

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
South Carolina Workers Compensation Commission

Derrick Williams, Single Commissioner
G Bryan Lyndon, T Scott Beck Susan S Barden Appellate Panel

W C C Case No 0907061

John Kevin Hartman,

Appellant

vs

Horizon Motors, Inc Employer,
Montgomery Insurance, Carrier

Respondents

RECORD ON APPEAL
Volume 2 of 2

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SC Court of Appeals

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INDEX

Decision and Order September 2 2010	1
Decision of Appellate Panel June 29, 2011	31
Form 50	66
Form 51	68
Form 21 January 22, 2010	69
Form 58 Claimant s Pre Hearing Brief	72
Form 58 Employer s Pre Hearing Brief	81
Transcript of Hearing March 2 2010	491
John Hartman Direct Examination	514
John Hartman Cross Examination	566
John Hartman Re-Direct Examination	568
John Hartman Re-Cross Examination	568
Sean Lawless Direct Examination	571
Sean Lawless Cross Examination	575
Sean Lawless Re-Direct Examination	578
Sean Lawless Court Examination	578
Dawoan Hughie Direct Examination	579
Dawoan Hughie Cross Examination	589
Transcript of Hearing before Appellate Panel December 14, 2010	592
Deposition Testimony of John Hartman February 2 2010	619
Notice of Appeal	717
Certificate of Counsel	718

1 your shoulder?

2 A My shoulder, I'm unable to raise it above, you know,
3 the area - I can't - I've been having trouble with it,
4 with trying - it's just simple tasks, like brushing my
5 teeth, you know, washing my hair, anything above my
6 head, it hurts to do that Laying on it at night, I
7 have a lot of trouble with it at night I can't sleep
8 on it It just feels like somebody is sticking a
9 barbecue skewer deep down in the joint of the arm
10 Any time I try and raise it - you know, any time from
11 - I can only explain it by showing But from about
12 this point up or trying to reach behind me, I'm having
13 to start using my left hand or retrain myself to use
14 my left hand to do a lot of things, because I'm right
15 handed that would normally do with my right hand

16 Q How many tears do you have in there?

17 A I've been told I have three

18 Q How many tendons?

19 A Two

20 Q How about your rotator cuff? Is that one of those?

21 A It's one of them too that's torn Yes

22 Q Tell us what's going on with the C3, 4 disc in your
23 neck

24 A I have a flattened - I'm not quite sure what the
25 terminology is But it's a flattened area in there

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1 that's causing some pressure on some of the nerves
2 and stuff in my neck

3 Q Is there also - how about C4, C5, what's going on with
4 your spinal cord there?

5 A I have a bulging disc I have a disc, a couple of
6 discs that are protruding into the, from what I
7 understand - I'm not a medical physician, so I'm
8 understanding it's in the spinal canal and it's
9 pressing up against the nerves and creating this pain
10 that I'm having

11 Q Do you know what it means to have at both C3, 4 and
12 C4, 5 spinal cord flattening?

13 A Do I understand what that means, the terminology?

14 Q Yes, sir

15 A No, sir I'm not a medical physician I know that's
16 what I've been told that that was the diagnosis I
17 don't know what that means

18 Q Do you know what it means to have exit route nerve
19 contact at C5, 6 and C 6, 7?

20 A My understanding of that is where the nerves come out
21 of the spinal cord and travel through the boney mass
22 of the spine, that that's where they get impinged or
23 pinched because of the movements or - I'm not quite
24 sure But, I mean, that's my take on it from what the
25 doctors have been telling me

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1 Q Adds up to four different levels in your neck?

2 A Yes And low back

3 Q Now, what happened when you saw Dr Aymond?

4 A Dr Aymond wanted to refer me to a Dr Wooten for some
5 spinal blocks

6 Q What happened with Dr Wooten?

7 A From what I understand, the company who had made the
8 arrangements, I would assume the insurance company,
9 denied those treatments and would not accept payment
10 for me to go see this doctor

11 Q What happened to you after that regarding some
12 psychological issues?

13 A Well, I was in extreme pain I wasn't getting
14 anywhere with the insurance company as far as getting
15 the treatment that I thought I had received and the
16 migraine headaches that I was having at the time and
17 not being able to sleep at night I made a decision
18 that it was - not a decision I'm proud of But at
19 about 2 00 in the morning, I was wide awake, hurting
20 with severe pain And I drove myself to a marina
21 where I took a weapon I had and had considered ending
22 my life that night I made a phone call to a police
23 officer friend of mine, told him I was in trouble,
24 told him I was in a lot of pain And the next thing I
25 know, I was at the hospital being treated And I was

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1 in Palmetto Bay Center or whatever Another place
2 where they monitor you and take care of you and put me
3 on a bunch of stuff to just kind of calm you down and
4 did some pain management and tried to bring me back to
5 my senses, I guess, and tried to get my pain under
6 control

7 Q Do you know what it means to have an L3, 4 extrusion?

8 A It has been explained to me that that is a disc that
9 is not in its proper location, that it's actually in
10 the spinal cord or actually protruding into the spinal
11 cord

12 Q Do you know what it means to have an L4, 5 fusion?

13 A Basically that's the same thing where it would go in
14 and it's pressing up against the nerves and causing
15 the pain I'm having in my legs and the tingling and
16 the numbness and whatnot

17 Q Would you describe for us - Dr Poletti discusses neck
18 pain, shoulder pain, right arm pain, low back pain,
19 buttocks, hip pain, and bilateral leg pain

20 A Yes

21 Q Tell us about the pain in your neck, if you will

22 A The pain in my neck is - it just feels like I have
23 this weight that I'm always carrying on top of my head
24 and it feels like it's compressed It's giving me a
25 pain around my right shoulder blade and I'm getting

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1 severe headaches I wake up with a very stiff neck
2 I'm having a hard time getting comfortable with it
3 It's always aching It's just - I can't find a
4 comfortable spot for it There's just something going
5 on in there that physically it just - you know, I have
6 a hard time with sleeping and my regular activities at
7 home I just - it's a constant ache for me

8 Q How about your right arm? What's going on with that?
9 How's that feel?

10 A It's terrible Like I was explaining, I can't do a
11 lot of the things I used to do I can't really brush
12 my teeth like I used to I can't comb my hair with
13 that arm I can't get it to go over my head without
14 that impingement, sharp stinging pain I have limited
15 use to it I'm a right-arm person And I can't pull
16 or push, you know, the way I used to or - it's just -
17 I'm not able to use my right arm the way I did before
18 the incident

19 Q What do you feel in your low back?

20 A Oh my God I feel like I carry around an elephant
21 every day It just - both of my legs go numb My
22 right leg specifically tingles My right feet and
23 toes go numb and tingle I have, you know, some
24 issues with the left, but predominantly the right leg
25 is where I'm having, like, my issues And even

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1 sitting for long periods of time, I can't sit, I
2 can't stand I just can't find a comfortable
3 position I'm up all hours of the night because I
4 can't sleep I sleep with four or five pillows trying
5 to find the comfortable position It feels like it's
6 just getting progressively worse and worse I cannot
7 find a comfortable spot anymore

8 Q What's going on with your legs?

9 A They get weak I have balance issues sometimes where,
10 if something comes along and I get that sharp,
11 stabbing feeling down the back of one of my legs, you
12 know, I feel like I'm going to fall Just today as an
13 example, sitting on these wooden benches out there
14 waiting to be coming in here and out of here and it's
15 just very uncomfortable for me right now I want to
16 go try and lay down somewhere where I can get into my
17 position and try to find some comfort because I'm
18 really starting to feel a lot of discomfort right now

19 Q How far are you able to walk?

20 A I would probably guess, if I had to walk normally,
21 maybe from here to the car, which is in the parking
22 lot maybe less than a block

23 Q Are you able to run?

24 A No Not at all

25 Q Can you jump?

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1 A Not at all

2 Q Can you negotiate rough or uneven terrain?

3 A No Not at all

4 Q Are you able to maintain balance?

5 A Just barely

6 Q Are you able to climb stairs?

7 A No

8 Q What happens when you try to climb stairs?

9 A I have to hold onto a hand rail And, I mean, my
10 particular house that I live in has four stairs up to
11 the first level of it And when I go up the stairs,
12 I'm constantly holding onto the handrail, pulling
13 myself up And it's just - I have to take one step at
14 a time to try and get up It's not very comfortable

15 Q Are you able to climb a ladder?

16 A No

17 Q Can you stand for longer than 10 to 15 minutes?

18 A That would probably be about the maximum

19 Q Are you able to stoop?

20 A No

21 Q Can you reach up without pain?

22 A No Not at all

23 Q Can you reach out without pain?

24 A Not at all

25 Q Are you able to reach around the back on the right

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1 side?

2 A Not at all Not without having pain

3 Q Are you able to sit for extended periods of time?

4 A I mean I have discomfort just like today, I'm
5 constantly having shuffle myself around and find a
6 different spot

7 Q Are you able to lift or carry more than 10 pounds?

8 A Not at all with my right arm

9 Q Were you able to do these things prior to your
10 on-the-job injury of 4/21/09?

11 A Absolutely I was carrying sonar heads and moving
12 them and bending them, stooping over car fenders and
13 putting these engines together I built that company
14 a wrecker I mean, actually built them a wrecker from
15 a flat bed truck in order to do that That's a lot of
16 heavy steel and metal I actually built it for them
17 So, yeah, at that time I could do a lot of that stuff

18 Q Are you able to do household chores now?

19 A No Like vacuuming and all of that stuff I don't do
20 because I can't use my right arm

21 Q How often are you required to actually remain in bed
22 during the day?

23 A It's a day-to-day period I stay in the bed The
24 majority of my day is mostly laying down horizontal
25 I try and get up from time to time and sit And I

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1 have a lazy boy chair I sit in with a couple of
2 pillows on each side trying to find that comfortable
3 spot And I do do some things You know, I have to
4 go to the bathroom of course and stuff like that But
5 as far as any kind of work or any kind of maintenance
6 around the house and stuff, I have to pay people to do
7 that I don't do it anymore

8 Q Are you able to perform yard work?

9 A No I pay people to do that

10 Q Home maintenance?

11 A No

12 Q Auto repair tasks?

13 A Absolutely not

14 Q Now, you used to be a pilot, you used to fly an
15 airplane?

16 A I used to

17 Q Are you able to do that anymore?

18 A No, sir

19 Q Do you enjoy camping anymore?

20 A I haven't camped since my accident

21 Q Do you jet ski anymore?

22 A No, not at all

23 Q Now, what effect, if any, does this pain in your
24 shoulder, your neck, and low back have on your mental
25 capacity, your mental function?

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1 A Just - well, I mean, if an example of what happened
2 to me when I went to Palmetto is not the worst case
3 scenario, the rest of it is I feel that, you know,
4 I am not able to function on a daily basis I don't
5 know what the next day is going to bring There's
6 other days where I - if I have what I consider a
7 decent day where I can get up and fix myself a
8 sandwich and sit down and eat But I'm not able to
9 get up and just go out and, you know, do the things
10 that I normally used to do where I would cut the grass
11 or just enjoyable things I don't have that from a
12 day-to-day basis It's just got me all - my brain
13 just doesn't function the same way anymore because of
14 the deep pain I'm in

15 Q Are you able to remember things?

16 A Not completely

17 Q Are you able to cognitively function like you used to?

18 A No, not at all It's very frustrating for me

19 Q What's your short-term memory like?

20 A Like if I would set a set of keys down, do I remember
21 where I put them? No I have trouble sometimes

22 Q Are you able to sleep?

23 A No

24 Q Why not?

25 A Because I'm having so much trouble with the pain and

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1 the uncomfortable situation I'm in I'm up and down
2 all hours of the night and I'm keeping, you know, my
3 wife up and down all hours of the night because she
4 feels me get up and down and she checks on me I try
5 not to wake the household up, but I just - I'm not
6 able to sleep because I'm very uncomfortable

7 Q What effect does that have on the way you feel during
8 the day?

9 A Always fatigued Always fatigued Always feeling
10 very tired

11 Q Now, with the fatigue and the constant pain combining,
12 what effect do you feel that has on your ability to
13 function just from a cognitive or a mental standpoint?

14 A I'm just frustrated and aggravated and unable to focus
15 on any particular thing for any length of time I
16 just -

17 Q What effect do you think that has on your ability to
18 learn things, to retain knowledge?

19 A It's just not possible I mean, I have - as a fun
20 thing, what I like to do is I have a computer program
21 where I can fly flight simulators Since I can't fly,
22 I can sit there and do that sometimes And now I
23 can't because I can't concentrate on doing it because
24 it's just not fun anymore because I'm constantly
25 having to reposition myself and - just this pain

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1 thing, just keep being reminded of the pain I'm not
2 able to focus -

3 Q What if they gave you a job as a greeter at Wal-Mart
4 or a telemarketer? Could you do those kinds of jobs?

5 A No I wouldn't be dependable because I wouldn't know
6 from day to day whether or not I was going to have the
7 ability to be able to go to work I wouldn't feel
8 comfortable with being a happy person knowing I'm in a
9 lot of pain

10 Q If you showed up for work and you were able to do your
11 job for a day, what effect would that have on you for
12 the next day or two or three?

13 A Oh, I would probably be down for two or three days
14 just trying to recoup from having to stand One day,
15 if I do any kind of activity like that, it takes me
16 two or three days to try and re-heal myself to a point
17 where I can get back -

18 Q What effect do you think that would have on your
19 employer, your employment, if you were able to get a
20 job?

21 A I would imagine as an employer, I would imagine that I
22 would be not dependable and they couldn't count on me
23 from day to day to be there on time or be there at
24 all

25 Q Would you be able to reliably show up for work?

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1 A No, not at all

2 Q When did your employer, when did they fire you?

3 A I was laid off October 5, 2009

4 Q Do you know why that happened?

5 A Their reasons being were -

6 MS ROSS I object to hearsay

7 BY MR TANENBAUM

8 Q It was five and a half months after you were hurt?

9 A Yes

10 Q All right

11 A I'm just repeating what I was told, but -

12 MS ROSS Objection

13 THE COURT Sustained

14 BY MR TANENBAUM

15 Q It's all right Do you feel like you are employable
16 in any capacity?

17 A At this time, no I'm not dependable I feel the
18 pain that I'm going through and the deprivation of
19 sleep and the issues that I have at hand, I just don't
20 feel like I could commit myself or be of value to
21 anybody at this point in time

22 MR TANENBAUM I don't have any further
23 questions

24 THE COURT Ms Ross

25 ///

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CROSS EXAMINATION

1

2 BY MS ROSS

3 Q You had a motor vehicle accident in 2001

4 A Yes January

5 Q Okay When I took your deposition, did you say that -
6 did you call it a minor incident?7 A To the best I recall, I believe I said it was an
8 accident I don't know if I said minor I don't
9 recall if I said minor or not10 Q Do you want me to show you your deposition or do you
11 trust me if I tell you that you said minor incident?12 A If you say I said it, then maybe I said it was a
13 minor, yes14 Q Okay That's at 4 Did you tell me that after that
15 injury you complained of minor pain in your neck and
16 back, you had an injection or two or something like
17 that, and then they released you back to work? Does
18 that sound about right as to what you told me?19 A That's correct, yeah I mean, it was ten years ago
20 That's to the best of my recollection, that was
21 correct

22 Q And treatment lasted a couple of weeks, maybe a month?

23 A That was correct

24 Q And you told me that you had x-rays for the 2001
25 injury, but no MRI

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1 A I don't recall that If I did say I had MRIs, I'm
2 not recalling that I mean, it was ten years ago I
3 don't know You asked me if I had some films and
4 stuff done and I told you I did

5 Q I asked you specifically if you had had any other
6 objective testing including an MRI and you said no
7 Would that be right?

8 A It's possible I said that, yes

9 Q At 27

10 A Again, it was ten years ago, so it was difficult for
11 me to remember what all they had done

12 Q Would you remember now whether you had an MRI?

13 A I wouldn't be able to testify yes or no I'm not sure
14 what test they did I know I had a bunch of x-rays

15 MS ROSS Commissioner, if I might, line 4 here

16 BY MS ROSS

17 Q Mike, I'm going to read the question and then you read
18 the answer Okay?

19 A Okay

20 Q "You mentioned x-rays after your auto accident Have
21 you undergone any other objective diagnostic testing,
22 CTs, x-rays, MRIs?" What did you say?

23 A "Just the most recent ones "

24 Q So, did you tell me you couldn't remember or did you
25 deny having an MRI?

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1 MR TANENBAUM I object to the way she
2 categorizes What he said -

3 THE WITNESS I didn't deny I just said it was
4 ten years ago and I wasn't -

5 THE COURT Hang on a second Mr Tanenbaum, let
6 me hear - okay All right Ms Ross

7 BY MS ROSS

8 Q But you did have an MRI January 21, 2001?

9 MS ROSS That's my 38, Commissioner

10 THE WITNESS If you say I did, then I guess I
11 did I'm not sure

12 BY MS ROSS

13 Q And I'm looking at Dr Jones' records on Alan's 47

14 It says that you treated with him for over a year

15 A I don't think so I think I saw - as far as
16 treatment, I saw him for a month I know that I don't
17 know the exact length of time that I was being
18 treated

19 Q My 47 I've highlighted in that first full paragraph,
20 "significant relief achieved over the ensuing six to
21 eight months of treatment Patient last seen in the
22 office for those injuries March '02 " So, would you
23 agree that you actually got a year's worth of
24 treatment?

25 A According to that, it sounds like it may have been,

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1 yeah

2 MS ROSS I'm sorry to switch back and forth,
3 Commissioner, but back to my APA 155

4 BY MS ROSS

5 Q You were actually on disability from your job as a
6 result of that injury as of September of '02

7 A I'm not sure There was no work comp disability
8 there

9 Q I'm at 155 It's your application for employment at
10 Horizon Motors What does it say about your current
11 work status?

12 A Personal history, mechanic

13 Q Here where I'm pointing

14 A I'm not sure "Are you currently employed?"

15 Q What did you put?

16 A I just put - I guess it says disability

17 Q What's that dated?

18 A 9/16/02

19 Q You didn't lie on your employment application, did
20 you?

21 A No

22 Q So, therefore you would have to agree that you were
23 disabled until at least September '02 as a result of
24 that accident

25 A I mean that was question of where my job had been,

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1 what have I been doing in that period of time But I
2 had no job prior to that job I guess that's what the
3 question they were asking me, why I was not employed
4 through that period of time

5 Q Your answer was that you were disabled

6 A I had an accident in '01 And that's the only job I
7 had prior to that job because they asked me for a job
8 history, I would assume

9 Q Okay But when I asked you about it in your
10 deposition, you said that your treatment lasted a
11 couple of weeks, maybe a month, and that it was a
12 minor incident

13 A To the best of my recollection, yeah, it was It was
14 a minor incident Yes

15 Q Okay Now, in your deposition you also said that you
16 hurt your shoulder around 2 00 on February - or excuse
17 me, April 21st, does that sound right?

18 A That was to the best of my knowledge Yes

19 Q Okay And you finished out the day, but you noticed
20 that you weren't feeling well Your shoulder hurt
21 really bad and your neck and back were throbbing

22 A Yes

23 Q And you told me that you told Jim about it on April
24 22nd, the next day

25 A We talked to the office manager, which was Glenn Hare

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1 (phonetic) And we called Jim because Jim was out of
2 town

3 Q Okay And you told me in your deposition that Jim was
4 out of town and you had a 30 minute telephone call
5 with him because he was in Florida

6 A I didn't personally have the call with him Glenn had
7 the call with him

8 Q But you were in the room the whole time?

9 A Yes, I was

10 Q For reasons that are going to come up later, we say
11 that you didn't tell us until June about your work
12 injury So, let's look at that I have telephone
13 records here, outgoing calls on April 22nd Let's look
14 for a 30 minute call These are outgoing calls from
15 your work lines This is my APA F as a whole So,
16 let's see, here's the first line, page 93 There's
17 the first line Any 30 minute calls on the 22nd?

18 A I'm not sure what you are asking me

19 Q There's the date there

20 A These are calls from the office to his phone from
21 another phone

22 Q These are all of the outgoing office calls

23 A Does that include Glenn's cell phone?

24 Q You didn't tell me you called on Glenn's cell phone
25 You told me you called on the office phone

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1 A No I told you Glen called Jim

2 Q And your testimony is now is that Glenn called Jim on
3 the on Glenn's cell phone?

4 A That's how they communicated Yeah They used cell
5 phones with each other

6 Q Okay And Jim was out of town?

7 A Jim was in Florida purchasing cars during that
8 process Yes

9 Q Well, my APA, the next one, G, is incoming calls to
10 Jim's cell phone

11 A Okay

12 Q So, we should find it here then?

13 A I would assume

14 Q Let's see, April 22nd It starts right there at 115
15 and then 117 has some other ones on the 22nd Any 30
16 minute calls?

17 A I'm not sure what you are asking me I mean, I can't
18 be - I can't tell you it was exactly 30 minutes And
19 his number is - I mean, I see Bret's number there,
20 which is his partner

21 Q We are looking at Glen's number, right? Because
22 that's when you said

23 A We are looking - whose number are we looking for?

24 Q We are looking for Glenn's number You said Glenn
25 called Jim on Glenn's cell phone So, we are looking

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1 for Glenn's number

2 A I don't know what his cell phone number is

3 Q Okay Right here next to 532-9993, it says "Glenn"

4 Does that sound like Glen's cell phone number?

5 A Okay

6 Q Okay So, looking for that number we got, what, a

7 three minute call

8 A Okay

9 Q And a three minute call

10 A Okay

11 Q Same day, next page We are looking for 9993 Let's

12 keep going

13 A Okay

14 Q Any 9993s on this page?

15 A I don't know how we usually got in touch with him I

16 just know that he called Jim and told Jim and Jim said

17 he needed to call his insurance company -

18 MS ROSS Objection

19 THE WITNESS Okay

20 MR TANENBAUM What?

21 MS ROSS We are talking about the phone call

22 MR TANENBAUM Objection to what? He's just

23 trying to answer your question

24 MS ROSS We are trying to -

25 THE WITNESS I mean, she is telling me about

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1 phones

2 THE COURT You opened the door for it

3 THE WITNESS All I know is he made a phone call
4 to Jim and Jim said he was in Florida and he needed to
5 call his insurance carrier to see before he made a
6 claim if it was going to jack his rate

7 BY MS ROSS

8 Q Okay So, back to whether the call happened You
9 thought you said in your deposition that it was from
10 the office phone, but we have got office phone records
11 that don't show a call But you said that it's now
12 from Glenn's cell phone

13 A I didn't say it was from an office phone I said I
14 was in his office when the call was made

15 Q And it was about a 30 minute phone call from Glenn's
16 cell phone?

17 A I said it was a call made to Jim to verify that a
18 claim had to be made And he said he had to call his
19 insurance carrier to see if it would jack his rate and
20 he would call back Now, what phones they used and
21 whose numbers they called, whether he was at his hotel
22 room, I can't verify whose phone they used I just
23 know the conversation took place

24 Q Okay A 30 minute phone call from Glenn's cell phone

25 A I don't know why it keeps - it's a 30 minute

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1 conversation That's just a random number that was
2 used to verify that there was a phone conversation
3 made

4 Q So, it might have been one of those three minute phone
5 calls and you just got it wrong in your deposition?

6 A All I'm saying is there was a phone call made to Jim
7 from Glenn letting him know that there was an issue
8 and that Jim told him that he needed to check his
9 carrier to see if it would jack his rating before we
10 filed the claim

11 Q But you say you definitely gave notice in April, not
12 June?

13 A I gave - yes Because I had a doctor's appointment
14 I went and saw my doctor I told Glenn about it I
15 told Glenn that I wanted to do those things and file
16 the Work Comp, but he said he had to check with Jim to
17 verify it because he was -

18 Q Please don't testify to what somebody else told you
19 Okay It's not admissible That's why I keep popping
20 up and saying, "Object "

21 A I'm sorry I'm just trying to explain to you the way
22 it happened

23 Q Okay But you told me you originally filed everything
24 under your health insurance and you tried to file for
25 Aflac

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803-834-3410

1 A No That's not true

2 Q Did you file for Aflac?

3 A No, I did not When trying to file an accident claim
4 through my Aflac I was told that if it was a work-
5 related incident, that I had to file a Work Comp
6 claim

7 MR TANENBAUM Your Honor, if I - excuse me Is
8 notice here even an issue?

9 MS ROSS We don't -

10 MR TANENBAUM I'm really trying to figure out
11 where all of this -

12 THE COURT Ms Ross, I was going to ask you -

13 MS ROSS We don't dispute notice within 90 days
14 as permitted by statute But it will become clear why
15 we are disputing this April versus June issue if you
16 will give me a little bit of leeway

17 THE COURT All right You have got a little bit
18 more time

19 MS ROSS Okay

20 THE COURT But I don't know where we are going
21 with it

22 MS ROSS Okay

23 BY MS ROSS

24 Q Your son worked at Horizon Motors, didn't he?

25 A Yes, he did

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1 Q And did you tell me on the telephone when we were
2 talking with Alan, that once Horizon let you go, they
3 didn't need your son anymore and that's why he didn't
4 work there?

5 A He told me that he was - his exact words, Mr Reagan's
6 exact words were -

7 Q No I'm asking you what you told me What did you
8 tell me on the telephone with Alan present?

9 A That he let him go because I was no longer there

10 Q Okay And your son worked until June, right?

11 A Yes

12 Q Okay Now, you also told me in your deposition that
13 Dawoan asked you to help start the blower, which is
14 what caused you injury, is that correct?

