

In the Supreme Court of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.,

Appellant,

vs.

SANDRA L. ESKEW, as special administrator of
the Estate of William George Eskew,

Respondent.

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Nadia Krall, District Judge
District Court No. A-19-788630-C

JOINT APPENDIX Volume 9 of 18

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1 Q Good afternoon, Mr. Eskew. We're going to try to move
2 through your testimony as quickly as we can. So tell us your
3 relationship to Bill Eskew.

4 A Well, we -- or --

5 Q He's your dad, right?

6 A He's my dad. He is my best friend, my dad. Just kind of
7 everything to me.

8 Q All right. Well, he's your dad and you're his junior, right?

9 A I'm his junior.

10 Q So you go by BJ?

11 A I do. Bill Junior.

12 Q All right. So how old are you, Mr. Eskew?

13 A What was that?

14 Q How old are you?

15 A 30.

16 Q Okay. Live here in Las Vegas?

17 A I do.

18 Q What do you do for a living?

19 A I own an automotive franchise. Me and my -- well, that me
20 and my dad started back in 2012.

21 Q Okay. What franchise?

22 A Meineke franchise.

23 Q All right. Are you married?

24 A I'm not.

25 Q Any kids?

1 A I do not have any kids.

2 Q Got a sister Tyler that we just met?

3 A I do.

4 Q Sandy's your mom?

5 A She is.

6 Q All right. Are you nervous?

7 A A little bit.

8 Q Okay. So you understand we're here about a lawsuit that

9 your mom's bringing in your dad's name against Sierra Health and Life,

10 right?

11 A I do. Yeah.

12 Q Okay. And we're talking to you and your sister about your

13 dad's quality of life before and after he was diagnosed with cancer and

14 got this radiation treatment at MD Anderson after proton therapy was

15 denied. Okay?

16 A Okay.

17 Q You kind of follow where I'm coming from?

18 A Uh-huh. I do.

19 Q Okay. So let's just clear up a couple housekeeping matters to

20 maybe shorten some things up. Have you spoken to your mom about

21 the trial, what's going on in the trial since the trial started?

22 A No.

23 Q Okay. Have you ever done any research regarding proton

24 beam therapy yourself?

25 A No.

1 Q All right. Have you ever done any research about MD
2 Anderson Cancer Center in Houston?

3 A I did not.

4 Q Have you ever done any research about IMRT?

5 A I did not.

6 Q Have you ever gotten any medical literature to find out what
7 medical literature says about proton beam therapy?

8 A I did not.

9 Q All right. Would not have done any of that stuff anyway,
10 right?

11 A I would have not.

12 Q Were you involved in any way in the purchase of the
13 insurance policy that we're here about today that insured your dad?

14 A No.

15 Q Okay. And you don't know anything about the medical
16 issues at MD Anderson or the radiation treatment or anything like that?

17 A I do not.

18 Q Okay. But you do know about your dad?

19 A I do. That, I do.

20 Q All right. So let's talk about that. Your sister has told us
21 some things about him, but we want to get a little bit of a flavor of what
22 your dad was like from you.

23 MR. TERRY: So can you pull up Exhibit 9 again, please? Can
24 we pull it up? There we go.

25 BY MR. TERRY:

1 Q Who's that, BJ?

2 A What was that?

3 Q Who's that?

4 A That's -- that would be my dad.

5 Q We heard a story about that day. Can you remember it?

6 A I do.

7 Q Whose fault was it that you guys got stuck out in the middle

8 of that lake?

9 A That was my fault. That was my fault.

10 Q Okay. So you and your dad liked to do stuff like that

11 together, get out on the water?

12 A We did a lot.

13 Q Okay. So tell us kind of what kind of -- what kind of guy was

14 your dad?

15 A You know, he was a -- he was a good guy. He was the kind

16 of guy that would -- he just had a smile, attitude about him that would --

17 just made everyone else around him happy, in a good mood. He was

18 never really -- I mean, he was a father figure to me my whole life. Very

19 strict on me. And then when we opened our first door together, we

20 became -- that's when we became more friends. You know, which

21 was -- which was kind of life changing to me because we got -- we were

22 able to do stuff like this, which meant the world to me and to him too. It

23 really did.

24 Q What other kinds of things would you all do together besides

25 going out on the lake?

1 A From golfing, to racing, to -- geez, we'd drive across town
2 just to try a new restaurant because we -- we had the -- the luxury to do
3 that which was -- I'm very thankful for we had those times.

4 Q Okay. So you said something about racing. What kind of
5 racing are we talking about?

6 A We did offroad racing.

7 Q Okay. And you still do that?

8 A I still do it. Yes.

9 Q And you liked to do it with your dad when he was still with
10 us?

11 A I did. Yeah.

12 Q Did he get much out of that?

13 A He -- he did. He did. He was my -- I wouldn't say coach, but
14 more motivator. He was my motivator. I would hear him come through
15 the radio, and it was always something.

16 Q Okay. So you and your dad, after your family made your
17 way out here in Vegas, how old were you when you guys came out?

18 A I was 15.

19 Q Okay.

20 A I was 15.

21 Q So you went through high school here in town?

22 A Freshman year was -- I moved out here my -- the summer
23 before my freshman year in high school.

24 Q Okay. And your dad was a -- was a salesguy as a
25 professional, we've heard?

1 A Yes.

2 Q Did he travel a lot doing that?

3 A Yes. My -- earlier in my childhood, he traveled a lot. And all

4 the way up -- I mean, he always traveled a lot.

5 Q All right. And then he retired from that business at some

6 point, right?

7 A He did.

8 Q And you guys were out here in Vegas?

9 A Yes.

10 Q And when -- there came a time when you and your dad, your

11 mom decided to invest in a business for you to work on with him, right?

12 A We did. Yes.

13 Q And what was that business?

14 A That was the Meineke franchise.

15 Q Okay. And I always think of it as a muffler shop, but that's

16 not exactly what it is anymore, I'm told, correct?

17 A That's correct. It's total auto care. Auto repair, auto care.

18 Q Mechanic's shop?

19 A Yes.

20 Q Okay. And so at one point in time, you and your mom and

21 dad purchased a Meineke franchise here in town?

22 A Yes.

23 Q And that went okay?

24 A It did. It did.

25 Q And your dad was there helping you?

1 A He was. He loved to -- his role besides the behind the scenes
2 business aspect when we were actually at the store working, he would
3 just sit up in the lobby just talking to customers. And you know, he was
4 kind of -- like I said, he was a joy to be around. Customers loved him.

5 Q He was your public relations guy?

6 A What's that?

7 Q He's your public relations guy?

8 A He was. He was.

9 Q Okay. So at some point in time, you guys pick up a second
10 franchise, right? A second Meineke spot?

11 A Yes, we did.

12 Q Okay. Where are those two -- where was the first one?

13 A So the first one was in the northeast part of town. And then
14 the second one that we acquired was closer to our home up in the -- still
15 North Las Vegas but Craig and Decatur area.

16 Q Okay. And so you guys had both of those going and your
17 dad was helping with both, right?

18 A Yes.

19 Q But then when your dad got sick, you weren't able to hold on
20 to both of them, right?

21 A Correct.

22 Q All right. And as a result of your dad having his difficulties
23 following the radiation, you were -- you ended up having to get out of
24 the second one, right?

25 A So -- well, we got out of the first one, the original one.

1 Q The first one.

2 A Because it was -- the other one was closer. The new that we
3 acquired was closer to where we live at. And since we had enough
4 people on staff, I was able to spend a little bit more time trying to help
5 him and whenever he needed in those. I was like on call, basically.

6 Q For him?

7 A It was very -- yeah, for him. It was very hard to do that when
8 I'm, you know, 25, 30 minutes away. So it made it a whole lot easier
9 when -- after we got rid of the first store for me to just focus on that one
10 and I'm only -- it takes me 9 minutes to get home from there.

11 Q And you said you were on call for him?

12 A Yes.

13 Q So you know that he went off and got radiation treatment at
14 MD Anderson --

15 A Yes.

16 Q -- after the cancer was discovered. By the way, you were
17 with him on the day that he was golfing and broke his arm?

18 A I was there. That was --

19 Q Tell us that story real quick.

20 A Oh, man. Well, we went golfing in Summerlin, Sun City.
21 And when his friends came into town, we actually went down, picked
22 him up from the hotel, and we went to the golf course. And we go to the
23 very first tee box, and he -- I said, you know, go first. Go on, take a
24 whack at it. And it was the worst golf shot I've ever seen in my life. And
25 me and his friend were laughing at each other, and he was sitting there

1 holding his arm. And he thought he had -- he said he thought he
2 dislocated it. I'm like, what are you doing? He's like, I dislocated my
3 arm.

4 He was trying to pop it back into place. Yeah, I don't -- I don't
5 know how to pop an arm back in place, but. He was trying to -- whatever
6 he was doing. And all of a sudden, he started sweating real bad and
7 then his face -- I realized he was serious. There was something wrong.
8 So I ran and got my truck. I drove it down to the tee box, threw him in
9 the truck, and I rushed him over to the hospital as fast as possible.

10 Q So not long after that, you learned that he had cancer?

11 A Exactly.

12 Q All right. So once he had been diagnosed with cancer, some
13 time went by where he was treated here in Las Vegas before he went to
14 MD Anderson. Do you remember that?

15 A Yes.

16 Q And -- but then he went off to MD Anderson, went through
17 his radiation treatment, came back. Right?

18 A Right.

19 Q And after that, you would have observed what life was like
20 for him, right?

21 A Yes.

22 Q You were living in the same house with him?

23 A Yes.

24 Q Whole time?

25 A Yes.

1 Q You might not have been there every minute or every day,
2 but you were with him and saw him every day, right?

3 A I did. Yes.

4 Q And you observed what his quality of life was after that
5 radiation treatment as compared to what his quality of life was before
6 that, right?

7 A Yes.

8 Q So can you tell us, BJ, did your dad's quality of life suffer as
9 a result of what happened?

10 A Yes.

11 Q How?

12 A Well, a few things. I was there to help him physically,
13 emotionally when he needed it, but most of the time, it was physically.
14 He became weak. We tried to get him to eat. He had trouble eating. He
15 couldn't swallow. And my mom, her sister, my aunt, we all just would
16 bring him food, try to get him to eat. We tried every different protein
17 drink. We finally got him to -- my mom got -- I believe it was the Ensure
18 protein drink. I finally sat there, and I watched him drink one. And I was
19 like, oh. You know, we're making progress. I wouldn't necessarily say
20 drink it, but he would -- he -- I mean, he did. He drank it. It was
21 progress. It really was.

22 He could not -- and he would -- you would say, you know, how was
23 dinner? Oh, I ate all of it. You would look, he didn't eat anything. You
24 know, but, oh, I had so much food. He was tired of us getting on his case
25 about it. But he couldn't eat. That was the hardest part. That was my

1 biggest struggle with him too was being with him every day. You know,
2 do you want to go to breakfast? No, I'm okay. I just ate. I'm like, what'd
3 you eat? You know. And he was kind of, like, defending himself and he
4 felt like I was almost attacking him in a way because I was trying to get
5 him to eat, but he needed it.

6 Q Why couldn't he eat? What did he say?

7 A Oh, he couldn't swallow. He would -- he couldn't swallow.
8 He would -- he would have to -- he would -- all the time, I would be -- I
9 would be in the other room, and I'd hear him dry heaving. We couldn't
10 necessarily say throw up because there was nothing to throw up, but he
11 would just sit there dry heaving. Always had a trash can next to his
12 chair. I got him a -- my mom bought him a special chair that would
13 actually almost stand him up. It looked a La-Z-Boy recliner chair. Just a
14 single chair that plugged in. We were kind of able to stand him up.
15 Right next to that chair, we had a trash can. I'd be in the other room, and
16 I'd hear him gagging, and it was awful. It really was.

17 Q Did you --

18 A But it's his -- it was his throat. I mean, he couldn't -- if he did
19 try to swallow something, it was almost like an instant gag or throw up.

20 Q Did he complain of something in his throat?

21 A Oh, yes. I want to say I've heard probably a few different
22 things, right? Yeah. I feel like there's something stuck in my throat. Or
23 basically something stuck in your throat or maybe like a -- like a
24 blistering feeling or something. Something stuck in his throat, I guess,
25 would be the main -- the main aspect.

1 Q So did you have to assist him physically? Like, your hands
2 on him helping him?

3 A Oh, yeah.

4 Q Okay. Tell me about that.

5 A I'd have to help him get up. I mean, I'd have to -- I had to do
6 everything. There was a time when he went to the bathroom, and I
7 thought he managed to get up somehow and make it to the bathroom,
8 which I was very impressed by that. But I could -- I went -- I thought he
9 was sleeping, and I went and checked on him and he wasn't there. And I
10 was calling his name, I was looking for him. He made it to the bathroom,
11 and he was -- he sat down on the -- on the toilet, and he couldn't get
12 back up. And that was when, of course, I panicked, you know. And I got
13 the door open. And that was a -- that was a lifechanging moment right
14 there when I had to pick my dad up off the toilet and help him get his
15 pants back on.

16 Q For him too?

17 A Yeah. I think he lost a little bit of his -- his manlyhood there.
18 I want to say he felt -- he was very disappointed that day.

19 Q So you've told us about some of his physical limitations
20 following the radiation therapy. But what about him as just his
21 personality?

22 A Oh, yeah.

23 Q Did it change?

24 A Oh, yeah. He was a people person. Whether we were
25 working or we went somewhere, we went to a restaurant or we went

1 anywhere, he would talk to people. He was a people person. He
2 had -- like I said, he had a smile that would light up a room. He was just
3 all around a good person. And then we'd have, like, Thanksgiving.
4 Thanksgiving was his -- his favorite holiday. He loved to eat. He got this
5 weird cake that he decided he wanted us to learn how to cook. Making
6 recipes or bake or whatever he wanted to do, you know, do it, you know.

7 And, you know, Thanksgiving came around and he wouldn't even
8 come out to say hi to the family, friends. He stayed in the back room.
9 And I tried, I tried to get him out. But he didn't want to -- he wouldn't
10 come out to say hi to anybody. He says because he wasn't feeling -- he
11 said it was because he wasn't feeling good. But I think a lot of it was the
12 way he looked. You know, he -- I think he started to realize the way he
13 was starting to look, and I think that kind of, you know, ruined his self-
14 esteem a little bit.

15 Q Did he -- was that because he was losing weight?

16 A Yeah. Yeah.

17 Q Did he ever express to you any anger toward the insurance
18 company?

19 A Oh, yeah.

20 Q What was that? Tell us about that.

21 A I want -- I would say expressed to me, maybe our whole
22 family kind of -- you know, me, my sister, my mom. Just frustration, you
23 know? I remember him saying one thing and the one thing was, when
24 did the insurance company know more than the doctors? That's what
25 was said. It's the only thing I really -- I can recall him saying, but that

1 was a conversation.

2 Q Well, we've heard that your dad was a family guy, right? Is
3 that true?

4 A Yeah, definitely.

5 Q So a lot of people say that, but I want to know what he did.
6 There's what you say and what you do. What did he do to demonstrate
7 that he was a family guy?

8 A You know, he was just a -- he was just a good person. His
9 grandkids, he loved his grandkids. Sophia would come running in the
10 room, jump up on his lap on that chair I was talking about. And he loved
11 the grandkids. That was, I want to say, towards the end. I mean, that
12 was his whole world. Really was. I think for any grandfather it would be.
13 But it was -- TJ was just born. That was super exciting for him. And I
14 don't ever remember him being that nice to me when I was that young.
15 But --

16 Q I think that's how it goes, BJ.

17 A But he was -- he was -- he was a good person. He was a
18 family guy. His friends, he treated his friends like family. He treated my
19 friends like family. He was just a family guy.

20 Q How about his relationship with Sandy?

21 A That is -- that is something that is rare. They were married
22 for a very, very long time. You know, he had me when he was 40 years
23 old. I don't know why he waited so long. But they've been married for a
24 very long time and that's something very special. And my mom -- they
25 had a really good relationship.

1 Q In what way?

2 A Just overall. They -- they were --

3 MR. SMITH: I'm sorry. Judge, I'm going to object. Can we
4 approach, please?

5 THE COURT: Yes.

6 [Sidebar at 4:58 p.m., ending at 4:59 p.m., not recorded]

7 THE COURT: Ladies and gentlemen, we're going to take our
8 evening recess and come back tomorrow at 10:45. In the interim, you
9 are instructed not to talk with each other or with anyone else about any
10 subject or issue connected with this trial. You are not to read, watch,
11 listen to any report of or commentary on the trial, of any person
12 connected with the case, or by any medium of information including
13 without limitation newspapers, television, the internet or radio.

14 You are not to conduct any research on your own related in
15 this case such as consulting dictionaries, using the internet, or using
16 reference materials. You are not to conduct any investigation, test any
17 theory of the case, recreate any aspect of the case or in any other way
18 investigate or learn about the case on your own.

19 You are not to talk with others, text others, tweet others,
20 Google issues, or conduct any other kind of book or computer research
21 with regard to any issue, party, witness or attorney involved in this case.
22 You are not to form or express any opinion on any subject connected
23 with this trial until the case is finally submitted to you.

24 So we'll return tomorrow at 10:45. Thank you.

25 THE MARSHAL: All rise for the jury. Leave your notepads.

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[Jury out at 5:00 p.m.]

THE COURT: Do the parties need to address any issues outside the presence of the jury?

MR. SHARP: No.

MR. TERRY: I don't think so, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: All right. I'll see you tomorrow at 10:45.

MR. TERRY: 10:45?

THE COURT: Yes.

MR. TERRY: Thank you, Your Honor.

THE COURT: Or sooner if you're Mr. Roberts.

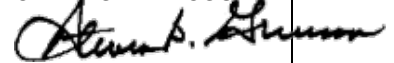
MR. ROBERTS: Thank you, Your Honor.

THE COURT: Have a good evening.

[Proceedings adjourned at 5:00 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.


Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7)
8 SANDRA ESKEW, ET AL.,)

CASE#: A-19-788630-C

9 Plaintiff,)

DEPT. IV

10 vs.)

11 SIERRA HEALTH AND LIFE)
12 INSURANCE COMPNAY, INC., ET)
13 AL.,)

Defendants.)
_____)

14 BEFORE THE HONORABLE NADIA KRALL
15 DISTRICT COURT JUDGE
THURSDAY, MARCH 24, 2022

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7**

17
18 APPEARANCES

19 For the Plaintiffs:

MATTHEW L. SHARP, ESQ.
DOUGLAS A. TERRY, ESQ.

20
21 For the Defendants:

D LEE ROBERTS, JR., ESQ.
RYAN T. GORMLEY, ESQ.
PHILLIP NELSON SMITH, JR., ESQ.

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23
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25 RECORDED BY: MELISSA BURGNER, COURT RECORDER

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FOR THE PLAINTIFFS

MARKED

RECEIVED

None

FOR THE DEFENDANTS

MARKED

RECEIVED

167

129

1 Las Vegas, Nevada, Thursday, March 24, 2022

2

3 [Case called at 10:44 a.m.]

4 [Outside the presence of the Jury]

5 THE MARSHAL: -- session now, with Judge Nadia Krall
6 presiding.

7 THE COURT: Thank you. Please be seated. Are the parties
8 ready for the jury?

9 MR. SMITH: Yes, Your Honor.

10 MR. TERRY: Yes, Honor.

11 THE COURT: Thank you.

12 MR. TERRY: Can I bring Mr. Eskew back in, Your Honor, at
13 this point?

14 THE COURT: Yes.

15 THE MARSHAL: Judge?

16 THE COURT: Yes.

17 THE MARSHAL: Judge, Number 5 is not here yet.

18 THE COURT: Will you have Tia call him.

19 THE MARSHAL: Okay. Yes, that's where I'm going.

20 THE COURT: So we're missing Mr. Desmond. He's seat
21 number 5.

22 [Pause]

23 MR. TERRY: Your Honor, can Mr. Eskew take a seat up
24 there?

25 THE COURT: Yes.

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[Pause]

THE MARSHAL: We are ready.

THE COURT: Thank you.

THE MARSHAL: Okay. All rise for the jury.

[Jury in at 10:48 a.m.]

THE MARSHAL: All jurors are present.

THE COURT: Thank you. Do the attorneys stipulate to the presence of the jury?

MR. TERRY: Yes, Your Honor.

MR. SMITH: Yes, Your Honor.

THE COURT: Thank you. Please proceed, Mr. Terry.

MR. TERRY: Thank you, Your Honor.

WILLIAM ESKEW, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION CONTINUED

BY MR. TERRY:

Q Good morning, B.J.

A Good morning.

Q Let's try to pick up where we left off yesterday afternoon or evening, and let's try to get through quickly, What's left of what I need to ask you about. Just to sort of reset things, is it your testimony B.J., that before your dad got cancer and went through this radiation treatment, that he was a happy guy?

A Yes.

Q And had a good life?

A He really did.

1 Q And he was looking forward to his future?

2 A Yes.

3 Q And then after things changed, you've told us about that,

4 right?

5 A Yeah. Yes.

6 Q All right. Now is it true B.J. that you were the member of

7 your family that had sort of the job schedule flexibility to be available to

8 help your dad get to and from his doctor's appointments?

9 A Yes. Yeah, that was me.

10 Q Okay. And did you do that on a fairly regular basis?

11 A Yeah. A very regular basis.

12 Q Okay. And so after he came back from MD Anderson you

13 were you were the person in the family that mostly took him to doctor's

14 appointments?

15 A I did.

16 Q And were you sometimes in the exam room with him?

17 A Yes.

18 Q And when would take him to the doctor, I assume you'd put

19 him in a vehicle that you would drive him in?

20 A Yes.

21 Q When you would get to the doctor, to the facility, wherever it

22 might be, did he require any assistance to get in and out of the building?

23 A Sometimes as he declined, yes.

24 Q He had a hard time just walking across the --

25 A Just --

1 Q -- parking lot?

2 A Yeah. Just weak. Weak would be --

3 Q Could he get in and out of a vehicle on his own?

4 A As time went on, no. As time went on, no

5 Q Okay. So you'd sometimes be in the room and doctors, or
6 nurses would come in and ask him some questions about how he was
7 doing, right?

8 A Yes.

9 Q And you would sometimes hear his answers?

10 A Oh, yeah.

11 Q And would the doctors ask if he was in pain?

12 A Yeah. That was -- that was a big question.

13 Q And would your dad always tell the doctors the same way
14 that you experienced it at home?

15 A Oh, yeah --

16 MR. SMITH: Objection, Your Honor. It calls for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: Yes. Yes.

19 BY MR. TERRY:

20 Q It would be different sometimes, his answer?

21 A Yeah. I mean, most of the time was, you know, they'd ask
22 how he was -- how he was doing, and sometimes he'd say, "Oh, I'm fine,
23 nothing's wrong." A lot of times you could -- he would say that, and you
24 could see that it was -- that was not the case, because it wasn't, you
25 know. If I have to help you get into a room, obviously you're not okay.

1 MR. SMITH: Judge, I'm going to renew my objection, that
2 Mr. Eskew is speculating, because he's testifying about his father's mind
3 state.

4 THE COURT: His father's what?

5 MR. SMITH: His father's state of mind.

6 THE COURT: Overruled.

7 BY MR. TERRY:

8 Q Okay. So you would be around your dad, at home; you all
9 lived in the same house?

10 A Yes.

11 Q And you'd see his condition at home, right?

12 A Yes.

13 Q And then you'd get to the doctor's office, and the doctor or
14 the nurse would ask him questions and he would downplay the way he
15 was feeling?

16 A Yes. Sometimes I would kind of, butt in, and make a
17 comment, but that would almost turn into almost an argument between
18 me and my dad, or if he feels like I'm attacking him, or I'm stepping on
19 his toes basically.

20 Q So sometimes you would try to chime in, and he wouldn't
21 want that?

22 A Yes.

23 Q So is it true that the members of your dad's family, you and
24 others, were on him to eat and drink?

25 A Everybody that was around him was on him to eat and drink,

1 family-wise.

2 Q So how did he feel about that?

3 A Frustrated. Frustrated. Sometimes he would -- he would get
4 mad, you know. He feels that we were, you know, attacking him, when
5 we say, "Hey, did you eat?" "Yes, I did. "Why is all your food on the
6 plate?" "Oh, there was a lot of food on the plate, I ate most of it," and it's
7 just -- it was always -- it would kind of turn into almost an argument. So
8 you kind of just have to back off and let it settle down.

9 Q Was your dad the kind of guy that complained much?

10 A No.

11 Q You've seen situations where he was obviously hurt, and he
12 wouldn't complain?

13 A No. He was -- he was tough.

14 Q Was your dad a prideful guy?

15 A Yes.

16 Q What do you mean when you say that?

17 A He's would -- he just -- I don't really know how to answer
18 that. He just -- he was tough, he really was a tough person and he
19 wanted to -- he didn't want someone to see him weak, you know, that's
20 really the only way I can answer that.

21 Q So when you'd be in the doctor's office with him, from time
22 to time, is it true that either doctors or nurses, whoever it might have
23 been, would tell him, you need to be eating, you need to be drinking;
24 that kind of stuff?

25 A Oh, yeah.

1 Q How'd that make him feel?

2 A You know, I can't remember specifics on that note, but it
3 would -- the overall it would be the same. He would react almost the
4 same way that I would tell him he needs to eat. The only difference is he
5 was nicer to the doctor.

6 Q He knew he needed to be eating and drinking?

7 A Yeah.

8 Q But he was having a hard time with it?

9 A He couldn't do it. So --

10 Q So, your sister told us about his "puke-bucket"? That's kind
11 of a crude thing to say, but that's what you guys called it, I guess, right?

12 A It's true. It's true.

13 Q And so is that something that was just an ever present thing
14 with him?

15 A Yes. When he was at home, he -- I think I might have said
16 this yesterday, he had a special chair that we got him, and that chair had
17 a trash can, a small like office trash can right next to it, and all the time
18 you would hear him dry heaving, I guess.

19 Q Could your dad get up out of his chair that would lift him up
20 and stand him up? Could he walk through the house, no problem?

21 A I wouldn't say "no problem." He would -- he struggled --
22 there was times, no, he couldn't, and there was times that he could.

23 Q Did you ever have to set anything up in the house in such a
24 way that he could make his way through the house?

25 A Yes and no. I mean, we -- the house was already set up to

1 where it was pretty functional for him. He -- I think I said this yesterday
2 too, he had an incident where he managed to make it to the bathroom. I
3 couldn't believe he did it, but he held onto every wall to every counter,
4 until he could get to the bathroom, and then he got stuck in the
5 bathroom at that point.

6 Q Did he ever have any falls?

7 A Yes.

8 Q Tell us about a situation where he fell around the car?

9 A So, one specific that I can remember, or think of, no clearer,
10 was that he had a little car, convertible, a little, two-seat convertible, and
11 he had the top down, which was better for him to get in and out of,
12 because he could almost grab the top of the windshield corner, to kind of
13 help him get into the car.

14 I didn't see it happen, but I came outside, there was blood
15 everywhere. He fell -- he somehow fell, and he hit his back on the center
16 console and broke a, I don't know if he broke -- what he broke, maybe a
17 rib or something like that, but that was --

18 Q Where does the blood come from?

19 A Honestly, I don't remember, but I do remember there being
20 blood, and I was like, oh my God, what happened? And that was the end
21 of that. It said, "No more car." And so we kind of got him a -- my mom
22 got him a -- like a crossover SUV, that he could get in and out of easier.

23 Q Okay. B.J., you know that your mom has brought this
24 lawsuit in your dad's name, right?

25 A I do.

1 Q Do you support that decision to do that?

2 A I do.

3 Q How do you think your dad would feel about it?

4 MR. SMITH: Objection, Judge. Relevance.

5 THE COURT: Sustained.

6 BY MR. TERRY:

7 Q Are you proud of your mother for doing what she's done?

8 A I am.

9 MR. SMITH: Objection, Judge. Relevance.

10 MR. TERRY: No further questions.

11 THE COURT: Mr. Smith?

12 [Counsel confer]

13 MR. SMITH: May I proceed, Your Honor?

14 THE COURT: Yes.

15 MR. SMITH: Thank you.

16 CROSS-EXAMINATION

17 BY MR. SMITH:

18 Q Good morning, Mr. Eskew.

19 A Good morning.

20 A I'm assuming you figured it out by now, I'm one of the
21 attorneys for Sierra, the company?

22 A I have.

23 Q Let me start by telling you, like I told your sister yesterday,
24 that I extend my condolences for the loss of your father, okay?

