

3 A That's correct.

4 Q Let's talk about the, uh, Robinwood
5 Family Practice record from March 26th, 2008, that
6 would be document number 0100. And if you wanna'
7 move that stack back out of the way. Do you have
8 that, Doctor?

9 A I do.

10 Q Ms. Zois was asking you about
11 "ancillary personnel" do you remember that?

12 A Uh, yes.

13 Q What is page 0101 say about Dr.
14 Stephanie Brown primary care doctor overseeing
15 that exam in that note?

16 A It says, "Verification of ancillary
17 documentation," um, uh, and it said that, "The
18 following portions of the chart were completed by
19 ancillary firs (sic), personnel and reviewed by
20 the physician, vitals and chief complaint."

21 Q So, she reviewed?

22 A Right.

23 Q And would you expect a reviewing
24 physician to correct known errors in a medical
25 record?

1 A I, I certainly would, yes.

2 Q And, in fact, let me ask you this
3 question, Doctor, you've got all these records on
4 this table, we have all these ring binders worth
5 of documents, has anyone given you a document
6 that says Robinwood Family Practice, your medical
7 report from March 26th, 2008 contains a material
8 error in fact? Do you have any paperwork like
9 that?

10 A No, sir.

11 Q Any paperwork like that from the
12 Plaintiff herself? Do you have any documentation
13 from the Plaintiff showing that she wrote the
14 doctor and said I'm involved in a case and this
15 is an important record and that's not accurate?
16 Do you have anything like that?

17 A Uh, she didn't, nothing that she sent
18 to the doctors.

19 Q How about anything from her lawyers,
20 did they send anything into you?

21 A No.

22 Q Let's talk about the attending
23 physician's report. Because it was very
24 interesting wording that Plaintiff's attorney
25 used about the doctor's note, the doctor's note,

1 the doctor's note. Was that actually signed by a
2 doctor, physician, medical doctor, MD?

3 A Uh, I don't think that's an MD it
4 doesn't say MD.

5 Q It says PAC doesn't it?

6 A Yes.

7 Q And what is a PAC?

8 A Um, I think it might be a physician's
9 assistant.

10 Q Hmm. So a physician's assistant looks
11 like she signed off on that, is that true?

12 A According to this document, yes.

13 Q Does a physician's assistant have
14 anywhere near the training of a medical doctor?

15 A No, sir.

16 Q Can I see that document again for a
17 moment? Take a look at the signature by the
18 physician's assistant and then compare that to
19 box five, because you went through boxes with Ms.
20 Zois. Does that even look close to the same
21 handwriting?

22 A I'm not a handwriting expert, but it
23 appears different.

24 Q And one more question on this, Doctor,
25 it says in box five, "History of the occurrence

1 as described by the com (sic), um, by the
2 patient," right?

3 A Yes.

4 Q But there are other boxes that ask
5 about has the patient ever had the same or
6 similar condition in box nine, right?

7 A Correct.

8 Q What was the answer?

9 A No.

10 Q You mean no reference to falling down
11 the stairs?

12 A Um, I, I guess that's, I mean, that's
13 the right way to interpret it. There was no
14 history of prior back pain.

15 MS. ZOIS: Objection, that calls for
16 speculation --

17 BY MR. PORCARELLI:

18 Q Is there any --

19 MS. ZOIS: -- (unclear - approximately four
20 words.)

21 BY MR. PORCARELLI:

22 Q -- is there any doc (sic), is --

23 FEMALE VOICE: I'm sorry, (unclear - one
24 word) --

25 MS. ZOIS: Sorry.

1 FEMALE VOICE: -- (unclear - two words.)

2 MS. ZOIS: Let's go off the record for a
3 second.

4 VIDEO TECHNICIAN: We're going off the video
5 record and the time is 8:30, p.m.

6 (Off the record.)

7 VIDEO TECHNICIAN: We are on the video
8 record and the time is 8:31, p.m.

9 BY MR. PORCARELLI:

10 Q So, Doctor, I just, let me see if I can
11 ask this in a, in a broad and general way. Um,
12 box nine --

13 A Yes.

14 Q -- it's a yes or no box, right?

15 A That's correct.

16 Q What was the answer to "Whether the
17 patient has ever had the same or similar
18 condition?"

19 A The checked box is no.

20 Q And is there room to the right of that
21 for additional information to be written if
22 somebody filling this out has knowledge of any
23 other incident of injury?

24 A It appears there's room beside the
25 checkbox.

1 Q And is there anything written to the
2 right of that?

3 A No.

4 Q And thank you for your time today,
5 Doctor.

6 MR. PORCARELLI: I would move into evidence
7 our, uh, Exhibit (unclear - video blank) subject
8 to our discussion off the video earlier, and we
9 are --

10 MS. HOWARD: No objection.

11 MS. ZOIS: Not yet.

12 RECROSS EXAMINATION

13 BY MS. ZOIS:

14 Q Doctor, Counsel just threw that huge
15 stack of paper of you, correct? That one that's
16 (unclear - one word), can you get that, do you
17 have that in the camera?

18 MS. ZOIS: (To Mr. Porcarelli) Guido, maybe
19 you can put that back in front of him.

20 BY MS. ZOIS:

21 Q So they're, that's a big pile of stuff
22 that you reviewed, right?

23 A Yes, ma'am.

24 Q And there's more piles, and Mr.
25 Porcarelli was referencing binders and you were

1 referencing hundreds of transcripts that, or
2 pages of transcripts that you've been sent, et
3 cetera. In addition to all of this stuff you
4 have more things back at your office that you
5 (unclear - one word.)