15 A That is correct

16 Q Okay And you have - let's see Your first APA says
17 blower But 18 and 33 say weed eater Do you have -

18 A It was a missed description I've been explaining
19 that since the first time I saw had weed eater on
20 anything It was a missed description of the
21 equipment

22 Q So, that's completely and totally wrong It was never
23 a weed eater?

24 A It was never a weed eater It was always a commercial
25 blower

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803-834-3410

1 Q And you don't know where they got the idea that it
2 was a weed eater?

3 A I'm not quite sure how that became a point no, ma'am
4 But I've tried to correct that since day one

5 MR TANENBAUM It was probably me

6 THE WITNESS And Dawoan Hughie can detest (sic)
7 that it was exactly a piece of equipment apparatus
8 that was being tried to be started He was there

9 MS ROSS Your Honor, if I could have just a
10 second here Something is not where I'm looking for
11 it

12 THE COURT Okay

13 MS ROSS Okay Here it is

14 BY MS ROSS

15 Q So, when you went to Dr Aymond - or excuse me,
16 Dr Ernst, you had to fill out a form?

17 A Of why I was seeing him?

18 Q Right

19 A Yes

20 Q And you filled it out?

21 A I would assume I did, yes

22 MS ROSS My APA 1, Commissioner

23 BY MS ROSS

24 Q How does that say that you hurt yourself?

25 A It's got weed eater there

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1 Q But weed eater is not right?

2 A Weed eater is not correct

3 Q But you filled this out?

4 A Yes

5 Q Okay

6 A It's a mis-description of the type of equipment, yes

7 Q Now, you chose Dr Jones to go see We didn't send
8 you there?

9 A Dr Highsmith referred me to him

10 Q But you had seen Dr Jones before

11 A And he did a very good job at taking care of me

12 Q And when you saw him before -

13 A I hadn't seen him in ten years

14 Q Okay But Dr Aymond, you have been talking about how
15 Dr Aymond sent you to Dr Wooten and that wasn't
16 approved and that caused you stress and problems, is
17 that right?

18 A Yes Because I was no longer allowed to go see

19 Dr Wooten to get the injections and to try and help
20 alleviate some of the pain

21 Q So, Allen's APA 36, that's Dr Aymond Dr Aymond
22 recommended that you get cervical epidural steroid
23 injections on 8/4 Would that be right?

24 A That is correct

25 Q And it was stressful to you that you could not go and

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803-834-3410

1 get those with Dr Wooten?

2 A Yes

3 Q Okay You went to Dr Jones the very next day, didn't
4 you?

5 A Yes Because they are in the same building

6 Q Okay So, that's APA 46 So, the stress where you
7 weren't permitted to have the injections, you went to
8 the doctor the next day

9 A Yes

10 Q And then you specifically told Dr Jones, I'm at 58,
11 that you didn't want surgery and that you wanted him
12 to do the injections, didn't you?

13 A That's not true

14 Q 58 I have two parts highlighted Can you read them
15 both, please?

16 A "Patient states he requested that the blocks be
17 accomplished by me in this practice, as well as the
18 treatments Patient indicates he did not want to have
19 surgical intervention "

20 Q Okay But you didn't say that to Dr Jones?

21 A I didn't deny surgical interventions I wanted to try
22 and have the blocks first and use the cervical
23 intervention as a last resort because, as he was
24 explaining to me through that process, that if we did
25 surgery without the blocks, surgery was the last

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803-834-3410

1 resort and if it didn't get any effect after surgery,
2 there was no further - other type of treatment that
3 could be done, that the blocks should be tried first,
4 and if it didn't work, then we would do the surgery

5 Q And you have blocks You had a block You went to
6 Dr Aymond on the 4th You went to Dr Jones on the
7 5th And you had a block on the 6th, APA 50

8 A I had a block before that I had one with Dr Lembo
9 and it did not work

10 Q So you had a block on the 6th You had a block on the
11 20th You had a block on September 1st

12 A Yes

13 Q And you told Dr Jones that you wanted him to do the
14 blocks

15 A I asked if he would do the blocks, yes

16 Q But it's your testimony that you were caused
17 significant amounts of stress because Dr Wooten
18 wasn't permitted to do the blocks?

19 A No I was saying that I was under severe pain and it
20 was taking too long to get to the point where I could
21 get my blocks

22 Q Okay You were also sent to physical therapy, weren't
23 you?

24 A Yes I went one time

25 Q Yeah And my APA 76, does this show that you had four

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803-834-3410

1 other visits scheduled, you no showed on four of
2 them, and cancelled the other one?

3 A Yes Because it was explained to Dr Lembo that it
4 was very painful for me to go to those because the
5 issues that I was suffering from, the way the
6 treatment was and his exact words were, "I want to
7 treat you my way, but I have to treat you the way they
8 want you to treat me " And then I was referred to
9 Dr Ernst by the insurance company and they took me
10 away from Dr Lembo

11 Q What does that say about why you needed to reschedule
12 your visit?

13 A "PT" -

14 Q That usually means patient

15 A "Patient figuring" - I don't know what that means

16 Q "Figuring insurance issues "?

17 A Yeah It was a Work Comp issue And Work Comp had
18 not picked it up, so I was having to see if my
19 insurance company would pick it up

20 Q Anything on here about anything not being authorized?

21 A No

22 Q It just says "no show"

23 A It just says "no show"

24 Q And we worked hard at your deposition to make sure we
25 had all of the health care providers you had seen in

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803-834-3410

1 the last 15 years, right? Do you remember that?

2 A I did the best I could I was there three hours

3 Yes, ma'am

4 Q Okay So, you admitted to - this is his depo at 80,
5 81 - Dr Arnau, Dr Lembo, Dr Ernst, Dr Highsmith,
6 Dr Jones, Dr Dorn, and your cardiologist, is that
7 right?

8 A Yes, ma'am

9 Q Upon initial review?

10 A Yes

11 Q Okay And then when I asked you about your most
12 recent medical appointment, you admitted to
13 Dr Poletti?

14 A I had Dr Poletti, yes

15 Q Okay You weren't trying to keep that from me, were
16 you?

17 A No, ma'am I just had seen so many doctors through
18 that course, that period of time, I couldn't keep - I
19 mean, you were asking me off the top of my head I
20 didn't have a list of doctors that I had seen You
21 were asking me out of memory how many doctors I had
22 seen

23 Q You also didn't remember Dr Faaberg either, did you?

24 A No I did not remember him

25 Q And your deposition was February 2nd?

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803-834-3410

- 1 A I would assume it was, if you say it is, yes, ma'am
- 2 Q And you saw Dr Poletti on January 25th
- 3 A That was like - yeah
- 4 Q But you couldn't remember him off the top of your
- 5 head?
- 6 A No When you asked me who the latest one was, I did
- 7 correct myself and say I did see him
- 8 Q Right But still Dr Faaberg just went out of your
- 9 head?
- 10 A I wasn't trying to hide him from you I just had seen
- 11 so many doctors
- 12 Q I also asked you when your next appointment was with
- 13 anyone And you said you didn't have any
- 14 appointments That was February 2nd But you met with
- 15 Jean Hutchinson on February 9th, didn't you?
- 16 A Jean Hutchinson?
- 17 Q The vocational evaluator
- 18 A I didn't know about - well, if I did, I didn't know
- 19 about Jean Hutchinson - yeah, I did
- 20 Q You did know about it?
- 21 A I'm not sure I would be telling you the untruth if I
- 22 knew either way I just knew I had some scheduled
- 23 appointments But whether I had them with her or not,
- 24 I didn't know what she was I knew she was the
- 25 vocational coordinator I didn't know what that

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803-834-3410

1 meant She wasn't a doctor, as far as I knew It
2 was somebody to see if I could -

3 Q But you didn't think that I wanted to know about that
4 when I kept asking you about all the appointments that
5 you had scheduled?

6 A Like you said, you kept asking me a lot of questions
7 We were there for three hours and I couldn't remember
8 everybody off the top of my head, who I had spoken to
9 or had appointments with

10 Q All right So, we have got your low back and your
11 neck in particular that we are talking about You
12 went to Dr Arnau immediately after your injury?

13 A On the 14th of May

14 Q May 14th And you told me that your back started to
15 throb on April 21st

16 A It did

17 THE COURT Let's go off the record

18 (OFF THE RECORD)

19 THE COURT All right We are back on

20 Ms Ross

21 BY MS ROSS

22 Q So, we are talking about the low back So, you said
23 that immediately after you pulled on the blower,
24 right?

25 A Yes

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803-834-3410

1 Q Okay That your neck and your low back started -
2 your low back started to throb immediately

3 A After about 20 minutes of pulling on the cord, yes

4 Q Okay And then you went to your family doctor,
5 Dr Arnau This is Alan's APA 1

6 A On the 14th

7 Q On May 14th?

8 A Yes

9 Q Any mention of low back on that report?

10 A He was told that I had neck, back, and shoulder And
11 he asked me what my primary problem at the time was
12 and I told him my shoulder was giving me the most
13 problems

14 Q Is there any mention of low back in this report?

15 A I don't see anything in that particular report, no

16 Q You went to Dr -

17 A Lembo

18 Q - Lembo And I highlighted what you said about your
19 low back If you would, read that please, APA -
20 Alan's 5

21 A "Over the past several months he's been doing more
22 mechanical work and having more pain across low back
23 and legs "

24 Q Anything about the blower in this low back section?

25 A I'm not sure what you are asking me to read Just

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803-834-3410

1 other than that, I don't see anything that you've
2 highlighted

3 Q You can read the whole thing Don't just read my
4 highlights But then what does it also say? It says,
5 "Secondarily he complains of right shoulder pains He
6 was pulling a cord on a leaf blower " Anything about
7 20 minutes, after 20 minutes pulling on the cord your
8 low back started to hurt?

9 A How she wrote that up, I have no idea But it was
10 explained to her that I had pulled on that thing for
11 20 minutes

12 Q Okay

13 A And that I experienced, you know, trauma to my
14 shoulder And that's when I was referred to by
15 Dr Arnau to Dr Lembo Immediately that day I had to
16 be seen that day There was no waiting I had to be
17 seen that day I explained to her and again she asked
18 me, "What is your most immediate issue?" And I told
19 her my right arm I could not use my right arm

20 Q Right And then when you talked about the low back,
21 did - this is a yes or no question You can explain
22 however you think you need to explain, but this is a
23 yes or no question

24 A Okay

25 Q Anything in this report about pulling on a blower for

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803-834-3410

1 20 minutes and feeling immediate low back pain?

2 A I don't see anything here for 20 minutes pulling on a
3 blower

4 Q Okay

5 A I do see where it says blower

6 Q Okay Now I'm at 18 You went to physical therapy
7 the one time too, right?

8 A She was the one that - that's the therapist that I was
9 supposed to go see, but I did not show up the second
10 or third time

11 Q Okay I'm at Alan's 18 Yet again, anything about
12 immediate low back pain after pulling on a blower for
13 20 minutes?

14 A I don't see anything that says 20 minutes of pulling
15 on it, no

16 Q But it does say, "Primary medical history, remarkable
17 for lumbar and left lower leg issues related to motor
18 vehicle accident in 2001 that's still giving him
19 issues " Is that what you told her about what caused
20 your low back?

21 A No I told her that this issue that I had was giving
22 me issues of a preexisting problem that I may have
23 had

24 Q So, Dr Jones got it wrong when he talked about you
25 not wanting surgery

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803-834-3410

2

1 A Nobody said anything about getting it wrong about
2 surgery

3 Q Arnau didn't put in there about your low back
4 Dr Lembo didn't put in there about your low back
5 being caused by the weed eater and the PT people
6 didn't put it in there either?

7 A I'm not sure about that If Dr Lembo didn't feel
8 that it was impertinent, then I don't know why she did
9 a low back injection

10 Q I'm asking what was in your report consistent with
11 your testimony And after 20 minutes your back hurt
12 right then

13 A Yes

14 Q It was bothering you right then

15 A I had three components that I went in and told them I
16 had hurting me And they both asked me what was the
17 main problem I was having at that time What problem
18 did I need addressed at that point and I said my right
19 shoulder was the immediate problem I was having

20 Q But you told them about all the other ones -

21 A Yes

22 Q - being caused by pulling on the blower?

23 A I told them that I suffered from a neck and my back -
24 yes

25 Q They just didn't write it down?

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803-834-3410

1 A I don't know how they reported it, ma'am

2 Q What about when you went to Palmetto Lowcountry
3 Behavioral Health, Alan's 160 Did you complain only
4 about rotator cuff and neck?

5 A At that time I don't know because I was out of my
6 mind The rotator cuff and lower back -

7 Q It says rotator cuff and upper neck

8 A Okay

9 Q Is that what you told them or did they not write it
10 down right either?

11 A All I can tell you is they had lower back and I had
12 rotator cuff because they actually gave me a special
13 bed to sleep on because of my back

14 Q Because of your low back?

15 A Yes They gave me a special mattress to sleep on
16 because of my low back

17 Q But they just have the rotator cuff and upper neck in
18 their report?

19 A I can't help how they wrote the report I can't
20 imagine they would give me a different mattress just
21 for the neck and right shoulder

22 Q Do you know where in the records it says that you were
23 given a special mattress?

24 A I haven't seen it I wouldn't know But I'm sure -
25 I mean, they gave me a mattress, a special mattress

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803-834-3410

1 specifically for that reason

2 Q Okay All right Now let's talk about your neck
3 Back to Dr Arnau You looked at it It's APA 1
4 Anything in here about your neck, the first time you
5 went to the doctor?

6 A The very first time I went and saw him I told him I
7 was having shoulder, neck, and back problems Again,
8 he asked me what my most immediate problem was and I
9 told him my shoulder

10 MS ROSS I'm not going to take you back through
11 3 and 18 We have been looking at those and I'm
12 confident that you will read them

13 BY MS ROSS

14 Q When you went in for your injection in June, which
15 this is 25

16 A Dr Lembo?

17 Q Right

18 A Yes

19 Q I see right shoulder I see low back this time I
20 don't see anything about neck Anything about neck
21 that I'm missing?

22 A I can't answer for her notes

23 Q So, she didn't write it down right either?

24 A The first time she did The second time she didn't

25 Q All right So, which one is worst, your neck or your

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1 low back?

2 A I have three issues that are bothering me I have a
3 right shoulder, a neck, and a low back issue

4 Q Which one is worse, your neck or your low back?

5 A Out of the two?

6 Q Out of the two, neck or low back?

7 A I would say my low back is giving me more trouble than
8 my neck

9 Q Okay

10 A Sorry, may I stand for a minute?

11 MS ROSS Please

12 THE COURT Sure, go ahead

13 BY MS ROSS

14 Q So, your low back is what is giving you the most
15 trouble, is that what you said?

16 A Yes, ma'am

17 Q My APA 79 shows a disability form that you filled out
18 for the Employer Does this look familiar?

19 A That was at Aflac

20 Q Right

21 A Yes

22 Q Did you fill it out?

23 A Yes We filled it out

24 Q What day did you fill it out?

25 A It was like 2/9/10

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803-834-3410

1 Q And you checked musculoskeletal issues Which one
2 did you pick? What did you put that was bothering
3 you?

4 A Cervical disc

5 Q Okay That's not your low back, is it?

6 A I'm not sure what that means But it was never filed

7 Q You told me in your deposition that you weren't taking
8 any medication Is that correct?

9 A At the time when I took my deposition, I was not under
10 any medication other than self medicating

11 Q Okay

12 A Over-the-counter medicines

13 Q And you also put on the application that I just showed
14 you you weren't taking any medication Is that right
15 or do you need to see it again?

16 A Per our conversation to our deposition, I was not
17 taking any medications at that time

18 Q When was the last time you took medication?

19 A Yesterday, the day before yesterday -

20 Q From the deposition

21 A I'm not quite sure, to be honest with you I know I
22 just - I had more injections and I asked the doctor to
23 give me some medicine

24 Q You told Dr Poletti the week before our deposition
25 that you were taking Lortab, Scelaxin, Flexeril,

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803-834-3410

1 Naproxen, and sleeping meds including Lunesta, is
2 that right?

3 A No I told him that's what they had in my record I
4 was not taking any of those medicines

5 Q You told him you weren't taking them?

6 A I was not taking those medicines

7 Q So, when he put in his report that you were taking
8 them, he got that wrong?

9 A No Those were medicines that they had me on I
10 didn't even know Naproxen was one of them

11 Q So, when it says he is taking Lortab, Scelaxin,
12 Flexeril, Naproxen, and sleeping medication to include
13 Lunesta, Alan's APA 119, that's not right?

14 A That's from a former - I guess another doctor's
15 review I don't know where that came from I can't
16 answer that

17 Q Don't you think that maybe he relied on your need for
18 those medications in rendering his opinion?

19 A I can't answer that

20 Q Well, wouldn't you think that if you were coming up
21 with what needs to be done for you, you need to know
22 what's being prescribed for you?

23 A He told me that I needed surgery for my back is what
24 he told me He looked at the film on the screen He
25 said, "This is what your problem is This is what you

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803-834-3410

1 need to have done "

2 Q Please don't testify to what somebody told you I'm
3 going to object to hearsay

4 THE COURT I think you opened the door on that
5 one Go ahead and finish

6 THE WITNESS That's what I - I walked in and he
7 came in His nurse sat me down She took a
8 preliminary review, took my pulse, took my blood
9 pressure, did all of my stuff, walked in, looked at my
10 charts, stuck the thing up in the thing and looked at
11 it and says, "Here is your problem This disc needs
12 to be replaced "

13 THE COURT Okay Ms Ross

14 BY MS ROSS

15 Q Do you or do you not think that he relied on those
16 statements about what you were taking in rendering his
17 opinion?

18 A I can't answer that

19 Q Okay When did you most recently see your
20 cardiologist?

21 A In December, I believe

22 Q In December? Did you tell him that you were taking
23 Imitrex, Lisinopril -

24 A I don't know what that is

25 Q - Lortab, Lunesta, Lyrica, and Naproxen?

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803-834-3410

1 A I don't remember I'm sure he had a full medical
2 record or a - I mean, he had to do blood work and
3 everything Because he did the procedure that he was
4 doing, he was well aware of what was going on

5 Q But you are not taking anything now?

6 A I am taking medicine now, yes

7 Q But you told me in your deposition a month ago -

8 A I was not

9 Q - that you weren't taking anything

10 A I was not on any medicine at that time

11 Q Do you mean that particular day?

12 A At that particular time, I was not on any medicine

13 Q Did you pipe up and say, "I haven't taken anything
14 today, but I did take something yesterday or the day
15 before "?

16 A No I was just recently prescribed some pain meds for
17 my back

18 Q Who gave you those?

19 A Dr Gregory Jones I had a procedure done and I asked
20 him if he could help me get through some of the pain
21 that I was experiencing He prescribed me a pain med

22 Q Did you see Dr Robinson out in the hallway?

23 A Yeah He's a friend of mine

24 Q What do you think he is going to testify to?

25 MR TANENBAUM I object, Your Honor

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803-834-3410

1 THE COURT Okay Sustained

2 MR TANENBAUM I don't know why I'm objecting

3 There are so many reasons

4 THE COURT I'm not going to allow him

5 speculating on what he thinks he's going to testify

6 to

7 THE WITNESS I've known Dr Robinson for a long

8 time

9 BY MS ROSS

10 Q Have you been working on his house?

11 A I haven't, no

12 Q Have you hired other people to work on his house?

13 A I contracted a job three years ago from him and was

14 unable to finish it due to my incident, so I asked

15 some friends of mine to go finish it for me

16 Q And you recently did that?

17 A They did

18 Q In December and January?

19 A Yes

20 Q Would you think that Dr Robinson saw you at least on

21 one occasion while that work was being done?

22 A I have no idea I can't answer that I mean, I spoke

23 to him in the evenings He was at work and when he

24 would come home, we talked

25 Q What did you hire these people to do?

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803-834-3410

1 A They were remodeling a garage and doing some fence
2 work and doing some painting

3 Q So, you were capable of hiring subcontractors and
4 sending them out to do work?

5 A No I didn't hire any subcontractors These are
6 friends of mine, who they had a specific part they
7 wanted to finish and I was unable to finish it, so I
8 asked them if they would go and help get it done for
9 Dave Robinson And I talked to Dave about it and he
10 didn't have a problem with it and he said he would be
11 happy to have them come over and finish up what I
12 couldn't do

13 Q So, did you or did you not facilitate people going to
14 a construction site and doing construction?

15 A Did I ask them to go do it? Yes

16 Q And they did it for you?

17 A They did it for - yeah I guess if you want to term
18 it that way Yes

19 Q And who got paid?

20 A They did

21 Q Did you get the check and disperse it to them?

22 A Yes, I did

23 Q So, you were able to facilitate a subcontractor
24 working on a construction project and you were able to
25 receive that money and disperse it out?

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803-834-3410

1 A The original job was for me to bid the job and do the
2 job, yes So, I was under obligation to get the job
3 done

4 Q And you were able to do that?

5 A By help from others, yes

6 Q This is a yes or no question You can explain what
7 you want, but this is a yes or no question

8 A Okay

9 Q You were able to choose qualified workers to work on a
10 friend of yours' house, correct?

11 A That he picked and choosed and said they were
12 qualified Yes

13 Q And you were able to tell them what to do and
14 facilitate their work

15 A I didn't tell them what to do They knew what to do

16 Q And you facilitated the agreement?

17 A However you want to put it I mean, I told them what
18 needed to be done and they went and did the job and
19 they got paid

20 Q And then you got paid and you dispersed it to them?

21 A The check was written to me and it was given to a
22 colleague of mine that paid everybody that he hired
23 I didn't actually hire the people He did

24 Q But you were the middle man?

25 A I was the one that was originally hired to do the job

NADINE A GARRETT
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803-834-3410

1 originally before my accident, yes This has been a
2 three-year-going-on project So, it's not like it
3 just was just a something you just -

4 Q And from time to time you would go to a construction
5 site?

6 A When I could, yes

7 Q Did you tell me in your deposition the last time you -
8 that you like to Jet Ski, but the last time you were
9 able to Jet Ski was before your injury?

10 A That is correct

11 Q Now, you talked about the fact that you were unable to
12 go to work Did you tell your cardiologist that you
13 wanted to have a cath so that you could continue
14 training to be a commercial airline pilot?

15 A A cath? No, I did not

16 Q When they snaked the camera up your leg and
17 catheterized your heart, did you tell them that?

18 A I told them I didn't want to have a cath so I could
19 fly No, that's incorrect

20 Q So, you did not tell them you wanted to continue
21 training to be a commercial airline pilot?

22 A I told them that one day I would like to be able to
23 get my pilot's license And in order to do that, I
24 had to have a - at my age you have to have a good EKG
25 to be able to do so

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1 Q Your cardiologist, when I took your deposition, you
2 didn't remember his name, did you?

3 A No, I didn't

4 Q His name is Dr H William Stites, is that correct?

5 A That is correct

6 Q At 125 Doughty Street?

7 A That is correct

8 Q And you are John Hartman?

9 A I am John Hartman

10 Q But it's your testimony that you did not tell

11 Dr Stites, "He's a pilot who needs curative treatment
12 so that he can continue flying ""

13 A No That's not the question you asked me You asked
14 me if I needed to have a heart cath so I could learn
15 how to fly

16 Q No So that you could continue flying

17 A I needed to have the correction of WPW to be able to
18 clear

19 Q Okay So, you want to be a pilot?

20 A I would have liked to have been a pilot some day, yes

21 Q Well, you saw Dr Stites in December

22 A Yes

23 Q And as of December, you wanted to be a pilot?

24 A That wasn't the reason why Because if you also
25 looked, the WPW is a serious illness that could cause

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1 death at any time, regardless of whether I wanted to
2 fly or not

3 Q Did you tell other physicians you wanted to fly?

4 A Dave Robinson, he's a physician He's a friend of
5 mine He knew I had been flying in the past

6 Q Did you tell your doctors that you were a pilot?

7 A I told them I had been flying I haven't told them -
8 I mean, they all knew I was student pilot I don't
9 think any of them knew I was a professional pilot by
10 no means

11 Q Dr Jones' record at 47 says that you said you were a
12 commercial pilot, is that not correct?

13 A That is incorrect

14 Q So, he got that wrong too?

15 A Yes That I had strived - maybe he misinterpreted
16 what I said But I had strived to want to one day be
17 a commercial pilot

18 Q Okay

19 A And if he could help me get to that point to one day
20 when I could do it, fine It's just a hope that I
21 could get through this But evidently, it's not
22 something that's ever going to happen, so -

23 Q So, when you went and saw Dr Faaberg at Alan's 83,
24 did you not tell them that you had to have a cardiac
25 procedure so that you could get licensed? Right here

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1 I will read it "Mr Hartman states that a cardiac
2 ablation procedure is planned He says he has a
3 commercial pilot's license and his heart condition
4 precludes his licensing in that this procedure is
5 necessary "

6 A I don't have a commercial license I have a student
7 certificate And that if in the event I want to fly,
8 that I have to have a normal EKG

9 Q So, you told Dr - so Dr Faaberg got it wrong when he
10 said that you said you have a commercial pilot's
11 license?

12 A Yeah I do not have a commercial pilot's license

13 Q Okay

14 A I told him that I would like to one day maybe have a
15 commercial pilot's license

16 Q Okay Did you tell me in your deposition that you
17 were trying to get your pilot's license? You were
18 just doing ride-alongs with friends and you didn't
19 take it too seriously and it's been two and a half
20 years since you pursued being a pilot?

