

IN THE COURT OF APPEALS
THE SECOND APPELLATE DISTRICT OF TEXAS

TXI TRANSPORTATION COMPANY,
RICHARDO REYNA RODRIGUEZ, AND
AURELIO MELENDEZ

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VS.

NO. 02-04-00242-CV

RANDY HUGHES, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF SHILOH HUGHES;
CLINT ROYSE, INDIVIDUALLY AND
NEXT FRIEND OF JAGR ROYSE AND
AS PERSONAL REPRESENTATIVE FOR
THE ESTATE OF AFTON HUGHES
ROYSE, ET AL

R E P O R T E R ' S R E C O R D
(TRIAL DAY NO. 4, May 10, 2004)
(VOLUME 8 OF 15)

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On the 10th day of May, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable John H. Fostel, Judge
presiding, held in Decatur, Wise County, Texas:

Proceedings reported by Computerized
Stenographic Method and Computer Aided Transcription.

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NO. 03-05-379

RANDY HUGHES, Individually)
and as Personal Representative)
for the ESTATE OF SHILOH)
HUGHES; CLINT ROYSE,)
Individually and as Personal)
Representative for the ESTATE)
OF AFTON HUGHES ROYSE; and as)
Next Friend of JAGR ROYSE;)
WILLIE WATKINS; Individually)
and as Personal Representative)
for the ESTATE OF JOYCE)
WATKINS; SHIRLEY RITCHEY;)
CAROLYN LARGENT; BETTY GENTRY)
and JOHNNY WATKINS)
Plaintiffs,)

IN THE DISTRICT COURT

OF WISE COUNTY, TEXAS

VS.)
TXI TRANSPORTATION COMPANY;)
AURELIO MELENDEZ; and RICARDO)
REYNA RODRIGUEZ)
VS.)
WILLIE WATKINS, Individually)
and as Personal Representative)
for the ESTATE OF KIMBERLY)
WATKINS HUGHES)

271st JUDICIAL DISTRICT

(TRIAL DAY NO. 4, May 10, 2004)

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1 P R O C E E D I N G S

2 (Proceedings continued on the
3 10th day of May, 2004.)

4 -----

5 (Open Court, jury not present.)

6 THE BAILIFF: All rise.

7 THE COURT: Thanks. You all can be seated.

8 Do we have 12?

9 THE BAILIFF: We do, your Honor.

10 THE COURT: All right. Bring them in.

11 (Open Court, jury present.)

12 THE COURT: All right. Good morning.

13 How are you all doing this morning?

14 THE JURORS: Good morning.

15 THE COURT: I wish every mother on the jury
16 a belated happy Mother's Day.

17 THE JURORS: Thank you.

18 THE COURT: All right. You may call your
19 first witness.

20 MR. SIMPSON: Yes, your Honor. We would
21 call Mr. Melendez.

22 THE COURT: All right. Raise your right
23 hand.

24 THE WITNESS: (The Witness complied.)

25 THE COURT: Do you swear to tell the truth,

1 the whole truth, and nothing but the truth, so help you
2 God?

3 THE WITNESS: I do.

4 THE COURT: Very well. If you'll have a
5 seat to my right.

6 THE WITNESS: (The Witness complied.)

7 THE COURT: And you may examine this
8 witness.

9 AURELIO MELENDEZ,

10 having being first duly sworn, testified as follows:

11 CROSS EXAMINATION

12 BY MR. SIMPSON:

13 Q. Mr. Melendez, my name is Mike Simpson.

14 Would you please give the jury your name
15 and address?

16 A. My name is Aurelio Melendez. I live --

17 (Not audible.)

18 THE COURT REPORTER: Okay. Hold on just a
19 second.

20 (A brief interruption occurred.)

21 A. (BY THE WITNESS) My name is Aurelio Melendez.

22 I live at 3510 Dallas, Texas --

23 I'm sorry.

24 -- 3510 Manning, Dallas, Texas, 75233.

25 Q. Mr. Melendez, Ricardo Rodriguez drove a truck

1 of yours, did he not?

2 A. Yes. That's correct.

3 Q. In fact, he drove the truck that was involved
4 in this accident on December 17th, 2002?

5 A. Yes, that's correct.

6 Q. Have you ever seen the application of
7 Mr. Rodriguez that he filled out for TXI?

8 A. Yes, I did see it.

9 Q. Now, do you know whether he filled this
10 application out, or someone else did?

11 A. I have no idea about that, sir.

12 Q. Okay. He didn't fill the application out for
13 you, did he, Mr. Melendez?

14 A. He -- He did fill it out for TXI.

15 Q. Okay. He filled it out for TXI, but he -- you
16 never saw the application, did you?

17 A. I did see it.

18 Q. Okay. But he filled it out for TXI at TXI's
19 office, did he not?

20 A. That's correct, but he give it to me and I
21 turned it into TXI.

22 Q. Well, whose handwriting is this, do you know?
23 (Indicating)

24 That doesn't look like Mr. Rodriguez'
25 handwriting, does it?

1 A. I believe it's his writing.

2 Q. You think that's his handwriting?

3 A. I think so.

4 Q. Let's look at his signature here.

5 Okay. You think that's his signature?

6 A. Yeah, I think that's his signature.

7 Q. Okay. Do you think it matches the handwriting
8 on the first page?

9 A. Okay. May I see that other one again?

10 Q. Sure. You think that's Mr. Rodriguez'
11 handwriting? (Indicating.)

12 A. I think it is.

13 Q. Okay.

14 A. I'm not certain, but I think it is.

15 Q. If that's his handwriting, when they asked him
16 whether he had the legal right to work in the United
17 States, he was untruthful, was he not?

18 A. I don't know about that, sir.

19 Q. Well, you're a friend of Mr. Rodriguez, aren't
20 you, Mr. Melendez?

21 A. Well, I would say, yes, sir.

22 Q. And, in fact, you have gone over to his house
23 before and had breakfast, haven't you?

24 A. I did once.

25 Q. And you've had numerous conversations with him,

1 haven't you?

2 A. Regarding working for me conversations, surely.

3 Q. You have visited with him before and had
4 conversations with him, have you not?

5 A. That was the only time I was at his house.

6 Q. And you see him every day literally -- well,
7 five, six days a week, do you not?

8 A. That is correct.

9 Q. Are you telling this jury that you did not know
10 that he had illegally entered the United States,
11 Mr. Melendez?

12 A. I did not have no knowledge of that. We never
13 talk about his legal immigration issues. We did not.

14 Q. And how long have you known Mr. Rodriguez,
15 Mr. Melendez?

16 A. I will say like about two years, before he come
17 to work for me.

18 Q. Okay.

19 MR. STRADLEY: Your Honor, we would object
20 to this line of questioning as being irrelevant,
21 immigration --

22 THE COURT: State relevance.

23 MR. SIMPSON: Your Honor, the relevance is
24 that this man did not have a valid driver's license to
25 drive in the State of Texas, and we are establishing

1 that he did not have a license, and Mr. Melendez knew
2 that he did not have a license, because he knew that he
3 wasn't a resident of the United States and that he had
4 illegally entered the U.S.

5 MR. STRADLEY: Your Honor, that wasn't the
6 question that he asked, and that was a speaking
7 objection, and I object to his inflammatory
8 argumentative comments, which are also not true, it was
9 a valid license. The record will reflect that.

10 THE COURT: Overruled.

11 Q. (BY MR. SIMPSON) Mr. Melendez, are you telling
12 this jury that you knew Mr. Rodriguez two years before
13 you hired him, which he worked for you about a
14 year-and-a-half; correct, before the accident?

15 A. Yes. Correct.

16 Q. So about --

17 You knew him for three-and-a-half years.
18 You went over to his house to eat. You talked to him on
19 a daily basis, and you never knew that he illegally
20 entered the U.S.?

21 A. I do not know. I know a lot of people -- a lot
22 of Hispanic people. I don't go around asking them if
23 they're legal or not. I don't want to know. He never
24 told me; I never asked.

25 Q. So since he never told you, you never asked?

1 A. That's correct.

2 Q. You're telling the jury you never asked him
3 that?

4 A. I did not ever ask him if he was legal or
5 illegal.

6 Q. Did you ever see a Social Security card that he
7 had?

8 A. Yes, I did.

9 Q. Okay. Where is that Social Security card?

10 A. Where is --

11 Well, in his wallet --

12 Q. It's in his wallet.

13 Well, he's going to testify here. Will he
14 have it in his wallet?

15 A. I have no idea, sir. I assume he might have it
16 in his wallet.

17 (Plaintiffs' Exhibit No. 36
18 marked for identification.)

19 MR. SIMPSON: Your Honor, we're going to
20 offer Plaintiffs' Exhibit No. 36, which is a request for
21 information from a previous employer to Aggregate
22 Haulers?

23 MR. STRADLEY: No objection.

24 THE COURT: It's admitted.

25 MR. SIMPSON: Your Honor, we'd like to

1 publish this just briefly.

2 THE COURT: All right.

3 Q. (BY MR. SIMPSON) Mr. Melendez, have you ever
4 seen this request for information form before on
5 Mr. Rodriguez?

6 A. Yes, I did.

7 Q. Okay. And it tells us that Mr. Rodriguez
8 worked for Aggregate Haulers from 03/03/00 to 06/27/00;
9 is that correct?

10 A. That's what it says, yes, sir.

11 Q. Is that correct?

12 A. Yes.

13 Q. Okay. That's -- That's not what he said on his
14 application, was it?

15 A. I cannot recall that.

16 (Plaintiffs' Exhibit No. 37
17 marked for identification.)

18 MR. SIMPSON: Your Honor, we would ask that
19 Plaintiffs' Exhibit No. 37, a request to Data Documents
20 for employment by Mr. Rodriguez be admitted into
21 evidence.

22 MR. STRADLEY: Your Honor, is this No. 37?

23 MR. SIMPSON: Huh?

24 MR. STRADLEY: Is this No. 37?

25 MR. SIMPSON: Yes, that's No. 37.

1 MR. STRADLEY: Your Honor, this is a
2 deposition, and as such we would object to its
3 admission.

4 It's testimonial evidence, not documentary
5 evidence, and we would object to its admission on those
6 grounds.

7 Further, we would object as to relevancy.

8 THE COURT: Approach.

9 (Discussion off the record.)

10 THE COURT: Sustained.

11 MR. SIMPSON: Your Honor, we would request
12 that we be able to read Deposition Exhibit No. 37.

13 THE COURT: You may read that.

14 MR. SIMPSON: Can we also publish it, your
15 Honor, since we're going to be reading from it?

16 THE COURT: Yes.

17 MR. SIMPSON: Thank you, your Honor.

18 Okay. First of all, these are direct
19 questions to be propounded to the record custodian for
20 Data Documents.

21 (Reading.)

22 "QUESTION: State your full name, employer
23 occupation, business address.

24 "ANSWER: Linda Moore, HR assistant,
25 Corporate Express Document, print management (formerly

1 Data Documents).

2 "QUESTION: Are you custodian of records
3 for your employer?

4 "ANSWER: Yes.

5 "QUESTION: Please check your records and
6 tell us if those records are outlined in the subpoena
7 duces tecum served on your employer.

8 "ANSWER: No record of this individual,
9 Ricardo Reyna Rodriguez, Social Security No.
10 464-25-3182."

11 And, your Honor, if we could, briefly --

12 This is a subpoena duces tecum to Data
13 Documents for them to produce any and all employment
14 records of Mr. Ricardo Rodriguez.

15 Q. (BY MR. SIMPSON) Now, isn't it true,
16 Mr. Melendez that Mr. Rodriguez on his application
17 listed Data Documents as the employer from February '96
18 until '97; is that not correct?

19 A. Yes. Correct.

20 Q. Okay. And that document that we just read into
21 evidence shows that he lied on that; correct?

22 A. I have no knowledge of that.

23 Q. Well, you can certainly read that, can't you,
24 Mr. Melendez?

25 A. Yes.

1 Q. And you know that from what we just read in,
2 they said he wasn't employed by them; correct?

3 A. That's correct.

4 Q. Now, he said that he was a driver for Data
5 Documents, was he not -- or that's what he's telling
6 TXI; correct?

7 A. That's correct.

8 Q. And he says that his employment is from May of
9 '96 until January of '97; correct?

10 A. That's true.

11 Q. And you're saying that that's his handwriting;
12 is that correct?

13 A. I believe so.

14 Q. Okay. When did he get his license to drive a
15 truck, Mr. Melendez?

16 A. When did he get it?

17 I don't know.

18 I believe it was somewhere in '96.

19 Q. May of '96; correct?

20 A. I believe. Right.

21 Q. Don't you agree that he would not have had a
22 driver's license when he says that he was driving for
23 Data Documents?

24 A. Yes, I believe.

25 Q. That's another lie, isn't it?

1 A. Could be.

2 MR. STRADLEY: Your Honor, may we approach
3 for a moment?

4 THE COURT: Yes, you may.

5 (Discussion off the record.)

6 THE COURT: Overrule your objection.

7 (Plaintiffs' Exhibit No. 38
8 marked for identification.)

9 MR. SIMPSON: Your Honor, we would ask that
10 Plaintiffs' Exhibit 38 be admitted into evidence.

11 MR. STRADLEY: Your Honor, we object to
12 Plaintiffs' Exhibit 38, that this is excerpts from the
13 Transportation Code, and as such, would not be factual
14 evidence to be submitted as an exhibit.

15 It would be an unfair comment on the weight
16 of the evidence, and we object on those grounds and it's
17 irrelevant.

18 THE COURT: Overruled. Admitted

19 Q. (BY MR. SIMPSON) Mr. Rodriguez, is it your
20 position before this jury that --

21 Excuse me.

22 Mr. Melendez, is it your position before
23 this jury that Mr. Rodriguez has a valid driver's
24 license?

25 A. Yes, I believe so.

1 Q. Are you aware that he has a falsely obtained or
2 falsely secured Social Security number?

3 A. I know now.

4 Q. You don't know?

5 A. I do know.

6 Q. You do know that?

7 A. I know now this moment, yes, sir.

8 Q. I'm sorry.

9 Would you repeat --

10 A. I know now, but I didn't know before.

11 Q. You did not know before, but you know now --

12 A. Yes.

13 Q. -- that he had a false Social Security number?

14 A. Yes, I did.

15 Q. Okay. You can't get a license in the State of
16 Texas with a false Social Security number, can you?

17 A. I don't know the state laws.

18 Q. Okay. Well, let's look at this right here.

19 This is Exhibit No. 38. It states, "An application for
20 a commercial driver's license or a commercial driver's
21 learner's permit, must include:"

22 And on No. 4 it said, "The applicant's
23 Social Security number;" is that correct?

24 A. That's correct.

25 Q. If he didn't have a Social Security number, he

1 couldn't get a license, could he, Mr. Melendez?

2 MR. STRADLEY: Objection. Objection, your
3 Honor. He's asking for a legal conclusion from a lay
4 witness.

5 THE COURT: Sustained.

6 Q. (BY MR. SIMPSON) Does that require -- No. 4,
7 does it ask that he provide a Social Security number?

8 A. Yeah, that's what it says.

9 Q. Okay. And it says he must include-- an
10 application must include a Social Security number;
11 correct?

12 Doesn't say "may"; it says, "must;"
13 correct?

14 A. That's correct.

15 Q. Have you ever seen Mr. Rodriguez' driver's
16 license?

17 A. Yes, I've seen it before.

18 Q. Okay. It does not have "non-resident" on the
19 face of it, does it?

20 A. I did not remember what it says. It's been a
21 while since I've seen it.

22 (Plaintiffs' Exhibit No. 39
23 marked for identification.)

24 MR. SIMPSON: Your Honor, we would ask that
25 Exhibit 39 be admitted into evidence. It's a copy of

1 the Texas Motor Carrier Safety Regulations.

2 MR. STRADLEY: Your Honor, we would object
3 to Plaintiffs' Exhibit No. 39 for the reason that this
4 is improper impeachment of this witness.

5 These are certain rules that this witness
6 is not an expert witness, and he is not qualified to
7 testify as to certain of these rules.

8 Further, this is irrelevant and prejudicial
9 under Rule 403.

10 THE COURT: Overruled. Admitted.

11 MR. SIMPSON: Your Honor, we would wish to
12 publish Exhibit No. 39, and ask Mr. Melendez questions
13 about it.

14 THE COURT: You may.

15 Q. (BY MR. SIMPSON) Mr. Melendez, how many trucks
16 do you own?

17 A. At this moment I own seven.

18 Q. Seven?

19 A. Seven.

20 Q. And you have seven drivers in those trucks?

21 A. No, I've got six.

22 Q. Six.

23 Do you drive a truck?

24 A. No, I'm not at this moment.

25 Q. Okay. Is there one that's down in the yard

1 or --

2 A. Yes, for --

3 Q. Okay. Are all those drivers Hispanic drivers?

4 A. Yes, sir.

5 Q. Mr. Melendez, are you familiar with the Texas
6 Motor Carrier Safety Regulations?

7 A. No, sir, I do not.

8 Q. You mean to tell me --

9 I'm going to show you No. 39.

10 --that you've never heard of the Texas
11 Motor Carrier Safety Regulations?

12 A. I hear about it, but I don't know the rules of
13 the-- or the laws.

14 Q. Okay. You have seven trucks that drive on the
15 highways of Wise County in the State of Texas, and you
16 don't know anything about this act?

17 A. No, I don't.

18 Q. Okay. Did you know that in order for a driver
19 to drive your truck, that they have to have a valid
20 driver's license?

21 A. Yes, sir, I do know that.

22 Q. You do know that?

23 A. I know that.

24 Q. Okay. And you say that Mr. Rodriguez had a
25 valid driver's license?

1 A. Yes, that's correct.

2 Q. It says, "A person is qualified to drive a
3 commercial motor vehicle if he or she --" and then it
4 gives the different things: "(5) has a currently valid
5 commercial motor vehicle operator license, issued only
6 by one state or jurisdiction." Did you read that?

7 A. Yes.

8 Q. Okay. Mr. Melendez, if a person came to your
9 office or to your place of business, and said that they
10 were 13 years old and had -- but said they had a valid
11 driver's license, would you allow them to drive your
12 truck?

13 A. No.

14 Q. If you knew they were 13 years old, would you
15 allow them to drive your truck?

16 A. No.

17 Q. If they showed you they had a driver's license,
18 and they were 13 years old of age, would you let them
19 drive your truck?

20 A. No, sir, I do not.

21 Q. Well, but they had -- they've got a valid
22 driver's license that they got from the DPS --

23 A. Uh-huh.

24 Q. -- would you let them drive your truck?

25 A. No.

1 Q. If they lied about their qualifications in
2 order to drive your truck, would you let them drive your
3 truck?

4 A. If I knew of their lie, I would not let them
5 drive my truck.

6 Q. Okay. Mr. Melendez, Mr. Rodriguez' deposition
7 was taken on November 18th, 2003. He said he didn't
8 have a Social Security number and he said that he was --
9 he had illegally entered the United States; is that
10 correct, in that deposition?

11 A. Yes, I believe so.

12 Q. And you were there, weren't you, Mr. Melendez?

13 A. Yes, sir, I was there.

14 Q. And you let him drive after November 18th,
15 2003, didn't you, Mr. Melendez?

16 MR. STRADLEY: Objection; not relevant.

17 Post-accident conduct is not relevant.

18 THE COURT: Overruled.

19 Q. (BY MR. SIMPSON) You let him drive after that
20 deposition, when you found out that he didn't have a
21 Social Security number, and he didn't -- and he
22 illegally entered the U.S.; correct?

23 A. That's correct.

24 Q. And he --

25 You're still letting him drive, aren't you?

1 A. Yeah, he's still driving for me.

2 Q. Mr. Melendez, I think you said that you
3 road-tested Mr. Rodriguez, did you not?

4 A. That's correct, I did.

5 Q. But you have no proof of that road test, do
6 you?

7 A. No, I do not have no proof.

8 Q. Doesn't the rules provide that you should do a
9 road test and fill out a form on the road test?

10 A. I don't know very much, my trucks and myself.
11 I just leave it up to the TXI Transportation, and
12 they're in charge of --

13 All I got is the application where I signed
14 a sheet that I -- that he passed the road test.

15 Q. Did you give him the road test?

16 A. Yes, I did.

17 Q. There is no document to indicate that he took a
18 road test and passed it in your files, is there?

19 A. It is in the application.

20 Q. Where in the application does it show that
21 he -- you road tested him?

22 A. Okay. There's a sheet in the application
23 that -- it's a question from TXI, not from the state,
24 and I signed it that I rode tested him.

25 Q. Okay. Have you seen that sheet of paper?

1 A. I seen it, I believe so, when I filled out the
2 application.

3 Q. Do you agree that when you road test that there
4 is a form that you fill out to verify that you road
5 tested the driver?

6 A. I do not have that form.

7 Q. Let's look at what the rules say here.

8 "Examination and Tests, Road Tests: If the
9 road test is successfully completed, the person who gave
10 it shall complete a certificate of the driver's road
11 test in substantially the form prescribed in Paragraph F
12 of this section. The form for the certificate of
13 driver's road test is substantially as follows:" Did
14 you fill something out like this, Mr. Melendez?

15 A. No, sir, that's the first time I seen something
16 like this.

17 Q. You did not?

18 A. I did not.

19 Q. You understand that the rule provides that you
20 must. The rules provides that you must, does it not?

21 MR. STRADLEY: Your Honor, objection;
22 assumes facts not in evidence; also assumes a legal duty
23 that does not exist.

24 THE COURT: Overruled.

25 Q. (BY MR. SIMPSON) Mr. Melendez, look at the

1 second sentence in G. "The motor carrier shall retain
2 in the driver qualification file of the person who was
3 examined, the original of the signed road test form;"
4 correct?

5 A. That's correct.

6 Q. "And the original or a copy of the certificate
7 required by Paragraph E of this section." You did not
8 do that for Ricardo Rodriguez, did you?

9 A. I did not.

10 Q. And that's not in his driver qualification
11 file, is it?

12 A. I didn't understand that question very clear.

13 Q. Have you seen the -- a copy of the road test in
14 Mr. Rodriguez' file, either your file that you keep, or
15 TXI's file?

16 A. There is --

17 There's a -- a kind of road test, I don't
18 remember where it's at --

19 Q. Okay.

20 A. -- if it's exactly like this one or different,
21 but there is something in there about the driving test.

22 Q. Is that kept in your file or TXI's file?

23 A. It should be in both.

24 Q. Okay.

25 A. It's the same thing. I just keep copies of the

1 same application.

2 Q. Mr. Melendez, we have received TXI's file, and
3 it's not in TXI's file, I'll represent that to you.

4 MR. STRADLEY: Your Honor, I would object
5 to the sidebar comments.

6 THE COURT: I'll sustain that. No sidebar
7 comments.

8 Q. (BY MR. SIMPSON) Have you seen it in TXI's
9 file?

10 A. I believe I've seen it.

11 Q. But you're not sure?

12 A. Yeah, I'm sure. It should be in there.

13 Q. You'll have a chance to show that to me here
14 later --

15 A. Okay.

16 Q. -- when your attorneys have a chance to
17 question you.

18 A. They what?

19 I'm sorry.

20 Q. Okay. When your attorneys have a chance to
21 question you, you'll have a chance to show me that
22 document; okay?

23 A. Okay.

24 Q. I want to show you just a minute, Mr. Melendez,
25 and I'll move on, Subpart C, b(2). That provides for

1 the application for employment.

2 No. 2 under that states that the applicant
3 must give their name, address, date of birth, and Social
4 Security number. Do you agree?

5 A. Yes, I agree.

6 Q. Are you aware of Mr. Rodriguez' conviction for
7 illegally entering the United States?

8 A. No, sir, I do not.

9 Q. Did you know that he wasn't to come back to the
10 United States for 10 years after he was convicted and
11 sentenced to jail?

12 MR. STRADLEY: Objection, your Honor; not
13 relevant, Rule 403.

14 THE COURT: Sustained.

15 Q. (BY MR. SIMPSON) After the deposition of
16 Mr. Rodriguez in November of 2003, did TXI tell you that
17 it was okay if Mr. Rodriguez continued to drive your
18 truck for TXI?

19 MR. STRADLEY: Your Honor, objection; not
20 relevant.

21 THE COURT: Sustained.

22 Q. (BY MR. SIMPSON) Are you familiar with a
23 trucking company called Coronado Trucking Company?

24 A. Yes.

25 Q. Is it a Texas company?

1 A. I believe it is in Texas.

2 Q. Do you know whether or not Mr. Rodriguez worked
3 for Coronado Trucking Company?

4 A. He told me, yes, he was worked for the company.

5 Q. What, sir?

6 A. I said, he -- he said he worked with the
7 company. I don't see him working with the company.

8 Q. He did not have a license until 1996, did he?

9 A. I believe so.

10 Q. So if he said he worked for Coronado Trucking
11 from 1994 to 1996 driving a truck, he would've been
12 telling a lie, would he not have?

13 A. I don't know.

14 Q. Do you think Mr. Rodriguez was an experienced
15 driver?

16 A. Yes, he was.

17 Q. Do you think he was a qualified driver?

18 A. Yes, sir.

19 Q. Do you have other drivers?

20 A. Yes.

21 Q. That are not as good as Mr. Rodriguez that
22 drive for you?

23 A. Yes.

24 Q. You mean to tell me there are other drivers
25 that have flunked their driving skills test that drive

1 for you, Mr. Melendez?

2 MR. STRADLEY: Objection, your Honor. He's
3 misstating the evidence. He did not flunk his driving
4 skills test.

5 THE COURT: Hold it. That's a speaking
6 objection there, Counsel. I don't want anybody making
7 speaking objections.

8 MR. STRADLEY: Yes, your Honor.

9 THE COURT: Okay. Let's follow the rules
10 on that.

11 Do you have a legal objection?

12 MR. STRADLEY: Yes, your Honor.

13 Objection; misstating the record.

14 THE COURT: Overruled.

15 Q. (BY MR. SIMPSON) Can you answer that question?

16 A. Will you ask me the question again?

17 Q. Yes, sir.

18 Do you have other drivers that are less
19 qualified than Mr. Rodriguez?

20 A. I will say so.

21 Q. Do you drive trucks, Mr. Melendez?

22 A. Not at the moment, but I drove a truck for 16
23 years.

24 Q. Have you ever crossed the center line by
25 accident?

1 A. Not to my knowledge. Not that I remember.

2 Q. You don't remember?

3 A. I will say, no.

4 Q. You think that's what happened to Mr. Rodriguez
5 that afternoon, that maybe he just doesn't remember that
6 he crossed the center line?

7 A. No, I don't think that is possible.

8 Q. You don't think that's possible that maybe he
9 doesn't remember like you don't remember?

10 A. No, I don't think it's possible.

11 Q. Have you ever seen one of your drivers cross
12 the center line?

13 A. No, I've never seen them.

14 Q. Would you agree with me that Mr. Rodriguez has
15 lied several times on his application?

16 MR. STRADLEY: Objection; argumentative and
17 repetitive.

18 THE COURT: Sustained.

19 Q. (BY MR. SIMPSON) Would Mr. Rodriguez lie to
20 keep his job, Mr. Melendez?

21 MR. STRADLEY: Objection; calls for
22 speculation and argumentative.

23 THE COURT: Sustained.

24 Q. (BY MR. SIMPSON) If found responsible for this
25 accident, Mr. Melendez, would you allow Mr. Rodriguez to

1 drive again?

2 MR. STRADLEY: Your Honor, objection; not
3 relevant.

4 THE COURT: Sustained.

5 Q. (BY MR. SIMPSON) Now, you had your deposition
6 taken in November of 2003, did you not, Mr. Melendez?

7 A. Yes.

8 Q. In that deposition you told us under oath that
9 you did not know of any eyewitness to the accident
10 except Mr. Rodriguez. Is that what you told us?

11 A. I said that.

12 Q. You said that; correct?

13 A. Okay. I said that, yeah.

14 Q. Were you here when Mr. Kennemer testified, I
15 think, on May 5th in this courtroom?

16 A. Yes.

17 Q. You were?

18 A. Uh-huh.

19 Q. Did you hear Mr. Kennemer tell this jury that
20 he was -- that Mr. Rodriguez was the only eyewitness to
21 what occurred before impact and what occurred during
22 impact?

23 MR. STRADLEY: Objection, your Honor;
24 improper impeachment to have him testify as to what
25 another witness said on the stand.

1 THE COURT: Sustained.

2 Q. (BY MR. SIMPSON) Have you heard anyone that is
3 associated with TXI or Mr. Rodriguez, that has testified
4 that Mr. Rodriguez was the only eyewitness before the
5 impact and during the impact in this accident?

6 MR. STRADLEY: Same objection, your Honor.

7 THE COURT: Sustained.

8 Q. (BY MR. SIMPSON) Do you know of any eyewitness
9 beside Mr. Rodriguez?

10 A. I know there's some others. I don't know --

11 Q. Now, you talked to Mr. Rodriguez immediately
12 after this accident, didn't you, Mr. Melendez?

13 A. No, not immediately.

14 Q. How soon after the accident did you talk to
15 Mr. Rodriguez?

16 A. I will say about -- about an hour -- 45
17 minutes, an hour, something like that.

18 Q. Okay. I'm talking about on the phone?

19 A. Yes, sir, on the phone.

20 Q. You talked to him immediately after the
21 accident on the phone, did you not?

22 A. No.

23 Q. Okay. When did you talk to him on the phone?

24 A. This same day about --

25 I would say about an hour after the

1 accident happened.

2 Q. And what did he tell you?

3 A. He tell me --

4 He told me what had happened.

5 Q. Okay. He told you that he had swerved right
6 real hard to avoid the Yukon, did he not?

7 A. I don't --

8 He don't say it like that. He just told me
9 that he tried to avoid the collision, and that he did as
10 much as he can.

11 Q. He did not tell you that he tried to swerve
12 hard to miss the Yukon?

13 A. I guess he tried to say that, but he don't tell
14 me exactly with those words.

15 Q. Okay. Well, let's see, look here, if we can,
16 on page 47, lines 19 through 25.

17 (Reading.)

18 "QUESTION: How did Mr. Rodriguez describe
19 the accident?"

20 MR. BOYD: Can we make that bigger?

21 "QUESTION: How did Mr. Rodriguez describe
22 the accident?"

23 "ANSWER: He told me he was coming south on
24 114 -- or east 114, and a Suburban was going west, and
25 suddenly the Suburban crossed to his lane.

1 "He told me he tried to avoid the head-on
2 collision, so he steered the truck as far as he can to
3 his right."

4 Is that what you told us under oath?

5 A. Yes, sir, that's what I said.

6 Q. Okay. Let's go to page 49, lines 4 through 12.

7 Here we have on lines seven and eight.

8 (Reading.)

