

1 V I R G I N I A

2 IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

3

4 -----x

5 THELMA XXXXXXX, :  
Plaintiff, :

CASE NO.

6 :  
vs. :

CL06-5XXX

7 :  
LUTHER XXXXXXX, :

8 Defendant. :  
9 -----x

10

11

12 Deposition of RICHARD H. McADAM, M.D.,  
13 F.A.C.S., taken on behalf of Plaintiff, at 2102  
14 Executive Drive, Hampton, Virginia, beginning at  
15 7:16 p.m. and ending at 8:27 p.m. Thursday, February  
16 21, 2008, before Cherrylynn O. Gerardo, CSR, a  
17 Notary Public for the Commonwealth of Virginia at  
18 Large.

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25 REPORTED BY: CHERRYLYNN O. GERARDO, CSR

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| 1      | Diagram     | 15   |

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1 Hampton, Virginia, Thursday, February 21, 2008

2 7:16 p.m. - 8:27 p.m.

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5 RICHARD B. McADAM, M.D.,

6 Called as a witness, having been first duly

7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. SALASKY:

10 Q Dr. McAdam, before we start my name is  
11 Mike Salasky. I represent the plaintiff in this  
12 case. I have a few questions in this case.

13 A Yeah. Sure.

14 Q If you don't understand the question,  
15 stop me.

16 A Sure.

17 Q I will try to make it clear.

18 Before we start, I'm obligated to ask  
19 you, are you prepared to testify today, sir?

20 A Yes.

21 Q And do you understand that even though  
22 a jury is not here, you're fully prepared to testify  
23 as though the jury were before us?

24 A Yes.

25 Q And I ask what documents or what

1 materials you relied on in forming your opinions?

2 A Well, I relied on the materials that  
3 Mrs. Hodges sent me.

4 Q Can you tell me what those materials  
5 were?

6 A Well --

7 Q On your desk, it looks like about  
8 three inches of materials?

9 A Yeah, that's correct. Well, it has to  
10 do with -- with the -- Thelma SXXXXXX, in the  
11 automobile accident that she was in. The initial  
12 evaluations about. Evaluations by her primary care  
13 physicians, Dr. Harris. Evaluation by Dr. Walko.  
14 Treatment by Dr. Skidmore. And various other  
15 notations done by people that treated her along the  
16 way.

17 Q All right. You, of course, accept  
18 that she was involved in an accident on November 23,  
19 2004?

20 A Oh, sure.

21 Q Yes, sir.

22 And do you accept that her car  
23 received a significant impact?

24 A Well, I don't know about that as much  
25 as -- I don't know about how much impact.

1 Q So you don't know if it's a big

2 impact --

3 A Well --

4 Q -- a moderate impact --

5 A I never know.

6 Q -- or a small impact? Pardon me?

7 A I never know.

8 Q And you went ahead and formed your  
9 opinions in this case and wrote an opinion without  
10 knowing that fact?

11 A It's not a factor.

12 Q It's not a factor?

13 A I never know. How would I ever know  
14 how big the impact was? I wasn't there.

15 Q Yes, sir.

16 You were not provided with any of the  
17 photographs of the automobile?

18 A I don't believe so.

19 Q All right. Would the photographs of  
20 the automobiles provide you with some indication of  
21 the kinetic energy that was transferred to the  
22 vehicle?

23 A Possibly.

24 Q And you didn't look at that?

25 A I didn't have it. It wasn't offered to

1 me.

2 Q Would it have been a benefit to you?

3 A Well, you know, yes and no. The -- you  
4 know, you can talk around this issue a lot about  
5 kinetic energy and all these things. It's very hard  
6 for anyone to understand, but in reality what  
7 happened -- what matters is the evaluation of the  
8 patient after the accident --

9 Q Yes, sir.

10 A -- by appropriate care and delivery.

11 Q Yes, sir.

12 So, for the record, you have no idea  
13 of -- you have no opinion about the kinetic energy  
14 that passed through her car; is that correct?

15 A I have no knowledge of it.

16 Q All right. Following the crash she  
17 was seen --

18 A Do you have any way to measure it?

19 Q Let me ask the questions, if you don't  
20 mind.

21 A There is no way of measuring.

22 Q Following the crash, she was seen at  
23 Patient First; is that correct?

24 A I think that's correct.

25 Q And then she was followed by

1 Dr. Harris; isn't that correct?

2 A Who I believe is her primary physician.

3 Q Yes, sir.

4 He referred her to Dr. Walko.

5 A That's, as I understand, that's the  
6 trail I followed in the record.

7 Q Yes, sir.

8 A As I told you earlier.

9 Q Yes, sir.

10 She sat for a couple of MRI studies of  
11 the lumbar spine; is that correct?

12 A Well, I know of the one key that  
13 subsequently her surgery was apparently performed  
14 in --

15 Q What was the key one?

16 A -- February of '05, I think.

17 Q That's the key one?

18 A Well, I think that's the one  
19 Dr. Skidmore made his opinion about.

20 Q All right.

21 A I think it's key in a sense of what  
22 subsequent of what happened in treatment of the  
23 lumbar spine.

24 Q Yes, sir.

25 Did you review that film yourself?

1           A        As I recall, I did see those films.

2           Q        Where do you -- do you have the films  
3 in your file tonight?

4           A        I don't know that I do.

5           Q        All right.

6           A        Maybe I do. Yes, I have the film.

7           Q        What is the date of that series, if  
8 you don't mind telling me?

9           A        The date of the film is -- if I can  
10 find it on here. It's -- well, I'm having trouble  
11 seeing the date.

12          Q        I believe there is a light box in here  
13 some place.

14          A        I have one right here.

15          Q        Yes, sir.

16          A        This was done on -- this was ordered by  
17 Dr. Walko. His name is on the films. At Chesapeake  
18 General Hospital. I don't see the date. It's got to  
19 be here somewhere.

20          Q        It usually is.

21          A        It's always on the film somewhere.  
22 These might be copies. Sometimes it gets blurry.  
23 2/5/05.

24          Q        Okay. You have that axial views.

25          A        Yeah.

1 Q Do you have the sagittal views? Did  
2 you look at the sagittal views?

3 A I'm sure I did, but I just haven't  
4 gotten to them yet.

5 Q Yes, sir.

6 A Give me a minute.

7 Q Sure. There we go.

8 Okay. So you did look at the MRIs  
9 yourself?

10 A Yes, I looked at them.

11 Q We have them all. At least February?

12 A Yeah. I have the MRI. I think I have  
13 a post-op study here, also, but the pre-op study is  
14 the one we are talking about.

15 Q Yes, sir.

16 A Yes. I'm looking at it right now.

17 Q Okay. Well, wherever you're  
18 comfortable, I've got some more questions.

19 A Sure.

20 Q I don't know if you want to resume  
21 your seat.

22 She also sat for an EMG study of the  
23 lumbar spine, did she not, and did you review that,  
24 sir?

25 A Hold on. There was an EMG. I don't

1 remember -- do you want me to look and see what it  
2 showed? I can.

3 Q Well, my recollection is that it  
4 showed electrodiagnostic evidence of the compression  
5 and tension of S1 and L5. Is that your  
6 recollection?

7 A No, I don't recall.

8 Q Okay.

9 A She had an EMG performed 1/12/05 that  
10 showed a carpal tunnel syndrome. She had an EMG  
11 performed 3/21/06. It showed evidence for  
12 radiculopathy, yes.

13 Q L5 only, or was it --

14 A L5, S1. L5, S1.

15 Q I'm sorry. I didn't hear you. Yes,  
16 sir.

17 A That was 3/21/06.

18 Q Yes, sir.

19 And based on all the diagnostic  
20 evidence and the MRIs, I think it's clear and you  
21 agree she did have a ruptured disc?

22 A You can see it on the MRI scan.

23 Q Yes, sir.

24 I believe it was a herniated or a  
25 ruptured disc compressing neural structures

1 primarily on the right, wasn't that correct?

2 A Actually, no. It's primarily on the  
3 left.

4 Q Primarily on the left?

5 A You can see it right here (indicating).  
6 Here is the axial view. It's primarily on the left.

7 Q All right. I see.

8 A The MRI is a reversed image. Now, it's  
9 broad-base disc herniation, but it's -- well, it's in  
10 both sides actually. It's on both sides.

11 Q It's bilateral?

12 A Yeah.

13 Q So it's a broad base -- in your  
14 opinion, broad-base disc herniation?

15 A It looks like -- it looks like a disc  
16 extrusion. If you look at this scan over here  
17 (indicating).

18 Q Yes, sir.

19 A On the axial and sagittal view.

20 Q Yes, sir.

21 A Right here (indicating). Well, that's  
22 not it. Here (indicating).

23 Q Yes, sir.

24 A It looks like a disc -- a herniated  
25 disc here at L5,S1.

1 Q Yes, sir. It's an extruded disc.

2 A That's what it looks like, yes.

3 Q And, in your opinion, it's compressing  
4 neural structure bilaterally at both foramina?

5 A It appears to be on both sides. It may  
6 be a little more on the right in your foramina, but  
7 it's a broad-base disc herniation.

8 Q Okay. Just to be clear. You agree  
9 it's an extrusion versus a protrusion?

10 A It looks like an extruded disc  
11 fragment.

12 Q Yes, sir.

13 A If I had to -- based on my experience,  
14 having seen many thousands of these, I would say it's  
15 an extruded disc fragment.

