

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

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Appellate Case No.: 2018-000965

SC Court of Appeals

Victor G. Benjamin, Employee,.....Appellant,

v.

Rexam Beverage Can Company d/b/a Rexam Beverages, Employer, and
Hartford Insurance Company of the Midwest c/o Sedgwick CMS, Carrier,..... Respondents.

RECORD ON APPEAL

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1 BY MR. LOCKHART:

2 YOUR HONOR, I'D HAVE TO OBJECT TO THE LEADING
3 NATURE OF THE QUESTION.

4 BY THE COMMISSIONER:

5 SUSTAINED.

6 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

7 Q. WHAT, IF ANY, REPAIRS, VICTOR, IS YOUR HOUSE IN NEED
8 OF AT THIS POINT?

9 A. AT THIS TIME I NEED TO REPLACE SOME WINDOWS. I NEED
10 TO FIX SOME BOXING.

11 Q. WHAT IS BOXING, FOR A LAYPERSON?

12 A. BOXING, LIKE AROUND THE EDGE OF THE BUILDING HERE,
13 ON THE OUTER EDGE OF THE BUILDING WHERE THE WOOD IS
14 ON THE FACIA BOARD, THAT'S THE BOXING.

15 Q. IS IT ROTTED?

16 A. YES, IT IS.

17 BY MR. LOCKHART:

18 YOUR HONOR, I'D HAVE TO OBJECT TO THE LEADING
19 FORM OF THE QUESTION.

20 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

21 Q. WHAT, IF ANY, ROTTING DO YOU HAVE WITH THE BOXING?

22 BY MR. LOCKHART:

23 THAT'S ALSO A LEADING QUESTION.

24 BY THE COMMISSIONER:

25 SUSTAINED. I KNOW. SUSTAINED. JUST TELL --

1 HE CAN JUST TELL US GENERALLY WHAT PROBLEMS HE'S ARE
2 HAVING. YOU'RE TELLING ---

3 **BY MR. CHANDLER:**

4 I THINK I PREFACED THE QUESTION WITH "WHAT, IF
5 ANY," AND I THINK THAT IS AN OPEN-ENDED QUESTION.

6 **BY THE COMMISSIONER:**

7 I'M GOING TO SUSTAIN THE OBJECTION. YOU CAN
8 REPHRASE THE QUESTION.

9 **DIRECT EXAMINATION RESUMED BY MR. CHANDLER:**

10 Q. TELL THE COURT ABOUT ANY PROBLEMS THAT YOU HAVE WITH
11 YOUR HOME.

12 A. WELL, THE PROBLEM I HAVE WITH MY HOME, I NEED SOME
13 WINDOWS REPLACED IN MY HOME. I NEED SOME EXTERIOR
14 WORK DONE AS FAR AS THE BOXING, BECAUSE OF THE
15 INSURANCE COMPANY, THEY WANT TO DROP MY INSURANCE,
16 AND IF I DON'T FIX THIS STUFF THEY'RE GOING TO DROP
17 MY INSURANCE, AND I DON'T HAVE THE EXTRA FUNDS TO
18 HAVE THOSE THINGS DONE. THE INSURANCE COMPANY COMES
19 OUT EVERY SO OFTEN AND INSPECTS YOUR HOME TO MAKE
20 SURE THAT EVERYTHING IS UP TO PAR. SO IF SOMETHING
21 WAS TO HAPPEN TO YOUR HOME, THEY'RE GOING TO TELL
22 YOU, "WELL, THAT'S ALREADY EXISTING, AND WE CANNOT
23 FIX IT."

24 **BY MR. LOCKHART:**

25 YOUR HONOR, I'D OBJECT TO ANYTHING THAT THE

1 CLAIMANT'S INSURANCE COMPANY MIGHT SAY.

2 BY MR. CHANDLER:

3 AND I THINK IN GENERAL TERMS HE'S ABLE TO
4 DESCRIBE WHAT HE UNDERSTANDS AS FAR AS HIS
5 RESPONSIBILITIES AS A HOMEOWNER AND WHAT HE HAS TO
6 DO TO MAINTAIN HOMEOWNER'S INSURANCE ON HIS
7 PROPERTY.

8 BY THE COMMISSIONER:

9 I GOT IT. I'LL SUSTAIN THE LAST -- THE
10 OBJECTION AS TO THE LAST PART OF HIS STATEMENT, BUT
11 I UNDERSTAND THE TESTIMONY.

12 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

13 Q. OKAY. VICTOR, HAVE YOU GOTTEN ANY KIND -- WHAT, IF
14 ANY, QUOTES HAVE YOU GOTTEN THAT WOULD PUT A VALUE
15 ON WHAT KIND OF REPAIRS YOU MAY NEED FOR THE HOME?

16 BY MR. LOCKHART:

17 AND, YOUR HONOR, I'M GOING TO HAVE TO LODGE AN
18 OBJECTION THAT I HAVE NO WAY TO CROSS EXAMINE HIM ON
19 THE ACCURACY OF THE INFORMATION BECAUSE IT IS NOT A
20 PART OF THE EVIDENCE. I'M JUST GOING TO HAVE TO
21 OBJECT TO IT.

22 BY THE COMMISSIONER:

23 SUSTAINED.

24 BY MR. CHANDLER:

25 I THINK I'D LIKE TO PROFFER IT, YOUR HONOR. I

1 UNDERSTAND THE OBJECTION, BUT I THINK -- HE MAY TELL
2 ME THAT HE'S HAD NO QUOTES. BUT, I MEAN, I THINK
3 IT'S APPROPRIATE TO PROFFER IT. I MEAN, THIS IS A
4 -- WE'RE ASKING FOR A PARTIAL LUMP SUM. I'VE GOT TO
5 PRODUCE ---

6 BY THE COMMISSIONER:

7 WELL, I THINK IT GOES TO THE OVERALL ISSUE OF
8 WHETHER THE PARTIAL LUMP SUM IN THE MANNER THAT
9 YOU'RE ASKING FOR IT AT THIS JUNCTURE IS PROPER.

10 BY MR. CHANDLER:

11 CAN WE GO OFF THE RECORD JUST A MOMENT?

12 BY THE COMMISSIONER:

13 OFF THE RECORD.

14 (OFF THE RECORD)

15 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

16 Q. VICTOR, IN ADDITION TO PROBLEMS WITH YOUR HOUSE AND
17 THINGS OF THAT SORT, I UNDERSTAND THAT YOU USED TO
18 HAVE A SWIMMING POOL?

19 A. YES, I DID.

20 Q. OKAY. AND HAVE YOU HAD A SWIMMING POOL AT YOUR
21 HOUSE FOR A LONG TIME?

22 A. YES, I HAVE.

23 Q. SINCE 2011 WHAT, IF ANYTHING, HAS HAPPENED WITH YOUR
24 SWIMMING POOL?

25 A. IT HAS DETERIORATED.

1 Q. HAVE YOU EVEN BEEN ABLE TO USE IT SINCE 2011?

2 A. NO, I HAVE NOT.

3 Q. HAVE YOU NOT BEEN ABLE TO MAINTAIN IT?

4 A. I HAVE NOT BEEN ABLE TO MAINTAIN IT, SO I DID AWAY
5 WITH IT.

6 Q. DID SOMEONE ACTUALLY HAVE TO COME AND DESTROY IT AND
7 TAKE IT DOWN?

8 A. I HAD SOMEONE TO COME IN AND TAKE IT DOWN A COUPLE
9 WEEKS AGO.

10 Q. THIS IS ONE OF THOSE ABOVE-GROUND POOLS ---

11 A. YES, IT IS.

12 Q. --- THAT YOU CAN DISMANTLE?

13 A. YES.

14 Q. BUT THAT EXISTED PRIOR TO JUNE OF 2011?

15 A. OH, YES. IT WAS THERE BEFORE JUNE OF 2011.

16 BY MR. CHANDLER:

17 ANSWER ANY QUESTIONS THAT MR. LOCKHART HAS OF
18 YOU, OR COMMISSIONER TAYLOR, AND I'LL PROBABLY HAVE
19 SOME FOLLOW-UP QUESTIONS FOR YOU, OKAY?

20 BY THE WITNESS:

21 OKAY.

22 BY THE COMMISSIONER:

23 MR. LOCKHART.

24 CROSS EXAMINATION BY MR. LOCKHART:

25 Q. MR. BENJAMIN, GOOD AFTERNOON, SIR.

1 A. GOOD AFTERNOON.

2 Q. WE HAD MET BEFORE. I THINK IT'S BEEN SOME TIME
3 SINCE WE LAST SPOKE. DO YOU RECALL BEING AT A
4 HEARING IN YOUR CASE PREVIOUSLY BEFORE A
5 COMMISSIONER NAMED SUSAN BARDEN? I BELIEVE WE WERE
6 IN SUMTER FOR THAT HEARING.

7 A. YES.

8 Q. DO YOU RECALL THAT?

9 A. YES.

10 Q. AND DO YOU RECALL ME TAKING YOUR DEPOSITION IN YOUR
11 LAWYER'S OFFICE A COUPLE OF YEARS AGO?

12 A. YES.

13 Q. OKAY. AND DO YOU ALSO RECALL A LAWYER WHO WORKS
14 WITH ME NAMED MARY MARGARET HYATT TAKING YOUR
15 DEPOSITION BACK IN 2012?

16 A. I THINK I DO, YES.

17 Q. YOU LIVE IN SUMTER CURRENTLY; IS THAT CORRECT?

18 A. IT'S IN LEE COUNTY, BUT IT'S A SUMTER ADDRESS.

19 Q. OKAY. ARE ANY OF THE PHYSICIANS THAT ARE TREATING
20 YOU FOR YOUR WORK-RELATED INJURIES LOCATED IN
21 SUMTER?

22 A. NO, THEY'RE NOT.

23 Q. DR. SANDOZ IS LOCATED IN THE CONWAY/MYRTLE BEACH
24 AREA?

25 A. YES, IT IS.

- 1 Q. AND DR. BERGMANN IS LOCATED IN COLUMBIA, CORRECT?
- 2 A. YES.
- 3 Q. WHEN YOU GO AND SEE DR. BERGMANN -- AND I BELIEVE
- 4 YOU TESTIFIED TO THIS EARLIER -- YOU OFTENTIMES WILL
- 5 DRIVE YOURSELF TO AN APPOINTMENT TO SEE HIM,
- 6 CORRECT?
- 7 A. SOMETIME I DO. YES, I DO.
- 8 Q. AND THAT IS APPROXIMATELY 60 MILES OR SO FROM YOUR
- 9 HOME?
- 10 A. SOMEWHERE IN THAT NEIGHBORHOOD.
- 11 Q. SO HOW LONG DOES IT TYPICALLY TAKE YOU TO GET FROM
- 12 YOUR HOME TO DR. BERGMANN'S OFFICE?
- 13 A. IT DEPENDS HOW I'M FEELING THAT DAY. IT COULD TAKE
- 14 AN HOUR AND A HALF. IT COULD TAKE AN HOUR AND TEN
- 15 MINUTES.
- 16 Q. HOW FREQUENTLY DO YOU GO AND SEE DR. BERGMANN ALONE?
- 17 A. ABOUT 20 PERCENT OF THE TIME.
- 18 Q. YOU'VE BEEN SEEING HIM FOR SEVERAL YEARS, CORRECT?
- 19 A. CORRECT.
- 20 Q. AND OVER THAT TIME YOU'VE BEEN DRIVING, YOU SAY, 20
- 21 PERCENT OF THE TIME BACK AND FORTH TO SUMTER FROM
- 22 COLUMBIA, CORRECT?
- 23 A. YES.
- 24 Q. AND DID YOU RECENTLY GO AND SEE HIM WITHIN THE LAST
- 25 30 DAYS?

1 A. YES, I HAVE.

2 Q. AND WHEN YOU'VE MOST RECENTLY SEEN HIM WITHIN THE
3 LAST 30 DAYS, HAVE YOU DRIVEN BACK FROM COLUMBIA TO
4 YOUR HOME?

5 A. MY WIFE -- I THINK I DROVE BACK ONCE SINCE THEN.

6 Q. AND WERE YOU OPERATING YOUR WIFE'S VEHICLE?

7 A. JASON, DON'T TAKE THIS TO BE OFFENDING. MY WIFE AND
8 I DOESN'T HAVE SEPARATE VEHICLES. MY WIFE AND I
9 HAVE VEHICLES TOGETHER. WE ARE A JOINT FAMILY.
10 EVERYTHING I OWN, SHE OWNS.

11 Q. IS IT REGISTERED IN HER NAME OR YOUR NAME?

12 A. IT'S REGISTERED IN BOTH OUR NAMES.

13 Q. OKAY. WELL, THE VEHICLE THAT YOU DROVE BACK TO
14 SUMTER FROM DR. BERGMANN'S OFFICE IN COLUMBIA, WHAT
15 TYPE OF VEHICLE IS THAT?

16 A. IT'S A HONDA ODYSSEY.

17 Q. IT'S A MINIVAN?

18 A. YES, IT IS.

19 Q. AND THE OPERATION OF THAT VEHICLE REQUIRES YOU TO
20 USE YOUR HANDS?

21 A. YES.

22 Q. THE OPERATION OF THAT VEHICLE REQUIRES YOU TO USE
23 YOUR LEGS?

24 A. YES.

25 Q. AND THE OPERATION OF THAT VEHICLE REQUIRES YOU TO

1 USE YOUR FEET?

2 A. YES.

3 Q. DOES THE OPERATION OF THAT VEHICLE REQUIRE YOU TO BE
4 ABLE TO TURN YOUR HEAD LEFT AND RIGHT TO SEE
5 TRAFFIC?

6 A. I USE MY MIRROR AND TURN MY BODY FROM LEFT TO RIGHT.

7 Q. DOES THE OPERATION OF THAT VEHICLE REQUIRE YOU TO
8 USE YOUR EYES AND EARS TO BE AWARE OF YOUR
9 SURROUNDINGS?

10 A. I USE MY EYES TO BE AWARE, YES.

11 Q. OKAY. AND DOES THE OPERATION OF THAT VEHICLE
12 REQUIRE YOU TO USE YOUR BRAIN TO PROCESS THE
13 INFORMATION OF WHAT'S GOING ON AROUND YOU IN
14 TRAFFIC?

15 A. I WOULD SAY SO; YES, SIR.

16 Q. SINCE THE DATE OF THIS ACCIDENT AND DURING THE
17 OCCASIONS THAT YOU'VE DRIVEN A VEHICLE FOR ANY
18 REASON, HAVE YOU BEEN INVOLVED IN ANY MOTOR VEHICLE
19 ACCIDENTS?

20 A. NO, I HAVE NOT.

21 Q. DO YOU HAVE A SOUTH CAROLINA DRIVER'S LICENSE?

22 A. YES, I DO.

23 Q. WHEN DID YOU RENEW THAT DRIVER'S LICENSE?

24 A. I DON'T REMEMBER. I CAN PULL MY LICENSE OUT AND
25 SEE.

1 Q. OKAY. DO YOU MIND -- WOULD YOU MIND TAKING A LOOK
2 AT IT AND TELLING ME WHEN IT WOULD HAVE BEEN
3 RENEWED?

4 A. IT WAS ISSUED ON 10-22-2014.

5 Q. SO HAVE YOU RENEWED YOUR DRIVER'S LICENSE SINCE THE
6 DATE OF YOUR ACCIDENT?

7 A. YES, BECAUSE OF THE COPS, WHENEVER I GO THROUGH A
8 ROADBLOCK, THEY WAS COMPLAINING ABOUT MY ---

9 BY MR. LOCKHART:

10 I'M SORRY, YOUR HONOR, I ---

11 BY THE COMMISSIONER:

12 SUSTAINED. IT'S JUST A YES OR NO QUESTION. WE
13 DON'T NEED TO KNOW ABOUT WHY.

14 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

15 Q. DO YOU HAVE ANY DIFFICULTY DRIVING A CAR?

16 A. YES, I DO.

17 BY MR. LOCKHART:

18 YOUR HONOR, I'M LOOKING AT PAGE 892 OF THE
19 DEFENDANTS' APA SUBMISSIONS.

20 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

21 Q. WHAT TYPE OF DIFFICULTY DO YOU HAVE DRIVING A CAR?

22 A. I HAVE BACK PROBLEMS AND NECK PROBLEMS.

23 Q. WHEN I TOOK YOUR DEPOSITION PREVIOUSLY IN YOUR CASE
24 BACK IN 2014, I ASKED YOU THE FOLLOWING QUESTION.
25 AND I'M LOOKING AT THIS QUESTION HERE.

1 BY MR. CHANDLER:

2 WHAT PAGE, JASON?

3 BY MR. LOCKHART:

4 I'M LOOKING AT DEFENDANTS' APA 892.

5 BY MR. CHANDLER:

6 UNDER THE ---

7 BY MR. LOCKHART:

8 BOTTOM RIGHT CORNER.

9 BY MR. CHANDLER:

10 BOTTOM RIGHT CORNER.

11 BY MR. LOCKHART:

12 LINE 17.

13 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

14 Q. I ASKED YOU, DO YOU HAVE ANY DIFFICULTY AT ALL
15 OPERATING THE CAR OR DRIVING? AND WHAT WAS YOUR
16 ANSWER TO THAT QUESTION?