25 A Thank you.

1 Q But I do have a couple of questions to ask you, as I'm sure
2 you can imagine?

3 A Of course.

4 Q Mr. Eskew, one of the things that I want talk to you about,
5 first, is something that came up during direct examination, and that was
6 a discussion about you and your father's foray into purchasing Meineke
7 franchises; do you recall talking about that?

8 A Yes. Yes and no. You're talking about during my
9 deposition?

10 Q No, I'm talking about yesterday?

11 A Oh, yes.

12 Q Do you remember talking about buying the Meineke
13 franchises?

14 A Yes. Yes I do.

15 Q Okay. So it's my understanding that initially your family
16 purchased two Meineke franchises; is that correct?

17 A No. Initially we purchased one.

18 Q Fair. You purchased one Meineke franchise, and then later
19 you purchased a second one, correct?

20 A Correct.

21 Q And then I believe you told us yesterday that you ended up
22 selling the first one; is that correct?

23 A Correct.

24 Q It's my understanding that you bought the first Meineke
25 shop in December of 2012; does that sound about right?

1 A Correct.

2 Q And then you owned that one 50/50 with your father?

3 A Yes.

4 Q I understand that he helped you with that first shop, or you

5 guys helped work that shop together and made it profitable, correct?

6 A We did.

7 Q It's also my understanding that you were working at that

8 store pretty much every day open and close?

9 A Yes.

10 Q Your father was working there with you?

11 A Yes.

12 Q And then as I understand it you purchased the second

13 Meineke franchise in September of 2015. So it would've been right

14 around the time that your father first learned that he had lung cancer;

15 does that sound right?

16 A I'm not sure of the dates.

17 Q Okay. If you previously testified that the Meineke shop was

18 purchased in September, 2015, that you would have no reason to believe

19 that that was false, right?

20 A No. If that's what I -- if that's what I said, I'm just not sure of

21 the dates.

22 Q Okay. And you told us that you sold the second shop

23 because it was too far away from your house?

24 A Well, there was more to it than that, but, yes.

25 Q And, incidentally, I understand that you sold the first shop for

1 about \$170,000; does that sound right?

2 A Yes.

3 Q Okay. So suffice it to say, you guys made a pretty good
4 profit on that shop, right?

5 A Yes.

6 Q Now the second shop, the one that you kept after you sold
7 the first one, did you and your father both work that shop pretty much
8 every day; open to close?

9 A Yes.

10 Q Can you tell us, based upon your understanding, when your
11 father stopped helping out with the second shop?

12 A So I'm not sure of the dates, exactly, but it was more of like a
13 fadeaway process, where he just started to -- he did help a lot. He would
14 go and he would run errands. He would do our like Sam's Club runs,
15 and printer cartridges, office supplies, things like that, he would do a lot
16 of that stuff, or bank deposits. He would do a lot of that stuff, and it kind
17 of faded away to where I started doing all that, and he would just kind of
18 hang out in the lobby and talk with customers when he had time, and
19 then slowly -- but that just slowly faded away.

20 Q Okay. Well, based on your statement, he did at least
21 continue to be a presence at the shop, even after he was diagnosed with
22 cancer, correct?

23 A Yes.

24 Q And he continued to be a presence at the shop even after he
25 returned from MD Anderson, and was receiving their radiation

1 treatment, correct?

2 A I'm not sure on that. I'm not sure on that.

3 Q If medical records indicated that, at least in May, 2016, he
4 was still working at that shop, the second shop, you wouldn't have any
5 reason to dispute that, would you?

6 A Not if it's true.

7 Q Now let's talk about MD Anderson and the treatment a little
8 bit.

9 A Okay.

10 Q It's my understanding that you actually didn't go to any of
11 Mr. Eskew's appointments at MD Anderson, right?

12 A I did not.

13 Q So any of the statements that your father made to doctors,
14 while he was at MD Anderson, you wouldn't know whether or not he
15 was being absolutely forthcoming, or kind of holding stuff back, as you
16 told us during your direct examination, correct?

17 A No, I wouldn't, because I wasn't there.

18 Q Right. Now the appointments that you did attend with your
19 father, those would have been appointments in Las Vegas, correct?

20 A Correct.

21 Q Okay. And it's my understanding that at those appointments,
22 neither you, nor Mr. Eskew, your father, talked about Mr. Eskew's life
23 expectancy, and whether or not he was going to be able to beat the
24 cancer; is that fair to say?

25 A If it was, I wasn't there for that.

1 Q Okay. So as I understand it, you're also telling us that even
2 during some of the appointments that you went to with your father here,
3 you weren't actually in the room when your father was having
4 conversations with the doctors he was there to see; is that fair?

5 A No, I was in the room during the conversation, I just didn't
6 have conversation about life expectancy.

7 Q Okay. So I guess the point I'm trying to get at Mr. Eskew is,
8 you can't tell us that you heard any doctor ever tell your father that he
9 was going to be able to survive his cancer, right?

10 A Nope.

11 Q And you didn't talk to anyone, yourself, about whether or not
12 the cancer was curable, correct?

13 A No.

14 Q It's also my understanding that you didn't talk to your father
15 about what kind of treatment he was actually planning on getting; is that
16 right?

17 A Correct.

18 Q You also don't remember discussing any of the cancer
19 treatment plans with the rest of your family, correct?

20 A Correct.

21 Q And as you sit here today, you don't remember any specific
22 conversations that you, yourself, had with your father about his cancer,
23 right?

24 A No.

25 Q Now it's my understanding that you found out about MD

1 Anderson and this proton therapy that you're now familiar with, right?

2 A Correct.

3 Q It's my understanding that you found out about MD

4 Anderson and this proton therapy from your mother, right?

5 A Yes.

6 Q You yourself, didn't -- never did any independent research on
7 It?

8 A I did not.

9 Q Do you know whose idea it was to go to MD Anderson?

10 A My mom's.

11 Q Okay. So to be clear, it wasn't from your father's treating
12 oncologist here, right?

13 A No.

14 Q And in those appointments that you were with your father
15 here in Las Vegas, you never heard anyone recommend that your father
16 go to MD Anderson or get proton therapy, correct?

17 A I didn't talk about it, no.

18 Q Okay, I understand. And whether or not you talked about it,
19 you never heard that conversation, correct?

20 A No, I did not.

21 Q Okay. You never sat in on any appointments where any
22 doctor talked about proton therapy, and its possible application to your
23 father's case, right?

24 A Nope.

25 Q You never heard your mother or your father, themselves,

1 talking amongst each other about -- excuse me, amongst each other,
2 talking about proton therapy, correct?

3 A No. Not prior to MD Anderson

4 Q And you never saw any research or learn of any research that
5 your mother may have done about proton therapy, right?

6 A No.

7 Q Or about the radiation treatment that he actually got; that he
8 received, right?

9 A No. I don't know anything about it.

10 Q To your understanding, do you now know that it's called
11 "IMRT"?

12 A Yes.

13 Q Okay. And I believe you actually told us yesterday that you
14 don't know anything about the actual radiation treatment that your father
15 was given at MD Anderson, right?

16 A No.

17 Q No, I'm not right, or no, you don't know?

18 A No. No. I don't know.

19 Q Okay.

20 A I was never really involved with any of the treatment stuff. I
21 just -- I was just a helper. I would take him to his doctor's appointments.
22 I would help him where -- I would help where help was needed, that's it.

23 Q Okay. Now in regards to you --

24 MR. SMITH: Actually strike that.

25 BY MR. SMITH:

1 Q You obviously learned at some point, right, that the
2 treatment that your father wanted wasn't approved by my client, correct?

3 A Correct.

4 Q Okay. But you don't know anything about that process or
5 how that happened, right?

6 A Just that it was denied.

7 Q Well, it's my understanding that you don't know anything
8 about the request that was sent from MD Anderson to Sierra?

9 A No. Not at the time, no.

10 Q And you've never seen that request, right?

11 A No.

12 Q You don't know if your dad ever saw it, right?

13 A I have no clue.

14 Q You don't know if your father ever actually saw the denial
15 that was written on a letter, right?

16 A I don't know.

17 Q And you, as you sit here today, don't know exactly why the
18 request for proton therapy was denied, right?

19 A I do not.

20 Q You never talked to your dad about it?

21 A I did not.

22 Q It's my understanding that still, you don't even know when
23 exactly it was denied; is that correct?

24 A Correct.

25 Q Anyone discuss with you, in the family, as to whether or not

1 that denial should have been appealed, or could have been appealed?

2 MR. TERRY: Objection, Your Honor, relevance. Can we
3 approach?

4 THE COURT: Yes, approach.

5 [Sidebar at 11:11:05 a.m., ending at 11:13:22, not recorded]

6 BY MR. SMITH:

7 Q Mr. Eskew, I'm going to ask my question again. My question
8 was, did anyone in the family, your mother, or your father, or even your
9 sister, ever discuss with you whether or not that denial could have been
10 appealed?

11 A I don't know.

12 Q Do you recall testifying previously, that, no, no one in the
13 family discussed that possibility with you?

14 A I'm not sure.

15 Q So you're not sure if you testified to that, or you're not sure
16 as you sit here today as to whether or not your family told you that?

17 A I can't remember. So I'm not sure if that was something that
18 we discussed.

19 Q Okay. You testified on direct, Mr. Eskew, that essentially you
20 observed Mr. Eskew's quality of life before the radiation treatment, and
21 were able to compare that as to what his quality of life was after the
22 radiation treatment; do you remember that?

23 A Yes.

24 Q Now it would be fair to say, Mr. Eskew, that your father did
25 do some activities with you, and continued to do some activities with

1 you even after the radiation treatment, right?

2 A Yeah, I believe so.

3 Q Like he went to -- he still went to some of your races, didn't
4 he?

5 A I think so. Yeah. I think he went to one maybe, maybe one.

6 Q Do you remember the exact date of that race?

7 A I do not.

8 A Okay. So you can't tell us how long after your father's
9 treatment stopped that he was still going to races with you, correct?

10 A I couldn't.

11 Q Okay. If it was as late as December, 2016, you'd agree with
12 me that, that would've been about nine months after that treatment,
13 right?

14 A If that were the case, then, yes.

15 Q Okay. And that would have been only three months before
16 his unfortunate passing, correct?

17 A Correct.

18 Q I understand that your father still went golfing with you, even
19 after that treatment?

20 A I'm not sure if he did.

21 Q I understand that your father still went boating with you,
22 after that treatment?

23 A Possibly, like -- yeah.

24 Q Okay.

25 A The golfing was a, no.

1 Q Well, just a second ago you said you weren't sure?

2 A Yeah. I wasn't sure, but it's a, no, we did not go golfing after
3 that.

4 Q Do you remember testifying, previously, at a deposition, that
5 you actually weren't sure of the exact date of the last time your father
6 went golfing with you?

7 A Yes.

8 Q Okay. So then if you weren't sure of the exact date, then
9 how can you tell us today that you're certain he didn't go golfing with
10 you after he received that treatment?

11 A Because he had a broken arm.

12 Q Okay. You told us that your father became weak, he had
13 trouble eating, and he couldn't swallow; do you remember telling us
14 that?

15 A Yes.

16 Q Can you give us a timeline of when this happened?

17 A I -- I couldn't give you an exact timeline. I -- I just don't know
18 the dates, if -- if that's what you're asking for?

19 Q Can you give us an estimation as to how long after he
20 returned from his treatment that this started?

21 A I'd say immediately.

22 Q And it just kind of stayed like that all the way up until the
23 time he passed away, right?

24 A It declined.

25 Q So, Mr. Eskew, if I understand your testimony correctly, the

1 reason why you know that your father would have trouble eating and
2 couldn't swallow, and things of that nature, was because he would tell
3 these things to you, correct?

4 A He would -- he would tell it to me, and he would -- he would
5 vomit and dry heave all the time.

6 Q Okay. You told us that he would complain about something
7 being stuck in his throat, and it feeling like a blistering feeling, right?

8 A Yes.

9 Q But it's also your testimony that when he would go to a
10 doctor to seek treatment for these ailments, that he nevertheless would
11 not tell the doctor that he was going through that; is that that's your
12 testimony?

13 A No. So my testimony is that he would go to the doctor, and
14 he would say that he feels like he has something in his throat, but when
15 the doctors would tell him he needs to eat, he would say he's eating, or
16 he feels fine. He was just -- he has trouble eating, because he feels like
17 he has something in his throat. And I would go on and tell the doctor
18 that he's not eating, and then that would then turn into kind of a dispute
19 between me and him.

20 Q So, Mr. Eskew, perhaps I missed something, but I thought
21 during direct examination, when Mr. Terry was asking you about you
22 going with your father to see the doctor, you told us things like your
23 father's a prideful man, right? Yes?

24 A Yes.

25 Q You told us that he was a tough guy, right?

1 A Correct. And you told us -- you suggested to us, if not
2 outright told us, that the reason why he wouldn't make complaints or
3 why these things wouldn't be documented in medical records, was
4 because he wasn't a complainer, and so he wouldn't say things like that
5 to the doctor. Do you remember telling us that?

6 A Yes.

7 Q But at the same time you're telling us that he nevertheless
8 would complain to you, and I suppose your mother and your sister all
9 the time, about being in pain and having difficulty eating and
10 swallowing, correct?

11 A Correct.

12 Q Okay. You'd agree that those two statements are
13 inconsistent, right?

14 A Yes.

15 Q Okay. And you've also told us that you weren't with your
16 father at any of the appointments that he went to in Texas, at MD
17 Anderson, right?

18 A Correct.

19 Q Okay. You told us about your father losing weight, right?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Okay. And I'm sorry, I'm not trying to be a jerk.

24 A I know, I'm sorry.

25 Q Yeah.

1 A I knew that.

2 Q You remember during the deposition being talked to about
3 that, right?

4 A Yep. I knew that, I'm sorry.

5 Q No problem. But you'd agree that at some point your
6 father's -- he gained weight, right?

7 A I don't agree with that.

8 Q Okay. So, just to make sure I understand, you don't agree
9 that from any point in time, when your father returned from MD
10 Anderson to the time that he passed, that he gained weight?

11 A I don't believe so.

12 Q Okay. You also told us, kind of as additional evidence, that,
13 you know, your father was in emotional stress and wasn't himself
14 anymore. He didn't want to hang out with the family. You told us about
15 a Thanksgiving example; do you remember that?

16 A Uh-huh. Yes.

17 Q Now I caught myself. I was actually just about to ask you,
18 can you tell us when that happened, then I realized it was Thanksgiving,
19 right?

20 A Yes.

21 Q Okay. Thanksgiving is in November, right?

22 A Yes.

23 Q Do you recall your father -- let me rephrase the question. Do
24 you recall a Disney Cruise, that would've happened around December,
25 2016?

1 A I do remember us going on a cruise, my family; my dad
2 excluded.

3 Q Right. So that would have obviously been after
4 Thanksgiving, right?

5 A If that was the date. I'm not -- I'm not sure of the date.

6 Q Well, Thanksgiving is in November, right?

7 A Correct.

8 Q Disney cruise was in December, 2016, I believe you just said
9 right?

10 A If that's when the cruise was --

11 MR. TERRY: Objection. It mischaracterizes the testimony; he
12 didn't say when it was.

13 MR. SMITH: I'll rephrase the question.

14 BY MR. SMITH:

15 Q I'm going to represent to you that there has been testimony
16 that this Disney Cruise was in December, 2016, okay?

17 A Okay.

18 Q If that's true, that would've occurred after the Thanksgiving
19 episode that you told us about, correct?

20 A Correct.

21 Q And this would've only been a few months before he passed
22 away, correct?

23 A Correct.

24 Q And it would've been nine months after he completed the
25 radiation therapy at MD Anderson, if the records indicated that that

1 would've stopped in March, 2016, correct?

2 A Correct.

3 Q So almost a year, right?

4 A Correct, nine months.

5 Q Do you remember your father actually wanting to go on that
6 Disney Cruise, but you being with him -- let me finish my question. Do
7 you remember your father wanting to go on that Disney Cruise, but you
8 being with him with -- in Dr. Jean's office and Dr. Jean being the one to
9 tell him that he shouldn't go?

10 A Yes.

11 Q Okay. So it's fair to say he wanted to go on that cruise, right?

12 A Yes.

13 Q And it's my understanding that Dr. Jean told your father that
14 the reason why he shouldn't go, was simply because he didn't think a
15 cruise ship was sanitary enough, and he was afraid Mr. Eskew would get
16 an infection, right?

17 A That's exactly what he said.

18 Q And based on your own observation and knowledge of kind
19 of your father's medical problems from when he first got diagnosed with
20 cancer, you recall he had a bout several times with infections, based on
21 his arm surgery, right?

22 Q Yes. And that obviously would've had nothing to do with his
23 radiation therapy, right?

24 A Yes.

25 Q Mr. Terry also asked you about your father having a puke

1 bucket, right?

2 A Yes.

3 Q Mr. Eskew, it's fair to say that a person that has late-stage
4 cancer, kind of in the final phase of their life, they might have a lot of
5 nausea, right?

6 MR. TERRY: Objection, Your Honor. This guy's not a doctor,
7 this is irrelevant testimony.

8 THE COURT: Overruled.

9 THE WITNESS: I have no idea.

10 BY MR. SMITH:

11 Q Okay. How old are you, sir?

12 A Thirty.

13 Q Okay. Do you watch TV?

14 A What's that?

15 Q Do you watch TV?

16 A Yes.

17 Q Do you use the internet?

18 A Yes.

19 Q You graduated high school, right?

20 A Yes.

21 Q You did a little college, right?

22 A Yeah.

23 Q You're telling us, based on your common sense and kind of
24 just life experience, that you have no idea as to whether someone with
25 late-stage cancer might be nauseas?

1 A That's exactly what I'm telling you.

2 Q Okay. Now, Mr. Terry asked you a couple of questions about
3 this lawsuit; do you remember that?

4 A Uh-huh. Yes.

5 Q Mr. Eskew, you, yourself, don't blame Sierra for your father's
6 death, do you?

7 A I do.

8 Q Okay. Now, initially, when this lawsuit was filed, you were
9 actually a plaintiff, right?

10 MR. TERRY: Objection, Your Honor. Can we approach?

11 THE COURT: Yes.

12 [Sidebar at 1:25:35 a.m., ending at 11:26:16 a.m., not recorded]

13 BY MR. SMITH:

14 Q Mr. Eskew, during the course of your father's bout with
15 cancer, you come to learn that after the treatment, the cancer had
16 spread?

17 A I don't know,

18 Q At some point did you learn that his cancer didn't respond as
19 had been hoped, to the treatment that he received?

20 A Ask the question one more time?

21 Q Okay. What I'm trying to -- what I'm trying to find out is, if
22 you learned at some point that the cancer wasn't responding to the
23 treatment?

24 A I'm not sure how the cancer responded to the treatment.

25 Q Well, you told us that he progressively got worse and that he

1 declined?

2 A Right.

3 Q Did you infer, it was because the cancer was spreading?

4 A I don't know if the cancer was spreading after the treatment,
5 or if it had spread before the treatment; I don't know that.

6 Q Well, I thought you told us on direct examination that it was
7 after the treatment that he progressively got worse?

8 A He did progressively get -- did get worse, but I don't know if
9 that was from the cancer spreading, or if that's from side effects. I don't
10 know.

11 Q So just so I'm clear, it's your testimony that at no point in
12 time did you learn or infer that your father's cancer was spreading, and
13 that's why he was getting worse?

14 A I did not learn that.

15 Q Okay. Going back to what you have admitted, somewhat
16 inconsistent with you telling us that your father would complain to you,
17 but would not complain to his doctors, and then tying that in with your
18 testimony about the car accident, do you remember telling us that he got
19 -- excuse me, not car accident, the fall. Do you remember talking to us
20 about the fall?

21 A Yes.

22 Q Okay. And he had to go see some physicians about that,
23 right?

24 A I'm sure, yes.

25 Q I'm going to show you, and this has already been admitted,

1 Exhibit 169-32, Counsel.

2 MR. TERRY: Yeah. Thank you.

3 MR. SMITH: Hunter, can you bring up 169-32, please. And if
4 you can zoom in, for me, Hunter, on present status. There we go.

5 BY MR. SMITH:

6 Q Now, Mr. Eskew, I'm going to represent to you that this is a
7 page of a medical record from Comprehensive Cancer Centers of
8 Nevada. It shows a date, a treatment date, or a visit date of October 4th,
9 2016, and then we have, patient, your father. That's his date of birth,
10 right?

11 A Right.

12 Q And then we see present status. It says, "Mr. William Eskew
13 is here today for a follow-up. "Patient had a fall yesterday and fractured
14 his rib." That was the incident that you told us about, right?

15 A I believe so.

16 Q He also states that he may have an infected right prosthesis
17 in his arm.

18 "He has an appointment with Dr. Galen Kam, his orthopedic
19 surgeon, to undergo assessment and surgery. He will also be seeing Dr.
20 Dhaval Shah. He denies any fever, denies any headache, overall he feels
21 well, other than rib pain; he is accompanied by his son and his wife."
22 Did I read that correctly?

23 A Yeah.

24 Q So here we have an instance of your father, in fact,
25 complaining about pain to a doctor, right?

1 A Yes.

2 Q Okay. And that would be inconsistent with you telling us,
3 previously, that even if your father was in pain he wouldn't tell a doctor
4 that, right?

5 A Sometimes he would, sometimes he wouldn't.

6 Q Okay. And this would be one of those times, right?

7 A This would be one of those times.

8 Q Okay.

9 MR. SMITH: Court's indulgence.

10 THE COURT: Yes.

11 MR. SMITH: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Smith.

13 MR. SMITH: Mr. Eskew, thank you for your time.

14 MR. TERRY: No further questions, Your Honor.

15 THE COURT: Mr. Eskew, you're excused then.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Terry, will you call your next witness?

18 MR. TERRY: We call Sandy Eskew, You Honor.

19 [Pause]

20 THE MARSHAL: She's going to swear you in.

21 THE CLERK: Please raise your right hand.

22 SANDRA ESKEW, PLAINTIFFS' WITNESS, SWORN

23 THE CLERK: Will you please state and spell your first and
24 last name for the record?

25 THE WITNESS: Sandra Eskew. S-A-N-D-R-A E-S-K-E-W.

1 THE CLERK: Thank you, you may be seated.

2 THE COURT: Go ahead, Mr. Terry.

3 DIRECT EXAMINATION

4 BY MR. TERRY:

5 Q Good morning, Sandy.

6 A Good morning.

7 Q Have you been dreading this?

8 A Have I been what?

9 Q Dreading this?

10 A I have been.

11 Q Okay. Are you nervous?

12 A I am.

13 Q Are you ready to get through it?

14 A I am.

15 Q All right, let's do it. Tell us, if you would, Sandy, how long
16 you and Bill were married, before he passed?

17 A We just had our 36th anniversary on March 1st, before he
18 passed.

19 Q And where did you and Bill meet?

20 A In college?

21 Q Where --

22 A Back in Illinois.

23 Q I'm sorry, say it again?

24 A Back in Illinois, in college.

25 Q Did the two of you grow up in Illinois?

1 A Yes.

2 Q And what college were you at when you met?

3 A It was a junior college in Chicago Heights, Illinois.

4 Q Okay. And how old were you when you got married, the two

5 of you?

6 A I was 28, and he was 29.

7 Q Okay. So you didn't get married right out of school?

8 A No.

9 Q You first met in college, and you married later.

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 Q All right. And the testimony of the case has been, up to

14 now, that you spent a portion of your adult lives back in Illinois, and then

15 you moved out here to Las Vegas?

16 A Correct?

17 Q About when did you move to Las Vegas?

18 A In 2006.

19 Q What brought you out here?

20 A The weather. My mom was out here, and my sister had a

21 place out here.

22 Q Okay. And was Bill's profession such that he could come

23 here?

24 A Yes.

25 Q Why is that?

1 A He's in sales, and he travelled, and he ended up working for
2 a company that would let him relocate out here.

3 Q Okay. What kind of sales was Bill in?

4 A Oh, well, when he started, he was originally an independent
5 rep for sound systems, music, guitars, microphones, that type of stuff.
6 And then in Chicago he was working for a company that did speakers,
7 like these, and they ended up letting him relocate out here.

8 Q Okay. Was Bill a music guy?

9 A Yes. He was a guitar player.

10 Q Did he -- did he ever play beyond just for himself; did he play
11 in a band or anything?

12 A That's how he put himself through college. He played in a
13 band, a wedding band, or a lounge band, and he loved music.

14 Q What instrument did he play?

15 A Guitar.

16 Q What kind of guitar? Like a lead guitar, basically?

17 A Yes, lead guitar.

18 Q Okay. Did he sing?

19 A As little as he had to.

20 Q Did music mean something to him, through his life?

21 A Oh, yes. He could never understand why the kids weren't
22 into music, he thought everyone should be in music.

23 Q Did he ever have any experience in his life with professional
24 music, beyond just his own little band?

25 A Well, he sold guitars, microphones sound systems.

1 Q Did he sell those to musicians that were famous?
2 A Well, yes. He became friends with people from the band, the
3 Boston Band, who became very close.
4 Q Boston, you said?
5 A Yes. They had a company called the SRD, and he sold some
6 of their equipment, so he became close with them, and he met a lot of
7 people.
8 Q Was Bill a born salesman?
9 A Was he what?
10 Q A born salesman?
11 A I think so.
12 Q Why, so?
13 A He was just very outgoing, very social, loved to talk to
14 people, and that's what salesmen do.
15 Q So when you moved your family out here, you said '06?
16 A '06.
17 Q You had your two kids that we've met now?
18 A Yes.
19 Q And they were high school age?
20 A Tyler was a senior in high school, and he was starting -- he'd
21 be a freshman.
22 Q B.J. was?
23 A Yes.
24 Q Okay. And let's -- what do you do for a living?
25 A I'm a dental hygienist.

1 Q How long have you been a dental hygienist?

2 A You really want to know that?

3 Q I guess so.

4 A I graduated in '72, so 50 years.

5 Q Wow. Okay. So how old are you Sandy; I'm sorry to ask?

6 A I'm 69.

7 Q So you started in dental hygienist work --

8 A Uh-huh.

9 Q -- right out of high school, pretty much?

10 A Well, out of college.

11 Q All right. Okay. So I assume that -- or just tell us, whenever

12 you guys moved out here, you and Bill and your family, were you

13 working as a dental hygienist when you came here?

14 A Yes. I -- we knew we were going to move out here, so I

15 applied for my dental hygiene license here in Nevada.

16 Q Okay.

17 A And it took a while to get, and -- but I knew it was going to be

18 a while before we moved.

19 Q Okay. So you had that lined up before you came out?

20 A Yes, I did.

21 Q And then how many jobs do you have, Sandy?

22 A Well, in dental hygiene there's a shortage, so you could work

23 as much as you want. But right now I work for two different dentists.

24 Q Okay.

25 A I have worked for three or four different ones on different

1 days.

2 Q Okay. So there's three or four dentists here in Las Vegas that
3 you've worked in their offices, sometimes all at the same time?

4 A Well, not on the same day --

5 Q Yeah, sorry --

6 A -- but during the same week, yes.

7 Q Yeah. So do you do any other work besides the multiple
8 dental hygienist jobs that you hold?

9 A I do the bookwork for Meineke.

10 Q The bookwork for Meineke, you say?

11 A Yes.

12 Q Like payroll and that kind of thing?

13 A Yes.

14 Q All right. So when did Bill get out of the sales' world,
15 roughly?

16 A Probably before we bought the shop, the first shop, he was
17 doing a lot of traveling and he wasn't liking it, and he was away from
18 home, and it was a stage in his life he thought it would be better to find
19 something else, and so we ended up getting a shop.

