

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel
Melody James, Susan Barden, Aisha Taylor

SCWCC File No. 0715651
Appellate Case No. 2017-000753

Donnie Lowe, Employee, Claimant, Appellant,
v.
BMW Manufacturing Corporation, Employer, and Hartford Ins. Co. of the
Midwest, c/o Sedgewick Claims Management Services, Inc., Carrier, Respondents.

**RECORD ON APPEAL
VOLUME II**

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SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. #0715651

Donnie K. Lowe,
Claimant,

COPY

vs.

BMW Manufacturing Corporation and,
Specialty Risk Services, Inc.
Employer-Insurer.

DEPOSITION OF DONNIE KENNETH LOWE

DATE TAKEN: January 9, 2012
TIME BEGAN: 10:14 A.M.
TIME ENDED: 11:38 A.M.
LOCATION: The Carolina Law Group, LLC
517 Laurens Road
Greenville, SC 29607

REPORTED BY: April Herbert
Notary Public for South Carolina

APPEARANCES:

MONTY D. DESAI, ESQUIRE

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Greenville, SC 29606

.....On behalf of the Claimant

STEPHANIE R. LAMB, ESQUIRE

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200 East Broad Street, Suite 250

Greenville, SC 29601

.....On behalf of the Employer-Insurer

ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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1 DONNIE KENNETH LOWE, being duly sworn, testified as
2 follows:

3 EXAMINATION BY MS. LAMB:

4 Q. Good morning, Mr. Lowe.

5 A. Good morning.

6 Q. My name is Stephanie Lamb and I represent BMW and
7 their workers' compensation insurance provider in
8 this claim that you've brought against them.
9 Okay?

10 A. Okay.

11 Q. Have you ever given a deposition before?

12 A. No, ma'am.

13 Q. All right. The person to your left is a court
14 reporter. She's recording everything we say down,
15 and for that reason I need you to avoid the uh-
16 huhs and the huh-uhs that we all have a tendency
17 to use in conversation. Okay?

18 A. Okay.

19 Q. Also avoid the shaking and the bobbing of the
20 head. If I catch you doing that or your attorney
21 catches you doing that, one of us will probably
22 say, is that a yes or is that a no.

23 A. Okay.

24 Q. That's only to preserve the record. It's not
25 meant to offend you in any way. Okay?

1 A. Yes, ma'am.

2 Q. When you answer my question, I'm going to assume
3 that you understood the question and that you're
4 telling the truth. Is that fair enough?

5 A. That's fair.

6 Q. If you need me to clarify my questions I'll be
7 happy to do that. I want to make sure that you
8 understand them. So if you don't understand it,
9 let me know, and I'll rephrase, clarify, whatever
10 I need to do to make sure you understand it.
11 okay?

12 A. Okay.

13 Q. We're not here to trick you or confuse you. This
14 is an admitted back claim. We know that it
15 happened. We're just here to investigate it
16 further. okay?

17 A. Okay.

18 Q. All right. State your full name for the record,
19 please, sir.

20 A. Donnie Kenneth Lowe.

21 Q. And your social security number, please?

22 A. 247-35-0152.

23 MS. LAMB:

24 off the record.

25 (OFF THE RECORD DISCUSSION)

1 EXAMINATION RESUMED BY MS. LAMB:

2 Q. And what's your current address, please, sir?

3 A. 106 Pine Street in Greer, South Carolina.

4 Q. And how long have you lived at that location?

5 A. Sixteen years.

6 Q. And who do you live there with?

7 A. I live by myself now.

8 Q. Have you ever lived outside the state of South
9 Carolina?

10 A. No.

11 Q. What's your current phone number?

12 A. Home phone is 864-848-2131.

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

14 A. Yes.

15 Q. Has it ever been revoked for any reason?

16 A. No.

17 Q. And your date of birth, please, sir?

18 A. September 19, 1964.

19 Q. Have you ever been married?

20 A. Yes.

21 Q. Are you currently married?

22 A. Yes.

23 Q. How many times have you been married?

24 A. One.

25 Q. What's your spouse's name?

- 1 A. Tammy, I guess, Cagle Lowe. And we are separated.
- 2 Q. Okay. And how long have you been separated?
- 3 A. Ten years.
- 4 Q. Oh, wow. Okay.
- 5 A. Yeah.
- 6 Q. Have you been living separate and apart for ten
- 7 years?
- 8 A. Yes.
- 9 Q. Are you two dependent upon each other for support
- 10 for any reason?
- 11 A. I kept insurance on her because she had cancer and
- 12 I didn't want to divorce her with her having
- 13 cancer.
- 14 Q. But besides the insurance, is there any other
- 15 financial obligations between --
- 16 A. No.
- 17 Q. -- the two of you?
- 18 A. No.
- 19 Q. And you no longer have any kind of insurance on
- 20 her?
- 21 A. No.
- 22 Q. Does she still have cancer?
- 23 A. She's in remission.
- 24 Q. Does she work?
- 25 A. She works for Lemforder.

1 Q. For who?

2 A. Lemforder, L-E-M-F-O-R-D-E-R. I believe they make
3 axles for BMW.

4 Q. Has any court, judicial actions been filed,
5 anything like that? Any kind of judicial orders
6 in place regarding separation?

7 A. No.

8 Q. Do you have any children?

9 A. I have a daughter. She's 23.

10 Q. And what's her name?

11 A. Tabitha, T-A-B-I-T-H-A.

12 Q. What's her last name?

13 A. Lowe.

14 Q. And where does she live?

15 A. At 207 Old Woodruff Road in Greer.

16 Q. Okay. Is there anyone that -- is your daughter
17 dependent upon you for support?

18 A. I help her out, yes. She's got a child, so I help
19 her out.

20 Q. She's kind of what?

21 A. She has a child now, so I help her out.

22 Q. Oh, she has a -- so you have a grandchild?

23 A. I have a grandchild, yeah. Seven months old.

24 Q. Now, do you help your daughter out financially or

25 --

- 1 A. I try when I can.
- 2 Q. Is she married?
- 3 A. She has a boyfriend.
- 4 Q. I think you make the same look my dad makes about
5 my little sister. I won't read anything into
6 that.
- 7 A. But I have a grandchild, so.
- 8 Q. That's right. You just have that one grandchild?
- 9 A. Just the one.
- 10 Q. Okay. Have you ever been arrested or convicted of
11 any crimes?
- 12 A. No, ma'am.
- 13 Q. Do you have any hobbies or things you like to do
14 for fun?
- 15 A. I like to draw and I sing in the church choir.
- 16 Q. What church do you go to?
- 17 A. El Bethel Baptist.
- 18 Q. Do you do any other ministries at Bethel Baptist
19 besides the choir?
- 20 A. I used to help with the youth before I hurt my
21 back.
- 22 Q. So you don't work with the youth minister anymore?
- 23 A. No. I can't get in there with them like I once
24 did.
- 25 Q. Do you have any other hobbies or things you do for

- 1 fun?
- 2 A. That's it.
- 3 Q. Have you ever been treated for alcohol or drug
- 4 abuse?
- 5 A. No, ma'am.
- 6 Q. Ever been to a psychiatrist, psychologist or
- 7 counselor for any reason?
- 8 A. No, ma'am.
- 9 Q. Where did you grow up?
- 10 A. In Greer.
- 11 Q. Did you graduate high school?
- 12 A. Yes, ma'am. I graduated from Greer High School.
- 13 Q. And what year was that?
- 14 A. 1982.
- 15 Q. Did you go to any colleges or technical schools
- 16 after that?
- 17 A. No, ma'am.
- 18 Q. No? Any specialized licenses or certifications in
- 19 any areas like a barber's license, a forklift
- 20 license, a CDL license, anything like that?
- 21 A. No, ma'am.
- 22 Q. Do you have any specialized on the job training in
- 23 any areas?
- 24 A. No, ma'am. Not that I can think of.
- 25 Q. Any further education beyond high school that

- 1 you've not mentioned to me?
- 2 A. No, ma'am.
- 3 Q. Have you ever enlisted or been in the military?
- 4 A. No, ma'am.
- 5 Q. Ever attempted to get into the military?
- 6 A. No, ma'am.
- 7 Q. Do you have any trouble reading or writing?
- 8 A. No, ma'am.
- 9 Q. All right. Now we're going to start going through
10 some of your employment history.
- 11 A. Okay.
- 12 Q. We're going to go back to when you left high
13 school. I find that that's easiest if we do it
14 that way.
- 15 A. Okay.
- 16 Q. For most people. Sometimes not. What's your
17 first full-time job after high school?
- 18 A. I actually worked two jobs. I worked at Hardee's
19 in Greer and I worked at Fleet Oil Company, which
20 was a small gas station.
- 21 Q. And what did you do for Hardee's?
- 22 A. I cooked.
- 23 Q. And what did you do for Fleet Oil Company?
- 24 A. I ran a cash register. I sat inside a little
25 booth and took money.

- 1 Q. How long did you work at those two jobs?
- 2 A. Hardee's I actually worked at during high school
- 3 and -- let's see. Until '83, because I got
- 4 married in '83.
- 5 Q. And what about Fleet Oil Company?
- 6 A. I worked there until '83 as well.
- 7 Q. And where did you go work after that?
- 8 A. I went to -- it's closed now. It's WundaWeve
- 9 Manufacturing. It was Dan River Corporation.
- 10 Q. Dan River Corporation?
- 11 A. Yeah. It's WundaWeve Manufacturing. They make
- 12 carpet.
- 13 Q. I'm not familiar with this. Are you saying Wanda
- 14 weave?
- 15 A. Wunda, W-U-N-D-A. WundaWeve.
- 16 Q. Oh, Wunda, okay. And what did you do for them?
- 17 A. I ran a machine that wrapped the carpet when it
- 18 went out to be shipped.
- 19 Q. I'm sorry. Where was that located?
- 20 A. I'm not sure of the road. It was just off of
- 21 Pelham Road and 85.
- 22 Q. Okay. So Greenville?
- 23 A. Yes.
- 24 Q. And how long did you work there?
- 25 A. I'm not real sure. I think it was two or three

1 years.

2 Q. Were you ever a supervisor?

3 A. No.

4 Q. And why did you leave Wundaweve?

5 A. I got a job at Digital Equipment Corporation.

6 Q. So you just left for a better job or was there
7 some other reason?

8 A. More pay.

9 Q. And, I'm sorry, what was the name of that job?

10 A. Digital Equipment Corporation.

11 Q. And what did you do for them?

12 A. I worked in a clean room and ran a machine that
13 imaged printed wiring boards. And I also
14 inspected the printed wiring boards. They later
15 changed their name to Carolina Circuits.

16 Q. Are they still around or have they gone under?

17 A. They went bankrupt. They made printed wiring
18 boards for the larger computers and they don't
19 make those anymore.

20 Q. How long did you work at Digital Equipment?

21 A. I want to say about 11 years.

22 Q. Were you ever a supervisor there?

23 A. No.

24 Q. And where were they located?

25 A. Off of -- well, let's see. What's the name of

1 that road? You go down Laurens Road and turn
2 beside Gore's Corvette World and it's south of
3 that road.

4 Q. So Greenville?

5 A. Greenville, yes.

6 Q. Okay. Yeah, Greenville's good enough.

7 A. Okay.

8 Q. And why did you leave that company?

9 A. I got a job at BMW.

10 Q. Prior to coming to work for BMW had you ever filed
11 any workers' compensation claims?

12 A. I think the only thing I may have done, I think
13 I've cut my finger one time at Digital and I think
14 they took me to the hospital with that. Other
15 than that, no.

16 Q. Had you ever been injured on the job, other than
17 that time you just told me about, prior to coming
18 to work for BMW?

19 A. No, not that I can remember.

20 Q. Did you receive any kind of settlement from
21 cutting your finger?

22 A. No, ma'am.

23 Q. Just had medical treatment?

24 A. Yes, ma'am.

25 Q. And where was that at? what hospital?

- 1 A. St. Francis.
- 2 Q. Have you ever been terminated from any position of
3 employment?
- 4 A. No, ma'am.
- 5 Q. I have down that you were hired at BMW on November
6 1st, 1999. Does that sound right to you?
- 7 A. That's correct.
- 8 Q. And I believe the last day you worked was June
9 23rd, 2010.
- 10 A. That's correct.
- 11 Q. Is that about right?
- 12 A. That's correct.
- 13 Q. What was your supervisor's name when you left?
14 when you last worked there?
- 15 A. Johnny Sexton.
- 16 Q. And were you an hourly employee?
- 17 A. Yes.
- 18 Q. What was your pay per hour?
- 19 A. To be honest, I can't remember. It was around 25
20 an hour. I can't remember.
- 21 Q. Okay. Now, were you in any sort of supervisory
22 position there?
- 23 A. No, ma'am. I worked the line.
- 24 Q. Okay. Did you always work the line the entire
25 time --

1 A. Yes, ma'am.

2 Q. -- you worked at BMW? Prior to coming to BMW had
3 you ever been a supervisor at any location?

4 A. No, ma'am.

5 Q. Did you work first shift?

6 A. At BMW?

7 Q. At BMW?

8 A. Yes, ma'am.

9 Q. The date of this accident is October 2nd, 2007.

10 A. That's correct.

11 Q. Does that sound right to you?

12 A. That's correct.

13 Q. Okay. Tell me what your duties were at BMW that
14 led up to this accident?

15 A. Okay.

16 Q. Well, let me ask you this first so we have a
17 better understanding. Did they change after
18 October of 2007, or did they stay the same until
19 you left?

20 A. They changed.

21 Q. They did change?

22 A. Yes.

23 Q. All right. Go back to when -- October 2007 and
24 tell me what you were doing that led up to this
25 accident in terms of duties, stations and so

1 forth.

2 A. Okay. Well, when I actually had the accident I
3 was working on the job. They had me going to the
4 front of the X5 and bending down and working in
5 the floor pan tightening up bolts for the grounds,
6 and then -- that was with a AFCS tool. And then I
7 would go to the back of the trunk area and have to
8 lift over my head and work on the hatch and wire
9 the hatch in the taillight area. And I would
10 actually do -- that was on wire and harness. I
11 would actually do four different jobs a day and
12 rotate every two and a half hours usually, because
13 we were ten-hour shifts.

14 Q. Now did you get a lunch break every day?

15 A. Yes, ma'am.

16 Q. And was that 30 minutes?

17 A. It was -- our lunch break was 45 minutes, I
18 believe.

19 Q. Forty-five minute lunch break?

20 A. Uh-huh.

21 Q. And did you get other breaks throughout the day or
22 was it just a lunch break?

23 A. We had two ten-minute breaks.

24 Q. Okay. Now, after your -- after the October 2nd,
25 2007 incident you said your duties changed; is

1 that correct?

2 A. Yes. They put me on light duty for a while. And
3 that was -- if I remember correct, it was off line
4 two hours and then on line two hours. After I got
5 hurt on that job they actually changed that job
6 around though.

7 Q. On your light-duty job?

8 A. Well, after I got hurt working the back of the car
9 they actually did change that job. But the light
10 duty was basically just working in the back of the
11 car, that I can remember.

12 Q. So you were off line for two hours, on line for
13 two hours?

14 A. Two hours, yes.

15 Q. And I know what that means. And Monty, your
16 attorney over here, probably knows what that
17 means, but explain for the commissioner that might
18 read this what that means. Off line and on line.

19 A. Basically for two -- two hours I would either --
20 well, I wasn't supposed to be doing anything.
21 Most of the time I ended up sweeping for two
22 hours, and then I would go back to work for two
23 hours.

24 Q. So when you were off line you were doing something
25 such as sweeping?

- 1 A. Correct.
- 2 Q. And when you were on line what did they have you
3 doing in light duty?
- 4 A. Basically stand-up jobs so that I could work in
5 the back of the car. And then after that, they
6 put me to just installing radio. The radios and
7 brackets at a stand-up job on the line. And
8 that's all I did all day.
- 9 Q. And then that would be all day? You wouldn't --
- 10 A. Huh-uh.
- 11 Q. Okay. So you weren't rotating then, you were just
12 doing the radios?
- 13 A. Just putting radios in the brackets all day.
- 14 Q. Did you have the same supervisor while you were on
15 light duty? Was that Johnny Sexton or did that
16 change?
- 17 A. No. That was Patrick Conner when I originally got
18 hurt. And that was in the wiring harness area.
- 19 Q. Did your duties ever change after putting the
20 radios in the brackets?
- 21 A. I stayed on light duty until -- they told me all I
22 could stay on light duty was 90 days, and then
23 they put me out. Then they put me permanently
24 restricted at that point and found me a job 13
25 months later on the engine line. And that was

1 when I worked for Johnny Sexton.

2 Q. So the job placement program put you on the engine
3 line?

4 A. Yes, ma'am.

5 Q. After you were out for 13 months?

6 A. Yes, ma'am.

7 Q. Okay. And what were you doing on the engine line?

8 A. Started out I was standing up -- I can't remember
9 what they call it. But doing -- I can't even
10 remember what we called it. It was basically
11 stand-up jobs. It was four jobs where I was
12 standing up to start with. One was putting
13 brackets on the front of the engine and then
14 another one was tightening up bolts on the engine
15 standing up. And then I did the torque converter
16 and then I would go to the other side of the
17 engine and tighten bolts.

18 Q. So all this was from a standing position?

19 A. Yeah. And then after -- that was in -- I went
20 back in September, I believe, and Christmas of
21 that year they redid the engine line and then they
22 put me on three different jobs. Three of which
23 were running a hoist, and two --

24 Q. I'm sorry. I couldn't hear you. I'm sorry.

25 A. I'm sorry. After Christmas of that year they

1 changed the line around and they put me on four
2 different jobs. Three of them were running a
3 hoist. Two of them I never really did. I trained
4 on the -- one of them for about three days. But
5 the main two that I did was stand up and tighten
6 the bolts on the engine, basically the same as I
7 did before, and the other one was what they call
8 transmission pick, or I think that's -- and I
9 would go and pick up the -- it wasn't
10 transmission. It was the -- I'm sorry. I can't
11 remember the terms that they used. It was -- I
12 would go pick up the small part that went on the
13 end of the transmission with a air hoist and would
14 have to bend down and hook it up and push it back
15 to the line and put it on the engine and tighten
16 it up and then I would have to go back. And
17 basically I would do that two and a half hours and
18 then go stand up for two and a half hours, and
19 then I would come back and do that again for two
20 and a half hours.

21 Q. So that was after Christmas?

22 A. That was after Christmas.

23 Q. And the stations changed on the engine line
24 virtually?

25 A. Virtually. They --

1 Q. Reconfigured what the stations were?

2 A. Reconfigured, yes. That's what I was trying to
3 say. Reconfigured the whole engine line.

4 Q. Okay. And then how long did you stay doing that
5 after Christmas?

6 A. I think it was June when I finally -- they finally
7 put me out.

8 Q. So you did that up until the time that you left in
9 June --

10 A. Yes, ma'am.

11 Q. -- of 2010?

12 A. Yes, ma'am.

13 Q. Okay. And when did you say you first started on
14 the engine line?

15 A. In September of '09. I believe that's correct.

16 Q. Okay. And you were still under Johnny's
17 supervision at that time?

18 A. Yes, ma'am.

19 Q. Did it become an issue with you working on the
20 light-duty work on the engine line?

21 A. Yeah. It hurt very badly, yes.

22 Q. Okay. So you started having more problems?

23 A. Yes, ma'am. And I would -- I had told Johnny
24 probably from the second week I was on that job
25 that it was hurting me.

1 Q. After it changed?

2 A. Yeah, after it changed, yeah.

3 Q. Okay.

4 A. And basically all I would get out of him was IHS
5 says you can do the job.

6 Q. And did you report back to IHS and tell them you
7 were having problems?

8 A. Eventually, yes.

9 Q. And that's why they took you out?

10 A. Yes, ma'am.

11 Q. Have you had any prior workers' compensation
12 claims against BMW?

13 A. No, ma'am.

14 Q. Have you been injured on the job at BMW prior to
15 this occasion?

16 A. No, ma'am.

17 Q. And this injury occurred back in October of 2007
18 and we're going to talk about how it happened in a
19 few minutes. But what body parts did you injure
20 on that day?

21 A. It was my back -- lower back was hurting, and the
22 pain was shooting down my right leg.

23 Q. And when you say lower back, that could mean
24 different things for different people. So can you
25 describe for the record where that pain was

1 located?

2 A. Pain --

3 Q. Let's use your belt, your waistline as a --

4 A. Basically going across at the waistline going --
5 like a burning pain going across right in there.

6 Q. Had you ever had any problems with your back prior
7 to this occasion?

8 A. No, ma'am.

9 Q. Had you ever been treated for any medical problems
10 dealing with your back prior to October 2nd, 2007?

11 A. No, ma'am. I'm sorry. Is it okay if I stand up?

12 Q. Yeah. You want to take a break or you want to --

13 A. If I could just stand up for a few minutes.

14 Q. Okay. Did you ever have any problems with your
15 right leg prior to this occasion?

16 A. No, ma'am.

17 Q. Ever seek any medical treatment for your right leg
18 prior to this occasion?

19 A. No, ma'am.

20 Q. Okay. Have you ever been involved in a motor
21 vehicle accident?

22 A. Yes.

23 Q. Okay. Have you ever sought medical treatment for
24 any of those accidents?

25 A. One time, yes. I was -- a car hit me coming out

1 of a side road and they took me because the
2 steering wheel actually came down on my legs and
3 it bruised them.

4 Q. What kind of injuries did you sustain? Was it
5 those bruises or something else?

6 A. Just bruises. That's all they could see was just
7 bruises. I had no complications from it.

8 Q. And what hospital did you go to?

9 A. Allen Bennett Memorial, which is now Greer
10 Memorial, I think.

11 Q. Have you had any other motor vehicle accidents?

12 A. I was hit once in Myrtle Beach from behind, but I
13 didn't go to the hospital.

14 Q. And when were you hit in Myrtle Beach?

15 A. '84, '85, around in there.

16 Q. Did you ever go to any doctor for that motor
17 vehicle accident?

18 A. No, ma'am.

19 Q. Outside of Allen Bennett Memorial Hospital did you
20 go to any other medical providers for the other
21 motor vehicle accident you just told me about?

22 A. No, ma'am.

23 Q. And what year was that accident?

24 A. I'm not sure right off. It was when I was working
25 with Digital Equipment.

1 Q. Have you ever been to see a chiropractor in your
2 lifetime?

3 A. Yes, ma'am.

4 Q. What chiropractor have you seen?

5 A. Dr. Chris Ehlich.

6 Q. And where is Dr. Ehlich located?

7 A. Poinsett Street in Greer.

8 Q. And when did you start seeing him?

9 A. I have been seeing him for two and a half years.

10 Q. Had you ever seen a chiropractor prior to this
11 workplace accident?

12 A. No, ma'am.

13 Q. Do you continue to see Dr. Ehlich on a regular
14 basis?

15 A. Yes, ma'am.

16 Q. And what is he doing for you?

17 A. He's actually helping me control the pain. It
18 does help.

19 Q. Have you seen any other chiropractors in your
20 lifetime besides Dr. Ehlich?

21 A. Yeah. In fact, right after -- that had to be like
22 '95, '96 after we bought the house. I dove into
23 the pool and sprained my neck and saw Dr. -- I'm
24 not saying -- sure if I -- Mruz in Taylors. On
25 Wade Hampton in Taylors. And he saw me for like

- 1 four weeks.
- 2 Q. And that was for your neck?
- 3 A. Yes, ma'am.
- 4 Q. Have you ever sought any other medical treatment
- 5 for your neck?
- 6 A. No, ma'am.
- 7 Q. Any other chiropractors in your lifetime?
- 8 A. That's it.
- 9 Q. Have you ever had any slips, trips or falls where
- 10 you had to seek medical treatment in your
- 11 lifetime?
- 12 A. While I was out the first time with BMW, I slipped
- 13 on my sidewalk and I broke my wrist.
- 14 Q. Was there ice or water or something on the ground?
- 15 A. Ice.
- 16 Q. Ice?
- 17 A. Yes. And the dog.
- 18 Q. And what wrist was that?
- 19 A. My left one.
- 20 Q. And where did you go for medical treatment?
- 21 A. Greer Memorial.
- 22 Q. And who else did you see for that injury?
- 23 A. That was Dr. Lonergan with Steadman Hawkins.
- 24 Q. Did you have surgery?
- 25 A. Yes, ma'am. They put a steel plate in it.

1 Q. Any other slips, trips or falls where you've had
2 to seek medical treatment?

3 A. None that I can remember.

4 Q. Okay. Any other kind of accidents or injuries
5 where you've had to seek medical treatment over
6 your lifetime that we haven't talked about yet
7 today?

8 A. None that I can think of right now.

9 Q. Any kind of sports injuries in your lifetime?

10 A. I never played sports.

11 Q. Okay. You mentioned the surgery on your left
12 wrist. Have you had any other surgeries in your
13 lifetime?

14 A. I've had my tonsils removed and my appendix
15 removed.

16 Q. And when were those surgeries?

17 A. My tonsils were in my tenth grade year of high
18 school and my appendix were when I was 29, because
19 it was on my birthday.

