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1 Dr. Schuster - by Plaintiff - Cross  
 2 pretty often.  
 3 Q But he is not wearing it all day long?  
 4 A He wouldn't be wearing a TENS unit all day long  
 5 anyway. That's not how it works.  
 6 Q And home maintenance you said is out?  
 7 A It is. It is a condo, not a house.  
 8 Q And a housekeeper? Are you saying he is not capable  
 9 of vacuuming; yes or no?  
 10 A Maybe. Depends what is necessary do it. Depends how  
 11 he feels that day.  
 12 Q How large is the apartment he has got down there?  
 13 A I don't -- I don't -- I have to go look.  
 14 Q Sir, are you saying he is physically or mentally  
 15 incapable of vacuuming?  
 16 A I think it is an issue more mentally than physically.  
 17 Q So he doesn't know there is dirt on the ground?  
 18 A No, I don't think that's the issue. It's the same  
 19 issue I said why it was good for him to have a personal trainer.  
 20 There are just issues in terms of mobilizing himself effectively  
 21 in getting things done. So when you talk to him about issues,  
 22 fill out the adaptive behavior skill, and I said, How  
 23 consistently can you do things like tasks around your house or  
 24 things like that, and he reported severe difficulties in  
 25 consistently being able to do them. If you want examples, I can  
 26 give them to you.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 Q Let me follow up. Did you ever visit his apartment?  
 3 A No.  
 4 Q Did you ever send anybody to visit his apartment?  
 5 A No.  
 6 Q So you don't know whether it is in need of a  
 7 housekeeper or not from anybody's personal observation other  
 8 than Mr. Barra, is that correct?  
 9 A That's correct.  
 10 Q Now, what medication was he on when he took your  
 11 tests?  
 12 A Three years ago?  
 13 Q If that's when he took the tests.  
 14 A He filled out the inventory at that time. He didn't  
 15 do any neuropsych testing the last time.  
 16 Q So the first time you said you say in you said you did  
 17 some testing?  
 18 A Yes.  
 19 Q What medications was he taking? Do you have it in  
 20 your report?  
 21 A Let's see. I would say he was on the pain medications  
 22 at that point.  
 23 Q Do you have it in your report what he was taking or  
 24 not?  
 25 A He still was taking pain medications.  
 26 Q Which ones, at what dosage, and when was the last time

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1 Dr. Schuster - by Plaintiff - Cross  
 2 he took it before the testing?  
 3 A Gee wiz, that I can't recollect off the top of my  
 4 head.  
 5 Q Do you have it anyplace there?  
 6 A I don't have it specifically in my report.  
 7 Q Would you agree that medications that somebody takes  
 8 could affect their test scores on the tests us were  
 9 administering?  
 10 A It could lower or raise their scores.  
 11 Q But you don't have a way for accounting for it to rule  
 12 out whether those medications affected his score one way or  
 13 another, do you?  
 14 A No. Nor could I account for -- by this stage of the  
 15 game, there are so many factors impeding here. He has the  
 16 psychiatric factor he is taking the psychiatric medications for.  
 17 Is that helping the score. He is taking pain medication that's  
 18 sedating. Is that helping to score? If he is on pain, is that  
 19 going to affect the score? Yes.  
 20 All this is completely confabulated. So you are  
 21 right, there are multiple factors here and I can't tease out the  
 22 factors. All I can tell you is that this is the way this guy  
 23 functions at this point in his life with his current medication  
 24 and current condition. That's all I can tell you. I can't  
 25 tease it out.  
 26 Q All right. So let's see if I understand that answer.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 You don't know what medications he was on; is  
 3 that correct, yes or no?  
 4 A Specifically?  
 5 Q Yes, specifically.  
 6 A He was on the pain medications when I sue him  
 7 originally in 2012.  
 8 Q Which medication?  
 9 A Probably he was on Vicodin.  
 10 Q Probably or do you know?  
 11 A I just can't remember from three or four years ago.  
 12 Q I know because you see a lot of people. What I am  
 13 asking you is: Did you write it down?  
 14 A I just wrote he was still taking the pain medications.  
 15 I can't -- to me that means he was on those medications when I  
 16 saw him. The best I can tell you -- the best I can recollect at  
 17 this moment here so that's the best I can tell you.  
 18 Q You don't have it written down?  
 19 A That he is on the pain medications, yes.  
 20 Q But you don't know which and what dosage?  
 21 A Vicodin and Flexeril he was taking on a regular basis.  
 22 Q When was the last time he took either of those  
 23 medications prior to the testing?  
 24 A I can't recollect.  
 25 Q Is it in your report?  
 26 A No, it is not in my report specifically that I could

