

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 THREE)

9

10 Frederick, Maryland

11 January 24, 2013

12 BEFORE:

13

14 THE HONORABLE JULIE S. SOLT, JUDGE

15 APPEARANCES:

16 For the Plaintiff:

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

18 For the Defendant:

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

20 For Penn National Insurance, et al.:

21 GUIDO PORCARELLI, ESQUIRE

22

23 TRANSCRIBED BY:

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1 (Whereupon, at 10:22 o'clock, a.m., January 24, 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 COURT: And good morning, everyone.

7 BY ALL: Good morning, Your Honor.

8 THE COURT: Back in the record again in the matter of
9 Exline-Hassler v. Sapp, Civil Number 12-0410. All right, we
10 have everyone present, and, uh, are we ready?

11 MS. ZOIS: We, we are, Your Honor, maybe we can have a
12 two minute housekeeping discussion --

13 THE COURT: Certainly.

14 MS. ZOIS: -- just about wis (sic), witness scheduling
15 today and some of the things that I anticipate may happen.
16 Um, our first witness today will be Steve Hassler, which is
17 Plaintiff's husband. I have her supervisor planning on being
18 here as soon as she can, but she said that she thinks it will
19 be 12:00. So, we have an hour and a half with just one
20 witness. I don't know how long to anticipate he's going to
21 be. Um, we'll attempt to use the Court's time productively
22 after Mr. Hassler testifies and before Ms. Hamilton can get
23 here, but it might be that the jury comes out, hears one
24 witness and then has to leave before Sharon Hamilton comes
25 out the things that I would probably do to fill the gap is

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1 read answers to interrogatories into the record to prove my
2 breach of contract claim outside the presence of the jury
3 with the limits and that sort of thing, and then just proffer
4 to the Court have the Penn National claims representative
5 under subpoena to produce documents and to be prepared to
6 testify as to what his testimony would be would I have been
7 able to call him, so we can get those two administrative
8 things out of the way, perhaps. So, I was just trying to let
9 the Court know we are trying to move it along.

10 (Brief pause while Counsel confer off the record.)

11 MS. ZOIS: I don't know that she's gonna' want to do
12 that.

13 MR. BRATT: Well, I'm just saying it's an option.

14 MS. ZOIS: My, um, my co-counsel recommended that
15 perhaps we get the administrivia out of the way now and then
16 hopefully we could roll straight from Mr. Hassler into the
17 supervisor and then break for lunch, or . . .

18 MR. BRATT: Rather than have the jury come out, hear a
19 witness, then go back, then wait.

20 THE COURT: So. I'll let --

21 MR. BRATT: I mean, I don't really care.

22 MS. ZOIS: And then my expectation is for this afternoon
23 that Dr. London is, is going to, to come, and we agree to
24 take him out of turn to accommodate the Defense.

25 MR. GILLCRIST: Your Honor, just a couple of things.

1 The, the Court's preference in terms of the schedule is
2 obviously fine with us. Um, as far as Mr. Hassler goes, we
3 do have a motion to make. Um, we learned last night that he
4 actually sat in on a large part of our cross, we think it was
5 our cross examination of Dr. Naff, which is a direct
6 violation on the rule of witnesses, the rule on witnesses
7 that this Court issued. Um, apparently, he's told his
8 attorneys that it was 35 minutes. We don't know if that's
9 correct or not, but apparently that's what Mr. Hassler has
10 told his, told his wife's attorneys.

11 Um, I'm very concerned about this. We understand
12 that Counsel, and we, we don't, we're not accusing of
13 anything, we understand that Counsel had arranged for him to
14 be here at 3 o'clock or so yesterday, so they had to know he
15 was coming. Um, there were four people over on that side of
16 the courtroom who had to have, uh, at least had an
17 opportunity to see him enter the courtroom and be sitting
18 there. Um, I've never met the man, my partner, Anne Howard,
19 has never met the man, um, and we learned that he had been
20 sitting in on this testimony. There was some very, we think,
21 crucial testimony elicited, uh, particularly during our cross
22 examination of Dr. Naff that would have certainly educated or
23 given, uh, Plaintiff's Coun (sic), uh, Mr. Hassler knowledge
24 of, of what this, what, where we were going with this witness
25 and what this witness said.

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1 Um, I think Counsel is under an obligation to not
2 only make sure their witnesses are not in the courtroom, but
3 at the very least, to use due diligence, and there obviously
4 was no due diligence to keep Mr. Hassler out of the
5 courtroom. So, in light of the violation of the rule on
6 witnesses I would ask that he be stricken as a witness,
7 excluded.

8 MR. PORCARELLI: Thank you, Your Honor, briefly I would,
9 uh, adopt what Mr. Gillcrist has said, and, uh, I'd like to
10 respond just briefly to one of the issues brought up by
11 Plaintiff's Counsel. It would be my hope, since Your Honor
12 has now covered, uh, what I think is an issue twi (sic), on
13 two occasions already in this trial regarding Penn National
14 adjuster. Um, I would ask that we not venture for a third
15 time into this area. I think the proffer's been made on the
16 record, and Your Honor's ruled on it in terms of the
17 relevancy and getting into those issues. And at this point
18 whether it is or it's not in front of the jury, um, it
19 shouldn't be heard, and we would ask that that not occur.
20 And that's everything I have for today.

21 THE COURT: With respect to Mr. Hassler, what it, um,
22 just as, what's the, what are you, is his anticipated
23 testimony?

24 MR. BRATT: Your Honor, Mr. Hassler is a damages
25 witness. He is expected to testify about what his wife was

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1 like before the car crash and what she's like after the car
2 crash, and he also has some knowledge about the facts of this
3 other, I guess, bumper tap fender bender in 2005 if he knew,
4 knows there was very little damage to the car and knows his
5 wife wasn't injured. He's a damages witness.

6 And I, I would like to make some corrections, Your
7 Honor. Mr. Hassler was here for about 35 minutes is what he
8 said, but when I asked him this morning, because I had
9 anticipated this arising, what he told me was is for the
10 first 20 minutes what he saw was the back of four lawyers at
11 a bench conference listening to white noise, and then he
12 heard about 10 or 15 minutes of Dr. Naff's testimony, which,
13 based on my conversation with him was about how much Dr. Naff
14 gets paid and being a witness and stuff, um, not substantive
15 testimony, and I would suggest that if the Court is
16 considering even granting this motion, which I don't think
17 Your Honor should be, but if you are considering granting the
18 motion I would ask Your Honor to bring Mr. Hassler in, swear
19 him and voir dire on what, what exact, exactly he saw and
20 heard as, and so the Court can make an informed decision
21 about whether the motion should be granted or not.

22 Um, as far as due diligence, Your Honor, Mr.
23 Hassler wasn't here, here at the beginning of the trial, he
24 didn't hear the instruction on witnesses. As far as myself,
25 I didn't know he was here, because I was doing the direct

1 examination of Dr. Naff, and Ms. Zois was running, and Ms.
2 Harveson were running the equipment. The first time I saw, I
3 knew that he was here is when during Mr. Gillcrist's cross
4 examination Ms. Howard walked over to me and said who's that
5 guy? And I looked and said, oh, I didn't know he was here,
6 and then I immediately took him outside. Um, so, from our
7 end we didn't know he was here, we were facing the Court.

8 THE COURT: So, what I, what I want to do is this. I do
9 not believe that there's any issue of due diligence on due
10 diligence. Unfortunately, this is an open courtroom, people
11 walk in and out. I don't know who witnesses are. I think,
12 just to be clear, I know he was in for a while, it was not
13 for a long time. I think, for everyone's sake, it's best to
14 bring him in, put him under oath, just have, what he
15 remembers from the testimony, and, uh, we'll go fr (sic),
16 we'll go from there just so that the record is clear. I will
17 tell you that I am, I just waht to make the record clear, I
18 am not inclined to strike him as a witness, but I just want
19 to, for everyone's sake, to put on the record what he does
20 recall observing for the time when he was in Court, and then,
21 um, the record is clear in that way.

22 MR. BRATT: Okay. And I'll, and I'll go get him, he's
23 right outside, whenever the Court's ready, 'cause I know
24 there's another issue that Ms. Zois is going to have to
25 address with -- I am, Your Honor, just for, so you know, I'm

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1 not going to say anything to him about why he's being brought
2 in here so if the --

3 THE COURT: So.

4 MR. BRATT: -- if the Court wanted to explain to him
5 when he comes in.

6 THE COURT: Ex, exactly, and I'll just --

7 MR. BRATT: Thank you.

8 THE COURT: -- and I will, um --

9 MR. BRATT: I, I just don't want to talk to him between
10 now and then.

11 THE COURT: No, it, that's okay. So.

12 MS. ZOIS: And with respect (sic), uh, respect to, um, my
13 proffer as to what I would have elicited the testimony as far
14 as the claims representative, which I believe just walked in,
15 I'm certainly not trying to step on the Court's toes, I
16 totally understand the Court's ruling, but I believe that in
17 order to properly protect my record I do need to share with
18 the Court what the expected testimony or what my proffered
19 questions would have been, and I do want the ability to, to
20 properly and succinctly, um, preserve the records. That's
21 all, Your Honor. I'm not, I understand the Court's ruling,
22 and I'm certainly not asking for a reconsideration of that.
23 I just need to make sure that everything I needed or wanted
24 to get out was on the record as to what I would have asked
25 the claims representative, Your Honor.

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1 MR. PORCARELLI: And if that's handled administratively
2 just with --

3 THE COURT: That, it's be --

4 MR. PORCARELLI: -- um, as a proffer and questions only,
5 I'm good with that.

6 THE COURT: That, that's exact --

7 MR. PORCARELLI: I just don't want my claims
8 representative on the stand.

9 THE COURT: No, it would be, it would be handled as a
10 proffer.

11 MR. PORCARELLI: Thank you.

12 THE COURT: So. Okay. Well, why don't we go get Mr.
13 Hassler and we'll find out what he remembers, quite honestly,
14 if he's probably like most witnesses that -- let's, let's
15 find out what, what --

16 MR. BRATT: I believe that's going to be likely.

17 THE COURT: -- what, what, if anything, he recalls.

18 MR. BRATT: I'll go bring him in, Your Honor.

19 THE COURT: So, let's, let's find out, 'cause that's
20 easy, this is an easy enough issue to resolve.

21 MR. GILLCRIST: Thank you, Your Honor.

22 THE COURT: Mr. Hassler, if you'd come on in, come on up
23 to the witness stand. It's easiest if you walk on up that
24 ramp.

25 THE CLERK: Go ahead and stand up there and raise your

1 right hand.

2 STEVEN HASSSLER,

3 A witness, produced on call of the State, first
4 having been duly sworn according to law, was
5 examined and testified as follows:

6 VOIR DIRE

7 BY THE COURT:

8 Q Mr. Hassler, if you would tell me your name for the
9 record?

10 A Steven Dwayne Hassler.

11 Q And, Mr. Hassler, I'm going to tell you right now
12 you're not in any trouble, okay? But yesterday afternoon you
13 came into court when another witness was testifying, is that
14 correct?

15 A Yes, I did.

16 Q Um, what do you remember hearing and occurring
17 while you were in the courtroom was testifying?

18 A You had the speaker blocker on when I walked in,
19 you, all of you was gathered around you.

20 Q All right.

21 A And then I remember the doctor statin' how much
22 money he was gettin' paid, and then I was asked to be, to be
23 led out. That's all I heard.

24 THE COURT: Mr. Gillcrist.

25 MR. GILLCRIST: Um, my I inquire, Your Honor?

1 THE COURT: You, mm-hmm, mm-hmm.

2 BY MR. GILLCRIST:

3 Q Mr. Hassler, um, do you remember last night being
4 outside the courtroom and telling people that you were in the
5 courtroom for 35 minutes?

6 A Do I remember telling somebody I was in there?

7 Q Yeah, do you remember saying that out loud?

8 A I said it out loud in here.

9 Q That you were in the courtroom for 35 minutes?

10 A For about 35 minutes.

11 Q Okay. And, so, if you were in for 35 minutes the
12 only thing you remember the doctor talking about is, is how
13 much money he got paid?

14 A Well, it took a while for you to get that out of
15 him, yes.

16 Q Okay.

17 A That was --

18 Q Um, is it your recollection you did not hear any
19 testimony about any of the, uh, prior history that he talked
20 about in terms of your wife?

21 A No.

22 Q Okay. Um, and you were not here when he talked
23 about and was shown any medical records?

24 A Nothin' about no medical records.

25 Q Okay, you sure about that?

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1 A I, I heard you ask about the vanilla (sic) envelope
2 that he had and that was it.

3 Q Okay. And you're sure you didn't hear anything
4 about, um, any questions to Dr. Naff about, um, his knowledge
5 of your wife's prior history made before the accident?

6 A No, all I heard about was pay, that's all I was
7 hearin', what he was gettin' paid.

8 Q All right. Thank you.

9 THE COURT: Any questions?

10 MR. PORCARELLI: No questions.

11 THE COURT: Okay.

12 MR. BRATT: Nothing, Your Honor.

13 THE COURT: Thank you, you can go ahead and step down.

14 MR. BRATT: And you have to go back outside, Mr.
15 Hassler.

16 THE COURT: And you get to do all this again, so.

17 MR. BRATT: You're not in trouble, relax.

18 MR. HASSLER: You want me back out?

19 MR. BRATT: Just hang out in the hallway.

20 THE COURT: Yeah, you can go back (unclear - two words).

21 MR. HASSLER: All right.

22 MR. BRATT: Everything's fine. Don't get all worried,
23 everything's fine.

24 (Brief pause while Mr. Hassler returned to the hallway.)

25 THE COURT: Any additional argument, Mr. Gillcrist?

1 MR. GILLCRIST: Well, Your Honor, I, I, it, it concerns
2 me, it does, and I know he's gonna' say what he's gonna say,
3 but, um, 35 minutes there weren't, wasn't 35 wor (sic),
4 minutes worth of questioning about the doctor on his fees.
5 Uh, there might have been 10 minutes. Um, and Counsel
6 represented, uh, that there was a twen (sic), that, that he
7 said today, this morning, that there, the attorneys were at
8 the bench conference for 20 minutes. There was no 20 minute
9 bench conference yesterday. Um, I'm also concerned, because
10 I was personally outside last night as we were gathering our
11 things, and he did in fact say he was in the courtroom for 35
12 minutes. So, that had been brought to his attention, uh,
13 Counsel had brought it to his attention that he shouldn't be
14 in there apparently, and his reaction was well, I was only in
15 there for 35 minutes or so. He had to have heard a lot more
16 than that now. Obviously, I can't, uh, put words in his
17 mouth, but I think there's more than meets the eye than what
18 we're hearing on his testimony.

19 THE COURT: Based on what I've heard today, um, while
20 there was technical violation for a period of time, and one I
21 do not find it was induced at all by Counsel for Plaintiffs,
22 um, and I'm not convinced that there's, has been any, um,
23 testimony that this witness heard from sitting in through,
24 uh, Dr. Naff's testimony for approximately 30 minutes, um,
25 that would indicate that exclusion of this witness from

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1 testifying before the jury is an appropriate remedy, so, the
2 motion is denied.

3 MR. GILLCRIST: Thank you, Your Honor.

4 THE COURT: Okay? And Counsel, why don't we, since
5 they're still out, why don't we go ahead with you putting
6 your proffers on and then we'll try to roll through, um, the
7 morning before the doctors --

8 MS. ZOIS: Okay.

9 THE COURT: -- in the afternoon.

10 MS. ZOIS: That'd be great, Your Honor.

11 THE COURT: Mm-hmm.

12 MR. BRATT: Including this stuff on the contract claim,
13 Your Honor?

14 THE COURT: Sure.

15 MR. BRATT: Okay. Thank you. I mean -- thank you --
16 I'm sorry, Your Honor, I mean no disrespect, I forgot to
17 stand up and that stuff.

18 MS. ZOIS: I try and kick him, but it doesn't always
19 work. Um, so starting with, Your Honor, and I believe that,
20 um, Mr. Porcarelli is, I'm suspecting, willing to stipulate
21 that there hasn't been any breach of the contract and there
22 hasn't been any payments made to Ms. Jacqueline Exline-
23 Hassler under the un-insured, un-insured motorist provision
24 of the policy, is that right?

25 MR. PORCARELLI: We can put on the record affirmatively

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1 that the Plaintiff, Ms. Exline-Hassler has not breached her
2 contract. Um, and that, and under the UM portion of the
3 policy has not made a payment to date.

4 MS. ZOIS: And, Your Honor, I would just read into the
5 record answers to interrogatories from Defendant Penn
6 National, interrogatory number three, Insurance coverage.

7 "Please identify any policy of insurance or any
8 insurance agreement that was in affect at the time of the
9 occurrence, and identify the type of policy, the identity of
10 the insurance company, the policy number and the policy limits
11 and coverage afforded under the policy or policies."

12 Answer to number three. "Pennsylvania National
13 Mutual Casualty Insurance Company issued a policy of insurance
14 under policy number 1290012044 to Jacqueline Exline and Steven
15 Hassler. The police," which I believe is, uh --

16 MR. PORCARELLI: Policy.

17 MS. ZOIS: -- uh, misspelled.

18 MR. PORCARELLI: Right.

19 MS. ZOIS: "The police (sic) period was from April 22nd,
20 2009 through October 22nd, 2009. That policy provided
21 uninsured motorist benefits in the amount of \$250,000 per
22 person and \$500,000 per accident."

23 And I believe we have the policy dec sheet
24 identified and marked, Your Honor, as Plaintiff's Exhibit
25 Number 31, which I would offer to Madam Clerk, Your Honor.

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1 THE COURT: You may.

2 MS. ZOIS: Um, addich (sic) --

3 MR. PORCARELLI: Well -- I'm sorry, didn't mean to
4 interrupt.

5 MS. ZOIS: That's okay. Um, additionally, Your Honor,
6 why, um, my (unclear - one word) thank you, may I approach
7 the clerk, Your Honor?

8 THE COURT: You certainly may.

9 MS. ZOIS: Want to see it, Mr. Porcarelli?

10 (Brief pause while Counsel confer off the record.)

11 MS. ZOIS: Plaintiff's Exhibit Number 31. Um,
12 additionally, Your Honor -- I'm sorry to turn my back on the
13 Court --

14 THE COURT: Mm-hmm, all right.

15 MS. ZOIS: -- we would read into the record the answers
16 to interrogatories of Defendant, Kirsten Sapp's answers to
17 co-defendant, Penn National's interrogatory at Interrogatory
18 Number 15.

19 "Identify which of the persons named in your
20 answers are known or related to you." Skip that. Sixteen, I
21 apologize, Your Honor, Question 16. "State whether or not
22 there was in existence on the date of the occurrence a policy
23 or policies of liability insurance, including any umbrella
24 policy by which its terms may satisfy all or part of any
25 judgment against you or indemnify you. If so, state the

1 limits of liability of each of the coverage's and the name
2 and address of the insurance company, which issued the policy
3 and all policy numbers and effective dates. Attach copies of
4 all policies reflecting the limits of liability."

5 Answer. "State Farm Policy Number 0724-045-20(b),
6 policy limits of 100,000\300,000\100,000. Please find
7 attached a specimen copy of an insurance policy of the form
8 booklet as that issued to the Defendant. Defendant has
9 requested a copy of the policy and will supplement this
10 answer."

11 I don't know that we ever got a dec sheet from
12 State Farm. We do have a copy of the form policy, which I
13 don't think I need to introduce into evidence at this time,
14 and, um, Plaintiff, uh, does agree that, obviously, these
15 numbers don't go before the jury. I have no intention of
16 mentioning --

17 THE COURT: I just put a big red sticker on the policy
18 that says not to go back to jury, so.

19 MS. ZOIS: Right, this is purely outside the presence of
20 the jury to --

21 THE COURT: Mm-hmm.

22 MS. ZOIS: -- to protect the record and indicate, uh, as
23 to the, the underlying liability coverage and as to the UIM
24 coverage that applies in this case so we can prove our breach
25 of contract elements, Your Honor.

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1 THE COURT: Okay.

2 MR. PORCARELLI: Uh, Your Honor, if I may be heard. We
3 covered points one and two, which we've agreed to, and,
4 obviously, the answer to interrogatory. We don't object to
5 being read into the record as long as it stays on the record,
6 and not go, not go back to the jury. Um, and obviously, with
7 respect to point number five, which is Ms. Sapp's insurance
8 policy with State Farm, we don't take issue with that one
9 either, so we agree with it.

10 Um, but with regard to Plaintiff's Number 31, um,
11 which is the policy dec sheet, um, given that the answers to
12 interrogatories were read and we've agreed to them as
13 reflecting what the \$250,000 is, we would object to the
14 introduction of, on the dec sheet in the policy at this time.

15 THE COURT: I'm gonna' overrule the objection. I'm
16 gonna' admit the policy. However, the policy itself will not
17 be disclosed to the jury. That is for the record only.

18 MR. PORCARELLI: And by policy, including the
19 declaration sheets that go with it.

20 THE COURT: Exactly. The Exhibit Number 31 --

21 THE CLERK: Yeah.

22 THE COURT: -- just so you know I have it --

23 THE CLERK: It's set aside, it's got a sticky on it --
24 (Chuckling.)

25 THE COURT: It's not, not to go, and I --

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1 MR. PORCARELLI: I, I, I knew you'd take care of me.

2 THE CLERK: We're good.

3 THE COURT: I did, I did with pink so that that does not
4 go back, but the policy itself, for the record to be clear,
5 I'm gonna' ad (sic), admit it, but we all agree it does not
6 go back before the jury.

7 MR. PORCARELLI: Well, I'll respect Your Honor's
8 decision on that, thank you.

9 THE COURT: Okay. And we'll check it many times before
10 we get to that point, but like I said, I have my red stickies
11 for that, pink stickies for that reason.

12 MS. ZOIS: That's Plaintiff's understanding as well,
13 Your Honor, we had no intention of it being published to the
14 jury at any point.

15 Um, as for the proffer for, um, the claims
16 representative, I'll just start from scratch. Initially when
17 Penn was a party to this case we subpoenaed the Penn National
18 Corporate designee, um, for a couple of different issues, but
19 since the March 26, 2008 report very clearly says MVA crash
20 three years ago we thought it was imperative to be able to
21 talk to Penn National who was her insurer back in, uh, 2005
22 to discuss whether or not she made a bodily injury claim for
23 that crash.

24 Now, before the Court's ruling Penn National was a
25 Defendant. So, part of what Plaintiffs cross of the

1 Defendant defending the claim would be, um, would include the
2 fact that the Penn National representative, um, does not have
3 the 2005 claim file. We ask that they do a search and
4 produce all the claim files that they could find under the
5 time period of the policy that Ms. Exline-Hassler had the
6 policy with Penn National and they were able to identify a
7 claim in 2002, but not produce the claim file. Identify a
8 claim from June 15th, 2005, but not produce the claim file.
9 However, they were able to produce a claim file from 2004,
10 which obviously precedes the 2005 claim and three other
11 policies after, or three other claims after that. So,
12 pursuant to Plaintiff's second request for request for
13 production of documents that asks for any and all information
14 they had regarding any claims that Plaintiff made with Penn
15 National while she was insured with them they produced four
16 claim files.

17 Um, the scope of Plaintiff's inquiry into the
18 corporate designee's testimony would, um, include areas of
19 inquiries such as how is a claim filed generated, what sorts
20 of things go into the claim file, if there's a bodily injury
21 investigation how do you investigate into a bodily injury
22 claim. If you discover that a person was injured in a car
23 accident would you report this to the ISO national database?
24 There's a, um, and I'm not sure how much Your Honor knows
25 about claims practice, so I'll take it one step further, but

1 there's an ISO national database that all the insurance, 97
2 percent of all the insurance companies, um, subscribe to, and
3 what they do is when they are made aware of a claim they
4 provide this national database what's called indexing
5 information. And the indexing information includes the
6 insured's name, the claimant's name, the type of vehicle they
7 were driving, the type of payments made under the policy, a
8 brief description of the accident, names of witnesses,
9 parties, if there's, um, PIP payments or medical payments
10 made, that's usually in the indexing information. So, it's
11 basically a, a database that's shared by all the insurance
12 companies so they can cross reference people's names,
13 insurers, insured's, dates of accidents, types of claims that
14 are made. So, the area of inquiry that I would have gone
15 into with the corporate designee was here's what a claim file
16 would or should like (sic) had an investigation been done in
17 2005. If a bodily injury claim was made it would have been
18 Penn's, uh, habit or practice to report that claim to the bod
19 (sic), to this indexing service. Um, the, and I do know that
20 Penn National did report this claim to the indexing service.
21 Um, I, I do when I start a search on all my own clients.
22 This claim does appear. Um, I did receive a, some
23 documentation from State Farm to indicate that they did an
24 index on my client, and Penn National did in fact supply this
25 ISO data base information regarding this crash that we're

1 here about today.

2 So, essentially, the, the cross would have been if
3 she had made a bodily injury claim in 2005 that's something
4 you would have reported to the indexing bureau, um, I asked
5 them to bring any indexing that they have, which I believe
6 would, and I haven't seen it, I've subpoenaed, I have a
7 subpoena that's out there that no records have been produced
8 for, because of your Court's ruling would be my
9 understanding, but I suspect that it did do indexing, and
10 that there is no 2005 bodily injury claim showing up in the
11 indexing.

12 Um, I would also ask, uh, and it, because at the
13 time they were a Defendant, I think the fact that the
14 Defendant themselves is taking a position contrary really to
15 their own file in this case, so that would have been
16 explored. For example, um, the Defendant is claiming that
17 she's had chronic back pain for three years following the
18 2005 crash, yet they don't have any indication in their own
19 claim file, and they were her insurance company back in 2005
20 to indicate that she made a bodily injury claim, and if they
21 were following their own practices and procedures they would
22 have reported that claim to the indexing bureau. So, it
23 would have been a credibility bias cross examination that
24 would help, um, you know, I'm essentially in the position of
25 proving a negative at this point with that 2005 car crash so

1 I have to provide as much information to the jury as I
2 possibly can that this information contained within this
3 medical record is inaccurate and it is a mistake. So, to
4 help, um, buttress the credibility of my client, who concedes
5 she was in a car accident in 2005, however, the car accident
6 in 2005 was a minor bumper tap, it was a hit and run, she
7 made a property damage claim only with her insurance company,
8 and was paid a payment after her deductible of less than
9 \$250. So, I would also explore that with the claims
10 representative, did you try and go back and find the
11 cancelled check, did you try and go back to the accounting
12 department? I don't know how much effort they put into
13 trying to find the 2005 claim files so I would have explored
14 that with him as well.

15 Um, also the fact that in 2005 Penn was her
16 insurance company, this was a hit and run, they're asserting
17 she's making a chronic back pain claim, I think that I would
18 have elicited testimony from him that she had hit and run
19 coverage, if she was injured in that crash it would have been
20 something that would have been covered back in 2005 for, you
21 know, not only her medical expenses for PIP, but also for a
22 bodily injury claim under the under insured or a phantom
23 vehicle insurance back in 2005, and they have no record that,
24 that she made any such claim, um, but she could have very
25 easily done that had she been severely injured in that crash

1 and had chronic back pain for three years.

2 And let me just check my notes, Your Honor --

3 THE COURT: Certainly.

4 MS. ZOIS: -- I think that's probably the extent of it,
5 but I just want to make sure that I'm not --

6 THE COURT: Mm-hmm.

7 MS. ZOIS: -- and I, I would have, um, established that
8 she's an insured now, and, obviously, I don't have to go into
9 that, 'cause we could have, we dealt with that another way,
10 but, um, just for a second, Your Honor, I just want to make
11 sure I didn't leave anything else out. I would have
12 discussed their file retention policy to see why they didn't
13 have the 2005 claim file.

14 I also would have, um, uh, gone over, Your Honor,
15 there's -- and when I, uh, we discussed this exhibit earlier,
16 it's medical record Bates stamp, it's in Plaintiff's 10,
17 medical record 28 and 29, which is an attending physician's
18 report, and in the attending physician's report it's a form
19 that Penn National sent to Robinwood Family practice. It's a
20 form that was received by Penn National from Robinwood Family
21 Practice that really flies in the face of the March 26, 2008
22 medical record which says that all of her injuries and
23 complaints were based on her June 26, 2009 car crash. She
24 didn't have the same or similar complaints before that, and
25 that her injuries were to her back following the June 26,

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1 2009 car crash, and that, um, she, she, I might have already
2 said this, didn't have the same or similar conditions. But I
3 would just incorporate into this argument the medical record
4 I already identified at, um, medical record page, uh,
5 Plaintiff's Exhibit 10 medical record pages 28 and 29. So, I
6 would have used that, um, report as, um, biased cross
7 examination against Penn National who's taking the position,
8 even though they requested the information from the family
9 practice and were provided the information that the family
10 practice said she didn't have the same or similar complaints
11 and that all her problems are related to the June 26, 2009
12 car crash, that they're taking an adverse position in Court,
13 even though they got the requested information they asked for
14 from her family practice and are placing unreasonable
15 reliance on the March 26, 2008 record. Did I forget
16 anything?

17 MR. BRATT: Nope.

18 MS. ZOIS: Were you listening?

19 MR. BRATT: Yep.

20 MS. ZOIS: Okay. Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. PORCARELLI: Can I just --

23 MS. ZOIS: Oh, and --

24 MR. PORCARELLI: -- briefly for a second?

25 MS. ZOIS: -- um, I just want to incorporate into, um,

1 my argument and I'll, I'll find it as an exhibit, but my
2 subpoena for the claims representative which, um, outlines
3 the areas of inquiry and the documents that I had requested
4 the claims representative to bring as an exhibit for the
5 Court that obviously won't go back to the jury, but is just
6 being marked for identification for the purposes of --

7 THE COURT: Of the proffer.

8 MS. ZOIS: -- um, the (unclear - two words).

9 THE COURT: Mm-hmm.

10 MS. ZOIS: Okay. And, I'm sorry, I didn't mean to
11 interrupt you, Mr. Porcarelli, I'm sorry --

12 MR. PORCARELLI: No, no --

13 MS. ZOIS: -- I just didn't wanna' --

14 MR. PORCARELLI: -- no problem.

15 MS. ZOIS: -- forget to do that. May I approach the
16 clerk, Your Honor?

17 THE COURT: You may.

18 MR. PORCARELLI: Your Honor, uh --

19 MS. ZOIS: We'll, we'll provide this at a later time,
20 Your Honor.

21 THE COURT: Okay.

22 MS. ZOIS: It's not, it's not entirely complete, but
23 we'll provide it it's Exhibit 48. Sorry, Guido, yes, thank
24 you.

25 MR. PORCARELLI: A) we would incorporate our arguments

1 against, that have already been laid out to Your Honor. The,
2 um, there are just a couple things that need to be
3 emphasized. As Your Honor has already seen, claims made
4 versus our reliance on some other physicians independent
5 medical chart are two different things, and that, as I
6 understood, was part of your ruling, and we would emphasize
7 that to Your Honor again.

8 And three, uh, because this, didn't, I don't recall
9 how this came up, if at all, when we went through this the
10 first two times, but it's clearly in front of us now, it's
11 this, is Penn National Document, um, which was signed by the
12 physician's assistant. I feel it necessary to address that
13 with the Court. Um, as I understand that document it appears
14 to be a PIP form, and I don't believe that that was sent by
15 Penn to Robinwood. I think the way that customarily works is
16 it's sent to the insured to work with and fill out with the
17 provider, and then submit their PIP claim package to the
18 carrier for reimbursement. So, I want that to be clear on
19 the record in terms of where it came from and who it went to.

20 But, secondly, um, that's yet another reason not to
21 get into this area, which is going to be collateral, because
22 that's PIP and if they wanna' open the door to PIP we can do
23 that, but we're gonna' start getting into collateral issues
24 that are going to get this record money. So, I would ask
25 that Your Honor reaffirm the decision that you've now given

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1 us on two separate days, and, uh, it would be my hope that
2 we're now done with this issue.

3 THE COURT: Okay. It --

4 MR. GILLCRIST: And I --

5 THE COURT: Go ahead.

6 MR. GILLCRIST: -- could I just say, Your Honor --

7 THE COURT: Mm-hmm.

8 MR. GILLCRIST: -- very quickly that, uh, we just adopt
9 and incorporate our prior arguments and concur with Mr.
10 Porcarelli. Thank you.

11 THE COURT: Okay. The Court is not going to change its
12 ruling, and I believe Counsel was aware of that, she's just
13 protecting the record of what she would have produced had the
14 Court allowed that testimony there. So, I think we have
15 dealt with that and it, it, hopefully, is preserved as may be
16 necessary, it may not be necessary, who knows, um, but that
17 that is laid to rest and we can move forward.

18 MS. ZOIS: That's correct, Your Honor. Thank you.

19 MR. PORCARELLI: Thank you.

20 THE COURT: Okay.

21 MR. BRATT: And, Your Honor, before we bring the jury
22 out, I know you probably were going to do this, but the
23 Court's going to explain to them that we weren't just sittin'
24 around wastin' our time while (unclear - one word).

25 THE COURT: I'm gonna' say we do leave, we have one,

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1 part of it is we were a little late, because my criminals ran
2 over, and I always say we have to do legal stuff sometimes --

3 MR. BRATT: Thank you, Your Honor.

4 THE COURT: -- and we've been in here working. So, I,
5 uh, I try to let them know. And are we ready?

6 MR. BRATT: Uh, as ready as we're getting.

7 MS. ZOIS: Yeah, can I take one of the -- I don't want
8 to cough my head off today, can I take one of the, I don't ,
9 I don't want to steal their water, but I don't have any.

10 THE COURT: We'll go --

11 MS. ZOIS: Okay.

12 THE COURT: -- we'll get you some water.

13 MS. ZOIS: Okay. I appreciate that, Your Honor, thank
14 you.

15 THE COURT: So.

16 MS. ZOIS: Thank you. I appreciate that.

17 THE COURT: So, we'll go ahead and bring the jury and
18 then he'll fill up your water and come on out.

19 MS. ZOIS: Thank you, Your Honor, I don't, I'm, I don't
20 wanna' --

21 THE COURT: That's why I don't keep one up here just
22 because --

23 MR. BRATT: None of this was on Law and Order.

24 THE COURT: So.

25 (Jury entered the courtroom.)

1 THE COURT: And good morning again, everyone. Note for
2 the record all of our jurors are present. Um, sorry for the
3 delay, folks. One, my morning docket ran a little bit longer
4 than I thought, 'cause of course with the weather, folks that
5 are charged with criminal offenses find excuses not to come
6 to court when the weather's bad, would you believe that? So,
7 we had to wait around a little bit for that and doing some
8 legal stuff, so I thank you for your patience. But I believe
9 we're ready to start again for morning.

10 MR. BRATT: Our first witness --

11 THE COURT: Mr. Bratt.

12 MR. BRATT: -- is going to be Steve Hassler, Your Honor,
13 may I get him from outside?

14 THE COURT: You certainly may.

15 MR. BRATT: Thank you.

16 (Brief pause.)

17 MR. BRATT: He's on his way into the courtroom, Your
18 Honor.

19 THE COURT: Mm-hmm.

20 MR. BRATT: May I have the Court's permission to move
21 around?

22 THE COURT: You certainly may.

23 | THE CLERK: Raise your right hand.

24 STEVEN HASSLER,

25 a witness produced on call of the

For more information about the study, please contact Dr. Michael J. Hwang at (310) 206-6500 or via email at mhwang@ucla.edu.

1 having first been duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BRATT:

5 Q Give us your name and address.

6 A Um, Steven Dwayne Hassler, 18941 Geeting Road,
7 Keedysville, Maryland.

8 Q How you doin' this morning?

9 A All right, how about yourself?

10 Q Well, I don't (unclear - two words) answer
11 questions. Are you a little nervous?

12 A What's that?

13 Q Are you a little nervous?

14 A Oh, yeah.

15 Q Where are you from, Steve?

16 A I'm originally from Hagerstown.

17 Q And is that where you grew up?

18 A Yes.

19 Q And how long have you lived in the area you live in
20 now?

21 A Uh, 14 years.

22 Q And do you work?

23 A Yes, I do.

24 Q What do you do?

25 A I do floor covering, I'm considered a flooring

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1 mechanic. I install carpet, ceramic tile --
2 Q And how long --
3 A -- hardwood.
4 Q -- have you been doing that kind of work?
5 A Thirty years.
6 Q And you're Jackie's husband, right?
7 A Yes.
8 Q And how long have you known her?
9 A Probably over 30 years.
10 Q And how long have you been married?
11 A We've been married six, been together for 18.
12 Q Who do you live with?
13 A Me and my wife and her youngest son.
14 Q And could you describe where you live?
15 A I live in like, I don't know, country area. I have
16 a couple acres of land.
17 Q How many?
18 A I've got nine acres.
19 Q And on the land you have a house, right?
20 A Yes.
21 Q What else?
22 A I got a couple out buildings, tractors.
23 Q How did you meet Jackie?
24 A Um, I met her, I met her at the Redman Club for
25 like the second time. We was friends, we was acquaintance

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1 (sic) while we was in school.

