

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
3
4 JAMES WILLIAM FAIRLEY, a Protected
5 Person, and KIM FAIRLEY,
6 Plaintiffs,
7 vs. Case No. 08-2759-NI
8 Hon. Thomas D. Wilson
9 SCHIBER TRUCK CO., a foreign
10 Corporation, and RAY D. KISSICK,
11 Jointly and Severally,
12 Defendants.
13 _____
14
15
16 The Videotaped Deposition of ROSALIND GRIFFIN, M.D.,
17 Taken at 31330 Northwestern Highway, Suite C,
18 Farmington Hills, Michigan,
19 Commencing at 9:02 a.m.,
20 Friday, December 3, 2010,
21 Before Becky L. Johnson, CSR-5395.

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24
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1 APPEARANCES:
2
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9
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16 Appearing on behalf of the Defendants.
17
18 ALSO PRESENT:
19 Michael Gurlides - Video Technician
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23
24
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1 Farmington Hills, Michigan
2 Friday, December 3, 2010
3 9:02 a.m.
4
5 MARKED FOR IDENTIFICATION:
6 DEPOSITION EXHIBIT 1
7 9:02 a.m.
8 VIDEO TECHNICIAN: We are now on the
9 record. This is the videotaped deposition of Rosalind
10 Griffin being taken on Friday, December 3rd, 2010.
11 The time is now 9:02 and 30 seconds a.m. We are
12 located at 31330 Northwestern Highway in Farmington
13 Hills, Michigan. We are here in the matter of James
14 William Fairley and Kim Fairley vs. Schiber Truck
15 Company and Ray D. Kissick. This is Case
16 No. 08-2759-NI. This matter is being held before the
17 Honorable Thomas D. Wilson in the Circuit Court for
18 the County of Jackson.
19 My name is Mike Gurlides, video technician.
20 Will the court reporter swear in the witness and will
21 the attorneys briefly identify themselves for the
22 record, please?
23 ROSALIND GRIFFIN, M.D.,
24 was thereupon called as a witness herein, and after
25 having first been duly sworn to testify to the truth,

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1 the whole truth and nothing but the truth, was
2 examined and testified as follows:
3 MR. OBRINGER: Robert Obringer on behalf of
4 the Defendants.
5 MR. GURSTEN: Steven Gursten, I'm here for
6 Jim Fairley and Kim Fairley.
7 EXAMINATION
8 BY MR. OBRINGER:
9 Q. And you're Dr. Rosalind Griffin?
10 A. Yes, sir.
11 Q. And what is your profession, Doctor?
12 A. I'm a medical doctor and I specialize in psychiatry.
13 Q. And would you tell me a little bit about your -- your
14 practice, what it is that you do and -- well, let me
15 first ask this, we're at your office here on
16 Northwestern Highway in Farmington Hills, correct?
17 A. That's correct.
18 Q. And is that where you conduct your practice?
19 A. Yes, it is.
20 Q. And would you tell us a little bit about what that
21 practice consists of?
22 A. My practice consists of treating patients and I have a
23 subspecialty in forensic psychiatry.
24 Q. And what is forensic psychiatry?
25 A. Forensic psychiatry is that part of psychiatry that

1 encounters legal issues and assists the courts with
2 any legal decisions it might need.
3 Q. I'll go a little bit through your -- your background.
4 You obtained your medical degree from the Wayne State
5 School of Medicine in 1977?
6 A. Yes.
7 Q. And then did you go on for further specialized
8 training?
9 A. Yes, I did, at Sinai Hospital I specialized in
10 psychiatry and graduated from that program in 1982,
11 became licensed to practice medicine and certified in
12 psychiatry in 1982.
13 Q. And have you been practicing psychiatry continuously
14 since 1982?
15 A. Yes, I have, and in this office since 1993.
16 Q. And the practice that you've conducted, has it been
17 all here in the general Detroit metropolitan area?
18 A. Yes, it has.
19 Q. And are you on the staffs of any of the local
20 hospitals?
21 A. Yes, I am. I'm on the staff of Sinai-Grace Hospital
22 in Detroit and William Beaumont Hospital in Royal Oak.
23 Q. You talked a little bit about being certified in
24 forensic psychiatry. Now, are you board certified in
25 the general field of psychiatry?

1 A. Yes, I am board certified in the general field of
2 psychiatry which required me to sit for an examination
3 and then subsequently have an oral examination in
4 front of patients where two certified psychiatrists
5 observed whether or not I can conduct an interview in
6 psychiatry and neurology, and then after that the
7 results of the tests come out and those two, the oral
8 and the testing, determine whether or not I've passed
9 both and I did and I was certified at that point in
10 general psychiatry.
11 Q. And that point was --
12 A. 1982.
13 Q. Okay. And then you also spoke about forensic
14 psychiatry, what's in -- are you board certified in
15 that?
16 A. Yes, by the American Board of Psychiatry and
17 Neurology.
18 Q. Is that the same board that did your other one?
19 A. Yes.
20 Q. Okay.
21 A. And that requires sitting for an examination as well
22 and then after passing that examination, which reviews
23 100 landmark cases in law and other practices of
24 forensic psychiatry, then one is able to go on and
25 become certified and I was. I now sit as a board

1 examiner for psychiatrists who want to become
2 certified as psychiatrists.
3 Q. So just like when you completed your residency and you
4 were going through the tests, you had to be examined
5 by other established psychiatrists?
6 A. Yes.
7 Q. Now you're one of the psychiatrists who supervises the
8 tests of the others?
9 A. That's correct.
10 Q. Okay. And how long have you been doing that work?
11 A. I've been doing that work for several years, over the
12 last decade.
13 Q. And in -- let's see, academic or university
14 connections or points, what academic appointments --
15 A. I'm appointed to the faculty of Wayne State University
16 as an assistant professor.
17 Q. And what do you do in that capacity?
18 A. I conduct several courses, one in transition to
19 private practice for the psychiatric residents, and
20 those are the senior ones who are about to enter the
21 field of work after their training is completed, some
22 go into fellowships and come -- some go directly into
23 private practice or clinical practice associated with
24 the university or community mental health.
25 Q. And in addition just serving -- or being on the

1 hospital medical staffs, have you served or do you
2 serve as a -- a psychiatric consultant to various
3 public agencies?
4 A. Yes, I do. I served as consultant to New Center
5 Community Mental Health Center in Detroit, that's a
6 part of the community healthcare -- healthcare system
7 throughout the state, this one is located in Detroit.
8 I've also and continue to consult with Catholic Social
9 Services and Northeast Guidance Center.
10 Q. And just in -- in looking at your resumé I see that
11 for a period of time you were involved with working
12 with deaf people, what -- what was that?
13 A. That's an additional certification that I found myself
14 interested in. I began studying deaf culture and went
15 on to Madonna University in Livonia and took several
16 courses there and interpret for my church and for deaf
17 patients. I have deaf patients in my private practice
18 and I am able to sign with them, American Sign
19 Language, and that remains an interest of mine and has
20 gone on to help me develop a school for the deaf in
21 Cape Town, South Africa as well as Dur -- as well as
22 Durban, South Africa.
23 Q. And what are some of the professional societies to
24 which you belong?
25 A. I belong to the American Psychiatric Association, the

1 local Michigan State Medical Society, the local
2 Medical Psychiatric Society and I also belong to the
3 Ac -- Academy of Psychiatry and Law and other
4 social -- well, other psychiatric-related
5 associations, as well as Wayne County Medical Society
6 where I serve on the peer review and the ethic --
7 ethics committee of the Michigan Psychiatric Society.
8 Q. And in reviewing your curriculum vitae, as an attorney
9 it caught my eye that actually you have some
10 connection with the -- the -- the state and attorneys,
11 could you explain what that is?
12 A. Yes, I was appointed by the Michigan Supreme Court,
13 which is ratified by the Congress, that I serve on the
14 Attorney Grievance Commission. This is a body that
15 reviews complaints against attorneys and then
16 determines if those are legitimate and then refers it
17 to the Attorney Discipline Board. I also serve now on
18 the Attorney Discipline Board, which sits in -- it's
19 sort of the persecutory arm of the legal practice and
20 determines what sentence or what kind of reprimand or
21 discipline is directed toward attorneys who have
22 broken certain rules of conduct.
23 Q. And that also is by the appointment of the Michigan
24 Supreme Court?
25 A. Yes, sir.

1 Q. And then for a certain period of time you were
2 appointed by Governor Engler to the Board of Regents
3 at Eastern Michigan University?
4 A. Yes, sir, that --
5 Q. How -- how long did you -- when and for how long did
6 you serve in that capacity?
7 A. In the, well, late '90s, early 2000. My recollection
8 is that it was for at least to fulfill an absent term,
9 an unfulfilled term of a prior region, which -- which
10 is the governing board of the university to determine
11 who the next president is, how the various committees
12 work on campus, the unions, the faculty, the student
13 body and they're reserved on those committees to make
14 sure that they are meeting the expectations of the
15 public as well as the educational system and I served
16 there for at least two terms and each term is about
17 five years.
18 Q. And I see that you've also been appointed by the
19 governor to, at -- at times in the past on various
20 tasks force on issues of social concern?
21 A. Yes, the race and gender bias was a -- a very
22 important committee that was to advise the governor
23 and the Supreme Court whether there was any
24 discrimination that was being practiced in courts or
25 by lawyers.

1 Q. And I noticed something about the child abuse and
2 neglect too?
3 A. Yes, I have been a lecturer for those groups who are
4 interested in understanding how to detect child abuse.
5 My familiar -- familiarity with this began in my
6 residency as a -- a pediatric resident and from there
7 I became interested in advocating for child safety.
8 Q. And are you called upon from time to time to give
9 lectures or presentations?
10 A. Yes, most recently at Harvard University on campus
11 there I lectured to women and discussed their issues
12 with suffering.
13 Q. And when you say most recently, when was that?
14 A. That was in November -- around the 15th of
15 November 2010 for about three days; 15th, 16th, 17th
16 and 18th.
17 Q. And your practice, does it include both adults and
18 adolescents?
19 A. Yes, it does.
20 Q. And in this case at -- at my request you did an
21 evaluation and a mental-status examination of
22 Mr. James Fairley?
23 A. That's correct.
24 Q. Is this type of evaluation or mental-status
25 examination of persons who -- whom you are not seeing

1 for purposes of treatment, is that part of your
2 private practice as well?
3 A. That is part of my private practice as well. It
4 involves applying the tools of mental status that are
5 part of the discipline of psychiatrists, the
6 mental-status examination, and those tools are used to
7 assess whether the injuries are related to a certain
8 event, employment or an incident such as a
9 motor-vehicle accident or any other kind of
10 precipitant that may be the perception of an
11 individual and determine if there are any objective
12 findings of -- findings that may be in men -- may be
13 determined by a mental-status examination.
14 Q. Now, does it matter to you or affect your conclusions
15 or impressions whether the party who's asking you to
16 examine someone is the -- is the attorney or the party
17 that's bringing the claim or the attorney or the party
18 that's defending the claim?
19 A. No, it doesn't matter.
20 Q. Do you see individuals from both perspectives in your
21 practice?
22 A. Oh, yes, I do, about equally for defense and
23 plaintiff.
24 Q. And you mentioned mental-status examination, and if
25 you could just briefly explain to me what it is, I'm

1 not that familiar with what goes on, so when you refer
2 to a mental-status examination what --
3 A. What do I mean by that?
4 Q. Yeah, without getting too -- so I can follow it.
5 A. Okay. I'll make it real simple and it's simple for me
6 and it's very much the tool of psychiatrists inasmuch
7 as we don't use a stethoscope or lay hands on a -- on
8 a patient. We observe how a patient is -- or a person
9 is able to communicate. We look at their body
10 posture, how they behave in the interview, whether
11 their attitude is, you know, consistent with
12 cooperation or consistent with what is appropriate for
13 an individual at a given time. We also observe
14 whether they have appropriate judgment.
15 We observe whether or not there's sadness
16 or depression. We observe whether or not their body
17 posture represents that because someone may say I'm
18 very depressed by something, but they're showing a
19 contradiction in that depression by being very upbeat
20 and following the conversation -- conversation. We
21 look for whether or not there's problems with memory,
22 concentration, comprehension. We also look whether
23 there's disturbance in reality testing, such as
24 psychosis, paranoia, hallucinations, whether visual or
25 auditory. We look for suicidal signs, homicidal

1 signs, impulses control.
2 We coordinate that with any medical
3 findings, what might give rise to these sort of
4 parameters of the mental-status examination where
5 there's a review of systems, that that produces
6 certain conditions that might cloud the person's
7 memory or their affect. We also look at whether or
8 not their age may determine certain things, not being
9 able to remember may be -- be a part of the natural
10 aging process. So all of those encompass the
11 mental-status examination. We're looking at the
12 psychological, sociological and biological functioning
13 of an individual.
14 Q. And I forgot to talk about money, do you -- do you
15 charge for these mental-status examinations in this --
16 in this sort of litigation context where you see
17 people?
18 A. Yes, it's customary and standard to have a retainer or
19 charge for services rendered for conducting such an
20 examination, and in my practice it includes review of
21 records, any legal consultations, the interview with
22 the patient or the person who is a subject of a --
23 usually a litigation or though it may be related to
24 other, performances in their job or whether they're
25 safe or not to be at the workplace or fitness to

1 perform certain duties, but in this instance to also
2 assess what the opinions may be about their
3 functioning and put that in a -- in a report and
4 submit it to the court or at the deposition.
5 Q. And at least in this case the charge was \$4,500?
6 A. Yes, sir.
7 Q. And -- and for the deposition like we're doing today
8 you would make an additional charge?
9 A. That's correct.
10 Q. And that charge includes meeting with me before the
11 deposition or any other consultations that we would
12 have?
13 A. Yes.
14 Q. Okay. As well as the time here at the deposition?
15 A. Yes, sir.
16 Q. And for that your charge is \$3,500?
17 A. Yes, it is.
18 Q. Okay. How -- how much time did you spend talking with
19 Mr. Fairley?
20 A. At least two hours.
21 Q. And I take it from what you said that this -- this
22 proceeds by talking with Mr. Fairley?
23 A. That's correct.
24 Q. You don't have him get on a scale or tap his knee with
25 a rubber hammer or anything like that?

