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SC Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Review

Unpublished Opinion No 2012-UP-153 (S C Ct App Filed Mar 7, 2012)

Donna L McCall, Employee,

Respondent,

v

Sandvik, Inc , Employer, and
Sentry Insurance Company, Carrier,

Petitioners

APPENDIX - VOLUME 2 OF 4

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Nicolas L Haigler, Esquire
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Attorneys for Respondents

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CVS PHARMACY #4537
PATIENT PRESCRIPTION RECORD
3/30/2008 THU 10/1/2008

PHARMACY NAME CVS PHARMACY #4537
ADDRESS 210 INGLE'S PLACE
CITY ST IP SENECA SC 296780000

PATIENT CITY 03211101
PATIENT NAME DONNA L MCRAIL
ADDRESS 51 E HALL WAY BRAMF RD
CITY ST ZIP WASHINGTON SC 29100000

TELEPHONE 864 888 4158
JERDATE 10/27/195
SEX F
RELAT ONSHIP R

CURRENT ALLERGENS ON RECORD
None communicated by the patient

CURRENT CONDITIONS ON RECORD
None communicated by the patient

RX NUMBER RXL NUMBER VDC DRUG DESCRIPTION PRESCRIBER NAME DATE RPH QUANTITY TOTAL PK CC CPT #1 PD AMT T #3 PD JMT T #4 PD JMT

774937 20 78481501 LEVOTHYROXINE 125 MCG TABLETS, RAO FRANK C 07/08/2008 DC 34 1 23 4th PYR # 4th PYR # 1 00
1st PYR # 5000 2nd PYR #
TP2 AUTH # 08159036281211 TP2 AUTH #
774937 1 00078181501 LEVOTHYROXINE 125 MCG TABLETS, RAO FRANK C 08/08/2008 RC 0 12 73 4th PYR # 4th PYR # 5 00
1st PYR # 5000 2nd PYR #
TP2 AUTH # 0817506032-9 10 TP2 AUTH #
78659- 20370345 10 LOCALZEPAM 1 MG TABLETS, RODERS DAVID 08/08/2008 MW 0 10 73 4th PYR # 4th PYR # 00
1st PYR # 5000 2nd PYR #
TP2 AUTH # 081750611458871 TP2 AUTH #

3 TOTAL AMOUNTS

37 59 22 69

00 00

15 08

D 07 10/13/2008 TIME 1 05

From-18648884358
Received Oct-13-2008 01:45pm
To-Larry C Bient P A Page 001

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

TO : DIRECTOR, FBI
FROM : SAC, NEW YORK
SUBJECT: [REDACTED]

RE: [REDACTED]
NY 100-123456
NY 100-789012

NY 100-345678
NY 100-901234

NY 100-567890
NY 100-123456

NY 100-789012
NY 100-345678

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall, Employee

Appellant

v

Sandvik Incorporated Employer
and
Sentry Insurance Company, Carrier

Respondents

RECORD ON APPEAL
VOLUME 2 OF 4

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3691 Blue Ridge Blvd
Walhalla, SC 29691
864/638-5406
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803/929-1400
Attorney for Respondents

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Walgreens

Rep r. date/Lane 10/1 008 2 7
PAJ

Confidential Patient Information
Prescription Profile
05/ 0/2008 through 10/13/2008

Patient Info
DONNA MCCALL
Patient Phone
Date of Birth 10/17/1954
Gender F
Allergy Conditions
Health Condition None on file

Store Info 1 01 SANDIPER BLVD
SENECA SC 29678
(64)84 6889

Prescription
Number Medication
0133811 10163 SYNTHROID 0.15MG (150MCG) TABLETS
Your insurance saved you \$1.69

INS Plan(s) Date of Service Quantity Price
Claim Ref#(s)
PCS / 06/05/08 34 000 1.50
08129124-050934

256

0139144-10163 LORAZEPAM 1MG TABLETS
Your insurance saved you \$20.49

PCS 06/05/08 7 000 5.0
081291283583949

013 145 10163 NAMENDA 10MG TABLETS
Your insurance saved you \$157.99

PCS 06/05/08 60 000 5.0
08129126721 846

0141010 10163 DIAZEPAM 5MG TABLETS
Your insurance saved you \$15.89

PCS 06/25/08 90 000 5.0
08149054 171416

195

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To-Larry C Brandt P A Page 001

D Y LC/13/2008 TRNG 1- 1 05

CVS PHARMACY #3537
PATIENT PRESCRIPTION RECORD
0 /30/2008 THRU 10/13/2008

PHARMACY NAME C J PHARMACY # 537
ADDRESS 210 INGLE S PLACE
CITY ST ZIP SENECA C 2 6780000

PATIENT CITY 03311101
PATIENT NAME DONNA L MCCALL
ADDRESS
CITY ST ZIP
TELEPHONE
REGDATE 10/27/195
SEX F
RELATIONSHIP H

CURRENT ALLERGIES ON RECORD
None communicated by the patient

CURRENT CONDITION ON RECORD
None communicated by the patient

RX NUMBER	REF NUMBER	VDC	DRUG	DFSCR	PT ON	PRESCRIBER NAME	DYTE	RPH	QUANT	TOTAL PR CE	TP #1 PD AKT	TP #2 PD JPT	TP #3 PD QNT	TP #4 PD JPT	TP #5 PD JPT
77 737	00778461.01	LEVOTHYROXINE 125 MCG TABLET	RAO FRANK C				07/08/2008 DC	34	34	14 23	4th PYR #				5 00
1st PYR #	5000						3rd PYR #				4th PYR #				
TP1 AUTH #	0815036-812141	TP2 AUTH #					TP1 AUTH #				TP2 AUTH #				
77073	1 00378461.01	LEVOTHYROXINE 125 MCG TABLET	RAO FRANK C				08/08/2008 RC	0	0	1 73	4th PYR #				5 00
1st PYR #	5000						3rd PYR #				4th PYR #				
TP1 AUTH #	081780603239410	TP2 AUTH #					TP1 AUTH #				TP2 AUTH #				
786522	0037824.10	LOXAPAM 1 MG TABLET	ROCCERS DAVID				08/08/2008 MW	50	50	10 73	4th PYR #				00
1st PYR #	5000						3rd PYR #				4th PYR #				
TP1 AUTH #	081780611158871	TP2 AUTH #					TP1 AUTH #				TP2 AUTH #				
3 TOTAL AMOUNTS										37 69	22 69	00	00	00	15 00

10/13/2008 01:44pm

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CV# 1428402/ #1

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CV# 1428402/ #1

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From-18648884358

To-Larry C Brandt P A

Page 001

PHARMACY NAME: CV# 1428402/ #1
ADDRESS: 501 FIVE ETL, SUITE 200
CITY: ST. LOUIS, MO 63103

DATE: 10/13/2008
TIME: 01:44PM
BY: LARRY C BRANDT

RECEIVED BY: LARRY C BRANDT
DATE: 10/13/2008
TIME: 01:44PM

CONFIRMATION: 10/13/2008
BY: LARRY C BRANDT

RECEIVED BY: LARRY C BRANDT
DATE: 10/13/2008
TIME: 01:44PM

PHARMACY NAME: CV# 1428402/ #1
ADDRESS: 501 FIVE ETL, SUITE 200
CITY: ST. LOUIS, MO 63103
DATE: 10/13/2008
TIME: 01:44PM
BY: LARRY C BRANDT
RECEIVED BY: LARRY C BRANDT
DATE: 10/13/2008
TIME: 01:44PM
CONFIRMATION: 10/13/2008
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CITY: ST. LOUIS, MO 63103
DATE: 10/13/2008
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CITY: ST. LOUIS, MO 63103
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BY: LARRY C BRANDT
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TIME: 01:44PM
CONFIRMATION: 10/13/2008
BY: LARRY C BRANDT

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ADDRESS: 501 FIVE ETL, SUITE 200
CITY: ST. LOUIS, MO 63103
DATE: 10/13/2008
TIME: 01:44PM
BY: LARRY C BRANDT
RECEIVED BY: LARRY C BRANDT
DATE: 10/13/2008
TIME: 01:44PM
CONFIRMATION: 10/13/2008
BY: LARRY C BRANDT

PHARMACY NAME CVS PHARMACY 4693
ADDRESS 1500 S W 10TH BLVD
CITY ST ZIP SEWELCA MO 64601

PATIENT ID 0011590
PATIENT NAME DONNA J CUMMINS
ADDRESS
CITY ST ZIP SEWELCA MO 64601

CURRENT ALERTS ON RECORD
NOTE COMMUNICATED BY THE PHARMACY

CURRENT CONDITIONS ON RECORD
NOTE COMMUNICATED BY THE PHARMACY

CVS PHARMACY 69
PATIENT PRESCRIPTION RECORD
01/01/2008 THRU 1 / 1/2008

DATE 1 / 1 / 2008

PHONE
BIRTHDATE 10/27/ 95
SEX F
REFILLS 0

REFILL NUMBER
DATE DESCRIPTION

102 1 00115901 REVOTRYKINE 25 MCG TABLETS
ST PAT # 5000
TRX AUTH # 00100 03.57 03

RESCRIBER NAME
PCG A HARMONY RAO FRANK G
ST PAT #
TRX AUTH #

DATE FILL
FILLED 10/04/2008

QUANTITY
3.5
13 100 03

TOTAL PRICE 73.77
73.77
73.77

73.77
73.77
73.77

LARRY C BRANDT PA
ATTORNEYS AT LAW
3691 BLUE RIDGE BOULEVARD
WALHALLA SOUTH CAROLINA 29691
(864) 638 7406

LARRY C BRANDT

M TODD SIMMONS

FACSIMILE (864) 638 7873
e mail lbrandt@mindpring.com
e mail tsimmons@earthlink.net

MAILING ADDRESS

PO Box 738
WALHALLA SOUTH CAROLINA 29691

November 4 2008

David S Rodgers MD
Oaktree Medical Centre P C
115 Brushy Creek Road
Easley South Carolina 29642

CLAIMANT'S APA #12 RECORDS OF DR DAVID S RODGERS

RE **Workers' Compensation Impairment Questionnaire**
Patient Donna L McCall / Date of Injury 06/29/06

Dear Doctor Rodgers

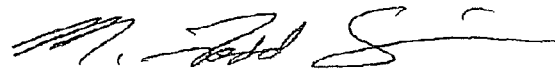
I represent Donna McCall regarding her workers' compensation injury claim Mrs McCall was injured at work on June 29 2006 Since that time she has received medical care through your office

In order to complete Mrs McCall's claim I need some additional medical information I have enclosed an Impairment Questionnaire that is commonly used in litigation to assist you in providing me with the information I need to resolve this case I would be most appreciative if you will complete the questionnaire and include it in her medical records I would also be appreciative if you will forward me a signed copy once you have had a chance to complete it It is my understanding that you have shared in the care of Mrs McCall with Dr Jay Patel I would appreciate it if you spoke with him prior to completing the questionnaire

I have enclosed a stamped and pre-addressed envelope for your convenience In lieu of completing the questionnaire, you may prepare a narrative which addresses each of the questions Any reasonable fees for preparing a narrative may be billed to my office

Please feel free to call me any time if you have any questions comments or would simply like to discuss this case I am willing to speak with you any time by phone or by personal visit to your office I look forward to hearing from you

With kindest regards



M Todd Simmons
Attorney for Donna L McCall

Enclosures

cc Jay Patel MD

Page 3 incomplete. Pt must be scheduled for impairment ratings.

Received Nov-11-2008 06:08pm From-

To-Larry C Brandt P A Page 001

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DAVID S. RODGERS, M.D.
Oaktree Medical Centre, P C
115 Brushy Creek Road
Easley, South Carolina, 29642

Workers' Compensation Impairment Questionnaire
Patient Donna L McCall / Date of Injury 06/29/06

1 Did Mrs McCall suffer post concussion syndrome as a result of the work accident she was involved in on June 29 2006?

X yes no

2 Did Mrs McCall suffer occipital neuralgia as a result of the work accident she was involved in on June 29, 2006?

X yes no

3 Did Mrs McCall suffer injuries to her ^{Cervical on} ~~upper~~ spine as a result of the work accident she was involved in on June 29 2006?

X yes no

4 Did Mrs McCall suffer injuries to her ^{Pelvis} ~~lower spine~~ as a result of the work accident she was involved in on June 29, 2006?

X yes no

Sacroiliac joint on

5 Did Mrs McCall aggravate or exacerbate any preexisting conditions as a result of the work accident she was involved in on June 29 2006?

X yes no

If yes please explain

PRE EXISTANT MIGRAINE SYNDROME

6 Is Mrs. McCall required to take any medication on a continuing basis as a result of
the work accident she was involved in on June 29, 2006?

☒ Yes ☐ No

If so, please describe the medication, the dosage, frequency of ingestion and duration of treatment

ΑΤΥΧΑΣ 1mg ποτόο και αναστα
 ΙΟΥΛΙΑ 150 π ποσο και αναστα
 ΓΥΝΑΙΚΑ 75 ι ποσ π π ης και ανασ
 ΠΡΟΣΕΜΠΑΤΗΚ ΤΑΥΤΗ ΕΡΩ και ανασ

7 Has Mrs. McCall reached maximum medical improvement in regards to her post
concussion syndrome?

Yes X No not related to accident

8 Has Mrs. McCall reached maximum medical improvement in regards to her occipital neuralgia?

Yes 8 No not related to accident

9 Has Mrs McCall reached maximum medical improvement in regards to the injury to her upper spine?

Yes ☒ No ☐ not related to accident

10 Has Mrs McCall reached maximum medical improvement in regards to the injury to
her lower spine?

Yes ☒ No ☐ not related to accident

11 Does Mrs. McCall suffer any residual permanent impairment as a result of the post
concussion syndrome? If so please rate in terms of percentage using the AMA Guide or
some other recognized medical guideline for the rating of impairments

_____ Yes _____ No _____ not related to accident

_____ to early to determine

_____ % Impairment

Guideline Used

12 Does Mrs McCall suffer any residual permanent impairment as a result of the occipital neuralgia? If so please rate in terms of percentage using the AMA Guide or some other recognized medical guideline for the rating of impairments

_____ Yes _____ No _____ not related to accident

_____ to early to determine

_____ % Impairment

Guideline Used _____

13 Does Mrs McCall suffer any residual permanent impairment as a result of the upper spine injury? If so please rate in terms of percentage using the AMA Guide or some other recognized medical guideline for the rating of impairments

_____ Yes _____ No _____ not related to accident

_____ to early to determine

_____ % Impairment

Guideline Used _____

14 Does Mrs McCall suffer any residual permanent impairment as a result of the lower spine injury? If so please rate in terms of percentage using the AMA Guide or some other recognized medical guideline for the rating of impairments

_____ Yes _____ No _____ not related to accident

_____ to early to determine

_____ % Impairment

Guideline Used _____

15 Does Mrs McCall have any permanent physical limitations or restrictions as a result of the conditions for which you have treated her? If so please describe in detail below

_____ to early to determine

3

16 Is your patient Donna L McCall a malingerer?

_____ Yes

X No

17 Are the opinions you expressed in this questionnaire given to a reasonable degree of medical certainty?

X Yes

_____ No

18 Any additional comments

Date 11 Nov 2008

DAVID S RODGERS, MD

David S. Rogers, MD
115 Brushy Creek Road
Easley, SC 29642
864-855-1633

4

Received Nov-11-2008 06 08pm From-

To-Larry C Brandt P A Page 005

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205

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Oaktree Medical Centre, P C
115 Brushy Creek Road
Easley, SC 29642
Tel (864) 855-1633 Fax (864) 855 1323

Patient ID: 37547DM
Patient Name DUNNA L MCCALL
Date of Birth 10/27/1950
Date of Service 11/12/2008
DAVID ROGERS MD

PATIENT'S HOME PHONE

PATIENT'S WORK PHONE (

The office received a phone call from the patient's attorney Dawn with Amy Larry Rant's office called because Dr Rogers just completed a questionnaire on the patient but part of it was incomplete because he needed for the patient to come in and be seen before he could finish it. She states that the patient has a hearing coming up and Friday is their deadline and this questionnaire is needed by then and she wanted to know if there was anyway the patient could be worked in for a short consult so he could finish the questionnaire. Call her back at 638-5406

ACTION: I called and spoke with Dawn and she does not need an apt for patient until she is MMI

TIME OF CALL: 02 44 09 PM

The doctor was assisted today by Carol Ambrose CMA.

DAVID ROGERS MD

Page 1 of 1

Received Mar-27-2009 02 17pm

From-8843430208

To-Larry C Brandt P A Page 023

CLAIMANT'S APA #13
RECORDS OF DR GEORGE R BRUCE

Oconee Orthopedic Clinic PA

George R Bruce, M D

FAAOS BCFE

10630 Clemson Blvd

Suite 100

Seneca SC 29678

Telephone (864) 482-6263

Fax (864) 482-7000

COPY

Donna I McCall

DOB 10-22-51

12-22-08 ORTHO This patient is seen today December 22 2008, in my office at Blue Ridge Orthopedics in Seneca, South Carolina. The records reviewed prior to my evaluation of the patient included records from Henry Ramirez P A dated from 08-17-06 through 10-08-07, Rhonda L Finley, Finley Chiropractic Clinic dated 06-19-07, Jeff Hummell Physical Therapy dated from 08-21-06 through 08-31-06, records from Seneca Diagnostic Imaging MRI dated 08-06-07 of the cervical and lumbar spine, Charles C Kanos M D consultation dated 08-29-07, Jay Patel, M D Pain Management Associates dated from 09-19-07 through 02-04-08, David Rodgers M D dated from 11-29-07 through 10-08-08, South Carolina Diagnostic Imaging dated 08-08-08, William W Woodruff M D dated 02-23-08, David Cannon psychological evaluation dated 06-20-08, and depositions of treating physicians - Dr Charles C Kanos, Dr Jay Patel, Dr S Rodgers. Records prior to the injury included records from Dr P Amaya dated from 11-12-99 through 12-10-99 and the records of an MRI from Edward Warren dated 11-17-99.

This patient presents today with a history of while being employed by Valenite where she had been an employee since 1985 as a furnace operator, she sustained an injury on or about 06-29-06 when she was standing up on a step stool. She was cleaning a furnace and when she stepped back off the platform, she stepped on the vacuum hose which severely twisted her ankle and she fell backwards, injuring her back, neck, head and right elbow. The patient reported this injury. This was witnessed by her partner, but they thought she would be okay and after reporting it she tried to go back to work. She states she had a good working relationship with her partner and he did most of the hard work. However, when she continued to have neck pain, she went back and requested she be seen by medical personnel on 08-17-06.

The patient states that she was allowed to see Henry Ramirez, P A where she was complaining of headaches, severe neck pain and low back pain. She was treated symptomatically and given a Decadron injection. When she returned on the second visit, she was sent for an x-ray of the neck and back and referred to physical therapy. The patient was seen six times in physical therapy and stated that she might be getting a little bit better. She continued to work over the next year with most of the heavy

PAGE TWO

Donna L McCall

work being done by her partner on the job. The patient states that the pain in her head just kept getting worse when rotating her neck, and down into her low back, so much that she had to be seen by another physician.

At that time the patient went to see Dr. Finley on her own on 06-19-07 for headaches, pain in neck and back pain. She stated she was then referred back to Henry Ramirez P A on 07-24-07. She was then sent for MRIs of the cervical and lumbar spine. I have reviewed those films today. The MRI of the cervical spine showed severe degenerative disc disease of C5-C6 and C6-C7, and at C5-C6 what appeared to be a nerve compression and foraminal stenosis on the left side, particularly at C6-C7. This is also associated with large osteophytes being present, indicative of degenerative changes. The patient's lumbar MRI shows degenerative disc disease at multiple levels and a generalized bulging at L4-L5 but there was no evidence of nerve root edema.

This patient has had previous MRIs of her cervical spine and her lumbar spine, not associated with an injury back in 1999, which showed minimal degenerative changes in the cervical spine and the lumbar spine on that particular date. There had been a definite change in the degenerative conditions of her cervical and lumbar spine over the interval, from 1999 to 2007. The patient, after this was explained to her by Henry Ramirez P A, became quite upset over the fact that she had all these degenerative changes, and she was referred to Dr. Kanos of Southeastern Neurosurgical and Spine. The patient was still complaining of pain in her neck, headaches and lumbar spine. After a thorough evaluation, he did not feel that surgery was indicated, and he recommended physical therapy and pain management.

The patient was then sent to Dr. Patel on 09-19-07, at which time he evaluated her and he recommended physical therapy there at OakTree as well as cervical epidural steroids, of which she had three. The patient last worked on 09-20-07 because she was unable to continue functioning and receive the treatment. This was the time when Worker's Comp said that they would not allow her to have any additional treatment. The patient, then on 10-05-07, underwent a nerve conduction study and an EMG of both the upper extremities, which showed bilateral moderate to severe carpal tunnel symptoms. The patient states that she had been having increasing difficulty with her hands secondary to her repetitive work, of which she had made several mentions of over the years prior to her fall.

After the epidurals did not help considerably, the patient was

PAGE THREE

Donna L McCall

referred to Dr Rogers for medical management. He saw her on 11-29-07 and followed her through the period up to the present time. The patient has another appointment with him next month. He is seeing her for tremors, which she had minimal difficulty with prior to her fall. Over the ensuing months her tremors have gotten much worse, involving both the upper extremities, as well as her head, mouth and tongue.

The patient was sent for Doppler studies at South Carolina Diagnostic Imaging on 08-08-08, which was interpreted as normal with no evidence of carotid stenosis. The patient was sent to Dr Cannon for a psychological evaluation, and he felt that she had a major depressive illness but no evidence of psychosis. The patient has since, also been sent to Dr Khan, a psychiatrist for an evaluation of severe depression and she is presently now on Effexor as well as Lorazepam, and some medication for rest. She did not bring them with her today.

As stated earlier, this patient presently is still under the care of Dr Rogers. He has told her that she needs to have an MRI of her head. She complains of a ticking sound in her head, as well as dizziness, and her tremors, she states, are progressing. The patient denies any true syncopal episodes. The patient denies any true radiculopathy in the upper extremities, but she complains of severe carpal tunnel symptoms bilaterally. The patient does complain of low back pain, as well as neck pain radiating down her left lower extremity with burning in the bottom of both the feet, which may be peripheral neuropathy.

The patient completed her pain survey today, which showed that she has a VAS today of 5/10 with 9/10 being her worst episode and she has some pain 70% of the time. It affects her walking, standing and sitting and affects her activities of daily living considerably. The patient's main concern is that her depression appears to be getting worse, as well as her anxiety, and all of this tends to make her pain worse and make her tremors more obvious.

The patient's past history is significant for cancer of the thyroid in 2007, the latter part, requiring thyroidectomy. She is presently taking thyroid supplement. She has a history of DVT at one time years ago, but is not taking Coumadin. She had a tubal ligation. She had previous Worker's Compensation injuries which was a torn cartilage of the right knee, and an electric shock.

PHYSICAL EXAMINATION The patient presents today as a 5'6', 195

PAGE FOUR

Donna L McCall

lb, right hand dominant female She ambulates very slowly She has obvious tremor of the head and upper extremities during all phases of rest The patient is able to get on and off the examining table independently She is able to walk on toes and heels with balancing on the diagnostic table She was noted to have a negative Romberg test today She appeared to have a mild nystagmus, but pupils were equal, round and reactive to light and accommodation The patient was noted to have a tremor in her tongue as well as her mouth during the examination She has a well healed transverse scar on her neck The carotid arteries were clear with no evidence of bruits

The range of motion of her neck, using the double inclinometer technique, showed that she had a cervical flexion angle of 47°, extension 35°, right deviation 30°, left deviation 38°, right rotation 60°, left rotation 62° She had full range of motion of her shoulders, elbows and hands She had marked decreased sensation of the median nerve distribution of both hands with two point discrimination greater than 1.5 cm The patient had some mild wasting of the thenar musculature in the hands indicative of the median nerve entrapment The patient had 5/5 strength in all parameters of motion of the shoulders and elbows Reflexes were normal in the upper extremities

Examination of the low back revealed tenderness in the midline as well as the right paralumbar area Using the inclinometer technique she was seen to have a sacral flexion angle of 12° with total flexion of 32° true flexion of 20°, extension of 5° and right and left deviation greater than 30° The patient had basically negative supine straight leg raising test

She was seen to have no atrophy in the lower extremities with both calves measuring 41 cm She had 2+ and equal reflexes in knees and ankles, and 5/5 strength in dorsiflexion and plantar flexion of both great toes Subjectively, she had decreased sensation along the S1 nerve root distribution on the left side She did not have any tenderness in the tarsal tunnel area, and had no loss of sensation above the ankle in either lower extremity

IMPRESSION This patient had a pre-existing problem with pain in her neck and low back which was minimal, as well as a mild tremor in her right hand, as she describes it, and numbness in both hands in 1999 The patient states that she did not have any additional treatment after seeing Dr Amaya until the fall which

PAGE FIVE

Donna L McCall

occurred on 6-29-06. It is my opinion, to a reasonable degree of medical certainty, that the fall further exacerbated her pain in her degenerated neck condition, as well as her low back. The patient hit her head in the fall, and in my opinion, this caused a post-concussion type syndrome which has left her with an audible tick in her head which has not been fully evaluated. I would recommend an EEG and a sedative MRI for that study. The MRI of her neck and lumbar spine definitely has shown a degenerative condition from 1999 until 2007 which would definitely, in my opinion, be aggravated by the trauma from the fall.

The patient is developing increasing difficulty with carpal tunnel and it is my opinion that this patient has a job-induced carpal tunnel syndrome bilaterally and should seek further treatment for this.

The patient has gone through a significant depression secondary to her loss of job and I feel this is further causing her tremors to worsen along with her anxious and worried state of mind. The patient's pain is significant today in that it is limiting a lot of her activities of daily living.

Her physical impairment would best be evaluated by the Fifth Edition AMA Guides in the cervical and lumbar by the range of motion model in that this is aggravating multiple levels of degenerative condition. This would fall into Category II-C on page 404 of the AMA Guides Fifth Edition, and when this is combined with the decreased range of motion, she would have a total of 14% assigned to whole person which equals 18% impairment of the cervical spine.

The lumbar spine would fall into Category II-C on page 404 of the AMA Guides Fifth Edition, and when this is combined with decreased range of motion, this would equal 19% whole person which equates to 21% physical impairment of the lumbar spine.

The patient has bilateral carpal tunnel syndrome which I would place at 10% on each upper extremity. I feel she would benefit from additional treatment.

As stated earlier, I feel that the patient's tremor has not been fully evaluated with complete head studies including EEG and MRI.

It is my opinion that the patient's fall lead to, with reasonable degree of medical certainty, an increasing of her depression and

1 Q No, that's fine

2 In terms of the physical nature of the job,
3 would you consider that job to be a light duty, a
4 medium duty, or a heavy duty type job?

5 A Well, it's about all of them Because sometimes
6 there's light duty, where we just break down the
7 parts When the furnaces are running, we don't have
8 anything else to do

9 Then sometimes we're setting up the parts, which
10 is easy And we get them ready to put them on the
11 conveyor, the table to put them in the furnace

12 Q Would it be fair to say then that about one third of
13 the job of furnace operator per day is doing light
14 duty type work, one third is about medium duty, and
15 one third is about heavy duty?

16 A I would say so, yes

17 Q And that's pretty much every day?

18 A Yes

19 Q How many days a week do you work, five?

20 A Most time it's six

21 Q You work six days a week?

22 A Most time

23 Q All right Now I'm going to ask you again, I told
24 you I was going to ask you a few general background
25 questions, and I need to do that and get it out of

1 Q So the leader is like just a lead person?

2 A Yes, sir

3 Q Foreman?

4 A Yes, sir

5 Q And that person gets direction from some supervisor?

6 A Um-hmm

7 Q So Paul Thrasher's supervisor is the name that you
8 don't know?

9 A Yes, sir

10 Q All right That's fine

11 And at Valenite, working for Paul Thrasher, what
12 exactly was your job?

13 A Furnace operator

14 Q And tell me exactly, as best you can, in layman's
15 terms, what is a furnace operator, or at least what
16 is a furnace operator at Valenite?

17 A It consists of a lot of things

18 We set up the parts, and we set them on a, a
19 table And then we have to arrange them and put them
20 in the furnace Then we, when the furnace is
21 finished, we take them out of the furnace And then
22 there's a lady that breaks them down

23 Then we clean the furnaces And we change the
24 shields in the furnaces every 80 runs

25 And, need to know more?

1 Q How long have you and Mr McCall been married?

2 A Going on 19 years

3 Q What name do you go by at work?

4 A Donna

5 Q Who is your supervisor? Who's the last supervisor
6 you had?

7 A The supervisor of the plant?

8 Q No Who was your direct supervisor?

9 A Oh, me Oh, it's, I'm sorry, I can't remember his
10 name

11 Q Let me see if I can help you, tell me if this is
12 correct

13 Paul Thrasher?

14 A Well, that's my leader

15 Q Okay Tell me the difference between a leader and a
16 supervisor?

17 A The leader comes in and tells us what's going on and
18 which jobs we need to put first, and things of that
19 nature

20 Q In the chain of command at, do you call it Sandvik or
21 do you call it Valenite?

22 A Valenite

23 Q In the chain of command at Valenite, which is higher,
24 a leader or a supervisor?

25 A Supervisor

1 what we say in here Okay?

