

COPY

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND
2 EXLINE-HASSLER

3 Plaintiff

4 v.

Civil Docket
No. 10-C-12-000410

5 PENN NATIONAL INSURANCE, ET AL.,

6 Defendant

7 OFFICIAL TRANSCRIPT OF PROCEEDINGS

8 (JURY TRIAL - DAY TWO)

9
10 Frederick, Maryland

11 January 23, 2013

12 BEFORE:

13 THE HONORABLE JULIE S. SOLT, JUDGE

14 APPEARANCES:

15 For the Plaintiff:

16 LAURA C. ZOIS, ESQUIRE
17 JOHN B. BRATT, ESQUIRE

18 For the Defendant:

19 WALTER E. GILLCRIST, JR., ESQUIRE
20 ANNE K. HOWARD, ESQUIRE

21 For Penn National Insurance, et al.:

22 GUIDO PORCARELLI, ESQUIRE

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CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

	P A G E			
	T A B L E O F C O N T E N T S			
3	PRELIMINARY ARGUMENTS			
4	By Ms. Zois			5
5	By Ms. Howard			9
6	By Mr. Porcarelli			10
7	Response by Ms. Zois			11
8	Court's ruling			16
9	WITNESSES:	DIRECT:	CROSS:	REDIRECT: RECROSS:
10	For the Plaintiff:			
11	Dr. Steven Sloan (Via videotaped deposition)	25/194	71/136	155/196 188/195
12	Dr. Neal Naff	209	282/377	37 --
13	For the Defendant:			
14	Trooper Chiccarelli	409	424	439 441
15	EXHIBITS:	IDENTIFICATION:	EVIDENCE:	
16	For the Plaintiff:			
17	Exhibit No. 8 (Medical records preceding accident)		220	--
18	Exhibit No. 9 (Summary of medical treatment and bills)	PRE-MARKED		--
19	Exhibit No. 10 (Set of medical records and bills)	PRE-MARKED		--
20	Exhibit No. 13 (Deposition of Jacqueline Exline-Hassler)		443	--
21	Exhibit No. 20 (Prescription Summary)		251	NOT SPECIFIED
22	Exhibit No. 20(a) (List of prescribed medications)	PRE-MARKED		NOT SPECIFIED

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1

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

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P A G E

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EXHIBITS: IDENTIFICATION: EVIDENCE:

4

For the Plaintiff:

5

Exhibit No. 21 PRE-MARKED 220

6

(Dr. Naff's curriculum vitae)

7

Exhibit No. 22 PRE-MARKED AUTHENTICATED 378

8

(Dr. Naff's fee schedule)

9

Exhibit No. 23(a) PRE-MARKED --

10

(Photo of healthy disc)

11

Exhibit No. 23(b) PRE-MARKED --

12

(Photo of annular tear)

13

Exhibit No. 26 PRE-MARKED --

14

(DEA schedule of controlled substances)

15

Exhibit No. 34(a) through 34(f) 242

16

(Surgical technique and anatomy of lumbar spine)

17

Exhibit 35(1) 230 233

18

(Slides of MRI)

19

Exhibit 35(2) 230 233

20

(Slides of MRI)

21

Exhibit No. 36 236 245/280

22

(Pedicle screws)

23

Exhibit No. 38(a) 227 --

24

(Photos of vehicles involved in collision)

25

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND

1 TABLE OF CONTENTS
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 (Whereupon, at 9:47 o'clock, a.m., January 23, 2013
2 before The Honorable Julie S. Solt, Judge, in Circuit
3 Courtroom Number Four, the following commenced:)

4 P R O C E E D I N G S

5 (Jury not present.)

6 THE CLERK: All rise.

7 THE COURT: And good morning again, everyone, please be
8 seated.

9 MR. BRATT: Good morning, Your Honor.

10 MR. GILLCRIST: Good morning, Your Honor.

11 THE COURT: Back on the record in the matter of Exline-
12 Hassler v. Sapp, civil 12-0410. And are we ready to begin
13 this morning?

14 MS. ZOIS: We are, Your Honor, but we have two
15 preliminary matters --

16 THE COURT: Okay.

17 MS. ZOIS: -- to address with the Court before we get
18 started.

19 MS. HOWARD: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MS. ZOIS: Um, so, and our first witness today, Your
22 Honor, may I step back here and staple something? I don't
23 like to turn my back on the Court.

24 THE COURT: Sure.

25 MS. ZOIS: Okay. Um, we're going to be playing Dr.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Sloan's videotape this morning, and when we took Dr. Sloan's
2 videotaped deposition, Penn National, of course, was in the
3 case and Penn National was identified on the video itself.
4 Um, we went through pursuant to the Court's order and
5 redacted out any reference to Penn National. However, one of
6 the things that happened in taking that out is that it has
7 gutted the Plaintiff's defense in this case with one
8 particular medical record that I'd like to show you to
9 illustrate as an example of how having a mystery defendant in
10 this case is going to dramatically prejudice the Plaintiff in
11 presenting, um, the evidence in this case, and in our
12 attempt, to undermine bias of the mystery defendant, the
13 credibility --

14 THE COURT: Just go ahead and make your argument.

15 MS. ZOIS: I'm workin' on it, on, Your Honor --

16 THE COURT: I, so --

17 MS. ZOIS: -- I'm work --

18 THE COURT: -- that's --

19 MS. ZOIS: I'm still making my argument, making my
20 record. So, what I would like to do is to present to the
21 Court one glaring piece of evidence that the jury's not going
22 to be able to totally and fully understand, appreciate or
23 consider because of Your Honor's ruling as to the mystery
24 defendant. So, may I approach, Your Honor?

25 THE COURT: Sure.

1 MS. ZOIS: And, for the record, Counsel, it's
2 Plaintiff's Exhibit Number 10, pages 28 and 29. So --

3 MS. HOWARD: I have the, you know, the Bates stamped
4 version.

5 MS. ZOIS: The (unclear - four words.) And I'll give
6 Your Honor an opportunity to review that before I start
7 discussing it.

8 (Brief pause.)

9 THE COURT: Okay.

10 MS. ZOIS: So, the evidence that you have before you,
11 Your Honor, is evidence that the Plaintiff's family practice
12 told the mystery Defendant that this car crash caused her the
13 problems that she's having now, that she did not have the
14 same or similar problems before, and that all of her problems
15 that she's having at that time are because of this car crash.
16 This is her family doctor telling the mystery Defendant that
17 they've requested this information from the family practice,
18 they have this information from the family practice, yet,
19 they're ignoring this piece of information in presented their
20 defense of this case, which goes to the credibility of the
21 evidence that they're presenting, it goes to the bias that we
22 are unable to extract from the mystery Defendant and it
23 eviscerates and guts the Plaintiff's ability to bolster her
24 own credibility in this case.

25 So, taking you back to Your Honor's ruling,

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 initially, is the Court's decision in this case flies in the
2 face of the rationale of King, and this is the exact problem

3 --

4 THE COURT: What is the --

5 MS. ZOIS: -- that we're stuck with.

6 THE COURT: If I may, if I may. You take Penn National
7 Insurance out of there, you get the Defendants to acknowledge
8 that this report was sent to someone on the Defendant's side
9 of the case without saying who the insurance company is,
10 don't you get the same --

11 MS. ZOIS: That's the --

12 THE COURT: -- information?

13 MS. ZOIS: -- problem. That is the problem, Your Honor.
14 That doesn't do what we need it to do. What the jury is
15 entitled to hear and what the jury is entitled to know is
16 that the mystery Defendant was told by her family doctor this
17 accident caused her back problem, she didn't have the same or
18 similar conditions before.

19 THE COURT: Okay.

20 MS. ZOIS: Additionally, the mystery Defendant will be
21 putting up an expert, they're gonna' be putting up Dr.
22 McGrail. Dr. McGrail relied on a report from the family
23 practice.

24 THE COURT: Okay.

25 MS. ZOIS: The family practice report that he's relying

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 on that she has chronic back pain for three years is the same
2 family practice, when requested the information by the
3 mystery Defendant, they were told this accident is why she
4 has these chronic problems.

5 THE COURT: Okay.

6 MS. ZOIS: This accident is why.

7 THE COURT: Okay.

8 MS. ZOIS: So, Your Honor, just by saying one of the
9 Defendants doesn't appropriately allow the jury to consider
10 witness testimony as to bias, as to credibility, as to motive
11 . . . Your Honor read the witness' instructions to the jury
12 this, uh, yesterday morning before we did opening. You gave
13 the witness testimony instruction. We are eviscerated and
14 gutted from being able to properly put on evidence in this
15 case. And I just want to add, this was the reason the King
16 Court decided what it did. It said --

17 THE COURT: Counsel --

18 MS. ZOIS: -- we're not going to have --

19 THE COURT: -- Counsel, please, don't, don't, please
20 don't argue me the rationale of King.

21 MS. ZOIS: I am making a record, Your Honor.

22 THE COURT: And I have asked you to -- I've heard your
23 argument --

24 MS. ZOIS: I'm not finished --

25 THE COURT: -- with reference to King.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: -- with my argument, Your Honor. I am making
2 a record for my case, Your Honor.

3 THE COURT: Go ahead.

4 MS. ZOIS: Thank you. So, this is the exact reason why
5 the King Court made the decision that it did. It said that
6 we are not going to have a sham with the jury, we are not
7 going to have mystery Defendants. The law in Maryland is
8 that the Defendants are publically identified. The fact that
9 they might be a deep pocket is not enough for us to keep that
10 information from the jury and from having a fair trial. This
11 will be one of many examples I will presenting to Your Honor
12 as to how Your Honor's ruling in this case has gutted the
13 Plaintiff's ability to properly cross examine experts, to
14 properly introduce evidence as to the bias, the credibility
15 and the witness testimony of the witnesses they'll be
16 calling.

17 THE COURT: Okay. Thank you.

18 MS. ZOIS: I would like to know what I'm allowed to do
19 with this report at the conclusion of Dr. Sloan's video
20 deposition when I've had to take out the fact that the
21 information that the Defense has asked for, that they've been
22 told is now, doesn't have a record of who asked for it and
23 who was told what, because I had to take the name out.

24 THE COURT: Okay.

25 MS. ZOIS: So, how do I cure that, Your Honor?

1 THE COURT: Okay. First of all, I'm going to allow
2 other Counsel to weigh in before I rule.

3 MS. ZOIS: Of course.

4 THE COURT: Then I'm going to make a ruling, and then I
5 also want to make something clear. You can certainly
6 preserve your record as to any other objection. I have
7 considered your arguments and I have overruled them. I will,
8 I do not want to reargue this every time. You can go ahead
9 and make your record with your objection and what your
10 proffer is, but we don't need to reargue this point, because
11 I have made my ruling, and I --

12 MS. ZOIS: I understand, Your Honor.

13 THE COURT: -- and I respect that you need to make a
14 record. I also would appreciate if you would respect that
15 the Court needs to make a ruling and to move on. Thank you.
16 You can go ahead and have a seat, and I'll be glad to hear
17 from Counsel.

18 MS. HOWARD: Thank you, Your Honor, on behalf of
19 Defendant Sapp, with respect to the particular record that
20 you've been presented with, and I believe the next witness is
21 going to be Dr. Sloan who was the treating, um, pain
22 management doctor. He never relied on these documents at any
23 time in formulating his treatment or his opinions in this
24 case, and we know that and you'll hear it on the record that
25 he, um, he formed his opinions before he had an opportunity

1 to review a packet of medical bills, et cetera, that the
2 Plaintiffs had, uh, given, Plaintiff's Counsel had given to
3 him. So, this witness did not rely on this document at all,
4 and we, and on behalf of Sapp we take the position that the
5 document you're seeing, um, contains hearsay from a doctor's
6 office is actually a nurse practitioner, it's not even the
7 doctor, uh, who's not expected to testify in this case. So,
8 for that reason alone we would indicate that the, we would
9 take the position that these documents shouldn't come in.

10 But with specific reference to the idea this
11 somehow, um, guts the argument, I'm just thinking how many
12 medical bills Your Honor redacted with insurance information
13 out of it all the time. And sometimes we even miss one and
14 we scramble and borrow white out from the Court, et cetera,
15 et cetera. This document could be sanitized just the way
16 many other issues are for the Court to balance the respective
17 rights of parties to not have collateral sol (sic), (unclear
18 - one word) respondent. Defendant Sapp, we maintain, is
19 prejudiced when the word insurance comes into this case.
20 Thank you.

21 MR. PORCARELLI: Your Honor, briefly, so we can get
22 going, on behalf of my client, I'd incorporate those
23 arguments as well. And I would like to point out one
24 additional thing for the record.

25 The relevancy of this, this document really isn't

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 even that relevant, because the suggestion appears to be that
2 the document went to my client, and my client had noticed
3 that this was the, what the family practice was saying. And
4 that's irrelevant, because my exposure does not occur until
5 there's a liability finding against the tortfeasor and
6 damages, not only assessed, but in excess of the policy that
7 they have.

8 So, we can't make a payment under the contract
9 until that occurs. And, therefore, this whole argument about
10 well, it went to Penn, and, and we're getting dangerously
11 close to the suggestion of and Penn failed to pay, Penn
12 failed to live up to their obligation. We don't have a legal
13 duty or obligation until the contract says that we owe the
14 payment. And that's not until the verdict comes in on
15 liability and damages.

16 I won't belabor the point, I know Your Honor's
17 ruled on it, it would be my hope that we could move on to
18 some other points.

19 MS. ZOIS: Just for clarification, Your Honor. Um, I
20 disagree with Defense Counsel Sapp's, um, saying that Dr.
21 Sloan didn't rely on these records in forming, uh, his
22 opinions, which is at page 14. I did lay the foundation for,
23 um, his opinions as relied --

24 THE COURT: I don't know I haven't seen it. We'll
25 figure that out when I see the deposition.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: I would direct your attention to page 14
2 wherein --

3 THE COURT: Okay.

4 MS. ZOIS: -- I disagree with that, because he does on
5 the record say that --

6 THE COURT: Okay.

7 MS. ZOIS: -- he relied on those records --

8 THE COURT: Well . . .

9 MS. ZOIS: -- in forming his opinions. Um, so I, now
10 that you've heard the Defense side of it, at the conclusion
11 of Dr. Sloan's deposition what is the Court's ruling as to
12 the usefulness of this document and how it's presented,
13 because I understand Mr. Porcarelli saying we can redact it
14 just as if we redacted insurance information, but we most
15 certainly cannot redact the bias out of the record.

16 THE COURT: I understand the Plaintiff's argument as to
17 bias. Quite frankly, the Court, obviously, does not agree to
18 that. I would redact it, I would redact the Penn National
19 Insurance out and then the document will go, go back in that
20 way.

21 MS. ZOIS: Okay. And is the Plaintiff allowed to
22 introduce it as a document form that was requested by the
23 mystery Defendant and provided to the mystery Defendant?

24 THE COURT: Counsel, quit -- there's, it's another
25 Defendant, mystery Defendant I know sounds --

1 MS. ZOIS: I wouldn't say that in front of the jury.

2 THE COURT: Exactly, so --

3 MS. ZOIS: I'm saying as to Mr. Porcarelli's client.

4 THE COURT: -- and just, just call it, just again, and
5 as long as it's up in the air say it's to Penn National
6 that's just perfectly alright. But I don't know, I'm gonna',
7 I'll take up a question of admissibility would come through
8 as to whether the document is auth (sic), properly
9 authenticated and admissible through the deposition and I'll
10 hear it at that time. I mean, I don't know at what point
11 that would be offered, or what you'll be offering it for or
12 what the authentication is or anything like that.

13 MS. ZOIS: Okay. Well, and, so the Court knows, we have
14 agreed that we are going to attempt to come to some agreement
15 as to exhibits so that we're not have exhibit fights
16 throughout the course of the trial.

17 THE COURT: That would be helpful.

18 MS. ZOIS: We're not going to be doing it at the
19 conclusion of the Sloan deposition. We will be doing it at
20 some time, but while we're on the subject, my question for
21 the Court is if Plaintiff intends to identify and use this
22 exhibit, and we all agree it goes back, when I'm arguing or
23 talking about it my understanding is, my question to you is
24 am I entitled to tell the jury that this is a form from Mr.
25 Porcarelli's interested party that was provided back to him.

1 THE COURT: That would be an argument that may be
2 relevant at the end of the case.

3 MS. ZOIS: Okay.

4 THE COURT: It's certainly, it, you know, I don't know
5 what the evidence is going to show so.

6 MR. BRATT: Your --

7 MS. ZOIS: Go ahead, stand up.

8 MR. BRATT: -- I'm, I'm sorry, Your Honor, I don't mean
9 to (unclear - one word), I have a question, simply, and it,
10 I'm not arguing the Court's ruling. I, I want to be very
11 clear about the nomenclature that the Court will permit us to
12 use throughout the rest of this trial to refer to Mr.
13 Porcarelli's client. My recollection, from our discussion at
14 the beginning, Your Honor, was is that what the Court said
15 was that we could refer to Mr. Porcarelli as an attorney who
16 is representing a party with an interest in this litigation.
17 Do I have that right?

18 THE COURT: So.

19 MR. PORCARELLI: Your Honor --

20 MS. ZOIS: (Unclear - one word) party.

21 THE COURT: Let's all hash it out --

22 MS. ZOIS: Yes!

23 THE COURT: -- and let's find out --

24 MR. GILLCRIST: Okay.

25 THE COURT: -- what exactly --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: Yes!

2 THE COURT: -- what words are going to be acceptable.

3 MR. BRATT: I don't, I don't want to do it wrong.

4 THE COURT: I am, 'cause I am getting a little
5 frustrated with trying to move this case along in that way.
6 I understand.

7 MR. BRATT: I just want to comply to the ruling, Your
8 Honor.

9 MR. GILLCRIST: Your Honor, I think you see what's going
10 on here. This is an effort by Counsel to --

11 THE COURT: I don't care about motives.

12 MR. GILLCRIST: Okay.

13 THE COURT: Just tell me an answer --

14 MR. GILLCRIST: My --

15 THE COURT: -- so we can get this case going, because
16 I'm starting to lose my temper with all of you and I don't
17 like to do that.

18 MR. GILLCRIST: There does not have to be any other
19 reference to the client that Mr. Porcarelli references. He's
20 been identified as an additional Defense Counsel representing
21 an additional Defense interest. There is no reason for any
22 additional witness in this case for there to be any reference
23 to him or to the client that he represents in any
24 nomenclature. And that's our position.

25 THE COURT: As another Defense --

1 MR. GILLCRIST: There's absolutely no --

2 THE COURT: -- just as another Defense Counsel.

3 MS. ZOIS: Ju (sic) --

4 THE COURT: 'Cause my, my problem with this is, and I'm
5 going to make this lay out clear to Plaintiffs. You have
6 argued the only reason that Penn National is in this case is
7 if the jury finds that Ms. Exline-Hassler's damages exceed
8 the policy limits of Ms. Sapp.

9 MS. ZOIS: That couldn't be any further from why we
10 wanted him identified, Your Honor.

11 THE COURT: I'm not saying why --

12 MS. ZOIS: That is not --

13 THE COURT: -- hold on, please, Counsel.

14 MS. ZOIS: Yes.

15 THE COURT: Please let me make my ruling and my
16 explanation.

17 MS. ZOIS: Let me know when you're done and then I'll
18 start talking, yes, Your Honor, go ahead.

19 THE COURT: Counsel, if you interrupt me one more time
20 we're gonna' have a big problem. (Brief pause.) All right?

21 MS. ZOIS: Understood, Your Honor, let, if you let me
22 know when you're done I will begin speaking.

23 THE COURT: I most certainly will.

24 MS. ZOIS: Thank you.

25 THE COURT: The issue in this case is whether this young

1 lady over here suffered injuries from this car accident and
2 the nature and the extent of those injuries, the dollar
3 amount, whether they were causally to this accident or not.
4 That is the issue that this jury is being decided, is being
5 asked to decide. Depending on what that verdict is Mr.
6 Porcarelli's client may have an interest in this case because
7 the claim is greater than Ms. Sapp's policy limits.

8 Ms. Sapp is the named Defendant who is the one
9 that, um, is being alleged to have been negligent and to have
10 caused those injuries. The identity of any under insured
11 insurance company is not relevant to the facts of how much
12 damage is causally related to this accident. That's the
13 issue before this jury. I have ruled that because of that
14 that Penn National is not to be identified as anything other
15 than an interested, that they're, they're not to be named in
16 it, that identify Mr. Porcarelli as an additional Counsel for
17 the Defendant. The jury doesn't need to know any more than
18 that, because it doesn't have anything to do with the issue
19 of whether this lady was damaged and what the amount of that
20 damage is. That's the focus of this case.

21 Now, you've made your point, you've made your
22 record. You've made your request, your objections have been
23 noted for the record. I have made my rulings, I have asked
24 you to, asked us to move along at this point. We're not
25 gonna' talk about Penn National anymore, we're not gonna'

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 call 'em the mystery party or anything else, it's just gonna'
2 be additional Defense Counsel, and we're gonna' go from
3 there, okay? Now I'm done. I'll be glad to hear you.

4 MS. ZOIS: Thank you. Your Honor. And I understand the
5 Court's position on why the Court has ruled the way the Court
6 has. My, the problem the Plaintiff has with the Court's
7 ruling is that it's not just they have to pay if it's over
8 \$100,000. The problem the Plaintiff has with the Court's
9 ruling is the inability to properly draw out bias,
10 credibility, motive, all of the things that the Court
11 instructed the jury on in the beginning of the case as to how
12 they could evaluate witness testimony, evidence that's
13 presented. Mr. Porcarelli is going to be taking a very
14 active role in the defense of this case, he's the one that
15 actually is calling and putting on Dr. McGrail, who's the
16 neurosurgeon who shall be testifying by way of videotape.

17 The Plaintiff is put in the position of an
18 inability to properly draw out bias questions, credibility
19 questions, motive questions, does the Defen (sic), does the
20 witness have an, uh, interest in the case? Does the, do they
21 have a motive? Do they have, um, credibility issues with why
22 they're taking the positions that they are. And, because of
23 the Court's ruling, I've, I've been trying cases for 18
24 years, I've tried hundreds of trials, I've never had the
25 inability to identify with the jury or tell the jury this

1 person is being called by this Defendant and here's why. So,
2 I, this is all very new for me in this position, but that's
3 the problem.

4 And, specifically, with the record that's before
5 Your Honor at pages 28 and 29, it would have been the
6 Plaintiff's intention to say Mr. Porcarelli is calling a
7 witness to the stand to testify as to the Plaintiff's causal
8 relationship in this case. However, his client, very early
9 on, back in July of 2009, requested this information from her
10 family doctor. His client, Penn National, received this
11 information, was told by the family doctor that her problems
12 were related to this crash, not to any problem before this
13 crash. So, that's, it's, it's not necessarily the identity
14 of it, it's the, the, all of the bias and credibility and,
15 and undermining we, we are, are hog tied, we, we can't . . .
16 so, that's, that's my issue with the Court's ruling and I
17 believe that's why King made the ruling that it did.

18 THE COURT: I'll just add, you can certainly bring all
19 those in by saying, doctor, you were hired by the Defendants,
20 were you, without saying the name of the insurance company,
21 because that's the same whether it's Ms. Sapp or whether it's
22 Penn National, same thing. I understand your point, but I'm
23 just saying that those, all of those issues, whether it's
24 Defendant A or Defendant B it's (unclear - one word) by the
25 Defendant and those issues as to bias, prejudice, prior

1 relationship are the same whether you name the Defendant or
2 not. So, that's, again, one of the reasons. But we fought
3 that battle, I've made my ruling, we'll go along from there.
4 Okay?

5 MS. ZOIS: May I speak, may I speak, Your Honor?

6 THE COURT: Sure.

7 MS. ZOIS: And I understand, and I, I think it was
8 important for us to, to hash out what we're allowed to say or
9 not allowed to say, and my understanding from what the Court
10 just said is there is Defendant A, there is Defendant B, they
11 are separated defendants, but Mr. Porcarelli's Defendant has
12 an interest in the outcome of the case?

13 THE COURT: You identify Mr. Porcarelli in front of the
14 jury just as an additional Defense attorney.

15 MS. ZOIS: But that's different than an additional
16 Defendant, so that's why I wanna' make sure I understand you.

17 THE COURT: The, an additional Defense attorney, and
18 just leave it at that.

19 MR. BRATT: (Unclear - approximately five words.) It's
20 different.

21 MS. ZOIS: I think that's inconsistent with how he's
22 been identified in opening, per the Court's ruling.

23 MR. BRATT: That's why we ask.

24 MS. ZOIS: So, that's why we're asking, I don't wanna'
25 step, I don't wanna' step in it again. So, I want to make

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 sure that I'm, I'm doing what the Court wants me to do.

2 THE COURT: I'm gonna' be honest with you, I don't
3 remember exactly what I said.

4 MR. BRATT: I do.

5 MS. ZOIS: I do.

6 THE COURT: It was yesterday. So.

7 MR. BRATT: What the Court said was --

8 THE COURT: Okay.

9 MS. ZOIS: Stand up.

10 MR. BRATT: Oh, shit. Sorry.

11 THE COURT: Jesus. I'm sorry --

12 MS. ZOIS: (Unclear - four words.)

13 THE COURT: -- I, I really don't mean to be this
14 frustrated, but --

15 MS. ZOIS: It's frustrating.

16 THE COURT: -- we're wasting all of this time on this
17 issue that should have been done at the pre-trial conference.
18 So, go ahead.

19 MR. BRATT: Your Honor, my recollection, and I am very
20 certain that it is accurate is that we asked the Court about
21 this at the beginning of the trial, and the way Your Honor
22 instructed us to refer to Mr. Porcarelli, and I believe the
23 Court introduced Mr. Porcarelli as Mr. Porcarelli is the
24 attorney for another party with an interest in this
25 litigation. Is it okay to refer to him and his party that

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 way? If it is, then fine, and I will endeavor to do my best
2 and follow the Court's ruling to the letter. I just wanna',
3 wanna' make sure I get it right.

4 THE COURT: I'm gonna' do this, I'm gonna' take five
5 minutes, I'm gonna' go back and I'm gonna' listen to what I
6 said and how he's introduced to the jury and that's gonna' be
7 it.

8 MR. BRATT: We do appreciate it. Thank you, Your Honor.

9 THE COURT: Okay?

10 MS. ZOIS: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Whereupon, from 10:09 o'clock, a.m. until 10:16
13 o'clock, a.m., a recess was taken.)

14 THE CLERK: All rise.

15 THE COURT: And good morning again, please be seated. I
16 went back and I listened to the beginning of the voir dire to
17 the jury, um, because I did not exactly recall what was said.
18 Um, and, uh, what I did was I introduced Plaintiff,
19 Plaintiff's Counsel, I, then I introduced Ms. Sapp, and then
20 I introduced all three Counsel as Counsel for Defendants. I
21 did not separately identify, um . . .

22 MS. ZOIS: So, Defendants plural, Your Honor.

23 THE COURT: Defendants.

24 MS. ZOIS: Plural.

25 THE COURT: So, as Counsel for Defendants, I think I

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 said it plurally, so.

2 MS. ZOIS: Okay.

3 THE COURT: But I did not separately break out Mr.
4 Porcarelli from the other two Counsel. So, it's, he's one of
5 Defendants' attorneys, and just call it at that. They're not
6 gonna' see whether it's apostrophe-s or s-apostrophe. So.

7 MS. ZOIS: Okay, understood.

8 THE COURT: Okay?

9 MS. ZOIS: I'm glad that's clear, 'cause I, that's not -
10 -

11 THE COURT: So.

12 MS. ZOIS: -- I understand moving forward that they will
13 be collectively --

14 THE COURT: So.

15 MS. ZOIS: -- referred to as Defendants' --

16 THE COURT: Defendants' --

17 MS. ZOIS: -- Counsel.

18 THE COURT: So, Defendants' Counsel. There are three of
19 them, exactly, that's how he was, they were introduced to the
20 jury. Okay? Anything else before we bring out the Jury?

21 MR. BRATT: Not from the Defendant, Your Honor, thank
22 you.

23 MR. PORCARELLI: Uh, this is so quick. I, given these
24 rulings, um, we just want to make sure that any evidence
25 presented from this point forward as Penn, Penn National,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Penn Insurance all redacted. It's my hope and expectation
2 that we're all on that same page, and that's all I need to
3 say on it.

4 THE COURT: I hope so.

5 MR. PORCARELLI: Thank you.

6 MR. BRATT: We intend to comply --

7 THE COURT: So.

8 MR. BRATT: -- with the Court's ruling, Your Honor.

9 THE COURT: Okay. Thank you. Okay? You can bring in
10 the ladies and gentlemen.

11 MS. ZOIS: (Unclear.)

12 THE COURT: Yeah, just be careful for anything that's
13 prescreened.

14 MS. ZOIS: Can I pull the --

15 MR. BRATT: (Unclear - three words.)

16 MS. ZOIS: -- okay, our first is by video.

17 THE COURT: Certainly. And Counsel can certainly move
18 to where they can see.

19 MR. GILLCRIST: Oh, thank you, Your Honor.

20 MS. HOWARD: Thank you, Your Honor.

21 MR. GILLCRIST: Thank you.

22 MR. BRATT: What?

23 MS. ZOIS: What? I'll talk to you about it when you're
24 done.

25 MR. BRATT: And is it about listening to this?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: No.

2 MR. BRATT: (Unclear.)

3 (Jury entered the courtroom.)

4 THE COURT: And good morning, ladies and gentlemen. I
5 note for the record all the members of the jury are present.
6 Sorry for the delay, folks, sometimes we get wrapped up in
7 legal stuff, and, uh, we have to get all that taken care of
8 before we, uh, bring you back in. So, I apologize for that.
9 Um, but I believe we're all here and ready to go.

10 MS. ZOIS: Your Honor, Plaintiff will --

11 THE COURT: Ms. Zois.

12 MS. ZOIS: -- be calling Dr. Sloan as our first witness,
13 one of Ms. Jacqueline Exline-Hassler's treating pain
14 management doctors.

15 (Brief pause.)

16 THE COURT: Like I said, so everybody can, everybody
17 that needs to see can see.

18 (Videotape deposition being played.)

19 VIDEO TECHNICIAN: (Unclear - one word) 16th,
20 2013. The time is 4:18, p.m. The video
21 technician is Scott Foreman of Merrill LAD.
22 These proceedings are taking place at The Spine
23 Center, 11921 Rockville Pike, Rockville,
24 Maryland. Would Counsel identify themselves and
25 state whom you represent.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: Laura Zois on behalf of Jackie
2 Exline-Hassler.

3 MS. HOWARD: Anne Howard on behalf of the
4 Defendant.

5 (Videotape stopped playing.)

6 FEMALE VOICE: (Unclear.)

7 THE COURT: Oop, somebody just --

8 FEMALE VOICE: Yeah --

9 MS. ZOIS: No, it's okay --

10 FEMALE VOICE: Oh, okay.

11 MS. ZOIS: -- it's okay.

12 FEMALE VOICE: (Unclear.)

13 MS. ZOIS: Sorry.

14 FEMALE VOICE: All right.

15 MS. ZOIS: Sorry about that, Your Honor.

16 THE COURT: Mm-hmm.

17 (Videotape being played.)

18 MS. ZOIS: Thank you.

19 DIRECT EXAMINATION

20 BY MS. ZOIS:

21 Q Good afternoon, Dr. Sloan.

22 A Good afternoon.

23 Q Can you give us your full name and your
24 business address, please?

25 A Steven (Unclear - one word) Sloan,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 11921, uh, Rockville Pike, Suite 505, Rockville,
2 Maryland.

3 Q And can you describe to the ladies and
4 gentlemen what kind of doctor you are?

5 A Uh, anesthesiology and pain management.

6 Q Where did you go to medical school?

7 A University of Colorado.

8 Q And what year did you graduate?

9 A 2000.

10 Q Where did you do your residence and in
11 what field?

12 A Uh, University of Colorado, um, for
13 anesthesia residency, and then to Cleveland
14 Clinic for completion as to (unclear - one word)
15 residency. And then to the Cleveland Clinic for
16 a fellowship in pain management.

17 Q Why did you want to go to the Cleveland
18 Clinic?

19 A Because it's the Cleveland Clinic.

20 Q For those of us that don't know how to
21 rank or compare --

22 A Mm-hmm.

23 Q -- clinics or hospitals, what is it
24 about the Cleveland Clinic that drew you there?

25 A Cleveland Clinic is basically

FREDERICK MARY AND 211701

1 recognized as the Harvard, the Mayo Clinic, the
2 Cleveland Clinic they're all considered peers,
3 uh, in the residency training programs that they
4 have.

5 Q And where did you do your fellowship?

6 A Cleveland Clinic.

7 Q In what field?

8 | A Pain management.

9 Q Are you board certified in pain

10 management?

12 Q Are all doctor board certified?

A Not all are board certified.

14 Q Did you pass your boards on the first
15 try?

16 A Yes.

17 Q Have you given lectures in the field of
18 pain management?

19 A Yes.

20 Q Have you written articles in the field
21 of pain management?

22 A Yes.

23 Q Have you written research material in
24 the field of pain management?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Can you describe for us briefly what
2 pain management specialists do?

3 A What we, a lot of, a lot of pain
4 management physicians are off-shoots of
5 anesthesiology, and what we do is we, uh, use
6 medications or use injections to treat peoples
7 pain, whether it's coming from the spine, for
8 example from disc herniation, or from arthritis
9 or from nerve injuries, such as seeing, uh,
10 patients with neuropathy.

11 Q Where was your first job after your
12 fellowship?

13 A Uh, in Albuquerque, New Mexico.

14 Q And what did you do there?

15 A Uh, practice anesthesiology, but mostly
16 pain management.

17 Q And where was your next job after that?

18 A Uh, second job in Albuquerque, New
19 Mexico.

20 Q And what did you do there?

21 A Uh, did, uh, pain management
22 exclusively.

23 Q What do you do in your current
24 practice?

25 A Exclusive pain management.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And what year did you come to Maryland?

2 A In 2009.

3 Q Can you give us an idea or a summary of
4 the types of problems that your patients have
5 that you help treat?

6 A We see patients who have, uh, uh, pain
7 derived from the spine primarily, the, the neck
8 or the back. We see patients who have injuries
9 to the discs in the back to the small joints in
10 the back. We also see patients who, uh, have
11 injuries to, uh, the nerves (unclear - one word)
12 neuropathy. And we see patients with, uh,
13 multiple, uh, pains and joints from arthritis.

14 Q What percentage of your patients are in
15 chronic pain?

16 A I would 80 percent, 80-85 percent.

17 Q And what percentage of your patients
18 are you performing injections and monitoring the
19 pain medication?

20 A About half our patients we will do
21 injections for, but there's a group of those
22 patients where we also manage the medications.
23 Uh, the other half will do variations of
24 medication management or (unclear - one word)
25 thera (sic), such as physical therapy, uh, or

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 acupuncture.

2 Q And what percentage of the population
3 of your pain, uh, patients are here for back
4 problems?

5 A The majority I would say in the realm
6 of 75 percent.

7 Q Do you perform epidural injections?

8 A Yes.

9 Q How about medial nerve branch
10 injections?

11 A Yes.

12 Q Ablation procedures?

13 A Yes.

14 Q And that's where you're burning the
15 nerves?

16 A That's where we, we heat the nerves up
17 along the, uh, the spine, correct.

18 Q Sacroiliac joint injections?

19 A Yes.

20 Q Discograms?

21 A Yes.

22 Q discTRODE procedures?

23 A Yes.

24 Q Disc decompressions?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Are you familiar with the standards of
2 care and when these types of procedures are
3 appropriate?

4 A Yes.

5 Q Uh, do you, and you mentioned before
6 that you do treat some of your patients with pain
7 medications. Are you familiar with the standards
8 of care and the treatment of patients with pain
9 man (sic), pain medication?

10 A Yes.

11 Q Are you generally familiar with what
12 the pain medications costs here in your office?

13 A Generally, yes.

14 Q Do you dispense medication here in your
15 office?

16 A Yes.

17 Q And have you reviewed the fee schedule
18 for the medications here in your office?

19 A Yes.

20 Q Doctor, I'm gonna' show you what's been
21 marked as Plaintiff's Exhibit Number 18, and ask
22 you to take a look at that.

23 A Okay.

24 Q Is that your most current CV or resume?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: At this time I'm gonna' offer
2 Exhibit 18 into evidence.

3 MS. HOWARD: No objection.

4 MS. ZOIS: And we would offer Dr. Sloan as
5 an expert in the field of pain management.

6 MS. HOWARD: No objection.

7 MS. ZOIS: Guido.

8 MR. PORCARELLI: No objection.

9 BY MS. ZOIS:

10 Q Doctor, how many times have you
11 testified in court on a case before?

12 A Uh, three may, oh, in court itself?

13 Q Yes.

14 A None.

15 Q How many depositions have you done?

16 A Three or maybe f (sic), maybe four.

17 Q Did the depositions that you gave
18 involve a patient you were treating?

19 A Yes.

20 Q And we first met back in May of 2012 on
21 this case, is that right?

22 A Correct.

23 Q And did we know each other before that?

24 A No.

25 Q Have you ever referred to me one of

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 your patients?

2 A No.

3 Q Have I ever referred a patient to you?

4 A No.

5 Q Are you aware of any clients that I
6 have that you treated?

7 A No.

8 Q When we first met back in May of last
9 year it was to discuss your pashin (sic),
10 patient, Jacqueline Exline-Hassler, correct?

11 A Correct.

12 Q And before testimony here today you
13 reviewed your chart, which I understand this is a
14 copy of?

15 A Correct.

16 Q And you've also reviewed the medical
17 records from this case, is that correct?

18 A Correct.

19 Q And did you rely upon your review of
20 those medical records and your chart in forming
21 any opinions in this case today?

22 A Yes.

23 Q Did you personally treat Ms. Exline-
24 Hassler?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And did you know when your first visit
2 was with her?

3 A Off the top of my head, no, but I
4 believe it was April from two years ago?

5 Q Okay. Hang on one second, let me see
6 if I can help you out here. I'm gonna' show you
7 what's been marked as Plaintiff's Exhibit Number
8 10, which is Bates stamped medical records one
9 through 368. And, directing your attention to
10 page 255 of that chart. (Brief pause.)

11 A Okay.

12 Q Does that appear to be your initial and
13 --

14 A Yes.

15 Q -- signature?

16 A Yes, May 24, 2010.

17 Q May 24, 2010?

18 A Correct.

19 Q Okay. Are you still treating her?

20 A No.

21 Q And why is that?

22 A I moved my practice.

23 Q And where is your practice primarily
24 now?

25 A Uh, in Rockville and, uh, in Frederick.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And while you were treating her where
2 was your practice primarily?

3 A In Hagerstown.

4 Q Um, you've treated her over the course
5 of about two and half years then, right?

6 A Yes.

7 Q And you've seen her over about 25
8 times, is that about right?

9 A Give or take.

10 Q When she first came to you did she have
11 any treatment before coming to see you?

12 A Yes.

13 Q And can you describe for the ladies and
14 gentlemen of the jury what treatment she had
15 before coming to see you?

16 A She was treated at an outside pain
17 group, and, uh, I believe she received, uh, SI
18 joint injections. And, uh, maybe an epidural,
19 I'm not, I don't (unclear - one word) exactly.

20 Q Okay. You can feel free to, to
21 reference your --

22 A Sure.

23 Q -- your records if necessary. When she
24 came to see you, initially, can you tell us what
25 her chief complaint was?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, pain in low back, uh, travelling
2 into her legs.

3 Q And when you first saw her that was
4 after she had her first MRI is that right?

5 A Correct.

6 Q And can you describe for the ladies and
7 gentlemen of the jury what the problem was that
8 she was having with her low back according to the
9 MRI results.

10 A The, uh, MRI dated 7/13/2009, um,
11 demonstrated, showed that there were tears in
12 discs L4/L5 and L5/S1, which are the, uh, the
13 last and second to last discs in the spine.

14 MS. ZOIS: Okay. Let's go off the record
15 for a second.

16 VIDEO TECHNICIAN: We're going off the
17 record. The time is 4:28, p.m.

18 (Whereupon, from 4:28 o'clock, p.m. until
19 4:31 o'clock, p.m. off the record.)

20 VIDEO TECHNICIAN: We're back on the record,
21 the time is 4:31, p.m.

22 MS. ZOIS: Thank you.

23 BY MS. ZOIS:

24 Q Thank you.

25 A (Unclear - one word.)

1 Q I appreciate you bringing the spine
2 model in for us.

3 A (Unclear - two words.)

4 Q You described before tears at L4/L5 and
5 L5/S1, before we get there can you give us an
6 explanation of, of the spine.

7 A Sure.

8 Q Can you show us what the parts are, and
9 how they work?

10 A Basic, basic (unclear - one word)
11 lesson?

12 Q Yes, please.

13 THE COURT: (Cough) excuse me.

14 A So, you have five lumbar vertebrae,
15 which are your bone and between the vertebrae you
16 have the discs, which are made of essentially
17 cartilage like the ears and nose and your
18 cartilage. And then you have small little spaces
19 between the vertebrae called the facet joint, F-
20 A-C-E-T, and you have the nerve roots coming out
21 of the spine, and these nerve roots here serve
22 your feet and serve your legs, and the holes
23 where these nerve roots come out of are called
24 the foramen.

25 Q So, does (unclear - one word) look like

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 that? Do the little yellow tails end there or do
2 they keep going?

3 A They keep going. You have the, the
4 nerve roots start from the cervical spine then
5 all the way down to your tailbone.

6 Q Okay. And when they come out from our
7 spine do they travel down into our feet and legs?

8 A Correct.

9 Q At L4 and L5?

10 A Correct.

11 Q Okay.

12 A So -- I beg your pardon --

13 Q That's okay.

14 A -- in the L, the L4/5 and L5/S1 discs
15 are the two (unclear - two words) here.

16 Q And those are the ones that we're
17 gonna' be talking about today --

18 A Correct.

19 Q -- that you saw the tears on --

20 A Correct.

21 Q -- from the MRI's?

22 A Correct.

23 Q Okay. Can you describe for us the
24 discs themselves?

25 A The, the discs are basically, uh, two

1 components. One component is --

2 Q You want to use that?

3 A Sure. One component --

4 Q Can you (unclear - two words)?

5 A -- is basically here and that's called
6 the annulus. And within the annulus you have
7 what's called nucleus. And the, the nucleus' is
8 a rather jelly-like material and the annulus' are
9 a tougher material, kind of like the rings in a
10 tree surrounding the nucleus.

11 Q So, orient me to that picture.

12 A Okay.

13 Q Are we basically slicing ourselves in
14 half and looking down (unclear - two words)?

15 A (Unclear - four words) cross section.
16 So, this here's your back, this here's the front,
17 right side, left side. Here's the disc here,
18 here's the spinal cord here, and the nerve roots
19 exiting going off into the feet and to the legs
20 here. And then these, these here are you, are
21 you sections.

22 Q All right. And is this disc, as we're
23 looking at it here on Plaintiff's Exhibit 23(a),
24 is that what a healthy disc looks like?

25 A This is what a healthy disc looks like.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And the annulus around --
2 A Mm-hmm.
3 Q -- the disc --
4 A Mm-hmm.
5 Q -- does that encase the jelly in the
6 middle?
7 A Correct.
8 Q Okay.
9 A Again, like the rings in a tree. So,
10 in certain cases, which I'm sure will come up
11 later, the disc can herniated and pinch a nerve
12 root or you can get a tear in the fibers of the
13 annulus.
14 Q Okay. Let me see if I can -- ah, there
15 we go. Okay, can you describe what's depicted in
16 Plaintiff's Exhibit 23(b)?
17 A Sure. So, what you're seeing here are,
18 are tears within the annulus itself.
19 Q Okay. And how about this photograph?
20 A Well, what you're seeing here are tell
21 (sic), tears in the annulus, but more importantly
22 what you're seeing is this is called a herni
23 (sic), or a disc bulge or protrusion where the,
24 the contents of the, of the nucleus here are
25 spilling out into the annulus here, and as a

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 result what's happening this bulge is pinching on
2 the nerve root.

3 Q And in her MRI there was a disc
4 protrusion, correct?

5 A Correct.

6 Q Okay. And how about this one here?

7 A Uh, same thing.

8 Q Same thing. Can --

9 A Mm-hmm.

10 Q -- so the, the rings of the tree look
11 like they're kinda' disrupted.

12 A Correct.

13 Q Okay.

14 A See here's a nucleus here, and it's
15 erupting out into the, the annular fibers here.

16 Q All right. Are there different grades
17 of annular tears, like one, like a totally
18 healthy disc is one thing and then a --

19 A It's (unclear - one word).

20 Q -- really bad rip is another?

21 A So, the, we have what are called Dallas
22 grade classifications, and what these
23 classifications do is they serve to stratify the,
24 the, uh, the severity of a tear --

25 Q Okay. Let me --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A -- from --
2 Q -- show you, um, that, what, can you,
3 based on looking at that picture, tell us what
4 kind of tear that would be?
5 A So, for example this would be what's
6 called a Dallas grade three tear. In other words
7 the, the tear goes through the annulus then it
8 goes right to the edge of the disc itself. In
9 the case of the Dallas grade four, that tears
10 would extend out along the radius here, and the
11 Dallas grade five kind of goes through the entire
12 structure of the disc itself.
13 Q Okay. So, this is a three.
14 A That's correct.
15 Q And Ms. Exline-Hassler had a four is
16 that right?
17 A Had a grade four and a grade five.
18 Q Okay. And a four, describe for us
19 again what a four would look like.
20 A Four would go out to the edge of the
21 disc and radiate around the outer aspect of the
22 disc here.
23 Q Okay.
24 A It's called a radial tear.
25 Q And then how about that one?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A This is a grade five, because it hit,
2 goes through the actual disc itself, and the
3 contents here, the nucleus, will then spill out
4 (unclear - two words) space.

5 Q Can an annular tear cause pain down in
6 your feet and legs?

7 A It can.

8 Q And how does that happen?

9 A What happens is that the contents of
10 the nucleus here are, are very inflammatory it's,
11 it's like, uh, uh, almost like chili sauce, it's
12 very irritating to the nerve roots, and so if
13 these nerve roots are irritated by the contents
14 of the nucleus they can then refer that pain into
15 the legs.

16 Q Okay. And those are Dallas grade
17 scales there?

18 A Mm-hmm.

19 Q Can you just point to the four and the
20 five?

21 A Sure. So, there's, here's the four and
22 here's the five.

23 Q Okay. And then this is my
24 understanding what this is is a dermatome chart.

25 A Dermatome, correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. And using the spine model --
2 A Mm-hmm.
3 Q -- can you sort of explain to us how if
4 our nerves at L4/L5 and L5/S1 are irritated how
5 we can end up somehow feeling that pain in our
6 legs?
7 A So, so, dermatomes, roughly, are areas
8 on the skin that correspond to a particular root.
9 For examples the dermatomes in the L4 nerve root
10 are right along here, where the dermatomes in the
11 S1 nerve group are in the back of the leg and the
12 calf.
13 Q Okay.
14 A Mm-hmm.
15 Q So, that that, how if we have a problem
16 in our lower back --
17 A Mm-hmm.
18 Q -- we can feel it into our leg?
19 A Correct.
20 Q I think we're probably done with the
21 spine model.
22 A Okay.
23 Q We might need it --
24 A I show you --
25 Q -- in a minute.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A -- I'll put this aside.
2 Q What does discogenic pain mean?
3 A Discogenic pain is a phenomena that
4 describes pain derived from discs, and what is
5 believed to happen is that the tear from the
6 disc, uh, can be painful and that releases these
7 inflammatory mediators from the nucleus, but you
8 can also get upgrades or increases in the number
9 of painful, of, of pain receptors in the, in the
10 disc as well.
11 Q Describe for me what you mean by that,
12 because I'm not quite sure I understand it.
13 A Okay.
14 Q So, I have an annular tear in my disc
15 --
16 A Mm-hmm.
17 Q -- then what happens?
18 A So, you have, you have nerve fibers
19 that go into the disc and convey sensations in
20 the disc. And, so, it's been shown then patients
21 who have, uh, discogenic pain there can be an
22 upgrade in these, these receptors.
23 Q They become more sensitive?
24 A They become more sensitized, and
25 there's also an upgraded number of them in the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 annulus of the disc.

2 Q So, you actually develop more?

3 A You can, you can (unclear - one word)
4 increase the back pain from this, from these
5 receptors increasing.

6 Q And what does myofacial pain mean?

7 A Myofacial pain is --

8 Q Oh, I didn't pronounce it right, thank
9 you.

10 A Of course. It's --

11 Q That's gonna' happen more than once, I
12 assure you.

13 A Myo (sic), Myofacial pain is basically
14 pain coming from the muscles or the tendons of,
15 of, uh, of the back.

16 Q We need the spine model again.

17 A Sure.

18 Q Just as sure as I had you put it down.

19 A Yeah, all right.

20 Q Can you describe for the ladies and
21 gentlemen of the jury where the sacrey (sic),
22 sacroiliac joint is?

23 A Sure. The, the sacroiliac joint is,
24 it's a (unclear - one word) spine, and the
25 sacroiliac joint is, this joint stays here that

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 exists between the hips out here and the spine
2 here, and the sacroiliac joint essentially serves
3 like the fulcrum, like a seesaw, where, where
4 your body bends back and forth, the upper spine
5 and the sacrum ride back on forth on the (unclear
6 - one word).

7 Q Okay. Um, I'm just gonna' ask you if
8 you agree or, or disagree with some of these
9 statements. Annular tissue that has been torn
10 and allows for liquid to escape has a poor
11 capacity of healing. Do you agree with that?

12 A If the tear is large enough, then yes.

13 Q Scar tissue may heal, but the leaks
14 leave the disc highly susceptible to re-tearing,
15 do you agree with that?

16 A Yes.

17 Q Herniated discs have the capacity to
18 resolve with time, but annular tears continue to
19 produce symptoms indefinitely, do you agree with
20 that?

21 A In large tears that, that is the case,
22 yes.

23 Q And the largest tears are the fives and
24 the fours?

25 A That's correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Annular tears are usually produced by
2 an injury or trauma?

3 A Most likely, yes.

4 Q The leg pain from an annular tear can
5 be down one leg or both?

6 A Correct.

7 Q Okay. Before coming to see you, and I
8 think you mentioned this earlier, Ms. Exline-
9 Hassler had a procedure called a sacroiliac
10 joint, am I pronouncing that right?

11 A Yes.

12 Q Sacroiliac Joint. And, I'm just going
13 to direct your attention to the screen here and
14 I, I know asked you to describe your own spine
15 model but can you also --

16 A Sure.

17 Q -- continue to describe just the
18 anatomy for us for a second --

19 A Sure.

20 Q -- on the, on the screen.

21 A So, for reference, the, the, uh, the
22 hips are out over here, okay? And here's the
23 spine here. And this is the sacrum, this is the
24 iliac crest of the hip and sacroiliac joint right
25 in there, right there.

1 Q Okay. And I'm just gonna' play this
2 video and ask if you can describe what a
3 sacroiliac joint injection is.

4 A So, there's a (unclear - one word)
5 anesthetic to numb the skin and from there you
6 place a needle, uh, within the joint space, under
7 x-ray guidance, and you put some contrast dye
8 into the joint space and ensure you get a
9 (unclear - two words), and from there you can
10 inject a combination of local anesthetic and
11 steroid into the joint space.

12 Q And this is one of the procedures that
13 Ms. Exline-Hassler had before coming to see you?

14 A Yes.

15 Q And you've done epidural steroid
16 injections before, right?

17 A Correct.

18 Q Can you describe to the ladies and
19 gentlemen of the jury what's done in an epidural
20 steroid injection procedure?

21 A Sure, uh, is there a diagram you want
22 me to use or just use the model?

23 Q Mm-mm, probably the model.

24 A Okay.

25 Q So, keep, we should probably just leave

1 it out there (chuckles.)

2 A Okay (chuckles), sure. So, what we
3 have here is, is when we do a (sic) epidural
4 injection typically what we'll do is we'll to a
5 smaller transforaminal approach.

6 In other words, we numb the skin over
7 here, and we take a very fine needle, and we got
8 through here to foramen. And, again, under your
9 x-ray guidance we can then ensure the contrast
10 dye (unclear - one word) the appropriate spread.
11 And from there we can inject a combination of
12 steroid and Novocain along the disc or the
13 membrane.

14 Q Have you done medial branch nerve
15 injections before?

16 A Yes.

17 Q Okay. Oh, I'm sorry, before I get
18 there, epidural injection, is that something Ms.
19 Exline-Hassler had -

20 A Correct.

21 Q -- following this crash, correct?

22 A Correct.

23 Q Okay. And then using the Plaintiff's
24 Exhibit 23, I believe (i), can you describe what
25 a medial branch nerve injection is?

1 A Sure. So, right here is the facet
2 joint, and as you can see the nerves that serve
3 this facet joint come from below and above the
4 joint. And so what we do is we inject Novocain
5 along these nerves to essentially numb them up.
6 It's like putting Novocain in a bad tooth. So,
7 you know, in a dentist's office you can, when
8 your tooth is numb with Novocain you know where
9 the, you know which tooth is causing pain.
10 Likewise, with injecting the nerve along the
11 facet joint if the pain goes awry you can isolate
12 the pain to that specific joint.

13 Q And this is one of the procedures that
14 you actually performed with Ms. Exline-Hassler,
15 is that right?

16 A Correct.

17 Q And ablation procedures, can you
18 describe to the ladies and gentlemen of the jury
19 what an ablation procedure is? And I do have a
20 video.

21 A So -- that's fine.

22 Q Okay. Is it easier that way?

23 A Well, let's see what the video looks
24 like. So, what -- so, if you can go back to the
25 previous slide I think that's more helpful.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q I'm not sure I'm qualified to do that,
2 but I'm gonna' try. Um . . .

3 A But essentially --

4 Q Oh, there we go, I did do it, okay.

5 A -- what, what that, that was showing --

6 Q Mm-hmm.

7 A -- was that once you demonstrate the
8 pains coming from that facet you can then come
9 back at a later time and put a needle along that
10 nerve and heat that nerve up, and that, that's
11 called rhizotomy. And so I'm doing that heating,
12 uh, the majority of patients that we do this they
13 can gain anywhere from six months to up to 12
14 months of significant relief of their pain.