17 A. IT WAS, "NO."

18 Q. WHEN YOU DRIVE TO AND FROM DR. BERGMANN'S OFFICE, DO
19 YOU HAVE ANY DIFFICULTY LOCATING HIS OFFICE?

20 A. DO WHAT?

21 Q. DO YOU HAVE ANY DIFFICULTY LOCATING DR. BERGMANN'S
22 OFFICE WHEN YOU DRIVE FROM YOUR HOME TO HIS OFFICE?

23 A. NO, I DO NOT.

24 Q. AND DO YOU USE ANY TYPE OF GPS OR MAP PROGRAM OR ANY
25 OTHER MEANS BY WHICH TO GET TO HIS OFFICE?

- 1 A. IT'S A ROUTINE ROUTE THAT I TAKE. SO, NO, I DON'T.
- 2 Q. AND WHEN YOU TRAVEL TO AND FROM A DOCTOR'S OFFICE,
- 3 YOU SUBMIT MILEAGE REIMBURSEMENT REQUESTS TO THE
- 4 INSURANCE COMPANY, CORRECT?
- 5 A. YES, I DO.
- 6 Q. AND YOU'VE BEEN SUBMITTING THOSE SINCE THE DATE OF
- 7 YOUR ACCIDENT, CORRECT?
- 8 A. CORRECT.
- 9 Q. YOU MENTIONED DR. SANDOZ. HOW FREQUENTLY DO YOU SEE
- 10 HIM?
- 11 A. I SEE DR. SANDOZ EVERY THREE MONTHS UNLESS THERE'S A
- 12 PROBLEM ARISES WITH ME THAT I NEED TO SEE HIM BEFORE
- 13 THEN.
- 14 Q. DO YOU ATTEND THOSE EXAMINATIONS, THOSE WITH DR.
- 15 SANDOZ, DO YOU ATTEND THOSE ALONE?
- 16 A. NO, I DO NOT.
- 17 Q. HAVE YOU EVER ATTENDED AN EXAMINATION WITH DR.
- 18 SANDOZ ALONE?
- 19 A. NO, I HAVE NOT.
- 20 Q. DID YOU SEE DR. MILLS AT THE REQUEST OF YOUR
- 21 ATTORNEY?
- 22 A. YES, I DID.
- 23 Q. DID YOU ATTEND THAT EXAMINATION ALONE?
- 24 A. NO, I DID NOT.
- 25 Q. WHO WAS IN ATTENDANCE AT THAT EXAMINATION?

1 A. MRS. BENJAMIN, MY WIFE.

2 Q. DO YOU KNOW WHY YOU WERE BEING SEEN BY DR. MILLS?

3 A. DO I KNOW WHY?

4 Q. DO YOU KNOW WHY YOU WERE BEING SEEN BY DR. MILLS?

5 BY MR. CHANDLER:

6 YOUR HONOR, I THINK THAT CALLS FOR A MEDICAL
7 CONCLUSION.

8 BY THE COMMISSIONER:

9 I'M GOING TO SUSTAIN THE OBJECTION. YOU CAN
10 REPHRASE THE QUESTION.

11 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

12 Q. HAD YOU EVER SEEN DR. MILLS PRIOR TO SEEING HIM
13 RECENTLY?

14 A. NO, I HAVE NOT.

15 Q. OKAY. WERE YOU SENT THERE AT THE REQUEST OF YOUR
16 ATTORNEY?

17 A. YES, I WAS.

18 Q. WHEN YOU WERE EMPLOYED WITH REXAM, YOU SAID YOU WERE
19 A CUPPER OPERATOR; IS THAT CORRECT?

20 A. YES, I WAS.

21 Q. AS A CUPPER OPERATOR AT THE REXAM FACILITY IN
22 BISHOPVILLE, WERE YOU THE MEMBER OF ANY TYPE OF
23 UNION ORGANIZATION?

24 A. OF COURSE I WAS.

25 Q. OKAY. AND WHAT WAS THE NAME OF YOUR UNION?

- 1 A. UNITED STATES STEEL WORKERS OF AMERICA.
- 2 Q. AND DID THE BRANCH HAVE A NUMBER OR A DESIGNATION?
- 3 A. YES, IT DOES HAVE A NUMBER, AND I CANNOT REMEMBER
- 4 THE NUMBER.
- 5 Q. IS IT LOCAL 8634S?
- 6 A. NUMBER 8634S? I DON'T REMEMBER THE NUMBER EXACTLY.
- 7 Q. ARE YOU FAMILIAR WITH A STEEL WORKERS UNION HALL
- 8 LOCATED AT 426 MARSH STREET IN BISHOPVILLE, SOUTH
- 9 CAROLINA?
- 10 A. YES, I AM.
- 11 Q. WAS THAT THE LOCATION OF YOUR UNION?
- 12 A. YES. I THINK I HAVE A UNION CARD IN HERE. I CAN
- 13 TELL YOU WHAT THE NUMBER IS. MY CARD IS SO WORN OUT
- 14 I CANNOT SEE THE NUMBER ON IT.
- 15 Q. MAY I TAKE A LOOK AT IT?
- 16 A. SURE, YOU MAY.
- 17 Q. THANK YOU VERY MUCH. DID YOU EVER SERVE AS THE
- 18 TREASURER OF YOUR LOCAL UNION CHAPTER IN THE
- 19 SUMTER/BISHOPVILLE AREA?
- 20 A. YES, I DID.
- 21 Q. DID YOU SERVE AS THE TREASURER OF THAT ORGANIZATION
- 22 AFTER YOUR WORK ACCIDENT OCCURRED?
- 23 A. YES, I DID.
- 24 Q. DID YOU SERVE AS THE TREASURER OF THAT ORGANIZATION
- 25 IN 2011?

1 A. YES, I WAS CURRENTLY A TREASURER. YES.

2 Q. WERE YOU PAID A SALARY BY YOUR UNION TO SERVE AS THE
3 TREASURER IN 2011?

4 A. IT WAS A -- IT WAS A THREE-MONTH SALARY. WHAT THEY
5 CALL A -- THEY CALLED IT A -- YEAH.

6 Q. WERE YOU PAID APPROXIMATELY \$1,446 TO SERVE AS THE
7 TREASURER OF YOUR UNION HALL IN 2011?

8 A. I DON'T KNOW EXACTLY WHAT THE FIGURES WAS.

9 Q. DID YOU SERVE AS THE TREASURER OF YOUR UNION HALL IN
10 2012?

11 A. YES, I WAS, BUT THERE WAS THE SECRETARY OF TREASURER
12 THAT WAS TAKING CARE OF ALL THE BUSINESS. HE WAS
13 TAKING CARE OF ALL THE BUSINESS. THE ONLY THING HE
14 DID WAS CAME BY AND GOT ME TO SIGN THE CHECKS.

15 Q. SO YOU WERE SIGNING CHECKS ON BEHALF OF THE UNION
16 HALL IN 2012?

17 A. YES, I WAS.

18 Q. OKAY. WERE YOU PAID WAGES OF APPROXIMATELY \$868 TO
19 SERVE AS THE TREASURER OF YOUR UNION HALL IN 2012?

20 A. I DON'T REMEMBER WHAT THE FIGURES WAS.

21 Q. WERE YOU PAID WAGES -- EVEN THOUGH YOU CAN'T
22 REMEMBER THE EXACT FIGURE, DO YOU RECALL BEING PAID
23 BY THE UNION HALL?

24 A. YES, I WAS.

25 Q. DID YOU SERVE AS THE TREASURER OR THE UNION HALL IN

- 1 2013?
- 2 A. I CAN'T REMEMBER BECAUSE THEY -- THEY HAD A RE-
- 3 ELECTION. I DON'T REMEMBER WHAT YEAR THE RE-
- 4 ELECTION WAS DONE, SO I DON'T REMEMBER WHAT YEAR
- 5 THAT THEY PUT SOMEONE ELSE IN CHARGE.
- 6 Q. DO YOU THINK IT'S POSSIBLE YOU COULD HAVE SERVED AS
- 7 THE TREASURER OF YOUR UNION IN 2013?
- 8 A. I DON'T KNOW.
- 9 Q. DO YOU THINK IT'S POSSIBLE YOU COULD HAVE BEEN PAID
- 10 WAGES BY YOUR UNION IN 2013?
- 11 A. I DON'T KNOW.
- 12 Q. ARE YOU STILL A MEMBER OF YOUR UNION HALL?
- 13 A. YES, I AM.
- 14 Q. DO YOU VISIT THERE WITH ANY FREQUENCY?
- 15 A. NO, I DO NOT.
- 16 Q. LET ME ASK YOU ABOUT BENJAMIN AND SON TOWING FOR
- 17 JUST A MOMENT. YOU MENTIONED EARLIER THAT YOU STILL
- 18 HAVE THE VEHICLE; THE TOW TRUCK ITSELF IS LOCATED ON
- 19 YOUR PROPERTY?
- 20 A. YES, IT IS.
- 21 Q. OKAY. WHEN IS THE LAST TIME THAT YOU'VE DRIVEN THAT
- 22 TRUCK?
- 23 A. 2011.
- 24 Q. WHEN DID THE LAST -- WHEN WAS THE LAST TIME THAT
- 25 BENJAMIN AND SON TOWING PERFORMED ANY TASK FOR WHICH

1 IT RECEIVED PAYMENT?

2 A. I DON'T KNOW BECAUSE MY SON IS THE ONE THAT DRIVES
3 THE TRUCK IF ANYTHING IS TO BE DONE TO THE TRUCK.

4 BY MR. LOCKHART:

5 YOUR HONOR, I'M LOOKING AT PAGE 907 OF THE APA
6 SUBMISSIONS.

7 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

8 Q. MR. BENJAMIN, WHEN I TOOK YOUR -- I'M SORRY; WHEN
9 MS. HYATT TOOK YOUR DEPOSITION IN MARCH OF 2012, DO
10 YOU RECALL HER ASKING YOU QUESTIONS ABOUT BENJAMIN
11 AND SON TOWING?

12 A. YES, I DO.

13 Q. I'M GOING TO SHOW YOU A COPY OF A QUESTION SHE ASKED
14 YOU. SO SHE TOOK THIS DEPOSITION IN MARCH OF 2012.

15 BY MR. LOCKHART:

16 JEFF, I'M LOOKING AT THE UPPER RIGHT PORTION OF
17 THAT PAGE, PAGE 15.

18 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

19 Q. MS. HYATT ASKED YOU, "WHEN IS THE LAST TIME YOU
20 TOWED A VEHICLE THROUGH YOUR BUSINESS?" AND WHAT
21 WAS YOUR ANSWER TO THAT QUESTION?

22 A. "I THINK MY SON TOWED A COUPLE OF WEEKS AGO."

23 Q. SO, IN LIGHT OF THIS TESTIMONY IT WOULD APPEAR MAYBE
24 BENJAMIN AND SON TOWING ACTUALLY WAS STILL TOWING
25 VEHICLES IN 2012? YOU PERSONALLY MAY NOT HAVE BEEN,

1 BUT THE BUSINESS STILL WAS, CORRECT?

2 A. YEAH, BECAUSE MY SON, HE'S PART OF THE BUSINESS.

3 Q. SO THE BUSINESS, TO SOME EXTENT, CONTINUED TO
4 OPERATE AFTER YOUR WORK ACCIDENT OCCURRED?

5 A. YES.

6 Q. OTHER THAN ANY INCOME RUN THROUGH BENJAMIN AND SON
7 TOWING AND ANY WAGES PAID TO YOU BY YOUR UNION HALL,
8 HAVE YOU HAD ANY OTHER INCOME AT ALL SINCE THE DATE
9 OF YOUR WORK ACCIDENT?

10 A. NO, I HAVEN'T.

11 Q. OTHER THAN YOUR WEEKLY TEMPORARY TOTAL DISABILITY
12 BENEFITS THAT YOU'RE RECEIVING CURRENTLY, DO YOU
13 HAVE ANY OTHER INCOME AT THE PRESENT TIME?

14 A. NO, I DO NOT.

15 Q. HAVE YOU FILED FOR SOCIAL SECURITY BENEFITS?

16 A. NO, I HAVE NOT.

17 Q. AND YOU SAID YOUR WIFE IS CURRENTLY EMPLOYED WITH
18 WELLS FARGO?

19 A. YES, SHE IS.

20 Q. AND SHE HAS EARNINGS, I ASSUME, THROUGH HER JOB
21 THERE?

22 A. YES.

23 Q. DOES SHE HAVE ANY OTHER JOBS BESIDES HER JOB WITH
24 WELLS FARGO?

25 A. SHE DID A NUTRITIONIST PRODUCT. SO, SHE'S NOT

1 MAKING ANY MONEY WITH IT. SHE JUST USE IT TO
2 SUPPLEMENT PRODUCTS THAT SHE USES FOR HERSELF.

3 Q. SO SHE SELLS THAT OUT OF YOUR HOME?

4 A. NO. SHE USES IT OUT OF MY HOME.

5 Q. OKAY. BUT SHE DOESN'T SELL IT TO ANYONE?

6 A. NO, SHE DOESN'T.

7 Q. OKAY, ALL RIGHT. MR. BENJAMIN, LET ME ASK YOU FOR A
8 MOMENT ABOUT THE ACTUAL WORK ACCIDENT ITSELF, AND
9 YOUR LAWYER TOUCHED ON IT FOR A BRIEF MOMENT. AFTER
10 YOU WERE INJURED, IMMEDIATELY AFTER YOU WERE INJURED
11 YOU SOUGHT AND RECEIVED TREATMENT AT A LOCAL
12 HOSPITAL, IS THAT CORRECT, McLEOD MEDICAL CENTER?

13 A. YES.

14 Q. WHEN YOU ARRIVED AT McLEOD, YOU ARRIVED THERE VIA
15 AMBULANCE; IS THAT CORRECT?

16 A. CORRECT.

17 Q. AND WHEN YOU ARRIVED AT McLEOD VIA AMBULANCE, WERE
18 YOU ABLE TO COMMUNICATE WITH YOUR PHYSICIANS THERE?

19 A. AT SOME POINT I DID BECAUSE I KEPT GOING IN AND OUT,
20 BECAUSE I KEPT COMPLAINING ABOUT MY BACK, AND I
21 DIDN'T KNOW THAT THEY HAD ALREADY TAKEN X-RAYS OF MY
22 BACK UNTIL MY WIFE BROUGHT IT TO MY ATTENTION. SHE
23 SAID, "VICTOR, THEY HAVE ALREADY TAKEN YOU DOWN
24 THREE TIME ALREADY," AND I DID NOT KNOW. I DIDN'T
25 HAVE A CLUE.

1 BY MR. LOCKHART:

2 YOUR HONOR, I'M LOOKING AT PAGE 658 OF THE APA
3 SUBMISSIONS.

4 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

5 Q. MR. BENJAMIN, WHEN YOU WERE SEEN AT McLEOD REGIONAL
6 MEDICAL CENTER ON JUNE 15, 2011, THE RECORD THERE
7 DESCRIBED YOU AS AWAKE, ALERT, CONVERSANT, AND WITH
8 FLUID SPEECH. SO, DO YOU RECALL BEING AWAKE; DO YOU
9 RECALL BEING CONVERSANT; DO YOU RECALL SPEAKING
10 CLEARLY WHEN COMMUNICATING WITH YOUR DOCTORS?

11 A. MAYBE I WAS; MAYBE I WASN'T. I CAN'T REMEMBER.

12 Q. WHEN YOU WERE SEEN AT McLEOD REGIONAL MEDICAL CENTER
13 ON THE DATE OF YOUR ACCIDENT, DID YOU PROVIDE YOUR
14 PHYSICIANS THERE WITH ANY COMPLAINTS AT ALL
15 REGARDING HAVING INJURED YOUR LOWER BACK?

16 A. YES, I DID.

17 Q. WOULD YOU BE SURPRISED IF THE MEDICAL RECORDS FROM
18 THAT FACILITY MAKE NO MENTION OF SUCH COMPLAINTS?

19 A. I WOULDN'T BE SURPRISED AT NO MEDICAL RECORDS OF
20 ANYTHING, JASON.

21 Q. AFTER BEING DISCHARGED FROM McLEOD YOU SOUGHT AND
22 RECEIVED TREATMENT WITH DR. NASO; IS THAT CORRECT?

23 A. YES, I DID.

24 Q. AS FAR AS THE ACCIDENT ITSELF IS CONCERNED, DO YOU
25 STILL RECALL ANY OF THE FACTS AND CIRCUMSTANCES

1 SURROUNDING THE ACCIDENT ITSELF?

2 A. NO, I DO NOT.

3 BY MR. LOCKHART:

4 YOUR HONOR, JUST IN THE INTEREST OF TIME, PAGE
5 844 THROUGH 848 IS TESTIMONY GIVEN AT THE HEARING
6 BEFORE COMMISSIONER BARDEN REGARDING THE ACCIDENT.

7 BY THE COMMISSIONER:

8 THANK YOU.

9 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

10 Q. NOW, WITH REGARDS TO DR. NASO WHILE YOU WERE UNDER
11 HIS CARE, DID YOU PROVIDE HIM WITH COMPLAINTS AT ALL
12 WITH REGARDS TO YOUR LOWER BACK?

13 A. NO. I GAVE HIM COMPLAINTS ABOUT MY HEAD.

14 Q. AND AS A RESULT OF THOSE COMPLAINTS, DID HE -- OR
15 DID YOU END UP UNDERGOING AN MRI OR A DIAGNOSTIC
16 SCAN OF YOUR BRAIN?

17 A. AN MRI.

18 Q. DO YOU RECALL AT SOME POINT UNDERGOING ANOTHER MRI
19 OF YOUR BRAIN THAT DR. SANDOZ RECOMMENDED THAT YOU
20 HAVE? THIS WOULD HAVE BEEN IN OCTOBER OF 2011.

21 A. IT'S A LONG TIME AGO, JASON. SOME THINGS I DON'T
22 REMEMBER.

23 Q. IF WE HAVE A MEDICAL RECORD THAT SAYS YOU HAD AN MRI
24 DONE IN OCTOBER OF 2011 ---

25 A. IT'S POSSIBLE, YEAH. I MEAN, I DON'T KNOW.

1 Q. WHEN YOU WERE UNDER THE CARE OF DR. NASO, DID YOU
2 PROVIDE HIM WITH ANY COMPLAINTS ABOUT LACK OF
3 BALANCE OR PROBLEMS WALKING OR PROBLEMS WITH YOUR
4 GAIT?