16 Q Yes, sir.

17 A I don't recall what Dr. Skidmore's  
18 report is -- his op report. That's what it looks  
19 like on the scan.

20 Q Yes, sir.

21 And it's a -- I believe, it's a -- I  
22 believe you pronounce it cephalad. The extruded  
23 disc is in the cephalad orientation; is that  
24 correct?

25 A Well, it means it's a little bit above

1 the disc space.

2 Q I'm sorry. I can't hear you.

3 A It went out a little bit above the disc  
4 space.

5 Q Yes, sir.

6 A When it came out, it came out in the  
7 middle and it went up a little bit.

8 Q Yes, sir.

9 When you say it went into the second  
10 story of the vertebral body, passed the first story,  
11 wouldn't you agree with that?

12 A That term has no validity to me, second  
13 story, first story.

14 Q No validity. You're not familiar with  
15 that?

16 A No.

17 Q First story, second story, third  
18 story, you're unfamiliar with that?

19 A With the lumbar spine?

20 Q Yes, sir.

21 A Never heard of it.

22 Q All right.

23 A It's not in the literature.

24 Q All right. It's not in the  
25 literature?

1           A       No. Just like whiplash, not an  
2 acceptable diagnosis.

3           Q       Okay. I hand you this diagram which  
4 shows -- which depicts, I believe, an extruded disc.  
5 Would you agree that that is a fair representation  
6 of the extruded disc in this case?

7           A       It's similar.

8           Q       Similar?

9           A       Yeah.

10          Q       And it's a compression on L5 and S1.

11                   MR. SALASKY: I would like to mark  
12 this as Plaintiff's 1 and admit that.

13                   (Marked as McAdam's Exhibit Number 1  
14 for the record.)

15 BY MR. SALASKY:

16          Q       And pre-operatively you agree she was  
17 having neurological deficits that were consistent  
18 with that level, the L5, S1?

19          A       She had a leg pain.

20          Q       Yes, sir. And it appeared --

21          A       I don't know that a neurological  
22 deficit -- I don't think she had any motor weaknesses  
23 that I recall from the exam.

24          Q       But it was consistent with that level?

25          A       Well, she had sciatic leg pain.

1 Q Yes, sir.

2 And I wanted to ask you in these MRIs  
3 there appear to be some bulges in the thoracic  
4 level; is that correct? Let me just point them out  
5 to you here.

6 A Well, you don't have to point them out  
7 to me.

8 Q Yes, sir.

9 A I can look at the scan.

10 Q I apologize.

11 A A couple of bulges here.

12 Q Yes, sir.

13 A They are not extrusions. They are just  
14 bulges.

15 Q Yes, sir.

16 A She's got what's called degenerative  
17 disc disease. Like, if you look here (indicating).

18 Q Yes. But let me just ask you --

19 A There is degenerative disc disease  
20 around this --

21 Q Yes, sir. We'll get to that. We'll  
22 get to that, sir. I appreciate it. But we're just  
23 asking now at the thoracic level.

24 A Right.

25 Q There are degenerative bulges at that

1 level, you would agree with that?

2 A Sure.

3 Q But I think you would also agree that  
4 they're not really causing her any symptoms?

5 A They don't appear to be.

6 Q Yes, sir.

7 And they are not significant for this  
8 case then?

9 A I wouldn't think so.

10 Q Yes, sir. Okay.

11 A Based on what I know about the case.

12 Q Pardon me, sir? Yes, sir.

13 A All right.

14 Q And, again, just so we're clear as for  
15 that L5, S1 disc, we are talking about a tear in the  
16 annulus; is that correct?

17 A That's what happens.

18 Q Yes, sir.

19 And we're talking about an extrusion  
20 of some of the nucleus pulposus that has crossed  
21 through the tear and has invaded the spinal canal?

22 A Correct.

23 Q Yes, sir.

24 And that same soft central disc  
25 material is compressing neural structures in her

1 case?

2 A They appear to be.

3 Q Yes, sir.

4 And you would agree that that's sort  
5 of a defect, and will not heal itself, or will not  
6 fix itself?

7 A Usually not.

8 Q Yes, sir.

9 A I have seen them heal, but usually not.

10 Q Yes, sir.

11 Well, the tear and the extrusion --  
12 the extrusion is not going to go back inside the  
13 disc?

14 A No.

15 Q And the tear is not going to heal --

16 A Sometimes they dehydrate and strengthen  
17 and the pain goes away.

18 Q Yes, sir.

19 A That's not the usual thing that  
20 happens.

21 Q No, sir.

22 But my question is the nucleus  
23 pulposus is not going to recede into a disc --

24 A No.

25 Q -- and a disc is not going to heal

1 that tear?

2 A Correct.

3 Q Yes, sir.

4 Okay. And you would agree that prior  
5 to the crash and no time in her life had she  
6 undergone MRI studies of the lumbar spine?

7 A Not that I know of.

8 Q Prior to the crash at no time in her  
9 life has she gone CT studies of the lumbar spine?

10 A Not that I'm aware of.

11 Q Yes, sir.

12 Prior to the crash she has never  
13 undergone a myelogram of the lumbar spine?

14 A Not that I'm aware of.

15 Q And the same for nerve conduction  
16 studies of the lumbar spine?

17 A Not that I'm aware of.

18 Q Never had any. Never had any EMG  
19 study of the lumbar spine, prior to the crash?

20 A Same question. Not that I'm aware of.

21 Q And never had any epidural steroid  
22 injections prior to the crash in the lumbar spine?

23 A Not that I'm aware of.

24 Q So is it fair to say that at no time  
25 prior to the crash did she ever receive any

1 treatment for a pinched nerve in the lumbar spine?

2 A Not that I'm aware of.

3 Q Yes, sir.

4 Prior to the crash, you would agree --

5 A There's a record in her past for a

6 pre-existing -- before that had the back and leg

7 pain, in the records. She had some episodes of back

8 and leg pain --

9 Q Yes, sir.

10 My question is -- my question is --

11 A But I don't know what treatment she

12 had. She was evaluated for it.

13 Q Yes.

14 A But I don't -- you asked me about the

15 treatment.

16 Q Yes, sir.

17 A I can't say no to that because there's

18 a suggestion that she might have had treatment

19 because her record clearly indicates she did have

20 back and leg sometime before this accident.

21 Q All right.

22 A So I can't say for sure.

23 Q All right, sir.

24 A To be totally honest in answering your

25 question.

1           Q           But you've come forward and offered an  
2   opinion, and I think what you are saying is, to the  
3   best of your knowledge, she's never had any  
4   treatment for a lumbar radiculopathy?

5           A           She must have had some evaluation  
6   because it's mentioned in the medical record. The  
7   kind of treatment she had, I don't know.

8           Q           Are you saying that she did have prior  
9   treatment?

10          A           I don't know that. I know the record  
11   indicates she would -- on more than one occasion  
12   complained to a physician that she had back and leg  
13   pain. So I can't be certain she never had any  
14   treatment. I just don't know what it might be.

15          Q           All right. Well, she complained of  
16   prior back and leg pain, but has any doctor before  
17   the accident diagnosed that as a lumbar  
18   radiculopathy?

19          A           Not to my knowledge.

20          Q           All right.

21          A           But I don't know.

22          Q           All right.

23          A           But I'm saying --

24          Q           She's had symptoms --

25          A           -- to answer your question.

1 Q Yes, sir.

2 A If you let me, please, answer.

3 Q Yes, sir.

4 A If I answer you honestly, under oath,  
5 which I am.

6 Q Yes, sir.

7 A That I'll have to point out that she  
8 did have complaint of back and leg pain on more than  
9 one occasion --

10 Q Yes, sir.

11 A -- before this accident. And I assume,  
12 if she complained about it, she had some sort of  
13 evaluation for it. I don't know the details of  
14 anything.

15 Q All right. Okay.

16 A That's my answer to your question.

17 Q Okay. Thank you.

18 Following the accident, she eventually  
19 came into the care of Dr. Skidmore; is that correct?

20 A Yes.

21 Q And he performed spine surgery on  
22 August the 2nd, 2006; is that right?

23 A I assume that's the date.

24 Q And I believe he did a laminectomy,  
25 discectomy transverse fusion with pedicle screws?

1           A        Yes.

2           Q        All right.  And you agree that surgery  
3 was necessary --

4           A        Yes.

5           Q        -- in order to decompress the neural  
6 elements; is that correct?

7           A        Yes.

8           Q        Yes, sir.

9                    Let me see here.  By the way.  Just a  
10 couple of housekeeping things.  I hand you a book, a  
11 Third Edition of Low Back and Neck Pain  
12 Comprehensive Diagnosis and Management.  One of the  
13 authors is Borenstein.  I ask you if you will take a  
14 minute and look at that book.  And my question is  
15 going to be, would you consider that to be an  
16 authoritative source in the medical field?  If you  
17 would take a minute and familiarize yourself with  
18 it.

19                    I think that's copyright 2004, over  
20 900 pages, for the record.

21           A        I'm personally not familiar with this  
22 book.  It looks like they're decent people that wrote  
23 it.

24           Q        I'm sorry?

25           A        I'm personally not familiar with it,

1 but it looks like they're decent people that wrote  
2 it.

3 Q Yes, sir.

4 A There are a lot of similar books.

5 Q Sure. There are many of them. I'm  
6 sure you don't know all of them. But my question  
7 is, would you agree this is just one of many  
8 authoritative sources?