9 "QUESTION: Then you stated that he said
10 swerved hard to the right?"

11 And what was your answer?

12 Your answer down there was, "Yes;" correct?

13 A. That's correct.

14 Q. So he did say he swerved hard to the right,
15 didn't he?

16 A. He said he swerved to the right, but I don't
17 remember saying "hard."

18 Q. Let's look at page three through six, page 50.

19 (Reading.)

20 "QUESTION: Was Mr. Rodriguez able to
21 swerve his tractor trailer to the right before the
22 initial impact with the third axle?

23 "ANSWER: Before the initial impact, yes,
24 sir."

25 And that was your answer; correct?

1 A. That's correct.

2 Q. You agree that Mr. Rodriguez was turning right
3 and traveling right before the impact with the Yukon, do
4 you not?

5 MR. STRADLEY: Your Honor, objection.
6 Objection; speculation and repetitive.

7 THE COURT: Overruled.

8 A. (BY THE WITNESS) No, I do not agree with that.

9 Q. You don't agree that he was traveling right
10 before the impact with the Yukon?

11 A. No, I'm not.

12 Q. Let's go back to page 47, lines 19 through 25
13 for just a minute.

14 "Mr. Rodriguez told you that the Suburban
15 hit him on the third axle of the truck. Is that -- on
16 the third and the fifth axle of the truck; is that
17 correct?

18 "That's what Mr. Rodriguez told you when
19 you all talked on the phone after the accident?"

20 A. No, he didn't told me that.

21 Q. Well, isn't that what you said under oath?

22 A. Yes, I did say that, but I don't know that he
23 told me.

24 Q. You're changing that testimony now, aren't you?

25 A. At that time when my deposition, I did not

1 remember exactly what axle was that.

2 Q. Okay. You're changing that, aren't you, but
3 this is what you said originally.

4 That the last axle of the tractor is where
5 Mr. Rodriguez told you the Yukon hit him; is that
6 correct?

7 A. That's what I say; is not what happened.

8 Q. That's what you said, but that's not what you
9 meant, because now you say that he said that he hit the
10 front of the truck; correct?

11 A. All I know is where he hit, because I see that
12 truck. It's my truck.

13 Q. That's not what your sworn testimony says,
14 though, is it, Mr. Melendez?

15 A. No, sir. That's what I said in just a moment.

16 Q. You changed this a couple of months ago, didn't
17 you?

18 A. Changed what?

19 Q. Your testimony.

20 A. No, I didn't change it. It's just what
21 happened.

22 Q. Okay. Let's keep going here. Let's go to page
23 49 and we'll see again what was said; that's line 4
24 through 12.

25 Again, you were asked:

1 (Reading.)

2 "QUESTION: The Suburban hit its tractor
3 trailer on the third axle and the fifth axle. Have I
4 read that back? Is that the way you recall?"

5 And what was your answer, Mr. Melendez?

6 I said, "Yes."

7 Q. You say, "Yes."

8 Let's go to page 50, lines seven through
9 12.

10 (Reading.)

11 "QUESTION: Was Mr. Rodriguez --

12 (A brief interruption occurred.)

13 Q. (BY MR. SIMPSON) (Reading.)

14 "QUESTION: Now, whether we're talking
15 about the third and the fifth axle, is that on the
16 trailer or on a tractor? Where is that axle? What
17 axles are we talking about?"

18 And what is your answer, Mr. Melendez?

19 A. I said that the third is on the tractor and the
20 fifth is on the trailer.

21 Q. Okay. So you're saying again that
22 Mr. Rodriguez said that he -- the Yukon first hit him on
23 the third axle of his tractor; is that correct?

24 A. That's what I said, yes.

25 Q. And you do not believe that now, is that what

1 you're telling the jury, Mr. Melendez?

2 A. No, I don't believe that now, because I've been
3 asked that question a year after the accident happened.
4 I cannot recall that moment what axles were hit. I know
5 one was on the truck and one on the trailer, but I don't
6 remember what axles that were -- that were hit a year
7 after the accident. I cannot remember exactly what
8 happened.

9 Q. Mr. Melendez, did you know that Mr. Rodriguez
10 did a drawing for us in his deposition, and that in his
11 deposition he drew the angle of the Yukon coming in at
12 an angle into his tractor trailer?

13 A. I knew he drew -- drew something, like --
14 I don't remember how he did.

15 Q. You were there, weren't you?

16 A. Yes, I was there.

17 (Plaintiffs' Exhibit No. 40
18 and 41 marked for identification.)

19 Q. (BY MR. SIMPSON) Mr. Stradley, Mr. Rodriguez'
20 attorney, asked him to draw how this accident happened
21 twice, did he not?

22 A. No, he did not.

23 Q. Well, why did he do this drawing?

24 A. If I remember correctly, we were in the office
25 and Mr. Rodriguez have a little language problem trying

1 to explain what happened, so he brought that piece of
2 paper and draw that -- the accident how that happened.

3 Q. Okay. And then in deposition, Mr. Stradley had
4 him do it again; correct?

5 A. That is correct.

6 MR. SIMPSON: Your Honor, we would offer
7 Plaintiffs' Exhibit 40 and 41.

8 MR. STRADLEY: No objection.

9 THE COURT: Admitted.

10 Q. (BY MR. SIMPSON) I want to show you what he
11 drew here and the angle that he drew it.

12 Each time he drew the Yukon coming into his
13 lane, he had it at an angle, did he not? (Indicating.)

14 A. Yes.

15 Q. And here's the other drawing, and it's also at
16 an angle, is it not? (Indicating.)

17 A. Yes.

18 Q. Mr. Rodriguez in his phone conversation with
19 you on December 17th, 2002, did not tell you that he hit
20 the clearance pole, did he?

21 A. No, he did not explain to me why -- how -- what
22 they hit.

23 Q. Well, no, he did explain what they hit, because
24 he told you that the Yukon hit the third axle of the
25 tractor, didn't he?

1 A. No, he didn't tell me that.

2 Q. That's what your deposition under oath said,
3 though, wasn't it?

4 A. Just what I heard, but I did not remember at
5 this time what axle was hit.

6 Q. But an axle was hit first, wasn't it?

7 A. No.

8 Q. That's what you said in your deposition, that
9 an axle was hit first, isn't it?

10 A. But I didn't --

11 I don't -- I don't think I said first. I
12 said it being hit in an axle, but I don't -- I don't
13 think I said first.

14 Q. You don't tell us anything about him hitting
15 the front of that tractor, do you?

16 A. I do not tell you, that's correct.

17 Q. And, Mr. Melendez, when we took your
18 deposition, you had had the tractor and trailer for
19 almost a year, had you not?

20 A. Yes.

21 Q. But you told us in deposition nothing about the
22 Yukon hitting the front of the tractor trailer, did you?

23 A. I don't remember telling you about --

24 I don't remember being asked about the
25 tractor trailer.

1 Q. When did you tell the lawyers about the
2 clearance pole?

3 A. When I saw the pictures.

4 Q. Okay. And would that have been just recently?

5 A. Yeah.

6 Q. Did they ask you where the clearance pole was?

7 A. Yeah.

8 MR. STRADLEY: Your Honor, may we approach
9 at this point?

10 THE COURT: Yes, you may.

11 (Discussion off the record.)

12 MR. STRADLEY: Your Honor, for the record
13 we object to this line of questioning as violating the
14 attorney/client privilege.

15 THE COURT: The Court overrules your
16 objection.

17 Q. (BY MR. SIMPSON) Did someone ask you where the
18 clearance pole was?

19 A. No. Actually, I told them.

20 Q. You told them.

21 When?

22 A. When I was looking at the pictures.

23 Q. And when was that?

24 After Doctor Marshek's deposition was
25 taken?

1 A. No, that was like about two months ago.

2 Q. That would have been after his deposition?

3 A. I don't know when he took his deposition.

4 Q. Where was the clearance pole?

5 A. It was in the sleeper in the truck.

6 Q. Did you know it was there before then?

7 A. Well, I know it was there, because I never took
8 it out.

9 I mean, I don't like have any memory that
10 it was there, but when I saw the pictures I told them I
11 think I know where the pole is, and I went and looked
12 and it was still there.

13 Q. You never put another clearance pole on that
14 tractor?

15 A. No, I did not.

16 Q. Who put the clearance pole in the back?

17 A. Mr. Ricardo -- Mr. Rodriguez.

18 Q. Okay. And how do you know that?

19 A. Because I told him -- I told him that evening
20 when -- before we towed the truck to the yard, I saw the
21 pole laying in front of the grill, and I asked him to
22 pull it off and throw it in the back of the sleeper.

23 Q. And so you're telling this jury that nobody put
24 that clearance pole back on the tractor trailer?

25 A. No, I was thinking I'd put it back on, but I

1 never did, so what I did I took the old one off and put
2 both of them in the sleeper. Never put it back.

3 Q. Why did you never put it back?

4 A. I was --

5 I just got so busy. I got too many things.
6 I don't think it's that important, so I never -- make --
7 get the time -- take the time to put those poles back.

8 Q. Now, this tractor trailer has been in other
9 accidents, had it not?

10 A. That's correct.

11 Q. Okay. In fact, that clearance pole would have
12 been hit before this accident several times, would it
13 not have?

14 A. No.

15 Q. Okay. How old was that tractor, Mr. Melendez?

16 A. That tractor was 12 years old, so 1992 model.

17 Q. Has that clearance pole been on it the entire
18 time?

19 A. No.

20 Q. Do you know when you got that clearance pole?

21 A. Yeah, I got that clearance pole in a couple of
22 months after I buy the truck.

23 Q. So that clearance pole had been on that tractor
24 for years, has it not?

25 A. No, not years; say a year -- little more than a

1 year.

2 Q. You said the tractor --

3 You had had the tractor for how long?

4 A. How long have I had the tractor?

5 Q. Yeah.

6 A. I bought the tractor in 2000. I don't know if
7 it was 2000 or 2001, somewhere in there.

8 Q. And it had the clearance pole on it?

9 A. No, I put it them on.

10 Q. Did it have any identifying number on it to
11 relate to the fact that it was your pole on that
12 tractor?

13 A. What do you mean, a number?

14 Q. Was there any numbers stamped on it or anything
15 to indicate that it was the specific clearance pole?

16 A. No, just --

17 It's just accessories off the market. They
18 don't come with the trucks.

19 Q. So you've got no way of identifying whether
20 this is, in fact, the clearance pole that was on the
21 tractor at the time of the accident, do you?

22 A. Not by numbers, but I know it was the pole.

23 Q. You know of no way to identify it by numbers,
24 do you?

25 A. By numbers, no. There's no numbers on the pole

1 that I know of.

2 Q. You say that you can identify it by marks on
3 it; is that correct?

4 A. What do you mean by "marks"?

5 Q. By marks, dents, things of that sort. Is that
6 why you say you can identify it?

7 A. Yeah, I can identify -- identify that pole
8 right now, yes, sir.

9 Q. If it was so important, why didn't you keep it
10 after the accident, Mr. Melendez?

11 A. Keep what?

12 Q. The pole? The clearance pole?

13 A. Why did I don't keep it?

14 Q. Yes, why didn't you keep it?

15 A. I did keep it.

16 Q. Well, but you didn't know where it was?

17 A. No, I don't know where it was. I mean, I know
18 where it was, but --

19 I don't understand your question.

20 Q. Okay.

21 A. I know where it was.

22 Q. You just didn't know it was important?

23 A. I did not know it was important. I did not
24 know it was important.

25 Q. So when someone told you it was important, you

1 tried to find a clearance pole, didn't you?

2 A. No, nobody told me it was important. I don't
3 know what's important.

4 Q. Did anybody tell you that that was the pole
5 that was on the tractor at the time of the accident,
6 Mr. Melendez?

7 A. No, nobody told me that. I know it was.

8 MR. SIMPSON: Your Honor, could I ask the
9 witness to come to here where I could ask him questions?

10 THE COURT: You may step to the board.

11 THE WITNESS: (The Witness complied.)

12 Q. (BY MR. SIMPSON) You've been here the whole
13 time that this trial has taken place, have you not,
14 Mr. Melendez?

15 A. Yes, that's correct.

16 Q. And you've heard the discussions about the
17 gouge mark, have you not?

18 A. Yes, I hear them.

19 Q. Okay. That are just inside the eastbound lane,
20 have you not?

21 A. Yes.

22 Q. Okay. You've also heard about Mr. Rodriguez
23 and his testimony that he moved right before impact;
24 correct?

25 A. I hear that, sir.

1 Q. And he told you in his first conversation with
2 you that he had moved right before impact, did he not?

3 A. He told me he tried to avoid the impact.

4 Q. Tried to avoid the impact?

5 A. Yes.

6 Q. And he swerved right; correct?

7 A. Correct.

8 Q. Okay. If impact is here, and he swerved right
9 two to three seconds -- or one to three seconds, he
10 would've had to have come from this lane, don't you
11 agree? (Indicating.)

12 A. Yes, if he moved for two or three seconds.

13 I don't think he did move two to three
14 seconds.

15 Q. You don't think he did move two to three
16 seconds?

17 A. No, sir.

18 Q. Well, now, he said that under oath that he did,
19 didn't he?

20 A. I know he said --

21 Q. You know he said that under oath, but you don't
22 believe him?

23 A. I don't believe him.

24 Q. Okay. He changed that to one second, didn't
25 he, Mr. Melendez?

1 A. Yes.

2 Q. He changed his answer to one second.

3 Do you believe that he moved right one
4 second?

5 A. No, sir.

6 Q. Okay. You don't believe he moved right at all
7 before impact?

8 A. Before impact, I don't believe he moved right.

9 Q. Okay. Because if he moved right before impact,
10 he had to have been in the opposite line in Kim Hughes'
11 lane; isn't that correct, Mr. Melendez?

12 A. Not necessarily.

13 THE COURT REPORTER: I'm sorry. I didn't
14 hear you.

15 THE WITNESS: I said, not necessarily.

16 A. (BY THE WITNESS) It depends on how far he
17 moved.

18 Q. Okay. If he moved one second to the right five
19 feet, he'd have to had been in Ms. Hughes' lane; is that
20 correct?

21 A. If he moved five feet.

22 THE COURT REPORTER: Turn around so we can
23 hear you.

24 A. (BY THE WITNESS) If he moved five feet, yes,
25 he -- he might be --

1 Q. Yeah. If he moved five feet he was in her
2 lane; correct?

3 A. That's correct.

4 MR. SIMPSON: Thank you, Mr. Melendez.
5 I'll pass the witness.

6 -----

7 THE COURT: Mr. Stradley.

8 MR. STRADLEY: Yes, your Honor.

9 -----

10 DIRECT EXAMINATION

11 BY MR. STRADLEY:

12 Q. Mr. Melendez, you were asked by Mr. Simpson
13 about the DPS requirements for commercial driver's
14 license. Do you remember that?

15 A. Yes, I do remember that.

16 Q. Were you ever advised by anybody that
17 Mr. Rodriguez' license was invalid?

18 A. No.

19 Q. In fact, were you ever made aware of DPS
20 initiating any proceedings at all to take away his
21 license?

22 A. No.

23 MR. SIMPSON: Your Honor, I'm going to
24 object as leading the witness.

25 THE COURT: Sustained.

1 Q. (BY MR. STRADLEY) Would you tell the jury
2 whether or not you received any word from DPS regarding
3 any invalidity to Mr. Rodriguez' license?

4 A. No, I did not have no notice about his license.

5 Q. Would you tell the jury whether or not the
6 department -- DPS, whether or not you were made aware
7 that there were any proceedings to determine if his
8 license was invalid?

9 A. No, they never did.

10 Q. Under Subchapter C, License or Permit
11 Application Issuance, would you tell the jury whether or
12 not you were made aware that the department, DPS, was
13 going to -- was -- that Mr. Rodriguez' license was
14 subject to a 60-day cancellation?

15 A. No, I did not know.

16 Q. Were you ever made aware of any -- any
17 proceedings like that?

18 A. No.

19 Q. They talked about the road test. Mr. Simpson
20 asked you about this road test, if you gave a road test
21 to Mr. Rodriguez? Did you?

22 A. Yes, I did.

23 Q. Let me talk --

24 This is from Exhibit 39.

25 Let me talk to you about the equivalency.

1 Mr. Melendez, can you see this?

2 (Indicating.)

3 A. Yes.

4 Q. Under Section 391.33, where it says, Equivalent
5 of Road Test;" do you see that?

6 A. Yes, I see that.

7 Q. Do you see where it says "in place of," or "as
8 in furtherance to the road test required in 391.31." Do
9 you see that?

10 A. Yes, I see that.

11 Q. Where a person can --

12 "A motor carrier may accept a valid
13 commercial driver's license." Do you see that?

14 A. Yes, I see that.

15 Q. Did Mr. Rodriguez present you with a valid
16 commercial driver's license?

17 A. Yes.

18 Q. Have you seen any paperwork that would show
19 that Mr. Rodriguez had a valid commercial driver's
20 license?

21 A. Paperwork --

22 I saw his driver's license. We checked the
23 record. It was valid.

24 Q. Okay. Let me ask you about checking the
25 record.

1 Let me --

2 May I approach, your Honor?

3 THE COURT: Yes.

4 (Defendants' Exhibit Nos. 438, 439,
5 442, and 446 marked for identification.)

6 Q. (BY MR. STRADLEY) Let me show you what has
7 been marked as Defendants' Exhibits 438, 439, 442, and
8 446. Would you look at those, please?

9 A. (The Witness complied.)

10 Q. And what are these, Mr. Melendez?

11 A. That's a document where TXI checks his
12 driver's -- driving records every four to six months, I
13 believe.

14 MR. STRADLEY: Your Honor, at this time
15 Defendant would offer Exhibits 438, 439, 442, and 446
16 into evidence.

17 MR. SIMPSON: Do those have the Social
18 Security number on them?

19 MR. STRADLEY: No.

20 MR. SIMPSON: Your Honor, we have no
21 objections.

22 THE COURT: Admitted.

23 Q. (BY MR. STRADLEY) What is the date on this
24 report right here? Can you see it?

25 A. That's 05/17, 2000.

1 I'm sorry.

2 2001.

3 Q. Okay. And what is the name of the driver for
4 this record?

5 A. Rodriguez, Ricardo.

6 Q. And the report is prepared for which motor
7 carrier?

8 A. TXI Transportation.

9 Q. Okay. And do you see here --

10 Are you familiar with the date of birth of
11 Ricardo Rodriguez?

12 A. Yes.

13 Q. Would you look at this and tell me if that
14 appears to be his date of birth?

15 A. That --

16 I believe so, yes.

17 Q. Okay. And you see here it has his license
18 number and the date that his license was issued?

19 A. Yes.

20 Q. Mr. Melendez, do you see here where it says,
21 "Driving Record History"?

22 A. Yes.

23 Q. And what is the indication for Mr. Rodriguez?

24 A. "Clear record."

25 Q. Did you see anywhere on this document that his

1 license was invalid?

2 A. No.

3 Q. That was Exhibit 438.

4 Let me show you Exhibit 439. Can you see
5 that?

6 A. Yes.

7 Q. What is the date of the report?

8 A. 02/25, 2002.

9 Q. And who is the driver on this report?

10 A. Rodriguez, Ricardo.

11 Q. And who is the motor carrier at the time?

12 A. TXI Transportation.

13 Q. Okay. And here does it show Mr. Rodriguez'
14 driver's license number and date of birth?

15 A. Yes.

16 Q. Under his driving record history, what does it
17 say?

18 A. Clear record.

19 Q. Is there any indication on this MVR, motor
20 vehicle record report, that would show his license was
21 invalid?

22 A. No.

23 Q. Did Mr. Rodriguez drive for TXI before he was
24 employed by you?

25 A. Yes.

1 Q. Let me show you Defendants' Exhibit 442.

2 What's the date of this report?

3 A. It's 1/09/97.

4 Q. And who is the driver?

5 A. Rodriguez, Ricardo.

6 Q. Okay. And do you know --

7 Here's an indication that says "Saldana."

8 Who is "Saldana"?

9 A. Saldana is another owner who has trucks with
10 TXI.

11 Q. Do you know whether or not Mr. Rodriguez drove
12 for Saldana Trucking at this time?

13 A. Yes, I know he did.

14 Q. This says his license was issued on what date?

15 A. May 20th, '96.

16 Q. And expires on what date?

17 A. May 2nd, 2001.

18 Q. Do you know whether or not Mr. Rodriguez got
19 his license reissued?

20 A. Yes, he did.

21 Q. And driving record history here in 1997 for
22 Saldana Trucking shows what?

23 A. Clear record.

24 Q. Is there any indication on this document that
25 you are aware of where the validity of his driver's

1 license was called into question?

2 A. No.

3 Q. Let me show you what has been marked as
4 Defendants' Exhibit No. 446. Can you see that?

5 A. Yes.

6 Q. What is the date of that -- the date of that
7 report?

8 A. February 14, '97.

9 Q. And who is the driver?

10 A. Rodriguez, Ricardo Reyna.

11 Q. Okay. And here is an entry for Saldana again.
12 Is it your understanding he was driving for them then?

13 A. Yes.

14 Q. And on the driving record history, what does it
15 say about Mr. Rodriguez?

16 A. It says, "clear record."

17 Q. Is there any indication on that MVR -- that
18 motor vehicle record -- report that calls into question
19 his -- the validity of his driver's license?

20 A. No.

21 Q. Now, you said that he got his license --

22 You said that his license was renewed; is
23 that correct?

24 A. It looks like it.

25 Q. Let me go back to Defendants' Exhibit 438.

1 I don't know if you can read that, but you
2 see "Date license issued," what is that date?

3 A. Yes, May 20th, 1996.

4 Q. And the expiration date on his license?

5 A. It's May 2nd, 2005.

6 Q. 2005?

7 A. It looks like 2005, yes.

8 Q. Mr. Melendez, did anybody ask you -- anybody at
9 all ask you for the clearance pole from the date of this
10 accident, December 17th, 2002, until you were named as a
11 Defendant in this case in the fall of 2003?

12 A. No, nobody asked me nothing about a clearance
13 pole.

14 Q. As far as your -- this tractor is concerned,
15 were there any previous accidents, previous before
16 December 17th, 2002?

17 A. No, there's no accidents.

18 Q. And how many accidents was this tractor
19 involved in after December 17th, 2002?

20 A. One.

21 Q. And were the clearance poles on it at that
22 time?

23 A. Back in the sleeper.

24 Q. In the back of the sleeper?

25 A. Yes.

1 Q. Was this tractor ever driven with the clearance
2 poles on the bumper after December 17th, 2002?

3 A. No.

4 Q. Other than putting them back on for pictures --
5 other than for pictures, have they ever been on the
6 bumper --

7 A. No.

8 Q. -- after December 17th, 2002?

9 A. No.

10 Q. Did anybody ask to inspect your tractor or your
11 trailer after December 17th, 2002, until you were added
12 as a Defendant in this case in the fall of 2003?

13 A. Can you repeat that question, please?

14 Q. Did anybody ask to -- to inspect the tractor
15 and the trailer involved in this accident between the
16 day of the accident and when you were added as a
17 Defendant in the fall of 2003?

18 A. No.

19 MR. STRADLEY: Your Honor, we'll reserve
20 the remainder of our questions until we present our case
21 in chief.

22 Pass the witness.

23 -----

24 THE COURT: Mr. Simpson.

25 RE CROSS EXAMINATION

1 BY MR. SIMPSON:

2 Q. Mr. Melendez, were both poles -- both clearance
3 poles off?

4 I think I understood you to say that both
5 poles were off; is that correct?

6 A. At the time of the accident just one. I take
7 the old one off the next morning.

8 Q. After the accident?

9 A. After the accident.

10 Q. So both poles were in the back?

11 A. Yes.

12 Q. Well, how could you tell which one was on the
13 left and which was on the right? They're identical.
14 They look identical, don't they?

15 A. Yes, they do look identical. Yeah.

16 Q. So how could you tell which one was on the left
17 and which was on the right of this tractor?

18 A. Because the one on the left was hit.

19 Q. What do you mean by "hit"?

20 A. It was hit when the accident --

21 Q. Now, on the different things that he has put up
22 on the screen here, isn't it true that there's no Social
23 Security number?

24 Can you see?

25 SSN?

1 A. Yes.

2 Q. Are you telling this jury that you got a
3 driving record for Mr. Rodriguez with no Social Security
4 number and you did nothing to verify whether or not he
5 had a Social Security number?

6 A. I did not do the driving records. TXI do this.

7 I don't see -- I don't see it to -- I just
8 keep them themselves.

9 Q. Okay. So TXI should have noticed that there
10 was no Social Security number when they made this
11 request, shouldn't they?

12 MR. STRADLEY: Objection; speculation.
13 Impeachment of a witness who's not on the stand.

14 THE COURT: Sustained.

15 Q. (BY MR. SIMPSON) Did you ever ask TXI why they
16 didn't notice whether there was a Social Security number
17 on these documents?

18 A. No, sir, because that's the first time I seen
19 these documents.

20 MR. SIMPSON: Thank you, Mr. Melendez.

21 I'll pass the witness.

22 -----

23 MR. STRADLEY: No further questions at this
24 time, your Honor.

25 -----

1 THE COURT: Thank you.

2 You may step down.

3 Ladies and gentlemen, let's take a
4 15-minute break. Be back in the jury room at 10:15.

5 (A brief recess was taken.)

6 (Open Court, jury present.)

7 THE COURT: Thank you.

8 You may call your next witness.

9 MR. BOYD: Thank you, your Honor.

10 Your Honor, we'd offer into evidence what
11 has been remarked as Plaintiffs' Exhibit 42, which is
12 the Yukon that was used during Doctor Marshek's
13 testimony, Exhibit 43, which is the tractor trailer that
14 was used during Doctor Marshek's testimony, and Exhibit
15 44, which is the highway board that was used during
16 Doctor Marshek's testimony.

17 MR. STRADLEY: Your Honor, we don't object
18 to them using this for demonstrative aids, but we do
19 object to them offering these into evidence, because
20 they're not -- not to scale, don't have all the gouge
21 marks on them. The vehicles aren't even to scale, vis a
22 vis one another, and --

23 If they're demonstrative, that's one thing,
24 but we do object to them coming into evidence, and not
25 be relevant and it would be misleading.

1 MR. BOYD: Your Honor, their only objection
2 they made on this --

3 This is on our pretrial exhibit list.

4 The only objection was that there was not
5 proper predicate. That predicate was laid during Doctor
6 Marshek's testimony.

7 THE COURT: I agree. Overruled. Admitted.

8 MR. BOYD: All right. At this time we
9 would call Allyn Needham by videotape deposition.

10 THE COURT: All right.

11 (Video playback:)

12 THE COURT REPORTER: If you'd raise your
13 right hand, please.

14 THE WITNESS: (The Witness complied.)

15 THE COURT REPORTER: Do you swear that the
16 answers you're about to give will be the truth, the
17 whole truth, and nothing but the truth so help you God?

18 THE WITNESS: I do.

19 ALLYN NEEDHAM,
20 having being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. POWERS:

23 Q. Would you please state your full name for the
24 record?

25 A. Yes. It's Allyn, that's A-l-l-y-n, Bryant,

1 B-r-y-a-n-t, Needham, N-e-e-d-h-a-m.

2 Q. Doctor Needham, you are involved in this case
3 because you are estimating the economic losses to the
4 Watson -- Watkins, Royse, and Hughes family -- or
5 specific members of that family due to the death of
6 members of this family in an automobile -- automobile
7 accident; is that right?

8 A. Yes, sir.

9 Q. Specifically, you've been asked to calculate
10 the loss -- the economic losses and loss of household
11 production loss that has been suffered as a result of
12 the death of Afton Royse; is that right?

13 A. Yes.

14 Q. Okay. And you've also been asked to calculate
15 the loss of household production as a result of the
16 death of Ms. Watkins; is that right?

17 A. Yes, sir, that's correct.

18 Q. What is your occupation, Doctor Needham?

19 A. I am an economist.

20 Q. Okay. And as far as being an economist, what
21 is your job as an economist in this type of case?

22 What -- What do you perform?

23 A. Okay.

24 Q. What kind of work do you perform?

25 A. In a -- a litigation-type situation when our

1 firm is -- is contacted, we perform a couple of
2 analysis: One is to look at the lost economic support,
3 that is, actual or potentially generated income that the
4 deceased is estimated would have made, less what that
5 person would have consumed for themselves.

6 The remaining amount is then what their
7 family had for additional support, and determining what
8 the value of that earning stream or that economic
9 support stream would be.

10 In addition, also looking at household
11 services; that is, the non-compensated work that is done
12 around the house; you have cleaning the house, mowing
13 the yard, providing care for children, and determining
14 what the value of that would have been.

15 Q. Okay. And you perform calculations for lost
16 economic support and household services in this case; is
17 that correct?

18 A. That is correct.

19 Q. Okay. Would you describe for the jury your
20 educational experience?

21 A. Yes. I have a BA in economics and business
22 administration from Austin College. I have an MA in
23 economics from Texas Christian University, and PhD in
24 business administration from California Coast
25 University.

1 Q. Okay. Have you ever taught at any college or
2 university?

3 A. Yes. I have taught both at Texas Christian
4 University and also at Weatherford College.

5 Q. And what courses did you teach at TCU?

6 A. I taught macroeconomics.

7 Q. Okay. And what course did you teach -- or
8 courses did you teach at Weatherford?

9 A. At Weatherford I taught -- also taught
10 macroeconomics and I taught microeconomics.

11 Q. Okay. Do those classes that you taught at
12 these universities, do they deal with the area of
13 expertise that you are offering in this deposition
14 today?

15 A. The -- The foundation --

16 The fundamentals of the type of work that
17 we're doing here would be based in these principles
18 of -- or particularly microeconomics.

19 Q. Okay. Now, I think you brought with you your
20 file for this case; is that right?

21 A. Yes, sir.

22 Q. And are you a certified earnings analyst?

23 A. Yes, sir.

24 Q. Okay. And what -- what did it take to become a
25 certified earnings analyst?

1 A. Well, the -- the first thing that you do is you
2 submit all of your transcripts from your prior education
3 for review. There is a review committee that is
4 established of people who already have the certified
5 earnings analysts designation.

6 And then you have three attorneys with whom
7 you've have worked send in letters of recommendation
8 which discuss the quality of work that you have
9 performed. You also have to forward at least two, maybe
10 three redacted reports that you have prepared for
11 litigation support situation; as well, you have to
12 forward copies of trial transcripts or depositions in
13 which you have defended your report -- one of those
14 reports that you have forwarded; and then, finally,
15 there is a test that you take. It's a proctored exam.
16 It took me about eight, eight-and-a-half hours to
17 complete, which is then graded to determine whether or
18 not you have the credentials -- or the qualifications to
19 be a certified analyst.

