

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
South Carolina Workers' Compensation Commission

WCC Case Nos. 0123790 and 0824046

Betty Joe Floyd as Personal Representative of the Estate of
Scottie Wayne Floyd and as dependent mother beneficiary of
Scottie W. Floyd, deceased employee, ...Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company
In liquidation c/o South Carolina Property & Casualty Insurance
Guaranty Association and Amguard Insurance Company, Carriers, ... Respondents.

RECORD ON APPEAL
VOLUME II

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INDEX

Order of Honorable Thomas Russo dated January 4, 2012 and served on March 8, 2012	5
Order of the South Carolina Court of Appeals dated March 25, 2011	21
Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission dated December 3, 2010	23
Decision and Order of Commissioner G. Bryan Lyndon dated March 1, 2010	39
Decision and Order of Commissioner J. Alan Bass dated December 12, 2007.....	69
Consent Order of Commissioner J. Alan Bass dated October 8, 2006	82
Consent Order of Commissioner J. Alan Bass dated June 27, 2006.....	85
Consent Order of Commissioner J. Alan Bass dated April 18, 2006	91
Consent Order of Commissioner J. Michelle Childs dated July 11, 2004.....	94
Decision and Order of Commissioner J. Michelle Childs dated June 10, 2004	96
Certificate of Appointment for Guardian dated July 14, 2004	112
Order of Appointment of Guardian <u>ad Litem</u> dated April 24, 2002	116
Form 30, Request for Commission Review, of Claimant dated March 12, 2010.....	119
Form 53 of Amguard Insurance Company dated June 11, 2009	123
Form 53 of Legion Insurance Company dated June 29, 2009	124
Form 52 dated May 30, 2009.....	126
Form 53 of Legion Insurance Company dated June 29, 2009	127
Form 52 dated May 30, 2009	128
Form 51 dated June 29, 2009.....	129
Form 50 dated May 30, 2009.....	130
Form 51 dated February 3, 2006.....	131
Form 50 dated January 6, 2006.....	132
Form 51 dated May 8, 2003.....	133
Form 50 dated April 8, 2003.....	134
Brief of Defendants, Ken Baker Used Cars and Legion Ins. Co. dated June 1, 2010	135
Brief of Ken Baker Used Cars and Body Shop and Amguard Insurance Company to the Full Commission dated May 19, 2010	164
Brief of Claimant/Appellant dated May 5, 2010	173
Post Trial Memorandum of Defendants, Ken Baker used Cars and Legion Ins. Co. dated October 16, 2009	211
Reply Brief of Defendant Amguard Insurance Company dated October 16, 2009	238
Single Commission Brief of Defendant Amguard Insurance Company dated October 1, 2009	243
Post-Trial Brief of Claimant dated September 30, 2009.....	251
Notice of Appeal to Circuit Court dated December 29, 2010.....	274
Notice of Appeal to South Carolina Court of Appeals dated December 29, 2010	278
Motion for Consolidation of Appeals dated February 15, 2011	282
Notice of Appeal to South Carolina Court of Appeals dated March 14, 2012	287

Transcript of hearing before Honorable Thomas Russo on September 8, 2011	
<u>Oral Argument</u>	
Mr. Wukela	294
Mr. Cauthen	314
Mr. Martin	321
Mr. Wukela	325
Transcript of hearing before Appellate Panel on June 22, 2010	
<u>Oral Argument</u>	
Mr. Wukela	330
Mr. Leventis	338
Mr. Martin	343
<u>Reply</u>	
Mr. Wukela	346
Transcript of hearing before Commissioner Bryan Lyndon on September 1, 2009	
<u>Examination of Betty Jo Floyd:</u>	
Direct Examination by Mr. Wukela	381
Cross Examination by Mr. Cauthen	396
Cross Examination by Mr. Martin	403
Examination by Commissioner Lyndon	406
Transcript of Deposition of R. Joseph Healy, M.D. taken August 25, 2009	
Direct Examination by Mr. Wukela	414
Cross Examination by Mr. Cauthen	438
Cross Examination by Ms. Turner	448
Re-direct Examination by Mr. Wukela	454
Transcript of Deposition of Alexander M. Federer, PhD. taken August 21, 2009	
Direct Examination by Mr. Wukela	462
Cross Examination by Mr. Cauthen	486
Cross Examination by Mr. Martin	508
Transcript of Deposition of Betty Jo Floyd taken July 24, 2009	
Direct Examination by Mr. Cauthen	516
Cross Examination by Ms. Turner	543
Transcript of Deposition of Walter James Evans, M.D. taken March 13, 2007	
Direct Examination by Mr. Cauthen	548
Cross Examination by Mr. Wukela	564
Re-direct Examination by Mr. Cauthen	571
Re-cross Examination by Mr. Wukela	575
Re-direct Examination by Mr. Cauthen	576
Transcript of Deposition of Rakesh P. Chokshi, M.D. taken March 12, 2007	
Direct Examination by Mr. Goodwyn	582
Cross Examination by Mr. Wukela	598
<u>Exhibits</u>	
Defendant's Exhibit #1	612
Defendant's Exhibit #2	613
Defendant's Exhibit #3	614
Transcript of Deposition of Betty Jo Floyd taken February 5, 2007	
Direct Examination by Mr. Cauthen	618

Transcript of Deposition of Scottie Floyd taken February 5, 2007	
Direct Examination by Mr. Cauthen.....	669
Transcript of Deposition of Sasha Federer, PhD. Taken February 2, 2007	
Direct Examination by Mr. Wukela.....	720
Cross Examination by Mr. Cauthen.....	759
Re-direct Examination by Mr. Wukela.....	804
Re-cross Examination by Mr. Cauthen.....	812
Re-direct Examination by Mr. Wukela.....	816
Re-cross Examination by Mr. Cauthen.....	819
Transcript of Deposition of R. Joseph Healy, M.D. taken April 24, 2006	
Direct Examination by Mr. Wukela.....	825
Cross Examination by Mr. Cauthen.....	844
Transcript of Deposition of R. Joseph Healy, M.D. taken March 15, 2004	
Direct Examination by Mr. Martin	864
Transcript of Deposition of Scottie Floyd taken December 18, 2003	
Direct Examination by Mr. Martin	895
<u>Exhibits</u>	
Defendant's Exhibit #1	978
Defendant's Exhibit #2	979
Form 58, Pre-Hearing Brief, of Employer/Carrier Legion Insurance Co. dated August 24, 2009	980
Notice of Witnesses and Written Reports of Employer/Carrier Legion Insurance Co. dated August 24, 2009, with attached APA No. 1	981
Form 58, Pre-Hearing Brief, of Employer/Carrier Amguard Insurance Company	992
Form 58, Pre-Hearing Brief, of Claimant, with attachments, dated August 17, 2009.....	993
Notice of Witnesses and Written Reports of Claimant dated August 17, 2009.....	1001
Form 58, Pre-Hearing Brief, on behalf of Employer and the S.C. Property & Casualty Insurance Guaranty Association filed on February 6, 2007	1005
Form 58 filed on behalf of Claimant Scottie Floyd on February 1, 2007.....	1007
APA 1.....	1010
APA 2.....	1053
APA 3.....	1063
APA 5.....	1084
APA 6.....	1096
APA 7.....	1102
APA 8.....	1139
APA 9.....	1145
APA 10.....	1192
APA 11.....	1199
APA 12.....	1202
APA 13.....	1219
APA 14.....	1225
APA 15.....	1237
APA 23.....	1245
APA 24.....	1263

APA 25.....	1312
APA 25, pp. 399-401 of the "CD Note Book Report".....	1332
APA 26.....	1335
APA 27.....	1336
APA 28.....	1393
APA 29.....	1409
APA 35.....	1428
APA 36.....	1432
APA 37.....	1434
APA 38.....	1440
APA 39.....	1445
APA 40.....	1446
APA 41.....	1447
APA 42.....	1448
APA 43.....	1449
APA 44.....	1450
APA 45.....	1451
APA 46.....	1452

Certificate of Counsel	1453

1 Q. All right. But he never actually acted on any of
2 these threats during the two-year period of time
3 that you were involved with him, did he?

4 A. No, not that I -- not that I know. I think -- I
5 think part of it was that everybody knew when to
6 let him go, because I knew when to let him go when
7 the session was over. If I did know, the situation
8 may be different, but it's -- and I think his mom
9 knew intuitively when to stop interacting with him
10 because he started to escalate and, I guess, and
11 everybody else knew when to let him -- let him be.

12 Q. Well, do you believe that he was capable of
13 controlling his behavior based upon his, his fear
14 or his understanding that it would -- it would have
15 been possible of the consequences? Do you think he
16 was able to control his behavior based upon his
17 realization of what the consequences could be;
18 i.e., return back to Tangram in Texas --

19 A. Uh-huh.

20 Q. -- or possible incarceration in the state hospital,
21 stuff like that? Do you think those understandings
22 or did he understand those were possibilities and,
23 if so, do you think he was able to control his
24 behavior because of those fears?

25 A. I know that he didn't want to return to Tangram,

1 but I, I think it played some role, but I think
2 that if Scottie got to a certain point, those were
3 -- that would not be no -- would not be a
4 consideration. I think that at some point, he did
5 not care. He did not care. I think the biggest
6 consideration was for his mom. I think that was
7 not wanting to leave her or not wanting to make
8 more troubles for her. I think -- I think if there
9 was a motivation for him to keep it together, it
10 was for mom because she -- he knew that she loved
11 him and that how much she did for him, and so I
12 think that, that was probably much more than fear
13 of going to prison, because he always thought that,
14 that he will -- he will not go to prison, he'll get
15 killed. That was not an option, that he is going
16 to die and he was determined. So, I think that,
17 that was -- it was not the fear.

18 Q. Okay. The third one, we haven't talked about yet,
19 goal that you mentioned improve social functioning.
20 Did he also make progress in that category?

21 A. He made -- he made some progress. I seen that he
22 was able to be little bit more civil when people
23 are civil to him. When he did the physical therapy
24 here, he was able to be civil to the therapists,
25 and so there was some increase in ability of social

1 function. Again, there still was the problem with
2 misreading. Yeah, if you give him information that
3 he thought in some way threatening or he perceived
4 as threatening, that still was an issue, but he was
5 able to process it down the road and him and I
6 would process it if it truly was a threat or if he
7 perceived it as a threat. So, I think that he
8 started to have little bit greater insight into
9 what was external and what was, what was internal,
10 but it was after two years of seeing him weekly,
11 yeah.

12 Q. Now, in the -- as I recall in the last, I don't
13 know whether it's six months, eight months, close
14 to a year, it seemed like after Scottie had his
15 teeth removed and the dentures --

16 A. Yeah.

17 Q. -- implanted, that he seemed to improve. Did he
18 improve his attendance sessions with you --

19 A. Yes. Yeah.

20 Q. -- after that?

21 A. Yes.

22 Q. And did it seem like his outlook in general seemed
23 to improve after that?

24 A. I think that he did better after that. I think
25 there was a -- let me just double-check with my

1 notes. It's in some of the notes are experiencing
2 reporting -- reporting improvement. One of the
3 things that we started to do with Scottie is we
4 would go and have half of the session across the
5 street which is a Starbucks, so we would go and I
6 just wanted to see how he managed in Starbucks with
7 sort of a seminormal situation and, and he
8 sometimes did okay. Sometimes if somebody just
9 started to agitate him because the way look, the
10 way the walk, the way they talk, we would go and
11 come back home to my office, so there is some first
12 attempts made to take him out in public because I
13 thought that he can do it, but it was always sort
14 of a tentative. Take him out. Bring him back.
15 Take him out. Bring him back. And so that, that
16 was a beginning of being able to take him out in an
17 out-of-control environment. But as I said, it was
18 still really tentative and I said that if you don't
19 embrace you, I won't embrace you. That was part of
20 the mode. And I think that Scottie was very happy
21 that Dr. Healy took him back, because that was a
22 sign for him that, that somebody sees that he is
23 trying. That he is trying hard to do better and
24 not to be as explosive and -- but I think until the
25 last day, there was, there was the fear of losing

1 it, of exploding and all being for naught and it
2 just --

3 Q. Did his -- did his attendance of counseling
4 sessions with you, though, did they improve after
5 that?

6 A. It improved depending. Sometimes I would see only
7 Ms. Floyd. When he would have headaches that went
8 out of control and some of it seems like it depend
9 on when the storm would come and Scottie would be
10 in bed for two days with headaches, vomiting, and
11 so I think that his irregular attendance or the
12 attendance, changes in attendance was more due to
13 headaches and inability to attend than any kind of
14 resistance. I think there was no longer resistance
15 as he was glad to see me, just so when he didn't
16 show, I knew that was due to headaches.

17 Q. Okay. But over the -- over the last several months
18 of treatment with you, wasn't he showing for all of
19 the sessions?

20 A. More -- most of them. Yeah, I think that --

21 Q. He had stopped missing sessions is my understanding
22 and maybe I'm wrong.

23 A. I think initially he was missing sessions and it
24 was an issue, but I think that it improved and as I
25 said, when he missed sessions, it was due to -- due

1 to headaches, yeah.

2 Q. Okay. So, then --

3 A. Not that he did not want to come or he was
4 resistant or refusing.

5 Q. So the goals, the treatment goals that you outlined
6 were not just for the purpose of preventing
7 regression or deterioration of his condition, they
8 were actually for the purpose of --

9 A. Improving.

10 Q. -- of improving in all of those areas that you
11 mentioned, --

12 A. Yeah.

13 Q. -- weren't they?

14 A. Yes.

15 Q. Is that correct?

16 A. They are just improving so he would be as good as
17 he can be.

18 Q. Okay. Were any -- did any of these goals, either
19 increasing independence, anger control, improve
20 social functioning, was it -- was it also a goal at
21 any point during your treatment to attempt to
22 return him to any type of employment, even part-
23 time employment activities?

24 A. No. I did not see him necessarily as being able --
25 from, from what I have seen as being able to return

1 to any kind of competitive employment. I am not
2 sure even at this point when, when I knew him that
3 he would have been able to function in a workshop.
4 Like Vocational Rehabilitation, they have
5 workshops. I thought that improvement would have
6 been a way that he could maybe function in some
7 other environment besides his mother and it would
8 have been a structured environment.

9 Q. Was -- did you discuss with Scottie what his
10 desires or his goals were as far as the possibility
11 of returning to any kind of, any kind of employment
12 activity outside or functioning, regular
13 functioning outside of the home?

14 A. I think that he -- that would have been his dream.
15 That would have been his dream, but it's -- it's --
16 it was at that point not even able for him to go
17 fishing, but I -- because his leaving the house,
18 the headaches were such that he was sort of a
19 virtual prisoner of his home with the headaches,
20 but he talked a lot about that he loved what he did
21 before. He loved the work that he did and he said
22 he was a good mechanic and he was functioning, he
23 was earning money, and I think part of that not
24 being able to function was part of -- part of the
25 depression.

1 Q. Okay. Now, you mentioned the seizures that he --
2 you mentioned that you did review medical records.
3 Of course, you were --

4 A. Yeah.

5 Q. You were provided with all of his medical history?

6 A. Right.

7 Q. And you did review that? You did review those
8 records?

9 A. Yes.

10 Q. So you were familiar with his medical history?

11 A. Yes.

12 Q. And you mentioned the seizures earlier that he was
13 taking medications to control. What is your
14 understanding of the origin of those seizures, the
15 cause of those seizures?

16 A. My understanding is that it was result of the head
17 injury, the trauma to his brain.

18 Q. The frontal lobe injury?

19 A. Yes.

20 Q. Okay. Now, you testified earlier that you believe
21 that Scottie was at Maximum Medical Improvement, I
22 guess, at the time of his death in terms of
23 psychologically or neuropsychologically, you
24 believe he was at Maximum Medical Improvement?

25 A. No. No. I think Maximum Medical Improvement

1 meaning that, that I would not expect that his
2 brain would -- the structure of his brain would,
3 would improve anymore. You know you have a
4 recovery when you have a brain injury, and then you
5 have a recovery, the swelling and so forth. I
6 think that was the maximum of medical improvement
7 that medically where he was as good as probably he
8 would get. I think that from a neuropsych point of
9 view, I think there is still ways to go. If he had
10 not passed, I would have still assumed that I would
11 have been seeing him to be able to continue with
12 the direction of the goals that I, that I indicated
13 as far as the anger control, as far as being able
14 to receive information correctly and as far as
15 increasing his independence. You know, those are
16 goals that he probably, given the severity of his
17 injury, that he would have benefited from more
18 therapy and ongoing.

19 Q. So from a neuropsychological standpoint, you do not
20 believe that he had reached Maximum Medical
21 Improvement or maximum -- maximum
22 neuropsychological improvement?

23 A. No.

24 Q. Is that -- that's correct, he had not at the time
25 of his death reached maximum improvement

1 neuropsychologically?

2 A. No. No, I believe that he still would benefit from
3 it and as I said, that he would probably -- there
4 would be some improvement still.

5 Q. Okay. That's all the questions I have, Doctor.
6 Thank you.

7 A. Okay.

8 EXAMINATION BY MR. MARTIN:

9 Q. Doctor, my name is Edward Martin, and I'm
10 representing the Employer, as well as Amguard
11 Insurance. I just have a couple of questions. You
12 mentioned there was episode with Dr. Evans
13 regarding prescription medication --

14 A. Yes.

15 Q. -- which Scottie had taken before. Was that -- was
16 that December 2006?

17 A. December? I believe so. I can be more certain if
18 I can look it up, but I believe it was December.
19 Yeah.

20 Q. Do you remember what medication it was that set
21 Scottie off?

22 A. Hydrocodone.

23 Q. Okay. So it was a pain medication as --

24 A. Yes.

25 Q. -- opposed to a seizure medication?

1 A. Yes.

2 Q. And I think as we discussed before last time you
3 saw him, you thought the medication, at least the
4 anti-seizure medication he was taking is Depakote
5 and Keppra?

6 A. I believe so, yes.

7 Q. Okay. And those medications he had been taking for
8 a number of years?

9 A. Yeah.

10 Q. Okay. And I believe you stated before that Scottie
11 understood the importance of taking anti-seizure
12 medication?

13 A. Yes.

14 Q. Okay. And it looks like from his medical records
15 in 2004, he had an episode where he had stopped his
16 anti-seizure medications and had to be hospitalized
17 for a couple of weeks? Are you -- are you aware of
18 that?

19 A. What medical records --

20 Q. I think they were Carolinas.

21 A. -- are you referring to?

22 Q. Carolinas Hospital System. It looks like April
23 2004?

24 A. I, I don't -- I don't have records from 2004. I
25 think there is an extensive note by Dr. Evans.

1 Let's see that's -- yeah. Yeah. I, I think that's
2 -- there is a note from April 2004 reported by Dr.
3 Evans that reporting a note by Dr. Ashley Kent.
4 That was for seizures, Emergency Room.

5 Q. Okay. And I think you stated before it was -- it
6 was your opinion it was the function of his -- of
7 his brain injury that led him to not take his
8 medication, anti-seizure medication?

9 A. That was my understanding, that when there was
10 either that he would not remember or if he felt
11 that there were some side effects associated with
12 that, that he would not tolerate the side effects
13 and would discontinue impulsively.

14 Q. And when was the last date that you saw Scottie?

15 A. My note is from September 2nd.

16 Q. What was his condition at that -- at that time?

17 A. Okay. The note says, "Patient was seen with his
18 mother. Focus was on improving his self-control,
19 expressing concerning about his sister in a way
20 that it's not aggressive or abusive. People are
21 able, able to -- patient is able to control his
22 rage but when he feels frustrated, he still
23 perseverates on his rage and revenge. Still making
24 progress."

25 Q. Any comment regarding compliance with taking the

1 medications?

2 A. No.

3 Q. And the Keppra and the Depakote, he would have been
4 taking those as a result of the seizures which were
5 caused by a brain injury?

6 A. That's correct. That's my understanding from his
7 physicians. See, not being a physician, I really
8 cannot make statements about medications. That
9 would be outside of my expertise.

10 Q. Yes, sir. But, that's your understanding of the
11 relationship?

12 A. That's my understanding given the information
13 available to me.

14 Q. That's all the questions I have.

15 A. Okay.

16 Q. Thanks.

17 MR. WUKELA: Doctor, thank you for your
18 patience.

19 DR. FEDERER: Thank you for your patience,

20 (THERE BEING NO FURTHER QUESTIONS, DEPOSITION
21 CONCLUDED AT 11:45 A.M.)

STATE OF SOUTH CAROLINA)

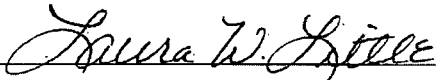
COUNTY OF DARLINGTON)

CERTIFICATE

I, Laura W. Little, Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I did have Alexander M. Federer, PhD, appear before me at 10:25 a.m. on the 21st day of August, 2009, at Carolinas Psychological Services, 1925 Hoffmeyer Road, Florence, South Carolina, and that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of his testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 26th day of August, 2009.



Laura W. Little, Verbatim Reporter

Notary Public, State of South Carolina

My Commission Expires September 21, 2015.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0123790 & 0824046

BETTY JOE FLOYD, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF SCOTTIE WAYNE FLOYD AND)
AS DEPENDENT OF SCOTTIE)
WAYNE FLOYD, DECEASED,)

DEPOSITION

OF

CLAIMANT,)

BETTY JOE FLOYD

VS.)

KEN BAKER USED CARS AND BODY)
SHOP,)

EMPLOYER,)

LEGION INSURANCE COMPANY IN)
LIQUIDATION/SOUTH CAROLINA)
GUARANTY ASSOCIATION, AMGUARD)
INSURANCE COMPANY,)

CARRIER,)

DEFENDANTS.)

Deposition of Betty Joe Floyd, taken pursuant to
the South Carolina Rules of Civil Procedure and the
Administrative Procedures Act, commencing at the hour of
4:00 p.m., Friday, July 24th, 2009, at the Wukela Law
Firm, 403 Second Loop Road, Florence, South Carolina.

COPY

Reported by

Barbara P. Scott, CVR

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Index

Stipulations	4
Examination by Mr. Cauthen	4
Examination by Ms. Turner	31
Certificate	33

Exhibits

No exhibits marked.

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SCOTT REPORTING SERVICE

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Stipulations

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

Whereupon,

Betty Joe Floyd, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: My name is Betty Joe Floyd.

Examination

By Mr. Cauthen:

Q Ms. Floyd, you know me, of course. I've taken your deposition before. Mark Cauthen, and, as you know, I represent one of the defendants in this matter, Legion and the Guaranty Association, and I don't need to go over the formalities of the deposition with you because you know the ground rules and you gave a deposition a couple of years ago in this case. I'm not going to be asking the same questions because we have different issues, but, hopefully, this will not take too long, but if you

- 1 don't understand any question that I ask, let me
2 know, and I will do my best to clear it up and make
3 sure that you -- that you do understand it, okay?
- 4 A (Nods head.)
- 5 Q And just to make it easy for the court reporter, if
6 you would, just make sure to give a verbal answer.
7 You speak kind of softly, so just do your best to
8 give us a verbal answer, a yes, no or an
9 explanation, and just try to avoid saying uh-huh,
10 uh-uh or just nodding the head so that she can take
11 everything down, okay?
- 12 A (Nods head.)
- 13 Q Ms. Floyd, let me ask you first off, are you
14 currently employed anywhere?
- 15 A No, sir.
- 16 Q Okay. What was your last employment?
- 17 A Taking care of my son.
- 18 Q All right. And before that, where were you
19 working?
- 20 A At Lane Woodworks. Lane Woodworks.
- 21 Q Okay. Now, did you have an on-the-job injury with
22 Lane Woodworks?
- 23 A Yes, sir.
- 24 Q Okay. Is that workers' compensation case still --
25 still ongoing?

- 1 A Yes, sir.
- 2 Q Okay. Could you tell me, are you receiving weekly
3 disability benefits for --
- 4 A No, sir.
- 5 Q You're not?
- 6 A (Shakes head.)
- 7 Q Okay. But the claim it still pending? It hasn't
8 been resolved yet?
- 9 A No, sir.
- 10 Q Are you still receiving medical treatment for that
11 -- for that injury?
- 12 A Yes, sir. I'm paying it myself.
- 13 Q Oh. You're paying for it yourself. Was this a
14 back injury?
- 15 A Yes, sir.
- 16 Q Okay. Have you been to a hearing in that case?
- 17 A No, sir.
- 18 Q You haven't. Okay. Are you represented by Mr.
19 Wukela in that case?
- 20 A Yes, sir.
- 21 Q All right. Have you -- Have you sought other
22 employment since Scottie passed away last
23 September?
- 24 A No, sir.
- 25 Q Okay. What sources of income do you have.

1 currently?

2 A Nothing.

3 Q You have no sources of income currently?

4 A No, sir.

5 Q Do you still live at the same address?

6 A Yes, sir.

7 Q And what is that address?

8 A

9 Q And do you own that house?

10 A I'm paying for it, yes.

11 Q How are you currently paying for it?

12 A The little bit of money I had in the bank.

13 Q Okay. So, --

14 A Yes, sir.

15 Q -- you're just living off of savings right now? Is

16 that -- Is that what you're doing?

17 A Yes, sir.

18 Q Okay. And you have no -- no other sources of

19 income, no disability benefits or anything like

20 that currently?

21 A No, sir.

22 Q Does anyone else live with you there on

23 currently?

24 A My daughter and my granddaughter.

25 Q Okay. All right. Do they help you with any of the

1 expenses?

2 A My daughter's doing what she can, but she's

3 pregnant.

4 Q Okay. And your granddaughter lives there, too?

5 A Yes, sir.

6 Q Okay. All right. Let me go back to the period of

7 time -- I want to ask you about the period of time

8 that Scottie was living with you, and I'm trying to

9 recall -- Wasn't it about June of 2006 when we got

10 him released from Tangram in Texas and placed there

11 with you in your home?

12 A Yes, sir.

13 Q Is that about right, June of 2006?

14 A June 1st. Yes.

15 Q So, he lived with you there at Caddy Court in

16 Marion from that time until he passed away in

17 September of 2008?

18 A Yes, sir.

19 Q Okay. All right. And, now, let me ask you this.

20 You -- You've made a -- One of the claims in this

21 case is that you were a dependent or that you were

22 dependent for support upon Scottie at some point.

23 Could you tell me the basis for that? Do you

24 understand my question?

25 A No, sir, I don't.

- 1 Q Okay. All right. Well, let me ask you this. What
2 sources of -- What sources of income did you --
3 did you have prior to Scottie's death?
- 4 A Nothing.
- 5 Q Well, weren't you receiving the \$400 --
- 6 A Oh. Yes, the workers' comp, when I was taking care
7 of -- Yes.
- 8 Q Okay. Was it \$400 a week?
- 9 A Yes, sir.
- 10 Q And that was -- that was for -- How did we term
11 it? It wasn't living expenses. Daily living --
12 Daily living --
- 13 A Taking care of him.
- 14 Q -- allowance. Daily living allowance. Isn't that
15 what it was?
- 16 A (Nods head.)
- 17 Q It was 400 a week? Is that what it was?
- 18 A (Nods head.)
- 19 Q And that was your -- that was your compensation for
20 being the caregiver for Scottie; is that correct?
- 21 A Yes, sir.
- 22 Q Okay. Did you have any other income besides that
23 during the period that Scottie lived with you?
- 24 A No, sir.
- 25 Q And the period I'm talking about is from 2006, when

1 he moved back in, until his -- until his passing
2 away.

3 A No, sir.

4 Q Okay. Just that. Did Scottie have -- Well, what
5 sources of income did Scottie have during that
6 period of time?

7 A He had the check that come from workers' comp, and
8 his disability.

9 Q And that's the -- that's the weekly -- his weekly
10 temporary total disability check from workers'
11 comp?

12 A (Nods head.) Every month.

13 Q Every month or every week? Did he get that check
14 every week?

15 A Not the disability, no. It's a month.

16 Q Well, I'm talking about the comp -- the comp check.

17 A Oh. Every week, yes, sir.

18 Q Okay. And let me see if we can pinpoint --
19 \$250.24 a week? Is that what --

20 A Yes, sir.

21 Q That's what he was getting?

22 A (Nods head.)

23 Q All right. And then you said there was a
24 disability check in addition to that?

25 A Yes, sir.

- 1 Q Was that from -- Where did that come from?
- 2 A From his injury I guess.
- 3 Q Was that Social Security?
- 4 A Yes, sir.
- 5 Q Do you know how much that was?
- 6 A The last of it was \$795, I think.
- 7 Q Okay. So, the \$400 a month that you were earning -
- 8 - I'm sorry -- the \$400 a week you were earning,
- 9 Scottie's TTD check, and then that Social Security
- 10 disability check, that was all the sources of
- 11 income?
- 12 A Yes, sir.
- 13 Q Okay. Could you tell me who managed -- who managed
- 14 Scottie's finances during that period of time?
- 15 A I did.
- 16 Q Okay. Did he have a -- Did he have a bank account
- 17 that he deposited those checks into?
- 18 A Yes, sir.
- 19 Q Where did he -- Who was his -- What was his bank?
- 20 Do you remember?
- 21 A Anderson Bank in Marion.
- 22 Q Anderson Bank in Marion?
- 23 A Anderson Brothers Bank in Marion.
- 24 Q Okay. Was his weekly check deposited into that
- 25 account every -- every week?

1 A Yes, sir. It was a different account.
2 Q I'm sorry?
3 A It was a different account.
4 Q A different account?
5 A (Nods head.)
6 Q And this account was in his name?
7 A Mm-hmm.
8 Q Now, did you have a separate account that you
9 deposited your 400-dollar -- Well, let me ask you
10 this. Did you get a 400-dollar check, or how did
11 you get that 400 a week?
12 A I got -- Every two weeks, I get -- I got \$800.
13 Q Every two weeks, you get \$800?
14 A Yes, sir.
15 Q And where did that come from?
16 A From workers' comp.
17 Q But did you receive a check?
18 A Yes, sir.
19 Q Okay. And it came directly -- Now, did that come
20 to Scottie, or did it come to you?
21 A It would come to me.
22 Q And it was made out to you?
23 A It had Scottie's name on it and then my name on it.
24 Q It had his and your name?
25 A (Nods head.)

- 1 Q And that was \$800 every two weeks?
- 2 A Yes, sir.
- 3 Q Okay. Now, would you deposit that check every two
- 4 weeks into another account?
- 5 A No, sir. I took that and paid what bills I had to
- 6 pay, and then I put some of it into a checking
- 7 account.
- 8 Q You paid bills out of that and then put the rest
- 9 into a checking account?
- 10 A My small account. Yes.
- 11 Q Now, was that a checking account in your name?
- 12 A Yes, sir.
- 13 Q Was it also with Anderson Bank -- Anderson Brothers
- 14 Bank?
- 15 A Yes, sir.
- 16 Q In Marion? Is that correct?
- 17 A Yes, sir.
- 18 Q Okay. Did you have any other accounts, bank
- 19 accounts, at that time?
- 20 A No, sir.
- 21 Q Is that the bank account that you're currently
- 22 using to live off of, the same --
- 23 A Yes, sir.
- 24 Q -- bank account? It is?
- 25 A (Nods head.)

- 1 Q You don't have a separate savings?
- 2 A No, sir.
- 3 Q Now, did Scottie have any other bank account at
- 4 that time?
- 5 A No, sir.
- 6 Q Is the bank account that he had -- is it closed
- 7 now?
- 8 A No, sir.
- 9 Q It's still open?
- 10 A Yes, sir.
- 11 Q Does it have any funds in it?
- 12 A Yes, sir.
- 13 Q Do you know what's in it?
- 14 A I think about a little over \$8,000.
- 15 Q Over 8,000 remains in that?
- 16 A (Nods head.)
- 17 Q And that was from his weekly checks and the monthly
- 18 checks?
- 19 A The disability checks.
- 20 Q Okay. Do you have the right to -- Were you the
- 21 executor of his estate?
- 22 A I was his legal guardian at that time.
- 23 Q Do you have the right to write checks or to make
- 24 withdrawals from that account, that account that
- 25 the \$8,000 is in?

1 A Not right now, no.

2 Q You don't currently?

3 A No.

4 Q Okay. Has his estate been probated yet?

5 A I don't think so.

6 Q Okay. Did he have a will?

7 A No, sir.

8 Mr. Wukela: You might -- I hate to
9 interrupt you here, but she may think when you
10 say probated that -- you used the past tense -
11 - that the estate has been closed, but if you
12 ask her if the estate is in probate, you might
13 get a different answer.

14 Mr. Cauthen: Yeah. Yeah.

15 Q Well, since Steve has already suggested that
16 question, -- it's a good question -- is it still --
17 the estate still in probate?

18 A Yes, sir.

19 Q It has not been closed out yet?

20 A Yes, sir.

21 Q It has been closed, or hasn't?

22 A Has been closed.

23 Q It has been closed out or it has not been closed
24 out?

25 A Has not.

- 1 Q Has not. Okay.
- 2 A Has not.
- 3 Q Okay. Now, the \$400 that you mentioned that you
- 4 got, or 800 every two weeks, what all expenses
- 5 would you take care of with that -- with those
- 6 funds?
- 7 A I would pay my house payment, the light bill, part
- 8 of the cable, --
- 9 Q Cable?
- 10 A -- the Cablevision, and I would pay part of the
- 11 furniture payment, --
- 12 Q Groceries?
- 13 A -- phone bill, --
- 14 Q Phone. Okay.
- 15 A -- and I'd buy -- I'd buy groceries, what we
- 16 needed.
- 17 Q Okay. Were there any living expenses that you had
- 18 in addition to that that weren't taken care of with
- 19 those funds?
- 20 A I paid the light bill. That's about it.
- 21 Q That 800 every two weeks, did that cover all of
- 22 your -- all of your household and living expenses?
- 23 A (Nods head.)
- 24 Q Is that -- That's a yes?
- 25 A Yes, sir.

- 1 Q Okay. All right. Tell me, then, what was done
2 with the 250 a week coming in, Scottie's TTD check?
3 What was done with that?
- 4 A With that he would like to go buy a game. There
5 were certain games he would buy. He would buy
6 them. He would spend that on something he needed.
- 7 Q Okay. Now, you said it was deposited into a
8 checking account. Did he have a checkbook where he
9 could write checks on that account, on those --
10 from those funds?
- 11 A He didn't do that. I did that.
- 12 Q Okay. So, if any bills had to be paid, you would -
13 - you would do so?
- 14 A Yes, sir.
- 15 Q All right. But, obviously, he was saving a lot of
16 money, too, wasn't he?
- 17 A Yes, sir.
- 18 Q Okay. Now, did he also have a truck payment at
19 that time?
- 20 A Yes, sir.
- 21 Q Do you remember how much that was?
- 22 A It was \$320.24, I think.
- 23 Q Okay. And that was -- Was that financed with a
24 bank or --
- 25 A Yes, sir.

- 1 Q It was. Okay. Is that -- Has that been paid off?
- 2 A Yes, sir.
- 3 Q It has. Okay. But he was still paying on that up
- 4 until the time of his death?
- 5 A Yes, sir.
- 6 Q So, it's been paid off since then?
- 7 A Yes, sir.
- 8 Q Okay. Now, any other expenses that he would --
- 9 that he would spend money on out of that 250 a week
- 10 TTD check, workers' comp check?
- 11 A He didn't take that to pay the bills out of that.
- 12 That was coming out of his disability check, his
- 13 Social Security check, what he was paying his bills
- 14 with.
- 15 Q Okay. What other bills was he paying with the
- 16 Social Security check?
- 17 A That would be the truck insurance, when it's due.
- 18 Q Anything else?
- 19 A He was paying back the teeth that he got, the false
- 20 teeth that he got. He was making a payment on
- 21 that.
- 22 Q Okay. Anything else?
- 23 A He was paying part of the cable that we shared
- 24 together.
- 25 Q Do you know about what that was running per month,

1 the total bill?

2 A About 50 apiece.

3 Q Fifty apiece. Okay. Anything else?

4 A He would help pay the cable. We halved that. That

5 was about 50 apiece, too, on that.

6 Q Anything besides that?

7 A No, sir.

8 Q Did he -- Did he help pay for any of -- Did he

9 help pay for the mortgage payment? Do you rent, or

10 do you have a mortgage on the house?

11 A I have a mortgage on the house.

12 Q Did he help pay for any of that?

13 A No, sir. I took that. I done that myself.

14 Q Did he help pay for any of the groceries?

15 A Yes, sir, he would buy groceries, too. Yes, sir.

16 Q Now, where did that come out of?

17 A That would come off the little 250-dollar check he

18 got every week.

19 Q Did you do all the grocery shopping for you and

20 Scottie?

21 A Yes, sir.

22 Q So, he would help buy some groceries?

23 A Yes, sir.

24 Q Anything else that you can think of that he would

25 use the -- Any other expenses besides what you've

1 already mentioned that he would -- that he had?
2 And I'm asking about the time that he lived with
3 you up until the time of his death, you know.
4 We're talking about a little over two years, wasn't
5 it?

6 A Yes, sir. Almost two years.

7 Q Yeah. Okay. Any other expenses that you can think
8 of?

9 A He bought his cigarettes, a carton of cigarettes a
10 week.

11 Q Did y'all ever eat out?

12 A Yes, sir, we did.

13 Q How often would you eat out?

14 A Well, when he'd come to Florence to see Mr. Wukela
15 and the doctors, he would eat out.

16 Q So, like a couple times a month?

17 A Couple times a week.

18 Q A week?

19 A Yeah.

20 Q Now, did he go out of the house much for anything
21 other than I guess groceries, doctor, going to see
22 his lawyer? Did he go out of the house much for
23 anything else?

24 A No, sir. He didn't go nowhere except to see the
25 lawyer and the doctors.

- 1 Q Okay. Now, he didn't have a driver's license, did
2 he?
- 3 A No, sir.
- 4 Q Did you drive his truck?
- 5 A Yes, sir.
- 6 Q Okay. He did not go out driving by himself, did
7 he?
- 8 A No, sir.
- 9 Q Okay. Now, are you -- are you aware of any other
10 income that Scottie ever had after his accident in
11 2001 from employment, that is any earnings -- any
12 earnings from income?
- 13 A I don't understand the question.
- 14 Q Are you aware of -- Did Scottie have any job after
15 he had the accident with Ken Baker in 2001? Did he
16 ever have another job?
- 17 A No, sir.
- 18 Q Okay. Okay. Let me back up to eight years before
19 that, back when he had the accident in September
20 2001. Did he live with you at that time?
- 21 A No, sir.
- 22 Q Where was he living at that time?
- 23 A He was living on his own in a trailer.
- 24 Q Was that in Florence?
- 25 A Marion.

- 1 Q In Marion. Now, did you live at your same address
2 at that time, back in 2001?
- 3 A Yes, sir.
- 4 Q Did anyone else live with you at that time?
- 5 A No, sir.
- 6 Q Okay. Was Scottie handling his own expenses while
7 he was living alone in the trailer?
- 8 A Yes, sir.
- 9 Q He had enough income -- To your knowledge, did he
10 have enough income to where he could pay -- he
11 could pay all of his own expenses of living?
- 12 A Yes, sir.
- 13 Q Did he contribute anything to you at that time?
- 14 A No, sir.
- 15 Q No kind of support or income?
- 16 A No, sir.
- 17 Q Do you file tax returns each year?
- 18 A Yes, sir.
- 19 Q Have you filed tax returns in -- like for the past
20 -- I guess the past three years?
- 21 A Yes, sir.
- 22 Q Okay. Was Scottie filing a tax return, do you
23 know?
- 24 A No, sir.
- 25 Q Okay. Do you do your taxes yourself, or does

- 1 somebody do them for you?
- 2 A Somebody else.
- 3 Q You have a -- like a CPA?
- 4 A H&R Block.
- 5 Q H&R Block. Do you remember -- Following Scottie's
- 6 death in 2008, do you remember giving an interview
- 7 or doing an interview with a Mr. Brown who was
- 8 doing a dependency investigation?
- 9 A Yes, sir.
- 10 Q Okay. You remember talking to him?
- 11 A Yes, sir.
- 12 Q Now, as I understand, Scottie was never married.
- 13 A Yes, sir.
- 14 Q He was --
- 15 A No, sir. He was --
- 16 Q He was not married?
- 17 A (Shakes head.)
- 18 Q Are you aware of any children that he ever had?
- 19 A No, sir.
- 20 Q Are you aware of anyone who was dependent for
- 21 support upon Scottie at the time of his accident
- 22 back in 2001, anyone --
- 23 A No, sir.
- 24 Q -- he was supporting?
- 25 A (Shakes head.)

1 Q Okay. Let me ask you just a little bit about the
2 time -- around the time that he passed away in
3 September of 2001. Could you -- Could you tell us
4 how you learned about -- or how you -- I
5 understand you found Scottie. How did you learn
6 that he had passed away? Did you actually -- Were
7 you actually the person that found him?

8 A Yes, sir.

9 Q Are you able to tell us just briefly --

10 A I left out his room at about quarter after eight.
11 The last thing he said to me, he said, "Mama, I
12 love you." I said, "I love you, too, Scottie."
13 When I went out of his room, I touched his arm.
14 Looked at the clock. It was a quarter after eight.
15 Nine-thirty I went to check on him to make sure he
16 took his medicine, but when I stepped in the door,
17 he was gone.

18 Q Okay. So, you said you checked on him earlier that
19 day to make sure he took his medicine?

20 A I went back that night to make sure he took his
21 medicine. He had a certain time when he took his
22 medicine.

23 Q The night before?

24 A Every night.

25 Q Every night. Now, did he -- did he take his

1 medicine -- his medicines different times of the
2 day, or was there a certain time -- the one certain
3 time of the day that he took his medicine?

4 A He had his watch set a certain time in the morning.
5 He would set it when that clock would go off. When
6 I heard it, I would go and make sure he had --.

7 Q Make sure he took them?

8 A Yes, sir.

9 Q Okay. Did he keep the medicine, his prescriptions,
10 -- When you say medicine, you're talking about
11 prescriptions?

12 A Yes, sir.

13 Q That's his prescriptions from Dr. Healy?

14 A Yes, sir.

15 Q He didn't have any prescriptions from anybody
16 besides Dr. Healy, did he?

17 A No, sir.

18 Q Okay. So, he would set his alarm, the alarm would
19 go off, --

20 A Yes, sir.

21 Q -- and he would take his medications at that time?

22 A Yes, sir.

23 Q And would you -- would you go back and watch him
24 take his medication?

25 A Yes, sir.

- 1 Q Okay. To your knowledge, was he taking his
2 medications as prescribed at the time that he
3 passed away?
- 4 A Yes, sir.
- 5 Q And prior to that time?
- 6 A Yes, sir.
- 7 Q Okay. Now, as I understand, he was also -- he was
8 also keeping his appointments with Dr. Healy and
9 Dr. Federer before the time he passed away, too,
10 wasn't he?
- 11 A Yes, sir.
- 12 Q And you were taking him to all those appointments?
- 13 A Yes, sir.
- 14 Q Did you have -- Were you the one that got his
15 prescriptions filled for him?
- 16 A Yes, sir.
- 17 Q Did you have one specific pharmacy you went to?
- 18 A CVS in Marion.
- 19 Q Okay. How did you -- How did you know when he
20 needed a prescription filled?
- 21 A I was keeping check on 'em, and when -- just before
22 he runs out, I would go and have 'em refilled.
- 23 Q Okay. So, you could look at the bottles and see
24 when they're getting low, --
- 25 A Yes, sir.

- 1 Q -- and then would you call in a refill for him?
- 2 A Yes, sir.
- 3 Q And then you'd -- And you'd go pick them up?
- 4 A Yes, sir.
- 5 Q So, did he always have his medications filled --
- 6 his prescriptions filled when he needed them?
- 7 A Yes, sir.
- 8 Q Is there any time that you know of when any of his
- 9 prescriptions were not filled?
- 10 A No, sir.
- 11 Q Was he also doing some physical therapy prior to
- 12 the time that he passed away?
- 13 A Yes, sir.
- 14 Q That was for his back?
- 15 A Yes, sir.
- 16 Q And was he keeping those appointments, too?
- 17 A Yes, sir.
- 18 Q Okay. Now, do you -- do you know what the cause of
- 19 his death was?
- 20 A What I understand, it was a aneurism.
- 21 Q Aneurism?
- 22 A The grand mal seizures they call it.
- 23 Q Seizure?
- 24 A (Nods head.)
- 25 Q Do you know the last time before that that he had a

1 seizure? Can you recall?

2 A April the 9th of 2004.

3 Q 2004?

4 A 2004, when he had the 15 seizures in 20 minutes
5 time.

6 Q And that was before he went to Tangram?

7 A Yes, sir.

8 Q Okay. So, between April of 2004 and when he passed
9 away in September of 2008, do you know of any other
10 seizure that he had?

11 A No, sir.

12 Q Okay. Let me just look over my notes. I don't
13 have much left at all. Okay. I asked you about
14 your workers' compensation claim earlier. Do you
15 have -- Are you involved in any other -- any other
16 legal claim or lawsuit?

17 A No, sir.

18 Q Have you been involved in any other type of lawsuit
19 or workers' comp claim in the past?

20 A No, sir.

21 Q Are you currently taking any kind of prescription
22 medications yourself that would possibly impair any
23 of your answers here today?

24 A No, sir.

25 Q Are you currently under the care of any doctor?

- 1 A Yes, sir.
- 2 Q Who do you currently see?
- 3 A Dr. Bilders.
- 4 Q Dr. --
- 5 A Bilkin. Bilders.
- 6 Q Bilders?
- 7 A Bilden. Bilden, I think.
- 8 Q Bilding. Bilding?
- 9 A Mm-hmm.
- 10 Q Is he in Florence?
- 11 A Yes, sir.
- 12 Q What kind of doctor is he?
- 13 A He's a back doctor.
- 14 Q Okay. And that's for your back injury for your
- 15 workers' comp --
- 16 A Yes, sir.
- 17 Q -- injury? Have you retained -- To your
- 18 knowledge, have you retained or consulted with any
- 19 expert, like a doctor or any other type of expert,
- 20 to review any of Scottie Floyd's records relating
- 21 to the time of his death, specifically the autopsy,
- 22 the toxicology report, those types of things?
- 23 A No, sir. The only way I found out, Mr. Jerry
- 24 Richardson explained it to me, the undertaker.
- 25 Q He's the -- Now, who is Mr. Richardson?

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- 1 A Jerry Richardson, the one who had Scottie's service
2 for me.
- 3 Q Okay.
- 4 A And he's the one that was the undertaker that I got
5 for him.
- 6 Q Now, what was the name of the mortuary where --
- 7 A Richardson's Funeral Home in Marion.
- 8 Q In Marion. Okay. Now, do you know if Scottie's
9 funeral bill has been paid?
- 10 A No, sir.
- 11 Q It has not been paid?
- 12 A No, sir.
- 13 Q Do you know how much that is?
- 14 A It was 2400-and-some dollars.
- 15 Q To your knowledge, none of those -- none of that
16 has been paid?
- 17 A No, sir, because I got four letters from him.
- 18 Q From Mr. Richardson?
- 19 A Yes, sir.
- 20 Q Okay. Do you know of any other unpaid medical
21 expenses, prescription or medical treatment, any
22 medical-related expenses that Scottie had that have
23 not been paid yet?
- 24 A No, sir.
- 25 Q Just the funeral bill, things related to that?

1 A (Nods head.)

2 Mr. Cauthen: Okay. Ms. Floyd, that's
3 all I have. Thank you very much.

4 The Deponent: Thank you.

5 Examination

6 By Ms. Turner:

7 Q Ms. Floyd, my name is Adrienne Turner. I just have
8 a couple of questions. When did you last work?

9 A It was May the 9th of 2006.

10 Q Is that when you got hurt?

11 A It was February the 14th of 2005 when I got hurt.

12 Q And your daughter who lives with you, how long has
13 she lived with you?

14 A Thirty.

15 Q How long has she lived with you? I'm sorry.

16 A About two years.

17 Q Is she employed?

18 A She is now, part-time.

19 Q Where does she work?

20 A I can't think of the name right now.

21 Q How long has she been employed?

22 A About two or three months.

23 Q Is she disabled in any way?

24 A No, sir. No, ma'am.

25 Q Was she working at the time she moved in with you?

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- 1 A No, ma'am.
- 2 Q And until two or three months ago, did she work
3 anywhere in between?
- 4 A No, ma'am.
- 5 Q Okay. May 9th, 2006, that was your last day at
6 Lane Woodworks?
- 7 A Yes, sir. Yes, ma'am.
- 8 Q And you haven't worked anywhere else since?
- 9 A No.
- 10 Q Okay. And you didn't -- Did you work anywhere
11 while you were working at Lane Woodworks, anywhere
12 else as a part-time job or anything?
- 13 A I worked at -- We did daycare before Lane
14 Woodworks.
- 15 Q Before then --
- 16 A (Nods head.)
- 17 Q -- but not during the same time period?
- 18 A (Shakes head.)
- 19 Q How long did you work there?
- 20 A From May the 12th of 2005 to May the 9th of 2006.
- 21 Ms. Turner: That's all I have. Thank
22 you.
- 23 (Whereupon the deposition was concluded at
24 4:34 p.m.)
- 25 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Richland)

Certificate

Be it known that the foregoing deposition of Betty Joe Floyd was taken before me;

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

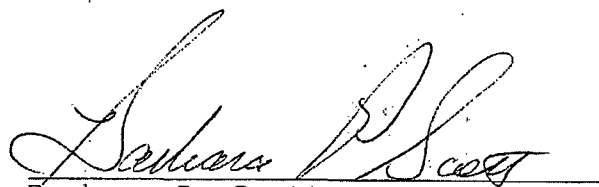
That by virtue thereof I was duly authorized to administer an oath;

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

That the foregoing transcript of 32 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

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

Witness my hand and seal this 29th day of July, 2009.


 Barbara P. Scott

Notary Public for South Carolina
 My commission expires April 9, 2017.

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0123790

SCOTTIE FLOYD,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
KEN BAKER USED CARS,	)	
	)	WALTER JAMES EVANS, MD
EMPLOYER,	)	
	)	
LEGION INSURANCE COMPANY	)	
IN LIQUIDATION THROUGH	)	
SCPCIGA,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Walter James Evans, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 3:58 p.m., Tuesday, March 13th, 2007, at Comprehensive Neurological Services, 436 West Palmetto Street, Florence, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR

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Reported By: Barbara P. Scott, CVR

Index

Stipulations	3
Direct Examination by Mr. Cauthen	3
Cross-examination by Mr. Wukela	19
Re-direct Examination by Mr. Cauthen	26
Re-cross-examination by Mr. Wukela	30
Re-direct Examination by Mr. Cauthen	31
Certificate	33

Exhibits

No exhibits marked.

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

Stipulations

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

Whereupon,

Walter James Evans, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Walter James Evans.

Direct Examination

By Mr. Cauthen:

Q Dr. Evans, my name is Mark Cauthen, and I represent the employer and insurance carrier in the workers' compensation case involving Scottie Wayne Floyd, and we're here, of course, to take your deposition today. I don't need to go over any background issues about the deposition because I'm sure you've given plenty, but if you would give us the benefit of your summary of your professional education and training, that would be helpful.

A Yes, sir. I graduated from LSU Medical School in New Orleans in 1983, and I completed my residency

1 in neurology at the University of California in
2 Irvine in 1987. I then did fellowships in
3 psychobiology and in geriatric neurology for
4 another two and a half years, and then I joined the
5 faculty and stayed there until 1995 when I came to
6 Florence to go into private practice, and I've been
7 in private practice in Florence since that time. I
8 started with my present office, Comprehensive
9 Neurological Services, in 2002. I'm board
10 certified in neurology and in clinical
11 neurophysiology, and I have a certificate in
12 neuroimaging and neurosonology from the American
13 Society of Neuroimaging.

14 Q Okay. And you are clinic associate professor of
15 neurology with the Medical University of South
16 Carolina; --

17 A Yes.

18 Q -- is that correct?

19 A Yes, and I'm licensed in the state of South
20 Carolina.

21 Q In South Carolina. Okay. Very good. Let me ask
22 you, when did you first have an occasion to see the
23 patient in this case, Scottie Floyd?

24 A I first saw him on December 6th, 2006.

25 Q Okay. And this was a referral, as I understand it,

1 from Dr. Sasha Federer?

2 A Yes.

3 Q Okay. Was the -- Was the visit on 12/6/06 for an
4 initial evaluation?

5 A Yes.

6 Q What was the purpose of that initial evaluation?

7 A I think basically to help with management of his
8 neurological problems caused by a head injury.

9 Mr. Wukela: Just to interrupt you for a
10 second for clarification of the record, that
11 report is our APA page -- our APA 29, which is
12 page 371 through --

13 Mr. Cauthen: It is a long report.

14 Mr. Wukela: -- 389. 371 through 389.

15 Mr. Cauthen: 389. That's correct.

16 Q And, Doctor, because you have given us absolutely
17 comprehensive review of the medical history in that
18 report, there's certainly no need for me to ask you
19 anything about that, but, as I understand it, Dr.
20 Federer referred the patient to you. Did you have
21 an opportunity to discuss some of the issues
22 relating to treatment of this patient with Dr.
23 Federer before you first saw him?

24 A Yes.

25 Q Okay. And what -- I guess what did Dr. Federer ask

1 you to do, to evaluate him and see if you would
2 accept him as treating neurologist? Is that
3 correct?

4 A Correct. Yes.

5 Q Okay. Did you decide to do that before you saw the
6 patient, or what?

7 A Well, as I recall, it was a very brief
8 conversation. I was standing in the parking lot,
9 and he was sitting in a car, and it was fairly
10 brief, so it was -- I think he asked me if I would
11 be willing to see someone who was having behavioral
12 problems who had had a head injury.

13 Q Okay. Is this the -- Have you treated a good bit
14 in your past cases with closed head injuries and
15 specifically frontal lobe injuries?

16 A Yes.

17 Q Okay. All right. Could you just tell us a little
18 bit about your examination of this patient and your
19 interview with the patient when you first saw him?

20 A Well, he was describing problems with headaches,
21 that the headaches often resulted in agitation,
22 changes in his mood, that he had had some
23 evaluation before by other doctors, including Dr.
24 Healy, and they recommended some sleep studies to
25 see if that would help with the headaches, but

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1 apparently he didn't want to have the sleep study.
2 He also had some problems controlling his anger,
3 and I think that had been pretty well documented in
4 the reports, and that was ongoing, although they
5 felt like that was better, and, in fact, it
6 improved to the point where he could actually come
7 home and live with his mother. I think she was
8 still frightened of his outbursts but felt that
9 they were manageable at least, which she was
10 willing to continue with that living situation. On
11 the examination, physical examination, you know,
12 his neurological examination was really not that
13 remarkable. He was a healthy-looking guy with
14 fairly good coordination. So, I didn't really find
15 anything -- I didn't go into great detail on the
16 mental status examination. He's had a lot of
17 neuropsychological evaluation. So, I didn't repeat
18 all of that.

19 Q Did you -- At the time of the initial evaluation,
20 did his mother, Ms. Floyd, accompany him to that
21 appointment?

22 A Yes.

23 Q Was she in the exam room with you during the
24 examination?

25 A Yes.

1 Q Okay. Was the patient able to relay history to
2 you, converse with you, that kind of thing?

3 A Yes.

4 Q Okay. Did you learn anything in particular in that
5 interview with him, or exam with him, that you
6 didn't know from review of the medical records,
7 anything new?

8 A Well, I mean, seeing the patient is so much better
9 than just reviewing the medical records. You
10 always learn a good deal about the patient that you
11 can't get from the medical records. I don't recall
12 anything specifically, you know, that stands out in
13 my mind, but --

14 Q Okay. All right. Did the patient seem to have
15 normal intellectual function to you, or could you
16 address that?

17 A Just in the -- you know, the brief mental status
18 exam that I did, I would say so, yes.

19 Q Okay. What, then, were your impressions from the
20 examination on December the 6th?

21 A Again, I had the opportunity to review a lot of
22 medical records, including some of the
23 neuropsychological testing that had been done, and
24 that I felt that he had had a closed head injury
25 with bilateral frontal contusions which had

1 subsequently turned into encephalomalacia with
2 persisting headaches, impulse control and seizures.
3 He also had ongoing back pain due to thoracic
4 compression fracture which was probably a
5 complication of the seizure, and that he was having
6 problems with snoring and daytime drowsiness,
7 difficulty initiating and maintaining sleep, and I
8 thought that he may very well have obstructive
9 sleep apnea.

10 Q Okay. Did you order a sleep test at that point?

11 A Yes.

12 Q All right. And did the patient complete that?

13 A No.

14 Q Okay. When was that to be -- to be done? Was that
15 going to be a referral outside or something that
16 you would do?

17 A We can do them here. I don't recall -- I think we
18 were doing it here.

19 Q Okay. And was it scheduled one time and missed one
20 time, or was it more than that?

21 A I think it was scheduled twice.

22 Q Okay. Do you have any idea why the patient didn't
23 keep those appointments?

24 A Not right off. I don't recall.

25 Q Okay. Well, based on your diagnosis and your exam,

1 what were your recommendations for this patient?

2 A Well, of course, to have the sleep study and to
3 initiate treatment for that if necessary. I also
4 wanted to refer him to a spine surgeon regarding
5 the pain and the compression fractures to see if
6 there was any other kind of treatment that could be
7 offered for that other than just pain -- using pain
8 medicine. I had also recommended started him on a
9 medicine that we use for memory loss and treatment
10 of Alzheimer's that has been shown to be helpful in
11 posttraumatic dementia and memory impairment.

12 Q Is that Aricept?

13 A Aricept.

14 Q Okay.

15 A Aricept also increases -- Basically Aricept
16 increases acetylcholine, or neurotransmitter, in
17 the frontal lobes, and since a lot of his problems
18 are related to frontal dysfunction, I was hopeful
19 that there would be some improvement in frontal
20 lobe function with that and maybe help with some of
21 the aggressive outbursts and agitation.

22 Q Okay.

23 A And I wanted to continue the Depakote and the
24 Keppra and to use some Restoril at night to see if
25 it could get him to sleep better. We entered into

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1 a pain management agreement basically stating that
2 he would receive narcotics only here, that he
3 wouldn't go anyplace else to get narcotics, and had
4 started him on a low-strength narcotic medication.
5 I also gave him a prescription for some anti-spasm
6 medicines or muscle relaxants.

7 Q Okay. Did the -- Did the patient seem okay with
8 the pain management agreement?

9 A You know, at the time, he seemed to agree with
10 everything that we proposed. We spent a lot of
11 time talking about the different treatments,
12 particularly the sleep study, if he would be
13 willing to do that, the reason for it, you know,
14 what would be done. You know, tried to answer any
15 questions that he had, and also spelled out that,
16 you know, part of the treatment would be to comply
17 with the medications and the various diagnostic
18 tests, and also to behave when he came to the
19 office, and, you know, I basically tell the
20 patients that this is a way of practicing their
21 behavior in public and that they -- they have to
22 come to the office, and this is a way of -- a type
23 of therapy really.

24 Q Okay. Did you see any issues with anger,
25 outbursts, agitation, anything like that while he

1 was here for his exam on the 6th?

2 A Well, he's very -- he's big, he's vocal, but I
3 didn't see anything that looked like an outburst or
4 any agitation when he was here.

5 Q -- behavior or anything like that?

6 A At that time, no, I did not.

7 Q Okay. So, as far as the changes in his medication
8 regime, the Aricept, was Vicodin a new
9 prescription? Was that going to be a substitute
10 for something else?

11 A I don't think he was on any -- Oh. Here -- Yes.
12 It was a substitute for Darvocet.

13 Q Okay.

14 A And that had been really ineffective at controlling
15 his pain, so we were basically going up to a
16 slightly stronger narcotic.

17 Q Okay. Targeting the headache complaints; is that
18 right?

19 A And the back pain, also.

20 Q And the back pain. Okay. Do you know whether the
21 patient was compliant with the medication, with the
22 prescriptions that you recommended for him?

23 A Well, I think maybe at some point he was compliant
24 with them, and then at some point he basically had
25 called to tell us that he was refusing to take the

1 medications, in particular to take the Vicodin or
2 the Restoril or the Aricept, and then I know that
3 he wasn't taking them after the -- January 5th
4 because he came and threw them into our front
5 office, and so I know he wasn't taking them after
6 that.

7 Q All the prescriptions? Just the bottles?

8 A At least those, yes.

9 Q Okay.

10 A Now, he said that -- before he threw them that he
11 didn't think they were any good. And the basic
12 problem there is that -- you know, I think part of
13 it may have to do with his size, but he frightened
14 all my front office staff, and --

15 Q Okay. And that was the return visit on -- Let me
16 see. Was that January the 5th, '07?

17 A January the 5th, yes.

18 Q Okay. But was it your belief that the Aricept
19 might possibly affect his behavioral issues?

20 A Well, I would be hopeful that it would. Yes.

21 Q Okay. Did you actually -- I want to make sure
22 that I am correct, that the next visit, that was
23 January the 5th. You didn't see him between the
24 December visit and the January 5th?

25 A No.

1 Q Did you actually see him on the 5th?

2 A No.

3 Q So, this incident occurred before the appointment
4 with you?

5 A Yes.

6 Q Okay. Do you know if his mother was with him on
7 that day?

8 A I don't recall.

9 Q Now, is it your understanding he just left your
10 office on his own, or did someone ask him leave or
11 anything like that?

12 A I think he left on his own, but, again, I don't --
13 I don't recall the specifics of that.

14 Q Okay. And have you seen the patient since then?

15 A No, I have not.

16 Q Would he still be considered to be a patient here?

17 A No.

18 Q Have you officially discharged him?

19 A Yes. We've discharged him from the practice.

20 Q Doctor, do you have an opinion as to whether Mr.
21 Floyd has reached or was -- either was at or has
22 reached MMI from a neurological standpoint, maximum
23 medical improvement?

24 A Well, I think he's reached maximum medical
25 improvement, but, I mean, this has been some time

1 since the accident, and I don't think really any of
2 these behaviors are new. These are all ongoing
3 problems that he's received treatment for over a
4 long period of time. So, I would have to say he's
5 reached maximum medical improvement.