9 A Yes.

10 Q Okay. Are you familiar with McNabbs  
11 Back Ache?

12 A Yes. I've seen that book.

13 Q Okay. Let me -- for the record, let  
14 me hand you a McNabbs Back Ache, Fourth Edition.  
15 One of the authors is David Wall, copyright 2007.  
16 If you would take a minute and look at that.

17 A Yes. I think these are legitimate  
18 people.

19 Q So, for the record, my question is  
20 it's an authoritative source?

21 A Yes.

22 Q All right. And, finally, I hand you  
23 Orthopedic Examination Evaluation Intervention by  
24 Mark Dutton. I believe that's over 1,000 pages.

25 A This book I don't know at all. I'm not

1 sure about this.

2 Q Well, take a minute and look at it.

3 My question --

4 A Well, I don't think you can expect me  
5 to look at 1,000 pages in a minute, sir.

6 Q All right.

7 A To be honest with you.

8 Q All right.

9 A I just don't know that -- I don't know  
10 this person.

11 Q So you would say this is not an  
12 authoritative source?

13 A I don't know that. I'm not going to  
14 make an opinion. I have no opinions.

15 Q All right. Okay. You examined  
16 Ms. SXXXXXX on January 11, 2008; is that right, sir?

17 A Yes.

18 Q And that was about one and-a-half  
19 years after her surgery; is that right?

20 A Yes.

21 Q That was about three years after her  
22 accident; is that correct?

23 A I guess that's about right, yeah.

24 Q And when you --

25 A I think her surgery was two years after

1 her accident, right?

2 Q Her surgery was in '06, August of '06.  
3 Her accident was November of '04.

4 A Yeah.

5 Q And when you saw her, she was still  
6 having problems, was she not?

7 A She complained of right, center low  
8 back pain, cramping pain to right leg.

9 Q Yes. And I think you performed and  
10 examined and you found some deficits, I believe, did  
11 you not, sir? I think you found a lack of an ankle  
12 reflex. I think you found -- I can't pronounce --

13 A She had an ankle reflex on her right  
14 side, yes.

15 Q She had S1, I think --

16 A Partial S1.

17 Q Yes, sir.

18 So she was still having problems?

19 A Well, yes. But ankle reflexes don't  
20 usually recover once they're lost.

21 Q All right. And you examined her and  
22 you wrote a report, which is dated January 11, 2008;  
23 is that right, sir?

24 A Yes.

25 Q Okay. And you mailed that to the

1 lawyers in the case?

2 A Yes.

3 Q I'd like to talk to you about that  
4 report. I have a couple of questions.

5 Is it your opinion that L5, S1 disc  
6 was ruptured before the crash, at the time of the  
7 crash or after the crash?

8 A I think my best assessment of that is  
9 sometime after the crash.

10 Q Sometime after the crash. What caused  
11 that disc to rupture, then?

12 A I don't know.

13 Q You don't know.

14 A All I know is that she has a  
15 degenerative disc at L5, S1.

16 Q All right.

17 A Lower chronic change. That disc has  
18 been injured a long time before an automobile  
19 accident because --

20 Q It was injured?

21 A -- it takes months or years to get a  
22 disc herniation -- to get a degenerative disc  
23 features on an MRI scan like she had.

24 Q Okay. You're saying that the disc was  
25 injured before the accident, or are you saying that

1 the disc was degenerated before the accident?

2 A It was certainly degenerated.

3 Q All right.

4 A That implies injury.

5 Q Okay.

6 A Wear and tear, whatever.

7 Q Okay. So you're --

8 A Time life injuries.

9 Q So you're saying it was before the  
10 accident that disc had undergone wear and tear,  
11 desiccation and --

12 A Yes.

13 Q -- became degenerated?

14 A Correct.

15 Q Okay. I don't think -- well, in that  
16 sense you used the word injury?

17 A Well, yeah, I think it's age. It's  
18 injury. It's a lot of things. It's life.

19 Q All right. You can't -- I think I --  
20 I think my question was what caused the disc to  
21 rupture, and you couldn't tell me. Is that where we  
22 left off?

23 A No. I don't know that.

24 Q All right. Can you tell me when the  
25 disc ruptured?

1           A        When she began having leg pain.

2           Q        When she began to have leg pain?

3           A        Yeah.

4           Q        So the disc ruptured and at the same  
5 moment in time she had leg pain?

6           A        Very quickly afterwards.

7           Q        About how long afterwards?

8           A        Well, I would think either that day or  
9 within days after it. And the reason I say that  
10 it's -- it's pretty clear to me having, you know,  
11 done probably 12,000 back operations in my career,  
12 and seen many more thousands of patients.

13                    This lady has a soft disc extrusion  
14 occupying a lot of space in the canal. She has a  
15 very significant nerve recompression on these views.  
16 I don't see how she could not have had any leg pain  
17 as soon as it happened. There is no way. You are  
18 talking about a mass movement into the spinal canal  
19 with a nerve that's very -- it's very sensitive and  
20 it's being compressed.

21           Q        All right.

22           A        And my problem with this is that I  
23 don't find any report of leg pain until a couple of  
24 months after the accident. That's where the problem  
25 is. With a soft disc extrusion it makes no

1 biomechanical sense to me that that could occur.

2 Q That what could occur? That the leg  
3 pain would be delayed two months post-accident?

4 A Exactly.

5 Q All right.

6 A With a soft disc extrusion in the canal  
7 that occupies a lot in the canal. I don't see how it  
8 could be there for two months without leg pain. It  
9 makes no biomechanical sense.

10 Q That's the fact you rely on --

11 A That's it.

12 Q Let me finish my question. The  
13 absence of leg pain two months post-accident?

14 A Correct.

15 Q And that's the entire basis of your  
16 opinion?

17 A That is the most important thing that I  
18 found that would make me think that this disc  
19 extrusion did not -- did not happen the day of the  
20 accident. Yes, sir.

21 Q Okay. Yes, sir.

22 Do you have your report there with  
23 you?

24 A Yes.

25 Q I have a question on page five. I

1 don't understand one of your sentences.

2 A Well, it would be a typo. Page five?

3 Q Yes, sir.

4 A Okay.

5 Q Are you with me there?

6 A I think I have it.

7 Q Yes, sir.

8 You wrote, "The fact that she had no  
9 documented leg pain that I can find in the records  
10 offered to me until two months after the injury  
11 indicates that the injury is probably not causally  
12 related to the herniated disc which subsequently  
13 required surgery."

14 And I'm a little puzzled what you mean  
15 when you say the injury is probably not causally  
16 related to the herniated disc which requires  
17 subsequent surgery.

18 A The automobile accident.

19 Q What do you mean by injury? Do you  
20 mean the ruptured disc?

21 A No. No. I can see your confusion with  
22 that, but what that sentence means is that the injury  
23 that she -- that she sustained the day of the  
24 accident, that's what this means is probably not  
25 causally related to the ruptured disc. That's what

1 that sentence says.

2 Q So what you are saying is -- well, how  
3 are you defining injury? You're talking about --

4 A The car wreck.

5 Q The car wreck?

6 A Right.

7 Q All right. Well, what specifically --

8 A The injury that we are talking about.

9 Q Because she had many injuries. She  
10 had shoulder. She had knee.

11 A Well --

12 Q She had carpal tunnel, I believe.  
13 Which one are you referring to? I'm sorry, I'm a  
14 little confused.

15 A I'm talking about the car wreck as a  
16 whole.

17 Q All right.

18 A The patient was injured in a car wreck.

19 Q Yes.

20 A Sometime after the injury, she  
21 developed leg pain.

22 Q Okay. So sometime after the car  
23 wreck --

24 A Actually, the injury that occurred the  
25 day of the car wreck does not appear to me to be

1 causally related to the herniated disc because the  
2 leg pain didn't occur until two months later.

3 Q Okay.

4 A That's what this sentence is saying.

5 Q Okay. So you're saying that she had  
6 the accident --

7 A The English is not -- you can pick on  
8 the English, but that is what it's saying.

9 Q I don't mean to.

10 A That's what it's saying.

11 Q I'm simply trying to understand.

12 A Yeah. I understand. That's what I'm  
13 saying.

14 Q What you're saying is the injury that  
15 she received in the car wreck --

16 A Exactly.

17 Q -- is separate from the injury that  
18 arose from the disc; is that correct?

19 A Yeah. That's what I'm saying, in my  
20 opinion, yes.

21 Q Okay. And that's all because the leg  
22 pain came on two months afterwards?

23 A Correct.

24 Q Okay. Let me ask you this. Is it  
25 your opinion that the crash of November 23, 2004 did

1 not aggravate any underlying condition in her lumbar  
2 spine?

3 A Well, all I can say to that is that  
4 looking at the record with the healthcare providers  
5 she sought, she had no complaint of any spinal pain  
6 after the accident. Somewhere down the line a  
7 physical therapist treated specifically her cervical  
8 and thoracic spine, not the lumbar spine. And she  
9 didn't complain of back and leg pain until she came  
10 to Dr. Walko's office apparently.

11 Q Yes, sir.

12 A That's all I have is the records.

13 Q Well, let me ask my question because I  
14 don't believe I got an answer to it.

15 A Okay.

16 Q Let me restate my question.

17 A Okay.

18 Q Is it your opinion, that the crash of  
19 November 23, 2004 did not aggravate any underlying  
20 condition in her lumbar spine?

21 A Correct.

22 Q That's your opinion?

23 A Yes.

24 Q All right. So you just told me that  
25 she has a degenerative disc that has been long

1 time -- a longstanding degenerated disc in her  
2 lumbar spine prior to the accident; is that correct?

