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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. SUPERIOR COURT
CIVIL ACTION NO. 02-01159A

MARCIA RHODES, HAROLD RHODES Individually, HAROLD RHODES on behalf of his Minor Child and Next Friend REBECCA RHODES,
Plaintiffs,
v.

CARLO ZALEWSKI, DRIVER LOGISTICS, PENSKE TRUCK LEASING CORP., and BUILDING MATERIALS CORPORATION OF AMERICA, d/b/a GAF MATERIALS CORP.

Defendants.

Deposition of **Harold Rhodes**, taken before Debra L. Kemp, a Notary Public in and for the Commonwealth of Massachusetts, at the Law Offices of Morrison Mahoney & Miller, 250 Summer Street, Boston, Massachusetts, **Wednesday, October 1, 2003**, pursuant to Notice given.

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PROCEEDINGS

STIPULATIONS

It is hereby stipulated and agreed by and between counsel for the respective parties that all objections, except as to the form of the question and al motions to strike are reserved to the time of trial.

It is further stipulated and agreed that the witness will read and sign the deposition transcript within 30 days upon receipt of the transcript. Notarization and filing are waived.

(The following proceedings were commenced at 10:08 a.m.)

HAROLD RHODES

(Mr. Harold Rhodes, having been duly sworn by the Notary Public, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. SMITH:

Q Hi, Harold. How are you today?

We met previously. As you know, my name is Michael Smith. I represent Carlo Zalewski and DLS in this matter. We're going to take your deposition today.

Have you ever been deposed before?

A No.

Q Basically, it's just a question and answer session. But let me go over a couple ground rules that hopefully will make things go easier today. Okay?

The first is you need to verbalize your answers. We have a stenographer here and she's taking everything we say down. She can't take down head bobs and mm-hmms very well. So I'd ask that you verbalize your answers with a yes or a no. Okay?

A Yes.

Q Second, I tend to speak quickly sometimes. So

I'd ask that if you don't understand one of my questions that you please let me know because if you respond I'm going to hold you to your answer. Okay?

A Yes.

Q Finally, if you want to take a break at any point or to speak with your Counsel, just let me know. Okay? We can do that. The only thing I'd ask is if there's a question pending please answer that question first and then we can take a break. Okay?

A Yes.

Q Thank you.

Can you state your name, please.

A My name is Harold Rhodes.

Q No middle name?

A My middle name is Saul, S-a-u-l.

Q What's your date of birth, Harold?

A February 24, 1954.

Q And what's your current address?

A 11 Janock Road in Milford, Massachusetts.

Q And how long have you lived there?

A For 20 years.

Q And you live there with your wife and daughter; is that correct?

A Yes, that's correct.

Q And you've done some substantial renovations

to the house. No immediate plans to leave that address?

A No.

Q How old is your daughter now?

A She's 15.

Q And you're 49, correct?

A I am 49.

Q I'd like to go through a little bit of your background in terms of education at this point.

Where did you graduate high school?

A North Central High School, Indianapolis, Indiana.

Q What year did you graduate?

A I graduated in 1972.

Q Did you go on to further education?

A Yes.

Q Where did you go next?

A I went to Indiana University.

Q What year did you commence there?

A 1972.

Q Did you graduate in 1976?

A I graduated in 1975.

Q With a degree in what?

A Economics.

Q Did you go on to any further education after

that?

A Yes, I did.

Q Where did you go?

A Harvard Business School.

Q When did you go to Harvard?

A I started at Harvard in 1978.

Q When did you finish?

A In 1980.

Q What degree did you come out with?

A A masters in business administration.

Q Any further education?

A Nope.

Q From 1975 to 1978, did you work?

A Yes.

Q Doing what?

A I was employed by the State of Indiana.

Q And what were you doing for the State of Indiana?

A I was a computer programmer with the Legislative Services Agency.

Q And you stopped that and went to Harvard full time, did you?

A Yes, I did.

Q And you were at Harvard full time from 1978 to 1980?

A Yes, I was.
Q Then did you go to work in 1980?
A Yes, I did.
Q Where did you go to work in 1980?
A I joined Prime Computer.
Q What was your position?
A Product Manager.
Q What did Prime Computer do?
A Prime is a manufacturer of mini computers.
Q Mini?
A Mini computers.
Q And how long did you work there for?
A Until 1983.
Q Were you a project manager the whole time?
A Product Manager.
Q Product manager the whole time there?
A I eventually was promoted to group product manager.
Q Where was that located?
A Natick, Massachusetts.
MR. JOHNSON: I'm sorry. Where was it, Natick?
THE WITNESS: In Natick.
Q (By Mr. Smith) So in 1983, you changed jobs?
A Yes, I did.

Q Where did you go in 1983?
A To a company called Enmass Computer.
Q N-M-A-S-S?
A E-n-m-a-s-s Computer.
Q Where were they located?
A In Acton, Massachusetts.
Q What was your position?
A Product Manager.
Q What was the business function of Enmass?
A They made large-scale computers.
Q How long did you work there for?
A About nine months.
Q And does that take us into 1984?
A Mm-hmm.
Q Okay. So 1984. Where did you go in 1984?
A I joined Adra Systems, A-d-r-a, Systems.
Q Where was that located?
A In Lowell, Massachusetts.
Q What was your position?
A Director of Marketing.
Q And how long were you there for?
A Two and a half years.
Q And what did Adra Systems do?
A They manufactured software for computer-aided design, mechanical design.