2 A Okay

3 Q So you need to speak up as loud as you can

4 I would ask that any question that requires a
5 yes or a no answer, please say the word yes or the
6 word no Uh-huh and uh-uh, which a lot of us
7 southerners have a tendency to do, doesn't come out
8 on a tape-recording very well, and there sometimes
9 have been disputes

10 Also, this, nodding of the head, doesn't work in
11 a recording And I may prompt you, and I'm not being
12 condescending, but I need you to say the word yes or
13 no Okay?

14 A Yes

15 Q Generally, and I'm guessing you and Todd have talked
16 a little bit about this, and you understand what I'm
17 going to be doing

18 If you would please state your full name for the
19 record?

20 A Donna Louise McCall

21 Q And Ms McCall, your husband is presently with us in
22 the deposition, is that correct?

23 A Yes, sir

24 Q And what is his name?

25 A Joseph Shuford McCall

1 A Okay

2 Q If I ask you a question and you do not understand my
3 question, please tell me, I don't understand
4 Meaning, if I use a word you don't understand, if I
5 talk too fast and you don't understand, anything like
6 that

7 Please make sure, when you answer my question,
8 that you are answering a question you understand
9 Okay?

10 A Okay

11 Q If you answer, I will assume you understood my
12 question And if for some reason we go to trial,
13 and you tell me a different answer at trial than you
14 tell me today, I'm going to remind you Well,
15 Ms McCall, it's not what you told me in your
16 deposition

17 So if you don't understand my question, promise
18 me you'll tell me you don't understand Okay?

19 A (Witness indicating)

20 Q You sound like you're going to be pretty quiet
21 Speak up as loud as you can, because not only is she
22 typing down what we're saying in shorthand, or
23 whatever that is that she does, she's also recording
24 everything you and I say as a back-up Meaning if
25 she loses that, we have a back-up to actually confirm

1 accident that happened, I'll be asking you questions
2 about medical treatment, what's going on now, are you
3 receiving benefits, are you receiving any money,
4 things like that, okay

5 Some information I already either know the
6 answer, or I think I know the answer, or I have a
7 good idea what the answer is going to be, but I have
8 to know for the record

9 Some things I don't have a clue what the answer
10 is going to be, that's why I come and take a
11 deposition like this

12 This is called a discovery deposition, which
13 means I'm going to be discovering things that I don't
14 already know You may have been to doctors that I
15 don't know about, things like that

16 In a worker's comp claim it's very, the medical
17 treatment is one of the most important things for
18 worker's comp awards So I'll be asking questions
19 like that

20 Some things you're going to think are so
21 personal that why is he asking me that I promise
22 you I'm only asking you because I have to ask you, I
23 have to make sure that you are who you say you are, I
24 have to make sure that my client knows everything
25 that they're supposed to know about you Okay?

Pursuant to notice and/or agreement to take depositions, the within deposition was taken by the above reporter, a notary public, by consent of all parties, at 3691 Blue Ridge Boulevard, Walhalla, South Carolina

** ** *

Waiver

Counsel did agree that both the reading over of and signing of the deposition are hereby dispensed with and waived

The deponent did agree that both the reading over of and signing of the deposition are hereby dispensed with and waived

The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth of her own knowledge concerning the matter herein

DONNA L MCCALL, BEING DULY SWORN, TESTIFIED AS FOLLOWS

DIRECT EXAMINATION BY MR BEARD

Q Ms McCall, again my name is Grady Beard, I represent Sandvik/Valenite basically for all their worker's comp claims now in South Carolina

I'm obviously here today taking your deposition about your worker's compensation claim I'm going to be asking you some very general background questions, not a lot, I'll be asking questions about the

I N D E X

WITNESS DONNA McCALL
DATE JANUARY 15, 2008

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Waiver	4
Direct Examination by Mr Beard	4
Cross examination by Mr Simmons	62
Redirect examination by Mr Beard	64
Recross examination by Mr Simmons	64
Certificate of Notary Public	66

NO EXHIBITS WERE MARKED

The attached 65 pages of testimony of DONNA McCALL in the above matter is the work product of Depositions And , Inc , and not to be copied or utilized in any manner without the express written authorization of Depositions And , Inc

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6
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Columbia, South Carolina 29201

10 appeared on behalf of the defendants

11 ALSO PRESENT Mr Joe McCall
12
13
14
15
16
17
18
19
20

21 DEPOSITION REPORTED BY

22 Ruth Anne Maciag,
Registered Professional Reporter
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25

1 STATE OF SOUTH CAROLINA
2 BEFORE THE S C WORKERS' COMPENSATION COMMISSION
3 W C C FILE NO 0627287
4

5 Donna L McCall, Employee,

6 Claimant,

7 vs

8 Sandvik/Valenite, Employer,

9 and

Sentry Claims Service, Carrier,

10 Defendants
11
12
13

14
15 DEPOSITION OF DONNA L McCALL
16
17

18 Pursuant to notice of deposition and/or
19 agreement in the above-entitled case, a deposition
20 was taken on the 15th day of January 2008, commencing
21 at approximately 11 00 a m , attended by counsel as
22 follows
23
24
25

Donna McCall
03/04/09

Patient seen for med check for 15 mts. accompanied by her husband. Had called me that she was experiencing some problems and side effects on 80 mg of Celexa subsequent to which it was cut down to 40 mg daily. I called Dr. Rogers, patient's neurologist who is treating her for ~~Post Concussive Syndrome~~. As per Dr. Rogers, patient also has essential tremor and seems to have worsening of anxiety and mood symptoms which seem to then worsen her tremor and her overall psychosocial functioning. She has been tried on different medications with limited response. She was on Diazepam in the past, including on Effexor, Luvox with again sub-optimal response. Cymbalta, as per her, also seemed to worsen her symptoms.

MENTAL STATUS EXAMINATION

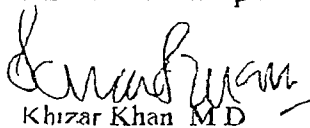
Oriented Xs 3. Grooming is fair. She remains overwhelmed, passive, withdrawn, dysphonic, sad, easily tearful. Affect congruent. Denies psychosis, suicidality, homicidality. Insight and judgment appears to be intact.

DIAGNOSIS

Ax1s I MDD Moderate to Severe without Psychotic Features Recurrent
GAD

PLAN

Celexa decreased down to 40 mg daily which I will continue at present. Klonopin 2 mg b.i.d. as before. Follow-up in 1 mo.


Khizar Khan M.D.

cc Dr. ROGERS

Donna McCall
02/05/09

Patient seen for med check for 15 mts accompanied by her husband. Patient reports Klonopin 3 times a day and Celexa have been well tolerated with mild intermittent diarrhea. Other than that, no other side effects. Patient's anxiety and mood symptoms are persistent including very prominent upper extremity neck and shoulder area shakes and tremors. Patient reports only other medicine she is on is Levothyroxine and a multivitamin. Patient states she has not yet gotten any answers from her neurologist regarding the nature of these tremors and shakes as it was initially thought to be more because of her anxiety issues for which she was referred to this clinic.

MENTAL STATUS EXAMINATION

Oriented Xs 3. Grooming is fair. She remains overwhelmed, dysphoric, sad, depressed mood. Tearful, withdrawn. Continues to struggle with memory issues. States "I still have a hard time feeling anxious". Remains overwhelmed and very thirsty. She denies psychosis, suicidality, homicidality. Insight and judgment intact.

DIAGNOSIS

Axis I: MDD, Moderate to Severe without Psychotic Features, Recurrent
GAD

PLAN

Presently on Celexa. I will further optimize to 60 mg q h s for 1 wk and then 80 mg q h s. I will also optimize Klonopin to 2 mg b i d. Follow-up in 1 mo to reassess.


Khizar Khan MD

cc Dr ROUELS

Donna McCall
01/06/09

Patient seen for med check for 15 mts accompanied by her husband. Continues to experience "staying in a daze" as well as "aggravated sometimes" as well as "I'm hard to remember on dates." States overall not doing very good. Response overall on Effexor to be sub-optimal.

MENTAL STATUS EXAMINATION

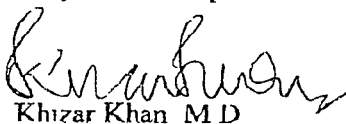
Oriented Xs 3. Grooming is fair. Very emotional, tearful with her medical problems. Continues to have subjective anxiety, dysphoric, sad mood. Affect congruent. Denies psychosis, suicidality, homicidality. Insight and judgment intact.

DIAGNOSIS

Axis 1: MDD, Moderate to Severe without Psychotic Features, Recurrent
GAD

PLAN

Decrease Effexor XR to 75 mg q a m for 1 more wk and then discontinue. Ativan to be discontinued. Start Klonopin 1 mg t i d. I will start Celexa with a gradual optimization of 40 mg daily. Follow-up in 1 mo to reassess.


Khizar Khan MD

Donna McCall
12/02/08

Patient seen for med check for 15 mts accompanied by her husband. Overall reports response on Effexor to be so-so so far. Continues to struggle with "real sad" moods as well as "I'm in a daze some times". In regards to anxiety it's about the same too referring to some periods of mood irritability. Past trials on Valium noted with sub-optimal results.

MENTAL STATUS EXAMINATION

Oriented Xs 3. Grooming is fair. She is engaging. Not as prominent shaking or anxiety as before. Reports subjectively 'it's pretty much the same'. Reports mood to be 'okay'. Affect is constricted. Denies psychosis, suicidality, homicidality. Insight and judgment intact.

DIAGNOSIS

Axis I MDD Moderate to Severe without Psychotic Features Recurrent
 GAD

PLAN

Effexor XR 150 mg q a m. Ativan change to 1 mg b i d 1 mg q 1 p m. Follow-up in 1 mo.


Khizar Khan MD

Donna McCall
11/20/08

Patient seen for med check and CBT for 30 mts. Reviewed H & P. Patient accompanied by her husband who reports patient has been feeling a lot weaker as well as socially isolated and prominent anhedonia with decreased interest in most of her activities. Report reports she was working until June '07 subsequent to injury she tried to go back to work although finally was asked to leave by Aug of next yr. States she was given an "ultimatum" lose her privileges, as she will be let go if she applies for disability. She was given a retirement although on 7 yrs of her employment was acknowledged when, in fact, she worked many more yrs. Her symptoms of anxiety and depression have worsened. Presently under treatment of a neurologist who started her on Propranolol 20 mg for tremors.

MENTAL STATUS EXAMINATION

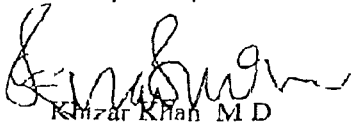
Oriented Xs 3. Grooming is fair. She is still prominently anxious with prominent body tremors. Reports her mood to be the same. Affect remains anxious, overwhelmed, sad, depressed mood. Affect congruent. Denies psychosis, suicidality, homicidality. Insight and judgment intact.

DIAGNOSIS

Axis I Major Depressive Disorder, Moderate to Severe without Psychotic Features,
Recurrent
GAD

PLAN

Presently on Effexor XR 375 mg q a m for the last 5 days. Further optimize and then after finishing XR 75 mg daily start the new prescription of XR 150 mg q a m. Ativan 1 mg q i d on her current prescription that will run out in 13 days after which I will change the dose on the new prescription. Follow-up in 13 days.


Khizar Khan M.D.

Donna McCall
11/05/08

DIAGNOSIS

Axis I MDD Moderate to Severe without Psychotic features Recurrent
GAD
Axis II Deferred
Axis III Work related injury causing chronic pain and essential tremor
Axis IV Medical Problems, Inability to work Financial Constraints
Axis V Current GAF- 50 to 55

PLAN

Patient endorses prominent progressive worsening of mood and anxiety symptoms Has prominent subjective and objective presentation, including ongoing tremors Would decrease Luvox CR to 100 mg q a m for 1 wk and then discontinue After 3 days of that, patient will be starting on Effexor XR 37.5 mg q a m wk 1 and then XR 75 mg q a m Advised to take Ativan 1 mg tid routine rather than prn, to acutely manage anxiety and can increase to 1 mg qid if needed Follow-up in 2 wks to assess


Khizai Khan M.D.

CLAIMANT'S APA #14 RECORDS OF DR KHIZAR KHAN

Donna McCall

11/05/08

HISTORY OF PRESENT ILLNESS

57 yr old Caucasian female married for 24 yrs who reports progressive worsening of depression and anxiety, more so subsequent to work related injury in July 06. Patient had undergone multiple treatments and is seeing a neurologist. Also, advised to see a psychologist whom she saw 2 mos ago and was advised to see a psychiatrist. She states Lexapro it made me more depressed hence been switched over to Luvox. Current dose of 150 mg CR daily and Ativan 1 mg tid on a prn basis. She reports having depression as "I have a lot on me". Describes "I'm concerned about my head". States "I hit my head on the concrete floor". Subsequent to the injury is reportedly seeing a neurologist for that reason. Reports problems with sleep, except when she takes Ativan. Anhedonia, hopeless, helpless, worthless. Overwhelmed, low energy, problems with attention/concentration, poor appetite because of nausea subsequent to being on Luvox, mood irritability including death wish "sometimes". She denies active suicidal thoughts, attempts, homicidal ideation, psychosis, mania or OCD symptoms. Reports in spite of compliance on medicine, her depression and anxiety has not remitted. She denies panic attacks as well.

PAST PSYCHIATRIC HISTORY

Never been hospitalized. Only contact was roughly 2 mos ago when she saw a psychologist for 'depression and anxiety' and was asked to pursue treatment with a psychiatrist.

FAMILY PSYCHIATRIC HISTORY

None

DRUG AND ALCOHOL HISTORY

None

MEDICAL/SURGICAL HISTORY

Reports had a work related injury in July 06 and has undergone MRI which has been a source of controversy between work and her as they claim it to be a preexisting condition. She reports a lot of pain issues have arisen from the injury.

PSYCHOSOCIAL HISTORY

Born and raised in Virginia. 11th grade education. Has 3 brothers, 4 sisters. She is 5th from the oldest. Father is deceased. Mother is living. She denies any physical or sexual abuse as a child. Been married twice. First time married 5 yrs, this time 24 yrs. Has 2 children. States "I had to retire" hence is not working. Lives with her husband who is retired as well. Denies any legal history.

MENTAL STATUS EXAMINATION

Alert and oriented Xs 3. Grooming is fair. Very anxious, overwhelmed, tearful, sad. Depressed mood. Affect congruent. Denies psychosis, suicidality, homicidality. Insight and judgment intact.

PAGE SIX

Donna I McCall

anxious state which has further aggravated her tremor as well as her general demeanor

It is my opinion that as this patient presents today she is not capable of being able to have gainful employment

George R Bruce, M D

GRB/ql1

~ / ~

1 the way, but I just want to make sure my records are
2 accurate

3 What is your date of birth?

4 A 10/27/51

5 Q And what is your height and weight?

6 A Five-six, and 195

7 Q Social Security number?

8 A - - -

9 Q Do you have a South Carolina driver's license?

10 A Yes, sir

11 Q Do you know the driver's license number?

12 A I'll get it

13 Q While you're looking for that, has that ever been
14 suspended for any reason?

15 A No, sir

16 Q It is , expires on ,

17 Thank you

18 I did not look at the back, do you have any
19 restrictions on your driver's license?

20 A No, sir

21 Q Vision? Do you have vision restrictions or not?

22 A Just my glasses

23 Q But no other restrictions?

24 A No, sir

25 Q What type of vehicle do you drive, you personally?

- 1 A Mostly it's '85 Mercury van
- 2 Q Do you have any children that live at home with you
- 3 and your husband?
- 4 A Yes, sir Oh, not at home, I'm sorry
- 5 Q Your children all grown and gone?
- 6 A I have two children grown, yeah
- 7 Q You don't have any that are dependent upon you for
- 8 support?
- 9 A No, sir
- 10 Q How far did you go through school?
- 11 A Eleventh grade
- 12 Q Where did you go to high school?
- 13 A William Fleming High School in Virginia
- 14 Q Is that where you're originally from?
- 15 A Yes, sir
- 16 Q What part of Virginia?
- 17 A Roanoke
- 18 Q What year did you come to South Carolina?
- 19 Approximately?
- 20 A Twenty-four years ago
- 21 Q So this is 2008, roughly mid-1980s?
- 22 A Yeah
- 23 Q What's your current address?
- 24 A --
- 25 Q How far is Walhalla from the plant in Westminster,

1 roughly?

2 A Fourteen miles

3 Q And that's, you would drive that every day?

4 A Yes, sir

5 Q Did you drive by yourself or did you drive with other

6 people?

7 A By myself

8 Q Does your husband work at Sandvik?

9 A No, sir

10 Q Did you ever serve in the military?

11 A No, sir

12 Q How long have you been working for Valenite?

13 A Twenty-three years

14 Q And have you always been a furnace operator, or did

15 you work your way up?

16 A I worked my way up

17 Q How long have you been a furnace operator?

18 A Maybe 13 years

19 Q Are there different levels of furnace operator?

20 A No, sir

21 Q Grades or anything?

22 A No, sir, it's just furnace operator, that's it

23 Q And what is your rate of pay, or what was your last

24 rate of pay?

25 A 17 53 an hour

1 Q I don't believe, Valenite's not a union company, is
2 it?

3 A No, sir

4 Q Prior to or concurrent to working with Valenite when
5 you were last there, did you work anywhere else, or
6 is that your only job?

7 A That's my only job

8 Q Prior to working for Valenite, what did you do? Did
9 you have any jobs before that?

10 A Yes, sir, I worked in Virginia

11 No, before that, it was South Carolina at a
12 restaurant called Jody's at Hilton Head

13 Q And what did you do there?

14 A I was a waitress

15 Q What did you do in Virginia?

16 A In Virginia I worked at Graham & White

17 Q Gramming?

18 Q Graham, like Graham crackers

19 A Yes, sir

20 Q Graham Okay, I'm sorry Graham & White?

21 A Yes, sir

22 Q What is that?

23 A They build locomotive parts

24 Q What was your job there?

25 A I was in on the assembly line

1 Q Prior to this particular worker's compensation claim
2 where you were injured on June 29th of 2006, have you
3 ever had any prior worker's compensation claims?
4 A Yes, sir
5 Q Tell me about that?
6 A It was when I was a furnace operator at the
7 beginning, and -- you want me to tell you how it
8 happened or what?
9 Q Let me ask you some questions
10 So was that Valenite?
11 A Yes, sir
12 Q All right Tell me what kind of injury did you have?
13 A It was my knee
14 Q Which one?
15 A Right knee Torn cartilage
16 Q Did you have surgery?
17 A Yes, sir, they did arthroscopic
18 Q Who was your doctor?
19 A I'm sorry, I can't remember
20 Q I assume it was an orthopedic surgeon?
21 A Yes, sir
22 Q Do you remember where?
23 A It was in Greenville
24 Q Greenville?
25 A Um-hmm

1 Q Was it Dr Reed, does that name sound familiar at
2 all?

3 A No, sir

4 Q Dr Postum?

5 A It was through workman's comp

6 Q Did you miss time from work?

7 A Yes, sir

8 Q Do you remember how much time?

9 A It wasn't a whole lot, but be honest with you, I
10 can't remember how long

11 Q Did you get a worker's comp check?

12 A Yes, sir

13 Q When it was all over, did you receive some sort of a
14 settlement for --

15 A Yes, sir

16 Q -- disability

17 Do you remember what that was?

18 A It was four thousand dollars

19 Q Do you remember what the percentage was to your knee,
20 or to your leg? Do you have any

21 A No, sir, I don't

22 Q Did you go to a hearing, or did you go to just an
23 informal kind of a conference?

24 A Just an informal thing

25 Q Is that the only prior worker's comp claim you've

1 ever had?

2 A Yes, sir

3 Q Have you had any other injuries on the job where you

4 didn't file a worker's comp claim?

5 A Yes, sir

6 Q Tell me about that?

7 A I was electrocuted one time

8 Q Where was that?

9 A It was at Valenite, in the same area, furnace

10 operator

11 Q And when you say you were electrocuted, tell me what

12 you mean? Did it knock you out?

13 A Well, well, it knocked me up What it was, my

14 co-worker and I, we was tearing apart a generator,

15 and we had these wires, I can't explain what they

16 look like, but it was the wires where they was

17 connecting to the generator

18 Q Right

19 A And he was at the side of the furnace, and he was

20 putting the wires toward me through this hole, where

21 I had to reach down and guide through that hole in

22 the furnace

23 Q Right

24 A And when I reached down to grab ahold the wire, why

25 it just flew me upward --

1 Q Shocked you?

2 A -- you know, knocked me upward

3 Yes

4 Q Did you have any medical treatment from that?

5 A They sent me to the doctor to run a EKG on me

6 Q Was that okay?

7 A And they said it was okay So I was out the rest of
8 that day, and that was it

9 Q No other problems from that?

10 A No, sir

11 Q No other lost time, no hearings or --

12 A No, sir

13 Q -- you didn't get a settlement from that?

14 A No, sir

15 Q Any other injuries on the job, and this includes any
16 job you've ever had, where you didn't file a worker's
17 comp claim?

18 A No, sir

19 Q And any other worker's comp claims at any other jobs?

20 A No, sir

21 I had a little breaking-out when I first come to
22 work at Valenite, on my first job And that was,
23 they just, the doctor said they just had to change my
24 job Because I was brazing, and the flux that was,
25 when I have to bend my head down, and the flux, the

1 fumes was coming up in my face, and it was breaking
2 out my lips

3 And they sent me to the doctor about that And
4 they said it was the nickel that was in it

5 Q You're allergic to nickel?

6 A Yes, sir And so that was all

7 Q Have you ever been, Ms McCall, a party to a lawsuit,
8 in other words, has anyone ever sued you for
9 anything?

10 A No, sir

11 Q Have you ever sued anyone for anything --

12 A No, sir

13 Q -- not counting worker's comp?

14 A No, sir

15 Q Have you ever been in any motor vehicle accidents?

16 A No, sir

17 Q Prior to what we're doing right now, have you ever
18 given a deposition before?

19 A No, sir

20 Q Have you ever testified in a courtroom before?

21 A No, sir

22 Q Do you have a criminal record?

23 A No, sir

24 Q I promise you, everybody gets asked that question
25 It's just one of those you have to ask

1 Do you have a family doctor?

2 A It was Carpenter, but he retired

3 Q Where is Dr Carpenter, or where was Dr Carpenter?

4 A He's here in Seneca

5 Q When did he retire?

6 A Two, three years ago, I think it is

7 Q Do you have a family doctor now?

8 A I been going to Dr Jordan in Clemson

9 He's a real good doctor, and you can see him on
10 Saturdays and Sundays You know, whenever you're
11 working and everything, you need to see a doctor,
12 why, you can go on Saturday or Sunday

13 Q Do you know his first name?

14 A No, sir

15 Q That's fine, no problem

16 Prior to this worker's compensation claim, did
17 you have any type of medical conditions or diseases
18 that were significant?

19 A Significant?

20 Q Arthritis, diabetes, thyroid problems, things of that
21 nature, hypertension, high blood pressure?

22 A None that I'm aware of

23 Q Were you on any kind of medical, or were under any
24 medical treatment or receiving any medications for
25 any problems at the time of this accident?

1 A Oh, no, sir

2 Q Tell me, if you would, as best you can, Ms McCall,
3 what happened to you on June the 29th of 2006?

4 A Okay I was cleaning the furnace And to do that,
5 it's real deep, and most all of us except my
6 co-worker, he's real tall, has to step on a
7 step-stool to get back into the furnace

8 So to clean the furnace, we have to scrape the
9 heaters And so we have to, they want us to use this
10 vacuum cleaner hose, it comes out the side of the
11 wall

) 12 So I had the vacuum cleaner hose in my hand, I
13 had the brush, scrubbing the heaters And I was
14 scrubbing the back part of the furnace, and then I
15 stepped back to clean the front of it, and when I
16 stepped back, I stepped on the vacuum cleaner hose,
17 and I went backwards

18 Q You tripped?

19 A Yes, sir

20 Q And when you tripped, did you trip all the way to the
21 ground, did you fall?

22 A Oh, yeah

23 Q Tell me what happened when you fell, what did you
24 hit?

25 A Well, I stepped back, my foot went on the vacuum

1 cleaner hose, my knee went sideways

2 Q Which knee?

3 A Right

4 Q That's the one you had surgery on?

5 A Yeah

6 And my knee went sideways, and then I fell
7 backwards onto my rear, and then my elbow hit, my
8 right elbow hit, and my head bounced on the concrete
9 floor

10 Q Right elbow hit the concrete?

11 A Yeah

12 Q Head hit the concrete?

13 A Um-hmm

14 Q That's yes?

15 A Yes, sir

16 Q You don't have to say sir It's all right

17 Q Did you lose consciousness?

18 A Well, I was kind of dizzy

19 Q Dazed?

20 A Yes, sir, dazed

21 Q But to your knowledge you did not lose consciousness?

22 A No, sir

23 Q Were there any eye-witnesses that saw this happen?

24 A My co-worker, Mo Turner

25 Q Mo?

1 A Um-hmm

2 Q Is Mo a man or a woman?

3 A A man

4 Q I was going to guess that, but I've actually seen

5 women named Mo

6 A His real name is Morris, but they call him Mo

7 Q What's his last name again?

8 A Turner

9 Q Is he still with Valenite, to your knowledge?

10 A Yes, sir

11 Q Any other eye-witnesses?

12 A No, sir

13 Q Now, when it happened, what did you do next?

14 A Well, I was laying there, and then Mo, he come

15 around, and he was trying to help me get up out of

16 the floor And so he set me in a chair

17 And I just set there for a few minutes, trying

18 to get myself back together, you know And he told

19 me, he said Are you going to be all right?

20 And I said Yeah, I believe I will

21 So I just set there, trying to concentrate on

22 exactly trying to see what was going on, you know, in

23 myself

24 And he said What do you feel like, do you

25 think you need any help or?

1 And I said I believe I'll be okay

2 And at that moment I did not have no sharp pains
3 or nothing

4 And so he said Well, just set there for a few
5 minutes

6 So I set for a few minutes And then after a
7 while, I got up and I just started kind of, I can't
8 remember exactly if I started breaking down or
9 setting up Because I wasn't, he said he would clean
10 the furnace, you know And so I believe I was
11 breaking down at that time

12 I just went over in a chair and just kind of
13 took it easy and started breaking down parts

14 Q Is that the light duty part of the job?

15 A Yes, sir

16 And I didn't go to the doctor And I went on, I
17 said, well, I better go to Paul and report the
18 accident, you know

19 So I went to Paul and told him about the
20 accident

21 And he asked me, he said Are you okay?

22 And I said Well, I think I'm going to be all
23 right

24 Because like I say, I didn't have no sharp pain

25 Q All right Now that was on June 29th of '06?

1 A Yes

2 Q After that, did you continue to work?

3 A Yes, sir, I did

4 Q Did you have any medical problems?

5 A Well, I had headaches and I had pressure, you know,
6 on the back of my neck, tightness But I just
7 thought it was, you know, from the fall, and I would
8 be okay And I thought it would go away

9 So I kept working

10 Q All right And from the best I can tell, it looks
11 like you worked for almost two months, and then you
12 asked to go see a doctor, is that correct?

