

1 THE COURT: That's fine. That will help.

2 THE WITNESS: So right now, in order -- in
3 order for Mr. Jaffe to remain stationary, I can lean on
4 him and he resists. If I want to move him, I have to
5 overcome his inertia, and I have to overcome the
6 stability inherent in him from his stance held there by
7 1 g. So by pushing him, I make him move. I have now
8 introduced a component of acceleration that he probably
9 chose not to overcome, but it's overcomeable depending
10 on how hard you push.

11 And the same thing is true in terms of
12 inducing g's on yourself. When you plop down in a
13 seat, you create roughly 2, 2 1/2 g's, on your system.
14 If I give him a slap on his back, that's about 3 g's.
15 So these are comparable accelerations that can be
16 imparted from depending on what you do.

17 BY MR. JAFFE:

18 Q. So then when you just pushed me and moved me
19 to my side, did you have to impose more than 1 g of
20 force to do that?

21 A. Yes.

22 Q. Okay. So, in other words, to overcome my
23 position, my standing --

24 A. Yes.

25 Q. -- more than 1 g has to be used. Otherwise,

1 less than a g, and I'm going to stay right where I am.

2 A. Well, it's more complex than that, but simply
3 speaking, that's true.

4 Q. Okay. Is there a difference -- well, okay.
5 You know what, thank you. Why don't you sit down,
6 Doctor.

7 Let's put it in terms -- some other terms.
8 So, for example, if we were going to be backing our car
9 into a parking space and there's a car stop, and we
10 know there's going to be a car stop at some point, but
11 we hit the car stop and we're moving at 5 miles an
12 hour --

13 A. Right.

14 Q. -- would you explain the physics of that.

15 A. So the car stop is very analogous to a
16 barrier. It stops you and it stops you now. The car
17 stop isn't going to be deformed, but you are going to
18 feel a jolt. I mean, your tires might take it without
19 deformation, but you're going to feel a jolt. And if
20 you're backing up at 5 miles an hour and you suddenly
21 get stopped, you've now incurred a 5-mile-an-hour
22 change in velocity. Which it now goes to the same
23 procedures that I indicated will be around on the order
24 of -- we said 7 g's was 3 -- 7-miles-an-hour delta-v
25 was 3 g's; 5-mile-an-hour change in velocity will be

1 around 2 1/2 g's, 2 to 2 1/2.

2 Q. Okay. Now, do you have an opinion as to the
3 amount of g-forces imposed upon the plaintiff in the
4 collision that we're here for?

5 A. Yeah. Roughly 3 g's, more or less.

6 Q. Now, yesterday -- you know what, let's --
7 let's go -- let's go to the next one.

8 Okay. Did you have an opportunity to compare
9 the damage of the plaintiff's vehicle versus the damage
10 in the IIHS and BRC crash test?

11 A. Yes. I have already stated so, yes.

12 Q. Right. And does that damage comparison allow
13 you to draw an -- an analogous comparison to the forces
14 on her?

15 A. Right, it does.

16 Q. So were the forces that you just said, this
17 3 g's of force, consistent with the same type of test
18 performed at roughly the same speed as this accident
19 that was done by IIHS and BRC?

20 A. Yes, it did.

21 Q. Now, let's take a look at the photographs.
22 You have got those in front of you. Are those the
23 photographs you have seen?

24 A. Yes.

25 Q. And are those consistent with that same type

1 of barrier force?

2 (Clarification by the Reporter.)

3 THE WITNESS: Pole impact, p-o-l-e. This is
4 a focal area of damage. It's not broadly distributed.

5 BY MR. JAFFE:

6 Q. Now, sir, you're aware that Dr. Croft told us
7 that the plaintiff experienced between 14 and 25 g's of
8 force on her neck in this accident and between 18 and
9 19.5 g's on her back?

10 A. Yes.

11 Q. Do you agree or disagree with that?

12 A. I disagree with that.

13 Q. Okay. I told the jury in my opening
14 statement that you were going to do an analysis
15 regarding g-forces in a plane crash.

16 A. Yes.

17 MR. JAFFE: Your Honor, we have disclosed in
18 our ninth supplement a videotape of a plane crash which
19 was measured in g-forces which we would like to show
20 excerpts of right now.

21 THE COURT: Any objection?

22 MR. CLOWARD: No.

23 MR. JAFFE: And I believe -- was the video
24 marked as an exhibit?

25 MR. SMITH: Yes.

1 MR. JAFFE: I just want to move that exhibit
2 into evidence, Your Honor..

3 THE COURT: Any objection to them admitting
4 into evidence?

5 MR. CLOWARD: No.

6 THE COURT: Do you know which exhibit it is?

7 MR. JAFFE: We're going to check it right
8 now. Well, it's what? M?

9 MR. SMITH: FF.

10 MR. JAFFE: FF? Double F?

11 MR. SMITH: Correct.

12 MR. JAFFE: French fry? FF.

13 THE COURT: Double F will be admitted.

14 MR. JAFFE: Thank you, sir.

15 (Whereupon, Defendant's Exhibit FF was
16 admitted into evidence.)

17 BY MR. JAFFE:

18 Q. Now, tell us what we're about to see, Doc.

19 A. Sometime in 2012 the Discovery Channel wanted
20 to do a -- demonstrate what happens during a crash test
21 of a Boeing 727. So they bought one instrumented with
22 various accelerometers, things that measure
23 acceleration, including a series of Hybrid III dummies
24 both in what would be the first class section and then
25 further back in the middle and in the -- way in the

1 back. And then they got a couple of pilots to take
2 this up and had permission from the Mexican government
3 to land in some desert strip to crash it.

4 And the Boeing 727, as you may know, has
5 that -- that staircase you can lower at the back end.
6 So once the pilots had it on course, there was an
7 accompanying plane that took over remote control of the
8 plane, and the pilots bailed out via the stair step and
9 parachuted down. And now the plane's flying on its
10 own.

11 This crash test was shown back in
12 October 2012 and aired many, many, many times. And a
13 whole bunch of people have seen it and some of you
14 might have.

15 MR. JAFFE: Go ahead, Greg. Let's play it.

16 (Whereupon video deposition was played.)

17 THE WITNESS: So here's the companion plane
18 you see in the background that is now remote control
19 steering the Boeing 727.

20 MR. JAFFE: What happened? Hit it again.

21 (Whereupon video deposition was played.)

22 MR. CLOWARD: Judge, can we stop that? May
23 we approach?

24 THE COURT: Pause it.

25 MR. JAFFE: Pause it.

1 THE COURT: Come on up.

2 (Whereupon a brief discussion was
3 held at the bench.)

4 THE COURT: Overruled.

5 MR. JAFFE: You want to finish playing it.
6 Because of the format it was in, it's just going to
7 take a second to find the approximate spot it was in,
8 Judge. Thank you.

9 BY MR. JAFFE:

10 Q. While he's doing that, Dr. Smith, explain to
11 us -- explain for us, what is the significance of this
12 video?

13 A. Yeah. The video had instrumented dummies in
14 it that were doing measurements during the crash. That
15 heretofore has not been done, and if the military has
16 done that, they never let the secret out. But in
17 crashing this plane, the producers of the program
18 wanted to show how high the g's can go and, also, what
19 g's are survivable in a crash like this.

20 MR. JAFFE: Okay. We have -- we have got the
21 spot now. So let's finish playing it. Go ahead.

22 (Whereupon video deposition was played.)

23 BY MR. JAFFE:

24 Q. Okay. Now, Doctor, did we -- did you want
25 to -- did you point out this video to illustrate what

1 the amount of g-forces generally are?

2 A. Yes. Also, what is considered injurious and
3 what is considered essentially noninjurious. That last
4 group of people in the tail section at about 6 g's
5 which is, by my calculation, still twice what
6 Ms. Seastrand received, as they pointed out, is no more
7 than a minor fender bender that is essentially without
8 injuries.

9 Q. Now, in light of this test, would you explain
10 for us how it is that you -- well, what you believe --
11 believe about Dr. Croft's analysis of the g-forces.

12 A. Yeah. Dr. Croft's analysis shows that he
13 believes there were 14 to 25 g's at work on
14 Ms. Seastrand. That is more than twice -- at least the
15 25 g level, that is more than twice what the section in
16 first class saw in this Boeing 727 crash. And --

17 Q. And as many as --

18 A. -- it's not credible.

19 Q. And as many as four times the forces of the
20 people in the rear?

21 A. Correct, yes.

22 Q. Do you know how it is that Dr. Croft
23 generated his 24 -- 14 to 25 and 18 to 19.5 g analysis?

24 A. Yes.

25 Q. Okay. Now, I want to make sure that we

1 understand a particular term because it was thrown
2 about yesterday, and I want to make sure that we all
3 understand it.

4 So tell us what crash pulse is and why that
5 is so important for this type of an analysis.

6 A. The crash pulse is the contact phase that two
7 cars have in a collision.

8 Q. From the moment they make contact till the
9 moment they disconnect?

10 A. From the moment they make contact till the
11 moment they disengage, that is the crash pulse. That's
12 when the transfer of energy and forces takes place.

13 Q. Now, when I was questioning Dr. Croft about
14 this yesterday, I was asking him about crash pulse for
15 the purposes of the exact same computer program that
16 you relied on PC-Crash and MADYMO. That's M-A-D-Y-M-O.

17 So how does crash pulse apply when it comes
18 to using those programs to determine the forces a
19 person experiences in an accident?

20 A. We don't -- just a small correction. We
21 don't use PC-Crash because it's too easily manipulated,
22 but we know how it is supposed to be used.

23 The PC-Crash program needs to have input
24 parameters. It needs to have velocities of vehicles,
25 and it needs to be assigned a contact phase or crash

1 pulse. The creators of the PC-Crash program in a paper
2 referenced by Dr. Croft written by a fellow named
3 Steffan and some other folks, state in their paper
4 quite clearly that the crash pulse needs to be selected
5 from between 60 to 140 milliseconds or, on average,
6 100 milliseconds, which is about the crash pulse of
7 many ordinary collisions, including staged ones.

8 MR. JAFFE: Your Honor, at this time, I would
9 like to move into evidence Exhibits CC and BB. BB, the
10 PC-Crash operating manual, a portion that was disclosed
11 on February 4, 2012. And D -- CC being a paper by the
12 Society of Automotive Engineers regarding -- entitled
13 "Validation of the Coupled PC-CRASH - MADYMO Occupant
14 Simulation Model."

15 MR. CLOWARD: Object as to foundation.

16 MR. JAFFE: Your Honor, those were disclosed
17 February 4, 2012, defense supplement 9 without
18 objection.

19 THE COURT: Come on up for a minute, guys.

20 (Whereupon a brief discussion was
21 held at the bench.)

22 MR. JAFFE: Your Honor, at this point, I will
23 reserve moving those two documents into evidence.

24 THE COURT: Thank you.

25 /////

1 BY MR. JAFFE:

2 Q. Dr. Smith, now, with respect to those two
3 documents, Dr. Croft testified yesterday that it is the
4 systems that generate the crash pulse not a number that
5 is put in; is that correct?

6 A. That's not correct.

7 Q. And the documents that you are relying on to
8 say that he's wrong, is one of them the PC-Crash
9 operating manual?

10 A. That's correct.

11 Q. The actual manufacturer and designer of the
12 program, their own operating manual.

13 A. That's correct.

14 Q. The other one, is that from the Society of
15 Automotive Engineers?

16 A. That's also correct.

17 Q. Now, let's talk about the relationship of the
18 crash pulse, because what was the crash pulse that he
19 used?

20 A. He used 13 milliseconds.

21 Q. Now, that means that the -- does that mean
22 that under his scenario, the vehicles were only
23 touching for 13 milliseconds?

24 A. That's correct.

25 Q. Where the -- the literature says you should

1 use 60 to 140. That's why you used 100 as the
2 midpoint.

3 A. That's correct.

4 Q. If they're touching for a longer period of
5 time, what does that mean?

6 A. It lowers -- it lowers the accelerations.
7 The longer you can stretch out the contact phase, the
8 lower the accelerations become.

9 Q. Now, reverse. If you use a shorter contact
10 phase, what does that mean?

11 A. It increases the accelerations because
12 they're inversely related.

13 Q. So, in other words, does that mean the other
14 vehicle would had to have been going a lot faster to
15 produce only 13 milliseconds of contact?

16 A. No. Even that won't do it. You cannot
17 shorten the contact phase because of crush. It takes
18 time to crush metal.

19 Q. So then, by 13 milliseconds, does that
20 produce the inordinately high g-forces?

21 A. Exactly.

22 Q. And when you ran this program and your
23 engineers ran this program, you used the midpoint of
24 that recommended by the manufacturer?

25 A. That's correct.

1 Q. And -- and what were the g-forces that you
2 came out with?

3 A. We came down to 3 g's.

4 Q. And that is consistent with what the Society
5 of Automotive Engineer recommends as well?

6 A. Correct.

7 Q. Now, let's talk about a couple of other
8 things. Dr. Croft yesterday talked about a concept of
9 rebound and restitution.

10 Would you explain what that is and how that
11 plays into the overall picture.

12 A. Right. So restitution is defined for the
13 cars. We run the car into a fixed barrier, it bounces
14 back some, that is a restitution. If you run two cars
15 into each other, there's a crumple zone, and then the
16 crumple zone expands and the cars separate, that is a
17 restitution. So it's -- it's a rebound of a car
18 effect. Coefficient of restitutions for low-level
19 rear-end collisions like these run anywhere between .3
20 and .4.

21 Q. Now -- I'm sorry. Did I interrupt you, sir?

22 A. No.

23 Q. So then understanding what restitution is,
24 what I'd like you to do is this: Can you explain for
25 us, tell us, in an accident involving 10 miles an hour,

1 3 g's of force, whatever it may very well be, what
2 happens to our spines from the point of contact until
3 everything comes to rest?

4 A. Right. That was published in a paper by BRC
5 back in 1995. But it comes down to this: When the
6 individual in the struck vehicle is seated looking
7 forward and the striking car causes the struck car to
8 move forward, the individual begins to push or begins
9 to get pushed by the cushion of the seat until there is
10 engagement and intercept by the headrest. And then
11 from that, as the car slows, it will relax and come
12 forward.

13 Two things that happen to the spine. The
14 neck is straightened until it's intercepted by this
15 headrest. It can't go any further. But also, there is
16 uncoiling of the thoracolumbar spine. The
17 thoracolumbar spine is also S curved. And as the
18 cushion pushes the torso forward, that spine also
19 straightens out. Okay.

20 So this all happens in less than a blink of
21 an eye. A blink of an eye is 300 milliseconds. This
22 all occurs in about 100 milliseconds. When the
23 uncoiling of the thoracolumbar spine occurs, it pulls
24 on the ligaments and muscles of the paraspinal
25 musculature, and that can induce a sprain or a strain.

1 That is the low back.

2 When the neck straightens out, it also
3 creates a pulling on the ligaments and the musculature
4 in the paracervical soft tissues, and that is -- can
5 create a sprain or strain. So that's what we are
6 getting out of this event in terms of soft tissue
7 injuries.

8 Q. In the world of biomechanics where you
9 combine the medicine and engineering, is there a term
10 called "mechanism of injury"?

11 A. Yes.

12 Q. Would you explain to us what mechanism of
13 injury is, sir.

14 A. The mechanism of injury in the context of
15 what I have just described is that the forces on the
16 muscles exceeded the tolerance value of the muscles to
17 resist it. The tolerance value when you exceed it,
18 results in injury. That is the mechanism of injury.

19 Q. Does the same principle apply to other
20 anatomic features of the spine such as our disks and
21 our facets?

22 A. Yes, it does.

23 Q. Now, have you and has BRC studied within
24 these types of accidents a mechanism of injury and
25 whether there are mechanisms of injury to the various

1 spinal elements?

2 A. Yes, we have.

3 Q. Doctor, do you have an opinion as to whether
4 in the accident we're here for, there was a sufficient
5 mechanism of injury to produce an injury to the
6 cervical or lumbar disks?

7 A. I have made an opinion on that.

8 Q. And what is your opinion?

9 A. And there is insufficient forces to overcome
10 the threshold value for the tolerance to injury by the
11 disk or by the bony vertebral bodies.

12 Q. Sir, is that stated to a reasonable degree of
13 probability within your fields of expertise?

14 A. That is correct.

15 MR. JAFFE: Your Honor, may I approach?

16 THE COURT: Sure.

17 (Whereupon a brief discussion was
18 held at the bench.)

19 THE COURT: You know what, folks, when you
20 guys do this, sometimes the attorneys need to do that
21 too. We're going to take a quick break.

22 You're instructed not to talk with each other
23 or with anyone else, about any subject or issue
24 connected with this trial. You are not to read, watch,
25 or listen to any report of or commentary on the trial

1 by any person connected with this case or by any medium
2 of information, including, without limitation,
3 newspapers, television, the Internet, or radio. You
4 are not to conduct any research on your own, which
5 means you cannot talk with others, Tweet others, text
6 others, Google issues, or conduct any other kind of
7 book or computer research with regard to any issue,
8 party, witness, or attorney, involved in this case.
9 You're not to form or express any opinion on any
10 subject connected with this trial until the case is
11 finally submitted to you.

12 I need a break, too, so take about ten
13 minutes. See you back.

14 THE BAILIFF: All rise.

15 (Whereupon jury exited the courtroom.)

16 THE COURT: We're outside the presence. We
17 need to put anything on the record now? You want to
18 take a break and come back?

19 MR. JAFFE: I know, Harry. I want to make
20 sure if you need to use the men's room, go ahead, but I
21 want to make sure, don't come over and talk with us.
22 You're still on the stand.

23 THE WITNESS: All right.

24 THE COURT: Nothing else outside the
25 presence?

1 MR. CLOWARD: No, Judge.

2 MR. JAFFE: No, I don't think so right now,
3 sir.

4 THE COURT: Off the record.

5 (Whereupon a short recess was taken.)

6 THE BAILIFF: Ready for the jury?

7 THE COURT: Yes.

8 THE BAILIFF: All rise.

9 (Whereupon jury entered the courtroom.)

10 THE COURT: Go ahead and be seated. Welcome
11 back, folks. Back on the record, Case 636515.

12 Parties stipulate to the presence of the
13 jury?

14 MR. JAFFE: Yes, Judge.

15 MR. CLOWARD: Yes, Judge.

16 THE COURT: I apologize, folks. That was my
17 fault. I had an emergency back in chambers dealing
18 with a different case, so sorry that break was a lot
19 longer than I told you it was going to be. But
20 hopefully we can get Dr. Smith done today.

21 MR. JAFFE: Thank you, sir.

22 THE COURT: Doctor, just be reminded you're
23 still under oath. Okay?

24 MR. JAFFE: Thank you, sir.

25 THE COURT: Go ahead, Mr. Jaffe.

1 BY MR. JAFFE:

2 Q. Dr. Smith, in looking at photographs in this
3 case, did you happen to see a picture which had a foam
4 bar that was broken?

5 A. Yes.

6 Q. Do you have an opinion as to whether this
7 accident caused that bar to break?

8 A. I do have an opinion.

9 Q. And what's your opinion?

10 A. To a reasonable degree of engineering
11 certainty, that did not occur in this crash.

12 Q. Why do you say that?

13 A. The nature and the fracture of the expanded
14 polystyrene is in the wrong direction. The hook is a
15 horizontally based structure.

16 MR. CLOWARD: Judge, can we approach?
17 Objection. It's late.

18 THE COURT: Come on.

19 (Whereupon a brief discussion was
20 held at the bench.)

21 THE COURT: Overruled.

22 BY MR. JAFFE:

23 Q. Let's put the picture of it up, and this is
24 Exhibit I either 30 or 31. I forgot which one.

25 Okay. Go ahead, sir.

1 A. So this is a vertically oriented fracture as
2 opposed to a horizontally oriented fracture. If
3 anything, the EPS, the expanded polystyrene, should
4 have been compressed. There's no evidence of
5 compression. This occurred likely upon removal from
6 the inside of the bumper.

7 Q. And is that stated to a reasonable degree of
8 probability, sir?

9 A. Correct.

10 Q. Okay. Now, let's talk for a moment about the
11 medical records that you reviewed and how those affect
12 your biomechanical causation opinion.

13 Sir, have you had an opportunity to consider
14 the plaintiff's prior medical condition as relates to
15 your causation opinion?

16 A. Yes.

17 Q. And what is your opinion in that respect?

18 A. In that respect, the prior medical history
19 shows that Ms. Seastrand had chronic neck and back pain
20 as far as back as 2004 is concerned. This is contained
21 in the records of the Summerlin Hospital.