Q You and your wife were married in 1980, correct?
A We were married in 1983.
Q 1983. Okay.
And when you were working at Adra Systems, were you living together -- you and your wife?
A Yes.
Q Where were you living?
A In 11 Janock Road.
Q Oh, 11 Janock Road?
A Right.
Q So that's the only address you've lived at since you've been in Massachusetts?
A Correct.
Q All right. So that takes us to about 1986 approximately. In 1986, where did you go?
A Computer Vision Corporation.
Q Where was that located?
A Bedford, Massachusetts.
Q Okay. And what was your position there?
A Director of Marketing.
Q How long did you hold that position?
A I was there about a year and a half.
Q It looks about 1984 -- is that when you embarked on your career in marketing?

A Well, since 1980. You know, product manager is a part of the marketing function.
Q Okay. In these jobs -- starting with 1983 with Prime Computer -- did that involve any travel or was that a basic nine to five, five days a week type of position?
A I'd say it's occasional travel not substantial.
Q How would you describe occasional? Once every couple of months you'd have to go somewhere?
A Yes. That would be a fair statement. Once every couple of months.
Q And was that the same in terms of travel at Enmass?
A Yes. I did not travel at Enmass.
Q And did you work a typical nine to five, five days a week at Enmass?
A Right.
Q How about with Computer Vision Corporation? Was there travel involved there?
A Yes. I'd say that that was maybe once a month.
Q All right. So we're up to about 1987, 1988. Where did you go after you left Computer Vision Corp.?

A I joined Parametric Technology Corporation.
Q What did they do?
A They were a start-up for mechanical design software.
Q Where were they located?
A In Waltham -- Waltham, Massachusetts.
Q And your position?
A Director of Marketing.
Q And was there travel involved in that position?
A Yes. I'd say about once a month.
Q When you traveled once a month, would it be for a weekend? Would it be a week-long trip? What would it entail typically?
A One or two nights.
Q And how long were you at Parametric for?
A Three years.
Q 1991 approximately?
A 1990.
Q 1990. Okay.
Do you have a CV that you keep?
A A resume?
Q Yes.
A Yes, certainly.
Q I should have asked for that. It might have been easier.
In 1990, where did you go?
A Data General Corporation.
Q And where were they located?
A In Westboro, Massachusetts.
Q And your position?
A Director of Marketing.
Q And how long did you work there for?
A Until 1993.
Q And just generally speaking, your duties as marketing director, were they similar at all in these positions?
A Certainly.
Q And how about travel there for that position?
A Yes.
Q And how often would you have to travel with that position?
A Again, you know, one or two nights or one or two or three nights a month.
Q And this would be right around the time your daughter was born, correct?
A My daughter was born on April 8, 1988.
Q 1988. Okay.
And when your daughter was born, that's when Marcia stopped working full time, correct?

A No.
Q No? Okay.
When did she stop working full time?
MR. PRITZKER: You're making an assumption.
MR. SMITH: I believe it was in your discovery. I'll ask a foundation question.
Q (By Mr. Smith) At some point, prior to this motor vehicle accident, did Marcia stop working full time?
A Yes, she did.
Q Can you ~~tell me~~ generally when that was?
A ~~1986.~~ 1984
Q Why did she stop working full time in 1986?
A To the best of my memory at this time, I'd say it was because we were likely making sufficient income that, you know, didn't require her to work anymore. I think she wanted to be a homemaker. consulting
Q And that was approximately two years before your daughter was born?
A ~~Correct.~~ No four years Sioquist and company in Wellesley
Q So from 1986 up until the accident in January, she was primarily a homemaker?
MR. PRITZKER: You went from full time to primarily a homemaker. I'm not sure that assumption is accurate.

MR. SMITH: Okay.
Q (By Mr. Smith) Well, I know at some point she started an antiquing business, correct?
A That's correct.
Q When did she start her antiquing business?
A Well, to the best of my knowledge, she had always had an interest in antiquing as far back as we were dating and married.
Q Mm-hmm.
A She got more involved with it certainly in 1986 going forward. By 1990, she was seriously involved with, you know, antiques and collectibles as a, you know, means to, you know, make money.
Q And she has always run her business out of your home. Is that a true statement?
A That's correct.
Q Let's just finish up with your work history here. You left Data General Corp in 1993, correct?
A Correct.
Q Where did you go in 1993?
A From 1993 to the present, I have been a marketing consultant to high-tech companies in the Boston area.
Q Do you maintain an office?
A In my house.

Q Have you maintained an office since 1993 when you went out -- do you -- strike that.

Do you work on your own?

A Yes, I do.

Q And have you worked on your own since 1993?

A Yes, I have.

Q Do you have any employees?

A No, I do not.

Q Since 1993 to the present, have you maintained your office out of your home?

A I'm not sure I understand your question.

Q Do you have -- you're an independent consultant, correct?

A Yes.

Q Do you maintain a business office outside of your home?

A No, I do not.

Q Have you ever, since 1993, maintained a business office outside of your home?

A No, I have not.

Q So since 1993, your office for conducting business as an independent consultant has been in your home?

A That is correct.

MR. PRITZKER: Excuse me a moment.

(Off the record while Attorney Pritzker speaks with the Witness.)

THE WITNESS: Not only do I have an office at home; but when I work for a company -- many times I'll work at a company part time. So I'll have office space and a desk.

Q (By Mr. Smith) I was going to ask you to describe typically what you do.