21 A It's actually - yes It's been about two years

22 Q That's not what you told your doctors?

23 A I'm not sure what that meant That I had pursued -
24 this ablation was done for health reasons other than
25 just wanting to be a pilot There was many

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1 stipulations in there that it's a genetic disorder
2 and people can die from it And I wanted to have the
3 ablation done, not only as a convenience if I one day
4 wanted to pursue a pilot's license if I were able, but
5 the medical reasons that were given to me so that I
6 wouldn't die, I'm not sure that that's a hundred
7 percent accurate

8 Q So, but you have been working with this heart
9 condition It's a murmur, correct?

10 A I found out in February that I had WPW

11 Q And prior to that, you have been working in these
12 physical jobs that you talked about all the time with
13 no problems?

14 A Never knew I had it

15 Q Now did you tell Dr Jones on your first visit that
16 that injection you have from Dr Lembo did not help at
17 all?

18 A Yes, I did

19 Q Do you know why Dr Lembo says that it helped you? Do
20 you have any idea, Claimant's 12, why it said that you
21 had an excellent response to the epidural injection?

22 A I have no idea why she would say that because I did
23 not have that

24 Q Okay

25 A I mean, if that had been the case, I would have had

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1 her do another one

2 Q And did you also tell, this is 39, that you didn't
3 have any difficulties sleeping Did you tell that to
4 Dr Ernst?

5 A That I didn't have any difficulty sleeping?

6 Q Correct

7 A That's not true I've had difficulty sleeping all
8 along

9 Q Thirty nine This says, "He is sleeping comfortably "
10 Is that not correct?

11 A That is not correct

12 Q Must have gotten that wrong Also, I'm going to look
13 at Alan's 66, which is your November 11th visit with
14 Dr Jones Do you remember that visit?

15 A Okay

16 Q Well, it was your last visit with Dr Jones until -
17 well, he got to - he wrote a note, but you didn't see
18 him again This, I think, was your last visit with
19 Dr Jones Does that sound right?

20 A Just the recent one - when I had the recent injections
21 -

22 Q Besides that one, the one prior to that

23 A The one - I'm not sure What was the date on that
24 one?

25 Q November 11th

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803-834-3410

1 A I'm not sure

2 Q Okay I'm going to look at your November 11th record
3 And let's look at it together Let's see It says
4 that - let's see Just a couple of things We will
5 hit the highlights Do you feel that you can return
6 to regular employment - or excuse me, you can return
7 to employment and then performing regular activities
8 at home, is that correct?

9 A Sounds like that was after he did the injection I
10 was feeling a little better after the injection, yes

11 Q You had had an injection on October 1st was your most
12 recent injection So, as of November, you felt that
13 you could return to employment?

14 A I explained to him I needed to get back to work, yes

15 Q And you said you had an 80 to 90 percent overall
16 improvement in your cervical symptoms?

17 A I didn't give those specific numbers, no I just told
18 him I was feeling a little better

19 Q Feeling a little better And you wrote down 80 to 90
20 percent improvement?

21 A It was a strange coincidence because it was brought to
22 my attention I was shocked as Alan was when I saw
23 that

24 Q It also says that you have a two to three out of ten
25 intensity with repetitive or strenuous overhead

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803-834-3410

1 lifting activities Is that not true either?

2 A What does that mean?

3 Q Do you remember when we talked about pain levels ten
4 out of ten?

5 A Yes

6 Q This says you said that it was a two out of ten

7 A No That's not correct because he wasn't treating me
8 for my right arm

9 Q But then he also says that you were doing repetitive
10 and strenuous above-head-lifting activities Were you
11 not doing those?

12 A No I was not doing those

13 Q And the sharp lancing pain had gone away since you had
14 your cervical facet blocks Did you tell him that?

15 A Cervical facet blocks in my low back?

16 Q In your neck

17 A Yeah The pain I was having around the outside of my
18 shoulder, I told him I had great improvement on it,
19 yes

20 Q Okay And then in between November and a couple of
21 days before today, did you see Dr Jones again?

22 A I saw Dr Jones again just recently He's -

23 Q Besides that one

24 A Not that I can remember

25 Q But then immediately afterwards you saw Dr Faaberg,

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1 didn't you?

2 A Yes

3 Q That was November 11th and Dr Faaberg was November

4 18th So, it was a week later, right?

5 A I guess

6 Q When you went to Dr Faaberg, you told him that you

7 had pain seven out of ten

8 A Yeah I was feeling very bad

9 Q Just a week after you told Dr Jones that you were

10 fine?

11 A Yeah The issue there was to try and I guess get me

12 back to work, because my boss had told me I could not

13 go back to work on limited or light duty

14 Q So, you told Dr Jones on November 11th that you were

15 fine

16 A I wasn't fine

17 Q Then when you went to Dr Faaberg -

18 A I told him that I was feeling much better after the

19 injections

20 Q Then only a week later, you told Dr Faaberg you had

21 pain seven out of ten?

22 A I regressed when I went back to see him and he did the

23 test Because Dr Jones didn't do what Dr Faaberg

24 did Dr Faaberg actually manipulated and moved me

25 and did some things that were difficult positions and

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1 stuff to test and see what was what And that's when
2 I told him, I said, "Well, evidently I am not prepared
3 to go back to work "

4 Q It's interesting that you bring that up He did do
5 something with you He did what's called a Waddell's
6 test Have you ever heard of that?

7 A No I don't know what that is

8 Q Well, it's a test where they check you to see if -
9 sometimes it tells whether symptom magnification is
10 present

11 MR TANENBAUM Your Honor, I'm not sure if he is
12 testifying as an expert I don't believe the
13 Waddell's test

14 THE COURT Okay Do you have a question,
15 Ms Ross?

16 MS ROSS I do I'm at 84

17 BY MS ROSS

18 Q Dr Faaberg is somebody that, between you and Alan it
19 was decided that you would go there, right? I'm not
20 asking you what you talked about, but we didn't pick
21 him, right?

22 A No I was asked to have an analysis done of my -

23 Q Okay And they checked to see if you had back pain
24 with slight loading of the cervical spine and straight
25 leg raise when you are sitting down versus straight

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- 1 leg raise when you were standing up
- 2 A I would assume, yes
- 3 Q And what does he say right there?
- 4 A "I would deem this at two positive" whatever "signs "
- 5 Q And then he also notes on 85 that your examination was
- 6 not quite consistent?
- 7 A I'm not sure Yeah, I guess
- 8 Q You put forth your best effort, didn't you?
- 9 A I did what he asked me to do I mean, I don't know
- 10 what you are asking me
- 11 Q I also have - we talked about your admission to
- 12 Behavioral Health?
- 13 A Yes
- 14 Q And you talked about one of the reasons that you say
- 15 that you needed to go there was because of your severe
- 16 pain?
- 17 A Severe pain
- 18 Q Okay Let me show you 135 And what does that
- 19 highlighted portion say?
- 20 A "Vicodin 7 5 oral as needed Hasn't taken any yet
- 21 Filled" -
- 22 Q 8/6/09?
- 23 A Yes
- 24 Q Okay Well, Dr Jones' note from August 6, '09 says
- 25 that he gave you Vicodin, is that correct? You got it

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803-834-3410

1 filled, didn't you?

2 A I guess

3 Q But you didn't take it?

4 A Ma'am, I have no idea I mean, I haven't taken a lot
5 of the meds they prescribe to me

6 Q Okay

7 A I'm not a big medicine taker I did take the Scelaxin
8 and stuff that they put there to help inflammation and
9 the muscle relaxer But I didn't take a lot of the
10 pain meds, no

11 Q Okay So, despite the fact that you were in severe
12 pain, you didn't take any of the Vicodin that you had
13 filled and at your house?

14 A The Vicodin I did take If you are saying I was in
15 pain at the time before the behavior - yeah, I took
16 it

17 Q You took the Vicodin before you were admitted to the
18 Behavioral Health?

19 A Yes

20 Q Do you have any idea why they say you haven't taken
21 any yet?

22 A No Who said that?

23 Q Let's just read it

24 A But who is saying it said that? Who is it?

25 Q Steven Loudermilk

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- 1 A I don't know who Steven Loudermilk is
- 2 Q Okay But he got it wrong on his record?
- 3 A I don't know who he is
- 4 Q Did you tell them that you hadn't taken any yet?
- 5 A I don't know who he is
- 6 Q Did you tell anyone at the Behavioral Health that you
- 7 had not taken any Vicodin?
- 8 A Not that I recall I mean, I don't know All I know
- 9 is they gave me my medicine They gave me whatever I
- 10 was taking and they gave me my pills that I was
- 11 already on, they gave me that and then they added
- 12 some I don't know what all I was on They had me on
- 13 all kind of stuff
- 14 Q So, you don't know why the record says that you hadn't
- 15 taken any of the Vicodin?
- 16 A Other than the fact I hadn't taken any between the
- 17 period of time I was admitted and they needed to get
- 18 me - I don't know
- 19 Q Okay You also told me that you haven't received any
- 20 income for any reason since you left Horizon Motors,
- 21 is that right?
- 22 A That is correct
- 23 Q We have already talked about you facilitated those
- 24 workers working for Dr Robinson
- 25 A I did not receive any income off that

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803-834-3410

1 Q You didn't receive any income?

2 A None

3 Q When I asked you if you have worked anywhere and you
4 said no -

5 A I haven't worked anywhere

6 Q Did you bring up anything about this facilitation for
7 Dr Robinson?

8 A No I hadn't worked any of that

9 Q Did you think that that would be something that I
10 would want to know? You talked about how long we were
11 in there I was trying to get all sorts of details

12 A That's fine You asked me if I had done any work I
13 was assuming you asked if I had contracted, went out
14 and actually did something and got paid for it I
15 didn't do any of that

16 Q But you didn't volunteer that you had been
17 facilitating and received money from Dr -

18 A I did not receive money Those monies were
19 distributed to the fellows that did the work

20 Q That's fine But you didn't tell me anything about
21 that, did you?

22 A I didn't think it was pertinent

23 Q At the beginning of your deposition, did I ask you if
24 you had any questions about what the questions I was
25 asking you, that you needed to speak up?

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803-834-3410

1 A I had no problem with that

2 Q And at the end of the deposition when I asked you if
3 you had any questions about the questions that I asked
4 you, did you ask me what I meant by that when I said
5 have you worked anywhere?

6 A I didn't work there

7 Q Okay Who owns Moore Automotive?

8 A I would assume that would be Eric Moore

9 Q Do you go there from time to time?

10 A The man that owns the property has been a friend of
11 mine for 35 years

12 Q Do you go there during the day, leave around
13 lunchtime, and -

14 A I used to go there and kind of hang out, sit at the
15 picnic table and go to lunch with him from time to
16 time

17 Q Okay So you go, you hang out, and you go to lunch
18 with him? You have done that since your injury?

19 A I was just getting out of the house

20 Q Okay But you're able to do that?

21 A What, getting out of the house?

22 Q Sure

23 A Plus I had doctors' appointments around the corner

24 Q Did you have a part shipped to Charleston Motor
25 Company for some work that you were doing? This is my

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803-834-3410

1 77

2 A No, I did not

3 Q You didn't?

4 A No, I did not

5 Q Any idea why there's a receipt with your name on it?

6 A Yeah It was a part that my son had started a

7 business and he was doing a job And because of my

8 position at the dealership, I had made accounts with

9 all other kind of dealerships and particular people

10 knew me by name And the part was ordered for this

11 car for this particular repair for him to do and the

12 gentleman was supposed to have it up on the counter

13 for it to be picked up And because of his

14 relationship with me in the past with Charleston Motor

15 Company, he inadvertently shipped it over there, which

16 - and in a conversation with Jim Regan and I, we had

17 discussed it -

18 MS ROSS Objection

19 THE COURT Sustained

20 BY MS ROSS

21 Q So, it was for your son is what you are saying?

22 A It was for a part to a car that my son was working on

23 Q Okay All right What about working on a boat for

24 the credit union Is that your son too?

25 A I guess

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803-834-3410

1 Q When I asked you about that when you were on the
2 telephone that day, did you tell me that your son did
3 all of that work?

4 A He and the other gentleman that's outside, he did

5 Q And you said that you didn't do any of the work except
6 direct and use your knowledge in your head?

7 A There was three people that worked on that boat

8 There was the gentleman that owned the property, Sean
9 Lawless who works at the bank who also worked on it,
10 my son, and this other gentleman that has been called
11 into question, Frank Penske

12 Q What I am asking you, did you tell me on the telephone
13 that you did not do any physical work on that boat?

14 A I don't remember our phone conversation

15 Q With Alan?

16 A Did I not do any physical work -

17 Q Is it your testimony today that you worked on the
18 boat?

19 A I did not do anything on a boat

20 Q Okay

21 A I facilitated by showing them what they needed to do
22 and telling them how to do it

23 Q Okay

24 A I did not actually physically work on the boat, no

25 Q Did you receive any money?

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803-834-3410

1 A There was a check issued to Lightning Automotive
2 Marine, which is a business that my son was starting

3 Q But you didn't get - you didn't do any of that work?

4 A No And I didn't get paid for it

5 Q Okay

6 A The check went and got cashed and went into my - paid
7 my son and the other people that worked on the boat
8 I did not generate any income off of it

9 Q Now, let me look at something We have Dr Jones in
10 November that we talked about, said that you could
11 return to employment and you have been performing
12 regular activities at home, is that right? I showed
13 it to you I will show it again

14 A I don't know if he said reporting regular activities
15 I don't know what regular activities would mean, other
16 than the fact that I just - I don't know what regular
17 activity is

18 Q And then when was the work done at Dr Robinson's
19 house?

20 A I'm not sure

21 Q When do you think?

22 A Sometime in December?

23 Q December Then when was your evaluation with
24 Dr Poletti?

25 A I can't remember the exact date

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803-834-3410

1 Q January 25th sound right?

2 A It could have been, possibly Yes

3 Q And when the note - when Dr Jones changed his opinion

4 -

5 A Yes

6 Q - that was dated February 17th, would that be right?

7 A You have all the paperwork I don't have the dates in
8 my head

9 MS ROSS Okay That's all I have

10 THE COURT Okay Any redirect?

11 MR TANENBAUM Just briefly

12 REDIRECT EXAMINATION

13 BY MR TANENBAUM

14 Q Tell us about your cardiac problem

15 A I was told in February I was rushed to the hospital
16 because I was having chest pains in February And at
17 that time they did a - whatever they call that where
18 they stick this tube up your leg and they did some
19 tests, because I thought I was having a heart attack
20 And they diagnosed me with WPW, Wolff-Parkinson-White
21 or White-Parkinson-Wolff I'm not sure how it's
22 termed Through the research of it, it's an irregular
23 electrical signal to the heart And depending on how
24 severe it is - and it's a very rare disease, from what
25 I understand, that's genetic and that it can cause -

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COURT REPORTER
803-834-3410

1 some people can live with it for their lives, some
2 people can't. It can cause your heart to start right
3 away. And you are subject to having, you know - my
4 wife and I did some research on it and you could
5 actually die from it. One of the things was, if I
6 ever did want to fly, if I could ever get through this
7 and get fixed and get put back in it, that one of the
8 things is you have to have a clear cardiogram. But
9 the main reason we did it was because of the health
10 issues involved in not having it done. There's a
11 potential possibility of death.

12 Q Now Dr. - let me ask. Are you going to be a pilot?

13 A No.

14 Q Why?

15 A Why not? I can't. There's just no way in my future
16 I'm ever going to be able to sit and fly a plane.

17 Q Now, the Dr. Faaberg she was asking you about, his
18 exam, is that the same one that said about you, quote
19 - that your, quote, "permanent restrictions for the
20 accident of 4/21/09 render him permanently and totally
21 disabled", that Dr. Faaberg?

22 A That's Dr. Faaberg.

23 Q And the Dr. Jones she was talking to you about, is
24 that the same one that said that you now have 15
25 percent cervical impairment, 10 percent of which is

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803-834-3410

✱

1 related directly to your Workers' Compensation injury
2 of 4/21/09 as well as an additional three percent for
3 your lumbar from the accident of 4/21/09 and that you
4 may require, quote, "surgical intervention", end
5 quote, is that that Dr Jones?

6 A That's Dr Jones

7 Q Okay And that's the report that was dated February
8 17, 2010?

9 A That's correct

10 MR TANENBAUM I don't have any further
11 questions

12 MS ROSS I have one more, Your Honor

13 RE-CROSS EXAMINATION

14 BY MS ROSS

15 Q When you were admitted to Behavioral Health -

16 A Yes

17 Q - was your wife emailing over the internet with an old
18 boyfriend?

19 A I have no idea at the time if she was or wasn't

20 Q That's your testimony?

21 A I mean, I don't know if she was or wasn't

22 Q Did you tell the people at the Behavioral Health that
23 you didn't know if your marriage was going to stay
24 together and that your wife had reunited with an old
25 boyfriend?

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803-834-3410

1 A She didn't reunite She basically found him on the
2 internet and they were talking because there were
3 previous people back 20 something years ago But that
4 wasn't why or any relation to why I was admitted

5 Q That didn't have anything to do with why you were
6 admitted?

7 A Not at all

8 Q My 162 So, when the behavioral health people wrote
9 down that, "His wife recently had an emotional affair
10 with an ex-boyfriend and is considering leaving the
11 marriage," that wasn't right?

12 A Who said that? I said that? "His wife recently had
13 an emotional affair" - I mean, who said that? Did I
14 say that?

15 Q They wrote it down that you said it Did they get it
16 wrong too?

17 A No It may have been something I said

18 Q Okay

19 A I mean, again, considering the situation I was in at
20 the time, I had a pistol to my head and was going to
21 blow my head off But that had nothing to do because
22 of my marriage We are still married, you know, and
23 she is here a hundred percent of the time now We've
24 been married 20 years

25 Q Did you testify just a minute ago, though, that you

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1 didn't know that she was having that affair when you
2 went to Behavioral Health place?

3 A No You asked me if she was having conversations with
4 him while I was at the facility I don't know if she
5 did or not Did I misunderstand that question or did
6 I misinterpret what you said?

7 Q So, did you know when you went into the Behavioral
8 Health Place that she was having an emotional affair
9 with an old boyfriend?

10 A I don't know how you would say emotional affair What
11 kind of affair? She had a conversation with him and
12 was talking with him back and forth in communication
13 via the internet on MySpace

14 MS ROSS That's all I have

15 THE COURT All right Anything else?

16 (WHEREUPON Indications of no)

17 THE COURT All right You can step down, sir

18 Any other witnesses for the Claimant? No?

19 MR TANENBAUM (Indication of no)

20 THE COURT Ms Ross, any witnesses for the -

21 MS ROSS Yeah We are going to call Sean

22 Lawless

23 THE COURT Okay

24 **SEAN LAWLESS,**

25 having been first duly sworn, testified as follows

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803-834-3410

1 THE COURT Ms Ross

2 DIRECT EXAMINATION

3 BY MS ROSS

4 Q Mr Lawless, what is your connection with the
5 Charleston Area Federal Credit Union?

6 A I am on the Board of Directors

7 Q And tell me about the boat you hired Mr Hartman to
8 repair

9 A It's a bankruptcy property of the credit union that
10 needed some attention that we are trying to get ready
11 for sale It needed some engine work

12 Q Who all worked on the boat? You worked on the boat?

13 A I did

14 Q Mr Hartman's son worked on the boat?

15 A He did

16 Q Mr Hartman worked on the boat?

17 A He did

18 Q What kinds of things did you see him doing while
19 repairing the boat?

20 A We had to remove the engines from the boat and rebuild
21 the starboard outdrive

22 Q Okay Does that require lifting, bending, pushing?
23 Tell me what that requires?

24 MR TANENBAUM I object Would you let the
25 witness testify? She's leading

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803-834-3410

1 THE COURT Okay

2 BY MS ROSS

3 Q Tell me physically what that requires

4 A Removing engines from the boat We used a crane to
5 get - a bucket lift to get the engines out

6 MR HARTMAN When he says we, it wasn't -

7 MS ROSS Objection

8 THE COURT Mr Hartman, try to whisper to your
9 lawyer But you can't just talk out loud, okay If
10 you need to tell him something, or either write it
11 down and just pass it to him Ms Ross

12 BY MS ROSS

13 Q So, you were explaining what kinds of things you
14 actually saw Mr Hartman do?

15 A Just removing the engines and refreshing them and
16 rebuilding the outdrive, which involved some gears
17 that needed to be put back together

18 Q Physically what's involved in that?

19 A Well, once the drive is up on a bench, I - you know,
20 just basically working with your hands But -

21 Q How about getting it out of the boat?

22 A That would require some heavy lifting, I suppose

23 Q Okay Did you see him actually performing those
24 tasks?

25 A Taking the outdrive off? No, I did not see him take

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1 the outdrive off

2 Q What did you see him do?

3 A The engines were worked on outside the boat while they
4 were on a stand We put, I think, some rear main
5 seals in them and did some valve train work, if I
6 remember correctly

7 Q What's involved in putting seals in a boat?

8 A Just replacing some rubber gaskets in the back of the
9 engine

10 Q Is it hard to get to?

11 A When the engines are out of the boat, no

12 Q Were the engines out of the boat when you were working
13 on them?

14 A Yes

15 Q What else? What was the other - you said gasket work?

16 A Right

17 Q What's involved in that?

18 A Pulling the valve covers off and replacing the gaskets
19 and painting and stuff like that And then putting
20 the drive back on the boat and reassembling
21 everything

22 Q And how many days did you work with Mr Hartman?

23 A I couldn't even put an amount on it The boat was at
24 the repair shop for a lengthy amount of time

25 Q When did all of this occur?

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- 1 A I believe it started in July
- 2 Q Of '09?
- 3 A Yes
- 4 Q Okay And what kinds of things did he say about his
- 5 neck pain?
- 6 A I don't recall anything about that
- 7 Q What kinds of things did he say about his back pain?
- 8 A I do know that he would say that he had a back issue
- 9 Q What kinds of things did he say about his shoulder?
- 10 A I know that he said that his shoulder hurt
- 11 Q Okay How was he paid?
- 12 A The credit union paid him
- 13 Q To whom was that money given?
- 14 A The check was issued to Kevin
- 15 Q Have you had any conversations with him about your
- 16 testimony today?
- 17 A Not really No
- 18 Q Has he called you?
- 19 A He has
- 20 Q How many times?
- 21 A Maybe three or four
- 22 MS ROSS That's all I have
- 23 THE COURT All right
- 24 ///
- 25 ///

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CROSS EXAMINATION

1

2 BY MR TANENBAUM

3 Q Now, you say the check was issued to John Kevin
4 Hartman?

5 A The check was issued - well, the original check was
6 issued to Lightning Performance and Marine

7 Q Right

8 A They had to issue, I think, another - they had to
9 issue another check because they were unable to cash
10 it

11 Q So, the original check was issued to where?

12 A I think Lightning Performance and Marine

13 Q Lightning Performance and Marine, that's actually
14 John Kevin Hartman's son's business, correct?

15 A I have no idea

16 Q You don't know whose business it is?

17 A I have no idea I know that when the check was
18 attempted to be cashed, they were unable to do it
19 because they could not find the business

20 Q Right So, if John Kevin Hartman, his son, were to
21 come in here and testify that this was his business -

22 MS ROSS Objection

23 BY MR TANENBAUM

24 Q - you wouldn't be able to contest that, is that
25 correct?

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1 MS ROSS Objection

2 BY MR TANENBAUM

3 Q You don't know whose business it was, right?

4 THE COURT I think you rephrased it

5 BY MR TANENBAUM

6 Q You don't know who owned the business, Lightning

7 Marine, correct?

8 A I do not

9 Q Okay Now, you say the check was reissued to John
10 Kevin Hartman?

11 A I don't know who it was reissued to, because once I
12 submitted the bill for reimbursement to Kevin, I do
13 know that -

14 Q Billed for reimbursement?

15 A For services rendered, let's say

16 Q The bill?

17 A Kevin submitted a bill to me, which I submitted to the
18 credit union to get him paid for the work that he did
19 on the boat

20 Q Right So, it was issued to Lightning Marine?

21 A Lightning Performance and Marine, yes, sir

22 Q Okay

23 A But I got a call from Kevin the next day -

24 Q Right

25 A - that he went to the credit union to try to cash it

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1 and they would not cash it

2 Q Right

3 A So, they needed to reissue another one

4 Q And the check was issued to John Kevin Hartman?

5 A I did not see who the check was issued to

6 Q Do you know what this John Kevin Hartman's son's name
7 is?

8 A I would assume that it's John Kevin Hartman

9 Q Thank you So, you never even saw the check that was
10 reissued, correct?

11 A I did not, no

12 Q Okay So -

13 A I had nothing to do with issuing the check I just
14 submitted the bill

15 Q You don't know that this John Kevin Hartman took any
16 of that money, correct?

17 A I do not

18 Q So, all the money could have gone to the guys that the
19 other - you said how many people worked on that job?

20 A Just the three of us

21 Q Yeah

22 A Just the three of us that I know of I mean, I had
23 never witnessed anybody other than us working on that
24 boat

25 Q Right So, there could have been another individual

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1 besides -

2 A Sure

3 Q Okay All right

4 MR TANENBAUM I really don't have any further
5 questions

6 THE COURT Any redirect?

7 REDIRECT EXAMINATION

8 BY MS ROSS

9 Q So, who were the three that worked on the boat?

10 A Myself, Kevin Sr , and Kevin Jr

11 MS ROSS That's all I have

12 THE COURT Okay

13 EXAMINATION

14 BY THE COURT

15 Q How much was the payment for the work done on the
16 boat?

17 A I think it was \$2,700

18 Q Okay Was that the total price paid to Mr Hartman
19 and his son?

20 A Yes

21 Q Okay

22 A I believe, yes

23 Q So, just one check?

24 A Right

25 Q \$2,700? Okay But he told you about some back pain

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1 and some shoulder pain, you do you remember that?

