

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1408826

RECEIVED
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SC Court of Appeals

Gennette Sowell,

Employee,
Respondent,

v.

Piggly Wiggly,

Employer,

and

Auto Owners Insurance Inc.,

Carrier,
Appellants.

**RECORD ON APPEAL
VOL. II**

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1408826

EMPLOYEE/CLAIMANT: GENNETTE SOWELL
EMPLOYER: PIGGLY WIGGLY
INSURER: OWNERS INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 22ND DAY OF
JUNE, 2016, COMMENCING AT THE HOUR OF 2:27 P.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
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APPEARANCES

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ALSO ATTENDING: MARY CYNTHIA QUICK
GERALD MALLOY

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * *

6 BY COMMISSIONER JAMES:

7 TODAY IS JUNE THE 22ND, 2016. WE ARE HERE ON
8 W.C.C. FILE NUMBER 1408826. THIS IS THE MATTER OF
9 GENNETTE SOWELL VERSUS PIGGLY WIGGLY AND OWNERS
10 INSURANCE COMPANY. PRESENT ON BEHALF OF THE
11 CLAIMANT IS MR. PRESTON MCDANIEL AND MR. GERALD
12 MALLOY. PRESENT ON BEHALF OF THE DEFENDANTS IS MS.
13 KENYA MILLER. THE DATE OF THE ALLEGED ACCIDENT IS
14 JANUARY THE 6TH, 2014. THE AVERAGE WEEKLY WAGE AND
15 COMPENSATION RATE HAS BEEN STIPULATED TO FROM THE
16 PRESENT EMPLOYER PIGGLY WIGGLY. THE AVERAGE WEEKLY
17 WAGE IS \$652.86 WITH A CORRESPONDING COMPENSATION
18 RATE OF \$435.26. THE PARTIES HAVE STIPULATED THE
19 CLAIMANT HOLDS SECOND EMPLOYMENT IN A CATERING
20 BUSINESS, AND THAT HER AVERAGE WEEKLY WAGE FROM THAT
21 EMPLOYMENT WOULD BE \$43.27 WITH A CORRESPONDING
22 COMPENSATION RATE OF \$28.84. THEREFORE, THE
23 COMBINED AVERAGE WEEKLY WAGE IS \$696.13 WITH A
24 CORRESPONDING COMPENSATION RATE OF \$464.10. I HAVE
25 NOT ASKED THE PARTIES TO HAND UP THEIR APAs YET

1 DURING THE PRETRIAL, BUT IF Y'ALL WILL GO AHEAD AND
2 HAND THOSE UP TO ME.

3 BY MR. MCDANIEL:

4 COMMISSIONER, CAN WE GO OFF THE RECORD JUST A
5 SECOND?

6 BY COMMISSIONER JAMES:

7 SURE.

8 (OFF THE RECORD)

9 BY COMMISSIONER JAMES:

10 WE ARE BACK ON RECORD. WE HAD A DISCUSSION
11 WITH REGARDS TO A COUPLE OF THINGS. ONE, THE
12 AVERAGE WEEKLY WAGE AND THE COMPENSATION RATE. IT
13 APPEARS AFTER THE RECALCULATION, THAT THE
14 COMPENSATION RATE IS OFF BY A PENNY WITH REGARDS TO
15 THE SECOND INCOME. SO, THE CALCULATION SHOULD BE A
16 COMPENSATION RATE OF \$28.85, AND THE COMBINED RATE
17 THEREFORE WILL BE \$464.11. ALSO, THE PARTIES HAVE
18 SUBMITTED THEIR APAs DURING THE BREAK. THE CLAIMANT
19 HAS SUBMITTED PAGES 1 THROUGH 221. THE DEFENDANTS
20 HAVE SUBMITTED PAGES 219 THROUGH 360. LISTED ON THE
21 BRIEF OF THE DEFENDANTS WERE PAGES 360 THROUGH 394.
22 THOSE HAVE BEEN REMOVED BY CONSENT OF THE PARTIES.
23 ALSO SUBMITTED FOR EVIDENCE IS THE DEPOSITION OF DR.
24 EARLY AND THE DEPOSITION OF DR. MENDEZ.

25 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,

1 VENUE, OR ANY OTHER ITEMS ON BEHALF OF THE MOVING
2 PARTY, THE CLAIMANT?

3 BY MR. MCDANIEL:

4 NONE, COMMISSIONER.

5 BY COMMISSIONER JAMES:

6 ON BEHALF OF THE DEFENDANTS?

7 BY MS. MILLER:

8 NONE, YOUR HONOR.

9 BY COMMISSIONER JAMES:

10 OKAY. WITHOUT OBJECTION, THE COMMISSION FILE
11 BECOMES A PART OF THE RECORD WITH THE EXCEPTION OF
12 ANY SELF-SERVING DECLARATIONS AND UNSTIPULATED
13 MEDICAL REPORTS.

14 I WILL STATE THE ISSUES VERY SUCCINCTLY AND
15 GIVE THE PARTIES AN OPPORTUNITY TO FLUSH OUT ANY
16 OTHER ISSUES IF THEY WISH TO ON THE RECORD.

17 THE CLAIMANT PRESENTS TODAY SEEKING
18 COMPENSABILITY FOR AN INJURY THAT SHE HAS PLED AS
19 AN INJURY BY ACCIDENT AND ALSO AS A REPETITIVE
20 INJURY OR OCCUPATIONAL DISEASE. THE CLAIMANT
21 CONTENDS THAT HER OCCUPATIONAL ASTHMA IS RELATED TO
22 HER WORK AND IS WITHIN THE SCOPE AND COURSE AND
23 ARISES OUT OF HER EMPLOYMENT. SHE IS REQUESTING
24 PAST AND FUTURE MEDICALS AND ALSO INDICATES THAT AT
25 THIS POINT IN TIME, AS WELL AS THE TEMPORARY TOTAL

1 THAT MAY BE DUE, THAT SHE IS PERMANENTLY AND TOTALLY
2 DISABLED, AND SHE IS SEEKING DETERMINATION OF
3 PERMANENCY.

4 THE DEFENDANTS HAVE RAISED A GENERAL DENIAL,
5 AND AS PART OF THAT GENERAL DENIAL INDICATES THAT
6 THE CLAIMANT DOES NOT MEET ALL OF THE ELEMENTS
7 WITHIN THE OCCUPATIONAL DISEASE REQUIREMENTS. AS TO
8 THE INJURY BEING PLED AS AN ACCIDENT, THE DEFENDANTS
9 RAISE THE STATUTE OF LIMITATIONS, AND ALSO AS TO THE
10 OCCUPATIONAL DISEASE, THE DEFENDANTS RAISE THE ISSUE
11 OF STATUTE OF LIMITATIONS AND NOTICE.

12 THAT IS MY UNDERSTANDING OF A SKINNY OF THE
13 ISSUES. I'M GOING TO ALLOW EACH OF THE PARTIES. I
14 WILL START WITH THE MOVING PARTY, THE CLAIMANT?

15 **BY MR. MCDANIEL:**

16 THANK YOU, YOUR HONOR. OUR MAIN POSITION IS
17 THAT MS. SOWELL HAS CONTRACTED AN OCCUPATIONAL
18 DISEASE IN THE FORM OF OCCUPATIONAL ASTHMA. IT IS
19 ALSO VERY SIMILAR -- IT ALSO FITS WITHIN THE
20 DIAGNOSIS OF BEING A REPETITIVE TRAUMA INJURY. THE
21 ORIGINAL REFERENCE TO AN INJURY BY ACCIDENT IS
22 SIMPLY IN THE FACT THAT THERE WAS A PERIOD OF
23 TREMENDOUS EXPOSURE THAT RESULTED IN A TRIGGERING OF
24 HER ASTHMA, IN WHICH THEN DUE TO HER CONTINUAL
25 OCCUPATIONAL EXPOSURE THEREAFTER, SHE DEVELOPED THE

1 OCCUPATIONAL ASTHMA AT THAT POINT AND THEN THROUGH
2 THE TIME THAT SHE BECAME DISABLED. AS TO THE ISSUE
3 OF NOTICE, SHE -- UNDER OCCUPATIONAL DISEASE, SHE
4 BECAME -- SHE WAS NOT DEFINITELY DIAGNOSED WITH
5 OCCUPATIONAL ASTHMA UNTIL AFTER SHE ACTUALLY WENT
6 OUT OF WORK ON JANUARY 6TH OF 2014. HOWEVER, TWO
7 EVENTS HAVE TO OCCUR. IN OTHER WORDS, IN ORDER FOR
8 THE STATUTE TO BEGIN TO RUN IN REFERENCE TO AN
9 OCCUPATIONAL DISEASE, ONE, THERE HAS TO BE A
10 DEFINITIVE DIAGNOSIS, AND THE CLAIMANT HAS TO BE
11 TOLD OF THAT DIAGNOSIS, AND TWO, THERE HAS TO BE --
12 SHE HAS TO BECOME DISABLED FROM THE OCCUPATIONAL
13 DISEASE. YOU WILL NOTE THAT SHE WENT OUT OF WORK ON
14 JANUARY 6TH, AND YOU WILL FIND IN THE FILE WHERE WE
15 PLACE THEM ON NOTICE PRIOR TO AND THEY ACTUALLY
16 FILED A FORM 12-A ON MARCH THE 24TH, WELL WITHIN THE
17 90-DAY PERIOD OF NOTICE, WELL WITHIN THE STATUTE OF
18 LIMITATIONS. IN REFERENCE TO THE STATUTE OF
19 LIMITATIONS AGAIN, WE TAKE THE POSITION THAT OF
20 COURSE IT IS AN OCCUPATIONAL DISEASE. SHE WAS NOT
21 DEFINITELY DIAGNOSED WITH AN OCCUPATIONAL DISEASE.
22 SHE WAS DIAGNOSED WITH ASTHMA, BUT SHE WAS NOT
23 DIAGNOSED WITH OCCUPATIONAL ASTHMA, THE DIFFERENCE
24 BEING THE CAUSE OF THE ASTHMA, UNTIL WELL AFTER SHE
25 BECAME DISABLED. IN ADDITION TO THAT, IN REFERENCE

1 TO REPETITIVE TRAUMA, SHE WAS NOT DEFINITELY
2 DIAGNOSED WITH A REPETITIVE TRAUMA INJURY CAUSED BY
3 HER WORK UNTIL AT LEAST NOVEMBER OF 2013, AS THE
4 EVIDENCE WILL SHOW. SHE BECAME DISABLED WITHIN TWO
5 MONTHS. THE EMPLOYER WAS WELL AWARE OF HER PROBLEMS
6 IN REFERENCE TO HER EMPLOYMENT BEGINNING AS EARLY AS
7 IN SOME ELEMENTS AS EARLY AS DECEMBER OF 2011 AND
8 GOING FORWARD IN 2012 AND '13. SO, THE STATUTE OF
9 LIMITATIONS WOULD NOT BEGIN TO RUN ON THE REPETITIVE
10 TRAUMA UNTIL AT THE VERY EARLIEST -- AT THE VERY
11 EARLIEST WOULD BE IN JANUARY OF 2014, AT THE VERY
12 EARLIEST OCTOBER -- EXCUSE ME, NOVEMBER OF 2014.
13 AND BY THAT TIME, IF YOU LOOK AT THE HEITZ (PHONETIC)
14 DECISION AND IF YOU LOOK AT THE DECISION IN
15 REFERENCE TO THAT, HER EMPLOYER WAS ALREADY WELL
16 AWARE OF, YOU KNOW, PROBLEMS IN REFERENCE TO, FOR
17 EXAMPLE, CHEMICALS AGGRAVATING HER CONDITION PRIOR
18 TO THAT TIME. SO, WE WOULD SUBMIT THERE IS NO
19 PROBLEM WITH THE STATUTE OF LIMITATIONS IN THE
20 REFERENCE TO EITHER REPETITIVE TRAUMA AND/OR IN
21 REFERENCE TO OCCUPATIONAL DISEASE. HOWEVER, AGAIN,
22 OUR POSITION IS THIS IS -- THIS IS AN OCCUPATIONAL
23 DISEASE CASE, AND WE WOULD RELY SPECIFICALLY ON THE
24 CASE OF MCGRAW VERSUS MARY BLACK HOSPITAL, IN WHICH
25 WE BELIEVE IS REALLY IN ALL RESPECTS ON ALL FOURS

1 WITH THIS CASE, AND I'M GOING TO HAND UP A COPY OF
2 THAT CASE TO THE COMMISSION.

3 BY COMMISSIONER JAMES:

4 WHILE YOU'RE HANDING IT UP, IN THE PRETRIAL, I
5 WILL NOTE THAT BOTH PARTIES HAVE HANDED UP CASE LAW
6 AND ALSO THERE IS ONE MEMORANDUM OF LAW BY THE
7 DEFENDANTS OUTLINING THEIR POSITION, WHICH WILL BE
8 REFLECTED IN THE FILE.

9 MR. MCDANIEL, DID YOU HAVE MORE YOU WISH TO
10 ADD, SIR?

11 BY MR. MCDANIEL:

12 WELL, COMMISSIONER, I BELIEVE YOU -- I BELIEVE
13 YOU STATED THAT THE DEFENDANTS TAKE THE POSITION
14 THAT MY CLIENT IS NOT ENTITLED TO AN AWARD FOR TOTAL
15 AND PERMANENT AND DISABILITY. I THINK THAT YOU WENT
16 OVER THAT ISSUE.

17 BY COMMISSIONER JAMES:

18 I BELIEVE THAT I DID NOT STATE IT IN THE
19 SKINNY. WE TALKED ABOUT IT DURING PRETRIAL, BUT THE
20 POSITION OF THE DEFENDANTS MY UNDERSTAND IS THAT SHE
21 IS NOT PERMANENT AND TOTAL.

22 BY MR. MCDANIEL:

23 CORRECT, AND JUST TO ADDRESS THAT VERY BRIEFLY,
24 WE HAVE STATEMENTS FROM ALL OF -- I KEEP REFERRING
25 TO THEM AS THE AUTHORIZED-TREATING PHYSICIANS. ALL

1 OF HER TREATING PHYSICIANS WHO HAVE TREATED HER HAVE
2 STATED THE POSITION THAT SHE IS TOTALLY AND
3 PERMANENTLY DISABLED. WE HAVE AGREED TO PUT IN THE
4 SOCIAL SECURITY DISABILITY RECORDS, AND SHE WAS
5 DECLARED TOTALLY DISABLED BY THE SOCIAL SECURITY
6 ADMINISTRATION. THAT IS NOT BINDING, OF COURSE, ON
7 THIS COMMISSION, BUT I ONLY NOTE IT FOR THE PURPOSE
8 OF THE POSITION THAT SHE IS TOTALLY AND PERMANENTLY
9 DISABLED UNDER THE ACT, AND AS THIS COMMISSION
10 KNOWS, THAT IS A FAR LESS STANDARD THAT IS THE
11 SOCIAL SECURITY ADMINISTRATION STANDARD OF NO
12 AVAILABILITY FOR ANY TYPE OF GAINFUL EMPLOYMENT. IN
13 REFERENCE TO THE STATEMENTS, YOU CAN FIND THOSE, DR.
14 MENDEZ STATED THE OPINION, IT'S ON PAGE 221, THAT
15 SHE -- IN HER OPINION, SHE IS TOTALLY AND
16 PERMANENTLY DISABLED FROM GAINFUL EMPLOYMENT, AND
17 THAT CAN BE FOUND ON PAGE 221, AND SHE ALSO STATED
18 THAT HER CONDITION IS PERMANENT. HER TREATING
19 PULMONOLOGIST WHO HAS TREATED HER AND WHO IS THE ONE
20 WHO ACTUALLY MADE THE INITIAL DIAGNOSIS OF
21 OCCUPATIONAL ASTHMA STATES ON PAGE 104-A THAT IN HIS
22 OPINION, SHE IS TOTALLY DISABLED FROM GAINFUL
23 EMPLOYMENT, AND THAT IS -- YOU CAN FIND THAT ON PAGE
24 104-A, AND THAT HER CONDITION IS PERMANENT AND WILL
25 NOT CHANGE.

1 BY COMMISSIONER JAMES:

2 AND GIVE ME HIS NAME AGAIN, MR. MCDANIEL.

3 BY MR. MCDANIEL:

4 DR. deDIOS, AND THAT IS SPELLED LITTLE d,
5 LITTLE e, CAPITAL D-I-O-S., deDIOS. ALL RIGHT. AND
6 IN ADDITION TO THAT, THE DEPOSITION OF DR. MENDEZ
7 WAS TAKEN, AND SHE REAFFIRMED THAT OPINION. SHE
8 STATED THAT DR. EARLY SAID HE WOULD DEFER TO THE
9 OPINIONS OF THE TREATING PHYSICIANS THAT TREAT HER
10 ALL THE TIME. HE FELT LIKE THAT SHE COULD POSSIBLY
11 DO SOME TYPE OF SEDENTARY WORK, BUT IN THAT REGARD,
12 DR. EARLY SAID THAT -- AND THIS CAN BE FOUND AT PAGE
13 -- AT PAGE 71 IN WHERE HE REFERENCES THAT SHE -- HE
14 COULD -- SHE WANTED A CLARIFICATION AS TO SEDENTARY
15 WORK. HE SAID "IF SHE HAD NO IRRITANT EXPOSURE, AND
16 THEY ALLOWED SEATED WORK, NO LIFTING OF MORE THAN
17 TEN POUNDS, USE HER NEBULIZER AT WORK, POSSIBLY SHE
18 COULD RETURN TO WORK." SO, THAT'S FOUND AT PAGE 71.
19 DR. EARLY WAS SPECIFICALLY ASKED TO OPINE, AND HE IS
20 A TOXICOLOGIST/OCCUPATIONAL DISEASE AND OCCUPATIONAL
21 MEDICINE SPECIALIST, AND HE WAS ASKED SIMPLY TO
22 OPINE AS TO HIS OPINION AS TO WHETHER OR NOT SHE
23 SUFFERED FROM OCCUPATIONAL ASTHMA OR WHAT WAS THE
24 CAUSE OF HER CONDITION. HE REAFFIRMED THAT,
25 COMMISSIONER. WE HAVE OPINIONS FROM DR. deDIOS. WE

1 HAVE OPINIONS FROM DR. HAMMETT, AND WE HAVE OPINIONS
2 FROM DR. GORDON EARLY, ALL OF WHICH OPINE THAT SHE
3 HAS SUFFERED FROM OCCUPATIONAL ASTHMA CAUSED BY HER
4 EXPOSURE IN THE WORK PLACE TO -- I'M GOING TO REFER
5 TO IT AS DR. EARLY DID, THE POTPOURRI OF STUFF THAT
6 WAS IN THOSE DRAINS AND IN ADDITION -- AND THE
7 CLEANERS THAT THEY WERE TRYING TO USE TO CLEAN OUT
8 OR STOP THE SEWAGE FROM BACKING UP. IT WAS
9 LITERALLY BACKING UP INTO THE FLOORS. IT HAD A
10 TREMENDOUS SMELL. DR. EARLY EXPLAINS IN HIS
11 DEPOSITION, "WE HAVE A WHOLE POTPOURRI OF MOLD,
12 FUNGUS, BACTERIA." THIS IS A DELI SITUATION. IT IS
13 A FOOD PRODUCTION JOB, AND SHE WAS THE DELI MANAGER,
14 AND WHAT THEY DID WAS IS THEY TOOK RAW VEGETABLES
15 AND ANIMAL PRODUCTS, AND THEN PREPARED THEM FOR SALE
16 TO THE PUBLIC, AND THEN SO THE WATER, THE SEWAGE
17 WATER AND WASTE WATER CONTAINED THE ENTIRE POTPOURRI
18 OF MOLD, FUNGUS, BACTERIA IN ADDITION TO THE DRANO,
19 THE VARIOUS CHEMICALS THAT ARE LISTED, THE SPIT FIRE
20 AND THE OTHERS, THAT THEY WERE USING TO TRY TO STOP
21 IT FROM BACKING UP TO WHERE THEY WERE HAVING TO
22 DAILY SQUEEGEE OFF THIS WATER INTO THIS ONE OPEN
23 DRAIN DOWN THE WAY. AND SO, WHICH IN OUR OPINION
24 TRIGGERED AND THEN IN THE DOCTORS' OPINIONS MORE
25 IMPORTANTLY TRIGGERED THE ONSET OF HER ASTHMA. AND

1 THEN IT CONTINUED TO GET WORSE. ONCE SHE WAS
2 SENSITIZED, SHE BECAME WORSE. SO, IT'S OUR POSITION
3 SHE IS TOTALLY AND PERMANENTLY DISABLED. THAT IS
4 WHAT WE HAVE ASKED FOR IN OUR PLEADINGS, AND WE ARE
5 TAKING THE POSITION, OF COURSE, THAT SHE SUFFERS
6 FROM THIS OCCUPATIONAL DISEASE ASTHMA, WHICH IS THE
7 DIAGNOSIS OF THE DOCTORS.

8 BY COMMISSIONER JAMES:

9 AND THE DEFENDANTS.

10 BY MS. MILLER:

11 THANK YOU, YOUR HONOR. THE DEFENDANTS HAVE
12 SUBMITTED A MEMORANDUM OF LAW, WHICH SETS FORTH OUR
13 POSITION IN GREAT DETAIL, BUT JUST FOR THE RECORD,
14 THIS CASE HAS BEEN PLED AS AN INJURY BY ACCIDENT AS
15 WELL AS AN OCCUPATIONAL DISEASE. WE WOULD MAINTAIN
16 TO THE EXTENT THAT IT IS AN INJURY BY ACCIDENT
17 PURSUANT TO THE DEPOSITION TESTIMONY, THE PROBLEMS
18 WERE INITIALLY ALLEGED TO HAVE BEGUN IN JUNE OF
19 2011. TO THAT EXTENT, WE MAINTAIN THAT THE
20 CLAIMANT'S CASE WOULD BE BARRED BY THE STATUTE OF
21 LIMITATIONS. SECONDLY, WITH REGARDS TO OCCUPATIONAL
22 DISEASE, THE DEFENDANTS TAKE THE POSITION THAT THE
23 CLAIMANT CANNOT SATISFY HER BURDEN OF PROOF THAT HER
24 ASTHMA WAS EITHER CAUSED OR AGGRAVATED BY THE WORK
25 ENVIRONMENT. MORE SPECIFICALLY, THE DEPOSITION OF

1 DR. EARLY ESTABLISHES THAT THERE ARE SOME NON -- OR
2 SOME STRONG FACTORS OF NON-WORK RELATED ISSUES IN
3 THE CASE THAT POINT TO THE CAUSES -- OR POSSIBLY
4 POINT TO THE CAUSE OF HER ASTHMA. AGAIN, THE APA
5 SECTIONS I'VE CITED IN THE MEMORANDUM OF LAW.
6 SECONDLY, THE DEFENDANTS RAISE THE DEFENSE OF
7 NOTICE. MORE SPECIFICALLY ON MARCH 19TH, 2013, PAGE
8 268 OF THE APAs, IT WAS DETERMINED THAT THE CLAIMANT
9 HAD WORK-RELATED ASTHMA. WHETHER OR NOT THE
10 TERMINOLOGY IS USED, OCCUPATIONAL ASTHMA OR WORK-
11 RELATED ASTHMA, THAT IS SYNONYMOUS. OCCUPATIONAL IS
12 WORK RELATED. AT THAT TIME, IT WAS SUGGESTED THAT
13 THE CLAIMANT REMOVE HERSELF FROM WORK, AT WHICH TIME
14 SHE HAD NOT. IT IS OUR POSITION THAT AT THAT POINT,
15 SHE SHOULD HAVE NOTIFIED HER EMPLOYER OF THIS WORK-
16 RELATED ACCIDENT, BECAUSE THAT WOULD HAVE
17 CONSTITUTED A DEFINITIVE DIAGNOSIS. TO THE EXTENT
18 SHE CONTINUED TO WORK UNTIL JANUARY 2014, IT IS OUR
19 POSITION THAT THE CLAIM SHOULD BE BARRED PURSUANT TO
20 THE NOTICE REQUIREMENTS. AND, LASTLY, YOUR HONOR,
21 WE MAINTAIN THAT SHE WILL NOT BE PERMANENTLY AND
22 TOTALLY DISABLED IF THIS IS FOUND COMPENSABLE
23 PRIMARILY BASED ON THE LACK OF VOCATIONAL EVIDENCE
24 AND ALSO OUR INTERPRETATION OF DR. EARLY'S TESTIMONY
25 IS THAT SHE CAN RETURN TO WORK DOING SEDENTARY WORK

1 WITH LIFTING RESTRICTIONS OF TEN POUNDS AND ALSO
2 CONTINUES TO OPERATE A CATERING BUSINESS, FOR WHICH
3 HER TAX RETURN REFLECTS THAT SHE CURRENTLY RECEIVES
4 MONEY FOR.

5 BY COMMISSIONER JAMES:

6 ALL RIGHT. MS. SOWELL, IF YOU WOULD RAISE YOUR
7 RIGHT HAND FOR ME, PLEASE. MA'AM.

8 * * * * *

9 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
10 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
11 MATTER HEREIN:

12 GENNETTE SOWELL

13 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

14 BY COMMISSIONER JAMES:

15 ALL RIGHT. YOUR WITNESS, MR. MCDANIEL.

16 BY MR. MCDANIEL:

17 ALL RIGHT. THANK YOU, YOUR HONOR.

18 DIRECT EXAMINATION BY MR. MCDANIEL:

19 Q. MS. SOWELL, HOW OLD ARE YOU?

20 A. I'M 66.

21 Q. OKAY. WHAT IS YOUR MARITAL STATUS?

22 A. I'M A WIDOW.

23 Q. WIDOW, OKAY.

24 A. YES, SIR.

25 Q. AND HOW MANY CHILDREN DO YOU HAVE?

1 A. I HAVE SEVEN, BUT I RAISED NINE.

2 Q. RAISED NINE, HAVE SEVEN, AND I BELIEVE THEY ARE ALL
3 GROWN?

4 A. YES.

5 Q. NOT DEPENDENT ON YOU FOR SUPPORT?

6 A. NO.

7 Q. ALL RIGHT. YOU LIVE ON ELMO MCFARLAND ROAD; IS THAT
8 RIGHT?

9 A. YES.

10 Q. ELMO MCFARLAND?

11 A. YES.

12 Q. ALL RIGHT. HOW LONG HAVE YOU LIVED THERE?

13 A. ALL MY LIFE.

14 Q. OKAY. AND THE HOUSE YOU LIVE IN NOW, IT'S ALSO ON
15 ELMO ---

16 A. YES, IT IS.

17 Q. OKAY. AND HOW LONG HAVE YOU LIVED IN THAT HOME?

18 A. ABOUT 30 YEARS.

19 Q. ABOUT 30 YEARS, OKAY. IT'S A BRICK HOME?

20 A. YES.

21 Q. AND HAVE YOU -- TO YOUR KNOWLEDGE, HAVE YOU EVER HAD
22 ANY PROBLEMS WITH -- WELL, BEFORE I ASK YOU THAT,
23 ABOUT HOW OLD IS THE HOUSE; DO YOU KNOW WHEN THAT
24 HOUSE WAS BUILT?

25 A. I THINK IT WAS 1970, 1975, SOMEWHERE IN THAT AREA.

1 Q. OKAY. AND I BELIEVE YOUR FATHER, ELMO -- THE ROAD
2 IS ACTUALLY NAMED FOR YOUR DAD?

3 A. YES.

4 Q. AND YOU ACTUALLY LIVED IN YOUR DAD'S HOME, AND THEN
5 LATER ON, YOU AND YOUR HUSBAND LIVED IN THIS OTHER --
6 --

7 A. YES.

8 Q. --- THE HOME WHERE YOU LIVE NOW?

9 A. YES.

10 Q. ALL RIGHT. NOW, HAVE YOU EVER KNOWN YOUR HOME --
11 AND IT'S A BRICK HOME BUILT IN 1970, 1975, HAVE YOU
12 EVER KNOWN YOUR HOME TO HAVE ANY KIND OF A MOLD
13 PROBLEM?

14 A. NO.

15 Q. OKAY. DO YOU HAVE ANY PETS?

16 A. NO.

17 Q. ALL RIGHT. NOW, TELL ME ABOUT YOUR EDUCATIONAL
18 BACKGROUND. WHAT GRADE DID YOU FINISH IN SCHOOL?

19 A. I DIDN'T GRADUATE FROM SCHOOL.

20 Q. OKAY. WENT THROUGH WHAT GRADE?

21 A. I WENT THROUGH THE 11TH GRADE, 10TH -- I WAS IN THE
22 10TH, AND I WAS SUPPOSED TO TAKE 11TH, BUT I DIDN'T
23 EVER GO IN.

24 Q. ALL RIGHT. AND THEN WHERE -- I BELIEVE THAT BEFORE
25 YOU WORKED FOR PIGGLY WIGGLY THAT YOU WORKED FOR

1 LIKE 27 YEARS WITH FIELDCREST?

2 A. YES.

3 Q. IN THE MILL?

4 A. YES.

5 Q. DID YOU EVER HAVE ANY PROBLEMS?

6 A. NONE.

7 Q. I BELIEVE YOUR TESTIMONY AT THE PREVIOUS DEPOSITION
8 WAS THAT YOU WERE GIVEN LUNG TESTS ON A REGULAR
9 BASIS?

10 A. YES.

11 Q. YOU ALWAYS PASSED THOSE?

12 A. YES.

13 Q. YOU WERE NEVER ADVISED YOU'VE EVER HAD ANY PROBLEMS?

14 A. NO PROBLEMS.

15 Q. ALL RIGHT. AND PRIOR TO AND AT THE TIME AT WORKING
16 FOR PIGGLY WIGGLY, HAVE YOU EVER HAD ANY TREATMENT
17 FOR ANYTHING RELATED TO YOUR LUNGS, ALLERGY OR
18 ASTHMA?

19 A. NO, NO.

20 Q. ALL RIGHT. NOW, I BELIEVE YOU WENT TO WORK FOR
21 PIGGLY WIGGLY, I BELIEVE, 1999?

22 A. YES, CHESTERFIELD.

23 Q. ALL RIGHT. WHERE DID YOU GO TO WORK, AND THEN WHERE
24 DID YOU GO FROM THERE?

25 A. I STAYED THERE ABOUT A YEAR-AND-A-HALF, AND THEN

1 THEY TRANSFERRED ME OVER TO THE BENNETTSVILLE PIGGLY
2 WIGGLY AS THE DELI MANAGER, AND I WAS A COOK AT
3 CHESTERFIELD PIGGLY WIGGLY.

4 Q. AT CHESTERFIELD, AND THEN WHEN YOU TRANSFERRED OVER
5 TO THE -- BENNETTSVILLE?

6 A. YEAH.

7 Q. AND ---

8 A. AND I WAS DELI MANAGER.

9 Q. AND YOU WERE THE DELI MANAGER?

10 A. UH-HUH.

11 Q. NOW, LET'S TALK ABOUT WHAT YOU DID. WHAT WAS YOUR
12 JOB AS A DELI MANAGER?

13 A. I ALWAYS SAID I DID EVERYTHING, WHATEVER IT TOOK TO
14 RUN THE JOB, BUT I GO IN AND I TURN EVERYTHING ON.
15 I CHECK AND MAKE SURE EVERYTHING IS RIGHT. I CHECK
16 THE DATES AND STUFF, PULL THE DATES THAT WAS OUT OF
17 DATE. GOT THE TRUCK, UNLOAD THE TRUCK, PUT THE
18 TRUCK IN THE FREEZER, PUT THE DRY GOODS WHERE THEY
19 BELONG TO, AND HELP COOK IF I HAD TO AND SERVE THE
20 PEOPLE AT LUNCH TIME OR BREAKFAST TIME.

21 Q. ALL RIGHT. NOW, LET'S TALK ABOUT THAT JUST A
22 SECOND. DID Y'ALL RUN -- DID Y'ALL RUN BREAKFAST?

23 A. BREAKFAST, YES.

24 Q. ON THE HOT LINE?

25 A. YES.

1 Q. DID YOU RUN LUNCH?

2 A. YES.

3 Q. DID YOU RUN DINNER?

4 A. YES.

5 Q. ALL RIGHT. AND ---

6 A. LUNCH AND DINNER WENT STRAIGHT THROUGH.

7 Q. OKAY. AND IN REFERENCE TO -- AND OF COURSE, DID YOU
8 HAVE STEAM TABLES AND THEN ---

9 A. YES.

10 Q. --- HAVE HOT ITEMS ON THE STEAM TABLE?

11 A. YES.

12 Q. AND OF COURSE, THAT WOULD BE ALL STAINLESS STEEL
13 CONTAINERS THAT ---

14 A. YES.

15 BY MS. MILLER:

16 OBJECTION, LEADING.

17 BY MR. MCDANIEL:

18 OKAY.

19 BY COMMISSIONER JAMES:

20 SUSTAINED.

21 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

22 Q. TELL ME WHAT THE CONTAINERS WERE MADE OUT OF, MS.
23 SOWELL.

24 A. OH, IT WAS STEEL, STAINLESS STEEL.

25 Q. OKAY. AND TELL ME IN REFERENCE TO -- DID YOU COOK

- 1 AND PREPARE ALL OF THESE ITEMS?
- 2 A. YES, EVERYTHING IS COOKED.
- 3 Q. ALL RIGHT. SO ---
- 4 A. OR PREPARED BACK IN THE DELI.
- 5 Q. ALL RIGHT. SO, ARE WE TALKING ABOUT FROM TAKING
- 6 FROM RAW VEGETABLES AND RAW MEATS ---
- 7 A. UH-HUH.
- 8 Q. --- THROUGH THE COOKING PROCESS, PREPARATION AND THE
- 9 SALE OF THOSE ITEMS?
- 10 A. YEAH, I DIDN'T BELIEVE IN BUYING THE ALREADY COME IN
- 11 AND JUST POP IT IN THE OVEN.
- 12 Q. OKAY.
- 13 A. WE MADE EVERYTHING FROM SCRATCH.
- 14 Q. WHEN YOU REFER TO -- WHAT DID YOU GET OFF OF THE
- 15 TRUCKS? WHAT CAME IN ON THE TRUCKS?
- 16 A. CHICKEN, BEEF, ALL THE DRY GOODS, FLOUR, SUGAR, AND
- 17 THE REST OF THE MEATS, WE GOT FROM THE MEAT
- 18 DEPARTMENT.
- 19 Q. OKAY. AND THEN WHAT KIND OF VEGETABLES WERE ON THE
- 20 VEGETABLE LINE?
- 21 A. WE HAD LIMA BEANS. WE HAD COLLARD GREENS. WE HAD
- 22 CORN. WE HAD ---
- 23 Q. ALL RIGHT. IN REFERENCE.
- 24 A. --- MANY VEGGIES.
- 25 Q. IN REFERENCE TO THE VEGETABLES, SO YOU WOULD HAVE

1 FRESH GREEN BEANS, THAT TYPE OF THING?

2 A. GREEN BEANS WERE IN CANS.

3 Q. CANS, CANNED GREEN BEANS, OKAY. UNCOOKED, AND THEN
4 Y'ALL WOULD PREPARE THOSE?

5 A. YES.

6 Q. WHAT ABOUT THE OTHER VEGETABLES DID YOU HAVE?

7 A. SOME OF THEM CAME FROZEN. SOME OF THEM CAME IN
8 CANS.

9 Q. ALL RIGHT. NOW, IN REFERENCE TO THOSE, ALL RIGHT,
10 SO TAKE ME THROUGH THE PROCESS. OF COURSE, YOU
11 WOULD COOK BREAKFAST, AND THAT WOULD INCLUDE --
12 WOULD THAT INCLUDE BACON, HAM?

13 A. YES.

14 Q. WHAT ELSE?

15 A. IT'S BACON, SAUSAGE. SOMETIMES WE HAD HAM, BUT NOT
16 OFTEN. SOMETIMES WE DID SALMON. WE DID THE GRITS.

17 Q. OKAY. BY THE WAY, IN YOUR PREPARATION, YOU'VE
18 MENTIONED MEAT, YOU MENTIONED BEEF. YOU MENTIONED
19 CHICKEN. DID YOU DO ANY FISH?

20 A. OCCASIONALLY, NOT TOO OFTEN.

21 Q. OKAY, ALL RIGHT. NOW, WHEN YOU WOULD FINISH UP WITH
22 THE BREAKFAST LINE AND YOU HAD SOLD ALL THE PRODUCT,
23 WHAT HAPPENED TO ANY LEFTOVER PRODUCT AND ALSO WHAT
24 DID YOU DO IN REFERENCE TO ALL OF THE EQUIPMENT AT
25 THAT TIME?

1 A. OKAY. WE HAD TO PUT ALL OF THE LEFTOVERS THAT WAS
2 JUST, YOU KNOW, SCRAP AND STUFF IN THE TRASH CAN,
3 AND IF IT WAS LIKE A LIQUID, THEN WE WOULD PUT IT IN
4 A BUCKET OR SOMETHING, AND THEN IF IT WAS SOMETHING
5 SAVABLE, THEN WE WOULD WRAP IT UP AND PUT IT IN THE
6 COOLER.

7 Q. OKAY. IN REFERENCE TO THEN THE ITEMS -- THE TRAYS
8 ON THE HOT LINE, WHAT DID YOU DO WITH THEM?

9 A. WE HAD TO TAKE THEM OUT AND WASH THEM AND PUT FRESH
10 OUT.

11 Q. ALL RIGHT. WHAT DID YOU DO WITH THE OIL?

12 A. THE OIL WENT INTO A CONTAINER IN THE BACK OF THE
13 STORE, BUT LIKE THE CRUMBS OUT OF THE BOTTOM OF THE
14 FRYER, WE ALWAYS HAD TO PUT THEM IN A BUCKET IN
15 THERE.

16 Q. OKAY.

17 A. BUT THEY HAVE A CONTAINER AT THE BACK OF THE STORE
18 TO PUT -- WHEN WE CHANGED THE OIL TO PUT IT IN
19 THERE.

20 Q. HOW MANY TIMES A DAY WOULD YOU SAY THAT -- TELL ME
21 ABOUT THE SINKS, HOW MANY SINKS DID YOU HAVE, THAT
22 TYPE OF THING?

23 A. IT WAS THREE.

24 Q. THREE COMPARTMENT SINK?

25 A. YEAH, AND THEY -- THEY ALL THREE OF THEM LEAKED, YOU

1 KNOW, ONE OR THE OTHER. MOST OF THE TIME IT WAS
2 KIND OF STOPPED UP AND THE FOOD COME DOWN IN IT,
3 BECAUSE WE DIDN'T HAVE A STRAINER DOWN INTO THE
4 SINK.

5 Q. ALL RIGHT. AND THEN OF COURSE, THAT -- HOW MANY
6 DRAINS WERE THERE IN THE -- WHAT AREAS WOULD YOU
7 REFER TO IN THE DELI AREA? I MEAN, DID YOU -- YOU
8 REFERRED TO THE HOT LINE, BUT WHAT DID YOU ---

9 A. IT'S A FRONT END. IT'S CALLED THE FRONT END AND
10 THEN THE KITCHEN. THE FRONT END, IT HAD THREE
11 DRAINS IN THE FRONT END.

12 Q. OKAY.

13 A. AND THE KITCHEN HAD ONE, TWO, THREE, FOUR DRAINS IN
14 THE KITCHEN.

15 Q. OKAY.

16 A. ONE IN FRONT OF THE STOVE, ONE BEHIND THE PREP
17 TABLE, ONE UP UNDER THE SINK AND ONE AT THE WASH
18 WHERE YOU DO THE MOP AND STUFF IN THE CORNER.

19 Q. ALL RIGHT. OKAY. NOW, IN REFERENCE TO THE DRAINS
20 AND THE COOKING AND ALL THAT, WHAT ABOUT THE FRY
21 BASKETS, THAT TYPE OF THING?

22 A. ALL OF THAT WENT TO THE SINK. WE WASHED IT IN THE
23 SINK.

24 Q. OKAY. SO, ALL OF THE STUFF -- ALL OF THE EQUIPMENT
25 OFF THE HOT LINE, ALL THE KNIFES, ALL OF THAT HAD TO

1 BE DONE. DID YOU USE ANY SLICERS AND THAT TYPE OF
2 THING?

3 A. YEAH. THEY HAD TO BE CLEANED WITH SANITIZER AND
4 STUFF LIKE THAT.

5 Q. OKAY. AND THEN WHAT WOULD HAPPEN WITH THE -- OF
6 COURSE, WOULD YOU BE CUTTING RAW MEATS, RAW CHICKEN,
7 THAT TYPE OF THING ON IT?

8 A. LIKE WE CUT HAM, TURKEY, STUFF LIKE THAT.

9 Q. DID Y'ALL FIX DELI SANDWICHES AS WELL?

10 A. YEAH, IF SOMEONE CAME UP AND ORDERED A SANDWICH, WE
11 FIXED IT.

12 Q. DID YOU HAVE -- DID YOU HAVE, FOR A BETTER TERM, A
13 SALAD LINE? I MEAN, A SALAD PLACE WHERE ---

14 A. WE HAD A CASE THAT HAD POTATO SALAD AND PASTA SALAD
15 AND CHICKEN SALAD.

16 Q. DID YOU HAVE -- WHEN YOU WERE USING THE DELI
17 SANDWICHES, DID YOU HAVE SLICED TOMATOES, SLICED
18 ONIONS, ---

19 A. YES.

20 Q. --- BELL PEPPER, THAT TYPE OF THING?

21 A. YEAH.

22 Q. ALL RIGHT. AND ALL OF THOSE ITEMS HAD TO BE WASHED?

23 A. YES.

24 Q. HOW MUCH OF THE TIME OR HOW MANY TIMES A DAY DID
25 Y'ALL WASH EQUIPMENT?

1 A. OH, WE HAD TO WASH IT CONSTANTLY. IT WAS -- IT
2 WASN'T NO CERTAIN TIME, JUST BECAUSE I DIDN'T LIKE
3 FOR THEM TO PILE IT ALL UP AND THEN TRY TO WASH IT
4 ALL AT ONE TIME. IT WOULD TAKE TOO LONG. I TRIED
5 TO GET THEM TO WASH IT AS THEY USED IT. YOU USE IT,
6 WASH IT, GO. THAT KEEPS THINGS CLEAN, SO, YOU DON'T
7 HAVE NO PROBLEM WITH EVERYTHING LYING AROUND. I'M
8 JUST -- I CAN'T TAKE IT WHEN IT'S GOT TOO MUCH STUFF
9 HANGING AROUND.

10 Q. OKAY. AND THEN THIS -- ALL, EVERYTHING WE'RE
11 TALKING ABOUT FROM BOTH THE RAW AND THE COOKED
12 PRODUCTS AND ALL THAT WHEN YOU WASH IT AND ALL THE
13 WASTE WATER AND ALL FROM CLEANING THE EQUIPMENT AND
14 THE SUDSY WATER AND ALL THAT WENT INTO THOSE SINKS?

15 A. THE SAME SINKS, YES.

16 Q. AND THEN WENT DOWN THROUGH THE DRAINAGE SYSTEM?

17 A. UH-HUH.

18 Q. ALL RIGHT. NOW, YOU WERE THE DELI MANAGER FROM
19 APPROXIMATELY 2000 UNTIL ABOUT 2011.

20 A. YES.

21 Q. WHAT HAPPENED IN 2011 THAT WAS DIFFERENT THAN THE
22 WAY IT HAD BEEN IN THE DELI DEPARTMENT THAT YOU HAD
23 WORKED IN -- BY THE WAY, BEFORE I ASK YOU THAT, LET
24 ME ASK YOU THIS: DURING THE TIME THAT YOU WORKED AT
25 PIGGLY WIGGLY FROM 2000 AS DELI MANAGER IN THIS

1 STORE UNTIL 2011, WERE YOU TREATED FOR BRONCHITIS,
2 ASTHMA, ANY TYPE OF UPPER -- ANY TYPE OF RESPIRATORY
3 PROBLEMS ON A CONSISTENT BASIS?

4 A. NO, NO, NONE.

5 Q. OKAY. HOW OFTEN DID YOU GO TO THE DOCTOR, AND WHAT
6 WERE YOU GOING TO THE DOCTOR FOR LET'S SAY BETWEEN
7 2000 AND 2011?

8 A. JUST A SLIGHT ELEVATED BLOOD PRESSURE.

9 Q. OKAY.

10 A. I WENT ABOUT EVERY SIX MONTHS TO GET MY MEDICINE
11 REFILLED AND WOULDN'T FILL IT UNTIL I SEEN THE
12 DOCTOR.

13 Q. HOW WOULD YOU DESCRIBE YOUR HEALTH UP UNTIL 2011?

14 A. I WAS DOING GREAT.

15 Q. OKAY.

16 A. I WAS DOING GREAT.

17 Q. ALL RIGHT. DID YOU MISS MUCH TIME FROM WORK?

18 A. NO.

19 Q. IF I ASK MS. QUICK -- I BELIEVE, WHEN DID SHE BECOME
20 YOUR MANAGER?

21 A. IN 2005, 2006, SOMEWHERE IN THERE.

22 Q. OKAY. AND WHAT TRANSPIRED THEN THAT CHANGED THAT
23 SHE BECAME THE MANAGER?

24 A. PIGGLY WIGGLY SOLD OUT TO RICKY MCLEOD.

25 Q. OKAY.

1 A. AND THERE WAS CHANGE OVER, BECAUSE THEY WAS GOING TO
2 CLOSE THE STORE, AND RICKY MCLEOD BOUGHT IT.

3 Q. OKAY. AND IT KEPT OPEN.

4 A. UH-HUH.

5 Q. AND THEN SO, NOW -- NOW, HOW MUCH TIME WOULD YOU SAY
6 YOU MISSED PRIOR TO 2011?

7 A. WELL, ONE PART OF TIME WHEN MY HUSBAND GOT SICK AND
8 HE DIED, I WAS OUT FOR A LITTLE BIT, BUT OTHER THAN
9 THAT, I WASN'T OUT FOR NOTHING.

10 Q. OKAY. WAS THERE ANY CHANGE IN YOUR HOURS? I KNOW
11 YOU WERE A SALARIED EMPLOYEE, CORRECT?

12 A. UH-HUH.

13 Q. AND WHAT WERE YOUR -- DID YOU -- WERE YOU NORMALLY
14 EXPECTED TO WORK; I MEAN, HOW MANY HOURS A WEEK?

15 A. IT WAS 45.

16 Q. FORTY-FIVE. WHAT -- DID YOU GET PAID ANYTHING IF
17 YOU WORKED MORE THAN 45?

18 A. IT'S WHAT WE CALL CHINESE SCALE. YOU KNOW, AFTER
19 THE 40 HOURS, IT -- YOU DON'T GET THE SAME HOURLY
20 RATE. IT GOES DOWN NOT UP.

21 Q. NOW, BEFORE JUNE OF 2011, WAS THERE ANY DIFFERENCE
22 IN -- AFTER JUNE OF 2011, WAS THERE ANY DIFFERENCE
23 IN THE AMOUNT OF TIME THAT YOU WORKED?

24 A. STATE THAT AGAIN.

25 Q. YEAH, BEFORE JUNE OF 2011, AS TO THE AMOUNT OF TIME

1 THAT YOU WOULD WORK, HOW MUCH TIME WOULD YOU BE
2 WORKING NORMALLY PER WEEK BETWEEN UP UNTIL JUNE OF
3 2011?

4 A. OKAY, I PROBABLY WORKED 45, 50 TO WHATEVER TIME IT
5 TOOK. IF I COULDN'T GET NOBODY TO COVER THE
6 SCHEDULE, THEN I CAME IN AND DID IT, AND IF
7 SOMETHING WENT WRONG IF IT WAS MY DAY OFF, THEY
8 CALLED ME, I CAME BACK OVER THERE AND WORKED.

9 Q. NOW, AFTER THAT, AFTER JUNE 2011, DID YOUR ABILITY
10 TO WORK AND THE NUMBER OF HOURS YOU WERE ABLE TO
11 WORK -- YOU STILL WORKED FULL TIME?

12 A. YES.

13 Q. YOU STILL GOT IN YOUR 40, 45?

14 A. UH-HUH.

15 Q. BUT DID YOU CUT BACK, OR WERE YOU ABLE TO CONTINUE
16 TO WORK ALL THOSE ADDITIONAL HOURS?

17 A. NO, NO.

18 Q. ALL RIGHT. NOW, LET'S TALK ABOUT WHAT HAPPENED. WE
19 DESCRIBED PRETTY MUCH THE NORMAL WORK DAY AND WHAT
20 YOU WERE DOING EVERY DAY. SOMETHING CHANGED IN THE
21 EARLY PART OF 2011. WHAT HAPPENED?

22 A. THE DRAINS STARTED BACKING UP, AND THEY COULD NEVER
23 GET THEM FIXED. MS. QUICK HAD SOMEBODY TO COME IN
24 SEVERAL TIMES TO WORK ON THEM, BUT THEY NEVER DID
25 GET THEM FIXED, AND SHE THOUGHT THAT WE DELI PEOPLE

1 WAS PUTTING WASTE AND STUFF DOWN THE DRAIN CAUSING
2 THE DRAIN TO STAY CLOGGED UP, AND THEY WOULD COME IN
3 AND WORK ON THEM, AND THEN MAYBE TWO DAYS LATER, THE
4 DRAIN WAS MESSED UP AGAIN.

5 Q. OKAY. AND THEN THAT'S UP 'TIL JUNE. WE'RE GOING TO
6 TALK ABOUT JUNE AND THE HOSPITALIZATION IN A MINUTE,
7 BUT TELL ME HOW OFTEN -- HOW MUCH WAS THIS OCCURRING
8 OVER THE LAST THREE OR FOUR MONTHS BEFORE JUNE?

9 A. IT WAS -- THE DRAIN WAS CONSTANTLY STOPPED UP.

10 Q. OKAY.

11 A. IT WAS CONSTANTLY. I MEAN, SHE WOULD GET SOMEBODY
12 TO COME IN AND WORK ON THEM, AND I DON'T KNOW
13 WHETHER THEY WEREN'T DOING THEIR JOB OR WHAT, BUT
14 THE DRAIN WOULD STILL BE ---

15 BY COMMISSIONER JAMES:

16 MR. MCDANIEL. WAIT JUST A MOMENT. I WOULD
17 LIKE TO ASK THEM TO BE QUIET.

18 (OFF THE RECORD)

19 BY COMMISSIONER JAMES:

20 ALL RIGHT, MR. MCDANIEL, GO AHEAD.

21 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

22 Q. NOW, MS. SOWELL, I THINK -- WHAT I WANT YOU TO DO
23 RIGHT NOW. I WANT YOU TO TELL THE COMMISSIONER
24 ABOUT, WHEN YOU SAY THEY WERE BACKING UP, I WANT YOU
25 TO TELL US EXACTLY WHAT YOU'RE TALKING ABOUT.

1 DESCRIBE WHAT WAS HAPPENING DURING THAT PERIOD OF
2 TIME.

3 A. WELL, ALL THE FOOD THAT WENT DOWN THE DRAIN WAS
4 COMING BACK UP IN THE FLOOR. ALL THE GREASE WAS
5 COMING BACK UP IN THE FLOOR. IT HAD A VERY NASTY
6 STINK TO IT. THE GREASE WOULD RUN OFF OVER THE
7 FLOOR. AS BIG AS THE DELI WAS, IT WOULD COVER THE
8 WHOLE BACK FLOOR AND EVERYTHING, AND WE HAD TO -- WE
9 HAD ONLY ONE DRAIN THAT WE COULD SWEEP IT IN, WHICH
10 WAS A DRAIN THAT WASN'T SUPPOSED TO BE SWEEP IN, BUT
11 TO KEEP IT CLEAN AND TO BE ABLE TO SERVE FOOD THERE,
12 WE HAD TO SWEEP IT IN THAT DRAIN TO KEEP THE FLOOR
13 FROM BEING, YOU KNOW, ALL MESSED UP, WHICH IN FACT
14 AT THAT TIME, IF THE HEALTH DEPARTMENT WOULD HAVE
15 CAME IN, HE WOULD HAVE SHUT THEM DOWN. ACTUALLY, WE
16 SHOULD HAVE BEEN SHUT DOWN THROUGH ALL THIS STUFF
17 THAT WAS DOWN THERE, BUT TRYING TO KEEP EVERYBODY
18 WORKING AND KEEP YOUR JOB GOING, WE DID THE BEST
19 THAT WE COULD.

20 Q. ALL RIGHT. AND YOU WOULD CLEAN IT, I MEAN, EVERY
21 DAY?

22 A. YEAH.

23 Q. WHEN YOU WOULD COME IN IN THE MORNING, WHAT WOULD
24 HAPPEN?

25 A. THE WATER WOULD ALREADY BE ON THE FLOOR IN THE

1 MORNING TIME.

2 Q. OKAY.

3 A. BACKED UP, SOME FOOD PARTICLES AND STUFF. WHEN THEY
4 CAME IN THERE AND PUT THAT HOSE DOWN INTO THAT DRAIN
5 THAT WAS IN FRONT OF THE SINK -- I MEAN, THE STOVE,
6 GREASE, EVERYTHING, IT JUST -- AND CAME OUT TO THE
7 WALL WHERE THE CAKE TABLES AND STUFF WAS AT. IT WAS
8 JUST AN AWFUL MESS.

9 Q. DID IT -- DO YOU HAVE A COOLER NEXT TO THE ---

10 A. YEAH, AND IT WENT ALL IN MY COOLER, AND THEY HAVE A
11 DOOR THERE, BUT, YOU KNOW, THE DOOR DIDN'T HAVE A
12 GUARD DOWN UP UNDER THE BOTTOM SO THAT NOTHING
13 WOULDN'T SINK UP UNDER IT. IT WENT ALL IN THERE AND
14 UP UNDER THE RACKS AND STUFF.

15 Q. OKAY. WAS IT -- WAS IT BASICALLY A LAYER OF WATER?

16 A. IT WAS, ---

17 Q. WASTE?

18 A. IT WAS A WHOLE LOT OF EVERYTHING. IF IT WAS WATER,
19 WE PROBABLY COULD DEAL WITH IT, BUT IT WAS A LOT OF
20 GOOP, GREASE, FOOD PARTICLES.

21 Q. OKAY. AND SO HOW MUCH OF THE TIME -- AND WHEN YOU
22 SAY YOU CLEANED IT, SWEEPED IT IN THIS DRAIN, HOW DID
23 YOU GET IT INTO THE DRAIN; WHAT DID YOU USE? WHAT
24 ALL WERE YOU USING?

25 A. WE HAD TO USE THE BROOM, AND WE HAD THE DUSTPAN.

1 SO, SOME OF US WOULD SCOOP WITH THE DUSTPAN, AND
2 SOMEBODY WOULD SWEEP IT.

3 Q. OKAY. DO YOU ALSO -- DID Y'ALL HAVE A SQUEEGEE?

4 A. WE DIDN'T HAVE ONE BACK THERE AT THE TIME.

5 Q. OKAY. SO, YOU WERE USING MOPS AND BROOMS AND ---

6 A. DUSTPANS, YEAH.

7 Q. --- DUSTPANS, AND TO GET THIS WATER OFF THE FLOOR
8 INTO THAT ONE DRAIN?

9 A. UH-HUH.

10 Q. OKAY. NOW, TELL ME WHAT -- YOU SAID SOMETHING ABOUT
11 THE -- NOW, WAS MS. QUICK AWARE OF THIS PROBLEM?

12 A. I TOLD HER.

13 Q. OKAY. AND THEN HOW MANY TIMES DO YOU REMEMBER
14 SOMEBODY COMING IN TRYING TO FIX IT BEFORE YOU WENT
15 IN THE HOSPITAL IN JUNE?

16 A. PROBABLY ABOUT TWO OR THREE TIMES, SOMEONE CAME IN
17 AND TRIED TO FIX IT.

18 Q. OKAY. BUT UP UNTIL THAT TIME, YOU THOUGHT OR MS.
19 QUICK WAS THINKING IT WAS SOMETHING THAT Y'ALL WERE
20 DOING?

21 A. YES.

22 Q. OKAY. NOW, I SEE ---

23 BY MR. MCDANIEL:

24 THE RECORDS ARE PUT IN, COMMISSIONER, BEGINNING
25 AT -- ACTUALLY, THEY ARE UNDER -- THE HOSPITAL

1 RECORDS ARE ACTUALLY BEGINNING UNDER DR. HAMMETT'S
2 RECORDS, AND THOSE CAN BE FOUND BEGINNING AT PAGE
3 100-AND -- EXCUSE ME, 96 IN REFERENCE TO...

4 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

5 Q. WHAT WAS OCCURRING RIGHT BEFORE JUNE 3RD WHEN YOU
6 WENT TO THE EMERGENCY ROOM THE FIRST TIME?

7 A. MY THROAT STARTED GETTING SCRATCHY, AND IT GOT TO
8 WHERE I COULDN'T HARDLY BREATHE, AND I COULDN'T
9 FIGURE OUT WHAT IT WAS COMING FROM AND DIDN'T KNOW
10 WHAT IT WAS COMING FROM. IT GOT TO WHERE I COULDN'T
11 -- I WENT AND GOT SOME MUCINEX AND TRIED TO TAKE IT
12 TO SEE WHETHER IT WOULD CLEAR MY THROAT, BUT IT
13 DIDN'T -- IT STILL ITCHED AND BURNED.

14 Q. AND THEN IT SAYS THAT YOU THEN -- YOU WENT TO THE
15 EMERGENCY ROOM ON JUNE 3RD?

16 A. UH-HUH.

17 Q. THEY THEN SENT YOU HOME. I BELIEVE THEY SAID THEY -
18 --

19 BY MS. MILLER:

20 OBJECTION.

21 BY COMMISSIONER JAMES:

22 SUSTAINED.

23 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

24 Q. ACCORDING TO THE MEDICAL RECORDS, THEY WERE TREATING
25 YOU FOR BRONCHITIS?

1 A. YEAH.

2 Q. IS THAT YOUR UNDERSTANDING?

3 A. HE SAID HE THOUGHT I HAD BRONCHITIS.

4 Q. ALL RIGHT. NOW, YOU WENT BACK TO WORK?

5 A. UH-HUH.

6 Q. DID YOUR CONDITION GET ANY BETTER?

7 A. NO.

8 Q. WHAT HAPPENED AFTER THAT ON JUNE 11TH?

9 A. I WAS CLEANING OUT THE COOLER WHERE I LOOKED IN
10 THERE, AND ALL THAT STUFF WAS STILL UP UNDER THE
11 RACKS AND STUFF, AND I SAID I NEED TO GET THIS
12 CLEANED OUT BEFORE I GO HOME AND CLEAN IT OUT, BUT
13 IT WOULDN'T COME OUT. SO, WE PUT THE WHAT THEY CALL
14 THE DEGREASER FLOOR WAX ON THE THING TO GET IT OUT,
15 AND MY THROAT REALLY STARTED BURNING REAL BAD, AND
16 SO, ONE OF THE GIRLS -- AND I STARTED COUGHING AND
17 ONE OF THE GIRLS TOLD ME THAT "YOU NEED TO COME OUT
18 OF THERE. I'LL GET IT. I'LL FINISH IT UP."

19 Q. NOW, I BELIEVE THAT UP UNTIL THAT TIME, Y'ALL WERE
20 USING A BUNCH OF DIFFERENT PRODUCTS TO ---

21 A. YEAH, WE USED WHATEVER THAT THEY HAD BACK THERE FOR
22 US TO USE.

23 Q. IT SOUNDS LIKE SPIT FIRE?

24 A. UH-HUH.

25 Q. DID YOU USE SOMETHING LIKE -- WHAT WERE THE NAMES OF

1 THE PRODUCTS? DRANO, YOU USED THAT?

2 A. UH-HUH. WE GOT SOME OFF THE SHELF AND USED IT.

3 Q. OKAY. AND YOU USED MR. MUSCLE?

4 A. UH-HUH.

5 Q. AND SOMETHING CALLED ---

6 BY COMMISSIONER JAMES:

7 WAIT ONE SECOND. MA'AM, THIS LADY IS TAKING
8 DOWN EVERY WORD WE SAY, SO INSTEAD OF YOU SAYING
9 "UH-HUH," MAKE SURE YOU SAY YES OR NO.

10 BY THE WITNESS:

11 OKAY, I'M SORRY.

12 BY COMMISSIONER JAMES:

13 IT MAKES IT HARD ON HER.

14 BY THE WITNESS:

15 OKAY.

16 BY COMMISSIONER JAMES:

17 WE'LL ALL HELP YOU REMEMBER, OKAY?

18 BY THE WITNESS:

19 OKAY, THANK YOU.

20 BY COMMISSIONER JAMES:

21 ALL RIGHT.

22 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

23 Q. ALL RIGHT. SO, AND YOU WERE ALSO USING SOMETHING
24 CALLED BLOCK WHITENER?

25 A. YES.

1 Q. OKAY. NOW, SO, ON JUNE 11TH, WHAT HAPPENED TO YOUR
2 CONDITION; WHAT DID YOU DO IN REFERENCE ON JUNE
3 11TH?

4 A. WELL, ACTUALLY AFTER I STARTED HAVING THE ATTACK AND
5 I STARTED COUGHING AND COULDN'T HALF BREATHE, AND I
6 FELT LIKE I WAS SHORT OF BREATH, I GOT OFF AND I
7 WENT HOME AND WENT TO LAY DOWN AND WHEN I WENT TO
8 LAY DOWN, AND IT'S JUST LIKE I COULDN'T BREATHE
9 LAYING DOWN. I GOT UP AND I FELT BETTER, AND THEN I
10 ENDED UP SWELLING IN THE FACE FOR LACK OF AIR, AND
11 THEY TOOK ME TO THE EMERGENCY ROOM IN CHERAW, AND
12 THEY KEPT ME BECAUSE MY BREATHING WAS -- THE OXYGEN
13 LEVEL IN MY AIR WAS LOW.

14 Q. ALL RIGHT. AND THEN HOW LONG WERE YOU IN THE
15 HOSPITAL? ACCORDING TO THE RECORDS, IT SAYS JUNE
16 11TH THROUGH JUNE 14TH?

17 A. YEAH.

18 Q. OKAY. AND WHAT WAS YOUR UNDERSTANDING -- WHAT WERE
19 THEY TREATING YOU FOR AT THAT TIME?

20 A. THEY THOUGHT BRONCHITIS OR PNEUMONIA, OR THEY DIDN'T
21 REALLY KNOW. THEY JUST KNEW I WAS A SICK PERSON
22 THEN.

23 BY MR. MCDANIEL:

24 NOW, COMMISSIONER, THOSE -- YOU CAN FIND THOSE
25 MEDICAL RECORDS BEGINNING AT PAGE 84 OF THE

CLAIMANT'S APA SUBMISSIONS.

DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

Q. NOW, THAT WAS CHESTERFIELD GENERAL?

A. YES.

Q. AFTER THAT, YOU FOLLOWED UP WITH YOUR FAMILY DOCTOR,
WHICH IS OVER ---

BY MS. MILLER:

OBJECTION, LEADING.

BY COMMISSIONER JAMES:

SUSTAINED.

DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

Q. OKAY. WHAT DID YOU DO AFTER THAT AS FAR AS FOLLOW
UP; HOW DID YOUR CONDITION DO AFTER THAT?

A. I STAYED -- I KEPT BEING SICK, BECAUSE ACTUALLY I
WENT BACK TO EARLY. THE DOCTOR DIDN'T REALLY WANT
ME TO GO BACK THEN, AND I WENT BACK BECAUSE WE WAS
HAVING PROBLEM WITH MY ASSISTANT. MS. QUICK WANTED
TO FIRE HER, BECAUSE SHE SAID SHE TOOK TIME OFF AND
IT WAS FATHER'S DAY WEEKEND AND LIKE THE CAKES AND
STUFF I RECKON, THAT'S NOT RELATIVE TO THIS, BUT
ANYWAY, I WAS HAVING PROBLEMS WITH THAT, AND I WENT
BACK EARLIER THAN WHAT I WAS SUPPOSED TO GO BACK.

Q. OKAY. AND THEN YOU FOLLOWED UP WITH CAROLINA
PHYSICIANS GROUP; THAT'S YOUR FAMILY DOCTORS?

A. YEAH, UH-HUH.

1 Q. AND I SEE THAT YOU FOLLOWED UP WITH THEM ON JUNE
2 21ST?

3 A. YEAH, THAT'S WHEN THEY TOLD ME THEY HAD THOUGHT THEY
4 HAD FOUND SOME SPOTS ON THE X-RAYS AND STUFF, AND
5 THEY THOUGHT MAYBE I MIGHT HAVE HAD SARCO -- I CAN'T
6 PRONOUNCE IT GOOD, IT'S SARCOIDOSIS,

7 Q. WELL, AND THEN ACCORDING TO THIS, YOU WERE BEING
8 TREATED FOR RESOLVING BRONCHITIS AT THAT TIME?

9 A. YEAH, IT WAS THEN AND ANOTHER TIME, AND THEN THAT'S
10 WHEN THEY THOUGHT THAT.

11 Q. NOW, LET ME ASK YOU ONE OTHER QUESTION ABOUT THE
12 HOSPITALIZATION. WHILE YOU WERE IN THE HOSPITAL,
13 DID MS. QUICK COME SEE YOU?

14 A. YEAH, SHOCKINGLY. I NEVER WOULD HAVE THOUGHT IT,
15 BUT, LORD, HALLELUJAH, THANK YOU, JESUS, SHE CAME TO
16 SEE ME, AND SHE TOLD ME, SHE SAID "WE GOT THE -- THE
17 DRAIN FIXED." IT WASN'T THE DELI FAULT. THE DRAIN
18 THAT WAS COMING FROM THE DELI THAT WAS SUPPOSED TO
19 GO OUT THE BACK WAS GOING UP UNDER THE FREEZER CASE
20 AND BEFORE IT WENT OUT THE FREEZER CASE, IT FROZE,
21 AND THAT'S WHY IT ALL HAD BACKED UP UP HERE. SO,
22 WHATEVER MAN SHE GOT THAT TIME KNOWED WHAT HE WAS
23 DOING.

24 Q. NOW, WHEN YOU GOT BACK TO WORK -- WHEN YOU GOT BACK
25 TO WORK, WAS IT BETTER THAN IT HAD BEEN AS FAR AS

1 THE BACKUP?

2 A. YES, YEAH, IT WAS A WHOLE LOT BETTER.

3 Q. OKAY. NOW, TELL ME ABOUT YOUR CONDITION. WE KNOW
4 YOU WENT ON JUNE 21ST OF 2011. JUST TELL ME BETWEEN
5 JUNE 21ST OF 2011 THROUGH DECEMBER OF 2011, HOW DID
6 YOUR CONDITION GO?

7 A. IT KEPT GETTING WORSE AND WORSE.

8 Q. I SEE YOU WERE ON MEDICATIONS?

9 A. YES.

10 Q. THEN I SEE THEY ADDED INHALERS?

11 A. YES.

12 Q. THEN I SEE THAT AT POINTS YOU WERE GETTING
13 INJECTIONS -- OR THEY WERE GIVING YOU THE NEBULIZER?

14 A. YES.

15 Q. OKAY. SO, IN REFERENCE TO YOUR LEVEL OF CARE, DID
16 IT INCREASE DURING THAT TIME; DID IT JUST GET MORE
17 AND MORE AND MORE?

18 A. AT ONE TIME, THEY GOT LIKE A -- WHEN I WAS TAKING
19 THE Z-PAK STEROID -- I RECKON THEY CALL IT A Z-PAK
20 OR WHATEVER, STEROID, THAT 14-DAY THING, AND I WAS
21 GETTING RELIEF, AND THEN WHEN -- AFTER I WAS THROUGH
22 TAKING THAT, IT WENT RIGHT BACK TO THE SAME THING.

23 Q. OKAY. NOW, CORRECT ME IF I'M WRONG, BUT BASICALLY
24 BETWEEN JUNE AND NOVEMBER, I SEE REFERENCES TO ---

25 BY MS. MILLER:

1 OBJECTION TO LEADING, YOUR HONOR.

2 BY MR. MCDANIEL:

3 OKAY, YOUR HONOR.

4 BY COMMISSIONER JAMES:

5 SUSTAINED.

6 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

7 Q. OKAY. WERE YOU GIVEN A DIAGNOSIS OF RHINITIS?

8 A. I DIDN'T KNOW NOTHING ABOUT IT.

9 Q. OKAY. ALL RIGHT. DR. HAMMETT SAW YOU ON -- DOES IT
10 SOUND FAMILIAR IF SHE SAW YOU ON JUNE 21ST, THEN SHE
11 -- AND GAVE YOU A DIAGNOSIS OF RESOLVING BRONCHITIS,
12 THAT SHE THEN SAW YOU ON AUGUST 1ST AND GAVE YOU
13 RECURRENT BRONCHITIS?

14 A. UH-HUH.

15 Q. DOES THAT SOUND FAMILIAR?

16 A. YES.

17 Q. OKAY. THEN SHE SAW YOU ON 8/4, AND SHE WAS ACTUALLY
18 ENTERTAINING PNEUMONIA?

19 A. YES.

20 Q. OKAY.

21 BY MS. MILLER:

22 YOUR HONOR, IF THERE'S GOING TO BE A REFERENCE
23 TO THE DOCTOR'S RECORDS LIKE THIS, CAN WE GET A PAGE
24 NUMBER?

25 BY MR. MCDANIEL:

1 FINE, I WILL BE GLAD TO DO THAT, COUNSELOR.

2 BY MR. MCDANIEL:

3 OKAY, PAGE 79, PNEUMONIA REFERENCE. PAGE 81,
4 RECURRENT BRONCHITIS. OKAY. THEN ON PAGE 77,
5 AUGUST 11TH, RECURRENT BRONCHITIS.

6 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

7 Q. DOES THAT SOUND FAMILIAR, THOSE ---

8 A. YES.

9 Q. WHAT SHE WAS TREATING YOU FOR?

10 A. YES.

11 Q. ALL RIGHT. NOW, AND IN REFERENCE TO SEPTEMBER 22ND,
12 2011, TREATMENT FOR COUGH AND CONGESTION.

13 A. UH-HUH.

14 Q. ALL RIGHT, NOW, THEN AGAIN DECEMBER 6TH, 2011,
15 CHRONIC VERSUS ACUTE BRONCHITIS?

16 A. UH-HUH.

17 Q. AND THEN ON -- AND THAT'S ON PAGE 70 AND 70... NOW,
18 IN DECEMBER 2011, YOU WENT TO SEE DR. HAMMETT ---

19 BY MS. MILLER:

20 OBJECTION TO LEADING.

21 BY MR. MCDANIEL:

22 COMMISSIONER, IT IS NOT A LEADING QUESTION IF I
23 ASK HER ---

24 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

25 Q. DID YOU GO SEE DR. HAMMETT IN DECEMBER?

1 A. YES.

2 Q. ALL RIGHT. NOW, WHAT DID SHE DO -- WHERE DID SHE
3 SEND YOU?

4 A. STRAIGHT TO THE EMERGENCY ROOM.

5 Q. OKAY. NOW, WHEN YOU GOT TO THE EMERGENCY ROOM, AND
6 THAT WAS AT -- WAS THAT AT CHESTERFIELD?

7 A. CHERAW. WELL, IT WAS CHESTERFIELD GENERAL, BUT IT'S
8 MCLEOD MEDICAL.

9 Q. WHAT DID THEY TREAT YOU -- WHAT DID THEY TREAT YOU
10 FOR?

11 A. WHEN THEY STARTED TREATING ME, THEY WAS TRYING TO
12 GET ME STABILIZED BREATHING AND KEEPING -- GET MY
13 COUGHING DOWN, BUT BEFORE I LEFT THERE, THEY TOLD ME
14 THAT THEY HAD CAME TO THE CONCLUSION THAT I HAD
15 ASTHMA.

16 Q. AND THE EMERGENCY ROOM DOCTOR, THAT WAS ---

17 A. YES.

18 Q. --- THE ONE THAT USED THAT TERM?

19 A. YES.

20 Q. OKAY. NOW, I'M LOOKING AT A REPORT FROM
21 CHESTERFIELD GENERAL HOSPITAL ALSO ON PAGE 171 OF
22 THE CLAIMANT'S APA SUBMISSIONS. IT SAYS "SHE IS
23 ADVISED TO AVOID CHEMICAL EXPOSURES AS THESE WERE
24 THE TRIGGERS FOR HER ASTHMATIC EXACERBATION."