1 A. None of that.
2 Q. Okay. And the time that you spent talking with
3 Mr. Fairley, are you satisfied that that was
4 sufficient to reach the opinions and conclusions that
5 you have?
6 A. Yes, it was.
7 Q. All right. And when you first started talking with
8 Mr. Fairley did you explain to him the nature of the
9 interaction that was going to take place that day?
10 A. Oh, absolutely. It's responsible and appropriate to
11 tell Mr. Fairley exactly what the purpose of this
12 evaluation is, that it was not for treatment, which
13 would be contradictory to a forensic evaluator's time
14 and purpose. A forensic examination -- examiner does
15 not treat the patient, that would be contradictory.
16 And I told him that it would not be
17 confidential, that what I found out during that
18 evaluation may be put in a report, may be submitted to
19 the court for trial testimony or even a deposition.
20 And I also explained that he's not held captive here,
21 if he wants to take a break or needs to take a break
22 he's free to do that, and those are the three areas
23 that are important to administer or discuss with any
24 patient so that they can discuss whether or not they
25 want to proceed under those circumstances or they

1 cooperate to go forward.
2 Q. And we'll go back over some of this, but did you on
3 the basis -- oh, and you were provided with documents
4 actually by me, but you were provided with documents
5 as well in connection with this evaluation?
6 A. Yes, to peruse them and consider them pertinent to my
7 analysis.
8 Q. And those would be, just to speed this up, the 12
9 items that you have listed in your report at the
10 evaluation?
11 A. Yes, my report dated August 26th, 2010 also includes
12 my evaluation of Mr. Fairley that was done on
13 June 7th, 2010 and includes the review of 12 items of
14 records that were submitted to me.
15 Q. And my understanding is, although I wasn't here, was
16 that the interview itself was videotaped?
17 A. Yes, it was.
18 Q. And did you have the opportunity to review that
19 videotape?
20 A. Yes, I did.
21 Q. Okay. And, you know, I forgot to ask you, what --
22 when was it that you met with Mr. Fairley?
23 A. I met with him June 7th, 2010.
24 Q. Okay. And did you reach any conclusion as to whether
25 based on your evaluation Mr. Fairley was suffering

1 from depression?
2 A. There may have been a mood disorder related to a
3 medical condition, which could be associated with his
4 chronic illnesses of diabetes, hypertension, high
5 cholesterol, obesity and as a result also perhaps
6 chronic pain related to those conditions or
7 perceptions that he has chronic pain.
8 Q. And -- well, what do you mean by mood disorder, is
9 that the same thing as a depression or --
10 A. It --
11 Q. -- does it include depression or -- --
12 A. It includes depression and it includes the fact that
13 it's a mood associated with a patient's perception of
14 his condition, as well as the objective findings of --
15 of systemic illnesses such as diabetes, which over
16 time can be a medical condition that associates itself
17 with the mood of depression, and as well as the other
18 systemic illnesses I mentioned, diabetes,
19 hypertension, I mean, those are not fatal of course,
20 but can be managed, but chronicity of them over a long
21 period of time may cause a person to be fatigued, have
22 problems sleeping, not make them feel interested in
23 certain activities, may add to their problems with
24 sleeping.
25 And then at -- in this instance Mr. Fairley

1 also felt that his chronic pain may -- associated with
2 the accident may contribute to his condition of a mood
3 disorder or depression in this instance.
4 Q. Did Mr. Fairley say anything to you about whether he
5 was improving or getting worse?
6 A. Oh, good -- it's a good reaction, a good prognosis for
7 him. He felt that he was improving and by my
8 observation he looked to be certainly improving, which
9 shows there's a positive -- positive prognosis for his
10 continued improvement.
11 Q. And -- and, I mean, how -- how did he seem as a person
12 to interview, was he -- was he hostile or difficult or
13 anything like that?
14 A. He was quite cooperative and we established a rapport.
15 He was quite straightforward, forthright in his
16 responses. He was spontaneous in them, he didn't take
17 a long time to answer questions and he appeared to be
18 showing perfect memory, absolute good concentration.
19 No problems at all in his comprehension of
20 my questions and I observed no evidence of distortion
21 of reality, no problems with his ability to interpret
22 proverbs, ability to count, remember items, spell
23 words backwards. All of those things are part of the
24 evaluation that I conducted and found him to be
25 consistent with what he stated, that he was improving

1 and I felt that he would continue to improve.
2 Q. Now, part of the records that you reviewed were the
3 records of Dr. Wilanowski?
4 A. Yes.
5 Q. And when you talked to Mr. Fairley did you explore
6 with him as to whether he was suicidal or feeling
7 suicidal?
8 A. Oh, not at all. I did ask him that and he had no
9 plans or a time frame to hurt himself or to hurt
10 others.
11 Q. But you did explore that with him?
12 A. Yes, I did.
13 Q. Okay.
14 A. And this was perhaps less than I would say -- this
15 accident happened in April of 2008 so I saw him in
16 June of 2010 and that would be roughly two years from
17 the date of the accident that he's reporting he's
18 continued to improve and I expect that he would
19 continue to improve.
20 Q. And as part of you -- you talked to Mr. Fairley about
21 his general background and history, I mean, growing
22 up, schooling, those sorts of things?
23 A. Yes, I did and they're contained in my report.
24 Q. All right. And was there anything about that general
25 background that struck you as sailing into unusual --

1 A. No, pretty much consistent with the activities that he
2 presented, his ability to conduct himself nowadays and
3 that he had a quite fulfilling life and that his
4 marriage was beautiful and stable to him, that he had
5 supportive friends and family, uh-huh.
6 Q. And then you asked him about his employment?
7 A. Yes.
8 Q. And he explained to you that he had not been employed
9 since the accident?
10 A. That's what he said, that's correct.
11 Q. And what did he tell you the -- the reason for that
12 was?
13 A. He stated that the reason was because he had pain in
14 the back of his head and that he thought it was also
15 due to a closed-head injury or traumatic brain injury.
16 Q. And -- and was the pain in the back of his head or the
17 back of his legs?
18 A. Back of his legs, I'm sorry.
19 Q. And did you talk with Mr. Fairley about the details of
20 the motor-vehicle accident, direct -- direct your
21 attention to part -- page 3 of your report where it
22 talks about the details of the accident as he recalled
23 them?
24 A. Yes, if I can read from that. As regards to the
25 motor-vehicle accident Mr. Fairley stated that he was

1 driving a Honda Odyssey on his way to work when he was
2 about to make a left turn and was clipped by a truck
3 from the rear and his car spun around and was hit from
4 the rear again and his vehicle flipped.
5 And I go on to mention what resulted from
6 that. Mr. Fairley stated he was not drinking. He was
7 seat belted. Mr. Fairley stated that he did not claim
8 that he was trapped in the car. He did not feel that
9 help was not on the way. He knew the police and
10 ambulance were en route to treat him. He was put on a
11 backboard which did not frighten him --
12 Q. Which did -- it says did --
13 A. Which did frighten him.
14 Q. Okay.
15 A. He recalled that he was in and out of consciousness --
16 consciousness and that the first thing that he
17 recalled was being in the ambulance where he was
18 reassured he was on his way to a hospital, Allegiance
19 Hospital, also known as Foote Hospital. And it
20 goes -- goes on to talk about his treatment.
21 Q. All right. And as far as his ability to be
22 independent what did Mr. Fairley tell you when you met
23 with him?
24 A. When I met with him he was able to drive, able to
25 dress himself, clothe himself, feed himself and that

1 he drove in certain areas that were familiar to him
2 and when he wasn't in those familiar areas he could
3 use a GPS to help him, and those were the areas of
4 functioning that he was able to comment on.
5 Q. Okay. Did he say anything about being anxious when
6 he's out in traffic or trucks around or anything like
7 that?
8 A. Yeah, he said he was afraid of trucks and that he had
9 some anxiety associated with heavy stop-and-go
10 traffic.
11 Q. And did you ask Mr. Fairley about his medications,
12 what he was on?
13 A. Yes --
14 Q. I -- I won't ask you to list all those because by this
15 time the jury will have heard his medications.
16 A. Yeah, he told me what his -- in a review of his
17 systems when I asked about any chronic conditions he
18 told me he had hypertension, that he had diabetes,
19 that he had problems with his arthritis and that he
20 had elevated triglycerides and he had asthma. And I
21 asked him for what -- what was he being treated with
22 and he said certain medications. He also mentioned
23 that he had been in physical therapy and that
24 currently he was enjoying and did go to the YMCA to
25 swim several times a week and he thought that was

1 helping him and he was improving.
2 So the chronic conditions would be
3 preexistent to the accident, asthma and diabetes and
4 hypertension, but currently were being managed by
5 medications and would continue to be managed and
6 improve, my estimation, my projection for his
7 continued living and quality of life.
8 Q. And I guess as part of -- of the history you asked him
9 about his -- his social history or his family history,
10 was anything that he told you about that particularly
11 significant?
12 A. Only that he remembered certain things and he had a
13 fair appreciation for his background. He had -- he
14 was the youngest of two brothers and his parents were
15 deceased. He was able to talk about his mother dying
16 of demen -- dementia at -- after stroke at age 82,
17 that occurred in 2001. He also knew and was able to
18 discuss his father's death secondary to congestive
19 heart failure.
20 And he finished high school in 1972 in
21 Jackson, attended some college at Jackson Community
22 College before he went on to the factory. He denied
23 prior criminal or -- history. He said his moving
24 violation was some -- long time ago. He denied any
25 childhood trauma, such as rape or molestation.

1 Q. And then you went on to do the mental-status
2 examination?
3 A. Yes, I did.
4 Q. And what -- what -- what did you find out in the
5 course of that, describe it for me?
6 A. Sure. As stated in my report, on page 6 is where it
7 begins, I describe Mr. Fairley as casually groomed and
8 had a stiff and rigid gait. He sat comfortably on the
9 couch, but did stretch at one point to loosen his
10 muscles. He was cooperative. He gave his current
11 weight and height. His appetite is different in that
12 sometimes he forgets to eat he stated. There was no
13 prolonged reaction time to questions, he was quite
14 spontaneous. As I would ask a question he would
15 answer it promptly and not figure out -- or delay due
16 a -- due to some memory problems. There was no
17 evidence of that.
18 He maintained good eye contact, showing
19 that he was interested in the -- in the examination
20 and able to be forthright about it instead of
21 wandering his gaze and looking elsewhere for --
22 searching for questions or answers. He did not appear
23 to have any confusion. He was articulate, had a
24 normal rate and speed in his recollection -- rec --
25 recoll -- recollections of events. He showed no

1 problems such as confusion or concentration or
2 comprehension.
3 He was able to recall details of the
4 motor-vehicle accident and treatment rendered
5 thereafter. Mr. Fairley stated he had a -- had had a
6 bald head for a long time and he shaves his head every
7 two weeks. He stated he had been treating with
8 Dr. Wilanowski in 2010 after three or four sessions,
9 but that -- I believe that turned out to be an
10 evaluation, not treatment. He stated that he had been
11 given medication to treat his mood and appeared to be
12 congruent with a blunted affect. He denied --
13 Q. What -- what -- you missed -- I'm not sure what
14 congruent --
15 A. He stated --
16 Q. -- I -- I missed that?
17 A. Sure. He stated he -- his mood, which he stated was
18 depressed, that it appeared to be consistent with what
19 I felt was a blunted affect. He didn't have a -- a
20 dramatic or theatrical or upbeat affect where he
21 smiled and laughed or any of that. He appeared to be
22 rather subdued and in that regard I saw that he wasn't
23 as affectively full and that would be consistent what
24 he said -- with what he said, that he was depressed.
25 And he described himself as being in total

1 pain from head to toe after he arrived at the
2 hospital. He was able to give sequential events such
3 as being sedated in order to relieve the pain.
4 Mr. Fairley had a -- a perception that his memory
5 problems were difficult based on using a microwave and
6 cooking and he makes notes to himself, but I found no
7 evidence that these were -- ran over into his regular
8 life or that it impaired his functioning in his
9 regular life.
10 So his performance there on certain tests
11 were consistent with a person who was average to
12 superior intellect, showing that he had a perception
13 of his being more disabled but his performance showed
14 that he was operating on all cylinders, doing very
15 well.
16 Q. Was he able to demonstrate immediate and remote
17 memory?
18 A. Yes, he was and those are tested by saying here's
19 three items, can you repeat those items after five
20 minutes or ten minutes and he was able to do just
21 that, showing good memory. And he talked about
22 watching TV, reading books, sports books, and
23 currently reading the biography of Ernie Harwell, a
24 sportscaster who died some time -- a very famous
25 sports -- sportscaster -- sportscaster.

1 Q. And was he able to recall a motor-vehicle accident
2 that he had in the 1980s?
3 A. He did and he said at that accident he may have had
4 whiplash.
5 Q. Did he talk about having good days and bad days?
6 A. Yes, he did.
7 Q. And -- and what's lability of mood?
8 A. Lability of mood would be that he was up and down,
9 having mood swings where he was very high, euphoric,
10 elated, outgoing and inappropriately outgoing,
11 spending a lot of money and gambling or anything like
12 that and that's -- this mood -- mood swing to the
13 other side was totally isolated, recluse, sort of a
14 hermit, not interested in any activities, depressed,
15 suicidal and in those regards perhaps isolated and not
16 participating in any social activities, not going to
17 work if it were given to him as a choice. So he
18 didn't show any lability of moods in that regard, not
19 only -- not in his history and not in the time that I
20 saw him as well.
21 Q. Is that a good thing?
22 A. That's a great thing.
23 Q. Okay. And did he talk about how he felt at times now
24 as compared to how he felt before the accident?
25 A. At times he stated he feels profound sadness,

1 helplessness and hopelessness compared to his former
2 activities prior to the motor-vehicle accident, that
3 was his perception of himself.
4 Q. Okay. And you have a category here for sensorium and
5 mental grasp, what -- would you explain to me what
6 that is?
7 A. That is the actual testing done in a mental-status
8 examination to see if there's any corroboration or
9 correlation with what I observed and what is actually
10 the objective findings on certain tests, and it may be
11 me asking what date is it, the time, the place and who
12 he is, his name and he was able to give all of that.
13 And I also ask his understanding of why he's here, he
14 understood that he's alleged -- he's launched a
15 lawsuit alleging certain damages related to the
16 motor-vehicle accident and he knew that that was the
17 pursuance of the exam. It also -- this tests for any
18 problems related to someone's stability, whether he
19 had --
20 Q. Ability, I'm sorry?
21 A. Stability and ability, if he had a stable functioning
22 in his life and ability to function at his own
23 motivation to do certain things. He stated he has a
24 fear of driving physicians -- of driving and that
25 physicians had ordered him to take a driver's