20 Q. Okay. And I take it then that after listening
21 to the referrals from the attorneys looking at your work
22 that you had performed in the past and taking this exam,
23 you -- you met all of the qualifications to become a
24 certified earnings analyst; is that right?

25 A. Yes, sir, that's correct.

1 Q. Okay. And the Southwestern Society of
2 Economists, it appears that you've been a member of that
3 organization?

4 A. Yes, sir, for quite awhile.

5 Q. Okay.

6 A. Yes.

7 Q. And you've been the president of that
8 organization; is that correct?

9 A. Yes, sir. The -- The Southwestern Society is
10 what I would call a -- a broad group. It covers
11 academicians and also practitioners in the economic
12 field, and it is a nationwide organization, although,
13 because we're in the southwest, for location, it's
14 called the Southwestern. I was the program chair from
15 '93 to '94, and then the president from '94 to '95.

16 Q. I'm going to ask you a couple of other
17 questions here. In -- In doing these, each one of these
18 scenarios, did you look at databases to determine what
19 work life expectancy, the anticipated age that Afton
20 Royse would've passed away had she lived a normal life?

21 A. Yes.

22 Q. Okay. And what -- what databases or text did
23 you look at to gain that information?

24 A. Okay. There are -- There are -- There are two
25 different databases that were used: Number one is, I

1 used the median years to retirement or the average
2 retirement age for a female worker in the United States,
3 and that's projected by the -- or is calculated by the
4 Department of Labor, and that's 62.6 is the age.

5 In addition, looking at the life expectancy
6 of a woman in the United States that's a white female,
7 the National Health & Human Services Department in
8 conjunction with the Center for Disease Control in
9 Atlanta, annually publishes work --

10 I'm sorry.

11 -- life expectancy tables, and I relied on
12 those for determining, not only her life expectancy, but
13 also her husband's life expectancy.

14 Q. Okay. So if we look at Scenario 1, and the
15 fact -- factors that you've described earlier, I'm going
16 to ask you this question: As an economist, who after
17 looking at Afton Royse's earnings potential, had she not
18 been killed as a result of the collision, do you have an
19 opinion as to the economic support that was lost due to
20 her death?

21 A. Yes.

22 Q. What is that opinion?

23 A. That based on her entering the work force when
24 her -- when her son started -- started school, the loss
25 is \$1,348,160.00.

1 Q. Okay. And that number has been brought down to
2 present value; is that correct?

3 A. Yes, sir, that's correct.

4 Q. In fact, if we look back to your report, you
5 have charts and tables back here of how you came to that
6 number, the math that you used to reach that number; is
7 that correct?

8 A. Yes, sir, that's correct.

9 Q. Okay. Now, is that opinion based upon
10 reasonable economic probability?

11 A. Yes, sir.

12 Q. Okay. Now, would you describe for the jury the
13 factors that went into Scenario 2 in your report?

14 A. The -- The factors in Scenario 2 are the same
15 with the exception that instead of entering the
16 workplace when her child is -- is starting school, it
17 shows Ms. Royse entering the workplace when her son
18 graduates from high school.

19 Q. Okay. So if we look at page one of your
20 report, again, under "Lost Economic Support" under
21 Scenario 2, loss from date of death to date to begin
22 discounting, again, we have a zero because Ms. Royse was
23 not working at the time of her death; she was a student?

24 A. That's correct.

25 Q. Okay. Now, after looking at Afton Royse's

1 earnings potential, had she not been killed as a result
2 of the collision, and she instead began working whenever
3 Jagr graduated from high school, do you have an opinion
4 as to the economic support that was lost due to Afton
5 Royse's death?

6 A. Yes.

7 Q. And what is that opinion?

8 A. That the estimated lost economic support, based
9 on Scenario 2, waiting until Jagr graduates from high
10 school, would be \$878,316.00.

11 Q. Okay. And is that opinion based upon a
12 reasonable economic probability?

13 A. Yes, sir.

14 Q. Now, you've also calculated a lost household
15 production for Afton Royse; is that correct?

16 A. Yes, that's correct.

17 Q. Okay. And would you go ahead and define for
18 the jury what "lost household production" is?

19 A. "Household production" or "household services"
20 are the work that one performs around the house for
21 which you are not compensated--cooking, cleaning,
22 washing clothes, keeping the yard, you know, mowed and
23 bushes trimmed, driving kids to and from soccer practice
24 or school, buying groceries, things like that. Those
25 are -- are normally what encompasses household services.

1 Q. In your opinion, after reading the studies and
2 comparing that with the life of the Royse family and
3 Afton Royse, do you have an opinion as to what the lost
4 household production that has been incurred as a result
5 of Afton Royse?

6 A. Yes.

7 Q. And what is -- what is your opinion?

8 A. Okay. That the average loss to a household,
9 based on the demographics of family like Ms. Royse,
10 would be \$532,026.00.

11 Q. Okay. And I see that you have that broken down
12 in your report as a loss from date of death to date to
13 begin discounting, and loss after date to begin
14 discounting; is that right?

15 A. Yes, sir, that's correct.

16 Q. And just -- just for clarification, how -- how
17 are those two numbers separated?

18 A. Okay. The loss from the date of death to the
19 date to begin discounting is \$12,147.00. The date --
20 The loss after the date to begin
21 discounting, or the future loss \$519,879.00; for a total
22 of \$532,026.00.

23 Q. Okay. Is your opinion that the total lost
24 household production of \$532,026.00, is that opinion
25 based upon reasonable economic probability?

1 A. Yes.

2 Q. And was this amount brought -- brought down to
3 present value?

4 A. Yes, it was.

5 BY MR. POWERS:

6 Q. Okay. Doctor Needham, we'll turn now to the
7 report you prepared for Joyce Watkins?

8 A. Okay.

9 Q. Doctor Needham, what calculations did you
10 perform with respect to Joyce Watkins?

11 A. For Ms. Watkins I performed a calculation of
12 loss household production.

13 Q. Okay. And what is your opinion based upon the
14 studies and factors pertaining to Ms. Watkins? What --

15 Do you have an opinion as to what her lost
16 household production in the past would have been?

17 A. Yes, sir.

18 Q. And what is that opinion?

19 A. \$13,392.00.

20 Q. Is that opinion based upon a reasonable,
21 economic probability?

22 A. Yes, sir, it is.

23 Q. Okay. And based upon the studies that you have
24 pertaining to lost household production, and the factors
25 pertaining to Ms. Watkins that you've used to reach that

1 conclusion, what is the loss of household production in
2 the future that has been sustained as a result of the
3 death of Ms. Watkins?

4 A. \$136,255.00.

5 Q. Okay. And has --

6 Is that figure based upon reasonable
7 economic probability?

8 A. Yes, sir, it is.

9 Q. Okay. So then if we combine the two, that will
10 give us a total for loss household production as a
11 result of the death of Ms. Joyce Watkins; is that
12 correct?

13 A. That is correct.

14 Q. And what is that number?

15 A. \$149,647.00.

16 Q. Okay. And is that number based upon a
17 reasonable economic probability?

18 A. Yes, sir, it is.

19 MR. POWERS: Your Honor, this concludes our
20 offer of Dr. Needham.

21 MR. STEINDORF: Defendants have an offer
22 from Dr. Needham, your Honor.

23 THE COURT: Very well.

24 (Video playback:)

25 Q. So you have worked for Simpson, Boyd & Powers

1 on their cases before?

2 A. Yes, sir.

3 Q. And specifically, Mr. Powers who is asking you
4 questions here today, you've worked for him before?

5 A. Yes, sir.

6 CROSS EXAMINATION

7 BY MR. STRADLEY:

8 Q. Doctor Needham, what -- tell me how -- how you
9 factor in all of the various factors to come up with
10 loss of household production.

11 We talked earlier about with regards to
12 Afton that it could be babysitting, cooking, cleaning.
13 With regards to Ms. Watkins, I'm assuming that it's
14 going to be mostly cooking, cleaning, that type of
15 thing?

16 A. The -- The dollar value of a day uses the same
17 general categories for all individuals, regardless of
18 age, but you are very much correct in that, of course,
19 that varies as you move through your lifetime.

20 The amount of providing chair for
21 children -- providing care for children is greatly
22 different for someone who has children under the age of
23 18 and those that have children over the age of 18.

24 Although my son that's in college hasn't
25 learned that from us, but, indeed, the -- the time

1 that's spent is -- is primarily for cooking and
2 obtaining goods, doing grocery shopping, and
3 prescriptive drugs, and things like that.

4 The amount of care for like babysitting and
5 stuff is reduced significantly for someone who is
6 retired and of Ms. Watkins' age.

7 Q. Is that -- Is that factored into the -- your
8 opinions as to the loss for Ms. Watkins, as opposed to
9 the loss that you believe was occasioned by the death of
10 Ms. Royse?

11 A. Yes.

12 Q. How -- How much money did you assign to these
13 various tasks that you believe Ms. Watkins performed in
14 the household?

15 A. I relied upon the -- the information from the
16 dollar value of the day. I could have individually
17 broken those out based on their tables, but I just did
18 the -- the collective number, so I don't have that
19 specific breakout, as far as obtaining goods, cooking,
20 and -- and cleaning.

21 Q. Well, what was the dollar value of a day for
22 Ms. Watkins?

23 A. In regards to the annual value of household
24 service it was \$14,009.00.

25 Q. \$14,000.00 per year?

1 A. Yes, sir.

2 Q. So to come up with a -- a daily value, you
3 would divide it by 365; right?

4 A. Yes, sir.

5 Q. And what would that be, please?

6 A. \$38.38.

7 Q. All right. For --

8 Let me go back to Afton Royse for just a
9 minute. What was the dollar value for -- for Ms. Royse?

10 A. Now, it did change during her lifetime, because
11 of the change of the -- the family demographics.

12 Q. Was -- Was she --

13 Let me say this: Would -- Would she have
14 been \$38.38 cents per day after she had retired and
15 after her children were all gone?

16 A. If --

17 The -- The short answer to your question
18 is, no. The longer answer is, after she obtained the
19 age of 75, if I had wanted to adjust gradually as -- as
20 she got older, then the answer would be, yes.

21 Q. Okay. All right. Go ahead and tell me those
22 figures, please --

23 A. Okay.

24 Q. -- for Ms. Royse, so I can compare them to the
25 ones you just gave for Ms. Watkins?

1 A. Certainly. The initial figure while she is a
2 full-time student, the dollar value of a day is \$34.81.

3 The value after she becomes a full-time
4 working --

5 I mean --

6 Sorry.

7 -- a registered nurse working full-time is
8 \$31.90 -- approximately 96 cents a day.

9 Q. Okay. And then when she retires from being a
10 registered nurse, what would it go to?

11 A. I did not adjust the -- the figures up --

12 Q. Okay.

13 A. -- for her.

14 Q. All right. And where did you obtain those
15 figures per day?

16 A. Once again, they're from the time diary
17 analysis, a publication called Dollar Value of a Day.
18 It's put out by the expectancy data people of Shawnee
19 Mission, Kansas. What they have done is they have taken
20 the government data from --

21 The Environmental Protection Agency has an
22 extensive time diary analysis that goes on. These
23 are -- These are the folks at the University of
24 Missouri, Kansas City, and they have downloaded that
25 information and they then apply it to looking at -- at

1 various types of working groups, females, males,
2 children within the home, children not within the home,
3 to provide a -- a data book that -- that breaks out
4 these various analyses.

5 MR. STEINDORF: Your Honor. This concludes
6 our offer from Mr. Needham.

7 THE COURT: Anything further?

8 MR. BOYD: Nothing, your Honor, except we
9 would offer Plaintiffs' Exhibit 45, which are the life
10 tables that we talked about in his deposition.

11 MR. STEINDORF: Objection; hearsay.

12 THE COURT: Overruled.

13 45 is admitted.

14 You may call your next witness.

15 MR. POWERS: Your Honor, at this time we'd
16 call by videotape deposition Doctor Flynn, the counselor
17 that has seen Randy Hughes.

18 THE COURT: All right, sir.

19 MR. SIMPSON: Your Honor, we may have some
20 records to put in first.

21 MR. POWERS: I'm sorry.

22 MR. SIMPSON: Your Honor, if we may.

23 Your Honor, we would offer Plaintiffs'
24 Exhibits 46, 47, and 48, which represent summaries of
25 medical bills for Afton Hughes Royse, Kimberly Hughes,

1 and Jagr Royse.

2 MR. STEINDORF: May we approach, your
3 Honor?

4 THE COURT: Yes, you may.

5 (Open Court, bench conference,
6 jury present.)

7 MR. STEINDORF: Your Honor, Plaintiffs have
8 tendered to me what they've marked for identification
9 Plaintiffs' Exhibit No. 47, which purport to be a
10 summary of medical records from Kimberly Hughes. The
11 Plaintiffs have no claim relating to the death of
12 Kimberly Hughes, which isn't--

13 We don't intend to let them try this by
14 consent.

15 The medical records therefore are not
16 relevant under 401, therefore, not admissible under 402,
17 and further on that, that's hearsay.

18 And finally, under 403, any showing of
19 relevance that could be used would be outweighed by the
20 prejudice done by a claim that they didn't even plead.

21 MR. BOYD: Your Honor -- First of all, your
22 Honor, these were identified as Plaintiff's Exhibits 37,
23 38, and 39 on our exhibit list and there's no objection
24 by the Defendants that was filed at pretrial.

25 Secondly, we do have a claim, counterclaim

1 as to Kimberly Hughes by Willie Watkins. The
2 representative of the estate of Kimberly Hughes has
3 filed a counterclaim in another suit by TXI for the
4 damages that brought her in as a Defendant.

5 THE COURT: You have a counterclaim for --

6 MR. BOYD: Yeah.

7 MR. STEINDORF: I don't believe they do. I
8 would have to look at the pleadings. I don't believe
9 it's a counterclaim.

10 MR. BOYD: There is a counterclaim.

11 MR. STEINDORF: I'm not sure. I'd have to
12 look at the pleadings to be certain of exactly what that
13 said.

14 Well, there is still no foundation that
15 these are reasonable and necessary medical records by
16 this witness for this particular person.

17 MR. BOYD: Your Honor, my point is there
18 was no objection at pretrial.

19 THE COURT: You have a counterclaim for
20 medical bills?

21 MR. BOYD: Yes.

22 THE COURT: With that understanding, that's
23 overruled.

24 MR. HURD: Your Honor, there is something
25 else.

1 Your Honor, there is-- I don't--

2 It seems to me that we should not be held
3 to making an objection to them laying a predicate of
4 reasonable and necessary on medical bills at pretrial
5 until the evidence is offered.

6 I mean, how do we know they're going to
7 make the predicate or not.

8 MR. BOYD: Your Honor, we did file
9 affidavits per the rule before trial with medical bills.

10 MR. HURD: But that went to the records
11 themselves.

12 MR. SIMPSON: No. We've got reasonable and
13 necessary affidavits, also.

14 MR. HURD: Not to the summaries.

15 MR. SIMPSON: Not the summaries.

16 These are summaries of the medical bills.

17 MR. BOYD: Rather than putting in all the
18 bills we put in summaries. That's course and custom and
19 there was no objection filed.

20 THE COURT: All right. Do you have the
21 bills to back these up.

22 MR. BOYD: Yes, sir, your Honor.

23 THE COURT: Are they in--

24 MR. BOYD: We have not submitted them. We
25 can put them in before, behind these if the Court wants

1 us to.

2 MR. SIMPSON: We may need to make sure that
3 we have sanitized the documents.

4 THE COURT: You have to say the right word.

5 MR. SIMPSON: But then they would argue
6 it's cumulative or whatever, and that's why we put in
7 the summaries?

8 THE COURT: All right. The summary is only
9 admissible as a summary if there is other evidence to
10 summarize.

11 MR. SIMPSON: Yes.

12 THE COURT: So if that--

13 You know, with that in mind, at this I'm
14 going to sustain their objection.

15 Now, basically if you have your affidavits
16 filed correctly.

17 MR. SIMPSON: We do, your Honor.

18 THE COURT: But you can put your witness on
19 the stand to do all that. But if you have a correct
20 affidavit to get the records in, you don't even have to
21 publish them.

22 I'll let you do summaries if, with your
23 representation that this does fairly and accurately
24 summarizes what the evidence totals.

25 MR. SIMPSON: Yes.

1 THE COURT: Anything else?

2 MR. SIMPSON: No, sir.

3 THE COURT: Okay. Thank you very much.

4 (Open court proceedings.)

5 MR. SIMPSON: Your Honor, we would offer
6 Exhibits 46, 47, and 48.

7 MR. STEINDORF: Your Honor, we made our
8 objections to 47. We have no objection to 46 and 48.

9 THE COURT: All right. I'm going to admit
10 47 and 48 at this time.

11 MR. STEINDORF: 46 and 48?

12 THE COURT: I'm sorry. Which ones did you
13 not have an objection to?

14 MR. STEINDORF: 46 and 48.

15 THE COURT: I admitted 46 and 48 at this
16 time.

17 MR. SIMPSON: Okay. Your Honor, we'd like
18 to publish just briefly.

19 THE COURT: You may.

20 (A brief interruption occurred.)

21 -----

22 (Plaintiffs' Exhibit No. 49
23 marked for identification.)

24 MR. SIMPSON: Your Honor, we would offer
25 the medical records of Afton Royse, Plaintiffs' Exhibit

1 49.

2 MR. STEINDORF: Objection; hearsay, your
3 Honor.

4 THE COURT: Overruled. Admitted.

5 MR. SIMPSON: Your Honor, specifically,
6 rather than publish this, on page 24, the records state
7 clearly about the death of the children, and rather than
8 put this on the screen, we would note that page 24 in
9 Exhibit No. 49 talks about the death of the twins rather
10 than publish it.

11 MR. STEINDORF: May we approach, your
12 Honor?

13 THE COURT: Yes, you may.

14 (Discussion off the record.)

15 THE COURT: Ladies and gentlemen, we're
16 going to take about a five-minute break. Stay in the
17 jury room. I'll be right back.

18 (A brief recess was taken, after which
19 time, the following proceedings were held
20 outside the presence and/or hearing of the
21 jury.)

22 THE COURT: All right. Back on the record.

23 MR. SIMPSON: These are the affidavits
24 on -- from Harris Hospital on the medical records here.
25 One is on Afton Royse is 242 pages.

1 THE COURT: All right.

2 MR. SIMPSON: Okay. And on Kim Hughes is.
3 312 pages.

4 THE COURT: All right.

5 MR. SIMPSON: Okay. Which will make them
6 admissible.

7 MR. STEINDORF: Your Honor, the
8 Defendants -- the medical records on Kim have not been
9 marked for identification. I'm going to mark them so
10 we'll keep the record clear.

11 THE COURT: You want to --

12 MR. SIMPSON: Well, let's go ahead and put
13 the affidavit, if we may, your Honor, of Kim's on
14 Exhibit --

15 Sorry about that, Jeff.

16 THE COURT REPORTER: Okay.

17 (Plaintiff's Exhibit No. 50 marked for.
18 identification.)

19 THE COURT: All right. Is this the
20 affidavit pertaining to the entire injury?

21 MR. SIMPSON: Yes, your Honor.

22 THE COURT: Let me put it another way.

23 Is the entire exhibit --

24 And is that everything that you've got with
25 that affidavit in that exhibit?

1 MR. SIMPSON: Yes. Okay. With the
2 exception, your Honor, of anything --

3 THE COURT: Of things that were objected
4 to.

5 MR. SIMPSON: -- with the motion in
6 limine --

7 THE COURT: We need to prove it up in the
8 records?

9 MR. SIMPSON: Yeah. Also, your Honor, we
10 would like to attach the affidavit that pertains to
11 Afton Royse --

12 THE COURT: All right.

13 MR. SIMPSON: -- as records, also.

14 And then we are getting the affidavits as
15 to the --

16 (Plaintiff's Exhibit No. 49 remarked for.
17 identification.)

18 MR. HURD: Your Honor, apart from the
19 admissibility of the records themselves, that issue that
20 Mr. Steindorf has addressed for the Court, the --

21 THE COURT: Do you agree with
22 Mr. Steindorf?

23 MR. HURD: I always agree with
24 Mr. Steindorf.

25 THE COURT: All right.

1 MR. HURD: But the -- the records on Afton
2 Royse show on their face that the fetuses were
3 nonviable. They're described in there as being unable
4 to survive, given the death of their mother as that was
5 expected.

6 And so, although the Court has previously
7 overruled our motion for summary judgment, and they do
8 have a cause of action; however, I would argue invalid
9 at this time, pled, I would ask the Court --

10 I would object to Mr. Simpson or
11 Plaintiffs' Counsel characterization of the fetuses as
12 the twins, because it's a mischaracterization.

13 The medical evidence clearly shows that
14 they were -- that they were fetuses and nonviable, and
15 if they were referred to by noun or adjective, it should
16 be accurate, and I think it's misleading for the jury.

17 THE COURT: All right. Anything else on
18 this issue?

19 MR. SIMPSON: Yes, your Honor.

20 THE COURT: The records are admitted.

21 MR. SIMPSON: Okay.

22 THE COURT: What else?

23 MR. SIMPSON: We're asking, your Honor, for
24 the -- we're getting the medical bill affidavits you
25 said you wanted as to necessity.

1 THE COURT: All right.

2 MR. SIMPSON: And we wanted to make sure
3 that they were in evidence.

4 THE COURT: All right. Let's get them in.

5 MR. SIMPSON: Okay. And then, your Honor,
6 we want to show the kind of claim that we had filed on
7 behalf of Kim's estate.

8 THE COURT: I've already admitted that on
9 your representation that you had.

10 MR. SIMPSON: Oh, well, they --

11 Well, your Honor, they objected to it

12 and --

13 THE COURT: But I overruled it.

14 MR. SIMPSON: Oh, you did.

15 Okay. Well, good, then, we'll publish
16 that.

17 (Discussion off the record.)

18 THE COURT: All right. Go ahead.

19 MR. BOYD: You want to see the pleading,
20 your Honor, with the claim -- the medical --

21 THE COURT: Sure.

22 What else, gentleman?

23 MR. HURD: What about my objection, your
24 Honor?

25 THE COURT: Overruled.

1 MR. HURD: Oh, it is. Okay.

2 THE COURT: Very interesting, and very
3 creative.

4 Anything else?

5 Bring in the jury.

6 (Open court, jury present.)

7 MR. SIMPSON: Your Honor, for
8 clarification, we wish to offer Plaintiff's Exhibit No.
9 47, which are -- which is the summary of the medical
10 bills of Kimberly Hughes.

11 MR. STEINDORF: Objection; hearsay. Lack
12 of proper foundation.

13 THE COURT: Admitted.

14 MR. SIMPSON: Your Honor, we would also
15 like to offer the medical records of Kim Hughes, that
16 would be Plaintiffs' Exhibit No. 50.

17 MR. STEINDORF: Objection; hearsay.

18 THE COURT: Admitted.

19 MR. SIMPSON: And, your Honor, again,
20 without publishing one of the narratives on page 17 --

21 THE COURT: I understand. You've already
22 said that, Mr. Simpson.

23 MR. SIMPSON: Thank you.

24 No, this is Kimberly Hughes, your Honor;
25 this is not-- This is not Afton Royse.

1 THE COURT: It's a different narrative?

2 MR. SIMPSON: Yes, your Honor. Thank you.

3 THE COURT: They're in there.

4 MR. SIMPSON: We'd call Doctor Flynn, your
5 Honor, by video.

6 THE COURT: You may.

7 MR. SIMPSON: Your Honor, could we publish
8 these to the jury just briefly?

9 THE COURT: Yes. It's your video.

10 MR. SIMPSON: These are the summaries.

11 (Video playback:)

12 THE VIDEOGRAPHER: We're going on the
13 record January 28th, 2004 for the deposition of Dr.
14 Michael Flynn.

15 The time is now 10:13.

16 THE COURT REPORTER: Doctor, raise your
17 right hand, please.

18 THE WITNESS: (The Witness complied.)

19 THE COURT REPORTER: Do you solemnly swear
20 the testimony you're about to give will be the truth,
21 the whole truth, and nothing but the truth so help you
22 God?

23 THE WITNESS: I do.

24 THE COURT REPORTER: You may proceed.

25 DR. MICHAEL FLYNN,

1 having being first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SIMPSON:

4 Q. Doctor Flynn, my name is Mike Simpson, and I
5 represent Randy Hughes and Clint Royse in a case filed
6 in Wise County.

7 Would you please state your name and
8 address?

9 A. I'm Dr. Michael Flynn.

10 Q. What is your occupation or profession?

11 A. I'm a clinical psychologist in independent
12 practice.

13 Q. Are you licensed to practice in the State of
14 Texas?

15 A. Yes, I am.

16 Q. When were you so licensed?

17 A. In June of 1981.

18 Q. Would you please tell the jury your formal
19 education?

20 A. I have a Bachelor's degree in psychology from
21 Middle Tennessee State University, and a Master's degree
22 and a Doctoral degree, PhD degree, in clinical
23 psychology from the University of North Texas.

24 Q. Would you tell the jury your professional
25 affiliations and any positions which you've held within

1 these professional societies?

2 A. I am a member of the American Academy of
3 Forensic Psychology, a member of the Texas Psychological
4 Association, and a member of the Denton Area Psycho --
5 Psychotherapists' Association. I was president of the
6 Denton Area Psychotherapists' Association for two terms
7 back in the late 1980s as its first president.

8 Q. Do you do any teaching, or have you done any
9 teaching?

10 A. I -- I have. I have taught at UNT and the
11 Texas Woman's University, and also at a small college
12 affiliated with a Catholic church -- a Catholic college
13 in Philadelphia, Pennsylvania.

14 Q. Did you teach students wanting to be
15 psychologists or psychologists themselves, or who did
16 you teach in --

17 A. Well, I taught --

18 Q. -- these classes?

19 A. -- I taught --

20 At -- At all of those places I taught
21 undergraduate psych majors or undergraduate psych
22 courses.

23 Q. Could you tell the jury a little bit about your
24 clinical experience?

25 A. I have been in private practice since 1980.

1 Actually began seeing patients fee for -- on a fee for
2 service basis in 1978 when I returned from internship;
3 was independently licensed in 1981, and have been in
4 private practice with my own office since that time.

5 Q. I note that on your curriculum vitae that you
6 are a division social work officer for the First Cavalry
7 Division in Fort Worth -- Fort Hood, Texas?

8 A. At Fort Hood, that was my first -- among --
9 among my first professional experience, yes.

10 Q. Okay. Can you tell us a little bit about that
11 and what you were doing?

12 A. That was an army position. I did evaluations
13 and treatment of soldiers who were referred to the
14 mental hygiene consultation service, doing referral to
15 the various treatment systems that we had available
16 through the -- the division office there at the First
17 Calv Division, and also I believe the Second Division --
18 Second Armored Division.

19 Q. Now, you have also written papers on your area
20 of expertise in psychology?

21 A. I have.

22 Q. And you've also given professional
23 presentations?

24 A. Yes, I have.

25 Q. Now, would you tell the jury the address of

1 your local offices for the practice of psychology?

2 A. My office currently is at 1400 North Locus
3 Street in Denton, Texas.

4 Q. How did you come to treat Randy Hughes?

5 A. Randy called my office and made an appointment.
6 His -- His first appointment was scheduled, I believe,
7 for the 8th of August of last year, 19 -- 2003?

8 Q. How many times have you seen Randy Hughes?

9 A. About a dozen times.

10 Would you like me to count --

11 Q. Yes, please.

12 A. -- because I can -- I can count that for you.

13 (Witness did as requested.)

14 Twelve times.

15 Q. And how did Randy Hughes pick you as a
16 counselor to see?

17 A. It --

18 It's not entirely clear. I looked on his
19 referral, his information, and he did not list it, but I
20 suspect it was from his physician. The common way for
21 me to get those referrals would be from the local
22 physician.

23 Q. Okay. Do you know who his local physician was?

24 A. It's Dr. John Copeland in Bridgeport.

25 Q. What condition was Randy Hughes in at the time

1 you last examined him?

2 A. Last -- Last time I saw Mr. Hughes he was doing
3 somewhat better. He was in good spirits. He was --
4 He --

5 As best I can remember, he was still having
6 trouble -- some trouble with his sleep disturbance.

7 Yeah, well, in fact, there is a note here that he's
8 still not sleeping very well. He was having --

9 There were --

10 He was having some trouble with his
11 trucking business, but that sounded like kind of the
12 ordinary vicissitudes of trying to operate his own
13 business. Symptomatically, mainly it was his sleep
14 disturbance and still struggling with some of the social
15 isolation.

16 Q. Now, you have been in private practice for how
17 many years?

18 A. In private practice, essentially, since 1980 --
19 since January of 1980.

20 Q. And, Doctor Flynn, how many patients would you
21 see -- you see a year for varying problems related to
22 depression, grief counseling, things of that sort, you
23 know?

24 A. Now, that --

25 We're talking, what, 24 years that -- that

1 I have been seeing clients, and I will typically see
2 between 30 and 35 client hours each week, so -- you
3 know, give me a calculator, but that's probably better
4 than a thousand --

5 Q. Okay.

6 A. -- but I would have to do the math.

7 Q. Have you ever treated a patient with as many
8 people that died in one accident that were related to a
9 patient in your life, that had this magnitude of loss?

10 And when I mean magnitude, I mean in
11 numbers?

12 A. Never. No.

13 Q. Okay. Would you state whether or not, Doctor
14 Flynn, in your experience whether you have ever treated
15 a person that has had this magnitude of loss? And when
16 I mean magnitude, the number of loss in your
17 professional career?

18 A. No. Never.

19 Q. Did you do an examination?

20 A. Yes.

21 Q. Okay. What did your examination show?

22 A. That Mr. Hughes was suffering from a major
23 depressive disorder. The nomenclature would make this a
24 single episode, major depressive disorder. Actually,
25 that would be the diagnosis from the -- from the DSM IV.

1 Q. Doctor, do you have an opinion based upon
2 reasonable psychological expertise -- your expertise as
3 to whether or not an event, such as Randy Hughes
4 experienced on December 17th of 2002, would cause a
5 depression or adjustment disorder?

6 Do you have an opinion?

7 A. I -- I do have an opinion.

8 Q. Okay. What is that opinion?

9 A. That it -- That it would not be at all
10 surprising for an event of the magnitude of the accident
11 that happened to Mr. Hughes' family to precipitate a
12 major depressive disorder. That would be very
13 predictable, very reasonable to assume.