3 A That's what the MRI scan shows, yes.

4 Q That's what it shows?

5 A Yeah.

6 Q And it's your testimony that the  
7 accident came along and didn't do anything bad to  
8 that disc?

9 A Not that we have any proof of by the  
10 healthcare providers that treated her.

11 Q And that's based on the leg pain  
12 popping up two months post-accident?

13 A Correct.

14 Q Okay. But your testimony is that the  
15 disc was degenerated?

16 A Yes, sir.

17 Q The accident came and did nothing to  
18 make the disc worse?

19 A Not that I can see --

20 Q All right. And then something else --

21 A -- by examining the records.

22 Q Yes, sir.

23 And then something else happened to  
24 make that disc rupture?

25 A I guess so. I don't know.

1 Q Can you tell me what the something  
2 else is?

3 A No clue.

4 Q No clue?

5 A No idea. I don't have that history in  
6 front of me.

7 Q Okay. Now, you say that the leg pain  
8 popped up two months post-accident; is that correct?

9 A The records I have indicate that to be  
10 the case.

11 Q Is it your testimony that leg pain  
12 follows an automobile accident by two months, the  
13 accident can never be the source of the ruptured  
14 disc, if there's a ruptured disc?

15 A That's pretty much correct in my  
16 opinion.

17 Q Okay.

18 A I think that's 98 percent.

19 Q All right. What is the maximum number  
20 of weeks that you are prepared to accept?

21 A With a full extruded disc, no more than  
22 a couple of weeks max.

23 Q How many weeks?

24 A Two.

25 Q That's two weeks. So the most you'd

1 expect --

2 A A couple of weeks.

3 Q -- is two weeks post-accident to see  
4 leg pain?

5 A With an extruded disc --

6 Q Yes, sir.

7 A -- like this MRI shows, yes, that's  
8 correct.

9 Q All right. So --

10 A And probably quicker than that.

11 Q All right. Well, I asked you the  
12 maximum and you said the most you would go out is  
13 two weeks?

14 A Right.

15 Q So three weeks would be too late. It  
16 wouldn't be from the accident?

17 A Well, you know, there's a big  
18 difference in two weeks and two months. There is not  
19 a big difference in two weeks and three weeks.

20 Q Well, it's about two weeks versus  
21 eight weeks. So I just want to see where is the  
22 dividing line. Where is the dividing line? You say  
23 two weeks, but you won't go three weeks. Would you  
24 go four weeks?

25 A No.

1 Q You won't go four weeks?

2 A No.

3 Q Would you go three weeks?

4 A Probably not.

5 Q Okay.

6 A We've got an extruded disc in a spinal  
7 canal occupying the place in the nerve.

8 Q All right.

9 A I don't see how you can live with that  
10 pain.

11 Q All right. So if it appears within  
12 two weeks post-accident, it's from the accident --  
13 the ruptured disc would be from the accident; beyond  
14 two weeks it's not?

15 A I think within a reasonable certainty,  
16 yes.

17 Q Okay. And you can't be that exact?

18 A Well, in my experience, sir, that  
19 people that have injuries to their back with an  
20 extruded disc, they have leg pain within a day or  
21 two. Over 90 percent of the time.

22 Q Over 90 percent of the time?

23 A Oh, yeah. Within a day or two.

24 Q What about the other ten percent?

25 A Well, it's maybe within a week or two.

1 Q Okay. Well, you said two weeks is the  
2 max?

3 A Yeah. I think two weeks is long  
4 enough.

5 Q Okay. Does it make any difference  
6 about the characteristics of the particular patient?

7 A I don't understand the question.

8 Q Well, the age, the state of health,  
9 that kind of a thing? Does that make any  
10 difference?

11 A I don't think so. I think nerves are  
12 pretty much the same in everyone.

13 Q They are?

14 A Uh-huh.

15 Q How about if the patient has diabetes,  
16 polyneuropathy? It doesn't make any difference?

17 A No, sir.

18 Q It does not? All right.

19 A Acute nerve root compression is very  
20 different than polyneuropathy and diabetes on nerves.

21 Q All right. Well --

22 A A very different situation.

23 Q Yes, sir.

24 But you're saying that that rule, that  
25 two-week rule applies regardless of the health of

1 the patient, correct?

2 A Well, I think the only exception would  
3 be if the patient weren't able to walk and they've  
4 been lying in their bed and it might relieve pain.  
5 But this patient is walking around going and seeing  
6 doctors.

7 Q Well, my question is that two weeks  
8 post-accident, if we see the leg pain, that's the  
9 most you will go, and the underlying health of the  
10 patient doesn't make any difference?

11 A With a full extruded disc in an  
12 ambulatory patient, that's my opinion, yes, sir.

13 Q All right. Thank you.

14 This two-week rule that you have just  
15 testified to, is this rule used by other  
16 neurosurgeons or just you?

17 MR. SAUNDERS: Object to your  
18 characterization of a rule. He didn't talk  
19 about any rule.

20 BY MR. SALASKY:

21 Q All right. Well, let me restate that  
22 then.

23 This disc answer that you've given me,  
24 this opinion that you've given me, is that adhered  
25 to by other neurosurgeons or just you?

1           A           I would -- my opinion would be that I  
2    don't know the answer to that.

3           Q           All right.  Have you testified as a  
4    medical expert in any prior legal proceedings?

5           A           Yes.

6           Q           And have you ever applied that -- I  
7    think it is a rule.  I think you did say it is a  
8    rule.

9           A           I didn't say it was a rule.  What I  
10   said, it was my opinion.

11          Q           Yes, sir.

12          A           That's a difference than a rule.

13          Q           All right.  Well, in your opinion --  
14   let me back up.  In your opinion, in an extruded  
15   disc we have to see leg pain within two weeks or  
16   it's not from the trauma, correct?

17          A           That's correct.

18          Q           Okay.

19          A           I think two weeks is a generous amount  
20   of time.

21          Q           All right.  And it doesn't make any  
22   difference about the underlying state of health of  
23   the patient, correct?

24          A           That's not what I said.

25          Q           What did you say?

1           A        I said if you have an ambulatory  
2    functioning patient getting around and walking,  
3    then -- in other words, the patient is not in  
4    bedrest, then I think that is correct.

5           Q        All right.

6           A        I think two weeks is completely  
7    generous time.  Because we are talking about a fully  
8    extruded disc here, not a bulge.

9           Q        Yes, sir.  Yes, sir.

10                    Now, you, I think, earlier testified  
11   that the accident did not aggravate the degenerated  
12   disc; is that right, sir?

13           A        I don't see any proof in the record  
14   that it did.

15           Q        All right.  A normal, healthy disc, of  
16   course, is able to retain moisture and water; is  
17   that correct?

18           A        Well, yes.

19           Q        And a normal disc is well hydrated; is  
20   that correct?

21           A        Yes.

22           Q        And as we age, the disc tends to dry  
23   out and become desiccated; is that correct?

24           A        Yes.

25           Q        And that's because the disc is

1 generally avascular and as we age the nutritional  
2 requirements of the disc tend not to be met, I  
3 think; is that correct?

4 A Correct.

5 Q All right. And this is part of the  
6 normal wear-and-tear process, right?

7 A That's why you get short when you get  
8 older.

9 Q Yes, sir.  
10 That's a normal process; is that  
11 right?

12 A Yeah.

13 Q And let me ask if this is a fair  
14 comparison. A life of a disc if we compare it to a  
15 grape. When we're young, the grape has a tough skin  
16 and a watery interior. As we age -- I'm sorry, as  
17 the grape ages, it progresses to a raisin. Is that  
18 a fair comparison for the disc?

19 A Well --

20 Q With a general matter, for a  
21 degenerative disc?

22 A Well, that's kind of an unusual  
23 comparison, but it's similar.

24 Q I'm sorry. I couldn't hear you.

25 A It's an unusual comparison, but it's

1 similar.

2 Q Similar?

3 A Yeah.

4 Q Similar to?

5 A When a disc desiccates, yes.

6 Q All right. And that's part of a  
7 normal aging process?

8 A Correct.

9 Q Like, graying of hair? Wrinkling of  
10 skin?

11 A Sure.

12 Q All right. And, in fact, a woman of  
13 her age, I think, wouldn't you be surprised if you  
14 saw a spine of a woman of 61 years of age, and  
15 didn't see any evidence of degeneration?

16 A It would be unusual.

17 Q It would be unusual. Yes, sir.

18 Isn't it generally accepted in the  
19 medical field that a degenerated disc cannot  
20 withstand and transmit sudden traumatic force, as  
21 well as a healthy disc?

22 A Yes.

23 Q Isn't it generally recognized in the  
24 medical field that a degenerated disc is more easily  
25 damaged by a traumatic force as compared to a

1 healthy disc?

2 A Yes.

3 Q If the disc was degenerated before the  
4 accident, isn't it more likely than not that it was  
5 aggravated by the crash then?

6 A Not necessarily.

7 Q Well, how do you rule that out in this  
8 case?

9 A She didn't have symptoms consistent  
10 with an injury to the disc at the time of the  
11 accident.

12 Q So it's your testimony that every  
13 aggravation of a disc brings on instant symptoms?

14 A Sure.

15 Q It does?

16 A If it's a significant injury, yes. If  
17 it's a significant aggravation, yes.

18 Q Right. But you also told me that you  
19 don't know what kind of impact took place here?

20 A I don't think it's relevant. What's  
21 relevant is what the aftermath was, and what the  
22 physicians noted and found when they examined her.

