

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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

W.C.C. File No. 1408826

Gennette Sowell,

Employee,
Respondent,

v.

Piggly Wiggly,

Employer,

and

Auto Owners Insurance Inc.,

Carrier,
Appellants.

**RECORD ON APPEAL
VOL. III**

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1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation Commission
WCC File No.: 1408826

4 Genette Sowell,)
Employee,)
5 Claimant,) Deposition of
vs.) GORDON EARLY, M.D.
6 Piggly Wiggly,) May 18, 2016
Employer,)
7)
and)
8 Owners Insurance Company,)
Carrier,)
9 Defendants.)
_____)

10

11

12

13 Deposition on oral examination of
14 GORDON EARLY, M.D., reported by Andrea R. Taylor,
15 Court Reporter and Notary Public in and for the
16 State of South Carolina; said deposition taken
17 pursuant to notice of deposition and in accordance
18 with the South Carolina Rules of Civil Procedure,
19 at Upstate Occupational Medicine, 1241 Boiling
20 Springs Road, Spartanburg, South Carolina,
21 commencing on Wednesday, May 18, 2016, at the hour
22 of 12:30 p.m.

23

24

25

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GORDON EARLY, M.D. 5/18/2016

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1 STIPULATIONS

2 This deposition is taken in
3 accordance with the South Carolina Rules of Civil
4 Procedure.

5 It is agreed and stipulated by the
6 deponent and respective counsel that the reading
7 and signing of the deposition transcript by the
8 deponent is expressly waived.

9 WHEREUPON:

10 GORDON EARLY, M.D., being duly sworn and
11 cautioned to speak the truth, the whole truth, and
12 nothing but the truth, testified as follows:

13 EXAMINATION

14 BY MS. MILLER:

15 Q. Hi, Dr. Early. We just met off the
16 record, but again, for the record, my name is
17 Kenya Miller, and I'm an attorney with the law
18 firm of Dickie, McCamey and Chilcote. And I
19 represent the employer and insurance carrier in a
20 workers' compensation claim involving Ms. Genette
21 Sowell.

22 It's my understanding that you've
23 rendered an opinion, maybe a couple of opinions,
24 with regards to this case which is currently
25 pending before the Workers' Comp Commission. And

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1 as you're aware, she contends that she's developed
2 occupational asthma and maybe some other pulmonary
3 problems relating to chemical exposures while
4 working for Piggly Wiggly.

5 It's my understanding that you had
6 originally provided an opinion to her attorney,
7 Mr. McDaniel, back in December 2015, and then you
8 had a follow-up evaluation with her in March.
9 Today, if you'll kind of bear with me, I'm going
10 to have you to address some additional records,
11 and but before I begin, I want to start by asking
12 you some background questions regarding your
13 medical training and background if that's okay.

14 A. Uh-huh.

15 Q. I know you're familiar with this
16 process, but I just want to remind you that when I
17 ask a question, or Mr. McDaniel asks you a
18 question, if you could refrain from answering
19 until the question is asked, just so we have a
20 clean record. Okay?

21 A. Yes, ma'am.

22 Q. And also, to help us kind of move
23 expeditiously today, I did prepare some exhibits
24 so we can try to direct your attention as soon --
25 as quickly as possible and kind of go through

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1 this.
2 A. Okay.
3 Q. It's not my intent to keep us all day.
4 A. Okay. Could you spell her name for me.
5 Q. Sure. Genette, G-E-N --
6 A. Last name.
7 Q. S-O-W-E-L-L.
8 A. Okay. Thank you.
9 Q. Sowell. I think some people pronounce
10 it Sowell, but in that area, it's Sowell.
11 A. Thank you. Okay.
12 Q. And you let me know when you're ready.
13 A. Yeah, ready.
14 Q. Can you state your name for the record?
15 A. Ira Gordon Early, Jr.
16 Q. And where are you employed, Dr. Early?
17 A. At Upstate Occ Med.
18 Q. And in what capacity?
19 A. Medical director, physician.
20 Q. How long have you been here?
21 A. For 17 years.
22 Q. And how long have you been practicing
23 medicine?
24 A. For 29 years.
25 Q. And what type of medicine do you

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1 currently practice?

2 A. Three elements: primary care/family
3 practice, occupational medicine, and medical
4 toxicology.

5 Q. And, for the record, can you kind of
6 give me a description of what does that entail?

7 A. The primary care/family practice
8 preventive care is kind of what you would go to
9 for your regular doctor, for seeing your regular
10 doctor for routine health care issues.

11 The occupational medicine is work-
12 related issues as they pertain to work-related
13 health issues. Most -- the most common encounters
14 for that would be for regulatory exams, such as
15 DOTs exams, FAA exams, pre-employment exams, drug
16 screens. Also for workers' comp encounters such
17 as low back pain, carpal tunnel, injuries, but
18 also for regulatory issues concerning the
19 workplace and how it interacts with various
20 regulatory issues concerning OSHA, NIOSH, EPA, the
21 various regulations as they -- the Americans with
22 Disabilities Act accommodations, various issues
23 concerning the workplace and health and in a broad
24 sense of understanding of that interaction of
25 health in the workplace.

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1 Q. Okay.

2 A. One of which is medical toxicology and,
3 in this case, exposure disease relationship
4 concerning exposures at the workplace and
5 respiratory health. But in this case medical
6 toxicology is a disease of -- is what primarily
7 that I'm more concerning Ms. Sowell -- is it
8 Sowell or --

9 Q. Sowell.

10 A. Sowell, sorry.

11 Q. It's okay.

12 A. Medical toxicology is the study of
13 toxins and their effect on human health. And
14 there is a branch that primarily is concerned with
15 acute exposure issues, such as overdose, and
16 that's kind of poison control issues. And then
17 there's the branch that's concerned more with
18 chronic exposure and adverse health outcomes, and
19 that's more of my interest. And the folks that
20 approach it from that interest tend to be
21 occupational medicine docs, and that's how I
22 approached it, from an occupational medicine
23 physician.

24 Q. The chronic exposure part?

25 A. Yes.

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1 Q. Okay. Can you give me a synopsis of
2 your educational training?

3 A. Sure. College at Emory University,
4 majored in biology. Med school at University of
5 Chapel Hill -- North Carolina Chapel Hill.

6 Q. I'm a Chapel Hill grad.

7 A. Oh, great. You're from North Carolina
8 too?

9 Q. No, from South Carolina, but I went to
10 Chapel Hill Law School.

11 A. Oh, okay. And internship in Charlotte.
12 Internal medicine residency in family practice at
13 University of Colorado. Fellowship at Duke in
14 occupational medicine. And part of the fellowship
15 was getting a masters in public health, which I
16 did at UNC and got that in epidemiology. And I've
17 got a CV for you.

18 Q. Oh, great.

19 MS. MILLER: I probably will mark this
20 as exhibit -- are you okay with this?

21 MR. MCDANIEL: Yeah, I'm fine with
22 marking that exhibit.

23 MS. MILLER: Okay. It will be Exhibit
24 Number 11.

25 (Defendant's Exhibit Number 11, CV, was marked for

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1 identification.)

2 MR. McDANIEL: And, by the way, I have
3 no objection to Exhibits 1 through 10.

4 MS. MILLER: Great.

5 MR. McDANIEL: Yeah.

6 BY MS. MILLER:

7 Q. And are you board certified?

8 A. I am board certified in medical
9 toxicology and occupational medicine and general
10 preventive medicine.

11 Q. Okay. And just based off what you're
12 telling me, you treat patients with pulmonary
13 problems?

14 A. Yes.

15 Q. Okay. And what percentage would you say
16 your patients suffer from, like, asthma? Are you
17 able to say one way or the other?

18 A. I'd say maybe five to ten percent.

19 Q. And of those five to ten percent, are
20 you able to break down a percentage of those who
21 develop asthma as adults?

22 A. I'd say less than one percent.

23 Q. Less than one?

24 A. Yes.

25 Q. And do many of your patients I guess who

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1 suffer from this adult onset of asthma, is that
2 typically from work-related issues or outside of
3 work environment?

4 A. Well, kind of you're asking the wrong
5 person because if it's work related, they
6 frequently come to me or somebody's sending them
7 to me.

8 Q. Okay.

9 A. So --

10 Q. So the ones you see, it's generally
11 going to be work related?

12 A. At least somebody thinks it may be work
13 related. A lot of them are, but I can't tell you
14 an exact percentage. But for me it would be
15 higher than for most people in the state.

16 Q. Gotcha. Okay. Dr. Early, I'm going to
17 provide you what's been marked as Defendant's
18 Exhibit 1, and it's your report from December
19 17th, 2015, just to help us kind of go along with
20 these questions.

21 (Defendant's Exhibit Number 1, Dr. Early's Report,
22 was marked for identification.)

23 Q. When were you first asked to render your
24 professional opinion with regards to Ms. Sowell?

25 A. I'd say roughly in the fall, late fall

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1 sometime.

2 Q. 2015?

3 A. Yes.

4 Q. Who asked you to render that opinion?

5 A. Mr. McDaniel.

6 Q. And do you recall what medical records
7 you were provided in preparation for the opinion?

8 A. The ones that I've listed here.

9 Q. And were those provided to you by Mr.
10 McDaniel's office?

11 A. Yes.

12 Q. And just to clarify, other than the ones
13 identified, you didn't consider any other
14 documents at the time that you issued this
15 opinion?

16 A. Correct.

17 Q. Okay. I know we have your report in
18 front of us, but for purposes of the record, can
19 you tell me what was your opinion in the case back
20 in December 2015?

21 A. I thought that the exposures that she
22 had while employed at Piggly Wiggly were more
23 likely than not contributory or causative for her
24 development of asthma as an adult.

25 Q. And what factors had to be in place, or

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1 you found that were in place to kind of support
2 that opinion?

3 A. The fact that she was unaware of a
4 previous history of asthma, and that she was
5 unaware of a previous history of wheezing or any
6 other known respiratory illness prior to her 2010
7 respiratory symptoms, the onset of respiratory
8 illness in 2010, the exposures in 2010 that are
9 listed in our report, the nature of the irritants
10 that she was exposed to, the temporal relationship
11 between exposure and symptoms, the improvement
12 went away from exposure.

13 Q. Okay. And, in general, are these the
14 type of factors you in your expertise would
15 normally look towards, or are there any other type
16 of tests or anything objective that you typically
17 like to point to when you make these type of
18 opinions?

19 A. Well, frequently we will do a
20 methacholine challenge test to ensure the
21 diagnosis of asthma. But in this case the
22 diagnosis was pretty clear. She had been
23 hospitalized with a pretty severe asthmatic
24 episode, and I really don't think the diagnosis
25 was in question. So I don't really think that was

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1 necessary. The flow meter test had already been
2 done back in 2011, but those records were
3 unavailable to me.

4 Sometimes you'll do a onsite pulmonary
5 function test while they're working, but she'd
6 been out of the workforce for two years by the
7 time that I had seen her. These were some of the
8 tests that were done.

9 Q. And those test for diagnostic purposes,
10 not necessarily to assist with causation per se?

11 A. No, they're -- the peak flow tests are
12 helpful in causation, and onsite pulmonary
13 function tests are tests for causation.

14 Q. And what do you look for in a peak flow
15 test result to determine one way or not whether or
16 not the cause is stemming from something in the
17 workplace?

18 A. You see if there is a drop in the
19 performance on the peak flow meter as they're
20 exposed to the work-related potential asthmagen.
21 The same is true with the onsite pulmonary
22 function test, you see if there's a drop in the
23 FEV1 when they --

24 Q. In the what now? I'm sorry.

25 A. In the -- in the test. It's called a

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1 pulmonary function test.

2 Q. Right. You said the LV --

3 MR. McDANIEL: The FEV.

4 Q. FEV?

5 A. FEV1, yeah. You see if there's a drop
6 in the FEV1, and that's the parameter that you
7 measure in the pulmonary function test while
8 they're exposed to the potential asthmagen.

9 MR. McDANIEL: Doctor, I'm an old
10 country lawyer, and don't mean to interrupt, but,
11 you know, it might be helpful to explain the FEV.
12 I've seen it quite a few times with all the old
13 byssinosis cases, brown lung cases I had. But,
14 you know, if you don't mind telling her what that
15 is.

16 MS. MILLER: Well, that was my next
17 question.

18 MR. McDANIEL: Like I said, I didn't
19 mean to interrupt.

20 MS. MILLER: That's okay. That's okay.

21 A. Yes. Forced expiratory volume in one
22 second, and it's how much air you can blow out in
23 one second. And it's one of the parameters that's
24 tested for in a pulmonary function test. So it's
25 kind of the first thing you look at on a pulmonary

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1 function test that assesses how much air you're
2 moving in your lungs in one second. And it's the
3 -- probably the most important parameter you look
4 at in obstructive lung disease with a pulmonary
5 function test.

6 There are other parameters that are
7 probably more sensitive, but the parameter that
8 you look at first is the FEV1.

9 Q. Okay. And is this something, because
10 I'm not familiar with the device itself, but if I
11 had this issue going on, is it something you would
12 give to me and I would take this test at home, and
13 also at work? How does that work?

14 A. No it --

15 Q. Or it just occurs in your office?

16 A. With the pulmonary function test, it has
17 to be administered by another person. Yeah, so --

18 Q. And what about peak flows is what I was
19 specifically referring to.

20 A. The peak flow is self-administered.

21 Q. Okay.

22 A. And that -- the peak flow is a handheld
23 device that you self-administer. And we've got to
24 count on the person giving a good effort, and
25 there's no way to tell whether or not they're

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1 giving a good effort. With the pulmonary function
2 test there are ways to tell whether or not they're
3 giving a good effort, so -- but it's expensive to
4 do the pulmonary function test and it's free to do
5 the peak flow.

6 Q. And at the time of 2015, or even today,
7 have you had the opportunity to review any of her
8 readings from peak flow or review her pulmonary
9 function test at all?

10 A. Yes. The peak flow I have not; however,
11 we did a pulmonary function test on her, and there
12 was some pulmonary function tests in her file.

13 Q. Okay. And what was your assessment of
14 those tests?

15 A. Consistent with asthma.

16 Q. Okay. And based on those tests, can you
17 provide an opinion as to the level of asthma?
18 Asthma, it's my understanding, has a couple of
19 categories, such as severe persistent, moderate
20 persistent.

21 A. Severe persistent.

22 Q. And that was based on your tests?

23 A. Right. And also notes from the
24 pulmonologist.

25 Q. Okay. Would that be back in -- going

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1 back in 2011, '12 or '13, or what time frame are
2 you referring to?

3 A. I'm sorry, could you repeat that
4 question?

5 Q. Sure. I understand when you did your
6 tests, and that would have been around 2015, maybe
7 even this year?

8 A. Uh-huh.

9 Q. I'm sorry, is that a yes? I just want
10 to make sure. I was just trying to clarify the
11 record. But you are understanding -- you are
12 understanding what I was saying? You're saying
13 yes, right?

14 A. Yes.

15 Q. But in 2015 and 2016, you were saying,
16 based on your tests, it was in the category of
17 severe persistent, correct?

18 A. Yes, ma'am.

19 Q. Now, prior to that time, you reviewed
20 pulmonary function tests from other doctors. Is
21 it your understanding in that time frame, was it
22 also severe persistent or did -- or was she in a
23 different category at that time, and if so, do you
24 know the time frame you're referring to?

25 A. I can't remember. I know to get

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1 approval for that Xolair -- which she got approved
2 for, I don't know, a few years ago, that's one of
3 her drugs -- that you've got to have severe
4 persistent asthma.

5 Q. You're not sure when she was approved
6 for that?

7 A. No. Yeah, the prior authorization
8 process for that is onerous, and they don't want
9 to -- they won't approve that unless you're severe
10 persistent.

11 Q. Thank you. Okay.

12 A. The insurance company won't approve it.

13 Q. Gotcha. Okay. I want to ask you just
14 in general, is adult onset of asthma, is that
15 something -- is that something that's common or
16 kind of rare?

17 A. It's less common than childhood onset.
18 I don't know if I would say rare, but I'd say it's
19 markedly less common than childhood onset.

20 Q. But you wouldn't say it's rare either?

21 A. No, I wouldn't say rare, but much less
22 common.

23 Q. Okay. What are some of the reasons that
24 people will develop onset or -- yeah, develop like
25 an onset of adult asthma?

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1 A. Well, sensitizers. Things that
2 sensitize your respiratory system to --
3 asthmagens, respiratory sensitizers. You want me
4 to go through a list?

5 Q. You don't have to. For example, could
6 it be an allergy to pollen, dust, things of that
7 nature?

8 A. It could be. You know, pollen isn't
9 common at the top of the list, but it could be.
10 You can get pollen, dust allergies in adult life.
11 Sometimes that's just something that has been
12 there as a child, but not discerned, not
13 appreciated. Do you want me to keep going?

14 Q. Well, secondly, what about someone's
15 family history? For example, I don't know, like
16 if maybe my parents or my kids had asthma and
17 maybe I didn't have that as a child, are those
18 type of people more susceptible to developing
19 asthma as adults, even though they may not have
20 had symptoms as a child?

21 A. I don't know the answer to that. I
22 don't know if your parents had asthma if that
23 makes you more likely to get it as an adult. I
24 know that if your parents had asthma it makes you
25 more likely to get it as a child, but I don't know

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1 if it makes you more likely as an adult.

2 Q. And do you know if Ms. Sowell suffers
3 from any allergies?

4 A. She told me she was not aware of any
5 pollen or dust mite or cat or dog allergies.

6 Q. And do you know if she had a family
7 history of asthma?

8 A. She told me that she did not, I believe.
9 Let me check on that.

10 Q. Sure.

11 A. Oh, excuse me. Her dad had asthma.

12 Q. Did any of these factors play any role
13 in your analysis one way or the other?

14 A. Yes. The fact that she was unaware of
15 any childhood allergies, and she had a rather
16 unremarkable family history. She has a large
17 family with two parents and six siblings and seven
18 children. So that's 15 first-degree relatives,
19 and only one of them with known asthma, was rather
20 unremarkable.

21 Q. Okay. And going back to report from
22 December 17, 2015, you noted that there was a
23 relative improvement in her symptoms since she
24 left the workforce; is that correct?

25 A. Yes.

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1 Q. That's under the discussion section.

2 A. Yes.

3 Q. Do you know when she left the workforce?

4 A. I think it was early 2013. 2013. It
5 seems to me it was like late winter, early spring.

6 Q. What improvement did she sustain after
7 she left the workforce?

8 A. She said that her respiratory symptoms
9 improved. I presume that means that her cough and
10 wheezing improved.

11 Q. Can you identify any, I guess, objective
12 means of improvement such as reduction in her
13 medication or anything of that nature, improvement
14 in pulmonary function tests?

15 A. No.

16 Q. Are you able to state or testify with
17 regards to her ability to function in her daily
18 life once she left the workforce? Did it improve,
19 stay the same?