5 A. I CAN'T REMEMBER, BUT I COMPLAINED TO HIM ABOUT ALL
6 THIS -- I THINK MAYBE I DID. I'M NOT SURE, BECAUSE
7 THE PROBLEM I HAD WITH DR. NASO, WHEN I COMPLAINED
8 TO DR. NASO ABOUT THE PROBLEMS I WAS HAVING, HE WAS
9 LIKE, "WHERE YOU AT?" "I'M OVER HERE." HE JUST GOT
10 OFF OF VACATION. AND I TOLD DR. NASO MY PROBLEMS.
11 AND THE THINGS THAT DR. NASO TOLD ME, HE SAID, "MR.
12 BENJAMIN, SOUND TO ME LIKE YOU DOING JUST FINE."

13 BY MR. LOCKHART:

14 YOUR HONOR, HE CAN'T TESTIFY AS TO WHAT THE
15 DOCTOR SAID TO HIM.

16 BY THE COMMISSIONER:

17 SUSTAINED.

18 BY MR. LOCKHART:

19 THAT'S AT PAGE 685 OF DEFENDANTS' APAs.

20 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

21 Q. AND WITH REGARDS TO POST TRAUMA RESOURCES, YOU
22 MENTIONED THAT DR. BERGMANN AND DR. DEAL BOTH HAVE
23 DONE QUITE A LOT FOR YOU, AND YOU FELT LIKE THE
24 TREATMENT THEY'VE PROVIDED TO YOU HAS BEEN
25 BENEFICIAL; IS THAT CORRECT?

1 A. YES.

2 Q. AND WHEN YOU WOULD GO TO SEE DR. BERGMANN, WHAT
3 TYPES OF THINGS WOULD YOU TALK WITH HIM ABOUT?

4 A. DIFFERENT KIND OF PROBLEMS WITH ANGER, DEALING WITH
5 PEOPLE, DEALING WITH FAMILY, HEADACHES, PAIN.

6 Q. DID YOU EVER DISCUSS WITH HIM YOUR HAVING TO TAKE
7 CARE OF YOUR PARENTS?

8 A. I PROBABLY DID BECAUSE I USED TO TAKE CARE OF THEM
9 BEFORE I HAD MY ACCIDENT.

10 BY MR. LOCKHART:

11 YOUR HONOR, I'M LOOKING AT PAGE 696 OF THE
12 APAs.

13 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

14 Q. MR. BENJAMIN, I'M LOOKING AT A REPORT FROM DR. -- I
15 BELIEVE IT'S FROM DR. DEAL DATED APRIL 15 OF 2014.
16 THAT WOULD HAVE BEEN AFTER YOUR ACCIDENT, CORRECT?

17 A. YES, IT IS.

18 Q. IN THAT NOTE DR. DEAL SAYS, "MR. BENJAMIN HAS HAD AN
19 ENORMOUS AMOUNT OF INTERPERSONAL STRESS. HE IS
20 RESPONSIBLE FOR TAKING CARE OF BOTH OF HIS PARENTS,
21 AND HIS FATHER HAS BEEN SICK IN THE HOSPITAL, WHICH
22 HAS CREATED MORE STRESS FOR HIM IN ADDITION TO
23 DEALING WITH HIS CHRONIC PAIN." WERE YOU CARING FOR
24 BOTH OF YOUR PARENTS IN APRIL OF 2014?

25 A. UP UNTIL THIS DAY, JASON, I DON'T HAVE ANY CHOICE

1 BUT TO TAKE CARE OF MY PARENTS AS FAR AS GIVING THEM
2 ABILITY TO -- BETWEEN AND WIFE AND I, TRY TO GIVE
3 THEM -- LEAD THEM IN THE RIGHT DIRECTION, WHAT THEY
4 NEED TO DO. THAT'S THE ONLY THING I CAN TELL YOU,
5 JASON. AS IN CARING FOR THEM, I CANNOT GO THERE AND
6 DO THIS AND DO THAT FOR THEM BECAUSE I'M NOT ABLE TO
7 DO FOR MYSELF.

8 Q. WELL, WHAT TYPE OF CARE WERE YOU PROVIDING TO THEM
9 IN APRIL OF 2014? AND THE ONLY REASON I ASK IS
10 BECAUSE EARLIER YOU SAID YOU COULDN'T PROVIDE ANY
11 CARE TO THEM. SO I'M TRYING TO FIGURE OUT WHAT
12 EXACTLY THAT WORD MEANS AS IT WAS CONVEYED TO DR.
13 DEAL.

14 A. I CAN'T THINK BACK THAT FAR. THE ONLY THING I CAN
15 KNOW IS I KNOW MY DADDY WAS SICK DURING THAT TIME,
16 AND I DID WHAT I COULD DO TO HELP THEM OUT AS FAR AS
17 RECOMMEND THEM DIFFERENT DOCTORS TO GO TO, AND I
18 STRESSED THAT VERY HIGHLY TO THEM, AND I EVEN ASKED
19 DR. DEAL WHERE DO I NEED TO SEND MY DADDY TO TO GET
20 THE BEST OF CARE.

21 Q. WOULD YOU DISCUSS WITH DR. BERGMANN AND DR. DEAL AN
22 ANGER ISSUE YOU HAVE TOWARDS OTHER PEOPLE?

23 A. YES, I HAVE.

24 **BY MR. LOCKHART:**

25 YOUR HONOR, I'M LOOKING AT PAGE 699 OF THE APA

1 SUBMISSIONS.

2 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

3 Q. I'M LOOKING AT A REPORT FROM DR. BERGMANN FROM JULY
4 OF 2014, AND IN THAT NOTE DR. BERGMANN SAYS,
5 "REPORTED STATUS AND ACTIVITY. REPORTED CONFLICT
6 WITH A CONTRACTOR, AND THIS REMAINS A PATTERN OF
7 IRRITABILITY." WERE YOU DEALING WITH A CONTRACTOR
8 IN JULY OF 2014?

9 A. I THINK I HAD A PROBLEM WITH A BUILDING OF MINE, AND
10 A CONTRACTOR WAS DOING SOME WORK ON A BUILDING OF
11 MINE.

12 Q. WHAT TYPE OF WORK WAS BEING DONE ON IT?

13 A. IT WAS SOME WORK ON THE ROOF TRYING TO FIX A WATER
14 LEAK FOR THE INSURANCE COMPANY, TRYING TO SPEND
15 MONEY THAT I DID NOT HAVE TO TRY TO GET THAT LEAK
16 FIXED, AND I GOT SCREWED OUT OF THAT DEAL.

17 Q. HOW SO?

18 A. THEY DID NOT FIX THE LEAK, AND THEY GOT MY MONEY,
19 AND THE LEAK STILL IS NOT FIXED, AND THEY WILL NOT
20 COME BACK AND FIX THE PROBLEM. I DIDN'T HAVE THE
21 MONEY TO TAKE THEM TO COURT TO FIGHT THEM IN COURT.

22 Q. THESE INTERACTIONS AND CONVERSATIONS YOU WOULD HAVE
23 WITH YOUR CONTRACTOR, WOULD THOSE OCCUR BETWEEN YOU
24 AND THE CONTRACTOR?

25 A. MAINLY MY WIFE AND THE CONTRACTOR.

1 Q. OKAY. BUT WOULD YOU DEAL WITH THE CONTRACTOR ON
2 OCCASION YOURSELF, YOU PERSONALLY?

3 A. MY WIFE.

4 Q. YOU NEVER DEALT WITH THE CONTRACTOR ALONE?

5 A. NO.

6 Q. MR. BENJAMIN, HAD YOU EVER HAD ANY CONVERSATIONS
7 WITH DR. BERGMANN OR DR. DEAL ABOUT YOUR BEING
8 INVOLVED IN THE PROBLEMS OF OTHER PEOPLE, BEING OVER
9 INVOLVED IN THE PROBLEMS OF OTHERS?

10 A. I HAVE THAT PROBLEM ALL THE TIME.

11 BY MR. LOCKHART:

12 YOUR HONOR, I'M LOOKING AT PAGE 706 AND 707 OF
13 THE APAs.

14 BY THE COMMISSIONER:

15 THANK YOU.

16 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

17 Q. MR. BENJAMIN, THIS IS A NOTE FROM DR. BERGMANN IN
18 MAY OF 2015 IN WHICH HE NOTES, "CONTINUED COMPLAINTS
19 ABOUT THE BEHAVIOR OF OTHERS, OVER INVOLVEMENT WITH
20 OTHERS' PROBLEMS." WHAT TYPE OF INVOLVEMENT WOULD
21 YOU HAVE IN THE PROBLEMS OF OTHERS THAT LED YOU TO
22 BRING THIS UP TO DR. BERGMANN?

23 A. WHEN I SEE SOMETHING -- LIKE I TOLD YOU EARLIER,
24 WHEN I SEE SOMETHING, MY WAY IS VICTOR'S WAY OR NO
25 WAY. THAT'S WHAT I MEANT MY THAT. THAT'S HOW I SEE

- 1 IT. BUT HE TOLD ME -- HE TELLS ME ---
- 2 Q. YOU CAN'T TELL US WHAT HE TOLD YOU. I'M ASKING
- 3 ABOUT WHAT YOU TOLD HIM ABOUT GETTING INVOLVED WITH
- 4 OTHERS. WERE YOU TRYING TO SOLVE OTHER INDIVIDUALS'
- 5 PROBLEMS FOR THEM OR RESOLVE ISSUES ON THEIR BEHALF?
- 6 A. NO, I WAS NOT. I WAS JUST LETTING HIM KNOW HOW I
- 7 FELT ABOUT DIFFERENT THINGS. I WAS NOT TRYING TO
- 8 SOLVE A PROBLEM FOR THEM.
- 9 Q. WELL, WHAT EXACTLY WERE YOU GETTING INVOLVED IN THAT
- 10 HE LABELED AS OVER INVOLVEMENT?
- 11 A. SAY, FOR INSTANCE, MY SON, IF I TELL MY SON I NEED
- 12 YOU TO DO SOMETHING, AND I NEED IT DONE A CERTAIN
- 13 WAY, AND HE DON'T DO IT THE WAY THAT I THINK IT
- 14 SHOULD BE DONE. I WOULD LIKE FOR YOU TO DO IT A
- 15 CERTAIN WAY, BECAUSE THAT'S THE WAY I ALWAYS HAVE
- 16 DONE IT. I DON'T LIKE STUFF HALF DONE. I LIKE
- 17 THINGS DONE RIGHT.
- 18 Q. WOULD CONFLICTS WITH YOUR SON BE SUBJECT OF
- 19 CONVERSATIONS YOU'VE HAD WITH DR. BERGMANN OR DR.
- 20 DEAL?
- 21 A. PROBABLY HAVE.
- 22 Q. YOU SAID YOU HAVE A 24-YEAR-OLD CHILD AND A 16-YEAR-
- 23 OLD?
- 24 A. YES, I DO.
- 25 Q. AND NEITHER OF THEM LIVE WITH YOU CURRENTLY?

1 A. NO, THEY DO NOT.

2 Q. WHERE DOES THE 16-YEAR-OLD RESIDE?

3 A. HE STAYS WITH HIS MOTHER.

4 Q. OKAY. DO YOU HAVE TO MAKE CHILD SUPPORT PAYMENTS TO
5 HER?

6 A. YES, I DO.

7 Q. AND WHAT ARE THE AMOUNT OF THOSE PAYMENTS?

8 A. I DON'T KNOW EXACTLY THE AMOUNT OF THE PAYMENTS, BUT
9 I PAY 110 EVERY MONTH -- I MEAN EVERY WEEK.

10 Q. AND YOU'VE BEEN MAKING THOSE PAYMENTS SINCE THE DATE
11 OF YOUR INJURY?

12 A. YES, I HAVE.

13 Q. OKAY. AND ARE THOSE PAYMENTS CURRENT, AS FAR AS YOU
14 KNOW?

15 A. IT'S CURRENT -- I MEAN, AS FAR AS I KNOW THEY ARE.

16 **BY MR. LOCKHART:**

17 YOUR HONOR, I'M LOOKING AT PAGE 714 OF THE
18 APAs.

19 **CROSS EXAMINATION RESUMED BY MR. LOCKHART:**

20 Q. MR. BENJAMIN, IS YOUR BEING INVOLVED WITH OTHERS'
21 PROBLEMS OR ISSUES STILL A CONCERN OF YOURS? IS
22 THAT SOMETHING YOU STILL TALK TO DR. BERGMANN ABOUT?

23 A. I PROBABLY DO, BECAUSE OF THE FACT IF I KNOW
24 SOMETHING -- IF I KNOW SOMEBODY IS NOT DOING SOME
25 SAFE AFTER MY ACCIDENT, AND I WOULD MENTION TO THEM,

1 "WHAT YOU'RE DOING IS NOT SAFE," AND IF THEY CHOOSE
2 NOT TO DO WHAT IS SAFE, I'LL WALK AWAY, BECAUSE I
3 CANNOT STAND TO SEE SOMEONE GET HURT AFTER WHAT HAVE
4 HAPPENED TO ME.

5 Q. IN DR. BERGMANN'S NOTE OF MARCH 15TH OF THIS YEAR,
6 2016, HE SAYS -- IN REFERENCE TO YOUR CONDITION HE
7 SAYS, "REPORTS THAT HE HAS BEEN VERY IRRITABLE,
8 ANGRY, AND UPSET DURING THE PAST WEEK; REMAINS OVER
9 INVOLVED IN OTHERS' BUSINESS, AND THIS IS IMPACTING
10 HIS CONDITION." WHAT INVOLVEMENT ARE YOU HAVING IN
11 THE BUSINESS OF OTHERS, AND WHAT BUSINESS IS HE
12 REFERRING TO?

13 A. I DON'T KNOW WHAT BUSINESS HE'S REFERRING TO. YOU
14 SAID MARCH OF 2016?

15 Q. YES, SIR. THIS IS THE NOTE RIGHT HERE, AND IT'S THE
16 FIRST SENTENCE, IN WHICH HE SAYS, "REMAINS OVER
17 INVOLVED IN OTHERS' BUSINESS, AND THIS IS IMPACTING
18 HIS CONDITION." DO YOU HAVE ANY RECOLLECTION OF
19 TALKING TO HIM ABOUT THAT OR MAKING THESE COMMENTS
20 TO HIM?

21 A. PROBABLY HAVE. IT COULD HAVE SOMETHING TO DO WITH
22 MY MOTHER.

23 Q. AND YOUR INVOLVEMENT IN ISSUES WITH OTHERS IS
24 BECAUSE YOU FEEL LIKE YOU HAVE THE RIGHT ANSWER OR
25 THE CORRECT APPROACH?

1 A. TO BE HONEST WITH YOU, I FEEL LIKE I'M ALWAYS RIGHT
2 AND EVERYBODY ELSE IS ALWAYS WRONG.

3 Q. YOU HAVE THE CLARITY OF MIND TO THINK THAT YOUR
4 POSITION ON AN ISSUE IS CORRECT?

5 A. I HAVE THE POSITION TO THINK THAT I'M RIGHT AND
6 EVERYBODY ELSE IS WRONG. I MEAN, I COULD BE WRONG,
7 BUT IN MY MIND IT'S TELLING ME THAT I'M RIGHT.

8 Q. YOU MENTIONED EARLIER THAT THE TOW TRUCK FROM THE
9 COMPANY BUSINESS IS STILL ON YOUR PROPERTY; IS THAT
10 CORRECT?

11 A. YES, IT IS.

12 Q. ALL RIGHT. AND YOU MENTIONED YOUR MINIVAN, THE
13 ODYSSEY. DO YOU HAVE ANY OTHER -- DO OWN ANY OTHER
14 VEHICLE AT ALL?

15 A. YES, I DO.

16 Q. HOW MANY OTHER VEHICLES DO YOU OWN?

17 A. BETWEEN ME AND MY SON AND MY WIFE, PROBABLY THREE OR
18 FOUR OTHER.

19 Q. AND THOSE ARE ALL OWNED BY THE FAMILY UNIT, BY YOU,
20 YOUR WIFE, ---

21 A. AND MY SON.

22 Q. --- AND YOUR SON?

23 A. YES.

24 Q. OKAY, ALL RIGHT. DO YOU OWN ANY TYPE OF FARM
25 EQUIPMENT OR TRACTORS OR ANY NON-AUTOMOBILES?

1 A. A TRACTOR, YES.

2 Q. WHAT DO YOU DO WITH THE TRACTOR?

3 A. MY SON USES IT TO CUT GRASS.

4 Q. WHEN DID YOU PURCHASE THAT?

5 A. 2001, I GUESS, OR MAYBE EARLIER THAN THAT.

6 Q. WHEN YOU WERE EXAMINED BY DR. MILLS A FEW WEEKS AGO,
7 DO YOU RECALL HOW LONG YOU SPENT WITH HIM?

8 A. NOT EXACTLY; NO, I DON'T.

9 Q. DID HE PROVIDE YOU ANY TREATMENT?

10 A. NO, HE DID NOT.

11 Q. AT SOME POINT AFTER YOUR ACCIDENT YOU CAME UNDER THE
12 CARE OF DR. CARL LOZANNE; IS THAT CORRECT?

13 A. YES.

14 Q. AND WHEN YOU SAW DR. LOZANNE FOR THE FIRST TIME, DID
15 YOU PROVIDE DR. LOZANNE WITH ANY COMPLAINTS AT ALL
16 REGARDING YOUR LOWER BACK?