2 A I do And going from an ongoing - from the date - I
3 know Kevin pretty well And so it was discussed
4 several times

5 THE COURT Okay All right Ms Ross,
6 anything?

7 MS ROSS No

8 THE COURT Mr Tanenbaum, any other questions
9 for him?

10 MR TANENBAUM (No verbal response)

11 THE COURT All right You can step down, sir
12 Any other witnesses, Ms Ross?

13 MS ROSS Yes We call Dawoan Hughie

14 **DAWOAN HUGHIE,**

15 having been first duly sworn, testified as follows

16 THE COURT Ms Ross

17 DIRECT EXAMINATION

18 BY MS ROSS

19 Q Mr Hughie, what is your relation with Horizon Motors?

20 A Detailing I'm a service writer

21 Q How long have you been there?

22 A Going on two years now

23 Q Okay Tell me about going jet skiing with

24 Mr Hartman

25 A I did it maybe three or four times Maybe three

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1 times

2 Q Have you done it since February 21, '09 - excuse me,
3 April 21, '09?

4 A Once

5 Q Tell me about that

6 A We went to the reservoir This was the week after the
7 customer appreciation That was he had just got the
8 big red one

9 Q He had just got the a jet ski?

10 A Uh-huh

11 Q You have to say yes

12 A Yes Yes Sorry Yes

13 Q And then when was the customer appreciation?

14 A Let's see, my birthday was the 27th of April, so it was
15 like the 25th I believe it was, the 25th or 24th,
16 something like that

17 Q And then when did you go out jet skiing?

18 A That following week, like on Monday

19 Q Okay Tell me about what happened with Mr Garcia's
20 car

21 A Mr Garcia's car, okay It was a van actually

22 Q Okay Tell me about the van

23 A Mr Garcia had some electronic equipment, TVs and a CD
24 player and stuff in the dashboard We went out to the
25 car It was me, Mr Hartman, and another one of my

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1 bosses, Fred Hosey (phonetic) We went out to the
2 car and the doors was locked on the car But when I
3 looked through the window, I could see that the
4 headrest had holes in it where TVs used to be at And
5 I hadn't seen the TVs before that and I didn't really
6 even pay attention to the car being out there because
7 we get cars that's out there all the time

8 Q Okay

9 A But I did notice that there was a space where there
10 used to be a CD player, a flip down TV in it and
11 whatnot, and TVs in the headrest The next day, just
12 nonchalantly I saw little Kevin at the hood of the car
13 winding the wires up from out the car, pulling the
14 wires out of the car

15 Q Do you mean - let me stop you By little Kevin, do
16 you mean Kevin -

17 A Jr

18 Q Jr

19 A I call him little Kevin

20 Q Did he work at the dealership, too?

21 A Yes

22 Q Tell me what he was doing?

23 A I saw him pulling the wires out of the car So, I
24 thought - you know, I didn't think anything of it
25 You know, we do that all the time around there Well,

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1 the day after that is when my boss, Bret, came into
2 the back and asked me about the stuff in the car

3 Q Okay

4 A I didn't know if - you know, the stuff was missing and
5 the guy was coming to redeem the car and the stuff was
6 gone out of the car So, I didn't know if Little
7 Kevin took the stuff, so I just called him because he
8 was the last person that I physically saw standing by
9 the car doing anything to the car So, when I called
10 him that's when he told me that he did have the stuff

11 Q He had the stuff that was missing from the car?

12 A Yes

13 Q Okay

14 A I told him to make sure on his to work that afternoon,
15 because he got out of school at 3 00 and he come to
16 work after he got out of school, I told him to make
17 sure he went home and got the stuff and bring it back
18 to work

19 Q Okay Then what happened?

20 A About five minutes after I hung the phone up from him,
21 that's when Big Kevin called me

22 Q Okay

23 A And asked me what happened, what was the situation
24 going on with the stuff missing out of the car

25 Q Right

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1 A And I explained to him everything I just told you
2 about, you know, seeing Little Kevin at the hood of
3 the car and whatnot I told him I didn't accuse him
4 I was just asking him if he had it and he said he had
5 it

6 Q Okay

7 A So, that's when he came up He ended up coming up
8 there like maybe 30 minutes later

9 Q Okay

10 A He was mad

11 Q Okay

12 A He was mad Word had already got around the
13 dealership that the stuff was gone and whatnot After
14 talking about it right then, I don't think we touched
15 it again that day It wasn't until like the days
16 following is when this whole - turned into something
17 bigger than what it was originally that day

18 Q Okay So, what else happened?

19 A Kevin and I had a discussion standing outside in the
20 service drive

21 Q Okay

22 A He was upset that Jim had accused Little Kevin of
23 taking the stuff because he said the stuff never left
24 the dealership

25 Q Where did he say it was?

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- 1 A He said it was there in the back of the dealership
- 2 Q Did you see it in the back?
- 3 A No
- 4 Q Did - tell me about - do you think it was in the back?
- 5 A No
- 6 Q Do you spend time back there?
- 7 A Not a lot I mean, I go back there, but I don't spend
- 8 time back in the back
- 9 Q Did you see it?
- 10 A No
- 11 Q Okay So, keep going
- 12 A Where was I? Where did I leave off?
- 13 Q Kevin said that the stuff was in the back, I think is
- 14 what you said
- 15 A Okay He said the stuff was in the back I didn't
- 16 see it in the back Like I said, he was mad because
- 17 Jim had accused Little Kevin of taking the stuff out
- 18 of the car
- 19 Q Okay
- 20 A I don't know what else you want me to tell you after
- 21 that
- 22 Q What did Mr Hartman say? This Mr Hartman, Sr ?
- 23 A Big Kevin?
- 24 Q Big Kevin
- 25 A He was going to get Jim for saying that Little Kevin

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1 took the stuff out of the car

2 Q I need you to tell me exactly what he said

3 A He said -

4 Q Word for word if you can

5 A Word for word, okay He said that, "This is the last
6 time that Jim was going to get over on me I'm going
7 to go out on disability "

8 Q Okay And when was all of that?

9 A Whenever the date was I honestly don't remember what
10 the dates were I just remember what happened

11 Q I'm going to show you my 89 Is this the ledger for
12 Mr Garcia?

13 A Yes, ma'am

14 Q And there where it says contract payoff, would that be
15 when he -

16 MR TANENBAUM Excuse me Leading the witness

17 THE COURT Okay

18 MS ROSS I will rephrase

19 MR TANENBAUM Actually, you are sitting here
20 showing him these dates so he can get them right

21 MS ROSS Okay

22 MR TANENBAUM Please, go sit down and - this is
23 -

24 MS ROSS This is in evidence I'm going to ask
25 him to identify it

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1 THE COURT All right You can show him the
2 document

3 MS ROSS I will rephrase I will

4 BY MS ROSS

5 Q What does this mean here where it says, "Repo charge
6 and contract payoff", what does that mean?

7 A Right here?

8 Q Right What does that mean?

9 A Repo charge?

10 Q Right

11 A Repo charge means, I guess that's how much they have
12 to pay after we get the car back from them

13 Q Okay And then what does contract payoff mean?

14 A That means they have already paid that repo charge

15 Q Okay And so, what is it that made you go look at
16 Mr Garcia's car?

17 A Well, actually like - okay When we get repossessed
18 cars, you got ten days to come and redeem the car
19 after we repossess the car If you don't come and get
20 it and the car has a lot of mileage, what we normally
21 do is send them to the auction So, we were basically
22 doing like we do every week in going through the car
23 that we have in the back, to see which ones we're
24 going to send to the auction And like that guy right
25 there, he had like a little bit of time left So, it

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1 was like, can we touch this car? No, we can't touch
2 this car

3 Q So, what did he say about - what, if anything, did
4 Mr Hartman say about going back to work versus
5 sitting at home?

6 A He was going to sit at home and collect the - let them
7 pay him to sit at home

8 Q Was that the only time he ever said that?

9 A I've heard it a couple times A few times A few
10 times

11 Q And then he said that you asked him to start the
12 blower that started all of this What do you know
13 about that?

14 A I don't use a blower?

15 Q Ever?

16 A The only blower that I use at the dealership is the
17 electric one to blow of -

18 Q That you don't have to crank?

19 A No I don't have to crank it It's just a little
20 knob that has different attachments that go in the
21 back to give power And you just flip the switch and
22 it blows

23 Q What about a weed eater? Do you ever use a weed
24 eater?

25 A No

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1 Q When was the last time you saw Mr Hartman before
2 today?

3 A Yesterday

4 Q And were sitting out in the hallway for quite a long
5 time Would that be right?

6 A Uh-huh

7 Q You have to say yes

8 A Yes, ma'am

9 Q Did you have opportunity when we were sitting in the
10 hallway to observe Mr Hartman?

11 A Yes, ma'am

12 Q His mannerisms?

13 A Yes, ma'am

14 Q What did he look like to you out in the hallway?

15 A Today?

16 Q Today

17 A Like he was hurting

18 Q How did he look yesterday?

19 A He wasn't walking like he was walking today

20 Q No?

21 A Uh-huh

22 Q How many times have you seen him walk in the past few
23 years?

24 A Few years?

25 Q Right

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1 A You want a number?

2 Q No That's okay

3 A I mean, a lot A lot

4 Q But yesterday, how did he look?

5 A He looked fine

6 MS ROSS That's all I have

7 THE COURT Mr Tanenbaum?

8 CROSS EXAMINATION

9 BY MR TANENBAUM

10 Q How long have you been working for the dealership, the
11 Defendant in this case?

12 A Now going on two years I worked there before when we
13 were JD Byrider and I left and came back

14 MR TANENBAUM That's all I have

15 MS ROSS Nothing else from me

16 THE COURT Thank you, sir You can step down
17 Any other witnesses?

18 MS ROSS No, Your Honor

19 THE COURT Anything else from the Claimant?

20 MR TANENBAUM Just one second Your Honor, we
21 could bring his son in to talk about the boat

22 THE COURT I mean, it's your case

23 MR TANENBAUM He's not listed as a witness, but
24 we'd like to call him as a rebuttal witness

25 THE COURT Oh, if he's not listed -

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1 MR TANENBAUM You know, really, we don't see
2 any reason to call anybody We rest our case

3 THE COURT I mean, any witnesses that's not
4 listed on either side, I won't let you call them

5 MR TANENBAUM We're fine

6 THE COURT That'll conclude this hearing

7 (THE HEARING CONCLUDED AT 3 58 PM)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

BE IT KNOWN THAT I TOOK THE FOREGOING
WORKERS' COMPENSATION HEARING,

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE,

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
SKILL AND ABILITY,

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
NOR INTERESTED IN THE OUTCOME OF THIS ACTION

WITNESS MY HAND AND SEAL THIS 15th DAY OF MAY,
2010



NADINE A GARRETT
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES AUGUST 11, 2016

NADINE A GARRETT
COURT REPORTER
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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION FULL
COMMISSION
WCC No 0907061

COPY

John K Hartman,)
)
Claimant,)
)
v)
)
Horizon Motors, Inc ,)
)
Employer,)
)
and)
)
American Economy)
Insurance Company,)
)
Carrier)
-----)

FULL COMMISSION HEARING

Tuesday, December 14, 2010
11 25 a m - 11 53 a m

The full commission hearing before Commissioner
G Bryan Lyndon, Chair, Commissioner T Scott Beck,
and Commissioner Susan S Barden, was taken at 1333
Main Street, Suite 500, Columbia, South Carolina on
the 14th day of December, 2010 before Cassandra E
Vance, Court Reporter and Notary Public in and for
the State of South Carolina

CREEL COURT REPORTING, INC
1230 Richland Street / Columbia SC 29201
(803) 252 3445 / (800) 822 0896

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INDEX

	<u>PAGE</u>
ARGUMENT BY MS ROSS	3
ARGUMENT BY MR TANENBAUM	13
REPLY BY MS ROSS	23
Certificate	27

1 **THE COURT REPORTER** Today is December 14th, 2010

2 This is South Carolina Workers' Compensation
3 Case Number 0907061 This is the case of John
4 Hartman, Claimant, versus Horizon Motors,
5 Incorporated, Employer, and American Economy
6 Insurance Company, Carrier

7 The Appellant is the Defendant represented by
8 Lynnley Ross The Respondent is represented by
9 Alan Tanenbaum Each side is allowed ten
10 minutes for oral argument and the Appellant
11 three minutes in reply You are requested to
12 argue the grounds of exception and stay within
13 the record

14 **COMMISSIONER LYNDON** All right Ms Ross, you're
15 recognized, ma'am

16 **MS ROSS** All rightey Commissioners, I'm going to
17 start by explaining the Claimant's side of this
18 story What he claims is that he was working
19 at the used car lot where he works and there
20 was a fellow named Dwayne Hugee and Dwayne was
21 trying to crank a commercial blower -- "blower"
22 is the operative word He was trying to crank
23 a commercial blower He can't crank it, so
24 Dwayne asked the Claimant, "Can you crank this
25 blower for me?"

1 The Claimant cranks on the blower for about 15
2 minutes He can't get it started He says he
3 feels terrible pain in his shoulder and his
4 neck He claims he worked that day, went in
5 the next, reported his injury to the office
6 manager The office manager said, "Let's call
7 the owner He's in Florida Let's call him on
8 his cell phone "

9 Called him on his cell phone, spent 30 minutes
10 on the phone with him and the Claimant wasn't
11 on the phone but he was in the room, so he
12 heard half of the conversation

13 Reported it This is the Claimant's story It
14 was accepted Medical treatment was provided
15 with Dr Ernst for his shoulder

16 Claimant got released at maximum medical
17 improvement, got a two percent rating from
18 Dr Ernst We filed a Form 21 and in the
19 course of our investigation preparing for the
20 hearing, we learned a lot of additional
21 information

22 So at the Form 21 -- I'm going to outline that
23 for you in a second At the hearing, we
24 explained the information that we had We
25 asserted that the case based on this

1 information should be denied We requested a
2 full denial I recognize it was after 150
3 days, it had been accepted So if the
4 Commissioner wasn't willing to deny the case in
5 full, we asserted the Claimant was at MMI for
6 the shoulder with the two percent from
7 Dr Ernst

8 The Claimant complained of the compensable neck
9 injury, which we denied, but the Claimant went
10 on his own for treatment with Dr Jones, who he
11 chose, and had gotten released with no
12 impairment by Dr Jones He had had a prior
13 motor vehicle accident, but Dr Jones treated
14 him afterwards, said there's no difference
15 That was the Claimant's story

16 The Defendant's story is a good bit different,
17 so we'll start with the mechanism of injury
18 There are two medical records that say the
19 mechanism of injury was a weedeater, not a
20 blower The Claimant says, "I don't know where
21 weedeater came from It was always a blower "
22 Well, you know where "weedeater" came from?
23 "Weedeater" came from the two intake reports he
24 filled out for Dr Ernst in his own handwriting
25 where he wrote "weedeater" Weedeater is not

1 a blower A weedeater is different The
2 Claimant's testimony that he didn't know where
3 the term "weedeater" came from can't be worthy
4 of credence because he, himself, filled out the
5 report
6 Dwayne Hugee came to testify and Dwayne Hugee
7 testified, "I never used a pull crank weedeater
8 or blower The only thing I used was a flip
9 switch I never used a pull-crank weedeater or
10 blower and I never asked the Claimant to pull
11 crank or weedeater, to pull anything for me
12 That's just not true " That's what Dwayne
13 Hugee said -- testified to That's the
14 mechanism of accident
15 Now the reporting of the accident Like I
16 said, the Claimant claims he went to the office
17 manager who called the owner on his cell phone
18 We have the records of the office manager's
19 cell phone, the office manager's outgoing
20 regular phone, and the incoming calls from the
21 owner No calls for 30 minutes on the day that
22 the Claimant claimed he reported the injury,
23 which was the next day No call longer than
24 seven minutes I'm not talking 28, 26 No
25 call longer than seven minutes

1 We assert that the Claimant reported his claim
2 in late May and early June Now, I understand,
3 we're within 90 days, so what's the deal with
4 that? Well, this is the deal with it There's
5 a fellow named Mr Garcia and Mr Garcia had a
6 car that was repossessed by the Employer They
7 do that It's a car dealership His car was
8 repossessed
9 Well, Dwayne Hugee, who came to testify,
10 testified that he saw the car and it had
11 electronics in it It had a CD player It had
12 those TV's in the back of the headrest, that
13 kind of thing So Dwayne is working in the
14 back, he notices this, gets word that
15 Mr Garcia comes to redeem his car, to pay it
16 off and to get it back Dwayne goes out to
17 look at it and the electronics are missing
18 They're not there
19 Dwayne thinks back, "Where are they?" Well, he
20 remembers the Claimant's son, Little Kevin, who
21 also worked at the dealership, had been messing
22 around with the car a couple of days prior
23 So Dwayne testified, "I called up Little Kevin
24 and said 'Mr Garcia is coming to pick up his
25 car Do you know where these electronics

1 are?" And Little Kevin said, "Yeah, I have
2 them " So Dwayne says, "Bring them back
3 Mr Garcia's coming "
4 About five minutes later, the Claimant calls
5 He's furious "How dare you accuse my son of
6 theft?" This is what he said He said, "This
7 is the last time that Jim" -- is the owner --
8 "This is the last time that Jim is going to get
9 over on me I'm going to go out on disability
10 I'm going to sit at home and let them pay me to
11 sit at home " That's what he told Dwayne
12 Now, the Claimant claims he reported his injury
13 a couple of weeks prior, but there are no phone
14 records supporting that But right around the
15 time that Mr Garcia's car, the electronics go
16 missing -- and the Claimant's son admitted
17 taking them -- the Claimant goes to the doctor
18 and the Claimant files a claim Carrier didn't
19 know this The Carrier accepted it The
20 temporal connection cannot be denied
21 The Claimant also claimed that he had not done
22 any work while he was on temporary total He
23 was not working He was lying around the
24 house He was in pain and miserable
25 Well, we have -- we had a fellow named

1 Dr Robinson, he's a follow local physician
2 The Claimant admitted that he served as a
3 general contractor for repairs on
4 Dr Robinson's home Dr Robinson was a friend
5 of the Claimant and a friend of the owner here
6 at Horizon Motors Dr Robinson needed some
7 things done in his house So the Claimant
8 claims he didn't do any work but he arranged
9 for his friends to come, to do the work that
10 needed to be done at Dr Robinson's house The
11 Claimant then received the money from
12 Dr Robinson and disbursed it to the workers
13 The work of a general contractor, even if the
14 Claimant didn't do any work -- but that wasn't
15 the only testimony There was also testimony
16 by a fellow named Shawn Lawless Mr Lawless
17 is on the board of directors for the -- for a
18 credit union in Charleston The credit union
19 had a boat that needed repairs, so Mr Lawless,
20 the Claimant and Little Kevin all worked on the
21 boat together Mr Lawless testified, "I saw
22 the Claimant working on the boat We all
23 worked together on the boat '
24 The Claimant -- a check was issued by the
25 credit union for -- I think it was \$2700 The

1 Claimant admitted he was the one that went to
2 go cash that check Didn't mention any of this
3 in his deposition, but Shawn Lawless testified
4 that he worked on that boat with the Claimant
5 The Claimant also had some other issues It's
6 outlined in my brief He had a prior auto
7 accident, which he downplayed as being very
8 minor and just a couple of weeks of lost time
9 Come to find out, he lost over a year He
10 underwent six to eight months of treatment with
11 Dr Jones Now, that was for the low back
12 The low back was denied and that finding has
13 not been appealed But it goes to the
14 Claimant's credibility and there are big issues
15 here

16 **COMMISSIONER LYNDON** Let me stop you there --

17 **MS ROSS** Sure

18 **COMMISSIONER LYNDON** -- and ask you in Finding of
19 Fact ten, the Hearing Commissioner says, "This
20 case turns on the medical evidence Although
21 I have some acute questions on the veracity of
22 the Claimant, the medical evidence is clear
23 that he was complaining of cervical issues from
24 nearly the start of his medical treatment "
25 Looking at your exceptions, you didn't attack

1 that one Finding of Fact, but address that, if
2 you would Because the hearing Commissioner
3 looks like -- realized the guy -- there may
4 have been some inconsistencies, but he -- he or
5 she relied on the medical evidence

6 **MS ROSS** He did look at the medical evidence and
7 the thing is, you have to believe what's coming
8 out of the Claimant's mouth when you look at
9 the medical evidence
10 He told Dr Jones in his release that he was
11 better, he had gotten back to baseline
12 Dr Jones released him with a zero percent
13 rating after doing some injections for the
14 neck And then only afterwards said he claimed
15 of additional pain, which led to additional
16 treatment But Dr Jones, as of the time of
17 the hearing, or almost right -- right as of the
18 time of the hearing had released him with a
19 zero percent rating
20 Then immediately prior to the hearing, the
21 Claimant went back to Dr Jones and Dr Jones
22 had some -- he had some increased complaints,
23 so Dr Jones did some additional treatment
24 But the totality of it indicates that Dr Jones
25 had that release for him with the zero percent

1 rating and then immediately before the hearing,
2 he goes back We just don't believe what he
3 says when he went back to Dr Jones We
4 believe that Dr Jones -- even if the neck is
5 compensable, the zero percent rating is part of
6 the medical evidence

7 **COMMISSIONER LYNDON** Okay

8 **MS ROSS** I'm going to run out of time and I don't
9 want to do that The Claimant testified that
10 he was under incredibly severe pain, that he
11 actually considered taking his own life, which
12 is a horrible situation The medical records
13 reveal, however, that when the Claimant went to
14 hospital for that, he didn't do it He called
15 a friend and they went to the hospital He had
16 filled a Vicodin prescription by Dr Jones
17 Dr Jones had given him a Vicodin prescription
18 He had filled it and he hadn't even taken it
19 yet

20 So while the Claimant told me that the
21 situation -- the suicide situation was the
22 result of pain, I don't think you can believe
23 that He hadn't even taken the Vicodin But
24 what the records do show, which is what the
25 Claimant denied, was that his wife was having

1 an emotional affair over the Internet

2 So yet again it's a situation where the
3 medical -- where the records just don't match
4 up with the Claimant's testimony We have a
5 zero percent rating -- or two percent rating
6 from Dr Ernst We have a zero percent rating
7 from Dr Jones, who's the doctor the Claimant
8 saw

9 We think that this case first should be denied
10 based on an utter lack of credibility for the
11 Claimant And even if it's not denied, we have
12 a two percent and zero percent We would like
13 for permanency to be awarded pursuant to that
14 and then a credit issued for any T T D at your
15 discretion

16 **COMMISSIONER LYNDON** Okay

17 **MS ROSS** Thank you

18 **COMMISSIONER LYNDON** Thank you You'll have some
19 time in reply Mr Tanenbaum?

20 **MR TANENBAUM** Thank you I'll be brief

21 **COMMISSIONER LYNDON** All right

22 **MR TANENBAUM** Actually, I love conspiracy theories,
23 but this one just doesn't hold water
24 Basically, Mr Hartman injured himself pulling
25 a 35-pound crank leaf blower

1 **COMMISSIONER BARDEN** Explain to me, if you would,
2 how he said, "I never said leaf blower I
3 never said weedeater "

4 **MR TANENBAUM** I will

5 **COMMISSIONER BARDEN** And it's in his handwriting

6 **MR TANENBAUM** I will Actually, just to answer
7 your question specifically -- would you mind if
8 I sort of went through

9 **COMMISSIONER BARDEN** Sure

10 **MR TANENBAUM** Because I've got yours as probably
11 number two

12 **COMMISSIONER BARDEN** That's fine

13 **MR TANENBAUM** And that's an important item

14 But, first of all, he injured his shoulder
15 trying to crank a 35-pound leaf blower pull
16 start, a gas-powered leaf blower He was
17 sent -- actually, he went to see Dr Arnold on
18 5/14/09, which is two or three weeks after he
19 hurt himself, immediately complaining about
20 neck and shoulder injuries

21 He was treated by Dr Arnold for a while He
22 was referred over to Dr Ernst Dr Ernst was
23 treating his shoulder, found a lot of stuff in
24 it but said, "You know, I'm not comfortable
25 with this guy's neck There's something going

1 on there, too "

2 So he sent him over to Dr Aymond Now, all of
3 these are authorized treating physicians What
4 all three of them agree on is that this fellow
5 was complaining about his neck and shoulder
6 from the get-go, from jump street They all
7 agree that it was caused by the on-the-job
8 injury from pulling the leaf blower Now,
9 these are their treating physicians

10 He also saw Dr Highsmith I sent him over to
11 see Dr Poletti and Jeffrey Fallburg
12 (phonetic) We've got five doctors all saying
13 he hurt himself, hurt his neck on the job End
14 of story They don't have anybody saying he
15 didn't That's why the medical evidence is so
16 overwhelming

17 Now, as to the conspiracy theory First of
18 all, she's complaining about Dr Jones saying
19 that he didn't hurt himself on the job In
20 fact, number 22 dated 2/17/10 is Dr Jones'
21 report where he says that the Claimant has a
22 15 percent cervical impairment, ten percent of
23 which is directly attributable to the
24 on-the-job injury of 4/21/09 That's
25 Dr Jones's testimony

1 And then we get over to the -- I'm sorry I
2 don't know why I can't catch my breath Same
3 thing always happens every time I stand in this
4 spot

5 Let me kind of get over the leaf blower Now,
6 this leaf blower has been referred to in this
7 case variously as -- and these are just a few
8 of them It's been called the leaf blower --

9 **COMMISSIONER BARDEN** That's not my question

10 **MR TANENBAUM** An industrial blower

11 **COMMISSIONER BARDEN** That's not my question

12 **MR TANENBAUM** A weed blower, weedeater I'm
13 sorry, what's your question?