20 A. I can state that she felt like it
21 improved.

22 (Defendant's Exhibit Number 2, excerpt from
23 transcript, was marked for identification.)

24 Q. And just for clarification, you note in
25 your report that you relied upon pages 81 to 92 of

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1 her deposition testimony, and I have it marked as
2 Defendant's Exhibit 2 for us, where that's where
3 you got her understanding as to the history in
4 terms of she would work, feel sick, leave work,
5 get better and then come back to work and get
6 sick. Is that your understanding kind of the
7 cycle in this case?

8 A. Yes.

9 (Defendant's Exhibit Number 3, excerpt from
10 transcript, was marked for identification.)

11 Q. And just to make it easier, I'll give
12 you page 72 of her deposition transcript, which
13 has been marked as Exhibit 3. And it's my
14 understanding, but I want you to confirm, that
15 this cycle would have been for a period of 2011
16 through 2013?

17 A. Uh-huh. Okay.

18 Q. Is that your understanding?

19 A. Right. Correct.

20 Q. I want to focus a little bit on her work
21 environment, if I may. Do you know how much of
22 her day she spent using these cleaning supplies?

23 A. I don't know if she was the one that
24 actually used them, but sometimes she would use
25 them and sometimes others would use them. But if

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1 she would use them, it would only be her
2 application of the cleaning material for a matter
3 of minutes probably, two or three minutes I would
4 assume.

5 Q. And I know you've identified some of the
6 cleaners. Is that based on what she told you, or
7 were you given an actual MSDS list from Piggly
8 Wiggly? Or what is your understanding as to the
9 chemicals that she was having to -- or being
10 exposed to?

11 A. Well, I was given a list of MSDS's, but
12 I also asked her what she used. And the --
13 actually, let me correct that.

14 Q. Okay.

15 A. I think -- I don't think I was given the
16 MSDS's. I think I asked the patient what products
17 she used, and she told me I use these products.

18 Q. And from that conversation, can you give
19 any indication of -- I'm just trying to be clear,
20 did you gain appreciation for how potent the
21 products were, again, how long she had to use them
22 or, you know, was it years, months, was it hours
23 out of her day?

24 A. Let me clarify that again because, you
25 know, this has been a while and I'm reading over

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1 materials as I'm thinking.

2 Q. Sure, take your time.

3 A. Yeah. So in the original report from
4 12/17/15, that predated my evaluation of Genette
5 Sowell.

6 Q. Uh-huh.

7 A. Because the evaluation of Genette Sowell
8 was in 3 of '16. And in the original report of
9 12/17/15, I was given a list of what she was
10 exposed to, and it included the five products of
11 Drano, bleach, Mr. Muscle, Spit Fly, and Pine-Sol.
12 So I was given a list of what was used as the
13 cleaning solution, and that list was given to me.
14 And I was given that by Mr. McDaniel's office.

15 So then when I saw the patient, I asked
16 her what she used and what they were using in the
17 Piggly Wiggly store. And she said that she
18 remembered those products. She said there may
19 have been more, she's not sure, but she remembered
20 those products. So that's the answer to the
21 previous question.

22 Q. Okay. Thank you. And these products,
23 are all of these products, are they just used for
24 household cleaning, or is anything specific on
25 here that, you know, me as a person just going to

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1 clean my house can go to any Walmart and purchase?

2 A. Uh-huh, you can go to Walmart and
3 purchase these. They are household cleaners.

4 Q. So you're not able to testify as to
5 whether or not any of these cleaners are more
6 potent than you would normally be able to buy?

7 A. I'm not aware of these being more potent
8 than what a normal commercial customer can buy.

9 Q. Did Ms. Sowell provide you with any
10 information concerning the cleaning supplies she
11 used in her own home?

12 A. She did not.

13 Q. Do you know if she had any other jobs
14 outside of Piggly Wiggly?

15 A. I do.

16 Q. Can you tell me about that?

17 A. Yes. She ran a catering business
18 outside of Piggly Wiggly.

19 Q. And that was operated within her home?

20 A. It was. She had a catering business
21 that she ran out of her house. And she had, I
22 think, an outdoor kitchen that she did a lot of
23 the cooking in --

24 Q. An outdoor kitchen?

25 A. Yeah. It was kind of in a separate

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1 building that she did a lot of the cooking in.
2 It's in my notes somewhere.

3 Q. Okay.

4 A. She had this catering business for a
5 long time, I don't know, 20 years. She ran it
6 with one of her daughters.

7 Q. Did you get an understanding as to
8 whether or not that building was connected to her
9 house, or at least on the same property as her
10 home?

11 A. Same property.

12 Q. Any indication as to what size this
13 outdoor kitchen would have been?

14 A. It was -- let me see if I can find it in
15 my notes.

16 Q. Sure. Take your time.

17 A. I'm not getting much detail here. So
18 here's what I remember.

19 Q. Okay.

20 A. She's run this catering business out of
21 her house for a long time, roughly maybe late '90s
22 or so. And she runs it with a family member. If
23 it's not a daughter, it's a niece or something
24 like that.

25 Q. Fair enough.

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1 A. And she does mostly parties, and she
2 does cold some cold cuts. But her big thing is
3 frying. She does a lot of frying. And she's got
4 like an outbuilding somewhere, it's -- I got the
5 impression it was like an old garage or something
6 that they converted into a frying center. And she
7 has a real problem with the frying.

8 So she -- once all this respiratory
9 stuff started, she has to modify how she does the
10 frying. You know, she's got all the hoods and
11 things like that. Whenever you -- whenever you
12 fry you've got a hood. I mean, true for every
13 kitchen. But she had trouble with the frying.
14 And so she gets her helper, whether it be her
15 granddaughter or her daughter or niece or whoever
16 it is, to do more of the frying for the catering
17 business.

18 Q. Okay.

19 A. And eventually she gets out of it
20 completely.

21 Q. Okay.

22 A. So she had to leave the catering
23 business sometime in the 2011 to 2014 time period;
24 she had to leave in. And she may do like, you
25 know, spreading the ham biscuits with some

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1 mayonnaise or something, but she's not running the
2 catering business.

3 Q. Well, let me ask you this. Can you
4 give, or did you gain any appreciation for what
5 would be different about her activities as a
6 caterer versus the activity she was doing at
7 Piggly Wiggly?

8 A. The catering business is a business
9 where she's not pouring a bunch of de-clogging
10 materials down the drain.

11 Q. Okay.

12 A. And the catering business is something
13 where she's not having her work instigate her
14 coughing, or at least she doesn't tell me her work
15 is instigating her coughing.

16 Q. And let me ask you this. If she's using
17 -- do you have any reason to believe like if she
18 were using the same cleaning products at home that
19 she was using at Piggly Wiggly, would you be able
20 to tell if one was worse than the other?

21 A. I really wouldn't be able to, but she's
22 not having a drain clog in her home.

23 Q. And in terms of when you say drain clog,
24 how often are you referring to her having a drain
25 clog at work? Are you saying this is something

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1 that was, in your impression, is it happening like
2 an everyday thing, or is an intermittent sort of
3 type issue?

4 A. She perceived that in that time frame of
5 2010 to 2013 that early '13 that it was happening
6 frequently, at least probably every month.

7 Q. And you say every month in terms of that
8 time frame, so you're saying this is a problem,
9 from your understanding, just based on talking
10 with her that would have went on for maybe a year?

11 A. Three years.

12 Q. And so, and the reason I'm asking,
13 because it sounds like that was a significant part
14 of your analysis or in terms of reaching this
15 conclusion?

16 A. Correct.

17 Q. So your impression, and I'm not saying
18 that she actually said these words to you, but
19 just your impression from that discussion was
20 she's working for Piggly Wiggly and on a monthly
21 basis for three years, they're having issues with
22 clogs, drainage clogs?

23 A. (Nods head.)

24 Q. Is that a yes?

25 A. Yes, that is.

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1 MR. McDANIEL: I'll object to the form
2 of the question.

3 MS. MILLER: That's fine.

4 Q. And when they have these clogs, your
5 impression is it's being clogged with what?

6 A. The refuse from the deli department.

7 Q. And that will be consisting of like the
8 cleaning supplies they use, cooking materials, raw
9 food, things of that nature?

10 A. Well, the refuse from the deli
11 department is clogging the drain, is what I
12 understand. And from what I understood, the drain
13 is running underneath the cooler and that is
14 solidifying the materials as it runs through the
15 drain, and that's why it keeps clogging.

16 Q. Now, have you had the benefit of
17 actually conducting an onsite visit of where she
18 worked?

19 A. (Shakes head.)

20 Q. I'm sorry, is that a no?

21 A. No. No, I'm sorry.

22 Q. That's okay. And you didn't have the
23 benefit of conducting any type of onsite visit of
24 her home?

25 A. No, I have not.

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1 Q. Have you had the opportunity to review
2 any reports of DHEC concerning the Piggly Wiggly
3 drains?

4 A. I have not.

5 Q. And I noticed in your report you said
6 the decaying organic material in the drain most
7 likely was contaminated by mold. The
8 identification of mold is based on what she tells
9 you or your own speculation? Where does that
10 information come from?

11 A. From my assumption that if it keeps
12 clogging every month, then it's probably going to
13 have mold growing in it.

14 Q. But you don't have any direct evidence
15 of Piggly Wiggly having issues with mold in that
16 deli that she worked?

17 A. I don't have any direct evidence.

18 Q. Is it fair to say that that would be
19 based on your speculation?

20 A. Yes.

21 Q. I noticed and we touched on this early
22 on, and I'm kind of going back on you. But I did
23 notice in your report you referenced not having
24 the peak flow evidence in the record. Is that
25 something that would be an important piece of the

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1 analysis?

2 A. Yes.

3 Q. And again, just for clarification, why
4 would that be important?

5 A. Because that is information that looks
6 at respiratory performance while exposed and
7 unexposed. And so that would see what her
8 respiratory performance is around the potential
9 asthmagen, and then while away from the asthmagen.

10 Q. Okay. I want to focus a little bit
11 about the cause of her asthma. You indicate in
12 your report that the exact cause of her asthma is
13 pretty much unknown; is that accurate?

14 A. Right.

15 Q. Can you kind of explain that just for
16 the record.

17 A. Well, you've got a number of different
18 potential causes. You've got that ones that I
19 outlined I think with listing the five cleaning
20 products that were possible. You've got the
21 decaying organic matter in the pipelines. You've
22 got, you know, the possible mold that I have
23 hypothesized. So these are all potential causes
24 and, you know, they have others. I mean, she had
25 a real problem whenever they turned the ovens on,

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1 and it may have been something they were using to
2 clean the ovens out. So --

3 Q. Oh, I'm sorry I didn't mean to cut you
4 off.

5 A. Go ahead.

6 Q. Sometimes when I'm holding my head down
7 I can't tell when you're finished. I was just
8 going to follow up and say but is it fair to say
9 that you really can't point to anything that in
10 her home business that could rule out some of the
11 cause of her problems?

12 A. Well, the history doesn't point to that,
13 that's the thing. The history is that I cough at
14 work, I go home and I don't cough.

15 Q. History in terms of who provides that
16 history?

17 A. Patient. I go home on the weekend and I
18 don't cough on the weekend.

19 Q. Or if I'm --

20 A. Or my cough gets better on the weekend.
21 And that's what the doctor notes say too.

22 Q. And specifically which doctor are you
23 referring to when you say that?

24 A. Hammett. But De Dios also said that.

25 Q. All right.

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1 A. So those would be some of the
2 possibilities.

3 Q. If Ms. Sowell tested positive for an
4 allergy to dust and pollen, would that change your
5 analysis at all or have any bearing on your
6 analysis of this case?

7 A. It would be -- I'd need to see the
8 results and see how significant the reaction was.

9 Q. And were you aware if she had pets in
10 her home or lived in a rural area where pets or
11 birds would be common in the area?

12 A. She said she had none.

13 Q. Okay. I want to take the opportunity to
14 review records. I don't think you've had an
15 opportunity -- these are records from a Dr.
16 Dayrit, I don't know if I pronounced that
17 correctly.

18 MR. McDANIEL: Dayrit.
19 (Defendant's Exhibit Number 4, records of Dr.
20 Dayrit, was marked for identification.)

21 Q. Dayrit, Center for Lung and Sleep
22 Medicine. It's been marked as Defendant's Exhibit
23 4. And I want to -- it's not as bad as it looks,
24 I promise you. Let me ask you first of all, have
25 you had an opportunity to review these records

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1 before today?

2 A. I'm not aware of them, no. Don't
3 recognize them.

4 Q. Okay. If I can direct your attention
5 first of all to page 304, which is the first page,
6 and let me know if you want me to slow down and
7 you want to take an opportunity to review this
8 page first. I just have a couple of questions
9 about it. And just let me know when you're ready.

10 A. I'm ready.

11 Q. Okay. This is a report of December
12 19th, 2012, for Dr. Dayrit, and it notes that her
13 preliminary function test at this time was
14 essentially normal. Does that surprise you --

15 A. Uh-huh.

16 Q. -- at all?

17 A. It does surprise me.

18 Q. Okay. And why would that be the case?

19 A. Because she had other pulmonary function
20 tests during this time that were abnormal.

21 Q. And when you say during the same time or
22 could it have been that those tests came later on?
23 Because this would be December 19, 2012.

24 A. At Dr. De Dios, she had abnormal tests
25 that -- and D-E D-I-O-S, she had normal tests in

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1 2013.

2 Q. Okay. And that would have been
3 conducted by Dr. De Dios?

4 A. Yes. Uh-huh.

5 MR. McDANIEL: De Dios.

6 MS. MILLER: I can say Sowell but I
7 can't say De Dios, because I'm a good old country
8 girl too.

9 A. But she was on Prednisone at that time,
10 at the time of that PFT, as well as Singulair and
11 also Albuterol nebulizer. So we don't know how
12 long it was since she -- that they did that test.

13 Q. Okay.

14 A. But keep going.

15 Q. Sure. I want to move forward to page
16 306. You'll see it at the very bottom I have it
17 stamped. I'm going to give you a moment.

18 A. I'm ready.

19 Q. Okay. And it's my understanding just
20 from reading Dr. Dayrit's medical report that he
21 was questioning whether or not her problems were
22 hypersensitivity pneumonitis -- I might be part
23 mispronouncing that -- versus occupational asthma
24 but wanted to do a CT of her chest.

25 A. Uh-huh.

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1 Q. Why would that be important one way or
2 the other? Just education purposes.

3 A. It could help look into a few other
4 issues; help rule out some other possibilities.

5 Q. What would be the distinction between
6 those two particular diagnosis?

7 A. Well, the CT wouldn't rule out either
8 hypersensitivity pneumonitis or occupational
9 asthma, but is looking for what -- he goes on to
10 say he wants to look for parenchymal opacities.
11 That would help rule towards hypersensitivity
12 pneumonitis, but I think he's really looking for
13 sarcoidosis, to tell the truth. That's why he
14 wants to do a CT.

15 Q. Okay. But at this point, is it an
16 appreciation for any type of occupational asthma
17 from what you can tell at this time?

18 A. Could you repeat that question?

19 Q. Is there any indication, just based on
20 what you're seeing right now, based on this report
21 from December 2012, is there any indication that
22 she has occupational asthma, just based on the
23 information available during this time frame?

24 A. Well, she's wheezing a lot at work and
25 she's on Prednisone and wheezing on Prednisone.

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1 Q. I guess what I'm trying to pin down on
2 her diagnosis, is it clear or still kind of
3 uncertain at this particular time?

4 A. I'd say it's uncertain. I think he
5 doesn't have enough evidence. He needs to get
6 more evidence.

7 Q. Okay.

8 A. He's seen -- he's just seen her one
9 visit, it looks like.

10 Q. Okay.

11 A. Yeah, you don't make occupational asthma
12 diagnosis with as little information as he has.

13 Q. Okay. And, from this report, it appears
14 that he attempts to counsel her that if her
15 problems continue with breathing that she probably
16 should change jobs. Would you say that was a
17 reasonable assessment at that time just based on
18 what you've seen?

19 A. I wouldn't do that.

20 Q. Okay. Explain that.

21 A. You know, if he thinks that there's a
22 work component to it, then he needs to tell her to
23 file a workers' comp claim instead of change jobs.
24 If he thinks that there's not a work component to
25 it, he needs to tell her don't change jobs.

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1 Q. But it does appear that there may be
2 some type of aggravation or some component that's
3 triggering some problems relating to work at this
4 point?

5 A. Uh-huh.

6 Q. I'm sorry, is that a yes?

7 A. Yes.

8 Q. Thank you. Okay. Let's move forward to
9 page 308, and is the report dated January 3, 2013,
10 from Dr. Dayrit. I'll give you the opportunity
11 just to kind of look over it and you let me know
12 when you're ready.

13 A. I'm ready.

14 Q. Is there anything that stands out to you
15 on this report that would influence your
16 assessment of the case one way or the other?

17 A. She's still on steroids. You know these
18 pulmonary function tests are not very helpful when
19 you're on Prednisone 20 milligrams a day. You
20 need a pulmonary function test when you're off
21 steroids and -- or at least on a low dose of
22 steroids --

23 Q. Okay.

24 A. -- and you haven't had a recent
25 Albuterol.

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1 Q. And let's move forward to page 311.
2 This takes us up to January 16, 2013, I believe.

3 A. Yes.

4 Q. And it's my understanding from reviewing
5 this record that Dr. Dayrit provides a diagnosis
6 of extrinsic asthma. Is there any difference
7 between extrinsic asthma and occupational asthma,
8 or is that pretty much kind of all-encompassing in
9 one?

10 A. Extrinsic asthma means that you have
11 asthma that's caused by extrinsic causes, but it
12 doesn't say whether or not the extrinsic cause is
13 a work cause. Occupational asthma is a type of
14 extrinsic asthma where the extrinsic factor is a
15 work-related factor.

16 Q. Occupational asthma would be under the
17 umbrella of one of those extrinsic asthmas,
18 correct?

19 A. Right.

20 Q. Okay. And does it appear that this
21 conclusion or diagnosis was based off of PFT that
22 she had recently had?

23 A. I don't see the PFT referenced in this.

24 Q. Down towards the D, based on the PFT,
25 basically has extrinsic asthma. It would appear

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1 that he wanted to test her IgE levels, which is
2 going to kind of run into my next question, one
3 her Prednisone is tapered off. Let me withdraw
4 the prior question for -- to make the record
5 clean. Let me ask you this.

6 A. Uh-huh.

7 Q. Reading this, it looks like he wanted to
8 test her IgE levels once her Prednisone is tapered
9 off, and you were just explaining earlier that you
10 kind of need to be off your Prednisone in order to
11 get a true indication of where she is. Did I kind
12 of sum that up correctly?

