

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

Gene McCaskill, Commissioner
Melody L. James, Commissioner
R. Michael Campbell, Commissioner

W.C.C. File No. 0802605
Appellate Case No.2015-002120

Tommy G. Houston, ... Claimant,

v.

Garda World Security, ... Employer/Defendant,

and

Gallagher Bassett Services, Inc., ... Carrier/Defendant,

Of Whom

Defendants are Appellants,

and

Claimant is Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0802605

Tommy Houston,)
)
Claimant,)
)
v.)
)
Garda World Security,)
)
Employer,)
)
and)
)
American Home Assurance)
Company,)
)
Carrier/Defendants.)
-----)

COPY

HEARING

Friday, November 14, 2014
10:32 a.m. - 11:31 a.m.

The Hearing was heard before Commissioner Aisha Taylor at the South Carolina Workers' Compensation Commission, 1333 Main Street, Columbia, South Carolina, on the 14th day of November, 2014 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.



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APPEARANCES

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EXHIBITS

(There were no exhibits marked in the hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 **MS. COMMISSIONER:** Today is Friday, November 14,
2 2014. We're here on Workers' Comp file number
3 0802605. This is the claim of Mr. Tommy
4 Houston, who's represented today by Ms. Kathryn
5 Williams. The Employer is Garda World Security
6 and the Carrier is American Home Assurance
7 Company. Both the Employer and Carrier are
8 represented today by Mr. Dan Addison. I have
9 an original date of accident of March 11, 2008.
10 The Claimant's average weekly wage is \$616.96
11 yielding a compensation rate of \$411.32. We
12 are here on the Claimant's Form 50 request for
13 a hearing. I will allow the parties to put
14 detailed position statements on the record.
15 However, prior to doing so, are there any
16 objections to APAs, jurisdiction, venue, or any
17 other items? Ms. Williams?

18 **MS. WILLIAMS:** None from the Claimant.

19 **MS. COMMISSIONER:** Mr. Addison?

20 **MR. ADDISON:** Commissioner, we've raised a
21 jurisdictional question pursuant to how this
22 claim has been filed. It's our understanding
23 that the Claimant is seeking a change of
24 condition pursuant to the original accepted
25 award in the original accepted case for the



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1 date of injury of March 11, 2008. The Claimant
2 participated in a Form 16 settlement with the
3 Defendants on February 4, 2010. The Form 16A
4 is listed in -- excuse me, is contained within
5 the Commission file, it is a -- presumably when
6 it was done with the Claimant being a pro se
7 Claimant back in the day. I assume that the
8 Commission was there and participated in an
9 informal conference -- excuse me, a conference
10 with the Commission -- excuse me, with the
11 Claimant and the Defendants. I don't have that
12 information. I would hope the Commission file
13 does. I was not the counsel that signed this
14 Form 16. It was prior defense counsel.

15 **MS. WILLIAMS:** And it's in your APAs if it's not in
16 the files.

17 **MR. ADDISON:** The Commission -- excuse me, the 16A
18 was done, the Claimant received -- or awarded
19 benefits on his back and right shoulder
20 pursuant to the Statute. The Form 16A lists
21 various body parts, including the right
22 shoulder and low back, as well as his ribs,
23 right knee, right hand, left hip, and left leg.
24 Those last body parts being the affected body
25 parts that the injury affected and such on the



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1 Form 16A. The Claimant subsequently sought a
2 change of condition pursuant to a Form 50 filed
3 by Claimant's counsel, Kathryn Williams, that
4 was filed on or about July 15, 2010, several
5 months later. On that Form 50 Claimant alleges
6 all of the body parts listed on the Form 16A
7 including the two body parts as well as -- the
8 two awarded body parts as well as the other
9 affected body parts. Our position is is that
10 the jurisdictional requirements of 42-17-90
11 were triggered at that point. The Claimant had
12 to sustain a change of condition within one
13 year of the date of the Form 16 for anything
14 related to the March 11, 2008 injuries. The
15 Form 16, as we've discussed off the record, is
16 a method of creating resolution and closure to
17 a file. If the Claimant as some problem that
18 comes about from that Form 16 settlement, he
19 has one year to request a change of condition
20 from payment of benefits as per the Statute.
21 If he does not seek that within that one year,
22 the jurisdictional trigger applies. The
23 Claimant's position is that they sought all the
24 various body parts and, as such, they are
25 protected. My position is is that even though



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1 they named that on the Form 50, there was no
2 pursuit of the right knee during that one year.
3 There was a consent order signed in 2011, March
4 of 2011, March 16, 2011 that should also be in
5 the Commission file that all the parties signed
6 wherein the parties agreed that the Claimant
7 had sustained a change of condition to his left
8 shoulder -- excuse me, right shoulder and low
9 back. No other body parts are listed. The
10 document does indicate that all other issues
11 will be held in abeyance. It's our position
12 that holding the issue in abeyance does not
13 hold the Claimant's statutory requirement to
14 seek benefits for his right knee in a timely
15 manner. And as such, we believe that you have
16 to make a determination of whether or not you
17 have jurisdiction over this claim under those
18 facts.

19 **MS. COMMISSIONER:** And just the make sure, you're
20 raising the jurisdiction argument as it
21 pertains to my hearing the merits of the Form
22 50, but you agree that I have jurisdiction to
23 at least decide whether the Form --

24 **MR. ADDISON:** Right. The Commission has purview to
25 hear these issues. The jurisdictional issue



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1 here is whether you have jurisdiction to
2 actually take that -- the merits of this
3 particular right knee issue and hear it. And
4 under the rules on jurisdiction, you have to
5 make a determination on that first before you
6 get to the merits.

7 **MS. COMMISSIONER:** Okay. All right. Thank you.
8 Ms. Williams, any -- I'll let you respond to
9 that.

10 **MS. WILLIAMS:** And, Your Honor, it's our position
11 that you clearly have jurisdiction either as an
12 undiagnosed condition from the original claim
13 or, you know, more the point -- to his point on
14 the change of condition. We did file the
15 change of condition. There's been a live open
16 claim since July of 2010 on the right knee. We
17 did enter a consent order where -- you know,
18 because he was getting -- he desperately needed
19 surgery on his back. And the Defendants were
20 willing -- had denied that as well. They were
21 willing to accepted that at that time and
22 provide surgery on the back and that was the
23 immediate issue. We entered a consent of order
24 to resolve that immediate issue, holding all
25 other issues in abeyance. And so we believe



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1 that we have, by any interpretation of the
2 Statute, met the requirements for preserving
3 any issues with regard with the knee. And we
4 contend that he has sustained an injury to the
5 right knee in the original accident that has
6 gotten worse and that he now needs additional
7 treatment on the right knee including surgery
8 and has been recommended by Dr. Paylor. And I
9 would point out that Defendants authorized Dr.
10 Paylor's treatment initially. They sent him to
11 Dr. Paylor. They did not deny compensability
12 of the right knee or treatment on the right
13 knee, so there was no reason for us to have,
14 quote, pursued this prior to that time because
15 the Defendants were authorizing treatment for
16 him. They did so up until the time that Paylor
17 recommended surgery and all of a sudden now
18 realized it was going to get expensive and they
19 decided to deny it.

20 **MR. ADDISON:** I'm going to have to object to that,
21 Commission. She doesn't know what my client
22 thinks or doesn't think. That's a subjective
23 speculative statement.

24 **MS. WILLIAMS:** It was an editorial comment that I
25 will withdraw. But the fact remains that they



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1 authorized treatment with Dr. Paylor, so there
2 was no reason for us to clutter that Commission
3 calendar with that issue until such times as
4 they denied treatment.

5 **MR. ADDISON:** Commissioner, I meant to raise the --

6 **MS. WILLIAMS:** And that did not happen until
7 Dr. Paylor --

8 **MR. HOUSTON:** November 5, 2013.

9 **MS. WILLIAMS:** Dr. Paylor began treating him
10 November 5, 2013. So at that point it wasn't
11 an issue. And the Claimant last saw Dr. Paylor
12 March 25, 2014 at which time Dr. Paylor noted
13 that he was awaiting approval for the surgery.
14 So Dr. Paylor at that point was still thinking
15 that Gallagher Basset was going to approve the
16 claim, so -- and you'll see a note at page 181
17 where Gallagher Basset was requesting, you
18 know, Dr. Paylor to see the Claimant with
19 regard to the right knee. So there was no
20 reason for us to raise cane over the right knee
21 until such time as the Defendants denied
22 treatment for it, which really didn't happen
23 until this year.

24 **MS. COMMISSIONER:** Thank you. Mr. Addison.

25 **MR. ADDISON:** Commissioner, I was --



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1 **MS. COMMISSIONER:** I know we kind of got off. She
2 went into her position, but I was going to let
3 you respond with your general position.

4 **MR. ADDISON:** I meant to add in the knew or should
5 have known standard the Supreme Court had
6 recently reiterated, which is -- it's the
7 Holmes decision. It's Holmes vs. National
8 Security Service Industries, which is 717
9 S.E.2d 751 where there Court does go into a
10 rather lengthy discussion of Claimant
11 supposedly should know when they have something
12 wrong with them, they have to pursue it in a
13 timely manner. So it's not like this is some
14 old standard that we're all operating under.
15 The Supreme Court has made very clear that the
16 Claimant -- the onus is on the Claimant to
17 pursue a claim if he believes that it exists.

18 **MS. WILLIAMS:** And he did and they provided
19 treatment for him until March of this year.

20 **MR. ADDISON:** It has to be timely, in one year,
21 Commissioner. Just so we're clear, the
22 timeliness would be in the timeframe as set out
23 by the change of condition statute, 42-17-90.
24 The Claimant has one year to pursue. He
25 pursued part of it. He got back surgery. I'm



1 more than happy to admit that. But their
2 position is is that the knee was substantially
3 bad enough in 2010 that he needed --

4 **MS. COMMISSIONER:** Well how come you all didn't
5 raise that argument before you began providing
6 treatment for the right knee?

7 **MR. ADDISON:** We sent him to a doctor for an
8 evaluation. That's not even an admission to
9 anything, Commissioner. Supreme Court's made
10 that very clear too.

11 **MS. WILLIAMS:** What it does show --

12 **MR. ADDISON:** We were told by the treating physician
13 at the time that before they would release him,
14 that we needed to have the knee checked out.
15 We were trying to get the case resolved at that
16 point. We also -- it's in my APA, we requested
17 information from the doctors as to whether he
18 could return to work in 2013. We submitted
19 stuff to them saying, is he capable of
20 returning to work. They said he could do
21 sedentary work. And the treating physician
22 said, I think his knee needs to be checked out
23 because he's complaining of it now. I'm not
24 saying he doesn't have a knee problem in 2013.
25 He clearly did. The MRI showed a bucket handle



1 tear. Our position is it's something new.
2 This is nothing that was there back in 2008,
3 2009, or 2010 per the medical records.

4 **MS. WILLIAMS:** And that, by the way, was Dr. Math,
5 who's the pain management.

6 **MR. ADDISON:** I don't dispute that he had problems
7 with his knee in 2013. He clearly did. They
8 existed. The evidence has to show that it came
9 from my injury.

10 **MS. COMMISSIONER:** But you agree he had something
11 with his right knee in 2008; is that correct?

12 **MR. ADDISON:** In 2008, in March and April of 2008
13 per the medical records.

14 **MS. COMMISSIONER:** All right. And then you agree
15 that there was at least a mention of it in
16 2010?

17 **MR. ADDISON:** In October of 2010. So two and one
18 half years went by without any mention of any
19 problem.

20 **MS. WILLIAMS:** But the Form 16 wasn't entered into
21 until February of 2010.

22 **MR. ADDISON:** 2011.

23 **MS. WILLIAMS:** February 2010.

24 **MR. ADDISON:** The 16?

25 **MS. WILLIAMS:** Uh-huh.



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1 MS. COMMISSIONER: Okay.

2 MR. ADDISON: You're right. I'm sorry. No, you're
3 wrong Kathryn -- no, you're right. I'm
4 thinking of the consent agreement.

5 MS. COMMISSIONER: Anything further from the
6 attorneys for the position statements?

7 MS. WILLIAMS: I think we beat it to death.

8 MS. COMMISSIONER: Madam Court Reporter, will you
9 please swear Mr. Houston.

10 TOMMY HOUSTON, having been duly sworn, testifies as
11 follows:

12 MS. COMMISSIONER: Ms. Williams.

13 MR. HOUSTON - DIRECT EXAMINATION BY MS. WILLIAMS:

14 Q: You go by Gregg; is that correct?

15 A: Yes, ma'am.

16 Q: I keep calling you Tommy, but you go by Gregg.

17 A: I go by Gregg.

18 Q: And, Gregg, how old are you?

19 A: Fifty-eight.

20 Q: And tell us about -- how far did you go in
21 school?

22 A: Two years of college.

23 Q: Did you get a degree?

24 A: No..

25 Q: Okay. So you graduated from high school?



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1 A: Yes.

2 Q: And attended some college. And tell us about
3 your work history. How long did you work for
4 Garda World Security?

5 A: I think I started there in May of 2005.

6 Q: Okay. And tell us a little bit about -- what
7 did you do for Garda World Security?

8 A: We have driver/messengers, you do both. On a
9 normal day if you don't have a trainee, you
10 drive half of the day and then you jump half of
11 the day delivering the coins --

12 Q: What you all do is you deliver coins and money;
13 is that correct?

14 A: Pick it up from the Federal Reserve Bank, carry
15 it to local banks, pick up deposits from
16 stores, retail outlets, bring them back to the
17 bank, carry change to them.

18 Q: All right.. And you were injured in March --
19 originally on March 11, 2008; is that correct?

20 A: Yes, ma'am.

21 Q: And can you tell us briefly what happened to
22 you?

23 A: We had -- or I had serviced an ATM machine in
24 the parking lot of BB&T on 123 in Easley. Went
25 inside, got them to sign for the receipts.



1 Came out and as -- it was normal procedure, as
2 soon as I shut the doors in the back, the
3 driver starts moving. They don't like to sit
4 still any longer than they have to. And he was
5 going across the parking lot and I reached up
6 into -- you put the copy of the receipts right
7 here beside your seat. And I was backing up to
8 get in my seat and buckle the seatbelt. He
9 evidently did not see the car coming down the
10 highway because he went on out into the highway
11 right directly in front of him. And they was
12 so close, there was no horns blowing, no tires
13 squealing, just boom.

14 Q: Okay. So somebody hit the truck?

15 A: Hit the truck.

16 Q: Okay. And you were thrown around inside --

17 A: With the hand trucks and the boxes of coins and
18 bags of coins.

19 Q: All right. And what all did you injure; what
20 body parts did you injure in that accident?

21 A: My right shoulder, broke all the ribs on the
22 right side. They said I had a puncture wound,
23 small puncture to the right kidney, but it
24 healed back fine. My right knee. And for
25 probably a couple of months they were saying it



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1 was my left hip. But after several injections
2 in it with more tests, it was said that the
3 actual injury was in my lumbar spine, that the
4 pain was just showing up in the hip.

5 Q: Okay. All right. Now, you had shoulder
6 surgery in July of 2008; is that correct?

7 A: Yes, ma'am.

8 Q: And I believe Dr. Wessinger did that surgery.

9 A: Yes, ma'am.

10 Q: Okay. And you were out of work until June or
11 July of 2009; is that correct?

12 A: May.

13 Q: May?

14 A: May 11th.

15 Q: Okay. Of 2009?

16 A: 2009.

17 Q: Okay. So you were out of work, it looks like,
18 ten months or so for that shoulder surgery; is
19 that correct?

20 A: Yes, ma'am.

21 Q: And then you settled your case on a Form 16 in
22 February of 2010; is that right?

23 A: Yes, ma'am.

24 **MS. WILLIAMS:** And, Your Honor, that Form 16 is in
25 our APA at page 186.



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R. 735

1 Q: And on that Form 16 -- and by the way, were you
2 represented by counsel?

3 A: No, ma'am.

4 Q: And you returned to work for -- you were
5 working at that time for --

6 A: Yes I was.

7 Q: -- Garda World Security? On that Form 16 it
8 shows the affected body parts as ribs, right
9 knee, right hand, left hip, left leg. Did you
10 prepare that Form 16?

11 A: No, ma'am. Mr. Hedlund, the attorney, did
12 that.

13 Q: For Garda World Security prepared that?

14 A: Yes, ma'am.

15 Q: Okay. All right.

16 A: I forgot about the right hand, had to have
17 surgery to get a piece of metal out of my hand.

18 Q: Okay. All right. All right. Now, when you
19 settled your case on the Form 16, were you
20 still having problems?

21 A: Yes, ma'am.

22 Q: Okay. Where were you having problems?

23 A: The shoulder was a lot better, but the knee and
24 the back were just -- since I had gone back to
25 work, were just getting worse.



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1 Q: Okay. So after you went back to work from the
2 shoulder surgery you noticed that the knee and
3 the back were getting worse; is that what
4 you're --

5 A: That's about the first time I was active again.
6 Because with the ribs it was go home, don't
7 lift anything, don't move around any more than
8 you have to. And that was about six weeks.
9 And then it was right on into Dr. Wessinger.
10 And when he did the MRI of my shoulder, well,
11 we got to fix the shoulder right now. And
12 after that surgery, go home, take it easy,
13 don't move around, had my arm strapped to my
14 chest. And when I went back to work in May of
15 2009 is the first time I was really up moving
16 around.

17 Q: Okay. And so did things gradually get worse
18 after that?

19 A: Yes, ma'am.

20 Q: Okay. And you went back in to see Wessinger.
21 And I think that was in September of 2010; is
22 that correct?

23 A: September 1st.

24 Q: Okay. Now, did you tell Dr. Wessinger about
25 your knee when you returned to see him in 2010?



1 A: That was the chief complaint was my back and my
2 knee. And I told him, I said, you know the
3 first three levels, the first three rows in
4 your parking lot across the street from the
5 entrance are all handicapped and I'm having to
6 park four rows out and I can't walk in your
7 office; I can come to the lobby, sit there five
8 or ten minutes until the pain eases up and then
9 come on up to your office. But he wanted to do
10 another MRI of the shoulder, check the
11 shoulder. And then he went over my back and
12 told me he didn't see anything surgically wrong
13 with it. And I told him, it's just constantly
14 getting better and I feel like if it's not
15 fixed quick, I'm probably not going to be
16 walking much longer.

17 Q: Constantly getting better or constantly getting
18 worse?

19 A: Constantly getting worse.

20 Q: Okay.

21 A: And I don't think I'll be walking much longer
22 if we don't get it fixed pretty quickly.
23 That's when he sent me to the spine center.

24 Q: Okay. And that's when you saw Dr. Kanos.

25 A: And they didn't want to talk about the knee.



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1 They all do backs.

2 Q: Okay. All right. Now I'm going to show you --

3 **MS. WILLIAMS:** And this is at page 10 of my APAs,
4 Your Honor.

5 Q: I'm going to show you a patient recheck
6 questionnaire. And this is dated 10/6/2010.
7 Is that your handwriting?

8 A: Yes, ma'am.

9 Q: Okay. And did you put on there, it says where
10 is your pain or problems, it says back,
11 shoulder, knee?

12 A: Yes, ma'am.

13 Q: Okay. And that was October 6, 2010?

14 A: Yes, ma'am.

15 Q: Okay. So that was right about the time you
16 began seeing Dr. Wessinger again; is that
17 right?

18 A: That's when I went back to get the MRI I think.

19 Q: All right. That same day I think that you also
20 were required to fill out some FMLA paperwork
21 for your employer; is that correct?

22 A: Yes, ma'am. Well they sent it to me and I
23 carried it to the doctor's office.

24 Q: Okay. You carried it to Dr. Wessinger's office
25 that day?



1 A: Yes, ma'am.

2 Q: All right. I'm going to show you the part that
3 you filled out.

4 MS. WILLIAMS: And, Your Honor, this is at page 191
5 of my APAs.

6 Q: And is that your signature at the bottom?

7 A: Yes, ma'am. This is a Steadman Hawkins form.
8 They had me fill this out and incorporated it
9 into the FMLA.

10 Q: Oh, did they really? This was one that
11 Steadman Hawkins gave you?

12 A: That's the one they gave me when I told them
13 what I need. To fill out either one of those
14 and I said I need the FMLA.

15 Q: I see. All right. Now, and on there it says
16 give a -- so Dr. Wessinger's office had this
17 note too, you gave this to them?

18 A: I filled it out there at the reception desk.

19 Q: On October 6.

20 A: Gave them that plus the forms Garda had sent
21 me.

22 Q: Okay. And then you also gave this to Garda?

23 A: Dr. Wessinger mailed it in.

24 Q: Mailed it. Dr. Wessinger mailed it for you?

25 A: Yes, ma'am.



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1 Q: Okay. All right. And on that day it says,
2 please give a brief description of disability
3 or accident and list date below. And what did
4 you put?

5 A: Auto accident 3/11/08, injury to right
6 shoulder, right knee, and lower back.

7 Q: Okay. All right. So that same day you, at
8 least on two different forms, complained to
9 Dr. Wessinger about the right knee; is that
10 correct?

11 A: Yes, ma'am.

12 Q: And you knew that form was going to your
13 employer as well?

14 A: Yes, ma'am.

15 Q: Okay. Now, you were also deposed -- you're
16 aware, I think by this point, that
17 Dr. Wessinger's treatment notes don't contain a
18 complaint of your right knee because I've told
19 you that.

20 A: He didn't really treat it. He just did the
21 shoulder and then go.

22 Q: Okay. All right. But you complained to him
23 about it at last on two separate forms and you
24 complained to your employer about it; is that
25 correct?



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1 A: Yes, ma'am.

2 Q: All right. Now, you were deposed shortly after
3 that on November 17, 2010 by the lawyer --

4 MR. ADDISON: I've got to object to the form of the
5 question. She just said he complained to the
6 employer.

7 MS. WILLIAMS: By way of the FMLA form.

8 MR. ADDISON: By way of the FMLA, which doesn't say
9 right knee from the 2008 injury. It says --

10 MS. WILLIAMS: It most certainly does.

11 THE WITNESS: 3/11/08.

12 MR. ADDISON: Okay.

13 MS. WILLIAMS: It most certainly does.

14 MR. ADDISON: Okay.

15 MS. WILLIAMS: Let's go over it just so the record's
16 clear.

17 MS. COMMISSIONER: Okay.

18 Q: On that FMLA form it says --

19 MR. ADDISON: Well, let me object to it this way. I
20 don't see anywhere that that is a proper notice
21 for it under the Worker's Comp Act. But I
22 think the question would have to be, did he
23 report this to whoever the supervisor would be.
24 It would be necessary under the Workers' Comp
25 Statutes for those purposes under the 42-15-10.



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1 MS. COMMISSIONER: And I'll note the objection for
2 the record. It's overruled. I think she can
3 just ask him about it.

4 MR. ADDISON: Sure. I just want to make sure the
5 record's clear.

6 MS. COMMISSIONER: Perfect. Thank you.

7 Q: Okay. And it says on there, is the patient's
8 condition due to an injury or sickness
9 involving the patient's employment? And what
10 did you say?

11 A: Yes.

12 Q: All right. And it asks you the last date
13 worked. And what did you say?

14 A: 8/30/2010.

15 Q: And then it says your first treatment for this
16 injury or illness with our physicians and what
17 did you say?

18 A: 3/11/08.

19 Q: Okay. So you indicated on that form that this
20 was from your work-related injury; is that
21 correct?

22 A: Yes, ma'am.

23 Q: All right. Now, let's talk about your
24 deposition because you were deposed about a
25 month later by the Employer for the Workers'



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1 Compensation carrier for Garda World Security
2 and you were asked in that deposition --

3 **MR. ADDISON:** And for the record, it's Randy Hedlund
4 I think who did the deposition.

5 **MS. WILLIAMS:** Randy Hedlund did it.

6 **THE WITNESS:** It was a female.

7 **MS. WILLIAMS:** And we will stipulate that --

8 **MR. ADDISON:** It was done. I'm just making sure the
9 record's clear.

10 **MS. WILLIAMS:** Amanda did it. Randy Hedlund
11 represented, Amanda did it. But you will
12 stipulate that that was representative of the
13 Workers' Compensation carrier?

14 **MR. ADDISON:** Absolutely. A representative. I just
15 want to make sure -- the way you asked the
16 question was that I was the one asking him, not
17 him.

18 **Q:** Okay. Now, you were asked at page 24 of your
19 deposition. I'll read the questions, I want
20 you to read the answers, okay?

21 **A:** Okay.

22 **Q:** You said that you were referred to
23 Dr. Wessinger for your right shoulder and your
24 back and your right knee. Did he provide any
25 treatment for your right knee? And what was



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1 your answer?

2 A: Treatment, x-ray, examination, and physical
3 therapy.

4 Q: And then question was, did your right knee
5 improve? And your answer?

6 A: It did while I was off of it.

7 Q: Question, while you were not working?

8 A: Uh-huh.

9 Q: Question, what happened when you went back to
10 work?

11 A: It just slowly got worse.

12 Q: Question, and tell me what you mean by that,
13 what got worse? And your answer?

14 A: Well, the pain in back is popping and cracking
15 and grinding sounds when I put weight on it.
16 Like going up steps -- coming down steps is
17 fine. Going up steps is a problem.

18 Q: Question, do you have any swelling in your
19 right knee?

20 A: While I'm on it a lot it does, swells and seems
21 like the outside's numb and the inside hurts.

22 Q: Okay. And then at page 33 you were asked, what
23 problems, if any, were you having with your
24 right knee in February? And by February, that
25 was the time that you had settled on the Form



1 16. And what was your answer?

2 A: In February not really a lot, just soreness and
3 swelling. No sharp pains.

4 Q: Question, how often would you notice this
5 swelling? And your answer?

6 A: Kind of like the back, maybe a couple days a
7 week I would put a heating pad or an ice pack
8 on it at night if it was keeping me awake.

9 Q: Question, when did you next see a doctor after
10 February? And the answer was?

11 A: September 1st.

12 Q: And then, and that was who?

13 A: Dr. Wessinger.

14 Q: And why did you go back to Dr. Wessinger?
15 What's your answer?

16 A: I was having pain in my shoulder. I was having
17 afraid something had come lose. I was having
18 severe pain in my back and legs. Was having
19 trouble walking actually. And my knee had
20 started giving way sometimes. Even standing up
21 long enough to take a shower in the morning
22 causes pretty bad back pain. And my knee
23 started doing the grinding sound and hurting.

24 Q: Okay. Then page 34 you were ask the question,
25 let's go back for a second. You went back to



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1 Dr. Wessinger because you started having pain
2 in your right shoulder again; is that right?
3 And what was your answer?

4 A: Shoulder, back, and knee.

5 Q: Okay. And then at page 41 you were asked
6 again, all right, now, let's talk about your
7 right knee. When did you begin to notice
8 problems again with it? And your answer was?

9 A: Soreness, stuff that I attributed to me laying
10 in bed for 14 months or laying on the sofa for
11 14 months and just getting to be active a month
12 or two, which I thought would go away. And at
13 first it would get sore a day or two and ease
14 up. It'd be two or three days later it would
15 get sore and it would ease up. I could live
16 with that. Five, six months ago it just got
17 sore, it got worse, and it got to the sharp
18 pain. Each step there was sharp pain inside.
19 It felt like it was behind my kneecap. The
20 outside of my leg, when I reach to rub it --
21 did we miss a page?

22 Q: One day.

23 A: Oh -- one day I notice that the outside was
24 numb, couldn't even feel it, couldn't tell I
25 was touching it. So popping and cracking. If



1 I had to go up steps, I have to lead with the
2 left foot because if it's bent when I put
3 weight on it, it might not work, but it might
4 work and it might not. I've been walking and
5 if there haven't been something close by that
6 I could grab, I would have fell because I put
7 weight on that knee and it just folds up.

8 Q: Okay. And then page 45, again, how about your
9 right knee, is it any better? And what was
10 your answer?

11 A: It don't get -- it's not sore every afternoon,
12 but now if I walk for ten minutes, I need to
13 stay close to something I can hang on to
14 because it's going to give way. It's going to
15 pop, crack. And when it does the popping and
16 cracking is when I have the pain shooting up
17 around my leg, around my knee.

18 Q: Okay. Now, and this was on -- all this
19 testimony was on November 17, 2010; is that
20 correct?

21 A: Yes, ma'am.

22 Q: That was some eight months or so after you
23 settled the case on the Form 16; is that
24 correct?

25 A: Yes.



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1 Q: So you were clear in the your deposition to the
2 lawyer that was representing the insurance
3 carrier at that time that you were pursuing a
4 claim for your right knee?

5 A: I wasn't going to settle unless they included
6 the back and the knee in the settlement.

7 Q: Okay. All right. Now, after that deposition
8 were we also at that same time -- you said your
9 were clear that you weren't going to settle
10 unless it included the back and the right knee.
11 We were pursuing -- you were pursuing a claim
12 for your back as well; is that correct?

13 A: Yes, ma'am.

14 Q: And the insurance carrier denied that they were
15 responsible for the change of condition for
16 your back; is that correct?

17 A: Yes, ma'am.

18 Q: Okay. And you ultimately wound up -- you hired
19 me and you ultimately wound up -- we had to
20 request a hearing to try to get them to pay for
21 the treatment that Dr. Kanos wanted to do on
22 your back, which was surgery; is that correct?

23 A: For about -- I think I told you the first day
24 I was there for about two months I had been
25 telling the supervisor I needed to go back to



1 that doctor. When I'm through in the
2 afternoon, sometimes a can't walk across the
3 parking lot to my car without sitting down for
4 15 minutes. And he would always, we'll call
5 and make an appointment. Then tell me, no, I
6 can't let you off that day. That's why I
7 contacted you to get me to see a doctor.

8 Q: Okay. And so finally in December we entered a
9 consent order and you finally had surgery on
10 your back we're now talking over a year after
11 you gave that deposition; is that correct?

12 A: December 12, 2012.

13 Q: So it took us over a year even from the time of
14 this deposition to get -- before you got
15 surgery on your back; is that correct?

16 A: Yes, ma'am. I guess about 14 months.

17 Q: Okay. And then you were -- how long were you
18 on your back from the back surgery, how --

19 A: About three weeks and then started physical
20 therapy, which was very light at first and
21 progressed on from there.

22 Q: And then Dr. Kanos sent you to Dr. Math for --
23 or you wound up with Dr. Math for chronic pain
24 management for your back; is that correct?

25 A: Yes, ma'am.



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1 Q: And you're still in treatment for that?

2 A: Yes, ma'am.

3 Q: Okay. Now, after you had the back surgery, did
4 you begin to notice again that your knee was
5 getting worse?

6 A: Yes, ma'am. When they started having me walk
7 more for the back therapy.

8 Q: Okay. And then we asked -- through me, we
9 asked the insurance carrier to send you for
10 treatment for your knee; is that correct?