6 A Some of it's sent electronically,
7 that's correct.

8 Q And only one page in all of those
9 records say that she was injured in a 2005 car
10 crash, correct?

11 A That's correct.

12 Q No further questions.

13 VIDEO TECHNICIAN: We're going off the video

14

15 (End of Videotaped deposition)

16 MR. PORCARELLI: Your Honor, that would be, obviously,
17 the end of the video tape.

18 THE COURT: Okay.

19 MR. PORCARELLI: And for formality sake I'd move, uh,
20 into evidence in our case the two DVD disks that comprise Dr.
21 McGrail's full testimony.

22 THE COURT: Those will be received. I think this is a
23 good time for everybody to take a stretch. I know it's been
24 a long stretch this afternoon. Um, I'm gonna' say we're
25 gonna' take 15, we're gonna', I'm gonna' check on what's

1 going on with the weather, uh, as well as everything else
2 that's going on since we've been in here working. So, I'm
3 going to excuse you to the jury room, um, for at least, it's
4 probably going to be at least 10 or 15 minutes just to -- and
5 you know it's always longer than that no matter how hard we
6 try.

7 (Jury excused from the courtroom.)

8 THE COURT: Let's all stretch and take at least 10. My
9 clerk just got a note saying that it's snowing fairly
10 significantly and it's getting bad outside. So, we'll talk
11 about that in a minute. But everybody, I think, needs to
12 stretch and take at least 10 minutes after that, so.

13 MR. BRATT: We're lawyers we ain't scared.

14 MS. ZOIS: Thank you, Your Honor.

15 THE CLERK: All rise.

16 MR. BRATT: Thank you, Your Honor.

17 (Whereupon, from 3:40 o'clock, p.m. until 4:16 o'clock,
18 p.m. a recess was taken.)

19 (Jury not present.)

20 THE CLERK: All rise.

21 THE COURT: And good afternoon, everyone. Please be
22 seated.

23 MS. HOWARD: Good afternoon, Your Honor.

24 THE COURT: Back on the record. First thing I want to
25 let you all know is apparently the, um, they have declared a

1 snow emergency, it is snowing, the roads are not very good
2 and we are probably at least two hours from even getting this
3 case to the jury is a fair estimate I think everybody would
4 agree.

5 Um, I don't know that we really have much of an
6 option now with respect to the jury, but to excuse, to
7 indicate that we'll need to go into Monday. I'd be glad to
8 hear anything, but that's, we called the State Police --

9 MR. BRATT: Sounds like it is what it is.

10 THE COURT: -- and looking at the roads and looking at
11 the time, and I know everybody's been working very hard today
12 to try to push things through, but realistically.

13 MR. BRATT: God doesn't care that we're having a trial,
14 apparently.

15 THE COURT: No, never does. Um --

16 MS. HOWARD: Your Honor, honestly, we don't have any
17 contrary position to what you said.

18 MR. BRATT: I would, I would request a courtesy from the
19 Court.

20 THE COURT: Mm-hmm.

21 MR. BRATT: I have a pre-trial in Baltimore City on
22 Monday. Could I get a, a, a note saying that I'm not there
23 because I'm trying a case in your courtroom?

24 THE COURT: Um, however you all would like with respect
25 to many, because I also have to make sure that we have at

1 least six that can come back on Monday.

2 MR. BRATT: Yeah.

3 THE COURT: As well. Um, I have a suggestion, and I'll
4 give you all a few minutes to talk about it if you need to is
5 why don't I bring them out and tell them what's going on.
6 Um, make sure that we have, ask them to go back and make sure
7 (unclear - one word), that we're gonna' have at least six,
8 and then we'll go from there.

9 MS. ZOIS: Sounds good, Your Honor.

10 THE COURT: Okay?

11 MS. ZOIS: Yes, ma'am.

12 MR. GILLCRIST: Your Honor, could you -- I guess I just,
13 and I'm sure you handle this properly, you will handle this
14 properly, but I guess I just don't want there to be any
15 suggestions to the jury that they have an option of selecting
16 the best six that can --

17 MR. PORCARELLI: Yes.

18 MR. GILLCRIST: -- make it on Monday.

19 THE COURT: No, no, no, no what I'm gonna' say is we
20 are, we are gonna', um, roll over 'til Monday and, um, you
21 know, excuse you now and then wait to see if I get a note --

22 MR. GILLCRIST: Note (unclear - three words.)

23 THE COURT: -- I have, I'm supposed to be going to
24 Cancun.

25 MR. GILLCRIST: Okay.

1 THE COURT: At which point we'll probably all want to go
2 with 'em --

3 (Laughter.)

4 THE COURT: -- but, um, but something like that. But
5 that, with between, and really, you know, it's the weather,
6 um, and it's, it's the hour, it's the combination of the two.
7 I think if it was not bad weather we would probably get 'em
8 all try to hang here together. We've deliberated as late as
9 midnight here, but I just, with the weather I'm just --

10 MR. GILLCRIST: Okay.

11 THE COURT: -- so.

12 MR. BRATT: Understand.

13 MS. HOWARD: On, on the way out last night I heard some
14 of the ladies and gentlemen from the Sheriff's office
15 they're, they, they kinda' thought they were gonna' be here
16 late tonight between all that's goin' on. I know it's not
17 the Court, it's the weather.