6 Q And that would be from the standpoint of -- from a
7 neurological standpoint or --

8 A Yes.

9 Q Okay. Now, if the patient did not complete the
10 treatment regime that you recommended, -- and, so,
11 you don't know how -- what kind of effect that
12 could have had, --

13 A Right.

14 Q -- would that not affect whether he is at or has
15 reached maximum medical improvement?

16 A Well, obviously, I'm limited somewhat there because
17 we won't be seeing him again and he didn't complete
18 the testing. Some of the issues might be the
19 obstructive sleep apnea, for instance, if he has a
20 sleep disorder, that he could have some response to
21 that.

22 Q From the standpoint of sleep disorder, would
23 treatment of the -- do you expect the treatment of
24 sleep apnea could improve that condition?

25 A It could improve his headaches I think.

1 Q Could improve the headaches, and his sleeping
2 patterns, obviously?

3 A Yes.

4 Q Would treatment of a sleep disorder be considered
5 part of the total treatment picture for this
6 patient? In other words, would treatment of the
7 sleep disorder -- I guess potentially if it was
8 effective treatment -- positively affect the total
9 treatment for the patient?

10 A Yes, I think so. I think one of the problems you'd
11 run into would be compliance. You know, the
12 initial treatment of the sleep apnea would be
13 wearing a mask to sleep every night, and you would
14 have to go through sometimes several sleep studies
15 in order to get the correct pressures for the type
16 of mask and the best fit so that you get the most
17 effective treatment, and that would be difficult.

18 Q Okay. With respect to the prescription for
19 Aricept, it was your intention, I guess, in
20 prescribing that to see if that could positively
21 affect the frontal lobe injury --

22 A Yes.

23 Q -- or his behavior, I guess, as -- as affected by
24 that frontal lobe injury?

25 A Yes.

1 Q Okay. From that standpoint, would you agree that
2 the patient could improve if he was in compliance
3 with the Aricept prescription?

4 A Yes.

5 Q Okay. So, from the standpoint of that, the Aricept
6 treatment recommendation and the sleep apnea
7 recommendation, you agree that the patient could
8 improve further?

9 A Yes.

10 Q And, so, from that standpoint, could you still say
11 the patient's at maximum medical improvement? In
12 other words, could he not get better?

13 A He could get better.

14 Q There's treatment out there that --

15 A Well, I think -- I think he'd have to take the
16 medicines and he'd have to comply with the
17 treatments, and this is the -- the difficulty.

18 Q From a practical standpoint, the difficulty is just
19 getting him to comply?

20 A Yes.

21 Q Okay. Would you agree that if he was compliant,
22 then he would not necessarily be at maximum medical
23 improvement and that we could hopefully expect
24 improvement?

25 A Yes.

1 Q Would you be willing to make a referral of this
2 patient to another neurologist or another medical
3 doctor who may be able to manage his medications?

4 A Well, I think I'd probably have to do a little
5 research and find out who would -- because I think
6 you'd have to have a program more geared to
7 treatment of head-injured patients, and I think
8 that, you know, the usual office setting, I think,
9 is going to be very difficult because of the same
10 kind of problems that we ran into here.

11 Q Can you think of anybody or any clinic in the -- in
12 this area that would fit that bill?

13 A Not right off, not in this area.

14 Q So, he wouldn't necessarily -- Is it your feeling
15 that he wouldn't necessarily need a neurologist to
16 manage medications, or are you thinking that it
17 might be more appropriate for him to be referred to
18 some -- to another MD, another specialty?

19 A Well, you know, I was thinking maybe a psychiatrist
20 would -- and the staff of a psychiatrist's office
21 might be better able to handle some of his
22 behaviors.

23 Q Do you think the patient could therefore benefit
24 from treatment from a psychiatrist or further
25 treatment by a psychiatrist?

1 A Yes.

2 Mr. Cauthen: Okay. I think that's all
3 the questions I've got right now, Doctor.
4 Thank you.

5 Cross-examination

6 By Mr. Wukela:

7 Q Dr. Evans, I've just got a few questions. I'm
8 looking at -- I guess it would be page 15 of your
9 report. You were aware that he had spent almost
10 two years out at ResCare Premier in San Marcos,
11 Texas?

12 A Yes.

13 Q All right. How familiar with that facility are
14 you? I mean, do you know what type of facility it
15 is?

16 A I have an idea after reading through some of the
17 reports, but I didn't really know anything about it
18 beforehand.

19 Q Okay. I note in your report, you said, "While he
20 has shown considerable improvement during the
21 course of his treatment, --" I assume you mean the
22 treatment out at ResCare. Is that right? "-- this
23 improvement is attributed to, to a large extent,
24 the nature of the rehabilitation environment,
25 highly structured with clearly-defined limits and

1 expectation with trained staff members in which the
2 environmental stressors can be controlled." What
3 do you mean by that statement?

4 A This is a quote. This is a quote from Dr. McGee,
5 Joanne McGee, who is the clinical director.

6 Q Okay. And that quote was when?

7 A This is, I think, her letter of January 3rd, 2005.

8 Q And you saw him in December -- Well, you wrote
9 this report in December of '06; --

10 A Yes.

11 Q -- is that correct?

12 A Yes.

13 Q Are you in agreement with that observation of Dr.
14 McGee?

15 Mr. Cauthen: What page was that again,
16 Steve?

17 Mr. Wukela: Well, it's our 385. Our APA
18 page 385.

19 A Well, in fact, I think that -- I mean, we've seen
20 that happen to a degree, that after returning here,
21 living in the community, that -- I don't think
22 we've seen a regression back to what he was doing
23 before, but -- I don't know -- I think that would
24 certainly be a reasonable statement. You know, one
25 of the things that he told me, he would feel best

1 if he just could stay in the woods and never come
2 out and be completely by himself so he doesn't have
3 to interface with anyone or interact with anyone,
4 and he felt like he could probably get along that
5 way, but I don't know how realistic that is.

6 Q That's his druthers if he could pick the way he
7 could live?

8 A Yes. As I recall, that's what he told me.

9 Q I'm looking at page 14 of that report, the previous
10 page, --

11 A Mm-hmm.

12 Q -- the last paragraph on that page where you say
13 Dr. Healy's note of June the 1st of '04 indicates
14 frontal lobe syndrome with rage and seizures. Who
15 is Dr. Healy?

16 A Dr. Healy's a neurologist in Florence.

17 Q Okay. And are you in agreement with his diagnosis
18 of Mr. Floyd?

19 A Yes.

20 Q Okay. Were you aware of why Dr. Healy quit
21 treating the patient?

22 A Well, as I recall, it was similar problems with
23 behavior directed toward Dr. Healy and his staff.

24 Q Okay. Would I be correct that one of the major
25 problems you have in treating this patient are

1 liability issues as far as the safety of your other
2 patients in your -- in your building and your
3 staff?

4 A Yes.

5 Q And this condition that he has, this rage and these
6 seizures that come on him, are they voluntary or is
7 that part of the nature of his injury?

8 A That's part of the nature of the injury. He cannot
9 voluntarily suppress them and control them.

10 Q Okay. Now, when you were asked earlier if he was -
11 - if he was compliant he would improve, the issue
12 of compliance is what his problem is. Isn't that
13 basically what it is?

14 A Yes, in a way.

15 Q It's kind of a catch-22. If he was compliant, he
16 wouldn't be injured, and since he's injured, he is
17 not compliant. Is that --

18 A And if he was compliant, he would be getting
19 better, --

20 Q Right.

21 A -- By definition. Yes.

22 Q Okay. Now, as far as his present -- Given the
23 history from this injury, how long he spent out at
24 the -- in Texas, and the doctors that have treated
25 him since then, are you of an opinion that his

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1 present condition is permanent?

2 A Yes.

3 Q Is there anything medically you can do to change
4 that permanency?

5 A Well, no, not to fix the problem. No.

6 Q The things that you were recommending will help on
7 the margins; is that correct?

8 A Well, there may be significant improvements, you
9 know, at least in pain, headaches. I know the
10 headaches are a trigger for some of these things.
11 Back pain's a trigger. Say if we were able to
12 control the headaches and the sleep disorder and
13 the back pain, that might help reduce some of these
14 things, but at some point he'll have some kind of
15 interaction with somebody and will lose -- well, be
16 unable to inhibit his rage and aggression, and --

17 Q And that's -- Is that the result of his physical
18 brain injury?

19 A Yes.

20 Q Okay. I believe your records reflect in your
21 review of the records that Dr. Windsorova at one
22 time had some contact with the patient.

23 A Yes.

24 Q Are you familiar with why she decided that she
25 couldn't continue to treat the patient?

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- 1 A I don't remember.
- 2 Q Okay. Dr. Federer. Are you familiar with Dr.
- 3 Federer?
- 4 A Yes.
- 5 Q And is he a neuropsychologist that has some -- a
- 6 great amount of experience in dealing with these
- 7 kind of people?
- 8 A Yes.
- 9 Q Has he been treating the patient?
- 10 A Yes.
- 11 Q Since this incident happened and you discharged the
- 12 patient, have you had any more contact with Dr.
- 13 Federer just on background discussing this patient?
- 14 A Yes.
- 15 Q And has Dr. Federer indicated to you that he's
- 16 continuing to treat the patient, he has some amount
- 17 of control over the patient?
- 18 A I don't recall.
- 19 Q Okay.
- 20 A He was mostly impressed by my 19-page report.
- 21 Q He was mostly impressed by your 19-page report?
- 22 A He only knows psychologists that generate 19-page
- 23 reports.
- 24 Q It was impressive. I'll second the motion.
- 25 Doctor, in the final analysis, do you have any

1 long-term prognosis based on your contact with the
2 patient and the review of this extensive medical
3 record whether in the long run Scottie would be
4 able to continue to live in an open environment
5 with his mother's basic control or whether
6 inevitably he will have to be, for lack of a better
7 term, re-institutionalized?

8 A Yes.

9 Q What's your opinion?

10 A I think he'll have to be re-institutionalized as I
11 don't think that he'll be able to continue living
12 in the community without some type of regression
13 and -- or just some type of situation developing
14 that will produce some violent outcome, and, in
15 fact, his mother told me that she was concerned
16 about this, that -- and that she's fearful of him
17 now but felt that, you know, if he was going to
18 work with the doctors, that maybe things would turn
19 out okay.

20 Q So, if anything, we may be at a plateau with his
21 condition right now, getting ready to descend
22 further down the scale as opposed to improving any
23 further. Would that be a correct statement?

24 A I think that's certainly a risk.

25 Mr. Wukela: That's all the questions I

1 have, Doctor. Thank you.

2 Mr. Cauthen: Just a few more follow-ups
3 on that.

4 Re-direct Examination

5 By Mr. Cauthen:

6 Q It's a risk, but it's not inevitable in this case,
7 is it?

8 A I don't think it's inevitable. You know, if he
9 could stay out in the woods and never run across
10 anybody at all, and any kind of interaction that he
11 had with somebody, they're smart enough to run away
12 from him and leave him be, you know, maybe we could
13 get really lucky, but I think that would be -- you
14 know, that's unlikely.

15 Q Now, is this based upon your review of the history
16 of the medical records or your one-time
17 examination/interview with him?

18 A Both.

19 Q Both?

20 A (Nods head.)

21 Q Okay. Now, have you had an opportunity to review
22 all of Dr. Federer's records on Scottie Floyd?

23 A Just the ones that I've reviewed here. Of course,
24 the only ones that I've had. I don't -- I don't
25 know if that's all of them or not.

- 1 Q Are you aware of the -- Of course, I know you
2 communicated with Dr. Federer regarding the
3 referral and all that, but are you aware of the
4 length of time that Dr. Federer has been treating
5 Scottie Floyd?
- 6 A It seems like he was involved right at -- after the
7 injury, at the very beginning.
- 8 Q Actually, when he returned to South Carolina this
9 past June, he began treating him full-time. Did he
10 relay any of that to you when you discussed the
11 patient with Dr. Federer?
- 12 A We talked about some of it. I don't recall
13 details.
- 14 Q Is it your understanding he's been the primary
15 treating doctor for Scottie Floyd since he's been
16 back here in South Carolina?
- 17 A Yes.
- 18 Q Okay. And would, therefore, know the patient
19 probably better than any other doctor who's seen
20 him in a while?
- 21 A Yes, although he is neuropsychologist, but he's not
22 a physician.
- 23 Q Right.
- 24 A But, yeah, I would agree with the statement.
- 25 Q Okay. Would you -- Would you have any -- Would

1 you be in agreement with -- Well, based on what
2 you've reviewed as far as Dr. Federer's records go,
3 would you agree with his -- his diagnosis and his
4 recommendations in this case?

5 A I don't recall what his diagnoses were.

6 Q What reports did you -- What reports did you
7 receive from Dr. Federer? Let me see if I can pin
8 that down.

9 A I had a note of -- let's see -- August 31st, 2006,
10 July 24th, 2006, July 20th, a note on September
11 5th, on November 9th. I got the impression
12 primarily he was focusing on counseling,
13 psychological treatment. I don't recall seeing
14 anything specifically about neuropsychological
15 testing by Dr. Federer, --

16 Q That's what I was going to ask you.

17 A -- or a specific diagnosis.

18 Q Have you reviewed any of his tests from the
19 neuropsychological -- well, his neuropsychological
20 testing that he did? Did you review any of that?

21 A I don't think so.

22 Q So, the most recent thing you'd have from Dr.
23 Federer would be November of 2006?

24 A November 9th, 2006.

25 Q Okay. Would you have any disagreement with Dr.

1 Federer if his opinion is that the patient has not
2 reached maximum benefit from --

3 Mr. Wukela: I don't think that's a
4 correct statement.

5 Q -- his standpoint, standpoint of his treatment?

6 Mr. Wukela: I object on two grounds. I
7 object, I don't think that's a correct
8 statement. Dr. Federer's deposition will
9 speak for itself, and since he hasn't reviewed
10 Dr. Federer's deposition, I don't think it's
11 fair to the doctor to ask him to arrive at an
12 opinion second guessing another caregiver.

13 Mr. Cauthen: Well, I'll just ask him a
14 hypothetical then.

15 Q Assuming that Dr. Federer is of the opinion that
16 the patient is not at maximum medical benefit or
17 maximum benefit from the standpoint of -- from a
18 neuropsychological standpoint, would you have any
19 disagreement with that, any reason to disagree with
20 that?

21 A Well, hypothetically, if he thinks that he has a
22 treatment plan that will -- has a good chance of
23 producing some change and that -- where he could
24 also be compliant with the treatment, then I -- I
25 wouldn't disagree with that, with him thinking that

1 there was a -- that he hadn't yet reached maximum
2 medical improvement from a neuropsychological point
3 of view.

4 Mr. Cauthen: Okay. All right. That's
5 all I have, Doctor.

6 Mr. Wukela: Just one question.

7 Re-cross-examination

8 By Mr. Wukela:

9 Q But, Doctor, as far as a medical opinion as to
10 whether or not he has reached maximum medical
11 improvement from a neurological point of view, do
12 you have an opinion as to whether he's reached
13 maximum medical improvement from a medical
14 neurological point of view?

15 A Yes.

16 Q And what is that opinion?

17 A Well, I think he's reached maximum medical
18 improvement after we've gone through all these
19 exceptions of, you know, if he could do this, if he
20 do that, if he could be compliant with the
21 treatment, but I think you pin down the crux of the
22 matter. Compliance is part of the problem and part
23 of the disease process, and what I am struck by is
24 that this has gone long, over a period of time, and
25 that we are seeing the same thing happen over and

1 over again. So, I think Dr. Federer would have to
2 have some type of plan laid out where he could be
3 compliant where we would see a significantly
4 different approach or more effective approach laid
5 out to say that really he has not reached maximum
6 medical improvement, you know. So, I think looking
7 at what's happened over time and the type of
8 treatment and the fact that we're seeing the same
9 process over and over again, I think that, from a
10 practical point of view, he has reached maximum
11 medical improvement.

12 Mr. Wukela: Okay. Thank you, Doctor.

13 Re-direct Examination

14 By Mr. Cauthen:

15 Q Doctor, just to make sure I understand, that
16 doesn't change your earlier testimony regarding the
17 exceptions you just cited that --

18 A Right. If he would take the medicine, would he get
19 better.

20 Q Yeah. If he would comply with the prescription
21 regime, if he would comply with sleep testing, then
22 we could see improvement?

23 A Yes. In a perfect world, all the patients would do
24 exactly what they were told, and, hopefully, they
25 would all get better.

1 Q Well, not just in a -- in a perfect world but just
2 simply following doctor's orders.

3 A To follow doctor's orders, yes.

4 Q This patient -- You agree that if this patient
5 would follow doctor's orders, he might improve?

6 A Yes.

7 Mr. Cauthen: Okay. All right. That's
8 all.

9 Mr. Wukela: That's all the questions.
10 (Whereupon the deposition was concluded at
11 4:45 p.m.)

12 (Deponent has waived reading and signing.)

State of South Carolina)
) Certificate
 County of Richland)

Be it known that the foregoing deposition of
 Walter James Evans, MD was taken before me;

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

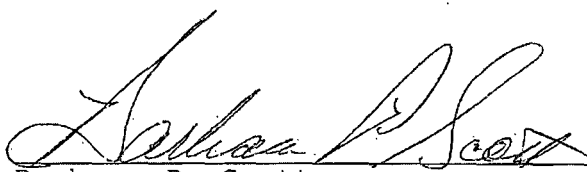
That by virtue thereof I was duly authorized
 to administer an oath;

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

That the foregoing transcript of 32
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

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

Witness my hand and seal this 13th day of
 March, 2007.


 Barbara P. Scott

Notary Public for South Carolina
 My commission expires April 29, 2007.

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0123790

SCOTTIE FLOYD,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
KEN BAKER USED CARS,	)	
	)	RAKESH P. CHOKSHI, MD
EMPLOYER,	)	
	)	
LEGION INSURANCE COMPANY	)	
IN LIQUIDATION THROUGH	)	
SCPCIGA,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Rakesh P. Chokshi, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 12:45 p.m., Monday, March 12th, 2007, at Pee Dee Orthopaedics, 901 East Cheves Street, Suite 100, Florence, South Carolina.

COPY

Reported by

Barbara P. Scott, CVR

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Reported By: Barbara P. Scott, CVR

Index

Stipulations	4
Direct Examination by Mr. Goodwyn	4
Cross-examination by Mr. Wukela	20
Certificate	33

Exhibits

Marked as Defendant's Exhibit Number One;

Deposition of Rakesh P. Chokshi, MD; copy of
Pee Orthopaedic Associates medical record;
one page 8

Marked as Defendant's Exhibit Number Two;

Deposition of Rakesh P. Chokshi, MD; copy of
ImageCare, LLC-Pee Dee Orthopaedic Associates
medical record; one page 32

Marked as Defendant's Exhibit Number Three;

Deposition of Rakesh P. Chokshi, MD; copy of
Pee Dee Orthopaedics-Dr. Alexander medical
record; two pages 32

Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
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interruption of speech, incomplete sentence/phrase, or
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Stipulations

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

Whereupon,

Rakesh P. Chokshi, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Rakesh Permin Chokshi.

Direct Examination

By Mr. Goodwyn:

Q Dr. Chokshi, my name is Jeff Goodwyn, and I'll be taking your deposition today with respect to Scottie Floyd and the treatment you provided for him. Where are you currently employed?

A I'm self-employed with Pee Dee Orthopaedics.

Q And how long have you been self-employed with Pee Dee Orthopaedics?

A Seven years.

Q Do you have a patient named Scottie Floyd?

A I do.

Q And how long have you been treating Mr. Floyd?

- 1 A The first time, on January 24th, 2007.
- 2 Q And what did you see him for?
- 3 A Mid and low back pain.
- 4 Q And how were you --- How did you come to see Mr.
- 5 Floyd? How was he referred to you?
- 6 A I believe he was referred from Dr. James Evans.
- 7 Q Okay. And what type of exam did you perform on
- 8 January 24th, 2007?
- 9 A The standard exam we perform for spine patients.
- 10 Q Which includes what?
- 11 A Looking at the neurologic status of the patient and
- 12 looking for tender spots and looking for range of
- 13 motion, things along that line.
- 14 Q Did you receive any -- any other medical records
- 15 for Mr. Floyd before seeing him on January 24th?
- 16 A I can't independently recall that at this point in
- 17 time. I'm sure I did. That's pretty common
- 18 practice.
- 19 Q Do you have any of those records in -- in your
- 20 file?
- 21 A I do.
- 22 Q Which -- Which records did you review or have you
- 23 seen?
- 24 A I have something from Cynthia Grimley, who is a
- 25 case manager.

- 1 Q For who?
- 2 A Cynthia Grimley and Associates, LLC.
- 3 Q Okay. What other records do you have?
- 4 A I don't see anything else here besides that.
- 5 Q Okay.
- 6 A The only thing, that I can sort of look through it
- 7 and see if there is something else that came along,
- 8 but I don't know. I can't recall it.
- 9 Q Okay. Well, if you find something during the
- 10 course of the deposition, just let us know.
- 11 A Okay.
- 12 Q Thanks. Looking at your medical report from
- 13 January 24th, 2007, I believe you noted in the
- 14 first section up here, the HPI, that he -- that he
- 15 had a head injury back in 2001 --
- 16 A Mm-hmm.
- 17 Q -- which caused him to develop some seizures, and
- 18 then you noted in 2004 that he had a significant
- 19 seizure which caused thoracic back pain.
- 20 A Mm-hmm.
- 21 Q How -- How did you know that the 2004 seizure
- 22 caused the thoracic back pain that you were seeing
- 23 him for?
- 24 A That was in his history. That's what he told me.
- 25 Q Okay. That was based exclusively on what he told

- 1 you?
- 2 A Correct.
- 3 Q Okay. And what was your -- What was your
- 4 recommendation after the January 24th meeting --
- 5 appointment?
- 6 A I just wanted to make sure that, you know, we get
- 7 an MRI to look at those areas a little further.
- 8 The plain x-rays that he did in the office, you
- 9 know, indicated maybe a questionable injury to T3,
- 10 T4 and T5 based on the pictures that we obtained.
- 11 Q Okay. So, you did take some x-rays?
- 12 A Mm-hmm.
- 13 Q You just ordered an MRI and asked him to come back?
- 14 A Mm-hmm.
- 15 Q Okay. Okay. And when did Mr. Floyd return?
- 16 A When did he return to see me back? Would be
- 17 February 7, 2007.
- 18 Q And is that when you viewed the MRI results with
- 19 him?
- 20 A I did.
- 21 Q Is this an accurate copy of your --
- 22 A It is.
- 23 Q -- of your February 2nd -- excuse me -- February
- 24 7th, 2007 report?
- 25 A It is.

1 Mr. Goodwyn: Okay. I'd like to mark
2 this as Defendant's Exhibit One. I don't
3 think it's part of our APAs.

4 Mr. Wukela: Just for the record, APA 11,
5 page 112 and 113, are the office notes from
6 January 24th, '07.

7 Mr. Goodwyn: Okay.

8 Mr. Wukela: Those are the defendant's
9 APAs.

10 Mr. Goodwyn: Okay.

11 Marked as Defendant's Exhibit Number
12 One; Deposition of Rakesh P.
13 Chokshi, MD; copy of Pee Orthopaedic
14 Associates medical record; one page.

15 Q Can you tell me what the results of the MRI were?

16 A Sure. It appeared that he had an old compression
17 fracture at the level of T3, T7, T8 and T9.

18 Q Okay. And was there any way to tell from this --
19 from looking at this -- these MRI results how old
20 these fractures were?

21 A Well, old enough not to have any signal changes in
22 them, but you can't exactly tell how old is old, in
23 other words.

24 Q Okay.

25 A It could be years. It could be months.

1 Q Okay. I'm looking under the recommendation section
2 from that February 7th, 2007 report.

3 A Yes.

4 Q First line, I believe, reads, "I do not believe he
5 requires any type of --" if I can pronounce this --

6 A Vertebroplasty.

7 Q "-- vertebroplasty-type intervention."

8 A Right.

9 Q What does that mean?

10 A Well, in a compression fracture, nowadays we can
11 sometimes put a cement-like material in the
12 vertebral bodies that helps minimize a patient's
13 pain and stabilizes it right away, and, because
14 this was an old fracture, I didn't see any need to
15 do that because that won't work in old fractures.

16 Q Okay. Looking at the first paragraph, HPI, what
17 does HPI stand for on these reports?

18 A Just history of present illness. That's all.

19 Q Okay.

20 A That's just a template that they have in the
21 computer, so they have -- feed the information
22 under those categories. That's all that is.

23 Q Okay. I'm reading your note here. It says, "I
24 reviewed Mr. Scotty Floyd's MRI, which essentially
25 showed possibly some old -- or some multiple old

1 healed compression fracture of the thoracic spine."

2 A Mm-hmm.

3 Q It sounds a little iffy as to whether or not you
4 actually saw evidence of an old healed compression
5 fracture.

6 A Yeah. I mean, you look at the report of the MRI of
7 the thoracic spine --

8 Mr. Wukela: What's the date of that
9 report, Doctor?

10 The Deponent: I'm trying to find it.
11 Let's see.

12 Q I'm not sure we have a copy of that. Do you think
13 we could get a copy of that?

14 A I'm sure you can if I can find it. I'm looking at
15 something here, but it looks like my plain x-rays
16 from 5/5/2004.

17 Q That's obviously old.

18 A That's old, yeah. So, -- I'm sure we can get it.
19 If we don't have it in the chart, we can always get
20 it back from the place -- Do you know where it was
21 done by any chance? Do you have that information
22 somewhere?

23 Mr. Wukela: Excuse me for a second.

24 Let's go off the record if we can.

25 Mr. Goodwyn: Sure.

1 [Off the record at 12:53 p.m.;
2 back on the record at 12:55
3 p.m.]

4 The Deponent: It was supposed to be in
5 the chart, and it's stuck in the front of the
6 chart. They're trying to make it easy for us,
7 too easy.

8 Mr. Goodwyn: That's right. All right.

9 Mr. Wukela: What's the date on that?

10 The Deponent: 1/25/2007.

11 Direct Examination Continues

12 By Mr. Goodwyn:

13 Q And you think I could get a copy of that --

14 A Sure.

15 Q -- because I'd like to make it an exhibit to this
16 deposition if we could.

17 A No problem.

18 Mr. Wukela: That will be exhibit --

19 Mr. Goodwyn: Defendant's Exhibit Two.

20 Q Can I take a look at it real quick since we don't
21 have a copy?

22 A Certainly.

23 (Attorney Goodwyn reviews document.)

24 The Deponent: (to the court reporter) I
25 was trying to read the back of your computer

1 right there.

2 The Court Reporter: It's my business
3 card.

4 The Deponent: Oh, it is?

5 Mr. Goodwyn: Do you want to look at it,
6 Steve?

7 Mr. Wukela: That's all right. I'll look
8 at it when the doctor finishes with it.

9 Mr. Goodwyn: Okay.

10 Q It appears as if that report is where you got the
11 information about the spine appearing as if it has
12 some multiple old healed compression fractures of
13 the thoracic spine. Is that --

14 A That's correct.

15 Q Okay. So, what was your recommendations?

16 A Well, I basically felt like there was -- no acute
17 surgical intervention was required, that he may
18 serve -- be served better with rehabilitation of
19 the musculature of the thoracic spine, so we
20 decided to send him to a physiatrist.

21 Q Okay. Do you know if he has seen anybody since you
22 asked him to go see the physiatrist on February
23 7th?

24 A I'm not aware if he has seen anybody. I have,
25 looks like, Dr. Alexander's notes here, and it's

1 possible he might have seen him. I don't have any
2 typed information here.

3 Q Okay. I had received some information that he had
4 seen Dr. Alexander, too, --

5 A Mm-hmm. Yeah. Okay.

6 Q -- but I don't have any reports either, so --

7 A Yeah, I don't have it available.

8 Q What type of doctor is Dr. Alexander?

9 A A physiatrist.

10 Q Okay. Do you expect to see -- Is your plan for
11 Mr. Floyd to see him back after he completes his
12 physical therapy?

13 A No.

14 Q Okay. What is -- What is your plan for him? Have
15 you released him?

16 A Yeah, I have.

17 Q Okay. As of February 7th, was Mr. Floyd at maximum
18 medical improvement?

19 A No.

20 Q And why not?

21 A Because he needed rehabilitation of his spine.

22 Q Okay. And are you leaving the determination of
23 when Mr. Floyd reaches maximum medical improvement
24 to the physiatrist that he sees, be it Dr.
25 Alexander or anybody else?

- 1 A That's correct.
- 2 Q Okay. Approximately how long will this physical
3 therapy program take?
- 4 A I don't know.
- 5 Q I mean, would it be months or weeks or --
- 6 A It depends on how the patient responds to the
7 treatment.
- 8 Q Is it possible in your estimate that Mr. Floyd
9 could have reached maximum medical improvement by
10 February 16th, 2007, which would've been --
- 11 A Probably not. About a month or so.
- 12 Q That would've been nine days after you saw him on
13 the 7th.
- 14 A Probably not.
- 15 Q And why is that?
- 16 A Because it's too short a time to determine how the
17 rehabilitation process is going to work for him.
- 18 Q Okay. From the notes that you have from Dr.
19 Alexander, can you tell what date he was seen by
20 Dr. Alexander on?
- 21 A 2/26/07.
- 22 Q Okay. And does that appear to be the first visit
23 to Dr. Alexander?
- 24 A Mm-hmm. It does.
- 25 Q Can I, again, make sure -- get a copy of that and

1 make that an exhibit, as well?

2 A I'm sure you can. It's his handwritten notes.

3 Q Okay. And is that a -- Is that a front and back
4 page of --

5 A It's got some handwritten notes on the back side
6 and some pre-printed standard form on the front
7 side.

8 Q Okay.

9 A Pam can get you whatever you need. It's not a
10 problem.

11 Q Thanks. Well, I'll --

12 Mr. Wukela: And that would be
13 Defendant's Exhibit Three?

14 Mr. Goodwyn: Exactly, however many pages
15 it ends up being. Looks like it's at least
16 two with the front and back.

17 Mr. Wukela: Right.

18 Mr. Goodwyn: Okay.

19 Q I'd like to ask you a couple of questions about the
20 -- about the cause of Mr. Floyd's back problems
21 now. Can you state to any -- to a reasonable
22 degree of medical certainty what the cause of Mr.
23 Floyd's current back pain is?

24 A With only --

25 Mr. Wukela: We're going to object to

1 that. If I may, Doctor, I'm going to impose
2 an objection. I'm taking the position that
3 the employer has already -- the employer and
4 the carrier have already conceded that this
5 injury is causally related to the seizures
6 that he underwent in '04. He's already --
7 The carrier has already provided orthopaedic
8 treatment for this injury, and I think the
9 causal connection has already been established
10 by Dr. Healy's testimony and also the medical
11 records that were submitted from his period of
12 hospitalization out in Tangram for
13 approximately 18 months, and we take the
14 position that your question as to causality at
15 this time is irrelevant to the issues before
16 the commission.

17 Mr. Goodwyn: Okay.

18 Q You can go ahead and answer.

19 A You know, I only have the history from January
20 24th, 2007, and, according to him, he started
21 having this problem after he had those seizures in
22 2004. So, that's the only thing I have to go by.

23 Q Okay. And is that enough for you to be able to
24 opine to a reasonable degree of medical certainty
25 as to the cause of the -- his current back pain?

1 A Seizures can certainly lead to compression
2 fractures, so it's certainly possible that's
3 probably what happened.

4 Q Okay, but as to my --

5 Mr. Wukela: Asked and answered.

6 Mr. Goodwyn: Asked and answered?

7 Mr. Wukela: Well, he answered his
8 question, and that's the answer you're stuck
9 with.

10 Mr. Goodwyn: Well, objection noted.

11 Q But can you state to a reasonable degree of medical
12 certainty that -- that what Mr. Floyd reported is,
13 in fact, the cause of his back pain?

14 A I'm sorry. I'm not following your question. What
15 he stated to me was he had seizures, then he
16 started having back pain. Is that what you're
17 basing it on, or something else, and I'm not
18 following you.

19 Q I'm not asking -- It sounds like you're saying
20 that the only -- the only evidence you have as to
21 the cause of Mr. Floyd's back pain is what he had
22 reported himself.

23 A And that -- And that's correct.

24 Q And is that enough for you to state to a reasonable
25 degree of medical certainty as to the cause of his

1 back pain?

2 A Well, I have no other way of basing it on, any
3 other information, so I have to go based on the
4 patient's history as to what perhaps caused his
5 back pain, what initiated his back pain anyway.

6 Q Okay. Okay. I think you may have already
7 testified to this, but I'll ask you again.

8 A Certainly.

9 Q Have you recommended any surgery at this time?

10 A I have not.

11 Q Mr. Floyd is not a surgical candidate?

12 A Not in my opinion. No, he's not.

13 Q You have not seen Mr. Floyd since February 7th,
14 2007?

15 A That is correct.

16 Q And you have no -- You do not plan to see him
17 again, as I understand?

18 A Unless somebody wants me to see him, but, no, I
19 have no -- have not made any arrangement for him to
20 see me back.

21 Q Okay. Do you have in your file any prior MRIs to
22 the one -- to the one you ordered after the January
23 24th?

24 A I don't believe so. The only thing I have is that
25 information from Carolinas Hospital from 5/5/2004.

1 I believe -- Excuse me. I believe it was the
2 thoracic and lumbar plain x-rays.

3 (Interruption by PA system.)

4 Q I'm sorry. Would you say that again?

5 A Yeah. The plain x-rays of thoracic and lumbar
6 spine.

7 Q Okay. And this was back in --

8 A 5/5/2004. That was the date of exam.

9 Q And what did those x-rays show?

10 A The lumbar MRI was negative. I mean -- Excuse me.
11 Lumbar plain x-ray was negative, which means he
12 didn't have any fractures or any other unusual
13 problem, and thoracic spine showed compression
14 fractures and multiple vertebral bodies as above,
15 and above indicates fracture at T8-T9, and superior
16 end plates of T3, T4 and T5.

17 Q Okay. Have you prescribed any medication for Mr.
18 Floyd?

19 A I believe so. Ultracet. Ultracet was what I
20 prescribed on 2/7/07.

21 Q Okay. And do you know if Mr. Floyd's been
22 compliant in taking the Ultracet?

23 A I don't know.

24 Q You don't know you said?

25 A I don't know.

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1 Q Okay. Is there any way that you would know since
2 you haven't seen him since then?

3 A No, I wouldn't.

4 Q Okay. And how -- Do you know how long a supply
5 that you prescribed him?

6 A There were 50 pills.

7 Q And how long does that typically last?

8 A It depends on how an individual uses it, but it
9 could last as little as two weeks or as much as
10 months, depending on how frequently they use it.

11 Q Well, would you prescribe it to be used as needed?

12 A I probably did. That's how we typically prescribe
13 pain medications.

14 Mr. Goodwyn: Okay. I think that's all I
15 have.

16 Cross-examination

17 By Mr. Wukela:

18 Q Doctor, could I see the letter from Ms. Grimley,
19 just briefly?

20 A Sure.

21 Q Doctor, if you could, just read for the record the
22 first -- actually it's the second paragraph of that
23 letter. Just read it aloud for us, please.

24 A Second paragraph?

25 Q Yes, sir. Second full paragraph.

1 A "Scottie suffered an injury to his head on
2 9/13/2001 which resulted in a brain injury. He's
3 been treating with Dr. Healy on April 9, 2004.
4 Scottie had a series of seizures that caused him to
5 have compression fracture of the spine. He has
6 never been treated for his back injuries. The only
7 medical documentation is the film taken at
8 Carolinas Hospital 5/4, which is actually 5/5,
9 2004. Ms. Betty Floyd, his mother, had this film
10 and the report as read by Dr. Sexton in her
11 possession. She will bring these to appointment
12 tomorrow. I could not find a copy of this report
13 in my record. Ms. Floyd attempted to read the
14 report to me just a short time ago. The film was
15 of TL spine, reported T8-T9 compression fracture.
16 Also involved T3, T4 and T5."

17 Q Thank you. Doctor, also I'm going to show you our
18 APA 225 of our APAs that we submitted on February
19 the 1st of '07. Could you identify that for me,
20 please?

21 A That's an MRI of the lumbar spine.

22 Q What date is that?

23 A 7/26/2005.

24 Q And what does it show? Just paraphrase it, if you
25 would.

1 A Yeah. The impression of the radiologist was
2 multilevel degenerative disc disease and facet
3 arthropathy as described above, which was in the
4 individual levels. They all seemed to be affected
5 to some degree.

6 Q Doctor, do you know what his age is?

7 A Back then he was fifty-six, according to this.

8 Q No.

9 A No. Wait a minute. Is that the same patient we're
10 talking about?

11 Q What does it say?

12 A Roland Polland.

13 Q I'm sorry. I'm sorry. I don't know what that's
14 doing in the file.

15 Mr. Wukela: Exhibit 225 should be
16 withdrawn from the record. Dammit.

17 Q Just a second, Doctor.

18 A Sure.

19 Q Doctor, the letter that was sent to you by Ms.
20 Grimley, --

21 A Uh-huh.

22 Q -- did that letter indicate to you anything that
23 would support your opinion that the claimant
24 sustained a compression fracture while he was being
25 hospitalized at McLeod Hospital for seizures?

1 A Yeah. I'm assuming that seizures took place. He
2 was brought to the hospital, he was complaining of
3 back pain, and then these pictures were done, and
4 then the pictures indicated the compression
5 fractures. And, so, like I said earlier, most
6 likely the seizure was the source of the fractures
7 since we don't have any other information available
8 --

9 Q Okay..

10 A -- as to what could have -- what else could have
11 caused it.

12 Q Now, in addition to that statement from the claims
13 manager, or the claims -- I guess manager, did the
14 patient also give you history of having seizures in
15 the hospital that --

16 A He did.

17 Q Okay. Now, the MRI that you took in '07, -- I
18 believe that's '07. Is that correct?

19 A Correct.

20 Q You have compression fractures of the thoracic
21 spine at five levels. Is that correct?

22 A That's correct.

23 Q All right. And those compression fractures, if
24 they were the ones that were diagnosed in '04,
25 would be over three years old?

1 A That's correct.

2 Q How long does it normally take a compression
3 fracture to heal?

4 A Anywhere from three months to six months.

5 Q All right. What exactly is a compression fracture?

6 A Basically, the vertebral body is a square
7 cylindrical block. It supports our body. And when
8 the load on it exceeds its limit of holding that
9 weight, it'll collapse a little bit because the
10 bony trabecular pattern breaks and develops this
11 picture of what we call compression fracture.
12 Basically, it's the loss of height of the vertebral
13 body.

14 Q Okay. And are we to glean from these reports,
15 then, that that type of event had occurred
16 basically up and down the thoracic spine?

17 A That is correct.

18 (Cellular phone rings.)

19 The Deponent: I'm sorry.

20 Mr. Wukela: That's all right.

21 The Deponent: Off the record, please.

22 [Off the record briefly at 1:14
23 p.m.]

24 Q Doctor, if I represent to you that the claimant was
25 born August the 4th of '75, --

1 A Mm-hmm.

2 Q -- that would make him about thirty-seven years old

3 today.

4 A Okay.

5 Q And --

6 A I'll rely on your mathematical ability.

7 Q Well, I'm not sure about my mathematical ability.

8 Mr. Goodwyn: He was born when?

9 Mr. Wukela: '75.

10 Mr. Goodwyn: I was born in '70, and I'm

11 thirty-seven. That's got to be five years

12 off.

13 A He's thirty-one.

14 Mr. Goodwyn: Two.

15 Mr. Wukela: Thirty-two?

16 Mr. Goodwyn: Yeah, because I think he

17 was twenty-eight back in -- back in '04.

18 Mr. Wukela: Oh. 2005 would be thirty.

19 From '75 to 2005 would be --

20 Mr. Goodwyn: Thirty.

21 Mr. Wukela: -- thirty years old.

22 Mr. Goodwyn: And it's 2007, so he'd be

23 thirty-two.

24 Mr. Wukela: All right. Thirty-two

25 years. I'm sorry. My math in not to be

1 relied upon..

2 Q I assume, then, he was four years younger than that
3 when this -- three years younger anyway.

4 A Right.

5 Q A person of that age, would their back normally be
6 stronger -- would their vertebrae be stronger than
7 someone, say, fifty-four years of age?

8 A Certainly.

9 Q And would they be able to withstand more
10 compression of the spine than someone of an older
11 age?

12 A They should be able to.

13 Q All right. Do you have an opinion to a reasonable
14 degree of medical certainty as to any impairment
15 that he sustained as a result of this compression
16 fracture along these vertebrae?

17 A He's in chronic pain --

18 Mr. Goodwyn: I'm going to object to any
19 kind of impairment rating he may give since
20 he's testified earlier that he's not at MMI.

21 Mr. Wukela: Well, let me just --

22 Q Go ahead --

23 Mr. Goodwyn: You can go ahead and
24 answer. I just wanted to make an objection.

25 Q Given a seven- -- Is that a seven-level

1 compression fracture along those discs?

2 A That's correct. It is.

3 Q And he's been in continuous pain from that and
4 other reasons since the -- since the accident.

5 A Okay.

6 Q Do you have an opinion as to the extent of his
7 physical impairment to his spine by these
8 compression fractures?

9 A Yes and no. Yes, because compression fractures can
10 cause impairment rating -- I mean an impairment,
11 and, if they heal up, then sometimes they don't
12 cause impairment.

13 Q All right, but how do you distinguish in this case
14 whether he's got an impairment or not?

15 A You would have to subject him to rehabilitation and
16 probably a functional capacity evaluation to see
17 what has changed in his capacity to do whatever
18 that he was doing earlier.

19 Q All right. The fact that it's been four years,
20 three or four years, since the event that caused
21 this compression fracture, are you of an opinion as
22 to whether his physical condition has stabilized?

23 A I think he's stabilized, by and large, I mean --
24 but in a healer standpoint, but, like I told
25 earlier to the gentleman, that rehabilitation would

1 be worth considering in his case.

2 Q All right. And the purpose of the rehabilitation
3 would be to try to get some control over the pain,
4 you think?

5 A Pain, and also get his strength back to the level
6 that -- you know, less loading of his spine, which
7 you strengthen your muscles that keep you upright.
8 So, if you strengthen your muscles that keep you
9 upright, then there's less pressure on the
10 vertebral bodies. That, in turn, will improve his
11 pain.

12 Q All right. If we assume that he's got pain from
13 other issues involving his brain injury, --

14 A Right.

15 Q -- is there any way to segregate the pain that he's
16 in from his back from the pain he's in from his
17 head injuries?

18 A I don't believe I would be able to do that. It's
19 very difficult to separate the pain components in
20 general.

21 Q All right. And people who have severe headaches, -
22 - and I will represent to you he's having severe
23 headaches -- would the existence of those headaches
24 tend to make other portions of his musculoskeletal
25 body go into spasms?

1 Mr. Goodwyn: I would object to these
2 hypotheticals. I mean, if you want to show
3 him some medical records of what he has, I
4 think --

5 Mr. Wukela: I don't know that you can
6 object to hypotheticals. I'm making it in the
7 form of a hypothetical.

8 Q Go ahead and answer the question, Doctor.

9 A That would be something I would ask a neurologist
10 about. That's not an area of my expertise.

11 Q All right. So, you would rely on a neurologist to
12 make any rating as far as the effect of the muscle
13 spasms on the spine?

14 A No. The headaches --

15 Q The headaches. I'm sorry.

16 A -- on the muscle spasms.

17 Q On the muscle spasms. Okay. Doctor, just from a
18 structural point of view, notwithstanding any
19 problems with pain, just from the impact of these
20 injuries on the structure of the vertebrae
21 themselves, does that in and of itself lead to a
22 rating?

23 A I believe so.

24 Q Do you have any idea --

25 A I'd have to look at the AMA Guidelines for that.

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1 Q All right. But those -- the compression of the
2 many -- Well, actually, the compression of one
3 vertebrae would lead to a certain rating. Isn't
4 that correct?

5 A I would think so. I haven't referred to the guide.

6 Q Doctor, if it doesn't take you too much time, could
7 you get your AMA Guides and just give us a rating
8 as to the structural impairments as a result of
9 this compression?

10 Mr. Goodwyn: I would object. He's not
11 at MMI. Any kind of impairment rating would
12 be premature. We'll go off the record for a
13 second.

14 [Off the record at 1:20 p.m.;
15 back on the record at 1:25
16 p.m.]

17 Cross-examination Continues

18 By Mr. Wukela:

19 A According to the DRE method of impairment, it would
20 be in the range of five to eight percent because of
21 the findings of affecting activities of daily
22 living and basically pain and spasms in that area.

23 Q Is that per vertebrae or per the whole --

24 A No, just the whole. It doesn't go into individual
25 fractures. It just talks about it as a whole.

1 Q Okay. And is there any way -- any treatment that
2 you can offer him at this point in time to re-
3 establish the height of those vertebrae?

4 A No, unfortunately not.

5 Q And if he has had this pain consistently now for
6 four years, three or four years, do you have an
7 opinion to a reasonable degree of medical certainty
8 whether he will have this pain continuously into
9 the future?

10 A We don't know that. He might; he might not.

11 Q Okay.

12 A We've got to wait and see.

13 Q All right. And that -- The rating you just gave
14 him is based on the physical injuries themselves
15 without reference to any improvement in the actual
16 pain that he might have?

17 A That's correct.

18 Q Okay. And that includes compression fractures up
19 and down the thoracic spine, all seven levels?

20 A That's correct.

21 Mr. Wukela: All right. That's all the
22 questions I have, Doctor.

23 Mr. Goodwyn: I think that's all I have,
24 too.

25 (Whereupon the deposition was concluded at

1 1:27 p.m.)

2 (At the conclusion of the deposition, the
3 following exhibits were marked for
4 identification.)

5 Marked as Defendant's Exhibit Number

6 Two; Deposition of Rakesh P.

7 Chokshi, MD; copy of ImageCare, LLC-

8 Pee Dee Orthopaedic Associates

9 medical record; one page.

10 Marked as Defendant's Exhibit Number

11 Three; Deposition of Rakesh P.

12 Chokshi, MD; copy of Pee Dee

13 Orthopaedics-Dr. Alexander medical

14 record; two pages.

15 (Deponent has waived reading and signing.)

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State of South Carolina)
)
 County of Richland) Certificate

Be it known that the foregoing deposition of
 Rakesh P. Chokshi, MD was taken before me;

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

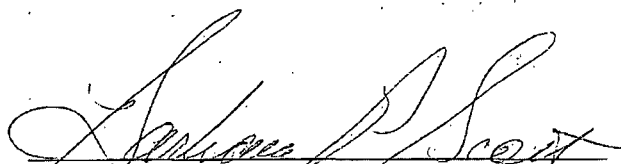
That by virtue thereof I was duly authorized
 to administer an oath;

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

That the foregoing transcript of 32
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

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

Witness my hand and seal this 12th day of
 March, 2007.


 Barbara P. Scott

Notary Public for South Carolina
 My commission expires April 29, 2007.

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

J-07 05:31pm From: Pee Dee Ortho

+8436788003

T-468 P: 02/02 F-378



**Pee Dee
Orthopedic**
Associates, PA

Joseph W. Dunlap, Jr., M.D., FACS • W.S. "Mac" Edwards, Jr., M.D.
Rakesh Chokshi, M.D. • Patrick K. Denton, M.D. • Barry L. Clark, D.O.
Danny W. Nicholls, D.O. • Anthony W. Alexander, M.D.
Dewey Nelson Ervin, M.D. • A. Cecil Bozart, Jr., M.D.
Nigel A. R. Watt, M.D.

901 East Cheves Street, Suite 100 • Florence, SC 29506
(843) 662-5233 • Fax: (843) 678-9003 • www.pdooa.com

Date: February 07, 2007
Name: Scotty Floyd
Address:

Case #: 252-114
Age: 31 M
Ref By:

---Page three (3)---

HPI: Ms. Cynthia Grimley & associate were present at the time of the discussion. I reviewed Mr. Scotty Floyd's MRI, which essentially showed possibly some multiple old healed compression fracture of the thoracic spine.

PE: His motor strength is 5/5 in all major muscle groups in lower extremities.

RECOM: I do not believe he requires any kind of vertebroplasty-type intervention. His problem was at the level of T3, T7, T8, and T9. Though, I feel he would benefit from rehabilitation in the form of physical therapy and modification as such based on his response to the treatment. I believe he would be best served by seeing a physiatrist who can then help him with rehabilitation process. Ultracet was prescribed in the meantime for pain control.

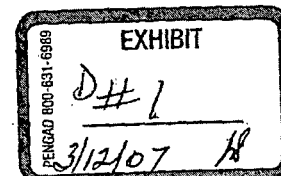
Thank you.

Rakesh P. Chokshi, M.D.
Spine Surgeon
Pee Dee Spine Center
RC: sra

(dictated but not read)

cc: James H. Evans, M.D.

Division HCFA & updates to SC In-Durante updates forwarded



ImageCare, LLC-Pee Dee Orthopaedic Associates,
PA
901 East Cheves Street Suite 100
Florence 29506
Phone: (843)662-5233

Name:	Scottie Floyd	Exam Date:	1/25/2007
Patient ID:	1000071107	Exam:	MRI T-spine wo contrast
DOB:	8/4/1975	Reason:	-
Phone:		Referrer:	Pee Dee Orthopaedic Associates
Acc#:	132775	Referrer 2:	Rakesh Chokshi

Results

DATE EXAM PERFORMED: 1-25-07

MRI SCAN OF THE THORACIC SPINE WITHOUT CONTRAST

CLINICAL HISTORY: Back pain.

TECHNIQUE: Multislice 4.5 mm thick sagittal T1 and T2-weighted images and 5 mm axial T2-weighted images of the thoracic spine were obtained.

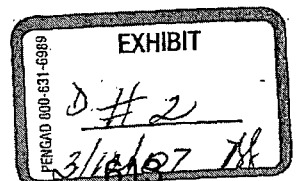
FINDINGS: Mild old healed compression fractures of the T3, T7, T8, and T9 vertebral bodies are noted. No retropulsed bone fragments, disc herniations or epidural hematomas are noted. The thoracic discs are normal-appearing. The thoracic cord is of normal size and contour with no intrinsic abnormalities or evidence of extrinsic cord compression. The tip of the conus is located normally at the L1-2 disc level.

IMPRESSION:

MULTIPLE MILD OLD HEALED COMPRESSION FRACTURES OF THE THORACIC SPINE WITHOUT EVIDENCE OF UNDERLYING INFLAMMATORY OR NEOPLASTIC DISEASE. THE SPINAL CORD IS NORMAL IN APPEARANCE. NO DISC HERNIATIONS OR INTRINSIC CORD ABNORMALITIES ARE NOTED.

Martin P Dommers Jr, MD

Transcribed By:	Dee Dee Martin	Pt. Name:	Scottie Floyd
Transcribed Date:	1/25/2007	Patient ID:	1000071107
Interpreting Rad:	Martin P Dommers Jr, MD	Exam:	MRI T-spine wo contrast
Finalized Date:	1/25/2007 5:25:18 PM	Acc:	132775



PEE DEE ORTHOPAEDICS - DR. ALEXANDER (pt no longer employed there)

PATIENT NAME Scottie Flard OCCUPATION Parts Puller
 DATE 2-26-07 EMPLOYER Kim Ken Baker's Used Cars
 AGE 31 RACE W M F DOMINANT HAND: LT RT
 HEIGHT 5'9" WEIGHT 245 BP 108/80 Pulse 82 WC L P

CHIEF COMPLAINT: TS

DATE OF INJURY / ONSET OF SYMPTOMS 9-13-01

HISTORY: pt c/o sharp TS pain that gets up into CS, pt c/o headaches, pain worsens w/ lifting, bending, pain relieved w/ nothing

CLASSIFICATION OF PAIN: (CIRCLE) SHARP DULL STABBING THROBBING ACHING BURNING
 OTHER NO RT in arms

PAIN SCALE : 1-10 (10 BEING MOST SEVERE) 7

PREVIOUS INJURY/PROBLEM Ø

IF ACCIDENT, DESCRIPTION AND HOW HAPPENED pt was pulling a part off of a car and the spring slipped and the control arm flew off and hit him on the (L) side of the head (did not knock pt out)

sensory - Ventral RUE
 Cervical Rad - R past neck pain
thoracic - T P's
limbs
Plurals

2+ 4+

PAST TREATMENT FOR SAME PROBLEM

PAST TESTS Ø X-RAYS Ø CT-SCAN Ø MRI'S 1-25-07 OTHER Ø

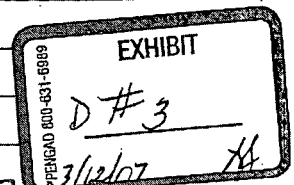
BROUGHT X-RAYS YES NO X-RAYS TAKEN WHERE PDCA

HOW LONG OUT OF WORK? Ø WHEN 1-25-07

REFERRING DOCTOR Rakesh Chokshi (#12) PAST MEDICAL HISTORY Ø FAMILY DOCTOR Ø

KNOWN ALLERGIES AND REACTIONS NKA

PRESENT MEDS	OTC MEDS & HERBS	SERIOUS ILLNESSES	OPERATIONS
<u>Depakote ER 500mg TID</u>	<u>Ø</u>	<u>migrains</u>	<u>nasal reconstruction</u>
<u>Keppra 750mg TID</u>		<u>Seizures</u>	
<u>Tramadol HCL PRN</u>			



T3 T7 T8 T9 Compression fractures healed

- ① CME
- ② h/o Sengul SS
- ③ Encephalitis outbreak - encephalitis behavior
- ④ myofascial pain

- ① Cymalta 30 mg: po qhb
- ② Consult Dr Stephen Parker
for ~~chronic~~ CME / chronic pain
- ③ cat ① T - BW - mono
- ④ DC ultraact

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0123790

SCOTTIE FLOYD,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
KEN BAKER USED CARS,	)	
	)	BETTY JO FLOYD
EMPLOYER,	)	
	)	
LEGION INSURANCE CO. IN	)	
LIQUIDATION THROUGH SCPCIGA,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Betty Jo Floyd, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 11:14 a.m., Monday, February 5th, 2007, at Carolinas Rehab Services, 1925 Hoffmeyer Road, Florence, South Carolina.

COPY

Reported by

Barbara P. Scott, CVR

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Appearances

For the Claimant: Steve Wukela, Jr., Esquire
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P.O. Box 13057
Florence, SC 29504-3057

For the Employer/
Carrier: Mark D. Cauthen, Esquire
McKay, Cauthen, Sëttana &
Stubley, PA
1301 Gervais Street, Suite 901
P.O. Drawer 7217
Columbia, SC 29202-7217

Reported By: Barbara P. Scott, CVR

Index

Stipulations	3
Examination by Mr. Cauthen	3
Certificate	51

Exhibits

No exhibits marked.

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

Stipulations

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

Whereupon,

Betty Jo Floyd, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: My name is Betty Jo Floyd.

Examination

By Mr. Cauthen:

Q Ms. Floyd, as you know, I'm Mark Cauthen. I've met you before, and we have scheduled your deposition today, which is also just an updated deposition. Of course, I will not be going back over -- try not to go back over anything that you were asked in that first deposition except just to find out new information and how things have been going for you with regard to Scottie's injury since you gave your deposition, and I think it was taken at the same time as Scottie's. It was December of 2003, just for reference. But, as you know, I represent the

1 employer and insurance company, and, just as in
2 your first deposition and in Scottie's today, if
3 you don't understand any question that I ask, just
4 let me know, and I'll do my best to try to clear
5 that up. And if you would, just make sure and try
6 -- and give us a verbal answer, you know, a yes, a
7 no or an explanation, and just try to avoid saying
8 uh-huh, uh-uh or nodding the head or anything like
9 that to make it easier on Ms. Scott to take
10 everything down, and just make sure and speak up
11 loud enough for her to hear. And if you need to --
12 The deposition shouldn't be very long, but if you
13 do need to take a break, let me know, --

14 A Okay.

15 Q -- and we'll be glad to do that. Could you state
16 your full name for us?

17 A My name is Betty Jo Floyd.

18 Q Okay. Now, is your address still the same as in
19 the last deposition in 2003, or have you moved
20 since then?

21 A Yes, sir.

22 Q The same address?

23 A The same address.

24 Q Okay. I want to make sure I've got that right.

25

- 1 A Yes, sir.
- 2 Q Now, is that a house?
- 3 A It's a trailer house.
- 4 Q Okay. Is that -- Do you own the land that it's
- 5 on?
- 6 A Yes, sir.
- 7 Q How much land is that?
- 8 A It's not quite an acre. It's about eight-tenths, I
- 9 think.
- 10 Q Okay. And that land is in your name?
- 11 A Yes, sir.
- 12 Q And do you also own the trailer?
- 13 A Yes, sir.
- 14 Q Is the trailer paid for, or has it --
- 15 A No, sir.
- 16 Q -- got a mortgage on it?
- 17 A I'm still paying on it, sir.
- 18 Q Okay. Has anything changed about your marital
- 19 status since the last deposition?
- 20 A I'm divorced.
- 21 Q Okay. You've just been married one time?
- 22 A Yes, sir.
- 23 Q And anything changed about your employment since --
- 24 Well, I'm sure it has, but -- Where were you
- 25 working before Scottie moved back to -- here in

- 1 2006?
- 2 A I was working at Lane Woodworks.
- 3 Q At what now?
- 4 A Lane Woodworks in Marion.
- 5 Q Lane Woodworks. And what type of place is that?
- 6 A It's a sawmill.
- 7 Q Okay. What was your job there?
- 8 A Manual labor. Put it that way.
- 9 Q Actually sawing timber.
- 10 A No, not -- Shooting -- shooting the airgun,
- 11 stacking and pulling and stacking the wood.
- 12 Q Okay. And what were you making at the time you
- 13 left there?
- 14 A I think 5.15.
- 15 Q Was it a 40-hour a week job?
- 16 A Yes, sir.
- 17 Q Okay. How long had you been working there before -
- 18 - Well, how long had you been working there up
- 19 until the time that you left that employment?
- 20 A I'd been there a year.
- 21 Q One year?
- 22 A Yes, sir.
- 23 Q Okay. Now, as I understand it, you -- you also
- 24 have a workers' compensation claim at this time.
- 25 Is that correct?

- 1 A I got hurt on my job, and they're taking care of me
2 by my medicine and doctor. That's all.
- 3 Q Were you injured at Lane Woodworks?
- 4 A Yes, sir.
- 5 Q Okay. What type of injury was it?
- 6 A I was taking out the trash, 49-inch boards, and
7 when I was taking it out to the fire, my foot
8 caught something in the dirt, and it threwed [sic]
9 me up, and I went down on both of my knees.
- 10 Q Okay. Did you injure your knees?
- 11 A I injured my back.
- 12 Q Injured your back?
- 13 A Yes, sir.
- 14 Q What part of your back?
- 15 A My lower back.
- 16 Q Okay. Now, did you -- Could you tell me what the
17 status of your claim is right now? Did you have to
18 actually file a workers' compensation claim? Did
19 you get -- have to get a lawyer, that kind of
20 thing?
- 21 A What you mean by that?
- 22 Q Well, did you -- did you just report the accident
23 to them and they're providing you benefits, or did
24 you have to actually file a claim, request a
25 hearing, get a lawyer, that kind of thing?

- 1 A When I got hurt, I went to the doctor. He put me
2 out for -- to March the 2nd. I went back, and I
3 worked and -- Anyhow, I tried to still work, and
4 then it got so bad, and I had to -- I quit. I
5 started staying home with daycare, Scottie, when he
6 come home from Texas.
- 7 Q Do you remember about when you left that job?
- 8 A I left May the 9th.
- 9 Q Okay. Do you have a -- one particular treating
10 doctor for this injury?
- 11 A I'm seeing Dr. Thompson right now for the shots in
12 my back.
- 13 Q And you're getting -- you're getting epidural
14 steroid injections?
- 15 A My last one, yes, sir.
- 16 Q Any surgery?
- 17 A No, sir.
- 18 Q And he's -- Dr. Thompson's still seeing you?
- 19 A I'm supposed to go back the 26th of this month to
20 see him.
- 21 Q He hasn't released you or given you an impairment
22 rating or anything like that yet?
- 23 A Uh-uh.
- 24 Q Now, do you have a lawyer? Have you retained a
25 lawyer for this?

1 A No, sir, not yet.

2 Q Are they, Lane Woodworks' insurance company,
3 providing you benefits currently?

4 A No, sir.

5 Q Are they paying for your medical treatment?

6 A They're just paying for the -- my medicine and
7 going to the doctors that I see they send me to.
8 That's all they're doing right now.

9 Q Okay. Has Dr. Thompson given you any kind of work
10 excuse?

11 A He'll let me know when I go back the 26th.

12 Q Well, has he -- has he -- So far to date, has he
13 written you out of work?

14 A He told me I couldn't go back to work right now.

15 Q So, he has written you out of work?

16 A Uh-huh.

17 Q How long has he -- How long have you been written
18 out of work?

19 A Well, really since Dr. Suggs sent me to the doctors
20 in Florence --

21 Q I'm sorry. I didn't --

22 A Dr. Suggs, --

23 Q Dr. Suggs?

24 A -- the one I went to in Marion, he's the one that
25 sent me to Dr. Ervin, and then Dr. Ervin sent me to

1 Dr. Thompson.

2 Q Okay. So, do you know -- do you know about how
3 long you've been under a doctor's excuse excusing
4 you from work?

5 A Before I got hurt? The day of I got hurt?

6 Q Since the day you got hurt?

7 A February the 14th. It's been a year since I got
8 hurt. Yes, sir.

9 Q So, you've been -- you've been written out of work
10 since February of last year?

11 A Um, --

12 Q When I say written out of work, I mean excused by a
13 doctor, have a doctor say, --

14 A Yeah.

15 Q -- Ms. Floyd, you --

16 A Yeah.

17 Q -- you can't go back to that kind of work, I'm
18 giving you a work excuse.

19 A Well, Dr. Suggs done it. Then he sent me to these
20 doctors over here. So, I've been going to them all
21 the time.

22 Q So, you've been excused from work for like a year
23 now?

24 A Yes, sir.

25 Q And they haven't paid you benefits for that?

1 A Only thing they go to is my medicine and going to
2 the doctor. Getting benefits, they would take --
3 The way we understand it, they said they could not
4 pay me for being out because I quit work to come
5 home and stay with my son.

6 Q Okay. Are there any -- Has Dr. Thompson or any
7 other doctor given you any kind of restriction on
8 physical activities, things you can and can't do?