14 **COMMISSIONER BARDEN** My question was, he said he
15 never called it a leaf blower Ms Ross, on
16 behalf of her clients, pointed out a record or
17 two where he in his own handwriting writes
18 "leaf blower" That's my question
19 "Weedeater", excuse me

20 **MR TANENBAUM** I'm sorry, where did he say he ever
21 called it a "leaf blower"?

22 **COMMISSIONER BARDEN** Okay That was my
23 understanding of her argument

24 **MR TANENBAUM** Well --

25 **COMMISSIONER BARDEN** Okay

1 **MR TANENBAUM** He's gone repeatedly on the
2 record -- I mean, he's gone through a
3 deposition and through the hearing on and on
4 saying, you know --

5 **COMMISSIONER BARDEN** Perhaps Ms Ross can point out
6 the page number

7 **MR TANENBAUM** I mean, he's like -- in fact -- so,
8 as I was saying, this thing has been referred
9 to as a leaf blower, an industrial blower, a
10 weed blower and a weedeater Those are just
11 four of the characterizations that different
12 doctors have put on it

13 **COMMISSIONER BARDEN** Yeah, and I wasn't concerned
14 with what the doctors called it

15 **MR TANENBAUM** Right Well

16 **COMMISSIONER BARDEN** But perhaps she can --

17 **MR TANENBAUM** Well, while she's looking for that
18 page --

19 **COMMISSIONER BARDEN** Just go ahead

20 **MR TANENBAUM** While she's looking for that page --
21 you know, her theory that he made all this up
22 and created this herniated disc in his neck,
23 which he's now, you know, had surgery for --
24 because, basically, what happened in this case
25 is that Derrick Williams found that the neck

1 was compensable, the shoulder was compensable,
2 the low back was not compensable And he said,
3 you know, well, Dr Aymond was a treating
4 physician All these doctors say that the
5 neck's compensable So he went ahead and had
6 Dr Aymond do surgery on his neck So he's
7 already had the neck surgery And I think he's
8 also had an additional shoulder surgery from
9 Dr Ernst

10 **MS ROSS** Objection, outside the scope of the
11 record

12 **MR TANENBAUM** Okay

13 **COMMISSIONER LYNDON** Stay within the record, if you
14 could

15 **MR TANENBAUM** All right Yes, sir

16 So what Commissioner Williams did was he held
17 all the other issues in abeyance He found he
18 was not at MMI but he did relate the neck and
19 the shoulder, not the low back And,
20 apparently, in his ruling, he noted that the
21 low back wasn't mentioned as prominently from
22 the beginning as the neck was
23 But I've been practicing law for 30 years and
24 I'll tell you, every time I see a shoulder
25 injury, my first thought is "Is this a

1 radiculopathy from the disc?" And I guess, you
2 know, probably two-thirds of the time, maybe a
3 third of the time, half the time it is And I
4 think that's what Dr Ernst was thinking, that
5 this guy's symptoms were a combination of his
6 shoulder and that cervical disc

7 Now, what I think is important is that my
8 client -- as far as the telephone call stuff,
9 there was never notice issue in this case My
10 client testified that he reported the accident
11 the next day to Glenn Hair, who was the office
12 manager He testified that he witnessed a
13 30-minute conversation between the two of them
14 that day during that meeting

15 Now, repeatedly he's been through questioning
16 about, "Well, who called what from where?"
17 And, "How did the call take place?" He says,
18 you know, 'I don't know But what we do know
19 is that she's presented some telephone records,
20 but they don't account for all the methods by
21 which this conversation could have taken place
22 There are no records of the hotel in Florida,
23 the phone there There's no records from any
24 other place that Mr Reagan could have called
25 him back from She doesn't have -- apparently,

1 there are two cell phones, that each of these
2 gentlemen have a personal one and a business
3 one, at least that's my understanding
4 So it's kind of like, she throws some cell
5 phone records in there, but there's two or
6 three other methods by which this phone call
7 could have taken place So what she didn't do,
8 okay, which I would like to point out, is she
9 didn't call Mr Hair or Mr Reagan as a
10 witness Why not? Because they would have
11 testified, we contend, that that phone
12 conversation did take place They're her
13 witnesses She should have brought them in
14 She's given us half the telephone records
15 They don't mean anything The two witnesses
16 that could have refuted my client's version
17 were never called, even though they're
18 employees
19 So, as far as theft allegations, she
20 mischaracterizes the record In fact, Dwayne
21 Hugee's testimony -- and it's on page 91 -- it
22 says that he noticed that there was some TV's
23 and other devices missing out of the van or out
24 of a van He doesn't know when And he says
25 that he saw the Claimant's son working on that

1 van the day after that, not the day before
2 There's a big difference So if you look at
3 the record, that's incorrect

4 **COMMISSIONER BECK** Well, I think Ms Ross also
5 indicated in her comments that the Claimant's
6 son admitted to having that equipment

7 **MR TANENBAUM** Well, the other --

8 **COMMISSIONER BECK** It really doesn't make any
9 difference what day it was if he, in fact, had
10 taken them and I think that was the point that
11 she was trying to make

12 **MR TANENBAUM** Right And we didn't clarify in the
13 record -- I'm trying to stay within the record,
14 but there's no evidence that any theft took
15 place

16 In fact, if you'll look at Exhibit 89, okay,
17 which she says, "Well, we've got Exhibit 89
18 about the Garcia car -- about the Garcia van "
19 It's not a van It's the wrong receipt It's
20 a Buick Century There are two Garcias there,
21 one of them has a van and one of them has a
22 Buick Century So her exhibit doesn't even
23 apply to this van And Dwayne Hugee doesn't
24 even know when this really occurred He just
25 kind of says, "Well, they were missing "

1 As an aside, and I'm trying to stay within the
2 record, it's my understanding that oftentimes
3 they take the electronics out of vehicles that
4 have been repossessed that are about to go to
5 auction and save those in the back, which is,
6 I understand, standard procedure at this
7 dealership

8 **COMMISSIONER LYNDON** Your time has run, but finish
9 your thought

10 **MR TANENBAUM** All right Well, finally, my client
11 testified that the reason that they were trying
12 to start the leaf blower in the first place was
13 to clear off the parking lot
14 And this is a big place with a lot of area I
15 don't know if anybody has every used a leaf
16 blower, but those little electric numbers will
17 not do the job on a big parking lot full of
18 leaves You're going to have to have a one to
19 three horse power gas-operated leaf blower to
20 get those leaves out of there

21 **COMMISSIONER LYNDON** Okay

22 **MR TANENBAUM** So, I just -- anyway, like I said,
23 this case turns on the medical evidence We
24 would just

25 **COMMISSIONER LYNDON** All right, sir Ms Ross?

1 REPLY BY MS ROSS

2 **MS ROSS** I have a lot of papers here Is it all
3 right if I stand a little adjacent to the --

4 **COMMISSIONER LYNDON** That's fine

5 **MS ROSS** -- podium to answer your question,
6 Commissioner? The Claimant testified that it
7 was a -- let's see Let me get it exactly

8 **COMMISSIONER LYNDON** Is this discovery deposition or
9 the hearing?

10 **MS ROSS** This is a discovery deposition but it was
11 introduced, also hearing testimony, which I'll
12 mention

13 **COMMISSIONER LYNDON** I've got it

14 **MS ROSS** He said, "The injury I sustained is most
15 prominent is when -- there's a -- they're
16 calling it a 'weedeater' but it wasn't a
17 weedeater It was a commercial blower " That
18 was the deposition testimony
19 The hearing testimony is at 35, which says --
20 starting about the middle of the page -- The
21 APA's that reflect 'weedeater" which are my One
22 and Three, by the way, the Claimant explains
23 that when I'm crossing him, "It was a
24 misdescription I've been explaining that
25 since the first time I saw "weedeater " It was

1 a misdescription " I'm skipping around a
2 little bit 'It was never a weedeater It was
3 always a commercial blower " And I asked him,
4 You don't know where they got the idea it was
5 a weedeater?" "I'm not quite sure how that
6 became a point " It became a point because he
7 wrote it down in Dr Ernst's intake reports not
8 once, but twice
9 Dr Jones -- going back to the medical records,
10 which I understand are a concern and they
11 should be -- Dr Jones, in Alan's APA's 66, is
12 the Claimant's last visit on November 11th He
13 said that symptoms are only admitted flaring --
14 "flaring noted primarily with more strenuous
15 activities The Claimant -- the Patient's
16 status would not warrant additional aggravation
17 impairment " That was November 11th, 2009
18 The Claimant didn't go back to Dr Jones for
19 four months Immediately prior to the hearing,
20 he went back to Dr Jones February 17th of
21 2010, the hearing was March 2nd If I remember
22 correctly, this was set on a 50, 51, and 21
23 Alan had to pull his 50 at the hearing to make
24 this inclusion of Dr Jones' record timely so
25 it was now set on my 21 and he only had 15

1 days He went four months with no complaints
2 of cervical from a medical standpoint, only
3 coming up immediately prior to the hearing
4 As far as where the phone call came from, that
5 was adequately covered in cross-examination
6 There was ample opportunity to discuss the
7 phone call Claimant said that they called on
8 Jim's cell phone, which we put in those
9 records
10 As far as the order goes, if you look at the
11 order, where is any of this? Where is the
12 testimony of Dwayne? Where is the testimony of
13 Shawn? Where is the issue with Mr Garcia's
14 car?
15 Oh, and the Claimant -- Dwayne's testimony that
16 the -- that Little Kevin said that he had the
17 items is on transcript at 92 That also wasn't
18 challenged "When I called him, that's when he
19 told me he did have the stuff He had items
20 out of the car " He was seen the next day
21 pulling wires, but we don't know when the TV's
22 were taken and the stereo was taken Little
23 Kevin admitted that he said that he had the
24 items The Claimant came in the next day -- or
25 that day said, "I'm going to get him I'm

1 going to make him go out on disability," and
2 only then did the medical treatment start, did
3 this accident get reported Thank you

4 **MR TANENBAUM** Am I done?

5 **COMMISSIONER LYNDON** We're done We've got
6 everything here Thank you

7 **(The hearing concluded at 11 53 a m)**

8
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CERTIFICATE

This is to certify that the within hearing consisting of Twenty-Six (26) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn, said hearing was reported by the method of Stenowriter with Backup

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of same

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 9, 2011



Cassandra E Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires February 26, 2018

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO 0907061

JOHN KEVIN HARTMAN,)
)
Employee/Claimant,)
)
vs)
)
HORIZON MOTORS, INC ,)
)
Employer,)
)
and)
)
MONTGOMERY INSURANCE,)
)
Carrier/Defendants)

 **COPY**

The deposition of JOHN KEVIN HARTMAN, taken
before Dana K Olive, Court Reporter and Notary Public,
at the law offices of Alan M Tanenbaum, 116 Church
Street, Charleston, South Carolina, on February 2, 2010,
commencing at 11 13 p m

A-P-P-E-A-R-A-N-C-E-S

For the Claimant

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INDEX TO EXAMINATIONS

Witness

John Kevin Hartman (sworn)

Page

Examination by Ms Ross

4

Reporter's Certificate

98

INDEX TO EXHIBITS

(No exhibits were offered or marked for
identification)

1 (John Kevin Hartman, having been first duly
2 sworn, testified as follows)

3 EXAMINATION BY MS ROSS

4 Q Mr Hartman, my name is Lynnley Ross, and I've
5 been retained by Montgomery Insurance and Horizon Motors
6 to handle your workers' compensation claim from their
7 perspective Have you ever had your deposition taken
8 before?

9 A Yes

10 Q Tell me about that

11 A We had a minor incident in '01, an MVA, where a
12 deposition was taken from an auto accident

13 Q I want to ask you about that in an a minute, but
14 since you've had your deposition taken before, you'll
15 remember that she's taking everything down So we ask
16 that you don't say uh-huh or huh-uh or shakes or nods
17 You need to go ahead and say yes or no We also ask
18 that only one of us speak at a time It makes it easier
19 to read when we go back and read it later I'm not here
20 to trick you or to get you to give any answer that you
21 don't want to give, I'm just here to get information
22 from you So if you don't understand a question that
23 I've asked or if you don't know what I'm asking or what
24 I'm getting at, let me know and I'll rephrase it But
25 if you're going to go ahead and answer it, your answer

1 is going to stand Fair enough?

2 A Yes

3 Q Ask for a break if you need one, but I don't
4 think we'll be here very long Let me go ahead and get
5 your full name

6 A John Kevin Hartman

7 Q Have you ever gone by any other name?

8 A No

9 Q How old are you?

10 A Forty-three

11 Q And what's your date of birth?

12 A 6/14/66

13 Q And your Social?

14 A 248-51-6792

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

16 A Yes, ma'am

17 Q Has it ever been suspended or revoked?

18 A No

19 Q Is it there anything special about it, CDL --

20 A I have a CDL

21 Q How long have you had a CDL?

22 A Since 1983 when it was a Class 3

23 Q '83 or '93?

24 A '83 I started off as a school bus driver and I
25 grandfathered into a CDL Back then they had a Class 3

1 license they called it

2 Q Okay So you kept your CDL ever since?

3 A Yes

4 Q So you didn't have to retake the CDL test, is
5 that what you're saying?

6 A There was a time when we did have to re-qualify,
7 yes

8 Q Okay So you have to re-qualify, when was that?

9 A Probably early nineties I'm not quite sure It
10 was either '91 or '92, I believe

11 Q So you took that test in the early nineties?

12 A Yes

13 Q Do you have to re-qualify ever again?

14 A Not unless you for whatever reason drop it We
15 have to re-qualify for any endorsements such as HAZMAT
16 and whatnot, which I don't have anymore I have what
17 they would consider two endorsements or doubles and
18 triples in tanks, which is just a basic test There's
19 no pre-qualification other than the test HAZMAT is an
20 annual thing that you have to do every year

21 Q But you don't have that?

22 A No, I do not

23 Q Do you have to get physicals for your CDL?

24 A Yes, you do

25 Q When was the last time you got a physical?

1 A Four years ago

2 Q How often do you have to get them?

3 A Every two years if you're a current driver

4 Q How often if you're not a current driver?

5 A You don't have to At least I don't believe you
6 do

7 Q But you haven't had one in four years?

8 A No

9 Q And as far as you know, your CDL is still good?

10 A Yes

11 Q Who did your physical four years ago?

12 A I don't recall

13 Q Who did you do it through?

14 A I did it on my own I believe the gentleman is
15 retired now He was on Yeamans Hall in Hanahan, South
16 Carolina

17 Q What was the name of the facility?

18 A I don't know I don't know It was an
19 individual doctor who that's what he did was basically
20 physicals for the DOT and pilot's license and so forth

21 Q Do you have a copy of your physical that he did
22 for you?

23 A Not with me

24 Q Do you have one though?

25 A I believe I still have my expired DOT card,

1 physical DOT card

2 Q If you wanted to get a job using your CDL, you
3 would need to have that, wouldn't you?

4 A Yes And it would have to be current

5 Q What about the physical before that?

6 A As far as for CDL?

7 Q For your CDL

8 A I used to -- I was leased to Landstar Gemini, and
9 they were the ones that would require us to have our
10 physicals I want to say it was Parachute -- I can't
11 remember the name of the company It was on Dorchester
12 Road just beyond Montague Avenue That was several
13 years ago

14 Q When was that, do you think?

15 A I would be guessing I couldn't tell you I
16 don't remember

17 Q Any other physicals you've had in the last 15
18 years?

19 A Just the DOT and the -- I had a pilot physical,
20 or a student pilot's license the same time the DOT one
21 was done

22 Q Who did that for you?

23 A Same gentleman in Hanahan

24 Q So you have to get a physical in order to be a
25 student pilot?

1 A Yes, ma'am

2 Q What made you want to be a student pilot?

3 A I have friends that are pilots, and one of my
4 friends is an instructor And he asked if I wanted to
5 learn how to fly And the owners of the business I
6 worked at were also getting their license, and all of us
7 at the same time had decided to try and get our basic
8 private license

9 Q Who is your friend that's the instructor?

10 A Michael Gibbons, Low Country Air

11 Q So what's the status of that? How long does it
12 take?

13 A Well, basically it's real expensive, and I kind
14 of did it as a hobby just with these other gentlemen
15 that I was with They were paying for their license and
16 I would do ride-along's with them and just kind of go
17 through the motions with them I didn't really take it
18 too seriously because it was expensive And my status
19 now -- I'm still not a private pilot, and,
20 unfortunately, I'm unable to fly at this time So I've
21 kind of put it on the back burner It's probably been
22 two and a half years or so since I've really taken a big
23 interest in it

24 Q So was it your intention when you started just to
25 kind of ride along with your friends?

1 A Well, and get a private license if I could

2 Q So when you started, your intention was to get
3 licensed?

4 A It was my intention, yes, as a hobby, yes

5 Q So when did it fall by the wayside?

6 A When I just wasn't able to afford it, one reason
7 And just busy working, couldn't find the time

8 Q So it's been about two and a half years since you
9 pursued that?

10 A Yes

11 Q How much does it cost?

12 A An average private license, depending on where
13 you go, is between 8,500 and \$13,000, depending on how
14 in depth you go It's just like a CDL There's
15 different qualifications where you have just your basic
16 license and you have your complex and multiengine
17 endorsement, your CFI enforcement, your instrument
18 rating endorsement It grows and grows and grows I
19 inquired of a school down in Florida, and it's \$50,000
20 to get your license to go to work for like Com Air or
21 Delta Connection or whatever And all they do is
22 guarantee you an interview They don't guarantee you a
23 job even after you do that

24 My advantage here was the instructor was a friend
25 of mine who offered me, since someone else was flying

1 and paying for the time in the plane, to do a ride-along
2 basically and go through the motions and possibly maybe
3 we could work some stuff out through -- at the time I
4 was a technician on automobiles I could work some
5 trade-out with him for time in the plane But I was
6 promoted to a service manager's position, and that
7 basically took up all my time I was working anywhere
8 from eight to 13 hours a day, sometimes six and seven
9 days a week and just wasn't able -- and I was on salary
10 So it didn't matter if I worked 100 hours or whether I
11 worked 40 hours But I spent a lot of time at the
12 dealership, and it got to be where -- instead of a hobby
13 I had to pass it up because it was just too expensive

14 Q So were you going to be able -- if you had only
15 been doing the ride-along's, were you going to be able
16 to take the test?

17 A I could have went through the motions and I would
18 have had to get the course and study for the test, take
19 the written And then through flying, if I was able to
20 get behind the plane and fly the plane, I would have to
21 put in about 40 hours of flight time before they would
22 have qualified me for a solo ride And then after the
23 solo, they would have given me an opportunity to do a
24 check ride, which at that time I would have been signed
25 off as a pilot The check ride you got to pay for, the

1 test you got to pay for, and the learning tools and
2 stuff you need, I was just sharing it with the other
3 guys because they were paying for it all But it just
4 got to a point where the time and money wasn't there for
5 me These guys are -- they own dealerships and fly back
6 and forth to buy cars at the auctions and stuff, and,
7 fortunately, I was well in with them enough that they
8 would allow me to ride along and learn And if things
9 were in my ability to be able to pay for the rest of the
10 training, you know, I could follow through with it and
11 get my private's license and have that just as a hobby
12 Nothing professional

13 Q Any other physicals?

14 A None that I know of

15 Q And that was about four years ago when you
16 started doing the pilot's license?

17 A That was the last time I had a physical, I
18 believe But we had been -- since 2004, I believe So
19 I believe 2004, 2005 is when they started flying and I
20 became interested, but I didn't really pick up any rides
21 or anything like that until later in 2006, I believe I
22 didn't take it seriously until the physical was actually
23 done, and that's when we started logging time in a
24 logbook to actually pursue not a career but a private
25 license

1 Q So when was the physical?

2 A I believe it was -- it's been a while It was
3 two years before I went back, so it was -- I want to say
4 it was 2005 I may be wrong, but I think it's 2005,
5 2006 I've kind of lost track because I haven't done
6 anything with it

7 Q What's your current street address?

8 A 5471 Pennsylvania Avenue, North Charleston 29406

9 Q How long have you lived there?

10 A Seven years

11 Q Who all lives with you?

12 A Just my two kids and my wife

13 Q What was your street address before the
14 Pennsylvania Avenue place?

15 A I was in transition I lived in a house on
16 Yeamans Hall for one year I don't remember the
17 address, but it was in Hanahan And the address
18 previous to that I was there for approximately, I want
19 to say five years, which was just down the street from
20 that house

21 Q I'm confused The --

22 A I lived on Yeamans Hall for a year I'm not sure
23 of the address I can't remember it off the top of my
24 head And then I lived in a house just down the street
25 We moved up to a house further down The one before

1 that was in Hanahan as well, and we were there for five
2 years

3 Q So you lived in a house just down the street from
4 your place at Yeamans Hall for five years Then you
5 moved to a place on Yeamans Hall for one year And then
6 you went to Pennsylvania Avenue, and you've been there
7 for seven years?

8 A That's correct

9 Q What was the place that you lived in for five
10 years, what was that address?

11 A You're asking me questions I can't answer I
12 just don't remember

13 Q How old are your children?

14 A My son is 19 and my daughter is 14

15 Q What does your wife do?

16 A She's a home mom right now, but she was
17 ex-military and ex-police officer

18 Q What's her name?

19 A Lisa Marie Hartman

20 Q What part of the military was she in?

21 A Navy

22 Q When was that?

23 A She was out of the Navy in '88, '89

24 Q When did she go in?

25 A Four years So '84, I believe

1 Q So she only did four years?

2 A Yes

3 Q Why did she get out?

4 A She's suffering from post-traumatic stress

5 Q What caused that?

6 A She was -- I just found out about all this, so
7 you'll have to bear with me She was raped in the
8 military

9 Q When was that?

10 A In '87, I believe And she's going to the VA
11 Hospital now to be treated for the PTSD

12 Q Are you and your children eligible for the VA as
13 well?

14 A At this time, I do not know They're going
15 through the motions to try and see what she's eligible
16 for

17 Q But she's able to go to the VA?

18 A Yes

19 Q Have you ever tried to go to the VA?

20 A They won't accept me

21 Q What makes you say that?

22 A Just through conversations of the eligibility at
23 this time that they're trying to reinstate some benefits
24 to cover family, but right now they're just reviewing
25 all her medical history and her case and going through

1 her treatments And right now I'm not a dependent,
2 classified as a dependent

3 Q Why not?

4 A My understanding is that she didn't do enough
5 time in the military is what I understand

6 Q When did you find all this out?

7 A She's been -- since February of last year, she's
8 been treated for this episode

9 Q So February of '09?

10 A She was on-line and met someone from her past
11 that was affiliated with the incident in some way, shape
12 or form, and it all came flooding back And I had to
13 take her to the VA to be treated for it And it's just
14 -- she's seeing therapists and doctors for medications
15 and whatnot to try and help her cope with it I don't
16 understand it completely

17 Q So when did you try and go to the VA?

18 A Well, I've been going with her on and off to her
19 treatments and her doctor visits, and I've been told
20 that I'm just not able to go there

21 Q Did you ask to go there?

22 A Well, I asked if I would receive any benefits to
23 be able to be treated there, and they said that at this
24 time I'm not eligible Even for like the flu vaccine or
25 H1N1, I'm not eligible to be treated for those types of

1 things

2 Q What about your children?

3 A No Everything was post her time in the military
4 is what I'm being told

5 Q Where did she work as a police officer?

6 A She worked for Harleyville, South Carolina PD as
7 a canine officer

8 Q When was that?

9 A When she arrived out of the military She walked
10 straight into that particular job

11 Q So '88 until?

12 A I'm not sure of the years '92, I believe It's
13 when my son was born And he was born with medical
14 problems, so we spent the rest of that time in the
15 hospital with him

16 Q What kind of medical problems?

17 A My son was born with Hirschsprung's disease and
18 idiopathic pseudoobstruction

19 Q What does that mean?

20 A Hirschsprung's is basically three inches of his
21 large colon didn't work, and they had to cut that part
22 out And the idiopathic pseudoobstruction or gastro
23 pseudoobstruction means that the intestine thinks there
24 is an obstruction, so it swells up to pass the
25 obstruction And pseudo means false, so there's no

1 obstruction He's had 38 surgeries The first six
2 years of his life we lived at MUSC He's had
3 colostomies, ileostomies, Broviacs, central lines You
4 name it, he's had it For the first six years of his
5 life we fed him through a tube in his stomach and an IV
6 line in his heart

7 Q How is he now?

8 A After they did what they call a short gut where
9 they took his large intestine complete out and hooked
10 his small bowel up to his rectum, he functions like you
11 and I He's living a normal life at this time He's on
12 the liver, small bowel and stomach transplant list And
13 he just watches his diet, what he eats, and we monitor
14 him on a daily basis We've been blessed because he's a
15 healthy 19-year-old kid now, and he wasn't expected to
16 live to the age of 13

17 Q That's good to hear What does he do?

18 A He's finishing up his school

19 Q High school, college, tech school?

20 A High school And he's very computer savvy So
21 he's doing the computer thing And he's a very bright
22 kid

23 Q What about your daughter?

24 A She was born with asthma, which she doesn't have
25 anymore Her middle name is Faith because we wanted a

1 child to be born with no medical problems, of course
2 So her middle name is Faith And she's an honor roll
3 student in middle school She's been elected for --
4 there's a seven percentile nationally for honor roll,
5 and she's been elected for that for this year She's a
6 very active band member as I was when I was in high
7 school

8 Q What does she play?

9 A She plays a saxophone

10 Q What did you play?

11 A I played the baritone and trumpet And she's
12 excelled in it to the point that as an eighth grader
13 she's able to play in the high school marching band
14 And she's been offered scholarships already, which I'm
15 very proud

16 Q Anybody else who is dependent upon you for
17 support?

18 A No, ma'am

19 Q Do you smoke?

20 A No

21 Q Have you ever smoked?

22 A No

23 Q Who is your family doctor?

24 A Dr Brantley Arnau

25 Q How long have you been going to Dr Arnau?

1 A Forever I mean, it's a real long time

2 Q More than 15 years?

3 A At least

4 Q Does Dr Arnau treat your children and your wife
5 as well?

6 A Yes

7 Q What's the emergency room closest to your house?

8 A Would be Trident, I would assume

9 Q What about an urgent care facility, Doctor's
10 Care, Rapid Care, anything like that?

11 A I believe there's a Roper near Mall Drive I
12 believe that's a new one, an extension of Roper
13 Hospital I believe that's it

14 Q Have you ever been in the military?

15 A No I was too hardheaded

16 Q Have you ever filed a workers' comp claim before?

17 A No

18 Q Have you ever injured yourself at work before?

19 A No

20 Q Tell me about the minor incident in '01 What
21 happened then?

22 A It was just a vehicle ran a stop sign and hit the
23 side of my vehicle

24 Q How fast was the car going?

25 A I think they estimated 35, 40 miles an hour

1 Q How fast were you going?

2 A About the same

3 Q What happened?

4 A And I was complaining of some minor pain in my
5 neck and back, and they took me to the emergency room,
6 did some x-rays and tests and sent me to a doctor to
7 have it all checked out And I guess for a couple of
8 weeks they did some -- I think I had an injection or two
9 or something like that, and then they released me back
10 to work

11 Q About how long did your treatment last?

12 A Couple of weeks to a month maybe, off and on

13 Q What emergency room did you go to?

14 A Trident

15 Q And what doctor did they send you to to check you
16 out?

17 A I want to say I went to a Douglas Dorn

18 Q What's that last name?

19 A Dorn, D-O-R-N Unfortunately, he's no longer
20 with us From my understanding he had -- he died I
21 don't know why That's who I saw

22 Q Anybody else that you saw?

23 A Dr Z, I think And he's the one that was doing
24 the injections

25 Q Are those injections that he does in the office

1 or where you have to go to the hospital?