25 A. YES.

1 Q. SO, THE EMERGENCY ROOM DOCTOR IS THE FIRST ONE TO
2 USE THE TERM THAT YOU HAD ASTHMA?

3 A. YES.

4 Q. OKAY. AND THEN AFTER THAT -- AND WHAT WAS YOUR
5 UNDERSTANDING ABOUT THE CHEMICALS?

6 A. THAT I NEEDED TO STAY AWAY FROM THEM.

7 Q. OKAY. DID HE GIVE YOU ANYTHING, OR DID DR. HAMMETT
8 GIVE YOU ANYTHING TO TAKE BACK TO WORK?

9 A. THE HOSPITAL DOCTOR GAVE ME A LETTER.

10 Q. OKAY.

11 A. AND MS. QUICK DID STATE THAT THE CHEMICALS -- I
12 NEEDED TO STAY AWAY FROM THE CHEMICALS.

13 Q. OKAY. NOW, BETWEEN -- OKAY, AND SO, YOU TOOK THAT
14 TO MS. QUICK?

15 A. I DID.

16 Q. ALL RIGHT. BETWEEN DECEMBER OF 2011 AND DECEMBER OF
17 2012, WHAT DID YOU DO; DID YOU TRY TO AVOID THE
18 CHEMICALS?

19 A. I DID.

20 Q. WHAT DID -- WHAT WAS YOUR UNDERSTANDING WHEN HE SAID
21 THAT, THAT YOU WERE SUPPOSED TO STOP WORK OR
22 ANYTHING LIKE THAT?

23 A. NO, NO.

24 Q. OKAY. IT WAS JUST YOU WERE TRYING TO AVOID THE
25 CHEMICALS?

1 A. THE CHEMICALS, YEAH.

2 Q. THAT HE FELT THAT'S WHAT HAD TRIGGERED IT?

3 A. YES.

4 Q. OKAY. NOW, AND SO WHAT DID YOU DO TO TRY TO AVOID
5 THE CHEMICALS?

6 A. WHEN THEY DID ANYTHING IN THE KITCHEN OR WITH THE
7 BLEACH OR ANY CHEMICALS, I ALWAYS WALK OUT AND DO
8 STUFF ON THE FLOOR.

9 Q. DID YOU ASSIGN THOSE CLEANING TASKS ---

10 A. YES.

11 Q. --- WITH USING THE CHEMICALS TO YOUR EMPLOYEES?

12 A. YEAH, WHICH I HAD -- I THINK AT THAT TIME, I HAD
13 EITHER 10 OR 11 EMPLOYEES.

14 Q. OKAY. AND SO DID YOU DO ANYTHING ELSE BETWEEN '11
15 AND '12 -- UNTIL DECEMBER 2012 IN ADDITION TO TRYING
16 TO AVOID THEM; DID YOU USE ANYTHING?

17 A. YEAH, I GOT A MASK FROM THE HOSPITAL, AND THEY
18 SHOWED ME WHEN I WENT OUT -- IF YOU GO OUT IN THE
19 AIR WITH THE CHEMICAL, USE A MASK, AND I STARTED
20 USING THE MASK, AND THEN AFTER A WHILE THE MASK GOT
21 TO WHERE IT DIDN'T WORK, AND LATER ON, DR. DAYRIT
22 SAID I NEEDED A HEAVIER MASK, AND I GOT A HEAVIER
23 MASK. IT WORKED FOR A WHILE, AND THEN IT DIDN'T
24 WORK. IT STARTED SUFFOCATING ME.

25 Q. WELL, LET'S TALK -- LET'S TALK ABOUT THAT. DR.

1 HAMMETT SENT YOU TO DR. DAYRIT.

2 A. YES.

3 BY MR. MCDANIEL:

4 COMMISSIONER, THIS IS FOUND AT APA --

5 DEFENDANTS' APA SUBMISSIONS, PAGE 304.

6 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

7 Q. AND HE WROTE A LETTER TO DR. DAYRIT IN DECEMBER --

8 IT LOOKS LIKE HE SAW YOU IN DECEMBER OF 2012.

9 A. UH-HUH.

10 Q. SO, NOW, BETWEEN 2011 WHEN YOU WENT TO THE HOSPITAL

11 AND 2012, I SEE REPEATED REFERENCE THAT DR.

12 HAMMETT'S DIAGNOSIS OF ASTHMA. SHE ENTERTAINED --

13 STILL ENTERTAINED CHRONIC BRONCHITIS, RHINITIS,

14 THOSE TYPES OF THINGS.

15 A. UH-HUH.

16 Q. AND I BELIEVE DURING THAT TIME IS WHEN YOU WERE

17 ACTUALLY TESTED FOR SARCOIDOSIS, THEY THOUGHT

18 POSSIBLY IT COULD BE SARCOIDOSIS?

19 A. YEAH.

20 Q. ALL RIGHT.

21 BY MR. MCDANIEL:

22 S-A-R-C-O-I-D-O-S-I-S, MADAM COURT REPROTER.

23 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

24 Q. BUT YOU TESTED NEGATIVE FOR SARCOIDOSIS?

25 A. NEGATIVE, YEAH, I DIDN'T HAVE IT.

1 Q. ALL RIGHT. NOW, WHEN YOU WENT TO SEE DR. DAYRIT, HE
2 TOOK A HISTORY FROM YOU?

3 A. YEAH.

4 Q. AND ACCORDING TO HIS RECORDS, HE SAID THAT YOU
5 DENIED HAVING ANY SIGNIFICANT EXPOSURE TO SMOKE
6 AND/OR ANIMALS AT HOME. AT WORK, IT WAS A DIFFERENT
7 STORY. DO YOU REMEMBER TALKING TO HIM ABOUT THAT?

8 A. YES, UH-HUH. YEAH, I DON'T HAVE ANY ANIMALS.

9 BY MR. MCDANIEL:

10 COMMISSIONER, AGAIN, THIS IS PAGE 304.

11 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

12 Q. "SHE GETS EXPOSED TO CLEANING CHEMICALS EVEN THOUGH
13 SHE IS USING A MASK."

14 A. UH-HUH.

15 Q. SO, YOU TOLD HIM YOU WERE USING A MASK AT THAT TIME?

16 A. YES, UH-HUH.

17 Q. ALL RIGHT. NOW, ACCORDING TO HIS RECORDS, HE
18 TREATED YOU -- AT THAT TIME, HE SAID THAT "IT
19 APPEARS MS. SOWELL HAS A SENSITIVITY TO SOME
20 CHEMICALS THAT SHE IS EXPOSED TO AT WORK." HE ALSO
21 SAID -- HE PUT IN HIS -- HE HAD A DIFFERENTIAL
22 DIAGNOSIS; IT WAS EITHER ONE OR THE OTHER, HE
23 THOUGHT, EITHER HYPERSENSITIVITY PNEUMONITIS OR
24 OCCUPATIONAL ASTHMA. DID HE EVER DISCUSS WITH YOU -

25 --

1 A. HE DID NOT.

2 Q. --- WHAT HIS OPINION WAS?

3 A. HE DID NOT.

4 BY MS. MILLER:

5 I OBJECT TO ANYTHING THAT THE DOCTOR --
6 STATEMENTS OF THE DOCTOR.

7 BY THE WITNESS:

8 HE DID NOT DISCUSS THAT WITH ME.

9 BY COMMISSIONER JAMES:

10 I'M SORRY. HOLD ON.

11 BY MS. MILLER:

12 I JUST OBJECT TO ANY STATEMENTS OF THE DOCTOR.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT, SUSTAINED.

15 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

16 Q. DID HE EVER GIVE YOU A DIAGNOSIS OF WHAT HE THOUGHT
17 YOUR CONDITION WAS?

18 A. HE TOLD ME I HAD ASTHMA.

19 Q. HE TOLD YOU YOU HAD ASTHMA?

20 A. UH-HUH.

21 Q. OKAY, ALL RIGHT. NOW, HERE AGAIN IT SAYS DOWN IN
22 HIS RECORDS, IT SAYS HE TENDED TO FAVOR
23 HYPERSENSITIVITY PNEUMONITIS IN DECEMBER. NOW, I'M
24 NOT TALKING ABOUT LATER ON. YOU ACTUALLY SAW HIM A
25 FEW MORE TIMES?

1 A. UH-HUH.

2 Q. HE CLOSED HIS PRACTICE IN MARCH.

3 A. YEAH.

4 Q. AND WE'RE GOING TO TALK ABOUT THAT -- THOSE RECORDS
5 IN JUST A MINUTE. BUT DID HE TELL YOU ANYTHING LIKE
6 THAT YOU NEEDED TO BE AWAY FROM WORK?

7 A. NO. HE WAS JUST GOING TO TAKE ME OUT FOR A WEEK SO
8 I COULD DO THAT BREATHING TEST TO SEE HOW THE
9 BREATHING, HOW MUCH MY LUNGS WAS FUNCTIONING, AND I
10 NEEDED TO BE OUT A WEEK AND NEEDED TO BE OFF MY
11 PREDNISONE FOR A WEEK SO HE CAN GET AN ACCURATE
12 READING.

13 Q. AN ACCURATE READING, OKAY. AND DID HE -- WHAT DID
14 HE SAY ABOUT THE MASK?

15 BY MS. MILLER:

16 AGAIN, OBJECT TO THE STATEMENTS ---

17 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

18 Q. WHAT WAS YOUR UNDERSTANDING ---

19 BY MS. MILLER:

20 --- OF THE DOCTOR, YOUR HONOR.

21 BY MR. MCDANIEL:

22 OKAY.

23 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

24 Q. HE REFERS -- HE MAKES A STATEMENT IN HERE THAT "SHE
25 WAS ALSO ADVISED TO GET A RESPIRATORY MASK OR A

1 RESPIRATOR MASK."

2 A. YEAH, AND I GOT THE MASK, AND LIKE I SAY, IT DIDN'T
3 -- IT DIDN'T DO ANY GOOD, AND HE SUGGESTED I GOT
4 THAT ONE THAT LOOKED LIKE A FULL MASK AND STUFF, AND
5 I TOLD MS. QUICK ABOUT IT. SHE SAID, "OH, NO, YOU
6 CAN'T COME IN HERE WITH SOMETHING ON LIKE THAT," SO.
7 THAT WAS OUT OF THE QUESTION.

8 Q. ALL RIGHT. OKAY. NOW, I SEE RECORDS IN HERE THEN
9 WHERE HE CONTINUED TO SEE YOU, AND YOU SAW HIM ---

10 BY MR. MCDANIEL:

11 COMMISSIONER, ON PAGE 308.

12 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

13 Q. HE SAID THAT AFTER YOU BEING OUT TO DO THIS TEST,
14 THAT YOU HAD ACTUALLY RETURNED TO WORK AND THAT YOU
15 HAD NOT HAD ANY EXACERBATION OF YOUR RETURN -- AFTER
16 YOU HAD RETURNED TO WORK. DOES THAT SOUND ---

17 A. I DIDN'T ---

18 Q. HOW WAS THAT DOING?

19 A. I DIDN'T HAVE A BAD ONE THAT I HAD TO GO BACK TO THE
20 DOCTOR'S OFFICE, BUT I WAS STILL HAVING PROBLEMS.

21 Q. NOW, AT ANY TIME DURING HIS TREATMENT OF YOU, DID HE
22 TELL YOU THAT YOU NEEDED TO STOP WORKING AT PIGGLY
23 WIGGLY?

24 A. NO.

25 Q. DID HE AT ANY TIME TELL YOU ---

1 BY MS. MILLER:

2 OBJECTION TO STATEMENTS OF THE DOCTOR, YOUR
3 HONOR?

4 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

5 Q. DID HE TELL YOU AT ANY TIME ---

6 BY COMMISSIONER JAMES:

7 STOP.

8 BY MR. MCDANIEL:

9 I'M SORRY.

10 BY COMMISSIONER JAMES:

11 I GUESS YOUR OBJECTION IS TO ACTUALLY THE
12 STATEMENT OF THE DOCTOR?

13 BY MS. MILLER:

14 YES, MA'AM.

15 BY COMMISSIONER JAMES:

16 OKAY, ALL RIGHT.

17 BY MR. MCDANIEL:

18 OKAY. MY QUESTION IS NOT WHAT THE DOCTOR TOLD
19 HER. IT IS DID HE AT ANY TIME TELL YOU.

20 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

21 Q. AND MY QUESTION TO YOU IS DID HE AT ANY TIME TELL
22 YOU THAT YOU HAD OCCUPATIONAL ASTHMA OR THAT YOU
23 NEEDED TO STOP WORK?

24 A. NO.

25 BY MS. MILLER:

1 OBJECT.

2 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

3 Q. OR GIVE YOU A DEFINITIVE DIAGNOSIS THAT THIS WAS
4 BEING, THAT YOUR CONDITION OF ASTHMA WAS BEING
5 CAUSED BY YOUR WORK?

6 A. NO, HE DID NOT.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. I MEAN, THAT'S FINE.

9 BY MR. MCDANIEL:

10 RIGHT.

11 BY COMMISSIONER JAMES:

12 I UNDERSTAND THE PARAMETERS OF THE LEGAL ISSUE
13 THAT WE'RE DEALING WITH. I GUESS WHAT WE JUST NEED
14 TO BE CAREFUL OF IS THAT SHE DOES NOT ADD ADDITIONAL
15 INFORMATION WITH REGARDS TO WHAT THE DOCTORS SAYS.

16 BY MR. MCDANIEL:

17 RIGHT.

18 BY COMMISSIONER JAMES:

19 IN OTHER WORDS, ---

20 BY MS. MILLER:

21 THE WAY THE QUESTION IS SET UP, IT IS JUST
22 ASKING HER TO TELL HIM WHAT THE DOCTOR SAID.

23 BY COMMISSIONER JAMES:

24 RIGHT.

25 BY MR. MCDANIEL:

1 NO.

2 BY COMMISSIONER JAMES:

3 SO, I UNDERSTAND THE NOTICE ISSUE, MR.

4 MCDANIEL, BUT I THINK WE JUST NEED TO BE COGNIZANT
5 THAT ---

6 BY MR. MCDANIEL:

7 RIGHT. AND HER -- HER STATEMENT JUST THEN IS A
8 MISSTATEMENT OF THE LAW, AND THE LAW IS IT IS NOT --
9 IF IT NOT -- IF I AM ASKING HER WHAT THE DOCTOR
10 SAID, WHAT DID HE TELL YOU, I'M ASKING HER
11 SPECIFICALLY "DID HE TELL YOU THIS," AND SHE'S
12 TELLING ---

13 BY COMMISSIONER JAMES:

14 AND THAT'S WHAT I UNDERSTAND.

15 BY MR. MCDANIEL:

16 I AGREE.

17 BY COMMISSIONER JAMES:

18 AND WE CAN JUST MOVE ON, BUT I JUST WANT TO BE

19 ---

20 BY MR. MCDANIEL:

21 CORRECT.

22 BY COMMISSIONER JAMES:

23 --- COGNIZANT THAT WE DON'T GET INTO MORE THAN
24 IS REQUIRED THAT SHOULD BE SAID.

25 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

1 Q. NOW, I'M GOING TO -- WELL, LET ME NOT -- LET ME JUST
2 TRY TO GO THROUGH THIS. ALL RIGHT. NOW, LET'S GO
3 TO -- DR. DAYRIT LEFT, WAS THAT CORRECT?

4 A. YES, HE DID.

5 Q. ALL RIGHT. AND THEN AFTER THAT, YOU CONTINUED UNDER
6 DR. HAMMETT'S CARE?

7 A. YES.

8 Q. ALL RIGHT. NOW, BEFORE NOVEMBER 11TH, 2014, I WANT
9 TO GO THROUGH THESE. BEGINNING ON ---

10 BY MR. MCDANIEL:

11 COMMISSIONER, BEGINNING ON PAGE...

12 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

13 Q. ALL RIGHT, ON MARCH 19TH, 2013, YOU SAW DR. HAMMETT,
14 AND ACCORDING TO HER ASSESSMENT AND PLAN, SHE HAD
15 "ASTHMA EXACERBATION, HYPERTENSION AND ACUTE
16 BRONCHITIS." DOES THAT SOUND LIKE WHAT SHE WAS
17 ADVISING YOU THAT YOU WERE HAVING AND WHAT SHE WAS
18 TREATING YOU FOR?

19 A. YES.

20 BY COMMISSIONER JAMES:

21 AND WHAT PAGE ARE YOU REFERRING TO?

22 BY MR. MCDANIEL:

23 PAGE -- I'M SORRY. PAGE 29.

24 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

25 Q. NOW, ON JUNE 27TH, IT SAYS THAT SHE WAS TREATING

1 YOU FOR "ASTHMA SEVERE, RESISTANT AND FOR ACUTE
2 BRONCHITIS." DOES THAT SOUND LIKE WHAT SHE WAS
3 ADVISING THAT SHE WAS TREATING YOU FOR ---

4 A. YES.

5 Q. --- DURING THAT TIME?

6 A. YES.

7 Q. NOW, AGAIN, ---

8 BY MR. MCDANIEL:

9 ON PAGE 9-26 OF 2013, COMMISSIONER.

10 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

11 Q. IT SAYS THAT SHE WAS TREATING YOU FOR ACUTE
12 BRONCHITIS AND THAT YOU WERE HAVING ASTHMA,
13 UNSPECIFIED TYPE. DOES THAT SOUND RIGHT THAT SHE
14 WAS TREATING YOU FOR ASTHMA?

15 A. YES.

16 Q. OKAY. THEN ACTUALLY IN NOVEMBER, ---

17 BY MR. MCDANIEL:

18 COMMISSIONER, AT PAGE 14.

19 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

20 Q. --- SHE SAYS THAT SHE WAS TREATING YOU FOR ASTHMA AT
21 THAT TIME?

22 A. YES.

23 Q. SO, WAS IT YOUR UNDERSTANDING THAT YOU WERE BEING
24 TREATED FOR ASTHMA THROUGHOUT 2013?

25 A. YES.

1 Q. NOW, WE'VE REFERRED TO THE NOTE FROM DR. DAYRIT
2 EARLIER, AND ---

3 BY MR. MCDANIEL:

4 COMMISSIONER, AGAIN, AT PAGE 304, YOU'LL NOTE
5 THAT THAT FIRST VISIT, AND I WOULD ASK YOU TO TAKE
6 SPECIFIC NOTE THAT THIS WAS A LETTER TO DR. ROCHELLE
7 HAMMETT, M.D. ON DECEMBER OF 2012.

8 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

9 Q. NOW, DR. HAMMETT ON MARCH 19TH OF 2013 IN ADDITION
10 TO SAYING THAT SHE WAS TREATING YOU FOR ASTHMA
11 EXACERBATION, HYPERTENSION AND ACUTE BRONCHITIS, SHE
12 ALSO IN THE HISTORY AND PHYSICAL, SHE SAYS THAT "SHE
13 HAS A HISTORY OF CHRONIC ASTHMA EXACERBATION THAT
14 WAS DETERMINED TO BE WORK RELATED AND WAS SUGGESTED
15 THAT SHE REMOVE HERSELF FROM THE JOB, WHICH SHE HAS
16 NOT YET DONE." DID DR. HAMMETT AT ANY TIME TELL YOU
17 TO REMOVE YOURSELF FROM THE JOB?

18 A. NO.

19 Q. OKAY. OTHER THAN THAT REFERENCE TO DR. DAYRIT THAT
20 THOUGHT YOU MIGHT NEED TO BE OUT FOR A COUPLE OF
21 WEEKS, DID ANY DOCTOR ADVISE YOU THAT YOU NEEDED TO
22 QUIT WORK OR BE OUT OF WORK?

23 A. NO.

24 Q. OKAY. NOW, IN REFERENCE TO THAT - NOW, I SEE -
25 WE'VE TALKED ABOUT THE REFERRAL FROM DR. DAYRIT, ---

1 BY MR. MCDANIEL:

2 AND THAT'S D-A-Y-R-I-T, MADAM COURT REPORTER.

3 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

4 Q. AGAIN, PAGE 304, THAT HE WAS ENTERTAINING TWO
5 POTENTIAL DIAGNOSES, BUT DID ANY DOCTOR PRIOR TO
6 JANUARY OF 2014 TELL YOU THAT YOU WERE SUFFERING
7 FROM OCCUPATIONAL ASTHMA?

8 A. NO.

9 Q. OKAY. AND NO DOCTOR TOLD YOU THAT YOU NEEDED TO
10 QUIT WORK OR BE OUT OF WORK -- TOLD YOU TO QUIT
11 WORK?

12 A. NO.

13 Q. OKAY. THAT YOU COULD NOT RETURN TO WORK. NOW, TELL
14 ME WHAT HAPPENED DURING 2013 IN REFERENCE TO YOU AND
15 DR. HAMMETT AS TO WHAT WAS CAUSING THESE CONTINUAL
16 AND WORSENING PROBLEMS WITH YOUR ASTHMA?

17 A. AT FIRST, SHE DIDN'T -- SHE DIDN'T REALLY KNOW, AND
18 THEN SHE TOOK ME OUT OF WORK FOR A COUPLE OF DAYS IN
19 THE LAST OF OCTOBER, SOMETIME, IT WAS RIGHT BEFORE
20 NOVEMBER, AND I GOT A LITTLE BETTER. SEE, WHAT WAS
21 HAPPENING WAS IS THE DOCTOR WOULD GIVE ME A NOTE TO
22 BE OUT OF WORK, BUT THINGS WAS GOING ON AT THE
23 STORE. I TOOK THE NOTE TO MS. QUICK AND GAVE IT TO
24 HER AND TOLD HER THE DOCTOR TOLD ME TO BE OUT OF
25 WORK, BUT I STILL CAME IN AND DID WHAT I HAD TO DO

1 AT WORK. AND IN NOVEMBER, SHE TOLD ME THAT THERE
2 WASN'T NOTHING ELSE THEY COULD DO, THAT SHE COULD
3 DO. THAT SHE FELT THAT IT WAS JOB RELATED. I
4 NEEDED -- THAT I NEEDED TO COME OUT, BECAUSE I - I
5 WAS HOSPITAL -- NOT HOSPITALIZED, BUT I WENT TO THE
6 EMERGENCY ROOM, AND I COULDN'T BREATHE, AND WHEN I
7 WENT BACK TO FOLLOW UP WITH HER, SHE TOLD ME THAT I
8 NEEDED TO COME OUT AND GIVE MY LUNGS A BREAK AND SEE
9 IF THAT'S WHAT IT WAS, BUT SHE FELT THAT IT WAS THE
10 JOB THAT WAS CAUSING ME TO BE SICK. I CAME BACK IN,
11 WHICH I TOLD HER "I NEED TO GO THROUGH THE
12 HOLIDAYS," BECAUSE I DIDN'T WANT TO LEAVE THEM
13 HANGING, BECAUSE IT WAS GETTING CLOSE TO
14 THANKSGIVING AND CHRISTMAS. I DIDN'T WANT TO LEAVE
15 THEM HANGING. I WAS "LET ME WORK 'TIL THE FIRST OF
16 THE YEAR, AND THEN I WILL COME OUT." I TOLD MS.
17 QUICK THIS WHEN I CAME BACK IN OCTOBER, THAT THE
18 DOCTOR WANTED TO TAKE ME OUT OF WORK 'CAUSE SHE SAID
19 IT WAS THE JOB, AND THAT AT THE FIRST OF THE YEAR
20 AFTER I GOT THEM THROUGH THE HOLIDAYS THAT I WOULD
21 BE COMING OUT FOR THREE MONTHS AND SEE WAS I WAS
22 GOING TO GET BETTER.

23 Q. OKAY. NOW, LET ME ASK YOU.

24 BY MR. MCDANIEL:

25 COMMISSIONER, I WOULD ASK YOU TO REFER TO PAGE

1 EIGHT, NINE, AND TEN OF THE CLAIMANT'S APA
2 SUBMISSIONS.

3 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

4 Q. AND SO, THAT WOULD BE NOVEMBER 21ST, 2013. DOES
5 THAT SOUND ABOUT CORRECT TO YOU?

6 A. YES.

7 Q. ALL RIGHT.

8 A. IT WAS THE WEEK BEFORE THANKSGIVING; I REMEMBER
9 THAT, BECAUSE THANKSGIVING WAS COMING UP.

10 Q. WHAT WAS YOUR UNDERSTANDING THOUGH WHEN DR. HAMMETT
11 SAID THAT SHE WANTED TO TAKE YOU OUT OF WORK; WAS
12 THAT PERMANENTLY OR WHAT WAS IT?

13 A. NO, JUST TO COME OUT TO SEE WAS I GOING TO GET
14 BETTER AND EVERYTHING.

15 Q. HOW -- OKAY, HOW WAS YOUR CONDITION THEN BY THAT
16 TIME AND THEN THROUGH JANUARY 2014?

17 A. IT WAS ROUGH. I GOT TO WHERE I COULDN'T EVEN WALK
18 HARDLY. WHEN I GO TO THE CAR TO GO HOME, I HAD TO
19 SIT THERE FIVE MINUTES AT LEAST TO GET MY BREATH SO
20 I COULD CRANK MY CAR UP, YOU KNOW, TO LEAVE THE
21 STORE. JUST WALKING FROM MY CAR TO THE -- FROM THE
22 STORE TO MY CAR, IT JUST GOT ME OUT OF BREATH, AND
23 WALKING FROM THE BACK ROOM, I WAS JUST GETTING
24 CONSTANTLY SHORT OF BREATH, AND EVERYTHING LOOKED
25 LIKE IT WOULD JUST TRIGGER MY ASTHMA. WHEN THEY

1 WAXED THE FLOOR, IT WOULD BURN MY THROAT. IF THEY
2 CLEANED OUT THE BATHROOM, IT WOULD BURN MY THROAT.
3 IT WAS JUST EVERYTHING WAS GETTING WORSE AND WORSE.

4 Q. NOW, ACCORDING TO HER RECORDS, EVEN IN -- THEN SHE
5 SAW YOU AGAIN ON JANUARY 6TH -- EXCUSE ME, JANUARY
6 9TH OF 2014.

7 A. UH-HUH.

8 Q. BY THAT TIME, YOU HAD SEEN DR. deDIOS?

9 A. YEAH, I WENT TO DR. deDIOS. HE HAD GIVE ME SHOTS
10 AND STUFF BECAUSE I WAS IN BAD SHAPE, AND AT THAT
11 TIME -- BECAUSE I WAS GOING TO WORK THAT WEEK OUT
12 BECAUSE HATTIE HAD CAME BACK, THE ONE THAT WAS
13 TAKING OVER. I WAS GOING TO HELP AND MAKE SURE SHE
14 WAS TRAINED TO TAKE OVER, BUT I HAD GOT SO SICK THAT
15 I COULDN'T COME BACK, AND I ONLY WORKED THAT ONE
16 DAY, AND THAT WAS THAT MONDAY.

17 Q. AND THEN DR. HAMMETT THEN TOOK YOU OUT OF WORK?

18 A. YEAH, SURE DID.

19 Q. ALL RIGHT.

20 BY MR. MCDANIEL:

21 NOW, DR. deDIOS'S RECORDS ARE IN EVIDENCE,
22 COMMISSIONER, AND THEY ARE BEGINNING AT PAGE 103,
23 AND THEN...

24 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

25 Q. NOW, YOU HAD A DISCUSSION ACCORDING TO -- HE SAW YOU

1 ON JANUARY THE 6TH OF 2014, AND I JUST WANT TO
2 RECORD IF WE CAN THAT AT THAT TIME, OF COURSE YOU
3 REPORTED YOU HAD LIVED OVER 25 YEARS IN THE SAME
4 HOUSE?

5 A. UH-HUH.

6 Q. THAT YOU HAD NO DOGS, CATS; THAT YOU HAD NO BIRDS,
7 AND AS FAR AS YOU KNOW, THERE WAS NO MOLD IN YOUR
8 HOME?

9 A. YEAH, THERE WASN'T NO MOLD.

10 Q. THAT YOU HAD NEVER SMOKED; THAT YOU WERE EXPOSED TO
11 SMOKE AT WORK; DOES THAT SOUND FAMILIAR?

12 A. YES.

13 Q. OKAY. NOW, DID YOU HAVE A DISCUSSION WITH DR.
14 deDIOS AT THAT TIME ABOUT DR. HAMMETT AND HER
15 OPINIONS?

16 A. I DID. I TOLD HIM, BECAUSE HE WANTED TO SEND ME TO
17 CHARLESTON TO GET MY LUNGS SCRAPED BECAUSE THAT WAS
18 ANOTHER ALTERNATIVE TO TRY TO GET ME BETTER, AND I
19 TOLD HIM THAT DR. HAMMETT AT THAT TIME THOUGHT THAT
20 IT WAS JOB RELATED, THAT IT WAS MY JOB, AND HE
21 DIDN'T KNOW. HE SAID "WELL, WHEN YOU COME OUT, IF
22 YOU GET BETTER, THEN I'M ON BOARD WITH IT."

23 Q. ALL RIGHT. NOW, AFTER TWO WEEKS WHEN YOU WENT BACK
24 TO SEE DR. deDIOS, HOW WAS YOUR CONDITION?

25 A. I WAS A WHOLE LOT BETTER. HE WAS SURPRISED, AND I

1 TOLD HIM "DOES THAT MEAN I CAN GO BACK TO WORK OR DO
2 THAT MEAN I CAN JUST STOP TAKING ALL OF THIS
3 MEDICINE I'M TAKING?" HE SAID, "NO, THIS -- PLEASE
4 DON'T DO THAT." HE SAID, "NO, NO, NO, DON'T DO
5 THAT, BECAUSE THIS IS IRREVERSIBLE. THIS IS
6 SOMETHING THAT YOU WILL HAVE FOR LIFE. YOU JUST
7 HAVE TO MAINTAIN IT, AND WE COULDN'T MAINTAIN IT
8 LIKE WE COULD MAINTAIN IT WHILE YOU WAS WORKING."

9 Q. WAS IT YOUR UNDERSTANDING BASED ON THAT
10 CONVERSATION, WHICH YOU TESTIFIED PREVIOUSLY IN YOUR
11 DEPOSITION, AND THAT IS THAT YOU HAD AN IRREVERSIBLE
12 CONDITION ---

13 A. YES.

14 Q. --- THAT YOU -- WHAT WAS YOUR UNDERSTANDING AT THAT
15 POINT ABOUT YOUR ABILITY TO GO BACK TO WORK?

16 A. I STILL THOUGHT THAT I MIGHT BE ABLE TO GO BACK TO
17 WORK, AND WHEN MS. QUICK TOLD ME THAT I HAD TO HAVE
18 A LETTER FROM THE DOCTOR STATING THAT I WAS 100
19 PERCENT ABLE TO COME BACK TO WORK, THEN I COULDN'T
20 COME BACK TO WORK IF I DIDN'T GET IT, AND NEITHER
21 DOCTOR WAS WILLING TO WRITE THAT LETTER.

22 Q. OKAY. NOW, I'M NOT GOING TO GO THROUGH ---

23 BY MR. MCDANIEL:

24 COMMISSIONER, AT PAGE 163 IS A LIST OF HER
25 MEDICATIONS THEN, AND OF COURSE, IT'S REFERRED TO

1 AND THROUGHOUT DR. deDIOS'S NOTES. I WOULD REFER
2 YOU ALSO TO PAGE 105 OF DR. deDIOS'S NOTES, BUT IN
3 ANY EVENT, AND YOU WILL FIND THE DIAGNOSIS BY DR.
4 deDIOS IN THE RECORDS IN ADDITION TO COMPLETING THE
5 QUESTIONNAIRE THAT HE COMPLETED FOR US, WHICH CAN BE
6 FOUND AT PAGE -- BEGINNING ON PAGE 169-B GOING
7 THROUGH PAGE 169-G.

8 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

9 Q. BUT IN OTHER WORDS, TELL THE COMMISSIONER BASICALLY
10 WHAT ALL MEDICATIONS YOU'VE GOT AND YOU'VE BEEN
11 TAKING EVER SINCE FOR A BETTER TERM, JANUARY OF
12 2014.

13 A. I TAKE PREDNISONE. I TAKE SYMBICORT INHALER TWO
14 PUFFS, TWO PUFFS IN THE EVENING. I DO -- I HAVE THE
15 RESCUE INHALER IN CASE SOMETHING HAPPENS AND I HAVE
16 TO HAVE THE RESCUE. I HAVE THE PROAIR. WHEN I GET
17 SHORT OF BREATH, I USE THE PROAIR. I HAVE
18 SINGULAIR. I HAVE NASONEX FOR MY NASALS. I HAVE
19 THE ALBUTEROL MACHINE, AND I USE THAT IN THE MORNING
20 TIME, AND I DO IT AT NIGHT TIME, AND IF I RUN INTO
21 SOMETHING -- IF I GO OUT AND RUN INTO SOMETHING, I
22 HAVE TO DO IT IN BETWEEN TIME IN THE DAY.

23 Q. OKAY. AND YOU ACTUALLY HAVE AN EPIPEN?

24 A. I DO, I HAVE AN EPIPEN BECAUSE I TAKE THE XOLAIR
25 SHOTS, AND I HAVE TO HAVE THE EPIPEN IN CASE I GET A

1 REACTION ON IT, AND I TAKE ALLERGY SHOTS FROM DR.

2 DICE EVERY WEEK. I TAKE SHOTS EVERY WEEK.

3 Q. OKAY. SO, YOU TAKE -- DICE EVERY WEEK, SHOTS EVERY
4 WEEK?

5 A. UH-HUH.

6 Q. AND XOLAIR SHOTS FROM DR. deDIOS ---

7 A. EVERY OTHER WEEK.

8 Q. --- EVERY OTHER WEEK?

9 A. UH-HUH.

10 Q. ALL RIGHT. AND I BELIEVE IT'S ACCORDING TO THE
11 TESTIMONY, BUT THOSE -- THAT XOLAIR HAS TO BE FLOWN
12 IN AND REFRIGERATED?

13 A. YES, YES.

14 Q. OKAY. AND THAT'S WHAT YOU'RE ON RIGHT NOW?

15 A. YES.

16 Q. AND HAVE BEEN ON?

17 A. YES. AND IT CONTROL ME. WHENEVER THEY SWITCH OVER
18 INSURANCE COMPANY EVERY YEAR, I HAVE A PERIOD THAT I
19 MIGHT HAVE TO SKIP A WEEK OR TWO. THEN I'LL START
20 GETTING SICK AGAIN.

21 Q. OKAY. LET'S GO BACK AND TALK A MINUTE, AND I WANT
22 TO TALK ABOUT YOUR -- YOUR CURRENT CONDITION AND HOW
23 YOUR CONDITION IS EVERY DAY AND THAT TYPE OF THING
24 IN A MINUTE, BUT LET'S GO BACK AND TALK ABOUT --
25 WHEN DID YOU START DOING, FOR A BETTER TERM, AS A

1 SIDELINE BUSINESS DOING CATERING?

2 A. LORD, IT'S PROBABLY ABOUT 12 YEARS AGO, AND I DID IT
3 THROUGH THE STORE. I BOUGHT, YOU KNOW, THEIR
4 CHICKEN AND SOMETIMES I BOUGHT EVERYTHING, YOU KNOW,
5 AND BROUGHT IT BACK AND MY DAUGHTERS TOOK IT AND
6 SERVED IT AND EVERYTHING.

7 Q. OKAY.

8 A. AND THAT WORKED AND THEN WE DID A LITTLE BIT MORE, A
9 LITTLE BIT MORE, AND A LITTLE BIT MORE.

10 Q. BETWEEN 2000-AND -- AFTER JUNE OF 2011 THROUGH 2014,
11 DID THAT -- DID THAT CHANGE AS FAR AS LIKE YOUR
12 ABILITY OF HOW MUCH WERE YOU ABLE TO DO?

13 A. BEFORE I LEFT WORK, PROBABLY ABOUT SIX OR SEVEN
14 MONTHS, I HAD TO TURN EVERYTHING OVER TO MY DAUGHTER
15 BECAUSE I COULDN'T DEAL WITH IT ANY LONGER. I WAS
16 TOO SICK. I COULDN'T HELP HER NONE. I COULDN'T --
17 I COULDN'T EVEN BE AROUND -- I GOT TO WHERE I
18 COULDN'T EVEN BE AROUND THE FOOD OR ANYTHING. SO,
19 SHE TOOK OVER AND HAS EVER SINCE.

20 Q. ALL RIGHT. NOW, LET'S -- OFF OF THAT, JUST SORT OF
21 TELL US ABOUT WHAT DO YOU DO ON A DAY-TO-DAY BASIS
22 AND TELL ME ABOUT WHAT YOU DO IN REFERENCE TO THE
23 CATERING BUSINESS NOW?

24 A. LIKE IF MY DAUGHTER NEED ANYTHING, IF IT'S IN THE
25 AREA, IF IT'S IN THE CHESTERFIELD AREA, I GO TO

1 PIGGLY WIGGLY, AND I'LL PICK IT UP AND -- WELL,
2 BASICALLY ME AND HER AND MY SISTER ALL BE TOGETHER
3 MOSTLY ALL THE TIME.

4 Q. IS MS. QUICK STILL THERE AT THE PIGGLY WIGGLY?

5 A. YES, SHE IS.

6 Q. OKAY.

7 A. YEAH, I MEAN, I HAVE NO HARD FEELINGS. I MEAN,
8 THINGS HAPPEN.

9 Q. YEAH.

10 A. AND I GO THERE BASICALLY EVERY WEEK OR SOME -- OR
11 WHENEVER MY DAUGHTER'S GOT A CATERING JOB, AND I
12 TAKE HER THERE, AND I GO TO THE DOCTOR ON TUESDAYS
13 BASICALLY ABOUT ALL DAY, DR. DICE, DR. deDIOS.

14 Q. ALL RIGHT. WHO DOES THE FOOD PREPARATION FOR THE
15 BUSINESS NOW?

16 A. MY DAUGHTER AND MY SISTER. MY DAUGHTER DO THE
17 PREPARATION, AND MY SISTER DO ALL THE CLEANING. SHE
18 DOES ALL MY HOUSEWORK. SHE MOWS MY GRASS. SHE
19 CLEANS UP EVERYTHING.

20 Q. SO, YOUR SISTER IS HERE TODAY?

21 A. YES.

22 Q. SHE DOES ALL OF YOUR HOME -- HOUSEWORK?

23 A. YEAH.

24 Q. WHEN SHE IS DOING THE HOUSEWORK IF SHE IS USING ANY
25 CHEMICALS OR ALSO IF SHE LIKE DOING ANY DUSTING,

1 WHERE ARE YOU?

2 A. I USUALLY GO TO SUBWAY, OR I'LL LEAVE THE HOUSE, OR
3 I'LL GO IN THE BACK YARD AND SIT DOWN IN THE CHAIR
4 OUT THERE.

5 Q. OKAY.

6 A. AND PLAY WITH MY GAME.

7 Q. NOW, IF YOUR DAUGHTER HAS TO DO ANY COOKING, WHERE
8 DOES SHE DO IT?

9 A. IF SHE DO ANY BAKING OR COOKING FOOD, SHE CAN DO IT
10 IN THE HOUSE, BUT IF SHE WANTS TO FRY ANYTHING, SHE
11 HAS TO TAKE IT TO THE BUILDING OUTSIDE.

12 Q. NOW, TELL THE COMMISSIONER ABOUT THAT, YOU KNOW,
13 WHAT YOU'VE GOT.

14 A. IT'S THE GREASE AND THE FRYING, IT JUST BURNS MY
15 LUNGS. THE MINUTE -- I GO IN WAL-MART AND THEY'VE
16 BEEN FRYING CHICKEN, AND THE GREASE, I HAVE TO MAKE
17 MY STAY VERY SHORT. ANY PLACE THAT'S IN THERE
18 FRYING FOOD OR CHICKEN OR FISH OR WHATEVER, IT JUST
19 TAKES MY BREATH. SO, I HAVE TO LEAVE.

20 Q. ALL RIGHT. IS THERE ANY TIME THAT YOU GO TO PIGGLY
21 WIGGLY TO PICK UP ALL THIS STUFF, DO YOU HAVE ANY
22 PROBLEMS THERE?

23 A. WELL, I WENT THERE ON ONE SATURDAY MORNING, AND THEY
24 WERE DUSTING THE FLOOR, AND I JUST LIKE TO HAVE HAD
25 AN ASTHMA ATTACK. I MEAN, I LIKE TO HAD TO GET THE

1 RESCUE SQUAD COME BECAUSE I COULDN'T HARDLY GET MY
2 BREATH. I HAD TO GO RIGHT BACK OUT THE DOOR. MY
3 SISTER GOT EVERYTHING THAT THEY NEEDED THAT MORNING
4 WHILE I WAS AT THE CAR USING MY INHALERS AND STUFF
5 TO GET SITUATED. AND SOMETIMES, I CAN GO BACK TO
6 THE MEAT DEPARTMENT, IT'S FINE IF THERE'S NO SMELL,
7 BUT IF I GO BACK THERE AND IT'S GOT A SMELL LIKE
8 MAYBE THE CHICKEN MIGHT BE GETTING -- WELL, I HAVE
9 TO -- I HAVE TO LEAVE OUT FROM BACK THERE.

10 Q. WHAT -- DO YOU GET AROUND LIKE, YOU KNOW, MOST
11 CHICKEN AND ALL THAT KIND OF STUFF, MEATS AND ALL
12 THAT ARE IN PACKAGES. DO YOU GET AROUND OPEN RAW
13 CHICKEN, MEATS, THAT KIND OF THING?

14 A. NO, MY DAUGHTER DOES ALL OF THAT.

15 Q. OKAY.

16 A. SHE DOES ALL THAT. AND WHEN I BUY IT FROM PIGGLY
17 WIGGLY, I BUY IT IN THE CASE, AND THEY GET IT AND
18 THEY TAKE IT TO MY CAR, AND THEY PUT IT IN THE TRUNK
19 OF MY CAR, AND I DON'T TOUCH IT. MY DAUGHTER --
20 WHEN I GET HOME, MY DAUGHTER COMES OUT AND GET IT IF
21 SHE'S WITH ME OR MY SISTER'S WITH ME, WHICHEVER ONE,
22 THEY GET IT AND THEY TAKE IT AND WORK IT OUT, AND I
23 GO IN MY ROOM AND CLOSE MY DOOR.

24 Q. WHAT HAPPENS -- WHAT HAPPENS IF YOU ARE AROUND
25 SOMEBODY WITH STRONG PERFUME OR IF THEY'RE USING,

- 1 YOU KNOW, SOME KIND OF A CLEANER WHATSOEVER?
- 2 A. IT CAUSES ME TO START COUGHING OR LOSE MY BREATH.
- 3 Q. OKAY. HOW ABOUT YOUR STAMINA; HOW FAR CAN YOU WALK
- 4 AND THAT KIND OF THING NOW? I MEAN, NOT HOW FAR CAN
- 5 YOU WALK, BUT JUST, YOU KNOW, IF YOU HAD TO WALK IN
- 6 A RAPID PACE ACROSS THIS ROOM?
- 7 A. NO.
- 8 Q. OKAY. LAST TIME WE WERE GOING TO TRY THIS CASE, WE
- 9 WERE OVER IN HARTSVILLE CITY HALL, AND THEY HAD ONE
- 10 OF THOSE TIME RELEASE AIR FRESHENERS. WHAT HAPPENED
- 11 TO YOU WHEN IT -- WHEN YOU WENT IN THAT BUILDING?
- 12 A. I COULDN'T STAY IN THERE. IT STARTED BURNING MY
- 13 THROAT AND STARTED MAKING ME COUGH, AND WHEN MY
- 14 THROAT STARTED BURNING, THE MUCOUS STARTED COMING UP
- 15 IN THERE, AND I STARTED COUGHING REAL BAD.
- 16 Q. WHERE DID YOU GO?
- 17 A. ON THE OUTSIDE. I HAD TO STAY OUTSIDE.
- 18 Q. OKAY. AND AFTER THAT, I HAD TO GO OUTSIDE TO GET
- 19 YOU WHENEVER WE WANTED TO INTRODUCE YOU TO THE
- 20 COMMISSIONER; IS THAT RIGHT?
- 21 A. YES.
- 22 Q. OKAY. ALL RIGHT. IS THAT -- DO YOU TAKE OUT THE
- 23 TRASH?
- 24 A. OCCASIONALLY IF MY SISTER OR MY DAUGHTER IS NOT
- 25 THERE, AND I HAVE SOME TRASH, I'LL TAKE IT OUT TO

1 THE DRUM, BUT THEN I CAN'T -- WHEN I LIFT THE LID, I
2 CAN'T -- I CAN'T -- I MEAN, IT JUST SHORTENS MY
3 BREATH.

4 Q. OKAY. WHO DOES MOST OF THE DRIVING, PARTICULARLY IF
5 YOU -- OTHER THAN SHORT DISTANCES LIKE UP TO PIGGLY
6 WIGGLY?

7 A. MY DAUGHTER JANET.

8 Q. WHICH DAUGHTER IS THAT?

9 A. SHE'S MY OLDEST DAUGHTER. SHE WORKS AT SUBWAY.

10 Q. AND THAT'S JANET?

11 A. JANET JAMES.

12 Q. OKAY. NOW, AND WHAT DAUGHTER WORKS WITH YOU IN THE
13 CATERING BUSINESS? WHAT'S THE ONE THAT RUNS IT?

14 A. AMY EDWARDS.

15 Q. OKAY. NOW, WHEN Y'ALL GO OUT AND CATER, ONE LAST
16 QUESTION. WHEN Y'ALL GO OUT AND -- WHEN YOU CATER
17 SOMETHING, DO YOU HAVE ANYTHING TO DO WITH PUTTING
18 OUT THE FOOD AND THAT KIND OF THING?

19 A. NO, NO, NO.

20 Q. ALL RIGHT.

21 A. SOMETIMES I GO OCCASIONALLY, BUT MOST OF THE TIME
22 I'M AT HOME. IF IT'S JUST THOSE THREE -- IT'S A
23 LIKE A FAMILY THING. THE OTHER CHILDREN AND MY
24 SISTERS AND BROTHERS; IT'S A LOT OF US.

25 Q. OKAY. ALL RIGHT. WOULD YOU LOVE TO GO BACK TO

1 WORK?

2 A. I WOULD.

3 Q. OKAY. IS THERE ANYTHING -- KNOWING WHAT ALL HAPPENS
4 TO YOU AND WITH WHAT YOU'VE DESCRIBED EVEN WHEN YOU
5 GET NEAR TRASH, WHEN YOU GET NEAR, YOU KNOW, WITH
6 SOMEBODY THAT'S USING ANY TYPE OF HOUSEHOLD
7 CLEANERS, THAT TYPE OF -- EVEN HOUSEHOLD CLEANERS,
8 THAT KIND OF THING, SETS YOU OFF?

9 A. YES.

10 Q. OKAY. IS THERE ANYTHING OUT THERE THAT YOU KNOW YOU
11 CAN DO?

12 A. NO, NOT WITH THE -- DEALING WITH THE PUBLIC OR
13 ANYTHING, BECAUSE ANYBODY COME IN WITH DIFFERENT
14 SMELLS OR ANYTHING, I WON'T BE ABLE TO SMELL -- YOU
15 KNOW, THAT'S WHAT THE DOCTORS HAD POINTED OUT TO ME.
16 WHEN I -- THAT'S WHAT I WANTED THEM TO DO WAS MAKE
17 ME ABLE ENOUGH TO STAY WORKING, BECAUSE I LOVED MY
18 JOB. I WANTED TO WORK. I DID NOT WANT TO LEAVE MY
19 JOB.

20 Q. OKAY.

21 A. AND I BEGGED THEM A LOT OF TIMES, THERE'S SOMETHING
22 OR ANOTHER YOU'VE GOT TO HAVE THAT CAN MAKE ME
23 BETTER, AND LIKE I SAID, THEY WASN'T TALKING ABOUT
24 ME COMING OUT, BUT I KNEW THAT I WAS SO SICK THAT
25 SOONER OR LATER WITH THE TIME I WAS IN AND OUT

1 RUNNING BACK AND FORTH TO THE DOCTORS AND SOONER OR
2 LATER PIGGLY WIGGLY WAS GOING TO HAVE A PROBLEM WITH
3 IT AND BE READY FOR ME TO GO.

4 Q. ALL RIGHT.

5 A. AND I DIDN'T WANT THAT. I WANTED TO -- I WANTED TO
6 STAY WORKING.

7 Q. KNOWING YOUR CONDITION ON A DAY-TO-DAY BASIS, IS
8 THERE ANY JOB THAT YOU FEEL LIKE THAT YOU KNOW OF
9 WITH YOUR -- YOU HAVE A NINTH GRADE EDUCATION, AND
10 YOU STARTED THE TENTH AND THEN DROPPED OUT. WITH
11 THAT -- IS THERE ANY JOB OUT THERE THAT YOU KNOW
12 THAT YOU COULD DO OR YOU FEEL THAT YOU COULD DO
13 KNOWING YOUR CONDITION, FIVE DAYS A WEEK, EIGHT
14 HOURS A DAY OR IN OTHER WORDS A FULL-TIME JOB?

15 A. NO.

16 Q. OKAY.

17 A. NOT DO A JOB THAT I WANT TO DO.

18 Q. NOW, HAS PIGGLY WIGGLY OR ANYBODY OFFERED YOU A JOB?

19 A. NO, THEY HAVE NOT.

20 Q. OKAY. AS A MATTER OF FACT, I BELIEVE YOU JUST
21 TESTIFIED THAT IN REFERENCE TO MS. QUICK, THAT
22 UNLESS YOU CAN GET THIS TYPE OF RELEASE, YOU
23 COULDN'T COME BACK TO WORK?

24 A. YEAH, THAT'S WHAT SHE TOLD ME.

25 Q. DID YOU HAVE A DISABILITY POLICY THROUGH THE COMPANY

1 THAT YOU BOUGHT?

2 A. I DID.

3 Q. DID YOU GET HELP THROUGH THEM?

4 A. YES.

5 Q. DID THEY KNOW YOU WERE GOING OUT ON DISABILITY?

6 A. I GOT IT FOR A YEAR. I TOOK IT OUT. I HAD THE
7 SHORT TERM -- LONG TERM DISABILITY. IT WENT FOR ONE
8 YEAR THAT I PAID FOR, AND THAT WAS -- IT WAS THE END
9 OF THAT ONE.

10 Q. AND THEN AFTER YOU LOST YOUR HEALTH INSURANCE, YOU
11 GOT ON -- NOW, YOU'VE BEEN DECLARED DISABLED BY THE
12 SOCIAL SECURITY ADMINISTRATION?

13 A. YEAH.

14 Q. ALL RIGHT. NOW, SO, PIGGLY WIGGLY HASN'T OFFERED
15 YOU A JOB?

16 A. NO, THEY HAVEN'T.

17 Q. THEY KNEW AND DID NOT CONTEST THE FACT THAT YOU WERE
18 GOING OUT ON DISABILITY?

19 A. UH-UH. IN FACT, WHEN I TOLD THEM THAT I COULDN'T
20 COME BACK TO WORK, THEY CANCELLED MY INSURANCE THAT
21 SAME DAY.

22 Q. OKAY. AND THEN HAVE THEY PROCURED A JOB FOR YOU?

23 A. NO.

24 Q. HAVE THEY ASSIGNED ANYBODY TO HELP YOU FIND A JOB?

25 A. NO.

1 Q. SO, THEY'VE NEITHER OFFERED YOU A JOB OR PROCURED
2 YOU A JOB ---

3 A. NO.

4 Q. --- THAT THEY SAY IS WITHIN YOUR RESIDUAL CAPACITY -
5 ---

6 A. NO.

7 Q. --- THAT YOU CAN DO?

8 A. NO.

9 Q. OKAY, ALL RIGHT.

10 BY MR. MCDANIEL:

11 MS. SOWELL, I DON'T HAVE ANY FURTHER QUESTIONS
12 FOR YOU RIGHT NOW. ANSWER ANY QUESTIONS MS. MILLER
13 HAS AND IF THE COMMISSIONER HAS ANY.

14 BY THE WITNESS:

15 OKAY.

16 BY COMMISSIONER JAMES:

17 BEFORE CROSS, IF Y'ALL WILL GIVE ME ABOUT TWO
18 MINUTES.

19 (OFF THE RECORD)

20 BY COMMISSIONER JAMES:

21 WE ARE BACK ON THE RECORD. MS. MILLER.

22 CROSS EXAMINATION BY MS. MILLER:

23 Q. I WON'T BE LONG TODAY, BUT I DO HAVE A COUPLE OF
24 QUESTIONS FOR YOU THIS AFTERNOON. WHEN YOU TREATED
25 WITH CHESTERFIELD GENERAL HOSPITAL IN 2011 AND 2012,

1 DID YOU IGNORE ANY RECOMMENDATIONS TO AVOID CHEMICAL
2 EXPOSURES?

3 A. I DID.

4 Q. OKAY.

5 BY MS. MILLER:

6 AND THAT'S APA 173 AND 231, YOUR HONOR.

7 CROSS EXAMINATION RESUMED BY MS. MILLER:

8 Q. AND WHEN YOU TREATED WITH DR. DAYRIT IN 2012, DID
9 YOU IGNORE SUGGESTIONS THAT YOU MAY HAVE NEEDED TO
10 CHANGE JOBS?

11 A. HE NEVER TOLD ME THAT.

12 Q. OKAY.

13 BY MS. MILLER:

14 PAGE 304 AND 306.

15 CROSS EXAMINATION RESUMED BY MS. MILLER:

16 Q. MS. SOWELL, WHEN YOU TREATED WITH DR. HAMMETT IN
17 MARCH 2013, DID YOU IGNORE ANY RECOMMENDATIONS TO
18 REMOVE YOURSELF FROM WORK AT THAT TIME?

19 A. DR. HAMMETT DID NOT TELL ME THAT.

20 Q. OKAY.

21 BY MS. MILLER:

22 AND THAT'S PAGE 68, YOUR HONOR.

23 CROSS EXAMINATION RESUMED BY MS. MILLER:

24 Q. AND WHEN YOU TREATED WITH DR. HAMMETT IN NOVEMBER OF
25 2013, DID YOU IGNORE ANY RECOMMENDATION TO GO OUT OF

1 WORK?

2 A. THAT'S WHEN HE SEEN ME AT THE HOLIDAYS, AND I TOLD
3 HIM I WAS GOING TO COME OUT WHEN SHE TOLD ME SHE
4 THOUGHT IT WAS MY JOB, AND I TOLD HER TO GIVE ME
5 THREE MONTHS. WELL, IT WASN'T THREE MONTHS. IT WAS
6 NOVEMBER TO JANUARY, AND I WAS GOING TO COME OUT,
7 AND SHE WANTED TO SEE WAS THAT THE REASON.

8 Q. SO, WHAT IS YOUR UNDERSTANDING AS TO WHEN YOU
9 BELIEVE THERE WAS A WORK-RELATED COMPONENT TO YOUR
10 PROBLEMS; WHAT'S THE FIRST TIME?

11 A. IT'S WHEN BACK IN NOVEMBER WHEN -- RIGHT BEFORE
12 NOVEMBER WHEN SHE TOOK ME OUT OF WORK, AND I DID GET
13 BETTER, AND I STARTED -- WHEN SHE BROUGHT ME BACK ME
14 AND SHE SAID "THERE'S NOTHING ELSE THAT I CAN DO FOR
15 YOU. MY SUGGESTION IS THAT YOU COME OUT AND SEE --
16 SO WE CAN SEE."

17 Q. SO, IS THAT NOVEMBER 2013?

18 A. YES.

19 Q. IT'S MY UNDERSTANDING, THAT'S THE FIRST TIME ---

20 A. YES.

21 Q. --- THAT YOU FELT LIKE THERE WAS ANY WORK COMPONENT
22 TO YOUR PROBLEMS?

23 A. THE FIRST TIME.

24 Q. OKAY. IN JANUARY 2014, THAT'S WHEN YOU WENT OUT ON
25 MEDICAL LEAVE, CORRECT?

1 A. YES.

2 Q. AND DID YOU INFORM YOUR EMPLOYER THAT YOU WANTED TO
3 GO OUT ON WORKERS' COMP, OR WHAT DID YOU TELL THEM
4 AT THAT TIME?

5 A. I WAS GOING OUT FOR THE THREE MONTHS, BECAUSE MY
6 NOTION WAS I WAS GOING TO COME BACK TO WORK.

7 Q. OKAY. SO, IF IN NOVEMBER 2013, IT'S MY
8 UNDERSTANDING THAT AT THAT POINT YOU BELIEVED THAT
9 THERE WAS A WORK-RELATED COMPONENT TO YOUR PROBLEMS?

10 A. UH-HUH.

11 Q. SO, IN JANUARY WHEN YOU WENT OUT, WHY DIDN'T YOU
12 TELL YOUR EMPLOYER AT THAT TIME THAT YOU WANTED TO
13 GO OUT ON WORKERS' COMP?

14 A. ACTUALLY, WORKMAN COMP NEVER CAME ACROSS MY MIND,
15 BECAUSE I WAS TRYING TO DO IT MYSELF, AND I WENT TO
16 -- WENT TO -- I THINK TO THE SOCIAL SECURITY PLACE
17 IN DECEMBER, AND I TOLD THEM WHAT MY PROBLEM WAS,
18 AND SHE SAID "THIS IS A WORKMAN COMP THING. YOU
19 SHOULD -- YOUR JOB SHOULD -- IF THE DOCTOR SAYS SHE
20 THINKS IT'S YOUR JOB DOING IT, THEN YOU SHOULD GO TO
21 THEM." BUT TO BE HONEST, I DIDN'T KNOW WHO TO GO TO
22 AS FAR AS WORKMANS' COMP. I DID NOT KNOW IT WAS MS.
23 QUICK WAS THE ONE THAT'S SUPPOSED TO SIGN ME UP FOR
24 WORKMANS' COMP. I NEVER KNOW -- I NEVER HAVE DEALT
25 WITH ANYBODY IN MY DEPARTMENT, DIRECTING ME DOING

1 WORKMAN COMP. I DID NOT KNOW HOW IT GOT AROUND, AND
2 THAT -- THAT WAS THE BASIC REPORT, AND THEN WHEN I
3 FOUND OUT IT WAS HER, THAT'S WHEN I WENT TO HER AND
4 TOLD HER.

5 Q. AND WHEN DID YOU FIND OUT?

6 A. I THINK IT WAS SOMETIME IN MAYBE MARCH OR APRIL,
7 MAY, SOMETIME IN THERE. I CAN'T -- I DON'T PUT NO
8 PINPOINT ON NO DATE.

9 Q. IS THAT 2014?

10 A. '14, YEAH.

11 Q. AND HOW DID YOU FIND OUT TO GO TO MARY QUICK?

12 A. 'CAUSE I KEPT SEEING SIGNS EVERYWHERE, BECAUSE
13 EVERYBODY WAS SAYING THIS WAS A WORKMAN COMP CASE.
14 I KEPT SEEING SIGNS SAYING WORKMAN COMP THIS, AND I
15 THOUGHT I HAD TO HAVE A LAWYER TO GET WORKMAN COMP,
16 AND THAT'S WHEN I GOT MR. PRESTON MCDANIEL. FOR
17 WORKMAN COMP, I THOUGHT I HAD TO GET A LAWYER. I'M
18 SORRY I'M UNEDUCATED, BUT THAT'S WHAT I THOUGHT, AND
19 THAT'S WHEN HE TOLD ME I HAD TO GO TO MS. QUICK.

20 Q. AND THAT WOULD HAVE BEEN IN MARCH OF 2014?

21 A. UH-HUH.

22 Q. I'M SORRY, IS THAT A YES?

23 A. YEAH -- YES.

24 Q. OKAY, THANK YOU. WHILE YOU WERE EMPLOYED AT PIGGLY
25 WIGGLY, WERE YOU ALSO OPERATING THE CATERING

1 BUSINESS AT THAT TIME, TOO?

2 A. YES, UP UNTIL IT MUST HAVE BEEN IN '13, I HAD TO
3 TURN IT OVER TO MY -- MY DAUGHTER.

4 Q. HOW LONG DID YOU HAVE THE CATERING BUSINESS BEFORE?

5 A. WELL, APPROXIMATELY -- WELL, AT LEAST 12 YEARS -- AT
6 LEAST 12 YEARS.

7 Q. TWELVE YEARS BEFORE COMING TO PIGGLY WIGGLY?

8 A. NO, NO, NO. I STARTED DOING IT AT PIGGLY WIGGLY. I
9 STARTED DOING IT AT PIGGLY WIGGLY WHEN A COUPLE OF
10 PEOPLE WERE ASKING ME TO GET FOOD FOR THEM AND BRING
11 IT TO THEM, AND IT WORKED. I BOUGHT IT FROM PIGGLY
12 WIGGLY AND WHATEVER THEIR PRICES WAS AND TOOK IT AND
13 SERVED IT, AND THEN THEY PAID ME A LITTLE EXTRA, AND
14 THEN THAT'S HOW IT GOT STARTED. ONE THING, SOMEBODY
15 ELSE TOLD SOMEONE, GO GET PIGGLY WIGGLY TO DO IT.
16 THAT'S HOW I GOT STARTED.

17 Q. NOW, AT THE TIME OF YOUR DEPOSITION ON NOVEMBER 7TH,
18 2014, IT'S MY UNDERSTANDING THAT YOU WERE STILL
19 INVOLVED WITH THE FAMILY CATERING BUSINESS; IS THAT
20 CORRECT?

21 A. I DO THE -- I PAY FOR THE STUFF BECAUSE MY DAUGHTER,
22 SHE COULDN'T PAY FOR IT, YOU KNOW. I LOOK FOR SALES
23 IN THE PAPER AND TELL HER WHICH WAY TO GO TO BUY
24 STUFF AND EVERYTHING. BUT I DO TASTE WHAT SHE COOK
25 BECAUSE A LOT OF TIMES THEY PUT MY NAME ON IT, AND I

1 WANT TO MAKE SURE WHEN SHE TAKE IT OUT THAT IT'S
2 APPROPRIATE.

3 Q. AND THE KITCHEN PRIMARILY IS OUTSIDE ON YOUR
4 PROPERTY; IS THAT CORRECT?

5 A. YES, UH-HUH.

6 Q. OKAY. DOES YOUR DAUGHTER LIVE WITH YOU IN THE HOME,
7 TOO?

8 A. NO. IN 2000-AND -- SINCE THE DEPOSITION, SHE MIGHT
9 HAVE GOT MARRIED THAT YEAR. SHE WAS LIVING WITH ME
10 AT THE TIME. THIS IS HER SECOND YEAR ANNIVERSARY
11 COMING UP, SO, WHATEVER THAT TIME.

12 Q. BUT NOW, SHE DOESN'T?

13 A. SHE DOES NOT, BUT EVERYBODY THINK THEY DO BECAUSE
14 HER AND MY SISTER BE THERE EVERY MORNING AT 6:30 AND
15 THEY LEAVE IN THE AFTERNOON.

16 Q. AND THEN SHE COMES TO YOUR HOUSE ---

17 A. YES.

18 Q. --- TO THE OUTDOOR KITCHEN TO DO THE COOKING?

19 A. YEAH. BUT LIKE BAKING OR SOMETHING LIKE THAT, SHE
20 WILL COOK IT IN THE HOUSE.

21 Q. HOW BIG IS THE ---

22 A. IN MY HOUSE, YEAH.

23 Q. I'M SORRY; I DID NOT MEAN TO INTERRUPT YOU.

24 A. THAT'S ALL RIGHT.

25 Q. SOMETIMES I'M LOOKING DOWN, ---

- 1 A. THAT'S ALL RIGHT.
- 2 Q. --- AND I CAN'T TELL WHEN YOU ARE ABOUT TO END YOUR
- 3 SENTENCES. HOW BIG IS THAT KITCHEN OUTSIDE?
- 4 A. IT'S JUST A STOVE, TWO REFRIGERATORS, AND AN OUTLET
- 5 PLUG IN. INSIDE MY HOUSE, IT HAS A DOUBLE OVEN, A
- 6 REGULAR STOVE AND A REFRIGERATOR ON THE PORCH, DEEP
- 7 FREEZER ON THE PORCH.
- 8 Q. SO, ONE STOVE OUTSIDE OR THERE'S TWO STOVES OUTSIDE?
- 9 A. ONE STOVE OUTSIDE.
- 10 Q. AND ONE STOVE INSIDE?
- 11 A. YEAH AND DOUBLE OVEN.
- 12 Q. AND DOUBLE OVENS?
- 13 A. UH-HUH.
- 14 Q. OUTSIDE?
- 15 A. INSIDE.
- 16 Q. INSIDE?
- 17 A. YEAH.
- 18 Q. OKAY.
- 19 A. BECAUSE I HAVE NO PROBLEM WITH SMELLING BAKED FOOD
- 20 OR ANYTHING LIKE THAT.
- 21 Q. OKAY. DID YOU HAVE THAT SETUP BEFORE YOU LEFT
- 22 PIGGLY WIGGLY?
- 23 A. ACTUALLY, NO. I HAD AN ENTERTAINMENT HOUSE WHERE
- 24 THEY GO OUT THERE -- BECAUSE MY CHILDREN COME, I'VE
- 25 GOT SEVEN CHILDREN. I RAISED NINE. I'VE GOT 20-

1 SOMETHING GRANDCHILDREN, AND WHEN EVERYBODY WOULD
2 COME, IT WASN'T NO ROOM IN MY HOUSE FOR THEM. SO,
3 THEY WENT OUTSIDE.

4 Q. SO, WHEN YOU FIRST STARTED YOUR CATERING BUSINESS,
5 YOU JUST HAD THE ONE KITCHEN IN YOUR HOME?

6 A. YES.

7 Q. AND HOW BIG IS YOUR HOME?

8 A. I HAVE THREE BEDROOMS, ONE BATHROOM. I HAVE A
9 LIVING ROOM, AND I HAVE A DEN.

10 Q. OKAY. DO YOU HAVE A VENTILATION SYSTEM OVER YOUR
11 OVEN AND YOUR STOVE AT HOME?

12 A. YES.

13 Q. OKAY. IS YOUR HOME KITCHEN OR OUTDOOR KITCHEN, IS
14 IT SUBJECT TO ANY TYPE OF DHEC INSPECTIONS?

15 A. NO.

16 Q. OKAY. HOW MANY REFRIGERATORS DO YOU HAVE INCLUDING
17 INSIDE AND OUTSIDE?

18 A. TWO, THREE, FOUR -- FOUR.

19 Q. DO YOU STORE THE FOOD BOTH INSIDE AND OUT FOR YOUR
20 CATERING BUSINESS?

21 A. INSIDE OF MY HOUSE IS BASICALLY FOR MY USE INSIDE.
22 SHE ALWAYS TAKES ALL THE FOOD OUT TO THE OUTSIDE ON
23 THE PORCH AND OUT IN THE BUILDING.

24 Q. AND YOU PICK UP THE FOOD SOMETIMES FROM PIGGLY
25 WIGGLY FOR THE BUSINESS; IS THAT CORRECT?

- 1 A. UH-HUH.
- 2 Q. I'M SORRY, IS THAT A YES?
- 3 A. YES.
- 4 Q. I KNOW IT'S HARD. AND SOMETIMES DO YOU GO BY
- 5 YOURSELF?
- 6 A. ONLY IF I'M GOING TO PICK UP A SMALL OBJECT LIKE
- 7 MAYBE A GALLON OF MILK OR SOMETHING LIKE THAT, BUT
- 8 IF I'M GOING TO PICK UP BIG ITEMS, I GO WITH THREE
- 9 PEOPLE.
- 10 Q. DO YOU EVER ASSIST WITH PUTTING THE FOOD IN THE
- 11 REFRIGERATORS?
- 12 A. NO.
- 13 Q. THE FOOD THAT IS STORED IN THE FACILITY OUTSIDE, DO
- 14 YOU EVER ACTUALLY GO OUT THERE?
- 15 A. VERY SELDOM.
- 16 Q. WHAT ABOUT THE SAUCES, DO YOU DEAL WITH THE SAUCES
- 17 OR THE SPICES?
- 18 A. WHAT?
- 19 Q. THAT YOU COOK WITH.
- 20 A. OH, NO.
- 21 Q. WHAT ABOUT IN YOUR HOME, YOU DIDN'T KEEP ANY IN YOUR
- 22 HOME?
- 23 A. THERE'S SOME IN THE CABINET. SHE USES IT, BUT YOU
- 24 ASKED ME DID I DEAL WITH IT.
- 25 Q. OKAY. HAVE YOU BEEN IN THAT KITCHEN AT ALL SINCE

1 2014?

2 A. HMM? MA'AM?

3 Q. HAVE YOU BEEN IN THAT OUTDOOR KITCHEN AT ALL SINCE
4 2014?

5 A. OCCASIONALLY I GO AND SEE WHAT THEY'RE DOING OR WALK
6 OUT THERE AND TALK TO THEM OR SOMETHING, BUT OTHER
7 THAN THAT.

8 Q. WHEN YOU SAY "OCCASIONALLY," WOULD THAT BE WEEKLY,
9 MONTHLY?

10 A. WELL, I WOULD SAY MAYBE OCCASIONALLY LIKE MAYBE ONCE
11 A WEEK OR SOMETHING.

12 Q. HAVE YOU RECEIVED ANY FINANCIAL BENEFIT FROM THE
13 CATERING BUSINESS SINCE 2014?

14 A. I GET THE MONEY BACK THAT I PUT INTO IT, AND I GET
15 WHAT'S LEFT OVER WHEN THEY ALL GET PAID, BECAUSE
16 IT'S A GROUP OF THEM. IT'S ABOUT SIX OR SEVEN OF
17 THEM BE PAID.

18 Q. ALL FAMILY MEMBERS?

19 A. ALL FAMILY MEMBERS.

20 Q. OKAY. HAVE YOU DONE ANY COOKING WHATSOEVER IN
21 CONNECTION TO THE CATERING COMPANY SINCE 2014?

22 A. OH, NO. I HAVE MIXED UP -- OR SHOWED HER HOW TO MIX
23 UP STUFF. I GUIDED HER AND I TEACH HER, AND SHE
24 LEARNED GOOD. SO, THE ONLY THING SHE NEEDS MY HELP
25 FOR NOW IS TASTE.

1 Q. WHERE DO YOU NORMALLY DO THAT, OUTSIDE OR INSIDE?

2 A. WELL, INSIDE.

3 Q. IN YOUR HOUSE?

4 A. YEAH.

5 Q. WHEN I SAY OUTSIDE OR INSIDE, I MEAN YOUR HOUSE.

6 A. YEAH.

7 Q. OKAY. HAVE YOU DONE ANY CLEANING WHATSOEVER IN
8 CONNECTION TO THE CATERING BUSINESS ---

9 A. NO.

10 Q. --- SINCE 2014?

11 A. NO.

12 Q. DO YOU TAKE ORDERS FROM CUSTOMERS AND THINGS ---

13 A. I DO.

14 Q. --- OF THAT NATURE?

15 A. YEAH.

16 Q. DO YOU HAVE ANY RESTRICTIONS PERTAINED TO DRIVING AT
17 ALL?

18 A. NO, I DON'T. IN 2000-AND -- I CAN'T REMEMBER WHAT
19 YEAR IT WAS, IT WAS AFTER I WAS OUT OF WORK. I WAS
20 GOING TO DR. MENDEZ' OFFICE, AND I BLANKED OUT, AND
21 I HIT A POLE AND DON'T REMEMBER IT. SO, THAT'S WHY
22 EVERYBODY BE WITH ME NOW. THEY COULDN'T FIND THE
23 CAUSE OR WHAT. I KNEW I HAD STARTED COUGHING, AND I
24 DON'T KNOW WHAT ELSE HAPPENED, BUT WHEN I WAS IN THE
25 EMERGENCY ROOM IN THE HOSPITAL, THE ONLY THING THEY

1 COULD FIND WAS JUST MY POTASSIUM WAS LOW, BUT NO
2 CAUSE. NOBODY DON'T KNOW. SO, USUALLY NOW SOMEBODY
3 IS WITH ME WHEN I GO OUT.

4 Q. BUT YOU DON'T HAVE A DOCTOR WRITING YOU OUT OF ---

5 A. NO.

6 Q. --- WORK WITH THOSE RESTRICTIONS?

7 A. OKAY. DO YOU STILL CONTINUE TO GO OUT LIKE TO THE
8 MALL AND THINGS OF THAT NATURE?

9 A. VERY OCCASIONALLY. I MEAN, VERY OCCASIONALLY, I
10 THINK THE LAST TIME I WENT OUT TO THE MALL, THEY
11 TOOK ME OUT FOR MY BIRTHDAY.

