

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 02-01159A

\*\*\*\*\*  
MARCIA RHODES, HAROLD RHODES, \*  
INDIVIDUALLY, HAROLD RHODES, ON \*  
BEHALF OF HIS MINOR CHILD AND NEXT \*  
FRIEND, REBECCA RHODES, \*  
Plaintiffs \*  
VS. \*  
CARLO ZALEWSKI, DRIVER LOGISTICS, \*  
PENSKE TRUCK LEASING CORP., and \*  
BUILDING MATERIALS CORP. OF AMERICA \*  
d/b/a GAF MATERIALS CORP., \*  
Defendants \*  
\*\*\*\*\*

\*\*\*\*\*  
BEFORE: J. DONOVAN  
AND A JURY  
\*\*\*\*\*

September 9, 2004  
Norfolk Superior Court  
650 High Street  
Dedham, Massachusetts 02026

APPEARANCES:

M. FREDERICK PRITZKER, Esquire; MARGARET M. PINKHAM,  
Esquire  
For the Plaintiffs

LAWRENCE F. BOYLE, Esquire; JOHN P. KNIGHT, Esquire;  
JOHN B. JOHNSON, Esquire; WILLIAM J. CONROY, Esquire;  
and RUSSELL X. POLLOCK, Esquire,  
For the Defendants

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**PROCEEDINGS**

**MR. PRITZKER: May we continue  
with Mrs. Rhodes.**

**THE COURT: Please.**

**MARCIA RHODES, PREVIOUSLY SWORN**

**THE COURT: And Mrs. Rhodes, you're  
still under oath from yesterday.**

**DIRECT EXAMINATION BY MR. PRITZKER:**

**Q Good morning, Mrs. Rhodes.**

**A Good morning.**

**Q Mrs. Rhodes, in order to get here to testify this  
morning, what time did you wake up?**

**A 2:30.**

**Q When you woke up, what was the first thing that  
happened?**

**A I went over to the commode.**

**Q You've got to keep your voice up.**

**A I transferred over to the commode.**

**Q Who helped you transfer?**

**A My husband.**

**Q And first you have to transfer onto your  
wheelchair?**

1 A Yes.

2 Q You got dressed at some point?

3 A Yep.

4 Q And all in all, when did you finally leave the  
5 house?

6 A I think we left the house at 7.

7 Q In Milford to get here before 9?

8 A Yes.

9 Q Yesterday we were talking a little bit about your  
10 background when we broke. And I want to go  
11 back over some questions based upon  
12 conversations that you and I had since about  
13 things that you and Harold did when you first got  
14 married. Did you think of any other things that you  
15 didn't mentioned yesterday to the Court?

16 A Well, I did remember that we were active in our  
17 temple, both going to services together and doing,  
18 I guess it would be called volunteer work. Where  
19 we would go and help run the Bingo game or we  
20 would go and help one of Mah-jong tournament,  
21 were sometimes fund raisers were at temple.

22 Q Those were activities that you and he did  
23 together?

24 A Yes.

- 1     **A**     Well Harold was just finally gotten into the antique  
2             concept, where your paying for something that's  
3             used and you're paying a small amount of money  
4             for something that's used and then turning around  
5             and selling it for a large amount of money. And he  
6             hadn't quite picked that up , even though he went  
7             to Harvard. Hadn't quite picked up on how, look if  
8             that could be in – when he started to understand,  
9             then he started to get into it and we would go to  
10            the auctions together and flea markets together  
11            and do more of that kind of stuff then going to the  
12            mall, the typical things that we would have done  
13            beforehand; shopping, spending money, shopping.
- 14    **Q**     Now during the year before the accident Rebecca  
15             turned 13?
- 16    **A**     Yes.
- 17    **Q**     And is there anything in the Jewish religion that  
18             happens when a young boy or girl turns 13?
- 19    **A**     When a boy or girl turns 13 they're considered to  
20             be a man or a woman. A year before they turn 13,  
21             they start an intensive Hebrew lesson program.  
22             They're going to Hebrew school all the way from,  
23             like kindergarten up. But they start the intensive  
24             Hebrew program where they have to learn how to

1       **A       Yes.**

2       **Q       The jury will see them.**

3                       **Now, you talked several times**  
 4       **already about the antique business. And I would**  
 5       **like if you would to describe what the antique**  
 6       **business entailed from your vantage point.**

7       **A       Okay. Well, --**

8       **Q       This is antique and collectibles.**

9       **A       Right. Mostly collectibles as I said. I did it a lot**  
 10       **of -- I didn't do what we call the cliché antiques.**  
 11       **The Limoges, or the depression glass or things --**  
 12       **all the other antique dealers did. I looked for more**  
 13       **eclectic things, like I have two hundred and forty-**  
 14       **two decks of playing cards and six hundred pieces**  
 15       **of sheet music; things like that. And I would have**  
 16       **to go, starting with starting on Thursday, there**  
 17       **would be an auction on Thursday night and at the**  
 18       **auction on Thursday night I would get the yard**  
 19       **sale sections for the local newspaper and cut out**  
 20       **the yard sales that I planned to go to on Saturday.**  
 21       **And Friday is usually estate sales. You know,**  
 22       **where you go to the person who is deceased, you**  
 23       **go to their house, you go into the house and you**  
 24       **buy things from the estate.**

1 Q And whatever you were able to acquire, you had to  
2 physically pick up and move to your car?

3 A Right.

4 Q Where did you put when you got in your car?

5 A Either the trunk or the back seat. The closest I  
6 got to furniture is if I could hold it one hand and  
7 throw it in the backseat, that was furniture for me.  
8 Otherwise I stay away from furniture.

9 Q So that was on Thursday.

10 A Yeah.

11 Q How many estate sales could you visit on a typical  
12 day?

13 A There's usually only one estate sale.

14 Q Because they were all pretty much at the same  
15 time?

16 A Yeah, usually one – people don't die that quickly.  
17 You know.

18 Q And on Saturday's you went to auctions and flea  
19 markets?

20 A Saturday I went to yard sales.

21 Q Yard sales. And how many yard sales could you  
22 visit on a typical Saturday?

23 A I could do between twelve and fifteen, between 7  
24 and say 12 o'clock.

1           happen from time to time.

2       **Q**       So that was the yard sales on a Saturday?

3       **A**       Yep.

4       **Q**       Sunday was the flea markets?

5       **A**       Sunday was flea markets. Yep.

6       **Q**       And tell me what the process was of acquiring  
7 merchandise from flea markets?

8       **A**       Well, the early – in the early years, when Becca  
9 was in Hebrew school, Hebrew school was one of  
10 the days was on was Sunday's. I used to drop her  
11 off and then maybe go to Douglas to a flea market  
12 they have out in Douglas. And then I'd do that flea  
13 market and then come back and pick her up from  
14 Hebrew school and then we'd do some other  
15 leftover flea markets that we had.

16       **Q**       Now flea markets are typically in yards or?

17       **A**       There typically – typically in buildings with other  
18 dealers outside the buildings. There's space in  
19 the building, there's fixed space you're renting it  
20 for the month or for the year or however the  
21 landlord arranges it, the outside space is first  
22 come, first serve. Anybody can go. You can go  
23 put – give them twenty dollars, put out your table,  
24 put out your merchandise, they don't care what



1 Q -- bring it back to the car, store it for later –

2 A Right. Well, yeah. Process it through the  
3 computer. I generally had a turnover rate where it  
4 would take about three weeks between the time I  
5 put the object in my office bedroom and the time I  
6 actually processed it, gave it a number, and  
7 processed it to put it into a place, into a store.  
8 Again it was all for computer records.

9 Q Now where did the auctions fit into this process?

10 A Well, auctions – there are two ways auctions can  
11 fit in. One is in acquiring merchandise. And  
12 there's dealers – when you go in, they ask you for  
13 your dealer number, your sales tax number. You  
14 give them your sales tax number and then they put  
15 your name on a mailing list and they let you know  
16 whenever there's going to be an auction. There  
17 are also auctions that I put stuff into the auction.  
18 I was the seller. And it makes a lot more fun to do  
19 it that way, when you're the seller then when  
20 you're the buyer.

21 Q Where did these auctions typically take place?

22 A One was in Franklin and one was in Medway.  
23 Those are the two that I did.

24 Q And are these outside auctions?

1 ceramics are big, I don't know why but ceramics  
2 are big. I take the planter, if it needed to be  
3 cleaned up, you have to determine whether  
4 something should be cleaned or not cleaned.  
5 Some antiques should not be cleaned, because the  
6 person who buys it is buying it so that they can  
7 either clean it themselves or because it's got a  
8 patina or shading on it, that makes it look - it  
9 improves the expense, the value of the antique.  
10 But assuming that it needs to be cleaned and  
11 processed, I would clean and process it. Put a tag  
12 on it. Put an inventory number on it. Put a brief  
13 description of what the object is. Put a price on it.  
14 Tie it to the object. Put it in a box for the store  
15 that it's going to. And then continue data process  
16 it until I had enough for one store, a particular  
17 store that I wanted to go to.

18 Q Now, that's the acquiring end and the processing  
19 end. How do you sell this stuff?

20 A Well -

21 Q How did you sell the stuff?

22 A I had - I rented space out in three stores. One  
23 was in Sturbridge, one was in Wellfleet and one of  
24 them was in Holliston. And the Sturbridge is

1 wall space and I could put pictures up. And then I  
 2 had a dresser with the smalls, that's what call  
 3 little antiques, the smalls. We'd put them out  
 4 there. And then I had six stores that I went to,  
 5 where I bought stuff in as a consignor -

6 Q What does it mean to be a consignor?

7 A You bring merchandise into the store and each  
 8 store is different. They'll either have you number  
 9 it beforehand or they'll do the numbering and  
 10 they'll do the paperwork. But one way or another  
 11 it gets a number and it gets put in a store, and if  
 12 it's sold the store owner gets - usually the  
 13 percentage is about thirty-five percent and the  
 14 seller, we get the other sixty-five percent.

15 Q So you had how many store where you had  
 16 merchandise in on consignment?

17 A I was doing six stores on consignment.

18 Q And do you remember where they were?

19 A Well, let's see - there was another store in  
 20 Holliston. Holliston is a great place for antiques.  
 21 There was a store in Mendon, there was a store in  
 22 Uxbridge, there was a store in Wrentham, I know  
 23 there's another one. I can't think of what it is  
 24 right now. But there were six of them, Brewster.

1     **A**     It made money but if you're talking about cash  
2             flow, anything that you make you immediately put  
3             right back into the business by buying more  
4             collectibles and antiques to sell. So you're not  
5             taking a salary or anything like that. You're just  
6             rolling it over into -

7     **Q**     So you were building up your inventory?

8     **A**     Yeah. My inventory and my repay earnings were  
9             the same. You know, all my valuable assets  
10            equaled my equity in the business.

11    **Q**     And it was growing?

12    **A**     Oh, yeah. I had another - another thing I did that  
13             none of the other dealers did, is I had this little  
14             market niche. The dealers, when they give a piece  
15             of merchandise and they think it's going to sell,  
16             and it doesn't sell, they get mad at it. You know,  
17             they get mad and they don't want to see the  
18             merchandise, so what they do is they give it to me  
19             and I would put it into different stores, the stores I  
20             go to, and we'd split whatever I sold, fifty-fifty.  
21             And I keep that - again, you can't do this without a  
22             computer. But with the computer I could keep  
23             track of each person's merchandise to the six  
24             different sellers that I had. And I was going to

1 don't want to be doing this. I don't like it. I was  
 2 lucky I found it, because I'd move to something  
 3 that I see myself doing well into the future. Most  
 4 of the antique dealers, on average, were probably  
 5 about about sixty. So it's something that you can  
 6 do for a long time and I had planned on doing it for  
 7 a long time until the accident.

8 Q How many of these stores that you had  
 9 merchandise in either rented space or by  
 10 consignment were handicapped accessible?

11 A Two of the stores - two of the stores that I - one  
 12 of the stores that I rent from is the Sturbridge  
 13 store, and two of the consignment stores are  
 14 accessible, handicapped accessible; the others  
 15 are not.

16 Q Aside from being handicapped accessible, even if  
 17 you could get in, were you able to organize the  
 18 merchandise?

19 A There's one store that I - I could just barely make  
 20 it in, but where my booth was there wasn't enough  
 21 room - it wasn't - the aisle wasn't even this wide  
 22 here; it was a smaller aisle, so that the wheelchair  
 23 wouldn't fit in, so I couldn't fix my merchandise.  
 24 What they would do for me is, I could send them

1           **Granted I would be getting the goods at a slower**  
2           **rate, but I could at least get the goods, put it up**  
3           **on the computer and stuff. And I found more times**  
4           **then most things that I watched that were other**  
5           **peoples, because it's always good to track what**  
6           **other people did first to see if their stuff is selling.**  
7           **It was just don't sell like, you know - I know**  
8           **people always here, oh, I made a fortune on the**  
9           **ebay. I sold this. I sold that and everything, those**  
10          **are the exceptions, really.**

11       **Q       So how are you trying to liquidate your inventory?**

12       **A       Well, my inventory right now is either in my**  
13           **bedroom upstairs or in the basement. So I really**  
14           **don't know what I have in inventory -**

15       **Q       When you say in your bedroom upstairs, do you**  
16           **mean your former bedroom?**

17       **A       Yes, the bedroom I used to use. Or they're in**  
18           **boxes downstairs. Or they're - we have an off site**  
19           **storage rental space that we have. And as we go**  
20           **through the boxes, I'll be putting the things out**  
21           **and determining, based on what they are, which**  
22           **store they'll go to. And try to - try not to buy**  
23           **anymore stuff and just sell the stuff and get rid of**  
24           **it and move on.**

1           **So, every morning there was a battle to get her to**  
 2           **eat something so that she would have something**  
 3           **in her stomach to go to school.**

4       **Q       After the battle, who prepped the food?**

5       **A       Oh, I prepared the food.**

6       **Q       And after she was off to school, then what?**

7       **A       Then I would get exercise – I had a thirty minute**  
 8           **exercise program that I did just to keep in shape.**  
 9           **And then, whether I'm cleaning or straightening up**  
 10          **or anything, that kind of stuff, that needed to be**  
 11          **done around the house. I would spend about an**  
 12          **hour doing that and didn't go out – I did vacuuming**  
 13          **and things like that. I didn't go out of my way to**  
 14          **polish things or anything. And then usually I'd be –**

15      **Q       Excuse me for interrupting but, back at the**  
 16          **breakfast time, what was Harold doing during this**  
 17          **time?**

18      **A       Harold had already left.**

19      **Q       So he would be leaving earlier for work?**

20      **A       Harold usually left for work around 6 in the**  
 21          **morning.**

22      **Q       Okay. I'm sorry to interrupt you.**

23      **A       Now I forgot where I was.**

24      **Q       You were cleaning.**

1 English, and you know, we'd be together and we'd  
2 talk and she'd tell me what she did that day in  
3 school and stuff like that. And then depending on  
4 the day if she had Hebrew School, then I would  
5 take her Hebrew School. If she had different  
6 hobbies that she tried. She tried karate. She tried  
7 archery. She did theater workshop, you know, if  
8 you have kids, you know. And I'm sure you spend  
9 a lot of time chauffeuring the kids around.

10 Generally as a family we only ate  
11 together - we'd try to do it Friday night, shabbat,  
12 and in one day week, during the week, as the  
13 three of us, as a family, but Harold usually worked  
14 - didn't get home before 7, which was much too  
15 late. So Becca and I would start eating. So I  
16 would make dinner for Becca and I at 5 o'clock  
17 and then Harold would eventually have to fend for  
18 himself because I wasn't going to be there. He'd  
19 come home at 7.

20 Q You were charge of meals for you and Becca?

21 A Right.

22 Q And you were the sole transportation for Becca  
23 during this period?

24 A Yes.



1                   intimating game for some people.

2           **Q**           As far as the remainder of the old group, are their  
3                   homes handicapped accessible?

4           **A**           No, not of them.

5           **Q**           So there's no way that you could -

6           **A**           There's no way I could go to their houses.  
7                   Everybody would have to come to ours - to my  
8                   house.

9           **Q**           You can't even pop in for a visit?

10          **A**           No.

11          **Q**           I'm going to change your attention again to  
12                   January 9, 2002. At about 1 o'clock, where were  
13                   you going?

14          **A**           I was headed for the Holliston store.

15          **Q**           Now, do you remember why you were going to the  
16                   Holliston store?

17          **A**           Yeah, I had a trunk full of antiques that I was  
18                   going to clear out the space of everything that  
19                   didn't sell in the Holliston store. I usually used to  
20                   clean it out, like I said three weeks or a month.  
21                   And I go in - I was going to in and clear out the  
22                   space and put the stuff that I had in the trunk into  
23                   the space that I just cleared out and bring the  
24                   other stuff back. And that's where I was on my

1                    were you intending to take?

