

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CIVIL ACTION NO. 16-cv-03768

ANN MCNAMARA AND RICHARD)	
MCNAMARA,)	
Plaintiffs,)	
)	
-vs-)	DEPOSITION OF:
)	
HOME DEPOT U.S.A., INC.; YOTRIO)	EDMOND
CORPORATION; ADVANTAGE)	PROVDER, CRC,
SOLUTIONS; ADVANTAGE SALES &)	CLCP, D-ABVE
MARKETING, INC.; ADVANTAGE)	
SALES & MARKETING, LLC,)	
)	
Defendants.)	
)	
)	

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter, as
taken by and before LORINDA LEON, a Certified Court
Reporter of the State of New Jersey, license number
XIO1485, and Notary Public of the State of New
Jersey, held at the office of OCCUPATIONAL ASSESSMENT
SERVICES, INC., EDMOND PROVDER, 300-3 Route 17 South,
Lodi, New Jersey, on Thursday, January 11, 2018
commencing at 10:13 a.m.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 NAPOLI SHKOLNIK, P.L.L.C.</p> <p>360 Lexington Avenue</p> <p>4 New York, New York 10017</p> <p>(212) 397-1000</p> <p>5 BY: VINCENT L. GONZALEZ, ESQ.</p> <p>vgonzalez@napolilaw.com</p> <p>6 Attorneys for the Plaintiffs</p> <p>7 LEWIS, BRISBOIS, BISGAARD & SMITH, L.L.P.</p> <p>77 Water Street, Suite 2100</p> <p>8 New York, New York 10005</p> <p>(212) 232-1300</p> <p>9 BY: JAMES A. CARDENAS, ESQ.</p> <p>James.Cardenas@lewisbrisbois.com</p> <p>10 Attorneys for the Defendant,</p> <p>Home Depot USA, Inc.</p> <p>11</p> <p>LEWIS, JOHS, AVALLONE & AVILES, L.L.P.</p> <p>12 One CA Plaza, Suite 225</p> <p>Islandia, New York 11749</p> <p>13 (631) 755-0101</p> <p>BY: CARL A. FORMICOLA, ESQ.</p> <p>14 caformicola@lewisjohs.com</p> <p>Attorneys for Defendant,</p> <p>15 Advantage Solutions and Advantage Sales &</p> <p>Marketing, Inc.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 EDMOND PROVIDER, 300-3 Route 17 South,</p> <p>2 Lodi, New Jersey, having been duly sworn by the</p> <p>3 Certified Court Reporter, Notary Public of the State</p> <p>4 of New Jersey testifies as follows:</p> <p>5 EXAMINATION BY CARDENAS:</p> <p>6 Q. Is it Dr. Provder?</p> <p>7 A. Mr. Provder.</p> <p>8 Q. It's not a medical doctor at all?</p> <p>9 A. No. Rehabilitation counselor.</p> <p>10 MR. CARDENAS: Counsel --</p> <p>11 MR. GONZALEZ: I see that.</p> <p>12 MR. CARDENAS: The exchange says</p> <p>13 "doctor." It's not a medical doctor. Right?</p> <p>14 MR. GONZALEZ: Yes.</p> <p>15 A. That's a common mistake.</p> <p>16 Q. First off, my name is James Cardenas.</p> <p>17 I'm an attorney with the law firm Lewis, Brisbois,</p> <p>18 Bisgaard and Smith and I represent the Home Depot in</p> <p>19 this matter. I'm here to ask you some questions</p> <p>20 about a case in which I understand you served, are</p> <p>21 serving as an expert witness.</p> <p>22 Is that your understanding of why you</p> <p>23 are here today?</p> <p>24 A. Yes.</p> <p>25 Q. Where exactly are we?</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 EDMOND PROVIDER</p> <p>5 BY MR. CARDENAS 4,116</p> <p>6 BY MR. FORMICOLA 74</p> <p>7 BY MR. GONZALEZ 120</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 I.D. DESCRIPTION PAGE</p> <p>13 D-A Ann Bridget McNamara notes four pages 81</p> <p>14 D-B Three-ringed binder 115</p> <p>15</p> <p>16 (Exhibits retained by counsel.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20 REQUESTS</p> <p>21 Page 32 Mr. Provder's notebook</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 A. In my office here in New Jersey, my main</p> <p>2 office. Lodi, New Jersey.</p> <p>3 Q. Your main office?</p> <p>4 A. Yes.</p> <p>5 Q. You have more than one?</p> <p>6 A. Yes.</p> <p>7 Q. What happens, what happens in this</p> <p>8 office?</p> <p>9 A. We do three things. We do what's called</p> <p>10 direct rehabilitation working with people that are</p> <p>11 injured to assist them in returning to work. We do</p> <p>12 life care plans working with people that have</p> <p>13 catastrophic injury, developing the care that they</p> <p>14 are going to require and implementing the care based</p> <p>15 on case management.</p> <p>16 We also do consultive services, for</p> <p>17 example, serve as a consultant to a group called</p> <p>18 Citizens Disability, which deals with Social Security</p> <p>19 Disability cases. I also served as a consultant to</p> <p>20 the New York State Attorney's Office when they were</p> <p>21 dealing with using vocational experts in their</p> <p>22 workers' compensation cases.</p> <p>23 And then I also do forensic</p> <p>24 rehabilitation, which is what we are here for.</p> <p>25 Q. Serving as an expert in connection with</p>

<p style="text-align: right;">Page 6</p> <p>1 litigation is forensic --</p> <p>2 A. Forensic rehabilitation.</p> <p>3 Q. Forensic rehabilitation. Okay. This</p> <p>4 company is called?</p> <p>5 A. Occupational Assessment Services, Inc.</p> <p>6 Q. And you are the owner of the company?</p> <p>7 A. I am.</p> <p>8 Q. The sole owner?</p> <p>9 A. I am.</p> <p>10 Q. How many employees work at this company?</p> <p>11 A. We now have, I believe, nine.</p> <p>12 Q. And what is your position?</p> <p>13 A. Rehabilitation counselor.</p> <p>14 Q. Are you also the president of the</p> <p>15 company?</p> <p>16 A. Yes.</p> <p>17 Q. Literally the president of the company?</p> <p>18 A. I'm the president of the company. Well,</p> <p>19 I'm so old now they call me the president and</p> <p>20 founder.</p> <p>21 Q. Fair enough. Are there any other rehab</p> <p>22 counselors that work here?</p> <p>23 A. Yes. Two.</p> <p>24 Q. The other six employees --</p> <p>25 A. Clerical.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Yes.</p> <p>2 Q. Who are the two other rehab counselors?</p> <p>3 A. Brian, B-R-I-A-N, Daly. D-A-L-Y, Kyra,</p> <p>4 K-Y-R-A. I'm going to bangle her name because it's</p> <p>5 really hard. I'm get it as best I can.</p> <p>6 Q. We don't even need it. Brian and Kyra.</p> <p>7 A. Right.</p> <p>8 Q. What does Brian do as a rehab counselor?</p> <p>9 Is his work dedicated to one of these areas or all</p> <p>10 three or a mix or something else?</p> <p>11 A. Well, Brian is a life care planner</p> <p>12 vocational expert like myself, serves as an expert</p> <p>13 for Social Security Disability. So he is called</p> <p>14 into, called by the Federal Administrative Law judges</p> <p>15 to render opinions as to the employability of people</p> <p>16 that seek Social Security benefits. He does that one</p> <p>17 day a week. He also is involved in providing direct</p> <p>18 rehabilitation as well as forensic rehabilitation</p> <p>19 services. He tends to work in the forensic area</p> <p>20 mostly with Veterans Administration cases, Social</p> <p>21 Security Disability cases and matrimonial cases.</p> <p>22 Those are his three areas.</p> <p>23 Q. He doesn't do any of the personal injury</p> <p>24 cases?</p> <p>25 A. He does some but very minimal. Most of</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Clerical. Okay. What percentage of the</p> <p>2 work that you do is the type of work that we are here</p> <p>3 for in this case, what you call forensic</p> <p>4 rehabilitation?</p> <p>5 A. About 50 percent.</p> <p>6 Q. What percentage would direct</p> <p>7 rehabilitation be?</p> <p>8 A. Be about 40 percent. About 10 percent</p> <p>9 would be the consultive services.</p> <p>10 Q. Okay. I'm a little confused. I had the</p> <p>11 three categories were direct rehab, life care plans</p> <p>12 --</p> <p>13 A. Combined.</p> <p>14 Q. Okay. So direct --</p> <p>15 A. Direct rehabilitation involves life care</p> <p>16 plans and -- direct rehabilitation are the same. We</p> <p>17 work with people that are looking for jobs as well as</p> <p>18 people who need long term care. Those are direct</p> <p>19 rehabilitation services.</p> <p>20 Q. We have 40 percent in that category of</p> <p>21 the work?</p> <p>22 A. Yes.</p> <p>23 Q. 10 percent consultive services?</p> <p>24 A. Yes.</p> <p>25 Q. And 50 percent forensic rehabilitation?</p>	<p style="text-align: right;">Page 9</p> <p>1 his job is concentrated in those areas.</p> <p>2 MR. FORMICOLA: Off the record.</p> <p>3 (Discussion is held off the record.)</p> <p>4 Q. Speaking of Kyra, what type of -- how</p> <p>5 would you break down her focus in the different</p> <p>6 categories?</p> <p>7 A. Well, Kyra is new to the firm. She came</p> <p>8 in, I believe, I believe October of this past year so</p> <p>9 she is new. So she basically follows along with</p> <p>10 everybody, tries to learn what everybody else is</p> <p>11 doing. Right now she's just started to evaluate</p> <p>12 individuals that we get referrals regarding long term</p> <p>13 disability cases. So again, those are lower end</p> <p>14 cases that Brian and Kyra would work on. But right</p> <p>15 now she is learning that. And she is also in the</p> <p>16 process, I guess, in another couple months she'll</p> <p>17 have her life care planning certificate so she'll be</p> <p>18 a life care planner that and a rehabilitation</p> <p>19 counselor.</p> <p>20 Q. Is it fair to say that you are primarily</p> <p>21 almost entirely the one doing the personal injury</p> <p>22 forensic rehabilitation services?</p> <p>23 MR. GONZALEZ: I object to the form of</p> <p>24 that question.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. In that category of forensic 2 rehabilitation do you have a breakdown of the 3 percentage of the work that you would do for what 4 we'll call the plaintiff side of the case versus the 5 defendant side of the case? 6 A. Yes. It's a little more defendants than 7 plaintiffs. I'd say probably 55 percent defense, 8 balance plaintiff. 9 Q. Your work is New Jersey, New York. 10 Any other states? 11 A. I work in a lot of states. I, I was 12 telling this gentleman, I'm literally going home in 13 another couple of hours. I have an office in Miami, 14 also, Fort Lauderdale area. Not that large. I do 15 one or two cases. Probably a case a month there. 16 And I have an office in Texas, in San Antonio and one 17 in Los Angeles and one in New York, obviously. 18 Q. Do those other offices have support 19 staff? 20 A. No. Everything comes out of here. I 21 use those offices when necessary. 22 Q. Sure. Have you ever worked for my law 23 firm? 24 A. I don't know. We'd have to do a check. 25 Judy may be able to...</p>	<p style="text-align: right;">Page 12</p> <p>1 14 years. 2 Q. 13, 14 years. Okay. I was going to ask 3 you: You're the founder of the company? 4 A. Yes. 5 Q. When did you start the company? 6 A. August '81. 7 Q. 1981. 36, 37 years ago? 8 A. Yes, sir. 9 Q. And you were at a different location 10 when you started; what town? 11 A. New York City. 12 Q. New York City. And between the time you 13 started the office here and your office in New York 14 City did you have any other locations? 15 A. Well, I had several locations in New 16 York City. I was originally sharing an office with 17 somebody on -- I was living in New York City at the 18 time, sharing an office with somebody on East 74th 19 Street. And then that person left and I took that 20 office. Then I relocated to an office on 74th Street 21 between 75th Street, between Second and -- between 22 First and Second Avenue. Then I went to an office on 23 61st Street. And then I went to an office on 24 Lexington. That was around 9/11. 25 And then I came -- I had an office in</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Lewis Brisbois. 2 A. The name is familiar. I don't know 3 whether we have done any cases for you. We may have. 4 Judy would know. That's my administrative assistant. 5 Q. As I was driving in I saw a billboard 6 for a law firm Lynch and Lynch. 7 Have you ever worked for those guys? 8 A. Many, many years ago. Many years ago. 9 I'd say last time we did work for them, five or six 10 years ago. They're all the TV. I see them, also. 11 Q. That's a plaintiff firm? 12 A. Yes. 13 Q. What about the firm you're currently 14 serving as an expert in connection with this case? 15 A. I think we probably have done maybe 16 three or four cases for them over the years. 17 Q. What attorney would you have worked with 18 on those three or four cases? 19 A. Mr. Napoli. 20 Q. So you worked with Mr. Napoli before? 21 A. Yes, sir. 22 Q. How long has Occupational Assessment 23 Services, Inc. been in this location? 24 A. You're making me go all the way back. 25 I'm going to say that we've been here for 13 years or</p>	<p style="text-align: right;">Page 13</p> <p>1 Hackensack since, had an office in Hackensack since I 2 want to say the mid '80s, small office. And then 3 when I relocated to New Jersey, my house located to 4 New Jersey, we moved to Warren Street. And then we 5 moved here. Warren Street in Hackensack. Then we 6 moved here. 7 Q. Okay. How old are you, sir? 8 A. Going to be 68 in April. 9 Q. And prior to 1981 -- strike that. 10 In August of 1981 you started the 11 company Occupational Assessment Services? 12 A. Yes. Me and two other individuals. 13 Q. Was it a company, shareholders or a 14 partnership? 15 A. Well, this is what transpired. At that 16 point in time I had been doing work for the Social 17 Security Administration. And the two other 18 individuals William Mooney and Arthur Bierman and 19 myself were the three most widely used vocational 20 experts for the government in the New York City area. 21 We worked in, anywhere from the offices in Long 22 Island to the four or five offices in New York. We 23 worked in offices in New Jersey and offices in White 24 Plains. We were getting calls from attorneys that 25 did Social Security Disability work asking whether we</p>

<p style="text-align: right;">Page 14</p> <p>1 would evaluate their clients for Social Security. So 2 the corporation was formed for that particular 3 reason. 4 What transpired was that Mr. Mooney, 5 myself -- first Mr. Mooney at that time was in his 6 60s. Mr. Bierman was 49 or 48 at that time. They 7 were the most widely used vocational experts. They 8 were earning a significant amount of money from the 9 government. The government did not like the idea 10 that we were forming a corporation and working 11 together. So they put pressure on the other two 12 individuals to pull out of the corporation, which 13 basically left me as the sole person owning the 14 corporation. This happened within several months 15 within the formation of the corporation. By probably 16 September, October they were out of the corporation. 17 Q. That -- 18 A. The government basically said that, if 19 you don't stop we are going to stop your Social 20 Security work. And they were earning, at that point 21 in time they were earning a significant amount 22 through Social Security. 23 Q. Let's go to your education. 24 Can you tell me what your educational 25 background is?</p>	<p style="text-align: right;">Page 16</p> <p>1 injuries, people that were homebound. We worked with 2 all types of individuals, severe back injuries, arm 3 injuries, amputations, paraplegics, quadriplegics, 4 muscular dystrophy, multiple sclerosis, Parkinson's. 5 Everybody that had severe types of disabilities we 6 were involved in, as well as people that had visual 7 impairments and blindness. 8 I was involved in, as part of the 9 program I was involved in performing individual and 10 group counseling, working with the clients to assist 11 them in adjusting to their disabilities, as well as 12 counseling them as to the most feasible vocational 13 goals. 14 I was also involved in vocational 15 testing and evaluation evaluating the clients to find 16 out what they could or could not do given their 17 injuries. In addition, I did work adjustment, which 18 meant that I prepared people for employment. And 19 then lastly, I did job placement services. I 20 evaluated people and determined what type of work 21 they could do. I found out what jobs they could do 22 given their capabilities. I did that for a year and 23 a half. 24 Want me to continue. 25 Q. That's '73 to?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Bachelor's degree in rehabilitation 2 counseling from the Pennsylvania State University. 3 Masters degree in rehabilitation counseling from the 4 Pennsylvania State University. After receiving my 5 Masters degree I continued with my education at New 6 York University completing the 42 credits toward a 7 Doctorate in rehabilitation counseling but leaving 8 the university with my dissertation to be completed. 9 Q. That was at NYU? 10 A. It was. 11 Q. Before the company you started, we'll 12 say private practice, what did you do before that? 13 A. Okay. I always had multiple jobs. 14 Okay? So when I came to New York I was fortunate. 15 This was in the early '70s, and '73 when I graduated. 16 There were no jobs at that time. The economy was 17 bad. 18 Q. When you say "graduated" -- 19 A. Masters degree March '73. 20 Q. -- that's the Masters degree? 21 A. I was lucky to have a job already lined 22 up in New York City. I worked as a rehabilitation 23 counselor for the Federation of the Handicapped in a 24 program called The Higher Horizons For the Homebound. 25 It was for people with severe and catastrophic</p>	<p style="text-align: right;">Page 17</p> <p>1 A. '73 to mid '74. It was about a year and 2 a half. 3 Q. Okay. Yeah, I do want to know all of 4 the employment positions that you held in this field 5 prior to starting the company. 6 A. Do you have a CV? 7 Q. I do. I want to ask you -- 8 A. No problem. So what happened was that 9 -- the Federation of the Handicapped is a facility 10 that people -- I like to term it a learning facility; 11 people learning the various aspects of rehabilitation 12 and then they move on. And at the time that I was 13 looking to move on the head of one of the programs at 14 Federation who had transferred to Mount Sinai 15 Hospital Department of Rehab Medicine went to the VA. 16 He recommended me to the job at Mount Sinai. 17 In July of 1974 I became employed at 18 Mount Sinai Hospital Department of Rehabilitation 19 Medicine. And I supervised their vocational 20 facilities, which consisted of sheltered workshop and 21 vocational testing and evaluation program. Again, I 22 was involved in doing the same types of things, 23 counseling, vocational testing and evaluation, 24 preparation for work, served as a liaison between the 25 state vocational rehab program and the Mount Sinai</p>

<p style="text-align: right;">Page 18</p> <p>1 rehabilitation program.</p> <p>2 We had a sheltered workshop program. I</p> <p>3 was involved in developing contracts for the state</p> <p>4 and federal government for our workshop. We had a</p> <p>5 sewing workshop. We made cubicle curtains, draperies</p> <p>6 for hospitals. And we had contracts during the time</p> <p>7 that I was there that per year were almost a million</p> <p>8 dollars. And also, I worked with both in-patient --</p> <p>9 again, we were in the Department of Rehab Medicine so</p> <p>10 I had people with physical disabilities, all types of</p> <p>11 disabilities from people in wheelchairs to MS, to</p> <p>12 Parkinson's. And then we also had in and</p> <p>13 out-patients psychiatric that I was involved in,</p> <p>14 also.</p> <p>15 I was there from, I believe, '74 through</p> <p>16 '79 and again from '80 to '81. At the same time</p> <p>17 started --</p> <p>18 Q. You said '74 to '79 and then again --</p> <p>19 A. Again, yes. They came back and wanted</p> <p>20 me to work with them again because their program was</p> <p>21 going down the tubes.</p> <p>22 Q. What did you do from '79 to 80?</p> <p>23 A. I'm going to tell you all the different</p> <p>24 jobs that I had. I when I was at Mount Sinai, that's</p> <p>25 how I started, I served as an expert for Social</p>	<p style="text-align: right;">Page 20</p> <p>1 Staten Island instead of having to go to Manhattan.</p> <p>2 I was instrumental in getting that kind of counselor</p> <p>3 assigned on a regular basis to come and evaluate</p> <p>4 people in Staten Island.</p> <p>5 So that brings us into Mount Sinai.</p> <p>6 When I left Mount Sinai I went to a program called</p> <p>7 the Staten Island Association For the -- I'm sorry,</p> <p>8 south Beach Psychiatric Center where I worked at the</p> <p>9 branch in the Coney Island Hospital out-patient</p> <p>10 working with people from a vocational standpoint who</p> <p>11 had psychiatric impairment. This was a day hospital</p> <p>12 setting. I also at that time was also doing, started</p> <p>13 to do evaluations with attorneys who needed people to</p> <p>14 be evaluated on Social Security Disability cases.</p> <p>15 And I also worked, when I left Mount</p> <p>16 Sinai worked for an agency called Temporary Guidance</p> <p>17 Service, which had a project, they were involved in</p> <p>18 training developmentally disabled individuals in</p> <p>19 retail store setting. They actually had a mini mall</p> <p>20 on Lexington and 85th Street that we set up in order</p> <p>21 to train the developmentally disabled people in work</p> <p>22 skills so we could get them placed in jobs. I did</p> <p>23 that for a period of time and then I got called back</p> <p>24 to Mount Sinai. I worked for Mount Sinai for about</p> <p>25 another year and then I went on my own.</p>
<p style="text-align: right;">Page 19</p> <p>1 Security. Started in 1976 or '77. I was contacted</p> <p>2 by a gentleman called Louis Zinn, Z-I-N-N, who was in</p> <p>3 charge of the Social Security vocational expert</p> <p>4 program at that time. And he called me up. He said</p> <p>5 I had been recommended by somebody that wanted to</p> <p>6 know what my qualifications were. We had a telephone</p> <p>7 interview. Before I knew it I was an expert for the</p> <p>8 government, much different than they do it now. It</p> <p>9 was basically who you knew and what type of</p> <p>10 background you had.</p> <p>11 So I started working for the government.</p> <p>12 And I would do anywhere from, I'd say, a minimum of</p> <p>13 nine to 12 hearings a week for them while I worked</p> <p>14 for, while I worked for Mount Sinai. And so I did</p> <p>15 that. That's how I learned how to be a vocational</p> <p>16 expert. Most vocational experts who did this work</p> <p>17 served as an expert for the Social Security</p> <p>18 Administration. All the terminology that is used all</p> <p>19 comes from the federal government regulations. So I</p> <p>20 did that work.</p> <p>21 I also did work for, at the same time</p> <p>22 for a company, agency in Staten Island Association</p> <p>23 for the Visually Handicapped. Their goal was to get</p> <p>24 individuals from Staten Island to be evaluated by the</p> <p>25 State Commission For the Visually Handicapped in</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So you were at South Beach Psychiatric</p> <p>2 for roughly a year?</p> <p>3 A. Probably about six months or so. It</p> <p>4 turned out that the person who was in charge of the</p> <p>5 program was somebody that I knew professionally. And</p> <p>6 I was able to integrate the people from the Coney</p> <p>7 Island Day Hospital setting to the vocational</p> <p>8 training program, which was located in downtown</p> <p>9 Brooklyn, which they had not been successful of</p> <p>10 doing. But because of my contacts I was able to</p> <p>11 integrate them into the system.</p> <p>12 Q. Okay. I think I heard you, you talked</p> <p>13 about working with individuals with severe</p> <p>14 disabilities, with physical and vision and then</p> <p>15 including MS and Parkinson's and then at South Beach</p> <p>16 psychiatric conditions.</p> <p>17 That's correct?</p> <p>18 A. Yes.</p> <p>19 Q. What is your background in working with</p> <p>20 traumatic brain injury --</p> <p>21 A. That's an interesting story.</p> <p>22 Q. -- patients?</p> <p>23 A. I started doing my internship at Moss</p> <p>24 Rehabilitation Hospital in Philadelphia in the early</p> <p>25 '70s, early -- I think it's probably January '73</p>

<p style="text-align: right;">Page 22</p> <p>1 until March of '73. And at that point in time we 2 would see people that had hit their head. But we 3 didn't know the impact of hitting their head on 4 people's ability to function. This was at an 5 in-patient rehab facility. Now, at the same facility 6 they have what's called the Drucker Rehabilitation 7 Head Injury Center. So fast forward quite a number 8 of years, now we have a head injury center to look at 9 these types of problems.</p> <p>10 We really didn't focus on brain injured 11 individuals until it became obvious that people that 12 were hitting their heads were having significant 13 cognitive problems. And so I probably worked at the 14 present time with people that have anywhere from -- 15 we probably see two to three brain injured people per 16 week. So we are very sensitive to the conditions 17 that they have. It wasn't really something that was 18 focused in on when I was working at any of the 19 facilities because we didn't really know anything 20 about brain injury at that time. We were learning as 21 we went.</p> <p>22 But right now we probably and probably 23 for the past 20 years we probably see two to three 24 brain injured people per week.</p> <p>25 Q. For the past 20 years you had a</p>	<p style="text-align: right;">Page 24</p> <p>1 talked to you about before would be considered 2 severe. He needs -- in fact, he had a nurse, 3 registered nurse with him. Two individuals that are 4 able to function.</p> <p>5 We just saw somebody yesterday 6 traumatic brain injury hit by bus. Very sad because 7 of the fact that he probably -- he couldn't answer 8 questions such as what his birthday is. He couldn't 9 tell us where, what state he was born in, couldn't -- 10 he was unable to know, he didn't know his address 11 where he lives. And this is a gentleman who is 49 12 years of age. But what was interesting was that he 13 -- and he demonstrated a lot of the problems that you 14 see in people that have had brain injuries. But what 15 was interesting was he was an artist and when you 16 started asking him about his art he was a little bit 17 more together. He was able to explain a little bit 18 about his art and whatever.</p> <p>19 But there's a question whether that 20 particular gentleman could be left alone because of 21 his fear of what would happen if there was a fire or 22 an emergency and he probably wouldn't know how to get 23 out of the house. So you know, we see everything. I 24 mean you know, we see people, a bump on the head, 25 they receive cognitive rehab and go back to work.</p>
<p style="text-align: right;">Page 23</p> <p>1 concentration two to three times a week seeing --</p> <p>2 A. At least. And we see all of our, people 3 that have mild traumatic brain injury to people that 4 are severe that are hospitalized and 5 institutionalized. We see the whole gambit. We had 6 a gentleman come in a couple of months ago on a road 7 accident case and traumatic brain injury affected one 8 side of his body; drooling, unable to feed himself, 9 all from a brain injury. So we see from the very bad 10 to individuals that have mild brain injury and that 11 may be able to function with some cognitive 12 rehabilitation back into the labor market.</p> <p>13 Q. Do you have any medical training?</p> <p>14 A. Not a physician, no.</p> <p>15 Q. When you use the terms "very bad" to 16 "mild," is that based upon a diagnosis that you made 17 or --</p> <p>18 A. No.</p> <p>19 Q. -- that you reviewing, interpreting and 20 receiving someone else's diagnosis?</p> <p>21 A. Well, that's reflected in the diagnosis 22 that are on the reports that we review. But also, 23 I'm looking at them from a functional standpoint, 24 from a functional standpoint as to what they can do 25 and not do. For example, the young gentleman that I</p>	<p style="text-align: right;">Page 25</p> <p>1 Maybe not all the same job but maybe another job, to 2 people as severe as I just described. I have to 3 emphasize the fact that I'm very sensitive to all of 4 this because of the number of people we see. It's 5 not a rarity that we see them. It's a regular basis 6 we see them.</p> <p>7 Q. Who is Ann McNamara?</p> <p>8 A. That's a client that was evaluated by 9 myself. She was seen in my office on July 25th of 10 last year, 2017.</p> <p>11 Q. You're reading from notes.</p> <p>12 A. Right.</p> <p>13 Q. That's fine.</p> <p>14 A. These are notes taken from my report.</p> <p>15 Q. That's fine.</p> <p>16 A. No problem.</p> <p>17 Q. I just want to know: Do you 18 independently have recall of who Miss McNamara is or 19 do you need the notes?</p> <p>20 A. I need the notes.</p> <p>21 Q. Refresh my recollection: What was the 22 date you just stated?</p> <p>23 A. July 25th, 2017. She was seen about 24 five months ago.</p> <p>25 Q. Was that the only time you saw Ann</p>