2 Q In school where?

3 A And then we got together, I don't know, it was 18
4 years ago, and . . .

5 Q Where'd you go to school together?

6 A She went to Boonsboro and went to North High just
7 from my school playin' her school or walk-a-thons, or stuff
8 like that.

9 Q Now, you know you're here about a, a car crash that
10 happened in June of 2009, right?

11 A Yes.

12 Q What was your wife's personality like before that?

13 A Very, real outgoing, we would do about everything
14 together. Wasn't nothin' we wouldn't do together.

15 Q Like what?

16 A When we would mow the yard together, we'd plant her
17 flowers together, anything. She'd help me build walls.

18 Q Build walls?

19 A Build walls, we built a, uh, retaining wall, we got
20 a couple hills on the property, she build, helped me build
21 retaining walls.

22 Q When?

23 A Oh, I guess a year after we built the house.

24 Q How long --

25 A Nine --

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1 Q -- was that?
2 A -- that would have been like 2000.
3 Q And what did she do to do that?
4 A Pick up block and lay block.
5 Q Okay. I'm, I'm gonna', you mean like a cinder
6 block, like a --
7 A Like a --
8 Q -- (unclear - one word) block?
9 A -- cinder block, a 12 by 12 block, yes.
10 Q How much they weigh?
11 A Uh, 40 pounds maybe.
12 Q Did she do anything else to help you build the
13 wall?
14 A What's that?
15 Q Did she do anything else to help you build the
16 wall?
17 A Yeah, she would do anything, dig.
18 Q And what, what did Jackie like to do for enjoyment
19 before her car crash in '09?
20 A Her flowers and the garden. And, and she enjoyed
21 mowing the yard.
22 Q Before --
23 A And --
24 Q -- June --
25 A -- and riding the motorcycle.

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1 Q Oh, I'm sorry, I didn't mean to interrupt you.

2 A Okay, yeah.

3 Q Before June of '09 can you describe Jackie's garden
4 to the ladies and gentlemen of the jury?

5 A Her garden was probably a hundred by a hundred at
6 time, tomato --

7 Q Feet or yards?

8 A Huh?

9 Q Feet or yards?

10 A Feet, a hundred by a hundred feet. Tomatoes,
11 potatoes, onions, and then we would put probably another
12 half-acre to acre corn in.

13 Q And what kinds of things would Jackie do in the
14 garden before?

15 A She'd do everything. Wasn't -- it was everything,
16 from diggin' to plantin' to drivin' the tractor to waterin',
17 to pullin' the weeds.

18 Q Well, assume I don't know anything about gardening
19 and explain it to me.

20 A Well, plantin' stuff, like tomatoes and stuff.
She's the one that showed me more than I knew, 'cause she was
21 doin' it longer.

22 Q What kinds of physical things did she have to do in
23 the garden?

24 A Hoein', plowin', diggin', bending down pulling

1 weeds out.

2 Q And --

3 A And then you go to harvest it you gotta' pick
4 everything.

5 Q How many, how, how often did she work in the garden
6 before June of 2009?

7 A She, she worked almost every weekend at least eight
8 hours in the garden, and then everything evening she would
9 probably at least stick an hour, maybe two hours in it.

10 Q Now, since 2009, since this car accident in June of
11 2009 --

12 A Yes.

13 Q -- is anything different about Jackie's gardening
14 activities?

15 A Ah, it's no nowhere near the size it used to be.

16 Q Okay. You're referring to the size of the garden
17 itself?

18 A Size of the garden yes.

19 Q How, how has it changed?

20 A Well, I, I raised some flower pots up so now she
21 grows some of her vegetables right there off the deck so she
22 don't have to bend over and . . . it might be a smaller area
23 of flowers, might be 25 by 25 now is about what she plants.

24 Q So, it's a quarter of the size it was before?

25 A Yes.

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1 Q Uh, and the, the physical things that you talked
2 about her doing in the garden before June of 2009, does she
3 still do those things?

4 A She still does some of them, yes.

5 Q Like what?

6 A She still has, she still has to bend over and pull
7 stuff out, but I help her more than, I try to help her as
8 much as I can.

9 Q Can you, can you compare the way it is now the way
10 it was then?

11 A She, it was, it was normal, I mean, it was just a
12 normal everyday thing. Now, it is painful for her, I can see
13 it's painful for her.

14 Q When you say you can see it's painful, how?

15 A I just see, you don't even have to be near her, I
16 can just stand back, and if I look at her face I know she's
17 in pain. That's just how I know. And she will not bend down
18 as much.

19 Q You and Jackie have any grandkids?

20 A Yes, five, and one on the way.

21 Q So five until Monday, right?

22 A Yeah, until Monday, then six.

23 Q Then six?

24 A Yes.

25 Q Now, before June of 2009 -- I want to ask this the

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1 right way -- did you, did Jackie do stuff with the grandkids
2 before June 2009?

3 A Yes.

4 Q What kinds of things?

5 A Anything, everything, wrestle with 'em, play with
6 'em, I mean, now they was (sic) little, she'd do anything,
7 carry 'em. She loves her grandkids, I mean --

8 Q And --

9 A -- she's gonna' do everything a grandmother would
10 do.

11 Q How often would she be with the grandkids before?

12 A Shoo . . . we probably see the grandkids maybe once
13 or twice during the week and then every weekend we'd see 'em
14 for a while.

15 Q And has the frequency with which sees them changed?

16 A No, I ain't gonna' say that, no. The kids still
17 stop over about the same.

18 Q Are the visits the same?

19 A Yes, but --

20 Q The stuff you, the stuff she does the same?

21 A Well, no, not the stuff that she does.

22 Q What's different about it?

23 A Well, she'd take 'em for four-wheeler rides on the
24 four-wheeler or take 'em on the tractor, she don't do none of
25 that now. I do all that.

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1 Q Okay. And when you say take 'em on four-wheeler
2 rides . . .

3 A ATV, off road four-wheeler.

4 Q I'm from the city.

5 A Okay. A four-wheeler, like a motorcycle, but it's
6 got four wheels, dirt bike.

7 Q And she doesn't do that anymore?

8 A No, she won't ride that no more.

9 Q Do you know why?

10 A Yeah, I know why, 'cause it --

11 Q Why?

12 A -- bothers her back.

13 Q All right. How do you know that?

14 A 'Cause if she does it, the next day she won't do
15 nothin', she won't do nothin' at all. And she tells me about
16 it.

17 Q And you mentioned having a tractor?

18 A Yes.

19 Q And you, you had that tractor before June of 2009,
20 right?

21 A Yes.

22 Q Did Jackie use the tractor before June of '09?

23 A Yes.

24 Q How often and for what?

25 A For plowin' or tillin' the garden, she would use it

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1 for that. Help me out brush hoggin', mowin', mowin' fields,
2 mowin' the deck, use a mowin' deck. We have a potato plow,
3 we got a rock rake. She'd use all the attachments that would
4 go on it.

5 Q Does she still do all those things?

6 A No.

7 Q How much involvement does she have with using the
8 tractor now?

9 A She won't, she won't ride the tractor no more. It
10 does not have no (sic) suspension.

11 Q Can you explain what you mean by that?

12 A It don't have no give, it don't have no shock
13 absorbers on it. It's no give to it, it'd be like driving a
14 car with no shocks in it, I mean, you feel every bump. If a
15 man's on it eight hours even if a person don't have a bad
16 back you back feels sore at the end of the day.

17 Q You mentioned that, um -- well, did Jackie do any
18 yard work before?

19 A Yes.

20 Q Like what?

21 A She'd mow the grass, weed eat.

22 Q And, and now?

23 A Now, she won't ride the lawn mower, because it
24 don't have no suspension either. She won't use the weed
25 eater, 'cause it's too, too much of a (sic) object to hold it

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1 straight out. She will, I have a self-propelled push mower,
2 she will use that occasionally, just to help me out, and
3 it's, she don't really want to do it, but she's doin' it to
4 help me out.

5 Q Self-propelled, what does that mean?

6 A It has wheels that drives it. You don't have to
7 really do no effort, you're just walkin' behind it is what
8 you're doin'.

9 Q Now, you mentioned that, uh, Jackie enjoyed
10 motorcycling.

11 A Oh, yeah.

12 Q When, is that something you and she did together?

13 A Yeah, all the time.

14 Q Um, when'd you first start doing that?

15 A Soon as we got together. Eighteen years ago.

16 Q And I understand that some of the kids are older.

17 A Yes.

18 Q Um, do they ride motorcycles as well?

19 A Yes.

20 Q Um, can you describe your and Jackie and the
21 family's motorcycling activities before June of 2009?

22 A We would go to bike week at least every other year,
23 most of the time it would be Daytona to take the kids to
24 Disney World, and then we'd stay there for a couple days of
25 bike week and enjoy that together as a family.

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1 Q Did you take the bikes down?
2 A Take the bikes down, yes.
3 Q And what I mean by that is from here to there would
4 you ride the bikes --
5 A She would --
6 Q -- or would you trailer 'em?
7 A -- she would trailer 'em, I'd usually ride myself.
8 Q And since 2009 have you go to bike week, or has
9 she?
10 A No.
11 Q And how often did you ride together before?
12 A Probably (unclear - one word), every other weekend
13 in the summer time. I mean, May, probably started about May
14 it would be every other weekend.
15 Q And did Jackie have a motorcycle of her own?
16 A Yes, she does.
17 Q Um, what kind?
18 A An 883 Hugger.
19 Q That's a Harley?
20 A Yes.
21 Q And she rode that on her own before?
22 A Yes.
23 Q Does she use her motorcycle anymore?
24 A No.
25 Q Since June 26, 2009, to your knowledge, how many

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1 times has Jackie ridden her motorcycle?

2 A She ain't been on her bike.

3 Q Now, you have a motorcycle as well, right?

4 A Yes.

5 Q What kinda' bike you have?

6 A I got a Road Lot.

7 Q That's a Harley, too?

8 A A full dresser, yes.

9 Q And has Jackie ridden on your motorcycle since --

10 A Yes, yes, she has.

11 Q -- June 26, '09? I'm sorry, the way this works is
12 we're gonna' end up with an ugly record 'cause this is all
13 being recorded. It's hard, we, we can't talk at the same
14 time. I'm gonna' try (sic) to interrupt ya'.

15 A Okay.

16 Q Some, but sometimes I'll forget. So, go ahead and
17 finish.

18 A Uh . . .

19 Q You forgot what I asked ya' didn't ya'?

20 A Yeah, now I do.

21 Q How many times has Jackie been, ridden on your
22 motorcycle since June 26, '09?

23 A Four times.

24 Q Do you remember those four times?

25 A Yes.

1 Q Can you describe those four times to the ladies and
2 gentlemen of the jury?

3 A Uh, they would just be short rides. We would go
4 probably grab a bite to eat for lunch, go see my mom or dad
5 or go see her mom.

6 Q And can, what is it, what, what would prompt Jackie
7 to go on those motorcycle rides with you if anything?

8 A Be more of me wantin' her to go just to do it
9 again. I would just keep at her, and she would do it. She
10 likes doin' it, but she, her heart's in it, but she would go
11 with me for me. That's the only reason she would even hop in
12 the bike.

13 Q And one those, after those four occasions that
14 she's ridden on your motorcycle since June of 2009, um, were
15 you able to observe any ways in which that affected her?

16 A Yes.

17 Q Could you describe them?

18 A The, the very next day she would just lay on the
19 couch, and she would just tell me she was in pain.

20 Q Now, before the accident Jackie did household
21 chores and stuff, right?

22 A Yeah.

23 Q The ordinary chores people do.

24 A Yes.

25 Q What kind of things?

1 A Vacuuming, doin' dishes, everything a housewife
2 would do or a mother would do.

3 Q And since June 26, 2009 does Jackie still do
4 household chores?

5 A Yeah, she still does, we just all try to pitch in
6 though.

7 Q Um, has the amount or frequency or way she does
8 chores changed in any way since June of '09?

9 A Ye (sic), she, we don't clean as often as we used
10 to.

11 Q And, how about you, has your level of involvement
12 with any household chores changed since that?

13 A Yes, most definitely I've got more chores now to
14 do.

15 Q Like what do you do now that didn't have?

16 A I pick up the vacuum more often for her, and do the
17 dishes, uh, take the laundry up and down the steps usually.

18 Q Now, the, the date of this accident on June 26,
19 2009, at some point you found out about the collision?

20 A Yes.

21 Q How'd you find out?

22 A My wife gave me a call.

23 Q And what did she tell ya'?

24 A She told me she was just rear ended on 70.

25 Q And what'd you do after she called?

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1 A She told me to start heading down towards
2 Frederick, and she'd leave (sic) me know where she was at.

3 Q And did you meet her down there?

4 A Yes, I did.

5 Q What was her condition when you met her?

6 A Um, she was just shook up, told me she had a real
7 bad headache and everything felt like it was tinglin'.

8 Q And after you met her where did you go?

9 A Uh, I think we went directly home.

10 Q And how -- well, what time of day did you get back
11 up?

12 A I don't -- it was summer time, it was startin' to
13 get dark.

14 Q What did Jackie do at home that night?

15 A She complained about having a real bad headache and
16 just aching all over, having a tingling feelin' all over.

17 Q Did she sleep that night?

18 A No, she did not.

19 Q How do you know?

20 A She woke me up two or three times to tell me she
21 didn't know if something was wrong or not.

22 Q What about the next day? What, if anything,
23 happened the next day?

24 A I think -- I, I think we went to the doctor's the
25 next day.

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1 Q Okay. And when you say we, you mean you and her?

2 A Yeah, me and her.

3 Q And who drove?

4 A I drove.

5 Q And to Robinwood?

6 A Yes.

7 Q At the point in time when you drove Jackie to
8 Robinwood did, were you able to make any observations about
9 her physical condition?

10 A I just, when she tells me, when my wife tells me
11 somethin's hurtin' it's botherin' her. I, I just know. She
12 don't (sic) normally complain.

13 Q Now, are you aware of Jackie getting in a fender
14 bender in 2009 (sic), in 2005?

15 A Yes.

16 Q Do you know what car was involved of hers?

17 A No, I, I know that it was a hit and run.

18 Q No, no, do you know what car she was driving then?

19 A Yes.

20 Q What?

21 A The 2005 Honda Civic.

22 Q And after that collision in 2005 did you see the
23 Civic after that?

24 A Yes.

25 Q Did you see any damage to the Civic?

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1 A Yes.

2 Q Could you describe it to the ladies and gentlemen
3 of the jury, please?

4 A Just mainly the bumper was just a little bit
5 scratched up.

6 Q And do you know whether Jackie was injured in that
7 colli (sic), collision?

8 A No she wasn't.

9 Q How do you know?

10 A Well, she never said no more about it.

11 Q Do you know whether she went to the doctor or
12 anything like that?

13 A No.

14 Q Back in 2005 after, after that little accident did,
15 uh, did Jackie's activity, did Jackie's activities change in
16 any way?

17 A No.

18 Q And she, did she continue to do stuff she
19 ordinarily did?

20 A She went to the ball game the same night that the
21 accident happened, that little fender bender.

22 Q What do you mean the ball game?

23 A Baseball game for the kids.

24 Q Where's that?

25 A In Keedeysville.

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1 Q Where do they play?
2 A In, well that was at, uh, yeah, that would be in
3 Keedeysville --
4 Q Well --
5 A -- ball, ball field.
6 Q -- I guess that's one of those --
7 A Yeah.
8 Q -- lawyer things.
9 A Yeah.
10 Q Is there seating there at the field?
11 A What's that?
12 Q Was there seating at the field?
13 A Yes.
14 Q What kind?
15 A Just bleachers.
16 Q Your regular old metal bleachers?
17 A Yeah.
18 Q She sat on the bleachers?
19 A Yes.
20 Q What, what'd she seem like afterwards?
21 A Nothin' we got a (sic) order of French fries, like
22 we do every time. I mean, that's what it . . .
23 Q Did you notice any, anything unusual about her that
24 night?
25 A No.

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1 Q Or in the days or week after wards?

2 A No.

3 Q Now, are you aware of Jackie taking a fall around
4 Christmas time in 2007?

5 A Yes, I am.

6 Q What happened?

7 A I was not there. She said she slipped down about
8 two steps gettin' a box of I don't know what it was, maybe
9 Christmas bulbs, may, maybe somethin'.

10 Q And do you know if she hurt herself?

11 A She said she bruised herself, yes. She, she --

12 Q Do you know what part of her body?

13 A Her buttocks and her side.

14 Q And do you know if she got any medical treatment
15 for that?

16 A I believe she seen (sic) somebody.

17 Q Do you know how long after that -- well, were you
18 able to observe whether any, anything about her after the
19 fall?

20 A She was complainin' about it for two or three days
21 or somethin'. I told her to go see the doctor.

22 Q And did it --

23 A And that was about it.

24 Q -- to your knowledge did it persist?

25 A It was, wasn't, she just thought it was a muscle.

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1 Q And do you remember whether after that happened do
2 you remember whether she got okay or stayed the same or what?

3 A She was, yeah, she was fine then.

4 Q And did her activities change after that fall?

5 A No.

6 Q The things that you've des (sic) --

7 A We still rode the motorcycles.

8 Q -- the things that you've described she did those
9 things?

10 A Yes.

11 Q Now, do you remember Jackie goin' to see a doctor
12 at the request of the Defendant named Dr. McGrail?

13 A You're gonna' have to explain to me which doctors,
14 which doctor I don't know.

15 Q Do you remember Jackie going to a medical
16 examination at the request of the Defendant in this case?

17 A Is that the one in Washington?

18 Q I can't --

19 A I, I don't, I don't know.

20 Q Did you drive her to an appointment like that?

21 A I drove her, I drove her to one appointment I know
22 of, yes, for, um, an examination.

23 Q And did you go with her when she went in to see the
24 doctor?

25 A Yes, I did.

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1 Q And did she tell the doctor about that hit and run
2 in 2005?

3 A I, I believe she did.

4 Q Do you ever, do you recall ever having thrown away
5 any medications at your house?

6 A Yes I do.

7 Q Do you have any specific recollections about it?

8 A Yes I do. I've gotten --

9 Q Could you ex --

10 A I, I went --

11 Q Tell, tell the ladies and gentlemen of the jury
12 what you remember.

13 MR. GILLCRIST: Objection, relevancy, Your Honor. Is,
14 is he talking about his medications?

15 THE COURT: I'll, I'll give him a little leeway just
16 link it up.

17 MR. BRATT: It'll make sense in a second, Your Honor.

18 BY MR. BRATT:

19 Q Go ahead.

20 A I was a, I needed a cough drop or I don't even
21 know, maybe a Pepto Bismol out of the top cupboard. Well, I
22 went to pull it down, and I bet ya' 20 bottles of different
23 medicine fell on me. She was standing there. I raised heck
24 about it. I started lookin' at dates throwin' pills away
25 that was outdated. And that's basically what happened.

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1 Q Did Jackie say anything about that?

2 A Well, she don't, she always yells at me about
3 throwin' stuff away.

4 Q What do you mean she always yells at you about
5 throwing stuff away?

6 A Well she packs, she's a pack rat, I mean, she keeps
7 stuff.

8 Q Like what?

9 A Like all the checks, I mean, I've got checks from
10 2004.

11 Q Why?

12 A I don't know why. You have to ask her.

13 Q Have you tried to get rid of them?

14 A She just don't (sic) get rid of stuff.

15 Q Have you asked her (unclear - three words)?

16 A Yeah, but I gotta' throw the stuff away.

17 Q And does she, that, that, that's her habit I guess?

18 A That's just always a habit.

19 Q Besides the physical things that you've talked
20 about all ready, the difference between your wife before and
21 after, have you been able to observe any changes in her
22 demeanor or the way she, the way she is in person?

23 A Yeah, she ain't as, she ain't as happy as she was
24 at one time, no.

25 Q How do you know?

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1 A She just don't, she don't (sic) want to joke around
2 or carry on, there's no more of that. I mean, she still has
3 fun, don't get me wrong, I mean, she ain't depressed or
4 nothin' like that. We still have our moments, and that's,
5 but it ain't like it was before. It's what I can't do now.

6 Q And how do you, how do you feel about Jackie's
7 situation goin' forward?

8 MS. HOWARD: Objection.

9 THE COURT: Sustained.

10 BY MR. BRATT:

11 Q How, what, if anything, have you done to cope with
12 the way things are now?

13 MS. HOWARD: Objection.

14 THE COURT: Sustained.

15 MR. BRATT: May I approach?

16 THE COURT: Sure.

17 (Counsel approached the bench and the following
18 occurred:)

19 (Husher turned on.)

20 MR. BRATT: I don't know what the objection is for.

21 MS. HOWARD: The -- want me to say? Uh, the objection
22 was for, I though the question was how is "he" coping with
23 it.

24 THE COURT: Right.

25 MS. HOWARD: And I wasn't sure there's a consortium

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1 claim or not.

2 MR. BRATT: Well, there's not --

3 THE COURT: Right.

4 MR. BRATT: -- but the relevance of it, I think it
5 really is a relevance objection if I'm ri (sic) --

6 THE COURT: Right.

7 MS. HOWARD: Yeah.

8 MR. BRATT: -- wrong (unclear - two words) or anything,
9 but the relevance of it is is that part of Ms. Exline-
10 Hassler's damages are the way that that's affected her and
11 her life with her family and certainly the way that her
12 husband copes with her situation since the accident is part
13 of those affects, and part of, you know, the consequences of
14 the collision. So, the people (unclear - two words) she
15 lives with has emotional react (sic), interactions with every
16 day, you know, the, the way that that's changed their lives
17 is part of her damages, too, because it affects her life,
18 they're family.

19 THE COURT: She can tell us, testify as to that. That's
20 a more appropriate way to do that, since there's no
21 consortium claim. So.

22 (Counsel returned to the trial tables and the following
23 occurred:)

24 (Husher turned off.)

25 BY MR. BRATT:

1 Q Mr. Hassler, do you know how, how Jackie copes with
2 the way things are now?

3 MS. HOWARD: Objection.

4 THE COURT: If he knows he may answer. You can answer.

5 THE WITNESS: She tries to keep herself occupied with
6 other things, thinkin' about what the kids are doin' or the
7 grandkids. Um, through prayer, same way with me.

8 BY MR. BRATT:

9 Q What do you mean?

10 A Both a little bit. I mean, I ain't real religious
11 I'm a pent (sic), brought up Pentecostal and I believe that
12 God can heal anything and ask him to take it away from her.

13 MR. BRATT: I don't have anything further, Your Honor.

14 THE COURT: Cross examine, Ms. Howard.

15 CROSS EXAMINATION

16 BY MS. HOWARD:

17 Q Mr. Hassler, um --

18 A Yes.

19 Q My name's Anne Howard, I'm representing, um, Ms.
20 Sapp. I haven't met you before, you met a gentleman from my
21 office, uh, Nathan Postillion, maybe you met him, a few weeks
22 ago?

23 A Through, through my deposition?

24 Q Yes.

25 A Yes.

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1 Q All right. Um, so I just have a couple of
2 questions, 'cause from your deposition I know what you said
3 just about a week or two ago.

4 A Okay.

5 Q Now, just ask -- I just wanna' direct you to the
6 car accident. Uh, when you arrived, uh, tried to get to meet
7 Jackie, because traffic was --

8 MR. BRATT: Objection.

9 THE COURT: Overruled.

10 BY MS. HOWARD:

11 Q 'Cause traffic was so bad, correct?

12 A Yes.

13 Q In fact, you described the traffic that evening,
14 let's call it, when you tried to get to 70 west to meet your
15 wife as "terrible", correct?

16 MR. BRATT: Objection.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: Yes it, traffic was bad.

19 BY MS. HOWARD:

20 Q Terri (sic), terrible was your word --

21 A Yeah.

22 Q -- at the deposition, right? And, uh, when you did
23 see your wife when she got dropped off at the exit ramp,
24 that's what happened the tow truck driver dropped her off at
25 the exit ramp, uh, a little further west of where her

1 accident was, correct?

2 A Yes.

3 Q All right. And you asked your wife what happened,
4 correct?

5 A Yes.

6 Q And she told you how the, uh, that she got hit by
7 my client's car, and she also told you that a tractor trailer
8 almost hit her as well, correct?

9 MR. BRATT: Objection.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Answer? She told me she says everything
12 felt like it was in slow motion, Steve, I stopped. She said
13 cars behind me was goin' out and around me. This lane was
14 stopped and these two lanes was open. The next thing she
15 knew she was hit, and then she seen (sic) a tractor trailer
16 sliding by her.

17 BY MS. HOWARD:

18 Q Mm-hmm. And she told you the tractor trailer
19 almost hit her, correct?

20 A Yes.

21 Q And she also told you it was basically a big pile
22 up, correct?

23 A Sh, she said it started to be a pile up, yes.

24 Q All right. Now, um, speaking of driving, I just
25 wanted to double check one thing. I know you've told us

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1 you've been married to Ms. Exline-Hassler for six years, but
2 you guys have been basically dating and together for 18
3 years, correct?

4 A We have been living together for 18 years.

5 Q All right. And as I understand it, sir, in those
6 18 years if you're in the car with your wife you drive?

7 A I'm, I took that as if we was planning to go
8 somewhere, like in my truck or something, I drive. I prefer,
9 I prefer to drive. I ain't saying that she ain't never drove

10 --

11 Q All right.

12 A -- with me behind it.

13 Q But we --

14 A I know what I said.

15 Q You know that you did say --

16 A I know I made a mistake when I seen (sic) the
17 question, yes.

18 Q Okay. And you were asked basically three times,
19 the same question, are you telling me you've never ridden as
20 a passenger in a car with your wife? And you told us three
21 times, no, I've never been a passenger in a car with my, my
22 wife driving.

23 MR. BRATT: Could I, if you're referring to --

24 MS. ZOIS: Pages.

25 MR. BRATT: -- Your Honor --

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1 THE COURT: So.

2 THE WITNESS: I don't --

3 MR. BRATT: I just want to know where.

4 THE COURT: It would, if I may, give a page and line

5 cite.

6 MS. HOWARD: I'm happy to give a page.

7 THE COURT: Mm-hmm.

8 MS. HOWARD: And it's page, uh, 53, starting at line

9 eight, and your client, obviously, well, Mr. Hassler, your

10 client's husband knows what I'm talking about.

11 MR. BRATT: Oh, I just didn't --

12 MS. HOWARD: I --

13 MR. BRATT: -- I need, I just need to follow along.

14 BY MS. HOWARD:

15 Q Um, do you recall, sir?

16 MS. ZOIS: (Unclear.)

17 MR. BRATT: It's page 53.

18 MS. ZOIS: I'm there.

19 BY MS. HOWARD:

20 Q Page four, I mean, uh, page 53, line four, do you

21 recall us asking you, "How often would you say you drive in a

22 car with your wife?" And your answer was . . . "If me and my

23 wife is (sic) going anywhere I always drive." And then the

24 next question -- do you remember telling us that, sir?

25 A Yes, yes, I do remember.

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1 Q And then do you remember we said "So she doesn't
2 generally drive then?" And you said, "If me and her is (sic)
3 together I am driving." And then we asked again, "So can you
4 recall any time in the last several years that you, that
5 where you and your wife have gone somewhere that she has
6 driven?" And you said, "No." is that correct, sir?

7 A Yes.

8 Q All right.

9 A It is.

10 Q All right, now, with respect to, um, I know you
11 told us that you like to spend as much time with your wife
12 and she told us the same thing, she likes to spend as much
13 time as she can with you.

14 A Yeah.

15 Q And, uh, she told us about some of the activities
16 she liked, and what I remember is she's told us that she
17 loves couponing or couponing, however you say it.

18 A Yeah.

19 Q Do you do that with her, too?

20 A No, I don't, I, I hate the couponing.

21 (Chuckles.)

22 Q I was wondering about, but that is something that
23 she liked before the accident and she does continue to do
24 after the accident, correct?

25 A Yes.

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1 Q All right. And you also told us that, um, that you
2 have the six grandchildren? Is that correct?

3 A Well, I got five grandkids, yeah, I got one on the
4 way.

5 Q One, all right, uh, five. And did you tell us also
6 that the oldest one's 6-years-old?

7 A Now, yes.

8 Q All right. So, back in 2009, would it be fair to
9 say the oldest one was three or less?

10 A Probably, yes.

11 Q All right. And you're not taking grandkids under
12 the age of three dirt biking are you, ATV'ing?

13 A I've had my grandkids on the tractor riding on my
14 lap at age one.

15 Q But that's not an ATV vehicle.

16 A What?

17 Q That's not an ATV vehicle, is it? The, what you're
18 talking about the dirt bike?

19 A No, they rode on the four-wheeler at age one.

20 Q All right. All right.

21 A On my lap, yes.

22 Q All right. Now, before the accident, uh, you and
23 your wife and your family enjoyed camping, correct?

24 A Yeah, we camped some.

25 Q Okay. And the last time you'd been camping even

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1 before the accident was '05 or '06, correct?

2 A I don't, I can't remember dates.

3 Q But it had been year, uh, several years before the
4 car accident with my client that you had stopped going
5 camping?

6 A Yeah, with, with all the grandkids coming, yes, we
7 stopped.

8 Q All right. And, uh, you enjoyed fishing with your
9 wife, correct?

10 A Yes.

11 Q And e (sic), and even before the accident sometimes
12 when you would go fishing with your, um, with your wife she
13 might not even cast, she would just kind of enjoy spending
14 time with the family, correct?

15 A Well, she used, she used to fish. She did go with
16 me a good bit prior to the accident, because I would like to
17 walk crick (sic) beds.

18 Q Right.

19 A Well, now she don't (sic) wanna' walk crick (sic)
20 beds.

21 Q But she still comes with you fishing?

22 A She still goes fishing if I go to a pond or lake or
23 somewhere it's easy access.

24 Q All right. And you also told us that, um, did you
25 say you and your wife used to like to go to bike week?

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1 A Yes.

2 Q All right. Uh, and would that be the Fourth of
3 July bike week, Fourth, Fourth of July weekend bike week?

4 A Fourth of July week.

5 Q Well, which bike week would you go to?

6 A We would go to Daytona that would be March, last
7 week of February, March.

8 Q Last week of February, March.

9 A Then we, we usually go to South Carolina, which is
10 around Mother's Day.

11 Q Early May or mid-May?

12 A Yeah.

13 Q All right. And when you would go, even, even
14 before the accident, uh, Jackie would trailer her bike and
15 drive down, correct?

16 A She would trailer her bike, yes.

17 Q All right. Mean --

18 A Just so we had a way of gettin' the kids all there,
19 yes.

20 Q All right. And, um, when you were down at that
21 meeting with the doctor down in Washington --

22 A Yes.

23 Q -- uh, you remember that your wife told the doctor
24 that she, he asked her did you have any back pain before the
25 accident, correct?

1 A Yes.

2 Q And she told the doctor, the doctor down in
3 Washington that she didn't have any back pain before the
4 accident, correct?

5 A I can't recall, ma'am, what she said.

6 Q Do you remember telling us that at the deposition?
7 Page 40, 41, Counsel.

8 A I would say, I mean, she, she never, she never
9 complained to me about her back before. So, I'm, I'm gonna'
10 say no.

11 Q All right. But what I'm asking is, is that what
12 you, did you hear her say that to the doctor?

13 A I believe that's what I heard, yes.

14 Q All right. Now, you had told us about in 2005 your
15 wife had been involved in a car accident, she told you about
16 it, correct?

17 A Yes.

18 Q And you remember that night vividly, you were able
19 to tell us exactly what you guys did that night, you went to
20 a baseball game in Keedeysville, correct?

21 A Yes, 'cause I'm --

22 Q And you remem (sic) --

23 A -- I had to leave work early to get the kid to the
24 baseball. She was supposed to do it.

25 Q So that was just the one time that you ever had to

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1 that?

2 A No, it ain't the one time that I had to do it.

3 Q All right. All right. But you, at nonetheless,
4 you remember that game very vividly, correct?

5 A Because yes, because she was hit and run.

6 Q All right.

7 A She was made about the girl leaving the scene of
8 the crime.

9 Q All right. When you talk about your gardening, um,
10 or the corn and all, you've told us at the deposition, uh, or
11 is it correct, sir, that with respect to the acre full of
12 corn, even before the accident, you did that part of the
13 gardening?

14 A She, yeah, I did, I did most of that part, but she
15 would help with anything.

16 Q Okay. All right. And, um, after the accident
17 you're, you said you pots up so your wife is able to continue
18 to garden on the, in the pots, correct?

19 A Yes.

20 Q All right. And you still, she still gardens, the
21 size of her garden may be smaller, but she's still gardening,
22 correct?

23 A She still gets to do some, yes.

24 Q All right. And, um, you know that your wife has
25 had other health issues, other than her back, after the

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1 accident, correct?

2 A I didn't, other than her arm problems, and she had
3 a hysterectomy, that's the only thing.

4 Q Well, she know she had arm problems, correct?

5 A After --

6 Q You just told --

7 A -- the accident.

8 Q -- yeah. You know she had a surgery on her right
9 arm --

10 A Yes.

11 Q -- just last year, right?

12 A Yes.

13 Q And you know that caused her pain, don't you?

14 A Yes.

15 Q And you know that limited her activities, don't
16 you?

17 A Yes.

18 Q All right. Now, with respect to, um, uh, her
19 ability to do chores, that limited her ability to do chores
20 as well, correct?

21 A Yes.

22 Q All right. And I know you've told us that your
23 chores have had to increase, but you don't really mind
24 picking up a little help, if it helps your wife, do you, sir?

25 A No, I'd do anything for my wife.

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1 Q All right. Now, with respect to, um, the last
2 thing I really wanted to ask you about, your wife's pain
3 medication you don't really know the cycle that she takes,
4 uh, when she takes medication, you told us that, right?

5 A Yeah, I don't know her cycles. I probably can't
6 even tell you what medicine she takes.

7 Q All right. Fair enough. And you can't, that would
8 be going all through time you don't really know which
9 medicines she took when for what, correct?

10 A I don't know what medicine was what.

11 Q All right. And, um -- (To the Court) Could the
12 Court's indulgence one second.

13 THE COURT: Mm-hmm.

14 MS. HOWARD: Thank you. Nothing further, thank you,
15 sir.

16 THE COURT: Mr. Porcarelli.

17 MR. PORCARELLI: Thank you.

18 CROSS EXAMINATION

19 BY MR. PORCARELLI:

20 Q Hi, Mr. Hassler, how are you?

21 A Hi.

22 Q Good to see you again.

23 A Yeah.

24 Q I'll try to be brief. Um, you went down to see Dr.
25 McGrail in Washington, D.C. --

1 A Yeah.
2 Q -- back in December, I think?
3 A I, I guess, I don't . . .
4 Q Okay. And when you were there at Dr. McGrail's
5 office you actually got to go into the examining room, right?
6 A Yes.
7 Q And you watched what Dr. McGrail had your wife do
8 in terms of movements and standing up, sitting down --
9 A Yes.
10 Q -- bending, twisting, right?
11 A Yeah.
12 Q And you also got to hear the, uh, dialogue between
13 your wife and Dr. McGrail, questions and answers?
14 A Yes.
15 Q Okay. Uh, I wanna' ask you something that we
16 talked about in your deposition, okay?
17 A Okay.
18 Q Did Dr. McGrail ask your wife whether she had ever
19 been involved in any accident or incidents where she may have
20 injured any part of her spine before the accident?
21 MS. ZOIS: Page, Counsel.
22 MR. PORCARELLI: I'm sorry.
23 MR. BRATT: Forty-one.
24 MR. PORCARELLI: Uh, page 41.
25 BY MR. PORCARELLI:

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1 Q Do you remember doctor, do you remember me asking
2 you that question in the deposition about Dr. McGrail --

3 A Yes.

4 Q -- asking that question to your wife?

5 A I don't recall that.

6 Q Would it help if I showed you your testimony?

7 A Yes, if you would.

8 MR. PORCARELLI: May I approach?

9 THE COURT: You may.

10 MR. PORCARELLI: And again, Counsel, that's page 41 at,
11 uh, line four.

12 BY MR. PORCARELLI:

13 Q And we are right here. Read the question and the
14 answer to yourself and let me know when you're ready. (Brief
15 pause.) So, let me -- have you had a chance to read it?

16 A Yeah, yeah.

17 Q Okay. So, does reading that help refresh your
18 recollection as to, um, what you heard Dr. McGrail ask about
19 whether your wife had ever been involved in any accidents or
20 incidents where she may have injured any part of her spine
21 before the car accident?

22 A I don't know if she, if he asked that, to tell you
23 the truth, I believe she asked if she had any back pain
24 prior.

25 Q Okay. Well, why don't we, why don't we do it this

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1 way, why don't you read your question and your answer out
2 loud under oath, and we'll see --

3 A Which one you want me to read here?

4 Q Page 41.

5 A Yeah.

6 Q And if you could start at line four.

7 MS. ZOIS: Go to (unclear - four words).

8 MR. BRATT: I will.

9 MS. ZOIS: Okay.

10 MR. BRATT: Your Honor, uh, objection, if I may. For
11 the doctor complete this I would ask that we begin, uh --
12 well, I'll go back and do it at the end, how about that?