11 A: Yes, ma'am.

12 Q: And they sent you to Dr. Paylor --

13 A: Yes, ma'am.

14 Q: -- is that correct? And they paid for
15 treatment with Dr. Paylor until he recommended
16 surgery; is that right?

17 A: Even with Dr. Math they paid for x-rays and
18 MRIs before sending me to --

19 Q: On that knee?

20 A: -- Dr. Paylor. And they covered that too.

21 Q: All right. And they paid for Dr. Paylor until
22 Dr. Paylor recommended surgery?

23 A: Yes, ma'am.

24 Q: And it was at that point that they denied Dr.
25 Paylor's treatment anymore; is that correct?



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1 A: They -- about two or three months later they
2 sent me back to be reevaluated. And at that
3 point when he said that the knee was worse and
4 I needed the surgery soon, that's when
5 everything came to a halt.

6 Q: Okay. And that's where we're stuck today; is
7 that correct?

8 A: Yes, ma'am.

9 Q: And you want the treatment that Dr. Paylor's
10 recommending?

11 A: Yes, ma'am.

12 MS. WILLIAMS: That's all the questions I have.

13 MS. COMMISSIONER: Mr. Addison.

14 MR. HOUSTON - CROSS EXAMINATION BY MR. ADDISON:

15 Q: Did you lawyer forget a doctor in there,
16 another doctor that you saw? Do you remember
17 seeing another doctor for your back?

18 A: For my back?

19 Q: Yes, sir.

20 A: Dr. Bucci.

21 Q: Right. He was the first doctor you saw for
22 your back, correct?

23 A: That's the first one Dr. Wessinger sent me to.

24 Q: Right. Dr. Bucci said he thought you did not
25 need surgery on your back, correct?



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1 A: Yes, he did.

2 Q: All right. You're attorney got you over to
3 Dr. Kanos and Dr. Kanos made the recommendation
4 for your back surgery, correct?

5 A: No, sir. That's not -- Dr. Math sent me to
6 Dr. Kanos.

7 Q: Dr. Bucci sent you to Dr. Math, correct?

8 A: Yes. Correct.

9 Q: That's what her records reflect is Dr. Bucci
10 sent you over there and you treated with Dr.
11 Math. Were you telling Dr. Math about these
12 problems with your right leg when you started
13 seeing her?

14 A: Yes, sir.

15 Q: So if she didn't write it down in 2011, that's
16 her fault not yours?

17 A: Well, she's the one that did x-rays and ordered
18 the MRI.

19 Q: In 2011 when you first saw her were you telling
20 her you were having these substantial
21 problems with your right knee?

22 A: Yes, sir.

23 Q: Were you telling her that you could barely walk
24 on your right knee in 2011 when you first saw
25 her?



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1 A: At that point my back was a lot worse than the
2 knee. But I did tell her about both.

3 Q: All right. Were you telling her that you were
4 having back pain that went down your left leg
5 to your left knee? Do you remember telling her
6 that?

7 A: Yes, sir.

8 Q: And that you were having substantial problems
9 with your left leg?

10 A: It went all the way down to the heel in my left
11 leg.

12 Q: Okay. Do you remember telling Dr. Wessinger
13 the same thing?

14 A: I don't know that the pain was going that far
15 when Dr. Wessinger was treating me. It was
16 between the hip and the knee.

17 Q: You went back and saw him in September and
18 October of 2010. You saw him a couple of
19 different times in that time frame, correct?

20 A: Yes, sir.

21 Q: Your first visit was on September 1, 2010?

22 A: Yes, sir.

23 Q: All right. And you were telling him --
24 according to you, you were telling him you were
25 having problems with your right knee as well as



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1 your shoulder and your back?

2 A: And the back.

3 Q: Okay. He wrote down that you were complaining
4 of left leg pain as well as low back pain. You
5 would agree with me that you were having pain
6 in your low back that went down your left leg?

7 A: Yes, sir.

8 Q: Okay. In October, October 6, 2010 --

9 **MR. ADDISON:** Page 234 of Defendants' APA.

10 Q: -- you indicated -- it indicates that you told
11 him that you were still having back and hip
12 problems primarily on the left side. Is that
13 accurate?

14 A: That's where the back pain was, going down
15 the left side.

16 Q: It says that you told him that they had been --
17 those problems have been present since the
18 accident as well?

19 A: Yes, sir.

20 Q: But they were getting worse --

21 A: Yes, sir.

22 Q: -- those problems of the pain in your back
23 going down your hip and -- your left hip and
24 your left side were getting worse?

25 A: Yes, sir.



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1 Q: Okay. That indicates that you told him that
2 you could only walk for ten to 15 minutes
3 before you started to have pain in the left
4 leg, did you tell him that?

5 A: Yes, I did.

6 Q: Okay. According to you, you also told him
7 about your right knee and he didn't write it
8 down that day.

9 A: I told him. I told him I was having a hard
10 time even walking in his office.

11 Q: Okay. And you saw him again October 27th. And
12 that looks like the last time that you saw him.

13 A: I think that was to go over the MRI results.
14 And that's when he sent me to the Dr. Bucci.

15 Q: And that was October 27, 2010, correct?

16 A: Yes, sir.

17 Q: Okay. Now you then go over to see Dr. Bucci.
18 Trying to remember the date. I'm sorry. I was
19 just looking for it, I had it, and I've lost
20 it. But you go over to see Dr. Bucci, he
21 checks you out, he sees the MRI, and then he
22 refers you to Dr. Math?

23 A: Yes, sir.

24 Q: He indicates that he didn't feel like you
25 needed surgery on your spine.



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1 A: Yes, sir.

2 Q: All right. Did you tell Dr. Bucci that you
3 were having all these problems with your right
4 knee?

5 A: I, in two visits, saw him probably a total of
6 five minutes. I'm not sure if I did or not.
7 The first visit he came in and said, before we
8 discuss anything, I need to get an MRI. And
9 they did a myelogram. And the second time he
10 came in, stood in the door, said I've looked at
11 your test results and I don't see anything with
12 a surgical solution; I'm going to send you to
13 pain management.

14 Q: Okay. And then ultimately ended up with Dr.
15 Kanos as your spine surgeon; is that correct?

16 A: Yes, sir.

17 Q: And you first saw him on October -- excuse me
18 August 1, 2012; is that correct?

19 A: That sounds about right.

20 Q: Okay. Did you tell Dr. Kanos about these
21 substantial problems with your right knee?

22 A: Yes, sir.

23 Q: Okay. He noted that you stated pain in center
24 of back to the left hip, down leg. That's what
25 he has in his notes. He doesn't note that you



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1 had any problems with your right knee.

2 A: He told me that he was not an orthopaedic
3 surgeon. That he would fix the back first.

4 Q: So your position is is he told you he wasn't
5 going to write anything down about your right
6 knee?

7 A: He didn't tell me that. He just told me that
8 someone else would be working on my knee, he
9 was trying to fix my back.

10 Q: Well, did he refer you for someone to see your
11 knee at that point?

12 A: No, sir.

13 Q: Okay. You saw him again on August 24, 2012 for
14 a followup. And it said that you complained
15 that day of low back and left leg pain.

16 A: Yes, sir.

17 Q: Nothing about your knee. Did you tell him
18 about your knee that day, your right knee.

19 A: I really don't remember.

20 Q: October 22nd looks like the next visit for a
21 followup. It says that you were complaining
22 that day of burning and pins and needle
23 sensation in your low back and down your left
24 leg. Did you also complain of your right knee
25 that day?



1 A: Probably not because since you said that, I
2 remembered that when I would go in, he would
3 ask me what's it feel like here, what's it feel
4 like here. And wherever he touched, I would
5 tell him what sensations I had.

6 Q: All right. Let's go back to Dr. Wessinger.
7 And during the time that you were seeing Dr.
8 Wessinger, you saw him pretty routinely for
9 over a year. And then there was a break for
10 about a year. Roughly a year.

11 A: Roughly, yes, sir.

12 Q: Okie doke. And you saw him two or three times
13 when you went back to him in 2010. You saw him
14 September 1st --

15 A: Saw him three times.

16 Q: And then a couple times in October?

17 A: Yes, sir.

18 Q: In 2009 when you seeing him, you seen him about
19 every month, weren't you?

20 A: That would have been after the shoulder
21 surgery. And, yes, it was at least once a
22 month.

23 Q: Okay. And during that time in 2009 were you
24 having problems with your right knee?

25 A: Yes, I was.



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1 Q: Were you telling Dr. Wessinger every time?

2 A: That's the time that I told him -- asked him if
3 there was anywhere closer to park, that parking
4 in that parking lot across the street I could
5 not walk all the way into his office without
6 either sitting down on the sidewalk outside or
7 the chair in the lobby until the pain eased up
8 in my back and knee and then coming on into his
9 office.

10 Q: All right. When you were seeing Dr. Wessinger,
11 did you have problems with your hip your left
12 hip?

13 A: They -- he's the one that, after the
14 injections, discovered that the even though the
15 pain was showing up in my hip, the actual
16 injury was in my lower back.

17 Q: My question though is were you complaining to
18 Dr. Wessinger of problems with pain in your
19 left hip?

20 A: Yes.

21 Q: He notes that in his record. That's why I'm
22 asking. So you did talk to him about that?

23 A: Yes, sir.

24 Q: You told him about problems with your right
25 shoulder?



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1 A: Yes, sir.

2 Q: He's noted that and written that down as well.
3 Did you complain to him of problems with your
4 left leg?

5 A: Yes, sir.

6 Q: He's noted that and written that down in his
7 records. Did you have problems with your hand
8 that you noted to him?

9 A: Yes, sir.

10 Q: All right, sir. And which hand are we talking
11 about?

12 A: Right hand.

13 Q: You ultimately had to have some surgery on
14 that, correct?

15 A: Just a small outpatient thing.

16 Q: All right. And I know you said it was -- I
17 think your attorney said he thought it was a
18 piece of metal, but it was where they had stuck
19 you with something for the surgery, right?

20 A: In the EMS, the tip of some plastic thing they
21 used to hook IVs up.

22 Q: Okay. All right. And you had sort of a little
23 growth in your hand and Dr. Wessinger removed
24 it and had a biopsy, correct?

25 A: It was a big knot that would swell up and then



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1 it was gush open and bleed and go away. And
2 then a week or so it'd be back. So a
3 continuous cycle.

4 Q: But Dr. Wessinger had that removed --

5 A: Yes, sir.

6 Q: -- and had a biopsy, had it checked for cancer?

7 A: I guess so. I don't know.

8 Q: That's in his records.

9 A: Okay.

10 Q: He went through all that with you and checked
11 out your hand, correct?

12 A: He did remove it at the hospital in
13 Simpsonville.

14 Q: Okay. All right. You continued to have back
15 pain during all of this, correct?

16 A: Yes, sir.

17 Q: The same time frame you had back pain. And you
18 told Dr. Wessinger about that back pain?

19 A: Yes, sir.

20 Q: And he's noted that in all the records. All
21 right. On -- in February of 2009 how were you
22 doing with your right knee back then?

23 A: February 2009?

24 Q: Yes, sir.

25 A: Being I wasn't on it a whole lot, so the time



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1 periods -- the time that I wasn't active, it
2 would do better.

3 Q: Okay. So you were not very active during that
4 time?

5 A: I think that's -- I had quit doing physical
6 therapy I think in November and was waiting to
7 take a function test, which was in about I
8 think in February. I'm not sure.

9 Q: That was right about when he was getting ready
10 to return you to work. He lists the October --
11 excuse me, the February 4, 2009 visit. He says
12 that you might be able to return to work on
13 your next visit. So this is right when Dr.
14 Wessinger is about to return you to work.

15 A: Okay. Yeah. It was doing better then.

16 Q: Were you active at all during that point?

17 A: Not a lot.

18 Q: Okay. But you told him that day that you were
19 able to walk two or three hours without pain
20 that you were experiencing in five minutes
21 previously.

22 A: No, sir.

23 Q: So you weren't walking two or three hours at a
24 time --

25 A: No, sir.



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1 Q: -- in February of 2009?

2 A: No, sir. I was walking at that time 20 to --
3 25 to 30 minutes.

4 MR. ADDISON: Page 216 of Defendants' APA,
5 Commissioner.

6 Q: And you were about to return to work at that
7 point and they were doing therapy and stuff for
8 you. And you were getting around and doing
9 things clearly at that point. I mean, you
10 weren't sitting in a chair all day or sitting
11 -- or laying in the bed all day in February of
12 2009, were you?

13 A: No, sir.

14 Q: All right. And then you went back to work
15 shortly thereafter, correct?

16 A: May 11th.

17 Q: How were you doing in April of 2009, about two
18 months later? How were you doing?

19 A: The month before going to work?

20 Q: Yes, sir.

21 A: I would do the exercises the therapist gave me
22 to do at home trying to get my strength built
23 back up because I knew going straight back to
24 work after all that time of not being very
25 active was not going to be easy.



1 Q: Okay. Were you doing things around your house
2 at that point?

3 A: Occasionally. When I felt like I could.

4 Q: All right. And just so the Commissioner
5 understands, this isn't the first time you've
6 had problems with your right knee, correct?
7 You've had to have surgery on your right knee
8 in the past a long time ago.

9 A: Uh-huh, yeah.

10 Q: You had surgery in 1974 on your right knee?

11 A: Yes, sir.

12 Q: Okay. And what happened with that?

13 A: That was an automobile accident.

14 Q: Okay. But it actually required a surgical
15 intervention in repair of your right knee?

16 A: Yes, sir.

17 Q: So this wasn't our first time of having to deal
18 with right-knee issues?

19 A: No, sir.

20 Q: Okay. So going back to April of 2009 were you
21 able to do kind of normal stuff at that point
22 in your regular life?

23 A: Not as easily as I could before, but I pushed
24 myself to try to be able to.

25 Q: So you were still -- you were being active at



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R. 765

1 that point, you were doing things around the
2 house.

3 A: I was trying to get more active, yes, sir.

4 Q: Okay. Do you remember telling Dr. Wessinger at
5 that point in April that you were able to cut
6 your grass in April of --

7 A: That was the previous visit when he had gave me
8 injections of pain killer in my back. And I
9 did. It took me three days cutting 20, 30
10 minutes a day, but I did get it done.

11 Q: Okay. Well it actually says that you were
12 doing well and were able to cut the grass. It
13 doesn't say you had all kind of problems. It
14 just says you were doing well --

15 A: Oh, I was proud of getting it done even though
16 it took me three days to do it.

17 Q: So you were being active is my point.

18 A: I was getting to be active, yes, sir.

19 Q: All right. The next visit that you had with
20 him that same month, April 29, 2009, is when
21 this thing with the hand came up, with the
22 issue with the hand.. That's what his records
23 show.

24 A: That's when I started back to work I had to go
25 to the company doctor to get checked. And the



1 thing just had ruptured and I had a band-aid
2 over it. It was bleeding a little bit and
3 fluid coming out. And he looked at it and he
4 said, when did you have an IV put in there.
5 And I told him and he said, you've got a piece
6 of a needle in there; I've seen that many
7 times.

8 Q: Okie doke. So what Dr. Wessinger wrote that
9 day, I'm going to read it to you and I want you
10 to tell me if this sounds accurate. It says,
11 right wrist/hand. He points out that on the
12 back of the right hand his has a place that
13 will periodically break down and ooze. This
14 has been since back when he was in the
15 ambulance on the way to surgery. He states he
16 has never had this problem before and that it
17 is related to an IV stick at that point in
18 time. This is the first time he has mentioned
19 this to me. He states he can feel something
20 next to that. Does that sound accurate as to
21 what you told him?

22 A: Yes, sir.

23 Q: Okay. And Dr. Wessinger wrote that in his
24 notes. He actually wrote down that you had
25 talked to him about a new problem. He then



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R. 767

1 evaluated you for that problem, didn't he? He
2 checked out your hand?

3 A: Yes, sir.

4 Q: And he ultimately did surgery to remove the
5 piece of tissue out of your hand?

6 A: Yes, sir.

7 Q: So you discussed in late April of 2009, one
8 year and one month after this injury occurred,
9 a problem that you felt like had been there
10 from the very beginning. The doctor noted that
11 it was the first time you discussed it with him
12 in his notes. He evaluated it and treated it.
13 You agree with that?

14 A: Yes, sir.

15 Q: Okay. But at no point did he ever do that with
16 your right knee. Would you agree?

17 A: No, sir.

18 Q: Okay. But your position is is that you were
19 consistently, during the treatment regimen that
20 Dr. Wessinger provided for you, that you were
21 consistently complaining to him of problems in
22 your right knee significant enough that you had
23 difficulty walking?

24 A: Yes, sir, I did tell him about that.

25 Q: When you settled your case on this Form 16, did



1 you have to go to the Commission to do that?

2 A: The Commissioner was there.

3 Q: That's what I mean. You went in front of
4 someone. You were by yourself. You were what
5 we call a pro se claimant, you were not
6 represented by a lawyer.

7 A: That's correct.

8 Q: Okay. And you had a Commissioner or some
9 member of the Commission staff there when you
10 did this document, correct?

11 A: What document?

12 Q: The Form 16, the settlement document, when you
13 signed that --

14 A: When I signed it, yes, sir.

15 Q: Okay. And the Commission staff member told you
16 what your rights were when you had your
17 meeting?

18 A: Well we went in and there was something wrong
19 with one of the recorders or something and he
20 said we can't really hold an official hearing
21 today, but if you all want me to hear the
22 comments and tell you what I would do and then
23 y'all decide what you want to do from there,
24 then I'll be glad to do that. So that's what
25 we did.



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R. 769

1 Q: Okay. My point is is you had a specific
2 official meeting with the Commissioner or
3 Commission staff member --

4 A: Yes, sir.

5 Q: -- to sign this document?

6 A: Yes, sir.

7 Q: Okie doke. And the document was signed and
8 submitted to the records of the Commission at
9 that point?

10 A: Yes, sir.

11 Q: And you were paid a sum of money of
12 approximately \$37,000 for settling your case --

13 A: Yes, sir.

14 Q: -- in February of 2010?

15 A: Yes, sir.

16 Q: Okay. Subsequent to that you hired Kathryn,
17 Ms. Williams, and you pursued a change of
18 condition?

19 **MS. WILLIAMS:** Kathryn's fine.

20 **MR. ADDISON:** You know I get it stuck in my head. I
21 have to go back and say Ms. Williams.

22 Q: You hired your attorney to help you with the
23 change of condition request, that you had more
24 problems that you felt needed to be dealt with?

25 A: Yes, sir.



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R. 770

1 Q: And that started in the fall of 2010?

2 A: Yes, sir.

3 Q: Okay. All right. Can you tell me when this
4 right knee problem became -- you know, where it
5 became substantially bad enough for you to seek
6 medical treatment beyond just mention it to the
7 doctor?

8 A: After being back at work, of course it just
9 gradually got worse and worse and worse. But
10 probably between three and four months back at
11 work it was -- by the end of the day it was not
12 easy to walk.

13 Q: And when was that, what year are we talking
14 about?

15 A: We're talking about 2010.

16 Q: All right, sir. And then once you signed --
17 your lawyer signed this consent order, you
18 actually then -- you ceased working at some
19 point. Was it before the settlement of the
20 Defendants or was it after the settlement?

21 A: This was September 1, 2010 when Dr. Wessinger
22 put me out of work until after he could get an
23 MRI.

24 Q: Okay. And you've been receiving a weekly check
25 ever since under Workers' Comp, correct? I



1 know it came later, but you have been paid
2 through -- from September of 2010 until now?

3 A: Actually it's within two weeks behind since
4 about February.

5 Q: My point is though, you've been on a running
6 award since September of --

7 A: Yes, sir.

8 **MS. WILLIAMS:** Since the consent order.

9 **MR. ADDISON:** It's in there. I just wanted to make
10 sure the dates were there.

11 **THE WITNESS:** Yes, sir.

12 Q: So you haven't worked in any capacity since
13 September of 2010?

14 A: They had me go back to work one time. I worked
15 in the office three days. And then the
16 company's doctor told them no, that I could not
17 work. And then November of 2012 they had me
18 come back for two days to be in the office.
19 And, again, the company doctor checked with
20 Dr. Math and said no, that the medication he's
21 taking, he cannot drive a commercial vehicle.

22 Q: Okay. You intermittently worked, but you
23 haven't had any kind of substantial --

24 A: No, sir.

25 Q: -- since September of 2010?



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1 A: No, sir.

2 MR. ADDISON: That's it.

3 MS. COMMISSIONER: Okay. Thank you. Ms. Williams.

4 MR. HOUSTON - RE-DIRECT EXAMINATION BY MS. WILLIAMS:

5 Q: Although you went out of work in
6 September 2010, you didn't start getting any
7 money from Workers' Comp until April and 2011;
8 is that correct?

9 MR. ADDISON: I'll stipulate.

10 A: At last that long.

11 MR. ADDISON: I'll stipulate to that.

12 MS. COMMISSIONER: Noted for the record.

13 THE WITNESS: I think it might have been longer.

14 Q: Now, you were asked some questions on the right
15 hand. It was the company doctor that forced
16 that issue on your right hand; is that correct?

17 A: Yes, ma'am. When I went for my physical to
18 return to work that day, the day before it had
19 just kind of ruptured and it was oozing a
20 little bit of blood and I had a band-aid on it
21 when I went in. And they checked everything
22 and they said what's wrong with your hand. And
23 I said, I've just got this knot here. And
24 peeled it back and he looked at it and he said,
25 you know, I was a surgeon for 40 years before



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1 I retired and came here to work part time. He
2 said, when did you have an IV put in there.
3 And I told him and he said, I've seen that many
4 times; you've got a piece of a needle in there;
5 you need to go get a doctor and get it out.
6 And he pushed it side to said and I said, no,
7 no pain at all. And when he pushed straight
8 down it was, yeah, felt that one. And he said,
9 yeah, it's in there; got to come out.

10 Q: So that's what caused you to go --

11 A: The next visit that I already had scheduled
12 with Dr. Wessinger, a week or two after that, I
13 showed it to him and told him that I thought it
14 was infected and I'd put peroxide and alcohol
15 on it and figured eventually it'll clear up.
16 And I said, when I went to get my physical to
17 go back to work, the guy there -- I knew his
18 name back then and Dr. Wessinger had known him.
19 He said, yeah, he's right; if there's something
20 in there, we got to get it out.

21 Q: All right. Now, you were also asking about
22 prior knee problems that you had on the right
23 side. And that was back in the '70s. So you
24 would have been --

25 A: I think I was 17.



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1 Q: Okay.

2 A: Seventeen or 18 years old when that happened.

3 Q: After you recovered from that surgery, have you
4 had any problems with your right knee up until
5 you had this accident?

6 A: Actually about a year after that, Dr. Bill
7 Evens is the one that worked at that knee, and
8 I ran into him at a Clemson basketball game.
9 And he remembered me and he said how's that
10 knee doing.

11 **MR. ADDISON:** Commissioner, I --

12 A: And I said, well, I've never had problems with
13 my left one, but this one feels so much better;
14 can you go ahead and fix this one too just the
15 same way that one is.

16 **MS. COMMISSIONER:** For the record, the objection is
17 sustained. He was kind of already been
18 testimony.

19 **THE WITNESS:** I'm sorry. I didn't hear him.

20 **MS. COMMISSIONER:** Just try to -- you can tell me
21 what you said to the doctors, but try to
22 refrain from telling us what they said unless
23 specifically asked about it.

24 **THE WITNESS:** Okay.

25 Q: When you saw Dr. Evens after -- about a year



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1 after your surgery on your right knee, what did
2 you tell him about your right knee?

3 A: I told him it was doing so good I wish he could
4 do the left knee even though I didn't have any
5 problems with it at that time.

6 Q: So since then had you had any problems with
7 your right knee --

8 A: None whatsoever.

9 Q: -- up until you had this accident?

10 A: Not a bit.

11 MS. WILLIAMS: Thank you. That's all the questions
12 I have.

13 MS. COMMISSIONER: Mr. Addison, anything further?

14 MS. WILLIAMS: No followup.

15 MS. COMMISSIONER: Okay. I believe -- you are
16 excused. You can actually -- you can sit right
17 here just for a moment. I was going to say on
18 the record, I did want to make sure for the
19 record, Mr. Addison, and this addresses
20 particularly your jurisdiction argument, I note
21 here that the Form 16 was filed on February 4,
22 2010. The original Form 50 on the change of
23 condition was filed on --

24 MS. WILLIAMS: July.

25 MS. COMMISSIONER: -- November 11, 2010. So would



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R. 776

1 you agree that at least the initial filing was
2 within that one-year change-of-condition
3 period?

4 **MR. ADDISON:** Absolutely. And then that Form 50 was
5 dealt with on a consent order.

6 **MS. COMMISSIONER:** Okay. Correct. And that consent
7 order addressed the back and the shoulder, but
8 then held the issues in abeyance; is that
9 correct?

10 **MR. ADDISON:** Correct.

11 **MS. COMMISSIONER:** Okay. All right. I just want to
12 make sure that the record is clear and I pulled
13 the correct documents. All right. That
14 concludes this matter. Thank you very much.

15 **(There being nothing further, the hearing concluded**
16 **at 11:31 a.m.)**

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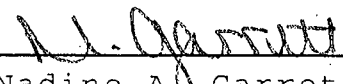
R. 777

CERTIFICATE

This is to certify that the within hearing consisting of fifty-eight (58) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on December 18, 2014.



Nadine A. Garrett
Court Reporter

Notary Public for South Carolina
My Commission Expires: 8/11/2016



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R. 778

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0802605

TOMMY G. HOUSTON,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
GARDA WORLD SECURITY,	)	
	)	JOHN H. PAYLOR, III, MD
EMPLOYER,	)	
	)	
GALLAGHER BASSETT SERVICES	)	
INC.,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of John H. Paylor, III, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 3:23 p.m., Tuesday, July 1st, 2014, at Piedmont Orthopaedic Associates, 1050 Grove Road, Greenville, South Carolina.

COPY

Reported by
Sandra M. Snead

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Reported By: Sandra M. Snead

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, has been partially or fully redacted or blacked out.

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Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

John H. Paylor, III, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: John H. Paylor, the Third.

Examination

By Mr. Addison:

Q Dr. Paylor, my name is Dan Addison. I'm here on behalf of Garda in regard to a workers' compensation claim involving a gentleman named Tommy Houston. We're here today to take your deposition in regard to treatment you have provided for Mr. Houston as well as recommendations you've made for surgery on his right knee. I'm going to go through the preliminaries on -- on this. I've actually deposed you, I believe, in the very first year of my practice.

A You did?

1 Q A very long time ago, --

2 A My, that's pretty --

3 Q -- a couple days ago, so -- I don't think I've
4 deposed you since, believe it or not.

5 Mr. Kamb: It was probably a few years
6 before I was born, but y'all go ahead.

7 The Deponent: Probably so.

8 Q If I ask you a question that you do not understand
9 today, I need you to tell me you do not understand
10 the question. I will try to ask that question in a
11 different manner or explain the question to you if
12 you indicate that you have some issues with the
13 question. If you answer a question, I will assume
14 you have understood the question as asked. Is that
15 fair enough?

16 A Yes.

17 Q All right, sir. Whenever answering a question,
18 just like you did there, that requires a yes or no
19 answer, if you would use the actual word yes or no
20 instead of uh-uh or uh-huh or some other nonword.
21 If you say one of the nonwords, I'll ask you do you
22 mean yes or no. You may add to the yes or no all
23 that you want to, all right? And if you'll also
24 always keep your voice up. It's important that we
25 have a nice clean recording of the -- of the

1 deposition. I know you've been through this before
2 multiple times.

3 [Off the record briefly at 3:25
4 p.m.]

5 Examination Continues

6 By Mr. Addison:

7 Q All right. If you would, briefly give a CV for the
8 record, Doctor.

9 A I went to Clemson University undergraduate, then to
10 the Medical University of South Carolina for
11 medical school. Following that, I went to Emory
12 University for one year of general surgery, and
13 then I returned to the medical university for
14 orthopedic surgery residency.

15 Q Okay.

16 A And then, in 1982, I came here to practice at --
17 here at Piedmont Orthopaedics, and I've been here
18 since.

19 Q All right, sir. Okey-doke. And is there a
20 particular area of orthopedics that you specialize
21 in, or just general orthopedics or --

22 A No. I do orthopedic sports medicine.

23 Q Okay. All right, sir. All right. And you're
24 board certified currently; is that correct?

25 A Yes.

- 1 Q In orthopedics?
- 2 A Orthopedics and also in the -- orthopedic sports
3 medicine.
- 4 Q Okay. All right. All right. In that regard, you
5 had seen Mr. Houston as a patient. I've got
6 records in front of me that y'all's office sent to
7 me, and it looks -- at least from the records that
8 I have, that you did not -- that you personally
9 didn't see him as a patient until 2013. Is that
10 correct?
- 11 A Yes.
- 12 Q Okay. And then the date of your first visit, what
13 is the date that you have as your first visit?
- 14 A November the 5th, 2013.
- 15 Q Okay. Were you aware that he had seen this
16 practice, Piedmont Orthopaedics, before that date?
- 17 A No.
- 18 Q Okay. And that he'd been a patient at any point in
19 the past with you guys?
- 20 A I wasn't aware of that.
- 21 Q Okay. Were any records provided to you from any
22 prior treatment that he had for any of the aspects
23 of the issues that he's been dealing with from this
24 car wreck that I'm here about with Garda? This is
25 a workers' comp case, but he was in an automobile

1 -- he was in a vehicle --

2 A Right.

3 Q -- accident.

4 A There were some records, but I did not really look
5 at those that much. He's had some spine surgery,
6 which I don't do, and --

7 Q Okay.

8 A -- he was just really coming to see me about his
9 right knee.

10 Q Okey-doke. All right. And the reason I -- I've --
11 We've retrieved these records from your office, and
12 it's a bunch of records, and they're all stamped
13 with this Piedmont Orthopaedics Copy on it.