1 certification program that he passed.
2 The conclusion of the mental-status
3 examination is contradictory as to his statements
4 because he performed very well on the exam. As I
5 said, it tests memory, proverb and abstraction, which
6 is a rather sensitive --
7 Q. Let -- let me ask you some questions about that a
8 little more. So he indicated to you that he had
9 problems sometimes being able to remember?
10 A. Yes.
11 Q. And then when you put him through these various tests
12 was his performance consistent with his perception of
13 how he thought he couldn't remember?
14 A. No, it was not and part of it is already shown, the
15 jury may be interested in, his whole history that he
16 gave me would be a part of that memory testing and
17 that appeared to be rather rational and logical and
18 sequential of information about his past history.
19 Then current history, he was able to talk about that
20 without any de -- deficits or holes in his recall.
21 And then at the time of the examination
22 there's a testing of information that is unrelated to
23 his background and his functioning or his occupation
24 that board -- that includes serial seven subtractions
25 from 100 or two subtractions from 20, you're able to

1 count down by two from 20; 18, 16, 14, et cetera.
2 Q. Did you have him do those while --
3 A. Yes, I -- I had him --
4 Q. -- the serial sevens --
5 A. Yes, yes, I did and he performed quite well on that.
6 He knew the current headlines in the newspaper, which
7 shows that his orientation is appropriate to the
8 current setting of our existence today, newspapers,
9 headlines, what might be in them. I think he was able
10 to talk about the Mobil oil spill he called it and
11 tornados in -- in Toledo. He was able to do the
12 tap-tap exercise where he was able to follow my
13 directions to tap when only I did two taps and -- to
14 tap only when I did two taps and if I did one tap and
15 then he would not do any taps, which shows he's able
16 to concentrate and follow direction. That's a rather
17 simple test.
18 He knew that his shadow was shortest at
19 noon, which is quite unusual for some people, they --
20 they think that it's shortest in the afternoon or --
21 or late at night or early morning they might give and
22 the actual true fact is that your shadow is shortest
23 at noon and he knew that, showing an above-average
24 intelligence I would say.
25 Q. You asked him -- did you ask him about who's the

1 president?
2 A. Yes, I did and he was able to name presidents in
3 reverse order to Carter without any errors. He
4 understood the symbolism of stars in the flag and how
5 they represented the 50 states. He was able to spell
6 the word sugar backwards. If he found a wallet with
7 ID on the -- a street he would make sure it goes back
8 to the person who owned it and he -- if he smelled
9 smoke in a theater what would he do. He would not
10 yell fire, which is often a panic trigger, but that he
11 would make sure that he started his -- himself for the
12 exit.
13 And again, as I asked him to interpret the
14 grass is greener pro -- proverb, he knew it without
15 concreteness. So somebody that would say well, the
16 grass is greener rather than saying what does it mean
17 that it's -- grass is greener on the other side. He
18 was able to say well, things look a little better from
19 one perspective, but when you actually get there it
20 may be different and so that was -- that's a normal
21 response. And I gave him a difficult one because
22 sometimes the grass is greener proverb or the glass
23 house proverb, such as don't throw stones at a glass
24 house and why not, someone might say it's concrete, it
25 might break, but actually the abstraction is, you

1 know, take care of your own house. If you start
2 criticizing somebody else you might also be at fault.
3 And he -- I gave him a difficult one that
4 said if two -- the dragons wading across shallow ponds
5 have nails -- snails nipping at their heels and to my
6 surprise he did quite well with that one. It's out of
7 the norm for proverbs that are given and he understood
8 that it means even big people have problems and he was
9 able to interpret that appropriately.
10 So I had enough information based on that
11 testing that he was operating on all cylinders, doing
12 quite well and functioning despite his perception that
13 he had memory problems and -- and all those, they did
14 not appear to be existent at the time of this exam and
15 I was able -- able to make a certain conclusion from
16 my testing and the history and my clinical observation
17 and skills.
18 Q. And -- and what did -- conclusion did you arrive at
19 with respect to his -- his ability to remember things
20 and his ability to think clearly?
21 A. I saw that there was absolutely no evidence of a
22 closed-head injury that affected his consciousness or
23 physiological or psychological functioning and I found
24 that there was a mood disorder due to a general
25 medical condition, which could be inclusive of his

1 diabetes, hypertension, asthma, and also perhaps the
2 chronic pain that he suffered, and these factors are a
3 part of the diagnosis of psychological problems in a
4 general medical condition.
5 Q. Now, what's a -- a prognosis?
6 A. My prognosis is what the future may hold for him and I
7 saw it as favorable, that he continued to improve,
8 that despite his -- of perceptions of himself being
9 disabled or not being able to function he was actually
10 showing that he was able to function pretty much as
11 general as anyone might do of his age and
12 circumstance, he'd do quite well. And I had a
13 favorable outlook that he would continue to do well.
14 He was being treated, responding to that, compliant
15 with medications, it was as much as you could hope
16 for.
17 Q. Did he tell you whether he was feeling more or less
18 depressed and whether he was making progress?
19 A. He felt he was less depressed -- depressed and making
20 progress.
21 Q. And did you assess Mr. Fair -- Fairley's -- you used
22 the term character strengths and willingness and --
23 and how would that affect his prognosis for the
24 future?
25 A. If he didn't have a willingness to improve -- if for

1 instance correlated with the legal issues he may have
2 an increased or exaggeration of his symptoms for that
3 purpose, in fact there's a correlation of increased
4 symptoms with legal issues such as damages that he's
5 seeking related to the incident, but if he decided
6 that he wasn't motivated to do certain things and he
7 wasn't able to pull himself to do that, then his
8 prognosis would not be as favorable, but given his
9 interests and able to demonstrate an ability and
10 motivation I felt that he'd be quite -- quite
11 successful.
12 Q. Did you feel that with his own character strengths and
13 willingness to return to an active life that that was
14 a favorable indication?
15 A. Yes, I did feel that.
16 MR. OBRINGER: Thank you, I don't have any
17 other questions then.
18 THE WITNESS: You're welcome.
19 EXAMINATION
20 BY MR. GURSTEN:
21 Q. Doctor, good morning.
22 A. Good morning.
23 Q. My name is Steven Gursten, as I said, I'm here for Jim
24 and Kim Fairley.
25 Just so we're clear, all those different

1 organizations you mentioned in the beginning when
2 Mr. Obringer was asking you questions, none of those
3 organizations asked you to do this one-time forensic
4 evaluation of Mr. Fairley, it was -- it was actually
5 the Defendant in this lawsuit, true?
6 A. Those organizations are part of my C.V. and the
7 American Academy of Psychiatry and Law informs me
8 about forensic evaluations.
9 Q. I'm sorry, maybe you -- maybe I wasn't clear with my
10 question, I apologize. Who hired you to do this
11 examination, ma'am?
12 A. Oh, I was retained by Mr. Obringer to evaluate
13 Mr. Fairley.
14 Q. And as -- as part of your examination you have on the
15 last page your diagnoses and conclusions and you have
16 something that's called a GAF, can you tell the jury
17 what that is?
18 A. That is a global assessment of functioning.
19 Q. And is that --
20 A. It is -- it is an exam -- it is a sort of a -- a
21 report card of how someone is functioning based on the
22 examination and my diagnoses, that despite all -- all
23 the individual ones, the ax -- there's a multiaxial
24 process. The first is any psychiatric conditions; the
25 second is axis II, personality problems; axis III,

1 what medical problems; axis IV, what psychosocial
2 problems; and axis V, despite all of these, whatever
3 they are, what is the assessment of his functioning
4 and it goes from 0 to 100. Like a report card 100 is
5 doing very well, 70 is C, 50 is showing some severe
6 impairment, 40, 30, 20 would indicate the person is
7 not doing well at all.
8 Q. Well, 50 indicates they're not doing very well at all
9 too, correct?
10 A. 50 represents serious symptoms of any serious
11 impairment in social, occupational and school
12 functioning.
13 Q. And 50 is what you gave Jim Fairley?
14 A. Yes, it is.
15 Q. And in your code you also diagnosed him with chronic
16 pain disorder?
17 A. Yes.
18 Q. And by definition that means that the pain he is
19 having is causing clinically-significant distress or
20 impairment in his social and occupational and other
21 areas of functioning?
22 A. That's correct.
23 Q. And by definition it means that he is not malingering
24 or exaggerating or faking?
25 A. That's correct.

1 Q. And you do not believe that he is malingering or
2 faking or exaggerating?
3 A. That's correct.
4 Q. So just as an overview of your -- your total
5 conclusions based upon this one-time exam at the
6 request of the defense attorneys in this case, you
7 find no evidence of a closed-head injury?
8 A. That's correct.
9 Q. And the jury has heard the term closed-head injury and
10 traumatic brain injury -- traumatic brain injury
11 intermittently, can -- is that the same thing to you?
12 A. Yes, it is.
13 Q. Okay. Closed-head injury and -- and traumatic brain
14 injury, it just depends on which doctor is using it,
15 but they're all talking about injury to the brain?
16 A. That's correct.
17 Q. And you -- you found no evidence at all of traumatic
18 brain injury?
19 A. That's true.
20 Q. And you found no evidence of any abnormal memory or
21 concentration?
22 A. That's correct.
23 Q. No -- no evidence at all in your exam?
24 A. That -- that's correct.
25 Q. And you found no evidence of PTSD, posttraumatic

1 stress disorder?
2 A. That's correct, no posttraumatic stress disorder.
3 Q. And you found no emotional injury at all, at least as
4 it relates to him being hit by two trucks?
5 A. That's correct. I mentioned that if he had some
6 depression it may be related to the motor-vehicle
7 accident but was responding to treatment and was
8 limited at the time I saw him and showing remarkable
9 signs of improvement.
10 Q. And that was based also on the things that he was
11 saying to you?
12 A. That's correct.
13 Q. And you found no evidence of suicide?
14 A. That's right.
15 Q. The depression that you find you say in your report is
16 related to a general mood disorder?
17 A. Yes.
18 Q. And by the general mood disorder you're -- you're
19 saying that that's due to medical conditions that you
20 list in your axis III?
21 A. Yes.
22 Q. And those medical conditions that you've listed in
23 your axis III are diabetes?
24 A. Yes.
25 Q. Elevated triglycerides?

1 A. Yes.
2 Q. Hypertension?
3 A. Yes.
4 Q. Asthma?
5 A. Yes.
6 Q. Obesity?
7 A. Yes.
8 Q. And vertebral degenerative arthritis?
9 A. That's correct.
10 Q. I did not leave anything out?
11 A. Chronic pain I've also used in my axis I diagnosis.
12 Q. And so just -- just so I'm clear, you feel that it is
13 his diabetes, elevated triglycerides, hypertension,
14 asthma, obesity and vertebral degenerative arthritis
15 in conjunction with the chronic pain therefrom that is
16 causing his depression and chronic pain?
17 MR. OBRINGER: Well, just -- my objection
18 only is that there's another entry there, it says
19 status-post motor-vehicle accident under that axis III
20 so --
21 MR. GURSTEN: I -- I think that's improper,
22 Bob, and --
23 MR. OBRINGER: Okay.
24 MR. GURSTEN: -- I think she -- that --
25 that's an improper way to object, that's a speaking

1 objection so --
2 MR. OBRINGER: Well, no, it's an objection
3 to your question because you -- you left it out of
4 your question.
5 MR. GURSTEN: I -- I -- I don't -- I have
6 too much respect for you to argue with you so I'll
7 just note that I think that's an improper objection.
8 I'll cite the Holly Clifton Precision (phonetic) case
9 and I'll just ask that you just restrain your
10 objections to something that -- that perhaps is not a
11 speaking objection in the future.
12 Would you -- would you read back my
13 question, please?
14 (The following requested portion of the
15 record was read by the reporter at
16 9:52 a.m.:
17 Q. And just so I'm clear, you feel that it
18 is his diabetes, elevated triglycerides,
19 hypertension, asthma, obesity and vertebral
20 degenerative arthritis in conjunction with
21 the chronic pain therefrom that is causing
22 his depression and chronic pain?)
23 MR. OBRINGER: Objection to form.
24 BY MR. GURSTEN:
25 Q. You may answer, Doctor.

1 A. I think I did already.
2 Q. Would you answer again, please?
3 A. Okay. Again, I see that these conditions status-post
4 motor-vehicle accident and including the diagnosis I
5 made in axis I are related to his mood disorder.
6 Q. So how -- how much of this is related to the
7 motor-vehicle accident and how much of it is related
8 to these general medical conditions?
9 A. Well, I explained that these are flowing from the
10 motor-vehicle accident.
11 Q. So when you say that he is now seriously impaired in
12 his global assessment of functioning and GAF defines
13 it as seriously impaired in his social and
14 occupational functioning, you also feel that that is
15 from the motor-vehicle accident as well?
16 A. I feel that that plus the other medical conditions
17 contribute to his severe impairment.
18 Q. The other general medical conditions that you list,
19 did you list those in order of severity?
20 A. No.
21 Q. How did you arrive at this disorder -- at this order
22 of general medical conditions?
23 A. It's a compilation of all the conditions he gave, his
24 review of medical systems that he could produce for
25 me.

1 Q. So diabetes was put first for what reason?
2 A. It's just -- was just listed first.
3 Q. Okay. So there's -- there's no significance to it
4 being listed first?
5 A. No.
6 Q. And you're saying that he told you he has diabetes?
7 A. Yes, and the medications he takes for them -- for it.
8 Q. He did not deny having diabetes?
9 A. That's correct.
10 Q. Can you tell me how -- did he tell you he had elevated
11 triglycerides?
12 A. Yes, he did.
13 Q. Okay. Is he taking medication for that?
14 A. I'm not sure that I saw that in his review of
15 medications.
16 Q. Okay. Can you tell me how elevated triglycerides
17 would be contributing to his chronic pain?
18 A. Well, he has an elevated cholesterol and he's obese
19 and those conditions together can produce the diabetes
20 that he has, and his family history of congestive
21 heart failure would indicate that he's at high risk
22 for those, and so I saw them as significant when I
23 listed them here.
24 Q. Okay. But how -- how does elevated triglycerides
25 contribute to chronic pain?