<p style="text-align: right;">Page 26</p> <p>1 McNamara?</p> <p>2 A. It was.</p> <p>3 Q. Where did you see Ann McNamara?</p> <p>4 A. She was seen in my office in New York</p> <p>5 City.</p> <p>6 Q. What's the address of that office?</p> <p>7 A. 575 Madison Avenue, New York, New York</p> <p>8 10021.</p> <p>9 Q. And there's no clerical staff at that</p> <p>10 office?</p> <p>11 A. No.</p> <p>12 Q. During your --</p> <p>13 A. No staff of my own at that office.</p> <p>14 Q. Understood. During your session with</p> <p>15 Miss McNamara on July 25, 2017 who was present?</p> <p>16 A. Myself, her husband and her son.</p> <p>17 Q. How long did the examination last?</p> <p>18 A. Two hours.</p> <p>19 Q. Of that two hours what percentage of the</p> <p>20 time was spent alone with Ann McNamara?</p> <p>21 A. There was no time spent alone. Her</p> <p>22 family was there to provide support for her. That's</p> <p>23 what she wanted.</p> <p>24 Q. I'm just asking.</p> <p>25 A. Yeah. I always give the key person an</p>	<p style="text-align: right;">Page 28</p> <p>1 However, at times if we have somebody who has a</p> <p>2 traumatic brain injury, like I gave you with the</p> <p>3 client I saw yesterday, a second person is necessary</p> <p>4 to provide, to act as a historian. But in this</p> <p>5 instance she was able to respond to the questions</p> <p>6 that I asked her and no historian was necessary to</p> <p>7 the best of my recollection.</p> <p>8 Q. The example you gave, you characterized</p> <p>9 this other individual as having a severe traumatic</p> <p>10 brain injury. He even had a nurse present, a</p> <p>11 registered nurse present with him.</p> <p>12 What is your understanding as a</p> <p>13 professional of what, of how Miss McNamara presented</p> <p>14 on the scale of brain injury?</p> <p>15 A. Mild, moderate to severe, is that the</p> <p>16 scale?</p> <p>17 Q. Yes.</p> <p>18 A. I'd say she is moderate, moderately to,</p> <p>19 moderately to severe range.</p> <p>20 Q. So the scale is moderate, mild to</p> <p>21 severe?</p> <p>22 A. Yes. I would place her in the moderate,</p> <p>23 possibly moving up towards the severe range but</p> <p>24 certainly not mild.</p> <p>25 Q. You would say "certainly not mild."</p>
<p style="text-align: right;">Page 27</p> <p>1 option, you know, when they have people with them. I</p> <p>2 would always prefer to have the person sit out, have</p> <p>3 the other people sit out. But she felt more</p> <p>4 comfortable, which is okay with me, to have the other</p> <p>5 individuals sit in.</p> <p>6 Q. You recall her -- what were her words in</p> <p>7 that regard?</p> <p>8 A. Well, I, I asked her whether her -- she</p> <p>9 wanted, well, whether she wanted the, her son and her</p> <p>10 husband to sit out during the interview or to come.</p> <p>11 She felt that she would be more comfortable coming.</p> <p>12 At times I feel it's better that somebody is there in</p> <p>13 case they don't, can't answer any questions or</p> <p>14 respond to any questions. I have a secondary source</p> <p>15 then to help. But that wasn't necessary in this</p> <p>16 case. She was able to respond to my questions.</p> <p>17 Q. That was actually my next question to</p> <p>18 you was going to be: The sessions spent with Miss</p> <p>19 McNamara with her husband and her son in the room,</p> <p>20 was it, I think you partially answered it, was it</p> <p>21 largely spent talking directly with Miss McNamara or</p> <p>22 was there input from the other individuals?</p> <p>23 A. Okay. Well, the interviews always are</p> <p>24 pretty much conducted with the person I'm evaluating.</p> <p>25 I don't usually interview the other individuals.</p>	<p style="text-align: right;">Page 29</p> <p>1 Would you say certainly not severe?</p> <p>2 A. Well, things that she talks about</p> <p>3 indicate some severity. But if I was going to place</p> <p>4 her on the continuum of one end of the spectrum I</p> <p>5 would say moderate would be my assumption. My</p> <p>6 evaluation would be moderate.</p> <p>7 Q. What were the aspects that would make it</p> <p>8 even an issue as to whether it was moderate or</p> <p>9 severe? What things did she say that may have put it</p> <p>10 in a different category?</p> <p>11 A. Well, she, you know, she had quite a lot</p> <p>12 of cognitive complaints regarding her capabilities.</p> <p>13 She reported that she had impairments in her memory,</p> <p>14 both remote memory and short term memory. She had</p> <p>15 diminished concentration. She stated she had</p> <p>16 difficulty reading and problems retaining and</p> <p>17 remembering what she read. She stated that she had a</p> <p>18 shortened attention span that was easily distracted</p> <p>19 when she did things. She had difficulty with word</p> <p>20 retrieval, difficulty doing more than one thing at</p> <p>21 one time, impairment in organizational abilities.</p> <p>22 And she reported that her thinking now is slower than</p> <p>23 prior to the accident.</p> <p>24 And when we look at her, turn the page</p> <p>25 here, at her -- we talk about her activities of daily</p>

<p style="text-align: right;">Page 30</p> <p>1 living. Her ability to wash, dress and bathe 2 herself, she felt that she is not able to do this 3 independently, requiring assistance of her son or her 4 husband. She states that she has fallen 13 times. 5 And this is a very -- when I do a life care plan and 6 talk about what somebody can do safety is a very big 7 issue for me. So the fact that somebody has fallen 8 that many times is very alarming to me. She is able 9 to feed herself but she can't use both a knife and 10 fork together. She can't use both hands together. 11 She has a limitation in that aspect. 12 And I thought that based on this 13 background that she gave me, as well as her 14 recounting of her emotional condition and the 15 impaired balance problems that she had, the need for 16 prism glasses and the, her effect of the fluorescent 17 lighting and sunlight on her would all, in my 18 opinion, made her a moderately impaired traumatic 19 brain injured individual. 20 Q. The session that you had with Miss 21 McNamara, does it include any objective -- does it 22 include any testing? 23 A. Okay. That's an interesting question. 24 I do do a lot of vocational testing on people but I 25 did not do it in this case. I felt that she, that</p>	<p style="text-align: right;">Page 32</p> <p>1 Is that your file for Miss McNamara? 2 A. Yes, sir. 3 Q. Does that contain all of the documents 4 that you received in connection with the case and 5 generated in connection with the case? 6 A. Yes, sir. 7 Q. So there is nothing related to your work 8 with Miss McNamara that would not be in that 9 three-ringed binder? 10 A. True. 11 MR. CARDENAS: I would call for 12 production, a copy of this. I will note that we 13 don't have, we did not receive Dr. Pachilakis' file 14 in advance of this deposition, which we had been 15 getting files in advance of these depositions when we 16 were presenting our experts. So I would call that a 17 copy of that be sent to us. 18 MR. GONZALEZ: All I can ask is put it 19 in writing. 20 MR. FORMICOLA: I also put a request on 21 the record for a copy of the complete notebook that 22 the doctor has before him today containing all the 23 materials he generated and reviewed. 24 MR. CARDENAS: I'll absolutely put it 25 into writing. I know that you're new to this. We</p>
<p style="text-align: right;">Page 31</p> <p>1 the information wasn't going to be helpful to me. I 2 didn't do -- I felt that her, how she was presenting 3 herself, the testing wouldn't yield anything 4 additional. We did have, at the time I did have a 5 neuropsychological evaluation that was done by Dr. 6 Pachilakis, P-A-C-H-I-L-A-K-I-S, who notes very 7 similar things that she told me during my evaluation, 8 which certainly would concur with my findings that 9 she has at least a moderate brain injury. In fact, 10 he had recommended cognitive rehabilitation. 11 MR. CARDENAS: Do you remember that 12 doctor? 13 Off the record. 14 (Discussion is held off the record.) 15 Q. You have a note with you -- Doctor, you 16 had just said that -- 17 A. Mr. Provder. 18 Q. Mr. Provder, you had just said that Dr. 19 Pachilakis, a neuro psych, had prepared a report that 20 you had in your possession at the time of your 21 evaluation of Miss McNamara and that you have that, 22 Dr. Pachilakis' report in your possession. 23 A. Yes, sir. 24 Q. And I note that in front of you you have 25 a three-ringed binder.</p>	<p style="text-align: right;">Page 33</p> <p>1 had a working arrangement that these were being 2 provided. 3 MR. GONZALEZ: That's fine. 4 A. Just to keep the record straight, it is 5 "Mr. Provder." 6 Q. I apologize, sir. 7 A. That's all right. 8 MR. GONZALEZ: Happens all the time. 9 Q. In recounting -- in discussing your 10 evaluation of Miss McNamara you said several times 11 that you base your placement of her on the cognitive 12 scale upon her recounting of the issues. And then I 13 want to say seven times you indicated that "she 14 stated" and three times you said "she reported" and 15 twice you said "she felt." 16 Is it fair to say that a large part of 17 your opinions and your evaluation of Miss McNamara is 18 based upon her presentation of her condition and 19 symptoms to you during your evaluation? 20 MR. GONZALEZ: I'm going to object to 21 the form of that question because it's compound and 22 you're asking him for two things, multiple things at 23 the same time. 24 MR. CARDENAS: The one thing I don't 25 want to do is ask questions compound. My questions</p>

<p style="text-align: right;">Page 34</p> <p>1 are traditionally and typically long-winded. I'll 2 stay with that until I get boxed up. 3 MR. GONZALEZ: Did you understand? 4 THE WITNESS: Yes. 5 MR. CARDENAS: If he understands the 6 question -- 7 A. One of the basis is the assumption that 8 the person is being truthful and accurate of what 9 they are telling us. I have to base my opinions on 10 information that the person has, is conveying to me 11 and of course, using my own expertise to determine if 12 what they're saying to me, whether it makes sense or 13 is reflective of an individual that has a similar 14 type of impairment. 15 As you and I discussed before we went 16 into Miss McNamara, I see a significant number of 17 people with TBIs in my practice. So certainly, 18 somebody who comes in wearing prism glasses is 19 something that's important to me. Somebody that 20 comes in and says, I'm getting effected by the 21 fluorescent lights and the sunlight, that is also 22 something that a TBI person would usually say to me 23 given the circumstances. And the fact that somebody 24 is reporting memory problems and so on, of course 25 that would effect somebody that has a cognitive</p>	<p style="text-align: right;">Page 36</p> <p>1 administered by psychologists. First is called the 2 MMPI. I believe that has a malingering scale. The 3 second is TOMMS, T-O-M-M-S, again a test administered 4 by a psychologist. 5 Q. Are you not certified in administering 6 any of those tests? 7 A. I'm not a psychologist. I can't 8 administer either one. 9 Q. Do you ever join up with a psychiatrist 10 to see that one of these tests is administered to a 11 patient you're working with? 12 A. Usually before I see a person the 13 neuropsychological testing has been done. 14 Q. In the case of Miss McNamara had any 15 such neuropsychological testing been done prior to 16 your July 25th, 2017 evaluation of Miss McNamara? 17 A. Yes. We had the report of Dr. 18 Pachilakis, P-A-C-H-I-L-A-K-I-S. His report is -- 19 Q. Who is that? 20 A. P-A-C-H-I-L-A-K-I-S. His report is 21 dated August the 10th, 2015. 22 MR. FORMICOLA: Off the record. 23 (Discussion is held off the record.) 24 Q. Same doctor? 25 A. Same doctor. But we also have, I also</p>
<p style="text-align: right;">Page 35</p> <p>1 impairment. 2 So what she said was consistent with 3 what I usually see in people that have similar type 4 of brain injuries. 5 Q. Have you ever had a patient regardless 6 of whether it's traumatic brain injury or physical 7 injury or mental injury or psychiatric that you 8 concluded may have been either exaggerating symptoms 9 or malingering to avoid rejoining the work force? 10 A. Yes. 11 Q. Is that a concern of yours every time 12 you evaluate a patient? 13 A. On a forensic basis, yes. 14 Q. Are you aware of any tests in the 15 industry in your profession, and right now I'm not 16 asking if you can administer them, I'm just asking if 17 you're aware of any tests that are designed to detect 18 we won't say "faking," even though I don't think it's 19 a pejorative term, I think it's an appropriate term, 20 was malingering? I think that's the medically 21 correct term. 22 The question is: Have you ever -- are 23 you aware of any tests that can be administered to 24 detect malingering? 25 A. There are two tests that can be</p>	<p style="text-align: right;">Page 37</p> <p>1 have in my possession records from -- this doctor is 2 with Long Island Transitions. And I also have the 3 Long Island Transition records regarding her time 4 there. 5 Q. What tests were administered -- you 6 mentioned the two tests that you're aware of, the 7 MMPI and the TOMMS test? 8 A. Right. Well, it's a scale of the MMPI 9 that measures malingering. The MMPI measures many 10 different personality traits but there's a special 11 scale for malingering. 12 Q. Is there a test called a Rey 15? 13 A. I don't know that test. 14 Q. Were either of these tests, the scale of 15 the MMPI or the TOMMS test, performed on Miss 16 McNamara by Dr. Pachilakis? 17 A. I'm going to find out. Hold on. I do 18 not, to the best of my reading of the report dated 19 August 10, 2015 I do not see any statement regarding 20 the administration of the MMPI or of the TOMMS. 21 Q. Aside from the report and the files you 22 have, do you have any independent recollection of in 23 the case of Miss McNamara you being advised or 24 becoming aware of a scale of MMPI or TOMMS test 25 having been administered on Miss McNamara?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. No. The only person from any record 2 that I have would be for the neuropsychologist. It 3 does not appear that either one of those tests were 4 administered.</p> <p>5 Q. Do you know how to -- do you know what a 6 passing or failing score on the TOMMS test is?</p> <p>7 A. On the TOMMS test?</p> <p>8 Q. Yes.</p> <p>9 A. I never administered the test. I don't 10 know.</p> <p>11 Q. Do you know what the -- can you read the 12 results of a TOMMS test?</p> <p>13 A. Well, the TOMMS test deals with making 14 certain marks on the test paper. And it's the speed 15 that they use to make the marks. But I have never 16 administered the test and I have never scored it so I 17 can't interpret it.</p> <p>18 Q. So when someone does a TOMMS test you 19 look at the end result, their conclusions, I guess, 20 and that's what you get from it?</p> <p>21 A. Right. But I'm going to tell you that I 22 rarely -- I'm trying to think if I've ever seen a 23 TOMMS test administered in any of the cases I've been 24 evaluating involving looking for malingering. If 25 there's malingering involved it's an MMPI. It seems</p>	<p style="text-align: right;">Page 40</p> <p>1 Two, that her past earnings as she 2 reported them of \$84,652 per year as a utilization 3 review nurse and \$1,000 a week as a hospice case 4 manager nurse, represented her pre earning capacity 5 or what she could have earned had she not been hurt. 6 I did not believe she could use her special skills or 7 knowledge to transfer them to other occupations, 8 given the severity of her brain injury.</p> <p>9 Next, I found that she is unable to 10 perform any of the physical demand categories of 11 work; sedentary work, light work, medium work, heavy 12 or very heavy work as they exist in a national or 13 local industry at a sustained regular full time 14 competitive basis. I felt that she was unemployable 15 for any job existing in the competitive labor market.</p> <p>16 Six, I felt that at the present time she 17 had sustained a total loss of earning capacity over 18 her work life due to her multiple impairment.</p> <p>19 Seven, I felt that at the present time 20 she was not a candidate for vocational rehabilitation 21 services due to her reduced vocational capacity.</p> <p>22 Those are my opinions. In essence, I 23 found that she was unemployable.</p> <p>24 Q. I'm not sure if "rehabilitatable" is a 25 word. Is she capable -- I think you said at the end</p>
<p style="text-align: right;">Page 39</p> <p>1 to be the most accepted scale of malingering would be 2 the MMPI.</p> <p>3 Q. Would it have any affect on your report 4 and evaluation of Miss McNamara if you became aware 5 that on a scale of MMPI examination a determination 6 of potential malingering was demonstrated?</p> <p>7 MR. GONZALEZ: I object to the form of 8 that question.</p> <p>9 A. Sure. I'd certainly be interested. I 10 mean if there were any, if there are any records that 11 I don't have or information I don't have that could 12 possibly change my opinion.</p> <p>13 Q. Would the same be said about the same 14 results for a TOMMS test?</p> <p>15 A. Sure.</p> <p>16 MR. GONZALEZ: Same objection.</p> <p>17 Q. Mr. Provder, what is your assessment of 18 Miss McNamara, aside from the category that you put 19 her in on a scale of traumatic brain injury, with 20 regards to her present ability to seek gainful 21 employment?</p> <p>22 A. Okay. Well, I felt that at that time I 23 saw her she was unemployable. I felt that she was 24 unable to perform her past relevant work as a 25 registered nurse and a case manager.</p>	<p style="text-align: right;">Page 41</p> <p>1 she is not capable of being rehabilitated.</p> <p>2 A. She is not a candidate for vocational 3 rehabilitation services at the present time. You 4 have to meet certain criteria to be accepted into the 5 state vocational rehabilitation program. That's the 6 guidelines that I use.</p> <p>7 You have to have the capability to 8 perform work that requires in a sedentary physical 9 demands. That would be the first step. In my 10 opinion I don't believe she had that capability. 11 Then we had the cognitive disabilities on top of 12 that. Based on all of that I do not believe she was 13 unemployable or will be in the future, unless her 14 condition changes in some substantial way.</p> <p>15 Q. What are the physical requirements for a 16 sedentary -- is there like a weight pound?</p> <p>17 A. Sure. I have it attached to my report, 18 just for your reference, it's appendix A of my report 19 taken from the U.S. Department of Labor's dictionary 20 of occupational titles. In order to do sedentary 21 work a person has to be able to sit for at least six 22 hours of a eight-hour work day and have to be able to 23 lift and carry anything from small items, documents, 24 files up to 10 pounds. That's the least physical 25 exertional level of work.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. And you're under the impression Miss 2 McNamara cannot lift 10 pounds? 3 A. That's not my -- she indicated to me 4 that she was capable of -- let's see what she said 5 here. She said that she could lift anywhere from 6 five to 10 pounds. That's not what is precluding her 7 from being employed. The physical limitations are 8 one thing but we have all the emotional and all the 9 psychological limitations that we already discussed. 10 The cognitive rehabilitation on top of it. So in 11 fact, she was in a program at Transitions, which is a 12 program that tries to move people into employment 13 and they were unsuccessful. 14 Q. So the physical aspects of her condition 15 are not preventing her return to work but -- 16 A. Well, it's a combination of factors. 17 It's the physical. We have physical conditions. She 18 said she can sit for 60 minutes, stand for 15 to 20 19 minutes, walk for 10 minutes, lift and carry five to 20 10 pounds. That's a very limited capability. She 21 also has a vestibular problems and balance problems, 22 which she indicated that she has fallen a number of 23 times, 13 times, I believe it was. So -- and she 24 doesn't drive. 25 So these are all factors that would</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Give me a second. 2 Q. Sure. For that matter, are you aware 3 that she is on Social Security Disability? 4 A. That's what I was looking for. Just 5 hold on a second. I have that she is receiving the 6 time I saw her Social Security Disability of 1,500 7 per month, which indicates that the federal 8 government found that she is unable to perform any 9 substantial gainful work activity, which was the same 10 founding that I made. And she also indicated to me 11 that she is receiving \$2,550 per month in long term 12 disability benefits. But I did not offset my figure 13 with any of those figures because I'm not an 14 economist. 15 Q. So in other words, you give a 2.4 16 million dollar figure -- let's, let's tackle that 17 figure first. 18 You see 2.4 million dollars is the loss 19 of income? 20 A. Yes. 21 Q. Are you -- do you believe you're 22 qualified to make that statement? 23 A. Well, I'm qualified to make it but I 24 don't bring everything to present value. I don't 25 take inflation rates in it. I'm not an economist. I</p>
<p style="text-align: right;">Page 43</p> <p>1 affect her ability to work where she lives. So it's 2 a combination of factors of her physical, cognitive 3 and psychological conditions that affect her ability 4 to work and prevent her from being employable. 5 Q. I think you said that there was a total, 6 a total loss of income? 7 A. Loss of earning capacity. 8 Q. Loss of earning capacity. 9 Do you have any opinions with regard to 10 her lost earnings? 11 A. Such as an economist? 12 Q. Yes. 13 A. Well, I have a figure in my report but 14 I'm not an economist. 15 Q. What figure do you give in your report? 16 A. Two million four hundred -- \$2,423,736 17 as a total loss. 18 Q. Two point what million? 19 A. 2.423 -- \$2,423,736. 20 Q. Does that figure account for any income 21 that Miss McNamara has in connection with her 22 disability? 23 A. No. 24 Q. Are you aware that she has 5,000 dollar 25 a month private disability plan?</p>	<p style="text-align: right;">Page 45</p> <p>1 just give that figure for informational purposes 2 only. 3 Q. So in your opinion there's a loss of 2.4 4 million over the course of her lifetime, that you 5 acknowledge that that figure was not offset by any of 6 the Social Security Disability payments or private 7 disability insurance payments that Miss McNamara 8 receives? 9 A. Correct. 10 Q. And that if those figures were used to 11 offset the number the 2.4 million dollar number would 12 certainly be lower? 13 A. True. 14 Q. Are you aware of Miss McNamara suffering 15 from any medical conditions prior to an alleged 16 accident she had at the Home Depot in May of 2015? 17 A. She reported none. And it's not really 18 relevant to me but because attorneys ask me these 19 questions I ask the question. And the question is: 20 Do you have any medical conditions, on-the-job 21 accidents, motor vehicle accidents that affect your 22 ability to work and have you had that in the past? 23 Q. And she answered "no?" 24 A. No, none are reported. 25 Q. Would it be relevant to you if it was</p>

<p style="text-align: right;">Page 46</p> <p>1 proven to you that she lied to you on that question?</p> <p>2 A. Well, again, these things don't really</p> <p>3 have an impact on my findings. But certainly, I'd</p> <p>4 like to know if there were accidents that impacted on</p> <p>5 that person's ability to function, certainly, sure.</p> <p>6 Q. At that point -- I'm not asking you</p> <p>7 that.</p> <p>8 I'm asking you: Would it be relevant to</p> <p>9 you if it was proven that she lied to you in</p> <p>10 answering that question?</p> <p>11 A. I don't know the word "lie." If she</p> <p>12 didn't understand the question, that could have been</p> <p>13 something, also. The fact -- I have many people who</p> <p>14 say "no" to this question and they turn out that</p> <p>15 there are accidents or something in the past so...</p> <p>16 Q. If she was taking antidepressants and</p> <p>17 anxiety medication at the time you asked her that</p> <p>18 question would you have expected her to disclose that</p> <p>19 information to you?</p> <p>20 A. No. That wouldn't be a condition</p> <p>21 because I was asking her whether it affected her</p> <p>22 ability to work. And she was working two jobs at the</p> <p>23 time this incident happened.</p> <p>24 Q. Do you have an understanding that Miss</p> <p>25 McNamara prior to the accident at the Home Depot,</p>	<p style="text-align: right;">Page 48</p> <p>1 an at-home case evaluation style of employment?</p> <p>2 A. No.</p> <p>3 MR. GONZALEZ: Note my objection to the</p> <p>4 form of the question.</p> <p>5 A. I don't know why she did it. I don't</p> <p>6 believe I asked her why she wanted to be in this</p> <p>7 particular area. But certainly, she was earning</p> <p>8 \$84,000 doing utilization review, which is a</p> <p>9 significant amount of money. And she had a second</p> <p>10 job where she was doing case management so...</p> <p>11 Q. How long did she have that second job?</p> <p>12 A. Only a few months. She had just started</p> <p>13 it -- the date she indicated that she started the</p> <p>14 second job April 2015 so maybe a month or so.</p> <p>15 Q. And the first four weeks were training?</p> <p>16 A. I assumed, yes.</p> <p>17 Q. And in fact, the Saturday that she had</p> <p>18 her accident was the first day she was actually on</p> <p>19 the job?</p> <p>20 A. That I don't know.</p> <p>21 Q. What if Miss McNamara told you that she</p> <p>22 transitioned from traditional leave the house, get in</p> <p>23 your car and go to work nursing at the hospital to</p> <p>24 sort of that at-home case evaluation style of working</p> <p>25 due to depression and anxiety?</p>
<p style="text-align: right;">Page 47</p> <p>1 that she had already transitioned from in-the-field</p> <p>2 nursing to at-home nursing and case evaluation only?</p> <p>3 A. That she was only holding one job as</p> <p>4 opposed to two?</p> <p>5 Q. No. Both of her jobs were not in the</p> <p>6 field nursing.</p> <p>7 A. Well, they are in the field of nursing.</p> <p>8 She just wasn't doing what we traditionally feel is</p> <p>9 hospital nursing duties. She was doing case reviews,</p> <p>10 utilization review and case management. That's still</p> <p>11 the field of nursing.</p> <p>12 Q. When I say "in-the-field" I meant on the</p> <p>13 road. She used to get out of her home every morning</p> <p>14 and go to a hospital and to report from nine to five.</p> <p>15 At some point several years prior to her</p> <p>16 accident at Home Depot she no longer did that and all</p> <p>17 of her work was home based?</p> <p>18 A. That's true. I was aware of that.</p> <p>19 Q. You were aware of that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Did -- in your evaluation did it</p> <p>22 at all, did that at all factor into whether or not</p> <p>23 Miss McNamara may have had some type of a</p> <p>24 pre-existing condition that caused her to transition</p> <p>25 from on the road going to work commuting nursing to</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Okay.</p> <p>2 MR. GONZALEZ: I'm going to object to</p> <p>3 the form of the question. But I'm also going to</p> <p>4 object because it appears that you're indicating this</p> <p>5 as a hypothesis as opposed to an actual statement</p> <p>6 that she has given for transitioning over to that</p> <p>7 other type of work.</p> <p>8 MR. CARDENAS: I'm asking the doctor --</p> <p>9 A. Mr. Provder.</p> <p>10 MR. CARDENAS: I'm asking Mr. Provder if</p> <p>11 he had learned of this information would it be</p> <p>12 relevant.</p> <p>13 MR. GONZALEZ: But the question is --</p> <p>14 MR. CARDENAS: It is accurate</p> <p>15 information by counsel. It is accurate information.</p> <p>16 MR. GONZALEZ: What is accurate</p> <p>17 information?</p> <p>18 MR. CARDENAS: That Miss McNamara was</p> <p>19 suffering from depression, that she was taking</p> <p>20 antidepressants, an anxiety medication and that she</p> <p>21 had transitioned from on-the-road commuting style</p> <p>22 going to work every day nursing to at-home case</p> <p>23 evaluation style of nursing --</p> <p>24 MR. GONZALEZ: Because she was depressed</p> <p>25 or because she was taking medication?</p>