2            A            109 to – 109 intersects with 126 in Medway.

3            Q            So you were going to go into Medway and take a  
4                    left on 126?

5            A            Yes. And that would put you on route to – 126  
6                    would take you to Route 16, and 16 went right  
7                    through the center of Holliston.

8            Q            Did you ever get to the center of Medway?

9            A            Not that day.

10          Q            Now, can you describe – do you know Trotter  
11                  Drive?

12          A            I know where it is. Yeah.

13          Q            Can you describe, once you took the left on Route  
14                  109, what the roadway looked like?

15          A            Clear. Fine.

16          Q            Was there – there were no curves?

17          A            There were no cars.

18          Q            Were there any curves?

19          A            Were there what?

20          Q            Curves or was it straight?

21          A            Oh, no. Straight. It's a straight road.

22          Q            Were there any hills?

23          A            There's a little incline you go up.

24          Q            And after you go up the incline, then what?

1 A Yes.

2 Q Did you have time to determine what it was that  
3 was being done?

4 A No.

5 Q How long were you stopped, that you remember?

6 A I had only stopped – I had only just stopped maybe  
7 two, three seconds.

8 Q And then what?

9 A Then I looked in my rearview mirror and I saw a  
10 truck coming towards us and I hate to use the  
11 phrase, barreling towards me, but that's what it  
12 was doing. And I could tell that it wasn't – even if  
13 he would apply his brakes, it was still going to hit  
14 me. So I turned the wheels really hard to the  
15 right, which is the only way to go because if you  
16 went left you'd go into the flow of traffic, straight  
17 would be going into the equipment, right would be  
18 going into the woods. So I turned the car wheels  
19 really hard to the right and figuring that when the  
20 truck hit me, I would go that way to the right, into  
21 the woods, which is what happened.

22 Q I'm just going to back up for a minute and I know  
23 this may be difficult and maybe you don't know.

24 But, you didn't stop by jamming on your brakes

1 Q So, do you remember turning your steering wheel  
2 to the right?

3 A Very distinctly.

4 Q Then what happened?

5 A Then I got hit. Going back - I know I went flying. I  
6 heard and felt, but I heard my back break.

7 Q You actually heard it?

8 A Yes.

9 Q And you felt it?

10 A And I felt it. I mean, it's - if you have ever broken  
11 a bone, you know, you relate. If you have never  
12 broken a bone, and I never had before, it snaps. It  
13 makes a sound like when you pull turkey wings,  
14 you know. The wishbone on the turkey. And I  
15 certainly felt it because I knew that I couldn't feel  
16 anything from my waist down.

17 Q Did you know - did you hear it and feel it prior to  
18 your car coming to a stop?

19 A I don't remember.

20 Q Do you remember the car coming to a stop?

21 A I remember coming to a stop. I think at that point  
22 I was - I remember I was thrust forward and then  
23 back. But I don't remember which point - at which  
24 point my back snapped. But I do know by the time

1 Q Could you describe the pain?

2 A It was all sharp pain. It wasn't throbbing pain or  
3 anything like that. It was like being stabbed  
4 internally. You being stabbed out - outwards. It  
5 was very painful. I didn't realize what it was at  
6 the time but then I - when you're - when you're in  
7 accident, you know you're going to be in accident,  
8 it doesn't dawn on you that you might die in this  
9 accident. You just brace yourself for the accident.  
10 And that's all I did, was brace myself for the  
11 accident. It never dawned on me that I was going  
12 to be seriously injured. And I was seriously  
13 injured. I couldn't move because the car was like,  
14 the way it was crushed, I was like crushed down  
15 like this so I couldn't move that way. And I was  
16 crushed down on the area that hurt, so I was apply  
17 more pressure on it an area that already hurt. So,  
18 I knew the medics, when the medics came I knew  
19 they had drugs, so I asked for the drugs. They  
20 gave me the drugs.

21 Q Do you remember the efforts that were made to  
22 get you out of the car?

23 A I remember somebody coming over and telling me  
24 that they were going to have to use the jaws of life

1 Q Now what condition did you have?

2 A I –

3 Q That required medication?

4 A I have bipolar disorder and I'm ADHD.

5 Q Can you describe what bipolar disorder is?

6 A Bipolar disorder is what they used to call manic  
7 depressive. And sometimes you're really, really on  
8 depressed end of the scale, really – you feel  
9 hopeless, you know, nothing to look forward to. I  
10 don't know you feel depression if you ever had it,  
11 you know what I'm talking about. The manic side  
12 is the opposite, you feel you can do anything. You  
13 can conquer the world. You're up. You're raring  
14 to go. You, know, go, go, go. And they consider  
15 you have bipolar disorder if the swings are erratic.  
16 If your swings are just kind of like this, then they  
17 figure you're normal, but if your swings go from  
18 deep lows to real highs to real lows, they consider  
19 that you have a bipolar disorder and they usually  
20 prescribe, in my case they prescribed Prozac and  
21 Lithium for the bipolar disorder.

22 Q And that was causing weight gain?

23 A That was – well the Prozac, I gained some weight  
24 on the Prozac, but nothing like what happened

1     **A**       Well attention deficit part is probably the – you let  
2               your mind wander and you know, in school you  
3               look at the window a lot. And you're not paying  
4               attention to teachers and stuff like that. I think  
5               everybody has it to some degree, everybody has it.  
6               Attention deficit disorder I mean.

7     **Q**       But the way you had described it earlier, was the  
8               hyperactivity.

9     **A**       The hyperactivity is the hard part.

10    **Q**       And were you taking medication for that?

11    **A**       Yes. I had just started about two years before the  
12              accident.

13    **Q**       What were you taking for that?

14    **A**       They started me on Ritalin, which is what they  
15              give to kids, but Ritalin is consumed by the liver  
16              very quickly. So I would have to take Ritalin three  
17              or four times a day and so instead of doing that,  
18              my doctor prescribed a drug called Cylert which is  
19              really time-released Ritalin and I would take that  
20              twice a day and the good news was it helped with  
21              hyperactivity and the bad news was, I gained like  
22              seventy pounds. They didn't tell me there was  
23              going to be that side effect, until side effect  
24              happened, but I don't know what I would have

1           **Zyprexa.**

2           **Q       Are you talking now about before the accident?**

3           **A       No. This was after the accident.**

4           **Q       I'm still focusing on before.**

5           **A       You just want the one before. Oh, okay.**

6           **Q       What your health was before.**

7           **A       I'm just skipping over that accident.**

8           **Q       Okay. So, have you described all of the**  
 9                   **medications that you remember that you were**  
 10           **being prescribed prior to the accident?**

11          **A       Right.**

12          **Q       Now, from time to time did you also self medicate,**  
 13                   **Mrs. Rhodes, because of the bipolar disorder?**

14          **A       Yes, I did.**

15          **Q       And what did you self medicate with?**

16          **A       Marijuana.**

17          **Q       And you used it for what purpose?**

18          **A       I would find that if I smoked, if you put it in either**  
 19                   **a little pipe, you put some in a little pipe, which is**  
 20                   **probably is equivalent of a half a joint, it would**  
 21                   **calm me down to where probably normal people**  
 22                   **are in terms of hyperactivity and I could**  
 23                   **accomplish, work on, focus on one thing and do**  
 24                   **one thing, and do it well. And we didn't find**



1       **Q**       **Now I'm going to, once again, shift gears. Go back**  
2       **to the accident, after the accident. Do you know**  
3       **where you were taken?**

<b>4</b>	<b>A</b>	<b>No.</b>
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**5 Q Which hospital you were taken to?**

**6      A      Well, I know now.**

**7 Q But you didn't know then?**

**8      A      Milford-Whitinsville.**

9 Q Do you know how much time you spent there?

10       **A       No. I think almost immediately they took me to**  
11       **Mass General in Worcester.**

12	Q	The UMASS Medical Center?
----	---	---------------------------

13	A	UMASS, yeah.
----	---	--------------

14 Q Do you know why they took you to UMASS Medical  
15 Center?

16      **A      Because they had – they're a trauma center.**

**17 Q And do you know what they did for you?**

<b>18</b>	<b>A</b>	<b>No.</b>
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19	Q	Do you have much of a memory of this period of
20		your life?

21       **A**       **No, that whole six weeks I don't remember**  
22       **anything about the next six weeks.**

23 Q You do remember some things that happened at  
24 the hospital; do you not?

1 reaction was, what was the purpose of me  
2 surviving the accident? Okay. You know. I didn't  
3 want to live that kind of life. It was – it's a  
4 counterproductive, especially if you're ADHD. It's  
5 so hard to be ADHD in a wheelchair because  
6 you're used to running around and everything is  
7 movement, movement, going here, going there,  
8 doing this, doing that. And here my husband was  
9 telling me that I was going to be in a wheelchair  
10 for the rest of my life. I was very depressed. It  
11 wasn't a bipolar depression, it was profound  
12 depression. It was a different kind of depression.

13 Q Is it a depression which has lasted?

14 A It's still there, oh, yeah. Well, this is last – as long  
15 as this last, that's going to last I imagine.

16 Q Do you remember having to wear a body brace?

17 A Oh, yeah. If I was going to sit up higher than thirty  
18 degrees, I had to wear this big white, think of it as  
19 a turtle shell, the front and then there's a back.  
20 And they put you in – they put thing on you and it's  
21 really difficult because they want you to sit up  
22 because they want you to start using, you know,  
23 your back muscles like that but when they're  
24 putting this thing on you, they're crushing the area

1       **A       Right. Rehab center.**

2       **Q       We'll get in the timing in a minute, but, I would like**  
3       **to offer this.**

4                   **MR. BOYLE: No objection.**

5                   **MR. CONROY: No objection.**

6                   **THE COURT: It may be marked**

7       **Exhibit 28.**

8                   **(Body cast marked and**  
9                   **received as evidence as Exhibit**  
10                  **Number 28)**

11       **Q       Do you know how long you were at the UMASS**  
12       **Medical Center?**

13       **A       From February to April 16<sup>th</sup>. Early February, I don't**  
14       **remember – the first week of February.**

15       **Q       I think you were responding to the rehab.**

16       **A       Oh, UMASS?**

17       **Q       UMASS trauma center.**

18       **A       No, I don't know. I don't remember. I think two**  
19       **weeks.**

20       **Q       We'll get the exact dates elsewhere. But do you**  
21       **remember how long approximately you were at the**  
22       **rehab center?**

23       **A       I was there for at least six weeks.**

24       **Q       Do you remember the day that you were**

1 transfer myself, was because the leg had blown up  
2 to be about this big and –

3 Q Unfortunately the reporter can't –

4 A Okay. Five times the size of your normal leg, it  
5 had blown up to that size. It was very, very heavy.  
6 It took two technicians or two nurses or whatever  
7 to move my leg whenever they transferred me into  
8 the chair, because it was that heavy. And it – as I  
9 said, it really hampered any – being able to  
10 transfer on my own. And it was like that the whole  
11 time I was Fairlawn. So, that's why I don't  
12 remember any boots.

13 Q If you remember any incidents, where people came  
14 to visit you and they were forced to suit up?

15 A Yes. My friends, when they came to visit me,  
16 because I had gotten some kind of staph  
17 infections when I was at UMASS Worcester, they  
18 had to put on gowns and gloves and facial masks  
19 to come in to see me. Try to keep the  
20 environment as sterile as possible.

21 Q And in fact, were you isolated during that period?

22 A Yes, I was isolated for four of the six weeks I was  
23 at Fairlawn because of the staph infection,  
24 because it's not threatening to people who are

1 little sponge that had water on it and they'd wet  
 2 my lips with the little sponge, but that was all the  
 3 - they wouldn't let me have any ice or they  
 4 wouldn't let me have any water.

5 Q Was this before or after they took the tube out of  
 6 your throat?

7 A It was after they took the tube out.

8 Q While the tube was in, do you remember if you  
 9 were attached to various things?

10 A I know I had intravenous.

11 Q Do you remember anything else? Do you  
 12 remember oxygen?

13 A Yeah. Yeah, I did have oxygen.

14 Q The whole time?

15 A I can't remember when it stopped, so, I would  
 16 have to say full-time because I don't remember it  
 17 stopping.

18 Q So you have a memory that you had oxygen, this is  
 19 now back at UMASS Medical Center. And you have  
 20 a memory of a tube coming out of your throat?

21 A Right.

22 Q Do you have a memory of intravenous; true?

23 A Yes.

24 Q And do you have a memory that at the hospital you

1            wanted me to sit up for – it started out with fifteen  
2            minutes, and then at one point I was up to like two  
3            hours.

4            Q            Do you know why they put rods in your back?

5            A            Because my spine was broken.

6            Q            Are you asking me or do you know?

7            A            I'm guessing.

8            Q            Okay. So they wanted you to sit up, that was first  
9            week rehab?

10          A            That was for the first – skipping the first week, the  
11          next three weeks of – and then occupational  
12          therapist and a physical therapist came into the  
13          room to try to figure out what kind of therapy they  
14          could give me given that I was isolated and in a  
15          room and all the physical therapy equipment was  
16          out in the physical therapy area. So, I had very  
17          limited physical therapy while I was there.

18          Q            Was whatever therapy that they were trying also  
19          affected by the swelling in your leg?

20          A            Yeah, that was the big thing. The one thing that  
21          they felt that I could try and do, which wouldn't  
22          really – my leg would not really interfere with is to  
23          – this, you see me doing this, just to lift up and  
24          circulate. It's very interesting, when you're sitting

1 with these sticks, but I can't think of anything that  
2 we did now. And they would have balance, that  
3 was the other thing, it was trying to teach  
4 balance. They would have you sit on the edge of  
5 the therapy bed and they'd put cones out in front  
6 of you and then they'd ask you to lean forward and  
7 pick them up, which I was not very good at. I had  
8 a lot of fear of falling forward. That was pretty  
9 much it for physical therapy.

10 Q Can you tell me during the six weeks that you  
11 were in the rehab center, what your mood was?

12 A Oh, I was depressed all the time. I was  
13 depressed.

14 Q Did you feel like you were making progress as far  
15 as getting back to a situation where you could  
16 function?

17 A I felt I made minor victories, but they were really  
18 nothing - nothing to make me believe that my life  
19 was going to be normal. I mean, for example,  
20 these teds, these stockings they put on your legs,  
21 like - like these, and they're to protect your legs,  
22 and I could, after they took me out of the shell  
23 thing, I could put the stocking on my leg myself.  
24 That was a big accomplishment. I mean,

1 everything. Once the cast are off, they put these  
 2 on to protect my legs that, if I hit anything they  
 3 were afraid, because they found out while I was  
 4 at the hospital that I had osteoporosis and that my  
 5 bones were very brittle. And so I'm suppose to  
 6 wear these for protection. Particularly when I  
 7 move, transfers, which makes it very harder to  
 8 transfer because they're big, and they're bulky,  
 9 and you know, it's hard enough to get the board  
 10 underneath you without the added bulk and  
 11 weight. You know, an air cast. But they do  
 12 protect you.

13 Q Could you pick up the skirt one more time, just to  
 14 your knees. I see that there's a tube coiled up  
 15 there.

16 A Right.

17 Q What is that?

18 A It's in-dwelling Foley -

19 MR. PRITZKER: May the jury stand  
 20 up, your Honor?

21 THE COURT: They may. Sure.

22 Q What's it do?

23 A It's an in-dwelling Foley catheter.

24 Q And what is an in-dwelling Foley catheter?



1                    somewhere –

2            Q            You don't have to pull it out.

3            A            Oh, good.

4                                MR. PRITZKER: I would like this mark  
5                                as the next exhibit, your Honor.

6                                THE COURT: Any objection?

7                                MR. CONROY: No objection.

8                                MR. BOYLE: No, your Honor.

9                                THE COURT: All right. Exhibit 29.

10    (Foley catheter marked and  
11    received as evidence as Exhibit  
12    Number 29)

13            Q            Do you remember if you contracted any illnesses  
14                                at Fairlawn?

15            A            Well I remember the doctor kept coming in and  
16                                telling me that, congratulations, I've gotten rid of  
17                                one infection, but on the other side I got a new  
18                                infection. I generally had three infections going  
19                                on at the same time, almost the whole period I  
20                                was at Fairlawn.

21            Q            What were they?

22            A            I don't remember. One was – they were all initials.  
23                                The only one I can remember is the UTI, urinary  
24                                tract infection.

1       **Q**       How do you know when you have a urinary tract  
2                   infections?

3       **A**       Oh, how do I – there's odor and then there's mass –  
4                   there's masses of tissue that go through the tube,  
5                   instead of just plain urine, masses – I guess part of  
6                   the bladder wall going into the tube. And you can  
7                   see, it's not clear.

8       **Q**       Do you remember that you had pneumonia?

9       **A**       I had what?

10      **Q**       Pneumonia.

11      **A**       I don't remember having it. I know I was told I had  
12               it, but I don't remember it.

13      **Q**       Do you remember that you developed a stomach  
14               bacterial infection?

15      **A**       That was one of the ones.

16      **Q**       When you were discharged – before you were  
17               discharged, was there any therapy or training or  
18               classes or instructions as to what you might  
19               expect?