22 She also, during a workup in May of 2005 at
23 MountainView Hospital, came with chest and left arm
24 pain. Now, if I see a patient with chest and left arm
25 pain, first thing I'm going to do is a cardiac workup,

1 and that was done on her too. It was negative. It was
2 felt that it probably was from another origin, and that
3 would be most likely the cervical spine. Also, in
4 Dr. Horan's notes or synopsis of 5/17/05, he indicates
5 she had two significant cervical spine injuries in the
6 past.

7 And so that and records through '07 and
8 '08 -- '07 is mostly medical issues different from the
9 neck. '08 we're coming into, again, cervical spine
10 with spondylotic changes which is degenerative. In
11 '08, again there are numbness and tingling in the arms
12 bilaterally.

13 So she had a number of cervical spine issues,
14 going on well before the '09 incident. And with the --
15 the analysis of the '09 forces, there was no
16 contribution from that to any of her existing chronic
17 cervical issues.

18 Q. Well, yesterday Dr. Croft told us that your
19 reference to daily lifestyle activities, genetics, that
20 it was misplaced and flawed, and that studies of
21 monozygotic twins prove that you're wrong.

22 Do you have a response to that?

23 A. Sure. Studies he references are not
24 produced. I have papers, especially the Michael Modic
25 paper, after whom were named the Modic changes, in

1 doing the various autopsies on cadavers has found that
2 most of these degenerative changes that he found are
3 likely related to lifestyle, genetic makeup, and so
4 there's -- and that's just one example.

5 Q. Well, yesterday Dr. Croft also told us that
6 you misapplied the Modic standards in your reading of
7 the MRIs.

8 Now, I know he's a chiropractor and you're a
9 board-certified radiologist, and radiologists read
10 films, right?

11 A. Correct.

12 Q. What's your response to that, sir?

13 A. Well, the standard for -- or the criteria for
14 determining the Modic 1, Modic 2, and Modic 3 changes
15 were set by Dr. Modic in his -- in his 1985 paper on
16 imaging of the degenerative spine or degenerative disk.
17 The Modic Type 1 is characterized by low T2-weighted
18 MRI, MRI spin echo images, and high intensity on the
19 T2-weighted echo spin images.

20 When the clinical radiologist reads
21 Ms. Seastrand's MRI, says it's a Modic Type 1 change,
22 Dr. ViaBlanco looks at the MRI and says it's a Type 1
23 Modic change, and I look at it as a Type 1 Modic
24 change, and it meets the criteria set by Dr. Modic, I
25 think you get the picture.

1 Q. Well -- and Dr. ViaBlanco, I will tell you,
2 will be here testifying tomorrow, and he'll talk to us
3 about the radiology and show us the images and exactly
4 what he means by that.

5 But, sir, for the purposes of causation
6 analyses and -- and that's really why you're here,
7 right?

8 A. Right.

9 Q. For the purposes of causation analyses, why
10 are those films and why are those prior records
11 important and why are all these studies important?

12 A. Well, they point to chronicity and a
13 continuation of same or similar issues of degenerative
14 spine disease that starts well before our rear-end
15 collision and continues right after.

16 Yes, she has an episode of sprain or strain
17 in her neck and back that is created by the crash. No
18 doubt about it. Now, most sprains and strains, simple
19 ones, may go away in three to five weeks. Some can
20 last as six to nine months. And so the pain from a
21 sprain or strain can last a considerable period of time
22 as a function of not only the initial insult but also
23 of how you reaggravate it with your everyday living
24 activities. There are certain things you can do to
25 make the sprains heal, and there's certain things you

1 can do to aggravate them and -- and keep on having the
2 pain. It's still soft tissue pain. Can last a long
3 time sometimes.

4 Q. Now, one of the things I've been asking the
5 plaintiff's treating doctors about -- and let's talk
6 about this because I want to make sure we understand
7 this from an injury causation analysis perspective and
8 a biomechanical perspective is this: Can somebody have
9 a sprain or strain in a traumatic event like a car
10 accident yet independently have compromised disks,
11 and -- answer that one first.

12 A. The answer's yes.

13 Q. Okay. Just because there's a sprain and
14 strain, does that necessarily mean it's going to affect
15 that previously compromised disk?

16 A. It can if the collision and forces are high
17 enough. But for low ones such as analogous to everyday
18 living activities, it isn't.

19 Q. Well, were the forces high enough in this
20 accident to affect those disks?

21 A. No.

22 Q. Why not?

23 A. Because they were too low. First of all --

24 Q. What would you need to see in order to make
25 that to say that it was caused?

1 A. Right. Disks at virtually every level of
2 aging are stronger than the adjacent bone. If you
3 intend to rupture the disk in a car crash, it has not
4 been known to occur without also fracturing adjacent
5 bone. There's none of that here.

6 MR. CLOWARD: Your Honor, I'm going to
7 object. I'm going to approach -- ask to approach.

8 THE COURT: Okay. Come on up.

9 (Whereupon a brief discussion was
10 held at the bench.)

11 THE COURT: Overruled.

12 BY MR. JAFFE:

13 Q. Dr. Smith, in your report, did you discuss
14 the difference between a spine injury and a spinal soft
15 tissue injury?

16 A. Yes.

17 Q. When you talked about a spinal soft tissue
18 injury versus a spine injury for the purposes of
19 accidents like these, is that what you were just
20 explaining about, you know, disk and bone? I mean, is
21 that part and parcel of that opinion?

22 A. Right. The soft tissue injury are sprains
23 and strains from muscles and ligaments. The spinal
24 injury involves bone and disks. That did not occur in
25 this case. We had soft tissue injury.

1 Q. And, Doctor, was that concept raised in your
2 first report in this case?

3 A. It was.

4 Q. And, in fact, in your report, did you
5 specifically state that the forces encountered were far
6 below the threshold level for spinal injury?

7 A. Correct.

8 Q. Were you deposed in this case?

9 A. I was.

10 Q. Were you given an opportunity to be asked
11 about those opinions?

12 A. It was discussed in my -- in my deposition.

13 Q. Now, Doctor, I want to wrap this up because
14 we've been going -- we've been going for a while, but I
15 want to ask one other thing.

16 Plaintiff's been making a big point of the
17 fact that, well, she was fine the day before this
18 accident. How is it that all of a sudden she's set in
19 motion and headed in a course toward two surgeries if
20 this accident isn't what caused it? What's your
21 answer?

22 A. Well, the answer lies in the premedical
23 records which suggest that she is not just fine. If
24 the records indicate that she had chronic neck and back
25 pain, then that doesn't square with her position that

1 there was nothing wrong with her before the crash.

2 Now, the crash induced pain in her. I agree.
3 But it wasn't the kind of pain that she was having all
4 along, which is -- was one of degenerative -- the
5 degenerative disease which continued right on marching.
6 And that never gets better. You see, you never get
7 younger, and aging is closely related to degenerative
8 changes.

9 Q. Doctor, to a reasonable degree of
10 probability, as a -- with all the credentials that
11 you've given us today, did this accident cause Margaret
12 Seastrand to suffer injuries in her neck and back?

13 A. She suffered injuries to the tune of sprains
14 and strains.

15 Q. And that is a causation analysis that you
16 make based upon all the testing and the data and the
17 records and everything that you've reviewed?

18 A. It's based on the medicine and the
19 engineering that I have analyzed.

20 Q. And that is your causation analysis, sir?

21 A. That is my injury causation analysis.

22 Q. And is that to a reasonable degree of
23 probability?

24 A. That's to a reasonable degree of medical and
25 engineering probability.

1 Q. And, sir, did this accident cause the need
2 for either her cervical or her lumbar fusion?

3 A. It's a different question. It depends on how
4 you evaluate the advances of her degenerative spine.
5 If a degenerative spine begins to show neurological or
6 functional deficits, or the threat thereof, then
7 certainly surgery is indicated. On the basis of pain
8 alone, the promise of surgery is but 50 percent
9 effective.

10 Q. Did this accident cause the need for her
11 surgery, sir?

12 MR. CLOWARD: Judge, we need to approach.
13 Objection.

14 (Whereupon a brief discussion was
15 held at the bench.)

16 THE COURT: Objection's sustained. The prior
17 question and answer -- I guess just the prior question
18 will be stricken.

19 MR. JAFFE: I will -- I'll withdraw it, Your
20 Honor.

21 BY MR. JAFFE:

22 Q. Did this accident cause any abnormality in
23 the cervical C5-6 disk?

24 A. No.

25 Q. Did this accident cause any abnormality at

1 the L4-5 or the L5-S1 level?

2 A. No.

3 Q. Did this accident cause any disruption to her
4 neurologic system?

5 A. It did not.

6 Q. Are those opinions stated to a reasonable
7 degree of probability, sir?

8 A. They are.

9 MR. JAFFE: May I have a moment, Your Honor?

10 THE COURT: Okay.

11 MR. JAFFE: Thank you. I have no further
12 questions for Dr. Smith at this time.

13 THE COURT: Cross.

14 MR. CLOWARD: Yes, Your Honor.

15 Can I get the ELMO?

16 Judge, may I approach the witness?

17 THE COURT: You may.

18 MR. CLOWARD: Hi. Just one moment, with the
19 Court's indulgence. Just have one --

20

21 CROSS-EXAMINATION

22 BY MR. CLOWARD:

23 Q. How are you today, Doctor?

24 A. Real fine. You?

25 Q. Good. Thank you for being here today.

1 Doctor, can you tell me who Darryl Bay is?

2 A. Darryl Bay is one of the BRC engineers that
3 assisted me on this case.

4 Q. Okay. Did Darryl in fact do the calculations
5 for the -- for the forces you used in this?

6 A. Darryl Bay did the analysis, especially of
7 the IIHS tests and the correlations between that and
8 the damage of Ms. Seastrand's Honda. The calculations
9 as such were also generated from that.

10 Q. Okay. So it's fair to say this memorandum
11 contained in your report from Darryl Bay to you is --
12 Darryl Bay's the one that did the calculations?

13 A. It's done at my direction. I check his
14 calculations. But yes, that's correct.

15 Q. So Darryl Bay did the calculations?

16 A. He did the legwork, yes.

17 Q. Okay. And the upper limit of the
18 calculations with delta-v of 7, correct?

19 A. I think he said less than 7, correct.
20 Uh-huh.

21 Q. But that would mean up to 7.

22 A. Yeah, anything less.

23 Q. Okay. Thank you.

24 Now, Doctor, you've talked a little bit about
25 your -- your company. It's BRC?

1 A. Yes.

2 Q. Okay. You agree with me that the majority of
3 the work that you do is for defendants like Mr. -- and
4 defense attorneys like Mr. Jaffe.

5 A. As compared to the plaintiff's side, that's
6 correct.

7 Q. Okay. And defendants like Mr. Khoury, they
8 pay you money, correct?

9 A. The company charges for my time.

10 Q. Sure.

11 A. Yes.

12 Q. But they pay -- they ultimately pay BRC,
13 correct?

14 A. They send a check, I presume, to BRC, yes.

15 Q. Okay. And if -- if jurors accept your
16 opinions, then you save Mr. Khoury -- people like
17 Mr. Khoury money, right?

18 A. Well, who knows? I mean, I don't know if I
19 do or not. Nor is that my objective.

20 Q. Sure. No, I -- I understand that, but I
21 mean, the ultimate effect of if the jurors accept your
22 opinions, then you would save Mr. Khoury money, right?

23 A. You would have to ask him because I don't
24 know that.

25 Q. Okay. You don't agree with that general

1 premise?

2 A. It's a premise that implies that I'm out to
3 save people money, and that's not what I'm here for.

4 Q. Okay.

5 MR. CLOWARD: Judge, can I turn on the little
6 TV there?

7 THE COURT: Yep.

8 BY MR. CLOWARD:

9 Q. Now, you agree that Ms. Seastrand was
10 injured.

11 A. Yes.

12 Q. Okay. Just -- just not as significantly as
13 she says that she was.

14 A. Correct.

15 Q. And her doctors.

16 A. Because they agree with her, yes, uh-huh.

17 Q. Okay.

18 MR. CLOWARD: Just -- just a little graphic
19 here that I -- you know, be like if I drew a --

20 MR. JAFFE: Well, no, I don't -- Judge. No,
21 I'm objecting to you showing that.

22 MR. CLOWARD: Well, I'll just write it, then,
23 if you won't let me show those, then.

24 MR. JAFFE: Go ahead and write it. Go ahead.

25 /////

1 BY MR. CLOWARD:

2 Q. Okay. So let's talk about BRC. The majority
3 of the work that BRC does is for defendants like
4 Mr. Khoury, right?

5 A. Correct.

6 Q. All right. Now, let's talk about those
7 papers that you referenced.

8 How many papers have you actually published
9 on the subject of whiplash or traumatic injury? Peer
10 reviewed.

11 A. Oh, about two or three to include a book
12 chapter.

13 Q. Okay. So two or three. Do you know how many
14 articles Dr. Croft has published on the subject, peer
15 reviewed?

16 A. You mean self-published? I don't know.

17 Q. Well, Doctor, you know, there was a big point
18 of that, but I actually checked your references in your
19 paper, and there's some of the references to the same
20 journals that Dr. Croft has authored. So let me just
21 go through a list and tell me whether these are
22 reputable sources or not because they're in your
23 report.

24 The American Journal of Orthopedic Medicine,
25 is that reputable?

1 A. Sure.

2 Q. Okay. *Journal of Neuromusculoskeletal*
3 *System, is that reputable?*

4 A. Don't recognize it offhand, but if it exists,
5 it probably is.

6 Q. What about *Spine*?

7 A. *Spine* is reputable.

8 Q. What about neurologists?

9 A. *Neurology, yes, uh-huh.*

10 Q. What about *Medical Science Monitor*?

11 A. I don't recognize that so much.

12 Q. What about *Journal of Biomechanics*?

13 A. *Journal of Biomechanics is.*

14 Q. What about *Clinical Neurology and*
15 *Neurosurgery*?

16 A. Probably.

17 Q. So those are all reputable?

18 A. Sure.

19 Q. Dr. Croft has published reports in all of
20 those, hasn't he?

21 A. I don't know that.

22 Q. Well --

23 MR. CLOWARD: Your Honor, may I approach the
24 witness?

25 THE COURT: Sure.

1 BY MR. CLOWARD:

2 Q. I've highlighted them for your reference.
3 Can you just review those for me, Doctor.

4 A. Sure.

5 Yeah. With the exception of the *Medical*
6 *Science Monitor*, that I don't recognize, the others
7 appear to be --

8 Q. Okay.

9 A. -- respected journals.

10 Q. Okay. Thank you.

11 Now, let's -- let's talk about the -- the
12 BRC. Okay? So this is -- I had a little illustration
13 I was, you know --

14 MR. JAFFE: Objection. Your Honor, I object
15 to any illustrations being shown that have not been
16 disclosed. Has to be taken down.

17 MR. CLOWARD: Judge, he -- he's done this the
18 entire time with these PowerPoint slides.

19 THE COURT: It's okay. It's overruled. Go
20 ahead.

21 MR. CLOWARD: Okay. May I -- may I show
22 this? It's just like if I drew it out.

23 THE COURT: I don't care.

24 BY MR. CLOWARD:

25 Q. Okay. So I want to talk about this -- this

1 Biodynamic Research Corp., BRC. You're an owner of
2 that, right?

3 A. Among 25 others, yes.

4 Q. Okay. And these reports -- let's first talk
5 about these two seminal reports. Let's talk about the
6 first one.

7 Can you pull out the report "Comparison of
8 Human and ATD Head Kinematics During Low-Speed Rearend
9 Impacts."

10 A. Yes.

11 THE COURT: Are you going to talk about this
12 thing that's on the screen, or are you just going to
13 leave it there while you talk about other things?

14 MR. CLOWARD: I want to leave it there, if
15 that's okay.

16 THE COURT: Let's talk about it when we get
17 to it.

18 MR. CLOWARD: Okay.

19 THE COURT: Or let's put it up there when you
20 get to it.

21 MR. CLOWARD: Okay. Fair enough.

22 BY MR. CLOWARD:

23 Q. Now, you testified earlier that there -- that
24 the occupants in that test were actually employees of
25 BRC.

1 A. First set of series was, yes, uh-huh.

2 Q. Okay. Well, this -- this specific test, they
3 were actually employees of your company.

4 A. Correct.

5 Q. And those employees were screened
6 radiologically, meaning they -- X rays were taken of
7 them to make sure that they didn't have any issues,
8 right?

9 A. By me.

10 Q. And matter of a fact, not only were they --
11 were they screened, but there was a history taken, and
12 it was made sure that they didn't have any health
13 issues, right?

14 A. Sure.

15 Q. They were healthy subjects.

16 A. They were healthy over 50-year-old males.

17 Q. Okay. Over 50-year-old males. Let's get to
18 that, because I don't think the -- the report says
19 that.

20 Does the report say that?

21 A. These are my -- these are my partners. I
22 know how old my partners are.

23 Q. So you and who else?

24 A. Well, it was Jim Raddin, Jim Benedict. It
25 was Charlie Hatsell, and Richard Howard.

1 Q. Okay. So now, I just want to make sure.
2 You're an owner of BRC. Defendants like Mr. Khoury
3 hire you. You and your other co-owners are doing tests
4 on whether or not people like Mr. Khoury actually
5 injure folks, correct?

6 A. It's not for the purpose of the advancement
7 of science, not to support a case.

8 Q. Doctor, in this study, all three occupants
9 were actually injured, were they not?

10 A. Sure.

11 Q. You testified earlier you had no injuries.

12 A. Well, not injuries beyond the sprain or
13 strain.

14 Q. That's not what you said earlier, though, is
15 it?

16 A. What did I say?

17 Q. You said there was no injuries.

18 A. Oh, I'd like to have that read back, then.
19 I'd like to hear that again. Because the -- anytime
20 you're involved in a low-level rear-end collision, you
21 run the risk of a sprain or a strain. That's -- that's
22 just a fact.

23 Q. So my question is just simply: Were you
24 injured or were you not?

25 A. I believe I had some discomfort in the base

1 of my neck and that was it.

2 Q. And how long did that last?

3 A. About an hour.

4 Q. Okay. Now, Doctor, let's go on to the next
5 study. The next one is "Analysis of Human Test Subject
6 Kinematic Responses to Low Velocity Rear-End impacts."

7 That, again, was by BRC, correct?

8 A. Right.

9 Q. And how many how many people were selected
10 for that one?

11 A. The same five that were in the article we
12 just discussed because one followed the other.

13 Q. Okay. I know that you're the -- you're the
14 author, and so I don't mean to -- you know, I don't --
15 there were actually four, right? It wasn't five. It
16 was four.

17 A. I thought there were five.

18 Q. You want to just pull that for me and just
19 take a look.

20 A. (Witness reviewing document.)

21 Guess we only used four for this one.

22 Q. Okay. Now, again, there was some X rays
23 taken of the people who were involved, right?

24 A. Right. Well, actually, it was the same
25 X rays that was done for the same study. These are

1 different analyses.

2 Q. Sure. But the -- the X rays that were taken,
3 there were no significant issues -- or there were
4 actually no findings on the MRIs in this test, right?

5 A. There are no MRIs of this test.

6 Q. Per the X rays, no degenerative findings.

7 A. Right.

8 Q. Were there injuries in this?

9 A. Probably nothing more than a sprain or a
10 strain.

11 Q. But there were injuries, correct?

12 A. Of course.

13 Q. There were, in fact, injuries to three of the
14 four occupants, correct?

15 A. I haven't read this lately, but if your
16 reading is correct, then of course that stands.

17 Q. Okay. You don't know as you sit there?

18 A. I don't remember as I sit here.

19 Q. In fact, you indicated in this study that
20 the -- the test subjects were robustly healthy,
21 correct?

22 A. Sure.

23 Q. Okay.

24 A. I don't state that. I think -- well, I'm one
25 of the coauthors, so I -- I agreed to that statement,

1 yes.

2 Q. Well, do you have any -- any reason to
3 disagree with that statement?

4 A. No, I don't.

5 Q. All right. Doctor, let me ask you about this
6 test, because you indicated that from a clinical
7 standpoint, a delta-v of 5 is the threshold of injury.

8 Do you agree with that?

9 A. It would appear to be.

10 Q. And so if delta-v of 5, that's the threshold,
11 that's where you -- according to this study, you say
12 under 5 people don't get hurt, but over 5, that's when
13 the threshold comes in, right?