12 Q. WHAT ABOUT TO RESTAURANTS AND TO CHURCH?

13 A. I DON'T GO TO RESTAURANTS, AND I GO TO CHURCH ON
14 SUNDAYS.

15 Q. SINCE LEAVING PIGGY WIGGLY IN 2014, HAVE YOU LOOKED
16 FOR ANY OTHER JOBS?

17 A. NO.

18 Q. OKAY. ARE YOU OPEN TO RETURNING FOR PIGGLY WIGGLY
19 IN A DIFFERENT DEPARTMENT IF YOU CAN DO SO SAFELY?

20 A. YES.

21 Q. DID YOUR FATHER HAVE ASTHMA; IS THAT CORRECT?

22 A. HE DID.

23 Q. OKAY. AND DID ---

24 A. HE HAD IT AS A BABY, BUT NONE OF MY SIBLINGS HAVE
25 ASTHMA. NONE OF MY CHILDREN HAVE ASTHMA, NONE AT

1 ALL.

2 Q. WHAT ABOUT UNCLES OR GRANDPARENTS OR AUNTS?

3 A. NO.

4 Q. AND DOES YOUR DAUGHTER HAVE A LUNG DISORDER; IS THAT
5 CORRECT?

6 A. YOU'RE TALKING ABOUT AMY?

7 Q. YES.

8 A. SHE'S HAD WHAT YOU CALL SARCOIDOSIS.

9 Q. HOW MANY CHILDREN DO YOU HAVE?

10 A. I HAVE SEVEN.

11 Q. AND NONE OF THEM SUFFER FROM ANY ALLERGIES?

12 A. NO.

13 BY MS. MILLER:

14 THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,
15 YOUR HONOR.

16 BY COMMISSIONER JAMES:

17 ANY RE-DIRECT?

18 BY MR. MCDANIEL:

19 JUST A COUPLE.

20 RE-DIRECT EXAMINATION BY MR. MCDANIEL:

21 Q. MS. MILLER ASKED YOU ABOUT COOKING. WHO COOKS FOR
22 YOU?

23 A. OH, I FIX FOR MYSELF.

24 Q. OH, YOU DO, OKAY.

25 A. I CAN FIX FOR MYSELF.

1 Q. ALL RIGHT.

2 A. BECAUSE I MEAN, I WANT TO BE ABLE TO DO SOMETHING.
3 I CAN'T LET THEM WAIT ON ME HAND AND FOOT, AND
4 BASICALLY IF I'M OUT SOMEWHERE, I JUST GET A
5 SANDWICH OR SOMETHING ANOTHER AND COME BACK. BUT AS
6 FAR AS COOKING A WHOLE MEAL FOR ME, NO, I CAN -- I
7 CAN FIX ME A SANDWICH OR I CAN COOK ME AN EGG OR
8 SOMETHING.

9 Q. OKAY. ALL RIGHT. NOW, WHY DO YOU NOT GO TO
10 RESTAURANTS ANYMORE?

11 A. I CAN'T STAND THE SMELLS IN THEM.

12 Q. ALL RIGHT.

13 A. IT'S BEEN SOME YEARS SINCE I'VE BEEN.

14 Q. AND YOU SAID YOUR FATHER HAD ASTHMA AS A BABY?

15 A. YEAH.

16 Q. WHAT ABOUT AS AN ADULT?

17 A. HE DID. HE CONTINUED THROUGH THE ADULTHOOD.

18 Q. OKAY. SO, HE HAD SOME PROBLEMS AS AN ADULT, TOO?

19 A. UH-HUH.

20 Q. OKAY.

21 BY MR. MCDANIEL:

22 COMMISSIONER, NO FURTHER QUESTIONS ON RE-
23 DIRECT. I WOULD POINT OUT JUST PAGE 143 IS IN
24 REFERENCE TO DR. deDIOS' VISIT WITH MS. SOWELL ON
25 OCTOBER 17TH 2014, AND THEN I WOULD POINT OUT TO

1 YOUR HONOR IN REFERENCE TO HIS VISIT WITH HER ON
2 FEBRUARY -- I BELIEVE IT'S THE 4TH, WHEREIN HE
3 RECORDS DOWN AT THE BOTTOM OF THE PAGE IN REFERENCE
4 TO ASTHMA UNDER ASSESSMENT/PLAN, AT PAGE 161, "THE
5 SIGNIFICANT IMPROVEMENT SINCE BEING OFF WORK. HER
6 ASTHMA HAS BEEN BETTER. CLEARLY HER WORK
7 ENVIRONMENT WAS MAKING HER WORSE." THAT'S -- YOU
8 WILL FIND THAT AT PAGE 161. I HAVE NOTHING FURTHER
9 FOR MS. SOWELL.

10 BY COMMISSIONER JAMES:

11 NEXT WITNESS.

12 BY MR. MCDANIEL:

13 I'M SORRY?

14 BY COMMISSIONER JAMES:

15 NEXT WITNESS.

16 YOU CAN SIT WITH YOUR ATTORNEY.

17 BY THE WITNESS:

18 OKAY.

19 (OFF THE RECORD)

20 BY MR. MCDANIEL:

21 WE ARE GOING TO CALL AMY EDWARDS.

22 BY COMMISSIONER JAMES:

23 YOU CAN COME UP HERE, PLEASE, MA'AM.

24 BY THE WITNESS:

25 RIGHT HERE?

1 BY COMMISSIONER JAMES:

2 YES, MA'AM. IF YOU CAN RAISE YOUR RIGHT HAND
3 FOR ME, PLEASE, MA'AM.

4 * * * * * * * * * * * * * * *

5 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
6 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
7 MATTER HEREIN:

8 AMY EDWARDS

9 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

10 BY COMMISSIONER JAMES:

11 OKAY. YOUR WITNESS, SIR.

12 BY MR. MCDANIEL:

13 ALL RIGHT.

14 DIRECT EXAMINATION BY MR. MCDANIEL:

15 Q. MS. EDWARDS, TELL ME -- GIVE ME YOUR FULL NAME AND
16 YOUR ADDRESS.

17 A. AMY LAURIE EDWARDS, THREE -- WELL, I USE MY MOMMA'S
18 ADDRESS, 2590 ELMO MCFARLAND ROAD.

19 Q. OKAY. BUT DO YOU CURRENTLY LIVE THERE WITH HER
20 RIGHT NOW?

21 A. NO.

22 Q. OKAY. NOW, MS. EDWARDS, YOUR MOM WENT OUT OF WORK
23 IN JANUARY 2014. TELL ME WHAT YOU DO IN REFERENCE
24 TO THE BUSINESS BEFORE THAT TIME AND SINCE THAT
25 TIME.

1 A. I TAKE ORDERS FOR WHEN PEOPLE CALL AND STUFF, AND I
2 GIVE THEM THE PRICE OF WHAT THE MENU IS OR WHAT THEY
3 WANT FOR, YOU KNOW, HOW MANY PEOPLE, AND THEN I DO
4 ALL OF THE COOKING.

5 Q. OKAY. NOW, DID THAT CHANGE BEFORE LET'S SAY 2011 TO
6 WHENEVER YOUR MOM HAD TO GO TO THE HOSPITAL FOR THE
7 FIRST TIME AND SINCE THEN, DID THAT CHANGE -- DID
8 YOUR ROLE IN THE BUSINESS -- WHAT DOES YOUR MOM DO
9 NOW IN REFERENCE TO THE BUSINESS?

10 A. SHE JUST MAKES SURE I GET EVERYTHING STRAIGHT, YOU
11 KNOW, WITH EVERYTHING I NEED AS FAR AS THE FOOD AND
12 STUFF LIKE THAT.

13 Q. WHO GOES TO THE GROCERY STORE?

14 A. SHE GO BUT I GO WITH HER WHENEVER SHE GO.

15 Q. OKAY. JUST TELL THE COMMISSIONER, YOU KNOW, JUST
16 TELL THE COMMISSIONER ABOUT YOUR OBSERVATIONS IN
17 REFERENCE TO THINGS THAT YOU HAVE OBSERVED THAT
18 CAUSE YOUR MOTHER PROBLEMS.

19 A. WHENEVER SHE GO TO THE STORE OR GO, YOU KNOW, JUST
20 WALK AND JUST DIFFERENT SMELLS AND STUFF, SHE GETS
21 SICK. SHE START COUGHING. THE ASTHMA, YOU KNOW,
22 FLARES UP. THEN SHE COUGHS MUCOUS AND STUFF. I
23 HATE TO SAY IT, BUT IT LOOK BAD. JUST THE SMELL OF
24 FRESH MEAT, AND IT'S ---

25 Q. JUST THE SMELL OF FRESH MEAT?

- 1 A. YEAH, FRESH MEAT OR JUST LIKE ANY KIND OF SMELLS OF
2 LIKE CHEMICALS, DIFFERENT STUFF LIKE THAT, SHE...
- 3 Q. NOT TO SAY THAT SHE DOESN'T EVER GO IN THERE, BUT IS
4 THERE ANY PART OF THE GROCERY STORE THAT SHE TRIES
5 TO AVOID WHEN YOU GO TO THE GROCERY STORE?
- 6 A. SHE TRIES TO AVOID GOING TO THE MEAT DEPARTMENT, BUT
7 SOMETIMES SHE MIGHT HAVE TO GO, YOU KNOW, IF I'M
8 HOME COOKING.
- 9 Q. ALL RIGHT. AND THEN YOU DO THE COOKING. WHERE DO
10 YOU DO THE COOKING?
- 11 A. I DO IT AT HER HOUSE.
- 12 Q. OKAY. IN HER HOUSE OR WHERE?
- 13 A. IN THE -- SHE'S GOT THE BARN THAT SHE USES FOR
14 FAMILY DINNERS AND STUFF, AND WE DO THE COOKING
15 THERE.
- 16 Q. OKAY. THE ORIGINAL PURPOSE OF THAT WAS FOR FAMILY
17 DINNERS?
- 18 A. IT WAS FOR FAMILY DINNERS, BUT THEN AS THE BUSINESS
19 GOT STARTED, YOU KNOW, GOING GOOD, WE HAD TO GO OUT
20 THERE BECAUSE SHE COULDN'T TAKE THE SMELL.
- 21 Q. ALL RIGHT. HAVE YOU OBSERVED HER OUTSIDE OF THE --
22 YOU KNOW, LIKE WHEN YOU GO TO THE GROCERY STORE,
23 HAVE YOU OBSERVED ANY OTHER TIMES THAT SHE HAS --
24 THAT YOU CAN TELL THE COMMISSIONER ABOUT SPECIFIC
25 EXAMPLES ABOUT WHAT MINOR THING WILL SET OFF HER

1 ASTHMA CONDITION?

2 A. YEAH, LIKE IF SHE GO OUTSIDE AND JUST -- JUST
3 WALKING JUST A SHORT DISTANCE WITH THE WIND AND
4 JUST, YOU KNOW, THE SMELLS IN THE AREA, STUFF LIKE
5 THAT, YOU KNOW, JUST -- MOSTLY JUST ABOUT EVERYTHING
6 SHE GETS SHORT WINDED FROM, A LOT OF DIFFERENT
7 STUFF.

8 Q. YOU WERE WITH US THE LAST TIME WE WERE GETTING READY
9 TO TRY THIS CASE OVER AT THE HARTSVILLE CITY HALL.

10 A. UH-HUH.

11 Q. AND THEY HAD ONE OF THOSE AIR FRESHENERS, TIME
12 RELEASED AIR FRESHENERS?

13 A. YES.

14 Q. TELL THE COMMISSIONER WHAT HAPPENED TO YOUR MOM.

15 A. SHE HAD TO GO OUTSIDE. IT WAS JUST THAT BAD. IT
16 WAS -- THE SMELL WAS SO STRONG, SHE COULDN'T HARDLY
17 BREATHE. SHE COULDN'T EVEN CATCH HER BREATH. AND
18 SO, WE HAD TO TAKE HER OUTSIDE SO SHE COULD GET SOME
19 FRESH AIR AND STUFF.

20 Q. OKAY. TO YOUR KNOWLEDGE, WHO ALL -- WHO DOES HER
21 HOUSEWORK, AND WHO DOES HER YARD WORK AT ALL THAT
22 NOW?

23 A. MY AUNT DOES -- DOES THAT.

24 Q. IF SHE GOES WITH Y'ALL ON THE CATERING -- SOMETIMES
25 I IMAGINE THEY WANT TO SEE MS. GENNETTE WHEN THEY

1 ORDER; I BELIEVE EVERYBODY REFERS TO YOUR MOM AS MS.
2 GENNETTE; ---

3 A. YES.

4 Q. --- IS THAT RIGHT?

5 A. YES.

6 Q. ALL RIGHT. SO, WHEN YOU GO TO THESE CATERING
7 EVENTS, A LOT OF TIMES THEY WANT TO SEE MS.
8 GENNETTE?

9 A. THEY WANT TO SEE HER, AND THEY ASK, YOU KNOW, WHY IS
10 SHE NOT HERE AND YOU GET TIRED OF -- YOU KNOW, THEY
11 ASK THE QUESTION, AND THEN YOU'RE LIKE OH, OKAY.
12 YOU GET TIRED OF SAYING "OKAY, WELL, SHE CAN'T
13 COME," YOU KNOW, THROUGH OUR KNOWLEDGE, BECAUSE HER
14 ASTHMA WOULD FLARE UP. SHE GOT SICK, YOU KNOW, OR
15 SOMETHING LIKE THAT. IT'S HARD, BUT THEY'RE LIKE
16 "WELL, WE WANT TO SEE HER. SHE DON'T WANT TO COME
17 AROUND US?" NO, BUT IT'S NOT THAT. IT'S JUST THAT
18 SHE CAN'T DO IT.

19 Q. ALL RIGHT. BUT WHEN YOU'RE ACTUALLY -- YOU'RE
20 SITTING THERE AND YOU'RE TAKING OUT THE FRIED
21 CHICKEN, AND YOU'RE TAKING IT OUT OF THE POT, AND
22 YOU'RE TAKING ALL OF THE VEGETABLES AND EVERYTHING
23 THAT Y'ALL HAVE CATERED TO THE EVENTS. DOES SHE
24 HAVE ANYTHING TO DO WITH THAT GENERALLY?

25 A. NO, NO.

1 Q. OKAY. DOES SHE LIKE FOR A BETTER TERM MINGLE WITH
2 THE CROWD?

3 A. YES.

4 Q. OKAY.

5 A. OH, WE MAKE HER.

6 Q. ALL RIGHT. ALL RIGHT.

7 BY MR. MCDANIEL:

8 I HAVE NO FURTHER QUESTIONS, COMMISSIONER.

9 BY COMMISSIONER JAMES:

10 CROSS.

11 BY MS. MILLER:

12 JUST A COUPLE OF QUESTIONS.

13 CROSS EXAMINATION BY MS. MILLER:

14 Q. HOW ARE YOU DOING?

15 A. I'M GOOD.

16 Q. MS. EDWARDS, CORRECT?

17 A. YES.

18 Q. YOU INDICATED YOU NO LONGER LIVE WITH YOUR MOM
19 ANYMORE, RIGHT?

20 A. RIGHT.

21 Q. WHEN DID YOU STOP LIVING WITH HER?

22 A. I GOT MARRIED IN 2014.

23 Q. OKAY. AND WHEN DID YOUR MOM STOP COOKING FOR THE
24 CATERING BUSINESS?

25 A. SHE STOPPED AROUND SOMEWHERE IN BETWEEN THE END OF

1 2013 AND 2014, 'CAUSE I WAS LIVING WITH HER UP UNTIL
2 I GOT MARRIED, AND SO I GET UP AT 4:00 EVERY MORNING
3 AND HAVE MY HUSBAND TAKE ME TO HER HOUSE ON THE DAYS
4 THAT WE HAVE TO CATER.

5 Q. SO, WHILE SHE WAS WORKING FOR PIGGLY WIGGLY IN 2011
6 AND 2012, SHE WAS STILL COOKING FOR THE BUSINESS AS
7 WELL?

8 A. WELL, I WAS DOING MOST OF IT WHILE SHE WAS AT WORK.

9 Q. AND -- BUT SHE WAS STILL COOKING THOUGH?

10 A. YEAH, BUT NOT FRIED STUFF OR ANYTHING LIKE THAT, NO.

11 Q. WHEN DID SHE STOP COOKING FRIED STUFF?

12 A. I DON'T KNOW THE EXACT DATE BUT AROUND -- AROUND
13 ABOUT THE END OF -- THE BEGINNING OF 2014.

14 Q. OKAY. SO, IN 2011, SHE STILL WOULD HAVE BEEN
15 COOKING OR FRYING FOOD FOR THE COMPANY, TOO?

16 A. FOR PIGGLY WIGGLY, I MEAN, AS FAR AS THAT, I DON'T
17 KNOW WHAT SHE WAS DOING AT PIGGY WIGGLY.

18 Q. NO, I'M TALKING ABOUT ---

19 A. AS FAR AS AT THE HOUSE?

20 Q. YEAH, THE CATERING.

21 A. NO, SHE WAS GETTING THAT FROM PIGGLY WIGGLY IN
22 CHESTERFIELD -- WELL, FROM BENNETTSVILLE RATHER.

23 Q. HOW LONG ---

24 A. IN 2011, SHE WAS GETTING THE CHICKEN, SHE WAS
25 ORDERING IT FROM PIGGLY WIGGLY.

1 Q. OKAY. AND SHE ---

2 A. AND SO THE CHICKEN THAT WE FRIED -- I'M SORRY.

3 Q. NO, NO, YOU GO AHEAD.

4 A. WHAT CHICKEN THAT WE FRY NOW IS IN HER BARN, BUT,
5 YOU KNOW, SHE WAS GETTING IT FROM PIGGLY WIGGLY.

6 Q. OKAY.

7 A. SO, WHAT LITTLE BIT WE DO NOW, YES.

8 Q. OKAY. OKAY. HOW LONG HAVE YOU GUYS HAD THE
9 CATERING BUSINESS?

10 A. I DON'T KNOW. I GOT TO THINK, 2000-AND-SOMETHING.
11 I CAN'T EXACTLY REMEMBER HOW LONG.

12 Q. BEFORE 2010?

13 A. YEAH, BECAUSE I WAS WORKING -- NO, I WAS WORKING IN
14 2010. I STOPPED WORKING IN 2010. SO, PROBABLY
15 AROUND THAT TIME, MAYBE. I DON'T KNOW FOR SURE.

16 Q. OKAY. AND WHEN DID YOU BECOME INVOLVED WITH THE
17 BUSINESS?

18 A. TAKING OVER, I STARTED IT IN -- AROUND ABOUT THE END
19 OF 2013, AROUND THEN.

20 Q. OKAY. AND WITH YOUR CATERING BUSINESS, WHAT TYPE OF
21 FOOD DO YOU GUYS OFFER TO YOUR CLIENTS SPECIFICALLY?

22 A. IT DEPENDS ON WHAT THEY WANT: BAKED CHICKEN, ROAST
23 BEEF, MACARONI CHEESE, GREEN BEANS, RICE AND GRAVY
24 IT DEPENDS ON WHAT THE PERSON WANTED.

25 Q. OKAY. AND IN TERMS OF I'M ASSUMING WHEN YOU'RE

1 WORKING IN THE CATERING BUSINESS, IT ENTAILS
2 CLEANING AS WELL?

3 A. UH-HUH.

4 Q. IS THAT A YES?

5 A. YES.

6 Q. WHAT TYPE OF AGENTS DO YOU USE TO CLEAN?

7 A. MY AUNT DO THE CLEANING, SO YOU WILL HAVE TO ASK HER
8 THAT.

9 Q. SO, YOU NEVER WASH ANY DISHES; YOU NEVER ---

10 A. WELL, I MEAN, IF I WASH THEM, I USE DISHWASHING
11 LIQUID LIKE DAWN DISHWASHING LIQUID.

12 Q. YOU NEVER MOP DOWN THE FLOORS IN THE KITCHEN?

13 A. MY AUNT DOES THAT.

14 Q. OKAY. AND THERE ARE NO CLEANING SUPPLIES KEPT AT
15 THE KITCHEN?

16 A. I MEAN, MY AUNT HAVE TO TELL YOU THAT. I MEAN...

17 Q. YOU NEVER WIPE DOWN COUNTER TOPS AT ALL?

18 A. I MEAN, YEAH, I WIPE IT DOWN, BUT LIKE I SAID, I USE
19 DISHWASHING LIQUID, DAWN DISHWASHING LIQUID.

20 Q. OKAY. SO, EVERYTHING THAT YOU USE TO CLEAN THAT
21 KITCHEN WHEN YOU'RE COOKING THAT FOOD IS JUST
22 DISHWASHING LIQUID?

23 A. THAT I USE, BUT LIKE I SAY, MY AUNT BE IN THERE
24 HELPING ME, SO SHE DO THAT.

25 Q. OKAY. AND YOU HAVE NEVER OBSERVED HER CLEANING?

1 A. I MEAN, WHEN I'M COOKING, I'M JUST FOCUSING ON WHAT
2 I'M DOING.

3 Q. SO, YOU DON'T KNOW IF SHE'S CLEANING WITH BLEACH;
4 YOU DON'T KNOW IF SHE'S CLEANING WITH WHATEVER,
5 SOAP?

6 A. I MEAN, SHE USES SOAP, DAWN DISHWASHING LIQUID.

7 Q. HOW BIG IS THE KITCHEN?

8 A. PROBABLY ABOUT FROM RIGHT HERE -- I'D SAY FROM ABOUT
9 THAT DOOR TO ABOUT HERE (INDICATES).

10 Q. OKAY. SO, IT'S NOT AS BIG AS THIS ENTIRE ROOM?

11 A. NO.

12 Q. OKAY. IS IT VENTILATED?

13 A. AS FAR AS I KNOW, YES.

14 Q. DO YOU HAVE AN ACTUAL VENTILATION ---

15 A. WELL, WE DON'T HAVE A FAN THOUGH.

16 Q. THERE'S NO FAN, OKAY. HOW MANY REFRIGERATORS IN
17 THERE?

18 A. IT'S ONE.

19 Q. IT'S ONE REFRIGERATOR. HOW MANY PEOPLE WORK FOR THE
20 COMPANY NOW?

21 A. IT'S -- IT DEPENDS ON HOW BIG THE DINNERS THAT WE
22 HAVE TO DO.

23 Q. LET ME ASK YOU THIS: WHAT TYPE OF MEATS DO YOU
24 STORE; IS IT HAM, CHICKEN, BEEF?

25 A. HAM, CHICKEN, BEEF.

1 Q. POTATO SALAD?

2 A. YEAH.

3 Q. VEGETABLES?

4 A. YES.

5 Q. WHERE DO YOU KEEP YOUR TRASH?

6 A. IT'S IN THE KITCHEN BY THE STOVE.

7 Q. AND YOU SAID YOU DON'T DO THE CLEANING; WHO TAKES
8 OUT THE TRASH?

9 A. MY AUNT.

10 Q. AND BEFORE YOU BECAME INVOLVED, WAS IT YOUR MOM WHO
11 WAS DOING ALL OF THIS WORK, TOO?

12 A. WELL, MY AUNT BEEN HELPING HER FOR A WHILE CLEANING
13 AND STUFF, BUT SEE I'VE BEEN -- I'VE BEEN IN THE
14 HOUSE WITH HER, SO I'VE BEEN HELPING HER, YOU KNOW,
15 SINCE I'VE BEEN IN THE HOUSE WITH HER.

16 Q. BEFORE ---

17 A. I'VE ONLY BEEN OUT FOR TWO YEARS.

18 Q. OKAY, I'M SORRY. BEFORE YOUR MOM DEVELOPED THESE
19 PROBLEMS, WHAT TYPES OF PRODUCTS DID SHE CLEAN WITH
20 AT HOME?

21 A. I DON'T KNOW. I DON'T EVEN KNOW.

22 Q. GROWING UP, YOU DON'T KNOW ---

23 A. BUT LIKE -- SAY WHAT NOW?

24 Q. GROWING UP, YOU DON'T RECALL WHAT TYPE OF CLEANING
25 AGENTS YOUR MOM USED AT HOME?

1 A. NO.

2 Q. YOU DON'T ---

3 A. BECAUSE MY MOMMA WORKED, AND I STAYED -- WHEN I WAS
4 YOUNGER, I STAYED WITH MY GRANDPARENTS WHILE SHE
5 WORKED.

6 Q. OKAY. YOU'VE NEVER HAD AN OCCASION TO IDENTIFY ANY
7 TYPE OF CLEANING AGENT AT YOUR MOM'S HOUSE?

8 A. MAYBE STUFF TO CLEAN THE BATHROOM WITH LIKE SOME
9 SIMPLE -- ALL PURPOSE CLEANER OR SOMETHING LIKE THAT
10 MAYBE.

11 Q. OKAY. HAVE YOU EVER IDENTIFIED BLEACH AT YOUR MOM'S
12 HOUSE?

13 A. YEAH.

14 Q. WASH CLOTHES WITH BLEACH OR CLEAN WITH BLEACH?

15 A. TO WASH CLOTHES.

16 Q. DO YOU OR ANY OF YOUR SIBLINGS HAVE ANY PROBLEMS
17 WITH ALLERGIES OR ASTHMA?

18 A. NO.

19 Q. WHAT ABOUT ANY OTHER RESPIRATORY DISORDERS?

20 A. NO.

21 Q. LUNG DISORDERS?

22 A. NO.

23 Q. NOW, YOU INDICATED THAT SOMETIMES YOUR MOM WOULD
24 HAVE TO GO TO PIGGLY WIGGLY BY HERSELF IF YOU'RE
25 COOKING. IS THAT ---

1 A. WELL, MY AUNT GO WITH HER IF I CAN'T GO.

2 Q. OKAY. SO, SHE DOESN'T EVER GO BY HERSELF?

3 A. NO, SHE DON'T TRY TO. IF SHE -- IF SHE HAS TO GO BY
4 HERSELF, IT'S ONE OF US DOING -- OR I'M COOKING, AND
5 SHE HAS TO GO BY HERSELF.

6 Q. DOES SHE OWN A CAR?

7 A. DOES SHE OWN ONE, YES.

8 Q. AND IS SHE ABLE TO DRIVE A CAR BY HERSELF NOW?

9 A. YEAH.

10 Q. BUT SHE DOESN'T GO TO PIGGLY WIGGLY?

11 A. I DIDN'T SAY SHE DIDN'T GO TO PIGGLY WIGGLY; I SAID
12 SHE GOES TO PIGGLY WIGGLY. IF SHE HAS TO GO BY
13 HERSELF, SHE -- SHE WILL GO BY HERSELF TO PICK UP
14 SOMETHING THAT I MIGHT NEED.

15 Q. OKAY. SINCE 2014, HAVE YOU EVER HAD OCCASION TO SEE
16 YOUR MOM WORK WITH RAW MEATS?

17 A. NO, I BASICALLY BEEN WORKING WITH THE RAW MEAT.

18 Q. OKAY. WHAT ABOUT IN TERMS OF BEING AROUND CLEANING
19 SUPPLIES?

20 A. BY ME NOT BEING THERE, I COULD NOT TELL YOU WHAT SHE
21 DO THE DAYS THAT I'M NOT THERE.

22 Q. OKAY. WHY IS THE MONEY FOR THE CATERING BUSINESS
23 NOT PAID TO YOU DIRECTLY IF YOU'RE TAKING OVER?

24 A. BECAUSE SHE TAKES HER MONEY AND SPEND IT ON THE FOOD
25 AND STUFF, SO I'M -- I'M THERE DOING THE BUSINESS

1 ASPECT. SO, SHE GIVES ME MONEY FOR THE BUSINESS
2 ASPECT.

3 Q. DO YOUR CLIENTS PAY YOU MONEY UP FRONT, OR DO THEY
4 HAVE TO -- OR DO YOU COOK THE FOOD FIRST AND THEN
5 YOU GET THE MONEY ON THE BACK-END?

6 A. GET IT AFTER WE DO IT, AND SOME PAY UP FRONT.

7 Q. IF SOME OF THE CLIENTS PAY UP FRONT, WHY AREN'T YOU
8 ABLE TO TAKE THAT MONEY TO BUY THE FOOD AND BE PAID
9 DIRECTLY?

10 A. BECAUSE WE DON'T DO IT THAT WAY 'CAUSE SEE THEY
11 COULD EITHER CANCEL OUT BEFORE THAT TIME COME, AND
12 SEE WE DO EVERYTHING THAT DAY OF. SO, IF THEY
13 CANCEL. SAY IF THEY CHANGE THEIR MIND ABOUT THE
14 DATE THAT THEY WANT THEIR FOOD OR WHATEVER OR THEY
15 MIGHT NOT JUST DECIDE, OKAY, WELL WE MIGHT NOT DO
16 THIS, SO WHY DO ARE YOU GOING TO GO SPEND THE MONEY
17 ---

18 Q. HOW IS THAT ---

19 A. --- THAT THEY GAVE YOU IN ADVANCE.

20 Q. WHAT WOULD BE THE DISTINCTION BETWEEN GIVING YOUR
21 MOM THE MONEY VERSUS GIVING YOU THAT MONEY?

22 A. BECAUSE IT'S HER BUSINESS, BUT I'M TAKING OVER --
23 I'M THE HARD WORKER. I'M DOING THE FOOD. I'M DOING
24 THE TALKING -- YOU KNOW, TALKING TO THE PEOPLE ABOUT
25 DIFFERENT STUFF. SO, I MEAN, WITH HER BUYING THE

1 FOOD, PAYING HER -- USING HER MONEY, I FEEL LIKE
2 THAT'S THE WAY IT SHOULD BE.

3 Q. OKAY. SO, IF I CALL TO TAKE -- TO ORDER, PLACE AN
4 ORDER, BECAUSE YOU INDICATED YOU TAKE ORDERS AS
5 WELL?

6 A. UH-HUH.

7 Q. I'M SORRY, IS THAT A YES?

8 A. YES, YES, YES.

9 Q. THEN I PAY -- I DON'T PAY YOU; I PAY YOUR MOM?

10 A. WELL, WHEN I GO PICK UP -- WHEN WE GO DO THE
11 DINNERS, I GET THE MONEY IN MY HAND, BUT I GIVE IT
12 TO HER.

13 Q. WHAT'S THE NAME OF THE CATERING BUSINESS?

14 A. SHE DON'T HAVE A NAME. HS USES HER NAME, GENNETTE
15 SOWELL.

16 Q. AND WHAT'S THE TELEPHONE NUMBER CONNECTED TO THE
17 BUSINESS?

18 A. 843-623-2298.

19 Q. IS THAT YOUR MOM'S HOUSE NUMBER?

20 A. YES, IT IS.

21 Q. OKAY.

22 BY MS. MILLER:

23 THAT'S ALL I HAVE. THANK YOU.

24 BY COMMISSIONER JAMES:

25 ANY RE-DIRECT?

1 BY MR. MCDANIEL:

2 JUST ONE.

3 RE-DIRECT EXAMINATION BY MR. MCDANIEL:

4 Q. DO YOU KNOW ANYBODY WITH A CONDITION KNOWN AS
5 SARCOIDOSIS?

6 A. YES.

7 Q. WHO IS THAT?

8 A. I WAS DIAGNOSED WITH IT, BUT I DON'T TAKE ANY
9 MEDICINE FOR IT.

10 Q. OKAY.

11 BY MR. MCDANIEL:

12 NOTHING FURTHER, COMMISSIONER.

13 BY COMMISSIONER JAMES:

14 ANY RE-CROSS?

15 BY MS. MILLER:

16 NO, YOUR HONOR.

17 BY COMMISSIONER JAMES:

18 OKAY. YOU CAN STEP DOWN, MA'AM, THANK YOU.

19 BY THE WITNESS:

20 UH-HUH.

21 BY COMMISSIONER JAMES:

22 NEXT WITNESS.

23 BY MR. MCDANIEL:

24 ALL RIGHT. JANET JAMES.

25 BY COMMISSIONER JAMES:

1 IF YOU WOULD COME UP HERE FOR ME.

2 BY THE WITNESS:

3 UP HERE?

4 BY COMMISSIONER JAMES:

5 YES, MA'AM, RIGHT HERE IN THIS CHAIR. YOU CAN
6 HAVE A SEAT.

7 BY MR. MCDANIEL:

8 I TOLD MS. JAMES THAT I WOULD LOVE TO HAVE HER
9 IN A PATERNITY SUIT WITH HER MOTHER ALLEGING THAT
10 SHE IS NOT HER DAUGHTER. DO YOU THINK I WOULD WIN
11 THAT ONE, COMMISSIONER?

12 BY COMMISSIONER JAMES:

13 I DON'T KNOW. WE'RE ON THE RECORD, SO I BETTER
14 NOT MAKE ANY JUDGMENT ON THAT UNTIL WE'RE THROUGH
15 WITH EVERYTHING.

16 ALL RIGHT. MA'AM, IF YOU WOULD RAISE YOUR
17 RIGHT HAND FOR ME.

18 * * * * *

19 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
20 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
21 MATTER HEREIN:

22 JANET JAMES

23 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

24 BY COMMISSIONER JAMES:

25 YOUR WITNESS, SIR.

DIRECT EXAMINATION BY MR. MCDANIEL:

Q. MS. JAMES, GIVE YOUR FULL NAME AND YOUR ADDRESS.

A. JANET JAMES, AND I STAY IN CHERAW, SOUTH CAROLINA.
DO YOU NEED MY ADDRESS?

Q. NO. NOW, I BELIEVE YOUR MOM DRIVES BACK AND FORTH
TO PIGGY WIGGLY WHEN SHE HAS TO GO AND I BELIEVE --
IF I WOULD NORMALLY SEE -- WHO WOULD I NORMALLY SEE
IF I SAW HER GOING TO PIGGLY WIGGLY TO PICK UP
ANYTHING FOR LET'S SAY IN REFERENCE TO THE CATERING
BUSINESS?

A. THAT WOULD BE MY SISTER AMY, THE ONE THAT JUST LEFT,
AND MY AUNT FLORA BELL.

Q. OKAY. NOW, IF YOU -- IF SHE HAS TO GO OUT OF TOWN
OR EITHER DRIVE ANY DISTANCE, WHO DOES THE DRIVING
FOR HER?

A. I DO. I DO THE DRIVING.

Q. OKAY. WHY IS IT THAT Y'ALL WANT SOMEBODY WITH HER
MOST OF THE TIME?

A. SHE IS COUGHING ALL THE TIME. SHE CAN'T CATCH HER
BREATH HARDLY NONE AT ALL.

Q. ALL RIGHT.

A. THE LEAST LITTLE THING TRIGGERS IT.

Q. OKAY. AND THAT'S WHAT I WAS GOING TO ASK YOU. THE
NEXT THING I WANT YOU TO DO, AND THEN I'M GOING TO
LEAVE YOU ALONE.

1 A. OKAY.

2 Q. IS JUST TELL ME, CAN YOU GIVE THE COMMISSIONER SOME
3 EXAMPLES OF -- LIKE FOR EXAMPLE, HOW OFTEN DOES YOUR
4 MOM GO OUT TO A RESTAURANT?

5 A. WE DON'T. WE DON'T. SHE DON'T GO TO RESTAURANTS.

6 Q. WHY IS THAT?

7 A. SHE JUST CAN'T TAKE THE SMELLS AND STUFF. SHE CAN'T
8 HANDLE IT.

9 Q. OKAY. TELL ME ABOUT, DO YOU HAVE ANY OTHER
10 OBSERVATIONS OF HER IN REFERENCE TO THINGS TO SET
11 OFF HER ASTHMA?

12 A. STRONG WIND. I MEAN, WHEN SHE TOOK HER TRASH TO THE
13 DUMPSTER ONE DAY, AND SHE JUST COME BACK IN, AND SHE
14 COULDN'T HARDLY BREATHE. I MEAN, SHE WAS JUST BENT
15 ALL OVER. I MEAN, STRONG PERFUME, FUMES AT THE
16 STORES. WE WILL GO TO THE MALL AND PASS BY LIKE A
17 BATH AND BODY WORKS, ANYTHING LIKE THAT, THAT
18 TRIGGERS IT. FOOD, FRIED CHICKEN, YOU KNOW, WHEN A
19 RESTAURANT IS FRYING SOMETHING, SOMETIMES THE GREASE
20 MIGHT BE BURNED OR SOMETHING, IT -- ALL THAT
21 TRIGGERS THAT.

22 Q. OKAY. HAVE YOU BEEN WITH HER ON OCCASION TO PIGGLY
23 WIGGLY TO PICK UP SUPPLIES FOR THE CATERING
24 BUSINESS?

25 A. YEAH, BUT NOT AS MUCH AS MY SISTER, BUT I DO GO

1 WHENEVER SHE NEEDS ME TO.

2 Q. OKAY. WHEN SHE GOES, IS THERE ANY PART OF THE STORE
3 SHE TRIES TO AVOID?

4 A. SHE USUALLY DON'T GO TO THE MEAT DEPARTMENT. SHE
5 DON'T GO BACK THAT WAY.

6 Q. BASICALLY THE SAME REASON YOU TESTIFIED TO EARLIER?

7 A. RIGHT.

8 Q. OKAY. ALL RIGHT. DO Y'ALL GO TO THE MALL ANY?

9 A. NOT MUCH, BECAUSE LIKE I SAY, SHE -- SHE CAN'T
10 HARDLY TAKE THE FUMES AND STUFF. WE DON'T DO IT.
11 AND SHE CAN'T -- WALKING LONG DISTANCES LIKE THAT,
12 SHE CAN'T CATCH HER BREATH. IT'S -- IT'S NOT WORTH
13 PUTTING HER HEALTH IN DANGER, SO WE JUST DON'T GO.

14 Q. SO, IF SHE -- IF YOU GO WITH HER ANYWHERE AND SHE'S
15 GOT TO WALK ANY DISTANCE, SHE REALLY CAN'T DO THAT?

16 A. NO. LIKE IF WE -- IF WE HAPPEN TO GO, I DROP HER
17 OFF RIGHT WHERE WE NEED TO BE AT, AND THEN I DON'T
18 LET HER WALK BACK AND FORTH TO THE CAR OR WHATEVER.

19 Q. OKAY.

20 BY MR. MCDANIEL:

21 I HAVE NO FURTHER QUESTIONS.

22 BY COMMISSIONER JAMES:

23 CROSS.

24 BY MS. MILLER:

25 VERY BRIEFLY, YOUR HONOR.

CROSS EXAMINATION BY MS. MILLER:

Q. JANET JAMES.

A. YES, MA'AM.

Q. OKAY. I GOT IT RIGHT THIS TIME.

A. YES, MA'AM.

Q. JUST A COUPLE OF QUICK QUESTIONS.

A. YES, MA'AM.

Q. WHAT -- DO YOU KNOW WHEN YOUR MOM STOPPED WORKING
WITH THE CATERING BUSINESS AS EXTENSIVELY AS SHE
USED TO?

A. AS FAR AS THE DATE?

Q. OR THE YEAR.

A. THE YEAR.

Q. THE YEAR IS GOOD.

A. 2013 MAYBE.

Q. OKAY. AND BEFORE THAT PARTICULAR TIME, HOW INVOLVED
WITH THE BUSINESS WAS SHE BEFORE ---

A. SHE DID EVERYTHING.

Q. OKAY. WHAT DO YOU MEAN BY EVERYTHING?

A. I MEAN, SHE COOKED, EVERYTHING. SHE -- BEFORE, YOU
KNOW, SHE GOT SICK, SHE COOKED EVERYTHING.

Q. OKAY. WHAT TYPE OF FOODS DID SHE COOK?

A. FRIED CHICKEN, ROAST BEEF, I MEAN, YOU NAME IT, SHE
COOKED IT. WHATEVER THE CUSTOMER ASKED FOR, SHE DO
IT.

1 Q. DID SHE HAVE A KITCHEN OUTSIDE THEN, OR WAS IT JUST
2 IN THE KITCHEN IN HER HOUSE AT THAT TIME?

3 A. SAY IT AGAIN.

4 Q. AT THAT TIME, DID SHE HAVE THE KITCHEN OUTSIDE, TOO,
5 OR DID SHE JUST HAVE THE ONE INSIDE?

6 A. WELL, SHE WAS WORKING ON IT TO GET IT ON THE
7 OUTSIDE, YEAH.

8 Q. OKAY. OKAY. AND THAT WOULD HAVE BEEN JUST ONE
9 STOVE IN HER HOUSE?

10 A. YEAH.

11 Q. OKAY. OKAY. DO YOU KNOW WHAT TYPE OF CLEANING
12 PRODUCTS SHE USED IN THE HOME?

13 A. I DON'T KNOW WHAT CLEANING PRODUCTS, BECAUSE MY AUNT
14 DOES THE CLEANING AND STUFF. MOMMA DON'T DO IT.

15 Q. GOING BACK TO THIS TIME, NOT NOW, GOING BACK IN
16 2011, '12 AND '13.

17 A. PINESOL, LYSOL.

18 Q. BLEACH?

19 A. AS FAR AS CLOTHES, I'M SURE, BLEACH, YEAH, MAYBE.

20 Q. AND IN TERMS OF NOW, WHAT IS THE EXTENT OF HER
21 INVOLVEMENT WITH THE COMPANY?

22 A. SHE ---

23 Q. WITH THE CATERING BUSINESS.

24 A. SHE JUST, YOU KNOW, TAKE THE ORDERS IN. WE GO OUT
25 AND SERVE IT. MY SISTER, SHE COOKS FOR HER. LIKE I

1 SAY, MY AUNT, SHE CLEANS.

2 Q. OKAY. IS SHE ABLE TO LIFT THE FOOD AT ALL LIKE WHEN
3 YOU DELIVER THE FOOD?

4 A. NO, NO. I WOULD -- NO.

5 Q. OKAY. AND IN TERMS OF SHOPPING, SHE DOESN'T
6 ACTUALLY LIFT -- DOES SHE GO BY HERSELF OR LIFT THE
7 BAGS OR ANYTHING OF THAT NATURE?

8 A. NO, AND WHEN WE DO GO SHOPPING, SHE GETS A CART AND
9 RIDES -- SHE EVEN RIDES HER POCKETBOOK AROUND. SHE
10 CAN'T -- IT'S JUST -- IT'S TOO MUCH.

11 Q. OKAY. DO YOU KNOW IF ANY OF YOUR SIBLINGS OR
12 YOURSELF SUFFER FROM ANY TYPE OF ALLERGIES, ASTHMA
13 OR ANY RESPIRATORY PROBLEMS?

14 A. NO.

15 Q. WHAT ABOUT LUNG DISORDERS?

16 A. NO, NOT THAT I KNOW OF.

17 **BY MS. MILLER:**

18 I BEG THE COURT'S INDULGENCE.

19 **CROSS EXAMINATION RESUMED BY MS. MILLER:**

20 Q. HOW OFTEN DOES YOUR MOM VISIT THE KITCHEN OUTSIDE;
21 DOES SHE EVER GO OUT THERE AT ALL?

22 A. SHE PROBABLY GO TO CHECK ON TO MAKE SURE
23 EVERYTHING'S GOING GOOD, BUT AS FAR AS STAYING OUT
24 THERE, NO, MA'AM, SHE DON'T. SHE DON'T GO OUT
25 THERE.

1 BY MS. MILLER:

2 OKAY. THAT'S ALL I HAVE. THANK YOU.

3 BY COMMISSIONER JAMES:

4 RE-DIRECT?

5 BY MR. MCDANIEL:

6 JUST REAL QUICK.

7 RE-DIRECT EXAMINATION BY MR. MCDANIEL:

8 Q. DO YOU KNOW ANYBODY THAT HAS THE CONDITION KNOWN AS
9 SARCOIDOSIS?

10 A. NO.

11 Q. OKAY. DO YOU KNOW ---

12 A. YOU SAID SARCOIDOSIS?

13 Q. SARCOIDOSIS.

14 A. I DON'T -- I DON'T KNOW.

15 Q. OKAY. THE REASON I ASKED YOU THAT IS COUNSEL ASKED
16 YOU IF YOU KNEW ANYBODY WITH RESPIRATORY PROBLEMS,
17 ANYBODY IN YOUR FAMILY. DOES ANYBODY HAVE ANY
18 PROBLEM WITH THEIR LUNG OR HAS HAD -- BEEN DIAGNOSED
19 WITH A PROBLEM WITH THEIR LUNG?

20 A. I REALLY -- I REALLY DON'T KNOW THE ANSWER TO THAT
21 BECAUSE I HAVE SO MANY HEALTH PROBLEMS MYSELF, I
22 JUST TRY TO KEEP UP WITH MYSELF. I'M SORRY, BUT
23 I'VE JUST BEEN THROUGH SO MUCH MYSELF, I CAN'T
24 REMEMBER.

25 Q. OKAY.

1 BY MR. MCDANIEL:

2 ALL RIGHT. NOTHING FURTHER, COMMISSIONER.

3 BY COMMISSIONER JAMES:

4 ANY RE-CROSS?

5 BY MS. MILLER:

6 NONE, YOUR HONOR.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. YOU CAN STEP DOWN. THANK YOU,

9 MA'AM.

10 BY MR. MCDANIEL:

11 ONE MORE QUICK WITNESS, AND WE ARE FINISHED ON

12 OUR SIDE.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT. IF YOU CAN RAISE YOUR RIGHT HAND

15 FOR ME, PLEASE, MA'AM.

16 * * * * *

17 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
18 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
19 MATTER HEREIN:

20 FLORA BELL ISHMELL

21 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

22 BY COMMISSIONER JAMES:

23 ALL RIGHT, IF YOU WILL HAVE A SEAT FOR ME.

24 THANK YOU.

25 DIRECT EXAMINATION BY MR. MCDANIEL:

1 Q. MS. ISHMELL, WOULD YOU GIVE ME YOUR FULL NAME, AND
2 YOU MIGHT WANT TO SPELL IT FOR THE COURT REPORTER.

3 A. FLORA BELL ISHMELL.

4 Q. OKAY. HOW DO YOU SPELL ISHMELL?

5 A. I-S-H-M-E-L-L.

6 Q. OKAY. ALL RIGHT, NOW, WHAT IS YOUR RELATIONSHIP TO
7 MS. SOWELL?

8 A. THAT'S MY SISTER.

9 Q. OKAY. AND DO YOU DO ANYTHING FOR YOUR SISTER NOW AS
10 COMPARED TO BEFORE SHE DEVELOPED ALL OF THESE
11 PROBLEMS STARTING IN 2011 AND '12 AND '13 IT'S
12 GOTTEN WORSE, WHAT DO YOU DO FOR HER NOW?

13 A. I CLEANS UP.

14 Q. OKAY.

15 A. AND DO ALL OF THAT, CARRY THE TRASH OUT.

16 Q. OKAY.

17 A. AND I DO THE YARD WORK.

18 Q. ALL RIGHT. SO, YOU DO ALL OF THE YARD WORK?

19 A. YES.

20 Q. SO, ANY OF THE CLEANING IN THE HOUSE, YOU DO THAT?

21 A. THAT'S -- THAT'S MY JOB.

22 Q. OKAY. YOU ALSO CLEAN UP OUT AT THE KITCHEN; IS THAT
23 RIGHT?

24 A. YES.

25 Q. OKAY. AND I BELIEVE THAT USED TO BE A FAMILY ROOM,

1 AND NOW IT'S THE KITCHEN WHERE YOU DO ALL THE
2 COOKING FOR THE CATERING?

3 A. YEAH.

4 Q. IF THERE'S ANY?

5 A. YEAH.

6 Q. BY THE WAY, I FORGOT TO ASK THE LAST -- MS. JAMES
7 ABOUT THIS, BUT BEFORE SHE LEFT PIGGLY WIGGLY, WHERE
8 DID MS. SOWELL GET MOST OF HER CHICKEN OR FRIED
9 CHICKEN FROM; DO YOU KNOW?

10 A. NO.

11 Q. OKAY. THAT'S FINE. ALL RIGHT. TELL ME ABOUT YOUR
12 OBSERVATIONS OF HER ABOUT THE KIND OF PROBLEMS AND
13 WHAT WOULD SET OFF HER PROBLEMS? WHERE IS SHE LIKE
14 FOR EXAMPLE WHEN YOU'RE DOING THE CLEANING AND ALL
15 OF THAT; JUST TELL THE COMMISSIONER.

16 A. OKAY. WHEN I'M DOING -- LIKE IF I'M GOING TO SPRAY
17 OUT -- SEE, I LOVE TO SPRAY THE HOUSE OUT WITH
18 AMMONIA CLEANER. SHE WILL LEAVE OUT. IF SHE DON'T
19 -- IF I CLEAN HALF OF THE HOUSE FIRST, SOMETIME IF
20 SHE DON'T LEAVE, SHE'LL GO TO THE BACK, BECAUSE IF I
21 GO TO SPRAY, I SPRAY THE CHAIRS AND STUFF BECAUSE
22 THERE'S ODORS AND STUFF FROM PEOPLE COMING IN, AND
23 THEN SHE'LL GO -- SHE CAN'T -- WHEN SHE COME IN, SHE
24 CAN'T HARDLY BREATHE. AND I DO ALL THE, YOU KNOW,
25 CLEANING THE SINK OUT, AND I HAVE BLEACH AND STUFF

1 LIKE THAT.

2 Q. DO YOU GO TO -- DO YOU GO TO THE GROCERY STORE WITH
3 HER TO GET STUFF?

4 A. YES, YEAH.

5 Q. ALL RIGHT. DOES SHE USE ONE OF THOSE CARTS WHENEVER
6 SHE IS AT THE GROCERY STORE?

7 A. YEAH.

8 Q. ALL RIGHT. IS THERE ANY PART OF THE GROCERY STORE
9 SHE TRIES TO AVOID?

10 A. BACK THERE AT THE MEAT PLACE BACK THERE, YEAH.

11 Q. OKAY. DOES SHE -- DOES SHE GO OUT TO DINNER MUCH,
12 GO OUT TO RESTAURANTS MUCH TO EAT OUT?

13 A. NO.

14 Q. WHY IS THAT?

15 A. JUST CAN'T STAND THE SMELL, GET IN THERE AND GO TO
16 COUGHING UP.

17 Q. OKAY. CAN YOU GIVE THE COMMISSIONER ANY EXAMPLES OF
18 JUST WHAT YOU'VE SEEN, JUST WHAT WILL MINIMALLY SET
19 HER OFF?

20 A. WHEN WE -- NOT ONLY GOING OUT, JUST RIDING IN THE
21 CAR, IF WE GETS FOOD TO EAT, SHE WILL GO COUGHING UP
22 STUFF AND HAVE US ALL ABOUT TO THROW UP, (MAKE SOUND
23 EFFECT) COUGHING UP STUFF, AND WE BE TRYING TO EAT,
24 TOO, AND THEN WE GET -- I BE GETTING SICK MYSELF.
25 NOW, AMY CAN TAKE IT MORE THAN I CAN. I CAN'T TAKE

1 IT. I'VE GOT A WEAK STOMACH. YOU GO TO COUGHING UP
2 THAT STUFF LIKE THAT WHAT SHE BE COUGHING UP,
3 SPITTING IT DOWN IN A NAPKIN AND STUFF, UH-UH.

4 Q. AND SHE USES THAT INHALER AND ALL THAT?

5 A. YEAH, SHE DO. SHE USES THAT.

6 Q. SO, SAY FOR EXAMPLE Y'ALL GO THROUGH A DRIVE-THRU
7 AND PICK UP FRENCH FRIES AND A HAMBURGER OR
8 SOMETHING LIKE THAT, EVEN SOMETHING LIKE THAT WILL
9 SET OFF HER ---

10 A. YEAH, WE DON'T HARDLY DO TOO MUCH OF THAT, BUT IT
11 WOULD, YEAH.

12 Q. OKAY. ALL RIGHT.

13 BY MR. MCDANIEL:

14 I'VE GOT NO FURTHER QUESTIONS.

15 BY COMMISSIONER JAMES:

16 CROSS.

17 BY MS. MILLER:

18 NONE, YOUR HONOR.

19 BY THE WITNESS:

20 SAY WHAT?

21 BY MS. MILLER:

22 NO QUESTIONS.

23 BY COMMISSIONER JAMES:

24 OKAY.

25 BY THE WITNESS:

1 THANKS.

2 BY COMMISSIONER JAMES:

3 YOU CAN STEP DOWN, MA'AM. THANK YOU.

4 BY THE WITNESS:

5 YOU'RE WELCOME.

6 BY MR. MCDANIEL:

7 ALL RIGHT. COMMISSIONER, THAT'S THE CLAIMANT'S
8 CASE.

9 BY COMMISSIONER JAMES:

10 ALL RIGHT. WE'RE GOING TO TAKE A COUPLE OF
11 MINUTES BREAK.

12 (OFF THE RECORD)

13 BY COMMISSIONER JAMES:

14 BACK ON THE RECORD. WE WILL START THE
15 TESTIMONY IN JUST A MOMENT, AND BECAUSE IT HAS TO DO
16 WITH WHETHER A PARTICULAR WITNESS IS CALLED, I
17 BELIEVE THE PARTIES HAVE A STIPULATION THAT THEY ARE
18 GOING TO MAKE WITH REGARDS TO AN ISSUE.

19 BY MR. MCDANIEL:

20 COMMISSIONER, AFTER FURTHER DISCUSSION WITH
21 COUNSEL AND WITH THE COMMISSION, WE WILL WITHDRAW
22 AND WAIVE ANY OBJECTION TO THE FORM 51 BEING TIMELY
23 FILED.

24 BY MS. MILLER:

25 THANK YOU.

1 BY COMMISSIONER JAMES:

2 NEXT -- OR DEFENSE WITNESSES?

3 BY MS. MILLER:

4 MARIE STEELE IS HER NAME, S-T-E-E-L-E.

5 BY COMMISSIONER JAMES:

6 IF YOU WOULD RAISE YOUR RIGHT HAND, PLEASE,
7 MA'AM.

8 * * * * *

9 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
10 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
11 MATTER HEREIN:

12 MARIE STEELE

13 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

14 BY COMMISSIONER JAMES:

15 YOUR WITNESS, MA'AM.

16 DIRECT EXAMINATION BY MS. MILLER:

17 Q. WOULD YOU STATE YOUR NAME FOR THE RECORD.

18 A. MARIE STEELE.

19 Q. MS. STEELE, WHERE ARE YOU EMPLOYED?

20 A. BYNAM INSURANCE.

21 Q. AND HOW LONG HAVE YOU BEEN THERE?

22 A. SINCE JANUARY 2000.

23 Q. AND WHAT IS YOUR JOB TITLE?

24 A. I'M ACCOUNT MANAGER.

25 Q. AND DO YOU HANDLE THE PIGGLY WIGGLY ACCOUNT?

1 A. I DO.

2 Q. AND WHAT IS YOUR ROLE IN DEALING WITH THE PIGGLY
3 WIGGLY ACCOUNT?

4 A. WE PROVIDE THE INSURANCE COVERAGE FOR PIGGLY WIGGLY
5 CENTRAL. THAT MEANS WE WRITE THE BUSINESS. WE
6 HANDLE THE CLAIMS. EXCUSE ME, WE REPORT THE CLAIMS
7 TO THE INSURANCE COMPANY. THE BILLING, OF COURSE,
8 AND WHATEVER GOES WITH INSURANCE, SELLING INSURANCE.

9 Q. SO, IN A NUTSHELL, IF THERE IS A CLAIM REPORTED IN
10 ANY PIGGLY WIGGLY, DOES IT COME THROUGH YOU?

11 A. YES. THE INITIAL REPORT COMES TO ME.

12 Q. AND THAT'S JUST WITHIN THE STATE OF SOUTH CAROLINA?

13 A. YES. AND ONLY THOSE PIGGLY WIGGLYS OWNED BY PIGGLY
14 WIGGLY CENTRAL.

15 Q. OKAY. AND HOW LONG HAVE YOU HANDLED THE PIGGLY
16 WIGGLY ACCOUNT?

17 A. SINCE 2000.

18 Q. OKAY. AND DO YOU JUST -- NORMALLY, WHAT COMES TO
19 YOU; IS IT JUST THE FIRST REPORT OF INJURY?

20 A. THE FIRST REPORT OF INJURY.

21 Q. OKAY. AND NORMALLY, DO YOU DO ANY INVESTIGATION, OR
22 DO YOU JUST RECEIVE THAT INFORMATION?

23 A. NO INVESTIGATION AT ALL.

24 Q. ARE YOU AWARE OF A CLAIM THAT'S REPORTED REGARDING
25 GENNETTE SOWELL?

1 A. IN MARCH 2014.

2 Q. OKAY. AND WHICH PIGGLY WIGGLY WAS THAT WITH?

3 A. BENNETTSVILLE.

4 Q. OKAY. AND WHO WOULD HAVE SENT YOU THAT?

5 A. MARY QUICK DID, THE MANAGER.

6 Q. OKAY.

7 BY MS. MILLER:

8 PERMISSION TO APPROACH, YOUR HONOR?

9 BY COMMISSIONER JAMES:

10 CERTAINLY.

11 BY MS. MILLER:

12 JUST PAGE 394.

13 BY MR. MCDANIEL:

14 IT'S ACTUALLY -- ISN'T IT PART OF THE RECORD?

15 BY MS. MILLER:

16 IT IS. IT'S FILED WITH THE COMMISSION, BUT I
17 HAD IT IN MY APAS TO MAKE IT EASIER.

18 BY MR. MCDANIEL:

19 OH, THAT'S FINE.

20 DIRECT EXAMINATION RESUMED BY MS. MILLER:

21 Q. ARE YOU FAMILIAR WITH THIS DOCUMENT?

22 A. I AM.

23 Q. AND WHO PROVIDED IT TO YOU?

24 A. MARY QUICK.

25 Q. AND WHAT WAS THE DATE THAT YOU RECEIVED THAT?

- 1 A. 3/20 -- OH, I RECEIVED IT ON THE 28TH. IT WAS FAXED
2 TO ME. SHE COMPLETED IT ON THE 25TH.
- 3 Q. AND IS THAT YOUR UNDERSTANDING AS TO WHEN THE NOTICE
4 WAS PROVIDED WITH REGARDS TO HER WORKERS'
5 COMPENSATION CLAIM?
- 6 A. YES.
- 7 Q. OKAY. SO, AND IS YOUR ROLE AS ACCOUNT MANAGER, DO
8 YOU KEEP TRACK OF ALL THE WORKERS' COMPENSATION
9 CLAIMS FOR PIGGLY WIGGLY IN THE STATE OF SOUTH
10 CAROLINA, CORRECT?
- 11 A. YES, I DO.
- 12 Q. AND THAT'S BEEN YOUR JOB SINCE WHEN?
- 13 A. 2000.
- 14 Q. OKAY. AND FROM 2000 TO 2014, DID YOU ALSO HANDLE
15 THE ACCOUNT FOR THE BENNETTSVILLE PIGGLY WIGGLY?
- 16 A. YES.
- 17 Q. OKAY. DO YOU HAVE ANY OTHER WORKERS' COMPENSATION
18 CLAIMS FROM MS. SOWELL?
- 19 A. NO.
- 20 Q. THIS WILL BE NUMBER ONE?
- 21 A. YES.
- 22 Q. HOW MANY EMPLOYEES DO YOU, I GUESS, MANAGE WITHIN
23 THE UMBRELLA OF PIGGLY WIGGLY?
- 24 A. THEY HAVE APPROXIMATELY 1200.
- 25 Q. AND SINCE 2000 HAVE YOU HAD ANY OTHER OCCUPATIONAL

1 DISEASE OR CHEMICAL EXPOSURE TYPE CASES?

2 A. NONE.

3 Q. OKAY. AND ---

4 A. AND I ---

5 Q. I'M SORRY.

6 A. NEVER THROUGH THAT PERIOD.

7 Q. OKAY.

8 BY MS. MILLER:

9 NO FURTHER QUESTIONS.

10 BY COMMISSIONER JAMES:

11 CROSS.

12 CROSS EXAMINATION BY MR. MCDANIEL:

13 Q. LOOK AT THAT FORM 12-A.

14 A. OKAY.

15 Q. IS IT AN OCCUPATIONAL DISEASE CLAIM?

16 A. I DON'T THINK SO. THERE'S NOT A LOT OF INFORMATION
17 ON THIS FORM.

18 Q. RIGHT. IS THAT -- LET ME ASK YOU, IS THAT A LOT OF
19 TIMES TYPICAL THAT YOU DON'T GET A LOT OF
20 INFORMATION ON THE FORMS?

21 A. NO.

22 Q. OH, YOU REALLY GET A LOT?

23 A. I REALLY DO.

24 Q. OH, OKAY.

25 A. I DO.

1 Q. THAT'S GOOD.

2 A. NO, I REALLY DO GET A LOT OF INFORMATION. I MEAN,
3 THEY ARE VERY SPECIFIC. FOR INSTANCE, LIKE THIS IS
4 NOT FILLED OUT, DATE OF INJURY, NONE. I MEAN,
5 NORMALLY I WOULD HAVE WHEN IT HAPPENED, WHAT
6 HAPPENED ON THE INCIDENT, THE ACTUAL INCIDENT.

7 Q. RIGHT. SO, THIS IS NOT TYPICAL, OKAY. AND TELL ME
8 IF THERE WAS ANOTHER ONE DATED THE 19TH, THIS IS THE
9 ONLY ONE YOU'VE EVER SEEN, OR DO YOU KNOW? DO YOU
10 HAVE YOUR FILE WITH YOU BY CHANCE?

11 A. NO.

12 Q. OKAY.

13 A. I MEAN, DO Y'ALL HAVE ANY OTHER PAPER? I DON'T
14 KNOW.

15 Q. WELL, I WAS RAPIDLY TRYING TO FIND MINE, BUT I
16 THOUGHT THERE WAS ACTUALLY TWO OF THEM, BUT...
17 HOWEVER, HAS THIS BEEN TYPED UP AND PUT IN -- FILED
18 WITH THE COMMISSION? DID YOU SEND IT INTO THE
19 COMMISSION?

20 A. YES.

21 Q. OKAY, GOOD, OKAY.

22 A. YES, IT DID GO TO THE COMMISSION. WELL, IT WENT
23 THROUGH THE COMPANY, EXCUSE ME ---

24 Q. RIGHT.

25 A. --- ON TO THE COMMISSION.

1 Q. THAT'S FINE. THAT'S FINE. LET ME ASK YOU. IF
2 SOMEBODY WAS INJURED OVER A PERIOD OF TIME LIKE A
3 MONTH, HOW WOULD THEY -- HAVE YOU SEEN ANY OF THOSE?

4 A. NOT TO MY KNOWLEDGE.

5 Q. WHAT ABOUT AN INHALATION INJURY LIKE WHERE THEY
6 INHALED CHEMICALS OR SOMETHING LIKE THAT?

7 A. I'VE NEVER HAD ANY LIKE THAT.

8 Q. DO YOU HANDLE THE PIGGLY WIGGLYS IN COLUMBIA?

9 A. NO.

10 Q. OKAY, ALL RIGHT. HAVE YOU EVER HAD ANYTHING IN
11 REFERENCE TO THE MEAT DEPARTMENT BECAUSE OF THE --
12 IN REFERENCE TO THE -- THEY USE A REAL STRONG
13 CHEMICAL THAT WILL DISSOLVE MEAT TISSUE TO CLEAN ALL
14 THE MEAT CUTTING EQUIPMENT. DO YOU REMEMBER HAVING
15 ANY OF THOSE?

16 A. NEVER.

17 Q. OKAY. ALL RIGHT. WE UNDERSTAND THAT MCLEOD TOOK
18 THIS FILE OVER -- TOOK THIS PIGGLY WIGGLY OVER IN
19 2005. SO, WHO WAS IT OWNED WITH BEFORE, AND WHO WAS
20 IT OWNED WITH AFTER 2005?

21 A. BEFORE 2005, I DON'T KNOW.

22 Q. OKAY. SO, WHEN DID YOU BECOME INVOLVED WITH THIS --
23 --

24 A. THIS PARTICULAR ONE, WHEN THE MCLEODS PURCHASED IT.

25 Q. OH, OKAY.

1 A. SO, THAT'S WHEN.

2 Q. SO, WHEN YOU REFER TO MCLEOD, HOW MANY DOES MCLEOD
3 OWN?

4 A. IT'S -- WELL, IT CHANGES, BECAUSE THEY BUY AND SELL.

5 Q. YEAH, RIGHT.

6 A. I'M GOING TO SAY 13.

7 Q. THIRTEEN, OKAY.

8 A. YEAH.

9 Q. AND SO YOU ARE AN INSURANCE AGENCY, NOT THE
10 INSURANCE COMPANY?

11 A. THAT'S CORRECT.

12 Q. GOTCHA.

13 BY MR. MCDANIEL:

14 NOTHING FURTHER.

15 BY COMMISSIONER JAMES:

16 ANY RE-DIRECT?

17 BY MS. MILLER:

18 NONE, YOUR HONOR.

19 BY COMMISSIONER JAMES:

20 ALL RIGHT. THANK YOU, MA'AM. YOU CAN STEP
21 DOWN.

22 BY MR. MCDANIEL:

23 OFF THE RECORD.

24 (THIS HEARING WAS CONCLUDED AT THE HOUR OF 5:46 P.M. TO
25 BE RECONVENED ON JULY 21, 2016)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1408826

EMPLOYEE/CLAIMANT: GENNETTE SOWELL

EMPLOYER: PIGGLY WIGGLY

INSURER: OWNERS INSURANCE COMPANY

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 128 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF GENNETTE SOWELL TAKEN ON THE 22ND DAY OF JUNE, 2016.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 21ST DAY OF AUGUST, 2016.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-04-2024

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1408826

EMPLOYEE/CLAIMANT: GENNETTE SOWELL

EMPLOYER: PIGGLY WIGGLY

INSURER: OWNERS INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 21ST DAY OF
JULY, 2016, COMMENCING AT THE HOUR OF 11:20 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705

APPEARANCES

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MCDANIEL LAW FIRM
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

KENYA C. MILLER, ESQUIRE, OF THE FIRM
DICKIE MCCAMEY & CHILCOTE, P.C.
POST OFFICE BOX 2046
LANCASTER, SOUTH CAROLINA 29721

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: MARY CYNTHIA QUICK

I N D E X

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PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
 SOUTH CAROLINA.

* * * * *

BY COMMISSIONER JAMES:

____ TODAY'S DATE IS JULY 21ST, 2016. WE ARE BACK
 ON THE RECORD FOR A SECOND DAY -- IT WAS NOT A FULL
 DAY THE FIRST DAY, BUT THIS WOULD BE THE SECOND DAY
 OF THE FILE WITH REGARDS TO W.C.C. NUMBER 1408826.
 THIS IS THE MATTER OF GENNETTE SOWELL VERSUS PIGGLY
 WIGGLY AND OWNERS INSURANCE COMPANY. I WILL STATE
 AGAIN FOR THE RECORD THAT THE CLAIMANT IS
 REPRESENTED BY PRESTON MCDANIEL AND THE DEFENDANTS
 BY KENYA MILLER. ALL OF THE ISSUES WERE SET FORTH
 IN THE BEGINNING OF THE FIRST DATE OF HEARING, SO WE
 ARE READY FOR THE TESTIMONY TO BEGIN FOR THE SECOND
 DAY.

MS. QUICK, IF YOU COULD RAISE YOUR RIGHT HAND.

* * * * *

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
 MATTER HEREIN:

MARY CYNTHIA QUICK

BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

1 BY COMMISSIONER JAMES:

2 _____YOUR WITNESS, MA'AM.

3 BY MS. MILLER:

4 THANK YOU, YOUR HONOR.

5 DIRECT EXAMINATION BY MS. MILLER:

6 Q. MS. QUICK, COULD YOU STATE YOUR NAME FOR THE RECORD,
7 PLEASE?

8 A. MARY CYNTHIA QUICK.

9 Q. AND, MS. QUICK, WHERE ARE YOU EMPLOYED?

10 A. I AM EMPLOYED AT PIGGLY WIGGLY IN CHESTERFIELD.

11 Q. OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

12 A. IN CHESTERFIELD, SINCE APRIL OF 2015.

13 Q. OKAY. AND WERE YOU PREVIOUSLY EMPLOYED AT THE
14 BENNETSVILLE LOCATION AS WELL?

15 A. YES, MA'AM.

16 Q. OKAY. AND WHAT IS YOUR TITLE?

17 A. STORE OPERATOR.

18 Q. OKAY. AND AS A STORE OPERATOR, CAN YOU TELL US YOUR
19 ESSENTIAL RESPONSIBILITIES?

20 A. TO OPERATE THE STORE, TO MANAGE EMPLOYEES, TO TAKE
21 CARE OF CUSTOMERS, PULL GROSS PROFITS.

22 Q. OKAY. AND HOW MANY EMPLOYEES DO YOU TYPICALLY
23 MANAGE?

24 A. ANYWHERE FROM 30 TO 60.

25 Q. OKAY. AND HOW DO YOU KNOW MS. SOWELL?

1 A. SHE WAS THE DELI MANAGER WHEN I WENT TO WORK IN
2 BENNETSVILLE.

3 Q. AND HOW LONG DID YOU SERVE AS HER SUPERVISOR?

4 A. I WENT THERE IN 2005, MAY OF 2005, UNTIL SHE LEFT IN
5 2014.

6 Q. AND CAN YOU TELL US WHAT WERE MS. SOWELL'S
7 RESPONSIBILITIES AS THE DELI MANAGER?

8 A. SHE SUPERVISED EMPLOYEES. SHE HAD ANYWHERE FROM I
9 WANT TO SAY EIGHT TO TEN EMPLOYEES. SHE WAS
10 RESPONSIBLE FOR GROSS PROFIT IN THE DELI DEPARTMENT,
11 INVENTORY CONTROL, TAKING CARE OF THE CUSTOMERS.

12 Q. WAS SHE ALSO RESPONSIBLE FOR I GUESS KEEPING THE
13 DELI CLEAN?

14 A. YES, MA'AM.

15 Q. AND WAS SHE FULL TIME?

16 A. YES, MA'AM.

17 Q. AND WHAT WERE HER WORK HOURS?

18 A. ON A NORMAL DAY, IT WAS FROM -- SHE CAME IN AT SIX
19 IN THE MORNING TO GET BREAKFAST STARTED AND UNLOAD
20 THE TRUCKS, BECAUSE OUR TRUCKS WERE ALWAYS THERE AT
21 SIX IN THE MORNING. USUALLY WORK UNTIL 4:00 IN THE
22 AFTERNOON.

23 Q. OKAY.

24 A. ON A NORMAL DAY.

25 Q. AND DURING HER, I GUESS, WORK WEEK, HOW MUCH OF HER

1 TIME WOULD BE DEVOTED TO DIRECTLY CLEANING OR USING
2 CLEANING SUPPLIES IN THE DELI?

3 A. OUT OF 100 PERCENT, I WOULD SAY ABOUT MAYBE 20.

4 Q. TWENTY PERCENT OF HER TIME?

5 A. YES, MA'AM. I GUESS THAT WOULD VARY ON A WEEKLY
6 BASIS. IT DEPENDED.

7 Q. WAS THERE A SEPARATE OR I GUESS DIFFERENT FUNCTION
8 OR REQUIREMENTS FOR OPENING UP THE DELI VERSUS
9 CLOSING THE DELI?

10 A. WELL, WHEN YOU OPEN THE DELI, THE FIRST THING YOU
11 WANTED TO DO WAS GO IN AND GET READY FOR THE
12 BREAKFAST, BECAUSE WE OPEN AT 7:00. WE GOT THERE AT
13 SIX, AND YOU HAD TO HAVE BREAKFAST READY BY SEVEN
14 WHEN YOU UNLOCKED THE FRONT DOOR. CLOSING THE DELI,
15 YOU WOULD HAVE TO -- EVERYTHING WOULD HAVE TO BE
16 CLEANED, SANITIZED. THE FLOOR WOULD HAVE TO BE, YOU
17 KNOW, CLEANED WHEN YOU WERE CLOSING THE DELI.

18 Q. SO, WOULD ---

19 A. ALL THE DISHES WOULD HAVE TO BE WASHED.

20 Q. SO, IS IT THAT MOST OF THE CLEANING WOULD HAVE BEEN
21 DONE AT CLOSING TIME?

22 A. YES, MA'AM.

23 Q. IS THAT WHAT YOU MEAN?

24 A. YES, MA'AM. AND I WOULD SAY THEY WASH DISHES DURING
25 THE DAY, YES, BUT, YEAH.

1 Q. AND DID MS. SOWELL, DID SHE CLOSE THE DELI OFTEN?

2 A. NOT TO MY KNOWLEDGE, NO. I DON'T -- NO. NO. SHE
3 HAD A CREW THAT CAME IN USUALLY IN THE AFTERNOONS
4 THAT CLOSED THE DELI.

5 Q. CAN YOU TELL US ABOUT THE CONDITION OF THE SETUP OF
6 THE DELI IN BENNETSVILLE? HOW WAS -- WHAT WAS THE
7 DESIGN?

8 A. WHEN YOU WALK THROUGH AND YOU HAVE -- YOU HAD THE
9 HOT BAR AND THE SALAD CASE, WHICH IS WHERE THE
10 CUSTOMERS SIT ON THIS SIDE OF, AND THEN ON THE OTHER
11 SIDE YOU HAD AN OPEN AREA WHERE THE EMPLOYEES STOOD
12 TO WAIT ON THE CUSTOMERS. THAT'S WHERE THEY MADE
13 THEIR TEA AND IF THEY MADE ANY SANDWICHES OR
14 ANYTHING LIKE THAT, IT WOULD BE MADE IN THAT AREA.
15 THEY HAD A WRAPPING MACHINE AND A SCALE, AND THEN
16 YOU HAD A KITCHEN AREA TOWARDS THE BACK WHERE YOU
17 WALK THROUGH A DOORWAY, AND THE KITCHEN AREA WAS
18 BACK THERE ALONG WITH THE COOLER AND THE FREEZER AND
19 YOU HAD A THREE-COMPARTMENT SINK. YOU HAD AN OVEN,
20 A GRILL. YOU HAVE PROOF BOXES BACK THERE. THE
21 CHICKEN FRYERS WERE BACK THERE. ALL OF THAT WAS IN
22 THE KITCHEN AREA.