15 Q Okay. So, I'm going to go back to --

16 A Mm-hmm.

17 Q -- the heatin'.

18 A Mm-hmm.

19 Q So, you confirm first and then go in
20 and heat?

21 A Correct.

22 Q Okay.

23 A So, that's the tip of the needle up
24 there and it's heating up the nerve right here.

25 Q And how does heating up the nerve help

1 resolve or help with pain?

2 A So, by heating the nerve what you're
3 doing is you're essentially, you're disturbing
4 the coating of the nerve. It's like disturbing
5 the insulation on copper cable, 'cause that, that
6 wire can't carry a signal anymore, and that's
7 what you're doing here (unclear - one word) that
8 nerve.

9 Q Okay. What is a discogram or
10 discography procedure, and why do you perform
11 them?

12 A So, if there's a question of where pain
13 could be coming from the back we do what's called
14 Discography, what we're doing is we're putting,
15 uh, needle into the disc itself and we're
16 putting contrast dye in the disc. And by putting
17 contrast dye in the disc you're trying to answer
18 two questions. One, is the disc causing the
19 patient's pain. And, two, if it is is there a
20 tear in that disc and how big is that tear. And
21 that, that's essentially the essence of
22 discography.

23 Q And did you perform one of these
24 procedures on Ms. Exline-Hassler?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q I think it's in your binder before you
2 at --

3 A Okay.

4 Q -- page 272.

5 A Okay. Okay.

6 Q And are these procedures painful?

7 A Yes.

8 Q Why is that?

9 A In essence you're trying to, uh, you
10 are trying to reproduce the patient's pain.

11 Q And how do you do that while they're un
12 (sic), like are they under, are they awake, do
13 you have to ask them (unclear - one word)?

14 A We, we give them slight sedation, but
15 we need them to be awake and participatory in
16 doing the test, and, uh, and while we inject the,
17 while we inject the contrast solution, excuse me,
18 we'll ask them what are you feeling, is this the
19 same thing when you're at home, same intensity.

20 Q And what were the results of her exam
21 or her test?

22 A Her test, uh, demonstrated pain at both
23 the L4/5 and the L5/S1 disc, and at the L4/5 disc
24 there was a grade five tear, which is a tear that
25 penetrates beyond the outer layer of the test.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 And the L5/S1 there was a, a grade four tear.

2 Q After you did this procedure --

3 A Mm-hmm.

4 Q -- confirming that the tears are the
5 two, you know, worse tears you can you get --

6 A Mm-hmm.

7 Q -- what did you recommend to her for
8 her pain?

9 A At that point in time the discussion
10 then goes toward either surgery or trying to, uh,
11 seal those, uh, tears up in the disc.

12 Q And did you refer her out to a
13 neurosurgeon for a consultation regarding
14 surgery?

15 A Prior to the discography I, I believe I
16 did.

17 Q And do you remember that doctor's name?

18 A Uh, she has seen both Neal Naff and Jay
19 Conn (phonetic).

20 Q What procedure did you perform next on
21 her, after the discogram, what was the next thing
22 you (unclear - one word)?

23 A What, what I did was a decompression of
24 the, uh, of the, uh, uh, L5/S1 disc.

25 Q Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A And --
2 Q All right -- if you could maybe --
3 A Sure.
4 Q -- describe for us what we're looking
5 at --
6 A Sure.
7 Q -- here hopefully? And this is just
8 for reference, that's not the L4 or L5 disc --
9 A No, no --
10 Q -- (unclear - two words)?
11 A -- no, it just gives you the basic
12 mechanics of what we do.
13 Q Okay. And what, what's happening now?
14 A So, what, what we do in this case is we
15 place a needle into the disc and we essentially
16 put a rooter-router device into the disc, and in
17 doing that we remove a volume from that disc.
18 Q So, you take part of it out?
19 A That's correct.
20 Q Okay.
21 A And in doing that we put a negative
22 pressure, and if you create a negative pressure
23 the disc will shrink, and so in the case like for
24 an L5/S1 disc, the disc was bulging out into the
25 epidural space and, and touching on this nerve

1 route here. And so by creating this negative
2 pressure that protrusion comes off a nerve root
3 and hopefully addresses a leg pain issue.

4 Q What was the next procedure that you
5 did after the disc decompression?

6 A So, once the disc is decompressed at
7 L5/S1 you still have tears to deal with.

8 Q Okay, I think have one more picture in
9 here I want to show -- okay, can you describe for
10 the ladies and gentlemen of the jury what this
11 is?

12 A That was a decompression I believe.

13 Q Okay. Is this actually Jacqueline
14 Exline-Hassler's --

15 A Yes.

16 Q -- decompression?

17 A Yes.

18 Q And can you show us, I know we've been
19 looking at the spine a lot, can you show us where
20 then the rooter router went in and where that L4
21 or L5 disc was?

22 A No, this, this part is side that be,
23 this is part of the sides from the, the, uh, the,
24 uh, disc discTRODE

25 Q Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A But this was the L5/S1 disc here, and
2 here's the L4/5 disc here.

3 Q Okay. So, this is the next procedure
4 they're --

5 A Correct.

6 Q -- talking about?

7 A Correct.

8 Q This is the discTRODE?

9 A Correct.

10 Q Okay. And why don't we get to that.

11 And if you can explain to the jury what the
12 discTRODE procedure that we're looking at here.

13 A So, as you can see again you place the
14 needle into the disc itself and wrap coil around
15 this, and the coil's a heated coil, and what
16 we're attempting to do is we're attempting to not
17 only seal that tear there, we're also attempting
18 to ablate and heat up the, um, the pain fibers in
19 the back part of this disc as well.

20 Q What's the recovery length for a
21 patient after having both of these procedures?

22 A We, we'll have the patient wear a back
23 brace for six to eight weeks, and, uh, at that
24 point of time they can't sit for a long period of
25 time, they can't drive a car. If they have a job

1 that requires that they work or do lifting they
2 can't return to that, their job. And from there
3 we gradually re-introduce them back into physical
4 therapy and a core strengthening program.

5 Q Okay. Following these two procedures
6 that you performed on her did she get better?

7 A Yes.

8 Q Was she completely pain free following
9 these procedures?

10 A No.

11 Q After these procedures what, uh, are
12 you doing to manage her pain at this point?

13 A What would you do, in general, what we
14 do in particular for her --

15 Q What are you doing with her, I'm sorry.

16 A With her in particular?

17 Q Yes.

18 A Uh, well despite the fact that she did
19 feel her pain had improved along the lumbar spine
20 as well as her legs, she was still having pain in
21 her back. At that point in time she obtained, I
22 believe, second consult with the surgeon, and
23 right now we are treating her medically. Uh,
24 medically meaning pain medicines. Uh, we are
25 using, uh, narcotics, we're using anti-

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 inflammatories to treat her.

2 MALE VOICE: Excuse me on second. Do you
3 mind (unclear - two words) the model (unclear -
4 one word)?

5 THE WITNESS: Oh, sure, okay.

6 BY MS. ZOIS:

7 Q And, Doctor, we discussed this a little
8 bit before --

9 A Mm-hmm.

10 Q -- but your, you know the standards of
11 care in regards to pain medications, is that
12 right?

13 A Yes.

14 Q And there's varying degrees of pain
15 medications, is that correct?

16 A Yes.

17 Q I'm gonna' show you what has been
18 marked as Plaintiff's Exhibit Number 26 and ask
19 you if you would agree that that is the DEA
20 schedule of controlled substances?

21 A Yes.

22 Q Um, and on there there's listed two
23 things called Tramadol and Skelaxin.

24 A Correct.

25 Q Are they narcotics?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, no.

2 Q Are they on the scheduled list for DEA?

3 A They're not.

4 Q Doctor, I'm gonna' show you what's been

5 marked as Plaintiff's Exhibit Number 20(a).

6 A Mm-hmm.

7 Q And ask you to review that for a second

8 and just confirm for us that those are the

9 medications that your office has prescribed to

10 Ms. Exline-Hassler during the course of your

11 treatment with her.

12 A Yes.

13 Q What's the strongest thing on that

14 list?

15 A Strongest thing would likely be, uh,

16 either the morphine or the hydrocodone.

17 Q And what's the weakest thing on that

18 list?

19 A Uh, weakest, uh, would probably be the

20 ibuprofen or, uh, the tramadol.

21 Q What, if any, policies or procedures

22 does your office have in place to make sure that

23 people aren't abusing medication?

24 A So, if we have a patient on, on

25 controlled substances, uh, we have a program

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 where we will do urine screens, uh, to ensure
2 they're not taking, uh, uh, illicit substances to
3 ensure they are indeed taking the subs, the
4 medication we prescribe them. Uh, we also have
5 them come in on a monthly basis and make sure
6 that we account for any side effects that
7 (unclear - two words) and if the medications are
8 effective.

9 Q And what are, what's an opiate
10 agreement?

11 A An opiate agreement is an agreement
12 between the physician and the patient stating
13 that they will abide by our policies. Uh, what
14 the means is that they won't receive medications
15 from other physicians, they won't sell their
16 medications, uh, they won't forge prescriptions,
17 that sort of things.

18 Q Um, you just mentioned any one of the
19 red flags. Are there other red flags that you're
20 trained to recognize that might be more subtle
21 other than just the selling prescriptions or
22 forging prescriptions? Are there other ways that
23 you can tell --

24 A Sure.

25 Q -- if someone's coming in, just coming

1 in for medication?

2 A Well, we, a lot of, a lot of what we do
3 is basic trust in patient. However, uh, red
4 flags that would need to be accounted for are
5 patients who have emotional duress, for example,
6 anxiety depression, bi-polar disorder, uh, by
7 using multiple physicians to obtain their
8 medications. Uh, uh, had we identified a true
9 pain generator in these patients to explain why
10 we're prescribing narcotics in the first place?

11 Q When you do a physical exam on someone
12 is there ways that you can tell if someone's
13 exaggerating a complaint, or just by your
14 observations of people are there things that you
15 can see or do you pay attention to that you're
16 kinda' trained to look for?

17 A Part, part of it is just the basic
18 feeling you have when it's (unclear - one word).
19 Part of it using what are called Waddell signs to
20 help you identify, uh, when the patient is
21 exaggerating some things. In other words, if
22 there are inconsistent findings. If there's a
23 lot of anxiety during the exam. Uh, if there are
24 inconsistencies in how you examine the patient.
25 If they're easily distracted and they'll feel

1 pain maneuvering the leg, but they have pain also
2 when you're moving your leg and not distracted.
3 These are keys that let you know that there's,
4 there might be something other than besides just
5 presentation.

6 Q How's your BS meter on those things?

7 A (Unclear - three words) it's pretty
8 good.

9 Q Had, how do you describe Ms. Exline-
10 Hassler as a patient?

11 A Uh, she's been fine. I've had no
12 problems with her in terms of (unclear - one
13 word) medications. Uh, she shows up on time.
14 She may miss an appointment here or there, but
15 she's not one of these people that doesn't show,
16 not show up for an appointment. Uh, and I feel
17 she's (unclear - one word) very, she's really
18 been straightforward with me.

19 Q Has she ever raised any red flags with
20 you at all?

21 A No.

22 Q Has she ever failed a toxicology test?

23 A Not that I know of, no.

24 Q Okay. Doctor, I apologize for using
25 the legal gobble-de-goop, but I have to ask

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 you these questions, but --

2 A (Unclear - two words.)

3 Q -- I'm required to say it in this way.

4 A Sure.

5 Q Do you have an opinion within a
6 reasonable degree of medical probability as to
7 whether or not Mrs. Hassler injured her lower
8 back in the June 26, 2000(sic)-and, 2009 car
9 crash?

10 A Yes.

11 Q And what is that opinion?

12 A It is my opinion that, uh, the patient
13 did not have pain prior to the car wreck, but had
14 pain after the car wreck. If you look at the
15 MRI's there are annular tears, uh, at the L4/5
16 and the L5/S1 disc. Uh, we attempted to treat
17 them as conservatively, uh, we've gotten some
18 relief for her, but she still continues to have
19 pain in her back. Uh, and it is my opinion that
20 the accident served to cause these tears in her
21 discs to cause her pain.

22 Q So, just so we're clear --

23 A Mm-hmm.

24 Q -- do you have an opinion, within a
25 reasonable degree of medical probability, as to

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 whether or not the annular tears she developed at
2 L4/L5 --

3 A Mm-hmm.

4 Q -- and L5/S1 were caused in the car
5 crash of June 26, 2009?

6 A It's my opinion that they are the
7 result of the car crash.

8 Q Do you have an opinion, within a
9 reasonable degree of medical probability, as to
10 whether or not your care and treatment of her
11 lower back, including the injections and the
12 prescription medication we've discussed, were
13 fair, reasonable, necessary and related, causally
14 related to the car crash of June 26, 2009?

15 A Yes.

16 Q Doctor, I'm going to show you what's
17 been marked as Plaintiff's Exhibit Number 20 --

18 A Mm-hmm.

19 Q -- and ask you to take a look at that
20 for a second.

21 A Sure.

22 Q And, Doctor, that's basically a one
23 year snapshot of October 2011 through October
24 2012.

25 A Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Um, is this the medications that your
2 office has been prescribing within the last year?

3 A Yes.

4 Q Do you have an opinion within a
5 reasonable degree of medical probability as to
6 whether or not she will continue to meen (sic),
7 need pain medication at this rate into the
8 indefinite future for her lower back pain as a
9 result of the June 26, 2009 car crash?

10 A She'll likely need continued pain
11 medication for the remainder of her days.. Uh,
12 the concern I have is if she develops tolerance
13 to these narcotic medications, which she likely
14 will, we'll have to further adjust them and
15 either use, uh, higher doses of narcotic pain
16 medications or use pain medications that might be
17 more expensive than what we're typically, than
18 what we're currently looking at right now.

19 Q And how often will she need to come in
20 to have those pain medications prescribed to her?

21 A Monthly.

22 MS. ZOIS: I would offer into evidence then
23 as 20 and 20(a) at this time.

24 MS. HOWARD: No objection.

25 MR. GILLCRIST: No objection.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 BY MS. ZOIS:

2 Q Doctor, have all the opinions that
3 you've given here today been, would have been
4 within a reasonable degree of medical
5 probability?

6 A Yes.

7 MS. ZOIS: Off the record for a second.

8 VIDEO TECHNICIAN: (Unclear - one word)
9 going off the record, time is 4:59, p.m.

10 (Whereupon, from 4:59 o'clock, p.m. until
11 5:01 o'clock, p.m., off the record.)

12 VIDEO TECHNICIAN: We're back on the record.
13 The time is 5:01, p.m.

14 MS. HOWARD:

15 CROSS EXAMINATION

16 BY MS. HOWARD:

17 Q Dr. Sloan, uh, my name's Anne Howard,
18 we've met before, correct?

19 A Yes we have.

20 Q All right. Now, I just wanted to ask
21 you a couple questions about your treatment of
22 Ms. Exline-Hassler, all right?

23 A Mm-hmm.

24 Q Now, (unclear - two words) before, feel
25 free to look at the records in front of you or

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 your actual chart there. You first saw Ms.
2 Exline-Hassler on May 24th, 2010 or thereabouts
3 anyway, right?

4 A That's correct.

5 Q And in conjunction with your first
6 meeting with Ms. Exline-Hassler, um, did you take
7 a medical history from her?

8 A Yes.

9 Q All right. And what, if any,
10 information, um, did you record on your report
11 regarding past medical history?

12 A Let me, uh -- can you give me back that
13 page? There we go.

14 Q 255, I believe. 255.

15 A (Unclear.) The previous medical
16 history is related specifically to her, to her
17 back, um, that includes the annular tears, facet
18 arthropathy, myofacial back pain, pain in both
19 her legs.

20 Q With respect to past medical history --

21 A Mm-hmm.

22 Q -- isn't it correct, Doctor, that you
23 recorded on your report (unclear - one word)
24 contributory, past medical history?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And is it correct, Doctor, that Ms.
2 Exline-Hassler, uh, in your first meeting with
3 her you asked her questions about how was your
4 low back before the accident?

5 A Correct.

6 Q Have you had any problems with your low
7 back before the accident?

8 A Correct.

9 Q Did you ask her questions along those
10 lines?

11 A Correct.

12 Q And you were trained in medical school
13 over the past eight years to take a proper -

14 A Mm-hmm.

15 Q -- medical history from patients,
16 correct?

17 A Correct.

18 Q And isn't it correct that Ms. Exline-
19 Hassler told you that she had no prior problems
20 with her low back at any time before the
21 accident?

22 A According to my notes she said the car
23 wreck had caused her lower back pain.

24 Q All right. But with specific reference
25 --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Mm-hmm --
2 Q -- to whether she had ever had any --
3 A -- (unclear - three words.)
4 Q -- (unclear - one word) back pain
5 before the (unclear - one word) the accident --
6 A Mm-hmm.
7 Q -- isn't correct, isn't it correct that
8 your --
9 A Mm-hmm.
10 Q -- that your typed record indicates, or
11 provides no information regarding any prior
12 problems?
13 A That's correct.
14 Q Okay. And is it also correct that
15 that's what Ms. Exline-Hassler told you?
16 A I don't recollect, but it's not in my
17 note.
18 Q All right. And if she had told you
19 would it be your standard practice --
20 A Mm-hmm.
21 Q -- to keep it in your note?
22 A Correct.
23 Q And is that how you're trained in
24 medical school?
25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q To (unclear - one word) -- all right,
2 and again, you told us before you'd been
3 practicing for eight years --

4 A Yes.

5 Q -- and you know to record medical, or a
6 medical history under a past medical history.

7 A Correct.

8 Q If somebody tells you something about
9 their, the bottom, the very bottom you're
10 treating them for currently if they told you that
11 they had had a prior problem with it you would
12 record that in the medical history?

13 A That's correct.

14 Q Okay.

15 A Mm-hmm.

16 Q Now, with respect to, um, the actual,
17 um, examination of Ms. Exline-Hassler on that day
18 you actually took an examination from her.

19 A That's correct.

20 Q And you also asked her questions about
21 what type of treatment had you been getting since
22 this accident --

23 A Correct.

24 Q Correct? All right. And did she tell
25 you that she had been seeing, um, the prior pain

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 manager, somebody in the same field as you?

2 A Yes.

3 Q With, I think you noted, equivocal

4 benefit?

5 A Yes.

6 Q Meaning mixed or even?

7 A Plus/minus.

8 Q All right. Uh, uncertain results?

9 A Correct.

10 Q All right. And then she also told you

11 that she'd been having some physical therapy

12 correct?

13 A Uh --

14 Q Before she saw you?

15 A One moment, please.

16 Q Sure, take your time.

17 A Yes, physical therapy.

18 Q Also with equivocal benefit?

19 A Correct.

20 Q All right. Now, did she also tell you

21 that she had been given a test, or purchased, uh

22 . . . let's put it this way, was using it, had,

23 and in the past, since the accident, but before

24 seeing you, had been using a tens unit?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And she told you that that was having
2 no benefit?

3 A Correct.

4 Q And, uh, did she also tell you that
5 she, uh, had received chiropractic care prior to
6 seeing you?

7 A Yes.

8 Q And that that had provided no benefit?

9 A Yes.

10 Q And were you aware, Doctor, that while
11 during the, uh, time that you were seeing Ms.
12 Exline-Hassler, so that would mean after May 24th,
13 2010, um, but prior to today, she continued to
14 see a chiropractor at Ballenger Creek, were you
15 aware of that?

16 A After reviewing the notes, yes.

17 Q All right. So, that this is
18 chiropractic care that even when she told you in
19 May 2010 she was getting no benefit from for some
20 reason she continued to see, receive some
21 chiropractic care?

22 A Yes.

23 Q But you were unaware of that until
24 reading those notes recently, would that be fair
25 to say?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And you began to read the notes, uh,
3 from Ballenger Chiropractor about when, sir?

4 A Uh, at the time of this deposition.

5 Q Which was last Wednesday, so what is
6 that, about a week ago?

7 A Yes.

8 Q Now, in fairness, uh, when you first --
9 or at or near the time you began to see Ms.

10 Exline-Hassler as a patient, so I'm talking about
11 summer of 2010, you did have the benefit of some
12 medical records, including the MRI at that point,
13 correct?

14 A Uh, at the time that I saw her I have
15 the MRI --

16 Q Mm-hmm.

17 A -- and I had then gotten, uh, to review
18 the medical records from Parkway.

19 Q And that's where the, um, Dr. Wall
20 (sic), is it Wallen (phonetic), pr (sic), the
21 other pain management doctor?

22 A Correct.

23 Q Um, and then at some time well down the
24 road that's when you got additional medical
25 records, correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Well down the road?
2 Q Meaning like recently.
3 A Yes.
4 Q Last week?
5 A Yes.
6 Q Okay. Um, but in addition to getting
7 records last week, um, in May of 2012, so a good
8 six months ago, you did have a meeting with Ms.
9 Exline-Hassler's, um, attorneys, correct?
10 A Yes.
11 Q All right. And then in about, is it in
12 November or December of this year you also had a
13 second meeting with Ms. Exline-Hassler's
14 attorneys, correct?
15 A Correct.
16 Q All right. Um, now, um, is is correct
17 that before yes (sic), before last week's
18 deposition, February, uh, I'm sorry, January 9th,
19 2013, you had never seen personally a medical
20 record of Ms. Exline-Hassler's that pre-dates the
21 accident day of June 26, 2009, is that correct?
22 A That's correct.
23 Q All right. So, that would mean that
24 Ms. Exline-Hassler never br (sic), brought you
25 any of her prior records until last week? Or, or

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 she never brought you and of her prior records,
2 correct?

3 A With the exception of Parkway, that's
4 correct.

5 Q But the Parkway records were after the
6 accident, but before seeing you, correct?

7 A That's correct.

8 Q Ms. Exline-Hassler, to this day, has
9 never actually brought you any of her medical
10 records that were written or prepared before the
11 date of her car accident, correct?

12 A That's correct.

13 Q And would it also be fair to say, at
14 least to the best of your recollection, in your
15 first meeting with Ms. Exline-Hassler's
16 attorneys, they did not sort of direct your
17 attention -- I don't mean that in a bad way or a
18 good way, I mean very neutrally --

19 A Mm-hmm.

20 Q -- ask you to please be sure to review
21 some records that pre-date the crash, would that
22 be fair? Is that correct --

23 A (Unclear - one word) --

24 Q -- (unclear - two words) --

25 A -- yeah.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. At least as far as you remember

2 --

3 A Mm-hmm.

4 Q I'm just asking your recollection.

5 A Sure.

6 Q When you had the first meeting with Ms.
7 Exline-Hassler's attorneys, is it correct --

8 A Mm-hmm.

9 Q -- that you, they had no specific
10 conversations with you, like one thing we want
11 you to know about, doctor --

12 A Mm-hmm.

13 Q -- is there are some medical records,
14 uh, that pre-date the accident we'd like you to
15 take a look at.

16 A I can't recall specifically (unclear -
17 one word).

18 Q All right. And then same thing, uh, in
19 November or December when you met with the
20 lawyers the second time --

21 A Mm-hmm.

22 Q -- isn't it correct that it's your, you
23 have no specific recollection of them sort of
24 calling your attention to, again in a very
25 neutral way --

1 A Mm-hmm.

2 Q -- Doctor, there are some records that
3 are, that were prepared before the car accident
4 and we'd like to make sure you take a look at
5 them.

6 A I can't recall, uh, but I do know as,
7 as the date was approaching for this deposition
8 that those records were brought to my attention.

9 Q So, then, um, two days before your
10 deposition on Jan (sic), January 9th, last
11 Wednesday --

12 A Mm-hmm.

13 Q -- on May (sic) of last, Monday of last
14 week --

15 A (Chuckles.)

16 Q -- I don't even know where that came
17 from, but, but M and ends with a Y also, so --
18 um, so about Monday of last week you were given
19 two disks full of medical records and other
20 information relevant to Ms. Exline-Hassler,
21 correct?

22 A Correct.

23 Q And, uh, as you told us at your
24 deposition last Wednesday you tried your best to
25 review as many of those records as you could --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.
2 Q -- but you have a little baby, and, you
3 know --
4 A Right.
5 Q -- when you get home you have other
6 obligations as well --
7 A Correct.
8 Q -- correct?
9 A Yes.
10 Q And, so, when you gave your deposition
11 last week, uh, as of the time of your deposition
12 --
13 A Mm-hmm.
14 Q -- you had not had an opportunity to
15 review any records that pre-date the accident,
16 correct?
17 A Not any, I reviewed some, but not all.
18 It was --
19 Q The records that --
20 A -- not completed.
21 Q -- pre-date the motor vehicle accident?
22 A Correct.
23 Q Okay. And isn't it correct at the time
24 of your deposition you were specifically asked
25 the question had you reviewed any records that

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 pre-date --

2 A Mm-hmm.

3 Q -- the, uh, accident? While you hadn't
4 had them provided to you --

5 A Mm-hmm.

6 Q -- you hadn't got a chance to get to
7 those yet, page 77?

8 A Correct.

9 MS. ZOIS: Objection.

10 THE WITNESS: Oh.

11 BY MS. HOWARD:

12 Q Is that correct?

13 MS. ZOIS: It misstates the testimony.

14 THE WITNESS: Okay.

15 MS. ZOIS: But you can answer.

16 BY MS. HOWARD:

17 Q Go ahead.

18 A Uh, I, I, I can recall that.

19 Q Okay.

20 A It, it -- (unclear - three words).

21 Q Okay. Um, have you reviewed your
22 deposition reviewed your deposition recently?

23 A No.

24 Q Okay. I remember after the deposition
25 you had asked to see a copy of it. Have you had

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 an opportunity to see --

2 A No.

3 Q -- a copy of it?

4 A No.

5 Q All right. Um, and I'm referring to
6 page 76, um, the question was, "And, to your
7 knowledge, as you . . ." --

8 A Mm-hmm.

9 Q -- ". . . sit here today, you haven't
10 seen any records that are prior to the car
11 accident of June 26th, 2009?" And your answer
12 was, "Well, I'm starting to see those now . . ."

13 --

14 A Mm-hmm.

15 Q -- ". . . that I'm going back to in
16 these disks . . ." --

17 A Okay.

18 Q -- ". . . that all of you provided me."

19 A Okay.

20 MS. ZOIS: Thank you --

21 BY MS. HOWARD:

22 Q Um, and --

23 A Okay.

24 MS. ZOIS: -- for clarifying that.

25 THE WITNESS: Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 BY MS. HOWARD:

2 Q Yeah. So, had you seen the records
3 before?

4 MS. ZOIS: Objection, asked and answered.

5 MS. HOWARD: Thank you, Counsel.

6 THE WITNESS: So, so again, I can't recall
7 my seeing -- I'm sure I have seen records after
8 the patient's car accident.

9 BY MS. HOWARD:

10 Q Mm-hmm.

11 A If I had reviewed her medical records
12 regarding prior to the accident I did not do a
13 complete review of them --

14 Q Mm-hmm.

15 A -- but I might have seen some of them.

16 Q Okay. And you did tell us you had two,
17 you had been given two discs.

18 A Correct.

19 Q So you knew there was more things on
20 there that you hadn't had a chance to see yet,
21 correct?

22 A That's correct.

23 Q And you, your recollection, I don't
24 know if you, if you would recall this, but you
25 had started, you had started with Disk 2.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Okay.
2 Q Is that, (unclear - two words)?
3 A Uh, again, I --
4 Q Do you recall re, reviewing one disk,
5 but not the other?
6 A Correct.
7 Q And do you recall telling us, it was
8 just before, that what you hadn't had a chance to
9 see were the reports from Dr. London and Dr.
10 McGrail?
11 A Yes.
12 Q And some of the other records after the
13 accident?
14 A Yes.
15 Q But you weren't certain that you had,
16 what you had seen that pre-dates?
17 A Yes.
18 Q All right. And is it fair to sit here
19 today --
20 A Mm-hmm.
21 Q -- that after that deposition you did
22 have a chance to review --
23 A Yes.
24 Q -- all of the records that had been
25 provided to you that pre-date the car accident?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes, ma'am.

2 Q So, you definitely read more records
3 relevant to pre-accident treatment after your
4 deposition, would that be fair to say?

5 A That's correct.

6 Q All right. Now, I would like to --

7 A Mm-hmm.

8 Q -- if you don't mind --

9 A Mm-hmm.

10 Q -- take you back to your first meeting
11 with Ms. Exline-Hassler.

12 A Okay.

13 Q Okay. Now, is, you told us how you
14 took the medical history from her, is it also
15 correct that you took a social history?

16 A Yes.

17 Q All right. And in the social history,
18 um, on your report, Doctor, there's sort of like,
19 at least what I'm looking at, typed categories
20 example would be *occupation* is italics, and then
21 it's kind of regular type describes, um, Ms.
22 Exline-Hassler's, of course, (unclear - three
23 words), she's employed full time in a managerial
24 position.

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q So, would it be, am I correct when I
2 say that occupation is more or less the question
3 you ask --

4 A Mm-hmm.

5 Q -- and she's employed full time in a
6 managerial position, that's the answer?

7 A Correct.

8 Q All right. And then it continues on
9 education level, and presses along those lines,
10 correct?

11 A Yes.

12 Q And is it also correct that the third
13 question that's listed here on your, uh, in
14 italics on the printed form here is *claims*
15 *pending*?

16 A Yes

17 Q And is it correct that Ms. Exline-
18 Hassler informed your office that she's under
19 pers (sic), is under personal injury?

20 A Yes.

21 Q And you took that to mean she has a
22 pending personal injury claim, which you began to
23 treat at your office?

24 A That's correct.

25 Q All right. And, so, I take it then

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 asking a question about whether you have a claim

2 --

3 A Mm-hmm.

4 Q -- pending is, um, an important part of
5 the social history, at least The Spine Center
6 likes to report a social history?

7 A Yes.

8 Q And is that something you learned about
9 in medical school as well?

10 A Yes.

11 Q All right. Is it something that you,
12 uh, um, in your eight years of practice, even
13 before you came to The Spine Center, you knew it
14 was an important question to ask a patient as to
15 whether they have any claims pending?

16 A Yes.

17 Q And isn't that correct, Doctor, that
18 has to do with, um, concerns that practitioners
19 have about what's called secondary gain?

20 A Yes.

21 Q All right. And, um, so, could you
22 describe for us what is secondary gain?

23 A Secondary gain, uh, means, uh, the
24 patient has an agenda other than their medical
25 issues.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. And with specific reference
2 to a claim --

3 A Mm-hmm.

4 Q -- as a secondary gain would mean that
5 there may be reasons why a patient would, um,
6 report pain, um, other than to get actual relief
7 of a pain?

8 A Correct.

9 Q All right. Um, and, uh, you also took
10 a physical examination of Ms. Exline-Hassler, I
11 think I already asked you that and you told me
12 that's correct.

13 A Yes.

14 Q All right. And when you examined Ms.
15 Exline's (sic)-Hassler on that first visit it is
16 correct that, um, her range of motion was within
17 normal limits? This would be to the lower back?

18 A (Unclear - three words.)

19 Q And I guess while I'm on that (unclear
20 - one word) tangent, that was the only body part
21 you were examining on this first visit with Ms.
22 Exline-Hassler, correct, her low back?

23 A That's incorrect.

24 Q Oh, I'm sorry, what else did you
25 (unclear - one word)?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Um, uh, the legs, lower (unclear - two
2 words).

3 Q Okay. So, but there was no mid-back or
4 neck complaints lodged to you at that time,
5 correct?

6 A At that time, no.

7 Q And no carpal tunnel type symptoms
8 lodged to you at that, at that time, correct?

9 A Uh, no.

10 Q Okay. So, you examined the low back
11 and the legs, correct?

12 A Yes, ma'am.

13 Q On the first visit.

14 A Mm-hmm.

15 Q And you checked her through her range
16 of motion. Um, could you just briefly tell us
17 how do you check that?

18 A We have the patient lie forward.

19 Q Mm-hmm.

20 A We have the patient lie backwards.

21 Q Mm-hmm.

22 A We have the patient lie on one side and
23 the other.

24 Q Okay. And, again, that was within
25 normal limits, and even at the ends of motion

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 there was no pain, would that be true?

2 A Correct.

3 Q All right. Now, um, you also, um, I
4 guess would it be correct, that you palpated her,
5 um, on both sides at the L5/S1 area of her back?

6 A Yes.

7 Q And would it be fair to say that it was
8 equivocal again on certain complaints of pain by
9 her?

10 A Yes.

11 Q Would you agree that that's a
12 relatively mild finding? Equivocal (unclear -
13 one word) --

14 A Relatively mild, yes.

15 Q Okay. Um, and then you checked the
16 paraspinous muscles and found a degree of spasm
17 with no trigger point, correct?

18 A Yes.

19 Q All right. And then you checked the
20 midline, so would that be the middle of her
21 spine?

22 A Yes.

23 Q And you touch on it, or palpate, I
24 guess, is the medical term?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And again --
2 A (Unclear - one word.) (Chuckles.)
3 Q (Chuckles.) And I guess she also said
4 she reported no pain, correct?
5 A Yes, ma'am.
6 Q Uh, and then the paraspinous muscular
7 on the thoracic spine also demonstrates spasm.
8 A Yes.
9 Q So, that is a find, uh, an adverse
10 finding or something?
11 A Correct.
12 Q And not --
13 MS. ZOIS: Objection to form.
14 BY MS. HOWARD:
15 Q Um, and then you checked her lower
16 extremities, correct?
17 A Yes.
18 Q All right. And her strength was normal
19 on both sides, correct?
20 A Mm-hmm, yes.
21 Q And, uh, tactile sensation was also
22 normal, correct?
23 A Yes.
24 Q Could you tell us how you checked that?
25 A You, uh, can take a paper clip or a pen

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 wheel --

2 Q Mm-hmm.

3 A -- and you run it down the various
4 dermatomes or the various areas of the legs that
5 correspond to the typical nerve root.

6 Q And that was all normal?

7 A Yes.

8 Q All right. And then also you check her
9 reflexes?

10 A Yes.

11 Q Which, uh, is it true that you actually
12 use one of those little hammers?

13 A Yes.

14 MS. ZOIS: Objection.

15 BY MS. HOWARD:

16 Q And, um, her reflexes were normal?

17 A Yes.

18 Q And that's good, right?

19 A Yes.

20 Q All right. And then you asked her to
21 also do the heel to heel and toe to toe walk, I
22 guess, or stand?

23 A I have her standing and stand up on her
24 heels and stand up on her toes.

25 Q And she was able to do that without

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 difficulty, correct?

2 A Yes.

3 Q And that's one of the, that's a real
4 exam, you ask her to do it because that's part of
5 how you've been trained to examine somebody?

6 A Part, part of, part of why I do that,
7 one is to ensure they're steady on their feet.

8 Q Mm-hmm.

9 A But the other reason is, is sometimes
10 people will put forth less effort on the exam,
11 uh, for one part of the, but put in full strength
12 the other part of the exam, which is
13 inconsistency.

14 Q Gotcha'.

15 A But in her case she was consistent
16 across the board in her exam.

17 Q Okay. And in terms of the neurological
18 examination --

19 A Mm-hmm.

20 Q -- of her extremities, and it was all
21 normal, correct?

22 A Yes.

23 Q And you also, um, I guess, must have
24 known at that point that she had already had an
25 EMG to both of the lower extremities, correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And that was reported to be normal,
3 correct?

4 A Yes, that's correct.

5 Q And is it also correct, that's a test
6 to see if there's any nerve damage as a result of
7 any sort of disc issue, correct?

8 A Uh, yes and no.

9 Q Okay.

10 A So, for example --

11 Q Yes.

12 A -- the, the, uh, if, if the disc is
13 torn and it's leaking irritating a nerve root --

14 Q Mm-hmm.

15 A -- it's painful for the patient.

16 However, it's not compressing the nerve root,
17 it's uncompromised in the function of the nerve -
18 -

19 Q Mm-hmm.

20 A -- hence, the EMG will be normal. If
21 there's a big disc herniation pinching that nerve
22 then the EMG conduction can be abnormal.

23 Q Okay. But in her case if the EMG was
24 normal --

25 A Yes, ma'am.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- and your not (sic), neurological
2 examination in strength testing of her legs was
3 normal, correct?

4 A Yes.

5 Q And you found and reported that it
6 would be disc protrusion within evidence of
7 impingement, correct?

8 A Correct.

9 Q All right. Now, since the time, and
10 trust me, I'm not going to go visit (unclear -
11 three words) --

12 A (Chuckles.)

13 Q -- but since the time of, um --

14 A You had me right (unclear -
15 approximately four words.)

16 Q (Chuckles.) So, when you, um, you
17 know, over the course of being involved with Ms.
18 Exline-Hassler in terms of, um, treating her as a
19 patient you, uh, you told us before that you
20 asked her to be seen by Dr. Naff, correct?

21 A I'm sorry, can you rephrase that --

22 Q At some --

23 A -- so, (unclear - five words?)

24 Q -- at some point, whether it's in your
25 course of treating Ms. Exline-Hassler or

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 reviewing records for your deposition, you've
2 seen medical records from other doctors that have
3 actually examined Ms. Exline-Hassler, correct?

4 A That's correct.

5 Q All right. And do you recall seeing a
6 record from a doctor, let's start with Frank
7 Nisenfeld, who's an orthopedic doctor up in the
8 Frederick area generally, do you remember seeing
9 that?

10 A I do not, not (unclear - two words) my
11 head, no.

12 Q Do you remember seeing a record from a
13 Dr. Naff, a neurosurgeon?

14 A Yes.

15 Q Have you seen one or two vi (sic), uh,
16 record from Dr. Naff?

17 A I recall seeing one.

18 Q Okay.

19 A Yes.

20 Q And, uh, that would be about, would it
21 be, do you accept my proffer to you that that was
22 from June of 2011 about 11, I mean, 13 months
23 after you first saw Ms. Exline-Hassler?

24 A June 2011? I'll, I'll take you on that
25 one.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right.
2 A (Unclear - one word.)
3 Q Do you have a record on today, as you
4 speak to me, or do you agree with me that he, Dr.
5 Naff's report indicates full range of motion of
6 the low back as well?
7 MS. ZOIS: I think if we can --
8 THE WITNESS: I can't recall.
9 MS. ZOIS: -- (unclear - four words) we
10 should direct his attention where it is (unclear
11 - two words).
12 THE WITNESS: Sure.
13 MS. HOWARD: I'm actually asking him if he
14 remembers one way or the other --
15 THE WITNESS: I don't know --
16 MS. HOWARD: -- (unclear - three words).
17 THE WITNESS: -- specifics about the, about
18 Dr. Naff's findings, but I do know she was seen
19 by Dr. Naff.
20 BY MS. HOWARD:
21 Q Okay. Good. All right, so, you don't
22 remember, as you sit here today, one way or the
23 other, as to whether Dr. Naff recorded any
24 neurological problems in terms of --
25 A I, I --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- sensation, reflex, things like that?

2 A I can't recall Dr. Naff's exam.

3 Q Okay.

4 A Yeah.

5 Q All right. And then, uh, do you recall
6 seeing, um, any record from a Dr. McGrail who
7 recently saw Ms. Exline-Hassler?

8 A I remember seeing Dr. McGrail's record,
9 yes.

10 Q Do you remember anything about his, uh,
11 findings in terms of whether there were
12 neurological deficits or range of motion
13 deficits?

14 A Off the top of my head I cannot recall.

15 Q All right. Now, with respect to, um,
16 uh, you've told us how, you know, the course you
17 took with Ms. Exline-Hassler that you, uh, made
18 some recommendations regarding objections and you
19 proceeded, you talked to us about how you've done
20 that.

21 A Sure.

22 Q Now, I'd like to direct your attention
23 to the last, uh, procedure you did, um, was that
24 the IVET procedure?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. And that was about, is it, am I
2 correct, about December of 2010?

3 A Uh --

4 Q I mean --

5 A -- May I (unclear - one word)?

6 Q -- I'm sorry, yeah, December 2010?

7 A May I go check?

8 Q Sure. Take your time.

9 A Sure, okay.

10 Q And check anything any time.

11 A If you could direct me to a page
12 number.

13 Q Uh, yeah, just a second. (Brief
14 pause.) Okay. We're around 270.

15 A Around 270. (Brief pause.) 270 I have
16 a, uh, 27 (sic), I've got 272.

17 Q Yeah, it's probably higher than 270, so
18 a little bit higher. (Unclear - one word) 277.

19 A 277. Okay.

20 Q Does that look like what we're talking
21 about?

22 A Yes, ma'am.

23 Q Okay. Um, and you told us how you
24 recommended a patient wear a back brace after
25 that, is that right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And you also recommended physical
3 therapy?

4 A Yes.

5 Q Do you, did you ever get the records
6 from, uh, Ms. Exline-Hassler went to get physical
7 therapy after you had done, so after December
8 14th, 2000 (sic)?

9 A I can't recall if I (unclear - one
10 word).

11 Q Do you know anything about, um, how the
12 therapy went for Ms. Exline-Hassler?

13 A I don't.

14 Q Did you know that she self-discharged
15 her therapy in February of 2011?

16 A Actually, I do recall that, now that
17 you recall it, she did self-discharge in physical
18 therapy because she was feeling better.

19 Q All right. And, uh, but you continued
20 to see Ms. Exline-Hassler --

21 A Right.

22 Q -- after, um, your procedure of
23 December 14th, 2010, correct?

24 A Correct, mm-hmm.

25 Q All right. Isn't it correct that in

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 the next couple of visits after December 14th,
2 2010 Ms. Exline-Hassler presented to your office
3 with complaints of neck and shoulder complaints,
4 correct?

5 A After I had treated her for her low
6 back pain she began to present with pain from the
7 thoracic spine as well as in her neck.

8 Q And her shoulder?

9 A Yes.

10 Q All right. And that would be really,
11 uh, so maybe it's, uh, it's 279.

12 A Mm-hmm, (unclear - one word).

13 Q December 28th, uh, you know, record 279,
14 December 28th, 2010, chief complaint right upper
15 extremity numbness, correct?

16 A Yes.

17 MS. ZOIS: I'm just going to make a motion
18 to strike any questions that are outside of the
19 scope of direct and I would like a continuing
20 objection in that regard so I don't have to keep
21 interrupting you.

22 MS. HOWARD: Yeah, thank you very much,
23 Counsel, of course.

24 BY MS. HOWARD:

25 Q And then after that on January 21st,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 2011, uh, uh, your office, I guess, had, uh,
2 requested that a nerve conduction test of the
3 arms be conducted, correct?

4 A January 1st, 2011.

5 Q 21st, sir, page, uh, 281.

6 A Okay. One second, please. 281.

7 Q Mm-hmm.

8 A We did a nerve conduction study of her,
9 of her arms, that's correct.

10 Q And that's your office the, uh, the top
11 of the document at 281 says The Center for Pain
12 Management, but that's, uh, part of The Spine
13 Center, correct?

14 A That's correct.

15 Q All right. Um, and that was not for
16 anything related to this car accident, correct?

17 A Uh, not, no.

18 Q Okay. And, uh, continuing on in
19 February of 2000 (sic), February 7th, 2011.

20 A (Unclear - four words) that's page 285?

21 Q 285.

22 A Okay.

23 Q And there's a procedure or (unclear -
24 one word) of an injection --

25 A Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- we're talking (unclear - one word)
2 described, um, well, who am I to say (unclear -
3 one word) that you describe, but it's an
4 injection, do you remember that?

5 A Correct.

6 Q All right. And it's an injection into
7 the shoulder, correct?

8 A Into the, uh, muscles in the back part
9 of the shoulder.

10 Q All right. And, um, uh, that is not
11 related to her treatment for her low back is that
12 fair to say?

13 A That's correct.

14 Q All right. And, um, if you just kind
15 of continue along 286, um, again, the treatment
16 and visit to your office of that date, March 7th,
17 2009 (sic), is for right upper extremity
18 numbness, correct?

19 MS. ZOIS: Objection as to, well, the
20 foundation with respect to this report, because
21 that's just one of the differential diagnoses,
22 not including four.

23 BY MS. HOWARD:

24 Q Is it correct, Doctor, that on March
25 7th, 2011 Ms. Jacqueline Exline-Hassler's chief

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 complaint was right upper extremity numbness?

2 A Yes.

3 Q All right. And just to kind of speed
4 things up here, you did ultimately, um, diagnose
5 Ms. Jacqueline Exline-Hassler suffering from
6 carpal tunnel syndrome, correct?

7 A Yes.

8 Q All right. And are you aware that she
9 later had surgery for her bilateral carpal
10 tunnel?

11 A That she later had surgery? I don't
12 recollect she had surgery.

13 Q Oh, or --

14 A (Unclear - two words.)

15 Q -- uh, did you refer her to another
16 doctor for treatment for her carpal tunnel
17 syndrome?

18 A Yes.

19 Q All right. Um, and it's your opinion
20 that the carpal tunnel syndrome is not related to
21 this car accident, correct?

22 A I don't have an opinion on the carpal
23 tunnel, we're here to talk about her back today.

24 Q Okay. All right. Now, um, this kind
25 of reminded me of one of those questions

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 regarding the pain medication --

2 A Mm-hmm.

3 Q -- that Counsel has asked you about.

4 A Mm-hmm.

5 Q Once a patient signs the, um, the
6 agreement with you to only get their
7 prescriptions through, filled through your office
8 --

9 A Mm-hmm.

10 Q -- uh, let's assume, hypothetically,
11 that same person needs to have a medical
12 procedure done --

13 A Mm-hmm.

14 Q -- and needs some, uh, uh, needs to
15 get, prescribe some pain medication --

16 A Mm-hmm.

17 Q -- in not talking about while they're
18 at the hospital, okay, (unclear - five words).

19 A Mm-hmm.

20 Q Um, does that again have to come
21 through your office?

22 A What would typically happen in a
23 patient as an out-patient procedure --

24 Q Mm-hmm.

25 A -- is that, uh, we will discuss this

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 with her --

2 Q Mm-hmm.

3 A -- surgeon.

4 Q Mm-hmm.

5 A Or the patient will, uh, discuss this
6 with us, and we'll address the issue. If they
7 need additional pain medication due to pain from
8 the surgery they can take extra pain medication
9 as long as everybody's on board with what she's
10 doing.

11 Q All right.

12 A Or the person is doing.

13 Q All right. Do you have any
14 recollection of having spoken to any orthopedic
15 surgeon about doing a, uh, surgery on either of
16 those of Ms. Exline-Hassler's wrists at any time
17 up to the present date?

18 A No.

19 Q Now, are you aware, I'm sure, sure you
20 are, because I've seen your records, that in
21 summer of 2011 Ms. Exline-Hassler had a
22 hysterectomy?

23 A Uh, yes.

24 Q Okay. And do you recall any, having
25 any conversation with her a medical provider has

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 to coordinate an, any prescription medication she
2 might need (unclear - two words)?

3 A If I can read my notes --

4 Q Sure, fine.

5 A -- I can answer. Sure, March of 2000
6 (sic).

7 Q Uh, I think July.

8 A July.

9 Q Sometime between May and July of '11.

10 MS. ZOIS: Do you have page, Counsel?

11 BY MS. HOWARD:

12 Q Your, your -- where, um, you
13 referencing is starting at approximately 292, but
14 more specifically 296.

15 A 296.

16 MS. ZOIS: And I've forgotten the question.

17 BY MS. HOWARD:

18 Q Well, let me ask you this, Doctor, does
19 it ring, ring any bells that actually when, um,
20 that when Ms. Exline-Hassler had a second MRI in
21 May of 2011, does that, does that sound right,
22 correct? A lumbar MRI (unclear - one word).

23 A She did have a second MRI.

24 Q Does this, this is what I meant about
25 ringing bells, that, um, all that finding on the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MRI that somebody had noticed something
2 regarding, um, her uterus, does that ring any
3 bells?

4 A No, it's not.

5 Q Okay, fine. Well, then, um, I direct
6 your attention to your record of that (unclear -
7 one word) at 296 --

8 A Okay.

9 Q -- August 11, 2011.

10 A Okay.

11 Q And the question I had been asking you
12 was what, if any, record do you have or
13 recollection do you have of coordinating any pain
14 medication with, um, Ms. Exline-Hassler's
15 surgeons following, or in conjunction with the
16 hysterectomy.

17 A Okay. So, according to this note, we
18 will continue with her pain med (sic) -- so, on
19 the note dated August 11, 2011?

20 Q Yes.

21 A Specifically?

22 Q Well, I don't want to limit you --

23 A Okay.

24 Q -- but Counsel asked me to direct you
25 to your page, that's one page where you reference

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 it.

2 A Okay.

3 Q So, I don't want to limit you. She's
4 already had the procedure at that point.

5 MS. ZOIS: Is there a question, Counsel?

6 MS. HOWARD: He was asking me a question.

7 MS. ZOIS: No, I know, but what's the
8 question, it's kind of . . .

9 MS. HOWARD: The question pending is what,
10 if any, um, record or recollection does the
11 doctor have regarding coordinating pain
12 medications with his office and any pain
13 medication, uh, that, um, Ms. Exline-Hassler's,
14 uh, internist or, uh, GYN doctor had recommended.

15 THE WITNESS: So, if I go through August
16 2011, September 2011, I'm trying to pin --

17 MS. HOWARD: (Unclear - one word.)

18 THE WITNESS: -- I'm trying to peg this date
19 that you're looking for.

20 BY MS. HOWARD:

21 Q Uh, (unclear - two words) --

22 A Uh --

23 Q -- I'm not necessarily looking for it.

24 A Okay.

25 Q Uh, you asked me. I know that, um, I'm

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 not, I'm not looking for it any way.
2 A Sure.
3 Q I know that in August of 2011 --
4 A Mm-hmm.
5 Q -- 2011 at least at that point --
6 A Mm-hmm.
7 Q -- it had been brought to your
8 attention, can we agree that it had been brought
9 to your attention that she already had the
10 surgery, um, on July 26th, 2011?
11 A Okay.
12 Q Is that true?
13 A Yes.
14 Q Record 296?
15 A Mm-hmm.
16 Q So, I guess either around that or
17 before --
18 A Mm-hmm.
19 Q -- but, again, I don't want to limit
20 you --
21 A Right.
22 Q Was there any note in your file
23 indicating your and the surgeon talked about
24 coordinating, um, these medications?
25 A No.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. (Unclear - three words.)
2 A Not, not that I can see at this point
3 (unclear - two words).
4 Q All right.
5 A And I'm going through July on, I'm not
6 going to (unclear - three words).
7 Q So, you don't know whether she got
8 prescriptions, if any, from another facility, um,
9 associated with this, um, this, uh, the
10 hysterectomy or whether the pain medication your
11 office was, uh, um, increased as a result?
12 A Correct.
13 Q You just don't really know?
14 A Correct.
15 Q Okay. All right. Um, now, sorry, um,
16 do you h, do you recall also at one point, and
17 this would be in the, in the early part of, uh,
18 2011 that Ms. Exline-Hassler had some sort of
19 sebaceous cyst removed from her neck, do you
20 remember that?
21 A I don't remember that.
22 Q Um, now, I would like to direct your
23 attention to, um, medical records that pre date
24 June 26th, 2009. You've, have you now had an
25 opportunity to review, uh, some medical records

CIRCUIT COURT FOR FREDERICK COUNTY
COURTHOUSE
FREDERICK, MARYLAND 21701

1 from, uh, a Dr. Stephanie Brown from March of
2 2008?

3 A I've reviewed all the medical records
4 presented in front of me, I don't have an instant
5 recollection of a particular medical record.

6 Q All right. Did you see some records
7 indicating that, um, Ms. Exline-Hassler had
8 treated with any medical care providers for low
9 back pain before June 26th, 2009?

10 A Yes.

11 Q Okay. And these are, again, records
12 that you did not have --

13 A Mm-hmm.

14 Q -- at the time Ms. Exline-Hassler was
15 still a patient of yours --

16 A Mm-hmm.

17 Q Correct?

18 A Correct.

19 Q Is that correct?

20 A Yes.

21 Q The first time you got those records
22 would have been two days before your deposition
23 last week, correct?

24 A Correct.

25 Q All right. And you had already told

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 the lawyers, Ms. Exline-Hassler's lawyers that
2 you would be willing to, um, provide an expert
3 opinion to a reasonable (unclear - one word)
4 medical certainty that her low back was related
5 to the car, um, the low back problems, which you
6 treated her for were related to the car accident,
7 correct?

8 A Correct.

9 Q And you agree that would, you told the
10 lawyers --

11 A Mm-hmm.

12 Q -- that was your opinion --

13 A Mm-hmm.

14 Q -- before you saw the prior records,
15 correct?

16 A Correct.

17 Q And at the time you formed that opinion
18 that you told the lawyers about --

19 A Mm-hmm.

20 Q -- your understanding was that Ms.
21 Exline-Hassler had never had low back pain,
22 correct?

23 A Had not had back pain prior to the,
24 prior to the car wreck.

25 Q And prior meaning before, correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Okay.

3 A Mm-hmm.

4 Q Uh, and when you say had not had back
5 pain before the car wreck that means, does that
6 mean 24 hours before or ever before, or something
7 in between?

8 A Every person out there has lower back
9 pain in their life.

10 Q Mm-hmm.

11 A Ms. Hassler conveyed to me that she had
12 not had back pain prior to the car wreck.

13 Q Okay. And what do you mean by prior?

14 A It could be a year, it could weeks, but
15 right after the time of the car wreck she did not
16 have any lower back pains, well that she conveyed
17 to me anyway.

18 Q And, now, again, going to your training

19 --

20 A Mm-hmm.

21 Q -- and your experience --

22 A Mm-hmm.

23 Q -- past medical history does not mean a
24 couple days before.

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Correct?
2 A Right.
3 Q Past medical history means in the past.
4 A Mm-hmm.
5 Q And, uh, would include certainly a
6 year, if we're talking about back pain --
7 A Mm-hmm.
8 Q -- a year, any back pain --
9 A Mm-hmm.
10 Q -- within the past year or 18 months
11 could be relevant, correct?
12 A Correct.
13 Q And you would like, in a perfect world,
14 to get that information from a patient, correct?
15 A Correct.
16 Q All right. Now when you review the
17 medical records that are from before June 26th,
18 2009 you agree with me that Ms. Exline-Hassler
19 had been at an emergency room with complaints of
20 low back pain when she fell down six steps,
21 correct?
22 A Correct.
23 Q All right. And you agree with me that
24 she was provided some prescription medication --
25 A Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- to treat that pain?