14 A. That's where the threshold for sprains and
15 strains come in, yes.

16 Q. So injury occurs above 5.

17 A. Sprain or strain injury occurs.

18 Q. Okay. Okay. And you indicated in this test
19 that -- at the very end, you said that "Additional
20 testing should be done to include a wider variety of
21 test subjects."

22 A. Right.

23 Q. Why is that?

24 A. Well, when you take five males over 50,
25 that's a good study to start with. You're not biasing

1 against older people. You're using older people. But
2 you're not including any women and you're not including
3 any younger people. So we recommended that more
4 studies be done to see how things would vary if we
5 included a larger spectrum of people. And that has
6 been done since then to the tune of 5-, 600
7 participants.

8 Q. And, Doctor, that's because people are
9 different, right?

10 A. Sure.

11 Q. Like if you and I were to go outside and have
12 a tackle football game, chances are -- I know I'm not
13 the healthiest guy, but chances are, you'd probably get
14 hurt before I would.

15 A. Well, I'm 72. You tell me.

16 Q. I don't know.

17 So, Doctor, you also indicate in this paper
18 that there were other things that were important to
19 consider.

20 A, seating position.

21 A. Sure.

22 Q. And B, riding posture.

23 A. Right.

24 Q. Those weren't considered in your study?

25 A. Not in the first study.

1 Q. Okay. I'm going to get to the third one.
2 The third one, it actually was studied, right?

3 A. Correct.

4 Q. And that's the study "Human Head and Neck
5 Kinematics."

6 A. Yes.

7 Q. Now, again, these are employees from your
8 BRC, right?

9 A. That's right.

10 Q. And they're between 39 and 59 years -- or 32
11 and 59?

12 A. Right.

13 Q. And of those folks, they are healthy,
14 correct?

15 A. Right.

16 Q. Fully informed?

17 A. Right.

18 Q. And you -- and they did a pretesting medical
19 history and physical evaluation.

20 A. Right.

21 Q. Okay. Also some cervical spine radiology
22 studies --

23 A. Correct.

24 Q. -- right?

25 Now, in this case, there were injuries,

1 correct?

2 A. Yes.

3 Q. Tell us about Subject No. 2. What's unique
4 about him?

5 A. Subject No. 2, if I'm correct, we had him
6 turn his head to the left or right prior to being
7 struck from the rear, and that created more
8 sprain-strain than normally sitting looking forward.
9 So there's a difference as to how you hold your head,
10 whether you will bias more injury to one side or the
11 other.

12 Q. In fact, this report says, "This was reported
13 to be a subjectively much more stressful exposure,"
14 correct?

15 A. That's how we put it in the paper, yes.

16 Q. And that person "developed an uncomfortable,
17 predominantly right sided, anterior and posterior lower
18 neck muscle strain later that evening and was asked not
19 to participate on day 3 of the test series," correct?

20 A. That's correct.

21 Q. So the guy that had his head turned, he
22 got -- he got hurt, and his symptoms were subjectively
23 much more stressful, correct?

24 A. Exactly.

25 Q. So he was asked not to participate.

1 A. Well, you don't want to reaggravate it,
2 that's right.

3 Q. Okay. And, Doctor, you indicated in the
4 papers that even though you tried to take out the
5 awareness factor, it was still -- it was still part of
6 the test.

7 A. The awareness is part of the test because
8 that's what these people are there for.

9 Q. Sure. They know that they're about to get
10 hit by, you know, a truck rolling down a hill.

11 A. Sure.

12 Q. So now, Doctor, do you believe that there
13 are -- do you believe that me and you have the same
14 risk factor for injury?

15 A. Probably not. If you're considerably younger
16 than I am, I probably am the guy at highest risk.

17 Q. And Dr. Croft -- Dr. Croft put this study --
18 we had poster on it, but I don't know where it went.
19 He did this poster for us and he had all of these
20 studies here, okay, about known risk factors.

21 Do you agree that the female sex increases
22 the risk of injury?

23 A. For certain collisions, yes.

24 Q. For rear-end impacts specifically.

25 A. Well, for certain magnitude, meaning severity

1 of rear-end collisions, yes.

2 Q. Okay. So just a yes-or-no question: The
3 female gender has a higher risk or likelihood of injury
4 in the rear-end collision, correct?

5 MR. JAFFE: Objection.

6 THE WITNESS: It depends on the -- on the
7 severity of the crash. You have to, first of all,
8 exceed the threshold in order to get the sprain or
9 strain. Once you exceed the threshold, women tend to
10 get more of them than men, that's true.

11 BY MR. CLOWARD:

12 Q. Okay. Doctor, you agree -- you agree that
13 increasing age is a risk factor --

14 A. It is.

15 Q. -- true?

16 You agree that initial degenerative changes
17 seen on radiographs is a risk factor, true?

18 A. Well, degenerative changes by themselves are
19 not. By the time you see them radiographically,
20 they've pretty well progressed, that is on the plain
21 films. And that is likely to be true. I don't know
22 who did that study, but it's likely to be true.

23 Q. More likely than not to be true?

24 A. Well, I don't know that.

25 Q. Okay. So we will -- we will put a question

1 mark there.

2 Loss of -- loss or reversal of cervical
3 lordosis, does that increase the risk of injury?

4 A. No.

5 Q. Okay. So you don't -- you disagree with that
6 one?

7 A. Right.

8 Q. What about foraminal stenosis?

9 A. Preexisting foraminal stenosis can be a risk
10 factor, yes.

11 Q. Nonawareness of the impending impact?

12 A. No, has nothing to do with it.

13 Q. So, Doctor, if I'm -- well, let me ask this
14 then: Why was it in the papers that you went about and
15 you talked about being aware versus nonaware and you
16 tried to take that factor out of it?

17 A. You can't take it out. But it has no effect
18 on how the body reacts.

19 Q. So if I know -- you mean to tell me if I know
20 that Mr. Jaffe's going to run toward me and tackle me
21 from behind, it has no effect of the way I'm going
22 to -- going to react versus if I see him coming right
23 at me?

24 A. Yeah. Yeah. That is different than being
25 involved in a rear-end collision, because you have an

1 opportunity, perhaps, to brace yourself against an
2 impending assault. But that's different than a
3 rear-end collision in a car which takes place in a
4 tenth of a second. When -- when and if Mr. Jaffe
5 tackles you, it's over generally a longer period of
6 time than just a tenth of a second. The body has no
7 known mechanism to react consciously to a
8 one-tenth-of-a-second event.

9 Q. Doctor, I understand. And let's -- let's --
10 I want to keep on task here, okay, because I understand
11 what you're saying.

12 You're saying when an impact happens, the
13 person doesn't have the opportunity, because it's so
14 fast, to tense up. What I'm talking about is when
15 somebody looks into the rearview and they see a car
16 coming, brakes are screeching, they're sliding toward
17 them, in that moment, they have an opportunity to tense
18 up, do they not?

19 A. Well, they do. And if their head is turned,
20 as looking in the rearview mirror, then they're setting
21 themselves up for an enhanced injury as was our
22 subject, too, in the third -- in the third crash test
23 or in the third paper anyway.

24 Q. Doctor, let me just ask this question. Okay?
25 Two people. Hypothetical. One person is sitting

1 there -- let's just say they're both looking forward.
2 You take all other variables out, exact same crash,
3 exact same people, exact same everything. Okay? One
4 person is looking ahead. They're not looking in the
5 rearview. They have no idea they're about to be hit,
6 and they're hit. Okay?

7 Compare that now, with the guy or the -- the
8 girl, whatever the subject is, they're looking in the
9 rearview and they see somebody coming, and so they
10 get -- they tense up, they tighten up.

11 Who has a greater likelihood of being injured
12 in those two scenarios?

13 A. If you keep them both the same except one
14 tenses up and the other one doesn't, makes no
15 difference.

16 Q. Okay. Now, Doctor, I want to talk about
17 another couple of things. You -- you did this -- well,
18 first off, just so that I'm clear, you agree that a
19 sprain or a strain can take nine months to -- to get
20 better.

21 A. Sure.

22 Q. You believe that Ms. Seastrand's problems
23 were limited to sprain or strain.

24 A. Correct.

25 Q. Okay. Dr. Schifini and Dr. Siegler, they

1 agree with you. So you disagree with Dr. Muir,
2 correct?

3 A. Yes.

4 Q. You disagree with Dr. Belsky, correct?

5 A. I do.

6 Q. You disagree with Dr. Gross, correct?

7 A. Right.

8 Q. You disagree with Dr. Grover, correct?

9 A. Yes.

10 Q. You disagree with Dr. Croft, correct?

11 A. Right.

12 Q. You disagree with Dr. Khavkin, correct?

13 A. I don't recall -- oh, Khavkin, yes.

14 Q. You disagree with Dr. Lurie, correct?

15 A. Correct.

16 Q. You disagree with Dr. Olmstead, correct?

17 A. And that too.

18 Q. You never performed a spine surgery, correct?

19 A. I've assisted but not performed one as -- as
20 a lead surgeon, no.

21 Q. When was the last time you assisted?

22 A. Oh, about 35 years ago.

23 Q. Okay. Now, let's talk about for a moment --
24 would you mind coming off the stand for just one
25 second. That would be helpful.

1 THE COURT: Go ahead.

2 BY MR. CLOWARD:

3 Q. This Allen study that you cited about the
4 chair plopping and so forth --

5 A. Mm-hmm.

6 Q. -- can you just show me what it is to chair
7 plop. I don't even know what that is.

8 A. I could give you my interpretation. I don't
9 know what Allen had in mind when he did his study. A
10 chair flop. This. That's a chair flop to me (witness
11 indicating).

12 Q. And what were the g-forces on the chair flop?

13 A. About 2 1/2 g's.

14 Q. So that right there is the same force that
15 Ms. Seastrand would have had?

16 A. Well, she's probably a little higher, up to
17 3.

18 Q. Now, Doctor, you testified earlier that to
19 determine injury, it's to determine whether the -- the
20 muscles are taken -- just hold on for one second. I
21 want to show you -- I have something else -- is to
22 determine the elasticity of the tissues and determine
23 whether they're taken out of their natural range of
24 motion, right?

25 A. It's to assess the threshold of sprain or

1 strain which does not have to go to how far did you
2 stretch but how rapidly did you stretch. So it's the
3 speed of stretching.

4 Q. Okay. So can you show the jurors -- can you
5 show us, how was Ms. Seastrand positioned at the time
6 of the crash?

7 A. Her testimony is that she is seated looking
8 forward.

9 Q. And how are her arms and so forth?

10 A. Well, she's waiting for traffic to pass. I
11 don't know if she tells us necessarily. The way I'm
12 sitting, I've got my hands on the wheel and my foot on
13 the brake.

14 Q. Thank you, Doctor. Just wanted to know that.

15 A. You done?

16 Q. Yeah. Thank you. I appreciate it.

17 A. Mm-hmm.

18 Q. Thanks for indulging me.

19 Doctor, can I ask you a question: Was there
20 ever one time in medical school -- you also were a
21 professor of medical school too, right?

22 A. I was an assistant clinical professor, yes.

23 Q. So you did rounds?

24 A. No. An assistant clinical professor teaches
25 people either in his practice or by coming to the

1 medical school and giving lectures but not doing rounds
2 as such. Certainly not in radiology you don't do
3 rounds.

4 Q. Okay. Was there ever one time in your
5 history of doing your training, ever one time, in your
6 training where when you were evaluating a patient that
7 you asked the patient, hey, before I determine whether
8 you're hurt or not, I got to go look at your car?

9 A. That's not the role of the physician, no.
10 The treating physician, no.

11 Q. So the answer is yes, you've never done that.

12 A. The answer's correct, I have not done that.

13 Q. Okay. You were an ER physician for about ten
14 years, right?

15 A. Nine years, yes.

16 Q. Ever one time as an ER physician, did you
17 ever once ask your patients to go out and look at their
18 car to determine whether they were really hurt?

19 A. No.

20 Q. Now, Doctor, this Allen study that you
21 testified to, here's this little graphic, you testified
22 that jumping off of a 7 1/2-foot step is equal to an
23 8.2 g-force --

24 A. Correct.

25 Q. -- correct?

1 So remembering that video that we just saw of
2 that plane crash.

3 A. Right.

4 Q. Okay. So you're saying that the same
5 g-force, 8 -- around 8 g's is the -- is the
6 equivalent -- if I were to stand up 7 feet and jump
7 off, that that's equivalent of that plane crash?

8 A. Seven feet?

9 Q. Yeah, 7.5 feet.

10 A. That 7.5-inch step.

11 Q. Oh. So you're saying -- you're saying -- so
12 you're saying a 7 1/2-inch step off, just like that, is
13 the same as that plane crash?

14 A. It's the striking of the heel that sends the
15 spike up the spine that can amount to 8.2 g's.

16 Q. Okay. So it's 8.2 g's, 7 1/2 inches,
17 correct?

18 A. Right.

19 Q. And how fast was that plane going, just out
20 of curiosity? Do you know?

21 A. That plane at impact is probably running
22 below flying speed. So it's doing less than 250 miles
23 an hour. And that is the horizontal speed. The down
24 speed, I don't have a handle on it. It's dropping
25 fast, but I can't tell you how fast it is dropping.

1 Q. Safe to say it's going faster than 5 miles an
2 hour?

3 A. Well, yes.

4 Q. Okay. Doctor, between 1985 through 2009, are
5 you aware of one visit, a single visit for the primary
6 purpose of neck pain for Ms. Seastrand?

7 A. Oh, I thought you were talking about me.
8 What did I say about prime medical records?
9 You said '85?

10 Q. Yeah. So basically, Doctor, the chief
11 complaint -- you know, the reason that brought her to
12 the -- to the physician, are you aware of a single
13 visit between '85 and 2009?

14 A. For the primary complaints of neck pain?

15 Q. Yeah, chief complaint, No. 1 thing she's
16 there for.

17 A. She comes in for other reasons.

18 Q. Thank you.

19 What about between 1985 and 2009, a single
20 visit for the primary chief complaint of lumbar spine?

21 A. Don't have a record for the primary reason
22 for the visit being that.

23 Q. Thank you, Doctor.

24 Let me --

25 Margie, would you come up here for me for a

1 minute.

2 This is my client, Ms. Seastrand.

3 A. How are you?

4 Q. You've never met her, have you?

5 A. Correct.

6 Q. You never talked to her, correct?

7 A. Correct.

8 Q. So the question I have for you: She says --
9 she testified earlier that she was significantly
10 injured in this crash.

11 Are you here to tell these folks that she's
12 lying about that?

13 MR. JAFFE: Judge, objection. That is -- may
14 we approach?

15 THE COURT: Sure.

16 (Whereupon a brief discussion was
17 held at the bench.)

18 THE COURT: Objection's sustained.

19 MR. JAFFE: Thank you, sir.

20 BY MR. CLOWARD:

21 Q. Doctor, is Ms. Seastrand mistaken regarding
22 what she testified to?

23 MR. JAFFE: Objection, Your Honor. I don't
24 know what he's saying about what "she testified to."

25 MR. CLOWARD: I'll clarify.

1 BY MR. CLOWARD:

2 Q. Ms. Seastrand said that this event
3 significantly changed her life. So, Doctor, my
4 question for you is: Is she mistaken that this
5 automobile crash caused her to have significant and
6 serious pain? Is she mistaken about that?

7 A. No. I've told you the pain of sprains or
8 strains can be significant. I don't know disagree with
9 that.

10 Q. Okay. You agree that the chiropractic care
11 was -- was appropriate?

12 MR. JAFFE: Objection, Your Honor. He's not
13 here to offer opinions as to a propriety of care.

14 THE COURT: Sustained.

15 MR. JAFFE: Thank you.

16 BY MR. CLOWARD:

17 Q. Doctor, you agree that -- that sprains and
18 strains are often treated by chiropractic care, right?

19 A. Sure.

20 Q. Okay. Are you aware of the cost of the
21 chiropractic care in this case?

22 A. No idea.

23 Q. Okay.

24 MR. CLOWARD: No further questions.

25 THE COURT: Redirect.

1 MR. JAFFE: Briefly.

2

3 REDIRECT EXAMINATION

4 BY MR. JAFFE:

5 Q. Do you still have Dr. Croft's CV there, sir?

6 A. Well, I have his list of references.

7 Q. Publications and all?

8 A. Right, uh-huh.

9 Q. To scan through those and all the dozens and
10 dozens or whatever it is, what's the common word that
11 appears in -- in all of those publications, the vast
12 majority of them, the overwhelming majority of them?

13 A. Well, it's from the American Chiropractic
14 Association.

15 Q. "Chiropractic," right?

16 A. Yeah.

17 Q. A lot of them -- almost all of them are
18 chiropractic publications?

19 MR. CLOWARD: Judge, I'm going to object as
20 leading.

21 MR. JAFFE: Not leading, Your Honor.

22 THE COURT: That question was. Sustained.

23 BY MR. JAFFE:

24 Q. Are they overwhelmingly chiropractic
25 publications?

1 MR. CLOWARD: Same objection, Judge.

2 THE COURT: Overruled.

3 MR. JAFFE: Thank you, Your Honor.

4 THE WITNESS: Yeah, it appears that way.

5 From just a scanning here, a lot of chiropractic
6 publications.

7 BY MR. JAFFE:

8 Q. Okay. Now, let's -- let's talk something,
9 first off, about the 7 1/2-inch step. In your report
10 it doesn't say stepping off it. It says jumping off of
11 it, right?

12 A. Right, uh-huh.

13 Q. Now, explain the action of jumping off a
14 7 1/2-inch step and how it creates 8 g-forces.

15 A. Jumping off the -- off these steps were done
16 in particular by landing on the heel. And when you
17 land on your heels, you send, for lack of a better
18 word, a shock wave up to your spine. This can be as
19 high as 8 g's or 8.2 g's, according to Alan Weir and
20 others. And it is -- it can be, from time to time,
21 creating some pain.

22 Now, the actual threshold for a vertebral
23 body fracture is about 18 g's when it's done in the
24 same manner. And that was done at the pilot ejection
25 studies.

1 Q. Now, in your report where that was taken
2 from, were you giving an example of different
3 activities of daily living?

4 A. That's correct.

5 Q. And what are the amount of g-forces typically
6 experienced in our daily living?

7 A. Well, they range all the way from 2 g's, to
8 the 8 g's.

9 Q. So that's pretty much the high end of forces
10 we would experience?

11 A. That's the high end.

12 Q. Going about our daily lifestyle activities?

13 A. That's correct.

14 Q. Okay. And you're certainly not hiding behind
15 that in any way, are you, sir?

16 A. No.

17 Q. Okay. Counsel asked you some questions about
18 the concept of awareness when you're performing crash
19 tests.

20 Would you explain the whole concept of
21 awareness and how that plays into the testing and your
22 results.

23 A. Awareness has to do with the brain and
24 nothing to do with the muscles. The muscles don't know
25 whether you are aware of something or not. The brain

1 only is. When you're in a rear-end collision, the
2 sudden impulse from the rear of 100 milliseconds, the
3 muscles are going to react in very similarly or samely
4 whether you were consciously aware of them or not. The
5 brain is not in your muscles. It's -- it's up here.

6 Q. Okay. Hypothetically, Doctor, if you wanted
7 to -- to conduct crash tests and take the awareness
8 factor out of it, how do you think the community would
9 receive you if you went around San Antonio striking
10 people stopped at lights just so you could measure them
11 so that they're -- you could test when they're not
12 aware?

13 A. Well, the human use committee will never
14 approve that.

15 Q. How about the police force?

16 A. Yeah, they would not approve of that either.
17 So that's -- that's not doable.

18 Q. Now, let's talk about some of these issues
19 regarding risk factors. Okay? And in particular,
20 counsel raised as a risk factor preexisting
21 degenerative changes.

22 Explain to us why preexisting degenerative
23 changes are not considered a risk factor or how they
24 weigh into risk factors when it comes to causation
25 analysis for injuries of people involved in minimal

1 impact rear-end collisions.

2 A. If you're -- if you're over 20 years old, you
3 have begun degenerative changes in your spine.
4 Actually, in more than just your spine, but that's what
5 we're talking about here.

6 If you are a 90-year-old grandmother who has
7 lost most of her muscle mass who is bent over and you
8 put her in a car seat -- in the seat of a car, she's
9 going to be at much greater risk for injury where you
10 and I can walk away from it. And I think that's
11 intuitive because she has very little with which to
12 resist any forces. The threshold for injury on her is
13 enormous.

14 For the ordinary individual between 20 and
15 70, or even 80 now, or over 70, it's fairly -- it's
16 fairly unusual to be so advanced in degenerative
17 disease that you've lowered your threshold to injury.