23 Q. OKAY. WOULD YOU DESCRIBE THE DELI AS BEING CLOSED
24 IN OR PRETTY MUCH OF AN OPEN AREA?

25 A. THE DELI PART WAS OPEN, YES, MA'AM, BUT THE KITCHEN

1 AREA, YOU WOULD WALK THROUGH A DOORWAY, BUT IT
2 WASN'T CLOSED IN, NO.

3 Q. WOULD MS. SOWELL BE CONTAINED TO ONE PARTICULAR PART
4 OF THE DELI, OR WAS SHE PRETTY MUCH ---

5 A. NOT AS THE DELI MANAGER, NO, BECAUSE SHE HAD SO MANY
6 THINGS TO TAKE CARE OF. SHE HAD TABLES OUT FRONT TO
7 TAKE CARE OF, CUSTOMERS TO WAIT ON IN THE FRONT
8 AREA, TRUCKS TO UNLOAD IN THE BACK. SHE HAD A
9 FREEZER IN THE BACK OF THE STORE. NO, SHE WAS ALL
10 OVER.

11 Q. HOW WOULD YOU DESCRIBE JUST THE OVERALL CLEANLINESS
12 OF THE DELI?

13 A. I WOULD SAY WE HAD A CLEAN DELI. WE NEVER HAD AN
14 ISSUE WITH DHEC.

15 Q. WERE YOU SUBJECT TO MONTHLY OR ROUTINE INSPECTIONS
16 FROM DHEC?

17 A. HE CAME ABOUT EVERY 90 DAYS. SOMETIMES HE WOULD BE
18 RUNNING LATE, AND WE WOULD WONDER WHERE HE WAS OR...

19 Q. I KNOW MOST RESTAURANTS AND GROCERY STORES HAVE THE
20 LETTERS A,B,C FOR THEIR RATING. DID YOU EVER HAVE
21 ANYTHING BELOW AN 'A'?

22 A. NO, MA'AM, NEVER. HE WOULD HAVE TO COME BACK EVERY
23 NOW AND THEN. HE WOULD FIND SOMETHING WRONG AND
24 COME BACK IN A COUPLE OF WEEKS TO MAKE SURE THAT WE,
25 YOU KNOW, SOLVED THE PROBLEM AND BUT THEY NEVER TOOK

1 THE "A" OFF OUR DOOR, NO.

2 Q. NOW, IN 2011, DID THE GROCERY STORE DEVELOP ANY
3 PROBLEMS WITH THE DRAINS?

4 A. YES, MA'AM.

5 Q. CAN YOU TELL THE COMMISSIONER ABOUT THAT?

6 A. WITH THE DRAIN SYSTEM?

7 Q. YEAH, WHAT WAS GOING ON?

8 A. WELL, WE HAD A CLOGGED DRAIN, AND IT GOT CLOGGED,
9 AND WE CALLED THE PLUMBER, AND IT WOULD GET CLOGGED
10 AGAIN, AND WE WOULD CALL THE PLUMBER AGAIN.

11 Q. AND WHEN YOU SAY IT WAS CLOGGED, WAS IT CLOGGED TO
12 THE EXTENT WHERE YOU HAD ANKLE DEEP WATER?

13 A. NO, MA'AM. NOT TO MY KNOWLEDGE, NO, MA'AM. NO,
14 MA'AM. I NEVER SAW ANKLE DEEP WATER.

15 Q. WHAT -- CAN YOU DESCRIBE THE DRAIN; WAS IT JUST
16 AROUND THE -- THE WATER, WOULD IT BE AROUND THE
17 DRAIN AREA OR HOW ---

18 A. YEAH, IT WOULD HAPPEN WHEN THE GIRLS WOULD CLEAN THE
19 FLOOR AT NIGHT WITH THE WATER HOSE AND SQUEEGEE, AND
20 THE WATER WOULD BE SLOW TO GO DOWN, AND THEY WOULD
21 GET THERE IN THE MORNING, AND THERE WOULD BE SOME
22 WATER STILL SITTING AROUND THE DRAIN.

23 Q. AND HOW BIG WAS THIS DRAIN?

24 A. THE DRAIN ITSELF WAS -- I GUESS IT WAS ABOUT FOUR
25 INCHES IN DIAMETER, SOMEWHERE AROUND THERE.

1 Q. AND HOW BIG DID THE WATER EXTEND FROM THE DRAIN?

2 A. I MEAN, I WOULD SAY THERE MIGHT BE A GALLON OR TWO
3 OF WATER ON THE FLOOR, MAYBE MORE. IT'S KIND OF
4 HARD. I MEAN, NOT MUCH MORE THAN THAT IF IT WAS,
5 BUT...

6 Q. AND CAN YOU TESTIFY AS TO WHETHER OR NOT THAT
7 PROBLEM EXTENDED OVER A PERIOD OF THREE YEARS AS
8 SUGGESTED BY ONE OF THE ---

9 A. I DON'T THINK IT WAS THREE YEARS, NO. WE FINALLY
10 GOT A PLUMBER TO COME IN BECAUSE IT KEPT HAPPENING
11 OVER AND OVER AGAIN. WE HAD SPENT A PILE OF MONEY
12 ON A PLUMBER. WE FINALLY GOT ONE TO COME IN FROM
13 SUMTER AREA, WHICH IS WHERE OUR HOME OFFICE IS, AND
14 HE CAME AND HE HAD TO GO TO THE BACK ROOM. IT WAS
15 ACTUALLY SOMETHING IN THE DRAIN LINE IN THE BACK,
16 AND HE HAD TO DIG UP THE CEMENT AND CHANGE OUT THE
17 PIPES AND STUFF.

18 Q. AND HOW DID THAT IMPACT THE DELI; WAS IT A STRONG
19 SMELL OR ANYTHING OF THAT NATURE?

20 A. NO, MA'AM. I DIDN'T SMELL ANYTHING, NO.

21 Q. DID YOU RECEIVE ANY COMPLAINTS FROM CUSTOMERS ABOUT
22 THAT?

23 A. NO. NO, AND IF IT WAS A SMELL, THEY WOULD HAVE
24 SMELLED IT. IT BEING AN OPEN AREA. THE CUSTOMERS
25 WERE NOT FAR FROM THE DRAIN.

(INTERRUPTION - CELL PHONE RINGING)

BY COMMISSIONER JAMES:

_____. LET'S STOP FOR JUST A SECOND.

(OFF THE RECORD)

BY COMMISSIONER JAMES:

_____. WE ARE BACK ON THE RECORD.

DIRECT EXAMINATION RESUMED BY MS. MILLER:

Q. BEFORE 2011, DO YOU RECALL MS. SOWELL BEING PLACED OUT OF WORK FOR AN EXTENDED PERIOD OF TIME FOR HAVING HEALTH PROBLEMS?

A. SHE WAS OUT ONE TIME WITH HER ANKLE. I DON'T REMEMBER HOW LONG. I HAVE NO EARTHLY IDEA HOW LONG SHE WAS OUT, AND SHE WAS OUT ONE TIME, AND SHE TOLD ME SHE WAS DIAGNOSED WITH PNEUMONIA. I DON'T REMEMBER IF THAT WAS BEFORE 2011 OR AROUND 2011. I HAVE NO IDEA.

Q. OKAY. FROM THE YEARS 2011, '12 AND '13, DID SHE COME TO YOU REQUESTING TO BE REFERRED TO ANOTHER DEPARTMENT?

A. NO, MA'AM.

Q. AND DID SHE COME TO YOU IN 2011, '12 OR '13 INDICATING THAT THE CHEMICALS WERE CREATING SOME TYPE OF PROBLEM FOR HER?

A. NO, MA'AM.

Q. LET'S TALK ABOUT JANUARY 2014. DID MS. SOWELL COME

1 TO YOU DURING THAT TIME PERIOD?

2 A. WELL, SHE WAS -- SHE CAME TO ME ---

3 **BY COMMISSIONER JAMES:**

4 _____ I'M SORRY, THE TIME PERIOD AGAIN?

5 **BY MS. MILLER:**

6 JANUARY 2014.

7 **BY COMMISSIONER JAMES:**

8 _____ OKAY.

9 **THE WITNESS ANSWERS:**

10 A. SHE CAME TO ME AND SHE WAS GOING OUT OF WORK IN
11 JANUARY OF 2014. THE DOCTOR WAS GOING TO TAKE HER
12 OUT OF WORK FOR THREE MONTHS, AND ---

13 **DIRECT EXAMINATION RESUMED BY MS. MILLER:**

14 Q. WHAT WAS YOUR UNDERSTANDING AS TO WHY SHE WAS TAKEN
15 OUT OF WORK?

16 A. MY UNDERSTANDING WAS THAT SHE WAS GOING TO HAVE HER
17 LUNGS SCRAPED, AND THEY WERE GOING TO FIND -- TRY TO
18 FIGURE OUT WHAT WAS GOING ON, WHY SHE COULDN'T EVER
19 GET NO BETTER, AND I SAID, "WELL, OKAY, THAT'S
20 FINE." WE HAD, YOU KNOW, SOMEBODY ELSE TRAINED THAT
21 COULD DO, YOU KNOW, WHAT SHE WAS DOING, AND SHE WENT
22 OUT OF WORK. IT WAS THE BEGINNING OF JANUARY. I'M
23 NOT EXACTLY SURE WHAT DAY IT WAS.

24 Q. DID SHE GIVE YOU ANY INDICATION THAT SHE WAS GOING
25 OUT OF WORK BECAUSE OF ANYTHING RELATED TO HER

1 EMPLOYMENT OR HER HAVING PROBLEMS WITH THE CHEMICALS
2 AT WORK?

3 A. NO, MA'AM.

4 Q. ALL RIGHT. AND WHEN DID YOU HEAR FROM HER AGAIN?

5 A. I WANT TO SAY IT WAS IN MARCH. SHE CAME TO ME, AND
6 I ASKED HER HOW SHE WAS DOING AND HOW EVERYTHING
7 WENT, AND SHE SAID THAT SHE DIDN'T HAVE HER LUNGS
8 SCRAPED, THAT SHE DIDN'T REALIZE SHE COULD FEEL SO
9 GOOD NOT -- NOT WORKING.

10 Q. AND DID YOU RESPOND TO THAT AT ALL?

11 A. I SAID "WELL, YOU KNOW, I PROBABLY WOULD -- I WOULD
12 FEEL PRETTY GOOD, TOO, IF I DIDN'T HAVE TO WORK
13 EVERY DAY," BUT I TOLD HER I WAS GLAD SHE WAS
14 FEELING BETTER, AND SHE TOLD ME THAT SHE HAD BEEN TO
15 THE DOCTOR, AND SHE WAS TRYING TO FIGURE OUT A WAY
16 FOR HER, YOU KNOW, NOT TO COME BACK TO WORK.

17 Q. AND AT THAT TIME, DID SHE REQUEST WORKERS'
18 COMPENSATION, OR WHAT HAPPENED?

19 A. I DON'T THINK IT WAS THAT PARTICULAR DAY. I WANT TO
20 SAY IT WAS A COUPLE OF DAYS LATER, AND SHE CAME BACK
21 TO ME, BECAUSE I REMEMBER I WAS STANDING ON THE BACK
22 AISLE, AND SHE CAME TO ME AND ASKED ME TO FILL OUT A
23 WORKMAN'S COMP FORM, AND I SAID "REALLY?" YOU KNOW,
24 I DIDN'T UNDERSTAND WHY I HAD TO FILL OUT A
25 WORKMAN'S COMP FORM. SO, I WENT AND CALLED MARIE

1 STEELE, WHICH IS -- SHE WORKS FOR BYNAM INSURANCE,
2 WHICH IS OUR INSURANCE COMPANY, AND SHE SAID "YEAH,
3 IF SHE HAS ASKED YOU TO FILL ONE OUT, YOU HAVE TO
4 FILL ONE OUT," AND I SAID, "WELL, I'M NOT QUITE SURE
5 HOW TO FILL THIS OUT BECAUSE I DON'T HAVE A DATE OF
6 ACCIDENT OR ANYTHING." AND SO, SHE ADVISED ME HOW
7 TO FILL IT OUT.

8 Q. WHEN DID YOU FIRST BECOME AWARE THAT SHE WAS
9 CLAIMING TO HAVE BREATHING PROBLEMS THAT WERE TIED
10 TO HER EMPLOYMENT?

11 A. THAT PARTICULAR DAY.

12 Q. OKAY.

13 A. WHATEVER DAY THAT WAS, YEAH.

14 **BY MS. MILLER:**

15 PERMISSION TO APPROACH, YOUR HONOR.

16 **BY COMMISSIONER JAMES:**

17 _____ CERTAINLY.

18 **DIRECT EXAMINATION RESUMED BY MS. MILLER:**

19 Q. MS. QUICK, ARE YOU FAMILIAR WITH THAT DOCUMENT?

20 A. YES, MA'AM. THIS IS OUR WORKMAN'S COMP FORM.

21 Q. OKAY. IS THAT YOUR SIGNATURE AT THE BOTTOM OF THAT?

22 A. YES, MA'AM, THAT'S MY SIGNATURE.

23 Q. OKAY. AND IN TERMS OF A DATE THAT YOU WOULD HAVE
24 COMPLETED THAT FORM?

25 A. IT SAYS 3/25/14.

1 Q. SO, DOES THAT SOUND LIKE THAT WAS THE DATE THAT YOU
2 WOULD HAVE BECAME AWARE OF A ---

3 A. YES, MA'AM.

4 Q. --- WORKERS' COMPENSATION CLAIM?

5 A. YES, MA'AM.

6 Q. DID MS. SOWELL HAVE ANY OTHER EMPLOYMENT OTHER THAN
7 HER WORK AT PIGGLY WIGGLY?

8 A. FROM WHAT I UNDERSTAND, SHE RUNS A CATERING SERVICE
9 COMPANY.

10 Q. DOES SHE OPERATE THAT CATERING BUSINESS OUT OF
11 PIGGLY WIGGLY AT ALL?

12 A. SHE DIDN'T OPERATE IT OUT OF PIGGLY WIGGLY. SHE
13 BOUGHT SOME FOOD OUT OF PIGGLY WIGGLY FOR HER
14 CATERING.

15 Q. WOULD SHE COOK IT THERE, TOO?

16 A. YES.

17 Q. DOES SHE -- HAVE YOU SEEN HER COME IN PIGGLY WIGGLY
18 SINCE ---

19 A. YES.

20 Q. --- 2014 ---

21 A. YES.

22 Q. --- TO SHOP?

23 A. YES.

24 Q. WHAT TYPE OF EMPLOYEE WAS MS. SOWELL?

25 A. SHE WAS A GOOD DELI MANAGER. SHE -- SHE PULLED A

1 GOOD GROSS PROFIT, AND SHE KEPT THE DELI CLEAN AND
2 SHE TOOK CARE OF HER EMPLOYEES AND HER CUSTOMERS.
3 SHE WAS A GOOD DELI MANAGER.

4 Q. IF SHE WAS ABLE TO RETURN TO PIGGLY WIGGLY IN A SAFE
5 ENVIRONMENT, DO YOU HAVE ANY REASON TO BELIEVE THAT
6 SHE WOULD NOT BE ELIGIBLE FOR REHIRE?

7 A. THAT WOULDN'T BE MY DECISION. THAT WOULD COME FROM
8 ABOVE ME.

9 Q. AND TO YOUR KNOWLEDGE, HAS SHE ASKED TO RETURN TO
10 WORK SINCE MARCH OF 2014?

11 A. NOT TO MY KNOWLEDGE.

12 Q. OKAY.

13 A. NOT TO MY KNOWLEDGE.

14 Q. THANK YOU, MS. QUICK.

15 BY MS. MILLER:

16 THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,
17 YOUR HONOR.

18 BY COMMISSIONER JAMES:

19 _____CROSS.

20 BY MR. MCDANIEL:

21 JUST A MINUTE, COMMISSIONER.

22 BY COMMISSIONER JAMES:

23 _____CERTAINLY.

24 CROSS EXAMINATION BY MR. MCDANIEL:

25 Q. ALL RIGHT. MS. QUICK.

1 A. YES, SIR.

2 Q. LET ME ASK YOU FIRST OFF. DO YOU REMEMBER WHEN MS.
3 SOWELL IN JUNE OF 2011 WENT TO THE HOSPITAL?

4 A. I REMEMBER HER GOING TO THE HOSPITAL, YES. I'M NOT
5 SURE WHEN IT WAS. YES.

6 Q. DID YOU VISIT HER IN THE HOSPITAL?

7 A. I DID VISIT HER IN THE HOSPITAL. I WAS CONCERNED.

8 Q. DID YOU HAVE A DISCUSSION WITH HER ABOUT THE DRAINS
9 IN THE DELI AT THAT TIME?

10 A. ALL I CAN REMEMBER IS I WAS CONCERNED BECAUSE SHE
11 LEFT WORK SICK THAT DAY, WHATEVER THAT DAY IT WAS,
12 AND SHE -- I DID -- I MAY HAVE TOLD HER THAT WE GOT
13 THE DRAINS FIXED. I MEAN, THAT'S ALL I CAN
14 REMEMBER.

15 Q. NOW, LET'S GO BACK -- LET'S FIRST START WITH 2014,
16 THE LAST PART OF YOUR TESTIMONY WHEN YOU SAID THAT
17 YOUR FIRST KNOWLEDGE YOU ARE SAYING OF ANY
18 RELATIONSHIP TO THE DELI OR THE CHEMICALS OR
19 ANYTHING LIKE THAT TO YOUR KNOWLEDGE WAS WHEN YOU
20 FILLED OUT -- SHE CAME TO YOU AND YOU FILLED OUT THE
21 FORM 12-A, WHICH IS THAT WORKERS' COMP FORM?

22 A. UH-HUH.

23 Q. OKAY.

24 A. CORRECT.

25 Q. ALL RIGHT. TELL ME ABOUT HER -- DO YOU KNOW THAT

1 SHE APPLIED FOR DISABILITY? IN OTHER WORDS, DO
2 Y'ALL HAVE SHORT TERM, LONG TERM DISABILITY?

3 A. SHE DOES, YES.

4 Q. OKAY.

5 A. I DO REMEMBER FILLING OUT FORMS.

6 Q. OKAY. AND YOU DO REMEMBER FILLING OUT THE FORMS ---

7 A. UH-HUH.

8 Q. --- THAT ---

9 A. RIGHT.

10 Q. --- SHE WAS CONTINUING TO BE DISABLED?

11 A. YEAH, SHE -- YEAH, I DO REMEMBER THOSE FORMS.

12 Q. RIGHT. OKAY. IN OTHER WORDS, SHE WAS APPLYING
13 UNDER THOSE FORMS. YOU KNOW ABOUT IT, BECAUSE SHE
14 WAS DISABLED FOR WORKING; IN OTHER WORDS, THAT'S WHY
15 YOU GET SHORT AND LONG TERM, RIGHT?

16 A. YEAH, I GUESS, YEAH.

17 Q. OKAY, ALL RIGHT. I JUST WANT TO MAKE SURE. YOU
18 KNOW, I'M NOT TRYING TO TRICK YOU IN THAT REGARD. I
19 JUST WANT TO MAKE SURE THAT YOU DID KNOW -- BECAUSE
20 COUNSEL ASKED YOU ABOUT COMING BACK TO WORK AND THAT
21 TYPE OF THING. YOU KNOW THAT AFTER THAT, SHE WAS
22 CONTINUING TO FILE FOR AND CLAIM THAT SHE WAS
23 DISABLED DUE TO HER LUNG CONDITION, RIGHT?

24 A. I GUESS. I MEAN, I DON'T KNOW WHY SHE WAS DISABLED.

25 Q. WELL, OKAY. WELL, LET'S TALK ABOUT THIS. NOW,

1 LET'S TALK ABOUT HER CONDITION IN 2011, 2012, 2013
2 AND 2014. TELL ME ABOUT HER LUNG CONDITION AS FAR
3 AS YOU SEEING HER IN THE OFFICE. DID SHE COME TALK
4 TO YOU ABOUT IT? HOW BAD WAS SHE? HOW MUCH TIME
5 DID SHE HAVE TO TAKE OFF TO GO SEE THE DOCTOR?

6 A. I DON'T KNOW. I CAN'T ANSWER THAT.

7 Q. DID SHE GIVE YOU -- DID SHE BRING IN WORK EXCUSES TO
8 YOU?

9 A. SHE DID EVERY TIME SHE CAME BACK TO WORK, SHE
10 BROUGHT ME A WORK EXCUSE RELEASING HER BACK TO WORK.

11 Q. AND WHY WAS SHE -- WHY WERE THOSE WORK EXCUSES; WHAT
12 PROBLEM WAS SHE HAVING THAT WAS REQUIRING HER TO GO
13 OUT OF WORK?

14 A. THOSE WORK EXCUSES DIDN'T TELL ME WHAT PROBLEMS SHE
15 WAS HAVING.

16 Q. OKAY. ALL RIGHT. YOUR TESTIMONY IS THAT -- WELL,
17 OKAY. YOU KNOW WHEN -- WE KNOW THAT SHE WENT TO THE
18 HOSPITAL SOME TIME IN JUNE 2011.

19 A. UH-HUH.

20 Q. OKAY. AND AFTER THAT, WE KNOW THAT SHE WAS TREATED
21 AND SHE WAS -- HOW MUCH TIME WOULD YOU SAY THAT SHE
22 WAS OUT OF WORK AFTER THAT?

23 A. I CAN'T ANSWER THAT TRUTHFULLY RIGHT HERE.

24 Q. OKAY. WERE THERE PERIODS OF TIME THAT SHE WAS TAKEN
25 OUT OF WORK FOR A COUPLE OF WEEKS?

1 A. (NO VERBAL RESPONSE)

2 Q. DO YOU REMEMBER A DISCUSSION ABOUT A TEST THAT SHE
3 HAD AND THEY WANTED HER TO STAY AWAY FROM WORK?

4 A. I THOUGHT THAT WAS -- NO, I DON'T. I DON'T.

5 Q. OKAY.

6 A. I THOUGHT THAT WAS HAPPENING IN 2014. I REALLY
7 DON'T.

8 Q. WHAT KIND OF PROBLEMS TO YOUR OBSERVATION WAS SHE
9 HAVING WITH HER LUNGS BETWEEN 2011 AND 2014?

10 A. I REALLY DON'T KNOW. I DON'T KNOW WHAT KINDS OF
11 PROBLEMS SHE WAS HAVING WITH HER LUNGS.

12 Q. WELL, WE KNOW THE DOCTORS TOOK HER OUT IN JANUARY,
13 AND YOU KNEW ABOUT THAT?

14 A. YEAH, I DO KNOW THAT. SHE TOLD ME SHE WAS HAVING
15 HER LUNGS SCRAPED SO THEY COULD FIGURE OUT WHAT WAS
16 GOING ON ---

17 Q. OKAY. SO, ---

18 A. --- IN 2014.

19 Q. OKAY. AND THAT IMPLIES TO ME WHEN YOU SAY THAT SHE
20 WAS TRYING TO SEE IF THEY COULD FIGURE OUT WHAT WAS
21 GOING ON, ---

22 A. THAT'S WHAT SHE TOLD ME.

23 Q. --- YOU KNEW THERE WAS SOMETHING GOING INTO THAT
24 CONVERSATION THAT THERE WAS SOMETHING WRONG WITH HER
25 LUNGS?

1 A. I DON'T KNOW. I DON'T -- I DIDN'T HAVE HER -- I
2 DON'T KNOW. YES, I GUESS WHEN SHE TOLD ME THAT, I
3 GUESS I KNEW SOMETHING WAS WRONG WITH HER LUNGS.

4 Q. OKAY. AND SO IS IT YOUR TESTIMONY YOU HAD NO
5 CONVERSATIONS THROUGHOUT 2011, 2012, 2013, 2014 AS
6 TO HER HAVING ANY SIGNIFICANT PROBLEMS WITH HER
7 LUNGS?

8 A. I KNOW IT WAS HARD FOR HER TO CATCH HER BREATH THAT
9 PARTICULAR DAY SHE LEFT TO GO TO THE HOSPITAL.

10 Q. THAT PARTICULAR ---

11 A. YES, WHATEVER DAY THAT WAS.

12 Q. SO, AFTER THAT, SHE DIDN'T HAVE TO LEAVE WORK ON
13 OCCASION TO GO TO SEE HER DOCTOR?

14 A. I MEAN, SHE MAY HAVE LEFT WORK TO GO SEE A DOCTOR.
15 I DON'T -- I DIDN'T ASK WHY OR WHAT OR WHEN OR --
16 NO.

17 Q. WELL, I MEAN, YOU'RE THE GENERAL STORE MANAGER?

18 A. RIGHT. I AM THE STORE OPERATOR.

19 Q. AND SHE REPORTS DIRECTLY TO YOU?

20 A. SOMETIMES, YES.

21 Q. AND SHE CAN'T JUST -- CAN'T WALK OUT OF THAT STORE
22 WITHOUT LETTING YOU KNOW SHE IS LEAVING?

23 A. NO -- YES. I MEAN, A LOT OF PEOPLE LEAVE TO GO TO
24 DOCTOR'S APPOINTMENTS. I DON'T ASK THEM WHY THEY
25 HAVE TO GO TO THE DOCTOR.

1 Q. OKAY. WELL, SO, YOUR TESTIMONY IS YOU DIDN'T KNOW
2 ABOUT HER LUNG CONDITION?

3 A. I KNEW SHE HAD A BREATHING ISSUE.

4 Q. OKAY.

5 A. BUT, NO, I DIDN'T KNOW SHE HAD A SERIOUS LUNG ISSUE,
6 NO.

7 Q. WELL, HERE AGAIN, I'M NOT TRYING TO -- I'M NOT
8 TRYING TO PLAY SEMANTICS. I'M NOT TRYING TO TRICK
9 YOU FROM THE STANDPOINT OF USING THE WORD LUNG. YOU
10 KNOW, YOU KNEW SHE HAD A BREATHING PROBLEM?

11 A. YES, I DO KNOW SHE HAD A BREATHING ISSUE.

12 Q. AND SHE -- HOW WOULD YOU DESCRIBE HER CONDITION IN
13 2011 AS COMPARED TO 2014 RIGHT BEFORE ---

14 A. I CAN'T ANSWER THAT. I'M NOT A DOCTOR. I CAN'T
15 ANSWER THAT. I DON'T KNOW. I DON'T KNOW.

16 Q. ALL RIGHT. SO, SHE DIDN'T COME TO YOU IN NOVEMBER
17 2013; Y'ALL HAD NO SPECIFIC DISCUSSION ABOUT THE
18 FACT THAT THE DOCTOR WANTED TO TAKE HER OUT OF WORK?

19 A. RIGHT. IN JANUARY, SHE DID TELL ME THAT. IN
20 JANUARY, THE DOCTOR WANTED HER TO COME OUT OF WORK
21 IN JANUARY FOR THREE MONTHS TO HAVE HER LUNGS
22 SCRAPED SO THEY COULD FIGURE OUT WHAT WAS GOING ON.

23 Q. OKAY. NOW, ---

24 A. BUT I ---

25 Q. --- SO -- I'M SORRY, GO AHEAD.

1 A. GO AHEAD. GO AHEAD.

2 Q. I DIDN'T MEAN TO INTERRUPT YOU.

3 A. THAT'S ALL RIGHT. GO AHEAD.

4 Q. GO AHEAD.

5 A. I DON'T EVEN REMEMBER WHAT I WAS GOING TO SAY.

6 Q. OKAY. SO, NOW, IT WAS IN NOVEMBER YOU HAD THE
7 DISCUSSION ABOUT GOING OUT IN JANUARY?

8 A. RIGHT.

9 Q. OKAY. DO YOU REMEMBER ANY DISCUSSION WITH HER ABOUT
10 THAT SHE HAD TALKED THE DOCTOR INTO LETTING HER
11 FINISH THROUGH CHRISTMAS BECAUSE IT WAS SUCH A
12 CRUNCH FOR Y'ALL WITH ALL THE WORK THAT WOULD HAVE
13 TO BE DONE IN THE DELI?

14 A. YES, SHE TOLD ME SHE ASKED THE DOCTOR COULD SHE WAIT
15 UNTIL JANUARY SO SHE COULD GET THROUGH WITH THE
16 HOLIDAYS.

17 Q. OKAY.

18 A. WHICH IS THE REASON WHY SHE WAS GOING OUT IN
19 JANUARY.

20 Q. NOW, WHY DID THE DOCTOR WANT TO TAKE HER OUT OF
21 WORK?

22 A. SO THEY COULD FIGURE OUT WHAT WAS GOING ON WITH HER
23 LUNGS.

24 Q. OKAY. BUT IT'S YOUR TESTIMONY THAT SHE -- YOU HAD
25 NO INDICATION THAT THIS WAS -- THAT THE DOCTORS WERE

1 EVEN THINKING THAT THIS WAS IN SOME WAY RELATED TO
2 HER JOB?

3 A. NO, I HAD NO INDICATION, NO.

4 Q. OKAY, ALL RIGHT. AND YOU HAVE NO RECOLLECTION OF
5 HER TELLING YOU ANYTHING ABOUT HER PROBLEMS IN 2011
6 THROUGH 2013?

7 A. NO, NOT, UH-UH.

8 Q. AND THAT THE DOCTORS WERE EVEN SUSPICIOUS THAT IT
9 MIGHT BE FROM THE CHEMICALS ---

10 A. NO.

11 Q. --- AND STUFF AT WORK?

12 A. NO, I HAD NO INDICATION OF THAT, NO.

13 Q. OKAY. NOW, LET ME GO BACK -- LET ME GO BACK A
14 LITTLE BIT FURTHER, AND LET ME CONFIRM THE
15 TESTIMONY. OF COURSE, WHERE DO YOU SPEND MOST OF
16 YOUR TIME DURING THE DAY AS A GENERAL MANAGER OF THE
17 STORE?

18 A. THROUGHOUT THE GROCERY DEPARTMENT UP FRONT.

19 Q. OKAY. HOW LATE IS THE DELI OPEN?

20 A. UNTIL 6:00 P.M. THEY'RE USUALLY GONE BY 7:00 P.M.

21 Q. OKAY. WHAT TIME DO THEY SHUT -- YOU KNOW, I WORKED
22 IN RESTAURANTS. I JUST WANT TO KNOW WHAT TIME DO
23 THEY SHUT DOWN THE COOKING?

24 A. SHUT DOWN THE COOKING PART OF IT, PROBABLY AROUND
25 THREE OR FOUR.

1 Q. OKAY.

2 A. I MEAN, I GUESS IT WOULD DEPEND ON WHAT DAY IT IS

3 AND HOW BUSY YOU ARE.

4 Q. OKAY. AND BEING THE GENERAL MANAGER OF A

5 SUPERMARKET, YOU'RE PRETTY MUCH AWARE THAT IT TAKES

6 A PRETTY GOOD WHILE TO SHUT DOWN THE KITCHEN AND

7 CLEAN IT UP?

8 A. YES.

9 Q. THE GREASE AND ALL THAT GOOD STUFF?

10 A. YES.

11 Q. YEAH, OKAY. SO, YOU DON'T -- IT COULD BE SHUT DOWN

12 AND CLEANED UP BEFORE AS FAR AS THE COOKING PART OF

13 IT GOES BEFORE MS. SOWELL WOULD LEAVE, WOULDN'T IT?

14 A. ON SOME DAYS, MAYBE. I DON'T KNOW. I CAN'T ANSWER

15 THAT TRUTHFULLY.

16 Q. OKAY. SO, IN OTHER WORDS, YOU NEVER WERE AROUND

17 BACK IN THE BACK TO SUPERVISE; THAT WAS HER JOB TO

18 SUPERVISE?

19 A. I WASN'T, NO -- SHE WAS THE DELI MANAGER.

20 Q. AND THAT WAS HER JOB TO SEE THAT IT WAS CLEANED UP

21 AND EVERYTHING WAS TAKEN CARE OF?

22 A. IT WAS HER JOB TO MAKE SURE IT WAS DONE, YES.

23 Q. OKAY. ALL RIGHT. NOW, WHEN YOU WERE HAVING

24 PROBLEMS WITH THE -- AND WE'VE ALL AGREED NOW THAT

25 THERE BECAME A TIME SOMETIME AROUND 2011 THAT YOU

1 STARTED HAVING MORE OF A PROBLEM WITH BACKUP; LET'S
2 JUST PUT IT THAT WAY. WOULD THAT BE A FAIR
3 STATEMENT?

4 A. YEAH, WE HAD A DRAIN ISSUE, YES.

5 Q. OKAY. ALL RIGHT, NOW, AND YOUR -- NOW, I WANT TO BE
6 FAIR TO YOU.

7 A. OKAY.

8 Q. ALL RIGHT. AND -- BECAUSE WHAT WE WANT IS YOUR
9 TESTIMONY ---

10 A. RIGHT.

11 Q. --- AND WHAT YOU KNEW. NO MATTER WHAT EACH SIDE IS
12 TRYING TO DO, WHAT WE WANT TO DO IS -- HOW MUCH OF
13 THE TIME WERE YOU BACK THERE WHEN THEY WERE CLEANING
14 THIS UP?

15 A. CLEANING WHAT UP, THE DELI?

16 Q. CLEANING UP THE DELI.

17 A. ON A DAILY BASIS?

18 Q. AND WHENEVER THEY STARTED HAVING THE DRAINAGE
19 PROBLEM.

20 A. WELL, I WOULD GO BACK THERE TO SEE WHAT THE PROBLEM
21 WAS JUST SO I COULD TELL IT WHEN I CALLED THE
22 PLUMBER SO I COULD TELL HIM WHAT WAS GOING ON.

23 Q. OKAY.

24 A. I DIDN'T GO BACK THERE AND HELP THEM CLEAN IT OR
25 CLEAN THE DELI OR ANYTHING LIKE THAT, NO.

1 Q. OKAY. AND HERE AGAIN, IN FAIRNESS TO YOU, YOU
2 WEREN'T BACK THERE CLEANING THIS UP WHEN IT WAS
3 NEEDING TO BE CLEANED UP?

4 A. NO.

5 Q. FAIR?

6 A. NO.

7 Q. OKAY. SO, THE AMOUNT OF WATER AND SEWAGE -- OR LET
8 ME NOT USE THE WORD SEWAGE WATER, WASTE WATER, OF
9 COURSE, IN THE DELI, YOU WOULD AGREE THEY USE --
10 THEY'VE GOT FRESH VEGETABLES; THEY'VE GOT COOKED
11 VEGETABLES, CORRECT?

12 A. YES.

13 Q. YOU'VE GOT RAW CHICKEN, FRIED CHICKEN?

14 A. YES, YES, YES.

15 Q. THEY'VE GOT ---

16 A. YES.

17 Q. --- RAW MEATS, COOKED MEATS?

18 A. YES. IT'S RAW AND THEN YOU COOK IT.

19 Q. RAW FISH AND COOKED FISH?

20 A. YEAH, IT'S RAW AND THEN YOU COOK IT.

21 Q. SO, IN OTHER WORDS, YOU'VE GOT A BUNCH OF RAW MEATS,
22 VEGETABLES, ALL OF THAT, AND THEN YOU'VE GOT A BUNCH
23 OF COOKED MEATS AND VEGETABLES?

24 A. UH-HUH.

25 Q. AND ALL OF THAT GOES DOWN THE DRAIN; A LOT OF THAT

1 GOES DOWN THE DRAIN?

2 A. WHY WOULD IT GO DOWN THE DRAIN?

3 Q. WELL, I MEAN, LET'S SAY WHEN YOU EVER HAD TO CLEAN
4 THE PANS IN THE DELI?

5 A. OH, YEAH, DEFINITELY.

6 Q. OF COURSE, THERE'S A BUNCH OF FRIED STUFF IN THERE,
7 ISN'T THERE?

8 A. A BUNCH OF GREASE.

9 Q. AND WHENEVER YOU FLOUR CHICKEN, THERE'S A BUNCH OF
10 CHICKEN JUICE AND ALL OF THAT KIND OF STUFF?

11 A. RIGHT.

12 Q. AND YOU WASH ALL OF THAT STUFF OUT IN THE SINK,
13 DON'T YOU?

14 A. RIGHT.

15 Q. OKAY. SO, ALL OF THAT -- YOU WOULD AGREE THAT ALL
16 OF THAT STUFF WENT DOWN THE DRAIN?

17 A. NOT ALL OF IT NOW. YOU HAVE STRAINERS IN THE SINK.

18 Q. OKAY. ALL RIGHT. I AGREE WITH YOU ON THAT. YOU'RE
19 RIGHT. NOW, A LOT OF GREASE, TOO?

20 A. YEAH. WE FRIED A LOT OF CHICKEN IN THAT DELI.

21 Q. ALL RIGHT. NOW, TELL ME HOW MUCH OF THE TIME AND
22 HOW MUCH DRANO THEY WERE USING WHENEVER THEY
23 DEVELOPED THIS PROBLEM WITH THE DRAIN SYSTEM?

24 A. I MEAN, YOU WANT ME TO PINPOINT A TIME AND HOW MUCH,
25 I CAN'T PINPOINT THAT.

1 Q. WELL, I MEAN, WERE THEY -- WHAT WERE THEY DOING TO
2 CORRECT THE PROBLEM WITH THE DRAINS?

3 A. I CALLED THE PLUMBER.

4 Q. OKAY. AND WHEN THEY CALLED -- OF COURSE, THEY HAD
5 TO CLEAN IT UP TO THE BEST THEY COULD BEFORE THE
6 PLUMBER WAS CALLED, RIGHT?

7 A. CLEAN UP WHAT?

8 Q. THE WATER.

9 A. I MEAN, IT WASN'T THAT MUCH WATER AROUND THE DRAIN,
10 BUT, YEAH, I WOULD SAY THEY HAD TO GET A MOP AND MOP
11 IT, YEAH.

12 Q. AND IF I'M -- I DON'T WANT TO MISSTATE YOUR
13 TESTIMONY, BUT I THOUGHT YOU JUST TOLD ME THAT YOU
14 WEREN'T BACK THERE WHILE THEY WERE CLEANING UP ALL
15 THE TIME?

16 A. WELL, I DIDN'T SAY I WAS BACK THERE ALL THE TIME,
17 BUT, YEAH, I WOULD WALK BACK THERE, YES.

18 Q. OKAY, ON OCCASION. SO, ON THE OCCASIONS YOU WERE
19 THERE, YOU ONLY SAW A GALLON OR TWO OF WATER ON THE
20 FLOOR?

21 A. RIGHT.

22 Q. OKAY.

23 A. I MEAN, I DIDN'T SAY GALLONS. I SAID IT COULD HAVE
24 BEEN MORE.

25 Q. OKAY.

1 A. I'M NOT AN EXPERT ON THAT, SO I DON'T KNOW. I CAN'T
2 ANSWER THAT.

3 Q. WELL, HOW MANY -- BASED ON YOUR DISCUSSIONS WITH
4 YOUR DELI MANAGER AND THE PEOPLE BACK THERE, HOW
5 MANY OF THE DRAINS WERE INVOLVED AND WITH YOUR
6 CONVERSATIONS -- WITH THE PLUMBERS AND ALL?

7 A. WELL, OUR DRAIN SYSTEM WENT FROM THE DELI ALL THE
8 WAY TO THE BACK OF THE STORE.

9 Q. WELL, OKAY. WOULD YOU DISAGREE THAT THERE ARE FOUR
10 OR FIVE DRAINS IN THE DELI AREA AND THEN TWO MORE
11 BACK NEXT TO THE FREEZER UNIT, AND THAT Y'ALL WERE
12 HAVING PROBLEMS WITH ALL OF THEM EXCEPT FOR ONE
13 DRAIN? WOULD YOU AGREE WITH THAT?

14 A. NOT ALL THE TIME, NO.

15 Q. OKAY. BUT DID YOU HAVE DISCUSSIONS WITH MS. SOWELL
16 AND WITH THE PLUMBERS AND WITH THE OTHER PEOPLE IN
17 THE STAFF ABOUT THE PROBLEM, ABOUT THE DRAINS THAT
18 WERE INVOLVED AND ---

19 A. YES.

20 Q. --- BACKUP?

21 A. YES.

22 Q. OKAY. SO, STUFF WAS BACKING UP OUT OF AT LEAST FOUR
23 OR FIVE DRAINS ON OCCASION -- MANY OCCASIONS?

24 A. I DON'T REMEMBER FOUR OR FIVE DRAINS, BUT I MEAN,
25 YES. YEAH, I GUESS.

- 1 Q. NOW, I'LL JUST GO TO THE NEXT QUESTION I'VE GOT.
2 AND YOU WERE SAYING THAT YOU WERE CALLING THE
3 PLUMBER, AND I UNDERSTAND YOUR FRUSTRATION, BECAUSE,
4 TRUST ME, I'VE GOT A PROBLEM RIGHT NOW WITH MY
5 COMPUTER THAT I HAVE THOUGHT I HAVE HAD FIXED TIME
6 AND TIME AND TIME AND TIME OVER AGAIN OVER THE LAST
7 THREE MONTHS. SO, I CAN FEEL FOR YOU AS I'VE HAD
8 THE SAME KIND OF PROBLEM, BUT IT WOULD BE THEY WOULD
9 REPORT A PROBLEM, HAVING A PROBLEM. YOU WOULD CALL
10 THE PLUMBER, AND THEY WOULD COME, AND I'M GOING TO
11 USE THE TERM ROTO ROOTER. ARE YOU FAMILIAR WITH THE
12 TERM SNAKE?
- 13 A. UH-HUH.
- 14 Q. YOU KNOW ---
- 15 A. I KNOW EXACTLY WHAT IT IS.
- 16 Q. ALL RIGHT. AND, YOU KNOW, THEY BASICALLY
17 (INDICATES). SO, WHAT THEY WERE DOING IS THEY WERE
18 SNAKING OUT THE DRAIN?
- 19 A. RIGHT.
- 20 Q. THEY WERE PUTTING THAT LONG ---
- 21 A. RIGHT.
- 22 Q. --- METAL LINE IN THERE SNAKING OUT THE DRAIN;
23 THAT'S WHAT THEY WERE GENERALLY DOING?
- 24 A. YES.
- 25 Q. ALL RIGHT. AND YOU WERE HAVING TO REPEATEDLY CALL

1 THEM?

2 A. YES.

3 Q. AND THIS WENT ON FOR A PERIOD, FOR A LONG PERIOD OF
4 TIME. HOW -- I KNOW COUNSEL ASKED YOU DID IT GO ON
5 FOR THREE YEARS. ABOUT HOW LONG A PERIOD OF TIME DO
6 YOU REMEMBER IT WENT ON?

7 A. I WANT TO SAY WE GOT IT FIXED PERMANENTLY IN 2012,
8 BUT I MIGHT BE WRONG.

9 Q. OKAY.

10 A. I'M NOT -- I CAN'T SIT HERE -- BUT I WANT TO SAY IN
11 2012 IS WHEN THE GUYS FROM SUMTER CAME AND FOUND OUT
12 WHAT THE REAL PROBLEM WAS.

13 Q. OKAY. AND THAT WAS -- WAS THAT A BROKEN PIPE?

14 A. NO, IT WAS NOT.

15 Q. OH, IT WAS NOT, OKAY. NOW, LET ME ASK YOU THIS: DO
16 YOU REMEMBER DISCUSSIONS WITH THE PLUMBERS AND
17 HAVING DISCUSSIONS WITH PEOPLE ON YOUR STAFF AND
18 PEOPLE IN THE STORE THAT THE REASON THAT THE SNAKING
19 OUT OF THE DRAINS WAS NOT WORKING WAS BECAUSE IT WAS
20 A BROKEN PIPE AND THAT YOU NEEDED TO TEAR UP THE
21 FLOOR TO GET TO IT?

22 A. YEAH, WE TORE UP THE FLOOR, BUT IT WAS NOT A BROKEN
23 PIPE.

24 Q. OKAY. BUT IT WAS IN 2012 -- THAT WAS IN 2012?

25 A. I THINK SO.

1 Q. OKAY. NOW, MY POINT IT -- MY QUESTION IS THAT
2 BEFORE THAT TIME, DID OTHER PEOPLE TELL YOU THAT IT
3 WAS -- THAT IT WAS SOMETHING ELSE AND YOU NEED TO
4 TEAR UP THAT FLOOR?

5 A. NO, NOT TO MY KNOWLEDGE.

6 Q. SO, THE FIRST TIME YOU KNEW ANYTHING ABOUT TEARING
7 UP THE FLOOR WAS WHENEVER -- YOU DON'T REMEMBER
8 PEOPLE REQUESTING, "MS. QUICK, YOU NEED TO TEAR --
9 WE'RE GOING TO HAVE -- YOU NEED TO GO AHEAD AND TEAR
10 UP THAT FLOOR BECAUSE THIS ISN'T WORKING. THIS IS
11 JUST NOT GETTING THIS THING FIXED"?

12 A. I REALLY DON'T REMEMBER THAT CONVERSATION. I REALLY
13 DON'T.

14 Q. OKAY.

15 A. I KNOW MY BOSS -- WE HAD SPENT A LOT OF MONEY ON
16 PLUMBERS, AND HE FINALLY SENT THE EXPERT FROM SUMTER
17 TO FIGURE OUT THAT WAS THE PROBLEM WAS.

18 Q. I CAN UNDERSTAND HIS FRUSTRATION AS WELL. NOW, YOU
19 SAID THAT SHE KEPT A CLEAN DELI?

20 A. SHE DID.

21 Q. AND I KNOW Y'ALL LIKE A LOT OF RESTAURANTS, YOU TAKE
22 GREAT PRIDE AND TRY TO KEEP THAT "A"?

23 A. WE DO. WE DID.

24 Q. SO, WAS THERE A TIME THAT THE DELI MANAGER -- THAT -
25 - WAS THERE A TIME THAT YOU REMEMBER THAT ONE OF THE

1 PEOPLE IN INSPECTION CAME TO YOU OR GAVE Y'ALL A
2 PERIOD OF 14 DAYS TO GET IT CORRECTED?

3 A. WELL, WE'VE HAD THAT IN THE PAST, YES. I MEAN, WHEN
4 THEY FIND SOMETHING WRONG, THEY GIVE YOU TWO WEEKS
5 TO CORRECT IT, AND THEN THEY COME BACK AND
6 REINSPECT, BUT THEY NEVER PULL THE "A" OFF YOUR
7 DOOR.

8 Q. OKAY, I UNDERSTAND.

9 A. NOT UNLESS THEY COME BACK AND THE PROBLEM IS NOT
10 FIXED.

11 Q. EXACTLY. BUT ONE TIME, THEY WERE -- YOU WERE GIVEN
12 A PERIOD OF TIME TO FIX THE DRAINS, IN OTHER WORDS
13 GET THAT DRAINAGE PROBLEM FIXED?

14 A. I DON'T RECALL THAT. IT MAY HAVE HAPPENED, BUT I
15 DON'T RECALL THAT.

16 Q. OKAY, THAT'S FINE.

17 A. I DON'T RECALL THAT.

18 Q. LISTEN, WE'RE TALKING ABOUT 2011 THROUGH 2016, OKAY.
19 BY THE WAY, HAVE YOU EVER BEEN UNDER OATH BEFORE?

20 A. NO.

21 Q. WELL, MS. QUICK, LET ME JUST TELL YOU, I REMEMBER MY
22 FIRST TIME I WAS UNDER OATH, AND I COULDN'T REMEMBER
23 WHAT COLOR SOCKS I HAD ON. NOW, LET'S GO AHEAD A
24 LITTLE BIT FURTHER. I THINK YOU CAME OVER IN 2005
25 WHEN THE STORE -- MCLEOD IS ACTUALLY AN INDEPENDENT

1 OWNER OF PIGGLY WIGGLYS, AND YOU CAME OVER WITH
2 MCLEOD WHEN THEY BOUGHT THE BENNETSVILLE STORE OR --
3 -

4 A. YES.

5 Q. --- CLOSED THE CHESTERFIELD STORE?

6 A. NO.

7 Q. NOT THE CHESTERFIELD ---

8 A. I CAME -- I WAS IN CHERAW RUNNING THE STORE IN
9 CHERAW ---

10 Q. I SAID ---

11 A. --- WHEN HE BOUGHT THE STORE IN BENNETSVILLE, AND HE
12 SENT ME TO BENNETSVILLE.

13 Q. OKAY. AND MS. SOWELL WAS ALREADY THERE?

14 A. YES.

15 Q. DID GENERALLY MR., WHO WE TALKED TO OUTSIDE, MR.
16 OLIVER HARRINGTON, DID HE COME OVER WITH YOU AT THAT
17 TIME?

18 A. NO.

19 Q. DID HE COME OVER LATER?

20 A. YES.

21 Q. OKAY. SO, HE CAME OVER LATER, AND HE RETIRED, I
22 BELIEVE, IN 2013 OR 2014, OR DO YOU REMEMBER?

23 A. HE RETIRED FROM PIGGLY WIGGLY?

24 Q. YES.

25 A. 2014.

1 Q. OKAY.

2 A. YEAH.

3 Q. ALL RIGHT. NOW, IN ADDITION TO -- IS IT YOUR
4 TESTIMONY THAT NONE OF THE OTHER EMPLOYEES CAME TO
5 YOU AND EXPRESSED CONCERN TO YOU AND HER CONDITION
6 DURING LET'S SAY 2013/2014?

7 A. NONE OF THE OTHER EMPLOYEES CAME TO ME?

8 Q. YEAH.

9 A. ABOUT HER CONDITION?

10 Q. YEAH, ABOUT THAT SHE JUST -- JUST HOW BAD SHE WAS
11 GETTING, AND THEY HAD TO HELP HER. DID YOU KNOW
12 THEY WERE HAVING TO HELP HER?

13 A. NO. I KNEW THE BOYS HAD TO HELP HER LIFT UP SOME
14 HEAVY STUFF IN THE BACK ROOM OFF THE TRUCK.

15 Q. OKAY.

16 A. BUT AS FAR AS HELP HER DO HER JOB? OR I DON'T KNOW
17 WHAT YOU'RE ASKING ME.

18 Q. WELL, YEAH, I'M -- I MEAN, HER CONDITION, THAT SHE
19 WAS GETTING -- MOVING SLOWER AND SLOWER AND HER
20 ABILITY TO JUST DO HER -- WHEN I SAY, YOU KNOW, HER
21 STAMINA FOR A BETTER TERM, WAS SUCH THAT SHE JUST
22 COULDN'T DO IT AS MUCH AS BEFORE. I MEAN, HOW BAD
23 WAS SHE TO YOUR RECOLLECTION RIGHT BEFORE CHRISTMAS
24 WHEN THE DOCTOR WANTED TO TAKE HER OUT OF WORK?

25 A. I DON'T KNOW. I CAN'T ANSWER THAT. I DON'T -- I

1 DON'T KNOW HOW BAD SHE WAS.

2 Q. OKAY. ALL RIGHT. NOW, I THINK YOU'VE ALREADY
3 CONFIRMED THIS, BUT FROM THE TIME YOU BECAME THE
4 STORE MANAGER IN 2005 THROUGH 2011 WHEN YOU WENT TO
5 VISIT HER IN THE HOSPITAL, CORRECT ME IF I'M WRONG,
6 I DON'T REMEMBER ANY PROBLEMS? SHE WAS IN GOOD
7 HEALTH AS FAR AS YOU KNEW?

8 A. WHAT YOU MEAN, BEFORE?

9 Q. BEFORE, YEAH, ALL OF THIS STARTED IN 2011?

10 A. WELL, I MEAN, SHE HAD -- SHE WAS OUT OF WORK IN THE
11 PAST FOR HER ANKLE, AND I GUESS SHE WAS IN GOOD
12 HEALTH. I DON'T KNOW. I DON'T KNOW.

13 Q. ALL RIGHT.

14 A. I DIDN'T ASK HER ON A DAILY BASIS HOW SHE FELT.

15 Q. OKAY. LET ME ASK YOU THIS: WOULD IT BE FAIR TO SAY
16 THAT -- I MEAN, IT APPEARS FROM YOUR TESTIMONY THAT
17 THERE WAS A PERIOD OF TIME THAT SHE STARTED TO BRING
18 YOU REPEATED WORK EXCUSES FOR HER BEING OUT, HAVING
19 TO GO TO THE DOCTOR, AND WOULD THAT -- WOULD IT BE
20 TO YOUR RECOLLECTION THAT ALL OF THAT STARTED AFTER
21 2011?

22 A. TO MY RECOLLECTION, YEAH, THAT'S WHEN SHE STARTED
23 GETTING SICKER, YES.

24 Q. OKAY.

25 A. YEAH. OR, I MEAN, I CAN SAY THAT, YEAH, SHE WAS OUT

1 OF WORK SEVERAL TIMES.

2 BY MR. MCDANIEL:

3 COMMISSIONER, I THINK THAT'S ALL I HAVE. HOLD
4 ON. CAN I HAVE JUST A MINUTE?

5 BY COMMISSIONER JAMES:

6 _____CERTAINLY.

7 BY THE WITNESS:

8 AM I THROUGH?

9 BY MS. MILLER:

10 NO, NOT YET.

11 CROSS EXAMINATION RESUMED BY MR. MCDANIEL:

12 Q. ONE LAST QUESTION. DO YOU REMEMBER MS. SOWELL
13 COMING INTO THE STORE AND BEING SICK AND YOU ASKING
14 HER WHAT WAS CAUSING HER TO BE SICK? DO YOU
15 REMEMBER THAT?

16 A. NO, I REALLY DON'T REMEMBER THAT. I REMEMBER ME
17 ASKING HER WAS SHE OKAY SEVERAL TIMES. SHE SAID
18 "YEAH," YOU KNOW. I DON'T REMEMBER ME ASKING HER
19 WHAT CAUSED IT, NO, I DON'T.

20 Q. OKAY.

21 A. THAT WAS A LONG TIME AGO.

22 Q. ALL RIGHT.

23 BY MR. MCDANIEL:

24 NOTHING FURTHER, COMMISSIONER.

25 BY COMMISSIONER JAMES:

1 RE-DIRECT?

2 RE-DIRECT EXAMINATION BY MS. MILLER:

3 Q. MS. QUICK.

4 A. YES, MA'AM.

5 Q. IN 2011, DID MS. SOWELL COME TO YOU OR ASK PIGGLY
6 WIGGLY TO PAY FOR HER HOSPITAL BILLS AT ALL?

7 A. NO, MA'AM.

8 Q. OKAY. AT ANY ---

9 A. SHE DIDN'T ASK ME.

10 Q. AT ANY POINT IN 2012, WAS PIGGLY WIGGLY OR YOU ASKED
11 TO PAY FOR ANY OF HER MEDICAL EXPENSES?

12 A. NO, MA'AM, NOT TO MY KNOWLEDGE.

13 Q. THE WORK EXCUSES, DID ANY OF THESE WORK EXCUSES
14 STATE THAT SHE WAS RESTRICTED FROM BEING AROUND
15 CHEMICALS OR WAS ---

16 A. NO. IF THEY DID, I WOULD HAVE NOTIFIED SOMEBODY.

17 Q. DID ANY OF THE WORK EXCUSES IDENTIFY HER PROBLEMS OR
18 ANY MEDICATIONS ---

19 A. NO.

20 Q. --- OR ANYTHING?

21 A. NO, THEY JUST ALLOWED HER TO COME BACK TO WORK.

22 Q. WHEN WAS THE FIRST TIME WOULD YOU SAY THAT YOU
23 RECEIVED NOTICE THAT SHE WAS CLAIMING THAT THERE WAS
24 A LINK BETWEEN HER HEALTH PROBLEMS AND HER WORK
25 ENVIRONMENT?

1 A. THE DAY I FILLED OUT THAT WORKMAN'S COMP FORM.

2 Q. AND FROM THE PERIOD OF TIME FROM 2011 THROUGH 2014,
3 WAS SHE STILL WORKING AS A CATERER AS WELL?

4 A. YES, MA'AM.

5 Q. AND SHE WAS PRETTY MUCH STILL WORKING FOR PIGGLY
6 WIGGLY AS WELL?

7 A. RIGHT. YES, MA'AM.

8 **BY MS. MILLER:**

9 THANK YOU.

10 **RE-CROSS EXAMINATION BY MR. MCDANIEL:**

11 Q. HOW DO YOU KNOW SHE WAS DOING THE WORK AT THE
12 CATERING BUSINESS?

13 A. HOW DO I KNOW?

14 Q. UH-HUH.

15 A. WELL, SHE WOULD ORDER THE FOOD -- GET THE FOOD AT
16 THE STORE, AND SHE WOULD TAKE IT, AND SHE WOULD
17 ACTUALLY TALK ABOUT HER CATERING ---

18 Q. RIGHT.

19 A. --- TO OTHER EMPLOYEES, AND I WOULD SEE HER LEAVE
20 WITH THE FOOD, AND SHE WOULD CASH SOME OF HER CHECKS
21 AT THE STORE WHEN SHE GOT PAID.

22 Q. NO QUESTION THAT THEY WERE OPERATING -- THAT SHE WAS
23 OPERATING A CATERING BUSINESS, BUT THE QUESTION I'M
24 ASKING YOU IS ACTUALLY DOING THE WORK OF THE
25 CATERING ITSELF?

1 A. OH, I DON'T KNOW WHO DID THE WORK.

2 Q. OKAY.

3 A. I CAN'T ANSWER THAT.

4 Q. OKAY. THAT'S FINE. THAT'S FINE. AND THAT BRINGS
5 UP ANOTHER THING. TELL ME ABOUT YOUR OBSERVATIONS
6 OF MS. SOWELL AFTER SHE HAS COME IN OVER THE LAST
7 COUPLE OF YEARS. SHE IS ON 14 DIFFERENT TYPES OF
8 MEDICINES. SHE IS ON SHOTS, INJECTIONS TWICE A
9 MONTH. SHE HAS GOT AN EPIPEN IN HER POCKET, WHICH I
10 DON'T KNOW IF YOU KNOW WHAT AN EPIPEN IS.

11 A. I SURE DO; MY HUSBAND HAS ONE.

12 Q. OKAY. ALL RIGHT. SO, TELL ME ABOUT HER CONDITION
13 WHEN YOU SEE HER COME IN THE OFFICE -- I MEAN, INTO
14 THE STORE? DOES SHE STAY AWAY FROM THE MEAT
15 DEPARTMENT?

16 A. NO, I'VE SEEN HER AT THE MEAT DEPARTMENT.

17 Q. OKAY. WELL, DOES SHE GO BY THERE EVERY TIME? WHO
18 ALL IS WITH HER? WHO CARRIES HER BAGS AND THAT KIND
19 OF THING?

20 A. I DON'T KNOW. I DON'T KNOW.

21 Q. YOU DON'T ---

22 A. I MEAN, I'VE SEEN HER WITH HER SISTER IN THERE, AND
23 I'VE SEEN HER WITH HER DAUGHTERS IN THERE. I'VE
24 ALSO SEEN HER BY HERSELF IN THERE.

25 Q. OKAY. THESE WORK EXCUSES THAT COUNSEL REFERRED TO,

1 WHERE WOULD YOU KEEP THOSE?

2 A. WHERE WOULD I KEEP THEM?

3 Q. UH-HUH.

4 A. THEY WOULD GO IN A FILE OR IN A FILE CABINET OR...

5 Q. WOULD THAT BE IN HER FILE?

6 A. YES.

7 Q. WOULD YOU HAVE ANY REASON IF I HAD REQUESTED THOSE
8 WHY ---

9 A. THAT STORE IS CLOSED. I MEAN, THOSE FILES WERE
10 TAKEN TO SUMTER.

11 Q. OKAY, ALL RIGHT. THANK YOU.

12 **BY MR. MCDANIEL:**

13 LET ME SEE, COMMISSIONER. I THINK THAT'S ALL I
14 HAVE. COMMISSIONER, THAT'S ALL I HAVE.

15 **BY COMMISSIONER JAMES:**

16 _____ OKAY. YOU CAN STEP DOWN, MA'AM. THANK YOU.

17 **BY THE WITNESS:**

18 YOU'RE WELCOME.

19 **BY MR. MILLER:**

20 PRESTON, DO YOU HAVE ANY OBJECTIONS TO HER
21 LEAVING?

22 **BY MR. MCDANIEL:**

23 NO, NO -- WELL, WAIT A MINUTE. I HAVE NO
24 OBJECTION TO HER -- YOU MEAN, YOU WANT TO GO AHEAD
25 AND RELEASE HER?

1 BY MS. MILLER:

2 YES.

3 BY MR. MCDANIEL:

4 IF YOU WANT TO RELEASE HER -- IF YOU WANT TO
5 RELEASE HER, THAT'S FINE. SHE'S ALREADY TESTIFIED,
6 AND SHE WAS YOUR EMPLOYER REP. THAT'S FINE.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. LET'S TAKE A SHORT BREAK WHILE YOU
9 GET YOUR NEXT WITNESS.

10 (OFF THE RECORD)

11 BY COMMISSIONER JAMES:

12 _____ IF YOU WILL RAISE YOUR RIGHT HAND, PLEASE.

13 * * * * *

14 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
15 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
16 MATTER HEREIN:

17 ROBERT BENNETT

18 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

19 BY COMMISSIONER JAMES:

20 ALL RIGHT. YOUR WITNESS.

21 DIRECT EXAMINATION BY MS. MILLER:

22 Q. DR. BENNETT, CAN YOU STATE YOUR NAME FOR THE RECORD,
23 PLEASE, SIR.

24 A. ROBERT BENNETT.

25 Q. AND WHERE ARE YOU CURRENTLY EMPLOYED?

1 A. YES.

2 Q. WHERE?

3 A. I PRACTICE FULL TIME FORENSIC SCIENCE AND FORENSIC
4 TOXICOLOGY IN THE HOME BASE OF CHARLESTON, SOUTH
5 CAROLINA.

6 Q. HOW LONG HAVE YOU BEEN DOING THAT?

7 A. ABOUT 25 YEARS NOW.

8 Q. CAN YOU PROVIDE US WITH A SYNOPSIS OF YOUR
9 EDUCATIONAL TRAINING AND EXPERIENCE?

10 A. SURE. I WENT TO PHARMACY SCHOOL AT THE MEDICAL
11 UNIVERSITY OF SOUTH CAROLINA AND OBTAINED A DEGREE
12 AND A LICENSE IN PHARMACY, WHICH IS ESSENTIALLY A
13 DRUG EXPERT AND THEN WENT BACK TO SCHOOL AND
14 OBTAINED A DOCTORATE DEGREE IN THE SAME AREA,
15 PHARMACEUTICAL SCIENCES WITH AN EMPHASIS ON
16 TOXICOLOGY AT THE MEDICAL UNIVERSITY OF SOUTH
17 CAROLINA.

18 Q. OKAY. AND HAVE YOU TESTIFIED BEFORE BEFORE THE
19 COMMISSIONER OR COURTS IN THE STATE OF SOUTH
20 CAROLINA OR OTHER JURISDICTIONS?

21 A. I'VE TESTIFIED MANY TIMES IN A VARIETY OF COURTS
22 FROM FEDERAL COURT, FAMILY COURT, CRIMINAL COURT,
23 EVEN WORKERS' COMP CASES BEFORE UNDER JUDGE
24 CAMPBELL.

25 Q. AND YOUR EXPERTISE WOULD YOU DESCRIBE IT AS FORENSIC

1 TOXICOLOGY?

2 A. CORRECT.

3 BY MS. MILLER:

4 YOUR HONOR, I WOULD LIKE TO MOVE TO HAVE DR.
5 BENNETT RECEIVED AS AN EXPERT IN FORENSIC TOXICOLOGY
6 IF I DON'T HAVE ANY OBJECTIONS FROM OPPOSING
7 COUNSEL.

8 BY MR. MCDANIEL:

9 COMMISSIONER, RIGHT TO CROSS?

10 BY COMMISSIONER JAMES:

11 _____ CERTAINLY.

12 BY MR. MCDANIEL:

13 ON CREDENTIALS.

14 CROSS EXAMINATION BY MR. MCDANIEL:

15 Q. DR. BENNETT, WOULD YOU GO OVER YOUR EDUCATIONAL
16 BACKGROUND AGAIN? YOU SAID YOU GOT A DEGREE IN
17 PHARMACY FROM M.U.S.C.?

18 A. CORRECT.

19 Q. AND THEN YOU GOT A PhD IN PHARMACY?

20 A. CORRECT.

21 Q. I DID NOT HEAR THAT YOU GOT A PhD IN TOXICOLOGY.

22 A. BECAUSE THERE'S NO SUCH THING.

23 Q. OKAY, ALL RIGHT. AND SO, YOUR BACKGROUND IS IN
24 TOXICOLOGY -- I MEAN, EXCUSE ME, IN PHARMACY AND
25 YOU'VE GOT A PhD IN PHARMACY?

1 A. CORRECT, BUT THAT INCLUDES PHARMACOLOGY AND
2 TOXICOLOGY.

3 Q. ALL RIGHT. AND TELL ME -- TELL ME SPECIFICALLY
4 ABOUT YOUR BACKGROUND IN REFERENCE TO CHEMICALS,
5 THAT AREA OF TOXICOLOGY?

6 A. I HAVE ESSENTIALLY STUDIED THOSE MY ENTIRE CAREER.

7 Q. OKAY. SO, BUT IN YOUR REFERENCE TO YOUR TESTIMONY
8 IN FEDERAL COURT AND IN OTHER COURTS, I BELIEVE YOU
9 LIST ON YOUR RESUME THAT YOU ARE AN EXPERT IN THE
10 AREA OF D.N.A., DRUG, ALCOHOL, PATERNITY AND
11 FORENSIC TESTING; IS THAT CORRECT?

12 A. THAT'S THE MAJORITY OF MY DAILY WORK, YES.

13 Q. OKAY. HOW MUCH OF YOUR TIME IS SPENT IN THE AREA OF
14 TOXICOLOGY IN REFERENCE TO INDUSTRIAL CHEMICALS AND
15 IN REFERENCE TO BIOCHEMICAL AGENTS?

16 A. PROBABLY AROUND 20 PERCENT OF THE TIME.

17 Q. ALL RIGHT. WHEN YOU TESTIFIED IN FEDERAL COURT,
18 WHAT TYPE OF TESTIMONY -- WHAT KIND OF CASES HAVE
19 YOU BEEN INVOLVED IN?

20 A. SINCE I'VE DONE HUNDREDS AND HUNDREDS OF CASES, SOME
21 OF WHICH ARE LISTED ON MY C.V., THAT SPECIFIC CASE,
22 I THINK IT WAS A CASE OUT OF GEORGIA IN WHICH THERE
23 WERE -- THERE WAS A DEATH INVOLVED IN WHICH IT WAS
24 TRYING TO DETERMINE WHETHER THE DEATH WAS ACCIDENTAL
25 OR SUICIDE.

1 Q. OKAY. SO, IT WAS IN REFERENCE TO THE CHEMICAL
2 AGENTS IN THE BODY?

3 A. CORRECT, YES.

4 Q. I'M FAMILIAR WITH YOU, I BELIEVE, IN THE PAST IN
5 REFERENCE TO ALCOHOL AND ALCOHOL RELATED ISSUES SUCH
6 AS D.U.I., THOSE TYPES OF THINGS?

7 A. YES, I DO QUITE A BIT OF THAT WORK.

8 Q. AND ALSO IN THE AREA OF PATERNITY?

9 A. YES, I DO A NUMBER OF D.N.A. WORK AS WELL.

10 Q. OKAY. AND IN REFERENCE TO DRUG CASES, AM I RIGHT ON
11 THAT?

12 A. CORRECT.

13 Q. OKAY. SO, YOU JUST REFERRED TO THE FEDERAL CASE.
14 HAVE YOU TESTIFIED IN MORE THAN ONE FEDERAL CASE?

15 A. I BELIEVE SO. IT'S -- I JUST -- I'VE TESTIFIED IN
16 SO MANY DIFFERENT CASES, SO MANY DIFFERENT AREAS, SO
17 MANY DIFFERENT COURTS, I JUST CANNOT RECALL OFF THE
18 TOP OF MY HEAD.

19 Q. THAT'S -- THAT'S ALL RIGHT. I JUST WANTED TO -- I'M
20 REALLY WANTING TO GET YOUR BACKGROUND IN REFERENCE
21 TO SUCH THINGS AS, YOU KNOW, IN OTHER WORDS,
22 BACTERIA, TOXIC MOLD, HOW MUCH EXPERIENCE -- HOW
23 MANY CASES HAVE YOU TESTIFIED IN REFERENCE TO TOXIC
24 MOLD AND REFERENCE TO BACTERIAL INFECTIONS, THAT
25 TYPE OF THING?

1 A. PROBABLY ABOUT A HALF A DOZEN. I'VE DONE QUITE A
2 BIT OF WORK WHERE PEOPLE WERE POISONED BY EATING AT
3 A RESTAURANT, FOOD POISONING AND TESTED FOOD
4 PRODUCTS. ALSO INVOLVED IN CASES WHERE A MOLD HAD
5 INFILTRATED A HOUSE AFTER A FLOODING OR ---

6 Q. INVOLVED IN A CASE WHERE A MOLD HAD INFILTRATED A
7 HOUSE?

8 A. NO, THERE WERE A COUPLE OF CASES.

9 Q. OKAY.

10 A. ONE OF WHICH WAS INVOLVED WHEN THE CHINESE DRYWALL
11 WAS A BIG PROBLEM, AND THERE WAS A LOT OF MOLD
12 INVOLVED IN THAT. I THINK MOST OF THAT WORK I DID
13 WAS IN APARTMENT COMPLEXES.

14 Q. ALL RIGHT. AND JUST TO MAKE SURE THE RECORD IS
15 STRAIGHT, ACCORDING TO YOUR C.V. AND ACCORDING TO
16 THE AREA YOU'VE BEEN ASKED TO BE CERTIFIED IN, YOU
17 HAVE NO BACKGROUND OR EXPERIENCE IN OCCUPATIONAL
18 MEDICINE; IS THAT CORRECT?

19 A. WELL, I'M NOT A PHYSICIAN, SO I DO -- AND I'VE NEVER
20 PRACTICED OCCUPATIONAL MEDICINE.

21 Q. OKAY. BASICALLY, YOU HAVE DONE -- BEEN INVOLVED
22 WITH -- FOR A BETTER TERM, THE TESTING AND ANALYSIS
23 OF THE TESTING; WOULD THAT BE A FAIR STATEMENT?

24 A. NO. THE MAJORITY OF MY EXPERTISE IS ON CONSULTATION
25 INTO THE EFFECTS AND DANGERS OF TOXICOLOGICAL AGENTS

1 ON THE HUMAN BODY.

2 Q. OKAY. SO, YOU'RE NOT ACTUALLY INVOLVED IN THE
3 ACTUAL BLOOD TESTS, THAT KIND OF THING. WHAT YOU'RE
4 INVOLVED IN IS THE TOXICOLOGICAL EFFECTS ON THE
5 HUMAN BODY?

6 A. NO, I'M INVOLVED IN THE TESTING AS WELL. I DO -- I
7 HAVE CLIENTS COME INTO MY OFFICE ON A DAILY BASIS,
8 WHICH I GATHER BLOOD, URINE, HAIR AND DO TESTING ON
9 THOSE AS WELL.

10 Q. ALL RIGHT. THAT'S WHAT I WAS TRYING -- I WAS TRYING
11 TO GET. SO, YOU ARE INVOLVED IN THE TESTING FROM A
12 TOXICOLOGICAL AND PHARMACOLOGY STANDPOINT?

13 A. VERY MUCH SO, YES.

14 Q. NOW, ---

15 A. I'VE PROBABLY HAD 40,000 PEOPLE COME THROUGH MY
16 OFFICE OVER THE PAST 25 YEARS.

17 Q. OKAY. HOW MANY -- YOU SAID, YOU'VE BEEN INVOLVED,
18 YOU BELIEVE, IN A COUPLE OF CASES IN REFERENCE TO
19 MOLD?

20 A. CORRECT.

21 Q. ALL RIGHT. HOW MANY HAVE YOU BEEN INVOLVED IN IN
22 REFERENCE TO EXPOSURE TO INHALATION OF PRODUCTS OR
23 ABSORPTION OF PRODUCTS SUCH AS NEUROTOXINS, THAT
24 TYPE OF THING?

25 A. ARE YOU FOCUSING ON ---

1 Q. FOR EXPOSURE TO SUCH THINGS AS INDUSTRIAL SOLVENTS,
2 PAINTS, THAT TYPE OF THING IN EXPOSURE TO INDUSTRIAL
3 CHEMICALS SUCH AS THE DRANO THAT -- THE VARIOUS
4 CHEMICALS I'M SURE YOU'VE BEEN GIVEN THE INFORMATION
5 ABOUT.

6 A. CORRECT.

7 Q. BUT THE TYPE OF CHEMICALS THEY WERE USING BUT ALSO,
8 YOU KNOW, HER EXPOSURE TO THE TYPES OF STUFF THAT
9 SHE WAS EXPOSED TO IN THE DELI?