17 A. YES, I HAVE.

18 BY MR. LOCKHART:

19 YOUR HONOR, I'M LOOKING AT PAGE 677 OF THE APA
20 SUBMISSIONS.

21 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

22 Q. AT SOME POINT DR. LOZANNE PERFORMED SURGERY ON YOUR
23 NECK; IS THAT CORRECT?

24 A. YES.

25 Q. AND AT SOME POINT YOU ACTUALLY SAW DR. STEVEN

1 POLETTI; IS THAT CORRECT?

2 A. YES.

3 Q. AND WAS THAT AT THE REQUEST OF YOUR ATTORNEY?

4 A. YES -- NO, IT WAS AT THE REQUEST OF DR. SANDOZ.

5 Q. OF DR. SANDOZ. OKAY.

6 BY MR. LOCKHART:

7 YOUR HONOR, I'M LOOKING AT PAGE 718 OF THE APA
8 SUBMISSIONS.

9 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

10 Q. WHEN YOU SAW DR. POLETTI FOR THE FIRST TIME, DO YOU
11 RECALL WHAT TYPE OF COMPLAINTS YOU PROVIDED TO HIM?

12 A. SOMEWHAT, YES.

13 Q. AND WHAT WERE THOSE?

14 A. I WAS HAVING NECK PROBLEMS. I WAS HAVING NUMBNESS
15 IN MY ARMS. I WAS HAVING BACK PROBLEMS.

16 Q. DID HE DO A PHYSICAL EXAM ON YOU?

17 A. YES, HE DID.

18 BY MR. LOCKHART:

19 PAGE 719 OF THE APAs, YOUR HONOR.

20 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

21 Q. HAD YOU EVER HAD ANY PROBLEMS WITH YOUR LOWER BACK
22 BEFORE YOUR WORK ACCIDENT OCCURRED?

23 A. I'VE HAD PROBLEMS AFTER 15 YEARS OF WORK AT REXAM.

24 Q. DID YOU HAVE ANY PROBLEMS WITH YOUR LOWER BACK
25 BEFORE YOUR WORK ACCIDENT THAT NECESSITATED MEDICAL

1 TREATMENT OR YOU SEEKING TREATMENT?

2 A. I WAS SEEKING TREATMENT THEN BECAUSE I GOT HURT AT
3 WORK.

4 BY MR. LOCKHART:

5 YOUR HONOR, I'M LOOKING AT PAGE 656 OF THE APA
6 SUBMISSIONS.

7 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

8 Q. DID YOU GO TO McLEOD MEDICAL CENTER BACK IN 1997
9 WITH COMPLAINTS OF LOW BACK PAIN? DO YOU RECALL
10 BEING SEEN THERE?

11 A. YES, I RECALL BEING SEEN THERE.

12 Q. AND WHERE ELSE BESIDES AT McLEOD HAD YOU SOUGHT OR
13 RECEIVED TREATMENT FOR LOWER BACK PROBLEMS BEFORE
14 YOUR WORK ACCIDENT OCCURRED?

15 A. I CAN'T REMEMBER. IT WAS SOME PLACE IN FLORENCE.
16 IT WAS ALWAYS IN FLORENCE.

17 Q. WAS IT AN ORTHOPEDIC PHYSICIAN OR A PAIN MANAGEMENT
18 DOCTOR, OR DO YOU RECALL?

19 A. I THINK IT WAS A CHIROPRACTOR.

20 Q. OKAY. AND WHO WOULD THAT -- WHO WOULD THE
21 CHIROPRACTOR HAVE BEEN?

22 A. I CAN'T REMEMBER.

23 Q. BUT IT WAS LOCATED IN FLORENCE?

24 A. YES, IT WAS.

25 Q. DID ALL THE PROBLEMS THAT YOU'RE HAVING RIGHT NOW

1 WORSEN AFTER DR. POLETTI OPERATED ON YOUR NECK?

2 A. NO. MY PROBLEM WORSENER WHEN DR. LOZANNE WORKED ON
3 MY NECK.

4 Q. SO HAVE YOUR PROBLEMS HAVE IMPROVED SINCE DR.
5 POLETTI PERFORMED SURGERY, OR HAVE THEY GOTTEN
6 WORSE?

7 A. THEY MAINTAIN ABOUT THE SAME.

8 Q. HAVE YOU ALSO SEEN A DR. SARB?

9 A. YES, I HAVE.

10 Q. AND WHO IS DR. SARB?

11 A. SHE'S A PAIN MANAGEMENT DOCTOR.

12 Q. AND WHERE IS SHE LOCATED?

13 A. SHE'S LOCATED IN FLORENCE.

14 Q. DO YOU RECALL HAVING SEEN HER BACK ON JUNE THE 16TH
15 -- I'M SORRY, JUNE THE 8TH OF 2016?

16 A. YES, I HAVE.

17 Q. AND WHAT TYPE OF COMPLAINTS DID YOU PROVIDE TO HER
18 ON THAT OCCASION?

19 A. LOWER BACK PROBLEMS.

20 BY MR. LOCKHART:

21 YOUR HONOR, I'M LOOKING AT PAGE 628 OF THE
22 APAs.

23 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

24 Q. OTHER THAN LOWER BACK PROBLEMS, WHAT OTHER TYPES OF
25 PROBLEMS, IF ANY, DID YOU COMPLAIN TO HER ABOUT?

1 A. ABOUT NUMBNESS ON MY RIGHT SIDE.

2 Q. DID SHE CONDUCT A PHYSICAL EXAM OF YOU?

3 A. YES, SHE DID, AND SHE GAVE ME AN INJECTION.

4 BY MR. LOCKHART:

5 YOUR HONOR, I'M LOOKING AT PAGE 629 OF THE

6 APAs.

7 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

8 Q. YOU MENTIONED THIS ISSUE WITH YOUR BLADDER AND SOME
9 ISSUES WITH INCONTINENCE. DID YOU SPEAK TO DR. SARB
10 ABOUT THOSE?

11 A. NO, I DID NOT SPEAK TO DR. SARB ABOUT THOSE.

12 Q. DID YOU DENY HAVING ANY PROBLEMS WITH INCONTINENCE?

13 A. DID I DENY IT?

14 Q. YES, SIR.

15 A. TO WHO?

16 Q. TO DR. SARB.

17 A. NO. SHE DIDN'T ASK ME ABOUT IT, AS FAR AS I CAN
18 REMEMBER.

19 Q. HER NOTE INDICATES THAT INCONTINENCE IS NOT PRESENT
20 IN YOU AT THIS TIME OF THIS EXAMINATION. THAT IS
21 THE ONLY REASON I ASKED. THIS IS NOT THE FIRST TIME
22 YOU'VE SEEN DR. SARB EITHER, CORRECT?

23 A. CORRECT.

24 Q. ALL RIGHT. YOU SAW HER BACK IN MAY OF 2015,
25 ACCORDING TO THE RECORDS. DOES THAT SOUND FAMILIAR

1 TO YOU?

2 A. I'VE SEEN DR. SARB SEVERAL TIMES.

3 Q. OKAY. AND SHE HAD ADMINISTERED AN INJECTION TO YOU
4 PREVIOUSLY?

5 A. YES.

6 Q. DO YOU HAVE A FOLLOW-UP VISIT SCHEDULED WITH DR.
7 SARB?

8 A. YES, I DO.

9 Q. AND WHEN IS IT SCHEDULED?

10 A. I DON'T KNOW EXACTLY, BUT IT'S SOMETIME IN THE NEXT
11 COUPLE MONTHS, OR A MONTH OR WHATEVER. I DON'T KNOW
12 EXACTLY WHEN.

13 Q. DO YOU CONSIDER YOURSELF TO BE UNDER HER CARE STILL
14 AT THIS TIME?

15 A. YES, I DO.

16 Q. HAS SHE RELEASED YOU FROM HER CARE?

17 A. NO, SHE HAS NOT.

18 Q. WHEN YOU WOULD GO AND SEE DR. POLETTI OR WHEN YOU
19 WOULD GO TO HIS OFFICE FOR TREATMENT AFTER YOUR
20 SURGERY TOOK PLACE, WOULD YOU SOMETIMES SEE A
21 PHYSICIAN'S ASSISTANT?

22 A. YES, I WOULD.

23 Q. WOULD THERE BE OCCASIONS WHEN YOU WOULD GO TO
24 SOUTHEASTERN SPINE INSTITUTE AND NEVER SEE DR.
25 POLETTI?

- 1 A. REPEAT THE QUESTION.
- 2 Q. WOULD THERE BE OCCASIONS AFTER YOUR SURGERY WHEN YOU
- 3 WOULD GO TO SOUTHEASTERN SPINE INSTITUTE FOR AN
- 4 EXAMINATION AND NEVER SEE DR. POLETTI?
- 5 A. SOMETIMES I DIDN'T SEE HIM, AND SOMETIMES I DID SEE
- 6 HIM.
- 7 Q. DO YOU HAVE A FAMILY PHYSICIAN?
- 8 A. YES, I DO.
- 9 Q. AND WHO IS THAT?
- 10 A. DR. BELMAR.
- 11 Q. BELMAR?
- 12 A. YES.
- 13 Q. AND WHERE IS HE LOCATED?
- 14 A. SHE'S LOCATED IN ---
- 15 Q. SORRY.
- 16 A. --- ELGIN.
- 17 Q. IN ELGIN. HOW FREQUENTLY DO YOU SEE DR. BELMAR?
- 18 A. EVERY THREE MONTHS.
- 19 Q. OKAY. AND WHAT TYPE OF CONDITIONS ARE DR. BELMAR
- 20 TREATING YOU FOR?
- 21 A. MY BLOOD PRESSURE, HEART CONDITION, CHECK MY HEART,
- 22 DIFFERENT PROBLEMS FOR A FAMILY DOCTOR.
- 23 Q. WHEN WAS THE LAST TIME YOU WENT TO SEE YOUR FAMILY
- 24 PHYSICIAN?
- 25 A. I CAN'T EXACTLY SAY.

1 BY MR. LOCKHART:

2 YOUR HONOR, I BEG THE COURT'S INDULGENCE FOR
3 JUST A BRIEF MOMENT.

4 BY THE COMMISSIONER:

5 SURE.

6 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

7 Q. YOU MENTIONED YOU HAD TO HAVE YOUR SWIMMING POOL
8 REMOVED. WHEN DID THAT TAKE PLACE?

9 A. A FEW WEEKS AGO.

10 Q. WITHIN THE LAST 30 DAYS?

11 A. YES.

12 Q. MR. BENJAMIN, YOU MENTIONED YOU AND YOUR WIFE OWN
13 YOUR VEHICLE COLLECTIVELY, THAT YOU ALL OWN IT
14 TOGETHER. DO YOU MANAGE THE FINANCES IN YOUR HOME,
15 OR DOES YOUR WIFE MANAGE THE FINANCES, OR DO YOU ---

16 A. MY WIFE.

17 Q. --- MANAGE THEM TOGETHER?

18 A. MY WIFE.

19 Q. SO OTHER THAN YOUR CHILD SUPPORT PAYMENTS, DO YOU
20 HAVE ANY OTHER PAYMENT -- AND YOUR MORTGAGE PAYMENT,
21 ANY OTHER -- BESIDES YOUR MORTGAGE AND YOUR CHILD
22 SUPPORT, DO YOU HAVE ANY OTHER PAYMENTS THAT YOU
23 HAVE TO MAKE ON A WEEKLY OR MONTHLY BASIS THAT YOU
24 HAVEN'T TOLD US ABOUT?

25 A. YES.

1 Q. LIKE WHAT?

2 A. MY LIGHT BILL. I HAVE LIFE INSURANCE. I HAVE A
3 CABLE BILL. I'VE GOT DOCTOR BILLS.

4 BY MR. LOCKHART:

5 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

6 BY THE COMMISSIONER:

7 MR. CHANDLER, ANY REDIRECT?

8 BY MR. CHANDLER:

9 NO REDIRECT, YOUR HONOR.

10 BY THE COMMISSIONER:

11 OKAY. AT THIS MOMENT WE'RE GOING TO TAKE A
12 BRIEF RECESS BEFORE WE CALL THE NEXT WITNESS.

13 (OFF THE RECORD)

14 BY THE COMMISSIONER:

15 MADAM COURT REPORTER, WILL YOU PLEASE SWEAR THE
16 WITNESS.

17 BY THE COURT REPORTER:

18 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,
19 PLEASE.

20 * * * * *

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

24 LETIA ANDERSON BENJAMIN,

25 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS

1 FOLLOWS:

2 BY THE COMMISSIONER:

3 OKAY. MA'AM, WILL YOU PLEASE STATE AND SPELL
4 YOUR NAME FOR THE RECORD.

5 BY THE WITNESS:

6 LETIA ANDERSON BENJAMIN; L-E-T-I-A, A-N-D-E-R-
7 S-O-N, B-E-N-J-A-M-I-N.

8 BY THE COMMISSIONER:

9 THANK YOU VERY MUCH. MR. CHANDLER.

10 BY MR. CHANDLER:

11 THANK YOU, YOUR HONOR.

12 DIRECT EXAMINATION BY MR. CHANDLER:

13 Q. MRS. BENJAMIN, THANK YOU FOR STAYING AROUND WITH US
14 THIS AFTERNOON. HOW LONG HAVE YOU AND VICTOR BEEN
15 MARRIED?

16 A. THIRTY-THREE YEARS.

17 Q. THIRTY-FOUR YEARS?

18 A. THIRTY-THREE.

19 Q. THIRTY-THREE YEARS. AND DO YOU HAVE CHILDREN
20 TOGETHER?

21 A. WE DO.

22 Q. AND HOW MANY?

23 A. ONE.

24 Q. AND WHAT IS THAT CHILD'S NAME?

25 A. LEEMAN BENJAMIN.

1 Q. AND HOW LONG HAS LEEMAN BEEN OUT OF THE HOUSEHOLD?

2 A. THIS PAST NOVEMBER.

3 Q. OF 2015?

4 A. UH-HUH.

5 Q. OKAY. AND PRIOR TO THAT WAS LEEMAN LIVING UNDER
6 YOUR ROOF?

7 A. HE WAS.

8 Q. WHERE DOES LEEMAN LIVE NOW?

9 A. BETWEEN -- NEAR HARTSVILLE, ABOUT 30 MINUTES AWAY.

10 Q. DOES LEEMAN COME AROUND AND SPEND TIME WITH YOUR
11 FAMILY STILL?

12 A. HE DOES.

13 Q. AND DO YOU PROVIDE ANY FINANCIAL SUPPORT FOR LEEMAN
14 PRESENTLY?

15 A. NO. LEEMAN TAKES CARE OF HIMSELF.

16 Q. WHERE IS HE EMPLOYED?

17 A. OTIS ELEVATORS IN FLORENCE.

18 **BY THE COMMISSIONER:**

19 MRS. BENJAMIN, I'M GOING TO ASK YOU TO SPEAK UP
20 A LITTLE BIT LOUDER.

21 **BY THE WITNESS:**

22 OKAY.

23 **BY THE COMMISSIONER:**

24 THERE'S AN AIR CONDITIONER BACK HERE; SO...

25 **BY THE WITNESS:**

1 OKAY. OTIS ELEVATOR IN FLORENCE.

2 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

3 Q. AND, MRS. BENJAMIN, WHERE ARE YOU FROM ORIGINALLY?

4 A. SPRING HILL, SOUTH CAROLINA, A LITTLE, SMALL TOWN IN
5 LEE COUNTY.

6 Q. OKAY. IS THAT VERY FAR FROM WHERE YOU LIVE
7 PRESENTLY?

8 A. PROBABLY ABOUT 20 MINUTES, 25 MINUTES.

9 Q. AND WHERE DID YOU GO TO SCHOOL; SPRING HILL?

10 A. I WENT TO WESLEY, BUT I GRADUATED FROM ASHWOOD,
11 WHICH IS IN ASHWOOD. THE SCHOOL IS NO LONGER THERE
12 NOW.

13 Q. IS THAT OVER IN LEE COUNTY?

14 A. LEE COUNTY.

15 Q. DID YOU GRADUATE HIGH SCHOOL?

16 A. YES.

17 Q. WHAT YEAR WAS THAT?

18 A. '79.

19 Q. DID YOU ---

20 A. 1979.

21 Q. DID YOU ATTEND COLLEGE?

22 A. I WENT TO TRADE SCHOOL, NOT COLLEGE.

23 Q. WHICH TRADE SCHOOL DID YOU GO TO?

24 A. SUMTER TECH.

25 Q. DID YOU ACHIEVE ANY DEGREES OR CERTIFICATES?

- 1 A. CERTIFICATES, I DID.
- 2 Q. IN WHAT FIELDS?
- 3 A. BUSINESS ACCOUNTING, SHORTHAND, DATA PROCESSING.
- 4 Q. DID YOU EVER WORK IN ANY OF THOSE FIELDS THAT YOU
- 5 GOT YOUR CERTIFICATES IN?
- 6 A. UH-HUH.
- 7 Q. THAT'S A YES, FOR THE RECORD?
- 8 A. YES.
- 9 Q. OKAY. PRESENTLY ARE YOU EMPLOYED?
- 10 A. I AM.
- 11 Q. AND WITH WHOM ARE YOU EMPLOYED?
- 12 A. WELLS FARGO.
- 13 Q. HOW LONG HAVE YOU WORKED WITH WELLS FARGO?
- 14 A. THREE YEARS.
- 15 Q. AND WHERE IS THE WELLS FARGO THAT YOU WORK AT?
- 16 A. IT'S IN SUMTER, SOUTH CAROLINA, ON WASHINGTON AND
- 17 LIBERTY STREET.
- 18 Q. AND PRIOR TO WELLS FARGO WHERE DID YOU WORK?
- 19 A. J.P. MORGAN CHASE.
- 20 Q. HOW LONG DID YOU WORK FOR J.P. MORGAN?
- 21 A. ABOUT FOUR YEARS.
- 22 Q. WOULD THAT HAVE BEEN THE EMPLOYER THAT YOU WERE
- 23 WORKING WITH WHEN VICTOR SUSTAINED HIS INJURY ON THE
- 24 JOB?
- 25 A. YES, SIR.