A Right.

Q Can you describe generally what you do as an independent marketing consultant?

A Generally, my work falls into two categories. First, either as an acting, you know, vice president of marketing while the company searches for a full-time V.P. of marketing or doing a marketing project for a V.P. of marketing who needs extra arms and legs to get a project done. So, in which case, I may work at home on the project or I may, you know, be on site at the company to do the work.

Q Has that been the nature of your business -- those two roles that you play -- since 1993?

A Yes, it has.

Q And can you break it up for me percentage-wise of those two types of work you do, that you just described, that your work has entailed over those

years?

A To the best of my knowledge, about fifty-fifty.

Q How do you get this work?

A Well, I'm pretty well known in the -- you know, in the Boston high-tech community. You know, people know that this is what I do. You know, mostly it's referrals or calls.

Q And given that you do this on an independent basis, is it fair to say your income level has fluctuated from 1993 to the present depending on the type of work you get?

A That's correct.

Q You have some good years. You have some not-so-good years.

A I characterize them all as being -- except for 2002 -- as all very good years.

Q And 2002 was a poor year, obviously, because of the accident and you had to be at home?

A I had to stop working -- well, stop working as much as I was working before.

Q And in a typical year, would you -- would you work straight through like from job to job to job every month or was there a particular time you would always take off?

A In the years -- to the best of my knowledge, in the years 2000 and 2001 my family took a vacation in August. But outside of that, it's pretty much working full time. You know, perhaps, we took short vacations places. I just can't remember.

Q And is there -- obviously, I know it would vary depending on the job; but typically when you would go in-house somewhere, how long would a job like that typically last?

A Six months to a year.

Q Six months to a year.

Do you recall what your income was for 1999?

MR. PRITZKER: We're not making a claim for lost earning capacity. Can you tell me how this could lead to relevant evidence?

MR. SMITH: Okay. So in your loss of consortium claim, you're not claiming any lost economics other than out-of-pocket expenses?

MR. PRITZKER: That's correct.

Q (By Mr. Smith) Okay. Let me just pose that question to you.

You know you're bringing this loss of consortium claim. You're not alleging that you lost wages or economic damages other than out-of-pocket expenses as a result of this accident?

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A Yes.
Q Can you tell me where you were working -- where you were on the job just prior to the accident?
A I was working for a company called Visibillity, V-i-s-i-b-i-l-l-i-t-y, out of Chicago.
MR. SMITH: Off the record.
(Off the record colloquy.)
Q (By Mr. Smith) Visibillity, how long had you been working for that company prior to the accident?
A I believe I started with Visibillity in -- to the best of my knowledge, I believe I started with Visibillity in July of 2001.
Q So you had been there approximately six months prior to the accident?
A (Witness nodded.)
MR. PRITZKER: You have to --
THE WITNESS: Yes. Thank you.
Q (By Mr. Smith) Since Visibillity was a company out of Chicago, were you requiring frequent trips out there? How often, if at all, were you traveling to Chicago?
A One or two weeks -- I mean, one or two days every two weeks. I was able to do, you know, most of my work, you know, at home.
MR. PRITZKER: Just answer the question,

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please.
Q (By Mr. Smith) Can you describe for me your office at home? Do you have technically an office at home?
A Yes. I have a large office at home filled with computers and assorted other kinds of office equipment -- you know, a telephone system, computer system, fax.
Q Is it in the same location today as it was prior to the accident?
A Yes, it is.
Q And going back one more -- do you remember the project you were on before Visibillity?
A Yes, I do.
Q What was that?
A That was Upromise.
Q Upromise?
A Upromise.
Q The college loan --
A College savings accelerator.
Q And how long were you on the Upromise for?
A A year.
Q Where were they based out of?
A Brookline.
Q So was there any travel involved in that

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position?
A No, not at all.
MR. DESCHENES: Off the record.
(Off the record colloquy.)
Q (By Mr. Smith) Since 1993, you've been self-employed.
Did you maintain your own health insurance?
A Yes, I have.
Q And who was that health insurance through?
A United Healthcare.
Q And has it been United Health -- strike that.
Was it United Healthcare at the time of the accident?
A Yes.
Q Do you recall what your premiums were prior to the motor vehicle accident?
A To the best of my knowledge -- and it can certainly be substantiated -- I believe it was $1,800 per month for the family.
Q And you provided health care for your --
MR. DESCHENES: I'm sorry. Did you say $1,800 a month?
THE WITNESS: Yes.
Q (By Mr. Smith) And that provided coverage to Marcia and Rebecca?

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A It did.
Q Since the accident, have you had an increase in premiums?
A Yes.
Q When did that increase take effect; if you recall?
A To the best of my knowledge, I believe it took place in January 2003. Again, it can be substantiated.
Q So for the year after the accident, you were still paying the $1,800 a month to the best of your recollection? s/b no Δ
A Yes.
Q And then did your policy renew each year in January?
A Yes.
Q So the year following the accident they increased your premium?
A Yes.
Q And do you recall how much your premium increased to?
A Approximately, $2,500 per month.
Q Did they give you a reason for the increase?
A No.
Q Is that -- as we sit here today, is that your current monthly insurance premium?