14 A Okay.

15 Q And is that how y'all keep your records and y'all
16 know that it's yours, it's got this stamp on it?

17 A Piedmont --

18 Q Where it says Piedmont Orthopaedics Copy on the
19 file.

20 A It doesn't usually say that, I don't think. It's
21 just in the computer. They scan it in the
22 computer.

23 Q Okay. All right. All right. So, you did not
24 review any of these prior records --

25 A No.

1 Q -- that you had? Okay. All right. When he came
2 to you in November of 2013, was he -- Who sent him
3 to -- to you to be reviewed as a patient?
4 A That -- I would assume that the workers'
5 compensation company did. I don't have anybody
6 else sending him.
7 Q Okay. Okey-doke. And I have -- That day, it just
8 shows that he had an injury of the right knee.
9 This is -- I'm looking at your record, if I'm
10 looking at the right one. Is that correct?
11 A Yes.
12 Q All right. That's your November the 5th, 2013 --
13 The onset date was 3/11/2008, according to your
14 note, correct?
15 A Yes.
16 Q And then it has HPI. Is that the history section?
17 A History of Present Illness.
18 Q Okay. All right. It says, "The injury occurred on
19 the date of onset. The patient suffered an injury
20 by being in a MVA. He was working at the time.
21 The knee has been painful since the initial injury.
22 The location of the pain is anterior and lateral.
23 Movement and use aggravate the pain, and associated
24 signs of swelling, giving way, locking. He did
25 have an MRI." You're referring to the MRI that was

1 done in the summer of 2013? Is that what you're
2 referring to there? I believe it's June of 2013.

3 A June 25th, 2013.

4 Q Okay. And that's a MRI of his right knee?

5 A Yes.

6 Q Okay. And it indicates that he's got a meniscal
7 tear?

8 A Yes.

9 Q Okay. Which I think is ultimately what your
10 findings are. Is that correct?

11 A Yes.

12 Q Okay. And you've indicated that you wanted to do
13 an arthroscopic surgery on him as a result of what
14 you have reviewed on this MRI and his complaints to
15 you with pain?

16 A Yes.

17 Q All right, sir. You've also done a statement for
18 the plaintiff's counsel, which was presented today,
19 done on June 26th of last week, indicating that in
20 your opinion that he suffered an injury to his
21 right knee as the result of his MVA while working
22 on or about March the 11th, 2008, that his right
23 knee symptoms settled down, became less noticeable
24 as he pursued treatment for other injuries and was
25 less active, and it became more symptomatic again

1 as treatment for his other injuries wound down as
2 he increased activity and began walking more
3 following his back surgery. Did you write that or
4 did the claimant's counsel write that?
5 A Plaintiff's counsel wrote that.
6 Q Do you agree with all of that?
7 A Yes, but -- I do.
8 Q Okay. Did you go back and review any of the
9 medical records before you signed this letter?
10 A Yes, I did review the records at that time.
11 Q Okay. What records did you review?
12 A The ones that you have about his back surgery.
13 Q Okay. Did you review the ones from the Greenville
14 Health System with the pain management physicians
15 that had been treating him all this time?
16 A Can I see that for a minute, --
17 Q Sure.
18 A -- and I'll tell you.
19 Q There are a few records from --
20 A No, and I -- I haven't reviewed this one because
21 this one is after I saw him.
22 Q Yes, sir.
23 A Yeah, I didn't review that one.
24 Q Okay. Well, there's multiple in here. This goes
25 on back to --

1 A Mm-hmm. No, I really didn't review that much.
2 Q Early 2012 is when this -- these go back to, at
3 least what I have, from --
4 A Right. No, --
5 Q Well, they predate that, as well.
6 A I mostly talked to the plaintiff's counsel, and he
7 told me what was in there. I didn't personally
8 review that --
9 Q Okay.
10 A -- that much.
11 Q All right.
12 A I looked through them, but --
13 Q Okey-doke.
14 A -- I'm very busy, and I -- I really don't have time
15 to do that.
16 Q Would you have expected, if he was really having
17 problems with this knee -- I mean, you have to
18 understand our concern. I presume --
19 A Certainly.
20 Q -- you do.
21 A Mm-hmm.
22 Q This is a car wreck in 2008, and this is --
23 A Right.
24 Q -- not a gentleman who has not had any lack of
25 medical treatment.

1 A Correct.

2 Q He has seen multiple physicians here in the
3 Greenville area, all of whom -- most of whom are
4 specialists in their area.

5 A Mm-hmm.

6 Q He's seen back -- spine specialists, and he's seen
7 pain medicine specialists for the issues resulting
8 from this MVA.

9 A Okay.

10 Q And the records -- and I'll show you what I'm
11 talking about here in a minute, but the records
12 don't have any mention of a knee until 2013 --

13 Mr. Kamb: Objection --

14 Q -- other than his --

15 Mr. Kamb: -- because that's not the
16 correct --

17 Q -- left knee. There was complaints of his left
18 knee early on --

19 A Mm-hmm.

20 Q -- but not his right knee.

21 A Okay.

22 Q Now, were you aware that he had prior right knee
23 surgery years ago?

24 A I might have talked to him about that. I can't
25 remember.

1 Q It's not reflected in your notes. That's why I'm
2 asking you if you have --

3 A Right. But it's not really important that much.

4 Q Okay. But he didn't discuss that with you, that
5 he'd had prior right knee surgery?

6 A He did not.

7 Q Okay. All right. It was quite a long time ago.
8 It was in 1974 per the other records that we have.

9 A Okay.

10 Q But I'm going to show you some of the records that
11 I have. This is from 2012 --

12 Mr. Addison: I'm sorry. I keep kicking

13 --

14 A Mm-hmm.

15 Mr. Addison: -- your leg.

16 Q -- from Greenville Hospital System who was treating
17 primarily as the pain management folks. This is
18 Dr. Math. Are you familiar with Dr. Math?

19 A No.

20 Q I cannot pronounce the first name if I had to.

21 It's J-y-o-t-i Math, --

22 A Okay.

23 Q -- just like doing math. I'll let you read that
24 real quick, if you would. It's three pages. I'll
25 let you look at that.

1 A Oh. Okay.

2 Mr. Kamb: (to Mr. Addison) What's the
3 date of the report?

4 Mr. Addison: That was the December --

5 The Deponent: December the 20th, 2012.

6 Mr. Addison: Okay.

7 A Okay. I reviewed them.

8 Q Would you agree with me he makes no mention of any
9 right knee pain in that record?

10 A There's no mention of any knee pain in that record.

11 Q Okey-doke. Does it indicate that the -- and it's a
12 fairly extensive record. It doesn't have like just
13 three sentences about the patient. This is a
14 three-page document where this doctor has gone
15 through all the various issues that the patient is
16 complaining of to a pain management physician in
17 December of 2012. Would you agree with me that
18 that's an accurate statement? This is --

19 A I agree that he makes no mention of his --

20 Q Okay.

21 A -- right knee.

22 Q But my -- But would you agree with the statement
23 that this is a fairly comprehensive review of the
24 patient's --

25 A Now, let me look at it --

1 Q --- problems?

2 A -- again. Well, except that he didn't ask him

3 anything about his knee.

4 Q Okay. But he's asking what's wrong with him,

5 doesn't he?

6 A That would be very general -- His general

7 examination is very short. "On examination, he is

8 awake and alert, communicates appropriately, a

9 slight antalgic gait." That means he has pain when

10 he's walking. He walks with a walker. Strength in

11 bilateral lower extremities were within normal

12 limits.

13 Q Okey-doke.

14 A But that's a very abbreviated examination.

15 Q Okay. But it does indicate that he's got -- that

16 he's got normal strength in his legs. The

17 claimant's not complaining of any kind of pain in

18 his leg, --

19 A Well, antalgic --

20 Q -- in his right leg?

21 A -- gait would mean -- That means pain --

22 Q Okay.

23 A -- when he walks, so he was -- That record

24 indicates that he did have pain when he was

25 walking.

- 1 Q Okay. All right. Does it say where?
- 2 A No. It just says his leg.
- 3 Q Okey-doke. An antalgic gait can also just means
- 4 the person's walking funny, can't it?
- 5 A No. That means pain --
- 6 Q All right.
- 7 A -- usually.
- 8 Q All right. Usually or always?
- 9 A Always.
- 10 Q So, antalgic gait means the person's having pain?
- 11 A Usually -- Yes. Correct.
- 12 Q It doesn't mean --
- 13 A That's the way -- When I say usually, most people
- 14 would agree that I -- that pain -- I'm sure some
- 15 people would take it differently, but --
- 16 Q Okay.
- 17 A -- in my opinion it means pain.
- 18 Q You have no clue how Dr. Math means it, though, do
- 19 you?
- 20 A I've never met Dr. Math.
- 21 Q Okey-doke. All right. But, again, no mention of a
- 22 light -- of a right leg, --
- 23 A That is correct.
- 24 Q -- right knee --
- 25 A No mention.

- 1 Q -- issue?
- 2 A Right.
- 3 Q Okey-doke. The records, up through this time, he
- 4 had -- Like you said, you went through some of
- 5 these records. You said you went through some of
- 6 them, but then you said that the plaintiff's lawyer
- 7 went through it with you. Did the plaintiff's
- 8 lawyer meet with you or did he talk with you on the
- 9 phone or --
- 10 A No. He came and met with me later when this case
- 11 was ongoing.
- 12 Q When was that?
- 13 A When that -- See, I glanced through those records,
- 14 --
- 15 Q Mm-hmm.
- 16 A -- but they really don't have anything to do with
- 17 his knee, which is what I was concerned about.
- 18 Q Sure.
- 19 A So, therefore, I really did not --
- 20 Q Okay.
- 21 A -- pay any attention, to speak of, for those
- 22 records. They --
- 23 Q So, the --
- 24 A They wouldn't help me at all and --
- 25 Q The condition that we have now, this meniscal tear

1 in his right knee, you think that it has existed
2 since March of 2008?

3 A The only thing I can go by is on the patient's
4 history, and he says, in my note, which is on --
5 You know, the first time I saw him in November, he
6 said that he injured his knee in a MVA and he was
7 working at the time. That's what -- My entire
8 thing is based on that.

9 Q Okay. Based on --

10 A It's based on --

11 Q -- what he told you?

12 A -- his -- what he told me, correct.

13 Q Even though --

14 A And as a physician, you have to assume that
15 patients are truthful, --

16 Q Sure.

17 A -- because the history is actually the most
18 important thing you do.

19 Q I understand. And that is -- Again, you'd have to
20 take it as the patient tells you --

21 A We're going totally on the patient's word,
22 absolutely, and I will agree a hundred percent with
23 that.

24 Q As does every other doctor that's seen him in the
25 past six --

1 A Exactly.

2 Q -- years, correct?

3 A Correct. Mm-hmm.

4 Q All right. If he's told them all other
5 information, specifically that he has never in that
6 time frame mentioned that he had any significant
7 problem with his right knee, would you have found
8 that --

9 Mr. Kamb: Object to the
10 characterization.

11 Q -- to be odd?

12 A Oh. He said in the notes somewhere else that he
13 had no problems with his right knee? He said that
14 somewhere?

15 Q No. No. No. I said if he has consistently told
16 the other -- never told the physicians that he had
17 any significant problem with his right knee.

18 A No. He would have to say that he didn't have a
19 problem with his right knee for me to say, well,
20 maybe that's not true, but if he didn't mention it,
21 it's because they didn't ask.

22 Q Okay. So, --

23 A If they didn't ask him, he probably wouldn't say.

24 Q So, if a person is having problems and is seeing a
25 physician, the doctor is supposed to say do you

1 have a problem with that part of your body for him
2 not to --
3 A Well, they were --
4 Q -- mention it to the doctor?
5 A He was seeing him for other problems. He was
6 seeing them for their back, mostly, so they're not
7 going -- they're not going to be worried --
8 Q He --
9 A -- about his knee.
10 Q He was seeing the pain management physician for
11 everything that was wrong with him --
12 A You'll have to depose them and ask them about that.
13 Q Okay.
14 A I don't know how they practice. All I --
15 Q Sure.
16 A -- can tell you --
17 Q I understand.
18 A -- is what -- the information I have --
19 Q My question, though, Doctor, is --
20 A Mm-hmm.
21 Q -- you're saying that -- You agree that the
22 patient is supposed to tell the doctor whatever is
23 going on, that --
24 A Right.
25 Q -- you've got to rely on the patient's information?

- 1 A Completely, yes.
- 2 Q Okay. And if he, for five years, never made
- 3 mention of his right knee to the other physicians,
- 4 your position would be that he should have been
- 5 asked by the doctors is your right knee bothering
- 6 you?
- 7 A No, I don't think so at all.
- 8 Q Okay. It would have been up to him to tell the
- 9 doctors that his knee was bothering him, wouldn't
- 10 it?
- 11 A But those doctors don't treat knees. Why would he
- 12 say anything about that unless they specifically
- 13 asked him?
- 14 Q Do you think the pain management doctors --
- 15 A Those pain management doctors really don't do that
- 16 much knee. They do mostly spine.
- 17 Q Okay.
- 18 A What he was seeing them for is -- is his spine.
- 19 Q He was also seeing them for his shoulder.
- 20 A Well, that's okay, too, but, you know, if they
- 21 didn't ask him about his knee, you know, --
- 22 Q Okay.
- 23 A What can I say? I -- I can only go by what he
- 24 tells me.
- 25 Q Okay. Well, --

- 1 A That's all that's --
- 2 Q -- let's get back to my question. But it's your
3 position that the doctors should have specifically
4 said, "Is your right knee bothering you?" for him
5 to have mentioned right knee problems?
- 6 A For me to change my opinion about what's in my
7 note, that's what they would have had to have said,
8 correct.
- 9 Q Okay. All right.
- 10 A And I don't see that in there anywhere, so --
- 11 Q Okay. All right. Okay. So, you -- When a
12 patient comes to you, do you ask them everything
13 that's wrong with them? Do you mention --
- 14 A No, I do not.
- 15 Q -- every body part?
- 16 A No, I do not.
- 17 Q Do you ask them whatever they're there to see you
18 for?
- 19 A Correct.
- 20 Q All right. Okay. And if they had something else
21 wrong with them and didn't tell you about it, you
22 would have been of the opinion that you should have
23 asked them about it or they should have told you
24 about it?
- 25 A Uh-uh, neither one. That's not important --

- 1 Q Okay. That's not --
- 2 A -- because I'm treating the condition -- what he's
- 3 here for, his knee.
- 4 Q Okay.
- 5 A I was seeing him for his right knee. I didn't ask
- 6 him anything about his back. I didn't ask him if
- 7 his back was hurting. He wasn't here for -- I
- 8 don't do backs. Why would he -- Why would he care
- 9 what I thought about --
- 10 Q Okay. Let's --
- 11 A -- his back?
- 12 Q -- get to your opinion, then. You've indicated
- 13 that you believe this came from the car wreck in
- 14 2008. Why have you narrowed it down to that
- 15 particular -- that that had to be what caused his
- 16 right knee symptoms?
- 17 A Because the patient said so.
- 18 Q Okay. But there is a possibility that other
- 19 reasons exist. He could have had other issues with
- 20 his knee.
- 21 A He didn't say that.
- 22 Q Okay. But the MRI --
- 23 A He only said that he had -- His knee was injured
- 24 in the wreck is what he told me.
- 25 Q Okay. But he hadn't told any other physician that,

1 just you?

2 A Just me. I'm just -- I'm the only -- I wasn't

3 there when he was seeing the other --

4 Q Okay.

5 A -- patients, so I really can't tell you --

6 Q Okey-doke.

7 A -- what he did or what he didn't say.

8 Q You haven't read another note from somebody that

9 said he's injured his knee and it's bothering him a

10 lot since --

11 A I have not read any note like that. Correct.

12 Q All right. And you've ruled out every other cause

13 because the patient told you that's what it came

14 from?

15 A Yes, that he didn't say there was any other cause.

16 He just -- He told me -- He came in and said, "I

17 was in a wreck in '08, and my knee was injured at

18 the time, and --

19 Q Okay.

20 A -- it still hurts." And somebody ordered the MRI

21 scan on it.

22 Q Okay.

23 A Dr. Math did.

24 Q Right, in two thousand and --

25 A So, he must have -- For her to have ordered that

1 MRI scan, he would have had to have told --
2 Q In --
3 A -- her that his knee was hurting.
4 Q In 2013 is when it was ordered, correct?
5 A That's fine. Okay.
6 Q You agree with me on that -- which is five years
7 after the accident. That's why I said five years
8 --
9 A I would agree, but, there again, I'm only going by
10 what the patient said.
11 Q Okay.
12 A You probably need to depose Dr. Math --
13 Q Okay.
14 A -- about that.
15 Q The MRI itself, you can't look at the MRI and tell
16 me whether that's a six-year-old knee or a six-
17 month-old knee, can you?
18 A No, I can't tell that.
19 Q Okay.
20 A Uh-uh.
21 Q You can't pinpoint the date of when the -- the
22 issues that are going on with his knee --
23 A No.
24 Q -- were caused?
25 A I cannot. And if I -- And the radiologist didn't

1 do that either. If you read his note, he said that
2 it was the MVA in '08 and he had to be cut out of
3 his car, multiple injuries.

4 Q Okay.

5 A He didn't say anything about -- If he'd have
6 thought this would have been a newer tear, he would
7 have said so.

8 Q Okay.

9 A In my opinion, he probably would, but you would
10 have to ask him that. I'm just --

11 Q Okay.

12 A That's just what I'm thinking.

13 Q But you can't -- My point is that you can't look
14 at the MRI and tell me that that's a six-year-old
15 knee injury?

16 A I cannot, no.

17 Q Okay. All right. When did you meet with
18 claimant's counsel, when you signed this last week?

19 A Yeah, is there a date on that?

20 Q It's 6/26/14.

21 A I guess that's the date we -- I couldn't tell you
22 exactly what day. It would be --

23 Q That was last week.

24 A Yeah, that would be close to that. Yeah, 6/26.

25 Well, that might have been the day after, though.

1 I can't remember what day it was.

2 Q But that's still last week, though? The 25th was

3 --

4 A Yes.

5 Q -- was last week, as well?

6 A Right.

7 Q Okay.

8 A But as far as the specific date, that probably came

9 in the next day or something.

10 Q Okay. All right. And, as you stated, you --

11 essentially, the claimant's counsel came in and met

12 with you and showed you certain things within the

13 medical record or told you about certain things in

14 the medical records; is that --

15 A He did.

16 Q You did no independent review of the medical

17 records yourself?

18 A Did not.

19 Q Okay. Which records did you go over with

20 plaintiff's counsel when looking at --

21 A He just -- Mostly the ones about his back surgery

22 and his shoulder, and he had other injuries.

23 Q Okay. And do you remember whose it was that you

24 were looking at? Was it Dr. Kanos', Dr. Bucci's

25 records, Greenville Hospital System, Greenville

- 1 Health System records?
- 2 A I think it was the Greenville Health System.
- 3 Q Okey-doke.
- 4 A I couldn't tell you exactly.
- 5 Q Dr. Wessinger's records, did you look at those at
- 6 all?
- 7 A No.
- 8 Q Okey-doke. University Medical Group, which is Dr.
- 9 Kanos, I believe. Is that correct?
- 10 A Yes, he's a member of that, --
- 11 Q Okay.
- 12 A -- as is -- Dr. Wessinger is, too.
- 13 Q Yeah. And Dr. Bucci -- I think I asked you that
- 14 before, didn't I? You did not look at any of Dr.
- 15 Bucci's either?
- 16 A No.
- 17 Q Okey-doke. All right. So, what you looked at were
- 18 primarily these Greenville Health System records
- 19 from when, going back to 2012 or the ones from
- 20 2013?
- 21 A I really didn't look at those records. We just --
- 22 Very cursory did I look at those, and I mostly
- 23 talked with the plaintiff's counsel about those, --
- 24 Q Okay.
- 25 A -- and he told me basically what was in them.

1 Q All right. And the -- So, the statement was
2 essentially what you went over with plaintiff's
3 counsel -- because it's what the claimant's saying.
4 He's saying that he pursued other treatment for
5 other injuries and that's why he didn't notice his
6 right knee. That's your position --

7 A Well, that -- that can easily happen, where you can
8 have -- be in an auto accident -- It happens all
9 the time, where you can be in an auto accident and
10 you have more severe injuries and you have less
11 severe injuries that are not as noticeable --

12 Q For --

13 A -- and then they come up later on.

14 Q For six years?

15 A That would be unusual, but, there again, I'm just
16 going by what the patient says. I can only go by
17 that.

18 Q How about five years?

19 A It's the same.

20 Q Okay. It's pretty unusual, isn't it?

21 A Yes, it would be unusual.

22 Q Okey-doke. All right. And he's --

23 A But there might have been -- Who knows, there --
24 I deal with workers' comp sometimes, and there can
25 be huge delays in treatment or anything else. That

1 --

2 Q Well, did you see anything --

3 A -- might have been involved.

4 Q -- that indicated that he was denied any treatment

5 for his right knee, where he'd asked for it, in

6 this time frame?

7 A No. I'm just talking in generalities when I say

8 that.

9 Q Okay.

10 A But I can tell you for sure there are huge delays

11 in workers' comp.

12 Q Okey-doke. The -- But you don't know that there

13 were in this case, do you?

14 A I do not.

15 Q Okay. Do you know if he complained about the knee

16 problems at any prior hearing with the commission?

17 A No, I do not.

18 Q All right. Do you have any reason to believe that

19 he wasn't capable of complaining about that to the

20 commission if he felt it was an issue earlier in

21 his life?

22 A No.

23 Q I mean, he didn't -- You didn't notice any kind of

24 issues with this claimant as -- in terms of his

25 cognitive abilities, did you?

- 1 A No.
- 2 Q Okay. All right. He was able to communicate with
3 you fine?
- 4 A Yes. There again, my entire opinion is based on my
5 history from the patient.
- 6 Q Okay.
- 7 A But it seems like a lot of these things you're
8 asking me is something that a judge would have to
9 decide on.
- 10 Q Unfortunately, you're --
- 11 A That's not --
- 12 Q -- the one that's issued the opinion, though,
13 Doctor. That's why I have to ask these --
- 14 A That's fine. I'm just rendering my opinion.
15 That's all.
- 16 Q Okey-doke. So, what you've written here, this
17 isn't an independent opinion of yours; this is an
18 independent opinion -- Well, this is an opinion
19 that you reached based upon a meeting with
20 plaintiff's counsel and information he provided to
21 you?
- 22 A Correct. That would be correct. It would be based
23 on the information he told me about.
- 24 Q Okay.
- 25 A Absolutely.

1 Q You did no independent research as to any prior --
2 A I --
3 Q -- records?
4 A -- did not. I did not.
5 Q Anything that he may have discussed with the
6 commission in the -- that the claimant may have
7 discussed with the commission --
8 A I know --
9 Q -- in the past?
10 A -- none of that. Correct. Absolutely, --
11 Q Anything that the --
12 A -- I did not.
13 Q -- plaintiff's counsel may have discussed with the
14 commission in the past?
15 A I don't know anything about that.
16 Q Okay. This entire document that's dated 6/26/14
17 was based on a meeting with plaintiff's counsel and
18 his indications to you that this is what the --
19 A Yes.
20 Q -- the patient would indicate?
21 A That's correct.
22 Q Okay. Was the claimant here to talk about this
23 with you?
24 A No, he was not.
25 Q Have you picked the phone up and called the

1 claimant to confirm any of this?

2 A No.

3 Q Okay. One quick second. I need to find it. Did
4 you ask the claimant when he first came to you back
5 last year why it took him so long to seek medical
6 treatment for this issue?

7 A No.

8 Q Is that just something you typically don't ask
9 patients, or --

10 A No, I don't ever ask anybody that.

11 Q Okay. All right. Did he make any indication to
12 you in that time, independently himself, not
13 through his attorney but independent, -- Did he
14 indicate to you any reason why he hadn't sought
15 treatment for his knee until 2013?

16 A He did not.

17 Q What is it that you're looking -- that you think
18 needs to be done? I know it's an arthroscopic --
19 What is that you're planning to do on --

20 A Oh, yeah, he has -- he has an extensive tear
21 involving anterior lateral meniscus with
22 displacement of tissue and that -- It's a bucket
23 handle repair, but the handle of the bucket is no
24 longer seen. So, that would indicate that it's
25 actually been there a long time because if he's

1 kind of -- he has worn it down with walking on it
2 all this time.

3 Q But, again, you can't tell me that it's been there
4 since March of 2008, can you?

5 A I wouldn't be able to tell you what date.

6 Q Okay.

7 A It's been there for a while, though. That's for
8 sure.

9 Q It's been there for some period of time before --

10 A Yes.

11 Q -- 2013?

12 A Correct.

13 Q Okay.

14 Mr. Addison: All right. I think that's
15 all I have. Don?

16 Examination

17 By Mr. Kamb:

18 Q Dr. Paylor, I'm going to show you a couple of
19 records. This is an early record from Dr.
20 Wessinger.

21 A Mm-hmm.

22 Q And if you'd look at the HPI on that. And -- I'm
23 sorry. Could you -- What was the date on it
24 again?

25 A Oh. It was --

1 Q 4/13/08, wasn't it?

2 A Yeah, 4/30/08. Yeah, it says he initially had

3 right knee pain. It makes a reference to his knee

4 right there, if that's what you're looking for.

5 Q Right. And then I want to -- Is it your

6 understanding that he -- You said earlier that he

7 had multiple injuries in this car accident. Is

8 that correct?

9 A Yeah, evidently. It appears -- Yeah, the shoulder

10 and his spine --

11 Q And --

12 A -- in addition to his knee, right knee.

13 Q And he ultimately -- And I'll just tell you. You

14 may not know, but he ended up having surgery on

15 both of those things over the years. And does that

16 tie in with what you were saying earlier, that

17 sometimes people can have more severe problems,

18 and, so, other problems --

19 A Well, the -- the knee --

20 Q -- get left behind?

21 A -- problem would be minor compared to the other two

22 things that he had. They would -- It would be a

23 lesser type of problem.

24 Q Okay. Let me show you a report from Dr. Math's

25 office. It's actually the PA, Chris Kelly, on

1 6/6/13.

2 (Attorney Kamb presents document to Attorney
3 Addison.)

4 Mr. Addison: (to Mr. Kamb) I've got it.
5 You can keep it. I've got it.

6 Mr. Kamb: Okay.

7 A Yeah, he said then he has knee pain that's gotten
8 worse. And that was on -- well, whatever the date
9 was that -- oh -- 6/6/13. Okay.

10 Q He actually -- There's quite a passage there about
11 the right knee. Correct me if I'm wrong. I'm
12 going to read it again.

13 A Mm-hmm.

14 Q "The patient states that he has some right knee
15 pain that has gotten worse. He has been trying to
16 walk more as Dr. Kanos has prescribed for him to
17 do, but his right knee seems to be limiting him
18 quite a bit and his knee has been bothering him
19 since the accident. He --"

20 A Oh. And he saw Dr. Wessinger in 2010 about it, and
21 that was the --

22 Q Yeah.

23 A -- least of his worries.

24 Q Right. And then -- Then, apparently, Dr.
25 Wessinger said he would focus on fixing the other

1 parts "...before we come back to his knee, and now
2 that he is starting to walking again, trying to get
3 back to his normal life, the patient would like to
4 get his knee evaluated since it is giving him so
5 many problems."

6 A Okay.

7 Q Does that, again, tie in with what you were saying
8 earlier about lesser problems kind of --

9 A Yes.

10 Q -- going by the wayside?

11 A Yes.

12 Q And for whatever -- whatever -- His knee was
13 originally injured in the accident or by some other
14 way. Is it medically possible that the knee
15 condition that you see on the MRI could have been
16 aggravated by walking, such as what he has
17 described, increasing his activity post- --

18 A Yes, that would --

19 Q -- surgery?

20 A -- hurt to walk on that meniscus tear, yes.

21 Q And especially if he had been -- Correct me if I'm
22 wrong. If he had been less active, for whatever
23 reason, because of treatment for his shoulder, his
24 back, et cetera, and he starts -- as Dr. Kanos
25 apparently recommended, that he start doing more

1 walking, would that make it potentially more
2 aggravated?

3 A Yes.

4 Q Let me also show you another record from that same
5 office from August of 2013.

6 A It says here, "Right knee pain since the injury."
7 That's what this person says, Progress note by
8 Christopher Kelly.

9 Q Do you see at the bottom of that page where Mr.
10 Kelly, the PA, has reported that the knee has been
11 constantly giving him problems ever since the
12 accident and it's just been lowest on the totem
13 pole as far as injuries go?

14 A I do see that.

15 Q And, again, that's consistent with what you were
16 saying earlier?

17 A Yes.

18 Q The -- According to what you have seen and what
19 you know about this patient, have you had any other
20 -- have you seen anything that indicated that he
21 was diagnosed with a problem with his right knee
22 prior to the MRI that Dr. Math's office obtained in
23 your seeing him?

24 A No, I haven't seen anything else like that.

25 Q And, so, apparently, the tear in the meniscus was

1 first diagnosed following the MRI that Dr. Math got
2 and then when you saw him.

3 A Yeah, this is --

4 Q Is that correct?

5 A -- the only -- is -- This MRI scan of the knee is
6 the only thing I saw.

7 Q And that's when it -- apparently is when it was
8 first diagnosed, -- is that correct -- the
9 condition?

10 A I would believe so, yes, in last -- in June of '13.

11 Q The statement that you signed on June 26th, 2014,
12 is that still your opinion?

13 A Yes.

14 Q Is that your opinion to a reasonable degree of
15 medical certainty?

16 A Yes.

17 Q And more likely than not?

18 A Yes.

19 Mr. Kamb: Thank you, sir.

20 Re-examination

21 By Mr. Addison:

22 Q This is your opinion to a reasonable degree of
23 medical certainty based on everything that was told
24 to you by plaintiff's counsel, correct? You did no
25 independent review of the records to determine any

1 of this information's accuracy, did you?

2 A At the time I signed that, that plus the history I
3 got from the patient.

4 Q Okay. Which was the patient's telling you I've had
5 this --

6 A That he said, "My -- My knee was injured in the
7 accident."

8 Q Okay. Let's go to that note that -- that he just
9 showed you, with Dr. Wessinger on April the 30th,
10 2008, --

11 A Okay.

12 Q -- where he showed you the --

13 Mr. Addison: (to Mr. Kamb) I think you
14 gave him --

15 The Deponent: Oh.

16 Mr. Addison: You gave him a copy, didn't
17 you, Don?

18 The Deponent: This --

19 Mr. Kamb: April 30th --

20 The Deponent: No, I don't have one.

21 A April 30th, 2008?

22 Q -- yes, --

23 A Okay.

24 Q -- which he was asking you about. It said that
25 he'd had problems with his right knee. Remember

- 1 him --
- 2 A Yeah, it says it right there. Uh-huh.
- 3 Q Right knee. What does it say right after he says
- 4 he had problems with his right knee pain -- that he
- 5 had right knee pain? "He initially had right knee
- 6 pain."
- 7 A Uh-huh.
- 8 Q What's the next sentence?
- 9 A "Those have improved."
- 10 Q Okey-doke. So, his right knee had gotten better as
- 11 of April of 2008, hadn't it? That's per Dr.
- 12 Wessinger's report?
- 13 A Improved. Yes, that's what it says. I agree.
- 14 Q Okay. All right. And the next report that we have
- 15 from anybody that says -- him telling the doctor my
- 16 knee is bothering me, as by what was just shown
- 17 you, was in 2013, correct?
- 18 A I haven't seen anything in between that would
- 19 indicate there was any --
- 20 Q Plaintiff's counsel didn't hand you any other
- 21 records in his --
- 22 A No. These are all those ones I've seen, --
- 23 Q Okay. His --
- 24 A -- and that one.
- 25 Q -- examination?