20 Q. And what hospital was that?

21 A. The tonsils were St. Francis. The appendix were
22 at Allen Bennett.

23 Q. Do you have any chronic medical conditions like
24 high blood pressure, diabetes, high cholesterol,
25 anything like that?

- 1 A. No. None that -- I am -- cholesterol. High
2 cholesterol. I am on simvastatin for high
3 cholesterol. My doctor keeps a watch on me
4 because my mother and grandparents were diabetic
5 and he says mine stays kind of close.
- 6 Q. Okay. So you have high cholesterol?
- 7 A. High cholesterol, yes.
- 8 Q. And simvastatin, is that what you said?
- 9 A. Simvastatin. It's the generic for Zocor.
- 10 Q. Okay. Do you take any other medications besides
11 that Zocor generic?
- 12 A. I take omeprazole which is generic for Prilosec
13 because of high reflux, and I take allergy
14 mediation. It's a Poly Hist Forte.
- 15 Q. And who prescribes all those medications for you?
- 16 A. Dr. Hunter Leigh at Mountain View Family Practice.
- 17 Q. How long have you been seeing Dr. Leigh?
- 18 A. Years. That's been my doctor up there since at
19 least I know I've been married. For at least 16
20 from the -- at Mountain View.
- 21 Q. And who did --
- 22 A. And it might be --
- 23 Q. Who did you see prior to Dr. Leigh?
- 24 A. Usually the ones at Mountain View. There's Dr.
25 Lawrence, Dr. -- I mean, just whoever would see

1 me. But Dr. Leigh tends to be my family doctor
2 now.

3 Q. Do you drink alcohol?

4 A. No, ma'am.

5 Q. Do you smoke?

6 A. No, ma'am.

7 Q. Have you ever smoked?

8 A. No, ma'am.

9 Q. Explain to me what happened on October 2nd, 2007
10 that got us here today.

11 A. Okay. Let's see. I was working on a job and I
12 was having to bend down into the front floor pan
13 of the X5 and tighten grounds -- or two grounds
14 that we had to tighten with an electric tool. So
15 I would have to bend down in there and tighten
16 those and take the bolt off and put the ground on
17 it and re-tighten it, and take another bolt off
18 and put the ground on and re-tighten that. Then I
19 would have to go to the back of the car and raise
20 my hands over my head and wire up the taillight on
21 the back of the hatch.

22 Q. And what were you doing when your accident
23 happened? Which one of those responsibilities
24 were you doing when you started feeling the pain?

25 A. Bending forward.

1 Q. On the front end of the car?

2 A. Yes.

3 Q. And what were you bending forward to do?

4 A. Tighten the grounds.

5 Q. Do you have to use any kind of tools for that?

6 A. An electric -- it's called an AFCS tool.

7 Q. Were you working by yourself or was there anybody
8 around when it happened?

9 A. Actually I was being trained on the job. There
10 was a lady there that was training me. Her name
11 was Brenda, but I don't remember her last name.

12 Q. Did you feel immediate pain?

13 A. Yes. And I tended to keep on working a little
14 while, yes.

15 Q. You say you tended to. What do you mean by that?

16 A. Yeah. I just -- I kept -- I kind of thought it
17 might just be, you know, the new job or something,
18 but it kept getting worse and worse.

19 Q. When you felt it -- was that the first time you
20 had ever felt any kind of pain like that or had it
21 been going on for some time?

22 A. That's the first time I ever felt anything like
23 that.

24 Q. But you just kept working?

25 A. (Nonverbal response.) And then I just had to

- 1 stop.
- 2 Q. Is that a yes?
- 3 A. Yes. Yes. And then I just had to stop.
- 4 Q. Okay. And where was that pain located at?
- 5 A. In my back.
- 6 Q. In what part of your back?
- 7 A. The lower back.
- 8 Q. And how long did you continue to work before
- 9 telling somebody?
- 10 A. About 30 minutes.
- 11 Q. Okay. And who was it that you told?
- 12 A. I told -- well, I told Brenda who I was working
- 13 with. Then I told -- her name -- it was our team
- 14 leader. Her name was Trinity. And I also told
- 15 Patrick.
- 16 Q. And what happened when you told Trinity and
- 17 Patrick?
- 18 A. They sent me to IHS.
- 19 Q. Did Brenda actually see the accident happen?
- 20 A. I don't think she did. I just -- you know, I told
- 21 her that it was hurting.
- 22 Q. Okay. Did you tell the folks at IHS all the
- 23 problems you were having?
- 24 A. Yes, ma'am.
- 25 Q. And now I understand that you've seen a variety of

1 doctors.

2 A. Yes, ma'am.

3 Q. So I'm going to go -- try to go through them. I
4 think I have a list here, just to make sure that I
5 have them all. You saw IHS. You also saw Dr.
6 Robert Schwartz; is that correct?

7 A. That's correct.

8 Q. Dr. Schwartz did some pain injections, some
9 steroidal injections on your back?

10 A. That's correct.

11 Q. Did those help?

12 A. Temporarily. Not -- I mean, at the most -- two,
13 three weeks at the most.

14 Q. Okay. And did you tell Dr. Schwartz all the
15 problems that you were having?

16 A. Yes, ma'am.

17 Q. Okay. And then you were referred to Dr. Glen
18 Scott, I understand?

19 A. That's correct.

20 Q. Okay. And did you tell Dr. Scott all the problems
21 you were having?

22 A. That's correct.

23 Q. And then you went to Dr. Mitchell?

24 A. Yes. That sounds right, yeah.

25 Q. Did you tell him all the problems you were having?

1 A. Yes, ma'am.

2 Q. And then I understand you went to Dr. Rollins.

3 A. Yes. Dr. Mitchell referred me to Dr. Rollins
4 because he was going out of the country.

5 Q. Okay. And Dr. Rollins evaluated your back; is
6 that correct?

7 A. That's correct.

8 Q. Okay. Were you satisfied with his evaluation?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes, ma'am. Yes.

12 Q. And you told Dr. Rollins all the problems you were
13 having?

14 A. Yes, ma'am.

15 Q. And then I understand you were referred to Dr.
16 Behr?

17 A. Dr. Behr is for pain management.

18 Q. Are you still seeing Dr. Behr at this time?

19 A. Yes, ma'am. I have an appointment the 13th to see
20 him again.

21 Q. And have you told Dr. Behr all the problems you've
22 been having?

23 A. Yes, ma'am.

24 Q. Are you satisfied with Dr. Behr's treatment?

25 A. The injections that he has been given me are

1 lasting about three months each, so it's more --

2 Q. And what kind of relief do you get from those
3 injections?

4 A. It -- I'm able to function through the day pretty
5 much. It's not a constant pain that I'm
6 constantly thinking about. The pain is still
7 there. I can still feel it. But it's not a pain
8 that just -- how can I say this? It's not a pain
9 that you would -- it's just like a low grade pain.
10 It's not like the high intensity pain that I was
11 having. And then it slowed -- the pain slowly
12 comes back, yes. Like now I know it's time for
13 another shot.

14 Q. Okay. After you get the -- after Dr. Behr gives
15 you an injection and, let's say, a day later or a
16 week later, is that -- is the pain that you feel
17 on a daily basis, is that -- does it get in the
18 way of the way you live your life on a daily basis
19 or is it manageable?

20 A. After the shot it's manageable. It's manageable.

21 Q. Does it get in the way -- does the pain that you
22 feel at that point, does it get in the way of what
23 you do on a daily basis, or are you able to do
24 okay with it?

25 A. I can do okay with it. I still can't do some of

- 1 the things that I would like to do.
- 2 Q. Sure. I see today you -- you have a brace around
- 3 your low back; is that right?
- 4 A. Yes, ma'am. Dr. Scott --
- 5 Q. Do you have a TENS unit as well?
- 6 A. Yes, ma'am.
- 7 Q. Who prescribed the TENS unit for you?
- 8 A. Dr. Schwartz gives me the TENS unit.
- 9 Q. Okay. And how often do you have to use that TENS
- 10 unit?
- 11 A. I use it in the evenings quite a bit, because
- 12 after I've been up like through the day, in the
- 13 evenings it seems to hurt more.
- 14 Q. And how often do you use the brace?
- 15 A. Pretty much five, six times a week.
- 16 Q. And how many hours per day do you have to use it?
- 17 A. Any time I'm up around doing anything. If I'm
- 18 sitting down at home in a recliner or something I
- 19 can usually take it off.
- 20 Q. Okay.
- 21 A. But if I'm up around, especially outside doing
- 22 something, I need to put it on.
- 23 Q. Okay. What kinds of stuff are you able to do
- 24 outside?
- 25 A. Not a whole lot. I've tried washing my truck.

1 That doesn't work. I have to take it -- I tried
2 with the long brush and that just didn't get it,
3 so I had to stop that. I can't work in my yard
4 anymore. I have to get my nephew to cut my grass
5 for me now.

6 Q. So you don't do anything in your yards?

7 A. (Nonverbal response.) Just --

8 Q. Is that a no?

9 A. No, ma'am. I don't. Just -- I get pots and sit
10 in my flowerbeds now because I can't get down
11 there to work in them anymore.

12 Q. And how -- do you live in a house or an apartment
13 or mobile home?

14 A. I live in a house.

15 Q. A house?

16 A. Yes, ma'am.

17 Q. And is that a one-story house or a two story?

18 A. It's a one story.

19 Q. Does it have any steps there?

20 A. In the front it does. In the back there are no
21 steps.

22 Q. How much land do you live on?

23 A. It's about a half acre.

24 Q. Do you have any animals? I know you mentioned a
25 dog earlier.

1 A. I have two dogs.

2 Q. What kind of dogs do you have?

3 A. I have a lab and I have a Chihuahua.

4 Q. Do they stay in the house or outside?

5 A. The Chihuahua stays in the house. The lab stays
6 outside. Actually, it's my daughter's Chihuahua,
7 but.

8 Q. Do you care for the dogs?

9 A. I take care of them, yes.

10 Q. Do you have any jet skis or ATVs of any sort?

11 A. I have a motorcycle that I can't ride anymore that
12 sits in the yard now.

13 Q. What kind of motorcycle do you have?

14 A. 1999 Harley-Davidson Sportster.

15 Q. I've learned a little bit about a Harley over the
16 past couple of years of my life, so I can
17 appreciate that a little bit. When was the last
18 time you were able to ride your motorcycle?

19 A. It's been a couple of years. I didn't even pay
20 the taxes on it this year because why bother to
21 get a tag when you can't ride it. But it still
22 sits there and it still looks good.

23 Q. Have you ridden it since your accident?

24 A. I've tried. I tried to go around the block and it
25 hurts to sit on it.

- 1 Q. Is it paid off?
- 2 A. Yes, it's paid for.
- 3 Q. Do you have a girlfriend?
- 4 A. No, ma'am.
- 5 Q. Did you say Dr. Behr gave you the back brace?
- 6 A. Dr. Scott gave me the back brace.
- 7 Q. I'm sorry. Dr. Scott. Now, has surgery ever been
- 8 referred -- have you ever been referred for
- 9 surgery?
- 10 A. Dr. Rollins said that -- he talked with me about
- 11 surgery, and he told me all the things that could
- 12 happen, and I just didn't think that the odds he
- 13 was giving me were very good.
- 14 Q. Did you opt not to have the surgery?
- 15 A. Yes, ma'am. He told me if -- as long as I could
- 16 bear the pain he would recommend not having any
- 17 surgery.
- 18 Q. Is surgery something you're interested in at this
- 19 point?
- 20 A. If I had to have it, I would consider it. I would
- 21 really rather not have it if I don't have to have
- 22 the surgery. As long as I can kind of deal with
- 23 it.
- 24 Q. With the pain?
- 25 A. Yes, ma'am.

1 Q. Are you dealing with the pain okay?

2 A. Fairly okay. Yes, ma'am.

3 Q. Do you have to take any medications?

4 A. I take tramadol, which is a generic for Ultracet.

5 Q. I thought you said tramadol. You didn't say
6 tramadol?

7 A. I said tramadol, yes.

8 Q. Tramadol?

9 A. Tramadol. And it's 50 milligram and he says one
10 to two of those every four hours as needed for
11 pain. I don't take them constantly, because I
12 don't like having to take the medication
13 constantly. I didn't take it before I came over
14 here because I don't like to drive and take it.

15 Q. That's a good idea.

16 A. Yeah.

17 Q. The tramadol, when is the last time -- how often
18 do you -- how often do you take it?

19 A. I pretty much have to take it every evening at
20 least usually -- usually twice a day. Not the
21 every four hours that he recommends. He also
22 prescribed me Celebrex which I cannot take. It
23 just messes with my stomach.

24 Q. And when you say he, you're talking about Dr.
25 Behr?

1 A. Dr. Behr. Yes, ma'am. And I also informed him of
2 that as well.

3 Q. Do you take anything else besides the tramadol
4 then?

5 A. No, ma'am.

6 Q. And what pharmacy do you use?

7 A. The BMW pharmacy.

8 Q. You haven't used any other pharmacies for this
9 injury?

10 A. No, ma'am.

11 Q. When's your next appointment? I think you've told
12 me this already.

13 A. It is the 13th at 1:45.

14 Q. Do you have any appointments with any other
15 medical providers?

16 A. I see my chiropractor every Wednesday, and I do --
17 let's see. At this time I'm not sure.

18 Q. Are you seeing anybody -- any other doctors
19 ongoing for this injury other than Dr. Behr and
20 the chiropractor?

21 A. No, ma'am.

22 Q. And who's paying for the chiropractor visits?

23 A. I'm paying for it myself.

24 Q. Has any doctor recommended the chiropractor visits
25 or have you just found that it's helpful?

1 A. I told Dr. Katemba -- I asked her about it at BMW,
2 and she said that she wasn't against it if it
3 helped me and so I just -- I've tried it and it
4 seems to help.

5 Q. And you're going there every week?

6 A. Yes, ma'am.

7 Q. Has your lawyer sent you to any doctors?

8 A. Not yet.

9 Q. Do you have any appointments scheduled with
10 anybody?

11 A. I'm not sure at this time. I believe that they
12 are going to. I'm not sure.

13 MR. DESAI:

14 Can we go off the record for a second?

15 MS. LAMB:

16 Yeah, sure.

17 (OFF THE RECORD DISCUSSION)

18 EXAMINATION RESUMED BY MS. LAMB:

19 Q. Did you drive yourself here today?

20 A. Yes, ma'am.

21 Q. Do you drive yourself everywhere you need to go?

22 A. Yes, ma'am. Pretty much. Unless it's anywhere of
23 a long distance. My leg tends to go to sleep if I
24 have to drive more than, say, an hour.

25 Q. More than what?

- 1 A. More than an hour my leg just tends to go to
2 sleep, so I usually get somebody to take me if
3 it's anywhere more than an hour.
- 4 Q. And that's your right leg?
- 5 A. Yes, ma'am.
- 6 Q. Okay. Have you sat down with any kind of
7 vocational rehabilitation folks that have talked
8 to you about what kind of jobs you can do in the
9 future?
- 10 A. No, ma'am.
- 11 Q. Have you worked anywhere since June 2010?
- 12 A. No, ma'am.
- 13 Q. Have you applied for unemployment benefits?
- 14 A. No, ma'am.
- 15 Q. Have you looked for any jobs anywhere?
- 16 A. No, ma'am.
- 17 Q. Why not?
- 18 A. I was hoping BMW would find me something.
- 19 Q. So you were hoping to be placed back at BMW again?
- 20 A. Yes, ma'am.
- 21 Q. And have they been able to do that?
- 22 A. No, ma'am. They said they weren't able to find me
23 a job with my restrictions.
- 24 Q. And do you know what those restrictions are?
- 25 A. No more than -- I've actually got a copy of them.

1 Q. That's okay. I just didn't know. I'm sure I do,
2 too. I just didn't know if you know off the top
3 of your head.

4 A. Not off the top of my head, I don't.

5 Q. Is there any job at BMW that you think you could
6 do?

7 A. If it is a standing job I might could do it. I
8 just have to be able to sit down every so often
9 because my back tends to hurt just standing there.
10 And then I have to stand up every so often because
11 my back hurts just sitting there.

12 Q. So as long as you can alternate standing and
13 sitting?

14 A. Yeah. If I had to get on the -- kneel down. That
15 was the problem with the hoist. I was having to
16 actually get down on my knees because I couldn't
17 bend over to pick the -- to hook the stuff up that
18 they needed me to hook up.

19 Q. So you can't do anything that requires bending?

20 A. No.

21 Q. Or stooping?

22 A. No.

23 Q. Any particular jobs at BMW that you know about
24 that you can do?

25 A. Not off the top of my head. No, ma'am.

- 1 Q. Do you have any sources of income at this point
2 other than your workers' compensation benefits?
- 3 A. The long-term disability kicked in and they are
4 sending me \$100 a month. Other than that, no.
- 5 Q. They're only paying the gap between your workers'
6 comp and your --
- 7 A. I guess. I guess that's what it is.
- 8 Q. -- entitlement. Okay. And are you receiving
9 weekly checks from BMW?
- 10 A. Yes. From workers' comp. Yes, ma'am.
- 11 Q. Is there anything else you do to make money?
- 12 A. No, ma'am.
- 13 Q. To the best of your knowledge, have all of your
14 medical bills been paid?
- 15 A. To the best of my knowledge, yes.
- 16 Q. Do you have a mortgage on your home?
- 17 A. Yes, ma'am.
- 18 Q. How many years are left on that, or how much is
19 the balance?
- 20 A. My balance is 81,000, thereabouts.
- 21 Q. And what kind of vehicle do you drive?
- 22 A. I drive a 2004 Tundra.
- 23 Q. Is that a stick shift or an automatic?
- 24 A. Automatic.
- 25 Q. Is that car paid off?

1 A. Yes, ma'am.

2 Q. Now that you're out of work, how are you spending
3 your time on a daily basis?

4 A. I watch TV a lot. I do kind of walk around the
5 yard just to get in a little -- try to get in a
6 little exercise. I don't like just sitting there
7 all the time either. And I keep my granddaughter
8 in the afternoons some when my daughter works.

9 Q. And where does your daughter work at?

10 A. She works for the Hare and the Hound Pub in
11 Landrum.

12 Q. Okay. And you said your granddaughter was seven
13 months; is that right?

14 A. Yes, ma'am. Seven months today.

15 Q. Do you keep her every day?

16 A. No, ma'am. Usually a couple of times a week.

17 Q. Do you do anything else during your days?

18 A. Ride to my mother's. Not a whole lot.

19 Q. Is your mother disabled in any way?

20 A. She's retired, yes.

21 Q. Is she disabled?

22 A. She actually has asthma, so.

23 Q. Can she get around on her own okay or do you have
24 to help her?

25 A. A lot of times I'll have to take her places that

1 she needs to go.

2 Q. Is she mobile?

3 A. She's mobile. She also has degenerative eye
4 disorder, so she -- she won't drive in Greenville
5 or anywhere like that because she can't see.
6 She's afraid she can't see good enough to drive.

7 Q. What time do you wake up in the mornings?

8 A. Would that be through the night or just in the
9 mornings?

10 Q. In the morning.

11 A. I'm usually up about 7:00.

12 Q. And what time do you go to bed at night?

13 A. Usually about 11:00.

14 Q. And how often do you wake up at night?

15 A. I usually see the clock every hour, every couple
16 of hours.

17 Q. And why is that?

18 A. I just don't sleep that good. My back will get to
19 hurting and I'll have to re-adjust. Sometimes
20 I'll have to get up and walk around.

21 Q. You live by yourself --

22 A. That's right.

23 Q. -- is that correct?

24 A. Yes.

25 Q. Do you cook?

- 1 A. Yes, ma'am.
- 2 Q. Do you clean?
- 3 A. Well, be it what may, yeah, I try.
- 4 Q. Do you vacuum?
- 5 A. Yes, I can vacuum.
- 6 Q. Do you sweep?
- 7 A. I can sweep, yes.
- 8 Q. Do you do your own dishes?
- 9 A. I have a dishwasher.
- 10 Q. You do the loading and unloading of the
- 11 dishwasher?
- 12 A. Yes.
- 13 Q. Do you do your own laundry?
- 14 A. Yes, I can wash clothes.
- 15 Q. And do you maintain your own yards?
- 16 A. No. My nephew cuts my grass now.
- 17 Q. And you mentioned something about gardening. Do
- 18 you do some of the gardening yourself?
- 19 A. In the summertime when I can actually sit down in
- 20 the yard I might get out there and plant -- try
- 21 and plant a few things, but I have to actually sit
- 22 down on the ground. I can't stoop over to do it.
- 23 Most of the time I just get pots and sit them in
- 24 the flowerbed, so -- or have somebody sit them
- 25 over in there for me.

1 Q. So you get potted plants or potted flowers and sit
2 them in the flowerbeds?

3 A. Yes, ma'am.

4 Q. What kind of flowers do you have?

5 A. Right now there are pansies in there.

6 Q. Do you do any exercising?

7 A. I have a treadmill that I try and walk on 30
8 minutes a day. That's what they had me doing in
9 the therapy at BMW and I got a treadmill and try
10 to walk on it now.

11 Q. Do you do any other exercises besides the
12 treadmill?

13 A. I do some leg lifts that they had me -- they gave
14 me like a list of stuff to do, like leg lifts.
15 And then there's one that I got to the side, just
16 basically laying on a flat bed and --

17 Q. So it's your home therapy program?

18 A. Yeah.

19 Q. Your physical therapy program at home?

20 A. Yeah.

21 Q. Okay. Have you taken any vacations or trips since
22 October 2007?

23 A. No.

24 Q. Do you have any trips or vacations planned?

25 A. Well, I take that back. In '07 I did -- no, '08.

- 1 I went with our youth group to Tennessee on a
2 mission trip.
- 3 Q. And what kind of mission trip was it?
- 4 A. We did a vacation Bible school.
- 5 Q. And who were you doing the Bible school for?
- 6 A. For underprivileged kids.
- 7 Q. Did you all ride there on a bus --
- 8 A. Yes.
- 9 Q. -- or church van?
- 10 A. It was a church bus. A very uncomfortable church
11 bus.
- 12 Q. And where did you all stay when you got there?
- 13 A. We stayed in a college dorm. And I can't remember
14 the college right now.
- 15 Q. Have you taken any other vacations or trips since
16 you were injured?
- 17 A. None that I can remember.
- 18 Q. Do you have any trips planned?
- 19 A. No, ma'am.
- 20 Q. What did you do for Christmas and Thanksgiving?
- 21 A. I went to my mom's.
- 22 Q. And what about New Year's?
- 23 A. I stayed home.
- 24 Q. Have you ever been sued for any reason?
- 25 A. No, ma'am.

1 Q. Have you ever sued anyone for any reason?

2 A. No, ma'am.

3 Q. Have you ever applied for social security
4 disability in your lifetime?

5 A. No, ma'am.

6 Q. When did your long-term disability start?

7 A. In -- let's see. In June.

8 Q. 2011?

9 A. Yes.

10 Q. And that's your policy through BMW?

11 A. Yes, ma'am. They've sent me \$600 so far. So six
12 months back. Would that be right? Through
13 December --

14 Q. Yeah. Yes, sir. So you've never applied for
15 social security, correct?

16 A. No, ma'am.

17 Q. And just for the record, have you ever been on
18 Medicare in your lifetime?

19 A. No, ma'am.

20 Q. All right. As we sit here today, tell me all the
21 problems that you are currently having that you
22 relate back to your October 2007 accident?

23 A. Pain in my lower back, going across, burning pain
24 that most of the time there's a burning pain that
25 goes down my leg. Sometimes all the way down into

- 1 my toes and it tingles.
- 2 Q. And what leg is that?
- 3 A. My right leg. And sometimes that leg goes to
- 4 sleep if I sit too long, or sometimes if I'm
- 5 walking it starts -- it will almost give way.
- 6 Q. The pain in your low back, does that come and go
- 7 or is that there all the time?
- 8 A. That's pretty much there.
- 9 Q. But the intensity changes?
- 10 A. The intensity changes, yes.
- 11 Q. On a scale of zero to ten, what would you rate it
- 12 on a normal day?
- 13 A. About a three.
- 14 Q. And what about the pain in your right leg? On a
- 15 scale of zero to ten, how would you rate that?
- 16 A. About a -- on a normal day?
- 17 Q. Yes, sir.
- 18 A. About a three. That's what I would call bearable.
- 19 Q. Okay. So three is bearable?
- 20 A. Yes.
- 21 Q. Does the pain in your right leg come and go or is
- 22 it constant?
- 23 A. It comes and goes.
- 24 Q. Is there anything that you've noticed that makes
- 25 it come and go?

1 A. Not really.

2 Q. Okay. Is there anything that you noted -- any
3 kind of positions that you notice with your back
4 that helps it or hurts it?

5 A. When I'm sleeping I know if I take a pillow and
6 put -- if I'm laying on my back and take a pillow
7 and it under my legs it tends to, I guess, relieve
8 the pressure on my leg.

9 Q. Okay. Relieve the pressure on your back or your
10 leg?

11 A. Of the back or leg. The leg doesn't hurt as bad
12 that way.

13 MS. LAMB:

14 okay. I don't have any further questions. Answer
15 any questions your attorney may have for you.