13 A. Yes, ma'am.

14 Q. Okay. For the record, and for my
15 education, can you explain what is IgE? What
16 exactly is that?

17 A. It is one of the types of antibodies
18 that you make. So there are various types of
19 antibodies, and IgE is the antibody that your
20 body's immune system makes that responds to
21 foreign proteins that are typically things like
22 pollen. They're large foreign proteins that are
23 not bacteria or viruses.

24 So, typically, you want your immune
25 system to not make a reaction to these proteins.

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1 Q. Right.

2 A. You don't want to -- you don't want your
3 immune system to respond to pollen. But people
4 who have seasonal allergic rhinitis or hayfever,
5 their immune system reacts to pollen, and that's
6 due to the body's immune system, that B cells
7 making antibodies to pollen and having those
8 antibodies -- IgE antibodies attacking these
9 pollen -- pollen that's inhaled.

10 Q. So is there any particular significance
11 as to why Dr. Dayrit would be wanting to test her
12 specifically for this?

13 A. He wants to know how much IgE she has,
14 and wants to know how high it is, and he wants to
15 see really how allergic she is. It's kind of a
16 measure of how allergic you are.

17 Q. And does that have any bearing on in
18 terms of is it a piece of analysis -- analysis
19 that you look at when you're determining whether
20 or not am I allergic to -- am I reacting because
21 of the pollen, am I reacting because of workplace?
22 How does this piece fit into this whole big
23 puzzle, if at all?

24 A. Well, he's curious, for one, to see how
25 much of this is kind of an allergic process

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1 allergy, I think. But he also wants to get her on
2 this drug Xolair, and you have to have an IgE
3 elevated to a certain extent to get her on Xolair.

4 Q. And I think you and I discussed earlier
5 that to get the qualification for Xolair, that
6 means your asthma has got to be in probably the
7 severe persistent range?

8 A. Right.

9 Q. Is that accurate?

10 A. It's got to be really bad asthma to get
11 on Xolair.

12 Q. Okay.

13 A. And you've got to have an IgE level
14 that's above a certain quantity, along with severe
15 symptoms and severe impediments to get on Xolair.

16 Q. And just now we've viewed a couple
17 reports, I just want to make sure that your
18 analysis is still on the same track. It appears
19 that you're leaning towards is it she's just
20 allergic to pollen, a little bit of everything, or
21 she's allergic to stuff at work that's -- I mean,
22 what is actually causing this reaction at this
23 point? Are you able to say one way or the other?

24 A. Well, I wouldn't say she's allergic to
25 stuff at work. I think she's been sensitized to

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1 something in her respiratory tract.

2 Q. Fair enough. Poor choice of words on
3 my part.

4 A. Yeah. And that's what's triggered her,
5 and that's what's making her cough.

6 Q. How does one just become sensitized? Is
7 it that -- do people -- is that explainable, or is
8 that just something that can happen with age or --

9 A. There are respiratory sensitizers that
10 can sensitize the respiratory tract.

11 Q. Okay.

12 A. And usually it happens with repeated
13 exposure, but it can happen with one-time
14 exposure, particularly with certain known -- very
15 well known respiratory tract sensitizers. But, in
16 her case, I think it was an issue of repeated
17 exposure.

18 Q. Chronic?

19 A. Repeated exposure --

20 Q. I think we use --

21 A. -- time after time.

22 Q. -- the term synonymously.

23 A. Yeah. What she was exposed to is not
24 anything that was well known for being a very
25 powerful respiratory sensitizer.

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1 Q. And when you say well known for being a
2 powerful respiratory sensitizer, meaning?

3 A. There are certain types of chemicals
4 that are really well known for doing --

5 Q. Asbestos?

6 A. Huh-uh. No, more like isocyanates like,
7 you know, Bhopal, India, remember that? In 1983,
8 in India, there was a big gas leak that killed
9 like, you know, 2,000 people in Bhopal, India.

10 Q. Wow. Well, I won't tell you my age in
11 1983.

12 A. Okay. But yeah, that was a bad --

13 Q. I gotcha.

14 A. -- chemical. It was -- it was an
15 isocyanate --

16 Q. But it sounds like if it's more -- if
17 it's powerful, you don't need the chronic
18 exposure? You can have that one time --

19 A. Right.

20 Q. -- heightened exposure and it's going to
21 be more, I guess I will call it, acute?

22 A. Right. Yeah, if it's the right chemical
23 you can have a one-time exposure and that'll do
24 it. But this isn't the right chemical for a one-
25 time exposure. And that's why, you know, the EPA

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1 or the Consumer Drug Product Safety Commission
2 lets you sell it at Walmart. You know, they don't
3 let you sell isocyanate at Walmart.

4 Q. Good. Okay. One more clarification on
5 -- we're still on page 311 before I move on. The
6 report notes, and I'll put my finger on it, that
7 she was coughing in her sleep. Since I'm assuming
8 she doesn't sleep at work, does this factor impact
9 your assessment of the case at all? It's actually
10 like the third sentence.

11 A. I noticed that. It doesn't sway me one
12 way or another. With asthma sometimes you do
13 cough in your sleep. It doesn't, to me, mean that
14 the asthmagen is at home. You can cough in your
15 sleep from -- it doesn't sway me one way or
16 another.

17 Q. Okay.

18 A. She said she was coughing at home too.

19 Q. But it's your impression that she was
20 coughing worse at work --

21 A. Exactly.

22 Q. -- at some point in this -- this time
23 frame?

24 A. Correct.

25 Q. Okay. All right. Let's move forward to

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1 page 314. And I'll give you a moment, and let me
2 know when you're ready.

3 A. I'm ready.

4 Q. Okay. Is there anything that stands out
5 one way or the other?

6 A. She's got some lymph node enlargement
7 and they're not sure why. That's on her CT, her
8 lung CT.

9 Q. But other than that, nothing really
10 earth shattering, I would say. All right. If
11 not, let's move on to page 318 --

12 A. Okay.

13 Q. -- if you will, when ready. And this is
14 February 26, 2013. Let me know when you're ready.
15 Actually, 319 as well, if you will.

16 A. Okay.

17 Q. Okay. One thing that I -- that stood
18 out to me, and I wanted you to clarify, was Dr.
19 Dayrit -- or Dayrit, excuse me -- appears to go
20 into some detail about her home environment and
21 indicated that she denied owning pets, having
22 leaks or fungus, said she lived out in the country
23 but had lots of birds on the property. At this
24 stage, why would it be important to kind of devote
25 a section to the claimant's home environment?

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1 A. Well, I think he's responding to the
2 fact that she's got this really super high IgE
3 level and he's wonder -- he's realizing now I have
4 to respond to why she's got this high IGE level.
5 And he may be realizing, oh, I forgot to go over
6 the pet history; I better include it now. So
7 that's my bet -- best bet. He -- the next
8 paragraph is she's got an IgE of 480 and normal
9 is, I think, less than 25 roughly. So it's a
10 pretty whopping IgE level.

11 Q. Which was going to my second question.
12 I know we touched on it a little bit before. How
13 is this significant in terms of her exposures to
14 other things she may be allergic to versus
15 desensitized to in the workplace?

16 A. Yeah, I would -- one question that you
17 had asked me previously is what do you think about
18 her being allergic to dust mite and something
19 else. Well, that's very relevant to her being
20 allergic to dust mite and whatever else she's
21 allergic to. I'd just like to see the results of
22 that testing. Was it pin prick testing?

23 Q. I'm sorry?

24 A. Was the allergy testing done by pin
25 prick, is that how it was done?

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1 Q. I can't speak to that one way or the
2 other quite honestly.

3 A. Yeah, I'd like to see those test
4 results. And yeah, that's a big IgE test result.

5 Q. And would you say it would -- is it fair
6 to say that someone with that type of result,
7 regardless of where they work, would develop
8 respiratory problems?

9 A. Not necessarily. I mean, sometimes you
10 have a IgE level like that due to urticaria and
11 you don't have any respiratory problems.

12 Q. Well, let me rephrase the question. Can
13 you count that factor out? Does that make sense?

14 A. I don't know if I understand your
15 question.

16 Q. Yeah, that's -- let me see if I can
17 explain myself a little bit better. She
18 obviously, and correct me if I'm wrong because
19 it's not intentional if I use the wrong words.
20 That's your expertise so I'm getting, you know,
21 thrown into this. But it's my understanding that
22 this is an indication that she's allergic to some
23 stuff, correct?

24 A. Her immune system is revved up is what
25 I'd say.

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1 Q. Okay. Fair enough. If her immune
2 system is revved up and she is allergic to other
3 stuff, pollen and dust, what would be or could be
4 the common symptoms of that? For example, we
5 think of, you know, rhinitis and I think of
6 headaches, I think of coughing, and you stop me --
7 I think of the sinus problems and sometimes
8 respiratory problems. Is that fair to say?

9 A. Yeah, those could be some of the
10 symptoms.

11 Q. And in terms of respiratory problems, is
12 it uncommon for that to be to the extent where it
13 is asthmatic or someone becomes asthmatic, that
14 it's triggered by them being -- having this immune
15 deficiency triggered by allergies? I hope I -- I
16 might not have phrased that correctly. I'm hoping
17 you understand anyway what I'm getting to. And I
18 guess the best way I can describe it is give you
19 an example of my own story.

20 A. Right.

21 Q. When I went to law school, I never
22 really had a significant problem with allergies.

23 A. Uh-huh.

24 Q. I go to Chapel Hill and the first week,
25 I could barely breathe. And I go to the doctor

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1 and I'm like, what's going on? And they gave me
2 an inhaler and, you know, I didn't get tested for
3 asthma, per se, I eventually got used to being in
4 that environment, but what I'm saying is if you
5 have a level this high, is it possible that it
6 rises to the point where you -- once you reach
7 that it's very difficult to control it at that
8 point, or maybe it takes more management to
9 control those respiratory problems? Am I far off
10 the -- I'm off the planet?

11 A. Yeah --

12 MR. McDANIEL: Let me just make an
13 objection --

14 MS. MILLER: Object to the form. That's
15 fine.

16 MR. McDANIEL: Just to cover me.

17 A. Yeah. Well, this is a very high IgE
18 level. So -- so her immune system is very active.
19 And so she really isn't having -- throughout these
20 records from Dr. Dayrit, he's not talking much
21 about her nose being runny or other, what I call,
22 upper respiratory symptoms. Upper respiratory
23 symptoms are sinus congestion, eye irritation,
24 itchy eyes, itchy nose, runny nose, nasal
25 congestion, post-nasal drip. He's not talking

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1 about much of those at all. He's just mostly
2 talking about lower respiratory symptoms, which
3 are cough, shortness of breath, chest pain,
4 pleuritic pain, phlegm, wheezing.

5 So one of the questions that Ms. Miller
6 has been asking me is about kind of upper
7 respiratory symptoms, which is what do you think
8 about this IgE level and allergic rhinitis
9 symptoms. Really, she never really talked to me
10 about allergic rhinitis symptoms. She mostly
11 talked to me about cough and lower respiratory
12 symptoms.

13 She did say that sometimes when she was
14 dealing with the drainage product, she got eye and
15 nose irritation, but she didn't have that at home.
16 She's had it when she's dealt with product, and
17 she really didn't have it too much at work. Just
18 kind of with the drain de-cleaners -- drain de-
19 cloggers.

20 Q. Let me ask you this. With the
21 occupational asthma patients that you have here,
22 and you indicated they typically would be work
23 related, do they have IgE levels this high?

24 A. Not very commonly.

25 Q. At this point, would you say that her

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1 condition would be consistent with severe
2 persistent asthma, mild, intermittent, moderate?

3 A. Severe persistent.

4 THE WITNESS: Can we take a break for
5 just a moment?

6 MS. MILLER: Absolutely. We can go off
7 the record.

8 (Off the record)

9 (Defendant's Exhibit Number 5, Clinic Note of Dr.
10 Hammett, was marked for identification).

11 BY MS. MILLER:

12 Q. Let's move on for a minute to Dr.
13 Hammett's records, and I know you've had an
14 opportunity to review those previously. But
15 specifically want you to address what's identified
16 as Defendant Exhibit 5.

17 A. Okay.

18 Q. And it's her medical report from March
19 19th, 2015.

20 A. All right.

21 Q. And it's APA page 268. Because I did
22 want to clarify something. And you let me know
23 when you're ready.

24 A. I'm ready.

25 Q. You indicated that kind of in this time

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1 frame and we're still in what I would consider the
2 fall getting to the spring of 2013. We were at
3 Dr. Dayrit, that was January/February 2013. This
4 is March 2013. Is it still your testimony that
5 she has severe persistent asthma --

6 A. Yes.

7 Q. -- first of all?

8 A. Yes, ma'am.

9 Q. Okay. And is there a presence of
10 wheezing appreciated on the exam?

11 A. Yes.

12 Q. At this point, the phrase that really
13 caught my eye is under the history. It says, She
14 has a history of chronic asthma exacerbation that
15 was determined to be work related and suggested
16 that she remove herself from the job.

17 A. Yes, ma'am.

18 Q. Based on what you've seen in terms of
19 the medical evidence, would you say that this is
20 probably a fair assessment at this time?

21 A. Yes, ma'am.

22 Q. Can you provide an opinion as to whether
23 or not, at this point, she has what one would
24 consider a definitive diagnosis of occupational or
25 work-related asthma?

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1 A. On 3/13 -- 3/19/13?

2 Q. That's correct.

3 A. I do think there is a work-related
4 component to her asthma. You know, you brought up
5 some other things that I think are also related to
6 her asthma, and I would like to see some of these
7 other issues that you brought up be --

8 Q. Such as?

9 A. The dust mites. You said that she's
10 also allergic to pollen?

11 Q. Uh-huh.

12 A. And I'd like to see the results of those
13 tests.

14 Q. So one way or the other, she has asthma,
15 but it's kind of unsure if it's work related or
16 could be something else at this point?

17 A. No, I think there's a work-related
18 component. That doesn't mean that -- you know,
19 with comp, you don't have to be 100 percent
20 attributable to work. You just have to be
21 aggravated by work. I think there's definitely a
22 work aggravation to her asthma and, you know, it's
23 in my history, there's a strong correlation
24 between her symptoms and work. And you've got
25 some asthmagen exposures at work that I've gone

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1 through and illustrated in my -- in my history.

2 Q. Let me tell you what I'm trying to get
3 in this whole spectrum. At some point it has to
4 be a realization that this work, these chemicals
5 is aggravating -- I don't know what the cause is
6 or whatever, but it aggravates or hinders my
7 ability to breathe --

8 A. Right.

9 Q. -- is that fair --

10 A. Yes.

11 Q. -- to say?

12 A. Uh-huh.

13 Q. Is it true that, okay, if I have that
14 and I remove myself earlier on in that tandem, so
15 to speak, that I may get much better or not create
16 any type of permanent impairment to myself at some
17 point? Or once it's there, it's permanent, it's
18 done, it's point of no return, is pretty much what
19 I'm asking.

20 A. I think you've already sensitized
21 yourself and developed asthma. If you're removed,
22 you're not going to return to normal regarding
23 developing asthma.

24 Q. And when we touched on this earlier,
25 there are different components of that: there's

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1 the severe persistent. Is that correct?

2 A. Correct.

3 Q. And can you explain to me the different
4 -- let me ask you to explain the different
5 categories first.

6 A. For asthma?

7 Q. That's correct.

8 A. Well, generally, they're broken down
9 into mild persistent, severe persistent, moderate
10 persistent.

11 Q. And would you say from your review of
12 all of these records, because I know you reviewed
13 even the hospital records, is it your testimony
14 that from day one at the hospital she was already
15 in severe persistent; is that -- is that what your
16 testimony is? Or did she build up to severe
17 persistent?

18 A. I'd say she built up to severe
19 persistent.

20 Q. And at what point did she become severe
21 persistent?

22 A. It's hard for me to say. But I would
23 say at the time that you asked me this question,
24 which is March of '13, I'd say she was in severe
25 persistent.

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1 Q. Okay. Well, let's back up some. What
2 about when she's with Dr. Dayrit, and that was
3 December 2012 through February 2013, that time
4 frame, severe persistent?

5 A. She's severe persistent because she's on
6 daily Prednisone during that interval.

7 Q. So would you say at any point in the
8 medical evidence where she's on daily Prednisone
9 at -- was it 20 milligrams?

10 A. Uh-huh.

11 Q. I'm sorry, is that a yes?

12 A. Yes, ma'am.

13 Q. That would be considered severe
14 persistent?

15 A. Yes, ma'am. Well, that in addition to
16 the fact that she's coughing a lot.

17 Q. And she's still having symptoms?

18 A. Right. And she's having a hard time
19 doing her work during that interval.

20 Q. Okay.

21 A. She was missing a lot of work time
22 during that interval.

23 Q. Let me ask you this as well. If early
24 on when she developed these respiratory problems,
25 and I think it was she went through like

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1 bronchitis or maybe a pneumonia diagnosis, and
2 she's provided with a lower dosage of Prednisone,
3 how important would it be to consistently take
4 that medication once you've been prescribed?

5 A. I think early on when she was given
6 Prednisone she was given it for a brief period of
7 time. So just five to seven days. And usually
8 when you're given Prednisone for a short period of
9 time it's called a burst. And if you want to
10 shorten the interval by a day or two, it's not
11 that important.

12 Q. And then when it's --

13 A. You can taper yourself off for, you
14 know, instead of six days, you take it five days.
15 Not that big a deal.

16 Q. Gotcha. And when it becomes more of a
17 routine, like okay, this is your medication, you
18 need to take it, how important at that point is it
19 for you to take it as prescribed?

20 A. Probably pretty important. If you skip
21 it, you'll probably feel the difference. So
22 usually people don't skip it because they feel bad
23 when they skip it.

24 Q. And if prescribed that medication, and I
25 go back to those chemicals that I've been

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1 desensitized towards, is there any harm in doing
2 that?

3 A. Typically, if the asthmagen that is
4 triggering the bronchoconstriction is
5 reintroduced, typically, it aggravates the
6 problem.

7 Q. Beg your indulgence for one second.

8 All right. Let's move forward to your
9 report of March 24, 2016, if you will. And it's
10 been marked as Defendant's Exhibit 7.

11 (Defendant's Exhibit Number 7, Visit Note 3/24/16
12 Dr. Gordon, was marked for identification.)

13 Q. We touched base on this home catering
14 business earlier, but I want to clarify, you
15 reference that she used a vent at home while she
16 was frying the food, so to speak. Can you give me
17 any indication as to whether or not that this
18 would afford her the same protection as any --
19 from any fumes or smokes that she may have been
20 exposed to from frying there versus in a
21 commercial kitchen?

22 A. Probably less desirable would be my
23 prediction. I predict that the commercial kitchen
24 has probably got better ventilation for frying.
25 But she didn't have a problem with frying at

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1 Piggly Wiggly.