2 A No, just at the office

3 Q Were you able to drive yourself home?

4 A Yes

5 Q You think you had one or two injections?

6 A Yeah, I'm not quite sure how many I think it
7 was -- it wasn't too many

8 Q Any other health care providers that you saw for
9 that accident?

10 A None that I recollect

11 Q And you said that was '01?

12 A Yes

13 Q How much time do you think you missed from work?

14 A Maybe a couple of weeks

15 Q How much damage was done to your car?

16 A It was a pickup truck, so, I mean, it busted a
17 window and dented a fender It was still drivable

18 Q Did you sue the driver who hit you?

19 A Well, we tried, but he had no insurance So we
20 used my UIM to take care of my vehicle and my doctor
21 bills

22 Q Who was your UIM through?

23 A I believe it was State Farm at the time

24 Q Once you went back to work -- so you had pain in
25 your neck and your back? When you say back, do you mean

1 low back, mid back? What do you mean about the back?

2 A Just my low back Just like a sprain or a
3 strain Just where the seat belt caught me

4 Q Once you went back to work, how was your low
5 back?

6 A Fine after the treatments Didn't have any more
7 problems

8 Q Once you went back to work, how was your neck?

9 A It was fine

10 Q No other problems there?

11 A No

12 Q And you missed a couple of weeks?

13 A Couple of weeks

14 Q Who paid you while you were out? How did you
15 live?

16 A I just had some savings and some bonds and stocks
17 that I cashed in

18 Q How much did you get from your UIM?

19 A I don't really know the totals I know that at
20 the end of the day I think -- personally I think got --
21 I just don't recollect It wasn't very much, because
22 between the attorneys and what doctors I saw and stuff
23 there wasn't I think maybe \$8,500 at the end of the day

24 Q For you?

25 A Yeah And that wasn't like a one-check deal It

1 was over the course of a couple of weeks I got just to
2 pay bills

3 Q What attorney did you have?

4 A Gary Ling Riesen Law Firm

5 Q What about the other side, did he have a lawyer?

6 A I'm not sure

7 Q You don't know whether he had a lawyer?

8 A I don't know who represented him If he got
9 represented, I don't know I just know he was a
10 76-year-old man We went to traffic court for the
11 incident, and to my understanding, it wasn't the first
12 time he had had a problem with driving with no driver's
13 license and insurance I don't even know if he's still
14 with us today It was quite a few years ago

15 Q What kind of pickup truck did you have?

16 A I had a half-ton Dodge pickup truck

17 Q But you were able to drive home?

18 A Yeah

19 Q And out of that \$8,500, did you have to fix your
20 car or was that already taken care of?

21 A No, it wasn't taken care of That was part of
22 the money to fix the vehicle

23 Q Okay Other than traffic court for the accident,
24 did you have to go for any other court for this
25 accident?

1 A No

2 Q Did you go to the traffic court, too?

3 A Yes

4 Q Why did you go to the traffic court?

5 A I went there to represent myself as a victim of
6 the accident

7 Q Was the other driver given a ticket?

8 A Yes

9 Q Were you given a ticket?

10 A No

11 Q When in '01 was that?

12 A January 1

13 Q What time of day?

14 A I want to say it was approximately 11 00, 12 00
15 maybe

16 Q Noonish?

17 A I believe so, yes I had a load to Tennessee,
18 because I was a truck driver at that time Was on my
19 way to get my rig when the incident happened

20 Q And you missed a couple of weeks I'm not going
21 to hold you to the day, but somewhere around the middle
22 of February you were back to normal?

23 A Yes

24 Q And any problems since from that injury?

25 A No

1 Q Any other auto accidents where you've hurt
2 yourself?

3 A No

4 Q Other than what we've discussed with that
5 accident, have you been a party to a lawsuit, sued
6 somebody, or been sued by somebody?

7 A No

8 Q Have you ever had surgery of any kind?

9 A I've had an appendectomy and a gallbladder I
10 got a two-for-one

11 Q Well, while you're in there

12 A Laparoscopically

13 Q Any other surgeries?

14 A I'm not sure what they call it now They went up
15 -- give me just a second to think what the name of it
16 is They went up my leg and checked my arteries and
17 stuff in my heart to see --

18 Q Like a catheterization?

19 A A catheterization

20 Q When was your heart cath?

21 A I want to say it was February this past year

22 Q '09?

23 A Yes

24 Q Any other surgeries?

25 A None that I can recall

1 Q Any other hospitalizations except what we've
2 already discussed?

3 A Just the heart

4 Q You mentioned x-rays after your auto accident
5 Have you undergone any other objective diagnostic
6 testing, CT scans, x-rays, MRI's?

7 A Just the most recent ones

8 Q The ones after April 21 of '09?

9 A Yes

10 Q Please don't take offense, we ask this of
11 everybody Have you ever been convicted of a crime?

12 A No

13 Q Have you ever been arrested?

14 A No

15 Q Do you have any history of drug abuse, alcoholism
16 or mental illness?

17 A No

18 Q Tell me about your education Where did you go
19 to high school?

20 A R B Stall High School

21 Q Did you finish okay?

22 A Yes

23 Q What did you do after high school?

24 A Just got a job Been working since I was 13

25 Q Not interested in college?

1 A No

2 Q Have you received any formal training, tech
3 school, vocational school, certificates, anything like
4 that?

5 A I'm an eight-and-a-half-year volunteer fire
6 fighter I did four years of CREOC, which is Cooper
7 River Educational Occupational Center, for machine shop
8 I'm trained in HAZMAT, flammables, liquids and gases,
9 high level rescue I'm a certified welder, certified
10 plumber, heavy equipment operator, electrician I've
11 been basically a hands-on guy all my life An
12 automobile technician I'm a master tech I have all
13 nine certifications I've done that for 27 years

14 Q Who are you a fire fighter with?

15 A Harleyville-Ridgeville

16 Q Do you still do that?

17 A No

18 Q When did you stop?

19 A Back in '95, maybe

20 Q So you did it from '87 or so to '95?

21 A Yes

22 Q Why did you stop?

23 A Moved back to Charleston

24 Q Did you talk to Charleston about being a fire
25 fighter?

1 A I did

2 Q And what did they say?

3 A I know Rusty Thomas and I talked with him, and
4 the salaries were real low at the time And we were
5 concerned and concentrating more on the hospitalization
6 of my son, and I didn't think I could dedicate the time
7 to be on call at that time, because I was in and out of
8 the hospital with my son so much at that time That's
9 why we moved back to Charleston

10 Q For your son's hospitalization?

11 A Yes

12 Q Where was he treating?

13 A MUSC

14 Q Tell me about the four-year certificate in
15 machine shop What was that?

16 A It was just basic training in how to use lades
17 and milling machines and whatnot, and this was all
18 through my high school years At the time when I went
19 to school, the school bus drivers were the students at
20 the time, so we were allowed to drive And I was a
21 trade bus driver, so I drove the trade students to
22 trade And I did four years with that career training
23 as a machinist And we -- I won state competition one
24 year, was student of the quarter two or three quarters
25 out of that four-year stint And, actually, it became a

1 business for the school because we had advanced so far
2 There was three of us that we were actually contracting
3 outside work to work to help generate funds for the
4 school

5 Q While you were in high school?

6 A Yes It was a fun time

7 Q What about the HAZMAT, you don't carry it in your
8 truck, right?

9 A No I did -- at one time I was HAZMAT qualified
10 to haul, but I did work for an environmental company
11 It was 3R Environmental, and I was trained in what we
12 call Hazwoper training and HAZMAT disposal and
13 disbursement where we would clean up chemical spills or
14 fuel spills And I used the training I had received as
15 a fire fighter to extend that on out to that type of
16 environment

17 Q So for 3R Environmental you drove the HAZMAT
18 truck?

19 A I drove a tanker truck

20 Q And you also helped clean up the spills?

21 A I was a technician as well

22 Q And when was that?

23 A Mid nineties

24 Q And they're here in Charleston?

25 A They used to be I don't know where they're at

1 now They used to be off Meeting Street Or excuse me,
2 Spruill Avenue

3 Q What about high level rescue, did you do that
4 through the fire fighter?

5 A I did that in the fire department I went to the
6 academy in Columbia for both flammables, liquids and
7 gases, and high level rescue and pump operations

8 Q What about the welding, when did you do that?

9 A That was also in the early nineties I worked
10 for a contractor that was Williams Construction
11 Harleyville is where I was, and they were the cement
12 capitol of the world basically, and they had a lot of
13 work out there So I went out as a welder for them to
14 weld on some of the equipment I did it for a short
15 period, not very long

16 Q You don't weld cement though, right?

17 A No It was their equipment The silos and they
18 had shutdowns where they would go in and fix the
19 equipment that was making the cement

20 Q I don't know a lot about construction, but I
21 didn't think you could weld cement What kind of
22 welders would you use?

23 A AC, stick, what we consider stick welding, arc
24 welding

25 Q What about mig welding?

1 A I have used mig welding in the past

2 Q Which one do you like better?

3 A Mig

4 Q What makes you say that?

5 A It's just an easier type of equipment to use
6 It's a wire-fed spool, you don't have to keep changing
7 the stick, you just go and go and go

8 Q So you're qualified for those types of welding?

9 A Yes

10 Q What other types of welding are there?

11 A That's the only ones that I would be privy to

12 Q So certification -- do you get like a license or
13 do you get a degree? What do you get to be certified?
14 Do you have to take a test?

15 A You have to take a test to be certified

16 Q Is your certification still good?

17 A No They're way expired It's years since I've
18 done any of that

19 Q What about plumbing?

20 A '92, '93 was the last time I did plumbing I
21 worked for American Residential Services, which is now
22 ARS Or excuse me, Atlas Services

23 Q Atlas Services?

24 A At the time I worked there, yes

25 Q But now it's American Residential Services?

1 A Yes They're off Oscar Johnson Drive

2 Q How long did you work for them?

3 A Couple of years Heavy equipment operator I
4 worked on the sewer crew

5 Q What kind of heavy equipment?

6 A We used ditch witches, backhoes, bulldozers

7 Q How did you learn how to do that?

8 A Basically hands on Just picked up watching
9 other people and people letting me use the equipment
10 over the years And family, some of my previous family
11 had farms, and we used some equipment on the farms and
12 it was similar

13 Q What about electrician, were you licensed for
14 that?

15 A I worked under a licensed electrician When I
16 was with Atlas Services again, I moonlighted as an
17 electrician They had several divisions there,
18 air-conditioning, heating and air, and plumbing and
19 electrical And I moonlighted at night with a
20 supervisor there doing electrical work, commercial and
21 residential

22 Q So is your license for that still good?

23 A No

24 Q What about being an automotive master tech,
25 what's involved with that?

1 A Basically, they're ASE certifications You have
2 to take a test, and if you pass a test you become
3 recertified for each section Each section is a
4 specific part of an automobile, whether one would be
5 steering and suspension, one would be engine diagnostic,
6 and each cert you have to take an evaluation test and
7 pass it And if you do You get your certificate And
8 then once you get all eight, then you take a master tech
9 certification, ASE, which I did that back in -- again,
10 that was the early nineties when I took the master tech,
11 and I haven't been re-qualified since then

12 Q How often do you have to re-qualify?

13 A To be honest with you, I don't know, because
14 technology --

15 MR TANENBAUM I need to take a break, if
16 that's okay with you

17 MS ROSS Sure

18 (The proceedings went off the record for a
19 brief period)

20 Q (By Ms Ross) You were explaining about the auto
21 master tech certification You had each section with
22 the parts of the car, there were eight total, and then
23 you got a master certification And then you were
24 talking about getting re-qualified So let's try and
25 pick up what you were telling me about that

1 A I was with the dealership for almost seven years

2 Q Which dealership?

3 A Charleston Motor Company, previously named J D
4 Byrider When they first opened -- it was a new
5 dealership, I went in a month after they opened I had
6 the qualifications already from previous jobs, and
7 through being with them I just -- they never required
8 that I updated or became current with my certifications,
9 because the general manager that I was with, they would
10 normally pay for it, but he saw what I could do and he
11 thought it was a waste of money for me to go get my
12 re-cert's because he already knew what I could do So
13 we never really kept it up And I'm sure you have to do
14 it annually due to the fact that there's technology that
15 keeps changing and newer cars -- you have to know more
16 and more about the technology So is it something that
17 you keep forever? No, you have to be recertified I
18 just don't know how often I never inquired about it in
19 the past seven or eight years So it's something I did
20 have when I worked for Firestone and a few other ones
21 They maintained that you had to be certified and stay
22 current with them

23 Q So we've gone through a couple of jobs that
24 you've held How did you get hooked up with the people
25 at Horizon Motors?

1 A Through a friend that owned an insurance company,
2 State Farm, had another young gentleman that was working
3 at the dealership as a service manager And I wanted to
4 get off the road and be local at home, and he made
5 mention to me about an opportunity to go to work for
6 these people, and I went and put my application in and
7 was hired

8 Q What job did you hold before the one immediately
9 prior to Horizon Motors?

10 A Over-the-road driver, owner-operator

11 Q Did you have anybody in particular that you
12 worked with or contracted with?

13 A Landstar Gemini

14 Q And then how long did you work for Landstar
15 Gemini?

16 A I think I was with them for four, four and a half
17 years

18 Q Let me ask you this, when did you start with
19 Horizon Motors?

20 A In 2002, I believe I was with them for six and
21 a half years So that would be 2002, 2003, 2004 End
22 of 2003, beginning of 2004

23 Q So you started at the end of 2003?

24 A I believe that would be correct

25 Q So you would have been an owner-operator for

1 Landstar Gemini from '99 to '03 or so?

2 A Yes, ma'am

3 Q And who was your supervisor there?

4 A Her first name is Patsy And she got married, so
5 I can't remember her last name

6 Q What was her name when you knew her?

7 A I just called her Patsy I worked for -- give me
8 a second and I'll tell you his name -- Fred Thomas He
9 was the terminal manager

10 Q And about how much money did you make for
11 Landstar Gemini?

12 A The last year I was with them I grossed 130,000,
13 140,000

14 Q How much money did you make at Horizon Motors?

15 A 40,000

16 Q That's a big pay cut What happened there?

17 A Well, we had discussed -- it was a new business
18 starting, and the general manager and I sat down and
19 talked and explained to me that it was a new business,
20 that it would probably take a couple of years, and that
21 I would be promoted to a statute that I could make
22 comparable amounts of advancements where within a couple
23 years I should have been around the \$100,000 mark
24 Things didn't quite work out that way, but that was our
25 discussion And at the time, I had enough assets and

1 stocks and stuff, wanted to spend more time with the
2 family The road life was not there for me anymore
3 And I was willing to sacrifice the income based on the
4 family

5 Q That's a lot of sacrifice on the chance that
6 you're going to be able to make more money at the
7 Horizon Motors place

8 A Yeah

9 Q But you were able to afford that?

10 A At the time, everything was paid for, yes

11 Q What did you do before Landstar Gemini?

12 A I worked for Bridge Terminal Transportation, BTT

13 Q And how long did you work there?

14 A Couple of years I was driving someone else's
15 truck

16 Q So I guess at the Landstar Gemini place you made
17 more money, but you had to pay for your own truck Is
18 that how it worked?

19 A Yes I had to pay all the expenses out of 130,
20 140 I paid fuel, maintenance, truck payment, which was
21 \$1,600 a month, insurance They didn't call it work
22 compensation, they had another name for it, but it was
23 another name that we had to have and we had to pay for
24 that So everything came out of that That's why I
25 said I grossed that So technically I didn't take that

1 money home Through all the expenses and stuff I was
2 lucky probably to net 55,000, 60,000

3 Q How much money did you make for BTT?

4 A I think we were in the neighborhood of 35,000,
5 38,000

6 Q And who was your supervisor there?

7 A I'm sorry, I'm terrible with names My
8 dispatcher's name was Kevin I don't remember his last
9 name His name was Kevin That's all I can remember

10 Q So that would be from '97 to '99 or so?

11 A I believe it was -- it was early nineties I'm
12 not sure of the years

13 Q Where did you work before that?

14 A That was when I was with ARS, Atlas Services at
15 the time

16 Q And who was your supervisor there?

17 A These names are just hitting me The electrical
18 one was Speedy Quick

19 Q Speedy Quick was the name of the company or
20 somebody's name

21 A No, that was his name Speedy Quick was the
22 electrician I worked under He was a supervisor The
23 other gentleman I worked for is no longer there He
24 passed away

25 Q So Speedy Quick worked at ARS?

1 A Yes He was the electrical supervisor that I
2 worked under

3 Q About how much money did you make there?

4 A I think it was \$12 an hour

5 Q That was in '92, '93, would that be right?

6 A Yes, I believe so

7 Q Where did you work before that?

8 A I believe it was with Coastal Elevator

9 Q What did you do for them?

10 A Installed new elevators

11 Q How did you learn how to do that?

12 A They trained me

13 Q How long did you do that?

14 A Maybe couple three years

15 Q How much money did you make there?

16 A I was making, I believe, 13, 14 dollars an hour

17 Q And who was your supervisor there?

18 A Mark Bursey

19 Q Can you spell that

20 A B-U-R-S-E-Y

21 Q Why did you leave ARS to drive the truck?

22 A Just looking for career advancement, more money

23 Q As a general rule, have you been employed since
24 you started working? No long periods of unemployment?

25 A No

1 Q I didn't ask that very clearly Would you say
2 that you have had long periods of unemployment?

3 A I wouldn't say that, no It's just from one job
4 to the next This is the longest I've been unemployed

5 Q Prior to now, what was the longest you had gone
6 while unemployed?

7 A I've never filed for unemployment, if that's what
8 you're asking

9 Q No, that's not what I'm asking Let me ask you
10 this, when did you last work at all for anyone?

11 A It was October 5 I was employed at that time
12 I was not working at the time, but that was the last job
13 I had up until October 5

14 Q Who were you working for on October 5?

15 A Charleston Motor Company

16 Q That's Horizon Motors?

17 A Yes

18 Q When was the last time you actually showed up at
19 a job and worked?

20 A I can't answer that I don't know It was not
21 too long after my doctor visit I was pulled out I'm
22 not sure of the exact date It's probably been at least
23 seven months

24 Q So seven months is the longest you've been
25 without a job since you started working?

1 A It depends on how you word that I was employed
2 up until October 5 where I was laid off

3 Q I'm not trying to trick you I'm just trying to
4 figure out your employment history

5 A Right

6 Q So what types of periods of unemployment have you
7 had since you've been working?

8 A This is the longest -- this is the only one that
9 I know of Maybe a couple two weeks, maybe

10 Q Okay So prior to now, you've generally been
11 working except for maybe two weeks or so?

12 A Yes I've had a job since I was 13, and I
13 haven't stopped since

14 Q Who was your supervisor at Horizon Motors?

15 A James Kageil Regan He's the owner and general
16 manager Or one of the owners

17 Q And you started with them towards the end of '03?

18 A I believe that's correct

19 Q When you were injured, about how much money were
20 you making before taxes?

21 A Roughly 60,000

22 Q And what did you do for them?

23 A I was an auto technician, service manager,
24 building manager, lot manager I wore many hats

25 Q What does being an auto technician involve?

1 A Basically my job was to -- I did transmission
2 work We rebuilt transmissions Pulled them out,
3 rebuilt them, reinstalled them I rebuilt engines
4 Pulled the engines out, rebuilt them, reinstalled them
5 Body work, paint work Every entity of an automobile
6 that needs fixing, that's what I was there to do

7 Q Would you do it or would you just supervise the
8 people who were doing it?

9 A No, I was actually hands on and supervising I
10 was a working manager

11 Q How many employees did you have?

12 A At one time I had nine, and I was down to six
13 when I got injured

14 Q What about service manager, what does that mean?

15 A Basically, all the operations of the service
16 department were under my care Customer issues,
17 repairs, ordering parts, making sure the technicians
18 basically were doing their job, overseeing their jobs to
19 make sure they were being done correctly and as quickly
20 as possible And basically just getting everybody their
21 job for the day

22 Q Did you do payroll?

23 A No, I did not

24 Q Did you do the schedule?

25 A For the work that came into the shop, I was part

1 of that, yes

2 Q What about building manager, what does that mean?

3 A I took care of all the building maintenance
4 Basically, all the gutters had to be cleaned, painting,
5 making sure the shop was always presentable and the
6 showroom was presentable, making sure the parking lot
7 stayed clean, making sure the lot -- the cars were
8 prepped and parked like they were supposed to be
9 Lights, fixtures up in the showroom, any kind of
10 electrical issues in the building New work stations
11 that needed to be installed for employees, new
12 employees I assembled those Just basically taking
13 care of the building, any kind of maintenance the
14 building required

15 Q Now, did you do that yourself?

16 A Yes

17 Q Or did you hire people?

18 A Both

19 Q What about lot manager, what does that mean?

20 A Basically, I was in charge of making sure that --
21 completed what we called recon cars or cars that were
22 through the process of being reconditioned to go up
23 front, that they were ready to test drive, they had
24 fuel, they were clean There was a certain organization
25 they had to be on the lot Every morning we had to do a

1 car count, make sure all our cars were there I
2 participated in that I was in charge of making sure
3 that all the cars were accounted for on a daily basis to
4 make sure none of them were missing I was in charge of
5 new cars that came in, making sure they were entered
6 into the system to be reconditioned The whole process
7 from the car hauler -- actually, from the auction,
8 because I did go to the auction in my cars as well So
9 we would go from the purchase of the used cars to the
10 lot and the hauler, from the hauler to the back, the
11 reconditioning process, and then to the sales lot And
12 I was in charge of making sure all that happened

13 Q Did you like it there?

14 A Yes

15 Q So your last day worked was not too long after
16 you went to the doctor, is that what you said?

17 A It wasn't too far after that, yes, ma'am

18 Q Okay But you were still employed through 10/5?

19 A Yes

20 Q Tell me what happened with that

21 A I asked the doctors that did work on me if it was
22 possible that I could try to go back to work, because my
23 income was limited and it was a big cut in pay for me
24 And I was having added stress I guess you could say from
25 being at home and just trying to get back to work I

1 wanted to go back to work And I asked the doctors to
2 do what they had to do to see if they could get me back
3 to work

4 Q Which doctor is this?

5 A I seen several of them One of them was Dr
6 Ernst and Dr Aymond and Dr Greg Jones And I asked
7 them -- I pleaded with them to do whatever they had to
8 do to try and fix me so I could get back to work for a
9 lot of reasons One was fear of losing my job, because
10 I was so sewed in to the dealership with so many
11 different tasks that I was a very big part of the
12 operations of the dealership And was worried about
13 losing my job because of the injury I sustained And
14 they had made an arrangement where I would go back on
15 October 5, light duty, to try and exercise some of the
16 stuff that they had done some work on And when I went
17 in and approached the general manager about them wanting
18 me to come back and test out some of the work that they
19 did to see how far along I had come, he said there was
20 no job for me, said he couldn't afford me anymore and
21 laid me off

22 Q And who was that?

23 A James Regan It was very troubling to me Seven
24 years is a long time to put in And, unfortunately, I
25 injured myself at work It wasn't on purpose, wasn't

1 something I planned We had a situation where Suzuki
2 was looking for a new dealership location, and I was
3 approached to clean the dealership up in the back and
4 make sure it was suitable for the clients to come in and
5 look and see how our facility worked and it was clean
6 And that's when the injury happened You know, moving
7 equipment and getting everything along And we had a
8 piece of apparatus that wouldn't start, and that's what
9 happened

10 Q So who did you talk to about returning to work on
11 10/5, light duty?

12 A James Regan

13 Q And you talked to him over the telephone or in
14 person?

15 A In person He said he had no light duty work for
16 me

17 Q No, but I mean, before, how did you know to go to
18 work on 10/5?

19 A I was told that -- the doctors that I talked to
20 had made an arrangement for me to test out some of the
21 work that they had done

22 Q Who told you that?

23 A Dr Greg Jones

24 Q So you go to Dr Jones, you say I'd like to go
25 back to work Dr Jones says, I'll let you go back to

1 light duty --

2 A Yes, and try it

3 Q Okay When did you have a conversation with
4 Horizon Motors about going back?

5 A It was October 5

6 Q This is all October 5?

7 A That was the day that we were supposed to go
8 back The general manager was not aware that I was
9 coming in until I showed up October 5

10 Q Was somebody else aware that you were coming in?

11 A Not that I know of

12 Q What I'm trying to figure out is if showing back
13 up on 10/5 was prearranged or whether you just came in
14 to work How did that go down?