13 BY MR. PORCARELLI:

14 Q So, if you, if you could read --

15 A "Did he ask whether she ever had involved in an
16 accident a incidence where she may have been injured part of
17 her spine before the car accident?" I said, "Yes."

18 Q Okay. And what was your wife's answer to that
19 question that he asked her?

20 A My, my wife's answer was, "No."

21 MR. PORCARELLI: I don't have anything further.

22 THE COURT: Mr. Bratt, redirect.

23 REDIRECT EXAMINATION

24 BY MR. BRATT:

25 Q Did Dr. McGrail ask Jackie to describe to him the

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1 type of pain she was having at the examination?

2 A Yes.

3 Q What'd she say?

4 A It was very, very brief. She was saying she was
5 having problems with her lower and upper back.

6 Q And this is at that day, right?

7 A At that day.

8 Q And did he ask her if she had pain in her back
9 before her car accident?

10 A Yes, she did.

11 Q And what did she say?

12 A She said, "No."

13 Q Thank you.

14 THE COURT: And thank you, Mr. Hassler, you may step
15 down.

16 MR. GILLCRIST: Your Honor.

17 THE COURT: Counsel, yeah, approach, I said approach,
18 let's --

19 MR. BRATT: Oh, okay.

20 THE COURT: -- approach now (chuckles).

21 MR. HASSLER: Am I good to go?

22 THE COURT: You're good to go.

23 (Counsel approached the bench and the following
24 occurred:)

25 MR. BRATT: What I was going to ask, Your Honor --

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1 (husher turned on) -- is we don't expect him to be recalled.

2 THE COURT: Oh.

3 MR. BRATT: If he'd like to stick around can he?

4 THE COURT: So, I'll just check with Counsel.

5 MR. BRATT: Are you going to work, Steve?

6 MR. HASSLER: Yes (unclear - three words.)

7 MR. BRATT: Okay, never mind then.

8 THE COURT: Okay.

9 MR. HASSLER: (Unclear - three words) I'm gonna' try to
10 make it back (unclear - approximately five words.)

11 MS. ZOIS: But we should --

12 MR. BRATT: He has to work.

13 MS. ZOIS: No, I know, but if he wants to come back
14 (unclear - three words) it might be important.

15 THE COURT: First question is, um, do you want to check
16 to see whether your witness is here, your other witness is
17 here?

18 MS. ZOIS: That's a great idea.

19 THE COURT: Um, it's 20 of if --

20 MR. BRATT: (Unclear - two words.)

21 MS. ZOIS: I'll go find out, I'll go see. May I, may I

22 --

23 MR. BRATT: Sorry.

24 MS. ZOIS: -- be excused for moment, Your Honor?

25 THE COURT: Yeah, sure. Um, and if she's not here then

1 we decide whether we give them an early lunch break or not.

2 What time is the doctor supposed to be here?

3 MR. GILLCRIST: He's going to be in the afternoon, but
4 don't forget, we have the Plaintiff, too --

5 THE COURT: Yeah.

6 MR. GILLCRIST: -- to testify.

7 THE COURT: Exactly.

8 MR. GILLCRIST: And, uh, our preference, honestly, would
9 be to put our Defense case on in the right order.

10 THE COURT: Right.

11 MR. GILLCRIST: So, I think if we have time to put on a
12 witness in, and the person is not here I would have no
13 objection to beginning with her and then maybe taking the
14 other witness out of turn.

15 MR. BRATT: Uh, here's how I feel about that, Your
16 Honor. We were told that Dr. London was expect at 10 o'clock
17 this morning. In fact, it's kind of a funny story. When I,
18 when I left he had to give me a bill for his deposition time,
19 and he gave me a follow up appointment for the 24th at 10:00
20 a.m. on the paper he had, I mean, we were told he was coming
21 here today at 10:00. It's been represented to us as he's
22 been available all day. We arranged our witness, planned our
23 strategy and put together the order of our case based upon
24 those representations. We would very much object to putting
25 Ms. Exline-Hassler on for partial testimony and breaking it

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1 up.

2 THE COURT: We're going to move this case through,
3 because we only have this jury cleared through tomorrow, and
4 the way we're goin' it's --

5 MS. ZOIS: She's not here, Your Honor, she said she'd be
6 here around noon. Um, I can check my phone, because she was,
7 she's pretty good about texting me, um, but maybe if we took
8 an early lunch and then put her on right after lunch?

9 MR. BRATT: We don't want to break up the Plaintiff over
10 20 minutes, Your Honor.

11 THE COURT: What I'll do is I'll go ahead and break for
12 an early lunch. We'll resume at 12:30 --

13 MS. ZOIS: Perfect.

14 THE COURT: -- if your witness isn't here we're gonna'
15 start with the Plaintiff.

16 MR. BRATT: We understand.

17 MS. ZOIS: Okay.

18 MR. GILLCRIST: Thank you, Your Honor.

19 THE COURT: Okay?

20 MS. ZOIS: Understood, Your Honor.

21 MR. PORCARELLI: Thank you, Your Honor.

22 MS. ZOIS: Thank you, Your Honor.

23 THE COURT: Mm-hmm.

24 (Counsel returned to the trial tables and the following
25 occurred:)

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1 (Husher turned off.)

2 THE COURT: Folks, as you know, this little bit of snow
3 has kind of created a little consternation. We have the
4 witness coming, but is not going to be here for a little
5 while. So what we're going to do is take an early lunch
6 break so that, rather than have you sit around and then take
7 another lunch break. Um, so I'm gonna' excuse you for now,
8 be back downstairs a little earlier than usual at 12:30.
9 We're gonna' shoot to try to start it to 12:30 and then to,
10 to roll on through the afternoon is what we're doing. So a
11 little bit of snow creates consternation for everybody. But
12 I will excuse you from here, be back downstairs like I said
13 in about, uh, 45 minutes and, uh, hopefully we'll roll at
14 12:30.

15 (Jury excused from the courtroom.)

16 MR. PORCARELLI: Your Honor. Your Honor, I have
17 something very brief. I've hesitated to bring it up to the
18 Court today. Um, and I know this is your courtroom, and I
19 mean no disrespect by bringing this up. I appreciate
20 everybody's friendliness out there compared to some other
21 places I go to, um, so please don't misinterpret what I'm
22 raising, but I think when the jury's in the box it would be
23 fair to everyone on both sides of the table if we address
24 witnesses by their proper names and titles. When we start
25 dropping first names, Jackie, Steve, Steve and Jackie.

1 THE COURT: Mr. and Mrs., correct.

2 MR. PORCARELLI: Um, I just think that we all understand
3 how that can get a leg up, and we're all here to do the best
4 for our clients, and I respect that, but it would, I would,
5 at this point I think I've been pretty good sittin' on my
6 hands with it. I know we're gonna' get to Ms. Exline-Hassler
7 at some point. I expect that, to the extent that they can do
8 it, they probably want to get her on Jackie this basis with
9 the jury. I would ask that if Your Honor's inclined to
10 entertain my request that we could use titles in the
11 courtroom.

12 MR. BRATT: (Coughing.) Not (unclear - two words),
13 sorry, I almost choked, whatever instructions the Court
14 gives.

15 THE COURT: So. We do have a tendency to be very
16 informal, um, as a society and I think the courtroom is a
17 place where formality should be appropriate. So, I would
18 appreciate --

19 MR. BRATT: Understood, Your Honor.

20 THE COURT: -- Mr./Ms. from this point --

21 MR. BRATT: It's --

22 THE COURT: -- the Court doesn't like to step on toes
23 about doing that unless someone raises it as an issue, or if
24 the Court feels sometimes it's being done in a demeaning way,
25 which has not been the case, which is why the Court has not

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1 taken an affirmative action (unclear - one word). But the
2 request has been made, and it is a reasonable request.

3 MR. BRATT: I, I have nothing to say to that.

4 THE COURT: So.

5 MR. GILLCRIST: Thank you, Your Honor.

6 MR. PORCARELLI: Thank you, Your Honor.

7 THE CLERK: All rise.

8 (Whereupon, from 11:41 o'clock, a.m. until 12:38
9 o'clock, p.m. a luncheon recess was taken.)

10 (Jury not present.)

11 THE CLERK: All rise.

12 THE COURT: And good afternoon, everyone.

13 MS. ZOIS: Good afternoon, Your Honor.

14 THE COURT: Please be seated. We're back on the record
15 in the Exline-Hassler matter. And are we ready for the jury?

16 MS. ZOIS: Yes, Your Honor.

17 (Jury entered the courtroom.)

18 THE COURT: And good afternoon again, everyone. Note
19 for the record, all of our jurors are present.

20 MS. ZOIS: Wonderful. Thank you, Your Honor. Um, may
21 Plaintiff call the next witness, Your Honor?

22 THE COURT: Please do.

23 MS. ZOIS: Thank you, Your Honor. We would call Sharon
24 Hamilton. Your Honor, may I move about the courtroom?

25 THE COURT: I'm sorry?

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1 MS. ZOIS: May I move about the courtroom, Your Honor?

2 THE COURT: Certainly.

3 MS. ZOIS: Thank you, Your Honor.

4 THE COURT: When you come on up, Ms. Hamilton, and come
5 up this ramp, the witness stand is over there.

6 SHARON HAMILTON,

7 a witness produced on call of the Plaintiff,
8 having first been duly sworn, was examined and
9 testified as follows:

10 MS. ZOIS: May I proceed, Your Honor?

11 THE COURT: You may proceed.

12 MS. ZOIS: Thank you.

13 DIRECT EXAMINATION

14 BY MS. ZOIS:

15 Q Um, good afternoon, Ms. Hamilton, how are you
16 today?

17 A Fine, how are you?

18 Q Wonderful. Can you give us your full name and
19 current business address, please?

20 A Okay. Sharon Hamilton is my name, uh, the address
21 is 799 Cromwell Park Drive, Glen Burnie, Maryland 21061.

22 Q And what is the name of your employer?

23 A Um, the American Postal Worker's Union Health Plan.

24 Q How long have you worked there?

25 A Twenty-five years.

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1 Q And what do you do there?
2 A I'm the applications development manager.
3 Q Can you tell us what it means? What your job title
4 means, what you do?
5 A Um, I am over the group that maintains the
6 software, does MIS reporting, and maintains our business
7 application system.
8 Q Okay. I'm still not sure what you do. I'm sorry,
9 no offense.
10 A (Chuckles.)
11 Q What do you do on a day by day basis?
12 A Uh, we support the plan, the health plan by
13 maintaining the applications that the health plan uses to do
14 business.
15 Q And when you say the applications, are they the
16 computer applications?
17 A Yes.
18 Q Okay. Thank you. And do you know the Plaintiff,
19 Ms. Jacqueline Exline-Hassler?
20 A Yes, I do.
21 Q And how is it that you know the Plaintiff in this
22 case?
23 A Uh, she has been an employee of the health plan
24 for, I believe, about 15 years. And in 2006 she became, um,
25 one of the employees in my group.

1 Q And how many employees do you have in your group?

2 A There are a total of nine.

3 Q At some point did you -- you said in 2006 you
4 became her supervisor?

5 A Yes.

6 Q Okay. And can you tell us how that came about?

7 How was it that Jackie came into your group in 2006?

8 A We were, at the time we had just installed a new,
9 uh, claims processing application system, and, uh, she had
10 been very involved with the testing and training when she was
11 with the QA group. Uh, at that time I was promoted and she
12 came into my position, which was an applications specialist,
13 or now being called a business analyst.

14 Q And who hired her and put her in your old position?

15 A I did.

16 Q Currently, um, how far away is your office from
17 where Ms. Jacqueline Exline-Hassler's office is located?

18 A Um, maybe 30 feet, 40 feet.

19 Q And can you describe how the office is situated?

20 Do you have an office with a door, where does she sit, what
21 can you see, that sort of thing?

22 A Okay. I'm in an office that's basically around the
23 corner from, um, uh, cubicles, open cubicles where most of my
24 staff sits. So, I can't, unfortunately, I can't see anybody
25 unless I get up and go around the corner.

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1 Q And where, um, the Plaintiff sits what, where, what
2 is she sitting in?

3 A She's sitting in an, an open cubicle.

4 Q Now, I'm going -- (To the Court) may I approach the
5 witness, Your Honor?

6 THE COURT: You may.

7 BY MS. ZOIS:

8 Q I'm gonna' show you what's been marked for
9 identification as Exhibits 41, leave slips, Exhibit 40, uh,
10 I'm sorry to the 40 leave slips, Exhibit 41 daily leave
11 slips, Exhibit 42 performance evaluation and Exhibit 43
12 yearly summaries, and, um, if you'll -- I'm gonna' ask you
13 some questions about those in a minute.

14 A Okay.

15 Q But as far as the, um, we'll start with the
16 performance evaluations.

17 A Mm-hmm.

18 Q Um, do you perform performance evaluations for the
19 members of your group?

20 A Yes.

21 Q And are the performance evaluations done at the
22 conclusion of every year?

23 A Yes, uh, in February be, between the end of January
24 and the end of February is typically the review period. I, I
25 do the review initially, it goes to the division manager and

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1 then ultimately to the, um, CE, COM, or the chief operating
2 manager.

3 Q And are these, uh, performance evaluations made or
4 created at or around the time of the evaluation?

5 A Yes.

6 Q And are they kept in the ordinary course of
7 business at your employer's office?

8 A Yes.

9 Q And are they intended to be kept and retained?

10 A Yes.

11 Q All right. Um, back, uh, before June 26 of 2009
12 was Ms. Jacqueline Exline-Hassler in your group?

13 A Yes.

14 Q And back before June 26 of 2009 were you her
15 supervisor?

16 A Yes.

17 Q Can you describe for the ladies and gentlemen of
18 the jury, um, Ms. Jacqueline Exline-Hassler's work
19 performance from the time you knew her leading up to June 26,
20 2009?

21 A Um, Jackie was very, um, she's very bright, so she
22 would grasp the, the jobs that we were trying to do and she
23 would dive right in, spend the hours if it was, if it was
24 time, she had no problem with putting in hours and hours of
25 time, as well as, um, innovative ways to overcome, uh,

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1 business problems. She came with a strong set of skills and
2 adding the, the resources that we were able to give her she
3 was able to, to tackle a lot of difficult jobs.

4 Q How would you describe her, um, reliability and
5 dependability before June 26, 2009?

6 A Very good.

7 Q How would you describe her ability to focus before
8 June 26 of 2009?

9 A Very good.

10 Q Can you describe for the ladies and gentlemen of
11 the jury what Jackie's position entails, what does she have
12 to do on a day-to-day basis, how detail oriented is it, how .
13 . .

14 A Um, we manage a, uh, health insurance company for
15 140,000 lives, and, um, we do that from the application
16 submission through the check going out. And all of that, uh,
17 all of the detail of that setting up the, the, um, benefit
18 plans, maintaining those benefit plans, um, interacting with
19 Medicare, all of that is in Jackie's position to know that,
20 to be able to understand it, and to coordinate with the
21 business users and the IT group so that there's some
22 intermediary there that can talk the language that the IT
23 group needs to program with and the business u, u, uh, unit
24 needs to understand what they can get out of the business,
25 out of the IT group. So, as an applications development or

1 applications specialist that's her job to understand the
2 applications, how they interact with what the business group
3 needs and then to be able to go back to the applications
4 developers and translate that. So, that's one aspect of what
5 she does.

6 Q Before June 26 of 2009 did, how often did you see
7 Jackie Exline-Hassler, Ms. Exline-Hassler?

8 A What was the date again?

9 Q Before June 26 of 2009 how often did you see Ms.
10 Jacqueline Exline-Hassler before that date?

11 A (Unclear - one word) --

12 Q How frequently?

13 A All day, every day. Not on the weekends, unless we
14 were working weekends, but all day long.

15 Q And would she work weekends before June of 2009?

16 A Yes we did.

17 Q Would she work late nights before June of 2009?

18 A Yes she did.

19 Q Would she work from home before June of 2009?

20 A Quite often.

21 Q Can you, uh, describe her energy level and
22 personality before June 26 of 2009?

23 A Um, yeah, she was, um, like almost a super person
24 (chuckles), you know, she worked hard in the office and then
25 she would leave the, the office and she had a very full life

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1 outside of the office, um, and we teased about how she would
2 go home and, you know, move mountains we, we would say, but
3 she gardened --

4 Q What do you, I was going to say what do you mean by
5 the moved mountains part?

6 A She, she gardened, she helped her husband build
7 walls and she was very, uh, energetic, very focused, uh, very
8 high energy.

9 Q And what, if anything, do you know about, um, the
10 Plaintiff's, um, hobbies regarding motorcycle riding?

11 A I knew that rode. She, since I've known her I
12 think she's had two bikes. They took trips to ride. So,
13 she, she did a lot of that. Her family does that.

14 Q Can you tell us about her commitment to her job,
15 her level of commitment to her job before June of 2009?

16 A Um, 120 percent, 130. She was very, I would say
17 she was just as committed as I was, so we, we took care of
18 the things that we had to take care of.

19 Q Did you trust her to lead large projects before the
20 cra (sic), oh, before June of 2009?

21 A Yes.

22 Q And did you do, uh, a performance evaluation of her
23 in June of 2009?

24 A Yes.

25 Q Can -- or, I'm sorry, for -- let me rephrase that.

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1 Did you do a performance evaluation of her for the year
2 before June of 2009, so that would the 2000 (sic) --

3 A 2008.

4 Q Yes, correct.

5 A Yes I did a 2008 eval.

6 Q And before you in Exhibit Number 42, if I could
7 direct your attention to, I believe, it's page 45, and (To
8 the Court) as a business records exception I'd like to
9 publish it to the jury on screen while the witness is
10 testifying about it.

11 MR. GILLCRIST: It hasn't been introduced yet.

12 THE COURT: Did you, why don't you --

13 MS. ZOIS: I'm not, just demonstrative, Your Honor, I'm
14 not use, I'm not moving it into evidence, I'm using it as a
15 demonstrative, just like the March 26, 2008 billboard.

16 THE COURT: As a demonstrative exhibit.

17 MR. GILLCRIST: Thank you.

18 THE COURT: That's fine.

19 MS. ZOIS: Thank you, Your Honor.

20 BY MS. ZOIS:

21 Q And just let me know, Miss Sharon Hamil (sic), uh,
22 Ms. Hamilton when you're there.

23 A Okay.

24 Q Are you with me?

25 A Yep.

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1 Q Okay. Great. Uh, in -- now, first, before we get
2 to, I wanna' focus specifically on the dependability portion
3 of the evaluation, um, there's several different portions of
4 the evaluation, is that fair to say?

5 A Yes.

6 Q It covers a lot of different areas?

7 A Aspects of her, of her performance, yes.

8 Q Directing your attention to just the dependability
9 evaluation in 2008, um, and before I ask you any specifics
10 about it, can you tell the ladies and gentlemen of the jury
11 about the ratings, the one, the two, the three, the four and
12 the five.

13 A Um, yes, generally, um, you would expect for an
14 employee to fall within the at least the generally met
15 expectations for the position, uh, which is the mid-point.
16 If you rate them higher, and, and this is just the
17 environment of the APW Health Plan, but if someone is rated
18 higher than a three then the, uh, person rating them has got
19 to be able to substantiate why they feel that they are better
20 than average. So, and then, you know, really nobody gets a
21 five.

22 Q Okay. So, the five's on there, but, you know, it
23 doesn't happen.

24 A Yeah, you can, you, oh, there's a few fives
25 sprinkled here and there, but you, you've gotta' be like

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1 super, super human or something. I don't get any fives.

2 Q Okay. (Chuckles.) And how about, how difficult,
3 and I understand it's based on your explanation, um, the
4 threes, the general meeting expectations level.

5 A Yes.

6 Q And how hard is to get a four?

7 A It's, you, you've got to be consistently above
8 average, I mean, like day in, day out, and way above what you
9 would expect for the position. We expect for our employees
10 to be at work, we expect for them to be focused and work
11 diligently. So, if someone gets something above a three then
12 that means that they're (sic), they've superseded those
13 expectations consistently.

14 Q And what about a two is it, how, what's a two mean?

15 And --

16 A Um --

17 Q -- do you have to work hard to get a two? Or how
18 does that work?

19 A Well, a two means that your con (sic), pretty much
20 consistently falling below the average, below what the ex
21 (sic) general expectation is for an employee.

22 Q All right. Directing your attention specifically
23 to, um, Ms. Jacqueline Exline-Hassler's, um, performance
24 evaluation during the time period of 2008 -- (To the Court)
25 and, Your Honor, may I go, I'm gonna' grab my calendar if

1 that's okay?

2 THE COURT: Mm-hmm.

3 MS. ZOIS: Thank you.

4 BY MS. ZOIS:

5 Q And could you, um, tell the ladies and gentlemen of
6 the jury what Ms. Jacqueline Exline-Hassler's evaluation was
7 for the time period of the entire year, 2008? And I believe
8 it's on page 35.

9 A That's the depend (sic), the dede (sic), mm --

10 Q I'm focusing on the dependability.

11 A The, the dependability section?

12 Q Yes.

13 A Um, sh (sic), her evaluation reflects, one, two,
14 three, four, five four's and two three's.

15 Q And can you read for us the narrative portion of
16 her performance evaluation from her 2008 dependability
17 portion of her performance evaluation?

18 A Yes. "Jackie is very reliable and dependable
19 requiring minimal follow up. Her position requires that she
20 be flexible and resourceful. It is a rare week that Jackie
21 doesn't work from home to ensure that projects remain on
22 schedule. She regularly takes the initiative to complete
23 research, verify processes and report back to the benefit of
24 the plan. She uses the internet and other resources to
25 verify information needed to perform her job."

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1 Q And I'm not going to just focus on this page, but
2 can you tell us how many other four's she got and other areas
3 on this page?

4 A Just, um, a couple it looks like, no, about four
5 others.

6 Q And is it fair to say that she got four's in other
7 areas in the performance evaluation --

8 A Mm-hmm.

9 Q -- for the 2008 year?

10 A Yes.

11 Q Okay. Um, directing your attention to the exhibit
12 in front of you of the, uh, Exhibit Number 43, and, um, those
13 are the yearly summaries of leave and I just want ask you
14 are, are those reports that are generated within your office?

15 A Yes.

16 Q And are they made at or, or at someone's request
17 the report can be generated, is that correct?

18 A Correct.

19 Q And they're kept in the regular course of business
20 at your office is that right?

21 A Yes.

22 Q And they're intended to be retained as data at the
23 office that someone can go back and look at it if that's
24 necessary, is that correct?

25 A Yes.

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1 Q All right. I want to direct your attention to --

2 MS. HOWARD: Excuse me, Counsel, is that, uh, this --

3 BY MS. ZOIS:

4 Q -- Ms. Hassler's 2008 --

5 MS. HOWARD: -- I just don't know what 43 is.

6 MS. ZOIS: The (unclear - three words).

7 MS. HOWARD: Is that what this is?

8 MS. ZOIS: Yes.

9 MS. HOWARD: Okay, thank you. Thank you.

10 BY MS. ZOIS:

11 Q I just want to direct your attention to Ms. Exline-
12 Hassler's 2008 yearly summary and ask you if you could pull
13 that out and take a look at it. The 2008 begins on page
14 seven I believe of the exhibit.

15 A Yes.

16 Q And can you tell the ladies and gentlemen of the
17 jury how much sick leave, uh, she used in 2008, how much sick
18 time did she take?

19 A None.

20 Q Directing your attention to specifically the second
21 page where it says, it's designated V-A-C-A-L.

22 A Mm-hmm.

23 Q And there's a date there 3/26/2008?

24 A Right.

25 Q In order to take a day off with that designation is

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1 that something that somebody has to tell you in advance?

2 A Yeah, that's scheduled leave.

3 Q Okay.

4 A It's scheduled annually.

5 Q Okay. And then for, on the first page with the
6 designation A-D-M-I-N are those dates that the office is
7 closed?

8 A A, yes for some administrative leave purpose.

9 Q Okay.

10 A Generally bad weather.

11 Q Um, directing your attention now to the 2009
12 performance evaluation, and the 2009 performance evaluation
13 is located at page 45.

14 A Okay.

15 Q Are you, are you there?

16 A Mm-hmm.

17 Q Okay, great. Um, can you tell us how many four's
18 Jackie, uh, Ms. Plaintiff, Exline-Hassler got in, uh, the
19 dependability section in 2009?

20 A None.

21 Q And can you read for the jury, um, the, at the end
22 of the paragraph beginning with, um, "...Jackie was seriously
23 injured this evaluation."

24 A "Jackie was seriously injured this evaluation
25 period and has to take significant leave for medical care.

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1 But even through feeling bad she has continued to take on
2 responsibilly (sic), responsibilities and somehow seeing them
3 through. On more than one occasion she has been told to take
4 care of herself first."

5 Q And jumping ahead to the performance evaluation
6 done in 2010, which I believe is in the dependability
7 department found on page 55 of the packet before you.

8 A Yes.

9 Q Can you tell us how many fours she got in 2010?

10 A None.

11 Q Did she get any two's that year?

12 A Yes, she did, one.

13 Q And can you, uh, tell us what the comment was from
14 that year?

15 A "This past year Jackie has been out on F-M-L-A and
16 sick leave because of a back injury. While Jackie was at
17 home she logged into the system to provide assistance to the
18 health suite and (unclear - one word) the teams."

19 Q And moving forward now to the 2011 evaluation.

20 A Mm-hmm.

21 Q Under the dependability part, portion, which is on
22 page 65.

23 A Mm-hmm.

24 Q Can you tell us how many four's Jackie got in 2011?

25 A None.

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1 Q Can you tell us how many two's she got in 2011?

2 A Two.

3 Q And can you tell the ladies and gentlemen of the
4 jury what the comment section was for 2011?

5 A "Jackie's depenalent (sic), dependable in both
6 projects and day-to-day assignments. Her one weakness is her
7 desire to help everyone on their issues while letting her own
8 work wait. Where I find this admirable she needs to stay
9 focused on the task assigned to her. Even though she has had
10 to deal with her health problems, problems she's always been
11 available when needed."

12 Q Have you noticed a difference in Plaintiff Exline-
13 Hassler's job performance from before June 26 of 2009 to
14 after?

15 A Yes. Yes.

16 Q And can you explain for the ladies and gentlemen of
17 the jury what her job performance has been since June 26 of
18 2009?

19 A Um, after the, uh, accident on top of the leave,
20 the unscheduled leave or scheduled leave or the excessive
21 leave, um, she has not been as valuable of an employee,
22 because one, she's not there. And, two, when she is there
23 you're, you're, as a manager I'm always trying to make sure
24 that she's caught up to where we are, 'cause, you know, time
25 is going on and she's, she's gotta' be brought back up to

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1 speed, and then the focus to be able to carry the project
2 through where, quite honestly, I was used to working with
3 someone who was snap fast, always catching and moving and
4 didn't require a lot of follow up or any follow in a lot of
5 cases. Now, um, I have to come back and say did you make a
6 note of this, did you, don't forget to do this, Jackie, did
7 you do this, 'cause if you don't do this then I can't do the
8 next thing. So, it's a lot more follow up on my part.

9 Q And as far as your observations physically --

10 A Mm-hmm.

11 Q -- can you tell us what, if anything, you've
12 noticed about her from before June 26th of 2009 and after June
13 26 of 2009, physically?

14 A Um, she's very often in pain. Most days when I see
15 her from the beginning of the day she's twisting and
16 stretching and she's in pain.

17 Q Does she complain about it?

18 A Not, no she tries not to.

19 Q Does she walk around and talk about how bad she
20 feels all day or does she --

21 A No, she doesn't.

22 Q -- keep it to herself?

23 A No, she doesn't. She, she doesn't want to talk
24 about it.

25 Q Before June 26th, 2009 would Jackie, um, socialize

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1 with the rest of the group?

2 A Yeah, on occasion we would go out to celebrate
3 someone's birthday or, um, you know, happy hour or something,
4 yes, she did.

5 Q Has she done that since June of 2009?

6 A Uh, no, I don't believe so.

7 Q Before, uh, June 26 of 2009 were you able to, um,
8 tell whether or not she was having the same, the same or
9 similar back complaints or do you recall ever seeing her in
10 pain in her office before June of 2009?

11 A No.

12 Q Did you ever see her squirming around or standing
13 or . . .

14 A No.

15 Q Have you ever been to dinner with Jackie and her
16 husband?

17 A No, I've never been to dinner with them.

18 Q Have you ever socialized at her house on a weekend,
19 have you ever gone over to help her in the garden --

20 A No.

21 Q -- or motorcycle ride with her, or --

22 A No.

23 Q -- have you met any of her children?

24 A Uh, I have met, when they've come to the office to,
25 uh, drop off a car or pick up a car or something like that.

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1 Q Have you ever gone out to a movie with her or
2 anything?

3 A No.

4 Q Have you ever taken a vacation with her?

5 A No.

6 Q Um, have you ever seen her socially outside the
7 office ever?

8 A No. No more than like I said if a group of people
9 from the office went, no.

10 Q Um, based on Jackie's performance after June of
11 2009 would you put, would you have put her in your pos (sic),
12 old position, would you have hired her and put her in that
13 position --

14 MS. HOWARD: Objection.

15 BY MS. ZOIS:

16 Q -- based on her performance?

17 THE COURT: Sustained.

18 BY MS. ZOIS:

19 Q Based on her performance now would you hire her at
20 all?

21 MS. HOWARD: Objection.

22 MR. PORCARELLI: Objection.

23 THE COURT: Sustained.

24 MS. ZOIS: May we approach, Your Honor?

25 THE COURT: Sure.

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1 (Counsel approached the bench and the following
2 occurred:)

3 (Husher turned on.)

4 MS. ZOIS: I'm not sure I understand the basis of the
5 objection.

6 THE COURT: There, she has the job now, right?

7 MS. ZOIS: Right.

8 THE COURT: So there's no claim for lost future wages,
9 right?

10 MS. ZOIS: Oh, right, right.

11 THE COURT: So why is this relevant?

12 MS. ZOIS: To demonstratively --

13 THE COURT: That's why.

14 MS. ZOIS: -- exhibit how her skill set and valiability,
15 I guess, for lack of a better word, even if that is a word,
16 has changed some from before the crash to after the crash.

17 THE COURT: So, she's --

18 MS. ZOIS: She was a person she would have promoted
19 before, she's not a person she would promote now.

20 THE COURT: So, it, I think that's a little far afield
21 to what the issues, I think you've established factually that
22 there's a difference in her work performance.

23 MS. ZOIS: Okay.

24 THE COURT: And that's been illustrated by this witness,
25 so --

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1 MS. ZOIS: Okay. It --

2 THE COURT: -- I sustained the objection.

3 MS. ZOIS: Okay. Thank you.

4 THE COURT: Mm-hmm.

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

7 (Husher turned off.)

8 THE COURT: She'll ask you another question.

9 THE WITNESS: Okay.

10 BY MS. ZOIS:

11 Q What is, what, if anything, is keeping Jackie in
12 her, Jacqueline Exline-Hassler in her current position right
13 now?

14 MS. HOWARD: Objection.

15 BY MS. ZOIS:

16 Q Based on what we see with the not very good
17 performance evaluations and a lot of twos.

18 THE WITNESS: May I answer?

19 THE COURT: You can answer.

20 MS. HOWARD: Objection.

21 THE WITNESS: Uh --

22 MS. HOWARD: Objection, there's, I haven't heard any
23 foundation that there's a, anything that's on the table
24 regarding a change in position.

25 THE COURT: Let's move on.

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1 BY MS. ZOIS:

2 Q Okay, uh, um, if things were different would you
3 change anything about Jackie's position?

4 MS. HOWARD: Objection.

5 MR. PORCARELLI: Objection.

6 MS. HOWARD: It's so speculative.

7 THE COURT: It, it is speculative. I'll sustained.

8 MS. ZOIS: I know the answer, but --

9 THE COURT: (Sigh.)

10 MS. ZOIS: -- may we approach, Your Honor?

11 THE COURT: Sure.

12 MS. ZOIS: Okay.

13 (Counsel approached the bench and the following
14 occurred:)

15 (Husher turned on.)

16 THE COURT: What's your proffer as to the answer?

17 MS. ZOIS: The answer is if she wasn't protected by the
18 Family Medical Leave Act she'd fire her.

19 MALE VOICE: I'm objecting.

20 MS. ZOIS: That's --

21 THE COURT: I --

22 MS. ZOIS: -- that's how bad it is.

23 THE COURT: But that's absolutely not --

24 MS. ZOIS: Okay.

25 THE COURT: -- relevant, appropriate. Because there's

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1 not, there's not a claim here, and there's no other reason.
2 It doesn't lead to any relevant evidence for this jury to
3 determine so I'll definitely sustain that objection.

4 MS. ZOIS: Okay. And, and I would just --

5 THE COURT: You have your proffer on the record as to
6 that, that's what her answer would be.

7 MS. ZOIS: Correct, Your Honor. And I would just, um,
8 further the proffer to say that it's demonstrative of how
9 significant of a difference this accident has, um, caused her
10 ability to perform at her job, and her, um, ability to, to
11 work and be successful in her career.

12 THE COURT: Okay.

13 MS. ZOIS: Okay.

14 THE COURT: Understood.

15 MS. ZOIS: Okay, thank you, Your Honor. I appreciate
16 that. Court's indulgence for a moment, Your Honor.

17 (Husher turned off.)

18 THE COURT: Absolutely.

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

21 (Brief pause while Counsel confer off the record.)

22 BY MS. ZOIS:

23 Q Ms. Hamilton, can you give the ladies and gentlemen
24 of the jury a general summary of Jacqueline Exline-Hassler in
25 the years preceding this incident, and let me just be clear,

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1 you've worked with her from before 2005 is that right?

2 A Be, yes.

3 Q And you promoted her in 2006 is that right?

4 A Yes.

5 Q And so from 2005 through June of 2009 can you
6 compare and contrast her before June of 2009 and after?

7 MS. HOWARD: Objection.

8 MR. PORCARELLI: Objection.

9 MS. HOWARD: Asked and answered.

10 THE COURT: It has been asked and answered.

11 MS. ZOIS: No further questions, Your Honor. Thank you.

12 THE COURT: Cross examine.

13 MS. HOWARD: Thank you.

14 CROSS EXAMINATION

15 BY MS. HOWARD:

16 Q Ms. Hamilton, uh, good afternoon.

17 A Hi, how are you?

18 Q I'm good. Um, you told us you've never been to Ms.
19 Exline-Hassler's home, correct?

20 A I have --

21 Q Is that correct?

22 A -- been to her home on one occasion.

23 Q Okay.

24 A But I don't go to dinner, I think that was the
25 question that was asked.

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1 Q Okay. And, um, is that the weekend that Ms.
2 Exline-Hassler and her husband dog sat for your dogs?

3 A Yes.

4 Q So you brought the dogs out there?

5 A I brought my dog there on my way to, um, I believe
6 it was Tennessee or Ohio, one of them --

7 Q Hopefully --

8 A -- for the holiday.

9 Q -- hopefully Ohio.

10 A Yeah, hopefully Ohio, that's right, the other way
11 would have been, yeah --

12 Q Tennessee would be far.

13 A -- it's Ohio, yes.

14 Q All right. Well, either way, um, uh, but you would
15 say that you would characterize Ms. Exline-Hassler, in
16 addition to being your employee, she's also a friend?

17 A I would say, I would hope that we're friends after
18 these years, yes.

19 Q And that, um, on occasion you'd go out to lunch
20 with her at work even if it's not like a work function, it's
21 just you and her grabbing lunch sometimes, correct?

22 A We have done that on occasion, you, generally, she
23 brings her lunch.

24 Q Mm-hmm.

25 A So.

1 Q And on occasion you've gone out with Ms. Exline-
2 Hassler and other co-workers for a baby shower or somebody's
3 birthday or something along those lines, correct?

4 A Yeah, I said that, yes.

5 Q All right. Now, um, in terms of -- before you were
6 coming to testify today did you talk about what other
7 witnesses were going to say?

8 A No.

9 Q Um, but you do remember that Ms. Exline-Hassler
10 helped her husband build a wall?

11 A I do remember that they were building a, um, stone
12 wall and they had stones delivered and she helped him to move
13 some of the stuff.

14 Q All right. All right. And this would be a time
15 after she started working for you?

16 A This would be after 2006, I'm sure.

17 Q All right. Now, with respect to, um, the group of
18 people that you do supervise, is it correct it's a team of
19 10, is that right, currently a team of 10 people that you
20 supervise?

21 A Nine or 10, yeah.

22 Q Nine or 10, and seven of them you write performance
23 reviews on, correct?

24 A That's true.

25 Q All right. And Ms. Exline-Hassler is one of those

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1 people that you, um, you, uh, you write ex (sic), uh,
2 performance reviews on, correct?

3 A Correct.

4 Q And you're, you would do their performance review
5 and then two other managers would have to sign on, off on
6 that performance review, correct?