10 A. CORRECT. THERE'S BEEN SEVERAL CASES WHERE I'VE BEEN
11 INVOLVED WITH A WORKER'S EXPOSURE TO CLEANING
12 AGENTS. THAT WAS THROUGH THE STEINBERG LAW FIRM.
13 SEVERAL CASES WHERE I'VE BEEN CONSULTED ON AND
14 LOOKING AT THE TOXICOLOGICAL EFFECTS OF CLEANING
15 AGENTS IN A WORKERS' COMP CASE.

16 Q. OKAY. BUT AGAIN, FROM THE STANDPOINT OF -- AND
17 WE'RE TALKING ABOUT THIS FROM THE STANDPOINT OF
18 TOXICOLOGICAL TESTING AND EVALUATION OF THOSE TESTS,
19 AND FROM A TOXICOLOGICAL STANDPOINT, NOT FROM AN
20 OCCUPATIONAL MEDICINE STANDPOINT OR -- AND I KNOW
21 YOU HAVE CLEARLY STATED AND YOU CLEARLY STATE ON
22 YOUR RESUME YOU ARE NOT A MEDICAL DOCTOR, AND YOU
23 ARE NOT HERE TO GIVE A MEDICAL OPINION.

24 A. CORRECT. YES, I WORK CLOSELY WITH PHYSICIANS. THEY
25 RELY ON ME FOR TOXICOLOGICAL INFORMATION, BECAUSE

1 THEIR FOCUS IS ON DEALING WITH THE PATIENT. SO,
2 THEY'RE NOT AN EXPERT IN TOXICOLOGY. I'M NOT AN
3 EXPERT IN OCCUPATIONAL MEDICINE. SO, WE WORK
4 TOGETHER AS A TEAM.

5 Q. DO YOU KNOW DR. GORDON EARLY?

6 A. YES, I DO.

7 Q. OKAY.

8 BY MR. MCDANIEL:

9 I DON'T THINK I HAVE ANY FURTHER QUESTIONS,
10 COMMISSIONER.

11 BY COMMISSIONER JAMES:

12 ____ ANY OBJECTION TO THE QUALIFICATION?

13 BY MR. MCDANIEL:

14 COMMISSIONER, I -- I WOULD OBJECT ON THE BASIS
15 THAT THE ISSUE BEFORE YOU IS IN REFERENCE TO HIS --
16 IN REFERENCE TO THIS LADY'S MEDICAL CONDITION AS
17 STEMMING FROM THESE CONDITIONS. WE HAVE MEDICAL
18 TESTIMONY IN THAT REGARD, AND I WOULD OBJECT TO IT
19 BECAUSE IT REALLY WILL BE AN EXERCISE IN REFERENCE
20 TO ESOTERIC OR IN OTHER WORDS THE CONCEPTS OF
21 FORENSIC TOXICOLOGY. IT HAS NOTHING TO DO WITH THIS
22 PARTICULAR CASE.

23 BY COMMISSIONER JAMES:

24 WELL, IT STILL MAY VERY WELL BE RELEVANT. HE
25 HAS INDICATED HE'S NOT GOING TO TESTIFY AS A DOCTOR.

1 I MEAN, SO THERE IS A DISTINCTION. SO, THE REQUEST
2 IS FOR HIM TO BE CERTIFIED AS AN EXPERT IN FORENSIC
3 TOXICOLOGY OR -- HE IS QUALIFIED ALSO IN THE
4 PHARMACY WITH THE EMPHASIS ON THE TOXICOLOGY, BUT
5 THE REQUEST AS I UNDERSTAND IT IS TO QUALIFY HIM
6 ONLY IN HIS FIELD.

7 BY MR. MCDANIEL:

8 OKAY.

9 BY COMMISSIONER JAMES:

10 _____ AND NOTHING BEYOND THAT.

11 BY MR. MCDANIEL:

12 OKAY. I APPRECIATE IT.

13 BY COMMISSIONER JAMES:

14 _____ IS THAT CORRECT?

15 BY MS. MILLER:

16 THAT'S CORRECT, YOUR HONOR.

17 BY COMMISSIONER JAMES:

18 _____ OKAY, ALL RIGHT.

19 BY MR. MCDANIEL:

20 NOTHING FURTHER, COMMISSIONER.

21 BY COMMISSIONER JAMES:

22 _____ ALL RIGHT. AND HE IS SO QUALIFIED.

23 BY MS. MILLER:

24 THANK YOU.

25 RE-DIRECT EXAMINATION RESUMED BY MS. MILLER:

1 Q. DR. BENNETT, DID YOU HAVE AN OPPORTUNITY TO REVIEW
2 THE MEDICAL RECORDS, DEPOSITION TRANSCRIPTS AND THE
3 EVIDENCE THAT IS PRESENTED IN THIS CASE?

4 A. I DID.

5 Q. AND SPECIFICALLY DID YOU ALSO REVIEW THE REPORTS OF
6 DR. EARLY INCLUDING THE ONE DECEMBER 17TH, 2015, AND
7 MARCH 24TH OF 2016?

8 A. YES.

9 Q. OKAY. DID YOU ALSO REVIEW PIGGLY WIGGLY'S DAILY
10 SAFETY POLICY AND PROCEDURES?

11 A. CORRECT.

12 Q. AND WHAT ABOUT THE M.S.D.S. MANUAL, DID YOU REVIEW
13 THAT AS WELL?

14 A. I DID.

15 Q. WHAT IS YOUR UNDERSTANDING AS TO THE ALLEGATIONS
16 PLACED BY MS. SOWELL IN THIS CASE?

17 A. THAT IN HER EMPLOYMENT AT PIGGLY WIGGLY AS MANAGER
18 OF THE DELI DEPARTMENT THAT THERE WERE MULTIPLE
19 INCIDENCES IN WHICH THERE WERE PROBLEMS IN DRAINAGE
20 OF A LIQUID SUBSTANCE, AND THAT IN HER EFFORT TO
21 FACILITATE THE DRAINAGE OF THIS LIQUID MATERIAL THAT
22 SHE WOULD USE VARIOUS CHEMICALS THAT WERE ACCESSIBLE
23 OR AVAILABLE TO HER TO TRY TO IMPROVE THE DRAINAGE
24 OF THE LIQUID SUBSTANCE OFF THE FLOOR IN THE DELI
25 AREA.

1 Q. AND LET'S DISCUSS I GUESS THE AGENTS. WHAT TYPE OF
2 CLEANING SUPPLIES IS IT TO YOUR UNDERSTANDING THAT
3 SHE WAS USING?

4 A. WELL, JUST TO FINISH UP ---

5 Q. SURE.

6 A. --- THE PREVIOUS QUESTION, IT'S MY UNDERSTANDING
7 THAT HER USE OF THESE AGENTS OR BEING IN THE
8 VICINITY OF THESE AGENTS HAS CAUSED HEALTH
9 CONDITIONS THAT HAVE BEEN ADDRESSED IN THE MEDICAL
10 RECORDS INCLUDING CONDITIONS OF ASTHMA, BRONCHITIS,
11 SARCOIDOSIS AND SOME OTHER LUNG-RELATED CONDITIONS,
12 AND THAT MY ROLE IS TO DETERMINE WHETHER THE
13 EXPOSURE TO THESE CHEMICALS, WHAT EFFECT THAT THEY
14 HAD ON HER CLAIMED MEDICAL CONDITION. NOW, WE CAN
15 GO ON TO THE ACTUAL CHEMICALS THAT SHE WAS --
16 CLAIMED TO HAVE BEEN EXPOSED TO. THE LIST THAT WAS
17 PROVIDED TO ME WAS A DRAIN CLEANER THAT GOES BY THE
18 TRADE NAME DRANO, BLEACH, A PRODUCT THAT IS USED AS
19 A DEGREASER USED TO CLEAN OVENS CALLED MR. MUSCLE, A
20 CLEANER CALLED SPIT FIRE, AND A CLEANER THAT'S SOLD
21 UNDER THE TRADE NAME PINESOL. NOW, IT'S MY
22 UNDERSTANDING THAT THE PRODUCT MR. MUSCLE AND SPIT
23 FIRE ARE PRODUCTS THAT ARE MADE AVAILABLE FOR THE
24 PURPOSE OF CLEANING BY PIGGLY WIGGLY, AND THAT THE
25 DRANO, BLEACH AND PINESOL ARE NOT ON THAT LIST OF

1 APPROVED CLEANING PRODUCTS, BUT SHE MAY HAVE USED
2 THOSE JUST RIGHT OFF THE STORE SHELF.

3 Q. IS IT FAIR TO SAY THAT THE MATERIALS USED BY MS.
4 SOWELL CONSTITUTE I GUESS COMMON NONINDUSTRIAL
5 HOUSEHOLD PRODUCTS SAFE FOR THE GENERAL PUBLIC?

6 A. YES. THESE ARE -- ESPECIALLY THE COMMERCIALY
7 AVAILABLE PINESOL, BLEACH AND DRANO. THESE ARE
8 COMPOUNDS THAT HAVE BEEN AROUND FOR DECADES AND USED
9 ESSENTIALLY BY TENS OF MILLIONS OF PEOPLE AND USED
10 ON A DAILY BASIS WITHOUT ANY -- ON A RELATIVE BASIS
11 ANY SIGNIFICANT TOXICOLOGICAL EFFECT. THEY'RE
12 COMMON PRODUCTS. THEY ARE USED BY ALL TYPES OF
13 PEOPLE IN THE GENERAL PUBLIC. SOME THAT ARE WELL
14 TRAINED IN THE USE OF THESE PRODUCTS AND OBVIOUSLY
15 MANY PEOPLE WHO ARE NOT WHO USE THEM SOMEWHAT
16 HAPHAZARDLY. THE PRODUCT MR. MUSCLE AND SPIT FIRE
17 CONTAIN THE SAME INGREDIENTS THAT ARE AVAILABLE TO
18 THE GENERAL PUBLIC, THE RETAIL, FOR CLEANING
19 PURPOSES. SO, WE'RE NOT DEALING WITH CHEMICALS THAT
20 ARE RELATIVELY EXCEEDINGLY DANGEROUS FROM A
21 RESPIRATORY STANDPOINT.

22 Q. CAN YOU PROVIDE ANY TESTIMONY OR DO YOU HAVE AN
23 OPINION AS TO THE LIKELIHOOD OF WORKING WITH THESE
24 TYPE OF CHEMICALS CAUSING SOMEONE OR CAUSING MS.
25 SOWELL TO DEVELOP ASTHMA?

1 A. WELL, IT IS POSSIBLE. THERE ARE A COUPLE OF THESE
2 PRODUCTS THAT DO VAPORIZE, AND IT'S IMPORTANT TO
3 MAKE NOTE THAT THE CHEMICAL CANNOT IRRITATE THE
4 LUNGS UNLESS IT IS VOLATILE, MEANING THAT A VAPOR
5 FORMS THAT THE IRRITANT CHEMICAL EVAPORATES INTO THE
6 ATMOSPHERE AND THEN IS BREATHED IN TO A SUFFICIENT
7 QUANTITY TO IRRITATE THE LUNGS, WHICH AT THAT POINT
8 COULD CAUSE WHAT'S CALLED A CHEMICAL IRRITATE TYPE
9 ASTHMA AS OPPOSED TO AN IMMUNOLOGICAL TYPE ASTHMA.
10 SO, WHAT I WOULD LIKE TO DO AS A TOXICOLOGIST IN MY
11 EXPERTISE IS TO ACTUALLY GO OVER EACH OF THESE
12 CHEMICALS NAMELY JUST BRIEFLY REVIEWING THE M.S.D.S.
13 SHEETS TO POINT OUT THE ONE OR TWO SPECIFIC POINTS
14 IN THE M.S.D.S. SHEET THAT RELATE TO THE CHEMICAL,
15 BECAUSE THAT'S THE ONLY SURE METHOD TO GET AN
16 UNDERSTANDING OF EXACTLY WHAT THE DANGERS OF THESE
17 CHEMICALS ARE.

18 Q. OKAY, SURE.

19 A. BECAUSE MR. MUSCLE IS A COMPOUND THAT IS APPROVED BY
20 PIGGLY WIGGLY TO USE BY THE EMPLOYEES, THE MANUAL
21 PROVIDED BY PIGGLY WIGGLY STATES THAT IT IS
22 AVAILABLE FOR USE, AND THE MATERIAL SAFETY DATA
23 SHEET THAT IS PART OF THE PIGGLY WIGGLY MANUAL
24 STATES THAT IT -- IT CALLS THE PRODUCT MR. MUSCLE
25 FRYER BOIL OUT, AND IT'S USED TO CLEAN OVENS AND

1 SUCH, YOU KNOW, WHICH IT IS IMPORTANT TO NOTE THAT
2 IT IS NOT USED FOR DRAINS. THAT'S NOT ITS INTENDED
3 PURPOSE. SO, IF IT'S USED TO POUR DOWN ---

4 Q. SO, THAT WOULDN'T HAVE BEEN ANYTHING CONSIDERED --
5 IT SHOULDN'T HAVE BEEN A PART OF THE DRAINAGE?

6 A. CORRECT, YES. IT IS SPECIFICALLY USED TO CLEAN OUT
7 OVENS AND THAT TYPE OF AN ENVIRONMENT, NOT TO BE
8 USED ON THE FLOOR FOR ANY WIDE SPREAD EXPOSURE TO
9 COVER AN ENTIRE FLOOR AREA. BUT ON THE MATERIAL
10 SAFETY DATA SHEET, IT DISCUSSES WHAT MEASURES ARE TO
11 BE TAKEN IF THERE IS CERTAIN EXPOSURE AND THE
12 M.S.D.S. SHEET COVERS EYES, SKIN, INHALATION, AND
13 INGESTION, AND UNDER THE INHALATION SECTION, IT SAYS
14 IF BREATHING IS AFFECTED, REMOVE TO FRESH AIR.
15 THAT'S REALLY ALL YOU HAVE TO DO AS FAR AS THE
16 DANGER OF BEING EXPOSED TO MR. MUSCLE; THAT IS IF
17 BREATHING IS AFFECTED, REMOVE TO FRESH AIR. IT
18 DOESN'T MENTION THAT ANY TYPE OF RESPIRATORY IS
19 REQUIRED BECAUSE MR. MUSCLE DOESN'T PRODUCE VOLATILE
20 CHEMICALS THAT SOMEONE CAN BREATHE IN.

21 Q. SO, CAN YOU PROVIDE TESTIMONY AS TO THE LIKELIHOOD
22 OF CAUSING ASTHMA IF YOU'RE JUST SPRAYING IT A
23 COUPLE OF TIMES AND WIPING IT DOWN; DOES THAT CHANGE
24 YOUR ANALYSIS AT ALL?

25 A. WELL, BEING THAT IT IS NOT A COMPOUND THAT IS

1 VOLATILE AND GETS IN THE ATMOSPHERE, THEN THE
2 LIKELIHOOD OF IT CAUSING ASTHMA IS LOW. ONE THING
3 THAT IT DOES SAY IS "DO NOT MIX WITH AMMONIA, BLEACH
4 OR OTHER CHLORINATED COMPOUNDS," AND I BELIEVE FROM
5 READING THE RECORDS THAT IT WAS MIXED WITH BLEACH
6 AND OTHER CLEANING COMPOUNDS. SO, THAT MIXING COULD
7 PRODUCE VOLATILE GASES FROM THE AMMONIA OR BLEACH,
8 BECAUSE AMMONIA AND BLEACH DO -- DOES EVAPORATE AND
9 DOES PUT AMMONIA AND CHLORINE INTO THE ATMOSPHERE
10 FOR BREATHING IN, WHICH COULD IRRITATE THE LUNGS.
11 SO, IF YOU USE MR. MUSCLE WITH BLEACH, THEN YOU CAN
12 CREATE A CHEMICAL REACTION, WHICH CAN CREATE MORE OF
13 A VAPOR. SO, THE M.S.D.S. SHEET CLEARLY WARNS "DO
14 NOT MIX WITH AMMONIA OR BLEACH OR OTHER CHLORINATED
15 COMPOUNDS." BLEACH IS A CHLORINATED COMPOUND. IN
16 THE M.S.D.S. SHEET WHERE IT LISTS WHAT PERSONAL
17 PROTECTIVE EQUIPMENT IS REQUIRED BASED ON THE
18 CHEMICAL THAT YOU'RE USING, AND IT GOES OVER EYE
19 PROTECTION, HAND PROTECTION, SKIN PROTECTION, AND
20 RESPIRATORY PROTECTION, AND FOR MR. MUSCLE, THE
21 M.S.D.S. SHEET STATES UNDER RESPIRATORY PROTECTION,
22 IT STATES "NO SPECIAL PROTECTIVE CLOTHING IS
23 REQUIRED." SO, THAT EMPHASIZES THAT IT IS NOT A
24 COMPOUND THAT IS VOLATILE AND PUTS CHEMICALS IN THE
25 AIR THAT SOMEONE WOULD BREATHE IN. THE ACTUAL

INGREDIENTS ARE VERY SIMPLE. IT'S ALCOHOL
ETHOXYLATES, WHICH ARE ALCOHOL COMPOUNDS THAT ARE
LESS VOLATILE THAN SAY RUBBING ALCOHOL, WATER, AND
HYDROXY ACETIC ACID, WHICH IS A FORM OF VINEGAR.
SO, IT'S A VERY SIMPLE COMPOUND AS FAR AS ITS
CHEMICAL STRUCTURE. OKAY. THE OTHER COMPOUND SPIT
FIRE, IT'S A HEAVY-DUTY CLEANER AND DEGREASER AND
NOW THIS PRODUCT IS CONCENTRATED, AND THE
INSTRUCTIONS SAY THAT IT IS INTENDED TO BE DILUTED
PRIOR TO USE. NOW, IF IT IS INHALED WITHOUT BEING
DILUTED, THE M.S.D.S. STATES THAT IT MAY CAUSE
IRRITATION TO THE NOSE, THROAT AND RESPIRATORY
TRACT, AND AS FAR AS THE PROTECTION, IT SAYS "IF
THERE IS INSUFFICIENT VENTILATION, THEN SUITABLE
RESPIRATORY EQUIPMENT SHOULD BE WORN." I ALSO
REVIEWED THE M.S.D.S. SHEETS THAT ARE NOT PART OF
THE PIGGLY WIGGLY MANUAL ON THE DRANO AND THE OTHER
COMPOUND, BLEACH AND PINESOL, AND THE DRANO AND
BLEACH DO NOT REQUIRE ANY PROTECTIVE RESPIRATORY
EQUIPMENT, DO NOT CAUSE ANY TYPE OF IRRITATION OF
THE LUNGS IF IT IS USED ACCORDING TO INSTRUCTIONS,
NOT MIXED WITH OTHER CHEMICALS AND IS NOT IN AN
ENCLOSED ENVIRONMENT. THE BLEACH ON THE OTHER HAND
IS A VOLATILE COMPOUND. IT CAN IRRITATE THE LUNG IF
IT IS NOT USED IN A VENTILATED AREA. BUT AT SOME

1 TIME, WE WILL DISCUSS THE ACTUAL AREA IN WHICH THE
2 COMPOUNDS WERE USED TO DETERMINE WHAT TYPE OF
3 VENTILATION WAS THERE.

4 Q. AND I GUESS THIS IS PROBABLY A GOOD TIME TO DO THAT.
5 DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE WORK AREA
6 WHERE MS. SOWELL WORKED?

7 A. I DID. YES. I VISITED THE STORE, WHICH IS NOW A
8 CARL'S GROCERY STORE, AND IT'S STILL IN EXISTENCE AS
9 IT WAS WHEN IT WAS A PIGGLY WIGGLY, AND THE STORE I
10 VISITED. I SPENT SEVERAL HOURS THERE, TOOK A LOT OF
11 PICTURES OF THE STORE AND THE DELI AREA, WHICH THOSE
12 PHOTOGRAPHS ARE AVAILABLE. THE DELI AREA IS AN OPEN
13 ENVIRONMENT. THERE ARE NO WALLS OR ENCLOSURES IN
14 THE DELI AREA. IT'S SIMPLY A LARGE OPEN AREA TO THE
15 STORE WITH A DELI COUNTER HALFWAY IN FRONT OF THE
16 DELI AREA. SO, THE AREA IS WELL VENTILATED. IF
17 THERE WERE SOME SORT OR RELEASE OF VAPORS, THEN THEY
18 WOULD PERMEATE THE ENTIRE STORE RAPIDLY, AND THIS IS
19 WHERE YOU HAVE TO BE CONCERNED FROM A TOXICOLOGICAL
20 EFFECT. THAT IF THOSE -- IF ANY DANGEROUS COMPOUNDS
21 THAT ARE VOLATILE ARE USED IN THAT PARTICULAR AREA
22 THAT THEY WOULD IMMEDIATE GO TO THE H.V.A.C. SYSTEM
23 OF THE BUILDING AND WOULD CIRCULATE INTO THE
24 REMAINDER OF THE STORE. THAT'S BAD FROM AN EXPOSURE
25 TO THE GENERAL PUBLIC AND THE REST OF THE EMPLOYEES,

1 BUT IT'S GOOD FROM A STANDPOINT OF EXPOSURE BY THE
2 EMPLOYEES IN THE DELI AREA BECAUSE THOSE VAPORS ARE
3 NOT GOING TO BE ACCUMULATED, AND THEY'RE NOT GOING
4 TO BE IN AN ENCLOSED ENVIRONMENT. THEY ARE GOING TO
5 DISSIPATE RAPIDLY. SO, A PERSON WOULD NOT BE
6 EXPOSED. EVEN IF THE COMPOUNDS WERE USED
7 EXCESSIVELY AND MIXED TOGETHER AND PRODUCED A
8 VOLATILE TYPE OF GAS IN THE AIR, IT'S NOT GOING TO
9 LAST VERY LONG, BECAUSE IT'S A COMPLETELY OPEN
10 ENVIRONMENT, AND EVEN THE FLOOR IS AN OPEN FLOOR TO
11 THE REST OF THE STORE. SO IF THERE WAS A LIQUID ON
12 THE FLOOR THAT WAS NOT GOING DOWN THE DRAIN, IT
13 WOULD SPREAD TO THE REST OF THE STORE, BECAUSE THE
14 FLOOR IS NOT CONTAINED OR SEALED OFF OR WALLED OFF
15 IN ANY WAY AT ALL EITHER. SO, THE MOST THAT A FLUID
16 WOULD GATHER ON THE FLOOR IS JUST THE AMOUNT THAT
17 WOULD ALLOW A PUDDLE TO BE THERE WITH A SIMPLE
18 SURFACE TENSION OF WATER, YOU KNOW, MAYBE AN EIGHTH
19 OF AN INCH THICK OR SOMETHING, ENOUGH TO GET THE
20 BOTTOM OF YOUR FEET WET, AND THAT'S ABOUT IT.
21 ANYTHING MORE THAN THAT WOULD RUN TO THE REST OF THE
22 STORE. SO, I DID NOTICE IN THE RECORDS THAT THERE
23 WAS SOME DISCUSSION ABOUT ANKLE DEEP FLUID. THAT
24 WOULD BE IMPOSSIBLE IN THIS STORE. I'VE VISITED THE
25 STORE. I SAW THE STORE. IT WOULD BE IN NO WAY

1 POSSIBLE FOR ANKLE DEEP ANY KIND OF LIQUID TO OCCUR
2 IN THE DELI AREA, BECAUSE IT'S ALL FLAT AND
3 CONTIGUOUS WITH THE REST OF THE STORE.

4 Q. OKAY. AND BASED ON YOUR OBSERVATIONS OF THE
5 LOCATION OF THE DELI WHERE SHE WORKED AND REVIEWING
6 THE CHEMICALS THAT WERE AT PLAY HERE, CAN YOU
7 PROVIDE AN OPINION AS TO WHETHER OR NOT HER ASTHMA
8 WOULD HAVE BEEN CAUSED BY THE EXPOSURES AT WORK?

9 **BY MR. MCDANIEL:**

10 OBJECTION. THAT CALLS FOR A MEDICAL OPINION,
11 COMMISSIONER.

12 **BY MS. MILLER:**

13 AND I WILL DISAGREE. I THINK THAT'S FROM A
14 TOXICOLOGICAL STANDPOINT. DR. EARLY WAS CONSISTENT
15 WITH THAT WAS PART OF HIS EXPERTISE AND NOT
16 NECESSARILY THE MEDICAL DIAGNOSIS.

17 **BY THE WITNESS:**

18 I DO WANT TO EMPHASIZE THAT TOXICOLOGY IS THE
19 EFFECT OF DRUGS AND CHEMICALS ON THE HUMAN BODY.
20 THAT'S THE DEFINITION.

21 **BY COMMISSIONER JAMES:**

22 I AM GOING TO ALLOW THE QUESTION. OF COURSE, I
23 RESERVE THE RIGHT WHEN I GO BACK THROUGH THIS IF
24 THERE IS SOMETHING THAT IS NOT WITHIN ANY OF THE
25 EXPERT'S FIELDS, I WILL POINT THAT OUT IN MY

1 DECISION.

2 **BY MS. MILLER:**

3 FAIR ENOUGH.

4 **BY MR. MCDANIEL:**

5 COULD WE ASK -- COULD I ASK THAT MADAM COURT
6 REPORTER READ BACK THE EXACT QUESTION. I UNDERSTAND
7 YOUR RULING, COMMISSIONER. I WOULD JUST LIKE TO ---

8 **BY COMMISSIONER JAMES:**

9 _____ I'M GOING TO ASK MS. MILLER TO REPEAT IT.

10 **BY MS. MILLER:**

11 SURE, I'LL BE GLAD TO.

12 **DIRECT EXAMINATION RESUMED BY MS. MILLER:**

13 Q. JUST BASED ON YOUR OBSERVATION OF THE WORK AREA AS
14 WELL AS THE CHEMICALS AT PLAY AS LISTED ON THE
15 M.S.D.S. SHEET THAT YOU WENT THROUGH, CAN YOU
16 PROVIDE AN OPINION AS TO WHETHER OR NOT MS. SOWELL'S
17 ASTHMA WAS CAUSED BY THE EXPOSURES AT WORK?

18 A. BASED ON THE WORK AREA, THE CHEMICALS IN MY OPINION
19 WOULD NOT CAUSE ASTHMA. HOWEVER, YOU HAVE A TWO-
20 PART QUESTION. BASED ON THE CHEMICALS, IF THE
21 QUESTION WAS WHETHER OR NOT IT COULD CAUSE ASTHMA,
22 SO THE ANSWER TO THAT PORTION IS IT COULD. SO, THE
23 WORK AREA, NO. THE CHEMICALS THEMSELVES, POSSIBLY.
24 BUT THAT'S JUST A GENERAL QUESTION BASED ON ASTHMA
25 AS OPPOSED TO HER SPECIFIC FORM OF ASTHMA.

1 Q. FAIR ENOUGH.

2 A. BECAUSE THERE'S TWO DIFFERENT TYPES OF ASTHMA.

3 Q. EXPLAIN THAT, PLEASE.

4 A. WELL, THERE IS CHEMICAL IRRITANT ASTHMA, IN WHICH IF
5 CHEMICAL IRRITANTS ARE BREATHED INTO THE LUNGS, THAT
6 IRRITATION CAN CAUSE AN ASTHMATIC TYPE OF RESPONSE,
7 AND THEN THERE'S IMMUNOLOGICAL ASTHMA CLOSELY
8 RELATED TO WHAT IS SEEN GENETICALLY IN SOMEONE WHO
9 HAS A GENETIC PREDISPOSITION OR DEVELOPS ASTHMA
10 BECAUSE THEIR PARENTS OR SOME PREVIOUS RELATIVE HAS
11 ASTHMA, AND THEY PASSED THAT DISEASE DOWN TO THAT
12 PERSON. THE DIAGNOSIS BETWEEN THE TWO IS RELATED ON
13 DOING SOME TESTS TO -- LABORATORY TESTS TO LOOK AT A
14 PERSON'S IMMUNE RESPONSE, MAINLY LOOKING AT THEIR
15 IMMUNOGLOBULIN LEVELS, AND THIS WAS ACTUALLY DONE IN
16 THIS CASE IN WHICH THE CLAIMANT'S IMMUNOGLOBULIN
17 LEVELS WERE ANALYZED, AND THEY WERE FOUND TO BE
18 ELEVATED ABOVE NORMAL, A LEVEL OF 248 ON THE I.G.E.,
19 WHICH MEANS THAT IF THERE IS A GENETIC OR A
20 IMMUNOLOGICAL COMPONENT TO THE CAUSE OF THE ASTHMA
21 AS OPPOSED TO JUST SIMPLY A CHEMICAL IRRITATION, AND
22 THEREFORE BASED ON THAT, IT APPEARS IN MY OPINION
23 THAT HER ASTHMA IS LEANING MORE TOWARDS A
24 PREDISPOSITION TO ASTHMA BASED ON HER GENETICS. FOR
25 EXAMPLE, I MENTIONED THAT IT'S PASSED DOWN FROM YOUR

1 PARENTS. WELL, THE RECORDS INDICATE HER FATHER HAD
2 ASTHMA. ALSO, IT INDICATES THAT HER DAUGHTER HAD
3 SARCOIDOSIS, AND THAT IS A DISEASE IN WHICH CELLS
4 BECOME INFLAMED AND BECOME GRANULOMA IN FORM, AND
5 THAT CAN OCCUR IN THE LUNGS AS WELL, AND ---

6 **BY MR. MCDANIEL:**

7 COMMISSIONER, I'M GOING TO OBJECT IN THAT THIS
8 IS OBVIOUSLY MEDICAL EVIDENCE IN REFERENCE TO
9 MEDICINE, AND THE STUDY OF MEDICINE AND IN THE AREA
10 OF BIOLOGY AND IN THE AREA OF, YOU KNOW, INHERITED
11 TRAITS, THAT TYPE OF THING. THIS IS CLEARLY MEDICAL
12 TESTIMONY LEADING TO AND IT'S THE SAME THING, IT'S
13 MEDICAL OPINION IN REFERENCE TO -- THIS IS NOT THE
14 TOXICOLOGICAL EFFECT ON THE BODY. THIS IS -- THIS
15 IS THE TESTIMONY CONCERNING, YOU KNOW, IN OTHER
16 WORDS, SPECIFICALLY RELATED TO MEDICINE. IT'S --
17 YOU KNOW, BUT ANYWAY, I OBJECT TO THIS LINE OF HIS
18 TESTIMONY IN THAT REGARD AND ASK THAT IT BE
19 STRICKEN.

20 **BY COMMISSIONER JAMES:**

21 DO YOU HAVE ANYTHING FURTHER IN RESPONSE BEFORE
22 I RULE?

23 **BY MS. MILLER:**

24 I DO. I THINK IT GOES TO THE HEART OF WHAT DR.
25 BENNETT WAS TESTIFYING TO IN TERMS OF THE

1 TOXICOLOGICAL IMPACT ON THE BODY. I SEE THAT
2 PERFECTLY WITHIN HIS FULL EXPERTISE.

3 **BY COMMISSIONER JAMES:**

4 I UNDERSTAND AT THIS POINT THERE'S A DEFINITION
5 WITH REGARDS TO A PARTICULAR CONDITION. I DON'T
6 FIND IT'S REALLY GIVING A MEDICAL OPINION. AT THIS
7 POINT, IT'S A DEFINITION. WITH REGARDS TO SOME OF
8 THE OTHER QUESTIONING, IT SEEMS TO ME THAT -- AND
9 AGAIN, I WILL REVIEW THE TESTIMONY ENTIRELY, BUT IT
10 SEEMS TO BE THAT IN ORDER TO GIVE AN OPINION IN
11 REGARDS TO TOXICOLOGY, THAT YOU MAY VERY WELL HAVE
12 TO BE ABLE TO DISTINGUISH IT FROM OTHER MATTERS.
13 SO, I'M GOING TO ALLOW THE LINE OF QUESTIONING AT
14 THIS POINT IN TIME.

15 SIR, YOU WERE EXPLAINING THE DEFINITION OF THE
16 CONDITION.

17 **THE WITNESS RESUMES ANSWER:**

18 A. YES, THE TWO TYPES OF ASTHMA THAT CAN OCCUR IN
19 RELATION TO THIS CASE, AND IF THE ASTHMA WAS TRULY
20 CAUSED BY THE CHEMICAL IRRITANTS, THEN UPON MEDICAL
21 EXAMINATION, THEN THE PHYSICIAN WOULD FIND AND THEN
22 BE ABLE TO TAKE THAT INFORMATION AND MAKE A
23 DIAGNOSIS, WOULD FIND A DIFFERENCE BETWEEN AN
24 IMMUNOLOGICAL REACTION AND A NON-IMMUNOLOGICAL
25 REACTION, AND IN THIS PARTICULAR CASE, BEING THAT

1 THE I.G.E. WAS ELEVATED INDICATES THAT THERE IS A
2 GENETIC COMPONENT TO THIS CONDITION. AND THEN I
3 MENTIONED HER FATHER HAD ASTHMA AND HER DAUGHTER HAD
4 SARCOIDOSIS, AND THAT'S -- THE SARCOIDOSIS IS NOT
5 ASTHMA; IT'S A DIFFERENT CONDITION, AND DR. HAMMETT
6 I BELIEVE ACTUALLY -- AND I'M JUST QUOTING THE
7 MEDICAL RECORDS, TENDED TO SAY THAT AFTER EVALUATION
8 OF HER MEDICAL CONDITION THAT IT WAS HER OPINION
9 THAT SARCOIDOSIS IS THE CASE HERE RATHER THAN
10 ASTHMA. SO, IN REVIEWING THE MEDICAL RECORDS, I SAW
11 A LOT OF THE PHYSICIANS TRYING TO DETERMINE WHAT
12 CONDITION SHE ACTUALLY HAD, AND THAT'S DIFFICULT FOR
13 A PHYSICIAN TO DO, AND I WORK VERY CLOSELY WITH
14 PHYSICIANS AND PROVIDE MY TOXICOLOGICAL EXPERTISE IN
15 WORKING WITH THESE PHYSICIANS TO TRY TO DETERMINE
16 WHAT CONDITION A PATIENT ACTUALLY HAS, AND IT'S
17 DIFFICULT WITH CERTAIN CONDITIONS. THERE ARE
18 CERTAIN CONDITIONS THAT CANNOT BE DIAGNOSED WITH AN
19 OBJECTIVE TEST. FOR EXAMPLE, WITH CHOLESTEROL, YOU
20 CAN DO A TEST, AND YOUR CHOLESTEROL IS ELEVATED.
21 CLEAR CUT, BLACK AND WHITE. HOWEVER, WITH SOME
22 CONDITIONS, IT'S NOT THAT CLEAR. FOR EXAMPLE, THE
23 MOST COMMON ONE IS PAIN. THERE IS NO LABORATORY
24 TEST FOR PAIN. YOU HAVE TO RELY ON THE PATIENT
25 TELLING YOU THEY'RE IN PAIN. ANOTHER ONE IS THESE

1 TYPES OF PULMONARY CONDITIONS. A PERSON TELLS YOU
2 THAT THEY ARE COUGHING AND THEY'RE WHEEZING AND THEY
3 HAVE DIFFICULTY IN BREATHING AND SHORTNESS OF
4 BREATH, AND YOU JUST HAVE TO RELY ON THEM TELLING
5 YOU WHAT'S OCCURRING TO MAKE THE DIAGNOSIS. SO,
6 SOMEONE -- AND I'VE WORKED WITH OTHER PHYSICIANS WHO
7 DEAL WITH PEOPLE WHO PSYCHOLOGICALLY MAKE THEMSELVES
8 SICK. IT'S A PSYCHOSOMATIC TYPE OF ILLNESS. SO,
9 THEY DON'T REALLY HAVE ASTHMA. THEY JUST TELL
10 THEMSELVES THEY DO, AND THEY EXHIBIT ALL THE
11 SYMPTOMS. BECAUSE A PERSON CAN EXHIBIT SYMPTOMS TO
12 FIT THE DISEASE, AND THE DOCTOR HAS TO TREAT THAT.
13 SO, THERE CAN BE SITUATIONS WHERE STRONG MEDICINES
14 ARE GIVEN, A VARIETY OF HELP, RESPIRATORY THERAPY
15 CAN COME INTO PLAY, AND TREATING THE CONDITION ALL
16 BECAUSE THE PERSON SAYS THEY HAVE SHORTNESS OF
17 BREATH AND THEY FEEL LIKE THEY HAVE ASTHMA. SO,
18 THERE'S NO DEFINITIVE OBJECTIVE TEST TO DETERMINE
19 THAT. NOW, THERE CAN BE SOME X-RAYS AND SOME LUNG
20 SCANS, AND THAT WAS DONE IN THIS CASE, BUT I RECALL
21 IN THE RECORDS THAT NOTHING ABNORMAL WAS FOUND.
22 THERE WAS SOME LYMPHADENOPATHY THAT WAS FOUND, BUT
23 THAT'S -- LYMPHADENOPATHY IS A DISEASE OF THE LYMPH
24 NODES, AND THEN THEY WERE IN THE CHEST AREA, BUT IT
25 WASN'T IN THE LUNGS THEMSELVES. SO, AS FAR AS A

1 CHANGE IN THE LUNG STRUCTURE, THERE WAS -- I DID NOT
2 SEE ANY DEFINITIVE MEDICAL RECORDS TO SUPPORT THAT.
3 THE I.G.E. LEVEL THAT WAS FOUND OF 248, THERE IS A
4 PAPER THAT WAS PUBLISHED, AND THIS IS A PEER VIEWED
5 SCIENTIFIC PUBLICATION ENTITLED "EVALUATION OF SERUM
6 IMMUNOGLOBULIN E LEVELS AND BRONCHIAL ASTHMA," AND
7 IT TALKS ABOUT I.G.E. LEVELS, AND A LARGE STUDY WAS
8 DONE, AND A CHART WAS CREATED IN WHICH THE I.G.E.
9 LEVELS WERE RELATED TO THE STRENGTH OF THE ASTHMA OR
10 THE DEGREE OF THE ASTHMA, AND THIS IS A READILY-
11 AVAILABLE PUBLICATION AND AVAILABLE TODAY AS WELL.
12 IN THE NORMAL GROUPS, THE I.G.E. LEVEL WAS AROUND
13 150. IF A PERSON HAD MILD ASTHMA, THERE I.G.E.
14 LEVELS ROSE TO AN AVERAGE OF 460. IN MODERATE
15 ASTHMA, THE I.G.E. LEVELS ROSE TO AN AVERAGE OF 700,
16 AND THEN SEVERE ASTHMA ROSE TO A LEVEL OF GREATER
17 THAN 1000. SO, WITH HER I.G.E. LEVEL BEING 248, AND
18 ACCORDING TO THIS LARGE SCALE STUDY, SHE WAS IN THE
19 MILD ASTHMA CATEGORY.

20 Q. LET ME ASK YOU. THERE WAS A QUESTION AS TO MOLD
21 POSSIBLY BEING IN THE DRAINS, AND I KNOW YOU
22 OBSERVED THIS AREA. DO YOU HAVE ANY TYPE OF
23 TESTIMONY TO ADDRESS THAT ISSUE?

24 A. YES. THERE WAS NO TESTING DONE ACCORDING TO THE
25 RECORDS TO SEE IF THERE WAS ANY MOLD THERE. THERE

1 WAS MENTION OF IT. IN MY OPINION, THAT WAS JUST
2 SPECULATION AS BEST. BEING THAT MOLD CAN GROW IN
3 THE ENVIRONMENT WHERE THE CONDITIONS ARE RIGHT. IN
4 OTHER WORDS, THERE HAS TO BE MOISTURE THERE; THERE
5 HAS TO BE A MEDIUM FOR THE MOLD TO GROW ON, A FOOD
6 SOURCE, AND THE TEMPERATURE HAS TO BE RIGHT. SO,
7 MOLD CAN GROW IF ALL THE CONDITIONS ARE RIGHT;
8 HOWEVER, THIS WAS A SITUATION IN WHICH A VARIETY OF
9 CHEMICALS WERE POURED INTO THE DRAIN: BLEACH AND
10 PINESOL AND THESE CLEANERS, AND BLEACH IN SPECIFIC
11 WILL KILL MOLD, AND SO IN MY OPINION THAT -- THERE
12 MOST LIKELY WOULD NOT BE ANY MOLD IN THAT
13 ENVIRONMENT BECAUSE OF THE CHEMICALS THAT WERE USED.
14 IT WOULD KILL THE MOLD. SO, THE LIKELIHOOD OF MOLD
15 BEING IN THE AREA AND BEING IN THE ENVIRONMENT IN MY
16 OPINION IS VERY LOW IF NOT AT ALL. NOW, CERTAINLY,
17 THERE ARE UNSANITARY CONDITIONS WITH THE FLUID OFF
18 THE FLOOR, AND THERE WAS MENTION OF GREASE AS WELL,
19 AND THERE WAS NOTHING IN THE RECORDS TO POINT OUT
20 WHERE THIS GREASE CAME FROM. GREASE IS NORMALLY NOT
21 IN DRAINS. THE ONLY WAY THE GREASE COULD BE THERE
22 IF SOMEONE POURS THE GREASE IN THERE, WHICH IS
23 SOMETHING THAT MAY HAVE OCCURRED IN A DAILY AREA,
24 AND I'LL HAVE TO THROW OUT SOME COMMON SENSE HERE.
25 I WAS ALWAYS TAUGHT NOT TO POUR GREASE DOWN A DRAIN

1 BECAUSE IT WILL CLOG IT. SO, THERE'S NO WAY TO KNOW
2 WHY THAT GREASE WAS THERE, BUT EVEN WITH GREASE
3 THERE, THAT COULD POTENTIALLY CREATE AN UNSANITARY
4 CONDITION, BUT I DON'T THINK BACTERIA AND MOLDS WERE
5 HERE IN THIS SITUATION BECAUSE OF THE CHEMICALS THAT
6 WERE USED TO GO DOWN THE DRAIN.

7 Q. I KNOW YOU'VE HAD THE OPPORTUNITY TO REVIEW THE
8 DEPOSITION TRANSCRIPT IN THIS CASE, AND YOU WERE
9 AWARE THAT MS. SOWELL -- OR ARE YOU AWARE THAT MS.
10 SOWELL RAN A CATERING BUSINESS DURING THIS TIME
11 PERIOD, CORRECT?

12 A. YES. THERE WAS MENTION IN THE RECORD THAT SHE HAD
13 HER OWN BUSINESS WHERE SHE DID HER OWN CATERING,
14 WHICH INVOLVED COOKING AND PREPARING OF FOOD IN HER
15 HOME ENVIRONMENT.

16 Q. WOULD THERE BE ANY -- TO THE EXTENT THAT THERE IS
17 SOME TYPE OF RELATIONSHIP BETWEEN THE COOKING OR THE
18 CHEMICALS AT WORK, WOULD THERE BE ANY WAY TO TELL
19 WHETHER OR NOT THAT WOULD BE COMING FROM THE
20 CATERING VERSUS HER WORK AT PIGGLY WIGGLY?

21 A. THERE WOULD BE NO WAY TO TELL, AND I DO WANT TO
22 MENTION THAT DR. GORDON EARLY ALSO MENTIONED IN HIS
23 REPORT THAT -- AND I'LL QUOTE THE REPORT, "THE EXACT
24 CAUSE OF THE ASTHMA MAY NEVER BE KNOWN." HE STATES
25 THAT THE -- "THAT THERE' SO WAY TO DETERMINE THE

1 CAUSE OF THE ASTHMA." SO, THE ANSWER TO YOUR
2 QUESTION IS THE SOURCE -- ASSUMING THAT THERE -- FOR
3 A MOMENT THAT THERE IS AN EXPOSURE TO THE CHEMICAL
4 THAT CAUSED HER ASTHMA AS OPPOSED TO BE GENETICALLY
5 CAUSED, THERE IS NO WAY TO TELL WHERE THAT OCCURRED
6 FROM. IF SHE'S IN THE CATERING BUSINESS, SHE'S
7 GOING TO BE EXPOSED TO VERY MUCH SOME OF THE SIMILAR
8 COMPOUNDS THAT SHE WOULD BE EXPOSED TO IN THE WORK
9 ENVIRONMENT AT PIGGLY WIGGLY, AND SHE MAY HAVE EVEN
10 BEEN EXPOSED TO SOME CONDITIONS IN HER HOME. I DID
11 NOTICE IN THE RECORDS AT ONE POINT THAT FOR 18 YEARS
12 THAT SHE USED BIO-MASS FUEL IN A STOVE INSIDE HER
13 HOUSE. THAT'S GOING TO -- IF SHE'S EXPOSED TO THAT
14 TYPE OF POTENTIAL SMOKE, THAT'S GOING TO BE MORE OF
15 A CAUSE FOR ASTHMA THAN ANY OF THESE CLEANING
16 COMPOUNDS THAT ARE REFERRED TO.

17 Q. YOU ALSO HAD THE OPPORTUNITY TO OBSERVE AND CONDUCT
18 A SITE VISIT OF THE PIGGLY WIGGLY IN CHESTERFIELD,
19 IN THE TOWN SHE WORKS; IS THAT CORRECT?

20 A. CORRECT, YES.

21 Q. WHAT WAS YOUR ASSESSMENT OF THAT PARTICULAR STORE?

22 A. WELL, I DID LOOK AT EACH AND EVERY AISLE. I WAS
23 ESCORTED TO THE AREAS BEHIND THE SCENES LOOKING AT
24 THE VARIOUS FREEZERS AND STORAGE AREAS AND
25 MECHANICAL ROOMS AND BATHROOMS AND DID A VERY

1 THOROUGH INVESTIGATION OF THE PIGGLY WIGGLY IN
2 CHESTERFIELD. BASED ON THAT, I WAS FROM A
3 TOXICOLOGICAL STANDPOINT WAS ABLE TO PROVIDE A MAP
4 OF THE AREAS IN THE STORE THAT IF SOMEONE HAS SEVERE
5 ASTHMA, AND AGAIN, WE'VE NOT NECESSARILY DIAGNOSED
6 MS. SOWELL WITH SEVERE ASTHMA, BUT IF SOMEONE HAD
7 SEVERE ASTHMA, THERE ARE CERTAIN AREAS THAT A PERSON
8 WOULD WANT TO STAY AWAY FROM TO AVOID POTENTIALLY
9 TRIGGERING AN ASTHMATIC EPISODE, AND THOSE AREAS ARE
10 THE FREEZER AREAS BECAUSE GOING FROM WARM TO A
11 RELATIVELY COLD ENVIRONMENT CAN TRIGGER AN ASTHMA
12 ATTACK. OF COURSE AVOIDING ANY MECHANICAL ROOMS
13 THAT MIGHT HAVE CHEMICALS IN THE AIR THAT MIGHT
14 WOULD TRIGGER AN ASTHMA, BUT TYPICALLY ONLY THE VERY
15 LIMITED PERSON WHO WOULD HAVE TO ENTER A MECHANICAL
16 ROOM. AVOIDING THE AISLE THAT CONTAINS THE BLEACH
17 AND MAINLY THE WASHING MACHINE CLEANERS BECAUSE OF
18 IN MY EVALUATION OF THOSE TYPES OF PRODUCTS AND
19 THEIR CONTAINERS, THEY CAN EMIT STRONG FRAGRANCES
20 AND ODORS. I'M SURE ALL OF US HAS WALKED DOWN THE
21 AISLE THAT CONTAINS THE BLEACH AND THE WASHING
22 MACHINE POWDERS AND HAS NOTICED A SMELL WHEN YOU'RE
23 DOWN THAT AISLE. PRODUCTS THAT ARE CONTAINED IN
24 CARDBOARD VERSUS SEALED-IN PLASTIC OR GLASS CAN EMIT
25 THE ODORS DIRECTLY THROUGH THE CARDBOARD. IT'S NOT

1 SEALED FOR THOSE VOLATILE COMPOUNDS, SO IT CAN GET
2 INTO THE AIR ON THAT AISLE, BUT IT IS RAPIDLY
3 DISSIPATED BY THE H.V.A.C. SYSTEM OF A STORE, BUT IF
4 SOMEONE HAD SEVERE ASTHMA, THEY WOULD WANT TO AVOID
5 THAT AISLE AS WELL. THERE MAY EVEN BE A CONDITION
6 WHERE SOME SPICES ALTHOUGH THE VOLUME IS A LOT
7 SMALLER AS COMPARED TO CLEANING PRODUCTS, BUT IF THE
8 SPICES THAT ARE ON THE STORE SHELF ARE IN CARDBOARD
9 CONTAINERS THAT WOULD ALLOW THE OMISSION OF THE
10 VOLATILE COMPONENTS OF THE SPICES, THAT POTENTIALLY
11 COULD TRIGGER AN ASTHMA ATTACK IN SOMEONE WITH
12 SEVERE ASTHMA. SO, AS FAR AS THE STORE THAT IS IN
13 CHESTERFIELD, I DID GO THROUGH THAT STORE. I TOOK A
14 FLOOR PLAN OF THAT STORE AND MAPPED OUT THE AREAS
15 THAT HAD THE POTENTIAL TO BE A PROBLEM, AND THEN
16 BASED ON THAT MAP, IT JUST OPENS TO WHAT AREAS OF
17 THE STORE ARE COMPLETELY SAFE IN MY OPINION IN A
18 PERSON WITH ASTHMA TO WORK IN AS MUCH AS THEY WANT.

19 Q. OKAY. AND DO YOU HAVE AN OPINION FROM A
20 TOXICOLOGICAL STANDPOINT AS TO WHETHER MS. SOWELL
21 COULD RETURN TO WORK IN THAT STORE?

22 A. YES, SHE COULD RETURN TO WORK IMMEDIATELY TO THE
23 MAJORITY OF THAT STORE IN A VARIETY OF CAPACITY AND
24 FUNCTION.

25 Q. OKAY. THANK YOU.

1 BY MS. MILLER:

2 THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME.

3 BY COMMISSIONER JAMES:

4 _____ YOUR WITNESS.

5 RE-CROSS EXAMINATION BY MR. MCDANIEL:

6 Q. DOCTOR, I KNOW THAT WAS COUCHED IN TERMS OF FROM A
7 TOXICOLOGICAL STANDPOINT THAT SHE COULD RETURN TO
8 WORK IN MANY AREAS OF THAT STORE. WHAT IN THE WORLD
9 ARE YOU ACTUALLY SAYING THERE? HOW MUCH DO YOU KNOW
10 ABOUT HER CURRENT CONDITION?

11 A. I'VE READ EXTENSIVE MEDICAL RECORDS.

12 Q. OKAY. BUT YOU SAY YOU'RE NOT A DOCTOR.

13 A. YES, I AM A DOCTOR.

14 Q. IS THAT CORRECT?

15 A. I AM A DOCTOR.

16 Q. YOU'RE NOT A MEDICAL DOCTOR?

17 A. I'M DR. BENNETT, YES.

18 Q. OKAY. YOU'RE NOT A MEDICAL DOCTOR?

19 A. CORRECT, I'M NOT A PHYSICIAN.

20 Q. OKAY, ALL RIGHT. SO, -- AND SO, YOU KNOW WHAT TYPES
21 OF MEDICATIONS SHE'S ON?

22 A. CORRECT.

23 Q. YOU KNOW SHE'S GOT AN EPIPEN?

24 A. CORRECT.

25 Q. YOU KNOW THAT IF SHE GETS EVEN -- EVEN BREATHS OVER

1 -- YOU'VE SEEN ALL THE TESTIMONY; IT'S UNCONTESTED,
2 THAT IF SHE EVEN LOOKS INTO A GARBAGE CONTAINER THAT
3 SHE CAN LOSE HER BREATHE, OR THAT IF SHE GETS
4 EXPOSED TO ANY KIND OF A DUST. SO, YOU'RE SAYING
5 THAT SHE COULD SAFELY RETURN TO WORK FROM A MEDICAL
6 STANDPOINT?

7 A. FROM A TOXICOLOGICAL STANDPOINT, YES.

8 Q. BUT WHAT YOU'RE SAYING IS THAT THERE'S NOT -- WHAT
9 ARE YOU SAYING?

10 A. THERE IS -- THERE IS MORE OF A LIKELIHOOD OF HER
11 DEVELOPING ASTHMA FROM POLLEN AND A WOOD-BURNING
12 STOVE THAN THERE IS IN THE PIGGLY WIGGLY IN
13 CHESTERFIELD.

14 Q. OKAY, ALL RIGHT. SO, THAT'S WHAT -- THAT'S WHAT
15 YOU'RE SAYING IN THAT REGARD?

16 A. CORRECT.

17 Q. SO, WHAT ABOUT THE EXPOSURES THAT SHE HAS RECORDED
18 AND IT'S UNCONTESTED ABOUT WHENEVER SHE GETS AROUND
19 FRYING OIL AND THAT KIND OF THING?

20 A. I'M NOT SURE WHAT YOUR QUESTION IS.

21 Q. WELL, I MEAN, ARE YOU EXPRESSING ANY KIND OF OPINION
22 AS FAR AS WHAT KIND OF EFFECT THAT WOULD HAVE ON
23 HER?

24 A. I'LL SUGGEST THAT SHE NOT FRY OIL. IS THAT WHAT
25 YOU'RE ASKING?

1 Q. WELL, THAT SOUNDS GOOD. NOW, LET ME ASK YOU. LET'S
2 GO BACK. TELL ME WHAT IT MEANS WHEN DR. GORDON
3 EARLY SAYS THAT HE IS BOARD CERTIFIED IN MEDICAL
4 TOXICOLOGY?

5 A. I ASSUME THAT'S A VOLUNTARY PROGRAM THAT HE DID ON
6 HIS OWN.

7 Q. WELL, WHAT DOES IT MEAN BOARD CERTIFIED IN MEDICAL
8 TOXICOLOGY? HE DOESN'T SAY FORENSIC TOXICOLOGY. HE
9 SAYS "MEDICAL TOXICOLOGY." TELL ME THE DIFFERENCE
10 BETWEEN THAT AND YOUR BACKGROUND AND EXPERIENCE AND
11 YOUR QUALIFICATIONS IN TOXICOLOGY?

12 A. WELL, IN THIS -- YOU CAN GET CERTIFIED IN ANYTHING
13 YOU WANT. THERE ARE A LOT OF VOLUNTEER
14 ORGANIZATIONS THAT PROVIDE CERTIFICATION. YOU CAN
15 GET -- YOU CAN BE CERTIFIED IN TATTOOING IF YOU WANT
16 TO. YOU CAN GET THAT ONLINE COURSE.

17 Q. WELL, LET ME ASK YOU. IS THERE A BOARD
18 CERTIFICATION IN MEDICAL TOXICOLOGY?

19 A. THERE'S A CERTIFICATION PROCESS THAT IS REVIEWED BY
20 A BOARD THAT IS PUT TOGETHER IN JUST ABOUT ANYTHING.

21 Q. OKAY. LET'S TALK ABOUT TOXICOLOGY. I'M NOT TALKING
22 ABOUT ANYTHING. I'M TALKING ABOUT TOXICOLOGY.

23 A. OKAY.

24 Q. SO, IS THERE A BOARD CERTIFICATION FOR TOXICOLOGY?

25 A. OBVIOUSLY, THERE IS, BECAUSE DR. EARLY HAS GONE

1 THROUGH THAT PROGRAM.

2 Q. DO YOU KNOW OF ANYBODY ELSE THAT IS BOARD CERTIFIED
3 IN MEDICAL TOXICOLOGY?

4 A. NO.

5 Q. OKAY. ALL RIGHT. DO YOU KNOW DR. RUSSELL IN
6 CHARLESTON?

7 A. DR. ROGER RUSSELL?

8 Q. UH-HUH, YEAH.

9 A. VERY WELL.

10 Q. OKAY. HE'S AN M.D.?

11 A. WELL, HE WAS. HE PASSED AWAY.

12 Q. YOU'RE CORRECT. I'M SORRY TO HEAR THAT. I DID NOT
13 KNOW THAT.

14 A. YEAH.

15 Q. BUT HE WAS ACTUALLY BOARD CERTIFIED IN MEDICAL
16 TOXICOLOGY AS WELL. DID YOU KNOW THAT?

17 A. YES.

18 Q. AND YOU KNEW THAT HE WAS A TOXICOLOGIST,
19 SPECIFICALLY A TOXICOLOGIST?

20 A. HE STUDIED TOXICOLOGY, AND HIM AND I WORKED TOGETHER
21 ON MANY CASES.

22 Q. OKAY. NOW, ---

23 A. AND THE REASON WE WORKED TOGETHER SO WELL IS HE
24 FOCUSED ON THE MEDICINE SIDE, AND I FOCUSED ON THE
25 CHEMICAL SIDE.

1 Q. ALL RIGHT. AND HE ALSO -- DID HE FOCUS ON THE
2 TOXICOLOGICAL FROM THE STANDPOINT OF MEDICINE, TOO,
3 DIDN'T HE?

4 A. ABSOLUTELY.

5 Q. OKAY, ALL RIGHT. NOW, THE 248 I.G.E. LEVEL THAT YOU
6 WERE REFERRING TO, WAS THAT OUT OF DR. DAYRIT'S
7 RECORDS?

8 A. I CAN POUR THROUGH THE RECORDS AND DETERMINE THAT IF
9 YOU WOULD LIKE.

10 Q. WELL, LET ME JUST ASK YOU: DO YOU REMEMBER THAT DR.
11 DAYRIT SAW HER?

12 A. UH-HUH.

13 Q. IN WHICH THE DEFENDANTS HAVE RELIED ON HEAVILY, AND
14 HE GAVE HER A DIAGNOSIS OF HYPERSENSITIVITY
15 PNEUMONITIS VERSUS OCCUPATIONAL ASTHMA.

16 A. OKAY, YES, I REMEMBER THAT.

17 Q. FROM A MEDICAL -- AS A MEDICAL DIAGNOSIS.

18 A. OKAY.

19 Q. AND EVENTUALLY, HE DIAGNOSED HER WITH ASTHMA, AND IN
20 REFERENCE TO THE -- HE CONSTANTLY REFERRED TO THE
21 SENSITIVITY CHEMICALS THAT SHE WAS EXPOSED TO AT
22 WORK. SO TELL ME THE DIFFERENCE BETWEEN
23 OCCUPATIONAL ASTHMA AND ASTHMA IN GENERAL.

24 A. WELL, THE MAJORITY OF OCCUPATIONAL ASTHMA THAT OCCUR
25 IS DUE TO EXPOSURE TO A CHEMICAL IN THE ENVIRONMENT.

1 Q. OKAY.

2 A. INDUSTRIAL CHEMICALS ARE WIDESPREAD, AND SOME OF
3 THESE CHEMICALS CAN PRODUCE A VAPOR, AND IF THAT
4 VAPOR IS INHALED SUFFICIENTLY ENOUGH, THEN IT CAN
5 IRRITATE THE LUNGS AND CAUSE SOME SORT OF PULMONARY
6 DISEASE THAT CAN BE CLASSIFIED AS ASTHMA, BECAUSE
7 WHEN A PHYSICIAN SEES A PERSON, THEY HAVE TO
8 CLASSIFY THE SYMPTOMS THAT ARE BEING REPORTED, AND
9 ASTHMA IS KIND OF A CATCH ALL PHRASE FOR A CONDITION
10 WHEN SOMEONE HAS DIFFICULTY BREATHING.

11 Q. AND YOU RECORDED THAT THROUGHOUT; IN OTHER WORDS,
12 HER FAMILY DOCTOR WAS DIAGNOSING HER WITH VARIOUS
13 DIAGNOSES BEFORE SHE WAS FINALLY GIVEN A DIAGNOSIS
14 OF ASTHMA. YOU WOULD -- WOULD YOU AGREE WITH THAT
15 IN REVIEWING THOSE RECORDS?

16 A. YES, THERE WAS ---

17 Q. BRONCHITIS, PNEUMONIA, SARCOIDOSIS, ---

18 A. CORRECT.

19 Q. --- YOU KNOW, CHRONIC SINUSITIS, CHRONIC BRONCHITIS,
20 ALL OF THOSE WERE ENTERTAINED?

21 A. YES, BECAUSE SHE PRESENTED HERSELF WITH SYMPTOMS,
22 AND THE JOB OF THE PHYSICIAN IS BASED ON THESE
23 SYMPTOMS AS WELL AS OBJECTIVE DIAGNOSTIC TESTS TO
24 TRY TO COME UP WITH A DETERMINATION OF WHAT THE
25 DISEASE IS SO IT CAN BE TREATED, AND IN CASES OF

PULMONARY TYPE EFFECTS, A PHYSICIAN HAS TO STRONGLY
RELY ON WHAT IS BEING REPORTED BY THE PATIENT.

Q. CORRECT. AND A LOT OF THIS IS -- ONE OF THE
SPECIFIC DIFFERENCES BETWEEN JUST ASTHMA AND
OCCUPATIONAL ASTHMA IS THE SOURCE OF THE ASTHMA?

A. YES, CORRECT.

Q. FROM AN OCCUPATIONAL EXPOSURE?

A. YES, THE OCCUPATIONAL IS MORE CHEMICAL RELATED, THE
VAST MAJORITY OF THE CASES; WHEREAS, NON-
OCCUPATIONAL ASTHMA IS MORE LIKELY CAUSED BY A
GENETIC PREDISPOSITION FOR THAT; THEY WERE -- IT WAS
PASSED DOWN FROM THEIR ---

Q. NOW, TELL ME IN REFERENCE TO ADULT ONSET ASTHMA AT
HER AGE OF AROUND 60, TELL ME WHAT -- IS THERE SUCH
THINGS AS TRIGGERING FACTORS?

A. ABSOLUTELY, YES. SO, A PERSON WHO IS GENETICALLY
PREDISPOSED TO ASTHMA, AND EXACERBATION CAUSED BY A
CHEMICAL CAN PUT THAT PERSON INTO A STATE WHERE THEY
ARE NOT EXPERIENCING MORE SYMPTOMS. A PERSON CAN
HAVE ASTHMA EVEN AS A CHILD AND NOT REALLY KNOW IT,
BECAUSE IT'S SO MILD THAT THEY ARE JUST OUT OF
BREATH BECAUSE THEY ARE OUT OF SHAPE, AND THEY'RE AN
OBESE CHILD, AND THEY DON'T -- DON'T -- YOU KNOW,
CATCHING THEIR BREATH. SO, THERE EASILY AND QUITE
COMMONLY CAN BE CASES WHERE A CHILD WOULD HAVE

1 ASTHMA BUT IT BE MILD ENOUGH TO WHERE IT DOESN'T
2 TRIGGER A RESPONSE BY THE PARENT TO GET IT TREATED.
3 BUT EVEN IN CHILDHOOD, ADOLESCENCE, ADULTHOOD, IF
4 THAT PERSON IS EXPOSED TO SOMETHING THAT MAKES THAT
5 ALREADY EXISTING ASTHMA WORSE, THE PERSON IS GOING
6 TO HAVE MORE SYMPTOMS, AND THEREFORE IT MAY HAVE THE
7 APPEARANCE AT THAT POINT IN TIME THAT OH, YOU
8 DEVELOPED ASTHMA. WELL, MAYBE NOT. MAYBE YOU'VE
9 HAD ASTHMA ALL ALONG, BUT YOU'VE JUST NOW BEEN
10 EXPOSED TO SOMETHING THAT HAS MADE THE SYMPTOMS
11 WORSE, AND THAT COULD BE POLLEN. THAT COULD BE
12 WORKING AT A WOOD-BURNING STOVE. THAT COULD BE
13 RUNNING A CATERING BUSINESS. THAT COULD BE WORKING
14 WITH CHEMICALS AT PIGGLY WIGGLY.

15 Q. OKAY.

16 A. SO, THERE ARE A VARIETY OF CONDITIONS THAT CAN MAKE
17 THAT PROBLEM WORSE, AND AS A PERSON GETS OLDER, THEN
18 THEY'RE NOT AS HEALTHY ENOUGH TO FIGHT OFF THE
19 OCCURRENCE OF THE SYMPTOMS.

20 Q. NOW, EVERYBODY -- YOU TALKED ABOUT THE WOOD-BURNING
21 STOVE FOR A PERIOD OF TIME BEFOREHAND, AND WE TALKED
22 ABOUT THESE VARIOUS THINGS. LET'S TALK ABOUT A
23 COUPLE OF OTHER DISEASES AND SEE IF -- I THINK WE'RE
24 ON THE SAME PAGE WITH THIS, BUT FOR EXAMPLE, WE KNOW
25 THAT DIABETES SKIPS GENERATIONS FROM THE STANDPOINT

1 OF IT BEING SOMETHING OF A GENETICALLY INHERITED
2 CONDITION. I'M NOT TALKING THOSE OTHER TYPES OF
3 DIABETES, TYPE ONE, TYPE TWO. BUT IN OTHER WORDS,
4 DIABETES, YOU CAN HAVE IT AS AN ASYMPTOMATIC NON-
5 CONDITION UNTIL SUCH TIME AS SOMETHING THEN TRIGGERS
6 IT OR CAUSES IT TO BECOME SYMPTOMATIC.

7 A. YEAH. THERE ARE A VARIETY OF DISEASE THAT EXIT ---

8 Q. ALSO, THAT EXISTS FOR EXAMPLE IN THE AREA OF
9 ARTHRITIS?

10 A. RIGHT. THERE ARE A NUMBER OF DISEASES THAT EXIST
11 THAT DON'T BECOME PROMINENT UNTIL THEY ARE --
12 THERE'S A TRIGGER INVOLVED.

13 Q. YOU CAN HAVE A PREDISPOSITION TO ASTHMA, HAVE THAT
14 GENETIC PREDISPOSITION BUT NEVER DEVELOP IT; IS THAT
15 CORRECT?

16 A. WELL, I WANT TO CLARIFY THAT IT'S NOT A CONDITION
17 WHERE YOU DON'T HAVE IT AND THEN YOU HIT A TRIGGER
18 AND YOU DO HAVE IT.

19 Q. OKAY.

20 A. IT'S -- IT'S NOT THAT DEMARCATED. IT'S MORE OF A
21 CONDITION, YOU HAVE IT, BUT YOU'RE NOT HIGHLY
22 SYMPTOMATIC, AND THEN YOU ARE EXPOSED TO SOME SORT
23 OF A CONDITION, AND THE SYMPTOMS BECOME WORSE TO THE
24 POINT TO WHERE YOU SEEK MEDICAL ATTENTION FOR
25 EXAMPLE.

1 Q. SO, HOW WOULD YOU DESCRIBE A CHILD WHO HAS CHILDHOOD
2 ASTHMA BUT THEN LATER ON THEY HAVE NO PROBLEMS?

3 A. THEY'VE LEARNED TO COPE WITH IT. THEY'VE LEARNED TO
4 ---

5 Q WOULD THAT BE THE SAME TYPE THING; IN OTHER WORDS,
6 IT BECOMES ALMOST ASYMPTOMATIC?

7 A. YEAH, IT CAN WORK BOTH WAYS, ABSOLUTELY. SO, IF YOU
8 STAY AWAY FROM TRIGGERS AND LIVE A HEALTHY
9 LIFESTYLE, YOU CAN REDUCE YOUR SYMPTOMS.

10 Q. NOW, EVERYBODY HAS AGREED; WE'VE HAD AT LEAST FOUR
11 OR FIVE WITNESSES TESTIFY ALREADY THAT UP UNTIL THE
12 SPRING OF 2011, THAT MS. SOWELL HAD ABSOLUTELY NO
13 PROBLEMS WITH ASTHMA OR BRONCHITIS AS FAR AS WE
14 KNOW. IN OTHER WORDS, THERE WAS NO PROBLEMS. MS.
15 QUICK EVEN TESTIFIED SHE WAS HEALTHY, AND EVERYBODY
16 AGREES SO FAR AND WE HAVE FOUND THAT THEY DEVELOPED
17 A PROBLEM WITH THE DRAINS WHERE THE DRAINS WERE
18 BACKING UP. THEY HAD TO ALMOST EVERY COUPLE OF
19 DAYS, THEY WOULD COME IN AND SNAKE OUT THE DRAIN.
20 ARE YOU FAMILIAR WITH WHAT I'M TALKING ABOUT ---

21 A. CORRECT.

22 Q. --- SNAKING OUT A DRAIN?

23 A. CORRECT.

24 Q. AND THEN THEY WOULD USE CHEMICALS BECAUSE IT WOULD
25 START BACKING UP, AND THEY WOULD USE CHEMICALS TO

1 FLUSH IT OUT, AND THEN THEY WOULD HAVE TO CALL THE
2 PLUMBER IN AGAIN AND SNAKE IT OUT AGAIN. THIS WAS A
3 REPEAT BUSINESS, AND EVERYBODY HAS TESTIFIED THIS
4 WENT ON FOR AT LEAST A COUPLE OF YEARS, BUT VERY
5 BADLY IN 2011.

6 A. OKAY.

7 Q. NOW, TELL ME IN REFERENCE -- AND TO COMPENSATE FOR
8 THAT, THAT ON A DAILY BASIS AND REPEATEDLY, THEY
9 WERE USING DRANO AND THESE OTHER CHEMICALS WE'RE
10 TALKING ABOUT, OKAY? WHAT DOES THAT TELL YOU IN
11 REFERENCE TO A TRIGGERING FACTOR AS BEING TO -- AND
12 THOSE CHEMICALS WERE ALL BEING USED AT WORK. WHAT
13 DOES THAT TELL YOU IN REFERENCE TO WHAT YOU'VE
14 TESTIFIED TO EARLIER AND WHAT WE'VE TALKED ABOUT IN
15 REFERENCE TO A TRIGGERING FACTOR?

16 A. ARE YOU SAYING MS. SOWELL WAS DOING THE SNAKING INTO
17 THE DRAIN, AND ---

18 Q. NO, MS. SOWELL WAS DOING THE USE OF THE CHEMICALS.

19 A. OKAY.

20 Q. AND SHE WAS PRESENT WHILE ALL THOSE CHEMICALS WERE
21 BEING USED.

22 A. OKAY. I'M TRYING TO PICTURE THE SCENARIO YOU'RE
23 DESCRIBING.

24 Q. RIGHT.

25 A. SO, SHE WASN'T THE ONE ACTUALLY TRYING TO CLEAR THE

1 DRAIN?

2 Q. RIGHT.

3 A. THERE WERE OTHER PEOPLE THAT WERE DOING THAT.

4 Q. CORRECT.

5 A. HOWEVER, SHE WAS -- DID YOU MAKE THE STATEMENT THAT
6 THESE OTHER PEOPLE WERE USING CHEMICALS AS WELL?

7 Q. NO, NO. THEY WERE -- THEY WERE HAVING THE BACKUP
8 PROBLEM. THEY WOULD USE CHEMICALS TO TRY TO
9 ERADICATE IT, TO STOP IT.

10 A. WHEN YOU SAY "THEY," WHO IS THEY?

11 Q. THE EMPLOYEES OF THE DELI.

12 A. OKAY, ALL RIGHT. OKAY. ALL RIGHT. AND THEN THAT
13 DIDN'T WORK. THEN THEY CALLED PLUMBERS?

14 Q. THEN THEY CALLED PLUMBERS.

15 A. OKAY.

16 Q. I MEAN, IT WAS TO THE POINT THAT THERE WERE FUMES IN
17 THE AIR FROM THE DRANO.

18 A. OKAY.

19 Q. WHAT DOES THAT TELL YOU ABOUT THE AMOUNT OF DRANO
20 THEY WERE USING?

21 A. I HAVE NO IDEA HOW MUCH WAS USED. IF YOU USE A
22 LITTLE OR A LOT, THERE'S GOING TO BE SOME VAPORS
23 FROM BLEACH BUT NOT NECESSARILY FROM THE DRANO.
24 DRANO IS NOT A COMPOUND THAT PRODUCES VAPORS
25 ACCORDING TO THE M.S.D.S. SHEET.

- 1 Q. WELL, LET'S -- IF YOU DON'T MIND, PULL THAT M.S.D.S.
2 SHEET OUT.
- 3 A. I DON'T HAVE IN THE RECORDS THAT WERE PRESENTED, THE
4 M.S.D.S. SHEET FOR DRANO, BECAUSE IT WAS NOT AN
5 APPROVED PRODUCT FOR USE BY PIGGLY WIGGLY.
- 6 Q. OKAY. SO, IF THEY WERE INSTRUCTED AND WERE GETTING
7 DRANO AND WERE USING DRANO, THAT WAS THE CHEMICAL OF
8 CHOICE THEY WERE TRYING TO USE TO FLUSH OUT THE
9 DRAINS -- WHAT DO YOU KNOW ABOUT DRANO?
- 10 A. WELL, IF -- AND I'M TRYING TO GET A -- PICTURING THE
11 SCENARIO OF HOW THE PRODUCT WAS USED. ARE YOU
12 SAYING IT WAS NOT USED BY THE PLUMBERS?
- 13 Q. NO, IT WAS USED BY THE EMPLOYEES FROM MY
14 UNDERSTANDING.
- 15 A. OKAY, ALL RIGHT.
- 16 Q. AMONG OTHER THINGS.
- 17 A. RIGHT. AS FAR AS CLARIFICATION, THE DRANO THAT WAS
18 USED WAS SOMETHING THAT WAS OBTAINED FROM THE STORE
19 SHELF?
- 20 A. I ASSUME IT WAS.
- 21 Q. OKAY, ALL RIGHT.
- 22 A. ALL RIGHT.
- 23 Q. THEY WERE DOING ANYTHING TO STOP THE BACKUP.
- 24 A. OKAY, ALL RIGHT.
- 25 Q. IT WAS BACKING UP ON THEIR FEET. I DON'T KNOW TO

1 WHAT LEVELS. I TELL YOU WHAT LET'S DO. LET'S --
2 BEFORE WE GET INTO THAT, LET'S TALK ABOUT THAT.

3 A. OKAY.

4 Q. YOU ACTUALLY TOOK PICTURES YOU SAID OF THE ENTIRE
5 STORE. IS THAT -- OR TOOK A LOT OF PICTURES?

6 A. YES, I TOOK A NUMBER OF PICTURES.

7 Q. OKAY. AND YOU SAID THAT THE FLOOR WAS SIMILAR AND
8 THAT IT WOULD BACK UP ON THE -- IT WOULD HAVE BACKED
9 UP INTO THE REMAINDER OF THE BUILDING FROM THOSE
10 DRAINS IF IT -- BECAUSE IT'S JUST SLIGHTLY ABOVE
11 LEVEL?