20 Q Okay. So Bill retired from his sales' work?

21 A Yes.

22 Q And you said "we" end up getting the shop. Let's talk about
23 that; who's "we" the family?

24 A Yes. Well, Bill and I and then -- and B.J.

25 Q Okay. So how did that come about?

1 A When B.J. graduated high school, he was working as a lube
2 tech in a terrible shop, and ended up going to a Meineke, and he started
3 liking it and was, I think an assistant manager at one time, and came
4 home one day and said they were selling off their corporate-owned
5 stores, they were franchising them; there were some franchises and
6 some corporates, so --

7 Q There was an opportunity then?

8 A Yes.

9 Q So you and Bill decided, along with B.J., to do it?

10 A Yes.

11 Q Okay. And so what was the idea that Bill and B.J. were going
12 to work in it together?

13 A Yes.

14 Q And is that the way it worked out?

15 A Yes.

16 Q All right. So what was Bill's role in the -- in the Meineke
17 Shop, as you understand it?

18 A Well, he didn't do any of the mechanics, but he would sit up
19 front and talk to people and do errands or do whatever needed to be
20 done, pick up parts that needed to be picked up, and things like that.

21 Q And then on the back end, you'd be doing the bookwork,
22 bookkeeping, and that kind of stuff?

23 A Yes. I have a bookkeeper, but I would just enter the stuff and
24 I do payroll, but I have a bookkeeper that I send everything to, to make
25 sure I'm doing it correctly.

1 Q All right. And that's still true today?

2 A Yes.

3 Q All right. And so B.J. was the one that was running the

4 store?

5 A Yes.

6 Q Managing the people and all that?

7 A Yes.

8 Q All right. So we heard that Tyler is a pre-K school teacher

9 here in town, right?

10 A Correct.

11 Q Tell us, how many grandkids do you have?

12 A I have two. I have Sophia who is now ten, and T.J., who is

13 now six.

14 Q All right. Are you ready for some more?

15 A It would be nice?

16 Q So tell us about Bill and Sophia?

17 A Oh, she was the light of his life. She was over all the time.

18 They lived with us for a while until Tyler moved out. But then when

19 Sophia was, I guess she would be four, before -- she was going to go to

20 preschool and we signed her up at a preschool by the house so that Bill

21 could take her every day, which did not happen, but that was the plan.

22 Q Why did that not happen?

23 A Because he got sick.

24 Q Was he looking forward to that?

25 A Oh, yes.

1 Q So somebody said, I think maybe Tyler said yesterday that
2 Bill and Sophia liked to do things together?

3 A Oh, they were together all the time. In the summertime they
4 were in the pool every day. He taught her how to swim. He used to just
5 take her places all the time.

6 Q So when Sophia would show up, how would the two of them
7 act toward each other?

8 A Oh, they loved it. They were happy to see each other.

9 Q Okay.

10 A He spoiled her terribly.

11 Q In what way?

12 A Just whatever she wanted to do; he would do.

13 Q So tell me about Bill's relationship with Tyler. How were --
14 what kind of relationship did they have?

15 A They had a good relationship. I mean, she moved -- after
16 high school she moved back to Chicago for a year, because she was mad
17 that we moved her out here, her senior year, and then realized that it
18 was a smart thing we did, and she came back, and they were fine.

19 Q So Tyler told us yesterday that she always felt like daddy's
20 little girl?

21 A Oh, absolutely.

22 Q Is that what you saw too?

23 A Yes. Until Sophie came along, and then Sophie was his little
24 girl.

25 Q So how about Bill and B.J., what kind of relationship did they

1 have? I know B.J. told us that he was pretty strict on him when he was a
2 youngster, but basically --

3 A He was.

4 Q And then things got better between them, more friendly, as
5 they got older, right?

6 A Yes. Especially when they started working together, they
7 really enjoyed being around each other. They would go on -- well, when
8 they were younger, he was younger up until he got sick, they would go
9 on fishing trips, up in Canada once a year. It was a whole big two-week
10 long thing that they would -- they used to drive from Illinois to Canada.
11 And then when we moved out here they would fly to Chicago where his
12 brother lived, because they left their fishing equipment there, and they
13 would still drive, and they have a good time.

14 Q So did he and B.J. have a good relationship working
15 together?

16 A Oh yes, absolutely.

17 Q We've heard a little bit from Tyler about what kind of family
18 life Bill enjoyed, and from B.J., but let's talk about that some more. Did
19 you consider Bill to have been a family-oriented person?

20 A Oh, absolutely.

21 Q And tell the jury Sandy, why can you say that? I mean, a lot
22 of people may say it, but tell us what he did that indicated that, please?

23 A Well, he loved being around the family. We used to go
24 places together.

25 Q Like what kind of places? What do you mean?

1 A Well, we would go to the races. B.J. had I think six or eight
2 races throughout the year that we'd go to, and he enjoyed doing that.
3 He enjoyed helping around when B.J. was getting cars ready to go to the
4 races, he was right out there helping him. Not that he could do much
5 mechanically, but --

6 Q Helping him?

7 A -- but he was helping him.

8 Q Right.

9 A And just -- we just always did stuff as a family. We had
10 friends that lived out here, that moved here before we did, and we were
11 always getting together. And --

12 Q Is there anybody that Bill would have preferred to spend time
13 with, besides his family?

14 A I don't think so.

15 Q So tell us about these Eskew family Sunday dinners?

16 A Oh, well we would get together every Sunday. It started out
17 to be dinners, but during football season, it ended up being breakfast,
18 lunch and dinner. The kids would come over and they'd be there all day,
19 and friends would come over and it was just the thing we always did on
20 Sunday, when I had friends that live here, and also still live in Chicago.
21 When they were in town, they would come over, and we considered
22 them family, and yeah, we'd spend Sundays together.

23 Q Watch a little football, it sounds like?

24 A Uh-huh.

25 Q Yes?

1 A Yes.

2 Q And I assume the kitchen was working all day?

3 A Absolutely.

4 Q Okay. Well, who was the head cook in that kitchen?

5 A Well, it depends on what we were cooking.

6 Q Yes.

7 A But -- or Bill liked to experiment and cook his desserts, and I

8 -- we were laughing yesterday about Tyler, he insisted on making

9 cheesecakes.

10 Q Where did that come from?

11 A I have no idea, but he liked making cheesecakes. So he'd

12 make cheesecakes, make the kids favorite chicken. He loved fried

13 chicken. He liked experimenting, where I just would either bake or grill,

14 but he liked to experiment and make things.

15 Q Different things?

16 A Yes. He liked eating different things.

17 Q Did he like just cooking, or did he also enjoy the latter part of

18 that, where you get to eat it?

19 A Oh, the latter part too.

20 Q So did Bill's life consist of -- one of the things that made up

21 the quality of his life was his love of food?

22 A Yes.

23 Q And I think Tyler, or -- I can't remember, maybe Tyler said

24 that you guys liked to go out to different restaurants and try things?

25 A Yes. He would like to go to these bizarre restaurants and try

1 different kind of foods that I don't eat, but we would go, and he would
2 eat whatever, and he didn't care. I mean, if he didn't know what it was,
3 he would still eat it. I need to know what it is before I eat it.

4 Q So would he -- would he then try any of these recipes at
5 home, or that kind of thing, or what?

6 A Sometimes. But he would admit if they didn't come out
7 good, but he would still eat it.

8 Q Okay. So there's been some testimony about Bill's love of
9 the game of golf?

10 A Yes.

11 Q And did he play a lot of golf before he got sick, out here in
12 Las Vegas?

13 A Yes.

14 Q The weather allowed him to do that better than in Illinois?

15 A They had their winter group and their summer group, and
16 they would play every Sunday morning, whether it was snow, ice, they
17 would still go out and play.

18 Q So he had some friends that were in a group that he played a
19 lot of golf with?

20 A Yes.

21 Q And did he take some joy from that?

22 A Yes. He did.

23 Q Did he only play once a week?

24 A Oh, he'd play during the week too, if he could get away. And
25 we used to play, I used to play. I haven't played in a long time, but I --

1 we'd go out during the week, like after work.

2 Q So we've heard the story about Bill swinging a golf club with
3 his arm broke.

4 A Yes.

5 Q And he was playing with B.J. that day?

6 A Correct.

7 Q So Bill -- did you have Bill's body cremated after he passed?

8 A I did.

9 Q And do you have his ashes in your house?

10 A It's in my china cabinet.

11 Q What the container look like?

12 A Oh, it's got a golfer on the front.

13 Q So --

14 A And his little dog on top.

15 Q His little dog on top?

16 A He's got a -- he always -- he got mad at because I'd always
17 adopt dogs, and I always would adopt Great Danes; I would rescue
18 them, but I ended up with a little mini-dachshund, and he couldn't
19 understand why we were keeping it, but it became his dog. And so I had
20 a little statue of the dachshund on top of his golf box.

21 Q Is the dachshund still with us?

22 A Yes.

23 Q So still lives with you?

24 A Yes.

25 Q All right. So now we know that -- you've told us that Bill and

1 Sophie, his granddaughter, had a close relationship and a happy
2 relationship with one another, but toward the end of Bill's life Tyler was
3 pregnant again, right?

4 A Yes.

5 Q And I assume at some point Bill and the rest of the family
6 found out it was a boy?

7 A Yes.

8 Q It was going to be a boy, I mean?

9 A Yes.

10 Q How did that make Bill feel?

11 A I think he was thinking in the back of his mind that they
12 would add to their fishing trip. There would be another one, another
13 family member going on their yearly fishing trip.

14 Q He was looking forward to having a grandson?

15 A Yes. He was.

16 Q And so did Bill live long enough to see little T.J. born?

17 A He was born right before he went out to MD Anderson, or I
18 should say -- well, before he went out for his treatment in MD Anderson.

19 Q Right. And how did Bill feel about all that; about the birth of
20 T.J.?

21 A Oh, he was excited that he was here to see that, and to see
22 him and hold him.

23 Q Here as opposed to somewhere else, like getting treatment?

24 A Yes.

25 Q Was he -- was there some worry that he might not get to see

1 the birth?

2 A Yes.

3 Q By the way, were you on the boat that day, that everybody
4 got stuck out in the middle of Lake Mead?

5 A No, I was not.

6 Q Do you think that somebody would have remembered to fill
7 the gas tank if you had been along?

8 A Well, I would like to say that, but I have done that too, so I
9 can't get mad at B.J.

10 Q So is it fair to say, Sandy, that before Bill got sick and ended
11 up having his radiation treatment, that he had a happy life?

12 A Absolutely.

13 Q Was he an optimistic person by nature?

14 A Yes, he was.

15 Q Was he looking forward to the remaining years of his life?

16 A Absolutely.

17 Q What was he looking forward to?

18 A Looking forward to spend time with the family, with the
19 grandkids, to go places.

20 Q Okay. So you and Bill had worked a long time to build the
21 family that you had, at the time that he passed, right?

22 A Yes.

23 Q So now we know that -- we'll come to the part of Bill's life
24 that's not quite so happy, and that is his cancer diagnosis. I understand,
25 we've heard the story about the breaking of the arm with the swinging of

1 the golf club, and all. Did the family, or Bill, anyone, have any inkling
2 that Bill had cancer?

3 A No. Not until his arm broke.

4 Q And pretty quickly after that, the doctors found that he did
5 have cancer, right?

6 A When they were in the ER, and they told me that his arm
7 broke from a pathological fracture.

8 Q And you said, "What do you mean"?

9 A Yes. I said, "What are you talking about?" And he said,
10 "Well, from his cancer," and I said, "What cancer." And they said,
11 Lung cancer." So that was the first we heard about it.

12 Q And how did that make Bill feel?

13 A Well, I think we all panicked for a minute, which I think
14 anyone would, and then tried to figure out what we were going to do.

15 Q Was there ever any thought given by Bill or anyone else in
16 the family that the receipt of the diagnosis of lung cancer was a death
17 sentence?

18 A No.

19 Q Did Bill and the rest of his family have hope that he could
20 beat it?

21 A Absolutely.

22 Q Did Bill and the rest of you, his support system, resolve
23 themselves to fight it?

24 A Yes.

25 Q Bill didn't quit?

1 A No.

2 Q Did you ever quit on him?

3 A Never.

4 Q When the cancer diagnosis was first revealed to you guys,

5 was everyone afraid?

6 A I don't know if that's the right word to use, but we were -- we

7 were surprised, and we were going to do whatever it took to get him

8 better.

9 Q So who in the family, the Eskew family, was the person that

10 ran things?

11 A That would be me.

12 Q So at some point after hearing this cancer diagnosis, Sandy,

13 did your mind turn to health insurance?

14 A Yes.

15 Q Why?

16 A Because I had just received a letter previously that his current

17 health insurance was not going to be renewed in January, because they

18 were no longer offering that.

19 Q Okay. Let's talk about that from a timing standpoint, just to

20 sort of put things in context. We know that Bill broke his arm playing

21 golf in July, summertime --

22 A Yes.

23 Q -- of 2015?

24 A Yes.

25 Q And then we know that after the first of the year in 2016 he

1 started his radiation treatment in Houston. Okay. Just to kind of put
2 those --

3 A Correct.

4 Q -- things in context?

5 A Correct.

6 Q So between the time of the cancer diagnosis, and the time
7 that he started his radiation treatment at MD Anderson, is that the
8 window of time when you would have started to think about, I got to get
9 this -- I got to get this health insurance thing figured out?

10 A Correct.

11 Q All right. So you said that there was a letter that came from
12 his previous health insurance company saying that they weren't going to
13 offer policies anymore?

14 A Correct.

15 Q Was it your understanding that that was because they were
16 not offering policies in the State of Nevada anymore?

17 A I do not know that.

18 Q Okay. But anyway -- in any event he needed new health
19 insurance?

20 A Correct.

21 Q Okay. Was Bill Eskew the kind of guy that was going to go
22 figure out what kind of health insurance he needed, or where to get it?

23 A Absolutely not.

24 Q Okay. And who did that fall to?

25 A Me.

1 Q Okay. So you got busy trying to figure out a number of
2 different things, including health insurance, it seems, right?

3 A Yes.

4 Q And you also, the testimony has been here, in the
5 courthouse, that you did some research about treatments for him?

6 A I did. As soon as I found out he had lung cancer, that --
7 whatever day that was that he broke his arm, we had to get that fixed,
8 because that had to be fixed, and they referred us to an oncologist who
9 then did their thing here. And in the meantime I started looking up who
10 had the best cancer centers for lung cancer.

11 Q Okay. So you started looking it up, what, on the internet?

12 A Yes.

13 Q Okay. You started doing searches, trying to figure out
14 where's the best place to get treated?

15 A Correct.

16 Q And what did you find?

17 A MD Anderson came up as number one,

18 Q But you knew it was all the way in Houston?

19 A Yes, I did.

20 Q Was that going to stop you?

21 A No.

22 Q All right. So is it right to say that you were looking for where
23 to go?

24 A Yes.

25 Q And were you also looking for anything else about the

1 treatment, for instance?

2 A What the best treatment out there for his lung cancer, and on
3 their website they talked about proton therapy. It's the first time I heard
4 of proton therapy being a great treatment, that it didn't affect other
5 organs. I knew his lung cancer was close to his heart and esophagus
6 and stuff like that, and they mentioned in their article that it avoids most
7 of those areas.

8 Q So this was on the MD Anderson website?

9 A Yes.

10 Q Did you look anywhere else?

11 A Well, I originally, before I hit MD Anderson, I looked at the
12 top 10 cancer hospitals in the world -- or the United States, and they
13 came up number one. I think Mayo was two or three, and then I started
14 doing some research on that MD Anderson and proton therapy, when I
15 read that on their site.

16 THE COURT: Counsel, we're going to take our lunch recess.
17 Ladies and gentlemen, you're instructed not to talk with each other
18 anyone else, about any subject or issue connected with this trial. You're
19 not to read, watch, or listen to any report of, or commentary on the trial,
20 of any person connected about this case, or by any medium of
21 information, including, but not limited to newspapers, telephone,
22 internet or radio.

23 You're not to do any research on your own on this case, such
24 as consulting dictionaries, using the internet, or using reference
25 materials. Do not conduct any investigation, test any theory of the case,

1 recreate any aspect of the case, or in any other way investigate or learn
2 about the case on your own.

3 Do not talk with others, text others, Tweet others, Google
4 issues, or connect any other kind of book, or computer research, with
5 regard to any issue, party, witness, or attorney, while in this case.
6 You're not to form or express any opinion on any subject connected to
7 this trial, until the case is finally submitted to you.

8 So we will return at 1:00 p.m.

9 THE MARSHAL: All rise for the jury.

10 [Jury out at 12:01 p.m.]

11 [Outside the presence of the jury]

12 THE COURT: Do we need to address any issues outside the
13 presence of the jury?

14 MR. SHARP: I do, Your Honor.

15 MR. SMITH: I wanted to ask one thing real quick. Are we
16 stopping at 3:00 today?

17 THE COURT: No.

18 MR. SMITH: Why did someone tell us we were stopping at
19 3:00 today? Or was that tomorrow?

20 THE COURT: No. I think that was in your minds.

21 MR. ROBERTS: That's actually what my staff thought they
22 heard.

23 THE COURT: No. We're never stopping at 3:00 on any day.

24 MR. ROBERTS: Oh, okay.

25 MR. TERRY: So Lee misled us, Judge.

1 MR. ROBERTS: I apologize.

2 THE COURT: Yes. Mr. Roberts is leading you astray.

3 MR. ROBERTS: I won't point names to who in this room may
4 have told me that, but --

5 [Counsel confer]

6 THE COURT: No, we're here until 5:00.

7 MR. TERRY: You can step down Sandy.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: Is that your only question?

10 MR. ROBERTS: Those are my only questions --

11 MR. SHARP: Yeah. I had an issue, Your Honor. In Mr.
12 Eskew's testimony, United Healthcare elicited a question that they filed a
13 direct motion in limine on, it was motion in limine Number 11, to not
14 seek unqualified opinions. The concern, and I think it was tactical in its
15 advantage when he asked that question, and Mr. Eskew then says, "Yes."
16 And then it was deliberately asked whether Mr. Eskew had been a party
17 to a lawsuit.

18 So I'm concerned, number one, this was a direct violation of the
19 motion in limine the Defense filed, but more importantly now it is out
20 that he was a party to a lawsuit. I mean, obviously the question wasn't
21 asked -- answered. It should be known by United Healthcare as to why
22 Mr. Eskew dismissed his lawsuit, is a matter between Mr. Terry and I,
23 and Mr. Eskew, as well as our own work product.

24 So I'm concerned -- I mean, it's out there and I would ask for some
25 sort of admonition, and I really don't know exactly the remedy, but there

1 must be an admonition to the Defense, to follow their own motions of
2 limine. And as I said, I mean, I don't know exactly what to do, Mr. Terry
3 and I haven't talked about it, but clearly it was not an accident.

4 THE COURT: Defense counsel, whoever's going to speak on
5 this issue?

6 [Pause]

7 MR. SMITH: Judge, looking at that motion in limine, that
8 applies to medical causation. I didn't ask Mr. Eskew about that, and prior
9 to me questioning Mr. Eskew, if you recall, Mr. Terry was asking about
10 opinions on a lawsuit, why it was filed, if they thought it was justified.
11 He did the same thing with Tyler, with Tyler Eskew, and Mr. Terry was
12 prepared to go further until I objected when he asked the penultimate
13 question before it concluded his examination, which was, are you proud
14 of your mother filing the suit?

15 Ms. Eskew, yesterday, was able to testify at length about her
16 being proud of her mother for filing that suit, so that that's the first issue.
17 And then, secondly, to the extent that they're alleging that we violated a
18 motion in limine, as I just read it, again, that talks about medical
19 causation; I didn't ask him about that.

20 And finally, to the extent that there is some concern, you
21 sustained the objection and we moved on.

22 THE COURT: Mr. Sharp?

23 MR. SHARP: I just -- nobody, whether somebody's proud or
24 not, obviously had nothing to do with whether or not we are offering an
25 opinion from a lay witness on cause of death, and that's specifically what

1 the Defense asked for. In the motion in limine, clearly the intent, I mean,
2 it's right here, I'm reading it, one of the questions they didn't want Mrs.
3 Eskew to be asked, you believe starvation was another cause of Mr.
4 Eskew's death.

5 The whole point of their motion in limine was that Mrs.
6 Eskew not talk about her belief that his death was caused by UHC, or by
7 Sierra Health and Life. I mean that, and clearly that was a proper order,
8 but for them to do that, that was not accidental. I mean, for them to ask
9 that question and follow with the next question, which was, "Have you
10 been a party to a lawsuit?"

11 We all know in this courtroom, the fact that Mr. Eskew was a
12 party to a lawsuit is not relevant, period, this is Evidence 101, and
13 something needs to be done about that.

14 THE COURT: The Court can admonish the jury, that the fact
15 that B.J. Eskew is no longer part to this action, is due to some procedural
16 issues, as his mother is a party to the lawsuit. And the jury would accept
17 that, if the parties are okay with that.

18 MR. SHARP: I'd like to consider that over the lunch hour.

19 THE COURT: Okay.

20 MR. SMITH: That's fine with us, Your Honor.

21 THE COURT: All right. So come back a little bit before one
22 o'clock, then, so we can readdress this issue.

23 UNIDENTIFIED SPEAKER: Are you stopping at three today,
24 Judge.

25 THE COURT: No. And we're coming back on lunch, before

1 1:00.

2 [Recess taken from 12:08 p.m. to 12:56 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: Mr. Sharp?

5 MR. SHARP: Yes, Your Honor. Just two things. I think we're
6 going to -- what I'd like to do over today is to propose a curative
7 instruction. Both Mr. Terry and I have concern that the instruction as you
8 posed it just adds to the issue that B.J. was once a party to the lawsuit,
9 so I -- what I'd like to do is just propose something tomorrow and not
10 waste the Court's time.

11 Then the second issue, since we were addressing motions in
12 limine, and we just want to make sure that what we are doing is in
13 compliance with the Court's order relating to Holland-Williams. The
14 order of the transcripts, we're just a little confused, so this is what we
15 intend to put into evidence to through Mrs. Eskew, that she contacted
16 Mrs. Holland-Williams, that she identified her needs which was generally
17 speaking United Healthcare, proton beam therapy, and that in response
18 to that inquiry she was provided the agreement of coverage. So I just
19 want to make sure that that's not inviolative of your order before we put
20 the evidence in.

21 THE COURT: Yes. Mr. Roberts? Mr. Gormley?

22 MR. GORMLEY: I think I can address it, Your Honor. We
23 think that's fine. I mean, I have the language here. I think that's already
24 sort of been put into evidence through maybe Mr. Prater, so I think that's
25 fine, and we are just focused on the prohibition of conversations that she

1 had with Ms. Holland-Williams coming into trial, but I don't think that
2 seems to run afoul, but --

3 THE COURT: Correct.

4 MR. SHARP: Yeah, nobody's going to say Holland-Williams
5 told -- Mrs. Holland-Williams told Mrs. Eskew it was covered. That, we're
6 not going to offer that, nor did it happen.

7 THE COURT: Okay. Thank you.

8 Do we have all the jurors?

9 THE MARSHAL: Not yet, Judge. There's seven of them out
10 there.

11 [Pause]

12 THE MARSHAL: We ready, Judge?

13 THE COURT: Yes.

14 THE MARSHAL: They're all back. Okay.

15 THE COURT: Can we have our witness on the stand?

16 THE MARSHAL: All rise for the jury.

17 [Jury in at 1:01 p.m.]

18 THE MARSHAL: Judge, all jurors are present.

19 THE COURT: Thank you.

20 The parties stipulate to the presence of the jury?

21 UNIDENTIFIED SPEAKER: Yes, Your Honor.

22 MR. TERRY: Yes, Your Honor.

23 THE COURT: Thank you. Please be seated.

24 I first want to address one issue, Mr. Jackson. The Court was
25 advised that someone had touched your belongings, and so we're going

1 to investigate and see who that was.

2 UNIDENTIFIED SPEAKER: Okay.

3 THE COURT: Thank you.

4 MR. TERRY: May I proceed, Your Honor?

5 THE COURT: Yes.

6 MR. TERRY: Thank you.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. TERRY:

9 Q Sandy, we're back after having a lunch break and I just want
10 to make sure that we pick up where we left off. I'm trying to remember
11 so I'll just kind of jump in here. Once Bill was diagnosed with cancer,
12 you told us that you did some research about cancer centers and
13 treatment, proton therapy, etcetera, right?

14 A Yes.

15 Q Okay. And you also told us that you knew about his health
16 insurance going away and needing to find some new health insurance,
17 right?

18 A Yes.

19 Q I think that's kind of where we left off. So did you under the -
20 - given the fact that you were looking for some health insurance for your
21 husband, did you reach out to an insurance agent?

22 A Yes, I did.

23 Q Who was that?

24 A Janet Holland-Williams.

25 Q Janet Holland-Williams?

1 A Yes.

2 Q Okay. And did you let -- well, let me back up. Did you have a
3 prior relationship with Janet Holland-Williams in any way?

4 A She got us our previous insurance.

5 Q Okay. And did you come to find out in talking to her about
6 this insurance situation that she was a licensed agent for Sierra Health
7 and Life?

8 A Yes.

9 Q And did you and Ms. Holland-Williams work through some
10 options about health insurance?

11 A Yes.

12 Q And did you tell Ms. Holland-Williams what you were looking
13 for?

14 A Yes, I did.

15 Q What did you tell her?

16 A I told her that Bill was diagnosed with lung cancer, and I
17 needed a policy that I could go wherever I wanted to go, and that it
18 would cover a proton therapy because that's what we were looking at,
19 and she gave me some -- helped me find a policy that could do that.

20 Q Okay.

21 MR. SMITH: I'm going to object. Can we approach?

22 [Sidebar at 1:04 p.m., ending at 1:04 p.m., not transcribed]

23 BY MR. TERRY:

24 Q So Sandy, you told Ms. Holland-Williams Bill's sickness,
25 right?

1 A Yes.

2 Q You told her that you wanted to go to MD Anderson?

3 A Yes.

4 Q And you told her that you were looking to get proton
5 therapy?

6 A Yes.

7 Q Okay. And in response --

8 A She --

9 Q -- Ms. -- hang on, Ms. Holland-Williams gave you some
10 documents?

11 A Correct.

12 Q Okay.

13 MR. TERRY: Has Exhibit 2 been admitted? Yes?

14 THE CLERK: Yes.

15 BY MR. TERRY:

16 Q Let's pull up, Sandy --

17 MR. TERRY: Jason, Exhibit 2, please.

18 BY MR. TERRY:

19 Q Sandy, this is a copy of the policy that you were given by Ms.
20 Holland-Williams?

21 A Yes.

22 Q Okay. So I want to -- when you received this policy from Ms.
23 Holland-Williams, did you look at it?

24 A I did.

25 Q Did you look at it for the purpose of trying to determine for

1 yourself?

2 A Yes.

3 Q If there was coverage for what you were looking for?

4 A Yes.

5 Q Okay. Well, let's take a couple of looks at a couple of places
6 where you may have seen something along those lines.

7 MR. TERRY: Jason, could you go to page 13 of Exhibit 2?

8 BY MR. TERRY:

9 Q So Sandy, this is a portion of the policy under covered
10 services; remember that?

11 A Yes.

12 Q All right. So let's look down here at section 5.18, blow that
13 up so everybody can see it. 5.18, other diagnostic and therapeutic
14 services?

15 A Yes.

16 MR. SMITH: Judge, I'm going to object to this line of
17 questioning based on relevance.

18 THE COURT: Overruled.

19 BY MR. TERRY:

20 Q So you can see that the policy that you received, that this is
21 before you decided to buy the policy, right?

22 A Correct.

23 Q Okay. So it says, "Diagnostic and therapeutic covered
24 services when prescribed by a physician and authorized by the managed
25 care program include the follow," right?