13 A Yes, sir

14 The headaches were worse And I could tell that
15 they was different than the headaches that I'd had
16 before And they was causing me a lot of pain, and I
17 was concerned about my neck too

18 Q And who did you ask to go see a doctor?

19 A I went back to Paul Thrasher

20 Q Paul send you somewhere?

21 A Yeah, he said Well, I got to talk with the
22 workman's comp lady

23 Q Who is that?

24 A Diana

25 Q Dieska?

1 A Yes, sir

2 Q And did Diana send you somewhere?

3 A She came to me and told me she had the appointment
4 for Henry Ramirez

5 Q Where is he, is he at Oconee Family, or what do they
6 call it?

7 A Yeah, it's a family practice, I believe

8 Q And what did he do for you?

9 A I told him what was going on with the headaches, and
10 I had a, my back was hurting too, low back

11 And he asked me too, when I hit my head, did I
12 have any severe pain And I said, at the time I
13 didn't have no severe pain

14 And he said Well, if you don't have no severe
15 pain, then nothing should be seriously wrong with
16 you That's what he told me

17 I said okay

18 He said, we'll take x-rays So made me an
19 appointment to have x-rays And then he gave me some
20 pills, some muscle relaxers and pain pills

21 Q What all did you have x-rayed?

22 A I can't remember if he took, if they took x-rays of
23 my neck, I know they took x-rays of my back, but I
24 can't remember if they took x-rays of my neck

25 Q I'm looking at a report from, I guess this is the

1 first report from Ramirez, dated August 17th 2006
2 Does that sound about right? It would be a little
3 less than two months

4 A Yeah

5 Q Says, his diagnosis was, you had chronic problems
6 that were stable on the date that you saw him, and he
7 did x-ray of your head, neck, and low back, and those
8 were all normal

9 Is that your understanding?

10 A Yes, sir

11 Q And he gave you prescriptions for medications,
12 Relafen, Soma, and Ultram?

13 A Yes, sir

14 Q What happened after that visit?

15 A I had the x-rays done, and they said the x-rays was
16 fine

17 Q Where were the x-rays done?

18 A Seneca Diagnostics, I believe that's where it's at

19 Q And those were normal?

20 A That's what he said, yes

21 Q All right And what did you do after that?

22 A He sent me to physical therapy

23 Q Where did you do that? Is that Hummel, Hummel
24 Physical Therapy?

25 A Tell you the truth, I can't remember the name of it

- 1 Q Was it in Seneca?
- 2 A Yes, sir
- 3 Q Eagles Nest Park?
- 4 A Yes, that's it
- 5 Q All right And how long did you do that?
- 6 A It was two weeks
- 7 Q And did that help?
- 8 A It helped some, I would say
- 9 Q And what happened after that?
- 10 A After that, I just kept working And I --
- 11 Q Did you ever go back to Mr Ramirez?
- 12 A No, sir, I didn't
- 13 Q After the two weeks of physical therapy, you just
- 14 went back to your regular job?
- 15 A Yes, sir
- 16 Q All right And how long did you do that?
- 17 A I kept working until, it was 7/24 when I went back to
- 18 him
- 19 Q 7/24 of '07?
- 20 A Yes, sir
- 21 Q So we're talking about basically almost a year later?
- 22 A Yes, sir
- 23 Q All right And why was it a year between medical
- 24 treatment?
- 25 A Well, what he told me at the time, he said because

1 the neck pain and all, he says your muscles are
2 tight, and he said they need time to relax

3 And he said, he didn't ever tell me how long it
4 would take or anything like that And so he said,
5 just because I was, with the tightness and
6 everything, that it would take time, but And he
7 never did tell me, though, exactly how long it would
8 take

9 Q What was it, I guess my question is more towards what
10 caused you to go back to see him in July of '07?

11 A Because my headaches and tightness and pain in the
12 back of my neck

13 Q Was there any kind of an incident or anything that
14 made them come back after all that period of time?

15 A I had them in, I've had headaches before, but this
16 time it was worse than the regular headaches that I
17 used to have

18 Q When you say this time -- I'm sorry, go ahead, finish
19 what you need to say

20 A Well, within that time, it just kept getting worse
21 It wasn't like the normal headaches that I'd had
22 before

23 Q When you say this time, are you talking about between
24 August of '06 and July of '07 your headaches got
25 worse?

1 A Yeah

2 Q Did you report that to anybody?

3 A I just kept, I was taking Tylenol and Advils and
4 stuff like that

5 Q So the answer to my question is, you didn't report
6 that to anybody?

7 A No, sir, I didn't

8 Q Now, July 24th of '07, when you went back to Ramirez,
9 did you tell anybody you were going back, or did you
10 just make an appointment and go back?

11 A Oh, yes, sir, I told workman's comp lady

12 Q And Ms Dieska, did she set this up, or did you set
13 it up?

14 A She did

15 Q So you went back to Ramirez, and you said, what, July
16 24th of '07?

17 A Yes, sir

18 Q All right You're reading off a piece of paper, what
19 is that?

20 A Yeah, that's, I've got short-term memory loss, with a
21 concussion that I have And I wrote down these
22 dates, because someone told me that dates was very
23 important And so I couldn't remember, I can't
24 remember all these dates, so I wrote them down when I
25 went to the doctor and all

- 1 Q So the notes that you're reading from, they were made
2 contemporaneously or at the time that you did these
3 things?
- 4 A Yes, sir
- 5 Q So this is not something you sat down and wrote up
6 the whole thing at one time?
- 7 A No This is when it, each day whenever I come back
8 from the doctor
- 9 Q Who told you you have short-term memory loss?
- 10 A Dr Rogers
- 11 Q Who told you you had a concussion?
- 12 A Dr Rogers And that was causing the headaches
- 13 Q When you went back to Ramirez in July of '07, what
14 did he do for you then?
- 15 A In which date now?
- 16 Q July 24th of '07, what did he do on that return
17 visit?
- 18 A He said that he would take an MRI
- 19 Q MRI of your neck and your low back?
- 20 A Yes, sir
- 21 Q Did you get those?
- 22 A Yes, sir
- 23 Q And do you know what the results were of those?
- 24 A Well, that's it, he came in, he scared me to death,

1 Well, Ms McCall, he says, you got problems He
2 said, in all my 34 years of practice, I've never seen
3 a head damaged this bad before And he said I had
4 seven damaged disks

5 Q Where?

6 A In my neck

7 Q So all the disks in your neck were damaged, according
8 to him?

9 A That's what he said

10 Q When you say damaged, what do you mean by that, what
11 did he tell you?

12 A Well, I can't remember the exact doctor say that he
13 told me

14 Q You don't remember the terms he used?

15 A I can't remember, no, sir, I don't

16 Q I'm looking at, first of all, what is an MRI scan
17 dated August 6th of 2007 from Seneca Diagnostic
18 Imaging of your neck

19 A Um-hmm

20 Q Is that where you had the MRI?

21 A Yes, sir

22 Q And it says, and I'm reading word for word Severe
23 C5-C6 and C6-C7 degenerative disk disease

24 Did anybody ever explain to you what
25 degenerative disk disease is?

1 A Dr Patel was the first one that explained to me
2 Because I asked him, I said, no one has explained to
3 me yet exactly what's going on with me, you know

4 And so he took that little diagram he had in his
5 office, and he showed it to me

6 Q What kind of doctor is Dr Patel?

7 A A neurosurgeon

8 Q And what did he tell you degenerative disk disease
9 was?

10 A He said it was nothing that needed surgical But
11 that he showed me with the way the little, I don't
12 know how to describe it

13 Q Did he have like a skeletal spine?

14 A Yes, sir Yes, sir And he was showing me how the
15 gel in between them, and how it was squeezed out, and
16 that's, that was my problem

17 Q Did he explain to you what causes degenerative disk
18 disease?

19 A I can't, I don't think he did

20 Q Did you ask him any questions about was what you had
21 normal, or was what you had something that was
22 inherited, or did you ask him any of those kind of
23 questions?

24 A No, sir, I didn't ask him that

25 Q Prior to July of -- excuse me -- prior to June of

1 2006, had you ever had any problems whatsoever, any
2 problems, with your neck?

3 A No, sir

4 Q How about with your low back?

5 A Yes, sir I had a, in 1999 I had a pinched nerve,
6 the doctor said a pinched nerve

7 Q What doctor said that?

8 A Oh, mercy

9 I'm sorry, I can't remember his name It's in
10 the files

11 Q Do you remember where he was?

12 A In Seneca

13 Q Was he a specialist, orthopedic or neurosurgeon?

14 A To be honest with you, I don't know exactly what kind
15 of doctor he was All I know is, he was someone that
16 somebody told me, you know, to go to So I went to
17 him

18 Q When you say his name is in the files, what do you
19 mean by that, what files are you talking about?

20 A Well, I have it wrote down

21 Q Let me ask a better question Have you written the
22 name down and given it to your attorney --

23 A Yes

24 Q -- so that somebody has a record of who this is?

25 A Yes, sir

1 Q So when this deposition is over, since you can't
2 remember the name, if I need to talk with
3 Mr Simmons, he will have that name for me?

4 A Yes, sir Yes, sir

5 Q Did Dr Patel and/or Mr Ramirez explain to you that
6 degenerative disk disease is a process that happens
7 over a long period of time?

8 A No, sir

9 Q Assuming, and I don't know if you know the answer to
10 this or not, but assuming you had degenerative disk
11 disease, and what they have described in your MRI as,
12 I'm going to just again quote right out of your
13 report, it says Joint osteophytes and foraminal
14 stenosis

15 Assuming you have all those things, and assuming
16 you had all those things before June of 2006, did you
17 know you had that problem going on in your neck
18 before June of '06?

19 A No, sir

20 Q No doctor had ever explained to you any of those
21 terms or told you about those problems?

22 A No, sir

23 Q Had you ever been treated in your lifetime for your
24 neck?

25 A No, sir

1 Q We talked a little bit about your low back, and now
2 I'm looking at an MRI that was done the same day,
3 August 6, 2007 And essentially, although they
4 mentioned you had a little bit of a, it says a small
5 protrusion at L4-5, from what I'm reading it looks
6 like they basically said it was normal

7 Is that your understanding of your MRI on your
8 low back?

9 A They said it was normal?

10 Q I'm asking you, is that what somebody told you, or
11 did they tell you something different than what I'm
12 saying?

13 Better question What did they tell you about
14 your MRI on your low back, what did it show?

15 A Well, they said it wasn't as bad as my neck, my back
16 wasn't

17 Q What else did they say?

18 And who said that, not as bad as your neck?
19 Dr Patel? Or Ramirez?

20 A Let me think

21 I'm thinking it was Dr Patel

22 Q Is your low back a surgical condition? Dr Patel
23 think you needed surgery for your low back?

24 A No He said he was going to deal with one thing at a
25 time So mostly he's dealing with my neck problem

1 They haven't really got into my back problem yet

2 Q How did you get to Dr Patel and/or Dr Rogers? Are
3 they together?

4 A They're in the same building, yes

5 Q How did you get to them?

6 A The workman's comp lady made the appointment

7 Q Did she refer you there, or did somebody else refer
8 you to those doctors?

9 A They made the appointment, Diana

10 Q How did you pay for your medical treatment with them?

11 A It started out workman's comp was paying it

12 Q And then what happened?

13 A Well, I had an appointment with Dr Patel, and the
14 nurse was there, and Brenda Connell, C-O-N-N-E-L-L

15 Q She's a nurse?

16 A Yes, sir The workman's comp nurse

17 Q Like a nurse-case manager, somebody who goes with you
18 to keep up with your medical?

19 A Yes, sir

20 Q All right

21 A And so she came in with me, with Dr Patel and I
22 And when Dr Patel was, said that he wanted to take
23 certain tests, and she said that it had to be
24 approved by workman's comp

25 And he said, well, I need these tests, and he

1 wanted to do an injection, epidural injection

2 And so when he finished, the nurse asked, said,
3 well, can I ask a question, she said, the way that
4 she seen the doctor said that they thought it was
5 preexisting

6 And he looked at her and he said, no, it is not

7 Q So your testimony is, Dr Patel told the nurse-case
8 manager that your condition was not preexisting?

9 A Yes He said that to her

10 And she said, that's all I wanted to know, I had
11 to ask that question

12 Then we left

13 Q That brings me back to my question You said it
14 started off being paid for by worker's comp How is
15 it being paid for now?

16 A My insurance

17 Q Meaning your group insurance?

18 A Yes, sir

19 Q And why? Why is that, what happened to make it
20 change?

21 A Because workman's comp, he called me up and -- I got
22 his name on here --

23 Q When you say worker's comp, you're talking about the
24 insurance carrier?

25 A Yes

1 Q George Hoang? H-O-A-N-G

2 A Yes, sir

3 He called me up on 9/26 and said that they was
4 not going to be responsible for my injury

5 Q 9/26/07?

6 A Yes, sir

7 Q And what did he tell you, why was that?

8 A He said because he felt like that, that they wouldn't
9 be responsible for it because he felt like the injury
10 was preexisting

11 Q During this period of time when you were seeing
12 Ramirez, and initially when you first started seeing
13 Drs Patel and Rogers, were you still working?

14 A Say that again, so I get it straight?

15 Q Sure When you went back to see Ramirez in July of
16 '07 after nearly a year, and then you apparently went
17 from him and started seeing Drs Patel and Rogers
18 shortly thereafter?

19 A Yes, sir

20 Q Were you still working at Valenite?

21 A Yes, sir, I was still working

22 Q When is the last day you worked at Valenite?

23 A It was August the 23rd of '07

24 Q And why did you stop working at Valenite?

25 A Well, the doctor put me on light duty

1 Q Which doctor?

2 A Well, I was on light duty with doctor, Henry Ramirez,
3 he put me on light duty And then when they, when I
4 went to Dr Patel, he said light duty, no bending,
5 stretching, all that

6 Q Right

7 A And then when I confronted Diane about it, the
8 workman's's comp, she says, well, that we don't have
9 nothing for that strict, that restriction

10 Q Let me summarize, and you tell me if I say this
11 right

12 You were already on light duty from Henry
13 Ramirez?

14 A Yeah

15 Q And Valenite was accommodating those restrictions?

16 A Yes

17 Q Dr Patel changed your restrictions, and made it even
18 lighter duty?

19 A No, he kept the light duty

20 Q Was his light duty the same light duty as Ramirez's?

21 In other words, doctors write different words on
22 forms Do you know if Henry Ramirez and Dr Patel
23 gave the exact same type of restrictions?

24 A I think Ramirez was five pounds, and I believe that
25 Patel was ten pounds

- 1 Q Did Ramirez have a restriction about no bending,
2 stooping, crawling, and all that?
- 3 A Yes
- 4 Q He did have that too?
- 5 A Yes
- 6 Q But then when Dr Patel, according to you when
7 Dr Patel gave his restrictions, the company could no
8 longer accommodate your restrictions?
- 9 A That's what she said
- 10 Q That was on August 23rd of '07?
- 11 A Yes, sir
- 12 Q Have you worked there since then?
- 13 A No, sir
- 14 Q Have you received any benefits, worker's comp checks?
- 15 A Nothing
- 16 Q Have you received any short-term or long-term
17 disability benefits from the company?
- 18 A No, sir They denied me too
- 19 Q Why did they deny you long-term and short-term?
- 20 A Because they felt like it should be worker's comp
21 problem, and not theirs
- 22 Q Did you get a letter from them that says that?
- 23 A Yes, sir
- 24 Q Do you have a copy of that letter?
- 25 A I have it in the files, the lawyer files

- 1 Q What's the name of the insurance company that sent
2 you that letter, do you know?
- 3 A Sentry
- 4 Q I'm talking about the short-term, long-term
5 disability letter?
- 6 A Oh, I don't know
- 7 Q I'm pretty sure that's not Sentry
- 8 A Yeah, that's workman's comp, I'm sorry
- 9 Q I've got a copy of the letter where workman's comp
10 denied, but I don't have a copy of any letter where
11 your short-term and long-term deny
- 12 A Okay
- 13 Q But your testimony is, you have not received any
14 worker's comp, short-term or long-term since August
15 23rd of '07?
- 16 A No, sir
- 17 Q You're receiving no benefits and have not received
18 any moneys whatsoever?
- 19 A None
- 20 Q All right Have Drs Rogers or Patel referred you
21 for any other physical therapy?
- 22 A Yes, sir
- 23 Q Have you been?
- 24 A Yes, sir
- 25 Q Did you go to the same place?

- 1 A Yes, sir
- 2 Q So you're back, are you there now?
- 3 A The last day was last Wednesday, I believe it was
- 4 Q So we're talking about --
- 5 A Just last week
- 6 Q -- maybe the 7th, or the 9th of January?
- 7 A It would be on a Friday, I believe it was
- 8 Q Anyway, one day first part of January?
- 9 A Yeah
- 10 Q And when you say that was the last day, does that
- 11 mean you don't go back anymore, or --
- 12 A Until the doctor says something else
- 13 Q So the prescription, or the referral for however much
- 14 time doctor, who sent you over there, Rogers or
- 15 Patel?
- 16 A Patel
- 17 Q So Dr Patel gave you a certain amount of time, and
- 18 that time has run out?
- 19 A Yes, sir
- 20 Q And did you miss any of your physical therapy?
- 21 A No, sir
- 22 Q And you're scheduled to go back to see Dr Patel to
- 23 decide whether you go back to physical therapy or
- 24 what's going to happen next?
- 25 A Yes, sir

- 1 Q When is that?
- 2 A Monday
- 3 Q This coming Monday?
- 4 A Well, this coming Monday I'm supposed to go for
- 5 injection in my back
- 6 Q By who?
- 7 A Dr Patel
- 8 Q So Monday, the 21st?
- 9 A Yes
- 10 Q You're scheduled to go back to Dr Patel?
- 11 A Yes, sir
- 12 Q At that time, and you're getting an injection at that
- 13 time, and you also, is it your understanding you're
- 14 also going to discuss whatever plans he has for
- 15 further treatment?
- 16 A Yes, sir
- 17 Q Other than the MRIs and the x-rays, have you had any
- 18 other kind of radiological testing done? Any
- 19 myelograms? That's where they stick a needle in your
- 20 back and inject dye --
- 21 A The injections, the epidural injections
- 22 Q That's different I'm talking about where they
- 23 stick, and then they read it on an x-ray, they inject
- 24 some dye into your --
- 25 A No, sir I haven't had that

- 1 Q They haven't done that?
- 2 A No, sir
- 3 Q And no one's recommended surgery?
- 4 A No, sir
- 5 Q Other than Dr Patel and Dr Rogers, Henry Ramirez,
- 6 Hummel Physical Therapy, have you seen any other
- 7 doctors at all?
- 8 A Dr Kanos, he was the first doctor
- 9 Q Is he a neurosurgeon?
- 10 A Yes, sir
- 11 Q When did you see him?
- 12 A He was the first one that Henry Ramirez sent me to
- 13 He sent me to him first
- 14 Q What did he do?
- 15 A He looked at my x-rays to see if I needed any
- 16 surgery
- 17 Q And he didn't feel surgery was necessary either?
- 18 A Yes, sir He said, no, he didn't believe that
- 19 surgery was necessary And then he said to go to
- 20 Dr Rogers
- 21 Q And essentially when a neurosurgeon doesn't do
- 22 surgery, that pretty much ends treatment with them,
- 23 is that correct, you ended with him?
- 24 A Yes, sir
- 25 Q You said Dr Rogers is a neurosurgeon?

1 A Yeah

2 Q Is he a neurosurgeon or a neurologist? There's a
3 difference

4 A Be honest with you, I don't know I was just trying
5 to do everything workman's comp told me to do

6 Q I understand

7 Same for Dr Patel, do you know whether he's a
8 neurosurgeon or a neurologist?

9 A I didn't know there was a difference, to be honest
10 with you I don't know

11 Q All right Now, you indicated you had not worked
12 since August of 2007, correct?

13 A Yes, sir

14 Q And I'm looking at a report dated October the 8th of
15 2007, that says, at that time you were tolerating
16 light duty well But your testimony is, you weren't
17 working at that time, in October --

18 A When?

19 Q October of 2007

20 A October

21 Q Would be two months after August

22 A October?

23 Q Um-hmm

24 A And when was this?

25 Q October the 8th of 2007 You were being seen by a

1 Leann Chastain, a family nurse practitioner, at 4 34
2 p m in the afternoon Donna McCall, female, date of
3 birth, 10/27/1951

4 Looks like she's in with Henry Ramirez and
5 Dr Hanahan

6 A I don't understand what you're talking about there

7 Q You don't recall this?

8 A Say the name again?

9 Q Leann Chastain?

10 A Who is that?

11 Q Family nurse practitioner, in Dr Hanahan's office

12 A In Dr Hanahan's office

13 Q With Henry Ramirez

14 There's a note that says you saw her on October
15 the 8th, 2007 -

16 A In Dr Hanahan's office?

17 Q Um-hmm

18 A For what?

19 Q For neck and back pain Wants an excuse to be out of
20 work Neck and lumbar States that she is
21 tolerating her light duty Back ache

22 A It must be a wrong date on there, because I haven't
23 worked since they took me out

24 Q All right Other than all the doctors we've talked
25 about, the last one being Dr Kanos, are there any

1 other doctors' names that you need to tell me about
2 that you've seen?

3 A Um-um, no, sir

4 Q When you had the pinched nerve diagnosis in your low
5 back, back in 1999, did you have any kind of testing
6 done on your low back, back then, like MRI scans,
7 x-rays, anything like that?

8 A In '99?

9 Q Yes, ma'am

10 A No, sir

11 Q They just diagnosed you as having a pinched nerve?

12 A He run needles, I don't know what it's called, he put
13 them needles in my skin, you know

14 Q EMG, nerve conduction studies?

15 A Yeah

16 Q That was back in '99?

17 A Yeah

18 Q How about hospitals, have you been to any hospitals
19 for any treatment, testing, anything?

20 A No, sir

21 Q Have you ever been in Ocone Memorial Hospital for
22 any reason?

23 A Yes, sir

24 Q For what, childbirth?

25 A No I didn't have my children here

1 It was because of a bee sting

2 Q Is that the only time you've ever been there?

3 A Yes, sir

4 Q What about any hospitals in Greenville?

5 A Greenville Not that I can remember, no

6 Q Any other hospitals in South Carolina?

7 A No, sir

8 Q Has Mr Simmons scheduled you or sent you to see any
9 doctors?

10 A Mr Simmons?

11 Q Um-hmm, Todd

12 A Oh, I'm sorry, I'm not thinking

13 No, sir

14 Q Have you ever been treated by a chiropractor, any
15 other specialist, for any other reasons related to
16 your neck or low back, other than the 1999 doctor you
17 saw?

18 A I did go to the chiropractor, and it was because I
19 was having those headaches and the tightness in my
20 neck after the accident

21 Q Who was the chiropractor?

22 A In Westminster

23 Q Finley?

24 A Yes, Finley

25 Q Who scheduled that appointment? Is that somebody you

1 went to on your own?

2 A I did, yeah

3 Q Do you recall when you started going to see the
4 chiropractor there?

5 A You know, I wrote the date down, and it's in the
6 lawyer files I can't remember right this minute

7 Q Would that have been, do you believe, just before you
8 went back to Henry Ramirez?

9 A Yes, sir, it was

10 Q So it was nearly a year after the accident

11 A Yeah, about ten months, something like that

12 Q And what did you tell the chiropractor was wrong with
13 you, and what did you feel like was causing your
14 problems then?

15 A Well, I told him that I had headaches, and the
16 pressure on my neck, and tightness, and stuff on my
17 neck And I told him that I had had an accident at
18 work I wanted him to know that I had had an
19 accident, you know

20 Q Do you recall treating with a chiropractor in March
21 of 2002? Same chiropractor, or the same facility?

22 A 2002 Well, I'd been to him couple of times, yeah

23 Q Do you recall you went to him in March of 2002?

24 A Well, I don't remember the dates, but I know I've
25 been to him a couple of times

1 Q Do you recall you'd been to him in July of 1991?

2 A Well, I could have

3 Q What were you going to the chiropractor for during
4 those periods of time?

5 A Because back

6 Q Low back?

7 A Um-hmm We do heavy lifting at work

8 Q Did your employer know, Ms McCall, in 1991 and 1999,
9 and even in 2002, that you were going to the
10 chiropractor because of back problems?

11 A Chiropractor? No, I didn't say nothing

12 Q You didn't tell them?

13 A No, sir

14 Q So you never told them you were having back problems?

15 A No, I just went to the chiropractor

16 Q So even though you just said you were having low back
17 pain because of heavy lifting, I assume you're
18 talking about heavy lifting at work?

19 A Yeah, because I notice that when I started lifting
20 heavy, something heavy, that I would get pain in my
21 back

22 Q Why didn't you tell your employer that?

23 A I just didn't I thought I'd be okay

24 Q But you don't have any reason to disagree, I'm
25 looking at records that show you were there in '91,

1 '99, 2002, you don't have any reason to disagree with
2 those?

3 A Um-um

4 Q That's no?

5 A No

6 Q And it looks like in '99 you were having low back
7 problem with numbness going all the way down to both
8 of your feet and your legs, and they were going to
9 send you to an orthopedic Is that correct?

10 A In when?

11 Q 1999

12 A '99

13 Q Back when you had a pinched nerve

14 A They was going to send me to an orthopedic?

15 Q Says actually you've been to an orthopedic I'm
16 reading out of the chiropractor report, says, Been to
17 an ortho To me, that means you've been to an
18 orthopedic

19 A I can't remember

20 Q You said earlier you couldn't remember if that doctor
21 you went to in 1999, who said you had a pinched
22 nerve, you couldn't remember if that was a specialist
23 or not?

24 A Yeah

25 Q This also says you had an MRI and x-rays back in

1 1999, and you were told you had a pinched nerve?

2 A Well, he said I had a pinched nerve, yeah

3 Q You don't recall having a MRI of your low back, back
4 then?

5 A Yeah

6 Q Okay, you did have an MRI?

7 Because earlier I asked you, you said you didn't
8 have --

9 A Oh, I'm sorry

10 Q You did have an MRI of your low back in 1999?

11 A Oh Yes

12 Q All right Do you recall going to the chiropractor
13 in July of 1995 with, and I'm quoting, severe
14 headaches?

15 A I know one time I did have some real serious
16 headaches

17 Q Did you tell Dr Rogers and Dr Patel that you had
18 been treated for severe headaches in the past?

19 A They never asked

20 Q And you never offered to tell them that?

21 A I didn't -- no

22 Q So to your knowledge, neither Dr Patel nor
23 Dr Rogers know that you'd been treated by a
24 chiropractor in the past for severe headaches?

25 A No, sir

1 Q Do you recall treating with a chiropractor in October
2 of 2005, this would be about six months before the
3 fall at Valenite, for two weeks of headaches and pain
4 into your shoulder area?

5 A Like I say, I've went to them, you know, a few times
6 I don't know the dates

7 Q You also were having, looks like tenderness and
8 tingling, and I can't tell if he says your arms or
9 your legs, to be honest with you I'm guessing your
10 arms, because he's talking about your shoulder

11 But do you remember any of that?

12 A My arms

13 Q You do remember going about six months before the
14 fall?

15 A Like I say, I don't remember the dates, but I know
16 I've been to him

17 Q And again, the chiropractor is somebody you chose on
18 your own, Valenite didn't send you there, correct?

19 A Yes, sir

20 Q And it looks like you had to pay the chiropractor
21 bill out of your pocket because even group insurance
22 wouldn't cover chiropractor bills, is that correct?

23 A They don't pay, no

24 Q So you had to pay that out of your pocket?

25 A Yeah

- 1 Q Currently, Ms McCall, what kind of physical problems
2 do you have?
- 3 A Okay, I want to get this straight Right now, after
4 the physical therapy --
- 5 Q Today, as we sit here today, what's wrong with you
6 physically?
- 7 A Okay I have some pain in my lower back
- 8 Q Okay
- 9 A And I still have tightness in my neck, pressure
- 10 Q Okay
- 11 A And at this moment I do not have no headaches
- 12 Q Okay
- 13 A And I have numbness in my arms
- 14 Q Both arms?
- 15 A Yes, sir
- 16 Q Okay
- 17 A And I have numbness from my waist down on my left
18 leg
- 19 Q Okay Anything else?
- 20 A That's it
- 21 Q Has any doctor told you that the pain in your low
22 back is related to the incident at Valenite?
- 23 A They haven't really started concentrating on my back
24 right now, it's mostly been my neck
- 25 Q Have you made the doctors aware of the prior

1 diagnosis of a pinched nerve in your low back in
2 1999?

3 A Yes, sir

4 Q So they're aware of that?

5 A Dr Patel, yes, sir

6 Q Has any doctor told you that the tightness in your
7 neck and the pressure is in any way related to the
8 incident at Valenite?

9 A Yes sir, for the fall

10 Q What doctor told you that?

11 A Patel

12 Q And has he told you that in writing, or has he just
13 told you that verbally?

14 A Just verbally

15 Q The numbness in both of your arms, is that anything
16 like what you were seeing the chiropractor for, six
17 months before the fall?

18 A Same

19 Q Same kind of numbness?

20 A Yeah

21 Q And again, correct me if I'm wrong, Dr Patel nor
22 Dr Rogers are aware that you were seeing the
23 chiropractor six months before the fall, correct?
24 They don't know that you have that numbness in your
25 arms? Correct?

1 A No, sir

2 Q I'm correct?

3 A That the doctors don't know?

4 Q Correct You haven't told Dr Patel or Dr Rogers

5 about being treated by the chiropractor?

6 A No, sir, not that I know of

7 Q You said they didn't ask?

8 A Um-um

9 Q And then the numbness from your waist down in your

10 left leg, is anyone treating that right now?

11 A No, sir

12 Q So I'm assuming nobody's told you that's related to

13 your fall at Valenite?

14 A Like he said, he was concentrating on one thing at a

15 time

16 Q So he's going to deal with the low back and the leg

17 issues whenever he's through with the neck?

18 A Yes, sir

19 Q Has he given you any kind of timeline about when he

20 thinks he's going to be through treating your neck?