A Yes, it is.
Q And that's $2,500?
A Approximately, yes.
Q Prior to the motor vehicle accident, what vehicles did you have at the house?
A We had two cars. First was Marcia's Toyota. Second was my Explorer -- Ford Explorer.
Q And as a result of the accident, you had to get a specially-equipped van, correct?
A That is correct.
Q Do you recall where you purchased that van?
A I purchased it from a dealer called Bill Kay out of Chicago.
Q Any particular reason why you went to this dealer in Chicago?
A The process for purchasing a van suitable for a wheelchair is a complex process. You deal with the -- what is the -- you deal with the provider of, you know, the handicap car which is typically a local vendor. They deal with a vendor who does van modifications. They deal with the dealer.
So the company that makes the van modifications selects the dealer under -- you know, under their program. So while I paid them, they were the ones who had the best vehicle for what we wanted.

At the time, we wanted to do -- at the time we needed, you know, a modified van.
Q Did you go through a local company as to the modifications?
A There are -- yes.
Q What was the name of that company; do you recall?
A Handicap Mobility.
Q Where were they located?
A In Norfolk, Mass.
Q Was that the only place that you checked or you shopped around with or did you speak with other modification vendors; if you will?
A I spoke to a second vendor.
Q Who was that?
A A company called Ride-Away in -- I think it's Attleboro.
Q Do you recall the approximate cost of the vehicle all totaled with the modifications?
A Again, to the best of my knowledge -- and it can be substantiated -- I think it was around $45,000.
Q When did you get the van?
A April 2000 -- April 2002.
Q Before we move on, there's been -- you've done -- needed substantial renovations to your home as a

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result of the accident. I'm not clear from some of the information that's been provided as to what exactly.
My understanding is there were some modifications done to the house that weren't necessarily related to the accident; is that correct? Or have all the modifications been as a result of the motor vehicle accident?
A If I understand your question correctly, all of the modifications that we've done, which has been in two parts, have been because of Marcia's, you know, wheelchair.
Q As I understand it, the kitchen is what you have left in terms of renovating the house. The back isn't quite complete yet either but you need to finish -- start the kitchen. That's the last project, correct?
A That's not correct.
Q That's not correct. Okay.
Can you tell me other additions you foresee needing to be done to your home?
A In addition to the kitchen renovation, the basement of the new structure needs renovation as well.
Q And have you determined what the basement of the new structure is going to be utilized for?
A No. That's why we haven't begun the

renovation of that.
Q Have you obtained any estimates from anyone with respect to the renovation of the kitchen?
A No, we have not.
Q Do you have a timetable when you anticipate you may be beginning that work?
A The timetable greatly depends on Marcia and her recuperation or lack of recuperation. In the best case, we will do it next summer. In the worst case, it could go another year.
MR. SMITH: I'm going to take five minutes. Okay?
MR. PRITZKER: Sure.
(Off the record for a short break.)
(Off the record colloquy.)
MR. PRITZKER: What I said off the record and I'll now state on the record is that I think Mr. Rhodes wants to clarify an answer that he gave earlier.
THE WITNESS: You asked the question, were all the renovations required for Marcia or something along those lines.
Q (By Mr. Smith) Right.
A I answered yes, they were. I was referring to all the structural renovations that were done. Certainly, we've purchased other items, you know, for

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the home that may not be required for Marcia. But all of the structural renovations certainly were required, you know, to handle Marcia's, you know -- you know, wheelchair and other medical issues. Okay?

Q Sure. And I want you to know, at anytime during the deposition today, if something comes to you and you want to clarify something, please -- please do so. Okay? We're not trying to trick you here or anything along those lines. We're just trying to get some information. Okay?

A Thank you.

Q What kind of items have you -- like the big screen T.V. in the new addition, is that something you're referring to that wasn't a result of the accident but it's new to the addition?

A Right.

Q Okay.

MR. PRITZKER: And for the record, it is not part of the claim.

MR. SMITH: I'm just trying clarify his answer.

Q (By Mr. Smith) When did you and Marcia meet?

A We met in May of 1982. July

Q And where were you -- when were you married?

A On April 16, 1983.

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Q Did you meet here in Massachusetts?

A Yes, we did.

Q And in 1983, Marcia was still working full time?

A Yes, she was.

Q What was she doing then?

A She was working for Zayre Corporation in their accounting department.

Q Where were you married?

A In East Windsor, New Jersey.

Q Then you moved to -- strike that.

Can you describe for me, just generally, what sort of activities you and Marcia liked to do prior to the motor vehicle accident?

MR. PRITZKER: Could I ask for a clarification?

MR. SMITH: Sure. I'll --

MR. PRITZKER: For what period of time prior to the --

Q (By Mr. Smith) Well, let's -- let's talk about prior to Rebecca being born.

What were some of the things you and Marcia liked to do together during that time period?

A Marcia, early on in our marriage, I mean, adored taking trips. She loved Florida. You know, she

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-- she loved the Diplomat Hotel in Florida and, you know, just enjoyed trips to Florida just as much as we could possibly get there. Baba trips + care of

You know, we were members of, you know, a religious congregation and took part in, you know, religious activities. We had just moved into a new home. You know, we worked on the home incessantly, you know, to make it everything we wanted it to be.

You know, we saw her family. We saw my family. We had a wonderful, you know, lovely, you know, time.

Q How often would you make those trips to Florida? Right now, you understand, my questioning is before Rebecca was born.

A To the best of my knowledge -- and this is certainly a long time ago now -- at least once a year. She loved it. twice Baba there Baba Back

Q And you described you were a member of a religious congregation?

A Right.

Q What is that?

A We're Jewish.

Q And are you members at a local temple?