2 Q. Well, the only reason I mentioned that
3 because -- I have to put my finger on it -- at
4 some point on your report you indicate that the
5 oven temperature could possibly serve as a
6 contributing factor to her respiratory problems.
7 Was that at least part of something that was
8 considered by you in reaching your conclusion in
9 this case?

10 A. She said that when they ran the oven at
11 high temperatures, particularly if they were
12 cleaning the oven, it was a bad trigger for
13 coughing fits, if I recall. I didn't put it in
14 the report. There are just little things like
15 that that I remember now that I didn't put in the
16 report.

17 I was just thinking of what the
18 differential could be of things that could trigger
19 her, so that could have been one. Could just be
20 the heat trigger from volatilizing something that
21 was in the neighborhood of the oven that bothered
22 her. I don't -- she never told me that frying at
23 Piggly Wiggly was an issue.

24 Q. I just noted it from the report, so.

25 A. She didn't mention frying bothered her

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1 at Piggly Wiggly.

2 Q. Okay.

3 A. But she didn't mention doing much frying
4 at Piggly Wiggly either. I don't know if she was
5 in charge of frying at Piggly Wiggly.

6 Q. Okay. On your report you list the
7 medications she was currently taking.

8 A. Uh-huh.

9 Q. Just for clarification, do you mind
10 taking some time to kind of go through this list
11 of --

12 A. Sure.

13 Q. -- medications and --

14 A. Yes.

15 Q. -- tell us the purpose for these
16 particular medications.

17 A. Okay. Certainly. Albuterol nebulizer,
18 that's for bronchodilatation, use as needed.
19 Atorvastatin is a cholesterol med. Benazepril,
20 blood pressure med. Nexium is an acid suppression
21 med.

22 Q. Would that be related, the Nexium?

23 A. Yes. There is a concern about
24 gastroesophageal reflux exacerbating her lung
25 disease. So they gave that to her to suppress

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1 acid production.

2 Q. Okay. Thank you.

3 A. Potassium chloride is something you take
4 when you're on a diuretic, which she's not on a
5 diuretic. I don't know why she's on potassium.
6 Prednisone ten milligrams as needed, she's
7 probably on that daily, is my prediction.
8 Singulair is a lung medicine, leukotriene
9 inhibitor that suppresses the lung's immune
10 reaction to irritants, pulmonary irritants.
11 Symbicort is an inhaled steroid and long-acting
12 bronchodilator, one puff -- or two puffs twice a
13 day. That's a high dose. Xolair is an injection
14 that you get two weeks that binds IgE and thereby
15 lowers your IgE circulating level.

16 Q. And just for clarification of these
17 medications, would you say all of them were
18 related to respiratory functioning with the
19 exception of the potassium and cholesterol
20 medication?

21 A. And blood pressure, Benazepril, and
22 potassium -- yes, except those ones that we just
23 mentioned

24 Q. Except for -- make sure I got it -- two,
25 three, and five; did I get that right?

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1 A. Yes. Yes, ma'am.

2 Q. Thank you. Are you able to testify as
3 to whether or not Ms. Sowell may be able to reduce
4 or eliminate any of these medications in the
5 future?

6 A. She may be able to.

7 Q. Any particular one more so than the
8 other?

9 A. Xolair, that'd be the first one you'd
10 want to get her off.

11 Q. Do people typically stay on that for
12 life, or is that something that is kind of a short
13 term?

14 A. The insurance company wants you to come
15 off it as quick as you can.

16 Q. Kind of costly?

17 A. (Nods head.)

18 Q. Is that a yes?

19 A. Yes, ma'am.

20 MR. McDANIEL: That's the Xolair?

21 MS. MILLER: Yes, that's the Xolair, the
22 injections.

23 Q. I want to clarify, I notice on here you
24 noted the father's history of RAD, R-A-D. What
25 exactly is that?

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1 A. Reactive airway disease.

2 Q. Is that the same thing as asthma?

3 A. Yes, ma'am.

4 Q. Okay. I thought so. I just wanted to
5 clarify that.

6 I also noted not this severe -- is there
7 any particular reason why that would be important
8 to note, not this severe there?

9 A. Because she has a severe case, and so I
10 just wrote down that he did not have a severe
11 case, that she told me it was mild. That -- I
12 asked if anyone had a case similar to hers, and
13 she said no. She just said that her dad had a
14 mild case of asthma.

15 Q. If he had a longstanding history of
16 asthma, would that play any type of part in your
17 analysis of significance, I should say?

18 A. What I'd be interested in is whether or
19 not he had a severe case of asthma, or whether or
20 not he had a case of adult-onset asthma.

21 Q. And it'd be difficult to know that by
22 terminology saying -- I guess my question is you
23 wouldn't equate necessarily a long history of
24 asthma to being the same as a severe case of
25 asthma?

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1 A. Your statement is correct.

2 Q. And in terms of sarcoidosis, is that a
3 factor of any significance if she had that in her
4 family history?

5 A. I think it'd be relevant. I asked her
6 if she had lung disease in her family. I don't
7 recall her telling me that. Does she have that?
8 (Defendant's Exhibit Number 9, Office Note of Dr.
9 Vaughn, was marked for identification.)

10 Q. Well, let me direct your attention --
11 it's been marked as Exhibit 9, page 75 of the
12 APA's. Based on this report it appears that her
13 daughter, she reported her daughter as having this
14 condition. Her father has a lengthy history of
15 asthma. She does have a daughter with
16 sarcoidosis.

17 A. Okay.

18 Q. I'm sorry, I guess the question is does
19 that have any bearing on your analysis of the case
20 one way or the other?

21 A. Makes me want to do more sarcoidosis
22 tests on her, but it doesn't change my opinion.

23 Q. Is sarcoidosis, that's something that's
24 work related?

25 A. No, it is not.

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1 Q. And for clarification, and perhaps my
2 understanding, is there any way to reconcile the
3 fact that she hasn't been working for Piggly
4 Wiggly since 2014, but yet her condition is still
5 to the point where she's having to take these
6 medications, and particularly the injections?

7 A. Once you're sensitized with asthma, the
8 asthma doesn't resolve. So the fact that the
9 asthma has not resolved doesn't surprise me. But
10 she relayed to me that she perceived that she was
11 significantly better than winter of 2013, and she
12 was significantly more active, she could get
13 around better than she could in winter of '13.
14 And her Prednisone is lower. She was 20
15 milligrams a day and now she's ten milligrams a
16 day.

17 Q. But at that time she wasn't on the
18 injections; does that play a part as well?

19 A. That does play a part.

20 Q. And do you have any indication when she
21 started taking these injections?

22 A. I think it was sometime in 2013, but I'm
23 not sure.

24 MR. McDANIEL: Sorry?

25 MS. MILLER: He said some -- oh, when

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1 she started the injections.

2 MR. McDANIEL: Okay.

3 BY MS. MILLER:

4 Q. Is it a fair statement to say that if
5 she had removed herself from employment sooner,
6 she may not have gotten to the point where she
7 needed these type of injections and reached this
8 level of being asthmatic?

9 A. I think that's a fair statement.

10 Q. And would that opinion be to a
11 reasonable degree of medical certainty?

12 A. Yes.

13 Q. Okay. I want to talk just a little bit
14 about her restrictions. Would you -- would you
15 consider Ms. Sowell, from what we say in the comp
16 perspective, to be at maximum medical improvement
17 right now?

18 A. Yes.

19 Q. She is. Okay.

20 And in terms of her work restrictions,
21 would you say she has work restrictions?

22 A. Yes.

23 Q. And what would those restrictions be?

24 A. She has restrictions relating to her
25 respiratory status due to windedness, and

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1 basically there -- there are cardiac -- have you
2 seen the cardiac respiratory restrictions?
3 There's a -- there are like a class I, II, III, IV
4 cardiac respiratory restrictions.

5 Q. Okay.

6 A. Oh, gosh. Basically, it'd be sedentary
7 work.

8 Q. Okay.

9 A. But if you want, they're called METS, M-
10 E-T-S.

11 Q. M-E-T-S?

12 A. Yeah.

13 MR. McDANIEL: Uh-huh.

14 A. And you -- it deals with how much energy
15 you can expend in work. So if you want something
16 more specific, you can look into that. But the
17 cardiac folks have come up with a table that lets
18 you look at that. It's in the AMA Guides.

19 Q. But you haven't specifically looked at
20 it for her case, or have you?

21 A. Well, it's -- the AMA Guides has a --
22 something for cardiothoracic work restrictions for
23 windedness. It's mostly for heart failure, but
24 you can use it for lung too.

25 You want me to get a AMA Guides and show

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1 you?

2 Q. Please.

3 A. Okay.

4 Q. That would be helpful for the record.

5 And he can read it into the record.

6 MR. McDANIEL: Good, then I'll take a
7 quick break.

8 (A break was taken.)

9 BY MS. MILLER:

10 Q. I wanted to clarify sedentary work,
11 would that extend to an eight-hour day? Just
12 trying to get some clarification on if she can do
13 any type of work, basically?

14 A. Yeah, I think she could probably do
15 sedentary work for an eight-hour day.

16 Q. Okay. And if she were isolated or
17 completely moved away from any chemicals in Piggly
18 Wiggly, could she possibly return to work for her
19 employer? Safely return to work?

20 A. If she had no irritant exposure and they
21 allowed seated work, no lifting more than ten
22 pounds, use of nebulizer at work, possibly.

23 Q. And this may be outside of the METS, but
24 is it possible to provide any type of impairment
25 rating per se?

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1 MR. McDANIEL: I would object to the
2 question simply because Dr. Early has not been
3 given a sufficient amount of time to do a proper
4 evaluation under the AMA Guides in reference to
5 impairments and all that would apply.

6 MS. MILLER: Fair enough.

7 THE WITNESS: Right, I don't think -- I
8 don't think I can answer that. But I think she
9 would fall within a Class IV impairment on page
10 107 of the AMA Fifth Edition.

11 MR. McDANIEL: Is that in reference to
12 the pulmonary or --

13 THE WITNESS: Pulmonary.

14 MR. McDANIEL: Okay.

15 MS. MILLER: Okay. Dr. Early, I think
16 that concludes my questions, but if you would just
17 allow me one moment to review my notes, please.

18 BY MS. MILLER:

19 Q. General question, is it more common for
20 women to develop adult onset of asthma over men?
21 Just curious.

22 A. I'm not aware of that.

23 Q. Okay. And one clarification, going back
24 to a definitive diagnosis. What tests would you
25 say or factors need to be in place in order for

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1 that to happen? Is there a certain list that you
2 can identify?

3 A. Well, I think the most helpful thing now
4 would be to run down those peak flow meter results
5 from 2012, I think it was. I think that would be
6 helpful.

7 Q. Okay.

8 A. I think it would be helpful for me to
9 see the allergy testing and -- what year was the
10 allergy testing done?

11 Q. I'm not going to be able to say honestly.

12 A. Okay. And I think those are the two
13 most helpful variables that could be done now.

14 Q. Well, for clarification it was March
15 18th, I believe it was -- 19th, 2013, you would
16 say that it was a definitely a work component to
17 her condition?

18 A. A work aggravation.

19 Q. Okay. Thank you.

20 MS. MILLER: Please answer any questions
21 Mr. McDaniel may have.

22 EXAMINATION

23 BY MR. MCDANIEL:

24 Q. Dr. Early, I will try not to be too
25 long. Just want to clarify some things. We

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1 originally asked you to do a records review as
2 being board certified in occupational medicine and
3 toxicology; is that not correct?

4 A. Correct.

5 Q. And at the time that you did that
6 evaluation, we've talked about records from Dr.
7 Hammett, but at that time, you requested and we
8 provided you with a copy of Ms. Genette Sowell's
9 complete deposition; is that correct?

10 A. In December of 2015?

11 Q. Yes. Uh-huh.

12 A. Yes, that is correct.

13 Q. And at that time, we provided you with a
14 complete set of the records from her family
15 doctor, Dr. Hammett, that we had at that time; is
16 that --

17 A. That is correct, yes.

18 Q. And at that time, we provided you with a
19 complete set of records from Chesterfield General
20 Hospital for the two visits on June the 3rd, 2011,
21 and June the 11th, 2011, correct?

22 A. Correct.

23 Q. All right. And, in addition, we
24 provided you with a copy of Dr. De Dios', the
25 pulmonologist, records at that time?

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1 A. Correct.

2 Q. And we also provided you with all the
3 records that we had from the allergy and asthma
4 doctor that she saw, and that's Dr. -- let me find
5 it -- I'm confusing all of my --

6 MS. MILLER: Dyce.

7 Q. Dr. Dyce, Dr. Orville Dyce.

8 A. I don't have that down here. Did you
9 provide that to me?

10 Q. I think we did. But, in other words,
11 you definitely had the records from Chesterfield
12 General, you definitely had all the records we've
13 referred to throughout this from Dr. Hammett, and
14 you had all the records from Dr. De Dios?

15 A. Correct, correct, correct and a
16 deposition.

17 Q. In reference to -- of course, you
18 reviewed the deposition at this time. Now you've
19 been asked a lot of questions in reference to that
20 deposition and those medical records, you reviewed
21 those at that time; is that correct?

22 A. Correct.

23 Q. All right. Now, we're now asking you in
24 May, approximately seven months after that, so
25 you're -- at specific times, your reference point

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1 is a seven-month old memory; is that correct?

2 A. Correct.

3 Q. All right. I just want to -- the reason
4 I ask you that is that, looking back at your
5 report at that time, correct me if I'm wrong, but
6 based on the history that you recorded, based on
7 your review of records at that time, you recorded
8 that some period of time prior to the first
9 admission into the hospital in June of 2011, at
10 the Piggly Wiggly where she had worked for over
11 ten to 12 years, they developed a problem with the
12 sewage -- or the waste water system and the sewage
13 drains backing up in the deli department
14 specifically. I believe it was five out of six
15 drains were backing up and they were even at
16 points in time getting ankle deep in water. Do
17 you remember -- does that refresh your
18 recollection as to the history?

19 MS. MILLER: And I'll object to form.

20 A. I remember that element, yes.

21 Q. Okay. And I believe it's recorded in
22 your report, am I not correct, that you -- there
23 was a period of time prior to her onset of the
24 problems that there was a significant increase in
25 the amount of waste water and that she was exposed

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1 to?

2 A. Correct.

3 Q. And I believe you've already testified
4 that that was in reference to that they thought it
5 was some kind of a problem with the sewer pipes
6 going under, or the drainage pipes going under the
7 refrigerator system?

8 A. Correct.

9 Q. Now, then after that there's been
10 questions about, and you referencing as to when
11 she went out of work. I would submit to you,
12 Doctor, and I'll quote to you from the records,
13 look at Dr. De Dios' records that I believe you've
14 been provided. I'm going to reference my copy.

15 MS. MILLER: What page of the APA's and
16 I can --

17 MR. McDANIEL: Let's see.

18 MS. MILLER: It's not on the bottom of
19 your copy?

20 MR. McDANIEL: No. Well, let's see, the
21 one you gave me it is.

22 MS. MILLER: Oh, I didn't give you Dr.
23 De Dios, though.

24 MR. McDANIEL: Okay.

25 BY MR. McDANIEL:

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1 Q. Doctor, let me just say this, we've
2 talked a lot about 2013 and we've talked a lot of
3 about 2012 and Dr. Dayrit, and I believe you
4 testified that you had not reviewed Dr. Dayrit's
5 reports before today, to the best of your
6 recollection?

7 A. That is correct.

8 Q. Did you know that I had sent you those
9 recently? That's all right, in other words, you
10 have not reviewed them before today?

11 A. No.

12 Q. Let me just -- I know I'm bouncing
13 around a little bit, but let me say this. First
14 off, she was taken out of work by Dr. Hammett on
15 January 14, 2014.

16 MS. MILLER: Object to form.

17 MR. McDANIEL: Well --

18 MS. MILLER: Are you asking a question
19 or --

20 Q. Well, I'm going to ask you to assume
21 that as a fact based on the records that have been
22 provided. I'm going to show you a record from Dr.
23 De Dios, which is from February 14th of 2014. He
24 first saw her in January, and then this is the
25 record, and let me see if I can -- so we can all

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1 be on the same page, let me see if I can find my
2 copy of Dr. De Dios' records.

3 MR. McDANIEL: Which exhibit is that?

4 MS. MILLER: I'm looking for you. You
5 do yours backwards so it's harder for me to -- I
6 know some commissioners prefer that. February
7 14th, 2014?

8 MR. McDANIEL: Yeah. There's -- well,
9 let me do it that way. Let me go to mine. Did
10 you not make those an exhibit?

11 MS. MILLER: I did not.

12 MR. McDANIEL: Okay. Then I --

13 MS. MILLER: But I mean, if you give me
14 a moment, I can find it. His records are hard to
15 read because the dates start sometimes in the
16 middle of the report.

17 MR. McDANIEL: Yeah, so --

18 MS. MILLER: So it's hard to identify
19 it.

20 MR. McDANIEL: Those new documents.

21 MS. MILLER: Yeah. I see February 4th.
22 Are you sure it's February 14th?

23 MR. McDANIEL: Here it is. It is
24 February 4, and it's page 158.

25 BY MR. McDANIEL:

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1 Q. Doctor, I'm going to ask you to look at
2 this and it's actually --

3 A. Uh-huh.

4 Q. -- if you'll look at the top of the
5 page, it says 15 of 18.

6 A. Yes.

7 Q. I want you to flip back to page 18 of
8 18; it's back this way.

9 A. Got it.

10 Q. All right. Now, under asthma -- under
11 assessment and plan down at the bottom of the
12 page, it says, plan is for patient to be on
13 medical leave until April then resume work then.

14 A. Uh-huh.

15 Q. All right. And then below that it says,
16 "Patient has significantly improved since being
17 off work. Her asthma has been better. Clearly
18 her work environment was making her worse." Do
19 you see that right below under asthma, right above
20 asthma in adults, 493-3090 under that -- above
21 that --

22 A. Yeah, I got it.

23 Q. So at that point in February, she was
24 out of work?

25 A. February 14th, right?

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1 Q. Correct.

2 A. Uh-huh.

3 Q. And then so she was not out of work in
4 2013. I just, what I wanted to make sure of is
5 that we were -- we were just going back and asking
6 you dates and whether or not she was out of work
7 and that type of thing. So she was working up
8 until shortly before February 4th of 2014?

9 A. Got it. Thank you.

10 Q. Now, let's look at -- and now I'm going
11 to -- I'm going to back up a little bit. And you
12 reviewed Dr. De Dios' notes whenever you entered
13 your first records review report at that time?

14 A. Correct.

15 Q. And you reviewed Dr. Hammett's and you
16 reviewed those in June. Now, I want to look at on
17 page -- if you'll go back to page 15.

18 A. Of who, De Dios?

19 Q. That same -- that same -- that same
20 report, yes, page 15. Actually it's on page --
21 actually, go to page 17.

22 A. This is De Dios, right?

23 Q. Correct.

24 A. Okay. I'm here.

25 Q. And I want you to look under social

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1 history.