16 EXAMINATION BY MR. DESAI:

17 Q. Donnie, this injury occurred in October of 2007;
18 is that right?

19 A. That's correct.

20 Q. And soon thereafter you were sent to see Dr.
21 Schwartz. Do you remember that at all?

22 A. I remember that.

23 Q. Do you remember Dr. Schwartz filling out a work
24 restriction form, or what I would call a 14B? And
25 let me let you look at that. Have you seen that

1 document?

2 A. I've never seen that, that I can remember.

3 Q. Has anybody told you that Dr. Schwartz -- and let
4 me tell you what that document says. It says that
5 you have been assigned a zero percent impairment
6 rating and that you're able to return to work
7 without restrictions, and that you will not need
8 any future medical treatment as related to this
9 case. And that was on February 12th of 2008.

10 A. He just told me I was ready to go back to work.

11 Q. Okay. He did tell you that?

12 A. Yeah. He told me I was ready to go back to work.

13 Q. Do you feel that you were ready to go back to work
14 at that time?

15 A. Well, I told him I was still hurting, and that's
16 why they gave me the TENS unit. He said for the
17 residual pain. And he said to wear that on line,
18 which that's pretty much impossible to wear a TENS
19 unit on line.

20 Q. Did you mention that to him?

21 A. I told him that. He said, well, there are ways.
22 But you just can't wear anything on those lines
23 with cords and stuff hanging out, because they
24 catch. Stuff we're not even -- you're not even
25 supposed to have a phone or anything on the

1 outside, and it's actually a box that sits on the
2 side.

3 Q. I see you're pointing to your right hip. Is that
4 your TENS unit?

5 A. Yeah. Yeah, that's the TENS unit.

6 Q. All right. How long have you had that TENS unit?

7 A. Since he gave that one to me. It was probably the
8 last day I saw him.

9 Q. Okay. 2008 sometime?

10 A. Yes, sir.

11 Q. Fair statement? Okay. Do you use it everyday?

12 A. In the evenings I tend to have to use it, yes.

13 Q. Are you supposed to use it everyday?

14 A. He says I can actually -- he told me I could
15 actually wear it everyday. I just have to turn it
16 off every couple hours for like 30 minutes at a
17 time.

18 Q. Does it seem to help any?

19 A. It does ease it, yes.

20 Q. Do you remember seeing this little prescription
21 here by Dr. Schwartz?

22 A. Yeah. I remember a return at work thing.

23 MS. LAMB:

24 Let me see that. I've seen that.

25 MR. DESAI:

1 I'm going to go ahead and admit both of those as
2 exhibits.

3 (PLAINTIFF'S EXHIBIT NUMBER 1 AND 2 MARKED; ATTACHED)
4 EXAMINATION RESUMED BY MR. DESAI:

5 Q. So not to put any words in your mouth, but you're
6 saying you do not agree with Dr. Schwartz at that
7 time where he said you are -- you do not need any
8 future medical treatment?

9 A. I didn't agree with him, no.

10 Q. Okay. Did you reinjure yourself or aggravate that
11 injury further after that time you saw Dr.
12 Schwartz in 2008?

13 A. I think I more or less aggravated it further.

14 Q. Okay. Did it keep getting worse?

15 A. It kept getting worse, yes.

16 Q. At what point did you decide that you just had
17 enough and then you went back to see -- who did
18 you see after that actually?

19 A. I actually went back to IHS at BMW and saw Dr.
20 Katemba.

21 Q. Okay. And what was that conversation like? What
22 did you tell Dr. Katemba?

23 A. I told her the jobs that they had me on, and she
24 was actually kind of shocked that they had me on
25 jobs running the hoist. She said that they had

1 said that I would be able to do them and she never
2 actually went and checked out the jobs. She took
3 it at their word that I would be able to do those
4 jobs.

5 Q. And in 2008, and I believe it was in August, do
6 you remember talking to Dr. Katemba about that, or
7 do you remember Dr. Katemba assigning those work
8 restrictions to you?

9 A. Yes.

10 Q. Okay. And what made her assign those work
11 restrictions to you? Do you know?

12 A. She said she didn't believe -- she said just
13 judging from the movement I could make from -- I'm
14 sorry, excuse me.

15 MS. LAMB:

16 while he's drinking, I'm going to object to the
17 form of these questions. Just let it be an
18 ongoing objection.

19 THE WITNESS:

20 A. I'm sorry. Now I've lost my train of thought.

21 EXAMINATION RESUMED BY MR. DESAI:

22 Q. That's okay. What was your conversation with Dr.
23 Katemba?

24 A. When I went --

25 Q. For those work restrictions in 2008.

- 1 A. For the work restrictions. She wanted to put
2 restrictions on me because she felt like I needed
3 the restrictions, because she didn't think that I
4 would be able to perform the duties out there
5 without restrictions.
- 6 Q. At what point did you go to see Dr. Mitchell?
- 7 A. Dr. Scott.
- 8 Q. Dr. Scott. I'm sorry.
- 9 A. That was the next doctor that she referred me to
10 when I went to -- up to IHS.
- 11 Q. So is it fair then to say that you continued to
12 complain about your back?
- 13 A. Yes, sir.
- 14 Q. And when was it, or do you remember, when Dr.
15 Katemba sent you to Dr. Scott?
- 16 A. I don't remember the exact date.
- 17 Q. Do you remember the year?
- 18 A. It was in '10, I believe.
- 19 Q. Okay. And then what exactly do you remember did
20 Dr. Scott do for you?
- 21 A. He actually -- he actually tried putting me on
22 Lyrica and he gave me the brace and they actually
23 had to put me back out while I was taking the
24 Lyrica because I was told that it changed my total
25 personality. And they had to send me back up to

1 IHS. And Dr. Katemba and the workers' comp lady
2 at BMW, I believe her name is Latu, they both came
3 in and talked with me and they both said that I
4 had to get off this medication because it had
5 changed my personality. And so, they actually put
6 me back out of work until I could get off of that.

7 Q. And when you say they specifically, did Dr.
8 Katemba put you out of work or did Dr. Scott put
9 you out of work or both?

10 A. Dr. Katemba.

11 Q. Okay. And that is the BMW doctor, isn't it?

12 A. Yes.

13 Q. After treating with Dr. Scott, where did you go?
14 What's the next doctor you saw?

15 A. He sent me to Dr. Mitchell. And I think I saw Dr.
16 Mitchell one or two times. I don't remember. And
17 he said that he was going out of the country and
18 he was referring me to Dr. Rollins.

19 Q. Are all these doctors in the same speciality?

20 A. They're all in the same -- same office right
21 there.

22 Q. Same building?

23 A. Same building, yes.

24 Q. Do you remember what Dr. Mitchell's or Dr.
25 Rollins' speciality was or is?

- 1 A. Orthopedics surgery.
- 2 Q. And what is Dr. Scott or do you know?
- 3 A. I don't know what Dr. Scott was.
- 4 Q. Okay. So Dr. Mitchell tells you that he's going
5 out of the country and he wants you to go see Dr.
6 Rollins?
- 7 A. Yes.
- 8 Q. Did you end up seeing Dr. Rollins?
- 9 A. Yes, I did.
- 10 Q. And what was the result of that consultation? How
11 many times did you see Dr. Rollins?
- 12 A. I saw Dr. Rollins several times. I'm not sure of
13 the exact number. He sent me to see Dr. Behr and
14 they did a discogram and they also did a CT scan.
15 well, they did the disc -- well they -- somehow he
16 told me that they had the disc -- something in
17 them. I know it hurt. And they sent me for a CT
18 scan while it was -- while the medicine from the
19 discogram was in there.
- 20 Q. Okay. So did you actually -- did you actually
21 have the discogram procedure done, performed?
- 22 A. Yes, I did.
- 23 Q. And who was the doctor that did it?
- 24 A. Dr. Behr.
- 25 Q. Okay. Let me show you a note which I believe was

1 written on January 6th of 2011 and it's a three
2 page note. The one that I'm most interested in is
3 the third page. And it's number four. If you
4 don't mind, can you read that for me, please, sir.

5 A. Number four. "As we are not considering surgery
6 at the moment and this case has been open for four
7 years, I feel it is appropriate to state he has
8 reached maximum medical improvement and that he
9 can be rated and released. Based on the Guides to
10 Evaluation of Permanent Impairment label --" I'm
11 not sure, "one of four, will give him a nine
12 percent impairment rating. I feel that he will
13 have some restrictions at going forward. I
14 particularly would not recommend lifting over 20
15 pounds on a frequent basis, nor would I recommend
16 any excessive lifting, bending or twisting."

17 Q. Okay. Did you ever talk to Dr. Behr about your
18 workers' compensation case at all?

19 (PLAINTIFF'S EXHIBIT NUMBER 3 MARKED; ATTACHED)

20 A. No.

21 Q. Well, I would have mentioned, and you might not
22 know this, but he seems to be concerned about your
23 workers' compensation case open for four years.

24 Do you know why that is?

25 MS. LAMB:

1 Object.

2 THE WITNESS:

3 A. I don't know.

4 EXAMINATION RESUMED BY MR. DESAI:

5 Q. Okay. Did you have a conversation with Dr. Behr
6 that day about being released?

7 A. He told me that he felt like I was at maximum
8 improvement. That he was making some notes and
9 that he never told me a percentage or anything
10 that he --

11 Q. And it seems to me that he's releasing you based
12 on the fact that a surgery was -- that you didn't
13 want a surgery.

14 A. I would rather --

15 Q. Did that conversation ever come up?

16 A. I would rather not have surgery.

17 Q. Did you tell him that?

18 A. Yeah. I told him that.

19 Q. And do you believe that you were put at MMI
20 because of the fact that you didn't want surgery?

21 A. Possibly.

22 MS. LAMB:

23 Object.

24 EXAMINATION RESUMED BY MR. DESAI:

25 Q. Did he advise you that you could only have so many

1 injections per year?

2 A. I can only have an injection -- four injections
3 per year is the most I can have, he said.

4 Q. And do you feel that you need all four of them
5 every year?

6 A. It's been -- the last one that I had was in August
7 and I've actually -- I can tell that it's time for
8 another one now, but I've made it since August.
9 So I would -- I would say probably not all four of
10 them, if I can make it that long on one. But the
11 first two he did were -- the last one he did he
12 tried a different steroid of whatever they put in
13 them and it seems to have done better.

14 Q. Okay. Do you remember him saying that although he
15 was rating and releasing you, you will need future
16 medical --

17 A. Yes, I do.

18 Q. -- including medications, epidural up to three
19 months --

20 A. Yes.

21 Q. -- and a possible surgical referral in the future?

22 A. Yes, he told me that.

23 Q. Do you agree with that?

24 A. Yeah, I definitely think I would need at least the
25 injections.

1 Q. Are you scared of surgery?

2 A. Yes, sir.

3 Q. Is that the reason you don't want it?

4 A. Pretty much. I just -- I don't know. I'm afraid
5 because he told me all the nerve damage that could
6 happen, because -- and, he said, you know, there's
7 a chance that it wouldn't work. Yes, I'm afraid
8 to have someone messing with my back.

9 Q. My question --

10 A. Cutting on my back.

11 Q. Sorry. My question then is, do you not want the
12 surgery because you feel that it's not necessary,
13 or do you not want the surgery because you're
14 afraid of the side effects and the possibility of
15 it going south?

16 A. I guess I'm more afraid of the side effects and
17 the possibility of it being -- ending up worse. I
18 guess I've seen too many people where it ended up
19 worse than what it was to start with.

20 Q. On May 6th of 2011 Dr. Katemba wrote a note and
21 assigned significant work restrictions to you.
22 Are you aware of that?

23 A. Yes.

24 Q. Okay. And do you remember what it was that she
25 assigned to you?

1 A. Not off the top of my head I can't. I remember
2 there's probably not more than a 30 degree bend, I
3 believe.

4 Q. On an occasional basis?

5 A. On occasional basis. And not lifting more than 20
6 pounds, I believe, from the ground. If I have to
7 get down to the ground, not more than 10 pounds,
8 if I'm not mistaken.

9 Q. Maximum sitting for one hour at a time and five
10 minutes stand/walk break?

11 A. That's -- yeah.

12 Q. Do you remember her telling you that if you were
13 to be put on the line it would have to be on self-
14 paced?

15 A. Yes. Anything I do they -- she said would have to
16 be self-paced.

17 Q. Is there a line on BMW that's self-paced?

18 A. No, sir.

19 Q. Do you have an expectation as to how much you're
20 supposed to produce every hour or day at BMW?

21 A. Yes, sir.

22 Q. In order to meet those expectations, do you have
23 to be constantly up? Do you have to be going at
24 all times?

25 A. Yes.

1 Q. And do you feel that with the way you are today
2 that you would be able to meet those expectations?

3 A. Not on a line-type atmosphere I don't -- I was
4 actually -- when I was on the engine line Johnny
5 actually wrote me up because he said I was the
6 reason the line was not going as fast as it
7 should.

8 Q. So that's another thing, right? If there's a weak
9 link in there it could effect the rest of
10 production?

11 A. Yeah.

12 Q. Do you want to work?

13 A. I want to work. Yes, I would love to work. I get
14 tired of sitting. I get tired of being at home
15 all the time.

16 Q. If this pain could go away and if the doctor
17 releases you to full duty, would you go back to
18 work?

19 A. Yes, definitely.

20 Q. What medications are you on currently?

21 A. Currently I take tramadol for the pain.

22 Q. Tramadol?

23 A. Tramadol. He prescribed me Celebrex but --

24 Q. Who is he?

25 A. Dr. Behr. But it does mess with my stomach and it

1 -- I just can't take it. I mean, it literally
2 makes my stomach hurt and don't want to get into
3 the rest.

4 Q. What else?

5 A. I am on omeprazole for acid reflux. I take
6 simvastatin for high cholesterol. And I take Poly
7 Hist Forte for allergies.

8 Q. So all the medications that you've described, you
9 would say tramadol and Celebrex, are the two work
10 related --

11 A. Yes.

12 Q. -- medications?

13 A. Yes.

14 Q. And does -- Celebrex is an anti-inflammatory,
15 isn't it?

16 A. I believe so.

17 Q. Have they given you any substitute for Celebrex?

18 A. He tried one that started with a T and I can't
19 remember the name of it. And it didn't mess with
20 my stomach, but I couldn't tell it did anything.

21 Q. Have you had your stomach checked out for possible
22 ulcers because of Celebrex? Were you on a
23 Celebrex routine for a while?

24 A. No. I actually -- the reason the reflux is there
25 is I actually have a hiatal hernia that they said

1 I was born with.

2 Q. Fair enough. What kind of side effect does
3 tramadol have on you?

4 A. It makes me kind of foggy, I guess, I would say,
5 to a point that I wouldn't drive a car and take
6 it.

7 Q. Does it have like a warning on the side of the
8 bottle that says do not operate heavy machinery or
9 do not --

10 A. Oh, yeah. Any -- just pain medicine in general,
11 yes. Not to operate -- yeah.

12 Q. If you were to be ready to go back to work on
13 tramadol, do you think BMW would take you back
14 with tramadol in your system?

15 MS. LAMB:

16 Object.

17 THE WITNESS:

18 A. Well, I worked there before on it.

19 EXAMINATION RESUMED BY MR. DESAI:

20 Q. Did they know about that?

21 A. Dr. Katemba did. I don't know if BMW did, but Dr.
22 Katemba did.

23 MR. DESAI:

24 Okay. I'm going to enter this into the record as
25 well. The permanent work restrictions.

1 (PLAINTIFF'S EXHIBIT NUMBER 4 and 5 MARKED; ATTACHED)

2 MS. LAMB:

3 Katemba's?

4 MR. DESAI:

5 Uh-huh. May 6th.

6 MS. LAMB:

7 Yes.

8 EXAMINATION RESUMED BY MR. DESAI:

9 Q. Donnie, do you believe those work restrictions --
10 have you had a chance to look at that? You said
11 yes earlier.

12 A. Yeah, I've read through them. Yes. I can't
13 remember them right off the top of my head, but I
14 have read them.

15 Q. Take a look at them, if you don't mind.

16 A. Okay.

17 Q. Do you agree or disagree with those work
18 restrictions?

19 A. I agree with them.

20 Q. Do you think that you -- if you had to put
21 yourself on restriction, would you place more,
22 less, any different restrictions? Is there
23 anything on there that you think you can do or
24 cannot do, or something that should be on that
25 list that is not?

1 A. No, sir. I mean, I would try anything they had me
2 do.

3 Q. You mentioned surgery. Hypothetically speaking,
4 you go back to Dr. Behr and Dr. Behr says, Look,
5 there's just nothing we can do for you. Surgery
6 is your last option. Would you go through it?

7 A. If that was my last option, yeah.

8 MR. DESAI:

9 I don't have anything else, Donnie. Thank you
10 very much.

11 REEXAMINATION BY MS. LAMB:

12 Q. Why are you currently not opting to do the
13 surgery?

14 A. I'll be honest, I'm afraid of the surgery. I'll
15 be honest.

16 Q. And is your pain manageable at this time?

17 A. For me it is, yes.

18 MS. LAMB:

19 All right. Nothing further.

20 (DEPOSITION CONCLUDED AT 11:38 A.M.)

21

22

23

24

25

CERTIFICATE

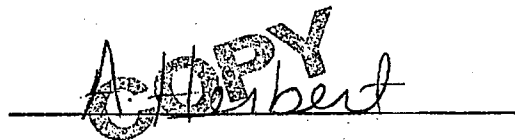
I, the undersigned, April Herbert, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of Donnie Kenneth Lowe was taken on the 9th day of January, 2012;

That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 19th day of January, 2012.



April Herbert

Notary Public for South Carolina

My Commission Expires: 1/24/21

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Johnnie L. Lott
Physician's Name: Dr. R. DeLoach
Practice/Clinic: Physician's Office
Proprietor's Name: Dr. R. DeLoach
Phone: 215-11334

Employer's Name: RAMCO
Insurance Carrier: SVCS
SCWC File No: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 10/2/07

Date of first office visit: 4/19/07

Date of last visit: 2/12/08

Diagnosis or nature of injury or illness: LAP &addy / Budge

Body part(s) injured: LA

Body part(s) affected: _____

Date of Maximum Medical Improvement: 2/12/08

Based on the AMA Guidelines, the claimant has sustained a 0 % loss of use to _____ injured body part(s) and a _____ % loss of use to _____ other affected body part(s).

☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

☐ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☐ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Treating Physician: [Signature]

Date: 2/12/08

9/07

14B

Physician's Statement





Piedmont Physical Medicine & Rehabilitation, P.A.
317 St. Francis Drive, Suite 350
Greenville, SC 29601-3988
Telephone: (864) 235-1834

Robert G. Schwartz, M.D.

Patient's Name: _____ Age: _____
Address: _____ Date: 1/10/08



Jonnie Lowe may return to work

☒ Without restriction

☐ With the following restriction

Refill _____ Times

Dispense as Written

MD

Substitution Permitted

MD

Have
received
SE repeated.
TALCHER FIVE

Orthopaedic Associates PA
115 Deacon Tiller Court Duncan, SC 29334
(864) 721-0021 Fax: (864) 721-0035

December 30, 2011

Page 1

Chart Document

Donnie K Lowe

Male DOB: 09/19/1964

129807

Home: (864) 848-2131

Ins: SRS MedBill

01/06/2011 - Office Visit: Follow up: back pain
Provider: James Paul Behr MD
Location of Care: Orthopaedic Associates PA

History of Present Illness

Family Physician: Dr. Hunter Leigh, Greer, SC

Mr. Donnie Lowe is a 46 Years Old white male, who is here for a follow-up appointment.
History From: Patient

Chief Complaint: back pain

Problem #1

Type: Lumbar spine

DOI: 10/02/2007

Mr. Lowe returns today after epidural steroid injection. He reports that a combination of the epidural steroid injection along with the new medication, the Tramadol and Diclofenac, he is having great relief. He reports this is the best relief he has had in years. He reports if he was able to maintain this type of relief he would certainly be very happy and would be happy to continue to avoid surgery.

Past Medical History

Patient indicates history of High Cholesterol, Diabetes and GERD.

***** Please Note *****

Patient has Metal in Body.

MEDICATIONS

OMEPRAZOLE 40 MG CPDR (OMEPRAZOLE) 1 po qd

SIMVASTATIN 40 MG TABS (SIMVASTATIN) 1 po qd

POLY HIST FORTE 4-25-10 MG TBCT (CHLORPHEN-PYRIL-PHENYLEPH) po qd

TRAMADOL HCL 50 MG TABS (TRAMADOL HCL) 1-2 po tid prn pain

DICLOFENAC SODIUM 75 MG TBCT (DICLOFENAC SODIUM) one po bid

ALLERGIES

1 PENICILLIN

Are you receiving any narcotics from any other Physician? No

Revised - 01/14/2011

Past Surgical History

Surgical history includes Appendectomy and Tonsillectomy.



Social History

Patient is separated, Non-smoker, and lives with children. Has 1 child. Does not drink alcohol. Exercises. Education completed: High School. Occupation: Production Associate @ BMW

Orthopaedic Associates PA

115 Deacon Tiller Court Duncan, SC 29334
(864) 721-0021 Fax: (864) 721-0035

December 30, 2011

Page 2

Chart Document

Donnie K Lowe

Date DOB: 09/19/1964

129807

Home: (864) 848-2131

Ins: SRS MedBill

Osteoporosis Management in Women 50 yrs of age and Older

Patient is not taking Calcium Supplements

Family History

Patient indicates a family history of Arthritis and Heart Disease.

Review of Systems

General: Denies weight loss, weight gain, fatigue, fever.

Eyes: Denies blurring, vision loss.

Ears/Nose/Throat: Denies difficulty breathing, deafness, hoarseness, hearing aid, dentures.

Cardiovascular: Denies swelling in hands or feet, palpitations, chest pain.

Respiratory: Denies wheezing, coughing, shortness of breath.

Gastrointestinal: Denies abdominal pain, nausea, diarrhea, constipation, vomiting.

Genitourinary: Denies urinary frequency, incontinence, painful urination

Musculoskeletal: Complains of back pain, stiffness.

Skin: Denies rashes, lumps, lesions, itching, sores.

Neurologic: Denies numbness/tingling in arms/legs, fainting, dementia, paralysis.

Psychiatric: Denies difficulty sleeping, anxiety, depression, suicidal thoughts.

Endocrine: Denies heat or cold intolerance, excessive thirst.

Heme/Lymphatic: Denies easy or excessive bruising, chills, swelling of lymph nodes, history of blood transfusion, weats.

Allergic/Immunologic: Denies latex allergy, hives, hay fever.

VITAL SIGNS

Ht: 68 in. Wt: 172 lbs. R: 14

GENERAL EXAM

Appearance: Healthy

Mental Status: Alert & Oriented x 3, No Acute Distress

Hand Dominance: Right

Gait: Normal

PHYSICAL EXAMINATION

HEENT: NCAT, MMM, EOMI

CHEST/RESP: No respiratory distress

EXTREMITIES: No CCE

NEURO/MSK:**MMT:**

	HF	HE	KF	KE	DF	PF	EHL
R	5	5	5	5	5	5	5
L	5	5	5	5	5	5	5

DTR:

Equal and symmetric.

Donnie K Lowe
Male DOB: 09/19/1964

129807

Home: (864) 848-2131
Ins: SRS MedBill

SPECIAL TESTS:

Straight leg raise positive on the right.
Forward flexion does cause some pain
Facet loading is negative.

IMAGING

MRI from Intervention in Greenville unfortunately is not available for my review.

He did have a positive discogram at L5-S1.

ASSESSMENT

Mr. Lowe is a very pleasant 46 year old gentleman who with a past medical history significant for high cholesterol, diabetes, and GERD who is here today at the request of Dr. Rollins for initial consultation and evaluation of low back pain following a worker's comp injury in 2007 secondary to repetitive motion. After careful review of the patient's history, physical exam, and imaging studies it appears the patient's pain complaints are likely related to L5-S1 discogenic pain with a positive discogram although Dr. Rollins did not want to do surgery at this time although he was sent for the discogram by Dr. Mitchell.

PLAN

New Orders:

Test Level 4 [992.4]

- 1 Will continue Diclofenac and Tramadol.
- 2 The patient did quite well with the bilateral L5-S1 transforaminal epidural steroid injection. I told him this likely would provide him 3-4 months of relief and could be repeated every 3-4 months. He certainly understood this.
3. As the patient is doing well with the medications and injections, would not recommend any further interventions at this time.
4. As we are not considering surgery at the moment and this case has been opened for four years, I feel it is appropriate to state he has reached maximum medical improvement and that he can be rated and released. Based on the Guides to Evaluation of Permanent Impairment, Table 17.4, I will give him a 9% impairment rating. I feel that he will have some restrictions at going forward. I particularly would not recommend lifting over 20 pounds on a frequent basis, nor would I recommend any excessive lifting, bending or twisting.
5. Although I am rating and releasing Mr. Lowe today, he will certainly likely need future medical care including medications, epidurals up to every three months as well as possible surgical referral in the future if his pain should worsen.
- 6 Follow up. The patient will follow up in three months time.