7 A That's true.

8 Q And when you look at, uh, I think it was Exhibit 42

9 --

10 A Mm-hmm.

11 Q -- is that what's in front, is it 42 that has the
12 packet of performance reviews?

13 A Correct.

14 Q All right. You are unable to tell us that those
15 are the numbers you put in or whether your other co-managers
16 modify the numbers --

17 A If they --

18 Q -- or --

19 A -- they could choose to modify the numbers as well,
20 that's correct.

21 Q But those are the final numbers, correct?

22 A That's correct.

23 Q All right. And you do agree that, is it one of the
24 years Ms. Esposito, is it, for the year of 2010 Ms. Esposito
25 prepared the performance review not you, correct?

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1 A That's correct.

2 Q And that would be a performance review that'll be
3 dated early 2011, but reflects work for 2010, correct?

4 A Correct.

5 Q And that's because Jackie was working primarily on
6 the Havalina (phonetic) team project?

7 A That's correct.

8 Q And you had no, um, supervisory role over that
9 project, correct?

10 A Correct.

11 Q Um, now, you also on each of these performance
12 reviews at the, I think it's more or less the last page of
13 each the review there's a percentage raise that is given to
14 the person being reviewed, correct?

15 A Correct.

16 Q All right. And you'd agree with me that each year,
17 each performance review Ms. Exline-Hassler has received a,
18 um, percentage raise, correct?

19 A That's correct.

20 Q And, although on the form it will have zero to
21 about six or seven?

22 A Mm-hmm.

23 Q You've told us that basically nobody gets a six
24 percentage raises?

25 A Very, very hard to get a six.

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1 Q And nobody gets about a six.

2 A Right.

3 Q But you are at liberty to give an employee a zero
4 raise, technically? It could be a, it could be one, it could
5 be two --

6 A Oh, yeah.

7 Q -- it could be zero.

8 A Mm-hmm.

9 Q All right. And with Ms. Exline-Hassler, based upon
10 her, uh, her performance reviews you'd agree with me that,
11 um, that she had in the years before the accident she had
12 several times when her raise percent was three or four
13 percent, correct?

14 A I did not look at that, but I believe she's had
15 four's. I know she's had four's --

16 Q Well --

17 A -- I think she may have had a five one time --

18 Q -- well, let's --

19 A -- six.

20 Q -- go ahead and take a look at it. So, if we were
21 to start, um, and I'll direct you to page, uh, 0010.

22 A Mm-hmm.

23 Q And that would be the performance review dated
24 March '06 --

25 A Which was for the '05 year.

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1 Q -- for '05 she got a six percent, correct?

2 A Correct.

3 Q And then if I direct your attention to 001 (sic),
4 uh, I was going to say 16, 0020 --

5 A Mm-hmm.

6 Q -- she's a five percent?

7 A Correct.

8 Q And that's, um, for the year of '06?

9 A Correct.

10 Q And while we're on that set of records, um, would
11 you agree with me that, um, on page, uh, 16 of that set of
12 records, under dependability Ms. Exline-Haster (sic), Hassler
13 has almost all three's for dependability and two four's?

14 A Correct.

15 Q And you had told us that a three, that's doing your
16 job, correct?

17 A That's, that's right.

18 Q Three is meeting expectations, correct?

19 A Right.

20 Q You would really have to go to the mat and sell a
21 four, correct?

22 A That's right.

23 Q But there's nothing wrong with getting three's,
24 correct?

25 A No. There's nothing wrong with getting three's.

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1 Q Nothing wrong. That's doing your job.
2 A Yes.
3 Q And that gets you your raise?
4 A That, that's, yes, mm-hmm.
5 Q All right. If we go ahead and look at page 0026,
6 and I don't mean to just ramp right into it, but, uh, if we
7 look at, uh, let's see, 0021, this is telling us that we're
8 looking at the performance review for 07.
9 A Right.
10 Q And on page, uh, again, we go to the dependability
11 section --
12 A Mm-hmm.
13 Q -- page 0026, in '07 Ms. Exline-Hassler got all
14 three's, correct?
15 A That's correct.
16 Q And that was in '07, and there's nothing wrong with
17 0 (sic), all three's under dependability, correct?
18 A That's correct.
19 Q And she still got a, a four percent raise that
20 year, is that correct?
21 A That's correct.
22 Q And is it also correct, and I'm referring to page
23 0028, um, isn't it true that Jackie was reminded that time,
24 uh, and was noted in her performance review that Jack (sic),
25 Jackie, um, needs to learn to block out time without

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1 interruption for key work.

2 A Mm-hmm.

3 Q Um, she, um, management courses would help her for
4 scheduling her day, and management wants to see her work on
5 her writing skills mainly taking time needed to concisely
6 present the problems. She rushes to complete emails, but in
7 the end it needs, it answers more questions than, uh, more
8 questions than answer, correct?

9 A Right.

10 Q So, that would be even before the accident in '07
11 one of the issues was Jackie's number one, concentrating on
12 one key task and allowing herself to be interrupted, correct?

13 A Uh, in it, no, it was, it was a different kind of,
14 um, not her inability to process multi-task, in the sense
15 that today she can't not multi-task, she can't task.

16 Q But back then --

17 A So --

18 Q -- in '07 is it correct that in her performance
19 review she was asked to work on blocking out time to work
20 without --

21 A For without interruptions.

22 Q -- to find without interruption to work on things.

23 A Yeah.

24 Q And as her supervisor you were recommending that
25 that's how she focused on certain key projects to make sure

1 she's meth (sic), metholog (sic), um, methodical and single
2 minded about certain tasks, correct?

3 A Correct.

4 Q And she had to be, um, counsel (sic), I mean, it
5 was noted in her performance. All right. Now, with respect
6 to, um, uh, 2008 --

7 A Mm-hmm.

8 Q -- on page 0039, we know that Ms. Exline-Hassler
9 got a five percent raise that year, correct?

10 A Mm-hmm.

11 Q But you told us before that the raises that Ms.
12 Exline -- or, is it correct, you told us at our (sic), your
13 deposition, but I'll ask you here, isn't it correct that the
14 raises that you've been giving to Ms. Exline-Hassler in her
15 performance review are consistent with the percentage raise
16 you've given to the other seven members that you review each
17 year?

18 A I don't recall saying that in that way.

19 Q All right. Um, this would be page 52 of the
20 deposition. Have you seen a copy of your deposition?

21 A No, I have not.

22 MS. HOWARD: So, may I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MS. HOWARD:

25 Q Oh, I'm sorry. At 52 I had asked you ques (sic),

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1 different questions while (unclear - two words) right now --
2 sorry, I'll come back to that. Uh, you have hired two more
3 people into your unit since the, um, in the past couple
4 years, correct?

5 A Yes.

6 Q All right. And you have not hired them be (sic),
7 in any way having anything to do with Ms. Exline-Hassler,
8 correct?

9 A Mm, no.

10 Q All right. Now with respect to the consistency,
11 that's page 65 of your deposition. Um, the question was, um,
12 "All right, and do you submit for all seven of your direct
13 reports, do you submit their performance review at about the
14 same time?" "Yes." The next question was "Okay, would you
15 have any way of knowing any particular year from year to year
16 Ms. Ex (sic), Ms. Jacqueline Exline-Hassler's annual review,
17 you know, salary percentage raise, would be consistent with
18 others on your team or different than et cetera." And your
19 answer was, "I would say it was probably consistent with
20 them."

21 A Okay.

22 Q And do you agree with that?

23 A Mm-hmm.

24 Q All right. And, so and that would be the same for
25 after 2008. So, in 2009 the raise that Ms., percentage raise

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1 that Ms. Exline-Hassler got was consistent with the other
2 members of your team, correct?

3 A Correct.

4 Q And, in fact, if you look at '09, and this is at
5 page, this is for the work year, 2009, at page 0045, she got
6 all three's in her dependability, correct?

7 A Mm-hmm.

8 Q So, again, she's meeting all the expectations,
9 correct?

10 A Right.

11 Q And at page 0049 she got a four percent, um, raise,
12 correct?

13 A Correct.

14 Q And this would be an opportunity where you could
15 have given her lower, but you didn't, correct?

16 A And would not have given the level of effort that
17 she was putting in.

18 Q And you, uh, did not note any, uh, goals for the
19 next review at Section E, so I'm referring to page 0049, you
20 did not, under Section E, establish any goals for next year,
21 list any expectations or goals that she was required to meet
22 for the next year, did you?

23 A That section, if you've noticed, was not generally
24 filled out in most of the reviews.

25 Q All right. And, in fact, in all of the reviews

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1 after 2009 going forward, at no time was it contained in any
2 review that Ms. Exline-Hassler was on probation because of,
3 uh, attendance, correct?

4 A That's, that's very true.

5 Q All right. Now, with respect to, um, she also
6 received bonuses each of these years, correct?

7 A All employees receive the same level of bonus.

8 Q And by level you mean again it's tied to, um, your
9 salary, but it's the same amount, correct?

10 A Every employee, if the health plan reaches certain
11 milestones --

12 Q Mm-hmm.

13 A -- for, um, budget, for membership, for quality as
14 a health plan all of the management employees receive the
15 same percentage of bonus based on your own salary though.
16 So, if it's a three percent bonus everybody in the health
17 plan receives a three percent bonus of your own health (sic),
18 of your own salary.

19 Q All right. And now, um, in 2011, again, I'm just
20 going to direct your attention to that thing (unclear - three
21 words) the, uh, percentage raise, um, this would be the form
22 that, um, Ms. Esposito filled out for work, for the, actually
23 it was for work for the year 2011, was that when she worked
24 for Ms. Esposito, in '11. I'm directing your attention
25 (unclear - two words) --

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1 A Yes, she worked for Ms. Esposito in 2011.
2 Q So, that's 0069?
3 A Yes.
4 Q All right. And that, she got the four percent, uh,
5 salary increase, correct?
6 A Mm-hmm.
7 Q And, again, on page 0065, with respect to
8 dependability she was all three's, correct?
9 A No.
10 Q 0065?
11 A She had two two's in --
12 Q Yeah, yeah --
13 A -- dependability.
14 Q -- you're right. My vision is horrible. Now, this
15 is prepared by Ms. Esposito and this would be based upon her
16 observations, correct?
17 A Correct.
18 Q And she was, this would be the one year that Ms.
19 Esposito was the primary completer of that report, correct?
20 A Yes.
21 Q All right. Now, um, and for -- all right, now, in
22 addition to the fact that she got a raise every year, um, you
23 had told us some stuff about, or some information regarding
24 the leave that Ms. Exline-Hassler took, correct?
25 A That's correct.

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1 Q You were asking questions about Counsel, uh, by
2 Counsel regarding the, um, the amount of sick leave she took
3 in 2008.

4 A Correct.

5 Q Now, isn't it also correct that in 2008 the bonus,
6 uh, for all the managers was substantially less than the
7 bonus in other years?

8 A I don't know.

9 Q Well, if you, I think, uh, Exhibit 43, correct?

10 A Mm-hmm.

11 MS. ZOIS: Your Honor, I'm gonna' object, may we
12 approach?

13 THE COURT: Sure.

14 (Counsel approached the bench and the following
15 occurred:)

16 (Husher turned on.)

17 THE COURT: I was going say re (sic), relevance of that.

18 MS. ZOIS: Yeah.

19 THE COURT: Well, the relevance is it 19 (sic), in 2008
20 it was a really tough year over at the company. They didn't
21 even meet their expectations. Everybody was, basically, all
22 hands on deck. It was a tough year for the entire economy,
23 as a matter of fact. And I'd like just a little leeway here.

24 MS. ZOIS: But all the bonuses are equally distributed
25 amongst all the --

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1 THE COURT: I'm sorry, I couldn't hear you.

2 MS. ZOIS: Her testimony is all of the bonuses are
3 equally distributed amongst all of the employees not based on
4 performance.

5 MS. HOWARD: Right.

6 THE COURT: Which, why don't you just ask her 2008 was a
7 rough year for everybody wasn't it, boom, and then move on
8 from there.

9 MS. HOWARD: Um, but to clarify this bonus, um, uh,
10 right, she says everybody gets a percentage they, they, they
11 all, like for example, I proffer that if I wrote, I'm given a
12 little leeway I would very quickly point out '05, '06, '07
13 the bonus amount is like \$3,000. '09, '10, '11, et cetera is
14 like \$2,000 to \$3,000. In '08 it's \$500.

15 MS. ZOIS: What's the relevance as to this --

16 THE COURT: Okay. You, you --

17 MS. ZOIS: -- particular employee?

18 THE COURT: -- that information is (unclear - two words)
19 you can argue it.

20 MS. HOWARD: Well, it's at 43. So, leave it on? Am I
21 gonna' (unclear - one word)?

22 THE COURT: You, you, you can argue --

23 MS. HOWARD: Sure.

24 THE COURT: -- the, the, the inference there. I would
25 just ask her if it was, you know --

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1 MS. HOWARD: Mm-hmm.

2 THE COURT: -- we all agree 2008 was a bad year and then
3 move on from there.

4 MS. ZOIS: Thank you, Your Honor. Thank you, Your
5 Honor.

6 (Husher turned off.)

7 (Counsel returned to the trial tables and the following
8 occurred:)

9 THE COURT: She had to rephrase that question.

10 BY MS. HOWARD:

11 Q You'd agree 2008 was a tough year for the economy
12 from everyone?

13 A If you're reflecting, showing, uh, talking about
14 the bonuses again, the bonuses are tied to the company's
15 performance in certain areas. It doesn't have anything to do
16 with the economy, it's strictly based on our performance as
17 an organization.

18 Q And you have before you Exhibit 43, correct?

19 A Yes.

20 Q Is that the printout of all the payroll items?

21 A Yes.

22 Q All right. And would you agree with me that at the
23 top, um, one of the top entries for each pay year it lists
24 the bonus for this particular employee?

25 A Yes.

1 MS. ZOIS: Same objection, Your Honor --

2 THE COURT: So.

3 MS. ZOIS: -- for the record. I don't want to have to
4 keep doing it. Thank you, Your Honor.

5 BY MS. HOWARD:

6 Q And, in fact --

7 THE COURT: I'm gonna' overrule with this one based on
8 her answer.

9 MS. ZOIS: Thank you, Your Honor.

10 BY MS. HOWARD:

11 Q And, again, it's not gonna' be the exact same
12 number for, let's say Ms. Exline-Hassler and you, but the,
13 the formula for how much you get is the same for you and the
14 same for Ms. Exline-Hassler, correct?

15 A Correct.

16 Q And that would be if the company met its objectives
17 it'll be more, if the company only met some of the objectives
18 it would be sort of medium, and if it didn't meet any of the
19 objectives there could be, for managers, no bonus, correct?

20 A Right.

21 Q All right. Now, sticking with Exhibit 43, if you
22 would just, uh, stick with me here a second, Ms. Hamilton, I
23 promise I'm almost done. This is a printout that you've
24 identified that shows all of the, basically, for each of the
25 years '05 through, I guess 2012, um, basically the leave that

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1 Ms., um, or basically the payroll register, or pay register,
2 for Ms. Exline-Hassler, correct?

3 A Correct.

4 Q All right. And, again, you were asked questions
5 about sick leave in '08, and I just wanted to follow up on
6 that. Um, it looks like, have we talked about this before
7 your, your, your comp (sic), as a manager, Ms. Exline-Hassler
8 is paid on 35-hour work week, correct?

9 A Correct.

10 Q And as her, the team lead you allow your employees
11 to come to work anywhere, arrive at work anywhere between
12 7:00 to 9:00 --

13 A Mm-hmm.

14 Q -- work their seven hours and then they're
15 technically free to leave, they're responsible for getting
16 the work done, but they're free to leave in terms of they've
17 done their seven hours, correct?

18 A Correct.

19 Q So that if a person got there as early as 7:00 she,
20 she or he could leave as early as 2:00, correct?

21 A Correct.

22 Q And you've mentioned before that when commute in
23 from the Frederick area or even more west or more north you
24 know traffic can be bad so you even have a little leeway off
25 of the 9 o'clock arrival time, correct?

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1 A Correct.

2 Q All right. Uh, and if you take a look at the, um,
3 record of the part of Exhibit 43 that is for 2009, can you
4 find that for me, please?

5 A Yes.

6 Q All right. Oh, I forgot to ask you one other
7 thing, it looks like, is payday Wednesday at your company?

8 A Uh, yes, Tuesday, Wednesday.

9 Q You get paid every week, correct?

10 A Yes, we do.

11 Q And it's paid for a work week that technically I
12 guess would run Sunday through Saturday, correct?

13 A Yes.

14 Q All right. So, if we take a look at Exhibit 43 for
15 the, uh, year 2009 and we look down, I guess it's the third
16 column from the left, that's gonna' tell us the date, the pay
17 date, the date of the check, correct?

18 A Correct.

19 Q But we know that's gonna' reflect pay for the week
20 the Sunday through Saturday before, correct?

21 A Correct.

22 Q All right.

23 A I would assume (unclear - one word).

24 Q So we take it by, if you'd indulge me and take a
25 look down there at, uh, in week the payday marched (sic), uh,

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1 marked June 25th, 2000 (sic), uh, I'm sorry, 2008 (sic), we're
2 talk, uh, marked June 24th, 2009.

3 A Mm-hmm.

4 Q And then if you continue across we can see that for
5 salary that week Ms. Exline-Hassler was paid for 40.

6 MS. ZOIS: Objection, Your Honor, may we approach?

7 THE COURT: Sure.

8 (Counsel approached the bench and the following
9 occurred:)

10 (Husher turned on.)

11 FEMALE VOICE: (Unclear.)

12 MS. ZOIS: Um --

13 MS. HOWARD: It's a two paged document for '09.

14 MS. ZOIS: Okay. Collateral source is my problem, so
15 what she's being paid verses what she's taking leave for is
16 the area that we're getting into, and I've tried very hard to
17 delicately tread that when I was asking her questions. So,
18 what she got --

19 THE COURT: I would calculate it as days working as
20 opposed to paid for.

21 MS. HOWARD: Okay.

22 MS. ZOIS: And --

23 MS. HOWARD: Perfect. I can handle that. No problem.

24 Uh, actually for prior to, my question right now is prior to.

25 THE COURT: So.

1 MS. ZOIS: So be --

2 MS. HOWARD: And then Counsel already asked questions
3 about sick leave pri (sic), and I would like to ask that
4 questions.

5 MS. ZOIS: Sick time.

6 THE COURT: Just focus it in, in, in terms of sick time
7 or sick leave as opposed to paid days.

8 MS. HOWARD: That's fine. Thank you.

9 THE COURT: Okay?

10 MS. ZOIS: Thank you.

11 (Counsel returned to the trial tables and the following
12 occurred:)

13 (Husher turned off.)

14 THE COURT: She'll rephrase that question.

15 THE WITNESS: Okay.

16 MS. ZOIS: And, Counsel, what page were you on, sorry?

17 MS. HOWARD: Well, like I said it's a two page document
18 for 2009, and I happen to be on the first page of it right
19 now, but I intend to go to the second page as well.

20 MS. ZOIS: But just the page numbers, please.

21 MS. HOWARD: It's page 43, I mean, your Exhibit 43.

22 MS. ZOIS: But page numbers within the exhibits is what
23 I'm looking for.

24 MS. HOWARD: I don't have page numbers of this.

25 MS. ZOIS: Well, but the exhibit does that's --

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1 BY MS. HOWARD:

2 Q Oh, okay, no problem, Counsel. Do you have 43
3 there?

4 A Mm-hmm.

5 Q Yeah. Do you, could you tell me on '09 the very,
6 the number at the very bottom, just that big black number at
7 the bottom, the two pages of '09.

8 A Nine and 10.

9 Q Sounds good.

10 MS. HOWARD: Okay, Counsel, nine and 10.

11 MS. ZOIS: Nine and 10, got it, thank you.

12 BY MS. HOWARD:

13 Q So if we take a look at, uh, for the payday of June
14 24th, 2009.

15 A Mm-hmm.

16 Q That's the paycheck for the previous week, correct?

17 A Correct.

18 Q And you'd agree with me that it would be four work
19 days and one non workday reflected in that paycheck, correct?
20 This would be before the accident, correct?

21 A Uh, just a minute, let me see.

22 Q Mm-hmm.

23 A That's what it looks like.

24 Q All right. Well, you can see that in the column
25 marked hours and units it's 28 rather than 35, correct?

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1 A Correct.

2 Q All right, and when you take a look on the page
3 two, so I guess it's Exhibit, or, you know, 43 page 10, we
4 can see that there's seven hours of sick leave reported on
5 this same report the week, um --

6 A Mm-hmm.

7 Q -- the week before the accident, correct?

8 A Right.

9 Q And as you sit here today do you have any knowledge
10 of why Ms. Exline-Hassler was sick the week before the
11 accident or missed work the week before the accident?

12 A I would not --

13 Q All right.

14 A -- I mean, without looking back at leave records.

15 Q All right.

16 A No.

17 Q All right. And you don't, you didn't bring any
18 leave records for dates before the accident, did you?

19 A I did not, no.

20 Q All right. Now, if we just continue on with that
21 same page and it could take you back to page nine and you
22 take a look at the next week, the next pay day, July 1st.

23 A Mm-hmm.

24 Q And this would reflect, uh, work performed for the
25 January, I mean, uh, June (unclear - two words) June, it

1 would be basically the week before July 1st, which would be
2 the week ending of the Friday of the car accident, correct?

3 A Correct.

4 Q And Ms. Exline-Hassler worked a full five work days
5 that week, or so it would appear from Exhibit 43, correct?

6 A Correct.

7 Q And then continuing on the next week the paycheck
8 that, uh, is reflected there July 8th, 2009.

9 A I don't know --

10 Q Eight --

11 A -- that that's reflecting that that's a, a work
12 week, I'm not certain what that reflects to be honest with
13 you.

14 Q All right. All right. July 8th in terms of if you
15 take a look at page 09 we see 28 hours.

16 A I think you have another exhibit that shows the,
17 uh, the actual sick leave days broke, broken down.

18 Q I do have another exhibit.

19 A A daily leave report.

20 Q I do have another exhibit that's, you would agree
21 is not consistent with this, correct?

22 A Yeah, because I'm not sure what that other, this
23 other one reflects.

24 Q But this is the exhibit, Exhibit 43 --

25 A Mm-hmm.

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1 Q -- that you used when you were asked questions
2 about '08 to show no sick leave was taken, correct?

3 A Correct.

4 Q So are you saying that it's reliable for '08, but
5 unreliable for --

6 A No, I'm not. I'm saying that I'm not sure that
7 that's what that reflects.

8 Q So that there may be more to how much sick leave
9 was taken in '08?

10 A That -- yeah.

11 Q All right. And in fact if you take a look at '08
12 would you agree with me that there was vacation time taken
13 just before March 24th, '08?

14 A And let me see.

15 Q Sorry to jump you back there.

16 A That's okay.

17 MS. ZOIS: Page, Counsel.

18 THE WITNESS: Page eight.

19 MS. ZOIS: Thank you. And what was the question?

20 THE WITNESS: That it's reflecting vacation --

21 MS. ZOIS: Taken before.

22 THE WITNESS: -- of 3/26 of 2008, is that what you're
23 talking about?

24 BY MS. HOWARD:

25 Q 2008 isn't it correct that two days of vacation

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1 week were taken, um, just prior to March 26, um, March 26,
2 '08?

3 A Yes.

4 Q Okay. Now, um, you also told us, uh, or is it
5 correct, ma'am, that with respect to why Ms. Exline-Hassler
6 was out of the office on one particular day, all you know
7 about is this car accident, correct?

8 A You mean after the, the leave after?

9 Q Yes.

10 A Yes.

11 Q All right. You didn't know, for example, that she
12 had surgery to her wrist, her right wrist, did you?

13 A Yes, I would have known that --

14 Q Okay, did you know that she missed --

15 A -- at the time.

16 Q -- she missed four weeks of work in May of 2012 as
17 a result of her wrists?

18 A Yes, I do know that.

19 Q So, her leave at --

20 A That was this past year, yes, I know that.

21 Q So, some of the leave that she took over this,
22 since '09 to now is for other matters, correct?

23 A Correct.

24 Q And you're aware she had another surgery the year
25 before that, correct?

1 A Yes, I am.

2 Q And so you, uh, know that she had, presumably pain
3 associated with the other matters

4 A Uh, I don't know that she pain. I, I didn't see
5 her reflecting that kind of pain.

6 Q All right. And all you know is she's told you
7 everything's linked back to this car accident, correct?

8 A No. No, she has not told me that.

9 Q She has -- so --

10 A She has not told me that when she had wrist surgery
11 that it was linked to the car accident or her other surgery
12 that it was linked to the car accident.

13 Q And she never told you anything about the prior
14 problems with her low back, correct?

15 A No.

16 Q Okay. Thank you. Thank you very much.

17 A Mm-hmm.

18 THE COURT: Just, Mr. Porcarelli.

19 CROSS EXAMINATION

20 BY MR. PORCARELLI:

21 Q Hello, Ms. Hamilton.

22 A Hello, how are you?

23 Q Nice to see you again.

24 A Good to see you, too.

25 Q Real quick, if I understand, uh, your testimony,

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1 every year that you qualify for a bonus --

2 A Every year --

3 Q -- the company qualified for a bonus --

4 A Yes.

5 Q -- she got one?

6 A Every management employee got one.

7 Q She got one?

8 A Yes, every em (sic), every management employee got
9 one.

10 Q Thank you.

11 MS. ZOIS: Very briefly.

12 THE COURT: Redirect, mm-hmm. Just so, in case I need
13 it later.

14 REDIRECT EXAMINATION

15 BY MS. ZOIS:

16 Q Uh, exhi (sic), the other exhibits before you is
17 one of the exhibits the daily leave logs, um, I believe that
18 you wanted to tell the jury about that before?

19 MS. ZOIS: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MS. ZOIS:

22 Q Just so --

23 A This one.

24 Q Okay. So, marked for identification is Plaintiff's
25 Exhibit Number 41, um, can you describe for the jury what

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1 Exhibit Number 41 is, please?

2 A It's a daily leave record that breaks down the, any
3 leave used and the, um, number of hours.

4 Q And are these records kept in the normal course of
5 business at your office?

6 A Yes.

7 Q Okay. And there's two different types of leave
8 logs in there --

9 A Mm-hmm.

10 Q -- can you tell the ladies and gentlemen of the
11 jury why the leave log from 2009 looks different than the
12 leave log from 2012?

13 A Um, this, they changed the system, the payroll
14 accounting system and, therefore, the reports were changed.

15 Q And do these daily leave logs reflect exactly day-
16 by-day what leave was taken?

17 A Yes.

18 Q And, uh, directing your attention to Exhibit Number
19 --

20 A In the daily leave?

21 Q -- Exhibit Number 40.

22 A Mm-hmm.

23 Q Yes. All right. Can you describe for the ladies
24 and gentlemen of the jury what Exhibit Number 40 shows?

25 A These are, um, individual leave requests submitted

1 during, before the payroll system changed.

2 Q And can you describe for us how that works? If
3 someone wants to take time off from work what do they have to
4 do?

5 A They would complete one of these leave slips and
6 turn it in to pay, get turned in to payroll.

7 Q And even though you do allow your group some
8 flexibility in arriving and leaving, if a person's gonna'
9 miss more than two hours or so during the normal workday are
10 they required to fill out a leave slip?

11 A Yes.

12 Q And can you tell the ladies and gentlemen of the
13 jury, uh, I believe Counsel was asking about the, the week
14 following this crash, and I think she said on something it
15 looked like that she worked that week, but can you tell the
16 ladies and gentlemen of the jury, um, just the first page,
17 can you tell us how much time, uh, was requested, just in the
18 first week following the June 26, 2009 crash just to respond
19 to Counsel's question?

20 A From these, from the leave slips?

21 Q Yes, ma'am.

22 A Okay. Seven hours, seven hours, 56 hours, (unclear
23 - one word) --

24 Q So, is it fair to say that after June 26, 2009 she
25 took a significant time off from work and didn't come back

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1 for a while, is that right?

2 MR. PORCARELLI: Objection.

3 MR. GILLCRIST: Objection, leading, Your Honor.

4 THE COURT: It is. Sustained.

5 BY MS. ZOIS:

6 Q Can you describe in your own words how much time,
7 uh, Ms. Exline-Hassler took off immediately following the
8 crash of June 26, 2009?

9 MR. GILLCRIST: Objection, asked and answered.

10 MR. PORCARELLI: Objection, asked and answered.

11 THE COURT: She just answered that seven, seven, 56.

12 MS. ZOIS: Oh, fair enough, Your Honor.

13 THE WITNESS: No, that was, she was asking me to read
14 the first page.

15 THE COURT: Mm-hmm.

16 THE WITNESS: That is not how much time she took off
17 immediately following though.

18 THE COURT: Okay, well then clarify that.

19 THE WITNESS: Okay.

20 BY MS. ZOIS:

21 Q Is there more than that time?

22 THE COURT: Mm-hmm.

23 BY MS. ZOIS:

24 Q Well, it's okay, Ms. Hamilton, I think, I think
25 I've made my point on that one --

1 THE COURT: Mm-hmm.

2 BY MS. ZOIS:

3 Q -- and I don't wanna' wear everybody with that, so.

4 A Okay.

5 MS. ZOIS: Court's indulgence for a moment.

6 THE COURT: Mm-hmm.

7 MS. ZOIS: And, Your Honor, just so, uh, I'm clear, the
8 foundation, I believe, for the, um, these records, which I'm
9 not moving into evidence at this time is that they're kept in
10 the regular course of business --

11 THE COURT: I understand.

12 MS. ZOIS: -- should I choose to move them in at a later
13 date. Is that, is that, is that Court satisfied with
14 foundation, Your Honor? Should I approach?

15 THE COURT: Approach.

16 MS. ZOIS: Okay.

17 (Counsel approached the bench and the following
18 occurred:)

19 (Husher turned on.)

20 MS. ZOIS: I just wanna' be able to let her go without
21 moving 'em in.

22 THE COURT: Well, the Court is hesitant to give, give
23 you advice over whether -- I think if they, if there is no
24 other reason for them to be excluded I think she's
25 established that they were business records.

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1 MS. ZOIS: Okay.

2 THE COURT: There may be another reason that there might
3 be an objection, but --

4 MS. ZOIS: Thank you, Your Honor.

5 THE COURT: -- just so that we can move them all.

6 MR. GILLCRIST: Okay. And, Your Honor, Ms. Howard
7 stepped out for a moment. If necessary, can I have a, one or
8 two follow ups if it's pertinent --

9 MS. ZOIS: Uh --

10 MR. GILLCRIST: -- in her place instead of bringing --

11 THE COURT: As to what?

12 MR. GILLCRIST: Well, she's, she talk -- I think since
13 she had to step out for a second if there's just one or two
14 follow ups I can ask.

15 MS. ZOIS: I'm gonna' object to that, Your Honor, we
16 already have three Defense Counsels over there, and they
17 already --

18 THE COURT: I, I usually, I'd like a proffer as to what.

19 MR. GILLCRIST: Well, she, she got into the time that
20 she missed, and she talked, Counsel talked about if she had
21 to miss seven hours what would be done in this situation, and
22 that, I simply want to ask the witness, uh, if Ms. Exline-
23 Hassler had to leave work for a doctor's appointment and had
24 to miss some time for doing that that she would be perfectly
25 welcome to make up that time later in the day or earlier the

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1 next morning.

2 THE COURT: I'll allow inquiry as to flex time only.

3 MR. GILLCRIST: Okay.

4 THE COURT: And then you can do any follow up if
5 necessary.

6 MS. ZOIS: Okay. Thank you, Your Honor.

7 THE COURT: Mm-hmm.

8 (Counsel returned to the trial tables and the following
9 occurred:)

10 (Husher turned off.)

11 THE COURT: Almost, not quite.

12 THE WITNESS: Hah, okay.

13 RECROSS EXAMINATION

14 BY MS. HOWARD:

15 Q Um, Ms. Hamilton, you explained to us at, at your
16 office, I mean, at your deposition that your office, uh, we
17 talked earlier how you work for seven hours and then
18 technically you're free to leave.

19 A Mm-hmm.

20 Q The big picture you have to get your work done, but
21 any given day is seven hours, correct?

22 A Yes.

23 Q But also, um, if you worked a few extra hours,
24 mostly Monday, Tuesday, Wednesday you just wanted to leave
25 early Friday you could do that, too, correct?

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1 A That's true.

2 Q And you wouldn't have to put in a leave slip?

3 A There, we take that flexibility occasionally.

4 Q Okay. And the same thing if you needed to leave
5 early to, uh, go to a doctor's appointment you have a little
6 bit of leeway, again, to leave an hour or so, hour and a half
7 early, again, you wouldn't have to necessarily have to fill
8 out a leave slip to go, correct?

9 A Correct.

10 Q All right. And now, um, if you take a coup (sic),
11 more than two or two and a half hours, again it's not set in
12 stone, you would like to see the leave slip, correct?

13 A Correct.

14 Q All right. And that's just the leave slip that you
15 would, you would fill that leave slip out, uh, and you do it
16 either, you know in advance --

17 A Mm-hmm.

18 Q -- I think you told us you know you're going to be
19 taking a couple days off you've already filled it out,
20 correct?

21 A Correct.

22 Q All right. But if you were sick and couldn't get
23 into the office you would do it retroactively or do a leave
24 slip.

25 A Right.

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1 Q And you would submit that and it would be processed
2 and your company retains that, correct?

3 A Correct.

4 Q All right. But then four (sic), Exhibit 43 that
5 kinda' shows a running total.

6 A Correct.

7 Q All right. Thanks.

8 MS. ZOIS: Nothing based on that, Your Honor. Ms.
9 Hamilton isn't under subpoena may she be released?

10 THE COURT: She certainly is excused from here, and as
11 far as the Court's concerned she's released.

12 MS. ZOIS: Thank you, Your Honor.

13 (Brief pause while Counsel confer off the record.)

14 MS. ZOIS: May we approach, Your Honor?

15 THE COURT: Mm-hmm.

16 (Counsel approached the bench and the following
17 occurred:)

18 (Husher turned on.)

19 MS. ZOIS: It's my understand Dr. London was going to be
20 here at 1:00, so I'm just inquiring.

21 MS. HOWARD: Yeah, London's here.

22 MS. ZOIS: Okay.

23 THE COURT: I, I'm sorry.

24 MR. GILLCRIST: Dr. London's here, but, um, I don't know
25 why, it's the Plain (sic), we're still in the Plaintiff's

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1 case and I think is Dr. London going to the (unclear - four
2 words)?

3 MS. HOWARD: I think so.

4 THE COURT: I, I, I'm sorry, I couldn't hear that.

5 MS. HOWARD: I think he's here, I mean, he is here now,
6 but I think he has the whole afternoon.

7 THE COURT: How long were you, um, anticipating
8 Plaintiff's testimony to take.

9 MS. ZOIS: Three hours. I mean, I'm just basing it on
10 the other witnesses. She is the Plaintiff, and we did three
11 hour depositions of McGrail and three hour depositions with
12 Sloan --

13 MR. GILLCRIST: (Unclear.)

14 MS. ZOIS: -- and three hour depositions (unclear - one
15 word).

16 THE COURT: Witnesses are running very slow, I must
17 admit.

18 MR. PORCARELLI: Those are expert depositions with a lot
19 of technical medical things, and my understanding the
20 Plaintiff's direct is going to be significantly shorter than
21 three hours, somewhere in the range of 45 minutes, so maybe,
22 since we're still in the case, we could Plaintiff on.

23 MS. ZOIS: Well, Your Honor, they've asked us to take
24 London out of turn, which we've accommodated in scheduling
25 our witnesses, so . . .

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1 THE COURT: I'm gonna' do this.
2 MS. ZOIS: Okay.
3 THE COURT: I'm gonna' give the jury a 10 minute break.
4 MS. ZOIS: Okay.
5 THE COURT: You all are gonna' figure out what we're
6 gonna' do --
7 MS. ZOIS: Okay.
8 THE COURT: -- and if you all don't figure out what
9 we're gonna' do I'm gonna' make a decision that's probably
10 gonna' make nobody happy.
11 MS. ZOIS: Okay (unclear - one word).
12 THE COURT: So that's what we're gonna' do.
13 MS. ZOIS: Thank you, Your Honor.
14 THE COURT: But I'm gonna' see if you all can work it
15 out to be convenient for the doctor, but also note this
16 Plaintiff has an obligation to try to put their case on
17 expeditiously and we're in day three of the trial and we're
18 not concluded Plaintiff's case --
19 MS. ZOIS: I understand, Your Honor.
20 THE COURT: -- we've taken one witness out of order.
21 We're gonna' take 10 minutes, you're gonna' figure it out or
22 I will.
23 MS. ZOIS: Okay.
24 THE COURT: Okay? All righty.
25 MS. ZOIS: How late --

1 MR. GILLCRIST: Thank you, Your Honor.
2 MS. ZOIS: -- will Your Honor sit? I think that might
3 be, is there any obligations this, this evening?
4 THE COURT: I don't have any obligations --
5 MS. ZOIS: Okay. Thank you, Your Honor.
6 THE COURT: -- I think it's difficult for anybody to
7 concentrate much after 6 o'clock when you're listening to
8 testimony.
9 MS. ZOIS: Agreed, Your Honor.
10 THE COURT: But, so, we'll --
11 MR. BRATT: Just for the purpose of our discussion.
12 THE COURT: -- go from there. Exactly.
13 MS. ZOIS: Thank you, Your Honor.
14 THE COURT: So.
15 MS. ZOIS: I appreciate that --
16 THE COURT: Okay.
17 MS. ZOIS: -- information.
18 THE COURT: All righty.
19 MS. ZOIS: Thank you.
20 (Counsel returned to the trial tables and the following
21 occurred:)
22 (Husher turned off.)
23 THE COURT: We're gonna' take 10 minutes, we're gonna'
24 figure out what witness we're gonna' do next. So, everybody
25 can stretch a little bit, and, uh, hopefully, before 2:00

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1 we'll be back. Okay?