2 A. Yes.

3 Q. And he records there exposed to smoke at
4 work. Okay, has lived in present home for 25
5 years plus. Dogs negative, birds negative, molds
6 negative, is that -- do you see that?

7 A. Yes.

8 Q. All right. Now, you reviewed as part of
9 this also the original records in June of 2011 at
10 the hospital?

11 A. Can I clarify something? It says dogs
12 positive.

13 Q. Okay. I'm sorry, yes, dogs positive.

14 All right. Now, we talked about the
15 other records. Back in June of 2011, I believe
16 she recorded as past history at that time no
17 problems with allergies, no problems with asthma
18 prior to that. Have you been shown any evidence
19 of any trouble with allergies or asthma prior to
20 June of 2011, today or before, to your
21 recollection and knowledge?

22 A. No.

23 Q. Okay. Now, and I believe you refer to
24 that fact in your report?

25 A. Correct.

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1 Q. You also refer to the reports that
2 doctors commonly look at in reference to asthma
3 and the causation of that, and you referred to
4 whether or not there was any construction, whether
5 or not there was any mold, whether or not there
6 was any problems with cats or dogs, particularly
7 cats, I believe you referenced that in your
8 report?

9 A. Correct.

10 Q. And it's all -- that's all negative?

11 A. Yes.

12 Q. All right. Now, I want to show you --
13 and of course I'm not going to take the time to go
14 over your report, but I want you to look at Dr.
15 Dayrit's report of December 19th, 2012.

16 A. Okay.

17 Q. All right. And that should be Exhibit
18 Number 4.

19 A. Got it.

20 Q. First page, these are little bullets,
21 looking at the -- and of course we reported that,
22 okay, in other words, that she has no pets, third
23 paragraph down.

24 MS. MILLER: You're on page 304?

25 MR. McDANIEL: 304, uh-huh, very first

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1 page.

2 Q. All right. You see that. Go down to
3 bullet point number three, four, five, six, seven,
4 eight, okay? It starts off with, "She denies
5 having any significant exposure." You see that on
6 that page?

7 A. Yes, sir.

8 Q. All right. Now, I want you to look at
9 that and look at that paragraph where he says,
10 "She denies having any significant exposure to
11 smoke or animal at home. At work it is a
12 different story. She gets exposed to cleaning
13 chemicals, even though she uses a mask if she gets
14 exposed to the fumes of the floor wax or other
15 cleaners that are used. She appears to be using a
16 substandard mask at that time and has one elastic
17 attached to it." In reference to the description
18 of, you particularly honed in on all the cleaning
19 products she was using at work; is that correct?

20 A. Yes.

21 Q. Does that seem to be a concern of Dr.
22 Dayrit?

23 A. It does, yes.

24 Q. All right. And then on page -- his
25 initial assessment, if we go over to page 306,

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1 under counseling, it says, "The differential as to
2 whether she is hypersensitivity pneumonitis or
3 occupational asthma." He specifically mentions
4 occupational asthma as one of his two potential
5 diagnosis; is that correct?

6 A. Correct.

7 Q. All right. Look in the next paragraph,
8 "It appears that Ms. Sowell has a sensitivity to
9 some chemicals that she is exposed to at work. It
10 is not clear which one, but there appears to be a
11 temporal relationship with her symptoms. What is
12 bothersome is that she continues to have
13 significant wheezing despite being on systemic
14 steroids."

15 Now, my point is that I want to ask you
16 this. Is that not consistent with the history and
17 your findings and conclusions reached in your
18 report?

19 A. It is.

20 Q. All right. Now, again, and I want to
21 make a point of this because counsel asked you
22 this question in reference to Dr. Hammett. Look
23 in that same paragraph, "She may have to try to
24 get away from work for at least two weeks to get
25 herself better. She was also advised to get a

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1 respirator mask to use at work. If she still
2 continues to have issues with wheezing, then she
3 may have no -- any choice but to change jobs." Do
4 you see any specific notation there that she had
5 to quit her job at that point?

6 A. No. I see no specific notation that she
7 had to quit her job.

8 Q. Or that she was told that she had --
9 that she was going to have to leave her job, or
10 that she was told that if she continued to work
11 that, you know, this was going to continue to get
12 worse? Is there anything in there in that regard?

13 A. No.

14 Q. Okay. Now, in going through the report,
15 and I'm going to show you this report -- if I can
16 find it. Under Exhibit 5, if you'll look at the
17 -- I'm going to show you --

18 MS. MILLER: He should have it.

19 Q. Counsel highlighted that report for you,
20 and it's actually underlined in the copy that was
21 submitted into evidence.

22 A. I got it.

23 Q. "And she has a history of chronic asthma
24 exacerbation that was determined to be work
25 related and was suggested that she remove herself

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1 from the job, which she has not done yet." All
2 right. Does that appear to be a reference to Dr.
3 Dayrit's recommendation?

4 A. I don't think you can say where it came
5 from, but evidently somebody suggested it. But,
6 you know, if it's comp, you don't remove yourself;
7 you deal with it in the comp arena.

8 Q. Uh-huh.

9 A. So with comp, you don't quit; you just
10 tell your employer to accommodate it.

11 Q. Exactly. And the reason I wanted to ask
12 you that is because there's no specific reference
13 here again -- and Dr. Early, if you would, look
14 back at Exhibit 4 just briefly.

15 MS. MILLER: He has it.

16 Q. Okay. I'm just going to show you that.
17 That's actually a letter to who? From Dr. Dayrit
18 on Exhibit 4 --

19 A. To the --

20 Q. -- December 19th is to who?

21 A. PCP.

22 Q. In other words, to Dr. Hammett?

23 A. Yes.

24 Q. And then later on we have Dr. Hammett's
25 suggestion in March that it has been suggested

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1 that she remove herself from the job?

2 A. Uh-huh.

3 Q. So looking at those two reports, one in
4 December and his initial assessment and that she
5 might consider remove herself two weeks from the
6 job to see how she did, does that appear to be
7 where Dr. Hammett is referencing on that March
8 19th report?

9 A. Most likely.

10 Q. All right. Now, I'm not going to
11 trouble your time, but the first time I see a
12 mention of Xolair and wanting to put her on Xolair
13 is in Dr. Dayrit's reports in the end of March.
14 He had not put her on there, then it's after that
15 that Dr. Hammett -- I see no reference to Xolair
16 before that time.

17 MS. MILLER: Is that a question?

18 MR. McDANIEL: Well --

19 MS. MILLER: Object to form.

20 MR. McDANIEL: Do you -- well --

21 MS. MILLER: I think the records speak
22 for themselves on that.

23 MR. McDANIEL: Okay. All right.

24 BY MR. McDANIEL:

25 Q. Then let me ask you this. You've

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1 referred to various levels of asthmatic response,
2 and I believe you said that, based on your review
3 of that, as of March 13, 2013, he was diagnosing
4 her with severe persistent asthma?

5 A. Yes.

6 Q. Okay. So we have this, for a better
7 term, massive exposures are repeated high level
8 exposures to the mold and chemicals, abnormal
9 exposure almost, in the spring of 2011. She then
10 works from 2011 doing her same job, and works in
11 2012, and then in March of 2013, her asthma has
12 become severe persistent; is that -- by the time
13 that she is first told specifically that there is
14 -- that the job may be exacerbating her condition.
15 Is that a fair statement of the history we
16 reviewed today?

17 A. That's one way to interpret it. Give it
18 to me again.

19 Q. Well, in other words, we know that we
20 had these exposures, and she first went to the
21 hospital in June. We know that by history they
22 were having this problem in the deli where the
23 drains were backing up, which is something that
24 had recently started before that. And then we
25 know that -- and you haven't reviewed the records

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1 back then from Dr. Hammett, but there was an ever
2 increasing level of care and treatment needed to
3 control her first diagnosed chronic bronchitis and
4 then after that, it resulted in a diagnosis of
5 asthma.

6 A. Correct. And she was coughing more and
7 more and became Prednisone dependent and over the
8 time period of a year and a half, she became
9 Prednisone dependent.

10 Q. Correct. And so by 2013, she was at the
11 highest level of asthma at that time, she was
12 severe persistent?

13 A. Correct.

14 Q. At that point -- tell me this. At that
15 point in time and after that, is -- how sensitized
16 is a person in reference to severe persistent
17 asthma?

18 A. Usually you're pretty sensitized. Does
19 it -- the amount of immunologic trigger is less
20 for someone who is severe than it is for someone
21 who is moderate or mild.

22 Q. And even less for somebody that doesn't
23 have asthma?

24 A. Correct.

25 Q. So that if she in her testimony in her

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1 deposition recorded that when she would enter the
2 building and they were cleaning with the
3 chemicals, you know, cleaning the floors, that it
4 would almost take her breath away by that time?

5 Would that be the type of reaction she would have?

6 A. Right. But -- yeah, that certainly is,
7 and that -- that brings up a point that -- that
8 it's not always -- the point I made was your
9 immunologic trigger for severe -- severe asthma --
10 we talked about a immunologic trigger, walking
11 into the Piggy Wiggly and they're cleaning the
12 floors or they're waxing the floors, that isn't
13 necessarily the immunologic trigger, but that is
14 just an irritant, or walking into a bar and
15 there's smoke in the bar could be not an
16 immunologic trigger but an irritant trigger of
17 smoke can take your breath away.

18 Q. Okay.

19 A. So it's not necessarily that you're
20 allergic to them waxing the floor, but that is a
21 irritant trigger.

22 Q. Okay.

23 A. Or you're allergic to smoke in the bar,
24 but something will trigger you and take your
25 breath away.

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1 Q. You're hypersensitized, in other words?

2 A. Exactly.

3 Q. Okay. And what would it tell you about
4 her condition if she were to walk into a room and
5 they're using these timed air fresheners in the
6 building and she immediately begins to develop
7 respiratory problems and has to leave the
8 building?

9 A. So they --

10 Q. How sensitized is she?

11 A. -- emit a mist and the mist were to puff
12 out?

13 Q. Well, in other words, you walk into one
14 of these buildings that has this type of time --
15 and you walk in there and you immediately smell
16 air freshener?

17 A. She's pretty sensitive, yeah --

18 Q. Okay.

19 A. -- if she was having a rough time.

20 Q. If she's -- well, first off -- well, in
21 reference to that, before I ask you this question,
22 and I'm going to ask you a question about how
23 sensitized she is as far as her ability to go to
24 work, you would refer to her treating physicians
25 that see her day in and day out as to whether or

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1 not she's disabled from gainful employment; would
2 that be fair?

3 A. I would defer to them, yes. Uh-huh.

4 Q. Now, if she's that sensitized, and we
5 refer to that she could possibly go back to
6 sedentary work, I believe there's also a further
7 classification in that, and, that is, it would
8 have to be in a clean air environment?

9 A. Correct.

10 Q. All right. If she is so sensitized that
11 if she walks into a room, she immediately develops
12 respiratory problems where they've got these air
13 freshener in the air or -- would she need to be in
14 an absolutely clean air environment, in your
15 opinion?

16 A. I wouldn't say that. Her home is not a
17 clean air environment.

18 Q. Okay. You talked about all the -- we
19 talked about the cleaners involved, and we talked
20 about the -- there was one that I'm just not sure,
21 and I want to ask you as a toxicologist. I know
22 Drano and I know bleach and I know Mr. Muscle and
23 I know Pine-Sol, okay. But there's also a
24 cleanant that is used in meat departments because
25 it breaks down meat tissue, and I don't if this is

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1 it or not, but you referred to -- one of the ones
2 you referred to is Spit Fly.

3 A. Uh-huh.

4 Q. Do you know if that's -- it's one of
5 those commercial cleaners? I don't know the
6 answer to that. I'm just asking you as a
7 toxicologist if you may know. I know you don't
8 make reference to it.

9 A. I didn't find Spit Fly -- I didn't find
10 much about Spit Fly as an asthmagen.

11 Q. Okay.

12 A. You want me to look it up now?

13 Q. No, that's fine. I was just wondering
14 if that was -- I'm not -- as I said, I'm not
15 familiar. The others are household cleaners that,
16 you know, I'd submit to you she makes sure there
17 are none of those around her house.

18 Also, the -- you were asked about your
19 experience in reference to what was in those --
20 what she was exposed to, and you reference that
21 mold is another allergen and, you know, we've got
22 -- this is a deli where there are all kinds of
23 uncooked fish, meat, poultry, and seafood products
24 and there's all kinds of cooked products and
25 there's all kinds of vegetable products, lettuce,

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1 tomatoes, that kind of thing that go into the
2 preparation of items.

3 So what kind of types of molds and that
4 kind of thing would you expect to be in that waste
5 water from that?

6 MS. MILLER: Object to form.

7 A. I think the waste water would be a
8 cornucopia for molds, and I think that it --
9 although my -- my theory was labeled speculative,
10 I think it's far from speculative. I think waste
11 water is well known to be infested with bacteria
12 and molds. And I think that if you plug up a
13 drain, it's going to be filled with bacteria and
14 molds and viruses.

15 Q. Okay.

16 A. I think that's common sense.

17 Q. Okay.

18 A. You can test it out at home.

19 Q. The only thing -- do you know whether or
20 not by 2013 she was doing any of the frying in her
21 home business and how much of the business she was
22 doing at that time in her catering business?

23 A. No. But she did say that, as the
24 symptoms got worse, she laid off the frying. And
25 I asked her about it; I just don't know how much.

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1 Q. All right.

2 A. And she has this outbuilding, and the
3 outbuilding is -- it's like an external garage,
4 but I can't tell you exactly what it is, that she
5 converted to her cooking building and she put in a
6 hood, you know, for frying stuff out there. But
7 maybe she built it as the own external building.
8 I don't know. She had this business going for a
9 long time. She might have built her own external
10 one.

11 Q. And my --

12 A. She just laid off the frying because she
13 coughed so much.

14 Q. And that would be also like an irritant
15 reaction like you were talking about before?

16 A. Uh-huh.

17 Q. Now, and so -- and she told y'all about
18 this, and you took all that in consideration, and
19 your opinions remain the same today as you
20 expressed in your report of December and in May;
21 is that correct?

22 A. Well, I'm going to change my opinion a
23 little bit. You know, I'm going to lay off on the
24 -- I'm going to still say that this is a case of
25 occupational asthma. I believe that it is a case

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GORDON EARLY, M.D. 5/18/2016

1 of occupational asthma. But there is some other
2 strong issues that are contributory here that have
3 been brought up. There is an IgE of 480. There
4 is a positive allergy testing for dust mite and
5 some other pollens that I think are contributory
6 to her -- her asthma. But I think there's
7 definitely a work-related component that is
8 contributory to her asthma. But we --

9 Q. That it -- okay.

10 A. -- have some other things that are
11 contributory to her asthma also.

12 Q. Let's talk about that. The first thing
13 we have in reference to any kind of a 480 on the
14 IgE is in 2000- -- right at 2013 -- well, it's
15 actually in 2013, okay, how does that play into --
16 in other words, if you develop occupational asthma
17 or hypersensitivity, how does that affect your
18 reference to your immune system and its effect on
19 that?

20 A. Rephrase that question.

21 Q. Well, in other words, you know, I'm
22 trying to figure out if, you know, once you've
23 developed asthma --

24 A. Yes, sir.

25 Q. -- you know, okay, does that have any

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GORDON EARLY, M.D. 5/18/2016

1 other effect on your sensitivity to allergens?

2 A. Well, I'm not sure about the answer to
3 that question. Her immune system certainly has
4 been triggered. Her immune system has certainly
5 been stimulated, and we are not sure about what
6 has been the primary issue to cause this IgE to
7 become so elevated.

8 I do think that the primary issue
9 causing the asthma to develop, according to her
10 history, is the -- is the work-related exposure
11 according to her history. But I can't tell you
12 the primary issue that caused her IgE to be so
13 elevated.

14 Q. Okay. I understand. So your opinion
15 then as previously expressed remains the same in
16 reference to the occupational asthma?

17 A. Yes, sir.

18 Q. All right.

19 MR. McDANIEL: Thank you, Doctor. I
20 have no further questions.

21 MS. MILLER: I just have one
22 clarification question.

23 REEXAMINATION

24 BY MS. MILLER:

25 Q. Can you state to a reasonable degree of

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1 medical certainty that her immunologic trigger was
2 exposure at work?

3 A. Immunologic trigger for her asthma. Her
4 immunologic trigger for her IgE elevation?

5 Q. IgE elevation first.

6 A. No, I cannot.

7 Q. And for her asthma?

8 A. Yes, I can.

9 Q. Okay.

10 MR. McDANIEL: Nothing further.

11 MS. MILLER: Thank you, Doctor.

12 (The deposition was concluded at
13 approximately 2:58 p.m.)

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GORDON EARLY, M.D. 5/18/2016

1 CERTIFICATE OF REPORTER

2 I, Andrea R. Taylor, Court Reporter and
3 Notary Public for the State of South Carolina at
4 Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and the time and location
7 stated on Page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that
10 the testimony of the deponent and all objections
11 made at the time of the examination were recorded
12 by me and were thereafter transcribed; that the
13 foregoing deposition as typed is a true, accurate,
14 and complete record of the testimony of the
15 deponent and of all objections made at the time of
16 the examination to the best of my ability.

17 I further certify that I am neither
18 related to nor counsel for any party to the cause
19 pending or interested in the events thereof.

20 Witness my hand, I have hereunto affixed
21 my official seal this 20th day of May, 2016, at
22 Lexington County, South Carolina.

23

24

25

26 Andrea R. Taylor, Court Reporter
27 Notary Public
28 State of South Carolina at Large
29 My Commission expires:
30 February 18, 2024

31

32

33

1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation Commission
4 WCC File No.: 1408826
5
6 Genette Sowell,)
7 Employee,)
8 Claimant,)
9 vs.) Deposition of
10 Piggly Wiggly,) LUZ YOLANDA MENDEZ, MD
11 Employer,) May 27, 2016
12 and)
13 Owners Insurance)
14 Company,)
15 Carrier,)
16 Defendants.)

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APPEARANCES:

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REPORTER'S NOTE: No exhibits were marked for
identification.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 This deposition is taken in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 It is agreed and stipulated by the
5 deponent and respective counsel that the reading
6 and signing of the deposition transcript by the
7 deponent is expressly waived.

8 WHEREUPON:

9 LUZ YOLANDA MENDEZ, MD, being duly
10 sworn and cautioned to speak the truth, the whole
11 truth and nothing but the truth, testified as
12 follows:

13 EXAMINATION

14 BY MS. MILLER:

15 Q. Hi, Dr. Mendez. We met off record
16 but, again, for the record my name is
17 Kenya Miller, and I represent the insurance
18 carrier and employer with regards to a workers'
19 compensation claim involving Ms. Genette Sowell,
20 who I understand is a current patient of yours.