21 A Well, he, with the physical therapy, that's helped my

22 headaches go away a lot I still have the pressure,

23 but I don't have those severe headaches like I had

24 before And the injections that he gave

25 So they're all working there at the same time,

1 so I don't know which one done the best, you know,
2 the physical therapy or the injection

3 Q But the combination has helped your neck?

4 A Yes

5 Q And your headaches?

6 A Yes, sir

7 And then that's why he scheduled an appointment
8 Monday for my back He's concentrating on my back
9 now

10 Q So Monday starts the low back?

11 A Yes, sir

12 Q So when you told me you had that appointment, that's
13 actually for the low back?

14 A Yes

15 Q So is he through treating your neck, as far as you
16 know?

17 A To be honest with you, I don't know

18 Q You're not working anywhere now, correct?

19 A No, sir

20 Q Are you still employed at Valenite?

21 A Yes, sir

22 Q You're not receiving or haven't filed for any
23 unemployment benefits? Or have you?

24 A Well, I filed for short-term disability

25 Q Right But what about unemployment? I assume you

1 haven't filed for that?

2 A No, um-um

3 Q And short-term, you said their insurance carrier
4 denied you?

5 A Um-hmm

6 Q That's yes?

7 A Yes, sir

8 Q What about Social Security Disability, have you filed
9 for that?

10 A No, sir

11 Q Voc Rehab, have you been through any vocational
12 rehabilitation?

13 A No, sir

14 Q Have you had any injuries or accidents or
15 aggravations since June of 2006?

16 A No, sir

17 Q None at all?

18 A No, sir

19 Q There was no events or nothing happened back in July
20 of 2007 that made you all of a sudden go back to the
21 doctor?

22 A No, sir

23 MR BEARD One second, I may be through

24 CONTINUED EXAMINATION BY MR BEARD

25 Q Just a couple more

1 The document that started the process of why I'm
2 here is called a Form 50 that Mr Simmons filed on
3 your behalf

4 It mentions a right ankle injury, do you have a
5 right ankle injury? You didn't mention that just a
6 minute ago

7 A No, I didn't Well, it was hurting at the time, but
8 it just went away

9 Q It's not a problem now?

10 A No, sir

11 Q You said both arms?

12 A Yeah

13 Q You said your headaches are gone?

14 A Yes

15 Q How about your shoulders, do you have shoulder
16 problems?

17 A Oh, yeah

18 Q When you say your arms, do you include that to mean
19 the shoulders?

20 A Yeah, um-hmm

21 Q And there's also a statement on a Form 50 that says
22 Do you have any prior, to the best of your knowledge,
23 did you have any prior permanent disability

24 You answered no

25 The reality is, you did have prior knee

1 disability, correct? You in fact received a check
2 for that from worker's comp?

3 A Oh Okay, yeah

4 Q And you also got a prior pinched nerve, I don't know
5 if you had permanent disability or not, I haven't
6 seen any records --

7 A No

8 Q -- I haven't got a doctor name yet, but did you
9 consider yourself to have any prior permanent
10 disability from your pinched nerve?

11 A Um-um Well, it's not no disability in my knee
12 either, because it got better, you know, because I
13 can use it and it does fine

14 Q And the doctors that are currently writing you out of
15 work are Patel and Rogers?

16 A Yes, sir

17 Q And do they still have you out of work?

18 A Yes, sir

19 Well, it's because Valenite, because they say
20 that they can't give me the, accommodate the light
21 duty

22 Q So you believe you could return to work at the light
23 duty restrictions?

24 A That's what the doctor said Dr Patel said that I
25 could work on that light duty

1 Q Do you believe you could return to work at the light
2 duty restrictions?

3 A Well, I don't feel like that I could do work a whole
4 eight hours a day

5 Q But Dr Patel seems to think you could?

6 A Yeah

7 Q And at some point at least for a period of time
8 you testified that Valenite gave you light duty
9 How long did you actually work light duty at
10 Valenite?

11 A Maybe a couple weeks I can't remember exactly

12 MR BEARD I think that's all I've got

13 CROSS EXAMINATION BY MR SIMMONS

14 Q I have just a couple of questions in follow-up, in
15 response to some of the questions that Mr Beard
16 asked you

17 Since this accident occurred on June 29th of
18 '06, have you ever been reimbursed by the worker's
19 compensation insurance carrier for any mileage that
20 you've incurred going to and from your doctors'
21 visits?

22 A No, sir

23 Q Through your treatment with Dr Patel, have you ever
24 been informed by either him or his office as to any
25 specific nerve conduction tests that he requested

1 that were denied by the worker's compensation
2 carrier?

3 A Yes As soon as he started the test, why then, I got
4 it wrote down here, that they called me and told me
5 that workman's comp denied the test

6 Q Was it the worker's compensation carrier and your
7 worker's comp coordinator at Valenite that sent you
8 to Dr Patel?

9 A Yes

10 Q Regarding the accident itself, when you stated
11 earlier that you fell backwards onto your back, did
12 you fall from the top of the stool, or were you
13 standing on the concrete when you fell?

14 A The top of the stool

15 Q How tall is the stool that you use to clean the
16 furnaces?

17 A It's probably six or seven inches high

18 Q You also stated that in 1999 you received medical
19 care and treatment for a pinched nerve in your lower
20 back, but that you didn't recall the doctor's name?

21 A Yes

22 Q Is there any way you could probably describe to us
23 where that office is located, so it would assist us
24 in retrieving those records?

25 A It was here in Seneca, but to be honest with you, I

1 can't even remember the building

2 Q Do you remember anything about the doctor or his
3 staff or the practice name or anything at all that
4 would assist us in identifying it?

5 A I have his name wrote down at home

6 Q Could you provide that to me, so that I could also in
7 turn provide it to Mr Beard?

8 A Yes, sir In fact I think it should be in your
9 files

10 Q Okay Well, we'll check that, to see if it's there
11 MR SIMMONS That's all the questions that I
12 have I appreciate it

13 REDIRECT EXAMINATION BY MR BEARD

14 Q Let me make one guess or one stab at the doctor's
15 name, since we're talking about back in 1999 in
16 Seneca Would it by chance have been Dr George
17 Bruce?

18 A No, sir

19 Q Not Dr Bruce?

20 A No, sir

21 RECROSS EXAMINATION BY MR SIMMONS

22 Q Do you recall ever having been treated by Dr Bruce
23 for anything in the past?

24 A No, sir

25 Q How about, you also mentioned that you've been seeing

1 a Dr Jordan in Clemson, do you know where that
2 office is located or the name of that practice, or
3 his full name?

4 A Dr Jordan? Oh, in Clemson?

5 What's the name of that?

6 MR McCALL Can I speak?

7 MR BEARD I don't have a problem

8 MR SIMMONS Do you know the name of it?

9 MR McCALL Edmond Jordan

10 MR SIMMONS Edmond Jordan?

11 MR McCALL Yeah

12 MR SIMMONS How about Dr Carpenter, do you
13 recall the name of his practice or his full name?

14 MR McCALL Grace Family Practice

15 MR SIMMONS That's all the questions I have,

16 Ms McCall Thank you

17 MR BEARD Nothing else

18 Thank you, ma'am, appreciate it

19 (Discussion off the record)

20 (The deposition of Donna L McCall

21 ceased at 12 25 p m this date)

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BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION
SWCC No 0627287

EMPLOYEE DONNA MCCALL
EMPLOYER SANDIK/VALENTINE
INSURER SENTRY CLAIMS SERVICE

DEPOSITION OF CHARLES C KANOS, M D

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT IN
THE ABOVE-ENTITLED CASE, A DEPOSITION WAS TAKEN ON THE
21ST DAY OF JULY, 2008, COMMENCING AT APPROXIMATELY
4 20 P M , ATTENDED BY COUNSEL AS FOLLOWS

DEPOSITIONS AND , INC
(864) 585-0642

1 APPEARANCES

2 M TODD SIMMONS, ESQUIRE, OF THE LAW FIRM LARRY C
3 BRANDT, 3691 BLUE RIDGE BOULEVARD, POST OFFICE BOX 738,
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11

12 ALSO ATTENDING DONNA MCCALL
13 JOSEPH MCCALL
14

15
16 DEPOSITION REPORTED BY MARLA J O'BRIEN, CVR
17 DEPOSITIONS AND , INC
18 (864) 585-0642
19

20
21 THE ATTACHED 29 PAGES OF TESTIMONY OF CHARLES C
22 KANOS, M D IN THE ABOVE MATTER IS THE WORK PRODUCT
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1 PURSUANT TO NOTICE AND/OR AGREEMENT TO TAKE
2 DEPOSITIONS, THE WITHIN DEPOSITION WAS TAKEN BY THE ABOVE
3 REPORTER, A NOTARY PUBLIC, AS REQUIRED UNDER THE CODE OF
4 LAWS OF SOUTH CAROLINA, 1976, SECTION 19-17-10, AND
5 CIRCUIT COURT RULE 30, ET AL , BY CONSENT OF ALL PARTIES
6 AT THE OFFICES OF DR CHARLES C KANOS, 890 WEST FARIS
7 ROAD, GREENVILLE, SOUTH CAROLINA
8 WAIVER

9 IT IS AGREED BY COUNSEL THAT BOTH THE READING OVER
10 OF AND SIGNING OF THE DEPOSITION BY THE WITNESS ARE
11 HEREBY DISPENSED WITH AND WAIVED

12 IT IS AGREED BY THE DEPONENT THAT BOTH THE READING
13 OVER OF AND SIGNING OF THE DEPOSITION ARE HEREBY
14 DISPENSED WITH AND WAIVED

15 ** ** *

16 THE DEPONENT WAS DULY SWORN TO TELL THE TRUTH, THE
17 WHOLE TRUTH, AND NOTHING BUT THE TRUTH OF HIS OWN
18 KNOWLEDGE CONCERNING THE MATTER HEREIN
19 **CHARLES C KANOS, M D** , BEING DULY SWORN, TESTIFIED AS
20 FOLLOWS

21 **DIRECT EXAMINATION BY MR HAYES**

22 Q Doctor, we met a minute ago, but for the record, my
23 name is Daniel Hayes My law firm represents the
24 employer and Worker's Comp insurance carrier in Ms
25 Donna McCall's Worker's Comp claim Her attorney

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1 is here, she's here with her husband And we'll
2 try to get through this as quickly as possible I
3 know you only saw her on one occasion, is that
4 correct?

5 A Right

6 Q And was that a referral by Dr. Ramirez?

7 A Yes

8 Q What was the history of accident provided to you?

9 A The history was she injured herself in June of '06
10 when she was cleaning a furnace She fell
11 backwards

12 Q And who provided that information?

13 A The patient

14 Q Without anything else to rely upon, would that be
15 categorized as subjective history from the patient?

16 A Yes

17 Q And what were her complaints that day?

18 A She had headaches initially And she developed
19 mid-line neck pain that went through her shoulders
20 into her arms, and numbness in her arms

21 Q Okay Any low back complaints on that day to you?

22 A I know she has a back history I'm not exactly --
23 I don't recall what she told me

24 Q Would it be fair to say the major complaints to you
25 were in the neck with headaches?

1 A Yeah and numbness in her arms

2 Q There was an MRI performed 8/6/07, lumbar and

3 cervical Did you look at those films?

4 A Yes

5 Q And what was your impression, based upon the

6 cervical films?

7 A She had arthritic changes in her mid cervical

8 region, possible left-sided nerve compression I

9 wasn't impressed with any findings on that lumbar

10 MRI

11 Q Okay And when you say you weren't impressed with

12 any findings on the lumbar MRI, is that from a

13 surgical only standpoint?

14 A Right

15 Q Okay

16 A And there didn't appear to be any -- not

17 significant arthritic changes, according to what I

18 read here

19 Q With arthritic changes such as what you saw on the

20 MRI film, can you tell if that is the result of an

21 accident or a trauma?

22 A Arthritis is usually not traumatic You can tell a

23 difference, because I wrote she had a thickened

24 PLL, which is posterior longitudinal ligament, and

25 that's not a traumatic finding It's a

1 degenerative and arthritic appearance, although
2 trauma can make it worse, it doesn't cause those
3 findings

4 Q Okay And before we got on the record, we talked
5 about a prior MRI, a set of x-rays done in 1999
6 The impression there for the cervical is, I
7 believe, moderate degenerative disc disease?

8 A At C5-6 and C6-7, yes

9 Q Is there any way you can tell - let me phrase this
10 correctly - given a patient's age at the time of
11 that prior examination -- and I represent she was
12 47 years old, almost 48 --

13 A Okay

14 Q Can you tell from a set of MRI films whether
15 arthritic changes are age-appropriate, or is that
16 too general a question?

17 A No, I can't tell that looking at the film Age-
18 appropriate is too general, because some people are
19 going to have a normal MRI, and some people are
20 going to have disastrous It depends on each
21 particular case These do not look to be -- the
22 report in '99 doesn't look to be horrible
23 degenerative changes And it may very well be
24 what's expected for someone age 48

25 Q Okay By the time we get to the second set of MRIs

1 done in August of 2007, and I will represent she
2 was 55 years old then, almost 56 years old, given
3 the impression of severe degenerative disc disease,
4 compared to the prior moderate, would that tend to
5 be an expected progression of that condition?

6 A Not necessarily expected, but it's certainly not an
7 unusual progression

8 Q Okay

9 A Because some people don't necessarily always get
10 worse It sounds like, according to the report,
11 she did worsen in her arthritic condition, and
12 that's certainly seen all the time

13 Q And that could be consistent with the work accident
14 that's described on June 29, 2006?

15 A I don't know if the work accident can cause it, but
16 it certainly can aggravate her symptoms But it's
17 not necessarily going to change the degenerative
18 findings on her MRI

19 Q Okay

20 A Trauma usually causes fractures or acute problems
21 This is a degenerative, chronic problem she has

22 Q Okay If you exacerbate a degenerative condition
23 such as that, would you expect her to flare up and
24 then taper off for any certain amount of time?

25 A It may taper off, it may not, but I see a lot of

1 patients that have underlying arthritic conditions
2 with an exacerbation from a trauma of some sort
3 And some get better and some don't

4 Q Okay Are you familiar with the course of her
5 treatment following the work accident on 6/29/06?

6 A I'm not right now

7 Q Okay I'll represent to you she was seen by Dr
8 Ramirez initially on 8/17/06 and had six sessions
9 of physical therapy, ending 8/31/06 with no other
10 treatment until she saw Dr Ramirez on 7/24/07,
11 almost a year later Based on that information
12 alone, and given the exacerbation of the underlying
13 condition we were talking about, would it seem that
14 her condition would have resolved on or about
15 August 2006?

16 A August 2006?

17 Q And that's when she last had physical therapy
18 There was a break from August 31, 2006 until
19 7/24/07, during which time she had no treatment

20 A Okay

21 Q Would that be consistent with the condition having
22 resolved, or consistent with an ongoing problem?

23 A I can't answer that I can tell you that it's
24 unusual You would assume if she didn't go see a
25 doctor, that the symptoms might not have been

1 severe But to say if they resolved or not, I
2 can't answer that But if she was hurting, I would
3 have expected her to have gotten some treatment
4 that year

5 Q Given that the date of accident is 6/29/06 and the
6 set of MRIs were not done until 8/6/07, is there
7 any way to tell for sure what problems, as shown on
8 that 8/07 MRI are related to the work accident? Or
9 is that just too much time in between?

10 A No, it's not too much time It still doesn't
11 change the fact that, I imagine that the 8/07 MRI
12 arthritic changes were there probably a year
13 earlier They were certainly there in '99 And
14 it's a subjective complaint of exacerbation And
15 you're not going to necessarily see very much on
16 the MRI

17 Q Is it possible that some of the changes seen in
18 8/07 are not related to the work accident?

19 A Well, the radiographic findings are going to be
20 there -- appear, regardless of there being a work
21 injury, okay? So yes, she already had degenerative
22 changes on there to begin with What we're talking
23 about is an exacerbation, it seems to me
24 Exacerbation of underlying arthritic condition
25 after the fall Is that what you're asking me?

1 Q Yes, sir And let me kind of get to the point of
2 all this She was seen in the meantime on June the
3 19th of 2007 by a chiropractor, and gave a history
4 to the chiropractor of the symptoms first appearing
5 three days before that visit And assuming that
6 history from the claimant to the chiropractor is
7 accurate --

8 A Is this before her fall?

9 Q That's after the fall

10 A Okay

11 Q That's during that one-year gap Is that
12 consistent or inconsistent with the history given
13 to you that the problems in August 2007 were from
14 the work accident?

15 By Mr Simmons

16 I object to the form of the question You don't
17 know what symptoms it is that she's talking about
18 on that form It could be symptoms that are not
19 related to this that she just had some pain or
20 symptoms that went in So until you can provide
21 him with facts that show that those are the same
22 symptoms, there's no way he can possibly issue an
23 opinion in that regard So I object to the form

24 Examination resumed by Mr Hayes

25 Q Okay You can answer that

1 A All right In terms of an inconsistency on this,
2 it's dated 6/19/07 It says her symptoms first
3 appeared three days ago And that's inconsistent
4 with the timeframe But his point is well taken,
5 too What symptoms are we referring to here? It
6 says back pain on here

7 Q And assuming that's back pain that she's talking
8 about the symptoms first appearing three days
9 earlier, would that history be consistent with the
10 history provided to you?

11 A No, it would not Just because it's -- yeah, her
12 symptoms, we were told, were a year beforehand

13 Q And was it your understanding from the patient that
14 she had had the same type symptoms since that work
15 injury on 6/29/06, basically lingering problems?

16 A Yeah, the history she gave, I assume all the
17 complaints she made were since that injury on 6/6
18 I'm not sure they'd changed very much I don't
19 remember the details of our discussion So I'm
20 under that impression

21 Q I'll show you one other This is from the same
22 chiropractor, 167 of claimant's APAs

23 By Mr Simmons

24 I'm sorry, what was that reference again?

25 By Mr Hayes

1 It was 167, claimant's APAs That's also dated
2 6/19

3 By the witness

4 What's APA mean?

5 By Mr Hayes?

6 Our Administrative Procedures Act These are
7 medical records submitted --

8 By the witness

9 Oh, okay

10 By Mr Hayes

11 -- at a hearing And you'll see it's numbered at
12 the bottom That will be used at a Worker's Comp
13 Commission hearing

14 Examination resumed by Mr Hayes

15 Q And the ultimate question, Doctor, we're trying to
16 determine is whether or not the problems she saw
17 you for relate back to that accident in June of
18 2006, or whether it's possible there was some
19 intervening accident or trauma So I'm showing you
20 different histories as provided in medical records
21 In the document I just presented to you, there's a
22 reference to a fall at work two months prior

23 A And it's dated June 19th, '07

24 Q Yes, sir

25 A She said she fell at work, landing on bottom, and

1 then head bounced off floor

2 Q Were you aware of a potential second accident at
3 work?

4 A I don't have it written in my note So I certainly
5 don't recall

6 Q Would that history be consistent with the history
7 provided to you by the patient?

8 A Well, I don't know if that was mentioned to me, a
9 second fall, or the fall you're referring to here

10 Q Doctor, have you made an opinion as to causation in
11 this claim?

12 A My opinion was it was, from what the patient told
13 me, following the fall from work That's the only
14 history I had at the time So I was under the
15 impression that she had a fall at work and
16 developed neck pain, and she had an exacerbation of
17 underlying arthritic condition

18 Q Based upon the other --

19 A Based on the other information you've given me now?

20 Q Yes, sir Or can you say to a reasonable degree of
21 medical certainty whether or not the current
22 problems are related to the Worker's Comp accident?

23 A No, I can't -- I mean, I think that this has been
24 brought into question with the other history, the
25 accuracy -- I mean, this is a handwritten note from

1 somewhere, but certainly she has a history of
2 intervening trauma from the initial injury that I
3 was given as a history 'til when I saw her, based
4 on what I see here

5 Q What type of trauma would it take to exacerbate an
6 underlying arthritic condition in the back?

7 A Anything A fall, overexertion, a car accident
8 Anything

9 Q Could it be something as simple as a hard sneeze?

10 A Potentially

11 Q Potentially? What about heavy lifting on the job?

12 A That can, yes

13 Q Is there any cure for degenerative disc disease?

14 A There is no cure There's treatments

15 Q And if it's not a surgical problem, what are some
16 of the treatments?

17 A Anti-inflammatory medication, exercise, physical
18 therapy It's a progressive problem

19 Q You had recommended referral to pain management is
20 that correct?

21 A Yes

22 Q Does that preclude the finding of MMI from your
23 standpoint?

24 A No

25 Q Based upon your examination, would you declare the

1 claimant to have reached MMI as of the time you saw
2 her?

3 A I just saw her one time I thought she was non-
4 surgical So what I typically do is I -- in
5 patients such as her, I refer to pain management,
6 and then place her at MMI

7 Q And would that be as of the date you saw her?

8 A Yes

9 Q 8/29/07?

10 A Right

11 Q What percentage of impairment would she qualify for
12 under the AMA Guides, Fifth Edition, based upon
13 your examination?

14 A I give five percent to the spine

15 Q And is that a DRE category?

16 A It's not a DRE category, it's just the rating I use
17 for the spine, for the non-operative C-spine

18 Q Okay

19 A I'm not using the DRE method

20 Q Are there any restrictions you personally would
21 place on the patient?

22 A I didn't mention any work restrictions at this
23 time I don't know how to do that now, having not
24 seen her a year

25 Q Thank you, Doctor That's all I have

1 CROSS-EXAMINATION BY MR SIMMONS

2 Q Dr Kanos, my name is Todd Simmons and I introduced
3 myself to you before we started your deposition I
4 represent the claimant, Ms Donna McCall in a
5 Worker's Comp action And I'd just like to ask you
6 a couple of questions How was it that Ms McCall
7 came to your care for this one visit? Do you
8 recall that?

9 A She was referred

10 Q Okay Do you recall who she was referred by?

11 A I think I have Dr Ramirez Yes, patient seen in
12 consultation request of Dr Henry Ramirez

13 Q Okay Did he provide you with any medical records?

14 A They usually do I don't recall now

15 Q When I sent your office a request for the medical
16 records that were in your possession -- I just want
17 to, if I could, get you to take a look at this
18 This might be in your charts, you could look at
19 your own, but it appears to me that there are some
20 records in there from physician assistant Ramirez

21 A Yes

22 Q Okay Do you recall having reviewed those records
23 when you saw Ms McCall on this one visit?

24 A I don't recall reviewing it, but I usually look at
25 stuff that's sent to me

1 Q Is it true that the records that you're presently
2 looking at from Henry Ramirez, it states that Ms
3 McCall fell on 6/29 of '06 while working?

4 A Yes

5 Q And that would be part of the records that were
6 provided to you through this referral correct?

7 A Right

8 Q Okay For what purpose was Ms McCall referred to
9 you?

10 A Neck, headache, and arm numbness were the main
11 complaints

12 Q Do you have any reason to doubt the records that
13 were provided to you from physician assistant
14 Ramirez as being incorrect?

15 A No

16 Q Doctor, on the medical record that you generated
17 from your one visit with Ms McCall, it states that
18 she was seen in neurosurgical consultation at the
19 request of Dr Henry Ramirez, is that true?

20 A Right, that's correct

21 Q Would it be a fair statement to say that you saw
22 Ms McCall one time for the sole purposes of
23 determining whether or not she was a surgical
24 candidate?

25 A Not the sole purpose And to see if there was

1 anything else I could recommend to help her

2 Q And would it be a fair statement to say that you
3 based your opinions upon an MRI report from Seneca
4 Diagnostic and the records provided to you by Henry
5 Ramirez?

6 A And the actual films

7 Q And the actual films And you personally reviewed
8 those films?

9 A Yes

10 Q Following the one visit that you had with Ms
11 McCall, did you make a referral to a Dr Rogers for
12 extensive physical therapy, continued non-steroid
13 anti-inflammatory drugs, pain modality-based
14 treatment, and possibly injections?

15 A Yes

16 Q Why did you feel that that was necessary?

17 A Because I felt that those modalities may give her
18 pain relief, and I did not feel I could help her
19 surgically

20 Q On the first page of your record, it states that
21 the functional impairment is very severe, and when
22 present, the patient is unable to carry out any
23 daily activities Is that true?

24 A That's what she told me My employee enters that
25 data

1 Q But that is in your medical record correct?

2 A That is in my medical record, yes She told
3 someone that

4 Q Did she ever explain to you that there was any
5 other injury at all following her fall at work on
6 6/29 of '06?

7 A I'm basing everything on what I've looked at today
8 I certainly don't remember the details of the
9 encounter, but on that day in August, I don't
10 recall any other date mentioned I didn't document
11 any other injury

12 Q If someone is in need of pain management and
13 extensive physical therapy, continued drug
14 administration and injections, is it fair to say
15 that they are truly at MMI? And let me qualify
16 that If their pain is severe enough that they
17 still need injections, and they are from a
18 functional standpoint --

19 A I understood you the first time, there, yeah I
20 put them at MMI with the basis that it's non-
21 surgical, and this is going to be an ongoing
22 problems I mean, I don't have to do that I do
23 so much Worker's Comp that's been the most -- I
24 think the best way to handle it But is she cured?
25 No Is she at MMI? My rating wouldn't change, and

1 we put in here that as long as Worker's Comp
2 understands that she needs these other treatments,
3 that's how I do it So what's the end point going
4 to be on someone with chronic pain? At some point
5 it has to end At some point there has to be a
6 resolution to the Worker's Comp claim, in my view,
7 and as long as she has the appropriate treatment
8 lined up, I don't really know what else treatment
9 -- that covered everything, that we mentioned

10 Q Are patients such as Ms McCall, are there
11 additional medical treatments that can be provided
12 to her that can help alleviate her pain and
13 possibly resolve it?

14 A Sure When I put this down, I try to cover the
15 whole range Pain management is a catch-all
16 statement, medications, injections, and physical
17 therapy All those other treatments you might be
18 referring to fall under pain management, in my
19 opinion, without specifically listing, because I
20 don't know what they are, necessarily

21 Q You were asked to look at some medical records from
22 a chiropractor that had some dates on it In your
23 experience as a physician in reviewing medical
24 records -- and we're assuming that that was a
25 medical record that you looked at -- but isn't it

1 possible that sometimes people just write down the
2 wrong dates in the records?

3 A Certainly it's a possibility

4 Q Doctor, I'm going to hand to you a report from Dr
5 William W Woodruff, III He's from Jamestown,
6 North Carolina Are you familiar with Dr
7 Woodruff?

8 A No

9 Q Okay If you could, just review that report, and
10 I'm going to ask you a couple of questions

11 A Okay

12 Q Doctor, if I could draw your attention to about
13 midway down the third paragraph, where it says at
14 C2-3 It says that there is now a small central
15 bulge of disc material which does not impress upon
16 the existing nerve roots

17 A Okay

18 Q A similar finding is present at C3-C4 These were
19 not present in 1999

20 A Okay

21 Q Did you observe any disc bulges in her neck?

22 A Yes

23 Q Okay A disc bulge - and correct me if I'm wrong -
24 a disc bulge would not be a degenerative change,
25 correct?

1 A It is a degenerative process

2 Q Could a disc bulge be consistent with a traumatic
3 event?

4 A Yes

5 Q Could it be consistent with a traumatic event such
6 as falling off of a 12- to 16-inch stool flat on
7 your back onto a concrete floor?

8 A Yes

9 Q Okay It also goes on to state that at C4-C5
10 there's a moderate central and right paracentral
11 protrusion of disc material without frank disc
12 extrusion or stenosis Did you also observe that
13 in Ms McCall's neck?

14 A I assume I did

15 Q Okay Is it fair to say, Doctor, that other than
16 just degenerative changes, that in Ms McCall's
17 neck there were findings that could be consistent
18 with a traumatic event?

19 A It could be Most bulges -- the vast majority of
20 bulges I see are degenerative, but certainly could
21 be a traumatic event I wouldn't say probable, but
22 it could be

23 Q Is it fair to say that based upon the report that
24 you're viewing, there are several findings that are
25 present in Ms McCall's neck that were not present

1 prior to the accident as shown by an MRI dated
2 November 17th, 1999?

3 A Yes

4 Q If you could, turn to page two for me, too Not
5 the thank you paragraph, but about towards the end
6 of that last paragraph, it says there is now
7 relatively mild generalized disc bulging at L4-L5,
8 which is also new

9 A Yes

10 Q Did you have a chance to observe that in Ms
11 McCall's lumbar spine?

12 A I don't think I had her 1999 --

13 Q Okay

14 A I don't know if it was new or not, but I wasn't
15 impressed with anything I saw in her lumbar MRI,
16 according to my notes

17 Q When you look at an MRI, do you look at it
18 primarily from a standpoint, is there anything I
19 can do surgically? Or do you look at it from a
20 standpoint, or is there something there that is
21 treatable?