23 Q All right, sir. Let me ask it from  
24 another direction. Can you -- let's go back a year  
25 and-a-half before the accident with this lady.

1 Let's go back 18 months before the accident. Can  
2 you point to any symptom that is consistent with or  
3 compatible with a radicular complaint for a year  
4 and-a-half prior to the accident?

5 A The only thing I think that I see is --  
6 and I will read from the records of what I dictated  
7 is that in August of 1999, she had pain in her right  
8 leg after a fall. In March 2000, she had a complaint  
9 of pain in left --

10 Q What year? Excuse me. What year,  
11 sir?

12 A March 30, 2000.

13 Q All right.

14 A She complained of pain in left leg down  
15 to the calf, suggesting side distribution.

16 Q All right.

17 A On March 17, 2003, there is a notation  
18 in the physician's record that she fell again and had  
19 some left-sided leg pain.

20 Q All right.

21 A On 4/28/03. She'd seen a physical  
22 therapy center in Chesapeake. Fell out of shower.  
23 Not able to work because of back and leg pain. So  
24 there is mention of back and leg pain.

25 Q Right.

1           A           I don't remember the timeframe.

2           Q           The most recent one you picked out is  
3 April of '03; is that correct?

4           A           Yes.

5           Q           All right. And between April of '03  
6 and November of '04, do you have any evidence of any  
7 sort of sciatic pain or radicular pain?

8           A           Not in any records that I saw, no.

9           Q           All right. So is it fair to say that  
10 for that timeframe she didn't have any symptoms?

11          A           Not that I have any record of it.  
12 Correct.

13          Q           All right. So we can agree she didn't  
14 have any symptoms from that timeframe. The accident  
15 came along --

16                   MR. SAUNDERS: He said not that he has  
17 any record of.

18 BY MR. SALASKY:

19          Q           Not that he has any record of. We  
20 can -- let me restate it.

21                   We agree that you don't have any  
22 record of any radicular or sciatic pain from that 4  
23 of '03 to the accident, November of '04; is that  
24 correct?

25          A           Correct.

1           Q       All right.  The accident came along,  
2   and you say did not damage the disc and didn't  
3   rupture the disc?

4           A       Yes.

5           Q       And she then became symptomatic, you  
6   say, two months post-accident?

7           A       That's what the record showed.

8           Q       For whatever reason you don't know?

9           A       Correct.

10          Q       Well, in terms of symptoms, we agree  
11   that there is no -- you have no record and I have no  
12   record of any radicular complaint for a long period  
13   of time before the accident?

14          A       Correct.

15          Q       The accident came along and then she  
16   became symptomatic?

17          A       Two months later.

18          Q       Two months later she became  
19   symptomatic?

20          A       Correct.

21          Q       With that in mind, my question is,  
22   isn't it more likely than not that the accident  
23   stirred something up and caused her to become  
24   symptomatic?

25          A       No, sir, it's not.

1 Q Because the leg pain came on two  
2 months later?

3 A You're exactly right. Anything could  
4 have happened between the accident and the time the  
5 leg pain started. We don't know what happened.

6 Q We don't know, and you can't point to  
7 anything?

8 A No, I can't.

9 Q All right. Okay. You agree that pain  
10 is a symptom; it's not a disease?

11 A Yes.

12 Q All right. And I think you would  
13 agree that exiting nerve roots are not normally  
14 pinched, compressed or under tension?

15 A Correct.

16 Q Once they are pinched, compressed and  
17 put under tension, in layman's terms, they don't  
18 like it?

19 A That's correct.

20 Q All right. I believe you would agree  
21 that at the cellular level of the nerve root, the  
22 cells react and respond to the compression.  
23 Wouldn't you agree with that?

24 A Yes.

25 Q Isn't it generally accepted in the

1 medical field the pain is a result of both of the  
2 tension and the cellular response to that tension?

3 A Yes.

4 Q All right. Wouldn't you agree that  
5 once the cells come under tension they can become  
6 inflamed?

7 A Yes.

8 Q And I think that's part of the  
9 process, isn't it, substance P that provokes the --

10 A Yes.

11 Q -- provokes the inflammation; is that  
12 right, sir?

13 A Correct.

14 Q And it takes a period -- it takes a  
15 passage of time for the inflammation to set in, does  
16 it not?

17 A Not much time for an extruded disc with  
18 significant nerve root compression. It sometimes  
19 happens instantly, within hours.

20 Q Do you have any clinical studies that  
21 back that up, sir?

22 A I have tremendous amount of clinical  
23 experience that backs it up.

24 Q Do you have any clinical studies that  
25 back that up?

1           A       Not that I can pull off right off hand,  
2 but I can look it up, if you want me to.

3           Q       I would like for you to.

4                   And your opinion is that an extruded  
5 disc, the inflammation is going to arise within two  
6 weeks in every case?

7           A       Or much before, usually.

8           Q       Or much before?

9           A       Oh, sure. I have countless patients  
10 that have a ruptured disc and just drop to the floor  
11 with leg pain immediately.

12          Q       My question is, do you have any  
13 clinical studies that back that up?

14          A       I can look and see.

15          Q       Okay. Another process that can take  
16 place once the nerve root becomes entrapped and  
17 under pressure, edema can develop; isn't that  
18 correct?

19          A       Yes.

20          Q       And doesn't it take time for edema to  
21 develop?

22          A       Well, yes, it does.

23          Q       And can't that arise after two months  
24 or after two weeks?

25          A       I don't think so.

1 Q Edema will always arise within two  
2 weeks?

3 A Oh, of course.

4 Q Inflammation, in a case like this,  
5 will always arise; is that right?

6 A Oh, absolutely.

7 Q Okay. When the cells --

8 A Usually, you're talking about -- the  
9 percentages are so high it's overwhelming.

10 Q I see.  
11 The never cells can also undergo  
12 scarring when they come under tension; isn't that  
13 correct?

14 A In time.

15 Q In time?

16 A Scarring now takes time.

17 Q Scarring takes time?

18 A Yes.

19 Q Scarring will provoke pain, will it  
20 not?

21 A In some cases.

22 Q That can take more than two weeks,  
23 can't it?

24 A That takes months.

25 Q It takes months.

1           A       Right.

2           Q       Let me ask about another process. The  
3 cells, once they come under pressure -- again, the  
4 cells in the nerve root, when they come under  
5 pressure and tension, they can demyelinate, isn't  
6 that true?

7           A       In time, yes.

8           Q       And that will also interfere with the  
9 function of the cells; isn't that correct?

10          A       Yes.

11          Q       And that can also provoke pain; isn't  
12 that correct?

13          A       Yes. But that's something that comes  
14 much later. That doesn't come acutely.

15          Q       And that can come on after two weeks,  
16 though?

17          A       Demyelination, I doubt it. I think it  
18 takes longer than that.

19          Q       It takes longer than two weeks,  
20 doesn't it?

21          A       Probably two weeks. Demyelination  
22 probably does, yeah.

23          Q       Right. And I think you can also have  
24 axonal degeneration and regeneration; isn't that  
25 true?

1           A        Yes.

2           Q        And that is another process that takes  
3 time; isn't that correct?

4           A        It does.

5           Q        And that process will also result in  
6 pain, will it not?

7           A        I don't think so.

8           Q        You don't think so?

9           A        No.

10          Q        Okay. But they're disturbances in the  
11 cell?

12          A        There is no -- there is no information  
13 to think that axonal degeneration causes pain.

14          Q        All right. Well, let's leave pain  
15 out. When you have axonal --

16          A        It's a result of --

17          Q        Let me ask my question, if I may?

18          A        All right.

19          Q        When you have axonal degeneration,  
20 that interferes with the function of the cells,  
21 doesn't it?

22          A        It can cause deficit.

23          Q        Yes, sir. Yes, sir.

24          A        Paralysis or all sorts of things.

25          Q        And then regeneration comes along, as

1 well; isn't that correct?

2 A Yeah. Sometimes.

3 Q And that takes more than two weeks,  
4 doesn't it?

5 A Regeneration?

6 Q Yes, sir.

7 A That doesn't have anything to do with  
8 pain.

9 Q Okay.

10 A Excuse me. My mother has been admitted  
11 in the hospital. My wife is calling me. Excuse me  
12 for a minute.

13 Q All right. Go ahead.

14 A THE WITNESS: If we would go off the  
15 record for a second.

16 (Break from 7:58 p.m. to 7:59 p.m.)

17 BY MR. SALASKY:

18 Q So what goes on at the cellular level  
19 has a lot to do with the production of pain, you  
20 would agree with that?

21 A Well, I think it can, yes.

22 Q All right. Let me ask you another  
23 question. When the cell -- I'm sorry. Let me ask  
24 you another question. When the nerve root comes  
25 under pressure or tension, doesn't it also make a

1 difference what particular anatomical structure is  
2 compressed, in terms of symptoms?

3 A I don't know. I don't understand your  
4 question.

5 Q All right.

6 A The nerve -- the nerve has sensory and  
7 motor fibers inside.

8 Q Sure.

9 A It's the sensory fibers that cause  
10 the -- that transmit the pain to the brain.

11 Q Sure.

12 A Not the motor fibers.

13 Q We understand that. Let me ask it  
14 like this. If we get a broad-base disc, a simple  
15 disc protrusion that compresses called cauda equina, we  
16 get what's called a cauda equina. That is a  
17 certain set of problems, correct? Because that  
18 particular piece of anatomy is compressed; isn't  
19 that correct?