18 Technically, there should be some, and maybe
19 for some conditions other than low-level rear-end
20 collisions it might be true. We do know that for
21 automobile collisions that occur, say, in the 25- to
22 30-, 35-mile-an-hour range, when the older person gets
23 hit with the air bag, there tends to be more pain and
24 suffering because -- associated with that than if it's
25 a 20 year old. True. The 70 year old will have more

1 rib fractures. That's true. But in a low-level
2 rear-end collision, no.

3 We all have, over 20, the beginnings of
4 degenerative disease in our disks as is demonstrated by
5 Dr. Modic's research. The fissuring begins by
6 derangement of the endplate's junction with the disk,
7 and it is -- it is -- it is seen at three early stages.
8 The fissuring is what eventually becomes known as
9 tears. That starts way early. And when a 47-year-old
10 person is involved in a low-level rear-end collision,
11 those tears have been there for a good number of years
12 and have been -- have been growing.

13 So this -- this risk based on degeneration
14 must be taken very carefully, and it's only at the --
15 the ends of the extremes that it becomes more important
16 as a risk factor.

17 Q. Now, in this particular case, you've had an
18 opportunity to review Ms. Seastrand's films and
19 records; isn't that correct?

20 A. Correct.

21 Q. You've had an opportunity to see where she
22 had preexisting degenerative conditions relative to her
23 spine, correct?

24 A. Correct.

25 Q. Did she have a preexisting degenerative

1 condition at the C5-6 disk?

2 A. She does.

3 Q. Any other structures than C5-6?

4 A. Yes. She has the so-called Modic Type 1
5 changes, which are a stage of degenerative disease that
6 appears with certain characteristics on the MRI. For
7 the uninitiated, frequently mistaken for bone
8 contusions. It's not what they are. They're Modic
9 changes based on degenerative disk disease. So that
10 was noticeable at the C5-C6 vertebral space.

11 And then there are -- there are spurring, the
12 osteophytes, also hallmarks of degenerative disease.
13 It takes years to grow a spur. Years. Those don't
14 come about overnight.

15 And then there's thinning of the disk space
16 itself from hydration losses. Those are all marks of
17 age-appropriate degenerative changes.

18 Q. Would the same be true at L4-5 and L5-S1?

19 A. There as well, yes.

20 Q. Would that also -- is there any indication of
21 degeneration as relates to the annular fibers?

22 A. Well, yes, because the annular fibers of
23 the -- of the annulus fibrosis are the ones that become
24 interrupted by fissuring.

25 Q. Now, knowing what the plaintiff's preexisting

1 degeneration was and based on the studies that you
2 performed, the testing that -- all of the data that
3 you've accumulated over these years, was there a
4 mechanism of injury and sufficient force to produce any
5 injury to the C5-6 disk, the L4-5 disk, or the L5-S1
6 disk?

7 A. No, there was not.

8 Q. And is that statement made to a reasonable
9 degree of probability?

10 A. It is.

11 Q. The same as the rest of your testimony.

12 A. Correct.

13 Q. Is there anything that Mr. Cloward showed you
14 or discussed which in any way changed your opinions in
15 this case?

16 A. No, it does not.

17 MR. JAFFE: Thank you, sir. I have nothing
18 further.

19 THE COURT: Mr. Cloward.

20 MR. CLOWARD: Yeah, just one quick question.

21

22 RE CROSS-EXAMINATION

23 BY MR. CLOWARD:

24 Q. You've work for -- with Mr. Jaffe for a lot
25 of years, right?

1 A. Off and on through the last -- I guess he
2 corrected me -- about 20 years, yes.

3 Q. Okay. Have you ever known Mr. Jaffe to
4 represent plaintiffs?

5 MR. JAFFE: Your Honor, this is beyond the
6 scope of redirect.

7 THE COURT: It is. Sustained.

8 BY MR. CLOWARD:

9 Q. Doctor, did you actually look at the studies
10 that Dr. Croft cited?

11 MR. JAFFE: Your Honor, beyond the scope of
12 redirect.

13 THE COURT: Overruled.

14 MR. CLOWARD: It goes to risk factors.

15 THE COURT: He talked about the studies.

16 MR. JAFFE: Okay.

17 BY MR. CLOWARD:

18 Q. It was overruled.

19 A. Sorry. I didn't hear that.

20 No, I didn't look up his references.

21 Q. Would you look at them just real quick.

22 A. Oh, it's not that I haven't seen them before,
23 but I didn't look -- I didn't look for this case, no.

24 MR. CLOWARD: Can I approach?

25 /////

1 BY MR. CLOWARD:

2 Q. I circled them for you.

3 A. Yeah.

4 Q. Are those reputable sources?

5 A. These sources here?

6 Q. Yeah. IRCOBI?

7 A. You'd almost have to read them to me.

8 Q. I-R-C-O-B-I?

9 A. Yeah, I know what IRCOBI is. IRCOBI
10 certainly is a reputable organization.

11 Q. You actually cited to the same organization
12 when you wrote your paper, right?

13 A. Oh, yes.

14 Q. Same thing with *Injury*. You cited to that
15 when you wrote your paper too, huh?

16 A. Sure.

17 Q. Okay.

18 MR. CLOWARD: Nothing further, Judge.

19 THE COURT: Mr. Jaffe.

20

21 FURTHER REDIRECT EXAMINATION

22 BY MR. JAFFE:

23 Q. Does the fact that Dr. Croft may have cited
24 to some reference of the same organization that you
25 happen to cite in any way have -- have anything to do

1 with the opinions you've cited and the references you
2 specifically cited with respect to this case?

3 A. No.

4 MR. JAFFE: Nothing further. Thank you, sir.

5

6 FURTHER RECROSS-EXAMINATION

7 BY MR. CLOWARD:

8 Q. You didn't actually look at the risk factors,
9 did you?

10 A. I have times in the past. I know what they
11 are.

12 Q. But you didn't look at the risk factors --

13 MR. JAFFE: Your Honor, this --

14 BY MR. CLOWARD:

15 Q. -- in this case for Ms. Seastrand.

16 MR. JAFFE: -- beyond the scope of my re,
17 re --

18 THE COURT: You guys can't talk at the same
19 time. You can't keep talking when he's trying to make
20 an objection.

21 MR. JAFFE: Beyond the scope, sir.

22 THE COURT: I don't think it is. I'm going
23 to allow it. It's overruled.

24 BY MR. CLOWARD:

25 Q. You didn't look at the risk factors that

1 Ms. Seastrand had, did you?

2 A. I took them into account. I didn't have to
3 look at them.

4 Q. You did not put a single risk factor that you
5 evaluated in the report, correct?

6 MR. JAFFE: Your Honor, I don't know where I
7 even discuss risk factors in talking about the IRCOB. I.
8 But this is beyond the scope.

9 THE COURT: Overruled.

10 BY MR. CLOWARD:

11 Q. Correct?

12 A. Yeah, risk factors were not mentioned in my
13 report.

14 MR. CLOWARD: Thank you.

15 THE COURT: Anything else?

16

17 FURTHER REDIRECT EXAMINATION

18 BY MR. JAFFE:

19 Q. Does any of that change your opinion?

20 A. No, it doesn't.

21 Q. Was it necessary to look at those specific
22 risk factors?

23 A. No, it wasn't.

24 MR. JAFFE: Nothing further.

25 THE COURT: Mr. Jaffe?

1 MR. JAFFE: I'm Jaffe.

2 MR. CLOWARD: I'm done.

3 THE COURT: Ladies and gentlemen, any
4 questions? We have at least one. Okay.

5 THE BAILIFF: Excuse me. Anyone else?

6 (Whereupon a brief discussion was
7 held at the bench.)

8 THE COURT: All right. Doctor, I have a few
9 questions for you. First page I actually have three
10 questions.

11 First one: How does Dr. Smith define chronic
12 pain in Ms. Seastrand's medical record?

13 THE WITNESS: Chronic pain, the common -- the
14 common definition of chronic pain is any pain that
15 lasts more than six months.

16 THE COURT: Okay. Next question: How do the
17 sufficient g's required to rupture a disk change if the
18 subject disk has prior damage? I.e., how weak does a
19 disk have to be for 3.1 g's to rupture it?

20 THE WITNESS: A 3.1 g, which is the low end
21 of everyday living activities, is, by experience, not
22 going to do it. Because in that case, since all of us
23 have degenerative disk disease to one form or another,
24 there would be a lot of people herniating their disks
25 just sitting around. So we know that doesn't happen at

1 the 3.1 g level.

2 Now, as to what the actual threshold is in
3 terms of at what level of disease will a certain
4 threshold rupture the disk, I don't think that is
5 known.

6 THE COURT: Okay. Next question: As a
7 clarification, did Dr. Smith review MRIs/X rays of
8 Ms. Seastrand that were taken prior to her crash?

9 THE WITNESS: No. Those were not available.

10 THE COURT: Okay. Thank you. We'll mark
11 that Court's next in order.

12 Next question: Wouldn't the Honda absorb
13 more energy due to the fact that the Infiniti tow hook
14 is mounted to the frame and is not part of the energy
15 absorbing bumper system? Wouldn't the resulting damage
16 be more like the pole crash study?

17 THE WITNESS: Yes, I believe that's what I
18 indicated. The pole crash study is similar to the tow
19 hook in that both are -- both, first of all, have a
20 rounded surface and they become more focal.

21 And yes, the Honda did absorb more energy
22 than the Infiniti. The Infiniti has some other damage,
23 other than what's related to the tow hook.

24 THE COURT: Okay. Thank you. Mark that
25 Court's next in order.

1 Mr. Jaffe, any follow-ups?

2 MR. JAFFE: Yes, sir.

3

4 FURTHER REDIRECT EXAMINATION

5 BY MR. JAFFE:

6 Q. The question regarding 3.1 g's and the impact
7 on the -- on a degenerated disk, you've seen the MRIs
8 of this disk, correct?

9 A. Yes.

10 Q. And they were taken three weeks after the
11 accident?

12 A. Correct.

13 Q. Based on the degeneration that you saw in
14 this disk -- actually, all three disks, C5-6, L4-5, and
15 L5-S1, why is that you -- well, first of all, do you
16 believe that 3 g's would have in any way changed the
17 condition of those disks further?

18 A. No.

19 Q. Why not?

20 A. Because it's insufficient. The forces are
21 just not there. Besides -- besides, as I indicated
22 earlier, in order to rupture the disk, the adjoining
23 vertebral body will yield, will fracture.

24 Q. And, sir, the pole crash study, when we
25 talked about the Honda absorbing the energy, what part

1 of the Honda would be absorbing the energy, and how
2 does that affect the driver?

3 A. Yeah. The bumper absorbs virtually all the
4 energy because it's an energy absorbing bumper by
5 design made for 5-mile-an-hour collisions. By the time
6 the absorbtion -- absorption is a bad word -- it's
7 dissipated because energy is neither created nor
8 destroyed. It gets dissipated.

9 By the time that translates forward to the
10 driver who sits a good bit away from the seat -- from
11 the impact, by the time that gets modulated through the
12 suspension system of both the vehicle and the car
13 seats, there's virtually nothing left for the driver in
14 the seat.

15 Now, the CG of the Honda is what one
16 calculates the g's for. And usually in a Honda like
17 this, the engine sits up front, so the CG of the Honda
18 is biased towards the front, generally close to and to
19 the midline of the driver's. So the two can't be
20 compared.

21 Q. Now, you've seen the plaintiff's deposition
22 testimony where she said that she was sitting flush
23 against the seat looking forward; is that correct?

24 A. That's correct.

25 Q. In light of that testimony especially, how

1 much of that energy would she then have been impacted
2 with and how would that relate to her disks, those
3 three disks?

4 A. Not to confuse energy with forces, but --

5 Q. Define forces.

6 A. That's all right. But that's why we say
7 3 g's or less, because it is not calculable how far
8 below that can go.

9 Q. Thank you.

10 MR. JAFFE: I have nothing further, sir.

11 THE COURT: Mr. Cloward.

12 MR. CLOWARD: Yeah.

13

14 FURTHER RECROSS-EXAMINATION

15 BY MR. CLOWARD:

16 Q. Yes or no, you never spoke to Ms. Seastrand
17 to determine what she meant by chronic pain, right?

18 A. No.

19 Q. She didn't define that in the deposition
20 either, right?

21 A. Not that I recall.

22 Q. Okay. Now, if you don't know the threshold
23 for what it takes to cause an injury in something, how
24 can you say that she was either hurt or not hurt?

25 A. We know the limits of the threshold, meaning

1 at what point do we exceed the threshold for a
2 particular tissue.

3 Q. We're talking --

4 A. In this case --

5 Q. Like to know the disk specifically.

6 MR. JAFFE: Your Honor, I object. I ask that
7 Dr. Smith be allowed to finish his answer.

8 THE COURT: It did -- he said "in this case,"
9 yeah, and I think he probably needs to be allowed to
10 answer.

11 BY MR. CLOWARD:

12 Q. Go ahead, Doctor.

13 MR. JAFFE: Thank you, sir.

14 THE WITNESS: Certainly the threshold for
15 injury to the cervical muscles and the lumbar muscles
16 were exceeded to give it the sprain or strain because
17 those are rather low-threshold structures.

18 The threshold for the disk is established by
19 the adjacent bone. If the bone doesn't fracture, then
20 the disk didn't get ruptured in the same -- for the
21 same forces. So we have a -- we have a check on it.
22 We may not know a number of the threshold, although the
23 bone, by the way -- I gave that in my deposition -- the
24 compressive strength of bone is about between 1,000 and
25 1200 pounds. Well, that is not happening in this

1 crash.

2 BY MR. CLOWARD:

3 Q. Okay. Doctor, you just testified that the
4 threshold for the disk is unknown, correct?

5 A. For her specific disk, yes, that's true.

6 Q. Okay. You have also testified -- or in these
7 reports that you wrote, you've also indicated that head
8 motions are easily measured on human subjects, true?

9 A. Right.

10 Q. But neck forces are not? True? Yes or no?
11 True?

12 A. Neck forces can be determined, yes.

13 MR. CLOWARD: Can I -- may I approach?

14 THE COURT: You may.

15 BY MR. CLOWARD:

16 Q. Can you just read that for me.

17 A. "Head motions are easily measured on human
18 subjects while neck forces are not."

19 Q. Thank you.

20 MR. CLOWARD: No further questions.

21 THE COURT: Mr. Jaffe.

22

23 FURTHER REDIRECT EXAMINATION

24 BY MR. JAFFE:

25 Q. Just because the neck forces are not easily

1 measured, does that mean that it's impossible to
2 measure them?

3 A. That's the point. You can still do it.

4 Q. In your experience, do doctors sometimes take
5 the way patients describe their presentation of pain
6 and they -- the period of time for which they've had it
7 and apply medical terms to them such as chronic?

8 MR. CLOWARD: Judge, outside the scope.

9 THE COURT: You talked about chronic pain.
10 Overruled.

11 THE WITNESS: Yes, by the definition I gave.

12 BY MR. JAFFE:

13 Q. While -- and I just want to follow up.

14 While the threshold for the disk -- for
15 further disruption or alteration of the disk may be
16 unknown, are there limits below which we know it's not
17 going to occur?

18 A. Yes, there are.

19 Q. Including the -- the abnormal disks in the
20 plaintiff.

21 A. That's correct.

22 Q. Did she reach that threshold from the forces
23 in this accident?

24 A. She did not.

25 Q. Is that stated to a reasonable degree of

1 probability?

2 A. It is.

3 Q. Same as all your other testimony.

4 A. That's correct.

5 MR. JAFFE: Nothing further.

6 MR. CLOWARD: Nothing further, Judge.

7 THE COURT: Thank you, Doctor. Appreciate
8 your time. You're excused.

9 Can we have the attorneys come up for just a
10 second and talk about schedule.

11 (Whereupon a brief discussion was
12 held at the bench.)

13 THE COURT: All right, folks, we're going to
14 start tomorrow morning at 9:00 o'clock. Hopefully we
15 won't keep you late tomorrow, but we'll start early.

16 During you're break tonight, you're
17 instructed not to talk with each other or with anyone
18 else, about any subject or issue connected with this
19 trial. You are not to read, watch, or listen to any
20 report of or commentary on the trial by any person
21 connected with this case or by any medium of
22 information, including, without limitation, newspapers,
23 television, the Internet, or radio. You are not to
24 conduct any research on your own, which means you
25 cannot talk with others, Tweet others, text others,

1 Google issues, or conduct any other kind of book or
2 computer research with regard to any issue, party,
3 witness, or attorney, involved in this case. You're
4 not to form or express any opinion on any subject
5 connected with this trial until the case is finally
6 submitted to you.

7 See you tomorrow morning.

8 THE BAILIFF: All rise.

9 (Whereupon jury exited the courtroom.)

10 THE COURT: All right. We're outside the
11 presence of the jury. Is there stuff we need to take
12 care of? You want to make your Rule 50 motion?

13 MR. JAFFE: You know what, Judge, I'll do it
14 tomorrow. I may -- I can do it anytime at the close of
15 the plaintiff's case.

16 There are a couple of other things, Judge.
17 Obviously, there's -- in looking over those
18 interrogatories that were admitted in evidence, I think
19 there's a few things we're going to need to redact.

20 THE COURT: I agree.

21 MR. JAFFE: I -- I know Mr. Smith's going to
22 go over to get the disc from Mr. Cloward. I don't know
23 if maybe we can try and resolve that, work those out
24 tonight. Otherwise, we're going to have to work that
25 out tomorrow, or unless you want us to just, you know,

1 look at them tonight, see what we need to redact out
2 and go from there.

3 THE COURT: However you guys want to work it
4 out's fine.

5 MR. JAFFE: Okay. Second thing, Judge, is we
6 would like to provide some supplemental requested jury
7 instructions from defense. We want to give them to you
8 now so that everybody has the opportunity tonight to
9 take a look at them.

10 THE COURT: That's fine.

11 MR. JAFFE: What we've got right now is just
12 the ones with citations. We'll bring ones without
13 cites tomorrow in electronic form.

14 THE COURT: That's fine. Anything else?

15 MR. JAFFE: Um -- oh, yeah. Judge, are you
16 going -- you indicated you would let us know at the end
17 of the day -- by the end of the day today if you're
18 going to let us have the jury inspect Mr. Khoury's car.

19 THE COURT: I don't think so. I think
20 it's -- it's more trouble than it's worth. I don't see
21 that there's any real benefit to it based on the fact
22 that we have accident reconstruction experts from both
23 sides, biomechanical experts from both sides, and we
24 have photographs of the vehicles. I don't think it
25 adds anything, and I think it just creates problems,

1 creates additional expense and time in a trial that
2 we're trying to conserve time.

3 MR. JAFFE: I understand.

4 THE COURT: So I'll just say no.

5 MR. JAFFE: Okay. Oh, the -- the two
6 documents, BB and CC, those two articles, Judge, I
7 don't know if you want to take a look at them. They're
8 very short. They're one or two pages apiece. I would
9 like to move those into evidence.

10 THE CLERK: BB and?

11 MR. JAFFE: And CC.

12 THE COURT: B, as in boy?

13 MR. JAFFE: Yes, double B, as in boy,
14 double C, as in Charlie.

15 They were disclosed in our ninth supplement
16 to disclosure in February of 2012 as a 16.1(a) (3)
17 disclosure, and they were never objected to. Dr. Smith
18 did testify about them. They go directly to the
19 testimony from Arthur Croft regarding application and
20 use of the computer programs. We ask they be admitted.

21 THE COURT: Mr. Cloward?

22 MR. CLOWARD: Judge, the same -- the same
23 things. It's cumulative. The Court does have a
24 safekeeping task, you know. So even if -- even if it
25 is found that those objections, foundation, relevance,

1 were waived, the Court still can exclude those. It's
2 cumulative. Dr. Smith talked about it on the stand.
3 There's really no reason for them to get in.

4 It's going to confuse the jury. There's a
5 lot of other things that the jury already have to go
6 through in addition to those two documents. It's just
7 one more thing that really doesn't have anything to do
8 with anything.

9 MR. JAFFE: Your Honor, No. 1, it goes
10 directly to Dr. Smith's testimony as well as
11 Dr. Croft's; No. 2, cumulative is not an appropriate
12 objection because if that was the case, we would never
13 get any medical record when a doctor already talks
14 about a surgery or the symptoms or anything else that's
15 already contained within them.