1 Q. AND I THINK THERE WAS SOME TESTIMONY FROM MR.
2 BENJAMIN ABOUT YOUR EMPLOYMENT STATUS, BUT ARE YOU
3 CONSIDERED A FULL-TIME EMPLOYEE OF WELLS FARGO
4 PRESENTLY?

5 A. I AM FULL TIME, BUT I'M ON FAMILY MEDICAL LEAVE,
6 FMLA, AND THAT TOOK PLACE IN MARCH OF THIS YEAR.

7 Q. DOES THAT ALLOW YOU TO STILL WORK SOME DAYS OF THE
8 WEEK AT WELLS FARGO AND TAKE OFF OTHERS? HOW DOES
9 THAT WORK?

10 A. WELL, I'M APPROVED FOR 480 HOURS TO ACCOMPANY MY
11 HUSBAND AS FAR AS DOCTORS, WHATEVER HE NEEDS TO
12 ASSIST HIM WITH, GIVES ME TIME IN THE MORNINGS. I
13 GOES IN LATE BECAUSE I HAVE TO GET HIM BATHED AND
14 PREPPED BEFORE I LEAVE TO GO TO WORK, AND ALSO IN
15 THE EVENINGS. SO IT GIVES ME TIME OFF AND ALSO
16 SECURES MY JOB FOR ME NOT LOSING MY JOB WHEN I'M NOT
17 THERE.

18 Q. ARE THOSE HOURS -- I DIDN'T MEAN TO CUT YOU OFF.
19 ARE THOSE HOURS AT YOUR DISCRETION? HOWEVER YOU USE
20 THOSE IS UP TO YOU?

21 A. RIGHT. WE HAVE TO GET APPROVAL LIKE IN ADVANCE, SO
22 I TRY TO MAKE SURE I KNOW HIS APPOINTMENTS AND STUFF
23 LIKE THAT SO I CAN PLAN IT. AS FAR AS LATENESS IN
24 THE MORNINGS, I'M NEVER TO WORK ON TIME, AND THAT'S
25 ALREADY UNDERSTOOD WITH MANAGEMENT BECAUSE OF WHAT I

1 HAVE TO DO FOR HIM BEFORE I GO TO WORK.

2 Q. DO YOU TEND TO COME IN AT A CERTAIN TIME BECAUSE YOU
3 CAN'T MAKE YOUR NORMALLY SCHEDULED SHIFT?

4 A. THAT'S CORRECT. THAT'S CORRECT.

5 Q. AND WHAT TIME DO YOU NORMALLY ARRIVE AT WORK?

6 A. ABOUT 8:45 TO 9:00.

7 Q. YOU'VE BEEN MARRIED TO VICTOR FOR 33 YEARS. PLEASE
8 TELL THE COURT ABOUT VICTOR'S HEALTH HISTORY OVER
9 THAT 33-YEAR TIME PERIOD BEFORE JUNE OF 2011.

10 A. WELL, HE'S BEEN FINE. HE TOOK CARE OF EVERYTHING AS
11 FAR AS MAINTENANCE. I DIDN'T HAVE TO WORRY ABOUT
12 TAKING CARS TO THE SHOPS. I DIDN'T HAVE TO WORRY
13 ABOUT DOING THE LAWN CARE OR ANY OF THAT. WE ALWAYS
14 TOOK VACATION. WE JUST DID SO MUCH THINGS TOGETHER,
15 AND IT'S TOTALLY CHANGED. EVEN IN THE BEDROOM IT'S
16 NOT THERE ANYMORE. WE ALWAYS DID SURPRISE STUFF.
17 IT'S JUST NOT THE SAME.

18 Q. AND IN THE YEARS LEADING UP TO 2011, WHAT WAS
19 VICTOR'S PHYSICAL HEALTH LIKE, MEANING DID HE HAVE
20 ANY DIAGNOSED CONDITIONS THAT YOU WERE AWARE OF?

21 A. NO, SIR.

22 Q. I THINK HIS TESTIMONY WAS THAT HE TOOK A MEDICINE
23 PERHAPS FOR CHOLESTEROL AND SOMETHING FOR BLOOD
24 PRESSURE.

25 A. RIGHT.

1 Q. AND A FAMILY DOCTOR WROTE THOSE?

2 A. RIGHT. BUT PHYSICALLY THAT DIDN'T AFFECT HIM AS FAR
3 AS THINGS THAT HE DID.

4 Q. OKAY. SO IN SPITE OF HIM TAKING THOSE MEDICINES, AS
5 FAR AS YOU WERE TO OBSERVE THAT DIDN'T IMPACT HIS
6 ABILITIES?

7 A. EXACTLY.

8 Q. DID YOU PERCEIVE VICTOR TO BE A STRONG MAN?

9 A. VERY.

10 Q. DID YOU PERCEIVE THAT HE HAD STAMINA?

11 A. YES.

12 Q. AND I THINK YOU ALLUDED TO THIS BY VIRTUE OF YOU
13 BEING OUT UNDER THE FAMILY MEDICAL ACT, BUT ARE YOU
14 PRESENTLY PROVIDING ANY KIND OF CARETAKING
15 RESPONSIBILITIES FOR VICTOR?

16 A. I AM.

17 Q. AND PLEASE TELL THE COURT ON A DAY-TO-DAY BASIS WHAT
18 YOU DO FOR VICTOR.

19 A. WELL, IN THE MORNINGS I GETS UP AND MAKE SURE I
20 BATHE HIM BEFORE I LEAVE OUT. I HAVE FOOD PREPARED
21 FOR HIM. I REFRIGERATE IT IN COVERED CONTAINERS. A
22 LOT OF TIME I COOK AT NIGHT AND PUT LIKE THREE
23 PLATES IN THERE, AND THIS IS LIKE ON A DAILY BASIS.
24 I COME HOME IN THE AFTERNOON. A LOT OF TIMES HE'S
25 LYING DOWN IN THE BED. I TRY TO GET HIM UP, 'CAUSE

1 WITH HIS DEPRESSION A LOT OF TIMES HE DON'T EVEN
2 WANT TO COME OUT OF THE ROOM. I TRY TO ENCOURAGE
3 HIM. THEN I GET HIM BATHED LIKE AT NIGHT AND STUFF.
4 AND LATELY WITHIN THE LAST -- THE LATTER PART OF
5 LAST YEAR HE'S BEEN HAVING A LITTLE PROBLEM WITH
6 LEAKAGE A LITTLE, NOT KNOWING IT, AND I HAVE TO TAKE
7 CARE OF THAT. IT CAUSES ME TO DO A LOT MORE WASHING
8 THAN NORMAL, STUFF LIKE THAT.

9 Q. WHEN YOU SAY LEAKING, YOU'RE TALKING ABOUT HE LOSES
10 HIS URINE?

11 A. YES, SIR.

12 Q. ARE YOU -- HAVE YOU EVER PERSONALLY OBSERVED IT, NOT
13 JUST CLEANED UP THE SHORTS OR THE TROUSERS AND PUT
14 THEM IN THE WASH, BUT ACTUALLY OBSERVED ---

15 A. YES, SIR.

16 Q. --- WHEN HE ACTUALLY LOST HIS URINE?

17 A. YES, SIR.

18 Q. AND DO YOU HAVE A TIME LINE ON WHEN THAT BEGAN AND
19 HOW OFTEN IT OCCURS?

20 A. I NOTICED IT LIKE THE LATTER PART OF LAST YEAR.
21 NOW, IT COULD'VE HAPPENED BEFORE THAT AND MAYBE HE
22 DIDN'T SAY SOMETHING. BUT WHEN I STARTED NOTICING
23 THERE WAS A LITTLE WATER IN DIFFERENT AREAS THAT HE
24 WOULD SIT, OR WHATEVER, I KNEW SOMETHING WAS GOING
25 ON.

1 Q. OKAY. AND WHY ARE YOU HAVING TO BATHE HIM, AS FAR
2 AS YOU'RE AWARE? IS HE, IN YOUR EYES, PHYSICALLY
3 INCAPABLE OF PERFORMING HIS OWN BATHING?

4 A. I FEEL -- FROM WHAT I CAN SEE OF VICTOR I DON'T FEEL
5 COMFORTABLE WITH HIM IN A TUB OR IN A SHOWER ALONE
6 BECAUSE OF THE WEAKNESS OF HIS LEGS AND STUFF. HE
7 COULD EASILY SLIP. PLUS, HE DON'T HAVE THE STRENGTH
8 TO SCRUB AND WASH AREAS THAT NEEDS TO BE WASHED
9 PROPERLY. SOMETIMES HE'LL JUST -- LIKE IN OUR
10 SHOWER HE CAN SIT, BUT THEN HE'S NOT GOING TO DO
11 WHAT NEEDS TO BE DONE BECAUSE HE DON'T HAVE --
12 SOMETIMES CAN'T HOLD THE RAGS OR THE SOAP LIKE IT
13 SHOULD BE. AND I'D RATHER JUST GET IN THERE AND
14 BATHE HIM GOOD BECAUSE HE WON'T HALF WASH. AND THEN
15 HE CAN'T TURN LIKE HE NEEDS TO. LIKE I SAY, WITH
16 THE WEAKNESS OF THAT LEG, I DON'T TRUST HIM STANDING
17 OR BEING UNATTENDED IN THE SHOWER.

18 Q. HAVE YOU EVER OBSERVED VICTOR FALLING?

19 A. YES, SIR; SEVERAL TIMES.

20 Q. IS THERE ANYTHING THAT YOU NOTICE THAT BROUGHT THE
21 FALL ON?

22 A. IT JUST HAPPENS. I MEAN, COMING OUT, EVEN LIKE
23 WALKING IN HERE A COUPLE OF TIMES, HE ALMOST FELL
24 OUT THERE. IT'S LIKE HIS LEG -- HE EXPLAINS IT TO
25 ME LIKE HE LOSES THE FEELING IN IT.

1 Q. OKAY. AND WHEN YOU'RE BATHING HIM, DO YOU HAVE TO
2 PROVIDE PHYSICAL ASSISTANCE, MEANING TO HOLD HIM UP
3 SO THAT HE DOESN'T FALL?

4 A. SOMETIMES I DO. IN OUR SHOWER WE DO HAVE LIKE
5 SOMETHING HE CAN HOLD ON, BUT GETTING HIM OUT AND
6 DRYING HIM, IT'S PRESSURE -- HE'S PUTTING THAT
7 PRESSURE ON ME OR EITHER ON THE TOWEL RACK THAT'S
8 AGAINST THE WALL. BUT A LOT OF PRESSURE IS ON ME.

9 Q. DO YOU AND VICTOR STILL SLEEP IN THE SAME BED?

10 A. WE DO.

11 Q. AND HAVE YOU OBSERVED VICTOR'S SLEEP HABITS?

12 A. YES.

13 Q. ARE YOU AWAKE SOMETIMES WHEN HE'S ASLEEP?

14 A. YES.

15 Q. IS THERE ANYTHING UNUSUAL THAT YOU'VE OBSERVED OVER
16 THE LAST COUPLE OF YEARS ABOUT HIS SLEEP?

17 A. HE JUMPS IN HIS SLEEP, LIKE A CONSTANT JERK AND
18 SHAKE. I'VE HAD ELBOW NUMEROUS TIMES IN MY SIDE AND
19 STUFF. I DON'T KNOW IF HE'S LIKE IN A DREAM, BUT
20 WHENEVER I TRY TO WAKE HIM, IT'S LIKE A FIGHT WITH
21 HIM. THIS NEVER HAPPENED BEFORE UNTIL AFTER THIS
22 ACCIDENT. HE TREMBLES A LOT. SOMETIMES HIS SPEECH
23 -- WHEN HE TRIES TO EXPLAIN TO ME WHAT'S GOING ON
24 WHEN I DO WAKE HIM, HE HAS LIKE A SLUR IN HIS
25 SPEECH. AND THEN HE LIKE SWEATS, LIKE SWEATY, WET.

1 THAT HAPPENS A LOT. AND, TOO, A LOT OF TIMES VICTOR
2 BE AWAKE MORE THAN I'M AWAKE AT NIGHT TRYING TO GET
3 HIM TO GO TO SLEEP.

4 Q. DO YOU -- I GUESS YOU NOTICE THAT HE HAS DIFFICULTY
5 WITH OBTAINING SLEEP?

6 A. YES, SIR.

7 Q. HAVE YOU BEEN WITH HIM TO THE DOCTORS IN COLUMBIA,
8 SUCH AS DR. BERGMANN AND WHEN DR. DEAL WAS ALIVE,
9 DR. DEAL?

10 A. YES, SIR.

11 Q. DID YOU ACTUALLY GO IN THE ROOM WHEN VICTOR WOULD
12 HAVE A COUNSELING SESSION, OR WOULD YOU STAY IN THE
13 LOBBY?

14 A. GO IN THE ROOM.

15 Q. WERE YOU MOST OFTEN IN THE ROOM? IF YOU ATTENDED
16 THE SESSION, WOULD YOU ALWAYS BE IN THE ROOM?

17 A. YES, SIR.

18 Q. SO THEY INCLUDED YOU IN THE CONVERSATION, SO TO
19 SPEAK?

20 A. YES, SIR.

21 Q. NOW, AS FAR AS YOU KNOW, WAS VICTOR ALWAYS UP FRONT
22 AND HONEST WITH THE SYMPTOMS THAT YOU WERE OBSERVING
23 AROUND THE HOUSEHOLD WHEN HE WOULD GO TO THE DOCTORS
24 AND DESCRIBE WHAT WAS WRONG WITH HIM?

25 A. YES, SIR.

1 Q. HOW OFTEN WOULD YOU GO PHYSICALLY WITH VICTOR TO
2 DOCTOR OFFICES VERSUS TIMES THAT HE WOULD JUST TAKE
3 HIMSELF?

4 A. I GO MOST OF THE TIME WITH VICTOR TO THE DOCTORS.

5 Q. WHEN WOULD ---

6 A. THERE ARE A FEW TIMES THAT HE ---

7 Q. GO AHEAD.

8 A. --- WOULD GO BY HIMSELF.

9 Q. OKAY. WHEN WOULD THERE BE AN OCCASION WHERE HE JUST
10 HAD TO GO BY HIMSELF AND THAT YOU COULDN'T ATTEND?

11 A. SAY IF HE HAD LIKE MORE THAN ONE DOCTOR'S
12 APPOINTMENT THAT WEEK AND I CANNOT GET EXTRA DAYS
13 OFF AND THERE'S NO ONE ELSE, LIKE A FAMILY MEMBER,
14 TO TAKE HIM. AND I CAN SAY, THERE'S VERY FEW PEOPLE
15 THAT YOU CAN FIND TO HELP WHEN YOU REALLY NEED HELP,
16 AND THAT'S SORT OF LIKE WHAT WE DEAL WITH. SO WHEN
17 VICTOR HAS TO GO -- I DON'T WANT HIM TO GO; I DON'T.
18 IT KILLS ME TO KNOW THAT HE'S DRIVING OUT THERE, BUT
19 WHAT CAN I DO? AND I WORK BECAUSE I HAVE TO WORK,
20 AND I JUST CAN'T JEOPARDIZE, YOU KNOW, THAT.

21 Q. WHY DO YOU FIND THAT YOU NEED TO GO PHYSICALLY AND
22 ATTEND THE APPOINTMENTS WITH VICTOR?

23 A. A LOT OF TIMES HE CAN'T REMEMBER. HE WON'T REMEMBER
24 TO COME BACK TO TELL ME WHAT WENT ON, AND I NEED TO
25 KNOW THESE THINGS.

1 Q. HAVE YOU OBSERVED ANY DIFFICULTIES THAT HE HAD WITH
2 GETTING TO A DOCTOR'S APPOINTMENT?

3 A. I HAVE. I HAVE.

4 Q. AND DID THAT INCLUDE DRIVING AN AUTOMOBILE?

5 A. EXACTLY. AND THAT'S ONE OF THE MAIN REASONS, TOO.
6 WHEN MY SON WAS IN THE HOUSE UP UNTIL NOVEMBER, HE
7 WOULD SOMETIMES TAKE HIS DAD SO I WOULDN'T BE
8 STRESSED LIKE THAT. BUT WHEN HE MOVED OUT, IT PUT
9 MORE ON ME FOR ME TO DO. THAT'S WHY I TOOK THE
10 FAMILY MEDICAL LEAVE, SO I COULD TAKE THESE TIMES TO
11 TAKE HIM.

12 Q. SO WHAT PHYSICAL LIMITATIONS HAVE YOU OBSERVED WITH
13 RESPECT TO VICTOR SINCE 2011? WHAT PHYSICAL
14 DIFFICULTIES, IF ANY, HAVE YOU OBSERVED HIM SUFFER
15 FROM?

16 A. OKAY. HIS ANGER, HIS DEPRESSION, HIM ABLE TO DO
17 THINGS THAT HE DID BEFORE, LIKE DOING THE LAWN OR,
18 LIKE I SAY, ALL THE MECHANICAL STUFF I HAVE TO TAKE
19 TO THE SHOP NOW. BEFORE HE DID ALL THAT. EVEN
20 SITTING JUST EATING, IF HE WERE TO HAND ME THE SALT
21 SHAKER, SOMETIMES HE WOULD DROP IT BEFORE IT GETS TO
22 ME. HE DOESN'T HAVE THE MOBILITY TO SLICE OR CUT
23 LIKE HE SHOULD. I CUTS UP HIS FOOD. IT'S ALMOST
24 LIKE I HAVE A CHILD SOMETIMES. AND IT GETS HARD,
25 BUT THESE ARE THINGS I NOTICE THAT HE CANNOT DO THAT

1 HE USED TO DO.

2 Q. AND IN ADDITION TO THE USE OF HIS HANDS FOR CUTTING,
3 WHAT HAVE YOU OBSERVED WITH RESPECT TO HIS WALKING?

4 A. HE WILL WALK LIKE TO THE -- LEANING TOWARDS THE
5 RIGHT AND WILL LOSE STRENGTH, OR WHATEVER, WHEN HE'S
6 WALKING.

7 Q. DO YOU OBSERVE HIM WALKING AROUND WITHOUT THE USE OF
8 THAT CANE?

9 A. IF HE DOES HE'S HOLDING TO SOMETHING. HE'LL GO OUT
10 MAYBE TO THE YARD, OUT DOWN THE STEPS, DOWN THE
11 RAIL, TO THE FENCE, BUT HE'S STILL HOLDING TO
12 SOMETHING.