A Yes.

Q Did you join the temple in 1983 when you moved

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to 11 Janock Road?

A Yes. We joined one temple but later we changed to a different temple.

Q When was that change to a different temple?

A I couldn't remember.

Q What were some of the activities that you and Marcia enjoyed doing together during that time period with the temple? Were there socials? Were there trips?

A Well, we attended, you know, services, you know, early on; and marcia was involved in a Jewish charitable organization as part of the temple. You know, festivities -- it's a long time ago. It's very difficult to remember all these things. But it was, you know, a nice thing to do.

Q During that time period, did you go out to dinner a lot?

A Certainly. You know, we had a very active social life. I mean, this was, you know, the part of, you know -- you know, this time before Marcia -- before Rebecca was born was that, you know, we were deeply in love and, you know, had the -- you know, we were charmed. I mean, you know, I was doing well at work. She was -- you know, she, after a while, you know, decided to stop working full time. You know, we

My Consultant I teacher

just had a wonderful -- I mean, I just was filled with everything.

Q Do you still socialize today with friends that you were socializing with back then?

A You mean now since the accident -- after the accident?

Q Yes. Today. You said you -- let me strike that.

You socialized with a group of friends -- I believe you just testified to -- during that time period before Rebecca.

A Yes, very actively.

Q And are you still friendly with groups -- that group of people or individuals in that group?

A Life, since the accident, has become just terrible. Marcia has very little interest in, you know, seeing other people; although, we do on occasion. She is, you know, very depressed, angry; and it makes it very difficult for her to socialize. While, you know, I've wanted to, she just -- it's very difficult for her to do it. It's very sad.

Q But do you still -- I guess my question -- and I understand. I want to go through all that with you but I'm really just -- at this point, I'm still just trying to see what things were like before.

Do you still keep in touch with that group that you socialized actively with before Rebecca's birth?

A A few of them, yes.

Q Can you give me an example of the names of some of those people?

A Andy and Cindy Rafey, R-a-f-e-y. ~~Marion and Bruce Kallen~~. That's probably it.

Q And I'm sorry. What year was Rebecca born?

A She was born April 8, 1988.

Q Obviously, your life changed a little bit when Rebecca was born?

A It certainly did.

Q Can you describe for me in terms of the social activities we were just talking about how it changed?

A Well, it, at the first level, was a blessed and joyful event. Marcia, as I mentioned, you know, wanted to be a homemaker and a mother. This fulfilled her dream. Rebecca, you know, was a beautiful baby. She was smart and she was funny and she just -- you know, she and Marcia, over the years, became inseparable.

As other friends had other children, too, you know, as opposed to being couples oriented, now, these became family-oriented activities. You know, while I

was working, you know, there were, you know, things that mommys and daughters do that dads just don't know. You know, they spent a huge amount of time together. It was just, you know, I dare say, the most glorious thing, as a husband, you could ever hope for. It was wonderful.

Q And at that time, Marcia was at home full time, correct?

A Yes, she was.

Q Prior to the accident -- let's say the last five years prior to the accident, what types of things would you and Marcia do by yourself in terms of social activities, getting away, that sort of thing -- just the two of you?

MR. PRITZKER: What is the time period?

MR. SMITH: Five years prior to the accident.

THE WITNESS: Again, to the best of my knowledge -- because so much has happened since --

Q (By Mr. Smith) Right.

A -- and things like that -- I don't know if you would qualify this as social but one of the big things Marcia and I did together was set up her eBay store for her antiques. Together -- you know, she was, over this period of time, getting more and more involved in her antique and collectibles business as eBay came along.

You know, we -- you know, my computer background helped her establish a -- you know, we spent hours together working on her store and her -- you know, her eBay store together.

Q Did you have like a standing, "Every Tuesday night we go out to dinner just the two of us.", or anything along those lines in that five-year period?

A I wouldn't say we had a standing; but we certainly tried very hard, you know, once a week to spend time together -- you know, dinner without Becca. But I wouldn't say that we were able do that every week.

Q Were there any other activities that you would try to do just the two of you together in that five-year period?

A We -- oh, certainly. I mean, Sundays were reserved for the two of us. Sundays were antique and flea market and yard sale days. This was the day that, you know, Marcia and I -- well, Marcia, you know, and I went to look at all new sorts of things that, you know, she might possibly collect and resell. We did that -- that was done practically every day, you know, except for the winter. But, you know, spring, summer, and fall, you know, we did a lot of that together.

So, you know -- then I'd say, while I can't

remember specifically, I'm sure there were -- at least once a month we went to dinner with friends. But, I mean, again, I can't remember anything specifically.

Q So you had a standing date every Sunday for antiquing just you and Marcia, correct? wrong

A Yes. I mean, once in a while, Becca would come along but mostly she didn't like it.

Q Were the two of you involved in any organizations together? ORT

A Again, we were members of the temple together.

Q Right.

A Which reminds me of another big thing that we did together. Rebecca's bat mitzvah was in the April 2001.

MR. PRITZKER: That's right.

THE WITNESS: Thank you. We, together, spent a great deal of time together planning her bat mitzvah. This was very important to us, you know; and we spent an enormous amount of time planning that together.

Q (By Mr. Smith) What was the date on that again?

A It was April 2001. I don't remember exactly the weekend it was.

Q And in the amount -- strike that.

And that five-year period, again we're still

talking about, did you have dinner every evening or did you try to have dinner as a family every evening or did that depend on where you were working at the time?