16 THE COURT: All right. Here's the deal,
17 Guys: Whether the objection to these was waived or not
18 because it was not an objection to the production, I
19 don't like the idea of producing a one- or two-page
20 thing that I don't think is probably a complete
21 representation of whatever this is supposed to be. It
22 looks like it's part of something else. I don't
23 know -- I don't like the foundation for it, without
24 having somebody here that says, yes, this is -- I'm
25 with SAE and this is part of our document. The

1 PC-Crash operating manual, I mean, I guarantee you the
2 PC-Crash operating manual is not just one page.

3 I'm going to say no. I think your expert
4 talked about them, and I think he probably got in
5 whatever you need to from the document. I don't think
6 it's something that the jury needs to see.

7 MR. JAFFE: Okay, sir.

8 THE COURT: Okay?

9 MR. JAFFE: Yes, sir.

10 THE COURT: Anything else?

11 MR. CLOWARD: Thanks, Judge.

12 MR. JAFFE: Nothing, sir.

13 THE COURT: See you in the morning at 9:00.

14 Let me just put on the record, Mr. Jaffe, are
15 you paying for the overtime tonight?

16 MR. JAFFE: Yeah, I think it's probably
17 appropriate.

18 THE COURT: Okay. Thank you.

19 Off the record.

20 (Thereupon, the proceedings
21 concluded at 5:26 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF NEVADA)
COUNTY OF CLARK)

ss:

I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Tuesday, July 23, 2013, at 1:01 o'clock p.m.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript is a complete, true and accurate
transcription of my said shorthand notes.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
5th day of May, 2014.


KRISTY L. CLARK, CCR #708

1 CASE NO. A-11-636515-C

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CLERK OF THE COURT

4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 MARGARET G. SEASTRAND,)
10 Plaintiff,)
11 vs.)
12 RAYMOND RIAD KHOURY, DOES 1)
13 through 10; and ROE ENTITIES)
14 11 through 20, inclusive,)
15 Defendants.)

16 REPORTER'S TRANSCRIPT

17 OF

18 JURY TRIAL

19 P.M. SESSION

20 BEFORE THE HONORABLE JERRY A. WIESE, II

21 DEPARTMENT XXX

22 DATED TUESDAY, JULY 23, 2013

23
24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

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2 1:01 P.M.
3
4 P R O C E E D I N G S
5 * * * * *
6
7 THE BAILIFF: All rise.
8 (Whereupon jury entered the courtroom.)
9 THE COURT: Go ahead and be seated. Welcome
10 back, folks. Back on the record, Case No. 636515.
11 Parties stipulate to the presence of the
12 jury?
13 MR. JAFFE: Yes, sir.
14 MR. CLOWARD: Yes, Judge, we stipulate.
15 THE COURT: All right. Ms. Seastrand is
16 still on the stand, and it is time for
17 cross-examination.
18 You're still under oath. Just be
19 remembered -- just be reminded. Okay?
20 Go ahead, Mr. Jaffe.
21 MR. JAFFE: Thank you. May I proceed, Your
22 Honor?
23 THE COURT: You may.
24
25 /////

CROSS-EXAMINATION

BY MR. JAFFE:

Q. Mrs. Seastrand, do you accept that there are rules in life in which we all must live?

A. Yes.

Q. Do you agree that we all have to accept and live by those rules of society whether we like them or not?

A. Yes.

Q. Do you agree that when you file a lawsuit, you accept the responsibility of following the rules of the court and what they require of you?

A. Yes.

Q. And do you agree with the rule that it is imperative to be completely honest with your doctors and those providing you with medical care at all times?

A. Yes.

Q. Have you done that?

A. To the best of my knowledge, I have.

Q. You testified that when this accident occurred -- well, actually, let me back up.

You've used various different terms at various different times in describing the effect of this accident on you and the impact. For example, jolted.

1 You agree with that?

2 A. Yes.

3 Q. Whipped back and forth?

4 A. Yes.

5 Q. Shocked?

6 A. Yes.

7 Q. Hurt so bad you could not think or breathe?

8 A. Yes.

9 Q. Even though I know it's -- it probably should
10 have said shaken up, but shaken up in at least one
11 medical record?

12 A. I can't remember the medical record, but I'm
13 sure if it's on there, I did.

14 Q. Okay. And that's a -- that is a point. When
15 a doctor creates a medical record representing what you
16 have told them, you don't remember as you sit here, for
17 example, what you told the doctor in 2005 to say that I
18 didn't say that or did say that.

19 Would that be fair to say?

20 A. Some things I might remember, but it's a long
21 time ago.

22 Q. You certainly don't take issue with or in any
23 way suggest that any of your doctors at any time have
24 attributed comments or statements to you that they --
25 that you did not make, do you?

1 A. I'm -- I'm not in control of what they write
2 down in the records, so' ...

3 Q. Do you have any reason to believe that any of
4 your doctors would have made anything up at any time
5 when preparing your medical records?

6 A. I think what they write in their records is
7 their responsibility. It's not mine. I'm just
8 answering the questions to the best of my ability.

9 Q. Okay. So, for example, when Dr. Muir creates
10 records pointing out what you've said to him, you have
11 no reason to believe that Dr. Muir would make anything
12 up.

13 A. Whether it's accurate or not, I don't know.

14 Q. I understand that, ma'am.

15 But my point is this: Do you have any reason
16 to believe that Dr. Muir would make anything up
17 regarding what you would have said?

18 A. As to fabricating things you mean?

19 Q. Making something up that you did not say.
20 Putting something in a record attributed to you that
21 you did not say.

22 Do you believe Dr. Muir would do that?

23 A. I think it's all accuracy. I think there's
24 two issues there, so I don't know.

25 Q. Ma'am -- okay. So you don't know.

1 Do you know if Dr. Shah would make something
2 up and attribute something to you that you did not say?

3 A. Well, I think there were some errors in
4 Dr. Shah's records, and we talked about them.

5 Q. Okay. For example, the issue about you
6 saying that you heard screeching tires?

7 A. Right.

8 Q. You don't know where Dr. Shah got that?

9 A. No. It was a long time ago, so I'm not sure
10 exactly -- I'm -- we could have talked about it, but I
11 don't remember hearing tires screeching. And so maybe
12 he left out the "not," that I did not or something.
13 I'm not responsible for the accuracy of it.

14 Q. Ma'am, I'm just asking you --

15 A. Yeah.

16 Q. -- it's really a simple question.

17 Do you have any reason to believe that
18 Dr. Shah would have made anything up and intentionally
19 misrepresented comments attributed to you in his
20 medical records? Do you think he would do that
21 intentionally?

22 A. I don't know Dr. Shah well. I only saw
23 him --

24 Q. Do you think Dr. Khavkin would have done
25 that?

1 A. I know Dr. Khavkin better, no.

2 Q. You don't believe he would have
3 misrepresented what you've said.

4 A. If he understood and we communicated well, I
5 think he would have definitely reported it well.

6 Q. Do you believe that Dr. Lurie would have
7 misrepresented statements made by you in his medical
8 records?

9 A. I don't know Dr. Lurie well. I can't say. I
10 can't make a judgment on that.

11 Q. Dr. Lurie has no stake in this -- in a
12 lawsuit, right?

13 A. In a lawsuit? I don't know.

14 Q. In this lawsuit.

15 A. Oh, I don't think so, but I don't know. I'm
16 not part of Dr. Lurie. I don't know of anything with
17 Dr. Lurie.

18 Q. Dr. Shah has no stake in your lawsuit, right?

19 A. Not that I know of.

20 Q. Okay. Do you believe Dr. Muir would
21 intentionally misrepresent things that you've told him
22 when attributing comments to you in his medical
23 records?

24 MS. BRASIER: Your Honor, I'm going -- I'm
25 going to object. Calls for speculation. He's asking

1 her what Dr. Muir would do.

2 MR. JAFFE: I'm asking for her impressions,
3 Your Honor.

4 THE COURT: He's asking if she has any reason
5 to be believe that. Overruled.

6 MR. JAFFE: Thank you, Your Honor.

7 BY MR. JAFFE:

8 Q. Would you like the question read back?

9 A. Yes, please.

10 MR. JAFFE: Do you want me to restate it,
11 Judge, or --

12 THE COURT: Why don't you restate it.

13 BY MR. JAFFE:

14 Q. Do you have any reason to believe that
15 Dr. Shah would have intentionally misrepresented
16 statements made by you when preparing his medical
17 records? I meant Dr. Muir. I'm sorry. I don't --

18 A. Oh, yeah, I was --

19 Q. Do you have any reason to believe that
20 Dr. Muir would have intentionally misrepresented
21 comments made by you when preparing his medical
22 records?

23 A. Intentionally misrepresented? I don't see
24 that he would have done that. No, I don't think so.

25 Q. Okay. Do you believe Dr. Kermani would have?

1 A. No. But I don't know Dr. Kermani well enough
2 and --

3 Q. So he might have? You just don't know?

4 A. No. I just can't make a judgment on
5 something like that.

6 Q. Okay. Now, you testified in your deposition
7 when this accident happened, the officer was mean to
8 you?

9 A. He was. I felt.

10 Q. How so?

11 A. When I -- when I was -- when he talked to me,
12 and I think I was on the -- the stretcher, I just
13 remember him just being really rude to me and making me
14 cry. I don't remember everything he said, but I
15 remember crying and saying, I'm hurting. I want to go
16 to the hospital.

17 Q. Was there anything else the officer did that
18 was mean to you?

19 MS. BRASIER: Objection, Your Honor. Can we
20 approach?

21 THE COURT: Sure.

22 (Whereupon a brief discussion was
23 held at the bench.)

24 BY MR. JAFFE:

25 Q. Now, your -- your attorney showed you

1 requests for admissions that we served in this case.
2 In fact, moved them into evidence while you were on
3 direct testimony.

4 Do you remember that?

5 A. Was that the first document?

6 Q. Yes, Exhibit JJ.

7 A. I remember that.

8 MR. JAFFE: Your Honor, would the Court
9 advise the jury as to what a request for admission is
10 so that I can address those now?

11 THE COURT: Sure. Requests for admissions
12 are -- it's a discovery tool that attorneys can use,
13 each side can use it to ask the other -- ask the other
14 side to admit or deny certain things. And an
15 interrogatory, you've heard reference to that as well.
16 Interrogatories have to be signed under oath by the
17 party who -- who is responding to them. Requests for
18 admissions do not need to be responded to under oath.
19 That's one difference. But a request for admissions
20 that you've heard reference to, there's either an
21 admission or a denial to each request.

22 BY MR. JAFFE:

23 Q. Are you aware that as lawyers, we're entitled
24 to rely upon the answers that are provided to requests
25 for admissions?

1 A. Is that common practice? I mean, is that --

2 THE COURT: He's just asking whether you know
3 that.

4 THE WITNESS: I did not know that, but ...

5 BY MR. JAFFE:

6 Q. Now, you mentioned that these requests for
7 admissions, you never saw them before; is that correct?

8 A. I saw them yesterday, I think it was, or the
9 day before she showed that.

10 Q. That was the first time?

11 A. I don't remember seeing them before then.

12 Q. Well, because they were signed and dated
13 August 30, 2011. Why don't you turn to the exhibit.
14 It's JJ.

15 A. Is that right in here, the one I just folded
16 up?

17 Q. It may very well be. I didn't see what you
18 took out, ma'am.

19 MR. JAFFE: Your Honor, may we have access
20 for our computer?

21 THE WITNESS: I -- oh.

22 MR. JAFFE: Actually, I will tell you what,
23 before we go to the requests for admissions, Greg,
24 let's do this.

25 Your Honor, I'd like to put a timeline of

1 some pertinent events out there.

2 BY MR. JAFFE:

3 Q. Your accident occurred on March 13th, 2009,
4 correct?

5 A. Correct.

6 MR. JAFFE: Now, Greg, do you need a moment?
7 Okay.

8 BY MR. JAFFE:

9 Q. Your cervical fusion surgery occurred on
10 January 25, 2010; isn't that correct?

11 A. I believe so.

12 Q. Your lumbar fusion surgery occurred on
13 May 12, 2010, correct?

14 A. I believe so.

15 MR. JAFFE: Your Honor, I would ask the Court
16 to take judicial notice of the fact that this lawsuit
17 was filed on March 9, 2000 -- March 8, 2011. We filed
18 as a court exhibit a copy of the complaint.

19 THE COURT: Is there any dispute to the date,
20 Mr. Cloward?

21 MR. CLOWARD: No.

22 THE COURT: Okay. The Court will take
23 notice.

24 MR. JAFFE: Your Honor, we've also filed
25 with -- as a court exhibit a copy of the summons served

1 on Raymond Khoury indicating he was served with this
2 lawsuit on June 1, 2011.

3 THE COURT: Okay.

4 MR. JAFFE: Would the Court take notice of
5 that?

6 THE COURT: I have it in front of me, but I
7 have no reason to dispute it.

8 MR. JAFFE: Thank you, Your Honor.

9 And I would also ask the Court to take notice
10 that our answer, our initial answer was filed with the
11 court and served on June 21, 2011. I would ask the
12 Court take notice of that.

13 THE COURT: Okay.

14 MR. JAFFE: So June 21, 2011, is when I
15 entered the case as the attorney for Mr. Khoury. And
16 then we served these requests for admissions, and these
17 were answered on August 30, 2011, so just two months
18 after we got into the case. Okay? I -- since these
19 are now admitted in evidence, Your Honor, I would like
20 to publish the requests for admissions to the jury.

21 THE COURT: As long as there's nothing in
22 there that would be otherwise objectionable.

23 MR. JAFFE: I'm actually just -- instead of
24 showing the actual ones, sir, I'm just going to -- I've
25 got slides created of the particular admissions that I

1 want to reference.

2 THE COURT: That's fine.

3 BY MR. JAFFE:

4 Q. Ma'am, would you please turn to the third
5 page. And you will confirm -- please confirm for the
6 jury, what date were those answered.

7 A. I'm sorry?

8 Q. What date were these signed?

9 A. Do you mean down at the bottom?

10 Q. Yes, please.

11 A. The 30th day of August.

12 Q. And who signed them?

13 A. Richard Harris.

14 Q. Your attorney?

15 A. Yes.

16 Q. Now, with respect to Request for Admission
17 No. 11, what we asked you to admit was the following:

18 "In approximately 1981, you were in a
19 rollover auto incident in which you suffered
20 injuries to your neck, mid back, and lower
21 back."

22 You see that?

23 A. Yes.

24 Q. You don't -- you admit that, right?

25 A. No.

1 Q. You -- no, no, no. In this courtroom, right
2 now, you admit that fact, right? You admit that in
3 1981, you were in a rollover auto accident in which you
4 injured your neck, your mid back, and your low back?

5 A. No. I can explain --

6 Q. Ma'am --

7 A. -- if you'd like me to.

8 Q. -- hold on. It's a yes-or-no question.

9 So I want to make sure I got this right
10 because the response to this was "Deny."

11 A. Correct.

12 Q. Okay. So you believe that -- that that is an
13 accurate answer.

14 A. I do.

15 Q. We're going to come back to that in a moment.

16 A. I can explain, too.

17 Q. Ma'am, I'm -- Mr. Cloward will ask for any
18 explanations. Please --

19 A. I'm sorry.

20 Q. -- this is going to go a lot easier if you
21 just let me ask my questions and answer them. Okay?

22 A. I'm sorry. Okay.

23 Q. Let's turn to Request for Admission No. 12.

24 The question was:

25 "Prior to the subject accident -- meaning

1 the one we are here for -- you were in a
2 head-on auto accident in which you suffered
3 injuries to your neck, mid back, and lower
4 back."

5 Do you see that?

6 A. (Witness nods head.)

7 Q. Do you today admit that that is accurate?

8 A. No.

9 Q. So then the response of deny you believe is
10 an accurate answer.

11 A. It is.

12 Q. Let's turn to No. 15. Request No. 15 said,
13 You experienced intermittent neck pain prior to the
14 subject accident; is that correct? That's what it
15 says?

16 A. Yes, that's what it says.

17 Q. Do you admit that today?

18 A. Occasional.

19 Q. Okay. So if occasional was a -- changed for
20 intermittent, then you would admit this, but you
21 wouldn't admit it as intermittent?

22 A. Well, if they mean the same thing, then I
23 would say, yes, I had occasional back pain.

24 Q. This is neck pain.

25 A. I mean, neck pain, yes.

1 Q. Okay. So the response was "Deny"; isn't that
2 correct?

3 A. To intermittent --

4 Q. Neck pain --

5 A. -- neck pain.

6 Q. -- prior to this accident.

7 A. It was deny.

8 Q. And -- and when in Request No. 16 we asked
9 you to admit that you experienced intermittent low back
10 pain prior to the subject accident, do you today admit
11 that you did?

12 A. Occasional back pain.

13 Q. So if occasional was substituted for
14 intermittent, you would admit that but not
15 intermittent.

16 A. I would admit that -- that I had occasional
17 back pain. If you asked me the question today, I would
18 do that, definitely.

19 Q. What about intermittent low back pain?

20 A. Low back pain, I would admit that, yes, I do
21 have -- did have occasional.

22 Q. Yet on August 30, 2011, the answer was
23 "Deny," correct?

24 A. Well, I did not see this document.

25 Q. So it's your lawyer's fault?

1 A. I don't know what that means as far as fault.

2 Q. Mr. Harris signed these, right?

3 A. Yes.

4 MR. JAFFE: Your Honor --

5 BY MR. JAFFE:

6 Q. I want to go back now. We're going to talk
7 about No. 11 and 12, because in 11 and 12, you said you
8 would still deny that in 1981 you were in a rollover
9 accident in which you suffered injuries to your neck,
10 mid back, and upper back. Okay?

11 MR. JAFFE: So, Your Honor, at this time, I
12 would like to publish plaintiff's Exhibit 9 which has
13 been admitted into evidence and page 7. Just takes a
14 moment. Got to change over the system.

15 THE WITNESS: Am I supposed to have
16 something?

17 THE COURT: He's going to show it to you on
18 the screen.

19 THE WITNESS: Okay.

20 THE COURT: You want to just use the ELMO?

21 MR. JAFFE: Greg, and --

22 Okay. Your Honor, I'll use the ELMO.

23 BY MR. JAFFE:

24 Q. I'm going to show you a portion of your
25 medical record, and this is from Dr. Lurie's initial

1 examination of you on March 20, 2009.

2 A. Can I put this away so I can move those
3 out --

4 Q. Actually, you -- you're going to have it on
5 the screen anyway, but I'd like you to keep --

6 A. It just cuts off the bottom. I need to just
7 move this.

8 Q. I see, but --

9 A. Okay. That's all right.

10 Q. If you want to move -- here, would you like
11 me to move those for you?

12 A. No, I'm fine. Thank you.

13 Q. Oh, okay. Now, you'll see that on there,
14 this is March 20, 2009, so one week after the accident
15 for which we're here.

16 Do you see that?

17 A. Yes.

18 Q. Now, in Dr. Lurie's note, what it says, and
19 I'm pointing -- I'm referring right here if you can see
20 my pen point.

21 A. I cannot.

22 Q. You see the pen point on -- where my pen was
23 pointing on the screen?

24 THE COURT: The way it shows up on the
25 screen, I can't see it either.

1 MR. JAFFE: Okay. Greg, how we doing with
2 it?

3 THE COURT: If you move it over to the right,
4 now she can see it.

5 MR. JAFFE: The whole -- okay.

6 THE COURT: Just zoom it out one.

7 MR. JAFFE: If it's off the TV a bit, but --
8 okay.

9 BY MR. JAFFE:

10 Q. I'm going to read this. Now, bear in mind,
11 the request for admission that No. 11 was, In
12 approximately 1981, you were in a rollover auto
13 accident in which you suffered injuries to your neck,
14 mid back, and lower back, which is what you denied and
15 still deny.

16 Yet what this says, She stated she was in a
17 motor vehicle collision rollover approximately in 1981
18 and was treated and released with no evidence of
19 residual difficulties. She recalls injuries to her
20 neck, mid back, and lower back.

21 Is that what you told Dr. Lurie?

22 A. This -- I have no memory --

23 Q. Is that -- it's a yes or no, ma'am. Do you
24 remember telling that to Dr. Lurie or not?

25 A. No.

1 Q. Do you know where Dr. Lurie would have gotten
2 that information?

3 A. Not about my mid back.

4 Q. Okay. And just below it, and look at Request
5 No. 12, it says, Prior to the subject accident, you
6 were in a head-on auto accident in which you suffered
7 injuries to your neck, mid back, and lower back, which
8 today -- to this day you still deny.