2 A Correct.

3 Q Or I should say prescription for
4 medications to treat that pain, correct?

5 A Correct.

6 Q (Unclear - two words.) And do you
7 recall that she, uh, in addition to the emergency
8 room, she also visited with another doctor for
9 complaints of low back pain?

10 A Correct.

11 Q And that would have been, do you recall
12 this, several months after the emergency room
13 visit?

14 A It was her primary care if this, I
15 remember.

16 Q Okay.

17 A Okay.

18 Q And several months after the --

19 A Yes.

20 Q -- um, incident where she had, went to
21 the emergency room, correct?

22 A Correct.

23 Q Now, do you recall seeing, um, uh, that
24 the primary care physician also recommended that
25 the, uh, patient go forward with some physical

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 therapy for her low back?

2 A You have to show me the exact record.

3 Q Okay.

4 A Okay.

5 Q If I could get this (unclear - one
6 word).

7 A Okay.

8 (Brief pause.)

9 Q I'm gonna' mark this as Defendant
10 Sapp's Exhibit 1, it has a Bates stamp of DSapp2
11 Robinwood Family Practice 0031.

12 MS. ZOIS: Can I see that?

13 THE WITNESS: Thirty-one?

14 MS. ZOIS: Thirty-one. Okay. This also
15 coordinates with Plaintiff's Exhibit Number 8 in
16 the prior medical records as page 100, which is
17 right before him in the thick packet. (Unclear -
18 approximately six words)?

19 MS. HOWARD: Sure.

20 BY MS. HOWARD:

21 Q Um, is that record, have you seen that
22 record before --

23 A Yes.

24 Q -- (unclear - one word) me handing it
25 to you?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Okay. And you first saw it sometime
3 last week, correct?

4 A Yes.

5 Q All right. And it, um, is it correct
6 that Dr. Brown recommended the patient proceed
7 with physical therapy?

8 A Uh, from this record?

9 Q Yes.

10 A There's no recommendation on this
11 particular sheet of paper talking about physical
12 therapy from what I can see. No.

13 (Brief pause.)

14 MS. HOWARD: Oh, you know what happened?
15 Um, we're gonna' just set it up.

16 MALE VOICE: We can go off the record. I
17 can go off.

18 MS. HOWARD: Two copies of (unclear - one
19 word).

20 VIDEO TECHNICIAN: We're going off the
21 record, and it's 5:37 p.m.

22 (Whereupon, from 5:37 o'clock, p.m. until
23 5:40 o'clock, p.m., video off the record.)

24 (Videotape stopped playing.)

25 MS. ZOIS: Your Honor, may we approach just for one

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 moment?

2 THE COURT: Sure.

3 MS. ZOIS: Thank you, Your Honor.

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

6 (Husher turned on.)

7 MS. ZOIS: Um, if this witness were testifying live in
8 Court I would have the calendar of the date so the jury can
9 help follow along with the date --

10 THE COURT: Mm-hmm.

11 MS. ZOIS: -- and the time of sequence. May I have the
12 Court's permission just to put the calendar directly beneath
13 the doctor's video? Just so they can see a calendar and a
14 corresponding date.

15 THE COURT: Any objection?

16 MS. HOWARD: Yes, I object. It's my cross examination.

17 If, if --

18 THE COURT: So.

19 MS. HOWARD: -- if we were in open court and someone
20 would ask to put exhibit up.

21 THE COURT: (Unclear - two words.)

22 MS. HOWARD: I mean . . .

23 THE COURT: For, for now I'll sustain, but you,
24 certainly when you're reviewing everything can put the
25 calendar up and can go through dates.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: Okay. So, on my redirect I can put the
2 calendar up.

3 THE COURT: When you're back on there.

4 MS. ZOIS: Do I need to come back up or can I just do
5 it.

6 THE COURT: No, that's okay.

7 MS. ZOIS: Okay.

8 MS. HOWARD: Okay, that's just --

9 THE COURT: But, but no.

10 MS. HOWARD: -- my objection would be it wasn't used
11 during this deposition, and, Your Honor, you're up here you
12 didn't see the video. They had a TV screen, the doctor used
13 models --

14 THE COURT: So.

15 MS. HOWARD: -- the doctor did like a video, they hand
16 tons of props.

17 THE COURT: So.

18 MS. HOWARD: This prop wasn't part of it.

19 THE COURT: I understand, but my --

20 MS. HOWARD: Thank you.

21 THE COURT: -- position is if it's going to help the
22 jury understand then I'll allow it.

23 MS. HOWARD: Thank you.

24 THE COURT: Okay?

25 MS. HOWARD: That makes sense. Thank you.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. GILLCRIST: Thank you, Your Honor.

2 MS. ZOIS: Thank you, Your Honor.

3 THE COURT: Mm-hmm.

4 (Counsel returned to the trial tables and the following
5 occurred:)

6 (Husher turned on.)

7 (Video tape being played.)

8 VIDEO TECHNICIAN: We're back on the record,
9 and it's 5:40 p.m.

10 BY MS. HOWARD:

11 Q All right, Doctor, so, sorry, I was
12 looking at you like some crazy, but it turned out
13 had an Exhibit 11 that has two cop (sic), can we
14 agree, what I'm showing you is two copies of the
15 same page.

16 A Okay.

17 Q And I was trying to act like they were
18 two separate pages. Um, Your Honor, Ms. Exline-
19 Hassler' attorney's been kind enough what is page
20 two of Dr. Brown's March 28, 2008 record.

21 A Okay.

22 Q Okay. And that's in the prior medical
23 workers 1 and 1.

24 A Mm-hmm.

25 Q And then immediately after 1 and 2

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 order requisition.

2 A Yeah.

3 Q Okay. Now, does the order requisition
4 refresh your recollection as to whether or not
5 Dr. Brown, um, ordered physical therapy?

6 A Yes, ma'am.

7 Q (Unclear - two words) she did on that
8 tape?

9 A Yes, ma'am.

10 Q (Unclear - four words?)

11 A (Unclear - two words?)

12 Q And her diagnosis was lumbar strain on
13 that day?

14 A That's correct.

15 Q All right. Now, um, with respect to
16 page 101 --

17 A Thank you.

18 Q -- of the prior medical records.

19 A Thank you.

20 Q Um, is it also correct that Dr. Brown
21 prescribed some medications for Ms. Exline-
22 Hassler on that date?

23 A Yes.

24 Q And, uh, I guess jumping back to page
25 1, that same record, is is correct that, at least

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 as recorded in Dr. Brown's records Ms. Exline-
2 Hassler informed the doctor that she was taking
3 six Advil a day to deal with pain that had
4 prompted, whatever pain she had that prompted her
5 to come in see the doctor, she was taking six
6 Advil per day?

7 A Yes.

8 Q Now, Advil's over the counter, as far
9 as I know, correct?

10 A Yes, uh-huh.

11 Q Now, do you consider six a day to be
12 kind of high dosage for a person?

13 A For a long period of time I wouldn't --

14 Q Recommend it?

15 A Correct.

16 Q You would hope they would come to see
17 you and you can kind of counsel them on how to --

18 A Yes.

19 Q -- deal with the pain?

20 A Mm-hmm.

21 Q Okay. Uh, now, uh, in fact, uh, as was
22 mentioned that, uh, Dr. Brown gave Ms. Exline-
23 Hassler or seemingly, according to her, according
24 to her prescription, for a pain medication?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And a muscle relaxer, correct?
2 A Yes.
3 Q All right. And is it also correct that
4 she gave her, um, the prescriptions that were
5 given had three refills?
6 A Can you show me there are three refills
7 here?
8 Q Yeah.
9 A 'Cause I don't think she's going to get
10 refills in Percocet for three.
11 Q Three of those. And, uh, uh --
12 A You, you can't do refills on Percocet,
13 ma'am.
14 Q Okay. So, is, the Percocet, oh, not
15 the Percocet, but the Ultram, okay, let me back
16 up.
17 A Okay.
18 Q You're right. On the, on March 28,
19 six, 2008 --
20 A Okay.
21 Q -- Dr. Brown actually gave a med, or
22 prescription of two medications.
23 A Correct.
24 Q Of Percocet.
25 A Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And Ultram and Skelaxin, correct?
2 A That's correct.
3 Q All right. Percocet's for pain?
4 A Yes.
5 Q Ultram is for . . .
6 A For pain also.
7 Q All right. And is Ultram the same as,
8 uh, Trama (sic), Tramadol?
9 A Yes.
10 Q All right. And that's for pain?
11 A Yes.
12 Q Now, there were three fills on the
13 Tramadol, correct?
14 A Yes.
15 Q All right. And she also gave her a
16 prescription for Skelaxin, that's a muscle
17 relaxer, correct?
18 A Yes.
19 Q And three fills on that?
20 A Yes.
21 Q All right. Now, have you see any
22 indication that Ms. Exline-Hassler ever filled
23 those, um, you now took advantage of having a
24 second, third, and, I mean, a first, second and
25 third refill of the medications that Dr. Brown,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 um, prescribed on March 28th, 2008?

2 A You'd have to show me record that she
3 did.

4 Q Did you have your recollection, have
5 you seen them?

6 A I have med (sic), recollection to
7 seeing the medical records.

8 Q Mm-hmm.

9 A I also, but I can't tell you specifics.
10 If you show me a record showing it was filled
11 three times, I mean, let me know.

12 Q Okay. But, I guess my, and I'm happy
13 to show it --

14 A Mm-hmm, sure.

15 Q -- to you, and I will in a second.
16 But, again, as, as you're sitting here today do
17 you have any recollection of kind of knowing --

18 A Mm-hmm.

19 Q -- after you reviewed the records last
20 week, oh, Ms. Exline-Hassler was taking, or re,
21 refilling prescriptions --

22 A Yes.

23 Q -- for muscle relaxer and pain
24 medication throughout 2009 and in two thou (sic),
25 2009, do you remember knowing that one way or

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 another?

2 A I think that was disclosed the last
3 time I saw her record.

4 Q Okay. All right.

5 A Mm-hmm.

6 Q And so that would the records from, uh,
7 and I don't have a Bates stamp, but I can mark it

8 --

9 A Mm-hmm.

10 Q -- as Defendant's Exhibit 2 --

11 A Mm-hmm.

12 Q -- from Weis Therapy (sic).

13 A Mm-hmm.

14 Q Is that correct?

15 A Pharmacy.

16 Q Pharmacy, sorry, Weis Pharmacy.

17 MS. HOWARD: Thank you, Counsel.

18 BY MS. HOWARD:

19 Q Is that something you'd seen before?

20 A Uh, this, yes.

21 Q Okay.

22 A Mm-hmm.

23 Q And then what I had marked as Defendant
24 Sapp's Exhibit 3, records from Boonsboro
25 Pharmacy. Have you seen those records last week?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.
2 Q Now, um, but you have seen --
3 MS. ZOIS: (Unclear.)
4 BY MS. HOWARD:
5 Q -- these records last week, correct?
6 A Yes.
7 MS. ZOIS: Okay, fine.
8 BY MS. HOWARD:
9 Q And, um, this would be information that
10 you only learned last week when Ms. Exline-
11 Hassler was actively taking a prescription --
12 A Correct.
13 Q -- pain medication and muscle relaxer,
14 correct?
15 A Correct.
16 Q All right. And, um, having reviewed
17 the records from Weis Pharmacy in Boonsboro
18 would, would seem to indicate that the patient
19 had to go into the pharmacy and, and purch (sic)
20 or pick up and went in the, the prescriptions on
21 different dates marked on these records, correct?
22 A What was she using the prescriptions
23 for?
24 Q Uh, that's what I'm not, I'm not there
25 yet.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Okay.
2 Q Would, the question would be --
3 A Yes.
4 Q -- from this itemization it was
5 different dates --
6 A Yes.
7 Q -- that the patient went into the
8 different pharmacies to get the medications is
9 that --
10 A That's correct.
11 Q -- all right. And, so, as you sit here
12 today, apropos what you just asked me, you don't
13 know what she was taking those medications for?
14 A Correct.
15 Q All right. Now, having reviewed, um,
16 the Bates exhibits, um, from, you know, the March
17 26th, 2008 record from Dr., um, Brown --
18 A Mm-hmm.
19 Q -- the Bate stamps, prior medical
20 records 101 and one, we know she got the
21 prescriptions and three fills on that back date,
22 correct?
23 A Correct.
24 Q All right. We, do you agree with me
25 that the prescriptions on that date were for the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 low back pain?

2 A At the time they were prescribed --

3 Q Yes.

4 A -- the answer's yes.

5 Q Okay. And, um, and there's always
6 vagrancy, but would it be correct that we get a
7 prescription for back pain, even though you've
8 got three fills, in theory, as a medical
9 provider, you would expect the patient has the
10 three fills for the back pain, not for their
11 son's ankle pain, not for their own headache,
12 correct? In a perfect world?

13 A In a perfect world the answer's yes.

14 Q Okay. All right. Um, has anybody
15 provided you any information that Ms. Exline-
16 Hassler actually filled those prescriptions for
17 some other sort of pain?

18 A No.

19 Q Okay. Have you seen any medical
20 record, uh, you know, now that you've seen the
21 prior records, any medical record indicating that
22 she had had another type of, um, malady that
23 would require muscle relaxer and, and pain to
24 treat, like, uh, strained a knee or strained an
25 ankle?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A The answer is no.

2 Q Okay. All right. So, um, uh, now have

3 you also, um, did you also take note in Dr.

4 Stephanie Brown's records, and this would be page

5 100, that, um, Dr. Brown took a medical history

6 when she first, um, met with Ms. Exline-Hassler

7 on that date, correct?

8 A Yes.

9 Q All right. And if you agree with me

10 that the medical record indicates that, uh, Ms.

11 Exline-Hassler is, or, as recorded on your

12 record, that the medical history that was

13 provided to Dr. Brown was that Ms. Exline-Hassler

14 had injured her back in a motor vehicle accident

15 three years before, and the pain had been worse

16 this past year?

17 A According to Doc (sic), Dr. Brown's

18 note it states that, "The patient had back pain

19 since being involved in an MVA three years ago,

20 and it's gotten worse this past year."

21 Q And an MVA's . . .

22 A Motor vehicle accident.

23 Q Oh, oh. Um, has anybody told you that

24 that medical history, as recorded by Dr. Brown,

25 is inaccurate?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, no
2 Q Have you talked to Dr. Brown?
3 A No.
4 Q All right. Have you talked to Ms.
5 Exline-Hassler about that aspect of Dr. Brown's
6 medical records?
7 A No.
8 Q Okay. Have you talked to her attorneys
9 about that aspect?
10 A I'm sure we discussed that, yes.
11 Q Okay. And, again, nobody told you that
12 it's inaccurate?
13 A I, I can't comment if it's inaccurate
14 or not based on what I'm looking at here.
15 Q My question, and I know --
16 A (Unclear - one word.)
17 Q -- I'm not a good questioner, (unclear
18 - three words) profession, but, uh, was, has
19 anyone told you --
20 A Mm-hmm.
21 Q -- that the history, as recorded by Dr.
22 Brown, is inaccurate?
23 A No.
24 Q All right. All right. (Unclear - two
25 words.) And, again, this was all, the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 information of Dr. Brown's record, the
2 information about getting the prescriptions, the
3 information about visiting the emergency room
4 January '08 with a fall down the steps, any visit
5 to the physical therapist, those were things you
6 didn't know at the time you formulated your
7 opinion in this case, correct?

8 A Correct.

9 Q All right. Thank you, Doctor. I have
10 nothing further.

11 MR. GILLCRIST: We'll be off, go off for a
12 moment.

13 FEMALE VOICE: (Unclear - three words?)

14 VIDEO TECHNICIAN: Going off the record.

15 It's 5:49, p.m.

16 (Whereupon, from 5:49 o'clock, p.m. until
17 5:53 o'clock, p.m., video off the record.)

18 VIDEO TECHNICIAN: We're back on the record
19 and it's 5:53, p.m.

20 CROSS EXAMINATION

21 BY MR. PORCARELLI:

22 Q Hi, Dr. Sloan, my name's Guido
23 Porcarelli, we met last week for the first time
24 at your discovery deposition, did we not?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q I want to ask you a few questions.

2 A Sure.

3 Q Uh, Ms. Howard's covered a lot of
4 material.

5 A (Chuckles.)

6 Q And I need to touch on just a few
7 things. I'll try not to be repetitive --

8 A Mm-hmm.

9 Q -- but I want to make sure I understand
10 a few things before we wrap up your testimony
11 today, okay?

12 A Sure.

13 Q Now, the neck par (sic), region of the
14 body is also referred to by physicians as the
15 cervical region, is it not?

16 A Yes.

17 Q And the thoracic part of your spine is
18 known as the middle of the back?

19 A Yes.

20 Q And the carpal tunnel, where is carpal,
21 where, where's the carpal located?

22 MS. ZOIS: I'm just gonna' put another
23 objection on the record as to any questions
24 regarding anything other than the lower back,
25 because it's outside the scope of cross, and

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 everybody knows we're not claiming carpal tunnel,
2 but just for the record. And (unclear - two
3 words) continuing objection.

4 MR. PORCARELLI: Continuing objection.

5 MS. ZOIS: Thanks.

6 MR. PORCARELLI: Thank you.

7 BY MR. PORCARELLI:

8 Q So --

9 A Could you say the question again?

10 A Yes.

11 Q When somebody has carpal tunnel --

12 A Mm-hmm.

13 Q -- where do they have that?

14 A The carpal tunnel is located just above
15 the wrist.

16 Q Okay. So, uh, and you're a medical
17 Doctor, right?

18 A Yes.

19 Q You've examined the, uh, Plaintiff
20 several times, you've treated her for the better
21 part of a couple years, right?

22 A Yes.

23 Q And you've looked at a large volume of
24 records as recently as last week, correct?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Correct. And you cannot say to a
2 reasonable degree of medical probability that her
3 neck problems are related to the car accident of
4 June 2009, correct?

5 A That's correct.

6 Q And you cannot say to a reasonable
7 degree of medical probability that her middle
8 back complaints are related to the car accident
9 of June 2009, right?

10 A That's correct.

11 Q And you would also agree with me, would
12 you not, Doctor, that the carpal tunnel, uh, is
13 not related to the car accident of June 2009?

14 A I, I'm not -- yes.

15 Q Okay.

16 A (Chuckles.)

17 Q Now, you're, you're claiming that the
18 low back pain --

19 A Yes.

20 Q -- that she's been complaining about is
21 related to the car accident of 2009?

22 A Yes.

23 Q And you've characterized it as
24 mechanical low back pain, right?

25 A That's correct.

1 Q And you told us in deposition last week
2 that the mechanical low back pain is caused by
3 these annular tears that you've described,
4 correct?

5 A (No audible response.)

6 Q And you did the procedure called a
7 discTRODE where you insert a wire to seal that
8 disc, correct?

9 A Yes.

10 Q So, if there's no evidence of a tear on
11 any MRI and she's still complaining about pain in
12 the low back region then it could be that the
13 source of her pain is coming from somewhere other
14 than the annular tears, right?

15 A It's possible.

16 Q She could be, for example,
17 exaggerating, that's one option.

18 A Possible.

19 Q It could be coming from some other
20 condition that she has in her back or her spine,
21 correct?

22 A Yes.

23 Q Let's talk about history for just a
24 second. I know that you've covered a little bit
25 of, with that with Ms. Howard. Dr. McGrail,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 you've seen his report, right?

2 A Yes.

3 Q He reviewed an entire box full of
4 medical records including records from before the
5 accident and then he gave his opinion. In this
6 case you reached your opinion regarding the cause
7 for low back pain after you met with the lawyers
8 for the Plaintiff, did you not?

9 A I beg your pardon?

10 Q You arrived at your conclusion --

11 A Mm-hmm.

12 Q -- that the car accident caused her low
13 back pain after you met with the lawyers in this
14 case, right?

15 A I cannot recall when I formed that
16 opinion.

17 Q You met with --

18 A Um, but it was when, when her attorney
19 asked me do I think that the car wreck did cause
20 her back pain I answered yes.

21 Q And that was in the second of two
22 meetings you had with the lawyers, which you had
23 (unclear - one word) two weeks ago, right?

24 MS. ZOIS: Objection, the (unclear - one
25 word) doesn't know.

1 THE WITNESS: I, I can't recall exactly when
2 I said it.

3 BY MR. PORCARELLI:

4 Q Three to four weeks ago did you have a
5 meeting with them?

6 A Yes.

7 Q Do you recall if you shared your
8 opinions with them during that meeting?

9 A Three or four weeks ago, yes.

10 Q Okay. And, again, you reached your
11 opinion on the cause of lower back before you had
12 an opportunity to see records that were generated
13 by doctors who treated her before the car
14 accident of June 2009?

15 A Correct.

16 Q Now, Dr. McGrail's concluded that the
17 tears are not the current cause for complaints,
18 and the cause is her degenerative changes in her
19 spine. You told us last week in the deposition
20 that you disagree with that.

21 A Yes.

22 Q Do you recall that?

23 A Yes.

24 Q Is that still your opinion today?

25 A Yes, sir.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Doctor, let me ask you, are you a board
2 certified neurosurgeon?

3 A No.

4 Q Are you a neurosurgeon?

5 A No.

6 Q Are you an orthopedic surgeon?

7 A No.

8 Q If I were -- well, Dr. McGrail performs
9 an average six surgical procedures a week, how
10 many times have you been in an operating room in
11 2012?

12 A None.

13 Q How about 2011?

14 A None.

15 Q How about in 2010?

16 A None.

17 Q And the last time, Doctor, that you
18 were in an operating room setting was in 2009,
19 correct?

20 A Yes.

21 Q I'd like to ask you some questions
22 about drugs.

23 A Sure.

24 Q Let's talk about a drug called
25 Tramadol. Is that also known as Ultram?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Would you agree with me that Tramadol
3 is a centrally acting synthetic drug, which is
4 used to treat moderate to severe pain?

5 A I would say moderate pain, not severe
6 pain.

7 Q It is a controlled drug?

8 A It is not recognized as a controlled
9 substance at this time.

10 Q Can you get it over the counter?

11 A No.

12 Q So you need a prescription from a
13 doctor?

14 A Correct.

15 Q And once you run out you can only get
16 it refilled if the doctor thinks that you still
17 need the medicine, right?

18 A Correct.

19 Q Is that one of the drugs that can be
20 prescribed to treat back pain?

21 A Yes.

22 Q Let me ask you about another drug, drug
23 called Skelaxin.

24 A Mm-hmm.

25 Q Is Skelaxin a muscle relaxant?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Mm-hmm, yes.

2 Q Is it used to relax muscles and to
3 relieve pains caused by strains, sprains and
4 other musculoskeletal conditions?

5 A Yes.

6 Q Is it considered a moderately strong
7 muscle relaxant?

8 A Moderate, yes.

9 Q Is it available to a patient in high,
10 as high a dose as 800 milligrams?

11 A Yes.

12 Q It works by blocking nerve impulses or
13 pain sensations in the brain, does it not?

14 A Or essentially, yes.

15 Q And it's often prescribed for acute
16 skeletal muscular conditions, such as pain,
17 coming from pain or injury, right?

18 A Yes.

19 Q Is it often used to treat back pain or
20 back injury?

21 A Yes.

22 Q And can, and this drug, Skelaxin, can
23 only be obtained with a prescription from a
24 licensed medical physician?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q You can't get a refill unless the
2 doctor thinks that you need it.

3 A Correct.

4 Q Hydrocodone. If I recall your, uh,
5 testimony earlier today, uh, you mentioned that
6 your office had given the Plaintiff two very
7 powerful medications, morphine and the other one
8 was Hydrocodone.

9 A Correct.

10 Q It's a very strong medicine, isn't it?

11 A It's, in terms of narcotics it's
12 recognized as the entry level narcotic that we
13 would use.

14 Q Hydrocodone is a semi-synthetic opiate,
15 isn't it?

16 A Yes.

17 Q And, again, it's a narcotic medication.

18 A That's correct.

19 Q Are narcotics the strongest types of
20 medicine that a doctor can prescribe in the
21 United States?

22 A Yes.

23 Q Is Hydrocodone even stronger than
24 Skelaxin and Tramadol?

25 A When you talk about strength, it's

1 difficult to say what's stronger, they both work
2 in different mechanisms.

3 Q Do you find yourself prescribing
4 Hydrocodone when the pain is more intense as
5 opposed to Skelaxin or Tramadol?

6 A Again, it depends on what I'm trying to
7 treat. If there's going to be a spasm that can
8 be helped with Skelaxin, I'll prescribe it. If
9 there's other pain that might become something
10 other than spasm, then I prescribed an Ultram or
11 Vicodin, for example.

12 Q And as a narcotic, you can only get
13 Hydrocodone with a prescription from a physician,
14 correct?

15 A Right.

16 Q In fact, when you prescribe a narcotic
17 in the United States you need to supply your
18 medical narcotic board DEA number --

19 A Correct.

20 Q -- to the pharmacy so that they know
21 that it's legitimate to give that medicine to
22 that patient.

23 A Correct.

24 Q In fact there was an exhibit here
25 before where you had a chart.

1 MS. ZOIS: Twenty-six.

2 MR. PORCARELLI: Thank you, Counsel.

3 MS. ZOIS: Sure.

4 BY MR. PORCARELLI:

5 Q That has schedule one through four.

6 A Mm-hmm.

7 Q And Hydrocodone was a schedule two
8 drug, was it' not?

9 A Correct.

10 Q And schedule one, what does that mean,
11 more powerful?

12 A Schedule one are medications that are
13 typically abused and have no real therapeutic
14 value.

15 Q So, a schedule two would be a category
16 of drugs, the most powerful drugs that you can
17 legally obtain --

18 A Correct.

19 Q -- to treat pain or injury to a certain
20 part of your body?

21 A Correct.

22 Q And Hydrocodone is often used to treat
23 moderate to severe pains, is it not?

24 A Moderate to severe.

25 Q Often prescribed to treat back pain, is

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 it not?

2 A Yes.

3 Q Let's talk about billing for a minute,
4 doctor. You've never seen any bills from any
5 other pain management specialist in Maryland,
6 D.C. or Virginia, have you?

7 A No.

8 Q And, if I recall, the bill that you and
9 your organization generated in connection with
10 Ms. Exline-Hassler's treatment is just over
11 \$41,000?

12 A Correct.

13 Q And that's for treatment between May of
14 2010 and November of 2012?

15 A Since I saw her until the last time I
16 treated her.

17 Q And that would have been the end of
18 last year?

19 A Yes.

20 Q And during that time, uh, we were
21 provided with a chart by, uh, Plaintiff's
22 attorney that summarized the dates that your
23 office saw her, which totaled up to be \$41,271.

24 A Okay.

25 Q Do you see that?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Now, if I were to represent to you that
3 I've counted up those visits at your office that
4 would be about 44 visits from when she started
5 treating with your office up through 2012, okay?
6 Does that sound about right?

7 A That sounds about right.

8 Q And after July of 2012 she had five
9 visits with your office.

10 A After July of 2012, I'd have to go back
11 and verify, but for the bulk of her treatment was
12 before July of 2012.

13 Q Correct.

14 A Right.

15 Q In fact, about 39 visits worth, right?

16 A Mm-hmm, okay.

17 Q What happened in your medical career in
18 July of 2012?

19 A My medical career in July of 2012?

20 Q You made partner.

21 A Oh, yeah, it's good stuff. I was going
22 to say was it something that I (unclear - one
23 word).

24 Q And as an equity partner --

25 A Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- you share in the profits of the
2 business, right?

3 A Correct.

4 Q And the criteria to make equity partner
5 was to show that you could generate enough to
6 support yourself, right?

7 A Correct.

8 Q It was important to you to make
9 partner, because once you did you could share in
10 the bonus that your company gives out every three
11 months, right?

12 A Correct.

13 Q Four times a year bonus, plus regular
14 salary for the year, right?

15 A Correct.

16 Q And the way your business is set up, if
17 I recall, the more that you or one of your
18 partners generates in billings the more bonus
19 that you get. Correct?

20 A Right.

21 Q Despite the fact that your organization
22 billed \$41,000-plus dollars in treatment, uh, you
23 were not successful in eliminating her (unclear -
24 one word) pain symptoms, right?

25 A Eliminating, no. However, improving.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Yes. Can you quantify with a
2 percentage as to how much more improved she is
3 after the 41,000?

4 A My latest re (sic), my latest notes
5 were indicating that she had received 50 percent
6 relief from the time that we completed doing the,
7 uh, discTRODE for her.

8 Q Okay. Now, Doctor, although you've
9 treated the Plaintiff, um, you've also been
10 participating in some of these activities and
11 charging for your time, have you not?

12 A Correct. Activities being depositions?

13 Q Yes.

14 A Okay.

15 Q So, um, you've been charging the
16 Plaintiff's lawyers your hourly rate --

17 A Correct.

18 Q -- for legal activities?

19 A Correct.

20 Q When you talk to them on the phone and
21 when you would meet with them face to face?

22 A We haven't spoken on the phone, but we
23 have met face to face.

24 Q Okay. And on, uh, at least a couple of
25 occasions you've met with them?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q And you were charging them not the rate
3 that you charge your patients for a visit, but
4 rather your legal hourly rate, if we could call
5 it that?

6 A Correct, which is standard for any
7 physician talking to an attorney.

8 Q What is that rate?

9 A Off the top of my head I do not know.
10 That's handled by my, uh, front office manager.

11 Q So, when you say it's standard you
12 don't mean to suggest that it's standard outside
13 the four walls of your business? It's standard
14 as you've described to you and your partners when
15 you speak to an attorney?

16 A From my understanding of how, if a
17 physician is speaking to an attorney, if the
18 physician is using an attorney, if the attorney
19 is using the physician's time they will bill for
20 their time.

21 Q Okay. But the rate is set by your
22 business manager.

23 A That's correct.

24 Q You're not suggesting that your
25 business manager sets the rate according to what

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 other doctors' charge around the state or
2 country, right?

3 A Not that I'm (unclear - one word), not
4 to my knowledge, no.

5 Q All right. And if, you've been
6 charging for your time to prepare for
7 depositions?

8 A Yes.

9 Q You've been charging for your time to
10 sit in discovery depositions and today's video
11 deposition right?

12 A Yes.

13 Q And has the fact that you charge for
14 your time, uh, skewed at all the opinions that
15 you're giving in this case?

16 A No.

17 Q Can we agree that there are differences
18 between something called a disc bulge and a disc
19 herniation?

20 A Yes.

21 Q And have you seen any films to date
22 that show that the Plaintiff has had a disc
23 herniation at L4 through S1?

24 A My records indicate that there is a
25 disc protrusion L5/S1, which is, which is a small

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 version of a herniation.

2 Q You're reading the radiologist report?

3 A Yes.

4 Q Did the radiologist use the word
5 herniation?

6 A No.

7 Q That was -- and, and you characterized
8 it as a protrusion.

9 A Right.

10 Q Would you agree with me that a
11 protrusion is closer to a bulge than a
12 herniation?

13 A Yes.

14 Q Okay. And, so, you have no records in,
15 in that entire 300 page chart of yours that would
16 show any films to date where a radiologist said -
17 -

18 A Mm-hmm.

19 Q -- this Plaintiff has a herniation
20 somewhere in her spine, whether it's L4/L5, S1?

21 A That's correct.

22 Q Okay. I appreciate your time. Thank
23 you.

24 REDIRECT EXAMINATION

25 BY MS. ZOIS:

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q I'm not even sure where to start,
2 Doctor, frankly, um, but just one question. Do
3 you treat patients unnecessarily, ever?

4 A No.

5 Q Would you ever treat extra patients or
6 bring people in here so that you could get more
7 money in your partnership fees?

8 A My, my, uh, office is full day and
9 night, five days a week. I don't have to treat
10 anybody excessively.

11 Q Okay.

12 A My basic credo is what would you do for
13 your mom or dad, and that's how I treat them.

14 Q Excellent. And, as far as prescribing
15 narcotics to people, do you prescribe narcotics
16 to people that you think are pill seekers?

17 A No.

18 Q Do you, are you trained to know what
19 the red flags are for that?

20 A Yes.

21 Q And, um, as far as the medications that
22 Jackie Exline-Hassler is currently taking, which
23 is three --

24 A Yes.

25 Q -- can you give us, or the jury, more

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 importantly, can you give us an understanding of,
2 you know, based on two and half years or three
3 and half years of chronic pain, the level of meds
4 that she's taking versus the sprec (sic), the
5 spectrum of high and low, where is she? Where
6 does she fall on the chronic pain management
7 scale?

8 MR. PORCARELLI: Objection. Outside of the
9 scope of the cross.

10 MS. ZOIS: Certainly not.

11 BY MS. ZOIS:

12 Q Go ahead, you can answer.

13 MR. PORCARELLI: (Unclear.)

14 A (Unclear.)

15 BY MS. ZOIS:

16 Q How do you -- Counsel went through all
17 of the --

18 A Right.

19 Q -- this is Hydrocodone and this is one,
20 one level below, you know --

21 A Right.

22 Q -- these drugs, and he was asking about
23 some of the medications that Jackie's been
24 prescribed --

25 A Mm-hmm.

1 Q -- based on the few medications that
2 she's being prescribed currently can you give the
3 jury an understanding of what that load is,
4 generally speaking, for patients that you treat
5 for chronic pain injury?

6 A She is relatively low grade, uh, in
7 that she is taking Vicodin for some break through
8 pain, and she's on relatively low dose morphine
9 for a long acting agent. So, she's definitely on
10 the lower end of the spectrum in terms of
11 narcotic, narcotic medications for chronic pain
12 patients.

13 Q And has she talked to you about her
14 dosage?

15 A Yes.

16 Q And has she, what has she told the
17 pills and what she likes taking them or not
18 taking them?

19 A She does not like taking them. In
20 fact, when we've done procedures she would like
21 to cut back on them.

22 Q Okay. So, she, you talked to her
23 before about cutting back on her medications?

24 A Yes.

25 Q And did you send her out for a second

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 opinion base, uh, based on your opinions of a
2 regime that you have outlined for her?

3 A Yes.

4 Q And who'd you send her to?

5 A Uh, to Penn State Hershey.

6 Q And what did they say as to what you
7 are doing for her.

8 MS. HOWARD: Objection --

9 THE WITNESS: They --

10 MS. HOWARD: -- beyond the scope.

11 THE WITNESS: -- they, can I say why she --

12 MR. PORCARELLI: Same objection.

13 BY MS. ZOIS:

14 Q Yes, you may.

15 A They, they agreed with my treatment and
16 with my recommendations.

17 Q Okay. Did they think that you were
18 doing anything out of the ordinary in pain
19 management treatment?

20 A (Unclear.)

21 MR. PORCARELLI: Objection, beyond the
22 scope.

23 THE WITNESS: Can I --

24 BY MS. ZOIS:

25 Q Go ahead, you can answer, yes, you may.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A From, from my, from my recollection in
2 reading the notes, they agreed with my
3 recommendations.

4 Q All right. And, so, um, these
5 procedures that you perform on people, do, do
6 people enjoy them?

7 A No.

8 Q Getting injected in their backs?

9 A No.

10 MS. HOWARD: Objection. Asked and answered.

11 MS. ZOIS: All right.

12 BY MS. ZOIS:

13 Q Now, we're gonna' have to go through a
14 little bit of a long walk with these medical
15 records, and I apologize for that, but --

16 A Sure.

17 Q -- Doctor, I'm gonna' show you what's
18 marked as Plaintiff's Exhibit Number 8 and it's,
19 I'll represent to you, prior medical records in
20 this case, you've reviewed these, and they're
21 pages one through 100, correct?

22 A Yes.

23 Q And can we agree that those medical
24 records, um, are some of the med (sic), medical
25 records that were subpoenaed by the Defendant --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. HOWARD: Objection.
2 BY MS. ZOIS:
3 Q -- and they've been provided to you for
4 your review, is that right?
5 MR. PORCARELLI: Objection, move to strike.
6 THE WITNESS: Yes.
7 BY MS. ZOIS:
8 Q Okay. Fair enough. And the records
9 that you've been provided have been, date back to
10 the 1980's is that correct?
11 A That's correct.
12 Q All right. And in the 1980 she went to
13 the Washington County Hospital for things like a
14 throat culture, a rash, an ankle injury, to
15 delivery her son, is that your recollection --
16 A Yes.
17 Q -- of the (unclear - two words)?
18 MS. HOWARD: Objection, beyond the scope.
19 MS. ZOIS: All right. Let's go off the
20 record for a second.
21 VIDEO TECHNICIAN: We're going off the
22 record it's about 6:14 p.m.
23 (Whereupon, at 6:14 o'clock, p.m. video off
24 the record.)
25 MS. ZOIS: We have to change the video out, can you all

1 see the calendar well enough? Do you want it closer?

2 MALE VOICE: (Unclear.)

3 (Whereupon, at 6:28 o'clock, p.m. back on
4 the video record.)

5 VIDEO TECHNICIAN: This marks the beginning
6 of Tape 2 in the deposition of Dr. Sloan, we're
7 back on the record. The time is 6:28 p.m.

8 BY MS. ZOIS:

9 Q Changing gears slightly, Doctor, I
10 would like to direct your attention to page 360
11 in Ms. Exline-Hassler's medical records.

12 (Brief pause.)

13 A Okay. And I would represent to you
14 that this is a report from a doctor at Johns
15 Hopkins regarding his evaluation of Ms. Exline-
16 Hassler, and you've reviewed this record before,
17 is that right?

18 A Yes.

19 Q And, um, Mr. Porcarelli was asking you
20 some questions about whether or not you had seen
21 the films and whether or not the tears were still
22 there, et cetera. Can you read for me the
23 radiographic findings that this doctor reviewed
24 and tell me whether or not there's evidence,
25 according to his review of the films, that the

1 annular tears are still present.

2 A So, for the annular dated 5/26/11 --

3 Q Yes.

4 A -- there is, uh, there is discussion of
5 at L4/5, the second to last disc in the back,
6 that there is an area of high intensity zone, uh,
7 and central stenosis due to a disc protrusion.
8 And at the L5/S1 disc there's also degenerative
9 disease in addition to the high intensity zone.

10 Q And what does a high intensity zone
11 tell you?

12 A A high intensity zone is an MRI finding
13 that, uh, is consistent with a tear in a disc.

14 Q Okay. So, just so we're clear, as of
15 May --

16 A I mean (unclear - one word) that best
17 suggests a tear in the disc.

18 Q Okay.

19 A Is my antithesis.

20 Q All right. So, the MRI that was done
21 in May of 2011, which was after your discTRODE
22 procedure and your disc decompression does show
23 high intensity zones at those two levels, is that
24 right?

25 A That's correct.

1 Q All right. And I think your testimony
2 was just the high intensity zone does mean that
3 there are annular tears visible, is that right?

4 A It suggests that they're tear wounds.

5 Q Okay. Thank you.

6 A Mm-hmm.

7 Q Um, heading back to the prior medical
8 history in this case, and I'll provide to you
9 Plaintiff's Exhibit Number 8, the medical records
10 that you've been provided date back to the 1980's
11 is that correct?

12 A That's correct.

13 Q And from 1980 through about 1999, Ms.
14 Exline-Hassler went to the Washington County
15 Hospital for a variety of things, is that right?

16 A Correct.

17 Q And she went for things like a throat
18 culture, an injury to her left index finger, a
19 rash, the delivery of her son, is that correct?

20 A That's correct.

21 Q Um, Doctor, directing your attention to
22 Exline-Hassler's prior medical records Bates
23 stamp number, and I'm just gonna' pull these out
24 for you, 73 and 74, she was seen at the Urgent
25 Care at Robinwood on this date, is that right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And her chief complaint at that time
3 was a cough?

4 A Yes.

5 Q And she was noted to have allergies to
6 Penicillin, is that right?

7 A Yes.

8 Q And on the second page, page 74, um,
9 she was discharged home on a good discharge and
10 didn't want a work note, is that right?

11 A Yes.

12 Q And is it fair to say, Doctor, that
13 there's nothing in the pile before you in the
14 Plaintiff's Exhibit 8 for any medical records
15 from 2004, is that accurate?

16 A There's no referral, that's correct.

17 Q And there's nothing from 2005, is that
18 correct?

19 A That's correct.

20 Q And there's nothing from 2006, is that
21 right?

22 A Yes.

23 Q Okay. And, directing your attention,
24 um, oh, before I get ahead of myself, I'm gonna'
25 show you what's been marked as Den (sic), uh,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Defendant's Boonsboro Pharmacy Record Number 1,
2 as a result of her having --

3 MS. HOWARD: Objection.

4 MS. ZOIS: You can have a continuing
5 objection, Counsel.

6 BY MS. ZOIS:

7 Q She did fill a prescription for the
8 cough based on the November 19th, 2003 visit is
9 that right?

10 A Yes.

11 Q Okay. Now, I'm gonna' show you what's
12 been marked as Def (sic), uh, Exline-Hassler's
13 prior medical records 78 and 79, and I'll direct
14 your attention to the top where it says the date
15 of February 13th, 2007, is that right?

16 A I beg your pardon, repeat that.

17 Q I'm sorry, the date that she was there
18 was February 13th, 2007 --

19 A Yes.

20 Q -- is that correct?

21 A Mm-hmm.

22 Q And it says previous admit date
23 November 19th, 2003.

24 A Yes.

25 Q So, we know from the urgent care at

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Robinwood they have her previously being seen
2 back in November 19th, 2003, is that right?

3 A Right.

4 MS. HOWARD: Objection. This is Washington
5 County records.

6 MS. ZOIS: Right below that it says Urgent
7 Care Robinwood.

8 MS. HOWARD: Where?

9 MS. ZOIS: The highlighted part on (unclear
10 - two words).

11 BY MS. ZOIS:

12 Q It, and, and just so we're all on the
13 same page, it says Washington County Health
14 System, Urgent Care at Robinwood, is that
15 correct?

16 A Yes.

17 Q All right. And where it says PCP it
18 says, "Patient has no PCP or family doctor," is
19 that right?

20 A Where it says PCP.

21 Q On the right hand corner, I'm sorry.

22 A That's correct.

23 Q And it says past medical history none,
24 is that right?

25 A That's correct.

1 Q And currently medications none, is that
2 correct?

3 A That's correct.

4 Q And, um, going over to page 79, um,
5 second page, it says, "She states that she feels
6 fine otherwise, other than the itching," is that
7 right?

8 A Yes.

9 Q And then she provides her past medical
10 history of no medical history, is that correct?

11 A Yes.

12 Q And no medications, is that right?

13 A Yes.

14 Q Um, directing your attention to page
15 80, the plan was to have her referred to an
16 allergist, and for her to establish with a
17 primary care physician since she doesn't have
18 one, is that correct?

19 A Yes.

20 Q Okay. And, Doctor, she gets
21 prescriptions filled for that rash with Boonsboro
22 Pharmacy in February 2007, is that right?

23 A For the rash, yes.

24 Q Are there any prescriptions filled
25 between 2003 for the cough and 2007 for the rash?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A According to this, no.

2 Q All right. All right, Doctor,
3 directing your attention to, um, prior medical
4 records Bates stamp 85 and 89. Counsel asked you
5 earlier about a fall and a medical visit that she
6 had.

7 A Correct.

8 Q Oh, am I handing it to you, there we
9 go.

10 A Okay.

11 Q (Chuckles.) Sorry about that. So, she
12 was seen there for back pain as a result of a
13 fall, is that right?

14 A Correct.

15 Q And in the upper right hand corner
16 again it says, "The last time she was seen," can
17 you tell the jury when the last time she was seen
18 there was?

19 A The previous visit was, uh, 2/13/07.

20 Q Okay. And that's for the rash?

21 A Correct.

22 Q And there's no other records that
23 you've been provided in that meantime is there?

24 A To my recollection, no.

25 Q All right. And on the second page of

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 that the, according to the doctor's note, they
2 lost the dictation and they were going off memory
3 about her complaints, is that right?

4 A Yes.

5 Q And so, a week went by, essentially,
6 and the doctor created the report, is that right?

7 A Yes.

8 Q According to this report on this date
9 of January 2008 her prior medical history was
10 what?

11 A Previous medical history is labeled as
12 none.

13 Q And, um, what was her diagnosis, I'm
14 sorry, from this date?

15 A The --

16 MS. HOWARD: Objection.

17 BY MS. ZOIS:

18 Q Diagnosis from January 8th of 2008?

19 A Correct, I'm, I'm looking for the
20 additional, she complained of back pain, final
21 diagnoses is, uh, lumbar sprain.

22 Q And did the doctor order any x-rays?

23 A The doctor . . . no.

24 Q Did the doc (sic), doctor order an MRI?

25 A No.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Did the doctor order a neurology
2 consult?

3 A No.

4 Q Did the doctor order a neurosurgeon
5 consult?

6 A No.

7 Q Did the doctor order an orthopedic
8 consult?

9 A No.

10 Q And the doctor did prescribe some pain
11 medications for those, is that correct?

12 A Uh, let's see here. I don't see it on
13 this particular sheet.

14 Q How about 92?

15 A Yes.

16 Q And tell me the, the prescrip (sic),
17 the length of the prescription, so taken as
18 directed how long did that prescription last?

19 A This protrusion was, uh, so the
20 Vicodin, uh, five milligrams was prescribed one
21 or two tablets every four to six hours as needed,
22 and he dispensed 20. So, if the patient took
23 this as directed, she would run out in several
24 days.

25 Q And how about the other prescription?

1 A The (unclear - one word) was prescribed
2 for 17 milligrams, um, one every four hours and
3 20. So, again, several days.

4 Q Okay. So, the prescriptions were
5 pretty short?

6 A Correct.

7 Q All right. And, Doctor, directing your
8 attention to Defendant, I'm sorry, Boonsboro
9 Pharmacy --

10 A Mm-hmm.

11 Q -- it would appear as though she filled
12 those prescriptions, is that correct?

13 A Yes.

14 Q And are there any prescriptions filled
15 between that date and her prior visit there in
16 February of 2007?

17 A No.

18 Q All right. Directing your attention to
19 Ms. Hasline's (sic) record of 100 and 101, these
20 are the ones that, um, Counsel's directing your
21 attention to from the Robinwood Family Practice.

22 A (Unclear - two words.)

23 Q Doctor, it indicates that she was 45-
24 years-old --

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- at the date of this visit, is that
2 correct?

3 A Yes.

4 Q Is that how old she was at the date of
5 that visit based on that?

6 A What is, what's your date of birth
7 here? No.

8 Q That set out, that's incorrect?

9 A That's incorrect.

10 Q And it says under chief complaint that
11 she was a new patient there to be established, is
12 that right?

13 A Yes.

14 Q Under chief complaint?

15 A Mm-hmm.

16 Q And she was there about low back pain,
17 is that right?

18 A Yes.

19 Q Show me on page two for a second,
20 Doctor, at the bottom of the page --

21 A Mm-hmm.

22 Q -- it's actually page 101 where it
23 says, "Verification of ancillary documentation
24 the following portions of the chart were
25 completed by ancillary personnel under (unclear -

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 one word) physician, (unclear - one word) and
2 chief complaint," is that accurate?

3 A Yes.

4 Q So, and her chief complaint was the low
5 back pain, is that right?

6 A Chief complaint was the lowers back
7 pain.

8 Q So, the low, is it fair to assume the
9 low back pain that she had complained was taking
10 by ancillary personnel and actually the
11 physician, according to this record?

12 A Yes.

13 Q Okay. And does this, does anywhere in
14 this record mention the fall that she had three
15 months before?

16 A Three months before?

17 Q Yes, the fall from January of '08?

18 A No, it does not.

19 Q Okay. So, in the record, is it fair to
20 say that there was no numbness or tingling in her
21 back that she reported?

22 A The patient did not complain of it, and
23 it is not discussed in the evaluating provider.

24 Q And where the prior medical history
25 part is on page 100, which is the first page,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 what does it say about her prior medical history?

2 A It doesn't.

3 Q It's just left blank?

4 A Correct.

5 Q And what about medications, what does
6 that say?

7 A It doesn't say anything.

8 Q It's just left blank?

9 A Yes.

10 Q And how about allergies, what does that
11 say?

12 A Nothing.

13 Q It's just left blank?

14 A Yes.

15 Q And, Doctor, you're aware and then the
16 records revealed it, she's allergic to
17 Pénicillin, is that right?

18 A Yes.

19 Q Doctor, the physical examination that
20 was done on this date in March of 2008 doesn't
21 appear as though they even examined her back, I
22 mean, correct me if I'm wrong, because you're the
23 Doctor, I'm not, but do you see medical
24 examination of her back in that physical
25 examination portion?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A No.
2 Q Okay. And were any x-rays ordered?
3 A No.
4 Q Were any MRI's ordered?
5 A No.
6 Q Was any neuro-consult ordered?
7 A No.
8 Q Was any orthopedic consult ordered?
9 A No.
10 Q Was any, um, PT consult ordered (sic),
11 ordered, I'm sorry, right in the middle of the
12 page?
13 A Yes.
14 Q Okay. And what were the prescriptions
15 that were prescribed to her on that date?
16 A Uh, she was prescribed Chantix.
17 MS. HOWARD: What was the other one?
18 THE WITNESS: Uh, Chantix.
19 MS. ZOIS: Chantix.
20 THE WITNESS: C-H-A-N-T-I-X, and, uh, they
21 want her to get a, a lipid screen.
22 BY MS. ZOIS:
23 Q And what medications were prescribed to
24 her for the lumbar strain?
25 A In the?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Up above.
2 A I beg your pardon, I didn't --
3 Q That's okay.
4 A Percocet, Ultram, Skelaxin just like,
5 uh, the other, uh, being other counsel, sorry.
6 Q All right. Now, I'm gonna' show you
7 again in Boonsboro Pharmacy, and can you tell us
8 whether or not she ever filled the Percocet?
9 A Uh, according to this record the answer
10 is no.
11 Q And the Skelaxin and the Tramadol,
12 Doctor, we showed you this earlier, is, um,
13 Plaintiff's Exhibit Number 26, those are non-
14 scheduled narcotics, is that right?
15 A That is correct.
16 Q Okay. And she, um, was ordered to
17 follow up with a physical therapist, is that
18 right? She had a PT consult?
19 A Yes, that's right.
20 Q And she went to that PT consult on
21 April the 28th, 2008, and I will show you that
22 record as one of (unclear - two words). And that
23 medical --
24 A Okay.
25 Q -- record says that she's there for a

1 lumbar strain from a fall, is that right?

2 A Correct.

3 Q It doesn't say anything about a car
4 accident three years ago.

5 MS. HOWARD: Objection.

6 BY MS. ZOIS:

7 Q Let me ask it differently. Does this
8 record say anything about (unclear - two words)
9 there for a car accident three years earlier?

10 A No.

11 Q And what was her functional level
12 before the fall?

13 A Independent without any interference of
14 low back pain.

15 Q And what were her social activities
16 that she enjoyed?

17 A Uh, riding on her motorcycle and
18 gardening.

19 Q And what, if any, significance do you
20 place in the fact that she's riding a motorcycle
21 in April of 2008?

22 A From --

23 Q As it associates with back pain.

24 A -- from, from my experience in, in
25 patients who have low back pain if you ride

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 motorcycles, they can't ride their motorcycles
2 anymore, and that's a big, big issue for them,
3 because it, it, uh, impacts their life.

4 MS. HOWARD: Objection, move to strike.

5 BY MS. ZOIS:

6 Q And, according to this report, the pain
7 doesn't bother her when she's up and running,
8 does that, what the report would indicate?

9 A I beg your pardon?

10 Q Where it says "subjective reports" how
11 she's telling the doctor she's feeling on this
12 day, it says that, "The pain generally doesn't
13 bother her when she's up and moving."

14 A Yes.

15 Q And the second sentence, "Generally,
16 after she gets up and walks around for about five
17 minutes it goes away," is that right?

18 A Correct.

19 Q And the functional goals on page two,
20 which is 110.

21 A Mm-hmm.

22 Q The functional goals were . . . number
23 2) educate her in proper posture; and number 3)
24 to improve her postural awareness in sitting. Is
25 that correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q All right. Now, directing your
3 attention to her physical therapy note, which is
4 (unclear - two words) prior medical records 120
5 (sic), 124.

6 A Okay.

7 Q I'm sorry. So, she, did she follow up
8 at the PT consult?

9 A Yes.

10 Q And that was on May 6th, 2008?

11 A Yes.

12 Q Um, and according to what she told the
13 physical therapist she had a couple of flare ups,
14 but they'd all been from sitting crooked in the
15 chair, is that right?

16 A Correct.

17 MS. HOWARD: Objection. (Unclear - three
18 words.)

19 BY MS. ZOIS:

20 Q And what --

21 MS. HOWARD: Do you (unclear - three words)?

22 MS. ZOIS: Oh, sure.

23 BY MS. ZOIS:

24 Q You wanna' read the --

25 A Sure, um . . .

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- list the (unclear - one word)
2 portion of (unclear - two words)?

3 A Uh, "Pain has, that they had all been
4 related to sitting crooked in chairs. Advised
5 proper alignment doing sitting."

6 Q Okay. So, they were con (sic), they
7 were there to teach her the proper alignment when
8 sitting?

9 A Correct.

10 Q And this is her first and last physical
11 therapy visit with this group, is that right?

12 A Uh, yes.

13 Q I wanna' show you what's been marked as
14 Plaintiff's prior medical records, 128. To enter
15 one visit and was basically paper discharged, is
16 that right?

17 A "Minimal discomfort, patient not return
18 for further sessions."

19 Q And this was as, so, as of -- what's
20 the date of this record, Doctor, 128?

21 A 4/28/08.

22 Q And what did the doctor note as her
23 discomfort level in April 28th of 2008?

24 A He, he noted that, uh, "Patient not
25 return back for further sessions." Uh, and as

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 she noted, "Minimal discomfort."