13 Q. NOW, VICTOR TAKES MEDICINES. HE TESTIFIED TO TAKING
14 MEDICINES, AND THE RECORDS ARE PRETTY CLEAR ABOUT
15 WHAT MEDICINES HE TAKES. IS ANYONE RESPONSIBLE AT
16 YOUR HOUSEHOLD FOR LINING THOSE UP AS FAR AS THE
17 DOSAGE SCHEDULE AND THE FREQUENCY?

18 A. YES, SIR; I AM.

19 Q. YOU HANDLE THAT?

20 A. I HANDLE THAT. IN THE MORNINGS IT'S LINED UP, WHAT
21 HE'S TAKING FIRST AND IN WHAT ORDER.

22 Q. SO IF YOU'RE GONE DURING THE COURSE OF THE DAY AND
23 VICTOR NEEDED MEDICINE, IS THAT SOMETHING THAT
24 YOU'VE ALREADY LAID OUT FOR HIM?

25 A. YES, SIR.

1 Q. AND YOU DO THAT EVERY DAY?

2 A. YES, SIR.

3 Q. PRIOR TO 2011 WHO HANDLED THE HOUSEHOLD BILLS?

4 A. VICTOR DID THE MAJORITY OF IT. HE DID, I'D SAY,
5 ABOUT 90 PERCENT OF IT.

6 Q. AND EXAMPLES OF THOSE WOULD BE, I SUPPOSE, A
7 MORTGAGE?

8 A. YEAH. HE TOOK CARE OF THE MORTGAGE, TOOK CARE OF
9 THE HOUSE NOTE, THE INSURANCE, THE TAXES ON THE
10 VEHICLES, THE CONTRIBUTIONS THAT WE GAVE. HE MAINLY
11 TOOK CARE OF THAT. I HAD PETTY STUFF THAT I DEALT
12 WITH. LIKE WHAT LITTLE MONEY I MADE, I COULD SPEND
13 IT TO BUY WHAT I WANTED. HE TOOK CARE OF THE BILLS.

14 Q. DO YOU TITHE TO THE CHURCH?

15 A. YES, SIR.

16 Q. HAS YOUR TITHING CHANGED AT ALL SINCE THIS INJURY?

17 A. WE JUST PAY ACCORDING TO WHAT WE CAN, ACCORDING TO
18 WHAT WE MAKE NOW, VERSUS WHAT WE HAD BEFORE. WE DID
19 PAY MORE WHEN WE MADE MORE.

20 Q. NOW, WHAT KIND OF HOUSEHOLD BILLS DO YOU HAVE
21 PRESENTLY? IF YOU COULD GO DOWN THE LIST. AND I
22 KNOW YOU MAY NOT HAVE THEM IN FRONT OF YOU, BUT IF
23 YOU COULD START MAYBE AT THE TOP, LIKE A MORTGAGE,
24 AND KIND OF WORK YOUR WAY DOWN TO A SMALL BILL.

25 BY MR. LOCKHART:

1 YOUR HONOR, I THOUGHT -- LET'S GO OFF THE
2 RECORD.

3 (OFF THE RECORD)

4 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

5 Q. MRS. BENJAMIN, IF YOU COULD JUST IDENTIFY THE
6 VENDORS, IF YOU WILL, THE PEOPLE THAT YOU OWE ON A
7 MONTH-TO-MONTH BASIS, WHO WOULD THEY BE?

8 A. OUR MORTGAGE COMPANY. DO YOU NEED THE NAME OF THE
9 MORTGAGE COMPANY?

10 Q. THAT WOULD BE HELPFUL.

11 A. OKAY, OCWEN MORTGAGE. WE HAVE OUR CAR NOTES.

12 Q. WHO ARE THEY THROUGH?

13 A. SAFE PENTAGON CREDIT.

14 Q. DO YOU HAVE MORE THAN ONE CAR NOTE?

15 A. UH-HUH.

16 Q. HOW MANY?

17 A. TWO. MY CREDIT CARDS, I GUESS, LIKE THREE CREDIT
18 CARDS; THE LIGHT BILL; INSURANCE ON THE VEHICLES;
19 PHONE BILLS, THAT'S CELL AND LAND LINE; CABLE BILL.

20 Q. DO YOU HAVE PROPERTY TAXES AND THINGS LIKE THAT THAT
21 YOU HAVE TO PAY?

22 A. WE DO. WE HAVE THAT ESCROWED IN OUR MORTGAGE, BUT
23 THE TAXES ON THE CARS WE PAY THOSE WHEN THEY COME
24 DUE.

25 Q. HOW ABOUT THE INSURANCE FOR THE HOME; IS THAT

1 ESCROWED?

2 A. THAT'S ESCROWED. THE INSURANCE ON OUR AUTOMOBILES
3 IS MONTHLY.

4 Q. ANYTHING ELSE COMING TO MIND RIGHT NOW?

5 A. THEY ONLY COME INTO MIND WHEN THE TIME FOR IT'S DUE.

6 Q. OKAY. IF ANYTHING ELSE COMES UP DURING MY
7 EXAMINATION, YOU CAN JUST OFFER IT UP.

8 A. OKAY.

9 Q. NOW, DID SOMETHING CHANGE SINCE VICTOR'S INJURY THAT
10 CHANGED THE WAY THAT YOU MANAGE THE HOUSEHOLD
11 AFFAIRS AND THE BILL PAYING?

12 A. WELL, WE'RE DEFINITELY ON A STRICTER BUDGET FOR
13 SURE.

14 Q. AND THAT MAYBE WAS A POOR QUESTION. BUT DID IT
15 TRANSITION TO WHERE YOU WERE ALL OF A SUDDEN
16 RESPONSIBLE FOR MAKING SURE THAT THE BILLS WENT OUT
17 ON TIME AND THE CHECKS WERE WRITTEN?

18 A. YES. I'M TAKING CARE OF ALL THAT NOW. VICTOR
19 DOESN'T TAKE CARE OF THE BILLS RIGHT NOW.

20 Q. DO YOU DISCUSS WHAT BILLS YOU HAVE FOR THE
21 HOUSEHOLD?

22 A. SOMETIME I DO, AND SOMETIME I DON'T 'CAUSE I KNOW
23 IT'S REALLY NOT GOING TO MATTER; IT JUST NEEDS TO
24 GET TAKEN CARE OF.

25 Q. THERE WAS SOME DISCUSSION ABOUT A CONTRACTOR, I

1 GUESS, SOME DISPUTE THAT MAYBE AROSE WITH A
2 CONTRACTOR, AND VICTOR REPORTED SOME DISPUTE TO DR.
3 BERGMANN, AND I THINK VICTOR'S TESTIMONY WAS THAT IT
4 INVOLVED A LEAKY ROOF AT SOME BUILDING?

5 A. UH-HUH.

6 Q. WAS THAT YOUR PERSONAL HOME, OR WAS THAT SOME OTHER
7 PLACE?

8 A. THAT'S ANOTHER PLACE; IT'S ANOTHER BUILDING WE HAVE.

9 Q. OKAY. TELL US ABOUT THAT. WHAT KIND OF BUILDING IS
10 THIS?

11 A. WELL, I DO LIKE A FOOD MINISTRY. I'M PARTNERED WITH
12 HARVEST HOPE, AND WE HAVE A BUILDING ON HIGHWAY 15,
13 AND THE ROOF WAS MESSED UP ON IT. WE HAD TO HAVE IT
14 FIXED.

15 Q. THIS BUILDING AT HIGHWAY 15, IS THAT IN LEE COUNTY?

16 A. IT'S IN LEE COUNTY. IT'S IN LEE COUNTY.

17 Q. HOW LONG HAVE YOU OWNED THAT BUILDING?

18 A. SINCE 1996.

19 Q. WHAT TYPE OF BUILDING IS IT?

20 A. IT'S A BLOCK CONCRETE BUILDING.

21 Q. GOT A SHINGLED ROOF OR A METAL ROOF?

22 A. IT HAS A SHINGLED PART AND THEN TIN ON ONE PART OF
23 IT. IT HAS LIKE A FLAT SIDE, AND THAT FLAT SIDE HAS
24 TIN ON IT.

25 Q. AND YOU SAID THAT YOU PARTNER WITH HARVEST HOPE?

- 1 A. HARVEST HOPE FOOD BANK.
- 2 Q. SO, TELL US HOW THAT WORKS. DO YOU REQUEST
- 3 DONATIONS FROM THE COMMUNITY TO BRING FOOD INTO THIS
- 4 FOOD MINISTRY?
- 5 A. THEY CAN DO THAT IF THEY CHOOSE TO, BUT NORMALLY
- 6 WHAT WE DO, I GOES TO HARVEST HOPE, USDA GIVES SO
- 7 MUCH TO SUPPORT IT, AND THEN THEY HAVE LIKE
- 8 SOMETHING CALLED LIKE A SHARED MAINTENANCE WHERE YOU
- 9 PAY BY POUNDAGE FOR OTHERS THAT I GET AND BRING OUT
- 10 INTO THE COMMUNITY.
- 11 Q. DO YOU THEN DISTRIBUTE THE PRODUCTS THAT YOU BRING
- 12 INTO THIS FOOD MINISTRY TO MEMBERS OF THE COMMUNITY?
- 13 A. RIGHT. WE BAG IT. THEY COMES IN. THEY HAVE TO
- 14 FILL OUT A FORM. IT'S LIKE A PROCESS. THEN ON A
- 15 MONTHLY BASIS WE GO BACK. I HAVEN'T BEEN DOING IT
- 16 EVERY MONTH SINCE VICTOR'S ACCIDENT, BUT THIS IS
- 17 SOMETHING THAT STARTED BACK IN 2006. WE USED TO DO
- 18 IT MONTHLY. NOW WE MIGHT DO IT EVERY OTHER MONTH OR
- 19 EVERY THREE MONTHS.
- 20 Q. HOW DOES THE COMMUNITY KNOW THAT YOU'RE DOING THIS?
- 21 IS IT YOU JUST OPEN THE DOORS, AND THEY CAN JUST
- 22 DRIVE BY AND SEE IT, OR HOW DOES THAT WORK?
- 23 A. I HAVE LIKE A LIST WHERE EVERYBODY SIGNS WHEN THEY
- 24 PICK UP, THEIR PHONE NUMBERS AND STUFF. AND LIKE
- 25 THE WEEKEND PRIOR TO DOING THE DISTRIBUTION, I WILL

1 CONTACT THEM. AND, ALSO, IF THEY KNOW SOMEONE ELSE
2 THAT'S IN NEED, THEY CAN COME, TOO. THE ONES THAT
3 ARE NOT ALREADY ON THE LIST AND SIGNED UP FOR IT,
4 THEY CAN SIGN UP AT THAT POINT IN TIME WHEN THEY
5 COME.

6 Q. OKAY. AND SO THIS BUILDING, APPARENTLY THERE WAS
7 SOME KIND OF PROBLEM WITH THE ROOF, AND THERE WAS A
8 LEAK?

9 A. IT WAS.

10 Q. AND AT SOME POINT DID YOU HAVE TO ENGAGE THE
11 SERVICES OF A CONTRACTOR?

12 A. I DID.

13 Q. DO YOU REMEMBER THE CONTRACTOR'S NAME?

14 A. WE HAD TWO. WHEN THE FIRST ONE GOT DONE, THE WORK
15 DIDN'T LAST. IT WAS -- HIS LAST NAME WAS WELLS. I
16 CAN'T THINK OF HIS FIRST NAME, BUT I'VE GOT THE
17 PAPERWORK AT HOME.

18 Q. AND WAS IT JUST POOR WORKMANSHIP, OR WHAT HAPPENED?

19 A. IT WAS. HE DIDN'T DO EXACTLY WHAT HE SAID HE WAS
20 GOING TO DO. AND I GUESS WITH ME BEING A WOMAN,
21 THEY THOUGHT THEY WOULD JUST GET OVER ON ME, AND THE
22 BUILDING STILL HAD LEAKS, AND WE HAD TO GET SOMEBODY
23 ELSE TO COME BEHIND THEM.

24 Q. DO YOU HAVE A TENANT FOR THAT BUILDING, OR ARE YOU
25 THE ONLY PERSON THAT USES THE BUILDING?

1 A. I'M THE ONLY PERSON THAT USES IT. THERE'S ONE PART
2 OF THE BUILDING THAT DOES HAVE A ROOM LIKE WITH
3 TABLES AND CHAIRS WHERE WE HAVE LIKE A BIRTHDAY GET
4 TOGETHER, OR WHATEVER. BUT WE DON'T COLLECT RENT ON
5 IT BECAUSE WE'VE GOT IT SET UP AS A NONPROFIT
6 ORGANIZATION.

7 Q. AND THE COMMUNITY HAS ACCESS TO IT IF THEY ASK
8 PERMISSION?

9 A. UH-HUH.

10 BY THE COMMISSIONER:

11 IS THAT A YES? YES?

12 BY THE WITNESS:

13 YES. I'M SORRY.

14 DIRECT EXAMINATION RESUMED BY MR. CHANDLER:

15 Q. OKAY. DO YOU OWN ANY OTHER PROPERTIES OUTSIDE OF
16 WHERE YOUR PERSONAL RESIDENCE IS AND THE BUILDING
17 THAT SITS OFF OF HIGHWAY 15?

18 A. YES. I OWN THE PROPERTY WHERE MY SON LIVES AT.

19 Q. OKAY. AND WHAT TYPE OF PROPERTY IS THAT?

20 A. IT'S A MOBILE HOME.

21 Q. DO YOU OWN THE GROUND, OR IS THAT A LEASED PROPERTY?

22 A. THE GROUND AS WELL.

23 Q. IS THAT AN ACRE; IS IT A HALF AN ACRE?

24 A. IT'S .86 OF AN ACRE.

25 Q. AND IS THAT IN LEE COUNTY?

1 A. IT IS.

2 Q. DID YOU PURCHASE THE MOBILE HOME?

3 A. I DID.

4 Q. DO YOU KNOW THE MANUFACTURER OF THE MOBILE HOME?

5 A. UH-UH.

6 Q. IS THAT A USED ONE OR A NEW ONE?

7 A. USED.

8 Q. WHERE DID YOU PURCHASE IT FROM?

9 A. FROM A FORECLOSURE SALE FROM U.S. BANK.

10 Q. SO DO YOU HAVE RESPONSIBILITIES WITH PAYMENT FOR
11 PROPERTY TAXES FOR THAT .86 ACRES TO LEE COUNTY?

12 A. YES.

13 Q. DID YOU PAY CASH FOR THAT USED MOBILE HOME?

14 A. IT'S SORT OF LIKE -- WHY I'M SAYING THAT IS I USED
15 MY LINE OF CREDIT AND MY CREDIT CARD, PULLED THE
16 MONIES FROM THAT.

17 Q. SO THERE'S STILL MONIES BEING TAKEN OUT FROM YOUR
18 LINE OF CREDIT AND FROM YOUR CREDIT CARD TO FUND
19 THAT ACQUISITION?

20 A. THAT I'M PAYING BACK.

21 Q. YOU'RE PAYING BACK?

22 A. AS PAYMENTS; YES, SIR.

23 Q. AND WE CAN GET THE AMOUNTS FROM YOU AT ANOTHER TIME.
24 ANYTHING ELSE, LIKE THAT MOBILE HOME, LIKE THAT .86
25 ACRES, LIKE THE BLOCK BUILDING IN LEE COUNTY, AND

1 YOUR PERSONAL RESIDENCE THAT YOU OWN AND HAVE
2 RESPONSIBILITIES FOR?

3 A. NO, SIR.

4 Q. AND WHO CARES FOR THE LAWN OF YOUR PERSONAL
5 RESIDENCE? YOU'RE POINTING TO YOU?

6 A. ME.

7 Q. YOU?

8 A. I HAVE A ZERO TURN, NEVER CUT GRASS BEFORE UNTIL
9 AFTER VICTOR'S ACCIDENT, AND THEN IT TOOK LIKE A
10 YEAR AFTER THAT FOR ME TO BUILD UP THE NERVE TO GO
11 OUT THERE.

12 Q. AND SO YOU'RE DOING GRASS CUTTING?

13 A. YES, SIR.

14 Q. DO YOU DO ANY OTHER KIND OF OUTSIDE ACTIVITIES FOR
15 THE HOUSEHOLD?

16 A. I DO THE PUSH MOWER, TOO. I TRY TO TRIM THE BUSHES
17 WHEN I CAN.

18 Q. DID VICTOR DO ANYTHING ON THE INSIDE AS FAR AS
19 MAINTAINING THE HOUSEHOLD BEFORE HIS WORK INJURY?

20 A. YES.

21 Q. WHAT KIND OF THINGS DID HE DO BEFORE THE WORK
22 INJURY?

23 A. HE WOULD CLEAN, HE WOULD VACUUM, HE WOULD MAKE SURE
24 THE BEDS ARE MADE, HE WOULD DO DUSTING, YOU KNOW.
25 HE WOULD DO SOME THINGS ON THE INSIDE.