14 Q. Have you ever treated anyone before that has
15 lost their entire family in one accident?

16 A. No. Never.

17 Q. Okay. What is your --

18 Then your diagnosis here is --

19 A. Major depressive disorder.

20 Q. Major --

21 Okay. What is the diagnosis criteria for
22 major depressive disorder?

23 A. There would be a --

24 One -- One would expect to see --

25 One would expect to see a variety of

1 symptoms that include sleep disorder, sleep --
2 particular types of sleep disturbance, some social
3 isolation, feelings of hopelessness, helplessness,
4 pessimism --

5 I'm trying to think.

6 -- lack -- lack of motivation, lack of
7 interest, those -- those sorts of things.

8 I wish I had --

9 If I had known you were going to ask that,
10 I would've brought the DSM and would've read you the
11 list of symptoms.

12 Q. Well, how do the diagnostic criteria compare to
13 what Randy Hughes is experiencing?

14 A. Very -- Very consistent.

15 Mr. Hughes displayed many of the symptoms
16 that would be expected of someone suffering from a major
17 depressive disorder.

18 Q. Can a major, depressive single episode affect a
19 person's daily life?

20 A. Oh, it absolutely would affect. It would
21 affect virtually everything that goes on in a person's
22 daily life.

23 Q. And how would it affect it?

24 A. Well, as -- as the symptoms would suggest, it
25 robs the person of any sense of joy, things that used to

1 be fun are no longer fun, relationships become far too
2 much work. The individual very commonly withdraws from
3 relationships, spends a lot of time sitting alone,
4 really doing nothing.

5 Concentration is impaired. Sleep is
6 impaired. They don't sleep well. They will lie awake
7 at night tossing and turning, and they -- they will
8 perform poorly during the day, very often retreating
9 into hours and hours of sleep during the day. They
10 don't eat well. They will either --

11 Well, sometimes they will --

12 Mr. Hughes didn't have this problem, but
13 sometimes people will either overeat or they will cease
14 eating and they will lose a lot of weight, or they will
15 gain weight, several dozen pounds.

16 So -- So virtually every aspect of a
17 person's life can be, and often is affected by this kind
18 of depression.

19 Q. Would it surprise you that a man that has lost
20 his entire family would experience these problems
21 associated with major depression?

22 A. It would certainly not be a surprise at all,
23 no.

24 Q. Do you have an opinion as to whether or not
25 Randy Hughes suffers from major depression single

1 episode in a moderate form?

2 A. Yes, I do have an opinion.

3 Q. What is that opinion?

4 A. That Mr. Hughes does suffer from a major
5 depressive disorder that goes from moderate and drifts a
6 little bit into severe, and it's been --

7 It mostly at the moderate level. He has
8 had a couple of times over the past several months that
9 he has gotten very close to being severely depressed.

10 Q. Is that opinion based upon reasonable
11 psychological probability?

12 A. Yes, it is.

13 Q. Do you have an opinion as to the cause of Randy
14 Hughes' major depression single episode in a moderate
15 form?

16 A. The loss of --

17 The sudden loss of his family in December
18 of last year -- or year before last now.

19 Q. Okay. Is that opinion based upon a reasonable
20 psychological probability?

21 A. Yes, it is.

22 Q. What did Randy tell you about how he was
23 notified about the accident, what he saw, what he had to
24 do, and how he felt?

25 A. He told me that there had been a bad accident

1 that --

2 He indicate that someone was CareFlited
3 apparently to Fort Worth. His son and his wife's mother
4 had died at the scene. His daughter was pregnant at
5 that time with twins. Randy went with and stayed with
6 them at the hospital, and they asked him for decisions
7 about getting the family off life support.

8 The rest of my notes now got -- got into
9 more of the symptoms, and trying to get some symptoms
10 and background and find out what was going on with him
11 at the time, which was in August of 2003, almost --
12 almost eight months -- some eight months later.

13 Q. Was it your understanding that Randy Hughes saw
14 his family in the Yukon, but they were unrecognizable
15 because he didn't know, you know, where they were seated
16 and --

17 A. It was my understanding that he had -- that he
18 did go to the scene. I know he was at the scene of the
19 accident and that he -- he did see them.

20 I -- I don't remember specifically his
21 telling me that, but I can certainly believe that he had
22 no idea who was whom, but he was very, very distressed,
23 and he did go to the scene.

24 Q. Do you feel like that when a person has to make
25 that decision to cut off life support on a loved one

1 that it affects them?

2 A. Yes. Oh, yes, that would be an incredibly
3 difficult decision to ask someone to make.

4 Q. Do you think it had any effect on Randy, Doctor
5 Flynn?

6 A. Yes. Yes.

7 Q. In what way?

8 A. I believe -- I believe that it contributed
9 predictably to his ongoing ruminations and his ongoing
10 concern and anxiety that perhaps he -- you know, one --
11 one questions oneself whether one has done the right
12 thing, or done the wrong thing, should I have waited,
13 should I have done it sooner, and the problem for that
14 is that it gives a person kind of a nub around which to
15 spin around and around and around, and to just get worse
16 and get deeper and deeper into the -- the biological
17 depression.

18 Q. What is "symptom reactivation"?

19 A. By -- By that term --

20 I don't know that term formally, so --

21 Q. Okay. What I'm talking about is, is when you
22 have -- when you come to the anniversary of -- of the
23 accident, December 17th, when you come to the
24 anniversary of -- or birthdates of your children, when
25 you come to dates of things that were very significant

1 with your children, such as the birth of your
2 grandchild, things of that sort that normally would be
3 very happy, joyous occasions.

4 A. Yes. Now, all -- all of those anniversaries,
5 and I think that there are two particular -- two
6 particular anniversaries for Mr. Hughes that it will
7 always -- probably for the rest of his life be
8 troubling, and this is commonly observed in depressions,
9 particularly in a depression where there was a
10 catastrophic -- catastrophic event like this one, is
11 that the -- the individual at those anniversaries will
12 suffer -- and I won't say a relapse. It's not exactly a
13 relapse, but will suffer for a period of some weeks
14 before and perhaps a week or two after, will suffer
15 symptoms of depression and will do --

16 People in those circumstances will do a lot
17 of kind of extraordinary things that are -- that are
18 related more to the depression and to the event than --
19 than to the regular course -- the ordinary course of
20 their lives.

21 Q. It was my words describing that, "symptom
22 reactivation." Is there another word that you would use
23 there -- another two words that you would use?

24 A. I like -- I like those words. I had never
25 heard that specifically. I have --

1 That, of course, is commonly known
2 professionally, is that anniversaries are a dangerous
3 time for people who are depressed, and particularly for
4 people whose depression is related to a catastrophic
5 event that --

6 I like symptom reactivation, that's a good
7 term.

8 Q. I know I heard Randy and others say that even
9 country music songs that were country music songs that
10 they and their kids listen to, or that they related to
11 their children, were things that just -- you know, just
12 set up a stir of emotions and problems? Is -- Is that
13 another example of symptom reactivation?

14 A. That -- That can happen, yes.

15 Q. Do you anticipate continuing to treat Randy
16 Hughes in the future?

17 A. I'm -- I'm certainly available and have made
18 that clear to him that anytime he wants to come back.

19 Q. Do you have an opinion based upon reasonable,
20 psychological probability as to whether or not Randy
21 needs continuing psychological treatment?

22 A. It is my belief that it would be very helpful
23 to him. I think he needs it. I think Randy will do
24 much better, and I think without some ongoing attention
25 like that Randy is likely to -- to do much, much worse.

1 Q. Would you describe the type of -- type of
2 treatment you have provided to Randy?

3 A. I'd say basically three broad categories: In
4 consultation with Doctor Copeland, recommended a
5 serotonin reuptake inhibitor; as well as what is called
6 a tricyclic antidepressant for Mr. Hughes to take.

7 Also, supportive counseling which is just
8 an invitation to a -- to allow Mr. Hughes to have a
9 place that he can discuss his thoughts and feelings, and
10 work through some of the concerns and fears of an
11 ongoing; and then in kind of a third way is working
12 to -- to re-establish his -- what -- what are called ego
13 defenses -- re-establish his ability simply to cope with
14 the ordinary slings and arrows, the vicissitudes of
15 every day living, the ordinary problems of being in
16 relationships, and getting the bills paid, and -- just
17 getting by day-to-day, doing all the things people have
18 to do.

19 So there are rebuilding those defenses,
20 supportive therapy for the depression, as well as
21 pharmacotherapy and consultation with Doctor Copeland.

22 Q. Doctor Flynn, have you talked with Randy about
23 his relationships with his daughter, and his son?

24 A. Yes.

25 Q. What kind of relationships did they have?

1 A. He had kind of an ordinary relationship with
2 his daughter, Afton. He was --

3 They were --

4 Their's -- their's was an emotional, kind
5 of a volatile relationship. There were times when they
6 were much in conflict and times when they were warm and
7 close with one another.

8 He was remarkably close to his son, Shiloh.

9 They were very, very close; did things together.

10 Mr. Hughes very much valued that relationship, and was
11 looking forward to continuing to enjoy all the things
12 that a father enjoys with his son. He and Shiloh were
13 very close and he loved Shiloh very dearly.

14 Q. His relationship with Afton, I've heard Randy
15 describe, as that they were too much alike. Was there
16 any --

17 Were there any conversations about that,
18 that sometimes they butted heads because they -- their
19 personalities were almost identical?

20 A. As a matter fact, Mr. Hughes said that a couple
21 of times himself, that he and -- he and Ashton were too
22 much alike and sometimes conflicted because of that.

23 Q. As far as the love that Randy Hughes had, how
24 would you describe his love for his daughter, Afton?

25 A. Oh, he loved his daughter. Oh, he doted on

1 her, yes.

2 Q. And did they see each other on a daily basis?
3 I mean, did Randy see his daughter and his son a daily
4 basis?

5 A. It was my understanding, yes, that he did.

6 Q. And how would you describe the
7 relationship--and I'm talking, you know, in a range of
8 poor to excellent--between Randy and his daughter,
9 Afton?

10 A. Good.

11 Q. Okay. What about Randy and his son, Shiloh?

12 A. Very good.

13 That -- That Mr. Hughes was very close with
14 his son, and as I understand it, they did a lot of
15 things together and shared a lot of -- a lot of good
16 feelings.

17 Theirs' was an unusual -- an unusually
18 close relationship.

19 Q. (BY MR. SIMPSON) From your experience, would
20 you expect that Randy Hughes would continue to suffer
21 major depression as a result of the loss of his entire
22 family in the future?

23 A. He will be for the rest of his life, and
24 certainly for the next five to 10 years, I would say
25 that -- that depression will haunt him and he will be --

1 he will be subject to bouts of depression -- bouts of
2 moodiness and depression, and loss of interest and
3 motivation probably for the rest of his life.

4 Q. Would you think that would be unusual, based
5 upon the loss that he had in this single episode?

6 A. I think it would be absolutely predictable.
7 The magnitude of loss that he's suffered, in combination
8 with -- with -- particularly in combination with the age
9 and with the nature of -- of my understanding of
10 Mr. Hughes' family, it's absolutely predictable that --
11 that this kind of a blow would never go away, that he'll
12 never get past this.

13 Q. Doctor Flynn, are the medical charges that you
14 have charged Randy Hughes reasonable and necessary in
15 Denton County and in Wise County?

16 A. Yes, they are. Yes.

17 Q. Has Randy Hughes complied with all your
18 requests and been a good patient?

19 A. With -- Within normal limits, yes. He has been
20 a good -- a good patient and he has done as much as I
21 could expect out of a patient in his circumstances to
22 do.

23 Q. Have all of the opinions that you've given here
24 today been based upon reasonable psychological
25 probability?

1 A. Yes.

2 Q. In looking through your statement, there's a
3 couple of statements that he -- that Mr. Stradley didn't
4 cover, and I think it's your initial notes; and he
5 covered everything, but he missed just a couple of
6 things?

7 Number one, your --

8 If you'll take your first page of notes, in
9 your left column, about three-quarters of the way down
10 there is a quote in quotation -- there's a statement in
11 quotation marks, and could you -- could you read it
12 starting with, "What scares me --"

13 A. That was Randy's comment. It's in quotation
14 marks, so it is Randy's own statement. He said, "What
15 scares me the most is whether I'm ever going to be happy
16 again."

17 Q. (BY MR. SIMPSON) And that is a quote that
18 Randy told you -- or comment that Randy told you the
19 first time that you saw him?

20 A. Correct, yes.

21 Q. I note on that page, also, that above that --
22 about two things above that -- comments above that, it
23 says, "At return from hospital, family had taken all of
24 his guns --" and I can't read --

25 A. "-- except one."

1 Q. "-- except one." What did you understand that
2 comment to mean?

3 A. They were afraid --

4 The family--and I'm not sure exactly who he
5 means there--brothers, sisters, in-laws, had taken all
6 of his guns out of the house because they were afraid
7 that he might turn one on himself.

8 Q. Do you think with the kind of trauma that he
9 experienced that day on December 17th, 2002, that --
10 that would have been a reasonable concern to take the
11 guns out of his reach?

12 A. Yes, you bet. Of course, it would.

13 Q. Well, why is that so?

14 A. Well, that's a pretty devastating loss, and it
15 would not be at all surprising if --

16 If a man has a house full of guns, it would
17 not be at all surprising for a man to go home and -- and
18 kill himself in response to that kind of a -- of a
19 tragedy.

20 Q. Is Randy --

21 You prescribed medication for Randy, did
22 you not?

23 A. I recommended to his physician.

24 Q. Recommended?

25 A. Yes.

1 Q. Okay. Was medication prescribed by his
2 physician?

3 A. Yes.

4 Q. What was the medication?

5 A. Celexa.

6 Q. Okay. And can you tell the jury what the
7 purpose of Celexa is?

8 A. Celexa is a serotonin -- serotonin medication.
9 It increases the level of serotonin. A -- A loss of
10 serotonin, a depletion of serotonin in the brain is --
11 is kind of the biological reality of depression. That
12 it is -- it is the biological basis for all of the
13 depression -- the behavioral symptoms of depression.

14 And one of the important things for
15 anyone -- any depressed individual is to make sure that
16 their brain is functioning again at its optimal level so
17 that you can then begin to do work on -- on what is
18 the -- the life stressors, the -- the problems in a
19 person's life.

20 Q. Did you think that the medication helped Randy?

21 A. Absolutely. Absolutely. It was crucial.

22 Q. Doctor, I'd like to move just briefly to Clint
23 Royse. You saw Clint once on September 9th, 2003?

24 A. Yes.

25 Q. Okay. Doctor, in that one visit, were you able

1 to have a diagnosis of Clint Royse's problems?

2 A. Yes.

3 Q. And what was your diagnosis?

4 A. He -- He, too, was suffering from a major
5 depressive disorder. Again, the same life stressors had
6 depleted his serotonin and his brain was running --
7 running on too little serotonin, and he needed to have
8 that serotonin improved.

9 Q. Would that have been a surprise to you, his
10 major depression, taking into account what he
11 experienced and what he had experienced as a result of
12 the death of his family?

13 A. Not at all. No, that would be very predictable
14 that -- that he would become depressed.

15 MR. SIMPSON: Your Honor, that concludes
16 our offer from Doctor Flynn.

17 THE WITNESS: All right. Ladies and
18 gentlemen, at this time we're going to take our lunch
19 break.

20 I think I explained it to you maybe Friday,
21 maybe I didn't.

22 I have a couple of dockets that I've
23 squeezed in to a couple of hours, and if you could be
24 back in the jury room at 2:00 o'clock. We will see you
25 at that time, and I hope to be able to start testimony

1 then.

2 Thank you.

3 (Lunch recess.)

4 THE COURT: Bailiff, do we have 12?

5 THE BAILIFF: Yes, your Honor.

6 THE COURT: Bring them in.

7 (Open court, Defendant and jury present.)

8 THE COURT: Thank you.

9 Are you going to play your portion of the
10 video?

11 MR. STEINDORF: Yes, your Honor.

12 THE COURT: You may do it right now.

13 MR. STEINDORF: Defendants have offers from
14 the psychologist, Flynn.

15 (Videotape playback begins.)

16 Q. (BY MR. SIMPSON) When was the last time you
17 saw Randy Hughes?

18 A. December 10th.

19 Q. What condition was Randy Hughes in at the time
20 you last examined him?

21 A. Last -- Last time I saw Mr. Hughes he was doing
22 somewhat better. He was in good spirits. He was --
23 He --

24 As best I can remember, he was still having
25 trouble -- some trouble with his sleep disturbance.

1 Yeah, well, in fact, there is a note here that he's
2 still not sleeping very well. He was having --

3 There were --

4 He was having some trouble with his
5 trucking business, but that sounded like kind of the
6 ordinary vicissitudes of trying to operate his own
7 business. Symptomatically, mainly it was his sleep
8 disturbance and still struggling with some of the social
9 isolation.

10 -----

11 A. He had kind of an ordinary relationship with
12 his daughter, Afton. He was --

13 They were --

14 Their's -- their's was an emotional, kind
15 of a volatile relationship. There were times when they
16 were much in conflict and times when they were warm and
17 close with one another.

18 Q. Okay. All right. Doctor Flynn, my name is
19 Mark Stradley. I represent the Defendants in this
20 lawsuit. Certainly, we're not going to dispute that
21 this was a -- a terrible loss for Mr. Hughes?

22 What I would like to do is -- is talk to
23 you about whether there are any other factors or
24 aggravating factors that may have contributed or caused
25 his current situation. Did you --

1 When you got a history from him, did he
2 tell you that he had recently been divorced?

3 A. Yes, he did.

4 Q. And do you find that people who get --

5 Do you treat people for depression who have
6 just undergone a divorce?

7 A. Yes. Yes.

8 Q. Do you believe that Mr. Hughes had some
9 episodes of depression related to his divorce?

10 A. No.

11 Q. Okay. Now, some of these records, and it may
12 be because they're faxed, because I'm sure it's not a
13 handwriting problem, but could I ask you to -- could I
14 ask you to go over some of these records with me?

15 A. Certainly. Certainly.

16 Q. It looks like --

17 Would you turn to that page right there,
18 where it looks like to me that this was a history that
19 you wrote down?

20 A. Probably.

21 Q. Okay. Is that the page that's right there?

22 A. That's the page, yes, sir.

23 Q. Okay. What is that first entry; it says,
24 "12/17, RH" I guess is Randy Hughes; correct?

25 A. That's correct.

1 Q. Then it says, something "filed for divorce."
2 What is that?

3 A. His wife. I used that an abbreviation for
4 wife.

5 Q. Okay. So Randy Hughes' wife had filed for
6 divorce? Is that what that says?

7 A. That is -- That is correct.

8 Q. Okay. And then underneath that, it says,
9 "Divorce over" something. What does that say?

10 A. Biological child.

11 Q. What did -- What did he mean by that?

12 A. That the divorce that -- that he had and Kim
13 had been involved in involved their biological child.
14 It turns out it was Afton.

15 Q. Okay. And what -- what was the problem there?

16 A. His conflict with Afton.

17 Later in the notes there is the mention in
18 the lower right-hand corner of that same page, that Kim
19 Hughes had issued an ultimatum that Afton goes or Kim
20 goes, that either -- either they had to kick Afton out
21 of the house or she was leaving --

22 Q. Or Kim --

23 A. -- as I understood.

24 Q. -- Or Kim was leaving?

25 A. Or Kim was going to leave.

1 Q. And according to Randy Hughes that was the --
2 the reason for their divorce?

3 A. That's correct.

4 In -- In an odd way, my understanding from
5 Randy was that he got the divorce from Kim to save the
6 marriage and the family.

7 Q. And it was your understanding at the time of
8 the accident in December of 2002 that they were
9 divorced?

10 A. That is correct. That's my understanding.

11 This is now. Now Randy is having
12 difficulty with the relationship. He was sort of
13 seeing -- had been seeing a little bit, a woman named
14 Tiffany who was 23 years old, and Mr. Hughes reported to
15 me that he pushes her away. I think two things: He
16 had --

17 The long story on that is that they spent
18 time at the lake, several of them, he and Tiffany and I
19 think other members of her family, socializing at the
20 lake, but his concern was that he was pushing her away.
21 He was not allowing the relationship to develop.

22 Q. Okay. And did you ever meet Tiffany?

23 A. Never did, no.

24 Q. Okay. What else did he tell you about Tiffany?
25 What type of relationship did he have with Tiffany?

1 A. They played. She was someone that he could go
2 do things with, spend time with, low -- low demand on
3 him. I mean, it was a low maintenance relationship, and
4 it allowed him to have people to go do things with.

5 Q. Okay. To the right of that where it says,
6 "Sort of seeing Tiffany."

7 What does that say?

8 "RH thought --"

9 A. Uh-huh.

10 Q. "-- two months ago --" and then I can't read
11 that.

12 A. He -- He didn't want to go out two -- two
13 months before --

14 Apparently, and I'm going to say this must
15 have been in June of 2003, two months before he
16 contacted my office, he -- he had become isolated. He
17 didn't want to go out at all. He was hypersomniac,
18 which means that he was sleeping far too much. If he
19 wasn't at work, he indicated he was sleeping.

20 The social isolation is noted.

21 He had had a prescription. Mr. Hughes did
22 not know what the prescription was for. He didn't
23 remember the name of it.

24 At first he discontinued --

25 He took it for awhile and then he quit, and

1 then he felt bad again, so he took a bunch of the pills
2 and they just made him sick.

3 Q. Okay. All right. Now, you said there was --
4 let's see, something about, down here about --

5 Lower right, what does that say, "Tif --"

6 A. "Tiffany encourages Randy Hughes to get out and
7 to be active."

8 Q. Okay. And he --

9 Did he tell you whether or not he was doing
10 that?

11 A. Indications over the next several months were
12 that he was making a good effort on most weekends to get
13 out and do some stuff, to get more active and be busy.

14 Q. Okay. Now, do you --

15 This --

16 Now, we're going over notes from your
17 initial visit in August of 2003; is that correct?

18 A. That's correct.

19 Q. Okay. Now, in subsequent visits, I guess, he
20 had 11 more after that; correct?

21 A. Yes, sir. I have notes for 11 more, yes.

22 Q. Okay. Now, did he -- did he continue to see
23 Tiffany, and did she intend to encourage him to get out?

24 A. Through -- Through much of the fall, he and
25 Tiffany continued to go out and do things together.

1 Q. Okay. And do you know the extent of the
2 relationship? I mean, were they --

3 Was she like a girlfriend?

4 A. He -- He avoided that term. No, he denied that
5 they were actually --

6 He denied --

7 For example, he denied that there was ever
8 any intimacy; would not have called her a girlfriend,
9 but would've called her a good friend.

10 Q. Okay.

11 A. He enjoyed her company and they did a lot
12 together, but he was very clear with me that he didn't
13 consider her a girlfriend.

14 Q. Okay. All right. Now, so you saw him on
15 08/22?

16 A. Correct.

17 Q. 08/27?

18 A. Correct. Yes.

19 Q. 09/03?

20 A. Yes.

21 Q. What's that next? 09/10?

22 A. 09/10.

23 Q. 09/24, 10/01, 10/08, 11/05, 11/12, 12/03, and
24 12/10, all in the year of 2003?

25 A. Correct.

1 Q. Okay. So it's been -- it's been about a month
2 and a half since you've seen him?

3 A. That is correct.

4 Q. And the last visit on December 10th, 2003, you
5 noted that Mr. Hughes was doing a lot better that day
6 and reported so. Did I read that correctly?

7 A. That is -- That's what it says, yes.

8 Q. All right. Was there ever a discussion with
9 Mr. Hughes about how the accident happened?

10 A. A couple of discussions, yes.

11 Q. And I don't know --

12 Well, let me ask you this: What did he
13 tell you about -- about how the accident happened?

14 A. The accident was a head-on collision in which
15 his -- the car that his wife was driving was hit head on
16 by a truck, you know, obviously coming from the other
17 way.

18 His discussion of it was working over --
19 ruminating -- working over in his mind the details of
20 which side of the line at any given time, and what
21 the -- what the police had said, and what he understood,
22 and what the skidmarks indicated about who had been on
23 which side of the -- the median stripe, the midline, and
24 who had been on what side and what the sequence of
25 the -- the car and the truck, moving back and forth over

1 the line.

2 Q. Okay. And best as you can recall, being more
3 specific, what did he say about that?

4 A. I'm not sure. He --

5 That -- That was his discussion, was -- was
6 trying to sort out in his mind all of the pieces of what
7 had actually happened, according to the various sources
8 of information that he had and what different people had
9 said.

10 So -- So as far as -- you know, as far as
11 that, he had a lot of ideas about what might have
12 happened, and wondering which one was the actual version
13 of the events.

14 Q. And he was -- he was telling you he wasn't sure
15 if Ms. Hughes had crossed the center line or whether she
16 had not crossed the center line, or whether the truck
17 had crossed the center line or had not crossed --
18 crossed the center line?

19 A. That's --

20 My best understanding is that that was his
21 question, yes, was wondering what the sequence of events
22 was. That he was trying to sort out for himself what
23 the sequence of events was.

24 Q. Well, now on 09/03, September 3rd, 2003, what
25 is -- what do those first two words say?

1 like this family members tend to -- to take sides, tend
2 to have strong feelings, and I warned him -- advised
3 him -- warned him--I think is probably accurate--to --
4 to be prepared for a lot of family conflict, because
5 when -- when you get three or four different family
6 members involved in a lawsuit, a lot of stress leads to
7 people -- leads people to take strong positions.

8 And, in fact, he indicated -- I think he
9 said that already there was some dispute among family
10 members exactly as to what to do next -- what would be
11 the best thing to do next and how to go about it.

12 Q. And what specifically did he tell you about
13 that?

14 A. I don't remember.

15 He just -- He just indicated that there
16 were several people --

17 I believe -- I believe that Clint Royse is
18 involved, and I believe that his ex-father-in-law was
19 involved, and I think that there were a bunch of
20 siblings.

21 And what he said was that they were already
22 starting argue to among themselves as to what would be
23 the best course at this point, and that's kind of
24 normal. There's nothing unusual about that.

25 Q. Okay. But at the time of the meeting didn't he

1 specify to you what that argument was about, like who
2 wanted to do what and who wanted to do something else?

3 A. He -- He did not. I don't remember him
4 specifying anything about it, just that -- that they
5 were taking positions already.

6 Q. Did he tell you what his position was at that
7 time?

8 A. At that point I don't think he -- I don't think
9 he believed strongly. I think he probably felt like a
10 lawsuit was warranted, but I don't think he had at that
11 time really decided clearly in his own mind that he was
12 ready for it.

13 Q. Okay. Then October 8th, a week later, it says,
14 "Randy doing a lot better. He expressed concern --"
15 what does it say after "concern"?

16 A. Because -- "bcs" --

17 Q. Okay.

18 A. -- "because Kim's birthday is near."

19 Q. Okay. And then what does it say next?

20 A. That -- That's "not so much a problem as
21 Shiloh's birthday had been, his son," parenthetically,
22 "Shiloh."

23 Q. Okay. And then it says, "Randy doing work --"

24 A. "-- dealing with Tiffany."

25 Q. Okay. And then it says, "that" something?

1 A. "That relationship."

2 Q. Okay. "That relationship is strained --"

3 A. Correct.

4 Q. Okay. And what does it say after that?

5 A. "-- because -- because of the age difference,
6 and because of their different timelines."

7 Q. What do you mean by "timelines"?

8 A. Randy knew that -- that he was not available
9 for a relationship -- that he was not available for a
10 serious relationship for quite some time.

11 He -- He was very clear with me that he
12 didn't even know if or when he would ever be interested
13 in a relationship, and it was perception that Tiffany at
14 23 years old needed to be in a relationship, needed to
15 be moving on with her life, and sounded to me at that
16 time like there was some conflict.

17 I kind of understood that Tiffany expressed
18 her willingness to be willing to wait for him, but he
19 was not willing to be waited on, particularly.

20 Q. Okay.

21 A. That they -- That they just really had
22 different perceptions of where this was going.

23 Q. All right. And then the last line of --

24 October 8th says, "Randy --"

25 A. "-- he's holding still --"

1 Q. "-- holding still --"

2 A. "-- very well."

3 Q. "--very well."

4 -----

5 Q. So you saw him on December the 3rd, and he was
6 not doing as well that day?

7 A. Correct.

8 Q. That he --

9 You suggested he needed to have a plan,
10 because the accident anniversary was coming up?

11 A. That's correct.

12 Q. He said he was going to go hunting. Did I read
13 that correctly?

14 A. Yes.

15 Q. He -- He didn't have any -- He didn't have any
16 suicidal thoughts; is that correct?

17 A. He didn't have ideation or intent, yeah.

18 Q. Okay.

19 A. Yeah.

20 Q. Because that's --

21 When somebody --

22 I guess when somebody is depressed, you
23 want to make sure they don't -- they don't go to that
24 extreme and try to take their own life?

25 A. Particularly at the anniversary. Again, we are

1 coming up on the anniversary of the accident, and I
2 particularly wanted to check and make sure that -- that
3 Mr. Hughes was holding himself together, because -- that
4 he had a plan and that he wasn't going to be desperate.

5 Q. Okay.

6 A. That can be very significant, that anniversary.

7 Q. All right. Then the last visit, 12/10/03
8 that's the one where you wrote he was doing a lot
9 better?

10 A. Seemed a lot better that day.

11 Q. And reported --

12 He seemed better to you and he reported
13 that he was better?

14 A. Said he was doing better, yes.

15 Q. And that he didn't have a plan for the weekend,
16 but he does have some plans to go clubbing?

17 A. Yes.

18 Q. Now, have you had any meetings with Mr. Hughes'
19 lawyers?

20 A. I -- I did meet with Mr. Powers about a week
21 ago to schedule this deposition and to give him copies
22 of my file.

23 Q. Okay. You've met with him in person?

24 A. In person.

25 Q. In Denton?

1 A. In Denton.

2 Q. Okay. And did you discuss the kind of
3 information they would be interested in finding out in
4 your deposition and talk about today's deposition?

5 A. We -- We talked about my treatment of
6 Mr. Hughes and what the deposition was likely to entail
7 today, yes.

8 Q. And did Mr. Powers pay you for the -- your time
9 given giving that meeting?

10 A. He has not yet. I told him I would send a bill
11 for -- for last week's meeting and for today --

12 Q. Okay.

13 A. -- at the same time.

14 Q. So you're -- you're charging for last week's
15 meeting with Mr. Powers and for your time giving this
16 deposition today in -- in Mr. Simpson's office?