20      **A**       No. There wasn't. And we were too stupid to ask  
21               for it. They didn't give us any supplies to take  
22               with us. They didn't tell us what to expect. They  
23               didn't tell us what to do. They just discharged us  
24               and you know, I was just so happy to be

1 Q And in the meantime, where were you?

2 A I was still in bed.

3 Q With the bowel movement?

4 A Well after he had cleaned me up. He didn't go out  
5 until after he tried to clean me up.

6 Q Had Harold had any experience in trying to move  
7 you and clean you up?

8 A No.

9 Q And you came home without any help?

10 A Exactly.

11 Q So, if I understand correctly, we haven't talked yet  
12 about the fact that you have no bowel control;  
13 true?

14 A Yeah.

15 Q You don't have bowel control?

16 A Right.

17 Q And so after this accident and after Harold  
18 cleaned you up, do you remember how long it took  
19 for Harold to clean you up?

20 A It seemed like a long time. Harold really freaked  
21 out. I mean, he just was not prepared for this.

22 Q Were you prepared for it?

23 A I was probably more prepared for it than him  
24 because it happened to me at the hospital. The

1 using the other one as the method we did. And –

2 Q I'm going to stop you there for a minute, Mrs.  
3 Rhodes. And I'm showing you what looks like  
4 what I used to call them in my day, a diaper or  
5 apparently you call Depends?

6 A Yeah, brand name.

7 Q Is this, in fact, what you were referring to?

8 A Yes.

9 Q And are these type of things, things that you wear  
10 now?

11 A Right.

12 MR. CONROY: No objection.

13 MR. BOYLE: No objection.

14 MR. PRITZKER: I would like this  
15 marked, please.

16 THE COURT: Exhibit 29.

17 COURT REPORTER: 30.

18 THE COURT: 30.

19 (Depends marked and received  
20 as evidence as Exhibit Number  
21 30)

22 Q I'm going to ask you to take this. And it looks kind  
23 of like a pair of pants.

24 A Yeah.

- 1       **A**       **Right. Then it goes back like that, so it's back and**
- 2                   **the tabs are in the front. And back to underpants**
- 3                   **style.**
- 4       **Q**       **And do you wear these all the time?**
- 5       **A**       **Yes, every day.**
- 6       **Q**       **Now getting back to that first day again. So**
- 7                   **Harold runs to CVS, gets the supplies including**
- 8                   **those Depends, comes back, and the two of you**
- 9                   **struggle to figure out how you're going to get them**
- 10                  **on after you've been cleaned up.**
- 11       **A**       **Right.**
- 12       **Q**       **How long did all of this take?**
- 13       **A**       **A couple of hours.**
- 14       **Q**       **How did you feel?**
- 15       **A**       **Mostly it's embarrassing. I mean, he is my**
- 16                   **husband and everything, but still, very demeaning.**
- 17                   **Very embarrassing. The situation you find yourself**
- 18                   **in and not even be able to take of yourself in that**
- 19                   **way. You have to rely on somebody else. And that**
- 20                   **person not be trained or prepared for it; not**
- 21                   **knowing what to do. There's a lot of guilt involved**
- 22                   **in that. You know, it was like - I'm - I remember**
- 23                   **thinking that I probably got them to discharge me**
- 24                   **too early from Fairlawn. I pushed for the April 16<sup>th</sup>**

1 person leaves until the time they come back the  
2 next day?

3 A Exactly. And then weekends.

4 Q And all weekend?

5 A Yes.

6 Q Twenty-four hours a day on weekends?

7 A Yes.

8 Q The first day when you came home, was Rebecca  
9 home?

10 A I imagine she was but I don't remember.

11 Q Do you remember her being involved in this -

12 A No.

13 Q -- accident -

14 A We tried to keep her out of it as much as possible.

15 Q And was that something that you and Harold had  
16 talked about?

17 A Yes, we had - we talked about it at the hospital,  
18 that we would answer any questions that she had,  
19 but we were - her involvement in my health care  
20 down to a minimum. That she shouldn't be  
21 involved in any aspect of my health care. She was  
22 only, by that time, 14 years old. You know, she  
23 was only 14 years old, it wasn't fair that Harold to  
24 deal with it. It certainly wouldn't be fair that

1 in whatever information she was missing in her  
2 mind.

3 Q After having come home, do you remember any  
4 incident fairly soon after your arrived home where  
5 you experiencing pain, different kinds of pain?

6 A Well, I had - from rolling the manual wheelchair,  
7 from rolling around in the manual wheelchair I  
8 developed bursitis and tendinitis, because the  
9 carpeting was too thick and it was too much  
10 friction, I guess. So I had ultrasound treatments  
11 done to my shoulders, and then we had to put new  
12 carpeting in so that I could manage it - it's much  
13 like this carpeting. So I could manage on a  
14 wheelchair.

15 Then in May -

16 Q You got home in April; right?

17 A I got home, April 16<sup>th</sup>. May 23<sup>rd</sup> I had really sharp  
18 pains right here. They weren't going away, really  
19 sharp and so Harold rushed me over to the  
20 hospital and they determined that my gall bladder  
21 was gangrene and they had to remove my gall  
22 bladder the old fashion way, where they, you  
23 know, they do the incision and take - took out the  
24 gall bladder and made a drainage hole and I was -

1 everything and I actually went through four  
2 dresses that day with this drainage hole. And that  
3 took a long time to heal, and they still haven't fully  
4 explained to me.

5 Q So you had this tendinitis and bursitis and you had  
6 the gall bladder problem that you've described.  
7 Were there any other pain?

8 A At that time?

9 Q Yes.

10 A No. December I developed pressure sores.

11 Q Before the pressure sores, was there anything  
12 having to do with the rods?

13 A Well, the titanium rods – if you sit up a certain  
14 way, like when you play the piano or something,  
15 the rods hurt. You know. You get a backache.  
16 And everybody gets backache so I'm sure you can  
17 understand, but you get a backache and I take a  
18 Percocet for it, and I take a Valium for muscle – I  
19 have muscle spasms too. So I would take a  
20 Valium for the muscle spasms. And then – they  
21 asked me if it was working well, well, if I'm taking  
22 the Percocet and Valium, they're working but I  
23 don't know if I still have muscle spasms and  
24 backaches, because I'm taking these medications



1           they weren't surprised, you know. We were  
2           shocked, but they weren't surprised that this  
3           happened. It was very distressing, the whole thing  
4           was – it's very depressing. It's depressing to think  
5           about it now.

6       Q       Do you remember developing infections in your  
7           great toe?

8       A       In my what?

9       Q       Your great toe.

10      A       Oh, yeah. That was much later.

11      Q       How much later?

12      A       Oh, that would have been into the second year.

13      Q       Was that when the shoes were prescribed for you  
14           to wear to protect the toe?

15      A       No, that was – yeah, that's right. We did – after I  
16           think about it, after we got back from the hospital  
17           for the gall bladder, they told us that I needed to  
18           have something on my feet to protect my feet. So  
19           they sent us to this shoe store that fits odd sized  
20           feet and one of my feet is like a five triple E or  
21           something and the other one is a six double D or  
22           something like that. And we went to this store  
23           and we got fitted for the shoes and it caused  
24           pressure sores right away. So I had pressure

1       **A**       **Right.**

2       **Q**       **Now during that period of time, could you get up to**  
 3       **go to the toilet?**

4       **A**       **I could be picked up and put in the chair and rolled**  
 5       **over and put on a toilet and then picked up again**  
 6       **off the toilet, put back on the chair, be picked up**  
 7       **again and put into bed, but there was no**  
 8       **transferring. There was no sliding on my part.**  
 9       **They didn't want me to do any sliding because that**  
 10       **would just aggravate the pressure sores. So I**  
 11       **could use the bowel program, so for four hours**  
 12       **everyday I wasn't stuck in bed, I was stuck on the**  
 13       **toilet instead. But the - I had two people every**  
 14       **time I transferred. I had to have Harold to take**  
 15       **the top and Peggy would get stuck with the**  
 16       **bloated left leg and the other leg, and they would**  
 17       **transfer me that way to the bathroom. And then**  
 18       **when I was back in bed I had to be on my side**  
 19       **because that's was the only place there weren't**  
 20       **pressure sores.**

21       **Q**       **Are you able to see these pressure sores?**

22       **A**       **No. I saw them in a mirror.**

23       **Q**       **You have seen them?**

24       **A**       **I saw them in the mirror, yeah.**

1 to the jury, your Honor?

2 THE COURT: I think we'll take our  
3 morning recess at this point. We'll take a 15  
4 minute recess.

5 (RECESS)

6 MR. PRITZKER: Your Honor, before  
7 we broke, we had had marked Exhibits 31 and 32.  
8 May I distribute them to the jury?

9 THE COURT: You may.

10 Q Just as an aside, what happens if the wheelchair  
11 is not turned off?

12 A It dies.

13 Q And then what happens?

14 A And it doesn't do - it just dies.

15 Q I'm going to show you a plastic bag that looks like  
16 it has in it the other tube for the Foley catheter  
17 and the bag itself.

18 A Yeap.

19 Q Is that what that is?

20 A Mm-hmm.

21 MR. PRITZKER: Could we have that  
22 marked?

23 THE COURT: Okay. You have to  
24 answer, yes or No.

1       A       On my back, right.

2       Q       And this keeps your ankles stiff?

3       A       It keeps them – yeah.

4       Q       And what about the protrusion at the end of the  
5       toe?

6       A       It's suppose to – I'm actually to not get pressure  
7       sores.

8       Q       So the sheets are away from your feet?

9       A       Right.

10                       MR. PRITZKER: I would like this pair,  
11       your Honor, marked as the next exhibit.

12                       THE COURT: Any objection?

13                       MR. CONROY: No, objection.

14                       MR. BOYLE: No, your Honor.

15                       THE COURT: Exhibit 34.

16                       (L'Nard boots marked and received as  
17       evidence as Exhibit Number 34)

18       Q       Exhibit 34, when was that prescribed for you?

19       A       Early, early on. It would have been within the first  
20       year, between – probably, I would have to guess  
21       November 2002.

22       Q       And do you wear Exhibit 34 whenever you're not in  
23       a cast situation?

24       A       Yes.

1           were broken, I had broken both legs.

2           **Q**       How did you find that out?

3           **A**       Well in March I had we thought was a system  
4           infection in my right leg, and they give you those  
5           treatments in the hospital, where they put the IV  
6           in your arm and they have you come back three  
7           days in a row, and they give you some kind of  
8           medication through the IV in your arm. And that's  
9           suppose to clear up this problem and it didn't clear  
10          the problem up. So the doctor suggested that we  
11          take x-rays and see if there was blood clot or  
12          something and when they took the x-ray for blood  
13          clot, that's when they found out that my legs were  
14          broken and that was what the problem was.

15          **Q**       And when they found out what the problem was,  
16          how was it treated?

17          **A**       Well the left knee actually, they said, they're going  
18          to let it heal on its own because it was making  
19          progress on its own. The right leg I had to get a  
20          cast, you know, regular, it's a real kind of cast.  
21          First one was over the knee, and then as the leg  
22          got better, it went down to this part and then the  
23          last few months they have switched me to these  
24          boots.

1 Q Three months in the full leg cast?

2 A In the full leg cast.

3 Q And when you had the full leg cast taken off, did  
4 you have any other kind of treatment?

5 A A shorter – shorter version.

6 Q A shorter version. Okay. And how long was the  
7 shorter version on?

8 A Maybe for another couple of months. And then we  
9 switched to these.

10 Q So a couple more months in the shorter version  
11 and we'll get to the boots in a minute. But during  
12 the period when you had the full leg cast, did it  
13 weigh a lot?

14 A Oh, yeah.

15 Q Did it make transfers – did it cause any problems  
16 with transfers?

17 A Well, I couldn't transfer – most of my transfers  
18 seemed to be going from left to right. Obviously  
19 the leg got in the way of any transfer that I was  
20 trying to make.

21 Q Now during this period of time you were also  
22 suffering from the pressure sores, were you not?

23 A Yes.

24 Q And so now you were forced to stay on your side

1 Q And -

2 A And last night he spotted a pressure sore.

3 Q Had you had other incidents of pressure sores  
4 between the most severe condition back in '03 and  
5 today?

6 A I had, on my toe and on my left foot, my big toe,  
7 and on the side of the foot, and on the right foot I  
8 had pressure sores on the big toe and right now I  
9 have pressure sores on four out of the five toes on  
10 my right foot.

11 Q Have your fractures on your right and left leg  
12 healed?

13 A The left leg, I assume that it's healed, but he  
14 hasn't really checked on it because he thought it  
15 was going well. The right leg isn't healing  
16 because apparently in order to heal a break, you're  
17 suppose to put pressure on it, and bones fill in  
18 where the break is and that's what fixes the break,  
19 but since I can't stand up and put any weight on  
20 my legs, the bones are not meshing together and  
21 they're not healing. And so, it will take that much  
22 longer for calcium to form to heal.

23 Q Who was the doctor who is treating your broken  
24 bones?

1 a tray so you have something you can do, read or  
2 something, you just can't stand there all day. And  
3 it forces the weight that the doctor was talking  
4 about that I needed to start to get the bones to  
5 mend. And we have an EasyStand and we've used  
6 it on any occasion where I wasn't injured in some  
7 other way, and I could use, we used it. But right  
8 now we're not using it because of the pressure  
9 sores on my feet.

10 Q Do you remember that a video tape was taken of  
11 you on the EasyStand?

12 A I don't remember.

13 Q The jury will be seeing it later in any event. Can  
14 you tell me, you started to talk about the boots  
15 that you're presenting wearing. Who prescribed  
16 those boots?

17 A Dr. Mastroianni.

18 Q Why?

19 A He's trying to protect this front part of my leg and  
20 my feet because I bang into things a lot, as you  
21 noticed, and I have no feeling down there, I have a  
22 tendency to forget about my feet. If you don't  
23 have any feeling in some area, you just have a  
24 tendency to just not – I can't see them, you know,



1 ankle. We had to wait for that to re-heal, and  
2 that's-- actually that's the one we're waiting for for  
3 using the EasyStand and you know.

4 Q How did it get caught?

5 A Well I'm -- when you're pulling out of the seat to  
6 move out of the car, pull out of the seat and then I  
7 go forward, but if I go forward too far I'm going  
8 forward into this thing and I'm twisting my foot, in  
9 this case I didn't go into it, I put it right along side  
10 of it, so the leg, instead of being like this was  
11 twisted like this.

12 Q So you can't tell the direction that your foot is in?

13 A Not until my girlfriend screamed. I mean, oh, my  
14 God, you know, we -- he took picture and he said, it  
15 had -- it wasn't a new break but it didn't help what  
16 I had already accomplished; let's put it that way.

17 Q Now you started to mention the special shoes that  
18 you had made that you haven't been able to use  
19 yet.

20 A Right.

21 Q What's the purpose of those shoes?

22 A Those are actually primarily for swimming.

23 Q For water therapy?

24 A For water -- pool therapy, which I can go -- I can

1       **A**       **No.**

2       **Q**       **Why not?**

3       **A**       **Well, I can't turn this way because of the leg; this**  
 4       **is always on. This one can come off but then I've**  
 5       **got the L'Nard boot on and I don't know if you saw**  
 6       **them, but they have a bracket that comes out that**  
 7       **keeps the boot upright and that also would**  
 8       **prevent me from rolling over.**

9       **Q**       **Can you lift your legs, your own legs?**

10      **A**       **No.**

11      **Q**       **So, when you're put to bed the night before, you're**  
 12      **on your back?**

13      **A**       **Right.**

14      **Q**       **Does the bed move up and down, the back of the**  
 15      **bed?**

16      **A**       **Yeah, the back of the bed can move up and down,**  
 17      **so you can be in a sitting position and the legs**  
 18      **also rise, in case they want your legs to be lifted.**  
 19      **So I can be in sitting position and then lie down**  
 20      **again when I want to go to sleep, but that's the**  
 21      **only position changes I can make. Just to sit up**  
 22      **more or lay down more.**

23      **Q**       **So you get up in the morning, you wake up in the**  
 24      **morning.**

- 1           slid on the board to the seat that you're going to.
- 2           There's a wood board that we have, and we also
- 3           have another board we call a Beasy board which it
- 4           slides with you, instead of you having to do the
- 5           sliding, it slides with you.
- 6       **Q**       And is that important when you have pressure
- 7           sores?
- 8       **A**       It's very important because that means I'm not –
- 9           I'm not – my skin is not touching the – it's not
- 10          making a motion down the board, it's not being
- 11          irritated by the board, it's just – I'm just sitting on
- 12          this – it's like, if you were to imagine a big kidney
- 13          shaped thing and in the middle is this cutout, like
- 14          that, and in the middle of that is a big old Lazy
- 15          Susan, and you sit on the Lazy Susan and then it –
- 16          it slides down the cut-out section of the board to
- 17          the other end of the board, which is at the other
- 18          end of where you want to be, the other chair.
- 19       **Q**       Okay. Now you mentioned that the bed is the
- 20          easiest transfer, from the bed to the chair.
- 21       **A**       Right.
- 22       **Q**       Why is that?
- 23       **A**       Because in that transfer I can lean all the way
- 24          over so she can get the board all the way

- 1 board.
- 2 Q How do you get in the right angle so that you're
- 3 ready to go down the Beasy board?
- 4 A Well I'm sitting on the end of the bed -
- 5 Q How do you get to the edge of the bed; that's what
- 6 I'm getting at?
- 7 A Oh. When I don't have a cast on I can move my leg
- 8 over. If I do a lot squirming like this, but
- 9 generally, what they have is they've got these two
- 10 white pads underneath me and she pulls on the
- 11 pads and I go with the pads.
- 12 Q Okay. So now you're on the chair, you make your
- 13 way into the bathroom.
- 14 A Let me just point out one thing.
- 15 Q Please do.
- 16 A When I'm getting on the chair, this is one of those
- 17 places where I can hurt my feet because coming
- 18 down the chair, my feet are not going to go
- 19 exactly straight the way I think they should go,
- 20 because that's where my body is going and one or
- 21 the other one inevitable would be turned in the
- 22 wrong direction and that has to be corrected.
- 23 Q And that's part of what the caregiver does is to
- 24 make sure that your feet are correct?