1 A. I don't have a connection for that. Mr. Fairley said
2 that he had chronic pain from head to toe and that
3 encompasses a number of contributing factors to his
4 chronic pain, his arthritis, his asthma, his
5 hypertension, his blood flow as a result of diabetes
6 might constrict some of his, you know, arterials and
7 his muscular functioning.
8 Q. Do you have evidence that he had diabetes before this
9 truck crash?
10 A. No, I don't, but diabetes is not a sudden onset. It's
11 a chronic, preexistent condition that Mr. Fairley
12 stated he had.
13 Q. Do you -- do you have any evidence that he had either
14 diabetes or any possible precursor that could lead to
15 diabetes at all before this double truck crash?
16 A. No.
17 Q. And do you have any evidence that he has diabetes
18 today?
19 A. Only his statement, his history that he provided to
20 me.
21 Q. Okay. Are you aware that we took the deposition --
22 the trial deposition of his family doctor two days ago
23 who --
24 A. No.
25 Q. -- indicated that there is absolutely no evidence that

1 Mr. Fairley has diabetes?
2 A. No, I'm not aware.
3 Q. Okay. So going back to his elevated triglycerides,
4 how did you learn about that again?
5 A. From Mr. Fairley.
6 Q. And assuming that he does have it and it is being
7 controlled by medication, how does this contribute to
8 either his depression or his chronic pain?
9 A. It would contribute to what I considered to be a high
10 risk for his heart functioning, contributory to
11 whether his diabetes is regulated. If his family
12 physician, medical information is produced, it says he
13 doesn't have those conditions then I'm happy for him,
14 but as I can see them now triglycerides would be a
15 contributory factor to his functioning and I saw that
16 as significant.
17 Q. Okay. But help me because I'm -- that's where I'm
18 getting confused, how is it contributing to his
19 functioning right now?
20 A. It's a factor that he offered as part of his medical
21 background, medical history.
22 Q. Okay. But does -- does elevated triglycerides cause
23 pain?
24 A. Not to my understanding.
25 Q. Does elevated triglycerides cause depression?

1 A. Not to my understanding.
2 Q. Next you have hypertension, where did you learn that
3 he has hypertension?
4 A. From Mr. Fairley.
5 Q. And do you have any records or evidence as to how long
6 he's had hypertension?
7 A. No, I don't.
8 Q. Can you point to any evidence that he had hypertension
9 before the injuries he suffered in this double truck
10 crash?
11 A. No, I -- I have no medical records prior to the
12 motor-vehicle accident.
13 Q. You were not provided with any medical records from
14 before this by defense counsel?
15 A. I have no medical records prior to the motor-vehicle
16 accident.
17 Q. Are you aware that when we took the trial deposition
18 of the family doctor he indicated that Mr. Fairley
19 never had any issues with hypertension before this
20 truck crash?
21 A. No, I'm not aware.
22 Q. Okay. You are aware, however, that pain, especially
23 severe pain, can elevate blood pressure and cause
24 hypertension?
25 A. That's chronic pain, yes.

1 Q. Okay. Next you list in your -- in your list here you
2 have asthma, where did you learn he had asthma?
3 A. Mr. Fairley produced that information for me and it's
4 part of the multiaxial diagnostic order of making a
5 psychiatric diagnosis. It's a multiprong or five
6 different areas that one must mention when you're
7 making a psychiatric diagnosis. The axis I, as I
8 said, is a clinical psychiatric disorder; axis II
9 includes personality traits; and axis III, without
10 listing the priority, is inclusive of all medical
11 conditions currently contributing to Mr. Fairley's
12 stability or disability or impairment.
13 Q. Right, and that's -- that's what I'm trying to get at
14 is how is asthma contributing to his -- his depression
15 or his chronic pain?
16 A. Well, it's taken into consideration that part of his
17 dysfunction or impairment is not from one sole source,
18 that these all must be considered as part of his
19 condition.
20 Q. Dr. Griffin, are you aware that he does not have
21 asthma?
22 A. No, I'm not.
23 Q. Can you point to any medical records in your
24 possession that say he has asthma?
25 A. No.

1 Q. And you weren't provided with the records from his --
2 from his family doctor from before this, but I'd like
3 you to assume the family doctor records indicate that
4 he's had no problems with asthma before this truck
5 crash. So you can say that asthma is certainly not
6 contributing to any of these chronic pain syndrome or
7 depressive symptoms he's having if he doesn't have it?
8 A. That's not the intent, it's to list what medical
9 conditions he has and that's what I did on axis III.
10 Q. But where did you get that he has asthma from?
11 A. From Mr. Fairley.
12 Q. You're sure?
13 A. I am sure.
14 Q. Okay. Next you have obesity, was he obese before this
15 truck crash?
16 A. I have no records of Mr. Fairley's condition before
17 the motor-vehicle accident.
18 Q. But, Doctor, I'm -- I'm asking if -- if you know if he
19 was considered obese before the injuries from the
20 truck crash?
21 A. I have no records of his condition before the
22 motor-vehicle accident.
23 Q. I'm just asking if you -- if you know if there's any
24 records you have in your possession today or if
25 there's any source of information that you have in

1 your -- in -- in your possession today that would
2 suggest that Mr. Fairley was obese before the injuries
3 he suffered in this double truck accident?
4 A. I have no records before his motor-vehicle accident.
5 Q. Your -- your last and final finding on axis III is
6 vertebral degenerative arthritis, is that correct,
7 Doctor?
8 A. Yes.
9 Q. And -- and I stated that correctly, it's called
10 vertebral degenerative arthritis?
11 A. Yes.
12 Q. What is that referring to?
13 A. That's referring to his osteoarthritis that was
14 existent at the time of the motor-vehicle accident and
15 subsequently continues to be his diagnosis,
16 osteoarthritis.
17 Q. Okay. Where -- where do you see in any of the medical
18 records in this case the words osteoarthritis?
19 A. I saw them in the records, I'm not able to point to
20 them now.
21 Q. Whose records, Doctor?
22 A. Mr. Fairley's records.
23 Q. From what doctor?
24 A. I'm not sure, but it's in -- it's cited in his medical
25 records.

1 Q. Are you absolutely sure?
2 A. I'm sure.
3 Q. Maybe we can take a break shortly and you can try and
4 find that for us. My question is if -- if -- well,
5 actually one of the records you were provided with was
6 the trial deposition of his neurosurgeon, Dr. Rawal --
7 A. Yes.
8 Q. -- correct?
9 So how is it that Dr. Rawal is saying that
10 Mr. Fairley comes within a couple millimeters of being
11 paralyzed and that his T12 vertebral body is so badly
12 fractured and collapsed, how is it you're calling that
13 vertebral degenerative arthritis?
14 A. Well, I associate that with the findings that
15 Dr. Rawal saw and that the condition is certainly not
16 causing him to have spinal root or paralysis and is
17 limited and controlled and fixed and re -- repaired.
18 MR. GURSTEN: I'm sorry, can you read that
19 back to me, the last answer?
20 (The following requested portion of the
21 record was read by the reporter at
22 10:04 a.m.:
23 A. Well, I associate that with the
24 findings that Dr. Rawal saw and that the
25 condition is certainly not causing him to

1 have spinal root or paralysis and is
2 limited and controlled and fixed and
3 repaired.)
4 BY MR. GURSTEN:
5 Q. Okay. What evidence do you have from anywhere in this
6 case that this is limited or repaired or improving?
7 A. Mr. Fairley's presentation shows that he's not
8 paralyzed, shows that he is not dysfunctional in that
9 regard, he had a stiff gait and that's how he
10 presented as he walked in, but I did not see that he
11 was showing any kind of immobility.
12 Q. In -- in any of the medical records that defense
13 counsel provided to you do they indicate that this
14 condition is improving?
15 A. Mr. Fairley's statement was that he has improved and
16 his statement also that he continues to go to the Y
17 and swim three times a week is consistent with an
18 improved state.
19 Q. Okay. But I was asking you about all of the medical
20 records that have been given to you by the doctors
21 that are treating him for his physical injuries and
22 his fractured vertebral body and his chronic pain, do
23 you see any indications of improvement there?
24 A. I saw from Mr. Fairley that he has continued to
25 improve and that's his own statement and I agree with

1 that.
2 Q. Doctor, we'll -- we'll go on and -- and I -- I don't
3 mean to -- I -- I just would like an answer to my
4 question. In any of the medical records from the
5 specialists who are treating him for these injuries,
6 do any of them indicate anything consistent with the
7 statements you've just made --
8 MR. OBRINGER: Objection to the form of the
9 question.
10 BY MR. GURSTEN:
11 Q. -- that he's improving?
12 A. I certainly would help you understand that my role in
13 this was to look at whatever condition he may allege
14 or whatever conditions other medical providers may
15 give that his emotional injuries are certainly not
16 inclusive of a posttraumatic disorder and not
17 inclusive of a continuing disabling emotional
18 disorder, and that from my standpoint as a psychiatric
19 expert he showed no problems with his emotional state
20 and the treatment has been successful and he continues
21 to improve. There's been no plateau in that, he
22 continually improves his psychological, sociological
23 and biological functioning.
24 Q. How do you know that?
25 A. I have an expertise that is able to detect whether

1 someone is depressed or not and whether they're
2 resolving in those symptoms and I saw Mr. Fairley as
3 being that person with good luck that he was
4 improving.
5 Q. Okay. So with the exception of -- of the statement
6 that you say he made to you that he is improving and
7 with the exception of your one-time examination are
8 there any records, including the trial depositions
9 that defense counsel has provided to you for you to
10 review, that indicate anything consistent with what
11 you -- with the statements you have just made that he
12 is improving and his physical injuries are getting
13 better?
14 A. I'm the expert in looking at his psychological
15 functioning and that's my limited dealing with
16 Mr. Fairley. I can only go by what his statement was
17 that he was improving and continues to improve
18 psychiatrically.
19 Q. Okay. Well, I guess my question though is in all the
20 medical records you've been provided are you aware of
21 any doctor out of all of the specialists who have been
22 treating him for his back injuries and spinal injuries
23 who called these vertebral disc fractures vertebral
24 degenerative arthritis like you did?
25 A. I list them in my axis III diagnoses and I'm

1 redirecting you to look at my expertise in making a
2 psychiatric diagnosis --
3 Q. I -- I understand that, Doctor.
4 A. -- and physical condition and other medical
5 specialists that may, you know, be produced prior to
6 this time or at trial.
7 So my expertise is in that area of his
8 psychiatric or emotional injuries and in that --
9 Q. Doctor, can you answer my question?
10 A. -- regard I'm saying he's improving.
11 Q. Can you answer my question, please?
12 A. I can't answer --
13 MR. OBRINGER: Objection, I believe that it
14 has been asked and answered.
15 A. I can't answer it any further. I've done my best
16 and --
17 BY MR. GURSTEN:
18 Q. Okay.
19 A. -- that's as much as I can do.
20 Q. So -- so my -- my question is very specific and
21 perhaps you could just answer it with a yes or a no.
22 Are you aware of any doctor anywhere in this case of
23 the 40 medical specialists that have provided care to
24 him over the last two and a half, almost three years
25 that have called his physical injuries to his back and

1 his spine what you did when you called it -- referred
2 to it as vertebral degenerative arthritis, are you
3 aware of any doctor that -- that has used those words?
4 A. I cannot answer your question as stated.
5 Q. The vertebral degenerative arthritis, if we -- if we
6 put that aside, is there a reason that you did not
7 include any of his other injuries from this double
8 truck accident?
9 A. Well, I saw the records and I imagine that there
10 are -- that there may be additional medical records
11 that would be consistent with my perusal of certain
12 documents, but, again, my addressing those physical
13 conditions is not my expertise but only to list them
14 as offered by Mr. Fairley and I concentrated on my
15 area of expertise, which is to look at him
16 psychiatrically and emotionally.
17 Q. I -- I understand that's what you're saying, Doctor, I
18 guess my question is you -- you listed diabetes that
19 he doesn't have, elevated triglycerides that is not
20 symptomatic, asthma that he doesn't have, obesity that
21 I don't believe there's any evidence of before this
22 double truck crash, but you don't list anything about
23 traumatic headaches, tinnitus and ringing in the ears,
24 the fractures he's sustained to other areas of his
25 body, to his mouth, his shoulder, his knee injury, any

1 of these other injuries from this crash. I'm
2 wondering why those are omitted from your axis III
3 listing of injuries and conditions?
4 A. And your question is?
5 Q. Why are they not listed?
6 A. I didn't feel that they were pertinent to my analysis.
7 Q. Okay. I'm -- I'm confused so please help me to
8 understand. How is diabetes, elevated triglycerides,
9 hypertension and asthma and obesity pertinent to your
10 diagnosis and conclusions but the other physical
11 injuries that he is seeking medical attention for for
12 the past two and a half, almost three years and taking
13 narcotic medication for every day not pertinent?
14 MR. OBRINGER: Asked and answered.
15 A. I can't help you further.
16 BY MR. GURSTEN:
17 Q. You can't answer that?
18 A. I cannot help you further, as you requested, help you
19 understand. I've said as much as I can on that
20 subject.
21 Q. Would you agree that something like traumatic
22 headaches, where he's taking three Darvocets a day to
23 control them, might be more pertinent than listing
24 something like diabetes or asthma or obesity that he
25 doesn't even have or hypertension that he never had

1 before this and elevated triglycerides that if he does
2 have is not symptomatic?
3 MR. OBRINGER: Objection, form and
4 foundation.
5 BY MR. GURSTEN:
6 Q. Doctor?
7 A. I'm not sure of your question.
8 MR. GURSTEN: Would you read it back,
9 please?
10 (The following requested portion of the
11 record was read by the reporter at
12 10:13 a.m.:
13 Q. Would you agree that something like
14 traumatic headaches, where he's taking
15 three Darvocets a day to control them,
16 might be more pertinent than listing
17 something like diabetes or asthma or
18 obesity that he doesn't even have or
19 hypertension that he never had before this
20 and elevated triglycerides that if he does
21 have is not symptomatic?)
22 A. No.
23 BY MR. GURSTEN:
24 Q. It's not more pertinent to your conclusions and
25 diagnosis?

1 A. No, I've already addressed that in my axis I
2 diagnosis, which is chronic pain, so I have addressed
3 it.
4 Q. So you -- if I understood your testimony earlier where
5 I -- I believe you said on -- on more than one
6 occasion his chronic pain is related -- in fact this
7 is what you said, his chronic pain and mood disorder
8 is related to his general medical condition. His
9 chronic pain is related to these illnesses.
10 You're saying that the chronic pain he has,
11 including the traumatic headaches that you now say is
12 incorporated in the chronic pain disorder diagnosis
13 you list in axis I, that -- that those things he's
14 having, like traumatic headaches and chronic pain, is
15 related to the general mood condition that you went on
16 to list in axis III as the cause of his depression?
17 A. Well, it includes the chronic pain, whatever
18 contributes to his chronic pain. I -- I am admitting
19 that as it flows from the motor-vehicle accident it
20 may have a contributory factor in his mood, but I also
21 mention that he is responding to treatment and that
22 has very promising outlook that he will continue to
23 respond and it's being managed.
24 Q. But that seems to be only based upon your -- your exam
25 and what you say Mr. Fairley said to you, true?