12 A. WELL, IT WOULDN'T -- IT WOULD SPREAD AS FAR AS THE
13 AMOUNT OF LIQUID THAT WAS THERE. IN OTHER WORDS, IT
14 WOULD FILL THE ENTIRE FLOOR AT AN EIGHTH OF AN INCH
15 THICK IF THERE WAS ENOUGH FLUID COMING BACK OUT.

16 Q. WELL, THAT GOES TO MY NEXT QUESTION. WHAT WAS THE
17 FALL ON THAT DRAIN?

18 A. PARDON ME?

19 Q. WHAT WAS THE FALL ON THE DRAIN?

20 A. THE FALL? I DIDN'T UNDERSTAND WHAT YOU SAID.

21 Q. THE FALL ON THE DRAIN.

22 A. CAN YOU SPELL THAT FOR ME? F-A-L-L?

23 Q. F-A-L-L, YEAH, FALL.

24 A. I DON'T KNOW WHAT THAT MEANS.

25 Q. WELL, YOU KNOW A LITTLE BIT ABOUT CONSTRUCTION, I

- 1 ASSUME BECAUSE OF THE CASES ---
- 2 A. OH, THE DIP?
- 3 Q. THE WHAT?
- 4 A. THE DIP AS FAR AS THE LEVEL OF THE FLOOR?
- 5 Q. EXACTLY.
- 6 A. OKAY, ALL RIGHT. NOW, I UNDERSTAND WHAT YOU'RE
- 7 SAYING.
- 8 Q. SO, I MEAN, FOR EXAMPLE, IF YOU'RE GOING TO TRY TO
- 9 DRAIN THIS AREA, YOU DON'T HAVE TO HAVE A PARTICULAR
- 10 LEVEL OF FALL TO GRADE.
- 11 A. RIGHT.
- 12 Q. BUT IF YOU'RE GOING TO DRAIN THIS ENTIRE ROOM AREA,
- 13 YOU ARE -- YOU DO KNOW THAT THE AMOUNT OF AREA
- 14 YOU'VE GOT TO DRAIN HAS TO INCREASE?
- 15 A. CORRECT, YES.
- 16 Q. OKAY. SO, TELL ME WHAT MEASUREMENTS YOU MADE OF THE
- 17 FALL?
- 18 A. OH, I JUST DID VISUAL OBSERVATIONS.
- 19 Q. SO, HOW ARE YOU -- HOW ARE YOU ABLE TO TESTIFY IF IT
- 20 HAD TO BE OVER AN EIGHTH OF AN INCH THICK?
- 21 A. BECAUSE I SAW IT WITH MY OWN EYES.
- 22 Q. WELL, OKAY. DID YOU STAND NEXT TO IT -- SO, YOU
- 23 STOOD NEXT TO THE DRAIN, AND THEN YOU SAW HOW HIGH
- 24 IT WAS UP TO WHERE -- OF COURSE, THERE'S AN AREA
- 25 THAT'S MEANT TO DRAIN INTO THAT DRAIN, CORRECT?

1 A. CORRECT.

2 Q. AND THEY ALSO HAD FOUR OR FIVE OF THOSE?

3 A. UH-HUH.

4 Q. AND THE FLOOR WOULD BE SET UP TO WHERE THERE WAS A
5 DRAINAGE AREA FOR EACH ONE OF THOSE DRAINS?

6 A. RIGHT, BUT THE FALL IS NOT SPREAD FAR FROM THE DRAIN
7 ITSELF. IT'S LOCATED IMMEDIATELY AROUND THE DRAIN.

8 Q. NO, SIR, THE FALL STARTS FROM THE AREA YOU WANT TO
9 START DRAINING ALL THE WAY TO THE DRAIN.

10 A. BUT IT'S SO MINUSCULE THAT IT WOULD NOT CREATE DEEP
11 WATER.

12 Q. SO, DO YOU HAVE ANY IDEA OF PER FOOT HOW MUCH FALL
13 YOU HAVE TO USE IN CONSTRUCTION TO MAKE SURE THAT
14 THAT PROPERLY DRAINS THROUGH THAT AREA?

15 A. NO, SIR, I'M NOT A STRUCTURAL ENGINEER.

16 Q. OKAY, ALL RIGHT.

17 A. I JUST KNOW WHAT I OBSERVED AND USED MY COMMON
18 SENSE.

19 Q. OKAY. SO, YOU DON'T -- YOU DON'T BELIEVE IT WOULD
20 BE MAYBE AN INCH, INCH AND A HALF, SOMETHING LIKE
21 THAT, OVER THE ENTIRE -- IF YOU WOULD HAVE STOOD
22 NEXT TO THE DRAIN IN THAT AREA?

23 A. WELL, I HAVEN'T DONE ANY ONSITE TESTS TO SEE HOW
24 MUCH OF A DEPTH THAT I COULD FORCE TO REOCCUR. I'M
25 JUST SAYING THAT THE FLOOR WAS FLAT, AND IT WAS

1 CONTIGUOUS WITH THE REST OF THE FLOOR, AND THAT IF
2 ANY FLOODING OCCURRED, IT WOULD ---

3 Q. NOW, IN FAIRNESS TO YOU, I DON'T THINK YOU WENT
4 THERE TO SPECIFICALLY MEASURE THE FALL AS WE'RE
5 TALKING ABOUT.

6 A. CORRECT.

7 Q. OKAY. AND YOU WERE GENERALLY THERE TO OBSERVE THE
8 CONDITION OF THE STORE AND THE FLOORS AND THAT TYPE
9 OF THING.

10 A. CORRECT.

11 Q. AND IT WAS A DRAINAGE PATTERN AND THAT KIND OF
12 THING; IS THAT CORRECT?

13 A. CORRECT, YEAH.

14 Q. ALL RIGHT. SO, YOU DIDN'T ACTUALLY GET DOWN AND
15 EYEBALL THE AMOUNT OF FALL THERE WAS BETWEEN -- IN
16 OTHER WORDS, THE REASON YOU HAVE A DRAINAGE AREA IS
17 SO THAT IT WILL DRAIN THAT AREA INTO THAT DRAIN, AND
18 SO THAT IT WON'T GO OUT ON TO THE REMAINDER OF THE
19 FLOOR OF THE STORE. YOU WOULD AGREE WITH ME ON
20 THAT?

21 A. CORRECT.

22 Q. THAT'S WHY YOU HAVE DRAINS?

23 A. RIGHT.

24 Q. NOW, WAS THERE ANY DIFFERENCE IN THE TYPE OF FLOOR
25 THAT WAS IN THERE VERSUS THE TYPE OF FLOOR THAT WAS

1 OUT ON THE REGULAR FLOOR OF THE BUILDING?

2 A. TILE VERSUS VINYL.

3 Q. OKAY. SO, IT WAS A DIFFERENT -- DIFFERENT ---

4 A. RIGHT.

5 Q. --- TYPE FLOORING?

6 A. RIGHT.

7 Q. NOW, YOU'VE TESTIFIED ABOUT THE OPENNESS OF THE DELI
8 AREA. WAS THERE A SET -- MS. QUICK HAS TESTIFIED
9 THERE'S A SET OF DOORS THAT GOES BACK INTO THE
10 KITCHEN AREA?

11 A. I DIDN'T SEE THOSE DOORS.

12 Q. OKAY.

13 A. I DIDN'T SEE ANY DOORS GOING INTO A SEPARATE ROOM.

14 Q. NOW, IF I REMEMBER CORRECTLY, YOU TESTIFIED THAT YOU
15 WENT THERE WHENEVER THIS HAD BEEN BOUGHT OUT AND
16 RECENTLY -- IT'S NOW -- WHAT'S THE NAME OF THE
17 STORE?

18 A. CARL'S.

19 Q. CARL'S. SO, YOU DON'T KNOW IF THERE'S BEEN ANY --
20 WHAT TYPE OF MODIFICATIONS THERE'S BEEN TO THE
21 ENTIRE KITCHEN AND DELI AREA?

22 A. I DO NOT KNOW.

23 Q. OKAY. SO, YOU KNOW NOTHING ABOUT THAT DELI -- THAT
24 AREA IN REFERENCE TO THE WAY IT WAS. SO, IF MS.
25 QUICK TESTIFIED THAT THERE WAS A SET OF DOORS THAT

1 TOOK YOU THROUGH AND BACK INTO THE KITCHEN AREA, YOU
2 DIDN'T SEE THOSE?

3 A. CORRECT. I DID NOT KNOW THE CONDITION OF THE
4 CONSTRUCTION OF THE DELI AREA PRIOR TO MY VISIT
5 WITHIN THE PAST MONTH OR SO.

6 Q. OKAY. ALL RIGHT. AND THE REASON I -- THE REASON --
7 AND I WANT TO BE FAIR TO YOU. IF THERE WAS A SET OF
8 DOORS THAT WENT BACK INTO THE KITCHEN AREA WHERE ALL
9 THE KITCHEN PREPARATION AND ALL WAS DONE, DID YOU
10 SEE THE -- DID YOU SEE THE VENTILATORS -- THE
11 VENTILATORS FOR THE KITCHEN, I MEAN, ALL THE
12 OVERHEAD VENTS FOR THE STOVES?

13 A. I DID SEE -- I BELIEVE I DID SEE THOSE, YES.

14 Q. SO -- AND HOW MUCH OF THE TIME ARE THOSE KEPT ON
15 WHILE IT'S OPERATING?

16 A. I DO NOT KNOW.

17 Q. WELL, I'M ASSUMING BEING IN THE AREA OF TOXICOLOGY
18 THAT YOU WOULD KNOW THAT WHENEVER YOU ARE COOKING
19 AND/OR YOU'RE USING CHEMICALS THAT REQUIRE
20 VENTILATION THAT YOU WOULD BE USING THOSE VENTS?

21 A. THAT WOULD BE COMMON SENSE, YES.

22 Q. OKAY. AND SO WERE THOSE IN OPERATION; WERE THEY
23 DOING ANY COOKING WHILE YOU WERE THERE?

24 A. NO, I DON'T BELIEVE THEY WERE.

25 Q. OKAY, ALL RIGHT. NOW, LET'S TALK ABOUT THE MR.

1 MUSCLE. YOU SAID THAT IS USED AND IS SUPPOSED TO BE
2 USED FOR WHAT?

3 A. IT'S AN OVEN -- OVEN CLEANING.

4 Q. OVEN CLEANING?

5 A. CORRECT.

6 Q. AND YOU SAW OVENS THERE?

7 A. CORRECT.

8 Q. JUST SPECIFICALLY CLOSED OVENS -- HOW DO YOU USE IT?

9 A. WELL, I'VE NEVER USED THE ACTUAL PRODUCT ITSELF, BUT
10 YOU -- IF YOU'RE CLEANING THE OVEN, YOU APPLY THE
11 CHEMICAL AND THEN CLOSE THE DOOR AND TURN ON THE
12 OVEN AND BLOW IT OUT.

13 Q. AND THEN AFTER YOU BLOW IT OUT, WHAT DO YOU DO THEN,
14 CLEAN OUT THE RESIDUE AND ALL THAT?

15 A. CORRECT, YES.

16 Q. AND DO YOU USE IT ON FRYERS AND THAT TYPE OF THING?

17 A. YOU CAN, YES.

18 Q. OKAY. AND SO, YOU CLEAN IT OUT. CAN YOU USE IT; IS
19 IT OKAY TO TOUCH IT?

20 A. SURE.

21 Q. I MEAN, LIKE IF YOU USE GLOVES OR WHATEVER TO CLEAN
22 IT, CLEAN OUT THE FRYERS AND THAT TYPE OF THING?

23 A. YES.

24 Q. OR FRY BASKETS, ANYTHING LIKE THAT, YOU CAN USE THAT
25 MR. MUSCLE FOR THAT, RIGHT?

1 A. CORRECT.

2 Q. 'CAUSE IT'S REALLY A DEGREASER?

3 A. CORRECT.

4 Q. AND SO IT'S APPROPRIATE TO USE IT ON ANYTHING, AND
5 THEN OF COURSE DO YOU MIX IT WITH WATER ORDINARILY
6 OR DO YOU THEN WASH OFF WITH WATER?

7 A. CORRECT. YOU RINSE IT AWAY, YEAH.

8 Q. OKAY. AND THEN OF COURSE THAT WOULD -- ALL OF THAT
9 CLEANING MIXTURE AND THE MR. MUSCLE AND ALL OF THAT
10 WOULD GO INTO THE -- WOULD GO INTO THE COMMERCIAL
11 SINK FOR DISPOSAL, WOULDN'T IT?

12 A. CORRECT.

13 Q. ALL RIGHT. AND THEN THAT OF COURSE WOULD GO DOWN IN
14 TO THE DRAINS, WOULDN'T IT?

15 A. CORRECT.

16 Q. ALL RIGHT. NOW, WHAT DO YOU USE BLEACH FOR IN
17 REFERENCE TO CLEANING IN A DELI OR ANY KIND OF A
18 STAINLESS STEEL AREA?

19 A. THAT'S TO USE IT AS A GENERAL DISINFECTANT.

20 Q. OKAY. THAT'S RIGHT. IT'S USED AS A GENERAL
21 DISINFECTANT LIKE IF YOU'RE USING UNCOOKED MEATS AND
22 COOKED MEATS AND ALL THAT KIND OF STUFF AND
23 VEGETABLES, RAW VEGETABLES, COOKED VEGETABLES, YOU
24 WOULD USE IT AS A DISINFECTANT TO DISINFECT ALL OF
25 THE WHAT -- WHAT ARE YOU DISINFECTING?

1 A. WORK SURFACES.

2 Q. IN REFERENCE TO, YOU KNOW, LIKE THE BLOOD, THE
3 FUNGUS, WHAT ALL COMES FROM ALL THOSE KIND OF
4 PRODUCTS? FUNGUS?

5 A. THERE'S BACTERIA, MOLD, FUNGUS, JUST ANY TYPE OF
6 MICROORGANISM.

7 Q. ARE YOU FAMILIAR WITH THE -- ARE YOU FAMILIAR WITH
8 OCCUPATIONAL ASTHMA IN THE SETTING OF MEAT CUTTERS?

9 A. SOMEWHAT, YES. I'VE DONE SOME READING ON IT.

10 Q. ARE YOU FAMILIAR WITH OCCUPATIONAL ASTHMA IN THE
11 SETTING OF FARM WORKERS?

12 A. SOMEWHAT.

13 Q. ARE YOU FAMILIAR WITH THE SETTING OF OCCUPATIONAL
14 ASTHMA IN REFERENCE TO FOOD PRODUCTION PEOPLE?

15 A. SOMEWHAT, YES.

16 Q. ALL RIGHT. ARE YOU -- ARE YOU -- YOU KNOW, I CAN GO
17 DOWN A WHOLE -- YOU'RE FAMILIAR THAT THERE IS A
18 TREMENDOUS LIST PUBLISHED BY THE NATIONAL INSTITUTE
19 OF HEALTH IN REFERENCE TO OCCUPATIONAL ASTHMA AND
20 THE TYPES OF OCCUPATIONS FROM WHICH YOU CAN DEVELOP
21 IT?

22 A. CORRECT, YES, THERE IS.

23 Q. AND A LOT OF THOSE HAVE TO DO WITH EXPOSURE TO RAW
24 AND COOKED VEGETABLES?

25 A. UH-HUH.

1 Q. AND RAW AND COOKED MEATS?

2 A. CORRECT.

3 Q. AND FISH?

4 A. CORRECT.

5 Q. AND ALL OF WHICH THEY WERE USED IN THAT DELI?

6 A. CORRECT.

7 Q. AND ALL OF WHICH THE BLOOD AND ALL THE VARIOUS
8 FLUIDS AND COOKED AND BY-PRODUCTS AND ALL THE
9 VARIOUS ROTTING AND MOLD AND ALL THAT KIND OF STUFF,
10 THE WATER AND ALL OF THAT WASTEWATER WENT WHERE?

11 A. DOWN THE DRAIN.

12 Q. IN THE SINK, AND IT WAS DOWN THE SINK, CORRECT, DOWN
13 THE DRAIN?

14 A. UH-HUH.

15 Q. SO, ALL OF THAT POTPOURRI OF STUFF WOULD HAVE BEEN
16 IN THERE?

17 A. CORRECT.

18 Q. ALL RIGHT. AND SO, THE MR. MUSCLE AND THE BLEACH
19 MIXED IN WITH THE WATER WOULD HAVE BEEN IN THOSE
20 DRAINS?

21 A. CORRECT.

22 Q. AND YOU'VE ALREADY TESTIFIED THAT IT WOULD NOT BE A
23 GOOD IDEA TO MIX BLEACH -- AS A MATTER OF FACT,
24 YOU'RE NOT SUPPOSED TO MIX BLEACH AND MR. MUSCLE?

25 A. CORRECT.

1 Q. ALL RIGHT. AND NOW, WE'VE GOT -- AND WE DON'T HAVE
2 THE M.S.D.S. SHEET FOR DRANO. NOW, YOU KNEW FROM
3 DR. EARLY'S REPORT AND THE OTHER REPORTS THAT SPIT
4 FIRE AND PINESOL AND DRANO WERE ALL THE PRODUCTS
5 THEY WERE USING TO TRY TO ERADICATE THIS PROBLEM
6 THEY WERE HAVING WITH THE DRAIN?

7 A. CORRECT.

8 Q. OKAY. BUT YOU DIDN'T LOOK AT THOSE?

9 A. I DID, YES, AND I HAVE THEM ---

10 Q. BUT YOU DIDN'T BRING THEM WITH YOU?

11 A. WELL, I BROUGHT THEM ON A MEMORY STICK.

12 Q. OKAY, ALL RIGHT. BUT ---

13 A. I'M NOT STRONG ENOUGH TO CARRY ALL OF THE FILES AND
14 PAPER THAT I WOULD HAVE NEEDED TO.

15 Q. WELL, LET ME ASK YOU THIS; DID THAT DRANO -- I MEAN,
16 CAN WE AGREE THAT DRANO IS SOMETHING THAT YOU ARE
17 ONLY SUPPOSED TO USE AND YOU ONLY USE LIKE IN A HOME
18 SETTING ABOUT WHENEVER YOU HAVE A DRAIN CLOGGED
19 MAYBE ONCE A MONTH OR SOMETHING LIKE THAT?

20 A. IT'S AVAILABLE ON A RETAIL BASIS FOR USE IN THE
21 HOME, EVEN IN AN ENCLOSED ENVIRONMENT LIKE A SMALL
22 BATHROOM.

23 Q. OH, I FULLY AGREE WITH YOU ON THAT, BUT WE DON'T USE
24 IT ON A DAILY BASIS, DO WE?

25 A. TYPICALLY NOT.

1 Q. OKAY. EVEN IN -- I'M NOT SO SURE IT'S EVEN USED ON
2 A DAILY BASIS -- ARE YOU FAMILIAR WITH THE USE OF --
3 I THINK IT PROVIDES THAT YOU ARE SUPPOSED TO BE IN A
4 WELL VENTILATED AREA.

5 A. WELL, THAT'S A GENERAL STATEMENT FOR MOST ALL OF
6 THESE CHEMICALS.

7 Q. ANY TYPE OF -- ALL OF THESE ITEMS WE'RE TALKING
8 ABOUT COULD BE CORROSIVE TO THE LUNGS AND COULD
9 CAUSE HEALTH PROBLEMS FROM INHALATION OR ABSORPTION?

10 A. OH, ABSOLUTELY. IT'S ALL DOSE RELATED.

11 Q. AND I'M GLAD YOU MENTIONED THAT, IT'S DOSE RELATED.
12 AND HAVE YOU BEEN FAMILIAR WITH ANY AIR MONITORING
13 PLANTS?

14 A. NO, SIR.

15 Q. ARE YOU FAMILIAR WITH DOSIMETERS?

16 A. YES.

17 Q. AND WHERE THE DOSIMETER, A PERSON WEARS THE
18 DOSIMETER, AND THEN THEY GET A SAMPLE OF WHAT
19 THEY'RE ACTUALLY EXPOSED TO?

20 A. CORRECT. AND THAT PROVIDES AN ACCUMULATION
21 EXPOSURE.

22 Q. EXACTLY, AND THEN YOU HAVE YOUR TIME WEIGHTED
23 AVERAGE FOR THAT?

24 A. CORRECT.

25 Q. ALL RIGHT. IN REFERENCE TO THAT, CORRECT ME IF I'M

1 WRONG, BUT IF A PERSON IS USING SOME TYPE OF
2 CHEMICALS SUCH AS WE ARE DISCUSSING HERE OR IF WE
3 ARE DISCUSSING SOLIDS, AND THEY'RE STANDING AT THE
4 MACHINE VERSUS THE OTHER DOSIMETERS THAT ARE PLACED
5 AROUND THE PLANT, YOU'RE GOING TO HAVE A HIGH RATING
6 OF EXPOSURE RIGHT THERE?

7 A. CORRECT.

8 Q. SO, IN REFERENCE TO WHAT WE'RE TALKING ABOUT HERE,
9 IF A PERSON IS WORKING OVER AND AROUND THAT DRAIN
10 WHERE IT'S BACKING UP AND WHERE THIS STUFF IS COMING
11 OUT OF AND THE FUMES ARE, ARE THEY GOING TO BE
12 EXPOSED TO A HIGHER LEVEL THAN A PERSON WHO IS
13 STANDING OVER THERE OR OUT FRONT GETTING READY TO
14 SERVE THE DELI MEATS?

15 A. THAT WAS DEFINITELY AT A HIGHER LEVEL.

16 Q. OKAY.

17 A. BUT I HAVE TO ASK, WHY WOULD A PERSON TAKE THAT RISK
18 AND EXPOSE THEMSELVES TO THOSE TYPES OF CHEMICALS
19 THAT ARE BEING EMITTED?

20 Q. WELL, I GUESS YOU COULD ASK THAT ABOUT A LOT OF
21 PEOPLE, BECAUSE I GUESS THEY WANT TO MAKE A LIVING.

22 A. OKAY.

23 Q. AND THEIR JOB WAS TO RUN THAT DELI AND TO KEEP IT
24 CLEAN AND TO MAKE SURE THAT THE -- WHEN THE GUY CAME
25 IN FROM THE INSPECTOR THAT THEY PASSED INSPECTION,

1 AND THEIR JOB WAS TO KEEP THAT FILTHY TRASH THAT WAS
2 BACKING UP THROUGH THOSE SEWERS OUT OF THERE.

3 A. YES.

4 Q. AND SO THEY WERE DOING THAT. THEY WERE DUMPING
5 DRANO IN THERE, OKAY?

6 A. OKAY.

7 Q. AND THEY WERE PUTTING MR. MUSCLE IN THERE, AND THERE
8 WAS BLEACH IN THERE. SO, I THINK THEY WERE JUST
9 DOING THEIR JOB; WOULD YOU AGREE WITH ME?

10 A. NO, I THINK THEY WERE TAKING RISKS FAR BEYOND WHAT
11 THEIR JOB REQUIRED.

12 Q. WHO TOLD THEM ABOUT THAT RISK?

13 A. PIGGLY WIGGLY MANUAL.

14 Q. PIGGLY WIGGLY MANUAL, YOU JUST SAID DRANO WASN'T
15 EVEN IN THERE?

16 A. WELL, THE DRANO ITSELF HAS WARNINGS AND PRECAUTIONS
17 AND SAFETY INFORMATION RIGHT ON THE LABEL.

18 Q. OKAY, ALL RIGHT.

19 A. AND I READ EVERY LABEL OF EVERY CHEMICAL THAT I USE
20 AND NOT BECAUSE I'M A TOXICOLOGIST.

21 Q. DOES IT -- DOES IT HAVE -- I WAS GOING TO SAY, LET
22 ME ASK YOU ABOUT THAT. DOES THAT HAVE A LITTLE BIT
23 TO DO ABOUT WHAT YOU'VE SEEN AND ALSO BECAUSE YOU'RE
24 A TOXICOLOGIST?

25 A. NO, THAT'S WHAT EVERY PERSON SHOULD DO BEFORE THEY

1 USE A CHEMICAL COMPOUND.

2 Q. AND I KNOW YOU'VE REVIEWED ALL OF THE MEDICAL
3 RECORDS AND ALL OF THAT, AND I BELIEVE IN FAIRNESS
4 TO YOU, YOU TESTIFIED TO THIS REALLY EARLY IN YOUR
5 TESTIMONY, AND I BELIEVE THIS IS -- I'M JUST GOING
6 TO ASK YOU TO CONFIRM IF THIS IS CORRECT THAT YOU
7 WERE TALKING ABOUT THAT EXPOSURE TO THESE CHEMICALS
8 AND EXPOSURE TO BLEACH AND MIXED WITH THE MR. MUSCLE
9 IS NOT SUPPOSED TO BE DONE. YOU ALSO TESTIFIED
10 THAT, YOU KNOW, EXPOSURE TO THESE CAN CAUSE LUNG
11 PROBLEMS. IT CAN CAUSE -- AND WE'VE ALREADY STATED
12 THAT THESE ARE THE TYPES OF CHEMICALS THAT COULD
13 TRIGGER ASTHMA, AND THEN THE QUESTION COMES DOWN TO
14 -- WOULD YOU AGREE WITH ME THE QUESTION COMES DOWN
15 TO MAYBE POSSIBLY THE LEVEL OF EXPOSURE?

16 A. IT'S POSSIBLE.

17 Q. OKAY. WHAT WOULD IT TELL YOU IF THERE WERE -- IF
18 THE -- WHEN THEY WERE USING THIS DRANO ON A DAILY
19 BASIS REPEATEDLY TO TRY TO GET THE DRAINS OPEN AND
20 THAT THE FUMES WERE COMING UP OUT OF THE DRAINS, YOU
21 COULD ACTUALLY -- IT WAS AN UNBELIEVABLY -- IT WAS A
22 VERY STRONG ODOR AND ALSO THAT IT WAS JUST -- YOU
23 COULD LITERALLY SEE THE FUMES AND YOU COULD JUST
24 FEEL ALL THAT COMING OUT OF THESE DRAINS AS BEING
25 AROUND IT, WHAT WOULD THAT TELL YOU IN REFERENCE IN

1 WHAT WAS GOING ON, WHAT WAS IN THOSE FUMES, THAT
2 TYPE OF THING?

3 A. WELL, IF YOU CAN ACTUALLY SEE FUMES, THEN THAT'S A
4 HIGH CONCENTRATION OF FUMES THAT A PERSON SHOULD
5 AVOID.

6 Q. OKAY, ALL RIGHT. DO YOU HAVE THOSE PICTURES WITH
7 YOU?

8 A. I HAVE THEM ON A STICK, YEAH.

9 Q. OH, YOU DON'T HAVE LIKE ACTUAL RUN OUT COPIES?

10 A. NO.

11 BY MS. MILLER:

12 I HAVE THEM.

13 BY MR. MCDANIEL:

14 YEAH, CAN I HAVE JUST A MINUTE, COMMISSIONER?
15 IT MIGHT BE A GOOD POINT TO TAKE A BREAK. I'M
16 PROBABLY FINISHED, BUT I JUST WANT TO -- I WOULD
17 LIKE TO JUST TAKE A LOOK AT THEM.

18 BY COMMISSIONER JAMES:

19 _____. OKAY. LET'S TAKE ---

20 BY MR. MCDANIEL:

21 NO, I TELL YOU WHAT. LET ME NOT BELABOR THIS
22 ANYMORE. NOTHING FURTHER, COMMISSIONER.

23 BY COMMISSIONER JAMES:

24 _____. ANY RE-DIRECT?

25 BY MS. MILLER:

1 JUST REAL BRIEFLY.

2 **RE-DIRECT EXAMINATION BY MS. MILLER:**

3 Q. DR. BENNETT, IS IT YOUR OPINION THAT THERE IS
4 EVIDENCE IN THIS CASE THAT THE CAUSE OF MS. SOWELL'S
5 ASTHMA IS LINKED TO FACTORS OUTSIDE OF HER WORK WITH
6 PIGGLY WIGGLY? I THINK THAT'S PRETTY MUCH THE
7 ISSUE.

8 A. YEAH, BASED ON THE FACT THAT HER IMMUNOGLOBULIN E
9 LEVELS ARE ELEVATED AND THAT HER FATHER HAS ASTHMA;
10 HER DAUGHTER HAS A PULMONARY CONDITION; THAT IT IS
11 MORE LIKELY THAT IT'S -- HER ASTHMA WAS CAUSED JUST
12 BY HER GENETICS RATHER THAN BEING EXPOSED TO
13 CHEMICALS IN THE WORKPLACE. THAT'S MY OPINION.

14 **BY MS. MILLER:**

15 THANK YOU.

16 **RE-CROSS EXAMINATION BY MR. MCDANIEL:**

17 Q. WELL -- AND I BELIEVE -- I DON'T NECESSARILY MAYBE
18 DISAGREE WITH YOU, DOCTOR. LET ME ASK YOU THIS: WE
19 AGREE THOUGH ALSO THAT CHEMICALS CAN TRIGGER? THAT
20 CAN BE -- I'M GOING TO USE THE TERM, WHICH I'VE
21 REFERRED TO HER THOUSANDS OF TIMES FROM
22 TOXICOLOGISTS AND DOCTORS ASYMPTOMATIC OR IN OTHER
23 WORDS IT IS NOT CAUSING ANY PROBLEM AND THEN SHE IS
24 EXPOSED TO A TRIGGERING FACTOR.

25 A. I THINK THE KEY WORD HERE IS EXACERBATE, AND IT'S MY

1 OPINION THAT THE CHEMICALS THAT -- MAINLY THE
2 BLEACH, THE MAIN CHEMICAL HERE THAT PRODUCES THE
3 MOST VOLATILE TYPE COMPOUNDS IS BLEACH. SO, HER
4 EXPOSURE TO BLEACH POTENTIALLY COULD EXACERBATE HER
5 ASTHMATIC CONDITION.

6 Q. OKAY. AND IT GOES BACK TO OUR EARLIER DISCUSSION
7 ABOUT AND ALSO A LARGE PART OF THAT WOULD BE THE
8 AMOUNT OF -- THE AMOUNT OF EXPOSURE WOULD HAVE A
9 FACTOR ON THAT?

10 A. ABSOLUTELY, THE DOSE IS CRITICAL.

11 **BY MR. MCDANIEL:**

12 ALL RIGHT. NOTHING FURTHER, COMMISSIONER.

13 **BY MS. MILLER:**

14 ONE CLARIFICATION.

15 **RE-DIRECT EXAMINATION BY MS. MILLER:**

16 Q. BUT IN TERMS OF BLEACH BEING USED IN A CATERING
17 BUSINESS VERSUS BLEACH BEING USED AT PIGGLY WIGGLY,
18 IS THERE ANY WAY TO KNOW WHICH ONE CAUSES MORE HARM
19 OR EQUAL?

20 A. WHETHER SHE WAS IN A WORK ENVIRONMENT, CATERING
21 BUSINESS, HOME USE, LAUNDRY USE, THERE'S NO WAY TO
22 DETERMINE WHICH EXPOSURE OR MOST LIKELY AN
23 ACCUMULATION OF ALL OF THOSE EXPOSURES WOULD
24 EXACERBATE ASTHMA.

25 Q. AND IN TERMS OF A TRIGGER, IS DUST AND POLLEN ALSO

1 COULD BE CONSIDERED A TRIGGER?

2 A. ABSOLUTELY.

3 BY MR. MCDANIEL:

4 COMMISSIONER, THAT GOES BEYOND THE SCOPE OF RE-
5 DIRECT -- RE-CROSS. POLLEN, THAT WAS NOT A QUESTION
6 I ASKED.

7 BY COMMISSIONER JAMES:

8 IN THE GENERAL SCOPE OF WHAT'S BEING ASKED, AS
9 DEALING WITH EXACERBATIONS, SO I'M GOING TO ALLOW
10 THE QUESTION.

11 BY MS. MILLER:

12 THANK YOU, YOUR HONOR.

13 BY COMMISSIONER JAMES:

14 _____ WOULD YOU LIKE TO REPEAT THE QUESTION, PLEASE?

15 BY MS. MILLER:

16 SURE.

17 RE-DIRECT EXAMINATION RESUMED BY MS. MILLER:

18 Q. IN TERMS OF TRIGGERS, YOU IDENTIFIED -- WE TALKED
19 ABOUT THE BLEACH. WHAT ABOUT DUST AND POLLEN?

20 A. THE DUST AND POLLEN IS MORE -- IN MY OPINION MORE OF
21 A TRIGGER FOR ASTHMA THAN BLEACH IS. SO, IT'S
22 COMPLETELY UNKNOWN WHAT DUST OR ALLERGENS OR OTHER
23 ASTHMAGENS THAT WERE EXPOSED TO BY THE CLAIMANT.
24 THERE'S NO WAY TO DISTINGUISH WHAT SHE WAS EXPOSED
25 TO WHEN. NOW, AS FAR AS HER ATTORNEY POINTED OUT,

1 THE TIMING OF SUCH IS THAT THE SYMPTOMS OF ASTHMA
2 WORSENERD IN RELATION TO THE TIMING OF THE EXPOSURE
3 TO CHEMICALS IN THE WORKPLACE, AND SO THERE IS A
4 CAUSE AND EFFECT RELATIONSHIP TYING TO BE
5 ESTABLISHED BASED ON THAT, BUT YET THERE ARE TOO
6 MANY OTHER CAUSES TO BE ABLE TO DEFINITELY
7 ESTABLISH IN MY OPINION A CAUSE AND EFFECT
8 RELATIONSHIP PROXIMATE TO THE EXPOSURE TO CHEMICALS
9 AT WORK.

10 Q. THANK YOU.

11 BY MS. MILLER:

12 NOTHING FURTHER, YOUR HONOR.

13 BY MR. MCDANIEL:

14 A QUESTION ON RE-RE-REDIRECT.

15 BY COMMISSIONER JAMES:

16 _____ CROSS.

17 RE-CROSS EXAMINATION BY MR. MCDANIEL:

18 Q. TOO MANY CAUSES. CAN YOU LIST THOSE OTHER CAUSES,
19 WHAT THOSE OTHER CAUSES WERE?

20 A. WELL, THERE ARE SOME OTHER CONDITIONS THAT CAN CAUSE
21 ASTHMA THAT WE HAVEN'T EVEN TALKED ABOUT THAT MS.
22 SOWELL HAS. FOR EXAMPLE, GASTROINTESTINAL REFLUX
23 DISEASE. THAT CAUSES ASTHMA. SHE HAS THAT
24 CONDITION. IT IS DOCUMENTED IN THE LITERATURE. SO,
25 THERE'S NUMEROUS CAUSES, POTENTIAL CAUSES, OF ASTHMA

1 THAT COULD'VE OCCURRED IN HER SITUATION.

2 Q. OKAY. LET'S GO BACK TO SOME OF THOSE I THOUGHT YOU
3 WERE GOING TO REFER TO THAT THERE IS NO EVIDENCE --
4 HAVE YOU BEEN PRESENTED TO ANY EVIDENCE THAT SHE WAS
5 EXPOSED ON A DAILY BASIS TO DRANO, TO SPIT FIRE, TO
6 BLEACH AND/OR TO THE OTHER CHEMICALS WE'VE REFERRED
7 TO: DRANO, BLEACH, MR. MUSCLE, SPIT FIRE, AND
8 PINESOL OUTSIDE ON A DAILY BASIS THAN SHE WAS --
9 LIKE SHE WAS AT PIGGLY WIGGLY?

10 A. I DO NOT HAVE ANY OF THOSE RECORDS.

11 Q. DO YOU HAVE ANY -- BY THE WAY, WHERE DO YOU GET THE
12 FACT THAT SHE WAS FOR 18 YEARS EXPOSED TO A FOSSIL
13 FUEL, IF YOU DON'T MIND?

14 A. YEAH, NOT A PROBLEM.

15 Q. MS. SOWELL SAID SHE NEVER HAD A WOOD-BURNING STOVE.

16 A. IN DR. HAMMETT'S MEDICAL RECORD, AND THIS IS BATE'S
17 305, ---

18 Q. OKAY.

19 A. --- STATES DOWN UNDER THE SOCIAL HISTORY, "SHE HAS
20 REPORTED NO SECONDHAND SMOKE EXPOSURE, NEGATIVE FOR
21 SUBSTANCE ABUSE. SHE HAS AN 18-YEAR HISTORY OF
22 BIOMASS FUEL EXPOSURE. THEY USED WOOD IN A WOOD
23 HEATER."

24 Q. IF THAT'S IN FACT WRONG -- IF THAT'S NOT CORRECT, --

25 -

1 A. OKAY.

2 Q. --- WOULD THAT -- OF COURSE, THAT WOULD AFFECT --
3 DEFINITELY AFFECT YOUR OPINION ABOUT ANY CAUSE AND
4 EFFECT RELATIONSHIP BETWEEN THAT?

5 A. WELL, THAT WOULD BE ONE CAUSE WE COULD STRIKE OFF
6 THE LIST.

7 Q. I UNDERSTAND. I UNDERSTAND. AND PRIOR TO -- NOW,
8 YOU REFERRED TO GASTRO REFLEX DISEASE. DO YOU HAVE
9 ANY EVIDENCE OF THAT BEFORE JUNE OF 2011?

10 A. I DON'T RECALL.

11 Q. ALL RIGHT.

12 A. I WOULD HAVE TO POUR THROUGH THE RECORDS AGAIN TO
13 CHECK THAT.

14 Q. WELL, ALL THE RECORDS -- THE EARLIEST MEDICAL
15 RECORDS I KNOW OF THAT ARE IN THE RECORD OR HAVE
16 EVER BEEN PUT INTO EVIDENCE THAT COULD HAVE BEEN
17 SUBMITTED TO YOU WOULD HAVE BEEN THE ORIGINAL
18 RECORDS IN JUNE OF 2011 WHEN SHE WENT ON AN
19 EMERGENCY BASIS TO THE HOSPITAL. SO, ---

20 A. BUT THOSE RECORDS REFLECT ACCORDING TO HOSPITAL
21 PROCEDURE A REVIEW OF HER PAST HISTORY.

22 Q. CORRECT. I AGREE WITH YOU ON THAT. SO, LET'S --
23 AND YOU WOULD AGREE THAT SHE LIVED IN THE SAME HOUSE
24 FOR 25 YEARS?

25 A. OKAY.

1 Q. AND THAT SHE HAD NO PRIOR HISTORY OF ASTHMA,
2 BRONCHITIS?

3 A. THERE'S NO EVIDENCE TO THAT, CORRECT.

4 Q. AND ---

5 A. THAT'S NOT TO SAY THAT IT DIDN'T OCCUR. WE JUST
6 DON'T HAVE ANY RECORD OF IT.

7 Q. WELL, I AGREE WITH YOU ON THAT. A LOT OF TIMES WE
8 TALK ABOUT HISTORY, AREN'T WE?

9 A. UH-HUH.

10 Q. AND WE'RE TALKING ABOUT THE HISTORY OF THE DRAINS
11 SUDDENLY BACKING UP IN JUNE AND AFTER THAT SHE HAS
12 HAD PROBLEMS WITH ASTHMA, AREN'T WE?

13 A. THAT'S WHAT THE CLAIM IS, YES.

14 Q. OKAY. NOW, I DON'T WANT TO BELABOR THIS, BUT LET ME
15 LOOK AT THIS, BECAUSE I REMEMBER -- LET ME SEE, IT
16 MIGHT JUST BE EASIER TO GO TO DR. -- THE -- UNDER
17 PAST MEDICAL HISTORY AND UNDER THE SOCIAL HISTORY
18 THAT SHE WAS NOT A SMOKER, SHE NEVER HAD BEEN, SHE
19 HAD -- ALCOHOL USE WAS VERY OCCASIONAL, AND THAT
20 ALSO HER ONLY KNOWN MEDICAL CONDITION AT THAT TIME
21 WAS HIGH BLOOD PRESSURE.

22 A. OKAY.

23 Q. SO, ANY REFERENCE TO ACID REFLUX WOULD BE -- YOU CAN
24 ALSO DEVELOP THAT FROM ALL OF THESE MEDICATIONS,
25 ACID REFLUX?

1 A. THAT'S POSSIBLE AS WELL.

2 Q. ALL RIGHT.

3 BY MR. MCDANIEL:

4 NOTHING FURTHER, COMMISSIONER. I'M NOT GOING
5 TO BELABOR IT. THANK YOU, DOCTOR.

6 BY THE WITNESS:

7 THANK YOU.

8 BY MS. MILLER:

9 NOTHING FURTHER FROM THE DEFENSE, YOUR HONOR.

10 BY COMMISSIONER JAMES:

11 ALL RIGHT. YOU CAN STEP DOWN, SIR. THANK YOU.

12 CAN THIS WITNESS BE EXCUSED? MR. MCDANIEL, CAN
13 THIS WITNESS BE EXCUSED? CAN THE WITNESS BE
14 EXCUSED?

15 BY MR. MCDANIEL:

16 YES.

17 BY COMMISSIONER JAMES:

18 ALL RIGHT. WE WILL TAKE A TWO-MINUTE BREAK AND
19 THEN WE WILL RESUME.

20 (OFF THE RECORD)

21 BY COMMISSIONER JAMES:

22 THE DEFENSE HAS RESTED. MR. MCDANIEL, DO YOU
23 HAVE ANY REBUTTAL WITNESSES?

24 BY MR. MCDANIEL:

25 YES, COMMISSIONER, I WOULD LIKE TO CALL MS.

1 SOWELL FIRST. I'M GOING TO CALL HER BRIEFLY.

2 BY COMMISSIONER JAMES:

3 OKAY. MS. SOWELL, YOU'VE BEEN PLACED UNDER
4 OATH FOR PURPOSES OF THIS BEFORE, SO YOU ARE STILL
5 UNDER OATH.

6 BY THE WITNESS:

7 OKAY, THANK YOU.

8 BY COMMISSIONER JAMES:

9 _____ MR. MCDANIEL, YOUR WITNESS.

10 DIRECT EXAMINATION BY MR. MCDANIEL:

11 Q. MS. SOWELL, YOU HEARD MS. QUICK'S TESTIMONY ---

12 A. UH-HUH.

13 Q. --- IN REFERENCE TO THE FACT THAT SHE KNEW NOTHING
14 ABOUT YOU HAVING -- YOUR PROBLEMS BEING CAUSED FROM
15 WORK PRIOR TO WHEN YOU ASKED HER TO FILL OUT THE 12-

16 A. TELL ME FIRST ABOUT DID YOU HAVE ANY
17 CONVERSATIONS WITH HER -- SHE REMEMBERED AND SAID
18 THAT YOU TALKED TO HER IN NOVEMBER ABOUT THE DOCTORS
19 NEEDING TO TAKE YOU OUT OF WORK. DID Y'ALL HAVE ANY
20 DISCUSSIONS THEN ABOUT THIS?

21 A. YES. I TOLD -- SHE ASKED ME, SHE SAID "DID THEY
22 EVER FOUND OUT WHAT THE PROBLEM IS?" I SAID, "THEY
23 SEEM TO THINK THE STORE WAS MAKING ME SICK." AND
24 SHE SAID, "WELL, WHAT -- WHAT DO YOU THINK IT IS IN
25 THE STORE?" I SAID, "WELL, WHEN I COME IN, YOU

1 KNOW, WE HAD AN OVEN THAT IT STAYED ON ALL THE TIME.
2 IT WOULDN'T -- IT WOULD NOT TURN OFF, BUT IT STAYED
3 ON LOW HEAT, AND THEY LEFT SOME FOOD THERE ONE
4 MORNING AND WHEN I WALKED IN THE DELI TO TURN ON THE
5 OVEN, THE STOVE AND ALL EVERYTHING, IT HIT ME IN MY
6 FACE AND IT MADE ME SICK." SO, I CAME BACK OUT, AND
7 I TOLD HER ABOUT THEY HAD LEFT THE STUFF IN THE
8 OVEN, AND I HAD TO GET MY BREATH AND EVERYTHING AND
9 THAT IT WAS MAKING ME SICK. AND IT WAS SEVERAL
10 OTHER TIMES THAT SHE ASKED ME, AND I SAY -- SHE SAY
11 "WELL, WHAT YOU THINK IT IS?" AND I SAY, "WELL, I
12 KNOW BEFORE I COME IN THE DOOR I'M ALL RIGHT, AND
13 THE MINUTE I GO BACK THERE AND TURN THE OVEN ON AND
14 START SMELLING THE BACON AND THEN THEY START BUFFING
15 THE FLOOR, THE DUST AND THEN YOU GO IN THE BATHROOM,
16 AND THEY HAVE A LOT OF BLEACH IN THE BATHROOM, AND
17 WHEN HE CLEANED -- I HAD TO RUSH TO THE BATHROOM AND
18 USE THE BATHROOM BEFORE THEY CLEANED THE BATHROOM,
19 BECAUSE IT WAS JUST NOTHING BUT BLEACH. IT WAS SO
20 NASTY, YOU GOT TO SMELL IT. IT WAS JUST WHEN I
21 WOULD COME OUT AND I WOULD RUSH, YOU COULD SMELL
22 BLEACH ALL INTO MY CLOTHES."

23 Q. AND THIS IS LIKE IN 2012, 2013 ---

24 A. YEAH.

25 Q. --- WHEN YOUR CONDITION GOT WORSE?

1 A. YEAH. AND I KEPT TELLING HER, AND I CAME OVER THERE
2 WITH THE DOCTOR'S NOTE WHEN THE DOCTOR TOOK ME OUT
3 AND TOLD ME THAT I WAS GOING TO HAVE TO COME OUT
4 BECAUSE THEY HAD TO SEE EXACT IF IT WAS WHAT SHE WAS
5 THINKING IT WAS THE STORE, AND ME AND MY DAUGHTER
6 WENT OVER THERE, AND I TOOK THE DOCTOR'S EXCUSE TO
7 MS. QUICK, AND MS. QUICK WHEN I TOLD HER, SHE SAID
8 "WELL, WHAT DID THE DOCTOR SAY?" I SAID, "HE THINKS
9 IT'S THE STORE IS WHAT WAS MAKING ME SICK."

10 BY COMMISSIONER JAMES:

11 _____ I'M SORRY, WHEN IS THIS?

12 BY THE WITNESS:

13 THIS WAS BACK IN NOVEMBER -- IT WAS 2013, I
14 THINK.

15 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

16 Q. THIS WAS RIGHT BEFORE YOU WENT OUT ---

17 A. RIGHT BEFORE I CAME OUT.

18 Q. ALL RIGHT.

19 A. RIGHT BEFORE I CAME OUT. AND MS. QUICK GOT TO WHERE
20 SHE DIDN'T WANT TO HARDLY TALK TO ME, AND I TOLD HER
21 I WAS GOING TO STAY -- STAY UNTIL, YOU KNOW, THE
22 CHRISTMAS HOLIDAYS BECAUSE THEY HAVE A LOT OF
23 ORDERS, AND THEY DIDN'T HAVE NOBODY TRAINED TO TAKE
24 MY POSITION, BECAUSE IT JUST HIT ME ALL OF A SUDDEN
25 THAT I WAS GOING TO HAVE TO COME OUT, AND -- AND I

1 TOLD -- AND HATTIE WAS TAKING OVER. SHE HAD TO HAVE
2 HER LAST VACATION. SO, SHE NEEDED TO GET HER
3 VACATION. HERE IT WAS NOVEMBER; IT WAS A WEEK
4 BEFORE THANKSGIVING, I THINK IT WAS, AND I TOLD HER
5 ABOUT IT, AND I TOLD HER, "I JUST WANT TO WORK
6 UNTIL" -- I SAID "IT'S TWO ALTERNATIVES. THEY'RE
7 GOING TO SCRAPE MY LUNGS AND SEE IF MY LUNGS ARE ALL
8 RIGHT OR WAS IT THE STORE." IF I CAME OUT AND IT
9 GOT BETTER, THEN IT WAS THE STORE THAT WAS CAUSING
10 ME TO BE SICK. AFTER THAT, MS. QUICK ACTED LIKE I
11 HAD THE PLAGUE OR SOMETHING, LIKE I MEAN, SHE DIDN'T
12 WANT TO TALK ABOUT IT. I MEAN, IT WAS JUST NOTHING.
13 SHE DIDN'T ASK ME NO MORE HOW I WAS DOING OR
14 WHATEVER. I MEAN, I SEEN A DIFFERENCE IN HER,
15 BECAUSE SHE KNOWED THEN THAT THEY SAID IT WAS THE
16 STORE, BUT I HAD NO INTENTION OF JUST -- YOU KNOW,
17 JUST TRYING TO DOWN THE STORE, YOU KNOW. IT IS WHAT
18 IT IS.

19 Q. NOW, DID YOU EVER OWN A WOOD-BURNING STOVE?

20 A. NEVER.

21 Q. OKAY.

22 A. NEVER.

23 Q. ALL RIGHT.

24 A. AND MY CATERING THAT I DID WHEN I WAS AT THE STORE,
25 I DID IT FROM THE STORE. NO CATERING WAS DONE OUT

1 OF MY HOUSE UNTIL AFTER, AFTER I CAME OUT OF WORK.

2 Q. WHEN YOU'RE TALKING ABOUT CATERING, YOU MEAN LIKE
3 FRYING ---

4 A. LIKE COOKING -- YEAH, COOKING. NONE OF IT WAS DONE
5 OUT OF MY HOUSE. I BOUGHT IT ALL FROM THE STORE,
6 AND IF YOU PULL THE RECORDS ON THE STUFF THAT WAS
7 BOUGHT FROM THAT TIME, YOU CAN SEE HOW MUCH MONEY I
8 SPENT BUYING STUFF FROM THE STORE, FRIED CHICKEN,
9 EVERYTHING, BAKED CHICKEN, EVERYTHING, GREEN BEANS,
10 WHATEVER THEY HAD, I WOULD GET IT AT THE STORE. SO,
11 NOTHING IN MY HOUSE IN MY CATERING CAUSED ME TO --
12 BECAUSE I WASN'T THERE LONG ENOUGH.

13 Q. OKAY, ALL RIGHT. HOW OFTEN DID MS. QUICK COME BACK
14 TO THE DELI?

15 A. NEVER. NEVER, UNLESS I WENT UP THERE AND GOT HER,
16 OR SHE CAME BACK THERE LOOKING FOR SOME FOOD THAT
17 THEY WERE GOING TO BUY FOR LUNCH. NEVER, AND THAT'S
18 THE GOD IN HEAVEN TRUTH.

19 Q. NOW, THE DOCTOR TESTIFIED THAT HE DIDN'T LOOK AT THE
20 -- HE LOOKED AT THE DRANO, BUT IT WASN'T ON PIGGY
21 WIGGLY -- WHERE DID Y'ALL GET THE DRANO, AND HOW
22 MUCH OF THAT WERE Y'ALL USING?

23 A. WE GOT IT OFF THE SHELF OF THE STORE, THE SHELF. I
24 SENT OLIVER UP THERE TO TELL HER ABOUT THE DRAINS
25 STILL WAS MESSED UP AND EVERYTHING, AND SHE TOLD HIM

1 DO WHATEVER HE NEEDS TO DO TO SEE WHAT HE COULD DO
2 TO FIX IT. SO, HE WOULD CAME BACK WITH A PILE OF
3 DRANO AND ALL THIS DIFFERENT STUFF, AND THAT'S WHAT
4 WE USED.

5 Q. AND Y'ALL USED THAT CONSTANTLY?

6 A. YEAH.

7 Q. YOU'VE ALREADY TESTIFIED -- YOU WOULD AGREE --
8 EVERYBODY AGREES ---

9 A. YEAH.

10 Q. --- THAT ONCE THIS PROBLEM STARTED, IT ---

11 A. IT KEPT ON.

12 Q. AND THEY HAD THE PLUMBERS IN THERE EVERY FEW DAYS OR
13 WEEKS?

14 A. UH-HUH.

15 Q. AND Y'ALL WOULD USE THAT TO TRY TO UNCLOG THE
16 DRAINS?

17 A. YES.

18 Q. OKAY. HOW WERE THE FUMES COMING OUT OF THERE?

19 A. IT WAS A LOT. IT WAS A LOT, AND THEN BACK TO WHAT
20 YOU SAID, YOU SAID IT WAS DOUBLE DOORS; IT WASN'T
21 DOUBLE DOORS. IT WAS AN OPEN DOOR, BUT IT WAS JUST
22 LIKE A DOOR, JUST A REGULAR DOOR BUT IT WAS OPEN; IT
23 WASN'T DOUBLE DOORS, AND THE WALLS WAS CLOSED IN
24 BACK HERE, BECAUSE WE HAD A FREEZER BACK HERE AND A
25 COOLER BACK HERE IN THE CORNER. THE SINK AND ALL OF

1 THAT IS BACK THERE. THAT'S WHERE THE MAIN DRAIN,
2 ONE OF THE MAIN DRAINS THAT WAS STOPPED UP WAS BACK
3 IN THAT BACK LITTLE CORNER, AND WE HAD OTHER
4 APPLIANCES, A PROOFER AND WARMERS AND STUFF IN THE
5 FRONT OUT THERE.

6 Q. I DON'T THINK IT'S THAT IMPORTANT, BUT TELL ME ABOUT
7 HOW DEEP DO YOU REMEMBER THAT WATER GETTING, OR, YOU
8 KNOW, ---

9 A. IT WOULD COME UP ON ---

10 Q. --- HOW WOULD YOU DESCRIBE IT? I MEAN ---

11 A. IT WOULD COME UP -- IT WOULD COME UP ON OUR SHOES.

12 Q. INCH, INCH-AND-A-HALF, SOMETHING LIKE THAT?

13 A. YEAH, YEAH, IT WAS PRETTY THICK, AND SHE NEVER --
14 AND SHE NEVER CAME BACK THERE. SHE NEVER -- I TOLD
15 HER. SHE NEVER CAME.

16 Q. OKAY.

17 A. DO WHAT YOU GOT TO DO.

18 Q. OKAY. BECAUSE THAT WAS YOUR DEPARTMENT?

19 A. YEAH. BECAUSE IT WAS MY DEPARTMENT.

20 BY MR. MCDANIEL:

21 COMMISSIONER, I WOULD JUST ASK IF YOU CAN --
22 WE'VE BEEN USING OUR FINGERS AND THUMB TO ESTIMATE.
23 I WOULD -- WOULD YOU AGREE WITH ME THAT'S ABOUT AN
24 INCH, SOMEWHERE AROUND BETWEEN AN INCH OR SO, INCH,
25 INCH-AND-A-HALF?

1 BY COMMISSIONER JAMES:

2 _____ I WOULD AGREE IT'S AT LEAST THAT.

3 BY MR. MCDANIEL:

4 OKAY, ALL RIGHT, OKAY.

5 BY COMMISSIONER JAMES:

6 I MEAN, Y'ALL BOTH WERE DOING SOMETHING JUST A
7 LITTLE BIT DIFFERENTLY.

8 BY MR. MCDANIEL:

9 BUT I JUST WANTED -- FOR THE RECORD, I JUST
10 WANTED TO NOTE THAT WE ARE NOT TALKING ABOUT ANKLE
11 DEEP. COMMISSIONER, THAT'S ALL THE QUESTIONS I
12 HAVE.

13 BY MS. MILLER:

14 JUST REAL BRIEFLY.

15 CROSS EXAMINATION BY MS. MILLER:

16 Q. MS. SOWELL, DID YOU EVER REQUEST TO BE MOVED TO
17 ANOTHER DEPARTMENT?

18 A. I ASKED MR. MCLEOD TO TAKE ME -- SEND ME TO THE
19 CHESTERFIELD STORE BECAUSE THE DOCTOR SAID I HAD TO
20 TAKE MY BREATHING TREATMENT EVERY THREE HOURS. THAT
21 WAS ANOTHER THING, AND HE BOUGHT CHESTERFIELD,
22 WHATEVER TIME IT WAS. I CAN'T REMEMBER WHEN HE
23 BOUGHT THE CHESTERFIELD STORE. I ASKED HIM, "WELL,
24 SINCE YOU'RE BUYING THE CHESTERFIELD STORE, THEN CAN
25 I GO TO -- MOVE ME TO THE CHESTERFIELD STORE,"

1 BECAUSE THEN I WOULD BE CLOSER TO HOME. I COULD GET
2 MY BREATHING TREATMENTS AND EVERYTHING I NEED, AND
3 HE STATED THAT THAT GIRL UP THERE AT THAT STORE, "I
4 CAN'T MOVE THAT GIRL FROM THAT STORE." THAT WAS THE
5 END OF THAT.

6 Q. OKAY. I GUESS WHAT I'M TRYING TO ASK YOU IS WHEN
7 DID YOU -- WHEN DID YOU -- WHEN DID YOU HAVE AN
8 APPRECIATION THAT THE WORK IN THE DELI WAS CAUSING
9 YOU SOME HARM OR CAUSING YOU TO HAVE A HARD TIME
10 BREATHING?

11 A. I DON'T KNOW. I WAS SO BUSY TRYING TO GET THE JOB
12 DONE AND DO EVERYTHING AND THEN GO -- I DID WHATEVER
13 I HAD TO DO. AND EVERY DAY, I WAS HOPING -- I WAS
14 HOPING I WAS GOING TO GET BETTER AND GET BETTER, AND
15 IT DIDN'T HAPPEN. THE ONLY TIME IT GOT BETTER IS
16 LIKE WHEN I WENT ON VACATION, BUT I DIDN'T CLUE IT,
17 AND LIKE I SAID, I DIDN'T GO TO THE DOCTOR AND SAY
18 WELL, I GOT BETTER WHEN THIS -- I DIDN'T GIVE THEM A
19 MOTIVE TO SAY THE STORE IS WHAT'S CAUSING ME. THEY
20 CAME TO THAT CONCLUSION. I DID NOT COME TO THAT
21 CONCLUSION, AND WHEN THEY DID TAKE ME OUT, AND I DID
22 GET BETTER, THAT'S WHEN I REALIZED IT WAS THE STORE.

23 Q. LET ME ASK YOU THIS: YOU SAID -- I WANT TO MAKE SURE
24 I'M CLEAR. WAS IT NOVEMBER 2013, IS THAT THE FIRST
25 TIME YOU RECALL HAVING A CONVERSATION WITH MS. QUICK

1 ABOUT "HEY, WHATEVER IS GOING ON IN THAT DELI IS
2 CAUSING ME TO BE SICK"?

3 A. NO, I HAD TOLD HER. I MENTIONED IT A TIME BEFORE
4 THEN, BUT I DON'T KNOW WHEN, BUT I DO KNOW WE
5 SPECIFICALLY HAD THAT TALK, BECAUSE I HAD BEEN TO
6 THE DOCTOR, AND THEY HAD TOLD ME THAT THERE WASN'T
7 NOTHING ELSE THEY COULD DO. THEY WAS GIVING ME -- I
8 WAS UP UNDER ALL OF THE MEDICATION, AND NONE OF THE
9 MEDICATION WAS WORKING AS LONG AS I WAS IN THERE,
10 BUT WHEN I CAME OUT, WITHIN A WEEK, I STARTED
11 GETTING BETTER.

12 Q. AND LASTLY, PRIOR TO NOVEMBER 2013, WAS IT YOUR
13 UNDERSTANDING THAT FROM ANY OF YOUR DOCTORS THAT IT
14 WAS OKAY FOR YOU TO BE WORKING AT PIGGLY WIGGLY?

15 A. YEAH, NOBODY TOLD ME NOT TO WORK AT PIGGLY WIGGLY.
16 NOBODY TOLD ME NOT TO WORK AT PIGGLY WIGGLY, AND
17 LIKE I SAY, IF I HAD KNOWN THAT'S WHAT IT WAS, YES,
18 I WOULD HAVE COME OUT, AND IF I WOULD HAVE KNOWN
19 THAT WOULD HAVE TAKEN CARE OF IT, I WOULD HAVE BUT I
20 DIDN'T KNOW ALL OF THIS.

21 **BY MS. MILLER:**

22 THAT'S ALL I HAVE, YOUR HONOR.

23 **BY COMMISSIONER JAMES:**

24 _____ ANY RE-DIRECT?

25 **BY MR. MCDANIEL:**

1 NONE, COMMISSIONER.

2 **BY COMMISSIONER JAMES:**

3 ALL RIGHT, YOU CAN STEP DOWN, MA'AM. THANK
4 YOU.

5 **BY THE WITNESS:**

6 OKAY.

7 **BY COMMISSIONER JAMES:**

8 _____ ANY FURTHER WITNESSES?

9 **BY MR. MCDANIEL:**

10 YES, COMMISSIONER, WE ARE GOING TO CALL ONE
11 GENTLEMAN VERY BRIEFLY. MR. OLIVER HARRINGTON.

12 **BY COMMISSIONER JAMES:**

13 IF YOU CAN COME RIGHT HERE, PLEASE, SIR. RAISE
14 YOUR RIGHT HAND FOR ME.

15 _____ * * * * * * * * * * * * * * *

16 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
17 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
18 MATTER HEREIN:

19 **OLIVER HARRINGTON**

20 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

21 **BY COMMISSIONER JAMES:**

22 _____ THANK YOU.

23 **DIRECT EXAMINATION BY MR. MCDANIEL:**

24 Q. MR. HARRINGTON, TELL ME -- DID YOU GIVE YOUR FULL
25 NAME YET? I'M SORRY.

1 A. NO.

2 BY COMMISSIONER JAMES:

3 _____ JUST FOR THE COURT REPORTER.

4 BY MR. MCDANIEL:

5 I'M SORRY?

6 BY COMMISSIONER JAMES:

7 _____ JUST FOR THE COURT REPORTER'S PURPOSE.

8 BY MR. MCDANIEL:

9 OKAY.

10 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

11 Q. MR. HARRINGTON, WOULD YOU MIND GIVING ME YOUR FULL
12 NAME FOR THE COURT REPORTER, PLEASE.

13 A. OLIVER HARRINGTON.

14 Q. OKAY. NOW, MR. HARRINGTON, I BELIEVE YOU WORK FOR
15 PIGGLY WIGGLY. WHERE DID YOU GO TO WORK FOR THEM,
16 AND BASICALLY HOW LONG DID YOU WORK FOR THEM
17 APPROXIMATELY?

18 A. AT PIGGLY WIGGLY, WHICH ONE, IN CHERAW OR BOTH?

19 Q. WELL, ACTUALLY I THINK YOU TRANSFERRED FROM CHERAW
20 OVER TO BENNETSVILLE; IS THAT RIGHT?

21 A. RIGHT.

22 Q. ALL RIGHT. SO, TELL ME ABOUT HOW LONG AT BOTH OF
23 THEM, HOW LONG DID YOU WORK THERE?

24 A. I REALLY CAN'T GET DOWN -- SEVEN OR EIGHT YEARS,
25 SOMETHING LIKE THAT.

1 Q. OKAY. ALL RIGHT. AND YOU TRANSFERRED -- I THINK
2 MS. QUICK SAID THAT YOU TRANSFERRED OVER TO THE
3 BENNETSVILLE STORE AFTER SHE BECAME THE GENERAL
4 MANAGER SOMETIME?

5 A. YES.

6 Q. SHE WAS ALREADY OVER AS THE GENERAL MANAGER IN 2005,
7 IT HAD BEEN AFTER THAT THAT YOU TRANSFERRED TO
8 BENNETSVILLE; IS THAT RIGHT?

9 A. RIGHT.

10 Q. NOW, WE'VE ALL AGREED THAT IN THE SPRING OF 2011 --
11 WELL, I FORGOT TO ASK THIS. WHAT'S YOUR JOB AT
12 PIGGLY WIGGLY?

13 A. BAG BOY AND CUSTODIAN.

14 Q. OKAY. AND YOU DID SOME STOCKING, TOO, I BELIEVE?

15 A. RIGHT.

16 Q. ALL RIGHT. AND WE'VE ALREADY ESTABLISHED AND
17 EVERYBODY AGREES THAT THERE BEGAN A PROBLEM WITH THE
18 DRAINS BACK IN THE DELI AND KITCHEN AREA IN AROUND
19 THE SPRING OF 2011?

20 A. RIGHT.

21 Q. TELL ME IN REFERENCE, JUST TELL ME YOUR OBSERVATIONS
22 ABOUT HOW BAD -- HOW THAT WAS. TELL ME ABOUT IT.

23 A. WHAT YOU WANT TO KNOW?

24 Q. WELL, I WANT TO KNOW ABOUT THE WATER BACKING UP.

25 A. OKAY.

1 Q. I MEAN, WE'VE ALREADY TESTIFIED -- MS. QUICK AND
2 THEM HAVE SAID THAT EVERYBODY WAS COMING IN EVERY
3 FEW DAYS ---

4 BY MS. MILLER:

5 OBJECTION, YOUR HONOR. HE HAS TO ASK A
6 QUESTION.

7 BY MR. MCDANIEL:

8 OKAY.

9 BY COMMISSIONER JAMES:

10 YES, THAT'S LEADING. YOU HAVE TO ASK OPEN-
11 ENDED QUESTIONS.

12 BY MR. MCDANIEL:

13 OKAY, ALL RIGHT.

14 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

15 Q. AFTER THIS PROBLEM DEVELOPED, HOW OFTEN WERE THEY
16 CALLING IN THE PLUMBERS?

17 A. I'D SAY LIKE IF IT STARTED BACKING UP ON THAT MONDAY
18 OR SUNDAY OR WHATEVER DAY IT IS, LIKE TUESDAY OR
19 WEDNESDAY, THEY WOULD CALL THE PLUMBER TO TRY TO
20 UNSTOP THE DRAIN. SO, I COULDN'T UNSTOP IT, AND SO
21 THEN WE HAVE TO CALL SOMEBODY IN TO DRAIN -- TRY TO
22 DRAIN IT, BUT EVERY TIME THEY -- WE TRIED TO GET IT
23 UNSTOPPED, IT WOULD STOP BACK UP. THEN THEY COME IN
24 AND DO A LITTLE WORK. AFTER DOING A LITTLE WORK,
25 THEY STOP -- IT CLOGS BACK UP AGAIN. THEN, I HAVE

1 TO GO OUT THERE AND TRY TO PUMP ALL THAT STUFF BACK
2 OUT OF THERE TO TRY TO GET THAT GREASE AND WATER OUT
3 OF THAT DRAIN, AND THEN EVERYBODY ELSE BACK IN THE
4 BACK OF THE KITCHEN WAS SLIDING AND GOING ON LIKE
5 THIS HERE. SO, I WENT BACK TO THE FRONT AND TOLD --
6 -

7 **BY COMMISSIONER JAMES:**

8 _____ THEY WERE WHAT, SIR?

9 **BY THE WITNESS:**

10 SAY WHAT? SLIPPING AND SLIDING.

11 **BY COMMISSIONER JAMES:**

12 _____ THE PEOPLE IN THE KITCHEN WERE DOING WHAT?

13 **BY THE WITNESS:**

14 SLIPPING AND SLIDING LIKE YOU'RE ON ROLLER
15 SKATES, YOU KNOW, LIKE YOU SLIDE ON GREASE.

16 **BY COMMISSIONER JAMES:**

17 _____ OH, SLIPPING AND SLIDING, THANK YOU, SIR.

18 **BY THE WITNESS:**

19 OKAY.

20 **DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:**

21 Q. SHE JUST DIDN'T UNDERSTAND YOU.

22 A. OKAY, OKAY. SO, THEN WHILE I WAS TRYING TO UNSTOP
23 THE DRAIN, THE LADIES IN THE DELI, THEY WERE TRYING
24 TO PUMP THE WATER SO THEY CAN TRY TO GET THE THINGS
25 OUT, BECAUSE THEY HAD A CERTAIN TIME THEY HAD TO GET

1 THAT WATER OUT OF THERE SO THEY CAN START SERVING
2 THEIR FOOD. RIGHT. BUT EVERYBODY ELSE WAS HELPING
3 ME OUT, AND SO I GO BACK UP THERE TO THE FRONT AND
4 TELL MS. QUICK THAT WE NEED SOME HELP BACK THERE IN
5 THE -- IN THE KITCHEN TO TRY TO GET THAT WATER OFF
6 OF THAT FLOOR, BECAUSE IT'S GOT A LOT OF OIL AND
7 STUFF IN IT. BUT THEN SHE WOULD SAY A FEW WORDS,
8 AND THEN I WAS "OKAY, I'LL JUST GO AHEAD AND TRY TO
9 DO THE BEST I CAN." SO, THEN I WENT OUT ON THE
10 FLOOR AND GOT SOME DRANO, YOU KNOW, TO TRY TO MAKE
11 THE STUFF GO DOWN TO CUT THAT GREASE IT IN. AND
12 AFTER WE WENT AND GOT A COUPLE OF BOTTLES OFF THE
13 SHELF TO PUT DOWN THE DRAIN TO TRY TO GET IT
14 DRAINED. SO, IT WILL START BUBBLING AND BUBBLING
15 AND BUBBLING, SO IN THE BACK WHERE THE MOP AND ALL
16 OF THAT WAS BACKED UP. WATER BE RUNNING OUT THERE
17 IN THE BACK, THE BACK FLOOR IN THE BACK ROOM. SO,
18 THEN WE HAVE TO WAIT, TRY TO PUMP IT OUT AND GET
19 EVERYTHING, YOU KNOW, SO THAT THE WATER WILL BE OUT
20 FROM THE KITCHEN, SO IT WON'T BE SLIPPING AND
21 SLIDING GOING ON LIKE THAT.

22 Q. NOW, LET ME ASK YOU, MR. HARRINGTON, BASED ON THAT
23 WATER BACKUP, ARE YOU SAYING THAT THE DRAINS WERE
24 BACKING UP THAT THEY WOULD BACK UP SO MUCH THAT. ---

25 A. OH, YEAH.

1 Q. --- IT WOULD ACTUALLY OVERFLOW OVER TO THE OTHER
2 DRAIN AREAS?

3 A. RIGHT. SEE, WHEN YOU GOT -- YOU'VE GOT THE DRAIN.
4 YOU'VE GOT THREE DRAINS BACK THERE IN THE BACK. ALL
5 RIGHT. WHEN THAT WATER COMES OUT OF THERE, ALL THE
6 DRAINS WILL FILL UP. THEN, YOU'VE GOT THAT MAIN
7 DRAIN THAT GOES BACK TOWARDS THE BACK ROOM. THAT'S
8 WHERE THE WATER IS SUPPOSED TO COME OUT AND MAKE
9 THAT "T." IT'S GOT SOMETHING LIKE A "T" IN IT.
10 IT'S SUPPOSED TO GO BACK TOWARDS THE WHATEVER THEY
11 CALL THAT LITTLE THING THEY'VE GOT BACK IN THE BACK,
12 THE OIL RELEASE OR WHATEVER IT IS, SO THAT'S WHERE
13 IT KEPT STOPPING UP. THEN AFTER THAT, THE GUY CAME
14 BACK FROM THE PLUMBING PLACE AGAIN. ALL RIGHT. I
15 ASKED HIM WHAT WAS WRONG WITH IT. THEN HE TELL ME
16 IT'S GOT A BROKE PIPE. THAT'S WHY IT KEEPS BACKING
17 UP. SO, THEN AFTER IT KEEPS BACKING UP, I HAD TOLD
18 MS. QUICK THAT THEY NEEDED TO TAKE THAT THING UP AND
19 GET THE THING FIXED SO THAT THAT THING WON'T KEEP
20 BACKING UP.