18 THE COURT: It, it, exactly. Well, I will say the, the
19 wrongful death jury is back.

20 MS. HOWARD: (Unclear - two words.)

21 THE COURT: But, yeah, they came back.

22 MR. BRATT: Defense verdict.

23 MS. ZOIS: Defense verdict.

24 THE COURT: Defense verdict.

25 MS. ZOIS: Was it, was it death case or just --

1 THE COURT: Death case.

2 MS. ZOIS: Wow.

3 MR. BRATT: Oh, I thought she lived.

4 MS. ZOIS: I thought she lived, too.

5 THE COURT: So. Anyway, so let me bring them out and
6 tell them what's going on.

7 MS. ZOIS: Okay.

8 THE COURT: And then say we are gonna' have to
9 unfortunately run over 'til Monday and it's, just blame it on
10 the weather and I'll see if I get any desperate notes from
11 anybody and then we'll figure out the logistics. But that
12 takes a little bit of the pressure off of you all for right
13 now for trying to walk though everything, okay?

14 (Unclear - Counsel speaking simultaneously.)

15 THE COURT: I'll just tell them that nature's
16 conspiring.

17 MS. ZOIS: Your Honor, may I approach for one second?

18 THE COURT: Absolutely.

19 MS. ZOIS: Okay. Um, Jackie's expecting (unclear - five
20 words.)

21 THE COURT: Okay. Certainly.

22 MS. ZOIS: (Unclear - two words) her, her granddaughter.

23 THE COURT: And, and they, they all know that as well.

24 MS. ZOIS: Okay. Okay.

25 THE COURT: 'Cause I think she and her husband both

1 testified to that.

2 MS. ZOIS: Yes, yes.

3 (Jury entered the courtroom.)

4 THE COURT: Good afternoon, everyone. As you know it's
5 snowing, and they've, they've declared a snow emergency.
6 They don't want us to stay in session much longer tonight,
7 which means we are going to need you to come back on Monday.
8 And I know as hard as we've all tried we were all ready to
9 wait here, but the weather is deteriorating and we're just
10 not, we don't know how long. We would still probably have at
11 least an hour and a half before you all get the case to begin
12 deliberations, which would get us at least 6:00, 6:30 and
13 then go on from there. Um, and we're just not comfortable
14 and the State Police have said the roads are getting worse.
15 So, unfortunately, despite pushing on today as hard, we are
16 going to need you to come back on Monday.

17 Um, I'm gonna' ask you to be in at 9:30 on Monday
18 and, uh, I will tell you that you all will get the case for
19 your deliberations on Monday. The, the -- if not all of the
20 evidence, most of everything has been presented to you. It
21 will just be tying up all the loose ends, getting my
22 instructions and you going back to begin your deliberations.
23 So you will get the case for deliberations on Monday. But,
24 like I said, we've been on the phone with the, with the State
25 Police and checking the roads and everything else, and just,

1 so with the Court's -- nature's conspiring to make you all
2 come back on Monday. So, with my apologies I'm going to
3 excuse you. I'm gonna' hope you have a good weekend. Please
4 have a safe trip home tonight, and, um, I'll see you on
5 Monday. Okay?

6 (Jury excused from the courtroom.)

7 MR. BRATT: We do have a matter that I think can be
8 handled outside the presence of the jury, Your Honor.

9 THE COURT: Sure.

10 MR. BRATT: This relates to Mr. Porcarelli's opening
11 statement. Two things. One was the suggestion that the
12 witnesses that were being presented, in particular Dr.
13 McGrail is not a professional witness or whether he is or
14 isn't a professional witness.

15 The problem with that, Your Honor, is that Dr.
16 McGrail is a professional witness as a matter of law in this
17 case. Um, there is a case, that's Falik v. Hornage.

18 THE COURT: Give me the cite.

19 MR. BRATT: It's 413 Md. 163, Your Honor.

20 THE COURT: Okay.

21 MR. BRATT: And, specifically, more specifically to the
22 instant cases if a physician is paid to testify about someone
23 who is not that physician's patient under treatment that
24 witness is surely a professional witness. And in Dr.
25 McGrail's deposition testimony he testified that he was never

1 a treating physician. So, I would ask that the jury be
2 instructed that Dr. McGrail is in fact, as a matter of law,
3 under Maryland law, a professional witness.

4 Second, um, Mr. Porcarelli informed the jury that
5 the only reason that Dr. McGrail was testifying by way of
6 video deposition was because due to his schedule he was
7 unavailable to be here live at trial. And I don't believe
8 that's so, Your Honor. I have a letter that was an exhibit
9 from Dr. McGrail's deposition, a letter dated January 2nd,
10 2013 from Dr. McGrail from Mr. Porcarelli and the first line
11 of the letter says, "I've reserved the date of January 23rd,
12 2013 for my trial testimony in the above reference (sic), in
13 the above matter as requested by your firm."

14 THE COURT: What date?

15 MR. BRATT: January 2nd.

16 THE COURT: No, what date did he reserve?

17 MR. PORCARELLI: January 23rd.

18 MR. BRATT: January 23rd, 2013.

19 THE COURT: And what is today's date?

20 MR. BRATT: Today is --

21 THE COURT: January 25th.

22 MR. BRATT: Right, but we could have taken him out of
23 order if we were asked to. And, in fact, I think that the
24 reason Dr. McGrail's testimony is presented on video is
25 because he charges 80 (sic), eight (sic), \$8,950 for the

1 video and 3900 for -- I mean, he charges 8900 to come to
2 trial and 3900 for a video.

3 THE COURT: Did Dr. Sloan not testify by video?

4 MR. BRATT: He did.

5 THE COURT: Okay.

6 MR. BRATT: But I think the problem is is the
7 misrepresentation made to the jury. It's just not true.

8 THE COURT: Counsel, it's my understanding, and I'm
9 really not trying to be difficult, that you all have the
10 option of deciding whether to bring somebody in live or de
11 bene esse, and it is your option and you elected with one to
12 do de bene esse one live and so did Defense Counsel. And I
13 think that drawing any inference from that is not relevant to
14 the issues, and the issue in this case is does --

15 MR. BRATT: I'm not asking that he be stricken or
16 anything. I just wanna' be told, told, be told the truth
17 instead of what was told.