1 A Yes.

2 Q Then the third bullet point says what?

3 A Therapeutic radiology services.

4 Q All right.

5 MR. TERRY: Now Jason, go to page 43 of that same exhibit,
6 please.

7 BY MR. TERRY:

8 Q So you see up here at the top-left corner, it says, "benefits
9 scheduled?"

10 A Yes.

11 Q And did you look at that part of the policy, too?

12 A Yes.

13 MR. TERRY: Now Jason, go to page 48, please?

14 BY MR. TERRY:

15 Q Up here at the top, see there, it says, "covered services and
16 limitations, other diagnostic and therapeutic services, therapeutic
17 radiology?"

18 A Yes.

19 Q So how did you read that, Mrs. Eskew, and determine that at
20 least -- well, let me back up. Let me back up. Did you look at the policy
21 to see if there was anywhere that Proton therapy was even mentioned?

22 A Yes, I did, and nowhere in there it said it wasn't covered, and
23 I saw this that said therapeutic radiology, so that's what proton, is, it's
24 therapeutic, so I --

25 Q What did you believe?

1 A That it was covered.

2 Q All right. So based on that, well, let me back up again. I keep
3 getting ahead of myself.

4 MR. TERRY: Jason, pull up Exhibit 24, please. Highlight that
5 top part if would you, Jason.

6 BY MR. TERRY:

7 Q Sandy, you heard some testimony, probably a lot of
8 testimony in this case about this medical policy, this proton beam
9 medical policy, right?

10 A Yes.

11 Q Did you know that it existed at the time, back when you were
12 making the decision on what policy to buy?

13 A No, I did not.

14 MR. TERRY: So let's shrink this part, Jason, but -- yeah, get
15 that off of there, and then go down a page, please. And how about this
16 part right here?

17 BY MR. TERRY:

18 Q So here, this is the medical policy that we're talking about,
19 proton beam radiation therapy is unproven and not medical necessary
20 for treating all other indications, including but not limited to --

21 MR. TERRY: Right here, Jason, highlight that.

22 BY MR. TERRY:

23 Q -- lung cancer, right?

24 A I see that.

25 Q Okay. Did anybody from this insurance company ever tell

1 you that that was their position?

2 A No.

3 Q But you had asked them, is there coverage for proton therapy
4 for lung cancer?

5 MR. SMITH: Objection, Your Honor. Relevance, and also
6 misstates the evidence.

7 THE COURT: Counsel approach.

8 [Sidebar at 1:11 p.m., ending at 1:12 p.m., not recorded]

9 BY MR. TERRY:

10 Q Sandy, did anybody ever give you a copy of that?

11 A No.

12 Q Were you aware that it existed?

13 A No.

14 Q If you had been aware that it existed and seen that language,
15 what would you have done?

16 A I would look for a policy that didn't have that in there.

17 Q Okay. We'll come back to the topic in that in a minute. So --
18 oh, one more thing.

19 MR. TERRY: Let's go back to the insurance policy, Jason,
20 Exhibit 2.

21 BY MR. TERRY:

22 Q That you looked at this insurance policy that you were given?

23 A Yes.

24 Q And there's been much talk here in this trial about the term
25 "medical necessity" or "medically necessary", you know what I'm talking

1 about?

2 A Yes.

3 Q So just from your perspective, Bill's perspective, what did
4 you believe that to be?

5 A That treatment that would help him was medically necessary.

6 Q Okay. Did Dr. Liao tell you that proton therapy was
7 necessary for him?

8 A She said that was the best option for him.

9 Q Did she say why?

10 A Because it wouldn't affect a lot of the surrounding organs, it
11 was directed towards the tumor, and it was the best thing out there for
12 his lung cancer.

13 Q All right. So you take Bill, and you go to MD Anderson in
14 Houston, halfway across the country, right?

15 A Yes.

16 Q And there, he's evaluated by various people, right?

17 A Yes.

18 Q In fact, you went there more than once even before he
19 started his therapy, right?

20 A Correct.

21 Q And you met Dr. Liao before the whole radiation treatment
22 began, correct?

23 A We did.

24 Q And she recommended proton therapy as you just told us?

25 A Yes.

1 Q Did you and Bill have any sort of belief in that?

2 A Oh, absolutely. We were happy that she wanted to do that,
3 and that he was a candidate for that, and figured everything was going
4 to be good.

5 Q Okay. So you make your way to Houston a couple of times,
6 even before he begins his treatment, and then he goes back to begin his
7 treatment, right?

8 A Yes.

9 Q Around the beginning of February?

10 A Correct.

11 Q Of 2016?

12 A Yes.

13 Q And then comes the news that the insurance company has
14 denied proton therapy, right?

15 A Yes.

16 Q How did that affect Bill?

17 A Oh, he was devastated, as was I, that they denied it since
18 that's what we went out there for and that's why I got that insurance
19 policy, and it was like they pulled the carpet from underneath us. We're
20 out there and they're saying no.

21 Q Did it make you wonder why they were doing that?

22 A Yes.

23 Q Why they were denying the therapy?

24 A Yes, considering it was recommended by one of the top
25 doctors.

1 Q Now you've had the opportunity to sit here in this courtroom
2 for coming up on two full weeks, and part of what has happened here is
3 Dr. Ahmad gave his testimony, right?

4 A Yes.

5 Q And you saw that, right?

6 A Yes.

7 Q How did that make you feel?

8 A Sad and angry.

9 Q Okay. Let's talk about that. Why did it make you sad?

10 A Because he denied a treatment that would have helped my
11 husband, and he would not have had to suffer like he did.

12 Q And it made you angry you say?

13 A Well, it made me angry that he denied something that, as my
14 husband said, some guy sitting behind a desk who's picking and
15 choosing what I can have over what my doctor wants me to have.

16 Q So -- okay. Now you've heard a lot of talk here, both lawyers
17 and others, about the topic of an appeal of Dr. Ahmad's denial of the
18 request for proton therapy; you heard that, right?

19 A Yes.

20 Q So there may even be a little criticism of you about why that
21 didn't happen. What I want to ask you is, why didn't that happen?

22 A Because Dr. Liao told us that they -- she's dealt with this
23 before, they're not going to overturn their -- their decision, and we
24 needed to do something quickly.

25 Q Okay.

1 A He needed to be treated.

2 Q Why?

3 A Because it's -- if you don't treat it, then it would just get

4 worse.

5 Q Did you hear Dr. Chang's testimony about what would have

6 happened to Bill's cancer if he wasn't treated?

7 A Yes.

8 Q So --

9 A It would have eaten through his esophagus and put a hole,

10 and it would have been horrible.

11 Q So when you're at MD Anderson, and protons have been

12 denied, what did you feel like your options were?

13 A We didn't have any other option but to go with the second

14 option, the second treatment. We couldn't not do anything.

15 Q But you could have appealed.

16 A Well, I trusted my doctor, and she said that they don't usually

17 overturn their decisions, and it would take too long, and we didn't really

18 have time.

19 Q Okay. So Bill goes through his course of IMRT treatment,

20 right?

21 A Yes.

22 Q Takes how long, about?

23 A Six weeks.

24 Q Okay. And then he comes home, right?

25 A Yes.

1 Q And he flew home by himself, right?

2 A Yes, he did.

3 Q Why is that?

4 A Because I was going to fly out and get him, and he said why
5 would you -- just come get me at the airport, can't be that hard to get to
6 the airport, so I let him fly out by himself.

7 Q Okay. And so when you saw him at the airport, what was
8 your observation of him?

9 A That I should have never let him fly out by himself.

10 Q Why not?

11 A Because he looked horrible, he was weak, and I almost didn't
12 recognize him. He had lost so much weight, like, he was -- it was -- he
13 was weak and sick.

14 Q When you say he looked horrible, you mentioned weight
15 loss; anything else?

16 A Just weak, he could barely walk through the airport. And
17 then I felt bad that I made him do it by himself.

18 Q So did Bill, in the time period following him coming home,
19 did he express to you that he was having any issues?

20 A He had a lot of pain in his throat, and he couldn't swallow,
21 and I think we were home probably a week of dealing with that. I may
22 have taken him back to the hospital because I thought he was
23 dehydrated because he wasn't eating or drinking, or he couldn't eat or
24 drink. I can't remember exactly, but --

25 Q Did you ever reach out to Dr. Liao about these problems?

A I did. I emailed her or called her, or one of the two, I don't remember, and asked her if there was something we could do to help with the symptoms.

[Pause]

MR. TERRY: We want to -- we move to admit Exhibit 108 but only page 6. Is that what you're saying, Phil?

MR. SMITH: Yes.

MR. TERRY: Can we alter that exhibit slightly, Your Honor, before we actually put it into evidence, just like the one page now?

THE COURT: Yes.

MR. TERRY: Thank you. Jason, put that up, 108, page 6, please. Is that agreeable, Phil?

MR. SMITH: Yes, it is.

MR. TERRY: All right.

BY MR. TERRY:

Q Can you read that?

A Not at all.

Q Okay. Let's blow that up. Okay. Well, that's a little much.
There we go.

A The screen here is blurry anyways.

Q Can you see that?

A Yes.

MR. TERRY: Okay. So Jason, here, just highlight this last portion there, and pick up this date too, please, right here. Thanks.

BY MR. TERRY:

1 Q So Sandy, you sent an email, we could see here, Exhibit 108,
2 page 6, on April 3rd of 2016, so about what, a week after he came home?

3 A Yes.

4 Q And you say what? Can you tell us what that said?

5 A It says, "Thank you for arranging Bill's appointment for May
6 3rd." That was his follow-up that she must have arranged when he left.
7 And I said we will be there. I was confirming it. And then I said, told her
8 that he was down to 159 pounds and cannot eat. He said it feels like
9 something is stuck halfway down in his esophagus, and he throws up. Is
10 there something he can take?

11 Q Okay. So then the time period mainly following him coming
12 home from MD Anderson, this is the kind of thing that he was
13 experiencing, right?

14 A Correct.

15 Q So from the time Bill came home in late March 2016, did his
16 problems that you're referencing here, difficulty swallowing, feels like
17 something stuck halfway down in his esophagus, throwing up, did that
18 kind of thing continue?

19 A Yes.

20 Q Was there ever a time when things were hunky-dory, A-Okay
21 with him?

22 A Well, it was never hunk-dory, A-Okay, but I think some of the
23 symptoms subsided for a little bit where he could at least get some
24 things down. We were trying to find stuff that he could eat and drink.
25 Well, he couldn't eat, but drink, and get some nourishment in him. I

1 mean, he could get some stuff down.

2 Q Did you say he never really could eat?

3 A Well, he couldn't really swallow food. I mean, he couldn't,
4 but we were doing protein drinks and stuff like that to try to get him, so
5 there was a time he could do that. When he came home he couldn't.

6 Q Okay. And when he couldn't, that persisted for some period
7 of time, right?

8 A Yes.

9 Q And then there was a period of time when things got better;
10 is that what you're saying?

11 A Well, it didn't really get better, but it wasn't as bad. Does
12 that make sense?

13 Q And then what happened?

14 A It just kept getting worse and worse and worse.

15 Q So let's talk about what kind of impact that had on his daily
16 life in your home. Let's talk first about sort of the physical
17 manifestations of these problems that you're talking about, and I want to
18 try to explain this in a way that people can really understand what it was
19 like for him. Okay? So we heard that Bill loved to eat.

20 A Yes.

21 Q Like a food person.

22 A Yes.

23 Q So was he -- I mean, when he would wake up in the morning,
24 couldn't take a bite of breakfast?

25 A Not really.

1 Q So what would he do instead?

2 A He would tell -- I would make him breakfast but he really
3 couldn't eat it, you know. I would make scrambled eggs, soft stuff before
4 I'd go to work, and he just really couldn't eat it, and he'd say he'd eat it
5 when I left, but he never did.

6 Q How do you know he didn't?

7 A Because it was still there, or it would be in the garbage can
8 because I would look.

9 Q So, I mean, like, if you hand him a plate of scrambled eggs,
10 he liked scrambled eggs, right?

11 A Oh, yeah, he loved making breakfast. That was one of his
12 things he'd like to make.

13 Q So I mean, if you made him some scrambled eggs before
14 you left for work in the morning, he sat down at the kitchen table to eat
15 some breakfast; would you see him taking a fork of eggs and stick it in
16 his mouth and chewing them?

17 A No, not really.

18 Q So what would he do? Just push them around?

19 A Yes. And then he'd say he would eat, that I could go to work,
20 don't worry, I'll eat, but he didn't.

21 Q So why was he telling you don't worry? Is it because you
22 were talking to him about it?

23 A Because he didn't want me to worry.

24 Q Were you encouraging him to eat?

25 A Absolutely.

1 Q What did you say to him?

2 A I'd tell him he's got to eat and get strong.

3 Q What would he say?

4 A He'd say I am eating. It's, like, you're not eating or you're not

5 eating enough. If you say you're eating, you're not eating enough.

6 Q And --

7 A It was a fight all the time. It was a struggle.

8 Q Did he enjoy it, whatever you would tell him he'd need to

9 eat?

10 A No. Not at all.

11 Q Would he let you know that?

12 A Yes, he did. He would get angry.

13 Q What would he say?

14 A He'd say quit, quit pushing me, I'm doing the best I can.

15 Q Did you think that he was?

16 A Well, I think he did the best that he thought he could do.

17 Q Did he have an easier time swallowing liquid, I guess

18 compared to eggs or whatever?

19 A I would -- I'd like to say yes. We just have to get those

20 protein drinks for him.

21 Q Are we talking about those little --

22 A Cans.

23 Q -- I think Tyler said Ensure; is that a brand?

24 A Yes.

25 Q Okay. And those are those little premade drinks?

1 A Yes.

2 Q Why would you try to get him to drink those?

3 A Because it had a lot of protein and I thought it would make

4 him stronger.

5 Q Did he like them?

6 A Not particularly.

7 Q Did he not like them because it tasted bad?

8 A I think it was just hard for him to swallow, so he just didn't

9 want to do it, so he would push himself a little bit.

10 Q Okay. So you'd put one of those in front of him and say I

11 need you to drink that?

12 A Uh-huh. Yes.

13 Q And would he do it?

14 A It might take him all day to get one down, do it. No, not

15 really.

16 Q But there was a -- I think you've told us there was a time after

17 he first came home when he had the symptoms you've described, that

18 things got not as bad?

19 A Yes.

20 Q Okay. So let's talk about how that looked. If he'd get up in

21 the morning and sit down to eat breakfast, would he eat breakfast then,

22 like eat some egg during the period of time when things were not so

23 bad?

24 A He wouldn't eat a lot, but he did a little.

25 Q Okay. Was he able to drink the protein shakes better for a

1 period of time?

2 A Maybe a tad.

3 Q Okay. Did he ever, ever get back to anything like what he
4 was before?

5 A Never.

6 Q So if you fixed him breakfast before all this happened, would
7 he eat breakfast?

8 A Oh, my gosh, yes, and it wouldn't just be eggs, it would
9 bacon and toast and hash browns, and he liked his breakfast. He liked
10 going out for breakfast, which we never did anymore, but he liked going
11 out for breakfast.

12 Q What about like -- you were still working during this time,
13 right?

14 A Yes.

15 Q At your various dental office jobs?

16 A Yes.

17 Q So you couldn't stand there with him all day long with your
18 eyeballs on him watching to see if he was eating or drinking, right?

19 A No.

20 Q Okay. But what would he do, like, let's say it's a normal day,
21 and you've tried to feed him breakfast, that didn't go so great, but now
22 you know you're going to be gone through lunch, right?

23 A Yes.

24 Q So what would you do about that? Would you -- what would
25 you do for him for lunch?

1 A Either I would make something, or my sister would come
2 over because she is retired. She would stop over and bring him stuff
3 that he liked, different foods that he would like that she thought he
4 would eat, soups and stuff like that.

5 Q Okay. And what kind of stuff would you leave him?

6 A If I made him lunch?

7 Q Yeah.

8 A Well, I've always made him his favorite lunch, I don't know
9 why, but he loved ham sandwiches, and I'd make him a ham sandwich
10 and I'd leave it there and it would still be there when I came home.

11 Q So you don't remember him at any point in time, from the
12 time he got home from MD Anderson until his death, where he would
13 eat a full breakfast or a full lunch?

14 A Never.

15 Q Okay. So let's talk about -- was he a snack guy? He'd like to
16 eat between meals?

17 A Yeah.

18 Q Okay. Like what kind of things would he like to eat?

19 A He liked popcorn and chips and things like that.

20 Q Okay.

21 A And ice cream. I'd bring him ice cream a lot.

22 Q Why would you bring him ice cream?

23 A Because I thought he'd be able to eat that because when
24 people have sore throats they can eat ice cream, but that didn't really
25 work well.

1 Q He couldn't get the ice cream down?

2 A Not really. I mean, a little bit, but not much.

3 Q Not like he did before?

4 A Oh, no.

5 Q Okay. And so then let's talk about, like, what would be the
6 routine for dinner whenever one of these would go by when Bill was
7 home and you described already; what would the dinner routine look
8 like?

9 A He wouldn't eat much. I'd make, like, mashed potatoes and
10 chicken or steak, which I don't know why because he couldn't eat it, but
11 you know, he would try. He made it look like he was attempting to eat.

12 Q Okay. So my question is, was he ever able to eat from the
13 time he came home from MD Anderson to the time he passed away
14 without feeling pain?

15 A I don't think so.

16 Q Was he ever able to consistently eat enough to keep himself
17 properly -- the proper caloric intake for him?

18 A I don't think so.

19 Q Now there may have been times, Ms. Eskew, when his
20 weight fluctuated?

21 A Yes.

22 Q What was that about?

23 A Probably us forcing him to drink the Ensures and things like
24 that, and telling him why he had to do that, and just getting on him
25 about doing that, but it always hurt, he always -- and he would always

1 throw up. He would always eat something or attempt to eat something,
2 and he'd be throwing it up because it just wouldn't -- it wouldn't go
3 down all the way or it felt like it didn't go down. I don't know if it did or
4 not, but he said it didn't.

5 Q So -- all right. Let's talk about this vomiting thing because
6 we've heard about it, we've heard about the -- Bill's puke bucket thing.

7 A Uh-huh.

8 Q Was that a real thing?

9 A Oh, yes.

10 Q Tell us about that. Why would he need a bucket?

11 A Because he was constantly dry-heaving or coughing or trying
12 to get something out of his throat.

13 Q So let me ask you a little more detail about that. Let's say
14 that Bill sits down and tries to eat some scrambled eggs in the morning.
15 Okay? After he's come home from MD Anderson. And let's say he
16 somehow gets a couple of bites of eggs down, chews them up, and tries
17 to swallow them; would you see him vomiting after that?

18 A Well, we'd hear him. There was a time he could -- he could
19 go in the bathroom and throw up, and then when he got to point where
20 it was happening so often we just left the puke bucket by his chair, so he
21 didn't have to get up because it was hard for him to get up. I mean, it
22 got to a point he was so weak that it was just easier.

23 Q So is it fair to say, Mrs. Eskew, that from the time Bill
24 completed his IMRT at MD Anderson and the time he died, physically, he
25 was never the same?

1 A Correct.

2 Q Now was Bill a complainer?

3 A No, he never complained. A little bit to me, but, you know,
4 he didn't complain much to the kids, but they could see it, you know,
5 they -- he just didn't want people to know he wasn't feeling good. He
6 would go in with BJ a couple of times, he went in, when he was
7 somewhat okay, he'd go into the shop with BJ and sit and talk to people,
8 and the BJ would bring him home.

9 Q You guys tried to continue including him?

10 A Oh, yeah.

11 Q But was he the kind of guy that if you took him to the doctor
12 and the doctor said how's it going with you, Mr. Eskew, is he the kind of
13 guy that might say all good?

14 A He would. He would. He'd say I'm good, and would look at
15 him, like, no, he's not, but --

16 Q And is he the kind of guy that would -- if someone said how
17 are you eating, Mr. Eskew, what do you think -- is he the kind of guy that
18 might say doing very good?

19 A Yes. There was an incident at the hospital once, when we
20 were at the hospital, and they were going to let him go. I brought him in
21 because this was towards the end, and one of the doctors was an intern,
22 wanted to let him go because he said he was eating find, and the nurse
23 called me and said they're going to release him today, so I went over to
24 the -- I was on my way there anyways, but I hurried up and got there,
25 and the doctor's, like, well, he said he's eating. I said, but he's not.

1 Check with the person who took his tray away, which they did, and they
2 let him -- they kept him there another day, but yeah, he would always
3 say he ate, but he wasn't. You could look at him and see he was -- he
4 was going downhill.

5 Q Was -- excuse me, was Bill an honest guy?

6 A Oh, yeah. He hated dishonest people.

7 Q So would he go to these doctors and lie to them?

8 A I don't think he would consider lying, but he just wouldn't tell
9 them. Sometimes he'd say, well, my throat hurts a little, or he might say
10 something. When he broke his rib, that really hurt, so he didn't have a
11 choice to say yeah, my rib hurts, but, I mean, I don't think he considered
12 that lying. I think he just considered that not admitting that he was going
13 downhill for his pride, maybe. I don't know.

14 Q So did you have to do anything in the house to help him, like,
15 get from his chair to the bathroom?

16 A I had chairs set up all over just in case he started walking and
17 he wanted to sit for a minute, that he could.

18 Q Wow.

19 A So --

20 Q Like chairs? Sitting in chairs?

21 A Like my dining room chairs, I would bring it, I'd put in by the
22 family room, and I would set them up so -- or he could walk to the
23 kitchen, just in case he had to sit.

24 Q So now let's talk a little bit about how this affected him
25 mentally and personality-wise, emotionally, okay? You've heard and

1 you've said that Bill was an outgoing guy, a people person, right?

2 A Yes.

3 Q Did that change when he came home from MD Anderson?

4 A Oh, absolutely.

5 Q How?

6 A Well, he was angry that he had to have the treatment that he
7 had to hopefully cure his cancer, but it caused all this other stuff because
8 the insurance company said no, so he was angry about that, and then he
9 was -- I would have friends come over all the time. They'd always come
10 over, and some of his golfing buddies and stuff, they would stop by, but
11 he -- they wouldn't really stay long because they knew he was tired, or
12 he'd say I got to go lay down or just wasn't as outgoing as he used to be.

13 Q Well, what about his family life? How did it impact, say, his
14 relationship with his granddaughter, Sophie?

15 A Well, she'd come over and sit on his lap every day,
16 regardless. She knew he was sick.

17 Q Was he able to do the same things with her after the IRMT
18 that he was before?

19 A Some of the things he could go and lay in the pool, that's not
20 hard to do, he could just lay there, and she'd be in the pool with him. It
21 would get me nervous sometimes, because I'm thinking if something
22 happened, I don't know if he could save her, but I mean he would --
23 that's about all he ever did.

24 Q Did you notice that he was able to take less of an active role
25 in Sophie's life?

1 A Oh, yes. Originally, she was going to go to preschool by our
2 house and, and her mom was a student-teaching there, I think, or
3 working or whatever, I can't remember. But she -- we signed her up at
4 the preschool because he was going to take her every day, or four days a
5 week, and once she started school in September he couldn't do that.
6 Was Bill's life outside of the house restricted? I mean, did he -- did Bill
7 go out of the house much anymore?

8 A Not much. Not anymore. Not towards the end of summer.

9 Q Why not?

10 A Because he just didn't feel good. He just was weak. He
11 couldn't walk far.

12 Q So, Sandy, let me ask you this, has this been easy?

13 A No.

14 Q Has this, getting all the way here today been easy?

15 A No.

16 Q Why are you doing this?

17 A Okay. So nobody else ever has to go through this.

18 Q Thank you, Sandy.

19 MR. TERRY: That's all I have your Honor.

20 THE COURT: Thank you. Mr. Smith or Mr. Gormley?

21 [Pause]

22 MR. SMITH: May I proceed Your Honor?

23 THE COURT: Yes. Mr. Smith, go ahead.

24 MR. SMITH: Thank you.

25 CROSS-EXAMINATION

1 BY MR. SMITH:

2 Q Good afternoon, ma'am. And as I told your son and your
3 daughter, my condolences for your loss.

4 A Thank you.

5 Q Ma'am, first I have a couple of questions about your general
6 background. I think we heard during direct examination testimony that
7 you are a dental hygienist; is that correct?

8 A Yes.

9 Q And you've been doing that for quite some time?

10 A Yes.

11 Q And for the record you're licensed here in Nevada, correct?

12 A Yes.

13 Q It's my understanding that you've been licensed here to
14 practice dental hygiene, since 2006?

15 A Yes.

16 Q And just for my edification, and perhaps that for the jury, the
17 difference between a dental hygienist and a dentist, as I understand it is,
18 a dental hygienist is kind of more focused on preventative care, and
19 treating gum disease?

20 A Yes.

21 Q Okay. And it's also my understanding that there are some
22 things that a dental hygienist can do, but there are some things that they
23 can't do; can you tell us a little bit about that?

24 A Yes. I can't do fillings or extractions.

25 Q Can you do crowns?

1 A No.

2 Q That's also my understanding that under the Nevada
3 administrative code that a dentist can authorize a dental hygienist to do
4 things such as crowns; is that your understanding as well?

5 A No. It is not.

6 Q No, it's not true, or that's not your understanding?

7 A That's not my understanding.

8 Q Okay. But in any event, as you sit here today, you do admit
9 that there are certain things that you can't do, like as you just told us, do
10 extractions or crowns, right?

11 A Correct.

12 Q Can you take x-rays?

13 A Yes.

14 Q Can you interpret x-rays?

15 A Yes.

16 Q And you had to think about that. Are there some limitations
17 that pop up in your mind as to what you can and can't do with regards to
18 an x-ray?

19 A I can take an x-ray, and I can interpret the x-ray, but I think
20 technically I'm not allowed to diagnose to the patient, the x-ray, the
21 doctor has to do that.

22 Q Okay. Now it's also my understanding that in addition to
23 being a dental hygienist you, at some point in time, worked for a
24 company called Group Management Systems, actually processing dental
25 claims; is that correct?

1 A Correct.

2 Q Do you still work for that company?

3 A No, I do not.

4 Q When did you stop?

5 A After the -- well, during the pandemic, when they closed the
6 dental offices, they didn't have dental to be processed, because they
7 were closed for seven weeks.

8 Q Okay. So that had been like 2020-ish?

9 A Yes.

10 Q How long had you worked for Group Management Systems
11 prior to stopping working for them in 2020?

12 A I do not recall, but it's a while.

13 Q Eight years. Does that sound about right?

14 A Could be.

15 Q And I understand they're located in Ohio?

16 A Correct.

17 Q And your title was actually a claims processor, right?

18 A It was -- I don't know if I was really a claims processor. They
19 were a third party administrator, so they weren't -- they just
20 administered plans, and I would take the information. The dentist would
21 send the, the treatment and I would enter it into the plan, that,
22 depending on what group it was, I would enter the information in the
23 plan, and then they would get paid.

24 Q So functionally, what you did ma'am, was you processed
25 insurance claims, correct?

1 A Yeah. If you want to call them insurance, I guess, yes.

2 Q In fact I believe you previously testified at your deposition
3 that you started working there because an insurance company asked you
4 if you would help process claims, because you knew dental terminology;
5 does that sound right?

6 A It was a different company. It was a different person that --
7 yes, because I could interpret x-rays, and I knew dental terminology.

8 Q Okay. So at least in some capacity, for a period of time, up
9 until the pandemic, you yourself worked in the insurance industry,
10 correct?

11 A Sure.

12 Q Now it's my understanding that in order to do that job as
13 processing claims, you received some kind of training, right?

14 A Yes.

15 Q And what training did you receive?

16 A They showed me how to access a claim online, and where I
17 was supposed to put the information; that was about it.

18 Q Okay. How long did that training last?

19 A A day? Two days.

20 Q Did you have any follow up training after that?

21 A If I had any questions I could call.

22 Q But there wasn't any like formal follow-up training, right?

23 A Not with -- not with the person I started with, correct.

24 Q Okay. And what do you mean by "not with the person that
25 you started with"?

1 A Well, it was -- I was doing benefits at the time.

2 Q Okay.

3 A And it was just a guy who, or his family, did the same thing
4 and he ended up selling the business to Group Management.

5 Q Okay.

6 A And I just continued with that.

7 Q And once it rolled over to Group Management, did you have
8 any follow up training on how to process claims?

9 A No.

10 Q Okay. When you would receive these claims they would
11 come through, you would look at them. Kind of the nuts and bolts of
12 what you did was making a coverage determination, correct?