<p style="text-align: right;">Page 50</p> <p>1 MR. CARDENAS: -- before the accident.</p> <p>2 MR. GONZALEZ: Because she was depressed</p> <p>3 and because she was taking medication?</p> <p>4 MR. CARDENAS: I'm asking him.</p> <p>5 MR. GONZALEZ: No. No. No. You said</p> <p>6 that it's accurate. And I just want to know if what</p> <p>7 you're saying is accurate. Are you claiming that she</p> <p>8 testified in her deposition that the reason why she</p> <p>9 transitioned was because she was suffering from</p> <p>10 depression and taking medication for it? Is that</p> <p>11 your statement?</p> <p>12 MR. CARDENAS: Essentially, in words,</p> <p>13 yeah. I mean she had said that she couldn't go out</p> <p>14 in the public any more.</p> <p>15 MR. GONZALEZ: Going out in public is</p> <p>16 not the depressive -- so are you making -- is it a</p> <p>17 hypothesis that you're proposing today?</p> <p>18 MR. CARDENAS: We'll put it as a</p> <p>19 hypothetical to the doctor.</p> <p>20 Q. If Miss McNamara had told you that she</p> <p>21 made this transition because of her depression and</p> <p>22 anxiety and she couldn't work on the road, you know,</p> <p>23 getting up, going to work doing the daily grind any</p> <p>24 more and it was easier for her to be employed from</p> <p>25 home, would that have any relevance?</p>	<p style="text-align: right;">Page 52</p> <p>1 saw her.</p> <p>2 Q. What medications?</p> <p>3 A. She was taking Prednisone five</p> <p>4 milligrams twice a day, Zoloft 100 milligrams once a</p> <p>5 day, Propanolol 20 milligrams twice a day, Zofran</p> <p>6 four milligrams, Imitrex, Alprazolam,</p> <p>7 A-L-P-R-A-Z-O-L-A-N.</p> <p>8 Q. Alprozolan, that's Xanax.</p> <p>9 A. One milligram.</p> <p>10 Q. How much?</p> <p>11 A. One milligram.</p> <p>12 Q. The Xanax, the Alprazolam, do you know</p> <p>13 if that's a narcotic?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know what that drug does?</p> <p>16 A. Well, if it's Valium it's for anxiety.</p> <p>17 Q. Not Valium. It's called Xanax.</p> <p>18 A. Xanax. Okay. I don't know.</p> <p>19 Q. Do you know if one milligram is</p> <p>20 considered a strong dose, mild dose or something</p> <p>21 else?</p> <p>22 A. I don't -- it's not my area of</p> <p>23 expertise.</p> <p>24 Q. Is that relevant to you what the dosage</p> <p>25 of that medicine is?</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. GONZALEZ: I'm going to object to</p> <p>2 the form of the question.</p> <p>3 You can answer.</p> <p>4 A. No, because she was still performing the</p> <p>5 job and she was earning significant amount of money.</p> <p>6 Even though she was, I'm taking your words, depressed</p> <p>7 and had difficulty getting to a job because of maybe</p> <p>8 some fears or agoraphobia or something like that she</p> <p>9 still was performing the job and still earning</p> <p>10 significant amount of money. In fact, was feeling</p> <p>11 I'm going to put "well enough" around, quotes around</p> <p>12 "well enough" that she wanted to take a second job.</p> <p>13 So whatever the feelings were that she had</p> <p>14 emotionally didn't preclude her from performing job</p> <p>15 one. In fact, she was in the process of performing</p> <p>16 job two when this incident happened, despite her</p> <p>17 emotional condition.</p> <p>18 Q. How long had she been in job one?</p> <p>19 A. She reported 2008 to 2015. So she had</p> <p>20 been there seven years.</p> <p>21 Q. On the day of your evaluation of Miss</p> <p>22 McNamara was she on any medication?</p> <p>23 A. Sorry.</p> <p>24 Q. No apology necessary.</p> <p>25 A. She was taking medication at the time I</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Not really.</p> <p>2 Q. Would it be relevant if you learned that</p> <p>3 that dosage can cause delayed responses, slowness of</p> <p>4 thought?</p> <p>5 A. Well, that would be -- I don't know. I</p> <p>6 don't know if that's a side effect. But I didn't see</p> <p>7 slowness of responses from her and I did not see</p> <p>8 slowness of thought from her. She was able to</p> <p>9 respond to the questions. She just had difficulty</p> <p>10 with various aspects of her functioning. If say, for</p> <p>11 example, I asked her a question and she was hesitant</p> <p>12 to answer that question and there was a delay and she</p> <p>13 had to think about it and then she would respond, I</p> <p>14 would have had it in my report. I don't see it in my</p> <p>15 report nor do I remember that being what occurred</p> <p>16 during my interview with her.</p> <p>17 Q. So you don't recall her being slow to</p> <p>18 respond?</p> <p>19 A. No. I don't think my records reflect</p> <p>20 that either. Let me just double check and look.</p> <p>21 Q. But --</p> <p>22 A. Give me a second.</p> <p>23 Q. Sure.</p> <p>24 A. I don't want to misspeak. There is no</p> <p>25 indication in my general description that she had a</p>

<p style="text-align: right;">Page 54</p> <p>1 slowness in response to my questions or that she 2 couldn't respond to the questions. 3 Q. During your evaluation of her you found 4 her to be making complaints of her inability to do 5 certain things she used to do, her inability and 6 other effects she had from her fall. 7 Correct? 8 A. Yes. 9 Q. If during her examinations with other 10 doctors, including her own doctors, plaintiff's 11 doctors in this litigation as well as defendant's 12 doctors, they did note extreme slowness and delay in 13 responding would that be contradictory to what you 14 found? 15 A. Well, all I can do is based on my 16 recollection. Okay? And I don't recall her being 17 slow to respond. And if she would have been slow to 18 respond during my interview I would have noted it. 19 Q. Would it be significant to you if other 20 doctors evaluating her, experts in neuropsychological 21 said that she was extremely slow in responding to 22 questions -- 23 A. I didn't see it. Again, we've already 24 brought in the fact that I've been doing this a long 25 time. I'm very meticulous in what I do. If somebody</p>	<p style="text-align: right;">Page 56</p> <p>1 work in your opinion? 2 A. You have physical, cognitive and 3 emotional. You have cognitive conditions that are 4 affecting her memory, her word retrieval, 5 concentrational (sic) ability, ability to do 6 multitasking. You have emotional conditions that she 7 discusses and you have physical conditions. As I 8 indicated before, it's the combination of three that 9 have affected her employability. In fact, as we 10 already talked about, the U.S. government found that 11 she is disabled based on her multiple conditions, 12 found she is unable to perform any gainful 13 substantial work. 14 Q. What is the -- specifically what was the 15 -- I mean in general terms you're telling me what 16 Social Security found. 17 What was their diagnosis of Miss 18 McNamara? 19 A. On what grounds did they find her 20 disabled? 21 Q. Correct. 22 A. We have to have a decision. I'm not 23 sure if I have that. 24 Q. As you sit here now you don't know the 25 answer to that question?</p>
<p style="text-align: right;">Page 55</p> <p>1 -- I'm very, very aware especially in a brain injured 2 situation where the person is saying they have a 3 brain injury and has cognitive limitations, aware of 4 what, what could happen. And so if somebody is, 5 needs a historian and can't answer questions I'll 6 have that in my report. If somebody is slow and 7 hesitant in responding to the questions I'll have 8 that in my report. It's not in my report. 9 Q. Okay. Principally, what is in your 10 report? What are your assessments of her? 11 A. Again, as I indicated, she was able -- I 12 asked questions of her. She was able to respond to 13 the questions. She is able to describe her 14 conditions both from a physical standpoint, emotional 15 standpoint, cognitive standpoint. As I indicated in 16 my report, she was wearing sunglasses because of the 17 fluorescent lights in my office in New York. And was 18 able to describe her condition and her treatment. So 19 I didn't see -- again, I'm not going to, you know, go 20 through it again but I did not see to the best of my 21 knowledge any hesitation and delays of any 22 significant nature that I marked in my report in her 23 ability to respond to the questions. 24 Q. What exactly is it that Miss McNamara is 25 suffering from that prevents her from returning to</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I don't know whether I have the 2 decision. In order to do that we'd have to have the 3 decision either from the government or from the, if 4 she went to a hearing. We would have a decision from 5 the AALJ, which I don't have. And if she got it from 6 her records, if they did it from disability 7 determination, which is the first level, we may or 8 may not know why they found it. Just grants you 9 disability. You don't know why. I think the only 10 way we would know is if she went in front of an 11 administrative law judge and a decision was rendered. 12 Q. What is the point of saying the 13 government found her to be disabled if you're telling 14 me that you don't really know why or how they found 15 her to be disabled? Is it related to the accident? 16 A. Well -- 17 Q. What is their finding related to? 18 A. Okay. Okay. 19 MR. CARDENAS: Off the record. 20 (Discussion is held off the record.) 21 (Brief recess is held.) 22 Q. Let's go back on the record to the 23 question that was pending. We really didn't get an 24 answer to it, which is fine. 25 MR. CARDENAS: If you can just -- let's</p>

<p style="text-align: right;">Page 58</p> <p>1 refresh the witness' recollection and read the 2 question back. 3 (Last question is read back.) 4 A. Can't tell. Government looks at all 5 documents and all impairments and reaches an opinion. 6 They don't necessarily say it is because of a fall 7 and as a result of the fall. They don't say that 8 it's because it's cognitive impairment. We can't 9 tell unless we have the documents in front of us. 10 And it may not be specific. 11 Q. In connection -- 12 A. The only thing that would be specific 13 would be the onset date. And so that would be very 14 relevant. 15 Q. Fair enough. 16 A. If they found the onset date as of 17 5/25/15 then they find it to be related to the 18 accident. 19 Q. Point taken. Did you review any 20 deposition transcripts in this case? 21 A. No. 22 Q. If a deposition was completed -- I just 23 noticed that this says "deposition." 24 That's your notes to get ready for 25 today?</p>	<p style="text-align: right;">Page 60</p> <p>1 have any professional relationship over an evaluatee. 2 Q. What is your understanding of what this 3 litigation is about? 4 A. I'm not sure I understand your question. 5 Q. You know we are here in connection with 6 a lawsuit? 7 A. Sure. 8 Q. And you know that the caption of that 9 lawsuit is Ann McNamara versus Home Depot and some 10 other parties. 11 Correct? 12 A. Yes. 13 Q. Do you understand the claim she is 14 making in that lawsuit? 15 A. No. I have no documentation relating to 16 that. That's not my concern. My concern is that she 17 indicates she was injured at a point in time, the 18 injuries she sustained she indicates to me by her and 19 how it affects her ability to work and the long term 20 care needs. Those are the things that are important 21 to me. 22 Q. Can you appreciate that as a plaintiff 23 in litigation she has a monetary incentive to 24 describe the seriousness of her symptoms and her 25 conditions in connection with her alleged injury?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Mine, yes. 2 Q. In connection with your services in this 3 matter have you ever advised the Napoli firm that if 4 supplemental materials relevant to the case become 5 available to them that they should forward them to 6 you? 7 MR. GONZALEZ: I'm going to object to 8 any conversation that are had between the witness as 9 an expert and Mr. Napoli, who is the person handling 10 this file. Whatever that conversation is, that 11 transactional conversation is -- 12 MR. CARDENAS: That's fine. I'll 13 rephrase the question. 14 Q. Would you expect if supplemental 15 materials became available to the Napoli firm in 16 connection with this matter that they would pass 17 those onto you? 18 MR. GONZALEZ: Over objection you can 19 answer. 20 A. Yes. I would expect if any additional 21 documents were made available that I would get the 22 documents. 23 Q. You don't represent -- Miss McNamara is 24 not a patient of yours, is she? 25 A. No. They're called evaluatees. We don't</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. GONZALEZ: I object to the form of 2 that question. I don't understand the question, 3 honestly. 4 MR. CARDENAS: That's fine. 5 MR. GONZALEZ: I'm sure -- 6 MR. CARDENAS: I was trying to tread 7 lightly. 8 MR. GONZALEZ: Just be direct. 9 MR. CARDENAS: It would be more, more 10 concise if I was a little more direct. 11 Q. Can you appreciate that Miss McNamara to 12 increase the value of her case has every incentive to 13 make her symptoms sound as bad as possible? 14 A. Yes, that would go for every client or 15 every evaluatee that I evaluate whether it is for the 16 plaintiff or the defendants. I take that into 17 consideration that that's a possibility. 18 Q. And as cited from the medical record 19 from Pachilakis and Transitions of Long Island your 20 evaluation of her is based entirely, except for those 21 two sets of medical records, on her subjective 22 complaints and reporting to you. 23 Is that correct? 24 A. Well, I have other records. I have 25 records from other doctors, from physicians. I've</p>

<p style="text-align: right;">Page 62</p> <p>1 got records that deal with her visual impairment from 2 Dr. Fisher. I've got records from Dr. Khan. I've 3 got records from Dr. Nelson. I've got records from 4 Dr. Trazzera, T-R-A-Z-Z-E-R-A. We've got, as we 5 talked about -- so there are other records. 6 Q. Okay. That's my misunderstanding. I 7 have not seen your file so I don't know -- 8 A. Sure. 9 Q. I thought I understood it differently 10 from earlier testimony. I'm actually glad that you 11 clarified that. 12 A. No problem. 13 Q. Is it fair to say that the most 14 significant information in connection with your 15 assessment of Miss McNamara is that which was 16 obtained from your personal interview of her? 17 A. Well, I weigh everything equally. 18 Certainly, the information obtained during the 19 interview is very important to me because I'm asking 20 questions. I'm gathering information. And 21 dovetailing with the information that I'm getting I'm 22 looking at the records, the medical records, the 23 records of her visual impairment, the record of her 24 vestibular problems, the cognitive rehabilitation 25 that she underwent, the neuro psych. I'm dovetailing</p>	<p style="text-align: right;">Page 64</p> <p>1 then subsequently you were given test results that 2 showed a potential for malingering and you were asked 3 to reevaluate? 4 A. Umm, I have had cases where we've had 5 psychological reports, such as the MMPI, that 6 indicates the patient has malingering. I review that 7 against where my findings were. I don't recall 8 whether I changed my opinion because of it. I don't 9 recall. I may have. But I take all information. If 10 information changes my opinion then I'll change it. 11 Depends on what information I'm given. And then 12 assuming that the MMPI is valid, also. That's 13 another thing, too. 14 Q. Do you, do you critically assess the 15 statements being made to you by Miss McNamara for 16 their voracity and their accuracy? 17 A. What do you mean "critically?" 18 Q. Do you just take her statements at face 19 value or do you assess them in your mind as to 20 whether or not the statement is embellished or 21 exaggerated or anything of that nature? 22 A. Let's take -- her complaints that she 23 has visually. She wears sunglasses. She's affected 24 by the fluorescent lights. She's wearing prism 25 glasses. All of these are backed up by medical</p>
<p style="text-align: right;">Page 63</p> <p>1 that altogether. To me it's a combination of all the 2 information. That's why I ask for all types of 3 information so I can review everything and formulate 4 my opinion. Not just based what someone tells me but 5 I do assume that the person is telling me -- one of 6 the basic assumptions in my report is that the person 7 is being truthful. 8 Q. You would certainly acknowledge that to 9 the extent your evaluatee is not being truthful that 10 would, that could have an affect on the outcome or 11 determinations in your report? 12 A. It actually says that exactly, the 13 terminology, in my report. 14 Q. Where you say that it's based on 15 assumptions, if those aren't true it changes the 16 game? 17 A. Of course. Of course. 18 Q. Now, if, if the scale of MMPI tests or a 19 TOMMS test or another test that I think is in that 20 field, which you didn't indicate but it's called the 21 Rey 15, if those tests were available would you want 22 to see them in connection with Miss McNamara? 23 A. Yes. 24 Q. Have you ever had a situation in your 25 professional career where you gave an opinion and</p>	<p style="text-align: right;">Page 65</p> <p>1 records that we have. So there is nothing to talk 2 about embellishment. She's receiving treatment for 3 these particular conditions so -- so I don't go back 4 and weigh every statement. I take everything in 5 totality and how the person presents themselves. 6 Now, I've had cases where the person has 7 presented them self in one way and the records just 8 don't back it up. There is nothing there. You know? 9 And so if there is no objective information on a 10 brain injury case from a neuropsychologist or from 11 doctor who said, well, look, this is the situation 12 because of this incident, it has to have some basis 13 for it. 14 Q. What medical treatment did Miss McNamara 15 receive on the day of the accident? 16 A. 5/25/15 is the accident. She went to -- 17 based on the records she went to Syosset Hospital and 18 they stated that she -- her diagnosis was "fall, rib 19 contusion, head injury." 20 Q. Did they do any MRI testing on her? 21 MR. GONZALEZ: To clarify: You are 22 talking about on the date of the accident? 23 MR. CARDENAS: We are talking about 24 Syosset, the day of the accident. I don't see in the 25 Syosset records that I have that any MRI was</p>

<p style="text-align: right;">Page 66</p> <p>1 administered.</p> <p>2 Q. What about a CAT scan?</p> <p>3 A. No. I don't see any CAT scan that was</p> <p>4 administered.</p> <p>5 Q. How long was she at the hospital?</p> <p>6 A. Okay. These are all medical questions.</p> <p>7 I'm not a physician so...</p> <p>8 Q. I'm actually only asking these because</p> <p>9 you just said that you felt the medical records, the</p> <p>10 medical records backed up the statements she gave</p> <p>11 you.</p> <p>12 A. Well, I gave you an example of her</p> <p>13 visual impairment and the treatment that she received</p> <p>14 for visual impairment backed up that she has prism</p> <p>15 glasses. She wears sunglasses. I'm not basing it on</p> <p>16 anything else. I'm not a physician so I'm not making</p> <p>17 any medical opinions. I want to be clear about that.</p> <p>18 Q. I don't mean to say that you were doing</p> <p>19 that. You're not practicing medicine. I'm not even</p> <p>20 suggesting in the wildest contention that you are.</p> <p>21 You just made a statement that your evaluation of her</p> <p>22 was a combination of the existence of these records</p> <p>23 and your evaluation of her. That's the only point I</p> <p>24 was making.</p> <p>25 A. Exactly. Exactly. And I used the</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. But you would --</p> <p>2 A. She was not wearing a helmet at the time</p> <p>3 I saw her.</p> <p>4 Q. But you would acknowledge that if she's</p> <p>5 wearing a helmet and it's not prescribed then it</p> <p>6 wouldn't be based on medical treatment she is</p> <p>7 receiving?</p> <p>8 A. Well --</p> <p>9 MR. GONZALEZ: I'm going to the object</p> <p>10 to the form of that question.</p> <p>11 MR. CARDENAS: It's fine. It's not</p> <p>12 really a question for Mr. Provder. It's okay.</p> <p>13 Q. Do you know anything about Miss</p> <p>14 McNamara's personal life?</p> <p>15 A. Not sure what you're asking me.</p> <p>16 Q. Do you know where she lives?</p> <p>17 A. Sure. She states she lives in Oyster</p> <p>18 Bay, Nassau County.</p> <p>19 Q. Do you know if that's a one-story,</p> <p>20 two-story, three-story home?</p> <p>21 A. I do not.</p> <p>22 Q. Do you know if the home has an elevator?</p> <p>23 A. I do not.</p> <p>24 Q. Do you know if she has to take the</p> <p>25 stairs every day?</p>
<p style="text-align: right;">Page 67</p> <p>1 example of the visual impairment because we have</p> <p>2 doctor that deals with that.</p> <p>3 Q. And she had these glasses on?</p> <p>4 A. She had sunglasses on during my</p> <p>5 examination of her.</p> <p>6 Q. And that hardware was prescribed so it</p> <p>7 was related to the treatment?</p> <p>8 A. Right. She has prism glasses, also.</p> <p>9 Q. Was she wearing a helmet on the day that</p> <p>10 you examined her?</p> <p>11 A. No.</p> <p>12 Q. Do you know if she's ever been</p> <p>13 prescribed a helmet?</p> <p>14 A. I do not.</p> <p>15 Q. Do you know if she's walking around with</p> <p>16 a helmet that has not been prescribed by a medical</p> <p>17 provider?</p> <p>18 A. I do not.</p> <p>19 Q. Would it be relevant to you if an</p> <p>20 evaluatee was wearing a helmet even though one had</p> <p>21 never been prescribed for her?</p> <p>22 A. I'd like to know why she would be</p> <p>23 wearing a helmet. That would be a question. And I</p> <p>24 assume the response would be because she has fallen</p> <p>25 multiple times.</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I do not.</p> <p>2 Q. Do you know if that's a home that's over</p> <p>3 4,000 square feet in size?</p> <p>4 A. I do not.</p> <p>5 Q. If it was demonstrated to you that she</p> <p>6 could go up and down the stairs on a daily basis and</p> <p>7 walk and traverse and clean that 4,000 square foot</p> <p>8 home would that be at all relevant to her, to the</p> <p>9 accuracy of the way she represented her symptoms to</p> <p>10 you?</p> <p>11 A. Okay. Well, you've got two questions</p> <p>12 there.</p> <p>13 MR. GONZALEZ: I object.</p> <p>14 MR. CARDENAS: That's fine.</p> <p>15 Q. I'll leave it with: If it was</p> <p>16 represented to you and demonstrated to you that she</p> <p>17 could actually go up and down the stairs in her home</p> <p>18 and walk all around the 13 different rooms in the</p> <p>19 home would that be relevant to you?</p> <p>20 A. No. She told me that she could climb</p> <p>21 the stairs using a handrail. She states she can</p> <p>22 walk. She does have some impaired balance when</p> <p>23 walking. That would not be precluded from what she</p> <p>24 told me.</p> <p>25 Q. Okay. For how long has she not been</p>

<p style="text-align: right;">Page 70</p> <p>1 driving?</p> <p>2 A. She stated she has driven once since the</p> <p>3 accident due to inability to focus on driving.</p> <p>4 Q. Does she have a cell phone?</p> <p>5 A. I don't know. We'll see. Let me see</p> <p>6 here. I don't know.</p> <p>7 Q. Do you know if she watches TV programs</p> <p>8 on a regular basis?</p> <p>9 A. She states that -- that is one of the</p> <p>10 questions I asked her. She told me daily activities</p> <p>11 include listening to music. There is no inference</p> <p>12 that she watches TV on a regular basis. If she would</p> <p>13 I would have put it down.</p> <p>14 Q. She didn't tell you she watches all the</p> <p>15 episodes of Outlanders and Game of Thrones?</p> <p>16 A. No.</p> <p>17 Q. Would it be relevant to you that she</p> <p>18 could follow the complex story lines with 425</p> <p>19 different characters of Game of Thrones?</p> <p>20 MR. GONZALEZ: I'm going to object.</p> <p>21 MR. CARDENAS: I'm asking if it would be</p> <p>22 relevant to him.</p> <p>23 MR. GONZALEZ: You characterized it as</p> <p>24 "complex." I don't think Game of Thrones is that</p> <p>25 "complex."</p>	<p style="text-align: right;">Page 72</p> <p>1 injury lose an ability to understand and appreciate</p> <p>2 and follow along with a TV program?</p> <p>3 A. Some do, some don't. Some like to watch</p> <p>4 because they like the background noise.</p> <p>5 Q. Do you know if Miss McNamara consumes</p> <p>6 any alcoholic beverages?</p> <p>7 A. I do not.</p> <p>8 Q. Is that at all relevant to you?</p> <p>9 A. I didn't ask any questions regarding</p> <p>10 that. I don't usually.</p> <p>11 Q. Would it be relevant to you if you were</p> <p>12 told that there's some records that demonstrate there</p> <p>13 may be an abuse of alcohol in her background?</p> <p>14 A. I don't know what you mean by "abuse of</p> <p>15 alcohol."</p> <p>16 MR. GONZALEZ: Off the record.</p> <p>17 (Discussion is held off the record.)</p> <p>18 Q. I'll just let the question stand.</p> <p>19 If you were told or medical records were</p> <p>20 shown to you that use the words "alcohol abuse" would</p> <p>21 that be relevant to you in your evaluation of whether</p> <p>22 she is accurately presenting her symptoms, complaints</p> <p>23 and representations of her history and information</p> <p>24 like that?</p> <p>25 MR. GONZALEZ: Over objection.</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. CARDENAS: I think anyone that --</p> <p>2 you know the difference between Tywood, Tyrone,</p> <p>3 Tyrion, Tywin Lannister? I can't even tell their</p> <p>4 names apart.</p> <p>5 MR. GONZALEZ: I can't tell you.</p> <p>6 MR. CARDENAS: Exactly. It is all very</p> <p>7 complex. It has more characters than any other show.</p> <p>8 And this is all on the record.</p> <p>9 A. I never saw Game of Thrones so you're</p> <p>10 asking the wrong person. I have no idea of it.</p> <p>11 Q. That's fine. Is it at all relevant to</p> <p>12 you as to whether or not Miss McNamara was being</p> <p>13 accurate with her description of her symptoms and her</p> <p>14 complaints if you learned that she could follow along</p> <p>15 and actually look forward to and enjoying watching</p> <p>16 weekly television programs and looking forward to the</p> <p>17 next episode?</p> <p>18 A. I'm not sure of the relevancy whether</p> <p>19 she enjoys a television program has regarding her</p> <p>20 cognitive limitations. If somebody has a cognitive</p> <p>21 limitation, doesn't stop living. If anything, that</p> <p>22 would be more of a positive thing than a negative</p> <p>23 thing.</p> <p>24 Q. Do you have any understanding as to</p> <p>25 whether individuals suffering from traumatic brain</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Well, it's not a question I usually ask</p> <p>2 somebody, whether they are abusing alcohol. So if</p> <p>3 somebody had a history of alcohol abuse it could</p> <p>4 affect my opinion, depending on the impact of the</p> <p>5 alcohol abuse.</p> <p>6 Q. Mr. Provder, I think that just about</p> <p>7 wraps it up for my present examination. I am a</p> <p>8 little hesitant to say that I'm done because I have</p> <p>9 not seen the notebook to see what you have had in</p> <p>10 your possession and maybe more importantly what you</p> <p>11 haven't had in your possession. Hopefully, you know,</p> <p>12 there is nothing earth shattering in a there and it's</p> <p>13 fine but --</p> <p>14 MR. GONZALEZ: Did you want to look</p> <p>15 through the book now and see?</p> <p>16 MR. CARDENAS: I don't. It's a</p> <p>17 three-inch binder and I don't want to be in a</p> <p>18 situation where I'm tasked with reviewing as I sit</p> <p>19 here now to determine if my opportunity --</p> <p>20 MR. GONZALEZ: I'm not saying to read</p> <p>21 it.</p> <p>22 MR. CARDENAS: I'm the last person that</p> <p>23 wants to come to Lodi for another deposition and I'll</p> <p>24 highly doubt if I'm going to come back.</p> <p>25 MR. GONZALEZ: I want to see if there</p>