1 slide until I can reach the grab bar and then I'll  
 2 pull myself over the rest of the way, because the  
 3 Beasy board doesn't reach the whole length of the  
 4 toilet, it just hits the first part of the toilet, so I've  
 5 got to pull myself over onto the – these special  
 6 cushions that you can sit on in the bathroom.  
 7 They're called Roho cushions and I place myself  
 8 on these cushions and that's how I am for the next  
 9 four hours.

10 Q Why four hours, Mrs. Rhodes?

11 A That's how long my bowel regime takes.

12 Q As embarrassing as I know this is for you, could  
 13 you describe your bowel regime.

14 A I have to – I put on a glove. I have to take my  
 15 finger and stick up my anus and try and get the  
 16 bowel movement to move out into the toilet and I  
 17 find that, this happens four, on separate  
 18 occasions, and it will be every morning, but  
 19 unfortunately they don't happen four right in a row,  
 20 they happen four with twenty and twenty-five  
 21 minutes apart between each one.

22 Q So you have to, with what they call digital  
 23 stimulation?

24 A Digital stimulation.

1           than four hours?

2       A       No.

3       Q       Even earlier on in the hospital?

4       A       Well, I didn't really pay attention in the hospital  
5           because they were changing me in the hospital.

6       Q       Have you ever miscalculated or made mistakes?

7       A       Oh, yeah. I thought I was done and I wasn't and  
8           had accidents. And then either Peggy or Harold  
9           will have to get me back into the bed and clean  
10          me all up and put another Depends on and off we  
11          go.

12      Q       Now, so you finally get to the stage where you are  
13          able to see the mucus or feel the mucus?

14      A       Yes. You can see it.

15      Q       And then you know you're done?

16      A       Yep.

17      Q       And then what?

18      A       Then get back into the wheelchair -

19      Q       Excuse me for interrupting. But during this four  
20          hour regiment, what are you doing besides what  
21          you've described?

22      A       Well, I do a lot of needlepoint. A lot of  
23          needlepoint. I usually do my nails. And my  
24          husband put a television in there, so that I have

- 1       **A       From there I go to the shower.**
- 2       **Q       Now this is a handicapped accessible shower?**
- 3       **A       Yes. This is a handicapped accessible shower, it's**
- 4       **very nice. I transfer that one; that's an even**
- 5       **transfer, the chair in the shower are just about the**
- 6       **same height. It's a scary transfer though, because**
- 7       **you know, it's a shower. And what happens is, the**
- 8       **board will go with you as you slide. Instead of just**
- 9       **the board part sliding and the rest of it stays**
- 10       **stationary, the whole board goes with you, and so**
- 11       **you have to be careful that the whole board**
- 12       **doesn't go with you and knock you off the board**
- 13       **into the shower. Then I shower.**
- 14       **Q       How do you shower?**
- 15       **A       You know -**
- 16       **Q       Are there controls you're able to operate?**
- 17       **A       Yeah.**
- 18       **Q       This shower was specially built for you?**
- 19       **A       Yes. Yes. It's got one of those hand control**
- 20       **things and I take the shower myself and**
- 21       **everything.**
- 22       **Getting out of the shower is the**
- 23       **single most dangerous of all the transfers because**
- 24       **now in addition to the wheelchair still not having,**

1 then sometime usually between 12 and 1 I'm out –  
2 I'm into the dining room area where I have lunch.  
3 And then inevitably between the hours of 1:30 and  
4 3:30 I have a doctors appointment. I average at  
5 least two a week. And then there's trips to the  
6 Wellness Center in Framingham where I do my  
7 physical therapy and I do that – I try to do that  
8 twice a week, but I usually only get to do it once a  
9 week. So my days are pretty much consumed  
10 between physical exercise which I consider to be  
11 right up there with the doctor appointment,  
12 because I hate exercise and going to see a doctor.

13 Q Now, you haven't described anything about the  
14 urine bag for the Foley catheter that you spoke  
15 about earlier. How does that get emptied?

16 A After my morning, done on the toilet, we empty the  
17 catheter bag. It's got a little thing you pull out  
18 and you press it and it releases the urine into the  
19 toilet and then you press it back so it stops the  
20 urine from releasing from the bag. And then you  
21 can hook the bag – there's a bar right here, you  
22 can hook the bag right to the bar, it's right here. I  
23 have to do that every morning and every night  
24 before I go to bed.



- 1       **Q       What I was asking you is, does this every slip out?**
- 2               **I'm showing you Exhibit 29. Does this have the**
- 3               **little balloon on the end?**
- 4       **A       No. This is the thing that you hook the hose to.**
- 5       **Q       Okay.**
- 6       **A       And –**
- 7       **Q       So it's not on this exhibit?**
- 8       **A       No, it's not on it.**
- 9       **Q       Okay. I interrupted you, but what happens if the**
- 10              **Foley catheter comes out? First of all, obviously**
- 11              **you have an accident.**
- 12       **A       Right.**
- 13       **Q       And so your Depends have gotten wet?**
- 14       **A       I'm back in bed.**
- 15       **Q       Your back in bed for a change?**
- 16       **A       I'm back in bed waiting for the visiting nurse to**
- 17              **come because we can't stick the catheters in**
- 18              **ourselves, and there's a whole medical – it's a**
- 19              **medical procedure. The sterile gloves and**
- 20              **everything.**
- 21       **Q       How many times has it come out?**
- 22       **A       It's only come out a few times.**
- 23       **Q       Do you know how many?**
- 24       **A       Two or three times.**

1 I average two doctors a week. So, I don't have a  
2 lot of free time.

3 Q And the little free time that you have, what do you  
4 do?

5 A Well, if I'm not helping Becca with her homework, I  
6 usually write on a computer or play the piano.  
7 Just - there's nothing you can really start to do.  
8 You know, you only have thirty minutes, there's  
9 nothing really you can start unless something you  
10 can stop, put away and come back to.

11 Q Do you have a project you're working on right  
12 now?

13 A No.

14 Q Are you writing?

15 A I'm doing needlepoint. Oh, writing - writing, yes, I  
16 am writing something right now.

17 Q What are you writing?

18 A I'm writing a treatment, which is a summary of a  
19 story that's given to producers and directors to  
20 determine whether they want to go ahead with the  
21 project or not.

22 Q So you're - is this something you have experienced  
23 doing?

24 A No.

1     **A**       **So, I can't reach them. Yeah. I mean I could turn**  
 2               **them on but then I wouldn't be able to turn them**  
 3               **off because I'd burn myself.**

4     **Q**       **Do you clean the house?**

5     **A**       **I could do some things, but not really, No.**

6     **Q**       **Can you go upstairs in the house?**

7     **A**       **No.**

8     **Q**       **Can you go downstairs?**

9     **A**       **No.**

10    **Q**       **Can you drive?**

11    **A**       **I'm learning to drive.**

12    **Q**       **How far has that gotten you?**

13    **A**       **I've driven to the CVS which is about a mile and a**  
 14               **half, and I've driven to Applebee's, which is about**  
 15               **a mile. And I've driven around our block about a**  
 16               **hundred dozen times.**

17                       **You have to be taught by a**  
 18               **specialized professional. There's only three of**  
 19               **them in Massachusetts and so the appointments**  
 20               **are few and far between and you can't go for your**  
 21               **license until he approves you to go for your**  
 22               **license. But I have a learner's permit, so I can go**  
 23               **through - I can drive if I have an adult with the**  
 24               **driver's license, a valid driver's license with me.**

1 Q And then had it equipped --

2 A Yes -

3 Q -- to be a handicapped van?

4 A Special handicapped equipment. Yeah.

5 Q And does it have a place for you to sit as a  
6 passenger as well?

7 A I can sit in the passenger's seat, in the driver's  
8 seat, if the passenger's seat is in place, the  
9 driver's seat is open and my wheelchair can fit in  
10 there or vise-verse if the passenger - if the driver's  
11 seat is there, then the wheelchair side - the right  
12 side is open and I can drive in there. But it does  
13 come with two seats so that you can have your  
14 own - two normal seats in the front seat.

15 Q Or you could have one or the other?

16 A Correct. Yeah. You don't have to have - you don't  
17 have to have a wheelchair.

18 Q Can you change the seats by yourself?

19 A No.

20 Q So, for instance, if you've been a passenger in the  
21 van at one time and assuming that you get your  
22 license, you would have to make sure that  
23 someone else changed the seats over so that you  
24 could then drive the van yourself?

1           handicapped accessible don't really mean it. What  
2           they mean is that if you could transfer into a  
3           wheelchair by standing up, you do wheelchair, but  
4           what it doesn't mean is that I can wheel my  
5           wheelchair into the room. The first place we  
6           went, I couldn't get through the doors of the hotel  
7           room; the chair was too wide. The second place  
8           we went, I couldn't move around in the room  
9           where the beds were, and the beds were too high.  
10          Just, things like this all the time. The third time  
11          was much like either the first or second; I don't  
12          remember. The fourth time we went, we went to a  
13          place where Becca and I used to go to and they  
14          said they were wheelchair accessible and they  
15          were. And we managed to stay for one night over  
16          in Wellfleet.

17        Q           And did that include access to the bathroom as  
18                      well?

19        A           Yes. They had a big bathroom, pretty decent sized  
20                      bedroom.

21        Q           So in the last twenty-seven months you've had one  
22                      successful?

23        A           Yeah.

24        Q           You mentioned that you play the piano from time

- 1                    six weeks?
- 2        A            Yeah.
- 3        Q            Were any changes made to the house?
- 4        A            Yeah. We lost one of the garage spaces had to be
- 5                    taken -
- 6        Q            You didn't mention that there was a two car
- 7                    garage?
- 8        A            Oh, there was a two car garage.
- 9        Q            Okay.
- 10       A            One of the garage spaces had to be taken out to
- 11                    make the room for the ramp to go up into the
- 12                    house. The doors, where they could, the doors
- 13                    were widen and the bathroom was changed into a
- 14                    bedroom with a roll in shower so that I could take
- 15                    showers.
- 16       Q            So the bathroom was enlarged?
- 17       A            The bathroom was - it was made into a full bath.
- 18       Q            Not only a full bath, but a full handicapped
- 19                    bathroom?
- 20       A            Yes. A big full bath, yeah, it was handicap
- 21                    approved with bars and --
- 22       Q            And where, in order to get room for this whole
- 23                    handicapped bath, where did the space come
- 24                    from?

1           into the dining room, where did you, Harold and  
2           Rebecca eat?

3       A       We didn't.

4       Q       You ate where?

5       A       Well, we could set up a card table in the kitchen.

6       Q       And that was it?

7       A       Yeah. We could set up a card table in the dining  
8           room. The dining room became my quote,  
9           unquote, office and so the whole wall was non-  
10          functional for anything but – but for office use.  
11          But, there was space enough to put in a card table  
12          for us to sit on just for dinner.

13      Q       Do you have any privacy at this time that you were  
14          staying in the living room?

15      A       At first I didn't, but then Harold had these Levolor  
16          doors put in so that the two entrances to the living  
17          room could both be closed off with the Levolor  
18          doors. The dogs, being smarter than him and  
19          figured out how to open the Levolor doors, and so  
20          they were ended up always open anyway. But, I  
21          can't blame Harold for that.

22      Q       You haven't mentioned you have two dogs?

23      A       I have two dogs, yeah.

24      Q       What kind of dogs?

1           you know, those pressure sores or because of the  
2           broken leg, or whatever it was, I was – I wasn't in  
3           any place to entertain. It was – you know, it was  
4           embarrassing.

5       Q       Before the accident, where did you sleep?

6       A       I had an upstairs – like I said, there's four  
7           bedrooms upstairs. I slept in the pink bedroom,  
8           which is next to the master bedroom.

9       Q       And where did Harold sleep?

10      A       Harold slept in the master bedroom.

11      Q       Was there any particular reason why you slept in  
12           separate bedrooms?

13      A       Yes. Because Harold snores so loudly that I  
14           couldn't sleep. And he had – he had the sleep  
15           apnea test done and the surgery done and it didn't  
16           make any difference. He was just too noisy. So I  
17           just moved into the next room so I could get some  
18           sleep.

19      Q       Now the fact that you were in the next room, did  
20           that affect the intimacy that the two of you had?

21      A       No.

22      Q       In fact, before the accident, were you intimate?

23      A       As much as married couple of nineteen years  
24           could be.



- 1     **A**     **Yes. We put in a private – in the back of the**  
2             **house, we put in a private bedroom with a**  
3             **connecting bath for me, so that now I wouldn't**  
4             **have to go from the living room, through the**  
5             **kitchen to the bathroom to use the bathroom, I**  
6             **could just go in my little space in my bedroom to**  
7             **my little space in my bathroom. And then we had**  
8             **a family room put in. We already had a porch so**  
9             **the porch and we have an unfinished basement.**  
10            **That's the next phase.**
- 11    **Q**     **So the renovations are not complete?**
- 12    **A**     **No.**
- 13    **Q**     **Why not?**
- 14    **A**     **Ran out of money.**
- 15    **Q**     **What is left to be done?**
- 16    **A**     **Harold wants to put in a gym for me downstairs so**  
17             **that I don't have to drive all the way to the**  
18             **Wellness Center when I want to exercise. So we**  
19             **want to put in some therapy equipment in there**  
20             **and also a workshop for me so I have a space**  
21             **where I can do – work and actually have things**  
22             **spread out like they need to be.**
- 23    **Q**     **So that means finishing the basement?**
- 24    **A**     **Yes.**

1 would go into that area.

2 Q And where are they right now?

3 A The arm bicycle is in my bedroom. The E-Z stand  
4 is in the family room. I have no idea where the  
5 passive bicycle is. And we're going to be getting a  
6 pulley system, you know, weights to pull down.

7 Q Have you been upstairs since the accident?

8 A No. I hear I don't want to go.

9 Q You haven't seen your office and stuff that was in  
10 your office?

11 A No.

12 Q You haven't been back to your old bedroom?

13 A No.

14 Q You're not able to visit Rebecca's bedroom?

15 A No.

16 Q Can you tell me generally how your relationship  
17 with Rebecca has changed?

18 A Well, Becca gets away with a lot more now than  
19 she did before because I can't follow up. If I tell  
20 her to clean her room and she said, I did. I have to  
21 take her word for it because I can't get upstairs to  
22 check her room. Or I'll ask Harold or Peggy to  
23 check it out for me, which makes me feel really  
24 bad because I feel like I'm spying on my own child,

1           **terrible.**

2           **Q       Have you noticed any changes in Rebecca?**

3           **A       She's become more isolated. She - her grades**  
 4                   **have gone down some. She spends a lot of time -**  
 5                   **we converted the extra room that I was using for**  
 6                   **storage for inventory, we converted it into an**  
 7                   **office for her, for her computer and she spends an**  
 8                   **enormous amount of time. She spends a lot of**  
 9                   **time up there on the computer, chat rooms and**  
 10                  **homework and she writes, poems and short**  
 11                  **stories. The only time I ever really see is when**  
 12                  **she comes downstairs to get some food.**

13          **Q       Has Rebecca ever indicate any interest in driving?**

14          **A       Becca says she does not want to - she is not**  
 15                  **interested in driving. We asked her if she would**  
 16                  **be interested in getting her learner's permit. She**  
 17                  **humored my husband insofar as to go and get the**  
 18                  **handbook that you have to learn in order to take**  
 19                  **their manual test. But she does not want to drive.**  
 20                  **She has no interest in driving at all.**

21          **Q       And did she give you a reason why?**

22          **A       Because of the accident.**

23          **Q       Can you tell me how the relationship with Harold**  
 24                  **has changed?**

1 know, marital or husband and wife relationship.