15 A It was not prearranged for that particular date
16 When I got through with the doctor visit that day, it
17 was midweek, I believe, and after the week went by, I
18 said I'd like to go in And he said, well, why didn't
19 you go in Monday

20 Q That's what Dr Jones said?

21 A Yes, and talk to your manager, and see if there's
22 any light duty work available that we can go in and try
23 to see if some of the measures that they had done, see
24 if anything is working the way it's supposed to And at
25 that time, I was told there was nothing there for me

1 Q Okay Did you call ahead of Monday and say, hey,
2 I'm going to come in on Monday?

3 A I don't recall I don't believe I talked to Mr
4 Regan until that particular day

5 Q Did you talk to anybody else?

6 A Not that I recall

7 Q And so how long had you been out of work by that
8 time?

9 A I would say it would have had to have been six
10 months maybe, five, six months Not quite sure of the
11 timeframe, but I know it was at least five months

12 Q Since your last day working at Horizon Motors,
13 how many conversations did you have with anybody at
14 Horizon Motors?

15 A I've had several with the general manager,
16 because I leased a piece of property from him So we
17 talked extensively as to the care I was getting and what
18 they were doing The whole incident at work has not
19 been a very happy discussion between either one of us
20 Mr Regan -- at that time, the office manager, Glen Hair
21 -- I had my injury, and I went to him and told him that
22 I thought I had hurt myself And at the time I had
23 Aflac and was going to use my Aflac to be treated or go
24 out for a couple of days, and one of the questions on
25 the Aflac application was, was the injury at work? And

1 I put yes And they asked if I had filed a work comp
2 claim, and I had put no And they said until that was
3 done, they couldn't do anything because it happened at
4 work At the time, the general manager, Jim Regan, was
5 in Florida buying cars, and I went to my office manager
6 and told him, and we called him on the phone and told
7 him what Aflac had said And his comment back was, I
8 don't want you to file a workers' comp until I call my
9 carrier, because I want to see if it's going to jack my
10 rate And I said okay And that was the end of that
11 discussion He told me I had to wait until he got back
12 from Florida before we could discuss it any further
13 And I went and saw my doctor

14 Q Okay Let me back up So the last day that you
15 worked, whatever day that was, how did that go down that
16 you didn't come back the next day? What happened that
17 day?

18 A The doctor told me that I had a torn rotator
19 cuff And I may be mistaken or I don't know if we
20 talked about Dr Arnau When I saw Dr Arnau, he
21 referred me to Dr Limbo's office where she sent me to
22 have some MRI's and some films done And at the time,
23 she did a lower lumbar injection, sent me out to have my
24 shoulder looked at to do the films and said I had a torn
25 rotator cuff and some kind of impinged something And

1 that's when the low back and the neck came into play
2 From the incident the PCP -- I told him, Dr Arnau, that
3 I was complaining of both my shoulder, neck and back,
4 and went to Dr Lembo to be looked at as a specialist
5 She referred me out for the films We received the
6 films back, she sent me and had the -- I guess it's an
7 epidural block Not an epidural block, but some kind of
8 block down my back Didn't work Wanted to do another
9 one And at the time, I was going through the insurance
10 battle with what doctor to see, they sent me over to Dr
11 Ernst and Dr Aymond They did more tests, more films,
12 gave me shots of cortisone in the arm and just follow-up
13 and follow-up No surgical procedures on my shoulder

14 Q Let me back up The last day that you worked,
15 what happened that day and why didn't you go back the
16 next day?

17 A Dr Lembo pulled me off work status

18 Q So Dr Lembo took you out of work?

19 A She had me as light duty, and Jim Regan said
20 there was no light duty work for me

21 Q Okay Did Dr Lembo give you a piece of paper
22 that had your restrictions on it?

23 A Yes Nothing over 10 pounds No bending or
24 stooping No anything over my head from my shoulder

25 Q Okay And so you had that piece of paper Were

1 you done for the day when you went and saw Dr Lembo
2 that day or did you have to go back to work?

3 A No When I started seeing Dr Lembo, I was no
4 longer working because the general manager told me I had
5 -- I had a day off that day, and when I saw Dr Lembo,
6 she gave me the piece of paper and I took it back the
7 following day, and that's when Mr Regan was back in
8 town and told me that he had no light duty work

9 Q Okay Let's back up even further You got hurt,
10 what day was that?

11 A I'm not sure

12 Q That's all right That's why I'm pulling out my
13 little --

14 A I want to say it was a Thursday, but I may be
15 wrong

16 Q If I got Tuesday, would that sound all right to
17 you?

18 A If that's the day it says it is It's been quite
19 a while

20 Q Okay So you worked Monday like normal What
21 day did you come in?

22 A I'm not sure what that -- when you said what day
23 did I come in --

24 Q What time did you come in?

25 A I came in -- I'm usually there by 7 30, 8 00

1 every morning

2 Q Okay So you came in, you worked on Monday, no
3 problems?

4 A No problems

5 Q You went back home?

6 A Yes

7 Q You came in on Tuesday?

8 A Yes

9 Q What time of day did you hurt yourself?

10 A I believe it was mid afternoon

11 Q So mid afternoon, like noonish?

12 A Around 2 00 I would say

13 Q So around 2 00 you hurt your shoulder, then what
14 do you do?

15 A I basically finished out what I could through the
16 day and noticed that I was not feeling very well, and my
17 shoulder was really starting to hurt really bad My
18 neck and back were starting to throb and give me some
19 problems And I went to my office manager the next day,
20 that morning, and told him that I believe I had hurt
21 myself the day before

22 Q Okay Hang on So that happens at 2 00, you
23 finish the day Do you tell anybody on the 21st that
24 you hurt yourself?

25 A Yes There was a gentleman working with me at

1 the time

2 Q Who was that?

3 A DaWoan, D-A-W-O-A-N, Hugee And he was our
4 detailer at the time

5 Q And you told him?

6 A Yes He was very aware He was the one that
7 actually asked me to come help him with the piece of
8 equipment that wouldn't crank

9 Q Other than Mr Hugee, you didn't tell anybody
10 that day that you hurt yourself?

11 A Not that I recall

12 Q So you go in the next morning and you talk to the
13 office manager Is that Glen Hair?

14 A Glen Hair

15 Q So do you go in first thing? What time did you
16 go in?

17 A He usually didn't get there until 9 00 or 10 00
18 I'm not sure what time of day it was, because his
19 schedule kind of ranged about up and down And with me,
20 I'm very bad with time, I know it was in the morning
21 hours I'm not sure exactly what the time was, and I
22 went in and explained to him that I thought I hurt
23 myself And we were going to file the Aflac paperwork
24 and I needed to talk to the assistant office manager to
25 file the paperwork, and that's when we found out about

1 all the other stuff that we had --

2 Q Okay So you go to Glen Hair and you say what,
3 word for word if you can

4 A I believe I hurt my shoulder and my back and just
5 pulled some muscle -- at the time I thought it was a
6 pulled muscle in my arm and back and neck, just a big
7 strain

8 Q And what did Glen say?

9 A He said, well, you know, you'll have to call Jim
10 and tell him And I was like, okay And he was out of
11 town at the time He spends a lot of time in Florida,
12 so we tried to call Jim and let him know

13 Q Right then on the telephone?

14 A Yes

15 Q Did you do it over speaker phone? Did you do it
16 on your cell phone?

17 A No, he actually called -- when I say he, Glen
18 Hair called Jim, and talking to me in his office, told
19 Jim of the situation that occurred And at that time is
20 when Jim said that he needed to call his insurance
21 company and see if it was going to jack his rate before
22 I filed any kind of work comp claim

23 Q Okay So Glen was the one talking to Jim over
24 the telephone?

25 A Yes

1 Q And Glen was relaying this to you?

2 A Yes

3 Q So you didn't talk to Jim that day?

4 A Specifically, no

5 Q But you were in the room for the entire
6 conversation between Jim and Glen?

7 A Yes And Jim didn't sound like he was very happy
8 about trying to file a work comp claim at all

9 Q How long was the phone call with Jim?

10 A Probably 30 minutes

11 Q What else did you talk about?

12 A Just what happened, how it happened, where it
13 happened, what was I doing Just going through the
14 scenario and discussing back and forth and arguing with
15 him about we need to file a claim And he said I had to
16 wait until he got back to Charleston

17 Q When was he coming back to Charleston?

18 A The next day

19 Q So then Glen hung up the phone, and what happened
20 after that?

21 A It was a personal conversation between me and
22 Glen Basically, it was not going to be good for me,
23 that Jim was very upset that I was hurt at work, and he
24 was concerned about his rates being jacked And Glen
25 looked at me and said, you know, it's going to be a

1 battle And I was like, well, I got hurt at work It's
2 a simple situation Glen was basically telling me what
3 paperwork I needed to file, but he wasn't allowed to do
4 anything until Jim got back They didn't initiate any
5 conversations, they didn't call anybody, they didn't
6 tell anybody As a matter of fact, when Jim did get
7 back, I went to him and explained to him the situation,
8 Aflac wouldn't cover it because it was a work-related
9 incident I then went to -- Glen wasn't there that day,
10 so I went to Jennifer Thomas, which was the assistant
11 office manager I went to her because Jim told me to go
12 ahead and file workman's comp And I went in and gave
13 her all the information, told her who I needed to see

14 Q What do you mean, told her who you needed to see?

15 A The doctor I was going to see, my PCP, and let
16 him know what's going on, I need to file a claim And
17 Mr Regan went in to Jennifer, told her that she was not
18 to file it for me, that she was to give me the phone
19 number to the insurance company and I was to make the
20 claim

21 Q And he said that in front of you?

22 A Yes That she did not have time, she was too
23 busy doing other things for him

24 Q And what did Jennifer say?

25 A Of course, she did what he told her to do, and

1 she was sorry she couldn't help me I called the
2 insurance company and talked to the lady at the
3 insurance company She inquired as to why I was making
4 the claim and not somebody in the office

5 Q Who did you talk to?

6 A I don't remember her name And she transferred
7 me to another lady and I talked to her, and she asked me
8 why I was calling her and not the office manager I
9 explained to her the situation, and she said, well,
10 that's how the procedure is done And I said, I
11 understand that, but this is the only way I can get the
12 claim filed And she took a mental note and probably
13 wrote down some notes of what I was telling her and
14 asked me what was my most urgent problem At the time,
15 I couldn't even move my arm I told them my arm needed
16 to be addressed right away, and she said she would start
17 the file I told her my back was hurting me, my neck
18 was hurting me She asked me if I had any other
19 accidents at work or any kind of medical problems at
20 work and I told her no, that this all happened at the
21 same time And I had mentioned to her that I had an MVA
22 in '01, but I was no longer being treated for that, this
23 was a new injury I was trying to be as honest as I
24 could with the information they were asking me about
25 And she said, okay, she would start the file and they

1 would be in touch And that's what we did

2 Q Any other conversations with Jennifer Thomas?

3 A In regards to the claim?

4 Q In regards to your injury, how it was being
5 handled, anything relating to workers' comp or your
6 injury?

7 A No

8 Q Any other conversations with Glen Hair relating
9 to your injury, the extent of your problems, how it was
10 getting filed, anything related to this claim at all?

11 A Yes He knew that the claim was filed, and
12 through conversation he knew what I was being treated
13 for

14 Q Did you talk to him?

15 A Yes I kept him on an updated -- while I was
16 still there about the light duty -- I had to go to him
17 because he was the office manager So any kind of new
18 information we received from any of the doctors, he was
19 privy to up until I didn't work there, when I was
20 actually pulled off the job Because Glen was there
21 when Jim said there was no light duty work here He
22 said you need to basically not come back until you're
23 fixed or until you can resume full duty status

24 Q So you injured yourself on April 21, you went and
25 told Glen on the 22nd?

1 A Yes

2 Q Did you work at all on the 22nd?

3 A Yes

4 Q Did you work a full day?

5 MR TANENBAUM I need to take a 10-minute
6 break

7 (The proceedings went off the record for a
8 brief period)

9 Q (By Ms Ross) So you were injured on Tuesday the
10 21st, you went on Wednesday the 22nd and had the
11 conversation that we've been talking about about filing
12 this case under workers' comp, and then I was asking you
13 if you worked all day on the 22nd

14 A I believe I did off and on, yeah I think
15 physically I didn't do anything, I was just there

16 Q Okay And did you go to work Thursday the 23rd?

17 A Yes

18 Q What about Friday the 24th?

19 A Yes

20 Q How many more days did you work?

21 A I would say off and on until the 14th of the next
22 month

23 Q Until May 14?

24 A Yes

25 Q What happened on May 14?

1 A That's when I finally went to my PCP I couldn't
2 take the pain anymore

3 Q Did you seek any medical treatment between the
4 21st and May 14?

5 A No I was just trying to do filings and see what
6 the coverages were And it was arguing basically with
7 Jim on how to proceed into filing the case

8 Q So that week of the accident, have you told me
9 about all the conversations you had with Jim, Glen and
10 Jennifer, or were there any more conversations?

11 A I believe that's an accurate statement that I
12 have no recollection of any other type of communications
13 with them other than what we've talked about

14 MR TANENBAUM Let me ask you something
15 It's 12 45 and we started at 11 00, thereabouts I'm a
16 little hungry I don't know about you all I was
17 wondering what your time frame was

18 MS ROSS Maybe 45 minutes

19 MR TANENBAUM You need another 45 minutes?

20 MS ROSS Probably 45, maybe less

21 MR TANENBAUM I can't last that long for
22 food I don't know what you all -- maybe you had
23 something to eat before you came here, I didn't I
24 don't want to be rude and eat food in the room while you
25 all are doing the deposition

1 MS ROSS I don't have objection to that
2 (The proceedings went off the record for a
3 brief period)

4 Q (By Ms Ross) It's 12 49, and we're going to go
5 back on the record I think I've already asked you if
6 you had had any other conversations with Jennifer Thomas
7 about your work injury, it being filed, how you were
8 doing, anything along those lines, and you said you
9 hadn't had any other ones with her, is that right?

10 A That's correct

11 Q Okay Then we started talking about other
12 conversations with Glen Hair

13 A Basically just giving follow-ups on the doctor
14 visits and where we were at with that

15 Q And what did he say?

16 A He just made note of it and he would refer any
17 comments back to Jim, give him updates of what was going
18 on

19 Q Any other conversations with Glen Hair?

20 A No, ma'am

21 Q Now, conversation with Jim Regan, what other
22 conversations with Jim Regan did you have?

23 A Just the same conversations that we've already
24 talked about where I've gone in and told them they
25 wanted me to come back and try light duty status and he

1 not having any light duty work

2 Q I'm still having trouble, and I'm not trying to
3 trick you, I'm trying to get this clear, when was that
4 conversation again? You said that Dr Lembo had put you
5 on light duty?

6 A It had to have been -- I saw Dr Arnau on the
7 14th, the same day I saw Dr Lembo, and she put me on
8 restrictions the same day So I would assume it would
9 have been on the 15th when I carried the paperwork back
10 and gave it to Glen Because I don't believe Jim was
11 there that day, and per a phone conversation Jim called
12 and says, look, I don't have any light duty work for
13 you

14 Q So you talked to Jim over the telephone?

15 A I'm assuming -- yes, I talked to him several
16 times on the telephone prior to that, but I believe that
17 conversation that initiated the light duty was a
18 conversation on the telephone while he was in Florida
19 buying cars

20 Q And that was on the 14th or 15th?

21 A The 15th, because I had seen the doctors on the
22 14th

23 Q So you saw the doctors on the 14th, you took the
24 note to Glen on the 15th?

25 A Yes

1 Q Jim wasn't there, and then later that day you
2 spoke to Jim over the telephone?

3 A I believe so, yes

4 Q Was that in Glen's office or were you at home or
5 anywhere else?

6 A I want to say it was in Glen's office

7 Q Was Glen present?

8 A I believe he was, yes Most any conversation I
9 ever had in his office he was always present

10 Q Did you talk to Glen over the telephone or did
11 Glen do that?

12 A I know there was a conversation -- I don't know
13 what exact time it was I just know there was a
14 conversation where I had told him they had put me on
15 light duty status

16 Q And then that's when he said there was no light
17 duty?

18 A He had -- from the start he had not had any light
19 duty work There was never a discussion of any type of
20 coming back and trying to work, do any of my tasks that
21 I did It was just, I just don't have any light duty
22 work for you, Kevin

23 Q Okay So he had told you that prior to the 15th?

24 A No He told me when I -- I didn't know, because
25 the 14th is when I knew that I was going to be on light

1 duty

2 Q So you talked to him on the 15th He says, I
3 don't have light duty for you I never had light duty
4 for you

5 A He said, I don't have any light duty for you

6 Q And then what did you say?

7 A I asked him what he wanted me to do And,
8 basically, if I have no light duty work, you need to go
9 ahead and file the work comp claim That's when all
10 that finally started happening

11 Q And what did Jim say?

12 A Basically go ahead and file the claim

13 Q And what did you say?

14 A I was getting -- well, I was getting kind of
15 boisterous, because I was in a lot of pain and was
16 having to use my insurance to try and cover some of it
17 and everybody was asking me if it was work-related, and
18 I kept telling them yes And I was having trouble with
19 the general manager approving the ability for me to
20 file

21 Q Is that Jim that you're talking about?

22 A Yes He was not happy with the fact that a work
23 comp claim was filed against his insurance company I
24 suppose if I was a businessman in his situation I
25 probably wouldn't like it either because it means your

1 rates are going to go up But I was hurt at work, it
2 was a legitimate claim, and I needed to get fixed or be
3 seen by a doctor And I had paid for insurance, I had
4 paid for Aflac out of my paycheck, and neither one of
5 those would cover it because it was a work-related
6 injury So I had no alternative but to file a claim
7 And any delays in that filing would obviously be more
8 pain and suffering for me, and I didn't like it So I
9 voiced my opinion, and we ended up getting the claim
10 filed Although, I had to file it of his approval, he
11 would not assist me in getting it filed

12 Q Who is Jim's boss?

13 A He's a third partner of Charleston Motor Company
14 The silent partner is Paul Halsey, Halsey Litigation

15 Q Who is the other one?

16 A His son, Brett Halsey, who also works as the
17 finance manager for Charleston Motor Company

18 Q Did you go talk to Brett about the problems you
19 were having with Jim?

20 A Maybe in a brief conversation I had with him, and
21 he basically told me, Kevin, you got to do what you got
22 to do If it was a work comp injury, you need to file
23 it as work comp He and Glen -- I called Paul and told
24 him of the situation I was having

25 Q What did Paul say? What did you say, word for

1 word, if you can?

2 A Well, I didn't actually get to talk to Paul

3 Q Who did you talk to?

4 A I talked to his paralegal, Lisa, and explained to
5 her the situation I was having And she said if it
6 happened at work, you need to file the claim So based
7 on that fact, I went back to Jim and told him this is
8 what needed to happen, and he approved the filing and we
9 filed

10 Q Did you tell Jim that you had talked to Paul's
11 paralegal and with Brett?

12 A I don't believe that conversation ever came up

13 Q Did you tell Jim that you talked to Paul's
14 paralegal and with Brett?

15 A His paralegal, her name is Lisa Duncan She's a
16 -- we have a history where I went to high school with
17 her sister So I know her basically not only through
18 the business but as a past relationship friend

19 Q Did you date her or her sister?

20 A No Wasn't that fortunate

21 Q Any other conversations with Paul or Brett about
22 anything related to your injury or your workers' comp
23 claim or filing your workers' comp claim?

24 A I never was able to speak to Paul

25 Q Any other conversations with Lisa or Brett?

1 A Not since -- not from what I just told you

2 Q So you talked to Jim over the telephone on the
3 15th, and he said, I don't have any light duty for And
4 then what did you say, word for word, if you can?

5 A I asked him what it meant, what did he want me to
6 do

7 Q Okay

8 A And he basically said, don't come back until
9 you're ready to come back full duty

10 Q Did you leave right then?

11 A Yes

12 Q Did you have any other conversations with Jim
13 about this injury?

14 A That particular day, no He knows the processes
15 I've been going through and he's constantly called me,
16 not recently, but after the incident happened and the
17 progress that I was getting, what treatments, what
18 doctors, when, and how my -- what it looked like for
19 return date And I told him I couldn't give him that
20 because I didn't know how long the treatments were going
21 to take

22 Q Did he sound like he wanted you to come back to
23 work?

24 A At that time

25 Q Any other conversations with Jim?

1 A None other than I talked to you about We had
2 personal business to take care of where I had leased a
3 house from him, but nothing relating to my injury
4 Nothing but just updating him on my progress

5 Q Any other personal business with Jim besides
6 leasing the house from him?

7 A No

8 Q How did you end up leasing a house from your
9 boss?

10 A Again, me being a craftsman and tradesman, the
11 opportunity came to be that there was two properties
12 available to renovate And I approached him and asked
13 him if he wanted to make an investment into some
14 investment properties And at the time, I was working
15 very long hours My wife at the time was volunteering
16 as a vet tech in Mt Pleasant from 6 00 to 2 00 in the
17 morning, and it was a convenient location My in-laws
18 lived across the street, and the seller was desperate
19 She was a single lady And I approached him about
20 purchasing the properties and renovating them, and I'd
21 move in one so that I could be close to my in-laws to
22 watch my kids after school so I could help take care and
23 facilitate more at the dealership And I've basically
24 been in those houses the whole time I worked for the
25 dealership

1 Q So is that your house on Pennsylvania Avenue?

2 A Yes, ma'am

3 Q How are the renovations coming?

4 A They were finished -- we worked on them before I
5 moved in I think I moved in December of -- I'm not
6 sure of the year

7 Q But the renovations have you been finished for
8 many years?

9 A Yes They've been done for better than six
10 years

11 Q So the purpose was to --

12 A They were investment properties for both of us

13 Q What's the percentage of investment?

14 A Well, I did all the work He put up the money,
15 and at the end of the day if the properties were sold,
16 we would split the investments in thirds But it looks
17 like that's subject to change now since this has
18 happened

19 Q Who would get the other third?

20 A It was never a contract It was all word of
21 mouth There was never any signed legal documents that
22 that was what we were going to do And he has since
23 advised me that he's putting the houses up on the
24 market, and he's got appraisers that will be in the area
25 this week to do appraisals on the properties

1 Q So if he was putting up the money and you did all
2 the work in exchange to get a third of the value of the
3 house back out, why wouldn't you want to write that
4 down?

5 A Well, I mean, at the time we were doing it as --
6 I figured he was an honest businessman He was a
7 friend It was something that it was going to help me,
8 help him, basically And call me ignorant, I didn't
9 think at the time it would be a legal battle or
10 anything So it's my loss, his gain

11 Q So you said you were going to split the
12 investment in thirds Who was getting the other third?

13 A Brett Halsey He and Jim put up the money, and I
14 did the renovations along with some friends and family

15 Q Feel free to eat whenever Lunch has arrived
16 So other than what you've told me, no other
17 conversations with Jim about your work injury, returning
18 to work, how you're doing, anything like that?

19 A Not since October 5

20 Q Let me ask you this you said it was May 15 when
21 you got the work restrictions from --

22 A Dr Lembo

23 Q -- Dr Lembo And then you went home and you
24 didn't go back to work And then on October 5, you
25 asked to be released from work?

1 A No I asked to be released from the doctor so I
2 could go back to work

3 Q Right You asked to be released from the doctor
4 so you could go back to work, and then you showed up on
5 the 5th and asked for light duty?