18 THE COURT: Counsel, you can make your argument to the,
19 to the jury, but I'm not gonna' give that as an instruction.
20 I don't think that the law supports it. I don't think it's
21 appropriate, and I'll, you can certainly, uh, make the record
22 at the close of the instruction if you think that there's an
23 instruction I should, I should give to that effect.

24 MR. BRATT: We would ask to introduce, we'd ask to mark
25 the letter and introduce it into evidence, Your Honor.

1 THE COURT: No.

2 MR. BRATT: I understand the Court's ruling. Thank you.

3 THE COURT: Okay?

4 MS. HOWARD: Your Honor, if, uh, would you indulge us
5 just a few minutes to quickly roll through our exhibits? I
6 don't think there's gonna' be an objection. We'll just take
7 a few seconds.

8 THE COURT: Okay.

9 MS. HOWARD: Is that okay with everybody?

10 THE COURT: Absolutely. So, we're, we're here, I just,
11 I wanted to let them know and especially if I was gonna' hear
12 that there were gonna' be problems with them being available
13 on Monday for us to deal with it here together today.

14 MS. HOWARD: And, Your Honor, some of these may already
15 be in, but, um, the Clerk and I were kind of talking, and I
16 don't mean to speak --

17 THE CLERK: That's fine.

18 MS. HOWARD: -- but it would be almost easier for us to
19 start at the top and go.

20 THE COURT: Sure.

21 MS. HOWARD: Is that fine with everybody? Okay.

22 MS. ZOIS: I'm just gonna' walk up.

23 THE COURT: Absolutely no problem.

24 MR. BRATT: (Unclear.)

25 MS. HOWARD: Defendant's one, uh --

1 MR. BRATT: My, her issue isn't with --
2 MS. HOWARD: the photograph of the, um --
3 MR. BRATT: -- she (unclear - one word) the video, it's
4 the --
5 (Unclear - Counsel speaking simultaneously) --
6 MS. HOWARD: Ms. Ess (sic), Exline-Hassler's vehicle
7 right side --
8 MR. BRATT: (Unclear.)
9 MR. PORCARELLI: Sorry, Your Honor, I'm hearing trouble
10 hearing (unclear - three words.)
11 THE COURT: Mr., Mr. Bratt, if you would kinda' keep it
12 down, because the --
13 MR. BRATT: I apologize, Your Honor.
14 THE COURT: -- the acoustics --
15 MR. BRATT: I'm, I'm sorry, I didn't realize --
16 THE COURT: -- the acoustics are not real good in here.
17 MR. BRATT: -- the Court was still conducting business
18 up there. I apologize.
19 THE COURT: We are. I'm up, usually if I'm up here I'm
20 doin' business.
21 MS. HOWARD: Defendant's Exhibit 1 is the front and
22 passenger side of Ms. Exline-Hassler's vehicle.
23 THE CLERK: (Unclear - three words?)
24 MS. HOWARD: Yeah, Defendant's 1.
25 THE CLERK: You mean that was Ms. Exline-Hassler's or it

1 was it Sapp?

2 MS. HOWARD: It's her car. It's Defendant's Exhibit 1,
3 but just for identification it's Ms. Exline-Hass (sic) -- I'm
4 sorry, you're right, thank you. It's Ms. Sapp's vehicle,
5 thank you.

6 THE COURT: Okay.

7 MS. HOWARD: You were totally (unclear - two words.)
8 And then Defendant's Exhibit 2 is the driver's side, again,
9 of Defendant Sapp's vehicle. And now Exhibit 3 is the board
10 from --

11 THE COURT: Yeah, we have a bunch of boards.

12 MS. HOWARD: Defendant's Exhibit 3 is the two, uh, pages
13 of the Robinwood Family Practice, um, visit of 3/26/08 en
14 (sic), uh, enlarged. And then four, uh, is a register from
15 Boonsboro Pharmacy redacted to remove any reference to
16 insurance or payment.

17 THE COURT: Okay.

18 MS. HOWARD: Uh, five is similar, but it's Weis
19 Pharmacy, again, redacted. Six is a police report, which I'm
20 not moving in.

21 THE COURT: Okay.

22 MS. HOWARD: Uh, seven through 12 are additional boards
23 of the pre-existing, uh, or the prior record. So, that takes
24 us to 13 is the picture of Defendant (sic) Exline, I mean,
25 Plaintiff Exline-Hassler's vehicle. 14 is a Exline-Hassler

1 medical record, 15 and 16 and 17 and --

2 MS. ZOIS: And I would object to the records coming out
3 of 10. So, that's the first one that I would object to.

4 THE COURT: Okay.

5 THE CLERK: Which is Number 14?

6 MS. HOWARD: Fourteen.

7 MS. ZOIS: Yes.

8 MS. HOWARD: And, um, did you want to talk about that?
9 (Unclear - one word) objection (unclear - two words?)

10 THE COURT: Yes.

11 MS. HOWARD: Uh, 14, this was a document that was
12 identified by Ms., uh, Exline-Hassler on cross examination,
13 uh, associated with her first visit to her primary care
14 physician and contained information that Mr. Gillcrist asked
15 her about, certain questions about that.

16 THE COURT: Let, may I see?

17 MS. HOWARD: Sure, of course, Your Honor.

18 THE COURT: Just, just check to see. I think I know
19 which one this is.

20 MS. HOWARD: (Unclear - three words) to the doctor
21 (unclear - three words.)

22 MS. ZOIS: And, Your Honor, the objection would be the
23 same objection that the Defendant's made when I wanted to
24 introduce piecemeal records out of 10.