21 Q. NOW, DID YOU HAVE A DISCUSSION WITH MS. QUICK ABOUT
22 THERE BEING A BROKEN PIPE, THAT THAT'S WHAT YOU ---

23 A. YEAH, I TOLD HER THAT THEY HAD A BROKE PIPE. WHEN
24 THE GUY TOLD ME THAT THEY HAD A BROKEN PIPE, I TOLD
25 HER SHE NEEDED TO HAVE THAT FIXED 'CAUSE SOMEBODY IS

1 GOING TO GET HURT BACK IN THAT CAFETERIA, IN THE
2 BACK OF THE KITCHEN. BUT, YOU KNOW, THEY KEPT GOING
3 ON AND GOING ON, SO. I JUST LEFT IT UP -- LET THEM
4 SETTLE THAT PROBLEM. BUT THEN WHEN THEY -- THEY
5 LEFT THE STORE ON ONE -- ONE NIGHT, THEY LEFT THE
6 STOVE ON, AND THEN WE HAD SMOKE LIKE EVERY WAY
7 'CAUSE THE VENTILATION WASN'T REALLY WORKING, THE
8 FAN THAT SUCKS THE SMOKE OUT TO PUT IT ON THE
9 OUTSIDE, THAT WASN'T REALLY WORKING. SO, THEN MS.
10 GENNETTE STARTED GETTING SICK 'CAUSE THAT SMOKE WAS
11 TOO STRONG FOR ANYBODY, YOU KNOW, LIKE WORKING BACK
12 THERE IN THE KITCHEN. SO, SHE TRIED TO DO
13 SOMETHING, BUT I REALLY DON'T KNOW WHAT SHE WAS
14 TRYING TO DO OR WHAT -- WHAT -- TRYING TO PUT THE
15 FAN TO HELP THAT, BUT ANYWAY, MS. GENNETTE KEPT
16 GETTING SICK BECAUSE THE THING WAS KIND OF STRONG
17 FOR -- FOR ANYBODY WORKING BACK THERE, AND THEN THEY
18 HAD SOME LIKE LUNG PROBLEMS OR WHATEVER IT IS OR
19 WHATEVER. THE SMOKE KEPT MAKING HER SICK. SO, THEN
20 I TOLD MS. QUICK, I SAID "I DON'T KNOW. YOU BETTER
21 -- YOU BETTER START DOING SOMETHING, YOU KNOW,
22 BECAUSE ALL OF THAT STUFF BACK THERE, IT AIN'T
23 SUITABLE FOR NOBODY TO BE WORKING IN." OKAY.
24 WHAT'S THE NEXT QUESTION?

25 Q. OKAY. MR. HARRINGTON, TELL ME ABOUT WHEN YOU WERE

1 USING THE DRANO AND THESE OTHER CHEMICALS. TELL ME
2 ABOUT, WERE THERE ANY FUMES AND THAT TYPE OF THING?

3 A. ANY TIME YOU GOT -- ANYTIME YOU GOT ANY DRANO WITH
4 GREASE AND ALL THAT OTHER STUFF IN THERE, IT'S GOING
5 TO MAKE A FUME IN THERE. I DON'T CARE WHAT IT IS.
6 IF WE POUR BOILED -- POUR ACID IN THERE, IT'S GOING
7 TO MAKE A STINK. SEE, YOU CAN'T PUT ACID AND CLOROX
8 TOGETHER, BECAUSE WHAT IT DO, IT MAKES LIKE A FOAM,
9 LIKE A STRONG FOAM INTO IT. BUT THAT'S ABOUT THE
10 ONLY THING I KNOW ABOUT THAT PART, BUT, I DIDN'T
11 WANT TO HAVE TO BE THE ONE TO CLEAN IT UP.

12 Q. YEAH, BUT HOW WERE THE FUMES THOUGH WHEN Y'ALL WERE
13 USING ALL OF THIS STUFF TO TRY TO GET IT CLEANED UP,
14 WERE THEY BAD? I MEAN.

15 A. ANY TIME YOU PUT THAT CLOROX -- I MEAN, THAT DRANO
16 GREASE OR WHATEVER WE PUT IN THERE, IT'S GOING TO
17 HAVE A FUME. I DON'T CARE WHAT IT IS. NOW, ANYBODY
18 CAN TELL YOU THAT.

19 Q. HOW WAS THE SMELLS?

20 A. SOMETIMES IT WOULD BE RAW, AND SOMETIMES IT WOULD
21 BE, I CAN'T, YOU KNOW, LIKE DEAL WITH IT. SOMETIMES
22 YOU HAVE TO WALK OFF AND LET THE -- LIKE LET IT
23 SETTLE DOWN, AND THEN YOU GO BACK AND START DOING
24 THE SAME THING. OKAY.

25 Q. NOW, HOW DID MS. GENNETTE'S CONDITION GET OVER IN

1 2012, 2013; DID IT GET WORSE, BETTER?

2 A. NO, NOW, OKAY. NOW, THIS PART -- NOW, WHEN SHE --
3 WHEN SHE STARTED WEARING THAT MASK OVER HER FACE, I
4 KNOW IT WAS GETTING KIND OF WORSE. OKAY. SO, IT --
5 ONLY SHE WORE IT AND YOU AND I WORE IT, BUT IT
6 DIDN'T REALLY BOTHER ME. NOW, IT MIGHT HAVE BEEN
7 BOTHERING ME, BUT I REALLY DIDN'T KNOW IT. BUT AT
8 HER AGE, SHE COULDN'T STAND IT, AND THEN I WOULD GO
9 BACK UP THERE TO THE FRONT. I TOLD MS. QUICK, I
10 SAID "I DON'T -- I THINK YOU SHOULD SEND HER TO THE
11 HOUSE AND LET HER GET HER BREATHING OKAY," AND THEN
12 SHE WOULD COME BACK AND WORK LIKE THREE OR FOUR
13 DAYS, HALF -- LIKE HALF. SHE WOULD WORK LIKE A HALF
14 DAY. SHE STARTED GETTING SICK AGAIN. BUT YOU GOT
15 ALL OF THAT FUMES BACK THERE AND THEN YOU'RE TRYING
16 TO COOK AND WHATEVER, IT WON'T HOLD, AND THAT'S WHAT
17 I...

18 Q. DID YOU HAVE DISCUSSIONS WITH MS. QUICK ABOUT THE
19 FACT THAT MS. GENNETTE WAS GETTING WORSE, AND SHE
20 HAD TO DO -- HAD TO DO SOMETHING?

21 A. NOW, I TOLD HER, I SAY "NOW, MS. GENNETTE'S SICK,
22 MS. QUICK, BUT YOU NEED TO GO BACK THERE AND TALK TO
23 HER OR EITHER TELL HER WHAT TO DO OR WHATEVER OR GO
24 TO THE DOCTOR OR WHATEVER." NOW, WHAT SHE TALKED TO
25 MS. GENNETTE ABOUT, I REALLY DON'T KNOW. BUT

1 ANYWAY, I TOLD HER TO GO BACK THERE AND TALK TO MS.
2 GENNETTE TO SEE HER.

3 **BY MR. MCDANIEL:**

4 NOTHING FURTHER, COMMISSIONER.

5 **BY COMMISSIONER JAMES:**

6 _____CROSS.

7 **CROSS EXAMINATION BY MS. MILLER:**

8 Q. HOW ARE YOU DOING, MR. HARRINGTON?

9 A. GOOD.

10 Q. I JUST HAVE A COUPLE OF QUESTIONS FOR YOU, OKAY?

11 A. ALL RIGHT.

12 Q. I KNOW YOU TESTIFIED THAT YOU HELPED OUT WITH THE
13 DRAINS, BUT HOW LONG ARE WE TALKING ABOUT? THIS IS
14 LIKE ONE TIME THIS IS HAPPENING, OR ARE YOU TALKING
15 ABOUT THREE YEARS?

16 A. NO, IT'S A DOZEN TIMES, NOW. COME ON NOW. YOU JUST
17 ASKED THAT QUESTION NOT TOO LONG, NOT ME -- BUT HE
18 DID. I TOLD YOU EXACTLY WHAT I KNOW, AND I DONE
19 GAVE THE ANSWER. THAT'S IT.

20 Q. SO, WHAT TIME PERIOD ARE YOU TALKING ABOUT? IS IT
21 IN 2010, '11, '12, '13 OR '14?

22 A. IT WAS -- I DON'T REMEMBER THE EXACT YEAR AND STUFF
23 LIKE THAT, BUT WHEN WE HAD THE PROBLEM, I WAS
24 INVOLVED WITH IT. SO, I JUST DID WHAT I KNOW AND
25 TRIED TO DO THE BEST I CAN TO TRY TO HELP THEM OUT,

1 BUT...

2 Q. YOU WORKED FOR PIGGLY WIGGLY FOR EIGHT YEARS?

3 A. YEAH.

4 Q. EIGHT YEARS, SO TWELVE TIMES, THE CLOG -- THE DRAINS

5 ARE CLOGGED?

6 A. YEAH, IT WAS CLOGGED PRETTY REGULAR.

7 Q. SO, IS THAT EVERY YEAR OUT OF EIGHT YEARS; WHEN ARE

8 WE TALKING -- WHAT TIME PERIOD?

9 A. WAIT A MINUTE. EXPLAIN THAT AGAIN. YOU AIN'T

10 SAYING THAT RIGHT. EXPLAIN THAT AGAIN.

11 Q. IT'S PRETTY CLEAR. YOU WORKED THERE FOR EIGHT

12 YEARS?

13 A. YEAH.

14 Q. IN EIGHT YEARS, TWELVE TIMES THE DRAINS ARE CLOGGED;

15 IS THAT YOUR TESTIMONY?

16 A. EIGHT TIMES THE TWELVE, WHAT?

17 Q. TWELVE TIMES IN EIGHT YEARS; YOU SAID A DOZEN TIMES.

18 A. I QUITE DON'T UNDERSTAND THAT, THAT QUESTION.

19 Q. I'M TRYING TO GET AN INDICATION -- WAS THIS A

20 CONTINUOUS PROBLEM OVER ONE YEAR; WAS IT A

21 CONTINUOUS PROBLEM OVER EIGHT YEARS; WAS IT A

22 CONTINUOUS PROBLEM OVER TWO YEARS?

23 A. IT WAS A CONTINUOUS PROBLEM EVERY COUPLE OF WEEKS,

24 THEY HAD A PROBLEM WITH THE DRAIN.

25 Q. FOR EVERY -- FOR EIGHT YEARS?

1 A. NOT EIGHT YEARS. I DON'T KNOW HOW MANY YEARS IT
2 WAS, BUT WE HAD THE PROBLEM. I WAS THERE. BUT I
3 DIDN'T COUNT OR NOTHING LIKE THAT. THAT'S IT. WE
4 HAD THE PROBLEM. WE NEVER DID SOLVE THE PROBLEM, SO
5 THAT WAS IT.

6 Q. SO, THE PROBLEM, IT STILL EXISTED WHEN YOU GUYS LEFT
7 THE PIGGLY WIGGLY?

8 A. I DON'T KNOW. IT -- THEY BROUGHT ONE CREW IN THERE,
9 TORE THE THING UP TO TRY TO GET THAT PIPE FIXED, BUT
10 AFTER THEN, I DON'T KNOW.

11 Q. DO YOU RECALL ANY CUSTOMERS COMPLAINING?

12 A. IN THE KITCHEN?

13 Q. YES.

14 A. YEAH.

15 Q. CUSTOMERS.

16 A. NO, NOT THE CUSTOMERS. THEY JUST SMELLED THAT ODOR
17 COMING OUT OF THERE.

18 Q. DO YOU RECALL ANY OFFICIALS FROM THE GOVERNMENT
19 SHUTTING THE KITCHEN DOWN, SHUTTING THE DELI DOWN?

20 A. NOW, I DON'T KNOW ABOUT THAT NOW.

21 Q. DID YOU EAT FROM THAT DELI?

22 A. SURE I DID, I ATE THAT DAY -- OR EVERY DAY.

23 Q. YOU INDICATED THAT MS. SOWELL SAID SHE WAS SICK?

24 A. YEAH, I SURE DID.

25 Q. DID YOU -- WAS THERE ANY INDICATION THAT YOU TOLD

1 MS. QUICK OR MS. SOWELL TOLD YOU THAT SHE WAS SICK

2 ---

3 A. NO.

4 Q. --- BECAUSE OF ---

5 A. I HEARD.

6 Q. LET ME FINISH MY QUESTION.

7 A. OKAY.

8 Q. WAS SHE SICK BECAUSE OF WORK; WAS THAT THE
9 INFORMATION THAT WAS REPORTED?

10 A. NO, THAT AIN'T WHAT I WANTED TO SAY.

11 Q. BUT THAT'S THE QUESTION ---

12 A. I TOLD MS. QUICK ---

13 Q. --- THAT'S BEEN ASKED.

14 A. YEAH, BUT I DON'T KNOW THE ANSWER ON THAT ONE. SO,
15 SKIP THAT ONE AND GET BACK TO THE OTHER ONE.

16 Q. NO, MY QUESTION IS SHE WAS SICK, BUT WAS THERE ANY
17 INDICATION THAT SHE WAS SICK BECAUSE OF WORK?

18 A. BECAUSE THE SMELL OR WHATEVER HAPPENED TO HER, SHE
19 GOT SICK. THAT'S ALL I CAN TELL YOU ON THAT PART.

20 Q. OKAY. THE INCIDENT WITH REGARDS TO THE SMOKE AND
21 THE STOVE, WHEN WAS THAT?

22 A. I DON'T KNOW.

23 **BY MS. MILLER:**

24 THANK YOU.

25 **BY COMMISSIONER JAMES:**

1 ANY REDIRECT?

2 BY MR. MCDANIEL:

3 NO REDIRECT, COMMISSIONER.

4 BY COMMISSIONER JAMES:

5 ALL RIGHT. YOU CAN STEP DOWN, SIR.

6 BY THE WITNESS:

7 OKAY.

8 BY COMMISSIONER JAMES:

9 ANYTHING FURTHER FROM EITHER PARTY?

10 BY MR. MCDANIEL:

11 NONE -- NONE FROM THE CLAIMANT.

12 BY MS. MILLER:

13 NONE.

14 BY COMMISSIONER JAMES:

15 ALL RIGHT. BEFORE WE CLOSE THE RECORD, IF WE

16 CAN SPEAK FOR JUST A MOMENT.

17 (OFF THE RECORD)

18 BY COMMISSIONER JAMES:

19 AND IN CLOSING WITH REGARDS TO THE RECORD, I AM

20 GOING TO RESTATE WHAT HAS BEEN SUBMITTED TO THE

21 COMMISSION FOR CONSIDERATION BY WAY OF PAPER. THE

22 CLAIMANT'S PAGES 1 THROUGH 221, THE DEFENDANTS'

23 PAGES 219 THROUGH 535 MINUS PAGES 370 THROUGH 394

24 THAT WERE REMOVED BY AGREEMENT. THOSE WERE THE

25 EXHIBIT "C," CORRESPONDENCE FROM PRESTON MCDANIEL TO

1 DR. ROCHELLE HAMMETT. THESE WERE THE ENTIRE
2 NOTEBOOKS THAT WERE SUBMITTED IN THE BEGINNING OF
3 THE HEARING AND SHOULD BE ALSO REFLECTED AT THE
4 BEGINNING OF THIS HEARING, BUT I WANTED TO GO AHEAD
5 AND RESTATE THAT. ALSO SUBMITTED FOR CONSIDERATION
6 AT THE BEGINNING OF THE HEARING IS THE DEPOSITION OF
7 DR. MENDEZ AND DR. EARLY. AS FAR AS WHETHER THERE
8 WERE ANY EXHIBITS THAT WERE SUBMITTED DURING THE
9 TESTIMONY, THE TESTIMONY OF THE PARTIES AND THE
10 RECOLLECTION OR REPORTING OF THE COURT REPORTER
11 WOULD REFLECT THOSE EVEN THOUGH NONE OF THE THREE OF
12 US RECALL ANY AT THIS MOMENT.

13 WOULD THAT BE A CORRECT SUMMARIZATION OF THE
14 EVIDENCE TO YOUR KNOWLEDGE, MR. MCDANIEL?

15 **BY MR. MCDANIEL:**

16 YES, IT WOULD. WE RESOLVED THE COMPENSATION
17 RATE AT THE ---

18 **BY COMMISSIONER JAMES:**

19 _____ AT THE BEGINNING OF THE LAST HEARING, YES.

20 **BY MR. MCDANIEL:**

21 WE DID. AND I JUST -- BECAUSE WE HAD PUT IN
22 SOME EXHIBITS. YES, IT WOULD. YES, YOUR HONOR.

23 **BY COMMISSIONER JAMES:**

24 OKAY. AND, MS. MILLER, WOULD THAT ALSO BE YOUR
25 RECOLLECTION?

1 BY MS. MILLER:

2 YES, YOUR HONOR.

3 BY COMMISSIONER JAMES:

4 _____ ALL RIGHT. THAT CONCLUDES THIS HEARING.

5 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
6 CONCLUDED AT THE HOUR OF 2:10 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1408826

EMPLOYEE/CLAIMANT: **GENNETTE SOWELL**
EMPLOYER: **PIGGLY WIGGLY**
INSURER: **OWNERS INSURANCE COMPANY**

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **139** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **GENNETTE SOWELL** TAKEN ON THE 21ST DAY OF JULY, 2016.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 19TH DAY OF AUGUST, 2016.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-04-2024

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation Commission
4 WCC File No.: 1408826

4 Genette Sowell,)
5 Employee,)
6 Claimant,) Deposition of
7 vs.) GORDON EARLY, M.D.
8 Piggly Wiggly,) May 18, 2016
9 Employer,)
10 and)
11 Owners Insurance Company,)
12 Carrier,)
13 Defendants.)
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13 Deposition on oral examination of
14 GORDON EARLY, M.D., reported by Andrea R. Taylor,
15 Court Reporter and Notary Public in and for the
16 State of South Carolina; said deposition taken
17 pursuant to notice of deposition and in accordance
18 with the South Carolina Rules of Civil Procedure,
19 at Upstate Occupational Medicine, 1241 Boiling
20 Springs Road, Spartanburg, South Carolina,
21 commencing on Wednesday, May 18, 2016, at the hour
22 of 12:30 p.m.

GORDON EARLY, M.D. 5/18/2016

APPEARANCES

1

2

3 Representing the Employee/Claimant:

4 PRESTON F. McDANIEL, ESQUIRE

The McDaniel Law Firm

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Columbia, South Carolina 29201

6

7 Representing the Employer/Carrier:

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GORDON EARLY, M.D. 5/18/2016

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2 (Deposition of GORDON EARLY, M.D.)

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1 STIPULATIONS

2 This deposition is taken in
3 accordance with the South Carolina Rules of Civil
4 Procedure.

5 It is agreed and stipulated by the
6 deponent and respective counsel that the reading
7 and signing of the deposition transcript by the
8 deponent is expressly waived.

9 WHEREUPON:

10 GORDON EARLY, M.D., being duly sworn and
11 cautioned to speak the truth, the whole truth, and
12 nothing but the truth, testified as follows:

13 EXAMINATION

14 BY MS. MILLER:

15 Q. Hi, Dr. Early. We just met off the
16 record, but again, for the record, my name is
17 Kenya Miller, and I'm an attorney with the law
18 firm of Dickie, McCamey and Chilcote. And I
19 represent the employer and insurance carrier in a
20 workers' compensation claim involving Ms. Genette
21 Sowell.

22 It's my understanding that you've
23 rendered an opinion, maybe a couple of opinions,
24 with regards to this case which is currently
25 pending before the Workers' Comp Commission. And

GORDON EARLY, M.D. 5/18/2016

1 as you're aware, she contends that she's developed
2 occupational asthma and maybe some other pulmonary
3 problems relating to chemical exposures while
4 working for Piggly Wiggly.

5 It's my understanding that you had
6 originally provided an opinion to her attorney,
7 Mr. McDaniel, back in December 2015, and then you
8 had a follow-up evaluation with her in March.
9 Today, if you'll kind of bear with me, I'm going
10 to have you to address some additional records,
11 and but before I begin, I want to start by asking
12 you some background questions regarding your
13 medical training and background if that's okay.

14 A. Uh-huh.

15 Q. I know you're familiar with this
16 process, but I just want to remind you that when I
17 ask a question, or Mr. McDaniel asks you a
18 question, if you could refrain from answering
19 until the question is asked, just so we have a
20 clean record. Okay?

21 A. Yes, ma'am.

22 Q. And also, to help us kind of move
23 expeditiously today, I did prepare some exhibits
24 so we can try to direct your attention as soon --
25 as quickly as possible and kind of go through

GORDON EARLY, M.D. 5/18/2016

1 this.

2 A. Okay.

3 Q. It's not my intent to keep us all day.

4 A. Okay. Could you spell her name for me.

5 Q. Sure. Genette, G-E-N --

6 A. Last name.

7 Q. S-O-W-E-L-L.

8 A. Okay. Thank you.

9 Q. Sowell. I think some people pronounce
10 it Sowell, but in that area, it's Sowell.

11 A. Thank you. Okay.

12 Q. And you let me know when you're ready.

13 A. Yeah, ready.

14 Q. Can you state your name for the record?

15 A. Ira Gordon Early, Jr.

16 Q. And where are you employed, Dr. Early?

17 A. At Upstate Occ Med.

18 Q. And in what capacity?

19 A. Medical director, physician.

20 Q. How long have you been here?

21 A. For 17 years.

22 Q. And how long have you been practicing
23 medicine?

24 A. For 29 years.

25 Q. And what type of medicine do you

GORDON EARLY, M.D. 5/18/2016

1 currently practice?

2 A. Three elements: primary care/family
3 practice, occupational medicine, and medical
4 toxicology.

5 Q. And, for the record, can you kind of
6 give me a description of what does that entail?

7 A. The primary care/family practice
8 preventive care is kind of what you would go to
9 for your regular doctor, for seeing your regular
10 doctor for routine health care issues.

11 The occupational medicine is work-
12 related issues as they pertain to work-related
13 health issues. Most -- the most common encounters
14 for that would be for regulatory exams, such as
15 DOTs exams, FAA exams, pre-employment exams, drug
16 screens. Also for workers' comp encounters such
17 as low back pain, carpal tunnel, injuries, but
18 also for regulatory issues concerning the
19 workplace and how it interacts with various
20 regulatory issues concerning OSHA, NIOSH, EPA, the
21 various regulations as they -- the Americans with
22 Disabilities Act accommodations, various issues
23 concerning the workplace and health and in a broad
24 sense of understanding of that interaction of
25 health in the workplace.

GORDON EARLY, M.D. 5/18/2016

1 Q. Okay.

2 A. One of which is medical toxicology and,
3 in this case, exposure disease relationship
4 concerning exposures at the workplace and
5 respiratory health. But in this case medical
6 toxicology is a disease of -- is what primarily
7 that I'm more concerning Ms. Sowell -- is it
8 Sowell or --

9 Q. Sowell.

10 A. Sowell, sorry.

11 Q. It's okay.

12 A. Medical toxicology is the study of
13 toxins and their effect on human health. And
14 there is a branch that primarily is concerned with
15 acute exposure issues, such as overdose, and
16 that's kind of poison control issues. And then
17 there's the branch that's concerned more with
18 chronic exposure and adverse health outcomes, and
19 that's more of my interest. And the folks that
20 approach it from that interest tend to be
21 occupational medicine docs, and that's how I
22 approached it, from an occupational medicine
23 physician.

24 Q. The chronic exposure part?

25 A. Yes.

GORDON EARLY, M.D. 5/18/2016

1 Q. Okay. Can you give me a synopsis of
2 your educational training?

3 A. Sure. College at Emory University,
4 majored in biology. Med school at University of
5 Chapel Hill -- North Carolina Chapel Hill.

6 Q. I'm a Chapel Hill grad.

7 A. Oh, great. You're from North Carolina
8 too?

9 Q. No, from South Carolina, but I went to
10 Chapel Hill Law School.

11 A. Oh, okay. And internship in Charlotte.
12 Internal medicine residency in family practice at
13 University of Colorado. Fellowship at Duke in
14 occupational medicine. And part of the fellowship
15 was getting a masters in public health, which I
16 did at UNC and got that in epidemiology. And I've
17 got a CV for you.

18 Q. Oh, great.

19 MS. MILLER: I probably will mark this
20 as exhibit -- are you okay with this?

21 MR. MCDANIEL: Yeah, I'm fine with
22 marking that exhibit.

23 MS. MILLER: Okay. It will be Exhibit
24 Number 11.

25 (Defendant's Exhibit Number 11, CV, was marked for

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1 identification.)

2 MR. McDANIEL: And, by the way, I have
3 no objection to Exhibits 1 through 10.

4 MS. MILLER: Great.

5 MR. McDANIEL: Yeah.

6 BY MS. MILLER:

7 Q. And are you board certified?

8 A. I am board certified in medical
9 toxicology and occupational medicine and general
10 preventive medicine.

11 Q. Okay. And just based off what you're
12 telling me, you treat patients with pulmonary
13 problems?

14 A. Yes.

15 Q. Okay. And what percentage would you say
16 your patients suffer from, like, asthma? Are you
17 able to say one way or the other?

18 A. I'd say maybe five to ten percent.

19 Q. And of those five to ten percent, are
20 you able to break down a percentage of those who
21 develop asthma as adults?

22 A. I'd say less than one percent.

23 Q. Less than one?

24 A. Yes.

25 Q. And do many of your patients I guess who

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1 suffer from this adult onset of asthma, is that
2 typically from work-related issues or outside of
3 work environment?

4 A. Well, kind of you're asking the wrong
5 person because if it's work related, they
6 frequently come to me or somebody's sending them
7 to me.

8 Q. Okay.

9 A. So --

10 Q. So the ones you see, it's generally
11 going to be work related?

12 A. At least somebody thinks it may be work
13 related. A lot of them are, but I can't tell you
14 an exact percentage. But for me it would be
15 higher than for most people in the state.

16 Q. Gotcha. Okay. Dr. Early, I'm going to
17 provide you what's been marked as Defendant's
18 Exhibit 1, and it's your report from December
19 17th, 2015, just to help us kind of go along with
20 these questions.

21 (Defendant's Exhibit Number 1, Dr. Early's Report,
22 was marked for identification.)

23 Q. When were you first asked to render your
24 professional opinion with regards to Ms. Sowell?

25 A. I'd say roughly in the fall, late fall

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1 sometime.

2 Q. 2015?

3 A. Yes.

4 Q. Who asked you to render that opinion?

5 A. Mr. McDaniel.

6 Q. And do you recall what medical records
7 you were provided in preparation for the opinion?

8 A. The ones that I've listed here.

9 Q. And were those provided to you by Mr.
10 McDaniel's office?

11 A. Yes.

12 Q. And just to clarify, other than the ones
13 identified, you didn't consider any other
14 documents at the time that you issued this
15 opinion?

16 A. Correct.

17 Q. Okay. I know we have your report in
18 front of us, but for purposes of the record, can
19 you tell me what was your opinion in the case back
20 in December 2015?

21 A. I thought that the exposures that she
22 had while employed at Piggly Wiggly were more
23 likely than not contributory or causative for her
24 development of asthma as an adult.

25 Q. And what factors had to be in place, or

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1 you found that were in place to kind of support
2 that opinion?

3 A. The fact that she was unaware of a
4 previous history of asthma, and that she was
5 unaware of a previous history of wheezing or any
6 other known respiratory illness prior to her 2010
7 respiratory symptoms, the onset of respiratory
8 illness in 2010, the exposures in 2010 that are
9 listed in our report, the nature of the irritants
10 that she was exposed to, the temporal relationship
11 between exposure and symptoms, the improvement
12 went away from exposure.

13 Q. Okay. And, in general, are these the
14 type of factors you in your expertise would
15 normally look towards, or are there any other type
16 of tests or anything objective that you typically
17 like to point to when you make these type of
18 opinions?

19 A. Well, frequently we will do a
20 methacholine challenge test to ensure the
21 diagnosis of asthma. But in this case the
22 diagnosis was pretty clear. She had been
23 hospitalized with a pretty severe asthmatic
24 episode, and I really don't think the diagnosis
25 was in question. So I don't really think that was

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1 necessary. The flow meter test had already been
2 done back in 2011, but those records were
3 unavailable to me.

4 Sometimes you'll do a onsite pulmonary
5 function test while they're working, but she'd
6 been out of the workforce for two years by the
7 time that I had seen her. These were some of the
8 tests that were done.

9 Q. And those test for diagnostic purposes,
10 not necessarily to assist with causation per se?

11 A. No, they're -- the peak flow tests are
12 helpful in causation, and onsite pulmonary
13 function tests are tests for causation.

14 Q. And what do you look for in a peak flow
15 test result to determine one way or not whether or
16 not the cause is stemming from something in the
17 workplace?

18 A. You see if there is a drop in the
19 performance on the peak flow meter as they're
20 exposed to the work-related potential asthmagen.
21 The same is true with the onsite pulmonary
22 function test, you see if there's a drop in the
23 FEV1 when they --

24 Q. In the what now? I'm sorry.

25 A. In the -- in the test. It's called a

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1 pulmonary function test.

2 Q. Right. You said the LV --

3 MR. McDANIEL: The FEV.

4 Q. FEV?

5 A. FEV1, yeah. You see if there's a drop
6 in the FEV1, and that's the parameter that you
7 measure in the pulmonary function test while
8 they're exposed to the potential asthmagen.

9 MR. McDANIEL: Doctor, I'm an old
10 country lawyer, and don't mean to interrupt, but,
11 you know, it might be helpful to explain the FEV.
12 I've seen it quite a few times with all the old
13 byssinosis cases, brown lung cases I had. But,
14 you know, if you don't mind telling her what that
15 is.

16 MS. MILLER: Well, that was my next
17 question.

18 MR. McDANIEL: Like I said, I didn't
19 mean to interrupt.

20 MS. MILLER: That's okay. That's okay.

21 A. Yes. Forced expiratory volume in one
22 second, and it's how much air you can blow out in
23 one second. And it's one of the parameters that's
24 tested for in a pulmonary function test. So it's
25 kind of the first thing you look at on a pulmonary

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1 function test that assesses how much air you're
2 moving in your lungs in one second. And it's the
3 -- probably the most important parameter you look
4 at in obstructive lung disease with a pulmonary
5 function test.

6 There are other parameters that are
7 probably more sensitive, but the parameter that
8 you look at first is the FEV1.

9 Q. Okay. And is this something, because
10 I'm not familiar with the device itself, but if I
11 had this issue going on, is it something you would
12 give to me and I would take this test at home, and
13 also at work? How does that work?

14 A. No it --

15 Q. Or it just occurs in your office?

16 A. With the pulmonary function test, it has
17 to be administered by another person. Yeah, so --

18 Q. And what about peak flows is what I was
19 specifically referring to.

20 A. The peak flow is self-administered.

21 Q. Okay.

22 A. And that -- the peak flow is a handheld
23 device that you self-administer. And we've got to
24 count on the person giving a good effort, and
25 there's no way to tell whether or not they're

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1 giving a good effort. With the pulmonary function
2 test there are ways to tell whether or not they're
3 giving a good effort, so -- but it's expensive to
4 do the pulmonary function test and it's free to do
5 the peak flow.

6 Q. And at the time of 2015, or even today,
7 have you had the opportunity to review any of her
8 readings from peak flow or review her pulmonary
9 function test at all?

10 A. Yes. The peak flow I have not; however,
11 we did a pulmonary function test on her, and there
12 was some pulmonary function tests in her file.

13 Q. Okay. And what was your assessment of
14 those tests?

15 A. Consistent with asthma.

16 Q. Okay. And based on those tests, can you
17 provide an opinion as to the level of asthma?
18 Asthma, it's my understanding, has a couple of
19 categories, such as severe persistent, moderate
20 persistent.

21 A. Severe persistent.

22 Q. And that was based on your tests?

23 A. Right. And also notes from the
24 pulmonologist.

25 Q. Okay. Would that be back in -- going

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1 back in 2011, '12 or '13, or what time frame are
2 you referring to?

3 A. I'm sorry, could you repeat that
4 question?

5 Q. Sure. I understand when you did your
6 tests, and that would have been around 2015, maybe
7 even this year?

8 A. Uh-huh.

9 Q. I'm sorry, is that a yes? I just want
10 to make sure. I was just trying to clarify the
11 record. But you are understanding -- you are
12 understanding what I was saying? You're saying
13 yes, right?

14 A. Yes.

15 Q. But in 2015 and 2016, you were saying,
16 based on your tests, it was in the category of
17 severe persistent, correct?

18 A. Yes, ma'am.

19 Q. Now, prior to that time, you reviewed
20 pulmonary function tests from other doctors. Is
21 it your understanding in that time frame, was it
22 also severe persistent or did -- or was she in a
23 different category at that time, and if so, do you
24 know the time frame you're referring to?

25 A. I can't remember. I know to get

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1 approval for that Xolair -- which she got approved
2 for, I don't know, a few years ago, that's one of
3 her drugs -- that you've got to have severe
4 persistent asthma.

5 Q. You're not sure when she was approved
6 for that?

7 A. No. Yeah, the prior authorization
8 process for that is onerous, and they don't want
9 to -- they won't approve that unless you're severe
10 persistent.

11 Q. Thank you. Okay.

12 A. The insurance company won't approve it.

13 Q. Gotcha. Okay. I want to ask you just
14 in general, is adult onset of asthma, is that
15 something -- is that something that's common or
16 kind of rare?

17 A. It's less common than childhood onset.
18 I don't know if I would say rare, but I'd say it's
19 markedly less common than childhood onset.

20 Q. But you wouldn't say it's rare either?

21 A. No, I wouldn't say rare, but much less
22 common.

23 Q. Okay. What are some of the reasons that
24 people will develop onset or -- yeah, develop like
25 an onset of adult asthma?

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1 A. Well, sensitizers. Things that
2 sensitize your respiratory system to --
3 asthmagens, respiratory sensitizers. You want me
4 to go through a list?

5 Q. You don't have to. For example, could
6 it be an allergy to pollen, dust, things of that
7 nature?

8 A. It could be. You know, pollen isn't
9 common at the top of the list, but it could be.
10 You can get pollen, dust allergies in adult life.
11 Sometimes that's just something that has been
12 there as a child, but not discerned, not
13 appreciated. Do you want me to keep going?

14 Q. Well, secondly, what about someone's
15 family history? For example, I don't know, like
16 if maybe my parents or my kids had asthma and
17 maybe I didn't have that as a child, are those
18 type of people more susceptible to developing
19 asthma as adults, even though they may not have
20 had symptoms as a child?

21 A. I don't know the answer to that. I
22 don't know if your parents had asthma if that
23 makes you more likely to get it as an adult. I
24 know that if your parents had asthma it makes you
25 more likely to get it as a child, but I don't know

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1 if it makes you more likely as an adult.

2 Q. And do you know if Ms. Sowell suffers
3 from any allergies?

4 A. She told me she was not aware of any
5 pollen or dust mite or cat or dog allergies.

6 Q. And do you know if she had a family
7 history of asthma?

8 A. She told me that she did not, I believe.
9 Let me check on that.

10 Q. Sure.

11 A. Oh, excuse me. Her dad had asthma.

12 Q. Did any of these factors play any role
13 in your analysis one way or the other?

14 A. Yes. The fact that she was unaware of
15 any childhood allergies, and she had a rather
16 unremarkable family history. She has a large
17 family with two parents and six siblings and seven
18 children. So that's 15 first-degree relatives,
19 and only one of them with known asthma, was rather
20 unremarkable.

21 Q. Okay. And going back to report from
22 December 17, 2015, you noted that there was a
23 relative improvement in her symptoms since she
24 left the workforce; is that correct?

25 A. Yes.

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1 Q. That's under the discussion section.

2 A. Yes.

3 Q. Do you know when she left the workforce?

4 A. I think it was early 2013. 2013. It
5 seems to me it was like late winter, early spring.

6 Q. What improvement did she sustain after
7 she left the workforce?

8 A. She said that her respiratory symptoms
9 improved. I presume that means that her cough and
10 wheezing improved.

11 Q. Can you identify any, I guess, objective
12 means of improvement such as reduction in her
13 medication or anything of that nature, improvement
14 in pulmonary function tests?

15 A. No.

16 Q. Are you able to state or testify with
17 regards to her ability to function in her daily
18 life once she left the workforce? Did it improve,
19 stay the same?

20 A. I can state that she felt like it
21 improved.

22 (Defendant's Exhibit Number 2, excerpt from
23 transcript, was marked for identification.)

24 Q. And just for clarification, you note in
25 your report that you relied upon pages 81 to 92 of

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1 her deposition testimony, and I have it marked as
2 Defendant's Exhibit 2 for us, where that's where
3 you got her understanding as to the history in
4 terms of she would work, feel sick, leave work,
5 get better and then come back to work and get
6 sick. Is that your understanding kind of the
7 cycle in this case?

8 A. Yes.

9 (Defendant's Exhibit Number 3, excerpt from
10 transcript, was marked for identification.)

11 Q. And just to make it easier, I'll give
12 you page 72 of her deposition transcript, which
13 has been marked as Exhibit 3. And it's my
14 understanding, but I want you to confirm, that
15 this cycle would have been for a period of 2011
16 through 2013?

17 A. Uh-huh. Okay.

18 Q. Is that your understanding?

19 A. Right. Correct.

20 Q. I want to focus a little bit on her work
21 environment, if I may. Do you know how much of
22 her day she spent using these cleaning supplies?

23 A. I don't know if she was the one that
24 actually used them, but sometimes she would use
25 them and sometimes others would use them. But if

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1 she would use them, it would only be her
2 application of the cleaning material for a matter
3 of minutes probably, two or three minutes I would
4 assume.

5 Q. And I know you've identified some of the
6 cleaners. Is that based on what she told you, or
7 were you given an actual MSDS list from Piggly
8 Wiggly? Or what is your understanding as to the
9 chemicals that she was having to -- or being
10 exposed to?

11 A. Well, I was given a list of MSDS's, but
12 I also asked her what she used. And the --
13 actually, let me correct that.

14 Q. Okay.

15 A. I think -- I don't think I was given the
16 MSDS's. I think I asked the patient what products
17 she used, and she told me I use these products.

18 Q. And from that conversation, can you give
19 any indication of -- I'm just trying to be clear,
20 did you gain appreciation for how potent the
21 products were, again, how long she had to use them
22 or, you know, was it years, months, was it hours
23 out of her day?

24 A. Let me clarify that again because, you
25 know, this has been a while and I'm reading over

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1 materials as I'm thinking.

2 Q. Sure, take your time.

3 A. Yeah. So in the original report from
4 12/17/15, that predated my evaluation of Genette
5 Sowell.

6 Q. Uh-huh.

7 A. Because the evaluation of Genette Sowell
8 was in 3 of '16. And in the original report of
9 12/17/15, I was given a list of what she was
10 exposed to, and it included the five products of
11 Drano, bleach, Mr. Muscle, Spit Fly, and Pine-Sol.
12 So I was given a list of what was used as the
13 cleaning solution, and that list was given to me.
14 And I was given that by Mr. McDaniel's office.

15 So then when I saw the patient, I asked
16 her what she used and what they were using in the
17 Piggly Wiggly store. And she said that she
18 remembered those products. She said there may
19 have been more, she's not sure, but she remembered
20 those products. So that's the answer to the
21 previous question.

22 Q. Okay. Thank you. And these products,
23 are all of these products, are they just used for
24 household cleaning, or is anything specific on
25 here that, you know, me as a person just going to

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1 clean my house can go to any Walmart and purchase?

2 A. Uh-huh, you can go to Walmart and
3 purchase these. They are household cleaners.

4 Q. So you're not able to testify as to
5 whether or not any of these cleaners are more
6 potent than you would normally be able to buy?

7 A. I'm not aware of these being more potent
8 than what a normal commercial customer can buy.

9 Q. Did Ms. Sowell provide you with any
10 information concerning the cleaning supplies she
11 used in her own home?

12 A. She did not.

13 Q. Do you know if she had any other jobs
14 outside of Piggly Wiggly?

15 A. I do.

16 Q. Can you tell me about that?

17 A. Yes. She ran a catering business
18 outside of Piggly Wiggly.

19 Q. And that was operated within her home?

20 A. It was. She had a catering business
21 that she ran out of her house. And she had, I
22 think, an outdoor kitchen that she did a lot of
23 the cooking in --

24 Q. An outdoor kitchen?

25 A. Yeah. It was kind of in a separate

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1 building that she did a lot of the cooking in.

2 It's in my notes somewhere.

3 Q. Okay.

4 A. She had this catering business for a
5 long time, I don't know, 20 years. She ran it
6 with one of her daughters.

7 Q. Did you get an understanding as to
8 whether or not that building was connected to her
9 house, or at least on the same property as her
10 home?

11 A. Same property.

12 Q. Any indication as to what size this
13 outdoor kitchen would have been?

14 A. It was -- let me see if I can find it in
15 my notes.

16 Q. Sure. Take your time.

17 A. I'm not getting much detail here. So
18 here's what I remember.

19 Q. Okay.

20 A. She's run this catering business out of
21 her house for a long time, roughly maybe late '90s
22 or so. And she runs it with a family member. If
23 it's not a daughter, it's a niece or something
24 like that.

25 Q. Fair enough.

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1 A. And she does mostly parties, and she
2 does cold some cold cuts. But her big thing is
3 frying. She does a lot of frying. And she's got
4 like an outbuilding somewhere, it's -- I got the
5 impression it was like an old garage or something
6 that they converted into a frying center. And she
7 has a real problem with the frying.

8 So she -- once all this respiratory
9 stuff started, she has to modify how she does the
10 frying. You know, she's got all the hoods and
11 things like that. Whenever you -- whenever you
12 fry you've got a hood. I mean, true for every
13 kitchen. But she had trouble with the frying.
14 And so she gets her helper, whether it be her
15 granddaughter or her daughter or niece or whoever
16 it is, to do more of the frying for the catering
17 business.

18 Q. Okay.

19 A. And eventually she gets out of it
20 completely.

21 Q. Okay.

22 A. So she had to leave the catering
23 business sometime in the 2011 to 2014 time period;
24 she had to leave in. And she may do like, you
25 know, spreading the ham biscuits with some

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1 mayonnaise or something, but she's not running the
2 catering business.

3 Q. Well, let me ask you this. Can you
4 give, or did you gain any appreciation for what
5 would be different about her activities as a
6 caterer versus the activity she was doing at
7 Piggly Wiggly?

8 A. The catering business is a business
9 where she's not pouring a bunch of de-clogging
10 materials down the drain.

11 Q. Okay.

12 A. And the catering business is something
13 where she's not having her work instigate her
14 coughing, or at least she doesn't tell me her work
15 is instigating her coughing.

16 Q. And let me ask you this. If she's using
17 -- do you have any reason to believe like if she
18 were using the same cleaning products at home that
19 she was using at Piggly Wiggly, would you be able
20 to tell if one was worse than the other?

21 A. I really wouldn't be able to, but she's
22 not having a drain clog in her home.

23 Q. And in terms of when you say drain clog,
24 how often are you referring to her having a drain
25 clog at work? Are you saying this is something

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1 that was, in your impression, is it happening like
2 an everyday thing, or is an intermittent sort of
3 type issue?

4 A. She perceived that in that time frame of
5 2010 to 2013 that early '13 that it was happening
6 frequently, at least probably every month.

7 Q. And you say every month in terms of that
8 time frame, so you're saying this is a problem,
9 from your understanding, just based on talking
10 with her that would have went on for maybe a year?

11 A. Three years.

12 Q. And so, and the reason I'm asking,
13 because it sounds like that was a significant part
14 of your analysis or in terms of reaching this
15 conclusion?

16 A. Correct.

17 Q. So your impression, and I'm not saying
18 that she actually said these words to you, but
19 just your impression from that discussion was
20 she's working for Piggly Wiggly and on a monthly
21 basis for three years, they're having issues with
22 clogs, drainage clogs?

23 A. (Nods head.)

24 Q. Is that a yes?

25 A. Yes, that is.

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1 MR. McDANIEL: I'll object to the form
2 of the question.

3 MS. MILLER: That's fine.

4 Q. And when they have these clogs, your
5 impression is it's being clogged with what?

6 A. The refuse from the deli department.

7 Q. And that will be consisting of like the
8 cleaning supplies they use, cooking materials, raw
9 food, things of that nature?

10 A. Well, the refuse from the deli
11 department is clogging the drain, is what I
12 understand. And from what I understood, the drain
13 is running underneath the cooler and that is
14 solidifying the materials as it runs through the
15 drain, and that's why it keeps clogging.

16 Q. Now, have you had the benefit of
17 actually conducting an onsite visit of where she
18 worked?

19 A. (Shakes head.)

20 Q. I'm sorry, is that a no?

21 A. No. No, I'm sorry.

22 Q. That's okay. And you didn't have the
23 benefit of conducting any type of onsite visit of
24 her home?

25 A. No, I have not.

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1 Q. Have you had the opportunity to review
2 any reports of DHEC concerning the Piggly Wiggly
3 drains?

4 A. I have not.

5 Q. And I noticed in your report you said
6 the decaying organic material in the drain most
7 likely was contaminated by mold. The
8 identification of mold is based on what she tells
9 you or your own speculation? Where does that
10 information come from?

11 A. From my assumption that if it keeps
12 clogging every month, then it's probably going to
13 have mold growing in it.

14 Q. But you don't have any direct evidence
15 of Piggly Wiggly having issues with mold in that
16 deli that she worked?

17 A. I don't have any direct evidence.

18 Q. Is it fair to say that that would be
19 based on your speculation?

20 A. Yes.

21 Q. I noticed and we touched on this early
22 on, and I'm kind of going back on you. But I did
23 notice in your report you referenced not having
24 the peak flow evidence in the record. Is that
25 something that would be an important piece of the

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1 analysis?

2 A. Yes.

3 Q. And again, just for clarification, why
4 would that be important?

5 A. Because that is information that looks
6 at respiratory performance while exposed and
7 unexposed. And so that would see what her
8 respiratory performance is around the potential
9 asthmagen, and then while away from the asthmagen.

10 Q. Okay. I want to focus a little bit
11 about the cause of her asthma. You indicate in
12 your report that the exact cause of her asthma is
13 pretty much unknown; is that accurate?

14 A. Right.

15 Q. Can you kind of explain that just for
16 the record.

17 A. Well, you've got a number of different
18 potential causes. You've got that ones that I
19 outlined I think with listing the five cleaning
20 products that were possible. You've got the
21 decaying organic matter in the pipelines. You've
22 got, you know, the possible mold that I have
23 hypothesized. So these are all potential causes
24 and, you know, they have others. I mean, she had
25 a real problem whenever they turned the ovens on,

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1 and it may have been something they were using to
2 clean the ovens out. So --

3 Q. Oh, I'm sorry I didn't mean to cut you
4 off.

5 A. Go ahead.

6 Q. Sometimes when I'm holding my head down
7 I can't tell when you're finished. I was just
8 going to follow up and say but is it fair to say
9 that you really can't point to anything that in
10 her home business that could rule out some of the
11 cause of her problems?

12 A. Well, the history doesn't point to that,
13 that's the thing. The history is that I cough at
14 work, I go home and I don't cough.

15 Q. History in terms of who provides that
16 history?

17 A. Patient. I go home on the weekend and I
18 don't cough on the weekend.

19 Q. Or if I'm --

20 A. Or my cough gets better on the weekend.
21 And that's what the doctor notes say too.

22 Q. And specifically which doctor are you
23 referring to when you say that?

24 A. Hammett. But De Dios also said that.

25 Q. All right.

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1 A. So those would be some of the
2 possibilities.

3 Q. If Ms. Sowell tested positive for an
4 allergy to dust and pollen, would that change your
5 analysis at all or have any bearing on your
6 analysis of this case?

7 A. It would be -- I'd need to see the
8 results and see how significant the reaction was.

9 Q. And were you aware if she had pets in
10 her home or lived in a rural area where pets or
11 birds would be common in the area?

12 A. She said she had none.

13 Q. Okay. I want to take the opportunity to
14 review records. I don't think you've had an
15 opportunity -- these are records from a Dr.
16 Dayrit, I don't know if I pronounced that
17 correctly.

18 MR. McDANIEL: Dayrit.
19 (Defendant's Exhibit Number 4, records of Dr.
20 Dayrit, was marked for identification.)

21 Q. Dayrit, Center for Lung and Sleep
22 Medicine. It's been marked as Defendant's Exhibit
23 4. And I want to -- it's not as bad as it looks,
24 I promise you. Let me ask you first of all, have
25 you had an opportunity to review these records

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1 before today?

2 A. I'm not aware of them, no. Don't
3 recognize them.

4 Q. Okay. If I can direct your attention
5 first of all to page 304, which is the first page,
6 and let me know if you want me to slow down and
7 you want to take an opportunity to review this
8 page first. I just have a couple of questions
9 about it. And just let me know when you're ready.

10 A. I'm ready.

11 Q. Okay. This is a report of December
12 19th, 2012, for Dr. Dayrit, and it notes that her
13 preliminary function test at this time was
14 essentially normal. Does that surprise you --

15 A. Uh-huh.

16 Q. -- at all?

17 A. It does surprise me.

18 Q. Okay. And why would that be the case?

19 A. Because she had other pulmonary function
20 tests during this time that were abnormal.

21 Q. And when you say during the same time or
22 could it have been that those tests came later on?
23 Because this would be December 19, 2012.

24 A. At Dr. De Dios, she had abnormal tests
25 that -- and D-E D-I-O-S, she had normal tests in

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1 2013.

2 Q. Okay. And that would have been
3 conducted by Dr. De Dios?

4 A. Yes. Uh-huh.

5 MR. McDANIEL: De Dios.

6 MS. MILLER: I can say Sowell but I
7 can't say De Dios, because I'm a good old country
8 girl too.

9 A. But she was on Prednisone at that time,
10 at the time of that PFT, as well as Singulair and
11 also Albuterol nebulizer. So we don't know how
12 long it was since she -- that they did that test.

13 Q. Okay.

14 A. But keep going.

15 Q. Sure. I want to move forward to page
16 306. You'll see it at the very bottom I have it
17 stamped. I'm going to give you a moment.

18 A. I'm ready.

19 Q. Okay. And it's my understanding just
20 from reading Dr. Dayrit's medical report that he
21 was questioning whether or not her problems were
22 hypersensitivity pneumonitis -- I might be part
23 mispronouncing that -- versus occupational asthma
24 but wanted to do a CT of her chest.

25 A. Uh-huh.

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1 Q. Why would that be important one way or
2 the other? Just education purposes.

3 A. It could help look into a few other
4 issues; help rule out some other possibilities.

5 Q. What would be the distinction between
6 those two particular diagnosis?

7 A. Well, the CT wouldn't rule out either
8 hypersensitivity pneumonitis or occupational
9 asthma, but is looking for what -- he goes on to
10 say he wants to look for parenchymal opacities.
11 That would help rule towards hypersensitivity
12 pneumonitis, but I think he's really looking for
13 sarcoidosis, to tell the truth. That's why he
14 wants to do a CT.

15 Q. Okay. But at this point, is it an
16 appreciation for any type of occupational asthma
17 from what you can tell at this time?

18 A. Could you repeat that question?

19 Q. Is there any indication, just based on
20 what you're seeing right now, based on this report
21 from December 2012, is there any indication that
22 she has occupational asthma, just based on the
23 information available during this time frame?

24 A. Well, she's wheezing a lot at work and
25 she's on Prednisone and wheezing on Prednisone.

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1 Q. I guess what I'm trying to pin down on
2 her diagnosis, is it clear or still kind of
3 uncertain at this particular time?

4 A. I'd say it's uncertain. I think he
5 doesn't have enough evidence. He needs to get
6 more evidence.

7 Q. Okay.

8 A. He's seen -- he's just seen her one
9 visit, it looks like.

10 Q. Okay.

11 A. Yeah, you don't make occupational asthma
12 diagnosis with as little information as he has.

13 Q. Okay. And, from this report, it appears
14 that he attempts to counsel her that if her
15 problems continue with breathing that she probably
16 should change jobs. Would you say that was a
17 reasonable assessment at that time just based on
18 what you've seen?

19 A. I wouldn't do that.

20 Q. Okay. Explain that.

21 A. You know, if he thinks that there's a
22 work component to it, then he needs to tell her to
23 file a workers' comp claim instead of change jobs.
24 If he thinks that there's not a work component to
25 it, he needs to tell her don't change jobs.

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1 Q. But it does appear that there may be
2 some type of aggravation or some component that's
3 triggering some problems relating to work at this
4 point?

5 A. Uh-huh.

6 Q. I'm sorry, is that a yes?

7 A. Yes.

8 Q. Thank you. Okay. Let's move forward to
9 page 308, and is the report dated January 3, 2013,
10 from Dr. Dayrit. I'll give you the opportunity
11 just to kind of look over it and you let me know
12 when you're ready.

13 A. I'm ready.

14 Q. Is there anything that stands out to you
15 on this report that would influence your
16 assessment of the case one way or the other?

17 A. She's still on steroids. You know these
18 pulmonary function tests are not very helpful when
19 you're on Prednisone 20 milligrams a day. You
20 need a pulmonary function test when you're off
21 steroids and -- or at least on a low dose of
22 steroids --

23 Q. Okay.

24 A. -- and you haven't had a recent
25 Albuterol.

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1 Q. And let's move forward to page 311.
2 This takes us up to January 16, 2013, I believe.

3 A. Yes.

4 Q. And it's my understanding from reviewing
5 this record that Dr. Dayrit provides a diagnosis
6 of extrinsic asthma. Is there any difference
7 between extrinsic asthma and occupational asthma,
8 or is that pretty much kind of all-encompassing in
9 one?

10 A. Extrinsic asthma means that you have
11 asthma that's caused by extrinsic causes, but it
12 doesn't say whether or not the extrinsic cause is
13 a work cause. Occupational asthma is a type of
14 extrinsic asthma where the extrinsic factor is a
15 work-related factor.

16 Q. Occupational asthma would be under the
17 umbrella of one of those extrinsic asthmas,
18 correct?

19 A. Right.

20 Q. Okay. And does it appear that this
21 conclusion or diagnosis was based off of PFT that
22 she had recently had?

23 A. I don't see the PFT referenced in this.

24 Q. Down towards the D, based on the PFT,
25 basically has extrinsic asthma. It would appear

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1 that he wanted to test her IgE levels, which is
2 going to kind of run into my next question, one
3 her Prednisone is tapered off. Let me withdraw
4 the prior question for -- to make the record
5 clean. Let me ask you this.

6 A. Uh-huh.

7 Q. Reading this, it looks like he wanted to
8 test her IgE levels once her Prednisone is tapered
9 off, and you were just explaining earlier that you
10 kind of need to be off your Prednisone in order to
11 get a true indication of where she is. Did I kind
12 of sum that up correctly?

13 A. Yes, ma'am.

14 Q. Okay. For the record, and for my
15 education, can you explain what is IgE? What
16 exactly is that?

17 A. It is one of the types of antibodies
18 that you make. So there are various types of
19 antibodies, and IgE is the antibody that your
20 body's immune system makes that responds to
21 foreign proteins that are typically things like
22 pollen. They're large foreign proteins that are
23 not bacteria or viruses.

24 So, typically, you want your immune
25 system to not make a reaction to these proteins.

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1 Q. Right.

2 A. You don't want to -- you don't want your
3 immune system to respond to pollen. But people
4 who have seasonal allergic rhinitis or hayfever,
5 their immune system reacts to pollen, and that's
6 due to the body's immune system, that B cells
7 making antibodies to pollen and having those
8 antibodies -- IgE antibodies attacking these
9 pollen -- pollen that's inhaled.

10 Q. So is there any particular significance
11 as to why Dr. Dayrit would be wanting to test her
12 specifically for this?

13 A. He wants to know how much IgE she has,
14 and wants to know how high it is, and he wants to
15 see really how allergic she is. It's kind of a
16 measure of how allergic you are.

17 Q. And does that have any bearing on in
18 terms of is it a piece of analysis -- analysis
19 that you look at when you're determining whether
20 or not am I allergic to -- am I reacting because
21 of the pollen, am I reacting because of workplace?
22 How does this piece fit into this whole big
23 puzzle, if at all?

24 A. Well, he's curious, for one, to see how
25 much of this is kind of an allergic process

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1 allergy, I think. But he also wants to get her on
2 this drug Xolair, and you have to have an IgE
3 elevated to a certain extent to get her on Xolair.

4 Q. And I think you and I discussed earlier
5 that to get the qualification for Xolair, that
6 means your asthma has got to be in probably the
7 severe persistent range?

8 A. Right.

9 Q. Is that accurate?

10 A. It's got to be really bad asthma to get
11 on Xolair.

12 Q. Okay.

13 A. And you've got to have an IgE level
14 that's above a certain quantity, along with severe
15 symptoms and severe impediments to get on Xolair.

16 Q. And just now we've viewed a couple
17 reports, I just want to make sure that your
18 analysis is still on the same track. It appears
19 that you're leaning towards is it she's just
20 allergic to pollen, a little bit of everything, or
21 she's allergic to stuff at work that's -- I mean,
22 what is actually causing this reaction at this
23 point? Are you able to say one way or the other?

24 A. Well, I wouldn't say she's allergic to
25 stuff at work. I think she's been sensitized to

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1 something in her respiratory tract.

2 Q. Fair enough. Poor choice of words on
3 my part.

4 A. Yeah. And that's what's triggered her,
5 and that's what's making her cough.

6 Q. How does one just become sensitized? Is
7 it that -- do people -- is that explainable, or is
8 that just something that can happen with age or --

9 A. There are respiratory sensitizers that
10 can sensitize the respiratory tract.

11 Q. Okay.

12 A. And usually it happens with repeated
13 exposure, but it can happen with one-time
14 exposure, particularly with certain known -- very
15 well known respiratory tract sensitizers. But, in
16 her case, I think it was an issue of repeated
17 exposure.

18 Q. Chronic?

19 A. Repeated exposure --

20 Q. I think we use --

21 A. -- time after time.

22 Q. -- the term synonymously.

23 A. Yeah. What she was exposed to is not
24 anything that was well known for being a very
25 powerful respiratory sensitizer.

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1 Q. And when you say well known for being a
2 powerful respiratory sensitizer, meaning?

3 A. There are certain types of chemicals
4 that are really well known for doing --

5 Q. Asbestos?

6 A. Huh-uh. No, more like isocyanates like,
7 you know, Bhopal, India, remember that? In 1983,
8 in India, there was a big gas leak that killed
9 like, you know, 2,000 people in Bhopal, India.

10 Q. Wow. Well, I won't tell you my age in
11 1983.

12 A. Okay. But yeah, that was a bad --

13 Q. I gotcha.

14 A. -- chemical. It was -- it was an
15 isocyanate --

16 Q. But it sounds like if it's more -- if
17 it's powerful, you don't need the chronic
18 exposure? You can have that one time --

19 A. Right.

20 Q. -- heightened exposure and it's going to
21 be more, I guess I will call it, acute?

22 A. Right. Yeah, if it's the right chemical
23 you can have a one-time exposure and that'll do
24 it. But this isn't the right chemical for a one-
25 time exposure. And that's why, you know, the EPA

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1 or the Consumer Drug Product Safety Commission
2 lets you sell it at Walmart. You know, they don't
3 let you sell isocyanate at Walmart.

4 Q. Good. Okay. One more clarification on
5 -- we're still on page 311 before I move on. The
6 report notes, and I'll put my finger on it, that
7 she was coughing in her sleep. Since I'm assuming
8 she doesn't sleep at work, does this factor impact
9 your assessment of the case at all? It's actually
10 like the third sentence.

11 A. I noticed that. It doesn't sway me one
12 way or another. With asthma sometimes you do
13 cough in your sleep. It doesn't, to me, mean that
14 the asthmagen is at home. You can cough in your
15 sleep from -- it doesn't sway me one way or
16 another.

17 Q. Okay.

18 A. She said she was coughing at home too.

19 Q. But it's your impression that she was
20 coughing worse at work --

21 A. Exactly.

22 Q. -- at some point in this -- this time
23 frame?

24 A. Correct.

25 Q. Okay. All right. Let's move forward to

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1 page 314. And I'll give you a moment, and let me
2 know when you're ready.

3 A. I'm ready.

4 Q. Okay. Is there anything that stands out
5 one way or the other?

6 A. She's got some lymph node enlargement
7 and they're not sure why. That's on her CT, her
8 lung CT.

9 Q. But other than that, nothing really
10 earth shattering, I would say. All right. If
11 not, let's move on to page 318 --

12 A. Okay.

13 Q. -- if you will, when ready. And this is
14 February 26, 2013. Let me know when you're ready.
15 Actually, 319 as well, if you will.

16 A. Okay.

17 Q. Okay. One thing that I -- that stood
18 out to me, and I wanted you to clarify, was Dr.
19 Dayrit -- or Dayrit, excuse me -- appears to go
20 into some detail about her home environment and
21 indicated that she denied owning pets, having
22 leaks or fungus, said she lived out in the country
23 but had lots of birds on the property. At this
24 stage, why would it be important to kind of devote
25 a section to the claimant's home environment?

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1 A. Well, I think he's responding to the
2 fact that she's got this really super high IgE
3 level and he's wonder -- he's realizing now I have
4 to respond to why she's got this high IGE level.
5 And he may be realizing, oh, I forgot to go over
6 the pet history; I better include it now. So
7 that's my bet -- best bet. He -- the next
8 paragraph is she's got an IgE of 480 and normal
9 is, I think, less than 25 roughly. So it's a
10 pretty whopping IgE level.

11 Q. Which was going to my second question.
12 I know we touched on it a little bit before. How
13 is this significant in terms of her exposures to
14 other things she may be allergic to versus
15 desensitized to in the workplace?

16 A. Yeah, I would -- one question that you
17 had asked me previously is what do you think about
18 her being allergic to dust mite and something
19 else. Well, that's very relevant to her being
20 allergic to dust mite and whatever else she's
21 allergic to. I'd just like to see the results of
22 that testing. Was it pin prick testing?

23 Q. I'm sorry?

24 A. Was the allergy testing done by pin
25 prick, is that how it was done?

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1 Q. I can't speak to that one way or the
2 other quite honestly.

3 A. Yeah, I'd like to see those test
4 results. And yeah, that's a big IgE test result.

5 Q. And would you say it would -- is it fair
6 to say that someone with that type of result,
7 regardless of where they work, would develop
8 respiratory problems?

9 A. Not necessarily. I mean, sometimes you
10 have a IgE level like that due to urticaria and
11 you don't have any respiratory problems.

12 Q. Well, let me rephrase the question. Can
13 you count that factor out? Does that make sense?

14 A. I don't know if I understand your
15 question.

16 Q. Yeah, that's -- let me see if I can
17 explain myself a little bit better. She
18 obviously, and correct me if I'm wrong because
19 it's not intentional if I use the wrong words.
20 That's your expertise so I'm getting, you know,
21 thrown into this. But it's my understanding that
22 this is an indication that she's allergic to some
23 stuff, correct?

24 A. Her immune system is revved up is what
25 I'd say.

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1 Q. Okay. Fair enough. If her immune
2 system is revved up and she is allergic to other
3 stuff, pollen and dust, what would be or could be
4 the common symptoms of that? For example, we
5 think of, you know, rhinitis and I think of
6 headaches, I think of coughing, and you stop me --
7 I think of the sinus problems and sometimes
8 respiratory problems. Is that fair to say?

9 A. Yeah, those could be some of the
10 symptoms.

11 Q. And in terms of respiratory problems, is
12 it uncommon for that to be to the extent where it
13 is asthmatic or someone becomes asthmatic, that
14 it's triggered by them being -- having this immune
15 deficiency triggered by allergies? I hope I -- I
16 might not have phrased that correctly. I'm hoping
17 you understand anyway what I'm getting to. And I
18 guess the best way I can describe it is give you
19 an example of my own story.

20 A. Right.

21 Q. When I went to law school, I never
22 really had a significant problem with allergies.

23 A. Uh-huh.

24 Q. I go to Chapel Hill and the first week,
25 I could barely breathe. And I go to the doctor

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1 and I'm like, what's going on? And they gave me
2 an inhaler and, you know, I didn't get tested for
3 asthma, per se, I eventually got used to being in
4 that environment, but what I'm saying is if you
5 have a level this high, is it possible that it
6 rises to the point where you -- once you reach
7 that it's very difficult to control it at that
8 point, or maybe it takes more management to
9 control those respiratory problems? Am I far off
10 the -- I'm off the planet?

11 A. Yeah --

12 MR. McDANIEL: Let me just make an
13 objection --

14 MS. MILLER: Object to the form. That's
15 fine.

16 MR. McDANIEL: Just to cover me.

17 A. Yeah. Well, this is a very high IgE
18 level. So -- so her immune system is very active.
19 And so she really isn't having -- throughout these
20 records from Dr. Dayrit, he's not talking much
21 about her nose being runny or other, what I call,
22 upper respiratory symptoms. Upper respiratory
23 symptoms are sinus congestion, eye irritation,
24 itchy eyes, itchy nose, runny nose, nasal
25 congestion, post-nasal drip. He's not talking

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1 about much of those at all. He's just mostly
2 talking about lower respiratory symptoms, which
3 are cough, shortness of breath, chest pain,
4 pleuritic pain, phlegm, wheezing.

5 So one of the questions that Ms. Miller
6 has been asking me is about kind of upper
7 respiratory symptoms, which is what do you think
8 about this IgE level and allergic rhinitis
9 symptoms. Really, she never really talked to me
10 about allergic rhinitis symptoms. She mostly
11 talked to me about cough and lower respiratory
12 symptoms.

13 She did say that sometimes when she was
14 dealing with the drainage product, she got eye and
15 nose irritation, but she didn't have that at home.
16 She's had it when she's dealt with product, and
17 she really didn't have it too much at work. Just
18 kind of with the drain de-cleaners -- drain de-
19 cloggers.

20 Q. Let me ask you this. With the
21 occupational asthma patients that you have here,
22 and you indicated they typically would be work
23 related, do they have IgE levels this high?

24 A. Not very commonly.

25 Q. At this point, would you say that her

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1 condition would be consistent with severe
2 persistent asthma, mild, intermittent, moderate?

3 A. Severe persistent.

4 THE WITNESS: Can we take a break for
5 just a moment?

6 MS. MILLER: Absolutely. We can go off
7 the record.

8 (Off the record)

9 (Defendant's Exhibit Number 5, Clinic Note of Dr.
10 Hammett, was marked for identification).

11 BY MS. MILLER:

12 Q. Let's move on for a minute to Dr.
13 Hammett's records, and I know you've had an
14 opportunity to review those previously. But
15 specifically want you to address what's identified
16 as Defendant Exhibit 5.

17 A. Okay.

18 Q. And it's her medical report from March
19 19th, 2015.

20 A. All right.

21 Q. And it's APA page 268. Because I did
22 want to clarify something. And you let me know
23 when you're ready.

24 A. I'm ready.

25 Q. You indicated that kind of in this time

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1 frame and we're still in what I would consider the
2 fall getting to the spring of 2013. We were at
3 Dr. Dayrit, that was January/February 2013. This
4 is March 2013. Is it still your testimony that
5 she has severe persistent asthma --

6 A. Yes.

7 Q. -- first of all?

8 A. Yes, ma'am.

9 Q. Okay. And is there a presence of
10 wheezing appreciated on the exam?

11 A. Yes.

12 Q. At this point, the phrase that really
13 caught my eye is under the history. It says, She
14 has a history of chronic asthma exacerbation that
15 was determined to be work related and suggested
16 that she remove herself from the job.

17 A. Yes, ma'am.

18 Q. Based on what you've seen in terms of
19 the medical evidence, would you say that this is
20 probably a fair assessment at this time?

21 A. Yes, ma'am.

22 Q. Can you provide an opinion as to whether
23 or not, at this point, she has what one would
24 consider a definitive diagnosis of occupational or
25 work-related asthma?

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1 A. On 3/13 -- 3/19/13?

2 Q. That's correct.

3 A. I do think there is a work-related
4 component to her asthma. You know, you brought up
5 some other things that I think are also related to
6 her asthma, and I would like to see some of these
7 other issues that you brought up be --

8 Q. Such as?

9 A. The dust mites. You said that she's
10 also allergic to pollen?

11 Q. Uh-huh.

12 A. And I'd like to see the results of those
13 tests.

14 Q. So one way or the other, she has asthma,
15 but it's kind of unsure if it's work related or
16 could be something else at this point?

17 A. No, I think there's a work-related
18 component. That doesn't mean that -- you know,
19 with comp, you don't have to be 100 percent
20 attributable to work. You just have to be
21 aggravated by work. I think there's definitely a
22 work aggravation to her asthma and, you know, it's
23 in my history, there's a strong correlation
24 between her symptoms and work. And you've got
25 some asthmagen exposures at work that I've gone

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1 through and illustrated in my -- in my history.

2 Q. Let me tell you what I'm trying to get
3 in this whole spectrum. At some point it has to
4 be a realization that this work, these chemicals
5 is aggravating -- I don't know what the cause is
6 or whatever, but it aggravates or hinders my
7 ability to breathe --

8 A. Right.

9 Q. -- is that fair --

10 A. Yes.

11 Q. -- to say?

12 A. Uh-huh.

13 Q. Is it true that, okay, if I have that
14 and I remove myself earlier on in that tandem, so
15 to speak, that I may get much better or not create
16 any type of permanent impairment to myself at some
17 point? Or once it's there, it's permanent, it's
18 done, it's point of no return, is pretty much what
19 I'm asking.

20 A. I think you've already sensitized
21 yourself and developed asthma. If you're removed,
22 you're not going to return to normal regarding
23 developing asthma.

24 Q. And when we touched on this earlier,
25 there are different components of that: there's

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1 the severe persistent. Is that correct?

2 A. Correct.

3 Q. And can you explain to me the different
4 -- let me ask you to explain the different
5 categories first.

6 A. For asthma?

7 Q. That's correct.

8 A. Well, generally, they're broken down
9 into mild persistent, severe persistent, moderate
10 persistent.

11 Q. And would you say from your review of
12 all of these records, because I know you reviewed
13 even the hospital records, is it your testimony
14 that from day one at the hospital she was already
15 in severe persistent; is that -- is that what your
16 testimony is? Or did she build up to severe
17 persistent?

18 A. I'd say she built up to severe
19 persistent.

20 Q. And at what point did she become severe
21 persistent?

22 A. It's hard for me to say. But I would
23 say at the time that you asked me this question,
24 which is March of '13, I'd say she was in severe
25 persistent.

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1 Q. Okay. Well, let's back up some. What
2 about when she's with Dr. Dayrit, and that was
3 December 2012 through February 2013, that time
4 frame, severe persistent?

5 A. She's severe persistent because she's on
6 daily Prednisone during that interval.

7 Q. So would you say at any point in the
8 medical evidence where she's on daily Prednisone
9 at -- was it 20 milligrams?

10 A. Uh-huh.

11 Q. I'm sorry, is that a yes?

12 A. Yes, ma'am.

13 Q. That would be considered severe
14 persistent?

15 A. Yes, ma'am. Well, that in addition to
16 the fact that she's coughing a lot.

17 Q. And she's still having symptoms?

18 A. Right. And she's having a hard time
19 doing her work during that interval.

20 Q. Okay.

21 A. She was missing a lot of work time
22 during that interval.

23 Q. Let me ask you this as well. If early
24 on when she developed these respiratory problems,
25 and I think it was she went through like

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1 bronchitis or maybe a pneumonia diagnosis, and
2 she's provided with a lower dosage of Prednisone,
3 how important would it be to consistently take
4 that medication once you've been prescribed?

5 A. I think early on when she was given
6 Prednisone she was given it for a brief period of
7 time. So just five to seven days. And usually
8 when you're given Prednisone for a short period of
9 time it's called a burst. And if you want to
10 shorten the interval by a day or two, it's not
11 that important.

12 Q. And then when it's --

13 A. You can taper yourself off for, you
14 know, instead of six days, you take it five days.
15 Not that big a deal.

16 Q. Gotcha. And when it becomes more of a
17 routine, like okay, this is your medication, you
18 need to take it, how important at that point is it
19 for you to take it as prescribed?

20 A. Probably pretty important. If you skip
21 it you'll probably feel the difference. So
22 usually people don't skip it because they feel bad
23 when they skip it.

24 Q. And if prescribed that medication, and I
25 go back to those chemicals that I've been

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1 desensitized towards, is there any harm in doing
2 that?

3 A. Typically, if the asthmagen that is
4 triggering the bronchoconstriction is
5 reintroduced, typically, it aggravates the
6 problem.

7 Q. Beg your indulgence for one second.

8 All right. Let's move forward to your
9 report of March 24, 2016, if you will. And it's
10 been marked as Defendant's Exhibit 7.

11 (Defendant's Exhibit Number 7, Visit Note 3/24/16
12 Dr. Gordon, was marked for identification.)

13 Q. We touched base on this home catering
14 business earlier, but I want to clarify, you
15 reference that she used a vent at home while she
16 was frying the food, so to speak. Can you give me
17 any indication as to whether or not that this
18 would afford her the same protection as any --
19 from any fumes or smokes that she may have been
20 exposed to from frying there versus in a
21 commercial kitchen?

22 A. Probably less desirable would be my
23 prediction. I predict that the commercial kitchen
24 has probably got better ventilation for frying.
25 But she didn't have a problem with frying at

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1 Piggly Wiggly.

2 Q. Well, the only reason I mentioned that
3 because -- I have to put my finger on it -- at
4 some point on your report you indicate that the
5 oven temperature could possibly serve as a
6 contributing factor to her respiratory problems.
7 Was that at least part of something that was
8 considered by you in reaching your conclusion in
9 this case?