2 (Jury excused from the courtroom.)

3 THE COURT: And we'll all take 10.

4 THE CLERK: All rise.

5 (Whereupon, from 1:45 o'clock, p.m. until 2:06 o'clock,
6 p.m., a recess was taken.)

7 (Jury not present.)

8 THE CLERK: All rise.

9 THE COURT: And good afternoon again, everyone, please
10 be seated. And where are we?

11 MR. GILLCRIST: Your Honor, we, uh, have been in
12 consultation with Dr. London due to his schedule and the fact
13 that we really want to make sure he's off the stand today
14 have decided to call him out of turn with Counsel's gracious
15 permission.

16 THE COURT: That was my concern if we did run over what
17 were we gonna' do with the Doctor, so.

18 MR. GILLCRIST: Thank you, Your Honor.

19 THE COURT: Okay. So, bring in the ladies and
20 gentlemen.

21 (Jury entered the courtroom.)

22 THE COURT: And, once again, noting for the record, we
23 have all of jurors present. And I believe we are going to be
24 taking another witness out of turn (unclear - one word).

25 MS. HOWARD: So, may I get Dr. London?

1 THE COURT: You certainly may.

2 MS. HOWARD: Thank you.

3 MR. BRATT: Your Honor, I would just ask the Court if
4 you could give a brief explanation to the jury is to what
5 taking a witness out, out of turn means.

6 THE COURT: I think I did that yesterday.

7 MR. BRATT: I don't, I don't remember (chuckles).

8 THE COURT: (Chuckles) 'cause we took a witness out of
9 turn. This is a Defense witness even though the Plaintiff's
10 technically not rested and it's for scheduling purposes. (To
11 the witness) And good afternoon, Doctor, if you go on up to
12 the witness stand. The best way's up that ramp.

13 THE CLERK: Go ahead and stand up there and raise your
14 right hand.

15 THE WITNESS: Sure.

16 DR. LONDON,

a witness produced on call of the Defendant,

having first been duly sworn, was examined and

19 testified as follows:

20 THE CLERK: Please be seated.

THE WITNESS: Miss, Ma'am, can I get a glass of water.

22 THE CLERK: Do we have some water (unclear - four
23 words.)

24 THE COURT: Yeah, we'll get you a glass of water,
25 Doctor.

1 MS. HOWARD: (To the witness) You have to share with the
2 rest of the Defense team. (To the Court) Your Honor, may I
3 proceed?

4 THE COURT: You certainly may.

5 MS. HOWARD: Thank you.

6 DIRECT EXAMINATION

7 BY MR. GILLCRIST:

8 Q Doctor, could you please, well, did you already
9 state your full name?

10 A Gary W. London, M.D.

11 Q All right. And, so what is your occupation,
12 doctor?

13 A I'm a physician specializing in neurology.

14 Q And where do you, uh, currently work?

15 A Uh, I practice in Montgomery County, Maryland,
16 Silver Spring and Rockville.

17 Q And what is the name of the practice that you're
18 affiliated with?

19 A Uh, Neurology Center P.A.

20 Q Could you take a step back and, uh, please, uh,
21 trace for us your formal medical training starting with
22 medical school?

23 A Sure. Um, I graduated from Northwestern University
24 Medical School in 1968. Uh, I interned at a UCLA affiliated
25 hospital in Los Angeles. I, uh, did my first year at

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1 neurology residency at the University of Michigan Anne Arbor.
2 Uh, it was interrupted by active duty in the United States
3 Navy during Viet Nam. Then I resumed my residency training
4 at U.C. San Diego. And since then I've been in the private
5 practice of, uh, neurology since 1974 at the current
6 location.

7 Q And are you, um, licensed to practice medicine in
8 what jurisdictions?

9 A Uh, Virginia, District of Columbia and Maryland.

10 Q And are you Board certified?

11 A I am.

12 Q Could you explain to us when you became Board
13 certified, and briefly, what is that?

14 A Uh, to be Board certified one has to have trained,
15 uh, have a full training program in an approved program. Um,
16 you have to take a written exam -- thank you -- and, uh,
17 subsequently a four hour oral exam. Uh, and then you are
18 Board certified by the American Board of Neurology and
19 Psychiatry. Um, obviously, it's, it's a standard that the
20 Board would like all of certified physicians to rise to.

21 Q All right. And, um, Doctor, are you the member of
22 any professional society?

23 A Uh, I am.

24 Q Could you describe those for us?

25 A Well, I'm a fellow of the American Academy of

1 Neurology. I'm a fellow of, um, the, uh, I'm Board, also
2 Board certified in electro diagnostic medicine, which is EMG
3 NCV. Um, I'm a fellow of the, uh, Association of Electro
4 Diagnostic Medicine. Uh, I belong to the Montgomery County
5 Medical Society, Russell DeYoung (phonetic) Society, uh, and
6 a number of other societies. Those are the important ones.

7 Q Right. Thank you. And, Doctor, would you describe
8 for us the nature of your private practice, you know, what
9 types of patients do you see in sort of in a normal, um, work
10 week or work month?

11 A Sure. Um, I'm a general neurologist, and, uh, I
12 guess I would say I see all comers. Um, I do see some
13 teenagers. Um, I don't operate, I'm not a neurosurgeon. Uh,
14 and I take care of Parkinson's disease -- maybe if I mention
15 the diseases --

16 Q Yeah.

17 A -- it's easier for everybody to understand. I
18 treat Parkinson's disease, MS, dementia, strokes, uh, neck
19 problems, back problems, peripheral nerve disease and
20 injuries. Um, dizziness, headaches is a big, it's very
21 common. Uh, and there are many others.

22 Q Do you have occasion in, in your prac (sic),
23 private practice to treat people with, um, back pain?

24 A All the time.

25 Q Do you have occasion to treat people who have, um,

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1 || injured themselves in car accidents?

2 A Yes.

3 Q Is that frequent or rare or . . .

4 A Moderate.

5 Q Moderate, all right, fair enough. And, Doctor, um,
6 prior to today have you, um, te (sic), um, qualify to testify
7 as an expert in the field of, uh, medicine specializing in
8 neurology, uh, pri (sic), in any of the other Maryland
9 Circuit Courts?

10 A I testified here before, and, yes, I have testified
11 elsewhere.

Q Um, and other courts in Maryland in the area?

A Um, Prince George's County, Upper Marlboro,

14 Montgomery County. Uh, District of Columbia, of course.

15 Q All right.

16 A I think those are the main ones in the area.

17 MS. HOWARD: At this time, Your Honor, I would proffer
18 Dr. London as an expert in the field of medicine specializing
19 in neurology provided, uh, qualified to provide an expert
20 opinion in this case.

21 MR. BRATT: May I voir dire the Doctor in his
22 qualifications, Your Honor?

23 THE COURT: You may.

24 MR. BRATT: Thank you.

25 VOIR DIRE,

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1 BY MR. BRATT:

2 Q Good afternoon, Doctor.

3 A Hi, how are you?

4 Q I'm good. Good to see ya'. So, you're a
5 neurologist, right?

6 A Correct.

7 Q And neuro (sic), would it be fair to say that
8 neurology consists of, uh, diagnosis and treatment of the
9 nervous system and muscles?

10 A In general, yes, I think you covered it.

11 Q And, uh, your practice consists primarily of
12 treating patients with strokes, coma, Alzheimer's disease,
13 epilepsy and multiple sclerosis. Is that accurate?

14 A I said I treat all comers. I treat a variety of
15 diseases. I, I don't know, I wouldn't say primarily, but,
16 uh, I treat the more common ones more commonly.

17 Q And, specifically, you mentioned that you treat
18 folks with back pain. Um, how long have you been treating
19 patients with back pain?

20 A Since 1974.

21 Q You have?

22 MR. BRATT: (To the Court) Uh, if I could go to the
23 exhibit, Your Honor?

24 MR. BRATT: (To the Clerk) Madam Clerk, can I just mark
25 for identification, please?

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1 THE CLERK: What number?
2 MR. BRATT: Uh, I have no idea.
3 THE CLERK: The one (unclear - one word).
4 MR. BRATT: Next number, please.
5 THE CLERK: Next (unclear - two words).
6 FEMALE VOICE: Fifty-six.
7 MS. ZOIS: Fifty-six, Madam Clerk.
8 THE CLERK: (Unclear - one word) it's 54.
9 MS. HOWARD: That's what we're saying.
10 FEMALE VOICE: Okay. (Chuckles.)
11 MALE VOICE: (Unclear - three words?)
12 MS. ZOIS: Sure.
13 THE CLERK: She's telling me she has something else.
14 MR. BRATT: You have it (unclear - one word) now.
15 (Brief pause while Counsel confer off the record.)
16 MR. BRATT: Thank you.
17 BY MR. BRATT:
18 Q So, Doctor, you've been treating patients with back
19 pain since 1974 you say?
20 A I, uh, entered prior practice in 1980 (sic), '74,
21 and I've been treating patients with back pain since then.
22 I've probably treated some as residents as well. Although we
23 treated more acute neurology during residency.
24 MR. BRATT: (To the Court) May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 BY MR. BRATT:

3 Q Doctor, I'm gonna' show you a copy of the Plaintiff
4 (sic), what's marked for identification as Plaintiff's
5 Exhibit Number 54, which is a copy of a deposition transcript
6 from a deposition you gave in a case in, called Rita Jones v.
7 Mid-Atlantic Healthcare Group in the Supreme Court of the
8 District of Columbia on Monday, April 14th, 1977. Oh, I'm
9 sorry, 1997. And, specifically, I'd like to direct you to
10 the highlighted portions of pages 12 and 13. If you could
11 read line, beginning at line 17 on page 12 through line six
12 on page 13, please?

13 A Sure. I admire your research, Counselor.

14 Q I do try to be thorough.

15 A "In terms of neurologic, general neurologic
16 conditions is there a way that you can kind of give me a
17 sense of how it breaks down in terms of the types of patients
18 that you see?" Answer, that's me, "Uh, well, I can tell you
19 that, what types of patients that I see, we see a lot of
20 patients with strokes, Alzheimer's Disease, epilepsy,
21 multiple sclerosis, Parkinson's Disease, other problems of
22 aging. Patients with neuropathies, headaches, multiple
23 sclerosis, if I didn't say that already. I would say these
24 are the most common ones."

25 Q You didn't mention back pain in 1997 when you were

1 asked about the scope of your practice did you, Doctor?

2 A Uh, it doesn't say that here, but, uh, what, what
3 year was this, Counselor?

4 Q 1997, April 14th.

5 A Well, that was an unfortunate, uh, omission in, uh,
6 1997, I'm sorry.

7 Q So, you made a mistake in your deposition in '97?

8 A No, I did not, I just didn't mention it. It's not
9 a mistake, so.

10 Q But you did treat back pain then, it just doesn't
11 say so?

12 A Since 1974 I've stated that.

13 Q So, the back pain's not a new part of your practice
14 since 1997, correct?

15 A Pardon me?

16 Q The back pain is not a new part of your practice
17 since 1997, correct?

18 A No.

19 Q And the only Board certifications you hold, Doctor,
20 are in neurology and electro diagnostic medicine, correct?

21 A Yes.

22 Q And, as you indicated, you're a fellow of the
23 American Academy in Neurology?

24 A Yes.

25 Q And, uh, you've described that organization as the

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1 foremost professional organization for neurologists and the
2 largest in the world in the past?

3 A I don't know if I said that or not.

4 Q What you just say that's a (unclear - one word)
5 characterization?

6 A Sounds nice, like a nice description.

7 Q (Chuckles.) Would you disagree with that
8 characterization?

9 A Do you want to say that again, please?

10 Q That The American Academy of Neurology is quote,
11 "the foremost professional organization for neurologists and
12 the largest in the world."

13 A I would think that's something that the, um, PR
14 department of the American Academy of Neurology wrote. I
15 don't think I wrote that.

16 Q Okay.

17 MR. BRATT: (To the Court) I'm gonna' have to get an
18 exhibit, Your Honor.

19 MS. HOWARD: Your Honor, this is voir dire, right? Just
20 to verify the qualifications?

21 THE COURT: This is voir dire.

22 MR. BRATT: And I have follow up questions I need to lay
23 the foundation for those.

24 THE WITNESS: Thank you. Yeah, thank you.

25 MR. BRATT: Court's indulgence, Your Honor.

1 THE COURT: Mm-hmm.

2 (Brief pause.)

3 MR. GILLCRIST: Can we see that, Counsel?

4 MR. BRATT: Oh, yeah, sure. Sorry, forgot Walter, I
5 mean, Mr. Gillcrist.

6 MR. GILLCRIST: What page?

7 MR. BRATT: Uh, it would be page 43, lines 17 through
8 21. If I remember correctly, it would be right there. (To
9 the Clerk) Madam Clerk, if I could get this marked for
10 identification as Exhibit Number 55, Ma'am. All right. (To
11 the Court) Can I just go ahead and (unclear - four words) the
12 jury?

13 THE COURT: You may.

14 BY MR. BRATT:

15 Q Doctor, I'm gonna' show you what's been marked for
16 identification as -- (unclear - two words) -- Plaintiff's
17 Exhibit Number 55, which is a, uh, a deposition that I took
18 of you in an action called (Unclear - one word) v. Martinez
19 on April 6th, 2011. And I'd like to, uh, direct your
20 attention to page 43, beginning at, uh, line 17 through page
21 44, line two, if you could read that section. Page 43, line
22 17 through page 44, line two?

23 A Uh, this apparently is a comment I made on April
24 6th, 2011 during a deposition, and it says, Question, "You are
25 also a fellow of the American Academy of Neurology?" "Yes."

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1 Question, "What's that?" "The American Academy of Neurology
2 is the foremost professional organization for neurologists
3 and the largest in the world." Uh, I guess I did say that.

4 Q And you can hang on to that for a second, Doctor.

5 Uh, do you consider yourself bound by the, uh, American
6 Academy of Neurology's code of professional conduct --

7 MR. GILLCRIST: Objection, Your Honor. This does not go
8 to his qualifications.

9 THE COURT: I'm gonna' sustain that.

10 MR. BRATT: Sure it does. Your Honor, may I approach?

11 THE COURT: Of course.

12 (Counsel approached the bench and the following
13 occurred:)

14 (Husher turned on.)

15 THE COURT: Proffer as to how that goes to
16 qualifications.

17 MR. BRATT: (Unclear - four words) what I'm doing is
18 laying a foundation for his knowledge and obligations as a
19 member of the society under their own ethical code for what a
20 neurologist is supposed to when rendering legal expert
21 testimony, which certainly would be relevant to his
22 qualifications to testify whether he follows his own
23 professional society's code of ethics to give testimony.

24 MR. GILLCRIST: See, Your Honor, that would go to the
25 weight of his testimony and substantive grounds. This is

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1 just grandstand --

2 THE COURT: I'm gonna' sustain that. That, I don't
3 think that's proper.

4 MR. BRATT: Thank you, Your Honor.

5 THE COURT: You can put your proffer on the record.

6 MR. BRATT: Will I be permitted in cross, Your Honor?

7 THE COURT: We'll see where we go on cross --

8 MR. BRATT: Okay.

9 THE COURT: -- and when it comes out.

10 MR. BRATT: Okay. Okay.

11 (Counsel returned to the trial tables and the following
12 occurred:)

13 (Husher turned off.)

14 THE COURT: He'll ask another question.

15 THE WITNESS: Thank you.

16 BY MR. BRATT:

17 Q Do you know whether the American Academy has
18 guidelines for giving legal expert testimony, Doctor?

19 MR. GILLCRIST: Objection, Your Honor.

20 THE COURT: Sustained. Move on.

21 BY MR. BRATT:

22 Q Would you agree that neurologist when called upon
23 to provide expert medical testimony should testify only about
24 the subjects for which the experts is qualified as an expert
25 by training experience?

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1 A Yes, of course.

2 Q And you would agree, would you not, that Ms.

3 Exline-Hassler does not suffer from nerve damage, correct?

4 MR. GILLCRIST: Objection, Your Honor.

5 THE COURT: I'm gonna' -- that goes beyond the
6 qualifications, I'm gonna' sustain.

7 BY MR. BRATT:

8 Q You reviewed a variety of records about Ms. Exline-
9 Hassler before coming to testify, didn't you, Doctor?

10 MS. HOWARD: Objection.

11 THE WITNESS: I did.

12 MS. HOWARD: Same.

13 THE COURT: Sustained, beyond the scope.

14 BY MR. BRATT:

15 Q And did you review any record where Ms. Exline-
16 Hassler was treated by neurologists?

17 MS. HOWARD: Objection.

18 THE COURT: Gonna' sustain.

19 BY MR. BRATT:

20 Q You don't perform surgery right, Doctor?

21 A I already stated that yes.

22 Q And if you had a patient.

23 A Yes, I do not.

24 Q And if you had a patient with a surgical problem
25 you'd refer that patient to a neurosurgeon orthopedist,

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1 depending on what the problem was, correct?

2 A Yes.

3 Q And you've never performed a nerve root oblation?

4 A No, no.

5 Q You've never performed an epidural injection?

6 A No.

7 Q You've never performed an SI joint injection?

8 A No.

9 Q You do not perform disc decompressions?

10 A No.

11 Q You do not perform annularplasty?

12 A That's correct.

13 Q You do not perform the discTRODE procedure?

14 A That's correct.

15 Q And, in fact, you're really not that familiar with
16 the discTRODE procedure at all, isn't that right?

17 A No.

18 (Brief pause while Counsel confer off the record.)

19 MR. BRATT: I did mark this for identification as 56, I
20 guess?

21 MR. PORCARELLI: What number?

22 MR. BRATT: Fifty-six.

23 MS. ZOIS: It's already marked as 45, John.

24 MR. BRATT: Oh, I'm sorry, it's already marked as 45.

25 Do you have that, Madam Clerk?

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1 THE CLERK: Which one?

2 MR. BRATT: Forty-five. None of us can keep track

3 personally.

4 THE CLERK: Yes.

5 MR. BRATT: Can I have that?

6 THE CLERK: Uh, we don't have it though --

7 MS. ZOIS: We have it, John.

8 THE CLERK: -- it's just --

9 THE COURT: You all have it.

10 THE CLERK: -- (unclear - four words.)

11 THE COURT: You haven't introduced it.

12 MALE VOICE: (Unclear - approximately seven words.)

13 MR. GILLCRIST: Let me see it (unclear - one word).

14 MR. BRATT: Sure. This is Dr. London's report. I'm not

15 gonna' have (unclear - two words) it.

16 MALE VOICE: (Unclear - three words.)

17 MR. BRATT: I'm gonna' show it to him before I ask him.

18 (Brief pause while Counsel confer off the record.)

19 BY MR. BRATT:

20 Q Doctor, I'm gonna' show you what's been marked for

21 identification as Plaintiff's Exhibit 45. Would, I believe

22 you'll agree it's a copy of the, uh, report you did regarding

23 Ms. Exline-Hassler on December 25th, 2011, would you take a

24 look at that for a second, please?

25 A Sure.

1 Q Verify that it is your report.
2 A Uh, this is my report.
3 Q Now I'd like to direct your attention to, uh, page
4 seven, Doctor.
5 A Okay.
6 Q Just (unclear - four words), please. Could you
7 read the second paragraph, please, of your report on page
8 seven, Doctor?
9 A Sure. Uh, this would --
10 MR. GILLCRIST: Objection, Your Honor --
11 THE COURT: It --
12 MR. GILLCRIST: -- this does not go to his
13 qualifications.
14 MR. BRATT: It does.
15 THE COURT: Counsel, approach.
16 (Counsel approached the bench and the following
17 occurred:)
18 (Husher turned on.)
19 THE COURT: Don't do that.
20 MR. BRATT: Yes, Your Honor, I apologize.
21 THE COURT: Was it the, what is the proffer?
22 MR. BRATT: The proffer is is that his report says that,
23 and where did I put it, is that he is not really that
24 familiar with the discTRODE procedure at all, and that is one
25 of the things that Dr. Sloan testified about, it's one of the

1 procedures that the Plaintiff has had in this case, and he's
2 gonna' be giving expert medical testimony, so, certainly his
3 familiarity with the types of treatment that she's had and
4 the procedures that have been done is relevant to his
5 qualifications to give testimony.

6 MR. GILLCRIST: He just he didn't --

7 MS. HOWARD: But he, he said he doesn't know --

8 THE COURT: He doesn't know.

9 MS. HOWARD: -- that's what I was trying to get your
10 atten (sic), I think you misinterpreted his no as he would,
11 he agrees with you, and all this is because he didn't --

12 MR. BRATT: I didn't --

13 MR. GILLCRIST: He said he doesn't do it.

14 THE COURT: So.

15 MR. BRATT: -- I didn't -- I --

16 MS. HOWARD: It has to do with a no and a yes.

17 MR. BRATT: -- I said you, what I said is, I think what
18 I said is, in fact, you're really not really fami (sic), that
19 familiar with the discTOAD (sic), TRODE procedure at all,
20 correct? And he said no.

21 MS. HOWARD: Yeah --

22 MR. BRATT: Which in interpreted to mean I don't agree
23 with you, Mr. Bratt.

24 MS. HOWARD: Yeah, he agreed with you --

25 THE COURT: He agreed with you.

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1 MS. HOWARD: -- just in tone. I agree --
2 THE COURT: Agreed.
3 MS. HOWARD: -- with you that he said the word no --
4 THE COURT: Yeah, but --
5 MS. HOWARD: -- and that's fair misinterpretation, but
6 he doesn't --
7 MR. BRATT: All right. I'll just clean it up then.
8 MS. HOWARD: Yeah.
9 MR. BRATT: Can I lead to clean it up?
10 THE COURT: You, you certainly need to clean it.
11 MR. BRATT: Okay.
12 THE COURT: Exactly. So.
13 BY MR. BRATT:
14 Q I think we misunderstood one another, Doctor.
15 A I'm sorry.
16 Q By your last answer you in, did you intend to agree
17 with me that you really are not that familiar with the
18 discTRODE procedure at all?
19 A I just said no. No, I am familiar with it.
20 Q Ah, okay. Well, in that case, could you read the
21 second paragraph of your report, please?
22 A Sure. Now this was authored --
23 Q On page seven.
24 A -- on, uh, 12/25/11. So, that was a long time ago.
25 Q And what does it say?

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1 A It states, "I am not that familiar with Dr. Sloan's
2 inter-discal thermal ablation (discTRODE) procedure, but this
3 appears that this has not resolved her pain."

4 Q Thank you, Doctor. You do not perform I-D-E-T,
5 correct?

6 A It's the same as discTRODE almost.

7 Q You do not perform discograms?

8 A No.

9 Q Are you qualified to interpret a discogram
10 yourself, the results of that test?

11 A I don't, uh, I look at them, I read the reports, I
12 don't dictate the formal report.

13 Q So, would it be fair to say that you don't rely on
14 the raw data, you depend on the report of the person who
15 interpreted it?

16 A I don't know what you mean by raw data. You get an
17 image.

18 Q And --

19 A You get a picture.

20 Q Okay, you get a picture, right?

21 A Correct.

22 Q And you get a report with that picture, right?

23 A Correct.

24 Q Do you read the picture yourself and determine the
25 results of the picture on your own or do you rely on what it

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1 says in the report?

2 A I look at the report and I try to look at the
3 images if I can get them or the patient brings them.

4 Q And do you have training interpreting those proc
5 (sic), those, those tests, the discogram?

6 A It's not that difficult.

7 Q So is that a yes or a no?

8 A Do I have training, no, no formal training.

9 Q That's not something you customarily do as part of
10 your practice, is it?

11 A I'm not sure what you mean by customarily,
12 Counselor, but if I'm presented the pictures I'll look at
13 them and I'll read the reports.

14 Q Okay. And without the report are you able to
15 figure out what the picture shows?

16 A I think so, yes.

17 Q When's the last time you did it?

18 A Don't recall.

19 Q How often do you do it?

20 MR. GILLCRIST: Objection, Your Honor. This --

21 THE COURT: Sustained.

22 BY MR. BRATT:

23 Q And you don't perform any kind of invasive
24 procedures on patients, correct?

25 MR. GILLCRIST: Asked and answered, Your Honor.

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1 THE COURT: Sustained.

2 MR. BRATT: Okay.

3 BY MR. BRATT:

4 Q You do not, uh, put yourself out as an expert in
5 the specialty of pain management as it is conducted by
6 anesthesiologists, correct?

7 A No, I do not.

8 Q And you don't hold yourself out as an expert in any
9 specialty besides those in which you're Board certified,
10 right?

11 A Well, that's correct, but there's a tremendous
12 amount of overlap between specialties in the day-to-day
13 practice of, clinical practice of any specialty.

14 Q And you wouldn't feel comfortable testifying about
15 the standard of care in the field of pain management, would
16 you?

17 A Not really, no.

18 Q And, uh, let's see, um, your total patient
19 population, the, the entirety of the group of patients for
20 whom you serve as a treating neurologist, that's about 2,000
21 patient's right?

22 MR. GILLCRIST: Objection, Your Honor.

23 THE COURT: Overruled. You can answer that.

24 THE WITNESS: I would say roughly my, my active practice
25 is, uh, now, yes.

1 BY MR. BRATT:

2 Q So, the 2,000's correct?

3 A I haven't done an audit. I think that sounds
4 right.

5 Q And you would agree that out of those 2,000
6 patients you're only treating perhaps one or two for annular
7 tears, correct?

8 A That's not correct.

9 MR. BRATT: This is gonna' take a long time.

10 MR. GILLCRIST: Objection, Your Honor.

11 THE COURT: So.

12 MR. GILLCRIST: Can we approach the bench?

13 THE COURT: Sure.

14 (Counsel approached the bench and the following
15 occurred:)

16 (Husher turned on.)

17 MR. GILLCRIST: Your Honor, I have, and I, please, I
18 don't mean to overstep my bounds here, but I've been sitting
19 through this trial for two days. Counsel just walked back
20 and very audibly said "this is gonna' take a long time" right
21 to the jury, um, and there's been a lot of, uh --

22 THE COURT: There's been a lot of byplay, there's been a
23 lot of comments that are not directed to other Counsel or to
24 witnesses, and have been out loud to the jury, and the Court
25 does agree that that's im (sic), that's inappropriate. I

1 also, I understand you have a job to do, but we need to move
2 this case along. This jury is not cleared to be here on
3 Monday. Let's get to the point.

4 MR. BRATT: Your Honor, if the Doctor would tell the
5 truth and answer the question I wouldn't have this problem.
6 I have the deposition transcript right here. I'm not wrong.

7 MR. GILLCRIST: This doesn't go to his qualifications.

8 THE COURT: It doesn't go to the Doctor's
9 qualifications.

10 MR. BRATT: It does, this case involves, this case
11 involves annular tears, he's going to be giving opinions
12 regarding these, these annular tears, and, and --

13 THE COURT: (Unclear - two words) --

14 MR. BRATT: -- and the causality of them.

15 THE COURT: -- however, this Doctor, this Doctor is a
16 Board certified neurologist who has been accepted as an
17 expert witness in that field, and he is certainly, those are
18 certainly appropriate questions to ask at the, to support the
19 basis of his opinions and to, for the jury to decide whether
20 to believe him or not. He is a practicing Board certified
21 neurologist who deals with patients with issues of back pain.
22 He certainly is going to be qualified to issue an opinion.
23 You can cross examine on those other issues, the jury can
24 decide what, if any, weight to give to that. But I don't
25 think at this point --

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1 MR. BRATT: I, I believe I understand (unclear - two
2 words.)

3 THE COURT: So, okay? And you're gonna' get a chance to
4 do all that --

5 MR. BRATT: I'm just gonna' do it later.

6 THE COURT: -- so, okay? That's fine.

7 (Counsel returned to the trial tables and the following
8 occurred:)

9 (Husher turned off.)

10 BY MR. BRATT:

11 Q You have no training or experience in chiropractor
12 care correct, Doctor?

13 A Correct.

14 Q And you agree before giving testimony you should
15 carefully review the relevant records and facts of the case
16 in prevailing statements of practice, don't you?

17 A I'm sorry, could you say that a little louder,
18 please?

19 Q You agree that before giving testimony you should
20 carefully review the relevant records and facts of the case
21 and the prevailing statements of practice, correct?

22 A Yes, of course.

23 Q And the first time you acted as an expert witness
24 was in 1974?

25 A Most likely, yes.

1 Q And since then you've been involved in several
2 thousand cases as an expert witness?

3 A Several thousand, absolutely not.

4 Q Approximately 2,000 give take?

5 A Uh, 1951 . . . 39 years, so that would be 50 a
6 year, uh, as an expert, is that what you said?

7 Q Yes, Your (sic), um, yes, Doctor, that was
8 (unclear).

9 A Mm, no.

10 Q And you did not give testimony to that affect in
11 Mintner v. Mortimer case in which your deposition was taken?

12 A You know, Counselor, I, uh, I'm asked about these
13 estimates all the time, and I do the best I can, but I've had
14 a long career, and, uh, I don't audit these things the way
15 you might like, and, uh, I'm not sure what I said in that
16 case, but I didn't lie then and I'm not lying now.

17 Q It'd be fair to say that you've done an awful lot
18 of expert witnessing though, right?

19 A I do some, yes.

20 Q And you've provided medical testimony in, uh, at
21 least five states and the District of Columbia, have you not?

22 MR. GILLCRIST: Objection, Your Honor, it doesn't go to
23 qualifications as an expert.

24 THE COURT: I'll allow that. You can answer that,
25 Doctor.

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1 THE WITNESS: Yeah, sure, yes.

2 THE COURT: Mm-hmm.

3 THE WITNESS: Mm-hmm.

4 BY MR. BRATT:

5 Q Massachusetts, Florida, West Virginia, Maryland and
6 Virginia, right?

7 A Is that five? Yes.

8 Q And when you do legal medical work it's about 80
9 percent of the time for the Defense, 20 percent of the time
10 for the Plaintiff?

11 A Say that again, please. I'm sorry.

12 Q When you do legal medical consulting, such as
13 you're doing here today, when you do that kind of thing, you
14 do it 80 percent of the time for the Defense and 20 percent
15 of the time for the Plaintiff, correct?

16 A I, at this point in my career I seem, I seem to do
17 more Defense. Earlier in my career I did more Plaintiff,
18 just because I was treating a lot of those patients.

19 MR. BRATT: I think I have no further questions on
20 qualifications at this time, Your Honor, thank you.

21 MR. GILLCRIST: Thank you, Your Honor.

22 MS. HOWARD: So, so the Court will accept him?

23 THE COURT: And you're offering him as an expert?

24 MS. HOWARD: Yes, Your Honor.

25 THE COURT: He is received as such.

1 MS. HOWARD: Thank you, Your Honor.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MS. HOWARD:

4 Q Dr. London, I guess maybe we should just, um, well
5 let's start at the beginning. Is it correct that some time
6 before December 25th, 2011 you were asked to do an, um,
7 independent medical record review of Ms. Jacqueline Exline-
8 Hassler?

9 A I was.

10 Q All right. And could you explain what's involved
11 or -- strike that -- is that sometimes called a peer review?

12 A Correct.

13 Q Could you explain what generally is involved in
14 doing a peer review and how you personally do it?

15 A Well, in peer review I'm, uh, sent a pile of, uh,
16 I'm sent records with, um, a cover letter, I'm asked to, um,
17 review the records and dictate a report, and the person that
18 sends me the records or the entity, uh, frequently has
19 specific questions, uh, relating to, uh, the treatment of a
20 person or an incident in which they were involved.

21 Q And, um, with specific reference to Ms. Jacqueline
22 Exline-Hassler, um, approximately when did you review those
23 records, initially anyway?

24 A (No response.)

25 Q Would it have been around the time you prepared a

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1 written report?

2 A Let's see I (unclear - one word) it around
3 Christmas day, 2011. It was either December 24th or 25th,
4 2011.

5 Q Okay. So, you, uh, and it's already been marked,
6 it's before you, I think, as, uh, Plaintiff's 45, your report
7 from (unclear - two words)?

8 A Yeah, yeah, here it is, uh --

9 Q Okay, Plaintiff's 45. So, in conjunction with your
10 initial review of the records you prepared a very detailed
11 or, or I'll call it a seven page report, correct?

12 A Yes, I did.

13 Q And, uh, subsequent to preparing that report did
14 there come a time when I contacted your office and asked you
15 to provide, uh, uh, expert testimony in this case?

16 A Yes.

17 Q And before I contacted you a few months ago is it
18 also correct that in, in the years over the, uh, your career
19 I have had an opportunity to work with you on one or two
20 other occasions in the past?

21 A Yes, I believe one, maybe two.

22 Q All right. Does the fact that my office, me and
23 other attorneys in my office have, uh, used, uh, asked you to
24 review records and possibly be an expert, does that impact
25 your opinions in any way?

1 A Not at all.

2 Q Uh, now additionally you were paid for your
3 initial, um, or should have been anyway, hopefully, paid for
4 your time associated with reviewing the records and preparing
5 the initial report, correct?

6 A Yes.

7 Q And then again when, um, you gave a deposition,
8 when Mr. Bratt took your deposition in this case you were,
9 um, uh, and I had a meeting with you before the deposition,
10 you were paid for that time, correct?

11 A When I'm involved in situations, such as we're
12 doing today I'm compensated for my time, and, uh, otherwise
13 I'd be treating patients, so I am compensated, yes.

14 Q All right. And, um, that's very standard amongst
15 doctors who provide expert testimony in cases, correct?

16 A Absolutely.

17 Q All right.

18 A Nobody works for free.

19 Q And stating that point does the fact that my office
20 will be compensated for your time associated here does that
21 change your opinions or make you more likely to testify in
22 one way or the other?

23 A Uh, I'm under oath, I took an oath, and, um, I'm
24 here to give my expert opinion to the best of my ability and
25 to be truthful.

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1 Q Okay. Now, um, did you have an opportunity to
2 actually meet with and examine Ms. Exline-Hassler?

3 A I did not.

4 Q And do you have any personal knowledge as to why
5 you didn't have that opportunity?

6 A It --

7 MR. BRATT: Objection. May we approach?

8 THE COURT: Of course.

9 MR. BRATT: I do apologize, Your Honor, but this --

10 (Husher turned on.)

11 (Counsel approached the bench and the following
12 occurred:)

13 MR. BRATT: -- (unclear - three words.)

14 THE COURT: I have --

15 MR. BRATT: Your Honor, this is collateral.

16 THE COURT: Hold on.

17 MR. BRATT: Oh, I'm sorry, I forgot to wait for
18 everyone.

19 THE COURT: Mm-hmm.

20 MR. BRATT: Sorry.

21 THE COURT: What happened?

22 MS. HOWARD: Um, I was, I expected him to say no, he has
23 no personal knowledge and I was just gonna' go on to the next
24 question.

25 THE COURT: So.

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1 MS. HOWARD: I requested an appointment, I scheduled it
2 with him, Mr. Bratt's office took the position that, um, it
3 was too late or they didn't want to because of mediation.
4 The mediation got postponed. I said I renewed my request,
5 the date was still set, and Ms. Zois took the position no.
6 And, um, he never go to see her, and I, I expected him to say
7 no, he has no personal knowledge about it. All he knows is I
8 scheduled it and (unclear - three words.)

9 THE COURT: Why don't you just rephrase and lead him and
10 say you never had a chance to personally meet with her, and
11 then go on from there.

12 MR. BRATT: And I may have objected more quickly,
13 because my concern was the, the next question is how come?

14 THE COURT: So.

15 MR. BRATT: And that, and that I think's inappropriate.

16 MS. HOWARD: No, I'm not gonna' ask how come.

17 THE COURT: So, he, she's not gonna' ask.

18 MS. HOWARD: No, I wasn't gonna' ask how come.

19 THE COURT: So, so just re, just rephrase --

20 MS. HOWARD: Yeah.

21 THE COURT: -- the question as --

22 MS. HOWARD: Yeah.

23 THE COURT: -- you never got a chance to meet her did
24 you?

25 MS. HOWARD: Yeah.

1 THE COURT: And he can say no, and we can go on from
2 there.

3 MR. BRATT: Thank you, Your Honor, thank you.

4 THE COURT: Okay?

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

7 (Husher turned off.)