6 A I explained to him that the doctors wanted to
7 give me a trial basis and exercise some of the stuff
8 they did so I could do as a trial basis to see if I
9 could function in the capacity that I was before the
10 accident And at that time, he told me he didn't have
11 any work for me and he could not afford for me to come
12 back to work, because I had been out for, I guess, an
13 extensive amount of time in his eyes And he had made
14 arrangements and replaced me

15 Q Do you think that was reasonable?

16 A No

17 Q What makes you say that?

18 A I put seven years into that place, and I worked
19 six and seven days a week, a lot of overtime I did a
20 lot for him I made considerable amounts of sacrifice
21 to be in that position, time lost from my family, and
22 encouraged myself to do the best I could for the
23 dealership's benefit And I can give you many
24 opportunities where I spent the night at the dealership
25 through -- they were building a Toyota next door, and a

1 crane had pulled the power off the building And
2 because the lot was unsecured I stayed there overnight
3 with generators running with no extra income We had a
4 lot of theft in the area, and I would go and do
5 surveillance at night with no compensation Installed a
6 security fence or had a company come out and had to
7 clear the property for the installation of a security
8 fence All this was selfless dedication to my job and
9 to him and to the survival of our dealership And I did
10 a lot of work for them There's no question that
11 anybody you would ask at that dealership what I did,
12 they would tell you I was always there and I was the
13 go-to guy, because nobody else was hardly ever there as
14 far as managers I was the only manager that was
15 probably there 95 percent of the time and handled most
16 every problem that was there

17 Q So after you did all that and then Jim wouldn't
18 let you come back --

19 A I was upset

20 Q Were you angry?

21 A Yes Disappointed

22 Q Have you looked for any work elsewhere?

23 A I'm not able to

24 Q What makes you say that?

25 A Well, I don't think I could be -- in the

1 condition and the health that I'm in right now, I don't
2 believe that I could be a loyal, dedicated, everyday,
3 eight hours a day guy I don't think that I would be
4 able to function the way that I did Although, I was
5 asked to return back to work on October Since then
6 I've tried doing small things around the house and
7 whatnot, and I'm just not physically able to keep up
8 I'm constantly finding myself in a lot of pain

9 Now that all the injections that I received early
10 on after the incident has worn off, I'm not able to
11 sleep at night So I'm being deprived of sleep My
12 shoulder is absolutely killing me I'm very -- I was a
13 very active person As you can tell in my history, I'm
14 a hands-on guy I'm a laborer, been a laborer all my
15 life I'm very active with my kids We do a lot of
16 boating and skiing and jet skiing and a lot of -- I was
17 a race car driver early in my life I worked on a
18 Winston Cup team early in my life I did a lot of
19 things that, unfortunately, I can't do anymore And one
20 of the things that I enjoyed doing was working on cars
21 And I'm not able to comfortably do that anymore because
22 you're bending and stooping over cars, you're lifting
23 heavy cylinder heads, you're pulling transmissions out,
24 and I'm not able to do that

25 And nobody wants to hire anybody that's got a

1 back injury or shoulder injury, and even if they did, I
2 wouldn't be a person who could be depended upon to be
3 there every day or when they request I be there at this
4 time I'm just not physically able Just by knowing
5 what I'm doing around the house with the pain and
6 deprivation of sleep Just the pain -- I'm in constant
7 pain all the time, and it's just taking its mental toll
8 on me to where I just -- my drive is gone I don't know
9 how else to explain it These doctors aren't miracle
10 workers I know that But I'm not a big meds taker I
11 don't like taking medicines And I don't believe in
12 taking narcotics just to make the pain go away, although
13 it may ease I eat a box of Goody Powders a month just
14 to try and keep my head from hurting so much
15 I guess the doctors are telling me that the neck
16 injury is a contribution of my headaches I have
17 migraine headaches, and I didn't have them prior to
18 this Now I get them so bad that I put myself in a dark
19 room and try and be able to sleep I sleep with four
20 pillows What activities I do do, whether it be sitting
21 here talking with you ladies or trying to stand
22 somewhere I pay for it severely with my lower back
23 That's why I haven't taken my jacket off You ought to
24 see me how I have to put a jacket on because I can't
25 lift my arm up above my head It feels like somebody is

1 driving a shish kabob into my shoulder And it's been
2 going on now for quite some time, and it's frustrating I
3 can't get a reasonable answer or get it fixed And I
4 don't want to take a risk in trying to do something at
5 work and slip and fall again and fix it where they can't
6 fix it or -- I just don't feel I would be a person of
7 value at this particular time I can't be -- I was very
8 loyal I was there every day Whatever they needed I
9 did Whatever they wanted I did, personal and business
10 And I just don't know from day-to-day where I am

11 I have my good days and bad days, and my bad days
12 are really bad And I seem to have quite a few of those
13 now And when the weather is like it is right now, it's
14 even worse The cold has really zapped me And I'm
15 just concerned I mean, it's my livelihood It's what
16 I've done all my life I don't know what else to do

17 Q So have you looked for work anywhere?

18 A To be honest with you I haven't, because this has
19 been an ongoing work comp case And I've looked on the
20 Internet and looked at some stuff that if we can make me
21 manageable or whatever the doctors feel I can do, if
22 there's a position for me available and it's something I
23 can do, I would like to try I don't want to become a
24 dependant Everybody is dependent on me I'm the sole
25 provider for my family I don't know how I could stress

1 the fact how important it is for me to get back to a job
2 and provide for my family

3 Q I don't understand if it's important to you to
4 get back to a job to provide for your family, why
5 haven't you looked for work within your restrictions?

6 A Because I'm in too much pain, and I wouldn't be
7 able to -- most jobs would require you to be there at a
8 certain time, certain day, so many days, so many hours,
9 and I can't commit myself to that because on a daily
10 basis I don't feel that I'm physically able to devote
11 myself to that type of time And no business is going
12 to say, if you feel good today come in And I just
13 don't feel good

14 Q Tell me how you hurt yourself

15 A That particular day we were supposed to be under
16 review of the Suzuki dealership looking for sites, and
17 we were moving a lot of equipment and cleaning And the
18 injury that I sustained that's most prominent was when I
19 was -- there's a -- they're calling it a weed eater, but
20 it wasn't a weed eater It was a commercial blower to
21 blow the parking lot down And at the time I didn't
22 know it, but one of the mechanics had put watered gas in
23 this piece of equipment and they couldn't get it
24 started So they came to me and asked me to take a look
25 at it And I must have pulled on that thing off and on

1 for 20 minutes And it's a real long cord It's got a
2 big 15-pound flywheel in it, and I pulled and pulled and
3 pulled, and it wouldn't crank And we realized there
4 was an issue with the water in the gas And we changed
5 it out, put gas in it I pulled it one more time and I
6 felt all this burning everywhere and a lot of pain, you
7 know, in my lower back And my right shoulder was
8 absolutely killing me, and I figured I just pulled some
9 muscles at the time

10 And the gentleman that was there with me, he
11 basically pushed me out of the way and told me to get up
12 from the equipment, that I had done enough, and he took
13 it over and went out and blew the parking lot down, and
14 that was the end of the day And I basically went to my
15 office and sat down and just, you know, just kind of did
16 what I had to do paperwork-wise the rest of the day I
17 didn't try to do any more strenuous activities because
18 everything was hurting me And I remember that
19 afternoon I got a bad headache at the end of the day I
20 went home, took a warm shower, took a couple Excedrin
21 Migraine and went to bed, woke up the next day and
22 couldn't hardly move And then that's when I realized I
23 had done more than just pulled a muscle

24 Q So you're right-handed?

25 A Yes

1 Q And you were pulling on your right hand?

2 A Yes

3 Q And holding the --

4 A Machine with my left

5 Q -- blower on the left?

6 A With the left foot and left arm, yes

7 Q Was it on the floor?

8 A Yes

9 Q Or on the ground?

10 A Yes

11 Q Was there anybody with you there except for --
12 what was the name of the person who was with you?

13 A DaWoan Hugee

14 Q Anybody else around besides DaWoan?

15 A I'm sure there were, but the only one I remember
16 commenting about it at the time was him He was there
17 with me the whole time

18 Q And you felt immediate pain where?

19 A My right shoulder and my neck and lower back

20 Q And then you got a headache that night?

21 A Yeah

22 Q Any other symptoms that you felt?

23 A Just very sore and just sharp, stinging pain in
24 my lower back and right shoulder And a lot of
25 stiffness and soreness in my neck

1 Q Where was the sharp, stinging pain?

2 A My low back and right shoulder The best way I
3 can describe it, it felt like somebody was sticking a
4 hot poker in the joint and turning it

5 Q Which joint?

6 A Right shoulder And I was getting these sharp
7 firings through my left leg And like my leg was
8 asleep, tingling

9 Q We're running rather low on time, so I think
10 everybody will be glad when I say that I'm not going to
11 take you through all the medical treatment that you've
12 received, but I do want to get the name of all medical
13 providers that you've seen in the last 15 years for any
14 reason We've gotten Arnau, we've got Lembo, we've got
15 Ernst and Aymond

16 A Dr Highsmith

17 Q Okay Who else?

18 A Dr Greg Jones

19 Q Okay

20 A My cardiologist was in February He was at
21 Roper I can't remember his name He's the only other
22 one And I don't know who the doctor was that did my
23 appendectomy They were people I didn't normally know
24 And that was it

25 Q Okay So all medical health care providers,

1 doctors, chiropractors, physical therapists, everybody
2 that you've seen in the last 15 years was Dr Arnau, Dr
3 Lembo, Dr Ernst, Dr Aymond, Dr Highsmith, Greg Jones,
4 your cardiologist, and whoever did your appendectomy

5 A Dr Dorn

6 Q Dorn?

7 A Yeah

8 Q Anybody else?

9 A None that I know of

10 Q And while you were treating with all these
11 doctors, you've told them all your complaints?

12 A Just whatever the situation was, you know, at
13 that time

14 Q You didn't hold anything back from your doctors,
15 did you?

16 A No

17 Q So you told them everything you recall feeling at
18 the time?

19 A Yes

20 Q And you were 100 percent truthful at all times?

21 A Yes

22 Q On a scale of one to 10 where one is no pain and
23 10 is we have to stop the deposition and call an
24 ambulance to take you to the emergency room, what is
25 your level of pain right now?

1 A About a seven

2 Q Now I'm going to break it down What's the pain
3 in your neck right now?

4 A Mild

5 Q One to 10

6 A Probably a four

7 Q Your low back?

8 A That's up in the seven or eight

9 Q Shoulder?

10 A That's the same thing, seven or eight

11 Q What about on your worst days, same scale Neck?

12 A On my worst days, my neck, it's up there Seven

13 Q Low back?

14 A It's the same, eight Sometimes a nine where I

15 -- I've had to go into the emergency room on two
16 occasions to have shots for migraines

17 Q Okay Well, that would be a health care
18 provider

19 A That would be Dr Arnau's office

20 Q Dr Arnau's office did that for you?

21 A Yes I told them I was complaining of that
22 because of the neck spasms and the shoulder

23 Q What hospital did you go to?

24 A I went to Trident, and I would get a shot in the
25 keister

1 Q What about your shoulder, worst day, same scale

2 A It's an everyday scale It's seven, eight every
3 day I can't hardly use it About the only thing I can
4 do is barely brush my teeth I can't even comb my hair

5 Q So with your right shoulder, how high do you
6 think you can lift your arm?

7 A I mean, I can go probably 30 percent before it
8 starts hurting from a low position I would say that's
9 a rough estimate I'm not sure how to gauge that

10 Q What about strength in your arm?

11 A It's obviously weak If I were to fall and try
12 to catch myself with my right arm, I wouldn't be able to
13 do it, if that's an indication

14 Q What makes you say that it's weak? What have you
15 tried to do with the shoulder that you can't do?

16 A It's so painful when I move it, and when I move
17 it, try and get it above my shoulder line or if I lay on
18 it or try to open a door or push a door open, it's just
19 a sharp, stabbing pain in my arm

20 Q What about range of motion in your arm?

21 A It's very limited I can make any -- most any
22 low movement without lifting anything, but anything
23 shoulder level or higher is just not practical It's
24 not even possible Not without suffering the effects of
25 a lot of pain

1 Q What about the good days, what's your neck?

2 A Good days in the neck, I mean, I feel a lot of
3 tightness, a lot of burning I would say it's probably
4 a four or five

5 Q Good days for your back

6 A I don't think I have any good days for my back
7 It would probably be a six or seven I'm constantly
8 feeling pain, some days just worse than others

9 Q Good days for your shoulder

10 A Same thing

11 Q What medications are you taking?

12 A I'm not taking anything right now

13 Q When is the last time you saw a doctor?

14 A I believe it was last week or a week ago

15 Q Who did you see?

16 A Dr Poletti

17 Q That would be a health care provider you've seen
18 in the last 15 years, now wouldn't it be?

19 A I'm sorry, yes He was just a recent one I
20 totally forgot about him

21 Q How did you get to Dr Poletti?

22 A I was referred to him

23 Q What did Dr Poletti tell you?

24 A I have an L5 disc that's ruptured

25 Q Ruptured? Is that what he told you?

1 A His exact words to me were you have a blown disc
2 on L5, and that's why you're having the pain in your low
3 back

4 Q What else did he say?

5 A He said he could take care of it He needed to
6 do a procedure called a discogram where he could go in
7 and see if there was a surgical procedure that could be
8 done to correct the problem The disc is actually in
9 the canal pressing up against the nerves in my legs
10 that's giving me the pain

11 Q What else did he tell you?

12 A That was pretty much it

13 Q When was that appointment?

14 A I'm so terrible with days I want to say it was
15 Monday last week I'm not sure of the date

16 Q Any other health care providers that you've seen
17 for any reason in the last 10 years?

18 A None that I recall That's pretty much it

19 Q When is your next appointment with anyone?

20 A At this time, I have none scheduled

21 Q I don't want to make this repetitive, but I want
22 to make sure that it's clear, so here we go, other than
23 what we've talked about today, have you ever had any
24 prior injury to your neck?

25 A Just the incident in '01 Nothing in the last 10

1 years

2 Q So in the last 10 years, you've never had any
3 trouble with your neck at all?

4 A No, ma'am

5 Q Have you done anything since to your neck that
6 might cause injury?

7 A No, ma'am

8 Q Other than what we've talked about today, have
9 you had a prior injury to your low back?

10 A Other than that '01 incident, no

11 Q Again, nothing in 10 years?

12 A Nothing in 10 years

13 Q So in the last 10 years, you've never had any
14 trouble with it at all?

15 A No, ma'am

16 Q Have you done anything since to your low back
17 which might cause injury?

18 A No, ma'am

19 Q Right shoulder, any prior injury to your right
20 shoulder?

21 A Not at all

22 Q Never had any trouble with it at all?

23 A None

24 Q Have you done anything since to your right
25 shoulder which might cause injury?

1 A No, ma'am

2 Q You're still getting checks from the workers'
3 comp carrier?

4 A Yes, ma'am

5 Q As a general rule, do those come pretty
6 regularly?

7 A As a general rule, yes

8 Q They're not going to be perfect, but as a general
9 rule, they're all right?

10 A Yes, I am getting them

11 Q Have you applied for unemployment?

12 A No, I have not

13 Q Feel free to eat What about Social Security?

14 A No, I have not

15 Q Any other type of disability insurance?

16 A No, I have not

17 Q What happened with the Aflac?

18 A Basically, the carrier told me that it had to be
19 a work comp claim

20 Q They won't cover it because it's work-related?

21 A Yes

22 Q Have you received any income for any reason other
23 than your workers' comp benefits since you left Horizon
24 Motors?

25 A No, I have not

1 Q Have you worked anywhere since you left Horizon
2 Motors?

3 A No, I have not

4 Q What kind of car do you have?

5 A I have a 2008 Toyota pickup truck

6 Q When did you buy that?

7 A I bought it from my parents back last year

8 Q When last year?

9 A It was February

10 Q So tell me about what you do for fun

11 A I'm very active I'm a water rat I love to go
12 boating

13 Q Where do you go boat?

14 A We usually go to Santee Campground and do some
15 camping

16 Q Did you also say jet ski?

17 A Yes My son and daughter have jet skis And I'm
18 getting to the point in my life where I enjoy watching
19 them have fun now So I get on the boat and sit on the
20 boat and watch them do all that dangerous stuff they do,
21 diving them under water and all that stuff that I wish I
22 would have had when I was their age

23 Q Do you think you're able to jet ski now?

24 A At this point in time, no, absolutely not

25 Q What about boat?

1 A I probably wouldn't try it

2 Q When was the last time you think you went out on
3 a boat?

4 A It was last year, just before the accident We
5 probably went out one or two times in the cold weather
6 Nothing in the water And I've got a friend that owns a
7 340 Sundancer I've rode with him a couple times on his
8 big boat It's almost a 50-footer, so it's just like
9 sitting on land

10 Q Is that a sailboat?

11 A No, it's a cabin cruiser

12 Q What about jet ski, when was the last time you
13 jet skied?

14 MR TANENBAUM I got people sitting out
15 there waiting

16 MS ROSS We're coming along

17 MR TANENBAUM How much longer are you
18 going to be?

19 MS ROSS Probably no more than 15 minutes,
20 hopefully 10

21 MR TANENBAUM I'm going to have to call
22 time on this thing We started at 11 00 It's now
23 1 30 We're happy to reconvene this at such time as
24 counsel sees fit with no notice or minimum notice, but
25 it's now been an hour and a half and -- well, two and a

1 half hours, and it's just way past the time -- she
2 didn't notify it was going to be this extensive of a
3 deposition I was expecting between 45 minutes and an
4 hour It's now been two and a half hours, and I'm
5 calling time of the deposition I will allow four
6 minutes to wrap up, after which time if you want to
7 reconvene, we'll do it at your convenience Thank you

8 MS ROSS I will also put on the record
9 that I arrived in the building at 10 46 Mr Hartman
10 came back, was also in the lobby with me, came back at
11 10 54 The court reporter and I were invited back into
12 the deposition room at 11 08 The court reporter had to
13 set up We weren't permitted to start until 11 13

14 MR TANENBAUM Duly noted

15 MS ROSS And, also, we were not notified
16 that there were any other scheduling difficulties, and
17 we're doing the best we can here But I will do what I
18 can in the four minutes and I will be happy to reconvene
19 in my office since I've made the journey once

20 Q (By Ms Ross) So as we were saying, jet skiing,
21 when was the last time you went out on a jet ski?

22 A Sometime beginning of last year

23 Q 2009?

24 A Yes

25 Q Not since you were injured?

1 A No, absolutely not

2 Q You think you could jet ski now?

3 A No

4 Q Did I already ask you, do you think you could go
5 out on the boat now?

6 A Yes

7 Q I asked you that or you think you can?

8 A I cannot go out on the boat right now

9 MR TANENBAUM Let me add this, we do not
10 consent to reconvene at her office We'll reconvene
11 here or she can take it over the telephone or she can
12 try to wrap up in four minutes As an additional
13 possibility, I may be able to meet with my clients at
14 1 30, and that may only take about five minutes, and
15 maybe we could restart the deposition after that This
16 is an accommodation Just trying to get along

17 MS ROSS We'll see where we get

18 Q (By Ms Ross) Do you have any other health
19 problems affecting your ability to work?

20 A None

21 Q Anything you think I should know, the
22 employer/carrier should know or the Commissioner should
23 know that I haven't already covered?

24 A I don't believe so

25 Q Any questions about the questions I've already

1 asked you?

2 A No, ma'am

3 Q Do you want to add to, delete from, or change any
4 of the answers you've given?

5 A No, ma'am

6 Q And you've told the truth, the whole truth, and
7 nothing but the truth?

8 A Yes, ma'am

9 Q What else for fun do you like to do that you're
10 not able to do anymore?

11 A Just basically I restored antique cars and did
12 some work around the house, you know, small home
13 improvements and whatnot, that I can't do anymore

14 Q Any conversations with anyone at Horizon Motors
15 about your work injury that we haven't already covered?

16 A Not that we haven't already covered, no

17 MS ROSS Pursuant to Alan's request, we
18 can -- we will hold the rest of the deposition in
19 abeyance to reconvene if necessary

20 MR TANENBAUM Well, let's talk about that
21 Do you think we're going to need to reconvene, because I
22 can meet with this client and we can keep going But I
23 do need a five-minute break

24 MS ROSS I can go to the bathroom and you
25 can meet with your client and let's meet back up in five

1 minutes Truthfully, I probably have about six minutes
2 left, if that

3 MR TANENBAUM That will work

4 (The proceedings went off the record for a
5 brief period)

6 Q (Ms Ross) Back on the record I've got 1 45,
7 and I think I just have a few more questions If you
8 could be specific about the symptoms that you're having
9 right now, let's start with your shoulder

10 A It's burning, stinging, throbbing The pain is
11 essentially located deep in the joint It just feels
12 like somebody is just sticking a stake in it

13 Q And has that been present since April 21?

14 A It became gradually -- I would say it's worsened

15 Q What has caused it to worsen?

16 A I haven't done anything physical other than just
17 your normal routine stuff I would just say that the
18 cortisone shot they gave me or whatever they did to it,
19 the numbing medications wore off and now I'm having --
20 it feels like there's -- it's almost like a grinding
21 sensation sometimes and a popping

22 Q When you say that you haven't done anything
23 physical, what do you mean?

24 A I haven't done any -- anything that I did like I
25 did at work, I haven't -- I was prone to lifting heavy

1 objects and throwing the ball with the dogs and frisbee
2 with the dogs, stuff like that I haven't done anything
3 like that or any kind of strenuous work to -- I mean,
4 like lifting boat tongues off a truck or something like
5 that, I haven't done anything like that Basically, I
6 pay people to do everything now I don't do any yard
7 work I tried some small yard work after the doctors
8 wanted me to exercise some stuff, and just wasn't able
9 to do anything So I started paying people to do it
10 just to keep the City off of me

11 Q Since April 21 of '09, have you not thrown the
12 ball or frisbee or lifted anything heavy?

13 A No, it just hurts too bad

14 Q No lifting boat tongues, no yard work?

15 A It's just normal, everyday -- I may pick up a
16 trash can with my other hand and pull it to the thing if
17 I can, but they're on wheels and they're empty and it's
18 not very heavy

19 Q What about your neck, tell me what symptoms you
20 feel in that

21 A It just feels very tight It feels -- it's just
22 like a burning, tingling sensation

23 Q Does it go down into either arm?

24 A I can feel it go across my right shoulder blade
25 into my arm and wrap around the outside of my arm and

1 the base of my head Normally, if I don't take an
2 Asprin or something like that and lay down for a little
3 bit or try to lay down, it will turn into a headache
4 I've learned to be able to get to a point where I know
5 I've either been up too much or I've done too much
6 Before I get to that point of no return, I try and take
7 care of it before I get there, because it's not a very
8 comfortable feeling

9 Q The symptoms that you're feeling, have they been
10 present since April 21 of '09?

11 A Yes, off and on Some days real severe and some
12 days not as severe

13 Q Do you think they've gotten better, worse, or
14 stayed the same?

15 A No, I think they've gotten a little worse

16 Q Anything else going on with your neck?

17 A No

18 Q How about your low back?

19 A It's definitely gotten worse just from -- I don't
20 know how to explain it I just know that my left leg
21 numbness and tingling and the sharp, stinging pain and
22 the uncomfortable nights trying to sleep and not being
23 able to sleep, constantly trying to find that one
24 position where I can get comfortable, whether I'm trying
25 to sit on a Lazy Boy chair and sit on a pillow and try

1 to find that happy spot where I can at least tolerate
2 what I'm doing to try and forget about it But there's
3 not a day that goes by that I don't have discomfort
4 Some days are so bad they're unbearable, and I just have
5 to deal with it

6 Q Your sharp pain in your left leg, numbness and
7 tingling, has that been present since April 21 of '09?

8 A Yes

9 Q Any other body parts that you injured in this
10 accident?

11 A Right shoulder, neck and back is the only thing
12 I'm complaining of

13 Q No other injuries?

14 A No

15 Q Any other symptoms that we haven't already
16 covered?

17 A I think we've just about covered it all

18 Q We've been here a while And then just to recap
19 since we're finishing up, any questions about the
20 questions that I've asked you?

21 A No

22 Q I know I already asked you this, but then I asked
23 you some new questions So now I have to ask you this
24 again Do you want to add to, delete from, or change
25 any of the answers that you've given?

1 A Not that I can think, no

2 Q And you've told the truth, the whole truth, and
3 nothing but the truth?

4 A Everything I recollect, yes

5 MS ROSS Okay That was six minutes
6 Anything from you?

7 MR TANENBAUM I don't have any questions

8 (End of deposition)

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REPORTER'S CERTIFICATE

I do hereby certify that the witness whose attached deposition was taken before me in the aforementioned matter was, by me, first duly sworn to testify the truth, the whole truth, and nothing but the truth, that the testimony contained in said deposition was, by me, reduced to writing in the presence of said witness by means of computerized transcription. The said deposition is a true and accurate transcript of the whole of the testimony given by the said witness, as aforesaid.

I do further certify that I am not connected by blood or marriage with any of the parties or their attorneys or agents, and that I am not an employee of either of them, nor interested directly or indirectly in the matter of controversy either as counsel, attorney, agent or otherwise.

Sworn to and subscribed before me this the 11th day of February 2010

Dana K Olive
Court Reporter and Notary Public
My Commission Expires 4/1/2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS COMPENSATION
COMMISSION

WCC File No 907061

John Kevin Hartman

Appellant

v

Horizon Motors Inc ,

Employer

and

Montgomery Insurance

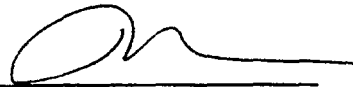
Respondents

NOTICE OF APPEAL

John Kevin Hartman appeals the decision of the South Carolina Workers
Compensation Commission dated June 29 2011 Appellant received a copy of this
decision on June 29, 2011

July 27 2011

ALAN M TANENBAUM, P A



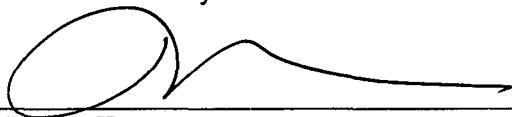
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CERTIFICATE OF COUNSEL

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

May 1, 2012

A handwritten signature in black ink, appearing to read 'Alan M. Tanenbaum', is written over a horizontal line.

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THE SOUTH CAROLINA COURT OF APPEALS

John Kevin Hartman, Employee,

Appellant,

V

Horizon Motors, Inc , Employer and
Montgomery Insurance, Carrier,

Respondents

Appellate Panel
Richland County
South Carolina Workers' Compensation Case No 2009-WC-40-07061

PROOF OF SERVICE

I hereby certify that three copies of the Record On Appeal were served upon
the party(s) below by hand delivery on the date below addressed as follows

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RECEIVED
MAY 15 2012
SC Court of Appeals

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5-11, 2012
Charleston, South Carolina