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1 Dr. Schuster - by Plaintiff - Cross  
 2 find.  
 3 Q Was he on other medications other than that, yes or  
 4 no? Don't stray on that one. Yes or no, was he taking other  
 5 medications?  
 6 A Maybe.  
 7 Q You don't know?  
 8 A I can't -- you are asking me to pull something out of  
 9 my head from three or four years ago. I can't recollect.  
 10 Q I am not asking you to pull anything out of your head,  
 11 doctor. I am asking you to pull it out of your records.  
 12 A The records say he was on pain medications at the time  
 13 I saw him.  
 14 Q Was he on regular medications as well for other  
 15 medical conditions; yes or no?  
 16 A It looks to me just the pain medications. He stopped  
 17 taking the antidepressants when I saw him.  
 18 Q At that point he didn't need antidepressants?  
 19 A His psychiatrist recommended different antidepressants  
 20 be reinstated.  
 21 Q Which psychiatrist is that?  
 22 A I am just reading from my report here. I don't have  
 23 the name of the gentleman.  
 24 Q Do you have any records from any treating  
 25 psychiatrist?  
 26 A I think we went through that already.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 Q Where was Mr. Barra living at the time you did your  
 3 evaluation?  
 4 A In Florida.  
 5 Q Doctor, did you review the emergency room records from  
 6 New York Presbyterian Hospital and the ambulance reports, yes or  
 7 no?  
 8 A Probably no. Wait a second. Let me go back. I did  
 9 review New York Presbyterian. I did. I don't see the ambulance  
 10 record.  
 11 Q Well, is it your understanding that Mr. Barra, I  
 12 think, fell from a missing step; is that right?  
 13 A I don't understand one way or another how this  
 14 happened.  
 15 Q Do you have an understanding whether he lost  
 16 consciousness?  
 17 A The record stated --  
 18 Q Not what the record stated. Did you have an  
 19 understanding?  
 20 A Only from the records.  
 21 Q What was your understanding?  
 22 A The medical records say he lost consciousness.  
 23 Q Doctor, are you aware that he denied loss of  
 24 consciousness to the ambulance crew; yes or no?  
 25 A I didn't see the ambulance report.  
 26 Q That's not the question.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 A I didn't see the ambulance report, so obviously I  
 3 don't know what is in it.  
 4 Q Well, I don't know if you know about it some other  
 5 way?  
 6 A No, I didn't see it.  
 7 Q Are you familiar with a Glasgow coma scale is, right?  
 8 A Sure.  
 9 Q It helps determine the level of consciousness after an  
 10 accident, correct?  
 11 A Among other things.  
 12 Q Right. A perfect score would be a 15, correct?  
 13 A Correct.  
 14 Q You are aware, are you not, that he scored a perfect  
 15 15 after the accident both times; yes or no?  
 16 A In the ambulance you are talking about?  
 17 Q Yes.  
 18 A I didn't see that report.  
 19 Q Okay.  
 20 You saw the ER report from New York Cornell,  
 21 right?  
 22 A Yes.  
 23 Q New York Presbyterian?  
 24 A Yes.  
 25 Q And you saw that he denied loss of consciousness  
 26 there, right?

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1 Dr. Schuster - by Plaintiff - Cross  
 2 A You know, look at these records here. I am sorry if I  
 3 can't answer your questions, you know, completely or as well as  
 4 you would like without having to look through this stuff over  
 5 here like this. I wish I -- if you have the records, pull them  
 6 out and we could look at them.  
 7 Q Well, did you review it or not?  
 8 A I did, but you are asking me to pull out something  
 9 from literally thousands of pages of information here. You  
 10 know, I cannot possibly recollect. If you show me the record,  
 11 we can talk about it.  
 12 Q By the way, doctor, what part of his head did he  
 13 injure when he allegedly fell from the crane; do you know that?  
 14 A I think it was supposed to be the right side of his  
 15 head.  
 16 Q Of his face or something else?  
 17 A The right side near his ear area, so over here.  
 18 (Indicating)  
 19 Q Did they do any x-rays or CAT scans of his face or  
 20 right ear at New York Presbyterian, yes or no, the area of his  
 21 head near the ear?  
 22 A I have an MRI of the brain done.  
 23 Q That's not New York Presbyterian, doctor.  
 24 A This is from Dr. Singer. Okay. I don't have -- that's  
 25 the first study of the brain I have in my medical summary.  
 26 That's all I could say.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 Q But no x-rays of the face, correct?  
 3 A Not that I delineated.  
 4 MR. JOSEPH: Can I approach the witness to show  
 5 him something?  
 6 THE COURT: You may.  
 7 Q I show you Exhibit 15 which is marked in evidence,  
 8 doctor?  
 9 MR. JOSEPH: For the record, your Honor, so it is  
 10 clear in case the pages get shuffled because they are  
 11 attached by a clip. I will describe the page.  
 12 I will show the witness a page on the top left  
 13 corner which says "New York Presbyterian University  
 14 Hospital Columbia and Cornell Emergency Department  
 15 Physician's Record and Discharge Instructions." On the top  
 16 right-hand corner of the page it has a number, 5367998.  
 17 Then it is followed by Mr. Barra's -- I assume his date of  
 18 birth which I won't state for the record. Then it says  
 19 "Barra, Joseph." It has an M for "male." The time is  
 20 8:57 a.m, it has the date. The bottom right-hand corner of  
 21 the page says "Resident/PA/impression/plan: Fall."  
 22 That's so the record is clear because the pages  
 23 are not numbered.  
 24 Q Doctor, do you see where it says "denies LOC"?  
 25 A I do.  
 26 Q That means "denies loss of consciousness," right?