22 A Right I try to see if there's something there
23 that -- is there something we can treat?

24 Q Okay But from your standpoint, are you just
25 looking for a surgical intervention?

- 1 A No I'm looking for something to treat
- 2 Q Okay
- 3 A If I can't, I will refer to the appropriate people
- 4 Q Okay
- 5 A If I felt like treatment is appropriate
- 6 Q Okay Do you do any other type of treatments
- 7 through your practice, other than surgical
- 8 intervention?
- 9 A No, other than make referrals
- 10 Q Okay And you did refer Ms McCall to Dr Rogers,
- 11 correct?
- 12 A Right
- 13 Q Okay Thank you, that's all the questions I have
- 14 about the report Doctor, prior to today, have you
- 15 had any conversations about this case or the
- 16 treatment of Ms McCall with anyone from the office
- 17 of Grady Beard?
- 18 A I don't think so
- 19 Q Do you know if anyone from your office had any
- 20 conversations?
- 21 A I don't know
- 22 Q Okay You stated earlier that you do a lot of
- 23 Worker's Comp treatment About what percent of
- 24 your practice is attributable to treating Worker's
- 25 Comp patients?

1 A Thirty

2 Q And the treatment for the Worker's Comp, is this at
3 the request of the employee or the employer or the
4 insurance carrier?

5 A All of the above

6 Q Okay Doctor, do you think that you can fairly
7 state to a reasonable degree of medical certainty,
8 based upon the few records that you have regarding
9 Ms McCall and the one visit that you had with her,
10 do you think there's any way that you could state
11 to a reasonable degree of medical certainty what
12 caused the changes in her back, the exacerbation of
13 the degenerative changes and also these new
14 findings that I've showed you according to the
15 report of Dr Woodruff?

16 A Can I describe it with 100 percent certainty? Is
17 that what you're asking me?

18 Q I'm just asking, do you think that you could even
19 state to a reasonable degree of certainty what
20 caused these findings in her spine?

21 A I think I can I think I can, by progression of
22 arthritis It's been seven, eight years, or
23 whatever, since her last MRI And I think that's
24 most probable But it could be a traumatic
25 component, too

1 Q Do you have any reason to doubt that Ms McCall
2 fell on her back on June 29th of '06?

3 A No

4 Q Okay Do you believe that that fall could
5 exacerbate existing conditions in her spine?

6 A Yes

7 Q And do you believe that to a reasonable degree of
8 medical certainty?

9 A Yes

10 Q Do you believe that that fall could be of such a
11 traumatic nature that it could cause these bulges
12 that I showed to you in the report from Dr
13 Woodruff?

14 A I just don't think it -- I don't think that usually
15 happens, but I think if someone had -- they'll
16 break their neck, I don't think they'll get a bulge
17 from it That's my opinion I think it's more
18 likely explained by degenerative arthritic changes,
19 bulges, than degenerative change I put posterior
20 longitudinal ligament thickening, which is
21 degenerative, in my interpretation of it Your
22 colleague there didn't write that there, so
23 But could she have a bulge after a fall? Yes Is
24 it more likely from degenerative findings? That's
25 what I think

1 Q You gave a rating just a few minutes ago of five
2 percent Is that based upon anything other than
3 just your one visit and your review of the MRIs,
4 the five percent that you stated?

5 A Based on any other information No, I only saw her
6 one time

7 Q And you stated that you give that to all your
8 patients

9 A Not all

10 Q That's with a similar condition

11 A With a similar, non-operative cervical spine
12 injury, with myofascial type pain, that's the
13 rating that I give

14 Q Okay Does that take into account any type of
15 restrictions in her movement or --

16 A That takes into account everything as I see things

17 Q Assuming that Ms McCall is still experiencing the
18 symptoms that she reported to you when she had the
19 consultation visit with you on August 29th, 2007,
20 do you think that she would benefit from the same
21 recommendations that you made regarding pain
22 management and the referral to Dr Rogers?

23 A Yes

24 Q Dr Kanos, that's all the questions I have Thank
25 you

1 RE-DIRECT EXAMINATION BY MR HAYES

2 Q Doctor, did you know that she has been seeing Dr
3 Rogers?

4 A I did not know it

5 Q Okay He's not sending you copies of medical
6 reports or anything?

7 A I don't think he has I honestly don't know what's
8 been going on since I've seen her

9 Q Thank you, that's all I have

10 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS
11 CONCLUDED AT APPROXIMATELY 4 52 P M)
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Before the South Carolina
Workers' Compensation Commission

W C C File No 0627287

Donna L McCall,)
)
Claimant,)
)
-VS-)
)
Sandvik/Valenite,)
)
Employer,)
)
-AND-)
)
Sentry Claims Service,)
)
Carrier)
_____)

COPY

DE BENE ESSE
DEPOSITION OF DAVID S ROGERS, M D

Pursuant to notice and/or agreement, the examination of DAVID S ROGERS, M D , called by the Claimant, was taken commencing at the hour of 4 45 p m on the 29th day of January, 2008, at the Oaktree Medical Center, 115 Brushy Creek Road, Easley, South Carolina

Danette Hanks, Reporter

Danette Hanks
Court and Deposition Reporters
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(864)225 2394 (800)476-6409

APPEARANCES

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(By telephone)

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Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Employer

Also present
Donna L McCall
Mr McCall

Stipulations

1 This is a de bene esse deposition taken
pursuant to the South Carolina Rules of Civil Procedure
and all objections will be stated on the record

2 The reading and signing of the deposition by the
witness is expressly waived

I N D E X

Direct examination (Simmons)	4
Cross examination (Beard)	21

3
/

E X H I B I T S

Defendant Exhibit 1 marked	63
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1 David S Rogers, M D , being duly sworn to tell the
2 truth, the whole truth and nothing but the truth,
3 testified as follows

4 (Direct examination by Mr Simmons)

5 Q Dr Rogers, could you please state your full legal
6 name for us?

7 A David Stephen Rogers

8 Q Dr Rogers, have you ever had your deposition taken
9 before?

10 A Yes

11 Q Okay I mentioned this to you earlier I'm the
12 attorney that's representing Donna McCall in a
13 workers' compensation claim that's been brought
14 against her employer and insurance carrier And my
15 name is Todd Simmons and I work with the law firm of
16 Larry C Brandt, P A and I'm going to be asking you
17 some questions And as I mentioned to you, I'm
18 going to try to keep this just as short as possible
19 And I will just remind you that you are under oath,
20 that if you don't understand a question that I ask
21 or if you need for me to rephrase something, please
22 ask me to do so If you've given an answer to a
23 question of mine, I'm going to assume that that's
24 the answer that you intended And everything that
25 we are saying is being put down word for word in a

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1 transcript form Do you understand that?

2 A Yes

3 Q Okay Thank you How old are you, Dr Rogers?

4 A Fifty-three years old

5 Q Are you currently married?

6 A Yes

7 Q And do you have any children?

8 A Yes

9 Q Okay How old are your children?

10 A Stepdaughter is twenty-five and my son is twenty-
11 three

12 Q If you could briefly walk me through your education?
13 I don't need to know your -- anything other than the
14 fact that you graduated from high school, but just
15 college, medical school and any other schools that
16 have led you to this point in your life?

17 A Undergraduate at Marshall University, medical school
18 at UAT, postgraduate training University of Miami,
19 West Virginia University, residency at MUSC in
20 Charleston, a fellowship at MUSC in Charleston,
21 associate professor, clinical director, headache
22 program at MUSC Then I was medical director for a
23 contract research organization for two years before
24 I came to Easley I've been here for the last eight
25 years

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1 Q Okay Do you hold any special certifications or
2 specializations?

3 A Special certifications? No

4 Q Okay Are you board certified?

5 A No

6 Q Okay And prior to working -- I believe you just
7 stated your professional work history is that true?

8 A Yes

9 Q Okay Here at -- what's the name of where you
10 practice now currently?

11 A Oaktree Medical Center

12 Q Okay And what -- is there any particular area of
13 practice that you engage in here at Oaktree?

14 A I'm an adult neurologist, but I subspecialize in the
15 treatment of headache and chronic pain

16 Q Okay What does it mean to be an adult neurologist?

17 A Well, as opposed to being a child neurologist, I
18 principally practice on adults, people over the age
19 of eighteen

20 Q What does it mean to be a neurologist?

21 A A neurologist is a subspecialty of medicine that
22 focuses on diseases of the nervous system

23 Q In your practice, Doctor, have you had an
24 opportunity to provide care and treatment to a Donna
25 McCall?

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1 A Yes

2 Q And have you had an opportunity to examine and treat
3 Ms McCall for injuries that she has claimed to have
4 suffered after a work accident on June 29th of 2006?

5 A Yes Wait a minute Was that not 2007?

6 Q The work injury that's the basis of this claim is
7 June 29th, 2006

8 A Okay

9 Q Has Ms McCall explained to you the basis of that
10 injury?

11 A It's my understanding that she fell and struck her
12 head on concrete

13 Q When did you first begin treating Ms McCall?

14 A Initially evaluated Ms McCall November 29th, 2007

15 Q And how did she come to your care, Dr Rogers?

16 A I think she was a referral from Dr Patel

17 Q When Ms McCall first visited you on the 29th of
18 November of 2007, what were her complaints? And at
19 anytime during this questioning, if you need to
20 refer to your chart, please feel free to do so

21 A She was complaining of headaches, cervical neck
22 region pain, lower back pain, problems with vertigo,
23 concentration difficulties, some tinnitus and light
24 sensitivity as well as weakness and numbness, upper
25 extremities, and numbness in left leg and left hip

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1 She was also reporting some insomnia

2 Q Has she ever reported to you that she's suffered any
3 pain or strange sensations in her arms or shoulders?

4 A Well, yes She was complaining of weakness and
5 numbness in upper extremities That would include
6 the arms And I don't have any notification of
7 shoulder discomfort

8 Q Okay Did Ms McCall convey to you that this pain
9 and the symptoms that she has presented to you with
10 were onset after her accident of June 29th of 2006?

11 A Yes

12 Q Okay And when you first started treating Ms
13 McCall, did you take a medical history from her
14 regarding her prior medical problems?

15 A Yes

16 Q Okay Did she ever disclose to you that she had had
17 some headaches and some back problems in the past,
18 either through intake forms or through discussions
19 during your visits with her?

20 A Well, I suspect she had a history of headache, but I
21 didn't have any history of low back pain

22 Q Okay On your visit of November 29th of 2007, if
23 you could refer to your notes for me and walk me
24 through your clinical findings from the visit with
25 her that day and discuss what your assessment was of

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1 Ms McCall based upon that visit?

2 A Well, I noted that Ms McCall was having headache
3 approximately seventeen days out of a month These
4 headaches were pulsatile and they were associated
5 with sensitivity to light She was reporting
6 posterior cervical or occipital discomfort She was
7 also reporting low back pain and some discomfort
8 through left lower extremity On examination she
9 demonstrated evidence of carpal tunnel in the wrists
10 bilaterally She had sensitivity in the lumbar
11 spine to palpation She had some sensory loss
12 proximal to the wrist in right upper extremity She
13 had some cervical spine tenderness to palpation
14 She also demonstrated some abnormalities on mental
15 status evaluation

16 Q And did you create -- did your office create notes
17 or a medical record following that visit?

18 A Yes

19 Q And just to make sure that I have the correct
20 records, would that be a document of five pages that
21 is date of service 11/29/2007?

22 A Yes

23 Q Okay And under the history of present illness,
24 does that clarify for you the June of 2006 where she
25 conveyed to you the work injury mechanism?

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1 A Yes

2 Q Okay After that visit, was there any course of
3 treatment or assessment or plan that you engaged in,
4 in treating Ms McCall?

5 A Well, my diagnoses after the initial visit was
6 postconcussive syndrome, occipital neuralgia,
7 cervical facet syndrome, carpal tunnel syndrome,
8 lumbago, sacroiliitis My initial goal was to try
9 to get her headaches under control and then manage
10 the cervical and lumbar pain I put her on my
11 standard headache program, instructed her on low
12 tech physical therapy We started medicine for
13 memory called Namenda I also started a muscle
14 relaxant called Baclofen And I kept her on medical
15 work leave until her follow-up appointment in one
16 month

17 Q And did Ms McCall follow up with you as recommended
18 in one month?

19 A I next saw Ms McCall December 27th, 2007

20 Q And if you could briefly walk me through that visit
21 and your findings and continue with your diagnosis
22 and your plan of treatment?

23 A She was still having headache She was still having
24 symptoms that were consistent with postconcussive
25 syndrome Said she was forgetful She had left the

1 oven on for over an hour She reported persistent
2 insomnia due to left lower extremity pain And
3 reported no side effects to medications So at that
4 time my diagnoses were unchanged I encouraged her
5 to use some over-the-counter nonsteroidal anti-
6 inflammatories and some magnesium supplements
7 Other medications stayed the same and she was to
8 return to me in four weeks

9 Q Okay And did you, at that time, write her out of
10 work for another period of time?

11 A I believe, I believe that's correct

12 Q Okay On these diagnoses that you've discussed with
13 us, could you please elaborate as far as briefly
14 what each one of them is And let's start with -- I
15 think we all know what carpal tunnel syndrome is,
16 but what is postconcussive syndrome?

17 A Postconcussive syndrome is a collection of symptoms
18 that persist after a person has a closed head
19 injury, like a concussion

20 Q Okay How about the occipital neuralgia?

21 A Occipital neuralgia means that there is some
22 disruption in the occipital nerves in the posterior
23 portion of the skull that can contribute to
24 persistent headache or neck pain

25 Q Is that something that can be triggered by a closed

1 head injury or trauma to the head?

2 A Yes Absolutely

3 Q Okay How about facet syndrome?

4 A Facet syndrome I felt that she had a cervical
5 facet syndrome which means that the bones in the
6 cervical spine can be damaged and cause
7 inflammation And they can cause decreased cervical
8 range of motion They can also cause muscle tension
9 and discomfort in certain specified areas of the
10 posterior shoulder and neck

11 Q And if you could please elaborate for us, and I may
12 mess this pronunciation up, but sacroiliitis?

13 A Sacroiliitis The sacroiliac is the largest joint
14 in the body It's in the posterior lumbar area
15 And it's the union between the posterior portion of
16 the hip and the sacrum, which is a large fused
17 arrowhead shaped bone at the very base of the spine

18 Q After the visit on -- I believe you said your next
19 visit was 12/27 of 2007?

20 A Yes

21 Q Did you have an opportunity to visit or treat Ms
22 McCall after that appointment?

23 A Yes My last visit with Ms McCall was January 24th
24 of this year

25 Q And if you could -- I don't have the notes from that

1 visit If you could please elaborate for me about
2 that visit and tell me what your findings and your
3 diagnoses was?

4 A Well, Ms McCall said that her neck was okay, was a
5 little tight She said her bad headaches have gone
6 away She was continuing to report an unusual type
7 of tinnitus she described as quote, ticking in my
8 head, end quote She was still reporting loss of
9 memory She was demonstrating increased anxiety
10 She was tearful through the interview She was
11 reporting no side effects to medication She said
12 she was only sleeping about five hours a night with
13 early awakening I performed an animal fluency test
14 on her She scored seven animals She identified
15 seven animals in thirty -- in sixty seconds We
16 also completed a mini mental status examination on
17 her at that time and she scored twenty-three out of
18 thirty, which indicates some cognitive impairment
19 I started her on an antidepressant called Lexapro,
20 continued it on -- continued on Namenda, provided
21 samples enough for a month at that time And I also
22 stated that she was unable to return to work at that
23 time due to significant affect of dysfunction

24 Q On that visit did you write Ms McCall out of work
25 for another period of time?

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1 A Yes

2 Q Okay And do you have any plans for a follow-up
3 visit and continued treatment with Ms McCall?

4 A Her next visit should be within a month

5 Q Okay Through your course of treatment with Ms
6 McCall, have you had an opportunity to actually
7 order, perform or review any radiological studies of
8 her spine or any of the other affected areas that
9 you've been treating?

10 A An MRI of cervical spine and an MRI of lumbar spine
11 were obtained August the 6th, 2007

12 Q And did you have an opportunity to review the
13 reports from that ---

14 A Yes

15 Q -- MRI? And based upon your review of that report,
16 are the injuries -- are there any injuries there
17 that are consistent with a fall during June 29th of
18 2006?

19 (By Mr Beard)

20 Object to the form of the question

21 (Direct examination continued by Mr Simmons)

22 Q You can go ahead and answer

23 A Well, for a cervical spine it looks like there's
24 preexisting degenerative disc disease But there's
25 also a broad based disc protrusion at C4-5 level,

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1 which could be caused from blunt trauma. The lumbar
2 spine showed a disc protrusion at L4-5 level to the
3 left, a disc bulge at L1-2 level and some diffuse
4 lumbar facet arthropathy, also mentioned by the
5 reviewing neurologist.

6 Q In your review of that MRI report, was there any
7 indication of any type of tearing such as an annular
8 tear at C4-C5?

9 A It says, moderate caliber broad based posterior disc
10 protrusion with annular tear.

11 Q What exactly is an annular tear in lay terms?

12 A It's a rent in the annulus, which is the tough
13 protective covering of the disc.

14 Q Other than the treatments that you've described
15 regarding your visits with Ms. McCall, have you
16 performed or prescribed any other type of procedures
17 regarding her treatment?

18 A I've provided no interventional care. That's really
19 the realm of Dr. Patel. It was my goal to try to
20 suppress a lot of her symptomology, principally her
21 chronic daily headaches or her persistent headaches.
22 And I would like to say that I've just had three
23 visits with Ms. McCall, so I think we're basically
24 in the initial periods of therapy with her.

25 Q I know that you've only had three visits, but based

1 upon the course of treatment that you have
2 prescribed for Ms. McCall, have you seen an
3 improvement in her symptoms?

4 A I've seen some improvement, but I've also seen some
5 persistent symptomology and actually perhaps some
6 deterioration in her mood

7 Q Okay. Once you have treated the symptomology, is
8 there a long term course of treatment or a plan such
9 as an order of what comes next that you plan on --
10 and I believe you mentioned Dr. Patel as part of the
11 treatment?

12 A Well, Dr. Patel is in charge of the interventional
13 care, which would be injections. And I think he's
14 completed his course of most recent cervical
15 injections. My goal would be to try to suppress the
16 discomfort, the headaches, the persistent pain, to
17 the point where Ms. McCall could possibly undergo a
18 course of physical therapy, either structured
19 physical therapy at a facility or low tech physical
20 therapy at her home

21 Q Do you expect that her pain and limitations would
22 get better with further medical treatment?

23 A I would hope so

24 Q Do you believe that she needs any further diagnostic
25 studies as part of your care or the care of Dr.

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1 Patel that you have been providing this treatment
2 with and in conjunction with?

3 A I don't think that there's any testing that's
4 absolutely essential to her medical care. There may
5 be some testing that may be preferred and helpful to
6 the condition, but I don't think there's anything
7 that's absolutely necessary at this time.

8 Q Have you -- other than the fact that -- excuse me
9 Go ahead?

10 A Let me clarify that. I do think nerve conduction,
11 lower extremities, may be more than just academic.

12 Q Do you believe that's something that would be
13 essential to giving her proper care?

14 A If she has persistent left lower extremity pain and
15 weakness, I think that that would be a test that I
16 would like to obtain.

17 Q Other than the fact that you've presently written
18 Ms. McCall out of work, have you placed any physical
19 limitations on her activity?

20 A I've not -- I don't think I've made any specific
21 recommendations in that area. It's activity as
22 tolerated. But it's my opinion that any type of
23 vigorous activity would likely aggravate her
24 condition.

25 Q Doctor, based upon your treatment of Ms. McCall, the

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1 history that you obtained and the observations that
2 you've made and the tests that you've done, based
3 upon that treatment, do you believe to a reasonable
4 degree of medical certainty that the conditions that
5 you are treating her for were caused by the fall
6 that she had at work on June 29th of 2006?

7 A Yes But that's -- let me qualify that I think
8 it's superimposed over some preexisting arthritic
9 conditions

10 Q Okay Other than the arthritic conditions that are
11 present, are there any other symptoms or injuries
12 that you're treating or that you've observed that
13 you feel are not related to the June 29th, 2006
14 accident?

15 A Yes

16 Q And could you please elaborate?

17 A I think Ms McCall has migraine syndrome and that
18 was certainly preexisting to the injury as well

19 Q Do you believe that the concussive syndrome that
20 you've been treating her for was caused by or
21 triggered by the accident?

22 A Yes

23 Q Okay Is it too early -- and I understand that
24 you've only had three visits with her But is it
25 too early to tell at this time if she's going to

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1 have any type of permanent limitations as a result
2 of this accident?

3 A I mean, it's my opinion that all type of brain
4 damage is permanent. Sure, symptoms may improve
5 over time, but certainly there will be some long
6 term consequences to this head injury.

7 Q I just want to make sure I understand exactly what
8 you said as far as your current course of treatment.
9 Is it true that you want to continue to treat her
10 symptomology through medication and also through Dr
11 Patel through intervention through injections?

12 A I'm treating the symptomology now to try to reduce
13 some of the physical and emotional burden on the
14 patient. And hopefully, with some improvement, the
15 concussive symptoms will abate. To my knowledge
16 there's really no standard therapy or medication
17 that's clearly indicated for the treatment of
18 postconcussive syndrome. It's always a
19 multidisciplinary approach that's generally
20 instituted. Generally with time postconcussive
21 syndrome will improve if there's no further head
22 injury or if there's no significant pathology that
23 would interfere with patient's improvement. But
24 having said that, it's been noted that cases of
25 postconcussive syndrome have lasted decades with

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1 regards to the cervical and lumbar spine, treating
2 that symptomatically. I don't think that there's
3 anything surgically that can be offered even though
4 that there appears to have been disc damage
5 secondary to the fall. And once again Dr. Patel has
6 completed his interventional care with the use of
7 steroids that would probably preclude any further
8 injections of that sort for a period of months, if
9 not up to a year.

10 Q I know this is a very broad question, but can you
11 give us any type of projection of when you could
12 possibly release her from your care or get her back
13 into the workforce?

14 A When her symptomology abates, when she becomes more
15 functional, I think that's a possibility. In the
16 near future I'm not that optimistic however.

17 Q The treatment that you would like to continue
18 performing on Ms. McCall, this treatment, do you
19 feel that it is necessitated as a result of the fall
20 that she had on June 29th of 2006?

21 A Yes. I would say the bulk of it is.

22 Q Okay. And just one last question for you, Doctor.
23 Are the opinions that you've rendered today during
24 your deposition, are these your opinions to a
25 reasonable degree of medical certainty?

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1 A Yes

2 Q Okay I have no further questions I may have some
3 in follow-up But if you could please answer any
4 questions that Mr Grady Beard has

5 (Cross examination by Mr Beard)

6 Q Thank you Dr Rogers, my name is Grady Beard I
7 represent Valenite Sandvik with regard to workers'
8 compensation cases in South Carolina And I'll just
9 be quite frank with you A lot of us don't
10 necessarily agree with you in the statement you just
11 said, that the problems are, in fact, related to a
12 fall in June of 2006 And I'll be more specific by
13 this question How important to you is the history
14 given to you by your patient?

15 A It's very important

16 Q Okay Could you be more specific in terms of how
17 important is that history, especially in terms of
18 making determinations about the causation of
19 symptomology?

20 A Well, I think I rely on a patient's history
21 substantially to give me some direction in trying to
22 tailor my neurological examination to the situation
23 But also it tells me exactly what the patient's
24 principal concerns are

25 Q You indicated earlier during questioning by Mr

1 Simmons that -- he questioned you about the date of
2 accident and you said you thought it was actually a
3 2007 injury. What made you think this was a 2007
4 rather than 2006 injury?

5 A Well, I do have one, I do have one document that
6 states 2007. But looking back on these other
7 documents, it looks like it is 2006. I was -- I
8 wanted to clarify the date.

9 Q All right. Referencing that date of accident and
10 assuming for purposes of this question and some of
11 the answers you gave earlier that she actually did
12 sustain these -- you've given her diagnoses for the
13 cervical region, for the lumbar region and you've
14 related them to this accident that happened in June
15 of 2006. If, in fact, she had annular tears and
16 disc protrusions as a result of that accident,
17 wouldn't you have expected that to have shown itself
18 a year and a half earlier than it did?

19 A I don't think I'm following the question.

20 Q Sure.

21 A It's my opinion though that an annular tear would be
22 caused by blunt trauma. I don't think that annular
23 tears appear spontaneously and they're not a
24 consequence of like an arthritic process.

25 Q Okay. Well, assuming that's true and she had an

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1 annular tear on the MRI scan that you just reviewed
2 and discussed in your testimony, then wouldn't you
3 have expected her to have been treated for the, I
4 assume, acute annular tear or acute problems in June
5 of 2006 and continuing thereafter?

6 A Well, with all due respect, Mr Beard, I can testify
7 to my medical care I don't know if I can testify
8 to previous physicians' medical care

9 Q Well, that wasn't my question My question was,
10 wouldn't you have expected her to treat for that
11 type of an injury on an ongoing basis if, in fact,
12 that is what caused that type of injury?

13 A Once again I can't answer for what previous
14 physicians were thinking, what they were seeing on
15 examination or what they were obtaining through
16 interview

17 Q Following the initial accident on June the 29th of
18 2006, are you aware that Ms McCall did not seek any
19 medical treatment for nearly two months?

20 A No

21 Q Are you aware that after she sought her initial
22 medical treatment in August of 2006, she did not
23 again go back to a doctor for almost one year, until
24 July of 2007?

25 A I was not aware of that

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1 Q Do you not think that that's sort of an important
2 chronological history as far as what might actually
3 be the cause of her current problems since she
4 didn't seem to necessitate the need for ongoing
5 medical treatment for basically a year?

6 A Well if, in fact, she didn't seek medical care
7 during that period of time, that does not indicate
8 that she didn't have an injury

9 Q No, it doesn't But it doesn't indicate that she
10 did have one either, does it? Isn't that important
11 information that would question your causation
12 statement?

13 A I think it -- to me, it makes me curious as to why
14 she delayed in care But then again, I've seen
15 people delay care in very serious conditions for
16 various reasons, anxiety, denial So

17 Q Any indication that that was a problem during that
18 one year before you treated her?

19 A My records start with the MRI that was obtained
20 August 6th, 2007

21 Q All right So you didn't obtain or ask for or
22 receive any preexisting medical records from either
23 Mr Simmons or Ms McCall or anyone else in making a
24 determination about causation?

25 A No I think I requested the MRI reports and I did

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1 receive the MRI reports

2 Q You didn't receive any prior medical records on Ms
3 McCall?

4 A The earliest medical records I have are the MRI
5 reports from August 6th, 2007

6 Q Did you obtain a copy of the neurosurgeon's report
7 from Dr. Kanos?

8 A No. But I do have a note that Dr. Kanos deferred
9 surgery.

10 Q Okay. In fact, he said surgery was not something
11 that should be considered. Are you aware of that?

12 A I know that he deferred surgery. And I really don't
13 see any surgical lesions on the cervical or lumbar
14 MRI, so I think that was an appropriate decision on
15 his part.

16 Q All right. And you could not do surgery if that
17 were, in fact, the issue, correct? Dr. Kanos would
18 be the one that would do surgery?

19 A Dr. Kanos is a neurosurgeon. I am a neurologist.
20 Neurologists ---

21 Q Can you do -- are you qualified to do surgery?

22 A I am qualified to do surgery, but I wouldn't say
23 that I was qualified to do neurosurgery.

24 Q Okay. Are you qualified to do neck and/or back
25 surgery if that was necessary?

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1 A No

2 Q Do you have any hospital privileges to perform
3 surgeries?

4 A Well, I mean, it depends on what you consider
5 surgery A lumbar puncture may be considered
6 surgery

7 Q A lumbar what?

8 A A spinal tap

9 Q Okay

10 A Or suturing of patients So I think I'm capable of
11 doing that, but I'm not going to perform cervical or
12 lumbar surgery Not ---

13 Q Are you qualified to do either of those?

14 A Not been trained to do that

15 Q Okay What is your relationship with Dr Patel?

16 A My relationship with Dr Patel? We are both
17 employed by Oaktree Medical Center and I would say
18 that he's a colleague

19 Q He's a what?

20 A Colleague

21 Q Colleague? Why does his letterhead say Pain
22 Management Associates and your letterhead says
23 Oaktree Medical Center?

24 A I don't know that answer

25 Q But you are actually at the same physical location?

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1 A We are actually in the same building

2 Q Okay And Dr Patel, during his course of
3 treatment, referred, if I understood you correctly,
4 referred Ms McCall over to you, is that correct?

5 A Yes

6 Q And I think I understood this correctly You said
7 you are not board certified in South Carolina?

8 A I'm licensed to practice in South Carolina I'm not
9 board certified, which would be a national
10 certification

11 Q All right Do you have a C V , Doctor, that you
12 normally can provide for depositions?

13 A I have a C V , yes

14 Q Is that something that you could provide at the end
15 of the deposition to the court reporter and then
16 maybe give a copy to Mr Simmons so that he could
17 give me a copy later so that we could just attach it
18 to your deposition?

19 A If that's required

20 Q It's requested I'm asking you if that's something
21 that we could obtain a copy of for the benefit of
22 the judge who will be hearing this case?

23 A Sure

24 Q All right Your medical record indicates on
25 November 29th of '07 the first time you saw Ms

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1 McCall And you would agree that's about a year and
2 a half after her alleged accident or the accident,
3 correct?