2 Q Okay. So --

3 A And to continue on exercise program.

4 Q So, of the prior medical records --

5 A Mm-hmm.

6 Q -- that you have we've discussed for
7 lower back records.

8 A Correct.

9 Q And after any of those visits did
10 anyone advise her to go to an orthopedic surgeon?

11 A No.

12 Q Did they advise, advise her to consult
13 a neurosurgeon?

14 A No.

15 Q Did they advise her to have x-rays?

16 A No.

17 Q Did they advise her to have MRI's?

18 A No.

19 Q Did they advise her to have injections?

20 A No.

21 Q Did they advise her to seek out pain
22 management?

23 A No.

24 Q Did they advise her to have, other than
25 the one physical therapy visit, extended physical

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 therapy?

2 A No.

3 Q Did they advise her to go seek
4 chiropractic treatment?

5 A No.

6 Q Did they advise her to, uh, consult
7 with a pain management doctor?

8 A No.

9 Q Did they advise her to be on ongoing
10 pain medications?

11 A No.

12 Q Doctor, I want to show you what's been
13 marked as, it's actually in your binder in front
14 of you, but it's a medical record. At page 28,
15 and can you tell whose form this is, upper right
16 hand corner?

17 A Uh, Robinwood Family Practice?

18 Q Yes, absolutely. Directing your
19 attention to box number five, can you, um, the,
20 the question is, "History of occurrence, as
21 described by patient." Can you tell us what the
22 doctor filled out on the box?

23 A Back and neck pain from the car
24 accident, uh, 6/26/09.

25 Q And, number seven, "When did symptoms

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 first appear?"

2 A 6/26/09.

3 Q And, number eight, "When did the
4 patient first consult with you for this
5 condition?" What --

6 A 6/26/09.

7 Q Box number nine, "Has patient ever had
8 same or similar condition?" What box did they
9 check?

10 A (Unclear - one word.)

11 Q "Is condition solely as a result of
12 this accident?"

13 A Yes.

14 Q What blocks did they check?

15 A They checked yes.

16 Q Okay. And this is a report that was
17 completed by Robinwood Family Practice and signed
18 and dated on July 30th of 2009.

19 A Signed it on the 7 (sic) -- yes.

20 Q And there's a physician by the name
21 Heather S. Hall --

22 A Yes.

23 Q -- is that right?

24 A Not, not --

25 (Unclear - voice speaking simultaneously.)

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay.
2 A That's not physician.
3 Q So, PAC, physicians --
4 A Mm-hmm.
5 Q -- assistant --
6 A Yeah.
7 Q -- completed this?
8 A Mm-hmm.
9 Q All right. But it was someone that
10 completed it from Robinwood Family Practice?
11 A Correct.
12 Q All right. And, lastly, I'm gonna'
13 show you what's been marked as 30, which is also
14 in the binder --
15 A Mm-hmm.
16 Q -- and that appears to be a motor
17 vehicle accident form from Robinwood, is that
18 right?
19 A Correct.
20 Q Did you see any form like this out of
21 the Robinwood records that you looked out for any
22 other car accident other than the June 26th, 2009
23 crash?
24 A No.
25 MS. ZOIS: That's all I have. Oh, before I

1 forget, I would offer into evidence Plaintiff's
2 Exhibits 18, 20, 20(a) and 26.

3 BY MS. ZOIS:

4 Q And one last question, Doctor, um,
5 after you were questioned at your discovery
6 deposition about The Pain Management Center's
7 billing practice, did you talk to anybody about
8 the bills in general at your practice?

9 A Yes.

10 Q Who'd you talk to?

11 A Our chief medical officer.

12 Q And was he able to provide you
13 information as to whether or not your charges
14 were fair and reasonable within the general
15 accepted area?

16 A (Unclear - four words.)

17 MS. HOWARD: Objection.

18 BY MS. ZOIS:

19 Q You can -- let me ask the question
20 differently. Um, what were you lead to
21 understand based on your discussion with him as
22 to your bills?

23 MR. PORCARELLI: Objection.

24 MS. HOWARD: Objection.

25 BY MS. ZOIS:

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q You can say what he told me (sic), but
2 you can tell me what your understanding was after
3 talking to him.

4 MS. HOWARD: Same objection.

5 MR. PORCARELLI: (Unclear - one word)
6 objection.

7 THE WITNESS: Okay. May I ask a question?
8 Or, so, so, I informed him that I was involved in
9 a deposition and a question arose as to whether
10 our finding was appropriate. And he, it was my
11 understanding, and how he conveyed to me, that
12 they compared, we compared our prices to doctors
13 in the area, as well as the Mid-Atlantic region
14 and that we were (unclear - two words) of any
15 pain practice in this region.

16 MS. ZOIS: Thank you.

17 MS. HOWARD: Objection, move to strike.

18 MR. PORCARELLI: (Unclear - one word) same.

19 MS. ZOIS: (Unclear - one word.)

20 MS. HOWARD: It, it hearsay. He didn't know
21 it, they guy told him then (unclear - three
22 words), that's all, it's hearsay.

23 MS. ZOIS: Hearsay's (unclear - one word).

24 MS. HOWARD: Okay.

25 MR. PORCARELLI: Same.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. HOWARD: I just have a couple questions.
2 MALE VOICE: (Unclear - five words.)
3 MS. HOWARD: Oh, sorry, (unclear - two
4 words).

5 RECROSS EXAMINATION

6 BY MS. HOWARD:

7 Q Um, Doctor, just take a look back at, I
8 guess it's part of that packet of prior medical
9 records, I'd like to direct your attention to Dr.
10 Stephanie Brown's record of, um, March 26, 2008,
11 I think it's record 100 from the prior thick
12 packet.

13 A Okay.

14 Q (Unclear - two words.)

15 A So, just wonderin'.

16 Q Down (unclear - one word).

17 A Okay.

18 Q Here, I'll just get you those.

19 A Okay.

20 Q And will you take it from page two of
21 that when you take a look at the, um, Percocet --

22 A Yes.

23 Q -- is it correct, Doctor, it was
24 actually dispensed to the patient there?

25 A I can't tell from this.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q It says dispense, doesn't it?
2 A Correct, but I'm not aware of people
3 who dispensing out of office, I just don't know.
4 Q Okay. But it does seem to indicate,
5 based upon the face of the record that it was
6 dispensed?
7 A Perhaps, I don't know how her office
8 works.
9 Q All right. Well, for example --
10 A Mm-hmm.
11 Q -- do you see on those records, um, uh,
12 I don't know if you have them in front of you,
13 from the pharmacy?
14 A Mm-hmm.
15 Q Do you have those there?
16 A I beg your pardon? Yes.
17 Q All right. Well, let me ask you this,
18 with respect to the Skelaxin and the, um, Ultram
19 --
20 A Mm-hmm.
21 Q -- were they dispensed?
22 A They were dispensed, but they were
23 filled at a pharmacy.
24 Q All right. Um, and they were later
25 filled at a pharmacy, correct?

1 A That's correct.

2 Q All right. And, um, what pharmacy --
3 uh, okay. Now, I just wanted to check on other
4 thing, you told us that you saw the records from
5 the physical therapist, um, on, uh, 2008, the
6 intake records from the physical therapist, like
7 typed report?

8 MS. ZOIS: Objection. Misstates testimony.

9 THE WITNESS: If you can show the, the
10 specifics I'd be happy to walk you through it.

11 BY MS. HOWARD:

12 Q Okay. Uh, it's the same records that
13 you were just looking at.

14 A Okay.

15 Q That thick packet. The thick packet.

16 MS. ZOIS: Which one, I can hand it to you.
17 (Unclear - four words.) (Brief pause.) (Unclear
18 - five words.)

19 BY MS. HOWARD:

20 Q I'm looking for physical therapist's
21 records.

22 MS. ZOIS: That's 5-608.

23 BY MS. HOWARD:

24 Q Uh, told we have, told me that (unclear
25 - one word) --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: 4-2808.

2 BY MS. HOWARD:

3 Q -- Robinwood, um, prior medical
4 records, is it 109?

5 A (Unclear - two words) page 109.

6 Q Um, is it correct, is it correct there
7 that Ms. Exline-Hassler told the therapist there
8 that, um, sometimes she feels like, when the pain
9 hits her she feels like an 80-year-old woman,
10 that's the subjective section of the report.

11 A Mm-hmm. Yes, that's where it says, uh,
12 that's correct.

13 Q All right. And, uh, you've already
14 talked about that this record indicates that she
15 first hurt herself when, um, first reports pain
16 around Christmas '07, she was moving something
17 around, injured her back, and then shortly
18 thereafter she fell downstairs, correct?

19 A Correct.

20 Q So, would it be fair to say, based upon
21 your review of these records, that from Christmas
22 time '07 as late as April 28th, 2008 Ms. Exline-
23 Hassler had continuing low back pain at times
24 making her feel like and 80-year-old woman?

25 A (Unclear.)

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Well, episodes anyway of pain, that
2 just hadn't seem to have gone away.

3 A I can't, I can't tell you if it's
4 continuing, but from what this note reads they,
5 they seem to be episodic.

6 Q Mm-hmm.

7 A But I can't say that it was continuing
8 or not.

9 Q Mm-hmm. And is it also correct that in
10 that same physical therapy note, the typed
11 section where she talks about, you know,
12 Christmas '07 and fell down stairs, et cetera.
13 It says she had a previous episode like this that
14 occurred several years ago, correct?

15 A Where are you finding this?

16 Q Okay, where it says, "Physical therapy,
17 initial evaluation. This is a 41-year-old female
18 who presents today with right side lower back
19 pain."

20 A Okay.

21 Q "Patient reports around Christmas '07 .

22 . . ." --

23 A -- ". . . she was moving something and
24 injured her back . . ." --

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q -- ". . . and shortly after that fell
2 down the stairs."

3 A Correct.

4 Q Now, we agree the date of this record
5 is April 28th, '08.

6 A That's correct.

7 Q Okay. So, December '07 is about five
8 months before, correct?

9 A That's correct.

10 Q All right. Um, and we saw on some
11 other records, we talked about that, she fell
12 down the steps in early January '08 that's when
13 she went to the emergency room, right?

14 A Correct.

15 Q All right. Um, says, "Continuing she
16 has not had radiographs."

17 A Mm-hmm.

18 Q And then in the typed portion of this
19 report it says, "She has had a previous episode
20 like this that occurred several years ago."

21 A Correct.

22 Q All right. Um, basically, the last
23 thing I wanted to ask you was about acupuncture.
24 (Unclear - five words), Doctor.

25 A (Unclear - one word.)

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. You recommended that Ms. Exline-
2 Hassler consider acupuncture, you, yourself, a
3 couple into your, your, um, prac, your meetings
4 with her, correct?

5 A I'll have to go back for a specific
6 recollection, but do I, may I?

7 Q Yes, of course.

8 A Do you I recommend acupuncture on
9 patients, the answer is yes.

10 Q So, without me actually pointing you to
11 the page --

12 A Mm-hmm.

13 Q -- it doesn't sound out of the or
14 (sic), out of the norm, correct?

15 A Correct.

16 Q All right. And when you told us
17 earlier that, um, Hershey, you know, had
18 basically had the same recommendations as you --

19 A Mm-hmm.

20 Q -- didn't Hershey recommend that maybe
21 she consider acupuncture? (Unclear - three
22 words?)

23 A I'll have to go back and look
24 specifically.

25 Q At the Hershey record?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yeah.

2 Q You can find that one easily, can't
3 you?

4 A If you can show me the page I'll be
5 happy to go through it.

6 MS. ZOIS: I'll stipulate to that, Counsel -
7 -

8 MS. HOWARD: Okay.

9 MS. ZOIS: -- to save time.

10 THE WITNESS: Okay.

11 BY MS. HOWARD:

12 Q And she, your recollection, did Ms.
13 Exline-Hassler ever actually get any acupuncture?

14 A To my recollection, the answer is no.

15 Q Okay. That's all I have. Thank you so
16 much.

17 A Sure.

18 RECROSS EXAMINATION

19 BY MR. PORCARELLI:

20 Q Very limited area, Doctor, I'm almost,
21 and I'll be done.

22 A Sure.

23 Q You have a thick stack of records in
24 front of you one through 368, can you flip to
25 number 028, please? We were talking about it a

1 moment ago regarding the attending physician's
2 report.

A 028. Have it, yes, sit.

4 Q Okay. Now, initially, when Plaintiff's
5 Counsel was asking about this, there was
6 suggestion that initially that it was signed by a
7 Doctor, but, in fact, clarified that it was
8 signed by a physician's assistant.

9 A It appears to be from a physician's
10 assistant.

11 Q Okay. Now, you don't know who filled
12 out page one of that form versus page two of the
13 form, do you?

14 A No, I do not.

Q And a physician's assistant has far less medical training than a medical doctor, don't they?

18 A Correct.

Q Thank you very much.

20 A Okay.

BEDIRECT EXAMINATION

22 BY MS. ZOIS:

23 Q Two based on that, I'm sorry, and this
24 will be the end. Does it appear that page one
25 and two are in the same handwriting, in your

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 | opinion?

2 MR. PORCARELLI: Objection.

3 MS. HOWARD: Objection.

4 BY MS. ZOIS:

5 Q Can you tell?

6 A Uh --

7 MS. HOWARD: Objection.

8 THE WITNESS: -- I can't tell you.

9 BY MS. ZOIS:

10 Q Fair enough. And the Hershey referral,
11 that was that came back that Counsel was asking
12 you about. She was, saw Hershey in just last
13 month, is that right?

A I don't recall an exact date.

15 Q I can direct your attention to the
16 records. I believe they're medical records page,
17 the last three, 36 (sic), uh, 368, 367 and 366, I
18 believe.

19 A Two to three . . .

20 Q Sorry.

21 A Okay.

22 Q And just the date that you went to go
23 see Hershey (unclear - four words).

24 A She went to see Hershey on December 11,
25 2012.

1 Q Thank you. Thank you, Doctor, for your
2 time.

3 A Okay. You're welcome.

4 VIDEO TECHNICIAN: All right. This marks
5 the end of the deposition, the number of tapes
6 used was two. We're going off the record. The
7 time is 7:01.

8 (Whereupon, at 7:01 o'clock, p.m.,
9 videotaped deposition is over.)

10 MS. ZOIS: Thank you, Your Honor.

11 THE COURT: And, Counsel, if you could just approach for
12 our logistics check it's considering the time? Come on up.

13 (Counsel approached the bench and the following
14 occurred:)

15 (Husher turned on.)

16 THE COURT: Um, you wanna' go ahead and do lunch right
17 now for about an hour?

18 MR. PORCARELLI: Yes, please.

19 THE COURT: Yeah, I think everybody needs it, so. Um, I
20 will, uh, send them out and we'll start back in about an
21 hour.

22 MR. GILLCRIST: Your Honor, just at the very end of the
23 tape there was a motion to strike the doctor's testimony in
24 terms of the billing, hearing from his billing manager. I
25 would, I --

1 MS. HOWARD: Yeah.

2 MR. GILLCRIST: -- believe we all, at least on the
3 Defense side are together in moving to strike, um, that
4 testimony he, um, uh, learned from his billing manager, and
5 was just recounting things his billing manager was saying.
6 So, that's, that's obviously hearsay, and I'd move to strike
7 that.

8 MS. ZOIS: Um, he didn't actually, hearsay's an out of
9 court statement made for the use of --

10 THE COURT: Mm-hmm.

11 MS. ZOIS: -- the truth of the matter asserted. What he
12 said was not verbatim hearsay. It wasn't what the officer
13 manager told him, it was what his understanding was of the
14 billing practice, which is certainly, um, admissible.
15 Because he obtained that information from some other source
16 doesn't mean the information that he testified to on the
17 transcript was actually hearsay.

18 Additionally, we, um, I asked him are your bills
19 fair, reasonable, necessary and causally related, and he said
20 yes. Um, what'd I leave out?

21 MR. BRATT: You left out that the basis for expert
22 (unclear - one word) testimony can be hearsay.

23 MS. ZOIS: The basis of expert testimony can be hearsay.

24 THE COURT: I'm, for right now I'm gonna' deny the
25 objection. The other reason is if there's an objection to a

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 de bene esse deposition that should be raised ahead of trial
2 so that the Court can rule and it can be excised. So, I'm
3 gonna' deny the motion to strike.

4 MR. BRATT: Thank you, Your Honor.

5 THE COURT: Okay?

6 MR. GILLCRIST: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. ZOIS: Thank you, Your Honor.

9 THE COURT: Mm-hmm.

10 (Counsel returned to the trial tables and the following
11 occurred:)

12 (Husher turned off.)

13 THE COURT: Lunch break. I know everybody wants . . .
14 um, again, take it back in the back and make sure that you
15 all get out of here, and I think you all realize now why we,
16 uh, have somebody come and fetch you, because it's a little
17 difficult to get up here.

18 Um, I'll ask you to be back downstairs, um, in an
19 hour and we'll resume for the afternoon. Thank you,
20 everyone.

21 (Jury excused from the courtroom.)

22 THE COURT: Okay. And everything should be safe in
23 here, I don't have anything else other than you all today,
24 this afternoon. Um, and just, uh, is there a, a DVD or
25 whatever of the doctor's testimony to be marked and entered?

1 MS. ZOIS: We, uh, we did mark and identify his
2 testimony as Plaintiff's Exhibit Number 50. I can offer that
3 into the record.

4 THE COURT: Just, just 'cause at some point I know that
5 for the record to be complete they want that to be there. I
6 just wanted to make, you don't need to do it now, but just to
7 make sure that we have one somewhere.

8 MS. ZOIS: Okay. The, the transcript that has been
9 marked and identified, however, is not the redacted --

10 THE COURT: Right.

11 MS. ZOIS: -- transcript that took the pen information
12 out. What I can do is we can burn a disk --

13 THE COURT: So.

14 MS. ZOIS: -- of what was actually played and put that
15 as a 50(a).

16 THE COURT: That should be fine.

17 MS. ZOIS: Thank you, Your Honor.

18 THE COURT: Okay?

19 MS. HOWARD: Your --

20 THE COURT: Yes.

21 MR. GILLCRIST: Your Honor, one small housekeeping
22 matter.

23 THE COURT: Yeah.

24 MR. GILLCRIST: We have the trooper under subpoena, and
25 apparently he can only testify today, is that correct?

1 MS. HOWARD: Well, he, it would be a great inconvenience
2 for him to have to come back tomorrow, but he's available all
3 day today, even after 4:00, I mean, he's working 'til 4:00,
4 but he said he could do overtime after 4:00. And I've asked
5 Counsel if they could accommodate me, and I, I think the
6 answer's yes, but I don't have a --

7 THE COURT: So.

8 MS. ZOIS: The answer's yes, Your Honor.

9 THE COURT: Yep.

10 MS. ZOIS: I sent her an email about this last night --

11 THE COURT: Okay.

12 MS. ZOIS: -- that we could take him at 4:00, and I also
13 told her I'd talk to her about it today.

14 THE COURT: Abso, and absolutely, and I'll just say that
15 for scheduling purposes, sometimes we take witnesses out of
16 order, and absolutely that's fine with the Court.

17 MS. HOWARD: All right.

18 MR. GILLCRIST: Thank you, Your Honor.

19 MS. HOWARD: Thank you.

20 MS. ZOIS: And fine with me, Your Honor.

21 THE COURT: And, and exactly.

22 MS. HOWARD: Thank you.

23 THE COURT: Okay. Thanks. See everybody in an hour.

24 MR. PORCARELLI: Thank you, Your Honor.

25 MS. ZOIS: Thank you, Your Honor.

1 THE CLERK: All rise.

2 (Whereupon, from 12:40 o'clock, p.m. until 1:49 o'clock,
3 p.m., a luncheon recess was taken.)

4 (Jury not present.)

5 THE COURT: And good afternoon again, everyone. Please
6 be seated.

7 MR. GILLCRIST: Good afternoon.

8 THE COURT: We're back on the record in the matter of
9 Exline-Hassler vs. Sapp. And are we ready for the jury?

10 MS. ZOIS: We are, Your Honor. Um, we will be calling
11 Dr. Naff. However, I understand Defense Counsel wants to
12 take the police officer out of turn, which is totally fine
13 with us, and he would be the next witness after Dr. Naff, and
14 there is an issue with what, um, I expect his testimony to be
15 that we'd be objecting to. Would you like to hear it now or
16 --

17 THE COURT: Sure.

18 MS. ZOIS: -- do you want us to wait? Um, it's our
19 understanding that the Defense will be eliciting testimony
20 from the police officer that there were several other
21 different accidents, um, on this date near this area, and we
22 would, uh, make a motion with the Court that other accidents
23 in the area are not relevant to the issues in this case,
24 which are did the Defendant operate her vehicle safely and
25 reasonably? Did the Plaintiff operate her vehicle safely and

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 reasonably, and any other accident that may have taken place
2 on those days completely irrelevant and not germane to the
3 issues, uh, that the jury needs to decide with respect to the
4 actions exclusively of the Defendant and the Plaintiff, which
5 is this case. And that's all, Your Honor.

6 THE COURT: Okay. Thank you.

7 MS. HOWARD: Uh, thank you, Your Honor. Um, I would be,
8 um, in part, eliciting, attempting to elicit from the
9 officer, uh, his understanding based upon his personal
10 observations of, um, an investigation of other accidents on,
11 on the scene at or near where this happened on his MAR
12 report. He indicates, based upon his investigation, that,
13 uh, vehicle two, the Plaintiff, stopped in response to an
14 accident in head of her. So, it's dir (sic), at least that
15 accident's directly relevant to this.

16 Also, while on the scene an ambulance came by,
17 stopped, and checked in with these people, but they were
18 heading on to another accident, and, um, the officer
19 testified at Traffic Court that there were six to seven other
20 accidents that day, which he has informed me that's based
21 upon his review of the call sheet from that afternoon, that
22 day that he's aware of at least several that he could see
23 while he was there, and later learned of several more in that
24 general area. I, I apologize, Your Honor, I forgot the
25 actual intersections, but he can between here and there on

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 that, uh, the westbound 70, there were five to six accidents
2 that night.

3 THE COURT: All right.

4 MS. HOWARD: Thank you.

5 THE COURT: And the, the proffered relevance of that is?

6 MS. HOWARD: The proffered relevance, first of all, is
7 to the fir (sic), the accident that the Plaintiff was
8 responding to, confirming that she was responding to another
9 accident, and that there was another accident, uh, that the
10 ambulance was responding to. And remember how Your, Your
11 Honor may have heard another proffer earlier that, um, the
12 Plaintiff will, herself will say that once I was stopped I
13 saw another car go past me, a tractor-trailer skid past me,
14 then I was hit. It all happened very fast. The tractor-
15 trailer guy comes back and says did I hit you guys. So, that
16 there's, to set the stage of this being, um, not only a
17 sudden stop, but, basically, kind of a mess out there is a
18 lot of the information that we've heard, remember how it was
19 raining, and that, so all go into the liability defenses of
20 the Defendant, as well as, um, to some degree the injuries of
21 the Plaintiff.

22 MS. ZOIS: And just in response to that, Your Honor --

23 THE COURT: Wait --

24 MS. ZOIS: -- I certainly --

25 THE COURT: -- well, just wait, 'cause Counsel stood up,

1 so let me --

2 MS. ZOIS: Sorry, Your Honor.

3 MR. BRATT: We keep forgetting how many there are.

4 THE COURT: That's okay.

5 MR. PORCARELLI: Just formally, for the record, I would
6 adopt to incorporate what Counsel for Defendant Sapp said.

7 THE COURT: Okay. Now.

8 MS. ZOIS: Thank you, Your Honor. And, certainly, I, I
9 agree with Counsel that all of that testimony is appropriate
and proper as to what the tractor-trailer driver did, the
11 other can swinging around and all that.

12 My specific objection would be the police officer's
13 testimony that there were six or seven other accidents in
14 this area on that day after he went back and looked at the
15 call sheets for other accidents on that day between this area
16 and that area. First, it's double hearsay, but second of
17 all, other accidents in that area don't go to the germane
18 issues of this case, which are did the Plaintiff act
19 reasonably under the circumstances? Did the Defendant act
20 reasonably under the circumstances, and to allow the, um,
21 Defendants to say well, gee, everybody had an accident that
22 day so it could not be everybody, it could be nobody's fault
23 is, I think, unfair and prejudicial to the Plaintiff when
24 what the jury's asked to decide is the specific acts of the
25 Plaintiff and the specific acts of the Defendant.

1 THE COURT: I will allow the officer to testify, um, as
2 to his personal observations of arriving on the scene, um,
3 and, uh, any personal observations of what he observed other
4 vehicles had happened during the day, assuming that that's
5 gonna' tie into the testimony that was outlined, um, that,
6 uh, cars kinda' were going all over the place when all this
7 happened. Um, but anything as to going back to other
8 reports, in looking at other reports there were six or seven
9 other accidents. I don't think that that's appropriate, but
10 he certainly can testify as to the . . . it sounds like a
11 rather chaotic scene.

12 MS. ZOIS: Thank you, Your Honor.

13 THE COURT: Okay?

14 MR. BRATT: I have one very brief preliminary thing,
15 Your Honor. Um, first, I don't, I don't know who in the
16 courtroom is a witness besides Dr. Naff.

17 THE COURT: So. I don't know either.

18 MR. BRATT: Are any of --

19 THE COURT: So.

20 MR. BRATT: -- you folks potential witnesses in this
21 matter?

22 (No response.)

23 MR. BRATT: Okay. Then, Your Honor, what I'd like to do
24 as a result of a discussion I had with Mr. Porcarelli, uh, he
25 has requested, and I have agreed, to advise Dr. Naff on the

1 record of the Court's ruling regarding Mr. Porcarelli's
2 client. Um, that, Dr. Naff, if at any point during your
3 testimony it arises, although I don't think it will, you
4 cannot refer to Penn National or refer to Penn National as a
5 Defendant in this case, do you understand that?

6 DR. NAFF: (Nodding.)

7 MR. BRATT: You're nodding your head saying yes?

8 DR. NAFF: Yes.

9 MR. BRATT: Okay. Thank you, Your Honor.

10 MR. PORCARELLI: Or any reference to insurance.

11 THE COURT: I think --

12 MR. BRATT: Whatever.

13 THE COURT: Yeah.

14 MR. PORCARELLI: I think we're good.

15 MS. HOWARD: Your Honor, again, I would have another,
16 uh, kinda' housekeeping request. So that we can keep things
17 moving, do I have permission to step and, um, contact officer
18 to re, uh, remind him of the, um, limited focus of his
19 testimony.

20 THE COURT: I have no --

21 MS. HOWARD: And then I come right back in.

22 THE COURT: -- I have no objection. I know everybody
23 wants to keep things moving, and that's one advantage to
24 having more than one head at the table.

25 MS. HOWARD: Thank you.

1 THE COURT: So, certainly, the Court has no objection to
2 that.

3 MR. BRATT: Are there others?

4 THE COURT: (Chuckles.) And, all that being said, we're
5 ready now to bring in the ladies and gentlemen.

6 MR. BRATT: Thank you, Your Honor.

7 THE COURT: Okay. Mr. Samuels, you wanna' let them come
8 on in.

9 MR. BRATT: Your Honor, may I have permission to sit the
10 exhibits I anticipate using on the table in front here.

11 THE COURT: Sure.

12 MR. BRATT: So I don't have to keep . . .

13 THE COURT: That's fine.

14 (Jury entered the courtroom.)

15 THE COURT: And good afternoon, everyone, and note for
16 the record all of jurors are present. And, Mr. Bratt, you
17 may proceed.

18 MR. BRATT: Thank you, Your Honor. Uh, the Plaintiff
19 would call, uh, Dr. Naff to the stand.

20 THE COURT: And the easiest way, Doctor, is go right up
21 that ramp.

22 DR. NEAL NAFF,

23 a witness, produced on call of the Plaintiff,
24 first having been duly sworn according to law,
25 was examined and testified as follows:

1 DIRECT EXAMINATION
2 BY MR. BRATT:
3 Q Good afternoon, Doctor.
4 A Good afternoon.
5 Q Um, could you give the jury your full name and
6 business address?
7 A Um, Neal Jamison Naff, 2700 Quarry Lake Drive,
8 Suite 360, Baltimore, Maryland 21209.
9 Q What do you do for a living?
10 A I'm a neurosurgeon.
11 Q And could you briefly describe your educational
12 background beginning with your undergraduate education?
13 A I, uh, obtained a bachelor of science in biology at
14 the Virginia Military Institute.
15 Q And you were class valedictorian, were you not?
16 A Yes.
17 Q And then you proceeded to medical school at Johns
18 Hopkins School of Medicine?
19 A Yes.
20 Q And that's where you completed your medical
21 training?
22 A Yes.
23 Q Um, can you explain to the, well, did you do a
24 fellowship, Doctor?
25 A Um, I, I did a, uh, embedded fellowship in my

1 residency in, uh, endovascular surgery.

2 Q And could you explain to the ladies and gentlemen
3 of the jury how medical education progresses from when you
4 begin medical school 'til your full, uh, uh, 'till you become
5 a full acquired (sic), full, fully, uh, uh, a fully qualified
6 physician (chuckles)?

7 A Um, medical school in general is four years, and at
8 the completion of that, at the recommendation of the, of the
9 dean, um, you're granted an M.D., so that makes you a
10 physician. And then, uh, to be certified in a specialty you
11 have to complete a specialty training in a residency
12 accredited by the National Regulatory Review boards, and in
13 my case that was, uh, neurosurgery. Uh, that residency, uh,
14 was seven years in duration.

15 At some point you, uh, take a oral, excuse me, at
16 some point you take a written test that you must pass, uh, in
17 order to take an oral examination, which is done about two
18 years after finishing your residency after the American Board
19 of Neurologic Surgeons has had time to review your practice
20 for one year recommendations from fellow neurosurgeons in the
21 community, um, recommendations from your training program
22 director, and then you sit for those oral examinations. And,
23 uh, after successfully completing that than you are Board
24 certified.

25 Q So, you are bir (sic), you are Board certified in

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 the practice of neurosurgery, correct?

2 A I am.

3 Q Are all doctors Board certified?

4 A No.

5 Q Would it be fair to describe that as an additional
6 qualification that some physicians have in specialized areas?

7 A Yes. Uh, most physicians are Board certified
8 though.

9 Q Yeah, but I, I guess what I'm getting at is is that
10 not all surgeons are Board certified in neurosurgery, right?

11 A And that's correct.

12 Q There may be other surgical specialties with
13 they're, in which they're certified?

14 A Correct.

15 Q Your certification is in neurosurgeon?

16 A Correct.

17 Q Can you describe to the ladies and gentlemen of the
18 jury what the practice of neurosurgery involves?

19 A Uh, neurosurgery involves the, uh, treatment of
20 structural problems of the brain and spine and peripheral
21 nervous system, generally by employing surgical intervention.

22 Q And you're in private practice now, correct?

23 A Yes.

24 Q Where are you in private practice?

25 A In Baltimore.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And as part of your private practice you see
2 patients?

3 A And within your practice, um, does your practice
4 involve treatment of disorders of the spine?

5 A Yes.

6 Q And does it by (sic), involve treatment of
7 disorders of spinal discs?

8 A Yes.

9 Q And you serve presently as the chief of
10 neurosurgery at Sinai Hospital in Baltimore and St. Joseph's
11 Medical Center in Towson?

12 A Yes.

13 Q Uh, you're also the director of clinical
14 neuroscience educations at the Johns Hopkins School of
15 Medicine?

16 A Yes.

17 Q You're an assistant professor of neurosurgery at
18 the Johns Hopkins School of Medicine?

19 A Yes.

20 Q You also serve as an assistant professor of surgery
21 at the Uniformed Services University of the Health Sciences?

22 A Yes.

23 Q Could you explain briefly to the ladies and
24 gentlemen of the jury what the Uniformed Services University
25 of the Health Sciences is?

1 A It's the, um, medical school for the Armed Forces,
2 and it trains, um, members of the Air Force, Army, uh, Navy,
3 uh, in, in medical school.

4 Q And, uh, you have privileges to treat patients at a
5 variety of hospitals, correct?

6 A I do.

7 Q And that would include Walter Reed Army Medical
8 Center in Washington?

9 A Uh, I don't have privileges there now. I, I used
10 to for some time.

11 Q Okay. Where do you currently have privileges,
12 Doctor?

13 A Uh, at, at several hospitals. The ones that I work
14 in frequently are Sinai Hospital, St. Joseph Medical Center,
15 Johns Hopkins Hospital, Johns Hopkins Bayview, Union Memorial
16 Hospital.

17 Q And, Doctor, have you given any lectures on
18 treatment of the spine or spinal surgery?

19 A Uh, yes.

20 Q And how about, the same question, have you given
21 any lectures on the, uh, process of interventional pain
22 management?

23 A Yes.

24 Q Have you written any articles regarding spinal
25 surgery or treatment?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Have you conducted any research in the area of
3 spinal surgery?

4 A No.

5 Q Uh, you perform spinal surgeries as part of your
6 practice?

7 A I do.

8 Q And what kind of spinal surgeries do you perform?

9 A Uh, I perform most of the, uh, spinal surgery that,
10 uh, is part of neurosurgery so that would include, uh,
11 surgery for disorders of the, um, neck and back, uh,
12 involving both the discs and the bones. Um, s, spinal cord
13 tumors and spinal trauma.

14 Q How much of your clinical practice involves the
15 spine?

16 A Approximately 70%.

17 Q And when was the last time you performed a spinal
18 surgery?

19 A Monday.

20 Q (Chuckles) I didn't know it was that recently.
21 Thank you, Doctor. Now, Doctor, you were, uh, you were named
22 the top doctor in the field of neurosurgery by Baltimore
23 Magazine, right?

24 A Yes.

25 Q In 2008, 2009, 2010, 2011 and 2012?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And you were also recognized by U.S. News as one of
3 the --

4 MR. GILLCRIST: Objection, Your Honor.

5 BY MR. BRATT:

6 Q -- top doctors in 2011?

7 THE COURT: (Unclear - one word.)

8 MR. GILLCRIST: He's leading, leading the witness.

9 MR. BRATT: I'm laying a (unclear - one word), Your
10 Honor.

11 THE COURT: I'll overrule.

12 BY MR. BRATT:

13 Q I for (sic) -- uh, let me start again. You're
14 named one of U.S. News' top doctors in 2011?

15 A Yes.

16 Q And I believe in 2012 as well?

17 A Yes.

18 Q And, uh, you were singled out by them as being
19 among the top one percent in the Nation in your specialty?

20 A Yes.

21 Q Um, I'd like to take and show you, Doctor, what has
22 been marked for identification purposes as Exhibit 21.

23 MR. BRATT: Madam Clerk, 21.

24 THE CLERK: (Unclear - one word) pre-marked, I'm sorry.

25 MR. BRATT: Counsel? Seated? Anybody else want to see

1 it?

2 THE COURT: And, and, if Counsel could just approach for
3 a second . . . all Counsel.

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

6 (Husher turned on.)

7 MR. BRATT: Did I do it wrong?

8 THE COURT: I just want to make sure that they know that
9 you're putting that up on the screen in front of the jury
10 before it's been introduced.

11 MR. BRATT: Well, that's because I'm about to show it to
12 them to lay a foundation though.

13 THE COURT: I, I know that, but they had projected a
14 copy of that before you'd introduced it into evidence. And I
15 just wanted to get, make that clear for the record whether
16 you all would prefer that you wait 'til it's formally moved
17 and introduced before it gets put up on the screen.

18 (Unclear - interference with the microphone.)

19 MR. BRATT: That's not an issue.

20 THE COURT: Okay.

21 MR. BRATT: I can tell Your Honor that I will need a
22 little leeway then, because what I'm gonna' have to do is I'm
23 gonna' have to walk over and speak with Ms. Haverson and tell
24 her --

25 THE COURT: That's fine.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: -- that, what's --
2 THE COURT: That, that --
3 MR. BRATT: Can I go do that now?
4 THE COURT: Yeah, and this was something fairly
5 innocuous. I just didn't know if, especially if there's
6 gonna' be a fight later on about one of the documents I don't
7 want the jury to see it.
8 MR. BRATT: Oh, no, I understand.
9 THE COURT: And then, so -- yeah, so.
10 MR. BRATT: I just, I --
11 THE COURT: Mm-hmm.
12 MR. BRATT: -- I, I want to make sure the mechanics, uh,
13 work through it.
14 THE COURT: Exactly.
15 THE CLERK: If you want to tell me that you're using
16 (unclear - three words.)
17 THE COURT: Mm-hmm.
18 MR. BRATT: I did.
19 THE CLERK: Oh, okay.
20 MR. BRATT: It's the (unclear - two words).
21 THE COURT: Yeah, and --
22 THE CLERK: No, I meant all of them.
23 MR. BRATT: Well, we got a jury here.
24 THE COURT: So, yeah.
25 THE CLERK: That was (unclear - two words).

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 (Husher turned off.)

2 (Counsel returned to the trial tables and the following
3 occurred:)

4 THE COURT: Stir (sic), you, uh --

5 MR. BRATT: I apologize, ladies and gentlemen.

6 THE COURT: Okay.

7 MR. BRATT: We do these lawyer conferences sometimes,
8 and every once in a while I lose my train of thought, and
9 just did, so bear with me, please. Thank you.

10 BY MR. BRATT:

11 Q Doctor, I'm going to show you what's been marked
12 for identification as, uh, Plaintiff's Exhibit Number 21 --

13 MR. GILLCRIST: Your, Your Honor . . . I'm sorry, I'll
14 withdraw it.

15 THE COURT: Okay.

16 BY MR. BRATT:

17 Q Doctor, I'm gonna' show you what's been marked for
18 identification as Plaintiff's Exhibit Number 21. Could you
19 take an exhibit num (sic), take a look at Exhibit Number 21,
20 please, Doctor.

21 A Yes.

22 Q And can you identify 21?

23 A Yes, that's my curriculum vitae.

24 Q And is it, uh, is it, is it, is it accurate?

25 A Uh, yes, in general.

1 Q In general, and I want to point one thing out, um,
2 it looks, when I looked at it, you, you left that you were
3 named a top doctor 2012 off, would that be the only omission?

4 A Most likely.

5 MR. BRATT: I'd ask that the Exhibit 21 be moved into
6 evidence, Your Honor.

7 MR. GILLCRIST: No objection.

8 MR. PORCARELLI: No objection.

9 THE COURT: Be received.

10 (Item admitted into evidence as
11 Plaintiff's Exhibit Number 21.)

12 BY MR. BRATT:

13 Q Are, are you acquainted with the Plaintiff, uh,
14 Jacqueline Exline-Hassler, Doctor?

15 A Yes.

16 Q Uh, how did you first encounter her?

17 A Uh, as a patient.

18 Q And can you explain to the ladies and gentlemen of
19 the jury how it was that she became a patient of yours?

20 A Mm, as I sit here I can't recall exactly how she,
21 uh, found me. I, I'm almost certain she was referred to me
22 by a, um, pain management doctor.

23 Q Uh, if I, would it jog your memory if I said Dr.
24 Sloan?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Do you think that's who it was?

2 A Yes.

3 Q All right. She didn't come to you from me or Ms.
4 Zois or my law firm, did she?

5 A That's correct.

6 Q Now, Doctor, before coming here today to testify,
7 um, you reviewed some medical records?

8 A Yes.

9 Q You reviewed some medical bills?

10 A Yes.

11 Q And what I'd like to do, Doctor, is -- (To the
12 clerk) Madam Clerk, this is going to be 10. It just stuck to
13 another exhibit. (To the witness) Doctor, I'm going to walk
14 over, and I'm going to show you what's been pre-marked as
15 Plaintiff's Exhibit 10. (To Counsel) Counsel, that is the
16 binder of (Unclear - two words) medical records and bills
17 (unclear - four words). (To the witness) Okay, Doctor, I'm
18 gonna' show you what's been marked on that page as
19 Plaintiff's Exhibit Number 10, uh, which is a set of the
20 medical records and bills following Ms. Exline-Hassler's June
21 26th, 2009 car wreck. Take a moment and look through it,
22 please.

23 A Okay.

24 Q And have you seen Exhibit Number 10 before?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And did ya', did ya' review the medical records and
2 bills contained within Exhibit Number 10?

3 A Yes.

4 Q And have you relied on the records contained within
5 Exhibit Number 10 in reaching any of the opinion you may
6 offer up today?

7 A Yes.

8 Q And -- (To the clerk) If I may approach again,
9 Madam Clerk, this will be 9. (To Counsel) Counsel, this will
10 be the, uh, the summary that's been pre-marked as Exhibit 9.
11 (To the witness) Counsel, I'm gonna' show you what's been
12 pre-marked for identification as Plaintiff's Exhibit 9, which
13 I'll represent is a summary of Ms. Exline-Hassler's medical
14 treatment and bills following the car wreck. Have you s
15 (sic) -- take a moment and review, please.

16 A Okay.

17 Q Have you seen Exhibit 9 before?

18 A Yes.

19 Q And you've reviewed what's, you've reviewed that
20 summary, correct?

21 A Yes.

22 Q And you'd agree that that's a summary of what's
23 contained within Exhibit 10?

24 A Yes.

25 Q And, uh, one more ex (sic), because I missed

1 (unclear - two words) paperwork, but I just (unclear - three
2 words). (To the clerk) Uh, this will be Number 8, Madam
3 Clerk, for ID.

4 THE CLERK: Okay.

5 MR. BRATT: Counsel, this is the set of prior medical
6 records.

7 BY MR. BRATT:

8 Q Uh, Dr. Naff, I'm gonna' show you what has been
9 pre-marked as Plaintiff's Exhibit 8. I'll warn you that the
10 top page is a little loose. And, uh, Exhibit 8 is a, uh, a
11 set of, uh, Ms. Exline-Hassler's medical records preceding
12 before her motor vehicle accident in June of 2009. Take a
13 moment and review it, please.

14 THE COURT: Counsel.

15 MR. BRATT: That's probably a good idea, Your Honor,
16 thank you.

17 THE WITNESS: Okay.

18 BY MR. BRATT:

19 Q Let me do this, Doctor. It's not good for our
20 record if we have pages come out. Hang on (unclear - one
21 word). And you've, have you seen records contained in
22 Exhibit 8 before?

23 A Yes.

24 Q And did you review them at some point prior to your
25 testimony today?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Um, and have you, uh, relied on any of those
3 records or have they impacted any opinions you may offer in
4 any way?

5 A Yes.

6 Q Now, Ms. Ex (sic), let's stick to Ms. Exline-
7 Hassler, Doctor, um, when did she become a patient of yours?

8 A Without looking at the notes I can't recall the
9 exact, uh, date.

10 Q Well, why don't you do this, I, if I could ask you
11 take a look at Exhibit 9? And after reviewing Exhibit 9,
12 does that refresh your recollection as to when Ms. Exline-
13 Hassler became a patient of yours?

14 A Yes, uh, on 6/2/2011.

15 Q And can you tell the ladies and gentlemen of the
16 jury why Ms. Exline-Hassler came to see you?

17 A She was, uh, suffering from back pain.

18 Q And could ya', could ya' tell the ladies and
19 gentlemen of the jury what you, you did for Ms. Exline-
20 Hassler? The course of your treatment, basically.

21 A Um, well, I, um, I took a history, uh, of her pain
22 condition, of -- and then examined her. Um, I reviewed the
23 pertinent films, and then, uh, I arrived at an assessment and
24 a treatment plan.

25 Q And what was your assessment of her when you, when

1 you saw her as the patient?

2 A That she was, uh, suffering from, um, traumatic,
3 uh, uh, disc tears and, uh, as a result suffering from back
4 pain.

5 Q Now, as a result of your training and experience
6 and the records you've reviewed and all the materials you've
7 reviewed in connection with this case, Doctor, do you have an
8 opinion within a reasonable degree of medical probability as
9 to whether Ms. Exline-Hassler sustained an injury to her
10 head, neck, upper back, lumbar back and her discs at L4 and
11 5, and L5/S1 as a result of the June 2009 motor vehicle
12 collision?

13 A I do.

14 Q And what is that opinion?

15 A That she, she did suffer those injuries as a result
16 of that accident.

17 Q How have you arrived (sic) at that opinion, Doctor?

18 A Based on my, uh, uh, evaluation of the patient,
19 based on my review of, um, these two binders of records, uh,
20 and based on my education and experience as a neurosurgeon.

21 Q And you've been a neurosurgeon how long?

22 A Um, uh, 14 years.

23 Q Now, Doctor, I'm gonna' skip around a little bit,
24 because what you don't know, because you weren't here, is
25 that we've already heard Dr. Sloan, the pain management

1 doctor's testimony, which was quite lengthy. So, I'm, what
2 I'm gonna' try to do is not, not have these ladies and
3 gentlemen sit through what they've heard already. So,
4 Doctor, um, can you tell us did Ms. Exline-Hassler, as a
5 result of the car crash, sustain an injury known as an
6 annular tear?

7 A Yes.

8 Q And is it possible for an annular tear to be caused
9 by trauma?

10 A Yes.

11 Q Um, is it likely for an annual tear to be caused by
12 trauma?

13 MR. GILLCRIST: Objection, Your Honor, beyond Ms.
14 Exline-Hassler. In other words, is his, is his question
15 directed to Ms. Exline-Hassler or to patients in general.

16 THE COURT: So, rephrase.

17 BY MR. BRATT:

18 Q In general --

19 THE COURT: Okay.

20 BY MR. BRATT:

21 Q -- in, in general, uh, in general, how likely is it
22 that a patient with an annular tear, without respect to Ms.
23 Exline-Hassler specifically, that there's a relationship to
24 trauma?

25 A There's a, a frequent relationship to trauma.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q How frequent?

2 A Uh, most of the time.

3 Q Can, how can an annular tear be caused by trauma?

4 A Well, the, uh --

5 Q Let me stop you for a second, Doctor, I hate to do
6 that, but -- (To the Court) If I can approach, Your Honor?

7 THE COURT: You may.

8 BY MR. BRATT:

9 Q I brought with me, uh, a spine, and I would like to
10 ask you, Doctor, if, wheth (sic), whether this model would
11 age you in your description of the question I just asked.
12 Could you use the spine model to come on over to our jury box
13 and explain to the ladies and gentlemen of the jury how an
14 annular tear can be caused by trauma?

15 A Yes.

16 Q Thank you, Doctor.

17 A Shall I do that now?

18 Q Yes, please.

19 THE COURT: So, and Counsel, you can certainly feel free
20 to . . .

21 MR. BRATT: Oh, I s (sic), I'm sorry, Your Honor, if I .

22 . . .

23 THE COURT: That's all right. No, we're fine.

24 (The witness moved to the jury box.)

25 THE WITNESS: Uh, so, this is a model of the, um, low

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 back, the spine with the muscles with the muscles removed,
2 and it would be oriented like this and like this. So, this
3 bone here is the bone that you can feel down the middle of
4 your, of your back.

5 Uh, between the bones of the back are these discs
6 and they serve as shock absorbers, and they also serve as
7 slightly mobile segments that allow some twisting of the
8 back. And there's a certain amount of tension on these discs
9 as they attach to the bones. So, uh, to answer the question
10 of how they're injured in trauma, one could imagine that if
11 you were to, you know, twist this, and this isn't a life
12 model 'cause it, so it doesn't move as much as it, it should,
13 but, you know, you can imagine if you were to twist one bone
14 on the other, like so, that, that, that these, uh, fibers
15 here, uh, that form the outside of the disc can tear, I mean,
16 they just, they get, they get too much tension. So, it can
17 happen that way. Uh, one bone can sort of be pushed forward
18 on the other. That could also apply stress to those fibers
19 and, and tear them.

20 BY MR. BRATT:

21 Q And, um, is that mechanism of injury consistent
22 with what you, with what could have happened in an automobile
23 collision?

24 A Yes.

25 Q Would it be unusual for a collision, an auto

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 collision to cause that kind of annular tear?

2 A No.

3 Q Are you familiar with -- well, you can go back,
4 doc, I'm sorry, I didn't mean to leave you up there.

5 (Witness returned to the witness stand.)

6 MR. BRATT: Bear with me one second. If I could have
7 the Court's indulgence, Your Honor.

8 THE COURT: Certainly.

9 MR. BRATT: Your Honor, I need the exhibit (unclear -
10 one word).

11 MS. ZOIS: Um, you want the real ones or the, on the
12 power point?

13 MR. BRATT: Both.

14 MS. ZOIS: Okay.

15 MR. BRATT: Just the, uh, the two, the, well, really,
16 just the, the two with -- you know what I want, right?

17 MS. ZOIS: I think so. But they might only be on there.

18 MR. BRATT: That's 39(a).

19 MS. ZOIS: Okay.

20 MR. BRATT: And, uh, 38(a).

21 MS. ZOIS: 38(a), 39(a).

22 MR. BRATT: And have these moved in?

23 MS. ZOIS: They have not.

24 MR. BRATT: Um, Madam Clerk, uh, for identification
25 purposes I have Exhibits 38(a)(1) and (2), and 39(a)

1 BY MR. BRATT:

2 Q Um, Doctor, what I'm gonna' do, I'm gonna' show you
3 two sets of exhibits that have been marked for identification
4 as Exhibits 38(a)(1) and (2), and Exhibit 39(a). And I'll
5 represent to you that these are photos of the damage to the
6 vehicles involved in the collision. And, of those photos,
7 specifically, I'm gonna' ask you to look at Exhibit 38(a)(1)
8 and 39(a). And, assuming that those are the vehicles
9 involved in the collision, you can see the, the damaged
10 depicted in those photos?

11 A I can.

12 Q And the damage that you see to these two vehicles,
13 and these two exhibits, is that consistent with the kind of a
14 collision that can cause an injury to an annular disc by
15 trauma?

16 A Yes.

17 MR. BRATT: And, ladies and gentlemen, we anticipate
18 that at some point later in the trial those photos will come
19 into --

20 MR. GILLCRIST: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. BRATT: May I approach, Your Honor?

23 THE COURT: Sure.

24 MR. BRATT: I don't think what I was going to do --

25 (Husher turned on.)

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 (Counsel approached the bench and the following
2 occurred:)

3 MR. BRATT: -- was something they would have objected to
4 --

5 THE COURT: Well --

6 MR. BRATT: -- before I, after I did it.

7 THE COURT: So.

8 MR. BRATT: My apologies. All, all I was going to say
9 was I anticipate that later on they may come into evidence
10 and they may be able to look at them. I, I just . . .

11 THE COURT: It's okay, but just, conversations with the
12 jury just --

13 MR. BRATT: I understand, Your Honor.

14 THE COURT: -- it's, it's --

15 MR. BRATT: No, I, I, I --

16 THE COURT: -- it's not usually done up here, so.

17 MR. BRATT: -- I, I, I, I got it.

18 THE COURT: Okay? All right.

19 MR. BRATT: All right.

20 MR. GILLCRIST: Thank you.

21 (Counsel returned to the trial tables and the following
22 occurred:)

23 (Husher turned on.)

24 MR. BRATT: Ladies and gentlemen, please disregard what
25 I just said, I'll move along.

1 MR. BRATT: Madam Clerk, I'm gonna' be using Exhibit
2 35(1) and (2) for identification.

3 BY MR. BRATT:

4 Q Doctor, I'm gonna' show you a folder that contains
5 Exhibits 35(1) and (2), um, which I will represent are slides
6 from a, an MRI from, uh, 2011 of Ms. Exline-Hassler. Would
7 you take a look inside and take a look at the two photos of
8 the slides, please?

9 A Yes.

10 Q Had you seen those before?

11 A Um, I haven't seen these pictures, I've seen these
12 images of the patient.

13 Q Okay. Well, that's what I mean to ask, you have
14 seen the MRI films of the, uh, of the, uh, ah, Jeez, I don't
15 have the date I have to walk back over there.

16 FEMALE VOICE: (Unclear - two words.)

17 (Brief pause.)

18 BY MR. BRATT:

19 Q And, Doctor, you have seen before the, uh, these
20 images of the MRI that was taken from, of Ms. Exline-Hassler
21 in 2011, correct?

22 A Yes.

23 Q And they're slices of MRI film what I've just shown
24 you?

25 A Yes.

1 MR. BRATT: And what I'd like to do, Your Honor, uh, is
2 I'd like to move those into evidence, Exhibits 35(1) and (2).

3 THE COURT: Any objection?

4 MR. GILLCRIST: No foundation at this point.

5 MR. BRATT: Well --

6 THE COURT: If you just --

7 MR. BRATT: I can go back and do it again.

8 THE COURT: Go ahead, mm-hmm.

9 BY MR. BRATT:

10 Q Doctor, in the course of your treatment of Ms.
11 Exline-Hassler and in the course of the documents and other
12 diagnostic films that you've reviewed, um, in the course of
13 this case, um, do the MRI films that are representative in
14 those two exhibits, um, do they fairly and accurately
15 represent what's depicted in the MRI?

16 A Yes.

17 | MR. GILLCRIST: No objection --

18 BY MR. BRATT:

19 Q And --

20 MR. GILLCRIST: -- at this point, Your Honor. Thank
21 you.

22 THE COURT: They're, they're received.

23 (Items admitted into evidence as
24 Plaintiff's Exhibit Number 35(1)
25 and Exhibit Number 35(2).)

1 MR. BRATT: Thank you. And if could as Ms. Zois to pull
2 it up.

3 BY MR. BRATT:

4 Q Doctor, what I'd like you to do, if you may, is if
5 you come around what we're gonna' do is we're gonna' hold
6 these up on the big screen, and I'd like you, if you're able
7 to, to illustrate, and we're gonna' zoom in for you to
8 illustrate for the ladies and gentlemen of the jury, do you,
9 can you show us any annular tears in there?

10 A Uh, yes. Uh, it may be best without the zoom. Uh,
11 so, um, again, you can see how the MRI looks like the model,
12 and, uh, the squares are the, are the bones, and then the
13 things that look like wafers are the discs. And you can see
14 here that there is, um, a white spot in the, in the disc
15 right here, and, on the, uh, inside portion of the disc.