Dictated by James Paul Behr, MD

Electronically signed by Myra Million on 01/14/2011 at 3:56 PM

BMW Manufacturing Corp., LLC
1400 Highway 101 South
Greer, SC 29651

Industrial Health Services
Encounters For An Individual Employee

04/30/2010
Page: 2

Name LOWE, DONNIE K.
SSN 247-35-0152
Cost Center ENGINE LINE
Period 06/10/2009 to 06/10/2009

Date	Time	Type	Type-Description	Description	Examiner
------	------	------	------------------	-------------	----------

(Created on 6/10/2009 at 12:03pm by QT20312, Elisa Katemba, M.D.)

06/10/2009 12:05pm EK

Addendum: Recall, these are his prior worker's comp low back permanent restrictions.

08/14/2008 06:01pm EK

Permanent low Back Restrictions:

1. Occasional (Max 20%) bend at waist > 45 degrees.
2. When bent at waist >45 degrees max lift 15#.
3. When bend at waist < or = 45 degrees max lift 25#.

(Created on 6/10/2009 at 12:05pm by QT20312, Elisa Katemba, M.D.)

Total Number Of Records (All Types): 2

490



AS of 5-6-11

Industrial Health Services

Encounters For An Individual Employee

05/06/2011
Page: 1

Name LOWE, DONNIE K.
SSN 247-35-0162
Cost Center ENGINE LINE
Period 05/06/2011 to 05/06/2011

Date	Time	Type	Type Description	Description	Examiner
05/06/2011	09:31am	RTWW	Return To Work - Work Related	Return To Work - Work Related	Katumba, Elisa

05/06/2011 1:27am EK

05/06/2011 1:27am EK
S: Mr. Lowe here to review the 2-Day Work Well FCE (5/2/11, 5/3/11) and to review revision of his Indefinite Low back restrictions for his chronic LBP. He also has prior left wrist Indefinite restrictions due to personal fracture 3/09 and surgical fixation with some ROM loss. He is Right Hand Dominant.

O: --- NAD. Polite. Gait/sitting posture/transitions with very straight spine alignment.

A: 1. Chronic lumbosacral pain- Assoc did not tolerate his previous, indefinite Low back restrictions placed 8/14/08. Back out of work since 6/10. Assoc is S/P B/L L5-S1 transforaminal ESI 12/15/10 by Dr. Behr. Not deemed surgical candidate at this point. Dr. Behr recommended permanent restrictions to avoid excessive bending, stooping, or climbing and to avoid heavy lifting. Recently completed 2-Day FCE which did show good effort and was consistent with needing stand-up work with little forward bending. It also showed significant limitation in machine/line-paced crouching, squatting, or kneeling. (See scanned FCE report).

P: 1. Based on Mr. Lowe's history, exams, and recent FCE, IHS MD is revising his Low back Indefinite Restrictions to: (1) MAX forward bend at waist 30 degrees occasionally (up to 33% of time). 0-20 degrees bend unrestricted. (2) Self-Paced (Not machine or time-paced) crouching, squatting, or kneeling on a Seldom basis (Max 5%). (3) Occasional Walking (Max 33%) (4) Max lift below waist 10#. Max lift at/above waist 25# occasional (Max 25%) and 35# seldom (Max 5%). (5) Max ladder climbing 3 feet elevation on seldom basis. (6) Max sitting 1 hour at a time without 5 minute stand/walk break. Prior Personal Left Wrist Indefinite Restrictions (Placed 6/09): (1) No use of left hand as a striking/hitting tool. (May use a mallet).

These will all be re-submitted to placement. Assoc given phone number for placement contact Anne Grote, RN. He will call nurse Grote next week. Assoc signed out copy of his FCE and for a copy of this note to be sent to his home address. Assoc call (864) 380-2984. Assoc appreciative.
(Created on 5/06/2011 at 11:27am by QT20312, Elisa Katemba, M.D.)

05/06/2011	11:27am	PR	Permanent Restrictions	Permanent Restrictions	Katumba, Elisa
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05/06/2011 11:34am EK

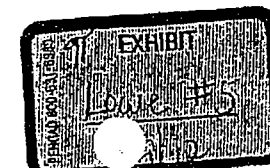
W. Comp Low back Indefinite Restrictions:

1. Max forward bend at waist 30 degrees on occasional basis (up to 33% of time). 0-20 degrees bend unrestricted.
2. Self-Paced (Not machine or line-paced) crouching, squatting, or kneeling on a Seldom basis (Max 5%).
3. Occasional Walking (Max 33%)
4. Max lift below waist 10#. Max lift at/above waist 25# occasional (Max 25%) and 35# seldom (Max 5%).
5. Max ladder climbing 3 feet elevation on seldom basis.
6. Max sitting 1 hour at a time without 5 minute stand/walk break.

Prior Personal Left Wrist Indefinite Restrictions (Placed 6/09): Right Hand dominant.

1. No use of left hand as a striking/hitting tool. (May use a mallet).
(Created on 5/06/2011 at 11:34am by QT20312, Elisa Katemba, M.D.)

Total Number Of Records (All Types): 2



DONNIE LOWE

Page 1	Page 3
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION W.C.C. #0715651 Donnie K. Lowe, Claimant, vs. BMW Manufacturing Corporation and, Specialty Risk Services, Inc. Employer-Insurer. DEPOSITION OF DONNIE KENNETH LOWE DATE TAKEN: January 9, 2012 TIME BEGAN: 10:14 A.M. TIME ENDED: 11:38 A.M. LOCATION: The Carolina Law Group, LLC 517 Laurens Road Greenville, SC 29607 REPORTED BY: April Herbert Notary Public for South Carolina	INDEX 1 2 3 4 Examination by Ms. Lamb.....4 5 Examination by Mr. Desai.....53 6 Reexamination by Ms. Lamb.....70 7 Certificate.....71 8 Exhibits: (Attached) 9 Exhibit No. 1 (Form 14B).....56 10 Exhibit No. 2 (Schwartz Prescription).....56 11 Exhibit No. 3 (Chart Document).....61 12 Exhibit No. 4 (BMW Record - 8/14/08).....69 13 Exhibit No. 5 (BMW Record - 5/6/11).....69 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 APPEARANCES: 2 3 MONTY D. DESAI, ESQUIRE 4 The Carolina Law Group, LLC 5 P.O. Box 5192 6 Greenville, SC 29606 7 On behalf of the Claimant 8 9 STEPHANIE R. LAMB, ESQUIRE 10 Turner Padgett Graham & Laney, P.A. 11 200 East Broad Street, Suite 250 12 Greenville, SC 29601 13 On behalf of the Employer-Insurer 14 15 16 ALSO ATTENDING: (None) 17 18 19 STIPULATIONS: The within deposition was taken pursuant to 20 the South Carolina Rules of Civil Procedure. 21 WAIVER: Examination and reading of the deposition are 22 waived by the witness and by the parties. 23 24 25	1 DONNIE KENNETH LOWE, being duly sworn, testified as 2 follows: 3 EXAMINATION BY MS. LAMB: 4 Q. Good morning, Mr. Lowe. 5 A. Good morning. 6 Q. My name is Stephanie Lamb and I represent BMW and 7 their workers' compensation insurance provider in 8 this claim that you've brought against them. 9 Okay? 10 A. Okay. 11 Q. Have you ever given a deposition before? 12 A. No, ma'am. 13 Q. All right. The person to your left is a court 14 reporter. She's recording everything we say down, 15 and for that reason I need you to avoid the uh- 16 huhs and the huh-uhs that we all have a tendency 17 to use in conversation. Okay? 18 A. Okay. 19 Q. Also avoid the shaking and the bobbing of the 20 head. If I catch you doing that or your attorney 21 catches you doing that, one of us will probably 22 say, is that a yes or is that a no. 23 A. Okay. 24 Q. That's only to preserve the record. It's not 25 meant to offend you in any way. Okay?

1 (Pages 1 to 4)

GALLAGHER COURT REPORTING

864-234-5744

gcr@charter.net

Page 5	Page 7
1 A. Yes, ma'am. 2 Q. When you answer my question, I'm going to assume 3 that you understood the question and that you're 4 telling the truth. Is that fair enough? 5 A. That's fair. 6 Q. If you need me to clarify my questions I'll be 7 happy to do that. I want to make sure that you 8 understand them. So if you don't understand it, 9 let me know, and I'll rephrase, clarify, whatever 10 I need to do to make sure you understand it. 11 Okay? 12 A. Okay. 13 Q. We're not here to trick you or confuse you. This 14 is an admitted back claim. We know that it 15 happened. We're just here to investigate it 16 further. Okay? 17 A. Okay. 18 Q. All right. State your full name for the record, 19 please, sir. 20 A. Donnie Kenneth Lowe. 21 Q. And your social security number, please? 22 A. 247-35-0152. 23 MS. LAMB: 24 Off the record. 25 (OFF THE RECORD DISCUSSION)	1 A. Tammy, I guess, Cagle Lowe. And we are separated. 2 Q. Okay. And how long have you been separated? 3 A. Ten years. 4 Q. Oh, wow. Okay. 5 A. Yeah. 6 Q. Have you been living separate and apart for ten 7 years? 8 A. Yes. 9 Q. Are you two dependent upon each other for support 10 for any reason? 11 A. I kept insurance on her because she had cancer and 12 I didn't want to divorce her with her having 13 cancer. 14 Q. But besides the insurance, is there any other 15 financial obligations between -- 16 A. No. 17 Q. -- the two of you? 18 A. No. 19 Q. And you no longer have any kind of insurance on 20 her? 21 A. No. 22 Q. Does she still have cancer? 23 A. She's in remission. 24 Q. Does she work? 25 A. She works for Lemforder.
Page 6	Page 8
1 EXAMINATION RESUMED BY MS. LAMB: 2 Q. And what's your current address, please, sir? 3 A. 106 Pine Street in Greer, South Carolina. 4 Q. And how long have you lived at that location? 5 A. Sixteen years. 6 Q. And who do you live there with? 7 A. I live by myself now. 8 Q. Have you ever lived outside the state of South 9 Carolina? 10 A. No. 11 Q. What's your current phone number? 12 A. Home phone is 864-848-2131. 13 Q. Do you have a South Carolina driver's license? 14 A. Yes. 15 Q. Has it ever been revoked for any reason? 16 A. No. 17 Q. And your date of birth, please, sir? 18 A. September 19, 1964. 19 Q. Have you ever been married? 20 A. Yes. 21 Q. Are you currently married? 22 A. Yes. 23 Q. How many times have you been married? 24 A. One. 25 Q. What's your spouse's name?	1 Q. For who? 2 A. Lemforder, L-E-M-F-O-R-D-E-R. I believe they make 3 axles for BMW. 4 Q. Has any court, judicial actions been filed, 5 anything like that? Any kind of judicial orders 6 in place regarding separation? 7 A. No. 8 Q. Do you have any children? 9 A. I have a daughter. She's 23. 10 Q. And what's her name? 11 A. Tabitha, T-A-B-I-T-H-A. 12 Q. What's her last name? 13 A. Lowe. 14 Q. And where does she live? 15 A. At 207 Old Woodruff Road in Greer. 16 Q. Okay. Is there anyone that -- is your daughter 17 dependent upon you for support? 18 A. I help her out, yes. She's got a child, so I help 19 her out. 20 Q. She's kind of what? 21 A. She has a child now, so I help her out. 22 Q. Oh, she has a -- so you have a grandchild? 23 A. I have a grandchild, yeah. Seven months old. 24 Q. Now, do you help your daughter out financially or 25 --

Page 9	Page 11
1 A. I try when I can. 2 Q. Is she married? 3 A. She has a boyfriend. 4 Q. I think you make the same look my dad makes about 5 my little sister. I won't read anything into 6 that. 7 A. But I have a grandchild, so. 8 Q. That's right. You just have that one grandchild? 9 A. Just the one. 10 Q. Okay. Have you ever been arrested or convicted of 11 any crimes? 12 A. No, ma'am. 13 Q. Do you have any hobbies or things you like to do 14 for fun? 15 A. I like to draw and I sing in the church choir. 16 Q. What church do you go to? 17 A. El Bethel Baptist. 18 Q. Do you do any other ministries at Bethel Baptist 19 besides the choir? 20 A. I used to help with the youth before I hurt my 21 back. 22 Q. So you don't work with the youth minister anymore? 23 A. No. I can't get in there with them like I once 24 did. 25 Q. Do you have any other hobbies or things you do for	1 you've not mentioned to me? 2 A. No, ma'am. 3 Q. Have you ever enlisted or been in the military? 4 A. No, ma'am. 5 Q. Ever attempted to get into the military? 6 A. No, ma'am. 7 Q. Do you have any trouble reading or writing? 8 A. No, ma'am. 9 Q. All right. Now we're going to start going through 10 some of your employment history. 11 A. Okay. 12 Q. We're going to go back to when you left high 13 school. I find that that's easiest if we do it 14 that way. 15 A. Okay. 16 Q. For most people. Sometimes not. What's your 17 first full-time job after high school? 18 A. I actually worked two jobs. I worked at Hardee's 19 in Greer and I worked at Fleet Oil Company, which 20 was a small gas station. 21 Q. And what did you do for Hardee's? 22 A. I cooked. 23 Q. And what did you do for Fleet Oil Company? 24 A. I ran a cash register. I sat inside a little 25 booth and took money.
Page 10	Page 12
1 fun? 2 A. That's it. 3 Q. Have you ever been treated for alcohol or drug 4 abuse? 5 A. No, ma'am. 6 Q. Ever been to a psychiatrist, psychologist or 7 counselor for any reason? 8 A. No, ma'am. 9 Q. Where did you grow up? 10 A. In Greer. 11 Q. Did you graduate high school? 12 A. Yes, ma'am. I graduated from Greer High School. 13 Q. And what year was that? 14 A. 1982. 15 Q. Did you go to any colleges or technical schools 16 after that? 17 A. No, ma'am. 18 Q. Any specialized licenses or certifications in 19 any areas like a barber's license, a forklift 20 license, a CDL license, anything like that? 21 A. No, ma'am. 22 Q. Do you have any specialized on the job training in 23 any areas? 24 A. No, ma'am. Not that I can think of. 25 Q. Any further education beyond high school that	1 Q. How long did you work at those two jobs? 2 A. Hardee's I actually worked at during high school 3 and -- let's see. Until '83, because I got 4 married in '83. 5 Q. And what about Fleet Oil Company? 6 A. I worked there until '83 as well. 7 Q. And where did you go work after that? 8 A. I went to -- it's closed now. It's WundaWeve 9 Manufacturing. It was Dan River Corporation. 10 Q. Dan River Corporation? 11 A. Yeah. It's WundaWeve Manufacturing. They make 12 carpet. 13 Q. I'm not familiar with this. Are you saying Wanda 14 Weave? 15 A. Wunda, W-U-N-D-A. WundaWeve. 16 Q. Oh, Wunda, okay. And what did you do for them? 17 A. I ran a machine that wrapped the carpet when it 18 went out to be shipped. 19 Q. I'm sorry. Where was that located? 20 A. I'm not sure of the road. It was just off of 21 Pelham Road and 85. 22 Q. Okay. So Greenville? 23 A. Yes. 24 Q. And how long did you work there? 25 A. I'm not real sure. I think it was two or three

3 (Pages 9 to 12)

Page 13	Page 15
1 years. 2 Q. Were you ever a supervisor? 3 A. No. 4 Q. And why did you leave WundaWeve? 5 A. I got a job at Digital Equipment Corporation. 6 Q. So you just left for a better job or was there 7 some other reason? 8 A. More pay. 9 Q. And, I'm sorry, what was the name of that job? 10 A. Digital Equipment Corporation. 11 Q. And what did you do for them? 12 A. I worked in a clean room and ran a machine that 13 imaged printed wiring boards. And I also 14 inspected the printed wiring boards. They later 15 changed their name to Carolina Circuits. 16 Q. Are they still around or have they gone under? 17 A. They went bankrupt. They made printed wiring 18 boards for the larger computers and they don't 19 make those anymore. 20 Q. How long did you work at Digital Equipment? 21 A. I want to say about 11 years. 22 Q. Were you ever a supervisor there? 23 A. No. 24 Q. And where were they located? 25 A. Off of -- well, let's see. What's the name of	1 A. St. Francis. 2 Q. Have you ever been terminated from any position of 3 employment? 4 A. No, ma'am. 5 Q. I have down that you were hired at BMW on November 6 1st, 1999. Does that sound right to you? 7 A. That's correct. 8 Q. And I believe the last day you worked was June 9 23rd, 2010. 10 A. That's correct. 11 Q. Is that about right? 12 A. That's correct. 13 Q. What was your supervisor's name when you left? 14 When you last worked there? 15 A. Johnny Sexton. 16 Q. And were you an hourly employee? 17 A. Yes. 18 Q. What was your pay per hour? 19 A. To be honest, I can't remember. It was around 25 20 an hour. I can't remember. 21 Q. Okay. Now, were you in any sort of supervisory 22 position there? 23 A. No, ma'am. I worked the line. 24 Q. Okay. Did you always work the line the entire 25 time --
Page 14	Page 16
1 that road? You go down Laurens Road and turn 2 beside Gore's Corvette World and it's south of 3 that road. 4 Q. So Greenville? 5 A. Greenville, yes. 6 Q. Okay. Yeah, Greenville's good enough. 7 A. Okay. 8 Q. And why did you leave that company? 9 A. I got a job at BMW. 10 Q. Prior to coming to work for BMW had you ever filed 11 any workers' compensation claims? 12 A. I think the only thing I may have done, I think 13 I've cut my finger one time at Digital and I think 14 they took me to the hospital with that. Other 15 than that, no. 16 Q. Had you ever been injured on the job, other than 17 that time you just told me about, prior to coming 18 to work for BMW? 19 A. No, not that I can remember. 20 Q. Did you receive any kind of settlement from 21 cutting your finger? 22 A. No, ma'am. 23 Q. Just had medical treatment? 24 A. Yes, ma'am. 25 Q. And where was that at? What hospital?	1 A. Yes, ma'am. 2 Q. -- you worked at BMW? Prior to coming to BMW had 3 you ever been a supervisor at any location? 4 A. No, ma'am. 5 Q. Did you work first shift? 6 A. At BMW? 7 Q. At BMW? 8 A. Yes, ma'am. 9 Q. The date of this accident is October 2nd, 2007. 10 A. That's correct. 11 Q. Does that sound right to you? 12 A. That's correct. 13 Q. Okay. Tell me what your duties were at BMW that 14 led up to this accident? 15 A. Okay. 16 Q. Well, let me ask you this first so we have a 17 better understanding. Did they change after 18 October of 2007, or did they stay the same until 19 you left? 20 A. They changed. 21 Q. They did change? 22 A. Yes. 23 Q. All right. Go back to when -- October 2007 and 24 tell me what you were doing that led up to this 25 accident in terms of duties, stations and so

4 (Pages 13 to 16)

1 forth.
 2 A. Okay. Well, when I actually had the accident I
 3 was working on the job. They had me going to the
 4 front of the X5 and bending down and working in
 5 the floor pan tightening up bolts for the grounds,
 6 and then -- that was with a AFCS tool. And then I
 7 would go to the back of the trunk area and have to
 8 lift over my head and work on the hatch and wire
 9 the hatch in the taillight area. And I would
 10 actually do -- that was on wire and harness. I
 11 would actually do four different jobs a day and
 12 rotate every two and a half hours usually, because
 13 we were ten-hour shifts.
 14 Q. Now did you get a lunch break every day?
 15 A. Yes, ma'am.
 16 Q. And was that 30 minutes?
 17 A. It was -- our lunch break was 45 minutes, I
 18 believe.
 19 Q. Forty-five minute lunch break?
 20 A. Uh-huh.
 21 Q. And did you get other breaks throughout the day or
 22 was it just a lunch break?
 23 A. We had two ten-minute breaks.
 24 Q. Okay. Now, after your -- after the October 2nd,
 25 2007 incident you said your duties changed; is

1 A. Correct.
 2 Q. And when you were on line what did they have you
 3 doing in light duty?
 4 A. Basically stand-up jobs so that I could work in
 5 the back of the car. And then after that, they
 6 put me to just installing radio. The radios and
 7 brackets at a stand-up job on the line. And
 8 that's all I did all day.
 9 Q. And then that would be all day? You wouldn't --
 10 A. Huh-uh.
 11 Q. Okay. So you weren't rotating then, you were just
 12 doing the radios?
 13 A. Just putting radios in the brackets all day.
 14 Q. Did you have the same supervisor while you were on
 15 light duty? Was that Johnny Sexton or did that
 16 change?
 17 A. No. That was Patrick Conner when I originally got
 18 hurt. And that was in the wiring harness area.
 19 Q. Did your duties ever change after putting the
 20 radios in the brackets?
 21 A. I stayed on light duty until -- they told me all I
 22 could stay on light duty was 90 days, and then
 23 they put me out. Then they put me permanently
 24 restricted at that point and found me a job 13
 25 months later on the engine line. And that was

1 that correct?
 2 A. Yes. They put me on light duty for a while. And
 3 that was -- if I remember correct, it was off line
 4 two hours and then on line two hours. After I got
 5 hurt on that job they actually changed that job
 6 around though.
 7 Q. On your light-duty job?
 8 A. Well, after I got hurt working the back of the car
 9 they actually did change that job. But the light
 10 duty was basically just working in the back of the
 11 car, that I can remember.
 12 Q. So you were off line for two hours, on line for
 13 two hours?
 14 A. Two hours, yes.
 15 Q. And I know what that means. And Monty, your
 16 attorney over here, probably knows what that
 17 means, but explain for the commissioner that might
 18 read this what that means. Off line and on line.
 19 A. Basically for two -- two hours I would either --
 20 well, I wasn't supposed to be doing anything.
 21 Most of the time I ended up sweeping for two
 22 hours, and then I would go back to work for two
 23 hours.
 24 Q. So when you were off line you were doing something
 25 such as sweeping?