8 THE COURT: She'll rephrase that.

9 BY MS. HOWARD:

10 Q Just the bottom line is you didn't have an
11 opportunity to meet with Ms. Exline-Hassler, did you?

12 A No, I did not.

13 Q All right. And, uh, have you had an opportunity in
14 your review of the records to review records, uh, from other
15 medical providers who did have an opportunity to examine and
16 meet with Ms. Exline-Hassler?

17 A Many.

18 Q All right. And how about even as recently as the
19 fall of 2012, did you see records from Dr. McGrail and Dr.
20 Naff who did examine the patient in that time?

21 A I did.

22 Q All right. And did you rely on their findings and
23 their report related to your opinions in this case?

24 A Yes.

25 Q All right. Now, let's take a step back and you

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1 told us that is was, uh, uh, Christmas time or December 25th,
2 2011 that you prepared your initial report. Uh, is it also
3 correct that after that date you received an additional set
4 of records, um, regarding that req (sic), they were requisite
5 pre-date the accident of June 26th, 2009 and they also kind of
6 updated you on additional treatment Ms. Hass (sic), uh,
7 Exline-Hassler had since Christmas of '11?

8 A That's correct, I did receive those.

9 Q So, let's talk about, um, your review of the
10 records. Um, could you tell us what, if anything, did you
11 find significant in your review of either the records
12 initially or your subsequent review of the records?

13 A That's a pretty broad question, could you be a
14 little more specific.

15 Q All right.

16 A I found a lot.

17 Q Did you, did you have an opportunity to review
18 records from, um, a Dr. Radley?

19 A Yes, I did.

20 Q All right. Tell us what, uh, anything you found
21 significant in Dr. Radley's records?

22 A Um, Dr. Radley was the first specialist, uh, to
23 examine or consult with and examine, uh, Ms. Exline-Hassler,
24 and he did that on 7/27/09, which was a month following the,
25 uh, the incident. She had been seeing her primary care

1 before that. And, um, his diagnosis was lumbar strain and
2 minor disc dehydration changes with no nerve root
3 compression, and he recommended medical and physical therapy.
4 Seemed to my interpretations that's pretty benign.

5 Q All right. And, um, did you have an opportunity to
6 review any records associated with an EMG and nerve
7 conduction tests done by Dr. Chen?

8 A I did.

9 Q And those would be, uh, EMG and nerve conduction
10 tests to the lower extremities, correct?

11 A They were.

12 Q And what --

13 A In, in the lower back, yeah.

14 Q All right, and what were the, uh -- oh, in the
15 lower back -- and what were the findings of those records?

16 A Uh, his test was completely normal indicating that
17 there was no denervation or a nerve root compression or dying
18 nerves in the lower back or the legs. I do the tests myself,
19 I do that test myself.

20 Q And, uh, did you have an opportunity at any time to
21 see a record from a Dr. Frank Nisenfeld from about February
22 2010?

23 A Yes.

24 Q All right. And what, if anything, was significant
25 in Dr. Nisenfeld's report?

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1 A Are we talking about Dr. Naff?
2 Q Uh, Dr. Nisenfeld. And I have here, um --
3 A Okay, maybe --
4 Q -- the, um, it may be easier, I have here
5 Plaintiff's Exhibit 10 that is all of Ms. Exline-Hassler's
6 medical records in this case that, uh, you could review this
7 or review the records that, um, are in your chart there.
8 A Uh, I think --
9 Q Let me get the page reference, too, Doctor.
10 A Yeah, sure.
11 MR. BRATT: I'd also appreciate that.
12 THE COURT: Mm-hmm.
13 BY MS. HOWARD:
14 Q Uh, yeah, these records have a Bates stamp at the
15 bottom?
16 A Right.
17 Q So, if we refer to these records then, um, uh, if I
18 can, uh, it'd make it easier for Counsel to follow along?
19 A Sure.
20 Q (Unclear - two words.)
21 A This is kind of mess.
22 Q So, this will be record, um, 253, Counsel. Is this
23 a record --
24 MS. ZOIS: Again, Counsel, I'm sorry, three --
25 THE COURT: 2-5-3.

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1 MS. ZOIS: 2-5-3, thank you.

2 THE COURT: Mm-hmm.

3 BY MS. HOWARD:

4 Q Is that it? Is it (unclear - one word)?

5 A Yes.

6 Q Okay.

7 A Mm-hmm.

8 Q And is that a record you had seen before, seen in
9 your initial review or in the supplemental record?

10 A As a matter of fact I have seen this.

11 Q And what, if anything, is significant in Dr.
12 Nisenfeld's, or significant to your opinions in this case in
13 Dr. Nisenfeld's report?

14 A Well, the date is 2/1/2010 so that would be seven,
15 about eight months post, uh, the incident, and, uh, he found
16 a normal neurological exam, he found a normal, uh, orthopedic
17 musculoskeletal examination, he looked at the x-rays and MRI
18 reports, he diagnosed degenerative disc conjoint disease of
19 the thoracic and lumbosacral spine, no evidence of
20 radiculopathy. Uh, degenerative means wear, natural wear and
21 tear. And he told her she had non-orthopedic low back pain.

22 Q Okay. And then following seeing Dr. Nisenfeld is
23 it, um, uh, did you have an opportunity to see any records
24 from Dr. Sloan? They start, I think, in the next, next
25 couple pages over, starting May 2010?

1 A Many records of Dr. Sloan's, yes.

2 Q What, if anything, significant did you find in Dr.
3 Sloan's, uh, initial records, Doctor?

4 MR. BRATT: Page, Counsel.

5 MS. HOWARD: I believe it's the next page, Counsel.

6 THE WITNESS: Oh, okay, fine. Yeah, that makes it a lot
7 easier.

8 MR. GILLCRIST: 2-5-5. (Unclear - one word) 2-5-5.

9 MR. BRATT: Okay.

10 THE WITNESS: Yeah, so this is 0-0-0-2-5-5. Well, this
11 is dated May 24, 2010 so that remits he made, made it June,
12 (unclear - two words), that would 11 months post the
13 incident. Uh, Ms. Exline-Hassler referred herself to the
14 Spine Center and was seen by Dr. Steven Sloan. Uh, he took a
15 history, he, uh, reviewed some of her, uh, previous
16 treatments. Uh, I find no, uh, there's no direct relation of
17 the, by Ms. Exline-Hassler of the history of, uh, any auto
18 accident or injury. Um --

19 BY MS. HOWARD:

20 Q So, in Dr. Sloan's first report of May 24th, 2010
21 what, if any, reference is there to the fact that, uh, there
22 had been a car accident, uh --

23 A The --

24 Q -- June 26th, '09?

25 A -- there's not in his history of present illness.

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1 Q All right.

2 A Um --

3 Q And then what are Dr. Sloan's findings on physical
4 exam?

5 A Sure. Uh, he found a full range of motion of her
6 lower back. I mean, I can read this, but flexion, extension,
7 rotation, normal limits, does not provoke pain. She had
8 equivocal, that means plus, minus, uh, tenderness, uh, over
9 the L5/S1 facets. Those are little joints in the spine.

10 Q So, when he touches her back she's not even sure if
11 saying she has pain or not? That's equivocal pain, equivocal
12 tenderness?

13 A Equivocal, that's equivocal.

14 Q Equivocal (unclear - two words).

15 A Plus, minus I think is fair.

16 Q Okay.

17 A Um, he said there was a degree of spasm, uh, in the
18 lumbar muscles, no tenderness to palpation. Uh, he found,
19 uh, strength sensation reflexes intact. Uh, gate was normal.
20 He looked at the MRI and the EMG, and, uh, the MRI films,
21 and, uh, I assume he looked at the film, he describes it
22 anyway. And, um, he, his diagnoses consists of, in my
23 opinion, wear and tear of changes and degenerative changes of
24 the lower back. He, uh, unbundles that to five diagnoses,
25 but it all adds up to degenerative changes.

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1 Q And degenerative, again, is the wear and tear of
2 the back?

3 A Yes --

4 Q All right.

5 A -- I can list them if you would like.

6 Q Um, well, actually, I wanted to ask you, you did
7 have an opportunity to, uh, regarding the MRI, you've seen
8 reports, you've seen references to the reports throughout
9 these records, correct?

10 A Yes.

11 Q All right. And what is your understanding of what
12 the findings on the, uh, MRI were? The MRI from July of '09?

13 A Well, the primary findings that are, are at L4/5
14 and L5/S1 and, uh, they show degenerative changes, meaning
15 wear and tear, sclerosis, things of that sort in the facets,
16 in the joints, and there are two annular tears described.
17 One at L4/5 and one at L5/S1. An annular tear, um, just
18 trying to think how to describe this to the jury, uh, I've
19 seen a lot of Reese's, uh, piece, um, a lot of Reese's
20 chocolate bars on TV lately, so, you know, they show you the
21 peanut butter and then there's the paper around it, so if you
22 think of the paper that's the, uh, what's called the annulus,
23 or it's a fibrous band that holds the disc material inside,
24 which is more liquid, and, uh, if the paper tore that would
25 be a tear in the annulus, and then if some of the delicious

1 peanut butter and chocolate sort of push through that little
2 tear that's called a disc rupture or disc protrusion. So,
3 um, this is what the radiologist saw, they're very common,
4 uh, they're, uh, the far and away the most common cause is,
5 again, wear and tear, and no, no pun intended, but, uh, it's
6 just degenerative and part of the process of aging.

7 Q All right. Now, um, Doctor, continuing on with
8 your review of the medical records, did you, uh, have an
9 opportunity to see a record from Dr. Naff from about June of
10 2011?

11 A I did.

12 Q And what, uh, do you recall whether he had any
13 findings on his, um, when he did the orthopedic and the
14 neurological examination, did he have any, uh, positive
15 findings there?

16 A As I recall he did not, in both, uh, in terms of
17 range of motion and the neurologic exam.

18 Q And what about when Dr. Naff saw Ms. Exline-
19 Hassler, and you've seen the report from this November of
20 this year, November 2012, correct?

21 A Yes.

22 Q And were there any, to your recollection, any
23 findings noted at that time?

24 A None.

25 Q All right.

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1 A No, no positive findings.

2 Q And then, uh, again, you mentioned you've seen Dr.
3 McGrail's written report associated with his examination of
4 the patient, correct?

5 A Yes.

6 Q Uh, were there any, what, if any, adverse findings
7 were there reported there?

8 A Uh, he found a, I know that he found a completely
9 normal neurological exam, and, um, I, I got it right here.

10 MR. BRATT: Objection, foundation, Your Honor.

11 THE COURT: We've asked, the question was whether he's
12 seen the report.

13 MR. BRATT: I think he's being asked to tell the jury
14 what Dr. McGrail said in the report. That's what I thought.

15 THE COURT: Let's, um, find the report, but she'll
16 probably ask another question. We'll go from there.

17 MR. BRATT: Okay.

18 BY MS. HOWARD:

19 Q Do you have Dr. McGrail's report there?

20 A I do.

21 Q All right, and is that a report that, uh, you rely
22 on in performing your, uh, opinions that you willing to give
23 here today in Court?

24 A Yes.

25 Q And you rely on the findings that Dr. McGrail had

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1 when he examined Ms. Exline-Hassler, um, late last year, late
2 2012?

3 A He states she was sitting comfortably on the exam
4 table, and he found a normal exam, normal (unclear - one
5 word) tone strength in all muscles groups, upper and lower
6 extremities, reflex sensory exam completely normal. He found
7 a normal exam.

8 Q All right. Now, Doctor, you have had an
9 opportunity to review some of Ms. Exline-Hassler's records
10 that pre-date the car accident of June 26th, '09, correct?

11 A Yes.

12 Q All right. And I'd like to, um, briefly go through
13 those with you. I have some of them actually, um, they're
14 contained in Plaintiff's Exhibit 8 starting at, I believe,
15 86, uh, but I also happen to have some of them enlarged that
16 might be easier for us to use them.

17 A Uh --

18 Q With Counsel starting at 87 and going through about
19 a hundred and four.

20 A Enlargements would be nice.

21 Q All right. So -- (to the Clerk) (Unclear - three
22 words) Exhibits 45 (unclear - one word.)

23 THE CLERK: (Unclear.)

24 MS. HOWARD: A couple of these I'm going to need marked,
25 okay, Your Honor?

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1 THE COURT: Mm-hmm, certainly.
2 (Brief pause while off record conversations being held.)
3 BY MS. HOWARD:
4 Q This will (unclear - one word), just take a second.
5 A Thanks a lot.
6 MALE VOICE: (Unclear.)
7 MS. HOWARD: (Unclear - two words.) So, um --
8 (Brief pause while Counsel confer off the record.)
9 MR. BRATT: All I would ask if I could just get the page
10 number so I can follow, please.
11 (Long pause.)
12 BY MS. HOWARD:
13 Q (Unclear - three words?)
14 A Sure.
15 (Long pause.)
16 Q All right. As I said, I'm starting --
17 A It's kind of awkward sitting here, Judge, you know,
18 the, uh, there's no place for your knees.
19 MS. HOWARD: Starting at page 87, Counsel, uh,
20 Plaintiff's Exhibit 8.
21 MS. ZOIS: One more time?
22 MS. HOWARD: Eighty-seven.
23 THE COURT: Eighty-seven.
24 MS. ZOIS: Thank you.
25 MS. HOWARD: I'm (unclear - three words.)

1 (Long pause while Counsel confers with the Clerk off the
2 record.)

3 BY MS. HOWARD:

4 Q All right, Doctor, um, if you would like to just
5 come down and take a look at these records.

6 A Sure.

7 Q Okay, this is page nine. (To Counsel) They
8 actually have the number right at the bottom, sorry, Counsel,
9 (unclear - four words.) (Long pause.) (To the witness) All
10 right, so I'm gonna' show you page, a blow up of page 90 at
11 Plaintiff's Exhibit 8. Doctor, have you seen this record
12 before?

13 A Yes.

14 Q And you've relied on it and formed any opinions
15 you're going to give here today?

16 A Yes.

17 Q Could you tell us what this record tell, uh, tells
18 us relevant to the case, or to Ms. Exline-Hass (sic),
19 Hassler's, um, claim?

20 A Well, it's an ER visit to the Urgent Care Center at
21 Washington County Hospital. I was looking for -- oh.

22 THE COURT: Doctor, if I could just ask you to keep your
23 voice up a little bit. It's a little hard to hear.

24 THE WITNESS: Yeah, sure, okay, I'm sorry.

25 THE COURT: Mm-hmm, that's okay.

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1 THE WITNESS: Um, I was looking for a date, but, um,
2 anyway, well, it says here, uh, "Fell downstairs last week,
3 could not move well. Sunday has been, has burning sensation
4 across the low back plus vomiting. Fever once since Sunday
5 a.m." Um, and, uh --

6 BY MS. HOWARD:

7 Q And that, is that the chief, the chief complaint?

8 A That's the chief --

9 MS. HOWARD: Uh, mark (unclear - three words.)

10 THE WITNESS: -- in other words, it's, she's being seen
11 for a low back injury following a fall down a flight of
12 stairs.

13 BY MS. HOWARD:

14 Q All right. So, if were to show you what I've had
15 marked as Defendant's Exhibit 8, which is page 92, here I'll
16 take these out, what is this, Doctor?

17 MR. BRATT: Page?

18 MS. ZOIS: Ninety-two.

19 MR. BRATT: I can't see the front of them.

20 MS. ZOIS: She said it (unclear - one word.)

21 THE WITNESS: This is --

22 MR. BRATT: Because I had it (unclear - one word) --

23 THE WITNESS: -- this is dated 1/8/08, and, um, it's a,
24 it's a discharge, uh, summary from the, uh, emergency
25 department of Washington County Hospital. And the diagnosis

1 is sprained back.

2 BY MS. HOWARD:

3 Q So, associated with this page, one of the pages of
4 the same visit, uh, that I just showed you on the bigger
5 printout, I mean, the (unclear - one word)?

6 A Well, this is a common (unclear - one word) last
7 document to get out of the ER.

8 Q All right.

9 A And, uh, she was prescribed Vicodin and Robaxin.
10 That's a pain medication and muscle relaxer.

11 Q All right. And, again, the diagnosis on that date
12 was sprained back?

13 A Yes, correct.

14 Q All right. All right, and these were records you'd
15 seen before?

16 A Yes.

17 Q All right. Now, since that, um, after January of
18 '08, um, or I'm sorry, (unclear - two words) thing on this --
19 (To Counsel) this is page 88 and 89, Counsel, of the same
20 exhibit, Exhibit 8. (To the witness) Uh, have you seen these
21 records before, the type records from Urgent Care of
22 Robinwood?

23 A Yes.

24 Q All right. And can you tell us about these records
25 and what's significant to your opinion in this case, Doctor?

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1 A Well, uh, Ms. Exline-Hassler has seen her personal
2 physician on the 8th of January, and, uh, she gives a history
3 of falling down a flight of stairs last Wednesday, couldn't
4 move well, burning sensation across her lower back, that
5 sounds familiar, denies upper back pain, flank pain, urinary
6 symptoms, no head injury. And, um --

7 Q That she had been taking Advil without relief,
8 correct?

9 A Yes.

10 Q All right.

11 A It does say that.

12 Q And then --

13 A And, um, uh, let's see, back exam trace to one plus
14 tenderness across the musculature of her lumbar region.

15 Q What's the significance of that?

16 A That means she has a, a (unclear - one word) bit of
17 spasm. And, uh, examined the lower extremities, neurologic
18 exams, strength, reflexes, sensation and tone are all normal.
19 And there's no other sign of injury here.

20 Q And the final diagnosis on that date?

21 A Is lumbar strain.

22 Q All right.

23 A Low back strain.

24 Q Now, so in fairness just to see page two of the
25 same record, um, and this is page 89, um, what does this tell

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1 us?

2 A Well, the fall is also mentioned, but, uh, the
3 Doctor's trying to be a good doctor so, uh, not only to
4 assuming muscle strain, but he, sciatica means perhaps there
5 was irritation of a nerve, sciatic nerve goes down the back
6 of your legs so, and vertebral fracture. Since it was a
7 fall, uh, you have to think of a fracture, too.

8 Q Mm-hmm, all right.

9 A Vertebral fracture would be a fracture of the bone.

10 Q All right, and, and I guess maybe I took this away
11 a little too soon, do you see that first paragraph (unclear -
12 two words) the doctor, Dr. Bandinbosh (phonetic), is saying,
13 telling us something about he's dictating this from memory a
14 week later, correct?

15 A Right, mm-hmm.

16 Q All right. And this is all associated with the
17 same visit that Sunday when she went to the emergency room,
18 correct? Whether it's called Washington County Hospital --

19 A Yeah, I mean, uh, this is, there was a glitch, he
20 dictated and got lost so he's re-dictating this one.

21 Q All right. But the bottom line is we know that in
22 January 8, 2008 Ms. Exline-Hassler was at the emergency room,
23 the diagnosis was lumbar strain, and, uh, with some other
24 differential diagnosis, and she got some prescription
25 medication, correct?

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1 A Well, then she followed up with her personal
2 physician, yes.

3 Q All right.

4 A Mm-hmm.

5 Q So, those records were marked yesterday, (unclear -
6 two words) those.

7 (Brief pause while Counsel confers with Clerk off the
8 record.)

9 MS. HOWARD: The Court's indulgence.

10 THE COURT: Mm-hmm.

11 MS. HOWARD: We had two exhibits marked yesterday and I
12 (unclear - two words).

13 THE CLERK: They're exhibits marked yesterday?

14 MS. HOWARD: They were big ones.

15 MR. GILLCRIST: There was a --

16 THE COURT: They're big ones.

17 MR. GILLCRIST: -- there was a large, enlarged, uh, blow
18 up that we left right here.

19 MS. HOWARD: It was, it was like this size.

20 THE CLERK: I don't think there's anything in the
21 closet, but I'll check again. I thought I got it all.

22 MS. HOWARD: (Unclear - two words) that there's more.

23 MR. GILLCRIST: I apologize, I thought (unclear - three
24 words).

25 THE CLERK: That's all right.

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1 (Clerk checking the closet.)

2 THE CLERK: Ah-hah.

3 THE COURT: There they are.

4 THE CLERK: (Chuckles.)

5 MS. HOWARD: (Unclear - three words.)

6 THE CLERK: Here you go.

7 MS. HOWARD: I'm sorry (unclear - four words) 59.

8 BY MS. HOWARD:

9 Q All right, so, Doctor, this was marked yesterday as
10 Defendant's Exhibit 3. And, again, just a blow up from, uh -
11 - (To Counsel) I think it's page 100, Counsel.

12 MS. ZOIS: It is.

13 MS. HOWARD: On the same.

14 BY MS. HOWARD:

15 Q Uh, and is this the primary care physician records
16 you were referring to? Maybe you want to see the Bates
17 stamp?

18 A Yes, well, yeah, no, no, I see it.

19 Q All right.

20 A It's 3/26/08, so that was, uh, this fall down the
21 stairs, it's my understanding, occurred at the, towards the
22 end of December, beginning of January, so end of December
23 2007, beginning of January 2008. And then this is about
24 three months later, 3/26/08. And Ms. Exline-Hassler returns,
25 uh, through this clinic.

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1 Q And return, uh, goes, Rob (sic), Rob (sic), now
2 it's Robinwood Family Practice?

3 A Family Practice, yes, her PMD, yes.

4 Q All right. And what is the history that's
5 recorded, (unclear - two words) reporting that date? Or, let
6 me strike that, what's the chief complaint?

7 A Uh, the chief complaint is new patient to get
8 established. I mean, uh, I guess that means she's a new
9 patient, and low back pain.

10 Q All right. So, she's there seemingly, according to
11 the record, for low back pain?

12 A Oh, yes, correct.

13 Q Not for hip pain?

14 A No, no.

15 Q Now, what, if any, history is recorded on this
16 record?

17 A Well, uh, it says here HPI, that means history of
18 present illness, "Patient has low back pain since being in
19 MVA..." that stands for motor vehicle accident, "...three
20 years ago. It's got worse this past year, worse in the a.m.,
21 take six Advil a day, no numbness or tingling, occasionally
22 pain radiates the buttocks, no weakness, had an ulcer when
23 she was younger." That, that was the history.

24 Q All right. And then there's a physical examination
25 of this new patient, correct?

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1 A Yes.

2 Q All right. And any examination of the muscular
3 cell (sic), skeletal system?

4 A Um, hmm, uh, her gait is normal, uh --

5 Q Full range of motion?

6 A Where's it say she's --

7 Q And that's (unclear - one word)?

8 A Oh, musculoskeletal, right. No, not (unclear -
9 four words.)

10 Q That's full range of motion?

11 A Doctors are addicted to initials. Yeah.

12 Q All right.

13 A Musculoskeletal this is bi-lateral extremities, no
14 edema, musculoskeletal, full range of motion times four, gait
15 normal, neuro, neuro exam's normal. And, uh, the diagnosis
16 is lumbar strain.

17 Q So, again, the same diagnosis, lumbar strain?

18 A Correct.

19 Q And what recommendations did doctor, the, uh, the
20 primary doctor, Dr. Stephanie Brown, have at that point?

21 A Uh, she recommended, uh, medication, Skelaxin's a
22 muscle relaxant, Ultram's a pain medication, Percocet is a
23 stronger pain medication. Uh, (unclear - two words)
24 restricted narcotic. Um, and she ordered a physical therapy
25 consult.

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1 Q All right. And the last set of large exhibits that
2 I have here are associated with the physical therapy. Oh, I
3 meant to ask you one other thing about these prescriptions,
4 sorry. The prescription, let's talk about the Ultram, you
5 said that's for pain, right?

6 A Mm-hmm, yes.

7 Q And how many refills on this order did Dr., uh,
8 Brown give?

9 A Uh, Ultram is the commercial name for Tramadol,
10 and, uh, she prescribes, uh, 60 with three refills.

11 Q And for the Skelaxin.

12 A Uh, she prescribe, prescribes 30, tells her to take
13 one at bedtime, that's kind of a low dose, you can take it up
14 to three times a day, but, uh, three refills.

15 Q Three refills and (unclear - two words).

16 A And Percocet has to be written, it can't be
17 refilled.

18 Q All right. So, um, now, with respect to the
19 physical therapy you had, do you recall seeing records that
20 Ms. Exline-Hassler did consult with a physical therapist?

21 A Yes, I do.

22 Q All right. So, again, you have those records, um -
23 - I thought I did. (Brief pause.)

24 MS. HOWARD: (To Counsel) Two pages again, first page in
25 this is 109000.

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1 MS. ZOIS: Thank you.

2 MR. BRATT: Thanks.

3 BY MS. HOWARD:

4 Q Uh, from Total Rehab Care, initial evaluation
5 4/28/08, correct?

6 A Yes.

7 Q And what's the diagnosis that's reported there?

8 A Lumbar strain.

9 Q So you (unclear - one word) --

10 A This is about a month after she saw Dr., uh, Brown.

11 Q All right. So, a month later she goes ahead with
12 the physical consult, the diagnosis is lumbar strain,
13 correct?

14 A Yes.

15 Q Not hip pain, not buttocks pain, it's lumbar
16 strain, correct?

17 A Absolutely.

18 Q All right. And what is the, uh, in the initial
19 evaluation, what, if anything significant, to your opinions
20 is recorded there, uh, regarding the history?

21 A Well, at the time she was 41, uh, she (unclear -
22 three words) low back pain. She said that in around
23 Christmas of 2007, as I think I mentioned, she was moving
24 something, injured her back, shortly after that she fell down
25 the stairs. Um, previous episode like this occurred several

1 years ago. Uh, she was referred to physical therapy.

2 Q All right. And now with respect to, uh, the
3 subjective complaints the Plaintiff reported.

4 A Mm-hmm.

5 Q What information, if anything significant, there?

6 A Pain hits her at times and makes her feel like an
7 80-year-old woman. Sorry.

8 FEMALE VOICE: It was a joke.

9 THE WITNESS: It's, uh, in the right side of her lower
10 back, gluteal in her region, that means here. Pain generally
11 does not bother her when she's up and moving, it seems to be
12 worse when she's going from sitting to standing. The, uh,
13 intradiscal pressure is greatest when sitting, so there's
14 like pressure on the disc when you're standing or lying.

15 Q So, when you say intradiscal (unclear - two words).

16 A It's been, it's been measured with strain gages, so
17 pressure on the disc it puts, forces it to kind of bulge,
18 that's how the, uh, annulus, the paper around, uh, gets
19 stretched and weakened. And, uh, patients that have, uh, a
20 badly ruptured disc pressing on one of the lumbar nerves, one
21 of the worst pains is when they're sitting on the toilet
22 straining, because you're sitting and you're straining and
23 increasing the, the pressure on the discs by, it's called the
24 (unclear - two words.)

25 Q So, so the pain --

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1 A So, anyway, so --

2 Q -- so if the pain's coming from when you're seated
3 and then you go to stand and that's consistent with --

4 A Yeah, I mean, it's consistent, it's consistent.

5 Q -- with a degenerative changes in the back?

6 A Sure.

7 Q All right.

8 A So, the (unclear - one word) with the lumbar
9 strain.

10 Q All right. And then with respect to the physical
11 findings or assessment by the physical therapists there, are
12 there any positive, meaning bad, uh, findings on the range of
13 motion or the neurological testing?

14 A Yeah, let me see. Mm, findings are positive
15 anterior (unclear - one word) rotation test, along with
16 sitting test right side going short to long, burning on the
17 right side of her hip during examination, limited and
18 functional mobility, transfer (unclear - two words) increased
19 time (someone coughing) (unclear - four words.) Positive
20 neurotension test on the right side. Uh, I assume, that's
21 called a straight leg raising test, when you're lying down
22 and your doctor pulls your leg up and, uh, it stretches
23 sciatic nerve and then stretches the nerve in the lower back
24 so a patient reports pain, and he says that it's, uh,
25 positive. She'd benefit from PT intervention to approve SI

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1 alignment, forceability, neurogliding (phonetic), decrease
2 pain (unclear - one word.)

3 Q All right. So, those findings, Doctor, are even
4 more signif (sic), uh, more (unclear - one word) responding
5 than we've seen in Dr. Nisenfeld, Dr. Naff, Doctor --

6 MR. BRATT: Objection.

7 BY MS. HOWARD:

8 Q -- McGrail's records, correct?

9 THE COURT: Overruled.

10 MR. BRATT: Objection.

11 THE COURT: You may answer.

12 THE WITNESS: Oh, I can answer? Yes, they're positive
13 findings.

14 BY MS. HOWARD:

15 Q All right.

16 A These, uh, weren't seen in the other examinations.

17 Q After the accident?

18 A Correct.

19 Q All right. Now, Doctor, if you could just go have
20 a seat back at, um, your, uh, chair where there's not enough
21 leg room. And I don't have (unclear - four words), but I
22 wanted to show you Defendant's Exhibits 4 and 5. (To
23 Counsel) Counsel, (unclear - four words.) (To the witness)
24 So, Exhibit 4, as previously been discussed by other
25 witnesses, the Boonsboro Pharmacy ledger, and it Defendant's

1 Exhibit 5 is the Weis Pharmacy ledger. All right. So, what,
2 if anything significant to your opinion in this case, Doctor,
3 showed any, uh, Boonsboro Pharmacy records?

4 A (Long pause.) Well, um, we've been talking, uh,
5 just to help the jury, we've been talking about this incident
6 around, two incidents around January 1st, 2008, the moving and
7 the fall, and so they're, uh, she fill, Ms. Exline-Hassler
8 fills some prescriptions for Percocet, Robaxin, which is a
9 muscle relaxant, Skelaxin, she, um --

10 Q Let me interrupt you.

11 A Yes.

12 Q That's January '08, that's what the doctor at the
13 emergency room prescribed, correct?

14 A Correct, correct.

15 Q All right. And then what happened next?

16 A And then, um, she, um, Ms. Exline-Hassler saw Dr.
17 Brown and there, there's, uh, she switched to Skelaxin, which
18 is a better muscle relaxant, by the way, and, uh, she's
19 filling prescriptions there for pain medicine and, uh, muscle
20 relaxants, but this continues, uh, through, there's more
21 refills in the fall of 2008. There are refills of these
22 medications, uh, to be specific, January 2009, June 2009,
23 July 2009 --

24 Q Well, after June '09 you had the accident --

25 A Yeah.

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1 Q -- but prior to the accident there's, uh, is --

2 A Well, there are some prior to the acc (sic), yes,
3 there's at least one and yes, yeah.

4 Q And is there a column on that ledger that indicates
5 the, the, what, what refill it is, whether it's zero, one,
6 two?

7 A Yeah, it says, uh, most of them are zero. There's
8 one one and one two.

9 Q And the one one and the one two is that the
10 Skelaxin prescribing, the prescriber's noted as Dr. Brown?

11 A Correct.

12 Q All right. So, those are those same refills that
13 we saw in March (unclear - one word)?

14 A Correct.

15 Q All right. Now, with respect to Exhibit 5, this is
16 from Weis Pharmacy, uh, what, if anything, prior to Ju (sic),
17 uh, late June '09, is relevant in those documents?

18 A Uh, there's a Tramadol refill, that's Ultram pain
19 medicine 9/16/08, 2/28/09, uh --

20 Q So, February 28, '09 Ms. Exline-Hassler refills a
21 prescription for is it the Tramadol?

22 A Yeah, 60 tablets, and then refills it again, uh,
23 uh, in, uh, February 2009.

24 Q February 28th, 2009?

25 A Yes.

1 Q All right. Now, Doctor, I would like to ask you
2 some questions regarding your review of the records, okay.
3 So, you've reviewed the records, you've described for us what
4 you considered relevant, as a result of your reviewing the
5 records initially provided to you and the records that were
6 later provided to you were you able to form an opinion to a
7 reasonable degree of medical certainty as to what, if any,
8 injury Ms. Exline-Hassler sustained in the car accident of
9 June 26, 2009?

10 A I was --

11 Q And could --

12 A -- I am able to, yes.

13 Q -- could you tell us what that opinion is and the
14 basis?

15 A Well, I thought that she had a traumatic cervical
16 strain injury, that doesn't seem to be much of discussion
17 today, so, I thought it had resolved though. Strain means,
18 uh, strain and sprain on the muscles, bones, ligaments, no
19 fractures, no dislocations, and generally it's a non-serious
20 injury. And then I thought that she had a traumatic lumbar
21 strain injury that was super imposed on her pre-existing
22 degenerative back problems and symptomatic back problems, and
23 that these specific strain, sprain injuries had resolved.
24 That is to say the strain on the muscles, bones, ligaments,
25 that part resolved.

1 Q And is that fairly standard for a strains result?

2 A Yes, and, uh, I, I, I, it's my opinion that there
3 was no acceleration of any further degeneration by this
4 specific incident of 6/29 (sic), 6th, 2009.

5 Q All right. So, were there any other injuries in
6 your opinion caused by the accident other than a strain to
7 the neck and a strain to the low back?

8 A None.

9 Q All right. Now, Doctor, did you have, do you have
10 an opinion to a, I guess, I should ask you, what's the basis
11 for that opinion, anything that you'd like to highlight or
12 anything that you haven't mentioned already?

13 A Sure. It's the type of injury, it's the findings,
14 it's the fact that, well, it, the, it's the findings in the
15 (unclear - one word) center the next day, it's, uh, findings
16 of, uh, the, her treating physicians. Uh, I believe, uh, she
17 missed one month of work, which usually patients get back to
18 work when they're, feel up to it. Um, the examinations that
19 she's had, the normal EMG's and the fact that her MRI,
20 although it does show these two tears, those are very non-
21 specific and can't be, uh, it's my opinion they pre-existed,
22 and that they can't, you can't say oh, a tear, it must be
23 here, you know, this must have done it. It's, it's non-
24 specific, non-specific means you can't say what the cause is,
25 you can just see what's there. Uh, so those are all, all the

1 factors.

2 Q All right. Now, Doctor, you've seen from the
3 records that Ms. Exline-Hassler has had a lot of treatment
4 from a lot of doctors.

5 A Correct.

6 Q That she's claiming, at least in the records that
7 were presented to you, um, are related to this accident,
8 after the first couple months after the accident. Do you
9 have an opinion to a reasonable degree of medical certainty
10 as to whether that treatment, let's say after 2000 (sic),
11 into 2010 and on, is that treatment related to anything that
12 happened in this car accident?

13 A I have an opinion about that, yes.

14 Q What is it?

15 A It's not related in any way to the automobile
16 accident of 6, I think it's 6/26 or 6/29/09.

17 Q 6/26.

18 A It's not related at all.

19 Q And what is the basis for that opinion?

20 A The basis for my opinion again is that, um, she
21 (unclear - one word), she was not involved in the type of
22 injury that would cause that much difficulty. Uh, number
23 one. Number two, she does have a, she does have these
24 degenerative changes, she has a bad back, and if her
25 physicians saw fit to treat her for that, which is their

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1 perrog (sic), you know, it's, it's what they do, and if they
2 saw fit they were treating her for her degenerative, uh,
3 changes in her low back and her aching low back, they weren't
4 treating her specifically for anything which occurred in the,
5 uh, automobile accident.

6 Q Do you have an opinion to a reasonable degree of
7 medical certainty as to what, if any, treatment would be
8 appropriate for a neck and back strain, neck and back sprain,
9 um, following this accident?

10 A One of the most important things is tincture of
11 time.

12 Q Mm-hmm.

13 A Uh, and limited physical activity if, uh, uh, in
14 other words, sort of babying yourself, heat, medication,
15 physical therapy, rest, maybe missing a few weeks of work
16 the, that's all reasonable, and patients with these type of
17 injuries, uh, recover in four to, four to eight to 12 to 16
18 weeks, I mean, it's, that's what it is.

19 Q (Unclear - one word.) Now, Doctor, do you have an
20 opinion to a reasonable degree of medical certainty as to
21 whether any limitation on Ms. Exline-Hassler's activities or
22 her medications at work or anything that are ongoing after,
23 let's say the 16 weeks after the accident, four to 16 weeks
24 after the accident, can be attributable to this accident?

25 A No, they cannot.

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1 Q Okay. And what's the basis for that opinion?
2 A Uh, I always like to go back to the type of injury.
3 I mean, uh, there's no question this event occurred, there's
4 no, uh, giving her every benefit of the doubt, uh, she's
5 entitled to a neck and low back strain, and, uh, she was
6 appropriately evaluated and treated and more serious things
7 were eliminated with the x-rays, the MRI, the EMG, and I, uh,
8 I th (sic), I th (sic), I would have anticipated that she
9 recovered nicely, at least from that part of her problem.
10 Q Okay. Thank you, Doctor, no further questions.
11 MR. BRATT: Your Honor, uh, if the Court will indulge me
12 in a brief five minute recess before I make cross?
13 THE COURT: Sure. Let's stretch for five minutes.
14 MR. BRATT: Thank you, Your Honor.
15 (Jury excused from the courtroom.)
16 THE COURT: Okay, and everybody can stretch.
17 MALE VOICE: Thank you, Your Honor.
18 THE COURT: Mm-hmm.
19 THE CLERK: All rise.
20 (Whereupon, from 3:22 o'clock, p.m. until 3:31 o'clock,
21 p.m., a recess was taken.)
22 (Jury not present.)
23 THE CLERK: All rise. Go ahead.
24 (Jury entered the courtroom.)
25 THE COURT: Good afternoon again, everyone. We have all

1 our jurors present. Mr. Bratt.