1 A. That's what an expert witness does.
2 Q. I see. So I'm -- I'm trying to understand because my
3 copy of the DSM-IV that defines chronic pain disorder
4 says that when you use that diagnosis, when you
5 diagnose someone with that that means that, number
6 one, the pain is the predominant focus, and number
7 two, it is severe enough to warrant clinical
8 attention?
9 A. That's correct.
10 Q. Okay. So looking now at all of the things that you
11 listed in axis III, his diabetes, elevated
12 triglycerides, hypertension, asthma, obesity and
13 vertebral degenerative arthritis, do any of those
14 conditions cause pain?
15 A. Well, the chronic pain that I list in axis I, that you
16 just clarified by your definition, addresses your
17 concern about your understanding in what chronic pain
18 means.
19 Q. Okay. But you said in your report and in your
20 testimony on more than one occasion that his chronic
21 pain and his depression is related to the mood
22 disorder, which is related to his general medical
23 conditions?
24 A. That's correct.
25 Q. Okay. So what I'm trying to get at is how do any of

1 these general medical conditions cause him pain, with
2 the exception perhaps of the hypertension which can be
3 caused by someone who is undergoing and experiencing
4 severe pain?
5 A. I can't help you understand it better. You stated it
6 correctly earlier and that's just as good as I can do.
7 He has chronic pain that need -- needs condition --
8 needs treatment and attention and chronic pain is the
9 number-one priority in addressing his complaints.
10 Q. So when I asked you in the very beginning of my
11 questioning that you found no evidence at all of any
12 emotional injury from this double truck crash, you're
13 saying that the depression he has is related to these
14 axis III conditions, these -- these general medical
15 conditions that you listed?
16 A. I think I've been clear that he has chronic pain that
17 I've addressed in axis I, so I've covered pretty much
18 every diagnosis that relates to the motor-vehicle
19 accident and his current functioning.
20 Q. Okay. So when you say he is depressed, is he
21 depressed also because of this motor-vehicle crash?
22 A. That's possible.
23 Q. Is it possible or is it probable?
24 A. It's possible.
25 Q. Why isn't it more probable that he is depressed from

1 serious physical injuries from a motor-vehicle crash
2 and the constant pain he's had for two and a half
3 years as well as all the things he can't do like go
4 back to work, than -- than axis III conditions like
5 diabetes and asthma that he doesn't even have?
6 A. Your question is rather confusing, I don't know which
7 part to answer.
8 Q. Why is it --
9 A. He can work --
10 Q. Why is it --
11 A. He can work and he just -- he refused to go back to
12 his other employment and I can understand why he
13 cannot, but he is employable and he has chronic pain
14 and it may have flown from -- flowed from the
15 motor-vehicle accident, but it's being addressed with
16 medication and I see that as promising, that he's --
17 he's able to address those things and be managed by
18 it.
19 Q. You feel he's able to go back to his job?
20 A. No, I said he cannot go back to his job, but he is
21 employable.
22 Q. Doing what?
23 A. Well, he could be a security guard, he could sit down
24 and watch video of certain kinds of movings and goings
25 on in an -- an area that requires observation and

1 surveillance. He could be a receptionist where he's
2 not demanding any physical movement, but I'm sure he
3 could manage that. He has a great intelligence,
4 memory, responsibilities for certain things, I think
5 he'd do well if he were motivated and interested.
6 Q. You don't feel he's motivated and interested?
7 A. If he was motivated and interested in performing
8 employment then he could pursue those avenues, and not
9 having sought those or failed at it I can only hope
10 that he would entertain those if he were interested
11 and working -- if he were interested in working.
12 Q. So you feel that the reason he's not working any of
13 these other jobs is -- is not because of any of his
14 injuries, but because he's not interested in it?
15 A. If he were interested in those other areas I would
16 feel that he'd be quite successful.
17 Q. Doctor, can you -- I -- I just want to get back to
18 this depression being possible from the motor-vehicle
19 accident and not probable. Can you explain to us
20 why -- well, let me ask you this, a -- as -- as a
21 medical doctor, as a psychiatrist you're supposed to
22 pick the most likely cause for someone's symptoms,
23 aren't you, not -- not the least likely?
24 A. Yes.
25 Q. Okay. Do you have any evidence of him functioning at

1 a -- at anything other than a very, very high level
2 before this crash that we're here for, be -- before
3 the effects on his life?
4 A. I have no medical records prior to his motor-vehicle
5 accident.
6 Q. Okay. Do you have any evidence from -- from his
7 history to you or all the depositions and medical
8 records that have been provided to you of him
9 functioning at anything other than a very high
10 functioning level before he's hit by two trucks on
11 April 4th, 2008?
12 A. Well, I know that he had a motor-vehicle accident in
13 the early '80s where he stated he had a whiplash.
14 Q. Okay. That was 30 years ago, anything besides
15 30 years ago where he may have had a whiplash?
16 A. Well, I might suggest that that could be possible --
17 maybe came from those -- from that accident that he
18 has some conditions now, that's about all according to
19 his history, but according to his history only that --
20 that I can see of -- can see could be contributory to
21 his current functioning and I have no other medical
22 records to corroborate that, but he offered it that he
23 did have a motor-vehicle accident before. So some of
24 the conditions may be related to that and some to
25 this, I'm not able to determine --

1 Q. Okay. But he has --
2 A. -- how much one or the other.
3 Q. But he has shattered, collapsed vertebral bodies in
4 his back, are you saying that that is -- and he worked
5 for 24 straight years, including 12 years without ever
6 missing a day from work, you -- you're -- you're
7 saying that -- that this whiplash he may have had
8 30 years ago was a contributing cause?
9 A. I don't know.
10 Q. Okay. Are you aware of any other possible
11 contributing cause besides him getting hit by two
12 trucks?
13 A. I see that as contributory, certainly, a dramatic
14 contribution.
15 Q. Okay. So back to my -- my question, do you have any
16 evidence to the contrary that he is functioning at
17 anything other than a very high level until this truck
18 crash on 4-4-08?
19 A. I've answered --
20 MR. OBRINGER: Asked and answered.
21 A. I sure have answered it a couple times and I don't
22 know what more you want from me.
23 BY MR. GURSTEN:
24 Q. I -- I want to know if you have any evidence?
25 A. You know that I have no records prior to his

1 motor-vehicle accident, I've said that.
2 MR. GURSTEN: Let's change the tape.
3 VIDEO TECHNICIAN: This marks the end of
4 tape number one, the time is 10:22 and 12 seconds
5 a.m., we are now off the record.
6 (Recess taken at 10:22 a.m.)
7 (Back on the record at 10:25 a.m.)
8 VIDEO TECHNICIAN: This marks the beginning
9 of tape number two, the time is 10:25 and 50 seconds
10 a.m., we are back on the record.
11 BY MR. GURSTEN:
12 Q. Doctor, I'd like to turn to a new area now. You said
13 that you find no evidence of traumatic brain injury or
14 closed-head injury; is that correct?
15 A. That's correct.
16 Q. And on page 6 of your report you did a mental-status
17 examination?
18 A. That's correct.
19 Q. Can you tell the jury how long that actually took you,
20 that -- that actual mental-status examination?
21 A. Approximately two hours.
22 Q. I'm sorry, the -- the actual mental-status examination
23 itself?
24 A. Two hours.
25 Q. Okay. You have a paragraph here where you asked him

1 about doing serial sevens, interpreting proverbs,
2 spelling sugar backwards, how many stars are in the
3 flag, how long did that segment take?
4 A. I'm not sure, it's part of the mental-status
5 examination.
6 Q. Okay. It's -- it's actually referred to as a mini
7 mental-status examination, isn't it?
8 A. No.
9 Q. Okay. It took about five minutes?
10 A. No, the mental-status examination begins at the time
11 I'm observing Mr. Fairley, that means from the time I
12 see him until the time the examination is over.
13 Q. Okay. And -- and I understand that, that -- that your
14 whole interview is part of your -- your examination,
15 but what I'm saying is is specific questions that you
16 were asking him to then have a basis to testify that
17 he has perfect memory, perfect concentration, no
18 problems with comprehension, no problems with my exam
19 questions, that I wrote down you saying in your
20 direct, I want to know how long those series of
21 questions were?
22 A. Well, they were questions that were conducted based on
23 his history, when I asked about auditory and visual
24 hallucinations, so I'm not sure what you're -- what I
25 can tell you about --

1 Q. All right. The question --
2 A. -- which part fit into what and which part fit into
3 that, but part of a mental-status examination includes
4 sensorium and mental grasp, just as part of it
5 includes history, part of it includes social history,
6 his functioning, his childhood history.
7 Q. Doctor, if you would, please, could you refer to your
8 report, page 7, the last paragraph, it starts off with
9 the conclusion of this sensorium and mental grasp is
10 contradictory to the statements not being able to
11 remember and then you list a number of -- of tests and
12 questions that you administered to him; do you see
13 where I'm referring?
14 A. Yes.
15 Q. Okay. And I just want to know that all those tests
16 that you have in that paragraph, do you think it took
17 you more or less than five minutes?
18 A. More.
19 Q. More or less than six minutes?
20 A. I don't know.
21 Q. And I -- I don't want this question to sound not
22 respectful, but most of these questions are -- are
23 questions that really an eight-year-old could answer
24 correctly, true?
25 A. Well, I don't know that.

1 Q. Well, an eight-year-old can answer how to spell sugar
2 backwards, right?
3 A. I don't know.
4 Q. An eight-year-old knows how many stars there are on an
5 American flag? These -- these questions don't rule
6 out traumatic brain injury, do they?
7 A. No, they don't.
8 Q. The serial sevens that he got right with you one time,
9 how much significance do we put on that, that on one
10 day he got that right with you?
11 A. You can add it as significant.
12 Q. Well, all right, that's what I'm trying to understand.
13 Why is that so significant that he gets it right with
14 you?
15 A. Because traumatic brain injury does not wax and wane
16 and consistently with his continued improvement it
17 shows that he did not have a traumatic injury and does
18 not have it at this time.
19 Q. The fact that he got the serial sevens right shows
20 that he doesn't have traumatic brain injury? What
21 about the quote that you said he -- the obscure
22 proverb, what's the significance of that?
23 A. The significance is that he's able to do more than
24 recite something an eight-year-old would know, but
25 would have an ability as a mature mind to understand

1 it, know the parts of which relate -- relate to
2 dinosaurs and snails and rivers and streams and have
3 an -- an ability to understand what that relevance may
4 be to the functioning of an object such as a dinosaur,
5 all of which are meant to be abstract.
6 And the ability of ab -- abstract -- the
7 ability to abstract is a rather significant,
8 sophisticated ability to understand, concentrate,
9 comprehend and it's more than just a waxing and waning
10 and to and fro of his cognitive abilities, which shows
11 he has a -- attained a rather sophisticated ability to
12 have positive cognitive demonstration. So his
13 performance there is consistent with my diagnosis that
14 he has no traumatic brain injury, not just at that
15 point, but over a long period of time.
16 Q. Doctor, would you -- would you read back what the
17 obscure proverb even was, please, in your report, what
18 was the proverb you gave him that you're attaching
19 such importance to?
20 A. Even dragons wading across streams with snails nipping
21 at their heels.
22 Q. And what was his interpretation that you found so
23 sophisticated?
24 A. That even big people who appear to be secure and
25 protected and -- and, you know, don't look as if they

1 have problems still have little things that may bother
2 them no matter how insulated and protected they
3 appear.
4 Q. Would you turn to page 8 of your report, the very
5 first paragraph, that's where you address this
6 proverb, correct?
7 A. Yes.
8 Q. And this is where you say this is a sophisticated
9 interpretation for someone who believed that his
10 memory and concentration are disturbed?
11 A. Yes.
12 Q. And you put his answer in quotes? Doctor? Doctor,
13 did you put his answer to your proverb in quotes
14 there?
15 A. Yes, I did.
16 Q. So that was his answer to you?
17 A. I'm not understanding your question, you made a
18 statement. That was his answer to me, yes.
19 Q. Okay. That's why you put it in quotes?
20 A. Yes.
21 Q. That's his exact answer?
22 A. Yes.
23 Q. Doctor, going through your five-minute -- or I'm
24 sorry -- six-minute mini mental-status examination --
25 A. I didn't say it was six minutes.

1 Q. I'm sorry. Going through your -- your mini
2 mental-status examination --
3 A. I didn't say --
4 MR. OBRINGER: Objection --
5 A. -- it was a mini mental-status examination.
6 BY MR. GURSTEN:
7 Q. Going through the questions that you asked in that
8 paragraph I've been asking you about, and -- and maybe
9 we can clarify, do you know how many minutes it took
10 you to actually go through those questions?
11 A. No, I do not.
12 Q. Okay. Going through those -- those questions did he
13 ever have a problem with any of your questions?
14 A. Not that I recall or recorded.
15 Q. Did he ever ask you to repeat any of them?
16 A. I don't recall that.
17 Q. Did he ever say he didn't understand any of your
18 questions?
19 A. I don't recall that.
20 Q. If he did could that be a sign of brain damage?
21 A. No, I've asked a question be repeated here and, I'm
22 sorry, it doesn't mean it's a sign of traumatic brain
23 injury.
24 Q. Well, the -- you're putting a lot of significance to
25 the questions he's getting right, would that suggest

1 that you would put an equal amount of significance on
2 those questions if he were to get them wrong?
3 A. Yes.
4 Q. That would indicate brain damage?
5 A. It would indicate that he got the questions wrong and
6 I'd look for reasons why.
7 Q. And, Doctor, you should never misrepresent in your
8 report what actually has occurred, true?
9 A. I would not do that consciously, no.
10 Q. That would not be honest or ethical to misrepresent
11 what someone says to you?
12 A. Would not try to do that, no.
13 Q. Doctor, you knew your examination was recorded, true?
14 A. Yes.
15 Q. And you knew it was recorded and in fact you -- you
16 demanded a copy of the videotape before you would even
17 write your report, true?
18 A. I required it to complete my review of all pertinent
19 records, yes.
20 Q. And you did review that videotape before you finally
21 issued your report about two months after your
22 examination, true?
23 MR. OBRINGER: Objection to the form of the
24 question.
25 MR. GURSTEN: Would you read it back?