9 A. About my mid back.

10 Q. What was in this record is, She also stated
11 she was involved in a motor vehicle collision in
12 approximately 1985 which she described as a head-on
13 collision. She stated that recall injuring her neck,
14 mid back, and lower back as well.

15 A. I'm sorry. I don't know where you are.

16 Q. It's actually just lower --

17 A. Are we over here, you mean?

18 Q. Yeah.

19 A. I'm sorry.

20 Q. It's just below where that pencil mark is on
21 that sheet.

22 A. I see that, uh-huh.

23 Q. She recalls -- she also stated she was
24 involved in a motor vehicle collision in approximately
25 1985 which she described as a head-on collision. She

1 stated that recall injuring her neck, mid back, and
2 lower back as well. She stated.

3 Are you -- is it your allegation that
4 Dr. Lurie made this up?

5 A. I just don't have any memory of telling him
6 about my mid back because I don't have any memory of
7 that -- having an injury.

8 Q. Okay. So Dr. Lurie's record is wrong.

9 A. In that, yes, he is.

10 MR. JAFFE: Now, Greg, can we go back and put
11 up that --

12 May we have the computer again, Your Honor?

13 I want the timeline.

14 Okay. What's not on there, of course, is
15 that our answer was served on June 21, 2011.

16 BY MR. JAFFE:

17 Q. Now, we can agree that when Dr. Muir operated
18 on your neck on January 25, 2010, it changed the
19 condition of your back, right? He removed your disk,
20 he fused the disk, and he put hardware in your neck; is
21 that right?

22 A. My neck or my back?

23 Q. Your neck, January 25, 2010.

24 A. Can you repeat the question?

25 Q. Sure. When Dr. Muir operated on your neck --

1 A. Right.

2 Q. -- he altered the condition of your neck.

3 A. Of my neck?

4 Q. Yes.

5 A. Yes.

6 Q. Right. It was not the same as it was after
7 the surgery as it was before the surgery and after the
8 accident, correct?

9 A. Correct.

10 Q. The disk was now changed. You had hardware
11 in your neck and a fusion, right?

12 A. Right.

13 Q. When Dr. Khavkin operated on your low back in
14 May 2010 at two disk levels, he did the same thing as
15 relates to your low back, right? He altered its
16 condition.

17 A. Yes.

18 Q. Both Dr. Khavkin and Dr. Grover, obviously,
19 since it was Grover who testified not Khavkin. They
20 changed your back and in a way that could not be put
21 back the way it was before because that's what you
22 wanted, right?

23 A. I'm sorry. Could you --

24 Q. Bad question. I'll restate it.

25 Once they operated on your back, it changed

1 the condition of your back forever; is that right? It
2 was altered.

3 A. Yes.

4 Q. So the way your back was as of May 13th,
5 2010, was different and not the same as it was right
6 after the accident; isn't that correct?

7 A. May -- would you repeat that one more time so
8 I know get the -- what you're talking about exactly.

9 Q. As of May 13th, 2010, the condition of your
10 back no longer reflected the way it was as of
11 March 14th, 2009. The day after the accident versus
12 the day after the surgery, it no -- the day after the
13 surgery, your back was no longer in any way in the
14 condition as it was right after the accident, right?
15 Because the disks were changed.

16 A. In the two areas are you talking about?

17 Q. In the lumbar spine. You -- when Dr. Khavkin
18 operated on your back, he altered the condition of the
19 disks in your lumbar spine, true?

20 A. Of those two?

21 Q. Right.

22 A. Yes.

23 Q. Right. They were no longer in the same
24 condition as they were prior to that fusion.

25 A. Yes.

1 Q. When Dr. Muir operated on your neck, your
2 symptoms changed.

3 A. Yes.

4 Q. When Dr. Khavkin operated on your low back,
5 your symptoms changed.

6 A. Yes.

7 Q. Now, I didn't come into this case until
8 June 21, 2011, more than a year after you had those
9 surgeries. We can agree that if I wanted to have a
10 doctor examine you, there is no way he could have
11 possibly examined you to see your disks, your back,
12 your symptoms, and your presentation as they were prior
13 to having had those fusions; is that correct?

14 A. Okay. Say it one more time so I got it
15 right.

16 Q. If -- after June 21, 2011, when I became
17 involved in this case, right, if I now wanted a doctor
18 to examine you, there's no way he would be able to
19 examine your back and perceive, understand from you
20 yourself how you were feeling given the symptoms, given
21 the condition of your back, the pain. They were all
22 changed because of the surgery, right?

23 A. To perceive from me --

24 Q. Yes.

25 A. -- you said?

1 Q. Yes. There's no way that he would have --
2 that any doctor would have been able to examine you
3 presurgery because the surgeries changed your
4 conditions before you filed a lawsuit, right?

5 A. So --

6 Q. Is it -- you would agree with me your
7 surgeries changed your condition and your symptoms
8 before you filed your lawsuit.

9 A. Yes, they did.

10 Q. Which means that if I wanted a doctor to
11 examine you, there's no way he would have been able to
12 examine your presurgery conditions; isn't that correct?

13 A. I'm not a doctor. So I don't know what he
14 would be looking for and what he would need to base all
15 of his assessments on.

16 Q. But if he wanted to assess your presurgery
17 condition and speak to you and see your symptoms and
18 your presentation presurgery, that opportunity was lost
19 by the surgeries that you underwent; isn't that
20 correct?

21 A. If he wanted to assess my presurgery
22 conditions?

23 Q. Yeah, that was lost because of the surgeries
24 that you underwent.

25 A. So he wouldn't evaluate my records is what

1 you're saying?

2 Q. No. I'm saying if he wanted to evaluate you
3 personally in a physical examination with your
4 symptoms, your -- the way you may have walked
5 differently or acted differently or moved differently,
6 anything about your presentation that was affected by
7 your spinal conditions, that opportunity was lost the
8 minute you had your surgeries; isn't that correct?

9 A. I'm not a doctor, so I don't know how to
10 answer that. If that opportunity -- I don't know what
11 they need to make assessments, and --

12 Q. Okay.

13 A. -- I'm not there -- I'm not medically trained
14 like that to know what they need.

15 Q. We can agree --

16 MS. BRASIER: Your Honor, can we approach?

17 THE COURT: Come on up.

18 (Whereupon a brief discussion was
19 held at the bench.)

20 BY MR. JAFFE:

21 Q. We can agree that a doctor in 2011 could not
22 have examined your back and your neck as it existed
23 prior to the surgeries that you underwent; isn't that
24 correct?

25 A. I'm not a medical doctor, so ...

1 Q. Okay. Now, after this accident occurred, you
2 indicated that you were in -- I want to make sure I
3 have it right -- that you were -- that you were hurting
4 really bad. Basically that you were in severe pain,
5 constant pain every day in your neck and low back. So
6 intense pain every day in your neck and low back
7 constantly; isn't that right?

8 A. When?

9 Q. After the accident.

10 A. Yes.

11 Q. Now, the accident happened on March 13th,
12 2009.

13 A. Right.

14 Q. You went to the emergency room on March 13,
15 2009, correct?

16 A. Right.

17 Q. But you didn't see another doctor for another
18 week despite that intense daily pain in your neck and
19 back --

20 A. Right.

21 Q. -- is that right?

22 A. Right.

23 Q. And then you went to see Dr. Lurie?

24 A. I did.

25 Q. And who referred you to Dr. Lurie?

1 A. My -- I was given some options.

2 Q. By who?

3 A. By Richard Harris's office.

4 Q. You did have a personal physician at that
5 time, though, correct?

6 A. Dr. Kermani, yes.

7 Q. We can agree, and it is true, that you did
8 not contact Dr. Kermani to go see him during that
9 period of time.

10 A. I did not.

11 Q. You did not make an appointment to go see
12 him.

13 A. I don't know if I made an appointment, but I
14 did not go see him at that time that week.

15 Q. And you did not call Dr. Kermani's office
16 asking if they would have a doctor to refer you to?

17 A. Dr. Kermani is a GP, and he was -- I just
18 didn't feel competent that he would know who to
19 recommend me to.

20 Q. Did you ask for a recommendation in the
21 emergency room?

22 A. I wasn't thinking about anything in the
23 emergency room. I was on drugs, and I wasn't thinking
24 about that kind of stuff at all.

25 Q. Your husband was there, correct?

1 A. Yes.

2 Q. And in the referral paperwork, Dr. Fredosian
3 even said there was a referral to a Dr. Ashman; isn't
4 that correct? Do you remember that?

5 A. I don't remember it from the time.

6 Q. Did you ever go see Dr. Ashman?

7 A. No.

8 Q. Now, the interrogatories were moved by your
9 counsel into evidence. I would like you to turn to
10 Exhibit II.

11 A. Is that in the same --

12 Q. It's in the same book.

13 A. -- same binder?

14 Q. It's one before. II.

15 A. Okay.

16 Q. Please turn to page 16 of those
17 interrogatories.

18 A. (Witness complies.)

19 Q. And I would like to direct your attention to
20 Interrogatory No. 16.

21 A. Yes.

22 Q. We can agree that you have verified the
23 authenticity and accuracy of these interrogatories,
24 correct?

25 A. Yes..

1 Q. Question No. 16 asked:

2 For each and every prior or subsequent
3 accident or injury, whether caused by motor
4 vehicle or work-related injury or otherwise,
5 provide the nature of each injury and the date
6 and location of accident.

7 You see that?

8 A. Yes.

9 Q. And Response No. 1 was:

10 Type: Motor vehicle accident. Date and
11 location: Approximately 1981, Idaho. Nature
12 of injury: You put, Plaintiff does not recall?

13 A. Hmm?

14 Q. So that was an accurate and honest answer?

15 A. Well, maybe at the time I was in a lot of
16 pain and maybe I didn't recall, and I was on
17 painkillers.

18 Q. Now, when you verified the authenticity of
19 these answers which were served on me on
20 September 29th, 2011, did you know that what -- that
21 you had hurt your neck and low back in 1981 in that
22 accident?

23 A. My neck and low back, yes, I did. But I
24 probably didn't read these all the way through
25 accurately. I probably just wasn't as thorough as I

1 should have been. Otherwise, I would have changed that
2 to reflect that.

3 Q. And, you know what, that's an interesting
4 point. Can we agree that at no time have you ever
5 supplemented these answers to provide updated
6 information? Can we agree on that?

7 A. I don't recall doing that.

8 Q. Can we agree with the request for admissions,
9 the ones that I showed you before, those four
10 admissions, can we agree that at no time have you ever
11 supplemented those to amend your answers?

12 A. I don't recall doing that.

13 Q. Now, is it your testimony that you no longer
14 go to the beach?

15 A. No. We go to the beach.

16 Q. You still do. But you testified earlier that
17 you don't do rappeling anymore and Sea-Dooing and
18 boogie boarding; is that right?

19 A. Sadly, I don't do all those things anymore.

20 Q. Now, you recall coming to my office for a
21 deposition; is that correct, ma'am?

22 A. Yes.

23 Q. You've reviewed your deposition in
24 preparation for your testimony?

25 A. I have.

1 MR. JAFFE: May I have the plaintiff's
2 deposition, please.

3 Your Honor, may I approach the witness?

4 THE COURT: You may.

5 BY MR. JAFFE:

6 Q. Ms. Seastrand, here's a copy of the
7 deposition transcript. What I'd like to do is ask you
8 this now: Do you remember when you came to my office
9 for your deposition that it was videotaped?

10 A. Yes.

11 Q. And you were placed under oath?

12 A. Yes.

13 Q. And you knew that you were testifying the
14 same as if you were testifying in front of a judge and
15 jury --

16 A. Yes.

17 Q. -- in court.

18 You remember that?

19 A. Yes.

20 Q. And I asked you about that?

21 A. Yes.

22 Q. And I also gave you the option, if you
23 wanted, to within 30 days after the transcript was
24 completed to review it and change answers if you would
25 like, knowing that I would be able to use the original

1 and the changed answers later on.

2 A. Yes.

3 Q. Now, you did testify honestly that day?

4 A. To the best of my ability.

5 MR. JAFFE: Your Honor, I'm looking at -- I
6 want to refer to page 127, lines 15 to 23. Now -- and
7 I'd like to play the clip of the testimony, Your Honor.
8 It was a duly noticed videotape deposition.

9 (Whereupon video clip was played.)

10 MR. JAFFE: Greg, this is the wrong one.
11 It's Clip -- sorry. Here's the right one.

12 THE WITNESS: What page are you on,
13 Mr. Jaffe?

14 MR. JAFFE: 127 lines, 15 through 22.

15 (Whereupon video clip was played.)

16 UNIDENTIFIED SPEAKER: Can you describe the
17 intensity impact for me.

18 MR. JAFFE: Greg, we're 0 for 2. We're oh
19 for two. Wrong one.

20 BY MR. JAFFE:

21 Q. Let's just read it. The question I asked you
22 was:

23 "What about your low back and prior
24 injuries, problem, or treatment to your low
25 back?"

1 And your answer was:

2 "I'm -- I'm -- I'm pretty careful. I
3 don't, you know, play tennis or any bungee
4 jumping or anything silly. I'm careful with
5 that. So I never had any problems with that
6 since, you know, I went through that physical
7 therapy in 1985. I've had babies. You know,
8 I've never had any -- anything that would slow
9 me down."

10 So you indicated that even before the
11 accident, because I was asking about prior low
12 injuries, treatment in your low back, you didn't even
13 play tennis and you gave up bungee jumping, right --

14 A. Right.

15 Q. -- is that correct?

16 But you did go Sea-Dooing, you did go
17 rappeling. That's your testimony?

18 A. I went rappeling one time.

19 Q. One time. And the Sea-Dooing --

20 A. With my girls. My kids.

21 Q. -- that wasn't a regular thing, was it?

22 A. We don't have any Sea-Doos or a boat, but I
23 love to do it.

24 Q. In fact, you said you did it -- your
25 testimony was that you did it rarely; is that right?

1 A. Uh-huh.

2 Q. Yes?

3 A. Yes. Uh-huh.

4 Q. Rarely?

5 A. Rarely.

6 Q. So it wasn't something you were out doing
7 once every week or once a month or maybe even once a
8 summer?

9 A. No. No, I'd go whenever we were invited to
10 go.

11 Q. Okay.

12 A. But it wasn't every summer.

13 Q. Now -- so before this accident, you were
14 careful not to engage in aggressive activities because
15 of your back; is that right?

16 A. I was careful, but not -- I just did whatever
17 we -- we did.

18 Q. Now, you have not had any physical therapy
19 since January 2011; isn't that correct?

20 A. I don't remember the date when I ended that,
21 so ...

22 Q. Was Matt Smith Physical Therapy the last time
23 you went for physical therapy?

24 A. On Nellis?

25 Q. I don't know where it was.

1 A. I think that was the one.

2 Q. Well, I will tell you what we've got is we
3 don't have any medical records since January 2011 of
4 physical therapy.

5 Are you aware of any?

6 A. No.

7 Q. We're not aware of any medications that you
8 refilled since July 2011 relative to these injuries.

9 Are you aware of any?

10 A. Since July 2011?

11 Q. Yes.

12 A. No, I'm not aware of any.

13 Q. Now, you mentioned earlier that two days
14 before Christmas in 2008, you went to a doctor for a
15 stress test; is that right?

16 A. I'm sorry. Would you say the date again.

17 Q. Two days before Christmas in 2008.

18 MS. BRASIER: Objection, Your Honor.
19 Misstates prior testimony.

20 MR. JAFFE: Your Honor, her testimony was
21 that she was there two days before Christmas because
22 she was concerned that she wouldn't be out, that it
23 might ruin Christmas.

24 MS. BRASIER: Her testimony was that she was
25 hospitalized, and I don't know that that's when she had

1 the stress test.

2 BY MR. JAFFE:

3 Q. Okay. You were hospitalized two days before
4 Christmas in 2008; is that right?

5 A. Just trying to make sure that was the right
6 year, and -- yes, uh-huh. Yes.

7 Q. We haven't been provided or seen any medical
8 records from you being in the hospital in 2008.

9 Where was this?

10 A. The hospital for my heart --

11 Q. Two days --

12 A. -- in 2008?

13 Q. -- before Christmas.

14 A. The -- the -- angiogram they did?

15 Q. Where was it?

16 A. Oh, I think it was Sun -- it was St. Rose
17 Siena I believe. But it was for my heart.

18 Q. Two days before Christmas.

19 A. The angiogram was on the 24th, the morning of
20 the 24th.

21 Q. We haven't seen or been provided with any
22 records from that day. Have you seen any?

23 A. Me? Have I seen any of those records?

24 Q. Yeah.

25 A. I don't -- I don't recall seeing any of those

1 records.

2 Q. Dr. Grover testified on Thursday that after
3 you were discharged from your lumbar fusion, you were
4 given postoperative instructions.

5 Do you recall that?

6 A. No. I don't recall anything much.

7 Q. You didn't get any post-op instructions on
8 what to do and what not to do?

9 A. I just don't remember. I was on drugs, pain
10 medication.

11 Q. Even when you left the hospital?

12 A. Yes.

13 MR. JAFFE: May I have a moment, Your Honor?

14 THE COURT: Sure.

15 MR. JAFFE: Thank you, Your Honor. I have
16 nothing further.

17 THE COURT: Redirect.

18

19 REDIRECT EXAMINATION

20 BY MS. BRASIER:

21 Q. All right. Margie, the request for
22 admissions that you were shown, you admit, deny, admit
23 deny, did you -- did you ever see those before they
24 were prepared?

25 A. Not that I recall.

1 Q. Okay. And after those were prepared, did --
2 did you have a deposition with Mr. Jaffe?

3 A. What was the date on their preparation?

4 Q. I'll just save some time. I'll-- they were
5 prepared in August of 2011. Was your deposition after
6 August of 2011?

7 A. You'd have to look on the date. I don't
8 remember the date.

9 Q. Okay. If I tell you the date was May 20th of
10 2012, last summer, do you remember that?

11 A. I do remember the deposition. I just don't
12 remember the date.

13 Q. And how long was your deposition?

14 A. I was there from 8:00 o'clock in the morning,
15 and we left at 6:00.

16 Q. And during your deposition, did Mr. Jaffe ask
17 you questions about prior accidents and injuries that
18 you'd had?

19 A. Yes.

20 Q. And did you give him honest testimony about
21 those accidents and injuries?

22 A. To the best of my ability that day.

23 Q. And have you lied in any of your responses
24 that you've given?

25 A. No.

1 MS. BRASIER: Court's indulgence.

2 BY MS. BRASIER:

3 Q. And, Margie, do you remember signing
4 verifications for different sets of interrogatories?
5 Not just the one that we've been talking about.

6 A. I don't have a specific memory for signing
7 things, but if my signature is on there, I'm sure I
8 signed it.

9 Q. Okay. If I represent to you that there's at
10 least three different verifications that you've done of
11 different sets, would -- do you remember that?

12 A. As I said, I'm sure I did if my signature is
13 on there.

14 Q. Okay.

15 MS. BRASIER: Nothing further, Your Honor.

16 THE COURT: Anything else, Mr. Jaffe?

17

18 RECROSS-EXAMINATION

19 BY MR. JAFFE:

20 Q. Would you agree that I have the right to rely
21 on you being honest in all phases of your providing
22 information in a lawsuit, whether it be -- would you
23 agree that I had the right to rely on the fact that you
24 had an obligation to be honest in answering questions
25 whether they're on paper or in a deposition as long as

1 it was within that lawsuit?

2 A. Would I agree that --

3 Q. Would you agree that I had the right to rely
4 on you being honest in answer -- providing discovery
5 responses?

6 A. Do I agree that you have the right to rely on
7 me being honest; is that correct?

8 Q. Yes.

9 A. To the best of my ability, at the time, I
10 would say I think I was honest.

11 Q. Do you agree that I have the right to trust
12 that the answers that you give me are intended to be
13 given to me as honest answers?

14 A. They were -- they were intentionally honest
15 and to the best of my ability at the time.

16 Q. My answer is -- my question is this: Do you
17 agree that I have the right to trust that those are
18 intended as honest answers?

19 A. They were intended as honest answers, yes.

20 Q. And I can -- I have the right to trust that?

21 A. I don't know what you have the right to do.

22 MR. JAFFE: Great. Thank you.

23 I have nothing further, Your Honor.

24 THE COURT: Anything else?

25 MS. BRASIER: Yes, Your Honor.

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FURTHER REDIRECT EXAMINATION

BY MS. BRASIER:

Q. And if you could look at the exhibits for me, Margie. What's the date on the request for admissions signature? It's Exhibit JJ.