9 A Well, he told me not to pick up nothing no more
10 than three to five pounds, you know, and, like,
11 I've been discussing -- talking to him -- It's
12 hard for me to get down. It's hard for me to get
13 up. It's hard to do cooking. It's hard for me to
14 stand or sit for long. I'm having trouble at
15 night, really, sleeping because of my back. Yeah.

16 Q Having trouble sleeping?

17 A Uh-huh, with my back, getting comfortable, you
18 know.

19 Q Taking any prescription medication for any of those
20 problems?

21 A Yes, sir, for pain. Yes, sir.

22 Q Okay. What is the pain meds they've got you on?

23 A I couldn't tell you that now. I don't have them
24 with me, sir.

25 Q Okay. All right. Well, since Scottie has been

1 back from Tangram in -- Was it June or 2006?

2 A June 1st. Yes, sir.

3 Q As we know, you have been the -- I guess for lack
4 of a better term, his main care provider, and, of
5 course, you're his guardian ad litem, as well, --

6 A Yes, sir.

7 Q -- and, as I understand, you've been -- you are the
8 primary person who cares for Scottie on a day-to-
9 day basis.

10 A Yes, sir.

11 Q How has -- Just tell me in general, how has that
12 been going? How has that worked out so far?

13 A Since he's been back home?

14 Q Yes, ma'am.

15 A He has really done good since he's been back home.
16 Before he went to Texas, since he's been in Texas,
17 there was another side to Scottie, but since he's
18 been home, there's -- he's done better with his
19 angerment [sic]. He's learnt how to control it.
20 He is doing a little bit more in the house than he
21 did before, and he don't go out as much except by
22 going to the doctors and coming to see Mr. Steve
23 and stuff like that. That's about it.

24 Q Okay. You say that he's doing better with his --
25 managing his anger --

- 1 A Yes, sir.
- 2 Q -- since he's been back from Tangram?
- 3 A Yes, sir.
- 4 Q Do you think he was -- he benefitted by some of the
5 rehabilitation and work they were doing with him on
6 his anger management down there?
- 7 A Yes, sir.
- 8 Q So, you really -- you saw a marked difference --
- 9 A Yes, sir.
- 10 Q -- after he came back?
- 11 A Yes, sir.
- 12 Q So, he's been under good control as far as his
13 anger goes?
- 14 A He's had a couple of blowups, but it's not been
15 like it was before he went to Texas.
- 16 Q Okay. Now, when you say -- when you say blowups,
17 tell me -- tell me what you're talking about there.
- 18 A Well, like beating the side of the house and the
19 side of the building, beating up the dryer and the
20 trees. Now if he gets angry, he sits there and he
21 cools down. He don't beat up nothing. He just --
22 He's learned how to control it a whole lot more
23 than what he did before. It ain't quite as bad
24 what it was before.
- 25 Q Okay. Nothing like beating up a dryer or a tin

- 1 house --
- 2 A No, sir.
- 3 Q -- or anything like that?
- 4 A No, sir.
- 5 Q But when he has episodes, what do you mean by
- 6 episodes? Is that -- Are you talking about like
- 7 just being angry and yelling and, you know, kind of
- 8 losing his temper and shouting and stuff, or does
- 9 he do something else?
- 10 A He -- If he's playing his game, and if he's played
- 11 it so long, and then something don't go right, like
- 12 he plays the button and he misses it, you know, he
- 13 gets upset about that a little bit. Usually,
- 14 before that, he would really get upset and go off,
- 15 but now he don't because, like I say, he's learnt
- 16 how to really control it a whole lot better.
- 17 Q Controls his frustrations --
- 18 A Uh-huh.
- 19 Q -- better?
- 20 A Yes, sir.
- 21 Q Okay. Well, have -- You mentioned a couple of
- 22 episodes. What episodes are you talking about
- 23 where he's -- he's lost his temper or whatever it
- 24 was?
- 25 A Well, his sister sometimes will say crazy things

1 that make no sense, and he really gets ticked off
2 about that sometimes.

3 Q And his sister, is that a younger or older sister?

4 A Younger.

5 Q What is her name?

6 A Kimberly. Kim.

7 Q Kim?

8 A (Nods head.)

9 Q That's your daughter?

10 A Uh-huh.

11 Q Where does she live?

12 A Marion.

13 Q Does she -- She doesn't live with you, though,
14 does she?

15 A No, sir.

16 Q Is she married?

17 A No, sir. She was married, but she's separated from
18 him.

19 Q Does she -- Does she see you and Scottie often?

20 A A couple times during the week and maybe on the
21 weekend.

22 Q Does she -- She and Scottie get along?

23 A They get along pretty good until, you know, the
24 little things she says kind of tick him off. Now,
25 sometimes he'll just let it go, you know. So, he

1 does okay on that. He's learnt to do better with
2 that.

3 Q Okay. Has there been any incident between them
4 where he has, like, threatened her or --

5 A No, sir.

6 Q -- anything like that?

7 A No, sir.

8 Q Is there anything that you know of that she may do
9 to aggravate him or agitate him purposefully?

10 A No, sir.

11 Q Okay. Well, other than -- other than that, any --
12 any other blowup or episode that you are aware of
13 since he's been back?

14 A Well, like with the incident with the doctor, at
15 Dr. Evans' office. Yeah.

16 Q Dr. Evans' office. Were you there?

17 A Yes, sir. That day, yes.

18 Q Could you tell me generally what happened?

19 A We was supposed to have a nine o'clock appointment
20 that morning. I went and told them that we was
21 there. They called us around to the other room and
22 told us that they couldn't find the file, and then
23 that's when they brought up that they had -- we had
24 to do two things, do the sleep test and to see Dr.
25 Chokshi about his back, but they didn't tell us we

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- 1 had to do that in a month's time to come back on
2 the 5th of January, and he got upset about it, and
3 he blew [sic] up at it. Yes, sir.
- 4 Q And walked out, basically?
- 5 A Yes, sir.
- 6 Q Did he get upset -- Did you see the doctor at all?
- 7 A No, sir.
- 8 Q Okay. Just waiting on the appointment?
- 9 A Yes.
- 10 Q Did he have to wait a while, or did he just get
11 upset because they lost the chart and stuff?
- 12 A He got upset because they -- he -- they told him
13 that we would have to do the back -- see the back
14 doctor and do the sleep test before Dr. Evans would
15 see him.
- 16 Q Okay. Is there anyone that you know of that could
17 prescribe medications for him currently, or refill
18 medications?
- 19 A Not right offhand I don't, no, sir.
- 20 Q Does he have or did he have in the past a regular
21 family doctor?
- 22 A Yes, sir, and that one won't work.
- 23 Q Who was that? Do you remember?
- 24 A Keith Stewart.
- 25 Q (Indicates lack of understanding.)

- 1 A Keith Stewart.
- 2 Q Stork?
- 3 A Stewart.
- 4 Q Stewart. Stewart.
- 5 A Stewart.
- 6 Q Okay. That was the doctor he saw right after the
7 emergency room?
- 8 A Yeah.
- 9 Q Okay. That's the doctor he said he doesn't want to
10 run into?
- 11 A Yes, sir.
- 12 Q Okay. But, otherwise, you've observed him --
13 Apparently -- Apparently, he's acquired some
14 technique or some ability to control his outbursts
15 and his anger and his aggression --
- 16 A Yes, sir.
- 17 Q -- in general, and that's -- you see that --
- 18 A I see a big difference in that from where he went
19 to Texas and now, yes, sir, since he's been back.
20 Yes.
- 21 Q Okay. You think those are things he learned in
22 Texas, or do you think he's just happier to be back
23 here in South Carolina?
- 24 A He learned a lot out there in Texas. They done
25 real good out there for him. Yeah.

1 Q Okay. Tell me -- Tell me a little about your
2 daily routine with Scottie, things that you do for
3 him, you know, just what you do on a typical --
4 typical day.

5 A Okay. Like, this morning, I got up and got him up.
6 We come to Florence and met this meeting. Then,
7 like, in the morning is going to be Dr. Federer's
8 office. We come back here for a doctor appointment
9 in the morning. Then I think we go to -- Wednesday
10 to Dr. Chokshi's, to see him. So, I'm making sure
11 he's going to his doctor appointment when he's got
12 them and make sure he's got his medicine, pick it
13 up, and make sure he's got something to eat. His
14 appetite is not as good like it was, but when he
15 gets hungry, I fix him what he wants. If I don't
16 get it -- If I don't have it, I'll go to the store
17 and, like, get something from Burger King or
18 something for him to eat, you know. I do that. If
19 he wants something from Wal-Mart's, I'll run to
20 Wal-Mart's and pick it up for him, and -- You
21 know, I'm doing, like, errands for him and taking
22 care of him there at the house.

23 Q Okay. Now, do you often take him with you on
24 errands?

25 A No, sir. He won't go.

- 1 Q So, he stays home by himself when you're --
- 2 A Yes, sir.
- 3 Q -- at an errand?
- 4 A Yes, sir.
- 5 Q Other than running errands and going to, you know,
- 6 any doctor's visits that you have to go to, are
- 7 there any other times when you leave Scottie by
- 8 himself?
- 9 A When I go to the doctor myself. Yes, sir.
- 10 Q Okay.
- 11 A Or like when I go to the grocery store or stuff
- 12 like that, I leave him like that.
- 13 Q What would be the longest period of time that you
- 14 can recall leaving him by himself since -- since
- 15 he's been back here in South Carolina?
- 16 A He -- If I go to the doctor, I should be back by
- 17 three or four hours, you know, and stuff like that.
- 18 Q If you're gone for three or four -- two, three,
- 19 four hours, you know, time span about like that,
- 20 have you ever come back home and found a problem,
- 21 you know, something that happened while you away,
- 22 with Scottie?
- 23 A No, sir.
- 24 Q Okay. If he's left at home by himself, he
- 25 entertains himself? He seems to be okay?

- 1 A He's playing his game or he's watching his movies,
2 or if he ain't doing that, he's asleep, yes, and I
3 make sure the doors and stuff is locked and he's
4 took care of before I left.
- 5 Q Does he seem to be comfortable, at ease, with his
6 situation at home, happy, for lack of a better
7 term? Happy's probably not accurate, but --
8 probably not a good term, but comfortable, --
- 9 A He does --
- 10 Q -- you know, at ease?
- 11 A He feels like he is safe. If he goes out to some -
12 - goes somewhere, like Wal-Mart's, and somebody
13 will say something or bump into him and not -- not
14 said it right, he would take it wrong. He might
15 explode. So, he's -- really, he's protecting him
16 and protecting the other people. Yes, sir.
- 17 Q He's afraid to go to Wal-Mart?
- 18 A Yes, sir.
- 19 Q Because of possibly maybe seeing somebody he
20 doesn't want to see or something like that?
- 21 A Or somebody say something wrong to him or bump into
22 him --
- 23 Q Right.
- 24 A -- by accident, you know, --
- 25 Q Right.

- 1 A -- and he's -- he's trying to protect his self and
2 other people. So, you know, --
- 3 Q Okay. Now, have you -- have you actually seen him
4 harm anybody physically at any time since this
5 accident has occurred?
- 6 A No, sir.
- 7 Q Prior to the accident, was he -- you know, was he
8 violent or aggressive to where he would get in
9 fights and hurt other people or get hurt himself?
- 10 A Are you talking before the accident?
- 11 Q Before the accident, yeah. Was he that type?
- 12 A No, sir, because he enjoyed life, he done what he
13 wanted to do, he went places. No, he would not
14 hurt nobody. He'd help everybody he could help if
15 he could.
- 16 Q Led a pretty normal life before --
- 17 A Yes, sir.
- 18 Q -- the accident? Didn't have any problems with
19 fights at school or fights at bars and stuff like
20 that?
- 21 A He didn't go to bars and stuff like that.
- 22 Q Okay. Now, you provide the -- You're his sole
23 means of transportation; --
- 24 A Yes, sir.
- 25 Q -- is that correct?

- 1 A Yes, sir.
- 2 Q Okay. You have one family vehicle?
- 3 A He's got two vehicles. He bought him a truck since
- 4 he's been home.
- 5 Q He has?
- 6 A Yes.
- 7 Q Bought a truck?
- 8 A Yes, got him a truck. That's what he wanted while
- 9 he was in Texas.
- 10 Q What kind of truck did he buy?
- 11 A It's a '98 GMC pickup.
- 12 Q And is somebody making the payments on that?
- 13 A He is, every month.
- 14 Q So, he hopes to be able to drive this someday?
- 15 A Yes, sir.
- 16 Q Does anybody drive it now?
- 17 A I do.
- 18 Q Okay. And you have your -- You have another
- 19 vehicle?
- 20 A He's got a '93 -- '92 Mitsubishi Eclipse. He had
- 21 that before he got in -- got hurt in the accident.
- 22 Q So, he still has that?
- 23 A Yes, sir.
- 24 Q Does anybody drive that car?
- 25 A I drive that every now and then, you know, to keep

1 it running, and he gets in it and rides in it, too.

2 Q Okay. Has he attempted to drive since he's been
3 back?

4 A He hasn't -- When he got in the accident, he has
5 not drove and behind no steering wheel after the
6 accident, before he went to Texas and since he's
7 been home. No, sir.

8 Q Okay. You prepare all his meals; is that correct?

9 A Yes, sir.

10 Q Either takeout or --

11 A Yes.

12 Q Either takeout food or go to a restaurant or cook
13 at home?

14 A I cook at home. When he decides, like, he wants,
15 like, porkchop and broccoli, I'll go to the store
16 and get it. I'll cook that. Like, yesterday he
17 wanted a fish sandwich. I went and got that, and
18 last night I cooked chicken and pastry, and he eat
19 some of that. So, I try to fix him something he
20 likes, his main stuff that he likes to eat.

21 Q Does he do any cooking or fix any of his own meals?

22 A Before he -- Before he went to Texas, he would --
23 he would warm up his food while I worked. He would
24 leave the stove on a lot. Since he's been home, he
25 left the stove on one time, and he forgot to cut it

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1 off, and he's kind of worried about that, you know,
2 he would leave it on. So, I do the cooking and
3 everything.

4 Q Okay. Now, he mentioned in his deposition earlier
5 today what his typical daily routine is like,
6 playing video games, maybe using the Internet,
7 watching TV. Those are the main things. Are there
8 any other activities, kind of routine daily
9 activities, that you know of that he partakes in?

10 A He'll get in there and clean up his room. He don't
11 get it all the way cleaned up. He'll clean up what
12 he can for the back injury, and he has washed his
13 clothes and put them in the washing machine and
14 forgot about them, and when I find them I would dry
15 them for him, you know, but he does try to do his
16 laundry, too, yeah.

17 Q Okay. Now, do you and Scottie get along pretty
18 well on a day-to-day basis?

19 A Yes, sir.

20 Q No kind of -- Is there any kind of conflict
21 between the two or you, --

22 A No, sir.

23 Q -- arguments or anything like that?

24 A No, sir.

25 Q He treats you respectfully?

1 A Oh, he picks at me, you know, stuff like that, but,
2 yeah, he respects me. Yeah.

3 Q He does what?

4 A Picks. Picks at me, --

5 Q Okay.

6 A -- but, yeah, he respects me.

7 Q Does he do what you tell him to do if you give him
8 a directive?

9 A He tries to do it. If he can't do it, he tells me
10 he can't do it. You know, like picking up his
11 clothes. He'll pick up what he can and stuff, you
12 know. He tries. He really does.

13 Q You feel like he's making good effort? He's not
14 just laying around saying I don't want to do
15 anything?

16 A It's a big improvement since he's been back from
17 Texas. Before, he wouldn't do nothing. He
18 wouldn't, you know, try to do his room. He would -
19 - He's done more now since he's been back from
20 Texas. Yes, sir.

21 Q Okay, but he doesn't do any kind of, like, out --
22 yard work, anything like that?

23 A No, sir.

24 Q Does he -- If he goes out to eat, do you always go
25 with him, or does he ever go by himself?

- 1 A Me and him goes together.
- 2 Q Does he ever go anywhere outside of the house by
- 3 himself?
- 4 A No, sir.
- 5 Q Doesn't have any desire to do that?
- 6 A No, sir.
- 7 Q Okay. Do you know if he's had any -- any alcohol
- 8 usage since he's been back?
- 9 A No, sir. No, sir.
- 10 Q Don't keep any alcoholic beverages in the house?
- 11 A No, sir.
- 12 Q Okay. Do you know if he has been exposed to
- 13 marijuana at all since he's been back?
- 14 A I don't think he has. I know he did before, but I
- 15 don't think he has since he's been back.
- 16 Q Does he have any interaction with friends, other
- 17 people in the community, you know, since he's been
- 18 back?
- 19 A Only one I see, maybe see his sister and the
- 20 grandbaby and the baby's daddy, and that's about
- 21 it, sir.
- 22 Q The grandbaby? Whose --
- 23 A My grandbaby.
- 24 Q Is that your daughter's --
- 25 A Yes, sir.

- 1 Q -- child?
- 2 A Yes, sir.
- 3 Q Okay. Is he around the grandbaby much?
- 4 A Yes, sir. When he -- she comes around, yes, sir.
- 5 Q Okay. Does he interact well with her?
- 6 A Yeah, he really does. Yes, sir. That's his pride
- 7 and joy.
- 8 Q How old is she?
- 9 A She'll be two in March.
- 10 Q Okay. So, he spends time with her and plays with
- 11 her and stuff?
- 12 A Yes, sir.
- 13 Q Do you have any responsibilities that you kind of
- 14 assign to him, chores, things like that, that you
- 15 want him to do on a daily basis?
- 16 A Well, we have talked about him cooking, but he's
- 17 kind of worried about the stove, and I'm trying to,
- 18 you know, -- What I'm trying to tell him that he
- 19 needs to show me he can do is cooking and learn how
- 20 to cut the stove off because if something happens
- 21 to me, he will be able to take care of his self.
- 22 That's the main thing I'm worried about right now
- 23 with him.
- 24 Q Now, does he have any role in managing his own
- 25 finances?

- 1 A What, like spending money?
- 2 Q Right, the -- How do you work the checks that come
- 3 in? Are there two checks, or is it just one check?
- 4 A One check. His disability goes to the bank. It's
- 5 deposited in there. His workers' comp check comes
- 6 to the house.
- 7 Q The Social Security disability goes to --
- 8 A The account.
- 9 Q -- direct deposit?
- 10 A Yes, sir.
- 11 Q And then the workers' comp check comes to the
- 12 house?
- 13 A Uh-huh.
- 14 Q Okay. And do you handle all the banking? Do you
- 15 deposit that?
- 16 A Yes, sir.
- 17 Q Does he have access to money when he wants it, or
- 18 do you have to give him money?
- 19 A Well, like if we leave here and he wants to go to
- 20 Best Buy, he'll go buy something, and sometimes
- 21 he'll use his debit card, and sometimes he'll sign
- 22 the check. Mostly it's me signing the check, you
- 23 know, what he needs and stuff like that. And
- 24 buying groceries, I'll do that.
- 25 Q Do you feel that the placement -- We call this the

1 placement, his current -- current placement, I like
2 to refer to it as, which is at home with you. Do
3 you feel like that's worked out pretty good since
4 we -- you know, since he came back from Texas?
5 Overall, has it worked out pretty good?

6 A What you mean by that?

7 Q Well, his living with you and your providing for
8 him and doing the things that you just described to
9 me, does that all seem to be working out okay as
10 opposed to his situation, being, you know, in Texas
11 before that?

12 A Yes, sir. Yes, sir.

13 Q Okay. You're happy with how it's gone for the past
14 eight months?

15 A Yes, sir.

16 Q Do you try to encourage Scottie to do -- to try
17 some -- branch out and try some more things, like
18 maybe go -- go into Wal-Mart or going shopping or
19 going to a movie or going to a ballgame, get out
20 and do some things?

21 A Really, there ain't nothing much around in Marion,
22 and the ballgames he went to in Texas, those were
23 pretty loud, and it bothered him, you know, and
24 stuff like that. Movies, we don't have except here
25 in Florence and stuff like that.

- 1 Q So, you're just saying there's just not that much
2 to do?
- 3 A Yes, sir. Now, he did mention something about
4 painting. He is getting back in the painting
5 thing. So, that's a big change, too.
- 6 Q Do you and he ever go to church?
- 7 A I'm trying to get him to go now. It's hard to wake
8 him up.
- 9 Q Yeah.
- 10 A And this morning, it was kind of hard to get him up
11 this morning, so -- We got here anyway.
- 12 Q Do you have a church membership anywhere in Marion?
- 13 A We did, but the -- they closed the church down.
14 The preacher left.
- 15 Q Okay. Let me ask you a little bit about the
16 medical treatment. Are you -- Are you comfortable
17 with Dr. Federer --
- 18 A Yes, sir.
- 19 Q -- and the services that he's been providing?
- 20 A Yes, sir.
- 21 Q Okay. Did you get enough of a flavor for Dr. Evans
22 to be able to tell whether you felt like he was
23 going to be a good fit or not?
- 24 A The first day, we talked to him and explained what
25 happened to Scottie and stuff like that, and then I.

1 -- to me, he just jumped too fast on that medicine .
2 that he give Scottie, and -- I mean, you know, just
3 for the first time. It might've worked out, but it
4 just didn't.

5 Q Okay. Now, Dr. Federer, how often has Scottie been
6 able to see him? Is it once a week?

7 A It was every two -- It was twice every two weeks,
8 and now they cut it down once a week. So, he comes
9 -- He didn't come this past Tuesday. I come
10 because Miss Cynthia told me that I could come and
11 see him, too.

12 Q Okay.

13 A And I come, when he don't come, and talk to Dr.
14 Federer, and then we come last Friday. Dr. Federer
15 made an appointment for last Friday, so he saw him
16 last Friday. Scottie saw him.

17 Q Okay. All right. Now, when he misses
18 appointments, why is that? Do you know?

19 A That has been the weather is so bad, the rain and
20 the thunderclouds and the coldness. His head is
21 hurting so bad that he can't get out the bed.

22 Q Is it just when weather's bad?

23 A The weather, -- The weather, the hot weather.
24 Since he's been home, back here in the summer when
25 the weather was so hot, he couldn't get out the bed

1 then because it was bothering his headaches real
2 bad.

3 Q So, the warm weather bothers --

4 A Yes, sir.

5 Q -- bothers him, as well?

6 A Yes, sir.

7 Q Not just moisture or storms?

8 A The whole -- The summer, the spring, all of it
9 bothers him.

10 Q Okay. So, when he -- when he does miss
11 appointments, it's always because of a headache?

12 A Yes, sir.

13 Q Any other reason that he's missed appointments that
14 you know of?

15 A According -- It's according like if he has been
16 up, say, three or four days and nights and he
17 couldn't sleep for the headache, and then his body
18 gets tired and the headache is so bad it makes him
19 sleep for two or three days. That has caused him
20 to be -- miss doctor appointments, too.

21 Q Okay. So, sleep or headache?

22 A Yeah.

23 Q Do you think he needs -- Do you think he needs the
24 sleep testing and possible treatment for sleep
25 apnea?

1 A Well, we've been trying to do the sleep test, but
2 it's been kind of hard on his headaches right
3 there. He couldn't make the appointments because
4 when we have an appointment for the sleep test,
5 that's when he -- his sleeping regime is all messed
6 up, and when his body says goes to sleep, he goes
7 to sleep. So, he cannot stay up during the day and
8 up, you know, -- So, that's messed up -- messed up
9 for him, too.

10 Q It just sounded like from his testimony that his
11 sleeping was pretty chaotic. Does he -- Does he
12 have any kind of routine, or is it just really
13 sporadic, the way he sleeps?

14 A When his headache's bad, that's when he sleeps.

15 Q Okay.

16 A And when -- You know, when they're so bad, that's
17 when he has to go to sleep. He goes to sleep
18 during the day sometimes.

19 Q But does he -- does he usually stay up late and
20 then sleep -- you know, sleep into -- into the day?
21 Does he stay up late at night?

22 A There have been times that he stayed up at night
23 with his headache so bad, then the days he would
24 sleep all day, and then it change where he'd sleep
25 all night and be up all day. It's just according

1 to how the weather --

2 Q Yeah.

3 A -- and the coldness, the rain, the storm, the
4 tornados coming in. All that's -- the weather's
5 got to do with it.

6 Q Does he ever just stay up late at night or maybe
7 all night just playing computer games?

8 A He has done it. He has done it, but I think what
9 he does, when his headache's so bad, he plays the
10 game so he kind of gets the headaches kind of
11 pushed back so it won't be so bad on him. He's
12 trying to use that to help with his headaches, too.

13 Q Now, let me ask you about the medication. He said
14 that he's only taking medication -- I think
15 Depakote and Keppra right now for --

16 A Yes, sir.

17 Q -- the seizure control?

18 A Yes, sir.

19 Q Are you familiar with the other medications that he
20 -- that have been prescribed that he's supposed to
21 be taking?

22 A The one that Dr. Evans prescribed to him was one
23 for the headache, one was for something for --
24 Alzheimer's medicine to help maybe his memory, and
25 then something for sleeping, and when he took it he

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1 could tell his body was really jittery. And the
2 headache medicine he had took awhile back, it
3 didn't do no good then, so he -- he's not taking
4 it, but he has took it a couple of times when the
5 headaches has been bad.

6 Q Okay. How does he take his -- Does he take his
7 medications on his own, or do you give them to him?

8 A In Texas, they wanted for him to do it, you know,
9 before I did it, but that's something that he's got
10 to get used to doing. So, he takes them early -- a
11 certain time in the morning and a certain time at
12 night. So, he's got a certain time, and he's got
13 his clock to go off, and I'll be in there early in
14 the morning or at night watching TV with him, the
15 movies, and he's taken them, so I'd see him taking
16 them, too.

17 Q Does he -- But he takes them on his own? You
18 don't keep them in a certain place and then
19 actually give him, you know, a particular capsule
20 or pill?

21 A He's got them right there in the little drawer
22 right there beside of him. So, that's keeping
23 reminding him it's time to take them.

24 Q Keeps them in his own room?

25 A Uh-huh.

1 Q Okay. So, he takes them on his own. You don't
2 give them to him. Is that correct?

3 A No, sir, because that program in Texas was trying
4 to learn him to do it in case something happens to
5 me. They give him responsibility, you know, not to
6 be like a handicap I guess. So, I know when he
7 takes it because I'm in there when he's taking
8 them. I know about what time, certain times, so --

9 Q But it's only just the seizure medication, right?

10 A Yes, sir, right now.

11 Q He's not taking any other medication?

12 A No, sir, except once in a while he might take some
13 of that there headache medicine that Dr. Evans give
14 him right now.

15 Q Do you think that it's important that he take the
16 prescription medication as it's prescribed by the
17 doctor?

18 A I think somebody needs to find some kind of
19 headache medicine to try to help him because he's
20 been on so much headache medicine.

21 Q Okay, but didn't Dr. -- wasn't Dr. Evans trying to
22 do that?

23 A He give him the same medicine that he had before he
24 went to Texas, the same medicine, and it didn't do
25 Scottie no good then.

1 Q How about the medication that Dr. Healy had
2 prescribed? Was he taking that --

3 A Yes, sir.

4 Q -- the way it was prescribed?

5 A Yes, sir.

6 Q All of it, including the headache medication?

7 A Yes, sir.

8 Q How do you know?

9 A Because I was there. He -- First, when he started
10 taking -- When I was working, he was taking his
11 medicine on his own, and he did have kind of like -
12 - he was forgetting, and that caused the seizures
13 that time. So, since I've been back, -- I've
14 learned a lot from Texas by him being out there
15 with the people, there when he takes it, being
16 there and watching him take it. So, being there
17 and watching him, and he's been responsible to take
18 it on his own.

19 Q So, you watch him always taking the medication?

20 A Yes, sir.

21 Q Does he come to you and say, Mom, I want -- I want
22 you to see what I'm doing, I'm taking my medicine
23 right now?

24 A No, he don't do that. I'll say, Scottie, it's time
25 for your medicine, have you took your medicine, and

1 usually now he takes the bottle, the little
2 medicine thing, and that's how I know he's taking
3 it. So, it's, like, between eight and nine in the
4 morning and eight and nine at night. That's when
5 he's got it scheduled for.

6 Q Okay. Now, assuming that Scottie and Dr. Federer
7 are able to find another medical doctor who can
8 prescribe medications, and maybe they change his
9 routine or maybe they keep him on the medication
10 routine he's on now, whatever the case may be, but
11 they find a doctor and he's able to prescribe the
12 medications, assuming that that happens, that
13 they're able to do that, do you think that in that
14 situation it is important that Scottie take the
15 medications as prescribed by that doctor?

16 A Yes, sir.

17 Q Do you feel that you have the ability to ensure
18 that he takes them?

19 A Yes, sir.

20 Q Okay, but what about the prescriptions from Dr.
21 Evans? Did you try to ensure that he took those?

22 A Yes, sir, I did. I watched him when he took them
23 and everything, and that's when he said it was --
24 I think what it was with the three new medicines,
25 that he'd do them plus what the medicine he had

1 been on, his body was going through a transaction.
2 His body was fighting for the old medicine, and his
3 body was fighting for the new medicine, and it was
4 just, you know, making his body wheezy because your
5 body's got to get used to the new medicine from the
6 old medicine, and I think that's one reason he
7 quit, too.

8 Q But you feel like -- You feel you have enough
9 control to be able to make sure he is taking --

10 A Yes, sir.

11 Q -- them all the time?

12 A Yes, sir, because I do -- I do ask him a lot about
13 his medicine. Yeah, that's the thing I do, make
14 sure he's got his medicine.

15 Q And meals, make sure he's got his --

16 A Yes, sir.

17 Q -- food? Since he's been back, has he generally
18 been compliant with keeping appointments with
19 doctors, or has he missed a whole lot?

20 A He has missed a couple. Yeah, he has.

21 Q You said those were always due to sleep or --

22 A The headaches. Yes, sir.

23 Q Do you think that you have the ability to --
24 whenever possible, -- Unless he's laid out with,
25 you know, a headache or something like that, do you

1 think you have the ability to at least encourage
2 him or insist that he -- that he keep his
3 appointments?

4 A I can see -- I'm going to put it this way. I can
5 see when he has a headache that just he feels like
6 his head is going to explode in his face. His
7 features is a whole lot stiffer than it's supposed
8 to be. I know that is a bad headache, and that's a
9 headache that you cannot get out the bed. I can
10 tell when it's a light headache, like a medium
11 headache, but when he's -- he just -- like he's
12 going to explode and his face is changed and his
13 body's different, that's when there's a headache
14 that he is not ready to get out the bed, and I've
15 told all these doctors all this. So, I know him
16 pretty well, yeah.

17 Q Okay. Do you have any -- Do you have any fear of
18 Scottie? Are you afraid of him?

19 A I've never been scared of Scottie. No, sir.

20 Q You feel like if you tell him to do something, that
21 he'll do what you tell him?

22 A Yes, sir. He might -- might be a little anxious a
23 little bit, but, yeah.

24 Q But he's never threatened to hurt you since he's
25 been back here, or harmed you, or anything?

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1 A He's never been -- He's never been where he was
2 going to harm me before the accident, before he
3 went to Texas, and he's not like that now, no.

4 Q Never has?

5 A No, sir.

6 Q Do you feel like things are working good with his
7 placement, with him being at home with you, or do
8 you think that there's -- Well, let me just ask
9 you this. Do you think that Scottie could benefit
10 by being back in a placement like he was at at
11 Tangram, ResCare, or Learning Services in North
12 Carolina? Do you think he could benefit by
13 something like that, or do you think he's better
14 off at home with you?

15 A Right now, I feel like he's better at home because
16 -- He did say that if it got where he couldn't
17 handle it, he would go -- he would talk about going
18 somewhere else, yeah, but right now he feels a
19 hundred percent better being home, and he knew what
20 he was before, --

21 Q Right.

22 A -- and he knows what he is now. So, being in Texas
23 for 19 months has done a world of good for him.
24 Yeah.

25 Q Do you -- Have you seen him progress in terms of

1 recovering from his injuries or improving from his
2 injuries since he's been back from Texas?

3 A What you mean by that?

4 Q Well, the different problems that he explained in
5 his deposition, the problems that he described, --
6 Of course, we've got headaches, we've got the lack
7 of feeling in the arm, we've got the sensitivity in
8 the ear, we've got back problems. I don't remember
9 offhand if he said anything else, but as far as
10 those things go, do those things seem to have
11 stabilized? Have they gotten better? Have they
12 gotten worse? Do you have any feeling about that?

13 A They're about the same, what he was before he went
14 to Texas because the light still bothers his right
15 eye, he can't smell, his hearing, like the hair
16 dryers and the stuff like that irritates him, and
17 him sleeping at night with the headaches being so
18 bad, with his back hurting he's tossing and turning
19 all night long because I'm watching him, checking
20 on him at night and at day, and when he does sleep,
21 he can't get comfortable because he's tossing and
22 turning when his back's bothering him, and during
23 the day if he's asleep, I'm constantly checking on
24 him all the time, and at night, too. I'm up and
25 down checking on him at night, too, while he's

1 asleep.

2 Q You check on him at night while he's asleep?

3 A Yes, sir.

4 Q Okay. What areas, then, have you seen him really
5 make progress since he has been back from Texas, if
6 any?

7 A His anger. His anger has done a lot.

8 Q The behavior control?

9 A Yes, sir.

10 Q That's improved a lot?

11 A Yes, sir.

12 Q Okay?

13 A Yes, sir.

14 Q Do you -- Do you see Scottie anytime in the
15 foreseeable future maybe being able to do any kind
16 of work?

17 A My honest opinion, --

18 Q Uh-huh.

19 A -- no, sir, because he is -- he's just -- he can't
20 even get up and do his room much because what he
21 does in his room, make up his bed and put the
22 bottom sheet on, when he comes in and does that, he
23 says I can't do no more, and if he goes in to carry
24 his clothes to the dryer, the washing machine, it
25 sounds like he's hurting. He gets up and walks

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1 around in the house, and I can tell the way his
2 back's hurting that he is really in pain because
3 the way he walks and stuff like that. I watch
4 that, too.

5 Q Okay. Still has -- He complains about a lot of
6 back pain?

7 A Yes, sir, with the headaches.

8 Q Now, he hasn't received any back treatment, though,
9 since he's been back from Texas except for the --
10 seeing Dr. Chokshi recently?

11 A We saw him the 24th, yes, sir, of this month.
12 We're supposed to see him the 7th of February, this
13 week.

14 Q Okay. Do you see Scottie as, anytime in the
15 foreseeable future, being independent enough where
16 he could actually live on his own?

17 A I think so because me and him's talked about it.

18 Q Really?

19 A Uh-huh.

20 Q Is that something that he would desire? Has he
21 expressed that to you?

22 A Well, like I said, I ain't going to be around
23 forever, and the main thing is he don't want to go
24 and be sent off and be locked away. He wants to
25 try to do -- live on his own, and he said he thinks

1 he could do it. So, we're talking about that a
2 lot. Yeah.

3 Q Do you feel like Scottie is any kind of danger to
4 himself or to others currently?

5 A No, sir.

6 Q Have you set any kind of goals along with Scottie
7 as to certain -- you know, certain things you would
8 like to see him achieve or accomplish? Have y'all
9 ever sat down and talked about stuff like that?

10 A Well, we -- I've talked to him about him getting --
11 cooking a little bit more and showing me he could
12 do a little bit more to take care of his self
13 because if something does happen to me, I'll know
14 he's -- know he can do it.

15 Q So, more independence?

16 A Yes.

17 Q Possibly --

18 A He wants to drive, --

19 Q -- drive?

20 A -- and he talked to Dr. Federer about driving, and
21 if he has -- if he's able to drive, maybe he could
22 drive during the day because he won't be able to
23 drive at night because the right eye, with the
24 lights and the car lights, he can't see good at
25 night with that.

1 Q Has any doctor addressed that vision problem
2 recently?

3 A Not since back in 2002 or three.

4 Q Does he have any prescription glasses?

5 A No, sir. He just wears dark sunglasses to help
6 with the lights and stuff, the sunlight and car
7 lights.

8 Q But you don't think he'd be able to see well enough
9 to drive --

10 A At night?

11 Q -- right now? Just at night, or do you think maybe
12 he could see -- see well enough in the daytime but
13 not night?

14 A I think he can during the day. I don't think he'd
15 be able to do it at night because at nighttime when
16 he's out, the car lights are coming toward him, and
17 the night lights, the street lights bother him a
18 lot, and he's squinching real bad with his right
19 eye.

20 Q How about as a goal -- One of the goals I think
21 Dr. Federer expressed was to increase Scottie's
22 compliance with -- and cooperation with medical
23 providers, with appointments and prescriptions,
24 things like that. Is that a goal that you've
25 discussed with Scottie, too?

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- 1 A Yeah, to try to get, you know, to go to the
2 doctors, yeah, and see the doctors and stuff.
3 Yeah.
- 4 Q Have you explained to him, you know, how important
5 that is?
- 6 A Yes, sir.
- 7 Q Let me just look over my notes, and that may --
8 that may be all I have. Okay. Just a couple more
9 quick things. How much is Scottie still smoking?
- 10 A He's not smoking as much as he used to before he
11 went to Texas.
- 12 Q But do you know much approximately, like a pack a
13 day or a carton a week?
- 14 A About a week -- I just went and got a carton, so
15 he'd be -- I'll get another carton by next
16 weekend. So, about a week -- a carton a week.
- 17 Q And you provide all the cigarettes for him?
- 18 A I go get them, yes, sir.
- 19 Q Are you aware of any possible injury, any kind of
20 physical injury, that he has sustained since he has
21 been back from Tangram, like -- you know, like
22 lifting and hurting his back or, you know, falling
23 or anything like that?
- 24 A No, sir.
- 25 Q And you haven't seen any situations like where he's

1 lost -- completely lost his temper and all that and
2 beat up a tree or anything like that since he's
3 been back?

4 A No, sir.

5 Q Have you seen any injuries to his hands or to his
6 forearms or elbows or anything like that?

7 A No, sir.

8 Q You mentioned that his behavior is the main thing
9 that's improved, and his control -- ability to
10 control something is the main thing you've seen
11 improved since he's come back from Texas. Anything
12 else that you've -- that you've noticed in the way
13 of improvements?

14 A What you mean?

15 Q Like improvements as far as recovering from his
16 injuries, recovering from his problem as a result
17 of the accident. Have you seen any other progress
18 that he appears to have made?

19 A No, sir. No, sir.

20 Q Do you -- Do you know of any other medical
21 treatment that you feel that he currently needs
22 that he's not getting?

23 A Well, they haven't done anything about his back
24 until he come home, so that's a good thing there.

25 Q Okay. Working on that with Dr. Chokshi?

1 A Yeah. Yes, sir.

2 Q How about any other -- any other medical treatment
3 or attention, any other problems that need to be
4 addressed that aren't being addressed?

5 A Try to find something to make the headache better.

6 Q And try to find another doctor to prescribe
7 medications?

8 A Yeah.

9 Q Do you have any ideas along those lines?

10 A No, sir.

11 Mr. Cauthen: Okay. All right, Ms.
12 Floyd. Thank you very much. That is all the
13 questions I have.

14 (Whereupon the deposition was concluded at
15 12:10 p.m.)

16 (Deponent has waived reading and signing.)

State of South Carolina)
) Certificate
 County of Richland)

Be it known that the foregoing deposition of Betty Jo Floyd was taken before me;

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

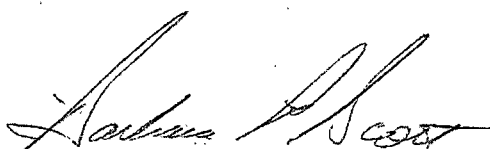
That by virtue thereof I was duly authorized to administer an oath;

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

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

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

Witness my hand and seal this 7th day of February, 2007.


 Barbara P. Scott

Notary Public for South Carolina
 My commission expires April 29, 2007.

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0123790

SCOTTIE FLOYD,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
KEN BAKER USED CARS,	)	
	)	SCOTTIE FLOYD
EMPLOYER,	)	
	)	
LEGION INSURANCE CO. IN	)	
LIQUIDATION THROUGH SCPCIGA,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Scottie Floyd, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 10:09 a.m., Monday, February 5th, 2007, at Carolinas Rehab Services, 1925 Hoffmeyer Road, Florence, South Carolina.

COPY

Reported by

Barbara P. Scott, CVR

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Reported By: Barbara P. Scott, CVR

Also Present: Alexander M. Federer, Ph.D.
Betty Jo Floyd
Cynthia Grimley

Index

Stipulations	3
Examination by Mr. Cauthen	3
Certificate	50

Exhibits

No exhibits marked.

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

Stipulations

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

Whereupon,

Scottie Floyd, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Scottie Floyd.

Examination

By Mr. Cauthen:

Q Mr. Floyd, my name is Mark Cauthen, and I took this case over from another attorney in my firm, Edwin Martin, who took your deposition a couple of years ago, if you remember him, Mr. Martin.

A Yes, sir.

Q And the purpose of this deposition today is just to kind of -- to catch up, a little update. We won't be going back over all the same stuff that you all talked about before. He already covered all the background and employment history and all that kind of stuff, so we won't need to go over any of that.

1 It should be fairly -- It shouldn't be a very long
2 deposition, but just like in the first deposition,
3 -- you know how they work -- if you don't
4 understand a question that I'm asking, just let me
5 know, and I'll do my best to clear that up, and
6 I'll try to -- try to talk clearly so you can
7 understand me. And if you would also just answer
8 and talk as clearly as you can so that Ms. Scott,
9 the court reporter, can take everything down, okay?

10 A Okay.

11 Q You've already stated your name. Could you give me
12 your current age?

13 A Thirty-one.

14 Q Thirty-one. And a current address?

15 A

16 Q And is that your mom's house?

17 A Yes.

18 Q Okay. And you live there currently with your mom?

19 A Yes.

20 Q Okay. And how long have you been living there?

21 A Pretty much -- I think it was probably -- Had to
22 be at least four months, a little over four months
23 after the accident..

24 Q Okay. And you've been there -- You moved back in
25 June of this past year; is that correct, June of

1 2006?

2 A Yes.

3 Q Okay. Okay. Do you have any current sources of
4 income other than workers' compensation right now?

5 A Social Security.

6 Q Okay. I was going to ask you that. Have you
7 already been determined to be entitled to Social
8 Security benefits?

9 A I think so. I'm getting a check every month.

10 Q Okay.

11 A I don't know exactly how far that would --

12 Q Okay. That's right. Do you -- Do you know when --
13 -- Did Social Security determine you to be disabled
14 based on your injuries from back in 2001?

15 A Well, from what I gathered, I'm thinking -- From
16 what I gathered, -- The court date was right
17 before I went to Texas. Everything after is when I
18 found out that they -- it was temporary --

19 Q Okay.

20 A -- because I guess it was due to the fact to see
21 what it does in the next few years.

22 Q Okay. Did they -- Did you have to go to a hearing
23 on that?

24 A Yes, sir.

25 Q You did. Did you -- So, did you have a different

1 lawyer for that?

2 A Yes, sir.

3 Q And who was your lawyer for that?

4 A Whisenhunt.

5 Q John David Whisenhunt?

6 A Yes.

7 Q Okay.

8 The Deponent: (to Mr. Wukela) Well, you
9 were there. It wasn't you, though.

10 A Which one are we talking about, the litem or the --

11 Q Social Security.

12 Mr. Wukela: (to Mr. Cauthen) I just --
13 I think he's confused. Why don't you go back,
14 start from the beginning.

15 Mr. Cauthen: Yeah.

16 Mr. Wukela: (to the deponent) Just
17 listen to his question.

18 Q Well, in the first deposition, I know that Mr.
19 Martin asked you if you had applied for Social
20 Security disability benefits, and I think you -- at
21 that time you indicated that you had applied but
22 that it was pending. Have you heard anything about
23 your application for Social Security disability?

24 A I think that was --

25 The Deponent: (to Mr. Wukela) We went

1 to court for that, right?

2 A I can't -- I know we went to Darlington, and
3 that's where we were having a -- Yeah, that was
4 McDaniels.

5 Q That might've been --

6 A That's when -- after I found out that I was --
7 From what I gathered, they had went from that time
8 all the way back to the date of my accident, and
9 they considered me disabled from that point.

10 Q Okay. Okay.

11 A I mean, I was in Texas after I found out what all
12 happened.

13 Q Okay. Did you -- Did you ever get an order from
14 the Social Security Administration with a -- like a
15 decision and order with a bunch of findings of fact
16 and discussion and all that in there from your
17 Social Security claim?

18 A I couldn't be sure about that. I've seen so much
19 that -- and time is kind of holding up. It's hard
20 to hold up everything you get on it.

21 Q Okay. All right.

22 Mr. Cauthen: Steve, have you -- have you
23 seen any -- any order?

24 Mr. Wukela: He's been adjudicated
25 totally and permanently disabled by the Social

1 Security Administration. He receives present
2 benefits subject to a workers' compensation
3 offset, and you'd have to ask him what his
4 monthly payments are.

5 Mr. Cauthen: Okay, but have you seen --
6 Do you have a copy of the order?

7 Mr. Wukela: I'm sure we could forward it
8 to you. We probably have forwarded it to you.

9 Mr. Cauthen: I don't think that you
10 have.

11 Mr. Wukela: But I'll -- I will forward
12 it to you if you don't have it.

13 Mr. Cauthen: Okay.

14 Q Mr. Floyd, what is the monthly benefit that you're
15 getting from that?

16 A I ain't sure of the figure. It's direct deposit.

17 Q Okay. Well, tell me -- The main thing I want to
18 talk about in this deposition is how things are
19 going for you these days, how things have been
20 going since you've been back in South Carolina from
21 Texas. That's kind of what I want to focus on
22 here. So, I wonder if you could just tell me
23 basically how things in general have been going for
24 you since you have returned back in, I think, June
25 of last year.

1 A Yes, sir. Everything seemed to -- It's been going
2 -- Before I went to Texas, everything was, like,
3 clouded. You know, my temper was a little harder
4 to contain. Since I went to Texas, I've learnt
5 that the meds that I was taking, they kind of upset
6 the balance a little bit. They -- It creates a
7 confusion. I'm thinking clearer. As far as
8 headaches, they've gotten worse since I've come
9 back home due to, I think, the climate change, the
10 variation, but I'm handling that pretty well.

11 Q Okay. You said some of the medicals -- some of the
12 prescriptions you think create some confusion?

13 A Yeah. It's -- Well, I noticed it when -- And --
14 Well, it's like you put the pieces together after
15 the fact. It's -- When I -- When it first
16 started coming down, I remember I was pacing all
17 the time. I was -- I couldn't sleep. I was
18 gnawing fingernails down to -- well, 'til they
19 bled. It was constant, like, I wouldn't sleep
20 three days straight, constantly up moving, doing --
21 It was -- It was like taking me out of who I am.
22 It was -- It wasn't -- You could see later when
23 they'd try something else or they'd take something
24 else away, -- Well, there was a time I just flat
25 out quit most of the meds because everything was

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1 just -- it was getting just too hard to handle with
2 it.

3 Q Okay. Now, you said the headaches have gotten
4 worse since you've been back in South Carolina?

5 A I'm thinking that's because of the climate. It's
6 the -- We're closer to the ocean than where we
7 were geographically in Texas. And the mountains
8 and all that, everything, we're sitting right in
9 between, and that's where I think a lot of the pain
10 comes from. Weather of any sort -- I have not
11 been able to pin down -- Electrical storms, those
12 -- well, those are the worst. It's like I can
13 sense the lightning flash before. I can feel the
14 static, you know, charge.

15 Q If the weather's clear and sunny like it is today,
16 do you -- do you have any problem with headaches
17 generally?

18 A It ain't -- I still have a headache but it's more
19 of a -- the manageable. It's not the one that, you
20 know, starts stressing. It's not the hardest
21 working one.

22 Q Okay. Do the headaches feel pretty much the same
23 these days when you have one as they were back in
24 2003 when you gave your first deposition?

25 A That, I can't -- I can't say because of the meds.

1 Everything that I was on then, everything -- I
2 couldn't tell you -- Everything wasn't clear. It
3 was like my mind was somewhere else, the body was
4 somewhere else, and when I started decreasing the
5 meds, it was like every time I decreased one, I
6 could feel like, you know, the confusion is
7 decreased.

8 Q Uh-huh. Okay. All right. How --

9 A The agitation level drops. It ain't so -- Well,
10 used to, before Texas, you could -- I could get in
11 one of my little rages and go off on a pine tree.
12 I would fight that pine tree until I was exhausted.
13 Then the adrenalin would still burn through the
14 exhaustion. When you get your second wind, you go
15 right back at it, and before you know it,
16 everything, knuckles, elbows, just busted. I have
17 not had that type of episode since -- well, since I
18 went -- went to Texas.

19 Q Since before you went to Texas?

20 A Yes.

21 Q Okay.

22 A Pine trees, dryers, tin building. I didn't throw
23 too much damage to the tree, so that's why I had to
24 revisit that one.

25 Q I understand. Now, the headaches, are they -- you

1 say they're more frequent now. About how often do
2 you have headaches? Do you have something every
3 day?

4 A I have a headache all the time.

5 Q All the time?

6 A It's -- The only time I don't is when -- I used
7 to go after the morphine and all that. The
8 tolerable ones are fine. Those are the ones I can
9 come out daily, the sun don't bother me as bad.
10 The bad ones, there's no going outside, no loud
11 sound, no bright light. Sound just generally
12 bothers me. It's like if you -- if you'll shoot a
13 gun and put your hand on the wall, you'll feel a
14 vibration in the wall. Well, a lot of sounds make
15 that same kind of -- I feel that. It's like I
16 feel it.

17 Q Right.

18 A It's like right between your ears all the time.
19 The smaller headaches, well, I would grade those as
20 basically like your migraine would be. The ones
21 any worse, I will say migraine times ten plus a
22 hangover. So, it's kind of -- That's when you
23 find out you, like, find things that cut that pain
24 away.

25 Q Right. Right. Are you taking -- Are you taking

1 anything currently -- Which one of your
2 prescriptions currently is for -- supposed to be
3 for the headaches, to treat the headaches?

4 A I'm currently not taking anything.

5 Q Is anything prescribed by a doctor for the
6 headaches?

7 A There was, but I can't remember the name of that.
8 It was -- It's like Vicodin.

9 Q Vicodin?

10 A It's a substitute.

11 Q Have you tried the Vicodin?

12 A Yes.

13 Q How does that work for you?

14 A Well, if I -- What I done, I went by his regime.
15 It wasn't doing anything. The agitation level
16 would start picking up, but when the bigger
17 headache come along, I'd do this to see because the
18 Darvocet that I was on before -- I went to two
19 before they would actually start slowing down the
20 bigger ones, and I tried two at one time, and then
21 it seems like it -- it knocks it back from the
22 point of being the agitating -- the ones that tense
23 up your shoulder muscles, run down the spine,
24 everything tightens up.

25 Q Did the Darvocet work better than the Vicodin?

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- 1 A I would say yes.
- 2 Q Okay. Do you have any of the Darvocet left, --
- 3 A No.
- 4 Q -- or just Vicodin?
- 5 A No.
- 6 Q Just Vicodin. Okay. What other -- What other
- 7 medications are you -- are you currently taking?
- 8 A Depakote and Keppra.
- 9 Q And that's for seizure control?
- 10 A Both. Both are for seizures.
- 11 Q Now, have you had a seizure episode since before
- 12 you went to Texas?
- 13 A No.
- 14 Q Okay. Taking anything else besides just those two?
- 15 A No, sir.
- 16 Q Now, do you feel like your situation today is
- 17 better since you've been back in South Carolina as
- 18 compared to your situation in Texas? When I say
- 19 situation, I mean just, you know, situation in
- 20 general. Are things better today --
- 21 A Yes.
- 22 Q -- than they were when you were in Texas?
- 23 A Yes, sir. My mind is clearer than -- Well, it's
- 24 clearer today because it took the period of Tangram
- 25 to where I could start decreasing medicines. I

1 mean, I had to go by doctors' directions and all of
2 what to quit, when to quit, how to -- you know,
3 whether it's -- not stop immediately but, you know,
4 kind of decrease my dosage, and that takes quite a
5 good bit of time when you're taking anywhere from
6 seven to eight pills twice a day.

7 Q Okay. Do you like having more independence here in
8 South Carolina?

9 A Yes, sir, and I'm pretty sure I'm going to grab
10 ahold of some more of it, just a few minor things.
11 I don't think I'm going to be able to pull off
12 anything heroic or anything.

13 Q What kind of things are you thinking about?

14 A I mean, driving.

15 Q Driving?

16 A Currently, my mother is my set of wheels. She does
17 my meds. She takes care of -- Doctor's
18 appointment, she's there. I know that she ain't
19 going to be here forever, so that's one -- It
20 ain't going to be one of those, you know, hurry
21 things. I'm just -- kind of take my time with it.

22 Q Did you -- When was the last time that you -- that
23 you drove a car or a truck?

24 A The last time I drove one? That was within the
25 four-month period at the beginning. That was

1 before I found out there was brain damage. I was
2 telling the doctor that something wasn't right, I
3 was wanting to pull, like, to one side of the road,
4 and I'm thinking from the swelling, all that, my
5 equilibrium was offset. So, after that, the day
6 that they told me what had -- no driving, that was
7 it.

8 Q Okay. Doctors told you no driving?

9 A Yes, sir.

10 Q Do you still have a valid South Carolina license?

11 A No. Well, I've got a -- I've got the license that
12 I had that I had renewed right after the accident,
13 but I just use it as ID.

14 Q Okay.

15 A I don't want to take the chance. I don't know if
16 it does come up in the records, well, you had 15
17 seizures. I don't know.

18 Q Yeah.

19 A And I ain't going down for that.

20 Q Yeah. Okay. Well, tell me -- tell me about what
21 you do in a typical day now since you've been back
22 in South Carolina.

23 A My typical days are slim. I don't -- I don't
24 travel too much, get outside, go where basically a
25 lot of people are. That -- That kind of

1 situation, it's like air just stops moving, there's
2 no air to breathe. So, just basically sit at home,
3 watch TV, play PlayStation video game system,
4 whatever, clean, the typical home thing.

5 Q Do you get out much outside of -- outside of home?

6 A This is about it right here.

7 Q Like, do you ever go grocery shopping or clothes
8 shopping?

9 A No, sir.

10 Q Nothing like that?

11 A Well, clothes, sometimes, yes, but when I go to buy
12 one time, I pretty -- I pretty much have what I
13 need for a year.

14 Q Okay. Now, TV. Anything in particular you like to
15 watch on TV?

16 A CSI. Love all that kind of drama.

17 Q Watch any sports?

18 A Yeah.

19 Q Did you watch the Super Bowl last night?

20 A Oh, yeah.

21 Q Did your team win?

22 A Oh, yeah..

23 Q Mine did, too. Now, do you have a computer at
24 home?

25 A Yes, sir.

1 Q What kind of -- Tell me what kind of hardware and
2 software you've got on your computer.

3 A I can, what, -- I can do video. I can hook my
4 camera up to it, download to a disk. I can make
5 CDs and go on the Internet.

6 Q So, you've got a CD burner on it?

7 A Yes, sir.

8 Q And what kind of computer is it, monitor and --

9 A It's the flat panel -- It's the -- It's just a --
10 Not the -- like that (referring to notebook
11 computer). It's not like that. It's the --

12 Q A desktop?

13 A Yes, sir.

14 Q Desktop.

15 A That's it.

16 Q Okay. Do you know what kind of software you've got
17 installed on it?

18 A I have no idea.

19 Q And you said you've got a --

20 A I don't even know what that -- What is the
21 software?

22 Q You know, like the -- like Microsoft Word and Excel
23 and that kind of stuff.

24 A Uh-uh. I don't have any of that, I don't think.

25 Q Okay.

- 1 A I don't -- I just use it for my -- what I get out
2 of it, and that's it. I don't -- I ain't got the
3 smarts for all that.
- 4 Q Do you have the PlayStation hooked up to it?
- 5 A No, sir.
- 6 Q That's hooked up to the TV?
- 7 A Yes, sir.
- 8 Q Okay. And, so, you usually use the PlayStation
9 every day?
- 10 A That's pretty -- Well, I got one right before
11 Christmas, and I've done killed it, so --
- 12 Q Used it up?
- 13 A Yeah. It's spent. It's done. I can sit -- Let's
14 see. The longest I think I've sat down is 12
15 hours, constantly, nothing but one game. You're
16 watching nothing else. That's it.
- 17 Q Twelve hours playing at a time, --
- 18 A Yes.
- 19 Q -- in a clip?
- 20 A And you're just supposed to only run it for two and
21 then let it cool off for an hour and then go back
22 to it. I don't do that.
- 23 Q Okay.
- 24 A The impulse don't allow me to stop. If I do, I'll
25 even leave it running and watch an hour show and go

1 back and play it again. When the commercials come
2 on, bam, go right back to it. Miss part of the
3 show, but that don't bother me as bad.

4 Q Okay. Does the PlayStation have like a -- Is it,
5 like, a joystick that you operate with your right
6 hand, or is it --

7 A It's a -- You hold it in both hands. It's a --
8 That's it. It's -- I'd have to show it to you to
9 get an idea of what it's like.

10 Q Yeah.

11 A Use these two fingers to hold the pad.

12 Q Uh-huh.

13 A You've got two buttons up here. Four buttons on
14 the thumb. You've got a knob on the right thumb,
15 and you've got a direction pad and another knob on
16 the left thumb. So, it's kind of complicated.

17 Q Okay.

18 A Well, it's complicated if you look at it in the
19 fact that you don't feel nothing in your right
20 hand.

21 Q But it takes -- it takes two hands to --

22 A Yeah. You can't -- can't play with one and -- No.

23 Q Are you pretty proficient with those games? Are
24 you getting --

25 A Oh, I'm very efficient. Yes. A lot of practice,

1 so --

2 Q Right.

3 A You don't get -- You don't have nothing but to get

4 better.

5 Q Right. Well, now, in the first deposition, I know

6 you were talking about you had numbness in the

7 right arm and right hand.

8 A Numbness is a sensation you would feel. I feel

9 nothing.

10 Q Okay.

11 A Nothing.

12 Q There's just no feeling --

13 A No --

14 Q -- no feeling in the right arm?

15 A It's like from where the shoulder rounds off from

16 where the -- what is that muscle -- down, I don't

17 feel it.

18 Q Okay. No feeling. Do you have feeling in your

19 hand?

20 A No.

21 Q But you can operate the PlayStation --

22 A Yes, sir.

23 Q -- with your hand? Okay.

24 A It's kind of hard to think of -- You have to go

25 without feeling it to know what that's like. It's

1 kind of -- You build, like, a -- You adjust. You
2 adapt. You -- Well, I mean, I played the
3 PlayStation, what, four or five years before the
4 accident, so I already had an in-brained idea of
5 how to play the pad. So, after that, it was just a
6 matter of learning to mash the -- I still mess up
7 and mash the wrong button sometime, but that's --
8 that's life.

9 Q Okay. Has the lack of feeling in your arm -- has
10 that changed since, you know, three, four years ago
11 when you gave the first deposition?

12 A No, sir.

13 Q It's still just like it was with no feeling?

14 A It's weird. It's like sometimes I think I feel the
15 pain. I think. I ain't sure if I feel something
16 in it. It's like something -- It's like a knot
17 that just bursts with pain. That's what it feels
18 like. I don't -- But I don't feel it. It's been
19 a while. I don't know if I sleep on it wrong and
20 it's trying, or --

21 Q Yeah.

22 A I don't know what it still is.

23 Q It's been like that just since the accident
24 happened in 2001?

25 A Well, it was -- it was after the fact that --

1 Well, I left -- I went on one of my little trips,
2 and the lady who was taking blood, I'm thinking,
3 well, she might've been a little more cautious as
4 to what she was doing because she drew blood from
5 the nerve, and it was weird. It was like you go to
6 a place, and -- When you go into one of those
7 places, they kind of slap you with all kinds of
8 everything. Your mind ain't straight at all. And
9 when I got out of there, that's when I started
10 realizing that, you know, something wasn't right,
11 and the doctor at that time, I was asking him about
12 that, and that's when he had some kind of, like,
13 vein -- some kind of test like that, doing, and
14 that's when he said that she had drew blood from
15 the nerve.

16 Q And it's been like that ever since?

17 A Yes, sir.

18 Q And you were telling us about the -- Mr. Martin, in
19 the first deposition, telling him about the
20 problems and the symptoms that you were having at
21 the time that he did that -- that first deposition,
22 and I want to ask you about a few of those. You've
23 already covered some of them. Of course, you've
24 already talked about the headaches. How about
25 blurred vision? Do you still have blurred vision?

- 1 A That's in the right eye.
- 2 Q In the right -- Has that changed any in the last
- 3 three, four years?
- 4 A No, sir.
- 5 Q So, you've still got the blurred vision?
- 6 A Yes, sir.
- 7 Q Any problem with the left eye?
- 8 A No, sir. That's -- It used to be my bad eye, but
- 9 now it's the best eye I got.
- 10 Q Hearing. Do you still have hearing sensitivity?
- 11 A In the right ear.
- 12 Q Right ear. Do you still have to use earplugs?
- 13 A Yes, sir, even though that sometimes don't help.
- 14 Q Do you hear okay, though?
- 15 A I think I hear better than most people. Don't
- 16 whisper around me because I'll hear it.
- 17 Q Yeah, like hypersensitive hearing in the right ear?
- 18 A It's like I hear the wave. The sound, you know, it
- 19 makes like a wave, and that's what I take, is that
- 20 vibration, and that's why I think some sounds seem
- 21 to be so intense. Somebody slams a door, it's like
- 22 I'll jump because it's that -- that sound, you
- 23 know. It's -- It's spooky sometimes. Even in
- 24 grocery stores, you wouldn't believe that sound
- 25 could be made, but let that wheel roll up on a

1 penny or something and scape that floor. Man, that

2 -- You know how it makes your skin crawl?