17 A. That's correct.

18 Q. And they've agreed to pay you for that?

19 A. Mr. Powers has agreed that Mr. Simpson will
20 pay.

21 Q. Now, you and I have never met before today; is
22 that correct?

23 A. Not to my knowledge, no.

24 Q. And we haven't talked about this case, except
25 in this room under oath; correct?

1 A. To my --

2 That's the best of my knowledge, yes.

3 Q. Did you have another meeting with Mr. Simpson,
4 or Mr. Powers, or Mr. Boyd before this deposition
5 started?

6 A. Other --

7 Oh, this morning?

8 Q. Yes.

9 A. I got here a little bit early.

10 I gave them copies of my vitae. We -- We
11 did talk briefly.

12 Q. Okay.

13 A. Yes.

14 Q. So there were two attorney meetings; one about
15 a week ago and one before the deposition?

16 A. Okay. Yeah. Okay.

17 Q. Now, you had --

18 Have you given deposition testimony or
19 trial testimony in other situations -- other cases?

20 A. Yes.

21 Q. How many times?

22 A. Which, deposition or trial testimony?

23 Q. Well, both?

24 A. Both.

25 Oh, probably 100 to 150 times.

1 Q. Okay. Now, if you break it down for me, how --
2 how much in deposition?

3 A. Probably, I'd say 75 or 80 times in deposition
4 and 50 or so times in court.

5 Q. So you saw Mr. Royse just one time?

6 A. That's correct.

7 Q. And that was in September?

8 A. That's sounds about right. I'd have to look.

9 September 9th.

10 Q. Okay. And it's my understanding that Mr. Randy
11 Hughes referred Mr. Royse to see you?

12 A. That's correct.

13 Q. Okay. All right. Then the top right, what
14 does that say?

15 A. I -- I asked him what does he do all day to
16 describe his -- his daily activities.

17 Q. He said usually doesn't eat breakfast?

18 A. Correct.

19 Q. Starts driving at 6:00 a.m.

20 A. Yes.

21 Q. Start by?

22 A. By 8:30.

23 Q. By 8:30, each load?

24 A. Each load takes him about two-and-a-half hours.

25 Q. Okay. And three years with Randy?

1 A. With Randy Hughes.

2 Q. Okay. And it's your understanding Randy Hughes
3 owns a trucking company and Clint Royse worked for him?

4 A. Correct.

5 Q. And -- And at all times they were seeing you,
6 they were still working in the trucking business?

7 A. To the best of my knowledge.

8 Now, I only saw Mr. Royse once --

9 Q. Okay.

10 A. -- and at that time he was working for
11 Mr. Hughes.

12 Q. As a truck driver?

13 A. As a driver, yes.

14 Q. Okay. All right. And as you said there was
15 just the one visit and that was September 9th, 2003?

16 A. Correct.

17 Q. Okay. And you diagnosed him as single episode
18 depression, moderate level?

19 A. Correct.

20 Q. Basically the same as Randy Hughes?

21 A. Basically the same, yes.

22 Q. I understand. What are some other common
23 stressors that you see in your practice that can cause
24 depression?

25 A. Well, illness -- illness --

1 Being involved, one's self in an -- in an
2 accident, after which one loses some capacity, back
3 pains, loss of a limb, loss of cognitive functioning.

4 I've seen people who had head -- head
5 injuries and loss of memory capacity, memory function,
6 and that can be depressing.

7 Q. Okay. What else?

8 A. I'm going to stop there. There are probably
9 any number --

10 You can probably name about as many of them
11 as there are people.

12 Q. All right. Divorce?

13 A. Divorce sometimes does, yes.

14 Q. Okay.

15 A. That's one.

16 Q. Litigation, itself?

17 A. If it goes on for a long time. Litigation can
18 produce depression in people, if it goes on long enough.

19 Q. Oh, wondering how an accident happened?

20 A. No, I would --

21 Now, wondering how an accident happened is
22 a lot more likely to be a symptom of depression than a
23 cause.

24 -----

25 (Videotape playback ends.)

1 MR. STEINDORF: Your Honor, that concludes
2 our offer from the psychologist, Flynn.

3 MR. SIMPSON: Your Honor, we just have a
4 short excerpt here on redirect.

5 THE COURT: All right.

6 (Videotape playback begins.)

7 "QUESTION: Do you believe that Mr. Hughes
8 had some episodes of depression related to his divorce?

9 "ANSWER: No.

10 "QUESTION: Do you believe that his divorce
11 has contributed to or exacerbated his depression because
12 of this automobile accident?

13 "ANSWER: I'm sorry. Again, I think the
14 answer is no. The --

15 "I'm not quite sure what you're asking --
16 the way you relate it because of the accident, but, no,
17 I don't think the -- the divorce contributed at all to
18 Mr. Hughes' depression.

19 "QUESTION: Do you have an opinion as to
20 whether or not Randy still loved Kim Hughes?

21 "ANSWER: Yes.

22 "QUESTION: And I'm talking about in the
23 husband/wife context?

24 "ANSWER: Absolutely.

25 "QUESTION: And what's that opinion?

1 "ANSWER: I believe he did, yes.

2 "QUESTION: Did Randy ever mention to you
3 that before Kim's death and after the divorce, whether
4 he or Kim saw anybody else or had any relationship --
5 intimate relationship with anyone else?

6 "ANSWER: He -- He did tell me, and the
7 answer is that neither of them had dated or had any
8 relationships with anybody else during that interim.

9 "QUESTION: Do you have an opinion as to
10 whether or not there was any depression -- that Randy
11 had any depression before the accident -- and when I
12 mean clinical depression before the accident?

13 "ANSWER: In -- In his report of his
14 history -- his description of his history prior to our
15 first meeting, there was no evidence that he had ever
16 suffered a previous episode. That's, you know, standard
17 clinical practice to look for that, and there was no
18 evidence in his past.

19 "QUESTION: Because of Randy's love for his
20 wife and his relationship with his wife, do you think
21 that her death affected him?

22 "ANSWER: Profoundly, yes."

23 (Videotape playback ends.)

24 MR. SIMPSON: Your Honor, that concludes
25 the testimony of Doctor Flynn.

1 THE COURT: All right. Anything further?

2 MR. STEINDORF: No, your Honor.

3 THE COURT: Call your next witness.

4 MR. SIMPSON: We would call Randy Hughes to
5 the stand.

6 THE COURT: All right, sir.

7 Thank you, Mr. Hughes.

8 Raise your right hand for me.

9 THE WITNESS: (The Witness complied.)

10 THE COURT: Do you swear to tell the truth,
11 the whole truth, and nothing but the truth?

12 THE WITNESS: I do.

13 THE COURT: Very well. Have a seat to my
14 right.

15 THE WITNESS: (The Witness complied.)

16 THE COURT: You may examine this witness.

17 RANDY HUGHES,

18 having being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. Randy, would you please state your name and
22 address for the jury?

23 A. Randy Lynn Hughes, 4167 FM 2123, Paradise.

24 Q. Randy, about how long have you lived at that
25 address?

1 A. That one, seven or eight years.

2 Q. Randy, before this accident on December 17th,
3 2002, who lived at that address with you?

4 A. Kim, Afton, Shiloh, Clint and Jagr.

5 Q. Okay. That would be Kim Hughes?

6 A. Yes, sir.

7 Q. Okay. And your daughter, Afton?

8 A. Yes, sir.

9 Q. And her husband, Clint?

10 A. Yes, sir.

11 Q. And your grandson, Jagr?

12 A. Yes, sir.

13 Q. And Shiloh --

14 Your son, Shiloh?

15 A. Yes, sir.

16 Q. And how long have they lived there?

17 A. Everybody, or --

18 Q. Let's just talk about Afton and Clint?

19 A. Well, Afton has always been there.

20 Q. Okay. How long had Afton and Clint lived
21 there?

22 A. Since they was married.

23 Q. And that would have been about a year and a
24 half?

25 A. Yes, sir.

1 Q. And then Kim had lived there ever since you
2 built the house?

3 A. Yes, sir.

4 Q. Afton had lived there ever since you built the
5 house?

6 A. Yes, sir.

7 Q. And had Shiloh lived there ever since you had
8 built the house?

9 A. Yes.

10 Q. How did you find out about the accident, Randy?

11 A. One of my friends called me on my mobile phone,
12 Leslie Oates.

13 Q. Did you go to the scene of the accident?

14 A. Yes, sir.

15 Q. Were you there before Afton and Kim were
16 CareFlited to Harris Hospital?

17 A. Yes, sir.

18 Q. Randy, I'm going to try to briefly show you
19 some pictures. I know you've had a tough time, and
20 you've had a tough time, haven't you?

21 A. Yes.

22 (Plaintiffs' Exhibit Nos. 51
23 and 52 marked for identification.)

24 MR. SIMPSON: Your Honor, we would
25 introduce Plaintiffs' Exhibit No. 51 and 52 into

1 evidence.

2 MR. STEINDORF: No objection, your Honor.

3 THE COURT: Admitted.

4 Q. (BY MR. SIMPSON) Randy, did you -- you all did
5 kind of a series of collages or pictures put together
6 for the funeral. Are these the ones that you prepared
7 for the funeral, and that's Exhibit No. 51 on Shiloh?

8 A. Yes, sir.

9 Q. And then No. 52 on Afton?

10 A. Yes.

11 Q. Randy, can you tell us what kind of
12 relationship you had with Shiloh and Afton?

13 A. They were great. Best kids you could ask for.

14 Q. Was Afton a lot like you?

15 A. Too much.

16 Q. Was Shiloh a lot like his mom?

17 A. Yes.

18 Q. Were you and Shiloh's hunting buddies, fishing
19 buddies, skiing buddies, you name it, you all did
20 everything together?

21 A. Yes, sir.

22 Q. Randy, would you have been able to make it thus
23 far if it hadn't of been for friends like Leslie Oates
24 and Tiffany Oates?

25 MR. STEINDORF: Objection; leading, your

1 Honor.

2 THE COURT: Sustained.

3 Q. (BY MR. SIMPSON) Randy, could you state
4 whether or not you would have been able to make it
5 without your friends?

6 A. I don't believe I could have.

7 Q. What are some of the things your friends have
8 done for you during this time?

9 A. Made me go places, do stuff with them.
10 Wouldn't let me stay at home, they would come by and get
11 me and make me go.

12 Q. Were there times when you secluded you in your
13 yourself -- secluded yourself, Randy, in your house and
14 wouldn't talk to anybody?

15 A. Yes, sir.

16 Q. Were you asked to pull the life support both on
17 Kim and your daughter, Afton?

18 A. Yes.

19 Q. What is the last thing that you did before you
20 pulled the life support on Afton?

21 A. Sang her song I sang when I rocked her to sleep
22 when she was a baby.

23 MR. SIMPSON: I'll pass the witness.

24 -----

25 MR. STEINDORF: May it please the Court,

1 may Mr. Hughes have a moment, your Honor, just to
2 gather --

3 THE COURT: Sure.

4 MR. STEINDORF: -- gather himself?

5 THE COURT: Sure.

6 -----

7 CROSS EXAMINATION

8 BY MR. STEINDORF:

9 Q. Mr. Hughes, while you're -- while you're --
10 while you gather yourself there just a little bit, sir,
11 I have just you a very few questions to ask you mostly
12 about some of the things the psychologist just testified
13 to?

14 You understand, Mr. Hughes, that in asking
15 these questions, it's not our intent to make today any
16 more difficult for you than it must already be, so I'll
17 try to be very brief.

18 Is that okay?

19 A. Yes, sir.

20 Q. All right, sir. The --

21 You were married to Kim back in 1983; is
22 that correct?

23 A. Yes, sir.

24 Q. And as it turned out, December 17th, 2002, but
25 for the divorce, would have actually been your 20th

1 wedding anniversary; is that correct?

2 A. Yes, sir.

3 Q. Now, you and Kim had been divorced for about
4 how long, please, sir?

5 A. It would be three months, four months.

6 Q. All right. But she continued to live there in
7 the home that you've just described; is that right?

8 A. That's right.

9 Q. You mentioned, Mr. Hughes, not today, but in
10 your deposition that you were helping her to work on
11 that home; is that correct?

12 A. It was the home that she was buying. I was
13 helping her remodel it.

14 Q. Were you living at that address prior to the
15 accident.

16 A. Which address?

17 Q. The address that you were helping her to fix
18 up?

19 A. No, sir. We all lived in my house.

20 Q. Okay. And what was that address, again,
21 please, sir?

22 A. 4167 FM 2123.

23 Q. All right. And what was the address that you
24 were working on prior to the accident, please, sir?

25 A. I don't know the address.

1 Q. But the plan was for Kim to move out and move
2 to this new place?

3 A. Eventually.

4 Q. All right. Mr. Hughes --

5 And again, just briefly, the psychologist,
6 Doctor Flynn, when you would go to talk to him, you
7 would talk to him about what was on your mind and what
8 was troubling you, would you not?

9 A. Yes, sir.

10 Q. One of the things that he mentioned here a
11 moment ago, perhaps you saw it on the videotape was that
12 Kim had issued some kind of an ultimatum. Do you
13 remember that testimony?

14 A. Yes, sir.

15 Q. Could you tell the jury what the ultimatum was
16 that Kim had issued?

17 A. Well, it was just about my daughter.

18 Q. And what was the ultimatum, please, sir?

19 A. That she was either leaving, or she was.

20 Q. Okay. Now, he referred --

21 Doctor Flynn, the psychologist Flynn,
22 referred to Afton as a biological child. Do -- Do you
23 know what he meant by that?

24 Afton was the biological child of Kim, was
25 she not?

1 A. Yes.

2 Q. And biological child of you, obviously; right?

3 A. Yes.

4 Q. Do you know what the conflict was between Kim
5 and Afton?

6 A. No, sir.

7 Q. Okay.

8 A. Just mother and daughter.

9 Q. But at any rate, that conflict was significant
10 enough that --

11 Well, it ultimately led to your divorce,
12 did it not -- led to your divorce?

13 A. I don't know if you would say that was all of
14 it or not.

15 Q. The psychologist mentioned that in a strange
16 way --

17 I don't want to put words in his mouth, but
18 in an odd way, I think, or in a strange way that you had
19 gotten the divorce to save the family; do you remember
20 that?

21 A. Something like that.

22 Q. And it's actually Kim that filed -- filed for
23 the divorce; is that right, Mr. Hughes?

24 A. That's right.

25 Q. Okay. Am I correct, Mr. Hughes, that on the

1 December the 17th, 2002, the date of this accident, you
2 did not have any plans of any kind later that evening to
3 do anything with Kim in celebration of your 20th
4 anniversary -- or what had been your 20th wedding
5 anniversary?

6 A. I never got the chance.

7 Q. There was no -- There was no discussion between
8 you and Kim that morning before you left the house about
9 this topic, was there, Mr. Hughes?

10 A. I don't remember talking to her about it.

11 Q. So you were married 19 years and about three or
12 four months shy of exactly 20 years; correct?

13 A. That's right.

14 Q. All right.

15 MR. STEINDORF: May we approach the bench,
16 your Honor?

17 THE COURT: Yes, you may.

18 (Bench discussion off record.)

19 MR. STEINDORF: Your Honor, let me --

20 I'll let the Court finish reading that and
21 then I'll start --

22 THE COURT: (The Court reading.)

23 (Defendants' Exhibit Nos. 440 and
24 441 marked for identification.)

25 MR. STEINDORF: Your Honor, Defendants

1 tender to the Court what we've marked as Exhibits 440
2 and 441.

3 This bench conference concerns the subject
4 of the motion.

5 THE COURT: All right. Without mentioning
6 the subject matter, go ahead --

7 MR. STEINDORF: Your Honor --

8 THE COURT: -- because I know what it's
9 about.

10 MR. STEINDORF: All right. Well, your
11 Honor, we're making a request under Rule 103 for the
12 opportunity to make a bill on this in the Q and A format
13 because of the urgency and importance of this specific
14 topic.

15 If the Court were to examine those
16 exhibits, 440 and 441, it would become apparent exactly
17 the time of the wreck.

18 THE COURT: There was --

19 I read the brief.

20 MR. STEINDORF: Your Honor, we feel that
21 although we'll make a speaking bill, the Court requires
22 us to do, it would be prejudicial to us and that we need
23 an opportunity to make our bill in Q and A format, so --

24 THE COURT: You've already taken his
25 deposition; right?

1 MR. STEINDORF: We have taken his
2 deposition, your Honor.

3 (Sotto voce discussion.)

4 THE COURT: Hold it.

5 All right. Ladies and gentlemen, go to the
6 jury room. I anticipate this will take about five
7 minutes.

8 Thank you.

9 (Proceedings held outside presence and/or
10 hearing of the jury.)

11 MR. BOYD: They've merely identified
12 Cingular's subpoena compliance provision. We've been
13 given no indication of what that testimony would be.

14 THE COURT REPORTER: I still can't hear
15 you. I'm sorry.

16 MR. BOYD: We've been given no indication
17 of what that testimony would be.

18 Further, your Honor, if the Court would
19 review the record, there are examples in there that came
20 out in the deposition that they took where two-minute
21 phone calls would be recorded as two minutes, but the
22 next phone call would be made one minute after that
23 two-minute phone call was made.

24 I don't think there's any connection. In
25 fact, the original reason why this evidence was

1 excluded, or if the limine was granted. There's no
2 connection, your Honor, between the cell phone records
3 and the time of the accident or the driver of the
4 accident.

5 The evidence before the Court that was in
6 Clint Royse's deposition, that we presented at the
7 hearing, showed that every single one of those phone
8 calls before the phone call they're wanting to put in
9 was made by Clint Royse to Afton Hughes Royse, who was
10 in the back seat of the Yukon.

11 The testimony from Ashton Quinn, who would
12 have testified on this position and which the Court
13 reported at the pretrial hearing was that she was on the
14 phone with Shiloh at the time, your Honor, and there was
15 no cell phone ring that she heard of any kind.

16 We don't believe they can introduce records
17 of the witness that they first identified on April 30th,
18 and they still have yet to identify by name. It's just
19 a Cingular wireless subpoena, and we've been given no
20 indication of what they would testify to. That is
21 undesignated and undisclosed expert testimony as to what
22 the two minutes actually would mean. That's not factual
23 testimony, that's expert testimony.

24 MR. STEINDORF: Your Honor, the Court
25 Reporter has advised me that my comments were not on the

1 record, so if I might be given the opportunity to
2 state -- to state my comments again for the record.

3 THE COURT: All right.

4 MR. STEINDORF: I've tendered to the Court
5 what we've marked for identification as Exhibit 440 and
6 441. I now ask the Court Reporter to mark for
7 identification the Wise County, 911 records, 442 --

8 MR. HURD: Well, let's see. Actually, this
9 is 425 and the other one is 420.

10 (Defendant's Exhibit Nos. 420 and
11 425 marked for identification.)

12 MR. STEINDORF: For the record, we've
13 marked this as 425.

14 THE COURT: All right.

15 MR. STEINDORF: This shows the 911 call at
16 1:56 -- 1:56 p.m.

17 And, your Honor, the other -- the other
18 comments that I had that I fear did not get on the
19 record the first time, I tendered to the Court exhibits
20 would show that at 1:55 Randy Hughes placed a call on
21 the cellular phone to Kim Hughes, and that phone call is
22 showed to have lasted two minutes.

23 Subsequently, there were two, one-minute
24 phone calls, and although those calls may not be an
25 indication that anybody picked up the receiver, we

1 believe evidence will be brought forth in this trial
2 from Cingular representatives to the effect that that
3 two-minute entry, which shows up, by the way, your
4 Honor, not only on Randy's cell phone number, but also
5 on Kim's cell phone number, stands for the idea that
6 somebody hit the talk button on the cell phone that was
7 in the Yukon.

8 And we have made a request under Rule 103
9 of the rules of evidence to develop this record in a Q
10 and A format outside the presence of the jury, because
11 of the crucial nature of this testimony.

12 Again, your Honor, it's -- it's relevant
13 under 401 because it is evidence that's probative as to
14 what was going on in the Yukon immediately prior to the
15 911 call at 1:56.

16 And so our view is that this evidence
17 should be admitted, but since the motion in limine was
18 granted on this, we've approached the bench and we
19 would -- we would request the opportunity to make our
20 record on this in a Q and A format under Rule 103.

21 THE COURT: You may make your record
22 briefly. There shouldn't be just a whole lot to make.

23 Q. (BY MR. STEINDORF) Okay. Mr. -- Mr. Hughes,
24 you may recall in the --

25 What is your cell number, please, sir?

1 A. 940-393-1303.

2 Q. What was Kim's cell phone, please, sir?

3 A. 940-389-3696.

4 Q. Did you talk to Kim at all on the -- the day of
5 the accident prior to the collision?

6 A. At the house.

7 Q. Did you talk about what you were going to do
8 that night for your anniversary?

9 A. No, sir.

10 Q. Did you find out during the day that it was the
11 anniversary and you needed to contact Kim about what the
12 plans were for that evening?

13 A. No, sir.

14 Q. Did you try to contact her by cell phone at
15 approximately 1:55? Did you place a phone call to her
16 cell number at approximately 1:55?

17 A. Well, I --

18 MR. STEINDORF: May I have the record, your
19 Honor, to tender to the witness?

20 THE COURT: Sure.

21 Q. (BY MR. STEINDORF) Do you recognize this page
22 from Exhibit 451 to be your cell phone number,
23 940-393-1303?

24 A. Yes, sir.

25 Q. And do you recall in your deposition saying

1 that you called at 1:55?

2 A. Well, that's what that said.

3 Q. You have no explanation of why it shows a
4 two-minute charge from the phone company for that 1:55
5 phone call; is that correct?

6 A. That's correct.

7 Q. It's your testimony, Mr. Hughes, that you did
8 not leave a voice mail on the phone?

9 A. Not that I can remember.

10 Q. Do you know where the phone is?

11 A. Yeah.

12 Q. Where?

13 A. Not really --

14 I used it for a little while after mine
15 broke, and then it messed up, so I turned it back into
16 Cingular.

17 Q. I'll show you now the -- a letter page in this
18 exhibit. Do you recognize your ex-wife's cell phone
19 number here that this would be a copy of her billing
20 records?

21 A. Yes.

22 Q. And does it show that a two-minute phone call
23 was received from your cell phone number at 1:55 p.m. on
24 the afternoon of December 17th, 2002?

25 A. That's what that shows.

1 Q. Do you have any explanation for why it shows a
2 two-minute charge there?

3 A. No.

4 MR. BOYD: Objection; asked and answered.

5 Q. (BY MR. STEINDORF) Did you continue to call
6 that number several more times?

7 A. I think the records shows I did.

8 Q. Okay. At least two more times?

9 A. I believe so.

10 Q. And is it your testimony nobody ever picked up
11 the phone?

12 A. No, sir.

13 Q. Okay. It's your testimony that nobody ever
14 picked the phone?

15 A. They did not pick it up.

16 Q. All right.

17 (Discussion off the record.)

18 Q. (BY MR. STEINDORF) The --

19 What was the purpose of your call,
20 Mr. Hughes?

21 MR. BOYD: Object, your Honor. The
22 question --

23 He said he didn't remember the call.

24 Q. (BY MR. STEINDORF) What was your purpose of
25 attempting to call her at 1:55?

1 MR. BOYD: Same objection.

2 I believe he's waiting on the objection
3 of --

4 THE COURT: Pardon?

5 MR. BOYD: I believe he's waiting on the
6 objection of that.

7 THE COURT: Overruled.

8 Q. (BY MR. STEINDORF) What was -- What was the
9 purpose --

10 Yes, sir. What was the purpose of the
11 phone call at 1:55?

12 A. I -- I really don't know.

13 I mean, we talked all the time. It could
14 have been anything. It could have been about a truck.

15 Q. Well, do you agree, Mr. Hughes, looking at
16 Kim's billing records, that while it does show a
17 two-minute call received from your cell number at 1:55,
18 if we can track that to your cell phone records, it does
19 not show these calls at 1:57 and 1:58. It doesn't show
20 that on -- on Kim's record; right?

21 A. That's what that shows.

22 Q. Is it still your testimony that nobody picked
23 up the phone?

24 A. If they did, I didn't know it. I didn't talk
25 to anyone.

1 I would have remembered if I talked to my
2 wife. That would be the --

3 I believe I would have remembered that.

4 -----

5 THE COURT: Mr. Boyd?

6 MR. BOYD: We have no questions, your
7 Honor.

8 THE COURT: All right. Anything else you
9 want to offer for the record?

10 MR. BOYD: No, your Honor. I think our
11 argument is incorporated in our pretrial arguments,
12 which were on the record.

13 We'll rest on those.

14 MR. STEINDORF: Just one last question, if
15 I may, your Honor?

16 THE COURT: You may.

17 Q. (BY MR. STEINDORF) Mr. Hughes, I detected a
18 little bit of a difference in the last answer.

19 Are you -- Are you --

20 Do you know acknowledge the possibility
21 that somebody may have answered that phone?

22 A. No, sir.

23 I'm just saying that if somebody would've
24 answered it and I would have talked to them, I would've
25 remembered the last time I talked to somebody in my

1 family.

2 Q. Okay. All right.

3 MR. STEINDORF: Pass the witness.

4 MR. BOYD: The only other thing for the
5 record, your Honor, is the authorities they have cited
6 to the Court do say there has to be a reasonable
7 connection for the argument of proof they made and we do
8 not believe there's any reasonable connection in the
9 evidence they want to offer, and the driver's conduct.

10 MR. STEINDORF: Well, your Honor, our --
11 our response to that is, it is relevant to the
12 credibility of the witness. He says --

13 THE COURT: What do you say to their
14 position that there are phone calls on there that show
15 to be for two minutes, and then another call the next
16 minute that shows to be for a minute within that
17 two-minute period?

18 MR. STEINDORF: I'll not --

19 I'm not a phone company representative, but
20 we're bringing a phone company representative. All
21 we're really saying at this point, your Honor, is it's
22 probative. It's -- It's proper testimony to at least be
23 discussed.

24 THE COURT: I'm going to overrule your
25 offer.

1 You got a record.

2 Bring the jury in.

3 MR. HURD: Your Honor, may I say one more
4 thing?

5 THE COURT: You may.

6 MR. HURD: I'm not sure that I heard your
7 Honor correctly in your question to Mr. Steindorf, but I
8 believe what the record shows is that a call by
9 Mr. Hughes at 1:55 that shows air time on both -- on
10 both phone accounts --

11 THE COURT: I understand.

12 MR. HURD: -- of two minutes.

13 Then there was another call by Mr. Hughes
14 at 1:57 for which he was charged one minute, but
15 Kimberly Hughes' number was not.

16 Another call at 1:58 --

17 THE COURT: All right. That's not what I
18 was talking about.

19 MR. HURD: Oh, okay.

20 THE COURT: I believe it was --

21 MR. BOYD: Correct. There were several --
22 several examples in the deposition that they took from
23 him in his phone records where there was a two-minute
24 phone call on the records. The next minute on that bill
25 a phone call was recorded.

1 THE COURT: And there's a two-minute phone
2 call --

3 MR. BOYD: For example --

4 THE COURT: What you're saying is at 1:55,
5 the last two minutes, until 1:57, then yet the 911 call
6 would say it was at 1:56?

7 MR. BOYD: Correct.

8 THE COURT: You're saying the expert was
9 not designated properly in this --

10 MR. BOYD: Well, it was never designated --

11 April 30th is the first time we heard
12 anything about it. We still haven't been given any
13 indication of what they would say.

14 MR. STEINDORF: Well, they've given us the
15 records, so this has all been done --

16 MR. BOYD: When I asked for --

17 MR. STEINDORF: -- this has all been done
18 in the last-- not that long ago -

19 THE COURT: What notice were you given?

20 MR. BOYD: None, your Honor.

21 MR. HURD: And I --

22 The Court has --

23 I have offered for the record Exhibit 440
24 and 441, also, 420 and 425, the Wise County Emergency
25 Response cell phone records?

1 THE COURT: All right.

2 MR. SIMPSON: And it was admitted for the
3 purposes of the bill only, your Honor --

4 THE COURT: Yes, they are.

5 MR. SIMPSON: Okay. Thank you.

6 MR. STRADLEY: And on another subject while
7 we're all up here --

8 THE COURT: All right.

9 MR. STRADLEY: -- I don't know whether they
10 plan to get into discussions between Clint Royse and
11 Afton Royse when he's on the stand, but -- so I don't
12 have to approach at that time, there was some cell phone
13 calls between Clint Royse and Afton Royse --

14 MR. SIMPSON: No, your Honor.

15 MR. STRADLEY: Well, we -- we would like to
16 get into them, because that's -- he's acknowledged
17 talking to her on the -- that cell phone on several
18 occasions during December 17th.

19 We would think it would be probative for
20 two reasons: One, is to show his knowledge of what they
21 were doing that day, and that he was trying to keep up
22 with her and his truck was broken down and he was
23 following -- they were following his progress and as to
24 whether his truck was fixed yet or not.

25 Secondly, we believe that it would go to

1 show that there may have been a second cell phone in the
2 car ringing during the afternoon of the accident.

3 MR. BOYD: Your Honor, we're not going to
4 get into --

5 THE COURT REPORTER: I can't hear you,
6 Derrick.

7 MR. BOYD: Your Honor, we're not going to
8 get into this, number one.

9 I don't think it's probative of anything,
10 number two.

11 And those phone calls I think were at least
12 90 minutes before what they're claiming was the accident
13 time, so I don't see how they would have any relevance
14 to any of the issue they're bringing up at this time.

15 THE COURT: All right. Overruled.

16 Next?

17 Bring in the jury.

18 (Open court, Defendant and jury present.)

19 THE COURT: Thank you, and you may proceed.

20 Q. (BY MR. STEINDORF) Mr. Hughes, one of the
21 gentlemen that testified last week was Leslie Oates.
22 He's one of your good friends; is that correct?

23 A. Yes, sir.

24 Q. And Tiffany is actually his daughter; is that
25 correct?

1 A. That's correct.

2 MR. STEINDORF: Pass the witness.

3 -----

4 MR. SIMPSON: Your Honor, we have no
5 further questions for Randy.

6 -----

7 THE COURT: You may step down.

8 You may call your next witness.

9 MR. SIMPSON: Your Honor, we would call
10 Doctor Fallin by video.

11 THE COURT: All right.

12 MR. STEINDORF: May we approach, your
13 Honor?

14 THE COURT: Yes, you may.

15 (Proceedings held outside presence.

16 and/or hearing of the jury.)

17 THE COURT: All right. You may proceed.

18 MR. STEINDORF: Your Honor, my apologies
19 for having to bring this up, but --

20 THE COURT: Yeah. We're probably going to
21 start at 6:30 in the morning, and any of this stuff that
22 you've got, we're going to do it then and not when the
23 jury is being shuffled in and out.