1 (The following requested portion of the
2 record was read by the reporter at
3 10:35 a.m.:
4 Q. And you did review that videotape
5 before you finally issued your report about
6 two months after your examination, true?)
7 A. I did review the -- the videotape prior to my
8 completion of the report.
9 BY MR. GURSTEN:
10 Q. Doctor, I'd like to play a portion of that videotape
11 for you.
12 (Whereupon the videotape was played as
13 follows:
14 Okay. Mr. Fairley, tell me, please, do you
15 remember my name? Rosalind. I can't remember your
16 last name.
17 Do you know where you are? I'm in
18 Farmington Hills.
19 Can you subtract seven from 100? 93.
20 And keep counting down by seven. 86, 79,
21 72, 66.)
22 BY MR. GURSTEN:
23 Q. Doctor, if you subtract 7 from 72 what number do you
24 get?
25 A. 85 (sic).

1 Q. What you put in quotes was no matter how big you are
2 you can still have problems, correct?
3 A. Yes.
4 Q. Now, Doctor, these tests that you gave in that one
5 paragraph that we've been going over, however many
6 minutes that was, that actually -- you gave your own
7 battery of -- of questions and tests in those five
8 minutes or -- or whatever it was, true?
9 A. Yes.
10 Q. The point is is that there are a number of
11 standardized mini mental-status examinations, the most
12 famous being the Folstein, F-O-L-S-T-E-I-N, that you
13 could give that are almost identical but are
14 standardized and have a score. Are you familiar with
15 the Folstein --
16 A. No, I'm not.
17 Q. -- mini mental-status examination?
18 A. No, I'm not.
19 Q. If you don't give a standardized battery and if you
20 don't have to score it, you don't have to say if
21 someone is -- is responding in a brain-damaged range
22 if it's your own test, true?
23 MR. OBRINGER: Objection, form and
24 foundation.
25 BY MR. GURSTEN:

1 Q. I'm sorry, if you subtract seven from 72 like you were
2 asking --
3 A. 65.
4 Q. Okay. He answered 66. Let's continue.
5 (Whereupon the videotape was played as
6 follows:
7 59, 52.
8 Okay. 45.
9 Okay. And if I asked you what this meant,
10 even dragons wading across shallow ponds have snails
11 nipping at their heels, what does that mean to you?
12 Nothing really to me.
13 Just give it a thought. Say it again,
14 please.
15 Dragons wading across ponds, shallow ponds,
16 have snails nipping at their heels. No matter how big
17 you are if you go across the pond snails will come
18 after you or something.
19 Okay.)
20 BY MR. GURSTEN:
21 Q. No matter how big you are if you go across the pond
22 snails will come after you or something, that's very
23 different from what you put in quotes as his answer to
24 you, isn't it, Doctor?
25 A. Yes, it is.

1 Q. Doctor, your -- your test isn't standardized and
2 doesn't have a score, does it?
3 A. That's correct.
4 Q. And in your report you make absolutely no reference to
5 all the medical records you have from all the doctors
6 that defense counsel did give you to where they did
7 specifically test for traumatic brain injury and they
8 diagnosed traumatic brain injury; is that true?
9 A. That's true, I did not make reference to them in my
10 report except to notice that I had reviewed them.
11 Q. And all those doctors that diagnosed brain injury in
12 his first week at the hospital at Foote and the second
13 week in the hospital at Chelsea, you also did not put
14 those in your report?
15 MR. OBRINGER: Objection, form and
16 foundation.
17 BY MR. GURSTEN:
18 Q. Is that true, Doctor?
19 A. That's true.
20 Q. Most, if not all, these doctors have done far more
21 extensive actual testing into a traumatic brain injury
22 than you did, true?
23 MR. OBRINGER: Objection, form and
24 foundation.
25 BY MR. GURSTEN:

1 Q. Is that true, Doctor?
2 A. From -- not as a psychiatric point of view, no, they
3 have not.
4 Q. You also had in your records a brain MRI from
5 Mr. Fairley, a positive abnormal brain MRI, and you
6 don't mention that at all in your report?
7 A. I didn't find --
8 MR. OBRINGER: Object -- excuse me.
9 Objection, form and foundation.
10 A. I don't recall any MRI that stated specifically that
11 it -- it pointed towards a traumatic brain injury.
12 And interestingly enough, it may surprise you, that no
13 matter how sophisticated imaging tests may be they
14 contribute nothing to a diagnostic formulation.
15 MR. GURSTEN: Would you read back my
16 question, please?
17 (The following requested portion of the
18 record was read by the reporter at
19 10:41 a.m.:
20 Q. You also had in your records a brain
21 MRI from Mr. Fairley, a positive abnormal
22 brain MRI, and you don't mention that at
23 all in your report?)
24 MR. OBRINGER: Again, I -- well, I -- I put
25 it on the record so --

1 BY MR. GURSTEN:
2 Q. Doctor, did you mention the brain MRI in your report
3 anywhere?
4 A. No, I did not inasmuch as it wasn't pertinent and
5 pointed to any direction that I -- my diagnostic
6 formulation would support.
7 Q. Doctor, you -- when you say you find absolutely no
8 evidence of traumatic brain injury or closed-head
9 injury, it -- it's kind of like if someone comes to
10 you with a positive mammogram or an abnormal mammogram
11 and says I've got these ten doctors who are telling me
12 that I have cancer and it would be like you saying you
13 have no cancer because you just do a five or
14 six-minute test?
15 MR. OBRINGER: Objection; form, foundation,
16 argumentative.
17 BY MR. GURSTEN:
18 Q. Is that -- is that a fair statement, Doctor?
19 A. No, it's not.
20 Q. But most of these questions that you asked him, like
21 spelling sugar backwards or how many stars there are
22 on the flag, even someone who is brain injured, even
23 profoundly brain injured, can answer, true?
24 A. Not in my experience.
25 Q. Okay. But in -- in the testing you did give him of

1 however many minutes it was, he still managed to get
2 four wrong. He got your last name wrong?
3 A. He didn't get my last name. He knew my first name,
4 which is unusual, most people don't remember that or
5 they mispronounce it.
6 Q. He didn't remember your last name though, correct?
7 A. He knew my first name, he got it right. Who am I, he
8 remembered Rosalind. He knew I was a doctor.
9 Q. So you think that's -- that's a correct answer?
10 A. I think it's as good as he can get --
11 Q. Even though he didn't remember your last name?
12 A. -- having only met me -- absolutely.
13 Q. Okay. He told you that it was the Mobil oil spill,
14 not the BP oil spill?
15 A. That's correct.
16 Q. He made a math mistake on his serial sevens?
17 A. Yes.
18 Q. And he got your proverb wrong?
19 A. No, he did not.
20 Q. He gave a -- an answer that is markedly different than
21 the answer you put in quotes as his exact answer in
22 your report, isn't that true, Doctor?
23 A. Yes. He did not get it wrong, your tape shows that he
24 did not get it wrong.
25 Q. Let's hear it again, Doctor.

1 (Whereupon the videotape was played as
2 follows:
3 I was very frightened at that point.
4 Okay. And tell -- dragons wading across
5 shallow ponds have snails nipping at their heels, what
6 does that mean to you? Nothing really to me.
7 Just give it a thought. Say it again,
8 please.
9 Dragons wading across ponds, shallow ponds,
10 have snails nipping at their heels. No matter how big
11 you are if you go across the pond snails will come
12 after you or something.
13 Okay.)
14 A. He didn't get it wrong.
15 BY MR. GURSTEN:
16 Q. Snails will come after you or something?
17 A. Yeah.
18 Q. That's your testimony?
19 A. Yes.
20 Q. Okay. Doctor, you -- can we agree your report is
21 inaccurate?
22 A. No.
23 Q. Can we -- your report is accurate? Your report is
24 accurate? Doctor?
25 A. Yes.

1 Q. Do you believe your report is accurate?
2 A. Yes.
3 Q. You wrote that he got the serial sevens correct, he
4 made a mistake, and you put down a completely
5 different answer in quotation marks to the proverb
6 that you asked him about and I'm asking you is your
7 report accurate?
8 A. Yes.
9 Q. You would never intentionally misrepresent what he
10 said to you?
11 A. That's correct.
12 Q. Let's turn to PTSD. What does PTSD stand for?
13 A. Posttraumatic stress disorder.
14 Q. You're aware that he was first diagnosed with PTSD in
15 June of 2008, approximately two months after this
16 crash?
17 A. Yes.
18 Q. Where in your report does it show that you asked him
19 about all of the symptoms of PTSD?
20 A. It's not in my report.
21 Q. Doctor, did you give any of the tests that are
22 designed to determine the existence of PTSD?
23 A. No.
24 Q. You did no testing for it, you just concluded he
25 doesn't have it?

1 A. That's correct. He did not offer that he was near
2 a -- in a near-death situation, that he had flashbacks
3 and nightmares of or changes in his personality or
4 irritability or numbing of his feelings and so I can
5 establish that posttraumatic stress disorder did not
6 exist at the time I saw him.
7 Q. But this is kind of like that -- my mammogram example
8 I just gave you. You -- you're aware that he's been
9 told and being diagnosed with it by a number of
10 doctors for two and a half years and -- and you did no
11 specific testing for it?
12 MR. OBRINGER: Objection, form and
13 foundation.
14 BY MR. GURSTEN:
15 Q. Is -- is that an accurate statement?
16 A. I am saying that, like the mammogram, opinions may be
17 offered and many of the women on the jury will find
18 some people will say you have it and you get another
19 opinion that says you don't and you're not dying, and
20 this was an abnormal test and -- and so they will
21 generally be optimistic of the fact that they don't
22 have such a disease and Mr. Fairley should be I think
23 as well optimistic that he doesn't have the labels
24 that have been applied to him, that he does not have
25 closed-head injury.

1 Q. But you're aware -- if it's -- if it's an issue in
2 this case, if it's -- if it's in the medical records
3 and specialists for brain injury have been providing
4 medical treatment to him for this, there are a number
5 of very well-respected and established tests that you
6 could have given if you chose to specifically rule in
7 or rule out a diagnosis of posttraumatic stress
8 disorder, you just chose not to do that?
9 MR. OBRINGER: Objection, form and
10 foundation.
11 BY MR. GURSTEN:
12 Q. Is that true?
13 A. I have stated that those tests, even imaging tests, do
14 not shed light on the diagnosis of posttraumatic
15 stress disorder and many clinicians will say that if
16 the diagnostic formulations required a lot more than
17 the testing, that maybe MRIs or maybe formulated by
18 psychologists, which are extensive and may pick up a
19 number of things, but not a -- not conclusive for
20 posttraumatic stress disorder or for traumatic brain
21 injury --
22 Q. I -- I understand that conclusive --
23 A. -- it is a clinical diagnostic formulation --
24 Q. I'm sorry.
25 A. A clinical diagnostic formulation, which I'm able to

1 give and can do in the time I had and the way that I
2 presented in my report, substantiates there's no
3 traumatic brain injury, no posttraumatic stress
4 disorder.
5 Q. Is your clinical diagnostic interpretation that you
6 say you did, is that your own that you just make up
7 out of thin air or is it based upon the American
8 Psychiatric Association and the Diagnostic of
9 Statistical Manuals definition of PTSD?
10 A. It is based on my clinical expertise and also fits
11 into the DSM-IV.
12 Q. Because the definition of posttraumatic stress
13 disorder in the DSM-IV says that someone -- an
14 essential feature of PTSD is exposure to an extreme
15 traumatic stressor involving direct personal
16 experience of an event that involves actual or
17 threatened death or serious injury and the person's
18 response to the event -- to the event must involve
19 fear, helplessness; is that true?
20 A. That's true.
21 Q. And you're saying that in your evaluation of
22 Mr. Fairley you had no indication at all of any of the
23 indicia to meet the definition of PTSD as offered by
24 the DSM-IV?
25 A. That's true.

1 Q. Doctor, I'd like you to hear what he told you in your
2 examination.
3 (Whereupon the videotape was played as
4 follows:
5 What's the next thing you recall? Woke up
6 in the ambulance just as we were coming into the
7 hospital.
8 Were you on a nick (phonetic) board or
9 anything like that? Yes. Yeah, I was very frightened
10 at that point.
11 Can you tell me what you were frightened
12 about? I didn't know where I was and I didn't know
13 what had happened. I couldn't figure out who these
14 people were.)
15 BY MR. GURSTEN:
16 Q. I'd like you to hear what else he said, Doctor.
17 (Whereupon the videotape was played as
18 follows:
19 Your head was wedged between what and what?
20 Between the seat and the -- the post there by the
21 door.
22 The front seat? Back seat.
23 Oh. I base that on the fact that the cup
24 holder was -- had about 2 inches of blood in it.
25 You describe it really dramatically. I --)

1 BY MR. GURSTEN:
2 Q. Doctor, doesn't that meet the DSM-IV definition of
3 posttraumatic stress disorder as I just read to you?
4 A. No.
5 Q. So he tells you that he wakes up in an ambulance, he
6 is waking up immobilized on a spinal immobilization
7 board, tells you he is very frightened, he tells you
8 that he has no idea where he is or who these people
9 are, he's in pain all over and there are 2 inches of
10 blood in the cup holder and you say he is describing
11 that very dramatically -- and then, if you would,
12 Doctor, can you turn to page 7 of your report? Are
13 you there?
14 A. Yes.
15 Q. On page 7 of your report under sensorium and mental
16 grasp did you write the following, and please tell me
17 if I'm reading this to you exactly word for word as
18 you wrote it in your report, Mr. Fairley stated that
19 without the Ambien he will awake screaming recalling
20 the accident. Did I read that correctly, Doctor?
21 A. That's correct.
22 Q. So Mr. Fairley has been diagnosed with posttraumatic
23 stress disorder by his treating doctors since June of
24 2008, that's in the medical records that you have, you
25 don't do any testing for it and despite these things

1 that he has told you you say there's absolutely no
2 evidence of posttraumatic stress disorder?
3 MR. OBRINGER: Objection, form and
4 foundation.
5 BY MR. GURSTEN:
6 Q. Is that true?
7 A. As you stated it, it leaves out the fact that there's
8 no standardized tests for posttraumatic stress
9 disorder, I didn't use one, but the clinical
10 evaluation of whether he had posttraumatic stress
11 disorder is evident that he has no posttraumatic
12 stress disorder at the time I saw him, and I don't
13 know if other treating physicians reevaluated their
14 diagnosis at that time, but certainly at the time I
15 saw him there was no existence of posttraumatic stress
16 disorder. And whatever symptoms he had certainly,
17 which were sympathetic and certainly painful to him,
18 they're being addressed in his current treatment and I
19 consider that to be appropriate and certainly
20 responsive to the treatment as showing improvement.
21 Q. Posttraumatic stress disorder is defined as exposure
22 to an extreme traumatic stressor involving direct
23 personal experience that directly involves actual or
24 threatened death or serious injury. The person's
25 response to the event must involve intense fear or