16 MR. BRATT: Can you see what he's pointing to --

17 THE WITNESS: Right, right there --

18 MR. BRATT: -- ladies and gentlemen?

19 THE WITNESS: -- it's right there above my, my finger.
20 Um, you know, it's, it's obvious to me, because I read these,
21 uh, for 14, 15 years, but, um, so that's one, and then I
22 think there's a -- okay, so that, so, so the one I just
23 pointed to was 5/1, the lowest disc. And then this, again,
24 there's a white spot above my finger. Yeah, that's the other
25 tear.

1 BY MR. BRATT:

2 Q And as part of your practice as a neurosurgeon --
3 you can go back to your seat, Doctor, thank you. As part of
4 your practice as a neurosurgeon is it, is it common for you
5 to read MRI films?

6 A Yes.

7 Q Why?

8 A Uh, because MRI's, uh, show us the, uh, internal
9 anatomy of, of the patient.

10 Q An MRI itself isn't performed by the neurosurgeon,
11 correct?

12 A Correct.

13 Q It's preformed by radiologists? Well, it's
14 performed by --

15 A It --

16 Q -- a tech and read by a radiologist, correct?

17 A That's correct.

18 Q Um, and is it your practice to read your own films?

19 A Yes.

20 Q Do you also review the reports from radiologists?

21 A Yes.

22 Q Why do you read the film yourself?

23 A Um, radiologists can vary in their, um,
24 interpretations and, frankly, in their ability. And, um, I
25 just find it important to, to look at the pictures myself --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And with res (sic) --
2 A -- in most, in most situations.
3 Q And, with respect to what we're talking about
4 specifically, an annular tear at these levels, would, um, do
5 you have knowledge, clinical knowledge that applies to that
6 reading?
7 A Yes.
8 Q And is that the type of clinical knowledge a
9 radiologist would necessarily have?
10 A Um, many radiologists would.
11 Q But not all, correct?
12 A Correct.
13 Q And the annular tears that you just showed the
14 ladies and gentlemen of the jury are, do they have any
15 significance for you in terms of both your medical treatment
16 of Ms. Exline-Hassler and your opinion testimony today?
17 A Yes.
18 Q And what is that significance, Doctor?
19 A Well, that, uh, that that is a, uh, potential, um,
20 pain generator. That's a term that we use in trying to
21 diagnose why someone is in pain is you try to see something
22 that is a potential generator of pain. And those tears are
23 generators of pain.
24 Q And an MRI, is that an objective test?
25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q So, would it be fair to say that an MRI is a, is a
2 picture?

3 A Um, yeah.

4 Q And that what you just showed the ladies and
5 gentlemen of the jury are a picture of the two annular tears
6 that Ms. Exline-Hassler has?

7 A Yes.

8 Q Um, in the course of your treatment of, uh -- let
9 me ask you this. Doctor, based, do you have an opinion
10 within a reasonable degree of medical certainty as to, uh,
11 whether Ms. Exline-Hassler's annular tears are causing her to
12 experience pain?

13 A I do.

14 Q And your opinion is?

15 A That they are.

16 Q And, as a result of your, your treatment of Ms.
17 Exline-Hassler, uh, have you made any surgical
18 recommendations or had any discussions of surgery?

19 A Yes.

20 Q And what were those?

21 A Well, I had a discussion with her that she is a,
22 uh, candidate for surgical intervention to help with her
23 pain. And that that intervention, uh, would necessitate some
24 type of fusion procedure of her low back at the, uh, those
25 two lower vertebral body levels.

1 Q When you say she's a candidate for surgery does
2 that mean you're recommending that she presently have
3 surgery?

4 A Not necessarily.

5 Q And when you're saying not necessarily could you
6 elaborate a little bit on that for the ladies and gentlemen
7 of the jury?

8 A Well, uh, you know, one can be a, surgery can be an
9 option for a patient to try to feel better. That doesn't
10 mean it's something that the patient has to have. I equate
11 it with somebody that has, uh, a sore hip. They get an x-
12 ray, it shows some arthritic changes. It explains the pain.
13 So, and the pain isn't getting better with the normal
14 treatments so, therefore, you're a candidate to have a hip
15 replacement, but that doesn't mean you have to have a hip
16 replacement, that means your alternative would be to continue
17 to live with the discomfort that you're having for as long as
18 you're able to accept that level of discomfort. And, you
19 know, folks do walk around with painful hips for, for many
20 years before they end up having surgery.

21 Q And, so, you're not presently recommending that Ms.
22 Exline-Hassler immediately have surgery, correct?

23 A Correct. I have explained to, uh, the patient that
24 surgery is an option, and why it is an option, and in general
25 what that surgical procedure would be.

1 Q Okay. And can you -- well, let me do it this way.

2 MR. BRATT: Um, Madam Clerk, this is for identification
3 purposes, Exhibits 34(a) through (f). And (unclear - many
4 words).

5 BY MR. BRATT:

6 Q And, Doctor, I'm gonna' show you copies of what has
7 been marked for identification as Plaintiff's Exhibits 34(a)
8 through (f). Would you take a moment to review those please?

9 (Brief pause.)

10 A Okay.

11 Q And have you seen those exhibits before, Doctor?

12 A Yes, or something very similar.

13 Q And let me ask you a few questions about those
14 exhibits. Um, do those exhibits fairly and accurately, well,
15 within a reasonable degree of medical probability, do those
16 fairly, do those exhibits fairly and accurately represent the
17 anatomy of a, the lumbar spine?

18 A Yes.

19 Q And they also illustrate some surgical technique,
20 do they not?

21 A Yes.

22 Q And the surgical technique that's illustrated in
23 those records, is, does it, do they fairly and accurately
24 demonstrate the technique to perform the surgery?

25 A Yes.

1 Q Specifically, a two level fusion?

2 A Yes.

3 Q And is that the kind of surgery that you've
4 recommended for Ms. Exline-Hassler?

5 A Yeah, it's the, it's one of the types of surgeries
6 that I explained to her, yes.

7 Q Okay. And do you -- (To the Court) first I'd like
8 to move Exhibits 34(a) through (f) into, into evidence, Your
9 Honor.

10 MR. GILLCRIST: Can, can I just clarify, because we, I
11 haven't seen those, but are those all the procedures that
12 he's recommending --

13 THE COURT: So.

14 MR. GILLCRIST: -- or are they different procedures? Is
15 it one procedure --

16 THE COURT: What's, what's --

17 MR. GILLCRIST: -- that's denoted there?

18 MR. BRATT: I think I know what you want.

19 THE COURT: Yeah, yeah.

20 MR. BRATT: I'll ask some additional foundation
21 questions.

22 BY MR. BRATT:

23 Q Um, Doctor, you indicated that it's a type of two
24 level fusion procedure?

25 A Yes.

1 Q And you're not presently be recommending that Ms.
2 Exline-Hassler undergo the surgery right at this second,
3 right?

4 A Correct.

5 Q And do you have a (sic) opinion, within a
6 reasonable degree of medical probability, as to whether, at
7 some point in the future, it's more likely than not that Ms.
8 Exline-Hassler will need a two level fusion surgery?

9 A Yes.

10 Q And are the photo, are the illustrations contained
11 in Exhibit 34(a) through (f) representative of a two level
12 fusion surgery?

13 A Yes.

14 Q And the surgery they are representative of, is that
15 one of the variations on that surgery that would be
16 appropriate for her?

17 A Yes.

18 Q And are you able, as we sit here today, to say
19 exactly how the surgery would be done?

20 A No.

21 Q And why is that?

22 A Well, at the time that, uh, the patient would come
23 to the decision that she is ready to have surgery she would
24 sit down with, um, a surgeon, uh, and there would be a review
25 of films updated at the time at which she decides to have

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 surgery, and, uh, a discussion would be held with the patient
2 about all of the various types of fusion procedures, and, uh,
3 uh, she and a surgeon would a, mutually agree upon one
4 particular approach.

5 Q And the things that are depicted in the exhibit are
6 they representative of, are they representative of the type
7 of surgery that you've recommended?

8 A Yes.

9 Q And, although there come be, depending on when the
10 surgery's done and who the surgery (sic) is, and whether
11 circumstances change there could be minor variations?

12 A Yes.

13 Q Those wouldn't make that exhibit inaccurate, would
14 they?

15 A Correct.

16 MR. BRATT: I'd again renew my request to admit 34(a)
17 through (f), Your Honor.

18 MR. GILLCRIST: No objection, Your Honor.

19 MR. PORCARELLI: No objection.

20 THE COURT: Be received.

21 (Items admitted into evidence as
22 Plaintiff's Exhibit Numbers 34(a)
23 through Exhibit Number 34(f).

24 MR. BRATT: Uh, Ms. (Unclear - one word), if you could
25 please pull Exhibits 34(a) through (f) up? Well, you know

1 what I want to do.

2 BY MR. BRATT:

3 Q Doctor, if you can come around. What I'd like you
4 to do is using, using the exhibits -- you might want to bring
5 your paper copy with you -- if you can take the ladies and
6 gentlemen of the jury through the surgery, explain how it's
7 performed, what's done and what's involved.

8 A So, uh, this is the, uh, this is the beginning of
9 the surgery. So, again, the orientation is, is like this.
10 So, this is an incision on the, on the mid-back, which would
11 be roughly like so. If you, um, jump forward one.

12 FEMALE VOICE: (Unclear.)

13 MR. BRATT: What did you say?

14 FEMALE VOICE: Is this (b) (unclear - two words)?

15 MR. BRATT: Go from (unclear - two words).

16 THE WITNESS: We're still on (a).

17 FEMALE VOICE: Okay.

18 THE WITNESS: Okay, so, the incision is made, and then
19 the muscle overlying the spine is incised, and, and then
20 basically the muscle is pushed off to the side on, on both
21 sides, and these are protractors are put in. So, now, so,
22 now you're looking at the, at the spine. So, (unclear - two
23 words) go to the next one now. And then, um, this overlying,
24 uh, bone over the area that is being, uh, addressed, it would
25 be removed. So, that's called laminectomy. And it's just

1 showing the drills drilling off of that, uh, bone.

2 Uh, the next one. And then, and then the rest of
3 the bone is just removed by another, uh, instrument. Next
4 one. Uh, then the, uh, so the broken discs then, this one
5 and this one are then removed. Uh, (unclear - two words),
6 okay, and once they're removed, uh, um, metal rods are placed
7 into the bones through, through this particular part of the
8 bone called the pedicle here and here and here. And, and
9 then to stabilize, to keep these bones from moving abnormally
10 a, a rod is, uh, attached to those, uh, screws, and so that's
11 what this is showing. So, the screws going into the bones,
12 like so, and then a rod connecting those screws so that now
13 all these bones are rigidly affixed together.

14 BY MR. BRATT:

15 Q Now, if we could stop for one second, Doctor. I'd
16 like to show you what's been marked for identification as
17 Plaintiff's Exhibit Number 36.

18 MR. BRATT: Can you get all that (unclear - two words).
19 That's the wrong (unclear - one word). That's the -- this is
20 pretty, yeah -- this is called trial craft, ladies and
21 gentlemen, when we drop things.

22 BY MR. BRATT:

23 Q Doctor, what I've just handed you, uh, what's been
24 marked for identification as Plaintiff's Exhibit Number 36.
25 Are you able to identify what it is?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, these are called pedicle screws.

2 Q And are, are they representative of the pedicle
3 screws that you were just describing to the jury?

4 A Yes.

5 Q And are those the sort of screws that would be used
6 in the procedure you recommended for Ms. Exline-Hassler?

7 A Yes.

8 Q And, within a reasonable degree of medical
9 probability, are those the screws that would be used or of a
10 type that would be used?

11 A Yes.

12 MR. BRATT: I'd like to admit Exhibit 36, Your Honor.

13 THE COURT: Any objection?

14 MR. GILLCRIST: I'm sorry. Uh, no objection, Your
15 Honor.

16 THE COURT: Be received.

17 (Item admitted into evidence as
18 Plaintiff's Exhibit Number 36.)

19 MR. BRATT: Your Honor, may I have permission to publish
20 Exhibit 36 to the jury?

21 THE COURT: You may.

22 MR. BRATT: Thank you.

23 BY MR. BRATT:

24 Q Now, if you could describe how the screws are used
25 and implanted, Doctor -- (To the jury) Ladies and gentlemen,

1 if you want to take, take a look at these.

2 MR. GILLCRIST: Your Honor, Counsel again is --

3 THE COURT: So, just -- the dialogue. Just watch the
4 dialogue. Go ahead, answer the question.

5 MR. BRATT: I just wasn't sure how to publish to the
6 jury without telling them.

7 THE COURT: Just hand it to them.

8 BY MR. BRATT:

9 Q Now, Doctor, if you could explain how those screws
10 are used, please.

11 A Um, could I have that?

12 FEMALE VOICE: Mm-hmm.

13 THE WITNESS: So, the, the screws are, are put through
14 the bone, uh, a, a, a, uh, a hole is first made into the bone
15 and then, uh, using x-ray guidance and also looking, you've
16 made the, you created that hole so you're actually looking in
17 there to make sure that the screws are staying in the bone
18 and getting into the right location. Um, and then literally
19 using a, a screwdriver you, you screw them in to the bone.

20 MR. BRATT: Um, are you at (f)?

21 FEMALE VOICE: Yes.

22 MR. BRATT: Okay.

23 BY MR. BRATT:

24 Q Um, and the screws that have been admitted are, are
25 they the likely screw that would be used for this kind of

1 procedure?

2 A Yes.

3 Q Okay. And you could, uh, take a seat, Doctor,
4 please. Now, Doctor, do you have an opinion within a
5 reasonable degree of medical probability as to whether Jackie
6 will in the future require, uh, the, uh, surgery that you
7 just described to the jury?

8 A Yes.

9 Q And when she requires that surgery would her need
10 for that surgery, within your, within a reasonable degree of
11 medical probability, be causally related to the June 26th,
12 2009 motor vehicle collision?

13 A Yes.

14 Q Now, what I'd like to do, Doctor, is assuming Ms.
15 Exline-Hassler's condition for the indefinite future remains
16 the way it is, are you able to tell the ladies and gentlemen
17 of the jury at what point you would recommend, with a
18 reasonable degree of medical probability, that she undergo
19 the surgery?

20 A I would be surprised if she doesn't undergo the
21 surgery in the next 10 years.

22 Q And why do you say that?

23 A Well, just knowing the amount of discomfort that
24 she's in and the failure thus far of very, uh, extensive non-
25 operative treatments to, to help her. Um, I, I just, I th

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 (sic), and, and having seen, you know, lots of patients with
2 similar types of pain in my career.

3 Q And based on your knowledge, training and
4 experience as a physician, um, can you tell us within a
5 reasonable degree of medical probability what the approximate
6 cost of that future surgery would be?

7 MR. GILLCRIST: Objection, Your Honor, no foundation.

8 THE COURT: O --

9 MR. GILLCRIST: May we approach, Your Honor?

10 THE COURT: Sure.

11 MR. BRATT: I'm not gonna' do it (unclear - two words).

12 (Counsel approached the bench and the following
13 occurred:)

14 (Husher turned on.)

15 THE COURT: I'll hear the objection then we'll go from
16 there.

17 MR. GILLCRIST: Your Honor, the doctor's not able to say
18 when this procedure would be done or undertaken or if it will
19 be done. As he said, she would have to go back to a
20 neurosurgeon get another MRI, so it's very speculative. And,
21 uh, to try to put a tag number on it is impossible. And we
22 don't know whether that's gonna' be two years from now or 10
23 years from now, and certainly the costs are going to be
24 different. So, I don't believe that the doctor has, I don't
25 think a foundation has been laid, and I don't think, and I

1 think based on his testimony a foundation cannot be laid.
2 He's gotta', she's gotta' go back for an MRI, the doctor that
3 does the procedure may have a different approach or
4 recommendation. Um, it's just all p, it all, it's all
5 speculative --

6 MR. PORCARELLI: And I --

7 MR. GILLCRIST: -- completely speculative.

8 MR. PORCARELLI: -- and I would join in the objection,
9 because his last few lines of testimony was he would be
10 surprised. And we're involving speculation at that point.

11 MR. BRATT: Uh, my turn?

12 THE COURT: Mm-hmm.

13 MR. BRATT: Um, well, (unclear - two words) doctor I
14 specifically asked him within a reasonable degree of medical
15 probability will she in the future need the surgery? She
16 (sic) said, he said yes. Is this type of surgery she will
17 need? He said yes. Uh, I said can you tell us within a
18 reasonable degree of medical probability, which, as we all
19 know, means more likely than not, when she will need to the
20 surgery. And his answer to that question was is I would be
21 surprised if she did not need it within 10 years.

22 THE COURT: Okay.

23 MR. BRATT: Um, that's the foundation of it. And then I
24 asked him if, as a result of his training and experience of a
25 physician and knowledge, whether he is able to give us an

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 estimate of the approximate cost of that surgery, and we
2 haven't heard his answer yet, but I expect it to be that he
3 can. And then that's the foundation.

4 THE COURT: My question is how do we know if we don't
5 know when the surgery's gonna' happen what the cost of that
6 surgery would be. That's my --

7 MR. BRATT: He's able to approximate it within a range,
8 and I think that --

9 THE COURT: Just try to lay a foundation for that and
10 we'll see where we go from there.

11 MR. BRATT: Okay.

12 THE COURT: I don't know that he can, but we'll let,
13 I'll let you try.

14 MR. BRATT: All right.

15 (Counsel returned to the trial tables and the following
16 occurred:)

17 (Husher turned off.)

18 BY MR. BRATT:

19 Q Doctor, if something is a given that that surgery,
20 in your opinion, will be needed in 10 years, are you today,
21 based on what you know as a practicing physician who performs
22 spinal surgery, are you able to give us an approximate
23 estimate of the range of costs that you think that surgery
24 will, will cost?

25 MR. GILLCRIST: Objection.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. PORCARELLI: Same.

2 THE COURT: I'll, rephrase. Sustained.

3 BY MR. BRATT:

4 Q Are you able, within a reasonable degree of medical
5 probability, to give us an estimate of the probable cost of
6 that future surgery?

7 MR. GILLCRIST: Objection, Your Honor.

8 MR. PORCARELLI: Same.

9 THE COURT: I'll allow that answer.

10 THE WITNESS: Yes.

11 BY MR. BRATT:

12 Q And what is that, what is that estimation, Your
13 Honor (sic) --

14 MR. GILLCRIST: Objection, Your Honor.

15 BY MR. BRATT:

16 Q -- uh, Doctor?

17 MR. GILLCRIST: Objection.

18 MR. PORCARELLI: Same.

19 THE COURT: Overruled.

20 THE WITNESS: Uh, it would be, uh, somewhere between
21 \$100,000 and \$150,000.

22 BY MR. BRATT:

23 Q And that's within a reasonable degree of medical
24 probability?

25 A Yes.

1 MR. GILLCRIST: Objection.

2 THE COURT: Overrule that for now.

3 MR. BRATT: I'm sorry, I lost my train of thought for
4 the moment.

5 THE COURT: Certainly.

6 BY MR. BRATT:

7 Q And the cost estimate you've just given us, do you
8 have an opinion within a reals (sic), a reasonable degree of
9 medical probability as to, uh, whether the, uh, need for that
10 surgery and the cost is fair, reasonable, necessary and
11 causally related to the June 26, '09 motor vehicle accident?

12 MR. GILLCRIST: Objection.

13 MR. PORCARELLI: Objection.

14 THE COURT: Objection noted for the record. I'll
15 overrule it for now.

16 MR. GILLCRIST: Thank you, Your Honor.

17 THE COURT: You may answer, mm-hmm.

18 THE WITNESS: Uh, yes.

19 BY MR. BRATT:

20 Q And it is?

21 A That is, those are, uh, reasonable customary, uh,
22 prices and that, uh, that surgery would be causally related
23 to her accident.

24 MR. BRATT: Okay. Um, Madam Clerk, this is going to be
25 Exhibit 20, for ID.

1 BY MR. BRATT:

2 Q Doctor, I'm gonna' show you what's been marked for
3 identification as Plaintiff's Exhibit 20. Actually, it's two
4 copies of Plaintiff's Exhibit 20. And what I'm showing you
5 Doctor, have you seen it before?

6 A It looks like something I've seen before, yes.

7 Q And that's a summary of Ms. Exline-Hassler's
8 prescription summary from October of 2011 through October of
9 2012?

10 A Yes.

11 Q And have you reviewed those, those costs listed?

12 A I have.

13 Q And based on your knowledge, training and
14 experience as a practicing physician have you developed a, a
15 body of knowledge as to the range of costs that you would
16 expect for those kind of medications?

17 A Yes.

18 Q And with a reasonable degree of medical probability
19 can you tell the ladies and gentlemen of the jury whether
20 those medications, uh, whether those, whether the cost of
21 those medications is fair and reasonable as expressed in the
22 exhibit?

23 A Yes.

24 Q Um, and can you tell us, within a reasonable degree
25 of medical probability, whether Ms., uh, Exline-Hassler will

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 need to continue on that regiment of pain management from
2 today until such time that she has the surgery?

3 A Yes.

4 Q And your opinion is?

5 A That, that she will.

6 Q Now, Doctor, going back to the big binder I showed
7 you, Exhibit 10, which is to, uh, um, which is a set of the
8 medical records and bills pertaining to Ms. Exline-Hassler
9 after her June 26, 2009 motor vehicle accident, you indicated
10 you've reviewed and relied on those records and bills,
11 correct?

12 A Yes.

13 Q And as a result of knowledge, training and
14 experience, uh, as a, uh, practicing physician in the field
15 of neurosurgery, do you have an opinion, within a reasonable
16 degree of medical probability, as to whether the medical
17 treatment shown in Exhibit 10, uh, and the medical bills
18 shown in Exhibit 10 are fair, reasonable, necessary and
19 causally related to the June 26, 2009 motor vehicle
20 collision?

21 A Uh, yes.

22 Q And to make things a little bit easier, Doctor, I'm
23 going to approach again, and I'd like you to take a look at
24 Exhibit 9.

25 MR. BRATT: (Unclear - three words.)

1 THE CLERK: (Unclear.)

2 MR. BRATT: Here we go.

3 BY MR. BRATT:

4 Q And I'm gonna' show you Exhibit 9, Doctor, which is
5 a, a summary of what's contained in Exhibit 10, and you've
6 reviewed that summary, correct?

7 A I have.

8 Q And that summary shows what's reflected in Exhibit
9 10, does it not?

10 A Yes.

11 Q And the same question, Doctor, do you have an
12 opinion, within a reasonable degree of medical probability as
13 to whether the medical treatment and medical costs as
14 reflected in the summary in Exhibit 9 are fair, reasonable,
15 necessary and causally related in the motor vehicle
16 collision?

17 A Yes.

18 Q And your opinion is what?

19 A That they are.

20 Q And, Doctor, can you tell us, within a reasonable
21 degree of medical probability, uh, as to whether Ms. Jac
22 (sic), Ms. Exline-Hassler has any permanent injury as a
23 result of the motor vehicle collision?

24 A Uh, yes.

25 Q And what is that?

1 A That she does.

2 Q And what is that permanent injury?

3 A Um, uh, back pain secondary to disc ern (sic), disc
4 injury.

5 Q And can you tell the ladies and gentlemen of the
6 jury what you think her prognosis might be?

7 A Well, I think she's, um, going to have long term
8 low back discomfort.

9 Q And when you say long term back discomfort, can you
10 tell us how long you expect that to last, within a reasonable
11 degree of medical probability?

12 A Well, indefinitely.

13 Q Okay.

14 MR. BRATT: And I just wanna', for housekeeping
15 purposes, I'd like to move in Exhibits 21, 10, 9, 35(1) and
16 (2), 34(a) through (f), and, uh, Exhibit 20.

17 THE COURT: Give them to --

18 MR. BRATT: And I think 36 is in already, Madam Clerk,
19 am I correct?

20 MR. GILLCRIST: Your Honor, could you just defer, uh,
21 consideration of that until after the doctor's testified
22 completely, including cross examination? I do have some
23 questions regarding some of those exhibits.

24 MR. BRATT: I would object, Your Honor, I believe I've
25 laid the foundation for disability.

1 MR. GILLCRIST: May we approach then?

2 THE COURT: Sure.

3 (Counsel approached the bench and the following
4 occurred:)

5 (Husher turned on.)

6 MS. ZOIS: And I think you misspoke. You didn't mean to
7 say 10.

8 MR. BRATT: Oh, I'm sorry, I did. I did not, I did not
9 mean to say 10.

10 MS. ZOIS: Okay.

11 THE COURT: Okay.

12 MS. HOWARD: I think we can agree to just take a
13 (unclear - one word) exhibits (unclear - three words).

14 MR. GILLCRIST: Yes, Your Honor, I, I --

15 MR. BRATT: Okay.

16 MR. GILLCRIST: -- was just simply asking if the Court,
17 because --

18 MR. BRATT: That's fine.

19 MR. GILLCRIST: -- I do have some questions regarding
20 these, those exhibits, and if the doctor's opinions don't
21 change they may be admissible, but they may change. And I'm
22 not saying they will, but they may, and, uh --

23 THE COURT: Let me put it this way right now, to the
24 Court's satisfaction, they've been sufficiently
25 authenticated. I certainly, um, 'cause the, the testimony

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 came in with the exception of about the, um, surgery.

2 MR. GILLCRIST: Mm-hmm.

3 THE COURT: The testimony came in as to the
4 reasonableness of that --

5 MR. GILLCRIST: Right.

6 THE COURT: -- but as to the --

7 FEMALE VOICE: (Unclear.)

8 THE COURT: So.

9 MR. GILLCRIST: Then if I can just direct specifically
10 to, there's a whole series of medical records that are being
11 wholesaled moved into evidence.

12 MR. BRATT: I tell you what --

13 THE COURT: Wh, which --

14 MR. BRATT: -- we'll withdraw the request as to 10.

15 THE COURT: As to 10?

16 MR. GILLCRIST: Which was one 10, I'm sorry.

17 MR. BRATT: Ten was the --

18 THE COURT: Ten is the bills --

19 MR. BRATT: -- big binder full of medical records,
20 incomplete binder of medical records.

21 THE COURT: -- the big binder full of medical -- yeah.

22 MR. GILLCRIST: Okay.

23 THE COURT: Okay. 'Cause --

24 MR. GILLCRIST: But we got -- I'm sorry.

25 THE COURT: -- everything else, I mean, um, 21 was the

1 CV, which I think is already in.

2 MR. PORCARELLI: That's no problem.

3 THE COURT: 35(1) and (2) is already in, 34(a) through
4 (f) is already in, 36 is in. Had not moved in 20, 10 or 9.
5 So, the one that you had an objection to is 10.

6 MS. HOWARD: Um, and I don't want to --

7 MR. GILLCRIST: Go ahead. If you, she can speak?

8 MS. HOWARD: I just want to be clear, 9 is the expense
9 exhibit, and I think that's your objection is to --

10 THE COURT: The summary.

11 MS. ZOIS: The summary.

12 MS. HOWARD: It's not so much the summary it's the
13 detail of the summary that his, that he's asking.

14 MR. GILLCRIST: It's an attorney, it's not a bill as I
15 understand it, it's an attorney summary.

16 MS. HOWARD: But even, even whether summary or not
17 that's the nature of, I believe, Mr. Gillcrest --

18 THE COURT: Okay.

19 MS. HOWARD: -- or on behalf of Sapp, the objection is
20 at this time it's a wholesale moving -- Your Honor, if you'd
21 just take a look.

22 THE COURT: Yeah --

23 MS. HOWARD: It's a whole --

24 THE COURT: -- 'cause I, I haven't seen 'em.

25 MS. HOWARD: It's a wholesale moving in of all of the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 medical records in this case from day one to today. Exhibit
2 10 is the records and the bills and I believe that, I'm
3 assuming what's going on here is Ms. Zois doesn't want the
4 medical records to come in --

5 MS. ZOIS: Or the bills.

6 MS. HOWARD: -- in 10 or the bills.

7 MS. ZOIS: Right.

8 MS. HOWARD: So --

9 THE COURT: Mm-hmm.

10 MS. HOWARD: -- but whether it's just the summary 9 our
11 objection goes to, you know, some questions we have regarding
12 a lot of the detail of 9. So, it would stand whether it's 9
13 and 10.

14 MS. ZOIS: And --

15 THE COURT: Okay.

16 MS. ZOIS: -- and I just may respond to that, Your
17 Honor. There is a rule that says that you, the jury can be
18 provided a summary, it's the summary rule --

19 THE COURT: Yeah.

20 MS. ZOIS: -- I can find it if I need to, but,
21 basically, this is so they don't have to plow through 44
22 pages of bills.

23 THE COURT: Let me put it this way, since we're
24 reserving right now on 10 'til cross --

25 MS. HOWARD: Mm-hmm.

1 THE COURT: -- I'll reserve on 9, because if some of 9,
2 some of 10 is reflected in 9 there may need to be some
3 redactions, and we'll do it that way. But I certainly note
4 that the foundation has been laid subject to --

5 MR. BRATT: Was that (unclear - one word)?

6 THE COURT: -- linking it up causally.

7 MR. GILLCRIST: Thank you.

8 MR. PORCARELLI: And with Your Honor's permission, can I
9 just take a quick peek at the actual exhibits to make sure
10 that they are consistent with our earlier housekeeping
11 matter?

12 THE COURT: Mm-hmm.

13 MR. BRATT: Thank you, Your Honor.

14 MS. ZOIS: Wait, wait, wait, wait. Oh, wait, wait, wait
15 a minute.

16 THE COURT: So.

17 MS. ZOIS: I had another issue.

18 MR. BRATT: Well, I, I (unclear - three words).

19 THE COURT: He's just taking a second to look through
20 it.

21 MS. ZOIS: Um, the other issue too is the, um, I don't
22 wanna' --

23 THE COURT: Mm-hmm.

24 (Pause while Counsel reviews medical records.)

25 MR. PORCARELLI: I'm sorry we're waiting.

1 THE COURT: Okay. No, that's all right.

2 MR. PORCARELLI: I'm good.

3 THE COURT: Okay.

4 MS. ZOIS: Um, I'm sorry, Your Honor.

5 THE COURT: No, I was just gonna' say the foundation has
6 been laid. Counsel is requesting that before I read it that
7 I make sure that after cross that the doctor can causally and
8 proximately relate it to the accident. I'll give him the
9 opportunity to do that. (Unclear - two words) you've
10 established the foundation I'll give them the opportunity to
11 show me that some of them may not be causally related and
12 we'll go from there.

13 MS. ZOIS: Okay. Your Honor, I anticipate that the
14 Defense will be asking Dr. Naff about the carpal tunnel
15 issue, bills, that surgery, and, um, 'cause I know it came up
16 under (unclear - one word) Sloan's, and unfortunately we did
17 depos at the very last minute --

18 THE COURT: Mm-hmm.

19 MS. ZOIS: -- so we didn't have time to file the motions
20 to strike the testimony. So, I would make a --

21 THE COURT: But the claim for carpal tunnel's been
22 withdrawn.

23 MS. ZOIS: It was, Your Honor, and I brought up a letter
24 --

25 THE COURT: So.

1 MS. ZOIS: -- this was the date for our ex (sic) --
2 MS. HOWARD: Do you want, do you ever cover that?
3 THE COURT: Yeah, that's right.
4 MS. HOWARD: Been there, done that, bought a tee shirt.
5 MS. ZOIS: The day before our expert designation, which
6 was after the Plaintiff's deposition wherein she did testify
7 as to all the ailments she had following the crash --
8 THE COURT: Mm-hmm.
9 MS. ZOIS: -- regardless of when they arose --
10 THE COURT: Mm-hmm.
11 MS. ZOIS: -- uh, we did withdraw any claim for carpal
12 tunnel. This was a, um, informal supplementation to our
13 formal answers to interrogatories wherein we advised them
14 that we were not going to be making any claim for carpal
15 tunnel, um, by way of treatment or bills. Throughout the
16 course of the case I have told Counsel that this 9 does not
17 contain any of the bills for carpal tunnel. I've provided
18 them updated summaries on a regular basis. They've been
19 seeing that summary forever. Um, and I have redacted the
20 carpal tunnel bills. In fact, I went so far as to on every
21 date that Dr. Sloan saw Ms. Exline-Hassler for both her back
22 and in the right upper extremity I took out the whole bill.
23 I didn't do a 50% or anything like that. So, for the dates
24 of service, and I've told Counsel that and they've had many
25 opportunity check and confirm the accuracy of, of what I

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 produced in that regard. So, um, I guess the motion would be
2 to preclude Defense Counsel from mentioning the carpal tunnel
3 syn (sic), uh, surgery, which we did revoke, they've known
4 we've revoked it. We've supplemented and amended our answers
5 to interrogatories. We did not designate an expert in that
6 area, and then to also preclude and prohibit them from
7 attacking a summary based on carpal tunnel and this
8 particular witness, because they know that this summary does
9 not contain a summary of any bills or charges for any dates
10 of service regarding carpal tunnel.

11 MS. HOWARD: I just, um, we're using a copy of 9 dated
12 12/26/2012.

13 MS. ZOIS: That's not --

14 MS. HOWARD: Our cross examina (sic) --

15 MS. ZOIS: -- (unclear - two words).

16 MS. HOWARD: -- well, it's well after August, and our
17 cross examination is related to that, if there's one more
18 recent, you know, I'm sure it has the same thing that we're
19 gonna' go into on cross.

20 And with respect to the carpal tunnel, Your Honor,
21 you now have heard the evidence that, um, the Plaintiff has
22 met with both of their experts as early as May of 2012.
23 You've heard at the deposition of Ms. Exline-Hassler in June
24 of 2012, um, you heard this pursuant to another motion that
25 Counsel said you'll hear when our expert designations are due

1 whether, whether we're proceeding with the carpal tunnel, but
2 the claim was being made and remade until August 2012, and
3 our position is not related to this doctor necessarily, but
4 to the claim.

5 THE COURT: As to this doctor I don't think --

6 MR. GILLCRIST: Well --

7 THE COURT: -- but it, it --

8 MR. GILLCRIST: -- I don't, I don't mean to speak, but
9 is it, my understanding is that the updated medicals that we
10 had until just now did in fact claim things related.

11 MS. ZOIS: This, well --

12 MR. GILLCRIST: Um, there's, there's, there's --

13 THE COURT: I don't know, 'cause you --

14 MR. GILLCRIST: -- there's --

15 THE COURT: -- you all are going to have to go through
16 and look at them --

17 MR. GILLCRIST: -- EMG --

18 THE COURT: -- because I don't know.

19 MR. GILLCRIST: -- there's, uh --

20 MS. ZOIS: Here's the letter, and that's why I brought
21 it up.

22 (Counsel speaking simultaneously.)

23 MR. GILLCRIST: -- there's the EMG.

24 THE COURT: So, so.

25 MS. HOWARD: No, right here. They're right here.

1 MR. GILLCRIST: (Unclear.)

2 MS. HOWARD: I mean, if you just let him do the cross,
3 it'll see --

4 MR. GILLCRIST: You'll see.

5 MS. HOWARD: -- it, it's, well, I'll give you an example
6 --

7 MR. BRATT: (Unclear - three words), Your Honor.

8 MS. HOWARD: I've highlighted them here. January 21st,
9 2011.

10 MS. ZOIS: Here's the --

11 THE COURT: Hold, hold on, hold on a second. I will
12 excuse the jury. I don't, I mean, I have, what do I have up
13 here? Do I have any of these documents? No.

14 MR. GILLCRIST: My concern is that we're louder than we
15 think we are.

16 THE COURT: So. I know. Enough argument (unclear -
17 three words), so.

18 (Husher turned off.)

19 THE COURT: Ladies and gentlemen, this is one of those
20 little things that's gonna' take a little time, so I'm gonna'
21 excuse you to the jury room, and now you all will get a
22 chance to stretch (unclear - two words) after lunch.

23 (Jury excused from the courtroom.)

24 THE COURT: And I'm gonna' need to see the exhibits to
25 know what we're talking about.

1 (Pause while Counsel confer off the record.)
2 MALE VOICE: Um, so, should the witness stay or go
3 outside?
4 THE COURT: Um, either way. I mean, this is, this
5 really doesn't have . . .
6 MS. ZOIS: Should we, Your Honor, would you like us to
7 proceed at the bench or would you like (unclear - two words)?
8 THE COURT: Up at the bench is fine.
9 MS. ZOIS: Okay.
10 (Counsel speaking simultaneously off the record.)
11 FEMALE VOICE: Here's the file (unclear - one word). I
12 gave them (unclear - one word).
13 MALE VOICE: Well . . .
14 MS. HOWARD: You're just (unclear - two words), but now
15 the request is to moving Exhibit 9, which contains the detail
16 of just at one iso (sic) --
17 MS. ZOIS: (Unclear - two words.)
18 THE COURT: That's all right.
19 MS. HOWARD: -- at one isolated example.
20 THE COURT: At (unclear - one word) --
21 MS. HOWARD: Of January 22nd, 2011 --
22 THE COURT: 22nd.
23 MS. HOWARD: -- I don't think it's the 20th, and it's,
24 and if you look at the 28th he says I'm gonna' do the nerve
25 conduction test for the ulnar entrapment. The sole procedure

1 done on the 11th was that, and I've shown you, Your Honor, we
2 included in that packet that's highlighted it's bills that
3 are part of 10 that contain several thousand dollars worth of
4 treatment for that visit alone. And --

5 THE COURT: I don't --

6 MS. HOWARD: Below it there (unclear - two words) --

7 MS. ZOIS: (Unclear.)

8 (Unclear - counsel speaking simultaneously.)

9 MS. HOWARD: So, Your Honor, one thing to do when this
10 gets moved in on that through this witness who just says
11 yeah, I looked at 9 and I matched it up and 9 contains the
12 details, uh, that's what Mr. Gillcrist is going to go into on
13 cross examination, and I believe, um, and it's not, it's a
14 (unclear - two words) for carpal tunnel at all. There's
15 another full component of, um --

16 MALE VOICE: Is there an exhibit number (unclear - two
17 words).

18 MS. HOWARD: -- like, for example, let's say the neck --

19 MS. ZOIS: What is she saying?

20 MS. HOWARD: -- you heard how Dr. Sloan says --

21 MS. ZOIS: (Unclear - one word) exhibit list?

22 MS. HOWARD: -- no I don't relate the neck to the back
23 (unclear - four words) some of the questions are the same.
24 And those are just selected highlights, um, (unclear - one
25 word), um, for, um, for cross examination.

1 THE COURT: All right, so, what I'm, what I'll do is, is
2 this. I will let them cross examine to determine what of
3 these bills may not be related. We all understand there's
4 not a claim for carpal tunnel, but just to make sure from all
5 these bills that anything that is related to something other
6 than what the doctors have testified to as being causally
7 related is out of these bills and the summary.

8 MS. ZOIS: May, may I approach, Your Honor?

9 THE COURT: Sure.

10 MS. ZOIS: Okay. We have been, the three of us, not Mr.
11 Gillcrist, have been working together on this case with the
12 same working medical records, and what I have told both of
13 these attorneys, and I'm sure that they will agree with me
14 that I have said this is that I am keeping the medical
15 records in a complete set. So, medical records one through
16 368 will include the carpal tunnel records, they will include
17 neck records for the completeness of the trial. I'm not
18 pulling out the medical records for carpal tunnel or, um,
19 specifically of Dr. Sloan, I'm not going to pull them out,
20 because I'm sure that there's other dates, uh, on those she
21 was also seen for the back. However, what I will do is I
22 will pull out the expenses for those, which I did. So, if
23 the number has changed the total that you see, Your Honor,
24 under Dr. Sloan's bill has changed. That amount decreased
25 after I took out all of the carpal tunnel bills. I even went

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 so far as to on any date of service where she was seen for
2 both the back and the neck and carpal tunnel, I took those
3 bills out as well. Counsel, would you agree that I've told
4 you that I've done that in the summary?

5 MS. HOWARD: But I, and I --

6 MS. ZOIS: Would you agree that I told you that I'd --

7 MS. HOWARD: -- would I, would I --

8 MS. ZOIS: -- done that?

9 MS. HOWARD: -- and I would say you have said that --

10 MS. ZOIS: Correct.

11 MS. HOWARD: -- but you haven't done that, because the
12 itemization --

13 MS. ZOIS: So, you disagree with (unclear - one word)?

14 MS. HOWARD: -- the item -- I disagree with the
15 itemization on Exhibit 9 --

16 MS. ZOIS: Mm-hmm.

17 MS. HOWARD: -- which is what has been moved in, and I
18 checked it every time you sent it to me, and it continues to
19 contain things that are only related to the carpal tunnel, as
20 well as, it has a ton of other issues related to that
21 itemization.

22 MS. ZOIS: Okay.

23 THE COURT: So.

24 MALE VOICE: So, Your Honor, (unclear - two words) --

25 MS. ZOIS: And, Your Honor, if I could continue on that.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: Go ahead.

2 MS. ZOIS: Since, since I wanted to keep the record as a
3 (unclear - one word) --

4 THE COURT: Mm-hmm.

5 MS. ZOIS: -- and I didn't want to (unclear - one word)
6 out those dates wherein he saw her for other back complaints.
7 That's why those dates appear. I've also invited and
8 challenged counsel several times in saying I believe that I
9 have pulled out all of the medical expenses that relate to
10 this. Here is my updated chart. Please tell me if you think
11 I have made an error in that regard, because I have tried to
12 do that. So, what we're asking, and I don't want, I'm not
13 going to sanitize all of the bills, but I will tell you that
14 it is not our intention to make any claim for any bill
15 related to the carpal tunnel syndrome, and I invited counsel
16 to tell me if I made that error. So, now, where we are in
17 this court is a sandbag, because they've had the opportunity
18 to tell me that this was included in the summary, which I
19 still believe if (unclear - one word) correct, and I did not
20 intend or mean to claim any bill for carpal tunnel. So, now,
21 we're gonna' have this witness go through and dissect the
22 bills for, I mean, what's carpal tunnel and what isn't, and
23 then sit there with a math machine, a calculator, and add it
24 all up. I will stipulate and tell the Court I have no
25 intention of claiming any bill for any date of service that

1 has anything to do with carpal tunnel, which is confirmed in
2 my letter that I sent back on August 24th, 2012.

3 So, I think where we are at this point, is I gave
4 Counsel an opportunity to tell me if I had it wrong, they
5 didn't take advantage of that opportunity, and now we're
6 gonna' have this witness go through and match up bills and
7 dates of service when I'm stipulating that I do not intend to
8 claim any expense related to carpal tunnel, which is clear by
9 the date of my letter marked as Plaintiff's Exhibit 51,
10 August 24, 2012, and I think it's unfair and prejudicial to
11 the Plaintiff when I've tried the best I could all along in
12 this case to make that crystal clear to them, and now we're
13 being sandbagged at the 11th hour with (unclear - one word).

14 MS. HOWARD: I, I just wanted to say, I heard my partner
15 saying just again, we're here with Exhibit 9 before Your
16 Honor that contains the information we want to cross examine
17 about, that's it. We're here in court, and the witness moved
18 it in wholesale, and we can ask these questions.

19 MS. ZOIS: It's not in yet.

20 MR. GILLCRIST: And, Your Honor, I'm sorry. I didn't
21 mean to speak out of term.

22 THE COURT: Go ahead.

23 MR. GILLCRIST: Your Honor, I think Counsel's
24 overlooking the fact that they did claim this in their
25 answers to interrogatories, which were under oath, and I'm

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 not gonna' --

2 THE COURT: Calm down.

3 MS. ZOIS: I'm sorry, Your Honor, I'm (unclear - two
4 words).

5 THE COURT: I'm -- take a deep breath.

6 MS. ZOIS: Thank you.

7 THE COURT: Count to 10.

8 MS. ZOIS: Okay.

9 THE COURT: Thank you.

10 MR. GILLCRIST: What I was getting to is not to
11 reiterate what I said earlier in the trial, but they are
12 claiming pain and suffering. During the entire time that
13 she's had these other problems, like the carpal tunnel,
14 they're claiming gardening, they're claiming inability to go
15 motorcycling, all these things go to the whole body picture
16 of the Plaintiff in terms of the compensation that the jury
17 can give to them. So, the fact that she's got other ailments
18 and other pathology is perfectly valid to how much
19 compensation she should receive for the periods of time that
20 they're claiming.

21 Um, if she is a, uh, she's got a broken bone
22 because she slipped and fell at work or something and can't
23 walk, well, that obviously inhabits her other activities.
24 So, I don't think they can have it both ways. I don't think
25 they can claim past pain and suffering for the period of time

1 that they're claiming and then pick, and just force us to
2 ignore the fact that she had other medical conditions going
3 on at the same time, and the doctors (unclear - one word)
4 talk about that same period of time.

5 THE COURT: Okay, I'm ready to lay out the parameters,
6 okay?

7 (Laughter.)

8 MS. ZOIS: I don't disagree with what Counsel said, it's
9 absolutely right on that.

10 THE COURT: Absolutely right.

11 MR. BRATT: Yeah, as I heard it I was like --

12 THE COURT: Coun (sic) --

13 MS. ZOIS: Yeah, that's right.

14 THE COURT: -- coun (sic) --

15 MS. ZOIS: I mean, (unclear - three words) --

16 THE COURT: -- he, not that that's true.

17 MS. ZOIS: -- bills, but . . .

18 THE COURT: As to the specific bills you've, uh, you've
19 highlighted these bills that you've introduced. I'll allow
20 you to certainly ask him whether in his review he noted that
21 those may have related to other issues. Okay? And then
22 certainly as to the, all the other issues that is relevant
23 appropriately, of course he wasn't the treating physician,
24 but certainly as to these specific, and you've highlighted,
25 it's not a target, you've highlighted some specific things

CIRCUIT COURT FOR FREDERICK COUNTY

FREDERICK, MARYLAND 21701
COURT HOUSE

1 that, um, that, uh, you could very well ask him about on
2 cross examination as to whether they're related, and we'll
3 just narrow that and then we'll go on from there.

4 MR. BRATT: It's not a big part of it, but just from
5 housekeeping perspective --

6 THE COURT: Mm-hmm.

7 MR. BRATT: -- I want to know where I am. So, what,
8 what is now moved into evidence?

9 THE COURT: What I'm not, I'm --

10 MR. BRATT: I understand you're reserving on some.

11 THE COURT: Right.

12 MR. BRATT: I just want to make sure what's not being
13 reserved on.

14 THE COURT: Well, what you've already, I think
15 everything that, um, that is not being reserved on, um --

16 MR. BRATT: Yeah, but --

17 THE COURT: -- has already been admitted.

18 MR. BRATT: -- I forgot what, Your Honor, is the --

19 THE COURT: You had moved for 21, which is the CV.

20 MR. BRATT: And I'm withdrawing the request for 10, Your
21 Honor, I didn't mean to do that (unclear - two words) wrong
22 thing up.

23 THE COURT: Okay. And then you moved in 35(1) and (2),
24 34(a) through (f), 36, and you moved in 20, and there's been
25 no objection to 20? That's the prescriptions?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. HOWARD: Oh, that's the summary of Sloan?
2 THE COURT: Summary of the prescriptions. No objection
3 to 20, so 20 is in.
4 MR. BRATT: So --
5 THE COURT: So, that leaves 9 and 10.
6 MS. HOWARD: The only think about 20 is when Dr. Sloan,
7 um, went to view that Counsel did object regarding the
8 foundation. I think you wanted us to talk about that later.
9 That's 20.
10 THE COURT: Correct.
11 MS. HOWARD: So, um, I'm sure we're objecting, we're
12 objecting to this witness as well, but . . .
13 THE COURT: Okay.
14 MS. HOWARD: Is that right?
15 THE COURT: That's right, but it, it, for --
16 MR. BRATT: I know.
17 THE COURT: -- it's overruled for now, and it will be,
18 20 will be received.
19 MR. BRATT: Can I get a couple of dates of (unclear -
20 one word) too?
21 THE COURT: Sure.
22 MS. ZOIS: Okay. Can I just ask for clarification from
23 the Court? Um, it's my understanding that the cross
24 examination allowable as to the carpal tunnel syndrome as it
25 appears on Exhibit 9 is, Doctor, you would agree that these

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 dates of service are not related to this car crash
2 essentially?

3 THE COURT: Or how, I don't know how Counsel's going to
4 ask the question that, you know, like I said, you know, she
5 had other issues, and just --

6 MR. BRATT: But --

7 MS. ZOIS: I don't want him to have to do math.

8 MR. BRATT: -- but the (unclear - one word) --

9 THE COURT: No, no, no I don't think they're --

10 MS. ZOIS: Okay.

11 THE COURT: -- I don't think they're --

12 MS. ZOIS: Okay.

13 THE COURT: -- gonna' be asking him to do that.

14 MS. ZOIS: Okay, great.

15 MR. BRATT: The relevance of it is limited to the effect
16 on possible non-economic damages, am I correct?

17 THE COURT: Or if, if, they satisfy to the Court that
18 that bill --

19 MR. BRATT: Okay.

20 THE COURT: -- was erroneously --

21 MR. BRATT: Okay.

22 THE COURT: -- included then we would do it that way.

23 We're not going to expect the doctor --

24 MS. ZOIS: Okay.

25 THE COURT: -- to do the math, and to do the math.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: We're not going to ask him to --
2 THE COURT: We're not going to ask him to do any math.
3 MS. ZOIS: Okay.
4 MS. HOWARD: I'm sorry.
5 MR. BRATT: Okay, and I wanted to clean up with this and
6 go to Exhibit 36 on of the pieces I forgot to show him and
7 put in, I'm gonna' do that now.
8 THE COURT: Okay.
9 MR. GILLCRIST: I'm sorry, what piece is that?
10 MR. BRATT: It's the rod. I just forgot.
11 FEMALE VOICE: (Unclear - three words?)
12 (Unclear - counsel speaking simultaneously.)
13 THE COURT: I sure do, and I'm gonna' hand them back
14 with all your highlights on them. Thank you. 'Cause, 'cause
15 I, like I said, I never, I don't have them, so when you start
16 arguing about an exhibit, so. So.
17 (Unclear - counsel speaking simultaneously.)
18 MR. GILLCRIST: Do you, do you want to just keep it in
19 there?
20 MR. BRATT: Do you want to stipulate to it?
21 MR. GILLCRIST: I'll stipulate to that (unclear - one
22 word) as well.
23 MR. BRATT: Okay, and I'm still gonna' have him show
24 (unclear - two words) --
25 MR. GILLCRIST: Well, if you're gonna' show 'em we'll

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 show 'em (unclear - two words).

2 MR. BRATT: I just want the jury to know what it is
3 before it goes back, that's all.

4 MR. GILLCRIST: That's fine.

5 MR. BRATT: We're ready to go I think.

6 THE COURT: Okay. Ready?

7 MS. ZOIS: John, John, John. The date of that (unclear
8 - two words).

9 MR. BRATT: I'm gonna', just (unclear - two words).

10 MS. ZOIS: I keep forgetting.

11 MR. BRATT: That's all right.

12 (Unclear -- Counsel speaking simultaneously.)

13 MS. ZOIS: Just start with that, May 26th, 2001.

14 MR. BRATT: That's okay. Okay.

15 MS. ZOIS: All right.

16 MR. BRATT: Relax.

17 (Jury entered the courtroom.)

18 THE COURT: And good afternoon again, ladies and
19 gentlemen, we didn't lose anybody during that recess, I think
20 they're all present. And Mr. Bratt.

21 MR. BRATT: Thank you, Your Honor.

22 DIRECT EXAMINATION (Continued)

23 BY MR. BRATT:

24 Q Doctor, when I showed you what was marked as
25 Exhibit 36 I had showed you the screws, but I neglected to

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 show you one of the other pieces of apparatus, which I'm
2 gonna' hand you now, which is part of what's been admitted as
3 Exhibit 36. Can, can you explain to the ladies and gentlemen
4 of the jury what the thing I just handed you is?

5 A Uh, this is the rod that would, uh, connect those
6 screws that you saw in the diagram.

7 Q And that is the, the rod or not the exact rod, but
8 the type of rod that would be implanted in Ms. Exline-Hassler
9 when she has the surgery?

10 A Yes.

11 Q Thank you, Doctor.

12 MR. BRATT: I'd ask that that be admitted along with the
13 rest of Exhibit 36.

14 MR. GILLCRIST: No objection.

15 MR. PORCARELLI: No objection.

16 THE COURT: You certainly may.

17 (Item admitted into evidence as
18 Plaintiff's Exhibit Number 36.)

19 BY MR. BRATT:

20 Q And, Doctor, just as a housekeeping matter I want
21 to be pretty clear about the MRI, uh, that we, you reviewed
22 and that you showed to the jury, that's an MRI from, uh, May
23 26th, 2011, correct?

24 A To the best of my recollection, yes.

25 Q And, Doctor, I asked you some questions about

1 various materials you had reviewed, medical records, bills,
2 summaries, things like that, Exhibits 10, 8, 9. Um, are
3 those the only things you've reviewed in connection with this
4 case?

5 A Uh, no.

6 Q What are, what are the other things you reviewed?
7 If you recall.

8 A I, uh, reviewed a deposition from, uh, uh, the
9 patient. I reviewed, uh, the, uh, expert designations from
10 the, uh, Defense. I reviewed my own deposition transcript.
11 I think that covers everything.

12 Q Did you also review a transcript of Dr. Sloan's
13 testimony?

14 A I did.

15 Q And did you review any reports from any Defense
16 experts?

17 A Yes.

18 Q Which ones?

19 A Um, Doctor, uh, I'm blanking on the name, um,
20 someone from George, uh, Georgetown.

21 Q Dr. McGrail?

22 A Dr. McGrail, yes.

23 Q And Dr. London?

24 A Yes.

25 Q You reviewed those reports?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Thank you, Doctor.

3 MR. BRATT: I think that will be it right now, Your
4 Honor.

5 THE COURT: Okay, thank you.

6 MR. GILLCRIST: Your Honor, could I just, if Counsel's
7 done with the video screen can I just --

8 THE COURT: Move it? You certainly --

9 MR. BRATT: Uh, for the moment.

10 THE COURT: -- certainly may.

11 MR. GILLCRIST: Move this out of the record (sic), out
12 of the way a little bit?

13 MR. BRATT: Sure.

14 MR. GILLCRIST: Is it okay if I move this table, Your
15 Honor?

16 THE COURT: Certainly.

17 CROSS EXAMINATION

18 BY MR. GILLCRIST:

19 Q Good afternoon, Doctor.

20 A Hi.

21 Q Doctor, I have some questions for you, obviously,
22 and please if I misstate anything or you don't understand a
23 question that I'm asking you, please let me know, okay?