24 All right. Both sides. Everybody
25 understand?

1 Go ahead.

2 MR. STEINDORF: Your Honor, the --

3 I stamped on the Court's copy of this with
4 a "1" and "2," the first two objections.

5 And our objection is that under Rule 610 of
6 the Rules of Evidence, the religious affiliation and
7 beliefs of this witness, Psychologist Fallin, are not
8 admissible to bolster his credibility.

9 That those should be highlighted in the
10 Court's copy, and that also applies to number --

11 THE COURT: Okay. What is this witness?

12 MR. BOYD: It's the psychologist that
13 treated Clint Royse, your Honor.

14 THE COURT: All right.

15 MR. STEINDORF: And Objections 1, 2, and 3,
16 we can almost take this-- talk about this as a group,
17 your Honor, all apply to that.

18 THE COURT: 1, 2, and 3 overruled.

19 MR. STEINDORF: Your Honor, starting with
20 objection four -- this objection four is on page 24,
21 Mr. Boyd.

22 Objection 4, for the record, these are all
23 set out in our written objections.

24 The Plaintiffs were attempting to elicit
25 testimony and expert opinion from this psychologist,

1 Kenneth Fallin, about the child Jagr.

2 First objection, your Honor, is there's no
3 disclosure whatsoever for -- regarding the Psychologist
4 Fallin, of him having any opinions regarding Jagr.

5 And if I could direct the Court's attention
6 to page 34 through 36, I'll ask the Court to take it on
7 my word that all of these really do apply to the
8 opinions about Jagr, but if you'll look at page 34, this
9 witness says, quite clearly, that he's not qualified to
10 express any opinions about the child. There's no
11 designation about the child, and as if there's any --

12 MR. BOYD: Two things, your Honor: One,
13 the designation refers to his deposition and the offer
14 here is as it relates to his treatment of Clint is what
15 we were relating to with respect to Jagr.

16 MR. STEINDORF: Your Honor, again, on page
17 46, he says again in response to even Mr. Simpson's
18 question, "I would not be qualified to express
19 opinions about Jagr --"

20 THE COURT: I'll sustain the objection to
21 those.

22 What's next?

23 MR. BOYD: Will you give me specifics on
24 those?

25 MR. STEINDORF: Your Honor, I can provide

1 Counsel now with line and page references --

2 THE COURT: All right.

3 MR. STEINDORF: Start with 24, Mr. Boyd, in
4 each of these line and page references --

5 Okay. Do you want to write these down
6 or --

7 MR. BOYD: Yeah. Okay.

8 MR. STEINDORF: Page 24, line 25; and
9 page 25, lines 1 through 24.

10 The next one is page 25, line 25; page 26,
11 one through 13; the next one is page 27, lines 13
12 through 25; and the next one page 28, line 18 through
13 25; and 29, line one through five.

14 The next one is 29, six through 25; 30 --
15 Okay.

16 (Discussion off the record.)

17 MR. STEINDORF: On page 49, line 16 through
18 21.

19 That's it.

20 THE COURT: So these were not --

21 These were just examples of not being
22 qualified?

23 MR. STEINDORF: Those were examples I
24 wanted to show you.

25 THE COURT: You showed me those.

1 I don't need those.

2 MR. STEINDORF: No. No.

3 THE COURT: We're down to nine?

4 MR. STEINDORF: They've already --

5 MR. BOYD: I think that's all --

6 But all the rest are Jagr.

7 THE COURT: All right. What else?

8 MR. STEINDORF: That's it.

9 THE COURT: Why don't we take a break.

10 What time did they --

11 MR. STEINDORF: I think it was about five
12 minutes ago.

13 THE COURT: You all be back and ready to
14 go.

15 (Recess.)

16 -----

17 (Proceedings held outside presence and/or.
18 hearing of the jury.)

19 THE COURT: All right.

20 MR. HURD: Well, your Honor, I do intend to
21 offer page --

22 MR. BOYD: They're saying now they want to
23 offer five through nine. (Reading)

24 "And then when he did that he looked back
25 up and saw the 18-wheeler with the impression that he

1 was on the right side of the road."

2 We object to the leading --

3 THE COURT: Sustain the objection.

4 MR. BOYD: He said, yes, sir.

5 And then was asked again, when you looked
6 back --

7 He did say, no, he didn't have an
8 impression, so --

9 So it's sustained?

10 THE COURT: Sustained.

11 MR. HURD: All right. Let me --

12 Let's see, that was 21:9.

13 And what was the other one?

14 MR. BOYD: 27.

15 Well, 25 is in there --

16 THE COURT: 25 is in, Mr. Hurd; 27 is out.

17 MR. HURD: Okay.

18 THE COURT: Next?

19 Anything else before we bring the jury in?

20 MR. STRADLEY: One moment, your Honor.

21 THE COURT: I'm not inviting that.

22 I mean, if you already had something
23 planned, Mr. Stradley.

24 THE COURT: Have we got 12?

25 THE BAILIFF: Yes, sir.

1 MR. STRADLEY: We've got our objections to
2 our next witness, also, your Honor. I don't know if you
3 want to take that up now.

4 I don't know that we'll get to Mr. Jackson.

5 THE COURT: We might.

6 MR. BODY: This is the Mr. Jackson issue in
7 the brief, where we had objected to them calling him as
8 an expert.

9 I think Mr. Stradley stated in opening he
10 was not being designated as an expert, and so we
11 objected to them calling him. We never got a report
12 from him, that's what he testified to, that he had no
13 opinions.

14 MR. STRADLEY: But we did designate him as
15 an expert. We planned to have Painter as our primary
16 expert, but they raised an issue that we changed experts
17 in midstream and made it sound like it's conspiratorial
18 or something, so we feel like we have need to have
19 Mr. Jackson to be here to testify as to what he did,
20 what his opinions are, and why he turned the file over
21 to Painter.

22 THE COURT: If that's his purpose of having
23 him here, I will sustain that objection to him.

24 MR. STRADLEY: I'm sorry?

25 THE COURT: I will sustain the objection to

1 him, but I want you to put that on the record, and then
2 later on we'll see if we can get to him.

3 Who have you got next?

4 MR. SIMPSON: Your Honor, we've got Clint
5 Royse. This will be our last one --

6 THE COURT: Okay. How -- How long is he?

7 MR. BOYD: We have Doctor Fallin, your
8 Honor, and then Clint Royse --

9 MR. SIMPSON: Doctor Fallin --

10 THE COURT: How long is he?

11 MR. SIMPSON: Twenty minutes.

12 THE COURT: And how long is the next one
13 witness?

14 MR. SIMPSON: Probably 20 minutes.

15 THE COURT: That's okay. All right.

16 We may go late since we had a big old break
17 siesta at lunch.

18 Bring in the jury.

19 (Open court, Defendant and jury present.)

20 THE COURT: All right. Call your next
21 witness.

22 MR. SIMPSON: Your Honor, we would call
23 Doctor Fallin.

24 THE COURT: You may.

25 (Videotape playback begins.)

1 "THE VIDEOGRAPHER: We're going on the
2 record January 28th, 2004, for the deposition of Kenneth
3 Jay Fallin, PhD.

4 "The time is now 4:28.

5 "THE COURT REPORTER: Doctor, raise your
6 right hand, please.

7 THE WITNESS: (The Witness complied.)

8 THE COURT REPORTER: Do you solemnly swear
9 the testimony you're about to give will be the truth,
10 the whole truth, and nothing but the truth so help you
11 God?

12 THE WITNESS: I do.

13 THE COURT REPORTER: You may proceed.

14 KENNETH FALLIN,
15 having being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. Doctor Fallin, my name is Mike Simpson, and I
19 represent Randy Hughes, and Clint Royse, and the Watkins
20 family in an accident that occurred in Wise County on
21 December 17th, 2002.

22 What is your occupation or profession?

23 A. I'm a psychotherapist in private practice.

24 Q. Okay. I don't think I asked your name and
25 address. Would you give me your name and address?

1 A. Yes. Kenneth Fallin; I'm at 750 North Fielder
2 in Arlington, Texas, 76012.

3 Q. And your occupation or profession?

4 A. Yes, I'm a psychotherapist in private practice.

5 Q. Are you licensed to practice in the State of
6 Texas?

7 A. I am.

8 Q. And who are you licensed by?

9 A. I'm licensed by the Texas Social Work Board.
10 I'm also licensed by the Marriage & Family Therapist
11 Board, and also by the Licensed Professional Counselors.

12 Q. When were you so licensed in the State of
13 Texas?

14 A. 19 --

15 Let's see. I believe the Practice Act was
16 passed in September of 1993, so subsequent to that --

17 Before that we were considered certified
18 until the Legislature passed the '93 Practice Act.

19 Q. Would you tell the jury your formal education?

20 A. Okay. I have a Baccalaureate degree in
21 theology. I have a Seminary degree and Master's in --
22 from a theological seminary. I have a Master of Science
23 in social work from the University of Texas at
24 Arlington, and I have a PhD in marriage and family
25 therapy from Vision International University, a seminary

1 in California.

2 Q. Where did you receive your Bachelor's degree?

3 A. At Vennard College in University Park, Iowa.

4 Q. And where did you receive your Master's in
5 theology?

6 A. At Southwestern Baptist Theological Seminary,
7 Fort Worth.

8 Q. Okay. And that's in Fort Worth?

9 A. Correct.

10 Q. Have you been a pastor before?

11 A. Yes. I served almost a quarter of a century as
12 a -- as a minister -- pastor of 24 years.

13 Q. Okay. What type of preacher were you -- or
14 what religion?

15 A. Methodist.

16 Q. Would you please tell the jury your clinical
17 experience?

18 A. Well, I've been, as I said, in private practice
19 as a licensed therapist since 1991. I've been working
20 primarily with individuals, couples, and families. In
21 addition, I teach at the Graduate School of Social Work,
22 University of Texas at Arlington. And I primarily teach
23 the graduate courses in marriage, couples therapy, and
24 family therapy; as well as somewhat we call direct
25 practice courses, which are training therapists in the

1 basics of counseling techniques.

2 Q. Okay. And so these are not undergraduate
3 students, these are graduate students --

4 A. Graduate students.

5 Q. -- that you teach?

6 A. Correct.

7 Q. And I guess you did some limited counseling
8 when you were a -- when you were a Methodist minister?

9 A. I did a lot of counseling. That was why I
10 basically chose to make a -- I called it a mid-career
11 course adjustment -- career adjustment. I was doing a
12 lot of counseling as a pastor, and began to realize that
13 I needed more education because of the complexity of the
14 cases that I was seeing, and so I took a two-year
15 sabbatical, went back to school full time, and started
16 the process of getting licensed and continuing
17 education.

18 Q. How did you come to treat Clint Royse?

19 A. Clint came to me in late December of this past
20 year -- or early December, I believe it was -- some time
21 during December.

22 And called, like most clients, scheduled an
23 appointment. I had no idea what his presenting problem
24 was or issue until I saw them, and then he proceeded to
25 tell me why he was here.

1 Q. How many times have you seen Clint Royse?

2 A. I've seen him only three times.

3 Q. When was the last time you saw him?

4 A. I believe it was January the --

5 It was not this past Monday, but it was the
6 Monday previous, so that's probably January the 19th, I
7 guess.

8 Yes.

9 Q. How was Clint doing when you saw him on
10 January 19th?

11 A. Clint is, in my judgment, in serious denial.
12 He opened up more in that third session -- that was our
13 third session. He began to open up more than in the
14 previous two sessions. The previous two sessions he's
15 very shut down, very -- very numb, emotionally.

16 Q. Did you --

17 Have you performed any psychological tests
18 on Clint?

19 A. Well, I utilized the Beck Depression Inventory,
20 which indicated he does have a level of clinical
21 depression. I think that I was surprised that his score
22 was not higher, and it would be higher if -- in my
23 opinion -- in my judgment it would be higher as he gets
24 more -- breaks more through the denial and comes to
25 grips with the reality of what's happened to him. I

1 would anticipate his score would go much higher, but
2 it's already in the clinically depressed range.

3 Q. Did you all go through the relationship that he
4 had with his wife?

5 A. We did take a psychosocial history. Probably
6 the most of the -- or all of the first session, and the
7 majority of the second session was just really devoted
8 to that --his history, his relationship with his -- with
9 his wife, and so forth -- his son.

10 Q. How would you describe their marriage?

11 A. His marriage?

12 Q. Yes. His marriage.

13 A. Well, from what he described, he was very
14 happily married, and enjoyed his marriage, enjoyed his
15 son, enjoyed his family.

16 Q. Were you able to diagnose his condition, Doctor
17 Fallin?

18 A. I feel that I was.

19 I applied the diagnostic criteria for
20 post-traumatic stress disorder; and he, in my opinion,
21 clearly -- my diagnostic impression is that he clearly
22 fits the criteria for that diagnosis.

23 Q. What is the criteria for post-traumatic stress
24 disorder?

25 A. Well, should I read it from the DSM or --

1 Q. Sure, that would be great.

2 (A brief interruption occurred.)

3 A. (BY THE WITNESS) Okay. This is an abbreviated
4 version of the handbook, but it has the criterion
5 stated.

6 The person has been exposed to a traumatic
7 event in which both of the following were present: That
8 the person experienced, witnessed, or was confronted
9 with an event or events that involved actual or
10 threatened death or serious injury, or a threat to the
11 physical integrity of self or others.

12 Secondly, the person's response involved
13 intense fear, helplessness, and horror.

14 The traumatic event is persistently
15 re-experienced in one or more of the following ways:
16 Recurrent and intrusive distressing recollections of the
17 event, including images, thoughts, or perceptions; 2)
18 recurrent distressing dreams of the event; 3) acting or
19 feeling as if the traumatic event were reoccurring,
20 including a sense of reliving the experience, illusions,
21 hallucinations, and dissociative flashback episodes,
22 including those that occur on awakening or when
23 intoxicated; 4) intense psychological distress at
24 exposure to internal or external cues that symbolize or
25 resemble as an aspect of the traumatic event; 5)

1 physiological reactivity on exposure to internal or
2 external cues that symbolize or resemble an aspect of
3 the traumatic event; and then persistent avoidance of
4 stimuli associated with the trauma, and numbing of
5 general responsiveness not present before the trauma as
6 indicated by three or more of the following: 1) efforts
7 to avoid thoughts, feelings, or conversations associated
8 with the trauma; 2) efforts to avoid activities, places,
9 or people that arouse recollections of the trauma; 3)
10 inability to recall an important aspect of the trauma;
11 4) markedly diminished interest or participation in
12 significant activities; 5) feeling of detachment or
13 estrangement from others; 6) restricted range of affect,
14 unable to have loving feelings; 7) sense a foreshortened
15 future. Does not expect to have a career, marriage,
16 family, or a normal lifespan.

17 And then, (d) persistent symptoms of
18 increased arousal, not present before the trauma, as
19 indicated by two or more of the following: Difficulty
20 falling or staying asleep, irritability, or outbursts of
21 anger, difficulty concentrating, hypervigilance,
22 exaggerated startled response, and duration of the
23 disturbance is more than one month, and the disturbance
24 causes clinically significant distress -- distress, or
25 impairment in social occupation or other important areas

1 of functioning.

2 So I would --

3 My diagnostic impression is that he meets
4 almost all of those criteria. I think maybe one is --

5 When I went through the list in looking at
6 him, and talking with him, and interviewing him,
7 probably the only one that he may not have listed was
8 number seven, a sense of a foreshortened future, but the
9 rest of them -- sleep disturbance, irritability, anger
10 outbursts, sadness, those are all present.

11 Q. Doctor, what you read from was the DSM --

12 A. Right.

13 Q. -- IV, was it not?

14 A. Correct.

15 Q. And it has basically an outline of what you
16 have to find in order to make a diagnosis of
17 post-traumatic stress disorder?

18 A. Correct.

19 Q. Now, who --

20 Where does the DSM IV come from, and why is
21 it significant in psychological disorders?

22 A. Well, it's --

23 And I can go back to my ministerial
24 background. This is my Bible. It's considered the
25 Bible of diagnostic work.

1 need in order to, first of all, construct a treatment
2 plan, and determining what techniques that would have
3 been proven to be empirically supported as clinically
4 effective in dealing with this particular treatment
5 issue, so --

6 Q. How would this affect a person that's diagnosed
7 with post-traumatic stress disorder? I mean, how
8 serious is this and how problematic is it for the
9 particular person that has experienced this and been
10 diagnosed with this disorder?

11 A. The problem with PTSD is it's -- I think one of
12 the big problems is that it's unpredictable. There's an
13 unpredictability about what pattern of behavior it would
14 take.

15 Sometimes it can be extremely long term,
16 chronic. There can be disturbing elements that appear
17 sometimes a year or two, three years even following
18 treatment when you're making good progress -- utilizing
19 treatment techniques that have been proven effective.

20 It's really unpredictable, and that's what
21 makes it a serious diagnosis.

22 Q. Doctor, do you have an opinion as to whether or
23 not Clint Royse suffers from post-traumatic stress
24 disorder?

25 A. That would be my impression.

1 Q. Is that opinion based upon reasonable
2 psychological probability?

3 A. It is.

4 Q. Do you have an opinion as to the cause of Clint
5 Royse's post-traumatic stress disorder?

6 And first of all, do you have an opinion?

7 A. I do.

8 Q. Okay. What is that opinion?

9 A. My opinion is that it was occasioned by the
10 loss, the death of his wife, his unborn twins, and his
11 other -- her family members.

12 Q. Doctor, specifically, do you have an opinion
13 based on psychological probability as to whether or not
14 the death of Clint's wife, Afton Royse, caused Clint
15 Royse to have post-traumatic stress disorder?

16 A. That's my opinion, yes.

17 Q. What is "acute post-traumatic stress disorder"?

18 A. The duration, the difference between acute and
19 chronic would be --

20 I believe the criteria is that less than
21 three months would be acute, the initial, and now he's
22 into -- it's more chronic.

23 Q. Okay. So it's your opinion that Clint Royse
24 has chronic, post-traumatic stress disorder?

25 A. Yes.

1 Q. With --

2 A. And I might add, in a sense, with acute
3 features, because he's just -- you know, he's beginning
4 to come to grips with the symptomatology now, and -- so
5 he's going to be even more acutely affected by it?

6 Q. Did Clint tell you anything about he being
7 involved in the decision to cut off life support for his
8 wife, Afton?

9 A. He mentioned that that was a consideration that
10 he had to take.

11 Q. Would -- Would that be something that would
12 affect a person psychologically having to cut off the
13 life support for a loved one?

14 A. In my opinion it would.

15 Q. Are you familiar with what "symptom
16 reactivation" means?

17 A. I am.

18 Q. Would Clint experience any symptom reactivation
19 in the future?

20 A. Well, as a part of the diagnosis, I would
21 anticipate it. I have a term that I've developed that
22 kind of captures that. I call it "emotional
23 ambushments," that when you least --

24 One of the problems with PTSD is when you
25 least expect it, all of a sudden you're overwhelmed,

1 you're ambushed emotionally. You'll be driving down the
2 road and all of a sudden just be flooded with these
3 intrusive thoughts and recollections, and -- and become
4 extremely emotional, filled with anxiety -- high states
5 of anxiety, deep -- deep feelings of sadness, and maybe
6 take the form of intense anger, which is one of the
7 scarier symptoms, I think, because it has the potential
8 for accidentally hurting self and whatever, so it's very
9 serious.

10 Q. Are one of the treatments to anticipate these
11 emotional ambushments and prepare your patients for the
12 likelihood of, say, on an anniversary of the accident,
13 that this might occur -- or perhaps a wedding
14 anniversary, or birthday --

15 A. Right.

16 Q. -- and try to -- to get them to face that and
17 to be aware that they may get that ambush?

18 A. Exactly. That's a part of the treatment. To
19 prepare them for the expectation that these events not
20 only may happen, but in all likelihood will happen.

21 Q. Is the opinion that these re-experiencing of
22 the accident on anniversary dates, on wedding
23 anniversaries, birthdays, other significant events, is
24 that based upon reasonable, psychological probability in
25 your opinion?

1 A. Yes.

2 Q. Do you anticipate continuing to treat Clint
3 Royse in the future?

4 A. If he so chooses, I'm -- I'm available. I
5 trust that he is engaged in -- and wants to -- he seems
6 to want to begin now to address the issues.

7 Q. Would you describe the type of treatment that
8 you have provided to Clint Royse so far?

9 A. Primarily, more of a grief and loss approach
10 using some cognitive behavioral techniques. I've worked
11 with him with some -- we've done some brief work in
12 relaxation and stress management techniques.

13 I'm having him begin now to do some journal
14 writing to bring these denied feelings to the surface,
15 so we can treat them more adequately -- effectively.

16 Q. How do you feel like that you will treat him in
17 the future?

18 A. I think continually that protocol, just
19 continuing to help him --

20 My primary agenda with him at this point is
21 to help him come to grips with the reality of what's
22 happened to him. I think he's still in a state of --
23 high state of denial about --

24 He says things like, "I can't believe this
25 has happened. I just don't believe it's -- I can't come

1 to grips with the reality."

2 Something that traumatic, that type of loss
3 generally has that effect on a client, where they just
4 can't believe it.

5 Q. Do you think he will need treatment in the
6 future?

7 A. I do.

8 Q. Can you give us any idea of how long in the
9 future?

10 A. I would say, at least, anywhere from one to two
11 years, generally, at least that's been my experience
12 with PTSD clients.

13 Q. Clint --

14 Well, I'll just ask you: Are you familiar
15 with Afton at the time of her death being pregnant with
16 twins?

17 A. He indicated that, that he discovered that.

18 Q. What did he tell you about that?

19 A. That -- That further traumatized him, because I
20 believe that he was not aware that she was expecting, I
21 believe is what he told me, so --

22 Q. But he was told as a result of her condition
23 that the children would not survive?

24 A. Right. That was my understanding.

25 Q. Has he talked to you about his boy, Jager?

1 A. He has.

2 Q. And what kind of relationship do they have?

3 A. Apparently, a very close relationship. He --
4 He seems to be a really hands-on father, it sounds like.
5 He talks about having to leave him with a cousin, I
6 believe, of his deceased wife -- or some family member
7 when he's working and away from him, but I think very
8 close relationship.

9 Q. Has he ever talked about Jager's relationship
10 with his mother?

11 A. He talks --

12 He says he sees a lot of confusion, that he
13 seems to --

14 He identi --

15 Almost every female he sees, he -- I think
16 he reported to me about every female he sees he calls
17 them "Mama," or "Mother," or reaches out to them like
18 they're a mother figure, so --

19 Q. Has he ever mentioned to you that sometimes
20 when a door will open and a female will come in, you can
21 kind of see him search that female's face to see if
22 maybe it's his mother?

23 A. He has talked about, yes, about that kind of
24 confusion or sense of searching.

25 Q. Doctor, what are your charges thus far on the

1 treatment of Clint Royse?

2 A. What is my fee?

3 Q. Yeah. Fees?

4 A. My therapy hour is \$95.00 an hour. I've seen
5 him three times, so --

6 What's that, \$285.00. Okay.

7 Q. Are the medical charges that you have charged
8 Clint Royse reasonable and necessary in both Tarrant
9 County and Wise County?

10 A. Well, I know in Tarrant County. I'm not
11 familiar with Wise County, but Tarrant County. I
12 believe that therapy runs anywhere now from -- on an
13 average from \$85.00 to \$130.00 an hour in our area.

14 Q. And you anticipate that he will need treatment
15 for some time in the future?

16 A. I would say one to two years.

17 Q. Okay.

18 BY MR. SIMPSON:

19 Q. Have any of Mr. Stradley's questions today
20 changed your opinions in any way in the deposition of
21 this case?

22 A. No.

23 (Videotape playback ends.)

24 MR. STEINDORF: Your Honor, we do have
25 offers from the psychologist, Fallin.

1 THE COURT: All right. You may play them
2 at this time.

3 (Videotape playback begins.)

4 "The first visit was December the 2nd,
5 2003; the second visit was January the 8th, 2004; and
6 the third visit was January 19th, 2004?

7 A. Correct.

8 Q. And as we stand -- sit here right now, does he
9 currently have an appointment to see you, whether it's
10 in a week or a month, does he have something on the
11 books yet, or he is he just supposed to call and get
12 that?

13 A. He'll be calling he indicated.

14 Q. All right. And I think on the child, Jager,
15 you said that he should be assessed by a child
16 psychologist; is that correct?

17 A. Or -- Or someone who's --

18 MR. SIMPSON: May we approach?

19 THE COURT: Yes.

20 (Discussion off the record.)

21 -----

22 (Videotape playback resumes.)

23 Q. "Now, have you had any meeting with Mr. Royse's
24 attorney, Derrick Boyd of their office, or anyone else
25 in the office before today?

1 A. Yes.

2 Q. When was that, please?

3 A. I believe Monday, or --

4 No, it wasn't Monday. It was --

5 THE WITNESS: What date was that that you
6 and I met?

7 MR. POWERS: Was it last Thursday?

8 THE WITNESS: Was it last Thursday?

9 MR. POWERS: 23rd, maybe.

10 THE WITNESS: I probably have it on my
11 calendar here. I'll take a look at it.

12 A. (BY THE WITNESS) I believe it was on the 22nd,
13 so whatever day that was.

14 Q. Okay. And you met with Mr. Powers?

15 A. Correct.

16 Q. And was there anybody else with you?

17 A. No.

18 Q. And did -- did you two discuss your treatment
19 of Mr. Royse, and this deposition we were going to take
20 today --

21 A. Yes.

22 Q. -- and the sort of things that they wanted to
23 discuss in the deposition?

24 A. Right.

25 Q. And then you had a -- about a five or 10

1 meeting -- five or 10-minute meeting before this
2 deposition with Mr. Simpson and Mr. Powers?

3 A. Correct.

4 Q. And you and I haven't met or discussed this
5 case at all; is that correct?

6 A. Correct.

7 Q. In fact, if I were to call you up and ask to
8 discuss it, you wouldn't discuss it with me since I'm
9 not his lawyer; is that correct?

10 A. Right, unless you had a release signed to that
11 effect.

12 Q. That allowed me to specifically meet with you?

13 A. Right.

14 Q. All right. Now, are you charging for your time
15 in these various meetings and this deposition?

16 A. I am.

17 Q. And you're charging Mr. Royse's attorneys?

18 A. Correct.

19 Q. And how much are you charging them?

20 A. The \$95.00 an hour rate.

21 Q. (BY MR. SIMPSON) Doctor, have your responses
22 to Mr. Stradley's questions here today been based upon
23 reasonable psychological probability?

24 A. Yes.

25 Q. Have any of the questions that he has asked you

1 changed any of the opinions that you have given to us,
2 as Clint Royse's attorneys, in this deposition today?

3 A. Not really.

4 BY MR. STRADLEY:

5 Q. When you said, "not really," you -- it almost
6 sounded like you wanted to say something else there.

7 What did you mean by "not really"?

8 A. The --

9 I've forgotten the question again. The
10 question was: Did anything change my opinion?

11 MR. SIMPSON: Yeah. Did any of the
12 questions --

13 THE WITNESS: That he asked --

14 MR. SIMPSON: -- that Mr. Stradley asked
15 change any of the opinions that you gave us based upon
16 reasonable psychological probability.

17 THE WITNESS: No, not really.

18 Q. All right.

19 A. I don't know why I hesitated there. If I did,
20 I was -- I guess I was being thoughtful.

21 Q. Well, I was through, but I just -- until you
22 said, "not really" --

23 A. I appreciate it.

24 Q. -- I just wasn't --

25 A. You're a good attorney.

1 (Videotape playback ends.)

2 MR. STEINDORF: That concludes our offer
3 from the psychologist Fallin.

4 THE COURT: Anything further?

5 MR. SIMPSON: No, your Honor, there's no
6 further offers, and we would call Mr. Clint Royse to the
7 stand.

8 THE COURT: All right. Thank you, Mr.
9 Royse.

10 Raise your right hand.

11 THE WITNESS: (The Witness complied.)

12 THE COURT: Do you swear to tell the truth,
13 the whole truth, and nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: Very well. Have a seat to my
16 right.

17 THE WITNESS: (The Witness complied.)

18 THE COURT: You may examine this witness.

19 CLINT ROYSE,

20 having being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. Clint, would you please state your name full
24 and address for the jury?

25 A. Clint Royse, 4167 FM 2123, Paradise, Texas.

1 Q. Clint, how did you find out about the accident?

2 A. My father-in-law, Randy.

3 Q. Did he call you on the phone?

4 A. Yes.

5 Q. Okay. Did you go to the accident site?

6 A. Yes, sir.

7 Q. When you got to the accident site, what did you
8 see?

9 A. As soon as I got there, Randy was -- he walked
10 up to me and said we lost Shiloh.

11 Q. And that's Randy's son?

12 A. Yes, sir.

13 Q. Your brother-in-law?

14 A. Yes, sir.

15 Q. Were you there when your wife was CareFlited to
16 Harris Hospital?

17 A. No, sir, they had already left.

18 Q. Did you then go to the hospital?

19 A. Well, we stayed around there for a little
20 while, and once they let us leave, we did.

21 Q. When you got to the hospital what were you
22 told, Clint?

23 A. Afton and Kim were in surgery, so I immediately
24 went over to Cooke's to check on Jagr.

25 (Plaintiffs' Exhibit No. 53

1 marked for identification.)

2 MR. STRADLEY: No objection, your Honor.

3 MR. SIMPSON: Your Honor, we would offer
4 Plaintiffs' Exhibit No. 53, which is Jagr Royse's
5 medical records at Harris Hospital.

6 THE COURT: Admitted.

7 Q. (BY MR. SIMPSON) Was Jagr injured, Clint?

8 A. Yes, sir.

9 Q. He was?

10 A. Yes, sir.

11 Q. When you went to check on Jagr, how was he
12 doing?

13 A. He was just crying. They had his head all
14 bandaged up and everything.

15 Q. He got a pretty good cut on his head?

16 A. Yes, sir, he had staples.

17 Q. Clint, you and your boy are pretty close, are
18 you not?

19 A. Yes, sir.

20 Q. Do you think he's missed his mother?

21 A. Yes, sir.

22 Q. Do you think he knows his mother is not here?

23 A. Yes, sir.

24 Q. Was he close to his grandmother?

25 A. Yes, sir. He was very close to all of them.

1 Q. Was he close to his great grandmother?

2 A. Yes, sir.

3 Q. And he lost all three at one time?

4 A. Yes, sir.

5 Q. Was he with his -- with his grandmother a lot,
6 Clint?

7 A. Yes, sir.

8 Q. What did he call her -- What did he call them?
9 Did he have a name for them?

10 A. He called her Gebo.

11 Q. Gebo?

12 A. Yes, sir.

13 Q. Did he call Kim anything -- I mean --

14 Excuse me.

15 -- Afton anything?