3 Q Uh-huh.

4 A That's what it feels like between my eyes and
5 between the ears, in that area.

6 Q Yeah. Okay. You ever have any more blackouts?

7 A No, sir.

8 Q Did you have an episode -- some blackouts before --
9 before going to Texas?

10 A Now, on blackouts, what are you --

11 Q Just, like fainting.

12 A Fainting?

13 Q Like fainting episodes or just where you lose
14 consciousness?

15 A I don't think I've lost consciousness, but I've --
16 I've been, like, -- get like a panic mode. I get
17 hot in my room, and I'll head to the front door to
18 cool off, and before I can get there I'd be on the
19 floor, but by the time I can get there, all I have
20 to do is feel that little cool air coming up. No,
21 I ain't never just went black, --

22 Q Okay.

23 A -- I don't think. Someone else would have to be
24 aware of that, wouldn't they?

25 Q Probably, yeah. I mean, somebody would notice

1 that.

2 A Well, I don't remember falling, blacking out or
3 nothing and then waking up somewhere.

4 Q Okay. How about your back? How is your back doing
5 today?

6 A It's a little on the painful side, but it's a --
7 It's actually doing better more than it has done.

8 Q Okay. Now, where on your spine do you have pain?
9 As I understand, it's kind of in the thoracic area,
10 kind of --

11 A It's like -- It's like from the bottom of the
12 shoulder blades up.

13 Q Right. Right.

14 A That's what it feels like.

15 Q Okay. And I understand you saw a Dr. Chokshi
16 recently?

17 A Yes.

18 Q And what -- Did he talk to you any about your --
19 about your back?

20 A Well, we went -- I had to go get an MRI. He
21 wanted to get a better picture of that, --

22 Q Uh-huh.

23 A -- and we're supposed to go see him this week to
24 find out what he thinks after that.

25 Q Okay. Does your back still give you a lot of --

1 just in general, does it give you a lot of trouble?

2 A If I have one of the headaches, it kind of -- I
3 don't know why, but they, like, work together.

4 That's one of the -- That's about the worst it can
5 get. It's like everything's tense, pulling. Every
6 pound you feel in the head runs down the spine.

7 Q Okay.

8 A That's the bad ones.

9 Q Does your back limit you from doing physical
10 activities?

11 A Picking up stuff?

12 Q Uh-huh.

13 A That was a problem. Doing what I done before, I
14 learned how to pick up things, you know, without
15 pulling your back, without stretching your back,
16 without -- You learn these things.

17 Q Uh-huh.

18 A That is -- That's still a problem. I think it's
19 like the back is offset a little, and it's like I
20 can't find no perfect way to pick something up now.

21 Q Okay.

22 A Sitting, I slouch. I'll pick up, straighten.

23 Just, I can't sit still or sit in one spot

24 constantly. It's got -- I've got to move.

25 Q Move around?

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1 A Yes.

2 Q Okay. Have you ever injured your back before, in
3 the past?

4 A No, sir, other than you should pick up with your
5 legs instead of your back, you know, that typical
6 yard work back strain.

7 Q Yeah. You never had any workers' compensation
8 claims before, did you?

9 A No, sir.

10 Q These things that we've talked about, headaches and
11 blurred vision, the numbness in the -- or the lack
12 of feeling in the right arm, hearing sensitivity or
13 hypersensitivity, did you ever have any of those
14 problems before this accident in 2001?

15 A That was what I've come to find out, is that what
16 has come out in the end, it's like the impulse.
17 That's where my major problem was, where I consider
18 my major problem. I was scared of what I -- how I
19 might react, what I might do if I do go off. That
20 would be the only area I'd say something had to
21 change in because it's -- I can control it. I
22 ain't as afraid -- I know it's there. It's just I
23 ain't as afraid of it as I was in the beginning,
24 and that was just because of the confusion.

25 Q Okay. So, you say these days or since you've been

1 back -- back from Texas that you have better
2 control over your emotions --

3 A Yes, sir.

4 Q -- and your anger and all that?

5 A Yes, sir. Now, I can get -- I can start on
6 something a little small and get myself worked up,
7 but once I, like, reach that point that my voice
8 vibrates my brain, I know it's time to shut up
9 because that -- the anger brings the -- brings
10 another headache on. The adrenalin kicks, and it
11 gets worse after that. So, that's why I try to
12 avoid that.

13 Q Okay. Well, I know you said that -- you mentioned
14 that the headaches are worse. Otherwise, do you
15 feel like you're making progress since you've been
16 through the program at Tangram and then back here
17 in South Carolina?

18 A I would have to say from the clearing of the --
19 well, the calming down on the medications, my head
20 -- my equilibrium, it ain't like it used to be, but
21 it's better than what it was. I don't -- I don't
22 walk right into door jams like I used to. That is
23 controlled, or pretty much controlled. It ain't
24 always on my side.

25 Q So, in general, you feel like you've made progress

1 since, you know, three or four years ago when you
2 gave the first deposition, progress as far as
3 recuperation from your injuries?

4 A I think I'm at the best I can get. I don't see
5 where -- I don't see -- I don't know. That is
6 still questionable, but as of back then to now,
7 there's a major difference.

8 Q Better now?

9 A Yes, sir.

10 Q Okay.

11 A Yes, sir. It's clearer.

12 Q Mind seems to be clearer?

13 A Yes, sir.

14 Q Thought process clearer?

15 A It is. It is picked up. I'll think about
16 something before I go off on it most of the time.

17 Q Do you -- Is your memory good? Do you feel like
18 you've got good memory?

19 A That depends. There's certain things -- I mean,
20 you go asking me something about that happened
21 before Texas, that's where my problem lies. I can
22 -- I can remember, like, the dude's face, but I
23 can't remember, like, everything that was counted
24 in that one point because it was like I was here
25 half of it and gone the next, you know. It's --

1 Everything's like fragmented. To remember
2 something, that's the way I have to picture it, you
3 know, picture that time, and that's where I can get
4 the closest recollection of what it was, but I
5 don't think it would actually be 100 percent.

6 Q Okay.

7 A I still forget to cut the stove off.

8 Q Now, do you -- do you do any cooking at home?

9 A I leave the stove on, so I don't -- I don't mess
10 with the stove too much.

11 Q Okay. Do you have any kind of special diet that
12 you follow?

13 A No.

14 Q Any activities or hobbies that you have, you know,
15 at home, things you like to --

16 A I'm starting to pick up on painting. It's going to
17 be hard to get the right hand to work with all
18 that, but -- and I'm starting in small areas. I'm
19 starting to, like, paint a little table, you know,
20 little figurines, stuff like that to kind of focus
21 that hand with the brain kind of thing. So, that's
22 kind of my hobby. I'm starting -- I didn't want
23 to do it, but it's seeming to come back on its own.

24 Q You don't mean like painting walls and stuff like
25 that?

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- 1 A No, sir. The fumes there will mess with me.
2 Housecleaning supplies, --
- 3 Q Yeah.
- 4 A -- headaches. Anything like that. I can't smell
5 it, but I -- it definitely is there.
- 6 Q Now, do you -- You have no sense of smell?
- 7 A No, sir.
- 8 Q Can't smell anything?
- 9 A Well, my sense of smell operates by what I use --
10 what I can gather on my tongue. If -- Like
11 perfume. You smell it. Well, I taste it, and it
12 tastes worse than what it smells. You know, I
13 taste the chemicals.
- 14 Q Okay.
- 15 A This morning my mother just put on fingernail
16 polish. Come on. How you going to take that? I
17 was just waking up. I was surprised I caught that
18 one, but I could taste that fume, whatever the
19 ingredients are.
- 20 Q Yeah.
- 21 A Whatever it is that y'all would smell, --
- 22 Q Yeah. Okay.
- 23 A -- I taste it. Ride by the paper mill, and it's
24 all nasty smelling, but it tastes worse.
- 25 Q So, you actually -- If you were going to drive by

1 a paper mill, you could get some sense of taste?

2 A I can taste it. I can -- You know, like if it
3 rains, I can tell when the swamp has been -- the
4 mud level has picked up. It changes the smell. I
5 remember it from before, but it's -- I'm using what
6 I used to remember to find -- to distinguish what
7 I'm tasting. I could ride down the road and taste
8 it. It's weird.

9 Q Okay. Do you -- Do you do any work around the
10 house, in the house or out in the yard?

11 A Outside, that's pretty much -- well, outside.
12 Inside, I do what I have to do to keep everything
13 managed there. Outside, I don't like to mess out
14 there too much.

15 Q Does anybody cut the -- Who cuts the grass and
16 stuff like that?

17 A That will be her, my mother.

18 Q Okay.

19 A Loud sounds, vibrations, that ain't my thing. Done
20 tried it.

21 Q Do you -- Do you do any kind of exercises at home?

22 A No.

23 Q No exercises. Like do you go on walks or run or
24 anything like that, bicycle?

25 A The last time I went on a walk, my neighbor's dogs

1 were trying to eat me up. Nah. I wanted to kill
2 them after that, so I had to kind of stay in the
3 house. Neighbors wouldn't take too kindly to that,
4 now, would they?

5 Q No, probably not.

6 A So, I kind of keep it right there in the house to
7 where -- That way I don't have to worry about that
8 -- something happening, somebody saying something
9 stupid or -- well, me going off on somebody saying
10 something stupid, which then I'd look like the
11 biggest rear.

12 Q In the first deposition, I know Mr. Martin asked
13 you a little bit about work, and, of course, he
14 went over your work history and all that, so I'm
15 familiar with that, but I wanted to ask you about
16 your plans in the future. Would you like to go
17 back to some kind of -- some kind of gainful work
18 at some point?

19 A I would.

20 Q Any kind of particular -- particular --

21 A I'd like to go back to what I was doing, but with
22 the sensitive hearing, the vibration, the, you
23 know, --

24 Q Yeah.

25 A -- impact guns, breaking bolts, all that, I don't

1 see that happening.

2 Q Yeah. You operated heavy machinery at one time?

3 A I run forklift, backhoe, track hoe, any heavy
4 equipment, yes.

5 Q Okay. You don't see getting back into that field
6 or doing --

7 A They don't have too good of shocks, so that would
8 put a lot of head movements, vibration, of course.
9 No. Digging, that's vibration, so -- I pretty
10 much analyzed a lot, and I haven't found anything
11 other than -- I could probably, like, have a home
12 business or something, --

13 Q Yeah.

14 A -- but that's about as far as I think I'm going to
15 get.

16 Q Okay.

17 A That way I won't have to face the customer, get
18 that disgruntled customer, you know.

19 Q Yeah.

20 A Then I'd have to --

21 Q Do you -- Do you ever spend any time on eBay on
22 the Internet?

23 A No, sir. I don't even know how to get on that.

24 Q You don't have Internet access at home?

25 A Oh, I have Internet access. I just don't know how

1 to access it, how -- What would you go there for?

2 Q eBay.com -- eBay.com is a --

3 A No, sir.

4 Q -- worldwide marketplace. You buy stuff, sell
5 stuff.

6 A No, sir.

7 Q People -- A lot of people make home businesses out
8 of eBay.

9 A Yeah, but I also heard you could get -- Well, they
10 can turn on you in that, too, what, people selling
11 you things and then it ain't what it is you bought.

12 Q Oh, yeah. Yeah. I'm sure that happens.

13 A I think that's why I don't want to mess with that.

14 Q Okay.

15 A My computer's basically -- I try to research to
16 find -- like investigating the hypothalamus, you
17 know, part of the brain. I'm interested in the
18 area because the sense palettes are not too far
19 away from it, so that explains why I lost the sense
20 of smell. I understand the physics of why it was
21 hit. Well, the mechanics is what I'd call it.

22 Q Right.

23 A I understand what -- how -- when the impact
24 happened. I understand the swelling. I understand
25 what -- I'm seeing more was affected by my

1 appetite. My appetite -- I can go to a restaurant
2 -- I can, what, go two days not eating. Sit down
3 to have a meal, I'd eat two or three bites, and
4 that's it. So, my appetite is shot. I'm
5 nauseated. Nausea is like 93 percent of the time.
6 I'm always wanting to get nauseated.

7 Q And that -- that still happens a lot these days?

8 A It's the feeling. It's the sensation of it, like
9 it's wanting to come, you know, and then sometimes
10 it's wanting to try, but then it's like, ha, fooled
11 you, you know. It's -- Well, after the accident,
12 it was like three weeks after, I was still throwing
13 up my own blood. So, I think that's like kind of
14 set in. The brain maybe set that up or something.
15 So, taking pills I have a problem with. That's --
16 It's like when they touch my tongue, ooh, it gets
17 worse then.

18 Q Okay.

19 A When you eat, you have to force it to actually eat
20 something.

21 Q Do you ever go to a restaurant?

22 A Yeah. I often bring back the leftovers for my
23 mother.

24 Q Any particular restaurants you like?

25 A Well, that's depending where I'm at. If I'm over

1 here, we've found quite a few. Percy and Willie's,
2 that's where you really need to go.

3 Q Here in Florence?

4 A Yes, sir.

5 Q Do you -- Do you have pretty good hand-eye
6 coordination you feel like with playing the
7 computer games and all that?

8 A Sometimes. It's not an everyday thing I can just
9 jump on it and do it. Everything's got to be right
10 to do it. I can -- If I sit and think and can't
11 think of what I would like to play at that moment,
12 that means I don't -- I ain't in the mood to play,
13 that something's off because then if I try to force
14 to play, then I find I'm making mistakes, I'm
15 mashing the wrong button, and that agitates me, so
16 I leave that alone when I feel that.

17 Q Okay. Are you -- You're right-handed?

18 A Yes, sir, and thanks to that, I think that's why
19 I'm getting so acclimated with it. I force myself
20 to use it.

21 Q Okay. Now, I want to ask you about sleeping. Do
22 you sleep okay?

23 A Well, in the past it's been kind of iffy. Sleep
24 three or four days -- Well, sleep, what, 12 hours
25 at one time when you do sleep, and then the times

1 that you try to fight to go to sleep, like if you -
2 - for an appointment the next morning, to lay down
3 and go to sleep, knowing you've got to sleep before
4 you -- so you don't feel pooppy during the meeting,
5 you lay there for hours trying to go to sleep.

6 Well, I went in to Dr. Federer and talked about it
7 last week. I went and got a, what, humidifier, and
8 I've been running that the past two nights. Things
9 seem a little different the past two mornings I
10 woke up, so maybe that's going to be looking up
11 shortly.

12 Q Do you have like a set going to bed and getting up
13 time?

14 A I don't -- I can't set no routine. If -- When
15 them -- If I get a routine going, I can hold it
16 together for a short time. The big headache comes,
17 and then three days, no sleep at all. Can't force
18 myself to sleep. So, then there goes any -- Then
19 I just wait until the body can't stay awake no more
20 and then fall asleep, and then there's just --
21 there is no way to set no schedule.

22 Q Right.

23 A Texas, they tried, and it didn't work.

24 Q It didn't work?

25 A They had me on a pretty good one, but I also had

1 nap time, too. So, if -- I can fall asleep when I
2 took a nap, and then just having to wake up, just
3 like starting a whole new day. It's just the
4 system has to crank back, just like a slow-starting
5 computer that has got to warm up before it can do
6 anything.

7 Q Right. Do you feel like you need some medical
8 treatment for that?

9 A Medical treatment for that. That sounds like more
10 pills, don't it?

11 Q Well, --

12 A That's what I'm trying to stay away from. I've had
13 -- I've seen what they've done. I'm trying to
14 stay away from pills as much as possible, take what
15 keeps me alive. The pain, --

16 Q Right.

17 A -- I think I can deal with on my own terms. I
18 think. I may have to rethink that later on, but
19 right now I think I'm managing decently.

20 Q Okay. Are there any other -- any other health
21 problems that you're having these days since you've
22 been back from Texas that we haven't already talked
23 about, any medical problems?

24 A No, sir.

25 Q Any unrelated problems? Any other health problems

1 that you had before this accident that -- that you
2 still deal with, like, for instance, --

3 A That's the thing. Everything was fine. That's
4 what I hate about the -- then, is because
5 everything was fine. Work was great. Everything
6 was -- And then everything just goes haywire.

7 Q Yeah. You weren't having any kind of medical
8 problems before the accident?

9 A No, sir. I was one of those that did not like
10 doctors, that I would near about die before I'd see
11 one, but I undoubtedly got something that, you
12 know, tried.

13 Q But you were healthy and you didn't need to go to
14 the doctor much?

15 A No, sir. I would sit home and suffer the flu by
16 myself. That's the way I was. Don't like doctors,
17 and after this, really don't like doctors.

18 Q But some doctors are very good.

19 A He (referring to Dr. Federer) ain't the one that
20 will say, here, take this and call me in the
21 morning. All I have to do is talk to him. So,
22 it's more of a friendly thing. I ain't got to take
23 something and then it agitates me when I come to
24 see him next time and then just tell him, man, this
25 ain't right. So, he's cool. The other doctors I

1 had, I don't trust them at all.

2 Q How about Dr. Evans? Did that just not work out?

3 A Let's see. First day I -- First day I saw him, he
4 assigned three new meds. After that, we go in a
5 month later. We were told that there are two
6 things we should've done before we come back to see
7 him then. Okay. After that, forget it. And the
8 headache, I'm willing to put up with it. And not
9 to forget, you get there and they didn't even have
10 my chart. So, where was it? I bet you they didn't
11 even create one. So, that's intolerable.
12 Somebody's not doing their job there.

13 Q Okay. Are there any other doctors that you -- that
14 you have a past relationship with in the area? I
15 can't remember the -- I know there was somebody
16 mentioned in the deposition --

17 A I think I might be -- know the one you're talking
18 about. It was a trial.

19 Q Was it Skinner?

20 A No. It was Healy.

21 Q Well, before Healy. I think he referred you to
22 Healy. I'm trying to remember the name of that
23 doctor.

24 A I don't even remember that one. I don't.

25 Q He might've been just like a -- like a family.

1 doctor.

2 A Oh, gosh. Yeah, I know who you're talking about.

3 Q I think it was the first doctor you saw --

4 A Might've been.

5 Q -- after the emergency room. I don't guess you see
6 him for anything else?

7 A Oh, no. Oh, no. I don't need to even run up on
8 him in a dark alley. Ooh. Four months, man. Four
9 months.

10 Q That first four months?

11 A Imagine going to somebody once a week telling them
12 something's wrong. Well, it's a concussion. Man,
13 I've seen football players get hit, get a
14 concussion and go right back on the field.

15 Q Uh-huh.

16 A Not the way I was feeling. Four months.

17 Q Do you know --

18 A He even lives in my town, so -- but we're on
19 totally opposite ends, so -- That's a good reason
20 why I avoid going to Wal-Mart and -- Just that
21 walking across, and there he is. What do you do,
22 say something nice? I said everything I could
23 nicely to him then.

24 Q Okay. Do you have any -- Do you feel like you
25 have any kind of problem with depression?

1 A No, sir. I am as far away from depressed as you
2 can get.

3 Q And no one's prescribed anything for depression
4 either?

5 A They've had me on it, but I think that's what else
6 strained me out then, the fact that I was taking
7 something for nothing. This stuff was supposed to
8 be giving me an effect of this, and it was -- It
9 ain't working with the injury or something, is what
10 it feels like. It don't cooperate well.

11 Q Okay. Now, I wanted to ask you, when you were in
12 Texas, did they have you doing any trial kind of
13 work or jobs?

14 A Oh, yeah. I tried pushing the lawnmower out there,
15 and that didn't work either. I've tried -- I
16 mean, at the end, when I was at the final part of
17 my program, I would -- I would do like vehicle
18 services. You know, me and a staff member would go
19 out there, they would open the hood, hit the signal
20 lights. We'd check the basic -- basics out. I
21 wasn't doing anything -- getting up under -- I was
22 not allowed to do anything like that, but I had
23 tried, like, trimming hedges and -- All that stuff
24 didn't last long. I could do it for a day, but I'd
25 do it like, what, 15 minutes, rest an hour. You

- 1 know, that's -- And that's kind of like very
2 unproductive, and it looks crappy when you walk
3 back outside and it's half done.
- 4 Q Did you like any of that work?
- 5 A Oh, man, I loved that work. That's how I started.
6 That's what I grew up doing.
- 7 Q Landscaping?
- 8 A Just, it ain't there.
- 9 Q Yeah.
- 10 A It's the back, it's the head, vibration, sound.
11 It's --
- 12 Q Right.
- 13 A What was me is gone.
- 14 Q Okay. We don't have far to go here. Do you feel
15 like you're currently getting the medical treatment
16 that you need?
- 17 A Can't answer that question. I'm still working on
18 that one. I've got to find the one.
- 19 Q The --
- 20 A The right doctor I can -- that's like, what, I'm
21 the negative, he's the positive. The balance.
- 22 Q Uh-huh. The right MD?
- 23 A Yeah, and so far, I don't see that happening. Even
24 in Texas I didn't see it.
- 25 Q Was there anybody in -- Was there an MD that you

1 saw in Texas on a regular basis that you liked?

2 A No, because he was a -- he was a -- he was a sports
3 doctor for a head injury clinic, okay? That dude
4 didn't even belong there. All I used him for was
5 to get myself off all the meds he was -- I was on.
6 He done his best trying -- you try this, try that.
7 I tried this and tried that. Useless. And that
8 was for two years. So, I didn't like him too well.

9 Q Okay. Is there any other type of treatment that
10 you feel like you need that you're not currently
11 getting, anything you'd like to try that you think
12 might -- might help you?

13 A I don't know. I kind of give up on the painkiller
14 thing. That don't seem to be floating too well.
15 That I'll have to look into after I find me another
16 doctor, see what he thinks. I don't want one that
17 jumps right in like the last one did. I want
18 someone who thinks about this stuff, look at what
19 I've already taken and think about what might work
20 now, nothing like just slap me with three more
21 pills, okay, get out the door. Uh-uh. I mean,
22 it's nice to have insurance and all take care of
23 that, but it's still useless. Within two days of
24 taking the meds, I could tell something was
25 changing, and I -- uh-uh -- had to go, and I'm just

1 realizing that when I get out, that just how much
2 of a problem it was.

3 Q Right. You feel better without being so medicated?

4 A Yes. It's like -- It's like getting doped up.
5 You're stretched in so many different places that -
6 -

7 Q Yeah.

8 A -- it ain't right.

9 Q Would any of that medication you were taking --
10 would it make you drowsy, sleepy, all that?

11 A Well, if -- When I did go to sleep, waking me up
12 was pretty much impossible unless you touch me, and
13 I wouldn't recommend that because I can't guarantee
14 you how I'll wake up. My mother's about the only
15 one that can touch me and get away with it, but she
16 knows to stay clear. But sleep is a pain, but I
17 could sleep like -- I could sleep through a
18 thunderstorm, hailstorm. I'm getting to where I
19 can sleep through the storms now. It's just a pain
20 to wake me up, or just to crank up. The past three
21 or four mornings it's you're groggy, you fall right
22 back to sleep, enough to hear the alarm, but as
23 soon as you hit it, go back to sleep.

24 Q Right.

25 A So, I'm still adjusting, I'm thinking, -- I'm just

1 wishing it'd just stop one day and so I know this
2 is it, this is the line, this is where it is, I
3 know where my level's at. It keeps changing. It's
4 like you can't get a bearing on it.

5 Q Yeah, and weather has a big effect?

6 A Oh, that throws a loop in everything. I mean, I
7 can't plan nothing for tomorrow because I don't
8 know what -- The weatherman can't even say what's
9 going to happen tomorrow, so -- My plans can
10 change just as quick as the weather.

11 Q Right.

12 A So, I don't go out on dates or anything. Uh-uh.
13 Appointments are as close as I come to getting out,
14 and when I come out for an appointment, that's when
15 I pretty much go -- Whenever I'm hunting
16 something, then I'll do it. I don't do two
17 separate trips.

18 Q How are things working with your treatment with Dr.
19 Federer? I mean, he's in the room, of course, but
20 --

21 Dr. Federer: Do you want me to step out?

22 The Deponent: No. I mean, I ain't
23 afraid to tell the truth in front of you.
24 That don't bother me at all.

25 A If I had a problem with him, he wouldn't be right

1 here now. I mean, everything's going great, and I
2 don't see no problems with it. Even though I still
3 don't understand why, it's something I do. I think
4 it's -- I think it is all right to actually have
5 somebody to talk to about something that they
6 somewhat understand what's going on. I get a
7 better feeling he understands than most I've talked
8 to.

9 Q You feel like you've made progress while you've
10 been with Dr. Federer --

11 A Yes, sir.

12 Q -- over the past seven, eight months?

13 A Yes, sir.

14 Q Okay. So, you want to continue with that -- with
15 that regime?

16 A I don't see why I need to get rid of him yet. He's
17 all right where he's at. He ain't creating no
18 problems. He ain't making waves. So, he's cool.

19 Q That's good. Okay.

20 Mr. Cauthen: I think that is all the
21 questions I have, Mr. Floyd. Thank you very
22 much.

23 (Whereupon the deposition was concluded at
24 11:07 a.m.)

25 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Richland)

Certificate

Be it known that the foregoing deposition of
 Scottie Floyd was taken before me;

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

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

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

That the foregoing transcript of 49
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

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

Witness my hand and seal this 7th day of
 February, 2007.


 Barbara P. Scott

Notary Public for South Carolina
 My commission expires April 29, 2007.

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

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0123790

Scottie W. Floyd, Employee,)
)
Claimant,)
)
-vs-)
)
Ken Baker Used Cars and Body Shop,)
Employer, And Legion Insurance)
Company, Carrier,)
)
Defendants.)
)

Deposition of ALEXANDER "SASHA" FEDERER, Ph.D.,
taken before Laura W. Little, Verbatim Reporter and Notary
Public in and for the State of South Carolina, at
Carolinas Rehab Services-Outpatient, 1925 Hoffmeyer Road,
Florence, South Carolina, commencing at 2:45 p.m. on the
2nd day of February, 2007.

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TABLE OF CONTENTS

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	<u>PAGE-LINE</u>
Examination by Mr. Wukela	4-4
Examination by Mr. Cauthen	43-15
Re-Examination by Mr. Wukela	88-5
Re-Examination by Mr. Cauthen	96-5
Re-Examination by Mr. Wukela	100-19
Re-Examination by Mr. Cauthen	103-12

EXHIBITS

=====

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE-LINE</u>
NONE		

Court Reporter's Note:

---Indicates Interruption;

--Indicates Incomplete Phrases or Sentences.

STIPULATIONS

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with Section 42-3-160, Code of Laws of South Carolina 1976, and Rule 30 of the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above entitled action, or for both purposes;

That all objections would be reserved until the time of the hearing except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

1 ALEXANDER "SASHA" FEDERER, Ph.D.,

2 after being first duly sworn to tell the truth, was
3 deposed and testified as follows:

4 EXAMINATION BY MR. WUKELA:

5 Q. Dr. Federer, could you give us a brief rendition of
6 your educational background as it relates to the
7 practice of Neuropsychology?

8 A. I am licensed as -- I have Ph.D. in Clinical
9 Psychology. I have been licensed in South Carolina
10 in 1993 as a licensed clinical psychologist,
11 License No. 569, and I have training in
12 Neuropsychology. I have worked with clients with
13 traumatic brain injury for approximately the last
14 twenty-five years and in this capacity, I work in
15 Carolinas Hospital System as a clinical
16 psychologist and a neuropsychologist.

17 Q. Where did you get your basic degree?

18 A. I got my -- received my education in
19 Czechoslovakia, Charles University, and in
20 Switzerland at Burn University.

21 Q. And what degrees did you get from those two
22 institutions?

23 A. I got final -- my final degree was Ph.D. in
24 Clinical Psychology.

25 Q. And how long have you been in the United States?

1 A. Since February 28th, 1972.

2 Q. Okay. And when you first came to the United
3 States, you already had your degrees by that time?

4 A. I had my Masters Degree and there was a
5 complication with the papers. The Communist were
6 still in power and they wouldn't let me get back to
7 finish my Ph.D. last three requirements, When they
8 discontinued their existence in 1989, I went to
9 Czechoslovakia in 1990. Did my competency exams
10 and received my Ph.D. in Czechoslovakia in 1990.

11 Q. All right. Between -- was it 1978, you said when
12 you came to the United States?

13 A. In '72.

14 Q. '72. Between 1972 and when you went back to
15 complete the formalities of your Ph.D., what did
16 you do in the United States during that period of
17 time?

18 A. I worked as a -- started work as -- started work as
19 a psychologist in 1972 in Wisconsin and I started
20 to work as psychologist, and then I worked as a
21 psychologist in Washington State with emotionally
22 disturbed teenagers and then I worked---

23 Q. And how long did you work there?

24 A. I worked there for over two years.

25 Q. And in Wisconsin, how long did you work there?

1 A. I worked there a couple of times. I worked there
2 initially worked for two-and-half years in a
3 maximum security hospital, and then after I left
4 the State of Washington, I went back to Wisconsin
5 and I worked in the field of mental retardation for
6 about approximately two to three years.

7 Q. All right. When you were working in the maximum
8 security hospital, what kind of specialty were you
9 doing there?

10 A. I was working with sex offenders and criminally
11 insane, so doing legal psychology work, forensic
12 work.

13 Q. All right. Then that takes us up between that and
14 working in -- what did you say Wisconsin? What was
15 the other state?

16 A. The State of -- the State of Washington.

17 Q. Okay. After that, what did you do?

18 A. Then I went to New Hampshire and for a brief period
19 of time, I worked in the -- begin the field of
20 mental retardation and there then I was hired for a
21 facility that treated exclusively brain-injured
22 clients that were specialized in clients that were
23 -- that had behavior issues following the brain
24 injury. We were one of the first facilities that
25 dealt with behavioral involved patients that was

1 high watched, excuse me, in New Hampshire and it
2 was we would accept the kind of behavioral involved
3 clients that nobody else was able to deal with and
4 work---

5 Q. How long did you work at that facility?

6 A. Was there approximately three years, and then with
7 the company, I moved to California where, again, I
8 worked in a facility that specialized in treating
9 people with brain injury that had behavior issues.
10 People that were aggressive or violent as a result
11 of the brain injury and worked there for
12 approximately three years, and then I came to South
13 Carolina, and I worked in a rehabilitation facility
14 in Rock Hill or Rock Hill/Lancaster area and that
15 was again at facility that specialized for treating
16 brain injury or neurologically-impaired clients and
17 after that, I came eleven or so years ago, I came
18 to Florence. Became the Director of Psychology in
19 Carolinas Hospital System and that's what I have
20 been doing since then.

21 Q. All right. And in your experience in Florence,
22 what kind of patients have you, have you treated?

23 A. I see -- I see people with chronic pain, traumatic
24 brain injury, a large number of strokes, and then I
25 do all the psychological and neuropsychological

1 consults for the acute hospital and before I also
2 worked in inpatient rehabilitation, so it's a
3 general psychiatry population as they come through
4 the hospital and, and the neurologically-impaired
5 people that come to our rehabilitation. I get
6 referrals from physicians, neurosurgeons,
7 neurologists, regular M.D.'s. That creates the
8 bulk of my -- bulk of my referrals.

9 Q. What's the difference between a specialty in
10 psychology or psych -- yeah, psychology and
11 neuropsychology? What's the difference? The
12 distinction between those two classifications?

13 A. I say that the clinical psychologist specialize
14 working with people that have mental illness from
15 schizophrenia to depression, and I say when you
16 work in a field of Neuropsychology, you work with
17 clients that had some kind of a neurological
18 impairment, either acquired brain injury, or it's a
19 stroke, or there is some other forms of injury to
20 the brain and are interested in how the brain is --
21 how the brain behavior connection. Specialize
22 using specialized testing, batterys and
23 specializing in treatment methods that will help
24 the clients to regain, regain independence. So,
25 it's a lot, you know, a specialized by the kind of

1 clients that you work with, by the methodology that
2 you use for testing and treatment.

3 Q. In just layman's terms, would I be correct in
4 interpreting that to mean that a psychologist deals
5 with the emotional problems a person might have and
6 a neuropsychologist would be dealing with physical
7 brain injuries and there impact on people's
8 behavior?

9 A. I think that the psychologist would deal with
10 emotional but also to deal with mental illness that
11 may be more than emotional like with schizophrenics
12 or thought disorders, so you deal with that, but
13 you deal with issues that would fall under the
14 realm of mental illness and even sort of the
15 division is the more we know, the more the division
16 blurs, because the brain chemistry is probably at
17 the root of a lot of mental illness, so it -- but
18 it's not by the form of injury like in traumatic
19 brain, acquired traumatic brain injury. So that's
20 a -- the origin of the disorder is different, but
21 it can -- it all goes through -- everything is
22 processed through the brain, so it all sort of
23 relates to the brain one way or another.

24 Q. What does the term executive function mean when
25 you're talking about a brain injury?

1 A. Executive functioning, that means it's one of the
2 highest level of the brain function. The major
3 function of the brain is to run the body. That is
4 90 percent of what the brain does is it runs the
5 body. Then you have the functioning, the vision,
6 the hearing, and the very top of the level of
7 functioning is executive functioning and that is
8 concerned with judgment, with planning, with
9 adjusting, with dealing with novelty situation, but
10 it has met executive in a sense of planning and
11 adjustment.

12 Q. And I, I may be using some primitive terms, but
13 could a person have a high level of intelligence
14 and still have a brain injury that involved
15 executive functioning?

16 A. It's that you can have impaired certain part of
17 your intellectual functioning and certain part can
18 be damaged and certain part can be maintained.
19 Some injuries, for instance, the frontal lobes
20 cannot -- do not decrease level of intellectual
21 functioning as measured by the tests for
22 intellectual functioning. That's why some of the
23 tests that normally measure level of intellectual
24 functioning are not predictive of how the person
25 will do after acquired brain injury. So, you can

1 have somebody who still function in some respect
2 quite well and in certain areas, but their
3 executive functioning can be, can be impaired.
4 They can have certain parts of the executive
5 functioning impaired that render them unemployable
6 and there has been a number of examples that can be
7 cited.

8 Q. Okay.

9 A. I'm not sure if I am answering your question.

10 Q. Okay, that answers the question. All right. When
11 was the first time you came into contact with
12 Scottie Floyd?

13 A. I believe it was in June, I think. It was in -- it
14 was in June '06. I met with his mother and maybe
15 before he came back and I met with his case manager
16 and Mom before Mr. Floyd returned back from Texas.

17 Q. June of what year?

18 A. Of '06.

19 Q. '06. And how did -- how did it come to pass that
20 you were involved in the treatment of this patient?

21 A. I believe prior -- prior -- before he came, he went
22 to Texas, he was seen by Dr. Windsorova, which is
23 another neuropsychologist in town, and she was
24 concerned that she would not be able to handle
25 Scottie because of his explosive, aggressive

1 behavior and she felt that she did not have enough
2 experience in dealing with head injury client that
3 have those kind of issues and she just didn't feel
4 comfortable in her clinical setting to deal with,
5 with Mr. Floyd, so I believe that's how I was -- he
6 was referred to me, at least that is my
7 understanding.

8 Q. Okay. What equips you to be able to deal with
9 somebody of that character?

10 A. I have -- as I've said, I've worked with some --
11 with clients that had behavior issues as a sequelae
12 to their head injury, and so that experience over
13 the years equip me to be able to deal with people
14 that are explosive or aggressive as a result of
15 their brain injury.

16 Q. Now, before you undertook to treat or to examine
17 him the first time, were you given any type of
18 medical records or did you have access to Dr.
19 Windsorova's records and the other physicians that
20 have treated him?

21 A. Yeah, I received substantial -- I believe six
22 months maybe or maybe seven months of documentation
23 that describe the records from Dr. Windsorova and
24 the records from previous treating physicians, from
25 Dr. Healy and also it, it included records from

1 Texas treatment facility and I also had an
2 opportunity to talk to the person who was in charge
3 of Mr. Floyd's treatment in Texas.

4 Q. Okay. All right. Before you saw Scottie, did you
5 arrive at any kind of conclusions about his
6 condition based on the records and the contact that
7 you had before then?

8 A. Well, I think the description was there was a
9 pattern of the behavior was clear. There were
10 several neuropsychological evaluations. There were
11 the psychiatric diagnoses that were established
12 through, I believe, two psychiatric hospitalization
13 prior to -- excuse me -- prior to his treatment in
14 Texas, so there was a very large body of
15 information and there was -- that was pretty,
16 fairly consistent in painting the clinical picture
17 of somebody who is potentially very explosive, who
18 suffers with headaches, and whose explosive
19 behavior is such that he had to be psychiatrically
20 hospitalized at some -- and who has incidents of
21 intermittent explosive behavior.

22 Q. Did you have an opinion before you met Scottie as
23 to what was causing this explosive behavior?

24 A. I think it was -- all the records indicated that it
25 was related to this acquired brain injury.

1 Q. And what type of brain injury was that?

2 A. He was hit in his forehead by a spring when he was
3 repairing or dismantling a car and it was on-the-
4 job injury.

5 Q. What type of impact did that have on his brain
6 from the medical records that you were able to
7 review?

8 A. It -- there is a -- there is an injury to the
9 frontal lobes, particularly the right front lobe,
10 frontal lobe.

11 Q. All right. What's the significance of it being on
12 the right side?

13 A. The significance, there is a -- again, there is a
14 executive functioning that are more injured and
15 also the frontal lobe has a particular function
16 that deals with novelty situation, so it's people
17 with injury to right frontal lobe have difficulties
18 to deal with any new situation and also that's the
19 -- that's part of the brain that regulates
20 behavior, that regulates some of the social graces
21 that, that regul-- that it's -- it regulates the
22 control over, over the behavior and over the
23 emotional tone of the behavior. So, it's that that
24 is -- so it's the regulatory mechanism of our
25 behavior and social functioning and relating to,

1 relating to novelty situation.

2 Q. And I believe you said you first had any contact in
3 this case was May of '06. Who were you talking to
4 in May of '06?

5 A. Well, it was -- I was talking to the case manager,
6 Ms. Cynthia Grimsley, who brought me all that
7 information and we agreed that I will talk also
8 with the mother of Mr. Floyd because she was going
9 to be the main caretaker and there was some issues
10 and question of how well she will be able to do
11 that since his behavior can be so explosive, if she
12 will be able to handle his behavior or not also.

13 Q. When was the first time you actually saw Scottie
14 himself?

15 A. I believe it was in June, June of '06. June 5th.

16 Q. Okay. Now, if my memory serves me right, he came
17 back to Florence after being in Tangram for---

18 A. Two years.

19 Q. ---approximately two years?

20 A. Right.

21 Q. He came back to Florence for about a week or so for
22 a trial visit in March of '06, and then went back
23 to Tangram, and then came back in June. Did you
24 see him at all in March of '06?

25 A. No.

1 Q. Okay. When you saw him in June of '06,
2 approximately how much time had you already spent
3 talking to the case manager and his mother? Do you
4 have any idea who much time you had spent?

5 A. A couple of hours and probably a couple or three
6 hours reading through all the records.

7 Q. All right. And your first experience with him on
8 the 5th of June, what was your observations, the
9 history that he gave you and whatever happened of
10 significance during that interview?

11 A. He was -- see, Scottie at that point was talking
12 about -- especially was talking about his
13 headaches. I see that the headaches has been a
14 prevalent theme because he has been suffering from
15 severe headaches all along. It's a -- it's a post-
16 traumatic headache. He was explaining to me how
17 the headaches potentiates his anger and that
18 increase level of headaches cause him to be more
19 angry and how the heat has been difficult for him
20 to deal and since he came back how that has been a
21 -- how the heat in here has, has been more
22 difficult. He talked about goals and one of the
23 goals was to decrease the level of headaches and
24 what we were thinking if he would be able to go
25 back to work as a, as a car mechanic and so I

1 started to establish the relationship and was
2 talking about what it was like in Texas and
3 initially, Mr. Floyd was very sort of like guarded
4 trying to find out who I am, if he can trust me or
5 not, and try to present himself about who he is but
6 spending a large number, chunk of time talking
7 about his anger again, so his anger, preoccupation
8 on his anger, maintaining his anger under control.

9 Q. Is that -- is that something peculiar to people who
10 have this type of injury to fixate on the injury
11 and the history of the injury and the ramifications
12 of the injury?

13 A. That -- I think that any person that's had a --
14 sustained a brain injury, I see this forever
15 preoccupied with it. I think there has been a --
16 it's such a life-altering event that even people
17 who that are patients that I have known now for
18 twenty years, it's still a focus, because it's an
19 event that changes your life forever and is a part
20 of the result of any head injury is that people
21 become more self-centered and that, that's part of
22 the self-centeredness, but they always -- the
23 preoccupation with the injury, how it happened, why
24 it happened, there is always -- it's always sort of
25 a central point of their thinking.

1 Q. From reviewing the records at Tangrum and the
2 reports of his conduct before he went out to
3 Tangrum and your initial observations of him the
4 first time you saw him, did you arrive at any
5 opinion as to whether he benefited for the period
6 of time he spent out at Tangrum?

7 A. My impression was that he, that he benefited. That
8 he benefited in a way that his -- that in that
9 particular environment, he had a highly structured
10 environment for the brain injury rehab. He was
11 able to become less explosive. He was able to
12 engage in daily routines even though he had some
13 difficulties there, but they still kept him for two
14 years which is fairly unusual length of time. I
15 remember when I worked the head injury program, we
16 would keep people the average stay, lengths of stay
17 was a year, but he stayed two years. That would
18 indicate to me that the severity of his problem. I
19 think prior to that when he is threatened the
20 physician with a gun and then some other instances
21 of potentially lethal violence that became an issue
22 for everybody and also his level of irritability
23 and I see there when he would -- according to the
24 records, he would become very destructive and so
25 destructive when agitated. While there was a sense

1 that Scottie has been able to control his behavior
2 more and that he would -- and then when he went on
3 outings that he was able to handle outings again
4 under structured conditions, and then it was time
5 for him to go home.

6 Q. When you say under structured conditions, what does
7 that mean in layman's terms?

8 A. Okay. Structured condition that, that means that
9 his day was regimented. That all of his behaviors
10 was consequented. That means that he'll receive
11 positive reinforcement for behaviors that were
12 acceptable and some kind of behavior consequences
13 for behavior that were not acceptable. That mean
14 that he worked with people that were trained in the
15 area of brain injury and when you are, there are
16 certain things you don't do and there are certain
17 things you do, you know, in order to be -- allow
18 them to cope better. There is that -- you use
19 strategies of behavior management that are used
20 specifically with brain injury and also you have
21 large number of staffings that if there is an
22 instance of physical aggression, that you are able
23 to deal with that.

24 Q. Could you determine from reviewing the records at
25 Tangrum whether he was a compliant patient, and

1 then you're going to have to explain to me what
2 that word means for somebody in his condition?

3 A. I would have to -- I'm not sure if I can exactly
4 recall. I think that he participated more. I see
5 there have been some -- I cannot, I cannot recall
6 exactly what the degree of compliance was. I just
7 don't. I would have to review it again.

8 Q. Does he have -- given his injury, does he have
9 difficulty being a compliant patient?

10 A. He certainly does. Part of it is that his thought
11 processes is that when, when Mr. Floyd is asked to
12 do something that he considers is not consistent
13 with his world beliefs, or that he thinks is
14 demeaning to him or challenging or in any way has
15 some kind of a emotional component, then he comes
16 to very quick conclusion and responds accordingly.
17 He doesn't think through it and he has an emotional
18 response to it. So, when he provided with
19 information, he may hear the first part of that
20 information and becomes agitated because he doesn't
21 receive the whole information. So that's -- and
22 that was part of the problem with, with compliance
23 was him is that his impassive thought processes are
24 such that he responds as I said to the first 5
25 percent of the information. That's sort of what

1 happened with Dr. -- with the instances Dr. Evans
2 had, and I imagine that -- I would -- but I would
3 guess that was also the issue with him in Tangrum,
4 and that has been the issue with him with taking
5 medication.

6 Q. We'll get back to that in a second. After you
7 initially saw him, did you administer any tests or
8 did you go through a period of evaluating him for
9 yourself?

10 A. I administered a couple of the tests to sort of to
11 see where he was at. I administered the Wechsler
12 and it took us some extensive period of time
13 because sometimes he would cooperate and sometimes
14 he was so consumed with anger and agitation that
15 most of the session was spent on dealing with anger
16 management so that was an extended period of time.
17 But he -- I tested him and the test results
18 indicates that in 2006 where the test results were
19 pretty much the same as year 2001 and 2000, the
20 year 2002, the testing that was performed by Dr.
21 Windsorova so they're---

22 Q. What's -- what's the significance of the fact that
23 you got the same test results that Dr. Windsorova
24 did four years earlier?

25 A. That mean that there is no -- there is no

1 deterioration. There is no cognitive decline.
2 There is no -- you know, like if you would have
3 let's say brain tumor, then there would be clearly
4 worsening of the condition and there would be a
5 decline in intellectual functioning. If some of --
6 if there were some series of seizures that would or
7 some kind of a deteriorating condition of the brain
8 that would be reflected in a decrease on some of
9 the subtest or functions on the test. So the
10 significance is that there has not been decrease in
11 his psycho-- in his intellectual functioning by
12 comparison to the testing in '02.

13 Q. What is the significance of those test results as
14 far as reliability and credibility of the results?

15 A. The Wechsler is considered the most standardized IQ
16 test currently used in the practice psychology so
17 that is the most -- it is the most validity testing
18 done and it is the primary tool to assess
19 intellectual functioning.

20 Q. Well, did you arrive at any opinion as to whether
21 or not he was exercising his best efforts for both
22 of those tests, the one in '04 and the ones in '06?

23 A. I cannot speak of '04. The records indicate that,
24 that he put in good effort. That's what Dr.
25 Windsorova indicated and in '06, he took it on as a

1 challenge and he tried and there are indication
2 that he put in good efforts to proceed with, with
3 the testing and there were no signs of avoidance or
4 attempt to not do well. There is always -- you
5 know, there is -- there is intermittent mitigating
6 factors that are his constant headaches.

7 Q. Okay.

8 A. And so the headaches will definitely decrease some
9 of the functioning and also he was on a seizure
10 medication that sometimes may decrease the
11 intellectual functioning, but he was not on the one
12 particular one that does the most, is most
13 influencing, so I would say that it correctly
14 reflected or accurately reflected his level of
15 functioning.

16 Q. After you completed your tests -- have you
17 completed all your testing?

18 A. I completed -- I did that and not, not all -- there
19 are some other tests that I may take but at this
20 point, I think, I believe that the functioning is
21 the same, cognitive functioning is the same as
22 described by Dr. Windsorova, and so the main issue
23 is not in cognition. Necessarily not cognition the
24 way it's measured by the test. I also did memory
25 testing and he had some greater difficulties that

1 indicated before but again, that was a -- he
2 indicated that he had a severe headache and -- but
3 in discussing events with him, his memory does not
4 seem to be that severely impaired.

5 Q. At some point in time, did you arrive at a
6 diagnosis of his condition for yourself?

7 A. It's acquired brain injury.

8 Q. Okay. And did you determine any course of
9 treatment for him?

10 A. Yes. I have, yes.

11 Q. When did you do that?

12 A. During the course of meeting with Mr. Floyd and,
13 and discussing what difficulties he has and
14 observing his behavior and talking to him about his
15 personal history and talking to his mother about
16 how he behaves at home and consulting with his
17 neurologist, with Dr. Healy.

18 Q. And his neurologist would have been?

19 A. Dr. Healy. And I also talked briefly to Dr. Evans.

20 Q. What transpired over the, over the early part of
21 his treatment?

22 A. There was a period of time when he became -- there
23 was an instance when he became agitated and there
24 was a -- he misunderstood information and became
25 very angry and became angry to the point that he

1 threatened to kill everybody who is providing care
2 for him.

3 Q. Before that, did he miss appointments?

4 A. He would miss some appointments that -- he would
5 miss some appointments because of headaches and
6 also he missed appointments for his sleep apnea
7 test, because that was at -- was my recommendation
8 -- I'm sure we would find somebody and it was my
9 recommendation that he has test -- is tested for
10 sleep apnea because when I discussed his sleep
11 patterns with his mother, she reported that he
12 snores and that sometimes he stops breathing which
13 is consistent with clinical indication of sleep
14 apnea and I referred him to Dr. Healy, but he --
15 and he did not go. I believe that he missed the
16 first one or two appointments for sleep apnea and
17 he also missed some of my appointments and when it
18 was discussed with him the necessity of him being
19 more consistent with his appointments, I see that
20 was one of the triggers that he became very
21 agitated.

22 Q. Did you notice any or did you by history note any
23 deterioration in his sleep patterns or in his
24 reliability in taking his medication, that sort of
25 thing?

1 A. I think there is a -- the record indicate that he
2 always had difficulties with being consistent with
3 taking the medication. I seen that, that he would
4 take some medication, and then he would not take
5 other medications. So, I said he was always -- not
6 always complying with his medication, and so there
7 is -- that sort of is -- through his record, I see
8 he was probably the most compliant when he was in
9 Texas.

10 Q. What about his sleeping patterns?

11 A. His sleeping patterns, I see that his sleep hygiene
12 has been always described as being poor. Sometimes
13 he would stay up at night and he would sleep during
14 the day and when I discussed it with him, he said
15 it just all -- it's regulated by the level of his
16 headaches. That sometimes when he has -- so that -
17 -- that's how it -- that's how he regulates his
18 sleep according to where, where his headaches are
19 at.

20 Q. His, his sleeping patterns when he was in Tangrum
21 in that type of institution, are his sleeping
22 patterns regulated by the, by the structure?

23 A. Yes.

24 Q. Do you know if his mother was able to regulate his
25 sleeping patterns or how much control she has of

1 him at home now?

2 A. I believe she has no control. I think -- I don't
3 think that, that Mrs. Floyd is capable of going
4 against Scottie's wishes. I think he loves her, he
5 cares about her, he's sort of a devoted son in that
6 sense, but I don't see that she's able, for
7 instance, to make him go to bed at certain time and
8 that's not how it works.

9 Q. Is he able to control himself?

10 A. He goes to -- I see that he goes to bed and as I
11 said it's just regulated by how he -- what his
12 headache is and he sometimes sleeps through the day
13 and is up all night,, and I think that has been --
14 that has been an issue and that may also contribute
15 to his headaches.

16 Q. Other than having him reinstitutionalized, do you
17 have any recommendations on how to ensure that he
18 maintains a structured sleeping pattern?

19 A. I, I don't think so. I don't -- I don't think -- I
20 -- I don't know that there is anyway unless he has
21 engaged in some activities that would necessitate
22 him to stay up during the day or there is some
23 treatment is discovered that will decrease his
24 level of headaches that will then allow him to
25 follow more regular pattern of day and night.

1 Q. Is there any relationship between his destructive
2 sleeping pattern and the increase in the severity
3 of the headaches?

4 A. And that's a -- I cannot say for sure, but I
5 believe that if somebody does have a sleep apnea
6 that leads -- that can lead to headache. It also
7 can lead to difficulties with cardiac function. It
8 leads to exhaustion. It leads to decrease in the
9 concentration and memory, and so it's a very
10 significant medical condition, and I think that the
11 neurologist was -- his neurologist was of the
12 opinion that it can be increasing his levels of
13 headaches, so that's --

14 Q. Okay. You were speaking earlier about all of this
15 coming to a head when he started threatening
16 everybody?

17 A. Yes.

18 Q. What impact did that have on Dr. Healy continuing
19 to treat the patient?

20 A. He discharged Mr. Floyd as a patient. I assume
21 that he did not feel comfortable with having Mr.
22 Floyd as a patient and he discharged him from his
23 practice.

24 Q. Did you play a role in trying to find another
25 neurologist, another -- yeah, neurologist to treat

1 Scottie?

2 A. Yes. Yes, I did.

3 Q. Okay.

4 A. I looked around and I consulted with several
5 neurologists, and then I found -- and I talk also
6 to Dr. Skinner, I believe. I talked to Dr. Evans,
7 Dr. Kent. They were not interested in seeing Mr.
8 Floyd, and I talked to Dr. Evans whom I know and
9 referred him and he accepted him as a new patient.

10 Q. And did Dr. Evans do an evaluation of Scottie?

11 A. Yeah. Dr. Evans saw Scottie once and he -- and he
12 wrote a nineteen page clinical -- clinical note,
13 and then he was going to see him again after
14 Scottie went for the sleep apnea test and that's
15 when it didn't work out with Scottie.

16 Q. Have you had an opportunity to review Dr. Evans'
17 nineteen page report?

18 A. Yes, I have.

19 Q. Has that been -- is that report and findings
20 consistent with what you've known about Scottie up
21 to this point?

22 A. Yes, it is.

23 Q. Did it contain anything surprising to you or any
24 diagnosis that were inconsistent with what you had
25 already arrived at?

1 A. No.

2 Q. Okay. Why wouldn't Dr. Evans continue to treat
3 him?

4 A. I think Dr. Evans perceived Scottie as non-
5 compliant, that was one thing. But also Scottie
6 refused to go and see Dr. Evans, and I think there
7 was sort of the episode that took place to
8 characterize his difficulties. Dr. Evans
9 prescribed him medication that he was on before
10 that according to Scottie didn't help him except
11 that Dr. Evans tripled the dose, because he thought
12 that the reason why it was not effective was
13 because the dose was low, so he tripled the dose
14 and changed the timing on the dose which could have
15 had completely different effect, but Scottie saw
16 the name of the medication and from that he
17 concluded that Dr. Evans knows nothing. That he is
18 -- that he is a bad doctor, that he does -- that he
19 didn't read anything that was written about him,
20 that he doesn't care about Scottie and exploded and
21 then -- and said that he is -- and he just -- and
22 as I said, he just took that one piece of
23 information that the name of the medication was the
24 same and without taking any, anything else into
25 consideration, without being open to anymore

1 information, he just took that one piece and based
2 on that, he based his decisions and agitations and
3 threatening behaviors, and for, for days, for days
4 spent talking about it and how bad Dr. Evans was,
5 and then when he went to Dr. Evans' appointment,
6 there was apparently some confusion when he should
7 go to the appointment and he did not have -- he has
8 not completed the sleep study evaluation. He threw
9 the pills at the receptionist and tell them that he
10 is firing Dr. Evans and became agitated and the
11 last thing that his nurse spent two hours calming
12 him down but that---

13 Q. When you say his nurse, you're talking about the
14 case manager?

15 A. The case manager, yeah.

16 Q. Has she always been there when you've talked to
17 Scottie, the case manager?

18 A. No.

19 Q. Has his mother always been there?

20 A. His mother has always been there.

21 Q. Have there been times when he's missed appointments
22 but his mother has been there?

23 A. Yes. There has been actually when Scottie misses -
24 - when Mr. Floyd -- I referred to him as Scottie,
25 does not come then his mother comes. That has been

1 the agreement with the, with his case manager that
2 in order to help Mom to be able to deal with
3 Scottie and to be able to talk more openly about
4 how he is doing at home, because she is very, very
5 cautious what she says in front of him.

6 Q. His reaction like you said when he sees just the
7 name of a drug and then all of the sudden he draws
8 all kinds of radical conclusions from that, is that
9 characteristic of this type of injury?

10 A. It is characteristic that when people have
11 difficulties with executive functioning, they just
12 -- the thought processes can get impaired and as
13 with him and typically when there is any kind of an
14 emotional overlay to him, then, then the whole
15 thought process becomes distorted.

16 Q. Have you had -- now, I can understand Scottie and
17 his reactions because of his condition. The -- the
18 maybe this is too strong of a word. The reaction
19 of these neurologists, why is it that they -- I
20 mean, are they -- obviously, they under -- they
21 understand what's causing the problem. Why are
22 they hesitant to treat him anymore?

23 A. I don't know, liability.

24 Q. When you say liability, what do you mean?

25 A. Scottie---

1 Q. Well, let me rephrase it. When he came into these
2 doctors' offices, did he just threaten the doctors
3 or did he also threaten their staffs and everybody
4 in the room?

5 A. I think with Dr. Healy, I think that when there was
6 an instance before he went to -- well, before he
7 went to Texas, there was a -- he was threatened
8 somebody, the staff, and they had to call the
9 police and they had to take him out of there, then
10 also they are aware that he brought a revolver or
11 pistol and threatened to kill ER doctor in hospital
12 if he does not help him with his headaches, and so
13 I see that was known about it and I see that people
14 who are petrified of him, and so that's a -- and I
15 think -- and that's my -- my guess is that he is
16 seen as being a high risk and, therefore, high
17 liability that if he is not going to take the
18 medications the doctor prescribes and after, he
19 will be considered responsible for him, that the
20 equation doesn't add up, and so if, if Scottie does
21 not take the medication, then the doctor will not
22 prescribe that for him. On top of it, I think,
23 because the medication concern pain medication, the
24 physicians have to sign -- have a contract that
25 the, that the patient is to sign and the contract

1 states that if they are on this type of medication,
2 they are highly regulated, and they do not -- they
3 either have -- either chemicals in their body that
4 says they smoked marijuana or have some other
5 opiates in their body or if they don't have in
6 their blood system what they should have in their
7 system, then they will be discharged, because it
8 creates -- it's a liability of noncompliance.

9 Q. Why do you continue to treat him?

10 A. I have worked with these folks for twenty-five
11 years. I think these are people who try to get
12 back to where they were and struggle against
13 terrible odds and to get there, some, some get
14 there, some don't, but I think there is a, there is
15 a -- I have a faith that one can change and one can
16 learn, and I guess I have seen enough people do
17 well to give me a hope that he -- that there is
18 possibility for improvement and I -- and I guess
19 I'm also used to working with them, so if they do
20 not -- I don't feel threatened. I don't feel that
21 I'm at risk, and I'm hoping that I can be of help.

22 Q. You've been present in numerous conferences
23 involving the attorneys involved in this case, the
24 case manager, and the neurologist at one point in
25 time, is that correct?

1 A. But the neurologist didn't come.

2 Q. Okay. How many different conferences have you been
3 involved with say in the last let's say since June?

4 A. With, with Scottie?

5 Q. Yes.

6 A. With Scottie being present?

7 Q. No, with -- well, no. Whether or not he was
8 present when you discussed people -- with people?

9 A. Four.

10 Q. Four?

11 A. I say four. Yeah.

12 Q. The last one that you had where the attorneys were
13 present, his guardian ad litem was present, his
14 general guardian was present, and there were also
15 some folks from North Carolina from a facility---

16 A. Right.

17 Q. ---up in North Carolina, do you recall that
18 meeting?

19 A. Very clearly.

20 Q. What was the purpose of that meeting?

21 A. The purpose of that meeting was to determine what
22 would be the next step that was after Scottie made
23 a threat to kill you and Dr. Healy and anybody else
24 that's involved with him, and then after that, it
25 was felt that we -- I felt that I have to notify

1 everybody, that is my responsibility to notify
2 everybody that according to my duty toward him, it
3 was a therapist decision, and so then we had to
4 regroup and discuss what we are going to do next.
5 What are -- if Scottie is safe to be home or if he
6 would benefit from another inpatient facility, and
7 so that's, that's where the -- that was the gist of
8 the conversation, trying to figure out treatment-
9 wise and safety-wise what would be the next step.

10 Q. By that time had Dr. Evans already decided he
11 wasn't going to treat Scottie?

12 A. It was by the time -- no, I think, I think the
13 decision and not from Dr. Evans, Dr. Evans haven't
14 seen him at that point yet, but it was -- I believe
15 that Dr. Healy, I am not sure if that was around
16 that time, Dr. Healy already decided that he is not
17 going to see him because it was one of the
18 considerations that we would need to have a new
19 physician treating Scottie and I was thinking about
20 Dr. Tom Gottierre in North Carolina being the
21 possible neuropsychiatrist.

22 Q. Do you have a neuropsychiatrist now or a
23 neurologist who is willing to treat Scottie and
24 prescribe medications for him?

25 A. We don't.

1 Q. How are you getting medications prescribed for
2 Scottie right now?

3 A. He still has medications that are present -- he
4 still has another months of medication for his --
5 for seizures and he still has significant amount of
6 pain medication because he has refused to take them
7 and now when the headaches are really bad, then he
8 takes them. I will -- so that -- that's what we
9 have right now. I think that I can -- if he runs
10 out of the seizure medications, I can take him as I
11 did before to the emergency room doctor and talk to
12 the emergency room physician, and get him new
13 prescription of anti-seizure medication. And I
14 think I can do it as sort of a -- they will
15 probably do it for me for a couple of more, a
16 couple of more months but that is not a permanent
17 solution. That is way it is right now.

18 Q. I believe he had also some back problems and there
19 was a prescription for him to submit to a MRI of
20 his spine?

21 A. And he did. He went -- he saw Dr. Chokshi and he
22 had MRI done.

23 Q. Did he give -- have you talked to him since that
24 MRI?

25 A. Yes, I talked to him today.

1 Q. What was his reaction to having that MRI?

2 A. He said that's the last MRI, closed MRI he is ever
3 going to do.

4 Q. Why is that?

5 A. Because he became claustrophobic, he became hot,
6 and he became intensely uncomfortable, and he said
7 that he will be able to do open MRI but not closed
8 MRI.

9 Q. At this choice -- at this point in time,
10 apparently, at least it appears to me and you can
11 object to my injecting my opinion in this thing,
12 that either he continues to live at home and we try
13 to maintain him as best we can or he's
14 institutionalized and in order for him to be
15 institutionalized against his will, because
16 apparently he is not going to voluntarily go back
17 to any kind of institutional setting. Is that the
18 impression you got from the conference we had?

19 A. Well, he's not -- he's -- not only that he is not
20 going to go voluntarily, but he is very, very
21 suspicious of going anywhere thinking that we will
22 snatch him and drag him and he is ready to fight us
23 to death.

24 Q. Well, assuming those are our only alternatives,
25 either he stays home or he is committed over his

1 objections involuntarily, is he of significant
2 enough threat right now to himself or to others
3 where you would recommend to a probate judge that
4 he has his civil rights denied and then he be
5 committed over his objections?

6 A. No.

7 Q. Okay. How close to the line is he?

8 A. Since the episode when he got upset and threatened
9 to do you bodily harm, there has not been a real --
10 there has not been an explosion. His Mom reports
11 that he is -- that his behavior has improved some,
12 that he is less angry. I think that unless there
13 is something that happens, unless there is some
14 kind of event that would -- that he would respond
15 to violently, I don't think that there is -- that
16 he would need or benefit from inpatient
17 rehabilitation at this point. I think that it's a
18 -- I would not recommend it. I think that what he
19 -- what would happen if he goes against his will is
20 that he will become very violent, and explosive,
21 and destructive, and I think there is that -- and
22 not much would be accomplished and I think that he
23 will probably do damage to himself and his body as
24 he did in once before.

25 Q. Right now, other than maintaining him as you're

1 doing and with the assistance of his mother as the,
2 as the guiding force as much as she can be in the
3 home, is there anything else that can be done for
4 him as far as treatment is concerned, assuming that
5 all -- what's going on right now is going to be
6 continued?