21 A. That's correct.

22 Q. Okay. Well, because she has a case
23 currently pending before the South Carolina
24 Workers' Compensation Commission, it's my
25 understanding that you have rendered at least one

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1 opinion in this case. I wanted to take your
2 deposition today just to kind of clarify your
3 opinion on this matter. It's not my intent to
4 hold you long today, and I'm sure you've been
5 deposed before, so I won't have to go through the
6 whole long spiel on how this works.

7 A. Sure.

8 Q. The only thing I'll remind you of is
9 to try to wait until the question is asked before
10 you respond just so the court reporter can get a
11 clear, clean record.

12 And secondly, I want to start by
13 asking you about your background, educational
14 background and training, if that's okay.

15 A. That's fine.

16 Q. Okay. First of all, state your name
17 for the record.

18 A. My name is Luz Yolanda Mendez.

19 Q. Okay. And that's Yolanda?

20 A. Uh-huh.

21 Q. Okay. Mendez. And where are you
22 employed?

23 A. Carolina Pines with The Medical
24 Group.

25 Q. Okay. In what capacity?

LUZ YOLANDA MENDEZ, MD 5-27-16

1 A. I am a family physician.
2 Q. Okay. And how long have you been
3 here?
4 A. Short of three years now.
5 Q. Okay. And how long have you been
6 practicing medicine?
7 A. About six years now.
8 Q. All right. And what type of
9 medicine?
10 A. Family practice.
11 Q. Okay. And I know it is pretty
12 self-explanatory, but just for the record clarify
13 what you do in terms of a family practitioner.
14 A. Pretty much see everyone from babies
15 to the elderly, take care of their primary care
16 stuff, basic everyday stuff.
17 Q. From the common cold to --
18 A. From the common cold to --
19 Q. -- hypertension, things of that
20 nature?
21 A. That's right.
22 Q. Okay. Can you give me a synopsis of
23 your educational training.
24 A. Sure. I went to undergrad in New
25 York City --

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1 Q. Okay.

2 A. -- at New York College Medical
3 School. First year and a half were at the
4 American University of Antigua. Clinical training
5 was in New York City at many different hospitals,
6 Wyckoff, Staten Island, Jamaica Hospital in
7 Queens. My residency was in Anderson, South
8 Carolina, at AnMed Health. And that's about it.

9 Q. Okay. And are you board certified
10 yet?

11 A. Yes.

12 Q. Okay. What year did you get your
13 certification?

14 A. 2013.

15 Q. All right. And do you treat patients
16 with pulmonary problems?

17 A. I do.

18 Q. Okay. What percentage of your
19 patients would you say suffer from asthma?

20 A. I want to say probably around 20
21 percent.

22 Q. All right. And of those 20 percent,
23 do you know what percentage of those who developed
24 it as an adult?

25 A. Very few of them did.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 Q. Okay.

2 A. So this has been an ongoing thing
3 since childhood --

4 Q. Okay.

5 A. -- for most of them.

6 Q. Now, you're -- are -- and I don't
7 know if you know off the top of your head how long
8 Ms. Sowell has been a patient for Carolinas
9 Medical Group, and if you don't, that's okay. We
10 have the records.

11 A. I know that she became a patient of
12 mine in March of 2015.

13 Q. Okay.

14 A. Around that March or April, and she
15 has been seeing Dr. deDios, who is in this -- in
16 The Medical Group also --

17 Q. Okay.

18 A. -- in the pulmonology division for --
19 since March of 2013.

20 Q. Okay.

21 A. March or April.

22 Q. And I guess that's something I
23 didn't -- I wasn't really aware of. Dr. -- say
24 his name for me.

25 A. deDios.

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1 Q. deDios. So he's affiliated with your
2 same practice?

3 A. It's -- so The Medical Group is a
4 multi-specialty group.

5 Q. Okay.

6 A. And we have different suites, like
7 family practice and then pulmonology, but we're
8 employed by the same --

9 Q. You're all under the same umbrella --

10 A. Yes.

11 Q. -- as The Medical Group.

12 A. Yes.

13 Q. Got you. I didn't think I really
14 appreciated that, so thank you for clarifying
15 because your records say Carolina Group, his
16 record says like Hartsville --

17 A. Hartsville Pulmonology.

18 Q. Okay.

19 A. Yes, that's what it is.

20 Q. Yeah.

21 A. But we're all employed by --

22 Q. The Medical Group.

23 A. Yeah. Pretty much the same employer.

24 Q. Thank you.

25 MR. MCDANIEL: Okay. Is that a --

LUZ YOLANDA MENDEZ, MD 5-27-16

1 run by the hospital?

2 THE WITNESS: Yes, sir.

3 MR. MCDANIEL: Okay.

4 MS. MILLER: Thank you.

5 BY MS. MILLER:

6 Q. It is my understanding that she
7 previously treated with Dr. Hammett, who was in
8 your office previously. Correct?

9 A. He was -- I do not know of
10 Dr. Hammett.

11 Q. Oh, okay. I got you. I got you.
12 What type of problems have you been
13 treating her for?

14 A. Basically, well, following up with
15 her asthma. I know she sees Dr. deDios, but she
16 follows up with me --

17 Q. Okay.

18 A. -- occasionally also for that.

19 Q. So you serve like as her primary care
20 physician?

21 A. Yes, ma'am.

22 Q. That's what I'm pretty much asking.

23 A. Uh-huh.

24 Q. Okay. And Dr. -- it's my
25 understanding Dr. Hammett was her former primary

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1 care physician.

2 A. That is correct.

3 Q. Okay. And now you're filling in for
4 Dr. Hammett now?

5 A. Correct.

6 Q. Okay.

7 A. Uh-huh.

8 Q. I'm sorry. And I interrupted you.
9 You were telling us exactly the type of problems
10 that she sees you for specifically.

11 A. So like I said, her asthma,
12 hypertension, just everything, primary care stuff.

13 Q. Okay. When she first came to you,
14 what was your understanding as to her medical
15 history?

16 A. Okay. So when she first came to me
17 her asthma was still kind of flaring up. She was
18 still trying to get it all under control. By the
19 time that she came to me, she had already been
20 taking time from work and probably already been
21 out of work, and her symptoms weren't -- seemed to
22 improve, so that's -- it was that transition where
23 they -- they realized it was more the chemicals
24 that she was being exposed to, so that's where we
25 started seeing her.

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1 Q. And that would be -- are you
2 referring to March 2015?

3 A. Correct.

4 Q. Okay.

5 A. March, April. I don't remember
6 exactly, but that's when it first happened.

7 Q. Okay. And do you know what
8 medications she was on when she first came to see
9 you?

10 A. I don't recall exactly, but I know
11 that she was on -- she was on steroids like for --

12 Q. Prednisone specifically?

13 A. Yes. Yes. And Albuterol. And I
14 know that at that point when we were trying to
15 wean her off the Prednisone but she kept flaring
16 up, it was not working.

17 Q. Is she still on Prednisone?

18 A. At the moment, huh-un, not as far as
19 I'm concerned, unless Dr. deDios has her own
20 something.

21 Q. Okay. So you're not the one
22 prescribing her any of the medication for her
23 asthma or allergies?

24 A. No. Dr. deDios does the --

25 Q. Okay.

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1 A. He prescribes that for her. He
2 manages it for her. And if I have to refill it,
3 then I will, but he does --

4 Q. You might do refills, but you're not
5 directing which --

6 A. No --

7 Q. -- medications --

8 A. -- ma'am.

9 Q. -- she needs?

10 A. No, ma'am.

11 Q. Okay. Have you noted any adjustments
12 in her medication while you've been treating her?
13 Have they been stronger, less, or anything of that
14 nature?

15 A. They have gotten less.

16 Q. Okay.

17 A. Like I know that she was weaned --
18 the last time I saw her she was being weaned off
19 the Prednisone. She was started on another
20 medication call Xolair and her symptoms were
21 improving, like much improved.

22 Q. Now, Xolair, is that something that's
23 stronger than Prednisone or --

24 A. It's a different kind --

25 Q. -- just different?

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 A. Different class of drug.

2 Q. Okay. So it wasn't a situation where
3 she could be taken off of Prednisone and not
4 replaced with -- having that medication being
5 replaced with something else?

6 A. No, ma'am.

7 Q. It's just it kind of -- they gave her
8 another medication --

9 A. Correct.

10 Q. -- instead of Prednisone. All right.
11 How many times have you seen her?

12 A. I don't recall exactly how many
13 times, but I know that --

14 Q. Let me --

15 A. -- I probably see her like
16 frequency-wise probably every three months now.
17 Before it was a lot more frequently.

18 Q. And that's what I was going to ask
19 you to follow up. A fair question would be, how
20 often do you see her. So you see her currently
21 every three months?

22 A. About.

23 Q. Okay.

24 A. When I first started seeing her it
25 was a lot more frequently, maybe every two weeks.

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1 Q. Okay. And the every three months,
2 did that start kind of when she got on the Xolair?

3 A. Pretty much. And her symptoms
4 started being a lot more controlled, and so she is
5 doing a lot better. And when I say "a lot
6 better," compared to where she was. I mean she
7 still has symptoms, but they are controlled.

8 Q. Do you have any indication as to how
9 often she has symptoms now?

10 A. I know they're still at least weekly
11 but not as -- not as prominent as they were. I
12 think, you know, once -- because of the severity
13 of the disease that she had, I don't know that she
14 will ever be able to fully recover, to be quite
15 honest. She still gets some symptoms from time to
16 time but...

17 Q. Well, let me ask you -- ask you
18 this. It's my understanding that asthma has
19 certain classifications, and one being --

20 A. Correct.

21 Q. -- like severe persistent, meaning --

22 A. Right.

23 Q. -- being the worst.

24 A. Correct.

25 Q. When she first saw you in 2015, where

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1 would you put her on that?

2 A. Severe persistent. She was --

3 Q. Okay. And where would you say she is
4 now?

5 A. I'm not really sure without
6 knowing -- without doing like PFTs and all that
7 where we classify her. And, really, her symptoms,
8 she doesn't really quantify how often. She just
9 learned to live with them, and so.

10 Q. Okay. So when you say in 2015 she
11 was at "severe persistent," what were you basing
12 that opinion on?

13 A. Just based on her everyday symptoms
14 and then utilization of medication. She was
15 requiring Prednisone. She was requiring her
16 nebulizer treatments frequently. She was getting
17 nighttime awakening, like waking up at night.
18 That was...

19 Q. Well, let me ask you this way. So
20 using those same factors, are you able to say that
21 she's no longer severe persistent?

22 A. That's fair to say, yes.

23 Q. Okay. In terms of your treatment of
24 her, has it pretty much just been refilling
25 medication and examinations? What's the extent of

LUZ YOLANDA MENDEZ, MD 5-27-16

1 the treatment that you've been offering to her
2 since 2015?

3 A. For her asthma, basically just
4 refilling medication. And, obviously, if she
5 comes to see me for any other problem, I'll
6 examine her and, you know, address anything that
7 has to do with it, but basically that was pretty
8 much it.

9 Q. Okay. Are you aware of her having
10 any allergies?

11 A. I don't have her chart in front of
12 me. I don't recall.

13 Q. Well, I guess that the question is,
14 have you been treating her for any type of
15 allergies?

16 A. Everything that has to do with
17 allergies, I know that she's been seeing a EMT and
18 allergy specialist. That was treated by
19 Dr. Dyce. I know that Dr. deDios had her on
20 medications to control that also, the allergies
21 also.

22 Q. What other conditions do you see her
23 for?

24 A. Hypertension. We've been monitoring
25 her for hyperlipidemia pretty much.

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1 Q. I'm sorry. I missed that.

2 A. For hyperlipidemia.

3 Q. Okay. What is your understanding of
4 her diagnosis?

5 A. Well, based the records that I got
6 from Dr. Hammett, based on the records that I
7 received from Dr. deDios, and based on her
8 improvement from when I started seeing her to now,
9 I know that she has adult onset asthma. I --
10 based on her history, on what she told me, she did
11 not have any asthma as a child.

12 I know that her asthma would flare up
13 every time she would return to work and improve
14 when she was taken out of work, and I know that
15 she's doing better now that she's no longer
16 working.

17 Q. Do you know how long she has been not
18 working for her employer?

19 A. I don't know exactly how long, no,
20 ma'am. I know that on the records from
21 Dr. Hammett she had already -- had started taking
22 her out of work by the time I started seeing her
23 for that.

24 Q. And when you say "taking her out of
25 work," was that taking her out a couple weeks here

1 or there or do you mean completely out of work?

2 A. It's my understanding a few weeks
3 here and there and then eventually completely out.

4 Q. Okay. What is your understanding as
5 to the triggers for her symptoms?

6 A. Well, based on, again, what she has
7 told me, it were -- there were some chemicals that
8 she was exposed to at work. What exactly, that,
9 I'm not sure.

10 Q. And that's based on what she has told
11 you or --

12 A. Based on what she's told me and based
13 on what Dr. deDios has said. At what -- exactly
14 what triggers specifically, I am not sure. She
15 said "chemicals," period.

16 Q. Do you have an opinion as to whether
17 or not the medications she is currently taking,
18 are they going to be indefinite? Do you expect
19 her to come off of some of those medications?

20 A. I really don't think she'll come off
21 this medication.

22 Q. I want to hand you a copy of a
23 medical questionnaire, and I think it has been
24 marked as page 221 of the claimant's prehearing
25 brief in the APA submissions. Do you recall

LUZ YOLANDA MENDEZ, MD 5-27-16

1 completing this questionnaire?

2 A. Yes.

3 Q. And who provided that to you?

4 A. My office manager brought it to me.

5 Q. Okay. My understanding from the
6 questionnaire is that you represented that you
7 were provided a statement from Dr. Hammett which
8 allegedly suggested that she was disabled from
9 work as of September 29, 2014. I want to make
10 sure we're on the same page. Is that your
11 understanding as well?

12 A. That I provided this statement from
13 Dr. Hammett?

14 Q. No. You were provided a statement.

15 A. Yes.

16 Q. Okay.

17 A. Yes.

18 Q. From Dr. Hammett.

19 A. Yes, I was.

20 Q. And what was your understanding of
21 doctor's statement -- Dr. Hammett's statement?

22 A. That she was going to be taken out of
23 work.

24 Q. Okay.

25 A. Uh-huh.

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1 Q. And that's the distinction I'm trying
2 to clarify because the language says "disabled."
3 I'm trying to clarify. Are you saying she's
4 disabled from returning to work or are you just
5 saying she was out of work at that particular
6 time, because those are two different things.

7 A. Right. Well, based on what I've seen
8 from her, she is probably -- she is disabled from
9 going back to work --

10 Q. Okay.

11 A. -- right now.

12 Q. And do you know what type of work she
13 did?

14 A. I know that she worked at the Piggly
15 Wiggly and -- but exactly what her job description
16 was, I am not sure.

17 Q. Okay. What restrictions does she
18 have now that would prevent her from working?

19 A. Well, right now her respiratory
20 status, I mean, she's dependent on medication.
21 Basically that would be that she gets really short
22 of breath with exertion.

23 Q. Okay. Do most of your patients with
24 asthma not work at all?

25 A. No, that is not correct. Most of my

LUZ YOLANDA MENDEZ, MD 5-27-16

1 patients with asthma do work.

2 Q. Okay. Well, so what makes her
3 situation different?

4 A. Basically the fact that she gets
5 short of breath on exertion. I think -- well, the
6 other patients that I have with asthma are, one,
7 better controlled, and they're not as severe as
8 her case is.

9 Q. Okay.

10 A. I don't have anybody else that's that
11 severe --

12 Q. And when you say --

13 A. -- symptoms-wise.

14 Q. And when you say "severe," that's why
15 I'm trying to hone --

16 A. No. Symptoms -- yeah. Symptoms-wise
17 they don't get short of breath on a day-to-day
18 basis, and they -- they flare up -- once their
19 flare-up is controlled and over, they go back to
20 normal activities and don't really have symptoms,
21 so it's not like a daily thing for them.

22 Q. Okay. So are -- and when you say
23 "daily," because initially you said weekly --

24 A. Uh-huh.

25 Q. -- but --

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1 A. Well, like on exertion. For example,
2 if she comes in and she's -- and this is based on
3 what I have seen and based on what she tells me.
4 If she moves around a lot, then she gets really
5 short of breath. My other patients with asthma,
6 they get flare-ups, but once their flare-up is
7 controlled, they're back to normal --

8 Q. And --

9 A. -- pretty much.

10 Q. -- how often will these flare-ups be
11 if you're in the more controlled situation?

12 A. Can you specify "controlled
13 situation"?

14 Q. Sure. You're saying hers is not --
15 you would say she's not in a controlled asthmatic
16 state right now, correct?

17 A. Well, she's -- she's doing better,
18 but "better" meaning compared to how she was in
19 the past. It doesn't mean she is happy, smiling,
20 where my regular asthmatic patients would be. I
21 think she's -- she's going to -- she has like
22 long-term consequences from her lungs. Her lung
23 health is not great.

24 Q. Is that based off any pulmonary
25 function test that you --

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1 A. And based on symptoms. I mean
2 compared -- I'm comparing her to a regular
3 asthmatic patient that will come to my office once
4 a month or once every three months for a flare-up
5 to her.

6 Q. Well, you said she comes in every
7 three months now, though. That's why I'm trying
8 to reconcile.

9 A. Yeah, but because she follows up with
10 Dr. deDios for her asthma I'm saying. So I have
11 another patient who, asthmatic, works. He comes
12 in once every month, once every three months. I
13 give him Albuterol. I give him a round of
14 steroids. He's back to normal. Well -- normal.

15 Her, she still has symptoms, so, on
16 exertion and all that. That's not the case with
17 another asthmatic patient that I have.

18 Q. But I'm -- and in terms of what you
19 said, 20 percent of your patients are asthmatic --

20 A. Right.

21 Q. -- right?

22 A. Right. So most of the ones -- my
23 other asthmatic patients, they're not as severe as
24 she is.

25 Q. So would you say she's still in

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1 severe persistent?

2 A. No. She's not in severe persistent,
3 but the severity of her asthma is more than the
4 rest of my patients.

5 Q. Who would be in which categories?

6 A. Probably moderate persistent.

7 Q. Okay. And in terms of her employment
8 history, do you have any knowledge of what her
9 employment history was?

10 A. I know that by the time I started
11 seeing her she was working at the -- she had just
12 gotten out of work from Piggly Wiggly. That's
13 about it. I don't know anything else about that.

14 Q. And do you have any knowledge of her
15 work as a caterer?

16 A. No, ma'am.

17 Q. Have you performed any market
18 analysis to identify any jobs she could do without
19 restrictions?

20 A. No, ma'am.

21 Q. Do you know how often she gets winded
22 or -- what was your terminology?

23 A. Short of breath.

24 Q. Short -- short of breath?

25 A. Uh-huh. She pretty much -- and this

LUZ YOLANDA MENDEZ, MD 5-27-16

1 is when she comes to my office that --

2 Q. Exertion. I'm sorry. That was the
3 word.

4 A. Well, yeah, like -- yeah, on
5 exertion, based on what she tells me, on a daily
6 basis. Now, when I see her in my office it's
7 probably because she's having, you know, a
8 flare-up and she's, you know, short of breath on
9 exertion.