25 MS. HOWARD: And Your Honor might recall we had a

1 problem with 10 coming in.

2 MS. ZOIS: I don't want the whole record.

3 THE COURT: I just --

4 MS. HOWARD: Yeah, see they don't want 10, they don't
5 want 10 in so I don't have the option of moving 10 in, but
6 there was a record from 10 that I felt was usable.

7 THE COURT: Okay. So, you're not gonna' be, nobody's
8 gonna' be moving 10 in?

9 MS. ZOIS: Correct.

10 MR. GILLCRIST: Which one is 10, I'm sorry?

11 MS. HOWARD: Ten is the (unclear - one word.)

12 THE COURT: Ten is the, ten is all of the records.

13 MR. BRATT: Your Honor, I think there was a juror.

14 FEMALE VOICE: Is that, that was one of the jurors?

15 MS. ZOIS: That was a juror.

16 THE CLERK: Should I check?

17 THE COURT: Yeah, go check.

18 MR. BRATT: I think the deputy is.

19 THE COURT: Oh, is, is checking.

20 MR. GILLCRIST: She's gonna' bring you a note.

21 THE COURT: Okay, they were gonna' bring me a note.

22 We'll deal with it --

23 MR. BRATT: She wasn't in here long enough to hear
24 (unclear - one word?)

25 MR. GILLCRIST: No.

1 MR. BRATT: Okay.

2 THE COURT: Okay. We'll deal with the note when we get
3 there. Well, I was expecting more than one, so.

4 MS. HOWARD: Move that one in.

5 MR. GILLCRIST: Okay.

6 MS. HOWARD: Yeah. Um --

7 MR. GILLCRIST: The Robinwood --

8 MS. HOWARD: Robinwood's (unclear - three words.)

9 THE COURT: So, nobody is moving all the records in, but
10 each of you are moving parts of the record in.

11 MS. HOWARD: Uh, that one page anyway.

12 THE COURT: So.

13 MS. HOWARD: Yeah, yeah that's true, yeah, others.

14 MR. GILLCRIST: So we don't need 14 I think that was the
15 one that was, isn't that the one that was (unclear - one
16 word) was already entered (unclear - two words?)

17 MS. HOWARD: Well, it's not, and it, um, it's not.

18 MS. ZOIS: So, each of us want to piecemeal records and
19 nobody wants to move 10 all in.

20 THE COURT: What I'm gonna' do then is I will admit the
21 piecemeal records that people want in.

22 MS. ZOIS: Okay.

23 THE COURT: So I know you, you'll each object to the
24 piecemeal of the others, but since nobody wants the whole
25 records in I'm not gonna' put the whole records in, but I

1 will go ahead and let everybody put their piecemeal --
2 MS. HOWARD: We don't --
3 THE COURT: -- records in.
4 MS. HOWARD: -- 'cause we don't really have a problem
5 with the whole thing coming in.
6 THE COURT: I, I --
7 MS. HOWARD: I was hoping I could move it in.
8 THE COURT: So.
9 MS. HOWARD: I move in (unclear - one word.)
10 THE COURT: But . . .
11 MR. PORCARELLI: Might as well.
12 MS. HOWARD: Fine (unclear.)
13 THE COURT: Yeah, let, let, yeah, let's just --
14 MS. HOWARD: Right, so fif (sic) -- all right, thanks.
15 THE COURT: Mm-hmm.
16 MS. HOWARD: So 14 will come in.
17 THE COURT: Fourteen will come in and then the
18 Plaintiff's piecemeal that I was waiting on there, so.
19 MS. HOWARD: Right.
20 THE COURT: So, those will come in as well.
21 MS. HOWARD: So, sticking these 14 --
22 THE COURT: Right.
23 MS. HOWARD: -- uh, will come in, thank you, Your Honor.
24 THE COURT: Correct.
25 MS. HOWARD: Fifteen I'm not going to move in it's a

1 copy of a total rehab record that's already in through other
2 avenues, okay?

3 THE COURT: Okay.

4 MS. HOWARD: And then, um, that takes me to 16.

5 THE COURT: Sixteen.

6 (Brief pause while Counsel confer off the record.)

7 MS. HOWARD: Um, now, Your Honor, just also wanted to
8 say this for the record, I'm not going to begin a series of
9 records that were referenced by Dr. McGrail in his de bene
10 esse deposition, but we've renumbered them to follow the
11 continuity here. So, Defendant's Exhibit 16 is Dr. McGrail's
12 curriculum vitae. Um, 17 are, um, portions of Plaintiff's
13 Exhibit 8, which is in evidence, which is -- and it's, uh,
14 Defendant's Exhibit 17.

15 THE COURT: Okay.

16 MS. HOWARD: And it's records 87 through, uh, 125, and I
17 would add, again, this is already in through Plaintiff's 8.
18 I just need to double check that there's no insurance
19 records, and that's what, um, Ms. Zois and I were doing right
20 (unclear - two words) --

21 THE COURT: Okay, mm-hmm.

22 MS. HOWARD: -- and we'll finish that piece of it up.
23 And then 18 and 19, or I should -- strike that -- 18 is a
24 duplicate of the, um, pharmacy records so we're not gonna'
25 bring that in.

1 THE COURT: Okay.

2 MS. HOWARD: Nineteen is, um, records, it's a packet of
3 records relied on by, um, it's excerpts from the Binder 1, I
4 mean, Binder 10 that, uh, specifically, that the expert
5 Doctor --

6 MR. PORCARELLI: McGrail.

7 MS. HOWARD: -- McGrail relied on in his expert opinion
8 you we may just briefly, Your Honor, would recall Dr.
9 Nisenfeld, Dr. Naff's two visits, Dr. Dabbah, Dr. Khanna,
10 the, um, the MD visit, uh, examinations --

11 THE COURT: Mm-hmm.

12 MS. HOWARD: -- of the patient, that's 19.

13 MS. ZOIS: And based on -- I would just, officially for
14 the record, object to that, but based on my understanding of
15 the Court's ruling excerpts are out (unclear - four words.)