16 A. He called her mom.

17 Q. Clint, when a woman walked into the room, days
18 and weeks after the death of Afton, what would Jagr do?

19 THE COURT: Hold it just a second.

20 (Discussion off the record.)

21 -----

22 (Plaintiffs' Exhibit No. 55

23 marked for identification.)

24 Q. (BY MR. SIMPSON) Clint, are these pictures
25 that was collected for the funeral --

1 A. Yes, sir.

2 Q. -- for Kim?

3 A. Yes, sir.

4 MR. SIMPSON: Your Honor, we would ask that
5 Plaintiffs' Exhibit 54 be admitted into evidence.

6 MR. STRADLEY: No objection.

7 THE COURT: It's admitted.

8 Q. (BY MR. SIMPSON) Clint, I'm going to ask that
9 you just sit there.

10 MR. SIMPSON: And, Randy, if you'll bring
11 Jagr. I'm going to go ahead and introduce Jagr.

12 Just hand him to Clint there for just a
13 minute, Randy, and stand by here.

14 Q. (BY MR. SIMPSON) Clint, are you close to Jagr?

15 A. Yes, sir.

16 Q. Is it about all you and Randy have left, Clint?

17 A. Yes, sir.

18 Q. Clint, if you want to, you can go ahead and
19 hand him back to Randy.

20 A. (The Witness complied.)

21 Q. Jagr, can you say, "Hi"?

22 I think he's shy.

23 MR. SIMPSON: Thank you.

24 Q. (BY MR. SIMPSON) Clint, when is the last time
25 you've gone to counseling?

1 A. I believe this past Wednesday.

2 Q. During the trial of this case?

3 A. Yes, sir.

4 Q. Have you been able to make counseling
5 periodically to see Doctor Fallin?

6 A. Yes, sir.

7 Q. When we took his deposition, the last time that
8 you had seen Doctor Fallin was January 19th. Have you
9 seen him several times since January 19th?

10 A. Yes, sir. I'd say probably --

11 I've probably seen him eight or nine times.

12 Q. What kind of marriage did you and Afton have?

13 A. Great one.

14 Q. What were your dreams, Clint, for the future?

15 A. She was going to be a nurse and we'd have a big
16 family.

17 Q. Was it bittersweet to find out that Afton was
18 pregnant with twins, Clint, at the hospital?

19 A. Yes, sir.

20 Q. Were you all trying to have children?

21 A. Yes, sir, that's all she wanted was twins.

22 Q. How did you find out about her being pregnant
23 at the hospital, Clint?

24 A. After they called me and Randy in, and said--
25 we was told they brought a gynecologist in and he told

1 us that she was pregnant when she went in.

2 Q. Did you understand that you were going to lose
3 the twins?

4 A. Yes, sir.

5 Q. What kind of dreams did you have for Afton --
6 for Jagr?

7 A. Being able to live --

8 I mean, when he growed up, you know, being
9 able to have the things that he needed, being able to --
10 be able to, you know, send him to college, give him
11 everything he needed.

12 Q. Did Afton have a dream of becoming a nurse?

13 A. Yes, sir.

14 Q. Do you think she would have accomplished that
15 dream?

16 A. Yes, sir, I know she would have.

17 Q. What was Mother's Day like, Clint?

18 A. Taking my two-year-old son to the cemetery to
19 see his momma, and trying to explain to him why she's
20 not there.

21 MR. SIMPSON: Thank you, Clint.

22 I'll pass the witness.

23 -----

24 MR. STRADLEY: No questions at this time,
25 your Honor.

1 -----

2 THE COURT: Thank you. You may step down.

3 MR. SIMPSON: Your Honor, one other thing
4 I'd like to do just briefly is mark the scrapbook and
5 also a picture of Jagr.

6 Just one minute, Clint.

7 Your Honor, I'm going to mark this as --
8 the scrapbook as Plaintiffs' Exhibit 55.

9 (Plaintiffs' Exhibit No. 55 and
10 56 marked for identification.)

11 MR. STRADLEY: Your Honor, as far as 55,
12 it's been marked as one exhibit. It's our belief that
13 there are quite a few in here. We would object to this
14 being multifarious.

15 Also, there's hearsay, and your Honor, we
16 would object on those grounds.

17 There's also been an improper predicate
18 laid for the admission of these documents.

19 THE COURT: Sustained.

20 Q. (BY MR. SIMPSON) Clint, if you'll look through
21 Plaintiffs' Exhibit No. 56, and I'll ask you some
22 questions in just a minute.

23 MR. SIMPSON: Your Honor, we would ask 56
24 be admitted into evidence.

25 MR. STRADLEY: That's number --

1 Your Honor, we have no objection to 56.

2 THE COURT: Admitted.

3 MR. SIMPSON: Thank you, your Honor.

4 Q. (BY MR. SIMPSON) Clint, I'm going to need to
5 ask some questions to set a predicate for that
6 scrapbook. Is that a scrapbook that contains pictures
7 of you and your family?

8 A. Yes, sir.

9 Q. And it's a scrapbook of basically Jagr from his
10 birth until, I think, July 4th of 2002?

11 A. Yes, sir.

12 Q. Do all those pictures purport what they
13 represent to the Court, and that is pictures of his
14 mother, you, and Jagr?

15 A. Yes, sir.

16 MR. SIMPSON: Your Honor, we would again
17 offer Plaintiffs' Exhibit No. 55.

18 MR. STRADLEY: Your Honor, we would object
19 to No. 55. Again, there are many different documents,
20 and there are cards in there, I noticed.

21 If we could have some time to look at these
22 individually, because there are many of these -- the
23 predicate still has not been laid.

24 It's duplicative, and it's prejudicial, and
25 hearsay, and we would object on those grounds, your

1 Honor.

2 THE COURT: Approach.

3 (Discussion off the record.)

4 THE COURT: Take those out and it's
5 admitted.

6 MR. SIMPSON: Okay. Thank you, your Honor.

7 THE COURT: Thank you.

8 And you may proceed.

9 MR. SIMPSON: Your Honor, can I have just a
10 minute to take this out?

11 THE COURT: Yes, sir.

12 MR. SIMPSON: Your Honor, we would like to
13 publish this as Plaintiffs' Exhibit No. 55.

14 THE COURT: You may.

15 MR. SIMPSON: Clint, that's all the
16 questions I have for you.

17 Pass the witness.

18 -----

19 MR. STRADLEY: And, your Honor, I think
20 Plaintiffs' 55, my objections were overruled; is that
21 correct?

22 THE COURT: That is right.

23 MR. STRADLEY: Okay. And we still have no
24 questions at this time, your Honor.

25 THE COURT: Very well. You may step down.

1 (Plaintiffs' Exhibit No. 57
2 marked for identification.)

3 MR. BOYD: Your Honor, Plaintiff would
4 offer Plaintiffs' Exhibit 57, which is the funeral bill
5 for Shiloh Hughes.

6 MR. STRADLEY: No objection, your Honor.

7 THE COURT: Admitted.

8 (Plaintiffs' Exhibit No. 58
9 marked for identification.)

10 MR. BOYD: Your Honor, Plaintiffs would
11 offer Plaintiffs' Exhibit 58, which is the funeral bill
12 for Afton Hughes Royse that took place on December 22nd
13 of 2002.

14 MR. STRADLEY: No objection, your Honor.

15 THE COURT: Admitted.

16 (Plaintiffs' Exhibit No. 59
17 marked for identification.)

18 MR. BOYD: Your Honor, Plaintiffs would
19 offer Plaintiffs' Exhibit 59, which is the funeral bill
20 for the funeral of Kimberly Hughes that took place
21 December 22nd of 2002.

22 MR. STRADLEY: No objection, your Honor.

23 THE COURT: Admitted.

24 (Plaintiffs' Exhibit No. 60
25 marked for identification.)

1 MR. BOYD: Your Honor, Plaintiffs would
2 offer Plaintiffs' Exhibit 60, which is the funeral bill
3 for Joyce Watkins that took place on December 22 of
4 2002.

5 MR. STRADLEY: No objection, your Honor.

6 THE COURT: Admitted.

7 MR. BOYD: Your Honor, at this time on
8 behalf of the families Willie Watkins, Randy Hughes,
9 Clint Royse, the Plaintiffs would rest.

10 THE COURT: All right. Ladies and
11 gentlemen, we have to take up a matter outside the
12 presence of the jury. Be in the jury room.

13 (Proceedings held outside presence and/or
14 hearing of the jury.)

15 THE COURT: Thank you.

16 Mr. Hurd, you had advised the Court earlier
17 that you wanted to make a motion as soon as the
18 Plaintiffs rest. You may do that.

19 MR. HURD: Yes, your Honor.

20 On behalf of the Defendants, TXI
21 Transportation, Aurelio Melendez, and Ricardo Rodriguez,
22 the Defendants respectfully move for directed verdict,
23 as follows:

24 On the claim of the estate of Afton Hughes
25 Royse, under the Texas Survival Statute, there's no

1 evidence of any conscious, physical pain, and no
2 evidence of any conscious mental anguish. We move for
3 directed verdict on that element of damages, your Honor.

4 THE COURT: Response?

5 MR. BOYD: Your Honor, there's evidence in
6 the medical records of Afton Royse, but more
7 importantly, the Texas law recognizes pre-impact fear
8 and mental anguish, and the testimony of Ashton Quinn,
9 your Honor, we believe established that she was on the
10 cell phone with Shiloh. At the time there were noises
11 coming from the car, and both of the experts agree that
12 there was a time lag from the initial impact until the
13 Yukon was T-boned, so we believe that is sufficient to
14 go to the jury on that issue.

15 THE COURT: Overruled.

16 MR. HURD: Your Honor, likewise, move for
17 directed verdict on the claim by the estate of Shiloh
18 Hughes under the Texas Survival Statute on the grounds
19 that there is no evidence of any conscious physical
20 pain, and no evidence of conscious mental anguish
21 suffered by Shiloh Hughes.

22 THE COURT: Overruled.

23 MR. HURD: I move for directed verdict on
24 the claim by the estate of Joyce Watkins on the element
25 of conscious physical pain and conscious mental anguish,

1 because there is no evidence of either of those elements
2 of damages.

3 THE COURT: Overruled.

4 MR. HURD: Your Honor, the Defendants move
5 for directed verdict on the following elements of
6 damages alleged by Randy Hughes under the Texas Wrongful
7 Death Act. There's no evidence of any pecuniary loss
8 that has been or will be sustained by Randy Hughes, as a
9 result of the death of Shiloh Hughes.

10 MR. BOYD: And we're not going to submit as
11 to Shiloh on pecuniary, but if he's going to move on
12 that, then I would like to be heard on that.

13 THE COURT: I'll sustain as to Shiloh.

14 MR. HURD: And I do move for a directed
15 verdict on Mr. Hughes' claim as to Afton Hughes on the
16 basis that there's no evidence of any pecuniary support
17 that he would have received prior to this date, and that
18 is in the past, or that he would receive in the future.

19 MR. BOYD: Your Honor, there's testimony
20 from the economist as to household services of Afton
21 Hughes, and the testimony that Randy lived in the same
22 house with Afton. We believe that is sufficient to
23 support a claim for household services, which would be
24 an element of pecuniary loss.

25 THE COURT: Sustain your motion on that.

1 MR. HURD: All right, your Honor. Moving
2 on. With respect to the claim of Clint Royse, under the
3 Texas Wrongful Death Statute for the loss of the
4 unborn -- the unborn fetuses of Afton Hughes Royse.
5 Your Honor, we move for directed verdict because the law
6 in the State of Texas is, first of all, that he's not
7 entitled to recover a wrongful death claim for the loss
8 of unborn fetuses.

9 Secondly, now that there is some evidence
10 in the record of the existence of the unborn fetuses,
11 that evidence is conclusive that they were not viable,
12 and there is no evidence to the contrary; there's no
13 evidence that they were viable.

14 And further, your Honor, and in the
15 alternative, we move for a directed verdict on the claim
16 of Clint Royse under the Wrongful Death Statute for any
17 claim of pecuniary loss as a result of the unborn
18 fetuses of Afton Royse.

19 MR. BOYD: And we're not going to submit
20 the pecuniary as to the unborn children.

21 THE COURT: Sustain as to pecuniary.

22 MR. BOYD: I don't know if you were
23 finished.

24 As to the other two, it's the same issues
25 presented in the summary judgment.

1 THE COURT: I recognize that, and I'll deny
2 it as to the original one.

3 MR. HURD: Your Honor, we move with respect
4 to the claim of Jagr Royse under the Texas Wrongful
5 Death Statute for the death of Afton Royse. There's no
6 evidence of any mental anguish experienced by Jagr Royse
7 because of the death of Afton Royse that was sustained
8 in the past, or that will in reasonable probability be
9 sustained in the future.

10 THE COURT: Response?

11 MR. BOYD: Your Honor, the testimony was
12 from Clint about Jagr's return and Jagr does know he has
13 lost his mother. I think to suggest that this
14 two-year-old is not going to suffer any anguish in the
15 future that he's lost his mother is simply something the
16 jury can determine what that is.

17 THE COURT: Overruled.

18 MR. HURD: Well, your Honor, in response to
19 Counsel's argument, I'm distinguishing here between
20 mental anguish and the loss of companionship element of
21 damages. I think that they are distinct elements of
22 damages under the law, and my motion is on the mental
23 anguish only.

24 I take it that's overruled?

25 THE COURT: That's correct.

1 MR. HURD: On the claim of Jagr Royse for
2 his own personal injuries, your Honor, we move for a
3 directed verdict, because there's no evidence of any
4 medical care that he will probably incur in the future.
5 There's no evidence of any physical impairment that he
6 will sustain -- that he sustained in the past, or that
7 he will sustain in the future. There's no evidence of
8 any disfigurement in the past, or that he will have in
9 the future; no evidence of physical pain sustained in
10 the past, or that he will sustain in the future; and
11 no -- no evidence of mental anguish pertaining to his
12 own personal injuries, your Honor, that he sustained in
13 the past or will sustain in the future.

14 MR. BOYD: Your Honor, with respect to
15 Jagr's personal injury claims, there are four elements
16 that we are submitting: Medical care in the past for
17 which we've produced evidence in the form of medical
18 bills, pain, and anguish in the past; his medical
19 records are in evidence which will support that, but
20 there's also testimony concerning the cuts and other
21 injuries that Jagr received; and fourth, your Honor,
22 anguish in the future which related to his bystander
23 claim. He was in the zone of danger.

24 Texas recognizes the bystander claim, and
25 so we're entitled to submit that, and so with those four

1 elements of damages being the only ones we're going to
2 submit. We recognize there's no evidence of the other
3 elements.

4 THE COURT: Overruled.

5 MR. HURD: Your Honor, Defendants move for
6 directed verdict on the claim of Shirley Ritchey,
7 because there is no evidence as to the element of
8 damages of pecuniary support, because there's no
9 evidence of that.

10 MR. BOYD: Your Honor, to save some time,
11 on the adult children we are not planning on submitting
12 pecuniary, so we would agree to save us time here.

13 THE COURT: All right.

14 MR. HURD: All right. Your Honor,
15 Defendants move for directed verdict on the Plaintiff's
16 claims for exemplary damages, that's there's no evidence
17 of any gross neglect or malice on the part of any of the
18 Defendants, Ricardo Rodriguez, Aurelio Melendez, or TXI
19 Transportation.

20 THE COURT: Overruled.

21 MR. HURD: All right. Your Honor,
22 Defendants move for directed verdict on the claim
23 against Aurelio Melendez and TXI Transportation, based
24 on the claim of negligent hiring, because there is no
25 nexus between the evidence the Plaintiffs have

1 submitted; namely, that Mr. Rodriguez is an illegal
2 alien, and that he used a false Social Security number.
3 There's no connection between that and the causation of
4 this -- of the accident in question; therefore, directed
5 verdict would be appropriate on that allegation, your
6 Honor.

7 THE COURT: Overruled.

8 MR. HURD: And with respect to the
9 negligent entrustment cause of action, your Honor,
10 alleged against Aurelio Melendez and TXI Transportation,
11 there's no evidence, your Honor, that Mr. Melendez --
12 Mr. Rodriguez was a reckless or incompetent driver.

13 I assume in the absence of evidence of
14 recklessness or incompetence that the Plaintiffs are
15 going to rely on a claim that he was unlicensed at the
16 time, and there's no evidence that he was unlicensed,
17 save and -- save and except a legal conclusion from
18 Mr. Bensmiller, which is not probative of whether or not
19 he was -- whether or not he had a valid driver's license
20 on the date of the accident.

21 THE COURT: Overruled.

22 MR. HURD: Or that he had a valid driver's
23 license at the time of the entrustment, actually is the
24 way it should be phrased. I take it that's overruled,
25 too, your Honor?

1 THE COURT: It is.

2 MR. HURD: Okay. That's --

3 I guess that's all of my motion.

4 One other thing on the Cody Jobe
5 deposition, your Honor. They --

6 I just saw it today, their offers. I don't
7 know whether they're planning on playing a video or
8 what.

9 MR. BOYD: We're just going to read --

10 MR. HURD: Okay. Then to the extent
11 they're to going read this testimony on page 34 from
12 four through 17, I've got my objection to that.

13 THE COURT: (Reading.)

14 Overruled.

15 MR. STRADLEY: Your Honor, and so as to not
16 inconvenience the jury one more time --

17 THE COURT: Yes.

18 MR. STRADLEY: -- may I?

19 Regarding Clint Royse, we pass the witness
20 at this time.

21 We have a speaking bill on his cell phone
22 records, and I believe that you have overruled our
23 speaking bill as to getting into the cell phone calls
24 made by Clint Royse to his wife, Afton Royse, on Kim
25 Hughes' phone; and I believe the Court did overrule

1 that; is that correct?

2 THE COURT: You heard it, Counsel --

3 And that's repetitive.

4 MR. STRADLEY: Yes, sir. I'm sorry.

5 Well, there are two new ones --

6 THE COURT: All right.

7 MR. STRADLEY: -- we would like to make

8 regarding Clint Royse. He is suing for loss of

9 companionship and loss of society.

10 There was testimony in his deposition that

11 for a period of time he moved in with a girlfriend,

12 Christie Ritchey. We would like to ask him questions

13 about that relationship. We believe that it is

14 probative and relevant, and it goes to his damages, such

15 as loss of society and loss of companionship.

16 MR. BOYD: Two things, your Honor. First

17 of all, it's past. They've passed the witness. We

18 believe they've waived it.

19 And second of all, it's prohibited by the

20 statute. The wrongful death statute prevents any

21 questions related to the prospects of remarriage and so

22 it covers that as well.

23 MR. STRADLEY: Second, your Honor, we

24 certainly haven't waived it. I passed him at this time,

25 and we can recall him. I haven't asked him any

1 questions at all.

2 So my intention was to recall him if your
3 Honor let's me get into this, and I didn't want to send
4 the jury out per your Honor's instructions last time.

5 THE COURT: You haven't hesitated to
6 approach the bench yet, Mr. Stradley, on any such issue,
7 so I'm not really going to consider your last comment on
8 that.

9 I'm going to deny your offer on it.

10 What's next?

11 MR. STRADLEY: And, your Honor, finally,
12 there's one other matter regarding Clint Royse, and that
13 is that he does have another child for which he is
14 paying child support. We believe that would be a --
15 relevant as to show the household expenses. There has
16 been economic testimony regarding the loss to the
17 family, and we would like to show that not all the loss
18 is to that family, that there is an ongoing commitment
19 by Mr. Royse to his child outside that family, and we
20 believe it's probative and relevant for those reasons.

21 MR. BOYD: Your Honor --

22 MR. STRADLEY: We offer this as a speaking
23 bill.

24 MR. BOYD: Again, your Honor, we believe
25 that should have been raised at the time the witness was

1 on the stand, but second of all, we think it is
2 irrelevant to any issue the jury is going to determine.

3 The economic support provided to Jagr is
4 going -- is from Afton. The economist's testimony comes
5 from Afton Royse. There's no issue as to Clint's
6 economic support that he would be providing, so I don't
7 understand what issue --

8 THE COURT: Anything else?

9 MR. STRADLEY: No, your Honor.

10 THE COURT: Denied.

11 Anything else before we bring in the jury?

12 Got 12?

13 MR. BAILIFF: Yes, sir.

14 THE COURT: Bring them in.

15 Wait a minute, Dick.

16 You all need a short break?

17 We're going to take a short -- about a
18 five-minute break.

19 (Recess.)

20 -----

21 (Open court, parties and jury present.)

22 THE COURT: Thank you. You may call your
23 first witness.

24 MR. STRADLEY: Your Honor, at this time
25 Defendants would call Ricardo Rodriguez.

1 Thank you. Raise your right hand for me.

2 THE WITNESS: (The Witness complied.)

3 THE COURT: Do you swear to tell the truth,
4 the whole truth, and nothing but the truth?

5 THE WITNESS: Yes, sir

6 THE COURT: Have a seat to my right.

7 THE WITNESS: (The Witness complied.)

8 RICARDO RODRIGUEZ,

9 having being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. STRADLEY:

12 Q. What is your name?

13 MR. STRADLEY: Pull the microphone down so
14 you can --

15 THE WITNESS: (The Witness complied.)

16 Q. (BY MR. STRADLEY) Tell the jury your name,
17 please.

18 A. My name is Ricardo Rodriguez.

19 Q. Mr. Rodriguez, where do you live?

20 A. In Dallas, Texas, 2242 Fort Worth Avenue,
21 Apartment 217.

22 Q. Who do you live with?

23 A. With my family.

24 Q. Are you married?

25 A. Yes, I am.

1 Q. What is your wife's name?

2 A. Maria.

3 Q. Does Maria work outside the home?

4 A. No, she don't.

5 Q. Do you have any children?

6 A. Yes.

7 Q. How many children?

8 A. Now, at this moment there are four.

9 Q. Okay. And who are your children?

10 A. Excuse --

11 Q. Who -- Who are your children?

12 Name --

13 Give me their names.

14 A. Oh, the first one is Fernando.

15 Q. How old is Fernando?

16 A. Now, almost seven years.

17 Q. Okay. And who is your next child?

18 A. Ricardo.

19 Q. And how old is Ricardo?

20 A. Six.

21 Q. Who is your next child?

22 A. His name is Ramone.

23 Q. How old is Ramone?

24 A. On next September he's going to be three.

25 Q. Okay. And your youngest child?

1 A. He's newborn. He's five months.

2 Q. What is his name?

3 A. Guillermo.

4 Q. Guillermo?

5 Is --

6 Are you expecting more children?

7 A. No, not that I know --

8 Q. Okay. Now, how long have you lived in the
9 United States?

10 A. At this moment I come from '96.

11 Q. 1996?

12 A. 1996, yes.

13 Q. Okay. Were all of your children born in the
14 United States?

15 A. Yes.

16 Q. Are all of them U.S. citizens?

17 A. Yes, they are.

18 Q. Who provides financial support for your family?

19 A. Just me.

20 Q. Where were you born?

21 A. In Monterrey -- Monterrey City, Mexico.

22 Q. Which state is Monterrey in?

23 A. It's what we call Nuevo Leon.

24 Q. Okay. And your father, tell me about his
25 business.

1 A. He's a truck driver.

2 Q. Did you grow up with a truck driver in your
3 family?

4 A. Yes.

5 Q. Okay.

6 A. He show me.

7 Q. And how long have you been a truck driver?

8 A. Around 20 years.

9 Q. Okay. Did you learn in Mexico?

10 A. Yes.

11 Q. Did you have a driver's license in Mexico?

12 A. Yes.

13 Q. What kind of license did you have in Mexico?

14 A. What we call them a federal -- federal license.

15 It's like a CDL here in your land -- in your country.

16 Q. A federal license?

17 A. Yes.

18 Q. Does that allow you to drive trucks?

19 A. Yes.

20 Q. Okay. When you came to the United States, did
21 you get a CDL?

22 A. Yes, sir.

23 Q. And what year was that?

24 A. From 1996.

25 Q. Okay. Now, when you came to the United States

1 and got a CDL license here, did you start driving trucks
2 in the United States?

3 A. No.

4 Q. What did you do first?

5 A. Carpenter helper.

6 Q. Carpenter, and what else?

7 A. Helper.

8 Q. Helper?

9 A. Helper.

10 Q. Okay. What else did you do?

11 A. After carpenter helper?

12 Q. Yes.

13 A. I worked for Data Documents.

14 Q. Now, Mr. Simpson earlier questioned whether you
15 worked for Data Documents. Do you remember that?

16 A. Yes.

17 Q. Did you really work for them?

18 A. Yes.

19 Q. What did you do for them?

20 A. Like working on the warehouse.

21 Q. Like working on the what?

22 A. The warehouse.

23 Q. Okay. What was --

24 Were you a temporary employee?

25 A. Yes, for Staffing Solutions.

1 Q. Staff -- Staffing Solutions?

2 A. Yes.

3 Q. All right. And Staffing Solutions, was that a
4 company that Data Documents used for some of their
5 workers?

6 A. Yes.

7 Q. Who are some other --

8 Where are some other places where you have
9 worked since you came to the United States?

10 A. For the --

11 Driving? You mean driving or --

12 Q. Any -- Any kind of job?

13 A. At the City Club.

14 Q. At the City Club?

15 A. Yes.

16 Q. What did you do at the City Club?

17 A. I waited.

18 Q. And where was that? Is that in Dallas?

19 A. Yes.

20 Q. Okay. What else have you done?

21 A. Well, driving.

22 Q. Okay. Tell me where you have been a driver?

23 A. For Saldana Trucking.

24 Q. All right. Were you ever a commercial truck
25 driver before in the United States, before you got your

1 commercial drivers license in 1996?

2 I'm not talking about Mexico, but in the
3 United States?

4 A. In the United States?

5 Well, I did get license in 1996.

6 Q. Okay.

7 A. The commercial.

8 Q. Yes, I understand.

9 A. Yes.

10 Q. And is that --

11 Did you start driving a truck at that time?

12 A. Not the --

13 What-- Can I explain?

14 Well, I received my license and I looked
15 for a job for -- to drive.

16 Q. Okay. What was the first job where you drove
17 that you remember?

18 A. For Saldana Trucking.

19 Q. Okay. Who are some other companies where you
20 have driven as a truck driver?

21 A. For Mr. Hermillio Jasso.

22 Q. Jasso?

23 A. Jasso.

24 Q. Jasso. Okay. With a "J"?

25 It's J --

1 A. J-a-s-s-o.

2 Q. Okay.

3 A. Jasso.

4 Q. Okay. And have you driven --

5 Who else have you driven for?

6 A. For --

7 His name is Mr. Guerra, Pedro Guerra.

8 Q. Mr. Guerra?

9 A. Yes.

10 Q. Okay. Who else have you driven for?

11 A. For Aggregate.

12 Q. Aggregate Haulers?

13 A. Yes.

14 Q. All right. Who else?

15 A. For RTX.

16 Q. Okay.

17 A. RTX was with the same -- same owner, Pedro
18 Guerra.

19 Q. Okay. I see.

20 All right. For whom do you drive now?

21 A. For Mr. Melendez.

22 Q. How long have you driven for Mr. Melendez?

23 A. For almost three years.

24 Q. Okay. What type of trucks -- What type of
25 trucks have you been driving since you've been in the

1 United States?

2 A. It's combination, dump -- dump truck, utility
3 trailer dump truck.

4 Q. Okay. What type of materials do you haul?

5 A. Sometimes rock, gravel, sand.

6 Q. Okay. Let me turn your attention,
7 Mr. Rodriguez, to the day of the accident?

8 A. Yes.

9 Q. December 17, 2002, do you remember that date?

10 A. Sure.

11 Q. Okay. Where --

12 Just before the accident, where were you
13 coming from?

14 A. From TXI plant over at Bridgeport.

15 Q. What were you hauling?

16 A. At that moment, sand.

17 MR. STRADLEY: Your Honor, may I use the
18 board?

19 THE COURT: Yes, you may.

20 Q. (BY MR. STRADLEY) Can you see that?

21 A. Yes.

22 Q. What highway were you on?

23 A. On 114.

24 Q. Which direction were you going?

25 A. East.

1 Q. Do you remember drawing a diagram of how this
2 accident happened?

3 A. Yes.

4 Q. Okay. Do you think you could do it again?

5 A. Sure.

6 MR. STRADLEY: Your Honor, may the witness
7 approach the board?

8 THE COURT: Yes, he may.

9 Q. (BY MR. STRADLEY) And keep --

10 Come up here, please, and keep your voice
11 loud; okay?

12 A. All right.

13 (The Witness complied.)

14 Q. All right. Now, let's assume --

15 I think Mr. Simpson drew this. This shows
16 114, and Paradise is down here. This is west. And Boyd
17 is up here, that is east. (Indicating.)

18 A. Okay.

19 Q. Is this where the accident happened?

20 (Indicating.)

21 A. Yes, in this direction.

22 Q. All right. Draw -- Draw your 18-wheeler where
23 it was just before the accident.

24 A. (The Witness complied.)

25 Q. Okay. Now, draw the Yukon, the SUV --

1 Let me ask you this: What happened as
2 you --

3 Just before the accident, tell me what
4 happened.

5 A. Before the accident, I -- I saw the -- the SUV
6 went to me, and I tried to -- to avoid the crash, and I
7 did the impossible to avoid the crash.

8 Q. Okay. Whose lane did the crash happen in?
9 Your lane, or the Yukon lane?

10 A. On my lane.

11 Q. Okay. Draw the Yukon as it came into your
12 lane, please.

13 A. (The Witness complied.)

14 Q. Okay. What happened next?

15 A. Well, I -- I did like this, because I saw -- I
16 saw her start to cross the line -- the lane -- the line,
17 the center line, going like this. (Indicating.)

18 Q. Okay. Draw her in where the impact -- where
19 the crash occurred. Can you do that? Can you draw the
20 Yukon where it made contact with your truck, or as close
21 as you can to where it made contact with your truck?

22 A. (The Witness complied.)

23 The first -- The first contact of the SUV
24 was on the -- on the accessory of the bumper -- goes on
25 the bumper.

1 Q. Let --

2 You say the accessory?

3 A. The accessory.

4 Q. Just a minute.

5 Is this what you're talking about?

6 (Indicating.)

7 A. Yes, it is.

8 Q. Okay. What happened next?

9 A. Next, because I saw the -- I saw my truck after
10 the accident. The SUV caught on my sleeper -- my

11 sleeper cab with the -- with the mirror and then with

12 the -- I think with the bumper -- with the bumper of the

13 SUV touch my first -- my first axle here, so here's

14 one -- one axle on the front and this is the second one.