2 We have caretaker wife relationship.

3 Q Before the accident, did you and Harold use to  
4 argue?

5 A Yes.

6 Q A lot, a little?

7 A Um, I'd say about same as everybody who had  
8 been married nineteen years.

9 Q Did either of you ever mention the word "divorce"?

10 A Yes.

11 Q In what content?

12 A It was the ultimate threat, you know.

13 Q What do you mean by the ultimate threat?

14 A Well, like, when we had our first miscarriage, I  
15 wanted Harold to go do counseling with me. And  
16 he didn't want to go and I told him that he needed  
17 to go to counseling or I'd divorce him. That's the  
18 ultimate threat. So, of course we went into  
19 counseling. And -

20 Q Did you mean it in the sense that you would have  
21 followed through?

22 A No, I wouldn't have followed through. But he  
23 didn't know that.

24 Q Did you ever follow through and seek a lawyer?

1 Q Did you used to hold hands when you went out  
2 walking?

3 A Yeah.

4 Q Did he use to put his arm around you?

5 A Yeah.

6 Q And do those things still occur now?

7 A Yeah.

8 Q Mrs. Rhodes, what are your immediate goals?

9 A My immediate goal, the closest goal that I can  
10 think of is to learn to drive. As I said, I am taking  
11 driving lessons. I would like to be able to transfer  
12 myself, that would be a big step towards  
13 independence. I'd like them to work on stem cell  
14 research so I could walk again, that would be a  
15 really big step in the right direction. Otherwise,  
16 my goals are pretty much are to make it through  
17 each day.

18 Q Are you trying to lose weight?

19 A I'm trying to lose weight, but I've hit a plateau and  
20 this hovering around at the same Number and it's -  
21 the only thing that could be more depressing is if  
22 it was going up.

23 Q Do you have an expectancy that you'll be driving in  
24 the near future?

1       **A**       I'd have to say I'm depressed.

2       **Q**       Can you describe it?

3       **A**       I'm depressed. Not the manic depressive,  
4       depressed, giving up depressed. Like, what's the  
5       point, that kind of depressed. I don't see the point  
6       of all this, going through all of this for no – you  
7       know, I know it's – I feel like I'm going through the  
8       motions, because it's expected of me to go  
9       through the motions. But that's all I'm doing is  
10      going through the motions. I'm not – there's a part  
11      of me that's not involved in this at all. It's  
12      removed itself from this and maybe I'll never  
13      accept it. Maybe I will, but right now everyday is  
14      just getting through the day. That's my big goal.

15      **Q**       When you feel like that, what do you think about?

16      **A**       I think about the fact that I wished I had been  
17      killed in the crash instead of just paralyzed. I  
18      think about how many Valium it would take. Dark  
19      thoughts. Things I shouldn't be thinking about but  
20      I do.

21      **Q**       Do you have any wishes?

22      **A**       I wish I could walk.

23                               **MR. PRITZKER:** I have no further  
24      questions.

1           life should be based on what that I want out of life,  
2           not for the benefits of somebody else's life.

3       Q       I understand. I'm just trying to - I'm just trying to  
4           see, though, for going forward for future things  
5           that you know you can be of help to Rebecca -

6       A       Right.

7       Q       -- and that's one of the things that is an  
8           encouragement for you to keep going on; right?

9       A       Right.

10      Q       And we understand that your relationship with Mr.  
11           Rhodes has changed but there's still - that  
12           relationship is still there that you told us about,  
13           and that's also yet another thing that's working for  
14           you to continue on, despite the problems; is that  
15           true?

16      A       If it's not going to get any better, I mean, I know I  
17           don't have guarantees that it's going to get any  
18           better, and that's probably the thing that hangs me  
19           up. That, I mean, if you could say to me, you  
20           know, you've done this in two-and-a-half years and  
21           look how much you've done and everything, and a  
22           real pep talk and everything then I might feel that  
23           way, but it's just been one big set back after  
24           another. And I'm just waiting for the - I'm always

1 Q And that's also an anti-depressant?

2 A I believe it is.

3 Q And the problem that you were having with these  
4 issues, I think Mr. Pritzker brought out the fact  
5 that you were self-medicating with also  
6 marijuana?

7 A Yes.

8 Q Two or three times a week before this accident to  
9 try to help with this issue before this accident  
10 happened?

11 A Right.

12 Q Am I correct that since the accident and even  
13 until today that those medications are things you  
14 still take for those issues, the Lithium?

15 A When I have them.

16 Q The marijuana as well?

17 A That's what I mean when I say when I have it.

18 Q The Wellbutrin as well?

19 A Yes.

20 Q And you told you that you also take Ritalin as  
21 well?

22 A Well Ritalin as needed when the Cylert wears off.  
23 Cylert is time released Ritalin.

24 Q And these medications that you take as well as



1       **Q**       Now, you described some changes about Rebecca  
2                   since the accident.

3       **A**       Yes.

4       **Q**       I think you told us about that. Now, before the  
5                   accident happened, am I correct, Ma'am, that  
6                   Rebecca was undergoing counseling for a couple  
7                   of years before this accident for some issues that  
8                   she had?

9       **A**       That's right.

10      **Q**       And she too had been taking antidepressants for a  
11                  couple of years before the accident?

12      **A**       She's been trying different ones.

13      **Q**       And I think she had been under – she had been  
14                  under professional care for those issues?

15      **A**       Right.

16      **Q**       And that care continued after the accident as  
17                  well?

18      **A**       Yes.

19      **Q**       I think from your deposition you were telling us  
20                  that one of the issues that Rebecca was dealing  
21                  with before the accident was some levels of  
22                  hostility that she had?

23      **A**       Some what?

24      **Q**       Levels of hostility.

1       **A**       Prior to the accident we were seeing a family  
 2               counselor who immediately recognized that the  
 3               problem that we had as a family was the lack of  
 4               communication between myself and my husband.  
 5               So Becca stopped seeing the family counselor and  
 6               I would go with Harold to see, her name is Linda,  
 7               and after the accident, at the time of the accident  
 8               Harold continued to see Linda and now he sees  
 9               Linda by himself. And I go in when there's an  
 10              issue, I'll go in with him, but right now, Linda is his  
 11              counselor.

12       **Q**       Fair enough.

13                       Now you had also told us that there  
 14              were some things that you did before the accident,  
 15              now I want to go back and clarify a couple of  
 16              things if I could, please.

17                       One of the things I think you told us  
 18              this morning was about the visits to the temple  
 19              and how often you would go. Am I correct, though,  
 20              Mrs. Rhodes, that before the accident, for some  
 21              time before the accident that you did not regularly  
 22              go to temple?

23       **A**       I didn't, No.

24       **Q**       And as far as from the high holidays would come

1 all of goes back into the inventory; is that correct  
2 statement?

3 A Right. Yes.

4 Q And am I correct, Ma'am, that whatever money  
5 that you did earn in that activity before the  
6 accident, and what you were doing in your attempt  
7 afterwards, you're not making a claim in this case  
8 for lost money because of the antiquing business;  
9 is that correct?

10 A Yes.

11 Q And I may have been mistaken when I heard this  
12 yesterday, but I think there was an indication that  
13 you liked to go to the movies but you have not  
14 been able to do it since the accident?

15 A No, actually I have gone to the movies since the  
16 accident. I just don't like going to the movies.

17 Q Okay. So, before the accident you didn't like to go  
18 -

19 A I didn't like to go then, and I don't like to go now.

20 Q All right. Fair enough. Fair enough.

21 There was also the issue you told us  
22 about the bursitis that you developed and the  
23 tendinitis because of using the manual wheelchair  
24 and the friction on the rug; do you recall that?

1       **Q**       And that's one of the goals you have; isn't it, really  
2                   is the kitchen is still modified for you to cook, you  
3                   would do things in there that you can do it?

4       **A**       Yes.

5       **Q**       And is one of the issues, Ma'am, that you need to  
6                   develop additional upper body strength as one of  
7                   the things that the doctor is pushing you towards  
8                   at this point?

9       **A**       That's a major issue.

10      **Q**       And the hope is that with increased upper body  
11                strength and the other issues that you talked  
12                about remains stable, that you become more  
13                independent?

14      **A**       That's a dream.

15      **Q**       And the more independent that you become, the  
16                more activities that you'll be able to do on your  
17                own without some of the help you're getting now?

18      **A**       That's true, except I have been unable to find an  
19                activity to fill the void of where antiques were.

20      **Q**       Fair enough, Ma'am. I'm just trying to understand  
21                what some of the basic activities, like eventually  
22                moving yourself from the bed to the wheelchair,  
23                that sort of thing.

24      **A**       Yes.

1       **A**       Not – well, no, not really because – well, using a  
2                   mall as an example, it's not something I normally  
3                   did. Doing – finding something that I could do on  
4                   my own, by myself, like with the antiques,  
5                   something to replace it, that, yes, that would be a  
6                   great long term goal. I haven't found anything to  
7                   fill in the void yet. I'm still looking but, if I had  
8                   free time, my first thoughts wouldn't be, oh, good,  
9                   let's go to the mall.

10       **Q**       Sure. Sure.

11       **A**       They only have new things at the mall and I want  
12                   the old things.

13       **Q**       All right. I think you told us that after the  
14                   accident you and Harold became, I suspect,  
15                   friends have been to dinner from time to time, at  
16                   restaurants that are wheelchair accessible?

17       **A**       Right.

18                               **MR. CONROY:** That's all I have.

19                   Thank you.

20                               **THE COURT:** Cross-examination.

21                               **MR. JOHNSON:** I have no questions,  
22                   your Honor.

23                               **THE COURT:** Mr. Boyle, cross-  
24                   examination.

1 trade jewelry on ebay -

2 A Well, I've been trying to liquidate, yes, I'm still -

3 Q And you've taken certain kind of jewelry that you  
4 are familiar with and you drive that - you've taken  
5 that with your caretaker to a place in Sturbridge  
6 where it's on sale?

7 A Yes.

8 Q In addition you were telling us that needlepoint is  
9 one of the things that you are very adept at doing?

10 A Yeah.

11 Q You've made like twenty portraits that you give  
12 away to friends -

13 A Yeah, I usually give it to them.

14 Q And relatives. I'm sorry?

15 A I usually give them away after I'm done with them.  
16 I frame them first.

17 Q And with respect to the driving, you, in fact, hope  
18 you'd have your driver's licence October of this  
19 year, but because of the unavailability of this  
20 fellow that teaches this, that has to be put off  
21 pending -

22 A Right.

23 Q -- his schedule.

24 A Right.

1       **Q**       And you told us that you were on four different  
2                   types of medications, Prozac, Wellbutrin, Lithium  
3                   and Cylert before the accident; correct?

4       **A**       Cylert and Ritalin. I'm not really clear, when the  
5                   Wellbutrin came in. There was Prozac, Lithium,  
6                   Cylert and Ritalin. But I'm not exactly sure if it  
7                   was after or before.

8       **Q**       How many of the medications were you on before  
9                   the accident? You were on Prozac; correct?

10      **A**       Four.

11      **Q**       Four?

12      **A**       Four.

13      **Q**       Plus the marijuana?

14      **A**       Yes.

15      **Q**       So you were taking five different medications, four  
16                   from doctors and one self medication?

17      **A**       Right.

18      **Q**       Five for the emotional health problems you had  
19                   before the accident.

20      **A**       Correct.

21      **Q**       Now with respect to – and with respect to the  
22                   bipolar and the Prozac, you've been treating with a  
23                   Dr. Aspell for many years before the accident;  
24                   correct?

1 was more of a person that got on the computer  
2 and made friends, penpals through the computer;  
3 correct?

4 A Yes.

5 Q Where she would visit out of state from time to  
6 time?

7 A Right.

8 Q And that she had problems because other kids  
9 were picking on her at school, things totally  
10 unrelated to this accident?

11 A Right.

12 Q And that was in years well before this accident;  
13 correct?

14 A Right.

15 Q And she was seeing a Dr. Merritt many years  
16 before this accident for her own emotional health  
17 issues; correct?

18 A Yes.

19 Q And she was seeing Dr. Merritt after the accident  
20 for those emotional health issues?

21 A Right.

22 Q With the same frequency before the accident as  
23 well as after the accident; correct?

24 A I'm not sure about that.



1                   **THE CLERK:** Would you stand and  
2                   raise your right hand, please. Do you solemnly  
3                   swear the testimony you shall give to the Court  
4                   and the jury in the case now on trial shall be the  
5                   truth, the whole truth and nothing but the truth, so  
6                   help you God?

7                   **THE WITNESS:** I do.

8                   **THE CLERK:** Thank you. You may be  
9                   seated.

10                                   **REBECCA RHODES, sworn**

11                   **DIRECT EXAMINATION BY MS. PINKHAM:**

12           **Q**           Would you tell the jury your name, please.

13           **A**           Rebecca Elizabeth Rhodes.

14           **Q**           Rebecca, who are your parents?

15           **A**           Marcia and Harold Rhodes.

16           **Q**           Where do you live?

17           **A**           Milford, Massachusetts, 11 Janok Road.

18           **Q**           Are you in school now?

19           **A**           Yes, I go to Milford High School.

20           **Q**           What grade are you in?

21           **A**           I'm a junior.

22           **Q**           When did classes start?

23           **A**           August 31st.

24           **Q**           And how are they going?

- 1     **A**       **With some of the cards you can do like little**
- 2               **battles. With Yu-Gi-Oh, they're called duels.**
- 3     **Q**       **Are they like card games?**
- 4     **A**       **Yes.**
- 5     **Q**       **And so how often do you do those card**
- 6               **exchanges?**
- 7     **A**       **I do them a lot with friends. I go to tournaments**
- 8               **sometimes.**
- 9     **Q**       **Tournaments?**
- 10    **A**       **They're at comic shops and sometimes at malls,**
- 11               **you have card tournaments where players will**
- 12               **compete against each other for a prize or a title.**
- 13    **Q**       **And how have you done in the tournaments that**
- 14               **you've been in?**
- 15    **A**       **I've done pretty well.**
- 16    **Q**       **Yeah?**
- 17    **A**       **I've been sponsored to go to bigger tournaments.**
- 18    **Q**       **Sponsored by whom?**
- 19    **A**       **Usually comic shops that I've already beaten all**
- 20               **the players and --**
- 21    **Q**       **And so what type of tournaments have you been**
- 22               **sponsored to go to?**
- 23    **A**       **The highest I've reached is state tournaments.**
- 24    **Q**       **And for Massachusetts?**

1 Q Before the accident, would your mom ever come  
2 into your bedroom?

3 A Yeah, all the time.

4 Q For what kinds of things?

5 A She'd come up to do my homework with me or to  
6 talk to me. Just hang out.

7 Q Ever supervise the cleanliness of the room at all?

8 A She tried.

9 Q Did you cooperate at all?

10 A I tried.

11 Q How often would your mother be in your room?

12 A If she wasn't completely swamped with her work,  
13 it would be every day.

14 Q Okay. I think you just said you did your homework  
15 in your bedroom?

16 A Usually if she wasn't busy, we would do it in my  
17 room. But if she was busy, then we would do it  
18 downstairs in the kitchen or the den.

19 Q Okay. And so what would your mom be busy with  
20 while you were doing your homework?

21 A Sometimes she would do a puzzle or crossword, or  
22 if she was really busy, she'd do inventory for her  
23 consignment shops.

24 Q Now, in addition to your Mom coming into your

1       **Q**       And so when you and your mom would go to either  
2                   a yard sale or a flea market together, did you have  
3                   kind of standard routine?

4       **A**       Yes, we'd usually leave the house for flea markets  
5                   around 8, and we'd leave the house for yard sales  
6                   around 7.

7       **Q**       And what would you do once you got to the yard  
8                   sale or flea market?

9       **A**       At the yard sale we would go to as many as we  
10                  could, until 11 or 12. And then if time allowed, I  
11                  would go to the comic shop after that, and I would  
12                  hang out with friends there and play cards.

13      **Q**       Okay. That's what I was going to ask. The comic  
14                  shop where they had these card challenges and  
15                  things?

16      **A**       Yes.

17      **Q**       Did you ever go out to eat with your mother on the  
18                  weekends when you were doing the yard sales and  
19                  flea markets?

20      **A**       We tried to do that on both days, but it was a lot  
21                  more common with the flea markets.

22      **Q**       Okay. And so what kind of flea markets would you  
23                  go to with your mom?