1 helplessness. Despite all those things that we've
2 just discussed, your conclusion is is that there is no
3 evidence whatsoever of PTSD?
4 A. That's absolutely correct.
5 Q. And the doctors that do say he's had it and that have
6 been treating him for it for the past two and a half
7 years, you conclude they are also wrong, you just
8 chose not to give any of the tests yourself that are
9 established by the American Psychiatric Association
10 that could have helped to definitively rule in or rule
11 out this diagnosis?
12 MR. OBRINGER: Objection; form, foundation,
13 argumentative.
14 A. You've misrepresented my response as I did not say
15 those doctors were wrong.
16 BY MR. GURSTEN:
17 Q. You just disagree with them?
18 A. I'm telling you at the time I saw Mr. Fairley there
19 was no evidence of posttraumatic stress disorder and,
20 I'm sorry, even in your playing back the tape you can
21 see how it's inconsistent with posttraumatic stress.
22 How could he recall 2 inches of blood in a cup holder,
23 I mean, that's his perception, but it's -- doesn't
24 agree with the facts and as he even presented his
25 history he's certainly saying that what he recalls and

1 what actually was the case is his recollection based
2 on whoever told him that or whatever he says, he woke
3 up -- that's not unusual to have some amnesia after an
4 accident, be disoriented, but it doesn't -- it doesn't
5 govern the rest of his progress. It doesn't govern
6 the rest of his treatment and it shows even in his
7 treatment that he's continually improving. Those
8 records indicate that as well.
9 Q. Well, he told you that he is -- without his Ambien he
10 will wake screaming recalling the accident. I guess
11 what I want to know, Doctor, is how much more would he
12 have to tell you, what -- what else would he have to
13 tell you for you to be able to conclude that he may
14 have posttraumatic stress disorder?
15 A. Well, you've just stated it for me. He's on Ambien,
16 there's no wakening with nightmares or screaming. I
17 don't know what else to tell you. Who would not want
18 to take the Ambien to wake up screaming, so I'm
19 telling you that's how he's being managed and he's
20 responding to the treatment and there's no evidence of
21 posttraumatic stress disorder that would exist despite
22 medication and he's responding to the treatment and
23 that's appropriate.
24 Q. So is it -- is it fair then to say, because I think
25 we're just going to have to agree to disagree on this,

1 that -- that it is an issue in this case that many of
2 his treating doctors believe he suffers from, and you
3 chose not to test for it specifically, you just chose
4 to conclude he does not have it?
5 A. That's not correct --
6 MR. OBRINGER: Objection; form and
7 foundation.
8 A. -- as you stated.
9 BY MR. GURSTEN:
10 Q. Okay. How is that -- strike that.
11 Let's move on, Doctor. Doctor, on page 3
12 of your report you say that he has absolutely no
13 evidence of emotional injuries related to the
14 April 4th crash. Is that still your testimony now?
15 A. Would you direct me to that area on my report that
16 you're quoting from?
17 Q. Bottom of page 2, last paragraph. Mr. Fairley has no
18 emotional injuries related to the motor-vehicle
19 accident of April 4, 2008. The depression that he has
20 is secondary -- secondarily to a medical condition?
21 A. Yes, and I've stated what the axis I diagnosis is.
22 Q. Would you tell us what you would need to have heard or
23 to know to be able to conclude that he does suffer
24 from serious emotional injuries from this double truck
25 crash from April 4th, 2008?

1 A. Would I tell you what I needed to hear or what I did
2 hear to tell me he did not have it?
3 Q. Well, let's start with that then. What -- what did he
4 tell you that you did hear that allows you to -- to
5 conclude that there's no evidence of emotional
6 injuries?
7 A. Well, I don't think that's fair of my conclusions. He
8 does have chronic pain that's related to the
9 motor-vehicle accident and from that there would be a
10 depression. I did not say he doesn't have it related
11 to his diagnosis.
12 Q. He told you he is profoundly sad and depressed?
13 A. That's his perception, he's profoundly sad and
14 depressed.
15 Q. And you have no reason to believe that he's
16 exaggerating or being less than honest with you?
17 A. That's correct.
18 Q. In other words, that's -- that's his real suffering?
19 A. That's what he perceives subjectively. Objectively,
20 no, that's not the case.
21 Q. Objectively, no, because you disagree?
22 A. Objectively that he shows no evidence of -- of that.
23 Q. Doctor, can I have you listen to what he said to you
24 about this in your examination?
25 A. Certainly.

1 (Whereupon the videotape was played as
2 follows:
3 I just have a profound sadness and I feel
4 overwhelmed at times, just I don't know what to do,
5 just none of the -- none of the things I like to do I
6 can do anymore and, I don't know, it just seems --
7 seems useless to be around sometimes, I don't know,
8 I -- I talk to my wife about it and thank God she's
9 here because she's -- she's wonderful, she's strong
10 and --
11 She's patient with you? Yeah.
12 She doesn't fuss at you and tell you to get
13 off -- she's -- she's convinced me that -- that I'd be
14 a bigger burden if I did do something to myself than I
15 would be now.
16 Let's talk about that, Mr. Fairley, you --
17 suicide, what would that accomplish for you? It would
18 take the pain away.
19 You're not feeling like the pain is being
20 managed? Well, you can only manage it so far. You
21 don't want to get it -- heavy into the narcotics, I
22 mean, I don't --
23 You don't want to be addicted? No, I -- I
24 don't want them controlling me, but then again the --
25 I think the pain is controlling me so I'm -- I'm still

1 working on that with the doctors. We'll see. I think
2 the counseling has helped me some, going to continue
3 with that. It was a little bit -- I was a little bit
4 more -- had thoughts that way when I was on the Paxil
5 and I've been off of that now so that -- that seems
6 to --
7 Paxil made you feel more suicidal? Yeah,
8 I -- the Wellbutrin seems to be a little better. I
9 still have days where I just -- I could just stay in
10 bed, but my wife, bless her heart, she --
11 Prompts you to get up? She prompts me to
12 get up, prompts me to get showers and stuff. Some
13 days I don't feel like it, but I -- she makes me.
14 You do shower yourself and bathe yourself?
15 My depression, what I can do to help it.
16 Have you been suicidal? I have thought
17 about it.
18 Have you ever acted on it? No.
19 Have you ever planned or -- when you would
20 do it? I've thought about planning it, but never
21 really -- I've had people around me, they've been
22 talking to me so I -- they've been adjusting my meds,
23 I think it's helping a little bit. There's still some
24 days and I just need to have somebody to talk to at
25 those times and fortunately I have them.

1 So you're in group therapy on Thursdays and
2 you see her three to four times this year? About once
3 a month.
4 Once a month? Yeah.
5 And what made you start seeing
6 Dr. Wilanowski? Well, for about a year I hid those
7 thoughts and --
8 You didn't talk about it in group? Not
9 really, and finally came out one time and -- at the
10 rehab and they were concerned about me so I -- I
11 arranged an appointment with her and --
12 Do you own any weapons? No, I don't.
13 Have you ever tried to hurt anyone else?
14 No.
15 Do you think you're depressed, sir? I do.
16 Why would you just start seeing
17 Dr. Wilanowski this year? Well, like I said, they --
18 they mentioned the -- the suicidal thoughts and they
19 picked up on it somewhere and -- I'd never mentioned
20 it to anybody. They recommended I see -- see someone,
21 that's how -- she was the closest one to me so --
22 How do you get along with her? She's a
23 wonderful lady.
24 She is a nice lady. What does she say or
25 recommend to you? We've just been trying to adjust

1 the meds and she just says continue to talk to people
2 and talk to me and --
3 Have you been tearful? Oh, yeah, I cry at
4 the drop of a hat sometimes. A lot of times I just
5 have to turn the news off because it's just so
6 depressing and intensifies what I have already.
7 Whose fault is it this accident happened?
8 Frustrated and just sad.
9 I understand, sir, frustrated and sad.)
10 BY MR. GURSTEN:
11 Q. Okay. Doctor, your testimony --
12 (Whereupon the videotape was played as
13 follows:
14 What are you going to do the rest --)
15 BY MR. GURSTEN:
16 Q. -- in direct and in response to my questions now about
17 what you wrote directly in your report is there is no
18 emotional injury related to the April 4, 2008
19 motor-vehicle accident.
20 Is that still your opinion today?
21 A. Well, I can concede that he has some depression now
22 and that he states it's intensified by the television.
23 He stated that he was --
24 Q. Doctor, I don't mean to --
25 A. -- seeing Dr. Wilanowski --

1 Q. Doctor --
2 A. -- as a result of his depression and I would say --
3 state that embodied in my diagnosis it clearly states
4 that chronic pain may cause a depression, which is a
5 mood, and that it's related to his medical condition
6 and the chronic pain and I think I've stated that
7 clearly.
8 Q. I -- I -- I don't think so, so respectfully, Doctor,
9 you state two times in your report and in your direct
10 and in the very beginning of my cross-examination that
11 Mr. Fairley suffered -- that you said there was no
12 evidence, no evidence of emotional injuries related to
13 this April 4, 2008 crash. Is that still your opinion?
14 MR. OBRINGER: Objection, form and
15 foundation.
16 A. That is my opinion.
17 BY MR. GURSTEN:
18 Q. Doctor, let's go on. I want to turn to a new topic.
19 You are -- the medical records in the trial deposition
20 testimony that you have received from defense counsel,
21 at least as it regards the physical injuries in this
22 case, would clearly indicate that these are
23 catastrophic, serious injuries, would you agree?
24 A. I leave that for the specialists in that area to
25 determine physical, catastrophic illnesses and their

1 diagnosis.
2 Q. Well, since you -- you actually have what defense
3 counsel has provided to you and -- and we've already
4 taken their trial depositions, I have not stated -- I
5 did not make that statement inaccurately, did I?
6 MR. OBRINGER: Objection, asked and
7 answered and -- and form and foundation.
8 BY MR. GURSTEN:
9 Q. Can you answer?
10 A. I remain in the accuracy of my previous answer.
11 Q. There are -- in your medical examination that you did
12 on behalf of the lawyers for Schiber there are
13 questions that you did spend a lot of time on. You
14 spent a lot of time it looks like asking about other
15 potential causes or -- or what else could be causing
16 the emotional injuries and depression. You asked him
17 about what his religion is, how often he goes to
18 church, does he gamble, has he ever declared
19 bankruptcy, has he ever had any extramarital affairs,
20 you went through basically every single form of
21 alcohol and every single form of drug, including
22 crack. You asked him all these questions in your
23 report, true?
24 MR. OBRINGER: Objection, form and
25 foundation.

1 A. Those are normal questions that are done in a
2 mental-status examination.
3 BY MR. GURSTEN:
4 Q. Can you tell me something, please, in a case of -- of
5 this kind of severity where you're asking him about
6 these things like how often he goes to church, do you
7 think that is more important than asking him about how
8 the relationship with his wife has changed?
9 MR. OBRINGER: Objection; form, foundation.
10 A. I didn't weigh one response greater than the other. I
11 did a general assessment of his ego strengths and the
12 functioning of his coping skills.
13 BY MR. GURSTEN:
14 Q. Can you show me anywhere in your report where it
15 reflects you asking him or him telling you about how
16 the relationship with his wife has been affected by
17 this crash?
18 MR. OBRINGER: Objection, form and
19 foundation.
20 A. It is not in my report, as you stated.
21 BY MR. GURSTEN:
22 Q. Doctor, was that a -- another mistake or did you
23 intentionally exclude that information from your
24 report?
25 A. Not --

1 MR. OBRINGER: Objection; form, foundation,
2 argumentative.
3 A. Not as you stated that.
4 BY MR. GURSTEN:
5 Q. I'm sorry?
6 A. Not as you stated it.
7 Q. Did you ask questions about his relationship with his
8 wife and how it's affected her in your examination?
9 A. I think he put forth that about his wife, trying to
10 get him to go out and -- and helping him cope with his
11 condition.
12 Q. You just thought that was not important enough to
13 include in your report?
14 MR. OBRINGER: Objection; form, foundation.
15 A. That's not what I said.
16 BY MR. GURSTEN:
17 Q. Okay. Do you think that it's more important as a
18 psychiatrist who's doing a -- a psychiatric evaluation
19 to know how the relationship and intimacy between a
20 man and wife who have been married for 25 years, how
21 that has been impacted, than it is to talk about his
22 general medical conditions like diabetes which he
23 doesn't have, triglycerides, hypertension, asthma
24 which he doesn't have, obesity and vertebral
25 degenerative arthritis?

1 MR. OBRINGER: Objection, form and
2 foundation.
3 A. I have no records of Mr. Fairley's functioning with
4 his wife prior to the motor-vehicle accident in April
5 of 2008.
6 BY MR. GURSTEN:
7 Q. Do you have anything to indicate to you that he and
8 his wife had a very successful and happy marriage?
9 A. I have no records prior to April 2008.
10 Q. What -- what -- do you think that would be important
11 in terms of evaluating the psychological and
12 psychiatric impact, the emotional injuries he has
13 suffered, to know how the relationship with his wife
14 has changed?
15 A. Mr. Fairley didn't offer that as I recall and I don't
16 have any records to suggest that there has been a
17 change.
18 Q. Mr. Fairley did not offer that and you have no records
19 to suggest there has been a change?
20 A. That's correct.
21 Q. Doctor, I'd like you to listen to your examination
22 with him.
23 (Whereupon the videotape was played as
24 follows:
25 Some days I -- I -- I forget to eat. I'll

1 eat a bowl of cereal and I'll just -- before I know it
2 it will be time to eat dinner and I hadn't ate lunch
3 or nothing, it's just -- just forget.
4 How often do you have sex with your wife?
5 Since the accident, zilch.
6 Is there something that was damaged that
7 you can't get an erection? It's not that, it's just
8 too painful.
9 You don't work around it like different
10 positions or anything like that? Well, other than
11 maybe a little masturbation by -- with her, but other
12 than that, no, and that's very seldom. It's just --
13 we're just not intimate anymore. It's just -- it's
14 one of the things I really miss.
15 How old is your wife? Oh, God.
16 Younger or older than you? She's younger,
17 she's 49.
18 So a lot younger. She's a lot younger than
19 you? Six -- six years.
20 Six years.)
21 BY MR. GURSTEN:
22 Q. Doctor --
23 (Whereupon the videotape was played as
24 follows:
25 How has your life --)

1 BY MR. GURSTEN:
2 Q. -- he told you that since this crash and his injuries
3 he's had no sex with his wife, that they're no longer
4 intimate and that's something that he really misses.
5 Was that something that would be important
6 to have in your report?
7 A. Well, it disproves your assumption that he changed his
8 sexual --
9 Q. Doctor, would you answer my question, please?
10 A. I am answering it, sir.
11 Q. Please.
12 A. I have no information of how he functioned prior to
13 the motor-vehicle accident and this is a very
14 sensitive subject about his sexual performance. I
15 think it's pretty clear, when someone masturbates with
16 their wife, that's sexually intimate and whether he's
17 performing sexually with penetration I have no
18 interest or understanding about his functioning prior
19 to the motor-vehicle accident. That may be by his
20 choice, it may be by their availability. I wasn't
21 performing any kind of sexual therapy or investigation
22 into his intimate life.
23 As it relates to this examination it's
24 pretty clear to me that intimacy is still available to
25 him and he still feels pain and I understand that that

1 may limiting -- may limit his certain positions, but
2 he offered that he has adjusted to it or compensates
3 for it and that they choose those activities that are
4 mutually satisfying.
5 Q. Did he tell you how frequently he and wife would have
6 intimacy before his injuries?
7 A. No, he didn't.
8 Q. And he told you he's had no intimacy since, that
9 they've had seldom masturbation and that the intimacy
10 with his wife is something he really misses?
11 A. Yes.
12 Q. And isn't it true, Doctor, that he did tell you during
13 your two-hour medical examination extensively about
14 the things he loved to do and the things that were
15 important to him and the relationship and quality with
16 his wife, you just chose not to put any of those
17 things in your report so you could conclude that there
18 is no emotional injuries that relate to this
19 motor-vehicle accident; isn't that true?
20 A. No.
21 MR. OBRINGER: Objection, form and
22 foundation.
23 BY MR. GURSTEN:
24 Q. I'll take an answer.
25 A. No.