A I'd say, you know, on weekdays it was fifty-fifty. You know, on occasion, because I was at a company office, we would work -- you know, Marcia would want to feed Becca early because she'd want to get, you know, her ready for bed and for school. On the weekends, you know, we certainly, as a family, ate together unless Becca had some activity that she was, you know, off to or something that I couldn't remember. But we certainly, you know, tried very hard.

Certainly, Friday nights were a time when the whole family got together. You know, dinner on Friday night is -- you know, Shabbat dinner together on Friday night was a very important thing to us. We did that as a family every Friday night just as much as we possibly could.

Q And prior to the accident, in that five-year window again, did you and Marcia share the same bedroom?

A No, we did not.

Q Where did you sleep and where did she sleep in the house?

A There were two bedrooms side by side on the

upstairs.

Q And for how long had you had separate bedrooms prior to the accident?

A Well, again, it's hard to remember; but I would say, you know, early to mid-nineties.

Q Was there a particular event or something that stands out in your mind as to why -- strike that. Let me ask you another question.

From 1983 to the early nineties, did the two of you share a bedroom?

A Yes.

Q Now, is there a particular event or something that is the reason why you had separate bedrooms?

A It's a little embarrassing. I had developed a horrendous snoring problem, which even after some medical procedures couldn't seem to fix. My wife just couldn't deal with it and I completely understood.

Q When did you get Marcia's eBay site up and running?

A 2000 -- 1999, 2000. You know, it's the sort of thing of beginning it and keep working on it over a long period of time.

Q Marcia became full time at home in 1986, correct? teacher

A To the best of my knowledge, that's

approximately when.

Q From 1986 to the birth of Becca, was she doing antiquing at the home?

A Yes. She was involved in antiquing and her charitable organization, you know, that she was involved with and being with her girlfriends -- taking care of the house. MAH JONGG

Q Let's talk about housekeeping a little bit. Let's go to that five-year window before the accident happened.

Were you responsible -- did you have any household responsibilities in terms of cooking, cleaning that sort of thing?

A Marcia certainly had the majority of it. But since the washing machine was located in the basement where my office was, I took care of that for her. And since -- you know, any kind of outdoor fixing of the house kind of things I certainly took care of. But practically everything else, you know, Marcia was responsible for. I mean, taking -- taking Becca to all of her activities; you know, all the grocery shopping; all the shopping, you know, that was needed for the house.

We didn't have a housekeeper. So Marcia was responsible for the upkeep of the house and all that --

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you know, all that kind of stuff. So you know, you know -- so I mean, I took care of just a little bit and Marcia took care of most of it.

Q So for the most part, you did laundry?

A Yes.

Q Did you mow the lawn?

A I think by then we had an outside service take care of the lawn, you know, because I was working a lot.

Q When you're on a big project like Visibillity or Upromise or something like that, how many hours a week would you typically work?

A I don't know. Maybe 50 hours a week. Some of it would be at the site at Upromise and some of it would be home. In the case of Visibillity, the majority of it was out of my house because I wasn't in Chicago that much.

Q Would your hours increase if there was a launch of -- did you work on any new products where there was a launch?

A You know, good marketing you don't get stressed out for big projects and everything like that. So I'd like to think no. But I'm sure on occasion there were times where, you know, more time was required but I'd say rarely.

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Q So it's safe to say on an average you would estimate when you're working on a project it would be about a 50-hour work week?

A Yes.

Q So you did general repairs around the house to your level of --

A My capability.

Q -- capability, laundry; and the rest of the household tasks were completed by Marcia, correct?

A Yes.

Q Did you have a standing -- again, we're still in that five-year window -- a standing meeting or social outting with friends? I recall a reference to some sort of game you like to play with your friends. Shasta or something. I was wondering -- MAH JONGG

A I don't recall that we had anything like that.

Q Okay. OK

MR. PRITZKER: Off the record.

MR. SMITH: Okay.

(Off the record colloquy.)

THE WITNESS: Marcia had a standing game with her girlfriends on at least a weekly basis, you know, for many years to play Mah Jong.

Q (By Mr. Smith) What's Mah Jong?

A It is a Chinese game played with tiles which

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is similar to Gin Rummy.

Q Did you and Marcia have any gym memberships during that five-year period before the accident?

A Marcia certainly did. I did not.

Q Do you know where she worked out during that time period? active woman

A I couldn't remember the place.

Q Where does your family live? You referenced trips to see your family. Where does your family currently live?

A Currently, I have a younger sister and middle brother who live in Indianapolis; and my oldest brother lives in Ann Arbor, Michigan.

Q And did they live in those respective locations in the five-year period prior to this accident?

A Yes, they did.

Q And would you have occasion to go out and visit them?

A Certainly.

Q With what frequency would you go out and visit them?

A Once a year.

Q How about Marcia's family? I believe they live in Florida -- her parents?

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A Marcia's parents live in Florida. Marcia's sister lives in Falmouth, Mass., now, currently.

Q And prior to the accident, that five-year window we've been talking about, did you and the family have occasion to go to Florida to visit her parents?

A They more came up because they traveled a lot. So they visited us in our house.

Q After Becca was born, were you still making the yearly pilgrimage to the Diplomat?

A No. I do remember six months after Becca was born we went to the Key West Marriott and I have some lovely pictures of that. That was a wonderful time together. But you know, as you have a child, it becomes more and more difficult to take vacations together.