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1 Dr. Schuster - by Plaintiff - Cross  
 2 A That's what it means.  
 3 Q I want to show you over here on the left side of the  
 4 page where it says "MSKL," that's musculoskeletal?  
 5 A Okay.  
 6 Q "Head, nontender, atraumatic," do you see that?  
 7 A Yes.  
 8 Q "Nontender" means when they touch the head there is no  
 9 tenderness, right, nobody is screaming out in pain?  
 10 A Yes.  
 11 Q "Atraumatic" means no trauma?  
 12 A That's the way I interpret that.  
 13 Q And "face" doesn't even have anything checked,  
 14 correct?  
 15 A That's correct.  
 16 Q At New York Presbyterian there was no evidence of a  
 17 cervical or neck injury; isn't that correct, yes or no?  
 18 A Okay. I do have a CAT scan of the brain. Now I see  
 19 it in my report. Sorry I missed it before. There was no acute  
 20 intracranial hemorrhage or mass lesion.  
 21 Q Right.  
 22 A That's from New York Presbyterian. Sorry I missed  
 23 that.  
 24 Q Now, New York Presbyterian, there was no evidence of a  
 25 cervical or neck injury, correct?  
 26 A In New York Presbyterian? And dr. Singer is not from

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1 Dr. Schuster - by Plaintiff - Cross  
 2 New York Presbyterian or --  
 3 Q No.  
 4 MR. JOSEPH: May I explain to the doctor?  
 5 THE COURT: Yes. Go ahead.  
 6 Q Doctor, Mr. Barra was taken to New York Presbyterian  
 7 Hospital on August 5, 2010, treated and released there.  
 8 Dr. Singer works or did work, was a radiologist working for a  
 9 facility called Open MRI in Westchester having nothing to do  
 10 with New York Presbyterian.  
 11 A Okay. This was a few days after discharge.  
 12 Q I am talking about August 5, 2010.  
 13 A That's the only study I saw from New York  
 14 Presbyterian. These others are done a few days afterwards.  
 15 Q You are not aware of any neck or cervical injury being  
 16 diagnosed at New York Presbyterian, correct?  
 17 A Not that I am aware of at the top of my head. That's  
 18 all I can tell you.  
 19 Q Mr. Barra never complained of a lumbar or back injury  
 20 at New York Presbyterian; isn't that correct, yes or no?  
 21 A I got to look at the records again. I can't remember.  
 22 Q You have it in your records, right?  
 23 A But I can't. Come on. You are asking me to pull  
 24 stuff out of 10,000 pages.  
 25 Q (Handing)  
 26 A Gee wiz, it is really tough to read what this guy

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1 Dr. Schuster - by Plaintiff - Cross  
 2 wrote. It is really tough.  
 3 MR. JOSEPH: May I approach the witness?  
 4 THE COURT: Yes.  
 5 MR. JOSEPH: I am looking at the same page I  
 6 previously described for the record, your Honor.  
 7 Q Doctor, do you see anything indicating that he is  
 8 complaining about the lumbar spine; yes or no? Does it say  
 9 "back nontender"?  
 10 A It does. "But AC joint and" -- and something.  
 11 Q The AC joint is the shoulder, right?  
 12 A It says "left" --  
 13 Q Is that "foot"?  
 14 A "With" --  
 15 Q "Without"?  
 16 A "With swelling."  
 17 Q "Without swelling." There is an S, right? That's  
 18 "without swelling," isn't it, doctor?  
 19 So there is no -- they are talking about his foot  
 20 there, right?  
 21 A Okay.  
 22 Q Not his back, right?  
 23 A And shoulder.  
 24 Q His foot and shoulder without swelling?  
 25 A Okay.  
 26 Q Nothing about his lumbar spine, right?