7 A. No.

8 Q. Is there anything else we can do?

9 A. I think we cannot -- at this point, he would not be
10 able to go to Voc Rehab unfortunately. I say that
11 because where he is at and it just not would be
12 safe for him or people that work there. He is --
13 if we can find -- and I -- and there has -- there
14 has been skepticism expressed by some of the
15 neurologists that his headaches will ever get
16 better, which I think that's -- which is very
17 unfortunate, so that may be so disabling if that's
18 truly unchanged, unchangeable condition, then I
19 think that his ability to function will be forever
20 very limited.

21 Q. Do you have an opinion to a reasonable degree of
22 psychological certainty today as to whether or not
23 he is able to engage in any kind of gainful work
24 activity?

25 A. I don't believe that he is able to engage in a

1 gainful activity.

2 Q. And why is that? What kind of impairments does he
3 have that will restrict him from working?

4 A. It is his explosive behavior. It is his level of
5 pain and headaches that he has difficulties even
6 coming to doctors' appointments, and I believe that
7 if he does not make my appointments, then that is
8 because his headaches are so severe that he is
9 nauseating and confined to bed. I don't think that
10 it's the resistance coming to see me or coming to -
11 - going to the other appointments. So, I don't
12 think that he would be a dependable employee
13 because of his headaches. I don't think that he is
14 able to take directions from anybody without
15 feeling threatened and insulted and exploding, and
16 so I don't think he is an employee that any, any
17 employer would be able to tolerate, and I don't
18 think that he would be an employee that could
19 tolerate any kind of employer. I think that if Mr.
20 Floyd has ever had a chance of some kind of an
21 employment, that he would have to become car
22 mechanic, what is it called, shade tree mechanic,
23 where he repairs car for somebody that has no time
24 limit and nobody tells him anything providing that
25 that's -- that he would be capable of doing that.

1 But it's -- but at this point, it's that the level
2 of headaches is such. My challenge would be for
3 him and I to find a physician that will take him
4 and that will be -- and part of it will be that I'm
5 telling him that I am refusing to do it alone.
6 That he is to do it with me and that it's part of a
7 sort of an independent -- I see it as an
8 independent living skill to be able to find a
9 physician, talk to them civilly over the phone and
10 ask if they will take him as a patient. And so
11 that would be our little step that I am aiming for,
12 but it's an independent living skill and he is
13 aware that his Mom will not always be here and that
14 he has to be able to make it on his own and that
15 motivates him to work with me.

16 Q. Have you developed a doctor/patient relationship
17 with him that---

18 A. Yes.

19 Q. ---that you feel confident that he has -- that he
20 trusts you?

21 A. Yes.

22 Q. Doctor, his present condition, do you have an
23 opinion as to whether or not it's permanent?

24 A. I believe it's permanent. The injury has been in
25 '01, so I believe -- I think that's, that's five

1 years. I think the behavior patterns described
2 three or four years ago are similar even though
3 just that they vary in intensity, but brain injury
4 is permanent. The behaviors are very similar. I
5 see that he will modify -- hopefully, there will be
6 some modification to his behavior, but the
7 condition itself is permanent.

8 MR. WUKELA: Doctor, that's all the questions
9 I have. Please answer any questions the other
10 attorney has.

11 DR. FEDERER: Would you mind if I get one?

12 MR. CAUTHEN: Oh, I was going to say let's
13 take -- let's take a break.

14 DR. FEDERER: Oh, sure.

15 EXAMINATION BY MR. CAUTHEN:

16 Q. All right. Dr. Federer, as you know, I'm Mark
17 Cauthen and I represent the employer.

18 A. Yes.

19 Q. And I want to talk with you about some of the
20 opinions that you've already given and ask you a
21 little bit about your -- a little bit more about
22 your treatment of Mr. Floyd. Let me ask you this,
23 do you, do you know, have you counted up, would you
24 be able to tell us the number of missed
25 appointments that Scottie Floyd has had?

1 A. I could count it up. Do you want an exact number?

2 Q. If you could give me a---

3 A. Probably like 25 percent.

4 Q. Twenty-five?

5 A. Twenty to 25 percent.

6 Q. Now, you had scheduled him -- you have scheduled
7 to see him how often?

8 A. Once a week.

9 Q. Once a week?

10 A. Once a week.

11 Q. And you're -- and you're saying since June, early
12 June of '06?

13 A. Yeah. I would imagine that, that would be -- that
14 would be my educated guess.

15 Q. So you say that since that time---

16 A. That would be about 20 to 25 percent, yeah.

17 Q. Okay. And since that time, you say he's missed
18 about 25 percent?

19 A. Yes.

20 Q. Okay. And most of those were reportedly due to
21 headaches?

22 A. Due to headaches and when he -- initially, when --
23 that -- at least that when he doesn't come then his
24 mother will come and I will have a session with
25 her. That was agreed upon and sort of do treatment

1 of Scottie via Mom and talk to her about what to do
2 with him, so that time is not lost.

3 Q. Okay. When she, when she would show up without
4 Scottie, what would she generally report as to the
5 reason for him not being there or did it vary?

6 A. She would report that it usually was that his
7 headache was so severe that he was nauseous and
8 that he was still asleep and unable to get up that
9 it was -- that the headache was disabling.

10 Q. Okay. Was it always headaches or was it sometimes
11 that he was just asleep?

12 A. Headaches. It was always -- always that the
13 headaches were such that -- apparently with the
14 change of weather, now those -- those has always
15 been when there is a -- when it's stormy or where
16 there is a change of weather that his headaches she
17 reports get worse and it's also reported by the
18 neurologist and it sort of is the persistent
19 pattern.

20 Q. Okay. Now, when you just -- when you just meet
21 with Ms. Floyd on her own, what, if anything, is
22 accomplished by that?

23 A. I think what we -- we go over what I get
24 information from her about what Scottie is doing,
25 how much -- what medication he -- if he's taking

1 medication, what medication he is taking, what is
2 it that she can do to promote greater level of
3 activity, what are her fears, what is -- and what
4 sort of has been happening and I go over with, with
5 her some behavior management techniques and try to
6 work with her, because she is, she is the primary
7 care provider.

8 Q. Right. Okay. And you also---

9 A. So we do like a family training.

10 Q. Okay. So you -- and you also provide support for
11 her, I guess, through the counseling?

12 A. Right. Right.

13 Q. Okay.

14 A. Because when he -- when he comes to session, she
15 really doesn't get a chance to talk and actually in
16 front of him, she doesn't want to say anything to
17 upset him.

18 Q. Okay. Okay. But you said earlier I think in the
19 deposition that you feel that she doesn't have any
20 control over him?

21 A. She cannot make him do what he doesn't want to do.
22 She cannot make him go if he says I cannot go. She
23 cannot make him go. She, she cannot make him go to
24 bed at certain times. She cannot -- she does not
25 have that control over him, no.

1 Q. Okay. Has she had any ability to monitor his
2 medications or ensure that he's taking medications
3 as prescribed?

4 A. She can monitor the medication, but she cannot
5 ensure that when he says I'm not taking the
6 medication that, that she cannot make him take it.

7 Q. Does she even know or do you know whether she's
8 even certain of what he's taking and what he's not
9 taking?

10 A. Yes. Yeah, because she has the pills and so when
11 she brings them, he would count how many. One of
12 the sessions she brought them and then we counted
13 how many pills is in each bottle just to know how
14 many he took.

15 Q. So, she could get the bottles---

16 A. Right. Right.

17 Q. ---and bring them with her to the session?

18 A. Yes. Yes.

19 Q. And she would usually always do that in a session?

20 A. Yes.

21 Q. Okay. Could you give me the list of medications
22 that he has been on since he has been under your
23 treatment? Do you have that handy?

24 A. It may -- I think the medication that would be --
25 he had -- he had four kinds of medication. He has

1 one medication that was prescribed by Dr. Evans.
2 He had one seizure medication, then he had one
3 medication for his memory and then he had one, then
4 he had pain medication, and then there was a fourth
5 one and out of those he takes only the seizure
6 medication.

7 Q. And do you know the -- and do you know the specific
8 names of those?

9 A. Yeah. Let me, I had a -- I have a notation
10 somewhere.

11 Q. I probably have something somewhere in this stack
12 of documents that could tell us that.

13 A. I think he was -- it should be -- it should be in
14 the note from Dr. Adams, because he would be --
15 that would be the medication that he was given.
16 Okay, okay. So, this is -- he was prescribed
17 Aricept and he took two.

18 Q. What was that first one?

19 A. Aricept. It's on the last page of Dr. Evans'
20 note---

21 Q. Okay.

22 A. ---is the list of the medication.

23 MR. WUKELA: Just for our records, that's APA
24 29, Page 389.

25 Q. Okay. So, A-R-I-C-E-P-T? Aricept?

1 A. Aricept.

2 Q. What -- what is that for?

3 A. Aricept is a medication that's given to improve
4 brain functioning, to improve memory. It's given
5 to people that have problems like with dementia and
6 it's prescribed often to brain injury clients,
7 because it improve memory of brain functioning, and
8 he took it.

9 Q. Then we have Depakote?

10 A. Depakote is seizure medication. Keppra is a
11 seizure medication. Restoril is a sleep
12 medication, and Vicodin is a pain medication, and
13 Flexeril is also pain medication for spasms.

14 Q. For the back?

15 A. Yeah.

16 Q. So, Flexeril is for the back spasms?

17 A. Vicodin for the headaches.

18 Q. Vicodin for the headaches. Rester -- Restoril and
19 -- I'm sorry. Restoril for sleep?

20 A. Yes.

21 Q. To aid in sleep?

22 A. Yes. And the Aricept for memory.

23 Q. Okay.

24 A. And Depakote and Keppra for seizures.

25 Q. Okay. Now, is that a new medication regime that

1 Dr. Evans has put him on or had he been on this one
2 for some period of time?

3 A. I think it's different from what Dr. Healy had him
4 on. I think it is just that the Depakote is
5 probably the same, but I, I see that the Aricept is
6 new and I don't know if the Vicodin may be, may be
7 new.

8 Q. Do you know of any other medication that he's been
9 on since you've been seeing him for headaches to
10 try to control the headaches and the pain from
11 that?

12 A. I don't remember what he -- when he came -- it
13 should be -- it is somewhere. It's somewhere. I'm
14 not sure. I do have a paper somewhere. I'm just
15 trying to find the admission where he -- I think
16 Ms. Grimsley would have it. Actually, I have it
17 somewhere in here. Okay.

18 Q. Okay. You don't have to look too long.

19 A. Yeah. But, I -- usually, it's in the history, in
20 the history section, but I -- let me see from
21 September to October was that because -- yeah.
22 It's not -- it doesn't state here. I don't -- I
23 don't have it right handy. But, it will be -- I
24 think that that information can be gotten from Ms.
25 Cynthia Grimsley.

1 Q. Okay. Well, let me, let me ask you this. I think
2 you said a minute ago he was compliant with taking
3 the seizure control---

4 A. Yes.

5 Q. ---medication, that being the Depakote and the
6 Keppra?

7 A. Yes.

8 Q. Okay. But, what is your knowledge of his level of
9 compliance with taking the other medications?

10 A. I've -- he took -- probably out of thirty, he took
11 two. When I talked to him about noncompliance, I
12 feel that he has a fear of being addicted, and I
13 think that he stated that he had that -- when he
14 had to take. what was it, the opiates, he was --
15 see, with some of the medication for the brain, to
16 improve brain function, he had problems with
17 dizziness and stomach cramps and some people have
18 side effects that are very unpleasant with that and
19 apparently he tried it once or twice and then he
20 stopped taking it. The pain medication, he saw
21 that was the same medication that he was on before
22 even though it was in a lower dose and didn't do
23 anything for him, so he decided not to take it. He
24 has a, he has a fear of being addicted that he
25 verbalized many, many times. Apparently, he was --

1 and I'm just trying to, trying to find what is it
2 that he was on that -- oh, he said he was addicted
3 to Morphine at some point and that he had terrible
4 time getting off Morphine and that's the fear of
5 withdrawal from, from addiction to tranquilizers
6 that kind of keeps him. Even though recently he
7 decided to take when the medication become too
8 severe -- when the headaches become too severe, he
9 started to take the medication but I think he does
10 not take it the way the physician prescribes it, so
11 he takes it the way he thinks it will or will not
12 help him.

13 Q. Okay.

14 A. And that's an issue.

15 Q. So, did -- you said -- mentioned something about
16 Morphine. Have you seen anything in the review of
17 records to indicate that he was on Morphine at some
18 point or had a problem with Morphine?

19 A. I think it was. I don't recall. I think it was
20 when he initially after the recovery from the
21 injury, I think he was on Morphine, but I cannot
22 tell you where and at what point. I don't -- I
23 don't recall.

24 Q. So, he is definitely not taking the Vicodin to
25 control the headaches the way it's prescribed?

1 A. Not the way it's prescribed.

2 Q. Okay. Is he -- and to your knowledge, has he taken
3 enough of it to have any positive effect on the
4 headaches?

5 A. From what his mother tells me when, when the
6 headaches became more severe recently that he
7 started to take the Vicodin and it helped, but he
8 still just takes it only when pain apparently
9 becomes unbearable and which again is not the way
10 to take the medication because when they become
11 that severe, then it's not effective.

12 Q. Okay. So, he's -- to your knowledge, he's
13 compliant with the, with the seizure control
14 medication but none of the others?

15 A. That's correct.

16 Q. All right. Now, you said that you -- earlier, I
17 think you said that you did complete your testing
18 and I assume, are you referring to the
19 neuropsychological evaluation that you've been in
20 the process of completing?

21 A. I did two, two tests. I was testing for memory, and
22 then I started -- and did the California Verbal
23 Learning Test and did the Weschler with him and,
24 again, now just basically those are, the results
25 are the same as Dr. Windsorova, so I see that from

1 that, those functions pretty much consistent with
2 the one in 2002.

3 Q. Okay. Now, when did you complete the
4 neuropsychological testing? Was this done over a
5 long period of time?

6 A. It was done over a period of time, because as I
7 said he just would do bits and pieces depending on
8 his -- probably within last months or so or maybe
9 even sooner.

10 Q. And have you -- have you completed the entire test,
11 the entire battery of tests that you would have?

12 A. No. No, I did not. I did not.

13 Q. What---

14 A. I would -- I would normally -- if I -- if the
15 person would have more cognitive difficulties then
16 there was a -- the focus at this point for me is on
17 the behavior issues, and he has done his
18 neuropsychological testing done twice. So for me,
19 the focus is now more on the behavior issues and
20 the anger management,---

21 Q. Okay.

22 A. ---and independent living skills. I just done
23 that, not in its entirety. I don't -- at this
24 point, I do not feel like I need to do more
25 testing. It just would not give me anymore

1 information.

2 Q. Okay. So you complete -- you completed what you---

3 A. What I'm going to do.

4 Q. ---feel you need -- you need to do?

5 A. Yeah.

6 Q. Okay. Did the missed appointments have any effect
7 on your ability to get the neuropsych evaluation
8 completed?

9 A. Well, I think it did slow me down some; yes, I do.
10 I think more part of it was slow down was when,
11 when he would come and would be agitated, and so we
12 had to deal with the anger issue as a priority.

13 Q. Okay.

14 A. There is a -- and there is another side to the
15 compliance/noncompliance issue. I think that
16 according to his Mom and he talked to me about his
17 personal history more than she ever heard him talk
18 to anybody about it, so he is just on the other
19 hand sort of opened up more about his childhood and
20 his own thought processes, and so in that sense,
21 there has been, you know, more cooperativeness and
22 compliance and trust expressed in the time that we
23 have spent together.

24 Q. Now, were there -- I see you did make the mention
25 of this in the latest report that we just got

1 dictated on 2/1/07, I believe,---

2 A. Right.

3 Q. ---of some issues in his background?

4 A. Yes.

5 Q. What, what were those? Could you explain that to
6 us just a little bit.

7 A. Now, he had very violent father, a father who was
8 an alcoholic who was violent person by any account.
9 He would beat his Mom. He would take shots at her.
10 He would stick gun to Scottie's head, and he was a
11 very violent, abusive person and that was the
12 beginnings of Scottie's life where those were the
13 early childhood experiences, and I think just that,
14 that definitely had an effect on him.

15 Q. Okay. What -- were you able to draw any
16 conclusions as to, as to how those things relayed
17 to you have effected him long-term?

18 A. I think people who -- I mention that he's -- I
19 would assume he would have some PTSD-like
20 experience. I think that there would be a mood
21 fluctuation. There would be problem with anger.
22 But, in spite of all of that, I see that he was
23 able prior to the injury, he was able to maintain
24 employment and function and work, and he had -- I
25 asked him about his driving. I see that he -- and

1 from my understanding, he had one speeding ticket,
2 so I think, I think there was -- so, he was not
3 necessarily a reckless driver, and I think that he
4 was somebody who always had some sort of temper.
5 But, I think with the dyscontrol and with the
6 injury to the frontal lobe, he is preoccupied with
7 his anger and violence and he -- that's sort of
8 what he talks about and that -- and that's what he
9 fears. He fears that he will harm somebody. He
10 fears that, that the anger that's always inside of
11 him will come out that he will not be able to
12 control it. Now, that's his constant struggle.
13 That's his fear about Monday. That's his fear
14 about what you will ask him and if he will come
15 across the table and harm you or not and how he's
16 going to be able to not do that and that's what --
17 when we had the conference with trying to help him
18 help, trying to figure out what to do for his
19 treatment, he has perceived it as we are, we are
20 trying to snatch him away and since that, he guards
21 his door and watches for the sounds of who is
22 coming to the door unannounced and is one of us
23 trying to snatch him away and so that preoccupation
24 and with violence, the anger that he feels, the
25 fear that he will lose control, fear that he will

1 never be able to date anybody, because he cannot
2 tell if he will harm that person or not, that he
3 will not be able to go out in public because he can
4 -- he cannot know if he will lose control and end
5 up in jail, and I think there is that -- that is --
6 it's an underlying -- that's, that's always there
7 for him and dealing with it, that's always is a
8 consideration.

9 Q. Now, do you -- you mentioned mood, and anger, and
10 probably Post Traumatic Stress Disorder---

11 A. Uh-huh.

12 Q. ---as a result of past experiences with his father,
13 apparently?

14 A. Right. It's -- well, when I mention that, that
15 people who have those kind of experiences that, you
16 know, being shot at, seeing their mother being shot
17 at with a gun, she's running through the woods,
18 father sticking gun to him, to his head and getting
19 beatings, then those folks, in my experience, have
20 always some form of responders. There is -- it
21 does something to them and sometime they have --
22 they frequently have PTSD symptoms or Post
23 Traumatic Stress Disorder symptoms and that, and
24 with that comes mood changes and anger.

25 Q. Right. Now, I mean, would you agree those were --

1 those incidents reported to you having apparently
2 his father shooting at people, pulling a gun on
3 him,---

4 A. Uh-huh.

5 Q. ---and things like that, those are -- that's,
6 that's pretty severe?

7 A. Yes.

8 Q. And something you would expect to probably result -
9 - wouldn't be surprised if it would result in Post
10 Traumatic Stress Disorder?

11 A. Correct.

12 Q. Do you -- do you have any opinion as to how much of
13 the current problems he's suffering from in terms
14 of mood or anger may relate back to those early
15 incidents?

16 A. It's hard to --- it's hard to quantify, but it
17 clearly magnifies. As I said, he was -- he had
18 those issues, but he was able to work, he was able
19 to function, he was able to live with a girlfriend,
20 and so he was, he was -- he was able to keep it
21 under control. He was able not to harm anybody or
22 kill anybody except that he would probably kill his
23 dad if he saw him, but there was -- so he was able
24 to control it. He was able to function, he was
25 able to work, and he was able to be in a

1 relationship and all of that, and that, that injury
2 pushed him past the point. So, he was functional;
3 now, he's not functional. And I think those are
4 the issues that sort of the content that's being
5 magnified by the injury and that sort of what,
6 what's in the grist mill for him---

7 Q. Uh-huh.

8 A. ---and that makes it -- if he -- the symptoms
9 probably would have been different, if he did not
10 have that. But it's like if you have a teenager
11 that is only sort of marginal functioning who gets
12 a head injury and he is not functioning. If
13 somebody with higher functioning individual who
14 have a head injury and they will -- they still have
15 enough internal resources and their impact will,
16 will be different. But for him the impact was
17 critical because it rendered him nonfunctional.

18 Q. Okay. All right. You said earlier when you
19 completed the test that, I think -- and I think you
20 indicated in your report that the IQ testing was
21 normal?

22 A. Yes.

23 Q. Okay. Is there anything about his IQ that has
24 changed as compared to what it was when Dr.
25 Windsorova did her test?

1 A. No, because---

2 Q. Anything about his IQ that would, that would
3 prevent him from some kind of gainful employment?

4 A. No. No, this -- what IQ measures level of
5 intellectual -- as I said intellectual functioning
6 and Scottie, in many ways, is bright.

7 Q. Uh-huh.

8 A. His ability of the visual spatial skills, he does
9 really well with it. I think that's probably why
10 he was a good mechanic, because he had those skills
11 and to be able to put things together and on the
12 tests, that's why the one side -- the test has two
13 parts, one of them is verbal, focus on verbal
14 functioning,---

15 Q. Uh-huh.

16 A. ---and one of them on perceptual organization and
17 the perceptual organization is much better than
18 the verbal functioning and probably always has
19 been, I say that. He has always been a person who,
20 who has that kind of a skill and that kind of a
21 gift. So, I think that's not what would take him
22 out of running. He is not -- he is -- but, as I
23 said he has average -- he has average IQ and so
24 that part of his functioning would not prevent him
25 from being gainfully employed.

1 Q. Okay. Now, you said, otherwise, that the tests
2 were also pretty much, your tests were pretty much
3 consistent with what Dr. Windsorova's were?

4 A. Yes.

5 Q. And showed---

6 A. Yes.

7 Q. ---apparently no -- no deterioration?

8 A. That's correct.

9 Q. So, he's sort of at a baseline?

10 A. Yes, per that test.

11 Q. Okay. Okay. Let me, let me ask you a little bit
12 about, a little bit more about that. Are there --
13 are there different components to you as a
14 neuropsychologist -- first of all, you're not a
15 neurologist?

16 A. No.

17 Q. But you are a neuropsychologist?

18 A. Right.

19 Q. Are there different components of, I guess, what
20 you assess as a neuropsychologist in terms of
21 Scottie's level of functioning? In other words,
22 are you looking at one component being cognitive,
23 another component being behavioral?

24 A. Right.

25 Q. And are there other components?

1 A. Emotional. I think, you know, it's just -- it's
2 that the level of emotional functioning you would
3 look at for, you can assess him for depression and
4 that would be another that you can test and you can
5 give him questionnaire to fill out or you can ask
6 him questions and as I said that's sort of what we
7 discuss in the sessions.

8 Q. Okay. So, there's three -- you are saying there
9 are three components to it: cognitive, behavioral,
10 and emotional?

11 A. Yes.

12 Q. As separate components?

13 A. Yeah. You can also -- you know, you can for a
14 regular neuropsychological evaluation it's not too
15 involved but you can also evaluate for speed of
16 movement and that was -- and all of those things
17 had been done before, so it would be sort of
18 wasteful to do. It would not serve a purpose to do
19 it at this point.

20 Q. Okay. Well, let me break these down then as far as
21 cognitive goes. What is your impression of his
22 level of cognitive functioning, I guess, as a
23 result of his, of his physical brain injury?

24 A. His intellectual functioning is measured by
25 Weschler. It still remains probably what it was

1 before. However, the things that are not measured
2 and that we are looking as I said the executive
3 functioning, the kind of short circuiting of his,
4 that emotional component that affects his thought
5 processes. The fact that he becomes very easily
6 agitated and that that affects his thought
7 processes that he becomes unable to process the
8 information and deal with it appropriately. So
9 that is part of the result that's sort of the
10 specific result of the head injury that is not
11 measured.

12 Q. Okay.

13 A. The only way that I will be able to measure it if I
14 would make him angry and then test him and I am not
15 going to do that.

16 Q. Okay.

17 A. So, you'll, you'll -- on the contrary you sort of
18 set up the test in an ideal supportive situation
19 because you want to see how he does under ideal
20 circumstance.

21 Q. And that would measure what?

22 A. So that's the measure -- the Weschler measure of
23 the intellectual functioning under ideal
24 circumstance.

25 Q. Okay.

1 A. But for him part of the injury is that when he gets
2 triggered, when he -- then that's when he becomes -
3 - his thinking becomes muddled. He is unable to
4 hear anymore information. He is unable to respond,
5 to deal with anything that is coming at him, that
6 whole adaptive organization, that whole adaptation
7 is out of the window and that's, that's why any
8 demands that are placed on him become -- become for
9 him the breakage points like when we're dealing
10 with the endless doctors where you have to present
11 to be some kind of a given thing, he cannot do
12 that.

13 Q. Okay. Now, is that -- is that part what you're
14 telling me there, is that part of cognitive or can
15 you -- does he have a cognitive impairment?

16 A. That is part of the cognitive impairment. I think
17 that, that when his -- when emotionally when he
18 becomes triggered, that his cognition becomes,
19 becomes impaired. He cannot problem solve and the
20 outcome is the explosive, aggressive, threatening
21 behavior. When the doctor said I cannot help you,
22 he pulls a gun on him or he just -- or he feels
23 that -- so, he just feels threatened, and then he
24 start to talk about what kind of violence he's
25 going -- what is he going to do, what to whom and

1 it just that becomes very agitated and then becomes
2 focused on the violence.

3 Q. Okay. Now, is that typical for a frontal lobe
4 injury?

5 A. That's very frequent with a frontal lobe injury.

6 Q. Okay. Let me ask you about behavioral?

7 A. There is that -- that's why he has two diagnoses.
8 One of them was Intermittent Explosive Disorder due
9 to head injury by several psychiatrists. Another
10 person diagnosed him with Organic Brain Personality
11 Disorder and those are all referring to the same
12 level of explosiveness and short circuiting that,
13 that comes with that.

14 Q. Okay. All right. Oh, before I go to behavioral,
15 is there in your judgment any improvement that,
16 that he could achieve in terms of that cognitive
17 impairment or is he as good as he's going to get
18 there?

19 A. I think the improvement will be very slow. It will
20 be gradual. I think there has been some
21 improvement. There has been some improvement when
22 he was in Texas, and then when he came back, there
23 has been some gradual improvement that he has
24 slightly better sense of humor. He has -- his
25 social graces improved which, which is truly

1 significant that he can say thank you, please.
2 That, that is truly significant and it's coming
3 slowly. But he still has -- there is a part of it
4 where he also has these periods or episode of
5 explosiveness. So, what we to look for is to
6 increase of social graces in some of the gradual
7 behavior and also decreased number of frequencies
8 of the explosive, explosive episodes. That he will
9 be able to handle more the stressful situations and
10 I think, as I said, it's a very slow process, and
11 so I don't see him in the foreseeable future, for
12 instance, being able to handle employment.

13 Q. Okay. Well, what about behavioral -- behaviorally,
14 is his behavior as -- that's another component?

15 A. Yeah, that is sort of a connected with that.
16 That's what -- the behavior that's what I mean of
17 explosiveness, that's the part that where the
18 emotional and the behavior is tied together and so
19 it's -- that is his behavior that, that becomes --
20 that becomes an issue.

21 Q. Okay. Is his behavior something that could be
22 improved upon with proper treatment?

23 A. The medication helps. I think staying on Depakote
24 definitely, definitely helps. Working -- working
25 with him to improve his frustration tolerance, his

1 impulsivity that may -- that may also improve.
2 Some of it, unfortunately, is also potentiated by
3 the pain, by the headaches. When he is in severe
4 pain, he's more likely to blow. So that's part of
5 the variable that will determine how well he does,
6 how well the head -- the treatment for his
7 headaches will go.

8 Q. So, if the headaches could be improved, then he
9 could possibly make some better---

10 A. Better gains. Faster gains; yes.

11 Q. Faster gains in terms of his behavior?

12 A. Right.

13 Q. And self-control?

14 A. Right.

15 Q. Would you consider Scottie Floyd to be at what we
16 call maximum medical improvement from a
17 neuropsychological standpoint?

18 A. Not yet; no.

19 Q. Okay.

20 A. No. I believe that he still will -- believe that
21 he still will improve.

22 Q. And could you explain to us how so?

23 A. I believe that, that if we will continue to meet
24 and continue to work with him, I believe that we
25 will see some improvement. That he will become --

1 the goals for him is to become more cooperative; is
2 to become more cognitive and flexible; to be able
3 to handle frustrations more and to be able to
4 operate more in the world. His motivation is to
5 get a license to be able to drive. So that's a --
6 that is -- and in order for him to drive, he would
7 be able to do X, Y and Z and for that, it will
8 motivate him. Interesting enough, he is saying I
9 am not going to drive unless somebody gives me
10 permission to drive, unless I know I am safe to
11 drive, and unless I know that, that it will not --
12 that my insurance will not -- will be able to cover
13 me, I will not drive without insurance. So, I see
14 there that he wants to be a responsible driver.

15 Q. Okay. Do you know when he last had a driver's
16 license?

17 A. Well, he still does.

18 Q. He still does?

19 A. Yeah, it expires August of '07.

20 Q. August of this year?

21 A. Yes.

22 Q. Okay. All right. So, he -- with continued
23 treatment, he could make improvements in terms of
24 cooperation, handling frustrations, anything else
25 you mentioned there?

1 A. Becoming more, more independent.

2 Q. And those are things that are---

3 A. And being able to go more into the community. He
4 spends 99 percent of his time in his room.

5 Q. Are those reasonable goals for Scottie? Is he---

6 A. I believe so.

7 Q. With continued treatment?

8 A. I believe so.

9 Q. Okay. Let me, let me ask you -- go back and ask
10 you a little bit more about headaches because it
11 seems in your earlier -- I think you identified the
12 headaches apparently as just a major source of
13 problem for him?

14 A. That's correct.

15 Q. Now, the -- and you also indicated that he is not
16 taking the medication to control those headaches
17 the way that he should be?

18 A. That's correct.

19 Q. Do you view that as a voluntary thing on his part
20 or an involuntary thing on his part, the failure to
21 take those medications and to control those
22 headaches?

23 A. It is his decision. I guess he think that that's
24 not the right medication and so, he has that --
25 that is his -- that is Scottie's decision not to

1 take it.

2 Q. Do you think Scottie -- you feel that Scottie is
3 certainly capable of understanding that he needs to
4 take that medication to control his headaches?

5 A. That's correct. Yeah.

6 Q. But for some reason, he just doesn't want to do it?

7 A. He is saying that it didn't work for him before.
8 At least that's when he saw that, that bottle --
9 you know, if it had different name on it, he
10 probably would have taken it and taken it as
11 prescribed, but at that point he saw it as the same
12 darn thing that I took before, it didn't help me
13 and he got stuck and became noncomp --
14 noncompliant.

15 Q. Does his noncompliance then with the medication to
16 control the headaches, does that then effect what
17 kind of gains and progress he could make in his
18 treatment of this illness, this injury?

19 A. I have -- if his headaches were more controlled --
20 you know,, when he takes the medication it controls
21 it to a point, but they never go away even when,
22 when he took the pain med -- when he took the
23 medication before, I think it controls it to a
24 degree that it growing a little bit more bearable,
25 but when the headaches are severe, then that's when

1 he doesn't come to sessions and that's when he just
2 stays in bed and tries to sleep through it.

3 Q. Okay. If he took the -- if he took the headache
4 medication, then is it, is it conceivable that he
5 could make gains toward these goals that you
6 mentioned earlier, being more cooperative, handling
7 frustrations better, being more independent,
8 working towards gaining -- you know, being able to
9 drive,---

10 A. Uh-huh.

11 Q. ---renewing his driver's license and drive, is it
12 con-- is it conceivable he could make progress
13 toward those goals if he would take the headache
14 medication as prescribed?

15 A. Faster progress, yes.

16 Q. Certainly faster progress?

17 A. That is my opinion.

18 Q. Okay. So, his own noncompliance with the
19 medications is holding him back from progressing in
20 those areas?

21 A. His sort of inability to think it through and to
22 get past the first emotional response that he has
23 to that, if he would be able to do that, then we
24 would see I think that faster progress.

25 Q. How about with the sleep apnea treatment, if he

1 were to cooperate and comply with that and receive
2 the proper treatment for sleep apnea, how could
3 that help him?

4 A. We don't know. We don't know. That sort of would
5 remain to be seen. I think there is a -- I saw
6 that if -- if he -- if he does have a sleep apnea
7 and if he would be able to tolerate the treatment
8 which is putting a mask on his nose at night and
9 have a CPAC machine, if he was able to tolerate,
10 then I think that -- assumption is that, that it
11 would, that it could help the headaches, I guess,
12 but that -- that is assumption. And as I said
13 that's sort of -- that would be a neurologist would
14 be better qualified to answer that question but
15 that would be the assumption.

16 Q. But you -- but you agree that's something that
17 should be treated for him, though?

18 A. Yes. Now, if he doesn't have a sleep apnea,
19 definitely it's life-threatening.

20 Q. Do you feel that Scottie is just in general over
21 the course of the six or seven months that you've
22 been treating him, how would you characterize his
23 level of compliance with your treatment and --
24 well, let me just ask you that with your---

25 A. Variable.

1 Q. ---with your treatment?

2 A. Variable.

3 Q. Variable?

4 A. Variable. Yeah. Yeah.

5 Q. And what do you mean by variable?

6 A. Well, I think if you measure compliance by number
7 of missed appointments, then it definitely
8 fluctuates. When if you measure it by the changes
9 that I see and that Mom reports, then it's sort of
10 as slow and gradual but present.

11 Q. Okay. And how would you characterize the level of
12 cooperation with or compliance with his
13 medications, medication dosage?

14 A. Poor.

15 Q. And is it -- is it your opinion that that level of
16 cooperation in terms of his medical in terms of his
17 medical appointments as well as the medication
18 dosage -- dosages, is Scottie's -- is just
19 Scottie's own voluntary choice? He doesn't want to
20 comply?

21 A. It's, it's -- it's not that he -- you know, I think
22 when his thinking becomes emotional, then he gets
23 stuck. He gets stuck, and then he thinks that,
24 that medication is the same that he had before, and
25 then he gets that stuck, and then he's not going to

1 -- he's not going to comply. I think that that's
2 part of the problem with folks with, with this kind
3 of injury that they have difficulties getting past
4 those, those points. It's like with dealing with
5 physicians. It's just that when he had one
6 impression of Dr. Evans, and then he decides to
7 fire him and that's -- it's that impulsive thought
8 processes that becomes -- that has this emotional
9 overlay that's -- is that I see with people with
10 head injury. That is that they get stuck. And so
11 it's a voluntary in a sense that, that it's based
12 on his judgment at the time, but it still is
13 typical that impulsive thought processes that are
14 associated with this kind of injury. I think
15 that's normal.

16 Q. So, there's -- there's some elements -- elements of
17 both?

18 A. Uh-huh.

19 Q. What about -- what is your impression of Scottie's
20 ability to manipulate his providers, his caregiver,
21 the people that are around him?

22 A. Manipulate in what way?

23 Q. Manipulate---

24 A. Like being deceitful or?

25 Q. Well, in the, in the sense -- in the sense that he

1 can cooperate when he wants to and not cooperate
2 when he doesn't want to. I mean, for example,
3 going into Dr. Evans' office with an outburst, but
4 then being contrite after that and cooperative with
5 you or going into Healy's office with an outburst,
6 and then being cooperative with somebody else,
7 something like that?

8 A. He really wasn't contrite for days, he wasn't, but
9 he -- when he saw me, he was not contrite. He was
10 on a war path and he just didn't act on it. I
11 don't see Scottie as being manipulative. I think
12 it is that some of the things that he does, it is
13 pain-driven. You know, he just describes it that
14 the pain is such that at times I think that he
15 would probably be rather dead than to be here,
16 especially if he figure that this is all that he
17 has to look for and some of this "I don't care"
18 attitude comes from this life is not worth living
19 and I don't care what happens to me and it -- and
20 it's that some of the violent thinkings that he has
21 is if he dies and it's a relief for him. So, I
22 think there is a -- I don't see it -- I don't see
23 manipulation. I don't see exaggeration of
24 symptoms. I just -- I see it as the connection
25 between the pain and the anger and at that point, I

1 think that he truly doesn't care and he is going to
2 do what he is going to do and act out of revenge
3 and that's that. That is a constant preoccupation
4 for him.

5 Q. Then it -- but then it goes back to the medication,
6 too, doesn't it? If he was taking the medication
7 as prescribed, then these outbursts might not occur
8 and he may have better control over his---

9 A. He would have a level -- I think the outbursts are
10 controlled. Most of the behavior outbursts are
11 controlled by the seizure meds. I think Depakote
12 is, in particular, is I think a medication that
13 controls behavior outbursts or that's one of the
14 most frequently prescribed meds for it.

15 Q. Uh-huh.

16 A. But I think that if he was -- had less of a
17 headache, then he probably would have been able to
18 cope better.

19 Q. Okay. You were able to review the Discharge
20 Summary from Risk Care Tangrum?

21 A. Correct.

22 Q. As well as their other records at the time you
23 began treating Scottie?

24 A. Six months ago; yes.

25 Q. Yeah. Do you recall what the level of cooperation

1 was as described in the Risk Care reports and the
2 Discharge Summary and the last couple leading up to
3 his discharge in June of '06?

4 A. Not exactly. I remember that they said that he was
5 able to go out in a community, and I said they
6 would go -- they would go on community trips and he
7 was able to go out into the community and that's
8 sort of unusual that he can do that, that he have
9 to be on a certain level, but I don't recall in
10 more details. I read it six months ago.

11 Q. Was it -- was it your impression that he had -- he
12 had progressed to a level of cooperation and
13 control that he could be safely discharged from
14 Risk Care?

15 A. Yes. Yes, that he was discharged to home. Yes.

16 Q. Okay. And when you first saw him, I guess, and
17 first evaluated him back in June, around June of
18 '06, what were your initial impressions of his, his
19 prognosis for treatment and improvement? Do you
20 recall what your initial impressions were? Were
21 they optimistic?

22 A. Guarded and optimistic. I have -- I have seen -- I
23 have worked with people that were, that were more
24 violent than Scottie.

25 Q. Uh-huh.

1 A. I have seen people that have to be physically
2 restrained thirty times a day, take them down to
3 the floor and physically restrain them. And so he
4 is not at that level, but also it's a -- but also
5 has that -- the injury happened five years ago, six
6 years ago, and he had some intermittent explosions
7 that were pretty, pretty serious and pretty scary,
8 and so I think there is a sense of that there is a
9 lot going on and sense of responsibility to take on
10 with Scottie, because when it goes bad, it goes
11 terrible, and so I think that I have more of a
12 sense of responsibility to be able to assist and
13 change it some and give him a chance.

14 Q. Well, has he progressed about as you envisioned or
15 has he done better or has he done worse?

16 A. If it hasn't been for the two, for the outbursts, I
17 would have said that he had been progressing quite
18 well. As I said, it will be slow, but if it wasn't
19 for that one time when he was upset and said those
20 words, then I would have said that he is
21 progressing, but then that happened with the fact
22 that he didn't cooperate or didn't go to the sleep
23 apnea test and trouble with the physicians and I
24 see it just becomes more complicated. But, you
25 know, all of those in some ways are measures.

1 That's a real life and things happen in real life
2 and maybe when it happens, it indicates where he is
3 at.

4 Q. Right.

5 A. So there is one thing that how he does in my office
6 and the other thing is how he does in the real
7 world.

8 Q. Right. Well, what do you think the difference is
9 between the level of control that he had over
10 himself while he was -- shortly before he was
11 discharged from Risk Care versus the level of
12 control that he has exhibited over this past six
13 months?

14 A. I think that he is exhibiting greater level of
15 control. Even though, even though he have
16 outbursts. I think that he has more control. I
17 think that there are -- you know, he has not beaten
18 wall with his fists or tree with his fists and did
19 a damage to himself. You know, he has not been --
20 he has not attacked anybody. He has not had to be
21 physically restrained. He is more able to talk
22 about what goes on in his head. He is, he is -- as
23 I said, his social graces have improved. He has
24 been in some -- he has been into stores but had
25 frustrated, but he didn't return back and didn't

1 hit a clerk. And so I think there has been --
2 there has been -- and some of that information is
3 from Mom, because Mom reports and looking over just
4 sort of what Mom reports that there has been
5 increase in the self control.

6 Q. Well, I think you had -- you hit on this some
7 before, but what do you -- what do you think the
8 answer is right now? We know that he's without a
9 neurologist or an M.D. to prescribe medications and
10 he's going to run out eventually,---

11 A. Uh-huh.

12 Q. ---what do -- what, what can we do?

13 A. Well, him and I -- and that's, that's my deal with
14 him that him and I are going to find a doctor, and
15 I think that is -- that he -- him and I will work
16 on it, and I talk -- and he said that he will do it
17 after the hearings are done and he can settle down,
18 because he is very anxious about Monday. He's
19 anxious about the hearing that's coming up and when
20 Scottie gets anxious, it's the war drums are
21 beating and after that when he gets through that,
22 then him and I will -- he agreed that him and I
23 will call, call around to the doctors and he is
24 going to -- he is going to do it and I see that --
25 I see it as an independent living skills. I see

1 that when he does it, he has an investment in it,
2 that it's not just provided for him, and then he'll
3 value it more and he will be more cooperative, and
4 I am going to coach him and in coaching him how to
5 do that, we will work out on better behavior
6 controls, because he will be able to take my
7 coaching and we have developed an operationship
8 that he will -- that I think he will be able to
9 take criticism from me and directions from me, so
10 we are getting there. I see that's taking a while,
11 but we are getting there.

12 Q. Okay. And what about when he runs out of
13 medication?

14 A. It's -- I think when he runs out of seizure meds,
15 then I'll take him to emergency room. We have done
16 it before we got hold of Dr. Evans. I took him to
17 the emergency room and cleared it with the
18 emergency physicians, and he prescribed him the
19 seizure medications, so that's -- and I guess I can
20 -- I have enough connections at the hospital to
21 make sure that that is provided.

22 Q. Okay. All right. Let me just go over some notes
23 here. I don't have too much more for you, Doctor.
24 Is it, is it still one of Scottie's goals to try to
25 return to work someday, hopefully return to work

1 someday as a car mechanic?

2 A. He says that at this point he just cannot -- he is
3 afraid that at this point he won't be able to do it
4 and just that, and I think that's -- I haven't
5 heard him talk about it. We talked about what he
6 could and couldn't handle, and he said that he just
7 that at this point that he is afraid that if
8 somebody will tell him something he doesn't like to
9 hear that he may lose control and hurt somebody and
10 that he -- that's -- that is -- that's a constant
11 fear.

12 Q. A fear of his? A fear of his?

13 A. Yeah, that he will hurt somebody, but also is a
14 fascination when he feels that he is being
15 challenged or threatened that, that he gears up and
16 you can see it in him. He's a big guy. Have you
17 seen him before?

18 Q. I have not. I've seen pictures. Has he -- now,
19 has he lost some weight---

20 A. Yeah.

21 Q. ---since he's been back?

22 A. Yeah. He's still a bear of a man.

23 Q. What about his -- what, if anything, about his
24 current placement with his Mom would you advise
25 changing, if anything?

1 A. Uh-uh. I wouldn't. I wouldn't. I think it's sort
2 of Mom on one hand she cannot make him do things.
3 She can't make him go. But she -- I think they
4 have sort of a very caring relationship, and I
5 think that he doesn't want to go anywhere without
6 her and she doesn't want to go anywhere without
7 him. I think they are just always together and
8 sort of Mom is very, very protective of him and he
9 is very protective of her, but he knows that she
10 won't be here forever and he knows that he has to
11 start to get on his own and be able to go shopping
12 for himself by himself and those are the things
13 that, you know, down the road I would like to be
14 able to go and take him shopping. I used to do
15 that with head injury patients and take him through
16 the store just to give him a task to do and those
17 are some of the steps and, and when he gets
18 agitated, he is to let you know and we walk out of
19 the store without creating a scene and those, those
20 are the steps to our independence.

21 Q. Well, do you -- I think you -- you may have
22 answered this before, but do you -- do you feel
23 like he's a present danger to himself or to others?

24 A. Only if pushed. Only if pushed. Only if -- when
25 it -- when it crosses certain line I believe that

1 he defines that I think that he could, he could
2 harm somebody.

3 Q. Well, that would describe a lot of society,
4 wouldn't it?

5 A. Pardon?

6 Q. That would describe a lot of society, wouldn't it?

7 A. That line is much closer, but it's much -- it
8 doesn't take very much at all.

9 Q. It doesn't take much for him?

10 A. It takes misunderstanding like with, with Steve. I
11 think when Steve told him that he needs to go to
12 the appointments, otherwise, the insurance company
13 may not be willing to continue or something like
14 that, so he saw it as a threat to his life and if
15 you start to threaten him, by God, he's going to
16 kill you. So, I think there are not many people in
17 society who think that way fortunately.

18 Q. But, do you -- do you know whether -- you know, has
19 this ever come up in counseling with him whether
20 Scottie has access to weapons, knives and/or guns?

21 A. I don't -- I don't think that he has -- I don't
22 think he has weapons at home. I think that he has
23 -- he may have, he may have knives. He may have
24 some -- may have knives.

25 Q. You don't think he's got a firearm?

1 A. I don't think so.

2 Q. Or has that ever been discussed with Ms. Floyd?

3 A. I don't recall. I don't think so. I don't think
4 so.

5 Q. Okay.

6 A. But, I know that, that, you know, he will have some
7 hunting knives.

8 Q. Has -- has---

9 A. I'll ask him not to bring any on Monday.

10 Q. Yeah. Thank you.

11 A. You're welcome.

12 Q. Has the subject of illicit drugs, drug use come up
13 in any of your, your meetings, marijuana, cocaine,
14 or alcohol use? Has any of that been discussed?

15 A. Yeah, he doesn't use any alcohol, because he knows
16 that it doesn't mix with, with that -- with his
17 medication and that has been always -- and
18 everybody stresses that, that he can have seizures
19 and he has seizures and he is deathly afraid of
20 seizures, so that fear of seizures keeps him from
21 taking any medicine -- any alcohol. I think in the
22 past I think he may have smoked marijuana. I think
23 that some people with headaches and nausea do, and
24 I think that premorbidly he smoked pot, but that's
25 that, but I, again, told him that if he is going to

1 be treated by any physician, any physician who gets
2 -- find anything in his bloodstream that shouldn't
3 be there will fire him.

4 Q. Do you -- but, do you have any, any idea whether he
5 has partaken of usage of marijuana or alcohol since
6 he's been back?

7 A. I don't. As far as I know, definitely not. Now,
8 he denies any use of alcohol and he may have smoked
9 pot, but I'm not sure. It's definitely not when,
10 when he comes to the session, it's not. I don't
11 have a sense that that he is high. He never came
12 high to the sessions.

13 Q. Okay. I'll go through my notes here and I'm just
14 about to the end. What would you think about the
15 possibility of realistically Scottie attending
16 Vocational Rehabilitation in the future?

17 A. It would have to be down the road, I think, because
18 the Vocational Rehab has changed. I think they are
19 not only patient that are neurologically impaired,
20 they also have a lot of people who just got out of
21 prison and go to Voc Rehab. Voc Rehab is much
22 rougher than it used to be, and so you have a lot
23 of people that are themselves explosive, ready to
24 fight at drop of a hat, so I think that's a -- it
25 may down the road it would be, that would be great,

1 but I don't see it in the foreseeable future.

2 Q. Okay. Okay, Doctor, I think that's all that I
3 have. Thank you very much.

4 A. Okay. You're welcome.

5 RE-EXAMINATION BY MR. WUKELA:

6 Q. Doctor, I have just a few follow-up questions.

7 A. Yes.

8 Q. When he was in Tangrum out in Texas, whatever it is
9 called now, he was in a very structured
10 environment?

11 A. Right.

12 Q. And in your experience, do they med -- do they --
13 when they medicate the patients, do they ensure
14 that the patients take the medication?

15 A. Yes.

16 Q. They actually physically supervise the taking of
17 the medication?

18 A. They watch him swallow it.

19 Q. Okay. I'm going to show you a report from Jane
20 Stewart dated -- it looks like it's dated I guess
21 September the 30th of '05, and I'm not going to ask
22 you to read the whole report but just the last
23 paragraph of that page which is Page 20 -- it's APA
24 23, Page 16---

25 A. Of 1700.

1 Q. ---of 1700 pages. Just that first paragraph there,
2 if you could just review it?

3 A. Just this one?

4 Q. Yes, sir.

5 A. "Persistent problem for Scottie has been in the
6 area of initiation. He lack -- his lack of
7 participation may be due in part to problem with
8 headaches; however, it also appears to be the
9 nature of his brain injuries. Scottie has been
10 able at times to overcome this pattern by adjusting
11 his attitude. Most recently, his attitude has
12 improved considerably. He has been participating
13 more in activities, has been more positive in his
14 interaction with others and has brighter outlook on
15 his future rather than just demanding to go home.
16 Scottie has..."

17 Q. All right, that -- that's as far as I need for you
18 to go.

19 A. Okay.

20 Q. Is there any indication in there that he was
21 continuing to have the headaches even with the
22 medication?

23 A. Yeah, I think he has always had headaches.

24 Q. All right. Now, you said -- or we -- in response
25 to the questions about him taking illicit drugs,

1 the headache medication that's been prescribed I
2 assume is an addictive drug, is that correct?

3 A. Yes.

4 Q. All right. And he indicated to you that he has
5 these -- he still has those pills? He hasn't taken
6 them, is that correct?

7 A. That's correct.

8 Q. Okay. So, there would be no reason for him -- is
9 than an opiate or---

10 A. That's an opiate. I think all of the pain
11 medication would be, some, some form of opiates.

12 Q. All right. So, it wouldn't make any sense for him
13 to go out on the street---

14 A. That's right.

15 Q. ---and buy street drugs of an addictive nature,
16 because he's got access on his own, is that
17 correct?

18 A. Yeah, and he denies ever getting any illicit drugs
19 from off the street and I say that because---

20 Q. All right.

21 A. ---I saw the bottle. Mom brought the bottle and
22 out of thirty that he was prescribed, I think there
23 were only two missing, so he took two only out of,
24 out of thirty, so he just -- he does not have an
25 addictive pattern.

1 Q. So, and you're -- you're confident that he's
2 fearful enough of the ramifications of another
3 seizure that he's not drinking alcohol?

4 A. That's right.

5 Q. So, the only medication -- the only illicit
6 involvement at all if there is any would be
7 marijuana at the most?

8 A. That's right.

9 Q. And do people who have headaches and nausea
10 traditionally self-medicate with marijuana?

11 A. Yes.

12 Q. If it weren't illegal -- if were not illegal, would
13 it be something that the medical profession
14 considers a proper treatment for nausea?

15 A. As a matter of fact, I just read a week ago that
16 there is, there is a medication being now utilized
17 that's extraction from the part of the marijuana
18 that will become medication for headaches and
19 nausea and because of that, because of that
20 positive effect.

21 Q. Okay.

22 A. And so they are trying to use that in some form
23 that's medically controlled that's safe and that
24 will be legal.

25 Q. Very well. One other question. You've, you've

1 made several references to Monday. What happens
2 Monday just so we can clear it up on the record?

3 A. Okay. Well, Monday will be, will be the deposition
4 and he---

5 Q. Have you been contacted about that deposition?

6 A. Yeah, I have been asked to be here on Monday at 10
7 o'clock and I said---

8 Q. And you were asked that by the attorney for the
9 Defendants in this case?

10 A. Yes.

11 Q. All right. Do you intend to be there for that
12 deposition?

13 A. Yes.

14 Q. Do you think it will be wise for you to be there
15 for that deposition?

16 A. Yes.

17 Q. Why is that?

18 A. Because I think that I have a good relationship
19 with him, and I think that he trusts me and he
20 trusts me that if I see him getting agitated, that
21 I will sort of tell him to go and that it's a --
22 he is -- he is concerned that he may lose it if you
23 ask him question that he would see as being
24 insulting, that he is sort of -- he is concerned
25 that he may, he may explode, and then -- and so he

1 wants -- I guess he wants me there, to be there as
2 some, some form of guardian angel or somebody who
3 will be able to observe and knowing him enough to
4 observe that he's getting upset and when he himself
5 cannot say, then I will excuse him.

6 Q. What, what is your professional opinion about his
7 ability to participate in the deposition?

8 A. I think if it's a -- in the past, he didn't do all
9 that well. There was a -- when we had a meeting
10 that was not even deposition, it was, it was just
11 that when we met and everybody was very careful but
12 when he thought that he was going to be taken away,
13 then that's when he became angry and walked out. I
14 think that if there is a -- if he see that he is
15 being seen as faking it, or pretending, or that,
16 that sort of denying that his headache is really as
17 bad as it is, you know, that's probably would be
18 one of the triggers. I think that he -- he will --
19 maybe he will be able to tell you how bad he feels
20 and that's probably how much you will get, you will
21 get out of him. But the potential of him blowing
22 on us is high. I think -- I believe that he will
23 be able to walk out and he should have the ability
24 to walk out. Like I say, I will put a table, put
25 him close to the door so when he goes, he goes and

1 I'll go with him.

2 Q. Later on, we've got a hearing scheduled, I believe
3 on the 16th---

4 MR. CAUTHEN: The 16th.

5 Q. ---of February. What are your recommendations as
6 far as his participation in that hearing? Now,
7 this will be a much more structured with a judge.

8 A. Yeah. And he -- it's funny. He is not worried
9 about that hearing because he said there will be a
10 judge who will make sure that the people stay
11 within the line, that nobody crosses the line, and
12 so he's afraid that on Monday, you may cross the
13 line and you may attack him or -- you know, he's
14 sees the -- he sees attorneys on television that
15 make fool out of, out of the opposing clients, so
16 that's what, that's what he envisions may happen on
17 Monday. That's why he is so revved up. And I
18 assured him that you wouldn't do that and I said --
19 but it's funny -- but he sees that with a judge
20 being there, that the judge will keep everybody in
21 line and, again, sort of he is more the television
22 kind of notion.

23 Q. What's, what's his response to being in a
24 structured environment as opposed to a non-
25 structured environment?

1 A. It's simpler. I think, you know, in structured
2 environment people make decision with you and for
3 you and you have a routine and they are left to
4 routine. They have to get up at certain time. You
5 be there at certain time. You have activity at
6 certain time. And for the brain injured folks,
7 that is -- that increases their effectiveness.
8 They, they function much better. It's a simpler,
9 much more simple world. They are more productive
10 and effective in this structured environment.

11 Q. As far as his ability to deal with the pressures of
12 employment, public pressures, meeting the public,
13 meeting demands of production, responding to
14 criticism of his performance, will he ever be able
15 to withstand those type of pressures?

16 A. Not in foreseeable future. I don't know ever. I
17 don't know ever. But in a -- for me, in
18 foreseeable future, no.

19 Q. Now, he has been in this condition I think you said
20 since '01?

21 A. '01.

22 Q. Do you feel his present condition, subject to the
23 continuing care and attempts to modify his behavior
24 patterns is a permanent condition?

25 A. Yes.

1 Q. And that's to a reasonable degree of psychological
2 certainty?

3 A. Yes.

4 Q. All right. That's all the questions we have.

5 RE-EXAMINATION BY MR. CAUTHEN:

6 Q. I got just a couple of follow ups more for you,
7 Doctor.

8 A. Yes.

9 Q. With regard to the deposition, do you think it's
10 ill-advised to take that deposition?

11 A. Yes.

12 Q. You do?

13 A. Yes, I do.

14 Q. And that---

15 A. The question is what would be -- what would you
16 like to learn? What would -- what would be your
17 purpose took from the deposition?

18 Q. Well, I mean, I can't answer. I can't answer that
19 for you.

20 A. Oh, okay.

21 Q. See, there will be a lot of purposes for it, but
22 it's normal procedure prior to a hearings
23 especially---

24 A. Uh-huh. Right.

25 Q. ---especially a hearing where there is as much on

1 the line---

2 A. Yeah.

3 Q. ---as there is in this one. But you -- you feel
4 that it's ill-advised in the sense that he just may
5 become angry and blow up?

6 A. I, I think -- you know, I think if you ask -- if
7 it's so that he can leave when he gets agitated,
8 and I think that if you -- you know, normally
9 somebody you are full of questions and with him, I
10 guess, when, when he is done, he is done.

11 Q. Okay.

12 A. And I think that's a -- and it may last a while,
13 and it may -- so it's a -- so, I think that if you
14 are careful, if you are gentle, if you don't ask
15 question, and some of the question, he will, he
16 will, he will be agitated and defensive when he
17 sits down.

18 Q. Okay. Well, let me ask you this then. Is it -- is
19 it the questioning or the cross-examination type
20 questioning that you, that you think may set him
21 off?

22 A. Now, it's the -- well, cross-examining or where it
23 sort of implies that when he -- you know, when I
24 ask him what is it that -- he said what do you mean
25 when he crosses the -- what is the line to cross

1 and he said if somebody tells me that I am faking
2 it, that I don't really hurt, then I'm -- and I
3 think that's a -- which is an issue for all people
4 with chronic pain. They all think that they are
5 not being believed and, and so I think that's --
6 that's the part.

7 Q. Okay.

8 A. Or if you say anything about his Mom, I would -- I
9 would not mention his mother at all except in
10 praising words because he is a -- he is very
11 protective of his Mom.

12 Q. Now, if the cross-examination at the hearing on the
13 16th is even more confrontational than that in the
14 deposition, wouldn't you also have the same
15 concerns about the hearing going forward?

16 A. As I say, I talked to him and he sort of believes
17 that, that the judge will keep everybody in line
18 and prevent people asking questions that are -- so
19 I, I don't know, but, you know, if it has to be
20 done, it has to be done.

21 Q. Well, if we assume -- if we assume that the, that
22 the cross-examination at the hearing will be even
23 more confrontational---

24 A. Uh-huh.

25 Q. ---than at the deposition which could be pretty

1 general, then wouldn't you in that instance have
2 the same concerns about Scottie sitting through
3 that hearing?

4 A. I sure have concerns of Scottie sitting through
5 that hearing; yes.

6 Q. And so in that instance, wouldn't you agree that
7 that hearing might be ill-advised?

8 A. Is it---

9 MR. WUKELA: Just for the record, I'm, I'm not
10 calling him as a witness there, and I may object to
11 you calling him as a witness, but be that as it
12 may, we'll cross that bridge when we come to it.

13 A. Yeah, with Scottie or?

14 MR. WUKELA: The likelihood of him being put
15 up as a Plaintiff's witness, Claimant's witness is
16 nonexistent and he may not even appear at the
17 hearing and if you, if you decide to call him as a
18 witness, we may very object -- very well object to
19 having him put up on the witness stand.

20 MR. CAUTHEN: I just don't see the hearing
21 going forward at all, Steve.

22 MR. WUKELA: Well, you can---

23 RE-EXAMINATION BY MR. CAUTHEN CONTINUES:

24 Q. But anyway,---

25 A. Yeah.

1 Q. ---one last question, Doctor. You, you indicated
2 that, that he did better in a structured
3 environment?

4 A. Yes.

5 Q. Such as Risk Care Tangrum.

6 A. Right.

7 Q. Are you recommending that he return to such a
8 structured environment today?

9 A. No. No, I am not.

10 Q. Nor in the foreseeable future?

11 A. Not -- no, unless something happens that he blows
12 up and for protection of himself and others has to
13 go there, it's -- then I think if something falls
14 apart like in the past, they will transport him to
15 psych hospital on couple of occasions or was
16 transported to Tangrum.

17 Q. Okay. That is all I have. Thank you very much,
18 Doctor.

19 RE-EXAMINATION BY MR. WUKELA:

20 Q. Doctor, let me just re-ask that question that you
21 have just been asked. Do you have an opinion to a
22 reasonable degree of psychological certainty that
23 it would be detrimental to his health, the
24 Claimant's health, Scottie Floyd's health, to
25 testify in an adversarial position in an

1 adversarial proceeding where he would be severely
2 cross-examined?

3 A. I'm not sure if to his health. I think he may
4 explode. He may -- we may see some severe behavior
5 outbursts that may have some consequences for him,
6 because if he threatens somebody, then whoever is
7 threatened has to respond or the system has to
8 respond and I think so that, that will -- he may --
9 if things don't work -- if he explodes, then he
10 will end up in Columbia.

11 Q. Uh-huh. Then let me do a follow-up question. As
12 far as your opinion directed at the Commissioner
13 that's going to conduct this hearing, do you have
14 any recommen-- recommendations to that commissioner
15 as to whether or not Scottie is acting voluntarily
16 when he has this explosion, if he has an explosion,
17 or whether it's just a product of his biological
18 brain injury?

19 A. I see it as a product of the, of the brain injury
20 that is the cause of an intermittent explosive
21 behavior, that it's, it's neurologically -- it's
22 neurologically-based.

23 Q. So other than any commotion that may be raised in
24 the courtroom and any kind of remedy that the judge
25 is going to have to fashion to maintain that

1 commotion, do you see this potential for an
2 explosion to be in any way threatening to the
3 Claimant himself?

4 A. To his health?

5 Q. Yes, sir.

6 A. Such as a heart attack?

7 Q. Well, heart attack, or have any kind of emotional
8 impairment, or any kind of emotional injury as a
9 result of that? For instance, I don't know, I, I
10 have no way of knowing, do you have an opinion as
11 to whether he could become catatonic or anything
12 like that or do you---

13 A. No, I don't think so. I think that -- and it's a
14 guess, it's a guess. It's a guess. That if he
15 would lose control, he probably would scream,
16 holler. I don't know if he would become physically
17 aggressive. He may threaten and if he does that in
18 a courtroom, then the Court would have to respond,
19 and then probably would end up in a custody and so
20 that's---

21 Q. All right. But as far as any long-term
22 psychological injuries that would be the result of
23 that, do you foresee anything like that?

24 A. Well, I think judged by what happened in November
25 in the meeting when we talked about possibly him

1 going to a treatment facility and until today he
2 sees it as being snatched and it increases
3 suspiciousness and he sits and he waits for people
4 to snatch him up like you and I or somebody, or
5 police to take him, then I think that it will
6 definitely raise his level of paranoia.