13 A No. I would enter the information. The data that I received, I
14 would enter it into whatever group the person was with, and somebody
15 else set up the groups, their plans. And if I entered the information into
16 the computer, as it was sent to me, it would automatically process.

17 Q Okay. what kind of things did you have to look at? Like what
18 kind of claims were you receiving?

19 A Dental claims.

20 Q Okay. But specifically, like in regards to what kind of --

21 A Like cleanings --

22 Q -- procedures?

23 A -- exams, x-rays, fillings. I would enter the codes that they
24 sent me into the -- the appropriate, and that plan would pay, however it
25 was set up.

1 Q Did it also involve crowns?

2 A Yes.

3 Q And it's my understanding that some of the claims actually
4 involved dentist requesting that their patients receive crowns or
5 extractions, et cetera, and that as part of evaluating that you would
6 actually have to look at an x-ray to see if the tooth actually needed a
7 crown; is that correct?

8 A Correct.

9 Q So in some way, Mrs. Eskew, you were looking at
10 information to determine whether or not a procedure was necessary,
11 right?

12 A I guess you could say that.

13 Q But I believe you just told us that you didn't really get any
14 training on that, right?

15 A Well, I knew how to read an x-ray, and I could see if there
16 was a cavity, or a big hole in the tooth, on the x-ray, and that's what
17 would determine what the type of -- needed to be done.

18 Q Okay. I appreciate that, but that doesn't quite answer my
19 question. My question was, you didn't get any specific training on how
20 to process claims like that, right?

21 A Yes, I did. They told me when an x-ray comes in, if it needs a
22 crown, then I enter the information, and if I needed more information, I
23 would ask for it.

24 Q And when did you get that training?

25 A When I first started originally,

1 Q But, again, you told us that you didn't get any follow up
2 training after that, correct?

3 A No.

4 Q Now when you were processing these claims were you doing
5 that in a dentist office, or were you doing that remotely from home?

6 A Remotely, from home?

7 Q Was there a licensed dentist in the home supervising you, as
8 you were making these determinations?

9 A No. The forms -- the forms -- or the claims were sent in by a
10 licensed dentist.

11 Q Okay. But you were making these determinations pretty
12 much unsupervised, correct?

13 A Yes.

14 Q Can you tell us approximately how many claims a week you
15 processed?

16 A I don't recall.

17 Q If I told you that you previously testified that it was about 30
18 claims a week; does that sound accurate?

19 A That could be.

20 Q And you were only doing this as a part -- on a part-time
21 basis, right?

22 A Correct.

23 Q It's my understanding that you were doing this claim
24 processing about five to ten hours a week; does that sound accurate?

25 A It's probably correct.

1 Q Would it be fair to say that some of the claims that you were
2 involved in were denied?

3 A I don't know if you'd say denied or not paid, for specific
4 reasons.

5 Q So then what would --

6 A So -- then I guess, yes.

7 Q Okay. And some of those claims were denied, to the best of
8 your recollection, because the patient didn't have coverage, right?

9 A Correct.

10 Q Group Management System also had an appeals process if a
11 claim was denied, didn't it?

12 A I assume so.

13 Q Do you recall testifying previously at your deposition that
14 group management system did in fact have an appeals process if a claim
15 was denied, and that, that process involved a manager going over the
16 claim?

17 A If -- probably. If it was -- a claim was denied, if they wanted
18 me to reprocess it, they would go -- I assume that they would go through
19 a manager, and if they wanted me to reprocess it, I would reprocess it.

20 Q So as I understand it now, I think we've established that you
21 have some familiarity with the insurance industry by your work as a
22 claims processor, correct?

23 A Correct.

24 Q And then I believe you told us that you kind of got some
25 introductory training when you first worked for, when it was previously

1 called Ogden [phonetic]?

2 A Yes.

3 Q But you didn't get any training once it turned over to Group
4 Management Systems, right?

5 A Not that I recall.

6 Q But nevertheless, you were in the business of handling
7 claims, interpreting medical information, for lack of a better term --

8 A Dental information,

9 Q Dental information, fair enough. But you agree with that,
10 right?

11 A Yes.

12 Q Now you were here yesterday when Mr. Prater testified that
13 insurance companies are aware of the principle of the covenant of good
14 faith and fair dealing, and that they train people on it, and that you must
15 train claims deciders on it, in order for them to do their job.

16 A Correct.

17 Q Do you remember hearing him say that?

18 A Correct. Okay.

19 Q But you previously testified that you were not familiar,
20 yourself, with the covenant of good faith and fair dealing, correct?

21 A Can you repeat that?

22 Q Sure. Do you recall testifying previously at your deposition,
23 that you yourself were not familiar with the covenant of implied -- excuse
24 me, with the covenant of -- the implied covenant of good faith and fair
25 dealing? That's a lot to say.

1 A Probably.

2 Q Okay. And that's despite the fact that Mr. Prater told the jury
3 that insurance companies have to train people on this on a regular basis,
4 and all their claims' handlers should be familiar with this, correct?

5 A Yes.

6 Q Okay. And do you remember Mr. Prater also telling the jury
7 that insurance companies have to make sure that claims' personnel are
8 trained practically every week, because you have to make sure their
9 mindset stays focused on their obligation?

10 MR. TERRY: Your honor can we approach?

11 THE COURT: Yes.

12 [Sidebar at 1:58:05 p.m., ending at 1:58:30 p.m., not recorded]

13 MR. SMITH: May I continue, Your Honor?

14 THE COURT: Yes.

15 MR. SMITH: Thank you.

16 BY MR. SMITH:

17 Q Do you recall my question, ma'am, or would you like me to
18 repeat it?

19 A Please repeat that.

20 Q Okay. I asked you if you recall Mr. Prater, the, I guess in
21 effect your insurance expert, telling the jury that, you know, in order for
22 an insurance company to do what they're supposed to do, that they have
23 to train claims' personnel every week, because you have to make sure
24 their mindset stays focused on their obligation, and because sometimes
25 the claims handler can get a little cynical and distrustful, and you have to

1 train them, so they remain honest. I'm just kind of a summarizing what
2 he said; do you remember him telling them that?

3 A Yes.

4 Q Okay. But I think you've just told us that you, nevertheless,
5 working for an insurance company, like my client, did not receive that
6 same weekly training that Mr. Prader wanted to criticize my client for
7 allegedly not doing it?

8 A I don't consider that the same.

9 Q Okay. I'm going to switch gears here a little bit, Ms. Eskew,
10 and ask you a couple of questions about the Meineke franchises that
11 we've heard a couple things about, and I just have maybe like one or two
12 questions about that. I think it's clear to the jury that kind of you, your
13 husband and your son, had a financial interest in these shops; is that
14 correct?

15 A Yes.

16 Q Okay. And I think we've heard that you bought one shop
17 initially, and then you bought a second one, and then you sold the first
18 one, correct?

19 A Correct.

20 Q And I believe your son told us that the first one was sold for
21 about 170 grand; does that sound right?

22 A I couldn't -- I couldn't comment on that.

23 Q Okay. And that second shop was sold around the time that
24 your husband got sick, and you were contemplating getting some
25 therapy to help his condition, correct?

1 A It was sold after he got sick, and my son could not take care
2 of both shops, because he had to help me with my husband while I was
3 working.

4 Q I understand that, ma'am.

5 A Yes.

6 Q But I'm just trying to get a timeline, that's all. So this would
7 have been before you went out to MD Anderson, correct?

8 A I don't think so.

9 Q Okay. Was it before he had the IMRT, though?

10 A That we sold the first shop?

11 Q Yes, ma'am.

12 A I can't answer that. I don't think so, but --

13 Q You're not sure?

14 A No.

15 Q Okay. We heard testimony from your son that your husband
16 liked to work at both shops, correct?

17 A Yes.

18 Q And, in fact, he worked at the store about five to eight hours
19 a day; does that sound right?

20 A Before he got sick? Yes.

21 Q About six days a week?

22 A Whenever needed.

23 Q When did he stop working at the store, or the stores?

24 A One, it was just too hard for him to get down there. Well,
25 obviously he quit working while we were out at MD Anderson, and then

1 to the best of my recollection, when I needed help from my son, that's
2 when we sold the store that was farther away from home, and he wasn't
3 going into the store much, a couple -- little bit with my son, but not for
4 any length of time.

5 Q I believe your son testified earlier that that first shop was
6 sold in actually 2015; do you remember hearing him testify to that?

7 A Yes. But I don't remember the date.

8 Q Okay.

9 A I'm sorry. I just don't remember when we did that.

10 Q No, I understand. I'm just trying to get a timeline as to
11 exactly how long, and up until what point, your husband worked at the
12 second shop that still would have been under your guys' ownership.
13 And so to that extent, do you recall Mr. Eskew working in the shop, up
14 until 2017?

15 A No.

16 Q Okay. Do you recall testifying, previously, at the deposition,
17 where you were kind of like today, sworn to tell the truth and placed
18 under oath, that your husband worked at both shops, and then just the
19 second shop after you sold the first shop, about five to eight hours a
20 day, six days a week, from 2012 to 2017; obviously, except the time that
21 he was away at MD Anderson?

22 A He never went into the shop, he passed away in 2017. He
23 never went to the shop after we came back from -- that whole time we
24 were gone and back and forth, he didn't work at the shop eight hours a
25 day, or five to eight hours a day.

1 Q Okay. Ma'am, I appreciate that. You said a couple of things,
2 so I just want to kind of parse them out. Are you testifying that after
3 your husband returned from MD Anderson, that would've been the point
4 where he never went back to work at the shop?

5 A I don't remember.

6 Q So there is a possibility, at least in your mind, if I understand
7 your testimony, that after he returned from MD Anderson, he continued
8 or went back to work at the shop?

9 A In my mind I don't believe that, but I could be wrong.

10 Q You told us that he -- excuse me. You told us that your
11 husband passed in 2017. I think it's clear, and we all understand that it
12 would happen in March, 2017, correct?

13 A Correct.

14 Q And so if you had previously testified that your husband
15 worked in the shop in 2017, that would be possible, right, because he
16 didn't pass away until March, 2017?

17 A Well, I could have been mistaken on my dates.

18 Q Your deposition was back in August of 2020. Does that
19 sounded about right?

20 A Probably.

21 Q Okay. So that would have been about maybe a year and a
22 half ago?

23 A Yes.

24 Q Do you think your memory might have been better back
25 then, than it is now?

1 A Well, during that time, probably not. I was -- I'm very bad at
2 dates.

3 Q Do you have any reason to dispute me telling you that you
4 previously testified that at some point in 2017 your husband was still
5 helping out at the shop?

6 A If I said that I assume I was wrong,

7 Q But you're not denying that you said that, right?

8 A I have no idea. If you said I said that, then that's what I said,
9 but I can't remember.

10 Q Let's talk a little bit about the insurance plan. I think we've
11 heard your testimony on direct surrounding the circumstances of you
12 obtaining the Sierra plan and why you wanted to obtain that plan,
13 correct?

14 A Correct.

15 Q My understanding, that you purchased that plan in December
16 of 2015, right?

17 A Correct.

18 Q The goal was to have it be effective in January of 2016,
19 correct?

20 A Correct.

21 Q And to be clear, by December, 2015, your husband had
22 already been diagnosed with lung cancer, right?

23 A Yes.

24 Q It's my understanding that you yourself actually had a Sierra
25 plan for some time, right?

1 A I'm sure I did. Oh, I did. I'm sorry, I did.

2 Q Okay.

3 A We had separate plans.

4 Q So you both had a separate plan, right?

5 A Correct.

6 Q Okay. And you told us that the reason why you purchased

7 the Sierra plan was because the plan that he previously had no longer

8 offered kind of what you guys were looking for, is that fair?

9 A No longer offered insurance here.

10 Q Okay.

11 A They told us they were not -- we could not renew it as of

12 January 1st.

13 Q So that's why you had to go look for a new plan?

14 A Correct.

15 Q Okay. Now speaking about insurance plans, you are familiar

16 with what a preauthorization request is, right?

17 A Yes.

18 Q Not only because of yourself being a consumer of insurance

19 plans, but also working in the insurance industry, right?

20 A Well, because whenever you go to the doctor they mention

21 they need to preauthorize something, so I was familiar with the term.

22 Q Okay. And I understand, in your own history, a medical

23 provider has on several occasions made preauthorization requests on

24 your behalf, right?

25 A I assume, so. I've really never been sick, so --

1 Q Now there was some questions that Mr. Terry asked you
2 about that plan, and he put it up on the screen, and you talked to us
3 about how you read that agreement of coverage, right?

4 A Yes.

5 Q And based on your testimony it would appear that you read
6 that entire agreement of coverage, correct?

7 A I assume I did. Being that I wanted to make sure what I
8 wanted was covered.

9 Q It would be fair to assume, if you read it, given the reason
10 why you were obtaining it, you would have read the part of the
11 agreement of coverage that we've all seen, that stated that for
12 procedures to be approved they have to be determined to be medically
13 necessary, correct?

14 A Correct.

15 Q But I believe your definition of "medically necessary" was
16 simply that, at least in regards to your husband's request for proton
17 therapy, was simply Dr. Liao telling you that it was the best treatment for
18 him, correct?

19 A I did say that.

20 Q Okay. And to be fair, Dr. Liao never told you, or your
21 husband, that the proton therapy would cure his cancer, correct?

22 A I think she did mention, somewhere along the line, that she
23 was hoping for a curative effect, or effect, for the lack of a better word,
24 yes. And this was our best option.

25 Q But again, she never told you that it would cure his cancer,

1 correct?

2 A She said that she was looking for -- she was planning on a
3 curative plan; is that what you're asking me?

4 Q No. What I'm asking you, and what I'm trying to establish is,
5 the fact that no one told you, no one could guarantee that proton therapy
6 was going to cure his cancer, right?

7 A There's no guarantee in medicine.

8 Q So the answer --

9 A We were just hopeful that this was going to work.

10 Q Okay. And we'll come back to the curative thing in a second,
11 or in a few minutes, I just wanted to make sure that that part was clear.
12 Let's talk a little bit, before we get into kind of what happened after the
13 treatment, let's talk a little bit about your husband's prior medical
14 history. It's my understanding that your husband had been diagnosed
15 with a form of cancer, previously in 2004, right?

16 A Correct.

17 Q And he had had surgery to remove a node, right?

18 A Correct.

19 Q And he also was treated with radiation?

20 A Correct.

21 Q I'm assuming that was not proton therapy?

22 A Correct.

23 Q But it worked, right?

24 A Correct.

25 Q You'd agree with me that sometimes radiation therapy works

1 and sometimes it doesn't, right?

2 A I think the location -- I probably did not know about proton
3 therapy back then, but the location of his node that they removed, yes, it
4 worked.

5 Q You wouldn't disagree with me by saying that sometimes
6 radiation therapy works, sometimes it doesn't?

7 A I guess so.

8 Q Mr. Eskew also had some preexisting heart issues, right?

9 A Correct.

10 Q And in fact he had heart failure in 2013?

11 A Correct.

12 Q And they put a pacemaker in him, right?

13 A Correct.

14 Q But that had to be removed a couple months later, as I
15 understand it, because he got a, a staph infection, right?

16 A Yes. It was a defib pacemaker, yes.

17 Q He also had Type 2 diabetes, right?

18 A Correct.

19 Q And so you'd agree with me, Ms. Eskew -- excuse me, Mrs.
20 Eskew, that your husband had some preexisting issues that may have
21 made it tough for him to fight lung cancer, right?

22 A No.

23 Q No?

24 A I don't agree with that, because the other cancer was cured,
25 and yes, he did have side effects from that other radiation, that's why he

1 became diabetic, Type 2 diabetes, because of the radiation where they
2 radiated; is what I was told back then.

3 Q What kind of side effects did he have from the first bout with
4 the radiation?

5 A Well, he became Type 2 diabetic, and he -- when they did the
6 radiation he was burned, and that's all I can remember.

7 Q Understood. But it's your testimony that you don't believe
8 that his preexisting issues may have made it tougher for him to fight the
9 lung cancer?

10 A I don't think so.

11 Q Do you recall the testimony from Dr. Chang, where Dr. Chang
12 testified at length about how having preexisting issues can in fact make
13 it tougher for a person to beat cancer; do you not remember him testify
14 to that?

15 A I thought he said that, and I could be mistaken, that having
16 radiation, because he had heart issues, having the IMRT radiation could
17 affect his heart more than the proton could; that was what I got out of it.

18 Q Okay. So you did not get out of Dr. Chang's testimony that a
19 person who has preexisting issues, makes it tougher for them, and it
20 may even reduce the likelihood that they'll beat the cancer?

21 A I didn't take that from his -- no.

22 Q Do you remember in the discussion where Dr. Chang gave all
23 of us an example of how even a person with Stage 1 cancer, he might
24 tell the person who has Stage 1 cancer, hey, you're not going to beat this
25 because of their preexisting issues; do you not remember that testimony

1 from him?

2 A I guess he said that.

3 Q Okay. So that would corroborate what I just asked you, right,
4 which is that based on your own expert, a person who has preexisting
5 issues, might have a tougher time beating cancer, regardless of what
6 kind of radiation therapy they get?

7 A Okay.

8 Q Right?

9 A Yes.

10 Q And you admit that your husband unfortunately had some
11 preexisting issues before he got the cancer, right?

12 A Correct.

13 Q And before he got the radiation therapy that he ultimately
14 received, right?

15 A Correct.

16 MR. SMITH: Your Honor, I don't know how long we've been
17 going, but it's about -- it's been about an hour and a half. I can keep
18 going, or if you want to take a break, this might be a good time?

19 We can go to the 15 minutes you like --

20 MR. SMITH: Okay, yeah.

21 THE COURT: -- before I take a break.

22 BY MR. SMITH:

23 Q Kind of following that thread, Mrs. Eskew, I think we've
24 already heard testimony, but I just wanted to ask you, since you are --
25 you know, you were married to him for 40 years, but your husband also,

1 he smoked for about 35 years, right?

2 A I don't know if it was 35 years, but he quit back in -- I don't
3 know, 2004 or '05, somewhere around there, '06.

4 Q I'll represent to you that you the he testified previously at a
5 deposition that he smoked cigarettes from 1970 to 2006; does that sound
6 about right?

7 A That's probably right.

8 Q And you testified that it was a half a pack, to a pack a day,
9 right?

10 A Probably.

11 Q Now moving onto the lung cancer diagnosis, I think you told
12 us that you all first learned about the lung cancer diagnosis after he
13 broke his arm at the golf course, right?

14 A Correct.

15 Q And you were with him when he was told about it?

16 A Correct.

17 Q And he started treating with an oncologist pretty soon after
18 that, right?

19 A Yes.

20 Q And was that Dr. Jean Clark [sic]?

21 A Yes.

22 Q Or Dr. Clark Jean?

23 A Yes.

24 Q Okay. The initial recommended treatment from Dr. Clark
25 Jean was six rounds of chemo, right?

1 A Correct.

2 Q And can you tell us, to the best of your recollection, what that
3 initial prognosis was?

4 A No.

5 Q Okay. Do you recall testifying previously that Dr. Jean gave
6 Mr. Eskew, at most, five to ten years, although he couldn't say how long?

7 A He may have said that. Whenever I would ask, he would tell
8 me he doesn't have a crystal ball, he doesn't know how long, but five to
9 ten years.

10 Q So based on your own testimony then, Dr. Jean was in fact
11 telling your husband that he was not going to beat the cancer, right?

12 A He never really actually said that.

13 Q Okay. Well, Mrs. Eskew, your husband at the time was how
14 old; in his 50s or 60s?

15 A When he hit the cancer, he was 63 --

16 Q Sixty-three, right?

17 A Because he died at right after he turned 65.

18 Q And so if a doctor is telling your husband that he mostly has
19 five to ten years, that would suggest that he's not going to make it, and
20 he's going to die prematurely, correct?

21 Q Well, at 73, I probably could have handled it better than 65.

22 A I understand. But that doesn't really answer my question.
23 My question is, I'm trying to establish the doctor is telling your husband
24 when he's first diagnosed with cancer and this particular doctor is an
25 oncologist, he's telling your husband that he's probably not going to

1 survive, correct?

2 A I guess if that's how you want to interpret it, he said five to
3 ten years. So, yes.

4 Q Would a reasonable person interpret it the way that I want to
5 interpret it?

6 A I guess, yes.

7 Q And your husband is hearing this at the same time you are,
8 correct?

9 A Yes.

10 Q You certainly don't recall Dr. Jean ever telling you or your
11 husband that his cancer is curable, right?

12 A I don't recall that.

13 Q But if I remember your testimony correctly on direct, you told
14 Mr. Terry, in response to a question, that your husband, nevertheless,
15 thought he was going to survive, right?

16 A Yes.

17 Q Okay. And this is a spite of the fact you've admitted to us
18 that the doctor told him that he wouldn't survive, right?

19 A I guess, yes.

20 Q Okay. And you'd agree with me, ma'am, that it's helpful for
21 your case, for you to convince the jury that your husband thought he
22 was going to survive, right?

23 MR. TERRY: Objection, Your Honor. Argumentative.

24 MR. SMITH: It goes to bias, Your Honor.

25 THE COURT: Overruled.

1 BY MR. SMITH:

2 Q You'd agree with that proposition, right?

3 A Could you please repeat that?

4 Q Okay. For the purposes of your lawsuit, you'd agree with me
5 that it's more helpful for your case for the jury to believe that your
6 husband thought that he was going to survive his cancer?

7 A I don't agree with that.

8 Q Okay. In any event he received his first round of
9 chemotherapy in August, right?

10 A Probably.

11 Q Okay.

12 A I don't know the exact date.

13 Q You went out to MD Anderson in October of 2015; does that
14 sound right?

15 A Correct.

16 Q And it's my understanding that this would've been about
17 maybe his third round of chemotherapy?

18 A Yes.

19 Q Because, as I understand it, as hopefully you recall, that
20 initial visit to MD Anderson, you were told that he needed to finish his
21 chemotherapy --

22 A Right.

23 Q -- before anything else could occur, right?

24 A Correct.

25 Q And so he was supposed to go back to MD Anderson in

1 December of 2015; does that sounded about right?

2 A Something like that, yes.

3 Q And I'm just asking these questions because I'm trying to just
4 give the jury a timeline. Okay?

5 A Uh-huh. Yes.

6 Q Thank you. That first appointment at MD Anderson, I
7 represent you that it was in October, 2015, you guys were out there a
8 couple of days; does that sound that sound right?

9 A Correct.

10 Q And to be clear, your husband never did any research
11 himself on proton therapy and its ability to cure or treat, or focus on any
12 areas or anything like that, that was all your doing, right?

13 A He left that up to me.

14 Q You also met with Dr. Liao, during that first visit, right?

15 A I don't recall if we met her the first visit, or when we went out
16 in January; I don't recall.

17 Q Okay. That's fair. I know we're talking about something that
18 happened almost seven years ago. So I think we can all understand if
19 you don't remember every minute detail, but suffice it to say, early on in
20 your trips to MD Anderson, that's when you first encountered Dr. Liao,
21 right?

22 A Yes.

23 Q And you guys talked about proton therapy, right?

24 A Yes.

25 Q But again, you don't recall Dr. Liao ever telling you that the

1 cancer was curable, right?

2 A No, I don't recall her actually saying it was curable. They
3 wanted to try -- the proton would give him a curative -- we were hoping
4 for a curative prognosis.

5 Q Okay.

6 A I guess hoping it's different than actually having one.

7 Q Right. And hopeful is different than actually being told that
8 something can happen, right?

9 A Yes.

10 Q Especially when you were being told that something by a
11 medical professional, right?

12 A Yes.

13 Q Now speaking about the proton therapy while we're still
14 talking about that, you don't know for sure as to whether there are any
15 studies or research that actually state proton therapy is superior to IMRT,
16 with respect to lung cancer, do you?

17 A Well, the -- when I found MD Anderson and I looked at all the
18 credentials, they said that it was a better -- a good treatment for lung
19 cancer.

20 Q My --

21 A That's what I looked up.

22 Q Okay. So you just looked up their website, right?

23 A And other cancer sites, I researched.

24 Q So you researched on the website, right?

25 A Correct.

1 Q But as I understand, you never researched any actual
2 scientific literature, or anything like that, that may have been available
3 on the internet, to confirm your suspicions?

4 A I don't know if the things I researched were scientific or not.

5 Q Okay. And you've seen through, not only witnesses
6 presented by -- actually primarily, solely, through witnesses presented
7 by your lawyer, the proton beam therapy that -- the proton beam policy
8 that actually has articles that talk about how proton therapy has not been
9 proven as superior to IMRT for the treatment of lung cancer, right?

10 A I never saw that, anything about proton therapy on the -- on
11 my policy

12 Q I'm talking about during the course of this trial?

13 A Oh yes.

14 Q Okay.

15 A I've seen it here.

16 Q Right.

17 A It's the first time I ever saw it.

18 Q Okay. I understand that, but you you've seen it now, right?

19 A Yes.

20 Q And you have no reason to dispute any of that science, right?

21 A No, I guess not.

22 Q Now I want to go back to -- well, I guess we we're on that
23 subject now, so we're talking now about your first trip kind of at MD
24 Anderson, right. And again, you want the jury to believe that your
25 husband kind of thought that he was going to beat this cancer. So I want

1 to ask you, do you recall a meeting with a doctor, and I'm probably going
2 to butcher the name fair, Ferrarotto --

3 A Yes.

4 Q F-E-R-R-A-R-O-T-T-O, for the Court Recorder. But do you
5 recall with him?

6 A Her. Yes.

7 Q Her. Okay.

8 A Yes.

9 MR. SMITH: And then if we can bring up Exhibit 154-2,
10 please Audra. And if we could -- can we come up and show where the,
11 the date of this is?

12 BY MR. SMITH:

13 Q So you see here, we have an encounter date, October 28th,
14 2015, right?

15 A Yes.

16 Q And this appears to be a record from MD Anderson, correct?

17 A Yes.

18 Q And it says here's signed by Renata , Ferrarotto, right?

19 A Yes.

20 Q And again, this would've been kind of your introductory
21 visits to MD Anderson. Am I right?

22 A Correct.

23 Q Okay.

24 MR. SMITH: And so can we bring up, Audra, the plan?

25 BY MR. SMITH:

1 Q And it's my understanding that at this point in time, your
2 husband's still on chemo, correct?

3 A Correct.

4 Q And this says, "Plan. I have discussed with the patient that
5 given he that he has already started treatment and disease has been
6 stable, I would proceed with two more cycles. I would do a biopsy of the
7 lung to confirm the diagnosis, as the pathology was not 100 percent
8 definitive of lung primary. I will order some molecular analysis on the
9 patient's tumor, and after the patient received six cycles of
10 chemotherapy, I would recommend a new PET/CT.

11 If we do confirm oligometastatic disease with only the lung
12 primary and mediastinum nodes, he might be a candidate for
13 consolidation, radiation therapy. I did tell the patient that this is not
14 curative intent, but it could buy him some time with no systemic
15 therapy."

16 Do you remember being present when you were initially at MD
17 Anderson, being told by Dr. Ferrarotto, or at least your husband being
18 told by Dr. Ferrarotto, in your presence, that this is not curative intent?

19 A Yes.

20 Q Okay.

21 A I see that.

22 Q All right. Do you recall during that visit whether or not you
23 were told -- and sorry, ma'am do, do you want to --

24 A No, I'm fine.

25 Q We're okay to continue?

1 A Yes.

2 Q Okay. Do you recall whether or not you were told during that
3 visit that proton therapy would be safer for Mr. Eskew?

4 A I don't recall if it was at that visit or not.

5 Q Okay.

6 A But that is my assumption.

7 Q Do you recall whether or not you were told if there were any
8 risks associated with proton therapy during that first, or during that visit
9 that we just saw records of?

10 A I don't recall.

11 Q Do you recall testifying previously at a deposition that you
12 were, quote, "Sure that they discussed that proton therapy also had side
13 effects"?