24      **A**       We'd go to the one in Grafton, which was our

1       **A**       **Yes.**

2       **Q**       **And what kinds of things would you do with her at**  
3       **the Natick Mall?**

4       **A**       **We would pretty much go into every store that we**  
5       **could, and we would go out to eat there at the**  
6       **Natick Mall. They have a Friendly's, which is our**  
7       **favorite restaurant to go to.**

8       **Q**       **Whose favorite restaurant is Friendly's?**

9       **A**       **Pretty much all the family's favorite restaurant to**  
10       **go to.**

11       **Q**       **When you go to the mall with your mother, did you**  
12       **have kind of a set -- you know, did you go every**  
13       **other week, or did you just go whenever you**  
14       **happened to have the opportunity?**

15       **A**       **We would go when we had the opportunity, but we**  
16       **would keep in mind that we would sometimes go**  
17       **as a family at least once a month.**

18       **Q**       **And what kinds of things would you do as a family**  
19       **when you'd go to the mall?**

20       **A**       **We would go shopping, sometimes we would stay**  
21       **together, sometimes we just split up. Mom and I**  
22       **would go to the arcade in the mall. Then we'd go**  
23       **out to eat if -- sometimes we'd go back to look at**  
24       **something and then we'd go home.**

1 I'd go to her consignment shops and antique shops  
2 a lot. Usually I would help her put inventory in and  
3 take inventory out. And then we would go and do  
4 something fun like the mall or the movies.

5 Q How often would you go to the stores with your  
6 mom?

7 A It could have been once a month, it could have  
8 been once a week. It depended.

9 Q Did she have any stores that you particularly liked  
10 to go to with her?

11 A She had some items in a store she had in  
12 Sturbridge, which I liked going to because usually  
13 after she was done with that, if it wasn't too late,  
14 we would go to Sturbridge Village, which wasn't  
15 even a mile away.

16 Q And how long did you spend in Sturbridge Village?

17 A We were just there, it would only be two hours, but  
18 sometimes it could be three, four.

19 Q And I think you had mentioned that you -- one of  
20 the things that you did with your mother was go to  
21 the Cape a couple of times. Tell me about the  
22 times that you'd go to the Cape with your mother.

23 A Every summer we'd go to the Cape twice. Once in  
24 July and once in August. We would go to Wellfleet

1 room?

2 A Yes.

3 Q And how did that work out?

4 A It was like two friends rooming together than  
5 being with a parent.

6 Q You wouldn't get on each other's nerves?

7 A No.

8 Q When you'd go to the amusement parks with your  
9 mother, what kinds of things would you do there?

10 A We would walk around. Usually the amusement  
11 parks we went to had a lot of games and they had  
12 a lot of mini attractions there. Usually she  
13 wouldn't go on the rides because she's not good  
14 with rides, but we would go a lot to the games.  
15 We'd walk around a lot. Usually when we wouldn't  
16 get home until late, or we'd just stay in a motel.

17 Q Now, of all the places that you have described  
18 going with your mother, would you typically get  
19 there by car?

20 A Yes.

21 Q And who would be driving you?

22 A It would be mom.

23 Q So what would you and your mom do while you  
24 guys were driving to wherever it was you were

1 forgotten about because I didn't have a well  
 2 memory, but once she took me to Chuckie Cheese.  
 3 Once she took me all the way to the Cape on the  
 4 weekend without telling me. She picked me up at  
 5 school. She already had my suitcase, and we just  
 6 drove down there.

7 Q When you were younger, did you ever have friends  
 8 over to celebrate your birthday?

9 A If mom was busy or if I just wanted to bring my  
 10 friends, they would sleep over.

11 Q And who would be in charge of getting that all set  
 12 up?

13 A If it was just a sleepover, then I would be the only  
 14 one in charge. But if there were other activities,  
 15 then it would be either mom, if she was driving, or  
 16 dad if he was driving.

17 Q And your mom testified there was a couple dogs at  
 18 your house right now.

19 A Yes.

20 Q Have you always had pets growing up?

21 A Yes.

22 Q And what kinds of things would you and your  
 23 mother do together with the dogs?

24 A We'd take the dogs for a walk almost every day, as



1 something. When we were done, depending on  
2 what kind of day it was and how long it took me to  
3 do my homework, sometimes afterwards we'd go  
4 shopping to Target or Wal-Mart, or we'd go to a  
5 movie if it was a Friday night, or we would stay  
6 home and watch a movie that was on TV.

7 Q And what was your -- after you finished your  
8 homework, who would get supper ready?

9 A It would usually be dad.

10 Q And what would you do after supper?

11 A Sometimes I'd call up my friends and talk to them  
12 and try to make plans for the weekend. Or we'd  
13 just talk. Or I'd go be with mom.

14 Q And what about when it was time for you to go to  
15 bed? Did you have kind of a bedtime routine that  
16 you followed?

17 A Dad would just come up from his work in the  
18 basement, tell me to go to bed. And I'd just kiss  
19 them good night, and I'd just go up to bed.

20 Q And where would your mother usually be when you  
21 kissed her good night?

22 A She would either be working downstairs like  
23 wrapping glass things together, to put into  
24 consignment shops for the next day, or in her

1                   MR. PRITZKER: The next witness  
2 was going to be Jane Mattson, who we've  
3 arranged -- that's the defendant's --

4                   THE COURT: Right.

5                   MR. PRITZKER: -- we've arranged to  
6 have first thing on Friday morning. Our expert,  
7 Adele Pollard, could have started, but she's just  
8 unavailable and couldn't get here today.

9                   THE COURT: Well, maybe you might  
10 want to at least talk -- think about some  
11 preliminaries with Mr. Rhodes.

12                  MR. PRITZKER: That I can certainly  
13 do.

14                  THE COURT: Okay.

15                  MR. PRITZKER: I could also --

16                  THE COURT: Because we -- you'll  
17 have an hour and a half to --

18                  MR. PRITZKER: -- fill.

19                  THE COURT: Well, no, to do some  
20 work now.

21                  MR. PRITZKER: And we can also put  
22 in some of the medicals.

23                  THE COURT: Sure. Okay.

24                  MR. CONROY: Are any depositions

1 MR. PRITZKER: I shouldn't have  
2 looked at -- he's the only one that didn't --

3 THE COURT: Okay.

4 MR. PRITZKER: Thank you, your  
5 Honor.

6 (Luncheon Recess)

7

8 THE COURT: All right. I think we're  
9 ready to continue.

10 REBECCA RHODES, Resumed

11 (By Ms. Pinkham)

12 Q Rebecca, before we broke for lunch, we were  
13 talking about your kind of daily routine before the  
14 accident. What about when you were sick, how  
15 was your daily routine changed?

16 A Usually dad was working in the basement all day,  
17 so if I was sick, I would stay in my room and just  
18 sleep. And mom would occasionally make soup or  
19 tea readily and bring it up for me.

20 Q So when you were sick, your mother would take  
21 care of you?

22 A Yes.

23 Q What about were there ever any times when you  
24 started to feel sick at school?

1 Cowan.

2 Q Are you still friends with Rachel and Lisa?

3 A Yes.

4 Q Rebecca, you testified earlier that you were  
5 thirteen when the accident happened. How old  
6 are you now?

7 A Sixteen.

8 Q Rebecca, do you remember how it was that you  
9 learned that your mom had been in an accident?

10 A I was in gym class, and I had to sit out because I  
11 was having a gastrointestinal attack, and I  
12 couldn't move. And I was sitting out and the  
13 school guidance counselor came and sat next to  
14 me. I asked her what was wrong, and she said,  
15 your father is coming to pick you up, your mother's  
16 been in a car accident.

17 Q So what did you do next?

18 A I first asked her did she know how bad it was, and  
19 she said she didn't know, she was just told to  
20 come get me.

21 Q Okay. So where did you go after she got you?

22 A I went with her to her office, to wait for my father.

23 Q And about how long did you wait for your dad?

24 A It couldn't have been more than ten minutes.

1 and I thought it was best not to bother him.

2 Q So what happened the next day?

3 A I got up to go to school. And he said, you don't  
4 have to go to school today.

5 Q What did you think when he said that?

6 A I thought that was very odd because he doesn't  
7 like me to skip school for any reason.

8 Q Did you ask about your mom again?

9 A I asked him and he said they don't know how she'll  
10 be, but I think she'll be okay.

11 Q Okay. Rebecca, at any point after that  
12 conversation did you learn about how serious your  
13 mother's injuries were?

14 A I didn't learn until the next day. And he had me  
15 stay home from school again, and he said, okay, I  
16 have to talk to you. And I asked him if it was  
17 about mom's accident, and he goes yes. And he  
18 asked me to sit down. I sat down and he said, I  
19 have really bad news.

20 Q And what did he say next?

21 A I asked him, well, is mom okay? And he said, well,  
22 she's going to live, but he said that was the good  
23 news. The bad news is she was going to be in a  
24 wheelchair.

1 town, but she had heard from Lisa that I had not  
 2 been in school all week. And the first thing she  
 3 asked me was, "Becca, are you all -- how are you?"  
 4 And I said, "Mom was in a car accident." And she  
 5 said, "How bad is it?" And I said, "she has to be in  
 6 a wheelchair." And she said, "Like, for how long?"  
 7 I told her, "All her life."

8 Q Did you talk about it any longer with Rachel that  
 9 day?

10 A She told me she was coming over. And I asked her  
 11 when, and she said, "Right now."

12 Q What time was it that you were on the phone with  
 13 her?

14 A Somewhere between 9 and 10.

15 Q And did she come over?

16 A Yes.

17 Q Were you happy to see her?

18 A Yes.

19 Q Rebecca, do you remember the first time you saw  
 20 your mom after the accident?

21 A It was that Friday. We got up really early, and I  
 22 remember really early, and we drove to the  
 23 hospital. I didn't talk to dad except when I told  
 24 him to get up because we were going to see mom.

1     **A**        **She was awake, but I could tell she was like**  
 2                **heavily medicated.**

3     **Q**        **Did she recognize you?**

4     **A**        **I went over to see her, and she looked at me, and**  
 5                **she took my hand.**

6     **Q**        **Did she talk to you?**

7     **A**        **She said, "Get me out of here, these people are**  
 8                **insane."**

9     **Q**        **And how did you respond when she said that?**

10    **A**        **I was happy because that's my mom's humor. And**  
 11               **to me that meant she was going to be okay.**

12    **Q**        **How long did you stay for that first visit?**

13    **A**        **I got out of there as soon as I could.**

14    **Q**        **Did you ever go back?**

15    **A**        **I went back one more time because I just wanted**  
 16               **to see if that was just a bad day, and that she was**  
 17               **better.**

18    **Q**        **And how was the second visit?**

19    **A**        **It was worse.**

20    **Q**        **After the second visit to your mom in intensive**  
 21               **care at UMass, did you go back to UMass again?**

22    **A**        **No.**

23    **Q**        **Why not?**

24    **A**        **Because if the first day was that bad, and the**

1 Q Did you go to see her then?

2 A Yes.

3 Q How were those visits?

4 A Those visits were better. There was no big metal  
5 bed. There was a normal bed. It was a private  
6 room, but it was a normal bed. There were still  
7 machines, and there were still a lot of beeping, but  
8 there was no big -- she was awake.

9 Q Did you still have to suit up in that gown thing you  
10 were talking about before?

11 A We did. We did that for all the time she was in  
12 that hospital. She had gotten pneumonia and we  
13 had to keep ourselves covered.

14 Q Did your Aunt Susan stay with you the whole time  
15 your mom was either in the hospital or the rehab.?

16 A She did, but soon after she came, my mom's  
17 parents, my grandparents came up to stay with me  
18 too.

19 Q And so at the time your mom was at Fairlawn  
20 Rehabilitation Hospital, who would get you up and  
21 ready for school and greet you when you came  
22 home?

23 A It would be either my Aunt Susan or my  
24 grandmother that would wake me up. When I got



1           **When they were sure it was finally gone, she got a**  
 2           **semi-private room, and we were allowed to bring**  
 3           **the dogs once a week to visit her.**

4       **Q       Did she enjoy that?**

5       **A       Balooka was confused by the sights and smells**  
 6           **and didn't immediately recognize mom, but Chili**  
 7           **recognized mom immediately.**

8       **Q       Did that make her happy?**

9       **A       Yeah.**

10      **Q       Did that make you happy?**

11      **A       Yes.**

12      **Q       Becca, during the time that your mom was either**  
 13           **at UMass or the rehabilitation hospital, do you**  
 14           **remember what you were thinking or feeling about**  
 15           **her injuries?**

16      **A       I knew she was going to be in a wheelchair, but I**  
 17           **didn't really believe yet that it was a life-long**  
 18           **thing. I thought that was a worst case scenario.**  
 19           **And I found out when she was moved to the semi-**  
 20           **private room, I don't remember who, but someone**  
 21           **told me that her being a paraplegic was the best**  
 22           **case scenario.**

23      **Q       How did that make you feel?**

24      **A       I stopped visiting mom again for a little bit, then I**

1       **Q**       So you say there were some kids who might have  
2                   picked on you in the past, but did that stop after  
3                   the accident?

4       **A**       Yes.

5       **Q**       Becca, after your mother got released from the  
6                   rehab center in April of 2002, what was your life  
7                   like then?

8       **A**       I thought that because she was released from the  
9                   hospital, she must be all better. And it didn't  
10                  occur to me until mom finally got home that our  
11                  house was not equipped for someone in a  
12                  wheelchair.

13      **Q**       So what was it like the first couple of months  
14                  when she was home at your house?

15      **A**       We had to change our living room that had a piano  
16                  in it. We had to change it into my mother's  
17                  bedroom. But it was very small and mom didn't  
18                  like it a lot, I didn't like it a lot. And with her  
19                  being in a wheelchair, it was very cramped.

20      **Q**       Were there lots of people at the house after your  
21                  mom got home?

22      **A**       When my mom got home, a lot of my friends and  
23                  my friends' families that have known us for all my  
24                  life were visiting a lot. My grandparents were

1 A Yes.

2 Q Did you like it?

3 A Yes.

4 Q Are you going to do it again?

5 A Yes.

6 Q Why did you start volunteering there?

7 A I was always interested in medical things, and I  
8 thought being in the hospital would be a good  
9 environment, either encourage or discourage me  
10 from going into the medical field, and I like helping  
11 people.

12 Q Rebecca, you said that before the accident you  
13 used to go into your mom's bedroom to talk with  
14 her a lot or watch TV, the bedroom on the second  
15 floor.

16 A Yes.

17 Q Do you still go into that room?

18 A I try my hardest not to.

19 Q Why?

20 A It's a reminder she'll never go in it again.

21 Q And what does your family use that room for now?

22 A A guest room.

23 Q Do you want to take a break?

24 THE COURT: Why don't we take a

1 do together?

2 A We can go to one or two flea markets, but because  
3 most of them are built on grass, and gravel, even  
4 the electric wheelchair can't maneuver through  
5 most of the flea markets.

6 Q What about do you -- when you spend time with  
7 your mom in the house now, what do you two do  
8 there?

9 A We still do my homework together in the new  
10 dining room that we had when the extension was  
11 built.

12 Q Have you ever traveled with your mom since the  
13 accident?

14 A We traveled down to Florida recently, but that  
15 didn't end very well.

16 Q Where in Florida did you go?

17 A It was near Orlando. We went with Peggy.

18 Q Peggy's the home health aide?

19 A Yes.

20 Q Was it just you, Peggy and your mom?

21 A Yes.

22 Q Did you drive or fly down to Florida?

23 A We flew.

24 Q Did you have fun on the trip?

1 could move, but then they required mom to have a  
2 photo ID, which she doesn't have because she  
3 doesn't have a license.

4 Q So what happened with that issue of the photo ID?

5 A They asked if we could vouch that she's who she  
6 says she is. I gave them my photo ID from my  
7 school ID, and then they said well, we still need  
8 some verification that she's who she says she is,  
9 which required three credit cards, which she had.

10 Q So your mom had the credit cards?

11 A Yes.

12 Q How did she get onto the plane itself?

13 A We had to bring the -- we had to bring the manual  
14 wheelchair because we couldn't get the electric  
15 one onto -- into the airport and near the plane.  
16 From her wheelchair, they had a small chair for  
17 her for the paralyzed, which they transferred her  
18 onto, which took Peggy and two of the flight  
19 attendants. And from that chair, they wheeled her  
20 to the aisle, the last aisle on the first class  
21 section, and they went in from there. They  
22 transferred her from the small chair to the airplane  
23 chair.

24 Q And did that process go smoothly?

1     **A**       **We rented an electric scooter instead, which took**  
 2               **another hour wait for it to charge.**

3     **Q**       **Did your mom use the scooter at Sea World?**

4     **A**       **She did, but it was very hard to control. It was**  
 5               **very heavy, getting in and out of the trunk. And**  
 6               **she had a lot of problems with it.**

7     **Q**       **Who dealt with getting the power scooter into and**  
 8               **out of the trunk?**

9     **A**       **Peggy did.**

10    **Q**       **Were there any incidences with the power scooter**  
 11            **and any of the times that your mom was using it?**

12    **A**       **We stopped at a mall on our way back from Sea**  
 13            **World, and when we got mom onto the scooter, the**  
 14            **scooter would not turn on. And we didn't**  
 15            **understand why. And we were trying to look**  
 16            **through the manual to figure out why the scooter**  
 17            **was not turning on as it should be. Eventually we**  
 18            **figured out because we needed to do something**  
 19            **with the wires on the motor, which was hard to do**  
 20            **with mom in the scooter and removing that part.**

21    **Q**       **But did you guys figure that out?**

22    **A**       **We did.**

23    **Q**       **Does the -- how much of -- how long did the --**  
 24            **strike that. How much of a power supply did the**

1           it, we would have to do it as a family, which we  
2           tried once, but we learned that the majority of the  
3           hotels and motels in Cape Cod, while being  
4           handicap accessible were not handicap friendly  
5           and they were not easy for us to use. We can't go  
6           to yard sales anymore. We can't go to most of the  
7           flea markets. We can't really go to an amusement  
8           park. We can occasionally go to movies, but like  
9           the mall, it makes mom very self-conscious about  
10          her wheelchair.