7 Q. And would that be a permanent injury to him?

8 A. I, I don't know. It may, it may stay with him for
9 a while.

10 Q. All right. Thank you, Your Honor -- Doctor. Do
11 you have any questions you want to ask?

12 RE-EXAMINATION BY MR. CAUTHEN:

13 Q. I just got one quick follow up. Doctor, you're not
14 saying that he has no ability to control his
15 outbursts, are you? Now, you're not saying that's
16 completely involuntary, are you?

17 A. He has -- he has some -- he has some ability, but
18 if it's crossing certain -- crosses certain line,
19 then he blows and he -- there is that -- and it
20 takes a lot of effort on his part to keep it under
21 control.

22 Q. But he can do it?

23 A. But it's not a de -- it's not deliberate. It's not
24 deliberately. It's not a deliberate strategy.

25 Q. It's not premeditated?

1 A. It's not premeditated.

2 Q. Okay.

3 A. It's not deliberate. It's not manipulative. It's
4 somebody who feels that and he just tries his best
5 to keep it under control and fears that it will,
6 that, that it will fall apart on him.

7 Q. But he could in all likelihood do a better job
8 keeping it under control if he was compliant with
9 his medications?

10 A. Oh, yeah. Without the medication on that day and
11 had a severe headache, he would be more irritable
12 than if he took the medication, yes.

13 Q. Okay. That's all, Doctor.

14 MR. WUKELA: Thank you, Doctor.

15 A. You're welcome.

16 MR. CAUTHEN: Thank you very much.

17 (THERE BEING NO FURTHER QUESTIONS, DEPOSITION

18 CONCLUDED AT 5:40 P.M.)

STATE OF SOUTH CAROLINA)

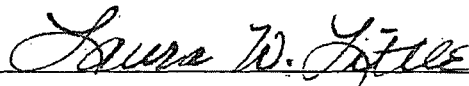
COUNTY OF DARLINGTON)

CERTIFICATE

I, Laura W. Little, Verbatim Reporter and
Notary Public in and for the State of South Carolina,
certify that I did have Alexander "Sasha" Federer,
Ph.D., appear before me at 2:45 p.m. on the 2nd day of
February, 2007 at Carolinas Rehab Services-Outpatient,
1925 Hoffmeyer Road, Florence, South Carolina; that the
witness was duly sworn and cautioned to tell the truth,
the whole truth, and nothing but the truth; that the
foregoing pages constitute a true and accurate
transcript of his testimony given at that time and
place.

I certify that I am not of counsel or kin to
any of the parties, nor am I interested in any manner in
its outcome.

IN WITNESS WHEREOF I have hereunto set my hand
and seal this the 8th day of February, 2007.



Laura W. Little, Verbatim Reporter

Notary Public, State of South Carolina

My Commission Expires September 21, 2015.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0123796

Scottie Floyd,	)	
	)	
Claimant,	)	
	)	
-vs-	)	DEPOSITION OF:
	)	
Ken Baker Used Cars,	)	R. JOSEPH HEALY, M.D.
	)	
	)	
Employer,	)	
and	)	
	)	
Compfirst,	)	
	)	
	)	
Carrier,	)	
Defendants.	)	
	)	

Deposition of R. JOSEPH HEALY, M.D., taken
before Laura W. Little, Verbatim Reporter and Notary Public
in and for the State of South Carolina, at the offices of
R. Joseph Healy, M.D., 805 Pamplico Highway, Suite A130,
Florence, South Carolina, commencing at 5:40 p.m. on the
24th day of April, 2006.

APPEARANCES OF COUNSEL:

For the Employee/ Claimant:	Steve Wukela, Jr., Esquire Wukela Law Firm Post Office Box 13057 Florence, South Carolina 29504
For the Employer/ Defendant:	Mark Cauthen, Esquire McKay, Cauthen, Settana & Stubley, P.A. Post Office Drawer 7217 Columbia, South Carolina 29202
In Attendance:	Betty Jo Floyd

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TABLE OF CONTENTS

=====

PAGE-LINE

Examination by Mr. Wukela 4-4

Examination by Mr. Cauthen 23-19

EXHIBITS

=====

NUMBER

DESCRIPTION

PAGE-LINE

NONE

Court Reporter's Note:

---Indicates Interruption;

--Indicates Incomplete Phrases or Sentences.

STIPULATIONS

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with Section 42-3-160, Code of Laws of South Carolina 1976, and Rule 30 of the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above entitled action, or for both purposes;

That all objections would be reserved until the time of the hearing except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

1 R. JOSEPH HEALY, M. D.,

2 after being first duly sworn to tell the truth, was
3 deposed and testified as follows:

4 EXAMINATION BY MR. WUKELA:

5 Q. Dr. Healy, I believe your deposition has been taken
6 before in the case of Scottie Floyd. As a matter of
7 fact -- just a second -- I believe it was taken on
8 January the 5th of '03.

9 A. Yes.

10 Q. We're not going to go back and replot that whole
11 field as far as your credentials and how long
12 you've been treating Scottie Floyd. But if you
13 could just briefly, since we're dealing with
14 probably a different Commissioner now, just briefly
15 fill us in as far as the type of injury that
16 Scottie had that caused you to treat him.

17 A. Scottie had a closed-head injury with a right
18 frontal contusion predominately and also a left
19 frontal contusion, secondary seizure disorder and
20 secondary affective or mood disorder.

21 Q. Okay. Now after that deposition was taken back in
22 '03, you've continued to treat Scott, is that
23 correct?

24 A. Yes.

25 Q. All right. Most recent, well not most recent, what

1 I would like for you to do is bring us up from
2 January of '03 to April 9th of '04 when Scottie was
3 admitted at Carolinas Hospital Systems for a
4 seizure disorder and then some compression
5 fractures of discs in his back.

6 A. Well, essentially most of the time I would see him
7 he was, it was predominately because of behavioral
8 issues and his seizures were fairly well controlled
9 until April 10 of 2004 when he was admitted. Let's
10 see, yes, I believe it was in April of 2004 when he
11 was admitted with a abreacto seizure and suffered
12 some compression fractures of the spine as a result
13 of the seizure and also acute renal failure which
14 resolved fairly well. And I believe that's what
15 happened to him in Aug-, or in April of 2004.

16 Q. Okay. Doctor, I'm going to -- I don't know if you
17 have this as part of your record there since he was
18 hospitalized for that period but I'm going to hand
19 to you some x-ray studies of his thoracic lumbar
20 spine and his thoracic spine and see if you had an
21 opportunity to review those while you were treating
22 him at that time.

23 A. Yes. I ordered these and what they showed was that
24 he had compression fractures of T-8 and T-9 with a
25 loss of about 50 percent of the height of T-8 and

1 30 percent of the height of T-9, and that's not an
2 uncommon complication from a major motor seizure.

3 Q. Explain the dynamics of how a seizure can cause
4 actually a compression of the discs or the
5 vertebrae in a person's back.

6 A. Well, the erect spinae which are the muscles all
7 along your spine which hold you up essentially
8 against gravity, you can imagine how strong those
9 muscles are, and if they forcefully contract which
10 would happen in a major motor seizure the force can
11 actually collapse the vertebrae.

12 Q. Do you have any idea how long that seizure process
13 lasted with him?

14 A. I don't.

15 Q. I believe he was also put in intensive care during
16 that hospitalization, is that correct?

17 A. Yes.

18 Q. What was the purpose of that?

19 A. Well, one, to make sure that the seizures didn't
20 happen unnoticed, and the second was to control
21 behavior and because of his renal failure problems.

22 Q. What were the renal failure problems attributed to?

23 A. Rhabdomyolysis and myoglobinuria which are the
24 result of seizures.

25 Q. Doctor, I'm also looking at an MRI that was done of

1 his lumbar spine, and I hand that over to you, and
2 I believe you ordered that too, didn't you? Or did
3 you?

4 A. Dr. Dawson ordered this.

5 Q. When was this done?

6 A. This was 7/26/05.

7 Q. And what was the condition of his lumbar spine at
8 that time?

9 A. Well, it showed multi-level degenerative disease
10 and facet arthropathy and essentially from T-11
11 down to L4-5 he had generative disc problems, facet
12 arthropathy and bulging of the discs at several
13 levels, an extensive lumbar spine problem.

14 Q. And, Doctor, are those attributable to the seizures
15 that he underwent?

16 A. I would say that the seizure contributed to those.
17 It didn't cause all of that but it certainly
18 contributed.

19 Q. All right, fine. Now these seizures that were
20 occurring, were they from the cervical spine all
21 the way down, all the way up and down his back?

22 A. Well, since it was a major motor seizure it would
23 have affected his entire spine but the compression
24 fractures are often in the thoracic region or in
25 the lumbosacral.

1 Q. And why is that?

2 A. I think probably because of the amount of
3 musculature that's there.

4 Q. Now, Doctor, he was eventually released from this
5 period of hospitalization and I believe there is
6 another period of hospitalization on July the 16th
7 of '04. Do you have that one?

8 A. I don't have that.

9 Q. I'm going to show you a report from Pee Dee
10 Orthopaedics dated July -- the actual admission is
11 the first page and then the page that I'm going to
12 show you is Florence Orthopaedic. I believe that
13 was an episode where he put his hand or attempted
14 to put his hand through a wall?

15 A. Yes.

16 Q. And as a result of that what did he sustain?

17 A. Well, it looks like he had a fracture of the fourth
18 and fifth metacarpal. So it looks like a boxer's
19 fracture and they did a closed reduction of that
20 fracture. I guess I wasn't involved in that one so
21 that's why I didn't have that.

22 Q. Put that bundle underneath the first bundle, and I
23 believe that's the actual admission?

24 A. Yes.

25 Q. After some time either contemporaneously with that

1 or shortly after that occurrence, and I believe
2 actually you were making recommendations before
3 these occurrences that he be treated at a facility
4 under stricter observation and supervision?

5 A. From a behavioral standpoint, yes.

6 Q. All right. What exactly were his behavioral
7 problems, Doctor?

8 A. Very impulsive, rage reactions, trouble controlling
9 his temper and then a lot of the activity was sort
10 of in an effort to control his discomfort, all
11 things that you see with a frontal lobe injury.

12 Q. What about a frontal lobe injury causes behavioral
13 problems?

14 A. Well, that's where a lot of your executive decision
15 making is. A lot of your affect, a lot of how you,
16 probably personally, how you approach an issue. In
17 other words, do you go about it calm, organized or
18 do you fly off the handle. And in Scottie's case
19 it seemed that after his head injury that he became
20 very impulsive in his way of dealing with things.
21 Predominately it was in a physical fashion, very
22 threatening and self-inflicted a lot of injuries on
23 himself actually.

24 Q. As far as judgment as it relates to taking
25 medications, either for pain or for other reasons,

1 is that affected by a frontal lobe injury?

2 A. Yes, it can be and in his case it was. He would, I
3 think, over medicate. He would use other
4 substances, marijuana, to control his pain and his
5 rage. I think that was the main.

6 Q. What were the problems as far as headaches? How
7 does that relate to a frontal lobe injury?

8 A. Well, there isn't necessarily a correlation between
9 the frontal lobe injury and the headache. I always
10 thought most of Scottie's headaches were chronic
11 muscle contraction or tension headaches because of
12 his behavior and affect in attitude. He didn't
13 sleep well, just always under a lot of stress and I
14 thought that that's where the headaches came from
15 predominately. By the time I saw him, I think by
16 the time I initially saw him he had already had the
17 head injury for, I think it was six months or more.

18 Q. When was the first time you saw him? We've already
19 got that in the record but if you could refresh
20 your notes.

21 A. They only gave me Volume 2 of this chart.

22 Q. Okay.

23 A. I thought it seemed awful thin.

24 Q. I'm going to show you our APA 9, Page 102. I

25 believe that's the most updated versions that we've

1 got absent these last few visits.

2 A. May I ask when his head injury was?

3 Q. The actual date of the accident was---

4 MS. FLOYD: September 13, '01.

5 Q. ---September 13th of '01.

6 A. And the earliest records I see here are in March of
7 '02 which I think is -- my recollection is that was
8 about right.

9 Q. Okay. And the last time that you saw him -- well,
10 let's put it this way. The second to the last time
11 that you saw him was when?

12 A. I think July 14th of '04.

13 Q. Okay. And that's just prior to him going out to
14 Tangrum?

15 A. Yes.

16 Q. While he was away at Tangrum did you get any
17 updated medical records or reports?

18 A. I got some periodic communications. I don't -- I
19 got an initial plan when they first saw him during
20 their intake process. I got it from Jane Stewart,
21 the program director. I got a plan of what they
22 were going to try and accomplish.

23 Q. Have you had any other contact with Tangrum since
24 then?

25 A. Only Scottie was here 3/23, and one of the

1 counselors accompanied him. I talked to Jane
2 Stewart on the phone. We had some conversations
3 about whether or not Scottie was going to be able
4 to come back home and things like that, and other
5 than those phone conversations, which I think there
6 have been two, talking to the counselor the day
7 that he was here in the office with Scottie has
8 been the sum total of my interaction.

9 Q. Okay. Now, you saw Scottie again the last time
10 when?

11 A. 3/23/06.

12 Q. Okay. And just out of curiosity did you know what
13 his weight was the previous time you had seen him?

14 A. I think -- I think that would be in my first chart.

15 Q. Okay. Do you know what his weight was the last
16 time you saw him?

17 A. Well, all I can say is that it was substantially
18 more.

19 Q. When you say substantially more, are you talking
20 eighty or ninety pounds?

21 A. Well, I would say probably more than a hundred
22 pounds.

23 Q. Okay. What's the significance of that type of
24 weight gain for someone taking the kinds of
25 medications that Scottie is taking?

1 A. Some of his medications can stimulate appetite,
2 particularly the Depakote, and then more regular
3 meals, and I don't know how active, although it
4 seems that he's fairly active there, but I don't
5 know if it's in a heavy, it's not in a laborious
6 type of activity. But I think probably Depakote,
7 three meals a day in the institutional setting is
8 enough to do that in the right person.

9 Q. Okay. I believe we had a conference with you and
10 me and Mr. Cauthen, and I believe somebody from --
11 Ms. Grimsley, was she there?

12 MR. CAUTHEN: Yes. Uh-huh.

13 Q. And Ms. Grimsley prior to any effort to bring
14 Scottie back home. Do you recall that conference?

15 A. Yes. Yes.

16 Q. Since that conference have you had an opportunity
17 to review with the folks out at Tangrum the ability
18 of Scottie's mother to be able to control him at
19 home as opposed to him being in an institutional
20 setting?

21 A. We have talked about that some, and you know, it
22 seems to me that his demeanor is just totally
23 different when he was here March 23 of 2006. Very
24 well behaved, insightful, spoke a good bit about
25 what he was going to do differently and how he was

1 going to approach things. I was very impressed.

2 And I think my feeling was is that it seemed like

3 he might well be able to stay at home.

4 Q. What would be, in your opinion, the requirements of

5 his mother as far as monitoring him at home, his

6 behavior, make sure he takes his medications and

7 make sure he sleeps like he's supposed to?

8 A. Well, I mean she always, you know, looked over

9 those things but never really could effect any, I

10 think, change in his behavior. I guess the main

11 question that's in my mind is whether he's going to

12 stay the way that he is now, which I think would

13 work out very well, and I don't know, I think for

14 the most part it's difficult for any mother to

15 effect the behavior of a 30-year-old man if they're

16 not on the same page. So I don't know. While it

17 looked very good on March 23 and while I do think

18 probably a trial is warranted and while I am

19 optimistic, I guess it remains to be seen how that

20 would work.

21 Q. As far as his ability to deal with the stressors

22 from the outside, conflict or pressures of work

23 activity or just dealing with controversy or

24 anxiety, is he able to do that at the present time?

25 A. Well, in the context of all of this has been toward

1 helping him to deal with one particular situation,
2 it seems to have worked with that. Whether he can
3 extrapolate this to life in general, I think
4 probably is the test. So I don't know. That
5 remains to be seen.

6 Q. As far as the nature of his injury and the effects
7 of that injury as far as the brain injury is
8 concerned, he's been under treatment now since
9 September of---

10 MS. FLOYD: September 13 of '01.

11 Q. ---September of '01. And this we're coming up on
12 is June of '06, and that's the anticipated date for
13 him to return to Florence. Will he continue for
14 the rest of his life, need to be in a, if not
15 supervised setting at least a monitored setting?

16 A. I think so, yes.

17 Q. The issue of the back injury, do you have any idea
18 of what percentage of impairment he has to his
19 spine from these numerous injuries or a rating for
20 his entire spinal column as it presently exists?

21 A. I haven't rated him as far as that goes.

22 Q. Do you have the ability to do that?

23 A. Yes. It would be my feeling that he probably has a
24 15 percent whole person impairment which would
25 encompass the two compression fractures and the

1 degenerative changes in the lumbosacral spine.

2 Q. Okay. And that's to the whole person?

3 A. Yes.

4 Q. The issue of headaches, when you saw him this most
5 recent visit, was he still complaining of
6 headaches?

7 A. They were much, much better. It wasn't a major
8 component. He had no complaints actually.

9 Q. Is his present condition permanent as far as
10 medical science can deal with his condition other
11 than the fact that he needs continuing monitoring
12 and supervision and medications?

13 A. It is.

14 Q. As he gets older or is subjected to different
15 stimuli, will that alter his needs for medications?

16 A. It could, yes.

17 Q. How often do you anticipate -- let me rephrase that
18 question. Am I correct that you're going to be the
19 authorized treating physician to treat him after he
20 comes back to Florence?

21 A. I believe so, yes.

22 Q. In anticipation of viewing Scottie over the long
23 term and what you know of his past, how often do
24 you think you will need to see him on a regular
25 basis? I know if he has any kind of emergency,

1 obviously, but on a normal as we go along basis how
2 often would you need to see him?

3 A. Well, I would say probably every three months for a
4 year or two and then probably every four to six if
5 he is stable.

6 Q. Okay. We've also been talking about issues
7 involving a neuropsychologist and that kind of
8 treatment as well as training for his mother, would
9 you agree that he needs a neuropsychologist and his
10 mother needs training in order to supervise
11 Scottie?

12 A. I think that's true. I think in the beginning a
13 local neuropsychologist should see him, and again
14 as time goes that need may be less and less.

15 Q. What exactly is the role that a neuropsychologist
16 would play in this?

17 A. Well, I think to monitor his behavior and to see
18 how he's reacting to new stresses and his
19 environment and maybe to ward off or to forecast
20 whether we're headed for a problem.

21 Q. Okay. Doctor, you mentioned earlier that this is a
22 test process that we're going through right now to
23 determine whether he can be subject to any further
24 developments so he can stay at home. How long do
25 you think this test will last before you would know

1 that he probably would be able to stay with his
2 mother?

3 A. I would think that probably six months would be a
4 good test, and you might only know in retrospect
5 depending on what kind of issues he might be
6 presented with and how he deals with them. If it's
7 a calm and quiet environment, you know, I suspect
8 that he'll do well. I think the biggest problems
9 can be maybe with new stressors that might arise.

10 Q. And by new stressors you would mean romantic
11 affairs, contact with neighbors that are free
12 roaming and not looking out for him particularly?

13 A. Well, that and I was always I think maybe a little
14 concerned that he was so close to where this all
15 happened because he seemed to in the past identify
16 that place as the people who did that.

17 Q. The fixation, is that---

18 A. That would be a good word.

19 Q. What causes that fixation in somebody with this
20 type of injury?

21 A. Well, I think the fact that (a), he got injured
22 which wasn't probably the biggest thing. I think
23 the biggest thing was that nobody took him
24 seriously in the beginning and that there were a
25 number of doctor visits, emergency room visits

1 where nobody did anything which drove him to the
2 point of going into the emergency room at McLeod
3 with a handgun. I mean this is what you can be
4 driven to, and I don't think you have to be insane
5 to begin with to be driven to something like this
6 depending on your makeup, depending on your
7 previous experience, whether you're a gun person or
8 not. A lot of issues, but I mean this is what I
9 think you can be driven to if you had one idea and
10 the establishment maybe has a different one and
11 then you turn out to be right.

12 Q. Do you have an opinion based on your last visit
13 with him and the fact that he's almost been two
14 years treatment out at Tangrum for his condition,
15 what's the extent of his impairment as it relates
16 to his brain injury?

17 A. Well, he seemed to have the capability of turning
18 that around and developing some insight. That was
19 what I think seemed to be the biggest change, was
20 he said on a couple of occasions how he was going
21 to do things differently when presented with this
22 or that, which before he had no insight. I think
23 that was his biggest problem. He had a lack of
24 insight into what had happened, how it was
25 affecting him and what he needed to do about it.

1 And so I think that while he does have a brain
2 injury and while it does affect his behavior, he at
3 least was educable to the point of altering his own
4 behavior with instruction but still he did it.

5 Q. So what percentage of impairment does he have as a
6 result of his brain injury?

7 A. Now, that I don't know. If I could come up with
8 that off the top of my head -- I would probably
9 have to see him and go to the book.

10 Q. Okay. So, then you're talking about doing that
11 sometime after he comes back in June? Or are you
12 talking about delaying that for six months or more?

13 A. Well, I could do it when he comes back or if you
14 need it beforehand, I think it would be a matter of
15 sitting down with the book and trying.

16 Q. Can you do it today? I mean could you in the next
17 twenty minutes, or do you have time for that?

18 A. I think I probably could.

19 Q. All right. Doctor, while you're going for your
20 book, the issue of stressors, if he comes up, and I
21 assume he's optimistic about what his capabilities
22 are at the present time, if he comes up with the
23 frustrations that he's not able to complete tasks
24 and he's not able to communicate with people and he
25 can't confront social issues, does he stand any

1 possibility or probability of regressing?

2 A. Yes. If he can't handle those issues, he could.

3 Q. And as to the issue of age as he just matures and
4 gets older, when he gets to 40 and 50, that age,
5 does the aging process itself have any role to play
6 in his ability to deal with stress?

7 A. Well, typically it should but whether or not that's
8 predictable with Scottie, I'm not sure. We're not
9 dealing with a normal brain, and the areas that are
10 injured, as those types of areas of injuries
11 mature, scar heal, it can sometimes change things
12 and so I'm not sure that it's predictable.

13 Q. As far as his ability to deal with rapidly changing
14 events, provocations like driving a car, is he
15 capable of driving a car safely? Is he able to
16 control his emotions to deal with it?

17 A. I'm not sure that -- I'm not sure about that. I
18 would think that at a minimum we would want him to
19 go take the driver's test, and my idea would be
20 that if you can pass the test and your seizures are
21 controlled, then you know by state law you can
22 drive.

23 Q. As far as his ability to deal with stress like any
24 rages that might pass over him if he's provoked on
25 the highway, do you have any concern about that?

1 A. Well, normally I would have but after seeing him.
2 the other day I don't know. He almost had kind of
3 a philosophical attitude about what he would do in
4 the future if something happened. I don't know if
5 it's just that I really wanted to believe him or
6 what, but I mean he seemed like a totally different
7 person. And the biggest thing as I say was just
8 insight. Whether that will translate into other
9 issues, whether he can take this same thing that
10 he's learned relative to this accident and use it
11 for the rest of his life in other situations, I
12 guess that's the question.

13 Q. All right, you were going to give us a rating. Do
14 you have the ability to do it?

15 A. Yes. If I can find the book. I didn't see it where
16 I usually keep it.

17 (BRIEF OFF-THE-RECORD BREAK)

18 MR. WUKELA: That's all right, Doctor, if you
19 can't find it, that's fine. If you could at your
20 leisure do a report to that effect, and we'll see
21 if we can get that incorporated unless there is
22 some objections to the report going in without an
23 examination. Do you have any objection?

24 MR. CAUTHEN: No, except whatever report he
25 provides.

1 MR. WUKELA: As part of this deposition?

2 MR. CAUTHEN: Sure.

3 MR. WUKELA: So we will---

4 MR. CAUTHEN: If it raises some new issue, we
5 can reserve the right to reconvene the deposition.

6 MR. WUKELA: To examine him.

7 EXAMINATION BY MR. WUKELA CONTINUES:

8 Q. All right, Doctor, if you would at your leisure
9 provide us a written report as to the brain injury
10 as far as any permanent impairment. And also,
11 you've already done the back and I don't know if
12 you feel comfortable in rating a hand injury that
13 he had. I would suspect that you---

14 A. The hand injury, that might be best done by an
15 orthopaedic.

16 Q. All right, very good.

17 MR. WUKELA: Doctor, please answer any
18 questions Mr. Cauthen may have.

19 EXAMINATION BY MR. CAUTHEN:

20 Q. Dr. Healy, I'm Mark Cauthen, as you know. I
21 represent the insurance carrier in this particular
22 case. I want to follow up on a few of the matters
23 you just testified to with regard to Steve's
24 questions. You indicated initially that your
25 diagnosis was closed-head injury with a right

1 frontal lobe, did you say contusion?

2 A. Contusion, and I don't know if there was any
3 hematoma there by the time I saw him, and by the
4 time he got his scan it was five or six months old,
5 the injury, but he had contusions it looked like,
6 too, as I recall predominately the right frontal
7 and to a lesser degree the left frontal brain.

8 Q. Okay. Was this a diagnosis that you made
9 independently, or was this in reliance on medical
10 records that you received and reviewed where that
11 diagnosis had already been made?

12 A. It was a combination of my first visit and his CT
13 scan from McLeod.

14 Q. So you got to review the CT scan?

15 A. Yes.

16 Q. Okay. And when we're talking about a right frontal
17 lobe contusion, what exactly is that? What happens
18 to the brain there?

19 A. Well, it's kind of like a grapefruit if you drop it
20 on the floor and it bruises. It's the same sort of
21 effect on the brain. If the brain gets shook up
22 but there's no injury to the substance, then you
23 can have a concussion which is in an interruption
24 in the psychologic activity of the brain but not
25 structural injury. If there's a structural injury,

1 then you're dealing with a contusion or a hematoma
2 if you bleed. And as I recall, he had bilateral
3 frontal contusions and I think greater on the right
4 side than the left.

5 Q. Is a contusion to the brain what we're talking
6 about here, is that similar to a contusion that
7 someone may receive to their thigh or their
8 shoulder or their arm or whatever, something that
9 will eventually heal?

10 A. Yes, it heals although the brain isn't as forgiving
11 as the rest of the body, and everywhere else in the
12 body the injured area can regenerate but the brain
13 won't regenerate. You have as many brain cells the
14 day you're born as you'll ever have, and if you
15 lose any or if they get injured then there's no
16 replacement.

17 Q. So once you have a contusion if you suffer a
18 contusion of the brain, then that's something that
19 will always be with you? Or are there cases where
20 patients completely resolve from an injury like
21 that?

22 A. Well, it will always be with you in the sense that
23 structurally there will always be a problem there
24 and whether or not that's an issue from a
25 behavioral or a neurologic standpoint, I think is

1 probably what you're asking. He will always have
2 contusion evident on a scan that was done of the
3 brain, and so whether his behavior improves or the
4 consequences I think he will always have a seizure
5 disorder. I think there will be behavioral issues,
6 although they're much better than what they were.
7 That's the way I see it.

8 Q. Is there a normal recovery time, I guess, from an
9 injury, from a head injury like that or a brain
10 injury like that?

11 A. I don't know if there's a normal. You know if
12 there were no behavioral issues and if there wasn't
13 a seizure disorder, you know, he would have been
14 fine probably in a few weeks. He probably would
15 have had some headache, but probably within a month
16 or two things would have been better, but I think
17 with the escalating behavioral problems and the
18 development of a seizure disorder and his problem
19 sort of compounded as he went along up until he
20 went to Tangrum and he's turned, he's done a
21 180-degree turn now.

22 Q. When we were talking before about the behavioral
23 issues that you have treated him for, are we
24 talking about a mental injury or a physical injury?

25 A. Both.

1 Q. Both? Could you elaborate on that any further?

2 A. Well, there's a very definite physical injury to
3 the brain, and because of that and because it's in
4 kind of a behavioral area of the brain, that's why
5 the bad behavior. That's why the rage, the lack of
6 insight, the impulsivity, and so those are the
7 behavioral manifestations of this physical injury
8 to the brain.

9 Q. You mentioned earlier, and I don't want to
10 mischaracterize your testimony, but I thought you
11 said something along the lines that no one took him
12 serious right after the accident and that was the
13 biggest problem, that the injury itself wasn't the
14 biggest problem?

15 A. Well, the injury set the stage certainly, but I
16 think that Scottie felt a lot of frustration and
17 anger from what I saw as sort of repeated visits to
18 the doctor and to the emergency room trying to find
19 out what was wrong. I believe that he was
20 convinced that there was a problem and nobody would
21 even order a CAT scan which would be pretty
22 fundamental after a head injury, probably at your
23 first visit. But as I recall, it was just before I
24 saw him which I think was in March of 2002 that he
25 got his first CAT scan and it showed the problem,

1 the contusions, and so it seemed to me that it took
2 him about six months to get to that point. And
3 then when they did show a problem, you know, that
4 just sort of compounded things. That was the state
5 that I found him in when I first saw him.

6 Q. Not long after he had had the CAT scan?

7 A. Yeah. As I recall, it was like within a week or
8 two.

9 Q. You mentioned earlier that the condition was
10 permanent. What exactly is the condition that is
11 permanent?

12 A. His behavioral problems and seizure disorder, back
13 problems because of his compression fractures. I
14 would say that those three medical problems are the
15 substance of his permanency.

16 Q. Okay. Let me ask you a little bit more about the
17 visit that he just recently had with you on March
18 the 23rd, and I think you earlier indicated that
19 you felt like he had made a tremendous turnaround
20 or a very surprising, positive turnaround after his
21 roughly eighteen months at Tangrum Risk Care
22 Premier. What do you attribute that to?

23 A. I think the way they approach these problems and
24 trying to not only show the person where they are
25 going wrong, where their behavior is really only

1 escalating their problems, giving them some insight
2 and then hopefully trying to get them to a point
3 where they use that to deal with every issue that
4 comes up from here on out. But I think their
5 program, and I've seen it with another patient, and
6 I think their program is very, very good and in
7 this particular case very successful.

8 Q. So as far as the behavioral problems go, did you
9 see any signs of residual behavioral problems when
10 you saw him on the 23rd?

11 A. No, not really but it wasn't a very good test of
12 the water, I don't think. It was a limited visit
13 and the counselor was there and his mom was there,
14 and we really didn't get to talk about a lot of
15 things, but just some of the statements that he
16 made about how in the future he would do this and
17 how he would react to certain things and he just
18 seemed very insightful whereas before I think that
19 was what he was missing, was any insight into what
20 had happened.

21 Q. Okay. Was part of the problem before when you were
22 treating him prior to the time he left for Texas,
23 was part of the problem at that time the physical
24 pain from the headaches? Wasn't that kind of
25 driving him crazy at one point?

1 A. That was a big problem, trying to get that pain
2 under control, and I always saw Scottie as actually
3 causing his own pain, and I think it was because he
4 had no insight and he was constantly frustrated,
5 and, you know, the treatment doesn't move very
6 quickly, and, you know, the stage is set by taking
7 six months to even make a diagnosis. All of that
8 compounded, and I always saw all of that as driving
9 his headache, and then he had a bit of a rebound
10 phenomena in that he took a great deal of pain
11 medication over the counter, illicit substances,
12 things that tend to rebound and cause your
13 headaches to be worse, kind of a chronic daily
14 headache, and so sometimes if you get a lot of
15 medication then the body figures that that's the
16 norm, and if you don't get it you have more
17 headache, and so it's kind of a vicious cycle, but
18 I think he was caught up in all of that before he
19 went to Tangrum.

20 Q. When you saw him on the 23rd of last month, did he
21 indicate to you that the headaches had disappeared?

22 A. I'm not sure that they had disappeared, but they
23 were a great deal better. It was not one of his
24 major complaints. They were a great deal better
25 than what they had been.

1 Q. How about the seizures? Are you aware of any
2 documented recent incidents of a seizure or how
3 long ago he last had a seizure?

4 A. As far as I know, he hasn't had a seizure since
5 April of 2004.

6 Q. If that, if April of '04, we're talking two years
7 without seizures, what would that indicate to you
8 with respect to that seizure disorder?

9 A. That if he gets his medication reliably he can be
10 controlled.

11 Q. Is that a problem that could be eliminated, you
12 think?

13 A. Do you mean could he get off of his medication?

14 Q. Could he be, could he ever just, I guess, overcome
15 the seizures like somebody might overcome an
16 allergy or something over time?

17 A. He can't overcome that on his own. I think that
18 stability of his environment at Tangrum, regular
19 meals, regular sleep, somebody overseeing him
20 getting his medications regularly, I think that's
21 probably where the success has come from with the
22 seizure control, and I would expect that the same
23 would be true wherever he stays if those same
24 issues are met.

25 Q. Which one of the medications controls the seizures?

1 A. He's on Depakote and Keppra, both of those.

2 Q. At the time that you saw him on the 23rd of March,
3 were those, well, let's see, I believe you
4 indicated in here Flexeril, Effexor, Depakote, and
5 Keppra. That was all the medications that you are
6 aware of that he's currently taking?

7 A. And I believe some Darvocet as needed, although he
8 said he was using that less and less.

9 Q. Okay. Anything about his current medication regime
10 that you would modify?

11 A. No, I don't think right now. I think I'd want to
12 observe him on this regime, again probably for
13 about six months, and it seems to be working.

14 Q. Did he seem to be motivated to you to continue to
15 make efforts and control his behavior, to get
16 better, to be more independent? Did he seem to be
17 motivated in that regard?

18 A. Yes, I think there was a positivity to him, and he
19 is or can be motivated.

20 Q. Did he seem to be optimistic about the prospect of
21 returning back here to South Carolina?

22 A. I think he definitely wants to come home. Yeah, I
23 think he was optimistic about it.

24 Q. Did you see any other health issues that we haven't
25 already discussed, at the time that you saw him

1 last month?

2 A. Well, his weight is an issue, and whether that's
3 going to be more of an issue, whether there is
4 interference with his sleep, whether hypertension,
5 consequences of bad sleep I think might be an issue
6 in the future, which affects behavior, blood
7 pressure. To me Scottie should be an aerobic
8 exerciser, get involved in something like that, and
9 in the work force is a way to do that. Too much
10 idle time, I think, isn't going to be good for him.

11 Q. Right. Now, you had indicated already, I believe,
12 that you were willing to assume the role of primary
13 treating physician for Scottie when he returns to
14 South Carolina?

15 A. Yeah, I think I can do that. I don't anticipate a
16 big problem. I hope I'm right about that.

17 Q. Okay, what would be, what would you envision being
18 your role when he returns here if it goes off as
19 planned around the first of June?

20 A. Monitoring his medications, his seizure disorder,
21 and probably his behavioral disorder secondarily,
22 probably again in conjunction with a psychologist
23 from the standpoint of behavior. I think that's
24 the main thing.

25 Q. You said a psychologist? Or a neuropsychologist?

1 A. Neuropsychologist. I think Dr. Windsorova had seen
2 him, and that would be good since she knows him.

3 Q. Have you discussed this case with Dr. Windsorova
4 recently?

5 A. I have not.

6 Q. Other than your monitoring as you've just, your
7 role as you have described it and then the
8 involvement of a neuropsychologist, possibly
9 Dr. Windsorova, do you see any other, is there any
10 other treatment that you would envision when he
11 returns here initially?

12 A. Well, depending on how his health is, which I think
13 I could probably establish when I first saw him in
14 return, he might need a primary care doctor.

15 Q. What would be the role of a primary care doctor?

16 A. Well, weight, and if he were to develop any
17 secondary medical issues from what his problems are
18 right now.

19 Q. So the weight issue, weight management, is that not
20 something that you could oversee as well?

21 A. Well, I think I could, yes. I was sort of
22 wondering if he develops hypertension or something
23 like that, he may need a primary care or maybe
24 other specialist.

25 Q. Okay. So that's something I could look at down the

1 road, but initially do you see any need for that
2 immediately?

3 A. Not initially.

4 Q. What do you see as a good, long-term, reasonable
5 long-term goal for Scottie?

6 A. Probably to manage his behavior and keep it under
7 control at home in his home environment.

8 Q. Have you had an opportunity to review the quarterly
9 reports that Risk Care provides, has provided us
10 with? I don't know if you've been getting them on
11 a regular basis or if you've just received them
12 from us.

13 A. I haven't gotten them on a regular basis.

14 Q. Have you had an opportunity to review them up
15 through, I guess end of 2005?

16 A. I haven't.

17 Q. You have not. You did indicate you've discussed
18 things with Ms. Jane Stewart, is that right?

19 A. Yes.

20 Q. And I guess you and she see eye to eye on what
21 we're planning to do here?

22 A. Yes.

23 Q. Would you, do you believe that Scottie is at
24 maximum medical improvement at the current time?

25 A. I think we're, I think we might need some more time

1 to know that. Changing the environment sure is
2 going to be, I think a big stress. From what I
3 see, I think he ought to be able to handle it, but
4 I probably wouldn't want to address that issue
5 until I knew that he had made the transition and
6 was stable.

7 Q. When you say that, do you mean as to the physical
8 brain injury, the closed-head injury, as to that
9 aspect of it or as to any of the medical problems
10 that you discussed?

11 A. Yeah, I think more so the behavioral issues and the
12 home environment and whether those remain under
13 control, whether his seizures stay under control
14 when he is responsible for taking his own
15 medication, things like that.

16 Q. Okay. Let me just look at my notes over here real
17 quick. That may be all I have, Doctor. Oh, with
18 regard to the 50 percent whole person rating to the
19 spine, is that pursuant to AMA Guidelines? Or is
20 that just an estimate?

21 A. That's from my recollection of all the other people
22 I've rated, that's from the AMA Guide.

23 Q. And is it -- do the AMA Guidelines provide for
24 rating a physical brain injury?

25 A. Yes.

1 Q. They do? Okay, and you're going to do that for us
2 in a separate report, I guess?

3 A. Yes.

4 MR. CAUTHEN: Okay, Doctor, that's all I have.
5 Thank you very much.

6 A. Thank you.

7 MR. WUKELA: Good luck, Doctor. I wish you
8 and Scottie good luck.

9 (THERE BEING NO FURTHER QUESTIONS, DEPOSITION
10 CONCLUDED AT 6:40 P. M.)

STATE OF SOUTH CAROLINA)

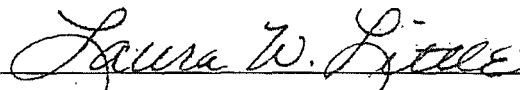
COUNTY OF DARLINGTON)

CERTIFICATE

I, Laura W. Little, Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I did have R. Joseph Healy, M. D., appear before me at 5:40 p.m. on the 24th day of April, 2006 at the offices of R. Joseph Healy, M.D., 805 Pamplico Highway, Suite A130, Florence, South Carolina; that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of his testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 17th day of July, 2006.



Laura W. Little, Verbatim Reporter

Notary Public, State of South Carolina

My Commission Expires September 21, 2015.

Garber Reporting Service



& Videoconferencing

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ORAL DEPOSITION OF
JOSEPH HEALY, M.D.

MARCH 15, 2004

SCOTTIE FLOYD

VS.

KEN BAKER USED CARS AND LEGION INSURANCE COMPANY, IN
LIQUIDATION, AND S.C. GUARANTY ASSOCIATION

WCC: 0123790

REPORTER: BETTY WASHINGTON

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCOTTIE FLOYD,	)	WCC: 0123790
	)	
Employee/Claimant,	)	
	)	
vs.	)	<u>DEPOSITION OF</u>
	)	<u>JOSEPH HEALY, M.D.</u>
Ken Baker Used Cars,	)	March 15, 2004
	)	
Employer,	)	
	)	
and	)	
	)	
Legion Insurance Company,	)	
in Liquidation, and S.C.	)	
Guaranty Association,	)	
	)	
Carrier,	)	
Defendants.	)	

Deposition on oral examination of JOSEPH HEALY, M.D., reported by Betty Washington, Court Reporter and Notary Public in and for the State of South Carolina; Said deposition taken pursuant to notice and in accordance with the South Carolina Rules of Civil Procedure, at the Medical Offices of Joseph Healy, M.D.; A-130 Carolina Pines Hospital System, Highway 51, Florence, South Carolina, on Monday, the 15th day of March, 2004, commencing at the hour of 5:45 p.m.

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(803) 256-4500

APPEARANCES:

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CONTENTS

(Deposition of JOSEPH HEALY, M.D.)

	<u>PAGE</u>
Exhibit Index	3
Stipulations	4
Examination by MR. MARTIN	4
Certificate of Reporter	30
Word Index	

* * * * *

EXHIBIT INDEXEXHIBITS:

(None offered.)

IDENTIFIED AT PAGE:

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

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1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and
5 signing of the deposition by the deponent is
6 expressly waived.

7 WHEREUPON:

8 JOSEPH HEALY, M.D., being duly sworn and
9 cautioned to speak the truth, the whole truth and
10 nothing but the truth, testifies as follows:

11 EXAMINATION BY MR. MARTIN:

12 Q Dr. Healy, my name is Edwin Martin; we
13 briefly met. I'm an attorney in Columbia representing
14 Ken Baker Used Cars in a workers' comp. claim with
15 Scottie Floyd. We're here today to take your
16 deposition to get your opinion regarding certain
17 issues in your treatment of Mr. Floyd. I've not
18 deposed you before; can you just give me a thumbnail
19 sketch of your education, and I'm sure Steve and I
20 will stipulate as to your qualifications as an expert?

21 A Undergraduate in biology and chemistry. I
22 then went to graduate school in neuro-anatomy at MUSC.
23 Following that I went to medical school, MUSC; then I
24 did a residency in internal medicine and then I did a
25 residence in neurology. Still on the faculty there,

1 teaching here at the Family Practice Center at McLeod,
2 but I've been practicing, myself, here in Florence
3 since I left MUSC. Adult, predominantly, and some
4 child neurology, since 1986.

5 Q And have you had an opportunity to treat
6 Scottie Floyd?

7 A Yes.

8 Q When would -- I don't believe I have the
9 first report. When would have been the first time
10 that you actually saw Mr. Floyd?

11 A That was 2/6/02, and I think maybe I only
12 have a handwritten note. I don't know -- I had a
13 number of old records that day, what records existed,
14 and I think maybe I only have a handwritten note.

15 Q Could you tell us what history was provided
16 at that time?

17 A What he told me was that he had a bruise on
18 his brain; that's what he told me when he walked in.
19 That was his chief complaint. At the time he was 26,
20 right-handed; I think Keith Stewart had asked me to
21 see him; he's a physician's assistant over in Marion.
22 And Scottie told me that on 9/13/01, while working at
23 Ken Baker's Originals, I guess it is, that he suffered
24 a closed head injury on his forehead without loss of
25 consciousness, and I believe he told me that the

1 exhaust pipe on an automobile fell; he was under the
2 car, and that since that time he couldn't smell,
3 couldn't taste, speech was abnormal.

4 He was seen in the emergency room at Marion
5 Memorial Hospital and had a laceration to his scalp
6 which was repaired, told he had a concussion, and that
7 he'd had a headache since that time. So I was seeing
8 him about five months later.

9 Q Okay. Was any diagnostic testing done before
10 he came to you?

11 A I think the way the story goes is that he'd
12 been to the emergency room a number of times and
13 nobody had done anything. And as I recall, this is
14 when he went to McLeod with a gun, by reports -- in
15 his backpack, I think -- and they told him they
16 thought he had a post-concussive type of headache,
17 post traumatic headache, and that they were going to
18 give him something and send him home.

19 And I think, as Scottie put it, he said he
20 had a Smith & Wesson in the bag that said differently,
21 that they were going to do a CAT scan. And I think,
22 as he told me, they did the CAT scan and then they
23 found out that he had this frontal lobe contusion
24 which, by that point, looked old, remote, not an acute
25 type problem.

1 And then, as I understand it, they wrestled
2 him down and took him to Columbia. But I guess they
3 tried to get his behavior under control, and I suppose
4 not much happened to him as could have happened,
5 mainly, I guess, because he was right and he did have
6 a problem. So that's what he told me that day as to
7 how he ended up here with a known contusion to the
8 brain.

9 Q Yes, sir. Doctor, I want to show you --
10 we've already had the hearing in this case so we --
11 these documents have already been submitted. Is this
12 -- it's McLeod Regional Medical Center dated 1/14/02;
13 is that the CAT scan that you were referring to?

14 MR. WUKELA: What page is it?

15 MR. MARTIN: Oh, I'm sorry: Page 41.

16 A Yes.

17 Q Okay. What was the impression from the
18 radiologist who read that report?

19 A Well, that there was a 3x4 centimeter focus
20 of decreased attenuation, or meaning abnormal signal,
21 in the right frontal lobe, likely related to trauma,
22 and that there was a fracture of the left frontal
23 ethmoidal complex which is sinus.

24 Q As a neurologist, what does the decreased
25 attenuation, the abnormal signal tell you?

1 A That it's a contusion.

2 Q Basically a bruise to the brain?

3 A Yes, kind of like if you'd drop an orange on
4 the floor and if it hits the wrong way you'll have a
5 bruised area on it, the same sort of thing.

6 Q Okay. And that just shows the front right
7 lobe?

8 A Right.

9 Q Okay.

10 MR. MARTIN: This is page 16, Steve.

11 Q This looks like it's a cranial computed
12 tomography?

13 A Right, which is the same thing. This is from
14 Marion Memorial on 1/9/02, so it's five days before
15 the other one. Non-enhancing focus of intra-
16 parenchymal low attenuation in the left front region
17 as described. So they sort of differ as to which side
18 it was on.

19 Q Why would there be a difference between the
20 two?

21 A In my opinion, they got the film backwards.
22 X-rays are negatives so left is right and right is
23 left, and every now and then they get it up there
24 backwards and that's the only way it can be explained.

25 Q So it should be right lobe or left lobe?

1 A Well, I can't remember. I did an MRI and
2 there was problem in both frontal areas, but I believe
3 that it was greater on the right.

4 Q Okay. So that could just be quality of the
5 testing done?

6 A I think that -- there's no way of really
7 knowing without looking at them, but I think they just
8 got them backwards. From Marion it says, "Appearance
9 consistent with an infarct," which it's not an infarct
10 but it might be hard to tell the difference on their
11 scanner.

12 Q Would an infarct be like a stroke?

13 A Right. That's what you think of there
14 whereas a contusion is different, so they can look
15 similar I supposed, and this also said that it was a
16 remote problem and not acute.

17 Q Okay, so as a layman, what does that mean?

18 A That it happened months before, weeks or
19 months before.

20 Q Would the results of that test be consistent
21 with an injury that happened in September with those
22 testings being in January?

23 A Yes. I think both of these scans are
24 consistent with something that happened several months
25 before.

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1 Q When was the second time that you saw him,
2 Mr. Floyd? I guess, while you're flipping, would the
3 results of that testing be consistent with the
4 symptoms that you observed?

5 A Yes. Scottie -- ever since I met him for the
6 first time he's been very aggressive, easy to anger.
7 He goes into a rage; his nostrils flare. I mean it
8 literally reminds me of a bull getting ready to
9 charge. He starts breathing different and he really
10 has trouble with impulse control, which is very
11 typical of frontal lobe lesions.

12 Q Did you have any pre-morbid history? I'm
13 sure you probably talked to his mom at some point.

14 A Only that he was a smoker and that he'd had a
15 circumcision before. On several occasions I've
16 mentioned to her that my gut feeling was that his
17 personality tended to be that way anyway, and that
18 this was a disinhibiting influence on what's his
19 baseline personality. And so the worst of somebody
20 comes out; basically the things that society has
21 taught them to suppress is what comes out.

22 But I would be willing to bet that Scottie,
23 you know, was, in a way, sort of this way to begin
24 with, that he was probably easy to anger, had a low
25 frustration level, maybe a short fuse. She didn't

1 really know of any violence or anything like that
2 which has become a big problem since the accident, but
3 she hasn't mentioned that but she's almost sort of
4 reluctant to talk about it.

5 But that's what I typically see, that there's
6 kind of an amplification of the person's baseline
7 personality. So if you're a quiet individual you get
8 quieter, and if you're an active, anxious frustrated
9 individual, all of that gets worse.

10 Q That's as the result of a frontal lobe
11 injury?

12 A Frontal lobe injury.

13 Q And it looks like you had an MRI done that --
14 I'm looking at your 3/5/02 note which is page 102.

15 A I did do one. It showed a contusion in the
16 right front lobe.

17 MR. WUKELA: What's the date of that, Doctor?

18 THE WITNESS: That MRI was ---

19 MR. WUKELA: Was it April the 10th?

20 MR. MARTIN: It's got to be before then
21 because he's reading it on March 5th.

22 MR. WUKELA: Okay. I'm looking at another
23 one.

24 A I have 2/15 -- I'm trying to find the actual
25 report. I think that is 2/15/04 -- excuse me -- '02.

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1 Q 02. And that showed a contusion of the
2 right frontal lobe?

3 A Right frontal lobe.

4 Q That's consistent with his symptoms?

5 A Yes.

6 Q It looks like you recommended some
7 psychological counseling; does that sound -- what
8 would have been the purpose of that?

9 A Well, his behavior. Scottie is just a very
10 unpredictable individual who, I think, could be very
11 dangerous not only to other people but to himself.
12 And I don't think his behavior is predictable and he's
13 just easily triggered. If you say the wrong thing he
14 just gets all upset and he's, you know, threatened me.
15 He's -- on a number of occasions -- threatened the
16 doctors in the emergency room at Marion Memorial,
17 mainly because he was very upset at the number of
18 trips that he made there and that nobody, he feels,
19 evaluated him or took him seriously. So I've been
20 very -- I've called them on two occasions to let them
21 know and they said, "Oh, we know."

22 Q When we deposed Mr. Floyd, he said in the
23 hearing that at some point that you thought that his
24 rage might have been psychologically based as well as
25 from the frontal lobe injury?

1 A Well I think it's a combination of both, and
2 it's -- I think that his rage is organic meaning that
3 it's a result of his brain injury, but I think the
4 psychological properties are that this is a -- this is
5 an amplification of his own personality. So it's
6 based in psychology if that's sort of the science of
7 behavior, but his brain, which is generating the
8 behavior, is abnormal. But I believe that's it's
9 organic, an organic rage reaction.

10 Q Okay. I'm looking at -- these are
11 preliminary -- electrophysiological report, page 103.

12 A Right, that's my EEG from 3/5/02 which just
13 showed some left frontal slowing. No seizure
14 activity. I've never -- even though he's at risk of
15 seizure, I've never seen, heard or felt that any of
16 this was seizure related.

17 Q Okay. When it's a left frontal slowing,
18 what's that indicative of?

19 A Injury underneath.

20 Q Do you know which side of his head was
21 actually struck?

22 A I don't know that I do.

23 Q Does it make a difference?

24 A Academically the injuries, oftentimes, are on
25 the opposite sides of where you get hit. That's

1 called a contrecoup injury, so oftentimes contusions,
2 if they're in the right or left frontal area, then the
3 person got hit in the back. So that's what you
4 usually will see, but it makes a difference in that
5 different parts of the brain causes different things
6 to happen.

7 If he had this same type of injury on the
8 back of his brain, then vision would be the issue. He
9 wouldn't be able to see on one side or the other. In
10 the front there's a lot of personality issues,
11 executive thinking where you decide, you know, you're
12 going to do something and that type of thing. The
13 smell, the loss of smell and taste. The majority of
14 taste is smell, so my theory is that he's lost his
15 smell which isn't unusual in this type of head injury.
16 Taste, I believe, is okay, and typically that doesn't
17 come back.

18 Q What type treatment, from the early stages,
19 did you provide for Mr. Floyd?

20 A Well, the main thing is trying to control his
21 headaches which that's been his number one complaint,
22 and trying to control his behavior, which has been my
23 number one complaint, and everybody else's. The
24 headaches are pretty unrelenting and it's been my
25 feeling all along that these headaches come from

1 chronic muscle contraction from his state of mind.

2 He is just absolutely fixated on this injury,
3 the way it happened, the way it wasn't discovered, to
4 the point that he's obsessed with all of that, and the
5 muscles in the head are just very tight, tense. And I
6 believe that's where his headache comes from, and in
7 that regard may be psychogenically driven. I would
8 think probably 90 percent of his headache is
9 psychogenically driven and 10 percent is probably the
10 actual underlying brain injury.

11 Most times that headache is kind of an acute
12 thing that goes away within probably a month or two or
13 so, and by the time that I saw him I would expect that
14 the acuteness of his injury probably had resolved and
15 that what I was seeing was more the consequences. And
16 so that's been my thought about his headaches.

17 The behavior is, again, an organic
18 manifestation of his brain injury as it relates to how
19 this happened, how it was discovered and all of that
20 kind of thing.

21 Q I believe he had testified, he being Mr.
22 Floyd, had testified that when the headaches are
23 severe is when he has the rage. Is there a
24 relationship between the two?

25 A There is; there is. It builds and I can

1 almost tell, when I see him walking down the hall, how
2 things are doing. But yeah, as he gets more and more
3 worked up the muscles tighten and the headache gets
4 worse.

5 Q There's a reported history of marijuana use;
6 what effect does that have on your treatment of him?

7 A Well, it's hard to say because, according to
8 his mother, it helps him which I don't probably deny.
9 I've just told him that it makes it difficult for me
10 to know and to treat, and not being a well recognized
11 or legitimate treatment, you know, we can't -- it's a
12 little variable because it depends on whether he can
13 get it or not. But I have no doubt that it probably
14 calms him and helps him to sleep. Sleep has been a
15 problem, and so.

16 But I've tested him several times; I've
17 discouraged him from doing it although now, at the
18 same time, I'm telling him that I know it's not going
19 to happen. And he readily will admit -- I mean I
20 wouldn't have known; he told me.

21 Q You mentioned some significance of the
22 cigarette smoking in dealing with his headaches. Is
23 there any relationship between the two?

24 A Well I just feel that if you're feeling that
25 bad, that smoking is making it worse. You know, in

1 the sense that you're depriving yourself of oxygen.
2 The cigarettes have carbon monoxide and the body can't
3 tell the difference between carbon monoxide and oxygen
4 and so you deprive yourself of oxygen which, in my
5 mind, causes fatigue, and fatigue is stress. So I
6 personally feel that the cigarettes have to make these
7 issues worse ultimately. I know when you first light
8 one up and you're puffing on it that you probably feel
9 like, oh, thank God, but I think ultimately they make
10 things worse. And so I've tried to get him to stop
11 that too, but again never have thought that I would be
12 successful in trying to convince him of that.

13 Q. Okay. How successful has the treatment of
14 headaches been?

15 A. Well, not very successful although in the
16 past couple months Scottie's doing better. Not
17 tremendous, but he's calmer and I believe that's just
18 probably medication but he's calmer. He still has the
19 same complaints; he's just not quite as animated when
20 he tells you about them. But from what I hear from
21 his mom, the violence and the rage, not right now
22 directed at anybody but directed at inanimate objects
23 lots of times, the side of the barn at home and things
24 like that still is a problem, and she's fearful. I
25 now see her as a patient and -- but she's lived in

1 fear ever since this has happened and has expressed
2 that to me on a number of occasions and I've asked her
3 about it on a number of occasions. It's just obvious
4 that she's very uncomfortable and nothing she can do
5 really appeases him. They were in here the other day
6 telling me that little things just set him off and
7 they don't ever know what he's going to do, but so far
8 it's been kind of directed away from individuals, but
9 I'm very worried about that.

10 Q Okay. At some point he went to Baptist
11 Medical Center; have you been privy to those records?

12 A I don't have the records. One time I sent
13 him; I sent him over to McLeod but called over there
14 and told them he was coming, reminded them of who he
15 was and that he was -- when he made threats he was
16 serious. And so they got him there and I guess they
17 wrestled him down and took him back over to Columbia
18 for the second time. He stayed there, I guess, two
19 weeks, and they got his behavior under control a
20 little bit, not much. I talked to the psychiatrist
21 there by phone several times, and he really never was
22 much help. He would always begin by telling me that
23 Scottie wasn't his patient.

24 Q Passing the buck, I guess.

25 A Well I would want to tell him that as much as

1 I thought about using the same theory, it just isn't
2 going to work; your name's on the discharge theory.
3 But he wasn't of much help in offering any advice
4 after Scottie left so that didn't really seem to be
5 optimal.

6 Q And looking at Dr. Lencki's report, the
7 neurologist in Columbia made some mention of analgesic
8 rebound headache?

9 A He, Scottie, uses enough pain medication that
10 that's -- we've talked about that. Theoretically you
11 can take enough over-the-counter pain medicines, or
12 even low level prescribed medications, that the body
13 begins to think that this is the normal situation so
14 that when you don't have the medicine the headache
15 comes back automatically. And so it's almost a self-
16 fulfilling prophecy, that you will have continued
17 headache if you don't get medication. And so trying
18 to break that cycle can be very difficult. We've
19 tried on a couple of occasions, but Scottie just -- he
20 wants his medication and so he uses a lot of over-the-
21 counter and low level medications on a daily basis.

22 Q And what's your current diagnosis of him?

23 A Frontal lobe contusions, organic rage
24 reaction; those are the two main ones.

25 Q I saw a mention in one report of yours of

1 post traumatic encephalopathy?

2 A Right.

3 Q What is that?

4 A Well, I don't think he thinks the way that he
5 normally did and whether his memory and things like
6 that are the same. Only neuropsychological testing
7 could really tell, and I think that he's had that one
8 time, 12/12/02, and what we need to do, probably, is
9 have that repeated at some point. Dr. Windserova
10 tested him a year ago.

11 Q He was actually seen 6/4 and 12/12, so he
12 would need another evaluation?

13 A Well, if he's had his second one, that was
14 only four months later; is that right? 2/02 and 6/02?
15 Or was it 6/02 and 12/12.

16 Q It was 6/4/02 and 12/12/02, so it would be
17 six months later.

18 A That might be adequate. By that time these
19 were static injuries, and not dynamic. But I do think
20 that the brain does not work the way that it did prior
21 to the head injury and that's the reason for the post
22 traumatic encephalopathy.

23 Q And Doctor, you mentioned several times
24 throughout your reports about him being able to go
25 back to work; what -- I mean at one point, this is

1 August 7 -- it's on page 109 you mention it -- he
2 ultimately will be able to go back to some type of
3 work, would have to go into a different type
4 environment. What's your opinion, at this point,
5 about his ability or possibility of him going back to
6 work in any type employment?

7 A I think the best thing that could happen to
8 Scottie would be if he could go back to work. At this
9 point, because of the behavioral issues, he can't -- I
10 don't think he can integrate into society and
11 function. I don't think he would last probably 30
12 minutes.

13 So at this point I think that's where the idea of
14 trying to retrain him behaviorally, and that's where
15 the referral to Tancrum came from, trying to retrain
16 him behaviorally so that, hopefully, he could
17 reintegrate back into society and into the work force.
18 I think probably he's a good worker. If he can apply
19 some of this intenseness to vocational effort I think
20 it would be in his best interests.

21 Q You made some mention in early 2003 about him
22 having some neck pain, involuntary motor activity?

23 A He had some torticollis at one point, but I
24 haven't seen that and actually wondered if it could
25 have been some of his medication, but I haven't seen

1 any of that in a while.

2 Q In, I think it was a May 15th report on page
3 122, where you mentioned that in your opinion
4 treatment of his headaches is within psychiatric
5 realm; what did you mean by that?

6 A Because I think it's driven by his psyche,
7 not only the constant medication he takes but his
8 behavior and his ideas, the obsession with how this
9 happened, and more so how it wasn't discovered.
10 That's been a major problem for him all along; that's
11 all he talks about; that's where his threats usually
12 are aimed, at the emergency room over there, Marion
13 Memorial.

14 Even though McLeod has done things to him
15 that seem bad, he doesn't really seem to have the
16 anger towards them like he does toward Marion
17 Memorial. You know, I think he feels like there was a
18 certain point where he wasn't getting any help, and
19 beyond that he started getting help, and most of his
20 anger, I think, is directed there.

21 Q In your notes on June 5th of 2003, on page
22 126, you noted he had a MRA done of his head which was
23 negative. Tell me what an MRA is.

24 A That is like an MRI except instead of looking
25 at the substance of the brain it looks at the blood

1 vessels, so it's a MR angiogram. Just looking to see
2 if there was a post traumatic aneurism, vascular
3 malformation, something that might explain why the
4 persistent headache, and it was normal.

5 Q All right. So basically vascular type
6 testing?

7 A Right.

8 Q Okay. Did he have any history of any pre-
9 existing psych problems that Mr. Floyd may have?

10 A I don't have any history of that.

11 Q Do you have an opinion within a reasonable
12 degree of medical certainty as to whether or not Mr.
13 Floyd has had a physical brain injury?

14 A He has.

15 Q And that would be to both frontal lobes?

16 A Right.

17 Q You mentioned before about some sort of
18 modification of his behavior at Tancrum facility; what
19 basically does he need?

20 A I think he needs psychotherapy and to --
21 probably starting with the nature of his injury and
22 how that can affect -- he, himself, already reads
23 books and will come in and ask me if this is where his
24 problem is and point to a picture on the wall. So I
25 really think that he needs someone to tell him what

1 the basis of his problem is, how that affects his
2 brain, and how that manifests itself in his behavior
3 and how that behavior's going to impair his ability to
4 function. And so I think -- I don't think Scottie's
5 ignorant; he's not the brightest fellow in the world,
6 but if you explain something to him he grasps it, and
7 I think he wants, or has demonstrated to me, that he
8 needs answers to some of these questions. It needs to
9 be reinforced; I've answered them for him, but it
10 doesn't seem to stick with him for very long. But I
11 know he's interested in that; I know he looks up
12 pictures and is constantly asking me about this part
13 of the brain and that and so I really think that a
14 behavioral unit which could explain these things and
15 try to get his behavior under better control -- and
16 medication may not be the way to do that. But that's
17 the only way that he's going to integrate back into
18 society and into the workplace.

19 Q So basically you would not be able to tell
20 whether or not he's employable until he's able to
21 modify his behavior?

22 A Yeah, he's definitely not employable now.
23 He's made a little bit of progress but not enough to
24 -- I think safety is the big issue. He's just
25 unpredictable.

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1 Q I think you said before it would be your
2 opinion that the outbursts of rage that he has is due
3 to the frontal lobe injury?