4 A Yes

5 Q The accident was on June the 29th of '06 That's
6 roughly almost a year and a half later?

7 A It's fifteen months, but yes

8 Q All right Well, it's actually seventeen months?

9 A Let me do the calculation Twelve, twelve and five
10 You're right, seventeen months

11 Q Okay And you would agree that's almost a year and
12 a half?

13 A Yes I agree

14 Q Okay And at the time she saw you, according to
15 your history from the patient, it says, she was
16 complaining of headaches, neck and back pain And
17 that was essentially all she was complaining about,
18 is that correct?

19 A No That's not correct

20 Q Okay Well, what else was she complaining about?

21 A Well, let's go through it again

22 Q All right

23 A She was complaining of headaches, neck pain, back
24 pain, vertigo, problems with concentration,
25 tinnitus, light sensitivity, weakness and numbness

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1 in upper extremities, numbness in left lower
2 extremity and left hip, insomnia, difficulty with
3 standing or difficulty with changing positions,
4 difficulty with lifting, decreased energy, night
5 sweats, blurred vision

6 Q All of those complaints, are those things that you
7 just took off of a questionnaire that she prepared
8 in your office?

9 A No I took that off my note of November 29th, 2007

10 Q Did she fill out a questionnaire that had those
11 types of questions on it in your office when she
12 came there on November 29th of '07? Do you give
13 them forms to fill out ---

14 A Yes

15 Q -- that have those types of questions?

16 A Yes But I'm going with the history that I elicited
17 from the patient

18 Q All right Did you ---

19 A There are other symptoms that I obtained on history
20 if you want those as well

21 Q Well, what I would like to know is, did you create a
22 form in your office called postconcussive symptoms
23 and ask Ms McCall to fill that form out?

24 A No

25 Q Do you have any idea where that form came from that

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1 we received pursuant to a subpoena to your office?

2 A Yeah That's my form I created the form I
3 complete that at the time of obtaining a history
4 from the patient

5 Q Okay Well, that's -- okay So I am correct that
6 you created the form, but you just -- you fill it in
7 as you're with the patient?

8 A Yes

9 Q Okay And what reason did you have to think that
10 she had postconcussive syndrome or symptoms when she
11 first came into your office?

12 A Well, because she reported a closed head injury and
13 she was complaining of symptoms that are consistent,
14 somatic, affective and cognitive symptoms that are
15 persistent -- or that are consistent with
16 postconcussive syndrome

17 Q All right Did you -- or let me ask this question
18 Are there any objective tests that a doctor can
19 perform to determine whether someone actually has a
20 condition called postconcussion syndrome?

21 A Yes

22 Q What are the objective tests?

23 A The objective tests that I performed was an animal
24 fluency test and mini mental status examination

25 Q All right Now, explain to me how either one of

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1 those ---

2 A In addition ---

3 Q -- are possibly objective?

4 A In addition to a Beck's Depression Inventory

5 Q Explain to me how any of the three of those are
6 objective testing?

7 A Well, animal fluency test is a rather specific test,
8 up to ninety-five percent specificity to indicate
9 whether a person has cognitive impairment The mini
10 mental status examination is used worldwide to
11 determine the presence of brain injury or brain
12 dysfunction And the Beck's Depression Inventory is
13 commonly used to assess level of affective
14 symptomology associated with the patient's
15 condition

16 Q Well, you're the first doctor I've ever had testify
17 that the Beck's depression test would be an
18 objective test Does it not rely on the patient --
19 every one of the tests you just mentioned, do they
20 not rely on subjective responses from the patient
21 for you to make a determination?

22 A Subjective tests, but they're -- it's interpreted
23 objectively

24 Q Well, Doctor, if someone has to rely on subjective
25 responses, is that not, in fact, a subjective test?

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1 Cannot a patient manipulate those responses?

2 A Well, I imagine a patient could probably manipulate
3 any type of test if they're determined to do so
4 But the ---

5 Q Can a patient manipulate a brain scan?

6 A Can I finish my statement?

7 Q Oh, I'm sorry I thought you were

8 A The subjective information is tabulated and an
9 objective score is produced So a numerical score
10 can't be really related to a subjective input

11 Q Well, the numerical score is just something that you
12 tabulate based upon the subjective responses from
13 your patient, correct?

14 A Yes But the ---

15 Q And you knew when your patient came into your office
16 she was claiming and pursuing a workers' comp
17 litigation claim, correct?

18 (By Mr Simmons)

19 Grady, if you could let him answer the question
20 completely

21 (By Mr Beard)

22 I'm sorry I thought he was again

23 (By Mr Simmons)

24 Yeah Because we've got the transition through the
25 phone here, it's kind of -- those pauses seem a little

1 long, but he is trying to answer your question If
2 you could ---

3 (By Mr Beard)

4 I apologize

5 (By Mr Simmons)

6 Thank you

7 (By Mr Beard)

8 I'm sorry

9 (Cross examination continued by Mr Beard)

10 A The score response is built into the Beck's
11 Depression Inventory to eliminate people that are
12 trying to minimize their symptomology So I think
13 it is an objective testing

14 Q Okay Well, again you're the first doctor I've ever
15 heard say that So that's my concern, is that you
16 think that that's an objective test The ---

17 A I

18 Q I'm sorry?

19 A I'm sorry No Go ahead

20 Q I was going to say the other two tests -- do every
21 one of the tests that you mentioned, are they all
22 based upon the responses -- subjective responses
23 from your patient?

24 A They're based on the responses of the patient, yes

25 Q Okay And would you agree that responses from a

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1 patient are subjective? You don't know whether
2 they're telling you the truth or not. You just have
3 to assume that they are correct?

4 A No. I think I would be a pretty faulty practitioner
5 if I wasn't able to tell when patients were trying
6 to mislead me.

7 Q You don't think that patients mislead doctors all
8 the time in litigation cases?

9 A I think that some patients may attempt to mislead
10 their physicians. But I think that it would be a
11 poor physician that can't pick up when a patient is
12 attempting to do that.

13 Q Are you familiar with the substantial literature
14 that have been written into many of the medical
15 treatises dealing with patient fraud and patient
16 manipulation and patient malingering, exaggeration,
17 those types of things?

18 A I'm familiar with such articles, yes.

19 Q All right. And you don't think, Doctor, in the
20 entire history of being a physician that you've ever
21 been duped by a patient, not one time?

22 A I didn't say that.

23 Q I'm asking you, do you think you've ever been duped
24 one time by a patient?

25 A Absolutely. You learn from experience. But ---

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1 Q If you have a history -- you indicated that ---

2 (By Mr Beard)

3 Grady, let him -- he's still answering your
4 question

5 (By Mr Beard)

6 Okay I'm sorry

7 (Cross examination continued by Mr Beard)

8 A But you're inferring Ms McCall is malingering

9 Q No, sir I didn't infer anything I just asked you
10 the question

11 A Okay Please proceed

12 Q Okay You indicated earlier that there were certain
13 things that you did not relate to the accident that
14 you were treating Ms McCall for And I think the
15 first one you said was you thought she had migraine
16 syndrome preexisting, is that correct?

17 A Yes

18 Q All right And what makes you think that?

19 A Because migraine is an inherited neurological
20 condition People are born with migraine, so I
21 think that would make it preexisting

22 Q All right How do you tell the difference between,
23 for instance, migraine headaches and headaches
24 associated with postconcussion syndrome?

25 A Well, migraine, migraine related headaches have

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1 certain characteristics Using I D migraine with
2 about eighty-five to ninety-five percent certainty,
3 if a person has pulsatile headaches and photophobia
4 and incapacitating headaches, that's a migraine
5 related headache Now, when people have head
6 injuries, they have damage to the brain, there's
7 damage both structurally and neurochemically, most
8 any type of headache can be magnified So I don't
9 think there's any particular type of headache that's
10 specific to having a concussion

11 Q Okay Did you request or have you seen any MRI
12 scans on Ms McCall's brain?

13 A No

14 Q Have you seen any objective radiological testing, CT
15 scan of the head, anything, on Ms McCall's brain?

16 A No

17 Q Have you ever referred her out for a
18 neuropsychological evaluation by a
19 neuropsychologist?

20 A No But I was asked earlier if there was any
21 testing that I think that would be mandatory I
22 don't think that neuropsychologic testing is
23 mandatory It would be helpful, but I don't think
24 it's mandatory for me to treat her

25 Q Correct Would it be help -- what would it be

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1 helpful for?

2 A It would probably help to validate the level of
3 impairment that Ms McCall has and may disclose some
4 deficits that she has that we haven't picked up on
5 yet

6 Q Would your psychological ---

7 A But ---

8 Q I'm sorry

9 A But in reference to an MRI, you can have a normal
10 MRI, but you can still have a significant
11 concussion The MRI is not the definitive test for
12 determining whether a person has had traumatic brain
13 injury

14 Q How do you know, Doctor, that she had a concussion?

15 A Medical records, medical history, my examination
16 It all fits To me it makes sense She has
17 significant symptomology consistent with
18 postconcussive syndrome

19 Q What medical records do you have before August of
20 2007, specifically a year in advance of that, that
21 show Ms McCall had a concussion?

22 A Once again the earliest record I have is August 6th,
23 2007 The medical records from Dr Patel do make
24 mention of closed head injury

25 Q Well, that's based on the history of the patient,

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1 correct?

2 A Once again you're going to have to ask Dr. Patel how
3 he arrived at his history

4 Q Well, you just relied on Dr. Patel's history you
5 just said in that answer, so ---

6 A Yes

7 Q -- I'm asking are you basing that opinion strictly
8 on Dr. Patel's history?

9 A I have to trust other physicians' histories as
10 accurate

11 Q If she had a concussion, don't you think that it
12 would have been noted in the doctor reports from
13 whenever she went to the hospital?

14 A Not necessarily. And quite commonly it's not
15 documented

16 Q Okay. Don't you think she would have treated with a
17 doctor for a concussion within the year following
18 such an incident?

19 A Not necessarily. Many times people with
20 postconcussive syndrome have a variety of
21 symptomology that they can't explain. It's not
22 clear cut. They have different problems that don't
23 make sense to them. They're concerned about that.
24 They're anxious about that. Maybe they don't want
25 to seek medical care because maybe they're afraid of

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1 what they might find

2 Q Were you aware that Ms. McCall had actually treated
3 for what she described as a pinched nerve in her low
4 back at the exact same level L4-5 with a
5 neurosurgeon in 1999 and subsequent to that for a
6 period of time?

7 A No. I didn't know that.

8 Q Would that be important to know in terms of trying
9 to determine the causation of whatever low back
10 problems she may have?

11 A I would say that's important, yes.

12 Q Were you aware that I have information that Ms.
13 McCall also treated with the same doctor for neck
14 symptomology at that period of time? Did she tell
15 you that?

16 A No.

17 Q Did she tell you she had MRI scans on both her neck
18 and low back in 1999 and was having problems with
19 all four of her extremities at that time?

20 A No.

21 Q Is all of that important to know in terms of
22 historical knowledge as well as causation
23 determinations?

24 A Well, I think it would be curious to see the MRI of
25 cervical spine from 1999 to make a comparison to the

1 MRI of August 6th, 2007 I think that that could
2 help delineate whether there was traumatic injury
3 from June 29th, 2006

4 Q You listed on your first report when you saw Ms
5 McCall numerous -- it says, current medication list,
6 Skelaxin, oral tablet, eight hundred milligrams
7 What is that?

8 A Skelaxin is a muscle relaxant

9 Q Do you know who had prescribed that for her?

10 A I would assume it's Dr Patel

11 Q Okay What is, and I'm not sure how to say this
12 word, Nabumetone, oral tablet?

13 A It's a nonsteroidal anti-inflammatory

14 Q Would that have been Dr Patel most likely as well?

15 A These are the medications that the patient presented
16 to me with, so I do not have a notification of who
17 the prescribing physician was

18 Q Okay What is Cymbalta?

19 A Cymbalta is an S N R I antidepressant medication

20 Q And you don't have any idea who had prescribed that?

21 A I would assume Dr Patel

22 Q All right You also indicated that Ms McCall
23 apparently had grade one hypertension in at least
24 part of the history of your report What is grade
25 one hypertension?

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1 A On the fundoscopic examination I felt that she had
2 some hypertensive changes in the arterioles in the
3 back of her eye

4 Q What kind of symptoms are involved with hypertension
5 in a grade one hypertension? What type of symptoms
6 would a patient normally have from that?

7 A This is a physical sign It doesn't have to be
8 associated with symptomology

9 Q Does hypertension occasionally have symptomology
10 associated with it?

11 A Yes, it can

12 Q What type of symptomology is associated with
13 hypertension?

14 A With uncontrolled hypertension it could be
15 agitation It could be headache It could be
16 pulsatile tinnitus

17 Q Would you agree that those are some of the
18 symptomologies that Ms McCall presented to you
19 with?

20 A No

21 Q You wouldn't agree with that?

22 A She did not present with a pulsatile tinnitus I
23 didn't really see any overt agitation on the initial
24 visit And I don't think her headaches were related
25 to hypertension Once again I stated previously I

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1 thought her headaches were migrainous in nature

2 Q During your physical exam you mentioned that she
3 had, it says on the report I'm reading, it says,
4 intention tremors in both upper extremities What
5 does that mean?

6 A Well, she had tremor in upper extremities My
7 personal feeling, it was physiologic tremor I
8 don't think it was an intentional tremor I think
9 this is just a typographic error or a pull down
10 screen error on the electronic medical records

11 Q But do you see what I'm talking about on page three
12 of your report?

13 A I see it But I think that it probably more
14 specifically should say physiologic tremor

15 Q All right And what I'm reading, does your report
16 also indicate that that was a very bold printed
17 report as far as intentioned tremors in both upper
18 extremities?

19 A Yeah It's in bold type I don't know why that is

20 Q Okay And then you finally again on that first
21 visit you gave her a diagnosis of postconcussion
22 syndrome And again, as I understood your testimony
23 earlier, your basis for that from a objective
24 standpoint were three questionnaires that you had
25 her fill out, is that correct?

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1 A No The basis of that was medical history, medical
2 records, my interview with the patient, medical
3 history and my examination with the patient

4 Q What medical records would that include?

5 A The records I was afforded by Dr. Patel. That's
6 medical records.

7 Q All right. So would that have been his one report
8 that he had done at that time?

9 A There could be others.

10 Q Okay.

11 A The medical history that I obtained from the patient
12 and from my examination.

13 Q Okay. Occipital neuralgia. And can you again tell
14 me for the record what that is?

15 A Occipital neuralgia is disruption in the occipital
16 nerves that emerge from the posterior portion of the
17 neck and then extend over the outside of the skull
18 in the occipital area extending into the parietal
19 area of the skull. In other words, these are
20 slender little nerves that exit from C2-3 in
21 cervical spine and then extend over the nuchal ridge
22 on the outside of the skull. And ---

23 Q And what -- I'm sorry.

24 A Damage to these nerves can cause neuralgia. But
25 also the origin of these nerves are commonly

1 affected in migraine

2 Q And what is the basis for your relationship to that
3 -- well, first of all, what is your basis for that
4 diagnosis?

5 A Physical examination

6 Q And you said that that can be a symptomology of
7 migraine headaches?

8 A Well, on examination, if you palpate or if you press
9 on these nerves and they're generally tender and
10 cause like a radiating discomfort, that's most
11 likely due to bruising of the nerve or inflammation
12 of the nerve. But people with migraine headaches
13 can also have headaches in an occipital distribution
14 because the origin of this nerve is very close to
15 where migraines are generated in the brain stem

16 Q So how do you know which one it is? How do you make
17 that conclusion?

18 A I made the conclusion that the nerves were bruised
19 because she was tender to palpation when I pressed
20 on the nerves in the back of her neck

21 Q Carpal tunnel syndrome, I know what that is. How is
22 that possibly related to this accident?

23 A I don't think it is. I never said it was

24 Q Okay. So that's one of the things that we can
25 exclude as far as your diagnoses that would be

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1 related to this accident?

2 A I think it's commonly accepted that trauma doesn't
3 really aggravate carpal tunnel syndrome

4 Q Okay And do you have any evidence that she had any
5 trauma to the carpal tunnel area of her body in the
6 wrist based on her description of what happened
7 here?

8 A I don't have any evidence I will, in all honesty,
9 say that I don't think I really explored that
10 possibility at the time of the initial evaluation

11 Q Okay Facet syndrome, is that in the neck, low back
12 or both?

13 A It's the cervical spine It causes -- generally
14 causes changes in the musculature in defined
15 patterns

16 Q And what is your basis for that diagnosis?

17 A Physical examination

18 Q Okay

19 A But also the MRI of cervical spine

20 Q All right Well, the MRI of the cervical spine
21 showed degenerative disc disease, spondylosis and
22 those types of things Are those chronic or acute
23 types of problems?

24 A Chronic

25 Q Would you agree ---

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1 A But a chronic --

2 Q -- that those conditions would have preexisted June
3 the 29th of 2006?

4 A Most likely However, once again the MRI from 1996
5 would be helpful in identifying any preexisting
6 conditions

7 Q And again she did not advise you that she had
8 actually been treated at the -- for the lumbar and
9 the neck during those periods of time is that
10 correct?

11 A I don't have that in my records

12 Q All right Do you ask those types of questions when
13 a patient comes in? Do you ask them for a past
14 medical history that would include that type of
15 information?

16 A I do get a past medical history That's not
17 included on the record

18 Q All right And if she had told you about that, do
19 you think that that would have been something that
20 would have shown up in your reports?

21 A Yes

22 Q So is it safe to assume that she probably didn't
23 reveal that information to you?

24 A Well, I think the most certain thing is, that it
25 didn't show up on my report

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1 Q Okay The fifth diagnosis, other and unspecified
2 disorders of the back What does that mean?

3 A This is lumbago which is a generalized term for low
4 back pain

5 Q All right And ---

6 A But that would also encompass the changes that we
7 saw on MRI

8 Q Okay So is that somewhat similar to facet
9 syndrome?

10 A No We're talking about a different area of the
11 spine now

12 Q Okay Sacroiliitis That's yet a different area of
13 the lumbar spine?

14 A This is below lumbar spine This is the junction
15 between the sacrum and the posterior portion of the
16 hip

17 Q Is that like the tailbone?

18 A No The tailbone is the coccyx and it's at the very
19 tip of the sacrum The sacrum ---

20 Q Other disorders of the cervical region, what does
21 that specifically mean?

22 A The sacrum is a large fused bone at the very base of
23 the lumbar vertebrae and it forms, it forms the
24 anchor of the pelvis What was your question again,
25 please?

1 Q I'm sorry We - you went to sacrum I think I
2 said cervical I asked about -- the last diagnosis
3 was other disorders of cervical region And
4 specifically what does that mean?

5 A This would be cervicalgia which would encompass the
6 pain that she was reporting in her neck

7 Q All right

8 A This is not a very -- this is a general diagnosis

9 Q Okay Now, is it my understanding that you have not
10 referred her out for any physical therapy at this
11 time?

12 A No

13 Q No, you have not or my understanding is wrong?

14 A I don't think I've -- no, I have not made a referral
15 to physical therapy, as I recall I think it's
16 important to get the patient's symptomology under
17 control before we stress them through a course of
18 physical therapy Because if the pain is not well
19 controlled, the patient will often fail physical
20 therapy It doesn't mean she wouldn't benefit from
21 physical therapy I'm not so sure that Ms McCall
22 would be able to complete a course of physical
23 therapy

24 Q Were you aware that after this accident originally
25 happened she actually had a two or three week course

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1 of physical therapy, completed it and found that she
2 was better to the point of never returning to a
3 doctor for a year?

4 A Well, that would indicate that she did seek medical
5 care following her injury June of 2006 And I
6 thought you inferred earlier she didn't seek medical
7 care

8 Q No, sir I said she went to the doctor one time
9 She went to physical therapy and then she never
10 returned in a year

11 A Well, then I didn't hear that when it was stated
12 But -- well, that would indicate to me that she
13 probably did seek medical care from her injury

14 Q Okay My question is, did you know that she had
15 actually already completed a physical therapy course
16 initially after this injury, returned to work,
17 indicated that she was better and worked for a year
18 without any attempt to go back to a doctor?

19 A Is there a question in that?

20 Q That was my question Were you aware of that?

21 A No

22 Q Well, you just indicated that you didn't think
23 physical therapy would help her, yet she's already
24 testified that it did help her the only time she
25 ever had it Why would that be the case?

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1 A Until a patient's symptomology is brought under
2 control, until their level of pain is brought under
3 control and their affect and symptomology is brought
4 under control, patients generally fail physical
5 therapy because they can't really -- they really
6 can't bear the stress both physically and
7 emotionally of going through a course of physical
8 therapy At the time I evaluated Ms McCall, I
9 didn't think she was ready for a course of physical
10 therapy I'm not so sure she's ready for a course
11 of physical therapy now

12 Q There is a form, it says something about Excelon at
13 the bottom of it It looks like some sort of a
14 graded questionnaire Do you know what I'm talking
15 about? This is something that looks like you
16 performed it or examined her on, on November 29th of
17 '07?

18 A Yes

19 Q Okay What is that form called?

20 A That's called the mini mental status examination

21 Q Okay And you either get a zero score or a one
22 score for, it looks like, numerous questions And
23 does a one mean you got it right and a zero mean you
24 got it wrong?

25 A That's right

- 1 Q Okay Now, what city or town are you located in?
- 2 A We're in Easley
- 3 Q Okay Why would under orientation to place there's
- 4 a question that says county and then in parens it
- 5 says, or city or town, closed parens It looks to
- 6 me like the answer Easley is written out, but she
- 7 got a zero score for that?
- 8 A The question is, what is the county? And Easley is
- 9 in Pickens County, so that's, that's ---
- 10 Q Well, does the question not say, or city or town?
- 11 A The question is, what is the county?
- 12 Q So what do the parens mean?
- 13 A That was the question the patient was asked, what is
- 14 the county we're in? She said, Easley
- 15 Q Okay
- 16 A That is incorrect We're in Pickens County So she
- 17 does not get a point for that
- 18 Q Okay
- 19 A If you look below that, the next question is, what
- 20 city or town are we in? She had ---
- 21 Q Well, I'm reading the question right off the form
- 22 and in parentheses after the word county I see or
- 23 city/town, closed parens, question mark?
- 24 A County, city and town are separate things She
- 25 needs to identify the county to get that point

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1 Q Okay Well, does it say county and city or town or
2 does it say county or city or town ---

3 A The question ---

4 Q -- on your questionnaire?

5 A The question is, what is the county? That's the
6 question the patient was asked That's the question
7 the patient was graded on Okay? And then on --
8 the next question was, what city or town are we in?
9 I got a negative -- I got a no response So that's
10 also a zero score

11 Q And you gave her a twenty-seven, it looks like, out
12 of a possible thirty score Is that good, bad?
13 What does that mean?

14 A That means that there's cognitive impairment That
15 means that there's some evidence that there is
16 something not right

17 Q And you don't know what her cognitive abilities
18 would have been prior to any kind of incident in
19 July of 2006, do you?

20 A No But -- no I wouldn't know that

21 Q Okay You don't know what her educational skills
22 would have been to determine whether she could do
23 even simple calculations such as the ones that
24 apparently you gave her -- it looks like she gave
25 wrong answers on several calculations You don't

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1 have any idea how she might have answered those
2 questions before June of 2006, do you?

3 A My understanding is that she completed the eleventh
4 grade I would assume that she should be able to
5 score a thirty out of thirty on this test

6 Q Well, can you fairly assume that, Doctor, that
7 everybody who finishes the eleventh grade has an
8 exact certain skill that they're going to have? I
9 mean, don't people finish college all the time that
10 can't read and write?

11 A To my knowledge I don't know of any college
12 graduates that are illiterate

13 Q Okay

14 A I mean -- that's all right A score of twenty-seven
15 over thirty is not a normal score

16 Q Who is Eric Harrell?

17 A Eric Harrell is a doctor of chiropractic at Oaktree
18 Medical Center

19 Q So he's one of your colleagues as well?

20 A Yes

21 Q Did you refer Ms McCall to Dr Carroll -- Dr
22 Harrell?

23 A No

24 Q Well, who did refer her there? Do you know?

25 A I know I didn't

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1 Q Were you aware then that she treated with Dr
2 Harrell for twelve visits of chiropractic treatment,
3 the last date of service January 9th of '08?

4 A I knew that she had seen Dr Harrell

5 Q Did you know that he had discharged her with no
6 further treatment recommendations based upon her
7 objective testing in his office or his objective
8 findings?

9 A I do not have Dr Harrell's records

10 Q Okay You didn't know that he said, the very first
11 sentence of objective, that her findings are
12 unremarkable?

13 A I do not have Dr Harrell's records

14 Q Do you have one chart that would include everyone's
15 records or does each doctor at Oaktree keep a
16 different chart?

17 A We have an electronic record keeping system at
18 Oaktree

19 Q And so does that mean you have access to the
20 records? You just don't have them in a chart in
21 front of you?

22 A Yes I would have access to this record

23 Q Okay

24 A I do have the record here It says, findings are
25 unremarkable except for pain on palpation of the mid

1 cervical joints to the left side, especially some
2 residual muscle spasms in the upper trapezius muscle
3 as well as some of her left rhomboid muscle

4 Q And what does that last sentence say?

5 A The patient has been discharged with no further
6 treatment

7 Q Under subjective did the patient not express to Dr
8 Harrell that she was, quote, feeling much better?

9 A The patient -- this is what's written The
10 patient's subjective complaints at the time are of
11 residual pain to the left side of her shoulder
12 blade, her mid back as well as her lower neck She
13 states that it is feeling much better, but she still
14 feels some residual pain with slight intensity

15 Q I think you indicated you last saw her -- and again,
16 neither one of us, neither Mr Simmons or I,
17 apparently have this report from January the 24th of
18 this year At that time she told you her neck was
19 okay, it was a just little tight, if I understood
20 correctly, is that right?

21 A That's a direct quote

22 Q The bad headaches were gone?

23 A The bad headaches have gone away That's another
24 direct quote

25 Q All right She was still expressing something about

1 loss of memory ---

2 A Still reporting ---

3 Q -- and she had increased anxiety?

4 A Still reporting loss of memory, still reporting an
5 unusual tinnitus I noted on my exam she had
6 increased anxiety and she was tearful during the
7 interview

8 Q Did you refer her to any psychologist or
9 psychiatrist?

10 A No I put her on antidepressant medication at that
11 time

12 Q Now, you indicated initially your number one goal
13 was to get rid of the headaches and then you would
14 start concentrating on physical therapy and things
15 of that nature, is that correct?

16 A My initial goal was to suppress the headache
17 activity ---

18 Q Okay And you've done that based ---

19 A -- and then work on ---

20 Q -- on the last time she was in your office, is that
21 correct?

22 A And then work on cervical and lumbar discomfort

23 Q Okay And essentially it looks like she never even
24 mentioned lumbar on January the 24th and the neck
25 was only -- or was just a little tight So what are

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1 you going to do about those things now?

2 A Well, there's a new problem that emerged at the time
3 of that visit and I thought it was important to
4 address that new problem, the anxiety and
5 significant features of depression. So I started an
6 antidepressant medication.

7 Q Okay. And so is that all you're treating her for
8 now?

9 A No. I'm still treating her for the diagnoses that I
10 had mentioned previously.

11 Q You're talking about headaches that are gone away
12 and neck problems that are just a little tight?

13 A The headaches may go away, but they may return.
14 That needs treatment.

15 Q Okay.

16 A The neck, according to the MRI, is far from normal.
17 That will require treatment.

18 Q All right. And so are you just never going to do
19 physical therapy?

20 A When I think -- when and if I think Ms. McCall would
21 be a good candidate for a course of physical
22 therapy, I may order physical therapy.

23 Q Were you aware that Ms. McCall has a rather lengthy
24 history of treating with a Chiropractor Finley and
25 that group since 1991 and ongoing after that period?

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1 of time?

2 A No

3 Q Were you aware that she treated for severe
4 headaches, back symptomology and things of that
5 nature in the past, as well as neck symptoms?

6 A Well, I'm not surprised that she does not have a
7 history of severe headache

8 Q What about the back and neck symptoms with the
9 chiropractor?

10 A I did not know that

11 Q All right And, in fact, when she first went to a
12 doctor again after being away from the doctor for a
13 year after this accident, she actually went to
14 Chiropractor Finley on June the 19th of 2007 And
15 were you aware that she told him that her back
16 symptoms began three days before that?

17 A No

18 Q Would that type of history be different than the
19 history that says her problems are related to an
20 accident in June of 2006 if they began three days
21 before June 19th of '07?

22 A Once again you're asking me to comment on another
23 doctor's history

24 Q And would that history be different than yours?

25 A Well, at least I can account for my history I

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1 don't know what another doctor has written or
2 stated I don't know the circumstances It could
3 have been an exacerbation of back pain I think we
4 both agree that her back pain didn't begin June
5 2007

6 Q And would you agree that someone with degenerative
7 disc disease, spondylosis and those types of
8 diagnoses in her neck and low back are going to be
9 prone to aggravations and exacerbations throughout
10 their lifetime?