Q We've been talking about just things that you and Marcia did together in that five-year period before the accident. I'd like to broaden that now just a little bit more and let's include Rebecca.

Can you go over some of the things that you would do as a family together in that five-year period?

A Well, let me just first highlight, you know, the preparation for the bat mitzvah was very, very important. I mean, the -- you know, it's a family event, not just a child event. Certainly, I worked a

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lot Becca on her Hebrew. Marcia and I worked with Becca on, you know, what the event would look like for her. One year project

In terms of what I did with Becca -- I mean, Saturdays were reserved for, you know, Becca and me. You know, Bec was my best buddy. You know, I had, you know, dreams of her, you know, accomplishing great things in life. So we did many educational things together. We visited the Science Museum many times. We, you know, went to the zoo. We went to the computer museum. We did a lot of shopping together. She liked that, too.

You know, we -- like I said, on weekends, we shared meals together. You know, as she was growing up, you know, I -- both Marcia and I reviewed Becca's homework, you know, on a daily basis. This was very important to us to make sure that Becca did a good job in school. So I would do her Algebra and her math -- her math and her -- her math and her science; and Marcia would do, you know, her Spanish and any other courses with it. But that was a very important evening activity.

Q And how -- sorry. I didn't mean to cut you off. How were her grades?

A Becca's is a good student. Let me -- sorry.

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Let me clarify that.

Q Let me ask you this. How were her grades before the accident?

A She was a very good student up until the accident.

Q And when you say very good student, what are you --

A "A"s and "B"s.

Q "A"s and "B"s?

And has there been a change in her grades since the accident?

A Certainly.

Q And can you describe for me what the change in her grades has been since the accident?

A "B"s and "C"s now. low B's + High c's

Q I just want to see if I understand. Sundays were you and Marcia, correct?

A Yes.

Q Saturdays were reserved for you and Becca?

A Yes.

Q And Friday night was family dinner, correct?

A Right.

Q Did you have a specific vacation period that you went every year -- a specific destination or anything along those lines?

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A As I mentioned, we took August as our time for vacation. We liked the Cape a great deal. I just want to make sure I get the years correct.

In the summer -- in the summer of 2000, we took two weeks, you know, together on the Cape in a house that we rented. We liked it so much that in the summer of 2001 we took three weeks together in a house on the Cape; and we did lots of things together, you know, as a family on vacation. You know, we liked it so much we were considering buying a second home on the Cape because it, you know, was such a wonderful place to be. Becca liked it a great deal and Marcia liked it a great deal. You know, it was just a thoroughly enjoyable time as a family, you know, to do that.

Q Prior to the accident, did you ever have any family counseling or did you folks see a counselor together for any familial issues?

A I -- I certainly did; and on occasion, Marcia would come -- would -- would -- would come -- you know, would come along.

Q Who did you see?

A Linda Eisenberg.

Q For how long of a period prior to the accident were you seeing -- is it Dr. Eisenberg?

A She's a licensed social worker. I don't know

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if she has a Ph.D. or not. Maybe we started -- maybe I started in 1997 -- you know, that time period.

Q Is there a particular event or something that sticks out in your mind as to why you started seeing Dr. Eisenberg?

MR. PRITZKER: Objection. I'm going to instruct you not to answer.

MR. SMITH: On what grounds?

MR. PRITZKER: On the grounds of privilege and irrelevancy.

MR. SMITH: What privilege are you invoking?

MR. PRITZKER: The doctor-patient privilege, privacy issues as well. Keep in mind that we are not seeking emotional distress for Harold in this.

Q (By Mr. Smith) Well, as you recall, did you begin seeing Dr. Eisenberg as a result of difficulties in your marriage?

MR. PRITZKER: That calls for a yes or no.

THE WITNESS: No.

Q (By Mr. Smith) Why did you begin seeing Dr. Eisenberg?

MR. PRITZKER: I instruct you not to -- objection. I instruct you not to answer.

Q (By Mr. Smith) Did you go to Dr. Eisenberg on your own first?

A Yes.
Q How did it come about -- how did you learn of Dr. Eisenberg? How did you go see Dr. Eisenberg for the first time?
A The local counseling service in Milford is called the Milford Holliston Counseling Service. I called to make an appointment. They set me up with Linda Eisenberg.
Q And you believe you first saw her in 1997; is that correct?
A I think so. Again, it's so long ago. You know, it would be approximately that time period.
MR. DESCHENES: Nineteen -- I'm sorry. I didn't hear.
MR. SMITH: '97.
MR. DESCHENES: '97.
Q (By Mr. Smith) How often would you see Dr. Eisenberg?
A Once a week.
Q And have you seen Dr. Eisenberg once a week from 1997 to the present?
A I'd say mostly, yes.
Q And what kind of services was Dr. Eisenberg providing to you?
A In a general sense, she was helping me to look

at things in different ways than the way I had always looked at things in life. So she was --
MR. PRITZKER: I think you've --
MR. SMITH: Fred, I haven't said anything. We talked about following the Rules of Civil Procedure today.
MR. PRITZKER: Okay.
MR. SMITH: As you know, --
MR. PRITZKER: Objection. I instruct you not to answer.
MR. SMITH: Well, --
MR. PRITZKER: He's not answering the question. He's getting into privileged stuff. What you asked for is the kinds of stuff that she was doing. He's now getting into substance.
MR. SMITH: It's his -- are you saying it's his privilege that he's invoking? His doctor-client --
MR. PRITZKER: Absolutely, yes.
MR. SMITH: I think it's --
MR. PRITZKER: What other privilege would there be?
MR. SMITH: What's that? Well, I think it's relevant.
MR. PRITZKER: I know you do and it's not. I can cite you some cases if you want but it really