1 when I worked for Johnny Sexton.
 2 Q. So the job placement program put you on the engine
 3 line?
 4 A. Yes, ma'am.
 5 Q. After you were out for 13 months?
 6 A. Yes, ma'am.
 7 Q. Okay. And what were you doing on the engine line?
 8 A. Started out I was standing up -- I can't remember
 9 what they call it. But doing -- I can't even
 10 remember what we called it. It was basically
 11 stand-up jobs. It was four jobs where I was
 12 standing up to start with. One was putting
 13 brackets on the front of the engine and then
 14 another one was tightening up bolts on the engine
 15 standing up. And then I did the torque converter
 16 and then I would go to the other side of the
 17 engine and tighten bolts.
 18 Q. So all this was from a standing position?
 19 A. Yeah. And then after -- that was in -- I went
 20 back in September, I believe, and Christmas of
 21 that year they redid the engine line and then they
 22 put me on three different jobs. Three of which
 23 were running a hoist, and two --
 24 Q. I'm sorry. I couldn't hear you. I'm sorry.
 25 A. I'm sorry. After Christmas of that year they

Page 21	Page 23
1 changed the line around and they put me on four 2 different jobs. Three of them were running a 3 hoist. Two of them I never really did. I trained 4 on the -- one of them for about three days. But 5 the main two that I did was stand up and tighten 6 the bolts on the engine, basically the same as I 7 did before, and the other one was what they call 8 transmission pick, or I think that's -- and I 9 would go and pick up the -- it wasn't 10 transmission. It was the -- I'm sorry. I can't 11 remember the terms that they used. It was -- I 12 would go pick up the small part that went on the 13 end of the transmission with a air hoist and would 14 have to bend down and hook it up and push it back 15 to the line and put it on the engine and tighten 16 it up and then I would have to go back. And 17 basically I would do that two and a half hours and 18 then go stand up for two and a half hours, and 19 then I would come back and do that again for two 20 and a half hours. 21 Q. So that was after Christmas? 22 A. That was after Christmas. 23 Q. And the stations changed on the engine line 24 virtually? 25 A. Virtually. They --	1 Q. After it changed? 2 A. Yeah, after it changed, yeah. 3 Q. Okay. 4 A. And basically all I would get out of him was IHS 5 says you can do the job. 6 Q. And did you report back to IHS and tell them you 7 were having problems? 8 A. Eventually, yes. 9 Q. And that's why they took you out? 10 A. Yes, ma'am. 11 Q. Have you had any prior workers' compensation 12 claims against BMW? 13 A. No, ma'am. 14 Q. Have you been injured on the job at BMW prior to 15 this occasion? 16 A. No, ma'am. 17 Q. And this injury occurred back in October of 2007 18 and we're going to talk about how it happened in a 19 few minutes. But what body parts did you injure 20 on that day? 21 A. It was my back -- lower back was hurting, and the 22 pain was shooting down my right leg. 23 Q. And when you say lower back, that could mean 24 different things for different people. So can you 25 describe for the record where that pain was
Page 22	Page 24
1 Q. Reconfigured what the stations were? 2 A. Reconfigured, yes. That's what I was trying to 3 say. Reconfigured the whole engine line. 4 Q. Okay. And then how long did you stay doing that 5 after Christmas? 6 A. I think it was June when I finally -- they finally 7 put me out. 8 Q. So you did that up until the time that you left in 9 June -- 10 A. Yes, ma'am. 11 Q. -- of 2010? 12 A. Yes, ma'am. 13 Q. Okay. And when did you say you first started on 14 the engine line? 15 A. In September of '09. I believe that's correct. 16 Q. Okay. And you were still under Johnny's 17 supervision at that time? 18 A. Yes, ma'am. 19 Q. Did it become an issue with you working on the 20 light-duty work on the engine line? 21 A. Yeah. It hurt very badly, yes. 22 Q. Okay. So you started having more problems? 23 A. Yes, ma'am. And I would -- I had told Johnny 24 probably from the second week I was on that job 25 that it was hurting me.	1 located? 2 A. Pain -- 3 Q. Let's use your belt, your waistline as a -- 4 A. Basically going across at the waistline going -- 5 like a burning pain going across right in there. 6 Q. Had you ever had any problems with your back prior 7 to this occasion? 8 A. No, ma'am. 9 Q. Had you ever been treated for any medical problems 10 dealing with your back prior to October 2nd, 2007? 11 A. No, ma'am. I'm sorry. Is it okay if I stand up? 12 Q. Yeah. You want to take a break or you want to -- 13 A. If I could just stand up for a few minutes. 14 Q. Okay. Did you ever have any problems with your 15 right leg prior to this occasion? 16 A. No, ma'am. 17 Q. Ever seek any medical treatment for your right leg 18 prior to this occasion? 19 A. No, ma'am. 20 Q. Okay. Have you ever been involved in a motor 21 vehicle accident? 22 A. Yes. 23 Q. Okay. Have you ever sought medical treatment for 24 any of those accidents? 25 A. One time, yes. I was -- a car hit me coming out

6 (Pages 21 to 24)

Page 25	Page 27
1 of a side road and they took me because the 2 steering wheel actually came down on my legs and 3 it bruised them. 4 Q. What kind of injuries did you sustain? Was it 5 those bruises or something else? 6 A. Just bruises. That's all they could see was just 7 bruises. I had no complications from it. 8 Q. And what hospital did you go to? 9 A. Allen Bennett Memorial, which is now Greer 10 Memorial, I think. 11 Q. Have you had any other motor vehicle accidents? 12 A. I was hit once in Myrtle Beach from behind, but I 13 didn't go to the hospital. 14 Q. And when were you hit in Myrtle Beach? 15 A. '84, '85, around in there. 16 Q. Did you ever go to any doctor for that motor 17 vehicle accident? 18 A. No, ma'am. 19 Q. Outside of Allen Bennett Memorial Hospital did you 20 go to any other medical providers for the other 21 motor vehicle accident you just told me about? 22 A. No, ma'am. 23 Q. And what year was that accident? 24 A. I'm not sure right off. It was when I was working 25 with Digital Equipment.	1 four weeks. 2 Q. And that was for your neck? 3 A. Yes, ma'am. 4 Q. Have you ever sought any other medical treatment 5 for your neck? 6 A. No, ma'am. 7 Q. Any other chiropractors in your lifetime? 8 A. That's it. 9 Q. Have you ever had any slips, trips or falls where 10 you had to seek medical treatment in your 11 lifetime? 12 A. While I was out the first time with BMW, I slipped 13 on my sidewalk and I broke my wrist. 14 Q. Was there ice or water or something on the ground? 15 A. Ice. 16 Q. Ice? 17 A. Yes. And the dog. 18 Q. And what wrist was that? 19 A. My left one. 20 Q. And where did you go for medical treatment? 21 A. Greer Memorial. 22 Q. And who else did you see for that injury? 23 A. That was Dr. Lonergan with Steadman Hawkins. 24 Q. Did you have surgery? 25 A. Yes, ma'am. They put a steel plate in it.
Page 26	Page 28
1 Q. Have you ever been to see a chiropractor in your 2 lifetime? 3 A. Yes, ma'am. 4 Q. What chiropractor have you seen? 5 A. Dr. Chris Ehlich. 6 Q. And where is Dr. Ehlich located? 7 A. Poinsett Street in Greer. 8 Q. And when did you start seeing him? 9 A. I have been seeing him for two and a half years. 10 Q. Had you ever seen a chiropractor prior to this 11 workplace accident? 12 A. No, ma'am. 13 Q. Do you continue to see Dr. Ehlich on a regular 14 basis? 15 A. Yes, ma'am. 16 Q. And what is he doing for you? 17 A. He's actually helping me control the pain. It 18 does help. 19 Q. Have you seen any other chiropractors in your 20 lifetime besides Dr. Ehlich? 21 A. Yeah. In fact, right after -- that had to be like 22 '95, '96 after we bought the house. I dove into 23 the pool and sprained my neck and saw Dr. -- I'm 24 not saying -- sure if I -- Mruz in Taylors. On 25 Wade Hampton in Taylors. And he saw me for like	1 Q. Any other slips, trips or falls where you've had 2 to seek medical treatment? 3 A. None that I can remember. 4 Q. Okay. Any other kind of accidents or injuries 5 where you've had to seek medical treatment over 6 your lifetime that we haven't talked about yet 7 today? 8 A. None that I can think of right now. 9 Q. Any kind of sports injuries in your lifetime? 10 A. I never played sports. 11 Q. Okay. You mentioned the surgery on your left 12 wrist. Have you had any other surgeries in your 13 lifetime? 14 A. I've had my tonsils removed and my appendix 15 removed. 16 Q. And when were those surgeries? 17 A. My tonsils were in my tenth grade year of high 18 school and my appendix were when I was 29, because 19 it was on my birthday. 20 Q. And what hospital was that? 21 A. The tonsils were St. Francis. The appendix were 22 at Allen Bennett. 23 Q. Do you have any chronic medical conditions like 24 high blood pressure, diabetes, high cholesterol, 25 anything like that?

7 (Pages 25 to 28)

1 A. No. None that -- I am -- cholesterol. High
2 cholesterol. I am on simvastatin for high
3 cholesterol. My doctor keeps a watch on me
4 because my mother and grandparents were diabetic
5 and he says mine stays kind of close.
6 Q. Okay. So you have high cholesterol?
7 A. High cholesterol, yes.
8 Q. And simvastatin, is that what you said?
9 A. Simvastatin. It's the generic for Zocor.
10 Q. Okay. Do you take any other medications besides
11 that Zocor generic?
12 A. I take omeprazole which is generic for Prilosec
13 because of high reflux, and I take allergy
14 mediation. It's a Poly Hist Forte.
15 Q. And who prescribes all those medications for you?
16 A. Dr. Hunter Leigh at Mountain View Family Practice.
17 Q. How long have you been seeing Dr. Leigh?
18 A. Years. That's been my doctor up there since at
19 least I know I've been married. For at least 16
20 from the -- at Mountain View.
21 Q. And who did --
22 A. And it might be --
23 Q. Who did you see prior to Dr. Leigh?
24 A. Usually the ones at Mountain View. There's Dr.
25 Lawrence, Dr. -- I mean, just whoever would see

1 me. But Dr. Leigh tends to be my family doctor
2 now.
3 Q. Do you drink alcohol?
4 A. No, ma'am.
5 Q. Do you smoke?
6 A. No, ma'am.
7 Q. Have you ever smoked?
8 A. No, ma'am.
9 Q. Explain to me what happened on October 2nd, 2007
10 that got us here today.
11 A. Okay. Let's see. I was working on a job and I
12 was having to bend down into the front floor pan
13 of the X5 and tighten grounds -- or two grounds
14 that we had to tighten with an electric tool. So
15 I would have to bend down in there and tighten
16 those and take the bolt off and put the ground on
17 it and re-tighten it, and take another bolt off
18 and put the ground on and re-tighten that. Then I
19 would have to go to the back of the car and raise
20 my hands over my head and wire up the taillight on
21 the back of the hatch.
22 Q. And what were you doing when your accident
23 happened? Which one of those responsibilities
24 were you doing when you started feeling the pain?
25 A. Bending forward.

1 Q. On the front end of the car?
2 A. Yes.
3 Q. And what were you bending forward to do?
4 A. Tighten the grounds.
5 Q. Do you have to use any kind of tools for that?
6 A. An electric -- it's called an AFCS tool.
7 Q. Were you working by yourself or was there anybody
8 around when it happened?
9 A. Actually I was being trained on the job. There
10 was a lady there that was training me. Her name
11 was Brenda, but I don't remember her last name.
12 Q. Did you feel immediate pain?
13 A. Yes. And I tended to keep on working a little
14 while, yes.
15 Q. You say you tended to. What do you mean by that?
16 A. Yeah. I just -- I kept -- I kind of thought it
17 might just be, you know, the new job or something,
18 but it kept getting worse and worse.
19 Q. When you felt it -- was that the first time you
20 had ever felt any kind of pain like that or had it
21 been going on for some time?
22 A. That's the first time I ever felt anything like
23 that.
24 Q. But you just kept working?
25 A. (Nonverbal response.) And then I just had to

1 stop.
2 Q. Is that a yes?
3 A. Yes. Yes. And then I just had to stop.
4 Q. Okay. And where was that pain located at?
5 A. In my back.
6 Q. In what part of your back?
7 A. The lower back.
8 Q. And how long did you continue to work before
9 telling somebody?
10 A. About 30 minutes.
11 Q. Okay. And who was it that you told?
12 A. I told -- well, I told Brenda who I was working
13 with. Then I told -- her name -- it was our team
14 leader. Her name was Trinity. And I also told
15 Patrick.
16 Q. And what happened when you told Trinity and
17 Patrick?
18 A. They sent me to IHS.
19 Q. Did Brenda actually see the accident happen?
20 A. I don't think she did. I just -- you know, I told
21 her that it was hurting.
22 Q. Okay. Did you tell the folks at IHS all the
23 problems you were having?
24 A. Yes, ma'am.
25 Q. And now I understand that you've seen a variety of

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1 doctors. 2 A. Yes, ma'am. 3 Q. So I'm going to go -- try to go through them. I 4 think I have a list here, just to make sure that I 5 have them all. You saw IHS. You also saw Dr. 6 Robert Schwartz; is that correct? 7 A. That's correct. 8 Q. Dr. Schwartz did some pain injections, some 9 steroidal injections on your back? 10 A. That's correct. 11 Q. Did those help? 12 A. Temporarily. Not -- I mean, at the most -- two, 13 three weeks at the most. 14 Q. Okay. And did you tell Dr. Schwartz all the 15 problems that you were having? 16 A. Yes, ma'am. 17 Q. Okay. And then you were referred to Dr. Glen 18 Scott, I understand? 19 A. That's correct. 20 Q. Okay. And did you tell Dr. Scott all the problems 21 you were having? 22 A. That's correct. 23 Q. And then you went to Dr. Mitchell? 24 A. Yes. That sounds right, yeah. 25 Q. Did you tell him all the problems you were having?	1 lasting about three months each, so it's more -- 2 Q. And what kind of relief do you get from those 3 injections? 4 A. It -- I'm able to function through the day pretty 5 much. It's not a constant pain that I'm 6 constantly thinking about. The pain is still 7 there. I can still feel it. But it's not a pain 8 that just -- how can I say this? It's not a pain 9 that you would -- it's just like a low grade pain. 10 It's not like the high intensity pain that I was 11 having. And then it slowed -- the pain slowly 12 comes back, yes. Like now I know it's time for 13 another shot. 14 Q. Okay. After you get the -- after Dr. Behr gives 15 you an injection and, let's say, a day later or a 16 week later, is that -- is the pain that you feel 17 on a daily basis, is that -- does it get in the 18 way of the way you live your life on a daily basis 19 or is it manageable? 20 A. After the shot it's manageable. It's manageable. 21 Q. Does it get in the way -- does the pain that you 22 feel at that point, does it get in the way of what 23 you do on a daily basis, or are you able to do 24 okay with it? 25 A. I can do okay with it. I still can't do some of
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1 A. Yes, ma'am. 2 Q. And then I understand you went to Dr. Rollins. 3 A. Yes. Dr. Mitchell referred me to Dr. Rollins 4 because he was going out of the country. 5 Q. Okay. And Dr. Rollins evaluated your back; is 6 that correct? 7 A. That's correct. 8 Q. Okay. Were you satisfied with his evaluation? 9 A. Uh-huh. 10 Q. Is that a yes? 11 A. Yes, ma'am. Yes. 12 Q. And you told Dr. Rollins all the problems you were 13 having? 14 A. Yes, ma'am. 15 Q. And then I understand you were referred to Dr. 16 Behr? 17 A. Dr. Behr is for pain management. 18 Q. Are you still seeing Dr. Behr at this time? 19 A. Yes, ma'am. I have an appointment the 13th to see 20 him again. 21 Q. And have you told Dr. Behr all the problems you've 22 been having? 23 A. Yes, ma'am. 24 Q. Are you satisfied with Dr. Behr's treatment? 25 A. The injections that he has been given me are	1 the things that I would like to do. 2 Q. Sure. I see today you -- you have a brace around 3 your low back; is that right? 4 A. Yes, ma'am. Dr. Scott -- 5 Q. Do you have a TENS unit as well? 6 A. Yes, ma'am. 7 Q. Who prescribed the TENS unit for you? 8 A. Dr. Schwartz gives me the TENS unit. 9 Q. Okay. And how often do you have to use that TENS 10 unit? 11 A. I use it in the evenings quite a bit, because 12 after I've been up like through the day, in the 13 evenings it seems to hurt more. 14 Q. And how often do you use the brace? 15 A. Pretty much five, six times a week. 16 Q. And how many hours per day do you have to use it? 17 A. Any time I'm up around doing anything. If I'm 18 sitting down at home in a recliner or something I 19 can usually take it off. 20 Q. Okay. 21 A. But if I'm up around, especially outside doing 22 something, I need to put it on. 23 Q. Okay. What kinds of stuff are you able to do 24 outside? 25 A. Not a whole lot. I've tried washing my truck.

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1 That doesn't work. I have to take it -- I tried 2 with the long brush and that just didn't get it, 3 so I had to stop that. I can't work in my yard 4 anymore. I have to get my nephew to cut my grass 5 for me now. 6 Q. So you don't do anything in your yards? 7 A. (Nonverbal response.) Just -- 8 Q. Is that a no? 9 A. No, ma'am. I don't. Just -- I get pots and sit 10 in my flowerbeds now because I can't get down 11 there to work in them anymore. 12 Q. And how -- do you live in a house or an apartment 13 or mobile home? 14 A. I live in a house. 15 Q. A house? 16 A. Yes, ma'am. 17 Q. And is that a one-story house or a two story? 18 A. It's a one story. 19 Q. Does it have any steps there? 20 A. In the front it does. In the back there are no 21 steps. 22 Q. How much land do you live on? 23 A. It's about a half acre. 24 Q. Do you have any animals? I know you mentioned a 25 dog earlier.	1 Q. Is it paid off? 2 A. Yes, it's paid for. 3 Q. Do you have a girlfriend? 4 A. No, ma'am. 5 Q. Did you say Dr. Behr gave you the back brace? 6 A. Dr. Scott gave me the back brace. 7 Q. I'm sorry. Dr. Scott. Now, has surgery ever been 8 referred -- have you ever been referred for 9 surgery? 10 A. Dr. Rollins said that -- he talked with me about 11 surgery, and he told me all the things that could 12 happen, and I just didn't think that the odds he 13 was giving me were very good. 14 Q. Did you opt not to have the surgery? 15 A. Yes, ma'am. He told me if -- as long as I could 16 bear the pain he would recommend not having any 17 surgery. 18 Q. Is surgery something you're interested in at this 19 point? 20 A. If I had to have it, I would consider it. I would 21 really rather not have it if I don't have to have 22 the surgery. As long as I can kind of deal with 23 it. 24 Q. With the pain? 25 A. Yes, ma'am.
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1 A. I have two dogs. 2 Q. What kind of dogs do you have? 3 A. I have a lab and I have a Chihuahua. 4 Q. Do they stay in the house or outside? 5 A. The Chihuahua stays in the house. The lab stays 6 outside. Actually, it's my daughter's Chihuahua, 7 but. 8 Q. Do you care for the dogs? 9 A. I take care of them, yes. 10 Q. Do you have any jet skis or ATVs of any sort? 11 A. I have a motorcycle that I can't ride anymore that 12 sits in the yard now. 13 Q. What kind of motorcycle do you have? 14 A. 1999 Harley-Davidson Sportster. 15 Q. I've learned a little bit about a Harley over the 16 past couple of years of my life, so I can 17 appreciate that a little bit. When was the last 18 time you were able to ride your motorcycle? 19 A. It's been a couple of years. I didn't even pay 20 the taxes on it this year because why bother to 21 get a tag when you can't ride it. But it still 22 sits there and it still looks good. 23 Q. Have you ridden it since your accident? 24 A. I've tried. I tried to go around the block and it 25 hurts to sit on it.	1 Q. Are you dealing with the pain okay? 2 A. Fairly okay. Yes, ma'am. 3 Q. Do you have to take any medications? 4 A. I take tramadol, which is a generic for Ultracet. 5 Q. I thought you said tramadol. You didn't say 6 tramadol? 7 A. I said tramadol, yes. 8 Q. Tramadol? 9 A. Tramadol. And it's 50 milligram and he says one 10 to two of those every four hours as needed for 11 pain. I don't take them constantly, because I 12 don't like having to take the medication 13 constantly. I didn't take it before I came over 14 here because I don't like to drive and take it. 15 Q. That's a good idea. 16 A. Yeah. 17 Q. The tramadol, when is the last time -- how often 18 do you -- how often do you take it? 19 A. I pretty much have to take it every evening at 20 least usually -- usually twice a day. Not the 21 every four hours that he recommends. He also 22 prescribed me Celebrex which I cannot take. It 23 just messes with my stomach. 24 Q. And when you say he, you're talking about Dr. 25 Behr?

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1 A. Dr. Behr. Yes, ma'am. And I also informed him of
2 that as well.
3 Q. Do you take anything else besides the tramadol
4 then?
5 A. No, ma'am.
6 Q. And what pharmacy do you use?
7 A. The BMW pharmacy.
8 Q. You haven't used any other pharmacies for this
9 injury?
10 A. No, ma'am.
11 Q. When's your next appointment? I think you've told
12 me this already.
13 A. It is the 13th at 1:45.
14 Q. Do you have any appointments with any other
15 medical providers?
16 A. I see my chiropractor every Wednesday, and I do --
17 let's see. At this time I'm not sure.
18 Q. Are you seeing anybody -- any other doctors
19 ongoing for this injury other than Dr. Behr and
20 the chiropractor?
21 A. No, ma'am.
22 Q. And who's paying for the chiropractor visits?
23 A. I'm paying for it myself.
24 Q. Has any doctor recommended the chiropractor visits
25 or have you just found that it's helpful?

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1 A. I told Dr. Katemba -- I asked her about it at BMW,
2 and she said that she wasn't against it if it
3 helped me and so I just -- I've tried it and it
4 seems to help.
5 Q. And you're going there every week?
6 A. Yes, ma'am.
7 Q. Has your lawyer sent you to any doctors?
8 A. Not yet.
9 Q. Do you have any appointments scheduled with
10 anybody?
11 A. I'm not sure at this time. I believe that they
12 are going to. I'm not sure.
13 MR. DESAI:
14 Can we go off the record for a second?
15 MS. LAMB:
16 Yeah, sure.
17 (OFF THE RECORD DISCUSSION)
18 EXAMINATION RESUMED BY MS. LAMB:
19 Q. Did you drive yourself here today?
20 A. Yes, ma'am.
21 Q. Do you drive yourself everywhere you need to go?
22 A. Yes, ma'am. Pretty much. Unless it's anywhere of
23 a long distance. My leg tends to go to sleep if I
24 have to drive more than, say, an hour.
25 Q. More than what?

1 A. More than an hour my leg just tends to go to
2 sleep, so I usually get somebody to take me if
3 it's anywhere more than an hour.
4 Q. And that's your right leg?
5 A. Yes, ma'am.
6 Q. Okay. Have you sat down with any kind of
7 vocational rehabilitation folks that have talked
8 to you about what kind of jobs you can do in the
9 future?
10 A. No, ma'am.
11 Q. Have you worked anywhere since June 2010?
12 A. No, ma'am.
13 Q. Have you applied for unemployment benefits?
14 A. No, ma'am.
15 Q. Have you looked for any jobs anywhere?
16 A. No, ma'am.
17 Q. Why not?
18 A. I was hoping BMW would find me something.
19 Q. So you were hoping to be placed back at BMW again?
20 A. Yes, ma'am.
21 Q. And have they been able to do that?
22 A. No, ma'am. They said they weren't able to find me
23 a job with my restrictions.
24 Q. And do you know what those restrictions are?
25 A. No more than -- I've actually got a copy of them.

1 Q. That's okay. I just didn't know. I'm sure I do,
2 too. I just didn't know if you know off the top
3 of your head.
4 A. Not off the top of my head, I don't.
5 Q. Is there any job at BMW that you think you could
6 do?
7 A. If it is a standing job I might could do it. I
8 just have to be able to sit down every so often
9 because my back tends to hurt just standing there.
10 And then I have to stand up every so often because
11 my back hurts just sitting there.
12 Q. So as long as you can alternate standing and
13 sitting?
14 A. Yeah. If I had to get on the -- kneel down. That
15 was the problem with the hoist. I was having to
16 actually get down on my knees because I couldn't
17 bend over to pick the -- to hook the stuff up that
18 they needed me to hook up.
19 Q. So you can't do anything that requires bending?
20 A. No.
21 Q. Or stooping?
22 A. No.
23 Q. Any particular jobs at BMW that you know about
24 that you can do?
25 A. Not off the top of my head. No, ma'am.

11 (Pages 41 to 44)

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1 Q. Do you have any sources of income at this point 2 other than your workers' compensation benefits? 3 A. The long-term disability kicked in and they are 4 sending me \$100 a month. Other than that, no. 5 Q. They're only paying the gap between your workers' 6 comp and your -- 7 A. I guess. I guess that's what it is. 8 Q. -- entitlement. Okay. And are you receiving 9 weekly checks from BMW? 10 A. Yes. From workers' comp. Yes, ma'am. 11 Q. Is there anything else you do to make money? 12 A. No, ma'am. 13 Q. To the best of your knowledge, have all of your 14 medical bills been paid? 15 A. To the best of my knowledge, yes. 16 Q. Do you have a mortgage on your home? 17 A. Yes, ma'am. 18 Q. How many years are left on that, or how much is 19 the balance? 20 A. My balance is 81,000, thereabouts. 21 Q. And what kind of vehicle do you drive? 22 A. I drive a 2004 Tundra. 23 Q. Is that a stick shift or an automatic? 24 A. Automatic. 25 Q. Is that car paid off?	1 she needs to go. 2 Q. Is she mobile? 3 A. She's mobile. She also has degenerative eye 4 disorder, so she -- she won't drive in Greenville 5 or anywhere like that because she can't see. 6 She's afraid she can't see good enough to drive. 7 Q. What time do you wake up in the mornings? 8 A. Would that be through the night or just in the 9 mornings? 10 Q. In the morning. 11 A. I'm usually up about 7:00. 12 Q. And what time do you go to bed at night? 13 A. Usually about 11:00. 14 Q. And how often do you wake up at night? 15 A. I usually see the clock every hour, every couple 16 of hours. 17 Q. And why is that? 18 A. I just don't sleep that good. My back will get to 19 hurting and I'll have to re-adjust. Sometimes 20 I'll have to get up and walk around. 21 Q. You live by yourself -- 22 A. That's right. 23 Q. -- is that correct? 24 A. Yes. 25 Q. Do you cook?
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1 A. Yes, ma'am. 2 Q. Now that you're out of work, how are you spending 3 your time on a daily basis? 4 A. I watch TV a lot. I do kind of walk around the 5 yard just to get in a little -- try to get in a 6 little exercise. I don't like just sitting there 7 all the time either. And I keep my granddaughter 8 in the afternoons some when my daughter works. 9 Q. And where does your daughter work at? 10 A. She works for the Hare and the Hound Pub in 11 Landrum. 12 Q. Okay. And you said your granddaughter was seven 13 months; is that right? 14 A. Yes, ma'am. Seven months today. 15 Q. Do you keep her every day? 16 A. No, ma'am. Usually a couple of times a week. 17 Q. Do you do anything else during your days? 18 A. Ride to my mother's. Not a whole lot. 19 Q. Is your mother disabled in any way? 20 A. She's retired, yes. 21 Q. Is she disabled? 22 A. She actually has asthma, so. 23 Q. Can she get around on her own okay or do you have 24 to help her? 25 A. A lot of times I'll have to take her places that	1 A. Yes, ma'am. 2 Q. Do you clean? 3 A. Well, be it what may, yeah, I try. 4 Q. Do you vacuum? 5 A. Yes, I can vacuum. 6 Q. Do you sweep? 7 A. I can sweep, yes. 8 Q. Do you do your own dishes? 9 A. I have a dishwasher. 10 Q. You do the loading and unloading of the 11 dishwasher? 12 A. Yes. 13 Q. Do you do your own laundry? 14 A. Yes, I can wash clothes. 15 Q. And do you maintain your own yards? 16 A. No. My nephew cuts my grass now. 17 Q. And you mentioned something about gardening. Do 18 you do some of the gardening yourself? 19 A. In the summertime when I can actually sit down in 20 the yard I might get out there and plant -- try 21 and plant a few things, but I have to actually sit 22 down on the ground. I can't stoop over to do it. 23 Most of the time I just get pots and sit them in 24 the flowerbed, so -- or have somebody sit them 25 over in there for me.