- 1 A Yes.
- 2 Q All right. So, there's a note from 2008 indicating
3 that it was right knee pain initially that had
4 resolved or had gotten better?
- 5 A Well, it says improved.
- 6 Q Improved.
- 7 A That means it's still there.
- 8 Q Okay. But it's gotten better as of April, a month
9 after the accident?
- 10 A Yes, it says that.
- 11 Q And then there is no mention, as per any record
12 that the plaintiff's counsel has shown you, between
13 April of 2008 and the early part of 2013, correct?
- 14 A That would be correct.
- 15 Q Okay. All right. It's your opinion, though, that
16 we need to talk with Dr. Math and his folks as to
17 anything they may have discussed with the claimant
18 and any complaints he may have made of his knee or
19 lack of complaints with his right knee to them; is
20 that correct?
- 21 A Yes, sir, because I have no information regarding
22 that.
- 23 Q Okay. You haven't picked up the phone and called
24 them and said hey --
- 25 A No, and I plan --

1 Q -- and y'all discussed --

2 A -- not to do that either.

3 Q Okay. All right. The -- I'm sorry. I tried to
4 mark it down, and I didn't, but the note from Dr.

5 --

6 Mr. Addison: (to Mr. Kamb) It's a note
7 -- What was the note from Dr. Kanos -- What
8 date did you give him on that?

9 Mr. Kamb: I didn't give anything from
10 Kanos.

11 Mr. Addison: You didn't give him Kanos.
12 Okay. Okay.

13 Q I think it was just -- Maybe it was a statement
14 that you said that there was a note saying that Dr.
15 Kanos had indicated -- I think you were reading
16 the Greenville Health System's records. Is that
17 correct? You said there was some note that Dr.
18 Kanos supposedly said something in 2010?

19 A I don't know about that. I was just reading what I
20 was reading just today, right now.

21 Q Okay.

22 A I don't know. I don't --

23 Q Well, I was just trying -- I was trying to
24 understand what you -- I didn't want to interrupt.

25 A I wasn't saying anything. I was just reading it.

1 Q Sure, and I'm trying to understand where that was
2 because I didn't --

3 A Oh. Okay.

4 Q -- see it. I didn't want to interrupt the flow of
5 the deposition, but you said --

6 A Yeah. I don't recall. I don't recall that.

7 Q -- that there was some note in 2010 from Dr. --

8 Mr. Kamb: I think what you may be
9 referring to is that the -- Dr. Math's office
10 notes indicated that the claimant has said
11 that he had told Dr. Wessinger -- or spoken
12 with Dr. Wessinger about his right knee in
13 2010.

14 Mr. Addison: And that's -- But that's a
15 2013 note, correct, Don?

16 Mr. Kamb: I believe the notes that I
17 showed him were both 2013.

18 Mr. Addison: Yeah. Okay. That's -- I
19 just wanted to make sure there wasn't a 2010
20 note that I didn't have in front of me.

21 Q All right. I'm going to show you the 2010 note
22 from Dr. Wessinger. This is the last note that we
23 had --

24 A Okay.

25 Q -- from Dr. Wessinger. I'll have you take a look

1 at that real quick. And this is dated -- I
2 believe it's September of 2010, correct?
3 A Mm-hmm. Yes.
4 Q He complains of left leg pain but no right leg pain
5 --
6 A That's what it says.
7 Q Okey-doke. Do you see any mention of any right leg
8 pain, --
9 A No.
10 Q -- specifically any right knee pain?
11 A Correct.
12 Q That's a -- September the 1st of 2010 is that
13 note. This is a note from April of 2009. By the
14 records that I have from Dr. Wessinger, it's a note
15 that precedes the 2010 note.
16 A Mm-hmm.
17 Q I'm going to have you look at that.
18 A Oh. Okay. Okay. Yeah, it doesn't say anything
19 about his knee.
20 Q So, there's nothing about his right knee in 2009
21 either, in April of 2009, is there?
22 A That's correct.
23 Q All right.
24 Mr. Addison: Okey-doke. That's all I
25 have.

Re-examination

By Mr. Kamb:

Q In that regard, the -- the fact that there -- it does not show in Dr. Wessinger's record, it really just means that Dr. Wessinger did not record it; it doesn't necessarily mean that he didn't talk to Dr. Wessinger about it. Is that true?

A That would be possible I guess.

Q And as far as the -- the -- what you and I talked about before, are the records that I showed you today here in the deposition consistent with what I described to you --

A Yes.

Q -- when we talked about this statement?

A Yes.

Mr. Kamb: Thank you. Nothing further.

Re-examination

By Mr. Addison:

Q You have no idea what was discussed with Dr. Wessinger, do you?

A I wasn't there.

Q And you've not made any independent investigation into what Dr. Wessinger may or may not have done with --

A I have not.

- 1 Q -- the patient?
- 2 A I have not.
- 3 Q Okay. That's up to Dr. Wessinger, isn't it?
- 4 A Correct.
- 5 Q We should depose Dr. Wessinger on that issue,
- 6 shouldn't we?
- 7 A Yes.
- 8 Q Okey-doke. All right. You'd agree, though, that
- 9 his records are -- And it doesn't just say he's
- 10 reviewing one particular body part. He talks about
- 11 multiple body parts that the claimant's complaining
- 12 of to him on that date, the two different dates
- 13 that --
- 14 A Yeah. Yeah, --
- 15 Q -- we showed you?
- 16 A -- several things that he talked about. Yes.
- 17 Q It wasn't just his back, and it wasn't just his
- 18 shoulder; he complained about other issues?
- 19 A Correct.
- 20 Q And there is no mention in either of those, either
- 21 in 2009 or in 2010, of a right knee problem?
- 22 A In -- Yes, that's correct, in those that I just
- 23 saw, those two. Yes.
- 24 Q All right. He had previously discussed his right
- 25 knee with Dr. Wessinger in 2008, in April of 2008,

1 --

2 A Mm-hmm.

3 Q -- but Dr. Wessinger had no mention in either '09
4 or -- or 2010 records of any problems with his
5 right knee? You'd agree with that?

6 A I would agree the record reflects that. I would
7 agree with that.

8 Q Okay. And you would defer to Dr. Wessinger as to
9 what he did or did not discuss with the patient
10 that --

11 A Correct.

12 Q -- may not be in his records --

13 A Yes.

14 Mr. Addison: Okay.

15 Re-examination

16 By Mr. Kamb:

17 Q And, again, the claimant was there seeing Dr.
18 Wessinger about other body parts. Is that true?

19 A Yes.

20 Mr. Addison: I object to the question.
21 He -- He can't answer that because that's
22 speculative. He has no clue what --

23 Mr. Kamb: Except that he saw the
24 records, and the records were detailed,
25 exactly as you were showing him, --

1 Mr. Addison: Again, --

2 Mr. Kamb: -- what body parts he was
3 reviewing.

4 Mr. Addison: -- I object to the question
5 because it's speculative.

6 Mr. Kamb: Okay. That's fine. Thank
7 you.

8 The Deponent: Thank y'all.

9 Mr. Addison: All right.

10 The Deponent: Have a nice day.

11 Mr. Addison: Thanks, Doctor.

12 (Whereupon the deposition was concluded at
13 4:02 p.m.)

14 **(Deponent has waived reading and signing.)**

State of South Carolina)
)
 County of Lexington) Certificate

Be it known that the foregoing deposition of John H. Paylor, III, MD, was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 50 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 14th day of July 2014.

Sandra M. Snead

 Sandra M. Snead

Notary Public for South Carolina
 My commission expires August 29, 2023.

Note: Recordings are retained for twelve (12) months from date of certification.

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0802605

TOMMY G. HOUSTON,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
GARDA WORLD SECURITY,	)	
	)	JYOTI K. MATH, MD
EMPLOYER,	)	
	)	
GALLAGHER BASSETT SERVICES,	)	
INC.,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Jyoti K. Math, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour 4:17 p.m., Wednesday, September 3rd, 2014, at Upstate Medical Rehabilitation, 111 Doctors Drive, Greenville, South Carolina.

COPY

Reported by
Sandra M. Snead

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

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Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Jyoti K. Math, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Jyoti Math.

Examination

By Mr. Addison:

Q Dr. Math, my name is Dan Addison. I'm here on behalf of the defendants in a workers' compensation claim involving Tommy Houston. We're here today to take your deposition in regard to treatment that has been provided to him for the various issues from an automobile accident that also was a workers' comp injury, that injury occurring back in 2008. We're going to discuss with you some of the issues on this case because of your involvement as one of the treating physicians involved in Mr. Houston's care over the last six years.

- 1 A Okay.
- 2 Q And I know you didn't come in until a little bit
- 3 later on, but we're just specifically talking about
- 4 your -- your involvement in the case. I've never
- 5 deposed you before, so I'm going to get you to give
- 6 me your curriculum vitae just quickly. You don't
- 7 have to give me an extremely lengthy, just a quick
- 8 CV.
- 9 A Oh. Okay.
- 10 Q We'll go through that in a minute, but, first, I've
- 11 got to give you some rules. If you will always try
- 12 to say yes or no in response to a question that is
- 13 asking you a yes or a no question. If I ask you a
- 14 question that you do not understand, I need you to
- 15 tell me that you do not understand the question as
- 16 asked. I will then try to recraft my question as
- 17 asked and see if I can get it where you can
- 18 understand it, and, if not, then we'll just kind of
- 19 go from there.
- 20 A Okay.
- 21 Q But if you answer a question, I will assume that
- 22 you have understood the question as asked. Is that
- 23 fair enough?
- 24 A That's fair.
- 25 Q Okey-doke.

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1 A All right.

2 Q All right. Again, -- So, if we can, if you would

3 just give me a quick CV.

4 A Okay. My name is Jyoti Math. I finished my

5 residency training in physical medicine and rehab,

6 and I have done interventional spine procedure

7 fellowship --

8 Q Okay.

9 A -- for one year. I have been with Greenville

10 Hospital System for the last four years.

11 Q Okey-doke. All right. And you're board-certified

12 in --

13 A Pain management, yes.

14 Q Okey-doke.

15 A And board-certified in PM&R.

16 Q PM&R. Physical --

17 A Physical medicine.

18 Q -- medicine?

19 A Yeah.

20 Q Okay.

21 A Yeah.

22 Q All right. Okay. And you started seeing Mr.

23 Houston -- and I'm going to have to get you to tell

24 me what -- what you have as your first record.

25 A Yeah. I'm --

1 Q The records that I have are a little bit confusing
2 because we got them from the hospital. Obviously,
3 the system sent them --

4 A Right.

5 Q -- to us, and --

6 A I'm just waiting for my schedule to load. My
7 computer is slow, a little bit slow.

8 Q I have the first visit as being --

9 A A long time.

10 Q -- a one-time visit of --

11 A 2010.

12 Q I'm sorry?

13 A 2010. Let me go back, okay? I've got it.

14 Q I actually have 2011.

15 A Let's see. 2011 -- Yeah, the first time I saw --
16 was August 18th, 2011.

17 Q Yes, ma'am. All right. And did you see him
18 routinely after that or was that the only time you
19 saw him in that year of 2011?

20 A No. I think I have seen him routinely after that.

21 Q Okay. All right. And the reason I asked, we've
22 requested the records, and I just don't have
23 extensive records on you. I have certain things
24 that the hospital has sent to us but not where, you
25 know, it's routine every month or every six months

1 or whatever.

2 A Almost every month.

3 Q Every month has been the --

4 A Almost every month.

5 Q Okay.

6 A There are some missing months here, but almost

7 every month.

8 Q Okey-doke. And has that primarily been for the

9 treatment based on the plan that existed in 2011,

10 on August the 18th, 2011?

11 A Yes.

12 Q Okey-doke.

13 A They've got, "Related with his injury sustained on

14 March 2008."

15 Q Yes, ma'am.

16 A Yeah.

17 Q Okay. I'm going to look at that particular report

18 from August the 18th of 2011. If you'll --

19 A August 18th.

20 Q -- pull that up real quick, --

21 A Yes.

22 Q -- your first visit.

23 A Mm-hmm.

24 Q Okay. It indicates that the subjective complaints

25 are a new WC -- I assume workers' comp -- shoulder.

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- 1 Is that correct?
- 2 A (No response.)
- 3 Q I'll show you the note I'm referring to, the
- 4 progress note from that date. This is how it was
- 5 sent to me.
- 6 A Right shoulder. Okay. Yeah. Shoulder -- Yeah,
- 7 it says shoulder, but he also had back issues at
- 8 that time.
- 9 Q Okay. All right. But just where it says, "New
- 10 W/C," is that new workers' comp shoulder?
- 11 A Yes.
- 12 Q Okay. All right.
- 13 A New means the new patient, not the new injury.
- 14 Q Right. I understand. I understand. But this was
- 15 a new patient for you --
- 16 A For me, yes, at --
- 17 Q -- at that point?
- 18 A Yeah.
- 19 Q And it's -- The HPI meaning the History --
- 20 A Of Present Illness.
- 21 Q History of Present Illness. "Has an interim --
- 22 interim history of showing an MRI of the lumbar
- 23 spine in 2010 --
- 24 A Yes.
- 25 Q -- and a CT of the lumbar spine in 2011 --"

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- 1 A Yeah.
- 2 Q -- and, I guess, "fluoroscopy of the lumbar
3 myelogram --"
- 4 A Uh-uh. I don't think fluoroscopy.
- 5 Q What's the FL? What's the FL? Just -- I'm just
6 trying to understand what the FL is.
- 7 A I'm not sure --
- 8 Q Okay.
- 9 A -- what that is, but it's lumbar myelogram, yeah.
- 10 Q Okey-doke. So, just basically, you're talking
11 about the -- he's had several diagnostics done on
12 his -- on his lumbar --
- 13 A Yes.
- 14 Q -- spine area to see what's going on with his back?
- 15 A Right.
- 16 Q And then he -- The next sentence below those --
17 one, two and -- three paragraphs is, "Patient is a
18 fifty-five-year-old male seen at the request of Dr.
19 Bucci --
- 20 A Mm-hmm.
- 21 Q -- for pain management for his low back."
- 22 A Right.
- 23 Q "He sustained a work injury on 3/11/2008. He
24 worked at the armored car company."
- 25 A Mm-hmm.

- 1 Q He was involved in -- and I'm kind of now
2 paraphrasing, obviously. He was involved in an
3 automobile accident where he injured his left
4 shoulder and had multiple broken ribs and --
- 5 A Mm-hmm.
- 6 Q -- a kidney puncture.
- 7 A Mm-hmm.
- 8 Q He never had back pain before, and his back pain
9 started on the day of the injury. He's been
10 evaluated by Dr. Wessinger. He is status post
11 right shoulder scope and rotator cuff repair on
12 7/11/2008.
- 13 A Correct.
- 14 Q Correct?
- 15 A Yeah.
- 16 Q All right. Then it says, "Regarding his back pain
17 and knee pain, he is status post physical therapy,
18 and he was in physical therapy from 2008 till 2009
19 --
- 20 A Mm-hmm.
- 21 Q -- and he got a little better, and he was stable."
- 22 A Right.
- 23 Q What knee are you referring to? Do you know?
- 24 A Okay. At that time, I did not mention it, but --
- 25 Q And that's my question, is how do we know what knee

1 you're discussing at that point?

2 A Right. I -- But he never complained other knee
3 pain. He never complained of bilateral knee pain.

4 Q Okay. Well, that's the reason I'm asking, is
5 because I've got some records that I'm going to
6 show you where he complained about his left knee
7 and that he'd injured his left knee in the
8 accident. I don't know what knee you're referring
9 to in your 2011 note, because it doesn't say. But
10 what I want to know, if you have anything in your
11 system, in your electronic system over here, or any
12 handwritten notes that you have --

13 A All right. So, --

14 Q -- that will reflect what knee you're discussing on
15 that particular date.

16 A Okay. Let me see if I can find something.

17 Q Especially since this is his very first visit with
18 you.

19 A Right. I -- His knee pain was very vaguely
20 discussed at that time. His main issue was back.

21 Q Okay.

22 A Since, like, you know, I do, like, musculoskeletal
23 issues, but mainly mine was interventional spine,
24 and -- and, at that time, his back was such a major
25 issue, we did not focus much on the knee. And I

1 apologize. I did not document anything there on
2 the knee, just vaguely -- We just mentioned that
3 he has that knee pain since the injury.

4 Q Okey-doke. But we don't know what knee you're
5 referring to, --

6 A No.

7 Q -- do we?

8 A No.

9 Q Okey-doke. But he's -- His job -- He worked
10 until August 2010; his job was physically
11 demanding, required lifting; aggravated his
12 shoulder pain as well as his back pain?

13 A Right.

14 Q So, the work aggravated his shoulder pain and his
15 back pain, but there's no mention in here that it
16 aggravated any part of any knee, does it? He did
17 not mention to you in 2011 that it -- his -- either
18 knee was bothering him as a work -- as a result of
19 his work. Is that correct?

20 A Was he -- Like, you know, I -- Like, all these
21 injuries, like back pain, shoulder pain and knee
22 pain, was documented on the day of first visit
23 because it was related with the injury.

24 Q My question, though, Doctor, is, in this section of
25 your note, --

- 1 A Mm-hmm.
- 2 Q -- it says his job is physically demanding and
3 requires heavy lifting, and that -- ostensibly,
4 that work aggravated his shoulder pain as well as
5 his back pain, period?
- 6 A I'm sorry. Say that again. Where is that?
- 7 Q Right here. Right here --
- 8 A He thought --
- 9 Q -- where it says, "His job is physically demanding
10 and requires heavy lifting, and that aggravated his
11 shoulder pain as well as back pain." Correct?
12 That's what your note says?
- 13 A Right. It means -- I think he went back to work
14 after the injury, right?
- 15 Q Uh-huh.
- 16 A And that was aggravating his condition.
- 17 Q Okey-doke. And what my question is is you -- would
18 you agree with me that your note appears to make no
19 mention of any knee pain, either right or left, --
- 20 A No.
- 21 Q -- as the result of his work at --
- 22 A No.
- 23 Q -- that time?
- 24 A No.
- 25 Q Okey-doke. And then it goes on to say -- Your

1 note goes on to say, "Back pain is worse with
2 prolonged standing."

3 A Mm-hmm.

4 Q "It is in the back of the thigh of the left side
5 and occasionally up to the heel."

6 A Right.

7 Q I assume you're referring to his left leg and left
8 heel there?

9 A The left thigh is -- Back of the left thigh is
10 back here (indicating), --

11 Q Okay.

12 A -- all right, and then it goes down to the left
13 heel, which is here (indicating).

14 Q Okey-doke. All right. So, what we're referring to
15 -- You said the thigh on the left side. Are you
16 referring to the left side leg, the left leg --

17 A Right.

18 Q -- thigh? Okay. All right. "He has some weakness
19 secondary to pain but no true weakness. He denies
20 any fall, but occasionally he had some near-fall
21 events"?

22 A Events, yeah.

23 Q And --

24 (The deposition is interrupted.)

25 [Off the record briefly at 4:27

p.m.]

Examination Continues

By Mr. Addison:

Q All right. So, that's kind of what we're dealing -- is essentially he's having some back problems, they're going down his left leg, and he's discussed with you that the work that he was doing was aggravating his shoulder pain as well as his back pain?

A Right.

Q All right. Then it goes on, the next paragraph, "Regarding his workers' comp, the case was settled in August 2010, and the claimant was put at MMI by Dr. Wessinger, --

A Right.

Q -- but it was reopened because of an aggravation of his symptoms."

A Mm-hmm.

Q What was your understanding -- Is that the aggravation you're referring to earlier, the aggravation of his shoulder and his --

A Right.

Q -- back?

A Right. Like on --

Q Okay.

- 1 A After the surgery, I think he got a little better.
2 He was put to MMI by Dr. Wessinger, --
- 3 Q Mm-hmm.
- 4 A -- but then, because of his old work issues, it got
5 worse.
- 6 Q Okey-doke. All right. It goes on to say he was
7 re-evaluated by Dr. Bucci, --
- 8 A Mm-hmm.
- 9 Q -- Dr. Bucci doesn't think that Mr. Houston was a
10 surgical candidate?
- 11 A Right.
- 12 Q He ordered a lumbar myelogram, and the claimant's
13 spine basically then required surgery, and there
14 was also a functional capacity evaluation done in
15 2009 that you reviewed?
- 16 A That's correct.
- 17 Q So, you're kind of looking at all the various stuff
18 that was going on with him at that time --
- 19 A Right.
- 20 Q -- and trying to come up with some idea of what you
21 were going to do with him. Is that --
- 22 A Right.
- 23 Q -- a fair statement?
- 24 A Yes.
- 25 Q Okay. All right. So, then, you go through an exam

- 1 of him, you look through the history, you go
2 through his prior surgical history, you go through
3 your clinical exam with him. In your clinical
4 exam, you indicate in the examination, General Exam
5 section, -- you state that, "The patient is obese,
6 awake, alert and oriented." So, he's -- he's a
7 large man, you'd agree?
- 8 A Yes.
- 9 Q Okey-doke.
- 10 A He's not extraordinarily morbidly obese, but --
- 11 Q Right. He's --
- 12 A -- yeah.
- 13 Q -- still a big guy, though?
- 14 A Okay. Yeah.
- 15 Q All right. Your next sentence says, "His gait is
16 normal." What does that mean?
- 17 A It means he was not walking with an antalgic gait.
- 18 Q He was walking normally?
- 19 A Right.
- 20 Q Okey-doke. All right. He's able to stand on his
21 toes but not on his heels?
- 22 A Mm-hmm.
- 23 Q Why -- Why do you do that? What's the point of
24 that?
- 25 A We try to see if they -- he has any weakness.

- 1 Q In his legs?
- 2 A In his ankles.
- 3 Q Ankles and legs?
- 4 A Not the legs. Ankles.
- 5 Q Ankles.
- 6 A Right.
- 7 Q Okay. All right. All right. "General appearance:
- 8 No acute or chronic distress. Communicates
- 9 normally." So, he was talking to you normally, and
- 10 he could --
- 11 A Mm-hmm.
- 12 Q -- he could tell you what was going on with him
- 13 normally that day, correct?
- 14 A Right.
- 15 Q So, then you go on to examine, and what you examine
- 16 that date was you looked at his lower back, --
- 17 A Mm-hmm.
- 18 Q -- and there was no swelling --
- 19 A Mm-hmm.
- 20 Q -- or edema, no puffiness in his lower back?
- 21 A Mm-hmm.
- 22 Q He had some tenderness over the lumbar area of his
- 23 back, correct?
- 24 A Yeah.
- 25 Q All right. And then you looked at the iliac area

1 of his spine, --

2 A Mm-hmm. Mm-hmm.

3 Q -- and you looked at other areas of his spine, and

4 you did some sensation testing of his lower spinal

5 area, correct?

6 A Yeah. Correct.

7 Q All right. Then you did a reflex -- I assume

8 banging him with the little hammer, right, --

9 A Mm-hmm.

10 Q -- reflex testing?

11 A Yes.

12 Q And he was -- seemed to be fine at both -- on both

13 knees and ankles with that issue, correct?

14 A Right.

15 Q All right. You did a straight leg test to see if

16 he had radiculopathy in his leg at that point, and

17 it was --

18 A Mm-hmm.

19 Q -- negative?

20 A Mm-hmm.

21 Q And the hip range was full and pain-free?

22 A Yeah.

23 Q So, you obviously messed around with his legs that

24 day, with both legs, you were testing -- you were

25 testing -- straight leg test, and you were doing

- 1 reflex testing?
- 2 A Correct.
- 3 Q You were -- You were clinically examining his legs
- 4 that date?
- 5 A Yes.
- 6 Q Okay. And then your assessment was that he had
- 7 lumbar and sacral arthritis, spondylolisthesis,
- 8 disorders of sacrum, pain that's myofascial and
- 9 lumbar radiculopathy?
- 10 A Correct.
- 11 Q The pain that was myofascial, what is your
- 12 understanding of where you were saying that
- 13 myofascial --
- 14 A My -- All --
- 15 Q -- pain existed?
- 16 A -- of that exam was focused on lumbar spine.
- 17 Q Okay. All right. All right. Your plan, then, on
- 18 that date was spelled out in your plan section.
- 19 A Mm-hmm.
- 20 Q And you indicated that you would have him take
- 21 medication --
- 22 A Mm-hmm.
- 23 Q -- as a result of the problems with his spine?
- 24 A Right.
- 25 Q Is that a pretty simple --

- 1 A Yeah.
- 2 Q All right. And that he was having ongoing issues
3 with the spine and that you were going to do
4 various things, including doing some injections?
- 5 A Right.
- 6 Q All right. And, you know, you basically said we're
7 going to see how he goes and then we'll give him an
8 SI joint injection if he doesn't improve with this
9 current plan?
- 10 A Correct.
- 11 Q I don't see anything in there referring to his
12 right leg and any need for treatment of his right
13 knee at that point in my --
- 14 A Neither the knee nor the shoulder.
- 15 Q Okay. All right. Well, there wasn't any -- You'd
16 agree with me there's no discussion in this visit
17 of any problem with his right knee?
- 18 A There might be some discussion, because I put down
19 the knee pain in my dictation.
- 20 Q Mm-hmm.
- 21 A Otherwise, I would not have even bothered to put
22 that knee pain there.
- 23 Q Okay. But, again, --
- 24 A But at that time --
- 25 Q -- we don't know which knee?

1 A We don't know which knee. Either I did not put it
2 or the transcriptionist did not put it.
3 Q Okay.
4 A We don't know that.
5 Q And in your plan section, your plan makes no
6 mention of any issue with the --
7 A No, --
8 Q -- knee that needed --
9 A -- because we were so --
10 Q -- treatment?
11 A -- focused on the back --
12 Q Okay.
13 A -- because --
14 Q I understand, but you'd agree with me your plan has
15 nothing about a right knee --
16 A No.
17 Q -- in it at all?
18 A I did -- Not the knee. Not the shoulder.
19 Q Okey-doke. And you'd agree with me that your
20 clinical exam shows that he walked in a normal
21 manner as of that point?
22 A Correct.
23 Q And he was apparently not indicating to you, during
24 the clinic -- clinical exam, that when he walked he
25 was having any problems with his right knee?

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- 1 A I did not ask him whether he was having any pain.
2 I was just watching him to see whether --
- 3 Q Okay.
- 4 A -- he has any weakness.
- 5 Q But you'd agree with me your -- your notes make no
6 mention that when he walked he was having any
7 difficulty walking?
- 8 A No.
- 9 Q Okay. All right. Beyond that, unfortunately, I
10 don't have a whole lot of narratives from you.
11 What did you do narrative-wise beyond that date
12 when he would come see you and you would have
13 visits with him?
- 14 A Gosh. So, that's a long -- because I saw him
15 almost every month.
- 16 Q Okay.
- 17 A So, I tried to narrate every time in my old
18 history. So, Dr. Wessinger did the scope, and he
19 got a second opinion eventually because he was not
20 getting better. So, Dr. Kanos saw him in August
21 24th, 2012, and he'd accommodate fusion at L5-S1,
22 and he underwent a fusion on December 2012.
- 23 Q Okay.
- 24 A And that improved his symptoms very significantly.
- 25 Q Okay. And you're looking at a most recent note.

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1 This is an August 2014 note that you're referring
2 to?

3 A Right, but I have narrated what happened.

4 Q Sure. I understand, but you've got this --

5 A Otherwise, I'll have to -- From 2011, I'll have to
6 go each and every month and tell you what's going
7 on.

8 Q Right. Okey-doke. What I'd like for you to do is
9 tell me the first time that he started mentioning
10 his right knee to you --

11 A Okay. Well, I think I --

12 Q -- as the physician.

13 A -- need to go back and look into it. So, maybe
14 June 2013 -- because we did a MRI at that time.
15 So, maybe --

16 Q The MRI that I have is from the summer of 2013.

17 A Yeah, I think that's the first time -- "The
18 patient comes in today for a follow-up." Okay.
19 So, my PA saw him on June 6th, 2013, and, at that
20 time, he mentioned like on -- his leg pain and that
21 knee pain is getting worse. And let me go back in
22 the May visit and see if he has mentioned anything
23 at that time. In May 2013, he complained about his
24 walking tolerance has been reduced and his leg is
25 giving out, but he did not specifically say

1 anything about the knee. And the following visit,
2 in June 2013, he complained of knee pain getting
3 worse.

4 Q And that was which knee?

5 A Right knee.

6 Q Okey-doke. Does it -- Does the note specifically
7 say that?

8 A Right knee, yes. Right knee.

9 Q Okay. All right.

10 A At that time, my PA documented that, "Right knee
11 seems to be limiting his -- limiting him quite a
12 bit, and his knee has --"

13 Q Okay. Who -- Who is your PA? I'm sorry.

14 A Chris Kelly.

15 Q Okey-doke.

16 A And he documented that his knee has been bothering
17 him since the accident. "He had seen Dr. Wessinger
18 about it back in August --"

19 Q Well, let me stop you there because you say --

20 A Yeah.

21 Q -- he -- that Mr. Kelly -- or is it a he or a she?

22 A He.

23 Q He. Mr. Kelly is documenting that the knee has
24 been bothering Mr. Houston since the injury?

25 A Correct.

1 Q That's not exactly an accurate statement, is it?
2 He's documented that the patient told him in 2013
3 that the injury had been bothering him since 2008,
4 correct, the right knee?

5 A Right, but why do you think that it is not a
6 accurate statement?

7 Q Because if you say that he's documenting that it
8 was bothering -- It sounds like you're saying that
9 there's documentation going back to 2008 that would
10 reflect that the claimant had been complaining of
11 his right knee the entire time. That's not
12 accurate, is it?

13 A No, the patient might not have complained, but that
14 doesn't mean that it was not bothering him.

15 Q Sure. I understand, but, I mean, the whole reason
16 we're here is to try to find out what you knew and
17 when you knew it, and, from your records, it
18 appears that the first time that he mentioned a
19 right knee problem with you as a treating physician
20 was well over -- well, right at about two years
21 into you treating him, and it wasn't mentioned to
22 you, it was mentioned to your PA, correct?