16 THE COURT: So, yes, 19 will be received.

17 (Item admitted into evidence as
18 Defendant's Exhibit Number 19.)

19 MS. HOWARD: And 20 is the nerve conduction test. Um,
20 and EMG dated 3/31/10, and, uh, I believe that would come in
21 under, Your Honor, under the same ruling. These are part of
22 the subsequent records, uh --

23 MS. ZOIS: So, objection for the record, Your Honor, I
24 understand Your Honor's ruling.

25 THE COURT: Okay.

1 MS. HOWARD: And then Exhibit 21 are the M (sic), um,
2 report from the MRI findings from the -- let me double check
3 here, both, basically both MRI's of the lumbar spine. The --

4 THE COURT: Both --

5 MS. HOWARD: -- (unclear - one word) from July '09 as
6 well as the May 26th, oh, and the thoracic, um, spine that
7 were, again, were relied on and referred to by Dr. McGrail,
8 that's 21.

9 MS. ZOIS: Same objection. I understand the Court's
10 ruling.

11 MS. HOWARD: And I believe that's it.

12 MS. ZOIS: And then 22, 22(a) --

13 MS. HOWARD: Oh, I lied.

14 MS. ZOIS: -- with it.

15 MS. HOWARD: Twenty-two and 22(a) are the transcript of
16 the McGrail, um, de bene esse deposition, which I believe you
17 already had mentioned therein just (unclear - one word)
18 remarked.

19 THE COURT: It --

20 MS. HOWARD: And it's 20.

21 THE COURT: Exactly the --

22 MS. HOWARD: Twenty-two and 22(a).

23 MR. PORCARELLI: They're the audio disks, not the
24 transcript.

25 THE COURT: Cr (sic), the audio disks, which needs to

1 come in, but doesn't go back to the jury.

2 MR. PORCARELLI: Right.

3 THE COURT: The same with --

4 MR. PORCARELLI: Yes.

5 THE COURT: -- as, as --

6 MS. ZOIS: And, Your Honor, we attempted to burn down
7 Sloan's redacted testimony, but for whatever reason the disk
8 we were using this morning wasn't compatible with --

9 THE COURT: Okay.

10 MS. ZOIS: -- whatever our formatting was. What I can
11 do is take the deposition transcript, introduce that, which I
12 believe is Plaintiff's 50, maybe, and then I can highlight
13 the portions that were redacted and not played. Would that
14 be appropriate?

15 THE COURT: That's certainly fine with the Court,
16 because sometimes electronically it doesn't go -- and, of
17 course, once again, that transcript would not go back with
18 the jury.

19 MS. ZOIS: Does not go back.

20 THE COURT: So. The one juror that could not, there's a
21 juror that says, um, they're not available to sit on Monday,
22 it happens to be our first alternate who doesn't know that,
23 Juror Number 25, so, who's indicated that, um, she, uh --

24 MALE VOICE: (Unclear.)

25 THE COURT: -- and she's missing some, um, she just

1 can't afford to miss anymore.

2 MALE VOICE: (Unclear.)

3 THE COURT: So, any -- she was, like I said, Juror
4 Number 25, which was our first alternate.

5 MS. ZOIS: Okay.

6 MR. BRATT: Losing an alternate is not such a big deal.

7 THE COURT: Exactly.

8 MR. GILLCRIST: She was the younger lady in the back?

9 THE COURT: Yes, yes.

10 MS. HOWARD: Oh, I hadn't noticed.

11 THE COURT: So, we can certainly let her know that she
12 can be excused, she's -- so.

13 MR. PORCARELLI: As long as, uh, she doesn't communicate
14 for two, for two (unclear - one word.)

15 THE COURT: Is she waiting?

16 MR. GILLCRIST: She is.

17 THE COURT: She is waiting? Um, why don't you ask her,
18 Counsel, you can ask, I'll have her come on in, let her know
19 that she's excused, but not to --

20 MS. ZOIS: Certainly, Your Honor.

21 THE COURT: -- um, not to communicate with anybody since
22 the jury's not begun their deliberations. So. Mm-hmm.

23 MR. PORCARELLI: Or, or to let them know that she's even
24 been excused, 'cause then we might run the risk of they're
25 all going to call in on Monday.

1 THE COURT: I think probably everybody else is gone, but
2 I'll check with her.
3 (Juror Number 25 entered the courtroom.)
4 THE COURT: Hi there. Come on up here. You're not in
5 any trouble. And you're Juror Number 25, right?
6 JUROR NUMBER 25: Mm-hmm.
7 THE COURT: And you indicated that you just don't feel
8 that you're able to come back on Monday?
9 JUROR NUMBER 25: (No audible response.)
10 THE COURT: Okay. We're okay with you being excused.
11 We actually did have spare jurors, but we have to tell ya',
12 um, you can't talk to anybody --
13 JUROR NUMBER 25: Mm-hmm.
14 THE COURT: -- about this case or let them know that you
15 were excused or anything like that.
16 JUROR NUMBER 25: Okay.
17 THE COURT: 'Cause we really, as you know, we've been
18 puttin' a lot of work --
19 JUROR NUMBER 25: Yeah.
20 THE COURT: -- in this and we want to get this case done
21 on Monday.
22 JUROR NUMBER 25: Yes.
23 THE COURT: Has everybody else left do you think?
24 JUROR NUMBER 25: Yeah, I waited 'til everybody was
25 gone.