20 A Yeah. But that's not what this lady  
21 has.

22 Q I didn't say that's what she had. My  
23 point is location matters, doesn't it?

24 A Oh, sure.

25 Q Sure. Okay. If the ventral root is

1 compressed, that has a certain set of symptoms,

2 correct?

3 A Yeah. The ventral root is a motor  
4 root.

5 Q Right. Right. The dorsal root is the  
6 sensory root.

7 A It could cause paralysis.

8 Q Right.

9 A The problem is --

10 Q Let me just ask my question.

11 A Okay.

12 Q Because you are giving me narrative  
13 answers. And I'm asking you, specifically, doesn't  
14 it make a difference what part of the neural  
15 structure is compressed?

16 A Yes.

17 Q That is going to affect the production  
18 and the pain and the symptoms that are expressed;  
19 isn't that correct?

20 A Yes. Correct.

21 Q And it makes a difference, doesn't it?

22 A It can, yes.

23 Q For example, cauda equina, the pain  
24 and the scarring and the deficits are going to come  
25 up very quickly, aren't they?

1           A       Usually, yes.

2           Q       That's an emergency, isn't it?

3           A       Usually, yes.

4           Q       Yes, sir.

5                    Because the location matters, doesn't

6 it?

7           A       Yes.

8           Q       Okay. Wouldn't you agree that the

9 presentation of radiculopathy is highly varied?

10          A       Yes.

11          Q       Wouldn't you agree that there are a

12 whole lot of symptoms associated with that, and they

13 don't always come on in the same pattern. In fact,

14 they come on in a maddingly diverse pattern; isn't

15 that true?

16          A       It depends on where the nerve

17 compression is, yes. It depends on -- yes. They can

18 be pretty different depending on what the disc is

19 being compressed on.

20          Q       Yes, sir.

21                    It would be pretty difficult to sort

22 out, can't it? Because it is so variable, isn't

23 that true?

24          A       I'm not sure I understand your

25 question.

1                   MR. SAUNDERS: Are you talking about  
2                   in general, or are you talking about in  
3                   people that have the kind of condition that  
4                   this plaintiff had?

5 BY MR. SALASKY

6                   Q           I'm asking in general.

7                   A           Well, yes. Radiculopathy can present  
8                   in different ways, yes.

9                   Q           Yes, sir.

10                   And it's highly variable. You would  
11                   agree with that?

12                   A           Yes.

13                   Q           All right.

14                   A           It depends strictly on the anatomy.  
15                   It's all anatomical.

16                   Q           It doesn't have anything to do with  
17                   inflammation, edema? We just talked about that.

18                   A           Oh, sure.

19                   Q           All of that process is involved, isn't  
20                   it?

21                   A           Yes. Correct.

22                   Q           And referred pain, you've got to rule  
23                   that out, right?

24                   A           Sometimes.

25                   Q           Yes, sir.

1                    Now, you put a lot of weight on the  
2 fact that she didn't have leg pain until two months  
3 post-accident; is that correct?

4            A            Correct.

5            Q            And wouldn't you agree that leg pain  
6 is one symptom of a pinched nerve, but it's not the  
7 only symptom?

8            A            Yes.

9            Q            For example, back pain is a symptom  
10 that is consistent with a radiculopathy. Wouldn't  
11 you agree with that?

12           A            No, I don't agree with that.

13           Q            You would not. You do not agree with  
14 that?

15           A            No.

16           Q            All right.

17           A            The majority of people who have back  
18 pain don't have radiculopathy.

19           Q            But people who have radiculopathy  
20 often have back pain?

21           A            But not always.

22           Q            But not always. It's highly variable?

23           A            Yes.

24           Q            So back pain can be one of the -- one  
25 of many symptoms associated with a radiculopathy?

1           A           Correct.

2           Q           All right. Do you know if this lady  
3 had back pain?

4           A           All I know is the first mention of the  
5 spinal treatment of any kind, after her accident,  
6 that I found in the records was December 6, 2004.  
7 She was seen by physical therapy for complaint of  
8 knee pain. Their note indicates she was treated with  
9 more to the cervical and thoracic spine, but did not  
10 mention a lumbar spine.

11          Q           Well, you're not answering my question  
12 with all respect, Dr. McAdam.

13          A           Well --

14          Q           Let me restate it. My question is  
15 about back pain. You stated an opinion --

16                   MR. SAUNDERS: He's getting there.

17                   THE WITNESS: Well, you're not giving  
18 me a chance to answer the question, sir.

19 BY MR. SALASKY:

20          Q           All right, sir.

21          A           If you are going to ask me a question,  
22 I expect the courtesy for the time to answer it.

23          Q           I apologize.

24          A           Okay. I accept your apology. I'm  
25 going to read my next sentence. My sentence says,

1 "That on 2/22/05 she saw Dr. Edward Walko, who  
2 indicated that she had a lumbar sprain with a  
3 possible radiculopathy."

4                   So on 2/22/05 is the first note I see  
5 of a low back complaint of any type in the records I  
6 saw.

7           Q        Okay.

8           A        That's the answer to your question.

9           Q        Yes, sir.

10                   Well, you have about three inches of  
11 the records in front you; is that correct?

12           A        (Nods head.)

13           Q        You've got to give an audible answer.

14           A        Oh, yes.

15           Q        Yes, sir.

16                   And you studied the records; is that  
17 correct?

18           A        Yes.

19           Q        And based on your review of the  
20 records, you've offered an opinion; is that correct?

21           A        That's correct.

22           Q        Well, based on your knowledge, when  
23 did she first have back pain, is that February 22 of  
24 '05?

25           A        Well, the first record that I see of

1 back pain after this accident that we are talking  
2 about was when Dr. Walko saw her, that's lumbar back  
3 pain.

4 Q So, in your opinion, the first  
5 complaint of lumbar back pain is February of '05?

6 A Well, that's the records I saw. If you  
7 have other records, I'll be glad to look at them, but  
8 that's the records that I saw.

9 Q Well, Dr. McAdam, you've offered an  
10 opinion based on the records, and I have to test  
11 what your knowledge of the records are.

12 A I've told you.

13 Q Yes, sir.

14 A I've told you the knowledge of the  
15 records.

16 Q All right.

17 A It's in my dictated summary. You  
18 should have a copy of it.

19 Q All right. And if you don't, the  
20 records -- if you don't have all the records, or if  
21 you're unaware of it, then your opinion shouldn't  
22 carry much weight. Wouldn't you agree with that?

23 MR. SAUNDERS: I object. It's not  
24 that he doesn't have all the records. He  
25 asked you if you have other records, he'd be

1           happy to look at them. Suggesting he doesn't  
2           have them all is inappropriate.

3 BY MR. SALASKY:

4           Q       We'll move on from there.

5                    Dr. McAdam, I asked you about back  
6 pain, and you mentioned lumbar pain. But I'd like  
7 to ask you about lumbar pain. When did she first  
8 get treatment for lumbar pain?

9           A       Low back pain?

10          Q       Lumbar pain?

11          A       The first mention I see of low back  
12 pain, clearly stated, is when Dr. Walko saw her.

13          Q       And when is that?

14          A       2/22/05 is the date that I have.

15          Q       So based on your review, that's the  
16 first complaint of lumbar pain?

17          A       Yes.

18          Q       Wouldn't you agree the lumbar back  
19 pain is also one of the symptoms that is consistent  
20 with the onset of radiculopathy?

21          A       It can be.

22          Q       Yes, sir.

23                    When is this first time she got  
24 treatment for lumbar back pain?

25          A       Well, sometime after Dr. Walko saw her,

1 he ordered an MRI scan that revealed the findings.

2 Q So if he saw her February of '05, your  
3 testimony is the first time she got treatment for  
4 lumbar back pain would be after February of '05?

5 A Well, my notes says this. That he said  
6 that she had a lumbar sprain with a possible  
7 radiculopathy. He ordered an MRI scan. He  
8 prescribed physical therapy. I assumed that physical  
9 therapy was directed to the low back, as well as to  
10 her complaint of shoulder pain.

11 Q So you're telling me that she had no  
12 treatment for the lumbar spine prior to that?

13 A In the records that I have, sir.

14 Q All right. Did she have knee pain at  
15 any time after the crash?

16 A I remember something about knee pain,  
17 but I can't find it.

18 Q Can you tell me how bad her knee pain  
19 was?

20 A I remember seeing something about knee  
21 pain, but I can't find it right now.

22 Sir, what did you ask?

23 Q Well, I'm trying to find out when did  
24 she first have knee pain, as far as you know?

25 A Oh, she complained of pain in the left

1 knee -- in the left knee, apparently, the day of the  
2 accident, or I can't say the day of the accident.  
3 When she was seen at Patient First on 11/24/04. I  
4 don't remember the day of the accident. Was that  
5 when it was? Yeah. Well, the accident was 11/23/04.  
6 She apparently wasn't seen until the next day,  
7 11/24/04 by Patient First in Chesapeake.

8 Q Did she have any other complaint of  
9 knee pain?

10 A She had left knee pain the day they saw  
11 her on 11/24/04. She had physical therapy -- no, I'm  
12 sorry. There's a notation 12/06/04 that she was seen  
13 by physical therapy for complaint of knee pain.