2 MR. BRATT: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. BRATT:

5 Q Now, Dr. London --

6 A Yes, sir.

7 Q -- in preparation for giving your opinions in this
8 case is it true that you're (unclear - one word), you
9 reviewed 35 sets of records that were submitted by the
10 Defense and provided to you?

11 A I --

12 Q Dated back to the 1980's?

13 A -- I'd have to look through those page by page to
14 answer your question, Counselor?

15 Q You were provided with a great deal of medical
16 records, right?

17 A Uh, this is what I was provided with.

18 Q And --

19 A And, actually, you can have that.

20 Q All right, and why don't we do it this way --

21 A This was what I was provided with.

22 Q -- and, specific, I'm looking at Plaintiff's, and
23 I'm looking at Exhibit 8, which has been marked for
24 identification.

25 THE COURT: Uh, Plaintiff's or Defendant's, Counsel?

1 MR. BRATT: Uh, I believe Plaintiff's, Your Honor. And
2 I know it's a little hard to read.

3 (Brief pause.)

4 BY MR. BRATT:

5 Q Would it be fair to say that have been provided
6 with Ms. Exline-Hassler's prior medical records dating back
7 to at least the 1980's?

8 A 1980's? I don't think so, no.

9 Q Okay, Doctor, I'm gonna' show you, uh, Exhibit 8 --

10 A Well, I mean, they might be in --

11 Q I'm gonna' --

12 A -- that pile I just handed back to you.

13 Q It's in what you just handed me.

14 A Oh, okay, cool.

15 Q Um, I'm gonna' show you the Pape (sic), the
16 Plaintiff's Exhibit 8, which, um, page seven, and this is a
17 record, uh, from some sort of an orthopedist about a, uh,
18 left index finger. And, uh, looking at the first paragraph
19 on page seven it says, uh, August 20th, 1981, right?

20 A Let's see, your eyes are younger than mine, um,
21 yes, August 20, 1981.

22 Q Okay. So, to be clear, you reviewed and relied
23 upon prior medical records of the Plaintiff dating back at
24 least to 1981, right?

25 A I haven't seen those before, no.

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1 Q You weren't provided with that that you just handed
2 to me?

3 A I just said that. (Long pause.) Well, you know,
4 let me correct myself. I was handed this and I flipped
5 through it. I don't recognize this page.

6 Q And you talked about some of the records in that
7 exhibit though a few moments ago, right?

8 A If I was pointed to a specific page, yeah, I mean,
9 I talked about it, yes, I talked about it.

10 Q And you were provided with the whole packet to look
11 at, right?

12 A As, um, on the fly, yes.

13 Q Okay. So, you didn't review it closely then?

14 A Uh, I think I just said how I reviewed it I flipped
15 through it.

16 Q Okay. And on your direct examination you're asked
17 about some medical records pertaining to a, uh, motor vehicle
18 collision on, uh, in June of 2005, do you remember that?

19 A Yes, mm-hmm.

20 Q So, as a counter, that's 2005, June 2005, right?

21 A Let me see. Correct, and the 15th is highlighted.

22 Q Right. So, you reviewed a record for a primary
23 care doctor that referred to a motor vehicle accident three
24 years earlier, is that correct, this was 1998 (sic), correct,
25 19 (sic), 2008, correct?

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1 A Correct.

2 Q Three years before that would have been 2005,
3 right?

4 A Yes.

5 Q And out of all the records you reviewed, all the
6 records you were provided, dating back to 1981, the first
7 time before June 26th, 2009 that there is a medical record
8 that describes Ms. Exline-Hassler as having low back pain is
9 in January of 2008, right?

10 A Well, there's a reference to an earlier back injury
11 in, in the, in those reports.

12 Q Really, which one, in where?

13 A We've looked at it blown up.

14 Q Right. That refers to a motor vehicle accident
15 three years earlier in 2005, right?

16 A Yes.

17 Q Okay. So, the first record that refers to a 2005
18 motor vehicle accident with an injury is a record from 2008,
19 right?

20 A The 2008 would be the first one I've seen, uh, I
21 don't know whether there was other documentation in between I
22 haven't seen it.

23 Q Okay. So then we agree that between June 2005 and
24 January of 2008 you're not aware of any medical records that
25 show that Ms. Exline-Hassler had low back pain as a result of

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1 a motor vehicle accident, are you?

2 A I haven't seen anything, I haven't been offered
3 anything, right.

4 Q And it was your opinion that Ms. Exline-Hassler's
5 chronic ongoing low back pain is pre-existing that it, is, is
6 not from the June 2009 accident, right?

7 A Yes, the strain and sprain, uh, soft tissue injury
8 has resolved, yes.

9 Q And the first record of which you're aware that
10 shows that she had medical treatment for her low back is from
11 2008, correct?

12 A That's the first one that I've seen, yes.

13 Q And you keep saying that you've seen, have you, are
14 you aware of other records that you have not seen?

15 A How would I be aware of that?

16 Q That's why I ask.

17 A I'm not, I don't know.

18 Q Now, you also, if I remember right, and please feel
19 free to correct me if I, if I have it wrong, your testimony a
20 few moments ago on direct examination to the ladies and
21 gentlemen of this jury was that, uh, Ms. Exline-Hassler's
22 annular tears in her lumbar spine are unrelated to the, uh,
23 June 26th, 2009 car accident?

24 A Absolutely.

25 Q You're sure of that?

1 A Yes.

2 (Brief pause while Counsel confer off the record.)

3 MR. BRATT: Apologies. Uh, Madam Clerk, I'm looking for
4 what is probably just marked as 58.

5 THE CLERK: Mm-hmm.

6 BY MR. BRATT:

7 Q Doctor, do you remember me taking your deposition
8 in this case on January 16th, 2013?

9 A Most definitely.

10 Q And when I took your deposition on that day would
11 you agree that when I took the deposition you didn't even
12 know if this case involved an annular tear?

13 A That's not correct.

14 Q Doctor, I'd like to direct your attention to
15 Plaintiff's Exhibit 58, page 50, lines 14 through 19.

16 A Okay.

17 Q Would you please read to the ladies and gentlemen
18 of the jury the question and answer at lines 14 through 19?

19 A Okay, it says here, "Question: So you're able to
20 tell me the last time you testified in a case involving an
21 annular tear that was alleged to have been caused by trauma
22 is there an allegation that there is an annular tear involved
23 in what we are talking about today?"

24 Q So, you're answer to my question was --

25 MR. GILLCRIST: Objection. That was a question, Your

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1 Honor.

2 BY MR. BRATT:

3 Q -- is there an allegation that --

4 THE COURT: Wait, (unclear - one word).

5 MR. BRATT: I'm sorry, Your Honor.

6 MR. GILLCRIST: Objection, he's misstating.

7 MR. BRATT: I'll read it again, no problem.

8 THE COURT: Just read it, exactly.

9 MR. BRATT: Absolutely, Your Honor. This, I, I, it
10 wasn't audible I couldn't hear it.

11 THE COURT: Okay.

12 BY MR. BRATT:

13 Q Question, "So, are you able to tell me the last
14 time you testified in a case involving an annular tear that
15 was alleged to have been caused by trauma?" Dr. London's
16 answer, "Is there an allegation that there is an annular tear
17 involved in what we are talking about today?" That was your
18 testimony, correct, Doctor?

19 MR. GILLCRIST: Your Honor, for the rule, could he read
20 the next couple questions and answers?

21 THE COURT: That, be on redirect.

22 MR. GILLCRIST: Thank you, Your Honor, I'm sorry.

23 THE COURT: Mm-hmm.

24 BY MR. BRATT:

25 Q Now, you agree that Ms. Exline-Hassler injured her

1 neck in a car crash in 2009, correct?

2 A I've stated that.

3 Q And you agree she injured her lumbar spine, didn't
4 you?

5 A She had a strain and sprain injury, yes.

6 Q And your testimony, specifically, is that she had
7 a, a traumatic lumbar strain injury from the car crash
8 superimposed by degenerative disc disease?

9 A Right.

10 Q And you won't dispute that Ms. Exline-Hassler has
11 annular tears at L4 and 5 and L5/S1, correct?

12 A No, they're seen on the MRI, they're very common.
13 And I didn't quite understand the way you were couching
14 annular tears in the ex (sic), deposition. But if you look
15 at page 6, first paragraph, I say, "I do not think the
16 annular tears at L4/5 and L5/S1 are related to the strain
17 sprain injury sustained on 6/26/2009." That's in my report,
18 so, sorry if I misstated something --

19 Q So --

20 A -- to you a few weeks ago.

21 Q -- at your deposition you didn't know what was in
22 your report?

23 A That's a rhetorical question, Counselor, I don't
24 have to answer that.

25 Q Okay. And it is your opinion that Ms. Exline-

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1 Hassler's annular tears pre-existed the car crash, correct?

2 A Yes.

3 Q And you would agree with me that a discogram is a
4 test that can confirm whether pain is coming from a, uh, an
5 annular tear at a particular level in the spine, correct?

6 A Yes.

7 Q And a discogram's an objective test, right?

8 A Yes.

9 Q And, Doctor Sloan, did a diset (sic), did a
10 discogram on October 5th, 2010, didn't he?

11 A Um, if that's the date, yes.

12 Q And Dr. Sloan's finding was that the discogram
13 confirmed that the annular tears at L4 and 5, and L5 and S1
14 were the source of Ms. Exline-Hassler's low back pain,
15 correct?

16 A Confirmed two things, one, that they were present.
17 And two, that, uh, she he injected the material it caused
18 pain, yes.

19 Q Okay. So, we agree that discogram confirmed that
20 the tears were causing pain at those levels, correct?

21 A It's not the tears per say, it's the fluid that is,
22 uh, that is expanding the disc and putting tension on the
23 annulus and the tears, but maybe we're saying the same thing.

24 Q I think we are. Now, you're not in a position to
25 dispute the findings Dr. Sloan made on the discogram, are

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1 you?

2 A No.

3 Q And it's your opinion that at most Ms. Exline-
4 Hassler had muscle injuries to her neck and back, right?
5 From the accident?

6 A Soft tissue injury strain and sprain, muscles,
7 bones and ligaments, yes.

8 Q And it's your testimony that those soft tissue
9 muscle, strain and sprain injury should have resolved within
10 four to six to eight to 12 to 16 weeks after the accident,
11 correct?

12 A Yes.

13 Q Okay. So, um, we're back at our calendar, okay,
14 and this calendar stops at June 25th, 2009, right?

15 A Okay.

16 Q Okay? And these red dots correspond to those
17 visits at the Urgent Care Center and the physical therapist
18 and the primary care doctor in 2008, January 8th, March 26th,
19 April 28th and May 6th, right?

20 A I'll take your word for it.

21 Q You don't disagree though, right?

22 A No.

23 Q And now we're back to the calendar again, and this
24 calendar begins on June 26th, 2009, correct, Doctor?

25 A Yes.

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1 Q And it's your testimony that at some point before
2 16 weeks after the accident Ms. Exline-Hassler would have
3 recovered and returned to her pre-accident, correct?

4 A Let me, uh, this looks like a baseball schedule,
5 home schedule, uh, um, okay, so direct me, this is the
6 accident date?

7 Q Correct, Doctor.

8 A Yeah, so four, five, nine, yeah, somewhere in here,
9 uh, four to six, whatever I said, up to 16 weeks, sure, she
10 should have recovered.

11 Q So, then it's your testimony then I guess,
12 according to (unclear - two words), four, eight, 12, 16, so
13 she would have ref (sic), returned to her pre-accident
14 condition no later than the end of June 2010, right? Is that
15 your testimony?

16 A Sixteen weeks, that's a year, isn't it?

17 Q That calendar?

18 THE COURT: I believe Counsel's, could he be moving
19 down?

20 MS. HOWARD: Yeah.

21 THE WITNESS: Should be going up.

22 MR. BRATT: I apologize. Math's not my strong suit.

23 THE COURT: (Chuckle.)

24 MR. BRATT: That's why I practice law.

25 BY MR. BRATT:

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1 Q So, accident of June 26th, 2009 she would get better
2 in 16 weeks so four weeks in July --

3 A July, August, September --

4 Q -- four weeks in August, that's eight.

5 A Yeah, by roughly the end of October I guess, mm-
6 hmm.

7 Q So, by the end of October she would have recovered
8 and been to her pre-accident condition, correct?

9 A Yes, as -- yes, that's my, uh, what I testified to.

10 Q She still had ongoing medical treatment well after
11 that.

12 A Oh, she certainly did, yes, sir.

13 Q All the way through, all these other red dots,
14 right?

15 A All the red dots, yes, sir. I haven't seen them
16 like that before, but . . .

17 Q But she'd been better, in your opinion, from the
18 accident by this day, right?

19 A The type of injury she had in the accident, the
20 rest of these she's being treated for something else.

21 Q Right, that's my point. So, any treatment she has
22 from the accident stops no later than October 30th, right?

23 A In my opinion she should have recovered by 16
24 weeks, yes, if I --

25 Q And that all this other treatment's unrelated, it's

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1 (unclear - two words)?

2 A I said if the doctors thought she needed it they're
3 treating her degenerative disease and they're not treating
4 her, uh, direct, uh, any direct injury.

5 Q Now, Doctor, you would defer to Dr. Naff's
6 expertise on the issue of whether Ms. Exline-Hassler needs
7 surgery, correct?

8 A He's told her than on two occasions if she's
9 willing to have it, but, uh, he says it's for degenerative
10 disease.

11 Q So, was that a yes or no?

12 A Why don't you repeat the question.

13 Q So, you would defer to Dr. Naff's expertise on the
14 issue of whether Ms. Exline-Hassler needs surgery, correct?

15 A Yes, I mean, she's, she presented with him a
16 problem, and he was offering that, yes, he should determine
17 that.

18 Q But you would not defer to his opinion on the issue
19 of whether her need for the surgery is causally related to
20 the 2009 car crash, right?

21 A Absolutely.

22 Q And, in fact, well, it'd be fair to say that if Dr.
23 Naff testified her need for surgery was related to the car
24 crash you would strongly disagree with that, right?

25 A Absolutely.

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1 Q And if Dr. Naff testified that Ms. Exline-Hassler's
2 ongoing lumbar complaints were related to the car crash, you
3 would also strongly disagree with that, correct?

4 A Correct, he hasn't stated in the records that I
5 looked at.

6 Q And you do not agree that a neurosurgeon would be
7 in a better position to give an opinion on the causal
8 relationship for a lumbar fusion surgery than you would, do
9 you?

10 A He is in a better position to recommend the
11 technical type of surgery that could help Ms. Exline-Hassler
12 as far as etiology, that means cause, uh, we're at least
13 equals.

14 Q Okay. So, what you're saying is that you don't
15 agree that he'd be in a better position to determine the
16 cause that, of, of the surgery he's recommended, right?

17 A Yes. I mean, you rephrased the question, right?
18 Yes, I do not agree.

19 Q And your testimony in your deposition was that
20 that's because you have just as much expertise in etiology as
21 a surgeon does, right?

22 A Absolutely.

23 Q And you testified that you believe that your
24 diagnostic acumen is as good as any orthopedist or
25 neurosurgeon, correct?

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1 A As it relates to th (sic), this particular type of
2 injury, yes. I don't, uh, do knee arthroscopy or things like
3 that.

4 Q Okay.

5 A As it relates to this type of injury, yes.

6 Q And are you, do you, is it your opinion that Ms.
7 Exline-Hassler has had chronic low back pain since this car
8 accident in 2005?

9 A Seems to me she was treated for it.

10 Q And you'd agree that the accuracy of your opinions
11 depends on the accuracy of the (unclear - one word) provided
12 review, correct?

13 A I reviewed the records, yes.

14 Q Meaning --

15 A I would hope that all these physicians and
16 chiropractors were accurate, yes.

17 Q You know that bad data leads to bad conclusions,
18 right, you agree with that?

19 A That's a rhetorical question, sure.

20 Q Okay.

21 MR. BRATT: Ms. Harveson, if you could pull up the, uh,
22 3/26/08 report, which is --

23 FEMALE VOICE: (Unclear - four words.)

24 MR. BRATT: -- which is page 100.

25 MALE VOICE: Page?

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1 MR. BRATT: It's page, it's page 100, folks.

2 BY MR. BRATT:

3 Q Okay. Now, if you can take Exhibit 8, Doctor, and
4 go to page 100.

5 A Got it.

6 Q Okay. I asked you at your deposition whether you
7 were aware in any inaccuracies in that report. You said you
8 were not, correct?

9 A Did you?

10 Q I can show you I did. And you're not, as you said,
11 aware of inaccuracies, are you?

12 A No.

13 Q Okay. So, if you take a look at page 100, Doctor,
14 right at the top it has Ms. Exline-Hassler's date of birth,
15 right, 1/24/67?

16 A Uh, yes.

17 Q And right above that, I think -- (To the jury) I
18 can't see the screen, folks -- right above that it says that
19 that makes her 45-years-old, right?

20 A Oh, I see what you're saying. Well, it looks like
21 the physician made a mistake about her age.

22 Q Right. So, somebody born that day on, in March of
23 '08 would have been 41, not 45, right?

24 A Yes. If I was Ms. Exline-Hassler I would be upset
25 with her doctor for aging her four years inappropriately.

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1 Q So, that's one inaccuracy in the report, right?

2 A I can't say no, yes, you're right, if it's
3 inconsequential I think.

4 Q And then below that there's a section that says
5 progress note, right?

6 A That's what it says, yes. I think we looked at
7 this already, but that's okay.

8 Q We have. And it's blank, right?

9 A Correct.

10 Q And are you aware of who compiled the information
11 that's used in this report, Doctor?

12 (Long pause.)

13 A Uh, the, uh, information was entered by Heather
14 Williams, N.A. (sic), M.A., and the, uh, visit was signed
15 electronically by Stephanie D. Brown, M.D.

16 Q Okay.

17 A Which means that she's attesting to it.

18 MR. BRATT: (To Ms. Harveson) Back to page 100, please,
19 Ms. Harveson.

20 BY MR. BRATT:

21 Q Um, so, it says nurse intake on page 100, right?

22 A Yes.

23 Q Okay, so, my conclusion there is that intake was
24 done by a nurse, not by the doctor, correct?

25 A That's the way it's generally done, yes.

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1 Q And her chief complaint says N.P. to get
2 established. That means new patient to be established,
3 correct?

4 A I think I said that when I read this before, yes.

5 Q You did. And earlier on March 20th, 2008 she had
6 had an earlier appointment scheduled to come, to come in and
7 be established as a new patient, didn't she?

8 A Well, I don't know that.

9 Q All right. Just hang tight, Doc. If I could refer
10 you to page 99.

11 A Okay.

12 MR. BRATT: (To Ms. Harveson) Ms. Harveson.

13 MS. HARVESON: Mm-hmm.

14 MR. BRATT: Can you blow that up for me, Sam?

15 BY MR. BRATT:

16 Q And that's a report indicating that on March 20th,
17 2008 they called and cancelled Ms. Exline-Hassler's
18 appointment, isn't it?

19 A It says here, "You have an upcoming appointment.
20 Unfortunately, we need to cont (sic), you need to contact us
21 to reschedule this appointment due to the provider being out
22 of the office on the date/time of your appointment."

23 Q Correct.

24 A That's what it says.

25 Q So, would you agree with me that she had an

1 appointment for the 20th and they cancelled it?

2 A Uh, it looks like it was the other way around, that
3 Dr. Brown needed to reschedule the appointment.

4 Q That's what I mean, is that the medical provider
5 was --

6 A That wasn't what you said.

7 Q -- unable to be there.

8 A Yeah, that wasn't what you said, but that's, if
9 that's what you mean, yes. She had, had to be rescheduled.

10 Q Right, meaning that Ms. Exline-Hassler didn't
11 cancel, the doctor's office did?

12 A Yes, it's obvious.

13 Q And, now, let's go back to page 100.

14 A Okay.

15 Q And on page 100 it indicates that, uh, right on the
16 intake that Ms. Exline-Hassler, there's a page for med (sic),
17 there's a note for medications, correct?

18 A I'm sorry, my hearing's failing, say that again,
19 please.

20 Q There's a note --

21 A Just say it again, that's all.

22 Q -- there's a note saying medications, correct, in
23 the intake portion of page 100?

24 A Oh, yes, mm-hmm. Would you like me to read what it
25 says?

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1 Q Um, Doctor, what I would like for you to do is, uh,
2 agree with me that says patient's not taking any medications.

3 A That's what it says, yes.

4 Q And that's entered by Heather Williams, M.A.,
5 correct?

6 A Yes.

7 Q And then it has a history of present illness,
8 that's what HPI means, right?

9 A Yes.

10 Q And it says, "Patient has low back pain since being
11 in MVA three years ago," correct?

12 A Yes, it does.

13 Q Okay. Now, you also testified on direct
14 examination about some other records from the Robinwood
15 Family, you know, the Urgent Care Center, the Physical Care
16 Center, you remember that?

17 A Yes, I do.

18 Q And those records said that Ms. Exline-Hassler had
19 had a fall around Christmas time or the first week of January
20 of 2008, correct?

21 A Uh, yes.

22 Q Now --

23 A Moving some furniture and then having a fall, uh,
24 sometime later, a short time later.

25 Q But around that Christmas holiday, January 1st

1 period of 2008, correct?

2 A I'm sorry, say that again.

3 Q Around late December, early January of 2007/2008?

4 A Yes.

5 Q And that would be about three months before she
6 went to Robinwood on March 26th, 2008, wouldn't it?

7 A That's accurate.

8 Q So, this note that says three years ago could,
9 could mean three months ago, right?

10 MR. GILLCRIST: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. BRATT:

13 Q It could be an error, couldn't it?

14 MR. GILLCRIST: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. BRATT:

17 Q And further in the HPI it says, "Takes six Advil a
18 day," correct?

19 A Yes.

20 Q So, wouldn't that be inconsistent with the
21 medications entries that says patient's not taking any
22 medications?

23 A Well, those two things contradict themselves. My
24 expert opinion would be that since Advil is purchased over
25 the counter, uh, the medications refer to prescriptions and

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1 she was using over the counter medications and, therefore,
2 they didn't list it under medications. That would be my
3 opinion, but, um, you know, the words are what they are.

4 Q Okay. And then further down the report it says
5 neurological, right? There's a, that's a review of symptoms

6 --

7 A Yes.

8 Q -- neurologic -- you're a neurologist, aren't you?

9 A Yes.

10 Q It says no headache, no weakness?

11 A It does.

12 Q So, there's no record in this March 26th, 2008
13 report of a neurological problem, correct?

14 A Well, it's not recorded in the review of systems,
15 yes, you're, you're, that's correct.

16 Q And then the next entry on the March 26th, 2008
17 report that you're relying on is something that says PMH, and
18 that stands for past medical history, correct, Doctor?

19 A Maybe I gotta' it at this point. Yes.

20 Q It's blank, right?

21 A Yes.

22 Q And then below that there's yet again another
23 entry, medications, correct?

24 A Yes.

25 Q Bottom of page 100?

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1 A Right.
2 Q Blank again, right?
3 A Yes.
4 Q Now, do you want to flip over to page 101 for me?
5 A I'm there.
6 Q It's -- there's an entry that says allergies,
7 right?
8 A Yes.
9 Q And that's also blank, right?
10 A Yes.
11 Q Now, you reviewed an awful lot of medical records
12 regarding Ms. Exline-Hassler, haven't you?
13 A I have.
14 Q Are you aware of whether Ms. Exline-Hassler had any
15 allergies to any medications?
16 A Am I aware?
17 Q Yeah.
18 A No --
19 Q So --
20 A -- I'm not.
21 Q -- you're not aware that she was allergic to
22 penicillin?
23 A I have no way of knowing that.
24 Q Yeah. You're familiar that people do have
25 allergies to penicillin, there are folks that have those

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1 kinds of allergies?

2 A Sulphur and penicillin are probably the two most
3 positive responses you get when you ask people about
4 allergies, yes.

5 Q And some of those allergic reactions can be quite
6 serious, can't they?

7 A Anything's possible, but yes they can be.

8 Q One of those reactions is anaphylaxis, isn't it?

9 A That, that is one, yes.

10 Q And that's when you can't breathe, right?

11 A Anaphylaxis implies shock, shortness of breath,
12 tachycardia, windpipe perhaps closing off, uh, yes.

13 Q So, would you agree with me --

14 A I'm aware of that.

15 Q -- would you agree with me that if, whether or not
16 a patient is allergic to penicillin would be something that
17 would be very important for a clinician to know?

18 MR. GILLCRIST: Objection to the relevancy of that.

19 THE COURT: I'm gonna' overrule that. You may answer.

20 THE WITNESS: Yes, it would be important, sure.

21 Especially in a law suit.

22 BY MR. BRATT:

23 Q And below, the next section's physical examination,
24 correct, Doctor?

25 A Yes.

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1 Q And there's a portion of that called
2 musculoskeletal?

3 A Yes.

4 Q And that is what it sounds like, right? It's an
5 examination of the muscles and bones, musculoskeletal?

6 A Correct.

7 Q And what it says on the report is F-R-O-M times
8 four, right?

9 A Yes.

10 Q And that means full range of motion times four,
11 correct?

12 A Correct.

13 Q And that refers to the various axis that she can
14 move her musculoskeletal through or does it refer to the
15 extremities?

16 A Uh, it's fairly general. I would speculate I don't
17 know, but I would speculate that it's probably extremities
18 since you have only one neck and one low back.

19 Q That seems reasonable. But she had no limitations
20 in her range of motion in the extremities assuming your
21 interpretation's correct, right?

22 A When I was asked to look at this before I, I may
23 have said that, but it says F-R-O-M times four is no further
24 explanation so we're just, you --

25 Q But you know that F-R-O-M --

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1 A -- you and I are both --
2 Q -- means full range of motion, right?
3 A -- you and I are both guessing --
4 Q You know --
5 A -- at this point.
6 Q -- that it means full range of motion, don't you,
7 Doctor?
8 A Full range of motion means what it says, full range
9 of motion.
10 Q And there is a section "Neuro" under "Physical
11 Examination," right, Doctor?
12 A Yes.
13 Q And that refers to a neurological examination?
14 A Yes.
15 Q And that's your field again, right?
16 A Pardon me?
17 Q That's, that's your field again, right?
18 A Absolutely.
19 Q It is, her neurological examination was normal that
20 day, wasn't it?
21 A What's reported here is normal.
22 Q And they also examined her gait, did they not?
23 A Her gait?
24 Q Yes.
25 A Uh, yes, it was normal.

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1 Q All right. And when they do an examination of the
2 gait that means how she walks, right?

3 A Correct.

4 Q And normal means that she wasn't walking funny,
5 didn't have a limp, anything like that, right?

6 A Correct. Normal's normal.

7 Q And there's an "Assessment Plan" section in here,
8 right, right underneath?

9 A There is.

10 Q There's a diagnosis for a lumbar strain.

11 A Correct.

12 Q And she was prescribed some medications, Percocet,
13 Ultram, Skelaxin, you testified of those, right?

14 A Yes.

15 Q She's also got a diagnosis code here for nicotine
16 addiction, correct?

17 A Correct.

18 Q It says medication started --

19 A Yes.

20 Q -- Chantix started month pack are all
21 miscellaneous?

22 A That's what it says.

23 Q And that's a, Chantix is a medicine to help people
24 quit smoking, right?

25 A I'm not familiar with it in this context, I guess I

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1 would guess that it is, but I'm not familiar with that,
2 sorry.

3 Q It doesn't mean any neurological significance for
4 you, does it?

5 A Pardon me?

6 Q It doesn't have any neurological significance for
7 you, does it?

8 A Neurological, I'm sorry, say that one work again.

9 Q The fact that she was prescribed the medication
10 Chantix has no neurological sig (sic), significance for you,
11 correct?

12 A Correct.

13 Q She's (sic) also has to be screened for lipid
14 disorders?

15 A Yes.

16 Q And that's not a neurological disorder, is it?

17 A Uh, no.

18 Q Not musculoskeletal?

19 A No.

20 Q Doesn't have anything to do with the low back?

21 A No.

22 Q And then underneath again there's, it says "Return
23 Visit," right?

24 A Yes.

25 Q "Return for G-P-E?"

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1 A Yes.

2 Q G-P-E means general physical exam, right?

3 A I would think so, yes.

4 Q And it says "Verification of ancillary

5 documentation." That the vitals and the chief complaint were

6 completed by ancillary personnel and reviewed by the

7 physician, correct?

8 A That's what it says.

9 Q And Ms. Exline-Hassler, and I'm referring to page

10 102, Doctor, was referred by Dr. Brown's office for a

11 physical therapy consult?

12 A Yes, I believe so, yes.

13 Q And --

14 A It looks like it.

15 Q -- and the referral order requisition on page one

16 or two says, "Consult, P.T. routine," correct?

17 A Where are you reading, please?

18 Q I'm on page 102 --

19 A Yeah, I know, but where?

20 Q -- bottom line.

21 A You know where you're going, and, um --

22 THE COURT: Where on the page is it, Counsel?

23 MR. BRATT: It, uh, it's the bottom left, Your Honor.

24 THE COURT: Bottom left of the page, Doctor.

25 BY MR. BRATT:

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1 Q It says, "Consult, P.T. routine?"

2 A Yes.

3 Q No? And at page 103, it appears to be a duplicate
4 copy with that (unclear - two words) Pital (sic), P.T.
5 consult, correct?

6 A It, uh, it does, if the dates are the same.

7 Q And are you aware of any records, documenting the
8 treatment that was given to Ms. Exline-Hassler by Robinwood
9 on March 26th, 2008? Just those pages that we discussed?

10 A Um, I don't think so, yes, I think that's accurate,
11 I mean, if there's something you want to show me, I'll be
12 happy to look at it, otherwise, I'm not aware --

13 Q Okay.

14 A -- from my memory.

15 Q So, after having looked at all the records
16 pertaining to that March 26th, 2008 visit, right?

17 A Yes.

18 Q You'd agree that Ms. Exline-Hassler wasn't sent for
19 an x-ray, correct?

20 A Uh, well, there was a differential diagnosis, was
21 that later, you know about that, we talk about that, right?

22 Q I'm asking you specifically about pages 100 --

23 A Yeah --

24 Q -- through (unclear - one word).

25 A -- it looks like, yes, there was no x-ray ordered.

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1 Q The March 26th, 2008 visit nobody, nobody sent her
2 for any x-ray, right?

3 A Yes.

4 Q Nobody sent her for an MRI, right?

5 A Correct.

6 Q She wasn't referred to an orthopedist, was she?

7 A No.

8 Q She wasn't referred to a neurologist, was she?

9 A No.

10 Q She wasn't sent to go see a neurosurgeon, was she?

11 A No.

12 Q There were no specific follow up instructions given
13 her other than to get a P.T. consult and follow up for a
14 general physical exam, correct?

15 A Yes. I mean, the way that if, if you'll allow me.

16 MR. BRATT: Your Honor, there's no question.

17 THE WITNESS: Okay. Okay.

18 MR. GILLCRIST: Can he finish the answer, Your Honor?

19 THE COURT: He'll finish either now or later, so.

20 MR. GILLCRIST: Okay.

21 THE COURT: Counsel's objecting, so I'll let you do it
22 on --

23 THE WITNESS: All right, it doesn't matter.

24 THE COURT: -- mm-hmm -- on redirect.

25 THE WITNESS: It's just a clarification for the jury,

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1 that's all.

2 THE COURT: Mm-hmm.

3 BY MR. BRATT:

4 Q Now -- (brief pause) -- and Ms. Exline-Hassler did
5 go and get the initial PT consult, right? In 2008?

6 A Yes.

7 Q And, specifically, she got that in, uh, April of
8 2008?

9 A If you wanna' show me the pages, I recall I've
10 seen, yes, I've seen an entry.

11 Q And she got, including the evaluation, a total of
12 two physical therapy visits, correct?

13 A One or two, yes.

14 Q And then that --

15 A It's my recollection, yes.

16 Q And in 2008, other than that one or two physical
17 therapy visits, that's the only physical therapy she had that
18 year, correct?

19 A I believe so, but, um, we don't want to look
20 through this page by page, I'll take your word for it now.

21 Q And, if I could, I'd like to refer you to page 124,
22 Doctor.

23 A You're not gonna' show me something otherwise, are
24 you? Uh, 144, I'm running out of pages, Counsel.

25 THE COURT: 124 --

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1 THE WITNESS: Oh, 124 --
2 THE COURT: -- was what he said.
3 THE WITNESS: -- I'm sorry, 120 (sic).
4 THE COURT: So.
5 THE WITNESS: I'm sorry, Judge, my hearing is --
6 THE COURT: That's okay.
7 BY MR. BRATT:
8 Q And I thought I said it loud.
9 A Uh, okay, got it.
10 Q And that's a phys (sic), that's a, a physical
11 therapy note from her second appointment from May 6th, 2008,
12 right?
13 A Yes.
14 Q And said she had had a couple flair ups of pain,
15 but they had been related to sitting crooked in chairs?
16 A It says that.
17 Q She was advised of proper alignment during sitting?
18 A Yes.
19 Q And she never had another physical therapy visit in
20 2008 after that, did she?
21 A If, if that's accurate, I would say yes. I mean, I
22 --
23 Q And in fact --
24 A -- I'll take your word for it.
25 Q -- and in fact, Doctor, refer you to page 128.

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1 A Okay.

2 Q 128 is a, uh, physical therapy discharge report for

3 total rehab care at Robinwood. 128, Doctor?

4 A Got it.

5 Q And it says "Number of treatments two," correct?

6 A Yes.

7 Q And it says "Functional status at discharge, unsure

8 as the patient did not return after first follow up session.

9 At that time she noticed minimal discomfort," that's correct?

10 A That's what it says.

11 Q Bear with me, I (unclear - four words). If you

12 could go to page 90, Doctor, of Exhibit 8.

13 A Okay.

14 Q I apologize for the delay, I've just now seen these

15 records (unclear - three words). Actually, I take it back,

16 Doctor, let me refer you to page 88.

17 A Sir?

18 Q Page 88, I'm sorry --

19 A 88?

20 Q -- Doctor, I apologize.

21 A Okay.

22 Q Got myself out of order.

23 A Okay.

24 Q Now, you testified about the record on page 88

25 during your direct examination, right?

1 A I think we looked at a blown up copy, yes.

2 Q Now, we all know that there's a note here about how
3 the dictation was lost and it was re-dictated at a later
4 point in time?

5 A We reviewed them, yes.

6 Q Okay. So, the dictation was actually done about a
7 week after the visit, right?

8 A It looks that way, yes.

9 Q And if you look at page 89, all the way down at the
10 bottom we could tell that that's when it was dictated, right?
11 Because there's a, a D 1/15/08, or dictated 1/15/08?

12 A Correct.

13 Q And then it says it was signed electronically on
14 January 27th, 2008 by Dr. Bandinbosh (phonetic), right?

15 A Correct.

16 Q So, what we have here in this record at pages 88
17 and 89 is a record of a lost dictation that was re-dictated a
18 week after the visit, and that was reviewed by the physicians
19 who re-dictated it 19 days later, correct?

20 A I think you've accurately described that, yes.

21 Q And when you look at page 88, Doctor, under
22 physical examination, well, let's go one step further, up
23 further allergies, penicillin, right?

24 A That's what it says, yes.

25 Q And if you go further down at the physical

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1 examination under general, Ms. Exline-Hassler was described
2 alert, interactive, talkative, in no apparent distress,
3 correct?

4 A Yes.

5 Q Her neck was free of musculoskeletal pain and
6 limitation of range of motion, correct?

7 A Yes.

8 Q Her lower extremities exam sowed (sic), showed
9 normal reflexes, normal sensation, normal motor strength and
10 normal motor tone, correct?

11 A Yes.

12 Q So, the only positive finding on her PE is trace,
13 which means extremely minimal, right, to one plus tenderness
14 across the musculature of her lumbar region?

15 A That's what it says, yes.

16 Q And that's a, a very minor lumbar strain, is it
17 not?

18 A It's a minor finding, yes. Lumbar strain is a
19 diagnostic conclusion.

20 Q And go to page 89, and as you indicated on your
21 direct exam the diagnosis, the differential diagnosis, and
22 please correct me if I'm wrong, but a differential diagnosis
23 is a doctor who's listed in order what they think might be
24 wrong?

25 A Correct.

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1 Q And first one's muscle strain, right?

2 A Right, they first diagnose with a lumbar strain,
3 second fall, and then he goes into a differential, yes.

4 Q And the second one is sciatica.

5 A Correct.

6 Q And you, you already testified that Ms. Exline-
7 Hassler had EMG and nerve conduction studies for her lower
8 extremities, right?