1 THE COURT: You waited 'til everybody was gone? Okay,
2 well, you go take care of yourself, and, um, good luck, but
3 like I said, don't talk to anybody about anything until maybe
4 the end of next week --

5 JUROR NUMBER 25: Okay.

6 THE COURT: -- if you wanted to call anybody and find
7 out what's going on.

8 JUROR NUMBER 25: All right.

9 THE COURT: Okay. Counsel, I have anything else to add?

10 MR. BRATT: Thanks for your service.

11 MS. ZOIS: No. Thank you for your service.

12 JUROR NUMBER 25: Okay. Thank you.

13 THE COURT: Thank you.

14 MS. ZOIS: Take care.

15 MR. GILLCRIST: Thanks a lot.

16 (Juror Number 25 excused from the courtroom.)

17 THE COURT: And, Counsel, I will let you know I never
18 have any interaction with the jury that you will not know
19 about. It's, if I get a note that they want whatever you're
20 gonna' know, it's just, 'cause it's your case.

21 MR. GILLCRIST: Appreciate that.

22 THE COURT: So. Okay, so I think we have everything
23 done with the exhibits. Juror Number 25 is excused and we'll
24 just say she's sick or whatever and take, deal with that on
25 Monday.

1 MS. HOWARD: Your, Your Honor --
2 THE COURT: Yes.
3 MS. HOWARD: -- just if you'd indulge me one more
4 second.
5 THE COURT: Absolutely.
6 MS. HOWARD: If we go back to what Plain (sic), I think
7 then we'll just nail this down what Plaintiff wanted to move
8 in out of 10 was, was it 28 pages, 0028 and 29? And --
9 MS. ZOIS: (Unclear - two words?)
10 MS. HOWARD: Yeah.
11 MS. ZOIS: Um, 272, 273, 359, 360, 361.
12 MS. HOWARD: Okay, no problem.
13 MS. ZOIS: And the 28 and 29.
14 MS. HOWARD: Gotcha'.
15 MS. ZOIS: But that needs to be redacted.
16 MS. HOWARD: Needs to be redacted, okay.
17 THE COURT: Yeah, redact 28 and 29, 379 to 361, 272 to
18 273.
19 MS. ZOIS: No, Your Honor, I'm sorry.
20 THE COURT: Okay.
21 MS. ZOIS: 359.
22 THE COURT: 359.
23 MS. ZOIS: 360, 361.
24 MS. HOWARD: Correct, got it. Okay. Thank you.
25 THE COURT: Okay.

1 MS. ZOIS: And these have not been marked for
2 identification other than the Bates stamps in 10. Is that
3 okay with Your Honor?

4 MS. HOWARD: We'll work it out. We'll work it out.

5 THE COURT: Yeah.

6 MS. ZOIS: We'll work it out. Okay.

7 MR. PORCARELLI: So, are you, are you all finished so I
8 can (unclear - three words.)

9 MS. ZOIS: (Unclear - three words.)

10 MR. PORCARELLI: I'll take it.

11 THE COURT: Okay.

12 MS. ZOIS: (Unclear - four words.)

13 MR. PORCARELLI: Okay. Great. So, Your Honor, if I
14 could take a, just a couple minutes to put --

15 THE COURT: Certainly.

16 MR. PORCARELLI: -- on the record. This is Guido
17 Porcarelli, and I just wanna' make sure that since I'm still
18 opening my case that the record is clear that Dr. McGrail's
19 CV has been moved and introduced, uh, into evidence along
20 with those other medical records that we just went through.

21 THE COURT: That's correct.

22 MR. PORCARELLI: And, secondly, that, uh, it's clear on
23 the record that Dr. McGrail's, uh, videotaped deposition and
24 some of his testimony is now on the record, part of the
25 record.

1 THE COURT: That is correct.

2 MR. PORCARELLI: And, uh, we would adopt by reference
3 into our case, uh, testimony given thus far by Kirsten Sapp,
4 uh, when called as an adverse witness in Plaintiff's case
5 into our case on behalf of my client.

6 THE COURT: Okay.

7 MR. PORCARELLI: And, uh, I would incorporate by
8 reference into my client's case, um, Penn National, uh, the
9 testimony offered by Trooper Chicarelli, when called out of
10 turn, when we were still in the Plaintiff's case.

11 THE COURT: Okay.

12 MR. PORCARELLI: And that would --

13 MS. ZOIS: One more lose end, Your Honor.

14 THE COURT: Sure.

15 MS. ZOIS: 2(a), McGrail's case list, I think the Court
16 was holding a ruling on that.

17 THE COURT: May I see that document?

18 MS. ZOIS: The 2(a)? Absolutely, Your Honor.

19 THE COURT: Yeah, 2(a).

20 (Brief pause while Counsel confer off the record.)

21 MS. ZOIS: And just for the record, Your Honor, I'm
22 gonna' take Plaintiff's 8, and I can leave a representative
23 copy here just so I can redact the insurance (unclear - one
24 word.)

25 THE COURT: Certainly.

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MS. ZOIS: And so it's not on (chuckle.) May I approach, Your Honor?

THE COURT: You certainly may.

(Long pause.)

THE COURT: Let me think about this.

MS. ZOIS: Okay, Your Honor.

THE COURT: Let me think about this.

MS. ZOIS: Certainly. You want me to have it stapled and put back in the folder?

THE COURT: I'll just put it, definitely I'm gonna' give it back to the clerk, but . . .

MS. ZOIS: Okay.

(Brief pause.)

THE COURT: And, Mr. Bratt, you need me to try and get you --

MR. BRATT: I don't anymore, Your Honor, I just got an email that it's cancelled.

MS. ZOIS: How'd that happen?