10 Q. Okay. And when she gets to the point
11 of exertion, what -- does that require her to lay
12 down, to sit down? Explain to me. What do you
13 have to do?

14 A. Sure. So based on her -- what she
15 tells me, she just has to stop what she's -- what
16 she's doing and just catch her breath and then
17 keep going.

18 Q. Okay. And I'm assuming when she has
19 that she can use her inhaler or something.

20 A. That's correct.

21 Q. And that allows her to keep going?

22 A. That's correct.

23 Q. Okay. So what about that
24 specifically will take -- what about that
25 particular routine leads you to conclude that she

LUZ YOLANDA MENDEZ, MD 5-27-16

1 couldn't work?

2 A. I guess it depends on what kind of
3 job that would be. Something that doesn't require
4 a lot of physical activity, I think that would be
5 an okay job for her.

6 Q. Sedentary work --

7 A. Correct.

8 Q. -- would be okay?

9 A. Yes.

10 Q. You note that her condition is
11 permanent. Can you give me some clarification as
12 to what leads you to believe that it's permanent?

13 A. Well, the fact that, you know, she,
14 while considered well-control now, is still on
15 some -- you know, requiring a lot of medication.
16 I don't -- I don't foresee that -- maybe -- you
17 know, maybe she will, but I don't foresee that her
18 asthma is going to go away.

19 Q. Are you able to provide an opinion as
20 to any particular impairment that she has
21 pertaining to her asthma?

22 MR. MCDANIEL: Objection. Calls for
23 speculation. She hasn't been -- it calls for
24 speculation.

25 MS. MILLER: You can still answer, if

LUZ YOLANDA MENDEZ, MD 5-27-16

1 you can, but -- that's okay.

2 THE WITNESS: Huh-un.

3 BY MS. MILLER:

4 Q. I'm sorry. Is that a no?

5 A. No.

6 Q. Okay. Thank you. When is the last
7 time you treated Ms. Sowell?

8 A. I saw her approximately a month and a
9 half, two months ago.

10 Q. Okay. And how was she doing at that
11 time?

12 A. She was doing well.

13 Q. Was she able to drive? Oh, I'm
14 sorry.

15 A. She was doing well. She still
16 complained of shortness of breath with walking and
17 like exerting herself heavily, but her symptoms
18 were well-controlled.

19 Q. Did she give you any indication of
20 the activities specifically that cause her to be
21 exerted?

22 A. No, ma'am.

23 Q. Okay. Was she able to drive herself
24 to the evaluation?

25 A. Yes, ma'am.

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1 Q. Did she walk with the need of any
2 type of assistive device?

3 A. No, ma'am.

4 Q. Okay. Do you know if she's still
5 having problems with symptoms at home, with
6 wheezing and coughing?

7 A. Based on what she told me, yes,
8 ma'am.

9 Q. Okay. Are you able to provide an
10 opinion as to the cause of her condition?

11 A. I thought that's what we discussed.

12 MR. MCDANIEL: Asked and answered.

13 Objection. Asked and answered.

14 BY MS. MILLER:

15 Q. Okay. Do you know what department
16 she worked at the Piggly Wiggly?

17 A. No, ma'am.

18 Q. I think you indicated that her
19 condition was permanent. Would you say that she's
20 at what we call maximum medical improvement?

21 A. Yes, ma'am.

22 Q. Are you able to state if there is a
23 nonwork-related trigger with regards to her
24 symptoms?

25 A. No, ma'am, but I know that I -- when

LUZ YOLANDA MENDEZ, MD 5-27-16

1 I started seeing her I worked her up for other
2 possible causes such as alpha-1 antitrypsin
3 deficiency. I even --

4 Q. Which one? I'm sorry.

5 A. Alpha-1 antitrypsin deficiency.

6 Q. Okay.

7 A. I also tested her for possible like
8 parasitic infection in her lungs or anything that
9 could be triggering her asthma, and all that was
10 negative.

11 Q. Okay. And you're going to have to
12 explain to me what those particular --

13 A. Sure.

14 Q. -- disorders are.

15 A. So I know in the south there is a
16 parasite, it's called Strongyloides, that can --
17 you can get infected and later on it might affect
18 your lungs and give you asthma-like symptoms.
19 That was --

20 Q. And just for the court reporter...

21 MS. MILLER: Do you need -- might
22 need -- did you need spelling on that?

23 THE WITNESS: Strongyloides,

24 S-T-R-O-N-G-Y-L-O-I-D-E-S.

25 MS. MILLER: Okay. Thank you.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 THE WITNESS: Anyway, and I was
2 like -- this is me trying to think out of the box,
3 so I tested her for that, negative. Alpha-1
4 antitrypsin is a --

5 BY MS. MILLER:

6 Q. What kind of test was that? I'm
7 sorry.

8 A. That's a blood --

9 Q. Is that a blood test?

10 A. It's a blood test.

11 Q. Okay.

12 A. Antibody test.

13 Q. Thank you.

14 A. Uh-huh. I also tested her for
15 alpha-1 antitrypsin deficiency. It was -- which
16 is an autoimmune disease where patients don't make
17 enough surfactant, like the lubricant in the lung,
18 and so as adults they can develop pulmonary
19 problems as well as liver problems. She does not
20 have liver problems, which she -- that was also
21 negative.

22 Q. Okay.

23 A. And it's alpha-1 antitrypsin,
24 T-R-Y-P-S-I-N.

25 Q. Thank you.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 A. Uh-huh.

2 Q. And, again, that was by a blood test?

3 A. Yes, ma'am.

4 Q. Okay.

5 A. And that was negative.

6 Q. And are you able to provide any
7 impairment with regards to the pulmonary? You
8 mentioned something -- she did not identify a
9 liver issue, but what about with the lungs?

10 MR. MCDANIEL: I -- again,
11 objection. It's been asked and answered.

12 MS. MILLER: Well --

13 MR. MCDANIEL: We went over it
14 several times.

15 MS. MILLER: Well, this is a little
16 bit different because she said she did a test and
17 she didn't have a liver issue but she did a
18 separate test.

19 THE WITNESS: No. It's the same
20 test, but that deficiency will affect both liver
21 and lungs, and it was just to see if that was a
22 cause of her pulmonary symptoms.

23 BY MS. MILLER:

24 Q. Okay. Okay. Thank you for
25 clarifying. I thought that's what you said.

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 I want to clarify from your opinion
2 because you said that she is "disabled from
3 gainful employment." Is your opinion that she is
4 not going to be able to return to work?

5 MR. MCDANIEL: Again, asked and
6 answered.

7 BY MS. MILLER:

8 Q. I understand, because you said she is
9 written out of work now, but --

10 A. But --

11 Q. -- is --

12 A. -- with --

13 Q. -- this --

14 A. -- this -- with this cause she could
15 have sedentary work.

16 Q. Okay. And is that to a reasonable
17 degree of medical certainty?

18 A. I'm sorry?

19 Q. Is that opinion to a reasonable
20 degree of medical certainty?

21 A. Yes.

22 MR. MCDANIEL: I'll -- I --

23 MS. MILLER: Okay. That's it. You
24 may ask any question that you would like,
25 Mr. McDaniel.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 EXAMINATION

2 BY MR. MCDANIEL:

3 Q. Dr. Mendez --

4 A. Yes, sir.

5 Q. -- first off, would you defer to
6 Dr. deDios -- do you know that Dr. deDios is
7 seeing her every two weeks and that she is getting
8 a Xolair injection every two weeks?

9 A. She is getting a Xolair, yes.

10 Q. Okay. And I believe that's a
11 medication that has to be flown in or shipped in
12 and has to be refrigerated.

13 A. That is correct.

14 Q. And it's -- as compared, how many
15 other patients do you have that have asthma that
16 are on Xolair --

17 A. None.

18 Q. -- injections?

19 A. Zero.

20 Q. So in reference to the treatment for
21 asthma, how -- what level of treatment is that?

22 A. That's as bad as it gets, as high a
23 level of treatment as it gets.

24 Q. All right. Now, in reference to
25 whether or not she can do any type of work,

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 would you -- would you defer -- you've been asked
2 opinions about whether or not you thought she
3 could go back to doing sedentary work.

4 A. Right.

5 MR. MCDANIEL: Let me have the two
6 documents we've --

7 MS. MILLER: All right.

8 BY MR. MCDANIEL:

9 Q. I'm going to ask you to review that,
10 and I believe also if -- this looks like the other
11 report that you looked at at the time that you
12 signed your report in reference to her being
13 disabled from gainful employment.

14 A. Okay. Well, I mean, based on her
15 symptoms, I really don't know who will employ
16 her. Honestly --

17 Q. Right.

18 A. -- I don't even know who will employ
19 her. She can probably sit at a desk and do that,
20 uh-huh.

21 Q. Well, in other words -- and -- and
22 that -- that gets back to my question. In other
23 words, like basically, though, the -- you're aware
24 that with any type of exertion whatsoever she --
25 she can't breathe?

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 A. That's correct.

2 Q. All right. And she -- you also note
3 that she's on an EpiPen.

4 A. Correct.

5 Q. And of course --

6 A. Two years.

7 Q. -- counsel asked you about her coming
8 to see you for flares. She actually goes to see
9 Dr. deDios and/or Dr. Dyce --

10 A. Correct.

11 Q. -- if she has any significant
12 problems with that. You're following her for her
13 other medical problems in reference to her high
14 blood pressure and high cholesterol.

15 A. Correct.

16 Q. But you see her on a regular basis
17 for those problems and so you are aware of her
18 condition.

19 A. That's correct.

20 Q. And in your opinion she's disabled
21 from gainful employment.

22 MS. MILLER: Object to form.

23 BY MR. MCDANIEL:

24 Q. Now, let me ask you this. I hate to
25 put you in the box from this, in this regard, but

LUZ YOLANDA MENDEZ, MD 5-27-16

1 in other words, are you aware that if
2 Ms. -- Ms. Sowell has testified that if she gets
3 around any type of fragrance, are you -- are you
4 familiar with the term, for example, that she has
5 become "hypersensitized" and she has become --

6 A. Uh-huh.

7 Q. -- extremely "sensitized" to the
8 offending agents --

9 A. That's correct.

10 Q. -- and any -- actually any kind of --
11 I don't -- I don't want to say impurities in the
12 air, but any kind of odors? I mean, would it
13 surprise you, knowing the severity of her
14 condition that you observed, that if she just
15 simply walked over to the trash can and put her
16 trash in it and there was a strong odor of mold,
17 mildew and all that coming out of the -- from the
18 mold, would that set off an attack? Would that --

19 A. That's correct. And she has stated
20 that to me in the past.

21 Q. Okay. And, also, I don't know if
22 she's made you aware, but we were in a building
23 recently, and I believe she has testified to
24 this, that strong odors -- but they had one of
25 those air fresheners where it would -- it would go

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 off and it keeps a constant scent.

2 Would it surprise you, too, that just
3 entering that environment and being exposed to
4 that, that she had to go outside and get away from
5 that?

6 A. No, I'm not surprised at all, and she
7 actually came to see me because of that.

8 Q. Oh, she did?

9 A. Yes.

10 Q. Okay.

11 A. Uh-huh.

12 Q. All right. So when you say that she
13 could sit at a desk, it would have -- would it
14 have to be in an absolutely clean environment?

15 A. Absolutely, uh-huh.

16 Q. All right. I see in doctors' offices
17 all the time, you know, reference to if they've
18 got maybe a -- patients and/or they have staff
19 that have -- you know, can react to perfumes or
20 whatever. Would that type of a sign need to be
21 around Ms. Hammett -- I mean -- excuse me --

22 A. Ms. Sowell.

23 Q. -- Ms. Sowell?

24 A. Absolutely.

25 Q. Okay. I want to show you one other

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 document and just ask you. I don't know if you've
2 reviewed this or seen this in the records, but we
3 showed you this report that was issued by
4 Dr. Hammett who -- and the reason you came to be
5 her -- is -- Ms. Sowell's treating family doctor,
6 Dr. Hammett, left the practice, is that correct,
7 and you took over her prior treatment?

8 A. Yeah. I don't know Dr. Hammett, but
9 he retired, I believe, or he moved --

10 Q. Okay.

11 A. -- and she transferred care to my --

12 Q. Okay.

13 A. -- practice.

14 Q. All right. All right. Now, and this
15 is -- this is -- I don't know if you observed this
16 or not. Have you -- have you seen this in her
17 medical records? It -- this is a report that's
18 been put into evidence. I don't have the actual
19 page number.

20 MS. MILLER: Which one is it?

21 MR. MCDANIEL: It's the one in
22 reference to -- dated -- if it is dated.

23 MS. MILLER: When was that? I
24 probably can find it. That's the one that's not
25 dated.

LUZ YOLANDA MENDEZ, MD 5-27-16

1 MR. MCDANIEL: Yeah. It's Carolina
2 Physicians --
3 MS. MILLER: It's page --
4 MR. MCDANIEL: -- Group.
5 MS. MILLER: -- 2. It's your APA,
6 page 2.
7 MR. MCDANIEL: Huh?
8 MS. MILLER: Your APA, page 2.
9 MR. MCDANIEL: Okay. Okay.
10 MS. MILLER: Right?
11 MCDANIEL: 2, yeah.
12 MS. MILLER: Is that it?
13 MR. MCDANIEL: That's it. That's it,
14 uh-huh. Okay.
15 BY MR. MCDANIEL:
16 Q. Looking at this report, have you ever
17 seen this?
18 A. I have seen Dr. deDios' report where
19 he's referring to this.
20 Q. Okay.
21 A. And I have seen Dr. deDios' report
22 where he has tried again to allow her to go back
23 to work and then, again, referring to her
24 symptoms.
25 Q. Okay. And the reason -- the reason I

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LUZ YOLANDA MENDEZ, MD 5-27-16

1 was asking you about that is, counsel was asking
2 you about you stating an opinion, and, of course,
3 you told us that by history she had never had any
4 problems with asthma. Then at that -- when she
5 would be out of work, it would -- her symptoms get
6 better yet, and they began to associate that with
7 that, and the difference between just simply the
8 diagnosis of asthma and occupational asthma is
9 simply the cause that -- the causal agent; is that
10 correct?

11 A. Absolutely.

12 Q. All right. So based on your
13 knowledge and, of course, in this -- this report
14 Dr. Hammett says that she had been treating for
15 occupational asthma, and is it your understanding
16 that the diagnosis from Dr. deDios and Dr. Hammett
17 is occupational asthma?

18 A. That's correct.

19 Q. All right. And based on your
20 experience and knowledge of what she's -- would
21 you -- what you know about her and what by history
22 you've been told and what you've seen in the
23 medical records, would you concur in that
24 diagnosis of being occupational asthma, just not
25 asthma?

LUZ YOLANDA MENDEZ, MD 5-27-16

1 A. I agree it's occupational asthma.

2 MR. MCDANIEL: Okay. No further
3 questions.

4 REEXAMINATION

5 BY MS. MILLER:

6 Q. Just a couple of follow ups. Do you
7 know if her home is a clean-air environment?

8 A. No, I do not.

9 Q. Is your office a clean-air
10 environment to the extent that none of your
11 employees are allowed to wear perfume, a scented
12 agent?

13 A. No one is allowed to wear any
14 perfumes.

15 Q. All right. And were you aware that
16 she stopped working on January 6, 2014, but didn't
17 start treating with Dr. deDios until January 7,
18 2014?

19 A. She -- she started --

20 MR. MCDANIEL: Object --

21 A. -- treating with
22 Dr. deDios on -- 2013.

23 MS. MILLER: Okay.

24 MR. MCDANIEL: Yeah.

25 MS. MILLER: There's no records in

ABC REPORTING SERVICE (803) 730-3015

LUZ YOLANDA MENDEZ, MD 5-27-16

1 here for 2013.

2 THE WITNESS: He -- he started
3 treating her --

4 MS. MILLER: The records speak for
5 themselves on that.

6 THE WITNESS: Okay.

7 MS. MILLER: We'll just let the --

8 THE WITNESS: Uh-huh.

9 MS. MILLER: We'll let the records
10 speak for themselves on that.

11 MR. MCDANIEL: Actually -- off the
12 record. Are you finished?

13 MS. MILLER: Yes --

14 MR. MCDANIEL: Okay.

15 MS. MILLER: -- I am.

16 Thank you.

17 THE WITNESS: No problem.

18 (The deposition concluded at
19 approximately 1:01 p.m.)
20
21
22
23
24
25

LUZ YOLANDA MENDEZ, MD 5-27-16

1 CERTIFICATE OF REPORTER

2

3

4

I, Donna Cheryl Kyzer, Court Reporter
and Notary Public for the State of South Carolina
at Large, do hereby certify:

5

6 That the foregoing deposition was
7 taken before me on the date and at the time and
8 location stated on Page 1 of this transcript; that
9 the deponent was duly sworn to testify to the
10 truth, the whole truth and nothing but the truth;
11 that the testimony of the deponent and all
12 objections made at the time of the examination
13 were recorded by me and were thereafter
14 transcribed; that the foregoing deposition as
15 typed is a true, accurate and complete record of
16 the testimony of the deponent and of all
17 objections made at the time of the examination to
18 the best of my ability.

12

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I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 31st day of May,
2016, at Lexington County, South Carolina.

Donna Cheryl Kyzer, Court Reporter,
Notary Public
State of South Carolina at Large.
My Commission expires:
October 5, 2022

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
February 11, 2016

NOTICE OF HEARING

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.

Date: March 23, 2016 at 09:00 AM

Location: Coach TB Thomas Sports Center
Conference Room
701 W. Washington Street
HARTSVILLE, SC 29550

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, February 11, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Brittany M. Lozanne
blozanne@dmclaw.com
803-285-0004

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Friday, March 11, 2016 4:48 PM
To: Tamara Morris (tmorris@wcc.sc.gov)
Cc: Gerald Malloy (gmalloy@bellsouth.net); Greta Elliott (gelliott@bellsouth.net); kmiller@dmclaw.com
Subject: Gennette Sowell v. Piggly Wiggly; WCC File No. 1408826
Attachments: SCAN11133_000.pdf

Importance: High

The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709

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McDANIEL LAW FIRM
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1315 ELMWOOD AVENUE
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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 11, 2016

VIA EMAIL - tmorris@wcc.sc.gov
AND US MAIL

Commissioner Melody L. James
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Gennette Sowell v. Piggly Wiggly
WCC File No.: 1408826

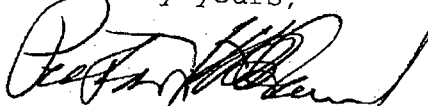
Dear Commissioner James:

At this point, this is to request a postponement of the hearing per agreement of Counsel. Kenya Miller has just taken over representation in this claim and Kenya and I spoke and we believe we are going to be able to request that this matter be resubmitted for mediation and are very hopeful that we will be able to get it resolved. At this point to give Kenya an opportunity this coming week to totally review the file, I would request postponement of the hearing and request that it be reset for one of the last days you are in the District. Kenya also advised me that she is leaving to go out of town today for a death in her family. This is another reason why we cannot immediately notify you and the Commission about an agreement to mediate. We will know by this coming Friday whether we will be able to enter into an agreement to further mediate this case and see if we can get it resolved. By copy of this letter I am confirming and notifying Ms. Miller of this communication.