24 A Okay.

25 Q Um, Doctor, you, uh, are here testifying on behalf

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 of Ms. Exline-Hassler, you know that, right?

2 A Um, I'm here to testify. I don't know that it's on
3 behalf of anyone.

4 Q Well, you understand that she's seeking
5 compensation for the injuries from the car accident in 2009,
6 don't you?

7 A Yes.

8 Q And you were, um, uh, solicited by her attorneys to
9 be here understanding that your testimony would be used to
10 help her achieve compensation for this car accident, isn't
11 that correct?

12 MR. BRATT: Objection.

13 THE COURT: Overruled. You can answer, you may.

14 THE WITNESS: Um, sort of a multi-part question, but,
15 uh, yes, I was contacted by her attorneys to provide
16 testimony, um . . .

17 BY MR. GILLCRIST:

18 Q You understand --

19 A And the testimony is what the testimony is. It's
20 not necessarily to serve any purposes.

21 Q Okay, but you understand you're here to help her
22 achieve compensation for the car accident?

23 MR. BRATT: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: No, I would not agree with that

1 characterization.

2 BY MR. GILLCRIST:

3 Q So, you're here not understanding that she's
4 seeking compensation for the car accident?

5 A No, no, no, that wasn't your last question. I
6 understand that she's here seeking compensation for her
7 accident, yes.

8 Q All right. And do you understand that you have
9 been called as a witness in the case to help establish her
10 injuries for her compensation?

11 A I don't think I've been called here to help. I
12 think I've been called here to render expert opinion.

13 Q Okay. And you understand that that expert opinion
14 is being utilized to help her achieve compensation in this
15 case, correct?

16 A Uh, I'm, I'm rendering expert opinion. Um, what
17 the Court does with that, the Court does with that.

18 Q I understand you're not here to decide
19 compensation, but you understand that your opinions are being
20 offer in support of her request for compensation, isn't that
21 true, Doctor?

22 A I, I just can't accept that characterization. I'm
23 here to offer opinions based on my medical training and
24 background, my care of the patient. I can't say I'm here to
25 help her.

1 Q Okay. So, is it your testimony, Doctor, that you
2 don't understand that your testimony is being utilized by her
3 attorneys to help her achieve compensation? You don't
4 understand that?

5 MR. BRATT: Objection.

6 THE COURT: Sustained. Let's move on.

7 BY MR. GILLCRIST:

8 Q Doctor, um, you know Dr. McGrail, is that correct?

9 A I, I do.

10 Q And, and he's a (unclear - one word) neurosurgeon
11 affiliated with Georgetown University Hospital, correct?

12 A Yes.

13 Q You have very high regard for him, correct?

14 A I do.

15 Q And, uh, in fact, you've attended lectures with
16 him, would you agree with that?

17 A Yes.

18 Q And, um, you understand from reading his report
19 that he's got some different opinions than you do in this
20 case, correct?

21 A Correct.

22 Q And reasonable physicians, just like reasonable
23 witnesses, may see things differently, is that fair to say?

24 A Yes.

25 Q Okay. Now, um, Doctor, you, uh, testified about

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 your background, your experience, and I'd like to ask you,
2 um, there was testimony in doc (sic), did you read Dr.
3 McGrail's video deposition testimony?

4 A (No response.)

5 Q And if you didn't that's okay.

6 A Uh, no, I'm trying to, to think. I, I read a s
7 (sic), I read his statement.

8 Q Okay.

9 A I do not think I saw his deposition.

10 Q You read his report?

11 A Correct.

12 Q Okay. Um, and you, yourself, have testified in
13 court before, isn't that true?

14 A Yes.

15 Q As a forensic expert, isn't that correct?

16 A Yes.

17 Q Meaning someone -- you've testified not as the,
18 well, you've testified in both arenas, both as a treating
19 physician for a patient who's involved in litigation, like
20 you are now, correct?

21 A I have.

22 Q And you've also testified as a forensic expert
23 retained by a litigant to help prove a case, correct?

24 A Yes.

25 Q Okay. And one of the areas that you do forensic

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 work in is, uh, medical malpractice, is that correct?

2 A Yes.

3 Q And it's common, or at least on occasion you have
4 an opportunity to be contacted by an attorney to perform a
5 forensic review of the case and to give expert opinion in
6 that arena, correct?

7 A Yes.

8 Q I think in your deposition you say that happens
9 about six to eight times a year?

10 A Yes.

11 Q Okay. And you testify about three times per year
12 for your patients, and in cases where they're making claims,
13 is that correct?

14 A Yes.

15 Q And you understand, Doctor, that sometimes
16 specialists, such as yourself, are called upon to do forensic
17 work and to charge for their work, correct?

18 A Correct.

19 Q So, you, you don't consider your opinions
20 invalidated by the fact that you do other forensic work for a
21 professional fee. Would you agree with that?

22 A Yes.

23 Q Um, and in fact in this case you were hired by Ms.
24 Exline-Hassler's attorneys to come to court, correct?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And you have an agreement with them that they will
2 compensate you for your time.

3 A Yes.

4 Q And you had your deposition given in this case, do
5 you remember that?

6 A Yes.

7 Q And you were compensated for your time in giving
8 the deposition.

9 A Yes.

10 Q And I think in your test deposition, testimony you
11 testified that your fee for the deposition was, uh, \$1500,
12 correct?

13 A Yes.

14 Q And you've also put time into the case in meeting
15 with Ms. Exline-Hassler's attorneys, correct?

16 A Yes.

17 Q Talking with them on the telephone, correct?

18 A Yes.

19 Q Exchanging emails with them, correct?

20 A Yes.

21 Q Uh, and you bill for your time?

22 A Yes.

23 Q And do you know what your billings are to date for
24 this particular case?

25 A No.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Um, you don't have your billing records with you?
2 A No.
3 Q Um, I understand that you came to court without any
4 of your records or your chart?
5 A Correct.
6 Q Um, you, when you were sitting back in the court,
7 back of the courtroom I thought I noticed that you were
8 looking at a chart.
9 A Uh, I was not looking at a chart.
10 Q Um, you were looking at some documents in a manila
11 folder, was that not related to this case?
12 A Uh, I was not looking at any documents in a manila
13 folder.
14 Q Okay. When you walked into the courtroom today did
15 you bring no records with you whatsoever?
16 A No, I had, um, um, I had notes, they just weren't
17 in a manila folder.
18 Q Okay. So, you did have documents that you brought
19 with you?
20 A Yes.
21 Q Okay. And why did you just a second ago indicate
22 that you did not bring any records with you?
23 A I think you said medical record. If you could go
24 back and repeat your question --
25 Q Sure.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A -- but I believe --
2 Q All right, I'll go --
3 A -- your question to me was did I bring medical
4 records, and the answer to that is, um, is no.
5 Q Okay. So, you, you have a medical chart back in
6 your office, correct?
7 A Yes.
8 Q That you did not bring today, correct?
9 A Correct.
10 Q And you also have a legal chart back in your
11 office, do you not, for this case?
12 A I do.
13 Q And you all (sic), and you also did not bring that
14 legal chart?
15 A Correct.
16 Q And the legal chart is something that contains
17 letters that you received from Counsel from Es-ex (sic), Ms.
18 Exline-Hassler, would you agree with that?
19 A Yes.
20 Q And the legal chart also includes, uh, hard copies
21 of email correspondence that they have sent you, correct?
22 A Yes.
23 Q And the fact that they have had dialogue with you
24 in preparing for your testimony, or preparing you to be here,
25 you don't consider that as in any way invalidating the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 opinions you hold in this case, correct?

2 A Correct.

3 Q And there's absolutely nothing wrong, wouldn't you
4 agree, Doctor, with an attorney who's hired a forensic expert
5 to have communications with that person in order to help give
6 them all the information they need to make informed opinions,
7 correct?

8 A Uh, correct.

9 Q Okay. Now, it wouldn't surprise you to learn,
10 would it, Doctor, that Dr. McGrail has had contact with the
11 Defense attorneys in this case, would it?

12 A Um, correct.

13 Q Okay. And it wouldn't surprise you to, to know
14 that Dr. London has had contact with the Defense attorneys in
15 this case, would it?

16 A Um, no, that would not surprise me.

17 Q And it would not surprise you to understand that,
18 that the Defense attorneys in this case have, uh, provided
19 Dr. McGrail information by email or by correspondence, or
20 that they have met with him, would you, there's nothing
21 untoward about that, would you agree with that?

22 A I would.

23 Q Now, Doctor, in terms of your fees in this case how
24 much do you charge?

25 A Um, uh, I'm going on memory, but I think it's about

1 \$500 an hour for record review.

2 Q All right. And, and is your court testimony the
3 same? Doctor, the reason I'm asking you this is because
4 there were some questions posed to Dr. McGrail in his
5 deposition about court testimony.

6 A Um, there's a, uh, uh, you know, there's a fee for
7 court testimony --

8 Q Okay.

9 A -- for like a day.

10 Q All right. And Counsel's kindly handed me a copy
11 of your fee schedule, and, Doctor, would you mind us taking a
12 look at this?

13 A Sure.

14 MR. GILLCRIST: And May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. GILLCRIST:

18 Q Um, uh, and this is a, a fee schedule of, of, uh,
19 generated from your office for litigation, correct,
20 litigation testimony?

21 A Yes.

22 Q And, um, you're down in Baltimore, right, so you
23 came to, uh, came to Frederick to testify, correct?

24 A Correct.

25 Q And that would be non-local court testimony,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 correct?

2 A Correct.

3 Q And would you agree that your charge that you're
4 charging, um, Mr., uh, Batt (sic) and, and, uh, Ms. Zois that
5 you're charging \$7,000 to testify?

6 A Yes.

7 Q And, Doctor, again, you are spending time away from
8 your professional practice just as Dr. McGrail has and just
9 as Dr. London did, correct?

10 A Uh, yes.

11 Q And it's reasonable for you to, uh, uh, charge by
12 the hour or by where you're going for your testimony,
13 correct?

14 A Yes.

15 Q Now, um, I asked you a moment ago about the
16 preparation, or I think I eluded to it, I apologize if I
17 didn't, um, your preparation for your testimony today and for
18 your participation in this case. Um, the first time that you
19 saw Ms. Exline-Hassler was on June 2nd, 2011, would you agree
20 with that?

21 A Yes.

22 Q Okay. And, uh, we're now obviously in to 2013, um,
23 when you saw Ms. Heb (sic), Exline-Hassler you saw her one
24 time in June and then a second time in November of 2011, is
25 that correct?

1 A I believe that's correct, yeah.

2 Q Okay. You have only seen her as a patient on two
3 occasions, correct?

4 A Correct.

5 Q Uh, and that would be from the date of her accident
6 in 2009 up until today, correct?

7 A Yes.

8 Q And would you agree, Doctor, that at no point when
9 she was actually a patient of yours did you ever express any
10 opinions that the treatment that you were giving her or the
11 findings that you had for her on your examination were
12 related to the car accident?

13 A I don't know that I ever had an occasion to, to
14 specifically comment as to what the ideology of her pain was.

15 Q Okay. Uh, let me refer to your deposition.

16 A I can't, but I can't, but I can't say that I
17 didn't.

18 Q Okay. Doctor, in your deposition you were asked
19 these questions on page 31 and 32, and I'd just like to
20 review the testimony.

21 A Sure.

22 Q Um, question on line (sic) 31 at, uh, line 10, Page
23 31, line 10.

24 MR. BRATT: I'm sorry, what page?

25 MR. GILLCRIST: Page 31, line 10.

1 MR. BRATT: Thank you.

2 BY MR. GILLCRIST:

3 Q Question, "When did you formulate your opinion that
4 the neck was related to the car accident?" Answer, "After my
5 review of the medical records." Question, "And when did that
6 review occur?" Answer, "I do not know the answer to that
7 from memory." Question, "Was it in 2012?" Answer, "Yes."
8 And then question, "And was it sometime over the summer of
9 2012?" Answer, "Yes to the best of my recollection."
10 Question, "And why did you come to an opinion regarding
11 causation of the neck in the summer of 2012?" Answer, "Well,
12 I was contacted by this legal firm to review the medical
13 records and to come to opinions and to share those opinions
14 with them." Question, "And how about the thoracic upper back
15 area, when did you come to an opinion that the thoracic/upper
16 back area, back excuse me, was related to the car answer
17 (sic)?" Answer, "Along the same time line." Question, "And
18 how about with regard to the lumbar area, when did you
19 conclude that the lumbar injury was related to the car
20 accident?" Answer, "Again, along the same time line." Okay.
21 Now, you understand that that was your testimony at
22 deposition, correct?

23 A I do.

24 Q And that deposition testimony was given under oath,
25 correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q And the last time you saw Ms. Exline-Hassler, uh,
3 was in November of 2011, correct?

4 A Yes.

5 Q And back in the summer of 2012, maybe three
6 quarters of a year after you no longer saw her as a patient
7 you were contacted by her attorneys, correct?

8 A Yes.

9 Q And one of the things that they did is they sent
10 you this complete binder of her medical records, correct?

11 A Yes.

12 Q And they asked you to review them, correct?

13 A Yes.

14 Q And, um, they asked you in accordance with your
15 testimony, "I was contacted by this legal firm to review the
16 medical records and to come to opinions and to share those
17 opinions with them." Do you agree with that?

18 A Yes.

19 Q So, you understood when, uh, Ms., um, Hassler's,
20 uh, um, I apologize, Ms. Exline-Hassler's attorneys contacted
21 you and provided you these records in the summer of 2012 that
22 you were being asked to participate in this case and give
23 opinions with respect to (unclear - one word), correct?

24 A I, I missed the last part.

25 Q (Unclear - two words.) Back in the summer of 2012

1 you understood, and as you did in your deposition that you
2 were being asked by her attorneys to start participating in
3 this case and they were gonna' be soliciting opinions for you
4 that the injuries were related to the car accident?

5 A Correct.

6 Q Okay. Now, um, up until that time, up until the
7 summer of 2012 you had never, in your medical chart, in
8 writing, verbally or by electronic communication, you had
9 never expressed an opinion that all of this treatment that
10 you've now said was related to the car accident in this
11 courtroom, you never expressed those sentiments or opinions
12 to anybody. Isn't that true, Doctor?

13 A That would be correct.

14 Q And it was only after being contacted by her
15 attorneys seeking that opinion from you that you express that
16 opinion for the very first time, and she was no longer a
17 patient of yours.

18 MR. BRATT: I would object, Your Honor.

19 THE COURT: Uh, multiple questions, rephrase.

20 BY MR. GILLCRIST:

21 Q I'm sorry. It was only in the summer of 2012 after
22 the opinions were solicited to you by her attorneys that you
23 first articulated any opinions on the relationship of the car
24 accident to, um, what you were treating for.

25 MR. BRATT: Objection, Your Honor. It misstates the

1 record.

2 MR. GILLCRIST: (Unclear - two words.)

3 THE COURT: Overruled. Answer if you can.

4 THE WITNESS: Sure, um, uh, I, so I can't accept the
5 characterization of the question. So, it's not just that the
6 attorneys contacted me and I just rendered an opinion.

7 BY MR. GILLCRIST:

8 Q Okay.

9 A They contacted me, they delivered to me a
10 considerable amount of medical records, records which, uh,
11 were more than I had when I saw her as a patient.

12 Q Okay.

13 A So things change. So, I was, at one point I was
14 seeing her just, just as a patient, and then at some point
15 things changed, because I was asked to get involved as an
16 expert witness to help the Court understand her injury. And
17 to do that I was given a lot of records, which I then
18 reviewed, and then I rendered an opinion.

19 Q The records you're talking about are in that white
20 binder. Could you just put your hand on it for the jury?
21 Okay. All of those records were never in your possession at
22 any time before they were sent to you in the summer of 2012
23 by her attorneys, correct?

24 A Correct.

25 Q Okay. And, so when you, when she was under your

1 care for those two visits in 2011 you've never had an
2 opportunity to look at those medical records, is that true?

3 A I certainly didn't have the opportunity to look at
4 the totality, she, she would have brought some records with
5 her, but not this many.

6 Q All right. And when you were contacted -- and I'll
7 move off of this in a second (unclear - two words) -- when
8 you were contacted by her attorneys you understood that she
9 was in litigation over her car accident, correct?

10 A Yes, yes.

11 Q And you understood that in that litigation she was
12 making a claim for compensation from her car accident, would
13 you agree with that?

14 A Yes.

15 Q And, since that time -- I started, I got off track,
16 I apologize -- but since that time, um, you had an
17 opportunity to meet with their attorneys, uh, her attorneys,
18 excuse me, for about two and a half hours, uh, with the
19 initial meeting. Do you remember saying that in your
20 deposition?

21 A That sounds right.

22 Q And, of course, that would be time that you would
23 bill them for your services as a forensic expert, correct?

24 A Yes.

25 Q Uh, and you also had, during that, uh, meeting with

1 them, an opportunity to go over the facts of this case,
2 correct?

3 A Yeah.

4 Q And I'm not suggesting there's anything wrong with
5 it, Doctor, but just in terms of, of some of the areas that
6 were explored in Dr. McGrail's deposition by her attorneys
7 you had an opportunity to go and, uh, meet with them and
8 discuss the opinions you hold in the case, correct?

9 A Yes.

10 Q And they reviewed some of the individual records of
11 her, correct, with you?

12 A Yes.

13 Q And they had, obviously, they had questions about
14 the medical records and questions about your opinions,
15 correct?

16 A That's right.

17 Q And they also showed you her prior medical records,
18 isn't that correct?

19 A Yes.

20 Q And they went over those prior medical records with
21 you and there was a back and forth between you and the
22 attorneys about what the significance of those medical
23 records were, isn't that fair to say?

24 A Yes.

25 Q You also went over the MRI scans that were done and

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 there was back and forth between you over the significance of
2 the MRI findings, correct?

3 A If by back and forth you mean discussion, yes.

4 Q Yeah, okay. In that capacity as a forensic expert,
5 in other words, a, a retained expert for her litigation,
6 correct?

7 A Yes.

8 Q All right, now, you're no longer treating her as a
9 patient, agreed?

10 A Well, I, I mean, she would be entitled to come see
11 me again, but no, I haven't seen her since that last visit.

12 Q It's been more than two years since you've seen
13 her, agreed?

14 A Agreed.

15 Q There's been no appointment scheduled, correct, to
16 your knowledge?

17 A Correct.

18 Q She has never asked to come back to you, she's
19 never called up your office and tried to make an appointment,
20 fair to say?

21 A Fair to say, yes.

22 Q She's never, uh, followed up with you to get a
23 particular prescription medication, fair to say?

24 A Yes.

25 Q Um, now, Doctor, in addition to meeting with her

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 attorneys you also had a telephone conversation with them
2 before your deposition was given, is that correct?

3 A Yes.

4 Q Do you remember that? You also met with them for
5 about a half an hour or so before the deposition began,
6 correct?

7 A Yes.

8 Q And all of this was to help prepare you to give
9 your opinions in this case as a forensic expert, agreed?

10 MR. BRATT: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: I, I don't know that I would characterize
13 it as helping me.

14 BY MR. GILLCRIST:

15 Q Okay. Well, the idea was to prepare you for your
16 deposition as a forensic expert, you, you understand that,
17 correct?

18 A Yeah, I think helping to prepare, I guess, would be
19 a reasonable characterization.

20 Q You do independent medical examinations as well, do
21 you not?

22 A Not often, but I have.

23 Q All right. Now, Doctor, let me turn, if I can, um,
24 to the, um, the, the report that you prepared, uh, this is
25 June 2nd, 2011. Um, this would have been your first visit,

1 uh, I'm sorry, Ms. Exline-Hass (sic), Ha (sic), uh, Hassler's
2 first visit with you, correct?

3 A That's correct.

4 Q Now, you, um, did this report, I assume, right
5 after you saw her that day or while you were seeing her?

6 A Correct.

7 Q All right. And isn't it true, Doctor, that she
8 gave you the history that her complaints were coming from in
9 her low back. And I'm just gonna' focus on the low back, if
10 that's all right with you?

11 A Yes.

12 Q Um, that she gave you the history of her low back
13 being related to the car accident, correct?

14 A Correct.

15 Q And you did not have any other medical records with
16 you at the time, correct?

17 A For the most part, I mean, I had an MRI report, but

18 --

19 Q Okay.

20 A -- yeah.

21 Q And it was fair to you, I mean, you're seeing a
22 patient for clinical treatment, it's fair to you to, to rely
23 on that history, correct?

24 A That's correct.

25 Q And you did, in fact, rely on her history as being

1 accurate, correct?

2 A I did.

3 Q Um, you did not independently ever review any
4 records at that time that would document that in fact her
5 injuries were caused by the accident, is that fair to say?

6 A Yes.

7 Q Now, when she came to see you you also asked her,
8 um, about her prior history, isn't that correct?

9 A Yes.

10 Q And, according to your report, Ms. Exline-Hassler
11 told you quote, "She does not report having any significant
12 pain prior to the accident." Do you see that?

13 A Yes.

14 Q Um, and that was the history that she gave to you,
15 correct?

16 A Correct.

17 Q And doctors, such as yourself, do consider it
18 important to know, especially in, in treating a patient with
19 low back what the source of the problem is, correct?

20 A Yes.

21 Q And do you agree that it would have been important
22 for you to now at that time if Ms. Ex (sic), uh, Exline-
23 Hassler had a significant problem with her low back before
24 her car accident, wouldn't you agree with that? You'd wanna'
25 know that.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Well, not for the purposes of treating her present
2 problem, I mean, it --

3 Q Okay.

4 A -- you know, the more, the more knowledge I, you
5 know, I'm not gonna' say that I don't wanna' know something,
6 but, eh, it wasn't of particular importance to treating her
7 present issue that she comes to see me for just for a purely
8 clinical reason.

9 Q Okay. But you did think it was important enough to
10 ask her about her prior history, correct?

11 A Yes.

12 Q And when you say prior you're referring to pre-
13 dating her car accident, correct?

14 A Yes.

15 Q All right. And, um, that was one of the things
16 that you questioned her in order to give yourself more
17 knowledge about her condition, fair to say?

18 A That's fair.

19 Q All right. And now that you're testifying as a
20 forensic expert, as opposed to a treating doctor, at least in
21 terms of your opinions, you realize that it is important to
22 know her, uh, full relevant prior medical history, that is
23 pre-dating her car accident, in order to validate your
24 opinions, correct?

25 A That is correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And it is in fact relevant to you, is it not,
2 whether or not she had ongoing chronic low back pain before
3 this car accident in determining what, if anything, the car
4 accident caused?

5 A Correct.

6 Q And you saw her a second time in November of 2012,
7 would you agree, Doctor?

8 A Yes.

9 Q I'm sorry, 2011, my apologies.

10 A No, I believe it was '12.

11 Q I'm sorry, was it '12? No, it was, it was November
12 or '11.

13 A Unless it's a typo on my -- it, it looks like it's
14 '12.

15 Q Okay, my apologies, it may have been '12, but
16 you're right, your report is dated November 29, 2012. First
17 off, in that second report sh (sic), sh (sic), you don't
18 mention a prior medical history at all, correct?

19 A In the, in the second report?

20 Q Yeah.

21 A Right, I don't mention any history preceding her
22 first visit with me.

23 Q Okay. So, in terms of your knowledge of her health
24 as it relates to her low back, before and after the car
25 accident from 2009 you had no knowledge either when you saw

1 it the first time or the second time about her having prior
2 low back problems, is that true?

3 A I want to be clear, prior to the accident?

4 Q Prior to the accident.

5 A That's correct.

6 Q Okay. And if indeed she had told you, um, if
7 indeed -- and Counsel has very kindly clarified, it was
8 November of 2012 that (unclear - three words). I apologize
9 for saying November 2011, I was mistaken on that. Um, if
10 indeed Ms. Exline-Hassler had come to you and reported that
11 she had pain in her low back before this car accident, um,
12 you would agree that you would have noted that in your
13 reports, correct?

14 A That, I would have, yeah, I would have tried to,
15 yeah.

16 Q All right. And in addition to completing narrative
17 or typewritten reports you also completed handwritten reports
18 for the visits as well, right? Or handwritten records?

19 A That's correct.

20 Q And in, in neither visit, um, that we talked about,
21 did your handwritten notes reflect any prior history of Ms.
22 Exline-Hassler, is that correct, in terms of the low back?

23 A Correct.

24 Q Now, you have since had an opportunity, Doctor, to
25 look at her complete medical records before the car accident,

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 haven't you?

2 A I've reviewed what's been offered to me as her
3 complete medical records.

4 Q Okay. And what's been offered to you as her
5 complete medical records before the accident, those were
6 provided to you by your, by her attorneys, correct?

7 A Yes.

8 Q Um, and would you agree, Doctor, that one of the
9 records that you were provided to by her attorneys -- by the
10 way, these records were also provided in 2012, correct? Not
11 while she was actively under your care. Is that correct?

12 A Well --

13 Q Prior records?

14 A -- um, well, we, as we just noted she saw me in
15 November 2012. So, she was under my care.

16 Q Oh, I apologize, I --

17 A Yeah.

18 Q -- I'm -- I should have limited that to when you
19 first saw her, because by the time you saw her a second time,
20 uh, you had been given her medical records by her attorneys?

21 MR. BRATT: Objection.

22 MS. ZOIS: To, it --

23 MR. BRATT: Your Honor, there's an exhibit facing the
24 jury that hasn't --

25 THE COURT: So.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: -- been ID'd --
2 THE COURT: Okay.
3 MR. BRATT: -- or admitted.
4 MR. GILLCRIST: My apologies (unclear - two words).
5 MR. BRATT: And I don't know what it is, and haven't
6 seen it.
7 THE COURT: (Unclear - one word.)
8 MR. GILLCRIST: My mistake, Your Honor. Could you have
9 this marked as, uh --
10 THE CLERK: Yes.
11 MR. GILLCRIST: -- Defendant's Exhibit in line with
12 whatever number we're at.
13 FEMALE VOICE: Court's indulgence.
14 THE COURT: Certainly.
15 MR. GILLCRIST: Thank you.
16 BY MR. GILLCRIST:
17 Q Um, Doctor, I'm -- and for Counsel's reference,
18 this is the same document that was eluded to earlier, the
19 March 26th, 2008 Robinwood Family Practice Medical record?
20 MR. BRATT: Do you have a Bates page?
21 MS. ZOIS: 100 I got it.
22 MR. GILLCRIST: I don't, on this one it's not date --
23 MS. ZOIS: I know where it is.
24 MR. GILLCRIST: -- stamp dated.
25 MR. BRATT: Okay, I got it.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 BY MR. GILLCRIST:

2 Q Okay, it's, Doctor, could you look at this before
3 we show this to the jury? Um, and I apologize for it's size,
4 but there's a reason for that. Um, would you agree this is
5 the March 26th, 2008 report for Ms. Exline-Hassler that was in
6 the prior records that her attorneys provided to you?

7 A Yes.

8 Q And you reviewed that record, and you have, in
9 part, relied upon it for the opinions you've expressed in
10 this case?

11 A Yes.

12 Q Okay. Could you please, um, factor then -- (To the
13 Court) Your Honor, may I display this to the jury for
14 purposes of (unclear - one word).

15 MR. BRATT: Objection.

16 THE COURT: Why don't you seek to move it in?

17 MR. GILLCRIST: Your Honor, may I move into evidence
18 Defendant's Exhibit Number 3?

19 MR. BRATT: Objection.

20 THE COURT: Approach.

21 (Counsel approached the bench and the following
22 occurred:)

23 (Husher turned on.)

24 THE COURT: Basis of the objection?

25 MR. BRATT: It's hearsay, Your Honor. And, although the

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 rule does permit a (sic) expert witness to rely upon hearsay,
2 if it's information of a, a type and character that's
3 typically relied upon in his field, all that the rule permits
4 is that that information, because it's the underlying data
5 that was supporting his opinions, that information made to be
6 disclosed to the jury through the form of testimony, cross
7 examination, but it may not be admitted into evidence and
8 shown physically to the jury.

9 THE COURT: Are you going to be moving in medical
10 records in this case?

11 MS. ZOIS: Your Honor, I'll love to address that. The
12 three of us --

13 MR. GILLCRIST: Have not.

14 MS. ZOIS: -- have discussed that.

15 THE COURT: Mm-hmm.

16 MS. ZOIS: I'm just saying that, because Mr. Gillcrist
17 has not been actively participating in those conversations.
18 So, the three of us have discussed my exhibit list, things
19 that I want in, I have an understanding of what they want in.
20 We would like the time to sit down and see if we can work all
21 of this out. This is one of the things I know they want in.
22 And we are considering that, but we haven't had that
23 discussion yet.

24 THE COURT: Let me put it this way.

25 MS. ZOIS: Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: This witness has indicated that that was one
2 of the pieces of information that he used to provide his
3 conclusions. So, I will certainly allow Counsel to, whether
4 or not we let it in eventually --

5 MS. ZOIS: Mm-hmm.

6 THE COURT: -- I'll certainly allow Counsel to use it as
7 a visual, because he indicated that that was on the bases'
8 for his opinions.

9 MR. BRATT: Thank you, Your Honor.

10 MS. ZOIS: Okay.

11 THE COURT: Okay?

12 MS. ZOIS: Um --

13 (Counsel returned to the trial tables and the following
14 occurred:)

15 BY MR. GILLCRIST:

16 Q Doctor, do you mind just stepping down for one
17 second?

18 (Husher turned off.)

19 BY MR. GILLCRIST:

20 Q Do you mind stepping down here, Doctor?

21 THE COURT: You're getting your exercise today, Doctor.
22 Well, they say it's good for all of us to get up and move
23 around a little bit, so.

24 MR. GILLCRIST: Sorry, I thought the print was (unclear
25 - one word).

1 BY MR. GILLCRIST:

2 Q Doctor, I just wanna', for purposes of
3 clarification, uh, this is Robinwood Family Practice,
4 correct? And this is one of the documents that you've just
5 testified that you reviewed and relied upon, correct?

6 A Yes.

7 Q All right. And this, you understand now, to be --
8 and I'm sorry, do you mind just taking one step to the left
9 or to the right? Um, do you mind, Doctor, uh, can you see
10 this okay just from right there?

11 A Mm-hmm.

12 Q Thank you. Um, this was, um, Ms. Exline-Hassler's
13 primary medical doctor, correct? As far as you know?

14 A Well, it's a family practice so they would be
15 primary care doctors, yes.

16 Q All right, now, first off, had you ever spoken to
17 this practitioner? Dr. Stephanie Brown or anybody from her
18 office?

19 A I, I, I might have, I know this group. I certainly
20 never spoke to them in regards to this matter.

21 Q Okay, you've never spoken to her regarding Ms.
22 Exline-Hassler?

23 A Correct.

24 Q Okay. Nor anybody in their office, correct?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. Now, um, would you agree that she saw,
2 um, this practice on March 26th, 2008, correct?

3 A Correct.

4 Q And would you agree that at that time, um, was
5 before her car accident in 2009, correct?

6 A Correct.

7 Q All right, and would you agree that it is recorded
8 HPI, and that means history of, uh, present illness, correct?

9 A It does.

10 Q And then it says PT, correct?

11 A Patient.

12 Q And that refers to patient. Okay. And would you
13 agree that it says, "Patient has low back pain since being in
14 MVA..." motor vehicle accident, "...three years ago." Do you
15 see that?

16 A I do.

17 Q Okay. And then would you agree that it also says,
18 "It has gotten worse this past year and worse in the a.m.,
19 morning," correct?

20 A Correct.

21 Q "Takes six Advil a day. No numbness or tingling.
22 OCC," means occasional, correct?

23 A It does.

24 Q "Into buttocks, no weakness. Had an ulcer when she
25 was young." Do you see that much?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A I do.

2 Q Okay. Now, Doctor, this was not a report that you
3 had when you first examined her, correct?

4 A Correct.

5 Q This was subsequently provided by her attorneys as
6 part of her prior medical records, correct?

7 A Correct.

8 Q And would you agree that you've never talked to
9 this provided to find out what exactly was meant in this
10 record?

11 A Correct.

12 Q Uh, but in reading this record does it not indicate
13 that Ms. Exline-Hassler had had low back pain since being in
14 a car accident three years ago?

15 A That's what it says.

16 Q Did Ms. Exline-Hassler ever tell you that?

17 A No.

18 Q Did she ever tell you that she had been in a car
19 accident in 2005 where she was injured?

20 A (Unclear.)

21 Q Um, so in terms of the history that she provided to
22 you while you were treating her, uh, that history was never
23 provided to you by your patient?

24 MR. BRATT: Objection.

25 THE COURT: Sustained.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 BY MR. GILLCRIST:

2 Q Um, would you agree that Ms. Exline-Hassler never
3 told you that it had gotten worse in the past year and worse
4 in the morning?

5 MR. BRATT: Objection.

6 THE WITNESS: Correct.

7 THE COURT: Sustained.

8 THE WITNESS: Correct (unclear - one word).

9 BY MR. GILLCRIST:

10 Q This is complete news to you after her attorneys
11 provide you her prior medical records, would you agree?

12 A Yes.

13 Q And you're not disputing the accuracy of this
14 report are you?

15 MR. BRATT: Objection.

16 THE COURT: Sustained.

17 MR. BRATT: Your Honor . . .

18 BY MR. GILLCRIST:

19 Q Uh, do you have, Doctor, you, this is one of the
20 reports you relied on, correct?

21 A It's, uh, one of the reports that I reviewed.

22 Q Okay. You have never seen a correction to this
23 report, have you?

24 A Uh, no.

25 Q Dr. Brown has never called you up and said, Doctor,

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 you know, I know my report says this, but it really is in
2 error, would you agree?

3 A That's correct.

4 Q So, as far as you know, this is an accurate
5 document? Isn't that true?

6 A It's a document.

7 Q Right. As far as you know it's an accurate
8 document, correct?

9 MR. BRATT: Objection.

10 THE COURT: I'll sustain. Let's move on.

11 MR. GILLCRIST: Okay.

12 BY MR. GILLCRIST:

13 Q All right, now, um, Doctor -- thank you, Doctor.
14 Um, Doctor, were you aware that Ms. Exline-Hassler, um, also,
15 um, fell in the Christmas time in 2007 and injured her low
16 back?

17 A I recall a fall in the medical record, yes.

18 Q Okay. Um, and do you recall her injuring her low
19 back in that fall?

20 A I recall her having some complaints of, uh, I
21 believe it was right low back or buttock pain after the fall.

22 Q All right. And do you recall her, um, going to the
23 hospital in January of '08, related to her low back?

24 A Uh, or buttock area, yes.

25 Q Okay. Now, again, these are all things that you

1 that is incorrect, has she?

2 A I've never asked her.

3 Q Okay. Her attorneys had never told that that's
4 incorrect, right?

5 MR. BRATT: Objection!

6 THE COURT: Sustained.

7 MR. GILLCRIST: There's no attorney client privilege,
8 Your Honor.

9 MS. ZOIS: What?

10 THE COURT: I sustained the objection.

11 MR. GILLCRIST: Okay, Your Honor.

12 BY MR. GILLCRIST:

13 Q Um, this, you've never heard any information,
14 exclude her attorney, but you've never heard any information
15 from any of her treating doctors, or from other doctors that
16 that's an inaccurate record.

17 A I, I've never talked to any of her doctors.

18 Q You have, during your (sic) course of your
19 testimony when Counsel is asking you questions, is it correct
20 that you never attempted to correct any of the other medical
21 records in this case and say that they were wrong?

22 MR. BRATT: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I, I don't know why I would attempt to
25 correct --

1 BY MR. GILLCRIST:

2 Q Okay.

3 A -- records.

4 Q All right. If, if you're relying on a record that
5 you know to be false you're gonna' let somebody know about
6 it, right?

7 MR. BRATT: Objection.

8 THE COURT: That -- uh, sustained.

9 MR. GILLCRIST: Okay.

10 THE WITNESS: I, I, I don't --

11 THE COURT: He, he'll --

12 THE WITNESS: Oh, I'm sorry.

13 THE COURT: -- ask you another question. Mm-hmm.

14 BY MR. GILLCRIST:

15 Q Sir, all right, um, let me ask you, Doctor, what is
16 Skelaxin?

17 A It's a, uh, medication that helps with, uh, muscle
18 relaxation.

19 Q And what is Tramadol?

20 A It's a medication that helps with pain.

21 MR. GILLCRIST: And I think these are already marked by
22 Plaintiffs, but just to be safe, can I have these marked as
23 Defense exhibits, Your Honor? Oh, uh, four and five, I
24 guess.

25 MR. BRATT: Not to interrupt, but I'd like to know what

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 they are.

2 THE COURT: He'll show them to you before you --

3 MR. BRATT: Thank you, Your Honor.

4 MR. GILLCRIST: These are the prescription drug tallies.

5 BY MR. GILLCRIST:

6 Q Would you like to see them?

7 A Yes.

8 MR. GILLCRIST: Um, Doctor (sic), if I could just
9 approach the witness.

10 THE COURT: You may.

11 MR. BRATT: Your Honor.

12 BY MR. GILLCRIST:

13 Q Were you provided by Counsel or by --

14 THE COURT: He -- do you want to see 'em?

15 MR. BRATT: I --

16 THE COURT: He walked over and you all weren't paying,
17 weren't . . .

18 MR. BRATT: -- yeah, I, I would like to --

19 THE COURT: So, take a look a second to look at it.

20 MR. BRATT: -- I just want to know what they are. I
21 mean, I'm not . . .

22 THE COURT: So.

23 MR. BRATT: Thank you. Thanks, Walter.

24 MR. GILLCRIST: You're welcome.

25 BY MR. GILLCRIST:

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Um, Doctor, let me just show you what's been marked
2 as Exhibit Number 4 and 5. Um, these, um, prescription drug
3 registers for Ms. Exline-Hassler, do you see those?

4 A I do.

5 Q Okay. And starting with Exhibit Number 4, those
6 provided to you by Counsel or by Ms. Exline-Hassler?

7 A I, I don't know.

8 Q Okay. Have you, is this the first time you've ever
9 seen them?

10 A I, I can't answer that.

11 Q Okay. Well --

12 A Because, I just --

13 Q -- I'm sorry --

14 A -- I mean, I --

15 Q -- I don't mean to keep (unclear - one word) --

16 A -- it just, no, I understand, it's just a list of
17 medicines and I've seen lots of lists of medicines, so.

18 Q Okay.

19 A As I sit here I can't tell you that I've seen this
20 particular --

21 Q I --

22 A -- list.

23 Q -- I thought that you had testified, Doctor, that
24 when you reviewed the medical records of Ms. Exline-Hassler
25 that her attorneys provided pre-dating her car accident in

1 2009 that, um, she was prescribed Skelaxin and Tramadol as a
2 result of what happened in 2008?

3 A Yes.

4 Q Okay. And those came about because of her low
5 back, to the best of your knowledge, correct?

6 A I, I'm not sure that they were, uh, uh, related to
7 her low back.

8 Q Well, isn't it in fact the medical records, don't
9 those reflect that when she was seen for evaluation of her
10 low back in 2008 that, that she was prescribed those
11 medications? And you're welcome to --

12 A Uh --

13 Q -- look at the record.

14 A Um, on the instance that she presented to the
15 Urgent Care or to the ER, uh, yes, she was --

16 Q Okay.

17 A -- she was prescribed some medication. So, that
18 was one instance.

19 Q All right.

20 A What I can't answer is that all of these were
21 related to that one visit.

22 Q Okay.

23 A Maybe they were --

24 Q Okay --

25 A -- maybe they're weren't, but I can't tell you --

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

- 1 Q I'm not --
2 A -- just looking at a list of --
3 Q It's a very fair response, Doctor, I'm only going
4 to ask you about the visits in the timeframe, and I'll, I'll
5 show you them and talk to you about it.
6 A Sure.
7 Q Um, you, you understood that she was prescribed
8 Skelastic (sic), Skelaxin and Tramadol related to her low
9 back, whether it was a condition or injury, whatever you want
10 to call it in 2008?
11 A Yes.
12 Q Okay. And then would you agree, Doctor, in looking
13 at it, you've had an opportunity to look at prescription
14 registers in other cases, correct?
15 A Yes.
16 Q And would you agree in the top, this would be
17 Exhibit Number 5, that, um, on two, on Mar (sic), uh, excuse
18 me, September 16, 2008 she was, uh, given a prescription and
19 filled a prescription for Tramadol ACL, 50 milligrams, do you
20 see that?
21 A Yes.
22 Q And ref, references her name, the doctor, Dr.
23 Brown?
24 A Yes.
25 Q And there were 60 pills at that, that time?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Now, that's a pain medication, correct?

3 A Correct.

4 Q All right. And, and the entire time that you've
5 known Ms. Exline-Hassler she's never told you that she's had
6 any other injuries after her car accident up until today,
7 would that be fair to say?

8 A Yes.

9 Q All right. She's never told you that she needed to
10 get Tramadol or Skelaxin for any other reason, correct?

11 MR. BRATT: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: Not --

14 THE COURT: You can --

15 THE WITNESS: -- not that I recall.

16 BY MR. GILLCRIST:

17 Q Okay. And a pharmacy is not going to, your, with
18 your experience with pharmacies they're not going to dispense
19 a particular medication for a patient with the knowledge that
20 that patient is going to give it to somebody else, correct?

21 MR. BRATT: Objection.

22 THE COURT: S --

23 THE WITNESS: Yeah, I --

24 THE COURT: -- I, it's -- I'm gonna' sustain.

25 BY MR. GILLCRIST:

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. Um, the person on this prescription register
2 is, the patient is indicated to be Jacqueline Exline-Hassler,
3 correct?
4 A Yes.
5 Q All right. Now, if you look the Tramadol that's
6 the pain medication, correct?
7 A Yes.
8 Q And isn't it true that on February 28th, 2009, uh,
9 four months roughly before this car accident she filled
10 another prescription for Tramadol?
11 A That's what --
12 Q ACL --
13 A -- yeah, that's what it says.
14 Q -- correct?
15 A Yes.
16 Q And there's a printed number under each of these
17 prescriptions, um, that is the same, correct?
18 A Yes.
19 Q Which would mean it's for, under the same script
20 that the doctor gives her.
21 A I think that's what that means, yes.
22 Q Okay. And this also was for another 60 pills,
23 correct?
24 A Yes.
25 Q Okay. Now, Doctor, if you look at the Exhibit

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Number 4, again, I'm just asking you about this time
2 reference, um, if you look at Exhibit Number 4 would you
3 agree, Doctor, that in January of 2008 she was prescribed
4 Hydrocodone?

5 A Yes.

6 Q And was, what is that? What type of medication?

7 A Uh, that's also a, uh, pain relieving medicine.

8 Q Is that a narcotic?

9 A Yes.

10 Q Is that the equivalent of Percocet?

11 A Uh, for all practical purposes, uh, yes, it's, uh,
12 regulatory, it's a, a little less than Percocet.

13 Q Okay. And would you agree that she was also
14 prescribed on March 26, 2008 Skelaxin and Tramadol?

15 A Yes.

16 Q Skelaxin being the muscle relaxant and Tramadol
17 being the pain reliever?

18 A Yes.

19 Q And Skelaxin is also, would you agree that you've
20 also prescribed Skelaxin to treat muscle spasms?

21 A Yes.

22 Q Okay. Now, Doctor, um, would you agree that in
23 July of 2008 she filled another prescription of Tramadol?

24 A Yes.

25 Q Specifically July 3rd, 2008, do you see that?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Okay. And would you agree that in September 9 of
3 2008 she's been, she was filling 800 milligrams, um, level of
4 Skelaxin, is that correct?

5 A Yes.

6 Q All of these are prescribed by Dr. Stephanie Brown,
7 the primary care doctor, would you agree?

8 A Yes.

9 Q All right. Now, if you fast forward, Doctor, to
10 January of '09, again, we're in the months leading up to the
11 car accident, uh, January 12th of '09 she's prescribed 800
12 milligrams of Skelaxin, correct?

13 A Yes.

14 Q Um, and, again, by Stephanie, Dr. Brown, correct?

15 A Yes, yes.

16 Q And this particular had, uh, uh, prescription has
17 two refills to it, correct?

18 A Yes.

19 Q And that would be in the columns indendi (sic), uh,
20 identified as RF Number, correct?

21 A Yes.

22 Q Okay. Now, when you took the history from Ms.
23 Exline-Hassler about her prior medical condition when she
24 first came in to see you, did she tell you that she had been
25 under medication of filling prescription medications for

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 muscle relax, relaxants and pain relievers in, uh, January of
2 '08, March of '08, July of '08, September of '08, January of
3 '09, and February of '09?

4 A Well, she wouldn't, she certainly wouldn't have,
5 uh, given me, you know, the actual dates of her
6 prescriptions, nor would I expect a patient to do that.

7 Q Fair enough. But did she tell you that she had
8 even had medication in that timeframe?

9 MR. BRATT: Objection.

10 THE WITNESS: Well, she --

11 THE COURT: Overruled.

12 THE WITNESS: -- she, she listed on her intake form that
13 she was taking Hydrocodone.

14 BY MR. GILLCRIST:

15 Q That's when she saw you.

16 A Yes.

17 Q But you took a past medical history on her.

18 A Yes.

19 Q And your intention of taking that past medical
20 history was to find out what her condition was like before
21 the accident, correct?

22 A Yes.

23 Q And she never told you that she had that series of
24 medications in the months and the year before the car
25 accident, did she?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, correct.

2 Q Okay. And it would be important for you as a
3 forensic expert to know that, correct?

4 A Yes, as a forensic expert, yes.

5 Q All right. And those, those medications were
6 initially diagnosed, or initially prescribed for her to treat
7 her low back in March of '08, correct? Or January of '08.

8 A Uh, based on my recollection of the record she had
9 prescriptions filled one time for an episode of, I know you
10 described it as low back, but it think it's sort of buttock,
11 right buttock, uh, kind of pain, and she had, um,
12 prescriptions for that.

13 Q Okay. But none --

14 A For that one episode. And, um, based on the record
15 you've presented me here I cannot say that those subsequent
16 prescriptions were for low back pain.

17 Q Okay.

18 A Because the record, as given to me in here, doesn't
19 talk about a lot of low back pain other than that one
20 episode.

21 Q All right, Doctor, she was prescribed medication
22 for her low back initially, and is it your testimony that you
23 don't know that she was taking the same medications would,
24 well, by my count five or six different refills, uh, in the
25 months afterwards --

1 MR. BRATT: Objection.

2 BY MR. GILLCRIST:

3 Q -- and it is not, your testimony is it was not for
4 her low or you just don't know?

5 A No, uh, my testimony is that the medical record
6 does not document, as far as I can tell, um, why she was
7 taking the subsequent medications.

8 Q Okay. And isn't, in fact, there is no medical
9 records for those subsequent occasions, isn't that correct?

10 A That is my recollection, hence, I can't say that
11 that's why she's taking them.

12 Q And you've never talked to Dr. Brown about it, have
13 you?

14 A No.

15 Q Okay. You, as a physician, have ever right as a
16 treating physician to call up other treating health care
17 providers of a patient and discuss their case with them,
18 isn't that true?

19 A If, if it's indicated, sure.

20 Q Now, um, Doctor, did Ms. Exline-Hassler ever tell
21 you that after March of '08 through the time of her accident,
22 so this would be June of '09, even up until today, has she
23 ever told you that she had any other accidents or injuries or
24 medical conditions that would warrant the use of either
25 Skelaxin or Tramadol?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A No.

2 Q No. Doctor, let me move on, and I apologize for
3 being sidetracked (unclear - one word).

4 A That's okay.

5 Q Um, you're aware, when you made the physical
6 examination (unclear - one word), on June 2nd, 2011, um, it
7 was a completely normal neurological examination, was it not?

8 A I just want to be sure.

9 Q Sure.

10 A Uh, you're correct.

11 Q And in terms of that -- and I apologize, let me go
12 back for one second to the history she gave you. You talked
13 about when you showed the jury the, uh, the spine you talked
14 about how a twisting injury could cause a ruptured disc. Um,
15 she never related to you that she twisted her back in this
16 accident, did she?

17 A No, but that's, I mean, I, I would have made that
18 assumption.

19 Q Okay. Well, Doctor, your making an assumption,
20 you're basing your opinion then on assumption, right?

21 A I'm basing what opinion?

22 Q Well, you, you (unclear - one word) ---

23 A Not, not, not my opinion in this case.

24 Q Okay.

25 A On an assumption, no.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Let, let me see if I understand, because I don't
2 want to put words in your mouth, but are you assuming that
3 she twisted her back in the accident, is that what you're
4 saying?

5 A What I've said is that, uh, a motor vehicle
6 collision is a type of trauma, as I testified earlier with
7 the model, is the type of trauma that can put those discs in
8 a position in which they're torn.

9 Q Okay.

10 A And that that happens frequently.

11 Q Okay. Um, and you related the twisting mechanism
12 as something that could cause that disc, (unclear - one
13 word)?

14 A It's one of the mechanisms, yes.

15 Q And she never told you about twisting, she never
16 told you about hitting anything inside of the car, would you
17 (sic) be accurate, would that be accurate?

18 A You know, I, I didn't document what she told me
19 about the details of the accident. I can't say that she
20 didn't tell me.

21 Q Okay. Sitting here today you only have your record
22 to look at in terms of offering your testimony, correct?

23 A Relative to my clinical visit with her, yes.

24 Q (Unclear - one word), now, Doctor, I asked you
25 about the physical examination, let me get to that for a

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 moment. Um, her physical examination she had a full range of
2 motion of her back, is that correct?

3 A Yes.

4 Q She had mild tenderness in her lumbosacral motion,
5 correct?

6 A Yes.

7 Q And that would be something, the tenderness would
8 be what we call subjective complaint, correct?

9 A Um, yes.

10 Q That comes from the patient, that's the patient's
11 input, correct?

12 A Yes.

13 Q All right. Now, she had, you also state that she
14 has no nerve attention signs, do you see that?

15 A Yes.

16 Q And that would be if she had a positive, and
17 positive in a medical sense is a bad thing, right? In most
18 instances, right?

19 A That's correct.

20 Q Okay. Um, if she had a positive nerve attention
21 sign that would be indicative of a disc problem, would you
22 agree with that?

23 A Well, more specifically, it's indicative of a nerve
24 compression problem.

25 Q Okay. But in this case she did not have that?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A That's right.

2 Q Um, you also state in the report that her sensation
3 is normal, correct?

4 A Yes.

5 Q That her reflexes are normal, correct?

6 A Yes.

7 Q Um, now, you also mention that she's a half a pack
8 a day smoker, correct?

9 A Yes.

10 Q And wouldn't you agree that, and I'm not, please
11 understand, I'm not, (unclear - one word) if somebody's
12 addicted or whatever, but just in terms of smoking that can
13 have an adverse impact on the spine?

14 A Yes.

15 Q Okay. Uh, and that, is that why you made that
16 record there about smoking?

17 A You know, smoking history's just part of the usual
18 history.

19 Q Okay. Now, you reference in your report that an
20 MRI of her lumbar spine demonstrates an annular tail (sic),
21 tear at L5/S1 and L4/5, L4/L5, do you see that?

22 A Yes.

23 Q Okay. And then you say there is no central or
24 foraminal stenosis, agreed?

25 A Agreed.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Now, did you have the film of the MRI at that time
2 or were you just reading the radiologist report?

3 A It's my, uh, recollection that I had the film.

4 Q Do you have any indication from your bill from that
5 visit or from your records or your notes that you actually
6 looked at the study as compared to what the radiologists
7 report?

8 A Uh, no.

9 Q Sitting here today it's an assumption, is it not,
10 that you looked at that film?

11 A Yes.

12 Q Now, in any event, whether you looked at the film
13 or you looked at the report you said there was no central or
14 foraminal stenosis, correct?

15 A Correct.

16 Q The foraminin (sic), the foramen, excuse me, those,
17 that's a little, basically, like a little window that the
18 nerves come out from the spinal canal, is that correct?

19 A That's right.

20 Q And if there's stenosis of the foramen that is
21 something that can sort of grip a nerve and cause irritation?

22 A Correct.

23 Q And when you have patients who have degenerative
24 disc disease or degenerative arthritis in their spine you
25 often see that foramina narrowing, like sort of a closing of

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 a straw, correct?

2 A That's correct.

3 Q And when that happens you can nerve root
4 impingement?

5 A Yes.

6 Q And there was none of that that you could find
7 either by the neurological examination that you conducted or
8 by looking at the MRI, would you agree with that?

9 A Correct. That was not her problem.

10 Q Now, in terms of your examination would you agree
11 that she had no signs of atrophy in her legs?

12 A Yeah, correct.

13 Q Um, she had no signs of, um, disuse of her legs or
14 weakness in her legs?

15 A Correct.

16 Q Would you agree that she had no spasm?

17 A Yes.

18 Q Would you agree that as far as the examination was
19 concerned it was a normal strength and range of motion
20 examination?

21 A Yes.

22 Q All right. Now, Doctor, let me turn, um, to your
23 assessment. You testified a few moments ago that your
24 assessment was that she had a traumatic annular tear in her
25 disc. Do you remember saying that?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Would you look at your assessment section of your
3 report, and bear in mind a second ago that you testified that
4 your knowledge of the clinical visit is based on what you
5 wrote, would you look at your assessment and tell me where it
6 says that she had a traumatic annular tear in her disc?

7 A Well, um, you know, degenerative disc disease is an
8 accumulation of trauma, so that, that encompasses all that
9 that disc has ever met in its life, and part of what that
10 disc met was a, a major motor vehicle collision.

11 Q Doctor, you knew that she was in an accident and
12 that she had a claim, because you had already, you had sent a
13 copy of your records to her attorney, or her attorney sent
14 copies of records to you.

15 A Are, are you talking about the day I saw her?

16 Q The day you saw you (sic) you did not --

17 A Yeah --

18 MR. BRATT: Objection.

19 THE WITNESS: -- I just wanted to understand your
20 question.

21 MR. GILLCRIST: My -- I withdraw.

22 MR. BRATT: Because I don't either.

23 MR. GILLCRIST: I withdraw.

24 THE COURT: No.

25 BY MR. GILLCRIST:

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Um, Doctor, when you did your assessment, would you
2 agree that you did not in any place say the word traumatic?