14 Q So she had knee pain 12/6 of '04?

15 A Yes.

16 Q That is within two weeks of the  
17 accident, is it not?

18 A Well, she had knee pain 11/24/04.

19 Q That's also within two weeks of the  
20 accident?

21 A Left knee pain.

22 Q All right.

23 A Wrong leg.

24 Q What about physical therapy?

25 A Physical therapy she had --

1 Q Which leg was it?

2 A I don't see which leg it was. It says  
3 knee pain.

4 Q It says knee pain.

5 A Yeah.

6 Q You don't know if it was right or  
7 left?

8 A I might be able to go back and look and  
9 see.

10 Q Today, you don't know if it's right or  
11 left?

12 A I don't remember. It was left the  
13 first time. I'm not sure.

14 Q The second time, the answer is you  
15 don't know, do you?

16 A Correct.

17 Q Isn't the knee part of the leg,  
18 Dr. McAdam?

19 A Usually.

20 Q If it was right knee pain, wouldn't  
21 that be leg pain within two weeks?

22 A No, sir.

23 Q It would not?

24 A There is a difference between knee pain  
25 and sciatic leg pain. And I would think a physical

1 therapist would understand and report that and note  
2 that difference in the records.

3 Q So your answer is -- pre-supposes that  
4 the therapist has diagnosed it correct? Is that  
5 what you're telling me?

6 A I would think any legitimate physical  
7 therapist would quickly note the difference between  
8 sciatic leg pain and knee pain, yes, sir.

9 Q And you're telling me that in every  
10 case of radiculopathy knee pain can be distinguished  
11 that easily by anybody. It's that clear?

12 A Pretty clear, yes, sir.

13 Q So --

14 A Knee -- knee implies a joint. And  
15 sciatic leg pain describes pain radiating in a  
16 radicular fashion. It's what you see with a  
17 herniated disc.

18 Q Yes, sir.

19 A You don't have knee pain only with a  
20 herniated disc without leg pain.

21 Q Yes, sir. Yes, sir.

22 A That's correct.

23 Q But the record shows knee pain, that's  
24 all it says. Everything else you're speculating on,  
25 isn't that true?

1           A           I'm not speculating. I'm just  
2 reporting what the record said.

3           Q           Doesn't the record say knee pain?

4           A           It does say knee pain.

5           Q           It doesn't distinguish what type of  
6 knee pain it is, does it?

7           A           Well, it doesn't say sciatic leg pain.

8           Q           It doesn't say it's not sciatic leg  
9 pain, does it?

10          A           Well, it doesn't say it's not a  
11 headache either.

12          Q           It says it's knee pain?

13          A           That's correct.

14          Q           And you would agree knee is part of  
15 the leg?

16          A           Yes.

17          Q           Okay. Let me posit this to you, and  
18 ask you a question. Let's assume that the crash  
19 caused the ruptured disc which caused her to be  
20 symptomatic. Let's just posture that as a theory.

21          A           Okay.

22          Q           And my question is, isn't that theory  
23 equally as likely as your theory as to how this  
24 problem arose?

25          A           No, it's not.

1           Q       All right. I noticed in your report,  
2    Doctor, you wrote that the injury is probably not  
3    causally related to the herniated disc?

4           A       Correct.

5           Q       So you're dealing in probabilities; is  
6    that correct?

7           A       Well, I guess that's true.

8           Q       You also went on to write and I'm  
9    quoting, quote, "I realize that it is difficult to  
10   be sure about these things, but I think that two  
11   months is too long before having documented leg  
12   pain."

13                    Why did you write that it's difficult  
14   to be sure about these things?

15           A       Well, because you always worry, did I  
16   have all the records. If there are not other pieces  
17   of information that I didn't have, but if you can  
18   offer it to me, then I'm going to have to stick with  
19   it's not related.

20           Q       Well, don't you think that the  
21   attorney that provided you with the records would  
22   give you all the pertinent records?

23           A       Not always.

24           Q       So what you are saying is --

25           A       Not that they wouldn't want to.

1 Q Yes, sir.

2 A But there's always -- as often as  
3 another record will pop up in a deposition.

4 Q So what your written record says,  
5 basically, you're hedging against the possibility  
6 that there is something else out there; is that  
7 right, that you've missed?

8 A That's probably true, yes.

9 Q Okay. So you admit in your report  
10 that you have some element of doubt that you have  
11 all the information to render an opinion?

12 A Well, what I'm saying is that this is  
13 my opinion notwithstanding any other information to  
14 the contrary, but I will be glad to look at any other  
15 information if it were there, and that's still true.

16 Q Well, I think that's between you and  
17 your attorneys who are presenting your opinion.  
18 But, in your report, you agree, you're hedging your  
19 opinion against any other information that you don't  
20 have in front of you?

21 A To some degree that's true.

22 Q You have on your light box the MRI  
23 that was ordered by Dr. Walko on February of '05?

24 A Yes.

25 Q And you just took a look; is that

1 right?

2 A Correct.

3 Q Are you aware that Dr. Skidmore has  
4 offered the opinion that this is soft disc  
5 herniation?

6 A Well, I would agree with that based on  
7 the MRI.

8 Q You agree? You agree it's a soft disc  
9 herniation?

10 A That's what it looks like on the MRI  
11 scan.

12 Q All right.

13 A He had the opportunity to see it, as  
14 well as the scan.

15 Q Yes, sir.

16 But you agree it's a soft disc  
17 herniation?

18 A It looks like it, yes, sir.

19 Q Okay. In a soft disc herniation,  
20 wouldn't you agree that there's not a great deal of  
21 calcification that's taken place?

22 A It doesn't appear to be. You mean in  
23 the extruded fragment itself?

24 Q Yes, sir.

25 A It doesn't appear to be.

1           Q        In the process the calcification takes  
2 time?

3           A        Oh, sure.

4           Q        So the fact that there is no  
5 calcification, doesn't that suggest to you that this  
6 is a fresh herniation?

7           A        Calcification takes months.

8           Q        My question is, there is no  
9 calcification in this disc?

10          A        Not on the scan.

11          Q        You said there is no calcification.  
12 My question is, doesn't that suggest to you that  
13 this is a fresh herniation of recent vintage,  
14 relatively speaking?

15          A        Well, yes. Oh, yes. I misunderstood.  
16 Yes, it is.

17          Q        Okay. What is intradiscal pressure,  
18 Dr. McAdam, for the record?

19          A        Pressure in the disc.

20          Q        Yes, sir. Pressure in the disc?

21          A        Yes.

22          Q        And I think in a normal disc, there is  
23 different pressures inside the disc based on what  
24 we're doing; is that right?

25          A        Yes. Right.

1           Q       Standing there is a certain pressure?  
2   Sitting there is a certain pressure?  Lying down  
3   there is a certain pressure?  You would agree with  
4   that?

5           A       That's all true, yeah.

6           Q       Yes, sir.

7           A       It has to do with the axial load on the  
8   spine.

9           Q       Yes, sir.

10                    In a healthy disc, the walls of the  
11   annulus are able to hold back that pressure?

12           A       Yes, sir.

13           Q       It's like a balloon, you would agree  
14   with that?

15           A       That's a reasonable analogy, yeah.

16           Q       All right.  Well, when you look at the  
17   MRI that's in front of you in your light box,  
18   wouldn't you agree that the nucleus in that disc  
19   that normally occupies the center of that disc has  
20   been pushed out a great distance?

21           A       It's been pushed out into the spinal  
22   canal.  Yes, sir.

23           Q       A relatively large distance, has it  
24   not?

25           A       You're talking about millimeters.

1           Q       Well, with only millimeters in the  
2 spine --

3           A       That's right.

4           Q       -- there's not much space in there to  
5 begin with?

6           A       Yeah.

7           Q       I'm talking about relative distance.  
8 It's been pushed out quite a ways, hadn't it?

9           A       Yes. It's causing pretty significant  
10 nerve compression, actually.

11          Q       Yes, sir.

12                    The fact that it's like a balloon and  
13 it's been pushed out a great distance, isn't that  
14 consistent, isn't that evidence that that disc was  
15 subjected to a very high intradiscal pressure?

16          A       Yes and no.

17          Q       Yes and no?

18          A       Yeah.

19          Q       Well, give me the yes, if you would  
20 expound on that. And then give me the no, so I have  
21 both answers.

22          A       Well, I think that if you are talking  
23 about a normal disc in a 30-year-old person, that  
24 normal weight, normal body, it takes quite a bit of  
25 pressure to break that ligament to bring that disc

1 out.

2 Q Yes, sir.

3 A You're talking about a very diseased  
4 disc here.

5 Q Yes, sir. Very susceptible to injury.

6 A And I think it would be much easier to  
7 do that.

8 Q And a diseased disc is susceptible to  
9 injury, isn't it?

10 A That's right.

11 Q And what you're saying is, in a  
12 diseased disc it wouldn't take as much as in a  
13 normal disc to blow that center out?

14 A That's correct.

15 Q Okay. And you say that the automobile  
16 accident didn't do it?

17 A Well, I said it didn't do it, sir,  
18 because we got a large extruded disc in the spinal  
19 canal that didn't cause leg pain. That you are  
20 saying, it could have occurred the day of the  
21 accident that didn't cause leg pain for two months.  
22 I don't think that's what happened. I don't think  
23 that's correct.

24 Q Well, you made that clear. But my  
25 question is --

1           A           I'm answering the same one.

2           Q           Yes, sir.

3           A           I clearly don't think that's the case.

4           Q           Yes, sir.

5           A           I don't think that this extruded  
6 fragment could have been in that spinal canal for two  
7 months before it caused symptoms.