1 Q. Doctor, the basis for your prognosis, your optimistic
2 prognosis, is that he has told you that he is
3 improving, isn't that what you said?
4 A. That's what I said.
5 Q. He told you that he felt he was less depressed and he
6 was making progress, isn't that what you said -- what
7 you testified to that he said to you?
8 A. Would you show that in my report what you're referring
9 to?
10 Q. On your report -- that's what I wrote down you
11 testifying to.
12 A. Well, I -- I would rely on my report to answer that.
13 Q. But in your report you clearly do say on page 3, first
14 paragraph, he noted that he has been improving. Did
15 you write that?
16 A. Yes, I did write that.
17 Q. And I read that exactly word for word as it appears in
18 your report?
19 A. Yes.
20 Q. Doctor, do you have your notes from the examination
21 that you took with him?
22 A. Yes.
23 Q. Would you look through your notes and please point to
24 where he told you he is improving?
25 A. No, I don't know that I can point that out in my

1 notes.
2 Q. Do you want to try and find it for us?
3 A. I cannot.
4 Q. Doctor, you're testifying under oath today and your
5 testimony is that he told you he is improving, true?
6 A. That's my understanding, yes.
7 Q. Well, that's not your understanding, this isn't a
8 mistake, you specifically testified under oath that
9 he's told you he's improving, true?
10 A. My understanding of what he told me is in my report.
11 Q. Where you say he told you he's improving?
12 A. That's my understanding.
13 Q. Because if he did not say those things to you, if he
14 never said he's improving but the jury believed he did
15 because of your sworn testimony, the consequences for
16 Mr. Fairley could be catastrophic, couldn't they?
17 A. No.
18 MR. OBRINGER: Objection, form and
19 foundation.
20 BY MR. GURSTEN:
21 Q. Well, the jury could unfairly turn him away or punish
22 him based upon your testimony that he said to you he's
23 improving, couldn't they?
24 A. No, they couldn't. The trier of fact would assess --
25 would assess all of the conditions to determine his

1 status. My role is to look at the psychiatric
2 portions.
3 Q. And is your role to put things in your report and to
4 testify about things that the person you are examining
5 has never said?
6 A. No, that's not my role.
7 Q. If -- if that were what you were doing and you're
8 testifying about it, you would be committing perjury?
9 MR. OBRINGER: Objection; form, foundation,
10 argumentative.
11 BY MR. GURSTEN:
12 Q. I'll take an answer.
13 A. You didn't ask me a question.
14 MR. GURSTEN: Would you read it back,
15 please?
16 (The following requested portion of the
17 record was read by the reporter at
18 11:21 a.m.):
19 Q. If that were what you were doing and
20 you're testifying about it, you would be
21 committing perjury?)
22 BY MR. GURSTEN:
23 Q. Isn't that true?
24 A. As you stated, yes.
25 Q. And you'd also be committing fraud and you'd also be

1 violating your code of ethics with your own
2 profession, the American Psychiatric Association?
3 MR. OBRINGER: Objection, form and
4 foundation.
5 BY MR. GURSTEN:
6 Q. Is that true, Doctor?
7 A. That's true.
8 Q. Doctor, were you told by any of the lawyers or any
9 agent of Schiber Truck to put in your report or to
10 testify that Mr. Fairley said he is improving?
11 A. No.
12 Q. Doctor, I'd like you to listen to what he said to you
13 in your examination.
14 (Whereupon the videotape was played as
15 follows:
16 So after you got out of Chelsea you
17 followed up with the physical therapy? Yeah, they
18 came to my house for like six weeks and --
19 So you had home therapy then? Yeah.
20 When were you able to walk on your own? I
21 could walk when I got out of Chelsea, I just couldn't
22 go very far. Still can't go real far.
23 How far can you go? I'm probably up to I'd
24 say a mile and a half at the Y and I used to -- I used
25 to walk four miles before the accident.

1 Do you think you'll ever go back to work?
2 Highly doubt it.
3 Why is that? Just the pain factor, that
4 and I can't -- unless it's a simple job I don't think
5 I could even get it through my head, keep things in
6 order, whatever.
7 What do you mean, in your head? I don't
8 think -- if I had a lot of duties I don't think I
9 could keep them straight.
10 Oh, you mean your head as far as -- Yeah,
11 I kind of -- I can't sit or stand for more than
12 15 minutes at a time without severe spasm coming in.
13 Where is the severe spasm? My back.
14 Are you doing all that your doctors have
15 advised you to do -- Yep.
16 -- except the Y is something that
17 Dr. Perlman says no sense coming back there, go to the
18 Y? Yeah.
19 Okay. Pretty much.
20 So you are compliant? Yeah, and basically
21 that's just so I can continue to be mobile and get out
22 of the chairs and stuff, it's not anything beyond
23 that. Most chairs though I'm uncomfortable in. If I
24 can recline it's a little better.
25 Reclining is better? But as far as a

1 set-up chair like these, huh-uh, it's just a certain
2 amount of time and it just starts hurting really bad.
3 Hurts (sic) better if you lay back? Do you
4 have a recliner at home? Yeah, some days I've just
5 got to go up and lay in the bed.
6 Do you do any reading or watching TV? TV
7 is about all I can do anymore.
8 What's a good day for you? I don't know, I
9 haven't had one lately.
10 Any constipation? Sometimes with meds.
11 Is there anything I haven't asked you you
12 feel is important for me to know? Yeah, I just have a
13 profound sadness and I feel overwhelmed at times and
14 just -- I don't know what to do, I just -- none of
15 the -- none of the things I like to do I can do
16 anymore and, I don't know, it just seems -- seems
17 useless to be around sometimes. I don't know.)
18 BY MR. GURSTEN:
19 Q. Doctor, you testified and wrote in your report that he
20 told you he's improving. I heard him say that he
21 hasn't even had a good day, can you explain?
22 MR. OBRINGER: Objection, form and
23 foundation.
24 A. That is his perception, he hasn't had a good day and I
25 acknowledge that that's his perception.

1 BY MR. GURSTEN:
2 Q. Doctor, did he ever tell you in your examination of
3 him that he is improving?
4 A. I need to see the entire videotape and audiotape and
5 my recollection is that he said he was improving, not
6 at this time, but amongst some other areas of his
7 functioning, yes.
8 Q. That's -- that's not what you've testified to, Doctor.
9 You didn't -- let's do this, Doctor, you're --
10 you're --
11 MR. OBRINGER: I don't know if it's a
12 question, but I object to form and foundation.
13 MR. GURSTEN: No, I'll strike it. I'll
14 strike it.
15 BY MR. GURSTEN:
16 Q. Doctor, I'd like you to assume that the jury in this
17 case does have notebooks and if they write this down
18 and if Judge Wilson allows them to watch the full
19 medical examination that you took of Mr. Fairley --
20 A. Yes.
21 Q. -- you are testifying under oath that this jury will
22 hear him tell you that he is improving?
23 Doctor?
24 A. I'm sorry, what is your question?
25 Q. Is it your testimony today that if the jury watches

1 your examination of Mr. Fairley that they will hear
2 him tell you at any time that he is improving, that he
3 feels he's getting better, is that your testimony?
4 A. I'm not -- I can't say what the jury will hear, but I
5 would say the trier of fact will get the impression
6 that Mr. Fairley -- Fairley implied to me and told me
7 and I understood from his -- his statement of what
8 he's had in the past and what he's undergoing now is
9 an improvement and in that regard I captured that in
10 my report. Not a quote, but as he stated it there's
11 certain things he had in treatment that he no longer
12 requires and that to me is improving, that he told me
13 he's no longer using those things and electing to use
14 others, and from that I deduced, as is my right as an
15 expert witness, that he has shown improvement.
16 Q. Doctor, you testified in your direct examination in
17 response to the lawyer from Schiber's questioning, his
18 direct questioning, that you said he was -- that
19 Mr. Fairley told you he is improving, from your
20 observation he is improving and that was a positive
21 prognosis to you, and that you said consistently that
22 he said he is improving and you wrote in your report
23 that he said he is improving. My question to you is
24 simple, if we listen to your two-hour videotape are we
25 ever going to hear Mr. Fairley say to you that he is

1 improving?
2 A. You won't hear it in a quote, but you'll hear how he's
3 no longer the way he was. Even as he stated, he was
4 able to walk when he left the hospital, not as much as
5 four miles, but I don't know that he walked four miles
6 before the incident -- accident and that he has --
7 Q. He told you he did?
8 A. -- improvement.
9 Yes, he did. I have no records to support
10 that and his perception is that he walked four miles.
11 I don't know four miles or not, but at the gym he's
12 walking a mile and a half. And further, he has
13 indicated that he is not doing the things he used to
14 do that he was interested in, the things he's able to
15 do he performs well, like the Ernie Harwell -- Harwell
16 book that he's reading that he --
17 Q. Well, I'm --
18 A. -- said he doesn't read.
19 Q. -- I'm glad you brought that up.
20 Are you saying that if we listen to the
21 videotape he's going to tell you that he's currently
22 reading the Ernie Harwell report or that that was a
23 book he had read before this accident, that he
24 remembers reading?
25 A. I'm not sure.

1 Q. Is he going to tell you if we watch this report (sic)
2 that he has diabetes?
3 A. I'm not sure.
4 Q. Is he going to tell you that he has asthma?
5 A. I'm not sure.
6 Q. Is he going to tell you that he has hypertension from
7 before this accident?
8 A. I'm not sure.
9 Q. Is he going to tell you that he was obese before this
10 accident?
11 A. I'm not sure.
12 Q. Nowhere in your report do you write down that because
13 he could walk better now than he did when he left
14 Chelsea after his first two weeks in the hospital that
15 he is improving on his walking, if we read your report
16 we're going to get the impression and listen to
17 your -- your testimony today we get the impression
18 that he's telling you, at least at the time of your
19 exam, Doctor, that he feels he's improving, true?
20 A. My -- my report reflects that he is improving.
21 Q. Doctor, nowhere in your report did you write that he
22 contradicts himself, that he told you in one place
23 that he's not improving, that he, quote, hasn't had a
24 good day lately, but you told us that he told you he's
25 improving. Is that a contradiction?

1 A. That's my understanding that he hasn't had a good day
2 lately, but he has had good days.
3 Q. That's very different from what you've testified to
4 now, isn't it?
5 A. That is what I'm saying.
6 MR. OBRINGER: Objection, form and
7 foundation.
8 BY MR. GURSTEN:
9 Q. Okay. Doctor, I just want to be absolutely crystal
10 clear on this. Is it your testimony under oath that
11 Mr. Fairley ever told you that he is improving --
12 MR. OBRINGER: Objection --
13 BY MR. GURSTEN:
14 Q. -- yes or no?
15 MR. OBRINGER: Objection, asked and
16 answered.
17 A. I rely upon my statements already made.
18 MR. GURSTEN: Nothing else.
19 RE-EXAMINATION
20 BY MR. OBRINGER:
21 Q. Doctor, is there anything after all this -- after the
22 cross-examination here that would cause you to change
23 the opinions and conclusions that you rendered under
24 direct examination?
25 A. No.

1 MR. OBRINGER: Thanks, Doctor, nothing
2 else.
3 Oh, I just -- before we close the record I
4 wanted to read in those -- I didn't put in the
5 specific documents, you know, that -- the list of 12
6 things. So these were the -- the items.
7 One, narrative report of Dr. Wilanowski
8 dated April 16, 2010. Two, medical records of
9 Dr. Wilanowski. Three, report of Dr. Yvan Silva, M.D.
10 Four, report of Dr. Louis, B-O-J-R-A-B, M.D. dated
11 April 14th, 2010. Report of Dr. -- or report of
12 Steven Schechter, M.D. dated August 6th, 2009.
13 Neuropsychological assessment of Philip Liethen, Ph.D.
14 dated May 13th, 2009. Deposition transcript of Harish
15 Rawal, M.D. dated April 5, 2010. Neuropsychological
16 evaluation of Bradley Sewick, Ph.D. dated November 21,
17 2009. Medical records of Associates in Physical
18 Medicine, Dr. Perlman. Initial neuropsychological
19 evaluation by Dr. Terry Braciszewski and medical
20 records of Ann Arbor Rehabilitation Centers, Inc., and
21 the records of Robert B. Ancell, Ph.D., and those are
22 the 12 items that I didn't go through on direct.
23 That's all I wanted to complete.
24 MR. GURSTEN: Nothing else.
25 VIDEO TECHNICIAN: This concludes today's

1 deposition, the time is 11:33 and 41 seconds a.m., we
2 are now off the record.
3 (The deposition was concluded at 11:33 a.m.
4 Signature of the witness was not requested by
5 counsel for the respective parties hereto.)

1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF OAKLAND)
5

6 I, BECKY JOHNSON, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to, either party nor interested in the event
14 of this cause.
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BECKY JOHNSON, CSR-5395
Notary Public,
Oakland County, Michigan
My Commission expires: January 28, 2013

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