3 A Yeah, I agree that the word traumatic is not in my
4 report.

5 Q Would you also agree that the word acute is not in
6 your report?

7 A Uh, yes.

8 Q Would you agree, Doctor, that you assess her
9 condition, and I'm, I'm gonna' read the part that I'm gonna'
10 ask you about first, okay, so they do not think that I'm just
11 picking and choosing. "Assessment/Plan. The patient has
12 refractory low back pain, much greater than leg pain,
13 consistent with her degenerative disc disease at L4/5 and
14 L5/S1," correct?

15 A Correct.

16 Q All right. And that's what you assessed her as
17 having, degenerative disc disease, correct?

18 A Correct.

19 Q And would you agree, Doctor, that as people get
20 older, um, that their body loses water content, correct?

21 A Correct.

22 Q And the discs are part of the body and the discs
23 that you have in your spine also lose water content?

24 A Yes.

25 Q And that's a drying out process, right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And when parts of the body dry out, like discs,
3 would you agree, Doctor, that they become dehydrated and
4 brittle?

5 A They can, yes.

6 Q And would you agree that that in and of itself can
7 cause tears in the discs?

8 A Yes.

9 Q And would you agree that that in and of itself can
10 cause herniations of the disc?

11 A Yes.

12 Q Uh, and it cause the, the, the sort of nebulous
13 group of protrusions or bulges of discs, correct?

14 A Yes.

15 Q All right. Now, there was never a reference in her
16 MRI in your report to her having herniated discs, would you
17 agree with that?

18 A That's correct.

19 Q All right. So, sitting here today, she did not
20 have a herniated disc?

21 A That's right.

22 Q Any of the L4/5 or the L5/S1 levels?

23 A Correct.

24 Q And those are the two lowest levels of the lumbar
25 spine, are they not?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A That is correct.

2 Q And isn't it true, Doctor, that, um, in terms of
3 wear and tear to that part of the body, those are the two
4 levels of the low back that get the most action?

5 A That's right.

6 Q So, on a patient who is in her 40's or in her 40,
7 late 40's, middle-40's, it's not unusual to see those, that
8 type of pathology in those levels of the spine?

9 A Correct.

10 Q Now, um, Doctor, you, um, said in your report that,
11 given her young age, uh, I would recommend that she continue
12 with non-operative treatment, correct? This was your initial
13 report?

14 A Y, yes, uh-huh.

15 Q And, in fact, that's your knowledge of her, she has
16 never had, um, the, the lumbar surgery that Counsel was
17 asking you earlier today showing you the screws and the, all
18 the hardware and the photos and stuff like that, she's never
19 had that surgery, correct?

20 A That's right.

21 Q She's never scheduled that surgery, correct?

22 A Not to my knowledge.

23 Q She's never come back to you indicating any desire
24 to have that surgery, would you agree?

25 A Well, I mean, she came back to me with continuing

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 complaints.

2 Q I understand that in November of 2012.

3 A Yeah, yeah.

4 Q And do you know how it came to be that she
5 scheduled apportionment (sic), appointment that was more about a
6 year and a half after she first saw you?

7 A I think she just wanted to, uh, review her
8 condition again.

9 Q Do you know if in fact her attorney scheduled the
10 appointment?

11 MR. BRATT: Objection.

12 THE COURT: Sustained.

13 MR. BRATT: Don't answer that.

14 THE COURT: Don't, don't answer that.

15 BY MR. GILLCRIST:

16 Q Um, uh, do you know if she was coming -- now,
17 regardless of any recommendations, but whether she herself
18 was coming back for you to be able to describe her condition
19 to the jury?

20 MR. BRATT: Objection.

21 BY MR. GILLCRIST:

22 Q In terms of what she told you?

23 A It's, uh, it's my impression that she was coming
24 back to see me purely as a patient and me as a treating
25 physician.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. And that was a year and a half after
2 roughly her first visit to you?

3 A That's right.

4 Q In the interim year, and, and I, I may be off by a
5 month or two, I apologize --

6 A Mm-hmm.

7 Q -- but in that year and a half do your records show
8 any indication that she tried to call you back for a follow
9 up visit?

10 A No.

11 Q Are there any indications from your records that,
12 um, your office made any contact with her to see if she
13 should come back or to suggest that she come back?

14 A No.

15 Q Okay. Um, now, Doctor, um, you, uh, talked about
16 the subsequent visit, or we, we talked about the subsequent
17 visit November of 2012, and on that visit, Doctor, isn't it
18 true that you also reiterated your feeling that surgery is
19 not indicated due to her young age?

20 A Yeah, I wrote, "Is not indicated at present..." --

21 Q Okay.

22 A -- "...given her young age."

23 Q All right. So, on the two occasions that you
24 examined her you expressed in writing on both occasions
25 essentially that at that time she was not a surgical

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 candidate, would you agree?

2 MR. BRATT: Objection. Misstates prior testimony.

3 THE COURT: Overruled.

4 THE WITNESS: Yeah, I --

5 THE COURT: Let him, he can explain.

6 THE WITNESS: My impression is that, uh, she is a
7 candidate for the surgery, but as I, uh, was saying earlier
8 in my testimony that just being a candidate for surgery
9 doesn't mean it's the time to have the surgery.

10 BY MR. GILLCRIST:

11 Q Okay.

12 A And --

13 Q All right. So, when you say on November 29, 2012,
14 "But I continue to feel that surgery is not indicated at the
15 present given her young age," is it your testimony that you
16 meant or that you really mean, yeah, she might need some
17 surgery in the future, but right now she shouldn't have it?

18 A Yeah, that's --

19 Q Is that correct?

20 A -- that's a fair characterization, yes.

21 Q All right. And it just, on that one limited issue
22 of the surgery, Doctor, I think you testified that before
23 you, as a competent neurosurgeon would ever perform surgery
24 on her, you would want another lumbar MRI scan, is that true?

25 A Y, well, you'd want one closer to the time of

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 surgery, yes.

2 Q Okay. And you'd want to see her again and evaluate
3 her again, correct?

4 A After that MRI, yes.

5 Q And that has not been scheduled or even proposed to
6 her, has it?

7 A Uh, n, not by me.

8 Q Okay. And you haven't seen any records indicating
9 that any other doctor has seen Ms. Exline-Hassler for the
10 purposes of seeing what her current condition is for the
11 evaluation of the surgical procedure?

12 A No, I recall that she's seen other doctors.

13 Q Okay. Um, do you recall seeing anybody recommend
14 that she have surgery?

15 A I believe a Dr. Khanna offered her surgery.

16 Q We'll get into that in a second, okay? Um, Doctor,
17 during the entire time that you saw her on those two visits
18 we can agree that she had no neurological deficits?

19 A Correct.

20 Q And in your review of all of her records would you
21 agree that in all of her records there's no indication of a
22 neurological deficit?

23 A Correct. I just wanna' make sure we're on the same
24 wavelength here, uh, you know, if someone wanted to be very
25 technical they could say pain is a neurologic deficit. So,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 I'm not considering pain a neurologic deficit. She certainly
2 had pain --

3 Q As a (unclear - one word) --

4 A -- but --

5 Q -- and, and that would be subjectively reported to
6 you, correct?

7 A Yes.

8 Q But in terms of your neurologic, you're a
9 neurologist by training or a neurosurgeon.

10 A Correct, neurosurgeon.

11 Q Neurosurgical practice involves neurology, right?

12 A It involves some, yes.

13 Q Okay. When you do a neurological assessment the
14 purpose is to decide if there's a clinical explanation for
15 that patient's pain, correct?

16 A Yes.

17 Q And at no point that she was under your care or any
18 other doctors care was there any neurological evidence of any
19 deficit, agreed?

20 A Outside of pain, yes.

21 Q Okay. Now, um, Doctor, um, you testified, I'm
22 gonna' move on, um, to, you talked about what other doctors,
23 you talked to Dr. Khanna, for example. You had an
24 opportunity, did you not, to review her medical records --

25 (To the Court) And with Counsels' permission just to speed

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 things up, I know it's getting kind of late, can I just show
2 these to the doctor so we can have them move, marked?

3 THE COURT: Just show Counsel what they are, so that he
4 knows what they are.

5 MR. GILLCRIST: (Unclear.)

6 MR. BRATT: Are you using the Bates page numbered ones?

7 MR. GILLCRIST: Um, okay, I think they're on here on the
8 bottom.

9 MR. BRATT: (Unclear - one word) the page number.

10 MR. GILLCRIST: This would be, uh, is that right here,
11 is that what you're (unclear - two words)?

12 MR. BRATT: Um, yeah.

13 MR. GILLCRIST: Okay.

14 BY MR. GILLCRIST:

15 Q The first one I'm gonna' ask you about is 31.

16 MS. ZOIS: Thirty-one?

17 MR. GILLCRIST: Yes.

18 MR. BRATT: Page 31?

19 MR. GILLCRIST: Uh, 00031.

20 MS. ZOIS: Okay.

21 MR. GILLCRIST: Okay, um, and if the, with the Court's,
22 just to speak things up I won't have them formally marked
23 now.

24 BY MR. GILLCRIST:

25 Q But, um, Doctor, um, this would be the Parkway

1 Neuroscience and Spine Institute, do you see that?

2 A Yes.

3 Q Okay. This is, you, a document you reviewed and
4 relied upon, correct?

5 A Uh, yes.

6 Q Dated July 27, 2009, correct?

7 A Yes.

8 Q And you can indicate that, you see here, Doctor,
9 that she brought a CD of her lumbar MRI with her for the
10 doctor's review?

11 A Yes.

12 Q Okay. So, this doctor clearly had her study, the
13 film of her study, correct?

14 A Yes.

15 Q All right, now would you look please, would you
16 agree that there was, uh, I've already covered that, but in
17 terms of getting right to the diagnosis, would you agree that
18 the doctor diagnosed a lumbar strain, correct?

19 A Yes.

20 Q And what does he say next?

21 A Minor disc dehydration.

22 Q Changes with no nerve root compression, correct?

23 A Correct.

24 Q All right. And then later on, and I've highlighted
25 for you, Doctor, what does it say where I, where I'm pointing

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 to here?

2 A Her MRI is as above and is in line with the
3 patient's age.

4 Q Okay. So, and this was a document prepared by a
5 Dr. Michael Radley, correct?

6 A Yes.

7 Q And just for, again, for edification, July 27,
8 2009.

9 A Yes.

10 Q And you'd agree that Dr. Radley looked at the films
11 and referred to her pathology as minor disc dehydration,
12 correct?

13 A I agree that that's how he characterized it, yes.

14 Q He does not diagnose or reflect any annular tears
15 in the study, does he?

16 A He did not.

17 Q He's describing degenerative disc disease that is
18 consistent with her age.

19 A That's what he, uh, wrote.

20 Q In fact his words were quote, "Her MRI is as above
21 and is in line with the patient's age," correct?

22 A Correct.

23 Q So, wouldn't you, after hearing that, Doctor, have
24 reason to think that what Dr. Radley is saying is that this
25 is a normal study for someone, relatively normal study, for

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 someone of her age?

2 MR. BRATT: Objection.

3 THE COURT: Sustained.

4 MR. GILLCRIST: Okay.

5 THE COURT: It says what it says.

6 BY MR. GILLCRIST:

7 Q Uh, Doctor, I think I covered this, but I'll, just
8 to be careful, it's not uncommon for people in her age group,
9 um, young age group, um, to have degenerative diseases?

10 A Correct.

11 Q Okay. Um, let me turn, Counsel, to, um -- I'm
12 sorry, I got mixed up here. Uh, let me turn to, um, this is
13 Date Stamp 000117, okay? And just very quickly, Doctor,
14 again, a report from, uh, the same office, Parkway
15 Neuroscience dated December 23rd, '09, correct?

16 A Yes.

17 Q This is after the car accident by about six months
18 or so.

19 A Yes.

20 Q And this is when she saw a pain management person
21 named a Dr., uh, Julia Hoang, H-O-A-N-G, do you see that?

22 A I do.

23 Q And would you agree, now, the second page I, again,
24 I'm not reading everything to you, but, um, the, the thing I
25 wanted to ask you about it says, quote, "The patient was

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 reassured that there was no evidence of neurologic injury."

2 Do you see that?

3 A I do.

4 Q Okay. And is that consistent with what you
5 testified earlier, um, about there being no neurological
6 deficits?

7 A Out, outside of pain, which --

8 Q Outside of pain.

9 A -- which that doctor noted in the line before.

10 Q Okay. Let me turn now, Doctor, um, to MR, or Bates
11 Stamp 000253, do you see that?

12 A I do.

13 Q And, um, this was a Dr. Nisenfeld of the Mid-
14 Maryland Musculoskeletal Institute, do you see that?

15 A Yes.

16 Q This is another document that you reviewed and
17 relied upon --

18 A Yes.

19 Q -- correct? And he's an orthopedic doctor,
20 correct?

21 A I think so.

22 Q Um, do you, do you know anything about him or his
23 qualifications?

24 A No.

25 Q Okay. Um, this was a visit that Ms. Exline-Hassler

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 had to him on, looks to be February 1st, 2010, is that
2 correct?

3 A Yes.

4 Q Okay. And can you raid (sic), read to the jury his
5 diagnosis of her condition?

6 A "Diagnosis. Degenerative disc and joint disease of
7 thoracic and lumbar spine. No evidence of radiculopathy."

8 Q Okay. And a radiculopathy, that would be something
9 where have, um, pain going down in the legs or for a cervical
10 condition pain going into the arms, arms, fingers and hands?

11 A That's correct.

12 Q Okay. So, Dr. Nisenfeld said she had the
13 degenerative condition and no evidence that it was resulting
14 in any pain in her arms, hands, fingers, legs, feet, anything
15 like that, fair to say?

16 A Um, no neurologic deficit in her, but I don't think
17 it says that she doesn't have pain in her legs.

18 Q Okay. Well, at least, he says no radiculopathy.

19 A Correct.

20 Q Okay. Um, and that would be something, that would
21 be the medical terminology for someone who has sciatica or a
22 condition radiating into the arms and legs?

23 A From nerve compression, yes.

24 Q From nerve compression, okay. Fair enough.

25 A Which is not what she has.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. Um, Doctor, um, let me show you MR,
2 Date Stamp 000357, do you see that?

3 A Yes.

4 Q And that would be a report, you mentioned Dr.
5 Khanna, uh, this is K-H-A-N-N-A, do you see that?

6 A I do.

7 Q And this was an assessment that he did June 20th,
8 2011, do you see that?

9 A Yes.

10 Q And his assessment and plan says degenerative disc
11 disease lumbar, correct?

12 A Yes.

13 Q Spinal stenosis lumbar, correct?

14 A Yes.

15 Q Spondylosis lumbar without myelopathy.

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q Okay. Now, all of those conditions are
20 degenerative in nature.

21 A Yes, they can be.

22 Q Does Dr. Khanna ever say in this report, or any
23 other reports to your knowledge, that she had a traumatic
24 tear of her annular? Or a traumatic herniated disc?

25 A Well, I just want to be complete in my answer.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay.

2 A Does he use the words traumatic, no, but
3 degenerative, degeneration is an accumulation of trauma.

4 Q Okay. Or it can come about because of aging.

5 A But, you know, uh, Ed Reed is going to have
6 degenerative disease of his shoulder, and it's not because
7 he's an old man, it's because he's been hit in his shoulder,
8 he's had trauma. But if you were to look at an MRI or an x-
9 ray it's gonna' look, it's gonna' say he has degenerative
10 shoulder disease. Or Ladarius Webb's gonna' have
11 degenerative knee disease. So, degeneration, um, is a type
12 of trauma.

13 Q But degeneration, Doctor, also comes about in the
14 normal process of aging, correct?

15 A Yes.

16 Q And, in fact --

17 A So, an 80-year-old would have degenerated discs --

18 Q Well --

19 A -- as well.

20 Q When you say an 80-year-old, Doctor, um, Ms., um,
21 Exline-Hassler, according to Dr. Radley on July 27, 2009 he
22 writes, quote, "Her MRI is as above and is in line with the
23 patient's age." All right? Are you saying that Dr. Radley
24 is wrong?

25 A I disagree with his, uh, uh, characterization.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay. So (unclear - two words) --

2 A Because as I said in my note I saw the annular
3 tears.

4 Q Okay.

5 A The radiologist saw the annular tears. Um, Dr.
6 Radley doesn't mention the annular tears. Um, I'm not
7 faulting Dr. Radley --

8 Q Okay.

9 A -- I'm, I just disagree with his impression of the
10 --

11 Q Okay.

12 A -- of the film.

13 Q Well, Doctor, let me ask you about that, because
14 Counsel showed you medical bills including Dr. Radley's
15 medical bills from Parkway Neuroscience.

16 A Yes.

17 Q And you said that those were all related to the
18 accident.

19 A Yes.

20 Q And you said that they were all fair, reasonable
21 and necessary.

22 A Yes.

23 Q And so what now you're saying is they're good
24 enough to be introduced into evidence as a medical bill, but
25 you actually disagree with what his assessment is.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: Objection.

2 THE COURT: Sustained.

3 BY MR. GILLCRIST:

4 Q Doctor, let me turn to, um, the next Bates stamp,
5 which is 000359, okay? Do you see that?

6 A Yes.

7 Q All right, now, this was when she went to Johns
8 Hopkins Medicine, correct?

9 A Yes.

10 Q And the date of this would be June 20th, 2011, do
11 you see that?

12 A Yes.

13 Q Okay. And, again, in fairness to Ms. Exline-
14 Hassler, she went in to complain her problems were related to
15 her car accident, agreed?

16 A Yes.

17 Q And the doctor there, this would be Doctor, uh, um,
18 Dr. Khanna again, this is his initial report.

19 A Yes.

20 Q Okay. Um, Dr. Khanna, does a (sic) examination of
21 her, and one thing he does is takes her past medical history,
22 does he not?

23 A Yes.

24 Q And he says her past medical history is quote,
25 "Significant for low back pain, sciatica, spinal stenosis and

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 degenerative disc disease." Do you see that?

2 A Yes.

3 Q Okay. And his examination neurologically was
4 normal, correct?

5 A Uh, yes.

6 MR. GILLCRIST: With the Court's brief indulgence.

7 BY MR. GILLCRIST:

8 Q And, Doctor, in his initial -- just to correct
9 something -- in his initial assessment he refers to L4/5,
10 L5/S1 degenerative disc disease with high intensity zone
11 seemed compatible with annular tears. So, he's referred to
12 an annular tear then?

13 A He has.

14 Q And this is Dr. Khanna that she saw about two years
15 after the accident?

16 A Yes.

17 Q Um, Doctor, let me show you Bates stamp this would
18 be 000362. Um, this was a report of Dr. Khanna again, and,
19 um, he suggests, and the only reason I'm asking you this is
20 he suggests it's not operative as well. She will go ahead
21 and attempt to continue non-operative management?

22 A Well, I mean, he doesn't cite that it's non-
23 operative. He says at this time she will go ahead and
24 attempt to continue non-operative management.

25 Q Okay. And he says that she tried, that he's, she's

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 discussed this with you, and had, you had suggested that she
2 try and hold off surgery as long as possible?

3 A But I --

4 Q Oh, I'm sorry.

5 A -- I, I mean, I just, I just wanna' be complete,
6 and as, I mean, he says the surgical treatment for this
7 problem would likely be an L4/5, and L5/S1 anterior lumbar
8 antibody fusion with allograft and instrumentation. And he
9 described that procedure to her in detail, including it's
10 risks and benefits --

11 Q Right.

12 A -- and that it would only have a 60% chance of
13 improving her low back pain. She understands that and then
14 goes on to say she's going to try non-operative therapy.

15 Q Okay. Which is what she told you as well,
16 basically.

17 A Yes.

18 Q Okay, and which is what you suggested or
19 recommended to her.

20 A Correct.

21 Q Doctor, she had, um, EMG, nerve conduction studies
22 are you aware of that?

23 A Uh, yes.

24 Q And isn't it true that her EMG and nerve conduction
25 studies, these are designed to test the patient, whether they

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 have a nerve compression or nerve irritation from a lumbar
2 condition or a cervical condition?

3 A That's correct.

4 Q All right. And can you tell from this report
5 dated, um, March 17, 2010 whether this EMG and nerve
6 conduction study was for her neck or for her low back?

7 MS. ZOIS: Page number, Counsel.

8 MR. GILLCRIST: I apologize, uh, 000126.

9 THE WITNESS: Um, I'm thinking out loud here, this, uh,
10 is an EMG nerve conduction study of the legs, and it's
11 normal.

12 BY MR. GILLCRIST:

13 Q And it's normal. Okay. And so, and you know who
14 it was that referred her to that study?

15 A It should be on here, uh, Julie Hoang.

16 Q And this would be the pain management person that
17 she saw initially through Parkway Neuroscience?

18 A Yes.

19 Q Okay. So, in essence she had the EMG and nerve
20 conduction study and that was reported to be normal, correct?

21 A That's correct.

22 Q Um, 00095, um, this is another record from Dr.
23 Hoang, and, um, would you agree that, and, again, I'm, you're
24 welcome to look at the whole page, just but to speed things
25 up, because I know you've looked at these records. His

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 assessment and plan was degeneration, that's the very first
2 word in his assessment, lumbar/lumbosacral disc, do you see
3 that?

4 A I do.

5 Q And you, she doesn't have a disc herniation, so
6 he's not referring to herniation there, is he?

7 A That's, that's right.

8 Q He's referring to a degenerative condition in her
9 spine, correct?

10 A Correct.

11 Q And that's what he's treating for, isn't that true?

12 A Yes.

13 Q Um, Doctor, I want to just go to the MRI
14 specifically for a second. Uh, and this is 00010. This is
15 what the MRI that was done, um, I apologize, July 13, 2009,
16 okay?

17 A Okay.

18 Q Um, at the L4/5 level, if you look at the body of
19 the report -- again, Doctor, you're welcome to look at the
20 whole thing, but I know you've seen it.

21 A Sure.

22 Q It says there is an annular tear, no significant
23 protrusion of nucleus pulposus material is present, is that
24 correct?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE

FREDERICK, MARYLAND 21701

1 Q So, basically, the, the jelly that Counsel referred
2 to has been contained, it's, it hasn't come out of its shell?

3 A Correct.

4 Q And it says mild circumferential bulging of the
5 annulus fibrosis is seen, correct?

6 A That's right.

7 Q And when you talked about an annular tear that's
8 the annulus, correct?

9 A Correct.

10 Q And when you talk about circumferential bulging
11 you're talking about all the way around, correct?

12 A Right.

13 Q So, she's got bulging all the way around her disc,
14 correct?

15 A Correct.

16 Q She doesn't have one specific point on her disc
17 that has been traumatically altered or ruptured, agreed?

18 MR. BRATT: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: No, I don't, I don't agree with that
21 characterization. She, she has a circumferential bulge, and,
22 as they say here, she has an annular tear.

23 BY MR. GILLCRIST:

24 Q Okay, but then in the body of the (unclear - one
25 word) --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A In, in both levels 4/5 and 5/1.

2 Q Okay, that's in the report, but do you see where it
3 says circumferential bulging?

4 A Yes.

5 Q So, would you agree, is that the bulging something
6 different then a tear?

7 A Yes, that you can have both.

8 Q Okay. Are you saying that the bulging was also
9 caused by the accident?

10 A Um, no, I, I, I don't, I can't, I can't say that.

11 Q Okay.

12 A I mean, bulging is bulging and it's that, that can
13 happen at, at age. The tear --

14 Q Okay.

15 A -- is the traumatic thing.

16 Q Okay. So, she's got, at those two levels, two
17 things going on. One that's related to the car accident, in
18 your opinion, one that's not.

19 A Well, um, I cannot say that the bulge is not
20 related to the accident. Um, the --

21 Q But you can't it is?

22 A That's correct.

23 MR. BRATT: Objection, Your Honor --

24 THE COURT: O (sic) --

25 MR. BRATT: -- can he finish his answers, please?

1 THE COURT: It would -- so, let him finish.

2 MR. GILLCRIST: I'm sorry, Your Honor.

3 THE COURT: So.

4 BY MR. GILLCRIST:

5 Q Um, all right, so, in addition to that it says mild
6 facet arthropathy and ligament inflatum hypertrophy is
7 present. Do you see that part of the report?

8 A I do.

9 Q Arthropathy is in the, hypertrophy, um, those are
10 all degenerative or age related. Would you agree with that?

11 A Degenerative, age or traumatic.

12 Q Okay. Can you say, Doctor, that the arthropathy
13 that she was having in her facet joints, in her low back,
14 were caused by this accident?

15 A No.

16 Q Can you say that the ligament inflatum hypertrophy
17 that was in her low back was caused by this accident?

18 A No, that was definitely not caused by the accident.

19 Q Okay. So, really, if you look at the body of the
20 MRI, the one -- it's got four things going on here. She's
21 got the annular tear, she's got the circumferential bulging
22 of the disc, she's got the arthropathy and she's got the
23 ligament inflatum hypertrophy, correct?

24 A Correct.

25 Q So, four items, and you say that one of those is

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 related and the three other you cannot say is related to her
2 car accident?

3 A Correct.

4 Q All right. And then she had an MRI of her lumbar
5 spine --

6 A I just -- I want to make sure. I can't say --

7 Q Whether or not?

8 A Right, I just wanted to be clear that they could be
9 related to the accident.

10 Q Okay, but --

11 A The ligament inflatum hypertrophy could not be.

12 Q Okay. But in terms of you being a forensic expert
13 you're prepared, you gave your testimony with your opinions
14 and your facts and so forth, you're not able as a forensic
15 expert, or as her treating physician, to say that those three
16 out of the four elements of her low back that are
17 pathological were caused by the accident?

18 A Correct.

19 Q She had a MRI subsequently May of 2011, okay? And
20 at that point is there any reference to her having, um, well,
21 let, let me just, let me go directly to L4/5. It says slight
22 loss of disc height and signal intensity with mild disc bulge
23 and facet arthropathy. Do you see that?

24 A Yes.

25 Q That's what we're talking about before these would

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 be pathological things that are not, or that you're not able
2 to say are related to the accident. Um, at L5/S1 pretty much
3 the same thing, Doctor?

4 A Yes.

5 Q And it also talks about at this point, now, this is
6 about a year after her prior lumbar MRI, at the L5/S1 level
7 she also has, um, now it's describing a moderate broad based
8 bulge at the level, correct?

9 A Yes.

10 Q Again, that's not something you can say is related
11 to the accident, within a reasonable degree of medical
12 probability?

13 A Correct.

14 Q Is that correct?

15 A Correct.

16 Q Okay. At that level it also says there is slight
17 retrolithisous, do you see that?

18 A Yes.

19 Q And doesn't that mean, Doctor, that part of the
20 vertebrae has displaced or gone, basically, almost where it
21 shouldn't go?

22 A Correct.

23 Q Uh, and the vertebrae is the bony part of the
24 lumbar back spine, right?

25 A That's correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And wouldn't you agree, Doctor, that you're not
2 able to say that that was related to the car accident?

3 A It could be related to the car accident.

4 Q But you're not able to say within a reasonable
5 degree of medical probability that it is, is that true?

6 A Correct.

7 Q All right. And, uh, she's, this report also talks
8 about foraminal narrowing at L5, do you see that?

9 A Yes.

10 Q Again, you're not able to say that that is part of
11 the accident, or caused by the accident, fair to say?

12 A Yeah, I can say that it, it; it could be, but it's,
13 uh, not at the same level of certainty as the, uh, annular
14 tears.

15 Q When you say not at the same level of certainty,
16 what you're saying is that you're not able to say within a
17 reasonable degree of probability, correct?

18 A Yes.

19 Q So, Doctor, now, combining the two reports we have
20 what appear to be six different pathological conditions of
21 her low back at the areas we're talking about, correct?

22 A Correct.

23 Q Five of which you can say with confidence that
24 you're not able to say, all within a reasonable degree of
25 medical probability relate to this car accident, correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A I think that's fair.

2 Q And one of them is?

3 A Yes.

4 MR. GILLCRIST: Um, I'm almost done, Your Honor, thank
5 you for your indulgence.

6 THE COURT: Mm-hmm.

7 BY MR. GILLCRIST:

8 Q Um, Doctor, the medical chart, I'm sorry, the
9 medical billings that you were presented with, I think it was
10 Plaintiff's Exhibit Number 9, are, do you know if in those
11 medical billings, you said those were all related to the car
12 accident, um, do you know --

13 MS. ZOIS: Page, Counsel.

14 MR. GILLCRIST: I'm sorry, this is, uh, let me s (sic),
15 let me start with 00026.

16 BY MR. GILLCRIST:

17 Q Do you see this date, December 28, 2010, do you see
18 those nerve conduction studies?

19 A Yes.

20 Q And then going on into 2011? I'm sorry, I, I gave
21 you the wrong date, I apologize. It begins (sic) on, begins
22 on, uh, January 21, 2011, do you see that?

23 A Yes.

24 Q Are you aware of whether or not that was actually
25 the EMG nerve conduction study for her upper extremity?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A No.
2 Q You don't have any idea one way or the other?
3 A No.
4 Q Okay.
5 A I don't have any --
6 Q Well --
7 A -- I don't -- this document's not this document.
8 So, I don't, I don't know the connection between this and
9 that.
10 Q Okay. Um --
11 A This is Exhibit 9, and this doesn't have anything
12 on it.
13 Q Okay. Let's then, very quickly -- Doctor, look
14 here, um, there's a charge on Exhibit Number 9, uh, the Spine
15 Center, it says January 21, '11 where there's an indication
16 of treatment on that date within the total of the medical
17 bill, do you see that?
18 A Yes.
19 Q Okay. And, um, if you go down to the same date on
20 00026, there seems to be nerve conduction charges that date?
21 A Yes.
22 Q Um, do you know if those dates were for her upper
23 extremities?
24 A No.
25 Q You don't know one way or the other?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A No.

2 Q Um, again, over the next -- you see different, note
3 the highlighted portions, I'm sorry, do you see those
4 highlighted portions of those (unclear - one word).

5 MS. ZOIS: Your Honor, we can't see the highlighted
6 portions.

7 THE COURT: So.

8 MR. GILLCRIST: Um --

9 MS. ZOIS: Our chart --

10 MR. GILLCRIST: -- 00 --

11 MS. ZOIS: -- isn't highlighted.

12 MR. GILLCRIST: -- 0026 beginning with January 21, 2011
13 towards the bottom, thank you.

14 THE WITNESS: Mm-hmm.

15 THE COURT: Mm-hmm.

16 BY MR. GILLCRIST:

17 Q Um, those charges nerve conduction, trigger point
18 injections, um, and going down the second page, facet C or T
19 single.

20 A Yeah.

21 Q You see that?

22 A Yeah.

23 Q Would that be cervical?

24 A It sounds like cervical or thoracic, yeah.

25 Q Okay. And this would be 4/22/2011?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Mm-hmm.

2 Q Do you know if those charges were included in
3 Exhibit Number 9?

4 A (No response.)

5 Q And if you don't know that's fine.

6 A No, as I sit here I don't know --

7 Q Okay.

8 A -- what that relation is to this.

9 Q Okay. The medical records of November 6th, 2012, do
10 you see the Spine Center there?

11 A Yes.

12 Q This would have been in 2012 she had a consultation
13 regid (sic), regarding left thoracic pain and right upper
14 extremity pain, bi-lateral lower extremity pain, do you see
15 that?

16 MS. ZOIS: Page, Counsel.

17 MR. GILLCRIST: Um, I'm sorry, 000323.

18 THE WITNESS: Yes, I see that.

19 BY MR. GILLCRIST:

20 Q Um, and then a complaint on December 28, 2010 right
21 upper extremity numbness --

22 MS. ZOIS: Page, Counsel.

23 MR. GILLCRIST: Uh, 000279.

24 BY MR. GILLCRIST:

25 Q Okay, um, do you know if those were for the neck,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 the back or somewhere in between?

2 A Well, I mean, this is for the right upper
3 extremity.

4 Q Okay. So, and that would not be related to the car
5 accident?

6 A Um, I don't think so, no.

7 Q Okay. Um, 000281, um, was a document that Counsel
8 provided for The Center for Pain Management, and it talks
9 about peripheral neuropathy, and it says, "Patient reports
10 numbness to the last digits of her fingers bilaterally.

11 Reported dated January 21, 2011." Okay, is that related to
12 this car accident?

13 A You know, what other doctors do to evaluate a
14 patient's complaints are what they do, and --

15 Q Okay.

16 A -- if they were seeing her for the complaints from
17 her car accident, then, yes, I would relate that to her car
18 accident.

19 Q But, so, you weren't --

20 A But I can't, I don't, I mean, I don't know, I don't
21 know, uh, you know, what that particular doctor was ordering
22 that study for just based on what you're showing me.

23 Q Okay. Well --

24 A So, I don't --

25 Q -- and, and I'm --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A -- I don't know.
2 Q -- I'm just (unclear - one word) --
3 A I guess that's the answer is I don't know.
4 Q You don't know, it's late in the day, I didn't want
5 to --
6 A Yeah.
7 Q -- take too much time with this, but she's
8 obviously having, she has something going on with her upper
9 cervical region that's leading to some type of symptoms in
10 her hands, her arms, as far as you can tell?
11 A Yeah, I mean, that's indicated in the records,
12 yeah.
13 Q Okay. You're not able to say whether those
14 conditions are causally related to the car accident are you?
15 A Well, she had neck pain after the accident, so, uh,
16 yes, I think the neck pain is related to the accident.
17 Q Okay. Are you saying that these symptoms in
18 January 2011 reflected in 000281 are related to her car
19 accident?
20 A Well, frankly, I'd have to dissect the medical
21 record more fully to answer that specific question about this
22 specific line in the --
23 Q Okay.
24 A -- (unclear - two word).
25 Q You haven't done that yet?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Uh, no.

2 Q Okay. When she came to you she didn't report any
3 neck pain in June of 2011, correct?

4 A That's correct.

5 Q And she didn't report any headaches, correct?

6 A Correct.

7 Q And when she saw you again in November 2012 she did
8 not report any neck pain or headaches, would you agree with
9 that?

10 A I agree.

11 (Brief pause.)

12 Q Doctor, thank you very much.

13 A You're welcome.

14 MR. BRATT: (Sigh.)

15 MR. GILLCRIST: Can I leave these here for a moment?

16 THE COURT: Mm-hmm, you may.

17 MR. BRATT: Oh, my turn?

18 MR. PORCARELLI: Your Honor, given the hour of the day I
19 don't have much, but, um, is it okay if the jury at least
20 stretches their legs here?

21 THE COURT: I was gonna' say, I think we're, we're
22 gonna' run a little late tonight, 'cause once, we want, I
23 definitely, we were gonna' get finished with the doctor and
24 send him on his way. And we have one other witness we need
25 to get to today, so we're gonna' run a little bit late. So,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 let's go ahead and take 10 minutes to stretch. Um, and then
2 we'll be back. I'm hoping 5:30, 6 o'clock, should that do?
3 Would that be a good target time, so that they know? So...

4 MS. ZOIS: I'm sorry, I just didn't hear the time.

5 THE COURT: So, do you think we'll be, to let them know
6 we'll be done by 5:30 or 6:00.

7 MR. BRATT: We're gonna' do our level best, Your Honor.
8 I tend to move pretty fast.

9 THE COURT: So, okay, so, let's everybody stretch,
10 including me, including Counsel, including the witness,
11 exactly. And, uh, say we'll, let's take 10, I don't want to
12 say five, and --

13 MR. BRATT: I need it. Thank you, Your Honor.

14 THE COURT: Mm-hmm. Everybody does. I know the doctor
15 does, too.

16 MS. ZOIS: May we approach for one, Your Honor?

17 THE COURT: Sure.

18 MS. ZOIS: Thank you.

19 FEMALE VOICE: Uh, wait, (unclear - one word), hello.

20 THE COURT: Let's do this, let's, let's --

21 MS. ZOIS: Come back.

22 THE COURT: -- take a break --

23 MS. ZOIS: Okay.

24 THE COURT: -- and exactly.

25 MR. GILLCRIST: Take a break and then, okay, Your Honor.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Thank you.

2 THE CLERK: All rise.

3 (Whereupon, from 4:40 o'clock, p.m. until 4:53 o'clock,
4 p.m., a recess was taken.)

5 (Jury not present.)

6 THE CLERK: All rise.

7 THE COURT: Just by the skin of our teeth we're still
8 officially good afternoon, everybody. Please have a seat.

9 MS. ZOIS: Good afternoon, Your Honor. May we approach?

10 THE COURT: Certainly.

11 MS. ZOIS: Thank you, Your Honor.

12 (Counsel approached the bench and the following
13 occurred:)

14 (Husher turned on.)

15 MS. ZOIS: (Unclear - one word), that's okay. Um, in
16 light of the clarification that we rehashed and hashed out
17 with respect to Mr. Por (sic), Porcarelli being one of the
18 attorneys --

19 THE COURT: Mm-hmm.

20 MS. ZOIS: -- for the Defendant, I would object to him
21 taking the second bite at the apple on cross examination of
22 this witness.

23 THE COURT: Okay. Your objection is noted for the
24 record and overruled.

25 MS. ZOIS: Okay. Um, second part of that, Your Honor,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 is I, I anticipate that there may be some questions that Mr.
2 Porcarelli is asking Dr. Naff that we have, he has already
3 asked and I would just ask that it not be, I don't want to
4 have to keep saying asked and answered, asked and answered,
5 asked and answered.

6 THE COURT: (Unclear - one word.)

7 MS. ZOIS: I'm hoping that this cross examination
8 (unclear - two words) keep the direct, or the original cross.

9 THE COURT: I would be very surprised if it does.

10 MS. ZOIS: Well, it, it, it's --

11 MALE VOICE: (Unclear - four words) anyway.

12 MS. ZOIS: -- I, I've, I've -- .

13 THE COURT: So.

14 MS. ZOIS: -- seen some evidence that that's going to
15 happen. So, I'm just, I'm just --

16 MR. PORCARELLI: Well --

17 THE COURT: So.

18 MS. ZOIS: -- putting, I'm just warning Counsel that I
19 don't want to have to do that every question.

20 MR. PORCARELLI: I have some numbers written up on the
21 board. Mr. Gillcrist didn't write them down, but he didn't
22 cover all the issues with regard to some of the numbers and
23 the dollars charged by Dr. Naff, and he got some of the
24 information from Dr. Naff about how many patients he sees per
25 month, but not all the information I got out of the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 deposition. So, I'd like to fill in some of those pieces of
2 the puzzle, and I will do my best not to be repetitive, but
3 again, you know, it's kinda' hard comin' in second to fill in
4 around without a little bit of overlap.

5 THE COURT: Okay.

6 MR. PORCARELLI: Thank you.

7 MR. BRATT: So, let me get this straight, two defense --

8 THE COURT: Counsel, I have ruled on this, and we have
9 argued over this, and let's go. I don't want to keep this
10 doctor waiting, let's go, and let's ask the questions, and
11 let's get goin' with this trial. It's gonna' take what it's
12 gonna' take.

13 MR. BRATT: Yes, Your Honor.

14 THE COURT: So. I will certainly rule on any objection
15 as it raises and I will rule as I deem appropriate.

16 (Husher turned off.)

17 (Counsel returned to the trial tables and the following
18 occurred:)

19 THE COURT: Okay, and, Doctor, you're back on the stand.
20 And once he's on we'll bring in the ladies and gentlemen of
21 the jury.

22 (Jury entered the courtroom.)

23 THE COURT: Once again, note for the record, all the
24 jurors are present.

25 MR. PORCARELLI: Thank you, Your Honor, again.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: Mr. Porcarelli, mm-hmm.

2 MR. PORCARELLI: Good afternoon. I know it's late, and
3 I'll try to be brief.

4 CROSS EXAMINATION

5 BY MR. PORCARELLI:

6 Q Doctor Naff, I want to go over some of the numbers
7 that you charged. I'll try not to repeat. Let me show you -
8 - (To the Court) may I approach the witness?

9 THE COURT: You may.

10 BY MR. PORCARELLI:

11 Q Plaintiff's Exhibit Number 22, that's your fee
12 schedule, right?

13 A Yes.

14 MR. PORCARELLI: May I --

15 MR. BRATT: Objection.

16 THE COURT: Overruled.

17 MR. PORCARELLI: I'd like to introduce that into
18 evidence, please.

19 MS. ZOIS: Same objection from earlier, Your Honor, as
20 to the collection to the exhibits that we'll address later.

21 MR. BRATT: That was why I objected.

22 THE COURT: I will note it's been authenticated. Go
23 ahead, and I'll, we'll argue about the admissibility in
24 showing it to the jury later. So.

25 MR. PORCARELLI: Okay.

1 THE COURT: I note he testified to the contents of it,
2 so, that evidence is before the jury.

3 BY MR. PORCARELLI:

4 Q So, um, we already covered how much, uh, you
5 charged for today, and there was some testimony about \$1500
6 for your discovery deposition when we came to ask you some
7 questions, and that was the \$1500, right?

8 A Yes.

9 Q But I want to clarify that the \$1500 was just for
10 the first hour, correct? Right?

11 A Yes.

12 Q And we were actually there for more than an hour
13 taking your deposition, correct?

14 A Yes.

15 Q It was about another hour, right?

16 A Yes.

17 Q Another \$500 for the continuation of that
18 deposition, right?

19 A I, I think so.

20 Q And I won't belabor the fact that we spent about a
21 few hours reviewing records, meeting with attorneys, right?

22 A Yes.

23 Q And can you give us an estimate about how many, I
24 know you couldn't give us an amount, but how many hours have
25 you put in looking at all the records, looking at all the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 films and meeting with the lawyers, how many hours?

2 A As a rough estimate, maybe 12.

3 Q And that would be up to, uh, last night?

4 A Yes.

5 Q Includes your prep time for deposition and trial as
6 well, or is that additional hours?

7 A No, that, that's a good estimate.

8 Q Um, now, you saw, uh, the Plaintiff on two
9 occasions, right?

10 A That's right.

11 MR. PORCARELLI: And, Counsel, I apologize for my back,
12 but I'm trying to work with the board --

13 MS. ZOIS: No worries.

14 MR. PORCARELLI: -- and work with the jury.

15 BY MR. PORCARELLI:

16 Q Um, and you reviewed some records and you gave an
17 opinion, right?

18 A That's right.

19 Q And you believe that two visits with (unclear - two
20 words) and reviewing records is a sufficient amount of time
21 to spend with a patient to arrive at some of the opinions
22 that you've given us here today, right?

23 A Yes.

24 Q So, you're not going to criticize Dr. McGrail for
25 having seen the Plaintiff on one occasion when you saw the

1 Plaintiff on two occasions --

2 MR. BRATT: Objection.

3 THE COURT: Overruled.

4 BY MR. PORCARELLI:

5 Q -- right?

6 A Yeah, I, I wouldn't criticize Dr. McGrail.

7 Q And there were some other numbers that Mr.
8 Gillcrist asked you about in terms of, uh, about three times
9 a month you're asked to review and speak with attorneys, uh,
10 on behalf of your patients, right?

11 A Yes.

12 Q So, that would be the person injured, right?

13 A Yes.

14 Q Person making the claim, right?

15 A Yes.

16 Q All right. And what wasn't discussed earlier with
17 Mr. Gillcrist was the fact that you've been doing that for
18 about 15 years, right?

19 A Yes.

20 Q You spoke to Mr. Gillcrist about other reviews,
21 about six to eight of those a month, in the medical
22 malpractice context, right?

23 A Yes.

24 Q And what we did not cover before was the fact that
25 when you do six to eight of those a month, you're doing those

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 on the part of the doctor for the Defense, right? I'm sorry,
2 about 85 percent of the time is for the Defense for the
3 doctor, for both, right?

4 A Yes, I'm, but I think you, I think you misspoke,
5 the six to eight times that's, I think that's per year.

6 Q Per year, okay.

7 A Not month, for malpractice.

8 Q We'll do that per year, okay? Fair enough?

9 A Yeah.

10 Q All right. And when you do that sort of work 85
11 percent of the time you're doing it for the Defense, right?

12 A Yes.

13 Q And because you're doing work for the Defense at
14 that percentage of frequency you don't consider yourself a
15 professional witness, do you?

16 A No.

17 Q Okay. And I only say that, because that phrase was
18 dropped a couple times yesterday with regard to Dr. McGrail.
19 Do you consider Dr. McGrail a professional witness?

20 MR. BRATT: Objection.

21 THE COURT: Overruled.

22 BY MR. PORCARELLI:

23 Q Do you?

24 A No.

25 Q In fact, um, and you respect his credentials and

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 reputation, do you not?

2 A I do.

3 Q And when we spoke in deposition do you recall that
4 you said that he was quote, "A very respected neurosurgeon in
5 Washington".

6 A Yes.

7 Q Do you still hold that opinion of him?

8 A Yes.

9 Q You know he's at Georgetown Medical Center, right?

10 A Yes.

11 Q And as far as Georgetown Medical Center goes, do
12 you recall when we were in deposition that you told me that
13 that was a quote, "preeminent institution in neurosurgery."

14 A Yes.

15 Q And he is, as you know, the head of the
16 neurosurgery department at Georgetown.

17 A Correct.

18 Q Let me ask you a little bit about, um, the Skelaxin
19 very briefly.

20 MR. PORCARELLI: Do you have the pharmacy records?

21 MR. GILLCRIST: I think I put them up there.

22 MR. PORCARELLI: I apologize for not asking to come here
23 first, Your Honor, I didn't mean any disrespect.

24 BY MR. PORCARELLI:

25 Q Can you see the, uh, Skelaxin here?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A I do.
2 Q 800 milligrams, right?
3 A Yes.
4 Q And we covered that with Dr. Sloan earlier today
5 that that's the largest amount of milligrams for Skelaxin
6 that you can get?
7 A Yes.
8 Q In a prescription, right?
9 A Yes.
10 Q Okay. And then, uh, I'd like to ask you just a
11 couple questions if I could about your, about your
12 examination on June 2nd, 2011, okay? Do you have that report,
13 Doctor?
14 A I do.
15 Q Okay. So, um, you gave her a physical exam?
16 A Yes.
17 Q And one of the things was you tested her back range
18 of motion, right?
19 A Yes.
20 Q And, if I recall, when we were together a couple
21 weeks ago you explained that, you tested the range of motion
22 by asking her to bend backward and forward, right?
23 A Yes.
24 Q Okay, so, uh, I'm gonna' try and bend backward and
25 you tell me if I'm doing it right, okay? And tell me when I

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 get to a full back range of motion.
2 A That's good.
3 Q Right there is full?
4 A Yeah.
5 Q Okay. I'm going to try forward, okay?
6 MR. BRATT: Objection.
7 MS. ZOIS: Your Honor --
8 THE WITNESS: That --
9 THE COURT: Overruled.
10 THE WITNESS: -- that's it.
11 BY MR. PORCARELLI:
12 Q Okay, when you did that --
13 MR. BRATT: Never mind.
14 BY MR. PORCARELLI:
15 Q -- when you did that exam on the Plaintiff what did
16 you find with her back range of motion?
17 A That she had full back range of motion.
18 Q Just like that?
19 A Yes.
20 Q Okay. And you also tested her nerve retention
21 signs, right?
22 A Yes.
23 Q And is that to see if there's a, a, a problem with
24 the disc pressing on a nerve?
25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q How do you do that?
2 A Uh, you ask them to extend their leg --
3 MR. BRATT: Objection.
4 THE WITNESS: -- from a sitting position.
5 THE COURT: Basis, approach, basis.
6 MR. BRATT: I would have to approach.
7 THE COURT: Sure.
8 MR. BRATT: Sorry, Your Honor.
9 (Counsel approached the bench and the following
10 occurred:)
11 (Husher turned on.)
12 THE COURT: Yes.
13 MR. BRATT: There's no claim of this case that she's got
14 that.
15 THE COURT: Let's move on to, to stuff that's, that we
16 haven't covered, and it's not relevant.
17 MR. PORCARELLI: Okay.
18 THE COURT: I mean, just --
19 MR. PORCARELLI: I'm doing by best, but I, I have --
20 THE COURT: I, I, I understand.
21 MR. PORCARELLI: -- but I haven't really spoken that
22 much, so.
23 THE COURT: I know, you, you, you have. That's all
24 right.
25 MR. BRATT: I'm sorry, I thought you were done, Your

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Honor, I didn't mean to (unclear - one word) (chuckles).

2 (Counsel returned to the trial tables and the following
3 occurred:)

4 (Husher turned on.)

5 BY MR. PORCARELLI:

6 Q So, we know that she had full range of motion in
7 the back on June 2nd, 2011, right?

8 A That's correct.

9 Q Okay. And with regard -- I think Mr. Gillcrist
10 covered the remainder of the examination in detail. So, I
11 won't be going into that. I hope that was brief enough for
12 your attention. Thank you, Doctor.

13 A You're welcome.

14 MR. BRATT: Oh, that was it?

15 THE COURT: Any redirect?

16 MR. BRATT: Yes.

17 THE COURT: Mm-hmm.

18 REDIRECT EXAMINATION

19 BY MR. BRATT:

20 Q All right, Doctor, let's get one thing straight
21 from go, are you giving any opinion in this case that Ms.
22 Exline-Hassler has nerve damage?

23 A No.

24 Q That she has neurological damage?

25 A No.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Other than pain?

2 A Correct.

3 Q Now, you were asked about, uh, some records of
4 yours, uh, from your treatment notes, and you -- I'm wanna'
5 phrase this right -- you're here today in a forensic capacity
6 giving testimony, right?

7 A Yes.

8 Q And when you, your, your right, your treatment is
9 you're operating as a medical clinician treating patients,
10 right?

11 A That's right.

12 Q Are the notes that you prepare as a clinician the
13 same as something that you might prepare in a forensic
14 context?

15 A No.

16 Q Why not?

17 A Well, you just -- I mean, you have different
18 purposes, you have different materials to review. Uh,
19 that's, that's just some of the answers, reasons.

20 Q And your clinical notes, would it be fair to say
21 that they're based solely on what you know at the time of the
22 clinical visit?

23 A Right.

24 Q So, anything you didn't know on the date of the
25 clinical visit couldn't be expressed in the clinical note,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 right?

2 A Right.

3 Q Now, Doctor, you were asked some questions about
4 you're gettin' paid to serve as a witness, right?

5 A Yes.

6 Q Now, when you get paid to serve as a witness is
7 there anything else that you would otherwise be doing with
8 that time?

9 A Yes.

10 Q What?

11 A Well, I'd be seeing patients in the office or
12 operating in the operating room.

13 Q So, you'd be out being a doctor?

14 A Yes.

15 Q And the reason that you charge for your time is,
16 would it be fair to say that you charge for your time because
17 you can't make money being a doctor while you're being a
18 witness?

19 A Correct.

20 Q Now, Doctor, you were asked early on in, uh, your
21 cross examination about some email exchanges between yourself
22 and Ms. Exline-Hassler's Counsel, right?

23 A Yes.

24 Q Um, would it be accurate to say that there were two
25 email exchanges?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A That would be a fair estimate.

2 Q And one of those was where I emailed you a copy of
3 your own deposition --

4 MR. GILLCRIST: Leading, Your Honor.

5 BY MR. BRATT:

6 Q -- testimony, correct?

7 MR. GILLCRIST: Objection, leading.

8 THE COURT: It is, but this is redirect, and I'll allow
9 it to move along.

10 MR. GILLCRIST: Thank you, Your Honor.

11 THE COURT: Mm-hmm.

12 BY MR. BRATT:

13 Q The first of those communications was when I
14 emailed you a copy of your own deposition transcript?

15 A That sounds right.

16 Q And my email said, "please find enclosed a copy of
17 your transcript," correct?

18 A Yes.

19 Q And the second one was when I emailed you a copy of
20 Doctor Sloan's testimony, correct?

21 A Yes.

22 Q And that was, that, that email also said something
23 to the similar effect, please find enclosed?

24 A Yes.

25 Q There was no discussion of this case or the

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 contentions in those emails, was there?

2 A Correct.

3 Q Now, you remember having deposition taken, um, in
4 this action, right, Doctor?

5 A I do.

6 Q And, uh, this is marked for ID as Exhibit 52.

7 It's, uh, Deposition Exhibit 3 from Dr. Naff's deposition.

8 MR. BRATT: Madam Clerk, I don't know if it's on the
9 list.

10 THE CLERK: I don't believe it is.

11 MR. BRATT: It would be Plaintiff's 52 for
12 identification purposes.

13 THE CLERK: Court's indulgence.

14 THE COURT: Mm-hmm. Certainly.

15 THE CLERK: I apologize, what is the name of that
16 particular document, sir?

17 MR. BRATT: Plaintiff's Exhibit 52.

18 THE COURT: The deposition of Dr. Naff.

19 MR. BRATT: It's, no --

20 THE CLERK: Thank you.

21 MR. BRATT: -- actually, it's Exhibit 3 from Dr. Naff's
22 deposition. Oh, oh, I already marked it, I'm sorry.

23 THE CLERK: That's okay.

24 (Brief pause.)

25 BY MR. BRATT:

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Okay, Doctor, and you were asked some questions
2 about, um, on cross examination about when you received
3 various medical records and bills, correct? Do you recall
4 that?

5 A I do.

6 Q And, Doctor, I'm gonna' show you what's been marked
7 as, for identification purposes as Defendant's Exhibit Number
8 52, which, um, is also submitted, was an exhibit at your
9 deposition, I'd ask you to take a look at it and tell me if
10 you remember, remember that being a deposition exhibit?

11 A Uh, yes.

12 Q And, if you could flip through it for a minute for
13 me real quick, please?

14 A Okay.

15 Q And, would it be fair to say that ex (sic), that ex
16 (sic), exhibit contains a record of communications between my
17 law firm and you?

18 A That looks to be the case.

19 Q In fact, copies of the letters we sent you?

20 A Yes.

21 Q Now, I'd like to direct you to the second page,
22 Doctor. That's dated February 10th, 2012, right?

23 A Yes.

24 Q And could you read the first sentence for us?

25 A "Enclosed for your review is a copy of our client,

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Jacqueline Exline-Hassler's, medical records and bills for
2 her treatment rendered as a result of the said occurrence."