10 A. She said that when they ran the oven at
11 high temperatures, particularly if they were
12 cleaning the oven, it was a bad trigger for
13 coughing fits, if I recall. I didn't put it in
14 the report. There are just little things like
15 that that I remember now that I didn't put in the
16 report.

17 I was just thinking of what the
18 differential could be of things that could trigger
19 her, so that could have been one. Could just be
20 the heat trigger from volatilizing something that
21 was in the neighborhood of the oven that bothered
22 her. I don't -- she never told me that frying at
23 Piggly Wiggly was an issue.

24 Q. I just noted it from the report, so.

25 A. She didn't mention frying bothered her

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1 at Piggly Wiggly.

2 Q. Okay.

3 A. But she didn't mention doing much frying
4 at Piggly Wiggly either. I don't know if she was
5 in charge of frying at Piggly Wiggly.

6 Q. Okay. On your report you list the
7 medications she was currently taking.

8 A. Uh-huh.

9 Q. Just for clarification, do you mind
10 taking some time to kind of go through this list
11 of --

12 A. Sure.

13 Q. -- medications and --

14 A. Yes.

15 Q. -- tell us the purpose for these
16 particular medications.

17 A. Okay. Certainly. Albuterol nebulizer,
18 that's for bronchodilatation, use as needed.
19 Atorvastatin is a cholesterol med. Benazepril,
20 blood pressure med. Nexium is an acid suppression
21 med.

22 Q. Would that be related, the Nexium?

23 A. Yes. There is a concern about
24 gastroesophageal reflux exacerbating her lung
25 disease. So they gave that to her to suppress

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1 acid production.

2 Q. Okay. Thank you.

3 A. Potassium chloride is something you take
4 when you're on a diuretic, which she's not on a
5 diuretic. I don't know why she's on potassium.
6 Prednisone ten milligrams as needed, she's
7 probably on that daily, is my prediction.
8 Singulair is a lung medicine, leukotriene
9 inhibitor that suppresses the lung's immune
10 reaction to irritants, pulmonary irritants.
11 Symbicort is an inhaled steroid and long-acting
12 bronchodilator, one puff -- or two puffs twice a
13 day. That's a high dose. Xolair is an injection
14 that you get two weeks that binds IgE and thereby
15 lowers your IgE circulating level.

16 Q. And just for clarification of these
17 medications, would you say all of them were
18 related to respiratory functioning with the
19 exception of the potassium and cholesterol
20 medication?

21 A. And blood pressure, Benazepril, and
22 potassium -- yes, except those ones that we just
23 mentioned

24 Q. Except for -- make sure I got it -- two,
25 three, and five; did I get that right?

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1 A. Yes. Yes, ma'am.

2 Q. Thank you. Are you able to testify as
3 to whether or not Ms. Sowell may be able to reduce
4 or eliminate any of these medications in the
5 future?

6 A. She may be able to.

7 Q. Any particular one more so than the
8 other?

9 A. Xolair, that'd be the first one you'd
10 want to get her off.

11 Q. Do people typically stay on that for
12 life, or is that something that is kind of a short
13 term?

14 A. The insurance company wants you to come
15 off it as quick as you can.

16 Q. Kind of costly?

17 A. (Nods head.)

18 Q. Is that a yes?

19 A. Yes, ma'am.

20 MR. McDANIEL: That's the Xolair?

21 MS. MILLER: Yes, that's the Xolair, the
22 injections.

23 Q. I want to clarify, I notice on here you
24 noted the father's history of RAD, R-A-D. What
25 exactly is that?

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1 A. Reactive airway disease.

2 Q. Is that the same thing as asthma?

3 A. Yes, ma'am.

4 Q. Okay. I thought so. I just wanted to
5 clarify that.

6 I also noted not this severe -- is there
7 any particular reason why that would be important
8 to note, not this severe there?

9 A. Because she has a severe case, and so I
10 just wrote down that he did not have a severe
11 case, that she told me it was mild. That -- I
12 asked if anyone had a case similar to hers, and
13 she said no. She just said that her dad had a
14 mild case of asthma.

15 Q. If he had a longstanding history of
16 asthma, would that play any type of part in your
17 analysis of significance, I should say?

18 A. What I'd be interested in is whether or
19 not he had a severe case of asthma, or whether or
20 not he had a case of adult-onset asthma.

21 Q. And it'd be difficult to know that by
22 terminology saying -- I guess my question is you
23 wouldn't equate necessarily a long history of
24 asthma to being the same as a severe case of
25 asthma?

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1 A. Your statement is correct.

2 Q. And in terms of sarcoidosis, is that a
3 factor of any significance if she had that in her
4 family history?

5 A. I think it'd be relevant. I asked her
6 if she had lung disease in her family. I don't
7 recall her telling me that. Does she have that?
8 (Defendant's Exhibit Number 9, Office Note of Dr.
9 Vaughn, was marked for identification.)

10 Q. Well, let me direct your attention --
11 it's been marked as Exhibit 9, page 75 of the
12 APA's. Based on this report it appears that her
13 daughter, she reported her daughter as having this
14 condition. Her father has a lengthy history of
15 asthma. She does have a daughter with
16 sarcoidosis.

17 A. Okay.

18 Q. I'm sorry, I guess the question is does
19 that have any bearing on your analysis of the case
20 one way or the other?

21 A. Makes me want to do more sarcoidosis
22 tests on her, but it doesn't change my opinion.

23 Q. Is sarcoidosis, that's something that's
24 work related?

25 A. No, it is not.

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1 Q. And for clarification, and perhaps my
2 understanding, is there any way to reconcile the
3 fact that she hasn't been working for Piggly
4 Wiggly since 2014, but yet her condition is still
5 to the point where she's having to take these
6 medications, and particularly the injections?

7 A. Once you're sensitized with asthma, the
8 asthma doesn't resolve. So the fact that the
9 asthma has not resolved doesn't surprise me. But
10 she relayed to me that she perceived that she was
11 significantly better than winter of 2013, and she
12 was significantly more active, she could get
13 around better than she could in winter of '13.
14 And her Prednisone is lower. She was 20
15 milligrams a day and now she's ten milligrams a
16 day.

17 Q. But at that time she wasn't on the
18 injections; does that play a part as well?

19 A. That does play a part.

20 Q. And do you have any indication when she
21 started taking these injections?

22 A. I think it was sometime in 2013, but I'm
23 not sure.

24 MR. McDANIEL: Sorry?

25 MS. MILLER: He said some -- oh, when

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1 she started the injections.

2 MR. McDANIEL: Okay.

3 BY MS. MILLER:

4 Q. Is it a fair statement to say that if
5 she had removed herself from employment sooner,
6 she may not have gotten to the point where she
7 needed these type of injections and reached this
8 level of being asthmatic?

9 A. I think that's a fair statement.

10 Q. And would that opinion be to a
11 reasonable degree of medical certainty?

12 A. Yes.

13 Q. Okay. I want to talk just a little bit
14 about her restrictions. Would you -- would you
15 consider Ms. Sowell, from what we say in the comp
16 perspective, to be at maximum medical improvement
17 right now?

18 A. Yes.

19 Q. She is. Okay.

20 And in terms of her work restrictions,
21 would you say she has work restrictions?

22 A. Yes.

23 Q. And what would those restrictions be?

24 A. She has restrictions relating to her
25 respiratory status due to windedness, and

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1 basically there -- there are cardiac -- have you
2 seen the cardiac respiratory restrictions?
3 There's a -- there are like a class I, II, III, IV
4 cardiac respiratory restrictions.

5 Q. Okay.

6 A. Oh, gosh. Basically, it'd be sedentary
7 work.

8 Q. Okay.

9 A. But if you want, they're called METS, M-
10 E-T-S.

11 Q. M-E-T-S?

12 A. Yeah.

13 MR. McDANIEL: Uh-huh.

14 A. And you -- it deals with how much energy
15 you can expend in work. So if you want something
16 more specific, you can look into that. But the
17 cardiac folks have come up with a table that lets
18 you look at that. It's in the AMA Guides.

19 Q. But you haven't specifically looked at
20 it for her case, or have you?

21 A. Well, it's -- the AMA Guides has a --
22 something for cardiothoracic work restrictions for
23 windedness. It's mostly for heart failure, but
24 you can use it for lung too.

25 You want me to get a AMA Guides and show

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1 you?

2 Q. Please.

3 A. Okay.

4 Q. That would be helpful for the record.

5 And he can read it into the record.

6 MR. McDANIEL: Good, then I'll take a
7 quick break.

8 (A break was taken.)

9 BY MS. MILLER:

10 Q. I wanted to clarify sedentary work,
11 would that extend to an eight-hour day? Just
12 trying to get some clarification on if she can do
13 any type of work, basically?

14 A. Yeah, I think she could probably do
15 sedentary work for an eight-hour day.

16 Q. Okay. And if she were isolated or
17 completely moved away from any chemicals in Piggly
18 Wiggly, could she possibly return to work for her
19 employer? Safely return to work?

20 A. If she had no irritant exposure and they
21 allowed seated work, no lifting more than ten
22 pounds, use of nebulizer at work, possibly.

23 Q. And this may be outside of the METS, but
24 is it possible to provide any type of impairment
25 rating per se?

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1 MR. McDANIEL: I would object to the
2 question simply because Dr. Early has not been
3 given a sufficient amount of time to do a proper
4 evaluation under the AMA Guides in reference to
5 impairments and all that would apply.

6 MS. MILLER: Fair enough.

7 THE WITNESS: Right, I don't think -- I
8 don't think I can answer that. But I think she
9 would fall within a Class IV impairment on page
10 107 of the AMA Fifth Edition.

11 MR. McDANIEL: Is that in reference to
12 the pulmonary or --

13 THE WITNESS: Pulmonary.

14 MR. McDANIEL: Okay.

15 MS. MILLER: Okay. Dr. Early, I think
16 that concludes my questions, but if you would just
17 allow me one moment to review my notes, please.

18 BY MS. MILLER:

19 Q. General question, is it more common for
20 women to develop adult onset of asthma over men?
21 Just curious.

22 A. I'm not aware of that.

23 Q. Okay. And one clarification, going back
24 to a definitive diagnosis. What tests would you
25 say or factors need to be in place in order for

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1 that to happen? Is there a certain list that you
2 can identify?

3 A. Well, I think the most helpful thing now
4 would be to run down those peak flow meter results
5 from 2012, I think it was. I think that would be
6 helpful.

7 Q. Okay.

8 A. I think it would be helpful for me to
9 see the allergy testing and -- what year was the
10 allergy testing done?

11 Q. I'm not going to be able to say honestly.

12 A. Okay. And I think those are the two
13 most helpful variables that could be done now.

14 Q. Well, for clarification it was March
15 18th, I believe it was -- 19th, 2013, you would
16 say that it was a definitely a work component to
17 her condition?

18 A. A work aggravation.

19 Q. Okay. Thank you.

20 MS. MILLER: Please answer any questions
21 Mr. McDaniel may have.

22 EXAMINATION

23 BY MR. McDANIEL:

24 Q. Dr. Early, I will try not to be too
25 long. Just want to clarify some things. We

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1 originally asked you to do a records review as
2 being board certified in occupational medicine and
3 toxicology; is that not correct?

4 A. Correct.

5 Q. And at the time that you did that
6 evaluation, we've talked about records from Dr.
7 Hammett, but at that time, you requested and we
8 provided you with a copy of Ms. Genette Sowell's
9 complete deposition; is that correct?

10 A. In December of 2015?

11 Q. Yes. Uh-huh.

12 A. Yes, that is correct.

13 Q. And at that time, we provided you with a
14 complete set of the records from her family
15 doctor, Dr. Hammett, that we had at that time; is
16 that --

17 A. That is correct, yes.

18 Q. And at that time, we provided you with a
19 complete set of records from Chesterfield General
20 Hospital for the two visits on June the 3rd, 2011,
21 and June the 11th, 2011, correct?

22 A. Correct.

23 Q. All right. And, in addition, we
24 provided you with a copy of Dr. De Dios', the
25 pulmonologist, records at that time?

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1 A. Correct.

2 Q. And we also provided you with all the
3 records that we had from the allergy and asthma
4 doctor that she saw, and that's Dr. -- let me find
5 it -- I'm confusing all of my --

6 MS. MILLER: Dyce.

7 Q. Dr. Dyce, Dr. Orville Dyce.

8 A. I don't have that down here. Did you
9 provide that to me?

10 Q. I think we did. But, in other words,
11 you definitely had the records from Chesterfield
12 General, you definitely had all the records we've
13 referred to throughout this from Dr. Hammett, and
14 you had all the records from Dr. De Dios?

15 A. Correct, correct, correct and a
16 deposition.

17 Q. In reference to -- of course, you
18 reviewed the deposition at this time. Now you've
19 been asked a lot of questions in reference to that
20 deposition and those medical records, you reviewed
21 those at that time; is that correct?

22 A. Correct.

23 Q. All right. Now, we're now asking you in
24 May, approximately seven months after that, so
25 you're -- at specific times, your reference point

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1 is a seven-month old memory; is that correct?

2 A. Correct.

3 Q. All right. I just want to -- the reason
4 I ask you that is that, looking back at your
5 report at that time, correct me if I'm wrong, but
6 based on the history that you recorded, based on
7 your review of records at that time, you recorded
8 that some period of time prior to the first
9 admission into the hospital in June of 2011, at
10 the Piggly Wiggly where she had worked for over
11 ten to 12 years, they developed a problem with the
12 sewage -- or the waste water system and the sewage
13 drains backing up in the deli department
14 specifically. I believe it was five out of six
15 drains were backing up and they were even at
16 points in time getting ankle deep in water. Do
17 you remember -- does that refresh your
18 recollection as to the history?

19 MS. MILLER: And I'll object to form.

20 A. I remember that element, yes.

21 Q. Okay. And I believe it's recorded in
22 your report, am I not correct, that you -- there
23 was a period of time prior to her onset of the
24 problems that there was a significant increase in
25 the amount of waste water and that she was exposed

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1 to?

2 A. Correct.

3 Q. And I believe you've already testified
4 that that was in reference to that they thought it
5 was some kind of a problem with the sewer pipes
6 going under, or the drainage pipes going under the
7 refrigerator system?

8 A. Correct.

9 Q. Now, then after that there's been
10 questions about, and you referencing as to when
11 she went out of work. I would submit to you,
12 Doctor, and I'll quote to you from the records,
13 look at Dr. De Dios' records that I believe you've
14 been provided. I'm going to reference my copy.

15 MS. MILLER: What page of the APA's and
16 I can --

17 MR. McDANIEL: Let's see.

18 MS. MILLER: It's not on the bottom of
19 your copy?

20 MR. McDANIEL: No. Well, let's see, the
21 one you gave me it is.

22 MS. MILLER: Oh, I didn't give you Dr.
23 De Dios, though.

24 MR. McDANIEL: Okay.

25 BY MR. McDANIEL:

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1 Q. Doctor, let me just say this, we've
2 talked a lot about 2013 and we've talked a lot of
3 about 2012 and Dr. Dayrit, and I believe you
4 testified that you had not reviewed Dr. Dayrit's
5 reports before today, to the best of your
6 recollection?

7 A. That is correct.

8 Q. Did you know that I had sent you those
9 recently? That's all right, in other words, you
10 have not reviewed them before today?

11 A. No.

12 Q. Let me just -- I know I'm bouncing
13 around a little bit, but let me say this. First
14 off, she was taken out of work by Dr. Hammett on
15 January 14, 2014.

16 MS. MILLER: Object to form.

17 MR. McDANIEL: Well --

18 MS. MILLER: Are you asking a question
19 or --

20 Q. Well, I'm going to ask you to assume
21 that as a fact based on the records that have been
22 provided. I'm going to show you a record from Dr.
23 De Dios, which is from February 14th of 2014. He
24 first saw her in January, and then this is the
25 record, and let me see if I can -- so we can all

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1 be on the same page, let me see if I can find my
2 copy of Dr. De Dios' records.

3 MR. McDANIEL: Which exhibit is that?

4 MS. MILLER: I'm looking for you. You
5 do yours backwards so it's harder for me to -- I
6 know some commissioners prefer that. February
7 14th, 2014?

8 MR. McDANIEL: Yeah. There's -- well,
9 let me do it that way. Let me go to mine. Did
10 you not make those an exhibit?

11 MS. MILLER: I did not.

12 MR. McDANIEL: Okay. Then I --

13 MS. MILLER: But I mean, if you give me
14 a moment, I can find it. His records are hard to
15 read because the dates start sometimes in the
16 middle of the report.

17 MR. McDANIEL: Yeah, so --

18 MS. MILLER: So it's hard to identify
19 it.

20 MR. McDANIEL: Those new documents.

21 MS. MILLER: Yeah. I see February 4th.
22 Are you sure it's February 14th?

23 MR. McDANIEL: Here it is. It is
24 February 4, and it's page 158.

25 BY MR. McDANIEL:

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1 Q. Doctor, I'm going to ask you to look at
2 this and it's actually --

3 A. Uh-huh.

4 Q. -- if you'll look at the top of the
5 page, it says 15 of 18.

6 A. Yes.

7 Q. I want you to flip back to page 18 of
8 18; it's back this way.

9 A. Got it.

10 Q. All right. Now, under asthma -- under
11 assessment and plan down at the bottom of the
12 page, it says, plan is for patient to be on
13 medical leave until April then resume work then.

14 A. Uh-huh.

15 Q. All right. And then below that it says,
16 "Patient has significantly improved since being
17 off work. Her asthma has been better. Clearly
18 her work environment was making her worse." Do
19 you see that right below under asthma, right above
20 asthma in adults, 493-3090 under that -- above
21 that --

22 A. Yeah, I got it.

23 Q. So at that point in February, she was
24 out of work?

25 A. February 14th, right?

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1 Q. Correct.

2 A. Uh-huh.

3 Q. And then so she was not out of work in
4 2013. I just, what I wanted to make sure of is
5 that we were -- we were just going back and asking
6 you dates and whether or not she was out of work
7 and that type of thing. So she was working up
8 until shortly before February 4th of 2014?

9 A. Got it. Thank you.

10 Q. Now, let's look at -- and now I'm going
11 to -- I'm going to back up a little bit. And you
12 reviewed Dr. De Dios' notes whenever you entered
13 your first records review report at that time?

14 A. Correct.

15 Q. And you reviewed Dr. Hammett's and you
16 reviewed those in June. Now, I want to look at on
17 page -- if you'll go back to page 15.

18 A. Of who, De Dios?

19 Q. That same -- that same -- that same
20 report, yes, page 15. Actually it's on page --
21 actually, go to page 17.

22 A. This is De Dios, right?

23 Q. Correct.

24 A. Okay. I'm here.

25 Q. And I want you to look under social

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1 history.

2 A. Yes.

3 Q. And he records there exposed to smoke at
4 work. Okay, has lived in present home for 25
5 years plus. Dogs negative, birds negative, molds
6 negative, is that -- do you see that?

7 A. Yes.

8 Q. All right. Now, you reviewed as part of
9 this also the original records in June of 2011 at
10 the hospital?

11 A. Can I clarify something? It says dogs
12 positive.

13 Q. Okay. I'm sorry, yes, dogs positive.

14 All right. Now, we talked about the
15 other records. Back in June of 2011, I believe
16 she recorded as past history at that time no
17 problems with allergies, no problems with asthma
18 prior to that. Have you been shown any evidence
19 of any trouble with allergies or asthma prior to
20 June of 2011, today or before, to your
21 recollection and knowledge?

22 A. No.

23 Q. Okay. Now, and I believe you refer to
24 that fact in your report?

25 A. Correct.

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1 Q. You also refer to the reports that
2 doctors commonly look at in reference to asthma
3 and the causation of that, and you referred to
4 whether or not there was any construction, whether
5 or not there was any mold, whether or not there
6 was any problems with cats or dogs, particularly
7 cats, I believe you referenced that in your
8 report?

9 A. Correct.

10 Q. And it's all -- that's all negative?

11 A. Yes.

12 Q. All right. Now, I want to show you --
13 and of course I'm not going to take the time to go
14 over your report, but I want you to look at Dr.
15 Dayrit's report of December 19th, 2012.

16 A. Okay.

17 Q. All right. And that should be Exhibit
18 Number 4.

19 A. Got it.

20 Q. First page, these are little bullets,
21 looking at the -- and of course we reported that,
22 okay, in other words, that she has no pets, third
23 paragraph down.

24 MS. MILLER: You're on page 304?

25 MR. McDANIEL: 304, uh-huh, very first

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1 page.

2 Q. All right. You see that. Go down to
3 bullet point number three, four, five, six, seven,
4 eight, okay? It starts off with, "She denies
5 having any significant exposure." You see that on
6 that page?

7 A. Yes, sir.

8 Q. All right. Now, I want you to look at
9 that and look at that paragraph where he says,
10 "She denies having any significant exposure to
11 smoke or animal at home. At work it is a
12 different story. She gets exposed to cleaning
13 chemicals, even though she uses a mask if she gets
14 exposed to the fumes of the floor wax or other
15 cleaners that are used. She appears to be using a
16 substandard mask at that time and has one elastic
17 attached to it." In reference to the description
18 of, you particularly honed in on all the cleaning
19 products she was using at work; is that correct?

20 A. Yes.

21 Q. Does that seem to be a concern of Dr.
22 Dayrit?

23 A. It does, yes.

24 Q. All right. And then on page -- his
25 initial assessment, if we go over to page 306,

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1 under counseling, it says, "The differential as to
2 whether she is hypersensitivity pneumonitis or
3 occupational asthma." He specifically mentions
4 occupational asthma as one of his two potential
5 diagnosis; is that correct?

6 A. Correct.

7 Q. All right. Look in the next paragraph,
8 "It appears that Ms. Sowell has a sensitivity to
9 some chemicals that she is exposed to at work. It
10 is not clear which one, but there appears to be a
11 temporal relationship with her symptoms. What is
12 bothersome is that she continues to have
13 significant wheezing despite being on systemic
14 steroids."

15 Now, my point is that I want to ask you
16 this. Is that not consistent with the history and
17 your findings and conclusions reached in your
18 report?

19 A. It is.

20 Q. All right. Now, again, and I want to
21 make a point of this because counsel asked you
22 this question in reference to Dr. Hammett. Look
23 in that same paragraph, "She may have to try to
24 get away from work for at least two weeks to get
25 herself better. She was also advised to get a

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1 respirator mask to use at work. If she still
2 continues to have issues with wheezing, then she
3 may have no -- any choice but to change jobs." Do
4 you see any specific notation there that she had
5 to quit her job at that point?

6 A. No. I see no specific notation that she
7 had to quit her job.

8 Q. Or that she was told that she had --
9 that she was going to have to leave her job, or
10 that she was told that if she continued to work
11 that, you know, this was going to continue to get
12 worse? Is there anything in there in that regard?

13 A. No.

14 Q. Okay. Now, in going through the report,
15 and I'm going to show you this report -- if I can
16 find it. Under Exhibit 5, if you'll look at the
17 -- I'm going to show you --

18 MS. MILLER: He should have it.

19 Q. Counsel highlighted that report for you,
20 and it's actually underlined in the copy that was
21 submitted into evidence.

22 A. I got it.

23 Q. "And she has a history of chronic asthma
24 exacerbation that was determined to be work
25 related and was suggested that she remove herself

GORDON EARLY, M.D. 5/18/2016

1 from the job, which she has not done yet." All
2 right. Does that appear to be a reference to Dr.
3 Dayrit's recommendation?

4 A. I don't think you can say where it came
5 from, but evidently somebody suggested it. But,
6 you know, if it's comp, you don't remove yourself;
7 you deal with it in the comp arena.

8 Q. Uh-huh.

9 A. So with comp, you don't quit; you just
10 tell your employer to accommodate it.

11 Q. Exactly. And the reason I wanted to ask
12 you that is because there's no specific reference
13 here again -- and Dr. Early, if you would, look
14 back at Exhibit 4 just briefly.

15 MS. MILLER: He has it.

16 Q. Okay. I'm just going to show you that.
17 That's actually a letter to who? From Dr. Dayrit
18 on Exhibit 4 --

19 A. To the --

20 Q. -- December 19th is to who?

21 A. PCP.

22 Q. In other words, to Dr. Hammett?

23 A. Yes.

24 Q. And then later on we have Dr. Hammett's
25 suggestion in March that it has been suggested

GORDON EARLY, M.D. 5/18/2016

1 that she remove herself from the job?

2 A. Uh-huh.

3 Q. So looking at those two reports, one in
4 December and his initial assessment and that she
5 might consider remove herself two weeks from the
6 job to see how she did, does that appear to be
7 where Dr. Hammett is referencing on that March
8 19th report?

9 A. Most likely.

10 Q. All right. Now, I'm not going to
11 trouble your time, but the first time I see a
12 mention of Xolair and wanting to put her on Xolair
13 is in Dr. Dayrit's reports in the end of March.
14 He had not put her on there, then it's after that
15 that Dr. Hammett -- I see no reference to Xolair
16 before that time.

17 MS. MILLER: Is that a question?

18 MR. McDANIEL: Well --

19 MS. MILLER: Object to form.

20 MR. McDANIEL: Do you -- well --

21 MS. MILLER: I think the records speak
22 for themselves on that.

23 MR. McDANIEL: Okay. All right.

24 BY MR. McDANIEL:

25 Q. Then let me ask you this. You've

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1 referred to various levels of asthmatic response,
2 and I believe you said that, based on your review
3 of that, as of March 13, 2013, he was diagnosing
4 her with severe persistent asthma?

5 A. Yes.

6 Q. Okay. So we have this, for a better
7 term, massive exposures are repeated high level
8 exposures to the mold and chemicals, abnormal
9 exposure almost, in the spring of 2011. She then
10 works from 2011 doing her same job, and works in
11 2012, and then in March of 2013, her asthma has
12 become severe persistent; is that -- by the time
13 that she is first told specifically that there is
14 -- that the job may be exacerbating her condition.
15 Is that a fair statement of the history we
16 reviewed today?

17 A. That's one way to interpret it. Give it
18 to me again.

19 Q. Well, in other words, we know that we
20 had these exposures, and she first went to the
21 hospital in June. We know that by history they
22 were having this problem in the deli where the
23 drains were backing up, which is something that
24 had recently started before that. And then we
25 know that -- and you haven't reviewed the records

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1 back then from Dr. Hammett, but there was an ever
2 increasing level of care and treatment needed to
3 control her first diagnosed chronic bronchitis and
4 then after that, it resulted in a diagnosis of
5 asthma.

6 A. Correct. And she was coughing more and
7 more and became Prednisone dependent and over the
8 time period of a year and a half, she became
9 Prednisone dependent.

10 Q. Correct. And so by 2013, she was at the
11 highest level of asthma at that time, she was
12 severe persistent?

13 A. Correct.

14 Q. At that point -- tell me this. At that
15 point in time and after that, is -- how sensitized
16 is a person in reference to severe persistent
17 asthma?

18 A. Usually you're pretty sensitized. Does
19 it -- the amount of immunologic trigger is less
20 for someone who is severe than it is for someone
21 who is moderate or mild.

22 Q. And even less for somebody that doesn't
23 have asthma?

24 A. Correct.

25 Q. So that if she in her testimony in her

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1 deposition recorded that when she would enter the
2 building and they were cleaning with the
3 chemicals, you know, cleaning the floors, that it
4 would almost take her breath away by that time?
5 Would that be the type of reaction she would have?

6 A. Right. But -- yeah, that certainly is,
7 and that -- that brings up a point that -- that
8 it's not always -- the point I made was your
9 immunologic trigger for severe -- severe asthma --
10 we talked about a immunologic trigger, walking
11 into the Piggy Wiggly and they're cleaning the
12 floors or they're waxing the floors, that isn't
13 necessarily the immunologic trigger, but that is
14 just an irritant, or walking into a bar and
15 there's smoke in the bar could be not an
16 immunologic trigger but an irritant trigger of
17 smoke can take your breath away.

18 Q. Okay.

19 A. So it's not necessarily that you're
20 allergic to them waxing the floor, but that is a
21 irritant trigger.

22 Q. Okay.

23 A. Or you're allergic to smoke in the bar,
24 but something will trigger you and take your
25 breath away.

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1 Q. You're hypersensitized, in other words?

2 A. Exactly.

3 Q. Okay. And what would it tell you about
4 her condition if she were to walk into a room and
5 they're using these timed air fresheners in the
6 building and she immediately begins to develop
7 respiratory problems and has to leave the
8 building?

9 A. So they --

10 Q. How sensitized is she?

11 A. -- emit a mist and the mist were to puff
12 out?

13 Q. Well, in other words, you walk into one
14 of these buildings that has this type of time --
15 and you walk in there and you immediately smell
16 air freshener?

17 A. She's pretty sensitive, yeah --

18 Q. Okay.

19 A. -- if she was having a rough time.

20 Q. If she's -- well, first off -- well, in
21 reference to that, before I ask you this question,
22 and I'm going to ask you a question about how
23 sensitized she is as far as her ability to go to
24 work, you would refer to her treating physicians
25 that see her day in and day out as to whether or

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1 not she's disabled from gainful employment; would
2 that be fair?

3 A. I would defer to them, yes. Uh-huh.

4 Q. Now, if she's that sensitized, and we
5 refer to that she could possibly go back to
6 sedentary work, I believe there's also a further
7 classification in that, and, that is, it would
8 have to be in a clean air environment?

9 A. Correct.

10 Q. All right. If she is so sensitized that
11 if she walks into a room, she immediately develops
12 respiratory problems where they've got these air
13 freshener in the air or -- would she need to be in
14 an absolutely clean air environment, in your
15 opinion?

16 A. I wouldn't say that. Her home is not a
17 clean air environment.

18 Q. Okay. You talked about all the -- we
19 talked about the cleaners involved, and we talked
20 about the -- there was one that I'm just not sure,
21 and I want to ask you as a toxicologist. I know
22 Drano and I know bleach and I know Mr. Muscle and
23 I know Pine-Sol, okay. But there's also a
24 cleanant that is used in meat departments because
25 it breaks down meat tissue, and I don't if this is

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1 it or not, but you referred to -- one of the ones
2 you referred to is Spit Fly.

3 A. Uh-huh.

4 Q. Do you know if that's -- it's one of
5 those commercial cleaners? I don't know the
6 answer to that. I'm just asking you as a
7 toxicologist if you may know. I know you don't
8 make reference to it.

9 A. I didn't find Spit Fly -- I didn't find
10 much about Spit Fly as an asthmagen.

11 Q. Okay.

12 A. You want me to look it up now?

13 Q. No, that's fine. I was just wondering
14 if that was -- I'm not -- as I said, I'm not
15 familiar. The others are household cleaners that,
16 you know, I'd submit to you she makes sure there
17 are none of those around her house.

18 Also, the -- you were asked about your
19 experience in reference to what was in those --
20 what she was exposed to, and you reference that
21 mold is another allergen and, you know, we've got
22 -- this is a deli where there are all kinds of
23 uncooked fish, meat, poultry, and seafood products
24 and there's all kinds of cooked products and
25 there's all kinds of vegetable products, lettuce,

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1 tomatoes, that kind of thing that go into the
2 preparation of items.

3 So what kind of types of molds and that
4 kind of thing would you expect to be in that waste
5 water from that?

6 MS. MILLER: Object to form.

7 A. I think the waste water would be a
8 cornucopia for molds, and I think that it --
9 although my -- my theory was labeled speculative,
10 I think it's far from speculative. I think waste
11 water is well known to be infested with bacteria
12 and molds. And I think that if you plug up a
13 drain, it's going to be filled with bacteria and
14 molds and viruses.

15 Q. Okay.

16 A. I think that's common sense.

17 Q. Okay.

18 A. You can test it out at home.

19 Q. The only thing -- do you know whether or
20 not by 2013 she was doing any of the frying in her
21 home business and how much of the business she was
22 doing at that time in her catering business?

23 A. No. But she did say that, as the
24 symptoms got worse, she laid off the frying. And
25 I asked her about it; I just don't know how much.

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GORDON EARLY, M.D. 5/18/2016.

1 Q. All right.

2 A. And she has this outbuilding, and the
3 outbuilding is -- it's like an external garage,
4 but I can't tell you exactly what it is, that she
5 converted to her cooking building and she put in a
6 hood, you know, for frying stuff out there. But
7 maybe she built it as the own external building.
8 I don't know. She had this business going for a
9 long time. She might have built her own external
10 one.

11 Q. And my --

12 A. She just laid off the frying because she
13 coughed so much.

14 Q. And that would be also like an irritant
15 reaction like you were talking about before?

16 A. Uh-huh.

17 Q. Now, and so -- and she told y'all about
18 this, and you took all that in consideration, and
19 your opinions remain the same today as you
20 expressed in your report of December and in May;
21 is that correct?

22 A. Well, I'm going to change my opinion a
23 little bit. You know, I'm going to lay off on the
24 -- I'm going to still say that this is a case of
25 occupational asthma. I believe that it is a case

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1 of occupational asthma. But there is some other
2 strong issues that are contributory here that have
3 been brought up. There is an IgE of 480. There
4 is a positive allergy testing for dust mite and
5 some other pollens that I think are contributory
6 to her -- her asthma. But I think there's
7 definitely a work-related component that is
8 contributory to her asthma. But we --

9 Q. That it -- okay.

10 A. -- have some other things that are
11 contributory to her asthma also.

12 Q. Let's talk about that. The first thing
13 we have in reference to any kind of a 480 on the
14 IgE is in 2000- -- right at 2013 -- well, it's
15 actually in 2013, okay, how does that play into --
16 in other words, if you develop occupational asthma
17 or hypersensitivity, how does that affect your
18 reference to your immune system and its effect on
19 that?

20 A. Rephrase that question.

21 Q. Well, in other words, you know, I'm
22 trying to figure out if, you know, once you've
23 developed asthma --

24 A. Yes, sir.

25 Q. -- you know, okay, does that have any

GORDON EARLY, M.D. 5/18/2016

1 other effect on your sensitivity to allergens?

2 A. Well, I'm not sure about the answer to
3 that question. Her immune system certainly has
4 been triggered. Her immune system has certainly
5 been stimulated, and we are not sure about what
6 has been the primary issue to cause this IgE to
7 become so elevated.

8 I do think that the primary issue
9 causing the asthma to develop, according to her
10 history, is the -- is the work-related exposure
11 according to her history. But I can't tell you
12 the primary issue that caused her IgE to be so
13 elevated.

14 Q. Okay. I understand. So your opinion
15 then as previously expressed remains the same in
16 reference to the occupational asthma?

17 A. Yes, sir.

18 Q. All right.

19 MR. McDANIEL: Thank you, Doctor. I
20 have no further questions.

21 MS. MILLER: I just have one
22 clarification question.

23 REEXAMINATION

24 BY MS. MILLER:

25 Q. Can you state to a reasonable degree of

GORDON EARLY, M.D. 5/18/2016

1 medical certainty that her immunologic trigger was
2 exposure at work?

3 A. Immunologic trigger for her asthma. Her
4 immunologic trigger for her IgE elevation?

5 Q. IgE elevation first.

6 A. No, I cannot.

7 Q. And for her asthma?

8 A. Yes, I can.

9 Q. Okay.

10 MR. McDANIEL: Nothing further.

11 MS. MILLER: Thank you, Doctor.

12 (The deposition was concluded at
13 approximately 2:58 p.m.)
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GORDON EARLY, M.D. 5/18/2016

CERTIFICATE OF REPORTER

I, Andrea R. Taylor, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and the time and location
stated on Page 1 of this transcript; that the
deponent was duly sworn to testify to the truth,
the whole truth and nothing but the truth; that
the testimony of the deponent and all objections
made at the time of the examination were recorded
by me and were thereafter transcribed; that the
foregoing deposition as typed is a true, accurate,
and complete record of the testimony of the
deponent and of all objections made at the time of
the examination to the best of my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 20th day of May, 2016, at
Lexington County, South Carolina.

Andrea R. Taylor, Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
February 18, 2024

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State of South Carolina
Before the
South Carolina Workers' Compensation Commission
WCC File No.: 1408826

Genette Sowell,	)	
Employee,	)	
Claimant,	)	
vs.	)	Deposition of
Piggly Wiggly,	)	LUZ YOLANDA MENDEZ, MD
Employer,	)	May 27, 2016
and	)	
Owners Insurance	)	
Company,	)	
Carrier,	)	
Defendants.	)	

Deposition on oral examination of
LUZ YOLANDA MENDEZ, MD, reported by
Donna Cheryl Kyzer, Court Reporter and Notary
Public in and for the State of South Carolina;
said deposition taken pursuant to notice of
deposition and in accordance with the South
Carolina Rules of Civil Procedure, at The Medical
Group, 701 Medical Park Drive, Suite 207,
Hartsville, South Carolina, commencing on Friday,
May 27, 2016, at the hour of 12:33 p.m.

1 APPEARANCES:

2

3

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LUZ YOLANDA MENDEZ, MD 5-27-16

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EXHIBIT INDEX

REPORTER'S NOTE: No exhibits were marked for
identification.

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 This deposition is taken in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 It is agreed and stipulated by the
5 deponent and respective counsel that the reading
6 and signing of the deposition transcript by the
7 deponent is expressly waived.

8 WHEREUPON:

9 LUZ YOLANDA MENDEZ, MD, being duly
10 sworn and cautioned to speak the truth, the whole
11 truth and nothing but the truth, testified as
12 follows:

13 EXAMINATION

14 BY MS. MILLER:

15 Q. Hi, Dr. Mendez. We met off record
16 but, again, for the record my name is
17 Kenya Miller, and I represent the insurance
18 carrier and employer with regards to a workers'
19 compensation claim involving Ms. Genette Sowell,
20 who I understand is a current patient of yours.

21 A. That's correct.

22 Q. Okay. Well, because she has a case
23 currently pending before the South Carolina
24 Workers' Compensation Commission, it's my
25 understanding that you have rendered at least one

LUZ YOLANDA MENDEZ, MD 5-27-16

1 opinion in this case. I wanted to take your
2 deposition today just to kind of clarify your
3 opinion on this matter. It's not my intent to
4 hold you long today, and I'm sure you've been
5 deposed before, so I won't have to go through the
6 whole long spiel on how this works.

7 A. Sure.

8 Q. The only thing I'll remind you of is
9 to try to wait until the question is asked before
10 you respond just so the court reporter can get a
11 clear, clean record.

12 And secondly, I want to start by
13 asking you about your background, educational
14 background and training, if that's okay.

15 A. That's fine.

16 Q. Okay. First of all, state your name
17 for the record.

18 A. My name is Luz Yolanda Mendez.

19 Q. Okay. And that's Yolanda?

20 A. Uh-huh.

21 Q. Okay. Mendez. And where are you
22 employed?

23 A. Carolina Pines with The Medical
24 Group.

25 Q. Okay. In what capacity?

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1 A. I am a family physician.

2 Q. Okay. And how long have you been
3 here?

4 A. Short of three years now.

5 Q. Okay. And how long have you been
6 practicing medicine?

7 A. About six years now.

8 Q. All right. And what type of
9 medicine?

10 A. Family practice.

11 Q. Okay. And I know it is pretty
12 self-explanatory, but just for the record clarify
13 what you do in terms of a family practitioner.

14 A. Pretty much see everyone from babies
15 to the elderly, take care of their primary care
16 stuff, basic everyday stuff.

17 Q. From the common cold to --

18 A. From the common cold to --

19 Q. -- hypertension, things of that
20 nature?

21 A. That's right.

22 Q. Okay. Can you give me a synopsis of
23 your educational training.

24 A. Sure. I went to undergrad in New
25 York City --

1 Q. Okay.

2 A. -- at New York College Medical
3 School. First year and a half were at the
4 American University of Antigua. Clinical training
5 was in New York City at many different hospitals,
6 Wyckoff, Staten Island, Jamaica Hospital in
7 Queens. My residency was in Anderson, South
8 Carolina, at AnMed Health. And that's about it.

9 Q. Okay. And are you board certified
10 yet?

11 A. Yes.

12 Q. Okay. What year did you get your
13 certification?

14 A. 2013.

15 Q. All right. And do you treat patients
16 with pulmonary problems?

17 A. I do.

18 Q. Okay. What percentage of your
19 patients would you say suffer from asthma?

20 A. I want to say probably around 20
21 percent.

22 Q. All right. And of those 20 percent,
23 do you know what percentage of those who developed
24 it as an adult?

25 A. Very few of them did.

1 Q. Okay.

2 A. So this has been an ongoing thing
3 since childhood --

4 Q. Okay.

5 A. -- for most of them.

6 Q. Now, you're -- are -- and I don't
7 know if you know off the top of your head how long
8 Ms. Sowell has been a patient for Carolinas
9 Medical Group, and if you don't, that's okay. We
10 have the records.

11 A. I know that she became a patient of
12 mine in March of 2015.

13 Q. Okay.

14 A. Around that March or April, and she
15 has been seeing Dr. deDios, who is in this -- in
16 The Medical Group also --

17 Q. Okay.

18 A. -- in the pulmonology division for --
19 since March of 2013.

20 Q. Okay.

21 A. March or April.

22 Q. And I guess that's something I
23 didn't -- I wasn't really aware of. Dr. -- say
24 his name for me.

25 A. deDios.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 Q. deDios. So he's affiliated with your
2 same practice?

3 A. It's -- so The Medical Group is a
4 multi-specialty group.

5 Q. Okay.

6 A. And we have different suites, like
7 family practice and then pulmonology, but we're
8 employed by the same --

9 Q. You're all under the same umbrella --

10 A. Yes.

11 Q. -- as The Medical Group.

12 A. Yes.

13 Q. Got you. I didn't think I really
14 appreciated that, so thank you for clarifying
15 because your records say Carolina Group, his
16 record says like Hartsville --

17 A. Hartsville Pulmonology.

18 Q. Okay.

19 A. Yes, that's what it is.

20 Q. Yeah.

21 A. But we're all employed by --

22 Q. The Medical Group.

23 A. Yeah. Pretty much the same employer.

24 Q. Thank you.

25 MR. MCDANIEL: Okay. Is that a --

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1 run by the hospital?

2 THE WITNESS: Yes, sir.

3 MR. MCDANIEL: Okay.

4 MS. MILLER: Thank you.

5 BY MS. MILLER:

6 Q. It is my understanding that she
7 previously treated with Dr. Hammett, who was in
8 your office previously. Correct?

9 A. He was -- I do not know of
10 Dr. Hammett.

11 Q. Oh, okay. I got you. I got you.
12 What type of problems have you been
13 treating her for?

14 A. Basically, well, following up with
15 her asthma. I know she sees Dr. deDios, but she
16 follows up with me --

17 Q. Okay.

18 A. -- occasionally also for that.

19 Q. So you serve like as her primary care
20 physician?

21 A. Yes, ma'am.

22 Q. That's what I'm pretty much asking.

23 A. Uh-huh.

24 Q. Okay. And Dr. -- it's my
25 understanding Dr. Hammett was her former primary

LUZ YOLANDA MENDEZ, MD 5-27-16

1 care physician.

2 A. That is correct.

3 Q. Okay. And now you're filling in for
4 Dr. Hammett now?

5 A. Correct.

6 Q. Okay.

7 A. Uh-huh.

8 Q. I'm sorry. And I interrupted you.

9 You were telling us exactly the type of problems
10 that she sees you for specifically.

11 A. So like I said, her asthma,
12 hypertension, just everything, primary care stuff.

13 Q. Okay. When she first came to you,
14 what was your understanding as to her medical
15 history?

16 A. Okay. So when she first came to me
17 her asthma was still kind of flaring up. She was
18 still trying to get it all under control. By the
19 time that she came to me, she had already been
20 taking time from work and probably already been
21 out of work, and her symptoms weren't -- seemed to
22 improve, so that's -- it was that transition where
23 they -- they realized it was more the chemicals
24 that she was being exposed to, so that's where we
25 started seeing her.

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1 Q. And that would be -- are you
2 referring to March 2015?

3 A. Correct.

4 Q. Okay.

5 A. March, April. I don't remember
6 exactly, but that's when it first happened.

7 Q. Okay. And do you know what
8 medications she was on when she first came to see
9 you?

10 A. I don't recall exactly, but I know
11 that she was on -- she was on steroids like for --

12 Q. Prednisone specifically?

13 A. Yes. Yes. And Albuterol. And I
14 know that at that point when we were trying to
15 wean her off the Prednisone but she kept flaring
16 up, it was not working.

17 Q. Is she still on Prednisone?

18 A. At the moment, huh-un, not as far as
19 I'm concerned, unless Dr. deDios has her own
20 something.

21 Q. Okay. So you're not the one
22 prescribing her any of the medication for her
23 asthma or allergies?

24 A. No. Dr. deDios does the --

25 Q. Okay.

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1 A. He prescribes that for her. He
2 manages it for her. And if I have to refill it,
3 then I will, but he does --

4 Q. You might do refills, but you're not
5 directing which --

6 A. No --

7 Q. -- medications --

8 A. -- ma'am.

9 Q. -- she needs?

10 A. No, ma'am.

11 Q. Okay. Have you noted any adjustments
12 in her medication while you've been treating her?
13 Have they been stronger, less, or anything of that
14 nature?

15 A. They have gotten less.

16 Q. Okay.

17 A. Like I know that she was weaned --
18 the last time I saw her she was being weaned off
19 the Prednisone. She was started on another
20 medication call Xolair and her symptoms were
21 improving, like much improved.

22 Q. Now, Xolair, is that something that's
23 stronger than Prednisone or --

24 A. It's a different kind --

25 Q. -- just different?

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1 A. Different class of drug.

2 Q. Okay. So it wasn't a situation where
3 she could be taken off of Prednisone and not
4 replaced with -- having that medication being
5 replaced with something else?

6 A. No, ma'am.

7 Q. It's just it kind of -- they gave her
8 another medication --

9 A. Correct.

10 Q. -- instead of Prednisone. All right.
11 How many times have you seen her?

12 A. I don't recall exactly how many
13 times, but I know that --

14 Q. Let me --

15 A. -- I probably see her like
16 frequency-wise probably every three months now.
17 Before it was a lot more frequently.

18 Q. And that's what I was going to ask
19 you to follow up. A fair question would be, how
20 often do you see her. So you see her currently
21 every three months?

22 A. About.

23 Q. Okay.

24 A. When I first started seeing her it
25 was a lot more frequently, maybe every two weeks.

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1 Q. Okay. And the every three months,
2 did that start kind of when she got on the Xolair?

3 A. Pretty much. And her symptoms
4 started being a lot more controlled, and so she is
5 doing a lot better. And when I say "a lot
6 better," compared to where she was. I mean she
7 still has symptoms, but they are controlled.

8 Q. Do you have any indication as to how
9 often she has symptoms now?

10 A. I know they're still at least weekly
11 but not as -- not as prominent as they were. I
12 think, you know, once -- because of the severity
13 of the disease that she had, I don't know that she
14 will ever be able to fully recover, to be quite
15 honest. She still gets some symptoms from time to
16 time but...

17 Q. Well, let me ask you -- ask you
18 this. It's my understanding that asthma has
19 certain classifications, and one being --

20 A. Correct.

21 Q. -- like severe persistent, meaning --

22 A. Right.

23 Q. -- being the worst.

24 A. Correct.

25 Q. When she first saw you in 2015, where

1 would you put her on that?

2 A. Severe persistent. She was --

3 Q. Okay. And where would you say she is
4 now?

5 A. I'm not really sure without
6 knowing -- without doing like PFTs and all that
7 where we classify her. And, really, her symptoms,
8 she doesn't really quantify how often. She just
9 learned to live with them, and so.

10 Q. Okay. So when you say in 2015 she
11 was at "severe persistent," what were you basing
12 that opinion on?

13 A. Just based on her everyday symptoms
14 and then utilization of medication. She was
15 requiring Prednisone. She was requiring her
16 nebulizer treatments frequently. She was getting
17 nighttime awakening, like waking up at night.
18 That was...

19 Q. Well, let me ask you this way. So
20 using those same factors, are you able to say that
21 she's no longer severe persistent?

22 A. That's fair to say, yes.

23 Q. Okay. In terms of your treatment of
24 her, has it pretty much just been refilling
25 medication and examinations? What's the extent of

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1 the treatment that you've been offering to her
2 since 2015?

3 A. For her asthma, basically just
4 refilling medication. And, obviously, if she
5 comes to see me for any other problem, I'll
6 examine her and, you know, address anything that
7 has to do with it, but basically that was pretty
8 much it.

9 Q. Okay. Are you aware of her having
10 any allergies?

11 A. I don't have her chart in front of
12 me. I don't recall.

13 Q. Well, I guess that the question is,
14 have you been treating her for any type of
15 allergies?

16 A. Everything that has to do with
17 allergies, I know that she's been seeing a EMT and
18 allergy specialist. That was treated by
19 Dr. Dyce. I know that Dr. deDios had her on
20 medications to control that also, the allergies
21 also.

22 Q. What other conditions do you see her
23 for?

24 A. Hypertension. We've been monitoring
25 her for hyperlipidemia pretty much.

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1 Q. I'm sorry. I missed that.

2 A. For hyperlipidemia.

3 Q. Okay. What is your understanding of
4 her diagnosis?

5 A. Well, based the records that I got
6 from Dr. Hammett, based on the records that I
7 received from Dr. deDios, and based on her
8 improvement from when I started seeing her to now,
9 I know that she has adult onset asthma. I --
10 based on her history, on what she told me, she did
11 not have any asthma as a child.

12 I know that her asthma would flare up
13 every time she would return to work and improve
14 when she was taken out of work, and I know that
15 she's doing better now that she's no longer
16 working.

17 Q. Do you know how long she has been not
18 working for her employer?

19 A. I don't know exactly how long, no,
20 ma'am. I know that on the records from
21 Dr. Hammett she had already -- had started taking
22 her out of work by the time I started seeing her
23 for that.

24 Q. And when you say "taking her out of
25 work," was that taking her out a couple weeks here

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1 or there or do you mean completely out of work?

2 A. It's my understanding a few weeks
3 here and there and then eventually completely out.

4 Q. Okay. What is your understanding as
5 to the triggers for her symptoms?

6 A. Well, based on, again, what she has
7 told me, it were -- there were some chemicals that
8 she was exposed to at work. What exactly, that,
9 I'm not sure.

10 Q. And that's based on what she has told
11 you or --

12 A. Based on what she's told me and based
13 on what Dr. deDios has said. At what -- exactly
14 what triggers specifically, I am not sure. She
15 said "chemicals," period.

16 Q. Do you have an opinion as to whether
17 or not the medications she is currently taking,
18 are they going to be indefinite? Do you expect
19 her to come off of some of those medications?

20 A. I really don't think she'll come off
21 this medication.

22 Q. I want to hand you a copy of a
23 medical questionnaire, and I think it has been
24 marked as page 221 of the claimant's prehearing
25 brief in the APA submissions. Do you recall

1 completing this questionnaire?

2 A. Yes.

3 Q. And who provided that to you?

4 A. My office manager brought it to me.

5 Q. Okay. My understanding from the
6 questionnaire is that you represented that you
7 were provided a statement from Dr. Hammett which
8 allegedly suggested that she was disabled from
9 work as of September 29, 2014. I want to make
10 sure we're on the same page. Is that your
11 understanding as well?

12 A. That I provided this statement from
13 Dr. Hammett?

14 Q. No. You were provided a statement.

15 A. Yes.

16 Q. Okay.

17 A. Yes.

18 Q. From Dr. Hammett.

19 A. Yes, I was.

20 Q. And what was your understanding of
21 doctor's statement -- Dr. Hammett's statement?

22 A. That she was going to be taken out of
23 work.

24 Q. Okay.

25 A. Uh-huh.

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1 Q. And that's the distinction I'm trying
2 to clarify because the language says "disabled."
3 I'm trying to clarify. Are you saying she's
4 disabled from returning to work or are you just
5 saying she was out of work at that particular
6 time, because those are two different things.

7 A. Right. Well, based on what I've seen
8 from her, she is probably -- she is disabled from
9 going back to work --

10 Q. Okay.

11 A. -- right now.

12 Q. And do you know what type of work she
13 did?

14 A. I know that she worked at the Piggly
15 Wiggly and -- but exactly what her job description
16 was, I am not sure.

17 Q. Okay. What restrictions does she
18 have now that would prevent her from working?

19 A. Well, right now her respiratory
20 status, I mean, she's dependent on medication.
21 Basically that would be that she gets really short
22 of breath with exertion.

23 Q. Okay. Do most of your patients with
24 asthma not work at all?

25 A. No, that is not correct. Most of my

1 patients with asthma do work.

2 Q. Okay. Well, so what makes her
3 situation different?

4 A. Basically the fact that she gets
5 short of breath on exertion. I think -- well, the
6 other patients that I have with asthma are, one,
7 better controlled, and they're not as severe as
8 her case is.

9 Q. Okay.

10 A. I don't have anybody else that's that
11 severe --

12 Q. And when you say --

13 A. -- symptoms-wise.

14 Q. And when you say "severe," that's why
15 I'm trying to hone --

16 A. No. Symptoms -- yeah. Symptoms-wise
17 they don't get short of breath on a day-to-day
18 basis, and they -- they flare up -- once their
19 flare-up is controlled and over, they go back to
20 normal activities and don't really have symptoms,
21 so it's not like a daily thing for them.

22 Q. Okay. So are -- and when you say
23 "daily," because initially you said weekly --

24 A. Uh-huh.

25 Q. -- but --

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1 A. Well, like on exertion. For example,
2 if she comes in and she's -- and this is based on
3 what I have seen and based on what she tells me.
4 If she moves around a lot, then she gets really
5 short of breath. My other patients with asthma,
6 they get flare-ups, but once their flare-up is
7 controlled, they're back to normal --

8 Q. And --

9 A. -- pretty much.

10 Q. -- how often will these flare-ups be
11 if you're in the more controlled situation?

12 A. Can you specify "controlled
13 situation"?

14 Q. Sure. You're saying hers is not --
15 you would say she's not in a controlled asthmatic
16 state right now, correct?

17 A. Well, she's -- she's doing better,
18 but "better" meaning compared to how she was in
19 the past. It doesn't mean she is happy, smiling,
20 where my regular asthmatic patients would be. I
21 think she's -- she's going to -- she has like
22 long-term consequences from her lungs. Her lung
23 health is not great.

24 Q. Is that based off any pulmonary
25 function test that you --

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1 A. And based on symptoms. I mean
2 compared -- I'm comparing her to a regular
3 asthmatic patient that will come to my office once
4 a month or once every three months for a flare-up
5 to her.

6 Q. Well, you said she comes in every
7 three months now, though. That's why I'm trying
8 to reconcile.

9 A. Yeah, but because she follows up with
10 Dr. deDios for her asthma I'm saying. So I have
11 another patient who, asthmatic, works. He comes
12 in once every month, once every three months. I
13 give him Albuterol. I give him a round of
14 steroids. He's back to normal. Well -- normal.

15 Her, she still has symptoms, so, on
16 exertion and all that. That's not the case with
17 another asthmatic patient that I have.

18 Q. But I'm -- and in terms of what you
19 said, 20 percent of your patients are asthmatic --

20 A. Right.

21 Q. -- right?

22 A. Right. So most of the ones -- my
23 other asthmatic patients, they're not as severe as
24 she is.

25 Q. So would you say she's still in

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1 severe persistent?

2 A. No. She's not in severe persistent,
3 but the severity of her asthma is more than the
4 rest of my patients.

5 Q. Who would be in which categories?

6 A. Probably moderate persistent.

7 Q. Okay. And in terms of her employment
8 history, do you have any knowledge of what her
9 employment history was?

10 A. I know that by the time I started
11 seeing her she was working at the -- she had just
12 gotten out of work from Piggly Wiggly. That's
13 about it. I don't know anything else about that.

14 Q. And do you have any knowledge of her
15 work as a caterer?

16 A. No, ma'am.

17 Q. Have you performed any market
18 analysis to identify any jobs she could do without
19 restrictions?

20 A. No, ma'am.

21 Q. Do you know how often she gets winded
22 or -- what was your terminology?

23 A. Short of breath.

24 Q. Short -- short of breath?

25 A. Uh-huh. She pretty much -- and this

1 is when she comes to my office that --

2 Q. Exertion. I'm sorry. That was the
3 word.

4 A. Well, yeah, like -- yeah, on
5 exertion, based on what she tells me, on a daily
6 basis. Now, when I see her in my office it's
7 probably because she's having, you know, a
8 flare-up and she's, you know, short of breath on
9 exertion.

10 Q. Okay. And when she gets to the point
11 of exertion, what -- does that require her to lay
12 down, to sit down? Explain to me. What do you
13 have to do?

14 A. Sure. So based on her -- what she
15 tells me, she just has to stop what she's -- what
16 she's doing and just catch her breath and then
17 keep going.

18 Q. Okay. And I'm assuming when she has
19 that she can use her inhaler or something.

20 A. That's correct.

21 Q. And that allows her to keep going?

22 A. That's correct.

23 Q. Okay. So what about that
24 specifically will take -- what about that
25 particular routine leads you to conclude that she

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1 couldn't work?

2 A. I guess it depends on what kind of
3 job that would be. Something that doesn't require
4 a lot of physical activity, I think that would be
5 an okay job for her.

6 Q. Sedentary work --

7 A. Correct.

8 Q. -- would be okay?

9 A. Yes.

10 Q. You note that her condition is
11 permanent. Can you give me some clarification as
12 to what leads you to believe that it's permanent?

13 A. Well, the fact that, you know, she,
14 while considered well-control now, is still on
15 some -- you know, requiring a lot of medication.
16 I don't -- I don't foresee that -- maybe -- you
17 know, maybe she will, but I don't foresee that her
18 asthma is going to go away.

19 Q. Are you able to provide an opinion as
20 to any particular impairment that she has
21 pertaining to her asthma?

22 MR. MCDANIEL: Objection. Calls for
23 speculation. She hasn't been -- it calls for
24 speculation.

25 MS. MILLER: You can still answer, if

1 you can, but -- that's okay.

2 THE WITNESS: Huh-un.

3 BY MS. MILLER:

4 Q. I'm sorry. Is that a no?

5 A. No.

6 Q. Okay. Thank you. When is the last
7 time you treated Ms. Sowell?

8 A. I saw her approximately a month and a
9 half, two months ago.

10 Q. Okay. And how was she doing at that
11 time?

12 A. She was doing well.

13 Q. Was she able to drive? Oh, I'm
14 sorry.

15 A. She was doing well. She still
16 complained of shortness of breath with walking and
17 like exerting herself heavily, but her symptoms
18 were well-controlled.

19 Q. Did she give you any indication of
20 the activities specifically that cause her to be
21 exerted?

22 A. No, ma'am.

23 Q. Okay. Was she able to drive herself
24 to the evaluation?

25 A. Yes, ma'am.

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1 Q. Did she walk with the need of any
2 type of assistive device?

3 A. No, ma'am.

4 Q. Okay. Do you know if she's still
5 having problems with symptoms at home, with
6 wheezing and coughing?

7 A. Based on what she told me, yes,
8 ma'am.

9 Q. Okay. Are you able to provide an
10 opinion as to the cause of her condition?

11 A. I thought that's what we discussed.

12 MR. MCDANIEL: Asked and answered.

13 Objection. Asked and answered.

14 BY MS. MILLER:

15 Q. Okay. Do you know what department
16 she worked at the Piggly Wiggly?

17 A. No, ma'am.

18 Q. I think you indicated that her
19 condition was permanent. Would you say that she's
20 at what we call maximum medical improvement?

21 A. Yes, ma'am.

22 Q. Are you able to state if there is a
23 nonwork-related trigger with regards to her
24 symptoms?

25 A. No, ma'am, but I know that I -- when

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1 I started seeing her I worked her up for other
2 possible causes such as alpha-1 antitrypsin
3 deficiency. I even --

4 Q. Which one? I'm sorry.

5 A. Alpha-1 antitrypsin deficiency.

6 Q. Okay.

7 A. I also tested her for possible like
8 parasitic infection in her lungs or anything that
9 could be triggering her asthma, and all that was
10 negative.

11 Q. Okay. And you're going to have to
12 explain to me what those particular --

13 A. Sure.

14 Q. -- disorders are.

15 A. So I know in the south there is a
16 parasite, it's called Strongyloides, that can --
17 you can get infected and later on it might affect
18 your lungs and give you asthma-like symptoms.
19 That was --

20 Q. And just for the court reporter...

21 MS. MILLER: Do you need -- might
22 need -- did you need spelling on that?

23 THE WITNESS: Strongyloides,
24 S-T-R-O-N-G-Y-L-O-I-D-E-S.

25 MS. MILLER: Okay. Thank you.

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1 THE WITNESS: Anyway, and I was
2 like -- this is me trying to think out of the box,
3 so I tested her for that, negative. Alpha-1
4 antitrypsin is a --

5 BY MS. MILLER:

6 Q. What kind of test was that? I'm
7 sorry.

8 A. That's a blood --

9 Q. Is that a blood test?

10 A. It's a blood test.

11 Q. Okay.

12 A. Antibody test.

13 Q. Thank you.

14 A. Uh-huh. I also tested her for
15 alpha-1 antitrypsin deficiency. It was -- which
16 is an autoimmune disease where patients don't make
17 enough surfactant, like the lubricant in the lung,
18 and so as adults they can develop pulmonary
19 problems as well as liver problems. She does not
20 have liver problems, which she -- that was also
21 negative.

22 Q. Okay.

23 A. And it's alpha-1 antitrypsin,

24 T-R-Y-P-S-I-N.

25 Q. Thank you.

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1 A. Uh-huh.

2 Q. And, again, that was by a blood test?

3 A. Yes, ma'am.

4 Q. Okay.

5 A. And that was negative.

6 Q. And are you able to provide any
7 impairment with regards to the pulmonary? You
8 mentioned something -- she did not identify a
9 liver issue, but what about with the lungs?

10 MR. MCDANIEL: I -- again,
11 objection. It's been asked and answered.

12 MS. MILLER: Well --

13 MR. MCDANIEL: We went over it
14 several times.

15 MS. MILLER: Well, this is a little
16 bit different because she said she did a test and
17 she didn't have a liver issue but she did a
18 separate test.

19 THE WITNESS: No. It's the same
20 test, but that deficiency will affect both liver
21 and lungs, and it was just to see if that was a
22 cause of her pulmonary symptoms.

23 BY MS. MILLER:

24 Q. Okay. Okay. Thank you for
25 clarifying. I thought that's what you said.

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1 I want to clarify from your opinion
2 because you said that she is "disabled from
3 gainful employment." Is your opinion that she is
4 not going to be able to return to work?

5 MR. MCDANIEL: Again, asked and
6 answered.

7 BY MS. MILLER:

8 Q. I understand, because you said she is
9 written out of work now, but --

10 A. But --

11 Q. -- is --

12 A. -- with --

13 Q. -- this --

14 A. -- this -- with this cause she could
15 have sedentary work.

16 Q. Okay. And is that to a reasonable
17 degree of medical certainty?

18 A. I'm sorry?

19 Q. Is that opinion to a reasonable
20 degree of medical certainty?

21 A. Yes.

22 MR. MCDANIEL: I'll -- I --

23 MS. MILLER: Okay. That's it. You
24 may ask any question that you would like,
25 Mr. McDaniel.

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1 EXAMINATION

2 BY MR. MCDANIEL:

3 Q. Dr. Mendez --

4 A. Yes, sir.

5 Q. -- first off, would you defer to

6 Dr. deDios -- do you know that Dr. deDios is

7 seeing her every two weeks and that she is getting

8 a Xolair injection every two weeks?

9 A. She is getting a Xolair, yes.

10 Q. Okay. And I believe that's a

11 medication that has to be flown in or shipped in

12 and has to be refrigerated.

13 A. That is correct.

14 Q. And it's -- as compared, how many

15 other patients do you have that have asthma that

16 are on Xolair --

17 A. None.

18 Q. -- injections?

19 A. Zero.

20 Q. So in reference to the treatment for

21 asthma, how -- what level of treatment is that?

22 A. That's as bad as it gets, as high a

23 level of treatment as it gets.

24 Q. All right. Now, in reference to

25 whether or not she can do any type of work,

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1 would you -- would you defer -- you've been asked
2 opinions about whether or not you thought she
3 could go back to doing sedentary work.

4 A. Right.

5 MR. MCDANIEL: Let me have the two
6 documents we've --

7 MS. MILLER: All right.

8 BY MR. MCDANIEL:

9 Q. I'm going to ask you to review that,
10 and I believe also if -- this looks like the other
11 report that you looked at at the time that you
12 signed your report in reference to her being
13 disabled from gainful employment.

14 A. Okay. Well, I mean, based on her
15 symptoms, I really don't know who will employ
16 her. Honestly --

17 Q. Right.

18 A. -- I don't even know who will employ
19 her. She can probably sit at a desk and do that,
20 uh-huh.

21 Q. Well, in other words -- and -- and
22 that -- that gets back to my question. In other
23 words, like basically, though, the -- you're aware
24 that with any type of exertion whatsoever she --
25 she can't breathe?

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1 A. That's correct.

2 Q. All right. And she -- you also note
3 that she's on an EpiPen.

4 A. Correct.

5 Q. And of course --

6 A. Two years.

7 Q. -- counsel asked you about her coming
8 to see you for flares. She actually goes to see
9 Dr. deDios and/or Dr. Dyce --

10 A. Correct.

11 Q. -- if she has any significant
12 problems with that. You're following her for her
13 other medical problems in reference to her high
14 blood pressure and high cholesterol.

15 A. Correct.

16 Q. But you see her on a regular basis
17 for those problems and so you are aware of her
18 condition.

19 A. That's correct.

20 Q. And in your opinion she's disabled
21 from gainful employment.

22 MS. MILLER: Object to form.

23 BY MR. MCDANIEL:

24 Q. Now, let me ask you this. I hate to
25 put you in the box from this, in this regard, but

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1 in other words, are you aware that if
2 Ms. -- Ms. Sowell has testified that if she gets
3 around any type of fragrance, are you -- are you
4 familiar with the term, for example, that she has
5 become "hypersensitized" and she has become --

6 A. Uh-huh.

7 Q. -- extremely "sensitized" to the
8 offending agents --

9 A. That's correct.

10 Q. -- and any -- actually any kind of --
11 I don't -- I don't want to say impurities in the
12 air, but any kind of odors? I mean, would it
13 surprise you, knowing the severity of her
14 condition that you observed, that if she just
15 simply walked over to the trash can and put her
16 trash in it and there was a strong odor of mold,
17 mildew and all that coming out of the -- from the
18 mold, would that set off an attack? Would that --

19 A. That's correct. And she has stated
20 that to me in the past.

21 Q. Okay. And, also, I don't know if
22 she's made you aware, but we were in a building
23 recently, and I believe she has testified to
24 this, that strong odors -- but they had one of
25 those air fresheners where it would -- it would go

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1 off and it keeps a constant scent.

2 Would it surprise you, too, that just
3 entering that environment and being exposed to
4 that, that she had to go outside and get away from
5 that?

6 A. No, I'm not surprised at all, and she
7 actually came to see me because of that.

8 Q. Oh, she did?

9 A. Yes.

10 Q. Okay.

11 A. Uh-huh.

12 Q. All right. So when you say that she
13 could sit at a desk, it would have -- would it
14 have to be in an absolutely clean environment?

15 A. Absolutely, uh-huh.

16 Q. All right. I see in doctors' offices
17 all the time, you know, reference to if they've
18 got maybe a -- patients and/or they have staff
19 that have -- you know, can react to perfumes or
20 whatever. Would that type of a sign need to be
21 around Ms. Hammett -- I mean -- excuse me --

22 A. Ms. Sowell.

23 Q. -- Ms. Sowell?

24 A. Absolutely.

25 Q. Okay. I want to show you one other

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1 document and just ask you. I don't know if you've
2 reviewed this or seen this in the records, but we
3 showed you this report that was issued by
4 Dr. Hammett who -- and the reason you came to be
5 her -- is -- Ms. Sowell's treating family doctor,
6 Dr. Hammett, left the practice, is that correct,
7 and you took over her prior treatment?

8 A. Yeah. I don't know Dr. Hammett, but
9 he retired, I believe, or he moved --

10 Q. Okay.

11 A. -- and she transferred care to my --

12 Q. Okay.

13 A. -- practice.

14 Q. All right. All right. Now, and this
15 is -- this is -- I don't know if you observed this
16 or not. Have you -- have you seen this in her
17 medical records? It -- this is a report that's
18 been put into evidence. I don't have the actual
19 page number.

20 MS. MILLER: Which one is it?

21 MR. MCDANIEL: It's the one in
22 reference to -- dated -- if it is dated.

23 MS. MILLER: When was that? I
24 probably can find it. That's the one that's not
25 dated.

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1 MR. MCDANIEL: Yeah. It's Carolina
2 Physicians --

3 MS. MILLER: It's page --

4 MR. MCDANIEL: -- Group.

5 MS. MILLER: -- 2. It's your APA,
6 page 2.

7 MR. MCDANIEL: Huh?

8 MS. MILLER: Your APA, page 2.

9 MR. MCDANIEL: Okay. Okay.

10 MS. MILLER: Right?

11 MCDANIEL: 2, yeah.

12 MS. MILLER: Is that it?

13 MR. MCDANIEL: That's it. That's it,
14 uh-huh. Okay.

15 BY MR. MCDANIEL:

16 Q. Looking at this report, have you ever
17 seen this?

18 A. I have seen Dr. deDios' report where
19 he's referring to this.

20 Q. Okay.

21 A. And I have seen Dr. deDios' report
22 where he has tried again to allow her to go back
23 to work and then, again, referring to her
24 symptoms.

25 Q. Okay. And the reason -- the reason I

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1 was asking you about that is, counsel was asking
2 you about you stating an opinion, and, of course,
3 you told us that by history she had never had any
4 problems with asthma. Then at that -- when she
5 would be out of work, it would -- her symptoms get
6 better yet, and they began to associate that with
7 that, and the difference between just simply the
8 diagnosis of asthma and occupational asthma is
9 simply the cause that -- the causal agent; is that
10 correct?

11 A. Absolutely.

12 Q. All right. So based on your
13 knowledge and, of course, in this -- this report
14 Dr. Hammett says that she had been treating for
15 occupational asthma, and is it your understanding
16 that the diagnosis from Dr. deDios and Dr. Hammett
17 is occupational asthma?

18 A. That's correct.

19 Q. All right. And based on your
20 experience and knowledge of what she's -- would
21 you -- what you know about her and what by history
22 you've been told and what you've seen in the
23 medical records, would you concur in that
24 diagnosis of being occupational asthma, just not
25 asthma?

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1 A. I agree it's occupational asthma.

2 MR. MCDANIEL: Okay. No further
3 questions.

4 REEXAMINATION

5 BY MS. MILLER:

6 Q. Just a couple of follow ups. Do you
7 know if her home is a clean-air environment?

8 A. No, I do not.

9 Q. Is your office a clean-air
10 environment to the extent that none of your
11 employees are allowed to wear perfume, a scented
12 agent?

13 A. No one is allowed to wear any
14 perfumes.

15 Q. All right. And were you aware that
16 she stopped working on January 6, 2014, but didn't
17 start treating with Dr. deDios until January 7,
18 2014?

19 A. She -- she started --

20 MR. MCDANIEL: Object --

21 A. -- treating with

22 Dr. deDios on -- 2013.

23 MS. MILLER: Okay.

24 MR. MCDANIEL: Yeah.

25 MS. MILLER: There's no records in

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1 here for 2013.

2 THE WITNESS: He -- he started
3 treating her --

4 MS. MILLER: The records speak for
5 themselves on that.

6 THE WITNESS: Okay.

7 MS. MILLER: We'll just let the --

8 THE WITNESS: Uh-huh.

9 MS. MILLER: We'll let the records
10 speak for themselves on that.

11 MR. MCDANIEL: Actually -- off the
12 record. Are you finished?

13 MS. MILLER: Yes --

14 MR. MCDANIEL: Okay.

15 MS. MILLER: -- I am.

16 Thank you.

17 THE WITNESS: No problem.

18 (The deposition concluded at
19 approximately 1:01 p.m.)

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1 CERTIFICATE OF REPORTER

2
3
4 I, Donna Cheryl Kyzer, Court Reporter
and Notary Public for the State of South Carolina
at Large, do hereby certify:

5
6 That the foregoing deposition was
taken before me on the date and at the time and
location stated on Page 1 of this transcript; that
7 the deponent was duly sworn to testify to the
truth, the whole truth and nothing but the truth;
8 that the testimony of the deponent and all
objections made at the time of the examination
9 were recorded by me and were thereafter
transcribed; that the foregoing deposition as
10 typed is a true, accurate and complete record of
the testimony of the deponent and of all
11 objections made at the time of the examination to
the best of my ability.

12
13 I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

14
15 Witness my hand, I have hereunto
affixed my official seal this 31st day of May,
2016, at Lexington County, South Carolina.

16
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19
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21
22
23 Donna Cheryl Kyzer, Court Reporter,
Notary Public
24 State of South Carolina at Large.
My Commission expires:
25 October 5, 2022