14 A I could have said that. I don't recall.

15 Q As you sit here today, you acknowledge, or you understand
16 that proton therapy also has side effects, right?

17 A Yes.

18 Q And I think we even heard from Dr. Chang that even with
19 proton therapy, there is a risk of developing acute and chronic
20 esophagitis, correct?

21 A A less risk, but a risk. Yes.

22 Q Meaning that even proton therapy doesn't completely
23 eliminate that risk, right?

24 A Correct.

25 THE COURT: Counsel, we're going to take, our 15 minute

1 recess now.

2 MR. SMITH: Yes, ma'am.

3 THE COURT: Ladies and gentlemen of the jury. You are
4 instructed not to talk with each other, or with anyone else, about any
5 subject or issue connected with this trial. You're not to read, watch,
6 listen to a report of, or commentary on the trial, any person connected
7 with the case, or by any medium of information, without limitation,
8 newspapers, television, internet or radio.

9 Do not conduct any research on your own, relating to this
10 case, such as consulting dictionaries, using the internet, using reference
11 materials. You're not to conduct any investigation, test any theory of the
12 case, recreate any aspect of the case, or in any other way investigate the
13 case on your own.

14 You are not to talk to others, text others, Tweet others,
15 Google, or conduct any other kind of book or computer research with
16 regard to any party, witness, or attorney involved in this case. You're
17 not to form or express any opinion on any subject at this trial, until the
18 case is finally submitted to you.

19 So come back at 2:45.

20 THE MARSHAL: All rise for the jury.

21 [Jury out at 2:25, p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Any issues outside the presence of the jury,
24 counsel?

25 MR. SHARP: Yeah. I do, Your Honor. I mean, we've been

1 sitting here, I don't know how many minutes it's been, but it's been
2 about a half hour of -- well, I mean, I don't have a time clock, but seeing
3 it's been about a half hour of Defense counsel questioning Mrs. Askew
4 you, essentially about medical causation issues, and even suggesting to
5 the jury that she's lying or magnifying her problems.

6 So it's our position they've opened this door up and we
7 intend to explore it on redirect. So I just want to advise that. I mean,
8 they're the ones that did not want anybody like Mrs. Eskew, testifying
9 about causation, and they chose to ask those questions. So we have an
10 opportunity then to rebut that?

11 THE COURT: Which causation are you talking about, the
12 causation of death?

13 MR. SHARP: Yes. Because they've asked -- he specifically
14 said, if you -- that you are manufacturing effectively your case, because
15 you're being told there was no there was no ability, you know, you were
16 going to die, anyway, all of this sort of stuff, her state of mind is now at
17 issue, he's made that an issue,

18 THE COURT: Mr. Smith?

19 MR. SMITH: Your Honor, Mr. Terry went on a limb through
20 not only Mr. Eskew's state of mind, but Mrs. Eskew's state of mind. My
21 questions are not going towards causation, and yes, obviously it's my
22 client's position that it shouldn't be a surprise to anyone in this room
23 that Mrs. Eskew is embellishing on her husband's condition.

24 And so the Defense, Your Honor, has a right, and the ability
25 to cross-examine and challenge whether or not she's being accurate and

1 truthful, about not only the fact that it was, IMRT that caused his
2 proton -- that causes his esophagitis, which they have been saying from
3 the get-go, and which what they need the jury to believe in order to
4 award damages.

5 And, secondly, that -- in fact, if I take it back a second, one of
6 the first things that came out of Mrs. Eskew's testimony, was that the
7 reason why he was so distraught when he didn't get the proton therapy,
8 was because he thought proton therapy was going to cure him.

9 She told us on direct that when he first got diagnosed with
10 cancer, he wasn't told that it was going to kill him. In fact, I think Mr.
11 Terry even said, "You had no reason to believe it was a death sentence,
12 did you?" She said, "No, we didn't think it was a death sentence." He
13 said those explicit words.

14 So one thing to rebut that Your Honor is a statement from
15 Dr. Ferrarotto, the initial treating radiation oncologist, who's telling --
16 okay, my apology, the treating oncologist, who's telling Mrs. Eskew and
17 her husband that this treatment is not curative intent; i.e., we don't think
18 we're going to be able to cure you. It undermines her credibility, and it
19 rebuts what she's trying to sell to the jury.

20 MR. SHARP: Your Honor, I mean nobody was complaining.
21 if you remember, when he was asking questions off the medical record.
22 Is where he crossed the line, is he -- and in fact said, I am suggesting to
23 the jury that she's embellishing her beliefs to get more money. Her state
24 of mind is now at issue, I mean, that's her belief.

25 Generally speaking, we do establish medical causation

1 through medical witnesses. They're the ones that are asking all of these
2 causation questions. I had no objection, none of us have objection. If he
3 wants to go through medical records and ask her about them, was that
4 said, was that not said, that's fine. He, over -- he went over the line when
5 he suggested to the jury, directly, that Mrs. Eskew is lying about her
6 beliefs.

7 So she's entitled to explain her beliefs, one of which, good,
8 bad or indifferent is, she believes in her mind that the proton beam
9 therapy, the lack thereof killed her husband, I mean, that's her belief,

10 THE COURT: Mr. Smith -- you can leave the stand.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Smith. Aren't you asking Mrs. Eskew,
13 essentially, doesn't she believe that the IMRT therapy killed her
14 husband? Essentially, isn't that what you're asking her?

15 MR. SMITH: No, Your Honor. I don't believe that's what I'm
16 asking her at all.

17 THE COURT: Then what --

18 MR. SMITH: I mean, it's not -- it's not our -- in fact, it's not
19 our position that IMRT killed her husband. It's our position that
20 Mr. Eskew's cancer, despite IMRT, progressed, and that's what killed
21 him.

22 THE COURT: Right. So you're asking her about what killed
23 him.

24 MR. SHARP: That is exactly it. And they're saying, because
25 of what all these doctors told you, you're embellishing this to the jury.

1 She should -- she has a right to defend herself. At this point, when
2 they're making these -- I mean, well, anyway, I'm not going to get
3 emotional about that. The fact is, my client had the right to defend
4 herself when they chose to make her integrity an issue.

5 THE COURT: All right. So Mr. Sharp is going to be allowed
6 to ask Ms. Eskew about what she believed killed her husband, because
7 the Defense has opened the door by asking her what she believed killed
8 her husband. You just opened the door, Mr. Smith.

9 MR. SMITH: Your Honor. I don't believe that I asked her
10 what killed her husband. What I was -- when she testified on direct -- so
11 the initial things that she said, right, was that one of the reasons why her
12 husband was so distraught, was because he thought that he was going
13 to be able to beat the cancer, that he didn't think it was a death sentence;
14 they said those exact words.

15 My questions were offered simply to rebut that assertion,
16 which goes to her credibility, which is always relevant, Your Honor,
17 that's it. Which is why I brought up and showed it on the -- the medical
18 record on the page that said she was told that they didn't have curative
19 intent.

20 The logical inference from that is that she's embellishing, or
21 her credibility can be questioned when she also is telling us and the jury
22 that the reason why he was so distressed, and the reason why he
23 thought his life over was because he thought he was going to beat the
24 cancer, and furthermore, the fact that he got, IMRT, which was a worse
25 form of treatment contribute to that.

1 I'm not asking her if she -- I'm not asking her to opine as to
2 what exactly killed him. I'm simply trying to rebut and attack the
3 statements that she's made that suggest that something that's portrayed
4 by the medical records. That's it?

5 THE COURT: The Court understands what you're saying,
6 Mr. Smith, but the end result is that you really are asking her what killed
7 her husband, trying to get her to say it was the cancer that killed him, not
8 the starvation. So because of that, Mr. Terry and Mr. Smith -- Mr. Sharp,
9 rather, will be able to ask her questions, and then you can ask her follow
10 up questions, that's the Court ruling.

11 We'll come back in five minutes.

12 [Recess taken from 2:37:p.m. to 2:50 p.m.]

13 THE MARSHAL: Let the Court come to order, back on the
14 record.

15 [Outside the presence of the jury]

16 THE COURT: Thank you. Please be seated. Are the parties
17 ready for the jury? Oh, no, there's something outside the presence. Real
18 quick.

19 MR. SMITH: Real quick, Your Honor. Thank you.

20 Your Honor, we just want to make it clear, I understand your
21 ruling. It's the Defense position that we were offering that evidence
22 solely to establish the state of mind and Sandra Eskew's credibility. And
23 so to the extent that you are going to let Plaintiff's counsel ask questions,
24 as you've indicated to us at the bench, the Defense is not consenting,
25 from a procedural standpoint to this -- to turning this into a wrongful

1 death case, and to them adding a wrongful death claim: just putting that
2 on the record,

3 MR. SHARP: We are not going to have a wrongful death
4 case. Understood, counsel. Thank you.

5 MR. SMITH: Thank you, Your Honor.

6 [Pause]

7 THE MARSHAL: Are we all set, Judge?

8 THE COURT: Yes.

9 [Pause]

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 2:51 p.m.]

12 THE MARSHAL: The jury is present.

13 THE COURT: Thank you. Do the parties to the presence of
14 the jury?

15 MR. SHARP: Yes, Your Honor.

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: All right. Please be seated.

18 Mr. Jackson, the Court did conduct an investigation of your
19 lost items. Due to security reasons, there is no video camera on the jury
20 box, so the footage does not show us who stole your items. But we did
21 replace them.

22 JUROR 10: I appreciate it.

23 THE COURT: Hopefully no one else steals them, we may
24 leave a note.

25 Mr. Smith?

1 THE COURT: Thank you, Your Honor.

2 THE COURT: Please proceed.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. SMITH:

5 Q Mrs. Eskew, before we left for the break, we were, timeline-
6 wise, in October 2nd, 2015, that visit to MD Anderson with Dr. Ferrarotto;
7 do you remember that?

8 A Yes.

9 Q It might have been Ferrarotto. And so after that visit, the
10 next visit at MD Anderson was January, 2016, after he completed the six
11 rounds of chemotherapy; does that sound about right?

12 A Yes.

13 Q It's my understanding that during that visit, Dr. Ferrarotto
14 said that since he was done with chemotherapy, they were going to then
15 find out if he was a candidate for proton therapy; do you remember that?

16 A That sounds correct.

17 Q And then Dr. Liao had indicated that hopefully your husband
18 would be a candidate for proton, but that they needed to do some testing
19 first?

20 A Correct.

21 Q Okay. So they complete the testing, right?

22 A Yes.

23 Q And then you guys return to MD Anderson in February, 2016,
24 in order to get the proton therapy, correct?

25 A Correct.

1 Q So as we've heard the request for proton therapy was
2 denied, right?

3 A Correct.

4 Q It was denied because a medical director and my client
5 determined that it wasn't medically necessary, based on scientific
6 literature, right? Among other things?

7 A Correct.

8 Q Okay. And so Dr. Liao then informs you and your husband
9 that the proton therapy prior authorization requests had been denied,
10 correct?

11 A Yes.

12 Q And then on direct, Mr. Terry asked you questions about
13 representations that Dr. Liao made to you about whether or not you
14 could appeal that decision; do you remember that?

15 A Yes.

16 Q And I think Mr. Terry even went so far as to say that you
17 might be facing some criticism because of that; do you recall that
18 question?

19 A Sort of, yes.

20 Q And your testimony was that Dr. Liao indicated that this
21 needed to happen quickly, and essentially that appeals would have taken
22 too long, right?

23 A She said that they don't normally overturn their decision, and
24 so we moved forward.

25 Q Well, didn't you also just tell us that Dr. Liao indicated you

1 that an appeal would've taken too long?

2 A If it was even overturned. Yes.

3 Q So yes. Dr. Liao also told you that it was going to take too
4 long, right?

5 A Yes.

6 Q Okay.

7 A And it probably wouldn't have made any difference anyways.

8 Q Okay. There there's no question pending, but I appreciate
9 that. Okay. Okay. Well, suffice it to say, ma'am, you don't know,
10 because you never tried, right?

11 A Correct.

12 Q Okay. And you told us that you read the agreement of
13 coverage, the AOC, right?

14 A Correct.

15 Q Okay. You saw the part in the AOC that actually talked about
16 an expedited appeal that would have to be adjudicated within 72 hours,
17 right?

18 A Correct.

19 Q Okay. So then you knew --

20 MR. TERRY: Objection, Your Honor. This is -- we've been
21 over this around and about, they're not going to make an argument that
22 there should have been an appeal, or that it would have changed
23 anything, they've said that; here we go again.

24 MR. SMITH: Your Honor, the argument isn't really, if she
25 should have appealed, is to rebut what she's just told this jury, which is

1 that the reason why they didn't was because she was told that it was
2 going to take too long.

3 MR. TERRY: Sounds a lot like he should, if she showed it to
4 me, Judge.

5 THE COURT: It's overruled

6 THE WITNESS: Can you repeat your question to me, please?

7 BY MR. SMITH:

8 Q The question is, in contrast to you telling this jury that the
9 reason why you didn't appeal is because Dr. Liao told you it was going to
10 took to take too long, you admit that there is a section in the agreement
11 of coverage that you've told us that you read, that actually says that
12 there is provision for an expedited appeal that would have to be
13 adjudicated within 72 hours, right?

14 A Yes.

15 Q Okay. And to be clear, the length of time between when you
16 received notification of the proton therapy denial, and when your
17 husband started IMRT, was greater than 72 hours, wasn't it?

18 A I can't answer that, I don't know.

19 Q If I told you that the medical records established that this was
20 about five days, you have no reason to dispute that, right?

21 A Correct. I do not.

22 Q Five days is more than 72 hours, right?

23 A Yes.

24 Q Kind of going back to your husband's state of mind, while
25 we're still talking about him, learning about the cancer and discussing

1 treatments, do you recall back in November, 2015, your husband having
2 an appointment with Dr. George Gluck, spelled G-L-U-C-K, at the hand
3 center of Nevada related to the arm fracture?

4 A Yes.

5 MR. SMITH: And if we can bring up Audra is 167 in
6 evidence?

7 UNIDENTIFIED SPEAKER: No.

8 MR. SMITH: 167?

9 UNIDENTIFIED SPEAKER: No.

10 MR. SMITH: No. Any objection, Mr. Terry, to 167, it's a
11 record from the Hand Center of Nevada?

12 [Counsel confer]

13 MR. TERRY: No objection, Your Honor.

14 MR. SMITH: Your Honor, without objection, I move for
15 admission of Exhibit 167.

16 THE COURT: Exhibit 167 will be admitted into evidence, Mr.
17 Smith.

18 [Defendants' Exhibit 167 admitted into evidence]

19 MR. SMITH: Thank you, Your Honor. Permission to publish?

20 THE COURT: Publish granted.

21 MR. SMITH: Can we go to page 3, Audra?

22 BY MR. SMITH:

23 Q Well, actually let's look at the first page. So does this appear
24 to be records from the Hand Center of Nevada, Mrs. Eskew?

25 A Yes.

1 Q Okay.

2 MR. SMITH: And then if we can go to 167-3, please. And
3 then if we -- does it appears -- Audra, can we zoom in on treatment date,
4 just so we have some context, and we keep that timeline going.

5 BY MR. SMITH:

6 Q You'd agree that it says this treatment date is November 3rd,
7 2015, right, Mrs. Eskew?

8 A Yes.

9 Q So this would've been after the initial diagnosis, correct?

10 A Correct.

11 Q Okay. And to be clear, do you know where this is, with
12 regards to the visits to MD Anderson? Had they begun yet, or you don't
13 remember?

14 A I don't remember when, but I do remember seeing this
15 person.

16 Q Okay. And so do you recall --

17 MR. SMITH: If we can blow up, yeah, Audra, the diagnosis?
18 The diagnosis at the bottom? No. Not that one. Oh, actually that works
19 too. I'm sorry, it's right there.

20 BY MR. SMITH:

21 Q And then Number 3, do you see Number 3 there, Ms. Eskew?

22 A Yes, I do.

23 Q And does that say diagnosis is metastatic squamous cell
24 carcinoma with 12 to 24 month life expectancy?

25 A I see that.

1 Q Do you recall having that discussion with your husband, with
2 the doctor?

3 A I do not recall.

4 Q Okay. But it's noted in the medical records, right?

5 A I see that.

6 Q Okay.

7 MR. SMITH: Thank you, Your Honor.

8 BY MR. SMITH:

9 Q Now I'm kind of in the timeline of things, we're still -- we're
10 still at the point where he's kind of in the timeframe where he's trying to
11 get the treatment, gets denied, gets the IMRT, and so he's now at MD
12 Anderson, and you've told us that he was out there by himself, right?

13 A Yes.

14 Q And that's because you had to work, I think we can all
15 understand that, right?

16 A Correct.

17 Q Okay. And he was out there for about six weeks, as I
18 understand it?

19 A Yes.

20 Q Incidentally, before the prior authorization was sent to Sierra,
21 did someone from MD Anderson tell you that they had to make a prior
22 authorization request?

23 A I don't recall.

24 Q Do you recall testifying previously at your deposition that
25 someone from MD Anderson told you that they had to make a prior

1 authorization request, and that that was standard procedure?

2 A Probably. I just don't recall. I don't remember.

3 Q So probably that happened?

4 A Probably.

5 Q And to be clear, you didn't send a copy of your agreement of
6 coverages to MD Anderson, right?

7 A No.

8 Q But they nevertheless told you that the request for proton
9 therapy required prior authorization, and that was a standard request,
10 right?

11 A I assume. Yes.

12 Q Now, as I understand it, you weren't obviously with
13 Mr. Eskew when he found out that the prior authorization request was
14 not approved, right?

15 A I don't recall when all that timeline happened. Yes. I know
16 he went out for his treatment for six weeks on his own. I did not go out
17 with him for that, but I don't remember how -- how it all came about.

18 Q Okay. Well, so if you had stayed here while he was out there
19 the entire time, and he went out there prior to the request being made,
20 suffice it to say when he learned the result of that request, you would've
21 still been here in Las Vegas?

22 A Correct.

23 Q Okay. That's all I'm trying to establish.

24 And so I guess we can assume that you found out by him
25 either calling you, or I don't know if you guys were texters or some form

1 of communication?

2 A We talked every day.

3 Q Okay. And to be clear, once you learned about the denial of
4 the prior authorization request, you were told that you could appeal that
5 denial, right?

6 A Correct.

7 Q To be fair, Mrs. Eskew, when you reviewed that agreement of
8 coverage, to the best of your ability, you understood it, right?

9 A Yes.

10 Q You didn't have any questions about any of its provisions,
11 right?

12 A Correct.

13 MR. SMITH: Audra, can we bring up Exhibit 2-28, please?
14 That's your agreement of coverage, Mr. Terry.

15 MR. TERRY: Thank you.

16 MR. SMITH: Already in evidence.

17 MR. TERRY: Yes, sir.

18 MR. SMITH: Okay. And then if we could zoom in on 12.2.

19 MR. TERRY: Page 20 -- 228?

20 MR. SMITH: Yes, sir, 228.

21 MR. TERRY: Thank you.

22 MR. SMITH: No problem.

23 BY MR. SMITH:

24 Q To be clear, Mrs. Eskew, this is that section about the
25 expedited appeal, right?

1 A Yes.

2 Q And then we can kind of see where it said, "they must be
3 decided no later than 72 hours after receipt of the appeal." Right?

4 A Correct. I see that.

5 Q That's kind of different than, what you testified to and what
6 we heard other witnesses talk about Dr. Liao, saying it would take
7 months to resolve this appeal. Right?

8 A She said, "I was told that they never changed their mind. It
9 takes a long time." Yes. That's the opposite to what it says here.

10 Q Okay. And you read this, right?

11 A Yes.

12 Q Okay. Now it's also my understanding that you testified
13 previously, Dr. Liao actually told you that she called the medical director
14 and that the medical director told her that he wasn't going to change his
15 mind; is that correct?

16 A I don't remember that. And if I said that, I don't know why,
17 or -- I don't remember.

18 Q Okay. If I --

19 A I have no clue.

20 Q If I showed you your deposition transcript, would that refresh
21 your recollection as to whether or not you testified to that?

22 MR. SMITH: And, Counsel, I'm going to --

23 THE WITNESS: Somebody called me to tell me that it wasn't
24 -- I assume it was her. If that's what I -- if I say it was her, but I don't
25 recall.

1 BY MR. SMITH:

2 Q You don't recall who it was, or you don't recall testifying to
3 that previously under oath?

4 A I don't recall what I said.

5 Q Okay. If I showed you your deposition transcript and asked
6 you to review some lines, would that refresh your recollection to what
7 you said?

8 A Well, whatever I said in the deposition is probably correct.

9 Q Okay. Well, I just want to make sure. So I'm going to give --

10 A Okay.

11 Q -- you the opportunity to refresh your recollection as to what
12 you said, okay?

13 A Okay.

14 MR. SMITH: Counsel, I'm looking at 152, line -- actually 151,
15 line 25 through to page 152, line 22.

16 MR. TERRY: Okay.

17 MR. SMITH: Okay. No problem. May I approach the witness
18 Your Honor?

19 THE COURT: Yes.

20 BY MR. SMITH:

21 Q Mrs. Eskew, I've just handed you a copy of a transcript of
22 your deposition, given on August 8th, I believe it was, but I'll check my
23 notes. August 6th, I stand corrected, 2020. And I've highlighted or a
24 bracketed portion. I'm I ask you to read that to yourself, and then when
25 you're done, please look up and I'll ask you a follow-up question

1 A And it says right on here --

2 Q So you don't --

3 A Oh, yes, I did read it.

4 Q You don't have to read it out

5 A Okay. I read it.

6 Q Okay. You read it?

7 A Yes.

8 Q Okay. So does that refresh your recollection, testifying that

9 Dr. Liao called -- excuse me, Dr. Liao said that she called the medical

10 director and that he wasn't going to change his mind?

11 A Yes. I said all this.

12 Q Okay. That's an answer to my question. If there's any follow

13 up, your attorney will get to ask you questions, to follow up.

14 A Okay.

15 Q But, so yes, you did testify under oath, that Dr. Liao called

16 you and told you that she called the medical director and spoke with

17 him, and the medical director said he wasn't going to change his mind,

18 right?

19 A I said, I think she did.

20 Q Okay.

21 A Yes.

22 Q But you obviously since found out that that actually never

23 happened, right?

24 A No, I didn't say that never happened. I said, I don't recall it

25 until I just read it, but this is what I've said, and I said, I think she did.

1 Q Okay. So perhaps I asked that question poorly. I think we
2 just established that you now recall testifying that Dr. Liao told you that
3 she called the medical director and spoke with him, right?

4 A Yes.

5 Q And that would've been Dr. Ahmad, right?

6 A I assume, yes.

7 Q Right. My question is you've now since learned that that
8 actually didn't happen and Dr. Liao never called Dr. Ahmad, right? I
9 mean, you know, that that -- you know that to be --

10 A Correct

11 Q -- to not be accurate, right?

12 A Correct.

13 Q Okay. So if Dr. Liao called you and told you that, that wasn't
14 accurate, right?

15 A Correct.

16 Q Okay.

17 MR. SMITH: Your Honor, may I approach the --

18 THE COURT: Yes.

19 MR. SMITH: -- witness, please?

20 THE COURT: Yes, Mr. Smith.

21 MR. SMITH: Thank you.

22 THE WITNESS: Do you want this back?

23 BY MR. SMITH:

24 Q Yes, ma'am. Thank you, ma'am.

25 THE COURT: Mr. Smith, if you need to, you can put your

1 papers next to the witness.

2 MR. SMITH: I thought it was on --

3 THE COURT: No --

4 MR. SMITH: -- I didn't want to --

5 THE COURT: No --

6 MR. SMITH: Okay. Thank you.

7 BY MR. SMITH:

8 Q After learning from your husband that the request was
9 denied, you got a letter memorializing that in the mail, right?

10 A Correct.

11 Q And that letter indicated that the request was unproven and
12 therefore not medically necessary, right?

13 A Correct.

14 MR. SMITH: And if we could bring up, Audra, if you please,
15 Exhibit 5-34. 5-34, Mr. Terry. If we could highlight sixth area, actually, at
16 the top. Actually, can you go to the, the first page, Audra, I apologize.
17 Yeah.

18 BY MR. SMITH:

19 Q Does this look familiar, Mrs. Eskew, the letter from Sierra
20 Health and Life explaining the outcome of the prior authorization request
21 for proton therapy?

22 A Yes.

23 Q Okay.

24 MR. SMITH: I know it's not the best resolution. My
25 apologies for that, but if you could go to that page that you previously

1 had displayed, Audra. Yeah. And if you could blow up -- no the
2 paragraph in front of that. Yes, ma'am.

3 BY MR. SMITH:

4 Q Do you recall at least reading the part where it said, "The
5 information in this letter is not a treatment decision, it addresses only
6 payment for the services in question.

7 A I don't recall reading that.

8 Q Okay.

9 A I don't recall reading anything, but the first page on the
10 denial.

11 Q Okay. So if I'm understanding your testimony correctly,
12 you've requested this particular type of treatment for your husband,
13 right?

14 A Correct.

15 Q It's to hopefully help treat a very serious disease, correct?

16 A Correct.

17 Q You've requested this treatment from a provider of medical
18 care, right?

19 A Correct.

20 Q And the insurance company sends you a letter explaining
21 why that requested treatment was not going to be approved?

22 A Correct.

23 Q And you didn't read the entire thing that they sent you?

24 A I think I probably was upset after reading the first part.

25 Q Okay. So at no point in time, did you read the --

1 A I don't recall reading it, no.

2 Q I understand, ma'am. Now, ma'am to be clear, it's my
3 understanding from your prior testimony in that deposition that I just
4 showed you a transcript of, that it's actually not your position that every
5 single request for proton therapy should be approved by Sierra; is that
6 correct?

7 A Repeat that for me, please?

8 Q Okay. It's not your position that every request for proton
9 therapy should be approved by Sierra, right?

10 A Correct.

11 Q You'd agree that it should be approved only if it's medically
12 necessary, right?

13 A I guess.

14 Q Depending on the circumstances, correct?

15 A Correct.

16 Q And is it your understanding that "medically necessary"
17 means what the best treatment should be, and what's been proven to
18 work?

19 A Correct.

20 Q And by "proven" you mean scientifically proven, right?

21 A Yes.

22 Q So now let's shift gears a little bit and talk about what
23 happened after your husband received the IMRT? It was my
24 understanding that he returned from treatment in around March, 2016.
25 Does that sound right?

1 A Yes.

2 Q And that he had to go back out to Texas for a couple of
3 follow up appointments?

4 A Correct.

5 Q Do you recall going back out in May and July of 2016?

6 A I don't recall when.

7 Q Okay. I'll put it to you this way. Do you recall going back out
8 there a couple of months after the treatment was completed?

9 A Yes.

10 Q Do you recall during two of those meetings being told by
11 Dr. Ferrarotto and or/other physicians at MD Anderson, that
12 unfortunately the lung tumor had -- oh, excuse me, that the lung tumor
13 had decreased in size and metabolic activity; do you remember being
14 told that?

15 A Yes.

16 Q So initially it seems like the radiation therapy had, had some
17 kind of -- some kind of effect; a positive outcome initially, correct?

18 A Correct.

19 Q Then later, as I understand it, unfortunately, you and your
20 husband were told that the tumor had spread to his left, humorous, his
21 left adrenal gland, and his left iliac bone; do you remember being told
22 that?

23 A Correct.

24 Q I would assume that upon hearing that news, both you and
25 your husband were a little distressed over that?

1 A Yes. I think I heard, and I could be wrong, that those areas lit
2 up on the CAT scan, that you mentioned, which is a sign that it's -- it's
3 spreading.

4 Q Spreading. And you'd agree with me that that's generally
5 not news that a person suffering from cancer ever wants to hear, right?

6 A Of course not.

7 Q Would you agree with me that that would probably cause a
8 person who's suffering from cancer to have some emotional distress
9 right?

10 A More than he already had, probably.

11 Q So, yes?

12 A Yes.

13 Q Okay. Neither -- no doctor ever told you that the reason why
14 your husband's cancer was spreading was because he got IMRT as
15 opposed to proton therapy, right?

16 A No.

17 Q No doctor at MD Anderson told you or your husband that the
18 cancer would not have spread to other parts of his body, if he had gotten
19 proton therapy, right?