3 Q And then could you give the, the second paragraph?
4 Could you read that for the ladies and gentlemen of the jury,
5 too, please, Doctor?

6 A "I would like to meet with you to discuss the
7 treatment you provided Ms. Exline-Hassler and any diagnosis
8 and/or prognosis you rendered. Upon receipt of this letter
9 please contact my assistant, Samantha, or myself at 410-553-
10 6000 to discuss Ms. Exline-Hassler's case."

11 Q And would it be acc (sic), is that first
12 communication you received from my law firm?

13 A Yes.

14 Q And, Doctor, the first page of Exhibit 52, it's a
15 letter dated January 10th, 2013, correct?

16 A Yes.

17 Q And it's a letter addressed to Mr. Porcarelli and
18 Mr. Gillcrist, correct?

19 A Uh, yes.

20 Q And it says, "Pursuant to your notice of
21 deposition, Dr. Naff, enclosed please find the following,
22 Item 1, all correspondence my office has had with Dr. Naff,"
23 correct?

24 A Yes.

25 Q And that's what's contained in there?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q And you were asked about something that was
3 contained in your charged called a legal chart, right?

4 A Yes.

5 Q And you recall having your deposition taken, right?

6 A Yes.

7 Q Was your legal charge present at your deposition?

8 A Yes.

9 Q Was it shown to the Defense attorneys?

10 A Yes.

11 Q Did they have an opportunity to question you about
12 it?

13 A Yes.

14 Q Did they question you about it?

15 A I believe so.

16 Q And you were not served with a subpoena for this
17 proceeding to bring that with you were you?

18 A Not that I'm aware of.

19 Q And you were asked, uh, about the location of your
20 practice in Baltimore, right?

21 A Yes.

22 Q And about how you came here to Frederick to testify
23 as a witness?

24 A Yes.

25 Q Do you know where Ms. Exline-Hassler lives?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A No.

2 Q Okay. Do you know where you gave her your, her,
3 the medical treatment you gave her, do you know where you did
4 that?

5 A Yes.

6 Q Where?

7 A In Baltimore, at my office.

8 Q Right. And your involvement in this case is
9 because you treated her, right?

10 A Yes.

11 Q You weren't sought out by my law firm separately
12 from your involvement as a treating physician or, rather
13 before you were involved as a treating physician for
14 involvement of your testimony were you?

15 A Corr (sic), that's correct.

16 Q And, Doctor, you were asked about occasions on
17 which you were asked by attorneys to review records regarding
18 your own patients, weren't you?

19 A Yes.

20 Q Now, if I, I'm a lawyer and I have questions about
21 medical treatment that a physician gave a patient and what
22 that physician's opinions are, wouldn't talking to that
23 physician be the logical start point?

24 MR. GILLCRIST: Objection.

25 THE COURT: Sustained.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 BY MR. BRATT:

2 Q Do you believe that you would be the best source of
3 information about medical treatment you gave a patient?

4 MR. GILLCRIST: Objection.

5 THE COURT: I'll overrule that.

6 THE WITNESS: Yes.

7 BY MR. BRATT:

8 Q Now, you were asked about, um, some upper extremity
9 problems that Ms. Exline-Hassler has had.

10 A I was.

11 Q And you've given the opinion that it's not related
12 to this car accident, right?

13 A Um, I, I think I, based on what I was shown I
14 couldn't tell, but . . .

15 Q Okay. As far as you're aware is she claiming an
16 upper extremity nerve problem --

17 MR. GILLCRIST: Objection.

18 BY MR. BRATT:

19 Q -- is that part of her case?

20 THE COURT: I'm, I'm gonna' sustain that.

21 BY MR. BRATT:

22 Q Did I ask you to any, to render any opinions about
23 that?

24 A No.

25 Q Now, you were asked on cross examination whether

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 you have ever spoken with Dr. Brown, do you recall that?

2 A I do.

3 Q And can you, as you sit here today can you tell us
4 how many times Ms. Exline-Hassler ever saw Dr. Brown again
5 after that one visit you were asked about in March of '08?

6 A My recollection is not, not very many times.

7 Q Can you remember any?

8 A No.

9 Q Now, you were asked about a history that you took
10 from Ms. Exline-Hassler when, uh, you did your intake, your
11 initial visit?

12 A Yes.

13 Q And she told you that she had been involved in a
14 car wreck, right?

15 A Yes she did.

16 Q Is the history that she gave you initially
17 consistent with the opinions you've given here today?

18 A Yes.

19 MR. BRATT: I apologize I --

20 THE COURT: Mm-hmm.

21 MR. BRATT: -- left this stuff on the table.

22 BY MR. BRATT:

23 Q Um, Doctor, you have Exhibit 10 open in front of
24 you, right?

25 A Yes.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q I'd like to direct your attention to page 350(a),
2 correct?

3 A Okay.

4 Q Now, you remember, you were asked whether during
5 your treatment of, uh, Ms. Exline-Hassler whether you, uh,
6 called her treating doctors to talk to them about her care?

7 A Yes.

8 Q Could you take a look down the bottom of page
9 350(a)?

10 A Yes.

11 Q There are these two letters, cc?

12 A Yes.

13 Q What appears next to those letters?

14 A Stephanie Brown, M.D. and her fax number; Steven
15 Sloan and his fax number.

16 Q And are you aware who those people are?

17 A Uh, uh, treating doctors for Ms., uh, Exline.

18 Q And what that means is that you took your report
19 from November 29, 2012 and it was faxed to those physicians,
20 correct?

21 A Correct.

22 Q Now, what I would like to do, Doctor, is I would
23 like to direct your attention to Exhibit 8, which was the
24 prior medical records.

25 A Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And, specifically, (unclear - two words), you take
2 a look at page, uh, 85.

3 THE COURT: Counsel, she has it up on the screen.

4 MR. BRATT: I know.

5 THE COURT: It's not int (sic), has it been introduced?

6 MR. BRATT: I thought it had been.

7 FEMALE VOICE: No, (unclear - one word).

8 MR. BRATT: I'm not sure about (unclear - one word) is
9 eight in?

10 THE CLERK: Wait, I apologize, which exhibit?

11 MR. BRATT: Is Exhibit Number 8 admitted?

12 THE CLERK: It has been.

13 THE COURT: Okay.

14 THE CLERK: Correct.

15 BY MR. BRATT:

16 Q Doctor, um, Exhibit, uh, Page 85 of Exhibit Number
17 8 indicates it was, uh, on the date of January 8th, 2008,
18 upper right hand corner.

19 A Uh, yes, it does, uh-huh.

20 Q And going to page -- it also indicates that -- you
21 have it (unclear - two words). Let's go to page 88, Doctor.
22 And page 88 of Exhibit Number 10 is a record from Urgent Care
23 at Robinwood?

24 A Yes.

25 Q And there is a note at the beginning of that

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 record?

2 A Yes.

3 Q What does the note say?

4 A Oh, it's under chief complaint back pain it says,
5 "Note: This patient was seen 1/8/08. On 1/15/08 it was
6 brought to my attention that this was lost in the
7 transcription dictation process. This is dictated at the
8 best remembrance that I have of the case to the best of my
9 ability."

10 Q That's a record from the Urgent Care of Robinwood
11 dated January 1? January, I'm sorry, January 8th, 2008?

12 A Uh, yes.

13 Q And, as a result of that visit at the Urgent Care,
14 looking at the records from Urgent Care, she was diagnosed
15 with a lumbar strain?

16 A Yes.

17 Q No x-rays were ordered?

18 A Uh, correct.

19 Q No MRI's were ordered?

20 A Correct.

21 Q No neurosurgery consult was ordered?

22 A Correct.

23 Q No orthopedics consult was ordered?

24 A Correct.

25 Q No pain meds were ordered?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. PORCARELLI: Objection, asked and answered. Haven't
2 we gone over this, Your Honor?

3 THE COURT: It's --

4 MR. PORCARELLI: I understand --

5 THE COURT: -- it, it's --

6 MR. PORCARELLI: -- it's redirect, but --

7 THE WITNESS: Well --

8 MR. BRATT: You know what, I'm gonna' skip it.

9 THE COURT: -- it is, it is --

10 MR. BRATT: We've been all here all day I'm gonna'
11 (unclear - one word) it.

12 BY MR. BRATT:

13 Q Doctor, would you agree that as a physician, I
14 think you were asked this on direct (sic), on cross
15 examination, you were asked about the importance of accuracy
16 in physician records?

17 A Yes.

18 Q And it's important that they be accurate?

19 A To the extent possible, yes.

20 Q And operating in a forensic capacity, when you're
21 asked to review medical records, you assume that those
22 records are accurate when you read them, right?

23 A Yes, in general.

24 Q If they were not accurate they could affect
25 opinions, could they not?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q And that would include the, uh, the record of the
3 visit with Dr. Brown on March 26, 2008, would it not?

4 MR. GILLCRIST: Objection, Your Honor. There's no
5 evidence it was inaccurate.

6 THE COURT: So.

7 MR. GILLCRIST: It's Counsel's argument or a statement
8 to the jury.

9 MR. BRATT: I could do it the long way.

10 THE COURT: Please, no, approach. Approach.

11 (Counsel approached the bench and the following
12 occurred:)

13 (Husher turned on.)

14 THE COURT: Okay.

15 MR. BRATT: You understand what I'm doing, right?

16 THE COURT: I do know, and the point, quite frankly, the
17 point has been made, and I, I really don't want to cut off,
18 but this jury has heard that there's a dispute about whether
19 that's accurate or not, whether it, it, and --

20 MR. BRATT: I follow you, Your Honor, I'll --

21 THE COURT: -- so there is no point --

22 MR. BRATT: -- I'll move along. I'll move along.

23 THE COURT: -- I mean, they're paying attention to every
24 word. You don't need to keep beating them with it. Let's go
25 from there.

1 (Husher turned off.)

2 (Counsel returned to the trial tables and the following
3 occurred:)

4 BY MR. BRATT:

5 Q Doctor, among the materials that were provided to
6 you, uh, for your review, was one of the things a copy of Ms.
7 Exline-Hassler's deposition?

8 A Yeah, yes.

9 Q And you read it, right?

10 A Yes.

11 MR. BRATT: Madam Clerk, if we could mark for
12 identification purposes a copy of Ms. Exline-Hassler's
13 deposition.

14 THE CLERK: Do you want it as 53?

15 MR. BRATT: Uh, whatever the next number is.

16 BY MR. BRATT:

17 Q Do you recall on cross examination, Doctor, being
18 asked some questions about, on direct you had described the
19 mechanism injury of a, an annular tear, twisting, bending
20 motion, do I have it right?

21 A Yes.

22 Q And you were asked, uh, on cross examination
23 whether the history you took from Ms. Exline-Hassler told you
24 anything about that, and you said no, right?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q And you read her deposition, correct?

2 A Yes.

3 Q Well, I'm gonna' hand you her deposition marked for
4 identification as Plaintiff's Exhibit Number (unclear - one
5 word), Number 53, and I'd like to direct your attention to
6 page 43, lines one through eight. Could you read the
7 testimony at that section, please?

8 A Page 43, lines one to eight. "Question: Did your
9 body hit anything inside the car after you got out, after you
10 got out by this black car? Answer: (unclear - one word) --

11 Q Yeah.

12 A "No, I mean, I just pushed, I kind of jarred
13 against my door, but . . ." Question, "So, your body moved
14 to the left?" "Yes." Question, "And it went up against the
15 door?" "Yes."

16 Q Okay, now, Doctor, that description of the
17 movements inside the car, is that consistent with an, as an
18 injury for an annular tear?

19 A Yes.

20 Q And, further, Doctor, same exhibit -- I want to
21 make sure I'm --

22 (Pause while Counsel confer off the record.)

23 MALE VOICE: Okay. No page number.

24 FEMALE VOICE: That's 13, marked as 13.

25 MR. BRATT: No, but it's the same dep, right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: Yes.

2 MALE VOICE: That's (unclear - three words)?

3 MS. ZOIS: Correct.

4 BY MR. BRATT:

5 Q Okay. I'd like to direct you to Exhibit 53, page
6 162, Doctor. And if you could read for us you reviewed this
7 deposition, correct?

8 A I did.

9 Q Could you read for us lines 12 through 21? And
10 this is Ms. Exline-Hassler's deposition, lines 12 through 21.

11 A Lines 12 to 21, page 162. Question, "Now, I know
12 Counsel asked you a bunch of questions about this, but I
13 guess I didn't quite understand it. Did you have a car
14 accident in, about 2005 or 2006?" Answer, "I was rear ended
15 in 2000 (sic) and ap (sic), I was rear ended in 2005."
16 Question, "What happened? Where did that accident happen?"
17 "695." "Did you get any treatment for that?" "No." "Did
18 you m (sic) . . ." --

19 MR. PORCARELLI: Objection, Your Honor, may we -- no,
20 we're cool.

21 THE COURT: So, you still want to preserve it to . . .

22 BY MR. BRATT:

23 Q Uh, Doctor --

24 THE COURT: Hold, hold on a second.

25 MR. BRATT: Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: I just wanted, there was an objection, and I
2 just wanna' see what --

3 MR. PORCARELLI: There was, and I understand that he's,
4 uh --

5 THE COURT: Okay.

6 MR. PORCARELLI: -- stopping at that --

7 THE COURT: Okay.

8 MR. PORCARELLI: -- particular citation. Thank you.

9 THE COURT: Mm-hmm.

10 BY MR. BRATT:

11 Q And, Doctor, that description of that accident in
12 2005 that didn't require medical treatment, you, you reviewed
13 this deposition before you gave your opinions today to this
14 jury, correct?

15 A Yes.

16 Q And so you knew that information before you came
17 here today?

18 A I did.

19 Q And you were asked about your, your visit notes
20 regarding the MRI films?

21 A Yes.

22 Q About whether you had reviewed the films themselves
23 or just the reports?

24 A Yes.

25 Q Do you have a regular practice regarding the

1 reading of MRI films?

2 A Yes.

3 Q What is it?

4 A That I, I look at them myself.

5 Q And when you make notes regarding the films that
6 you review, if there's a film, if there's an MRI and you
7 don't have the film, do you have a regular practice about
8 that with respect to your notes?

9 A I do. I document that the films aren't available -
10 -

11 Q So --

12 A -- for review, and I based my, uh, assessment on
13 the report.

14 Q So, if you're looking at a report (sic) only, your
15 record will reflect that, correct?

16 A Yes.

17 Q I mean, I'm sorry, record only.

18 A Correct.

19 Q You've been asked some questions about mild
20 degenerative changes that Ms. Exline-Hassler had in her lower
21 back, correct?

22 A I have.

23 Q Is a person with those kind of mild degenerative
24 changes more susceptible to an injury such as an annular
25 tear?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.

2 Q Is a person who has those type of mild degenerative
3 changes more susceptible to an aggravation of those, of those
4 degenerative changes?

5 A Yes.

6 Q Including an annular tear?

7 A Yes.

8 Q And an annular tear, is that generally a
9 degenerative finding?

10 A Well, uh, an annular tear is normally a traumatic
11 finding, which can be lumped under the heading of
12 degenerative.

13 Q And I want to be very clear about this, other than
14 the pain it causes, an annular tear is not a neurological
15 problem, is it?

16 A That's correct.

17 MR. BRATT: I think that's all I have, Your Honor.

18 THE COURT: And we may excuse the doctor.

19 FEMALE VOICE: Thank you.

20 MR. GILLCRIST: Yes, Your Honor, thank you.

21 DR. NAFF: Thank you.

22 MR. PORCARELLI: Thank you.

23 MS. HOWARD: May I, uh, call the trooper, Your Honor?

24 THE COURT: You, you may, and if, I'll just, uh, let the
25 jury know. Ladies and gentlemen, we are calling one Defense

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 witness out of turn, because that witness would be available
2 later on. Plaintiff has not rested their case, but just for
3 the convenience of the witness, and to keep things moving
4 along as best we can, one more witness before we're done.

5 (Long pause while witness enters the courtroom.)

6 THE COURT: And, Trooper, if you'd --

7 MS. HOWARD: Your Honor --

8 THE COURT: -- go on up the ramp, and, uh, stand by the
9 chair, the clerk will swear you in.

10 TROOPER CHIPPERELLI: Thank you, Your Honor.

11 TROOPER SCOTT CICCARELLI,

12 A witness, produced on call of the Defense, first
13 having been duly sworn according to law, was
14 examined and testified as follows:

15 (Brief pause while Counsel confer off the record.)

16 MS. HOWARD: Thank you, Your Honor. May I proceed?

17 THE COURT: You may.

18 DIRECT EXAMINATION

19 BY MS. HOWARD:

20 Q Would you please state your full name?

21 A Scott Patrick Chiccarelli.

22 Q All right. And, uh, what's your occupation?

23 A I'm with the Maryland State Police as a trooper.

24 Q So, you're a trooper (unclear - one word)?

25 A Trooper first class.

CIRCUIT COURT FOR FREDERICK COUNTY

COURTHOUSE
FREDERICK, MARYLAND 21701

1 Q Trooper first class. And how long have you been
2 employed by the Maryland State Police?

3 A Six years.

4 Q So, could you, um, go back in 2009, could you
5 described for us what, um, what barracks you were reporting
6 out of in 2000 (sic), uh, June of 2009?

7 A The Frederick barrack.

8 Q And were you also a trooper first class at that
9 time?

10 A Correct.

11 Q All right. Could you describe for us your duties
12 and responsibilities as of June 2009, as a trooper first
13 class?

14 A Uh, a go to work and I get dispatch calls for
15 accidents, calls for service. I would respond to the scene
16 and handle whatever the call of service was.

17 Q And had you been doing that for, um, several years
18 prior to June of 2009?

19 A Correct.

20 Q All right. So, how many years would it have been?

21 A Um, I went to the academy in 2006, and six months
22 after that I got cut loose, started in Rockville, and worked,
23 worked the road in Rockville since 2007.

24 Q All right. So, for about two and a half years you
25 had been responding to accidents, um, prior to this accident

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 in question, correct?

2 A Correct.

3 Q All right. And, so, if you could just estimate
4 maybe weekly, monthly, how many accidents is that that, uh,
5 the first two and half years of your career did you have an
6 opportunity to investigate?

7 A A lot of accidents. Last year I handled 80, over
8 80 accidents.

9 Q Is that fairly consistent per year?

10 A Correct.

11 Q All right. So, I'd like to direct your attention
12 to, uh, June 26, 2009, um, at that point you're at the
13 Frederick Barr (sic), Barrack, is that correct?

14 A Correct.

15 Q And do you recall the dispatch to the scene of an
16 accident on westbound 40 (sic) at approximately 5:15 in the
17 afternoon?

18 A Westbound 70?

19 Q What'd I say, uh, westbound 70, yes.

20 MS. ZOIS: Just objection as to foundation, Your Honor.

21 THE COURT: Overruled.

22 BY MS. HOWARD:

23 Q Do you recall that?

24 A Westbound, correct.

25 Q All right. And, um, in conjunction with being, or

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 responding to that accident did you prepare a MAR report?

2 A Yes.

3 Q All right. And have, uh, have you brought a copy
4 of your report with you here today?

5 A Yes.

6 Q All right. And I'm going to show you what I've had
7 marked as, uh, Defendant's Exhibit 6. Uh, is that consistent
8 with the copy of the report you've brought here today,
9 Trooper?

10 A Yes.

11 Q All right. Now, um, is it part of your duty and
12 responsibility to prepare the MAR report at or near the time
13 you do the investigation?

14 A Five to seven business days after the accident.

15 Q And did you do that in this case?

16 A Yes.

17 Q And you, uh, filed it then with your employer at,
18 shortly after --

19 A Correct.

20 Q -- hearing it, correct?

21 A Yes.

22 Q And there have been no changes made to it since the
23 time that you filed it, correct?

24 A No.

25 Q All right. So, any time you feel that you would

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 like to refer to your report while I ask you questions about
2 the accident you may, okay?

3 A Okay.

4 Q All right. Without referring to your report,
5 however, do you remember anything about the accident? You
6 don't have to tell me what, just sort of yes or no.

7 A Yes.

8 Q All right. So, there's something's you remember
9 outside of that report?

10 A Correct.

11 Q All right. Well, let's talk about it. Uh, can you
12 tell us, uh, either from your memory or from the report how
13 you learned of the accident?

14 A I was, uh, dispatched on the, uh, to the radio to,
15 uh, respond to the accident.

16 Q All right. And approximately what time did you
17 arrive at the scene of the accident?

18 A I was dispatched at 5:15, I don't recall what time
19 I was, when I arrived.

20 Q Okay. And once you arrived to the scene, can you
21 tell us what you saw?

22 A Um, observed two vehicles, um, in the left, in the
23 left lane, which would have been the fast lane, lane number
24 one.

25 Q Mm-hmm.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A One vehicle was, had front end damage on it. The
2 other vehicle had rear passenger side damage on it.

3 Q And, uh, let's just talk about this, uh, westbound
4 70, where on westbound 70 did the accident take place?

5 A It was west of Quinn Road.

6 Q All right. And in that stretch of 70 west it's a
7 divided highway, is that correct?

8 A Correct.

9 Q All right, so, a median separates west from east?

10 A Yes.

11 Q All right. And there's three lanes heading, uh,
12 westbound on 70, correct?

13 A Correct.

14 Q And the, uh, when you arrived on the scene the
15 vehicles were in that, uh, the most left travel lane,
16 correct?

17 A Correct.

18 Q All right. And that's what you observed when you
19 got there?

20 A Yes.

21 Q And could you tell us if you had made any
22 observations about the angle of any of the vehicles?

23 MS. ZOIS: And, Your Honor, for clarification, I'd like
24 to know if he's based on his independent recollection of
25 where the vehicles were or based on his report --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: So.

2 MS. ZOIS: -- for clarification.

3 THE COURT: So, just tell me, Officer, if you need to
4 refer to your report just say let me refer to my report so
5 that we know.

6 THE WITNESS: Yes, Your Honor.

7 MS. ZOIS: Thank you, Your Honor.

8 THE COURT: Okay?

9 BY MS. HOWARD:

10 Q All right, actually, let me take, take a step back
11 and just identify something. Uh, in the course of your
12 investigation investigating this accident, did you identify,
13 uh, the operators of the two vehicles involved?

14 A After speaking with all the people at the accident
15 I identified who the drivers were.

16 Q And did you get the make and model of the two
17 vehicles?

18 A I did.

19 Q All right. So, just for clarification purposes,
20 could you tell us, um, describe for us to the two vehicles
21 that you, uh --

22 MR. BRATT: I can't hear a word he's saying.

23 BY MS. HOWARD:

24 Q -- saw on the scene of this accident you were
25 investigating.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A They both -- from my notes I'm refereeing to --

2 MR. BRATT: That's (unclear - two words).

3 THE WITNESS: -- but I, I do remember they were both
4 Honda passenger vehicles.

5 BY MS. HOWARD:

6 Q All right.

7 A Honda Civics.

8 Q Both Honda Civics, all right. And can you tell us
9 who was the operator of each vehicle? You can review your
10 report.

11 A The operator of vehicle one, which was later found
12 as the at-fault vehicle, was Kirsten Sapp. And then the
13 driver of the vehicle two w (sic), was, um, Jacqueline
14 Exline-Hesser (sic), Hassler.

15 Q Okay. All right. So, now, I'm asking you,
16 Officer, when you first arrived at the scene which of these
17 vehicles was, um, uh, if any were angled.

18 A The, uh, front vehicle, vehicle number two.

19 Q So, Ms. Exline-Hassler's vehicle was angled?

20 A Correct.

21 Q And that's when you arrived at the scene?

22 A Correct.

23 Q And which direction was it angled?

24 A Towards, towards lane number two, so it would be
25 facing the right shoulder.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q So, the vehicle itself was angled towards the
2 right, towards the center lane?

3 A Correct.

4 Q It was not angled towards the median?

5 A Correct.

6 Q All right. And, uh, when you first arrived at the
7 scene you told us you saw the vehicles, uh, did you make, did
8 you speak to any people?

9 A I don't recall who I spoke to first. I, I,
10 obviously, ended up speaking to everybody in the accident
11 that was involved.

12 Q And what's, what do you first ask? What's your
13 first question?

14 A The first thing I ask is is anybody -- the -- when
15 I talk to the first person I ask them if they need an
16 ambulance if they're hurt.

17 Q What did the first person you speak to say?

18 A No.

19 Q All right. What did, what happened when you spoke
20 to the second person?

21 A I asked them the same thing, and they said no.

22 Q Okay. Do you have any personal recollection of, of
23 seeing, uh, Ms. Exline-Hassler or Ms. Sapp at the scene of
24 the accident?

25 A I can't recall if they, if, if they were the actual

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 person at the accident.

2 Q All right. But, uh, did you make observations
3 about the operators of the vehicle were they in, operators of
4 the vehicles were they in their cars or out of their cars
5 when you got there?

6 A I don't, um, I don't recall, but I would say out of
7 the car.

8 Q All right. And did you, um, speak to both
9 operators about what had happened?

10 A Yes.

11 Q All right. And did you, uh, in the course of your
12 speaking to the operators of both cars, and, um, based upon
13 your observations, did you make a determination of the
14 position of vehicle number two before the accident?

15 A That it was travelling, from speaking to both, both
16 sides of the, uh, both drivers, I came to the conclusion that
17 she was travelling in lane number one, traffic came to a stop
18 and from, preventing her from rear ending the car in front of
19 her she turned her vehicle to --

20 MS. ZOIS: Objection --

21 THE WITNESS: -- prevent an accident.

22 MS. ZOIS: -- Your Honor. Can we, may we approach?

23 THE COURT: Of course.

24 (Counsel approached the bench and the following
25 occurred:)

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 (Husher turned on.)

2 MS. ZOIS: I talked to this officer five minutes before,
3 during the break, and he said he has absolutely no
4 independent recollection of this a, accident whatsoever,
5 outside the four corners of his police report. Um --

6 MALE VOICE: (Unclear.)

7 MS. ZOIS: Say that again?

8 MALE VOICE: (Unclear - five words?)

9 MS. ZOIS: And that's why I was asking Counsel very
10 specific questions as to what he's relying on based on the
11 report versus what's his independent recollection, because
12 what he told me outside the courtroom is he has no
13 independent recollection outside the four corners of this
14 report whatsoever. I know Counsel's had a lot of
15 conversations with him between then, or between time that
16 she's subpoenaed him and now, so I would just ask with
17 specificity that he be asked the question are you saying,
18 you're basing them on independent recollection or the report
19 itself.

20 MS. HOWARD: We can accommodate that, no problem.

21 THE COURT: Mm-hmm, certainly.

22 MS. HOWARD: Thank you.

23 MS. ZOIS: Okay.

24 (Counsel returned to the trial tables and the following
25 occurred:)

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 (Husher turned off.)

2 THE COURT: Just clarify.

3 MS. HOWARD: Thank you.

4 BY MS. HOWARD:

5 Q Trooper, um, you told us already that you prepared
6 a MARS report, correct?

7 A Correct.

8 Q Okay. And your MARS report has a diagram?

9 A Correct.

10 Q And your MARS report had the narrative, correct?

11 A Correct.

12 Q All right. And, um, with specific reference to
13 your MARS report, did you make it, um, in your narrative
14 report did you include information regard what, uh, the
15 vehicles had done before the impact?

16 A Correct, yes.

17 Q All right. And, based upon, you're speaking with
18 the parties, your observations, what did you record in your
19 narrative report regarding vehicle two before the accident?

20 A I put in the accident that vehicle one and two were
21 both travelling westbound I-70, west of Quinn Road, lane
22 number one. Traffic ahead of the vehicles came to a stop,
23 due to an accident ahead. Vehicle two stopped at an angle
24 towards lane number two. Vehicle one attempted to stop, but
25 then ended up striking vehicle two in the rear, passenger

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 side of the vehicle.

2 Q And did you make a note in your report, um,
3 Officer, as to the condition of the roadway, the surfaces of
4 the roadways at the time you arrived there?

5 A I have that it was raining at the time of the
6 accident.

7 Q And you have a specific, and I'm referring to box

8 --

9 A Forty-two.

10 Q -- thirty, thir (sic) thirty-four, the surface
11 condition, did you make a note of the condition of the
12 roadway at that point?

13 A That was a one, which is listed as wet.

14 Q So, it was raining at the time and the roads were
15 wet?

16 A Correct.

17 Q That's recorded in your report?

18 A Correct.

19 Q When you give us that testimony today you're basing
20 it off of your report?

21 A Yes.

22 Q And the same thing when you said that the, uh,
23 vehicle two was angled toward the center before the impact,
24 that's from your report?

25 A Based on my report.

1 Q All right. And when you recorded in the report
2 that she stopped, uh, the vehicles came to a stop due to an
3 accident ahead, that's in your report, correct?

4 A Correct.

5 Q All right. Now, um, with respect to other
6 accidents, and I would like you to, please, ref (sic), limit
7 your testimony only to anything you personally observed or,
8 or at the scene that day, did you see any observation of any
9 other accidents other than, uh, Ms. Sapp and Ms. Exline-
10 Hassler?

11 A From, from, I do remember other accidents. That's
12 the only thing I remember.

13 Q From standing there at the scene you had evidence
14 before you (unclear - one word) --

15 A I remember there was an, is a traffic trailer up
16 ahead on the, on the right shoulder roadway from an accident.

17 Q And how was traffic?

18 A Traffic was slow.

19 Q All right. Now, I just wanted to ask, uh, one last
20 thing about the, uh, well, did you call any ambulances for
21 anybody?

22 A I don't, I don't recall if any ambulances were
23 called.

24 Q All right. And there on your report you make a
25 notation if, um, anybody was transported, correct?

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q And what did you note in your report?

3 A Nobody was transported.

4 Q And you make a note on your report if there were
5 any injuries, correct?

6 A Correct.

7 Q All right. With respect to Ms. Exline-Hassler,
8 what, if any, injuries did you report, did she report to you
9 that you recorded on your report?

10 A None.

11 Q Okay. And, again, I know you've told us you speak
12 to everyone, did you specifically speak to the operator of
13 vehicle two as to whether she was injured?

14 A Yes.

15 Q And what did she tell you?

16 A I'm assuming no, but I can't recall if she said no
17 or not. I don't know if an ambulance came out there and she
18 refused or not.

19 Q All right. But either she refused or she told you
20 no.

21 A At the end of the day she, or the end of that, when
22 I left the scene, she did not go to the ambulance.

23 Q All right. And that's based upon your training for
24 two and a half years you would not fill out an accident
25 report indicating no injuries if somebody had told you

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 (unclear - one word), correct?

2 A Correct.

3 Q And that is what you recorded on your report about
4 Ms. Exline-Hassler --

5 A Correct.

6 Q -- correct? Now, with respect to Ms., uh, Sapp,
7 uh, what did you record, did you record as to whether she had
8 any injuries?

9 MS. ZOIS: Objection, Your Honor. Relevance.

10 THE COURT: It's a Defense case, so, I don't know.

11 MS. ZOIS: Well --

12 THE COURT: So.

13 MS. ZOIS: -- well, she --

14 MR. BRATT: But --

15 MS. ZOIS: -- it --

16 THE COURT: That's just -- over, I'll overrule, I don't
17 know. I don't know.

18 BY MS. HOWARD:

19 Q On the report (unclear - one word) --

20 A There was no injuries for her either.

21 Q All right. Thank you, Officer.

22 THE COURT: Cross examine.

23 MS. ZOIS: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. ZOIS:

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Um, Trooper, thanks for taking your time to come in
2 today to talk to us about this crash. This crash was three
3 and a half years ago, right?

4 A Correct.

5 Q And based on my math, which is terrible, you
6 investigate about 80 crashes a year?

7 A Yes.

8 Q And, so, for the last three and a half years,
9 that'd be 280 crashes ago, perhaps, this accident was?

10 A Yes.

11 Q All right. And is it fair to say that, as you sit
12 here today, you don't have any independent recollection, you
13 can't rewind and play that videotape back in your head as to
14 the details of this crash, you're relying on the information
15 in your report, is that accurate?

16 A Yes.

17 Q Okay. Now, initially, Counsel asked you to
18 identify the drivers of the cars, and you said Kree (sic),
19 Kirsten Sapp was the at-fault vehicle. Is that my
20 understanding of what your testimony was?

21 A Yes, that's what I labeled her at the at-fault
22 vehicle.

23 Q And what about Jacqueline Exline-Hassler?

24 A She would be the vehicle two, which is the front
25 vehicle, not, not the at-fault vehicle.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q Not the at-fault vehicle. Okay. So, um, drivers
2 have safety rules, is that right?

3 A Yes.

4 Q And all drivers have a duty to pay attention to the
5 traffic in front of them is that correct?

6 A Correct.

7 Q And all drivers --

8 MR. GILLCRIST: Objection, Your Honor.

9 BY MS. ZOIS:

10 Q -- have a duty --

11 THE COURT: Sustained. That's a question of law that
12 we'll be dealing with later.

13 MS. ZOIS: Okay?

14 BY MS. ZOIS:

15 Q Um, you gave Ms. Sapp a ticket, is that correct?

16 A Yes.

17 Q And the tickets that you gave her were, um, one of
18 which was following too closely, is that correct?

19 A Um, actually, I don't know the actual tickets I
20 gave her, 'cause it just has a ticket number.

21 Q Okay. If you look at your box 82-2 into contrib
22 (sic), uh, contributing circumstances, is that right?

23 A Oh, yes.

24 Q Okay. And number 22, that's a code for following
25 too closely, is that right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q All right. So, one of the reasons that you put her
3 as the at-fault vehicle was following too closely?

4 A Yes.

5 Q All right. The, um, road conditions, in the area
6 where this crash took place it's seven (sic), it's 70
7 westbound, right?

8 A Correct.

9 Q And it's about rush hour, is that right?

10 A It's 5:15, correct.

11 Q And it was raining.

12 A Correct.

13 Q Did you indicate whether or not it was foggy?

14 A I don't believe I put foggy on there.

15 Q Right, box number 42 is weather, and number three
16 is rain, is that right?

17 A Correct.

18 Q Foggy would be diff --

19 A And there was rain.

20 Q I'm sorry, I didn't mean to interrupt you.

21 A I'm sorry, it was, it was raining, I put raining.

22 Q And foggy would be a different number, right?

23 A Yes.

24 Q Okay. Um, you indicated that you remember an
25 accident up ahead?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.

2 Q And it was a tractor trailer on the right hand side
3 I believe you said?

4 A Correct.

5 Q Because of the accident up ahead, can we agree that
6 traffic in the left lane was stopped, right?

7 A Correct.

8 Q Traffic in the center lane was stopped, right?

9 A Correct.

10 Q Traffic in the right hand lane was certainly
11 stopped, right?

12 A Correct.

13 Q And the traffic up ahead, do you, how far away was
14 this tractor trailer? How, how long were there stopped cars
15 from the tractor trailer, can you remember?

16 A I can't recall.

17 Q Was it a mile?

18 A I would say less than a mile.

19 Q Less than a mile, half a mile?

20 A From the, the accident, the tractor trailer from me
21 is --

22 Q Well, this --

23 A -- what you're asking?

24 Q -- from this scene to the tractor trailer scene,
25 how much of a distance is that?

1 A Half a mile.

2 Q So, a driver coming along in the far left hand lane
3 would have been approaching a half a mile of stopped vehicles
4 in lanes one, two and three, if they were paying attention,
5 right?

6 MS. HOWARD: Objection.

7 THE COURT: Sustained. You can go ahead and ask another
8 question.

9 MS. ZOIS: I'm tryin' to think, figure out how to reward
10 it, Your Honor.

11 BY MS. ZOIS:

12 Q Um, so, for one half of a mile traffic was at a
13 complete stop on 70 at the scene of this accident, is that
14 right?

15 A Hold on, you're saying coming up to my acc (sic),
16 coming up to the accident or are you saying after the
17 accident?

18 Q After the accident.

19 A I don't recall how, how much traffic was stopped.
20 It was rush hour so I'm assuming the traffic was not free
21 flowing --

22 Q (Unclear - one word) --

23 A -- at that time.

24 Q -- okay. Um, in the area where this crash took
25 place it's straight and level, right?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Yes.
2 Q You can see for a long way down the road?
3 A Correct.
4 Q This isn't right towards a bend in the road,
5 correct?
6 A No.
7 Q There isn't a crest or a hill, correct?
8 A No.
9 Q So, your line of sight in this area is well beyond
10 that first half a mile that we just talked about, right?
11 A Correct.
12 Q Can you estimate for us how far a person's line of
13 sight would be from the area that this crash took place?
14 A I have no idea how some, far somebody can see.
15 Q Okay. That's a fair answer. That's a fair answer,
16 Trooper. Can you agree if someone has eye vision that's
17 corrected by, you know, lenses or contacts or what everybody
18 has to have to be able to see to drive, 'cause you have to
19 have --
20 A Mm-hmm.
21 Q -- if you can't see you have to get corrective
22 lenses, right?
23 A Correct.
24 Q So, you have to be able to see to drive, right?
25 A Yes.

1 Q So, based on a normal person who can see with
2 corrective lenses, in this area, how far down the straight
3 away can you see from where the crash took place?

4 A You should be able to see a mile or so, at least, I
5 would say.

6 Q Okay. The vehicles at the scene, um, your
7 testimony was that when you arrived at the scene, vehicle
8 one, which was Kirsten Sapp's vehicle --

9 A Mm-hmm.

10 Q Let me, let me back up. The diagram that we don't
11 have the benefit of right this second, but the diagram that
12 you put in your report --

13 A Mm-hmm.

14 Q -- is this diagram intended to show us where the
15 vehicles were when you arrived at the scene or where the
16 impacts between the vehicles occurred?

17 A The impact.

18 Q So, this diagram is not intended to show us or the
19 jury or anyone else that this is where the vehicles were when
20 you arrived at the scene?

21 A No, this is the impact of the accident.

22 Q And the information that you have in your narrative
23 portion as to how the vehicles were situated or angled or, or
24 anything else, is it fair to say that you can't tell us which
25 one of those two drivers gave you any of that information as

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 you sit here today?

2 A No, I can't, that's right.

3 Q You don't recognize Ms. Sapp, you don't recognize
4 Ms. Hassler, correct?

5 A Not to tell her that she was the one that told me
6 what that side of her story, I couldn't, I couldn't recall
7 that, no.

8 Q So, then the narrative version of this you can't
9 tell us who said what?

10 A The narrative versions from what she told me and
11 what she told me combined, I come to my own conclusion of
12 what happened in the accident.

13 Q Understood. So, you can't direct us to who exactly
14 said what, you put your conclusion in the narr (sic),
15 narrative report?

16 A Correct.

17 Q All right, I understand that.

18 MS. ZOIS: Um, Court's indulgence for a second.

19 THE COURT: Mm-hmm, certainly.

20 (Brief pause while Counsel confer off the record.)

21 BY MS. ZOIS:

22 Q And the impact points between the vehicle were to
23 the -- I'm going to have to get (unclear - two words), my
24 left and my right side (unclear - one word). Front left
25 driver side of driver one's vehicle, correct?

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 A Correct.
2 Q Rear right driver's side of vehicle two, correct?
3 A Rear, pass --
4 MS. HOWARD: Objection.
5 THE COURT: He, he, I think he --
6 MS. HOWARD: He's going to clarify.
7 THE COURT: -- can clarify, yeah.
8 MS. HOWARD: Okay. Thank you.
9 THE WITNESS: Rear passenger side.
10 BY MS. ZOIS:
11 Q Okay. And --
12 A Of vehicle two.
13 Q -- and vehicle two is Ms. Hassler?
14 A Correct.
15 Q Vehicle one is Ms. Sapp.
16 A Correct.
17 Q And both of the vehicles were disabled because of
18 the crash, is that right?
19 A Correct.
20 Q Neither one of the vehicles were drivable after the
21 crash, is that right?
22 A Correct.
23 Q And both of the vehicles had to be towed.
24 A Correct.
25 Q You went to traffic court when Ms. Sapp pled guilty

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 to the ticket that you gave her, correct?

2 A Correct.

3 Q I'm going to play the transcript and see if you
4 remember this being her testimony at the cr (sic), at traffic
5 court.

6 MS. HOWARD: Objection.

7 THE COURT: I'm gonna' sustain. Jury's already heard
8 it.

9 MS. ZOIS: But it's not in evidence, Your Honor. I
10 played it (unclear - two words).

11 MS. HOWARD: It, I, Your Honor, I believe Mr. Bratt
12 cross examined my client and she admitted what she said.

13 THE COURT: I think that's exactly right. It came in,
14 it came in in when you called the Defendant yesterday --

15 MS. ZOIS: As for the --

16 THE COURT: -- it came in, and I believe you played the
17 whole, played the, or read it to her, yes.

18 MS. ZOIS: We did read it to her and we played the
19 audio.

20 THE COURT: So --

21 MS. ZOIS: Okay.

22 THE COURT: -- it's already, yeah . . .

23 MS. ZOIS: Fair enough.

24 BY MS. ZOIS:

25 Q You were in traf (sic) --

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: They've already heard it.

2 BY MS. ZOIS:

3 Q -- you were in traffic court where the Defendant
4 pled guilty, right?

5 A Yes.

6 Q And what she said was before she realized the car
7 in front of her was completely stopped, is that correct?

8 A I can't, I can't, I have no idea, I can't recall
9 what happened in traffic court. I don't remember.

10 MS. ZOIS: Your Honor, my I play the traffic (unclear -
11 one word) --

12 THE COURT: Approach for a second.

13 MS. ZOIS: -- (unclear - one word) refresh his
14 recollection?

15 THE COURT: Approach.

16 (Counsel approached the bench and the following
17 occurred:)

18 (Husher turned on.)

19 MS. ZOIS: That's what I expected was going to happen.

20 THE COURT: (Unclear - two words.)

21 MS. ZOIS: So.

22 THE COURT: I think it's, it's already in. They've
23 already heard it, they've heard what she said.

24 MS. ZOIS: I understand, Your Honor --

25 THE COURT: And why are you asking him about it, because

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 --

2 MS. ZOIS: It's --

3 THE COURT: -- it's the best evidence is what's on the
4 recording. So, why is it relevant to ask this witness that
5 question?

6 MS. ZOIS: Your Honor, the Defense asks the same
7 question of a lot of different witnesses.

8 THE COURT: I'm just, I'm, this is right now what I'm
9 ruling on --

10 MS. ZOIS: And --

11 THE COURT: -- they've heard through the, the Defendant
12 --

13 MS. ZOIS: So.

14 THE COURT: -- who said, admitted it --

15 MS. ZOIS: Mm-hmm.

16 THE COURT: -- and you've already read it, so, there's
17 no point, it's duplicative at this point. I don't see the
18 relevance of asking this witness that question. They've
19 already heard it.

20 MS. ZOIS: Okay.

21 THE COURT: And the Court is allowed to --

22 MS. ZOIS: I know.

23 THE COURT: So, and at, at this point, at 6 o'clock --

24 MS. ZOIS: Okay.

25 THE COURT: -- they don't need to hear --

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. ZOIS: Court's indulgence for a moment.

2 THE COURT: -- something again that they've already
3 heard.

4 MS. ZOIS: I just want to make sure that the audio, I
5 just want to make sure that the, I move the audio into
6 evidence at some point --

7 THE COURT: At the --

8 MS. ZOIS: -- so I can use it in closing, is that --

9 THE COURT: -- that, it, it, you do what, whatever you
10 think you need to do, but they've certainly heard it and seen
11 it already.

12 MS. ZOIS: Okay. Just so we're clear, that I would have
13 moved the audio in through this witness.

14 THE COURT: So.

15 MS. ZOIS: I don't want to be precluded from laying the
16 foundation for that at some point later on.

17 THE COURT: You certainly can, I'm not, your case is a
18 long way from being over, so.

19 MS. ZOIS: Okay.

20 THE COURT: Okay?

21 MS. ZOIS: But this is the foundation I would have laid
22 with, with this witness.

23 THE COURT: Understand --

24 MS. ZOIS: Okay.

25 THE COURT: -- there's --

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 MS. HOWARD: How much, excuse me, how much, for your
2 proffer then --

3 MS. ZOIS: Yeah.

4 MS. HOWARD: -- how much of the audio were you gonna'
5 have this witness identify?

6 THE COURT: Identify?

7 MS. ZOIS: The --

8 MS. HOWARD: Ms. Sapp's voice?

9 MS. ZOIS: -- seconds that were played in opening,
10 that's all.

11 MS. HOWARD: So, the --

12 THE COURT: That's what's ---

13 MS. HOWARD: -- the plea, and the same exact part you
14 played in opening.

15 MS. ZOIS: That's not in evidence that, yes.

16 THE COURT: Yeah.

17 MS. ZOIS: 'Cause that part's not in evidence.

18 THE COURT: So.

19 MS. HOWARD: All right. Well --

20 THE COURT: Okay.

21 MS. HOWARD: -- I mean, if you wanna' go there, I mean,
22 that way, I mean, I believe they're opening the door to the
23 other stuff that I wanted to bring out through this officer,
24 but . . .

25 THE COURT: So. I just, I just don't think it's

1 relevant through this offer (sic) --

2 MS. ZOIS: Okay.

3 THE COURT: -- through this officer, so.

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

6 THE COURT: All right?

7 (Counsel returned to the trial tables and the following
8 occurred:)

9 (Husher turned off.)

10 MS. ZOIS: Ooh, sorry. That's all I have, Your Honor,
11 thank you.

12 MALE VOICE: Thank you.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MS. HOWARD:

16 Q Officer, um, in your report did you indicate
17 whether there was any injury of any kind to any party?

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

19 THE COURT: Overruled. This is redirect.

20 THE WITNESS: No.

21 BY MS. HOWARD:

22 Q And how did you make the determination as to there
23 being no injury?

24 A When, when we cleared, when I cleared the accident
25 nobody was transported to the amb (sic), on the ambulance.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right, and --

2 A Therefore, I list it as no injury, 'cause nobody
3 went to the ambulance, nobody got transported to the
4 hospital. It went as a regular accident, or property damage.

5 Q And was your observation of the property damage to
6 the two vehicles, vehicle one and two, consistent with what
7 you learned from speaking to the parties about the angle of
8 vehicle two before she was hit?

9 A Correct, it was, correct.

10 Q The angle towards the second?

11 A Yes.

12 Q All right. And also, um, you personally didn't
13 witness the accident, correct?

14 A Did not.

15 Q And, uh, your report doesn't indicate how far Ms.
16 Sapp was following behind the Plaintiff before she began,
17 before she hit her, correct?

18 A Correct.

19 Q All right. It doesn't have any specifics about how
20 close she was following or not, correct?

21 A Correct.

22 Q And you, um, you basically issue a ticket to the,
23 uh, at the rear following driver after an accident like this,
24 correct?

25 A Correct.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 Q All right. And that's based upon your opinion of
2 what happened, correct?

3 A Correct.

4 Q Thank you.

5 MS. HOWARD: Nothing further.

6 MS. ZOIS: Just one.

7 RECROSS EXAMINATION

8 BY MS. ZOIS:

9 Q And your opinion was Jacqueline Exline-Hassler was
10 not at fault, correct?

11 MR. GILLCRIST: Objection, Your Honor.

12 MS. HOWARD: Object.

13 MR. BRATT: Opened the door.

14 THE COURT: Sustained.

15 MS. ZOIS: That, she opened the door, Your Honor. Fair
16 enough, I'll withdraw it!

17 THE COURT: He's answered who was at fault. You don't
18 need to beat every nail till it goes underneath the wood.

19 MS. ZOIS: I know, it's so hard for me though.

20 MR. BRATT: Like you have a hammer.

21 THE COURT: (Chuckles) So, exactly. Thank you, Trooper.

22 TROOPER CICCARELLI: Thanks, Your Honor.

23 THE COURT: You may step down, you may be excused. And
24 this is, we will definitely break for the evening at this
25 point. Folks I'm going to ask you to be downstairs tomorrow

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 at quarter of 10:00 tomorrow, I have a number of other things
2 in the morning, but, um, I will, should be available to
3 start, hopefully, right by 10 o'clock, but I don't want you
4 hanging around down there for too long, um, since I know I
5 have some other things to deal with in the morning, but we
6 should be, should be ready to roll at 10 o'clock. Okay? So,
7 I'll excuse you to the jury room, and, uh, we'll lead you on
8 out of here. Everyone have a nice evening. I hope you're
9 going someplace warm, and, uh, we'll see you all tomorrow
10 morning.

11 (Jury excused from the courtroom.)

12 MS. HOWARD: You just want to clear out the exhibits?

13 THE COURT: Absolutely. And I do have, um, my drug
14 court docket in the morning, and, uh, two or three other
15 criminal matters so you may wanna' put your stuff at a safe
16 place, but I should be, we should be ready to roll by quarter
17 of or by 10 o'clock.

18 MR. BRATT: Do you hand any out at that?

19 THE COURT: (Chuckles.)

20 MR. BRATT: Your Honor, may I approach the clerk,
21 because I want to make sure I didn't snag any of the exhibits
22 that had been put in or ID'd.

23 THE COURT: Certainly. And to go through all those
24 housekeeping things.

25 FEMALE VOICE: (Unclear.)

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 THE COURT: Absolutely.

2 (Unclear - Counsel speaking simultaneously.)

3 MR. BRATT: We are, are we still on the record?

4 THE COURT: Yes, we are.

5 MR. BRATT: For the record, we'd mark for
6 identification, Plaintiff's Exhibit Number 13, which the
7 deposition of Jacqueline Exline-Hassler.

8 THE COURT: Okay.

9 (Unclear - Counsel speaking simultaneously.)

10 THE COURT: Yeah, I don't believe that had been marked
11 for identification. I don't believe, I don't believe it had
12 been marked.

13 MR. BRATT: No, I'm just trying to make sure it is,
14 because I don't remember what I said, and (unclear - one
15 word) to tell you the truth.

16 (Unclear - Counsel speaking simultaneously.)

17 THE COURT: Yeah, go ahead and take 'em out, mm-hmm.

18 (Unclear - Counsel speaking simultaneously.)

19 THE COURT: Yeah, and 20 is in.

20 THE CLERK: Okay.

21 MR. BRATT: Okay, so here's 20.

22 THE CLERK: Okay.

23 MR. BRATT: And then 9 I think has been ID'd and Her
24 Honor's deferred on that.

25 THE COURT: Nine and 10, that's correct.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: Number 21, I think is in, which is Dr.
2 Naff's CD (sic), CV.

3 THE COURT: Yes, that C, CV is in.

4 MR. BRATT: (Unclear - approximately seven words.) I
5 can't believe the only mistake he made was he was named the
6 top cop this year and forgot to put it on. I always remember
7 that (unclear). And then, um, 35(1) and (2).

8 THE COURT: Those are in. And 38, no, those are marked,
9 but not in.

10 MR. BRATT: Thirty-six is in. I'm just making sure I
11 didn't --

12 THE COURT: Right.

13 MR. BRATT: -- (unclear - one word) know when on the
14 witness stand or on my table.

15 THE COURT: Exactly.

16 THE CLERK: Oh, Counsel, you, you have your copy of
17 eight.

18 MR. BRATT: Oh, I'm gonna' (unclear - two words). I
19 just want to make sure I don't have anything else. Do you
20 guys have any exhibits?

21 MS. ZOIS: How long was Steve in the courtroom during
22 (unclear - one word)?

23 MR. BRATT: I have no idea, I didn't know he was there.

24 MS. HOWARD: I'm the one that told John.

25 MS. ZOIS: Oh, okay.

CIRCUIT COURT FOR FREDERICK COUNTY

COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: I didn't even know he was here until Anne
2 asked me, because he was in the back and I was, you know,
3 facing the trial.

4 FEMALE VOICE: He knows how long, tell him how long.

5 MALE VOICE: Thirty-five minutes.

6 MS. HOWARD: That's probably about right.

7 MR. BRATT: But I don't know --

8 MALE VOICE: But it was only --

9 MR. BRATT: -- I don't anticipate that his testimony
10 would have anything to do with Dr. Naff's.

11 MR. GILLCRIST: Well, let's not maybe discuss it in
12 front of him.

13 THE COURT: So.

14 FEMALE VOICE: Do you want him to leave?

15 MR. BRATT: He can just hang out for a (unclear - two
16 words).

17 THE COURT: Let's figure, let's do one thing at a time,
18 because we're still on the record and the Court is still on
19 the bench, so, if, if, are we done with what we need to do
20 with respect to the exhibits or do we want to go over them.

21 MR. BRATT: I believe we are, Your Honor.

22 THE COURT: Okay. All right. Well, I'll go ahead, and
23 we'll adjourn then you can, we'll deal with whatever else.

24 MS. ZOIS: Sorry, Your Honor.

25 MR. GILLCRIST: Okay.

CIRCUIT COURT FOR FREDERICK COUNTY
COURT HOUSE
FREDERICK, MARYLAND 21701

1 MR. BRATT: Thank you, Your Honor. Have a good night.

2 THE COURT: That's all right.

3 THE CLERK: All rise.

4 (Whereupon, at 6:01 o'clock, p.m.,
5 Court is adjourned for the day and
6 will reconvene January 24, 2013 at
7 10:22 o'clock, a.m.)

8

9 CERTIFICATION

10 I HEREBY CERTIFY that the proceedings in the matter
11 of Exline-Hassler v. Penn National Insurance, et al., heard
12 in the Circuit Court for Frederick County, January 23, 2013,
13 were recorded by means of digital recording.

14 I further certify that, to the best of my knowledge
15 and belief, page number 1 through 446, constitute a complete
16 and accurate transcript of the proceedings as transcribed by
17 me.

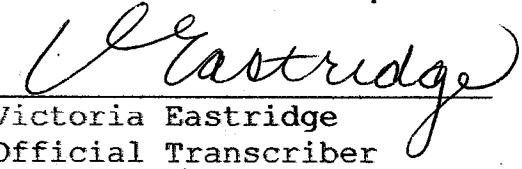
18
19 I further certify that I am neither a relative to,
20 nor an employee of any attorney or party herein, and that I
21 have no interest in the outcome of this case.

22

23

24

25


Victoria Eastridge
Official Transcriber