23 A Well, the PA works for me, so --

24 Q I understand, but the person that got that note,
25 got that first information from Mr. Houston was

1 your PA?

2 A I just, like, know -- If you're trying to say,
3 like, on the first visit we said -- we said knee
4 pain, I don't know whether I documented it right
5 but my transcription did not pick it up or I did
6 not mention it. I don't know that. But he has
7 definitely mentioned the knee pain at that time,
8 and he --

9 Q In two thousand and what?

10 A Eleven. But he never complained left knee pain to
11 me.

12 Q Well, --

13 A Now, at this time, I don't think we are focusing
14 more on the documentation. I think we are focusing
15 here more on getting the patient's history, so I --

16 Q Okay.

17 A -- don't think it is the wrong documentation.

18 Q Let -- Let me show you this. This is a discharge
19 summary from Greenville Hospital back in 2008.

20 A Okay.

21 Q Would you agree with me that the discharge summary
22 from the hospital from the original time of injury
23 indicates that the injuries that he had were a
24 motor vehicle accident with rib fractures and left
25 knee pain?

1 A Okay. Let me read that whole -- Yes, that's
2 correct. It says --
3 Q Okey-doke.
4 A -- says left knee pain.
5 Q All right. So, back in 2008, --
6 A Mm-hmm.
7 Q -- he was telling this particular medical facility,
8 which is a giant facility, that he had --
9 A Mm-hmm.
10 Q -- left knee problems. Your record in 2011 just
11 says knee. We have no independent anything that
12 tells us which knee he's referring to, do we, in
13 your records? There's nothing that would tell us
14 which --
15 A The first record --
16 Q -- knee --
17 A -- does not say anything, yeah.
18 Q Okay. And do your records -- further records in
19 2011 mention anything with his right knee, just in
20 2011?
21 A No.
22 Q How about in 2012?
23 A I don't think so.
24 Q Okey-doke. And -- I've got some of your records.
25 I don't know that I have all of them. That's --

1 A Okay.

2 Q -- part of why I'm not just going through all of
3 this.

4 A Okay.

5 Q That's why I'm asking you to kind of try to
6 pinpoint when the first time that your records
7 reflect that he had right knee problems.

8 A Mm-hmm. I think that the first time is in June.
9 That's why we started working him up at that time.

10 Q June of 2013, correct?

11 A Correct. That's correct.

12 Q All right. And you -- Like you said, you were
13 seeing him almost every month?

14 A Yeah, but let me go back to August 2010 by Dr.
15 Wessinger. August. Hmm, -- because he also told
16 us that he has been seeing Dr. Wessinger for that
17 in August 2010, but I don't see that --

18 Q Okay.

19 A -- there.

20 Q My point, though, ma'am, is -- What I'm asking
21 about is when he -- what he discussed with you --

22 A That's fine.

23 Q -- as the treating physician --

24 A Yeah. I told --

25 Q -- and --

- 1 A I gave that answer to you.
- 2 Q So, we have -- What we have is -- You know, your
3 records in 2011 and your 2012 records don't seem to
4 reflect any discussion of a problem with his right
5 knee.
- 6 A No.
- 7 Q And the first specific mention that we have that
8 he's having problems with his right knee is a
9 progress note by the physical -- excuse me -- the
10 physician's assistant in June of 2013?
- 11 A That's correct.
- 12 Q Okay. And that note indicates -- I'm sorry. The
13 second -- The note from -- There we go. Okey-
14 doke. This is June the 6th of 2013. He's coming
15 to see y'all, and he discusses what you just talked
16 about that's in the note. And the note will
17 certainly be in the records.
- 18 A Mm-hmm.
- 19 Q But he comes in, tells your -- your PA --
- 20 A Right.
- 21 Q -- that he's been having problems with the knee
22 since the time of the injury in --
- 23 A Mm-hmm.
- 24 Q -- 2008?
- 25 A Right.

- 1 Q Okey-doke. And then the next note, which is --
2 I'll give you the date here -- 7/10 of 2013, --
3 A 7/10. Okay.
4 Q Okey-doke. This is -- There was -- Y'all did an
5 MRI on him in between?
6 A Right.
7 Q The MRI was done on June the 25th of 2013, correct?
8 A Mm-hmm. Yeah.
9 Q That was a yes? Okey-doke. All right. And it
10 states that he had a lateral meniscal possible
11 bucket-handle tear and lateral tibofibuar --
12 tibiofibular chondromalacia?
13 A Correct.
14 Q What exactly is chondromalacia, Doctor?
15 A It's kind of like degenerative changes in the
16 cartilage.
17 Q It's an arthritic condition, --
18 A Right.
19 Q -- essentially, --
20 A Correct.
21 Q -- depending on your definition of arthritis, but
22 it's what laymen would know as arthritis, correct?
23 A Correct.
24 Q Degenerative issues in the soft tissue of the knee?
25 A That's correct.

- 1 Q All right. Is it uncommon for fifty-something-
2 year-old overweight men to have problems with
3 chondromalacia in their knees?
- 4 A It's quite common --
- 5 Q Okay. Especially --
- 6 A -- for overweight patients.
- 7 Q -- for overweight people, correct?
- 8 A That's correct.
- 9 Q And for fifty-something-year-old people?
- 10 A Yeah.
- 11 Q Okay. It didn't require him to have some type of
12 injury in his knee to have the issues that existed
13 in his knee, did it?
- 14 A Well, the degenerative changes are aging changes,
15 --
- 16 Q Okey-doke.
- 17 A -- but if you're asking -- asking me particularly
18 about this MRI report, the tear, we don't know.
- 19 Q Okay. You can develop something like that just
20 basically as a result of age and doing activities
21 of normal daily living, can you not?
- 22 A There are two types of tears. One is like a
23 degenerative tear, and one is traumatic tear.
- 24 Q Okey-doke. All right.
- 25 A And in his case, there are -- both the factors are

1 there, so it's hard to answer.

2 Q Okay. Okey-doke. But the point of my question,
3 though, was -- is it doesn't require a specific --
4 something like an automobile accident to have an
5 injury that -- The type of problems that exists in
6 his right knee don't require a specific acute
7 injury to have that type of a -- of an injury in
8 the knee, correct?

9 A We don't know what type of tear it is, --

10 Q I understand that.

11 A -- if it is a degenerative tear or it is a
12 traumatic tear.

13 Q Okay.

14 A So, if it is a traumatic tear --

15 Q Okay. I see what you're -- All right. I --

16 A Okay.

17 Q I'm getting your answer now. All right. If it's a
18 traumatic tear, you would think it would have
19 required some type of injury?

20 A Right.

21 Q Okey-doke. You can't give me an answer to a
22 reasonable degree of medical certainty, though,
23 that the accident that occurred in 2008 would be
24 the agent or the mechanism of that type of tear in
25 his knee, though, can you?

1 A Well, he had a really high impact accident, so it
2 is possible, but I did not see him in the beginning
3 of the injury, so I have no idea. The injury was
4 in 2008. I saw him -- It was in 2011, so two
5 years. So, it's hard to answer that question, but
6 he --

7 Q Okay.

8 A If you -- If you see the description of his
9 injury, initial injury, it is a pretty high-impact
10 injury --

11 Q Sure. I understand.

12 A -- and with the kidney punctures and with the rib
13 fractures and --

14 Q Oh, he got --

15 A -- all that stuff.

16 Q -- banged up pretty good.

17 A Right.

18 Q I don't -- We don't dispute that. My point is --

19 A Right.

20 Q -- is you, as a physician, cannot tell me to a
21 reasonable degree of medical certainty that that
22 accident was the specific cause of the injury that
23 exists in his right knee, can you?

24 A It could be highly possible that that injury might
25 have caused it because he --

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1 Q Can you tell me that to a reasonable degree of
2 medical certainty, --
3 A I'm not --
4 Q -- better than 50 percent?
5 A I'm not saying that is a hundred percent.
6 Q Not a hundred percent. I'm talking about better
7 than 50 percent.
8 A Most likely, yes. That's what my -- my opinion is.
9 Q Okay. And, so, --
10 A You may not agree with that, but my --
11 Q Yeah, you know, and that's based on just the
12 chronological history that he's giving you?
13 A Right.
14 Q Okey-doke.
15 A It's -- I did not examine him immediately after
16 the injury.
17 Q Okey-doke.
18 A I saw him two years down the road, so it's hard for
19 me to answer that --
20 Q You -- You saw him three years down the road. You
21 saw him in 2011, and the accident --
22 A Two -- Yes, --
23 Q -- occurred in --
24 A -- three years down the road.
25 Q -- 2008.

- 1 A So, it is better, like, now, -- Whoever has
2 examined him immediate after the injury will be a
3 better person to talk to.
- 4 Q Okay.
- 5 A But, at this point, I'm going to rely on the
6 patient to give me the history, --
- 7 Q Okay.
- 8 A -- and I'm going to correlate the objective
9 findings and MRI.
- 10 Q Wouldn't you expect, though, that he -- if it -- if
11 he had a significant tear in his right knee, that
12 he would have complained about it to you in 2011
13 and 2012?
- 14 A Right, but nobody did the MRI at that time. Maybe,
15 at the time, that tear was small. Who knows? We
16 do not have a comparison, this MRI with a previous
17 MRI.
- 18 Q According to your PA's note in 2013, --
- 19 A Uh-huh.
- 20 Q -- the claimant says that it'd been there all
21 along, the pain had been bothering the whole time?
- 22 A Right. The pain was -- started getting worse. He
23 had pain initially, but --
- 24 Q Mm-hmm.
- 25 A -- it started getting worse. Maybe internal

1 pathology started getting worse and the tear was
2 initially small and got larger. Who knows?

3 Q Isn't it also possible, just as likely, that this
4 was -- he's a large man who's in his fifties and he
5 developed degenerative problems in his knee and had
6 a tear as a result of that?

7 A There's -- Even though there are degenerative
8 changes, he has to do something to cause that tear.

9 Q He can walk into his bathroom and tear his knee up,
10 I mean, --

11 A But there should be something that you're saying,
12 that, yes, I was walking to the bathroom and it
13 popped and since then it is hurting.

14 Q Not if he's trying to put it on my client. He's
15 going to say your client -- my client is the one --

16 A But I'm going to --

17 Q -- is that one who has to --

18 A -- I'm going to take the -- I know -- I
19 understand the legal part of it, --

20 Q Yeah.

21 A -- but I am a physician. I am going to listen to
22 the patient and try to make -- construct my
23 treatment plan.

24 Q Sure. I understand that.

25 A And unless he gives me that history that yeah, I

1 was walking or I was doing something and it popped
2 and it snapped and since then it's causing me a
3 problem -- then I'd say yes, but he has not given
4 me that kind of history.

5 Q Well, why would he do that when he doesn't --

6 A I have no idea, sir.

7 Q -- have somebody else to -- to pay for that, when
8 he --

9 A I have no idea.

10 Q -- can make me pay for it? Why would he do that?

11 A I have no idea, sir.

12 Q Okay. But does it make any sense medically that he
13 had this condition and it was as bad as it
14 allegedly was for six years before he mentions it
15 to y'all?

16 A But I do not have any documentation --

17 Q Excuse me. Five years before y'all -- he mentions
18 it to y'all.

19 A Right. Like I just said, the injury may be minor
20 initially and gotten worse and that's why we are
21 seeing a big tear --

22 Q Mm-hmm.

23 A -- or, as you said, it happened some -- somewhere
24 in between. There is no way we can figure that
25 out.

1 Q Which is exactly my point. So, you cannot say, --
2 A Right.
3 Q -- to a reasonable degree of medical certainty,
4 where the knee injury came from, can you?
5 A I cannot say it a hundred percent, but looking at
6 his history that he was complaining of knee pain --
7 but nobody -- like no -- nobody evaluated him, so
8 we don't know. So, I --
9 Q Complained of knee pain when?
10 A Since his injury, --
11 Q To who?
12 A -- so -- To the doctors.
13 Q What --
14 A Like, you know, he was, like when he told me on the
15 day one. That is only -- Like you're -- you're
16 pointing at one thing, that I did not put the side,
17 and that's what you're taking advantage of. That's
18 what I feel. I --
19 Q But you don't know, Doctor? You don't know which
20 side it was that day, do you? Do you know it was
21 the right side?
22 A I don't remember at this point. It is --
23 Q Okay.
24 A -- 2008. And, as -- as I said, I cannot say a
25 hundred percent that it is not related with his

- 1 injury at all. So, it is, like, most likely, I'm
2 saying. I'm not a hundred percent saying that is
3 related with the injury, but I'm -- I cannot a
4 hundred percent say that --
- 5 Q If it's --
- 6 A -- it is not related with his injury either.
- 7 Q If it's just as likely that it's my scenario versus
8 your scenario, then it's not to a reasonable degree
9 of medical certainty; that's a 50-50?
- 10 A I feel like -- Now, I'm giving my opinion that
11 most likely it's related with his injury.
- 12 Q And that's based on the history that Mr. --
- 13 A Right.
- 14 Q -- Houston has given you?
- 15 A Right.
- 16 Q Despite the fact that he made no mention of it for
17 two years in treatment with your -- your practice?
- 18 A At that time, he had a lot of other issues going on
19 with his back and his shoulder, and we were more
20 focused on that.
- 21 Q Okay. And despite the fact that I just showed you
22 a medical record that the complaint that he made to
23 this exact hospital --
- 24 A Was on the leg --
- 25 Q -- was of his left knee --

1 A Right.

2 Q -- in 2008?

3 A Right.

4 Q Okay. So, despite all of that, you still think

5 that --

6 A But --

7 Q -- Mr. Houston's story fits -- to a reasonable

8 degree of medical certainty that the injury in 2008

9 is the cause of his right knee problems that exist

10 now?

11 A I don't know whether they did any x-rays on his

12 knee at the time of injury, and I don't know

13 whether that left knee was a misspell -- like

14 something -- a mistake there.

15 Q Okay.

16 A I'm not sure about that.

17 Q All right. Again, it's the same problem we have,

18 though, in the 2011 note; we don't know what knee

19 it was in 2011 either, do we?

20 A I have not mentioned that in my note.

21 Q Okay. All right. The other treatment that you've

22 done -- Are you still treating him monthly now?

23 A Yes.

24 Q Okay. All right. I want to go through and look at

25 each of the individual records as you go through

1 this treatment in 2011 and 2012.

2 A Mm-hmm.

3 Q It appears -- correct me if I'm wrong --

4 A Mm-hmm.

5 Q -- that y'all go through and look at how he's

6 walking, his gait, every time that he comes in.

7 Y'all check him to see how his gait is progressing?

8 A Could you please tell me the specific --

9 Q Well, if you'll --

10 A -- visit?

11 Q -- look at the 11/19/2012.

12 A Let me see.

13 Q That's the next one I have.

14 A 11/19/12, he was seen by my PA, April Smith.

15 Q And -- I'm sorry. I'll get to the very first one

16 that I have -- The oldest one that I have is 10/22

17 of 2012. Like I said, we don't have all of the

18 records from --

19 A Right. So, --

20 Q -- y'all's office.

21 A -- I looked at 11/19. My PA saw -- 11/19/12, she

22 did not mention anything about the gait.

23 Q Okey-doke.

24 A I saw him in December 2012, and he -- At that

25 time, I said like he has slight antalgic gait.

1 Q Okey-doke. On which side? Do you know --
2 A I did not mention that.
3 Q Okey-doke. All right.
4 A He -- And he was walking with a walker at that
5 time.
6 Q Okay. And that was just after surgery, I believe.
7 Is that correct?
8 A Yes, -- In December, yeah. Yeah.
9 Q All right. This was right after he'd had his back
10 surgery?
11 A Correct.
12 Q All right.
13 A Then in January 2013, I -- I put that the gait is
14 normal, --
15 Q Okay.
16 A -- and he was not using the walker at that time.
17 Okay. Let's go to April Smith, April 2013, and I
18 don't think she --
19 Q I've got February of 2013, as well. Do you see
20 that one?
21 A I don't think she documented -- Oh. Okay. "Right
22 lower extremities, antalgic gait."
23 Q Okey-doke. That's in what -- what -- I'm sorry?
24 A That is in April 2013.
25 Q Okay. Well, I'm looking at your February. Was

1 there any mention of it in February?

2 A I did not -- In February 2013?

3 Q Yes, ma'am.

4 A February. February. Smith, April saw patient, and

5 I don't think she documented any gait there. Oh.

6 "Using cane."

7 Q She says using cane?

8 A Yes.

9 Q And then the next one, where you saw -- I think

10 you saw him the next day -- or is that April Smith,

11 as well?

12 A April Smith again in March, --

13 Q All right.

14 A -- and she documented that he is -- he has an

15 antalgic gait.

16 Q Okey-doke. "Steady, antalgic, using cane,"

17 correct?

18 A Yeah. Yeah.

19 Q All right. And then the next note is again April

20 --

21 A April --

22 Q -- Smith?

23 A Yeah, April 2013.

24 Q It says, "Heel walk intact, toe walk intact, gait

25 --

1 A Gait is antalgic --
2 Q -- antalgic on --
3 A -- on right lower extremity.
4 Q -- right lower extremity," correct?
5 A Yeah.
6 Q All right. And then the next note we have is --
7 A May 2013.
8 Q -- May of 2013, and this is April Smith again?
9 A Yeah.
10 Q Okay. And then it says, "Gait steady, mildly
11 flexed at waist," --
12 A Yeah.
13 Q -- correct?
14 A Yeah. All right. The next note is --
15 Q All right. And then the next one is the one that's
16 the one from Chris Kelly in June of 2013?
17 A Correct. Yeah.
18 Q All right. Would you agree with me that y'all were
19 -- were -- the folks within your office were
20 clinically examining how he walked and what he --
21 what -- any issues he may be having with his
22 walking at that point, correct, between 2012 and
23 early 2013?
24 A Right, but, basically, at that time, we were more
25 focused on the back than knee. Except first visit,

1 he never mentioned knee pain till June 2013, but
2 that doesn't mean that he did not have pain.

3 Q But y'all don't just ignore everything else that's
4 going on with a patient, though, do you, Doctor?
5 If they tell you that -- If his leg was bleeding,
6 you'd obviously write down his leg's bleeding?

7 A There are like a lot of reasons you can have an
8 antalgic gait. It's not just the knee.

9 Q I understand, but --

10 A Right.

11 Q -- all my questions --

12 A He had SI pain. He had a, like, you know, major
13 surgery on his back. So, he has many reasons to
14 have an antalgic gait.

15 Q My question here is y'all were reviewing his
16 ability to walk --

17 A Right.

18 Q -- and any -- and any statements that he made about
19 what was going on with him and his ability to walk
20 during that time frame? Is that accurate?

21 A He was not complaining of ability of walk, but he
22 was complaining more of pain, back pain.

23 Q But -- I'm going to ask the question one more
24 time. Try to --

25 A All right, sir.

1 Q Try to answer what I'm asking. My question is,
2 your office and your PA and your -- and whatever
3 Mrs. Smith is --

4 A April Smith.

5 Q She's a PA, as well. So, what those folks were
6 doing in doing their evaluation of him each time
7 was they were checking to see how he walked and
8 noting any complaints that he had about how he --

9 A Walked.

10 Q -- any problems that he had while he was walking?

11 A Right.

12 Q Okay. That was all done in 2012 and then in two --
13 early 2013, correct?

14 A Correct.

15 Q All right. Then, y'all weren't ignoring everything
16 to the exclusion of his problems with his lumbar
17 spine. He had problems with his lumbar spine, but
18 y'all didn't ignore any other problems he may have
19 had when he came and saw you in any of these
20 visits, did you?

21 A Whatever he complained, we -- we tried to focus on
22 that, on that visit.

23 Q Okey-doke. All right. I understand you're
24 focusing on the back, but my point is, if he had
25 mentioned something, I assume that y'all would have

1 written it down?

2 A Right. Yes. He did not complain of knee pain, so
3 that's why we did not. That doesn't mean that we
4 ignored it. He never complained about the knee
5 pain afterwards, mention -- like never focused on
6 the knee.

7 Q My point exactly. Y'all were focusing on his back,
8 but if he mentioned anything, y'all certainly wrote
9 it down?

10 A Correct.

11 Q All right. It's -- It's noted, within your
12 records, the various things that he talked about on
13 each of the different visits. It is not until we
14 get -- until June of 2013 that he specifically
15 mentions his right knee --

16 A Correct.

17 Q -- and problems that he's having with his right
18 knee.

19 A Correct.

20 Q Would you agree with me?

21 A Correct.

22 Q Okay. And then y'all started trying to figure out
23 what was going on with his knee?

24 A Mm-hmm.

25 Q Is that a yes?

1 A Yes.

2 Q Okay.

3 A Sorry.

4 Q And then what y'all figured out was that he had a

5 bad knee, essentially had some degenerative stuff

6 going on and a tear in the knee and it needed

7 treatment?

8 A Correct.

9 Q And he was referred to an orthopedist to treat the

10 knee?

11 A Correct.

12 Q Okay. You've done a note, Statement of Dr. -- and

13 I'm sorry -- I can't -- What's your first name?

14 Is it Jyoti?

15 A Jyoti.

16 Q Jyoti. Okay.

17 A Mm-hmm.

18 Q This was on June the 13th of this year, 2014. It's

19 an answer to a question posed to you by counsel for

20 Mr. Houston. It says, "Based on my review of the

21 medical records and notes related to this patient,

22 it is my opinion, to a reasonable degree of medical

23 certainty, that -- and then it's an either/or

24 question, either that it's more likely than not

25 that the increased activity of walking that Mr.

1 Houston engaged in following his back surgery
2 aggravated his right knee pain causing the need for
3 additional evaluation and treatment of that knee.

4 I assume you're referring to the back surgery that
5 occurred in early -- earlier 2013 or late 2012. I
6 can't remember the exact date.

7 A December 2012.

8 Q Okey-doke. That's -- I mean, you're referring to
9 this -- the increased activity of walking that he
10 did following his back surgery, that that's what
11 caused, in your opinion, his knee pain causing the
12 need for additional evaluation and treatment of
13 that knee?

14 A Right. Can I explain that a little bit?

15 Q Sure.

16 A Okay. So, initially, he could not walk more
17 because of his back issues.

18 Q Mm-hmm.

19 A Then Dr. Kanos did the surgery, and he started
20 feeling better, and then he started walking more
21 and more, and then he started feeling that the pain
22 is getting worse in his right knee. That's what I
23 meant when we signed that.

24 Q Okay. Well, walking -- You mean -- So, just the
25 walking caused him to have the knee problem or --

1 I'm just trying to understand what you're meaning
2 there.

3 A Usually -- Before the -- Before the surgery, he
4 would just sit and not do more -- more physical
5 activity. So, even though he had knee pain, he did
6 not realize how bad it was. Since the surgery, his
7 back pain started feeling better, started getting
8 better, and he started more ambulating, and usually
9 the knee pain is worse when you have more physical
10 activity, and then he -- At that point, he noticed
11 that his pain is getting worse and worse.

12 Q Okey-doke. But he was walking before the back
13 surgery, wasn't he?

14 A He was, but it was not like now, a lot.

15 Q Okey-doke. Well, --

16 A He wasn't able to do daily activities, but --

17 Q Wasn't walking a -- I mean, he was walking with
18 his job before, I mean, before you saw him --
19 because he told you he'd aggravated his condition
20 by having to stand on his feet and doing all the
21 work that he was doing in the job?

22 A Correct, but after that, his back got worse, and
23 then he -- he had limited physical activity.

24 Q Okay. My point, ma'am, is that he was doing plenty
25 of walking before the surgery. You'd agree with me

1 on that, that there were multiple years before the
2 back surgery where he had to walk a lot?
3 A But his back surgery was in 2012.
4 Q Right. Before the 2012 surgery.
5 A How -- How much before you are talking --
6 Q Between 2008 and 2012. He actually worked for two
7 years.
8 A Right, but he always complained that he has limited
9 physical activity because of the pain, --
10 Q But he was --
11 A -- and I can imagine, with the spondylolisthesis,
12 his physical activity is going to be really
13 limited.
14 Q My point, though, you can't say that he was not
15 walking a fairly substantial amount before the
16 surgery in the years 2008, 2009, 2010.
17 A Well, I saw him only in the clinic for half a hour,
18 --
19 Q All right.
20 A -- so it's hard for -- hard for me --
21 Q Okay.
22 A -- to predict that.
23 Q So, what is this increase in walking? What is the
24 increased walking? What are you referring to?
25 A It means he started doing, like, more -- like

1 coming to -- ambulation, going for the -- like
2 shopping and all that, and he felt that his pain --
3 knee pain is getting worse.

4 Q Okay. How is that related to the surgery? If he
5 was doing similar walking in 2008 and 2009, how has
6 it become related to the surgery that he did more
7 walking somehow after the surgery?

8 A The patient told me that after the surgery, his
9 pain got better, the back pain, --

10 Q Okay.

11 A -- and because your back pain's better, obviously
12 you ambulate more.

13 Q So, he was just walking is what you're saying?

14 A I don't know, sir. I just -- Whatever documented
15 -- the patient has told me, I have documented that.

16 Q Okey-doke. All right. But -- So, you're not
17 referring to some kind of walking that he was doing
18 the -- this therapy for his back; you're just
19 saying just normal daily-living walking activities
20 --

21 A That's what he -- Not in the physical therapy
22 walking, no.

23 Q Okey-doke. You're just referring to just standard
24 walking that he would do --

25 A Correct, sir.

- 1 Q So, the point here of this note, where it says he
2 -- the increased activity of walking that he
3 engaged in, when you're saying that statement, what
4 you're saying is that he acted normal, he did the
5 same things that a normal person would do?
- 6 A No.
- 7 Q No. No. No. That he would do the things that a
8 normal person was able to do?
- 9 A He was not able to do the normal -- what the normal
10 person could do before the surgery. His activity
11 was limited because of the pain.
- 12 Q I'm talking about after surgery. He was doing --
- 13 A After surgery, he went back to normal physical
14 activity.
- 15 Q He was doing -- that normal people do, --
- 16 A Right.
- 17 Q -- going and getting their groceries, going to the
18 doctor, going to work?
- 19 A Correct.
- 20 Q Okay. So, this wasn't something -- You're not
21 referring to some specific treatment after the
22 surgery; you're just saying he was able to act like
23 a somewhat normal human being after the surgery on
24 his lumbar spine, --
- 25 A Correct.

1 Q -- and, as a result of that particular activity,
2 his knee got worse?

3 A At that time, he noticed. Because he was walking
4 more, --

5 Q Mm-hmm.

6 A -- he noticed that his pain was more and more.
7 Before that, he couldn't tell because he was more
8 like sedentary at that time.

9 Q Okay. I'm just reading the way this question is
10 written and what you answered.

11 A Okay.

12 Q So, I'm just trying to understand exactly what
13 you're saying here. It seems to me that what
14 you're saying is that the increased activity and
15 walking that was normal everyday activity that
16 every human being does --

17 A Mm-hmm.

18 Q -- that Mr. Houston was able to now engage in
19 subsequent to the back surgery, that that
20 particular activity aggravated his right knee pain?

21 A Right.

22 Q Okay.

23 A That's correct.

24 Q And that that activity and the aggravation of his
25 right knee pain is what caused the need for him to

1 go have an evaluation and treatment of this right
2 knee?

3 A Correct.

4 Q Okay.

5 Mr. Addison: All right. That's all I
6 have.

7 Mr. Kamb: Doctor, just a couple.

8 Examination

9 By Mr. Kamb:

10 Q If we look back at the June 6th, 2013 note, --

11 A June 6th. Yeah. Let me go back -- This is June.
12 Yeah. Go ahead, sir.

13 Q Under -- There's a number two there,
14 spondylolisthesis.

15 A Yes.

16 Q Under that, there's a -- where, again, it's talking
17 about the knee problem.

18 A Mm-hmm.

19 Q We didn't go over -- Mr. Addison didn't go over
20 this before, but there there's a description, more
21 of a description of the knee history.

22 A Mm-hmm.

23 Q It says, "Patient states that he has some right
24 knee pain that has gotten worse as he has been
25 trying to walk more as Dr. Kanos has prescribed for

- 1 him to do, but his right knee seems to be limiting
2 him quite a bit, --
- 3 A Mm-hmm.
- 4 Q -- and his knee has been bothering him since the
5 accident." Is that correct?
- 6 A Correct.
- 7 Q And then a little farther down, "He is starting to
8 walk again, trying to get back to his normal life,
9 and needs the knee evaluated, basically." Is that
10 correct?
- 11 A Correct.
- 12 Q So, this was not -- So, there was a period before
13 the surgery where, because of his pain, et cetera,
14 he was not walking as much. Is that true?
- 15 A Correct.
- 16 Q And then after surgery, is it -- he said that Dr.
17 Kanos was pushing him to walk more and more; is
18 that correct?
- 19 A Yeah.
- 20 Q And is that common with back surgery?
- 21 A Yeah, I mean, it's like the first three months, it
22 is hard, but once they start healing, we usually
23 tell them to increase the physical activity as
24 tolerable.
- 25 Q Okay. You push them to walk as much as -- much as

1 they can?

2 A Right, as tolerable. Yes.

3 Q And then walking strengthens the back, essentially?

4 A In general. It improves your endurance.

5 Q And following that period of inactivity, he's
6 saying that he's walking more and more and he's
7 having more knee pain; is that correct?

8 A Correct.

9 Q And would that be increased activity in walking
10 that was referred to here in this question in your
11 -- as you answered it?

12 A Correct.

13 Q And you indicated that that increased activity in
14 walking aggravated his right knee, causing the need
15 for evaluation and treatment, correct?