15 (Indicating.)

16 Q. Okay. All right. And what did you do when the
17 accident happened? Did you --

18 What did you do with your truck and your
19 trailer?

20 A. Well, after -- after she hit me, and --

21 I -- I stopped probably here.

22 (Indicating.)

23 Q. On the shoulder?

24 A. On the shoulder, yes.

25 Q. Okay. Mr. Rodriguez, were you ever out of your

1 lane from the time you left Bridgeport, came through
2 Paradise, and when the accident happened, did you ever
3 cross that center stripe?

4 A. No, I didn't.

5 Q. Mr. Rodriguez, are you 100 percent sure that
6 the Yukon came into your lane and struck you in your
7 lane?

8 A. Yes, I'm 100 percent sure.

9 Q. Okay. You can have a -- You can have a seat.

10 Thank you.

11 A. (The Witness complied.)

12 Q. Now, Mr. Rodriguez, did you --

13 MR. STRADLEY: May I approach the witness,
14 your Honor?

15 THE COURT: Yes, you may.

16 Q. (BY MR. STRADLEY) Did you have a cell phone?

17 A. Yes.

18 Q. Were you using it at the time of accident?

19 A. Well, I use after the accident.

20 Q. I understand you used it after the accident.

21 Did you use at the time of the accident?

22 A. No, I don't.

23 Q. Okay. After the accident, what did you do with
24 your cell phone?

25 A. Well, I dialed -- I dialed the 911 for

1 emergency.

2 (Defendants' Exhibit No. 420

3 marked for identification.)

4 Q. (BY MR. STRADLEY) Okay. All right. Let me
5 show you what has been marked as Defendants' Exhibit
6 420. Do you recognize this record?

7 A. Yes.

8 Q. What is it?

9 A. It's the record of my cell phone.

10 Q. Okay. What is the -- What is the last call --
11 What is the time -- the time of your 911
12 call that you made, please?

13 A. It's 1:56 p.m.

14 Q. What is the time of your call before that?

15 A. There's a 1:25 p.m.

16 Q. Okay. And did you talk to 911? Did you tell
17 them what had happened?

18 A. Well, when I did the call I gave the -- the
19 phone to a young -- a young man. He lived -- He lived
20 around there, where the -- where the crash occurred --
21 is one -- one house -- one house there.

22 Q. Did you talk to 911 first before you gave the
23 phone to the other young man?

24 A. Well, I remember, I tell the --

25 Probably, I'm sure it was a woman, I tell

1 her let me -- let me give the phone to another person
2 because my English is not very good, and I -- and at
3 that moment I was in shock.

4 Q. Okay.

5 MR. STRADLEY: Your Honor, at this time we
6 would offer Defendants' Exhibits 420, Mr. Rodriguez cell
7 phone record and 425, Wise County Sheriff's Department
8 records.

9 MR. SIMPSON: Your Honor, we have no
10 objection.

11 THE COURT: Admitted.

12 Q. (BY MR. STRADLEY) Okay. Mr. Rodriguez, when
13 you pulled over after the accident, I think you said you
14 were on the shoulder; is that correct?

15 A. Yes.

16 Q. Were you all the way on the shoulder?

17 A. Yes.

18 Q. Would you show me where you were on the
19 shoulder?

20 Draw your truck and trailer, please, where
21 they were?

22 A. (The Witness complied.)

23 Q. Okay. All right. Let me see this.

24 Now, you were hauling sand; correct?

25 A. Yes. Yes.

1 Q. Did you have a tarp on the trailer or not?

2 A. Yes.

3 Q. There was a tarp?

4 A. (No audible response.)

5 Q. Why did you have a tarp when you were hauling
6 sand?

7 A. Because the -- TXI require tarp on it.

8 Q. Okay. And did you ever pull the tarp off after
9 the accident?

10 A. Yes, I did.

11 Q. Why?

12 A. Because officer of the DPS told me, what have
13 you got on the -- the trailer?

14 And I say, that's sand.

15 And he say, will you remove the tarp?

16 Yes, I did. Why not.

17 Q. Okay. All right. Thank you, Mr. Rodriguez,
18 you can have your seat.

19 A. (The Witness complied.)

20 Q. Mr. Rodriguez, was there anything that you
21 could have done differently to avoid this accident?

22 A. No.

23 Q. Did you have any alcohol to drink the day of
24 the accident?

25 A. No.

1 Q. Did you have any drugs or prescription
2 medication?

3 A. No, not --

4 Q. When -- When you were in Paradise, was there a
5 stop sign in Paradise?

6 A. Yes, there's one stop sign there.

7 Q. Did you stop?

8 A. Yes, I did.

9 Q. How many gears does your truck have?

10 A. Fifteen.

11 Q. Okay. How long does it take your truck to get
12 up to speed and shift through all those gears?

13 A. Depends -- Depends on the -- on the hills.

14 Q. Okay.

15 A. Depends on the ground, you know.

16 Q. How fast do you believe you were going when
17 this accident happened?

18 A. Probably 55.

19 Q. And you're sure you never left your lane?

20 A. No, I don't.

21 Q. And you're sure that she came into your lane?

22 A. Yes, for --

23 Yes, she did.

24 I mean, it's -- it's about luck to me. I'm
25 not lucky, because I don't know what was wrong with the

1 SUV to went to me -- to came to me to my front of the --
2 front of the tractor.

3 Q. Did this happen suddenly or over a slow period
4 of time?

5 A. It was suddenly.

6 Q. And just so the record is clear, you talked
7 about an accessory where you said the first impact was?
8 Is that accessory Defendants' Exhibit No. 416, the
9 position pole? (Indicating.)

10 A. Yes, it's that one. (Indicating.)

11 Q. And you believe this was the first impact when
12 she hit you?

13 A. Yes, because that -- that pole was on -- on the
14 right place on the bumper, and after the accident when I
15 come down, I saw the pole on the ground.

16 MR. STRADLEY: Okay, Mr. Rodriguez, I may
17 have some questions for you later on.

18 Thank you very much. Pass the witness.

19 -----

20 CROSS EXAMINATION

21 BY MR. SIMPSON:

22 Q. Mr. Rodriguez, is it your sworn testimony
23 before this jury that you were hauling sand on December
24 17th, 2002?

25 A. Yes, probably.

1 Q. That's not what Mr. Melendez says, is it?

2 MR. STRADLEY: Objection. Impeachment of
3 the witness not on the stand. It's improper --

4 THE COURT: Overruled.

5 Q. (BY MR. SIMPSON) Let's read what Mr. Melendez
6 says.

7 (Reading.)

8 "QUESTION: Mr. Rodriguez was loaded at the
9 time of this accident; is that correct?

10 "ANSWER: That's correct.

11 "QUESTION: He was loaded with what?

12 "ANSWER: Rock.

13 "QUESTION: Is that right, Mr. Melendez?

14 "ANSWER: He was loaded with one-inch size
15 rock."

16 A. Excuse me. I can't see the --

17 Q. Okay.

18 A. -- the board.

19 Q. Yeah, let me move this.

20 Can you see it, sir?

21 A. Yes. Thank you.

22 Q. Okay. If you need to stand up, you stand up,
23 Mr. Rodriguez.

24 Mr. Rodriguez, he says you were hauling
25 rock. He's your boss, isn't he?

1 A. Yes, he is.

2 Q. Okay. Is he right or are you right?

3 A. I'm right, because I dump the truck.

4 Q. Okay. Did somebody tell you to say sand,
5 because that would sound better, what the experts are
6 going to need tomorrow, Mr. Painter?

7 A. Nobody told me.

8 Q. Nobody told you to say "sand"?

9 A. To say what is the material.

10 Q. But you disagree with Mr. Melendez?

11 A. Yes, but if -- if he say rock; it's not -- it's
12 not rock.

13 Q. Now, did you ever tell Mr. Melendez that the
14 Yukon -- the SUV hit your truck in the third axle first?
15 Did you ever tell Mr. Melendez that?

16 A. No, I'm not sure.

17 Q. Well, let's see what Mr. Melendez says.

18 Do you want to read that? I want to make
19 sure you can read that, Mr. Rodriguez.

20 A. Yes. Yes.

21 Q. This is Mr. Melendez.

22 (Reading.)

23 "QUESTION: He told me he tried to avoid
24 the head-on collision, so he steered the truck as far as
25 he can to his right, and the Suburban hit him on the

1 third axle on the truck."

2 Did you tell Mr. Melendez that?

3 A. No.

4 Q. So your boss again is lying to this jury, is
5 that what you're telling the jury?

6 MR. STRADLEY: Objection; argumentative.

7 THE COURT: Overruled. Cross examination.

8 A. (BY THE WITNESS) Excuse me?

9 Q. Is your boss again not telling the truth,
10 Mr. Rodriguez?

11 A. Well, at the moment of the accident, I -- I
12 called him and tell him about the accident and --

13 Q. On the phone?

14 A. Only by the phone.

15 Q. Okay. Yes, you did, but that was in the
16 afternoon. It wasn't in the morning, was it,

17 Mr. Rodriguez?

18 A. Excuse me?

19 Q. You -- You called him the afternoon, didn't
20 you?

21 A. Yes, sure, after the accident.

22 Q. Did you tell him that? Right there, that
23 answer right there, did you tell him that?

24 (Indicating.)

25 A. No, I don't remember.

1 Q. You remember what you said in your statement,
2 Mr. Rodriguez, as to where the Yukon hit your tractor
3 trailer?

4 A. Yes.

5 Q. Okay. Do you want to tell the jury where you
6 said it hit?

7 It says to the front of the tractor. Is
8 that what it says?

9 A. Yes.

10 Q. It said, "The SUV hit me on my left side,
11 touching my tires of the left." That's what you said;
12 correct?

13 A. Correct.

14 Q. Do you remember talking to a gentleman by the
15 name of Cody Jobe, Mr. Rodriguez?

16 A. Who --

17 Excuse me. Who is he?

18 Q. The man that was turning into the driveway in
19 front of you? The man that was in front of you that
20 would've turned into the driveway in front of you, do
21 you remember talking to him after the accident?

22 The same man you gave the cell phone to.
23 Do you remember the man you gave the cell phone to?

24 A. Oh, okay. He --

25 What's his name?

1 Q. Mr. Jobe. Cody Jobe.

2 A. Okay.

3 Q. Do you remember talking to him about the
4 accident?

5 A. It's probably --

6 I tell him what really happens.

7 Q. And you told him that the SUV hit your tractor,
8 did you not?

9 A. Probably.

10 Q. The back of the tractor. You recall telling
11 Mr. Jobe that your SUV hit the back of the tractor,
12 Mr. Rodriguez?

13 A. Mr. Simpson, I -- I talked to him seconds after
14 the accident. I don't know what exactly my damage was.

15 Q. Well, you were standing right outside your
16 tractor when you talked to him, weren't you, sir?

17 A. Yeah, but I saw a hurt people on the SUV. I
18 don't care -- I don't care my damage at that moment.

19 Q. Did you tell Mr. Jobe that the SUV hit the back
20 of your tractor?

21 A. Probably. Probably. I'm not sure.

22 Q. Mr. Rodriguez, have you ever been issued a
23 Social Security number from the Social Security
24 Administration?

25 A. No.

1 Q. Have you ever used a Social Security number
2 that was not issued to you by the Social Security
3 administration?

4 A. Excuse me?

5 Q. Have you ever used a Social Security number
6 that was not issued to you by the Social Security
7 Administration?

8 A. Yes, I use my -- my own number.

9 Q. Your own number?

10 A. Yes.

11 Q. Do you have your Social Security card with you
12 today?

13 A. No.

14 Q. The number you use, is that your Social
15 Security number?

16 A. Yes, it's --

17 You know, what it is -- it's on the paper.

18 Q. I know, but is it yours?

19 A. Well, I think it's mine. I'm using it.

20 Q. How did you get this number?

21 A. On my mind.

22 Q. I didn't -- I didn't understand what you said.

23 I'm sorry.

24 A. I invented it.

25 Q. You invented it?

1 A. Yes.

2 Q. You didn't take it from somebody that had
3 passed away?

4 A. No.

5 Q. Did you have a valid Social Security number
6 when you applied for your Texas driver's license in
7 1996?

8 A. No.

9 Q. You represented to the State of Texas in 1996
10 that you had a valid Social Security number when you
11 secured your license, did you not?

12 A. No, because nobody asked me.

13 Q. You were never asked to put your Social
14 Security number on your driver's license application?

15 A. Yes, I did.

16 Q. But you put the wrong one, didn't you? You put
17 a false one?

18 A. Yes, I did.

19 Q. Now, when you were convicted of illegally
20 entering the U.S. by the misrepresentations, you served
21 time in jail, did you not?

22 A. Yes.

23 Q. And a part of that was for you not to come back
24 to the United States for 10 years, wasn't that the
25 agreement you made with the U.S. Government?

1 A. Not --

2 No, nobody tell me.

3 MR. SIMPSON: Your Honor, may we approach?

4 THE COURT: Yes.

5 (Discussion off the record.)

6 THE COURT: Sustained.

7 Q. (BY MR. SIMPSON) Do you recall in your
8 application saying that you drove for Data Documents?

9 A. Probably.

10 Q. You did not drive for Data Documents, did you?

11 A. No, I don't.

12 Q. Do you recall in your application that you said
13 you drove for Coronado Trucking?

14 A. Yes, I did.

15 Q. You did not drive for Coronado Trucking, did
16 you?

17 A. No.

18 Q. In fact, you said you did not come over here
19 until 1996; is that correct?

20 A. I came in 1996.

21 Q. Yes, but --

22 Coronado Trucking you said that you had
23 worked for them over here in Dallas, Texas, from 1994 to
24 '96. You weren't here during that period, were you?

25 A. No. No.

1 Q. When you came in 1996, did you enter the U.S.
2 illegally?

3 MR. STRADLEY: Your Honor, objection; calls
4 for a legal conclusion from the lay witness.

5 THE COURT: Approach.

6 (Discussion off the record.)

7 THE COURT: And you may proceed,
8 Mr. Simpson.

9 MR. SIMPSON: Thank you, your Honor.

10 Q. (BY MR. SIMPSON) You swerved to the right to
11 avoid the impact with the Yukon, did you not?

12 A. Yes.

13 Q. And in your deposition you told me that you
14 swerved to the right about two to three seconds before
15 impact; is that correct?

16 A. Yeah, that's what I said.

17 Q. And you've changed that to one second now, have
18 you not?

19 A. Yes, I did.

20 Q. Did someone suggest that you change the two to
21 three seconds to one second, Mr. Rodriguez?

22 A. No, nobody.

23 Q. So you read that deposition -- the lengthy
24 deposition here, and you saw that and you corrected it
25 by yourself with nobody suggesting --

1 Excuse me.

2 -- that you correct it?

3 A. Nobody suggest to me.

4 Q. So how many seconds is it now? Did you avoid
5 her one second, two seconds, or three seconds before
6 impact, Mr. Rodriguez?

7 A. Before the impact?

8 Q. Before the impact?

9 A. Yes, I did a second or probably less.

10 Q. But it was not two to three seconds now?

11 A. No, it's not.

12 Q. Excuse me.

13 Do you remember the man, Mr. Jobe, that you
14 gave the phone to?

15 A. A little bit.

16 Q. Okay.

17 A. A little bit, yes.

18 Q. Do you know where he came from?

19 A. You mean, where -- where he came out?

20 Q. Yeah. Was he in an automobile?

21 A. No. No. He --

22 I saw him came out from -- I think his --
23 his house.

24 Q. Okay. Mr. Jobe was right here getting-- with
25 his lights on -- his blinker on, getting ready to turn

1 right into a driveway, was he not? He was in a TransAm.

2 Do you remember him?

3 He was in front of you getting ready to
4 turn right in this driveway? (Indicating.)

5 A. Well, if it -- if it -- must be --

6 Let's me see distance --

7 I cannot -- I cannot specifically --
8 specify, because I -- I don't remember that car.

9 Q. Okay. You don't remember the TransAm, the car
10 in front of you?

11 A. No, I don't remember seeing him anyway.

12 Q. Okay. Well, he's going to testify here. I
13 think that your attorneys are going to call him. He's
14 going to testify that he was in this lane, slowing down
15 to turn right into his parent's driveway. (Indicating.)

16 I want to ask you something, Mr. Rodriguez.

17 Excuse me.

18 If you were back here with your truck, and
19 you saw his automobile slowing down here, would you have
20 slowed down and downshifted, or would you have just gone
21 across the center stripe a little bit to come around
22 him, and then back into your lane? (Indicating.)

23 A. No.

24 Q. You would not have done that?

25 A. No.

1 What I remember, I never leave my lane.

2 Q. Okay. Have you ever passed an automobile that
3 was turning in the lane like this? (Indicating) Have
4 you ever gone across the center stripe to get around an
5 automobile that was turning instead of downshifting your
6 truck? Have you ever done that?

7 A. No, I don't remember if -- if he said -- if he
8 said he was on -- on the front of me. He must be on
9 the -- on the shoulder --

10 Q. Well, he said --

11 A. -- to -- to -- to enter to his driveway.

12 Q. Well, he said he was in front of you getting
13 ready to turn. My question is: Have you ever pulled
14 out, crossed the center to get around an automobile that
15 was slowing down getting ready to turn? Have you ever
16 done that?

17 A. No.

18 Q. Okay.

19 MR. SIMPSON: I'll pass the witness.

20 -----

21 REDIRECT EXAMINATION

22 BY MR. STRADLEY:

23 Q. Mr. Rodriguez?

24 A. Yes, sir.

25 Q. Do you remember any vehicles being close to

1 you, in front of you, just before the accident?

2 A. No. I don't remember, no.

3 Q. In fact, when you are leaving Paradise --

4 A. Yes.

5 Q. -- at that stop -- that stop sign, how long
6 does it take you to get to freeway speed when you're
7 leaving Paradise?

8 A. At the place of the accident?

9 Q. How long does it take you from -- from the stop
10 sign to wherever? How long does it take you to get to
11 the speed you want to drive on the freeway?

12 A. What I remember it's --

13 Before the impact, I was on the last gear,
14 I remember.

15 Q. Okay. Do you remember --

16 Usually, when you are loaded -- loaded like
17 you were with sand, do you slowly accelerate, or do you
18 accelerate quickly?

19 A. There -- There at the place of the accident is
20 down-- downhill --

21 Q. Okay.

22 A. -- for me, for on my direction.

23 Q. Okay. Let me ask this: I'll ask it a
24 different way: Your truck and the trailer, when you
25 start at the stop sign, can you go very quickly and get

1 up to speed, or does it take time for you to get up to
2 speed?

3 A. No, it's impossible to start fast, because I --
4 I was loaded.

5 Q. Okay.

6 A. And I did the --

7 My stop in Paradise on the stop sign, and
8 from --

9 I -- I believe from the stop sign to the
10 place of the accident is about a -- about a mile, mile
11 and a half.

12 Q. Okay. Do you remember catching up to a
13 TransAm?

14 A. No, I don't remember.

15 Q. All right.

16 MR. STRADLEY: Thank you, Mr. Rodriguez.

17 Pass the witness.

18 -----

19 MR. SIMPSON: Your Honor, we have no
20 further questions.

21 -----

22 THE COURT: Thank you, Mr. Rodriguez. You
23 may step down.

24 Ladies and gentleman, you may go home.

25 Be in the jury room at 8:30 the morning.

1 We'll see you then. Remember the admonition of the
2 Court.

3 (A brief interruption occurred.)

4 THE COURT: All right. Back on the record
5 in this cause. I've asked at a time when the Defense
6 has called Mr. Lee Jackson, but it's anticipated that
7 they might, because a brief of sorts has been furnished
8 to me by Mr. Boyd, and I am at this time asking for the
9 Defendants' response to his objection to Mr. Lee Jackson
10 being called as a witness during their case in chief.

11 You may present it.

12 MR. HURD: Your Honor, their -- their
13 objection is that he not be called --

14 THE COURT: Wait one second everybody.

15 We're having a hearing up here and if you
16 could just be quiet until we get through, then you all
17 can chat all you want to.

18 Go ahead, Mr. Hurd.

19 MR. HURD: And I understand there are
20 objections that he not be permitted to be called as an
21 expert.

22 He's -- He is --

23 In any event he's a fact witness, but
24 he's -- he was properly designated an expert witness.

25 And in addition to that, they questioned

1 Jonathan Kennemer, even -- even published to the jury a
2 reconstruction opinion testimony that Mr. Boyd asked him
3 about in his deposition, they published it to the jury.

4 THE COURT: I'm aware of that.

5 MR. HURD: I then in response published
6 a -- another portion of his deposition in which he
7 describes what his opinions are as to how this accident
8 happened.

9 They had --

10 Because they had opened it up then, and
11 it's still opened up. They opened up his testimony.

12 MR. BOYD: Your Honor, to the extent
13 they're going to offer opinions, they've already offered
14 the opinions from his deposition.

15 There is no designation one way or the
16 other, so if that's their basis, that's repetitive, your
17 Honor. They put the opinion that was disclosed to us
18 the first time at his deposition on April 19th into
19 evidence when we called him adversely in our case in
20 chief. We designated him adversely and asked him
21 questions about his findings, point of impact, those
22 type things, and then they put on their part in response
23 to that.

24 They're now wanting to --

25 So the extent they're going to call him to

1 go back to that again would be repetitive.

2 But, your Honor, as I understand it,
3 they're now wanting to call him as an expert, and this
4 is section three of their designation, where they're
5 required to get the general substance of an expert's
6 opinions, and there's no mention of Mr. Jackson anywhere
7 in here. They gave a resume and they gave an identity,
8 but they never gave an opinion.

9 As it turned out-- when we he took
10 Mr. Painter's deposition it turned out that he had been
11 the one that did the findings at the roadway they gave
12 to Mr. Painter, so we took his deposition because he
13 became a consulting expert whose work product had been
14 reviewed --

15 THE COURT: I read your brief.

16 MR. BOYD: -- at that point, but there's
17 still --

18 There's no designation, your Honor. If
19 they're going to call him affirmatively in their case in
20 chief, they have to designate his opinions.

21 At his deposition--and I know notice of
22 this is in the brief--on April 19th we asked him: Do
23 you have any opinions? Have you given a report?

24 They said, no, and they still haven't
25 supplemented this to include Mr. Jackson in response to

1 what the general substance of his opinions would be.

2 MR. STRADLEY: Can two of us speak, your
3 Honor? It would just be quicker, because I've got the
4 answer to one of those. If not, I'll give it to
5 Mr. Hurd.

6 THE COURT: Go ahead.

7 MR. STRADLEY: Defendants' fourth
8 supplemental -- supplemental responses to Plaintiffs'
9 request for disclosure, which was served on January the
10 12th, 2004, states under Request F for testifying
11 experts, that certain DPS officers and Defendants'
12 experts, Jackson and Painter, may testify as to the
13 accident investigation and/or reconstruction.

14 These subjects may also include crush
15 analysis, debris analyses, human factors analysis, and
16 other areas contained within the overall subject matter
17 of the accident -- of accident investigation and/or
18 reconstruction.

19 And then -- then we go on to say
20 specifically that the accident occurred when Kimberly
21 Hughes lost control of her vehicle, crossed the center
22 line, and collided with the tractor trailer driven by
23 Ricardo Rodriguez and that Mr. Rodriguez never was
24 across the center line and did nothing to cause or
25 contribute to the accident.

1 We then go on underneath that and we refer
2 them to the police report and to Mr. Painter's report.
3 Now, Mr. Jackson didn't do a report, but his work is
4 subsumed within Mr. Painter's reports, but it's
5 important to have him testify because there is a gap
6 from the day of the accident when Mr. Painter was hired,
7 and so we need to fill that gap with Mr. Jackson and
8 show what he did, how his work formed the basis of
9 Mr. Painter's opinions, and that his opinion -- what his
10 opinions are.

11 MR. BOYD: Your Honor, there's --

12 In the fourth supplemental, their section
13 three is where they're supposed to give us the sub --
14 the substance of an expert's opinion, and Mr. Jackson is
15 not even referenced anywhere in that, and nor were we
16 ever provided the general substance of his opinions.

17 And then, in fact, when we asked him on
18 April 19th, less than 30 days ago:

19 (Reading.)

20 "QUESTION: Have you issued a report or any
21 opinions in this case?

22 "ANSWER: No.

23 "QUESTION: Why not?

24 "ANSWER: I was never asked for one."

25 There's a reason they haven't given us one.

1 He never gave one.

2 MR. STRADLEY: But we did give them the
3 substance, and just because I put it under two instead
4 of three shouldn't make it inadmissible, your Honor.
5 I -- I answered your question -- or their request for
6 disclosure.

7 MR. HURD: And as far as the part of the
8 deposition, where they asked him: "Have you done a
9 report?"

10 He says, "No, I haven't been asked to."

11 Then they launch into about two hours worth
12 of questioning about his opinions, some of which they
13 read to the jury when -- first of all, when Jonathan
14 Kennemer was on the stand, and then -- then they offered
15 it as affirmative evidence.

16 Now, the --

17 And the crux of his -- of his opinion is as
18 to how this accident happened, was not offered by me as
19 affirmative evidence at that time.

20 MR. BOYD: Your Honor, the best evidence is
21 to look at this objection Mr. Stradley made to my
22 opening statement, when we started to talk about it.

23 His objection was he's not been
24 designated --

25 MR. HURD: I know it's not objection

1 evidence. I --

2 MR. BOYD: It's an admission.

3 THE COURT: It's a state of mind.

4 MR. HURD: Okay.

5 MR. STRADLEY: Well, my mind is in a state
6 of mush right now.

7 THE COURT: Anything further?

8 MR. HURD: No, your Honor.

9 THE COURT: No. The problem I got here,
10 Counsel, is the number three, you didn't do it. The
11 general substance of his mental impressions, opinions,
12 and a brief summary of the basis for them.

13 Now, you're saying that it's included in
14 Painter's work, and I guess that's where you're going to
15 have to get it, because I'm going to sustain their
16 objection to his testimony.

17 MR. HURD: Your Honor, what about the
18 description in Paragraph 2? That basically is the
19 description of his testimony.

20 THE COURT: Well, if that was so, you
21 wouldn't have answered paragraph three as to anything.

22 It's a general area, but it's not like a
23 description of basically what he's going to say -- his
24 mental impressions --

25 MR. HURD: Well, your Honor --

1 THE COURT: -- does it?

2 I mean, do you see that there?

3 MR. HURD: Yes, your Honor.

4 I would submit to the Court, with all due
5 respect, that there's a sentence that says these
6 subjects may also include, so forth and so on, and then
7 what follows is, specifically, that the accident
8 occurred when Kimberly Hughes lost control of her
9 vehicle, crossed the center line -- line, and collided
10 with the tractor trailer driven by Ricardo Rodriguez,
11 and that Mr. Rodriguez never was across the center line
12 and did nothing to cause or contribute to the accident.

13 That's pretty specific as to -- as to what
14 his opinions are going to be.

15 THE COURT: But is there a brief summary of
16 the basis of those opinions contained in there, which is
17 required under number three?

18 MR. STRADLEY: That's what I attempted to
19 do when I said that --

20 THE COURT: Of the basis?

21 MR. STRADLEY: -- specifically --

22 Yes, the --

23 THE COURT: That he relies upon.

24 MR. STRADLEY: Yes, your Honor.

25 THE COURT: Where is that?

1 MR. STRADLEY: I --

2 The --

3 I believe when I stated that --

4 Because he said he's -- his opinion is
5 Mr. Rodriguez was never across the center line and did
6 nothing to cause or contribute to the accident, but
7 specifically I pointed out, the basis of that is that
8 the accident occurred when Kimberly Hughes lost control
9 of her vehicle, crossed the center line and collided
10 with the tractor trailer.

11 THE COURT: I don't view that as basis; may
12 be wrong.

13 Grant the motion.

14 Next?

15 MR. STRADLEY: Now, your Honor, Mr. Jackson
16 is a fact witness, also, to the extent that we're in
17 compliance with the Court's Rule, we would have certain
18 questions to ask him about his scene investigation, and
19 I don't think they've even sought to --

20 MR. BOYD: That was part of --

21 MR. STRADLEY: What was part of your
22 motion?

23 MR. BOYD: Your Honor, I think that was
24 repetitive, because I think that was covered earlier,
25 but if they think they've got something that hasn't been

1 covered already --

2 THE COURT: Make sure it's not repetitive.

3 And if it's solely about the facts on the
4 scene investigation, bring him up.

5 MR. STRADLEY: Yes, sir.

6 THE COURT: What's next?

7 All right. I don't remember, do we need to
8 be here --

9 MR. BOYD: We need to be here to discuss --

10 I think we'll probably need to be here,
11 Judge, to discuss the trooper, but that won't take 10
12 minutes.

13 MR. SIMPSON: What time, 8:00? 7:30?

14 THE COURT: How long?

15 MR. BOYD: Ten minutes, 15 minutes at the
16 most.

17 MR. HURD: Well, then 7:30 might be a
18 little early.

19 MR. STRADLEY: What about 8:15?

20 MR. SIMPSON: 8:00 o'clock.

21 It always takes longer than you think.

22 MR. HURD: 8:00 o'clock.

23 THE COURT: 8:00 o'clock.

24 All right. You all are going to work on it
25 though now?

1 MR. BOYD: Yeah, we're going to --

2 MR. STRADLEY: Your Honor --

3 THE COURT: Yes?

4 MR. BOYD: Well, if they'll tell me what
5 it's going to be.

6 MR. STRADLEY: Just regarding the ruling on
7 Lee Jackson, may I append our discovery responses since
8 they're not filed with the Court as an exhibit, and
9 consider that our bill on Lee Jackson's --

10 THE COURT: That's fine with me.

11 Thank you.

12 (Discussion off the record.)

13 MR. STRADLEY: Let me just state -- state
14 for the record that Court's Exhibit No. 1A are the
15 Defendants' supplement four supplemental responses to
16 Plaintiffs' request for disclosure which were referred
17 to in this hearing on Lee Jackson's testimony.

18 (Court's Exhibit No. 1A marked for
19 identification.)

20 -----

21 (END OF VOLUME 8)

22 (CONTINUED IN VOLUME 9)

23 -----

24

25

1 STATE OF TEXAS)

2 COUNTY OF WISE)

3 I, Jeffery M. Goodwyn, Official Court Reporter
4 in and for the 271st District Court of Wise County,
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6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, offered by the respective parties.

15 *I further certify that the total cost for the
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17 was paid/will be paid by _____.

18 WITNESS MY OFFICIAL HAND this the _____ day
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