12 (Pages 45 to 48)

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1 Q. So you get potted plants or potted flowers and sit 2 them in the flowerbeds? 3 A. Yes, ma'am. 4 Q. What kind of flowers do you have? 5 A. Right now there are pansies in there. 6 Q. Do you do any exercising? 7 A. I have a treadmill that I try and walk on 30 8 minutes a day. That's what they had me doing in 9 the therapy at BMW and I got a treadmill and try 10 to walk on it now. 11 Q. Do you do any other exercises besides the 12 treadmill? 13 A. I do some leg lifts that they had me -- they gave 14 me like a list of stuff to do, like leg lifts. 15 And then there's one that I got to the side, just 16 basically laying on a flat bed and -- 17 Q. So it's your home therapy program? 18 A. Yeah. 19 Q. Your physical therapy program at home? 20 A. Yeah. 21 Q. Okay. Have you taken any vacations or trips since 22 October 2007? 23 A. No. 24 Q. Do you have any trips or vacations planned? 25 A. Well, I take that back. In '07 I did -- no, '08.	1 Q. Have you ever sued anyone for any reason? 2 A. No, ma'am. 3 Q. Have you ever applied for social security 4 disability in your lifetime? 5 A. No, ma'am. 6 Q. When did your long-term disability start? 7 A. In -- let's see. In June. 8 Q. 2011? 9 A. Yes. 10 Q. And that's your policy through BMW? 11 A. Yes, ma'am. They've sent me \$600 so far. So six 12 months back. Would that be right? Through 13 December -- 14 Q. Yeah. Yes, sir. So you've never applied for 15 social security, correct? 16 A. No, ma'am. 17 Q. And just for the record, have you ever been on 18 Medicare in your lifetime? 19 A. No, ma'am. 20 Q. All right. As we sit here today, tell me all the 21 problems that you are currently having that you 22 relate back to your October 2007 accident? 23 A. Pain in my lower back, going across, burning pain 24 that most of the time there's a burning pain that 25 goes down my leg. Sometimes all the way down into
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1 I went with our youth group to Tennessee on a 2 mission trip. 3 Q. And what kind of mission trip was it? 4 A. We did a vacation Bible school. 5 Q. And who were you doing the Bible school for? 6 A. For underprivileged kids. 7 Q. Did you all ride there on a bus -- 8 A. Yes. 9 Q. -- or church van? 10 A. It was a church bus. A very uncomfortable church 11 bus. 12 Q. And where did you all stay when you got there? 13 A. We stayed in a college dorm. And I can't remember 14 the college right now. 15 Q. Have you taken any other vacations or trips since 16 you were injured? 17 A. None that I can remember. 18 Q. Do you have any trips planned? 19 A. No, ma'am. 20 Q. What did you do for Christmas and Thanksgiving? 21 A. I went to my mom's. 22 Q. And what about New Year's? 23 A. I stayed home. 24 Q. Have you ever been sued for any reason? 25 A. No, ma'am.	1 my toes and it tingles. 2 Q. And what leg is that? 3 A. My right leg. And sometimes that leg goes to 4 sleep if I sit too long, or sometimes if I'm 5 walking it starts -- it will almost give way. 6 Q. The pain in your low back, does that come and go 7 or is that there all the time? 8 A. That's pretty much there. 9 Q. But the intensity changes? 10 A. The intensity changes, yes. 11 Q. On a scale of zero to ten, what would you rate it 12 on a normal day? 13 A. About a three. 14 Q. And what about the pain in your right leg? On a 15 scale of zero to ten, how would you rate that? 16 A. About a -- on a normal day? 17 Q. Yes, sir. 18 A. About a three. That's what I would call bearable. 19 Q. Okay. So three is bearable? 20 A. Yes. 21 Q. Does the pain in your right leg come and go or is 22 it constant? 23 A. It comes and goes. 24 Q. Is there anything that you've noticed that makes 25 it come and go?

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1 A. Not really. 2 Q. Okay. Is there anything that you noted -- any 3 kind of positions that you notice with your back 4 that helps it or hurts it? 5 A. When I'm sleeping I know if I take a pillow and 6 put -- if I'm laying on my back and take a pillow 7 and it under my legs it tends to, I guess, relieve 8 the pressure on my leg. 9 Q. Okay. Relieve the pressure on your back or your 10 leg? 11 A. Of the back or leg. The leg doesn't hurt as bad 12 that way. 13 MS. LAMB: 14 Okay. I don't have any further questions. Answer 15 any questions your attorney may have for you. 16 EXAMINATION BY MR. DESAI: 17 Q. Donnie, this injury occurred in October of 2007; 18 is that right? 19 A. That's correct. 20 Q. And soon thereafter you were sent to see Dr. 21 Schwartz. Do you remember that at all? 22 A. I remember that. 23 Q. Do you remember Dr. Schwartz filling out a work 24 restriction form, or what I would call a 14B? And 25 let me let you look at that. Have you seen that	1 outside, and it's actually a box that sits on the 2 side. 3 Q. I see you're pointing to your right hip. Is that 4 your TENS unit? 5 A. Yeah. Yeah, that's the TENS unit. 6 Q. All right. How long have you had that TENS unit? 7 A. Since he gave that one to me. It was probably the 8 last day I saw him. 9 Q. Okay. 2008 sometime? 10 A. Yes, sir. 11 Q. Fair statement? Okay. Do you use it everyday? 12 A. In the evenings I tend to have to use it, yes. 13 Q. Are you supposed to use it everyday? 14 A. He says I can actually -- he told me I could 15 actually wear it everyday. I just have to turn it 16 off every couple hours for like 30 minutes at a 17 time. 18 Q. Does it seem to help any? 19 A. It does ease it, yes. 20 Q. Do you remember seeing this little prescription 21 here by Dr. Schwartz? 22 A. Yeah. I remember a return at work thing. 23 MS. LAMB: 24 Let me see that. I've seen that. 25 MR. DESAI:
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1 document? 2 A. I've never seen that, that I can remember. 3 Q. Has anybody told you that Dr. Schwartz -- and let 4 me tell you what that document says. It says that 5 you have been assigned a zero percent impairment 6 rating and that you're able to return to work 7 without restrictions, and that you will not need 8 any future medical treatment as related to this 9 case. And that was on February 12th of 2008. 10 A. He just told me I was ready to go back to work. 11 Q. Okay. He did tell you that? 12 A. Yeah. He told me I was ready to go back to work. 13 Q. Do you feel that you were ready to go back to work 14 at that time? 15 A. Well, I told him I was still hurting, and that's 16 why they gave me the TENS unit. He said for the 17 residual pain. And he said to wear that on line, 18 which that's pretty much impossible to wear a TENS 19 unit on line. 20 Q. Did you mention that to him? 21 A. I told him that. He said, Well, there are ways. 22 But you just can't wear anything on those lines 23 with cords and stuff hanging out, because they 24 catch. Stuff we're not even -- you're not even 25 supposed to have a phone or anything on the	1 I'm going to go ahead and admit both of those as 2 exhibits. 3 (PLAINTIFF'S EXHIBIT NUMBER 1 AND 2 MARKED; ATTACHED) 4 EXAMINATION RESUMED BY MR. DESAI: 5 Q. So not to put any words in your mouth, but you're 6 saying you do not agree with Dr. Schwartz at that 7 time where he said you are -- you do not need any 8 future medical treatment? 9 A. I didn't agree with him, no. 10 Q. Okay. Did you reinjure yourself or aggravate that 11 injury further after that time you saw Dr. 12 Schwartz in 2008? 13 A. I think I more or less aggravated it further. 14 Q. Okay. Did it keep getting worse? 15 A. It kept getting worse, yes. 16 Q. At what point did you decide that you just had 17 enough and then you went back to see -- who did 18 you see after that actually? 19 A. I actually went back to IHS at BMW and saw Dr. 20 Katemba. 21 Q. Okay. And what was that conversation like? What 22 did you tell Dr. Katemba? 23 A. I told her the jobs that they had me on, and she 24 was actually kind of shocked that they had me on 25 jobs running the hoist. She said that they had

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1 said that I would be able to do them and she never 2 actually went and checked out the jobs. She took 3 it at their word that I would be able to do those 4 jobs. 5 Q. And in 2008, and I believe it was in August, do 6 you remember talking to Dr. Katemba about that, or 7 do you remember Dr. Katemba assigning those work 8 restrictions to you? 9 A. Yes. 10 Q. Okay. And what made her assign those work 11 restrictions to you? Do you know? 12 A. She said she didn't believe -- she said just 13 judging from the movement I could make from -- I'm 14 sorry, excuse me. 15 MS. LAMB: 16 While he's drinking, I'm going to object to the 17 form of these questions. Just let it be an 18 ongoing objection. 19 THE WITNESS: 20 A. I'm sorry. Now I've lost my train of thought. 21 EXAMINATION RESUMED BY MR. DESAI: 22 Q. That's okay. What was your conversation with Dr. 23 Katemba? 24 A. When I went -- 25 Q. For those work restrictions in 2008.	1 IHS. And Dr. Katemba and the workers' comp lady 2 at BMW, I believe her name is Latu, they both came 3 in and talked with me and they both said that I 4 had to get off this medication because it had 5 changed my personality. And so, they actually put 6 me back out of work until I could get off of that. 7 Q. And when you say they specifically, did Dr. 8 Katemba put you out of work or did Dr. Scott put 9 you out of work or both? 10 A. Dr. Katemba. 11 Q. Okay. And that is the BMW doctor, isn't it? 12 A. Yes. 13 Q. After treating with Dr. Scott, where did you go? 14 What's the next doctor you saw? 15 A. He sent me to Dr. Mitchell. And I think I saw Dr. 16 Mitchell one or two times. I don't remember. And 17 he said that he was going out of the country and 18 he was referring me to Dr. Rollins. 19 Q. Are all these doctors in the same speciality? 20 A. They're all in the same -- same office right 21 there. 22 Q. Same building? 23 A. Same building, yes. 24 Q. Do you remember what Dr. Mitchell's or Dr. 25 Rollins' speciality was or is?
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1 A. For the work restrictions. She wanted to put 2 restrictions on me because she felt like I needed 3 the restrictions, because she didn't think that I 4 would be able to perform the duties out there 5 without restrictions. 6 Q. At what point did you go to see Dr. Mitchell? 7 A. Dr. Scott. 8 Q. Dr. Scott. I'm sorry. 9 A. That was the next doctor that she referred me to 10 when I went to -- up to IHS. 11 Q. So is it fair then to say that you continued to 12 complain about your back? 13 A. Yes, sir. 14 Q. And when was it, or do you remember, when Dr. 15 Katemba sent you to Dr. Scott? 16 A. I don't remember the exact date. 17 Q. Do you remember the year? 18 A. It was in '10, I believe. 19 Q. Okay. And then what exactly do you remember did 20 Dr. Scott do for you? 21 A. He actually -- he actually tried putting me on 22 Lyrica and he gave me the brace and they actually 23 had to put me back out while I was taking the 24 Lyrica because I was told that it changed my total 25 personality. And they had to send me back up to	1 A. Orthopedics surgery. 2 Q. And what is Dr. Scott or do you know? 3 A. I don't know what Dr. Scott was. 4 Q. Okay. So Dr. Mitchell tells you that he's going 5 out of the country and he wants you to go see Dr. 6 Rollins? 7 A. Yes. 8 Q. Did you end up seeing Dr. Rollins? 9 A. Yes, I did. 10 Q. And what was the result of that consultation? How 11 many times did you see Dr. Rollins? 12 A. I saw Dr. Rollins several times. I'm not sure of 13 the exact number. He sent me to see Dr. Behr and 14 they did a discogram and they also did a CT scan. 15 Well, they did the disc -- well they -- somehow he 16 told me that they had the disc -- something in 17 them. I know it hurt. And they sent me for a CT 18 scan while it was -- while the medicine from the 19 discogram was in there. 20 Q. Okay. So did you actually -- did you actually 21 have the discogram procedure done, performed? 22 A. Yes, I did. 23 Q. And who was the doctor that did it? 24 A. Dr. Behr. 25 Q. Okay. Let me show you a note which I believe was

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1 written on January 6th of 2011 and it's a three 2 page note. The one that I'm most interested in is 3 the third page. And it's number four. If you 4 don't mind, can you read that for me, please, sir. 5 A. Number four. "As we are not considering surgery 6 at the moment and this case has been open for four 7 years, I feel it is appropriate to state he has 8 reached maximum medical improvement and that he 9 can be rated and released. Based on the Guides to 10 Evaluation of Permanent Impairment label --" I'm 11 not sure, "one of four, will give him a nine 12 percent impairment rating. I feel that he will 13 have some restrictions at going forward. I 14 particularly would not recommend lifting over 20 15 pounds on a frequent basis, nor would I recommend 16 any excessive lifting, bending or twisting." 17 Q. Okay. Did you ever talk to Dr. Behr about your 18 workers' compensation case at all? 19 (PLAINTIFF'S EXHIBIT NUMBER 3 MARKED; ATTACHED) 20 A. No. 21 Q. Well, I would have mentioned, and you might not 22 know this, but he seems to be concerned about your 23 workers' compensation case open for four years. 24 Do you know why that is? 25 MS. LAMB:	1 injections per year? 2 A. I can only have an injection -- four injections 3 per year is the most I can have, he said. 4 Q. And do you feel that you need all four of them 5 every year? 6 A. It's been -- the last one that I had was in August 7 and I've actually -- I can tell that it's time for 8 another one now, but I've made it since August. 9 So I would -- I would say probably not all four of 10 them, if I can make it that long on one. But the 11 first two he did were -- the last one he did he 12 tried a different steroid of whatever they put in 13 them and it seems to have done better. 14 Q. Okay. Do you remember him saying that although he 15 was rating and releasing you, you will need future 16 medical -- 17 A. Yes, I do. 18 Q. -- including medications, epidural up to three 19 months -- 20 A. Yes. 21 Q. -- and a possible surgical referral in the future? 22 A. Yes, he told me that. 23 Q. Do you agree with that? 24 A. Yeah, I definitely think I would need at least the 25 injections.
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1 Object. 2 THE WITNESS: 3 A. I don't know. 4 EXAMINATION RESUMED BY MR. DESAI: 5 Q. Okay. Did you have a conversation with Dr. Behr 6 that day about being released? 7 A. He told me that he felt like I was at maximum 8 improvement. That he was making some notes and 9 that he never told me a percentage or anything 10 that he -- 11 Q. And it seems to me that he's releasing you based 12 on the fact that a surgery was -- that you didn't 13 want a surgery. 14 A. I would rather -- 15 Q. Did that conversation ever come up? 16 A. I would rather not have surgery. 17 Q. Did you tell him that? 18 A. Yeah. I told him that. 19 Q. And do you believe that you were put at MMI 20 because of the fact that you didn't want surgery? 21 A. Possibly. 22 MS. LAMB: 23 Object. 24 EXAMINATION RESUMED BY MR. DESAI: 25 Q. Did he advise you that you could only have so many	1 Q. Are you scared of surgery? 2 A. Yes, sir. 3 Q. Is that the reason you don't want it? 4 A. Pretty much. I just -- I don't know. I'm afraid 5 because he told me all the nerve damage that could 6 happen, because -- and, he said, you know, there's 7 a chance that it wouldn't work. Yes, I'm afraid 8 to have someone messing with my back. 9 Q. My question -- 10 A. Cutting on my back. 11 Q. Sorry. My question then is, do you not want the 12 surgery because you feel that it's not necessary, 13 or do you not want the surgery because you're 14 afraid of the side effects and the possibility of 15 it going south? 16 A. I guess I'm more afraid of the side effects and 17 the possibility of it being -- ending up worse. I 18 guess I've seen too many people where it ended up 19 worse than what it was to start with. 20 Q. On May 6th of 2011 Dr. Katemba wrote a note and 21 assigned significant work restrictions to you. 22 Are you aware of that? 23 A. Yes. 24 Q. Okay. And do you remember what it was that she 25 assigned to you?

1 A. Not off the top of my head I can't. I remember
2 there's probably not more than a 30 degree bend, I
3 believe.
4 Q. On an occasional basis?
5 A. On occasional basis. And not lifting more than 20
6 pounds, I believe, from the ground. If I have to
7 get down to the ground, not more than 10 pounds,
8 if I'm not mistaken.
9 Q. Maximum sitting for one hour at a time and five
10 minutes stand/walk break?
11 A. That's -- yeah.
12 Q. Do you remember her telling you that if you were
13 to be put on the line it would have to be on self-
14 paced?
15 A. Yes. Anything I do they -- she said would have to
16 be self-paced.
17 Q. Is there a line on BMW that's self-paced?
18 A. No, sir.
19 Q. Do you have an expectation as to how much you're
20 supposed to produce every hour or day at BMW?
21 A. Yes, sir.
22 Q. In order to meet those expectations, do you have
23 to be constantly up? Do you have to be going at
24 all times?
25 A. Yes.

1 -- I just can't take it. I mean, it literally
2 makes my stomach hurt and don't want to get into
3 the rest.
4 Q. What else?
5 A. I am on omeprazole for acid reflux. I take
6 simvastatin for high cholesterol. And I take Poly
7 Hist Forte for allergies.
8 Q. So all the medications that you've described, you
9 would say tramadol and Celebrex, are the two work
10 related --
11 A. Yes.
12 Q. -- medications?
13 A. Yes.
14 Q. And does -- Celebrex is an anti-inflammatory,
15 isn't it?
16 A. I believe so.
17 Q. Have they given you any substitute for Celebrex?
18 A. He tried one that started with a T and I can't
19 remember the name of it. And it didn't mess with
20 my stomach, but I couldn't tell it did anything.
21 Q. Have you had your stomach checked out for possible
22 ulcers because of Celebrex? Were you on a
23 Celebrex routine for a while?
24 A. No. I actually -- the reason the reflux is there
25 is I actually have a hiatal hernia that they said

1 Q. And do you feel that with the way you are today
2 that you would be able to meet those expectations?
3 A. Not on a line-type atmosphere I don't -- I was
4 actually -- when I was on the engine line Johnny
5 actually wrote me up because he said I was the
6 reason the line was not going as fast as it
7 should.
8 Q. So that's another thing, right? If there's a weak
9 link in there it could effect the rest of
10 production?
11 A. Yeah.
12 Q. Do you want to work?
13 A. I want to work. Yes, I would love to work. I get
14 tired of sitting. I get tired of being at home
15 all the time.
16 Q. If this pain could go away and if the doctor
17 releases you to full duty, would you go back to
18 work?
19 A. Yes, definitely.
20 Q. What medications are you on currently?
21 A. Currently I take tramadol for the pain.
22 Q. Tramadol?
23 A. Tramadol. He prescribed me Celebrex but --
24 Q. Who is he?
25 A. Dr. Behr. But it does mess with my stomach and it

1 I was born with.
2 Q. Fair enough. What kind of side effect does
3 tramadol have on you?
4 A. It makes me kind of foggy, I guess, I would say,
5 to a point that I wouldn't drive a car and take
6 it.
7 Q. Does it have like a warning on the side of the
8 bottle that says do not operate heavy machinery or
9 do not --
10 A. Oh, yeah. Any -- just pain medicine in general,
11 yes. Not to operate -- yeah.
12 Q. If you were to be ready to go back to work on
13 tramadol, do you think BMW would take you back
14 with tramadol in your system?
15 MS. LAMB:
16 Object.
17 THE WITNESS:
18 A. Well, I worked there before on it.
19 EXAMINATION RESUMED BY MR. DESAI:
20 Q. Did they know about that?
21 A. Dr. Katemba did. I don't know if BMW did, but Dr.
22 Katemba did.
23 MR. DESAI:
24 Okay. I'm going to enter this into the record as
25 well. The permanent work restrictions.

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1 (PLAINTIFF'S EXHIBIT NUMBER 4 and 5 MARKED; ATTACHED) 2 MS. LAMB: 3 Katemba's? 4 MR. DESAI: 5 Uh-huh. May 6th. 6 MS. LAMB: 7 Yes. 8 EXAMINATION RESUMED BY MR. DESAI: 9 Q. Donnie, do you believe those work restrictions -- 10 have you had a chance to look at that? You said 11 yes earlier. 12 A. Yeah, I've read through them. Yes. I can't 13 remember them right off the top of my head, but I 14 have read them. 15 Q. Take a look at them, if you don't mind. 16 A. Okay. 17 Q. Do you agree or disagree with those work 18 restrictions? 19 A. I agree with them. 20 Q. Do you think that you -- If you had to put 21 yourself on restriction, would you place more, 22 less, any different restrictions? Is there 23 anything on there that you think you can do or 24 cannot do, or something that should be on that 25 list that is not?	1 CERTIFICATE 2 3 I, the undersigned, April Herbert, Notary Public 4 in and for the State of South Carolina, do hereby 5 certify that the foregoing deposition of Donnie Kenneth 6 Lowe was taken on the 9th day of January, 2012; 7 That the within deponent was sworn to tell the 8 truth, and that the foregoing is an accurate 9 transcription of the testimony taken under oath; 10 That all exhibits entered herein are attached 11 hereto (if requested by counsel) and made a part of 12 this deposition. 13 I further certify that I am neither counsel nor 14 solicitor to any of the parties in said suit, nor 15 interested in the event of the cause. 16 In witness whereof, I have hereunto set my hand 17 and seal this 19th day of January, 2012. 18 19 20 <u>April Herbert</u> 21 Notary Public for South Carolina 22 My Commission Expires: 1/24/21 23 24 25
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1 A. No, sir. I mean, I would try anything they had me 2 do. 3 Q. You mentioned surgery. Hypothetically speaking, 4 you go back to Dr. Behr and Dr. Behr says, Look, 5 there's just nothing we can do for you. Surgery 6 is your last option. Would you go through it? 7 A. If that was my last option, yeah. 8 MR. DESAI: 9 I don't have anything else, Donnie. Thank you 10 very much. 11 REEXAMINATION BY MS. LAMB: 12 Q. Why are you currently not opting to do the 13 surgery? 14 A. I'll be honest, I'm afraid of the surgery. I'll 15 be honest. 16 Q. And is your pain manageable at this time? 17 A. For me it is, yes. 18 MS. LAMB: 19 All right. Nothing further. 20 (DEPOSITION CONCLUDED AT 11:38 A.M.) 21 22 23 24 25	

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JAMES P. BEHR, M.D.

SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. #0715651

DONNIE K. LOWE,
Claimant,

VS.

BMW MANUFACTURING CORPORATION,
SPECIALTY RISK SERVICES, INC.,
Employer-Insurer.

COPY

DEPOSITION OF JAMES P. BEHR, M.D.

DATE TAKEN: September 9, 2013
TIME BEGAN: 12:15 p.m.
TIME ENDED: 12:50 p.m.
LOCATION: Orthopaedic Associates, PA
1330 Boiling Springs Road
Spartanburg, South Carolina 29303

REPORTED BY: Kathleen M. Gula
Notary Public for South Carolina

GALLAGHER COURT REPORTING

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ALSO ATTENDING: Donnie Lowe

STIPULATIONS: The within deposition was taken pursuant
to the South Carolina Rules of Civil Procedure.
WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

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1 JAMES P. BEHR, M.D., being duly sworn, testified as
2 follows:

3 EXAMINATION BY MR. EASTERLING:

4 Q. Dr. Behr, my name is Brad Easterling. I
5 represent BMW Manufacturing Corporation. I
6 handle their workers' compensation claims. You
7 have sat down with us in this same case a while
8 ago. It's been so long ago that I had even
9 forgotten myself. Just to let you know, Mr.
10 Desai represents Mr. Donnie Lowe in his workers'
11 compensation claim. I'm here to ask you some
12 questions as a result of a new pleading, for
13 lack of a better word, that's been filed in the
14 case.

15 And just to give you kind of a background
16 so we have a landscape of what is going on, Mr.
17 Lowe was involved in a work injury at BMW back
18 in 2007. It was an admitted injury. BMW
19 provided benefits under workers' comp, provided
20 treatment with you. Under the workers' comp
21 umbrella, I guess, we went to a hearing and Mr.
22 Lowe was given or an order was made awarding him
23 a permanent disability award. After that award
24 his attorney has filed what is called a
25 change-of-condition claim alleging that Mr.

1 Lowe's condition has worsened since we paid him
2 the original award. Does that make any sense?
3 I know that's --

4 A. Yes, it makes sense.

5 Q. Okay. What I want to do is to find out mainly
6 about the treatment he's gotten subsequent to
7 that original award which was back in October
8 2012; that's when I think the check was paid to
9 him the first time. But in any event, you have
10 been treating him consistently since way back?

11 A. That is correct.

12 Q. And I believe the last time, the notes that we
13 just got, you last saw him on August 28, 2013?

14 A. That is correct.

15 Q. Tell me, Doctor, after October of 2012, how did
16 his treatment go, or what treatment did you
17 provide -- strike that question. Did any of
18 your treatment modalities change, or have you
19 been basically treating him in the same capacity
20 all along?