1 Q. AND HAS HE BEEN ABLE TO DO ANY OF THOSE KIND OF
2 HOUSEHOLD ACTIVITIES SINCE?

3 A. NO, SIR.

4 Q. AND ARE THERE ANY PRESSING MATTERS WITH RESPECT TO
5 MAINTENANCE OF YOUR PERSONAL RESIDENCE THAT HAVE NOT
6 BEEN ATTENDED TO THAT NEED ATTENDING TO?

7 A. YEAH. WE GOT OUR GARAGE THAT THE BOXING, SOME PARTS
8 ARE ROTTEN AND HANGING ON. OUR SHELTERS ON OUR
9 HOUSE IS -- HALF OF THOSE ARE OFF THE HOUSE. THE
10 GARAGE NEEDS TO BE PAINTED. THE INSIDE OF THE
11 GARAGE IS STILL -- WHERE THE INSULATION HASN'T GOT
12 DONE YET, WHICH WAS A PROJECT THAT WAS GOING TO GET
13 DONE, HASN'T BEEN DONE. AND WE WAS HOPING TO BUILD
14 THIS GARAGE. WE LAID THE CONCRETE BUT NEVER GOT
15 FINISHED BECAUSE OF VICTOR'S ACCIDENT.

16 Q. AND THE PURPOSE OF THAT ---

17 A. THE FOUNDATION IS THERE.

18 Q. EXCUSE ME. THE PURPOSE OF THAT GARAGE THAT HAD
19 STARTED CONSTRUCTION BUT YOU DIDN'T GET TO FINISH,
20 WHAT WAS THE PURPOSE OF THAT STRUCTURE?

21 A. IT WAS GOING TO BE A SHOP. LIKE I SAID, VICTOR WAS
22 GOOD WITH MECHANICAL STUFF. THAT WAS PART OF WHAT
23 HE WANTED TO DO WHEN HE RETIRED, HAVE A SHOP AND HIS
24 BUSINESS.

25 Q. AND WOULD A LUMP SUM OF MONEY HELP THE FAMILY TRY TO

- 1 GET THEIR HEAD BACK ABOVE WATER FOR THINGS THAT THEY
2 NEED FOR THE HOUSEHOLD AND OTHER EXPENSES?
- 3 A. YES, SIR.
- 4 Q. AND I UNDERSTAND THAT BENJAMIN AND SON'S TOWING WAS
5 A VIABLE BUSINESS BEFORE VICTOR WAS INJURED?
- 6 A. YES, SIR.
- 7 Q. AND THERE WAS AN INCOME STREAM THAT CAME IN FROM
8 THAT?
- 9 A. YES, SIR.
- 10 Q. AND IS THAT INCOME STREAM TOTALLY GONE NOW, OR IS
11 THERE SOME KIND OF INCOME STREAM THAT IS MAINTAINED
12 BECAUSE OF YOUR SON'S MANAGEMENT OF THAT BUSINESS?
- 13 A. IT'S SORT OF TOTALLY GONE. OUR SON DOES A LITTLE
14 BIT. IT'S NOT REALLY SOMETHING THAT HE WANTS TO DO.
15 IF SOMEONE CALLS FOR A TOW AND WE CALL HIM, IT'S
16 LIKE EITHER YEA OR NAY. IT'S PRETTY MUCH NOT IN
17 OPERATION. AND I CAN'T DRIVE IT.
- 18 Q. AND VICTOR GETS A WORKERS' COMP CHECK NOW, \$700 AND
19 SOME CHANGE, IS THAT RIGHT?
- 20 A. 704.92.
- 21 Q. 704.92?
- 22 A. YES, SIR.
- 23 Q. DO YOU KNOW WHAT KIND OF MONEY VICTOR MADE EVERY
24 WEEK OR BIWEEKLY BEFORE HIS WORK INJURY?
- 25 A. PRIOR TO THAT ANYWHERE FROM ABOUT 1,100 OR \$1,400 A

1 WEEK.

2 Q. AND HAS THE ABSENCE OF THAT ADDITIONAL INCOME HURT
3 THE FAMILY?

4 A. YES, IT HAS.

5 BY MR. CHANDLER:

6 PLEASE ANSWER ANY QUESTIONS THAT MR. LOCKHART
7 WOULD HAVE OF YOU.

8 BY THE COMMISSIONER:

9 MR. LOCKHART.

10 CROSS EXAMINATION BY MR. LOCKHART:

11 Q. MRS. BENJAMIN, GOOD AFTERNOON.

12 A. GOOD EVENING.

13 Q. DURING THE -- WE TOOK A RECESS IN THIS CASE BEFORE
14 WE BROUGHT YOU TO THE STAND.

15 A. YES, SIR.

16 Q. DID YOU DISCUSS ANY OF YOUR HUSBAND'S TESTIMONY WITH
17 HIM DURING THE RECESS?

18 A. NO, SIR.

19 Q. LET ME ASK YOU A FEW QUESTIONS ABOUT SOME OF THE
20 THINGS YOU JUST TESTIFIED ABOUT. BENJAMIN AND SON
21 TOWING, IS IT STILL IN EXISTENCE?

22 A. FAR AS ACCOUNT OPEN, IT IS, BUT IT'S NOT BEEN
23 OPERATIONAL.

24 Q. WHEN WAS THE LAST TIME THAT THAT BUSINESS RECEIVED
25 PAYMENT FOR ANY SERVICES?

1 A. I THINK OUR SON, MAYBE LAST YEAR OR SOMETHING, LAST
2 YEAR AROUND MAY OR APRIL, APRIL OR MAY OF LAST YEAR,
3 DID A TOW.

4 Q. APRIL OR MAY OF 2015?

5 A. '15; YES, SIR.

6 Q. AND IS THAT A BUSINESS THAT YOU PAY TAXES ON OR
7 ATTEND TO, OR IS YOUR SON RESPONSIBLE FOR THAT?

8 A. I DO.

9 Q. THE PROPERTY THAT YOUR SON LIVES ON, YOU SAID, IS
10 OWNED BY YOU?

11 A. UH-HUH.

12 Q. AND THE HOME HE LIVES IN IS OWNED BY YOU?

13 A. THAT'S CORRECT.

14 Q. DOES HE PAY YOU RENT?

15 A. HE PAYS -- HELP PAYING THE CREDIT CARD AND THE LINE
16 OF CREDIT.

17 Q. OKAY. SO DOES HE -- BUT DOES HE WRITE YOU A CHECK
18 WHICH WOULD BE CONSIDERED RENT?

19 A. WELL, HE GIVES ME CASH AND I APPLY IT TO THAT, OR
20 EITHER I'LL GO ONLINE AND LET HIM DO IT FROM HIS
21 ACCOUNT TO EITHER THE LINE OF CREDIT OR TO THAT.

22 Q. OKAY. SO AS FAR AS THAT PROPERTY IS CONCERNED AND
23 THE COST ASSOCIATED WITH IT, IT'S MANAGED THROUGH
24 PAYMENTS RECEIVED BY YOUR -- PROVIDED BY YOUR SON?

25 A. SOME IS.

1 Q. THE PROPERTY ON WHICH THE HOME HE RESIDES IN EXISTS,
2 DO YOU OWN IT OUTRIGHT, OR DO YOU HAVE A MORTGAGE ON
3 THAT PROPERTY?

4 A. IT'S NO MORTGAGE ON THAT.

5 Q. YOU OWN IT OUTRIGHT?

6 A. UH-HUH.

7 BY THE COMMISSIONER:

8 IS THAT A YES?

9 BY THE WITNESS:

10 YES. I'M SORRY.

11 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

12 Q. THE NONPROFIT THAT YOU REFERENCED A MOMENT AGO, WHAT
13 IS IT CALLED?

14 A. LABS HELPING HANDS.

15 Q. LABS, L-A-B-S?

16 A. UH-HUH.

17 Q. DOES THAT STAND FOR SOMETHING?

18 A. MY MIDDLE -- MY INITIALS.

19 Q. AND HOW LONG HAS THAT NONPROFIT BEEN IN EXISTENCE?

20 A. SINCE 2006.

21 Q. DOES IT HAVE A BOARD OF DIRECTORS?

22 A. IT DOES.

23 Q. OKAY. AND WHO ARE THEY?

24 A. ME, MY FATHER -- WELL, I'M EXECUTIVE DIRECTOR; MY
25 FATHER IS THE PRESIDENT; MY SISTER IS SECRETARY; AND

1 DOROTHY BRISWELL, WHO IS MY AUNT, IS LIKE THE
2 TREASURER.

3 Q. DOES IT HAVE AN ACCOUNT, A FINANCIAL ACCOUNT, WITH A
4 FINANCIAL INSTITUTION?

5 A. UH-HUH.

6 Q. AND WHO MANAGES THOSE FUNDS?

7 A. I DO.

8 Q. AND WHAT ARE THOSE FUNDS USED FOR?

9 A. TO PAY THE LIGHT BILL AT THAT BUILDING, TO PAY THE
10 WATER BILL, TO PURCHASE -- 'CAUSE I HAVE TO PURCHASE
11 FROM HARVEST HOPE. I USE MONIES FOR THAT.

12 Q. AND DO YOU SOLICIT DONATIONS?

13 A. WE DO.

14 Q. DO YOU RECEIVE ANY TYPE OF WAGES SERVING IN YOUR
15 ROLE AS A MEMBER OF THE BOARD OF DIRECTORS?

16 A. NO, SIR; I DON'T.

17 Q. AND THE BUILDING ON WHICH THE NONPROFIT IS LOCATED,
18 IS THAT OWNED BY THE NONPROFIT OR OWNED BY YOU?

19 A. IT'S BY THE NONPROFIT NOW.

20 Q. WAS IT AT SOME POINT OWNED BY YOU PERSONALLY?

21 A. YES, IT WAS.

22 Q. UP UNTIL WHEN?

23 A. ABOUT TWO -- MAYBE TWO YEARS AGO, BECAUSE OF TAXES
24 BEING -- WE COULDN'T AFFORD TO PAY THAT PROPERTY
25 TAX. WE HAD TO GET IT OUT OF MY NAME.

- 1 Q. DID THE NONPROFIT PURCHASE THE BUILDING FROM YOU?
- 2 A. UH-HUH. I SIGNED IT OVER.
- 3 Q. OKAY. YOU SIGNED IT OVER, OR THEY PURCHASED IT?
- 4 A. I SIGNED IT OVER. IT WASN'T PURCHASED.
- 5 Q. AT THE TIME OF MR. BENJAMIN'S WORK-RELATED ACCIDENT,
- 6 YOU WERE EMPLOYED WITH J.P. MORGAN?
- 7 A. YES, I WAS.
- 8 Q. AND WHAT WAS YOUR JOB THERE?
- 9 A. A SENIOR UNDERWRITER.
- 10 Q. AND HOW LONG HAD YOU WORKED FOR J.P. MORGAN AS A
- 11 SENIOR UNDERWRITER?
- 12 A. FOUR YEARS.
- 13 Q. AT THE TIME OF YOUR -- AT THE TIME OF MR. BENJAMIN'S
- 14 ACCIDENT WHEN YOU WERE EMPLOYED WITH J.P. MORGAN,
- 15 WERE YOU WORKING THERE FIVE DAYS PER WEEK?
- 16 A. I WAS.
- 17 Q. AND WERE YOU WORKING THERE EIGHT HOURS A DAY?
- 18 A. SOMETIMES TEN.
- 19 Q. OKAY. AND DID YOU CONTINUE YOUR EMPLOYMENT WITH
- 20 J.P. MORGAN AFTER MR. BENJAMIN'S WORK ACCIDENT?
- 21 A. I WENT ON FAMILY MEDICAL LEAVE.
- 22 Q. DID YOU CONTINUE YOUR EMPLOYMENT THERE?
- 23 A. I DID.
- 24 Q. OKAY. HOW LONG DID YOU REMAIN EMPLOYED WITH THEM?
- 25 A. UNTIL JUNE 4TH, 2013.

1 Q. OKAY. BETWEEN THE DATE OF MR. BENJAMIN'S WORK
2 ACCIDENT AND JUNE OF '14, WHAT DID YOUR WORK
3 SCHEDULE LOOK LIKE AT J.P. MORGAN AS FAR AS THE
4 NUMBER OF DAYS YOU WORKED AND THE NUMBER OF HOURS
5 PER WEEK YOU WORKED?

6 A. I PROBABLY HAD THREE AND A HALF DAYS AT WORK. I
7 WOULD TAKE TWO DAYS OFF PER WEEK.

8 Q. DID YOU LEAVE J.P. MORGAN BY CHOICE, OR WERE YOU --
9 OR DID THEY CHOOSE TO END THEIR RELATIONSHIP WITH
10 YOU?

11 A. THEY LAID OFF 577 PEOPLE THAT DAY, AND I WAS ONE OF
12 THEM.

13 Q. OKAY. SO YOU LEFT J.P. MORGAN FOR REASONS OUTSIDE
14 OF YOUR CONTROL, SO TO SPEAK?

15 A. CORRECT.

16 Q. SO DURING THE TIME PERIOD THAT YOU WORKED AT J.P.
17 MORGAN AFTER MR. BENJAMIN WAS INJURED ON THE JOB,
18 THERE WOULD BE DAYS WHEN YOU WOULD GO TO WORK AND BE
19 THERE EIGHT TO TEN HOURS?

20 A. SOME DAYS I WOULD; YES, SIR.

21 Q. OKAY. AND DURING THAT TIME, I THINK YOU WOULD AGREE
22 WITH ME, YOU WOULDN'T KNOW WHAT MR. BENJAMIN WAS
23 DOING AT HOME; HE WAS THERE ESSENTIALLY ALONE,
24 CORRECT?

25 A. NO, SIR.

1 Q. WHO ---

2 A. MY SON WAS THERE.

3 Q. OKAY. WAS THERE EVER A TIME WHEN YOUR SON WOULD
4 LEAVE THE HOME AND GO DO SOMETHING AND LEAVE YOUR
5 HUSBAND THERE BY HIMSELF?

6 A. COULD BE. I CAN'T SAY FOR SURE, BUT I'M SURE THERE
7 HAS BEEN.

8 Q. AND NOW YOU WORK AT WELLS FARGO, CORRECT?

9 A. YES, SIR.

10 Q. AND YOU BEGAN WORKING THERE IN -- AT WHAT TIME?

11 A. JUNE 5TH, 2013.

12 Q. OKAY. AND WHEN YOU STARTED WORKING FOR WELLS FARGO,
13 WHAT WAS YOUR WORK SCHEDULE LIKE THERE?

14 A. FROM 8:15 TO 5:35, 5:45 EACH DAY.

15 Q. AND HOW MANY DAYS A WEEK?

16 A. FIVE DAYS. SOMETIMES I WORK ON SATURDAYS, HALF
17 DAYS.

18 Q. SO, SOMETIMES SIX DAYS OR ALWAYS FIVE?

19 A. IT'S MOSTLY FIVE, OR MAYBE ONCE OR TWICE A MONTH I
20 MAY HAVE TO DO A SATURDAY.

21 Q. HOW LONG DID YOU KEEP THAT EIGHT-HOUR-PER-DAY, FIVE-
22 TO-SIX-DAY WORK SCHEDULE?

23 A. UNTIL I HAD BEEN THERE A YEAR AND WAS ELIGIBLE FOR
24 FMLA.

25 Q. OKAY. SO, DURING THAT PERIOD OF TIME, THOSE EIGHT-

- 1 HOUR-A-DAY, FIVE-TO-SIX-DAY PER WORK WEEK TIME
2 PERIOD, YOU WOULD GO TO WORK, MR. BENJAMIN WOULD
3 REMAIN AT HOME, CORRECT?
- 4 A. CORRECT.
- 5 Q. OKAY. AND SOMETIMES HE REMAINED AT HOME BY HIMSELF?
- 6 A. SOMETIMES, IF LEEMAN WASN'T THERE, OUR SON. OUR SON
7 MOSTLY WORKED NIGHT SHIFT, AND I WOULD DO DAY SHIFT,
8 SO SOMEBODY WAS THERE.
- 9 Q. BUT AS FAR AS WHAT MR. BENJAMIN WAS DOING WHEN YOU
10 WERE AT WORK, YOU WOULD NOT NECESSARILY KNOW WHAT
11 HIS ACTIVITIES WERE WHILE YOU WERE GONE, CORRECT?
- 12 A. I WOULDN'T SAY I PHYSICALLY COULD SEE WHAT HE WAS
13 DOING, BUT I WOULD TELEPHONE HIM, CHECKING ON HIM,
14 AND KNOWING THAT HE WAS LYING DOWN OR SITTING AND
15 WATCHING T.V. OR SOMETHING LIKE THAT. I PRETTY MUCH
16 KNEW. AND EVEN TO TODAY I SORT OF HAVE LIKE AN IDEA
17 OF WHERE HE'S AT AND WHAT HE'S DOING BECAUSE WE
18 COMMUNICATE, AND MY JOB ALLOWS ME TO HAVE THAT PHONE
19 CONNECTION WITH HIM.
- 20 Q. YOU SPEAK WITH HIM BY CELL PHONE?
- 21 A. YES, SIR; CELL AND LAND LINE.
- 22 Q. OKAY. DOES HE HAVE A LAND LINE OR A CELL PHONE?
- 23 A. WE HAVE BOTH.
- 24 Q. OKAY. SO YOU SOMETIMES SPEAK TO HIM AND HE IS ON
25 HIS CELL PHONE?

1 A. UH-HUH, CELL PHONE OR LAND LINE.

2 Q. NOW, YOU MENTIONED THERE ARE OCCASIONS WHEN MR.
3 BENJAMIN ATTENDS MEDICAL APPOINTMENTS WITHOUT YOUR
4 BEING PRESENT, CORRECT?