11 A That's likely That's highly likely

12 Q Okay Just like you indicated that you believe this
13 accident in June of 2006 aggravated her preexisting
14 arthritic condition in both her lumbar and cervical
15 spine, is that correct?

16 A Per history, yes It makes sense to me

17 Q So if she, in fact, told the chiropractor on June
18 the 19th of 2007 that heavy lifting three days
19 before caused her to come see him with back
20 symptomology, that would not surprise you given the
21 MRI findings, is that correct?

22 A I think it's quite possible

23 Q One second to review my notes, Doctor I may be
24 through Are you and Dr Patel both treating her
25 currently?

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1 A I know I am treating Ms. McCall right now. I don't
2 know if Dr. Patel has released her. But I don't
3 think that Dr. Patel is going to perform any
4 additional procedures in the near future.

5 Q And all he was providing were the injections?

6 A Well, I think he was doing some diagnostic
7 evaluation. He ordered a nerve conduction in
8 October 2007. But essentially Dr. Patel does
9 interventional care, which means that he basically
10 uses a needle. So I would say that that's the bulk
11 of his focus as far as providing therapy, is
12 interventional care.

13 Q Okay. Now, you indicated something about you
14 thought that if she continued to complain about her
15 lower extremities, you felt maybe nerve conduction
16 studies were going to be necessary for that?

17 A Nerve conduction, EMG studies, are about eighty-
18 eight percent accurate for determining the presence
19 of neuro compromise. So if she was going to
20 continue to complain of left lower extremity pain
21 and numbness, I think that that would be a
22 reasonable test to see if there's a problem with a
23 peripheral nerve injury or a nerve root injury.

24 Q And essentially that would be to determine whether
25 she's having radicular pain coming from her lower --

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1 from her lumbar spine?

2 A Radicular pain, but also perhaps some kind of
3 neuropraxic injury to the peripheral nerves

4 Q And what would have caused those types of injuries
5 that would just now be showing themselves to you?

6 A Well, she's been reporting these things since I
7 initially saw her. So I don't know if these are
8 brand new complaints, but the test would be highly
9 diagnostic

10 Q And so you've just been seeing her for basically two
11 months, correct?

12 A Yes

13 Q Okay. Why do you and Dr. Patel have her completely
14 written out of work at this time? What prevents her
15 from working at all?

16 A Well, last visit I stated that Ms. McCall was unable
17 to return to work at that time due to significant
18 affective dysfunction

19 Q How about the two visits before that, why was she
20 being completely written out of work at that time?

21 A On November 29th, 2007, I wanted her to remain on
22 medical work leave until I could reevaluate her in
23 one month

24 Q Which lower extremity is causing her most of the
25 complaints or pain that's she's been giving, or is

1 it both?

2 A I have noted left lower extremity

3 Q Okay Have you been contacted by any other doctors
4 related to their treatment of Ms. McCall seeking any
5 of your medical records or just to discuss her case
6 with you?

7 A I don't think so, no

8 Q Okay Are you familiar with a Dr. Ricalde and a Dr.
9 Amaya?

10 A Yes

11 Q What type of doctors are they?

12 A Dr. Ricalde is a neurologist in -- I believe he's in
13 Seneca now. And I believe Dr. Amaya is no longer
14 practicing.

15 Q What type of doctor was he when he was practicing up
16 in that part of the state? Do you know?

17 A Dr. Amaya?

18 Q Yes, sir?

19 A I think he was doing pain management.

20 Q Okay. Is that similar to what Dr. Patel does? Is
21 he -- does he do pain management as well?

22 A Technically they both do pain management. But what
23 Dr. Amaya was doing is much different from what Dr.
24 Patel does.

25 Q Okay. Doctor, I believe that's all the questions I

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1 have at this time unless something comes up in
2 follow-up from any questions that Mr Simmons may
3 ask after this

4 (By Mr Simmons)

5 I think you covered all the bases pretty well I
6 have nothing in follow-up

7 (By Mr Beard)

8 Fantastic I appreciate y'all both letting me do
9 this by phone

10 (By Mr Simmons)

11 No problem

12 (By Mr Beard)

13 Thank y'all

14 (By Mr Simmons)

15 All right Take care

16 (Defendant Exhibit 1 marked and entered)

17 Deposition ended at 6 07 p m

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DAVID S ROGERS, M D

CURRICULUM VITAE

LICENSURE South Carolina Board of Medical Examiners #20340

PROFESSIONAL EXPERIENCE

May 2000 to present

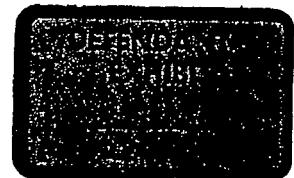
Adult Clinical Neurologist
subspecializing in headache and chronic pain
Oaktree Medical Centre
115 Brushy Creek Road
Easley, South Carolina 29642

June 1998 – May 2000

Medical Director
Project Manager
Medical Safety Officer
NCGS Laboratories, Contract Research Organization
3 Southpark Circle, Suite 200
Charleston, South Carolina 29407

June 1997 – May 1998

Research Fellowship/Independent Studies
Under the direction of Robert N Harden, M D
Clinical Director of Pain Studies
Rehabilitation Institute of Chicago
345 East Superior Ave, Chicago, Illinois 60611



August 1996 – May 1997

Medical Consultant – Independent Research

January 1996 – July 1996

Medical Director of the UMA Headache Program

Clinical Instructor

Department of Physical Medicine and Rehabilitation

Medical University of South Carolina, Charleston, South Carolina

July 1995- December 1995

Fellowship in Chronic Pain

Department of Physical Medicine and Rehabilitation

Medical University of South Carolina, Charleston, South Carolina

July 1991 – June 1991

Resident in Neurology

Department of Neurology

Medical University of South Carolina, Charleston, South Carolina

July 1990 – June 1991

Internship in Internal Medicine

Department of Medicine

Ohio Valley Medical Center/ West Virginia University

Wheeling, West Virginia

March 1990 – June 1990

Neuropsychiatry rotation

West Virginia University

Morgantown, West Virginia

EDUCATION

M D (Titulo granted) February 6, 1989
University Autonomous of Tamaulipas
Matamoros, Mexico

Medical Studies - November 1983
University of Miami School of Medicine
Coral Gables, Florida

Biology Instructor and Graduate Student
Marshall University
Huntington, West Virginia

A A Chemistry
Otterbein College
Westerville, Ohio

PUBLICATIONS/PRESENTATIONS

Controlled trial of Ketorolac in tension type headache
Harden, Rogers, et al
Neurology, American Academy of Neurology
Vol 50, February 1998

Randomized comparative study of ketorolac, meperidine, and placebo
Abstract Presentation – 1996 Academy Meeting
American Academy of Neurology

Guest lecturer, Herbal Medicine in today's practice, Acute treatment of
headache, Alternative Medicine Topics 1997- 1999
Medical University of South Carolina

RESEARCH EXPERIENCE

Infectious Disease

Phase III double blind study of patients with moderate to severe pneumonia (Ziracin)

Cardiovascular

Phase III double blind study in severe sepsis (rTFPI)

Neurology

Double blind study of patients with tension-type headache (NSAID)

International Collaborative Gaucher Group Registry

Myotropin Expanded Access Program – Investigator

AFFILIATIONS

American Academy of Neurology

American Headache Society

American Academy of Pain Management

American Medical Association

South Carolina Medical Association

South Carolina State Athletic Commission – License # 50

Before the South Carolina
Workers' Compensation Commission
W C C File No 0627287

Donna L McCall,)
)
Employee,)
)
-VS-)
)
Sandvik/Valenite,)
)
Employer,)
)
Sentry Claims Service)
)
Insurer)
_____)

COPY

DEPOSITION OF JAY PATEL, M D

Pursuant to notice and/or agreement, the examination of JAY PATEL, M D , called by the plaintiff, was taken commencing at the hour of 4 20 p m on the 18th day of March, 2008, at the office of Oak Tree Medical Centre, 115 Brushy Creek Road, Easley, South Carolina

Mindy McKee, Reporter

Danette Hanks
Court and Deposition Reporters
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Anderson South Carolina 29622
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APPEARANCES

)
Todd Simmons
Brandt Law Firm
3691 Blue Ridge Boulevard
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Walhalla, South Carolina 29691

Attorney for Plaintiff

Grady Beard
Sowell, Gray, Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29211

Attorney for Defendant

Also present Mr & Ms McCall

)
STIPULATIONS

1 This deposition is taken pursuant to the South
Carolina Rules of Civil Procedure

2 The reading and signing of the deposition by the
witness is not waived

I N D E X

Direct examination (Simmons)

4

E X H I B I T S

(None)

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1 JAY PATEL, M D , being duly sworn to tell the truth, the
2 whole truth and nothing but the truth, testified as
3 follows

4 (Direct examination by Mr Simmons)

5 Q Dr Patel, my name is Todd Simmons and I represent
6 Donna McCall in a workers' compensation case that
7 has been brought against her employer and the
8 insurance carrier And off the record a moment ago,
9 Mr Beard asked you if you had ever had your
10 deposition taken before and what was your response
11 to that?

12 A No

13 Q No Okay Let me give you just a couple of ground
14 rules It'll just help things go smoother and help
15 better explain to you the process You did just
16 swear to tell the truth and you are under oath and
17 sworn to tell the truth Do you understand that?

18 A Yes

19 Q It's just as if we are sitting in a courtroom It's
20 just that our rules nowadays make things a little
21 less formal, a little more relaxed, so that we can
22 cater to schedules of people, especially doctors and
23 professionals Everything that we are saying right
24 now is being taken down word for word by a court
25 reporter And it'll be put into a transcript, a

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1 printed transcript much like a book Every question
2 I ask and every answer you give, of course, will be
3 in it Throughout the process, Mr Beard may state
4 some objections We'll certainly -- we might run
5 into that and he certainly has that right In me
6 asking you questions it is very important that you
7 give a verbal response A lot of times humans have
8 a -- you know, we can communicate in other ways
9 rather than verbally such as head nods, gestures,
10 things like that So anytime I ask a question, if
11 you could please give a verbal response, it will
12 help the court reporter Do you understand that?

13 A Yes

14 Q Okay If I ask a question and you don't understand
15 the way I'm asking it, or if my southern drawl gets
16 in the way or anything like that, or if you're
17 unsure what I'm asking, please ask me to restate the
18 question It is perfectly fine to say I don't know
19 or please re-ask the question Do you understand
20 that?

21 A Uh-huh (affirmative)

22 Q Okay The reason I say that is because if I ask a
23 question and you give me an answer, that is the
24 answer that forever in eternity is going to be in
25 the transcript and that's the answer that I assume

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1 that you intended to give I'm going to start by
2 asking you what your full legal name is
3 A First name is Jay, J-a-y Middle name is Sanjay,
4 S-a-n-j-a-y Last name is Patel, P-a-t-e-l
5 Q And I'm going to ask it -- especially for people
6 that haven't ever been to a deposition, I'm going to
7 ask you a couple of personal questions I'm not
8 talking about serious personal questions, but just
9 your background, things like that And the reason I
10 ask that is because for another reader that's
11 picking up this transcript that has never met Dr
12 Patel, a little bit about our past and who we are
13 gives us a little bit of a foundation when we're
14 reading that so that we understand who Dr Patel is
15 And that's why I'll be asking those questions
16 A Okay
17 Q If you could give me your age, Dr Patel?
18 A Thirty-five
19 Q Are you currently married?
20 A No Well, actually, let me restate that I'm going
21 through a divorce
22 Q So you are currently married?
23 A Yes
24 Q But you have not completed the divorce?
25 A Correct

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1 Q Do you have any children?

2 A No

3 Q If you could -- and when I ask you about your
4 education, I don't need to know grammar schools and
5 things like that I assume you graduated from high
6 school?

7 A Correct

8 Q Okay If you could starting with college up to the
9 present day, just briefly walk me through your
10 educational background?

11 A Okay I did all of my schooling -- I did my school
12 in California After that I went to India, where I
13 was originally from, to complete my medical -- all
14 of my medical training So I did that That was
15 completed in 2001 And then I basically -- well,
16 it's kind of a complicated story But essentially
17 the training was completed in 2001 And then when
18 you come to the U S from India, you have to take
19 several exams I spent some time in that time, '99
20 to 2000, 2001, studying for those exams and then
21 started my residency training in the United States
22 At that point ---

23 Q Where did you do your residency?

24 A Various places So first year in 2001, that was one
25 year at the University of Minnesota I did a year

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1 of internal medicine there After that I did three
2 years at the University of Virginia, in
3 Charlottesville, Virginia That was physical
4 medicine and rehabilitation So that was -- that
5 takes us from '02 to '05

6 Q Okay

7 A And then '05 to '06, I did a fellowship in
8 interventional spine and pain management in Utah at
9 the Smart Clinic in Utah And then after that I've
10 been working here essentially

11 Q Okay Is the college and med school in India
12 similar to the educational requirements that we have
13 in the United States? Or would you say that they
14 are greater or less or

15 A That's a difficult question to answer There are
16 differences, but ultimately there are ways -- and
17 those are the exams that any person who has
18 graduated from a medical school outside the United
19 States has to go through a specific process in the
20 U S in terms of taking exams And once you take
21 those exams and clear those exams, essentially the
22 system recognizes that now, at least, you are at
23 least equivalent, if not higher, than the education
24 that's received in the United States

25 Q Okay And are you currently licensed to practice

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1 medicine in South Carolina?

2 A Correct, yes

3 Q Other than your fellowships and your trainings that
4 you've already described to me, have you gone
5 through any other types of specializations or
6 certificate programs or anything like that?

7 A Nothing that's long term There's certainly some
8 short term seminars and courses and various ones
9 that are either a day or three or four days that
10 basically have to do with my field, pain management
11 and physical medicine and rehab

12 Q Is it fair to say that within the State of South
13 Carolina you have the full privileges of any medical
14 doctor?

15 A Yes

16 Q Okay If you could and, once again same
17 qualification, briefly walk me through your
18 professional work experience and you've pretty much
19 touched on a little bit, from I would say just from
20 your fellowship time to the present day And if you
21 could just explain to me your positions and what you
22 did?

23 A Basically I've had one position, which is my current
24 position, since my fellowship So would you like me
25 to elaborate or

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1 Q If you could just briefly tell me when you started
2 here and what your duties have consisted of?

3 A Okay Started in November of 2006 And essentially
4 my duty consists of a physician specializing in
5 physical medicine and rehabilitation, interventional
6 spine and pain management, which includes diagnosis
7 and treatment of various musculoskeletal disorders,
8 such as neck pain and low back pain I do various
9 injection techniques that has sort of been the focus
10 of my fellowship training, is injection techniques,
11 in addition to other things Well, let me clarify
12 that You know, pain management is a broad field
13 and within pain management people tend -- people
14 sometimes do a certain aspect of that and so one of
15 the things that I was trained in is the injections
16 That's what I was trying to get at

17 Q Okay And is Pain Management Associates, which I
18 noticed is on your coat, is that a part of Oak Tree
19 Medical Group?

20 A Yes

21 Q Is that just like a department within it?

22 A Correct

23 Q In your practice, Dr Patel, have you had an
24 opportunity to provide medical care and treatment to
25 Donna McCall?

1 A Yes

2 Q Okay And in your practice have you had an
3 opportunity to physically examine Ms McCall for
4 injuries that she claims to have suffered after a
5 work accident on June 29th, 2006?

6 A Yes

7 Q Did Ms McCall explain to you how she fell at work?

8 A Now do we have my records available here?

9 Q Yes If at any time you need to refer to any of
10 your office notes, your chart, your records, please
11 feel free If you don't have them, we can probably
12 take a quick break

13 A Yeah I think I should probably get them

14 Q Certainly

15 A Okay

16 Q Let's take a quick break

17 (Off the record)

18 (Direct examination continued by Mr Simmons)

19 Q Dr Patel, have you had an opportunity to retrieve
20 your notes related to Ms Donna McCall?

21 A Yes

22 Q Okay If at any time you need to take a break and
23 look at those notes, or flip through them and refer
24 to them, please take as much time as you need
25 Okay?

1 A Okay

2 Q I'm going to ask you the question that precipitated
3 the need for those notes Do you know whether or
4 not Ms McCall ever explained to you how she fell at
5 work? What's your understanding of that?

6 A Let me refer to my notes Yes, she did

7 Q Okay Do you have an understanding of how she was
8 hurt and how the fall took place?

9 A Yes I understand, yes

10 Q Okay If you could, convey that to me?

11 A Basically she fell off a step stool, fell backwards
12 and hit her head on a concrete floor

13 Q When was it that you first began treating Ms
14 McCall?

15 A The date is September 19th, 2007, per the records

16 Q Did she come to you as a workers' comp referral?

17 A I don't recall

18 Q Do you know who referred her to you or who made the
19 appointment for her?

20 A Dr Kanos is what is indicated on the records

21 Q Okay Do you ever recall a nurse case manager
22 employed by the workers' compensation insurance
23 carrier attending Ms McCall's initial visit?

24 A I don't specifically recall Often there are case
25 managers In her case I don't specifically

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1 recall ---

2 Q Okay

3 A -- whether she did or not There may have been one

4 Q Okay Do you recall whether or not a nurse case
5 manager attended on that September 19th visit?

6 A I don't recall

7 Q Okay I assume since you don't recall a nurse case
8 manager being present, you would obviously not
9 recall any conversations with that person, is that
10 correct?

11 A No Yeah, that's correct

12 Q Okay Do you have any idea as to who or what entity
13 paid for that first visit with you on September
14 19th, 2007?

15 A No

16 Q Okay Who within the Oak Tree practice would be
17 able to convey that type of information to me?

18 A Probably our billing department

19 Q And what's his or her name that's over that
20 department?

21 A Well, we have a big department Honestly, I don't
22 even know who specifically would be But Gary
23 Edwards is one person who at least could get you to
24 the right person

25 Q Okay And can I reach Mr Edwards just by calling

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1 the main number for Oak Tree?

2 A Yeah You could probably even call his cell phone

3 Q Okay When you first visited with Ms McCall back
4 in September of 2007, did you take a history from
5 her?

6 A Yes

7 Q Okay And through that history and your visit with
8 Ms McCall did she ever convey to you that she was
9 experiencing pain in her upper back?

10 A Now, can you clarify for me what you mean by upper
11 back?

12 Q When I say upper back I'm referring to the neck or
13 the cervical region?

14 A Yes So can you restate your question?

15 Q Sure Did Ms McCall -- has she ever explained to
16 you or conveyed to you in any form that she was
17 experiencing pain in her cervical region of her
18 spine?

19 A Yes, she did

20 Q How about her shoulders? Same question

21 A I do recall that she was having pain in her shoulder
22 region

23 Q Same question as to her lower back?

24 A Yes

25 Q She explained to you that she was having lower back

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1 problems?

2 A Yes Yes

3 Q Did she ever explain to you that she was having
4 problems with persistent and reoccurring headaches?

5 A Yes

6 Q Did Ms McCall relate to you that these problems
7 that we just discussed began after the fall in June
8 of 2006?

9 A Yes

10 Q Okay Other than what we just discussed, are there
11 any other complaints of pain or other injuries that
12 we have not discussed that Ms McCall has conveyed
13 to you since that time, other than those of what
14 we've already talked about? And when I say that,
15 I'm talking about other parts of the body, you know,
16 other complaints?

17 A I don't recall any significant other complaints, but
18 there may have been something minor here and there
19 But I don't recall anything significant other than
20 what we talked about

21 Q Did Ms McCall ever explain to you that she had had
22 some back problems in the past that had resolved and
23 also some headaches that had resolved?

24 A Per the records it appears that she did not explain
25 that

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1 Q Okay Have you had an opportunity to review any
2 medical records from Oconee Family Practice and a
3 Henry Ramirez, which is a physician's assistant at
4 Oconee Family Practice, from August 17th, 2006 up
5 through fairly near present?

6 A Yeah I got those records just today and just
7 briefly flipped through them

8 Q Have you ever reviewed any MRI reports from Seneca
9 Diagnostic dated August 6th, 2007 pertaining to her
10 cervical and lumbar spine?

11 A Let me look through Yes I do recall that I
12 reviewed that

13 Q Seneca Diagnostic?

14 A Yes Yes

15 Q That was the August 2007 MRI reports?

16 A Correct

17 Q Have you ever reviewed any MRI reports from Anderson
18 Radiology dated November 17th, 1999 pertaining to
19 Ms McCall's cervical and lumbar spine?

20 A Again, briefly, today I received that today

21 Q Okay Have you had an opportunity to review any
22 records from a former doctor, a doctor -- when I say
23 former doctor, he's not a doctor any longer, but an
24 Antonio Amaya, from November of 1999?

25 A Yes, again, today

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1 Q And are you aware then that in 1999 Ms McCall had a
2 relatively short term of treatment for her back?

3 A Yes, I am

4 Q Okay We'll come back to those issues in just a
5 minute and I wanted to ask you whether or not you
6 had a chance to review those records Do you
7 practice here with a Dr David Rogers?

8 A Yes, I do

9 Q Okay Explain to me in just lay terms or however
10 you'd like to explain it, how have you been
11 coordinating your care, if at all, with Dr Rogers
12 of Ms McCall?

13 A In general?

14 Q In general?

15 A In general, I do pain management He does pain
16 management as well He -- his -- one of the things
17 that he does in his practice is medication
18 management for things such as pain, including
19 narcotics, things like that So he tends to do more
20 of that, whereas I tend to do more of injections I
21 also do some medication management, but typically
22 patients who -- where that becomes a focus, they
23 tend -- I send them to him

24 Q Okay And have y'all been routinely discussing your
25 treatment of Ms McCall or reviewing each other's

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1 notes?

2 A I don't specifically recall Maybe once or twice we
3 did But I don't recall any lengthy, you know,
4 discussions

5 Q What -- other than just giving, I assume, injections
6 to Ms McCall, what would you classify your role in
7 this treatment of Ms McCall?

8 A As a -- basically in -- overall in anyway I can, my
9 goal as a physician treating her would be to
10 alleviate her symptoms Injections is one thing
11 Whether it's supervising her physical therapy or
12 ordering other diagnostic tests or starting her off
13 on some medications So I do various things
14 basically that should alleviate her symptoms

15 Q Between you and Dr Rogers, is there any one
16 particular doctor in this scenario that is mapping
17 out a course of treatment for her and taking the
18 role of a primary caregiver in regards to treating
19 Ms McCall?

20 A I don't think there's a primary caregiver here I
21 think we're doing it probably simultaneously, at
22 least initially And then at some point it may be
23 that one of the physicians is seeing a patient more
24 often and therefore becomes somewhat primary But I
25 don't think that -- I don't know that we had that,

1 certainly not initially

2 Q What I would like to ask for you to do, Dr Patel,
3 is I would like to walk through each of your office
4 visits with Ms McCall, for two reasons Number
5 one, to find out from you what your findings, things
6 like that were You know, what your findings were,
7 your course of treatment, things like that But
8 also I want to make sure that I have all the records
9 in my possession

10 A Okay

11 Q My understanding is that she first visited with you
12 on September 19th of 2007 Is that correct?

13 A Yes

14 Q And after that visit -- and like I said earlier, if
15 you need to refer to your chart take as much time as
16 you need

17 A Okay

18 Q After that visit, what was your assessment of Ms
19 McCall and the course of treatment that you
20 prescribed, if any?

21 A Well, I stated in my notes -- can you repeat the
22 exact question?

23 Q Sure After that visit -- and am I correct in
24 assuming that you actually met with Ms McCall?

25 A Yes

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1 Q And did you actually physically examine her?

2 A Yes

3 Q Okay After your visit with Ms McCall and
4 reviewing her history and doing your physical
5 assessment, what did you -- what were your findings
6 and what type of treatment did you prescribe?

7 A Okay Well, I'll just hit the main points
8 Basically, the findings based on the information I
9 had were that she had an industrial injury on June
10 29th, initially it said '07, but that was later
11 corrected to '06, where she fell backwards as we
12 discussed, and that resulted in her cervical pain,
13 headaches and low back pain She had various
14 findings on an MRI and the essential treatment at
15 that point that was recommended was an epidural
16 steroid injection and restarting physical therapy
17 Apparently at that point she had had several visits
18 I recommended further physical therapy and also an
19 electrodiagnostic study of her upper extremities
20 Medication-wise no changes were made She was
21 already on several medications which were continued
22 Q At that time, when she presented to you, do you know
23 whether or not she was written out of work by any
24 other physicians?

25 A I don't believe I have that information

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1 Q At that time did you put her on light duty or write
2 her out of work?

3 A Yes According to the records, I put her on the
4 restrictions as indicated on the restriction sheet

5 Q And that restriction sheet would be what you have
6 labeled as a work status sheet?

7 A Correct Correct

8 Q And it would bear the date of 9/19/07?

9 A Correct

10 Q And if we were to look at that sheet that would tell
11 us what the restrictions were that you placed on Ms
12 McCall?

13 A Correct

14 Q What's your next date of treatment, in your records,
15 after September 19th?

16 A I believe it was October 1st, 2007, unless there's
17 something -- I believe that's correct

18 Q Do you have a note in your chart from September 27th
19 of 2007?

20 A Let's see There is not an office visit or any note
21 that I can tell that I saw her on September the
22 27th, from my records

23 Q The reason I ask is, I have in my possession a
24 record a date of service of 9/27/07 and there wasn't
25 anything attached to it Does that just mean that

1 y'all entered a note into your computer system?

2 A Yes Various notes are entered It may not -- many
3 of them, sometimes most of them, are not the
4 physician having seen the patient It may be the
5 nurse scheduled an MRI and that would be a note that
6 she would enter or something regarding billing So
7 that could be

8 Q All right Following your visit of 9/19/07, you
9 stated that you ordered some tests, is that true?

10 A Yes

11 Q And what were those tests again?

12 A EMG nerve conduction studies

13 Q What is that particular test used to determine?

14 A Basically it can determine any kind of nerve or
15 muscle injury or any kind of disease related to the
16 nerves or muscles That would be the basic thing
17 There are other things, but that would be the basic
18 thing

19 Q Can it be used to determine whether or not there is
20 injury or disease in your spine?

21 A Yes Well, it can be used to determine if there is
22 injury typically to nerves that are in the spine

23 Q And you did order that test?

24 A Yes

25 Q I believe you said that your next visit was October

1 1st of '01 Is that correct?

2 A Of '07

3 Q Of '07, I'm sorry I'm going back in time What
4 was your purpose of that visit?

5 A To do the procedure that was planned which was the
6 epidural steroid injection

7 Q And was that an epidural steroid injection on the
8 left side of C7-T1?

9 A Correct

10 Q What exactly -- or what is the purpose of those
11 injections? You touched on this earlier, but just
12 be a little more specific Why would you put an
13 injection on the left side of C7-T1 in Ms McCall's
14 case?

15 A Okay Well, first of all, the left or right side
16 may or may not be relevant When you do an
17 injection you have to select a side For technical
18 reasons you don't go typically right through the
19 middle You aim to go towards the middle but you
20 start off at one side or the other So the left
21 mirror may not be relevant And to my recollection
22 I don't know that that was relevant What the
23 injection is designed to do, first of all, it's
24 generally considered a, for lack of a better word,
25 it's fairly routine or almost standard injection for

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1 various chronic back or neck pain And what it's
2 designed to do is decrease some of the irritation
3 and inflammation that may exist from any cause and
4 thereby reducing their pain

5 Q Okay And on October 1st of '07 you did perform
6 that procedure on Ms McCall?

7 A Correct

8 Q And after that procedure did you once again write
9 her out of work or put her on light duty?

10 A Typically, unless there's a reason we don't change
11 the work status at the time of injections So as
12 long as we don't change it then the work status
13 remains the same

14 Q So she would have been on the same restrictions that
15 you had put her on starting September the 19th,
16 correct?

17 A Correct

18 Q After the October the 1st, '07 visit, what's your
19 next date of treatment?

20 A Now, just for clarification, it seems like on the
21 day that we did the injection, sometimes whether
22 it's somebody requests, for whatever reason, a work
23 note, so we did give her a work note on the day of
24 the injection So, but there were no changes, so
25 essentially it was the same

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1 Q The work note from the October 1st was the same as
2 the September 19th?

3 A Correct It was just a repetition of that

4 Q Okay

5 A The next date of visit was the electrodiagnostic
6 study on October 5th, 2007

7 Q Is that the study that you ordered on the initial
8 visit?

9 A Yes, correct

10 Q And was that study performed here?

11 A Yes Typically that's performed by a trained
12 physical therapist who performs that and if he has
13 any issues then he can call me during the procedure,
14 during the test, but it's typically performed by him
15 alone

16 Q Okay Did you review the results of that test?

17 A Yes

18 Q What were your findings in that regard?

19 A Well, the findings essentially are as stated in the
20 report from that test, which is that she had
21 essentially carpal tunnel syndrome in both the right
22 and left side

23 Q Is that pretty much the limitations of that finding?

24 A Yes Those are the only significant findings from
25 that

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1 Q Following -- did you visit with Ms McCall on that
2 day or was that just the test?