16 A Correct.

17 Q And that is still your opinion today?

18 A Correct.

19 Q And it's stated as more likely than not --

20 A Correct.

21 Q -- to a reasonable degree of medical certainty?

22 A Correct.

23 Mr. Kamb: No further questions.

24 Re-examination

25 By Mr. Addison:

- 1 Q Back to that same note, if you would. You'd agree
2 that what was stated by your PA, Mr. Kelly, --
3 A Mm-hmm.
4 Q -- that what Dr. Kanos wanted him to do -- It said
5 he's prescribed him to walk, and it says down below
6 that -- It says, "He is starting to walk again,
7 trying to get back to his normal life"?
8 A Right.
9 Q So, it's a semantic difference, but Dr. Kanos
10 didn't write some prescription telling him to go
11 out and walk six miles a day or something as part
12 of his rehab, did he, that you're aware of? What
13 Dr. Kanos told him to do was to go walk as much as
14 he was capable of doing, in normal daily
15 activities, to try to help strengthen his back and
16 to help rehab his condition, correct?
17 A Correct, but that note is by my PA, and I don't --
18 I have no idea why he would use a prescribed note
19 -- prescribed word, but he may be just trying to
20 say that Dr. Kanos wanted him to -- back to normal.
21 Q To try to get back to normal daily --
22 A As --
23 Q -- activities?
24 A As much as possible, correct.
25 Q Okey-doke. All right. In that -- Further on in

- 1 that note, during the statements that Mr. Houston
2 was making to your PA, he goes -- the patient goes
3 on to say that -- And this is on the second page.
- 4 A Mm-hmm.
- 5 Q The claimant says that he couldn't put weight down
6 on his knee and he has not been able to do that
7 since the accident, --
- 8 A Mm-hmm.
- 9 Q -- correct?
- 10 A Correct.
- 11 Q That wouldn't seem to comport with the physical
12 exams that you did of the patient back in 2011,
13 though, does it? There's no mention that he
14 couldn't bear weight on his right leg or his right
15 knee in 2011?
- 16 A I did not do the knee exam in 2011.
- 17 Q What we did -- you did do, though, looking at how
18 he walked, and he was able to walk fine --
- 19 A But that's not the knee --
- 20 Q -- in 2011?
- 21 A That's not the knee exam.
- 22 Q Okay. Well, if he was able to walk with a normal
23 gait, --
- 24 A That doesn't mean that he does not have knee pain.
- 25 Q But it -- But he's saying can't bear weight. The

1 specific statement to your PA in -- in 2013 was
2 that he could not bear weight on his right knee and
3 he hadn't been able to do that since 2008? I mean,
4 that's what your PA is writing here?

5 A Right, that's what he wrote, but I did not do the
6 knee exam --

7 Q Okay.

8 A -- in 2011.

9 Q My point, though, ma'am, is that that -- Would you
10 agree with me that doesn't really match up with
11 your prior records? If he's telling Mr. Kelly
12 something in 2013, he's saying to your PA, -- And,
13 again, y'all have to -- I understand y'all have to
14 write what the patient tells you.

15 A That's correct, and that's what we are writing. We
16 are not writing without our --

17 Q And -- Right. It's not -- You're not making it
18 up. It's the --

19 A No.

20 Q -- patient telling you something, --

21 A Right.

22 Q -- and the patient, on that day, in June of 2013,
23 told Mr. Kelly that he -- that he had not been able
24 to put his weight down on his knee on the right
25 side since the time of the injury?

1 A Correct.

2 Q When you saw him in 2011 and then 2012, there's no
3 mention by the patient to you of that problem?

4 A Well, I did not examine him immediately after the
5 injury. That exam was in 2011. So, he might have
6 periodic flare-ups since the injury.

7 Q Okay. But Mr. -- Mr. Kelly's statement, though,
8 ma'am, doesn't say that it was periodic. He says
9 that the patient tells him he had not been able to
10 bear weight on that right knee since the time of
11 the injury. That's exactly what's written in the
12 note?

13 A That's correct, but as I have not done the knee
14 exam, I cannot answer that question.

15 Q Okay. You can answer the question in this form
16 because my -- my question was, does that -- does
17 that comport with the notes that you saw, with what
18 you saw, or what was told to you?

19 A See, that the patient did not mention that doesn't
20 mean that he did not have that problem. He might
21 not have focused on that at that time.

22 Q Okay.

23 A That's what I'm trying to say. Like you're trying
24 to say like when he -- he was not able to bear the
25 weight, but my exam did not -- The gait is not

1 just the knee. Gait involves so many other issues.
2 It could be a ankle problem. It could be a knee
3 problem. It could be a hip problem. It could be a
4 back problem. It could be a SI joint problem.

5 Q Okay. But if --

6 A So, --

7 Q If a person came to see you for their low back and
8 their right knee was so bad that they couldn't bear
9 weight on it, don't you think you would have made a
10 mention of that in the records, if you had seen
11 them as a patient, not just Mr. Houston, just some
12 fictional patient? If a person came to see you for
13 their lumbar spine as a --

14 A Mm-hmm.

15 Q -- result of a referral from a neurosurgeon in the
16 Greenville area --

17 A Mm-hmm.

18 Q -- and, as part of your examination, they were not
19 able to bear weight on their right leg, --

20 A Mm-hmm.

21 Q -- you would make note of that, would you not?

22 A If the patient tells me that, that he is not able
23 to, then we would be more specific on that exam and
24 then would document, but if the patient does not --
25 if he doesn't tell me that, then I'm not going to

1 exam that part.

2 Q Then, when you -- When you saw him in 2011, you

3 didn't just say tell me everything you can about

4 your back, did you? You said tell me what's going

5 on with you, didn't you?

6 A No. He was mainly about -- for the back --

7 Q Well, --

8 A -- because I did not even examine his shoulder.

9 Q But he talks about his shoulder, ma'am. That's my

10 point. You didn't just discuss his lumbar spine.

11 You --

12 A No. We just briefly said about -- but my exam was

13 more on the back.

14 Q I understand that, but you didn't ignore his other

15 body parts; you talked about what was wrong with

16 him?

17 A We talked, but we did not examine.

18 Q You didn't examine his knee or you didn't exam his

19 body or you didn't examine what?

20 A I did not examine his knee.

21 Q Okay. Apparently, you talked to him about

22 something with his knee. We've already been

23 through this. He said that he -- he had knee pain?

24 A Yeah, that's the history part. I'm not denying

25 that. That's a --

1 Q Okay.

2 A -- history. I'm saying that I did not examine his
3 knee, a physical exam.

4 Q Sure. But you certainly talked to him that day.

5 A Right. I agree. Yes.

6 Q And he made no mention to you at that time that he
7 was not able to bear weight on his right knee?

8 A He did not mention that to me.

9 Q Okay. And that doesn't match up with what he told
10 Mr. Kelly in two -- in June of 2013, because what
11 he told Mr. Kelly was that he had not been able to
12 bear weight on his right knee since 2008.

13 A He did not mention that to me during 2011, but he
14 did mention that to Kelly in 2013. That's correct.

15 Q Okay. All right. Then you don't dispute that the
16 basic reason why he has problems with his knee is
17 from doing walking subsequent to the surgery, that
18 -- This is your -- your note that you've done for
19 plaintiff's counsel, that the primary reason he has
20 problems with his knee is an increased level of
21 activity in walking subsequent to surgery on his
22 spine?

23 A What we meant was it was not -- it became more
24 obvious because of his increased walking after the
25 surgery. He could walk more. At that time, it

1 became more obvious that he has significant knee
2 pain.

3 Q So, -- So, is this statement that you did, then,
4 not accurate that that was the cause for his need
5 for treatment, was the walking and the activity?

6 A It became more obvious and may be the cause more
7 -- that may be the cause, as well.

8 Mr. Kamb: Just to be clear, the
9 statement does not say cause. It says
10 aggravated.

11 A Aggravated. It did not start it. It caused --

12 Q Okay. What --

13 A It got more -- worse, like now --

14 Q What, in your opinion, was the cause of his right
15 knee problems?

16 A I -- Like whatever -- We trust our patients.
17 Whatever they tell, we start from there. So, I
18 think it's most likely it aggravated his injury.

19 Q But that's only because he hasn't told you anything
20 different, right?

21 A Right.

22 Q And this -- Then that's your --

23 A Because I do not have any objective findings.
24 Like, if somebody had done the MRI at that time,
25 then I would have been more sure, but we always

1 give the benefit of doubt to our patient and treat
2 the patient.

3 Q Okay. And you'd have to agree with me, wouldn't
4 you, ma'am, that it's extremely odd that he didn't
5 talk about that with multiple physicians for over
6 five years, -- isn't that a bit odd -- not you, --

7 A It depends. It depends -- For a normal person who
8 has only knee pain, I would say yeah, it is odd, --

9 Q Mm-hmm.

10 A -- but for him, with so many things going on at
11 that time, and -- Your brain tends to focus on one
12 -- the most painful area of your body. That I
13 really commonly see in my patient population. We
14 treat one part, and that starts getting better, and
15 then the brain shifts the focus on other part which
16 is more problematic now. So, that --

17 Q Okay.

18 A -- might have happened with him. His back was more
19 a problem, so he was more focused on the back.
20 Once the back started getting better, he was more
21 focused on his knee.

22 Q I understand that, but this is all revisionist
23 history when you look at current medical records
24 and he says I've had this all along and I've had
25 this problem and it goes all the way back to that

1 date.

2 Mr. Kamb: I object to the
3 characterization of revisionist history.

4 Mr. Addison: I will -- I will be happy
5 to admit that's a characterization.

6 Q That is a characterization entirely of the
7 statements that he's made to the physicians, and
8 just by excusing it by saying he was focusing on
9 his back, I don't know how that's possible, Doctor.
10 I certainly see patients -- I do this -- I've
11 been doing this for 20 years, and I don't --

12 A But you can disagree with --

13 Q Let me finish. Hang on. Let me finish --

14 A I'm sorry.

15 Q -- my question. I've been doing this for 20 years,
16 and I know people have problems and it masks the
17 other issues that they have.

18 A Right.

19 Q We're talking six years of it allegedly masking --
20 including a time frame when he actually worked for
21 the employer doing heavy work, according to him,
22 and the only aggravation and complaints that he had
23 when he saw you in 2011, three years after the
24 injury, --

25 A Right.

- 1 Q -- was to his shoulder and his spine. And he
2 didn't just say spine. His said his shoulder, as
3 well. He told you that he was having a problem
4 with his shoulder and that --
- 5 A Right.
- 6 Q -- the work aggravated his shoulder. There wasn't
7 a single mention that he was having -- any kind of
8 substantial problems with his right knee, --
- 9 A Right.
- 10 Q -- that he couldn't have -- that he had problems
11 bearing weight on his right knee at that time.
12 And it's entirely possibly that this man just has
13 to have a total knee replacement because he's an
14 overweight fifty-seven-year-old guy, isn't it?
- 15 A I don't agree with that, sir.
- 16 Q No?
- 17 A No. The reason is, like, we did -- we didn't --
18 I'm not saying that it started after, like, now, it
19 started in June. I'm saying -- saying that it has
20 aggravated the condition that was existing there.
21 It may not be this obvious. It may not be this
22 severe. It was there, but it had gotten worse, --
- 23 Q And by that --
- 24 A -- and --
- 25 Q Go ahead. I'm sorry.

- 1 A -- and we saw that -- We -- We did the MRI in
2 June. At that time, we saw that extensive tear.
3 And I agree, what you're trying -- trying to say.
4 The tear was so extensive, how could he mask it for
5 six years? It may not be that bad before, but it'd
6 gotten worse.
- 7 Q So, the tear could have been very recent is your
8 point?
- 9 A The tear could be smaller initially but gotten
10 worse. Who knows -- because we don't have a MRI
11 immediately after the injury.
- 12 Q And it could also be very recent, couldn't it? It
13 could be a very recent tear in his knee?
- 14 A It's hard to say that because the radiologist did
15 not comment on that, and I'm -- it's not my
16 expertise.
- 17 Q And, so, it's possible that it's very recent, isn't
18 it? If it's not able -- If you're not able to
19 tell, you can't tell me when that tear occurred?
- 20 A We -- I can't tell it, no.
- 21 Q So, it's just as possible that it's a very recent
22 tear as being an old tear, isn't it?
- 23 A It may be old tear. It may be the same tear. But
24 it is a -- Like, now, it may be old and small tear
25 initially and gotten worse. We can't -- We don't

1 know.

2 Q Right. Since we don't know, --

3 A Right.

4 Q -- it's just as likely that it's old versus being

5 brand spanking new?

6 A How old we are talking, because even -- The four

7 years is old. Even the three months is old, --

8 Q Mm-hmm.

9 A -- right? So, it's --

10 Q Right.

11 A The old is relative terminology. Anything more

12 than three months is chronic, and we are talking

13 here an injury from 2008. So, how old we are

14 talking?

15 Q That would be five years at that point, if it was

16 in 2013.

17 A Right. So, how do I know, like, how old it is?

18 Q Right, which is --

19 A Is it two years, three years, two years old, one

20 year old?

21 Q I'm not asking you to age it. My --

22 A Right.

23 Q -- point is, you can't tell me when it occurred?

24 A No, I can't.

25 Q You can't look at the MRI and tell me that that

1 injury was two years old or two months old?

2 A No. Maybe the radiologist may be able to comment
3 it, but he has not commented.

4 Q You can't?

5 A I cannot --

6 Q Okay.

7 A -- because that's not my expertise.

8 Q All right. Okay. That's all I was trying to point
9 out.

10 A Right.

11 Q There's not -- It's just as likely that it's old.
12 or it's just as likely that it's new?

13 A Yes.

14 Q Okay. All right. And the activities that you're
15 referring to in this statement that Mr. Kamb has
16 given to you is doing essentially normal daily
17 activities of walking and using his leg in a --

18 A Mm-hmm.

19 Q -- normal manner?

20 A Yes.

21 Mr. Addison: Okay. All right. That's
22 all I have.

23 Re-examination

24 By Mr. Kamb:

25 Q But after a period of inactivity, correct?

1 A After the period of?

2 Q The pushing back to normal activities, as Mr.
3 Addison has characterized. And that was after a
4 period of inactivity because of his back injury,
5 correct?

6 A Correct.

7 Q And you may not be able to say when this tear was
8 caused, when it arose, --

9 A No.

10 Q -- but it's still your opinion, more likely than
11 not, that it was aggravated as a result of --

12 A Correct.

13 Q -- post-surgery activity, --

14 A Correct.

15 Q -- correct? And is it fair to say that the -- his
16 -- that that increased walking post surgery
17 highlighted his knee problem?

18 A Highlighted, yeah. Correct.

19 Mr. Kamb: Thank you.

20 The Deponent: Thank you.

21 Mr. Addison: Nothing further.

22 (Whereupon the deposition was concluded at
23 5:19 p.m.)

24 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Lexington) Certificate

Be it known that the foregoing deposition of
 Jyoti K. Math, MD, was taken before me;

That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

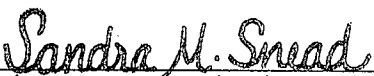
That by virtue thereof I was duly authorized
 to administer an oath;

That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 73
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.

Signed this 15th day of September 2014..


 Sandra M. Shead

Notary Public for South Carolina
 My commission expires August 29th, 2023.

Note: Recordings are retained for twelve (12) months
 from date of certification.

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0802605

TOMMY G. HOUSTON,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
GARDA WORLD SECURITY,	)	
	)	PHILIP H. WESSINGER, MD
EMPLOYER,	)	
	)	
GALLAGHER BASSETT SERVICES,	)	
INC.,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Philip H. Wessinger, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 3:15 p.m., Friday, October 10th, 2014, at the Steadman Hawkins Clinic of the Carolinas, 727 S.E. Main Street, Simpsonville, South Carolina.

COPY

Reported by
Sandra M. Snead

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Reported By: Sandra M. Snead

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

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Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Philip H. Wessinger, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Philip Wessinger.

Examination

By Mr. Addison:

Q Dr. Wessinger, my name is Dan Addison. I here -- I'm here on behalf of -- let me make sure I've got the name exactly right -- Garda World Security in regard to a workers' compensation claim filed by Tommy Houston. We have had an attempted hearing on this, but we haven't -- it did not go through. We're here today to take your deposition in regard to issues for that hearing. I'm going to go through the preliminary stuff with you first, and then we'll kind of go through the questions on what I have to ask you about Mr. Houston. First, I know

1 you've been deposed before because I think I
2 deposed you a gazillion years ago. But if I ask
3 you a question that you do not understand, I need
4 you to tell me that you don't understand the
5 question as asked. I will try to ask the question
6 in a different manner or explain the question to
7 you. If you answer a question, I will assume you
8 have understood the question as asked. Whenever
9 answering a question that requires a yes or no, if
10 you would always use the actual word yes or no
11 instead of uh-huh or uh-uh. If you say one of the
12 nonwords, I'll ask you do you mean yes or no. You
13 may add to a yes or no all that you want to. If
14 you'll always try to keep your voice up. The court
15 reporter is taking all this down. It's important
16 that we get a good clean recording. All right,
17 sir. I have notes in front of me, and, as you and
18 I discussed before the deposition, I'm going to use
19 my notes because they're out of my APA, and they're
20 marked with the APA pages on here, and I'll refer
21 to these notes. I know you were trying to pull it
22 up on your computer, but it may be a whole lot
23 easier just to work with these paper copies here in
24 front of me. The notes that I have, the first time
25 that you saw Mr. Gregory -- excuse me -- Mr.

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1 Houston was on -- with you as a physician was on
2 April the 30th of 2008. Let me know if your system
3 has any notes prior to --

4 A No.

5 Q -- for you.

6 A That's -- That's true, both from this document as
7 well as my -- my records.

8 Q Okay.

9 A That's the first time I saw him.

10 Q All right. And, on that day, he presented to you
11 as a result of an automobile accident, or an
12 armored car accident, where he was the passenger in
13 the back of an armored car and that he was banged
14 around in the back. Actually, it says he was
15 bouncing around the back like a pinball in a
16 pinball machine, as the claimant said, or the
17 patient said. He then goes on to tell you what all
18 had happened with him in that accident -- is that
19 correct -- in that first paragraph in the history
20 section?

21 A That is correct.

22 Q Okay. It indicates that -- It states he had
23 several rib fractures on the right. "He initially
24 had right knee pain," period, and it says, "Those
25 have improved." This is your note.

- 1 A Mm-hmm.
- 2 Q When you say those have improved, are you referring
3 to the right knee pain as those or the right knee
4 and the rib fractures?
- 5 A Both. Both.
- 6 Q Okay. Okey-doke. It says, "However, he has since
7 continued to have increased problems with left
8 shoulder pain, that it's difficult with overhead
9 activities. The patient has also developed a left
10 hip pain that radiates down to the knee." And when
11 you say the knee, are you referring to the left
12 knee?
- 13 A Yes.
- 14 Q Okay. "He states that this is intermittent and
15 comes and goes; however, his shoulder has continued
16 to be more persistent." Now, in this note, you're
17 referring to the accident at the very first of that
18 note, that paragraph at the top. It's -- The
19 injury occurred on March the 11th, correct?
- 20 A That's correct.
- 21 Q All right. So, this is roughly a month and three
22 weeks after this injury has occurred?
- 23 A Correct.
- 24 Q Okay. What he's telling you a month -- So, let's
25 call that seven weeks in. Seven weeks after the

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- 1 accident, he's telling you that he initially had
2 right pain -- excuse me -- right knee pain but it
3 had improved as of April the 30th of 2008, correct?
- 4 A Correct.
- 5 Q Okay. You then went on to do a clinical evaluation
6 of him that day. You look at what's going on with
7 him, and, in your assessment, you discuss that he
8 had subacromial impingement, which is a shoulder
9 problem. Is that correct?
- 10 A Correct. That's correct.
- 11 Q All right. And then he had bursitis of his hip,
12 correct?
- 13 A That's correct.
- 14 Q And you're referring to his left hip in that note
15 in the assessment section?
- 16 A Yeah, based on the rest of the note, that's what I
17 was referring to.
- 18 Q Okay.
- 19 A It was the left hip.
- 20 Q All right, sir. And then you had a plan about what
21 you were going to do with him, and, essentially,
22 you were going to try to deal with the right
23 shoulder primarily, correct?
- 24 A Correct.
- 25 Q Okay. All right. He then comes back to see you

1 after that, on May the 7th of 2008, is the next
2 record that I have. That's page 185 of Defendant's
3 APA. Is that the next visit date that you have, as
4 well?

5 A That's -- That's correct.

6 Q All right. And that -- On that particular note,
7 it's a little bit -- It looks like a little
8 different format of what I have, but it has a
9 history section again, and he says that he -- He's
10 come in, and the subacromial injection, the
11 shoulder injection, that you've given him did not
12 improve his symptoms at this point, meaning as of
13 May the 7th, correct?

14 A That's correct.

15 Q All right. He states he also developed significant
16 sciatica that ran down the back of his left leg and
17 ran halfway through the calf. So, he's having some
18 sciatica issues as of this point, as well, correct?

19 A Correct.

20 Q All right, sir. And that would have been a --
21 something different, a new something that he was
22 discussing with you on the second visit. He did
23 not discuss it in the first visit but discussed it
24 in the second visit?

25 A Possibly, but it could also be that the -- the

1 manifestation of his left hip pain that I perceived
2 as bursitis the first time is actually the same
3 problem --

4 Q Okey-doke.

5 A -- and just delineated itself in a different way,
6 --

7 Q Sure. Okay.

8 A -- based on exam and report and history.

9 Q All right. But, in this visit, he's discussing
10 various things that are wrong. He's essentially
11 telling you everything that's wrong with him that
12 -- that day, on May -- in May. It's not just his
13 shoulder. He's also talking about his back --

14 A Correct.

15 Q -- and the issues he's having with that?

16 A Correct.

17 Q All right, sir. You did an exam on him that day to
18 include whatever he was telling you was wrong with
19 him and then had a plan on what to do with him
20 after that, which was to get a MRI of his shoulder
21 and to give him some medication for the sciatica
22 issues?

23 A Correct.

24 Q All right, sir. The next visit I have is May the
25 21st of 2008. He's, again, back to see you, and

1 this is after he's had the MRI of the right
2 shoulder, which showed that he had a rotator cuff
3 tear, and that -- he's, essentially, talking with
4 you about problems with his shoulder on that date,
5 correct?

6 A Correct.

7 Q All right, sir. Excuse me. In your assessment
8 section on that visit of May the 21st -- and this
9 is page 197 of Defendant's APA. You discuss in
10 your assessment section that he has a rotator cuff
11 tear and then bursitis of his hip, correct?

12 A Correct.

13 Q All right. You then have a plan of doing an
14 arthroscopic repair of his shoulder?

15 A Correct.

16 Q Alrighty. Then the next visit I have is the --
17 when you came -- When he comes to see you next is
18 on June the 25th of 2008, page 199 of Defendant's
19 APA. Is that the next date that you have, Doctor?

20 A Correct.

21 Q All right, sir. The history section says, in
22 interim history, "Patient was scheduled for rotator
23 cuff repair that we will do on July 7th; however,
24 he says he had very good improvement from the
25 injection that he had in the shoulder. He had a

1 re-flare, would like to have another injection," --
2 A All right.
3 Q -- but, basically, he's kind of making a decision
4 whether to have the surgery at this point?
5 A At -- No. At the -- We're actually talking about
6 -- The rotator is in the hip, and --
7 Q Oh. Oh. I'm sorry. I'm sorry.
8 A -- and the injection --
9 Q Yes. Yes. Yes.
10 A -- that we gave him at the previous visit was in
11 the hip.
12 Q Okey-doke. All right.
13 A So, that's referring to the hip.
14 Q All right. So, he's back, really, kind of talking
15 to you about the hip primarily on this date; is
16 that correct?
17 A Yeah, that, and we mentioned the shoulder and what
18 our plan was.
19 Q Okey-doke.
20 A Yes. Correct.
21 Q All right. You've got a scheduled surgery for July
22 the 7th?
23 A Correct.
24 Q And the subjective complaint was the right shoulder
25 pain, but he's really kind of there to get another

1 injection in his hip --

2 A Correct.

3 Q -- on June the 25th? All right. You have --
4 assessment plan for him on that date basically that
5 -- to go ahead and inject the hip, and then he'll
6 also come back and see you for the surgery a couple
7 weeks later. All right. The next office visit
8 that I have is July the 23rd of 2008?

9 A Correct.

10 Q That's page 2000 -- excuse me -- 201 of Defendant's
11 APA.

12 Mr. Addison: If that gets too loud, let
13 me know, and I'll yell it over -- over to you
14 if you need me to.

15 Q All right, sir. So, on the complaints of that
16 date, it has SHC. What does that mean in your
17 lingo?

18 A That's just our -- That's just our -- For us,
19 that basically just tells us where we are, what
20 offices we're in.

21 Q Got you. Okey-doke. And it says, "Right -- Right
22 shoulder, global." So, right shoulder problems --
23 that's what he's there for is the right shoulder
24 problem that day?

25 A Global meaning it's a post-op visit.

- 1 Q Okey-doke. All right. The interim history says,
2 "Prior assessment, a subacromial -- subacromial
3 impingement and bursitis of hip," and then it shows
4 that he had surgery on July the 11th and that he's
5 there for -- essentially for his follow-up from the
6 surgery, correct?
- 7 A Correct.
- 8 Q All right. He was having physical therapy at that
9 point. He tolerated the surgery well, and you go
10 through a clinical exam with him that day, and then
11 you have an assessment that states that he has a
12 subacromial impingement, which is a shoulder
13 problem, bursitis of the hip and a rotator cuff
14 tear, also his shoulder?
- 15 A Correct.
- 16 Q All right, sir. All right. He's supposed to come
17 see you again in a couple weeks, basically to
18 follow up with you as necessary, subsequent to the
19 surgery?
- 20 A Correct.
- 21 Q All right, sir. And the next visit I have is on
22 September the 3rd of 2008. Is that what --
- 23 A That's --
- 24 Q -- you have?
- 25 A That's correct.

- 1 Q That's page two -- 204 of Defendant's APA. All
2 right. It said he was status post -- He's had a
3 -- Your note indicates, in the history section,
4 that he has come in status post large rotator cuff
5 repair. However, he is complaining primarily of
6 hip pain on this particular date. That's the main
7 reason he's coming to see you that date. Is that
8 correct?
- 9 A Correct.
- 10 Q All right. And this is still the left hip that
11 we're talking about?
- 12 A Yes.
- 13 Q All right, sir. The plan was to give him an
14 injection in the hip, another injection in the hip
15 to see if it helps out?
- 16 A Correct.
- 17 Q All right, sir. The next visit I have, the visit
18 date is October the 1st of 2008. Is that what you
19 have, as well?
- 20 A Correct.....
- 21 Q All right, sir. That's page 206 of Defendant's APA
22 for that visit date. He's coming in that date for
23 what appears to be a follow-up on his rotator cuff
24 repair, correct, --
- 25 A Correct.

1 Q -- primarily? All right, sir. The assessment
2 indicates that he's got a subacromial impingement,
3 bursitis of the hip and a rotator cuff tear on that
4 date?

5 A Correct.

6 Q All right. The next visit I have is October the
7 22nd of two -- 2008, page 208 of Defendant's APA.
8 Is that what you show, as well?

9 A Correct.

10 Q All right, sir. He's in there seeing you that day
11 again for the right shoulder, as well. You said
12 he's status post rotator cuff repair. "He's much
13 better with regard to his pain and has improved in
14 his range of motion, has a fairly easy range of
15 motion through functional range." And we're
16 talking about the shoulder with all of this; --

17 A Correct.

18 Q -- is that right?

19 A That's correct.

20 Q All right. "However, still, as would be expected,
21 fairly weak with regard to overhead lifting
22 activity. He is only working with three pounds in
23 physical therapy. We will need to continue
24 physical therapy and improve that, particularly
25 since his primary job activity involves him loading

1 anywhere from 35 to 70 pounds overhead, by his
2 report. The patient states that his hip and low
3 back have also responded well to physical therapy,
4 as well." So, he's discussing with you both his
5 shoulder and the other issues that he had and how
6 they were doing with the treatments that you were
7 giving for him, correct?

8 A Correct.

9 Q At any time in this process, has he discussed his
10 right knee with you, Doctor?

11 A Not that I documented in my chart --

12 Q Okay.

13 A -- and not that I recall.

14 Q Do you have any independent recollection of him
15 discussing any significant issues with his right
16 knee?

17 A I do not recall.

18 Q If he had discussed issues with his right knee,
19 would you have made a note of them within your
20 notes?

21 A Yes, --

22 Q Okay.

23 A -- I would.

24 Q And, clearly, we're not concentrating on just one
25 area, like the shoulder where you had done the

1 shoulder. You were discussing multiple body parts,
2 both his hip and his low back and sciatica issues
3 as well as the right shoulder; is that correct?
4 A That's correct.
5 Q All right, sir. Alrighty. The next visit that I
6 have is November the 19th of 2008. Is that
7 correct?
8 A I don't have a November the 19th in my --
9 Q It's --
10 A -- record.
11 Q Okay. I'll show it to you.
12 A Of 2008?
13 Q And I -- 2008, yes, sir, November 19th.
14 A I've got a 12/3. What I don't see is the -- Oh,
15 that's interesting because it's not in my --
16 That's --
17 Q I have the 12/3 here, too.
18 A That's very curious because it's not in my chart.
19 How did that happen? Okay.
20 Q I'll just let you look it over real quick.
21 A Okay.
22 Q All right. Okay. Pretty much, that day he was
23 there for the -- On November the 9th, you'd agree
24 with me he's pretty -- primarily there for the
25 right shoulder?

1 A Yeah. There's not a whole lot of documentation in
2 that record. It makes me --

3 Q Okay.

4 A -- wonder whether it was pre-populated and he never
5 showed up for the visit and that's why it's not in
6 my record anywhere.

7 Q Okay. All right.

8 A Although it got signed somehow by --
9 electronically. So, that's a curious thing. I'm
10 just speculating, because there's -- there's none
11 of the normal dictation or --

12 Q Right. It doesn't look like there's --

13 A All the -- All of it is the pre-populated stuff
14 that's in the chart when somebody shows up.

15 Q Okay. There's nothing in there basically where it
16 shows I talked to the patient and this is what --

17 A That's right.

18 Q -- he's telling me?

19 A So, I'm -- Given that it's not in my records, I --
20 I don't recall that specifically, but that's the
21 only way I can explain the fact that it doesn't
22 exist here and that it's -- The paucity of
23 information in that note is compelling.

24 Q Okay. All right. We'll look at the next record,
25 then, -- is the December the 3rd, 2008 record.

1 A Okay.

2 Q That particular date, he's there, and y'all --
3 there are some notes where you actually have some
4 narrative addition to the notes on your discussion
5 with him on that date, correct?

6 A Correct.

7 Q All right, sir. It talks about how he was there
8 for his right shoulder, that he also has SI joint
9 issues, or -- in his low back, or lumbar spine,
10 issues, as well as a greater trochanteric bursitis
11 of his hip. So, you're talking about both the
12 shoulder -- all three, the shoulder, the back and
13 the hip in this particular note, correct?

14 A That is correct.

15 Q All right, sir. "He has been treated with -- in
16 physical therapy; however, workers' comp insurance
17 cut him off, and he's only been doing home
18 exercises. The patient has now been cleared to go
19 back for more physical therapy." So, he's kind of
20 talking to you about all the things that are going
21 on with him, both with the problems that he's
22 having as well as the treatment that he's getting
23 at that point, correct?