9 A Correct.

10 Q They didn't find any nerve damage to her sciatic
11 nerve, right?

12 A It's not the, uh, no, they did not, but that isn't
13 what -- okay, no, they did not find it.

14 Q And differential diagnosis number three is
15 vertebral fracture, right?

16 A Yes.

17 Q And, again, she was told, looking at page 89, to
18 follow up with her doctor in five to seven days, right?

19 A Yes.

20 Q And then if she was worse in any way or if her
21 bowel and bladder dysfunction or trouble with ambulation,
22 that means trouble getting around, right?

23 A Yes.

24 Q She will return to our facility immediately,
25 correct?

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1 A Yes.

2 Q And that's on January 8th, 2008, correct?

3 A Uh, I'm not sure what game we're playing here, but
4 yes he's referring to January 8th, 2008.

5 Q There's no game, Doctor. Now, between January 8th,
6 2008 and March 26th, 2008 she does not return to the urgent
7 care center, does she?

8 A I believe that's correct, yes.

9 Q And at the end it says "Condition on disposition
10 good," right?

11 A Yes.

12 Q And now let's go on to page 90. This is another
13 one of the records that you talked about from 2008, right?

14 A Yes.

15 Q And these are the records that you're relying on in
16 support of your opinion that Ms. Exline-Hastler (sic),
17 Hassler had pre-existing degenerative conditions that are a
18 cause of all of her pain after the end of October 2009,
19 right?

20 A Uh, I think I've testified that I've used the
21 record, yes.

22 Q Okay. Now, looking at page 90 she's having trouble
23 moving well, she's got burning sensation across her lower
24 back, correct? And you talked about that before?

25 A Yes.

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1 Q And she's also got vomiting and fever since Sunday
2 morning, correct, and you mentioned that before too, didn't
3 you?

4 A I did as well.

5 Q Well, vomiting and, and fever are not something
6 that comes from a chronic spine problem, right?

7 A Correct.

8 Q Sounds like she's sick, doesn't it?

9 A It sounds like she's vomiting and has a fever.

10 Q She's ill, would that be accurate?

11 A Yes, I mean, she could have a virus, she could have
12 a urinary tract infection, yeah, there's some possibilities.

13 Q Fever and vomiting can affect muscle pain, can they
14 not?

15 A Uh, you know, fever can cause myalgia's or aching
16 of the muscles, uh, if you're vomiting a lot you can strain,
17 you could strain some muscles, yeah. Uh, more abdominal
18 muscles really.

19 Q So, that's a yes then?

20 A Pardon me?

21 Q Was that a yes?

22 A No.

23 Q That's a no?

24 A I would think the abdominal muscles would be more
25 strained than other muscles.

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1 Q Okay, but coughing and vomiting wouldn't involve
2 muscles of the back then?

3 A Pardon me?

4 Q Coughing and vomiting wouldn't involve the muscles
5 of the back then?

6 A Uh, if you're bowel's salving, which I think I
7 referred to before, if you're increasing your intra-abdominal
8 pressure, uh, it could put strain on the discs in the lower
9 back, yes, to be accurate.

10 Q And further it notes that Ms. Exline-Hassler is a
11 smoker, but has no, has not past three days, right?

12 A You know, this is like we're at a football game
13 where the wide receiver knows where he's going and the
14 defender doesn't, could you just tell me where it is on this
15 page, I mean, I don't wanna' --

16 Q It's, it's --

17 A -- belabor this.

18 Q -- right in the middle left where it says "smoker."

19 A Middle left.

20 Q About half way down.

21 MR. GILLCRIST: Maybe Counsel could just show him the
22 document.

23 THE COURT: Yeah, just, just point --

24 MR. BRATT: I, I don't, I just --

25 THE COURT: -- point --

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1 MR. BRATT: -- I don't --
2 THE COURT: -- point to him, it's easy.
3 MR. BRATT: -- like standing over the witnesses.
4 THE COURT: I know.
5 THE WITNESS: No that's okay, I'm not afraid of you
6 okay.

7 BY MR. BRATT:

8 Q Right here, "smoker,"

9 A Yeah, smoker, yes.

10 Q Has not past three --

11 A Yeah, has not past for three days, yeah.

12 Q And for somebody who's a smoker that's more
13 consistent than somebody who's just sick, isn't it, Doctor?

14 MS. HOWARD: Objection.

15 THE COURT: Sustained.

16 BY MR. BRATT:

17 Q Now, you had testified that, uh, Dr. Radley was the
18 first specialist Ms. Exline-Hassler saw?

19 A That's what, uh, the records seem to indicate, yes.

20 Q And his findings showed that there was no nerve
21 root compression, correct?

22 A Yes, I think we've reviewed that, but yes.

23 Q And that's an absence of a neurological finding,
24 isn't it?

25 A Yes.

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1 Q And she was given an EMG and a nerve conduction
2 study of her lower extremities by Dr. Radley?

3 A Right.

4 Q And an EMG and a nerve conduction study, that's a
5 diagnostic test that's used to, to look for nerve damage
6 isn't it?

7 A Uh, correct.

8 Q And they found that she didn't have any nerve
9 damage, right?

10 A Yes.

11 Q They found, Dr. Radley that there was no
12 denervation, correct?

13 A Well, Dr. Chen did who did the study, yes.

14 Q I'm sorry, I made an error, but Dr. Chen found no
15 denervation, correct?

16 A Correct.

17 Q And what that means is that there's no nerve damage
18 from the low back into the legs, correct?

19 A There's, it's the lack of nerve damage from the
20 study, correct.

21 Q And you mentioned a note from Dr. Nisenfeld, uh,
22 which was, uh, February 1st, 2010, and Dr. Nisenfeld noted
23 that, uh, she had complained about being in a motor vehicle
24 accident where she was rear ended in 2009?

25 A Uh, I think I went over that with, uh, Counselor,

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1 yes.

2 Q It also said that she continued to have disabling
3 pain, right?

4 MS. HOWARD: That's 250 (sic), I think 253 in the white
5 book.

6 THE WITNESS: Which one?

7 MR. BRATT: Exhibit 10, that's page 253.

8 THE WITNESS: 2-5-3? All right. Yes, term disabling
9 pain I said, yes.

10 BY MR. BRATT:

11 Q And on the same day at the same visit she had a,
12 uh, normal neurological exam, correct?

13 A Yes.

14 Q So, she didn't have any neurological problem that
15 was causing her pain, right?

16 A Well, pain, uh, is conveyed by nerves, and, um, if
17 I understand what you're saying, uh, when anyone has a back
18 or neck injury the examining physician, be he PMD,
19 orthopedist, neurologist, neurosurgeon, it's incumbent on
20 them to also look for neurologic involvement. And the
21 absence of that doesn't mean that they're not having pain,
22 the neurological involvement would indicate a more serious
23 injury. I see patients all the time with neck and back pain
24 and they may have no neurological findings, that's good.

25 Q Right, and I guess my point is is that at that

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1 visit she was not found to have any neurological condition
2 that was causing her pain, correct?

3 A That's what it says, yes, sir.

4 Q And I want to go back -- (To Ms. Harveson) Ms.
5 Harveson, can you go to Exhibit 10, page 255, please? (To
6 the witness) Doctor, it should be 255 in your book as well.
7 Uh, okay, and that's a note from Dr. Naff, right? I'm sorry,
8 Dr. Sloan.

9 A Yes.

10 Q And you talked about that on your direct
11 examination, right?

12 A I was asked to refer to it, yes.

13 Q And you went through it, right, at Counsel's
14 request?

15 A Yes, to the extent that I --

16 Q And, and I wrote down --

17 A -- was directed, yes.

18 Q -- when you testified your testimony on direct
19 examination about that record was that there is no reference
20 to a motor vehicle accident, right, that was your testimony?

21 A You fox. Uh, under social history it says here
22 "Claims pending. She is under personal injury."

23 MR. BRATT: Objection, Your Honor, move to strike.

24 THE COURT: I'm gonna' overrule.

25 MR. BRATT: Okay.

1 THE WITNESS: It says that, yes.

2 BY MR. BRATT:

3 Q That's one of the things it says, Doctor.

4 A Is that what you were looking for?

5 Q As a matter of fact, Doctor, well, for one thing
6 you're looking at page 256, not page 255. So, let's look at
7 page 255.

8 A Got it.

9 Q Now, on page 255 in the first paragraph "History of
10 present illness." "Ms. Exline-Hassler is a pleasant 43-year-
11 old female that has had 11 months of persistent pain in the
12 low back with radiation into the buttock, posterior thighs
13 and calves, as well as continuing..." I can't say that, you
14 probably can, something, "...cephalod (phonetic) into the
15 thoracic region." And the next sentence after that says, "It
16 occurred after a motor vehicle accident," (unclear - two
17 words.)

18 A Okay, you're, yes, it does say that. I apologize
19 to the judge and the jury, I misspoke.

20 Q Okay, and then --

21 A It does say that.

22 Q -- and if you would --

23 A Sorry.

24 Q -- go back to page 256, Dr. Sloan does make some
25 diagnostic findings, correct?

1 A Five.

2 Q Right. And I want to ask you specifically about
3 the first diagnostic finding, about annular tears. It
4 doesn't say anyplace in Dr. Sloan's first diagnostic finding
5 that these annular tears are degenerative, does it?

6 A It doesn't say they're not either, just, uh,
7 there's a quote, there's, he makes a diagnosis, you want me
8 to read it?

9 Q So, not degenerative. It doesn't say degenerative
10 in there. That's all I'm asking, right, you agree with that,
11 correct, that's what it says?

12 A Correct.

13 Q And also on that date Dr. Sloan did a neurological
14 exam as well, right?

15 A He did.

16 Q His neurological exam was once again normal,
17 correct?

18 A Correct.

19 Q And Dr. Sloan refers to an MRI from June, from July
20 13th, 2009?

21 A He does.

22 Q You have no reviewed the actual film of that MRI,
23 correct?

24 A I don't think so, no. I reviewed the
25 interpretation of many physicians that have looked at them, I

1 haven't seen the films, that's correct.

2 Q So, Doctor, it'd be fair to say that, and I, please
3 disagree with me if, if you don't agree that the essence of
4 your testimony is that Ms. Exline-Hassler's problems that
5 continued beyond October 30th, 2009 were related solely to
6 pre-existing conditions and not to the motor vehicle accident
7 in June of 2009, correct?

8 A Yes, it is, to a reasonable degree of medical
9 certainty.

10 Q And the records upon which you are relying in
11 support of that opinion are primarily, at least, the records
12 of these four visits, with, with Washington Hospital,
13 Robinwood and the therapy place in 2008, right?

14 A Absolutely not, Counselor.

15 Q Well, those are the records you discussed, right?

16 A You discussed them and the other counselor may have
17 discussed them, but that's not the only thing I'm relying on.
18 I think I've gone over that as to why I made my conclusions.

19 (Brief pause while Counsel confer off the record.)

20 BY MR. BRATT:

21 Q Um, take a look at -- if you wanna' go back to
22 Exhibit 8, Doctor, page 111.

23 MR. PORCARELLI: Is this MR-111?

24 MR. BRATT: Yes.

25 BY MR. BRATT:

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1 Q You have (unclear - two words)? Uh, wrong binder,
2 it's Exhibit 8, it's the (unclear - one word) medical
3 records. No, you're looking at the wrong place, it's
4 (unclear - two words).

5 A This one?

6 Q Exhibit 8, yeah, page 111.

7 A Okay. Got it.

8 Q And if you look at the way up at the top it's dated
9 April 28th, 2008, right?

10 A Yes.

11 Q And it indicates that at that point in time Ms.
12 Exline-Hassler was engaging in the work and leisure
13 activities of motorcycling and gardening?

14 A That's what it says.

15 (Brief pause while Counsel confer off the record.)

16 MR. BRATT: (Unclear - three words), may I borrow your
17 file for a second?

18 BY MR. BRATT:

19 Q Now, I'm gonna' show you another document, Doctor,
20 that's on page 28 of these, uh, medical records.

21 MR. BRATT: Ms. Harveson, do not pull this up, please.

22 BY MR. BRATT:

23 Q Now, this is page 28, right? This is one of the
24 records you reviewed?

25 MR. PORCARELLI: Excuse me, Mr. Bratt, is this from MR

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1 or --

2 MR. BRATT: It's MR, it's MR.

3 MS. HOWARD: Which page?

4 MR. BRATT: 28.

5 THE WITNESS: I, I, I'm reasonably sure I've seen it,

6 yes.

7 BY MR. BRATT:

8 Q And that's a document entitled "Attending
9 Physicians Report?"

10 A That's what it says, yes, mm-hmm.

11 Q And it asks some questions of the attending
12 physician about Ms. Exline-Hassler?

13 A Well, this is a form and you --

14 MR. PORCARELLI: Objection.

15 THE COURT: Approach.

16 (Counsel approached the bench and the following
17 occurred:)

18 (Husher turned on.)

19 THE COURT: Which form is it?

20 MR. PORCARELLI: This is the one --

21 THE COURT: That the --

22 MR. PORCARELLI: Correct.

23 THE COURT: -- Penn National.

24 MR. BRATT: I'm not gonna' violate Your Honor's ruling.

25 THE COURT: So.

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1 MR. PORCARELLI: I understand, but you're coming so
2 close and he's, and this --

3 THE COURT: So.

4 MR. PORCARELLI: -- and this witness is --

5 THE COURT: Just, yeah, just be --

6 MR. BRATT: I will not, I promise.

7 MR. PORCARELLI: Can --

8 MS. HOWARD: And, Your Honor, I did try to mention this
9 to him, the doctor, but it was like a couple hours ago, if
10 nobody minds if I just took one of your post-its as I walk
11 past his exhibits, slapped it up there, if that would be
12 enough of a queue for him to remember to not really go into
13 (unclear - two words).

14 THE COURT: Just to make sure.

15 MR. BRATT: I will observe the Court's ruling, Your
16 Honor.

17 THE COURT: So, yeah, I just wanna' make sure that --

18 MR. PORCARELLI: I don't want --

19 THE COURT: -- not you, but that --

20 MR. BRATT: I will not be displayed.

21 THE COURT: -- he -- well, no, no, no --

22 MR. BRATT: I know, I understand.

23 THE COURT: -- and that, and that, and that he doesn't
24 blurt it out.

25 MR. BRATT: No, I understand, I understand.

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1 THE COURT: So.

2 MR. PORCARELLI: Thank you.

3 MR. BRATT: And Ms., uh, Ms. Howard's gonna' advise him?

4 THE COURT: Yeah, she's just gonna' put a sticky over

5 it.

6 MR. BRATT: Okay.

7 THE COURT: Okay?

8 MR. BRATT: Thank you, Your Honor.

9 (Counsel returned to the trial tables and the following

10 occurred:)

11 (Husher turned off.)

12 BY MR. BRATT:

13 Q Sorry about that. Now, Doctor, look at page 28

14 (unclear - three words).

15 A Mm-hmm.

16 Q It's a document called "Attending Physicians

17 Report," right?

18 A Correct.

19 Q Generated by the Robinwood Family Practice, right?

20 A Well, that's the stamp on this file, yes.

21 Q And those are the --

22 A Correct.

23 Q -- the same people that generated these records

24 that you were talking about from 2008, remember those?

25 A Yes.

1 Q Okay. Now, page 28, the attending physician's
2 report, it asks for the history of the occurrences as
3 described by the patient, right?

4 A Yes.

5 Q And it says back and neck pain from car accident,
6 6/26/09, correct?

7 A It says that.

8 Q And then the, the next line says diagnosis and
9 concurrent or contributing conditions. And it says lumbar
10 herniated disc and neck strain, right?

11 A That's what it says --

12 Q And --

13 A -- and it's accurately coded, too. I know the
14 codes.

15 Q And then when it says when did symptoms first
16 appear? June 26, 2009.

17 A Correct.

18 Q And the patient first consulted Robinwood for that
19 condition, box eight, on June 26, 2009, right?

20 A Yes, three --

21 Q I think we can agree --

22 A -- days afterwards.

23 Q -- that's an error, because she actually was seen,
24 actually, no that's not an error --

25 A No, it's not an error.

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- 1 Q -- (unclear - four words.) Correct.
- 2 A She was seen three days later, yeah.
- 3 Q And then question nine, "Has the patient ever had
- 4 the same or similar condition?" The answer's, "No," right?
- 5 A Correct.
- 6 Q "Is this condition solely a result of this
- 7 accident?" And the answer's, "Yes," correct?
- 8 A That's what it says.
- 9 Q "Is the condition due to injury or sickness arising
- 10 out of the patient's employment?" "No."
- 11 A That's what it says, yes.
- 12 Q And, "Will the injury result in permanent
- 13 disfigurement or permanent disability?" And it says,
- 14 "Unknown," correct?
- 15 A Correct. If that's all this was about it's not
- 16 that simple.
- 17 Q And if you go to page 29 that's the second page,
- 18 right?
- 19 A Yes, sir.
- 20 Q And it's signed by a, a P.A. at the, uh, Robinwood
- 21 Family Practice, correct?
- 22 A Right, P.A.C., yes.
- 23 Q Correct, okay. And that record would tend to
- 24 indicate that, well what it indicates, that the symptoms
- 25 arose after the car accident, correct?

1 MR. GILLCRIST: Objection, Your Honor.

2 MS. HOWARD: Objection, Your Honor.

3 THE COURT: Sustained. Says what it says.

4 MR. BRATT: May I just have a minute, Your Honor?

5 THE COURT: Mm-hmm, certainly.

6 (Brief pause.)

7 MR. BRATT: That's all I have . . . presently.

8 MS. HOWARD: Thank you, thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HOWARD:

11 Q Um, just a couple questions, Doctor. As I
12 understand it, your opinion in this case is that the
13 Plaintiff sustained muscles strains to the neck and the low
14 back in the June '09 auto accident, correct?

15 A Yes.

16 Q All right. And in making the opinion did you
17 accept the accuracy of the complaints she made to her
18 doctors, um, about her symptoms?

19 A Yes, I, I made my conclusions from all the records
20 we've been talking about for a couple hours, yes.

21 Q Now, um, having reviewed her medical records
22 generated after the accident, was your diagnosis, uh, that
23 the lumbar strain, uh, your diagnosis of lumbar strain is
24 that consistent with her other treating doctors?

25 A Yes.

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1 Q And that would be Dr. Radley, Dr. Nisenfeld, Dr.
2 Naff, Dr. Sloan, correct?

3 A Yes, to the extent that, yes, it is.

4 Q And I, I'm referring to their medical records they
5 prepared, these doctors references that they prepared,
6 correct?

7 A I'm sorry, say that again.

8 Q Well, for example, Dr. Naff, his medical records
9 said that it's a degen (sic), degenerative condition (unclear
10 - three words)?

11 A Yes, yes.

12 Q All right. Now, finally, um, uh, is it also true
13 that the treating doctors interpreted the MRI, uh, scans as
14 showing degenerative disc disease?

15 A Yes, absolutely.

16 Q And I can show you in the, uh, or direct you to, in
17 the white binder, page MR, uh, 1-0 and 11, so 10 and 11 of
18 the white binder.

19 A Oh, 10 and 11? Okay. Okay, got it.

20 Q And that's the, uh, radiologist's report of the
21 interpretation of the MRI dated July 13th, '09, correct?

22 A Yes.

23 Q And it, the report is prepared by a medical doctor
24 who's a radiologist, correct?

25 A Yes.

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1 Q All right. And in the course of your practice is
2 it common to review radiologists' reports?

3 A All the time.

4 Q All right. And formulating your opinions in this
5 case did you rely not on the rade (sic), this radiologist's
6 report, but the other medical care providers' interpretation
7 of this report and their review of the films?

8 A Yes.

9 Q All right. Now, let's take a look at that Exhibit
10 and 11. Um, according to the radiologist, what are the
11 findings there?

12 A Uh, okay, of importance to what we're talking about
13 --

14 Q Yes, the relevant portions, please.

15 A Yeah. He says that there's desiccation at L4/5 and
16 L5/S1. That means the discs are drying out.

17 Q And that it happens to be --

18 A They're losing fluid.

19 Q Losing fluid happens why, Doctor?

20 A Because, uh, it's a degenerative process.

21 Q All right. Continue.

22 A And then he says there are some high intensity
23 zones of these discs consistent with annular tears. Well,
24 there's no, there's no, uh, denying that she has annular
25 tears, every doctor said she does. The question is does it

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1 mean anything, and does it mean anything in relation to the
2 automobile accident of concern? And the answer is, in my
3 opinion, absolutely no, there's, if these were acute they
4 would, there would be some edema associated with it, which
5 there isn't. Uh, so, they are there, they can occur, as I
6 said, 85 to 90 percent of the time from just aging, from wear
7 and tear, no pun intended, uh, and, uh, they could have, they
8 can be silent, they can be associated with pain, uh, and they
9 could just as well be attributable to other injuries that
10 she's had earlier in her life, that's what non-specific
11 means. In other words, you can't point to one event and say
12 ah-hah, that's it. Okay, L2, L1/2, L2/3 and L3/4, no
13 problem. L4/5 there's an annular tear, that's a tear in the
14 paper around the, uh, the peanut butter and chocolate, and,
15 uh, there's no significant disc protrusion, that means
16 despite the tear that probably isn't that big, the disc
17 material's not pushing through.

18 Q So, the wrapper, using your analogy, the wrapper
19 may have tear in it, but the --

20 A Yeah, nothing's come --

21 Q -- (unclear - one word.)

22 A -- I mean, the disc is not, the liquid part is not
23 pushing through.

24 Q All right.

25 A There's mild bulging. Mild facet arthropathy

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1 ligament inflatum hypertrophy, that's degenerative, that did
2 not occur on the, uh, sorry --

3 Q June 26.

4 A -- 6/26/2009. That's wear and tear, it had to be
5 there before, because this was only done, I believe a --

6 Q 18 days.

7 A -- it's only day a few days --

8 Q 18 days after the accident.

9 A Yeah, after the accident. Um --

10 Q And then --

11 A -- okay. And then at L5/S1, annular tear, we've
12 discussed what an annular tear is. There is a little left
13 paracentral disc protrusion. It's very tiny, it's five
14 millimeters, I mean, that's a half a centimeter. If
15 anybody's familiar with the metric system it's teeney, tiny,
16 it's probably a half a pea. And, uh, so the radiologist is
17 being very accurate, very compulsive, and, but this is what
18 he's describing. No significant mass effect on the fecal
19 sack, that's the sack that encloses all these nerves, no, uh,
20 or nerve roots. No narrowing, uh, no stenosis or narrowing
21 of the bones. So, that's what he's describing, uh, he
22 (unclear - two words) --

23 Q Is that consistent --

24 A -- that's what there, and every doctor that's
25 reviewed these films has said, yes, they're there, but

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1 they're relatively unimpressed.

2 Q And you testified that the annular tears are, uh,
3 far and away more commonly cause by the degenerative process,
4 correct?

5 A Absolutely.

6 Q All right. Could you ex --

7 A Aging.

8 Q Physiologically, how does that happen?

9 A How does it happen?

10 Q Yes.

11 A Well, we're up and about all the time, we move
12 around, uh, some people exercise more than others, they job,
13 uh, they left, they carry babies and other heavy things, um,
14 and it's a, it's a normal process. Same thing with the neck,
15 we're moving our neck all day, every day. We don't think
16 about it, but we are, and, uh, this takes its toll on, on
17 some people, not others, not everyone. In this particular
18 case it seems to have done that.

19 Q And just if I could quickly direct your attention
20 in that thick, right here at Plaintiff's Exhibit 8, page 9
21 (sic) --

22 A Okay.

23 Q -- page, uh, 90.

24 A Okay.

25 Q Which is one of big exhibits we have. These are

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- 1 handwritten notes from (unclear - three words) --
- 2 A I, I, I, um, I'm just about there, I got it.
- 3 Q Mm-hmm.
- 4 A Okay, got it.
- 5 Q And --
- 6 A My God.
- 7 Q -- how's this when the wide receiver telegraphs
- 8 the, uh, where he's goin', we're right here, middle of the
- 9 page is there a pain level reported there? Pain level?
- 10 A Yes.
- 11 Q And the pain level's six, correct?
- 12 A Correct.
- 13 Q All right. And we also know, and I won't belabor
- 14 the point, but when Ms. Exline-Hassler went to, um, physical
- 15 therapy a couple months later, April 28th, 2008, we know that
- 16 she had mentioned the problem coming from sitting to
- 17 standing, sometimes feel like an 80-year-old lady.
- 18 A Correct.
- 19 Q And, are those symptoms that are consistent with
- 20 suffering from an annular tear?
- 21 A Um --
- 22 Q (Unclear - one word?)
- 23 A -- it could be, it could not be. I mean, it's
- 24 symptoms of a bad back.
- 25 Q (Unclear - four words?)

1 A Degenerative changes, yes.

2 Q All right. Thank you. That's all.

3 THE COURT: And thank you, Doctor.

4 MR. BRATT: Mr. Porcarelli?

5 THE WITNESS: Thank you.

6 MR. PORCARELLI: No questions, thank you though for
7 offering.

8 MR. BRATT: Unsurprisingly, Your Honor, I have a few
9 questions, and I really mean it, just a few.

10 MS. HOWARD: Your Honor, is it really rebuttal here?

11 It's --

12 THE COURT: Approach.

13 (Counsel approached the bench and the following
14 occurred:)

15 (Husher turned on.)

16 MR. BRATT: It's recross, and it gets (unclear - one
17 word) what was developed in the annular tears MRI findings.

18 MS. HOWARD: But where's the recross.

19 THE COURT: Not the MRI, 'cause you've had oppor (sic),
20 ample opportunity to do --

21 MR. BRATT: It's, it gets to his opinions he giving on
22 the annular tears, Your Honor. It's the thing from the
23 qualifications.

24 THE COURT: But you had an opportunity to tell, to ask
25 him about that on your initial cross, and you did not.

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1 MR. BRATT: So, I can't ask my two questions?
2 THE COURT: I don't usually --
3 MR. BRATT: Pretty please.
4 THE COURT: -- I don't get it, I'm -- so. What is the
5 question?
6 MR. BRATT: Doctor, you have 2,000 patients. Out of
7 those 2,000 patients you're treating one or two for annular
8 tears. That's one/one-thousandth of your patient population.
9 THE COURT: No, can't ask that one, what's the next one?
10 MR. BRATT: That was it. That's all I wanna' ask.
11 THE COURT: That was it. You can, you --
12 MS. ZOIS: Can we do redirect about his deposition?
13 MR. BRATT: It's in there.
14 MS. HOWARD: You already asked him.
15 MS. ZOIS: It's in his deposition.
16 THE COURT: You had the opportunity to --
17 MR. BRATT: I tried once, Your Honor, and you said, and
18 now I'm trying again, you're telling me no again.
19 MS. ZOIS: He tried on voir dire to ask that question.
20 MS. HOWARD: He did ask the question.
21 THE COURT: He (unclear - one word) it.
22 MR. BRATT: It's qual --
23 THE COURT: And he answered it.
24 MS. HOWARD: He did.
25 MR. BRATT: Right, and the reason was --

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1 THE COURT: And he answered it.
2 MR. BRATT: -- is it's --
3 MS. ZOIS: No, he did not answer.
4 MR. BRATT: He did not. He answered it about back pain,
5 I specif (sic), Your Honor, I swear --
6 THE COURT: All right.
7 MR. BRATT: -- I (unclear - two words).
8 THE COURT: One more.
9 THE WITNESS: That's okay, I'm, uh, I want to, here to
10 cooperate, help one way or another.
11 THE COURT: Counsel.
12 MR. BRATT: I'm (unclear - one word).
13 THE COURT: No you.
14 MR. BRATT: Okay. Uh, Ms. Harveson, could you, uh --
15 RECROSS EXAMINATION
16 BY MR. BRATT:
17 Q Doctor, I'm gonna' direct you to Exhibit 58, which
18 is your deposition testimony. And if you remember having,
19 uh, your deposition taken by (unclear - two words) we've
20 discussed it a couple times. (To Ms. Harveson) Ms. Harveson,
21 would you pull it out, please. (To the witness) Doctor, I'm
22 gonna' show you page 28.
23 A Okay.
24 Q Make sure you're all right. Could you read lines
25 11 through 21?

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1 A Uh, Counselor says, "I think you might have
2 misunderstood my question, what I would like to know is,
3 right now, for your patient base, that you're providing
4 medical treatment for either patients that you are treating
5 for annular tears rather than people who may, rather than
6 people who may have annular tears. What I want to know is
7 are you treating anybody for annular tears?" And my answer
8 was, "Perhaps one or two." "And what percentage of your
9 practice would that make up?" "A small percentage." And --

10 Q And, in fact, Doctor, based on your testimony and
11 your patient population being about 2,000 patients with
12 symptomatic annular tears for their annular tears makes up
13 roughly between half of a thousandth and thousandth of what,
14 what you do as a neurologist?

15 MS. HOWARD: Objection, move to strike.

16 BY MR. BRATT:

17 Q Right?

18 MS. HOWARD: It's --

19 THE COURT: I'm gonna' sustain.

20 MR. BRATT: Thank you.

21 THE COURT: Now we're done. And thank you, Doctor. Now
22 you may step down.

23 DR. LONDON: Thank you, Judge. It's cold out there.

24 THE COURT: It's very cold out there. And, Counsel,
25 let's, if you'd approach for us to discuss logistics.

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1 (Counsel approached the bench and the following
2 occurred:)

3 (Husher turned on.)

4 THE COURT: I know we have the Plaintiff testify, and
5 your doctor.

6 MR. PORCARELLI: Dr. McGrail's on video and they're
7 working on editing that in conformity with your ruling.

8 THE COURT: Okay.

9 MR. PORCARELLI: I haven't seen it. It's back in Hunt
10 Valley, and I'll have to go back tonight and look at it.

11 THE COURT: Okay.

12 MR. PORCARELLI: And see if I can have it ready to go at
13 some point tomorrow.

14 THE COURT: Okay. Um, any other witnesses after the
15 Plaintiff for your case.

16 MS. ZOIS: We've, we have considered playing Dr.
17 McGrail's video in our case, but I'll talk to Mr. Porcarelli
18 about that.

19 THE COURT: Okay. Um, how long are we expecting, I'm
20 just, I'm just wondering if, if, if, if it's better to start
21 tonight with Plaintiff to start to get an hour's worth in
22 since we're already here. Or we start early in the morning.
23 I can do either.

24 MS. ZOIS: I don't want to --

25 MR. GILLCRIST: Would it be --

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1 MS. ZOIS: -- break her up.
2 MR. GILLCRIST: -- possible to start at 9:30 tomorrow?
3 THE COURT: I can start at --
4 MR. BRATT: Any time in the morning is fine with us.
5 THE COURT: -- I can start any time in the morning,
6 because I'll just make my criminals wait.
7 (Chuckles.)
8 MR. BRATT: That's elegant for (unclear - one word).
9 THE COURT: So, well, you know, they're --
10 MR. GILLCRIST: And if, if the Plaintiff is their only
11 remaining witness and possibly Dr. McGrail or something, but,
12 um, I would think that we could get them by early afternoon.
13 MR. PORCARELLI: Again, I have to see the final product.
14 THE COURT: Right.
15 MR. PORCARELLI: But, um, if the edits all come out on
16 the objections and colloquy --
17 THE COURT: Mm-hmm.
18 MR. PORCARELLI: -- and, and consistent with the ruling,
19 um, it's probably to estimate it, two and a half hours.
20 THE COURT: Okay.
21 MR. PORCARELLI: Maybe 2:45.
22 THE COURT: Okay.
23 MR. PORCARELLI: It's a good chunk of time.
24 THE COURT: Okay. Well, it's really to, I want to make
25 sure that we, I really don't want to repeat lots of things,

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1 because we've already had a lot of evidence in, but let's,
2 why don't I'll ask them to be here at 8:45 to shoot to start
3 right at 9 o'clock, and then we'll, then we'll roll.

4 MR. PORCARELLI: Okay.

5 MR. GILLCRIST: Thank you very much, Your Honor.

6 MR. BRATT: Thank you, Judge.

7 THE COURT: Okay.

8 MS. ZOIS: May, may I ask one more question, Your Honor

9 --

10 THE COURT: Mm-hmm.

11 MS. ZOIS: -- of the Defense? The two, are we calling
12 the two girls tomorrow or . . .

13 MS. HOWARD: I, I'm, I'm (unclear - one word), I'll have
14 them available like around --

15 THE COURT: And you'll make a decision --

16 MS. HOWARD: -- lunch time.

17 THE COURT: -- as to what you're gonna' do.

18 MR. GILLCRIST: It would be five minute witnesses.

19 MS. ZOIS: So, hopefully, we'll close tomorrow?

20 THE COURT: Oh, yeah.

21 MS. ZOIS: Okay.

22 THE COURT: I'm planning on it.

23 MS. ZOIS: Okay, good, 'cause I have childcare issues on
24 Monday, so.

25 THE COURT: So, I'm planning on it, so.

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1 MR. PORCARELLI: We're gonna' close tomorrow?
2 THE COURT: I'm, absolutely, so.
3 MR. GILLCRIST: That, that will make our wives --
4 MR. PORCARELLI: No problem.
5 MR. GILLCRIST: -- and families ecstatic.
6 MS. ZOIS: (Chuckles.) Thank you.
7 THE COURT: All right.
8 MS. ZOIS: Thank you, Your Honor.
9 (Husher turned off.)
10 (Counsel returned to the trial tables and the following
11 occurred:)
12 THE COURT: Okay, we're gonna' end for today. We're
13 gonna' try to start early tomorrow, um, ask you to be
14 downstairs at 8:45 to start right at 9 o'clock. The other
15 stuff that I have in the morning is going to get bumped,
16 because we want to go push through with this. We are going
17 to probably be all day tomorrow, just so that you know for
18 your planning purposes. Um, hopefully the snow we got today
19 is all the snow that we're gonna' get, but we'll play that by
20 ear as well. So, I'll excuse you for tonight, we'll see you,
21 we're gonna' shoot for, like I said, start right at 9 o'clock
22 tomorrow. Thank you, everybody. You're excused 'til then.
23 And, so, Counsel, just leave everything here,
24 'cause like I said, I'm just gonna', we're gonna' post a big
25 sign. Those folks will just have to work.

1 MR. BRATT: Since the criminals aren't coming.

2 THE COURT: Since a number of 'em were gonna' be
3 sentenced I think they probably won't mind at all --

4 (Chuckles.)

5 THE COURT: -- that they're gonna' get booted for a week
6 or two, so.

7 MR. BRATT: An iPad can be very useful in the lockup,
8 Your Honor.

9 THE COURT: So, so, like I said, so, um, just, you know,
10 do what you need to tidy up, but, uh, like I said --

11 MR. PORCARELLI: Your Honor.

12 THE COURT: Yes.

13 MR. PORCARELLI: I have a note in front of (unclear -
14 two words) just a couple of housekeeping questions. Uh, when
15 we get to closing I (unclear - one word) some judges who have
16 time limits, and does Your Honor do that, should we have
17 something like in mind?

18 THE COURT: I would just remind you all -- one, I think
19 they're paying very close attention to what's going on and
20 taking very active notes. And, just remember, we want to get
21 this case to the jury for them to begin their deliberations.
22 So, I'm, I don't artificially set that, I'll just ask for
23 everybody to be mindful of that.

24 MR. BRATT: Basically, if we're dumb enough to bore them
25 it's our own problem?

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1 planning to give, I'll hear argument on ones that I'm not
2 planning to give. After I give the instructions I'll, I have
3 Counsel approach to make sure I didn't forget anything and we
4 all agree I was going to give and to put, um, any objections
5 on the record, um, and then, then go from there.

6 MR. PORCARELLI: Thank you.

7 THE COURT: Okay? You're welcome.

8 MS. ZOIS: Thank you, Your Honor.

9 MR. GILLCRIST: Thank you, Your Honor.

10 THE CLERK: So, they're coming back at 8:45?

11 THE COURT: Yeah, 8:45. So, we'll let 'em all know
12 that, like I said, the criminal's will have to wait.

13 THE CLERK: All rise.

14 (Whereupon, at 4:50 o'clock, p.m.,
15 Court is adjourned for the day and
16 will reconvene on January 25, 2013
17 at 9:03 o'clock, a.m.)

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CERTIFICATION

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I HEREBY CERTIFY that the proceedings in the matter
of Exline-Hassler v. Penn National Insurance, et al., heard
in the Circuit Court for Frederick County, January 24, 2013,
were recorded by means of digital recording.

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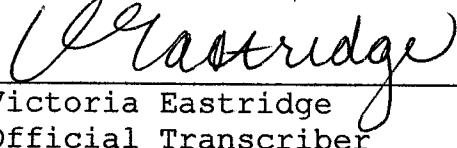
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I further certify that, to the best of my knowledge
and belief, page number 1 through 281, constitute a complete
and accurate transcript of the proceedings as transcribed by
me.

I further certify that I am neither a relative to,
nor an employee of any attorney or party herein, and that I
have no interest in the outcome of this case.


Victoria Eastridge

Official Transcriber