3 A No No I don't recall visiting with her

4 Q Well, after the 5th then, what was your next time
5 you met with her?

6 A October 17th

7 Q Okay And the same question that I asked you
8 regarding to the September 19th, is explain to me
9 what the purpose of that visit was and what your
10 assessment and course of treatment was afterwards?

11 A The purpose was essentially a follow-up visit
12 Course of treatment essentially appears to have been
13 a recommendation that we do a second injection of
14 the cervical epidural injection

15 Q Okay And did you eventually perform that injection
16 following that visit?

17 A Let me see Yes I believe the injection was
18 performed on November 13th

19 Q Okay Did you ever visit with Ms McCall on the
20 27th of October?

21 A I don't have notes indicating that

22 Q And this may be another one of the records that are
23 generated by your computer system But I just want
24 to hand you -- let me see if I can find it Here's
25 a 10 -- this is actually a 10/22 Is that a record

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1 generated after a visit that you had with her, or is
2 that just another entry into the system where a
3 nurse or somebody such as that entered something
4 into the system?

5 A My best guess at this time is that for whatever
6 reason our electronic system sometimes makes a
7 duplicate note, for another day, sometimes And
8 that's what it seems like happened here After I
9 saw her on the 22nd -- or rather the 17th, another
10 note was made that's identical on the 22nd It
11 seems basically just to be a computer error

12 Q Okay

13 A So I don't know whether I saw her on the 17th or the
14 22nd, but I would have probably seen her on one of
15 those days

16 Q Grady, did you need to see that? You should have
17 it

18 (By Mr Beard)

19 I've got it, I'm just trying to see if mine is
20 identical as he just said

21 (Direct examination continued by Mr Simmons)

22 A But I would say that in our -- actually let me
23 clarify that Our final chart does not have the
24 note from the 22nd, so I believe what must have
25 happened is that error was fixed Well, no Sorry

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1 about that Let me restate that That note is
2 still there on the 22nd and the 17th so it was not
3 fixed

4 Q Okay But you don't think that you actually saw her
5 on the 22nd? You think that you actually saw her on
6 the 17th?

7 (By Mr Beard)

8 Can I just -- the reports actually don't say the
9 same thing And the only reason I would point that
10 out is on the 17th under history of present illness
11 it talks about she rates her pain as a seven out of
12 ten Then on the 22nd it says she rates her pain as
13 a six out of ten So under the history on the 17th
14 and the 22nd they do not say the same thing, at
15 least on the records I have

16 (Direct examination continued by Mr Simmons)

17 A All right Let's take a look

18 Q And let me know if you don't have them in your file
19 I'll be more than happy -- I believe it's the one
20 you just turned to right there 10/22/07

21 A Okay

22 Q It appears to me that there was another visit on
23 10/22 following the 10/17?

24 A Right

25 Q Once you've reviewed that let me know?

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1 A Sure Yeah It does look like there were two
2 visits I can't say why there were two visits
3 closely apart Sometimes they -- scheduling-wise or
4 the patient requests another visit to discuss EMG
5 result At least on the date of the 22nd, it says
6 that she -- it says, follow-up for EMG, which it did
7 not say on the 17th So that may have been it
8 That we saw her on the 17th and the results for
9 whatever reason were not ready on the 17th and she
10 may have just wanted to discuss those on the 22nd
11 and that may be the reason why we saw her within
12 five days

13 Q Okay And on the last page of that office visit
14 note where it says work, it says ---

15 A Which date are you referring to?

16 Q The same visit, 10/22/07?

17 A Okay

18 Q The second page It should be page two of two?

19 A Okay

20 Q Down where it says work?

21 A Right

22 Q It says R E C light duty?

23 A Right

24 Q What does that mean?

25 A There are various, sort of short form abbreviations

1 used and primarily just for quickness It means
2 recommend

3 Q Okay And at that point in time did you continue
4 her on the same light duty restrictions as you had
5 previously had?

6 A I don't have a specific work note from that day, but
7 unless it was changed or something substantially
8 different happened then we would have continued the
9 same restrictions

10 Q Next to that it says, don't anticipate that she'll
11 be able to return to operating furnace again Is
12 that something that you would have inputted into the
13 system?

14 A Yes

15 Q Okay And that was what you wrote?

16 A Yes

17 Q Okay What was your next visit after 10/22/07, in
18 your records?

19 A I believe it is 11/13/07

20 Q Okay And I believe that's the one that you spoke
21 about earlier where she came back for some more
22 injections correct?

23 A Correct

24 Q If you could please explain to me where these
25 injections were placed in Ms McCall's body?

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1 A Where they were placed?

2 Q Yes?

3 A Basically in the cervical epidural space Hard to
4 explain that without a diagram or a model But
5 basically between the two vertebral bodies, just
6 behind them and into the spine area

7 Q Was this at the same level as the previous
8 injection?

9 A Yes

10 Q Okay How about after 11/13, when was your next
11 visit?

12 A 12/3

13 Q Was that a follow-up from the injection?

14 A Yeah Follow-up from the injection and follow-up
15 for general, in terms of her progress generally
16 And the -- it appears from the notes that she did
17 have some improvement from at least the first
18 injection and temporary improvement from the second
19 And then I'd recommended something called a trigger
20 point injection which would be done into muscle
21 areas in the neck or shoulders to alleviate pain

22 Q And these injections, once again, would be to
23 alleviate pain in her cervical spine that she had
24 conveyed to you when she first presented to you?

25 A Correct Correct

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1 Q Following 12/3, after your recommendation of trigger
2 point injections, did you then follow through with
3 those injections?

4 A Yes 12/5/07 appears to be the date for the trigger
5 point injections

6 Q And would this just be the same routine injection as
7 the ones you already described except they're not
8 into the spine?

9 A Yeah They're less complicated They're not done
10 in a special room They're just done in the office,
11 the same room as the office visits are done

12 Q Are they using this, and for lack of better a word,
13 the same medicines or same chemicals as the
14 epidural?

15 A Similar The key thing is they are different areas
16 These are basically into the muscle areas, which are
17 significantly superficial They are not deep into
18 the spine

19 Q What's the significance of the word trigger point?

20 A A trigger point is an area of pathology in a muscle
21 where there has been -- where the muscle tissue has
22 become abnormal, where it is not -- no longer
23 healthy And it becomes quite painful, especially
24 on pressure, and that pain can radiate to different
25 areas And there are specific injections called

1 trigger point injections which are designed to help
2 alleviate those trigger points and possibly cause a
3 little bit, at least, of regeneration of that
4 tissue

5 Q Okay In Ms McCall's specific case, what was the
6 purpose of the trigger point injections in her body?

7 A In her body, I had noted some tenderness and some
8 trigger points essentially in her neck and shoulder
9 areas And so the purpose would have been to
10 alleviate those areas

11 Q And that would be to alleviate pain that you
12 observed through your physical examinations of hers

13 ---

14 A Yes

15 Q -- in that region?

16 A Yes Correct

17 Q All right Following the trigger point injections,
18 what was your next date of service?

19 A January 11th

20 Q January 11th of 2008?

21 A Yes

22 Q And was this a follow-up from an injection?

23 A Yes Follow-up -- again follow-up from the
24 injection and just a general follow-up

25 Q Now, at this point in time she has had three

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1 separate injection visits, correct?

2 A Correct

3 Q Okay What was your findings that day regarding her
4 pain and her progress related to your plan that you
5 had for her?

6 A Can you repeat the question?

7 Q Certainly Obviously the purpose of these
8 injections and her treatment is to help alleviate
9 her pain?

10 A Uh-huh (affirmative)

11 Q Had the treatment that you had been providing her,
12 have you started to achieve that goal at this point
13 in time, on the 11th?

14 A Yes We were certainly in the right direction in
15 terms of getting improvement in her symptoms

16 Q Okay And once again, if you could look at page two
17 on that under work, did you continue her on light
18 duty at that time?

19 A Yes I don't have any notes indicating that
20 anything was changed, so yes, light duty was
21 continued

22 Q And also if you could look at page two of that
23 January the 11th, 2008 visit Does it once again
24 state, don't anticipate that she'll be able to
25 return to operating furnace again?

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1 A Right

2 Q And was that your notes and your records from that
3 day and your input?

4 A Yes

5 Q When you state that you don't anticipate that she'll
6 be able to return to operating a furnace again, what
7 are you saying there, when you put that into your
8 medical record?

9 A It's a general statement stating that even if we got
10 her significantly improved, based on my overall
11 assessment of her presentation, her history, her
12 progress, that if she went back to operating a
13 furnace again her symptoms would probably get worse
14 again even if they had completely resolved
15 Therefore, my recommendation would not -- would at
16 that point, would have been that she probably would
17 not have -- she ought not to operate a furnace
18 again

19 Q And that's because of her physical limitations and
20 injuries and everything that you're treating her
21 for?

22 A Correct

23 Q All right Following the visit on the 11th, did you
24 have any change in your course of treatment or
25 recommend anything further?

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1 A At that point, to my recollection, when I first saw
2 her, her neck, shoulders, the regions -- the upper
3 regions basically of her spine were more
4 symptomatic And at that point she had stated that
5 her leg -- her low back and leg was becoming more
6 symptomatic And that is something that can happen
7 where a person, a patient has several areas of their
8 spine, such as a neck or back, that's bothering
9 them Typically the area that is bothering them
10 more is addressed first and often they have some
11 improvement in that area They get improvement and
12 then later on the other area now starts becoming
13 more noticeable So the treatment at that point on
14 that day was an epidural injection -- rather the
15 treatment that was recommended was an epidural
16 injection into the low back

17 Q And did you eventually follow-up on a subsequent day
18 with that injection to her lumbar spine?

19 A Yes January 21st

20 Q I'm looking at a record that shows date of service
21 on 1/21/2008, and it says procedure performed, an
22 interlaminar epidural steroid injection with
23 fluoroscopic and epiduragram Is that the medical
24 record for that injection?

25 A Yes

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1 Q Okay Is there any difference from that particular
2 injection versus the earlier cervical spine
3 injections that you did?

4 A Yeah The main difference is the site The
5 cervical spines are in the cervical spine which is
6 the neck This is in the low back So, but similar
7 type of injection, but different areas

8 Q Would it utilize the same medicines?

9 A Yes

10 Q Maybe a slightly different procedure?

11 A Yes

12 Q And following that injection did you then follow-up
13 with her on February 4th of 2007? 2008, I'm sorry
14 I keep wanting to go backwards

15 A February 4th you said?

16 Q Yes, sir?

17 A Yes

18 Q Okay Other than the dates that we've talked about,
19 including the February 4th which we'll go into in a
20 minute, are there any other dates of service in your
21 records where you visited with Ms McCall or had any
22 tests performed or anybody did anything to her here?

23 A Yes Subsequent to that visit ---

24 Q Subsequent to the February 4th, '08?

25 A Yes I saw her on March 3rd

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- 1 Q Of this month I assume?
- 2 A Correct
- 3 Q Is that the only other outstanding ---
- 4 A Yes
- 5 Q Okay Let's go back to the February 4th of 2008
- 6 Was that a follow-up visit for her injection?
- 7 A Correct
- 8 Q Okay And what were your findings from that visit
- 9 following those injections and your treatment?
- 10 A At that point, she had complained of some
- 11 generalized weakness that had been occurring for
- 12 apparently about two months, but basically had been
- 13 worse for about a week Per the information that I
- 14 had, it seems that she was started on a medication
- 15 called Lexapro by Dr Rogers recently and so we, to
- 16 my recollection, I or my nurse -- my nurse spoke to
- 17 his nurse about that and he recommended for her to
- 18 discontinue it, so I told her to discontinue the
- 19 medication because of the fact that this was a
- 20 change in her status I believe from the records
- 21 that we did not make any other changes We just
- 22 wanted to see if she would just improve from that
- 23 Q Had she had any improvement of her lower extremity
- 24 numbness following that lumbar shot?
- 25 A Yes Yes According to the records she had

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1 improvement in the numbness

2 Q On page two of that visit, the notes from that
3 visit, the February 4th, 2008, under work, it
4 states, off of work as recommended by Dr Rogers
5 until changed by a physician

6 A Right

7 Q She is having general weakness recently Don't
8 anticipate that she'll be able to return to
9 operating furnace again

10 (By Mr Beard)

11 Just for the record that is not what my report says

12 (By Mr Simmons)

13 Okay I'm looking at ---

14 (By Mr Beard)

15 2/4/08, page two, that's what mine says

16 (By Mr Simmons)

17 I'll show you what mine says

18 (By Mr Patel)

19 My -- the records I have seems to be consistent with
20 what you have

21 (By Mr Simmons)

22 This is what I have, Grady

23 (By Mr Beard)

24 That's what I have My 2/4/08 doesn't say any of
25 the other things that he was describing earlier

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1 either on the first page

2 (By Mr Simmons)

3 Here's the first page of it

4 (By Mr Beard)

5 Yeah My 2/4/08 doesn't say any of that

6 (By Mr Patel)

7 Let me see if somehow there are two different notes

8 This appears to me that this is, for whatever

9 reason, a note -- the note -- kind of an earlier

10 version of the final note is what this appears to

11 be I don't know why or how it was printed, but

12 that is what it seems like So it seems to me that

13 the note he has is the actual note

14 (Direct examination continued by Mr Simmons)

15 Q So the note in my possession, the claimant's
16 attorney's possession, dated 2/4/2008 is actually
17 the final version of that office visit? And I'm
18 going to hand that to you

19 A Yes

20 Q Okay And what you're saying then is that the
21 2/4/08 visit note that Mr Beard has is just an
22 earlier rough draft version of that?

23 A Correct And sometimes these notes are begun by the
24 nurses, sometimes I add information, they add
25 information, until a final note is done

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1 Q All right On page two of your note, does it
2 indicate that off of work as recommended by Dr
3 Rogers until changed by a physician?

4 A Yes

5 Q Okay Did Dr Rogers at that time coordinate with
6 you to order her out of work? Or exactly how did
7 that work? And I'll hand you a work status note
8 from that day, 2/4/08 Is

9 A Yes That's my recollection Dr Rogers had given
10 a note to her earlier, I believe, taking her off of
11 work, and I basically had continued that at that
12 point

13 Q Okay And once again it says, don't anticipate that
14 she'll be able to return to operating furnace again
15 Is that your notes from that visit?

16 A Yeah

17 Q All right I believe you said earlier that the last
18 visit that you had with Ms McCall was March 3rd of
19 2008, is that correct?

20 A Yes

21 Q If you could, tell me what the purpose of that visit
22 was and what your findings were and your plan for
23 treating Ms McCall?

24 A Again this was basically a follow-up visit to see
25 how she was doing in terms of her progress It

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1 appears from the notes that she had had some
2 improvement in the low back pain as well, which she
3 had complained about in recent months. And no
4 specific changes at that point had been made. She
5 was seeing Dr. Rogers in terms of medication and
6 headache management and so I basically wanted her to
7 continue seeing Rogers, Dr. Rogers, and continue a
8 home exercise program which she had been recommended
9 or been taught by physical therapy.

10 Q Do you have any plans to have any further visits
11 with Ms. McCall for her treatment? Or any other
12 shots or any other tests or anything?

13 A Per the notes it appears that I left it open in
14 terms of her symptoms. If she had symptoms again
15 then she is to call and follow-up with me.
16 Otherwise she is to follow-up with Dr. Rogers.

17 Q I guess just to rephrase that to make sure I
18 understand it. At this point in time she is to call
19 you if her pain in her back becomes of such a degree
20 that she feels that she needs further treatment from
21 you?

22 A Correct. Yeah, or the other -- to say that it seems
23 that she was doing relatively okay. Certainly she
24 was continuing to have pain, both in her neck and
25 low back, but had some improvement and it appeared

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1 to me that she was tolerating it much better and so
2 if she desired any further improvement or further
3 treatments then she could make an appointment with
4 me

5 Q That leads me to my next question which was, as a
6 result of these visits and these shots and the
7 treatments that you have provided to Ms McCall,
8 have you seen her conditions in her back improve?

9 A Yes

10 Q Okay And when I say conditions, I assume that
11 we've seen an alleviation of pain?

12 A Correct

13 Q To a certain degree?

14 A Correct

15 Q Are there any other treatments or tests that you
16 feel need to be done at this time to help Ms McCall
17 deal with this pain in her back, from your
18 standpoint I'm not talking about Dr Rogers,
19 because I believe you said Dr Rogers was treating
20 the headaches, correct?

21 A Correct

22 Q But just as to the back and what you have been
23 treating, do you feel that any other treatments or
24 tests are needed at this time?

25 A It would depend on the progression of her symptoms

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1 If they -- certainly symptoms can wax and wane If
2 they did bother her somewhat more again, there are
3 further treatments that could be done So it really
4 depends on her symptoms and how much she's able to
5 tolerate and live with the current level of pain
6 that she had

7 Q Do you feel that as time she may need any further
8 diagnostic studies such as radiological studies or
9 imaging or anything like that to assist you in your
10 care and treatment of Ms McCall?

11 A Nothing specific There may be actually some
12 diagnostic injections, et cetera, that could be
13 carried out But again that will depend on how
14 she's tolerating her symptoms Nothing that would
15 have to be done

16 Q And this would be something that -- there are other
17 avenues to pursue if she was to get worse?

18 A Yes Absolutely

19 Q Is that what you're saying?

20 A Absolutely Or they could be pursued even if she
21 didn't get worse, if she just felt like the current
22 level of pain she wanted to alleviate further

23 Q The visits and procedures that you just explained to
24 me by date, and I'm going to ask you some questions
25 about your opinion and treatment of Ms McCall But

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1 these visits and procedures that we've just gone
2 through, were all of those procedures and visits, in
3 your opinion, to a reasonable degree of medical
4 certainty, were they necessitated as a result of
5 that fall that Ms McCall had at work on June 29th
6 of 2006?

7 A Yes

8 Q Do you or Dr Rogers have a plan for Ms McCall, at
9 this present time, for long term treatment? What's
10 the prognosis, is basically what I'm asking? Where
11 do y'all have her going right now as far as her
12 treatment? And have you coordinated anything with
13 Dr Rogers?

14 A Prognosis is that she is likely to have some amount
15 of continuing pain And typically when patients
16 have that I have Dr Rogers continue following them
17 and they can see me if they need something
18 Typically at that point, typically if Dr Rogers
19 feels or I feel that injection techniques may be
20 beneficial, then they would see me And so
21 primarily she would follow up with Dr Rogers

22 Q Do you have any opinions as to whether or not Ms
23 McCall has reached maximum medical improvement in
24 regards to the injuries that you have been treating
25 her for?

1 A Let me review the notes a second

2 Q And when I ask you that, I'm just asking about the
3 injuries that you have treated her for I know that
4 Dr Rogers is treating her for headaches But just
5 for what you have treated her for

6 A I say generally she is getting close to maximum
7 medical improvement It's possible that she could
8 still get some improvement, but that's generally the
9 case

10 Q Is the only way to determine that is time?

11 A Time and further treatments if she wanted them And
12 if she had them it's possible that she could get
13 better But yes, time

14 Q Previously I asked you if you had a chance to review
15 Ms McCall's records from 1999 correct?

16 A Yes

17 Q And have you reviewed the MRI report from Anderson
18 Radiology from November of 1999?

19 A Just very briefly

20 Q And have you also reviewed -- I believe you answered
21 this earlier Have you reviewed the records from
22 physician assistant, Henry Ramirez?

23 A Yes

24 Q Comparing the 1999 MRI report to the 2007 MRI
25 report, are you capable of telling me whether or not

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1 there are any new injuries or findings on the 2007
2 MRI that were not on the 1999 MRI?

3 A It would be nice to have these in a file

4 Q If you need to read those reports again, certainly
5 feel free But what I'm asking, is comparing the
6 1999 MRIs which were of her cervical and lumbar
7 spine, to the 2007 MRIs which are also of her
8 cervical and lumbar spine, are there any new
9 injuries or findings on the 2007 MRIs that are not
10 present on the 1999 MRI?

11 A Now, there is no MRI that I have in the lumbar area
12 from 1999 I just want to make sure that's correct
13 It's cervical

14 Q Did you -- do you have a copy of the MRI report from
15 Anderson Radiology? I believe I saw it in your file
16 just a minute ago

17 A 1999?

18 Q Yes, sir?

19 A You're talking about the lumbar MRI?

20 Q Yes, sir?

21 A Okay Let me see

22 Q I believe it's actually on the same -- the last page
23 in your file right there

24 A Okay Okay

25 Q Is it a cervical and a lumbar?

) 1 A This is a -- let me look at this This is an x-ray
2 of the lumbar spine and cervical spine
3 Q Hang on one second
4 A Take a two minute break here?
5 Q Sure Please
6 (Off the record)
7 (Direct examination continued by Mr Simmons)
8 Q What I was asking you, and I may have incorrectly
9 asked you about the lumbar part, but comparing the
10 '99 and '07 MRIs, the ones that you have available,
11 the reports, ---
12 A Right
13 Q -- are there any new findings or injuries on the '07
) 14 that aren't on the '99?
15 A There are at least two things that are new, two
16 areas At C4-5, it says annular tear and another
17 annular tear at C7-T1 Also there is an indication
18 of arthropathy on the new one as well And it
19 hasn't been specifically delineated by the
20 radiologist, but it appeared from the overall note
21 that the disc bulges are at least slightly greater
22 on the MRI in 2007 compared to '99
23 Q Are those observations -- or the report from '07,
24 the findings of that, are they consistent with what
25 you have observed of Ms McCall here in your office?

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1 A Yes But the findings -- the MRI is just one aspect
2 of the overall presentation But yes, they are
3 consistent with it

4 Q In addition to any new findings or injuries that are
5 shown, do you believe that she has exacerbated any
6 pre-existing degenerative conditions in her back as
7 a result of the fall?

8 A Yes Again the disc herniations, it seems to me are
9 slightly greater And also there are annular tears
10 which are -- which actually could be acute as
11 opposed to degenerative But it also -- she has the
12 cervical arthropathy Could you repeat your
13 specific question?

14 Q Sure As a result of the fall, do you believe, and
15 I'll just go ahead and ask you to a reasonable
16 degree of medical certainty, that she has
17 exacerbated any pre-existing degenerative changes or
18 conditions in her back? It's the same question for
19 the new findings or for anything that is pre-
20 existing Do you believe that that fall caused the
21 new findings on the '07 MRI and do you believe that
22 the fall caused her to have an exasperation of any
23 pre-existing degenerative changes in her spine?

24 (By Mr Beard)

25 I just -- I need to interpose an objection, doctor,

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1 because I don't know yet that you're qualified
2 actually to answer that question I don't know that
3 we have established those qualifications to answer
4 that particular question as a pain specialist or
5 pain rehab doctor

6 (By Mr Simmons)

7 You can answer the questions

8 (By Mr Beard)

9 You can answer it, if you're able to

10 (Direct examination continued by Mr Simmons)

11 A Answer your question you mean?

12 Q Yes Yes

13 A I think the question is -- I think sort of to
14 rephrase it, in terms of exacerbating a degenerative
15 condition, I think it's -- as I stated earlier, I
16 believe she had an injury and that resulted in her
17 symptoms, as opposed -- and specifically stating
18 that this injury exacerbated the degenerative
19 condition itself is a little tricky I don't think
20 it exacerbated the degenerative changes I think
21 there were changes that occurred as a result of the
22 injury, including the annular tear, which I believe
23 likely were new We don't know specifically, but it
24 was not present on the MRI previously, and it is
25 present So, but I'm not -- what I'm trying to say

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1 is that I don't think that's a degenerative change
2 specifically That's what I'm trying to clarify

3 Q Yeah I'm not asking if -- I guess another way to
4 ask it is -- I think we will all agree that
5 obviously Ms McCall had some degenerative changes
6 in her back, is that true?

7 A Yes

8 Q Okay And those degenerative changes were in her
9 back one second before she fell, is that true?

10 A Yes

11 Q Okay Did the fall cause her to suffer additional
12 symptoms related to those degenerative changes that
13 she would not have suffered but for the fall?

14 A Yes

15 Q Okay That's the question

16 A Okay To that I can say yes

17 Q Okay And can you say that to a reasonable degree
18 of medical certainty?

19 A Yes

20 Q Do you believe that through your course of treatment
21 and what you learned and observed about Ms McCall
22 that there are any conditions or symptoms that you
23 have observed and/or treated that were not caused by
24 the fall? For example, is there anything that you
25 have treated or observed with Ms McCall through her

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1 presentation to you that you don't believe is
2 related to the fall?

3 A Probably the weakness that she had complained of in
4 recent months I don't know that that was related
5 to the fall It was related to the medication it
6 seems like from the notes But other than that I
7 can't think of anything

8 Q Do you anticipate that Ms McCall will have any
9 permanent limitations on her physical abilities as a
10 result of these injuries she has suffered?

11 A Yes

12 Q And could you just, in as much detail as possible,
13 describe those for me?

14 A The limitations?

15 Q Yes?

16 A It's likely that -- now, one has to understand that
17 when we talk about limitations we're talking about
18 what would be ideal for her in order to keep her as
19 comfortable as possible and continue to, at the same
20 time, be as active as possible And so ideally I
21 would keep her on restrictions that would be similar
22 to the restrictions that I kept her on earlier,
23 which would be lifting no greater than ten pounds,
24 maybe that could be increased to fifteen if she
25 began to improve, with no repetitive bending,

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1 stooping, pushing, pulling, kneeling or crouching

2 Q Any other limitations?

3 A Those would be the main ones And certainly lifting
4 above the shoulders should be limited as well to
5 about ten pounds

6 Q Obviously, and you've already expressed your opinion
7 that she's not at MMI So I'm asking you as of
8 today, do you have an opinion as to whether or not
9 she will be able to return to her job as a furnace
10 operator?

11 A Yeah, as I stated ---

12 (By Mr Beard)

13 Let me -- I didn't know he was finished I would
14 object to the form of the question, in that you
15 stated he has not said she has reached MMI I'm not
16 sure that's what he's stated yet And I would
17 object to the question only in the form of the
18 question

19 (Direct examination continued by Mr Simmons)

20 Q Doctor, have you stated today that Ms McCall is not
21 at MMI?

22 A Yes

23 Q Okay Do you anticipate -- let me rephrase the
24 question As of today, based on the current
25 restrictions that you have placed upon Ms McCall,

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1 do you feel that she could go back to a repetitive
2 style job in a factory setting?

3 A No

4 Q Okay Regarding your qualifications to render
5 opinions, you are the person that has treated Ms
6 McCall for what you've testified about today,
7 correct?

8 A Yes

9 Q And that treatment, is it based upon her medical
10 history?

11 A Yeah

12 Q Okay Is it based upon your findings, your clinical
13 findings, actually being present in the room with
14 her for her examinations?

15 A Yes

16 Q Okay And have you been through the proper training
17 to understand how to read medical records and MRI
18 reports?

19 A Yes

20 Q And these are all things that you've studied and
21 have been tested on?

22 A Correct And I would add that, as far as I know,
23 physical medicine and rehab residency, this is the
24 first time I've heard that they would not be
25 qualified to treat this or render opinions on this

1 Q Thank you, doctor That's all the questions I have
2 Please answer any that Mr Beard has

3 A All right

4 (Cross examination by Mr Beard)

5 Q Well doctor, we'll just start off with the last
6 thing you said I didn't say you didn't have the
7 qualifications or expertise to render opinions My
8 objection was more restricted to whether you have
9 the qualifications to interpret other doctors'
10 interpretations of MRI scans and other diagnostic
11 testing What are your qualifications to do that?

12 A To interpret the interpretations of other doctors'
13 results, is that the question?

14 Q Yes, sir?

15 A I certainly -- yes, I would say that I would have
16 the qualifications to interpret their
17 interpretations That's something that you would
18 have to do as a physician Basically what it
19 amounts to is a radiologist is trained to read MRIs
20 But certainly all other doctors, those who order the
21 MRIs, would certainly have to look at their
22 interpretations And so as a result are -- would be
23 qualified to interpret them

24 Q Is it fair to say, doctor, that virtually every
25 radiologist who renders an interpretation from an

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1 MRI scan into a paper document does them in
2 different ways?

3 A Yes

4 Q Okay In other words you said you can't tell by
5 looking at the old Anderson Radiology written report
6 whether or not it is the same or different only by
7 reading what the particular radiologist wrote on
8 that report correct?

9 A No Hang on a second

10 Q Okay

11 A Okay As mentioned earlier, the new MRI from '07
12 mentions annular tears at C4-5 and an annular tear
13 at C7-T1 We can presume that -- or I would
14 certainly presume that if annular tears were present
15 in the 1999 MRI it would have been mentioned by a
16 radiologist

17 Q And I don't have -- can I see the '99 MRI because I
18 don't have any of those documents at this time?

19 A Sure

20 Q Now, the annular tears you indicated that were seen
21 on the 2007, or that are mentioned in the 2007 MRI
22 scan, specifically of the cervical spine, what makes
23 you think that those are not chronic or longstanding
24 findings?

25 A The fact that she suffered an injury that she