24 A That's correct.

25 Q Any mention of a right knee in any of this to you

- 1 that day?
- 2 A Not that I recorded.
- 3 Q All right, sir. Do you have any independent
- 4 recollection of him discussing any issues with
- 5 wanting treatment for his right knee at that point,
- 6 that nobody was providing?
- 7 A I -- I do not.
- 8 Q Okey-doke. All right, sir. The next record I have
- 9 is January the 7th of 2009. Is that accurate for
- 10 you, as well?
- 11 A That is correct.
- 12 Q Okay. That's page 214 of Defendant's APA. On this
- 13 particular note, it says he's there for his right
- 14 shoulder again. And what is the RCK at the top on
- 15 the reason for -- and it's not workers' comp, but
- 16 what's the RCK next to that? Is that a location
- 17 again?
- 18 A No, but it may be initials of who was following it
- 19 in our office.
- 20 Q Okay.
- 21 A That would be the only thing I can come up with.
- 22 Q Like a -- Like a person in the --
- 23 A A person within the --
- 24 Q -- staff --
- 25 A -- office who's --

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1 Mr. Kamb: I would guess workers' comp
2 recheck. I'm just --
3 A It could be a recheck, too.
4 Q Okay.. All right.
5 A Over the course of the years, we've played around
6 with how you can figure out and find notes within
7 this medical record system, and I -- I imagine it
8 has something to do with either that or a way we
9 can follow up on --
10 Q Okay. All right.
11 A -- who's responsible for parts of the note.
12 Q So, it goes through -- The interim history section
13 says, "Prior assessment was for the subacromial
14 impingement of the shoulder, bursitis of the hip
15 and a rotator cuff tear," date of injury being in
16 March of two thousand and -- March the 11th of
17 2008, and the treatment that you've done. His
18 response to treatment says, "Patient states feeling
19 the same since last visit." Were you referring to
20 the shoulder there? What are you referring to --
21 or just his -- his overall feeling in general?
22 A His overall feeling in general. That's a --
23 That's a -- The MAs at the front ask the patient
24 whether they're better, worse or feeling the same.
25 Q Okey-doke.

- 1 A It's a --
- 2 Q All right. The next -- That last paragraph in the
3 history, is that your -- what you would have
4 written that day?
- 5 A That's -- That's correct.
- 6 Q Okay. That's your narrative section. All right.
7 It says, "Fifty-year-old comes in today and is
8 doing fairly well with regard to his right
9 shoulder. He is still having some back and leg
10 pain. He states that he's having some difficulty
11 with pain running around to the front. I
12 previously evaluated him and realized he has some
13 lumbar spine issues." Are you referring to this
14 same problem here that you were discussing before?
- 15 A That's correct.
- 16 Q And everywhere that he had talked to you about
17 before was running down his left leg; is that
18 correct?
- 19 A Correct.
- 20 Q All right, sir. Or left-sided back issues, sciatic
21 issues?
- 22 A Correct.
- 23 Q All right, sir. Do you see any indication in this
24 note that would indicate that he was having
25 problems with his right knee on that particular

1 date?

2 A I did not specify that and didn't record it.

3 Q Okey-doke. All right, sir. Do you have any reason
4 to believe that -- that when you refer to his leg
5 pain on that date that you're referring that to any
6 kind of right knee problem?

7 A I -- I did not document that, and I don't recall
8 it, so it would be the left side that I would be
9 talking about --

10 Q Okay.

11 A -- at this point.

12 Q All right, sir. He continues to talk about his
13 shoulder, bursitis with the hip as well as other --
14 the other issues with the back at that point,
15 correct?

16 A Correct.

17 Q All right, sir. The next visit that I have is
18 February the 4th of 2009. Is that what you have?

19 A That's correct.

20 Q All right. On that particular day, he's in there
21 talking to you, and now it says right shoulder and
22 back as the reason for the appointment on this
23 particular one, correct?

24 A Correct.

25 Q All right, sir. In the history section there, it

1 says, "The patient comes --" This is, I assume,
2 your narrative part, where it says, "The patient
3 comes in today and is doing fairly --
4 A Correct?
5 Q -- well"?
6 A That's correct.
7 Q Okay. So, he's doing fairly well status post
8 shoulder repair. "He is making progress in
9 physical therapy and actually feels that if he does
10 some general conditioning and finishes out the
11 therapy that we've -- that we've -- we've approved
12 at this point, that he may be able to be ready to
13 return to work on his next visit." So, that was
14 what he was discussing with you in February of
15 2009?
16 A Correct.
17 Q No mention of his right knee causing him any
18 problems at that point?
19 A Not that I recorded --
20 Q All right, sir. No mention of any --
21 A -- or that I recall.
22 Q No mention of any issues of trying to do -- during
23 his conditioning, that his right knee was giving
24 him any problems?
25 A Not that I recorded or recall.

- 1 Q Okey-doke. All right. If you go down below that,
2 in the examination section, it says -- there's a
3 paragraph that says, "He does have improved
4 strength with regard to his rotator cuff." Did you
5 write that paragraph, as well?
- 6 A I did.
- 7 Q All right, sir. It says, "He has maintained his
8 range of motion with regard to his shoulder. His
9 back continues to get better, with good range of
10 motion, and he states he is able to walk two to
11 three hours without the pain that he was
12 experiencing at five minutes previously." Are you
13 referring to his back causing pain there?
- 14 A Yes, I am referring to his back --
- 15 Q Okay.
- 16 A -- and leg.
- 17 Q And you -- When you say leg, are you --
- 18 A The left leg.
- 19 Q His left leg?
- 20 A Mm-hmm.
- 21 Q All right, sir. Okay. No mention there that he
22 was having any problems with pain with his right
23 knee --
- 24 A That's --
- 25 Q -- with any walking, correct?

1 A That's correct.

2 Q And he's telling you, in February of 2009, that he

3 was able to walk two to three hours without the

4 pain that he had previously?

5 A That's correct.

6 Q All right, sir. The next visit I have is April the

7 15th of 2009. Is that what you have, as well?

8 A That's correct.

9 Q All right, sir. Again, the reason he is there now

10 is still listed as right shoulder and back pain?

11 A Correct.

12 Q All right. No --. No mention of any right knee

13 pain in the history of present illness section,

14 correct?

15 A Correct.

16 Q All right, sir. "Patient states feeling better

17 since last visit." That would have been something

18 he told somebody up front --.

19 A That's correct.

20 Q -- or your nurse or --

21 A That's correct.

22 Q -- PA or someone?

23 A Yes.

24 Q Okay. And then down below that, it's got, I'll

25 assume, what is your narrative part, where it says,

- 1 "Right shoulder/arm"?
- 2 A Correct.
- 3 Q "The patient comes in today." That's your
4 narrative?
- 5 A That's correct.
- 6 Q All right. It says, "The patient comes in today.
7 He is scheduled for his FCE next week," which I
8 presume you had scheduled to see how he was doing?
- 9 A Well, in preparation for MMI and --
- 10 Q Closing out his --
- 11 A -- closing out the case, yes.
- 12 Q All right, sir. Okay. It says, "He is doing well
13 and was able to cut his grass the other day"?
- 14 A Correct.
- 15 Q Did he mention any problem to you on that date of
16 any kind of significant issues --
- 17 A Not that I recorded or recall.
- 18 Q Did he mention any problems with his right knee on
19 that date?
- 20 A Not that I recorded or recall.
- 21 Q Did he mention any type of problem that you would
22 have expected may well have masked any particular
23 issue with the right knee if it did exist?
- 24 A Not that I recorded or recall.
- 25 Q Okey-doke. All right, sir. All right. The next

1 visit I have -- this is page 220 of Defendant's APA
2 -- is April the 29th of 2009?

3 A That is correct.

4 Q All right, sir. At this point, he's come in, and
5 he's had his functional capacity evaluation, or
6 FCE, in regard to his rotator cuff. And I'm in the
7 history section, where it says right shoulder/arm.
8 Is that where your narrative starts, that section
9 right there?

10 A That's correct.

11 Q All right. He comes in today status post FCE with
12 regard to his rotator cuff. He was actually
13 approved to go forward with heavy activity, with
14 the exception of overhead more than 70 pounds,
15 which he does not need to do. Then he starts
16 talking with you about another problem that's a new
17 problem?

18 A That is correct.

19 Q And it's something on his right wrist/hand area,
20 correct?

21 A That's correct.

22 Q He's gotten some place on there that's oozing and
23 breaks down, and he's got some concerns about it?

24 A Correct.

25 Q And it's something that's causing him concern and

1 worry, and he thinks it needs to be taken care of,

2 --

3 A That's correct.

4 Q -- correct? All right, sir. So, this is a new
5 issue that he brings up to you. He's dealing with
6 all the other issues, including his rotator cuff,
7 but he's talking with you about some other issue
8 that's bothering him that he thinks needs medical
9 treatment?

10 A That's correct.

11 Q All right, sir. And you make some recommendation
12 to him based on what could be going on with his
13 right hand. That's kind of, primarily, what the
14 focus of the visit becomes, is this right hand
15 issue, correct?

16 A That is correct.

17 Q All right. It looks like you -- you recommend a
18 removal and biopsy. Did you actually do the
19 removal of that?

20 A I think I did.

21 Q All right. And I think there's a -- This is page
22 --

23 A Yeah.

24 Q -- 223. You actually had the -- You had it
25 removed, and then you had it biopsied, and the

1 biopsy report comes back, as well, correct?

2 A That's correct.

3 Q And, so, I think it says a benign neoplasm of the
4 skin? Lip is what it says, but -- and this is June
5 the 1st. Do you have that?

6 A Right. It says lip, but I don't know why they
7 coded it out as that, but --

8 Q Okay. All right, sir. But it's really referring
9 to where you took this --

10 A It is. It is.

11 Q -- this skin tag or whatever it was --

12 A That's right.

13 Q -- off of him? All right. All right, sir. Then
14 the next time you see him, after the discussion of
15 his right hand issue, was on May the 27th of 2009?
16 That's the next office visit that I have.

17 A That's correct.

18 Q All right. Discusses reason for appointment, his
19 right shoulder and back. Again, this is where the
20 computer is populating that section. Is that
21 right?

22 A That's correct.

23 Q He discusses with you -- It looks like your
24 narrative starts where it's below the right
25 shoulder/arm. It says HPI. Is that where your

1 narrative --

2 A That's correct.

3 Q -- starts?

4 A That's correct.

5 Q All right. "This fifty-three-year-old comes in

6 today and is doing fairly well. He still has the

7 area on the back of his right hand. He's been

8 approved for exploration and excision of this

9 wound." At no point in this visit does he discuss

10 any kind of problem with his right knee with you,

11 --

12 A That's --

13 Q -- does he?

14 A That's correct.

15 Q All right, sir. Was this wound on his hand -- I

16 mean, was it some giant wound that was bleeding or

17 --

18 A It was a small area, as -- as I described, that --

19 that he described would periodically break down and

20 ooze, and he had related it back to where an IV had

21 been put in when he was in the hospital and --

22 Q Okay.

23 A -- was concerned that it was a foreign body, and,

24 of course, --

25 Q But he doesn't -- He wasn't discussing with you,

1 at any point during this visit in May of two
2 thousand -- this May 27th visit, that he was having
3 significant pain with the hand, did he?
4 A More -- More concerned that this wound kept
5 breaking down --
6 Q Okey-doke.
7 A -- and -- and draining.
8 Q Up in the history section, it says the severity of
9 his pain was two, two out of ten, with intermittent
10 dull, aching pain and satisfactorily controlled
11 pain. Is that something he's telling somebody else
12 on that day?
13 A That's something he's telling the -- the people who
14 checked him in, the MAs.
15 Q Okay. But he doesn't discuss with you any kind of
16 significant pain issues that day with either his
17 shoulder --
18 A Not --
19 Q -- or his back?
20 A Not that I recorded or recall.
21 Q All right. Any kind of thing that might mask him
22 having pain in his right knee?
23 A Not that I recorded or recall.
24 Q All right, sir. Would you have any reason to
25 believe that he would have reported that to you

1 that date?

2 A Well, he -- Just given -- Given the narrative to
3 this point, he's pretty willing to bring up issues
4 that he thinks are going on otherwise that may be
5 related, up to that point, --

6 Q Okey-doke.

7 A -- so I would think yes, he probably would have
8 brought it up --

9 Q Okey-doke, because he's -- I mean, he's talking to
10 you about this thing on his hand?

11 A That's correct.

12 Q He -- You know, it's kind of an -- It's, quite
13 frankly, kind of an odd thing. He's got a --

14 A Right.

15 Q -- tag on his skin, and he thinks somehow it's
16 related to the issues with his wreck, correct?

17 A I -- I agree.

18 Q And he's discussing that with you and --

19 A Correct.

20 Q -- seeking treatment for that --

21 A Correct.

22 Q -- at this point? All right. All right, sir. The
23 next visit I have is June the 10th of 2009, page
24 226 of Defendant's APA, and it's a post-op of the
25 right hand, this issue with dealing with the skin?

- 1 A Correct.
- 2 Q Okay. It discusses that it's actually -- was a
3 malignant -- malignant squamous cell biopsy on what
4 was removed, correct?
- 5 A Correct.
- 6 Q All right, sir. You discuss the various issues
7 with him, talk about, you know, what should be --
8 what he needed to be doing for treatment subsequent
9 to this, but it's relatively simple type issues of
10 what's going on with the hand?
- 11 A Correct.
- 12 Q Even though it was a malignant skin lesion, it was
13 removed, and you don't have any concerns about all
14 the issues that may come from that?
- 15 A Correct.
- 16 Q All right, sir. No discussion of any other body
17 part at this point, correct?
- 18 A That's correct.
- 19 Q All right. The next visit is -- that I have is
20 June the 24th of 2009. This is another one of
21 these ones that looks like -- a little weird that
22 -- where there's no narrative.
- 23 A This is a -- I don't have it either, and I --
- 24 Q Okay.
- 25 A -- but I anticipate that it's --

1 Q Another populated, computer-populated --
2 A Our people -- Our -- Our assistants pre-populate
3 the night before or -- and then -- certain things
4 from the last visit and then change what comes
5 through.
6 Q All right.
7 A That's -- And that's what it looks like because
8 his visit didn't get shown, --
9 Q Right.
10 A -- didn't show up.
11 Q That's page 228, starting -- It's 228 and 229 of
12 Defendant's APA. Alrighty then. The next -- What
13 looks like the next office visit is July the 1st of
14 2009, --
15 A Yeah. Correct.
16 Q -- correct, --
17 A Correct. I do have that one.
18 Q -- page 230 of Defendant's APA? But at this point,
19 he's there for removal of the stitches in the hand,
20 but you're also discussing all the other various
21 things going on with him on this date; is that
22 correct?
23 A Correct.
24 Q All right, sir. Down at the bottom, it says, "I do
25 feel, from his shoulder and back perspective, from

1 his injury, that he is at MMI. I feel that from
2 his shoulder and massive rotator cuff repair and
3 with continuing to have some weakness, we are
4 dealing with a 15 percent impair of -- impairment
5 of the shoulder, based on the AMA Guides of
6 Permanent Impairment. From his low back and with
7 pain with regard to the lumbar spine, I feeling we
8 -- I feel we are dealing with a seven percent
9 impairment. The patient has come back to see me on
10 a PRN basis. He is released from care, and he is
11 back at work." You're discussing kind of the
12 global issues that he has on that day, right?
13 A Yeah, this is -- this is just establishing MMI.
14 Q All right, sir.
15 A That's what we brought him back for.
16 Q At any point in that treatment date does he discuss
17 with you I may be done with these other things and
18 -- I'm pretty much finished with those but my right
19 knee is bothering me and I -- and I think you
20 should take a look at it?
21 A Not that I recall or recorded.
22 Q All right, sir. So, it doesn't appear he discussed
23 it with you that day, by your note?
24 A I'd agree.
25 Q All right, sir. Okay. He then comes back to you

1 on September the 1st of 2010, page 232 of
2 Defendant's APA, which is about a year and two
3 months after you had released him at MMI?

4 A Correct.

5 Q All right. Do you have anything in your records to
6 reflect that you saw him anywhere in that
7 intervening period?

8 A There's no record in my chart that I saw him in the
9 --

10 Q Okay.

11 A -- intervening period.

12 Q But you made clear to him on the last visit, the --
13 On July the 1st of 2009, you released him PRN.
14 When -- When you release somebody PRN, do you tell
15 them if you've got any more problems, come back and
16 see me?

17 A I do.

18 Q Okay. You don't tell a layperson come see me PRN,
19 do you, Doctor?

20 A No. I'll -- I'll describe it better than that.
21 That's -- But that's what it implies, it's --

22 Q Sure.

23 A -- as needed.

24 Q Right. You write it for your notes as PRN, --

25 A That's correct.

1 Q -- but you're telling the patient, in layman's
2 terms, if you've got problems, come see me?

3 A Come back to see me. Correct.

4 Q And, apparently, he did not come back and see you
5 anytime between June -- excuse me -- July of 2009
6 and October -- September of 2010?

7 A That's correct.

8 Q All right, sir. In September of 2010, he comes in
9 to see you, and it says the reason for appointment,
10 "ENP, right shoulder re-eval WC per Melissa." What
11 is ENP?

12 A To establish new patient. It's somebody whose --
13 you've seen before in the past, they're here for --
14 potentially for a new problem. That's what's put
15 in by the person when they call to make the
16 appointment.

17 Q Got you. Okay. It has an interim history section,
18 which kind of goes through some of the same stuff
19 that you had already populated in his file,
20 correct?

21 A Correct.

22 Q All right. It says, "The pain severity is actually
23 a nine out of ten, not satisfactorily controlled,
24 stiffness, numbness, locking, catching, giving
25 away, aggravated by physical activity." Is all

1 that referring to the shoulder impingement?

2 A Correct.

3 Q Okay. And then it has HPI. I guess that's an HPI.

4 It looks like -- It looks like IPI on mine. But
5 that's where your narrative starts. Is that
6 correct?

7 A That's correct.

8 Q All right. "The patient comes in today. He states
9 he has gradually had an increase in pain -- of pain
10 in his right shoulder to the point where he's -- he
11 is having a lot of difficulty. It feels very much
12 like a rotator cuff at this -- a rotator cuff tear
13 at this point. He states that it's made it very
14 difficult for him to participate in activities. He
15 is complaining of left leg pain, as well, and low
16 back pain."

17 A Mm-hmm.

18 Q So, he discusses multiple things with you that day?

19 A That's -- That's correct.

20 Q The shoulder has gotten worse, and he's having
21 continued problems with that low back problem and
22 the left leg pain?

23 A That's correct.

24 Q No discussion that date of any problem with his
25 right knee, is there, Doctor?

- 1 A That's correct.
- 2 Q Okey-doke. Down below that, in the examination
3 section, it says, "He has some soreness into both
4 hips and no pain down the leg." So, you're
5 obviously checking out both sides of his lower body
6 in this physical exam, correct?
- 7 A Correct.
- 8 Q And at any point in that did he make any note --
9 notification to you that his right knee was
10 bothering him in any kind of manner?
- 11 A He -- Not that I recall or recorded.
- 12 Q All right, sir. You then go through on the next
13 page -- This is page 233 of Defendant's APA. Just
14 -- What your findings are, essentially, in the
15 assessment section, that he had a localized
16 superficial swelling mass -- that's the hand, where
17 he had the problem with the hand, correct --
- 18 A That's correct.
- 19 Q -- that he had a rotator cuff tear -- That's
20 number two, item number two. That's a -- his right
21 shoulder rotator cuff tear?
- 22 A That's correct.
- 23 Q Number three is his subacromial impingement, which
24 was in the right shoulder, as well?
- 25 A That's correct.

1 Q And then number four is low back pain?

2 A Correct.

3 Q All right. You then discuss getting another MRI of
4 both the shoulder and the spine to see what's going
5 on. So, you were talking about doing diagnostics
6 of the things that he was telling you were
7 bothering him that day, correct?

8 A Correct.

9 Q And at no point in there is there any mention of
10 his right knee or any need to check out his right
11 knee with an MRI?

12 A That's correct.

13 Q Okay. And it appears that my clients agreed to pay
14 for those MRIs and have those done, because he
15 comes back right after that and had the MRIs done
16 to see what was going on, correct?

17 A That's correct.

18 Q All right, sir. The next visit I have is October
19 the 6th of 2010. This is Defendant's page 334 --
20 excuse me -- 234. Do you have that?

21 A I do.

22 Q All right. And this is where he's back to see you
23 as a result of the MRI -- the MRI results that he
24 had for his right shoulder, correct?

25 A Correct.

1 Q All right. The HPI section -- It says, "This is a
2 fifty-four-year-old --" That -- That's your
3 narrative note? That's where it starts your --

4 A That is correct.

5 Q -- your note? All right, sir. It said he's come
6 in. The MRI he had back on -- in September the 8th
7 of 2010 shows he has some tendinitis in his rotator
8 cuff but does not have a tear, a new tear. He has
9 some arthritis, fraying of the labrum but no
10 obvious tear. "I agree with the reading." The
11 next paragraph, "He states he is still having back
12 and hip problems, primarily on the left side. He
13 states they have been present since the accident,
14 as well. They are apparently --" Excuse me.
15 "They are getting, apparently, worse. He states he
16 can only walk for ten to 15 minutes before he
17 starts having -- starts to have pain in the left
18 leg. He can sit on something hard and relieve
19 this." So, he's telling you what's going on with
20 him, that he's having some increased problems, and
21 he's relating it back to the original injury in
22 2008?

23 A Correct.

24 Q At any point in that lengthy discussion of multiple
25 problems that he's having does he discuss with you

1 that he was having problems with his right knee?

2 A Not that I recall or recorded.

3 Q All right, sir. Would you believe that he was
4 having any problems with his right knee as of
5 October the 6th of 2010?

6 A Not -- Not that I recall or recorded.

7 Q All right. I mean, based on what you see here in
8 all the -- different things he's willing to discuss
9 with you, would you have thought he would have
10 discussed it with you if he was having problems?

11 A He seemed perfectly willing to bring up other
12 things, and, so, I would think that he would have
13 brought it up and that I would have recorded it.

14 Q All right, sir. Okey-doke. The next visit I have
15 is October 27th of 2010. Is that what you have, as
16 well?

17 A Correct.

18 Q All right. You state down below that he's -- It
19 says he's -- "I feel his shoulder is at maximum
20 medical improvement." This is in the treatment
21 section under subacromial impingement. "I feel his
22 shoulder is at maximum medical improvement and he
23 is ready for discharge with regard to this." And
24 then number two, you say low back pain. "He has
25 mostly osteoarthritic problems that, again, could

1 have been aggravated by his accident but certainly
2 were not caused by the accident. He has been
3 asking about what can be done and if there's
4 anything surgical. We need to get a surgical
5 opinion. We will send him for evaluation with
6 regard to this," and then -- and your signature
7 right after that. Correct?

8 A Correct.

9 Q All right. And then, apparently, you were going to
10 send him over to the spine center. I assume Dr.
11 Curry is who you were sending him to.

12 A Uh, --

13 Q It just says, "Copy Dr. Curry." I'm not sure why.

14 A Yeah. No, I don't -- I don't -- We don't have a
15 Dr. Curry in the spine center, so I don't know --

16 Q Okay. That's the last office note that I have for
17 you. Do you have notes beyond that that are office
18 notes, Doctor?

19 A There are lots more in the clinical, but I don't
20 think any of them are mine.

21 Q Okay. All right, sir. On that last day, October
22 27th date, did he discuss with you at any point
23 during this discussion that his back was -- excuse
24 me -- his knee, right knee, was bothering him to a
25 degree that he felt like he needed to have it

1 checked out?

2 A Not that I recall or I recorded.

3 Q All right, sir. But he did discuss with you

4 problems with his low back?

5 A He did.

6 Q All right, sir. And was asking you to send him to

7 another physician to have his low back checked out?

8 A Correct.

9 Q All right, sir. It was bothering him pretty

10 significantly at that point, right?

11 A Well, bothering him enough at the previous visit

12 for us to order an MRI, and he had an MRI

13 performed, --

14 Q All right, sir.

15 A -- and I reviewed his --

16 Q Okay.

17 A -- findings with him.

18 Q All right. And one of the main reasons that he

19 came back to see you in October -- in September of

20 2010 was the back. It wasn't just the shoulder.

21 It was also the back. He was telling you when he

22 came in September -- We can go back to that time.

23 A He -- He listed both as a problem --

24 Q Okay. All right.

25 A -- in that visit.

1 Q All right. He said these are kind of the things
2 that are bothering me and I want you to check me
3 out some more because you told me I could come back
4 to see you?

5 A That's correct.

6 Q Okay. All right. In that entire discussion in
7 September of 2010, there's no record of him ever
8 discussing any significant problem with his right
9 knee at that point, correct?

10 A Not that I recorded or that I recall.

11 Q All right, sir. You then have -- I have a final
12 note that's a handwritten -- well, a hand -- excuse
13 me -- a signed note that was a prepared note, --
14 I'm positive plaintiff's counsel prepared it --
15 page 238, done on November the 3rd of 2010. It's
16 discussing whether or not he's had a change in
17 condition for the worse.

18 A Okay.

19 Q All right, sir. When you -- It doesn't say what
20 the change in conditions were. It says for, but
21 what you -- or what are you referring to in here on
22 your change of condition for the worse? What is it
23 that you're -- that -- your understanding of what
24 you were referring to and signing, he'd had a
25 change of condition?

- 1 A The issues that he complained to me about with
2 regard to his shoulder and/or back.
- 3 Q Okay. All right, sir. But nothing to suggest that
4 he'd had any kind of issue with his right knee that
5 may have changed for the worse?
- 6 A At -- At no point in reviewing this narrative did
7 I document anything about his right knee. So, no,
8 I would --
- 9 Q Okay.
- 10 A -- not have speculated that.
- 11 Q The only notice that I have within your note -- or
12 any -- any mention I've seen within your notes
13 anywhere is the very first day that you saw him, on
14 April the 30th, 2008, where he discussed that he'd
15 had problems, he'd had pain in his right knee?
- 16 A Initially.
- 17 Q Initially, but that it had -- It actually had
18 resolved before he came to see you in April --
- 19 A Correct.
- 20 Q -- of 2008, and at no point subsequent to that date
21 in your treatment of him, for a period of about two
22 and a half years, did he mention any problem with
23 his right knee to you as a treating orthopedist; is
24 that correct?
- 25 A That's correct.

1 Q Would you have any reason to believe that he had
2 any kind of substantial issue with his right knee
3 as a result of the accident that occurred in 2008?

4 A Given the length of time and the number of times I
5 saw him in the intervening time, it would be
6 unlikely.

7 Q Okay. He's had an indication now that he has some
8 issues, that he has a bucket-handle tear that needs
9 repairing. Would you have any reason to believe
10 that that bucket-handle tear had existed in 2008
11 through 2010?

12 Mr. Kamb: I'll object because he hasn't
13 evaluated the knee.

14 A Again, I have to go off of the face value of you
15 telling me what -- what the injury is, but it would
16 be difficult to have a true bucket-handle tear of
17 the meniscus and not be symptomatic for an extended
18 period of time.

19 Q Okay. Even if he was having these other issues,
20 with having the shoulder problem and the back
21 problem as a mask, some potential masking
22 component?

23 A A bucket-handle tear is a pretty significant tear,
24 if that's the description that I'm -- I'm working
25 off of. You know, a tear -- a small tear in the

1 meniscus certainly can go dormant, can be dormant
2 for quite some time, but a bucket-handle tear is
3 typically not dormant and usually pretty -- pretty
4 symptomatic for folks. So, based -- based on that
5 information that you've given me, I would say it
6 would be unlikely that for two and a half years he
7 would not have brought it up as an issue.

8 Q Okey-doke. Would you have expected -- Even if it
9 was a minor tear, would you have expected to have
10 seen some effusion or swelling of the right knee?

11 A Not always. A small -- A small tear doesn't
12 always present with effusion and can certainly go
13 for long periods of time without causing a lot of
14 trouble. So, it depends on the size of the tear,
15 where it's located, what positions the knee is
16 getting in. So, there's -- there's a lot of
17 variability in how that might present and how it
18 might behave.

19 Q Okay. The claimant's position is -- is that he --
20 that this has existed -- that the right knee pain
21 has existed since the time of the injury and that
22 he was dealing with all the other issues and that
23 he had his final -- he had his back surgery and,
24 after his back surgery, he was able to become more
25 mobile and walk and work, and, as a result of that

1 walking additional, he noticed his right knee being
2 a worse problem -- has been his position as to why
3 he believes it's related. If he was -- Assuming
4 he was not mobile during the period you were
5 treating him, would he have still been having --
6 should he have still been having symptoms that
7 would have shown him he had some kind of issue with
8 the derangement of the right knee?

9 A Well, I -- I mean, I -- I think that certainly at
10 -- at one point he got back to a pretty high level
11 of activity, and I would have expected it to be
12 symptomatic at that point, but it's not -- not
13 impossible for somebody to have a meniscal tear and
14 it would present itself later, after an injury, but
15 I think the longer you go, the less likely that
16 becomes without it being symptomatic in the
17 intervening time.

18 Q Do you think it's probable, within a reasonable
19 degree of medical certainty, that he had some
20 degree of a tear to his meniscus in his right knee
21 during the time frame that you were treating him?

22 Mr. Kamb: And, again, I have to object
23 because he hasn't evaluated the knee.

24 A I'm going to ask you to restate that.

25 Q Sure. Do you believe it's -- Excuse me. Do you

1 believe it's probable, to a reasonable degree of
2 medical certainty, that he was dealing with any
3 kind of significant derangement of the right knee
4 or a meniscal tear during 2008 and 2009 and 2010
5 when you were treating him for the other issues?
6 A I'm -- I'm going to have to say no.
7 Q Okay. You just said that it was -- it was
8 possible, within the realm of possibility?
9 A Right. Right.
10 Q You said he -- that it is?
11 A But I think -- You're asking whether it's
12 probable, --
13 Q Right. The question --
14 A -- and I would say no.
15 Q The question is, is it probable, to a reasonable
16 degree of medical certainty?
17 A And I would say no.
18 Q Okay. All right, sir. And that's based on what
19 you saw from him as a patient?
20 A Correct.
21 Q Okay. All right. Now, you just said something
22 when -- in response to one of my questions that I
23 want to go over, too. The patient's position, the
24 claimant's position, is -- is that he was not
25 particularly active and that's why he didn't notice

- 1 the right knee.
- 2 A Mm-hmm.
- 3 Q You just made mention of the fact that at one point
- 4 during your treatment, he actually was -- got
- 5 pretty active, didn't he?
- 6 A Correct.
- 7 Q All right, sir. I believe that -- I mean, I
- 8 pointed that out to you, that he stated he was able
- 9 to walk two to three hours without pain?
- 10 A Correct.
- 11 Q So, he was clearly walking decent distances at that
- 12 point, and he also told you he -- he was able to
- 13 cut his grass, that he was able to get out and do
- 14 things, you know, manual labor at his house,
- 15 correct?
- 16 A Correct.
- 17 Q All right, sir. So, he was not just sitting around
- 18 all the time, worrying about the problems with pain
- 19 in his back at that point, correct?
- 20 A Correct.
- 21 Q All right, sir. Have you signed any kind of
- 22 document from the claimant regarding any opinions
- 23 on his right knee?
- 24 A I -- I don't recall, but I don't -- I don't know
- 25 that I have. I don't remember or recall signing

1 anything.