<p style="text-align: right;">Page 74</p> <p>1 are any records you don't recognize. At least if 2 there is something in there you don't recognize then 3 you'll know for certain you might want to reserve -- 4 well, you're reserving your right any way. 5 MR. CARDENAS: I think I'll just leave 6 it at that. 7 MR. GONZALEZ: That's fine. 8 A. In fact, you don't have to come to Lodi 9 for the next deposition if we have one. We can do it 10 in Miami. 11 MR. GONZALEZ: I'm there. I'll 12 volunteer. 13 A. Friday morning at 8:30. 14 EXAMINATION BY MR. FORMICOLA: 15 Q. Mr. Provder, my name is Carl Formicola 16 and I'm with the law firm of Lewis, Johns, Avallone 17 and Aviles. We are representing the Advantage 18 defendants in this case. I'm going to be asking you 19 a series of questions about your evaluation and 20 opinions. You said that knowing that Miss McNamara 21 had a history of alcohol abuse could affect your 22 opinion. 23 Is that correct? 24 A. Sure. 25 Q. In what way?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Presumably, you've seen the term 2 "alcohol abuse" used in medical records. 3 A. Yes. 4 Q. That has a meaning to you as a 5 professional? 6 A. Very frequent overuse of alcohol. In 7 response to your question, I'm not a causality 8 witness. 9 Q. I understand. 10 A. So the fact that some possible alcohol 11 abuse could possibly have an impact on her cognitive 12 limitations? It's out of my area of expertise. I'm 13 not a causality witness. 14 Q. But would it be fair to say that if you 15 were aware of a person having had a history as 16 reflected in medical records of alcohol abuse that's 17 something you would have stated in your records? Is 18 that correct? In your report. 19 A. Yes. If I saw it I would have put it in 20 my report. Also, realize that this is a person who 21 we already discussed worked on the same job for eight 22 years and worked successfully earning over \$80,000 a 23 year. If she had quote, unquote "alcohol abuse" it 24 wasn't affecting her ability to function on her job. 25 Q. Well, the affects of the use of alcohol</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Well, there are all ramifications. 2 Would depend how severe the alcohol abuse was, how 3 long she's done it for, how it has affected her, 4 whether it affected her emotional condition, 5 cognitive condition. 6 Q. Could the abuse of alcohol over a period 7 of time affect one's cognitive abilities? 8 A. Possible. 9 Q. So it is possible, would you agree, that 10 if you had known that Miss McNamara had a history of 11 abusing alcohol you may have contributed some of your 12 findings and perhaps more than some to that history? 13 Is that possible? 14 MR. GONZALEZ: I'm going to object to 15 the form of the question. Unless you can, unless you 16 can define the term "abuse" as abuse is used in the 17 medical records -- I'll tell you, a lot of times 18 abuse can just be a person drinks a glass of wine a 19 day. That could be considered abuse by a medical 20 professional. If you can define the term "abuse" 21 then I can accept your question in the form that 22 you've posed it; otherwise, I'd ask that you rephrase 23 it. Because everybody is using the word "alcohol 24 abuse" and that's being left out there to mean, you 25 know, whatever someone interprets it as.</p>	<p style="text-align: right;">Page 77</p> <p>1 can worsen over a period of time. 2 Is that correct? 3 MR. GONZALEZ: I'm going to object. 4 He's not an expert. 5 A. I'm not a medical doctor. Sorry. 6 Q. Other than speaking with Ms. McNamara in 7 doing your evaluation did you speak with anyone else? 8 A. No, sir. 9 Q. So you never spoke with her husband or 10 her son? 11 A. No. Other than saying hi, how are you, 12 please have a seat. I didn't interview either one of 13 them, no. 14 Q. Do you from time to time interview 15 spouses, siblings, children to determine whether or 16 not what they know about the individual you're 17 evaluating is the same as what is being reported by 18 that individual? 19 A. Usually not. Where I have -- again, the 20 example, client that I had yesterday who had a severe 21 traumatic brain injury, I had -- the wife was the 22 main historian. The husband was barely responding to 23 what I was asking. Only in that circumstance would I 24 have another person sit in and ask the other person 25 questions. If, if, if it's somebody -- the only</p>

<p style="text-align: right;">Page 78</p> <p>1 thing I can think of is someone with a traumatic 2 brain injury or a child who is severely impaired, 3 those are the individuals who I'll interview parents 4 but for the most part, no. 5 Q. Is it fair to say that in your career 6 you don't typically, other than in the circumstances 7 you described, speak to anyone close to the evaluatee 8 in order to determine whether the evaluatee is being 9 truthful with you? 10 A. True. 11 Q. Did you ever have any phone calls with 12 Ms. McNamara relative to your evaluation? 13 A. No. 14 Q. So the only time that you spoke to her 15 was during the two hours you evaluated her on July 16 25, 2017. 17 Is that correct? 18 A. True. 19 Q. I note that your report was, appears to 20 have been generated about a month later, August 22nd. 21 Is that correct? I think it's the last 22 page of your report. 23 A. Yes. 24 Q. Is that correct? 25 A. August 22nd, yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 will then take that information. I'll add 2 information regarding the person's job using the 3 dictionary of occupational titles, government 4 information. I'll look at the medical records that I 5 already will have already summarized by the time I 6 get to the interview with the person. I'll look at 7 the records again, input those in. And then I write 8 it my report. Then it is sent to the word processor, 9 who proofs it. Then sent back to me and I proof it 10 and it goes to final. 11 Q. The final would have been generated in 12 August of -- 13 A. Yes. Usually takes four to six weeks to 14 write a report. 15 Q. Do you have any draft reports of that? 16 A. There is no draft report. 17 Q. You have a draft report as a template 18 and then you add information afterwards? 19 A. Right. I have the report started from 20 when I interview the person. Then I build my report 21 off of that report. There are no drafts or anything. 22 Q. Other than what you referenced today, 23 which appears to be a couple of pages typed notes I 24 think you called them did you make any other notes in 25 connection with this evaluation?</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. How did you go about generating the 2 report if it was done a month later? In other words, 3 where did you get the information to generate your 4 report? 5 A. Well, the information to generate my 6 report is based on two types of information. First, 7 records that are sent to me from the attorney's 8 office. They are reviewed a number -- 9 Q. Let me rephrase it. I don't want to 10 interrupt you but perhaps I phrased it 11 inappropriately. 12 Do you know -- do you dictate your 13 reports? 14 A. No. 15 Q. How do you do your reports? 16 A. Okay. What happens is the evaluatee is on 17 one side of the table and I'm on the other side. I 18 have my laptop computer up in front of me and I 19 actually write the report as I'm interviewing the 20 person. 21 Q. So you wrote it contemporaneously with 22 interviewing the person? 23 A. Yes. 24 Q. Is it ever necessary to correct it? 25 A. Of course. It is word processed and I</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Well, the reports are the notes. 2 Q. So no handwritten notes or anything? 3 A. No. 4 Q. Did you at any point record the 5 evaluation? 6 A. No. 7 Q. Can we just mark those notes that you 8 referenced earlier? 9 A. These? 10 Q. Give them to the reporter. We will mark 11 them as defendant's A for identification. 12 (Exhibit D-A, Ann Bridget McNamara 13 notes, four pages, is marked for identification.) 14 Q. Mr. Provder, you can correct me if I'm 15 wrong but I believe you said that you generally 16 prefer not to have other people in the room while 17 you're doing an evaluation. 18 Is that correct? 19 A. Yes. 20 Q. Why is that? 21 A. Because I want, I want to have the 22 individual themselves not be distracted by the other 23 people in the room. 24 Q. And what kind of a distraction would 25 that be? What form would that distraction take</p>

Page 82

1 generally?

2 A. Well, sometimes, just like as we are

3 having now, someone is playing on their phone while

4 I'm interviewing or they are fidgeting or doing

5 things that are annoying me and distracting me while

6 I'm doing my interview. So I basically like to have

7 just the person in the room. However, if the

8 interviewee feels more comfortable having a

9 significant other in the room that's something I will

10 allow. And I, in most circumstances, will not allow

11 the person to interfere with the examination.

12 However, as I discussed before, if it is somebody

13 with a traumatic brain injury where the person is

14 having difficulty responding to questions then I will

15 have the other person be able to serve as historian

16 and note it in my report.

17 Q. What's been marked as defendant's, or

18 D-A, rather, for identification today, how did you

19 generate this document?

20 A. Taken from my report. Several days ago

21 I went through my report, took the areas that I

22 thought were most important to me and in order to

23 able to refresh my recollection with regard to this

24 case and highlighted the areas I felt would be most

25 important.

Page 83

1 Q. When I say "generated" I mean actually

2 physically generated.

3 A. I physically typed it.

4 Q. On your laptop?

5 A. Yes.

6 Q. Now, you refer in your report to various

7 government and other texts.

8 Is that correct?

9 A. Yes.

10 Q. To your knowledge are all of the texts

11 that you referred, that you referred to, are they all

12 the latest edition?

13 A. There may be some that the edition is

14 before. In my field this stuff has not really

15 changed that much. So for example, there's edition

16 three and I have edition two, I own all the updated

17 editions. They probably just never made it into the

18 report as the actual date, that's all.

19 Q. Do you know which ones would not be the

20 most updated edition?

21 A. No idea.

22 Q. Looking through them you wouldn't be

23 able to tell?

24 A. No. The field really hasn't changed

25 much over the years, unfortunately.

Page 84

1 MR. CARDENAS: I move to strike as

2 nonresponsive.

3 Q. Is there a percentage of the texts that

4 you refer to or the government publications that you

5 refer to that are not up to date? In other words,

6 can you give me a general --

7 A. I understand what you're trying to say.

8 Okay. All right. Okay.

9 Q. I'm just asking you if you can look at

10 it and say, 50 percent of what I referred to is not

11 the latest edition and 30 percent -- whatever it may

12 be?

13 A. No. No. No. Maybe two percent or

14 three percent. The books are there. It's just that

15 there may be a newer edition. That's all.

16 Q. You say you may have a newer edition in

17 your office that you may not have necessarily

18 consulted for this report.

19 Is that correct?

20 A. That may not have changed in my report.

21 The cite may not have changed.

22 Q. I'm sorry. I thought you --

23 A. Say, for example --

24 Q. I don't want examples, sir. Just answer

25 my questions. We'll move along a lot quicker.

Page 85

1 A. Go ahead.

2 Q. I thought you said and I don't want to

3 mischaracterize your testimony, that you might have

4 an updated version in your office but you may not

5 have referred to it for this report.

6 Is that a fair statement of what you

7 said?

8 A. No.

9 Q. Okay.

10 A. There may be --

11 Q. You want to elaborate, that's fine.

12 A. No. There may be -- for example, on

13 page four there's a citation to The Rehabilitation

14 Consultants Handbook fourth revised edition. That's

15 the latest edition. But at one point in time I may

16 have had the third revised edition and I just never

17 put the fourth portion in. That's all.

18 Q. Thank you. Now, if you turn to page

19 five of your report under the heading "vocational

20 evaluation assumptions."

21 A. Yes sir.

22 Q. And you indicate there that: "The

23 vocational opinions regarding Miss McNamara's

24 employability and earning capacity and vocational

25 rehabilitation potential expressed in this report are

<p style="text-align: right;">Page 86</p> <p>1 based on the assumptions that" -- and then you give 2 seven assumptions. 3 Correct? 4 A. Yes, sir. 5 Q. And the second one of those is: "The 6 evaluatee was cooperative and complied throughout the 7 vocational evaluation process." 8 A. Yes, sir. 9 Q. That is important, significant. 10 Right? 11 A. Yes. 12 Q. If, in point of fact, you learn at some 13 point that the evaluatee was not cooperative and did 14 not comply that could affect your evaluation. 15 Fair? 16 A. That would be fair but that's a decision 17 and assessment I make at the time of the evaluation 18 whether they are complying to the information I'm 19 giving you. 20 Q. What about assumption three? "The 21 evaluatee did not intentionally exaggerate or give 22 false information regarding her physical or 23 psychological symptoms." 24 Those are significant for you, I assume. 25 Correct?</p>	<p style="text-align: right;">Page 88</p> <p>1 would be something I would take into consideration. 2 MR. CARDENAS: I'm going to move to 3 strike that as nonresponsive. 4 Q. If you turn to page 14 of your report. 5 MR. GONZALEZ: I'm going to object to 6 that because I think it was totally responsive to 7 your question. 8 Q. You see page 14 about the last third of 9 the page the heading is "pre-existing injuries slash 10 accidents and/or medical conditions." And you say: 11 "There are none reported." 12 Correct? 13 A. Yes. 14 Q. There is nothing in that heading that 15 refers to whether those accidents, injuries or 16 medical conditions affects their ability to work. 17 Correct? 18 A. But that's the way I ask the question. 19 Q. I'm only asking you: Does it say in 20 your report, does that heading, is it qualified in 21 any way by those conditions affecting her ability to 22 work? Yes or no? 23 A. No. 24 Q. And she reported no pre-existing 25 injuries, accidents or medical conditions?</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Yes. We already discussed that as part 2 of the first examination. 3 Q. I want to discuss it further. 4 A. No problem. 5 Q. If, in point of fact, you subsequently 6 learned that you were given information that was not 7 truthful that could affect your evaluation. 8 Correct? 9 A. Possible. 10 Q. The fact is that Ms. McNamara reported 11 that she had no pre-existing conditions to you. 12 Correct? 13 A. No pre-existing conditions that affected 14 her ability to work, correct. 15 Q. Understood. But the fact that she told 16 you something that was not true, does that raise 17 concerns in your mind now as to whether other things 18 she told you may not have been true? 19 A. No. I answered this question 20 previously, that the question asked of the individual 21 is "do you have any medical conditions, any 22 on-the-job accidents, any car accidents that affect 23 your ability to work." Her answer was "no." And if 24 there is anything else that she said, maybe she 25 didn't understand the question, then certainly, that</p>	<p style="text-align: right;">Page 89</p> <p>1 A. True. That -- yes. 2 Q. And then assumption four, the first 3 sentence of that, that's on page six: "The history 4 and information given during the standardized 5 vocational diagnostic interview was truthful and 6 accurate to the best of the evaluatee's ability." That 7 is significant to you, that that statement is, in 8 fact, true. That's assumption. 9 Correct? 10 A. Yes. 11 Q. And you know now that that is not true, 12 that, in fact, she did have a medical history and she 13 didn't report it to you? 14 A. Again, you're misinterpreting what I'm 15 saying. You can move to strike if you want but I'm 16 telling you that the question to her was "do you have 17 any accidents, medical conditions or on-the-job 18 accidents or motor vehicle accidents that affected 19 your ability to work." Her answer was "no." Okay? 20 If you're going to misconstrue it and then place it 21 into this paragraph it doesn't make sense to me 22 because that's not what happened. 23 Q. Sir, I'm only basing my questions on the 24 heading in your report, which does not reference 25 anything about it affecting her capacity to work.</p>

<p style="text-align: right;">Page 90</p> <p>1 A. But I've already testified that that's 2 what I asked her. 3 Q. I understand that, sir. 4 A. Okay. 5 Q. Now, assumption six references the fact 6 that: "The physical and cognitive conditions and 7 resultant reduction of occupational capacity are 8 permanent." 9 That's an assumption you make as well? 10 A. Yes, sir. 11 Q. Did you come across in reviewing the 12 materials that you reviewed in connection with your 13 evaluation any neuropsychological or psychological 14 reports or records other than what you've already 15 testified to? 16 A. That was the only neuropsychological 17 evaluation that I had. You asked me psychological 18 reports? 19 Q. Yes. 20 A. Hold on. There are psychotherapy 21 records from Transition, Long Island Transition by 22 the same doctor, Dr. P-A-C-H -- 23 Q. Pachilakis? 24 A. Pachilakis, yes. There are a series of 25 weekly sessions that are noted during that</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I'm not a physician. I'm not a 2 physician. It doesn't -- I can't talk about the 3 relevancy of an unremarkable MRI on somebody's 4 complaints. I'm not a physician. That's a medical 5 question. 6 Q. Understood. Are you familiar with the 7 term in medicine "unremarkable?" 8 A. No. Means no findings, I would assume. 9 Q. Means generally normal. 10 Correct? 11 A. Yes. 12 Q. Does the fact that an MRI was done that 13 was normal have any affect of your evaluation of Miss 14 McNamara? 15 A. No. 16 MR. GONZALEZ: Note my objection to the 17 form of the question and the assumptions in the 18 question. 19 Q. Right under that says "general 20 description." 21 Correct? 22 A. Yes. 23 Q. You would agree with me that the 24 information contained under that heading either came 25 from your own evaluations or from Ms. McNamara</p>
<p style="text-align: right;">Page 91</p> <p>1 three-month period of time from September 15, 2015 to 2 12/18/2015. 3 Q. And correct me if I'm wrong again but I 4 think it's been established that neither of those 5 sets of records contain any subjective -- I'm sorry, 6 objective testing. 7 Correct? 8 A. Again, I didn't see any other 9 psychological testing other than what we previously 10 described. 11 Q. But there is no TOMMS testing there or 12 Rey testing or MMIP (sic) is it or -- 13 A. No. 14 Q. Would you turn to page nine of your 15 report, sir? 16 A. Okay. 17 Q. Fourth line from the top: "Dr. Knopp" 18 K-N-O-P-P, in parenthesis "6/15/15" close parenthesis 19 "on MRI of the brain states: Unremarkable MRI, 20 examination of the brain," close quotes. 21 Does the fact that an MRI of the brain 22 was done and was found unremarkable have any 23 significance to you in terms of your evaluation? 24 A. No. 25 Q. Why?</p>	<p style="text-align: right;">Page 93</p> <p>1 herself. 2 Correct? 3 A. Yes. 4 Q. And the next heading is "background 5 information?" 6 A. Yes. 7 Q. That either came from your own 8 evaluation or I suppose it came in this case from 9 Miss McNamara. 10 Correct? 11 A. This is all part of the interview. 12 Q. But the background information came from 13 her? 14 A. Yes. 15 Q. And then you have "educational and 16 training background." 17 Again, that came from Ms. McNamara? 18 A. Yes. 19 Q. No other source? 20 A. No. 21 Q. So when she reports graduating with 22 honors, you don't know that from any record. 23 Correct? 24 A. No. I reviewed no school records. 25 Q. She told you that?</p>

<p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. Did you review any records other than</p> <p>3 medical records or psychological records, whatever it</p> <p>4 may be?</p> <p>5 A. Such as like school records or stuff</p> <p>6 like that?</p> <p>7 Q. Work records or anything like that.</p> <p>8 A. No, I did not.</p> <p>9 Q. So no records -- just so we have a</p> <p>10 complete record, no records other than medical kinds</p> <p>11 of records, hospital records, physician records,</p> <p>12 psychology records?</p> <p>13 A. True.</p> <p>14 Q. Now, if you turn to page 16 of your --</p> <p>15 I'm sorry, page 14 of your report.</p> <p>16 A. Yes, sir.</p> <p>17 Q. It says "cognitive complaints."</p> <p>18 A. Yes, sir.</p> <p>19 Q. Again, the first line, I'm only going to</p> <p>20 read a few words, "Miss McNamara reports." The</p> <p>21 second paragraph, "Miss McNamara notes." The third</p> <p>22 is, "Miss McNamara reports." Those are all based on</p> <p>23 what she told you.</p> <p>24 Correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 We already discussed those assumptions in order to</p> <p>2 render my opinion. If the assumptions, as we already</p> <p>3 discussed, if some of them are not true or the degree</p> <p>4 of their impact is questionable then that could</p> <p>5 impact my opinion. I think I already discussed that.</p> <p>6 Q. I understand, sir. I want to get</p> <p>7 specific with regard to my question. I only asked</p> <p>8 you whether the assumptions that you're referencing</p> <p>9 are not based upon a reasonable degree of vocational</p> <p>10 and rehabilitation certainty.</p> <p>11 A. There is no way I can do that.</p> <p>12 Q. Okay. So in other words, they are not?</p> <p>13 A. They're not. They're not. There is no</p> <p>14 way I can do that.</p> <p>15 Q. That would include the assumptions that</p> <p>16 are reflected on pages five and six under the heading</p> <p>17 "vocational evaluation assumptions."</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, still on page 20 of your report</p> <p>21 there is a reference in the second paragraph to her</p> <p>22 "approaching advanced age."</p> <p>23 A. Yes.</p> <p>24 Q. Correct? Let me read the paragraph.</p> <p>25 "Based on the results of the vocational evaluation</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Then you have the next paragraph, the</p> <p>2 top of page 15: "Miss McNamara reports difficulties</p> <p>3 in word retrievals, she reports difficulty</p> <p>4 multitasking, she has an impairment in organizational</p> <p>5 abilities. Miss McNamara reports that thinking is</p> <p>6 slower now than prior to the accident."</p> <p>7 That is all based on what she told you,</p> <p>8 that information?</p> <p>9 A. Yes.</p> <p>10 Q. Can you turn to page 20 of your report,</p> <p>11 sir? The bottom third or so there's a heading</p> <p>12 "employability and earning capacity opinion?"</p> <p>13 A. Yes.</p> <p>14 Q. I'm reading now. "This evaluation was</p> <p>15 completed utilizing the peer review and RAPEL</p> <p>16 methodology. This evaluation has been completed</p> <p>17 within industry standards. Unless otherwise noted or</p> <p>18 where assumptions are stated, all opinions expressed</p> <p>19 herein are provided within a reasonable degree of</p> <p>20 professional and rehabilitation certainty."</p> <p>21 Would it be fair to conclude from this</p> <p>22 paragraph that the assumptions contained in your</p> <p>23 report are not based upon a reasonable degree of</p> <p>24 vocational and rehabilitation certainty?</p> <p>25 A. Well, they are assumptions that I made.</p>	<p style="text-align: right;">Page 97</p> <p>1 performed on Miss McNamara and the conclusions made,</p> <p>2 as well as her approaching advanced age, Bachelor's</p> <p>3 degree in nursing and past work experience of skilled</p> <p>4 work as a registered nurse, the following are my</p> <p>5 opinions as a vocational expert regarding her</p> <p>6 rehabilitation plan. Access to the labor market,</p> <p>7 placeability, earning capacity and labor force</p> <p>8 participation."</p> <p>9 What relevance does her approaching</p> <p>10 advanced age have to your evaluation?</p> <p>11 A. Okay. Well, "approaching advanced age"</p> <p>12 is a term note by the U.S. Department of Labor for</p> <p>13 people of various age categories. Individuals aged</p> <p>14 50 to 54 are approaching advanced age in. I coincide</p> <p>15 with the government's description of various age</p> <p>16 categories. Sometimes somebody who is approaching</p> <p>17 advanced age can impact on their ability to earn</p> <p>18 money and work. Deals with their work life</p> <p>19 expectancy. But this particular individual was</p> <p>20 working successfully at the time of this accident</p> <p>21 and, as I already testified to, was doing two jobs.</p> <p>22 Q. But her approaching advanced age is</p> <p>23 stated here, is it not --</p> <p>24 A. Yes.</p> <p>25 Q. -- as a factor in your evaluation?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 Correct?</p> <p>2 A. Of course. Age is always a factor in an</p> <p>3 evaluation.</p> <p>4 Q. And what that would mean is it is less</p> <p>5 likely for a person without any cognitive</p> <p>6 difficulties to get a job in their 50s than in their</p> <p>7 20s.</p> <p>8 Correct?</p> <p>9 A. Depends on the occupation.</p> <p>10 Q. But as a general proposition.</p> <p>11 A. Again, depends on the occupation. The</p> <p>12 reason the government uses that terminology, I'm</p> <p>13 talking about U.S. Department of Labor, Social</p> <p>14 Security Administration, is exactly what you're</p> <p>15 stating, that it may be more difficult for somebody</p> <p>16 who is an older individual to obtain employment.</p> <p>17 That's one of the tenants of what the government</p> <p>18 talks about.</p> <p>19 Q. At the bottom of that page you have</p> <p>20 "vocational handicaps."</p> <p>21 Correct?</p> <p>22 A. Yes.</p> <p>23 Q. And there are a number of things that</p> <p>24 you conclude she cannot do or cannot do well.</p> <p>25 A. She has difficulty doing.</p>	<p style="text-align: right;">Page 100</p> <p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. In the course of your evaluation was she</p> <p>4 seated or standing?</p> <p>5 A. Seated.</p> <p>6 Q. Was she seated for two hours?</p> <p>7 A. I don't recall.</p> <p>8 Q. You evaluated her for two hours.</p> <p>9 Correct?</p> <p>10 A. Yes. I don't recall whether she got up.</p> <p>11 I really don't recall.</p> <p>12 Q. Two hours would be 120 minutes.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Now --</p> <p>16 A. But -- okay.</p> <p>17 Q. If a person is doing a job that requires</p> <p>18 her to sit for a period of time that -- let me give</p> <p>19 you an example. If someone is -- and you correct me</p> <p>20 if I'm wrong, you're the person who is, does this for</p> <p>21 a living. But there are late night television</p> <p>22 commercials where you call in and you request</p> <p>23 MyPillow or whatever it may be, some good or service.</p> <p>24 There are people who are answering those phones.</p> <p>25 Correct?</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. All of that information that led you to</p> <p>2 that conclusion would have come from her.</p> <p>3 Correct?</p> <p>4 A. True.</p> <p>5 Q. And again under "rehabilitation plan"</p> <p>6 you use the terminology "approaching advanced age."</p> <p>7 Is that again an element in the</p> <p>8 rehabilitation plan?</p> <p>9 A. Yes. It's an element throughout my</p> <p>10 evaluation and my opinion.</p> <p>11 Q. So for the reasons that you, that you</p> <p>12 discussed earlier?</p> <p>13 A. Yes.</p> <p>14 Q. Turning to page 22 of your report.</p> <p>15 A. Yes, sir.</p> <p>16 Q. And that's paragraph three. "Miss</p> <p>17 McNamara is unable to transfer her skills to other</p> <p>18 types of semi-skilled or skilled occupation."</p> <p>19 Correct?</p> <p>20 A. The word is "semi-skilled."</p> <p>21 Q. Semi-skilled. That is your conclusion.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. I believe you said that she had told you</p> <p>25 that she could only sit for 60 minutes.</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. Is that a job that one can do at home?</p> <p>3 A. It could possibly be done at home or be</p> <p>4 done in a call center. I don't know how they are</p> <p>5 handling it.</p> <p>6 Q. But certain positions involving the sale</p> <p>7 of certain goods and services may be things that can</p> <p>8 be done at home.</p> <p>9 Correct?</p> <p>10 A. Possibly.</p> <p>11 Q. So a person would only have to answer a</p> <p>12 phone?</p> <p>13 A. And take an order and enter it into a</p> <p>14 computer.</p> <p>15 Q. Take an order. Okay. Now, that person</p> <p>16 could be seated the entire time they are working</p> <p>17 their shift.</p> <p>18 Correct?</p> <p>19 A. They could be seated, yes. They could</p> <p>20 be seated or they can walk around, depending on how</p> <p>21 busy it is, how many calls are taken from the</p> <p>22 infomercial. If it's a busy one it could be</p> <p>23 thousands of calls or a few calls if not busy.</p> <p>24 Q. It's not necessarily true that a person</p> <p>25 would have to remain seated throughout the entire</p>