21 A. Essentially his pain has been controlled with a
22 combination of medications, epidurals, back
23 brace, and an exercise program.

24 Q. And is that still the case today?

25 A. That is still the case today.

1 Q. Okay. You completed a questionnaire on behalf
2 of Mr. Desai. I think he sent it to your
3 office.

4 MR. EASTERLING:

5 Do you have a copy of that, Monty?

6 MR. DESAI:

7 I do. I have the actual questionnaire, and I do
8 have a copy.

9 MR. EASTERLING:

10 That is the questionnaire I was referring to.
11 Is that one dated?

12 MR. DESAI:

13 Yeah.

14 MR. EASTERLING:

15 What is the date on that one?

16 MR. DESAI:

17 1/24/12.

18 MR. EASTERLING:

19 1/24/13?

20 MR. DESAI:

21 Sorry. It should have been '12.

22 MR. EASTERLING:

23 Well, these are two different questionnaires.

24 MR. DESAI:

25 The first one might be that one. This is

1 6/7/13.

2 EXAMINATION RESUMED BY MR. EASTERLING:

3 Q. This is that questionnaire that I was referring
4 to. That is a questionnaire that you completed
5 in, from what we understand, in June of 2013?

6 A. There is no date on this, but it was around that
7 time.

8 Q. Okay. Let me ask you this. You ordered a new
9 MRI for Mr. Lowe; did you not?

10 A. That is correct.

11 Q. And that MRI, I believe, was undertaken August
12 the 8th of 2013?

13 A. That is correct.

14 Q. And there were, I believe, if I'm not mistaken,
15 at least two prior MRI's that were available for
16 comparison; is that correct?

17 A. That is correct.

18 Q. The most recent MRI in comparison to this one
19 would have been February the 24th of 2010. I
20 might be mistaken about that. There may have
21 been one after that, but I think that was the
22 one.

23 A. I believe the most recent one was from 2010.

24 Q. Okay. Have you had an opportunity to see the
25 report or the film from the August 8, 2013, MRI?

1 A. Yes.

2 Q. And this is a copy of the report. Obviously I
3 don't have the actual film here. But have you
4 had an opportunity then to compare the report of
5 August 8, 2013, or either the film of August 8,
6 2013, to the prior MRI?

7 A. To the prior report, not the actual film itself.

8 Q. And were there any changes relative to Mr.
9 Lowe's spine condition shown on the MRI?

10 A. May I look at this MRI?

11 Q. Sure.

12 A. Okay. I'm sorry, what was the question again?

13 Q. Yes, sir. In comparing the two MRI's, the one
14 from February 2013 to the newer one on August 8,
15 2013, are there any objective changes or any
16 objective differences from the two MRI's that is
17 noted by the radiologist?

18 A. There are no large or significant changes from
19 one MRI to the other.

20 Q. The MRI from February 24th, 2010, is it fair to
21 say that the focus of the problem was at L5-S1?

22 A. Yes. We believe that most of the pain is coming
23 from the L5-S1 level based on the imaging, his
24 physical exam, and then the discogram which was
25 also performed in 2010.

1 Q. And that's been the case throughout even up
2 until today?

3 A. That's correct.

4 Q. I mean, it's always been at L5-S1?

5 A. Yes.

6 Q. There's never been any concern or possibility
7 that it was at some other level?

8 A. We always believed it was L5-S1.

9 Q. And am I correct in that the February 2010 MRI
10 characterizes it as a prominent central disc
11 protrusion at L5-S1?

12 A. Yes.

13 Q. They actually use the word prominent?

14 A. Yes.

15 Q. The radiologist does?

16 A. Yes.

17 Q. Then in the August 8, 2013, it's classified as a
18 small?

19 A. Yes.

20 Q. Is there any significance to that, or is it just
21 the differences in the radiologists'
22 terminology?

23 A. Likely it's the difference between two
24 radiologists reading the same report.

25 Q. Is there any possibility that it got smaller?

1 A. That is possible, but I can't say without
2 directly looking at the old image from 2010,
3 which I don't have that at the moment. But I
4 would say that it does not appear as if there is
5 any significant change between the two in terms
6 of worsening.

7 Q. Okay. And just so I can cover my bases, this
8 indicates, it says, and I'm reading from the
9 February 24th, 2010, MRI. It says no
10 significant interval change has occurred. Then
11 up on the top under the technique section it
12 says study is compared with similar exam on
13 11/8/2007. Is it fair to assume that they're
14 comparing two MRI's?

15 A. Yes. What they would be doing is, is comparing
16 the initial MRI from 2007 to that MRI in 2010,
17 and they're saying there is no significant
18 progression or change.

19 Q. And I don't see that language here on this
20 August 8, 2013, where it says a comparison was
21 made to a prior MRI and no significant interval
22 change or not. Do radiologists typically make
23 those kinds of comparisons if there are prior
24 studies available?

25 A. If the prior study is available. These were

1 performed at the same -- they were both at
2 Innervision, yeah. I can't speak as to why the
3 radiologist did not make that comment. I'm not
4 sure if he did not make a comment or if he did
5 not compare it. I can't say.

6 Q. Well, from your standpoint as the treating,
7 would it be physiatrist? Is that fair?

8 A. Yes.

9 Q. In comparing the February 24th, 2010, MRI to the
10 August 8, 2013, MRI, has there been an interval
11 change?

12 A. Not a significant interval change.

13 Q. And in February 2010, the radiologist noted that
14 there was no significant neural impingement?

15 A. That is correct.

16 Q. Is that still the case as of August 8, 2013, or
17 at least as of today based on the August 8,
18 2013, MRI?

19 A. There is no significant spinal stenosis seen.
20 It does mention there is mild impression on the
21 thecal sac, but no significant stenosis.

22 Q. And you have, at least in your August 28, 2013,
23 note, that there is talk about Mr. Lowe being
24 interested in surgery?

25 A. That is correct.

1 Q. And you've made a referral to Dr. Mitchell?

2 A. Yes.

3 Q. And that referral was made even after you saw
4 the results of the August 8, 2013, MRI?

5 A. Yes.

6 Q. And is it still your recommendation that he see
7 Dr. Mitchell or an orthopedic surgeon?

8 A. I think it would be reasonable to see a spine
9 surgeon specifically because he has seen a spine
10 surgeon before.

11 Q. Fair enough. And let me ask you this way. The
12 potential for surgery existed from the get-go in
13 this case; is that fair?

14 A. I mean, there is always a potential for surgery.
15 The question is, is surgery the best treatment
16 available.

17 Q. And in this case he saw, I believe, and it's
18 noted, I think, in the record, that he saw Dr.
19 Rollins?

20 A. Yes.

21 Q. And what was your understanding of what Dr.
22 Rollins recommended to him when he saw him?

23 A. From my recollection, I believe they had elected
24 not to proceed with surgery at that point due to
25 the level of pain he was having at that time.

1 Q. And when you say they, do you know if that was
2 the patient's decision more so, or was it Dr.
3 Rollins' recommendation that it may not be worth
4 it?

5 A. I don't recall. Likely that would be detailed
6 in Dr. Rollins' note from 2010.

7 Q. The questionnaire that we looked at, you
8 indicated in the first question -- the first
9 question was: Has Mr. Lowe's condition resulting
10 from his work-related injury in December 2008,
11 and the actual work injury was December 2007,
12 but has it changed for the worse. And you
13 indicated yes?

14 A. What I actually said was subjectively Mr. Lowe
15 is reporting increased pain, so subjectively it
16 has worsened. And what I later said is we
17 wanted to look at other things, including the
18 MRI, to see if objectively it has changed.

19 Q. And objectively has it changed?

20 A. No, not according to the MRI.

21 Q. So is it fair to say that the only basis to
22 opine that Mr. Lowe's condition has worsened is
23 based on his subjective complaints of pain?

24 A. On his subjective complaints along with the fact
25 that he is stating that the treatments that had

1 been working fairly well up to this point are no
2 longer working as well.

3 Q. which would be tied to subjective complaints of
4 pain?

5 A. Yes.

6 Q. strictly from a surgical standpoint, if assuming
7 that Dr. Rollins and Mr. Lowe had collaborated
8 and determined that it may not be worth it, the
9 risk or the significance of having surgery may
10 not be worth the overall benefit, is there
11 anything objectively from a surgical standpoint
12 to change that mind set?

13 A. Not that I am seeing. However, I am not a
14 surgeon, so I cannot make a surgical decision.

15 Q. And I understand that. What current treatment
16 are you providing for Mr. Lowe?

17 A. I believe we are doing intermittent epidurals,
18 medications, home-exercise program, and a back
19 brace, if I recall correctly.

20 Q. And the medication, is it still the same? Is it
21 Tramadol? Am I right about that?

22 A. No. We actually switched to a medication called
23 Nucynta.

24 Q. He had previously been taking Tramadol?

25 A. Yes.

1 Q. I believe you placed Mr. Lowe at maximum medical
2 improvement in January of 2011, January 6, 2011;
3 is that right?

4 A. That sounds about right. I don't have the --
5 let me look.

6 Q. And I'm not trying to trick you.

7 A. I know. That sounds about right.

8 Q. Okay. And you opined or you gave him a nine
9 percent impairment rating to his lumbar spine?

10 A. Yes.

11 Q. And you indicated that he was able to return to
12 work with no lifting over 20 pounds on a
13 frequent basis, no excessive lifting, bending,
14 or twisting?

15 A. Yes.

16 Q. And at that time you indicated that he'll need
17 future care, including medication, epidurals up
18 to every three months, as well as possible
19 surgical referral in the future?

20 A. Yes.

21 Q. Has any of that changed?

22 A. No.

23 Q. And so it was a possibility all the way back in
24 January of 2011 that he may need a surgical
25 referral?

1 A. Yes.

2 Q. Is there any objective evidence from January 6,
3 2011, to today that has changed in order to
4 hasten a surgical referral?

5 A. There is no objective evidence in terms of
6 imaging studies, things like that.

7 Q. Okay. And his work restrictions, have you
8 changed his work restrictions, or do you feel
9 the need to change his work restrictions based
10 on any of the evidence or any of the additional
11 medical evaluations that you've done since
12 January 2011?

13 A. No.

14 Q. And how about the prognosis for future medical;
15 is there anything that has come to your
16 attention since January 2011 that would change
17 the prognosis for future care?

18 A. No.

19 Q. I don't have any other questions. Thanks.

20 EXAMINATION BY MR. DESAI:

21 Q. Doctor, if your answer to that is, no, that
22 there is no prognosis or any change in medical
23 condition, well, isn't the need for surgery in
24 itself a change?

25 A. I didn't say he needed surgery.

1 Q. But you sent him to a referral for a surgeon;
2 did you not?

3 A. That's very different from saying that he needed
4 surgery.

5 Q. But, I mean, that's not within your expertise,
6 and you said that; did you not? That's for a
7 surgeon to decide whether to decide whether he
8 needs one or not, right?

9 A. That's correct.

10 Q. So that answer is not necessarily no; it's we
11 don't know? Wouldn't that be a more appropriate
12 answer?

13 A. The answer is exactly what I said; that I cannot
14 make a decision whether or not he needs surgery.
15 What I said is that it would be appropriate for
16 him to talk to a surgeon.

17 Q. Right. But your answer to the question of
18 whether the prognosis or the need for any future
19 medical has changed was no. But the true answer
20 should be we don't know right now; would that be
21 fair?

22 A. If that's the way you would like to state that,
23 I don't have a problem with it.

24 Q. No, I mean, no and we don't know are two
25 different answers, so I'm just trying to figure

1 out is it definitely no or do we not know until
2 he's had a referral?

3 A. From my perspective I have no intention of
4 changing the treatment that I'm offering him
5 based on the objective information that we have.
6 But again, I did recommend a surgical referral
7 to discuss any surgical options that may or may
8 not be available.

9 Q. You've been practicing for long enough to
10 understand this, or maybe not, but medicine is a
11 combination of subjective and objective
12 findings; is it not?

13 A. That is correct.

14 Q. So do you have any reason to believe that Donnie
15 is lying to you or exaggerating anything in any
16 way, shape, or form to you?

17 A. There is no reason to suspect that.

18 Q. Okay. Why the change in medication?

19 A. Because subjectively he told me that what we
20 were doing previously was not working as well.

21 Q. Isn't there signs, isn't there statistics that
22 prove that after a while some medications do
23 become not as effective or become ineffective as
24 your body takes those medications for a
25 prolonged period of time? Doesn't your body at

1 some point in many cases become susceptible to
2 those medications and is not as effective?

3 A. What do you mean by susceptible to that?

4 Q. I mean, doesn't the body become immune to that?
5 Does your body not need a change in medications
6 after certain levels in an advanced, prolonged
7 pain management scenario?

8 A. Tolerance can develop to certain medications.

9 Q. Right. Fair enough. So that is possible?

10 A. That tolerance can develop?

11 Q. Yes.

12 A. It is possible.

13 Q. So it's not just all subjective? I mean, that
14 has been objectively proven by statistics and
15 data; has it not?

16 A. That can occur, yes..

17 Q. And it does occur quite a bit, would you agree,
18 in a long-term pain management scenario?

19 MR. EASTERLING:

20 Object to the form of the question.

21 WITNESS:

22 A. It certainly can occur.

23 EXAMINATION RESUMED BY MR. DESAI:

24 Q. What is a sub-annular tearing?

25 A. It's a degenerative change that can often be

1 seen in a disc.

2 Q. A change within the disc?

3 A. It's on the annular.

4 Q. And what kind of symptoms can that produce?

5 A. It can produce no symptoms at all, or it can
6 produce pain at that site.

7 Q. Okay. Looking at your notes on 4/15, in the
8 history.

9 MR. EASTERLING:

10 4/15/13?

11 MR. DESAI:

12 '13.

13 EXAMINATION RESUMED BY MR. DESAI:

14 Q. Look at the second line. Are you there?

15 A. Uh-huh.

16 Q. All right. On 4/15 of 2013, and I guess the
17 provider was Kelly Wilson; that's your
18 physician's assistant?

19 A. Uh-huh.

20 Q. Okay. She has noted: He does report it has
21 helped, and we're talking about the ESI, but not
22 as much as previous injection. I'm assuming
23 that's what she probably meant by that; is that
24 fair to say?

25 A. That would be correct.

1 Q. If you'll look at the 4/15/13 note, and that was
2 with yourself.

3 A. Okay.

4 Q. You've noted: Mr. Lowe returns today, reports
5 that the last epidural did not give him as much
6 relief as the previous ones. He also reports
7 that the pain has been increasing across his low
8 back down into his right greater than left
9 buttock?

10 A. Uh-huh.

11 Q. Some of his symptoms, I understand, subjectively
12 have changed; have they not? We've got pain
13 increasing. We've got pain radiating.
14 Something has changed. I mean, would you agree
15 with that, subjectively or objectively?

16 A. Certainly subjectively the pain has increased,
17 which is why we've gone through the whole
18 process of obtaining the MRI. That's why --

19 Q. And that's my point. You don't have any reason
20 to -- sorry for interrupting. Go ahead.

21 A. And again, that's why we've changed the
22 medications and obtained the MRI to evaluate for
23 that subjective change.

24 Q. Fair enough. But on top of that, you have kind
25 of said let's go ahead and explore this surgery

1 option. Now, whether the surgeon says it's
2 necessary or unnecessary or otherwise is another
3 thing, but you felt the need to go ahead and
4 refer him to the surgeon; have you not?

5 A. Again, yes, due to the fact that subjectively
6 his pain has increased and subjectively he's
7 told me that the treatments that had been
8 providing him relief were no longer providing
9 that type of relief.

10 Q. Doctor, just to give me a percentage, and maybe
11 you don't know, but how many patients out of ten
12 do you actually -- what percentage of your
13 practice or your personal assessment of a client
14 do you account the subjective information from
15 the client? How much do you rely on that
16 information, assuming your client is credible,
17 as you've stated Mr. Lowe is?

18 MR. EASTERLING:

19 Patient.

20 EXAMINATION RESUMED BY MR. DESAI:

21 Q. Patient. Thank you.

22 A. It's impossible to answer. It's truly a
23 combination of both subjective and objective.
24 It has to be a combination of both.

25 Q. Gotcha. That's all I have. Thank you.

1 REEXAMINATION BY MR. EASTERLING:

2 Q. I don't want to belabor this, but you have
3 experience treating workers' comp patients; do
4 you not?

5 A. Yes.

6 Q. And do you find in your treatment of workers'
7 comp patients versus any other patient, is there
8 a difference in subjective complaints of pain or
9 duration of treatment or anything in that
10 regard?

11 A. Yes, often times there is.

12 Q. And why is that?

13 A. I do not have an answer for that. There have
14 been many studies that have been done looking at
15 that exact issue.

16 Q. Have you had an opportunity to look at any of
17 those studies?

18 A. I have looked at some of them.

19 Q. And in your recollection, what are some of the
20 explanations that those studies provided?

21 A. I don't have any specific studies to refer to
22 offhand.

23 Q. Okay. Is potential monetary gain a factor that
24 plays into the workers' compensation patient's
25 treatment, the monetary gain from the patient's

1 standpoint?

2 A. Potentially. I have no direct knowledge of that
3 with any of my patients.

4 Q. Fair enough. And just to summarize: There is no
5 doubt that Mr. Lowe's subjective complaints of
6 pain increased subsequent to October 2012; is
7 that right?

8 A. That is correct.

9 Q. Those increased subjective complaints of pain
10 led you to request another MRI that was
11 completed August 8, 2013?

12 A. That is correct.

13 Q. That August 8, 2013, MRI, however, showed no
14 objective interval change based on his prior
15 studies?

16 A. That is correct.

17 Q. Your referral to Dr. Mitchell is simply a let's
18 cover our bases again and see if there are
19 surgical options available?

20 A. Again, I am not a surgeon, so I don't feel
21 comfortable making a determination whether or
22 not he's a surgical candidate, but I do think
23 having him talk to a surgeon would be a
24 reasonable option.

25 Q. Okay. And this same situation that we find

1 ourselves in, referring him to an orthopedist or
2 an orthopedic surgeon, has been done in the past
3 as well?

4 A. That is correct.

5 Q. Is it your opinion that Mr. Lowe is at maximum
6 medical improvement and that the treatment that
7 you're providing for him now is palliative or
8 maintenance in nature?

9 A. Yes.

10 Q. Is it still your opinion that he has a nine
11 percent impairment rating to his spine?

12 A. Yes.

13 Q. And are the impairment ratings that we discussed
14 -- I mean, I'm sorry, I mean the work
15 restrictions that we discussed still your work
16 restrictions for this particular patient?

17 A. Yes.

18 Q. I don't have any other questions.

19 REEXAMINATION BY MR. DESAI:

20 Q. Here's my confusion. You're saying he's at MMI,
21 which means that there is nothing more or less
22 that can be done for him at this time. That's
23 what that word MMI means.

24 A. From my perspective, from a pain management
25 perspective, that is correct.

1 Q. I understand that. But then if when he sees Dr.
2 Mitchell, hypothetically, and Dr. Mitchell says
3 he's a surgical candidate and one is necessary,
4 is he still at MMI?

5 A. We could determine that at that point when and
6 if Dr. Mitchell or another spine surgeon says
7 that he's a surgical candidate.

8 Q. Potentially speaking, I mean, there is something
9 that can be done for him; is that right? I
10 mean, you're not saying that he's basically at a
11 standstill; that this is it? I mean, you are
12 referring him to a surgeon. You are saying that
13 a surgery might be necessary if that surgeon
14 says so.

15 A. I'm not saying a surgery is necessary. I'm
16 saying that I think a surgical consultation is a
17 reasonable next step.

18 Q. And you've maintained that since January 4th of
19 2012. Let me go ahead and show you that
20 questionnaire that you did fill out for me. And
21 we're not just pulling out this whole concept of
22 things getting bad over time, I mean, just
23 sitting here today, are we? I mean, that was
24 kind of foreseen. You mentioned that in January
25 of 2012 that it is likely that degenerative disc

1 disease will progress with time?

2 A. Sure.

3 Q. And as it progresses, symptoms get worse?

4 A. Uh-huh.

5 Q. And things get worse; am I right about that?

6 A. That can occur.

7 Q. Well, I mean, it can occur. You stated that in
8 January of 2012.

9 A. I'm saying that right now, that it can occur.

10 Q. So it's foreseeable? It was foreseeable to you
11 then that this is going to get worse or could
12 get worse; am I right about that?

13 A. Again, it can get worse.

14 Q. Right, as you stated in 2012. So this is not
15 quite a shock or we're not here to for the whole
16 financial gain, blah, blah, blah, whatever that
17 may be. It was actually something that is not
18 outside of reason, as you had stated, that this
19 could happen and it is happening. Are we right
20 about that?

21 A. It can happen. And subjectively he is reporting
22 worsening.

23 Q. You stated that it could happen back then. I
24 mean, that's a foreseeable event?

25 MR. EASTERLING:

1 Object.

2 REEXAMINATION RESUMED BY MR. DESAI:

3 Q. Am I right about that? I mean, you kind of
4 thought that this might take a turn for the
5 worse when you filled this questionnaire out and
6 when you stated that to a reasonable degree of
7 medical certainty?

8 A. I cannot see into the future, but degenerative
9 disc disease and things like this can progress
10 with time.

11 Q. Right. So monetary gain and all that other
12 nonsense has nothing to do with it; this is just
13 the way medicine works?

14 A. I don't know anything about the monetary gain,
15 so I can't answer that question.

16 Q. Gotcha. Do you have any reason to believe that
17 Mr. Lowe is misleading you, exaggerating, lying
18 to you in any way, shape, or form?

19 A. I have no idea.

20 Q. You said that you had no reason to think that he
21 was?

22 A. I have no reason to think he is.

23 Q. Thank you.

24 REEXAMINATION BY MR. EASTERLING:

25 Q. The first question, and he was referring to the

1 January 24, 2012, questionnaire, which was done
2 way back is: In your medical opinion, do you
3 believe Mr. Lowe's condition from his December
4 22nd, again, 2007, work injury will deteriorate
5 as time goes on. You indicated yes?

6 A. Yes, it can.

7 Q. It could in situations like that, okay. And
8 that's what degenerative disc disease is; it
9 degenerates over time?

10 A. That is correct.

11 Q. Be that as it may, is there anything on the
12 August 8, 2013, MRI that would support that his
13 degenerative disc disease has worsened since
14 January 24, 2012?

15 A. No, there is no objective evidence on that MRI.

16 Q. Thank you. That's it.

17 COURT REPORTER:

18 Monty, did you want a copy of the transcript?

19 MR. DESAI:

20 I do. I do.

21 (Concluded at 12:50 p.m.)
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Kathleen M. Gula, Notary Public in and for the state of South Carolina, do hereby certify that the foregoing deposition of James P. Behr, M.D. was taken on September 9, 2013;

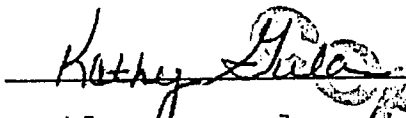
That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 10th day of September, 2013.




Kathleen M. Gula
Notary Public for South Carolina
My Commission Expires: 1/10/20

JAMES P. BEHR, M.D.

Page 3

WORKERS' SOUTH CAROLINA
COMPENSATION COMMISSION
W.C.C. #0715651

DONNIE K. LOWE,
Claimant,
VS.
BMW MANUFACTURING CORPORATION,
SPECIALTY RISK SERVICES, INC.,
Employer-Insurer.

DEPOSITION OF JAMES P. BEHR, M.D.

DATE TAKEN: September 9, 2013
TIME BEGAN: 12:15 p.m.
TIME ENDED: 12:50 p.m.
LOCATION: Orthopaedic Associates, PA
1330 Boiling Springs Road
Spartanburg, South Carolina 29303

REPORTED BY: Kathleen M. Gula
Notary Public for South Carolina

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(No exhibits introduced)	

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APPEARANCES:

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ALSO ATTENDING: Donnie Lowe

STIPULATIONS: The within deposition was taken pursuant
to the South Carolina Rules of Civil Procedure.
WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

Page 4

1 JAMES P. BEHR, M.D., being duly sworn, testified as
2 follows:

3 EXAMINATION BY MR. EASTERLING:

4 Q. Dr. Behr, my name is Brad Easterling. I
5 represent BMW Manufacturing Corporation. I
6 handle their workers' compensation claims. You
7 have sat down with us in this same case a while
8 ago. It's been so long ago that I had even
9 forgotten myself. Just to let you know, Mr.
10 Desai represents Mr. Donnie Lowe in his workers'
11 compensation claim. I'm here to ask you some
12 questions as a result of a new pleading, for
13 lack of a better word, that's been filed in the
14 case.

15 And just to give you kind of a background
16 so we have a landscape of what is going on, Mr.
17 Lowe was involved in a work injury at BMW back
18 in 2007. It was an admitted injury. BMW
19 provided benefits under workers' comp, provided
20 treatment with you. Under the workers' comp
21 umbrella, I guess, we went to a hearing and Mr.
22 Lowe was given or an order was made awarding him
23 a permanent disability award. After that award
24 his attorney has filed what is called a
25 change-of-condition claim alleging that Mr.