5 A. CORRECT.

6 Q. AND THOSE MEDICAL APPOINTMENTS TAKE PLACE OUTSIDE OF
7 THE SUMTER AREA, CORRECT?

8 A. YES, SIR.

9 Q. AND THOSE MEDICAL APPOINTMENTS NECESSITATE MR.
10 BENJAMIN DRIVING HIMSELF TO THE APPOINTMENT,
11 CORRECT?

12 A. YES.

13 Q. OKAY. AND SO, I THINK YOU WOULD AGREE WITH ME IF
14 HE'S DRIVING HIMSELF TO AND FROM THE APPOINTMENTS,
15 HE'S ABLE TO DRIVE AN AUTOMOBILE, CORRECT?

16 A. YES, HE CAN DRIVE.

17 Q. AND DO YOU RIDE IN AUTOMOBILES WITH HIM WHERE YOU
18 ARE THE PASSENGER AND HE IS THE DRIVER?

19 A. I HAVE; YES, SIR.

20 Q. HAVE YOU DONE THAT AS RECENTLY AS WITHIN THE LAST 30
21 DAYS?

22 A. HAVE I?

23 Q. YES.

24 A. YES, I HAVE.

25 Q. AND SINCE MR. BENJAMIN'S WORK-RELATED ACCIDENT, TO

1 YOUR KNOWLEDGE HAS HE BEEN INVOLVED IN ANY TYPE OF
2 AUTOMOBILE ACCIDENT WHERE HE HAD A WRECK OR
3 ANYTHING?

4 A. NO, SIR.

5 Q. BASED ON YOUR OBSERVATIONS OF HIM AT THE WHEEL OF A
6 CAR, DOES HE APPEAR TO BE MENTALLY CAPABLE OF
7 DRIVING AN AUTOMOBILE?

8 A. SOMETIME HE DOES, AND SOMETIME HE DOESN'T, AND I
9 WILL ASK HIM TO PULL OVER AND LET ME DRIVE.

10 Q. OKAY. BUT YOU STILL GET IN THE CAR WITH HIM?

11 A. UH-HUH.

12 Q. IS THAT A YES?

13 A. YES.

14 Q. AND YOU STILL RIDE BACK AND FORTH TO COLUMBIA, FOR
15 EXAMPLE, WITH HIM DRIVING?

16 A. NO, SIR. I WILL DRIVE IF WE'RE GOING TO COLUMBIA.

17 Q. DO YOU -- HAVE YOU EVER RIDDEN BACK FROM COLUMBIA IN
18 A CAR IN WHICH HE WAS THE DRIVER AND YOU WERE THE
19 PASSENGER SINCE THIS WORK ACCIDENT?

20 A. I HAVE; YES, SIR.

21 Q. HAVE YOU DONE THAT AS RECENTLY AS LAST MONTH?

22 A. LAST MONTH? IF SO, IT MAY HAVE BEEN ONE TIME.

23 Q. TO YOUR KNOWLEDGE, HAS YOUR HUSBAND WORKED ANYWHERE
24 AT ALL SINCE HIS WORK INJURY?

25 A. NO, SIR.

1 Q. TO YOUR KNOWLEDGE, AT THE TIME OF HIS WORK ACCIDENT
2 WAS HE A MEMBER OF A UNION?

3 A. YES, HE WAS.

4 Q. AND TO YOUR KNOWLEDGE, IS THAT A UNION LOCATED
5 LOCALLY IN THE BISHOPVILLE AREA? IS THAT A YES?

6 A. THAT'S A YES.

7 Q. TO YOUR KNOWLEDGE, HAS YOUR HUSBAND SERVED AS AN
8 OFFICER OF THAT UNION?

9 A. YES.

10 Q. OKAY. AND HAS HE SERVED AS AN OFFICER OF THAT UNION
11 SINCE HIS WORK ACCIDENT?

12 A. HE HAS, BUT NOT LONG AFTER THAT.

13 Q. DO YOU HAVE ANY KNOWLEDGE THAT HE SERVED AS THE
14 TREASURER OF HIS UNION IN 2011?

15 A. YES, SIR.

16 Q. DID HE RECEIVE PAYMENT OR WAGES FOR SERVING AS THE
17 TREASURER OF THAT UNION?

18 A. I'M THINKING YEARLY THEY GOT LIKE A YEARLY PAY OF
19 160 OR SOMETHING LIKE THAT. I'M NOT SURE.

20 Q. TO YOUR KNOWLEDGE, DID HE SERVE AS THE TREASURER OF
21 THE UNION IN 2012?

22 A. YES, SIR.

23 Q. OKAY. TO YOUR KNOWLEDGE, DID HE RECEIVE WAGES FOR
24 THOSE -- FOR THAT SERVICE?

25 A. THE SAME AMOUNT, YES, SIR.

1 Q. AND TO YOUR KNOWLEDGE, DID HE SERVE AS THE TREASURER
2 OF HIS UNION IN 2013?

3 A. YES, SIR.

4 Q. SO, AT LEAST IN THE EYES OF HIS UNION HE WAS CAPABLE
5 AND COMPETENT ENOUGH TO SERVE AS THE TREASURER OF
6 THAT ORGANIZATION?

7 BY MR. CHANDLER:

8 OBJECT TO SPECULATION.

9 WITNESS ANSWERS:

10 A. WHEN YOU SAY A TREASURER ---

11 BY THE COMMISSIONER:

12 SUSTAINED, SUSTAINED. DON'T ANSWER. IT WAS AN
13 OBJECTION. IT'S OKAY. I'M SUSTAINING. YOU CAN
14 REPHRASE IT.

15 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

16 Q. DID HE EVER EXPLAIN TO YOU WHAT HIS ROLE WAS AS THE
17 TREASURER OF HIS UNION, FOR WHICH -- A JOB FOR WHICH
18 HE RECEIVED PAY?

19 A. YES, SIR.

20 Q. OKAY. AND WHAT WAS THAT?

21 A. THAT HE WAS THE ONE THAT WOULD SIGN CHECKS. AT THE
22 TIME AFTER HIS SURGERY -- I MEAN AFTER HIS ACCIDENT
23 THERE WERE THREE PEOPLE THAT SIGNED THE CHECKS. HE
24 WASN'T THE SOLE TREASURER. SO WHEN THEY BRING A
25 CHECK THERE FOR HIM TO SIGN, HE SIGNED IT.

1 Q. SO HE WAS SIGNING CHECKS ON BEHALF OF HIS UNION
2 AFTER HIS WORK ACCIDENT?

3 A. THAT'S CORRECT, BUT HE WAS NOT THE SOLE SIGNER.

4 Q. THE TWO VEHICLES THAT YOU ALL OWN CURRENTLY THAT YOU
5 HAVE OUTSTANDING LOANS ON, WHEN WERE THEY PURCHASED?

6 A. WHEN?

7 Q. YES, MA'AM.

8 A. ONE WAS IN 2000 -- I THINK IN '13, '13 OR '14, AND
9 2010.

10 Q. SO, ONE WOULD HAVE BEEN BOUGHT BEFORE THE ACCIDENT
11 AND ONE AFTER THE ACCIDENT?

12 A. UH-HUH.

13 Q. OKAY. JUST A COUPLE FINAL QUESTIONS, MRS. BENJAMIN.
14 YOU MENTIONED A FEW MOMENTS AGO THAT YOUR HUSBAND --
15 OR YOU'VE OBSERVED PROBLEMS WITH HIM HAVING
16 INCONTINENCE; IS THAT CORRECT?

17 BY MR. CHANDLER:

18 OBJECT TO THE WORD INCONTINENCE. I DON'T THINK
19 THAT WAS USED IN MY DIRECT EXAMINATION OF THE
20 WITNESS.

21 BY THE COMMISSIONER:

22 SUSTAINED.

23 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

24 Q. I THINK YOUR HUSBAND'S LAWYER CALLED IT LEAKAGE. IS
25 THAT MY UNDERSTANDING?

1 A. UH-HUH.

2 BY THE COMMISSIONER:

3 IS THAT A YES?

4 BY THE WITNESS:

5 THAT'S A YES.

6 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

7 Q. DO YOU KNOW WHAT THE WORD INCONTINENCE MEANS?

8 A. I DIDN'T.

9 Q. OKAY. DO YOU KNOW WHAT IT MEANS THEN OR NOW? DO
10 YOU HAVE ANY IDEA WHAT IT MEANS?

11 A. ARE YOU TRYING TO SAY -- YOU MEAN A LEAKAGE OR COULD
12 NOT CONTROL A LEAKAGE.

13 Q. WELL, I'M ASKING YOU. DO YOU KNOW WHAT IT MEANS?

14 A. NO.

15 Q. OKAY, ALL RIGHT. WHEN DID THOSE PROBLEMS BEGIN?
16 YOU MENTIONED THAT YOU FIRST STARTED SEEING THEM
17 WHEN?

18 A. THE LATTER PART OF LAST YEAR, MAYBE SOMETIME AFTER
19 OCTOBER, NOVEMBER.

20 Q. OKAY. LATTER PART OF 2015?

21 A. UH-HUH.

22 Q. IS THAT A YES?

23 A. YES.

24 Q. DO YOU RECALL YOUR HUSBAND GOING DOWN TO THE
25 SOUTHEASTERN SPINE INSTITUTE IN DECEMBER OF LAST

1 YEAR FOR AN EXAMINATION?

2 A. DECEMBER? YES, I'M THINKING.

3 BY MR. LOCKHART:

4 THIS IS AT PAGE 735 OF THE APA SUBMISSIONS.

5 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

6 Q. IF WE HAVE A RECORD FROM SOUTHEASTERN SPINE
7 INSTITUTE DATED DECEMBER 17, 2015, A DAY ON WHICH
8 YOUR HUSBAND WAS EXAMINED BY SOMEONE CALLED LANE
9 TUGGLE, PHYSICIAN'S ASSISTANT, DO YOU RECALL YOUR
10 HUSBAND BEING SEEN MAYBE ON THAT DATE?

11 A. I CAN'T BE SURE. I'M NOT SURE WHAT DATE.

12 Q. OKAY. ALL RIGHT. I'M SHOWING YOU A MEDICAL RECORD
13 FROM THAT PROVIDER ON THAT DATE. DOES THAT HELP
14 REFRESH YOUR MEMORY AT ALL?

15 A. IT'S POSSIBLE THAT HE'S GONE THERE, BUT I CAN'T SAY
16 FOR SURE. I KNOW HE GOES THERE.

17 Q. IS IT POSSIBLE HE ATTENDED THAT EXAMINATION WITHOUT
18 YOU?

19 A. OH, NO. HE WOULDN'T HAVE GONE WITHOUT ME. I WOULD
20 HAVE CARRIED HIM THERE.

21 Q. OKAY. SO, THERE'S A LIKELIHOOD THAT THIS
22 EXAMINATION TOOK PLACE; YOU JUST DON'T RECALL IT?

23 A. EXACTLY.

24 Q. DO YOU SEE -- AT THE END OF THE FIRST PARAGRAPH OF
25 THIS NOTE THE PROVIDER THERE INDICATES THAT HE,

1 BEING YOUR HUSBAND, DENIES LOSS OF BLADDER OR BOWL
2 FUNCTION, ANY LOCAL MUSCLE DEFICITS, OR PARALYSIS;
3 DO YOU SEE THAT?

4 A. I DO.

5 Q. OKAY. SO, AT LEAST AS OF THE DATE OF THIS
6 EXAMINATION IT DOESN'T APPEAR YOUR HUSBAND TOLD HIS
7 DOCTORS ABOUT ANY ISSUES WITH HIS BLADDER, AT LEAST
8 IN DECEMBER; YOU WOULD AGREE WITH ME ABOUT THAT,
9 CORRECT?

10 A. YES.

11 Q. HE WAS ALSO SEEN BY DR. CARL LOZANNE LAST MONTH,
12 CORRECT?

13 A. YES.

14 Q. DID HE INFORM DR. LOZANNE OF ANY BLADDER OR BOWEL --
15 LOSS OF BOWEL OR BLADDER USE AT THAT TIME?

16 A. I DON'T THINK THAT QUESTION WAS ASKED, BUT I KNOW HE
17 ---

18 Q. AND I'M SORRY; THAT WASN'T MY QUESTION.

19 A. OKAY.

20 Q. MY QUESTION WAS, DID YOUR HUSBAND TELL DR. LOZANNE
21 THAT HE EXPERIENCED ANY PROBLEMS WITH LOSS OF THE
22 USE OF HIS BLADDER?

23 A. NO, HE DIDN'T.

24 BY MR. LOCKHART:

25 AND I BEG THE COURT'S INDULGENCE. I THINK I'M

1 CLOSING TO FINISHING.

2 BY THE COMMISSIONER:

3 SURE.

4 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

5 Q. MRS. BENJAMIN, TO YOUR KNOWLEDGE, HAS YOUR HUSBAND
6 FILED OR RECEIVED SOCIAL SECURITY BENEFITS SINCE THE
7 DATE OF HIS WORK INJURY?

8 A. NO, HE HAS NOT.

9 Q. AND YOU HAVE BEEN PRESENT AT BOTH OF HIS DEPOSITIONS
10 AND IN OUR PREVIOUS HEARING BEFORE COMMISSIONER
11 BARDEN; IS THAT CORRECT?

12 A. YES.

13 Q. AND YOU HAVE OBSERVED YOUR HUSBAND TESTIFY AT BOTH
14 OF THOSE HEARINGS?

15 A. YES. NOW, THE FIRST DEPOSITION I STAYED OUTSIDE.

16 BY MR. CHANDLER:

17 AND I THINK HE HAD JUST -- I THINK THAT WAS --
18 I THINK JASON MISSPOKE WHEN HE SAID, "BOTH OF THOSE
19 HEARINGS." I THINK HE MEANT ---

20 BY MR. LOCKHART:

21 IN BOTH OF THE DEPOSITIONS.

22 BY MR. CHANDLER:

23 BOTH OF THE DEPOSITIONS.

24 BY MR. LOCKHART:

25 MY APOLOGIES. I DID.

CROSS EXAMINATION RESUMED BY MR. LOCKHART:

Q. AND AT ALL THREE OF THOSE PROCEEDINGS, THE TWO
DEPOSITIONS AND THE HEARING, YOUR HUSBAND TESTIFIED
UNDER OATH TRUTHFULLY IN RESPONSE TO ALL QUESTIONS
BEING ASKED OF HIM BY ALL PARTIES INVOLVED, CORRECT?

A. CORRECT.

BY MR. LOCKHART:

I DON'T HAVE ANY FURTHER QUESTIONS.

BY THE COMMISSIONER:

THANK YOU. MR. CHANDLER?

BY MR. CHANDLER:

NO REDIRECT, YOUR HONOR.

BY THE COMMISSIONER:

OKAY, ALL RIGHT. THANK YOU, MA'AM. I WANTED
YOU TO KNOW, THE REASON WHY WE KEPT SAYING "IS THAT
A YES? IS THAT A YES?" IS BECAUSE SHE'S RECORDING
IT. WHEN YOU GO BACK AND READ IT, UH-UH AND UH-HUH
LOOK EXACTLY ALIKE, SO WE CAN'T ---

BY THE WITNESS:

OKAY.

BY THE COMMISSIONER:

ALL RIGHT. THANK YOU, MA'AM.

BY MR. CHANDLER:

YOUR HONOR, THAT WOULD BE THE CLAIMANT'S CASE.

BY THE COMMISSIONER:

1 ALL RIGHT.

2 BY MR. LOCKHART:

3 YOUR HONOR, I THINK WITH THE ADMISSION OF THAT
4 REPORT, I'M NOT GOING TO CALL THE INVESTIGATORS.

5 I'M GOING TO TELL HIM HE CAN LEAVE.

6 BY THE COMMISSIONER:

7 IS THAT REPORT ALREADY MARKED IN THE APAs?

8 BY MR. LOCKHART:

9 IT IS IN THE APA, YOUR HONOR. IT IS -- I
10 BELIEVE IT IS 29.

11 BY THE COMMISSIONER:

12 I DO WANT TO JUST VERY BRIEFLY BEFORE I CLOSE
13 RECORD JUST READ THE APAs INTO THE FILE. FOR THE
14 CLAIMANT I HAVE APA NUMBERS ONE THROUGH 14, WHICH
15 ARE PAGES ONE THROUGH 637. IN ADDITION, I HAVE
16 EXHIBITS A, B, AND C, WHICH ARE PAGES 638 THROUGH
17 654.

18 BY MR. CHANDLER:

19 CORRECT, YOUR HONOR.

20 BY THE COMMISSIONER:

21 THANK YOU. FOR THE DEFENDANTS HAVE APA NUMBERS
22 18 THROUGH 27, WHICH ARE PAGES 655 THROUGH 793. IN
23 ADDITION, I HAVE EXHIBITS NUMBER 28 THROUGH 35,
24 WHICH ARE PAGES 794 THROUGH 948. IN THOSE APAs ARE
25 THE DEPOSITION TRANSCRIPTS. HOWEVER, I HAVE

1 RECEIVED THE ORIGINAL COPIES OF THE TRANSCRIPTS
2 UPLOADED TO THE ECASE FILE.

3 THAT CONCLUDES THIS MATTER. THANK YOU VERY
4 MUCH.

5 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
6 CONCLUDED AT THE HOUR OF 2:56 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1106789

EMPLOYEE/CLAIMANT: VICTOR G. BENJAMIN

EMPLOYER: REXAM, INC.

CARRIER: HARTFORD INSURANCE COMPANY OF THE MIDWEST

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 130 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF VICTOR G. BENJAMIN, TAKEN ON THE 18TH DAY OF AUGUST, 2016.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 3RD DAY OF FEBRUARY, 2017.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2018-000965

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SEP 09 2019

SC Court of Appeals

Victor G. Benjamin, Employee, ... Appellant,

v.

Rexam Beverage Can Company d/b/a Rexam Beverages, Employer, and
Hartford Insurance Company of the Midwest c/o Sedgwick CMS, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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



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December 27, 2018
Columbia, South Carolina