MR. JAFFE: Your Honor, this is -- this is asked and answered already, and it's beyond the scope.

THE COURT: I don't know if it's beyond the scope. I'm going to allow it for a minute.

THE WITNESS: Where would I find that, Allison? In the back?

BY MS. BRASIER:

Q. If you just look on the last page of Exhibit JJ, there should be --

A. The 30th day of August 2011.

Q. Okay. And what's the date on the interrogatory responses? That's Exhibit II.

A. On the last page?

Q. Yes.

A. 29th of September 2011. The one up on top, right? Certificate of Service, is that the one you want?

Q. So the interrogatories were signed about 30 days later.

1 A. This one was the 30th day of August and this
2 one was the 29th day of September, so yes.

3 Q. And the interrogatories are the ones that you
4 helped prepare; is that right?

5 A. Yes.

6 MS. BRASIER: Okay. That's all I have.
7 Thanks.

8 THE COURT: Mr. Jaffe?

9 MR. JAFFE: Nothing further.

10 THE COURT: Ladies and gentlemen, any
11 questions? We have at least one. Okay.

12 THE BAILIFF: Thank you. Anyone else? No?

13 (Whereupon a brief discussion was
14 held at the bench.)

15 THE COURT: All right. Ms. Seastrand, the
16 question we have from a juror is: Which shoulder did
17 you hurt as a result of the accident on 3/13/09?

18 THE WITNESS: This one, my right.

19 THE COURT: Okay. Mark that Court's next in
20 order.

21 Mr. Cloward, any follow-ups based on that
22 question? Or, I'm sorry, Ms. Brasier?

23
24 /////

25 /////

FURTHER REDIRECT EXAMINATION

BY MS. BRASIER:

Q. Margie, how long -- how long did your shoulder injury last or pain?

A. I don't know how long, but I wasn't even thinking about that for very long. I was just thinking about my neck and my low back.

Q. Thank you.

THE COURT: Mr. Jaffe?

MR. JAFFE: Nothing, sir.

THE COURT: Thank you, ma'am.

THE WITNESS: Thank you.

THE COURT: Appreciate your time. You're excused.

MR. CLOWARD: Can we approach?

THE COURT: Sure.

(Whereupon a brief discussion was held at the bench.)

THE COURT: All right, folks, we're going to take a quick break for a few minutes.

During our break, you're instructed not to talk with each other or with anyone else, about any subject or issue connected with this trial. You are not to read, watch, or listen to any report of or commentary on the trial by any person connected with

1 this case or by any medium of information, including,
2 without limitation, newspapers, television, the
3 Internet, or radio. You are not to conduct any
4 research on your own, which means you cannot talk with
5 others, Tweet others, text others, Google issues, or
6 conduct any other kind of book or computer research
7 with regard to any issue, party, witness, or attorney,
8 involved in this case. You're not to form or express
9 any opinion on any subject connected with this trial
10 until the case is finally submitted to you.

11 Take ten minutes.

12 THE BAILIFF: All rise.

13 (Whereupon jury exited the courtroom.)

14 THE COURT: Just put it on the record really
15 quick. We're outside the presence of the jury.
16 Mr. Cloward requested permission to call Mr. Harris as
17 a witness as it relates to the request for admissions.
18 The fact that Mr. Harris was never listed as a witness
19 on the witness list and the fact that he's been here
20 during the trial, and that's an exception to the
21 exclusionary rule because Mr. Jaffe withdrew his prior
22 subpoena, I've ruled that that's not appropriate. So
23 he won't be allowed to testify.

24 Anything else we want to the put on the
25 record about that?

1 MR. CLOWARD: Yeah, actually.

2 MR. JAFFE: No, sir.

3 MR. CLOWARD: You know, if you think about
4 the turn of events, the way that it happened -- and
5 this is just for the purposes of the record --
6 Mr. Jaffe subpoenaed Richard Harris so that he could
7 use Rick to talk about the fact that the -- the
8 verifications and talk about the process. He -- he
9 withdrew the subpoena, saying, well, if you verify it,
10 you know, I'll go ahead and -- and -- you know, I'll
11 withdraw the subpoena if Ms. Seastrand will -- will
12 just verify it. And then once we do that, then he does
13 the exact same thing he was planning on using Rick for,
14 he uses the request for admission to impeach
15 Ms. Seastrand.

16 And so he lulls us into, you know, signing
17 the verification so that he can use that to impeach
18 her. And then once we do that, then he withdraws the
19 subpoena and -- and uses the -- you know, this -- this
20 unverified document to impeach her for 20 minutes. And
21 for us to now not be able to use Mr. Harris to rebut
22 that, that's prejudicial to my client.

23 THE COURT: It's actually the same thing that
24 happens in I'd say at least 50 percent of trials where
25 a request for admission is used to impeach a witness.

1 And -- and the response is, I didn't have anything to
2 do with preparation of that, it's signed by a lawyer,
3 it's not signed by me, which is what she said. And we
4 don't usually call the lawyers to talk about it.

5 MR. JAFFE: If I may, Your Honor.

6 THE COURT: Okay.

7 MR. JAFFE: For the purpose of the record, I
8 did subpoena Mr. Harris solely to verify because I did
9 not have a verification, could not find a signed
10 verification. The night before trial, we e-mailed them
11 asking if they could send us over a copy, and that's
12 when they told us to go pound sand. So I subpoenaed
13 Mr. Harris since we only had his signature on it. I
14 made it very clear to the court, Mr. Harris,
15 Mr. Cloward, everybody, all I wanted was some
16 acknowledgment. I said they could even make it as an
17 oral representation in court and I would vacate the
18 subpoena, which is precisely what I did.

19 And as for the request for admissions,
20 they're the ones who moved it into evidence as part of
21 their direct case and asked their client about them
22 before I even got up to question. She put them in this
23 morning and said I never saw these before. I don't
24 know who answered these.

25 So, obviously, they presume that that's where

1 I was going to be going anyway and tried to steal the
2 thunder by putting that out there before -- before I
3 even got up to cross-examine.

4 THE COURT: I think it's important to note,
5 too, that I never said I was going to allow Mr. Harris
6 to testify for Mr. Jaffe because he hadn't been
7 included on any witness list for him either. That's
8 just something that got resolved prior to the need to
9 call him because there is an agreement that there was
10 just going to be a signed verification on the
11 interrogatories.

12 MR. JAFFE: Thank you, Your Honor.

13 THE COURT: Off the record.

14 (Whereupon a short recess was taken.)

15 THE BAILIFF: All rise.

16 (Whereupon jury entered the courtroom.)

17 THE COURT: Go ahead and be seated. Welcome
18 back, folks. Back on the record, Case No. 636515.

19 Parties stipulate to the presence of the
20 jury?

21 MR. JAFFE: Yes.

22 MR. CLOWARD: Yes, sir.

23 THE COURT: Mr. Cloward, does the plaintiff
24 have any additional witnesses?

25 MR. CLOWARD: No, Your Honor.

1 THE COURT: Plaintiff rests?

2 MR. CLOWARD: Yes.

3 THE COURT: That means it's the defendant's
4 turn. So, Mr. Jaffe, defense may call its first
5 witness.

6 MR. JAFFE: And, Your Honor, for ease of
7 time, we may want to the make a Rule 50 motion at some
8 point, but I'll -- if I can hold off on that --

9 THE COURT: Just preserve it to the next
10 break.

11 MR. JAFFE: Thank you, sir. Your Honor, at
12 this time, defense would like to call Dr. Harry Smith.

13 THE BAILIFF: Dr. Smith.

14 THE COURT: Dr. Smith, if you want to come up
15 on the stand next to that chair. You can put down your
16 stuff if you'd like. Remain standing and raise your
17 right hand, please.

18 THE CLERK: You do solemnly swear the
19 testimony you're about to give in this action shall be
20 the truth, the whole truth, and nothing but the truth,
21 so help you God.

22 THE WITNESS: I do.

23 THE CLERK: Please state your full name and
24 spell it for the record, please.

25 THE WITNESS: Harry Lincoln Smith.

1 THE COURT: It's not spelled any strange way,
2 is it?

3 THE WITNESS: No, sir. It's S-m-i-t-h.

4 THE COURT: All right. Try to talk into that
5 microphone there. You're kind of a soft-spoken
6 gentleman.

7

8 DIRECT EXAMINATION

9 BY MR. JAFFE:

10 Q. Good afternoon, Dr. Smith.

11 A. Good afternoon.

12 Q. Would you please tell us, sir, what do you do
13 for a living?

14 A. I'm a physician as well as an engineer, and I
15 practice consulting in injury analysis between those
16 two.

17 Q. Sir, where do you practice?

18 A. I practice in San Antonio, Texas.

19 Q. What is the name of the company you work
20 with?

21 A. It's called Biodynamic Research Corporation.

22 Q. And, sir, do you have an ownership interest
23 in Biodynamic Research Corporation?

24 A. I do.

25 Q. Would you please tell us, what is Biodynamic

1 Research Corporation? Tell us what the company does.

2 A. The company is consisted of consultants like
3 myself who are engineers as well as physicians. We
4 have a few are straight engineers and we have a few who
5 are straight physicians who make a specialty of
6 determining how injuries are created. And we've been
7 doing this since before 1986 when we got large enough
8 to form a company.

9 Q. Okay. And, sir, tell us about the types of
10 injuries that you -- that Biodynamics Research
11 analyzes.

12 A. Almost any kind of injury that a person can
13 get is what we look at when asked to. Whether these
14 are simple slips and falls or whether these are car
15 crashes that generates injuries or whether it's a power
16 craft that goes topsy-turvy and bounces people on the
17 water and they get injuries from that or if it's an
18 injury that comes from a plane crash. We cover the
19 entire spectrum because an injury is always analyzable
20 by at least two methods. One of them is the physics or
21 engineering of the event and the other one is the
22 medical part.

23 Q. So since you're an engineer and a medical
24 doctor, do you actually bring both of those two
25 methodologies together?

1 A. That's correct.

2 Q. Now, one of the things that I indicated is
3 that Biodynamic Research and that you've been involved
4 with has even done testing for NASA and various
5 military outfits?

6 A. Yes.

7 Q. And I don't know how far you can go in
8 talking about that, but can you tell us the types of
9 issues and conditions that you've analyzed in that
10 regard?

11 A. Sure. Couple that we got involved with --

12 (Clarification by the reporter.)

13 BY MR. JAFFE:

14 Q. Harry, you've got a -- and I've known you for
15 a long time, haven't I, sir? About 20 years on and
16 off?

17 A. Yes.

18 Q. Okay. If I slip and call you Harry instead
19 of Dr. Smith, you'll forgive me?

20 A. That's all right.

21 Q. Dr. Smith, you've got an accent. Where are
22 you from?

23 A. Yes. I was born and raised in the
24 Netherlands and that gives a little guttural sound to
25 my voice and sometimes it's not always picked up.

1 Q. So please go back and tell us. What -- what
2 types of things has Biodynamic Research Corporation
3 done?

4 A. We've done a couple of things for agencies of
5 the United States Government. Mostly been involved
6 with the Air Force, and the Air Force has had problems
7 in high G aircraft such as fighter aircraft, whereby
8 very tight turns and loops are made by the pilots, and
9 sometimes that exceeds their capacity to keep their
10 heads straight on their neck -- on their body. In
11 other words, the neck muscles begin to strain. And in
12 order to help with that, we designed a system that
13 would aid stabilization of the head during high G roll
14 maneuvers, and the -- the Air Force adopted that.

15 The other one we did -- or at least that's
16 one of the ones we did for the United States Air Force,
17 in about, oh, six, seven years ago, NASA asked us to
18 look at the Columbia reentry mishap from back in '01 or
19 '02. And that -- that was prompted by the community at
20 NASA which did not want to do their own analysis.
21 They're all smart people up there, but their main
22 question to us was, How did the astronauts die? They
23 wanted us to make an assessment of that.

24 And with BRC, we have a variety of different
25 specialties including high-altitude physiologists. And

1 then a couple of us -- all of us, in fact, were at one
2 point in our career flight surgeons for the military.
3 I was, and we have a few pilots in our group, so they
4 understand what the -- what the risks are for
5 high-altitude flying. And we made that analysis, and
6 although I cannot give you details on that, that's
7 the -- under wraps, after about a year and a half of
8 looking at pathology slides, imaging studies that were
9 done, we came to a reasonable conclusion that NASA
10 could both accept and agree with.

11 Q. Okay. Now, before we get a little further
12 into some more germane aspects of BRC's work as relates
13 to motor vehicle collisions, let's talk about you
14 personally.

15 Would you give us the benefit of your
16 academic credentials?

17 A. Yeah. After high school, I started college
18 and acquired a bachelor's degree in engineering, civil,
19 followed by a master's degree, followed by a PhD in
20 engineering.

21 Q. Where were those degrees awarded?

22 A. The first two are at Michigan State
23 University, and the last one was at Texas A&M
24 University.

25 Q. Okay. And what are those engineering degrees

1 in, what fields?

2 A. Civil and nuclear.

3 Q. Now, after finishing your doctorate in
4 nuclear engineering, did you go on for any additional
5 schooling and training?

6 A. Yes, I did. I had a four-and-a-half-year
7 hiatus, called active duty with the Army, and then I
8 came back, requested a release from active duty to go
9 to medical school. So then I acquired an M.D. degree,
10 and then followed by residencies for specialization.

11 Q. Okay. And in what area do you specialize?

12 A. Well, I have basically four areas of
13 specialization. For the military, I'm a flight
14 surgeon. Or I'm now retired, so I don't do that
15 anymore. On the civilian sector, I have
16 specializations in emergency room medicine, radiology,
17 which is imaging now, and nuclear medicine.

18 Q. Okay. Are you board certified in any
19 particular area?

20 A. I'm board certified in the last two, that is
21 radiology and nuclear medicine. Of course the military
22 does its own certifications for flight surgeons.

23 Q. And did you conduct any fellowship work, sir?

24 A. No fellowship as such. I did not need to
25 take.

1 Q. Okay. For how long have you been working
2 with combining your engineering and medical training?

3 A. Combining those two for the last roughly
4 35 years.

5 Q. And do you rely upon the radiologic as well
6 as the emergency room aspect of your training when it
7 comes to analyzing situations such as motor vehicle
8 collisions?

9 A. Yes.

10 Q. Now, let's talk about BRC's work when it
11 comes to motor vehicle collisions. Okay, sir?

12 A. Sure.

13 Q. Would you please tell us the type of work
14 that Biodynamic Research Corporation has done.

15 A. Well, it can be categorized in some broad
16 categories. Consulting in injuries primarily rests
17 with the type of crash we're analyzing or the type of
18 mode. By that, I mean is it -- not that it happens a
19 lot, but is it criminally related in which case it's a
20 criminal case, or is it just a civil litigation related
21 such as we are here for today? And -- and within the
22 context of motor vehicle crashes, I think that would
23 pretty much be it.

24 Q. We've heard the term "crash testing." Has
25 Biodynamic Research Corporation conducted any of its

1 own crash testing?

2 A. Oh, yes.

3 Q. Is it possible for you to estimate the number
4 of different crash tests it's sanctioned and performed?

5 A. Yeah. They have been primarily in the four
6 main modes of crashes which is frontal crashes, side
7 impact collisions, rear end crashes, and rollovers.

8 Q. Okay. Would the number of tests that you've
9 performed number in the hundreds, the thousands, or
10 what?

11 A. At least in the hundreds.

12 Q. And as a principal, are you directly involved
13 in those tests -- those crash tests when they're
14 performed?

15 A. Some more and some less. If -- if testing
16 was a big aspect of my life, then it would not leave me
17 much room for doing anything else. So I'm aware of
18 most tests. I participate in some.

19 Q. And when you participate in some, is that as
20 an engineer, a medical doctor, a radiologist, an
21 emergency physician, some, all, what?

22 A. That would be all of those, including being a
23 subject myself in a crash test.

24 Q. Okay. So explain that.

25 A. Yeah. The series of rear-end -- low-level

1 rear-end collisions that BRC performed back in the
2 early '90s, I was a subject. I was in the seat, and
3 somebody else would strike the car I was in from the
4 rear. And I would have sensors on me that would
5 measure forces, expressed as accelerations, for us to
6 determine whether what was happening was injurious.

7 Q. Were you physically injured in any of those
8 crashes?

9 A. No.

10 Q. Now, let's talk for a second about those
11 studies, because I represented to the jury that in the
12 early 1990s, you were a coauthor of two papers that
13 were presented to the Society of Automotive Engineers
14 and that were published by the Society of Automotive
15 Engineers dealing with movements and forces in
16 low-speed and low-impact -- low-speed rear-end
17 collisions.

18 Is that accurate?

19 A. That's correct.

20 Q. Would you agree that those were two seminal
21 papers?

22 A. Yes.

23 Q. How so?

24 A. In that heretofore tests have never been done
25 with live humans in the vehicles. And the only way we

1 got to do it, because all types of human testing needs
2 to be approved by what's called a Human Use Committee,
3 and every university has one. So we went with the
4 Human Use Committee of the local medical school in
5 San Antonio, which is the University of Texas Health
6 Science Center at San Antonio, and requested they
7 review our protocol for live human testing and they
8 did. And they initially declined. They said, no, we
9 don't want you to do it. We don't know what the
10 outcome's going to be. And that was when we were
11 proposing using other people. Then we said, well, what
12 if we made ourselves the subjects in the crashes?
13 Would you approve it then? And they said okay, so we
14 did.

15 And it was more or less, you know, you put
16 your money where your mouth is, and we knew what the
17 outcome was going to be. We just couldn't convince
18 them of it to do it with other people, and then we
19 demonstrated it. And after that -- after that, there
20 have been 600 or more of the types of tests that we ran
21 until 1991, because once it was becoming an accepted
22 methodology that these tests are not injurious beyond
23 the sprain or strain, then more and more people were
24 able to go ahead and experiment with it.

25 Q. So what were the protocols of those tests?

1 A. Yes. The protocols were that the subjects
2 were to be right front seat passengers -- pardon me,
3 drivers with a Hybrid III dummy as right front seat
4 passenger. So, in other words, we'd have both, the
5 dummy as well as the subject. Both would be
6 restrained, meaning the three-point restraint system.
7 The dummies would be instrumented with measuring
8 devices called accelerometers in their necks and low
9 backs. And the humans were instrumented with bite
10 blocks, which is a metallic sort of facsimile of the
11 reversal of your teeth so that when you -- you can lock
12 your -- both tops and uppers, your uppers and lowers
13 into it to make solid contact. And in that sits a
14 small measuring tool called an accelerometer. And then
15 we also instrumented our low backs but on the outside
16 not the inside where the dummies have it.

17 Then there was a ramp that we had constructed
18 behind the vehicle we were in. And down that ramp
19 would roll another car with a driver, and we'd strike
20 bumper to bumper to see what would happen and what
21 would be the consequential deformations as well as
22 motions of both the subject and the dummy, because we
23 wanted to get a good coordination going between how
24 does the dummy react, how does the human react, how are
25 they same, and how are they different?

1 Q. Were the speeds of the striking vehicles
2 monitored?

3 A. Oh, yes, very tightly so.

4 Q. Okay. What sort -- pardon me. What sort of
5 protocols were in place in that respect, and what
6 speeds were generally tested during those tests?

7 A. Speeds were predetermined. Depending on how
8 high up the ramp you start, that will determine how
9 fast you're going to be at the bottom. And so we
10 calibrated those speeds to give us impact velocities of
11 around 5 miles an hour initially, and then we later on
12 raised it to 6 and 7.

13 Q. And, sir, the results of those tests, were
14 those presented to the Society of Automotive Engineers?

15 A. Yes, they were.

16 Q. And what is the Society of Automotive
17 Engineers?

18 A. Society of Automotive Engineers is a large
19 body of people -- it's an international organization
20 even though it started in the United States -- that is
21 composed of dominantly engineers or people with
22 engineering degrees even though they may not be
23 engineers in their daily practice. For instance, we
24 have a few lawyers who are members of the Society of
25 Automotive Engineers because these lawyers also had

1 engineering degrees before they went to law school, so
2 they qualified. And then there are associate members,
3 people who don't quite have engineering degrees but are
4 allowed to join on the basis of interests on the basis
5 of employment, technologists of all kinds, automotive
6 technologists who are not quite engineers, but they
7 certainly have an interest in the field. And these
8 folks gather together several times a year to hear
9 about new research that is being performed in the
10 various areas of automotive -- of automotive
11 engineering.