1 (Pages 1 to 4)

GALLAGHER COURT REPORTING

864-234-5744

gcr@charter.net

Page 5 1 Lowe's condition has worsened since we paid him 2 the original award. Does that make any sense? 3 I know that's -- 4 A. Yes, it makes sense. 5 Q. Okay. What I want to do is to find out mainly 6 about the treatment he's gotten subsequent to 7 that original award which was back in October 8 2012; that's when I think the check was paid to 9 him the first time. But in any event, you have 10 been treating him consistently since way back? 11 A. That is correct. 12 Q. And I believe the last time, the notes that we 13 just got, you last saw him on August 28, 2013? 14 A. That is correct. 15 Q. Tell me, Doctor, after October of 2012, how did 16 his treatment go, or what treatment did you 17 provide -- strike that question. Did any of 18 your treatment modalities change, or have you 19 been basically treating him in the same capacity 20 all along? 21 A. Essentially his pain has been controlled with a 22 combination of medications, epidurals, back 23 brace, and an exercise program. 24 Q. And is that still the case today? 25 A. That is still the case today.	Page 7 1 6/7/13. 2 EXAMINATION RESUMED BY MR. EASTERLING: 3 Q. This is that questionnaire that I was referring 4 to. That is a questionnaire that you completed 5 in, from what we understand, in June of 2013? 6 A. There is no date on this, but it was around that 7 time. 8 Q. Okay. Let me ask you this. You ordered a new 9 MRI for Mr. Lowe; did you not? 10 A. That is correct. 11 Q. And that MRI, I believe, was undertaken August 12 the 8th of 2013? 13 A. That is correct. 14 Q. And there were, I believe, if I'm not mistaken, 15 at least two prior MRI's that were available for 16 comparison; is that correct? 17 A. That is correct. 18 Q. The most recent MRI in comparison to this one 19 would have been February the 24th of 2010. I 20 might be mistaken about that. There may have 21 been one after that, but I think that was the 22 one. 23 A. I believe the most recent one was from 2010. 24 Q. Okay. Have you had an opportunity to see the 25 report or the film from the August 8, 2013, MRI?
Page 6 1 Q. Okay. You completed a questionnaire on behalf 2 of Mr. Desai. I think he sent it to your 3 office. 4 MR. EASTERLING: 5 Do you have a copy of that, Monty? 6 MR. DESAI: 7 I do. I have the actual questionnaire, and I do 8 have a copy. 9 MR. EASTERLING: 10 That is the questionnaire I was referring to. 11 Is that one dated? 12 MR. DESAI: 13 Yeah. 14 MR. EASTERLING: 15 What is the date on that one? 16 MR. DESAI: 17 1/24/12. 18 MR. EASTERLING: 19 1/24/13? 20 MR. DESAI: 21 Sorry. It should have been '12. 22 MR. EASTERLING: 23 Well, these are two different questionnaires. 24 MR. DESAI: 25 The first one might be that one. This is	Page 8 1 A. Yes. 2 Q. And this is a copy of the report. Obviously I 3 don't have the actual film here. But have you 4 had an opportunity then to compare the report of 5 August 8, 2013, or either the film of August 8, 6 2013, to the prior MRI? 7 A. To the prior report, not the actual film itself. 8 Q. And were there any changes relative to Mr. 9 Lowe's spine condition shown on the MRI? 10 A. May I look at this MRI? 11 Q. Sure. 12 A. Okay. I'm sorry, what was the question again? 13 Q. Yes, sir. In comparing the two MRI's, the one 14 from February 2013 to the newer one on August 8, 15 2013, are there any objective changes or any 16 objective differences from the two MRI's that is 17 noted by the radiologist? 18 A. There are no large or significant changes from 19 one MRI to the other. 20 Q. The MRI from February 24th, 2010, is it fair to 21 say that the focus of the problem was at L5-S1? 22 A. Yes. We believe that most of the pain is coming 23 from the L5-S1 level based on the imaging, his 24 physical exam, and then the discogram which was 25 also performed in 2010.

2 (Pages 5 to 8)

Page 9	Page 11
1 Q. And that's been the case throughout even up 2 until today? 3 A. That's correct. 4 Q. I mean, it's always been at L5-S1? 5 A. Yes. 6 Q. There's never been any concern or possibility 7 that it was at some other level? 8 A. We always believed it was L5-S1. 9 Q. And am I correct in that the February 2010 MRI 10 characterizes it as a prominent central disc 11 protrusion at L5-S1? 12 A. Yes. 13 Q. They actually use the word prominent? 14 A. Yes. 15 Q. The radiologist does? 16 A. Yes. 17 Q. Then in the August 8, 2013, it's classified as a 18 small? 19 A. Yes. 20 Q. Is there any significance to that, or is it just 21 the differences in the radiologists' 22 terminology? 23 A. Likely it's the difference between two 24 radiologists reading the same report. 25 Q. Is there any possibility that it got smaller?	1 performed at the same -- they were both at 2 Innervision, yeah. I can't speak as to why the 3 radiologist did not make that comment. I'm not 4 sure if he did not make a comment or if he did 5 not compare it. I can't say. 6 Q. Well, from your standpoint as the treating, 7 would it be physiatrist? Is that fair? 8 A. Yes. 9 Q. In comparing the February 24th, 2010, MRI to the 10 August 8, 2013, MRI, has there been an interval 11 change? 12 A. Not a significant interval change. 13 Q. And in February 2010, the radiologist noted that 14 there was no significant neural impingement? 15 A. That is correct. 16 Q. Is that still the case as of August 8, 2013, or 17 at least as of today based on the August 8, 18 2013, MRI? 19 A. There is no significant spinal stenosis seen. 20 It does mention there is mild impression on the 21 thecal sac, but no significant stenosis. 22 Q. And you have, at least in your August 28, 2013, 23 note, that there is talk about Mr. Lowe being 24 interested in surgery? 25 A. That is correct.
Page 10	Page 12
1 A. That is possible, but I can't say without 2 directly looking at the old image from 2010, 3 which I don't have that at the moment. But I 4 would say that it does not appear as if there is 5 any significant change between the two in terms 6 of worsening. 7 Q. Okay. And just so I can cover my bases, this 8 indicates, it says, and I'm reading from the 9 February 24th, 2010, MRI. It says no 10 significant interval change has occurred. Then 11 up on the top under the technique section it 12 says study is compared with similar exam on 13 11/8/2007. Is it fair to assume that they're 14 comparing two MRI's? 15 A. Yes. What they would be doing is, is comparing 16 the initial MRI from 2007 to that MRI in 2010, 17 and they're saying there is no significant 18 progression or change. 19 Q. And I don't see that language here on this 20 August 8, 2013, where it says a comparison was 21 made to a prior MRI and no significant interval 22 change or not. Do radiologists typically make 23 those kinds of comparisons if there are prior 24 studies available? 25 A. If the prior study is available. These were	1 Q. And you've made a referral to Dr. Mitchell? 2 A. Yes. 3 Q. And that referral was made even after you saw 4 the results of the August 8, 2013, MRI? 5 A. Yes. 6 Q. And is it still your recommendation that he see 7 Dr. Mitchell or an orthopedic surgeon? 8 A. I think it would be reasonable to see a spine 9 surgeon specifically because he has seen a spine 10 surgeon before. 11 Q. Fair enough. And let me ask you this way. The 12 potential for surgery existed from the get-go in 13 this case; is that fair? 14 A. I mean, there is always a potential for surgery. 15 The question is, is surgery the best treatment 16 available. 17 Q. And in this case he saw, I believe, and it's 18 noted, I think, in the record, that he saw Dr. 19 Rollins? 20 A. Yes. 21 Q. And what was your understanding of what Dr. 22 Rollins recommended to him when he saw him? 23 A. From my recollection, I believe they had elected 24 not to proceed with surgery at that point due to 25 the level of pain he was having at that time.

3 (Pages 9 to 12)

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1 Q. And when you say they, do you know if that was 2 the patient's decision more so, or was it Dr. 3 Rollins' recommendation that it may not be worth 4 it? 5 A. I don't recall. Likely that would be detailed 6 in Dr. Rollins' note from 2010. 7 Q. The questionnaire that we looked at, you 8 indicated in the first question -- the first 9 question was: Has Mr. Lowe's condition resulting 10 from his work-related injury in December 2008, 11 and the actual work injury was December 2007, 12 but has it changed for the worse. And you 13 indicated yes? 14 A. What I actually said was subjectively Mr. Lowe 15 is reporting increased pain, so subjectively it 16 has worsened. And what I later said is we 17 wanted to look at other things, including the 18 MRI, to see if objectively it has changed. 19 Q. And objectively has it changed? 20 A. No, not according to the MRI. 21 Q. So is it fair to say that the only basis to 22 opine that Mr. Lowe's condition has worsened is 23 based on his subjective complaints of pain? 24 A. On his subjective complaints along with the fact 25 that he is stating that the treatments that had	1 Q. I believe you placed Mr. Lowe at maximum medical 2 improvement in January of 2011, January 6, 2011; 3 is that right? 4 A. That sounds about right. I don't have the -- 5 let me look. 6 Q. And I'm not trying to trick you. 7 A. I know. That sounds about right. 8 Q. Okay. And you opined or you gave him a nine 9 percent impairment rating to his lumbar spine? 10 A. Yes. 11 Q. And you indicated that he was able to return to 12 work with no lifting over 20 pounds on a 13 frequent basis, no excessive lifting, bending, 14 or twisting? 15 A. Yes. 16 Q. And at that time you indicated that he'll need 17 future care, including medication, epidurals up 18 to every three months, as well as possible 19 surgical referral in the future? 20 A. Yes. 21 Q. Has any of that changed? 22 A. No. 23 Q. And so it was a possibility all the way back in 24 January of 2011 that he may need a surgical 25 referral?
Page 14	Page 16
1 been working fairly well up to this point are no 2 longer working as well. 3 Q. Which would be tied to subjective complaints of 4 pain? 5 A. Yes. 6 Q. Strictly from a surgical standpoint, if assuming 7 that Dr. Rollins and Mr. Lowe had collaborated 8 and determined that it may not be worth it, the 9 risk or the significance of having surgery may 10 not be worth the overall benefit, is there 11 anything objectively from a surgical standpoint 12 to change that mind set? 13 A. Not that I am seeing. However, I am not a 14 surgeon, so I cannot make a surgical decision. 15 Q. And I understand that. What current treatment 16 are you providing for Mr. Lowe? 17 A. I believe we are doing intermittent epidurals, 18 medications, home-exercise program, and a back 19 brace, if I recall correctly. 20 Q. And the medication, is it still the same? Is it 21 Tramadol? Am I right about that? 22 A. No. We actually switched to a medication called 23 Nucynta. 24 Q. He had previously been taking Tramadol? 25 A. Yes.	1 A. Yes. 2 Q. Is there any objective evidence from January 6, 3 2011, to today that has changed in order to 4 hasten a surgical referral? 5 A. There is no objective evidence in terms of 6 imaging studies, things like that. 7 Q. Okay. And his work restrictions, have you 8 changed his work restrictions, or do you feel 9 the need to change his work restrictions based 10 on any of the evidence or any of the additional 11 medical evaluations that you've done since 12 January 2011? 13 A. No. 14 Q. And how about the prognosis for future medical; 15 is there anything that has come to your 16 attention since January 2011 that would change 17 the prognosis for future care? 18 A. No. 19 Q. I don't have any other questions. Thanks. 20 EXAMINATION BY MR. DESAI: 21 Q. Doctor, if your answer to that is, no, that 22 there is no prognosis or any change in medical 23 condition, well, isn't the need for surgery in 24 itself a change? 25 A. I didn't say he needed surgery.

4 (Pages 13 to 16)

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1 Q. But you sent him to a referral for a surgeon; 2 did you not? 3 A. That's very different from saying that he needed 4 surgery. 5 Q. But, I mean, that's not within your expertise, 6 and you said that; did you not? That's for a 7 surgeon to decide whether to decide whether he 8 needs one or not, right? 9 A. That's correct. 10 Q. So that answer is not necessarily no; it's we 11 don't know? Wouldn't that be a more appropriate 12 answer? 13 A. The answer is exactly what I said; that I cannot 14 make a decision whether or not he needs surgery. 15 What I said is that it would be appropriate for 16 him to talk to a surgeon. 17 Q. Right. But your answer to the question of 18 whether the prognosis or the need for any future 19 medical has changed was no. But the true answer 20 should be we don't know right now; would that be 21 fair? 22 A. If that's the way you would like to state that, 23 I don't have a problem with it. 24 Q. No, I mean, no and we don't know are two 25 different answers, so I'm just trying to figure	1 some point in many cases become susceptible to 2 those medications and is not as effective? 3 A. What do you mean by susceptible to that? 4 Q. I mean, doesn't the body become immune to that? 5 Does your body not need a change in medications 6 after certain levels in an advanced, prolonged 7 pain management scenario? 8 A. Tolerance can develop to certain medications. 9 Q. Right. Fair enough. So that is possible? 10 A. That tolerance can develop? 11 Q. Yes. 12 A. It is possible. 13 Q. So it's not just all subjective? I mean, that 14 has been objectively proven by statistics and 15 data; has it not? 16 A. That can occur, yes. 17 Q. And it does occur quite a bit, would you agree, 18 in a long-term pain management scenario? 19 MR. EASTERLING: 20 Object to the form of the question. 21 WITNESS: 22 A. It certainly can occur. 23 EXAMINATION RESUMED BY MR. DESAI: 24 Q. What is a sub-annular tearing? 25 A. It's a degenerative change that can often be
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1 out is it definitely no or do we not know until 2 he's had a referral? 3 A. From my perspective I have no intention of 4 changing the treatment that I'm offering him 5 based on the objective information that we have. 6 But again, I did recommend a surgical referral 7 to discuss any surgical options that may or may 8 not be available. 9 Q. You've been practicing for long enough to 10 understand this, or maybe not, but medicine is a 11 combination of subjective and objective 12 findings; is it not? 13 A. That is correct. 14 Q. So do you have any reason to believe that Donnie 15 is lying to you or exaggerating anything in any 16 way, shape, or form to you? 17 A. There is no reason to suspect that. 18 Q. Okay. Why the change in medication? 19 A. Because subjectively he told me that what we 20 were doing previously was not working as well. 21 Q. Isn't there signs, isn't there statistics that 22 prove that after a while some medications do 23 become not as effective or become ineffective as 24 your body takes those medications for a 25 prolonged period of time? Doesn't your body at	1 seen in a disc. 2 Q. A change within the disc? 3 A. It's on the annular. 4 Q. And what kind of symptoms can that produce? 5 A. It can produce no symptoms at all, or it can 6 produce pain at that site. 7 Q. Okay. Looking at your notes on 4/15, in the 8 history. 9 MR. EASTERLING: 10 4/15/13? 11 MR. DESAI: 12 '13. 13 EXAMINATION RESUMED BY MR. DESAI: 14 Q. Look at the second line. Are you there? 15 A. Uh-huh. 16 Q. All right. On 4/15 of 2013, and I guess the 17 provider was Kelly Wilson; that's your 18 physician's assistant? 19 A. Uh-huh. 20 Q. Okay. She has noted: He does report it has 21 helped, and we're talking about the ESI, but not 22 as much as previous injection. I'm assuming 23 that's what she probably meant by that; is that 24 fair to say? 25 A. That would be correct.

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1 Q. If you'll look at the 4/15/13 note, and that was 2 with yourself. 3 A. Okay. 4 Q. You've noted: Mr. Lowe returns today, reports 5 that the last epidural did not give him as much 6 relief as the previous ones. He also reports 7 that the pain has been increasing across his low 8 back down into his right greater than left 9 buttock? 10 A. Uh-huh. 11 Q. Some of his symptoms, I understand, subjectively 12 have changed; have they not? We've got pain 13 increasing. We've got pain radiating. 14 Something has changed. I mean, would you agree 15 with that, subjectively or objectively? 16 A. Certainly subjectively the pain has increased, 17 which is why we've gone through the whole 18 process of obtaining the MRI. That's why -- 19 Q. And that's my point. You don't have any reason 20 to -- sorry for interrupting. Go ahead. 21 A. And again, that's why we've changed the 22 medications and obtained the MRI to evaluate for 23 that subjective change. 24 Q. Fair enough. But on top of that, you have kind 25 of said let's go ahead and explore this surgery	1 REEXAMINATION BY MR. EASTERLING: 2 Q. I don't want to belabor this, but you have 3 experience treating workers' comp patients; do 4 you not? 5 A. Yes. 6 Q. And do you find in your treatment of workers' 7 comp patients versus any other patient, is there 8 a difference in subjective complaints of pain or 9 duration of treatment or anything in that 10 regard? 11 A. Yes, often times there is. 12 Q. And why is that? 13 A. I do not have an answer for that. There have 14 been many studies that have been done looking at 15 that exact issue. 16 Q. Have you had an opportunity to look at any of 17 those studies? 18 A. I have looked at some of them. 19 Q. And in your recollection, what are some of the 20 explanations that those studies provided? 21 A. I don't have any specific studies to refer to 22 offhand. 23 Q. Okay. Is potential monetary gain a factor that 24 plays into the workers' compensation patient's 25 treatment, the monetary gain from the patient's
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1 option. Now, whether the surgeon says it's 2 necessary or unnecessary or otherwise is another 3 thing, but you felt the need to go ahead and 4 refer him to the surgeon; have you not? 5 A. Again, yes, due to the fact that subjectively 6 his pain has increased and subjectively he's 7 told me that the treatments that had been 8 providing him relief were no longer providing 9 that type of relief. 10 Q. Doctor, just to give me a percentage, and maybe 11 you don't know, but how many patients out of ten 12 do you actually -- what percentage of your 13 practice or your personal assessment of a client 14 do you account the subjective information from 15 the client? How much do you rely on that 16 information, assuming your client is credible, 17 as you've stated Mr. Lowe is? 18 MR. EASTERLING: 19 Patient. 20 EXAMINATION RESUMED BY MR. DESAI: 21 Q. Patient. Thank you. 22 A. It's impossible to answer. It's truly a 23 combination of both subjective and objective. 24 It has to be a combination of both. 25 Q. Gotcha. That's all I have. Thank you.	1 standpoint? 2 A. Potentially. I have no direct knowledge of that 3 with any of my patients. 4 Q. Fair enough. And just to summarize: There is no 5 doubt that Mr. Lowe's subjective complaints of 6 pain increased subsequent to October 2012; is 7 that right? 8 A. That is correct. 9 Q. Those increased subjective complaints of pain 10 led you to request another MRI that was 11 completed August 8, 2013? 12 A. That is correct. 13 Q. That August 8, 2013, MRI, however, showed no 14 objective interval change based on his prior 15 studies? 16 A. That is correct. 17 Q. Your referral to Dr. Mitchell is simply a let's 18 cover our bases again and see if there are 19 surgical options available? 20 A. Again, I am not a surgeon, so I don't feel 21 comfortable making a determination whether or 22 not he's a surgical candidate, but I do think 23 having him talk to a surgeon would be a 24 reasonable option. 25 Q. Okay. And this same situation that we find

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1 ourselves in, referring him to an orthopedist or 2 an orthopedic surgeon, has been done in the past 3 as well? 4 A. That is correct. 5 Q. Is it your opinion that Mr. Lowe is at maximum 6 medical improvement and that the treatment that 7 you're providing for him now is palliative or 8 maintenance in nature? 9 A. Yes. 10 Q. Is it still your opinion that he has a nine 11 percent impairment rating to his spine? 12 A. Yes. 13 Q. And are the impairment ratings that we discussed 14 - I mean, I'm sorry, I mean the work 15 restrictions that we discussed still your work 16 restrictions for this particular patient? 17 A. Yes. 18 Q. I don't have any other questions. 19 REEXAMINATION BY MR. DESAI: 20 Q. Here's my confusion. You're saying he's at MMI, 21 which means that there is nothing more or less 22 that can be done for him at this time. That's 23 what that word MMI means. 24 A. From my perspective, from a pain management 25 perspective, that is correct.	1 disease will progress with time? 2 A. Sure. 3 Q. And as it progresses, symptoms get worse? 4 A. Uh-huh. 5 Q. And things get worse; am I right about that? 6 A. That can occur. 7 Q. Well, I mean, it can occur. You stated that in 8 January of 2012. 9 A. I'm saying that right now, that it can occur. 10 Q. So it's foreseeable? It was foreseeable to you 11 then that this is going to get worse or could 12 get worse; am I right about that? 13 A. Again, it can get worse. 14 Q. Right, as you stated in 2012. So this is not 15 quite a shock or we're not here to for the whole 16 financial gain, blah, blah, blah, whatever that 17 may be. It was actually something that is not 18 outside of reason, as you had stated, that this 19 could happen and it is happening. Are we right 20 about that? 21 A. It can happen. And subjectively he is reporting 22 worsening. 23 Q. You stated that it could happen back then. I 24 mean, that's a foreseeable event? 25 MR. EASTERLING:
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1 Q. I understand that. But then if when he sees Dr. 2 Mitchell, hypothetically, and Dr. Mitchell says 3 he's a surgical candidate and one is necessary, 4 is he still at MMI? 5 A. We could determine that at that point when and 6 if Dr. Mitchell or another spine surgeon says 7 that he's a surgical candidate. 8 Q. Potentially speaking, I mean, there is something 9 that can be done for him; is that right? I 10 mean, you're not saying that he's basically at a 11 standstill; that this is it? I mean, you are 12 referring him to a surgeon. You are saying that 13 a surgery might be necessary if that surgeon 14 says so. 15 A. I'm not saying a surgery is necessary. I'm 16 saying that I think a surgical consultation is a 17 reasonable next step. 18 Q. And you've maintained that since January 4th of 19 2012. Let me go ahead and show you that 20 questionnaire that you did fill out for me. And 21 we're not just pulling out this whole concept of 22 things getting bad over time, I mean, just 23 sitting here today, are we? I mean, that was 24 kind of foreseen. You mentioned that in January 25 of 2012 that it is likely that degenerative disc	1 Object. 2 REEXAMINATION RESUMED BY MR. DESAI: 3 Q. Am I right about that? I mean, you kind of 4 thought that this might take a turn for the 5 worse when you filled this questionnaire out and 6 when you stated that to a reasonable degree of 7 medical certainty? 8 A. I cannot see into the future, but degenerative 9 disc disease and things like this can progress 10 with time. 11 Q. Right. So monetary gain and all that other 12 nonsense has nothing to do with it; this is just 13 the way medicine works? 14 A. I don't know anything about the monetary gain, 15 so I can't answer that question. 16 Q. Gotcha. Do you have any reason to believe that 17 Mr. Lowe is misleading you, exaggerating, lying 18 to you in any way, shape, or form? 19 A. I have no idea. 20 Q. You said that you had no reason to think that he 21 was? 22 A. I have no reason to think he is. 23 Q. Thank you. 24 REEXAMINATION BY MR. EASTERLING: 25 Q. The first question, and he was referring to the

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1 January 24, 2012, questionnaire, which was done
2 way back is: In your medical opinion, do you
3 believe Mr. Lowe's condition from his December
4 22nd, again, 2007, work injury will deteriorate
5 as time goes on. You indicated yes?

6 A. Yes, it can.

7 Q. It could in situations like that, okay. And
8 that's what degenerative disc disease is; it
9 degenerates over time?

10 A. That is correct.

11 Q. Be that as it may, is there anything on the
12 August 8, 2013, MRI that would support that his
13 degenerative disc disease has worsened since
14 January 24, 2012?

15 A. No, there is no objective evidence on that MRI.

16 Q. Thank you. That's it.

17 COURT REPORTER:

18 Monty, did you want a copy of the transcript?

19 MR. DESAI:

20 I do. I do.

21 (Concluded at 12:50 p.m.)
22
23
24
25

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CERTIFICATE

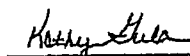
I, the undersigned, Kathleen M. Gula, Notary
Public in and for the State of South Carolina, do
hereby certify that the foregoing deposition of James
P. Behr, M.D. was taken on September 9, 2013;

That the within deponent was sworn to tell the
truth, and that the foregoing is an accurate
transcription of the testimony taken under oath;

That all exhibits entered herein are attached
hereto (if requested by counsel) and made a part of
this deposition.

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set my hand
and seal this 10th day of September, 2013.



Kathleen M. Gula
Notary Public for South Carolina
My Commission Expires: 1/10/20

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel
Melody James, Susan Barden, Aisha Taylor

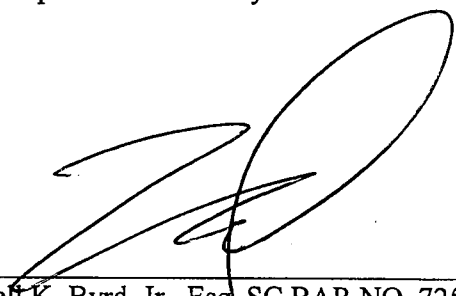
SCWCC File No. 0715651
Appellate Case No. 2017-000753

Donnie Lowe, Employee, Claimant, Appellant,
v.
BMW Manufacturing Corporation, Employer, and Hartford Ins. Co. of the
Midwest, c/o Sedgewick Claims Management Services, Inc., Carrier, Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

August 16, 2017



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