<p style="text-align: right;">Page 102</p> <p>1 shift in order to take phone calls where people are 2 placing orders? Fair? 3 A. If they're in a home. If they're in a 4 call center they've got to sit. 5 Q. Why is that? 6 A. Just the way they are. They, they 7 constantly are monitoring people in a call center to 8 make sure they are doing their job and concentrating. 9 There are supervisors that are walking around so they 10 have to sit. 11 Q. Would it be important to a supervisor if 12 a person had a headset on and walked around? 13 MR. GONZALEZ: I object. 14 MR. FORMICOLA: He said when the 15 supervisor is looking. 16 Q. The bottom line is that the order is 17 taken. 18 A. Most of the people are sitting. 19 Q. Miss McNamara could do a job like that 20 if she didn't have to sit for six or eight hours. 21 Correct? 22 A. Okay. You're talking just about that 23 part of the job, the physical portion of the job? 24 Q. Yes. 25 A. Correct.</p>	<p style="text-align: right;">Page 104</p> <p>1 We don't factor one out and just eliminate the 2 others. 3 Q. Well, there are some positions where she 4 wouldn't necessarily have to do anything or enter 5 orders in a computer, where just she might need to 6 take customer service calls and refer them to 7 somebody. 8 Is that fair? There are jobs like that. 9 Right? 10 A. These are still at home jobs? 11 Q. Yes. 12 A. I guess it's possible. 13 Q. Anything else you can think of she might 14 be able to do? 15 A. Just with that limitation? 16 Q. No. Based upon your evaluation is there 17 anything else -- 18 A. I don't believe she is employable on a 19 sustained regular competitive basis. You're taking a 20 job out of a vacuum that she could possibly do for an 21 hour or so at a time possibly. Depending on her 22 cognitive condition, her emotional condition, her 23 physical condition in my opinion she's unemployable. 24 Q. Did you consult any other, any sources 25 other than that are reflected in your report in order</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. If she needed to she could have some 2 sort of desk with a brace where she could stand from 3 time to time. 4 Correct? 5 A. Well, there are standing desks. 6 Q. But in other words, you said that she 7 has trouble sometimes with balance but if she were 8 able to balance herself when she stood that's 9 something she might be able to perform. 10 Correct? 11 A. Possible. 12 Q. So when you say she's unable to transfer 13 her skills to other types of semi-skilled or skilled 14 occupations, in fact, there might be some things she 15 can do for work. 16 Correct? 17 A. Again, you're only talking about the 18 physical components of her limitations. True. 19 Q. Would there be some -- 20 A. If you only look at the physical 21 components of her limitations that would be true. 22 When we looking for placing somebody in a job we 23 don't take them in a vacuum. We look at the 24 emotional condition, the cognitive condition and the 25 physical condition they have. All three together.</p>	<p style="text-align: right;">Page 105</p> <p>1 to reach your evaluation? 2 A. No. 3 Q. Nowhere in your report do you list 4 various occupations and indicate why she cannot 5 perform those occupations. 6 Correct? 7 A. Why would I do that? I find she is 8 unemployable. That would be a useless effort on my 9 part. 10 Q. I understand. By way of example, you 11 don't list a number of occupations and say, why she 12 can't perform them? 13 A. I didn't. I never do that. 14 Q. Would it be fair to say that you did not 15 personally make any phone calls or inquire of anyone 16 as to whether or not they would be interested in 17 hiring a person with what you found to be Ms. 18 McNamara's cognitive and other difficulties? 19 A. I did not. 20 Q. In other words, you didn't do any field 21 work? 22 A. I didn't do a labor market survey. 23 Q. Did you do -- 24 A. I didn't do a labor market survey 25 because I felt she was unemployable. If I felt</p>

<p style="text-align: right;">Page 106</p> <p>1 someone was employable I would do an Internet or 2 telephone call market labor survey. I can do 3 anything to see if jobs are open and available to 4 them. 5 Q. You have done that in the past? 6 A. I have. 7 Q. Have you done that in the past with a 8 woman who had roughly the same level of what you 9 consider to be brain injury as Miss McNamara? 10 A. No. 11 Q. So you've never in a situation where you 12 found moderate brain injury done an Internet survey 13 or telephone survey? 14 A. No. Before I get to that level I'm 15 looking at what type of job someone can do. If I 16 believe they are unemployable I'm not going to seek 17 what jobs they can do. Makes no sense. If I find 18 someone is employable I say, these are the jobs they 19 can do and this is what they are paid and this is how 20 many jobs are existing. If you want to go one step 21 further, which I do at times but not all the time, I 22 say, these are the jobs open and available in their 23 geographical area. 24 Q. Did it ever come to your attention that 25 Miss McNamara and her husband have given depositions</p>	<p style="text-align: right;">Page 108</p> <p>1 knowledge those are the major ones I didn't receive 2 were the depositions. I didn't even know if 3 depositions were taken at the time that I saw Miss 4 McNamara. 5 Q. But you never received them since? 6 A. I did not. 7 Q. Is there a reason you would feel that 8 you'd want to see the depositions? 9 A. Sure. I want to see what the person is 10 saying, how they are responding to the questions. 11 Q. And there's at least a possibility in 12 that response that the person may at deposition give 13 different answers than they give you at the time of 14 the evaluation. 15 Correct? 16 A. Possible. 17 Q. That would be something that would be 18 significant to you? 19 A. Something I'd like to know, yes, sir. 20 Q. If that were, in fact, the case that 21 might change your evaluation? 22 A. Possible. 23 Q. And -- 24 A. May change my opinion. 25 Q. Your opinion?</p>
<p style="text-align: right;">Page 107</p> <p>1 in this case? 2 A. I didn't know one way or the other. 3 Q. So it's fair to say you never requested 4 the depositions? 5 A. That's not true. 6 Q. You did request the depositions? 7 A. As part of my ongoing request for 8 records part of the records I request are 9 depositions. 10 Q. And you didn't receive them in this 11 case? 12 A. True. 13 Q. Do you know why you didn't receive them? 14 A. No. 15 Q. Did you exchange any correspondence at 16 all with Mr. Napoli's firm? 17 A. No. 18 Q. Why do you generally request 19 depositions? 20 A. It's part of the records I request. 21 There's a whole series of records that I request when 22 I get a referral. 23 Q. Any other records you requested that you 24 didn't receive? 25 A. Those are the -- to the best of my</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Possible. 2 Q. And in point of fact, you in your own 3 report reserve the right to amend your report if 4 additional information or documentation comes to you 5 and it changes your evaluation? 6 A. I do. Changes my opinion. 7 Q. Changes your opinion. 8 Is there a difference? 9 A. Yes. Of course. Doesn't change my 10 evaluation. It can change my opinion. 11 Q. I'm sorry. Change your opinion then. 12 Now, I just want to briefly go over your 13 findings with respect to lost earnings. You indicate 14 that your assessment is an estimate. You didn't take 15 into account the discount rate, the inflation rate or 16 taxes being subtracted. 17 Correct? 18 A. Yes. 19 Q. What is the discount rate? What does 20 that mean? 21 A. I have no idea. Those are all economic 22 terms. I'm not an economist. It says in the report 23 "this does not replace a forensic economic report." 24 Q. By the way, did you do any kind of 25 objective testing with Miss McNamara as to her</p>

<p style="text-align: right;">Page 110</p> <p>1 ability to lift weights? I think you said she could 2 lift five to 10 pounds? 3 A. I already previously testified I did no 4 testing. 5 Q. So you don't know whether or not when 6 she made those representations as to what she could 7 lift she was being truthful? 8 A. That was her estimate of what she could 9 do. I would not know whether she is being truthful 10 or not. 11 Q. And if you had somehow objectively 12 tested her and it was found that she was not being 13 truthful about that and she could lift more than she 14 said, that could affect your opinion. 15 Correct? 16 A. Possible. 17 Q. Where did you get the figure for fringe 18 benefits of 403,956? 19 A. I just take a standard 20 percent. 20 Q. So in other words, standard 20 percent 21 of what she was earning? 22 A. Yes, sir. 23 Q. And you -- do you consult any texts or 24 anything to evaluate that? 25 A. No. Just a standard figure I use.</p>	<p style="text-align: right;">Page 112</p> <p>1 unemployable so those factors just don't apply to 2 this particular individual. Those are factors to 3 take into consideration during the labor work force. 4 Q. If you can quickly turn to your 5 testimonial history. 6 A. Sure. I don't think I have one. 7 Q. It's your report. 8 A. It's -- 9 Q. I'm sorry. 10 MR. FORMICOLA: Counsel, do you have it? 11 Mine is marked up. Show him a couple of pages of his 12 testimony. 13 A. All right. 14 Q. It looks to be four pages or so. 15 A. I have to keep records for four years. 16 Q. I understand that. What you have before 17 you is five pages of your testimonial history. 18 Correct? 19 A. Yes. 20 Q. I don't want to go through them one by 21 one. 22 A. I hope not. 23 Q. Do you know if any of these cases 24 involve traumatic brain injury? 25 A. I would no idea.</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Where do you get that figure from? 2 A. Just a standard figure that I see the 3 economists using, some more, so I use 20 as the 4 average. 5 Q. Your last paragraph in your report 6 "labor force participation." 7 A. Yes. 8 Q. Let me just read it to you. "In 9 formulating my opinion regarding Miss McNamara's 10 employability and earning capacity I considered the 11 various factors which affect an injured person's work 12 life expectancy in the competitive labor market. I 13 considered that it may take her longer to find a job 14 and that she may be unemployed longer between jobs. 15 Miss McNamara may require time off for medical 16 treatment and may have difficulty keeping a job. 17 Lastly, her limitations may force her to retire 18 earlier than planned." 19 The sentence "I consider that it may 20 take her longer to find a job and that she may be 21 unemployed longer between jobs," what does that mean? 22 A. These are all factors, when we look at 23 someone that is injured these may affect her ability 24 to work. And it's called labor market participation 25 rate. In this instance I felt Miss McNamara was</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Do you know what percentage of these 2 cases you testified either at deposition or trial for 3 a defendant and which cases you testified for a 4 plaintiff? 5 A. I would say the vast majority is for -- 6 let's look at 2/17. That would be the last year. 7 That is the freshest. I may be able to pick out. 8 Q. All right. 9 A. I'd say on 2/17 -- no depositions were 10 for defendants. They are all for plaintiffs. I have 11 only -- in my entire career I have only had three 12 depositions taken of me from, that I was on the 13 defendant's side. It's not something that happens. 14 I think last year -- trying to think here. I 15 testified, I know I testified at least twice on the 16 defendant's side in 2017. I just don't know which 17 cases they are. I'm sorry. I'll tell you that the 18 vast majority of the time that I testify is for 19 plaintiff. 20 Q. Okay. Approximately what percentage of 21 time do you testify for plaintiff? 22 A. I'd say at least 85 to 90 percent of the 23 time. 24 Q. 85 to 90 percent is for plaintiff? 25 A. Yes.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. Does that include trial as well?</p> <p>2 A. Trial testimony, yes.</p> <p>3 Q. And deposition testimony?</p> <p>4 A. Yes.</p> <p>5 Q. What percentage of your income do you</p> <p>6 derive on a yearly basis from forensic work with</p> <p>7 lawyers?</p> <p>8 A. About 50 percent.</p> <p>9 Q. So the same is the percentage of time</p> <p>10 you spend is the percentage of your income?</p> <p>11 A. True.</p> <p>12 Q. Can we mark your folder as defendant's</p> <p>13 B?</p> <p>14 A. If we mark it on the front --</p> <p>15 Q. I want to mark it on the front folder.</p> <p>16 A. They don't keep it together that way.</p> <p>17 If you mark it here they will keep the file.</p> <p>18 Q. There appears something in the pocket</p> <p>19 that we --</p> <p>20 A. That was the MRI we discussed.</p> <p>21 Q. Is that part of what you reviewed as</p> <p>22 well?</p> <p>23 A. Hold on. I'm sorry. This is an MRI</p> <p>24 that was forwarded to me must be recently because it</p> <p>25 is dated 12/26/17. And this states it is from</p>	<p style="text-align: right;">Page 116</p> <p>1 of documents today and then complete a deposition</p> <p>2 because there is just too much information</p> <p>3 potentially contained in the documents. So I am</p> <p>4 reserving my right to conduct a further deposition of</p> <p>5 Mr. Provder at some future time.</p> <p>6 I would ask that counsel provide us with</p> <p>7 copies of everything marked today and we'll review</p> <p>8 them and determine if we need a further deposition.</p> <p>9 Subject to that, I have no further</p> <p>10 questions.</p> <p>11 EXAMINATION BY MR. CARDENAS:</p> <p>12 Q. Mr. Provder, very quickly. Is it fair</p> <p>13 to say that you have been somewhat generous to Miss</p> <p>14 McNamara when assigning a yearly income to her?</p> <p>15 A. No.</p> <p>16 MR. GONZALEZ: I'm going to object to</p> <p>17 the form of your question but he answered it.</p> <p>18 A. The answer is "no."</p> <p>19 Q. You said \$136,000 -- \$136,652 a year,</p> <p>20 correct, I believe paragraph eight on page 22?</p> <p>21 A. Hold on. Yes. Includes both jobs.</p> <p>22 Q. The \$136,652 per year, to your knowledge</p> <p>23 has she ever earned that much money?</p> <p>24 A. No. As I previously testified and we</p> <p>25 discussed before, she just started the second job so</p>
<p style="text-align: right;">Page 115</p> <p>1 Montefiore Hospital and states a clinical diagnosis</p> <p>2 of "clinical indication: Traumatic brain injury."</p> <p>3 Q. Did you review that in preparation for</p> <p>4 your testimony?</p> <p>5 A. I did.</p> <p>6 Q. And there appears to be, is that a CD</p> <p>7 there?</p> <p>8 A. CD of some sort or another. CD.</p> <p>9 Q. Is that a CD, to your knowledge, of the</p> <p>10 MRI report you just referenced?</p> <p>11 A. I assume it is.</p> <p>12 MR. FORMICOLA: Can we mark the notebook</p> <p>13 in some way as defendant's B?</p> <p>14 (Exhibit D-B, three-ringed binder, is</p> <p>15 marked for identification.)</p> <p>16 MR. FORMICOLA: What I'd like, if</p> <p>17 counsel can provide us with copies of everything that</p> <p>18 is marked today.</p> <p>19 I am joining Mr. Cardenas with respect</p> <p>20 to the fact that I cannot close the deposition today</p> <p>21 because we have been in the course of this case</p> <p>22 exchanging documents before the witness testifies so</p> <p>23 we are in a position to review them before we</p> <p>24 question the witness. That did not happen today.</p> <p>25 And obviously, we can't review a very thick notebook</p>	<p style="text-align: right;">Page 117</p> <p>1 the answer would be "no."</p> <p>2 Q. What's the most amount of money Miss</p> <p>3 McNamara ever earned in a single year?</p> <p>4 A. Can't answer that question. Never</p> <p>5 reviewed any. Wage information was never forwarded</p> <p>6 to me.</p> <p>7 Q. You're not able to tell us as you sit</p> <p>8 here today as the expert who has rendered an opinion</p> <p>9 on the income loss what the greatest amount of money</p> <p>10 this woman ever earned in one single year is?</p> <p>11 A. True. I never reviewed any tax returns.</p> <p>12 They were never forwarded to me.</p> <p>13 Q. The 136,652 dollar figure, as you just</p> <p>14 indicated, includes a job, includes a second job</p> <p>15 paying her a thousand a week.</p> <p>16 Correct?</p> <p>17 A. True.</p> <p>18 Q. And in fact, she had only held that</p> <p>19 second job for approximately a month?</p> <p>20 A. True.</p> <p>21 Q. And she would have to work that second</p> <p>22 job for a full year before she would actually earn</p> <p>23 income in the range of \$136,652.</p> <p>24 Correct?</p> <p>25 A. True.</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. Isn't it fair to say that a woman 2 approaching advanced age is not likely to be able to 3 keep running with both ends of the candle burning 24 4 hours a day at two jobs for very long? 5 MR. GONZALEZ: I'm objecting to both the 6 form of the question and to the substance of the 7 question. 8 MR. CARDENAS: The substance? 9 MR. GONZALEZ: The substance of the 10 question as well. 11 MR. CARDENAS: You believe it is 12 objectionable to ask this witness if an elderly woman 13 can work two jobs for a year? 14 MR. GONZALEZ: Elderly? A woman in her 15 mid 50s is not elderly. 16 Q. Do you believe that this woman, in your 17 terms, approaching advanced age is likely to have 18 been able to work two jobs for the next 15 years of 19 her working life? 20 MR. GONZALEZ: Had she not been injured? 21 MR. CARDENAS: Exactly. Had she not 22 been injured. 23 A. Depends on the individuals. There are 24 many individuals that I know that are at her age that 25 work multiple jobs. So that depends -- that's an</p>	<p style="text-align: right;">Page 120</p> <p>1 \$136,652 a year that she would have been able to hold 2 down both jobs at the same time year in and year out 3 for the 15 years that you say she had an active work 4 life left? 5 A. True. 6 MR. CARDENAS: No further questions. 7 EXAMINATION BY MR. GONZALEZ: 8 Q. I have a couple of questions. Mr. 9 Provder, at page 14 you were asked questions 10 concerning the cognitive complaints -- 11 A. Yes. 12 Q. -- related to what Mrs. McNamara reports 13 to you. 14 A. Yes. 15 Q. It indicates that and I'll read it to 16 you exactly as it says: Miss McNamara reports 17 experiencing impaired remote and short term memory." 18 Do you recall whether or not she said to 19 you "I have impaired remote and short term memory?" 20 A. Yes. I asked her those questions and 21 she responded she did. 22 Q. Is that the term she used to you, she 23 told you that she had "impaired remote and short term 24 memory?" 25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 individual -- her goal was to work those two jobs. 2 There is nothing indicating that I've seen that said 3 she wouldn't work the two jobs. So that's why I used 4 both the earnings from both occupations. 5 Q. She had never done it. 6 Correct? She had never worked both jobs 7 for a full year? 8 A. Not from the records I saw. This was 9 the first time -- 10 Q. I'm not talking about from the records. 11 A. This was the first time that she had 12 worked two jobs that I know. 13 Q. This is an important point to me so I am 14 not going to let it rest. 15 She had never worked two jobs for a full 16 year? 17 A. Based on the history I took of her the 18 answer would be "yes." 19 Q. In fact, the information you have 20 demonstrates to you that only for one month had she 21 worked two jobs, actually worked two jobs at the same 22 time? 23 A. Based on the information I had that 24 would be correct. 25 Q. So you're assuming when you give her the</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Did she say to you also that she had, 2 let's see where it was, on the next page "difficulty 3 in word retrieval?" 4 A. Yes. 5 Q. And did she say to you also she had 6 impairment in her organizational abilities? 7 A. Yes. 8 Q. And also, that her thinking was slower 9 than prior to her accident? 10 A. Yes. 11 Q. Thank you. 12 MR. GONZALEZ: I have nothing further. 13 MR. CARDENAS: One further question. 14 You just indicated that she told you her thinking was 15 slower than before the accident but you testified 16 earlier today, if I am correct, that you observed no 17 slowness in her responding to questions that you 18 asked of her. 19 THE WITNESS: True. 20 MR. CARDENAS: Okay. Thank you. 21 MR. FORMICOLA: Thank you, Doctor. 22 (Testimony concludes at 12:58 p.m.) 23 24 25</p>

&	1976 19:1	4	8
& 1:7,8 2:7,11,15	1981 12:7 13:9,10	4,000 69:3,7	80 18:16,22
0	2	4,116 3:5	80,000 76:22
03768 1:2	2,423,736 43:16,19	40 7:8,20	80s 13:2
1	2,550 44:11	403,956 110:18	81 3:13 12:6 18:16
1,000 40:3	2.4 44:15,18 45:3	42 15:6	84,000 48:8
1,500 44:6	45:11	425 70:18	84,652 40:2
1/11/2018 123:3	2.423 43:19	48 14:6	85 113:22,24
10 7:8,23 37:19	2/17 113:6,9	49 14:6 24:11	85th 20:20
41:24 42:2,6,19,20	20 22:23,25 42:18	5	8:30 74:13
110:2	52:5 95:10 96:20	5,000 43:24	9
100 52:4	110:19,20 111:3	5/25/15 58:17	9/11 12:24
10005 2:8	123:21	65:16	90 113:22,24
10017 2:4	2008 51:19	50 7:5,25 84:10	a
10021 26:8	2015 36:21 37:19	97:14 114:8	a.m. 1:21
10:13 1:21	45:16 48:14 51:19	50s 98:6 118:15	aalj 57:5
10th 36:21	91:1	54 97:14	abilities 29:21
11 1:20	2017 25:10,23	55 10:7	75:7 95:5 121:6
115 3:14	26:15 36:16 78:16	575 26:7	ability 22:4 30:1
11749 2:12	113:16	6	39:20 43:1,3
12 19:13	2018 1:20 122:24	6/15/15 91:18	45:22 46:5,22
12/18/2015 91:2	20s 98:7	60 42:18 99:25	55:23 56:5,5
12/26/17 114:25	2100 2:7	60s 14:6	60:19 72:1 76:24
120 3:7 100:12	212 2:4,8	61st 12:23	87:14,23 88:16,21
12:58 121:22	22 99:14 116:20	631 2:13	89:6,19 97:17
13 11:25 12:2 30:4	225 2:12	68 13:8	110:1 111:23
42:23 69:18	22nd 78:20,25	7	able 10:25 21:6,10
136,000 116:19	232-1300 2:8	70s 15:15 21:25	23:11 24:4,17
136,652 116:19,22	24 118:3	73 15:15,19 16:25	27:16 28:5 30:2,8
117:13,23 120:1	25 26:15 78:16	17:1 21:25 22:1	41:21,22 53:8
14 12:1,2 88:4,8	25th 25:9,23 36:16	74 3:6 17:1 18:15	55:11,12,13,18
94:15 120:9	3	18:18	82:15,23 83:23
15 37:12 42:18	30 84:11	74th 12:18,20	103:8,9 104:14
63:21 91:1 95:2	300-3 1:19 4:1	755-0101 2:13	113:7 117:7 118:2
118:18 120:3	32 3:21	75th 12:21	118:18 120:1
16 1:2 94:14	36 12:7	77 2:7 19:1	absolutely 32:24
122:24	360 2:3	79 18:16,18,22	abuse 72:13,14,20
17 1:19 4:1	37 12:7		73:3,5 74:21 75:2
1974 17:17	397-1000 2:4		75:6,16,16,18,19
			75:20,24 76:2,11