4 A The injury's effect on the brain, unleashing,
5 you know, this obsession with how he got injured and
6 in the way it unfolded.

7 Q And there was a note, which was submitted,
8 that you had a conversation with the Tancrum facility?

9 A I called them on several occasions and spoke
10 with them, and we sent records. Actually I don't know
11 that I've heard back from them. What I was told, from
12 Scottie, was that workers' comp. hadn't agreed to it
13 as yet.

14 Q And had you ever sent anybody to Tancrum
15 before?

16 A It's been a long time. The same sort of
17 patient, frontal lobe injury. It's been a long time;
18 I don't even remember who it was. I was familiar with
19 the institute and don't -- I'm not aware, myself, of
20 someplace closer that does the same sort of approach.

21 Q Have you heard of the Florida Institute for
22 Neurologic Rehabilitation?
23

24 A I haven't.

25 Q I faxed them to you this morning, but I'm

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1 sure they probably haven't gotten to you yet. So
2 basically he needs a type of program that will change
3 -- modify his behavior as well as to -- I guess --
4 have a trial of medications.

5 A If that's the way to go. I think the biggest
6 gains will probably be in trying to modify his
7 behavior. Medications may be a part of that; I don't
8 think they'll be the biggest part, and I think that
9 would be the best way to approach it.

10 Q Okay. Right now what type medications is he
11 taking?

12 A He is on Keppra, Carbatrol, Tranxene,
13 Prilosec, Klonopin, Paxil, and Vicodin as needed for
14 his headaches.

15 Q And Keppra is for what?

16 A Keppra is an antiepileptic, but it's used
17 also by the psychiatric physicians for behavior/mood
18 alteration.

19 Q And Carbatrol?

20 A The same.

21 Q Tranxene?

22 A Tranxene is a benzodiazepine; it is a minor
23 tranquilizer.

24 Q Okay. Prilosec is for the stomach?

25 A Stomach, yes.

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1 Q And Klonopin is also a benzodiazepine which
2 is a longer acting one than Tranxene, and is
3 essentially a minor tranquilizer to calm him.

4 Q Paxil, is that for anxiety?

5 A Yes, it's an antidepressant but very good
6 with sort of the anxiously or actively depressed
7 individual.

8 Q And he takes all these on a daily basis?

9 A Yes.

10 Q Okay. Do you believe Mr. Floyd is motivated
11 to complete an inpatient treatment program?

12 A I think he is if they have a way of
13 controlling his behavior on a day-to-day basis. I
14 mean he's his own worst enemy and so they're going to
15 have the same problem with him that we do and that the
16 emergency room does. I'm just trying to control
17 Scottie and keep him under control. Every little
18 thing that happens that isn't right he just sort of,
19 you know, magnifies a hundred times, and that's how he
20 responds to it.

21 Q All right. Do you believe his mother needs
22 to be involved in his treatment?

23 A Yes.

24 Q Okay. In what capacity?

25 A Well, I think, maybe, to reinforce. They

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1 have sort of a love/hate relationship, I think. He's
2 awful mean to her at times, but by the same token, you
3 know, when she was ill he was the one insisting that
4 someone see her and do something. And so I think
5 she's just there when things happen, so she ends up
6 being the object more than probably she deserves, but
7 she should be part of his treatment.

8 Q You mentioned one person that you had
9 previously with a frontal lobe injury; have you had
10 others that you've had to send to other facilities?

11 A I can't think of anybody who's been as bad.
12 Scottie's the worst that I've ever seen. This other
13 fellow, he wasn't nearly as bad as I recall. He had
14 outbursts and temper tantrums, but there wasn't the
15 actual -- Scottie's sort of militia based, I think, in
16 his underlying thinking, and the ideas that he has as
17 to how he's going to effect justice -- I mean, you
18 know the fellow in the bell tower with the rifle,
19 that's Scottie. That's almost the way I see him, you
20 know, that something's going to happen and then he's
21 going to break and something bad's going to happen to
22 somebody.

23 Q So you would say that Mr. Floyd is the worst
24 frontal lobe injury patient that you've treated?

25 A I think he is; I can't think of anybody

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1 worse.

2 Q Okay. That's all I have.

3 MR. WUKELA: Thank you, doctor, I have no
4 further questions.

5 Further deponent saith not.

6 (There being no further questions, the
7 deposition concluded at 6:25 p.m.)
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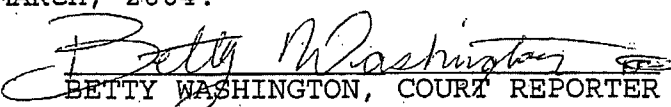
CERTIFICATE OF REPORTER

I, BETTY M. WASHINGTON, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF JOSEPH HEALY, M.D., ON MONDAY, THE 15th DAY OF MARCH, 2004, THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 29 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY REPORT OF THE SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO EDWIN P. MARTIN, JR., ESQUIRE; THE MCKAY LAW FIRM; 1330 Laurel Street, Columbia, South Carolina 29202, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 26TH DAY OF MARCH, 2004.


BETTY WASHINGTON, COURT REPORTER
MY COMMISSION EXPIRES

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ORAL DEPOSITION OF
SCOTTIE FLOYD

DECEMBER 18, 2003

SCOTTIE FLOYD

VS

KEN BAKER USED CARS AND LEGION INSURANCE CO., IN LIQUIDATION,
AND S.C. INSURANCE GUARANTY ASSOCIATION

W.C.C. FILE NO.: 0123790

REPORTER: BETTY M. WASHINGTON

COPY

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0123790

SCOTTIE FLOYD,	)	
	)	
Employee,	)	
	)	
vs.	)	DEPOSITION OF SCOTTIE FLOYD
	)	December 18, 2003
KEN BAKER USED CARS,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Legion Insurance Co., in	)	
liquidation, and S. C.	)	
Insurance Guaranty	)	
Association,	)	
	)	
Carrier/Defendants.)	)	
	)	

Deposition on oral examination of SCOTTIE FLOYD,
reported by Betty M. Washington, Verbatim Court Reporter
and Notary Public in and for the State of South Carolina;
said deposition taken pursuant to notice and in accordance
with the South Carolina Rules of Civil Procedure, at the
Law Offices of Steve Wukela, 243 Second Loop road,
Florence, South Carolina, on Thursday, the 18th day of
December, 2003, scheduled for 11:00 a.m. and commencing at
the hour of 11: 05 a.m.

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APPEARANCES:

REPRESENTING THE
PLAINTIFF:

Steve Wukela, Esquire
Wukela Law Firm
243 Second Loop Road
Post Office Box 13057
Florence, South Carolina 29504

REPRESENTING THE
DEFENDANT:

Edwin P. Martin, Jr., Esquire
McKay Law Firm
1330 Laurel Street
Columbia, South Carolina 29202-
7217

ALSO PRESENT:

Betty Joe Floyd, mother of
plaintiff

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CONTENTS

(DEPOSITION OF SCOTTIE FLOYD)

	<u>PAGE</u>
EXHIBIT INDEX	3
STIPULATIONS	4
EXAMINATION BY MR. MARTIN	4
CERTIFICATE OF REPORTER	86
WORD INDEX	

* * * * *

EXHIBIT INDEXEXHIBITS:IDENTIFIED AT PAGE

(Copy of exhibits attached to
each copy of transcript)

Defendant's Exhibit Number 1, Photograph of plaintiff.	79
Defendant's Exhibit Number 2, Photograph of part.	79

* * * * *

* * * * *

Court Reporter's Note:

--Indicates interruption; incomplete phrases; trailing
off; unfinished sentences.

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1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and
5 signing of the deposition by the deponent is
6 expressly waived.

7 Whereupon:

8 SCOTTIE FLOYD, being duly sworn and cautioned
9 to speak the truth, the whole truth and nothing
10 but the truth, testifies as follows:

11 EXAMINATION BY MR. MARTIN:

12 Q. Mr. Floyd, my name is Edwin Martin. We just
13 met briefly before we started. I'm an attorney in
14 Columbia representing Ken Baker Auto Sales. We are
15 here today to take your deposition. Basically I'm
16 trying to get some background information about you,
17 your past work history, education, just kind of just
18 give me a thumbnail sketch about yourself. If I ask
19 you a question which is -- I'm talking too fast or
20 mumbling, or it's just not a good question, if you ask
21 me to rephrase the question I'll do that for you.
22 Otherwise, if I ask you a question and you answer it,
23 I'll assume you understood my question. Is that fair?

24 A. Okay. But I also want to let you know that
25 there may be a little bit of brief time that I might

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1 have to take to answer the -- to pull up the answer,
2 because my answers are bouncing all around in my head,
3 so I have to catch it.

4 Q. Okay.

5 A. So you just be patient with me, I'll be
6 patient with you.

7 Q. I'll be patient. If you need to take a
8 break at any time or whatever, just let me know. We've
9 got time.

10 A. All right.

11 Q. So if it takes you a while to answer, we'll
12 just go with that. Okay?

13 A. It shouldn't take that long.

14 Q. Okay. If, like I said, you need a break --
15 to take a break, let me know, otherwise we'll just
16 plow on through and get you back wherever you need to
17 go. Okay?

18 A. All right.

19 Q. Can I get your full name, please?

20 A. Scottie Wayne Floyd.

21 Q. Okay. And how old are you?

22 A. 28.

23 Q. Okay. Your date of birth?

24 A. February 4, '08 ---- wait a minute.
25

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1 Q.

2 A. Yes, sir. Sorry. I got it tied up in my
3 head.

4 Q. Okay. Do you know your social security
5 number?

6 A.

7 Q. Okay. And what's your current address?

8 A.

9 Q. Where is that located?

10 A.

11 Q. And do you live with anyone at that address?

12 A. My mother.

13 Q. What's your mom's name?

14 A. Betty Joe Floyd.

15 Q. How long have you lived there at Caddy Lane?

16 A. It's probably been two years now.

17 Q. Anyone else live with you there other than
18 you and your mother?

19 A. Just us two.

20 Q. Okay. Have you ever been married before?

21 A. No, sir.

22 Q. Do you have any children?

23 A. No, sir.

24 Q. What's the highest grade that you completed
25 in school?

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1 A. Eighth.

2 Q. Okay. Did you go into ninth grade?

3 A. I went into the ninth grade; I just couldn't
4 get past English. I went to the eleventh grade in
5 math, so math I was good in. The English teacher had
6 a crush on me. She didn't want to let me go.

7 Q. Okay. You kind of got me confused a little
8 bit. You told me you completed the eighth grade;
9 right?

10 A. Yeah.

11 Q. And you went into the ninth grade?

12 A. I just didn't complete it. It's just like
13 English held me back in the ninth grade, but like
14 math-wise I was up in the eleventh grade.

15 Q. Okay. But you were still in ninth grade?

16 A. Still in ninth grade.

17 Q. But taking eleventh grade math?

18 A. Right.

19 Q. Okay. And did you drop out of school in the
20 ninth grade?

21 A. Yes, sir.

22 Q. Do you have any problems reading or writing?

23 A. The reading, yes. The smaller letters, the
24 less I can read of it at a time. The larger letters I
25 can concentrate on it a little more. And as far as my

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1 writing, I ain't got no feeling in this arm
2 (indicating), so I have to kind of concentrate when it
3 comes time to writing.

4 Q. And when you said in this arm, you're
5 referring to your right arm; is that correct?

6 A. Yes. Same thing with the right eye and the
7 right ear.

8 Q. Before this accident did you have any
9 problems reading?

10 A. No, sir.

11 Q. Okay. Before this accident did you have any
12 problems writing?

13 A. No, sir.

14 Q. Okay. So the problems you are having now
15 are because of vision problems?

16 A. Yes, sir. The visual, pain, and the feeling
17 -- no feeling in the hand. But don't worry. I'm
18 trying to work against all that and make things
19 better. Two years, you kind of learn to try to adapt.

20 Q. Did you have any further education after
21 ninth grade?

22 A. No, sir.

23 Q. No kind of technical schools?

24 A. As far as anything after that, I went to
25 work with like a company that done landscaping and

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1 basically learned on my own. Learned by hand.

2 Q. So any job you've had would be on the job
3 training?

4 A. Yes, sir.

5 Q. Okay. Ever been in the military before?

6 A. No, sir. But I sure would look like it,
7 wouldn't I? Our boys over there dying for what
8 they're dying for.

9 Q. My brother is over there now.

10 A. I hope he makes it back.

11 Q. Me too. Have you ever been arrested for any
12 criminal offense?

13 A. No, sir.

14 Q. Other than this accident, have you ever been
15 injured at work before?

16 A. No, sir. Other than minor dents and
17 scratches.

18 Q. Anything that you had to get medical
19 attention for?

20 A. No. Nothing a little band aid and a little
21 salve couldn't solve.

22 Q. Ever been involved in any kind of car
23 accident where you were injured?

24 A. There was one -- I was in one that never
25 went anywhere.

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1 Q. Okay. What do you mean by didn't go
2 anywhere?

3 A. It just didn't go nowhere. Nobody didn't
4 press nothing. It was -- it was more like a friend
5 bumped a friend, and they didn't -- being friends,
6 they fixed each other's business and all that.

7 Q. Were you injured in that accident?

8 A. I had a little tingle in the back, but
9 nothing that I ain't used to.

10 Q. Okay. Do you remember when that was?

11 A. I couldn't draw that number up if it was to
12 save my life.

13 Q. Do you know if it was in the '80s, '90s, or
14 2000?

15 A. It had to be somewhere, I'm thinking, in the
16 '90s.

17 Q. Okay. Any other car accidents that you've
18 been involved in where you have been injured?

19 A. No, sir.

20 Q. Okay. Any kind of incidents where you may
21 have slipped and fallen or --- say like at a Wal-Mart,
22 or your bathtub?

23 A. No. Now, since my accident, I do have to be
24 cautious in the shower, because of the, you know,
25 water, soap. The soap hits the floor; you've got to

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1 be cautious.

2 Q. Okay. Anything before this accident?

3 A. No, sir. I could do whatever I wanted to.

4 Q. Do you have any kind of income right now?

5 A. All I've got is workmen's comp.

6 Q. Okay. And how much do you receive in a
7 week?

8 A. \$211.77.

9 Q. Have you filed for social security
10 disability?

11 A. Yes, sir.

12 Q. What's the status of that?

13 A. I'm not sure as of this time. I think
14 they're waiting for a date.

15 Q. But right now you're not getting any money
16 from social security?

17 A. No, sir.

18 Q. Okay. You told me that when you dropped out
19 of school you went to work for a landscaping company.
20 Do you remember the name of that company?

21 A. When I went -- when I left there I went and
22 I was driving cars for a car dealer.

23 Q. Do you remember the name of that dealership?

24 A. That was Bobby Hood's Used Cars.

25 Q. Bobby Hood?

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1 A. Yes.

2 Q. Is that located in Marion?

3 A. Yes. Out on 501 heading toward the beach.

4 Q. And you said you drove cars?

5 A. Yes.

6 Q. Tell me what you ---

7 A. Like if there was a car sale, or if somebody
8 was up there -- if we bought a car from up the road,
9 two people would drive up; one would drive the other
10 car home.

11 Q. Okay. So your job just involved driving?

12 A. Yes, just involved driving.

13 Q. Okay. Do you remember how much you were
14 paid per hour?

15 A. Oh, man. That varied, because I washed cars
16 too. So I'm thinking I made somewhere around \$125.00
17 a week.

18 Q. Okay. And how long did you work for Bobby
19 Hood's Used Cars?

20 A. Very, very briefly.

21 Q. Like a couple of months?

22 A. Yes.

23 Q. And where did you go to work after Bobby
24 Hood?

25 A. I went to work for Ken Baker's. This is the

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1 tripping part, because the last time I went to Ken
2 Baker's was my third time going back.

3 Q. Okay. So this is the first time you went
4 there?

5 A. Yes.

6 Q. Do you remember when that was?

7 A. I can't draw no date up on that.

8 Q. Was that in the '80s maybe?

9 A. It was in the '90s, because it was after I
10 quit school.

11 Q. Do you remember what year you quit school?

12 A. Let's see. I was 18. That's probably --
13 you had to wait till you were over 18 before you could
14 make the decision yourself. So I was 18; I'm 28, so
15 it was ten years ago.

16 Q. Okay. And the first time you went to work
17 for Ken Baker what kind of work did you do for them?

18 A. Oh, man, I done what you called manual back
19 breaking labor, shovel, bush axing the ditch,
20 weedeating, lawnmowing, cleaned up, reorganized.

21 Q. Okay. So you just did clean up around the
22 lot?

23 A. Yes.

24 Q. Do you remember how much you were paid then?

25 A. Oh, man, I made minimum of \$5.00 an hour.

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1 Q. Okay. Forty hours a week?

2 A. Yes, sir.

3 Q. Okay. And how long did you work that first
4 time for Ken Baker?

5 A. I'd say it probably was about a year,
6 because that's when they -- when I stopped being in
7 the yard all the time they tried to get me into
8 bodywork. So I worked on that for like a year, and
9 that's when I got pissed and said forget it and walked
10 off the lot.

11 Q. Okay. Where did you go to at that time?

12 A. I pretty much sat on my ass.

13 Q. Okay. How long were you out of work?

14 A. (No response).

15 Q. Or where did you go to work next?

16 A. Well, the next place I went to work was Ken
17 Baker's.

18 Q. So you went back to them -- this is the
19 second time?

20 A. Yes.

21 Q. Do you remember how long you were out of
22 work before you went back to work with Ken Baker?

23 A. That -- I can't pull that file. It's all
24 over the place.

25 Q. So this is probably sometime in the early

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1 '90s?

2 A. Yes. Well, I ain't going to say early.
3 Let's see, yeah. It could be early, because, yeah,
4 it would be around the time that I was of age to be
5 working.

6 Q. And the second time you went to Ken Baker
7 what type work did you do?

8 A. Wait a minute. I got it confused. The
9 first one I was working and I was going back to school
10 trying to get my diploma, and I would work like half
11 days, and then I got tired of just getting out of
12 school and then going there, so I quit. It was like
13 it started out as a summer job. And the second time
14 is when they tried me on bodywork and it wouldn't
15 work.

16 Q. Okay. So the second time, were you doing
17 yard work at that time?

18 A. Yes, sir. They started me out -- they
19 tested me out again because they didn't trust me. You
20 know, they wanted to see if I was going -- they start
21 you out doing the rough work and see if you're willing
22 to stick it. And if you stick through it then they'll
23 try you somewhere else.

24 Q. So you're talking about the rough work doing
25 bodywork?

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1 A. No. I'm talking about getting out there
2 using a sling blade, bush ax, cleaning up the
3 junkyard. All the bad work, rough work, hot work.

4 Q. And is it the second time is when you said
5 you got pissed and you left?

6 A. That's when they tried me on the bodywork,
7 and I was trying to line up a front end hood, and --
8 well, the gnats and the heat got on my nerves and,
9 well, the road I went.

10 Q. And the second time you worked at Ken Baker,
11 how long did you work there?

12 A. It would have to be about a year, year and a
13 half, approximate, because it could be less.

14 Q. Okay. And then when you left Ken Baker the
15 second time where did you go to work?

16 A. I went to Harry Shelly and Son.

17 Q. Okay. What kind of company is that?

18 A. That's landscaping. We run backhoes, track
19 hoes, heavy machinery, we done dirt, made roads, took
20 trees out, cleared lots. You name it, we did it.

21 Q. Okay. So did you run the backhoes?

22 A. I was getting to the point that I was
23 running the backhoe. The tractor they didn't let me
24 get. They're so fast.

25 Q. Okay. So tell me what your main duties were

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1 when you worked there?

2 A. Basically, to tell the truth, I done the
3 rough work.

4 Q. The manual labor?

5 A. Yes, sir. Manual as in if we were doing a
6 septic tank, I was the one in doing all the ditch
7 work.

8 Q. So they give you a shovel?

9 A. Yes.

10 Q. And how long did you work for Harry Shelly
11 and Sons?

12 A. I'm thinking that took somewhere around two
13 and a half years.

14 Q. Do you remember how much you were paid an
15 hour?

16 A. We was getting straight pay. No, we wasn't.
17 I can't draw that right up.

18 Q. Was it more than minimum wage?

19 A. Yes; I was making damn good money out there.

20 Q. Was it more than \$10.00 an hour?

21 A. I couldn't say that, because it was the
22 overtime that was the killer, because they work you
23 from sunup to sundown. Enjoyed that work, really.

24 Q. So you worked more than 40 hours a week
25 normally?

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1 A. Yeah.

2 Q. Who would have been your direct supervisor
3 there?

4 A. That would have been Ronnie Shelly, because
5 his father was -- had a heart problem and he couldn't
6 work no more.

7 Q. And why did you leave Harry Shelly and Sons?

8 A. They decided -- Ronnie decided that he
9 wanted to go get another -- he got tired of being up
10 under his father, so he went and applied for a job
11 with AT&T and there went my job. And that's when I
12 went back to Ken Baker's.

13 Q. Okay. Do you remember when you went back to
14 Ken Baker?

15 A. Yes, sir.

16 Q. Okay. When was that?

17 A. When you said remember going back to Ken
18 Baker, I didn't know you mean a date.

19 Q. Do you remember when?

20 A. Okay. Let's see how long was it.

21 Q. This accident happened September 13th of
22 2001. How long were you there?

23 A. I probably worked there like two years
24 before the accident happened, because I remember
25 seeing the new building come up. I helped with the

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1 new building come up.

2 Q. Okay. So it would have been sometime,
3 probably 1999; would that be fair, if the accident
4 happened in 2001?

5 A. Yeah. I'd say somewhere 1999, '98. That's
6 to give it a little variance

7 Q. And when you went back to Ken Baker the
8 third time what were you hired to do?

9 A. Parts puller.

10 Q. Okay. Tell me what a parts puller does?

11 A. You name the part on the car, what series
12 car, or give me the car number, and I'll go to that
13 car and I'll pull that part. If it was the engine,
14 I'd go for the engine. If it was the transmission,
15 I'd go for the transmission. If it was any part,
16 speedometer, it didn't matter. I pulled everything.

17 Q. So basically these were cars that you guys
18 you just -- weren't drivable and you were taking parts
19 away from them?

20 A. Yeah. Because we were -- they had one side
21 that worked on cars. We had a body shop, and the
22 other side was opened up just because -- for parts.

23 Q. So you'd go to those cars and pull whatever
24 parts you needed?

25 A. Yes.

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1 Q. Do you remember how much you were paid an
2 hour there?

3 A. Well, it was pretty rough in the beginning,
4 but right at the end I was getting \$10.50 an hour
5 until the accident.

6 Q. And how many hours did you work a week?

7 A. Six, seven days a week.

8 Q. What would be an average number of hours a
9 week?

10 A. Huh?

11 Q. What would be an average number of hours you
12 would work a week?

13 A. I'd say -- I'd say I'd work about a half day
14 on Saturday, half a day on Sunday, so that's -- you
15 give you your basic 40 hours, half a day. I'm
16 thinking it would probably be four, five hours, so
17 that's 10 extra hours.

18 Q. So about 50 hours a week?

19 A. Yes.

20 Q. And did you have a direct supervisor?

21 A. It was Kyle Baker and Ken Baker. The two
22 boss men. And Mrs. Baker, because she was the boss
23 men of all. That lady always got what she wanted.

24 Q. Okay. So you worked there until you had
25 your accident?

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1 A. Yes, sir. I even went back after the
2 accident and tried to work.

3 Q. Do you know how long you worked when you
4 went back?

5 A. It was, I'd say a little less than probably
6 three months, because it -- at the beginning of the
7 accident I was still having problems with throwing up
8 and my eyes was swollen. I went back to work with my
9 eyes swollen up. You know, blood all built up around
10 your eyes and all that.

11 Q. So you worked about three months; is that
12 what you said?

13 A. Yes.

14 Q. So do you remember when the last day you
15 worked, or around the last day you worked?

16 A. 9/13/01.

17 Q. Okay. That would be the day of the
18 accident?

19 A. Yes.

20 Q. Okay. And after the accident you went back
21 to work?

22 A. No -- yeah. 9/13/01, yes. I went back to
23 work -- that was because they forced me, because I
24 didn't feel like it was right. I didn't feel right.
25 The doctor was telling me it was a concussion, but yet

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1 I was still vomiting blood, and that's what I didn't
2 understand. So I went back to work and tried pushing
3 through it, but it was like I would go like a few
4 minutes and then I'd have to drop to my knees and
5 everything and regain -- regain all composure. I
6 started wearing earplugs, and I started noticing my
7 temper would get -- would be getting out of control.
8 It was immediately after the accident. I mean, I was
9 getting pissed at my coworkers for basically nothing.
10 But, I mean, that still didn't mean I didn't want to
11 beat the shit out of them. Can I say that over the
12 mike?

13 Q. You can say what you want. So when would
14 you have stopped working there? You said you got hurt
15 on the 13th and you worked about three months.

16 A. Okay. That would be -- let's see. That
17 would be the day that -- the last day that I was
18 there. It had to be right before they drewed me to --
19 before I went to McLeod.

20 Q. So about probably January, 2002?

21 A. I'm guessing. I mean, the records could
22 tell you more than I could tell you, because, you
23 know, I can't remember half of what's going on from
24 the get go.

25 Q. So you got hospitalized around that time?

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1 A. Yes. That's after -- yeah. They
2 hospitalized me.

3 Q. Okay. And have you worked anywhere since --
4

5 A. No.

6 Q. --- you last worked at Ken Baker?

7 A. No.

8 Q. Okay. Have you looked for any work?

9 A. I've been told not to try it. I can't even
10 drive.

11 Q. Who told you not to look for work?

12 A. My doctor.

13 Q. Okay. Which one is that?

14 A. Healey.

15 Q. Do you know why he's told you not to drive?

16 A. Because I'm on two medications right now
17 that currently help with seizures.

18 Q. Are you taking Dilantin?

19 A. No. It's Keppra and -- I can't think of
20 the name of the other one.

21 Q. Are they both anti-seizure medications?

22 A. Yes, sir. And they went up on my dosage of
23 Keppra due to the fact that I've been kind of feeling
24 like I wanted to faint to my right.

25 Q. When you say faint, are you talking about

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1 passing out?

2 A. Yeah. I've passed out twice. I know what
3 it feels like, so I know -- when the body starts, I
4 know to go ahead and drop to my knees before I do do
5 some more damage.

6 Q. Okay. Tell me what -- this is an admitted
7 action. We're not denying that you got hurt at work.

8 A. All right.

9 Q. Can you just briefly tell me how it
10 happened?

11 A. Okay. It's two days after 9/11. After
12 9/11, let's see, I took -- I took that Monday off.
13 Tuesday, that's when 9/11 happened. I missed that day
14 at work. I went back to work the next day.
15 Everything seemed to be kosher. But the next day,
16 that's when -- well, my ex-girlfriend and all that
17 started coming back around, and the tragedy of 9/11,
18 and, well, after I got my -- my good raise I started
19 busting my butt for those people. I worked and I
20 would do what I had to do and get it done. And I
21 think that what it was is that because we were in the
22 BMW from the get go -- I think we were like six to
23 eight months in the Mercedes then, and it was the
24 first time that I ever handled a car like that.

25 And when I was trying to take the control arm

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1 off, I didn't realize that the spring had held tension
2 on that control arm. And when I released one bolt and
3 that bolt come out, wham. A scar here (indicating),
4 crushed everything on this side over. I could not get
5 no air in on the right-hand side.

6 Q. Okay. Could you raise your head up just a
7 little bit so I can see your scar?

8 A. (Showing scar.)

9 Q. Okay. So the scar is over your left eye?

10 A. Yes, sir. When it hit, it hit from like
11 this side and it knocked my head this way.

12 Q. Okay. So it came from your left and hit you
13 above your left eye and the left side of your nose?

14 A. Yes, sir. Because it crushed that septum
15 all the way over. I was getting no oxygen in on that
16 side. I done went through corrective surgery. I can
17 now breath almost like a normal man. But who's to say
18 what normal is, right?

19 Q. Exactly. Okay. You mentioned that your ex-
20 girlfriend started coming around. Was that a problem
21 for you?

22 A. No, not really. We were engaged to be
23 married. And, you know, you get you a little piece
24 here and there, and you swing that thing here and
25 there and then, well, boom, you know. That's pretty

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1 much what it was.

2 Q. Okay. So you guys became disengaged, I
3 guess?

4 A. Oh, no, we got engaged. In the sexual
5 nature.

6 Q. Okay. Got you. But you were engaged to be
7 married to her?

8 A. Yeah, before that. Way before that.

9 Q. Okay. So you guys broke up at some point?

10 A. Yeah. Her parents were a pain in the ass.

11 Q. Okay. When did your engagement break off?

12 A. I don't remember the year, but I could tell
13 you it was February -- it was Valentine's Day. It's
14 had to been like four, five years. Five, six years,
15 something like that. I can't remember.

16 Q. Okay. I guess I'm trying to figure out why
17 did you mention that your ex-girlfriend came around,
18 around 9/11?

19 A. Well, see, that's the thing. From the
20 beginning I been trying to figure out how or what it
21 was that I done to slip. And what all -- what all I
22 can figure was 9/11, her coming around, me working my
23 ass off, and me trying to out work the 50-year-old
24 dude that's out there, because that was the only two
25 that were on our side. Me and him. I got Kyle Baker

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917

1 -- when Kyle Baker give me a list it would be two to
2 three pages long. I'd go get my parts, clean my
3 parts, wrap my parts, take it in there. I was a full
4 force working machine. Manual labor, loved it. So as
5 far as back pushing pencils and all that, you all can
6 have that.

7 Q. Okay. So your ex-girlfriend coming in was
8 just you were trying to figure out what was the
9 distraction that caused you to get hurt?

10 A. I'm figuring that 9/11, her coming around,
11 and me trying to bust my butt because of the raise I
12 just got, and I didn't take that one moment to stop
13 and look at what it was I was dealing with.

14 Q. Do you remember what your raise was up to?

15 A. \$10.25 to \$10.50 an hour.

16 Q. Okay. And what had you been before that?

17 A. I started out -- I think I started out at \$6
18 bucks an hour.

19 Q. Okay. So you were going from \$6 bucks to
20 \$10.25 to \$10.50?

21 A. No. They dollared me here, dollared me
22 there, and then one day I got pissed off and raised
23 hell and then I got to \$10.25 to \$10.50.

24 Q. Okay. Do you remember when that raise was?

25 A. It was a few months before the accident,

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1 because after the accident -- before that -- after the
2 raise, that's when I started really putting it on. I
3 mean, you see that gut? That has not been there
4 before. My neck was thick. I was strong.

5 Q. Was your job a light duty, medium duty or
6 heavy duty job at Ken Baker?

7 A. Okay, let's see. I could take your car,
8 take the doors off of it, strip the motor out of it,
9 strip it down, but leave the front clip entire. I'll
10 put it down on the pallet and ship it on R & L. That
11 whole front half the car, or rear half, or side half,
12 or whatever. So heavy labor, yes. I lifted 70 pound
13 transmissions. Yeah, I love hard work.

14 Q. Okay. So when this part hit you, where did
15 they take you for medical care?

16 A. Marion Medical -- what do they call it?

17 Q. Is that the emergency room there in Marion?

18 A. Yes.

19 Q. And at that point, I guess, you were having
20 problems with your head and your nose?

21 A. Yes. When they carried me in they -- they
22 stitched me up. And the guy that was carrying me to
23 the x-ray room, I told him I needed something to throw
24 up in because I felt it coming. And he come back with
25 one of those little pecker shaped dishes. You know,

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1 the little kidney shaped dishes, or whatever you want
2 to call it, and I told him that was not going to be
3 enough. And that's when I found out what projectile
4 vomiting was.

5 Q. Yes, sir.

6 A. Because when I threw up it went in and out,
7 all over my boots, pants, bed, and everything.

8 Q. Okay. Did the part hit you anywhere other
9 than your head and your nose?

10 A. No, sir.

11 Q. Okay. Did they do an x-ray of your head?

12 A. Yes. And they did not determine anything
13 from the x-ray.

14 Q. So they sent you home at that point?

15 A. Yes.

16 Q. Okay. You continued to have some problems,
17 and did you go back to that same facility?

18 A. No. I was told to go to my family doctor.

19 Q. Okay. Who is your family doctor?

20 A. Dr. Keith Stewart.

21 Q. How long has Dr. Stewart been your family
22 doctor?

23 A. For a long time.

24 Q. Since you were a kid?

25 A. Yes.

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1 Q. Okay. And is he located in Marion?

2 A. Yes.

3 Q. And did you go see Dr. Stewart?

4 A. Yes.

5 Q. Okay. And when you went to go see Dr.
6 Stewart after you went to the ER what kind of problems
7 were you having?

8 A. I was telling him that the headaches didn't
9 feel right. He was telling me it was a concussion. I
10 was telling him it just didn't feel right, because two
11 weeks after the accident I was still throwing up
12 blood. And that's what -- and it was coming up
13 projectile. And, I mean, it's like, I would go get
14 something to eat, or be on the way to go get something
15 to eat and I would have to stop the car and throw up.
16 I mean, for two weeks after an accident and you're
17 still throwing up blood; something's still leaking,
18 right?

19 Q. Yes, sir.

20 A. So I tried to tell the doctor that something
21 ain't right. It's a concussion. I even showed him to
22 where you could look up my nose and tell it had been
23 kicked over. He would not pay attention to that. So
24 one -- it was getting closer -- it was getting close
25 to the time, say about -- it was approximately four

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1 months, and I walked into his office packing blades
2 and a 380 pistol because it was time to get some
3 answers. He ordered a CT scan.

4 Q. Okay. And this is Dr. Stewart you're
5 talking about?

6 A. Yes.

7 Q. And did you have that CT scan?

8 A. Yes, sir.

9 Q. And what did that show?

10 A. Well, judging by who read the CT scan, they
11 said that it looked like fluid built up on the brain.

12 Q. Do you remember where you had that CT scan?

13 A. Marion Hospital. They don't want nothing to
14 do with me no more.

15 Q. Okay. And after you had that test did they
16 send you to another doctor?

17 A. Well, that's when they went and sent me to
18 Dr. Healey.

19 Q. Okay. Who sent you to Dr. Healey?

20 A. Keith Stewart advised me to go see Dr.
21 Healey, but another occurrence come up before I made
22 it to see Dr. Healey.

23 Q. Okay. What was that?

24 A. I had a major headache, and I stopped in the
25 churchyard and I was preparing to blow my brains out.

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1 I had called my friend to call -- to go get my mother
2 to come get me to carry me to Florence. And, well, my
3 dumb ass walked up in there with a pistol too. They
4 run a CT scan and they determined that it was brain
5 damage.

6 Q. This was in Florence at McLeod?

7 A. Yes, sir. And no charges are being pressed
8 due to the fact.

9 Q. Okay. So you took a gun to McLeod as well?

10 A. Yes. And I did not pull it on nobody,
11 because when I realized security was coming I emptied
12 my pockets and put it all on the table, and when they
13 opened the door I was like that (indicating), because
14 them dudes coming in looked like, man, them's
15 bulletproof farmer dudes, man. I'm might got -- I
16 might have anger management issues, but I still
17 couldn't hurt them. I mean, body armor.

18 Q. All right. So they did a CT scan and you
19 told me that it showed that you had some brain damage?

20 A. Yes.

21 Q. Okay. What did they do for you at that
22 time?

23 A. They sent me to Three Rivers Behavioral
24 Health Center.

25 Q. Is that in Columbia?

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1 A. Yes.

2 Q. Okay. How long were you in Three Rivers?

3 A. Eight days.

4 Q. And this was in January of 2002; is that
5 right?

6 A. I'm just asking, because --

7 Q. We're going to take your mom's deposition
8 later. Just testify the best to your knowledge.

9 A. I can't draw that memory. I can't -- I can
10 barely tell you what the date is. I'd have to look on
11 my phone, which I don't have, to know what the date is
12 today.

13 Q. All right. That's about four months after
14 the accident.

15 A. Well, that sounds about right then. Okay,
16 wait a minute. The date I went in to McLeod's with
17 the firearm, it was four months to the date of the
18 accident. The next day, which was the 14th, they sent
19 me off to Three Rivers. That's the only way I can
20 remember it, because it was four months to the day.

21 Q. Okay. So you stayed in there for eight days
22 you say?

23 A. Yes, sir.

24 Q. Okay. And what kind of treatment did they
25 do for you at Three Rivers?

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1 A. Okay. The best treatment I could tell you
2 is, the first time I saw the seven dudes come out in
3 the white uniforms and one wearing purple gloves, six
4 restrained one and a dude stick a needle in your ass,
5 and before he pulls it out you're gone, that's when I
6 realized it was time to become a nice fellow. They
7 started putting me on Depakote and Neurontin, and all
8 that kind of stuff for seizures. I can't remember all
9 the name of the medications. They -- when I -- I
10 started pacing like I don't know what. I was -- it
11 was like I couldn't stop. I just
12 -- when I got home I rested for three days, because my
13 ankles and knees were hurting I paced so much in that
14 place. I done whatever they wanted to do, whenever
15 they called to do it. If they -- if we got a smoke
16 break, I'd walk outside, light up two because you only
17 got ten minutes so you had to smoke fast. And
18 basically tried to be nice from there out because I
19 knew what it was going to take to get my butt out of
20 there..

21 Q. Okay. Did they do any kind of counseling on
22 you?

23 A. Oh, yeah. They done -- they done that
24 talking and all that good stuff.

25 Q. Okay. Did that treatment help you any?

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1 A. Well, you see me wobbling back and forth?

2 Q. Yes, sir.

3 A. Well, that's --

4 Q. So I guess you're saying no?

5 A. That's a part of the condition. Don't
6 worry. The right knee will start going to a tap and I
7 can't control it. So it -- I ain't going to say it
8 didn't help me. I'd say -- okay. I got more help
9 watching Dr. Phil on the anger management, trying to
10 figure out how to work with the anger. And, well,
11 what I have, I ain't had one of my violent episodes in
12 a while, meaning go outside and beating the shit out
13 of a tin building or a dryer. Busting elbows up,
14 knuckles up, and don't care. It was either that or go
15 human.

16 MR. WUKELA: Ed, do you want to take a
17 little bit of a break?

18 MR. MARTIN: That's fine.

19 MR. WUKELA: Do you want to go outside and
20 take a smoke or something and slow down a
21 little bit?

22 (A break was taken from 11:38 a.m. to 11:45
23 a.m.)

24 EXAMINATION RESUMED BY MR. MARTIN:

25 Q. The last thing you were talking about is

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1 that you hadn't had a violent episode in a while, and
2 that you had been watching Dr. Phil. Is that right?

3 A. Yeah.

4 Q. Okay. So you went to Three Rivers, and you
5 came out after eight days. Did you go see Dr. Healey
6 at that time?

7 A. Yes, sir. Then I started seeing a
8 psychotherapist, and a psychiatrist, and -- what is
9 the one that -- what do you call the one that ain't
10 got the license to practice medicine?

11 Q. That's not an MD? A psychologist?

12 A. Okay. So what's the one that is licensed to
13 give medication?

14 Q. A psychologist cannot give medication. A
15 psychiatrist can.

16 A. Okay. Well, I had both of those.

17 Q. Okay. And we'll get into that. I want to
18 talk about Dr. Healey first.

19 A. Okay.

20 Q. Okay. Do you remember when you first
21 started seeing Dr. Healey?

22 A. I think it was -- he was the first -- he was
23 the first appointment I had when I come back from
24 Three Rivers.

25 Q. Okay. So it would be sometime early 2002?

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1 A. Yes, sir. I'm guessing.

2 Q. Okay. When you first started seeing Dr.
3 Healey what kind of problems were you having?

4 A. Major headaches, blurred vision,
5 hypersensitive hearing in my right ear, no feeling in
6 the right arm, and occasional blackouts.

7 Q. You said the blurred vision. Was that just
8 on the right side or both eyes?

9 A. It's all affecting this side (indicating).

10 Q. Okay. You're pointing to your right side?

11 A. This side is good. I can see you
12 beautifully. But this hearing, I can't stand the
13 sound of a vacuum cleaner, can't stand the sound of a
14 hair dryer, can't stand the sound of some toys that
15 little children play with. Some noise just gets on my
16 nerves, and they often trigger me wanting to get hot.

17 Q. Okay. So the problems you're having are on
18 your right side; is that correct?

19 A. Yes, sir.

20 Q. And the left side you said is okay?

21 A. Yeah. I don't have no problem with the
22 hearing on this side. Don't worry. I got earplugs
23 right there in my backpack in case -- or my jacket, in
24 case you all start getting a little loud in here.

25 Q. Okay. You mentioned you didn't have any

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1 feeling in your right arm. Do you remember when that
2 started?

3 A. See, that's the thing. It took a while
4 before I found out that that -- it was a problem,
5 because of the headaches. They were killer. Go to
6 the emergency room. They'd put me out for three days.
7 Then it took me three days to recover from the
8 medication they shut me up with. And then when I went
9 up to -- I really noticed it when I went to Baptist.
10 When I went to Baptist and they took a -- one day they
11 took like five vials of blood out this arm, and the
12 reason I asked that is because I couldn't feel it.
13 And then they -- the next day they took five more
14 vials out of that arm.

15 Q. And again, you're talking about your right
16 arm; is that right?

17 A. Right. And that's when I started noticing
18 like a pain in my wrist, a pain in this knuckle
19 (indicating).

20 Q. Okay. You're pointing to your ring finger -

21 --
22 A. Yes.

23 Q. --- of your right hand; is that right?

24 A. Yes, sir. And Dr. Healey ordered one of
25 them vein tests, and it showed that they had hit a

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1 nerve when they were drawing blood.

2 Q. Dr. Healey sticks needles in your arm?

3 A. No, Dr. Healey don't stick nobody.

4 Q. Okay. I was talking about to do that test?

5 To check --

6 A. No. It's a -- it's like a -- what do you --
7 what you do with a pregnant lady when you look at the
8 baby?

9 Q. Like an ultrasound?

10 A. Yeah. But they do it on like the veins and
11 all that in your arms and whatever -- wherever you're
12 having your problem.

13 Q. Okay. So you first started noticing the
14 problems with your right arm when you went to Baptist?

15 A. Yes, sir.

16 Q. And that would have been sometime in April
17 of this year. Does that sound about right?

18 A. I can't answer that question.

19 Q. Okay. Would it have been in 2003?

20 A. I would say yes to that. I may be wrong.

21 Q. Okay. What type treatment has Dr. Healey
22 done for you?

23 A. Putting me on medications. He was basically
24 thinking that my anger was coming from psychological,
25 so that's -- we've worked on that, and I still have my

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1 episodes.

2 Q. Okay. When you say you've worked on that,
3 you're talking about the psychological aspect?

4 A. Yeah. He was giving me the, I think, Paxil
5 CR, and stuff like that. Trying to see if it was like
6 a chemical imbalance in the brain. It ain't.

7 Q. Okay. So he's saying the problems that
8 you're having are related to physical -- the blow to
9 your head?

10 A. Yes, sir. Due to the part of which -- see,
11 one test shows damage on one side. Like the CT scan
12 shows it to be over here (indicating). The MRI shows
13 damage to be on this side. And the frontal lobes are
14 what controls personality, which I try to be nice, but
15 it's just that -- like going to Wal-Mart. Right?
16 This time of year people in a rush and they accidently
17 tap your leg with that shopping cart. I'm scared I
18 might, well, clean up on aisle three.

19 Q. Okay. So he's giving you medication and he
20 also -- did he refer you to a psychologist or a
21 psychiatrist?

22 A. I see a psychiatrist once a month.

23 Q. Who's the psychiatrist that you see?

24 A. Renee Williams.

25 Q. Okay. What does Renee Williams do for you?

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1 A. She talks to me, trying to help me out.
2 She tries to talk -- tell me new ways of, like -- when
3 I get that pain in my neck? Like the last time I was
4 hospitalized I had such a big knot in the back of my
5 neck they had to shoot me like with six or seven shots
6 to relax the tension. And she tries to teach me ways
7 of like controlling my breathing. Instead of
8 breathing through my chest, I'll bring it out through
9 my stomach. So therefore, you know, that helps keep
10 me calm. All right. She's told me to massage my
11 neck. She's shown me the spots to put pressure on and
12 then release. And see, that stuff don't seem to work.

13 Q. So she's a psychologist?

14 A. Yes.

15 Q. Okay. So she's not prescribing medication
16 for you?

17 A. No.

18 Q. Okay. So you just see her one time a month?

19 A. Just about, yeah. It changes. It will go
20 from once a month to maybe
21 -- it's depending on how her schedule is. It might --
22 it might be sooner, then it might be later, so it's
23 just all up in the air.

24 Q. Is her treatment helping you?

25 A. Well, it's nice to actually be able to go

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1 talk with somebody and tell them what it is you're
2 feeling.

3 Q. Okay. So you'd say yes, probably it's
4 helping you?

5 A. Yes.

6 Q. Okay. And who is the psychiatrist that
7 you're seeing?

8 A. Renee Williams.

9 Q. Okay. Well, you just said she's a
10 psychologist.

11 A. Okay. Well, see, Dr. Weinbaum -- instead of
12 going through one doctor, then another doctor giving
13 me two separate medications and then they having to
14 corroborate together, I just left one alone and went
15 to Dr. Healey. So therefore, there would only be one
16 doctor, you know, doing my medication.

17 Q. Okay. Are you seeing Dr. Weinbaum now?

18 A. No.

19 Q. Okay. Do you remember the last time you had
20 seen Dr. Weinbaum?

21 A. Oh, it's been awhile.

22 Q. Okay. Was it in 2003?

23 A. Well, I would say maybe.

24 Q. Okay. Was he just prescribing medication
25 for you?

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1 A. He would prescribe my anxiety or the
2 depression medicine.

3 Q. Okay. Any other mental health providers
4 that you've seen other than Renee Williams and Dr.
5 Weinbaum?

6 A. Myself.

7 Q. Okay. But anybody who's got any kind of a
8 degree to practice medicine?

9 A. (Shakes head.)

10 Q. And Dr. Phil, I guess. Okay. Dr. Healey's
11 prescribing medication and he's sent you to the
12 psychologist or psychiatrist?

13 A. Yes.

14 Q. Do you know what kind of testing he's done
15 on you?

16 A. He's done a CT scan, MRIs, BEARS.

17 Q. And you had the BEAR yesterday?

18 A. I had the BEAR and the MRI yesterday. So
19 that's why I'm kind of -- right now.

20 Q. What's your understanding of what Dr. Healey
21 believes is wrong with you?

22 A. My understanding is, his attitude has
23 changed towards what he was -- he was saying it was a
24 psychological thing because when he mentioned me going
25 to Texas his attitude had to change to even bring that

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1 up. Because, I mean, I've asked him to -- I've asked
2 him about going to like pain management, and he
3 wouldn't go for that. And, well, when he mentioned
4 this the first time, I need all the help I can get
5 because I can't help myself but so much.

6 Q. Okay. So is pain management something that
7 you want to do?

8 A. Yes. Pain management -- well, not really
9 pain management. Hell, I can deal with the pain.
10 It's the anger. Because the pain creates the anger.
11 That makes -- that's what makes me go off like that.

12 Q. Okay. So continue on. You were saying that
13 Dr. Healey's attitude had changed?

14 A. Yes. When he mentioned about going to that
15 place in Texas, I didn't think it was a good idea
16 because you're sending somebody with anger management
17 problems to a place that other people have anger
18 management problems, and I see there might be a
19 problem there. So I'm kind of wary about that. But
20 then I think about, well, if I go in they might be
21 able to teach me something other than what I already
22 tried. See, because the episodes that I have, I am
23 not taking it out on no human. I've went out on a tin
24 building or a dryer. And now I don't have a dryer, so
25 -- I got to leave the tin building alone, because it's

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1 already in bad shape, so next is trees.

2 Q. Okay. What -- is Ms. Williams, she's tried
3 to help you with the anger?

4 A. Yeah. She's tried to teach me -- she's
5 tried -- she tries to tell me to make sure -- think
6 about the consequences before I act. But, see, that's
7 the thing about impulse control disorder. When it
8 goes, I don't give a damn.

9 Q. Okay. Other than Ms. Williams, has anybody
10 else tried to give you any kind of treatment or
11 counseling regarding management of your anger?

12 A. No.

13 Q. Is that something you feel that you need?

14 A. Yes. If I'm going to make it back in
15 society, I've got to do something about it, right?

16 Q. Exactly. You said Dr. Healey has told you
17 not to look for any work. Is returning back to work
18 something that you would like to do?

19 A. I'm 28-years-old. What do you think?

20 Q. I think you probably do.

21 A. Yes, sir.

22 Q. Okay. In your personal opinion, could you
23 go back and do any kind of work right now?

24 A. No, sir.

25 Q. Okay. Tell me why? Why don't you think you

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1 could go back to work?

2 A. Okay. It's depending on where I go. I
3 mean, you know, I'd have to
4 -- if I go anywhere loud, I got to wear earplugs. I
5 got earplugs and the kind that go over your ears. I
6 got bright lights and loud vibrations, such as
7 something that you could feel -- you could hear a
8 sound and you could feel the vibration in your chest.
9 I've tried -- I've tried swinging a machete. That
10 don't bother me as much, but when I get short winded
11 that's when it feels like everything's trying to go
12 dark. I have tried pushing it. I've pushed myself to
13 see what my limit is, and in two years my limit ain't
14 changed very much.

15 Q. What type things have you tried to push your
16 limit on?

17 A. Okay. Grabbed that machete with that right
18 arm and just swing it. Trees the size of your wrist,
19 two swings and it's down. I don't mess with no rake.
20 Screw a rake. I've hated a rake ever since I was 12.

21 Q. Okay. So you'd swing the machete. Could
22 you swing the machete okay?

23 A. Well, if I'd have worn my other boots, you
24 could see where I nicked my boot on this side several
25 times, and I had knee pads on, like if I fell I

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1 wouldn't damage my knee or whatever, and I remember,
2 ting, hitting that. So my aim is not all there.

3 Q. Okay. What else have you tried to push
4 yourself with?

5 A. Walking. Stretching. If I get up, like
6 first thing in the morning, you know how you get up in
7 the morning and you get out of bed and you do that
8 lovely stretch and you feel so good? Well, I'll pass
9 out. I have to be standing or moving around for
10 approximately 10 minutes before I could even start to
11 stretch. And my psychiatrist asked me, you been
12 stretching? Yes, I've been stretching, but I have to
13 -- I've got to find -- certain times it works;
14 sometimes it don't. But it's depending on the queen.

15 Q. --- your brain?

16 A. Yeah, the queen bee sitting right there. I
17 mean, like yesterday, that weather that was coming
18 through and then going through those tests, I went
19 home, I eat a little bit of something, I went to bed.
20 The tests wore me out. Biometric pressure bothers
21 me.

22 Q. Does it cause you to have headaches?

23 A. Yes, it makes headaches. It makes -- it
24 feels like a tornado flapping around right between
25 your eyes.

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1 Q. You mentioned walking. Can you walk a
2 distance?

3 A. Large distance, I have not tried. But like
4 going to like a Wal-Mart or flea market, I can walk
5 but I can tell when things start getting tired. The
6 first thing I say is, it's time to make a way back to
7 the car. Heat drains me. If it's hot, it drains me
8 in a hurry. So I'm hoping during the winter I might
9 be able to do a little bit more to improve. Well,
10 basically to get my ass back to work. That's my
11 thrive. That's my drive. That's what I want to do.
12 I've got to get there.

13 Q. Okay. What's your goal in a job to get back
14 to?

15 A. Don't get me wrong, but I'd like to go right
16 back to heavy machinery.

17 Q. Do the same type work you were doing before?

18 A. That's fine. It's just I got to -- I mean,
19 it's like, when the accident first happened, a month -
20 - within the first month I could tell to where I was
21 talking bad to my coworkers, and even friends, so I
22 would react -- I would act like a pain in the ass all
23 the time.

24 So that's why I kind of apologize for things
25 before I do it, because I know it's either going to

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1 happen or I'll hurt somebody's feelings. And
2 basically because that's because I tell the truth, and
3 I get a little raw with the truth. Like my sister
4 moved to Virginia. I told her she's a dumb ass. I
5 think she's a dumb ass, and she knows she's a dumb
6 ass. So, I mean, that's just telling the truth.

7 Q. Okay. Were you like that before the
8 accident?

9 A. No. I could lie. I could spare somebody's
10 feelings. Now I don't care.

11 Q. Okay. You're just direct now?

12 A. Well, I kind of -- I'm kind of direct, and I
13 add a little insult to injury, because it's almost
14 like getting a thrill out of it.

15 Q. Okay. And that's something that's developed
16 after this accident?

17 A. Yes. And I like violent video games, such
18 as -- I don't know if you play Play Station 2, but you
19 can get games like vampires, one that's called
20 Defiance, and you can suck the blood while they still
21 standing, or you can grab them and you can grab them
22 and take them out. I love games like that. It fits
23 me so well. I'm actually thinking about changing my
24 name to that character.

25 Q. Did you play video games before this

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1 accident?

2 A. Yes.

3 Q. Did you play those type games before this
4 accident?

5 A. Yes. I've got games that are older than
6 some of this equipment sitting on the table.

7 Q. So you've always liked the violent video
8 games?

9 A. Oh, yeah. And now I love them even more. I
10 go in there asking for violence. But I look around to
11 see if there's any kids, you know, be respectful.

12 Q. Okay. Any other things that you've done to
13 push yourself? You've mentioned walking and
14 stretching and trying to get back to work.

15 A. I've tried pumping iron, but the problem
16 about that is I can't do but like two to three
17 strokes.

18 Q. And why is that?

19 A. Because then when the blood pressure starts
20 moving, pound, pound, pound, pound, pound, pound.

21 Q. Does it cause you to have a headache?

22 A. Yes.

23 Q. Okay. When you said you go out and walk,
24 say if you go to Wal-Mart, does that cause you to have
25 headaches?

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1 A. If I'm at it too long. It's like the body
2 feels like it's getting exhausted, and, you know, I
3 can't -- it's getting too -- and that's when I get
4 worried is when I get to that feeling I'm feeling
5 weak. That's where that terror will come out. Well,
6 not terror, but that demon.

7 Q. Your anger?

8 A. Yeah. That's what I consider it, because, I
9 mean, you ain't seen the damage I've done to the side
10 of that building. And I went until I run slam out of
11 air. And the dryer, well, I busted elbows and
12 knuckles and all that up on that one.

13 Q. Okay. So you're saying with the tin
14 building that you were hitting it with your fist?

15 A. Elbows and all, up, down, left, right. You
16 name it. Let's just say, if I had -- if I got in a
17 fight right now, I wouldn't even do nothing with this
18 hand. I'd use this one (indicating).

19 Q. You'd use your right hand?

20 A. Yes, sir. Because them two knuckles right
21 there, plant them right there, you'd deem somebody
22 unconscious.

23 Q. Okay. So does heavy activity cause you to
24 have headaches?

25 A. Yes. If I strain -- I tried to sling a bush

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1 ax. That's too heavy. That's like -- that like to
2 killed me.

3 Q. Have you tried to do any -- do you work on
4 cars?

5 A. No.

6 Q. Okay. So basically when you worked at Ken
7 Baker you would just take parts out?

8 A. If it was like something simple, like
9 something that was on top of the motor or something
10 that I could replace with like two or three bolts, I
11 would do that. But if it was something more of a
12 mechanical, more major getting into the engine, I
13 would pull the parts for the shop side and have the
14 parts ready for them.

15 Q. Do you know how to do car repair?

16 A. Not necessarily.

17 Q. You know what the parts are and you can take
18 them out?

19 A. I can change oil; I can do -- I can do -- I
20 can do maintenance on a car.

21 Q. Okay. Today is obviously not a typical day
22 for you. You don't have your deposition taken every
23 day. What's a typical day like for you?

24 A. Pain, anger.

25 Q. Okay. Where do you typically have pain?

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1 A. (Indicating.)

2 Q. Okay. So you're pointing to your forehead?

3 A. No, I'm pointing to the two halves of the
4 frontal lobe.

5 Q. Okay. So the front part of your head?

6 A. It feels like a war going on right in the
7 middle, and that's where the major battle's at.

8 Q. And you have a headache all the time?

9 A. Yes, sir.

10 Q. Okay. So when you wake up in the morning
11 you've got that headache?

12 A. Yes, sir.

13 Q. When you go to bed you've got it?

14 A. Well, when I go to bed I have to lay there
15 and listen to the TV until she gives up nights and
16 will fall asleep. So that's why my sleeping schedule
17 is all torn to pieces. I didn't say a bad word. Yes.

18 Q. So the area where you have the pain, that's
19 where the part hit you?

20 A. Yes.

21 Q. Okay. Any place else on your head or your
22 brain where you have pain?

23 A. When I had that test yesterday I got a weird
24 pain in this ear (indicating) ---

25 Q. You're pointing to your right ear?

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1 A. --- and in this temple (indicating).

2 Q. Okay. So your right temple and your right
3 ear?

4 A. And it's all in between.

5 Q. Okay. So typically is the pain just in
6 between your eyes and your forehead?

7 A. Yeah, my normal headaches. But my last
8 visit to the hospital, I don't think I want to go back
9 to an emergency room. It's only a temporary fix.

10 Q. Okay. So typically when you wake up in the
11 morning, I mean, you said you have to wait 10 minutes
12 before you stretch and move around. What do you do
13 during the day?

14 A. Feed my cat, go to the bathroom, watch TV or
15 play Play Station.

16 Q. So you're seated most of the day? Are you
17 sitting down most of the day?

18 A. Yes, sir.

19 Q. Okay. Do you get out at all?

20 A. I go outside quite often.

21 Q. Do you ever leave your home at all? The
22 premises?

23 A. It's depending on how I feel. Like if it's
24 to go to Wal-Mart or something and I've got that weird
25 feeling, I won't go, because I'm -- I'm just worried

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1 that somebody might bump into me and I -- I won't give
2 them the -- when they say I'm sorry, well, clean up on
3 aisle three.

4 Q. So what you're telling me, you go outside
5 your home rarely?

6 A. Rarely. See, the last -- the last two days
7 has been the first time I've been out since -- when
8 was ---

9 Q. Just tell me the best of your recollection.

10 A. It could be a week. I mean, I've seen times
11 it could be a month that I stay in the house and
12 wouldn't move, wouldn't leave. I wouldn't even ride
13 with mama to the store to get me a pack of cigarettes.

14 Q. How much are you smoking now?

15 A. Oh, man. At the beginning, when I come out
16 of Three Rivers, I could smoke two cartons in a week.
17 Now, I could say proudly I'm down to a pack.

18 Q. One pack a day?

19 A. Yes, sir. Until I get one of them bad
20 headaches, and then that pack stretches a little
21 longer.

22 Q. Has Dr. Healey said you should quit smoking
23 or --

24 A. Oh, yeah. He raised hell on that plenty.

25 Q. Would that help you with your headaches if

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1 you stopped smoking?

2 A. I don't see where it would, because I don't
3 see where it makes it worse. But, I mean, it's a good
4 -- I've been thinking about it right lately trying to
5 quit, but with everything going on, I don't think it's
6 going -- I've got too much going on with trying to
7 focus on that too. I'm trying -- I mean, it's like no
8 feeling in this hand where I play Play Station. I try
9 to -- have you ever seen a Play Station pad?

10 Q. No, sir.

11 A. Well, basically you got two buttons that are
12 on the front of the pad. You've got four that's on
13 this finger. Okay? I had to -- I went and bought a
14 new one, and I had to take it and file it down, right,
15 so the buttons would stick out far enough so my finger
16 could actually hit the button. So now if I go
17 shopping to get a new pad or whatever, that's what
18 I'm looking at. It's if the buttons stick out far
19 enough, or if they close enough together. If they're
20 too far apart, I have problems playing with that pad.
21 So -- and I'm trying to do things with this hand
22 without looking, you know. I'm trying to connect this
23 up here with this (indicating), because like Dr.
24 Healey said, it could heal, or it could reroute
25 itself, or -- I'm trying to help it reroute itself to

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1 make things easier. I'm trying to.

2 Q. I assume the games that you play take good
3 take good hand/eye coordination?

4 A. Yes, sir.

5 Q. Okay. Are you able to do well on these
6 games?

7 A. Some. Some I get my ass whupped. It's
8 because I press the wrong button.

9 Q. During a regular day how many hours would
10 you say you play your Play Station?

11 A. Well, my Play Station is about two years
12 old. Let's see. I could probably play it two, three
13 hours straight. And that's basically when my bad
14 headaches come along. It gives me something to put my
15 mind into to try to take my headache -- my mind away
16 from the headache.

17 Q. Okay. Do you have a computer at home?

18 A. I did.

19 Q. You don't have one now then?

20 A. No. I had to return it. Financial things
21 kinda wouldn't work for that.

22 Q. When you had the computer could you type on
23 the computer?

24 A. I had to make my letters bigger so I could
25 type. And reading everybody else's was a pain in the

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1 butt. I couldn't be on it but so long, because they
2 would type so small. And then that screen, I've went
3 through and I've adjusted the screen to where it would
4 be dimmer, and it wouldn't be dim enough. I got my TV
5 to where it is darker than what your regular TV would
6 be. I mean, it looks more black than it does anything
7 else. That's to keep bright light out. I mean, some
8 games I know so well that I know when that bright
9 flash is coming and I'll close my eyes and pass it.

10 Q. So do you wear sunglasses most of the day?

11 A. I'm wearing them now, aren't I?

12 Q. Yes, sir.

13 A. I wear them into the doctor's office.

14 Q. Does the bright light cause you to have
15 headaches?

16 A. Yes, sir.

17 Q. Is it just the right eye that bothers you?

18 A. Yes.

19 Q. Okay. You've got numbness in your hand?

20 A. Yes.

21 Q. Does it just start at your wrist, or where
22 does it start from?

23 A. It's all the way up the arm.

24 Q. Is it numb all the time?

25 A. If there's a dumpster outside I'll show you,

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1 if you want me to.

2 Q. Where about on your arm is it numb? Is it
3 the entire arm from your elbow up to your fingers?

4 A. I don't feel nothing to here (indicating).

5 Q. Okay. So you're pointing to your right
6 biceps?

7 A. Yes.

8 Q. And that goes all the way to your fingers of
9 your right hand?

10 A. To the fingers. But the only thing I do
11 feel, sometimes I feel like a pain in this joint, a
12 pain in this joint, and a pain in that joint
13 (indicating).