I am sure you understand and I am sure that you, like I, convey to Kenya our sincere sympathy on the loss of her loved one.

I would appreciate confirmation of receipt of this and that this matter will be continued. As always, I appreciate all the courtesies and kindnesses shown to me by the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire
Kenya C. Miller, Attorney of Law

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
March 15, 2016

**NOTICE OF HEARING
RESET**

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 25, 2016 at 01:30 PM
Location: Hartsville City Hall
Council Chambers
100 E. Carolina Avenue
Park between First Citizens Bank and Centennial Park
HARTSVILLE, SC 29550

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, March 15, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Kenya C. Miller
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803-285-0004

Brittany M. Lozanne
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South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
April 27, 2016

NOTICE OF HEARING RESET

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: June 22, 2016 at 10:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, April 27, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Kenya C. Miller
kmiller@dmclaw.com
803-285-0004

Rose Thielke

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Wednesday, April 27, 2016 5:15 PM
To: tmorris@wcc.sc.gov
Cc: gmalloy@bellsouth.net; kmiller@dmclaw.com
Subject: Gennette Sowell v Piggly Wiggly
Attachments: SCAN11515_000.pdf

The attached letter is being sent at the request of Preston McDaniel.

Rose Thielke
McDaniel Law Firm

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 27, 2016

VIA EMAIL ONLY - tmorris@wcc.sc.gov
Ms. Tamara Morris
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Gennette Sowell v. Piggly Wiggly
WCC File No.: 1408826

Dear Tamara:

I am not sure as to whether or not we agreed that there was going to be a formal written order or not but based on what I received in the mail today, I would request one as the Defendants are trying to go outside of the parameters of what the Commissioner ordered. In fact, I just thought of this, you were actually present during the discussion so if I am correct, you can confirm this and discuss this with the Commissioner.

I would appreciate it if you would confirm my understanding with the Commissioner and if I am correct then I will be glad to prepare a very short written order confirming this, my understanding at the Hearing was as follows:

We presented our APA Submissions and Notices of Witnesses and the Record is closed except for:

1. The APA's/Notice of Witnesses actually submitted and noticed on April 27th as to our Case-in-Chief and subject to objection.
2. The deposition of Dr. Gordon Early which is set for May 18th.
3. The deposition of Dr. Menendez who took over as Ms. Sowell's family doctor whenever Dr. Hammett left the practice. The deposition is for the purpose of examination on the medical record that was put into evidence from him and concerning his personal knowledge and treatment of Ms. Sowell after the date he took over her treatment.
4. We would produce Ms. Sowell's tax returns and her Social Security Award.

Ms. Tamara Morris
April 27, 2016
Page 2

5. Kenya submitted a Memorandum of Law and the Commissioner stated that I would be allowed to submit a Memorandum of Law after and assuming that mediation was not successful.

6. This case would be reset as soon as possible after the mediation. Tamara, we were given several dates that day and actually the hearing has been reset but I think the order should read simply that the Commissioner was directing that it be reset pursuant to her schedule and our schedules ASAP after the mediation date.

By copy of this letter, I am notifying Kenya of this request to draft a proposed order but if the Commissioner does not feel that we need an order, let me know.

I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/abh/rmt

cc: Gerald Malloy, Esquire (via email only: gmalloy@bellsouth.net)
Kenya C. Miller, Attorney (via email only: kmiller@dmclaw.com)

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
June 22, 2016

NOTICE OF HEARING RESET

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: July 21, 2016 at 11:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, June 22, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Kenya C. Miller
kmiller@dmclaw.com
803-285-0004

Kim Hinkle

From: Morris, Tamarã <TMorris@wcc.sc.gov>
Sent: Thursday, October 20, 2016 12:56 PM
To: 'Kenya C. Miller, Attorney'; Carver, Tamra; PRESTON@PFMCDLAW.COM; Kim Hinkle;
'Gerald Malloy'; Greta Elliotte; 'Denise Chavis'
Subject: FW: Sowell Draft Instructions from Commissioner James
Attachments: Sowell Draft Order Instructions.docx

Importance: High

From: James, Melody
Sent: Thursday, October 20, 2016 12:30 PM
To: Morris, Tamara
Subject: Sowell Draft Instructions

Tamara, Please forward this to the parties. This is the draft order instructions that I gave them last week. (They understand that there may be typographical errors.) Thank you!!!

CONFIDENTIAL & PRIVILEGED

The preceding email message, including any attachments, may be confidential and/or protected by the attorney-client or other applicable privileges. It is intended for the sole use of the individual or entity named above. If the reader of this transmission is not the intended recipient, please notify the sender immediately and destroy any copies, electronic, paper or otherwise, that you may have of this communication. Any unauthorized review, use, disclosure or distribution is strictly prohibited and may be unlawful.

Sowell (1408826) Order Instructions:

AWW and CR. -- Stipulated by parties

1. The Claimant has pled an injury by accident, repetitive injury, and occupational disease by exposure to chemicals and other inhaled properties at work.
2. There is not an indication in the record that there was an acute incident.
3. The Claimant has met her burden of proof that she incurred a repetitive injury that arose out of and within the course and scope of her employment.
4. The Claimant was ultimately diagnosed with work related asthma/occupational asthma.
5. The Claimant was exposed to a number of chemicals over a course of time when the drain in the deli would back it. Due to a pipe stopping up repeatedly overnight, the Claimant and her co-workers would come into the deli in the morning to standing water. The co-worker(s) would then clean up the water and put various chemicals into the drains. (This is pursuant to all testimony, including the store manager (Ms. Quick), the Claimant, and the bag boy/custodian (Mr. Harrington), who put many of the chemicals in the drain.) (The allegation that the water was ankle deep is not sustained in the record; however, it is clear that there was standing water.)
6. The conditions of the drain were evaluated by plumbers, who would snake the drain. The date of the final discovery of the cause of the backup is not in the record. (The store manager (Ms. Quick) believed that it might have been fixed permanently sometime in 2012. July Transcript at 33)
7. During the time of the back-up of the drain and attempts to clear it with chemicals the Claimant went to the hospital on June 11, 2011, and was admitted. The diagnosis was bronchitis. (C93)

8. After her hospitalization, the Claimant saw Dr. Vaughn for a couple of visits, and then became a patient of Dr. Hammett.
9. Throughout the course of Dr. Hammett's records his diagnosis varies. On December 6, 2011, he states that the Claimant has acute chronic bronchitis. (C70).
10. The Claimant was sent to the hospital on December 22, 2011 by Dr. Hammett. During her admission there, the chemical exposure was mentioned, and the hospital notes indicate that there was an asthma exacerbation, likely secondary to exposure to chemicals. (C175)
11. Even though the chemicals are mentioned as a likely cause, Dr. Hammett seemed to still be exploring what was the Claimant's diagnosis and what was the cause of the condition. Within a few days of her release from the hospital (December 27, 2011), his records state that she carries a diagnosis of asthma, "but may actually have sarcoidosis which is in the differential." (C64;D258). He indicated that she had a pulmonary referral.
12. On February 14, 2014, Dr. Hammett's records still have a diagnosis of "asthma versus sarcoidosis." (C52;D263)
13. On March 6, 2012 the Claimant sees Dr. Dyce for her allergies for the first time. (C203). There is no mention of a work relationship in that record.
14. Later, Dr. Hammett's records indicate chronic bronchitis on August 8, 2012 (C43), and COPD exacerbation on September 9, 2012. (C40)
15. The Claimant presents again to the hospital on November 12, 2012, and indicates to the provider that she thinks that at work there may be a cleaning compound which she does not handle directly which may aggravate her, and that she also thinks there may be some aggravation as does her physician from the fumes of cooking. (D233). She does indicate that she is bothered greatly by the fumes at work.

16. However, the records of Dr. Hammett still do not appear to contain consistent diagnosis or definitive cause. On November 19, 2012, Dr. Hammett's records contain a diagnosis of COPD. (C32).

17. For the first time she sees a specialist, Dr. Dayrit (Center for Lung and Sleep Medicine) on December 19, 2012. (D306). He does mention the chemicals at work. (D304). A differential between hypersensitivity pneumonia and occupational asthma is mentioned in his records. Also, he states that he does not know what she was exposed to or for how long. He indicates that favors the hypersensitivity pneumonia and it "appears" that she has sensitivity to some chemicals at work. (D306).

18. On March 14, 2013, Dr. Dayrit's notes indicate that the Claimant had returned to work and has not had any exacerbations of her symptoms since returning. (D309).

19. On March 19, 2013, Dr. Hammett states that she has a history of chronic asthma exacerbation that was determined to be work related and it was suggested that she remove herself from the job, which she has not done yet. (C29; D268). It is unclear where the diagnosis in this statement is generated from. He is not stating that it is his diagnosis; And as indicated above, his diagnosis has varied. His subsequent note of January 9, 2014 has a diagnosis of asthma, unspecified type. (C6)). As discussed above, Dr. Dayrit had a differential diagnosis, and stated that he did not know what chemicals she is exposed to and for how long. (D304).

20. Also, the Claimant's testimony is consistent with the variances in the diagnosis and that the doctor's were still trying to figure out what was wrong with the Claimant.

21. The Claimant testified that Dr. Dayrit closed his practice in March. (June Transcript at 50).

22. The Claimant is eventually referred to Dr. deDios (pulmonologist). The first visit appears to occur on May 22, 2013. (D269). (A questionnaire of Dr. deDios indicates the date as April 8, 2013 (C169); the May 22, 2013 note indicates it she is a "new consult." (D269) Whether the first visit is in April or May of 2013 is not critical in this determination.) The first note states that the Claimant has "asthma unspecified", and that the patient likely has adult onset asthma for which she is very symptomatic. (D271).

23. The Claimant testified that she advised in November of 2013 by her doctor (Hammett) that he felt that it was job related, and that she need to come out of work and she it that was what "it was". (June Transcript at 59, 62, 77) The Claimant testified that she advised her supervisor of this. (June Transcript at 59; July Transcript at 115, 116) Although, her supervisor (Ms. Quick) indicates that work was not mentioned, her testimony is consistent that the Claimant did tell her that she needed to be out of work in order to scrape her lungs and find out what was causing her problems. (June Transcript at 24)

24. The Claimant testified that this is the first time that she was advised that work could be the cause of her condition, or a component of her condition. (June Transcript at 77, 78) Her testimony was credible.

25. On December 12, 2013, the Claimant filed for Social Security Disability. (D359). Consistent with her testimony that she did not know that her condition was definitively caused by her work, the Claimant indicated to the Social Security offices that she had not filed for nor intended to file for workers' compensation. (D363)

26. On January 7, 2014 Dr. deDios' records reflect that her work environment makes her asthma worse, and that she likely has adult onset asthma for which she is very symptomatic. (C23; C165; D274)

27. On January 9, 2014, Dr. Hammett indicates that the Claimant's diagnosis is asthma unspecified type. (C6)
28. On February 4, 2014, Dr. deDios reflect that the Claimant stated that her asthma has been better since she has been on medical leave (C158), and that clearly her work environment as making it worse. (C161; D281).
29. The Claimant went to her supervisor (Ms. Quick) in March of 2014 and notified her that the doctors had determined that her condition was related.
30. The First Report of Injury was filled out by the Employer on March 25, 2014, indicating that the date of notice was March 25, 2014. (D396).
31. After the First Report of injury was filled out by the Claimant's supervisor, the Disability Claim Form -- Employer's Statement was filled out on April 2, 2014; the Employer indicated on that form that the disability was not caused by an incident that occurred at work while performing the duties of employment. (D395).
32. On April 3, 2014, Dr. deDios authored a letter to Dr. Hammett thanking him for his referral for consultation and evaluation of "f/u asthma/pt file worker com/not working at this time/feeling great." (D285)
33. The Form 50 was filed on July 22, 2014.
34. Dr. Hammett filled out a Disability Claim Form - Physician's Statement on August 29, 2014 stating that the Claimant was permanently disabled. (D368) He indicated that the condition was due to injury or sickness arising out of the employment. (D369) The diagnosis was "Occupational Asthma." (D369)
35. At some point Dr. Hammett had authored a statement to "whom it may concern." In that letter that the Claimant had been under his care for Occupational Asthma, and that it had been

diagnosed with the help of her pulmonologist. (C2). However, there is no date, so it is unclear when he had this opinion. He responded on September 29, 2014 that his opinions were to a degree of reasonable medical certainty. (C2).

36. In his November 4, 2014 note (C127) and subsequent notes, the diagnosis of Dr. deDios is WRA (work related asthma) and WRE (work-exacerbated asthma).

37. The Claimant did give proper notice with regards to a repetitive injury claim. The Claimant may have suspected that the chemicals were not good for her condition, but did not know the cause of her condition until after being out of work. She was advised in November that Dr. Hammett believed that there was a causal relationship to her work; Dr. deDios indicated to the Claimant that he was "on board" with the diagnosis if after being out of work, she was better. (June Transcript at 62)

38. An analysis under the King v. International Knife decision is appropriate. In King, the Claimant testified that his arm ached because he swung a hammer every day. The Claimant (Ms. Sowell) may have known that the chemicals at work caused her irritation, but she did not know that these were the cause of her condition. As indicated above, the diagnosis continued to vary. The Claimant did have disability (medical treatment and missed work) prior, but had not yet discovered the causation of her condition.

39. The earliest date based on review of all of the evidence that the Claimant would have known of the work causation component was in November of 2013. She advised the employer of this. Even if her supervisor is correct that work was not mentioned, the Claimant still did not know of the definite causation until after being out of work for months. Dr. Hammett and Dr. deDios essentially told the Claimant that being out of work would be part of that determination. (Claimant's June testimony at 59, 62, 77).

40. The notice for an occupational disease claim would also be based on the same facts. The Claimant was advised definitively that she had work-related asthma or occupational asthma after she she was out of work in January for a period of months. The Employer filled out the Incident report on March 23, 2014.

41. The Claimant filed her claim on July 22, 2014 within the statute of limitations.

42. As to causation, the Claimant has met her burden. The Claimant's treating pulmonologist, Dr. deDios, opines to a degree of reasonable medical certainty that the triggering factor for the Claimant's adult onset asthmas was her daily and repeated and unusual and extraordinary exposure at work. (C169c). He also opines that her continual and repeated exposure in her job at the Deli after her asthmas was triggered exacerbate and make her condition worse. (C169d). Dr. Hammett confirms that the Claimant's diagnosis with the help of her pulmonologist is Occupational Asthma. (C2). His opinions are to a degree of reasonable medical certainty. (C1). The Claimant's family physician as of 2015 is Dr. Mendcz; Dr. Mendez agrees to the diagnosis of occupational asthma. (Deposition of Dr. Mendez 41-42)

43. The Claimant was also seen by Dr. Early on December 17, 2015 (C219). Dr. Early is board certified in Occupational Medicine and Medial Toxicology and general preventative medicine. (C220 and Deposition of Dr. Early at 10). Dr. Early identifies three asthmagens that the Claimant incurred exposure (bleach, surfactant speciic amines in Pine Sol (ethoxylates), and monethanolamine in Mr. Muscle. (C220). His opinion is that the exposure at Piggly Wiggly in 2010 and 2011 was the cause of her Occupational Asthma. His opinions are stated to a degree of reasonable medical certainty. (C220). Dr. Early maintains his opinions in his May 18, 2016 deposition that the repeated exposure at work caused the Claimant's asthma.

44. The Defendant's expert, Robert Bennett, pharmacist, forensic scientist, and forensic toxicologist, testified at the hearing. Dr. Bennett's opinion is that it is more likely that Claimant's asthma was caused by her genetics rather than the chemicals at work. (July Transcript at 105). When asked whether his opinion is that working with the chemicals could cause asthma, he states that it is possible as a couple of the products do vaporize. (July Transcript at 56-57). He indicates that in his opinion her asthma is leaning more towards a predisposition to asthma. (July Transcript at 65). Dr. Bennett indicates that she could be predisposed and that something makes the symptoms worse; he identifies a number of possibilities. (July Transcript at 82-83). His testimony is that bleach would produce vapors. (July Transcript at 87). He agrees that there are a number of components in the water in the deli, including Mr. Muscle and bleach. (July Transcript at 97-98). Dr. Bennett indicates that health problems from inhalation or absorption are all dose related. (July Transcript at 100). He states that the amount of exposure would be a factor and the dose is critical. (July Transcript at 106)

45. The preponderance of the evidence provides that the Claimant's condition is related to her work, and the diagnosis is work related asthma/occupational asthma.

46. The Claimant has had a repeated exposure that has resulted in a repetitive condition. (Drafting attorney to provide discussion of 42-1-172).

47. Occupational disease (as discussed in post-trial conference)

48. Temporary total payments to be paid from (as discussed in post-trial conference).

49. The Claimant is at maximum medical improvement. (Dr. Mendez deposition at 29)

50. The Claimant is permanently and totally disabled. Dr. Mendez (family physician) indicates that she would be able to perform sedentary work. (Deposition of Dr. Mendez at 27 and 33). Although not a vocational expert, Dr. Mendez states that based on her symptoms, she

does not know who would employ her. (Deposition of Dr. Mendez at 35). Dr. Mendez' opinion is that the Claimant must have an "absolutely clean environment." (Deposition of Dr. Mendez at 38). Dr. E. (Deposition at 92 to 93). As indicated, Dr. deDios is the Claimant's treating physician; he is a specialist and expert in pulmonology. Therefore with regards to the Claimant's lung condition, his opinion is given greater weight. Dr. deDios' opinion is that the Claimant is permanently and totally disabled. (C104a).

51. Causally related future medical is to be provided by the Defendants. (Section 42-15-60(c))

52. The above is not a complete discussion of all of the evidence reviewed.; it is an instruction and guidance in the drafting of the order. The drafting attorney is to provide discussion of evidence, findings of facts, and discussion and conclusions of law that are consistent with the instructions. Please provide correction of all dates or citations to the record if typographical errors are discovered.

53. If there are any issues during the review of the instructions or in draft of the order that either party wishes to address, please contact Tamara and she will set up a time that is mutually convenient with both attorneys for a conference call.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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SC Court of App.