76:16,23 abusing 73:2 75:11 abve 1:7 accept 75:21 accepted 39:1 41:4 access 97:6 accident 23:7 29:23 45:16 46:25 47:16 48:18 50:1 57:15 58:18 65:15 65:16,22,24 70:3 95:6 97:20 121:9 121:15 accidents 45:21,21 46:4,15 87:22,22 88:10,15,25 89:17 89:18,18 account 43:20 109:15 accuracy 64:16 69:9 accurate 34:8 49:14,15,16 50:6,7 71:13 89:6 122:11 accurately 72:22 acknowledge 45:5 63:8 68:4 act 28:4 action 1:2 122:16 122:19 active 120:3 activities 29:25 70:10 activity 44:9 actual 49:5 83:18 add 80:1,18 addition 16:17 additional 31:4 59:20 109:4	address 24:10 26:6 adjusting 16:11 adjustment 16:17 administer 35:16 36:8 administered 35:23 36:1,3,10 37:5,25 38:4,9,16 38:23 66:1,4 administering 36:5 administration 8:20 13:17 19:18 37:20 98:14 administrative 8:14 11:4 57:11 advance 32:14,15 advanced 96:22 97:2,10,11,14,17 97:22 99:6 118:2 118:17 advantage 1:6,7,7 2:15,15 74:17 advised 37:23 59:3 affect 39:3 43:1,3 45:21 63:10 73:4 74:21 75:7 86:14 87:7,22 92:13 110:14 111:11,23 age 24:12 96:22 97:2,10,11,13,14 97:15,17,22 98:2 99:6 118:2,17,24 aged 97:13 agency 19:22 20:16 ago 11:8,8,10 12:7 23:6 25:24 82:20 agoraphobia 51:8	agree 75:9 92:23 ahead 85:1 alan 122:7 alarming 30:8 alcohol 72:13,15 72:20 73:2,3,5 74:21 75:2,6,11,23 76:2,6,10,16,23,25 alcoholic 72:6 alleged 45:15 60:25 allow 82:10,10 alprazolan 52:6 52:12 alprozolan 52:8 altogether 63:1 amend 109:3 amount 14:8,21 48:9 51:5,10 117:2,9 amputations 16:3 angeles 10:17 ann 1:3 3:13 25:7 25:25 26:3,20 60:9 81:12 annoying 82:5 answer 24:7 27:13 51:3 53:12 55:5 56:25 57:24 59:19 84:24 87:23 89:19 101:11 116:18 117:1,4 119:18 answered 27:20 45:23 87:19 116:17 answering 46:10 100:24 answers 108:13 antidepressants 46:16 49:20	antonio 10:16 anxiety 46:17 48:25 49:20 50:22 52:16 apart 71:4 apologize 33:6 apology 51:24 appear 38:3 appears 49:4 78:19 80:23 114:18 115:6 appendix 41:18 apply 112:1 appreciate 60:22 61:11 72:1 approaching 96:22 97:2,9,11,14 97:16,22 99:6 118:2,17 appropriate 35:19 approximately 113:20 117:19 april 13:8 48:14 area 8:19 10:14 13:20 48:7 52:22 76:12 106:23 areas 8:9,22 9:1 82:21,24 arm 16:2 arrangement 33:1 art 24:16,18 arthur 13:18 artist 24:15 aside 37:21 39:18 asked 27:8 28:6 46:17 48:6 53:11 55:12 64:2 70:10 87:20 90:2,17 96:7 120:9,20 121:18
--	--	--	---

asking 13:25 24:16 26:24 33:22 35:16,16 46:6,8,21 49:8,10 50:4 62:19 66:8 68:15 70:21 71:10 74:18 77:23 84:9 88:19 aspect 30:11 aspects 17:11 29:7 42:14 53:10 assess 64:14,19 assessment 1:18 6:5 11:22 13:11 39:17 62:15 86:17 109:14 assessments 55:10 assigned 20:3 assigning 116:14 assist 5:11 16:10 assistance 30:3 assistant 11:4 association 19:22 20:7 assume 63:5 67:24 86:24 92:8 115:11 assumed 48:16 assuming 64:12 119:25 assumption 29:5 34:7 86:20 89:2,8 90:5,9 assumptions 63:6 63:15 85:20 86:1 86:2 92:17 95:18 95:22,25 96:1,2,8 96:15,17 attached 41:17 attention 29:18 106:24 attorney 4:17 11:17 122:15,17	attorney's 5:20 79:7 attorneys 2:6,10 2:14 13:24 20:13 45:18 august 12:6 13:10 36:21 37:19 78:20 78:25 80:12 available 59:5,15 59:21 63:21 106:3 106:22 avallone 2:11 74:16 avenue 2:3 12:22 26:7 average 111:4 aviles 2:11 74:17 avoid 35:9 aware 35:14,17,23 37:6,24 39:4 43:24 44:2 45:14 47:18,19 55:1,3 76:15	balance 10:8 30:15 42:21 69:22 103:7,8 bangle 8:4 barely 77:22 base 33:11 34:9 based 5:14 23:16 30:12 33:18 41:12 47:17 54:15 56:11 61:20 63:4,14 65:17 68:6 79:6 86:1 94:22 95:7 95:23 96:9,25 104:16 119:17,23 basic 63:6 basically 9:9 14:13 14:18 19:9 82:6 basing 66:15 89:23 basis 20:3 25:5 34:7 35:13 40:14 65:12 69:6 70:8 70:12 104:19 114:6 bathe 30:1 bay 68:18 beach 20:8 21:1,15 becoming 37:24 believe 6:11 9:8,8 18:15 36:2 40:6 41:10,12 42:23 44:21 48:6 81:15 99:24 104:18 106:16 116:20 118:11,16 benefits 8:16 44:12 110:18 best 8:5 28:7 37:18 55:20 89:6 107:25 better 27:12	beverages 72:6 bierman 13:18 14:6 big 30:6 billboard 11:5 binder 3:14 31:25 32:9 73:17 115:14 birthday 24:8 bisgaard 2:7 4:18 bit 24:16,17 blindness 16:7 body 23:8 book 73:15 books 84:14 born 24:9 bottom 95:11 98:19 102:16 boxed 34:2 brace 103:2 brain 21:20 22:10 22:15,20,24 23:3,7 23:9,10 24:6,14 28:2,10,14 30:19 31:9 35:4,6 39:19 40:8 55:1,3 65:10 71:25 77:21 78:2 82:13 91:19,20,21 106:9,12 112:24 115:2 branch 20:9 break 9:5 breakdown 10:2 brian 8:3,6,8,11 9:14 bridget 3:13 81:12 brief 57:21 briefly 109:12 bring 44:24 brings 20:5 brisbois 2:7 4:17 11:1
---	--	---	---

brooklyn 21:9 brought 54:24 build 80:20 bump 24:24 burning 118:3 bus 24:6 busy 101:21,22,23 c c 2:1 31:6 36:18,20 90:22 ca 2:12 caformicola 2:14 call 6:19 7:3 10:4 32:11,16 100:22 101:4 102:4,7 106:2 called 5:9,17 6:4 8:13,14 15:24 19:2,4 20:6,16,23 22:6 36:1 37:12 52:17 59:25 63:20 80:24 111:24 calls 13:24 78:11 101:21,23,23 102:1 104:6 105:15 candidate 40:20 41:2 candle 118:3 capabilities 16:22 29:12 capability 41:7,10 42:20 capable 40:25 41:1 42:4 capacity 40:4,17 40:21 43:7,8 85:24 89:25 90:7 95:12 97:7 111:10 caption 60:8	car 48:23 87:22 cardenas 2:9 3:5 4:5,10,12,16 31:11 32:11,24 33:24 34:5 49:8,10,14,18 50:1,4,12,18 57:19 57:25 59:12 61:4 61:6,9 65:23 68:11 69:14 70:21 71:1,6 73:16,22 74:5 84:1 88:2 115:19 116:11 118:8,11,21 120:6 121:13,20 care 5:12,13,14 7:11,15,18 8:11 9:17,18 30:5 60:20 career 63:25 78:5 113:11 carl 2:13 74:15 carry 41:23 42:19 case 4:20 5:15 7:3 10:4,5,15 11:14 23:7 27:13,16 30:25 32:4,5 36:14 37:23 39:25 40:3 47:2,9,10 48:1,10,24 49:22 58:20 59:4 61:12 65:10 74:18 82:24 93:8 107:1,11 108:20 115:21 123:2 cases 5:19,22 8:20 8:21,21,24 9:13,14 10:15 11:3,16,18 20:14 38:23 64:4 65:6 112:23 113:2 113:3,17	cat 66:2,3 catastrophic 5:13 15:25 categories 7:11 9:6 40:10 97:13 97:16 category 7:20 10:1 29:10 39:18 causality 76:7,13 cause 53:3 caused 47:24 cd 115:6,8,8,9 cell 70:4 center 20:8 22:7,8 101:4 102:4,7 certain 38:14 41:4 54:5 74:3 101:6,7 certainly 28:24,25 29:1 31:8 34:17 39:9 45:12 46:3,5 48:7 62:18 63:8 87:25 certainty 95:20,24 96:10 certificate 9:17 122:2 certified 1:15 4:3 36:5 122:4,23 certify 122:6,10 122:14 change 39:12 64:10 108:21,24 109:9,10,11 123:5 changed 64:8 83:15,24 84:20,21 changes 41:14 63:15 64:10 109:5 109:6,7 characterized 28:8 70:23	characters 70:19 71:7 charge 19:3 21:4 check 10:24 53:20 child 78:2 children 77:15 circumstance 77:23 circumstances 34:23 78:6 82:10 citation 85:13 cite 84:21 cited 61:18 citizens 5:18 city 12:11,12,14 12:16,17 13:20 15:22 26:5 civil 1:2 claim 60:13 claiming 50:7 clarified 62:11 clarify 65:21 clcp 1:7 clean 69:7 clear 66:17 clerical 6:25 7:1 26:9 client 25:8 28:3 61:14 77:20 clients 14:1 16:10 16:15 climb 69:20 clinical 115:1,2 close 78:7 91:18 91:20 115:20 cognitive 22:13 23:11 24:25 29:12 31:10 33:11 34:25 41:11 42:10 43:2 55:3,15 56:2,3 58:8 62:24 71:20
--	--	--	---

71:20 75:5,7 76:11 90:6 94:17 98:5 103:24 104:22 105:18 120:10 coincide 97:14 combination 42:16 43:2 56:8 63:1 66:22 combined 7:13 come 20:3 23:6 27:10 73:23,24 74:8 90:11 99:2 106:24 comes 10:20 19:19 34:18,20 109:4 comfortable 27:4 27:11 82:8 coming 27:11 commencement 122:7 commencing 1:21 commercials 100:22 commission 19:25 123:25 common 4:15 commuting 47:25 49:21 company 6:4,6,10 6:15,17,18 12:3,5 13:11,13 15:11 17:5 19:22 compensation 5:22 competitive 40:14 40:15 104:19 111:12 complaints 29:12 54:4 61:22 64:22 71:14 72:22 92:4	94:17 120:10 complete 32:21 94:10 116:1 completed 15:8 58:22 95:15,16 completing 15:6 complex 70:18,24 70:25 71:7 complied 86:6 comply 86:14 complying 86:18 components 103:18,21 compound 33:21 33:25 computer 79:18 101:14 104:5 concentrated 9:1 concentrating 102:8 concentration 23:1 29:15 concentrational 56:5 concern 35:11 60:16,16 concerning 120:10 concerns 87:17 concise 61:10 conclude 95:21 98:24 concluded 35:8 concludes 121:22 conclusion 99:2,21 conclusions 38:19 97:1 concur 31:8 condition 30:14 33:18 41:14 42:14 46:20 47:24 51:17 55:18 75:4,5	103:24,24,25 104:22,22,23 conditions 21:16 22:16 42:17 43:3 45:15,20 55:14 56:3,6,7,11 60:25 65:3 87:11,13,21 88:10,16,21,25 89:17 90:6 conduct 116:4 conducted 27:24 coney 20:9 21:6 confused 7:10 connection 5:25 11:14 32:4,5 43:21 58:11 59:2 59:16 60:5,25 62:14 63:22 80:25 90:12 consider 106:9 111:19 consideration 61:17 88:1 112:3 considered 24:1 52:20 75:19 111:10,13 consisted 17:20 consistent 35:2 constantly 102:7 consult 104:24 110:23 consultant 5:17,19 consultants 85:14 consulted 84:18 consultive 5:16 7:9,23 consumes 72:5 contacted 19:1 contacts 21:10 contain 32:3 91:5	contained 92:24 95:22 116:3 containing 32:22 contemporaneou... 79:21 contention 66:20 continue 16:24 continued 15:5 continuum 29:4 contracts 18:3,6 contradictory 54:13 contributed 75:11 contusion 65:19 conversation 59:8 59:10,11 conveying 34:10 cooperative 86:6 86:13 copies 115:17 116:7 copy 32:12,17,21 corporation 1:6 14:2,10,12,14,15 14:16 correct 21:17 35:21 45:9 54:7 56:21 60:11 61:23 74:23 76:18 77:2 78:17,21,24 79:24 81:14,18 83:8 84:19 86:3,25 87:8,12,14 88:12 88:17 89:9 91:3,7 92:10,21 93:2,10 93:23 94:24 96:18 96:24 98:1,8,21 99:3,19,22 100:1,9 100:13,14,19,25 101:9,18 102:21 102:25 103:4,10
--	--	---	---

103:16 105:6 108:15 109:17 110:15 112:18 116:20 117:16,24 119:6,24 121:16 correspondence 107:15 counsel 3:16 4:10 49:15 112:10 115:17 116:6 122:15,17 counseling 15:2,3 15:7 16:10,12 17:23 counselor 4:9 6:13 8:8 9:19 15:23 20:2 counselors 6:22 8:2 county 68:18 couple 9:16 10:13 23:6 80:23 112:11 120:8 course 34:11,24 45:4 63:17,17 79:25 98:2 100:3 109:9 115:21 court 1:1,15 4:3 122:4,23 crc 1:6 credits 15:6 criteria 41:4 critically 64:14,17 cubicle 18:5 currently 11:13 curtains 18:5 customer 104:6 cv 1:2 17:6	d d 1:7 3:1,13,14 8:3 81:12 82:18 115:14 daily 29:25 50:23 69:6 70:10 daly 8:3 date 25:22 48:13 58:13,16 65:22 83:18 84:5 122:13 123:3 dated 36:21 37:18 114:25 122:24 day 8:17 20:11 21:7 41:22 48:18 49:22 51:21 52:4 52:5,5 65:15,24 67:9 68:25 75:19 118:4 123:21 days 82:20 deal 62:1 dealing 5:21 deals 5:18 38:13 67:2 97:18 decision 56:22 57:2,3,4,11 86:16 dedicated 8:9 defendant 2:10,14 10:5 113:3 defendant's 54:11 81:11 82:17 113:13,16 114:12 115:13 defendants 1:9 10:6 61:16 74:18 113:10 defense 10:7 define 75:16,20 degree 15:1,3,5,19 15:20 95:19,23 96:3,9 97:3	delay 53:12 54:12 delayed 53:3 delays 55:21 demand 40:10 demands 41:9 demonstrate 72:12 demonstrated 24:13 39:6 69:5 69:16 demonstrates 119:20 department 17:15 17:18 18:9 41:19 97:12 98:13 depend 75:2 depending 73:4 101:20 104:21 depends 64:11 98:9,11 118:23,25 depo 123:2 deposition 1:5 32:14 50:8 58:20 58:22,23 73:23 74:9 108:12 113:2 114:3 115:20 116:1,4,8 123:3 depositions 32:15 106:25 107:4,6,9 107:19 108:2,3,8 113:9,12 depot 1:6 2:10 4:18 45:16 46:25 47:16 60:9 depressed 49:24 50:2 51:6 depression 48:25 49:19 50:10,21 depressive 50:16 derive 114:6	describe 55:13,18 60:24 described 25:2 78:7 91:10 description 3:12 53:25 71:13 92:20 97:15 designed 35:17 desk 103:2 desks 103:5 despite 51:16 detect 35:17,24 determination 39:5 57:7 determinations 63:11 determine 34:11 73:19 77:15 78:8 116:8 determined 16:20 developing 5:13 18:3 developmentally 20:18,21 diagnosis 23:16,20 23:21 56:17 65:18 115:1 diagnostic 89:5 dictate 79:12 dictionary 41:19 80:3 difference 71:2 109:8 different 9:5 12:9 18:23 19:8 29:10 37:10 69:18 70:19 108:13 differently 62:9 difficult 98:15 difficulties 95:2 98:6 105:18
---	--	---	---

difficulty 29:16,19 29:20 51:7 53:9 82:14 95:3 98:25 111:16 121:2 diminished 29:15 direct 5:10 7:6,11 7:14,15,16,18 8:17 61:8,10 directly 27:21 disabilities 16:5 16:11 18:10,11 21:14 41:11 disability 5:18,19 8:13,21 9:13 13:25 20:14 43:22 43:25 44:3,6,12 45:6,7 57:6,9 disabled 20:18,21 56:11,20 57:13,15 disclose 46:18 discount 109:15 109:19 discuss 87:3 discussed 34:15 42:9 76:21 82:12 87:1 96:1,3,5 99:12 114:20 116:25 discusses 56:7 discussing 33:9 discussion 9:3 31:14 36:23 57:20 72:17 dissertation 15:8 distracted 29:18 81:22 distracting 82:5 distraction 81:24 81:25 district 1:1,1	doctor 4:8,13,13 31:12,15 32:22 36:24,25 37:1 49:8 50:19 65:11 67:2 77:5 90:22 121:21 doctorate 15:7 doctors 54:10,10 54:11,12,20 61:25 document 82:19 documentation 60:15 109:4 documents 32:3 41:23 58:5,9 59:21,22 115:22 116:1,3 doing 9:11,21 13:16 17:22 20:12 21:10,23 29:20 47:8,9 48:8,10 50:23 54:24 66:18 77:7 81:17 82:4,6 97:21 98:25 100:17 102:8 dollar 43:24 44:16 45:11 117:13 dollars 18:8 44:18 dosage 52:24 53:3 dose 52:20,20 double 53:20 doubt 73:24 dovetailing 62:21 62:25 downtown 21:8 dr 4:6 31:5,18,22 32:13 36:17 37:16 62:2,2,3,4 90:22 91:17 draft 80:15,16,17 drafts 80:21	draperies 18:5 dress 30:1 drinks 75:18 drive 42:24 driven 70:2 driving 11:5 70:1 70:3 drooling 23:8 drucker 22:6 drug 52:15 due 40:18,21 48:25 70:3 duly 4:2 122:8 duties 47:9 dystrophy 16:4 e e 2:1,1 3:1,10,20 3:20 62:4 earlier 62:10 81:8 99:12 111:18 121:16 early 15:15 21:24 21:25 earn 97:17 117:22 earned 40:5 116:23 117:3,10 earning 14:8,20,21 40:4,17 43:7,8 48:7 51:5,9 76:22 85:24 95:12 97:7 110:21 111:10 earnings 40:1 43:10 109:13 119:4 earth 73:12 easier 50:24 easily 29:18 east 12:18 eastern 1:1 economic 109:21 109:23	economist 43:11 43:14 44:14,25 109:22 economists 111:3 economy 15:16 edition 83:12,13 83:15,16,20 84:11 84:15,16 85:14,15 85:16 editions 83:17 edmond 1:6,19 3:4 4:1 122:7 123:3 123:20 education 14:23 15:5 educational 14:24 93:15 effect 30:16 34:25 53:6 effected 34:20 effects 54:6 effort 105:8 eight 41:22 76:21 102:20 116:20 either 35:8 36:8 37:14 38:3 53:20 57:3 77:12 92:24 93:7 113:2 elaborate 85:11 elderly 118:12,14 118:15 element 99:7,9 elevator 68:22 eliminate 104:1 else's 23:20 embellished 64:20 embellishment 65:2 emergency 24:22 emotional 30:14 42:8 51:17 55:14
---	--	---	---

56:3,6 75:4 103:24 104:22 emotionally 51:14 emphasize 25:3 employability 8:15 56:9 85:24 95:12 111:10 employable 43:4 104:18 106:1,18 employed 17:17 42:7 50:24 employee 122:15 122:17 employees 6:10,24 employment 16:18 17:4 39:21 42:12 48:1 98:16 ends 118:3 enjoying 71:15 enjoys 71:19 enter 101:13 104:4 entire 101:16,25 113:11 entirely 9:21 61:20 entitled 1:14 episode 71:17 episodes 70:15 equally 62:17 errata 123:1 especially 55:1 esq 2:5,9,13 essence 40:22 essentially 50:12 established 91:4 estimate 109:14 110:8 evaluate 9:11 14:1 20:3 35:12 61:15 110:24	evaluated 16:20 19:24 20:14 25:8 78:15 100:8 evaluating 16:15 27:24 38:24 54:20 77:17 evaluation 16:15 17:21,23 29:6 31:5,7,21 33:10,17 33:19 36:16 39:4 47:2,21 48:1,24 49:23 51:21 54:3 61:20 66:21,23 72:21 74:19 77:7 78:12 80:25 81:5 81:17 85:20 86:7 86:14,17 87:7 90:13,17 91:23 92:13 93:8 95:14 95:16 96:17,25 97:10,25 98:3 99:10 100:3 104:16 105:1 108:14,21 109:5 109:10 evaluations 20:13 92:25 valuee 60:1 61:15 63:9 67:20 78:7,8 79:16 86:6,13,21 valuee's 89:6 valuees 59:25 everybody 9:10,10 16:5 75:23 exactly 4:25 55:24 63:12 66:25,25 71:6 98:14 118:21 120:16 exaggerate 86:21 exaggerated 64:21	exaggerating 35:8 examination 4:5 26:17 39:5 67:5 73:7 74:14 82:11 87:2 91:20 116:11 120:7 122:7 examinations 54:9 examined 67:10 example 5:17 23:25 28:8 53:11 66:12 67:1 77:20 83:15 84:23 85:12 100:19 105:10 examples 84:24 exchange 4:12 107:15 exchanging 115:22 exertional 41:25 exhibit 81:12 115:14 exhibits 3:16 exist 40:12 existence 66:22 existing 40:15 47:24 87:11,13 88:9,24 106:20 expect 59:14,20 expectancy 97:19 111:12 expected 46:18 experience 97:3 experiencing 120:17 expert 4:21 5:25 8:12,12 11:14 18:25 19:3,7,16,17 59:9 77:4 97:5 117:8 expertise 34:11 52:23 76:12	experts 5:21 13:20 14:7 19:16 32:16 54:20 expires 123:25 explain 24:17 expressed 85:25 95:18 extent 63:9 extreme 54:12 extremely 54:21
f			
face 64:18 facilities 17:20 22:19 facility 17:9,10 22:5,5 fact 24:2,7 25:3 30:7 31:9 34:23 42:11 46:13 48:17 51:10,15 54:24 56:9 74:8 76:10 86:12 87:5,10,15 89:8,12 90:5 91:21 92:12 103:14 108:20 109:2 115:20 117:18 119:19 factor 47:22 97:25 98:2 104:1 factors 42:16,25 43:2 111:11,22 112:1,2 failing 38:6 fair 6:21 9:20 33:16 58:15 62:13 76:14 78:5 85:6 86:15,16 95:21 102:2 104:8 105:14 107:3 116:12 118:1			

faking 35:18 fall 54:6 58:6,7 65:18 fallen 30:4,7 42:22 67:24 false 86:22 familiar 11:2 92:6 family 26:22 fast 22:7 fear 24:21 fears 51:8 feasible 16:12 federal 8:14 18:4 19:19 44:7 federation 15:23 17:9,14 feed 23:8 30:9 feel 27:12 47:8 108:7 feeling 51:10 feelings 51:13 feels 82:8 feet 69:3 felt 27:3,11 30:2 30:25 31:2 33:15 39:22,23 40:14,16 40:19 66:9 82:24 105:25,25 111:25 fidgeting 82:4 field 17:4 47:1,6,7 47:11,12 63:20 83:14,24 105:20 figure 43:13,15,20 44:12,16,17 45:1,5 110:17,25 111:1,2 117:13 figures 44:13 45:10 file 32:1,13 59:10 62:7 114:17	files 32:15 37:21 41:24 final 80:10,11 financially 122:18 find 16:15 37:17 56:19 58:17 105:7 106:17 111:13,20 finding 57:17 findings 31:8 46:3 64:7 75:12 92:8 109:13 fine 25:13,15 33:3 57:24 59:12 61:4 68:11 69:14 71:11 73:13 74:7 85:11 fire 24:21 firm 4:17 9:7 10:23 11:6,11,13 59:3,15 74:16 107:16 first 4:16 12:22 14:5 36:1 41:9 44:17 48:15,18 57:7 79:6 87:2 89:2 94:19 119:9 119:11 fisher 62:2 five 11:9 13:22 25:24 42:6,19 47:14 52:3 85:19 96:16 110:2 112:17 fluorescent 30:16 34:21 55:17 64:24 focus 9:5 22:10 70:3 focused 22:18 folder 114:12,15 follow 70:18 71:14 72:2	following 97:4 follows 4:4 9:9 foot 69:7 force 35:9 97:7 111:6,17 112:3 foregoing 122:10 forensic 5:23 6:1,2 6:3 7:3,25 8:18,19 9:22 10:1 35:13 109:23 114:6 fork 30:10 form 9:23 33:21 39:7 48:4 49:3 51:2 61:1 68:10 75:15,21 81:25 92:17 116:17 118:6 formation 14:15 formed 14:2 formicola 2:13 3:6 9:2 32:20 36:22 74:14,15 102:14 112:10 115:12,16 121:21 forming 14:10 formulate 63:3 formulating 111:9 fort 10:14 forth 122:13 fortunate 15:14 forward 22:7 59:5 71:15,16 forwarded 114:24 117:5,12 found 16:21 40:9 40:23 44:8 54:3 54:14 56:10,12,16 57:8,13,14 58:16 91:22 105:17 106:12 110:12	founder 6:20 12:3 founding 44:10 four 3:13 11:16,18 13:22 43:16 48:15 52:6 80:13 81:13 85:13 89:2 112:14 112:15 fourth 85:14,17 91:17 frequent 76:6 freshest 113:7 friday 74:13 fringe 110:17 front 31:24 57:10 58:9 79:18 114:14 114:15 full 40:13 117:22 119:7,15 function 22:4 23:11 24:4 46:5 76:24 functional 23:23 23:24 functioning 53:10 further 87:3 106:21 116:4,8,9 120:6 121:12,13 122:10,14 future 41:13 116:5 <div style="text-align: center;">g</div> gainful 39:20 44:9 56:12 gambit 23:5 game 63:16 70:15 70:19,24 71:9 gathering 62:20 general 53:25 56:15 84:6 92:19 98:10 generally 81:15 82:1 92:9 107:18
---	---	---	---

generate 79:3,5 82:19 generated 32:5,23 78:20 80:11 83:1 83:2 generating 79:1 generous 116:13 gentleman 10:12 19:2 23:6,25 24:11,20 geographical 106:23 getting 13:24 20:2 32:15 34:20 50:23 51:7 62:21 give 26:25 43:15 44:1,15 45:1 53:22 81:10 84:6 86:1,21 100:18 108:12,13 119:25 given 16:16,22 34:23 40:8 49:6 64:1,11 87:6 89:4 106:25 giving 86:19 glad 62:10 glass 75:18 glasses 30:16 34:18 64:25 66:15 67:3,8 go 11:24 14:23 20:1 24:25 47:14 48:23 50:13 55:19 57:22 61:14 65:3 69:6,17 79:1 85:1 106:20 109:12 112:20 goal 19:23 119:1 goals 16:13 goes 80:10	going 5:14 8:4 10:12 11:25 12:2 13:8 14:19 18:21 18:23 27:18 29:3 31:1 33:20 37:17 38:21 47:25 49:2 49:3,22 50:15,23 51:1,11 55:19 59:7 68:9 70:20 73:24 74:18 75:14 77:3 88:2,5 89:20 94:19 106:16 116:16 119:14 gonzalez 2:5 3:7 4:11,14 9:23 32:18 33:3,8,20 34:3 39:7,16 48:3 49:2,13,16,24 50:2 50:5,15 51:1 59:7 59:18 61:1,5,8 65:21 68:9 69:13 70:20,23 71:5 72:16,25 73:14,20 73:25 74:7,11 75:14 77:3 88:5 92:16 102:13 116:16 118:5,9,14 118:20 120:7 121:12 good 100:23 goods 101:7 government 13:20 14:9,9,18 18:4 19:8,11,19 44:8 56:10 57:3,13 58:4 80:3 83:7 84:4 98:12,17 government's 97:15 graduated 15:15 15:18	graduating 93:21 grants 57:8 greatest 117:9 grind 50:23 grounds 56:19 group 5:17 16:10 guess 9:16 38:19 104:12 guidance 20:16 guidelines 41:6 guys 11:7	92:24 93:4 95:11 96:16 heads 22:12 headset 102:12 heard 21:12 hearing 57:4 hearings 19:13 heavy 40:11,12 held 1:18 9:3 17:4 31:14 36:23 57:20 57:21 72:17 117:18 helmet 67:9,13,16 67:20,23 68:2,5 help 27:15 helpful 31:1 hereinbefore 122:13 hesitant 53:11 55:7 73:8 hesitation 55:21 hi 77:11 higher 15:24 highlighted 82:24 highly 73:24 hiring 105:17 historian 28:4,6 55:5 77:22 82:15 history 72:23 73:3 74:21 75:10,12 76:15 89:3,12 112:5,17 119:17 hit 22:2 24:6 hitting 22:3,12 hold 37:17 44:5 90:20 114:23 116:21 120:1 holding 47:3 home 1:6 2:10 4:18 10:12 45:16 46:25 47:2,13,16
---	--	---	---