20 A No. They just said he wouldn't be as sick as he was from the
21 swallowing, if he had gotten proton.

22 Q Okay. And you told us that after he got the therapy that his
23 esophagus got infected, right?

24 A Correct.

25 Q And I think we heard from Dr. Chang that esophagitis that's

1 caused by radiation therapy comes in two phases; do you remember him
2 telling us that?

3 A Yes. Yes.

4 Q He said the initial phase is an acute phase, right?

5 A Correct.

6 Q And then it resolves, correct?

7 A Yes.

8 Q And then there's a potential that it could have like some
9 long-term damage that prevents or makes it more difficult for someone
10 to swallow?

11 A Yes.

12 Q By the way, it's your testimony that he kind of had that
13 inability to swallow from the moment he got back, or not long thereafter
14 he got back from MD Anderson, up until the point that he passed away?

15 A I said he did -- was able to swallow a little bit better for a
16 while, and then it just progressively got worse. It was never great. I
17 mean, it was a little better than when he first came home, but then it was
18 never great, and then it just kept getting worse.

19 Q And his weight, I believe you told us, just kind of nose-dived,
20 would that be a way to accurately describe it?

21 A Towards the end, yeah.

22 Q Okay. How about in the interim?

23 A We tried to keep him stable, the best we could when he
24 could eat, but it wasn't that often.

25 Q And you also told us again, we're talking about now, like

1 after the treatment, you told us that he would tell you that he was in
2 pain, and that it was hard for him to swallow, right?

3 A Correct.

4 Q So he would complain to you when things were ailing him,
5 right?

6 A He didn't really complain, he would make -- he would say
7 that if I tried to get him to eat and stuff, I mean, never really complained,
8 complained.

9 Q Okay. Fair enough. I guess my point is, is that he would tell
10 you --

11 A Yes.

12 Q -- right? He would enunciate to you things that were
13 bothering him, correct?

14 A Yes.

15 Q Okay. I think you also told us, or at least that you suggested,
16 and your son suggested it, as he testified today, and your daughter
17 suggested it, as she testified yesterday, that Mr. Eskew would minimize
18 and not complain, or voice any kind of physical problems he was having
19 when he went to go see doctors, right?

20 A Yeah.

21 Q Okay.

22 A Yes.

23 Q And this is kind of based on your memory, right?

24 A Yes.

25 Q You'd agree with me that memories can sometimes fade,

1 right?

2 A Of course.

3 Q They can be influenced by other incentives, as well, right?

4 A I don't know what you mean by that.

5 Q Okay. What I mean by that is sometimes people say certain
6 things because they have an incentive to say certain things; a reason, a
7 motive. You'd agree with that, right?

8 A I never thought about it. No.

9 Q No, you don't agree?

10 A I guess -- I don't know what you're trying to ask me?

11 Q What I'm trying to ask you. is that would you agree as a
12 general proposition that sometimes people have a certain reason to say
13 certain things, or to portray certain things in a certain way?

14 A I guess they do, yes.

15 Q You'd agree with me that, on the contrary, medical records
16 would be something, if we compare the two, would be objective and
17 would like accurately reflect facts and things of that nature?

18 A Depending what the patient tells the doctor, yes.

19 Q Okay. And we'll come to that in a second. So I'm going to
20 switch gears right now, we're going to, in order to help establish this
21 timeline for a jury, and so we can kind of just see the progression of your
22 husband's illness --

23 A Uh-huh.

24 Q -- we're going to take a trip through your husband's medical
25 records, okay?

1 A That's fine.

2 Q And you've already told us that your husband was an honest
3 man, right?

4 A Yes.

5 Q Okay. So he would expect that he would be truthful with his
6 doctors, correct? I see you smirking, ma'am, but you would expect that
7 he would be truthful with his doctors, right?

8 A He would tell them what they wanted to hear, probably.

9 Q Okay. All right. So let's see how that plays out.

10 MR. SMITH: Can we start with -- Audra, let's start with
11 February 10th, 2016, so that's Exhibit 154.

12 BY MR. SMITH:

13 Q This is when he starts IMRTs, we've already heard, correct?

14 A Yes.

15 Q Okay. Actually we go back to October 28th, 2015, that was
16 when --

17 MR. SMITH: I don't need you to do anything, Audra.

18 BY MR. SMITH:

19 Q I just want to, for the timeline purposes, you'd agree that one
20 of the first things we saw with regards to this medical record timeline is
21 October, 2015, where your husband's told that this therapy this is not
22 curative intent, but it could buy him some time. Do you remember
23 acknowledging that?

24 A Yes.

25 Q Okay. So if we look --

1 MR. SMITH: Audra, where's our date here, this should be
2 February 10, 2016? No, actually that's October 28, 2015. Oh, I'm sorry,
3 154-17, Audra, that's my fault; 154-17. Mr. Terry, do you follow me?

4 MR. TERRY: I'm sorry. Say that again?

5 MR. SMITH: 154-17.

6 MR. TERRY: Thank you.

7 MR. SMITH: No problem, sir.

8 BY MR. SMITH:

9 Q This is the one, February, 2016. You start IMRT, here.
10 Would you agree with me there?

11 A Yes.

12 Q Okay.

13 A And then we're not going to go through every single record
14 because we'd be here a long time, but I just want to kind of point out
15 some kind of key moments in the progression of your husband's disease.

16 MR. SMITH: So next, if we can go to March 16th, 2016,
17 Audra, that's 154- 41.

18 BY MR. SMITH:

19 Q So this would've been while he's still kind of going through --
20 he's still at MD Anderson, right?

21 A Yes.

22 Q So he's kind of still in the process of the -- of the therapy,
23 right?

24 A Yes.

25 MR. SMITH: And then if you can go to subjective

1 assessment, Audra. Thank you so much.

2 BY MR. SMITH:

3 Q Now, right here, ma'am, this says "subjective assessment,"
4 right? "PT, patient reports difficulty swallowing and decreased oral
5 intake over the past week." Do you see that?

6 A Yes. So this would be a memorialization of your husband
7 telling a doctor that he has difficulty swallowing, and that he's not eating
8 as much, right?

9 A Correct.

10 Q So he's making these representations to the doctor, right?

11 A Yes.

12 Q And then we also can see that his esophagitis, he rates at a
13 grade 2, right?

14 A Yes.

15 Q And he has nausea at a grade 2, right?

16 A Yes.

17 Q And he has some vomiting, right?

18 A Yes.

19 Q And he's also complaining about pain, right?

20 A Yes.

21 Q I'm going to not say the word "pain," I'm just going to say
22 he's disclosing that he had pain, right?

23 A Correct.

24 Q Okay. So this would indicate that he knows how to let a
25 doctor know what's going on with him, right?

1 A Yes.

2 Q Okay.

3 MR. SMITH: If we could go to 154-45 Audra. We're still on
4 March 16th, 2016. And then I think you can see where I'm going. Up, up,
5 no. The paragraph that starts "today." Thank you, Audra.

6 BY MR. SMITH:

7 Q Here. If I can read this correctly, it says, "Today he notes that
8 the toxicity from this therapy has started to accumulate largely in the
9 form of esophagitis, pain swallowing liquids, and solids and postprandial
10 nausea. He denies any other sites of pain," right? Do you see that,
11 there?

12 A Yes.

13 Q Did I read that correctly, Ms. Eskew?

14 A Yes.

15 Q And then there's also a note that he lost some weight
16 throughout the duration of the therapy, but he actually claimed that
17 some of this was excess weight that he gained in anticipation of weight
18 loss and is currently at his usual weight, right?

19 A Yes.

20 Q And then he denies fevers or chills, correct?

21 A Yes.

22 Q Okay. So again, this is an indication, would you agree, of
23 him telling a doctor exactly what's going on with him, right?

24 A Yes.

25 Q He's certainly not keeping anything back, right?

1 A Yes.

2 Q And he's certainly not minimizing anything, right?

3 A Yes.

4 Q Okay. So it's my understanding based on the medical
5 records, it ended on March 22nd, 2016.

6 MR. SMITH: So if we can go to 154-51, Audra, please.

7 BY MR. SMITH:

8 Q And then can you see the paragraph right above radiation
9 treatment, Mrs. Skew, where it says "Started treatment 2/10/16, end
10 treatment, 3/22/16; do you see that?

11 A Yes.

12 Q So that tells to stay he finished IMRT on March 22nd, 2016,
13 correct?

14 A Yes.

15 Q Okay.

16 MR. SMITH: And then if we move up to the 154-52, please,
17 Audra. Actually, can we, can we go back? I'm sorry. And then physical
18 exam from the [indiscernible]. No. Actually, no, I'm sorry, it's the wrong
19 page. 154-51. Thank you.

20 BY MR. SMITH:

21 Q "Summary of subjective toxicities." Here, he's rating his
22 esophagitis as a grade 2, correct?

23 A Yes.

24 Q Okay.

25 MR. SMITH: Now, if you can go to 154-2, Audra, please. And

1 then if we can go up to where it says, "major side effects, none, no
2 additional."

3 BY MR. SMITH:

4 Q "Follow up plan: The patient will be scheduled to return for a
5 follow up visit in one month." Major side effects it says, "None, no
6 additional." Am I reading that correctly, ma'am?

7 A Yes.

8 Q Okay. So now let's get to May, which would have been a
9 follow-up appointment, May 4th, 2016.

10 MR. SMITH: Audra, that's 154-53.

11 BY MR. SMITH:

12 Q And then can you see where this shows May 4th, 2016 up at
13 the top there?

14 A Yes.

15 MR. SMITH: Okay. Thank you, Audra. And then on the next
16 page, 154-54, Audra, please, the same record. And then under review of
17 systems, can you blow that up for me, Audra, please. Thank you.

18 BY MR. SMITH:

19 Q And then the kind of the first bold sentence, Mrs. Eskew, do
20 you see where it says, "Patient had profound esophagitis post treatment,
21 he lost a total of 30 pounds, but has regained 20 to 15 pounds in the past
22 three weeks. Energy is improving, also. He is back to working as a
23 supervisor of his own car shop. Do you see that?

24 A Yes.

25 Q Okay. So that's actually a re-confirmation that after the

1 treatment he went back to work at the car shop, right?

2 A Yes.

3 Q Okay. And then, did you hear testimony about what ECOG
4 meant, from Dr. Chang, I believe. That was who educated us all about
5 what ECOG means, and it was a scale as to someone's ability to
6 ambulate and kind of get around and carry on activities of daily living?

7 A Uh-huh.

8 Q Yes, ma'am?

9 A Yes.

10 Q Okay. And then remember, as I understand, and correct me
11 if I'm wrong, zero means you're kind of normal, and then the higher the
12 number the worse off you are?

13 A Correct.

14 Q And here --

15 A Apparently he has a left -- his -- I remember the strap foot. I
16 forgot all about that, so he needed to be careful walking.

17 Q Okay. But it says his ECOG level was zero to 1, right?

18 A Yes.

19 Q Okay. Next, if we can go to 154-55, and this is going to be
20 two days later.

21 MR. SMITH: Actually, no. 154-56, Audra, I apologize. Right
22 there, right where the -- thank you.

23 BY MR. SMITH:

24 Q Do you see that first sentence, Mrs. Eskew, where it says,
25 unfortunately his updated PET/CT showed disease progression distally?

1 A Yes.

2 Q Do you see that?

3 A Yes.

4 Q That's consistent with the diagnosis that unfortunately the
5 cancer was spreading, right?

6 A Correct.

7 Q So this would have been in May, 2016, right?

8 A I guess. Yes.

9 Q So initially after he got the treatment in March -- I know you
10 characterize it as "not doing great," but it appeared that he was
11 improving right?

12 A In March?

13 Q That first follow-up?

14 A Yes.

15 Q But now here we see that unfortunately the cancer has
16 spread, right?

17 A Yes.

18 Q And you'd agree with me, that that that's bad news, right?

19 A Correct. Why does this say February 26th on here, on the
20 bottom of the page; are we on the right month?

21 Q February 26th, 2019. That's just the date the report was
22 generated.

23 A Oh, okay.

24 Q I just want to make sure that's everything. Yeah. That's
25 everything for now, and I think the point on that one is made.

1 MR. SMITH: And then next we're going to go to July 13th,
2 2016, and Audra, that's going to be 154-59. And then you see a counter
3 date, yeah. A progress note, that's perfect. If you could blow that one
4 up, Audra. Thank you.

5 BY MR. SMITH:

6 Q Do you see, ma'am, where it says, "Encounter day, July 13th,
7 2016"?

8 A Yes.

9 Q It says reason for visit is, "Mr. Eskew is a 64 year old male
10 who presents a follow up for a metastatic -- I don't know what CCA is, I'll
11 be honest with you, but I know REO, is right upper load with metastases
12 to bones, right?

13 A Yes.

14 Q So at this point it's been conclusively established that his
15 cancer is spread to his bones, right?

16 A Yes.

17 Q Okay.

18 MR. SMITH: Up a paragraph one, and then pull up
19 paragraph 1. Number 1, yes, ma'am.

20 BY MR. SMITH:

21 Q And this says, "PET continued to show radiation response in
22 primary treated right over the lobe, but persistent and increased activity
23 in the left humeral head and left iliac bone?

24 A Yes.

25 Q Increased in size and activity in left adrenal metastasis. The

1 findings were fully discussed with the patient and his wife." Do you see
2 that?

3 A Yes.

4 Q So again, this is corroboration that you and your husband
5 were told, that the cancer has spread to his bones, right?

6 A Yes.

7 Q Okay.

8 MR. SMITH: 154-60, please, Audra. And then review
9 systems, please.

10 BY MR. SMITH:

11 Q Do you see where it says "constitutional" Mrs. Eskew? It
12 says, "Patient reports doing well"?

13 A Yes.

14 Q "He continues with physical therapy for his foot drop, with
15 good improvements," right?

16 A Yes. On his foot, yes.

17 Q So he was improving at this point, right?

18 Q He was improving at this point, right?

19 A His foot was improving, I guess. I don't ever recall him
20 eating well, but yes, his foot was improving.

21 Q Okay.

22 MR. SMITH: If we could pull back? Next page, 154-61,
23 Audra?

24 BY MR. SMITH:

25 Q And then we see at this point his weight is 172 pounds, right?

1 Because we can see where visit vitals?

2 A Yes.

3 Q 172 pounds, right?

4 A Yes.

5 Q So he's put some weight back on at this point, correct?

6 A Apparently.

7 Q Okay. So he goes back to Las Vegas for treating at the
8 Comprehensive Care Center at this point, right?

9 A Yes.

10 Q Okay. And so the next record we want to take a look at is
11 July 18, 2016.

12 MR. SMITH: That's 169-44, Audra.

13 MS. BONNEY: 159 or 169?

14 MR. SMITH: 169.

15 MS. BONNEY: Okay.

16 MR. SMITH: 169-44. Yeah.

17 BY MR. SMITH:

18 Q And this says present status, right? We see a date, July 18,
19 2016, correct?

20 A Yes.

21 Q So this would have been four months after he completed the
22 radiation therapy, right?

23 A Yes.

24 Q Present status, Mr. William is -- he was here today for follow-
25 up. He had a recent CT PET scan done at MD Anderson. The radiologist

1 describes left humeral metastasis, had SUV of 4.2 in the prior study, 6.3
2 presently, left iliac bone has an SUV of 5.2, previously was 2.9. It's my
3 understanding that we're talking about the tumor volume, that SUV
4 number's talking about the tumor volume, right?

5 A Yes.

6 Q So it's getting bigger, right, because 5.2 is obviously bigger
7 than 2.9, yes?

8 A Yes.

9 Q Okay. Then it says there is a new left-lower lobe one
10 centimeter III-defined nodule that shows no update. The left adrenal
11 metastasis has increased from 2.3 centimeters to 3.0 centimeters; do you
12 see that?

13 A Yes.

14 Q Then it says overall he feels well, his energy level has
15 improved, his ECOG score is zero which is normal, right?

16 A Yes.

17 Q Okay. You agree that that's what it says in his medical
18 record, right?

19 A That's what it says.

20 Q And this would have been based on what your husband was
21 telling the doctor, right?

22 A Correct.

23 Q Okay. Note there's no indication about swallowing concerns
24 or anything like that, right?

25 A I assume, I wasn't with him at that visit, but yes, he does not

1 mention it.

2 Q And, in fact, he's telling them that he's eating more, right?

3 A Yes.

4 Q Which would suggest that he's not having problems
5 swallowing his food, right?

6 A Well, he told us every day that he was eating well, too, but
7 yes.

8 Q Okay.

9 A I agree with you.

10 Q But again, at this point, his -- let's 169-046. And then vital
11 signs. You see where it says here his weight is 171 pounds?

12 A Yes.

13 Q So he's got some meat on him, right?

14 A Yes.

15 Q That would be consistent with him eating, right?

16 A Yes.

17 Q Okay.

18 MR. SMITH: Can we next, Audra, go to 166-050.

19 BY MR. SMITH:

20 Q Remind us, Mrs. Eskew, do you remember who Dr. Kam is?
21 K-A-M?

22 A Yes.

23 Q Who's Dr. Kam?

24 A He was an orthopedic specialist that we were referred to for
25 his elbow.

1 Q And that was the -- when the arm broke from playing the
2 golf?

3 A Yes.

4 Q Okay. And then you recall seeing Dr. Kam on October 21st --
5 strike that. Do you recall your husband seeing Dr. Kam on October 21st,
6 2016?

7 A Probably, yes.

8 MR. SMITH: And then we go to the assessment on the next
9 page, Audra.

10 BY MR. SMITH:

11 Q Do you recall, Ms. Eskew, your husband having some
12 problems with an infection because of that surgery?

13 A Yes.

14 Q I think we also heard your son testify about that earlier today.

15 A Yes.

16 Q Do you remember?

17 A Yes.

18 Q And do these medical records seem to corroborate that,
19 right? That he was having infection-related issues with that?

20 A Yes.

21 Q He was actually on IV-antibiotics to treat that bacterial
22 infection; do you remember that?

23 A Yes.

24 Q He's supposed to follow up with a physician in a week,
25 correct?

1 A Yes.

2 Q Okay.

3 MR. SMITH: And then if we can next go, Audra, to 169-26.

4 BY MR. SMITH:

5 Q This is from Dr. Jean, your husband's oncologist, right?

6 A Yes.

7 Q Date is October 2016, correct?

8 A Yes.

9 Q So we're now about seven months after the treatment, right?

10 A Yes.

11 Q And we're about, by my math, five months before his
12 passing, right?

13 A Yes.

14 Q And present status, it says Mr. William Eskew is here today
15 for a follow-up. Overall, he feels well. He states that his wound is
16 closed. He is accompanied by his brother. He denies any nausea, denies
17 any headache, denies any dizziness, denies any shortness of breath; do
18 you see that?

19 A Yes.

20 Q Then it says review of systems; you see that?

21 A Yes.

22 Q And it's your understanding that when we talk about review
23 of systems, we're actually talking about a physician kind of doing an
24 examination of the person and they're reporting their findings, right?

25 A Yes.

1 Q And you'd agree with me, ma'am, that it says here, of
2 particular importance right now, review of system, general is negative,
3 right? Meaning no findings?
4 A Correct.
5 Q Head, neck, negative, right?
6 A Yes.
7 Q To be clear, that would include the throat, right?
8 A Yes, but not swallowing, but yes, the throat, he said negative.
9 Q Okay. And when -- and when it says he said negative, that's
10 the doctor actually --
11 A Right.
12 Q -- conducting, right? So it's not what your husband is saying
13 or not saying, it's what the doctor determined, correct?
14 A Correct.
15 Q All right. Respiratory negative, cardiovascular negative,
16 right?
17 A Yes.
18 Q G.I. negative, right?
19 A Yes.
20 Q You understand that to be to represent that digestive
21 system?
22 A Yes.
23 Q Okay. So again, there's no mention of esophagitis, right?
24 A Yes.
25 Q No mention of your husband not being able to swallow or

1 eat or anything like that, correct?

2 A Yes.

3 Q And again, it says he feels well, right?

4 A Yes.

5 MR. SMITH: And in fact, can we pull out, Audra, please?

6 Perhaps the next page. Bottom slide. It's down at the bottom. Thank
7 you, Audra.

8 BY MR. SMITH:

9 Q Here it says his weight is 187 pounds, right?

10 A Yes.

11 Q So that means he's gained 15 pounds since the last time he
12 was seen, correct?

13 A Yes.

14 Q So his weight's been going up, right?

15 A That's what it says here, yes.

16 Q And here we are now seven months out of the treatment,
17 right?

18 A Yes.

19 Q And a couple of months before his passing, correct?

20 A Yes.

21 Q Okay. Next let's look at November of 2016.

22 MR. SMITH: Audra, that's 164-825.

23 BY MR. SMITH:

24 Q MountainView Hospital, you recall on a couple of occasions
25 your husband having to go to MountainView, right?

1 A Yes.

2 Q It's my understanding that that would be related to him
3 having infection-related issues; does that sound about right?

4 A I don't remember why we went at that time.

5 Q Okay.

6 MR. SMITH: Audra, can we just pull up this patient, just so
7 we can show that this November 2016. There we go. Okay. And then if
8 we can go to the next page, Audra, please? And then the first paragraph.
9 BY MR. SMITH:

10 Q November 3rd, 2016. Says 65 year-old patient presents to
11 emergency department complaining of, assuming that's what CO means,
12 worsening edema to abdomen extending down by a lateral lower
13 extremity, onset two weeks ago since being charged from the hospital
14 after right elbow surgery; do you remember this?

15 A I don't remember it but yes, I see it here.

16 Q It says reports urinary retention, right?

17 A Yes.

18 Q So that's just another way of saying that he wasn't able to
19 urinate, right?

20 A Correct.

21 Q Denies abdominal pain, right?

22 A Yes.

23 Q Chest pain, right? Or this -- I hope I said that right.

24 A Yes.

25 Q Patient states he is having to wear larger sandals and shorts

1 due to the swelling. Per patient, his elbow replacement became infected
2 and has had four surgeries since infection. Last surgery was
3 approximately three weeks ago. Patient with history of lung cancer that
4 metastasized to bone and is currently undergoing renal therapy. Also
5 with history of -- and it lists some various issues.

6 So you agree with me here, ma'am, if I read that correctly, that
7 your husband is here and he's complaining about some specific issues
8 affecting him, correct?

9 A Yes.

10 Q But he's not saying anything about not being able to swallow
11 or having esophagitis or not being able to eat, correct?

12 A Correct.

13 MR. SMITH: Can you pull out that? And then review of
14 systems, please, Audra? Review of systems, he denied chills, fevers,
15 denies cough, shortness of breath. All right. If you'd pull out of that,
16 Audra, and go to the prior review of systems? Yes, ma'am.

17 BY MR. SMITH:

18 Q And this says all systems reviewed and negative except as
19 marked, right?

20 A Uh-huh. Yes.

21 MR. SMITH: Let's go to November 14, 2016. So this would
22 have been 11 days after this visit, and now that's 166-44, Audra.

23 BY MR. SMITH:

24 Q It's another appointment with Dr. Kam, Mrs. Askew?

25 A Yes.

1 MR. SMITH: November 14, 2016, and then let's go to date of
2 surgery and then all the way down to today, Audra.

3 BY MR. SMITH:

4 Q Chief complaint. Chief complaint is right elbow pain follow-
5 up; do you see that, Mrs. Eskew?

6 A Yes.

7 Q And ma'am, if we can go down to today. Let's see what he's
8 -- what is he complaining about today? Today he's having diarrhea,
9 constipation, vomiting tea, urinary retention, night sweats, chills.
10 Infection labs are higher, considering antibiotic change, off ABX since
11 Friday, three days. So here again, Mrs. Eskew, do you see that he is
12 disclosing specific symptoms to his doctor, right?

13 A Yes.

14 Q You could assume that he's not holding anything back, right?

15 A Correct.

16 Q But there's no mention of esophagitis or him not being able
17 to swallow or him not being able to eat, correct?

18 A Correct.

19 Q And incidentally, is it your understanding that the reason
20 why he's having these particular issues on this particular day is because
21 he's battling this infection as a result of that arm surgery, right?

22 A I assume, yes.

23 Q Okay. It had nothing to do with the radiation treatment,
24 right?

25 A No.

1 Q If we can go to 164-962, and review of systems, please.
2 We're still at the same appointment, Mrs. Eskew. It says the patient is
3 positive for weakness, increased appetite and constipation. The patient
4 is negative for chest pain, shortness of breath, fever, or chills. Negative
5 for burning urination. Negative for swelling of the lower extremities.
6 Negative for worsening weakness and numbness in the upper or lower
7 extremities. Negative for pain in the right arm or left arm. Negative for
8 difficulty swallowing. Negative for joint swellings or rashes. All other
9 systems reviewed are negative. So did I get that right, Mrs. Eskew?

10 A Yes. Yes, you did.

11 Q So here in November of 2016, he's reporting that he's not
12 having difficulties swallowing, at least as indicated by these records,
13 right?

14 A Yes.

15 Q And that would have been eight months after he completed
16 the treatment, correct?

17 A Yes.

18 Q And four months before he passed away, right?

19 A Correct.

20 Q Next let's go to December of 2016, Mrs. Eskew.

21 MR. SMITH: 169-18, Audra.

22 BY MR. SMITH:

23 Q Another appointment at Comprehensive Cancer Center; do
24 you see that, ma'am?

25 A Yes.

1 Q December 13, 2016; do you see that?

2 A Yes.

3 Q And then if we look at present status we see that Mr. Eskew

4 is here today for a follow-up. He was hospitalized in MountainView in

5 November which we just talked about, right?

6 A Yes.

7 Q With -- I'm going to try this, enterococcus faecalis

8 bacteremia, which to me sounds like an infection, right?

9 A Yes.

10 Q Shown secondary to his urine. He completed a course of

11 antibiotics. He is still on oral Doxycycline. He denies an excess pain,

12 denies any headache, denies any dizziness, his appetite is markedly

13 improved, denies any nausea. You see that?

14 A Yes, I do.

15 Q Okay. So now we're down nine months out of the treatment,

16 right?

17 A Yes.

18 Q And three months before he passed away, right?

19 A Yes.

20 Q And here we can see his appetite's improved, right?

21 A That's what he said.

22 Q We can assume that he doesn't have any problem

23 swallowing because he would have disclosed that to the doctor, right?

24 A I -- probably not, but yes.

25 Q Okay. So it's your position that although we do have an

1 occasion where he initially was disclosing that he was having problems
2 because he was talking about the esophagitis, right?

3 A Yes.

4 Q Now you're telling us that he may have had it, but he didn't
5 say anything about it?

6 A Well, I don't think he was eating well in December so --

7 Q Okay.

8 A Yes.

9 Q But the records here?

10 A Yes.

11 Q Say something totally different, right?

12 A Correct.

13 Q All right. And this is written by a doctor who presumably has
14 no incentive to make any of this up, correct?

15 A Correct.

16 Q All right. So again, no discussion of esophagitis, right?

17 A Correct.

18 Q No discussion of being able to -- not being able to swallow,
19 right?

20 A Correct.

21 Q And we just saw a record maybe a month or two prior to this
22 where it said he affirmatively said that he denied having difficulty
23 swallowing, right?

24 A Correct.

25 Q So that would infer that the doctor actually asked him, hey,

1 are you having problems swallowing, right?

2 A Yes.

3 Q And he would have said no, right?

4 A Yes. Correct.

5 Q And then if we can go to 169-20, and then up at height, up to
6 the very top paragraph. Thank you very much. We see here that his
7 weight is 168 so it's around 170, right?

8 A Yes.

9 Q Okay. Again, no mention of swallowing complaint, correct?

10 A Correct.

11 Q All right. Now let's go to January of 2017.

12 MR. SMITH: That's 169-12, Audra.

13 BY MR. SMITH:

14 Q Another appointment at Comprehensive Cancer Center,
15 right?

16 A Yes.

17 Q Dr. Jean is treating oncologist, correct?

18 A Yes.

19 Q January 13, 2017, right?

20 A Yes.

21 Q Present status, Mr. William Eskew is here today for a follow-
22 up, right?

23 A Yes.

24 Q Overall, he feels well?

25 A Yes.

1 Q He said that he recently recovered from the flu. He has no
2 occasional light-headedness, so he's disclosing some kind of issue,
3 right?