12 Mind you, automotive engineering is not
13 limited to cars. It also involves trucks. It also
14 involves trains. It involves ATVs. Anything that
15 moves is fair for the Society of Automotive Engineers.

16 Q. What is the automotive -- Society of
17 Automotive Engineers' general standing within the
18 community?

19 A. It is regarded as the main proponent for
20 standards in testing together with the ANSIs and other
21 organizations. It is the main organ for disseminating
22 the information relative to automotive engineering.
23 And it is the main, for lack of a better word,
24 clearinghouse for research that is done in automotive
25 engineering both to have peer reviewed and published

1 and thereby disseminated.

2 Q. Were your two studies accepted by the SAE?

3 A. Yes.

4 Q. And what did they do with them?

5 A. Well --

6 Q. Did they publish them?

7 A. They published them. First of all, we
8 presented them. Presentation involves going to the
9 annual meeting of the Society of Automotive Engineers
10 and have your paper been -- presented by one of the
11 authors. It is then subject to questions from the
12 audience. In other words, it's a second review
13 process. If somebody thinks you're -- you're not doing
14 it right, by golly, they're going to let you know, that
15 sort of thing.

16 So once that has passed, then it goes into a
17 publication for the SAE. Then it's available to
18 whoever wants to ask for it, usually for a fee.

19 Q. And, sir, you were one of the authors on the
20 paper that was published?

21 A. Yes.

22 Q. I think, as I recall, there was about six or
23 seven individuals that were coauthors?

24 A. Correct.

25 Q. And were all of them principals of BRC?

1 A. No, that would not be true. The majority
2 were.

3 Q. Okay. And I know those were -- was it
4 Dr. McConnell was the lead author on those?

5 A. Right.

6 Q. And he is, but he is a member of BRC -- or
7 was a member of BRC.

8 A. He was, yeah.

9 Q. He's retired now, right?

10 A. Correct.

11 Q. Now, have you been published at any other
12 time?

13 A. Oh, yes. If you look at my CV, the first
14 third of the publications are in engineering, mostly
15 related to civil engineering, mostly related to energy
16 absorbing structures on highways. The second third is
17 mostly medical publications in the areas of radiology
18 and nuclear medicine. And then the last third is
19 biomechanics, the combination of both medicine and
20 engineering. So I have -- those are my three main
21 groupings in which I have published.

22 Q. Okay. And have you been the recipient of any
23 national awards or honors?

24 A. Yeah. On the engineering side, I have the
25 usual engineering honoraries, the --

1 Q. Usual for who? Usual for every engineer out
2 there?

3 A. Usual for engineers who perform in their, you
4 know, top 5 or 10 percent of their class, yeah.

5 Q. Okay. And, Doctor, did you actually practice
6 clinical medicine?

7 A. Yes, I did.

8 Q. What is clinical medicine, first of all?

9 A. Clinical medicine is, in brief, seeing
10 patients and contributing to their care.

11 Q. Would you give us the nature and extent of
12 your clinical medicine experience?

13 A. Sure. I spent 9 years as an emergency room
14 physician. I spent roughly a little over 30 years as a
15 clinical radiologist. And also, as a clinical nuclear
16 medicine physician.

17 Q. Okay. When did you discontinue clinical
18 medicine?

19 A. Let's see. I retired from my appointment at
20 the Veterans Administration Hospital in 2010, and I
21 closed my radiology clinic for clinical purposes in
22 2011.

23 Q. Okay.

24 MR. JAFFE: Your Honor --

25 /////

1 BY MR. JAFFE:

2 Q. Oh, and by the way, sir, what is
3 biomechanics?

4 A. Biomechanics is a field that combines
5 engineering with aspects of biology, the bio part. In
6 our case, it is medicine, not just biology but
7 medicine, whereas in other people's cases -- we have,
8 say, engineering biomechanics. And their combination
9 comes from studying biology and putting it together
10 with engineering.

11 Q. Now, just so I'm clear, your specialty --
12 your medical specialties were in -- I know you were a
13 flight trauma surgeon, but that's --

14 A. Flight surgeon.

15 Q. Flight surgeon.

16 A. Just flight surgeon, yeah.

17 Q. That's going back.

18 And emergency medicine, radiology, and the
19 fourth was?

20 A. Nuclear medicine.

21 Q. Nuclear medicine. Now, for the purposes of
22 today, though, you do not seek to be admitted as an
23 expert in either nuclear medicine or flight surgery,
24 correct?

25 A. Correct.

1 MR. JAFFE: Your Honor, at this time, I would
2 like to offer Dr. Harry Smith as an expert in the field
3 of biomechanics, in the field of engineering, and in
4 the field of medicine with specialties in radiology and
5 emergency medicine.

6 MR. CLOWARD: Your Honor, we object to a
7 couple of those designations. May we approach?

8 THE COURT: Sure. Come on up.

9 (Whereupon a brief discussion was
10 held at the bench.)

11 THE COURT: The doctor will be recognized in
12 regards to his expert as a biomechanical engineer.

13 MR. JAFFE: Thank you, sir.

14 BY MR. JAFFE:

15 Q. Dr. Smith, did I hire you?

16 A. Yes, you did.

17 Q. And how much are you being paid to testify?

18 A. Well, the company, Biomechanic Research
19 Corporation, charges \$700 an hour for my time.

20 Q. And is that how you're being paid for your
21 time today, you're being billed at that rate?

22 A. BRC bills at that rate today, yes.

23 Q. And have we paid you for your time thus far?

24 A. I suppose.

25 Q. Have you checked your billing records to

1 verify that I'm not a deadbeat?

2 A. They may have said something to me if you
3 were, yes, so ...

4 Q. Okay. Now, have you and I worked together in
5 the past?

6 A. Yes, we have.

7 Q. Approximately how many times, sir?

8 A. Oh, probably somewhere between a half a dozen
9 and a dozen times over the last 20, 30 years.

10 Q. Okay. Well, it's not 30 because I've only
11 been licensed for 27. So if it was 30, that would be a
12 little bit different, so ...

13 A. True.

14 Q. Anyway, we've known each other for a long
15 time.

16 A. Yes.

17 Q. Okay. Dr. Smith, in reviewing the records in
18 this case, and we're going to get to what you reviewed
19 in a moment, have you been able to form opinions to a
20 reasonable degree of probability within your field of
21 expertise?

22 A. Yes, I have.

23 Q. What I would like you to do is please give
24 us -- anytime you state your opinions, make sure that
25 they are stated to a reasonable degree of probability

1 within your field of expertise. Okay, sir?

2 A. Sure.

3 Q. Now, what I would like to do is this: Please
4 give us your first opinion with respect to this matter.

5 A. So to a reasonable degree of medical and
6 engineering probability, the rear-end collision that
7 Ms. Seastrand was involved in on the 13th of March,
8 2009, was a low-severity rear-end collision. As her
9 car moved forward, she engaged the seatback cushion and
10 the headrest of her vehicle. This is called the
11 kinematics. And there was minimal, if any, rebound
12 from that at the low level which is approximately 3 g's
13 of acceleration.

14 However, this happened in the time span of
15 about a tenth of a second, a hundred milliseconds, less
16 than an eye blink. When the neck is asked to respond
17 that quickly, it typically will result in some
18 stretching of the cervical musculature creating sprains
19 and strains. And that is what occurred on March 13th,
20 2009.

21 Q. Okay. What I would like to do now is, let's
22 talk about the background for those opinions. Okay,
23 sir?

24 A. Sure.

25 Q. Would you please tell us, have you had an

1 opportunity to inspect the vehicles involved in the
2 collision?

3 A. Yes, I -- I have.

4 Q. And, in fact, that was done at the same time
5 as Dr. Arthur Croft?

6 A. Yes.

7 Q. Both of you were there together to see the
8 cars at the same time?

9 A. Correct.

10 Q. What did your inspection of the vehicles
11 consist of?

12 A. Well, the Honda had already been repaired.
13 But Mr. Khoury's had not yet been repaired, so I was
14 able to see the damage on the front of his car which
15 was mostly cracks and a indication that the right tow
16 hook was -- was involved, which is more demonstrated by
17 the photograph of the Honda that was taken earlier of
18 the damage.

19 Q. And, sir, did you have the opportunity to
20 review any documents in this case?

21 A. Oh, yes.

22 Q. Would you give us an idea of what -- what you
23 reviewed.

24 A. Well, there were a series of photographs of
25 both the Honda Odyssey and the -- the Infiniti. Then

1 there were CD-ROMs and DVDs containing a variety of
2 information such as the State of Nevada Traffic
3 Accident Report, pleadings, and more color photographs
4 of the Honda, various medical records of Ms. Seastrand,
5 contains a deposition of Ms. Seastrand. In general, it
6 is reports, depositions, medical records, expert
7 depositions, expert reports. It's page after page.
8 Without mentioning or reading all of it, those are the
9 broad categories that I have reviewed.

10 Q. So about how many depositions did you have,
11 sir?

12 A. Let's see. About 10, and then mine was
13 No. 11.

14 Q. And then after yours, because you no longer
15 wrote any more reports, did you still get other
16 depositions?

17 A. Yes, I did.

18 Q. Okay. So did you have a depositions of the
19 parties?

20 A. Pardon me?

21 Q. The parties, did you have their depositions,
22 Mr. --

23 A. Oh, yes.

24 Q. -- Mr. Khoury's and Ms. Seastrand's, did you
25 see their depositions?

1 A. I believe I did. Let me quick look. I have
2 Ms. Seastrand's, yes.

3 Q. Do you have Mr. Khoury's?

4 A. I don't recall offhand. I'm looking for it.
5 I don't see it.

6 Q. Okay. How about the police officer's
7 deposition, doctors' depositions?

8 A. I have the doctors' depositions. I have -- I
9 don't see the police officer's deposition offhand.

10 Q. Okay. Might be there, might not be there?

11 A. Yeah.

12 Q. How many pages is that list you're scanning
13 through of what you've looked through?

14 A. There's five pages.

15 Q. Okay. Have you also seen the medical records
16 that predate the accident?

17 A. Yes.

18 Q. From what years did you see records?

19 A. I have seen records going back to 2004 from
20 Summerlin Hospital, and then, you know, up to -- to
21 2005 and 2007, 2008.

22 Q. Okay. Now, let's talk about how you were
23 able to make this determination, sir. Okay? And I've
24 put together some slides that I hope will assist us in
25 this regard.

1 MR. JAFFE: Greg.

2 BY MR. JAFFE:

3 Q. First, while he's doing that, did you also
4 consider a crash test performed by the IIHS?

5 A. Right.

6 Q. What is that crash test, and would you please
7 tell us what it involved.

8 A. Yeah. The -- the Insurance Institute for
9 Highway Safety, referred to as IIHS, conducts studies
10 on typically new vehicles for their ability to
11 withstand crashes. They do major frontal crashes, they
12 do side impacts, and they do rear impacts.

13 So for the 1994 to 2004 Honda Odyssey
14 platform, for that model, they did a -- they did tests,
15 involving, primarily for my interests in this case, a
16 rear impact test on a Honda Odyssey. This was a pole
17 impact. And that's sparked my interest even more since
18 the tow hook which was mostly implicated in the
19 Seastrand crash more resembles that of a pole than of a
20 flat barrier.

21 And so I consulted that particular test and
22 took the images or the photographs that were produced
23 from that test together with the speeds under which
24 those tests -- that test was performed and compared
25 that to the damage on the Honda.

1 Q. Okay. So, Greg -- let's start talking about
2 the science of the accident and your biomechanical
3 analysis. So now we know the IIHS conducted crash
4 tests on the Odyssey. Dr. Croft said that they -- hold
5 on one second. Dr. Croft told us that they were of
6 limited value because those were simply to assess
7 property damage and cost of repair.

8 Do you agree or disagree with that
9 assessment?

10 A. Oh, I disagree with that.

11 Q. Why?

12 A. The property damage is for insurance interest
13 purposes. But the fact that they also put the
14 Hybrid III dummy in there made it also of interest to
15 biomechanics. And they do that deliberately because
16 they know people are interested in more than just
17 property damage.

18 Q. And did those dummies have sensors in them to
19 measure the force?

20 A. The dummy had a sensor in it. By the way,
21 the dummy, just to give you a comparative, the 50th
22 percentile Hybrid III dummy is 5 feet 8 inches tall and
23 weighs approximately 168 pounds. So if we were to
24 compare apples and oranges, you can say, well, that's
25 very close to what Ms. Seastrand was at the time.

1 Q. Now -- by the way, does BRC do any work with
2 the IIHS?

3 A. No, we don't.

4 Q. Okay. Has BRC -- strike that. Let's go --
5 let's move on.

6 So let's talk about -- okay. We just talked
7 about the IIHS test, about determining damage, but they
8 were also beneficial for finding out the forces on
9 occupants; is that correct?

10 A. Correct.

11 Q. Let's talk about how a biomechanical engineer
12 goes about figuring out and determining these forces.
13 Okay? So tell us about damage and force.

14 Do they work together?

15 A. They do. Without forces on objects, there
16 wouldn't be any damage.

17 Q. Okay. So, for example -- now, you said there
18 was a crash test dummy in the car. We already talked
19 about that; is that right, sir?

20 A. Right.

21 Q. And what is the effect -- strike that.

22 MR. JAFFE: Let's go to the next one, Greg.

23 BY MR. JAFFE:

24 Q. Let's talk about the IIHS one because you
25 already talked about the effect -- the damage from --

1 is going to create a force and, therefore, impose a
2 force on the dummy, right?

3 A. The force creates damage and also puts
4 accelerations on the dummy.

5 Q. Okay.

6 A. Accelerations is a standing word for force.

7 Q. So we already talked about how the IIHS
8 rolled the car backwards into a fixed barrier meaning a
9 pole, right?

10 A. Correct.

11 MR. JAFFE: Go to the next one, Greg.

12 BY MR. JAFFE:

13 Q. And the monitors were inserted into the
14 dummy. We already talked about that.

15 A. Right.

16 Q. And biofidelic, what is that?

17 A. Yeah. The type of neck that was used on this
18 dummy was called Biorid neck. The Biorid is specific
19 for rear-end collisions because the dummy's neck,
20 otherwise, could be considered a little too stiff, but
21 the Biorid dummy responds more like the human neck.
22 It's called the -- therefore, it's called Biorid.

23 Q. So now, with respect to those, did the
24 IIHS -- tell us about the IIHS test.

25 A. All right. So the vehicle is caused to roll

1 backward at a specific speed. This -- the target speed
2 was 5 miles an hour. And that means when the car comes
3 to a stop against the pole and sometimes rebounds a
4 little bit back from it, that damage is taken all by
5 the bumper and whatever structures there are on the
6 vehicle. The pole is not going to be deformed. So the
7 whole 5 miles an hour is absorbed by the bumper of the
8 car.

9 Q. So has BRC conducted similar tests to
10 these -- the IIHS Honda Odyssey test?

11 A. We don't do bumper or pole impact testing.
12 We tend to do car-to-car crash testing.

13 Q. So tell us about a vehicle-to-vehicle test
14 and how that is analogous to the IIHS test on the Honda
15 Odyssey.

16 A. Yeah. The reason that the test can be
17 compared is because a 5-mile-an-hour, 10-mile-an-hour
18 damage pattern is going to be the same. The bumper
19 doesn't know what hit it. It doesn't have a brain with
20 which to analyze. It just responds to the forces and
21 deforms accordingly. And when you do car-to-car
22 testing, both cars deform. So they share the damage.

23 To make this easy, if you have two cars of
24 equal weight, equal mass, and one is stationary and the
25 other one runs into it at 10 miles an hour, they don't

1 just split the damage. Each car is going to look like
2 it hit 5-miles-an-hour barrier, because the two
3 together make the 10.

4 Now, when they're not equal weight, then it
5 gets proportionated as to the ratios of their weights.
6 The heavier car takes less and the -- the lighter car
7 takes more proportionately of that 10 miles an hour.

8 Q. Okay. So is it then the same scientific
9 principle?

10 A. That's correct.

11 Q. Now, let's talk about the crash test results
12 themselves. Okay? Let's talk about 10-mile-an-hour
13 impacts. Okay, sir?

14 A. Sure.

15 Q. Tell us about those.

16 A. Well, so a 10-mile-an-hour impact creates
17 damage accordingly. If it hits a barrier, it's going
18 to have more damage on it than if it hits another car
19 because if it hits another car, the other car is going
20 to be deformed, whereas on a barrier which is not
21 deformable, the hitting car has to take all of the
22 damage.

23 Q. Okay. So let's talk about at 10-mile-an-hour
24 impacts, what the results were from both the IIHS and
25 the similar BRC tests.

1 A. Right. So the equivalent -- the equivalency
2 is this: The 5-mile-an-hour impact created deformation
3 on the Odyssey in the IIHS test which was comparable to
4 the damage from photographs we saw of the Honda. The
5 difference was the pole test caused the IIHS Honda to
6 have to take all the damage, whereas the car-to-car
7 crash test meant it was shared between the Infiniti and
8 Ms. Seastrand's Honda. And it was in an offset ratio
9 that her car took more of that 10 miles an hour than
10 the Infiniti did. It was in a -- roughly in a ratio of
11 7 to 3.

12 The -- the Honda Odyssey with Ms. Seastrand
13 in it weighed roughly 4500 pounds. 4330 for the curb
14 weight of the Honda plus Ms. Seastrand at 165. The
15 Infiniti weighed -- with Mr. Khoury in it, weighed
16 roughly 5800 pounds. All right? Now, 5800 plus 4500
17 is 10,300 pounds total mass altogether. Out of that,
18 Ms. Seastrand's car is going to take a ratio of 500 --
19 5 -- 5800 pounds divided by 10,000 of the 10 miles, and
20 Mr. Khoury's car takes the balance. For her car, that
21 was roughly 7 miles an hour.

22 Q. So what does that mean?

23 A. That means the other car absorbed 3 miles an
24 hour.

25 Q. And does that mean that 7 miles an hour of

1 force was then imposed upon the plaintiff?

2 A. No. That is just velocity.

3 Q. Okay. So how -- velocity somehow has to
4 transfer into force or transmit into force?

5 A. It's transformed into accelerations which are
6 analogous to forces.

7 Q. Okay. So what does that mean in terms of
8 g-forces?

9 A. Right. So the change in velocity of 7 miles
10 an hour is translated to feet per second first. That's
11 about 10 feet per second. And then it was divided by
12 the crash pulse, p-u-l-s-e. The crash pulse for
13 car-to-car collisions and car-to-barrier collisions is
14 somewhere between 60 and 140 milliseconds. That comes
15 from running crash test after crash test. The midpoint
16 is 100 milliseconds which is typically used. So now
17 you divide the 10 miles an hour -- the 10 feet per
18 second, rather, by .1 seconds. And 10 divided by a
19 10th makes it 100. That's 100 feet per second squared.
20 That is the acceleration.

21 When you place that in terms of g's, the
22 gravitational constant, which is 32.2 feet per second
23 squared, then you divide 100 by 32.2, and you come up
24 with about 3 g's.

25 Q. Okay.

1 A. So that -- that was the acceleration for the
2 center of gravity for the Honda. And since the
3 occupant, that is the driver, sits very close to the
4 center of gravity of that Honda, that would be
5 operative -- would be for her the same weight, about
6 3 g's.

7 Q. Okay. And I understand the math, and
8 that's -- that's great, but let's -- I want to try to
9 explain it in ways we can all understand.

10 So first off, tell us, what is a g-force?

11 A. Yeah. A g-force is -- 1 g is what holds you
12 to the earth. The earth has gravity, and gravity is an
13 acceleration which becomes your weight when it is
14 coupled to your mass. So if you weigh 165 pounds, that
15 means the force, which is 165 pounds generated by your
16 mass in combination with 1 g, 32.2 feet per second
17 squared.

18 Q. So what does that have to do in terms of
19 moving a person?

20 A. Okay. So moving a person means you have to
21 impart a force.

22 Q. And do you want to step down and you want --
23 show them and me what you mean.

24 MR. JAFFE: Mind if he steps down, Your
25 Honor?

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,

Appellant,

vs.

MARGARET SEASTRAND,

Respondent.

Supreme Court Case No. 64702

Supreme Court Case No. 65007
Electronically Filed
Nov 13 2014 08:24 a.m.

Supreme Court Case No. 65172
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County

The HONORABLE JERRY WEISE, District Court Judge

District Court Case No. A-11-636515-C

APPELLANT'S APPENDIX

VOLUME XV

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VOLUME XV

Exhibit 38 July 23, 2013, Reporter's Transcript of Jury
Trial, (Day 7, pm)

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