47:17 48:1,24 49:22 50:25 60:9 68:20,22 69:2,8,17 69:19 101:2,3,8 102:3 104:10 123:2 homebound 15:24 16:1 honestly 61:3 honors 93:22 hope 112:22 hopefully 73:11 horizons 15:24 hospice 40:3 hospital 17:15,18 20:9,11 21:7,24 47:9,14 48:23 65:17 66:5 94:11 115:1 hospitalized 23:4 hospitals 18:6 hour 41:22 104:21 hours 10:13 26:18 26:19 41:22 78:15 100:6,8,12 102:20 118:4 house 13:3 24:23 48:22 hundred 43:16 hurt 40:5 husband 26:16 27:10,19 30:4 77:9,22 106:25 hypothesis 49:5 50:17 hypothetical 50:19	112:25 identification 81:11,13 82:18 115:15 imitrex 52:6 impact 22:3 46:3 73:4 76:11 96:4,5 97:17 impacted 46:4 impaired 30:15,18 69:22 78:2 120:17 120:19,23 impairment 20:11 29:21 34:14 35:1 40:18 58:8 62:1 62:23 66:13,14 67:1 95:4 121:6 impairments 16:7 29:13 58:5 implementing 5:14 important 34:19 60:20 62:19 82:22 82:25 86:9 102:11 119:13 importantly 73:10 impression 42:1 inability 54:4,5 70:3 inappropriately 79:11 incentive 60:23 61:12 inch 73:17 incident 46:23 51:16 65:12 include 30:21,22 70:11 96:15 114:1 includes 116:21 117:14,14	including 21:15 54:10 income 43:6,20 44:19 114:5,10 116:14 117:9,23 increase 61:12 independent 37:22 independently 25:18 30:3 indicate 29:3 63:20 85:22 105:4 109:13 indicated 33:13 42:3,22 44:10 48:13 55:11,15 56:8 117:14 121:14 indicates 44:7 60:17,18 64:6 120:15 indicating 49:4 119:2 indication 53:25 115:2 individual 16:9 28:9 30:19 34:13 77:16,18 81:22 87:20 97:19 98:16 112:2 119:1 individuals 9:12 13:12,18 14:12 16:2 19:24 20:18 21:13 22:11 23:10 24:3 27:5,22,25 71:25 78:3 97:13 118:23,24 industry 35:15 40:13 95:17 inference 70:11 inflation 44:25 109:15	infomercial 101:22 information 31:1 34:10 39:11 46:19 49:11,15,15,17 62:14,18,20,21 63:2,3 64:9,10,11 65:9 72:23 79:3,5 79:6 80:1,2,4,18 86:18,22 87:6 89:4 92:24 93:5 93:12 95:8 99:1 109:4 116:2 117:5 119:19,23 informational 45:1 injured 5:11 22:10 22:15,24 30:19 55:1 60:17 111:11 111:23 118:20,22 injuries 16:1,2,3 16:17 24:14 35:4 60:18 88:9,15,25 injury 5:13 8:23 9:21 21:20 22:7,8 22:20 23:3,7,9,10 24:6 28:2,10,14 31:9 35:6,7,7 39:19 40:8 55:3 60:25 65:10,19 72:1 77:21 78:2 82:13 106:9,12 112:24 115:2 input 27:22 80:7 inquire 105:15 instance 28:5 111:25 institutionalized 23:5 instrumental 20:2
i			
i.d. 3:12 idea 14:9 71:10 83:21 109:21			

insurance 45:7 integrate 21:6,11 intentionally 86:21 interested 39:9 105:16 122:18 interesting 21:21 24:12,15 30:23 interfere 82:11 internet 106:1,12 internship 21:23 interpret 38:17 interpreting 23:19 interprets 75:25 interrupt 79:10 interview 19:7 27:10,25 53:16 54:18 62:16,19 77:12,14 78:3 80:6,20 82:6 89:5 93:11 interviewee 82:8 interviewing 79:19,22 82:4 interviews 27:23 involve 112:24 involved 8:17 16:6 16:8,9,14 17:22 18:3,13 20:17 38:25 involves 7:15 involving 38:24 101:6 island 13:22 19:22 19:24 20:1,4,7,9 21:7 37:2,3 61:19 90:21 islandia 2:12 issue 29:8 30:7 issues 33:12	items 41:23	july 17:17 25:9,23 26:15 36:16 78:15	115:9 116:22 known 75:10 kyra 8:3,6 9:4,7 9:14
	j	k	l
	james 2:9 4:16 james.cardenas 2:9 january 1:20 21:25 122:24 jersey 1:16,18,20 4:2,4 5:1,2 10:9 13:3,4,23 122:6,23 job 9:1 15:21 16:19 17:16 25:1 25:1 40:15 45:20 47:3 48:10,11,14 48:19 51:5,7,9,12 51:14,16,18 76:21 76:24 80:2 87:22 89:17 98:6 100:17 101:2 102:8,19,23 102:23 103:22 104:20 106:15 111:13,16,20 116:25 117:14,14 117:19,22 jobs 7:17 15:13,16 16:21 18:24 20:22 46:22 47:5 97:21 104:8,10 106:3,17 106:18,20,22 111:14,21 116:21 118:4,13,18,25 119:1,3,6,12,15,21 119:21 120:2 johns 74:16 johs 2:11 join 36:9 joining 115:19 judge 57:11 judges 8:14 judy 10:25 11:4	k 8:4 31:6 36:18 36:20 91:18 keep 33:4 112:15 114:16,17 118:3 keeping 111:16 key 26:25 khan 62:2 kind 20:2 81:24 109:24 kinds 94:10 knew 19:7,9 21:5 knife 30:9 knopp 91:17 know 10:24 11:2,4 17:3 19:6 22:3,19 24:10,10,22,23,24 25:17 27:1 29:11 32:25 37:13 38:5 38:5,10,11 46:4,11 48:5,20 50:6,22 52:12,14,15,18,19 53:5,6 55:19 56:24 57:1,8,9,10 57:14 60:5,8 62:7 65:8 67:12,15,22 68:13,16,19,22,24 69:2 70:5,6,7 71:2 72:5,14 73:11 74:3 75:25 77:16 79:12 83:19 89:11 93:22 101:4 107:2 107:13 108:2,19 110:5,9 112:23 113:1,15,16 118:24 119:12 knowing 74:20 knowledge 40:7 55:21 83:10 108:1	l 2:5 8:3 31:6 36:18,20 52:7,7 l.l.p. 2:7,11 labor 23:12 40:15 97:6,7,12 98:13 105:22,24 106:2 111:6,12,24 112:3 labor's 41:19 lannister 71:3 laptop 79:18 83:4 large 10:14 33:16 largely 27:21 lastly 16:19 111:17 late 100:21 latest 83:12 84:11 85:15 lauderdale 10:14 law 4:17 8:14 10:22 11:6 57:11 74:16 lawsuit 60:6,9,14 lawyers 114:7 learn 9:10 86:12 learned 19:15 49:11 53:2 71:14 87:6 learning 9:15 17:10,11 22:20 leave 48:22 69:15 74:5 leaving 15:7 led 99:1 left 12:19 14:13 20:6,15 24:20 75:24 120:4

leon 1:15 122:4 level 41:25 57:7 106:8,14 lewis 2:7,11 4:17 11:1 74:16 lewisbrisbois.com 2:9 lewisjohs.com 2:14 lexington 2:3 12:24 20:20 liaison 17:24 license 1:16 lie 46:11 lied 46:1,9 life 5:12 7:11,15 8:11 9:17,18 30:5 40:18 68:14 97:18 111:12 118:19 120:4 lifetime 45:4 lift 41:23 42:2,5,19 110:1,2,7,13 light 40:11 lighting 30:17 lightly 61:7 lights 34:21 55:17 64:24 limitation 30:11 71:21 104:15 limitations 42:7,9 55:3 71:20 76:12 103:18,21 111:17 limited 42:20 line 91:17 94:19 102:16 123:5 lined 15:21 lines 70:18 list 105:3,11 listening 70:11	literally 6:17 10:12 litigation 6:1 54:11 60:3,23 little 7:10 10:6 24:16,17 61:10 73:8 lives 24:11 43:1 68:16,17 living 12:17 30:1 71:21 100:21 llc 1:8 123:1 local 40:13 located 13:3 21:8 location 11:23 12:9 locations 12:14,15 lodi 1:20 4:2 5:2 73:23 74:8 long 7:18 9:12 11:22 13:21 26:17 34:1 37:2,3 44:11 48:11 51:18 54:24 60:19 61:19 66:5 69:25 75:3 90:21 118:4 longer 47:16 111:13,14,20,21 look 22:8 29:24 38:19 53:20 65:11 71:15 73:14 80:4 80:6 84:9 103:20 103:23 111:22 113:6 looking 7:17 17:13 23:23 38:24 44:4 62:22 71:16 83:22 102:15 103:22 106:15 looks 58:4 112:14	lorinda 1:15 122:4 los 10:17 lose 72:1 loss 40:17 43:6,7,8 43:17 44:18 45:3 117:9 lost 43:10 109:13 lot 10:11 24:13 29:11 30:24 75:17 84:25 louis 19:2 lower 9:13 45:12 lucky 15:21 lynch 11:6,6	market 23:12 40:15 97:6 105:22 105:24 106:2 111:12,24 marketing 1:7,8 2:15 marks 38:14,15 masters 15:3,5,19 15:20 materials 32:23 59:4,15 90:12 matrimonial 8:21 matter 1:14 4:19 44:2 59:3,16 mcnamara 1:3,3 3:13 25:7,18 26:1 26:3,15,20 27:19 27:21 28:13 30:21 31:21 32:1,8 33:10,17 34:16 36:14,16 37:16,23 37:25 39:4,18 42:2 43:21 45:7 45:14 46:25 47:23 48:21 49:18 50:20 51:22 55:24 56:18 59:23 60:9 61:11 62:15 63:22 64:15 65:14 71:12 72:5 74:20 75:10 77:6 78:12 81:12 87:10 92:14,25 93:9,17 94:20,21,22 95:2,5 97:1 99:17 102:19 106:9,25 108:4 109:25 111:15,25 116:14 117:3 120:12,16 123:2 mcnamara's 68:14 85:23 105:18 111:9
--	---	---	---

mean 24:24 39:10 50:13 56:15 64:17 66:18 72:14 75:24 83:1 98:4 109:20 111:21 meaning 76:4 means 92:8,9 meant 16:18 47:12 measures 37:9,9 medical 4:8,13 23:13 45:15,20 61:18,21 62:22 64:25 65:14 66:6 66:9,10,17 67:16 68:6 72:19 75:17 75:19 76:2,16 77:5 80:4 87:21 88:10,16,25 89:12 89:17 92:4 94:3 94:10 111:15 medically 35:20 medication 46:17 49:20,25 50:3,10 51:22,25 medications 52:2 medicine 17:15,19 18:9 52:25 66:19 92:7 medium 40:11 meet 41:4 memory 29:13,14 29:14 34:24 56:4 120:17,19,24 mental 35:7 mentioned 37:6 methodology 95:16 meticulous 54:25 miami 10:13 74:10 mid 13:2 17:1 118:15	mild 23:3,10,16 28:15,20,24,25 52:20 milligram 52:9,11 52:19 milligrams 52:4,4 52:5,6 million 18:7 43:16 43:18 44:16,18 45:4,11 mind 64:19 87:17 mine 59:1 112:11 mini 20:19 minimal 8:25 minimum 19:12 minutes 42:18,19 42:19 99:25 100:12 mischaracterize 85:3 misconstrue 89:20 misinterpreting 89:14 misspeak 53:24 mistake 4:15 misunderstanding 62:6 mix 8:10 mmip 91:12 mmpi 36:2 37:7,8 37:9,15,20,24 38:25 39:2,5 63:18 64:5,12 moderate 28:15 28:18,20,22 29:5,6 29:8 31:9 106:12 moderately 28:18 28:19 30:18 monetary 60:23 money 14:8 48:9 51:5,10 97:18	116:23 117:2,9 monitoring 102:7 montefiore 115:1 month 10:15 43:25 44:7,11 48:14 78:20 79:2 91:1 117:19 119:20 months 9:16 14:14 21:3 23:6 25:24 48:12 mooney 13:18 14:4,5 morning 47:13 74:13 moss 21:23 motor 45:21 89:18 mount 17:14,16,18 17:25 18:24 19:14 20:5,6,15,24,24 move 17:12,13 42:12 84:1,25 88:2 89:15 moved 13:4,5,6 moving 28:23 mri 65:20,25 91:19,19,21 92:3 92:12 114:20,23 115:10 multiple 15:13 16:4 33:22 40:18 56:11 67:25 118:25 multitasking 56:6 95:4 muscular 16:4 music 70:11 mypillow 100:23	n n 2:1 3:1 8:3 19:2 19:2 52:7 91:18 name 4:16 8:4 11:2 74:15 123:2 123:3 names 71:4 napoli 2:3 11:19 11:20 59:3,9,15 napoli's 107:16 napolilaw.com 2:5 narcotic 52:13 nassau 68:18 national 40:12 nature 55:22 64:21 necessarily 58:6 84:17 101:24 104:4 necessary 10:21 27:15 28:3,6 51:24 79:24 need 7:18 8:6 25:19,20 30:15 104:5 116:8 needed 20:13 103:1 needs 24:2 55:5 60:20 negative 71:22 neither 91:4 122:14,16 nelson 62:3 neuro 31:19 62:25 neuropsychologi... 31:5 36:13,15 54:20 90:13,16 neuropsychologist 38:2 65:10 never 38:9,15,16 67:21 71:9 77:9
--	--	--	---

83:17 85:16 105:13 106:11 107:3 108:5 117:4 117:5,11,12 119:5 119:6,15 new 1:1,16,17,20 2:4,4,8,12 4:2,4 5:1,2,20 9:7,9 10:9,9,17 12:11,12 12:13,15,17 13:3,4 13:20,22,23 15:5 15:14,22 26:4,7,7 32:25 55:17 122:5 122:23 123:1 newer 84:15,16 night 100:21 nine 6:11 19:13 47:14 91:14 noise 72:4 nonresponsive 84:2 88:3 normal 92:9,13 notary 1:17 4:3 122:5,23 123:25 note 31:15,24 32:12 48:3 54:12 78:19 82:16 92:16 97:12 notebook 3:21 32:21 73:9 115:12 115:25 noted 54:18 90:25 95:17 notes 1:13 3:13 25:11,14,19,20 31:6 58:24 80:23 80:24 81:1,2,7,13 94:21 noticed 58:23 number 1:16 22:7 25:4 34:16 42:22	45:11,11 79:8 98:23 105:11 nurse 24:2,3 28:10 28:11 39:25 40:3 40:4 97:4 nursing 47:2,2,6,7 47:9,11,25 48:23 49:22,23 97:3 nyu 15:9 o o 36:3 52:7 91:18 object 9:23 33:20 39:7 49:2,4 51:1 59:7 61:1 68:9 69:13 70:20 75:14 77:3 88:5 102:13 116:16 objecting 118:5 objection 39:16 48:3 59:18 72:25 92:16 objectionable 118:12 objective 30:21 65:9 91:6 109:25 objectively 110:11 observed 121:16 obtain 98:16 obtained 62:16,18 obvious 22:11 obviously 10:17 115:25 occupation 98:9 98:11 99:18 occupational 1:18 6:5 11:22 13:11 41:20 80:3 90:7 occupations 40:7 103:14 105:4,5,11 119:4	occurred 53:15 october 9:8 14:16 office 1:18 5:1,2,3 5:8,20 10:13,16 12:13,13,16,18,20 12:20,22,23,25 13:1,2 25:9 26:4,6 26:10,13 55:17 79:8 84:17 85:4 offices 10:18,21 13:21,22,23,23 offset 44:12 45:5 45:11 okay 6:3 7:1,10,14 12:2 13:7 15:13 15:14 17:3 21:12 27:4,23 30:23 39:22 47:21 49:1 52:18 54:16 55:9 57:18,18 62:6 66:6 68:12 69:11 69:25 79:16 84:8 84:8 85:9 89:19 90:4 91:16 96:12 97:11 100:16 101:15 102:22 113:20 121:20 old 6:19 13:7 older 98:16 once 52:4 70:2 one's 75:7 ones 83:19 108:1 ongoing 107:7 onset 58:13,16 open 106:3,22 opinion 30:18 39:12 41:10 45:3 56:1 58:5 63:4,25 64:8,10 73:4 74:22 95:12 96:2 96:5 99:10 104:23	108:24,25 109:6,7 109:10,11 110:14 111:9 117:8 opinions 8:15 33:17 34:9 40:22 43:9 66:17 74:20 85:23 95:18 97:5 opportunity 73:19 opposed 47:4 49:5 option 27:1 order 20:20 41:20 57:2 78:8 82:22 96:1 101:13,15 102:1,16 104:25 orders 102:2 104:5 organizational 29:21 95:4 121:6 originally 12:16 outcome 63:10 outlanders 70:15 overuse 76:6 owner 6:6,8 owning 14:13 oyster 68:17 p p 2:1,1 31:6 36:18 36:20 52:7 90:22 91:18,18 p.l.l.c. 2:3 p.m. 121:22 pachilakis 31:6,19 31:22 32:13 36:18 37:16 61:19 90:23 90:24 page 3:3,12,21 29:24 78:22 85:13 85:18 88:4,8,9 89:3 91:14 94:14 94:15 95:2,10 96:20 98:19 99:14
---	--	---	--

<p>116:20 120:9 121:2 123:5 pages 3:13 80:23 81:13 96:16 112:11,14,17 paid 106:19 paper 38:14 paragraph 89:21 94:21 95:1,22 96:21,24 99:16 111:5 116:20 paraplegics 16:3 parenthesis 91:18 91:18 parents 78:3 parkinson's 16:4 18:12 21:15 part 16:8 33:16 78:4 87:1 93:11 102:23 105:9 107:7,8,20 114:21 partially 27:20 participation 97:8 111:6,24 particular 14:2 24:20 48:7 65:3 97:19 112:2 parties 60:10 122:16 partnership 13:14 pass 59:16 passing 38:6 patient 18:8 20:9 22:5 35:5,12 36:11 59:24 64:6 patients 18:13 21:22 paying 117:15 payments 45:6,7 peer 95:15</p>	<p>pejorative 35:19 pending 57:23 pennsylvania 15:2 15:4 people 5:10,12 7:17,18 8:15 15:25 16:1,6,18,20 17:10,11 18:10,11 20:4,10,13,21 21:6 22:2,11,14,15,24 23:2,3 24:14,24 25:2,4 27:1,3 30:24 34:17 35:3 42:12 46:13 81:16 81:23 97:13 100:24 102:1,7,18 people's 22:4 percent 7:5,8,8,20 7:23,25 10:7 84:10,11,13,14 110:19,20 113:22 113:24 114:8 percentage 7:1,6 10:3 26:19 84:3 113:1,20 114:5,9 114:10 perform 39:24 40:10 41:8 44:8 56:12 103:9 105:5 105:12 performed 37:15 97:1 performing 16:9 51:4,9,14,15 period 20:23 75:6 77:1 91:1 100:18 permanent 90:8 person 12:19 14:13 21:4 26:25 27:2,24 28:3 34:8 34:10,22 36:12</p>	<p>38:1 41:21 55:2 59:9 63:5,6 65:5,6 71:10 73:22 75:18 76:15,20 77:24,24 79:20,22 80:6,20 82:7,11,13,15 98:5 100:17,20 101:11 101:15,24 102:12 105:17 108:9,12 person's 46:5 80:2 111:11 personal 8:23 9:21 62:16 68:14 personality 37:10 personally 105:15 philadelphia 21:24 phone 70:4 78:11 82:3 101:12 102:1 105:15 phones 100:24 phrased 79:10 physical 18:10 21:14 35:6 40:10 41:8,15,24 42:7,14 42:17,17 43:2 55:14 56:2,7 86:22 90:6 102:23 103:18,20,25 104:23 physically 83:2,3 physician 23:14 66:7,16 92:1,2,4 94:11 physicians 61:25 pick 113:7 place 28:22 29:3 89:20 122:13 placeability 97:7 placed 20:22</p>	<p>placement 16:19 33:11 placing 102:2 103:22 plains 13:24 plaintiff 10:4,8 11:11 60:22 61:16 113:4,19,21,24 plaintiff's 54:10 plaintiffs 1:4 2:6 10:7 113:10 plan 30:5 43:25 97:6 99:5,8 planned 111:18 planner 8:11 9:18 planning 9:17 plans 5:12 7:11,16 playing 82:3 plaza 2:12 please 77:12 pocket 114:18 point 13:16 14:20 22:1 43:18 46:6 47:15 57:12 58:19 60:17 66:23 81:4 85:15 86:12,13 87:5 109:2 119:13 portion 85:17 102:23 posed 75:22 position 6:12 115:23 positions 17:4 101:6 104:3 positive 71:22 possession 31:20 31:22 37:1 73:10 73:11 possibility 61:17 108:11</p>
---	---	---	--

<p>possible 61:13 75:8,9,13 76:10 87:9 103:11 104:12 108:16,22 109:1 110:16 possibly 28:23 39:12 76:11 101:3 101:10 104:20,21 potential 39:6 64:2 85:25 potentially 116:3 pound 41:16 pounds 41:24 42:2 42:6,20 110:2 practice 15:12 34:17 practicing 66:19 pre 40:4 47:24 87:11,13 88:9,24 preclude 51:14 precluded 69:23 precluding 42:6 prednisone 52:3 prefer 27:2 81:16 preparation 17:24 115:3 prepared 16:18 31:19 prescribed 67:6 67:13,16,21 68:5 present 22:14 26:15 28:10,11 39:20 40:16,19 41:3 44:24 73:7 presentation 33:18 presented 28:13 65:7 presenting 31:2 32:16 72:22</p>	<p>presents 65:5 president 6:14,17 6:18,19 pressure 14:11 presumably 76:1 pretty 27:24 prevent 43:4 preventing 42:15 prevents 55:25 previously 87:20 91:9 110:3 116:24 primarily 9:20 principally 55:9 prior 13:9 17:5 29:23 36:15 45:15 46:25 47:15 95:6 121:9 122:6 prism 30:16 34:18 64:24 66:14 67:8 private 15:12 43:25 45:6 probably 10:7,15 11:15 14:15 21:3 21:25 22:13,15,22 22:22,23 24:7,22 83:17 problem 17:8 25:16 62:12 87:4 problems 22:9,13 24:13 29:16 30:15 34:24 42:21,21 62:24 proceedings 1:14 process 9:16 51:15 86:7 processed 79:25 processor 80:8 production 32:12 profession 35:15 professional 28:13 60:1 63:25 75:20</p>	<p>76:5 95:20 professionally 21:5 program 15:24 16:9 17:21,25 18:1,2,20 19:4 20:6 21:5,8 41:5 42:11,12 71:19 72:2 programs 17:13 70:7 71:16 project 20:17 proof 80:9 proofs 80:9 propanolol 52:5 proposing 50:17 proposition 98:10 provder 1:6,19 3:4 4:1,6,7 31:17,18 33:5 39:17 49:9 49:10 68:12 73:6 74:15 81:14 116:5 116:12 120:9 122:7 123:3,20 provder's 3:21 proven 46:1,9 provide 26:22 28:4 115:17 116:6 provided 33:2 95:19 provider 67:17 providing 8:17 psych 31:19 62:25 psychiatric 18:13 20:8,11 21:1,16 35:7 psychiatrist 36:9 psychological 42:9 43:3 64:5 86:23 90:13,17 91:9 94:3</p>	<p>psychologist 36:4 36:7 psychologists 36:1 psychology 94:12 psychotherapy 90:20 public 1:17 4:3 50:14,15 122:5,23 123:25 publications 84:4 pull 14:12 purposes 45:1 put 14:11 29:9 32:18,20,24 39:18 50:18 51:11 70:13 76:19 85:17</p> <tr> <td colspan="4">q</td></tr> <tr> <td colspan="4"> <p>quadriplegics 16:3 qualifications 19:6 qualified 44:22,23 88:20 question 9:24 24:19 27:17 30:23 33:21 34:6 35:22 39:8 45:19,19 46:1,10,12,14,18 48:4 49:3,13 51:2 53:11,12 56:25 57:23 58:2,3 59:13 60:4 61:2,2 67:23 68:10,12 72:18 73:1 75:15 75:21 76:7 87:19 87:20,25 88:7,18 89:16 92:5,17,18 96:7 115:24 116:17 117:4 118:6,7,10 121:13 questionable 96:4 questions 4:19 24:8 27:13,14,16</p> </td></tr>	q				<p>quadriplegics 16:3 qualifications 19:6 qualified 44:22,23 88:20 question 9:24 24:19 27:17 30:23 33:21 34:6 35:22 39:8 45:19,19 46:1,10,12,14,18 48:4 49:3,13 51:2 53:11,12 56:25 57:23 58:2,3 59:13 60:4 61:2,2 67:23 68:10,12 72:18 73:1 75:15 75:21 76:7 87:19 87:20,25 88:7,18 89:16 92:5,17,18 96:7 115:24 116:17 117:4 118:6,7,10 121:13 questionable 96:4 questions 4:19 24:8 27:13,14,16</p>			
q											
<p>quadriplegics 16:3 qualifications 19:6 qualified 44:22,23 88:20 question 9:24 24:19 27:17 30:23 33:21 34:6 35:22 39:8 45:19,19 46:1,10,12,14,18 48:4 49:3,13 51:2 53:11,12 56:25 57:23 58:2,3 59:13 60:4 61:2,2 67:23 68:10,12 72:18 73:1 75:15 75:21 76:7 87:19 87:20,25 88:7,18 89:16 92:5,17,18 96:7 115:24 116:17 117:4 118:6,7,10 121:13 questionable 96:4 questions 4:19 24:8 27:13,14,16</p>											