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1 Dr. Schuster - by Plaintiff - Cross  
 2 A Not at that point.  
 3 MR. MORGAN: What page is that?  
 4 MR. JOSEPH: The same page that I described  
 5 previously.  
 6 MR. MORGAN: Okay.  
 7 A Yeah, so?  
 8 Q By the way, his neuro exam was alert cranial nerves  
 9 were intact, motor skills were within normal limits, and his  
 10 sensations were intact; is that correct?  
 11 A Correct.  
 12 Q His psych, everything was fine, right?  
 13 A Seems okay. No severe psychiatric problems at that  
 14 point.  
 15 Q Now, when you met with Mr. Barra back in September did  
 16 he tell you about the five vacations?  
 17 A No.  
 18 Q Did you ask him?  
 19 A No.  
 20 Q And before Mr. Barra -- withdrawn.  
 21 At any time prior to the accident did Mr. Barra  
 22 own his own business or businesses; yes or no?  
 23 A Not that I know of.  
 24 Q He never told you about that?  
 25 A Never did.  
 26 Q If he had owned his own business or businesses,

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1 Dr. Schuster - by Plaintiff - Cross  
 2 wouldn't that be important to you to know as to what, perhaps,  
 3 he might be capable of doing in the future; yes or no?  
 4 A Not with the information I had. It could be with  
 5 other cases but not with this one.  
 6 Q You keep talking about he is not capable of doing  
 7 things based upon your test results and everything else. You  
 8 have a whole slew of papers in that red well?  
 9 A Yeah.  
 10 Q Could you show me in there where his academic records  
 11 were, you talked about his IQ test, what his score was before  
 12 this when he was in school, what his teachers said about his  
 13 ability to, you know, pay attention, his ability to read, what  
 14 his -- you know, what attention he paid to detail when he read  
 15 and things like that? Do you have that, yes or no?  
 16 A I don't think they exist.  
 17 Q What do you mean they don't exist? Did you try to get  
 18 them?  
 19 A High school records from 50 or 40 years ago? No, I  
 20 didn't try to get them and it is not going to be in the records.  
 21 You are going to just see a high school transcript is what you  
 22 are going to see. You are not going to see that from a  
 23 40-year-old high school transcript.  
 24 Q You will not see an IQ test?  
 25 A They don't give them unless you are in special ed or  
 26 something like that.

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1 Dr. Schuster - by Plaintiff - Cross  
 2 Q You are telling me that all of us didn't have IQ tests  
 3 back when we were in school?  
 4 A Some did and some didn't. It was not standard to get  
 5 an IQ test.  
 6 Q There was no -- are you telling us that there was no  
 7 standardized testing of any of the people in this room, and I am  
 8 not talking about SATs or PSATs or anything like that. When  
 9 they were in junior high school and high school and before there  
 10 why no standardized tests?  
 11 A Standard tests and IQ tests are different aspects  
 12 here. Could he have had standardized tests on reading and  
 13 language and math skills before? Possibly.  
 14 Q Did you check?  
 15 A No.  
 16 Q Well, you are sitting here telling this jury that he  
 17 has problems with these skills as a result of an alleged  
 18 accident. What did you do to check what his abilities were  
 19 beforehand other than looking at your statistics?  
 20 A Well, what you do is when you have cases like this you  
 21 look -- they are specifically geared to make assessments of a  
 22 person's premorbid capacities. There are two things you look  
 23 at. One is you give a test that entails the reading of  
 24 irregular words. This tends to be highly crystallized skill  
 25 unless you have an aphasic disorder or some type of language  
 26 disorder or a premorbid history of learning difficulties. It

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1 Dr. Schuster - by Plaintiff - Cross  
 2 tends to be resilient to brain injury. In other words, tests  
 3 that are overly learned and are already in your brain tend to be  
 4 the ones that are the most resilient to a brain injury. You  
 5 also look at demographic variables. There's age, sex, level of  
 6 education, type of work he did. These are all correlated with  
 7 intelligence, education level, functioning. And you get from  
 8 that a statistical probability of what his IQ was. It was rated  
 9 to be just within the average range which, of course, would be  
 10 congruent with everything that we are seeing.  
 11 So utilizing the best available stuff that would  
 12 be congruent, a guy of average intelligence congruent with what  
 13 you would expect before. So that's what I did. To get tests  
 14 from probably 1950 or something like that where he was in  
 15 elementary school, irrelevant. By the way, it is irrelevant  
 16 anyway in terms of what my issues are, because wherever he was  
 17 before, the question is what can he do now? What he can do now  
 18 is he can't function effectively now in any regard.  
 19 Q Well, sir, he was born in 1955.  
 20 A So 1965 are the scores you are looking for.  
 21 Q You didn't try to get those records, correct; yes or  
 22 no?  
 23 A No, I didn't try to get those records.  
 24 Q All right.  
 25 And the only people that you have discussed the  
 26 aspects of this case were in formulating your opinions are