4 A Yes.

5 Q He denies any chest pain, right?

6 A Yes.

7 Q Denies any nausea?

8 A Yes.

9 Q Denies any dizziness, denies any neuropathy, denies any
10 fever, right?

11 A Yes.

12 Q And then we see review of systems, correct?

13 A Yes.

14 Q And you've already told us, because I think you understand
15 this would involve a physician actually doing some kind of examination,
16 right?

17 A Yes.

18 Q And we see head and neck which would presumably include
19 the throat, right?

20 A Yes.

21 Q The only thing noted is occasional light-headedness, right,
22 which would also be a part of the head, right?

23 A Yes.

24 Q Okay. Nothing about swallowing or esophagitis, right?

25 A Correct.

1 Q No mention of swallowing complaints, right?

2 A Correct.

3 Q Next if we can go to January 25th, 2017?

4 MR. SMITH: Audra, that's 164-1106.

5 BY MR. SMITH:

6 Q Can we see here, Mrs. Eskew, this would be a visit to
7 MountainView Hospital?

8 A Yes.

9 Q And then we go to 1107, and then if we could blow up review
10 of systems. It says here that he's reporting -- or excuse me, the report is
11 that he has generalized weakness, correct?

12 A Yes.

13 Q Denies chills, fever, right?

14 A Yes.

15 Q And at this point if we're in January 2017, Mrs. Eskew, this
16 would have been by my math about six months after he first learned that
17 his cancer was spreading, right?

18 A Yes.

19 Q Because he would have learned that back in the summer of
20 2016, right?

21 A Yes.

22 Q Okay. He denies chills, fevers, right?

23 A Yes.

24 Q And then it's all systems reviewed and negative except as
25 marked, right? Can you see that?

1 A Yes.

2 Q Okay. And then if we can go to 164-1119?

3 MR. SMITH: Court's indulgence? I'm going to get the exhibit
4 back here.

5 [Pause]

6 MR. SMITH: Audra, are we able to see what date this is?
7 Can you go back? What page? What page is this? Okay. Can you go to
8 11 on this date, I'm sorry. Yeah, and rotate that one, too. No, that's
9 1105. January 25th, j2017. Okay. And then now if we can go to 1119?

10 BY MR. SMITH:

11 Q Can you see the board? This has emergency patient record,
12 Mrs. Eskew?

13 A I can't read this.

14 Q Okay. That's fair. Now can you see where it says
15 emergency?

16 A Yes.

17 Q Okay.

18 MR. SMITH: And then Audra, on the left side if you could --
19 that left box, if you can just bring up -- or excuse me, the right side. I
20 meant my other right. The bottom-half of it. And then seven lines down
21 at the last page, you see where it says sore throat not in the last seven
22 days, Audra? Yeah. Right there.

23 BY MR. SMITH:

24 Q You see where that says sore throat not in the last seven
25 days?

1 A Yes.

2 Q Okay. And again, this is in January, right?

3 A Yes.

4 Q Of 2017?

5 A Yes.

6 MR. SMITH: And then if we go to the next page, Audra? On
7 the right-hand side, like maybe -- see where it says nutritional
8 assessment, WDP? Yeah, right there.

9 BY MR. SMITH:

10 Q Mrs. Eskew, do you see where it says nutritional assessment
11 WDP?

12 A Yes.

13 Q You see where it says yes?

14 A Yes.

15 Q Can it represent to you that that means nutritional
16 assessment with then -- excuse me, within desired parameters? Can you
17 see where it says yes?

18 A Yes.

19 Q Okay. So next --

20 THE COURT: Mr. Smith, we're going to take a brief five-
21 minute recess.

22 Ladies and gentlemen, you are instructed not to talk with
23 each other or with anyone else on any subject or issue connected with
24 this trial, and you're not [indiscernible] commentary on the trial, by any
25 person connected with the case or by any medium of information

1 including with the limitation of newspapers, television , internet or radio.
2 Do not conduct any research on your own such as consulting
3 dictionaries, using the internet, or using reference materials. Do not
4 conduct any investigation , test any theory of the case, recreate any
5 aspect of the case, or in any other way investigate or learn about the
6 case on your own.

7 Do not talk with others, text others, tweet others, google
8 issues, or conduct any other kind of book or computer research with
9 regard to any issue, party, witness, or attorney involved in this case.
10 You're not to form or express any opinion on any subject connected with
11 this trial until the case is finally submitted to you. So let's take a quick
12 recess and resume at 4:05.

13 THE MARSHAL: All rise for the jury

14 [Jury out at 4:00 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: Mr. Sharp, are you planning on calling
17 Christina Armington?

18 MR. SHARP: Yes, I mean, if we can get to her today. I mean,
19 well, yes, I am planning on calling her.

20 THE COURT: Well, it's already 4:00, so today might not
21 happen.

22 MR. SHARP: Yeah, we need to figure that out, so --

23 THE COURT: All right.

24 MR. SHARP: -- I'll ask the Defense how much longer they
25 have.

1 MR. TERRY: We'd hate to release her and leave you with --
2 or leave us, leave ourselves with no witnesses if -- on the off-chance we
3 get finished.

4 MR. SHARP: Or we'll just -- we'll just figure out what's going
5 on.

6 UNIDENTIFIED SPEAKER: Okay.

7 MR. TERRY: We are call her --after Mrs. Eskew, we're calling
8 all morning, so we'll figure it out, so.

9 MR. ROBERTS: I'm sorry, Judge, I didn't -- I missed it. Both
10 missed. I'm sorry.

11 MR. SHARP: We've got a witness waiting and so I don't
12 know how much longer you have with Mrs. Eskew.

13 MR. SMITH: I can give you an estimate of that. Oh, well,
14 that's just the medical records. I'd estimate half an hour maybe.

15 THE COURT: All right. So Mr. Sharp's going to have to call
16 Ms. Armington tomorrow morning, just so you're aware for your
17 scheduling and your witnesses.

18 MR. TERRY: We did have an expert ready to come in first
19 thing, but I don't expect Ms. Armington is going to be long, so that's
20 true. We're -- we plan to start the morning with Dr. Chan since we had
21 Ms. Sweet here in our side room in case we needed a witness today, but
22 because the doctors travelled here we probably want to go ahead with
23 him instead of putting a Ms. Sweet on since she's local and we can get
24 him back.

25 THE COURT: So release Ms. Sweet today? She's not going

1 to be called today?

2 MR. TERRY: Okay. I'll go tell her, Your Honor. Thank you.

3 MR. SHARP: Same with Ms. Armington, I assume, Judge? Is
4 that all right?

5 THE COURT: Yes, let her go.

6 MR. SHARP: Thank you.

7 THE COURT: All right. So we'll come right back.

8 [Recess taken from 4:03 p.m. to 4:08 p.m.]

9 THE MARSHAL: Back on the record.

10 THE COURT: Thank you. Please be seated.

11 THE MARSHAL: Are the parties ready for the jury?

12 MR. SHARP: Yes, Your Honor.

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: Thank you.

15 [Pause]

16 THE MARSHAL: All rise for the jury.

17 [Jury in at 4:09 p.m.]

18 THE MARSHAL: Your Honor, all the jurors are present.

19 THE COURT: Thank you. Do the parties stipulate to the
20 presence of the jury?

21 MR. SHARP: Yes, ma'am.

22 MR. SMITH: Yes, Your Honor.

23 THE COURT: All right. Please be seated. Mr. Smith, go
24 ahead.

25 MR. SMITH: Thank you, Your Honor. Mrs. Eskew, I'm just

1 trying to finish right where we left off.

2 Just Audra, can you give me the top right portion. All right.

3 BY MR. SMITH:

4 Q So we see here January 25th, 2017, right? And then we left
5 off where I asked you if the records indicate nutritional assessment,
6 WDP, and it says yes; you remember that?

7 A Yes.

8 Q And I told you WDP stands for within desired parameters,
9 and I stand corrected, and I just looked at the notes, stands for within
10 defined parameters, okay?

11 A Okay.

12 Q All right. So let's look and see what -- and medication and
13 records if your husband's nutritional assessment on January 25, 2017
14 was within defined parameters, let's see what that means.

15 MR. SMITH: Audra, if you can go to 1128, please? Can you
16 flip these, and then give me the top, the first, the first thing on the right
17 side. I don't know why I can't describe this. There we go.

18 BY MR. SMITH:

19 Q And then Mrs. Eskew, do you see under the second part
20 where it says these are the definitions of what within defined parameters
21 for the nutritional and function screen was; do you see that?

22 A Yes.

23 Q And then what does it say under nutritional? It says no
24 swallowing or chewing interference, right?

25 A Yes, I see that.

1 Q So that would seem to suggest that a physician and/or your
2 husband reported that on January 25th, 2017, your husband was not
3 having any swallowing or chewing impairments, correct?

4 A But that is not true.

5 Q Okay. It's not true. That -- that that's not what the records --

6 A That he was not even swallowing.

7 THE COURT: Hold on. We can only speak one at a time.

8 THE WITNESS: Oh, okay. Sorry.

9 MR. SMITH: That's my fault, too. I apologize.

10 THE WITNESS: I apologize.

11 BY MR. SMITH:

12 Q You're not telling us that that's not what the record's saying,
13 correct?

14 A Correct.

15 Q Okay. It says no nausea and/or vomiting and/or diarrhea for
16 three more days, right?

17 A That's what it says.

18 Q No reported unintentional weight loss, right?

19 A Yes, that's what it says.

20 Q Okay. No reported decrease in intake greater than 50
21 percent, it looks like, or usual in the past two weeks?

22 A That's what it says.

23 Q That's what it says. Okay.

24 A But I don't find that to be true.

25 Q I understand. I think we understand that's your position but

1 you're not disputing that that's what the medical records say, right?

2 A That's what he told them, then that's what was said.

3 MR. SMITH: Can we next go, Audra, to February 3rd, 2017?

4 So this would have been nine days after the previous record we just saw.

5 And that's 1164. 164-1164. Go all the way down to past -- again, just
6 give me that whole paragraph. Thank you.

7 BY MR. SMITH:

8 Q You see there, Mrs. Eskew, where it says now we're in
9 February, 2017, right?

10 A Yes.

11 Q So this would have been a month before your husband
12 passed, correct?

13 A Yes.

14 Q All systems were reviewed and negative except where
15 marked, right?

16 A Yes.

17 Q So that means except what he disclosed, correct?

18 A Correct.

19 Q He denies chills and fever, right?

20 A Well, that's not true, but yes, it says that on there.

21 Q Okay. Denies cough, nonproductive, or shortness of breath,
22 right?

23 A That's what it says.

24 Q Denies chest pain palpitations, right?

25 A Correct.

1 Q But he reports nausea and vomiting, right?

2 A He vomited every day, so yes.

3 Q Denies abdominal pain, right?

4 A That's what it says.

5 Q And reports lumbar pain which would be in his back, right?

6 A Yes.

7 Q Okay. Denies dizziness, right?

8 A Correct.

9 Q So he's disclosing some things that hurt him, but I think it's

10 your testimony that he's not disclosing everything?

11 A That is correct.

12 Q Okay.

13 A I lived with him every day.

14 Q I understand.

15 A And I watched him throw up every day, and I watched him

16 not eat every day.

17 Q Well, I'm not disputing with you that it says that he was

18 vomiting, right?

19 A Correct.

20 Q But you'd agree with me that it says nothing about not

21 swallowing or not being able to eat or suffering from esophageal --

22 A Because he chose probably not to say that.

23 Q Okay. But if --

24 A But I know that's not to be true, but it says that on there, yes.

25 Q Okay.

1 MR. SMITH: Can we go next, Audra, to 169-7?

2 BY MR. SMITH:

3 Q Here, Mrs. Eskew, can we see January 21st, 2017?

4 A Yes.

5 Q So that would have been about 19 days before your husband
6 passed away?

7 A Yes.

8 Q Another report from your husband's oncologist, Dr. Jean?

9 A Yes.

10 MR. SMITH: And then can we go to the next page, Audra,
11 please? And then can we blow up problem list?

12 BY MR. SMITH:

13 Q So here we have problem is, it says lung cancer, non-small
14 cell, right?

15 A Correct.

16 Q Hypomagnesemia. I understand that's a problem with your
17 husband's magnesium which was kind of a reoccurring problem he had,
18 right?

19 A Yes, he had -- he always had low magnesium. That's why his
20 heart stopped in the first place the few years before. WE found that out
21 and we gave him magnesium every day.

22 Q Okay. Bone metastasis, which we know what that means,
23 and then he's reporting fatigue a weakness, right?

24 A Yes.

25 Q But no mention of esophagitis or any throat or swallowing

1 issues, correct?

2 A it doesn't say that there, but yes.

3 Q Okay.

4 A He had that.

5 MR. SMITH: Can we go to 169-5, Audra, please? Thank you.

6 BY MR. SMITH:

7 Q Here, there's an appointment from February 27, 2017, right?

8 A Yes.

9 Q So this would have been about 13 days prior to your
10 husband passing?

11 A Correct.

12 MR. SMITH: Okay. Then can we go to the next page, Audra,
13 please?

14 BY MR. SMITH:

15 Q Same reports, correct?

16 A Yes, it's the same reports. He never -- obviously, he wasn't
17 eating, he was down to skin and bones by then, so why it's not on there I
18 don't know, but I'm telling you, he wasn't eating, he was throwing up,
19 and he was skin and bones. That's a couple of weeks before he passed
20 away, so why it's not on there, I don't know. I just -- because if he didn't
21 say it, I don't know. I'm just telling you he wasn't eating.

22 Q Okay. I'm just -- I just want to note that there's no mention of
23 esophagitis?

24 A I see that.

25 Q And Mrs. Eskew, I think it's reasonable to assume that at this

1 point he's probably in bad shape, correct?

2 A He was all those other times that you said that there was
3 nothing where he said never anything, but he wasn't eating and drinking,
4 and what's on the records, I can't deny that, but I lived with him. He was
5 not eating and drinking.

6 Q Mrs. Eskew, you would agree with me that after we just
7 spent the past 45 minutes to an hour going through all his record, that
8 essentially they would indicate that after he finished his treatment in
9 March of 2016 he -- and he had multiple doctor visits from the point he
10 returned to Las Vegas until at the time he passed, and that those records
11 just don't support a conclusion that he suffered from continuous
12 esophagitis like you told this jury earlier?

13 A Well, I agree that it doesn't say that, but I'm telling you he
14 was not eating or drinking, I lived with him every day, and he was not
15 eating and drinking, and he was throwing up every day, and I can't
16 dispute what the record says there.

17 Q Okay.

18 A But he was not eating and drinking. What he told the doctors
19 or what they wrote down, I don't know.

20 Q Okay. You were there with him at some of those
21 appointments, right?

22 A Most of the time my son would take him, and I would pick
23 him up or I would be there, but there were times the doctors told him he
24 had to eat more, he was losing weight, or he was thin. Dr. Jean even
25 told him once.

1 Q Okay.

2 A But I'm just telling you, he just -- he could not swallow, and
3 he could not eat.

4 Q Okay. You told us today that your husband was honest,
5 right?

6 A Yes.

7 Q And then do you recall previously testifying at your
8 deposition back in 2020 that in the 40-plus years you were married to
9 him, your husband was never one to provide inaccurate information to a
10 medical provider; do you recall testifying to that?

11 A Yes, I would assume that, but he kept that to himself, I guess.
12 He never said anything, but you could look at him and see that he wasn't
13 -- he wasn't eating and drinking.

14 Q Mrs. Eskew, you would agree with me as a general
15 proposition that again, a person has an incentive to tell their physician
16 everything that's bothering them, correct?

17 A No, not everybody does.

18 Q Okay. My question is if they have an incentive to do it, right?
19 Meaning there's a reason, it makes sense why they would do that, right?

20 A He knew he couldn't swallow, and he couldn't -- he couldn't
21 eat, and he just, I guess, decided not to say anything.

22 Q Okay.

23 A Or to keep it to himself or he didn't want to talk about it.

24 Q So he wanted to talk about all the other issues that he was
25 having --

1 A I --

2 Q But let me finish my question.

3 A Okay.

4 Q But probably a super important one, right, which is his

5 inability to keep food down or swallow, he just neglected to say anything

6 about that except the one time where it's mentioned in his records, not

7 long after he had the treatment; that's your testimony?

8 A I guess, yes.

9 Q Okay.

10 A I can't --

11 Q There's not a question pending.

12 A Okay.

13 Q I'm sure Mr. Terry's going to ask you some more questions

14 when I'm done here in a couple of minutes, okay?

15 A Okay.

16 Q I appreciate your patience. You told us -- I just got a just a

17 few more questions for you, ma'am. You told us that, you know, your

18 husband didn't want to do anything, didn't want to spend any time with

19 family, and things like that; do you remember telling us that?

20 A Yes, towards the end, correct.

21 Q Well, I think we heard testimony that at least in December

22 2016 he wanted to go on that Disney cruise, but a doctor recommended

23 that he didn't go because he was prone to infection?

24 A That, and he could not eat.

25 Q Okay.

1 A And that's what you do on a cruise. He said he would not
2 enjoy himself, why go, and I think he used the doctor saying that as an
3 excuse, in my own personal opinion.

4 Q That's your own personal opinion?

5 A That he used that as an excuse not to go, but he also said he
6 can't eat, why go, he can't enjoy himself, and the doctor said not to.

7 Q Okay.

8 MR. SMITH: If I can have the Court's indulgence, please?

9 THE COURT: Yes.

10 MR. SMITH: Thank you. Judge, thank you. Mrs. Eskew,
11 thank you for your time.

12 THE COURT: Thank you, Mr. Smith.

13 MR. SMITH: Pass the witness.

14 THE COURT: Mr. Terry?

15 MR. TERRY: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. TERRY:

18 Q Sandy, are you a doctor?

19 A No.

20 Q Are you a medical expert of any kind?

21 A No.

22 Q We had one here earlier this week, Dr. Chang, correct?

23 A Correct.

24 Q Do you wonder why that didn't happen when Dr. Chang was
25 sitting where you are?

1 MR. SMITH: Objection, relevance, Your Honor.

2 THE WITNESS: Yes.

3 THE COURT: Overruled.

4 BY MR. TERRY:

5 Q Did you just get a little bit overwhelmed with all that light
6 show?

7 MR. SMITH: Objection, Judge. Leading, argumentative,
8 form.

9 THE COURT: Sustained.

10 MR. TERRY: Okay.

11 THE WITNESS: I sat here full --

12 THE COURT: Hold on.

13 MR. TERRY: No, no.

14 THE WITNESS: Oh, sustained means no. Sorry. Sorry, I'm
15 sorry.

16 BY MR. TERRY:

17 Q That's okay. So Sandy, you told us here, I mean you walked
18 in here and got there and raised your right hand and swore to tell the
19 truth, didn't you?

20 A Yes.

21 Q And then I asked you some questions and you told us your
22 experience with Bill, right?

23 A Yes.

24 Q Were you lying?

25 A No.

1 MR. SMITH: Objection, Judge.

2 THE COURT: Overruled.

3 MR. TERRY: Well, he called her a liar.

4 THE COURT: Overruled.

5 BY MR. TERRY:

6 Q Were you lying?

7 A No.

8 Q Let's talk about incentives, okay? Because the man back here
9 asked a lot of questions about incentives; did you hear that?

10 A YEs

11 Q So Sandy, that guy just said you have an incentive to get on
12 that stand and lie; how does that make you feel?

13 MR. SMITH: Objection. Relevance, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Pretty crappy, because my incentive is to
16 make sure this never happens again to anybody else. He can show me
17 all those records and stand up there for an hour and show me these
18 things and I can only say yes or no. And I lived with him. He did not --
19 he went downhill from day one basically. There were a few times he
20 was a little better. But he went downhill. He could not eat, he could not
21 drink, he was unhappy.

22 Q So you sat and watched your children come up and testify
23 about their dad, right?

24 A Uh-huh. Yes.

25 Q Did they get up there and lie?

1 A No.

2 Q Did you all ever sit around the kitchen table and come --
3 come up with a conspiracy to come in this courthouse and lie to this
4 jury?

5 A No. And we didn't make up the puke bucket either. He
6 puked every day. I don't care if it says he didn't find it on those reports.
7 Every single day he was either coughing, puking, or dry heaving.

8 Q When Bill got sick and you had to go find him some health
9 insurance, did you go to the agent for Sierra and try to obtain some
10 health insurance out of some incentive to get something out of them that
11 you weren't entitled to?

12 A No.

13 Q When you made decisions on what to do about the treatment
14 for your sick husband, taking him to MD Anderson to get proton therapy,
15 did you make those decisions out of an incentive to get something out of
16 these people?

17 A Not at all. I was looking for the best care that I could get for
18 my husband.

19 Q Did you suffer, along with your husband, through the
20 ramifications of this insurance denial in an effort --

21 MR. SMITH: Objection, Judge. Relevance.

22 BY MR. MR. TERRY:

23 Q -- to get something out of these people for nothing?

24 A No.

25 MR. SMITH: Objection, Judge. Relevance.

1 THE COURT: Overruled.

2 BY MR. TERRY:

3 Q Did you?

4 A No.

5 Q Are you here, Ms. Eskew, as an incentive to get this jury to
6 give you a handout?

7 A Not at all.

8 Q Why are you here?

9 A Because after he passed away, the more I thought about it,
10 the madder I would get thinking that he had to suffer the way he did
11 because somebody denied treatment that I thought he could have, I
12 looked up information, found the best stuff that we could find and
13 traveled, which was very hard to do, especially by myself with him -- I
14 had to take care of him up there -- and I was hoping that no one else
15 would have to go through this because I thought it was wrong.

16 Q Now, Sandy, when you came to this trial and sat down over
17 here, did you have any idea the way this insurance company really
18 works?

19 A No.

20 Q Have you learned some things about incentives in this case?

21 A I sure have.

22 Q Like what?

23 A Well, like there's a private plan that they won't tell you about.

24 Q You mean that document that they don't tell you about?

25 A Yes.

1 Q Well, you heard Dr. Ahmad testify that he gets bonuses every
2 year as an appeals doctor in -- at a -- his company, right?

3 A Yes.

4 Q Were they paying you any bonuses?

5 A No. No. I was paying them a lot of money for this insurance
6 every month, and I thought it was going to cover what he needed to get
7 covered.

8 MR. SMITH: Objection, Judge. Move to strike.

9 Nonresponsive.

10 THE COURT: Sustained.

11 BY MR. TERRY:

12 Q So this incentive, this money incentive that these people are
13 accusing of having to come here, do you think they have an incentive to
14 come in here and call the widow of Bill Eskew and his children liars?

15 MR. SMITH: Objection, Judge.

16 THE COURT: What's the objection?

17 MR. SMITH: Irrelevant.

18 THE COURT: Overruled.

19 BY MR. TERRY:

20 Q Do they? They have an incentive to call you and BJ --

21 A Oh, sure.

22 Q -- and Tyler liars?

23 A Oh, absolutely.

24 Q Right here in the courthouse in front of these people you
25 don't know?

1 MR. SMITH: Your Honor, may we approach?

2 THE COURT: Yes.

3 [Sidebar at 4:29 a.m., ending at 4:30 p.m., not recorded]

4 BY MR. TERRY:

5 Q Sandy, this is your last chance to speak in this trial. You got
6 anything else you want to tell the jury?

7 MR. SMITH: Objection, Your Honor. Calls for a narrative.

8 THE COURT: Sustained.

9 BY MR. TERRY:

10 Q Sandy, have you told us everything about this situation that
11 you feel as though you need to say?

12 A As far as what just went on today?

13 Q No. Let me ask it -- let me ask it to you a little bit more
14 specifically.

15 A Okay.

16 Q You've said here in this courtroom that you're here in hopes
17 that what happened to Bill doesn't happen to other people, right?

18 A Correct.

19 Q Why is that important to you?

20 A Because I think it was a terrible thing that we went through;
21 watched my husband suffer and die for something that was needless.
22 He didn't have to. And it just should never happen to anybody. And
23 then I find out they have this hidden plan that they don't tell you about. I
24 looked at the -- the whole policy when I got it, thought everything was
25 going to be taken care of. I got it because I believed that the insurance

1 was good. And they lied.

2 Q Thank you.

3 A Not me. They did.

4 Q Thank you, Sandy.

5 THE COURT: Mr. Smith, any follow-up?

6 MR. SMITH: The Court's brief indulgence, Your Honor.

7 THE COURT: Of course.

8 [Counsel confer]

9 RECROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Mrs. Eskew, we just heard you testify based on be being
12 repeatedly asked by your counsel, Mr. Terry, that the reason why you
13 filed this lawsuit and one of your hopes is to make sure that this never
14 happens again, correct?

15 A Correct.

16 Q Okay. And that was your incentive as brought out by
17 Mr. Terry, correct?

18 A Correct.

19 Q But you were also here at the beginning of this trial, right,
20 when your lawyer during voir dire and in opening was talking about how
21 there might be a potential verdict of something like 15 to \$50 million. Do
22 you remember hearing that?

23 A I heard that.

24 Q And you'd agree that that's also an incentive for you to say
25 what you're saying, correct?

1 A No. I --

2 Q Okay.

3 A -- did not lie.

4 Q Okay.

5 MR. SMITH: Nothing further, Your Honor. Thank you.

6 THE COURT: Thank you, Mr. Smith.

7 Mr. Terry?

8 FURTHER REDIRECT EXAMINATION

9 BY MR. TERRY:

10 Q Sandy, how do you get an insurance company's attention?

11 A Doing what --

12 Q Do you get their --

13 A -- we're doing today.

14 Q What's that? I'm sorry.

15 A Doing what we're doing today.

16 Q Thank you.

17 THE COURT: Any follow-up, Mr. Smith?

18 MR. SMITH: No, Your Honor.

19 THE COURT: Thank you.

20 MR. SMITH: Thank you.

21 THE COURT: Mrs. Eskew, you're excused from the witness
22 stand. Thank you.

23 Counsel, will you approach?

24 [Sidebar at 4:33 p.m., ending at 4:34 p.m., not recorded]

25 THE COURT: Ladies and gentlemen, you'll be pleased to

1 hear that we're going to take our evening recess a little bit early today.

2 You are instructed not to talk with each other or with anyone
3 else about any subject or issue connected with this trial. You are not to
4 read, watch, listen to any report of or commentary on the trial by any
5 person connected with the case or by any medium of information,
6 including, without limitation, newspapers, television, the Internet, or
7 radio.

8 Do not conduct any research on your own relating to this
9 case, such as consulting dictionaries, using the Internet, or using
10 reference materials. Do not conduct any investigation, test any theory of
11 the case, recreate any aspect of the case, or any other way investigate or
12 learn about the case on your own.

13 Do not talk with others, text others, Tweet others, Google
14 issues, or conduct any other kind of [indiscernible] book and computer
15 research with regard to any issue, party, witness, or attorney involved in
16 this case. You are not to form or express any opinion on any subject
17 connected with this trial until the case is finally submitted to you."

18 So we will return tomorrow at 9 a.m.

19 THE MARSHAL: Okay. All rise for the jury.

20 All right. Leave all your notepads.

21 [Jury out at 4:35 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Are there any issues outside the presence of
24 the jury, Counsel?

25 MR. SHARP: No, we don't, Your Honor. None -- nothing on

1 our side.

2 THE COURT: Thank you, Mr. Sharp.

3 MR. ROBERTS: Are you sure?

4 MR. SHARP: What's that supposed to mean?

5 MR. ROBERTS: I'm sorry.

6 MR. SMITH: Nothing, Your Honor.

7 THE COURT: Okay.

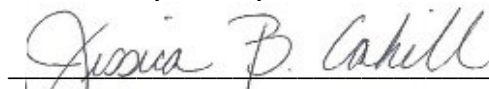
8 MR. SMITH: Nothing.

9 THE COURT: Okay. Thank you, Mr. Smith.

10 All right. We'll see you tomorrow at 9 a.m.

11 [Proceedings adjourned at 4:36 p.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

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