11        **Q**       You testified that you and your mom had a lot of  
12                catching up to do. Did you have the opportunity to  
13                talk to her a lot that first year after her accident?

14        **A**       As soon as she got out of the hospital, she had a  
15                lot of bed sores, so she -- and she was bedridden  
16                because of their location. As soon as those bed  
17                sores healed, more bed sores arose, and it took  
18                together ten months for the bed sores to clear up.  
19                During that time she was stuck in bed.

20        **Q**       Would you talk to your mother when she was in her  
21                bed?

22        **A**       I wouldn't be able to. She would either be  
23                sleeping or be around someone, such as my father  
24                or a doctor.

1       A       Hi.

2       Q       I just have a few questions I want to ask you.

3               Now, I understand that after the accident

4               happened, you missed a few days of school,

5               correct?

6       A       Yes.

7       Q       And you eventually got back to school full-time.

8       A       Yes.

9       Q       And you were a pretty good student before the  
10              accident happened?

11      A       Yes.

12      Q       You were around I think a -- you were a B student  
13              or your grades I guess, were an 85 or above --

14      A       Yes.

15      Q       -- as far as grades? And that pretty much  
16              continued after the accident?

17      A       Yes.

18      Q       As far as your grades went? And you're planning  
19              to go to college?

20      A       Yes.

21      Q       I think you said you like sciences.

22      A       Yes.

23      Q       And your relationship with your mom is different  
24              now --



1 to this day, will still help you with some things,  
2 some subjects; is that right?

3 A She would, but usually she's not home. She's  
4 usually at a doctor appointment.

5 Q But if she is home and you need some help, she's  
6 there to help you?

7 A If she is home, yes.

8 Q And that's pretty special time as well with your  
9 mom?

10 A Yes.

11 Q And I think you told us that, you know, although  
12 there are some limitations, you and your mom are  
13 able to go if you want to go to a mall, you try to do  
14 that once in a while?

15 A We try, yes.

16 Q But it's different now though, right?

17 A Yes.

18 Q But it's one of the things you look forward to doing  
19 with your mom?

20 A Yes, it's usually fun.

21 Q And do you see things getting better, Rebecca, as  
22 each day goes by?

23 A Very slowly, but yes.

24 Q That makes you feel pretty good?

1 MR. PRITZKER: -- for context.

2 THE COURT: Who's the deposition

3 of?

4 MR. PRITZKER: The first one is --

5 MS. PINKHAM: Octavio Rankin, your

6 Honor.

7 MR. PRITZKER: Mr. Daniel Brown

8 from my office will read the answers, your Honor.

9 THE COURT: All right.

10 MR. JOHNSON: Your Honor, there are

11 two issues with this transcript that if we could

12 bring it to your attention before we read it.

13 (CONFERENCE AT THE BENCH, AS FOLLOWS:)

14 THE COURT: Okay. Who's Mr.

15 Rankin?

16 MS. PINKHAM: He was the

17 designated safety witness for Penske.

18 THE COURT: Okay.

19 MR. PRITZKER: 30(b)(6).

20 THE COURT: Okay.

21 MR. JOHNSON: The plaintiff wants to

22 read in this question and the answer, and I had

23 objected to it because --

24 THE COURT: Okay. On Page 50, and

1                   **MR. JOHNSON:** On Page 68 -- Page  
2                   69, your Honor. This question and answer. If I  
3                   may, just before you ever read it, the question  
4                   addresses safety meetings.

5                   **THE COURT:** Is this the question  
6                   starting on Page 68, Line 19?

7                   **MR. JOHNSON:** Yes, it is.

8                   **THE COURT:** And we go down to 69,  
9                   Line 12.

10                  **MR. JOHNSON:** My objection to that  
11                  is, your Honor, the question talks about safety  
12                  training meetings. And relates back to other  
13                  information earlier on which has to do with GAF  
14                  safety meetings. Penske does not run its own  
15                  safety meetings. They may go and make  
16                  presentations at customers' safety meetings, so I  
17                  think it's misleading in terms of that question.

18                  **THE COURT:** But the precursor if  
19                  there's --

20                  **MS. PINKHAM:** Your Honor, if I could  
21                  --

22                  **MR. PRITZKER:** The answer is yes,  
23                  your Honor.

24                  **MS. PINKHAM:** On Page 7 he

1 THE COURT: Well, no, no. Well,  
2 whatever. All right, the objection is noted. All  
3 right.

4 (END OF BENCH CONFERENCE)

5 THE COURT: Members of the jury,  
6 this next order of business will be the reading of  
7 the deposition of Octavio Rankin, the Eastern  
8 Regional Safety Manager for Penske Truck  
9 Leasing. And it will be as though Mr. Rankin was  
10 sitting here live on the witness stand.

11 All right. You may proceed.

12 MR. PRITZKER: Thank you, your  
13 Honor.

14 DEPOSITION OF OCTAVIO RANKIN

15 (Read by Mr. Pritzker and Mr. Brown, as follows:)

16 Q "Could you state and spell your name for the  
17 record, please?"

18 A "My name is Octavio Rankin. O-C-T-A-V-I-O, last  
19 name Rankin, R-A-N-K-I-N."

20 Q "And do you have a middle name, Mr. Rankin?"

21 A "Alexander."

22 Q "And who are you employed by?"

23 A "Penske Truck Leasing."

24 Q "How long have you been employed by Penske?"

1           audit. So it's almost like a consultant."

2           Q        "So is it fair to say that you've been in the Safety  
3           Department for approximately sixteen years?"

4           A        "Well, with Penske, yes."

5           Q        "And has your title changed during those sixteen  
6           years?"

7           A        "Yes. I have become the Eastern Regional Safety  
8           Manager."

9           Q        "Are you familiar with the name Rollins?"

10          A        "Yes."

11          Q        "And Rollins Leasing?"

12          A        "Yes."

13          Q        "And what did you understand or do you  
14          understand is Rollins Leasing?"

15          A        "They were a former competitor that no longer  
16          exists. We bought them."

17          Q        "Now, Mr. Rankin, you previously testified that at  
18          some point Penske acquired Rollins."

19          A        "Uh-huh."

20          Q        "Do you have any knowledge of whether Penske's  
21          way of doing things, particularly regarding  
22          preventive maintenance programs was the same  
23          as Rollins?"

24          A        "I'm not in a position to give you a fair answer on

1           that we provide. We require a truck to be brought  
2           in at certain intervals, whether by a time frame or  
3           a mileage frame, you know. The truck has to be  
4           brought in for a certain type of maintenance."

5       Q       "And the reason you do that is?"

6       A       "To prevent breakdowns and accidents. In the  
7           interim between those required scheduled  
8           programs, then it is the obligation of the motor  
9           carrier, whether it in the leasing business or in the  
10          private industry. The regulations are very clear  
11          that, you know, it must be reported to the proper  
12          department for repairs to be done, and that is left  
13          up to the driver and the motor carrier."

14      Q       "Do you know whether Penske reserves the right  
15          to yank particular drivers from using its vehicles?"

16      A       "Do we reserve the right to pull the driver?"

17      Q       "Yes."

18      A       "If we are aware or made aware that there is a  
19          driver that poses a danger to the safety of the  
20          general public, I'm sure we most likely would tell  
21          the company we wouldn't want them behind the  
22          wheel of our truck."

23      Q       "Does Penske have standard materials that it  
24          distributes to its customers at safety training

1       **A**       **"The vehicle inspection report is a record of what**  
 2                   **a driver looks for and what a driver may find with a**  
 3                   **commercial motor vehicle prior to operating that**  
 4                   **vehicle and after operating that vehicle on a daily**  
 5                   **basis."**

6       **Q**       **"And are you familiar with those requirements?"**

7       **A**       **"Yes, I am."**

8       **Q**       **"So can you explain them to me?"**

9       **A**       **"Code of Federal Regulations, Part 396, and Parts**  
 10                   **of 392 -- these are codes -- require a driver to**  
 11                   **periodically inspect the vehicle, especially when**  
 12                   **they go to start a day's work. I mean, how much**  
 13                   **detail do you want me get into?"**

14       **Q**       **"Just give me the general gist."**

15       **A**       **"The driver will review an inspection report left by**  
 16                   **the previous driver. That's the process. He will**  
 17                   **review it. He will do his walk around. When we**  
 18                   **say walk around, we mean his inspection. He will**  
 19                   **then either agree or disagree with the previous**  
 20                   **driver's report, and he will so note that information**  
 21                   **or his findings on that report. He will then go**  
 22                   **about his business. When he is done with that**  
 23                   **piece of equipment, he will then fill out his own**  
 24                   **report and keep his copy, and supply the balance**

1           this. Then they will restart the system, let the air  
2           build up and make sure it does build up correctly.  
3           Then with the engine -- again, with the engine off  
4           and the system fully recharged, they will hold the  
5           brake pedal down and see if there's any sufficient  
6           loss of air pressure in a certain time period,  
7           depending on the size of the vehicle, to determine  
8           if there's an air leak. The process is not for a  
9           driver to repair but to identify. And if at any time  
10          the driver has any suspicions that there may be  
11          something wrong with the brakes, all he's required  
12          to do is report it, not operate the truck until it's  
13          repaired."

14                       MR. PRITZKER: That's the end of this  
15          deposition, your Honor.

16                       THE COURT: All right.

17                       MR. JOHNSON: Your Honor, I believe  
18          the plaintiffs now would like to read another  
19          Penske deposition, but again may we approach  
20          side bar for one moment?

21          (CONFERENCE AT THE BENCH, AS FOLLOWS:)

22                       MR. JOHNSON: Your Honor, I believe  
23          that -- I haven't had a chance yet to go through  
24          this. There's a lot of testimony that they're going



1                   **THE COURT:** All right. Members of  
2                   the jury, the next deposition to be read will be that  
3                   of John Hille, the District Service Manager for  
4                   Penske Truck Leasing in New Jersey.

5                   **MR. PRITZKER:** Your Honor, while  
6                   they straighten that out, perhaps I could read into  
7                   the record a stipulation.

8                   **THE COURT:** You may.

9                   **MR. PRITZKER:** This is a factual  
10                  stipulation, ladies and gentlemen, between the  
11                  plaintiffs and the defendant Penske Truck Leasing.  
12                  And it reads as follows:

13                  **"The Plaintiffs Marcia Rhodes, Harold**  
14                  **Rhodes, individually and on behalf of his minor**  
15                  **child and next friend, Rebecca Rhodes, and the**  
16                  **defendant Penske Truck Leasing Corp. (Penske)**  
17                  **hereby stipulate as follows: The tractor operated**  
18                  **by Carlo Zalewski on January 9, 2002, was owned**  
19                  **by Penske and identified as Tractor Number**  
20                  **5506563. The trailer operated by Carlo Zalewski**  
21                  **on January 9, 2002, was owned by Penske and**  
22                  **identified as trailer Number 5780137. At all**  
23                  **relevant times, Penske was responsible for the**  
24                  **inspection, maintenance and repair of Tractor**

1 through November 9, 2001. The trailer records  
2 and the entries contained therein were made in  
3 good faith, were made in the regular course of  
4 business, were made before the plaintiff filed the  
5 complaint in this action, and in accordance with  
6 Penske's regular course of business were made at  
7 the time of the events recorded or within a  
8 reasonable time thereafter.

9 "Penske conducted a search for  
10 additional maintenance records for trailer Number  
11 -- for the trailer for maintenance that was  
12 performed after June 7th, 2001, but none were  
13 found. Thus, the maintenance records from June  
14 14, 2000, through November 9, 2001, represent all  
15 the maintenance records in Penske's possession,  
16 including records of preventative maintenance for  
17 the trailer between June 14, 2000, and January 9,  
18 2002.

19 "When preventative maintenance is  
20 performed on trailers, a preventative maintenance  
21 checklist is completed. The only preventative  
22 maintenance checklist that exists for the trailer  
23 from the in-service date to the date of the  
24 accident is for September 6, 2000. Preventative

1           preventative maintenance performed on the  
2           tractor from January 5, 2000, through January 10,  
3           2002. The tractor records and the entries  
4           contained therein were made in good faith, were  
5           made in the regular course of Penske's business,  
6           were made before the plaintiffs filed the complaint  
7           in this action, and in accordance with Penske's  
8           regular course of business were made at the time  
9           of the events recorded therein or within a  
10          reasonable time thereafter.

11                        "Penske conducted a search for  
12          additional records of maintenance that was  
13          performed on the tractor between January 5, 2000,  
14          through the date of the accident, January 9th,  
15          2002, but none were found.

16                        "When preventative maintenance is  
17          performed on tractors, a preventative  
18          maintenance checklist is completed. The only  
19          preventative maintenance checklist that exists for  
20          the tractor between January 5, 2000, through the  
21          date of the accident, are from April 21, 2000, June  
22          18, 2000, September 1, 2000, March 2, 2001, and  
23          June 21, 2001.

24                        "Preventative maintenance was

1 the next exhibit.

2 THE COURT: Any objection?

3 MR. BOYLE: No objection, you Honor.

4 THE COURT: All right. That may be  
5 marked Exhibit 36.

6 (Stipulation received and  
7 marked Exhibit Number 36.)

8 MS. PINKHAM: Your Honor, could we  
9 approach before beginning the next testimony?

10 (CONFERENCE AT THE BENCH, AS FOLLOWS:)

11 MS. PINKHAM: Your Honor, these are  
12 the trailer records that have been stipulated to by  
13 Penske as the maintenance records for the trailer.  
14 This document is the checklist that was produced  
15 after I asked during deposition on the record  
16 where were the checklists, this document was  
17 produced by Penske. I intend to introduce both as  
18 exhibits.

19 THE COURT: All right. Is there any  
20 objection?

21 You have to talk to me. Is there any  
22 objection?

23 MR. JOHNSON: There is an objection.  
24 I'm not sure what part of the deposition that

1                   that Penske subsequently produced to say --

2                               MR. JOHNSON: They can use it. I  
3                   have no objection.

4                               THE COURT: Okay.

5                               **(END OF BENCH CONFERENCE)**

6                               MS. PINKHAM: Your Honor, the  
7                   plaintiffs call John Hille.

8                               THE COURT: All right.

9                               **DEPOSITION OF JOHN HILLE**

10                   **(Read by Ms. Pinkham and Mr. Brown, as follows:)**

11           Q           "Good morning, Mr. Hille."

12           A           "Good morning."

13           Q           "What is your current title at Penske?"

14           A           "District Service Manager, Pine Brook location,  
15                   Pine Brook, New Jersey."

16           Q           "Could you describe for me your employment  
17                   history, starting with high school?"

18           A           "Starting from high school, that's a long time. I  
19                   graduated out of Brooklyn Automotive in Brooklyn,  
20                   New York. Went to work for Diamond T Trucks in  
21                   Greenpoint, Brooklyn. Worked for them for I would  
22                   say five years or so, and then we went out to work  
23                   for someone else in the same business, truck  
24                   repairs."

1 Q "When did you start at Penske?"

2 A "In 1985."

3 Q "So you have been employed by Penske alone  
4 since 1985?"

5 A "Yes."

6 Q "Can you tell me, when was the first time you  
7 learned about the accident that's at issue in this  
8 case?"

9 A "I would say about a year ago in a meeting."

10 Q "So you think you first learned about this accident  
11 in the fall of 2002?"

12 A "Yes. Somewhere around there. I don't remember  
13 the date that it was."

14 Q "So there were four people from Penske, and  
15 apparently four or five people from GAF at this  
16 meeting?"

17 A "Yeah, I think that's what it was."

18 Q "And can you summarize for me what was  
19 discussed at the meeting?"

20 A "We discussed about repairs on trucks and the  
21 drivers bringing them in, and also it was  
22 mentioned about this accident."

23 Q "What specifically was discussed about the drivers  
24 bringing the trucks in?"

1 of the reasons we were there is because we need  
2 to make sure everything is going well with the  
3 trucks because of the accident."

4 Q "If GAF brought a truck in at the end of driver's  
5 route because he wanted something looked at,  
6 and it couldn't be fixed right away, say by 11  
7 o'clock at night, would it be stored in the garage  
8 until the next morning?"

9 A "If the facility closed, it would be stored on the  
10 facility. Not in -- basically in the garage."

11 Q "And how does Penske secure the facilities where  
12 it has mechanic operations?"

13 A "There's a fence around it."

14 Q "Is there a gate?"

15 A "Yes. When the place is closed, the gates are  
16 locked."

17 Q "Were only Penske employees allowed into the  
18 facility in nonworking hours?"

19 A "Yes."

20 Q "And if a driver came while the facility wasn't  
21 open yet, the driver would have to wait outside the  
22 locked gate?"