14 Q. So you're pointing to your right elbow, your
15 right wrist and your joint -- middle joint of your
16 right ring finger?

17 A. Yes, sir.

18 Q. So if you got a pin and stuck yourself you
19 couldn't feel it?

20 A. (Indicating).

21 MR. WUKELA: That's all right.

22 Q. That's fine. Can you feel that?

23 A. No.

24 Q. If you got a knife and you stuck it into
25 your right arm?

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1 A. No.

2 Q. So it's not just the skin? It's the entire
3 arm itself?

4 A. I don't feel it. Let me go outside and bust
5 my elbow up on that dumpster for you and I'll show
6 you.

7 Q. That's fine. You made your point for me.
8 Okay. And you stated you first started realizing that
9 when you went to Baptist Hospital?

10 A. Yes, sir. So I'm thinking it may have come
11 along after that visit, because it was the same dumb
12 ass nurse that did it in the first place. So I think
13 she hit me twice in the same spot in that nerve, and
14 that's when -- now, man, I feel like the Incredible
15 Hulk.

16 Q. Okay. When you -- you said that you tried
17 to lift weights. What type of exercises were you
18 doing with weights?

19 A. Well, I try not to go above my head.

20 Q. So you were doing like bench press?

21 A. Curls. Curls. I ain't working the chest.
22 I'm working basically the arms, forearms, stuff like
23 that, wrists. And I don't do that very often.

24 Q. Okay. So from a physical standpoint, can
25 you do the curls?

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1 A. If I get pissed off, yes. I can box with
2 them things. Have you ever heard anybody who could
3 trigger their own adrenaline?

4 Q. Uh-huh.

5 A. I'm one of them.

6 Q. Okay. So I think you said after about three
7 reps that's when you have the headache?

8 A. Yes, sir. I can't push it far.

9 Q. Okay. Any other kind of exercises you do
10 other than the walking and the occasional weight
11 lifting?

12 A. No, sir. Stretching. Ooh, ooh, I do have a
13 little ball that I squeeze, trying to -- I'm trying to
14 regain the feeling in this arm, so I work it. I
15 squeeze that ball, squeeze that ball, squeeze that
16 ball. And I'll go to the other hand and make
17 -- at least make sure it's the same strength so my
18 grip will be the same.

19 Q. Are you right-handed or are you left-handed?

20 A. I'm right-handed. And I draw right and --
21 you know what's fun?

22 Q. What's that?

23 A. Right hand, and you've got to look with your
24 left eye. I'm a right hand shooter. I've had to re-
25 engage to go to the left side, or buy a laser. Buy a

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1 laser and put on it, you could just put a laser on it
2 and you can shoot whatever the hell you want.

3 Q. Are you a hunter?

4 A. No. I'm a survivor.

5 Q. Okay. Do you like to shoot firearms?

6 A. Not now I can't. The last time I shot my
7 shotgun, I got a good one. I was pissed then, and I
8 walked outside with three rounds, and I laid them off.
9 And that third one, I walked in and -- have you ever
10 heard that tinngg? It took a while for that to go
11 away.

12 Q. Did you have ringing in your ear?

13 A. Yes.

14 Q. Okay. Before this injury, I saw mention in
15 one of the medical reports that you said that you were
16 a little high wired. How were you before this
17 accident? I mean, were you -- just kind of describe
18 yourself for me, if you could.

19 A. Okay. As of like right now I could get
20 pissed off at nothing. Used to, it would take --
21 let's say that's me, and I've got shit coming from
22 around me everywhere. That's when I would snap. But
23 as long as I'm left alone I'm fine.

24 Q. Okay. So before this accident did you have
25 problems with your anger?

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1 A. No. It would take a butt load coming from
2 all directions to get me pissed off, and then when I
3 got pissed off -- I think that's what the good Lord
4 struck me down for because I had this incredible way
5 of trying to get revenge on people.

6 Q. Are you talking about before this accident?

7 A. Yes.

8 Q. Did you get into any kind of fights or
9 anything?

10 A. No. I'm not a violent person, until now.
11 Now I'll take on the biggest man in here, because all
12 he'd do is fall harder than anybody else will. I'll
13 try him.

14 Q. Before this accident, when you were in
15 school, did you have any problems with violence at
16 school?

17 A. No.

18 Q. Did you have problems -- I mean, you
19 mentioned something about your teacher having an
20 infatuation with you.

21 A. Yeah.

22 Q. Did you have any problems with actual
23 schoolwork itself?

24 A. Her. When I would go into her class, I
25 wouldn't even open the English book. I'd open my art

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1 book and go to work. I would draw. That's because I
2 had that same teacher for three years in a row. And
3 the only way I could get rid of that teacher was to
4 either go up to a college prep class or go to a dumber
5 class. And then I just decided frig it. I'll quit.

6 Q. Okay. But did you have any problems in the
7 classes?

8 A. I did that -- what is it, LD?

9 Q. What's that?

10 A. I think it's like -- they help you learn.

11 Q. Did you have a learning disability? Is that
12 what you're saying?

13 A. I guess. They used to say I said my S and
14 it sound like an E. And that was back when I was back
15 in elementary, like fifth and sixth grade. But I've
16 gotten past that, I reckon, because nobody said
17 nothing about it to me before, or since.

18 Q. What type medications are you taking now?

19 A. Can my mother go get my bag out the car?

20 Q. Do you mind doing that?

21 A. It ain't -- I can't call out the name. I
22 can say Keppra, because yesterday Dr. Healey went up
23 from 250 to 500 milligrams on me. I thought you had a
24 list of my medications.

25 Q. Okay. Dr. Healey made mention of an MRA

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1 test. Do you remember that?

2 A. Yes. That's where they done the blood
3 vessel test, right?

4 Q. I'm not sure. I don't know what the test
5 is.

6 A. MRA, what it is, it sends signals in and it
7 finds the blood vessels that's in the brain, and he
8 was looking to see if any were shut off or damaged.
9 And judging by that test it was looking good. So it's
10 like the wound is -- it's on the exterior. So it
11 ain't gone so far in.

12 Q. Okay. Before this accident did you have
13 problems with headaches?

14 A. No. I mean -- I mean, I would take an
15 aspirin every once in a while or whatever. I wasn't --
16 - I'm not a pill popper, all right? I don't -- I
17 don't -- I don't pop pills, and now I've got tons of
18 them.

19 Q. Okay. Before this accident did you drink
20 alcohol?

21 A. Occasionally, but now I can't touch alcohol.

22 Q. Is that because of the medication you're
23 taking?

24 A. Well, no, not really. I get pissed faster
25 then than anything else because that's what alcohol

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1 intensifies is anger.

2 Q. Okay. So you just don't drink alcohol now?

3 A. I don't drink alcohol. Forget alcohol.

4 Q. Okay. How about any illegal drugs? I saw
5 some mention about some marijuana?

6 A. No, sir. I've laid off that because of the
7 fact of this Texas thing coming up, I hope.

8 Q. There's also mention in your medical reports
9 that your father was an alcoholic?

10 A. Yes, sir.

11 Q. And he physically abused you and, I guess,
12 your mom as well?

13 A. Yes.

14 Q. Okay. And that you had some sort of therapy
15 or something when you were maybe in the first or
16 second grade?

17 A. Yeah.

18 Q. Do you know how long a period of time that
19 you had that therapy?

20 A. I don't know; I'm ain't too sure about all
21 that.

22 Q. Would that be the only time you had any kind
23 of therapy from a mental health provider?

24 A. That would have been the first time. I
25 played with him.

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1 Q. Who?

2 A. I played with that doctor. See, my life, I
3 had to learn how to grow up before everybody else.
4 See, I didn't have a father to teach me. I had to --
5 I was grown before everybody else. I'm talking about
6 I remember when I was in diapers. Is that often? How
7 often -- do you remember when you were in diapers?

8 Q. No, sir.

9 A. That's how bad the abuse was.

10 Q. When you were very small?

11 A. Yes. I can remember it. I can still smell
12 the smells, and taste the taste, and hear the sounds.
13 Okay. Let's go ahead and get this medication out of
14 the way.

15 Q. Okay. This one says Omeprazole, O-m-e-p-r-
16 a-z-o-l-e.

17 A. What's at the bottom?

18 Q. It looks like it says substitute for
19 Prilosed.

20 A. Yes.

21 Q. What's that for?

22 A. That's a tranquilizer.

23 Q. And what does that do for you?

24 A. Nothing really.

25 Q. Okay. It says take two capsules by mouth

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1 every day.

2 A. I took three this morning. That one,
3 yesterday he doubled up the dosage from 250 to 500.

4 Q. Okay. This is Keppra, K-e-p-p-r-a.

5 A. Yes, sir.

6 Q. And you said this was one that -- it's an
7 anti --

8 A. Seizure.

9 Q. Anti-seizure medication?

10 A. Yes, sir. I ain't sure what the other one
11 is. The only way I knew that is because that's the
12 one he upped.

13 Q. Okay. This is Carbatrol, C-a-r-b-a-t-r-o-l.
14 What is that used for; do you know?

15 A. All I know is to take it.

16 Q. Okay. Take one capsule two times a day?

17 A. Yes, sir. Wait a minute. Did you see a
18 Tramadol?

19 Q. No, sir.

20 A. Okay. But you saw the Clorazepate, right?

21 Q. Why don't you stick the ones that we've seen
22 already on the table.

23 A. Okay. This is just a nasal solution, salt
24 water. Dr. Ferrell suggested that after my nose
25 operation I should stay on that. I may be on that the

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1 rest of my life because all my sinuses wants to build
2 up right there.

3 Q. Okay. We've got Paxil, P-a-x-i-l. What is
4 the Paxil for?

5 A. Depression. And that's what he says. I
6 don't see where there's any -- I've been depressed
7 before and I ain't depressed.

8 Q. Okay. You're not depressed now?

9 A. No.

10 Q. Are you still taking the Paxil?

11 A. Yes.

12 Q. Okay. And this is Clorazepate, C-l-o-r-a-z-
13 e-p-a-t-e. What is that for?

14 A. That's the name -- what's the substitute?

15 Q. Tranxene.

16 A. That's the tranquilizer.

17 Q. Okay. And you said that doesn't have any
18 effect on you?

19 A. Well, let's see. The last bad storm that
20 come through I took six at one time.

21 Q. And this says take one tablet every eight
22 hours?

23 A. Yes. I have a very strong immunity system.
24 I could go into the hospital, they shoot me up with
25 some of that stuff. Now, they got stuff that will put

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1 me out. But the last time I was in there, he told me
2 that he had enough stuff pumping through my blood to
3 take down a horse, and yet I was still moving.

4 Q. Okay. And this next one is Clonazepam, C-l-
5 o-n-a-z-e-p-a-m. Do you know what that's for?

6 A. I need to get my -- I ain't sure. I am not
7 sure.

8 Q. And this is not a substitute for anything.
9 And then the last one is Tramadol.

10 A. That's the pain medication.

11 Q. And that's what you take for your headaches?

12 A. Yes. I took two of those this morning
13 before I come in.

14 Q. Okay. Any other medication that you're
15 taking now?

16 A. No, sir, that's it.

17 Q. Do you have any other kind of physical
18 problems that are not related to this accident?

19 A. No, sir.

20 Q. Did you wear glasses --

21 A. No. Shades.

22 Q. I'm talking about prescription glasses,
23 before this accident?

24 A. No, sir.

25 Q. Are you wearing any kind of prescription

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1 glasses now?

2 A. No.

3 Q. Do you need any kind of hearing aid or
4 anything for your right ear?

5 A. Earplug.

6 Q. Okay. You actually want to keep it out as
7 opposed to ---

8 A. Yeah, because, see, what it is -- see, you
9 don't realize how much sound bounces. And what it
10 does is it vibrates the inner ear, and that's what
11 causes it to -- it will run straight from my ear to my
12 brain. So that's why I keep the earplugs handy.

13 Q. Okay. So you have problems with your right
14 eye, your right ear, and then you told me about the
15 problems with your right arm.

16 A. Yes, sir.

17 Q. Any problems with your right leg at all?

18 A. That's the few times that I felt like I
19 wanted to pass out right recent, I want to go down on
20 my right side. So I'm thinking my knee's giving. So
21 maybe taking the Keppra, upping it up to 500
22 milligrams, maybe that will help me out better.

23 Q. Okay. You mentioned Dr. Ferrell. Is he an
24 ear, nose and throat doctor?

25 A. Yes, sir.

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1 Q. Okay. And he did surgery on your septum?

2 A. Yes, sir.

3 Q. And I think you said before, now you breathe
4 like a regular person?

5 A. Well, it ain't one hundred percent, but it's
6 open enough that I would leave it alone.

7 Q. Are there any problems that you're having
8 now with your nose?

9 A. All I got to do is keep shooting saline
10 solution up in there because them boogers want to get
11 way up in there and get hard. Squirt that up there
12 one time, and when you blow your nose you'll get it
13 all out of there.

14 Q. Okay. Any problems that you have with sinus
15 infections?

16 A. Sinus infections. When I get a cold -- you
17 know how you get a cold and your nose runs and all
18 that?

19 Q. Yes, sir.

20 A. It builds up right here (indicating).

21 Q. Are you pointing to your forehead right
22 between your eyes?

23 A. Yes, and it don't want to go no further.
24 It's like it -- I can't reach it.

25 Q. Does it feel like a sinus headache at that

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1 point, or is that ---

2 A. It feels like hell really, because, I mean,
3 the pressure from it on the brain, it ain't a good
4 thing. At that point in time you don't come in and
5 make a joke that I don't get.

6 Q. Okay. When you dropped out of school what
7 school were you going to at that time?

8 A. Marion High School.

9 Q. What kind of grades did you make in school?

10 A. Well, when I put myself forth I'd do pretty
11 good, but when I didn't give a crap they would drop.

12 Q. Okay. So what would you say your grades
13 averaged?

14 A. Cs. Bs, Cs, Ds, and an occasional F,
15 because that's when I just didn't give a -- we'll just
16 leave that word off the record.

17 Q. Okay. Have you had any problems with your
18 memory?

19 A. Yes.

20 Q. Okay. Is it short term, or long term, or
21 both?

22 A. It's both, because I -- when is the last
23 time you forgot \$600 in the bank?

24 Q. I can't recall.

25 A. I just did that last week.

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1 Q. I mean, can you remember things that
2 happened years ago?

3 A. It's depending if something happens that
4 reminds me of it.

5 Q. What's the worst, your long term or short
6 term memory?

7 A. I would have to say the short term, because
8 sometimes I feel like I can -- the answer is in there;
9 it's just I can't grab it. I can't get it. It's
10 like it's right on the tip of your tongue but it's
11 just ricocheting everywhere and I can't catch it, and
12 then two or three days later, bam, I've got it.

13 Q. How about problems concentrating?

14 A. Concentrating?

15 Q. Can you sit down and concentrate, say read a
16 book?

17 A. I don't read.

18 Q. Okay. How about when you're watching TV, do
19 you have problems concentrating?

20 A. I go to the Play Station.

21 Q. If you lose concentration you go to the Play
22 Station?

23 A. And they my concentration's on the game.

24 Q. So you can concentrate to do the games on
25 the Play Station?

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1 A. Yes. I have to to try to get that hand to
2 work properly.

3 Q. Okay. When you're talking about that hand,
4 you're talking about your right hand; is that right?

5 A. Yes.

6 Q. It sounds, from what you're telling me, the
7 things -- the small things can set you off?

8 A. Yes.

9 Q. Okay. Before this accident, would small
10 things set you off?

11 A. If you were to call my mother a bitch right
12 now, I would tear this room apart with you.

13 Q. Okay. How about before the accident?

14 A. I wouldn't have done nothing. I might have
15 said you don't know my mama.

16 Q. Okay. I want you to tell me the difference
17 between the way you are now and the way you were
18 before the accident.

19 A. How do I want to phrase this to where -- I
20 am definitely more violent than what I used to be. In
21 a heartbeat I can think of a thousand ways to kill a
22 man.

23 Q. How about before the accident, were you
24 violent then?

25 A. No. Until somebody pissed me off or -- then

1 I went after them.

2 Q. Okay. Other than the violence, tell me what
3 -- I'm just trying to get a picture of how you were
4 before, if you can tell me.

5 A. I was basically go to work, pay my bills,
6 sit back, go out some nights, hang out at a friend's
7 house.

8 Q. Were you living by yourself before this
9 accident?

10 A. Yes. And when the accident happened, when I
11 went to Three rivers they gave me the choice to either
12 stay up there in one of their rooms or come home with
13 my mama, and it was to come home with my mama.

14 Q. Okay. Other than the violence now, what
15 other differences would you say that you have?

16 A. I don't think pleasant thoughts. I always
17 look at the negative. I always walk around with an
18 attitude, and that's what fears I -- fuels my fears of
19 going in to Wal-Mart, 'cause all it takes is for me to
20 stop and look at something and somebody run over me
21 and I'll hurt them. Because I won't have no tin
22 building to beat the shit out of then.

23 Q. Okay.

24 A. And I may be small but when that adrenaline
25 kicks in -- huh.

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1 Q. You said that you've gained some weight since
2 this accident?

3 A. Yes, sir.

4 Q. Do you remember how much you weighed at the
5 time of the accident?

6 A. I weighed around 160, 165.

7 Q. Okay. How about now?

8 A. I'm down around 180.

9 Q. So about 15, 20 pounds?

10 A. Yes, sir.

11 Q. What's Dr. Healey doing for you now? You
12 mentioned the test you had yesterday.

13 A. Well, that's what he's trying to find out
14 from these past few weeks I've been having these feel
15 like I want to faint episodes. So that's why he runs
16 the tests yesterday. And he said -- basically what he
17 told me was that it looked like I was tense from the
18 get go, and that was from the barometric pressure. So
19 when

20 -- every time you see a dark blue cloud out there, I'm
21 catching hell.

22 Q. Does that make your headaches worse?

23 A. Yes.

24 Q. When you have the headaches, are you
25 incapacitated? I guess the more serious headaches?

1 A. Yes. I'll pretty much lay there until I
2 fall asleep or just lay there.

3 Q. Mr. Wukela gave me some pictures which --
4 apparently that was you?

5 A. Yes, sir. That's three weeks after the
6 accident.

7 Q. You anticipated my question. Okay. So at
8 that time you had the scar on your -- how many
9 stitches did you have in your forehead?

10 A. Four or five.

11 Q. And then it looks like both of your eyes are
12 black ---

13 A. Yes.

14 Q. --- on the top and the bottom.

15 A. But see, the thing is, you don't see is --
16 you can see a little bit of red in the eyes; right?

17 Q. Yes, sir. Are you talking about in the
18 eyeball itself?

19 A. The eyeball itself, all you could see was
20 the pupil. The rest was blood red, both eyes.

21 Q. And how long did you have that?

22 A. Oh, man, that was a month. During that time
23 I was still throwing up blood.

24 Q. When you threw up the blood, was it bright
25 red blood?

1 A. I don't know. I really couldn't tell you
2 because it was projectile.

3 MR. WUKELA: Do you want to go ahead and mark
4 that as an exhibit to this deposition?

5 MR. MARTIN: Yeah, we might as well.

6 [MARKED FOR IDENTIFICATION AS DEFENDANT'S
7 EXHIBIT NUMBER 1, Photograph of plaintiff.]

8 [MARKED FOR IDENTIFICATION AS DEFENDANT'S
9 EXHIBIT NUMBER 2, Photograph of part.]

10 THE WITNESS: I can explain that to you if you
11 want me to. Okay, this is going better than what
12 I thought it was.

13 MR. MARTIN: I'm not going to bite you.

14 THE WITNESS: Well, don't worry; you don't
15 want me to bite back.

16 Q. The first picture of yourself with the
17 bruising we were talking about has been marked as
18 Defendant's Exhibit 1. The second one, Defendant's
19 Exhibit 2, appears to be -- it's my understanding this
20 is a picture of the part that struck you?

21 A. Yes, sir.

22 Q. Okay, let's see.

23 A. All right, this right here, see that circle?
24 You got something I can point? See that circular part
25 right there?

1 Q. Yes..

2 A. That's the size of the spring. The way I
3 got hit, I got hit with this part right there.

4 Q. How much would that part weigh, do you
5 think?

6 A. Well, with the force of the spring, a ass
7 load.

8 Q. Okay. Without the force of the spring, how
9 much do you think that part weighs?

10 A. Oh, about 15 pounds. Best guess.

11 Q. In this picture, the part we're referring to
12 is the one that's in the very center of the
13 photograph; is that right?

14 A. Yes, sir. That one right there. If you
15 want me to I'll circle it for you.

16 Q. No, we don't want to mess up Mr. Wukela's
17 picture.

18 MR. WUKELA: That's all right. You're welcome
19 to do that if you want to, but we've got two
20 photographs.. When you say the center of the
21 photograph, you're talking about the one on the
22 left.

23 MR. MARTIN: Well, in both of them it's in
24 the same spot, but ---

25 MR. WUKELA: Okay..

1 THE WITNESS: I centered it out. All I done
2 was flipped it so -- then that was the last day I
3 was at work. I had to get a picture of the part
4 that hit me.

5 Q. Had you -- I'm talking about before the
6 accident again. Did you have any depression before
7 this accident?

8 A. Yes, sir.

9 Q. Okay. When would you have had depression?

10 A. Well, let's see. It was like a -- way
11 before -- it was right after me and my fiance broke
12 up.

13 Q. And when was that?

14 A. I can't remember the year. That was
15 Valentine's Day.

16 Q. Did you say that was five years ago?

17 A. Yeah, that sounds about right, five or six
18 years.

19 Q. Okay. Was it -- your family doctor, did he
20 treat you for depression?

21 A. No, I dealt with the depression by myself.

22 Q. You just felt you were depressed at that
23 point?

24 A. I knew I was depressed. I could drink more
25 beer and alcohol and still go to work the next day

1 without getting any sleep. Liquor, you name it,
2 wouldn't faze me.

3 Q. So during that time you were drinking more?

4 A. Yes.

5 Q. Okay. How long did that period of
6 depression last for you?

7 A. Ooh. That did last about a year. So I know
8 what depression is, so I know it ain't Dr. Healey's
9 idea of thinking that my anger is from depression.
10 That ain't it because depression, you don't feel
11 anger.

12 Q. So right now you don't feel depressed?

13 A. No.

14 Q. Just anger?

15 A. No, headache.

16 Q. Headache, which brings the anger on?

17 A. Right.

18 Q. Okay, I'm about done. Let me look through
19 my notes. Okay, any other type work than we've
20 already talked about? You said that you worked in
21 landscaping, did some -- one of these reports said
22 truck driving, but is that the driving for the car
23 dealership?

24 A. Yeah. I mean I would drive -- sometimes I'd
25 drive a roll back; sometimes I wouldn't, so that job

1 required many different fields of interest such as --
2 you'd never know what you'd be driving home.

3 Q. Okay. Did you just have a regular driver's
4 license?

5 A. Yes, sir. I mean the small roll back, the
6 one you don't need the CDL for. It carries two cars,
7 a small Ford truck.

8 Q. You mentioned that you had some knots on
9 your neck sometimes. How often do you have that?

10 A. The last time was the first time, and they
11 put me in the hospital for three days.

12 Q. Okay. Do you remember when that was? Was
13 that this year?

14 A. Yeah, this was -- I'm talking about, this
15 was within the last month, month and a half.

16 Q. Okay. Have you had any of those knots back
17 since then?

18 A. No. They pissed me off when they went to
19 release me because, boy, the next two days after that
20 I was laid up on a heating pad on my neck because,
21 boy, you couldn't turn that neck without that muscle
22 feeling it. But it took care of the knot though.

23 Q. Is your neck doing okay now?

24 A. Yes.

25 Q. Did you have any kind of mood swings before

1 this accident?

2 A. No.

3 Q. Are you pretty moody now?

4 A. If somebody tried to piss me off, they could
5 get it quick.

6 Q. How does your mood stay -- because
7 basically, from what you told me, you stay home most
8 of the time?

9 A. Yes.

10 Q. Does your mood stay pretty controlled?

11 A. I kind of keep it in between a happy and a
12 -- I ain't wanting to say mad, but what's the lesser
13 word for mad? It's like I keep, I keep, I keep
14 tension up because, in case something that comes in
15 pisses me off, then I'm ready to go mess it up. Then
16 the bad thing about that is I can't drive to go do
17 that, so I don't actually get to do whatever it is I
18 want to do.

19 Q. Which, I guess, is a good thing, I guess.

20 A. Well, it saves whoever's ass that pissed me
21 off.

22 Q. Okay. I think that's all the questions that
23 I have.

24 MR. WUKELA: I don't have any questions.

25 Further Deponent Saith Not.

Garber Reporting Service

Certified Court Reporters

Post Office Box 12348

Columbia, South Carolina 29211

(803) 256-4500

1 (The taking of the deposition concluded at
2 12:45 p.m.)
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Garber Reporting Service
Certified Court Reporters
Post Office Box 12348
Columbia, South Carolina 29211
(803) 256-4500

CERTIFICATE OF REPORTER

I, Betty M. Washington, Verbatim Court Reporter and Notary Public in and for the State of South Carolina at Large, hereby certify that I reported the deposition of SCOTTIE FLOYD, on the 18TH day of December, 2003; that the witness was first duly sworn by me and that the foregoing 85 pages constitute a true and correct transcription of said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript was thereafter sealed and delivered to EDWIN P. MARTIN, JR., ESQUIRE; The McKay Law Firm; 1330 Laurel Street, Columbia, South Carolina 29202-7217, who will retain this sealed original transcript and shall be responsible for filing same with the court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof, I have set my hand and seal this 5th day of January, 2004.


BETTY M. WASHINGTON
MY COMMISSION EXPIRES JULY 14, 2007

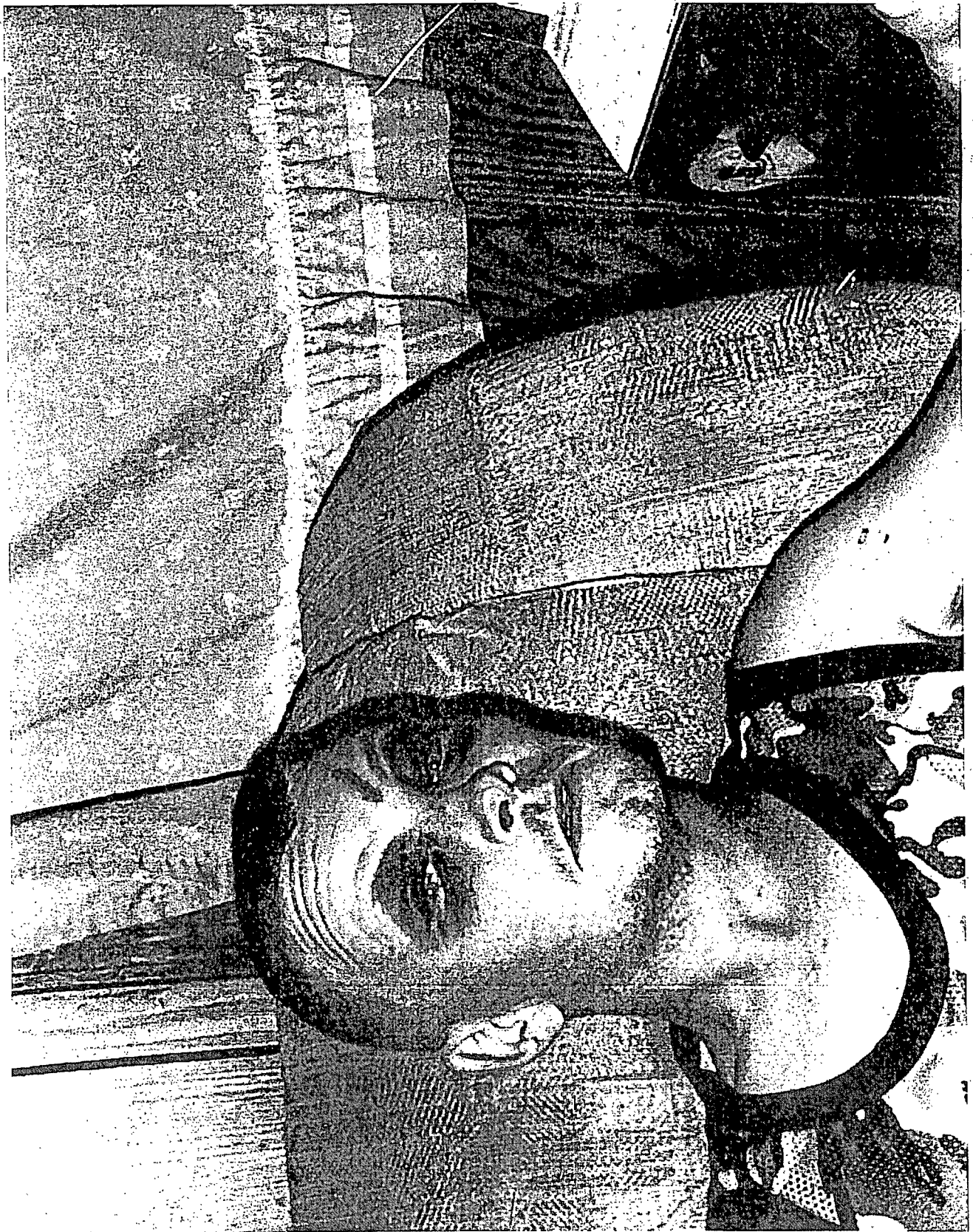
Garber Reporting Service

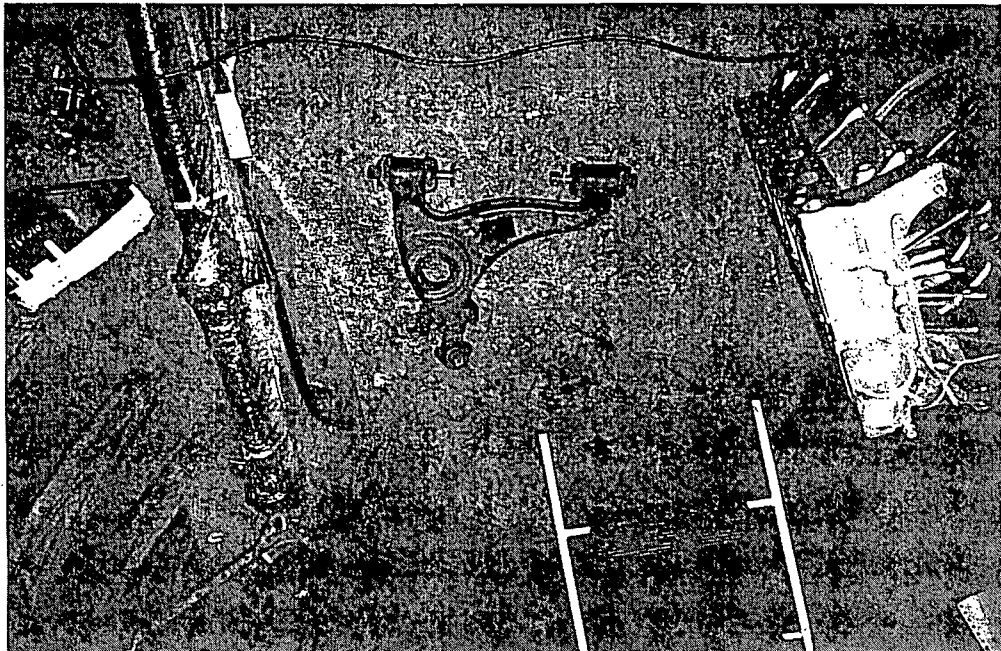
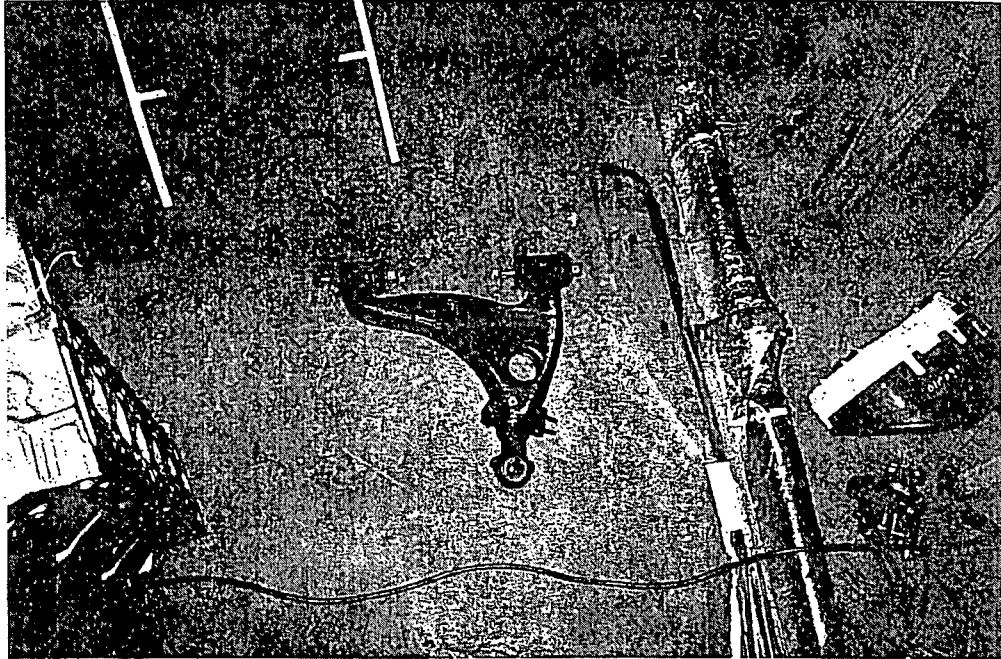
Certified Court Reporters

Post Office Box 12348

Columbia, South Carolina 29211

(803) 256-4500







Claimant's Name: Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd; and as dependent mother beneficiary of Scottie Wayne Floyd, deceased

Employer's Name: Ken Bakers Used Cars

Address: _____

Address: 2066 N. Hwy. 501 By-pass

City: _____ State: _____ Zip: _____

City: Marion State: SC Zip: 29571

Home Phone: () _____ Work Phone: () _____

Carrier: Legion Insurance Co. in liquidation/SCPCIGA and AmGuard Insurance Company

Preparer's Name: Mark D. Cauthen, Esquire

Preparer's Phone #: (803) 256-4645

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$250.54 2. AWW: \$375.36 Date of Injury: 09/13/01
3. Type of injury and body part(s): Brain and back
4. Facts in controversy: The deceased employee, Scottie Wayne Floyd, sustained a compensable closed head injury/brain injury on September 13, 2001. The employee later sustained compression fractures to his spine in 2004 due to seizures related to his right frontal lobe injury. Following a hearing in 2007, Commissioner Bass issued an order dated 12/12/07 finding that the claimant had not reached maximum medical improvement for the injury to his brain. No finding of disability has ever been made. On September 5, 2008, the employee died due to "complications of seizure disorder that resulted from a cavitory lesion of the right frontal cerebrum due to remote blunt head trauma." (autopsy report, 9/6/08) Because the employee died more than six years after the accident, the claimant/personal representative is barred from death benefits pursuant to §42-9-290. The issue of disability is therefore moot. Whether deceased employee's mother/personal representative was financially dependent upon the employee? Whether the claim for benefits survives pursuant to §42-9-280 in the event of a non-work related death? Whether the decedent sustained a subsequent compensable injury on the date of his death, September 5, 2008?
5. Legal issues involved: See No. 4.
6. Unusual aspects: None
7. Witnesses (designate if expert):* Cynthia Grimley, Ronald L. Brown, Ken Baker, Cal Baker, Margaret Baker, the Claimant and any witnesses listed by the claimant. (The Defendants reserve the right to cross-examine any expert submitted by the claimant pursuant to 1-23-330 (3). The Defendants reserve the right to amend their Pre-hearing brief upon receipt of additional information.
8. Exhibits: Dependency Investigation Report and attachments; Toxicology Report; Autopsy Report; certificate of death; Consent Order of Commissioner Bass dated 6/27/06; Order of Commissioner Bass dated 12/12/07; Deposition transcripts of Dr. Joseph Healy; Deposition transcripts of Dr. Alexandra M. (Sasha) Federer; Deposition transcripts of Betty Joe Floyd
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions. (None other than submitted by the claimant)
10. Name, address, and specialty, if any, of the treating physician: Dr. R. Joseph Healy, PO Box 3408, Florence, SC 29502; Dr. Alexandra M. (Sasha) Federer, 1925 Hoffmeyer Road, Florence, SC 29501
11. Impairment rating(s); body part(s); physician and date of opinion: None
12. I am amending my Form 50/51 in the following manner: N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: Mark D. Cauthen

Email: mcauthen@mckayfirm.com

Date of hearing: September 1, 2009 (Commissioner Lyndon)

Time needed for hearing: 1 Hour

On behalf of ☐ Claimant ☒ Employer

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NOS.: 0123790 & 0824046

Betty Joe Floyd as Personal Representative)
Of the Estate of Scottie Wayne Floyd)
and as dependent mother beneficiary of)
Scottie Wayne Floyd,)

Claimant,)

vs.)

Ken Baker Used Cars and Body Shop,)

Employer,)

and)

Legion Insurance Company in)
liquidation through South Carolina)
Property & Casualty Insurance Guaranty)
Association and AmGuard Insurance Co.,)

Carriers.)

NOTICE OF WITNESSES AND
WRITTEN REPORT(S) PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
THE EMPLOYER/CARRIER

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; STEVE
WUKELA, JR., ESQUIRE, ATTORNEY FOR CLAIMANT AND EDWIN P.
MARTIN, JR., ESQUIRE, ATTORNEY FOR THE EMPLOYER/CARRIER,
AMGUARD INSURANCE COMPANY:

YOU ARE HEREBY NOTIFIED THAT THE employer/carrier, pursuant to the
provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section
1-23-330 (1976, as amended), herewith submits the following reports/physicians or other
evidence on behalf of the employer/carrier, to wit:

TAB.	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
	Defendants will rely on certain medical reports submitted by claimant		

EXHIBITS:

1	Dependency Investigation Report and attachments
2	Consent Order of Commissioner Bass dated 6/27/06
3	Order of Commissioner Bass dated 12/12/07
4	Deposition transcripts of Dr. Joseph Healy
5	Deposition transcripts of Dr. Alexandra M. (Sasha) Federer
6	Deposition transcripts of Betty Joe Floyd

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employer/carrier.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the employer/carrier:

Ken Baker; Cal Baker; Margaret Baker; Cynthia Grimley; Ronald L. Brown; The Claimant and Any witnesses listed by the Claimant



Mark D. Cauthen
McKay, Cauthen, Settana & Stubley, PA
Post Office Box 7217
Columbia, South Carolina 29202-7217
(803) 256-4645

Attorneys for Defendant

Columbia, South Carolina
August 24, 2009

Tuten Insurance Services Corporation



Walter A. Tuten
Senior Consultant

Christopher L. Tuten
President

October 22, 2008

Mr. Mark Davis Cauthen
Attorney at Law
The McKay Firm
1301 Gervais Street, Suite 901
Columbia, South Carolina 29201

Re: Claim Number: 4200-0003
Employer: Ken Baker Used Cars
Employee: Scottie Wayne Floyd
Date of Accident: 09/13/2001
Our File Number: SC100708XX34-176

Dear Mark:

This will acknowledge receipt of this assignment we received from you on October 7, 2008 requesting that we conduct a dependency investigation regarding the above referenced worker's compensation claim. We understood when we received the assignment that the original date of the accident was September 13, 2001, however the claimant recently passed away on September 5, 2008 from a related cause.

Contact Attorney – Steve Wukela, Jr. :

On October 10, 2008 we contacted Attorney Steve Wukela, Jr. with the Wukela Law Firm, in Florence, South Carolina. His office can be reached by telephone at 843-665-5888. When we initially received this assignment, we understood that Attorney Wukela was representing the deceased claimant's mother, Betty Joe Floyd. We contacted Attorney Wukela's law firm on October 10, 2008 requesting an opportunity to secure a recorded statement from his client. He stated that we could secure a statement from his client without his presence, and that he would contact Mrs. Floyd and let her know that we would be contacting her.

Recorded Statement – Betty Joe Floyd (Mother):

On the morning of October 20, 2008 we secured the attached recorded statement from Scottie Floyd's mother, Betty Joe Floyd. We secured Mrs. Floyd's statement with the permission of her attorney, Steve Wukela. Ms. Floyd currently resides at _____, South Carolina 29571. She can be reached by telephone at (843) _____.

Mr. Mark Cauthen
File Number: SC100708XX34-176
October 22, 2008
Page Two

Betty Joe told us that she was born on _____ and that she had been divorced from her husband, Thomas Wayne Floyd, for many years and that he is deceased. Betty Joe stated that she had two children, Scottie Wayne Floyd, age 33, and Kimberly Diane Byrd, age 29. Kimberly currently resides at _____. She can be reached at _____.

Betty Joe stated that she is not currently employed, but is on disability from her previous job in a sawmill due to an injury in 2005.

Ms. Floyd stated that her son's birthday was _____. He was born in Marion, South Carolina and they moved to Lake View, South Carolina shortly after his birth. They moved back to Marion, South Carolina in 1982, when Scottie Wayne was seven years old. She stated that Scottie Wayne had never lived anywhere else and that he had never been in the armed forces. He went to Marion High School but dropped out in the ninth grade.

Betty Joe told us that Scottie Wayne had worked for a landscaping company, Shelly's Landscaping, for a short while and then went to work for Ken Baker Originals, a used car dealership in Marion. He had worked there for four to five years at the time of his accident. His manager was Mr. Ken Baker, now retired, and Mr. Cal Baker. He can be reached at (910) 350-2662. Betty Jo stated that her son did have one close friend, Mr. Kevin Palmer, who can be reached at (843) 617-4848.

Ms. Floyd stated that Scottie Wayne had never been married and had no children. She also told us that he had no girlfriends. She stated that her son did receive a disability check monthly, which he used to make his truck payment and pay for his necessities. Betty Joe told us that her son had become somewhat of a recluse the last few years of his life and spent almost all of his time in his bedroom watching television, movies, and playing video games. Betty Joe told us that Scottie Wayne was totally dependant on her for his upkeep. She stated that he did not attend church or any other social functions and that Mr. Kevin Palmer was his only close friend.

Betty Joe stated that she did not know of anyone who would have been financially dependent on Scottie Wayne at the time of his accident nor at the time of his death.

Recorded Statement – Kimberly Diane Floyd Byrd (Sister):

On the morning of October 20, 2008 we secured the attached recorded statement from the claimant's sister, Kimberly Byrd. Kimberly currently resides at _____.

Mr. Mark Cauthen
File Number SC100708XX34
October 22, 2008
Page Three

Kimberly can be reached by telephone at . She is married, but separated, from her husband, Danny Byrd. She has two children. Kimberly stated that her brother, Scottie Wayne, was born in Marion, South Carolina, moved to Nichols, in the Lake View area, and then moved back to Marion, South Carolina with his mother in 1982 when she divorced her husband.

Kimberly told us that Scottie Wayne attended Marion High School; that he had never attended college; and that he had never been in the armed forces. She stated that Scottie Wayne had worked for Mr. Harry Shelly doing landscape work for a short while and that he had worked for Ken Baker Used Cars for several years. She told us that her brother had one close friend named Kevin Palmer and that he could be reached at

Kimberly stated that Scottie Wayne had never been married; did not have any children; nor did he have any adopted children; and did not have a girlfriend. She told us that she knew of no one that was financially dependant on Scottie at the time of the accident or at the time of his death.

Kimberly told us that Scottie Wayne's parents were Betty Joe Floyd and Thomas Wayne Floyd. She stated that Thomas Wayne Floyd was deceased and that Betty Joe lived at . She stated that her mother, Betty Joe, was not able to work at this time due to an injury received on her job. She told us that Scottie Wayne's mother was not dependent on him, and that he was dependent on his mother.

Kimberly did state that her brother had one sister, herself, and that he also had a half-sister on his father's side, a Ms. Victoria Daniell Floyd. She did not know how to contact Victoria as she had not seen or heard from her in over eight years.

Recorded Statement – Kevin Palmer (Friend):

On the afternoon of October 21, 2008 we secured the attached recorded statement from the claimant's friend Kevin Palmer. Kevin currently resides at . Kevin can be reached by telephone at . He is not married and works for Larry's Auto Parts, 301 East Liberty Street, Marion, South Carolina 29571 where he sells auto parts.

Kevin stated that he met Scottie Wayne when he began dating his sister Kimberly. He didn't know where Scottie Wayne was born or grew up, but he did know that Scottie Wayne attended Marion High School. He did not know of any other friends that Scottie Wayne had and also knew that he was not dating.

Mr. Mark Cauthen
File Number SC100708XX34
October 22, 2008
Page Four

Kevin stated that Scottie Wayne lived with his mother, who he knew as Cookie, at He told us that he knew of only one sister, Kimberly, who also lived at the same address. He did not know of anyone that was financially dependant on Scottie Wayne at the time of his death.

Statement – Mr. Cal Baker:

On the afternoon of October 21, 2008 we contacted Mr. Cal Baker of Ken Baker Originals, the claimant's manager at the time of the accident. Mr. Baker refused to have the conversation recorded. He stated that there has been no contact between him and Scottie Floyd since the accident back in 2001. He recalls that Scottie was not married and that he had a sister. He didn't remember Scottie having any children.

Neighborhood Canvass:

On October 20, 2008 we conducted a neighborhood canvass at the claimant's last known address, ... I. We were able to speak with Mr. Eric Hill at Eric stated that he knew Scottie Wayne and his mother casually, to talk with them when they were in the yard and to help Betty Joe with small repairs around the house. He didn't know Scottie Wayne well enough to comment on his life other than he knew of his disability. We attempted to contact individuals at and did not receive an answer. These were the only two homes that were close to as this is a very rural section of Marion County.

Courthouse Search – Marion County, South Carolina:

On October 20, 2008 we conducted a search of the Marion County, South Carolina Family Court's records for any divorce decrees, paternity actions or child support orders under the claimant's name. They conducted a search after our request that dated back twenty years and they were unable to find any documents under the claimant's name. We then conducted a search of the Probate Court's records for any marriage licenses under the claimant's name and were unable to find any records.

Documentation:

We have secured several supporting documents which we are attaching with this report. We are enclosing a copy of the claimant's birth certificate. We are also enclosing a copy of the funeral bill from Richardson Funeral Home indicating that the total charges for the claimant's funeral were \$2,488.31. Also enclosed is a copy of the newspaper obituary and the funeral program. In the obituary, the survivors include his mother, a sister and a niece. We are also enclosing a copy of the death certificate indicating that the claimant died on September 5, 2008

Mr. Mark Cauthen
File Number SC100708XX34
October 22, 2008
Page Five

due to complications of seizure disorder due to cerebral cavitory lesion due to remote blunt head trauma.

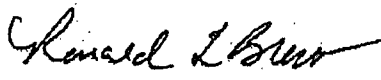
Results of Dependency Investigation:

As a result of our investigation, it appears that the claimant, Scottie Wayne Floyd was never married throughout the course of this life and did not have any children throughout the course of his life. We did not find anyone that was financially dependent on the claimant at the time of his accident and death.

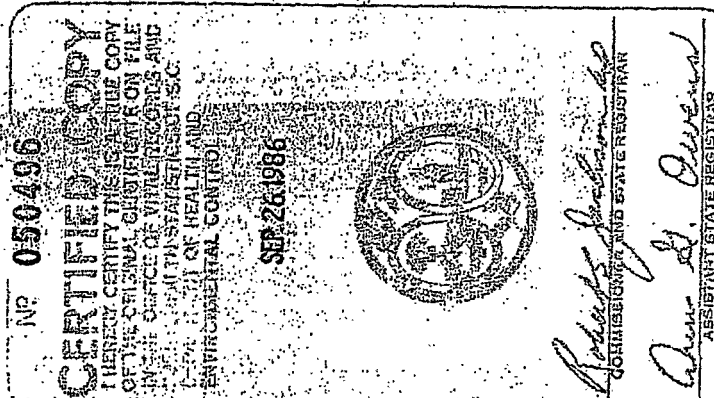
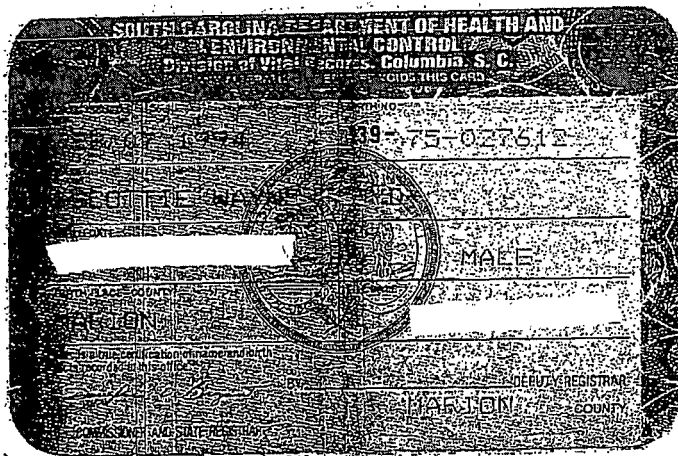
Remarks:

Since this appears to conclude our handling of this investigation, we are taking the liberty of retiring our file and submitting our bill for services. Thank you very much for this assignment,

Very truly yours,
Tuten Insurance Services


Ronald L. Brown
Adjuster

End: Recorded Statement – Betty Joe Floyd
Recorded Statement – Kimberly Diane Byrd
Recorded Statement – Kevin Palmer
Birth Certificate
Obituary
Funeral Bill
Funeral Service Program
Death Certificate
Our Service Bill



Registration Dist. No. 32-A		STATE OF SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL		75 027612	
REGISTRAR'S No. CERTIFICATE OF LIVE BIRTH					
1. CHILD - NAME Scottie Wayne Floyd		DATE OF BIRTH 8-11-75		HOUR 08 A.M.	
2. SEX male		3. THIS BIRTH - SINGLE, TWIN, OR MULTIPLE? Single		4. IF NOT SINGLE BIRTH - GIVE FIRST, SECOND, THIRD, ETC. (SPECIFY)	
5. CITY, TOWN, OR LOCATION OF BIRTH Marion		6. HOSPITAL - NAME Palmetto General		7. COUNTY OF BIRTH Marion	
8. MOTHER - MARRIED NAME Betty Jo Granger		9. AGE (AT TIME OF THIS BIRTH) 22		10. STATE OF BIRTH (IF NOT IN U.S.A., GIVE COUNTRY) S.C.	
11. RESIDENCE - STATE S.C.		12. COUNTY Dillon		13. CITY, TOWN, OR LOCATION Nichols	
14. FATHER - NAME Thomas Wayne Floyd		15. AGE (AT TIME OF THIS BIRTH) 26		16. STATE OF BIRTH (IF NOT IN U.S.A., GIVE COUNTRY) S.C.	
17. USUAL OCCUPATION Carpenter		18. KIND OF BUSINESS OR INDUSTRY			
19. SIGNATURE OF MOTHER Betty Jo Floyd		20. MAILING ADDRESS (IF DIFFERENT FROM RESIDENCE)			
21. I CERTIFY THAT THE ABOVE CHILD WAS BORN HERE AT THE PLACE AND DATE AND ON THE DAY MADE ABOVE		22. DATE SIGNED 8-11-75		23. ATTENDANT - M.D., D.O., NURSE, OTHER M.D.	
24. SIGNATURE Henry J. Fischl		25. MAILING ADDRESS Marion, S.C. 29571		26. DATE RECEIVED BY LOCAL REGISTRAR 8-17-75	
27. REGISTRAR - SIGNATURE S. S. Glass		28. RM		29. 75	

Marion County Obituaries: published Sept. 17

By STAR & ENTERPRISE STAFF REPORTS

Scottie Wayne Floyd

Scottie Wayne Floyd, 33, died on Friday, Sept. 5, 2008 in his home. Mr. Floyd was born in Marion, a son of Betty Jo (Cookie) Floyd Grainger. He was formerly employed with Ken Baker BMW Originals.

Surviving, in addition to his mother of Marion, is a sister, Kimberly Diane Floyd of Marion and a niece, Amberlyn Nicole Smith of Marion. Services were on Thursday, Sept. 11, 2008 at 4 p.m. in the Chapel of Richardson Funeral Home.

**FUNERAL PURCHASE CONTRACT
(STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED)**

(Charges are only for, those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reason in writing below.)

(A) OUR SERVICE

BASIC SERVICES OF FUNERAL DIRECTOR & STAFF.....\$

EMBALMING.....\$

If you selected a funeral that may require embalming such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged you for embalming, we will explain why below.

REASON FOR EMBALMING:.....

OTHER PREPARATION OF THE BODY.....\$

USE OF FACILITIES, STAFF & EQUIPMENT:

Funeral Ceremony (Conducted at Funeral Home).....\$ 225.00

Visitation / Viewing (Conducted at Funeral Home).....\$

Memorial Service (Conducted at Funeral Home).....\$

USE OF STAFF AND EQUIPMENT:

Funeral Ceremony (Conducted at another facility).....\$

Visitation / Viewing (Conducted at another facility).....\$

Memorial Service (Conducted at another facility).....\$

Graveside Service.....\$

TRANSFER OF REMAINS TO FUNERAL HOME.....\$

(Miles Transported).....

AUTOMOTIVE EQUIPMENT:

Casket Coach (Hearse).....\$

Limousine.....\$

Flower/Service Vehicle.....\$

CASKET.....\$

OUTER BURIAL CONTAINER (As Selected).....\$

MISCELLANEOUS MERCHANDISE:

Acknowledgement Cards.....\$

Visitors Register.....\$

.....\$

.....\$

.....\$

Receptacle (other than casket).....\$

Wearing Apparel.....\$

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME.....\$

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME.....\$

DIRECT CREMATION (As Selected).....\$ 1995.00

IMMEDIATE BURIAL (As Selected).....\$

Total (A) \$ 2370.00

RICHARDSON FUNERAL HOME

P.O. Box 697
Marion, South Carolina 29571
Phone: 843.423.5100 • Fax: 843.423.5101

No. 46
7-09

2008

Full name of deceased Scottie Wayne Floyd
(Please PRINT Name)

Age 38

Date of Death 09/25/08 2008 Deceased is SON of person arranging services.
(Give Relationship)

(B) CASH ADVANCE ITEMS:

We charge you for our services in obtaining:

Sales Tax.....\$

Newspaper Notices.....\$ 61.31

Beautician.....\$

Certified Certificates (No. 6).....\$ 27.00

Transportation.....\$

Opening & Closing Grave.....\$

Door Badge.....\$

Music.....\$

Total (A) Forward 2370.00

Total (B) \$ 88.31 2458.31

Total (A) & (B)

(C) OTHER ITEMS:

Funeral Home Folder.....\$ 30.00

Total (C) \$ 30.00 2488.31

Total (A) (B) & (C)

LESS: Preneed Adjustment/Allowance ☐ INS ☐ TR

Payment / Date ()

Other (Specify)

BALANCE \$ 2458.31

LEGAL: CEMETERY, CREMATORY OR OTHER REQUIREMENTS COMPELLING THE PURCHASE OF ANY ITEMS LISTED ABOVE:

The undersigned purchaser(s) hereby attest to the following: (1) I/We did () did not () authorize embalming of the above named deceased. (2) I/We were shown a Casket Price List and an Outer Burial Container Price List before the showing of caskets and outer burial containers. (3) I/We were given / offered for retention a General Price List upon the beginning of a discussion of funeral arrangements and/or selection of services and merchandise.

TERMS: This is a CASH TRANSACTION, due in full 7-09-08 and, in all events becomes PAST DUE AND DELINQUENT upon expiration of due date. A penalty of 18% per annum for UNANTICIPATED LATE PAYMENT will be charged effective 10-09-08.

I, or we, having read the above, accept and approve same, and jointly and severally promise to make full payment therefor.

Receipt of a copy of this contract is acknowledged.

MFT. Betty Joe Floyd
MRS. Betty Joe Floyd
MISS

Print Name of Purchaser(s)

Betty Joe Floyd
Signature of Purchaser(s)

Signature of Purchaser(s)

S.S. No.

Signature of Purchaser(s)

Signature of Purchaser(s)

We agree to render the service and furnish the merchandise indicated above.

RICHARDSON FUNERAL HOME

BY:



SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

STATE BIRTH NUMBER

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

STATE FILE NUMBER
08-029044

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last) Scottie Wayne Floyd				2. SEX: Male		3. SOCIAL SECURITY NUMBER	
4a. AGE-Last Birthday (Years) 33		4b. UNDER 1 YEAR Months: Days: Hours: Minutes:		5. DATE OF BIRTH		6. BIRTHPLACE (City and State or Foreign Country) Marion, South Carolina	
7a. RESIDENCE-STATE South Carolina		7b. COUNTY Marion		7c. CITY OR TOWN Marion		7d. APT. NO.	
7e. ZIP CODE 29571		7f. INSIDE CITY LIMITS? ☐ Yes ☒ No		7g. INSIDE CITY LIMITS?		7h. INSIDE CITY LIMITS?	
8. EVER IN U.S. ARMED FORCES? ☐ Yes ☒ No		9. MARITAL STATUS AT TIME OF DEATH ☐ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☒ Never Married ☐ Unknown		10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)			
11. FATHER'S NAME (First, Middle, Last) Thomas Wayne Floyd				12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last) Betty Joe Grainger			
13a. INFORMANT'S NAME Betty Joe Floyd		13b. RELATIONSHIP TO DECEDENT Mother		13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) 2			
14. PLACE OF DEATH (Check only one; see instructions)							
IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival				IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Nursing home/Long-term care facility ☐ Decedent's home ☐ Other (Specify)			
15. CITY OR TOWN, STATE AND ZIP CODE Marion, South Carolina 29571				17. COUNTY OF DEATH Marion			
18. METHOD OF DISPOSITION ☐ Donation ☐ Entombment ☐ Removal from state ☒ Other (Specify)				19. PLACE OF DISPOSITION (Name of cemetery, crematory, other place) Watson Funeral Home & Crematory			
20. LOCATION-CITY, TOWN AND STATE Conway, South Carolina				21. NAME AND ADDRESS OF FUNERAL FACILITY Richardson Funeral Home, Inc.			
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT				23. LICENSE NUMBER (Of Licensee) 1266		23a. P.O. Box: 697	
23b. EMBALMER (Signature) not embalmed				23c. EMBALMER LICENSE NUMBER 246		23d. LICENSE NUMBER (Of Facility)	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH				24. DATE PRONOUNCED DEAD (MM/DD/YYYY) September 5, 2008		25. TIME PRONOUNCED DEAD 10:00 p.m.	
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)				27. LICENSE NUMBER		28. DATE SIGNED (MM/DD/YYYY)	
29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month) September 5, 2008				30. ACTUAL OR PRESUMED TIME OF DEATH 10:00 p.m.		31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☒ Yes ☐ No	
CAUSE OF DEATH (See instructions and examples)							
32. PART I. Enter the chain of events, disease, injuries, or complications that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or vascular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (Final disease or condition resulting in death) → Complications of seizure disorder (due to) Due to (or as a consequence of): Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST Cerebral artery lesion (due to) Due to (or as a consequence of): Remote blunt head trauma Due to (or as a consequence of):							
PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.							
33. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☒ No ☐ Unknown				36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year		37. MANNER OF DEATH ☐ Natural ☐ Homicide ☒ Accidental ☐ Pending investigation ☐ Suicide ☐ Could not be determined	
38. DATE OF INJURY (Spell Month) September 13, 2001		39. TIME OF INJURY App: 3:00pm		40. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area) Ken Baker Used Cars		41. INJURY AT WORK? ☒ Yes ☐ No	
42. LOCATION OF INJURY: State: South Carolina City or Town: Marion County: Marion Street & Number: 2066 N. Hwy 501 by-pass Apartment Number: Zip Code: 29571				43. DESCRIBE HOW INJURY OCCURRED: Employee was removing a control arm from a car engine and a spring hit him in the forehead.			
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)				45. CERTIFIER (Check only one) ☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated. ☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. ☒ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.			
Signature of certifier: Jerry M. Richardson				46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32) P.O. Box 697, Marion, South Carolina 29571			
47. TITLE OF CERTIFIER Coroner		48. LICENSE NUMBER		49. DATE CERTIFIED (MM/DD/YYYY) 09/09/2008		50. FOR REGISTRAR ONLY-DATE FILED (MM/DD/YYYY) OCT 02 2008	

NAME OF DECEDENT
For use by physician or institution

Items 24-43 To Be Completed by MEDICAL CERTIFIER

SC 00088252

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

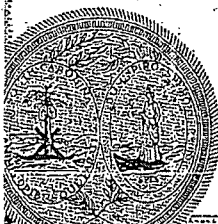
C. Earl Hunter
C. Earl Hunter
Commissioner and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 05/01/2008

ISSUED OCT 02 2008





Betty Joe Floyd as Personal Representative of Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie Wayne Floyd, deceased			
Claimant's Name:	beneficiary of Scottie Wayne Floyd, deceased	Employer's Name:	Ken Bakers Used Cars, LLC
Address:		Address:	2066 N. Highway 501 By-Pass
City:		City:	Marion State SC ZIP 29571
Home Phone:	Work Phone	Carrier:	Amguard Insurance Company
Preparer's Name:	Edwin P. Martin, Jr.	Preparer's Phone #:	(803) 727-1200

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$211.77 2. AWW: \$375.36 Date of Injury: September 05, 2008

3. Type of injury and body part(s) Death claim

4. Facts in controversy: The Claimant has not worked for the employer since 2001 and did not work for the employer during the period that Amguard covered the employer. The results of the autopsy and death certificate establish that the Claimant died as a result of complications of a seizure disorder that resulted from a cavitory lesion of the right frontal cerebrum due to remote blunt head trauma. The Claimant's death was caused by his failure to take his anticonvulsant medications which were necessitated by the work injury on 9/13/01. His failure to take the anticonvulsant medications did not constitute an injury by accident arising out of and in the course of his employment.

5. Legal issues involved Same as above

6. Unusual aspects: None known at this time

7. Witnesses (designate if expert)* None

8. Exhibits: None

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)

None

10. Name, address, and specialty, if any, of the treating physician: Numerous medical providers

11. Impairment rating(s); body part(s); physician and date of opinion: Unknown

12. I am amending my Form 50/51 in the following manner

I verify the contents of this Form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: edwinmartin@hedrickgardner.com

Date of Hearing 09/01/09

Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58

Rev. 9/07