8           Q           All right. That's not my question,  
9 though. You're repeating what you said earlier, and  
10 I appreciate that. But my question to you is, you  
11 just said that the disc was degenerated?

12          A           Yes.

13          Q           And it didn't take as high as it would  
14 compared to a healthy disc to blow the nucleus  
15 pulposus that far out, correct?

16          A           Correct.

17          Q           And I think you're telling me that the  
18 disc is more susceptible to damage because it's  
19 degenerated?

20          A           Well, sure.

21          Q           Wouldn't you agree that very high  
22 intradiscal pressures are associated with automobile  
23 accidents on the interstate highway?

24          A           They can be.

25          Q           Would you agree that Ms. SXXXXXX can

1 expect to experience pain in the foreseeable future?

2 A Meaning back pain?

3 Q Yes, sir.

4 A Yes, sir.

5 Q Having undergone the fusion of L5 on

6 S1, would you agree that she's at an elevated risk

7 for degeneration at the superior level?

8 A Yes.

9 Q I believe over 20 percent of people

10 who have fusion like she did are going to have

11 surgery at the superior level, isn't that true?

12 A Yes, that's about correct.

13 Q Okay. Having undergone the

14 instrumentation procedure, isn't she at an elevated

15 risk for future surgery to deal with issues of

16 breakage or removable as compared to where she was

17 before the accident?

18 A Yes.

19 Q Let me ask you in your opinion. Do

20 you think she's out of the woods on non-fusion of

21 L5, S1, or do you think there's some risk that

22 she'll have a non-fusion issue to deal with?

23 A When was the surgery?

24 Q The surgery was August of '06?

25 A If there were non-fusion problems, the

1 arthrosis, are symptoms that should have occurred by  
2 now.

3 Q So it's your opinion that she's out of  
4 the woods on that?

5 A I would think so.

6 Q Okay. You agree that she suffered a  
7 whole body impairment of 21 percent?

8 A Yes.

9 Q And, for the record, why do you  
10 include the body if she just had surgery on the  
11 spine?

12 A Because her leg was involved in this.

13 Q So her whole body has the impairment?

14 A Correct. You know, people disagree on  
15 the whole body impairment thing. I think it's  
16 legitimate in this case. I think if you have a  
17 spinal fusion, and you had a radiculopathy in the  
18 leg, I think the whole body impairment is legitimate.

19 Q Yes, sir.

20 A Not everyone agrees on that, though.

21 Q Yes, sir.

22 If you don't mind me asking, your web  
23 site with the Virginia Board of Medicine indicates  
24 that you practice 30 percent -- it says that  
25 practitioner spends 30 percent of his time at this

1 location, meaning Peninsula Neurosurgical

2 Associates; is that correct?

3 A That's probably incorrect. It's  
4 probably 40 percent.

5 Q Forty percent. Can I ask you what you  
6 do with the other 60 percent?

7 A Surgery.

8 Q Okay.

9 A I operate three days a week. I'm in  
10 the office two days a week. So it's 60/40.

11 Q Okay. So you're not in any kind of  
12 semi-retired mode or anything like that?

13 A No, not yet. No.

14 Q Okay. Okay. Well, I want to ask you  
15 about that in terms of the other activities you  
16 engage in. Can I ask how many times you've  
17 testified in court as an expert witness? And I'd  
18 like to cover, say, the last six years. Can you  
19 help me with that?

20 A You know, I don't know.

21 Q You don't know?

22 A Not me.

23 Q Okay.

24 A That's everything including  
25 testifying about --

1 Q I'm not asking --

2 A -- everything?

3 Q I'm asking in court.

4 A In court?

5 Q In court. In a courtroom?

6 A In the last six years?

7 Q Yes, sir.

8 A I wouldn't think more than a couple of  
9 times a year, if that.

10 Q Can I ask in the last six years, how  
11 many times you've testified in a pre-trial  
12 deposition, such as the one we are conducting today?

13 A Well, gosh, I would think every two to  
14 three months, probably one time.

15 Q So that's --

16 A I'll be honest with you, I don't have  
17 the exact figures, but it's not --

18 Q Every two to three months, that would  
19 be maybe four to six times a year?

20 A I would think so.

21 Q So in the last six years, that's going  
22 to be 24 to 36 times?

23 A Maybe.

24 Q In that timeframe, can I ask how many  
25 of the so-called independent examinations you

1 performed?

2 A A very small number.

3 Q Do you have any idea? Can you help me  
4 understand that?

5 A I would think -- you mean, that would  
6 involve in testimonies, like, depositions?

7 Q No. No. Just doing the report.

8 A I would think maybe one every couple of  
9 months. It's a very small part of my -- of what I  
10 do.

11 Q So you do the so-called independent  
12 medical exam maybe every -- one every two months?

13 A About.

14 Q So that would be about six a year --

15 A Probably.

16 Q -- for the last six years?

17 A I would think so. Maybe every three  
18 months. I may be able to dig those numbers out, if  
19 you really need them, if they are really important.

20 Q Yeah, they are. I would appreciate  
21 it, if you could and if you will.

22 A If I'm giving you anything, I'm giving  
23 you the high side. It wouldn't be any more than  
24 that.

25 Q Well, if you could dig that

1 information out.

2 A Yeah. But that's time consuming to do  
3 that.

4 Q I understand that.

5 MR. SAUNDERS: Are you going to pay  
6 him for that?

7 BY MR. SALASKY:

8 Q Do you do any other consulting work  
9 for any other -- in the last six years, have you  
10 done any other consulting work for insurance  
11 companies and their attorneys, other than testifying  
12 in court, the so-called IMEs, or testifying in a  
13 deposition?

14 A No, I don't.

15 Q And it's my obligation to ask. For  
16 these forensic services where you're offering an  
17 opinion in a legal proceeding, I apologize for  
18 asking this, it's my obligation to ask. What kind  
19 of income have you earned for these last six years  
20 for those services?

21 A Not enough to pay my light bill.

22 Q That's the best you can tell me?

23 A It's not much.

24 Q Well, you have done -- you say you  
25 testify every two to three months for the last six

1 years at pretrial depositions? You've done  
2 so-called --

3 A But that -- that -- most of that is for  
4 patients I've taken care of that are injured that  
5 there is a lawsuit about. That's the overwhelming  
6 majority of those cases.

7 Q Well, you're paid for that, aren't  
8 you, sir?

9 A Usually.

10 Q And the so-called independent medical  
11 exams you've done every -- about every two months  
12 for the last six years --

13 A I said two or three months.

14 Q Every two or three months --

15 A Three months is probably more accurate.

16 Q Okay. And what -- again, I apologize  
17 for asking, but what have you earned from that?

18 A I don't know. You want the total  
19 numbers of what I earned?

20 Q For those medical/legal services for  
21 testifying or offering an opinion.

22 A I can tell you it is a very, very small  
23 percentage of my income. You are talking like  
24 probably two or three percent of my income.

25 Q Well, again, I'm not trying to get

1 personal how much you earned from those services.

2 A I wouldn't know that.

3 Q Okay.

4 A I never think about it. I have no  
5 clue.

6 Q Do you do any other work for  
7 automobile insurance companies?

8 A No. The only -- the only ones that are  
9 the patients -- probably the patients that I take  
10 care of that are injured.

11 Q Okay.

12 A And I -- you know, I do those legal  
13 reports.

14 Q Okay. And let me just ask in light of  
15 the things that we've covered today, let me just ask  
16 you this, and then we'll wrap it up. In light of  
17 things we've talked about, about production of pain,  
18 and so forth, again, I want to ask you, isn't it  
19 more likely than not that the accident aggravated  
20 something in her spine and caused her problems and  
21 caused her to be symptomatic?

22 A You know, I'm going to have to say I  
23 don't think so because the leg pain didn't happen --  
24 she didn't have any back treatment. She had no  
25 lumbar treatment until Dr. Walko saw her that I can

1 find, and she had no leg pain until about that same  
2 time.

3 Q Okay.

4 A It doesn't make anatomical sense to me  
5 that she can carry an extruded disc that long without  
6 symptoms.

7 Q Okay.

8 A And that's where the problem is that I  
9 have with this case. Right there.

10 Q Yes, sir.

11 The fact that she had no lumbar pain  
12 until February of 2005?

13 A Exactly. I have no problem with the  
14 diagnosis of a herniated disc. It's clearly on that  
15 scan. I have no problem with the surgery she needed.

16 Q Right.

17 A The problem I have is that no lumbar,  
18 no sciatic leg for two months.

19 Q Okay.

20 A That's what the problem is.

21 MR. SALASKY: That's all the questions  
22 that I have.

23 MR. SAUNDERS: Doctor, you can either  
24 read it or waive.

25 THE WITNESS: All right. I waive.

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(This deposition was concluded at

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8:27 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA.  
CITY OF HAMPTON, to wit:

I, Cherrylynn O. Gerardo, CSR, a Notary Public for the Commonwealth of Virginia at Large, do hereby certify that the foregoing deposition of RICHARD B. McADAM, was duly sworn to before me at the time and place set out in the caption hereto.

Further, that the transcript of the deposition is true and correct, and that there were one exhibit marked by me during the taking hereof.

Given under my hand this 29th day of February, 2007.

\_\_\_\_\_  
Cherrylynn O. Gerardo  
Notary Public for the  
Commonwealth of Virginia at  
Large

My Commission Expires: January 31, 2011.  
Notary Registration No.: 7092928