23 A "Yes."

24 Q "And who would typically let the drivers in?"

1           they could leave it, yes."

2       **Q**       "And was that common practice?"

3       **A**       "Yes."

4       **Q**       "And could GAF drivers -- actually, could they wait  
5           in the service area of the facility?

6       **A**       "No."

7       **Q**       "So how would a GAF driver -- say it's a brand-new  
8           driver, how would the GAF driver know what the  
9           routine was when he brought a truck in for  
10          repairs?"

11      **A**       "It would be explained to him he has to wait in the  
12          break room."

13      **Q**       "So how does the driver know when the vehicle is  
14          repaired?"

15      **A**       "Someone gets him from the break room, tells him  
16          his truck is ready, shows him where it is, gives  
17          him the keys."

18      **Q**       "Is that somebody from the Service Department?"

19      **A**       "Yes."

20      **Q**       "Mr. Hille, you understand you're the lucky person  
21          who was picked to come testify at this deposition  
22          on behalf of Penske?"

23      **A**       "Yes."

24      **Q**       "And you understand that you are Penske's



1 in and says 'I blew the transmission,' are there  
2 guidelines for the amount of time it's supposed to  
3 take Penske to fix the transmission, or whatever  
4 the problem is?"

5 A "Well, that's what we call a major repair. And  
6 that's not going to get done in any quick time, so  
7 we would automatically give them another truck to  
8 continue on their way."

9 Q "You testified previously that you have a certain  
10 amount of time in which you are supposed to make  
11 repairs?"

12 A "Yes."

13 Q "Who identifies that time period?"

14 A "Basically, the normal deal would be we get at  
15 least two hours to take care of the truck. If we  
16 can't fix it in that time, we need to make sure, so  
17 it doesn't interrupt the customer's business, we  
18 give them another truck to continue on his way."

19 Q "So if you think the repair is going to take more  
20 than two hours, they get a replacement vehicle?"

21 A "Yes."

22 Q "If the problem is with the trailer and the tractor  
23 works fine, is the replacement vehicle just a new  
24 trailer, or is it both a new trailer and new tractor?"

1           **Going back at that time, South Brunswick."**

2           **Q        "So they'd call South Brunswick and find out if**  
3           **they had a tractor?"**

4           **A        "Yes."**

5           **Q        "And South Brunswick says, yeah, we have one,**  
6           **how does it get to South Plainfield?"**

7           **A        "We have two methods. One we take the driver**  
8           **down to the truck, or we have what we call a hiker**  
9           **available. We will have him hike it up to the --**  
10          **from South Brunswick to South Plainfield."**

11          **Q        "Is the hiker somebody there to drive the vehicle?"**

12          **A        "Yes."**

13          **Q        "Is that a specific position at Penske?"**

14          **A        "All Penske locations have hikers that work**  
15          **certain times during the day and night, to pick up**  
16          **and deliver equipment."**

17          **Q        "Who makes the initial decision of whether a**  
18          **replacement vehicle would be assigned to a**  
19          **customer?"**

20          **A        "The supervisor."**

21          **Q        "In the maintenance department?"**

22          **A        "Yes."**

23          **Q        "The complaint form that you referenced when a**  
24          **driver brings a vehicle in, will the driver already**

1 own people go out after him and take a look at it,  
 2 or we have vendors that we use. We will send one  
 3 of them out, depending on what the breakdown is.  
 4 The other option is if he's too far away from a  
 5 Penske location, to call our SOS Number, which is  
 6 a 24-hour, 7 day a week road service, which they  
 7 will do the exact same thing that we would do."

8 Q "And the staffing of the SOS service, is it  
 9 essentially the same people that the mechanics  
 10 would use because you said you had your own  
 11 people?"

12 A "When I say our own people, I mean we would  
 13 send one of our mechanics out after them if he  
 14 was close enough. If not, we would use a vendor."

15 Q "What if the vehicle had to be towed?"

16 A "We would call a tow service. We do not have tow  
 17 trucks."

18 Q "So the driver would call the local shop if there  
 19 was one in proximity. Is there a general guideline  
 20 of call the local shop if you're within 50 miles, or  
 21 is it pretty much up to the driver?"

22 A "Well, we try and tell them if you're close, call us.  
 23 If you're running out of our location, a lot of  
 24 drivers have the book in the vehicle which gives

1 of time, you get to know some of the drivers, and  
2 have a good rapport with them, and you always  
3 talk to them, and they always know that if they  
4 have a problem, they can call you."

5 Q "After Penske acquired Rollins, was the GAF fleet  
6 split up amongst three different locations, or just  
7 assigned to South Plainfield?"

8 A "Two locations."

9 Q "Which locations?"

10 A "South Plainfield and Linden."

11 Q "So did you have any understanding of whether the  
12 GAF fleet could pick and choose between South  
13 Plainfield or Linden, or were there certain  
14 guidelines and procedures set out for dealing now  
15 with maintaining this additional fleet?"

16 A "The customer was transferred to South Plainfield  
17 because it was the closest location to them. The  
18 couple vehicles that were left in Linden were left  
19 to the Linden facility because they ran out of  
20 Linden."

21 Q "Mr. Hille, Cookie Rankin was here early last  
22 week, and he described for me a procedure that  
23 every driver is supposed to follow in checking out  
24 the vehicle before it's driven. Are you familiar

1 vehicle condition report?"

2 A "Other than the location directory and the  
3 registration and their permits and stuff, that's it."

4 Q "If a driver picks up a truck and there isn't a  
5 vehicle condition report there, would Penske  
6 care?"

7 A "Yes, because they came with -- it came in with  
8 one, it needed to be addressed and signed off on."

9 Q "Let me ask it a different way. Who is responsible  
10 for making sure that vehicle condition reports are  
11 in the vehicles?"

12 A "The driver."

13 Q "How does the driver know he's responsible for  
14 making sure that there are vehicle condition  
15 reports in the truck?"

16 A "It's in the DOT log that it has to have a vehicle  
17 condition report."

18 Q "So does Penske give the vehicle condition reports  
19 to the drivers?"

20 A "We give them the blanks."

21 Q "And so when a driver runs out of blank forms,  
22 what's the driver supposed to do?"

23 A "Stop at a Penske location and pick up more."

24 Q "And how do they know they're supposed to do

1 Q "Can you tell me whether Unit 2 is the tractor or  
2 trailer that was involved in the accident that  
3 brings us here today?"

4 A "The trailer."

5 Q "And Unit Number 1 is the tractor?"

6 A "Yes."

7 Q "And the D stands for driver?"

8 A "Yes."

9 Q "Have you ever seen any other citation sheet, I  
10 guess I will call them?"

11 A "Yes."

12 Q "And is it a standard that tractors are always  
13 identified as Number 1 and trailers are Number 2?"

14 A "Yes."

15 Q "Focusing your attention on the second violation  
16 that's identified for Unit Number 2, do you see how  
17 it says 'inoperative/defective brake or brakes'? I  
18 think it says Number 5, light inoperative.?"

19 A "Yes."

20 Q "So if I say driver's side of the vehicle, do you  
21 understand that I mean the left side of the  
22 vehicle?"

23 A "Yes."

24 Q "And if I say the passenger side of the vehicle, you

1       A       "Serious accidents."

2       Q       "And what's your understanding of Penske's policy  
3               and why it does that?"

4       A       "To determine whether it was the fault of the  
5               truck, that we might have missed something that  
6               we could have caught to prevent something."

7       Q       "Do you know who Marilyn Sevigny is? S-E-V-I-G-N-  
8               Y?"

9       A       "Yes."

10      Q       "And did you know her as the Branch Manager of  
11              Linden?"

12      A       "Yes.

13      Q       "Mr. Hille, can you look back at the document that  
14              was marked as Exhibit Number 1, I think you  
15              called it a citation."

16      A       "Yes."

17      Q       "Up at the top left-hand side, can you see that the  
18              citation is addressed to GAF Building Materials  
19              Corp.?"

20      A       "Yes."

21      Q       "And the address is in Wayne, New Jersey?"

22      A       "Yes."

23      Q       "Do you know whether it's standard that GAF  
24              would get the citation for violations, even though

1 A "Yes."

2 Q "Back to Exhibit Number 4. Have you had the time  
3 -- do you need to read this to yourself? Because  
4 I'm going to ask you a couple of substantive  
5 questions about it."

6 A "That's okay."

7 Q "Anywhere in this letter does the Linden branch  
8 manager indicate that brake Number 5 is actually  
9 working?"

10 A "No."

11 Q "Mr. Hille, now you have the document that's been  
12 marked as Exhibit Number 7. That's actually a  
13 collection of documents that starts with PMCA  
14 0335 and goes through PMCA 0342."

15 A "Yes."

16 Q "Have you ever seen those types of documents  
17 before?"

18 A "Yes."

19 Q "And generally, what do you recognize them to  
20 be?"

21 A "Fuel receipt, trip report, scale receipt, driver's  
22 writeup. Yes, driver's vehicle inspection report. A  
23 bill of lading, packing slip material, an analysis of  
24 the equipment, I mean the parts being delivered,



1 Q "When they punch in the vehicle Number, they  
2 would punch in the tractor Number because that's  
3 where the gas goes?"

4 A "Yes, the tractor."

5 Q "So whoever it is that operates the pump would  
6 give the receipt to the driver?"

7 A "Yes."

8 THE COURT: Why don't we suspend  
9 at this point. You may step down.

10 Members of the jury, if you fold up  
11 your notebooks, lay them on the chair, they'll be  
12 there tomorrow morning. My two instructions, you  
13 are not to discuss the case among yourselves or  
14 with anyone, you're not to read anything about this  
15 case, you're not to go on the Internet to search  
16 out any information about the case, and if you'll be  
17 in the jury room tomorrow morning at quarter of 9,  
18 we'll start right at 9 o'clock.

19 (Jurors recessed for the day)

20 (CONFERENCE AT THE BENCH WITH A JUROR, AS  
21 FOLLOWS:)

22 THE COURT: Hi. You're in seat

23 Number --

24 JUROR: Two.

1           aside your own personal involvement in this and  
2           just look at what her condition, what her  
3           complaints are, and discuss it at the appropriate  
4           time with all the other jurors and make a rational  
5           decision as to --

6                       JUROR: Okay.

7                       THE COURT: -- the issues that she's  
8           presenting you folks with.

9                       JUROR: Okay.

10                      THE COURT: Can you do that?

11                      JUROR: I think so.

12                      THE COURT: Will you do that?

13                      JUROR: Yeah. I think I was more  
14           upset earlier, and then after I had a lunch break  
15           and stuff, I calmed down a little.

16                      THE COURT: Okay.

17                      JUROR: I think maybe I just got a  
18           little -- I don't know.

19                      THE COURT: Okay. So --

20                      JUROR: Like it was me up there or  
21           my family up there --

22                      THE COURT: Okay.

23                      JUROR: -- being like questioned  
24           about that.

1 then following -- is that the only one we have to  
2 take out of order tomorrow?

3 MR. PRITZKER: Yes.

4 MR. CONROY: Yes.

5 THE COURT: Then where are we  
6 going?

7 MR. PRITZKER: We'll finish this  
8 deposition transcript.

9 THE COURT: Right.

10 MR. PRITZKER: And then --

11 MS. PINKHAM: We'll cross Jane  
12 Mattson.

13 MR. PRITZKER: Yeah, we have to  
14 cross --

15 THE COURT: I know, I understand.

16 MS. PINKHAM: And then we'll put Dr.  
17 Roaf on the stand.

18 MR. PRITZKER: Dr. Roaf. Yeah,  
19 that's right.

20 THE COURT: How long will that be?  
21 Because we're going right to 4 o'clock tomorrow.

22 MS. PINKHAM: Sure.

23 MR. PRITZKER: We will have  
24 witnesses lined up. So after Dr. Roaf, there's

1 can.

2 MR. PRITZKER: We've Dr. Biesaw,  
3 we've got most of Harold Rhodes, who I would  
4 assume -- this is for Monday. We've got the video.

5 THE COURT: Mm-hmm.

6 MR. PRITZKER: We've got Dana  
7 Hewins, who's the economic expert.

8 THE COURT: Okay.

9 MR. PRITZKER: And I think that's it.

10 THE COURT: Elizabeth Roaf?

11 MS. PINKHAM: Yes.

12 MR. PRITZKER: She's going to be  
13 Friday.

14 MS. PINKHAM: Adele's done on  
15 Friday.

16 THE COURT: Okay. All right. So I  
17 mean there is a possibility that you may be all  
18 concluded Monday --

19 MR. PRITZKER: Monday or Tuesday.

20 THE COURT: -- or Tuesday morning.  
21 Okay. And then --

22 MR. CONROY: The indications are  
23 now we're going to go to 1 on Tuesday or you think  
24 late Tuesday?

1 MR. BOYLE: Your Honor --

2 THE COURT: Yes.

3 MR. BOYLE: -- addressing the issue  
4 raised by the juror --

5 THE COURT: Yes.

6 MR. BOYLE: -- I was very concerned  
7 with her remark that she made a comment  
8 something like how it would be for me and my  
9 family to be asked questions about --

10 THE COURT: No, she didn't put it that  
11 way. She said I thought of me and my family up  
12 there on the --

13 MR. BOYLE: -- being asked those  
14 questions.

15 THE COURT: Well, she didn't say  
16 that.

17 MR. PRITZKER: I believe she said  
18 that --

19 THE COURT: While at the side bar,  
20 it's on the record what she said.

21 MR. BOYLE: I believe the substance  
22 of it was that she was identifying those people  
23 because of her own personal experiences, and  
24 that it could very well be that the cross-

1 THE COURT: Your objection --

2 MR. CONROY: The Court has spoken  
3 to the issue.

4 THE COURT: I know that --

5 MR. JOHNSON: Penske's objection,  
6 your Honor.

7 THE COURT: Well noted, gentlemen.

8 MR. PRITZKER: Thank you, your  
9 Honor.

10 THE COURT: Thank you.

11 SIDE BAR CONFERENCE

12 THE COURT: Hi. You're in Seat  
13 Number?

14 JUROR: Two.

15 THE COURT: Two. Juror 6-3.

16 JUROR: Mm-hmm.

17 THE COURT: Yes.

18 JUROR: Just something that came up  
19 earlier this morning when she was talking about  
20 bipolar and depression, my brother is bipolar and  
21 my dad suffers from depression. I've taken  
22 medication too. I didn't know if that was, like, a  
23 problem at all, like, I'm a little sensitive about  
24 issues like that, like talking about the medications

1 JUROR: Yeah, I think – I just was  
2 more upset earlier and then after I had a lunch  
3 break and stuff I calmed down a little.

4 THE COURT: Okay.

5 JUROR: I think maybe I just got a  
6 little, um, I don't know.

7 THE COURT: Okay.

8 JUROR: I felt like it was me up there  
9 and my family up there, being like questioned  
10 about that.

11 THE COURT: Okay. But now would  
12 you put all of those personal issues aside and just  
13 listen to the evidence in this case?

14 JUROR: Mm-hmm.

15 THE COURT: Yes?

16 JUROR: Yes.

17 THE COURT: Okay. Thank you.

18 JUROR: I just didn't know, so I just  
19 let –

20 THE COURT: No, I'm glad you told us.  
21 I'm glad you told us. All right. You can go out that  
22 door.

23 JUROR: Thank you.

24 (juror leaves)

1 because of her own personal experiences. And it  
 2 could very well be that at cross-examination by  
 3 defense counsel with respect to issues of bipolar,  
 4 emotional issues which I raised among other  
 5 counsel, is something that she may be quite  
 6 critical of and I think because she's got these  
 7 problems and thought that, how would I feel, my  
 8 family, that she ought to be excused.

9 THE COURT: I'm not going to  
 10 because I think that she is capable of putting  
 11 those issues aside. I pressed her on that to see if  
 12 she could be – put all of those things aside and be  
 13 an impartial juror. And I've come to the  
 14 conclusion that she can be. If something else  
 15 comes up, obviously then we'll address at that  
 16 point. But right now I think – and to be honest  
 17 with you, I think the cross-examination was very –  
 18 it was good and it didn't – it wasn't overbearing  
 19 and just brought out the issues that you people  
 20 wanted to be brought out, so.

21 MR. CONROY: Judge, for the record,  
 22 I would also join the same objection.

23 THE COURT: I'm sure.

24 MR. CONROY: And for the same



**C E R T I F I C A T E****COMMONWEALTH OF MASSACHUSETTS****NORFOLK, ss.**

I, Dawna M. Chapin, an Official Court  
Reporter in and for the Commonwealth of Massachusetts,  
do hereby certify that the foregoing transcript represents  
a complete, accurate and true copy of my notes taken in  
the above-entitled matter, to the best of my knowledge,  
skill, and ability.

**Dawna M. Chapin**

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