28:5 33:25,25 45:19 53:9 54:1,2 54:22 55:5,7,12,13 55:23 62:20 66:6 69:11 70:10 72:9 74:19 77:25 82:14 84:25 89:23 108:10 116:10 120:6,8,9,20 121:17 quicker 84:25 quickly 112:4 116:12 quite 22:7 29:11 quote 76:23 quotes 51:11 91:20	really 8:5 22:10,17 22:19 45:17 46:2 53:1 57:14,23 68:12 83:14,24 100:11 reason 14:3 50:8 98:12 108:7 123:5 reasonable 95:19 95:23 96:9 reasons 99:11 recall 25:18 27:6 53:17 54:16 64:7 64:9 100:7,10,11 120:18 receive 24:25 32:13 65:15 107:10,13,24 108:1 received 32:4 66:13 108:5 receives 45:8 receiving 15:4 23:20 44:5,11 65:2 68:7 recess 57:21 recognize 74:1,2 recollection 25:21 28:7 37:22 54:16 58:1 82:23 recommended 17:16 19:5 31:10 record 9:2,3 31:13 31:14 32:21 33:4 36:22,23 38:1 57:19,20,22 61:18 62:23 71:8 72:16 72:17 81:4 93:22 94:10 records 37:1,3 39:10 53:19 57:6 61:21,24,25 62:1,2	62:3,3,5,22,22,23 65:1,7,17,25 66:9 66:10,22 72:12,19 74:1 75:17 76:2 76:16,17 79:7 80:4,7 90:14,21 91:5 93:24 94:2,3 94:3,5,7,9,10,11 94:11,11,12 107:8 107:8,20,21,23 112:15 119:8,10 recounting 30:14 33:9,12 reduced 40:21 reduction 90:7 reevaluate 64:3 refer 83:6 84:4,5 104:6 reference 41:18 89:24 96:21 referenced 80:22 81:8 115:10 references 90:5 referencing 96:8 referral 107:22 referrals 9:12 referred 83:11,11 84:10 85:5 refers 88:15 reflect 53:19 reflected 23:21 76:16 96:16 104:25 reflective 34:13 refresh 25:21 58:1 82:23 regard 27:7 43:9 82:23 96:7 regarding 9:12 29:12 37:3,19 71:19 72:9 80:2	85:23 86:22 97:5 111:9 regardless 35:5 regards 39:20 registered 24:3 28:11 39:25 97:4 regular 20:3 25:5 40:13 70:8,12 104:19 regulations 19:19 rehab 6:21 7:11 8:2,8 17:15,25 18:9 22:5 24:25 rehabilitatable 40:24 rehabilitated 41:1 rehabilitation 4:9 5:10,24 6:2,3,13 7:4,7,15,16,19,25 8:18,18 9:18,22 10:2 15:1,3,7,22 17:11,18 18:1 21:24 22:6 23:12 31:10 40:20 41:3 41:5 42:10 62:24 85:13,25 95:20,24 96:10 97:6 99:5,8 rejoining 35:9 related 32:7 57:15 57:17 58:17 67:7 120:12 relating 60:15 relationship 60:1 relative 78:12 122:15,17 relevance 50:25 97:9 relevancy 71:18 92:3 relevant 39:24 45:18,25 46:8
r			
r 2:1 3:20 8:3,4 52:7 62:4,4 raise 87:16 ramifications 75:1 range 28:19,23 117:23 rapel 95:15 rarely 38:22 rarity 25:5 rate 109:15,15,19 111:25 rates 44:25 reach 105:1 reaches 58:5 read 29:17 38:11 58:1,3 73:20 94:20 96:24 111:8 120:15 reading 25:11 29:16 37:18 95:14 ready 58:24 realize 76:20			

49:12 52:24 53:2 58:14 59:4 67:19 69:8,19 70:17,22 71:11 72:8,11,21 relocated 12:20 13:3 remain 101:25 remember 31:11 53:15 remembering 29:17 remote 29:14 120:17,19,23 render 8:15 96:2 rendered 57:11 117:8 rephrase 59:13 75:22 79:9 replace 109:23 report 25:14 31:19 31:22 36:17,18,20 37:18,21 39:3 41:17,18 43:13,15 47:14 53:14,15 55:6,8,8,10,16,22 63:6,11,13 76:18 76:20 78:19,22 79:2,4,6,19 80:8 80:14,16,17,19,20 80:21 82:16,20,21 83:6,18 84:18,20 85:5,19,25 88:4,20 89:13,24 91:15 94:15 95:10,23 96:20 99:14 104:25 105:3 109:3,3,22,23 111:5 112:7 115:10 reported 29:13,22 33:14 40:2 45:17	45:24 51:19 77:17 87:10 88:11,24 reporter 1:16 4:3 81:10 122:5,23 reporting 34:24 61:22 123:1 reports 23:22 64:5 79:13,15 80:15 81:1 90:14,18 93:21 94:20,22 95:2,3,5 120:12,16 represent 4:18 59:23 representations 72:23 110:6 represented 40:4 69:9,16 representing 74:17 request 32:20 100:22 107:6,7,8 107:18,20,21 requested 107:3 107:23 require 5:14 111:15 requirements 41:15 requires 41:8 100:17 requiring 30:3 reserve 74:3 109:3 reserving 74:4 116:4 respect 109:13 115:19 respond 27:14,16 28:5 53:9,13,18 54:2,17,18 55:12 55:23	responded 120:21 responding 54:13 54:21 55:7 77:22 82:14 108:10 121:17 response 54:1 67:24 76:7 108:12 responses 53:3,7 responsive 88:6 rest 119:14 result 38:19 58:7 resultant 90:7 results 38:12 39:14 64:1 96:25 retail 20:19 retained 3:16 retaining 29:16 retire 111:17 retrieval 29:20 56:4 121:3 retrievals 95:3 return 42:15 returning 5:11 55:25 returns 117:11 review 23:22 40:3 47:10 48:8 58:19 63:3 64:6 94:2 95:15 115:3,23,25 116:7 reviewed 32:23 79:8 90:12 93:24 114:21 117:5,11 reviewing 23:19 73:18 90:11 reviews 47:9 revised 85:14,16 rey 37:12 63:21 91:12 rib 65:18	richard 1:3 right 4:13 8:7 9:11 9:14 22:22 25:12 33:7 35:15 37:8 38:21 67:8 74:4 80:19 84:8 86:10 92:19 104:9 109:3 112:13 113:8 116:4 ringed 3:14 31:25 32:9 115:14 road 23:6 47:13,25 49:21 50:22 room 27:19 81:16 81:23 82:7,9 rooms 69:18 roughly 21:2 106:8 route 1:19 4:1 running 118:3
			s
			s 2:1 3:10,20,20 31:6 36:3,18,20 123:5 sad 24:6 safety 30:6 sale 101:6 sales 1:7,8 2:15 san 10:16 saturday 48:17 saw 11:5 24:5 25:25 28:3 39:23 44:6 52:1 68:3 71:9 76:19 108:3 119:8 saying 34:12 50:7 55:2 57:12 73:20 77:11 89:15 108:10 says 4:12 34:20 58:23 63:12 92:19

<p>94:17 109:22 120:16 scale 28:14,16,20 33:12 36:2 37:8 37:11,14,24 39:1,5 39:19 63:18 scan 66:2,3 school 93:24 94:5 sclerosis 16:4 score 38:6 scored 38:16 seat 77:12 seated 100:4,5,6 101:16,19,20,25 second 12:21,22 28:3 36:3 44:1,5 48:9,11,14 51:12 53:22 86:5 94:21 96:21 116:25 117:14,19,21 secondary 27:14 security 5:18 8:13 8:16,21 13:17,25 14:1,20,22 19:1,3 19:17 20:14 44:3 44:6 45:6 56:16 98:14 sedentary 40:11 41:8,16,20 see 4:11 11:10 22:2,15,23 23:2,5 23:9 24:14,23,24 25:4,5,6 26:3 34:16 35:3 36:10 36:12 37:19 42:4 44:18 53:6,7,14 54:23 55:19,20 63:22 65:24 66:3 70:5,5 73:9,15,25 88:8 91:8 106:3 108:8,9 111:2</p>	<p>121:2 seeing 23:1 seek 8:16 39:20 106:16 seen 25:9,23 26:4 38:22 62:7 73:9 76:1 119:2 self 65:7 semi 99:18,20,21 103:13 sense 34:12 89:21 106:17 sensitive 22:16 25:3 sent 32:17 79:7 80:8,9 sentence 89:3 111:19 september 14:16 91:1 series 74:19 90:24 107:21 seriousness 60:24 serve 5:17 82:15 served 4:20 5:19 17:24 18:25 19:17 serves 8:12 service 20:17 100:23 104:6 services 1:19 5:16 6:5 7:9,19,23 8:19 9:22 11:23 13:11 16:19 40:21 41:3 59:2 101:7 serving 4:21 5:25 11:14 session 26:14 30:20 sessions 27:18 90:25</p>	<p>set 20:20 122:13 sets 61:21 91:5 setting 20:12,19 21:7 seven 33:13 40:19 51:20 86:2 severe 15:25 16:2 16:5 21:13 23:4 24:2 25:2 28:9,15 28:19,21,23 29:1,9 75:2 77:20 severely 78:2 severity 29:3 40:8 sewing 18:5 shareholders 13:13 sharing 12:16,18 shattering 73:12 she'll 9:16,17 sheet 123:1 sheltered 17:20 18:2 shift 101:17 102:1 shkolnik 2:3 short 29:14 120:17 120:19,23 shortened 29:18 show 71:7 112:11 showed 64:2 shown 72:20 siblings 77:15 sic 56:5 91:12 side 10:4,5 23:8 53:6 79:17,17 113:13,16 signature 122:22 significance 91:23 significant 14:8,21 22:12 34:16 48:9 51:5,10 54:19 55:22 62:14 82:9</p>	<p>86:9,24 89:7 108:18 similar 31:7 34:13 35:3 sinai 17:14,16,18 17:25 18:24 19:14 20:5,6,16,24,24 single 117:3,10 sir 11:21 12:8 13:7 31:23 32:2,6 33:6 77:8 84:24 85:21 86:4,8 89:23 90:3 90:10 91:15 94:16 94:18 95:11 96:6 99:15 108:19 110:22 sit 27:2,3,5,10 41:21 42:18 56:24 73:18 77:24 99:25 100:18 102:4,10 102:20 117:7 sitting 102:18 situation 55:2 63:24 65:11 73:18 106:11 six 6:24 11:9 21:3 40:16 41:21 80:13 89:3 90:5 96:16 102:20 size 69:3 skilled 97:3 99:18 99:18,20,21 103:13,13 skills 20:22 40:6 99:17 103:13 slash 88:9 slow 53:17 54:17 54:17,21 55:6 slower 29:22 95:6 121:8,15</p>
--	--	--	---

slowness 53:3,7,8 54:1,12 121:17 small 13:2 41:23 smith 2:7 4:18 social 5:18 8:13,16 8:20 13:16,25 14:1,19,22 18:25 19:3,17 20:14 44:3,6 45:6 56:16 98:13 sole 6:8 14:13 solutions 1:7 2:15 somebody 12:17 12:18 19:5 21:5 24:5 27:12 28:1 30:6,7 34:18,19,23 34:25 54:25 55:4 55:6 71:20 73:2,3 77:25 82:12 97:16 98:15 103:22 104:7 somebody's 92:3 somewhat 116:13 son 26:16 27:9,19 30:3 77:10 sorry 20:7 51:23 77:5 84:22 91:5 94:15 109:11 112:9 113:17 114:23 sort 48:24 103:2 115:8 sound 61:13 source 27:14 93:19 sources 104:24 south 1:19 4:1 20:8 21:1,15 span 29:18 speak 77:7 78:7	speaking 9:4 77:6 special 37:10 40:6 specific 58:10,12 96:7 specifically 56:14 spectrum 29:4 speed 38:14 spend 114:10 spent 26:20,21 27:18,21 spoke 77:9 78:14 spouses 77:15 square 69:3,7 staff 10:19 26:9,13 stairs 68:25 69:6 69:17,21 stand 42:18 72:18 103:2 standard 110:19 110:20,25 111:2 standardized 89:4 standards 95:17 standing 100:4 103:5 standpoint 20:10 23:23,24 55:14,15 55:15 start 12:5 started 9:11 12:10 12:13 13:10 15:11 18:17,25 19:1,11 20:12 21:23 24:16 48:12,13 80:19 116:25 starting 17:5 state 1:16,17 4:3 5:20 15:2,4 17:25 18:3 19:25 24:9 41:5 122:5,23 stated 25:22 29:15 29:17 33:14 65:18	70:2 76:17 95:18 97:23 statement 37:19 44:22 49:5 50:11 64:20 65:4 66:21 85:6 89:7 statements 64:15 64:18 66:10 stated 19:22,24 20:1,4,7 states 1:1 10:10,11 30:4 68:17 69:21 70:9 91:19 114:25 115:1 stating 98:15 stay 34:2 stenographic 1:13 stenographically 122:12 step 41:9 106:20 stood 103:8 stop 14:19,19 71:21 store 20:19 story 21:21 68:19 68:20,20 70:18 straight 33:4 street 2:7 12:19,20 12:21,23 13:4,5 20:20 strike 13:9 84:1 88:3 89:15 strong 52:20 stuff 83:14 94:5 style 48:1,24 49:21 49:23 subject 116:9 subjective 61:21 91:5 subscribed 123:20	subsequently 64:1 87:5 substance 118:6,8 118:9 substantial 41:14 44:9 56:13 subtracted 109:16 successful 21:9 successfully 76:22 97:20 suffering 45:14 49:19 50:9 55:25 71:25 suggesting 66:20 suite 2:7,12 summarized 80:5 sunglasses 55:16 64:23 66:15 67:4 sunlight 30:17 34:21 supervised 17:19 supervisor 102:11 102:15 supervisors 102:9 supplemental 59:4 59:14 support 10:18 26:22 suppose 93:8 sure 10:22 39:9,15 40:24 41:17 44:2 46:5 53:23 56:23 60:4,7 61:5 62:8 68:15,17 71:18 74:24 102:8 108:9 112:6 survey 105:22,24 106:2,12,13 sustained 40:13,17 60:18 104:19
---	---	--	---

sworn 4:2 122:8 123:20 symptoms 33:19 35:8 60:24 61:13 69:9 71:13 72:22 86:23 syosset 65:17,24 65:25 system 21:11	tbis 34:17 telephone 19:6 106:2,13 television 71:16,19 100:21 tell 14:24 18:23 24:9 38:21 58:4,9 70:14 71:3,5 75:17 83:23 113:17 117:7 telling 10:12 34:9 56:15 57:13 63:5 89:16 tells 63:4 template 80:17 temporary 20:16 tenants 98:17 tends 8:19 term 7:18 9:12 17:10 29:14 35:19 35:19,21 44:11 60:19 75:16,20 76:1 92:7 97:12 120:17,19,22,23 terminology 19:18 63:13 98:12 99:6 terms 23:15 56:15 91:23 109:22 118:17 test 36:3 37:7,12 37:13,15,24 38:6,7 38:9,12,13,14,16 38:18,23 39:14 63:19,19 64:1 tested 110:12 testified 50:8 90:1 90:15 97:21 110:3 113:2,3,15,15 116:24 121:15 testifies 4:4 115:22	testify 113:18,21 122:8 testimonial 112:5 112:17 testimony 62:10 85:3 112:12 114:2 114:3 115:4 121:22 122:11 testing 16:15 17:21,23 30:22,24 31:3 36:13,15 65:20 91:6,9,11,12 109:25 110:4 tests 35:14,17,23 35:25 36:6,10 37:5,6,14 38:3 63:18,21 texas 10:16 texts 83:7,10 84:3 110:23 thank 85:18 121:11,20,21 thick 115:25 thing 29:20 33:24 42:8 58:12 64:13 71:22,23 78:1 things 5:9 17:22 29:2,9,19 31:7 33:22,22 46:2 54:5 60:20 82:5 87:17 98:23 101:7 103:14 think 11:15 21:12 21:25 27:20 35:18 35:19,20 38:22 40:25 43:5 53:13 53:19 57:9 63:19 70:24 71:1 73:6 74:5 78:1,21 80:24 88:6 91:4 96:5 104:13 110:1	112:6 113:14,14 thinking 29:22 95:5 121:8,14 third 85:16 88:8 94:21 95:11 thought 30:12 53:4,8 62:9 82:22 84:22 85:2 thousand 117:15 thousands 101:23 three 3:14 5:9 7:11 8:10,22 11:16,18 13:19 22:15,23 23:1 31:25 32:9 33:14 56:8 68:20 73:17 83:16 84:14 86:20 91:1 99:16 103:25 113:11 115:14 thrones 70:15,19 70:24 71:9 thursday 1:20 time 11:9 12:12,18 13:16 14:5,6,21 15:16 17:12 18:6 18:16 19:4,21 20:12,23 22:1,14 22:20 25:25 26:20 26:21 29:21 31:4 31:20 33:8,23 35:11 37:3 39:22 40:13,16,19 41:3 44:6 46:17,23 51:25 54:25 60:17 68:2 75:7 77:1,14 77:14 78:14 80:5 85:15 86:17 91:1 97:20 100:18 101:16 103:3,3 104:21 106:21 108:3,13 111:15
---	---	--	---

113:18,21,23 114:9 116:5 119:9 119:11,22 120:2 122:12 times 23:1 27:12 28:1 30:4,8 33:10 33:13,14 42:23,23 67:25 75:17 106:21 titles 41:20 80:3 today 4:23 32:22 50:17 58:25 80:22 82:18 115:18,20 115:24 116:1,7 117:8 121:16 told 31:7 48:21 50:20 69:20,24 70:10 72:12,19 87:15,18 93:25 94:23 95:7 99:24 120:23 121:14 tomms 36:3 37:7 37:15,20,24 38:6,7 38:12,13,18,23 39:14 63:19 91:11 top 41:11 42:10 91:17 95:2 total 40:17 43:5,6 43:17 totality 65:5 totally 88:6 town 12:10 traditional 48:22 traditionally 34:1 47:8 train 20:21 training 20:18 21:8 23:13 48:15 93:16 traits 37:10	transactional 59:11 transcript 1:13 122:11 transcripts 58:20 transfer 40:7 99:17 103:12 transferred 17:14 transition 37:3 47:24 50:21 90:21 90:21 transitioned 47:1 48:22 49:21 50:9 transitioning 49:6 transitions 37:2 42:11 61:19 transpired 13:15 14:4 traumatic 21:20 23:3,7 24:6 28:2,9 30:18 35:6 39:19 71:25 77:21 78:1 82:13 112:24 115:2 traverse 69:7 trazzera 62:4 tread 61:6 treatment 55:18 65:2,14 66:13 67:7 68:6 111:16 trial 113:2 114:1,2 tries 9:10 42:12 trouble 103:7 true 32:10 45:13 47:18 63:15 78:10 78:18 87:16,18 89:1,8,11 94:13 96:3 99:4 101:24 103:18,21 107:5 107:12 114:11 117:11,17,20,25	120:5 121:19 122:11 truth 122:8,9,9 truthful 34:8 63:7 63:9 78:9 87:7 89:5 110:7,9,13 trying 38:22 61:6 84:7 113:14 tubes 18:21 turn 29:24 46:14 85:18 88:4 91:14 94:14 95:10 112:4 turned 21:4 turning 99:14 tv 11:10 70:7,12 72:2 twice 33:15 52:4,5 113:15 two 6:23 8:2 10:15 13:12,17 14:11 22:15,23 23:1 24:3 26:18,19 33:22 35:25 37:6 40:1 43:16,18 46:22 47:4 51:16 61:21 68:20 69:11 78:15 79:6 83:16 84:13 97:21 100:6 100:8,12 118:4,13 118:18 119:1,3,12 119:15,21,21 type 7:2 9:4 16:20 19:9 34:14 35:3 47:23 49:7 106:15 typed 80:23 83:3 types 16:2,5 17:22 18:10 22:9 63:2 79:6 99:18 103:13 typically 34:1 78:6 tyrion 71:3	tyrone 71:2 tywin 71:3 tywood 71:2 u u 3:20 u.s. 41:19 56:10 97:12 98:13 u.s.a. 1:6 umm 64:4 unable 23:8 24:10 39:24 40:9 44:8 56:12 99:17 103:12 understand 4:20 34:3 46:12 60:4 60:13 61:2 72:1 76:9 84:7 87:25 90:3 96:6 105:10 112:16 understanding 4:22 28:12 46:24 60:2 71:24 understands 34:5 understood 26:14 62:9 87:15 92:6 underwent 62:25 unemployable 39:23 40:14,23 41:13 104:23 105:8,25 106:16 112:1 unemployed 111:14,21 unfortunately 83:25 united 1:1 university 15:2,4 15:6,8 unquote 76:23 unremarkable 91:19,22 92:3,7
---	---	--	---

unsuccessful 42:13 updated 83:16,20 85:4 usa 2:10 use 10:21 23:15 30:9,10 38:15 40:6 41:6 72:20 76:25 99:6 110:25 111:3 useless 105:8 uses 98:12 usually 27:25 34:22 35:3 36:12 72:10 73:1 77:19 80:13 utilization 40:2 47:10 48:8 utilizing 95:15	veterans 8:20 vgonzalez 2:5 vincent 2:5 vision 21:14 visual 16:6 62:1,23 66:13,14 67:1 visually 19:23,25 64:23 vocational 5:21 8:12 13:19 14:7 16:12,14 17:19,21 17:23,25 19:3,15 19:16 20:10 21:7 30:24 40:20,21 41:2,5 85:19,23,24 86:7 89:5 95:24 96:9,17,25 97:5 98:20 volunteer 74:12 voracity 64:16 vs 1:5	51:12 wants 73:23 warren 13:4,5 wash 30:1 watch 72:3 watches 70:7,12 70:14 watching 71:15 water 2:7 way 11:24 41:14 57:10 65:7 69:9 74:4,25 88:18,21 96:11,14 102:6 105:10 107:2 109:24 114:16 115:13 we've 11:25 54:23 62:4 64:4 wearing 34:18 55:16 64:24 67:9 67:20,23 68:2,5 wears 64:23 66:15 week 8:17 19:13 22:16,24 23:1 40:3 117:15 weekly 71:16 90:25 weeks 48:15 80:13 weigh 62:17 65:4 weight 41:16 weights 110:1 went 12:22,23 17:15 20:6,25 22:21 34:15 57:4 57:10 65:16,17 82:21 wheelchairs 18:11 white 13:23 widely 13:19 14:7 wife 77:21	wildest 66:20 william 13:18 winded 34:1 wine 75:18 witness 3:3 4:21 34:4 58:1 59:8 76:8,13 115:22,24 118:12 121:19 witness' 123:3 woman 106:8 117:10 118:1,12 118:14,16 word 29:19 40:25 46:11 56:4 75:23 79:25 80:8 95:3 99:20 121:3 words 27:6 44:15 50:12 51:6 72:20 79:2 84:5 94:20 96:12 103:6 105:20 110:20 work 5:11 6:10,22 7:2,2,17,21 8:9,19 9:14 10:3,9,11 11:9 13:16,25 14:20 16:17,20 17:24 18:20 19:16 19:20,21 20:21 24:25 32:7 35:9 39:24 40:11,11,11 40:11,12,18 41:8 41:21,22,25 42:15 43:1,4 44:9 45:22 46:22 47:17,25 48:23 49:7,22 50:22,23 56:1,13 60:19 87:14,23 88:16,22 89:19,25 94:7 97:3,4,18,18 103:15 105:21 111:11,24 112:3
v			
v 123:2 va 17:15 vacuum 103:23 104:20 valid 64:12 valium 52:16,17 value 44:24 61:12 64:19 various 17:11 53:10 83:6 97:13 97:15 105:4 111:11 vast 113:5,18 vehicle 45:21 89:18 veritext 123:1 version 85:4 versus 10:4 60:9 vestibular 42:21 62:24	wage 117:5 walk 42:19 69:7 69:18,22 101:20 walked 102:12 walking 67:15 69:23 102:9 want 13:2 16:24 17:3,7 25:17 33:13,25 50:6 53:24 63:21 66:17 73:14,17,25 74:3 79:9 81:21,21 84:24 85:2,11 87:3 89:15 96:6 106:20 108:8,9 109:12 112:20 114:15 wanted 18:19 19:5 26:23 27:9,9 48:6		
	w		

114:6 117:21 118:13,18,25 119:1,3 120:3 worked 10:22 11:7 11:17,20 13:21,23 15:22 16:1 18:8 19:13,14 20:8,15 20:16,24 22:13 76:21,22 119:6,12 119:15,21,21 workers 5:22 working 5:10,12 14:10 16:10 19:11 20:10 21:13,19 22:18 33:1 36:11 46:22 48:24 97:20 101:16 118:19 workshop 17:20 18:2,4,5 worsen 77:1 wraps 73:7 write 79:19 80:7 80:14 writing 32:19,25 wrong 71:10 81:15 91:3 100:20 wrote 79:21	116:19,22 117:3 117:10,22 118:13 119:7,16 120:1,2,2 yearly 114:6 116:14 years 11:8,8,10,16 11:25 12:1,2,7 22:8,23,25 24:12 47:15 51:20 76:22 83:25 112:15 118:18 120:3 yesterday 24:5 28:3 77:20 yield 31:3 york 1:1 2:4,4,8,8 2:12 5:20 10:9,17 12:11,12,13,16,17 13:20,22 15:6,14 15:22 26:4,7,7 55:17 123:1 yotrio 1:6 young 23:25
x	z
x 3:1,10 xanax 52:8,12,17 52:18 xio1485 1:17	z 19:2 52:7 62:4,4 zinn 19:2 zofran 52:5 zoloft 52:4
y	
y 8:3,4 yeah 17:3 26:25 50:13 year 9:8 16:22 17:1 18:7 20:25 21:2 25:10 40:2 76:23 113:6,14	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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