2 Q Have you had any discussions with claimant's
3 counsel on this case at all?

4 A Not that I recall.

5 Q Maybe since -- I mean, I know you probably did
6 back when this was done in 2010. Have you had any
7 conversations with anybody about the case since
8 2010?

9 A Not that I recall.

10 Q Okay. All right. Did the claimant ever make any
11 call back to you saying I want -- you know, I'd
12 like for you to look at my right knee that my
13 client ever denied?

14 A Not that I was aware of. I mean, he could have
15 called the office and I was not made of aware it,
16 but I don't -- I'm not aware of that phone call, if
17 it occurred.

18 Q All right, sir. And I didn't go through your CV,
19 and I typically do that, but I wanted to do that
20 now. That's kind of what --

21 A Okay.

22 Q -- I want to talk -- You are -- Just give us your
23 CV, if you would, Doctor.

24 A How far back do you want to go? So, --

25 Q Just give me a quick -- quick scan --

- 1 A I graduated from a university with a bachelor's
2 degree, medical school at MUSC, orthopedic training
3 and orthopedic residency at Wake Forest University
4 Medical Center, and have been in practice in the
5 Greenville-Simpsonville area for 21 years.
- 6 Q All right. Are you board-certified in a particular
7 area?
- 8 A Board- -- Board-certified orthopedic surgeon doing
9 primarily sports medicine and arthroplasty.
- 10 Q All right, sir. Of any particular joint or all
11 joints?
- 12 A Sports -- Sports medicine in general and
13 arthroplasty, lower extremities.
- 14 Q Typically, a sports medicine orthopedist is someone
15 that deals a lot with knees; --
- 16 A Correct.
- 17 Q -- is that correct?
- 18 A Correct.
- 19 Q Do you deal a lot with patients with knees?
- 20 A I -- I do.
- 21 Q That's something you routinely do, day in and day
22 out?
- 23 A Routinely, day in and day out.
- 24 Q All right. So, if you had a patient that had
25 discussed some issue with a knee, you would have

1 certainly evaluated and examined his knee, correct?

2 A Correct.

3 Q And come up with a treatment plan for his knee?

4 A Correct.

5 Q All right, sir. You're obviously qualified, I
6 would assume, to -- to perform an orthopedic
7 evaluation of -- of a person's knee?

8 A Correct.

9 Q All right.

10 Mr. Addison: That's all I have for now.

11 Mr. Kamb: Just a few.

12 Examination

13 By Mr. Kamb:

14 Q Doctor, is it -- Sometimes do -- or I guess I
15 should say is it possible that a patient may bring
16 up something to you and it is not recorded in your
17 records?

18 A Sure. Occasionally patients bring up things that
19 -- that we don't -- We don't always record every
20 single thing that a patient necessarily complains
21 of, but the majority of the time, we do record what
22 the patient complains of.

23 Q Sure.

24 A To what extent we evaluate it, you know, advanced
25 imaging and things like that varies from time to

1 time.

2 Q And that can be affected by, you know, whether or
3 not it's -- A person who has multiple orthopedic
4 problems, that can be affected by, you know, the --
5 which problem is worse. Is that true?

6 A Correct.

7 Q In this particular situation, as we've talked
8 about, Mr. Houston came to you, when he initially
9 started treatment, and had said that his right knee
10 was injured in the -- in the accident, but in the
11 six, seven weeks in between the accident and the
12 time that he came to see you, that the -- the right
13 knee pain, in your words, have improved. Is that
14 correct?

15 A That's correct.

16 Q And from that point, you focused on his shoulder
17 and his back. Is that true? Initially, I mean,
18 the --

19 A Back --

20 Q -- main focus --

21 A Back and hip, trying to figure out what was going
22 on exactly, but yes, the combination of his back
23 and his hip and his shoulder were the --

24 Q The major focus?

25 A -- were the major focus.

1 Q And, in fact, you treated for months on his
2 shoulder, and you eventually did a surgery on his
3 shoulder. Is that true?

4 A Correct.

5 Q And then -- And, again, that's -- that's normal;
6 someone with multiple orthopedic problems, you
7 focus on the worst problem?

8 A Sure.

9 Q And, at that point, as far as what you knew, what
10 you had, his shoulder was the worst problem?

11 A Correct.

12 Q And you eventually returned him to work in 2009,
13 May of 2009. Is that about right?

14 A I believe. That's what I recall from our recent
15 survey of the --

16 Q It's actually your note of 4/29/09, where I think
17 he actually physically returned to work on 5/11.
18 You released him to return to work on 4/29; is that
19 correct?

20 A That's correct.

21 Q And Mr. Addison was telling you a little bit about
22 the -- our contentions in this case, but to go a
23 little further, what Mr. Houston has testified to
24 in his deposition and what we're alleging now is
25 that he initially injured his right knee. As he

1 was getting treatment for his shoulder, and as he
2 told you, the right knee settled down. When he
3 returned to work, he began to have more problems
4 with his back and with his knee, and that's when he
5 returned to you. The treatment focused on the
6 back. He eventually went -- He had treatment on
7 his back. He ended up having surgery with Dr. --

8 A Mm-hmm.

9 Q -- Kanos, I believe, and now, you know, again, the
10 right knee problems came to the forefront as that
11 was wrapped up, and now he's -- we're -- we're
12 working on the right knee. But, in fact, going
13 back to that, we -- we looked at some of your
14 records when he returned to you in 2010, and I
15 believe that was on -- September 1st, 2010 was the
16 first time you had saw him -- seen him after his
17 return to work?

18 A Yes, --

19 Q And he was --

20 A -- it appears --

21 Q Right.

22 A Yeah, that -- that appears to be the first time I
23 saw him back.

24 Q And you recorded, at that time, he was having some
25 -- some increased problems with his shoulder, and

1 -- and you ended up getting an MRI and evaluating
2 that, and he also talked about the -- the back, and
3 you ended up getting an MRI on that, too. Is that
4 correct?

5 A Correct.

6 Q And, again, you -- When you saw him again on
7 10/27/10, you referred him for a surgical
8 evaluation of his back?

9 A Correct.

10 Q So, at that point, he had a -- what appeared to be
11 a fairly significant problem with his back, or
12 potentially?

13 A Well, enough that I felt it needed to be looked at
14 when he asked what options were available and could
15 -- We needed to get somebody to look at it.

16 Q And I'll submit to you --

17 A That's my recorded --

18 Q I know you probably don't have this information,
19 but I'll submit to you, again, Dr. Kanos did
20 surgery, ended up doing a lumbar fusion and
21 discectomy and a bunch of other things. It's a
22 long note, a long surgical note. The -- And we
23 talked -- Initially, when I started asking you
24 questions, you said it does happen, that, you know,
25 people bring things up to you that -- that do not

1 make it into your notes. Is that true, or can be
2 true?

3 A Can be true.

4 Q Okay. The -- When he returned to work -- or
5 returned to see you in 2010, and when patients come
6 in to see you, do they typically fill out something
7 that indicates what their difficulties are, what
8 the problem -- you know, like, you know, it talks
9 about the level of their pain, where they're having
10 pain, that sort of thing?

11 A They -- They do, and then our MAs write it into
12 the interim history.

13 Q Okay. And I'm going to show you -- There's one
14 document that y'all use, well, I guess, on intake
15 or when someone comes back for a recheck of
16 something, that's called a Patient Recheck
17 Questionnaire. Have you seen that?

18 A Mm-hmm.

19 Q And this is page ten of our APA. That's something
20 that the patient fills out?

21 A It is.

22 Q Okay. And that one is dated 10/6/10 that I showed
23 you, is it not?

24 A Correct.

25 Q And what did he list as the body parts that he was

1 having trouble with?

2 A Back, shoulder and knee.

3 Q So, apparently, when he returned to work --

4 returned to you after being at work and was telling

5 you about having increased trouble with his back

6 and shoulder, at least on this form that he filled

7 out on his second visit returning to you, he did

8 indicate that he was having some knee problems?

9 A But he didn't specify which side.

10 Q Right. But it does say knee?

11 A It does say knee. It does.

12 Q And, in that regard, with -- as to -- to which

13 side, I'm going to show you some contemporaneous

14 documents. First, this is an FMLA form that he

15 filled out on that same day. And that's in the

16 APAs, also. I believe it's page 191.

17 A And I didn't -- I did not fill this out.

18 Q Right. And I'm not sure -- That may have been

19 something that's FMLA, so I'm not sure --

20 A Yeah, I'm not -- I didn't sign it, and that's not

21 my writing, so --

22 Q Right. And --

23 A -- I -- I did not fill that out.

24 Q This is the -- Mr. Houston's handwriting. That's

25 his signature --

1 A Okay.

2 Q -- there at --

3 A Okay.

4 Q -- the bottom.

5 A Okay.

6 Q But, at any rate, this does have a date of 10/6/10,

7 correct?

8 A Okay. Correct.

9 Q And there he says -- Description of the problem,

10 he talks about injury to the right shoulder, right

11 knee and low back.

12 A Okay.

13 Q So, there, he did indicate right knee, correct?

14 A Correct.

15 Q And then I want to show you Mr. Houston's

16 deposition that was taken in November of 2010, just

17 a few weeks after that 10/6/10 date, and I want to

18 show you a couple of things. This is his

19 deposition, page 24, and there it talks -- line 21

20 into the next page.

21 A How far down do you want me to --

22 Q Just right there, about mid page there.

23 A Okay, --

24 Q It starts talking about your back --

25 A Okay. Yeah, it looks like he went back to his

1 back.

2 Q There, according to his testimony, when he returned
3 to work, he was having an increased problem with
4 his right knee, and he talks about, "It's just
5 slowly getting worse. Pain is back, popping,
6 cracking, grinding, trouble with steps," -- excuse
7 me -- and has some swelling when he's on it a lot,
8 correct?

9 A That's -- By -- By reading that, yes, that's what
10 he's stating.

11 Q And this is another passage that's talking about
12 his knee. This is page 41 of the deposition. It
13 starts on page 13 -- or -- I'm sorry -- line 13 and
14 goes through about the middle of the next page.

15 A Okay.

16 Q So, again, he's talking about returning -- or, you
17 know, being inactive while his shoulder was being
18 treated, and then, as he got more active, he was
19 starting -- found that he was having more and more
20 pain with his knee. Is that correct?

21 A That's what he's stating, yes.

22 Q All right. The -- If a person has what has been
23 described as a -- Well, let me just find my --

24 Mr. Addison: (to Mr. Kamb) What, the
25 MRI --

1 Mr. Kamb: Yeah, that's what I'm looking
2 for.

3 Mr. Addison: Here you go.

4 Q This is the MRI to the knee that was eventually
5 done by his pain management physician who was
6 treating him for his back.

7 A Okay.

8 Q Is that what we call a -- Was counsel correct,
9 that's a bucket-handle tear or whatever?

10 A Yeah, potentially. There's some question of that,
11 and I was trying to -- The radiologist is -- is
12 saying there's an extensive tear, and he's
13 speculating that it may have been a bucket-handle.

14 Q Okay. But, at any rate, --

15 A He's saying he can't really see the -- he can't see
16 the part that we would call the bucket-handle
17 piece, and then he's describing arthritis in the
18 knee.

19 Q Okay. But, at any rate, there's a -- there's some
20 sort of a meniscal tear there?

21 A Yes.

22 Q And you were saying earlier that -- you know, that
23 that sort of thing can settle down. Is that true?

24 A So, it -- it depends on the actual character of
25 this tear. I mean, I'm basing this off of the

- 1 radiologist's read, of course. So, the degree to
2 which a meniscal tear causes symptoms is directly
3 related to the size of the tear and its location.
- 4 Q And, in this particular situation, if that -- if he
5 had had a knee injury in the initial accident, the
6 -- the knee pain that he was talking to you about
7 the very first time you saw him, is it possible
8 that that would have settled down in the six weeks
9 after and become less symptomatic?
- 10 A I'm -- I'm basing this, again, not on seeing the
11 image but in what --
- 12 Q Sure.
- 13 A -- what was read by the radiologist, but he's
14 describing a -- a large area that's involved and a
15 big meniscal tear, which I would not have expected
16 to go through long periods of time where it was
17 asymptomatic.
- 18 Q Okay. But it can happen?
- 19 A It's less likely. The bigger the tear, the less
20 likely that is to happen.
- 21 Q Okay. But -- And he --
- 22 A But not impossible. So, if you're -- if that's the
23 --
- 24 Q Right.
- 25 A It can.

1 Q And then in -- When he came back to see you in
2 2010, according to the one note that he handwrote
3 in your notes, the questionnaire thing, he was
4 having some sort of knee difficulty, true?

5 A Yeah. We're not sure which side, but yes.

6 Q Right. And then, according to his deposition, he
7 described returning to work, being up on it after a
8 significant period of -- of being out of work,
9 getting treatment on his shoulder, and having more
10 trouble with the knee; is that correct?

11 A He -- Yeah, he describes that in his deposition.
12 Correct.

13 Q And could that be consistent with a problem in the
14 knee, such as this, that as he's not as active,
15 he's not having as much difficulty; when it -- when
16 the activity increases, the problems increase?

17 A It certainly could go along with that. Correct.

18 Q And after you saw him in 2010, again you refer him
19 for evaluation of his low back, a surgical
20 evaluation of his low back, correct?

21 A Correct.

22 Q And then surgery was eventually done in December of
23 2012, and that was a fusion, and from there he was
24 sent and had treatment with a pain management
25 physician, Dr. Math, and -- Hold on one second.

1 Let me find a note that I made. And, again, he was
2 -- I'll submit to you he was out of work for an
3 extended period of time again as a result of that
4 back situation. This is a -- a note from Dr. Math,
5 and it's kind of hard to read because of -- the
6 type is very small, but it's page 101 and 102 in
7 the APA, and there, sort of in the middle of the --
8 of her --

9 A Okay.

10 Q -- narrative there, --

11 A Okay.

12 Q -- she discusses the knee, does she not?

13 A She does.

14 Q And, again, it talks about a period of inactivity?

15 Mr. Addison: (to Mr. Kamb) What --

16 What is the date of that? I'm sorry.

17 Mr. Kamb: 6/6/13.

18 Mr. Addison: Okay.

19 Q And, again, it talks about getting -- the knee
20 becoming more symptomatic again as he's up on it
21 after he had apparently been off of it for his back
22 surgery. Is that correct?

23 A Correct.

24 Q And, again, as we said before, that can happen with
25 a situation such as was, apparently, in his knee,

1 that if he's inactive and not on it, he can have
2 less symptoms, and if he's back up on it, he's
3 going to have more symptoms. Is that correct?
4 A Certainly anything wrong with the knee mechanical,
5 the more you're on it, the more it's going to hurt.
6 Q And he's had -- This is, again, a situation where
7 this -- this guy, as a result of this injury, has
8 had many orthopedic problems. Is that true? He's
9 had the shoulder problem, the back problem that's
10 taken an extended period of time to treat; is that
11 true?
12 A Correct.
13 Q And throughout that situation, you know, initially,
14 while you were treating him, the focus was on his
15 -- was primarily on his shoulder; is that true?
16 A I'd say shoulder and back were getting pretty equal
17 time.
18 Q Okay. And then when you -- When he came back to
19 see you, the focus went to -- or you determined
20 that the -- the shoulder was okay, and the focus
21 went to his back?
22 A Correct.
23 Q And then Dr. Kanos and Dr. Math -- you may not
24 know, but -- have apparently treated him since that
25 time. Is that true, --

1 A I'll have to -- I'll have to --

2 Q -- based on the information --

3 A -- go off of what you've said about the information
4 with Dr. Kanos and Dr. Math, but --

5 Q Okay.

6 A -- but that's true.

7 Q So, it is -- Is it possible, then, as Mr. Houston
8 has -- has alleged, that the focus of these
9 problems, of his problems from the injury, were on
10 his shoulder and on his back; during the period of
11 his inactivity, he was having less problems; as he
12 became more active, he was having more and more
13 problems with his right knee, and now he's looking
14 for treatment for his right knee? Is all that
15 possible based on the diagnoses or the -- the
16 findings of the MRI scan?

17 Mr. Addison: Object to the form of the
18 question. That needs to be couched in terms
19 of medically probable to a reasonable degree
20 of medical certainty.

21 Mr. Kamb: Thank you.

22 Q Is it possible?

23 A It is possible.

24 Q Okay. And you have never examined this knee; is
25 that true?

1 A Not that I recorded or recall.

2 Q So, is it -- Is it really outside the realm of an
3 opinion that you're able to give as to more
4 probable than not, that sort of thing, as to
5 whether or not -- you know, the condition of his
6 knee and the causation of it, et cetera?

7 A My speculation on probability would be based on
8 information given from an MRI that I have not read
9 and from a knee that I have not evaluated, so it's
10 based on -- on taking that and -- and extrapolating
11 from experience with other patients who would have
12 a reading like that.

13 Q Okay. After Dr. Math got this MRI, she sent Mr.
14 Houston for evaluation with Dr. Paylor, and Dr.
15 Paylor has evaluated the knee. Would you defer to
16 Dr. Paylor as to the causation of his knee
17 problems?

18 A That would be -- Somebody who's had a chance to
19 see the imaging and examine the knee would
20 certainly, I think, have -- render a better opinion
21 than I could.

22 Q Doctor, just a couple more things. When you're
23 treating, and especially, I guess, in the workers'
24 compensation realm, are there some times that
25 you're -- that you're authorized to evaluate and

1. treat certain body parts?

2. A With regard to workman's comp --

3. Mr. Addison: I'll object to the form
4. because there's no evidence that we've denied
5. any treatment for the right knee anywhere in
6. these records. So, I think this is an
7. improper line of questioning.

8. Mr. Kamb: Thanks.

9. Q Have -- Have you seen in workers' comp that there
10. are -- that sometimes you're -- you're directed to
11. evaluate and treat certain body parts?

12. A Correct. That does happen.

13. Q And some -- And do you typically put your focus on
14. the body parts that you are directed to evaluate
15. and treat?

16. A When -- When a workmen's comp appointment is
17. approved and approved only for that body part,
18. that's totally what we're limited to deal with and
19. only look at parts that would potentially affect
20. that body part that's been assigned, which does
21. happen. I don't -- It doesn't happen all the
22. time, but it does happen.

23. Q The -- And he said that the -- The one note that
24. he filled out there on 10/6/10 that I showed to
25. you, where he said that he was having some

1 difficulty in the knee -- but it did not specify
2 which side. If, in fact, you know, that had been
3 there or that had been brought up to you, in the
4 face of an MRI that showed -- to his low back that
5 had showed the problems that were found there, is
6 it likely that the focus would have been on his
7 back as opposed to his knee anyway?

8 A Not necessarily.

9 Q If he had needed -- And this is, I guess, just for
10 general information. If he had an MRI, if we had
11 known that he had this tear in his knee and that he
12 also had this need for a lumbar spinal fusion,
13 typically which one had -- would have been done
14 first?

15 A We would have done the knee first.

16 Q Why is that?

17 A One, the predictability of -- of the result would
18 be the first thing, and the -- and the second would
19 have been that he was having stenosis symptoms with
20 regard to the lumbar spine, which, typically, the
21 first line of action is not surgery on it, not to
22 do surgery initially. And third would be it's
23 within my scope of practice to have taken care of
24 that, --

25 Q The knee?

1 A -- and the spine was not.

2 Q Okay.

3 Mr. Kamb: I don't have any other
4 questions.

5 Re-examination

6 By Mr. Addison:

7 Q Doctor, do you think you intimidated Mr. Houston at
8 all where he wasn't willing to talk to you about
9 any issues that he had?

10 A Not that I'm aware of, but --

11 Q He seems like he was very willing to talk -- talk
12 to you with whatever was wrong with him? Based on
13 your notes, --

14 A Yeah, --

15 Q -- he discussed multiple things?

16 A -- he seemed like -- Yeah, I thought we had a good
17 rapport. I recall that. This has, of course, been
18 a couple of years ago --

19 Q Sure.

20 A -- since I've seen him, but I recall that.

21 Q Including a relatively odd problem on his hand. He
22 brought up an issue with his hand that turned out
23 to be, essentially, a skin cancer, correct?

24 A Correct.

25 Q All right, sir. So, he was willing to talk about

1 any myriad of medical issues with you?

2 A Yes.

3 Q All right. And at no point during the two and a
4 half years that you treated him did he discuss with
5 you any kind of significant problems with his right
6 knee?

7 A Correct.

8 Q All right, sir. You were shown the MRI. I know
9 you've just seen the report, not the film itself,
10 and I know it's kind of difficult without the film.
11 You were asked about, you know, whether -- if he
12 wasn't being particularly active, there was some
13 way that that -- that that particular tear, as it
14 existed, as shown on the report of the MRI that was
15 done in 2013 -- whether or not it could just kind
16 of have sat there and not been a particular huge
17 issue if he was not being very active, and you said
18 it was possible?

19 A Correct.

20 Q Is it probable, to a reasonable degree of medical
21 certainty?

22 A He's -- Given the description of being as large a
23 tear as it was, in combination with arthritis, I
24 think it's unlikely.

25 Q Okay. All right, sir. And, again, by your own

1 records, he's discussing with you, during the time
2 frame that you treated him, from April of 2008
3 through October of 2010, there were periods of time
4 where he was very active, by the notes that he
5 reflect -- by your notes and what he's telling you
6 in your notes?

7 A Certainly, based on my notes. Correct.

8 Q Okay. So, he wasn't just sitting around during
9 that time frame, was he?

10 A Certainly, by what he was reporting and I recorded.

11 Q Okey-doke. All right. You've seen Dr. Math's note
12 from June of 2013 that the claimant's counsel
13 showed you. He's very willing to discuss with Dr.
14 Math all the stuff that he says occurred, including
15 his position on the history of him having problems
16 during all that time. You saw that note, the June
17 --

18 A I agree.

19 Q -- 6th note?

20 A I did. Correct.

21 Q All right. But at no point did he discuss any of
22 that with you as the treating physician, as the
23 primary treating physician, did he?

24 A Not that I recall or recorded. Correct.

25 Q All right, sir. You were shown a deposition

1 transcript where he says he was having problems
2 with his right knee and it's being used as -- as,
3 allegedly, contemporaneous discussions of him
4 having problems that he was discussing. Did he
5 discuss any of those problems with you?

6 A Not that I recall or recorded.

7 Q All right, sir. Does that make you change your
8 mind, just because it's in a deposition? Do you
9 have any reason to change your mind that he may
10 have -- You were asked is it possible that he
11 discussed it with you and you didn't put it in your
12 notes. Does that have any bearing on whether you
13 believe you may have had a discussion with him and
14 you forgot to put it in your notes?

15 A As -- As I understood the question and asked --
16 answered the question about the possibility, it had
17 to do with meniscal tears in general and not
18 necessarily specifically his meniscal tear.

19 Q Well, --

20 A I may have misunderstood the question.

21 Q It was being alluded to that he may have had a
22 discussion with you and you didn't write it down --
23 because that's what's going to happen at the
24 hearing, is they're going to say he said something
25 to you --

- 1 A Right.
- 2 Q -- and you didn't write it down. Is it likely that
3 you didn't write something down?
- 4 A I think it's unlikely that I did that on that
5 number of occasions that I saw the patient and we
6 discussed it.
- 7 Q You saw him, it looks like, about every other month
8 --
- 9 A Correct.
- 10 Q -- over a two and a half-year period, correct?
- 11 A Correct.
- 12 Q All right, sir. Is it -- Do you believe that it's
13 probable that during two and a half years' worth of
14 treatment of someone with the myriad of problems
15 that he had that you would have not written down at
16 any point that he was having problems with his
17 right knee if he discussed that with you?
- 18 A I -- I think that's improbable.
- 19 Q Okay. All right, sir. You indicated that you
20 would defer to Dr. Paylor's opinion. Are you --
21 When you're -- When you're stating that, are you
22 saying you would defer to his current opinion
23 regarding what he believes is going on with the
24 knee?
- 25 A Correct. I -- I mean, he's -- he's seen the MRI,

1 and he's evaluated the knee, and, so, I --
2 Q Okay.
3 A -- I would -- You know, I would defer to his
4 opinion with regard --
5 Q Do you --
6 A -- to what's going on with the knee now, yes.
7 Q Do you defer to Dr. Paylor in regard to what was
8 going on with his knee from April of 2008 through
9 October of 2010?
10 A I didn't record and I don't recall examining the
11 knee, but I didn't have a particular reason to do
12 that, --
13 Q Okay.
14 A -- so --
15 Q You were there then?
16 A But I was there then, correct.
17 Q Dr. Paylor was not?
18 A Correct.
19 Q Dr. Paylor didn't see him until 2013?
20 A Correct.
21 Q So, would you have any reason to defer to Dr.
22 Paylor about the period of time that you treated
23 the patient?
24 A No, I would not defer to his opinion about that
25 period of time, but --

1 Q Okay.

2 A -- with regard to the right knee, I didn't evaluate
3 the right knee.

4 Q All right. I'm going to show you what's a medical
5 statement that was received from Dr. Paylor about
6 his opinion on causation and --

7 Mr. Kamb: I object. It's -- You're
8 pitting witnesses at this point.

9 Q Page 237 -- Page -- Defendant's page 379 of the
10 APA. Would you agree with me on number two that
11 Dr. Paylor writes that the patient states that it
12 is from the accident?

13 A Correct.

14 Q All right. Dr. Paylor discussed in his deposition
15 that he's basing his opinion on the fact that Mr.
16 Houston told him that he's been having problems
17 with the right knee since the time of the accident?

18 A Correct.

19 Q But Dr. Paylor hadn't seen the patient other than
20 in 2013 and forward?

21 A Correct.

22 Q Would that seem -- Would that seem to be in line
23 with what you saw from the patient during 2008,
24 2009 and 2010?

25 A I did not record and I do not recall the right knee

1 coming up as an issue for me to evaluate it, so I
2 -- I mean, I think that stands on its own.

3 Q Okay. All right. So, you're not deferring to Dr.
4 Paylor in regard to any opinions that you may have
5 about whether or not there was a causal link
6 between the injury and any problems with his right
7 knee, correct?

8 A Correct.

9 Q Based on the observation that you were able to have
10 with the patient over a two and a half-year period,
11 do you have an opinion as to whether or not there
12 was any causal link between a meniscal tear in his
13 right knee and the injury that occurred in -- in
14 March of 2008?

15 A I -- I think it's -- I think I've stated that I
16 think it's improbable that it was a significant
17 problem and it went that period of time without him
18 complaining about it or bringing it up as an issue
19 --

20 Q Okay.

21 A -- such that I didn't record it --

22 Q Are you --

23 A -- or recall it.

24 Q Are you stating that opinion to a reasonable degree
25 of medical certainty?

1 A I am.

2 Mr. Addison: All right, sir. Thank you,
3 sir.

4 Re-examination

5 By Mr. Kamb:

6 Q But, again, you know, it is possible that at times
7 his knee could have been brought up and just not
8 have made it into your records; is that true? It
9 is possible?

10 A I'm -- I'm not going to claim perfection. I'll
11 say it is. I think it's unlikely that those number
12 of times, it would happen over and over again, --

13 Q And I'm not being --

14 A -- but it could have happened.

15 Q Right. And I'm not being argumentative or making
16 any -- you know, anything about -- of that nature,
17 but we know that at least on 10/6/10 he said
18 something about his -- a problem with his knee, and
19 that does not show up anywhere in the -- either
20 knee does not show up anywhere in the narrative.
21 Is that true?

22 A Correct.

23 Q And, again, you never evaluated the right knee; is
24 that true?

25 A Correct, not that I recorded or that I recall.

1 Mr. Kamb: No further questions.

2 Re-examination

3 By Mr. Addison:

4 Q Would you have evaluated the right knee if he asked
5 you to?

6 A It's certainly within my scope of practice. It's
7 something that I do, and I -- I can't imagine that
8 I would have not evaluated the knee if --

9 Q Okay.

10 A -- he had have complained about it.

11 Q Did you have any instructions from my client that
12 said for you to never -- or to not evaluate -- to
13 never or not ever evaluate the right knee?

14 A Not that I've stated in my notes or that I recall.

15 Q You actually found an odd problem on his hand, and
16 my clients paid for it; is that correct?

17 A Correct.

18 Q All right. This -- This cancer on his right hand
19 that --

20 A Correct.

21 Q -- you did a surgery -- and my clients picked the
22 tab up for that as far as you know?

23 A As far as I know. I'm not aware of who picked the
24 tab up for it.

25 Q But they didn't tell you no, you couldn't do that?

1 A That's correct.

2 Mr. Addison: All right. That's all I
3 have.

4 Mr. Kamb: I'm going to put this
5 deposition out of its misery and not ask any
6 more questions.

7 The Deponent: Thanks.

8 (Whereupon the deposition was concluded at
9 4:37 p.m.)

10 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Lexington) Certificate

Be it known that the foregoing deposition of Philip H. Wessinger, MD, was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 83 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 27th day of October 2014:

Sandra M. Snead

Sandra M. Snead

Notary Public for South Carolina
 My commission expires August 29th, 2023.

Note: Recordings are retained for twelve (12) months from date of certification.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

Gene McCaskill, Commissioner
Melody L. James, Commissioner
R. Michael Campbell, Commissioner

W.C.C. File No. 0802605
Appellate Case No.2015-002120

Tommy G. Houston, ... Claimant,

v.

Garda World Security, ... Employer/Defendant,

and

Gallagher Bassett Services, Inc., ... Carrier/Defendant,

Of Whom

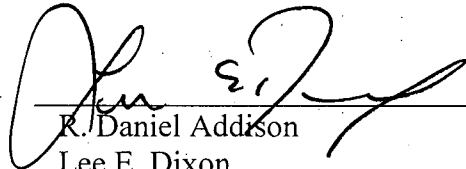
Defendants are Appellants,

and

Claimant is Respondent.

CERTIFICATE OF COUNSEL

This is to certify that the **Supplemental Record on Appeal** contains all material
proposed to be included by any of the parties and not any other material.



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