MR. BRATT: (Unclear - one word.)

MS. ZOIS: Oh, good.

MR. BRATT: The miracles of, what do ya' call it, that guy, uh, Steve Johnson.

THE COURT: Oh. I'm gonna' suggest, I know that there's some more business that we'll need to take care of, but I'm gonna' suggest that we, it's been a long day for everybody,

1 that we, uh, we meet 9 o'clock, um, Monday, we iron out
2 everything else, make sure we get, have all of our bases
3 covered, and then we'll roll from there. I will tell you I
4 have drafted out instructions and a verdict sheet so I have a
5 basis to work on so we can kind of move right from there.
6 Most of you have just submitted patterns with just a couple
7 of, with a couple additions, um, and, you know, nothing
8 looks, I don't have Mr., um --

9 MS. HOWARD: Porcarelli?

10 THE COURT: -- Porcarelli's.

11 MS. ZOIS: I haven't seen any of their --

12 THE COURT: So.

13 MS. ZOIS: -- requested jury instructions, Your Honor.

14 THE COURT: The, um, Ms. Sapp's have been all pattern.

15 They're nothing that's not a pattern, and so that, that --

16 MS. HOWARD: Yeah.

17 THE COURT: -- be --

18 MS. HOWARD: I, I thought --

19 THE COURT: -- some discussion over that.

20 MS. HOWARD: -- I gave 'em to you that first day.

21 THE COURT: And, yeah, to take a look at that. So, I
22 guess that it's -- you know, sometimes you get the one where
23 there are 25 pages of non-pattern instructions, um, but I'll
24 take a look, and I'd be glad to take a look at those.

25 MS. ZOIS: Your Honor, and I misspoke.

1 THE COURT: Mm-hmm.
2 MS. ZOIS: I did get Defendant's apps.
3 THE COURT: So.
4 MS. ZOIS: I do have that, I'm sorry.
5 THE COURT: Yeah, I haven't gotten any from Mr.
6 Porcarelli.
7 MS. ZOIS: And now I have Mr. Porcarelli's.
8 THE COURT: So.
9 MR. PORCARELLI: And, and however I gave Counsel just,
10 uh, Plaintiff's Counsel a copy now and a copy to Your Honor.
11 THE COURT: Okay.
12 MR. PORCARELLI: Most of them are pattern, there are
13 only two non-patterns.
14 THE COURT: Okay.
15 MR. PORCARELLI: And, um, (unclear - three words) talk
16 about that.
17 THE COURT: And also, and we'll take a, take a look at,
18 take a look at all of that. But, like I said, they're not a
19 lot of, again, this is not one where they're, everybody has
20 25 non-pattern instructions, so.
21 MR. BRATT: Just a question, Your Honor. Is it, is it
22 the Court's practice to send a copy of the instructions back
23 with the jury?
24 THE COURT: I usually either do a copy or I do a tape
25 record.

1 MS. ZOIS: Great.

2 THE COURT: Um, I'm g (sic), I'll leave, I've done a
3 copy so a copy goes back.

4 MR. GILLCRIST: Thank you, Your Honor.

5 THE COURT: So. Just 'cause I was afraid that I was
6 going to be losing my voice this week, too, so I've been
7 working on getting written instructions to go back so that
8 they wouldn't hear me coughing into the microphone, so.

9 MS. ZOIS: I have cough drops in case you need open.

10 THE COURT: Oh, I've been --

11 MS. ZOIS: I'm suckin' 'em down.

12 THE COURT: -- been eating them up there. And I
13 understand you might have a grandbaby on the way. So, we'll
14 see what happens on Monday and we certainly will understand
15 if, uh, you're not here 'cause there's a grandbaby.

16 MS. ZOIS: Yeah, she's actually being induced --

17 MS. EXLINE-HASSLER: Not me (unclear - one word.)

18 MS. ZOIS: -- not her -- Sunday night.

19 MS. EXLINE-HASSLER: Sunday night.

20 THE COURT: So.

21 MS. EXLINE-HASSLER: So.

22 THE COURT: And the jury has certainly, uh, certainly
23 heard from both you and your husband that there's a grandbaby
24 coming on Monday, so, um -- okay, everybody please be
25 careful.

1 MR. GILLCRIST: You, too, Your Honor.
2 THE COURT: Thank you.
3 MR. BRATT: Thank you, Your Honor.
4 MS. ZOIS: Thank you, Your Honor. May I be excused?
5 THE COURT: And, uh --
6 MR. GILLCRIST: We can leave stuff here?
7 THE COURT: You certainly may leave stuff here. They
8 were going to give me the whole criminal docket on Monday,
9 but --
10 MS. ZOIS: And we can leave the --
11 THE COURT: -- I'm off the hook.
12 MS. ZOIS: -- equipment here?
13 THE COURT: Yeah, you, you, it should be fine. Deputy
14 Hubble's gonna' lock it all up, and it should be fine. Okay?
15 Thank you all. Please be safe --
16 MS. HOWARD: Thank you.
17 THE COURT: -- and have a good weekend.
18 MR. GILLCRIST: Thank you, Your Honor.
19 MS. ZOIS: Thank you, Your Honor.
20 THE CLERK: All rise.

21 (Whereupon, at 4:45 o'clock, p.m.,
22 Court is adjourned for the day and
23 will reconvene 1/28/13 at 9:54
24 o'clock, a.m.)
25

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

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CERTIFICATION

I HEREBY CERTIFY that the proceedings in the matter of Exline-Hassler v. Penn National Insurance, et al., heard in the Circuit Court for Frederick County, January 25, 2013, were recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, page number 1 through 407, constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to, nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.


Victoria Eastridge
Official Transcriber