isn't. It would be if we were claiming severe emotional distress which we are not. We've already said that in correspondence. If you look at the claim, it's a run-of-the-mill loss of consortium claim.
MR. SMITH: Which has to do with his relationship with his wife.
MR. PRITZKER: Run-of-the-mill loss of consortium claims do not open up the privilege of psychiatric or psychological consultations. The law is pretty clear about that.
MR. DESCHENES: Mike, can I make a suggestion that we go off the record just for a second and talk about this in the absence of the witness just so we can have a discussion about it?
MR. PRITZKER: That's a good suggestion. But let's finish this line of questions first and then I'll be happy to do that.
Q (By Mr. Smith) Do you still see Dr. Eisenberg?
A Yes.
Q And how often do you see Dr. Eisenberg currently -- still on a weekly basis?
A I try to see her weekly; although, recently, it's been every other week because of Marcia's -- because of my responsibilities to Marcia on the

weekends. So it's very difficult sometimes to see her.
Q Were your -- strike that.
Were your trips to Dr. Eisenberg covered by your health insurance?
A Partially, yes.
Q Did you have to do a co-pay each time you went?
A A co-pay or an out-of-network payment depending on Linda's status with United Healthcare at different times.
Q Typically, what was your out-of-pocket co-pay for --
A Ten dollars.
Q And your treatment with Dr. Eisenberg post-accident, has it changed from your treatment prior to the accident?
MR. PRITZKER: You can answer that.
THE WITNESS: Yes.
Q (By Mr. Smith) How has it changed?
MR. PRITZKER: I instruct you not to answer.
Q (By Mr. Smith) Do you relate your treatment post-accident with Dr. Eisenberg -- strike that.
MR. SMITH: Let's go off the record for a second.
(Off the record colloquy out of the presence of the Witness.)

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Q (By Mr. Smith) I just want to be clear on one question that maybe you responded to but I didn't hear correctly.

Did you seek counseling with Dr. Eisenberg as a result of your relationship or difficulties with your relationship with Marcia?

A No.

Q Did you seek counseling with Dr. Eisenberg as a result of a physical problem -- your physical problem?

MR. PRITZKER: Objection. I instruct you not to answer.

Q (By Mr. Smith) Prior to the motor vehicle accident, did you seek counseling of any sort anywhere as a result of difficulties or problems with your marriage?

A I vaguely remember some time in the early 1990s Marcia and I, for a very short period of time, saw somebody. I cannot remember who it was or where it was. But, you know, it was such a long time ago that I just cannot give you -- I know it was for a very short period of time.

Q Do you recall the reason why you sought counseling?

A To the best of my knowledge, as I remember --

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again, I just want to stress that this was a very long time ago to me -- this was certainly at a time when I was probably working much more than I was working at other -- you know, later times. Becca was probably, you know, four of five.

Marcia -- Marcia was -- I was working. Marcia was trying to deal best with the child. I think we both had trouble understanding our roles and our responsibilities at this time. You know -- you know, what priorities we should be setting for each other and for Rebecca and for ourselves.

Q When you first saw Dr. Eisenberg, how were you feeling?

A There were a number of -- there were, you know, a lot of stresses. I wouldn't call them stresses. There were a number of things I was concerned about -- about realizing that perhaps the way I was looking at certain things may not be the correct way to look at certain things. I guess I would say I was so focused and so directed and so, even I dare say narrow, that I realized that there were things that I just wasn't seeing as well as I should be seeing. That was -- you know, it was suggested to me to get, you know, help in understanding more.

Q How were you feeling about work at that time?

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MR. PRITZKER: Objection. I instruct you not to answer.

MR. SMITH: It's his own feelings. It has nothing to do with his psychiatric --

MR. PRITZKER: What does this have to do with a loss of consortium claim?

MR. SMITH: It has to do with reasons -- stresses in his life and the potential effect on his relationship with his wife.

MR. PRITZKER: I instruct you not to answer.

Q (By Mr. Smith) How were you feeling about your home life at that time?

A Oh, I dearly loved Marcia very, very much. She's, you know -- you know, I haven't had a chance to say this in previous but you have to understand that Marcia, in every way, you know, completes me. Where I am very hard-working, some have described as anal, and focused, Marcia is -- before the accident, fun-loving and energetic and social.

You know, she made me see things that I just had never seen before or experienced before. She was amazing to me. I mean, you know, -- I mean -- I -- I -- she -- she -- you know, it was -- seeing how she was with Rebecca was so wonderful. I mean, this was -- in every way, this was -- you know, I don't know how to

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describe it -- a charmed life. A wonderful life that we were living.

Q Other than Dr. Eisenberg, who Counsel has instructed you not to talk about, and the other doctor or the other person that you and Marcia saw, was there any other counseling or professional treatment that you sought?

A None that I recall certainly.

Q I know that prior to the accident Marcia was diagnosed with ADHD. Do you recall when that diagnosis was?

A Again, you know, Marcia would know much better the answer to these questions. But I would believe that Marcia would say that she's always had -- I mean, I don't want to speak for her because she may disagree with this -- that she's always had ADHD and diagnosed, you know, at some later date that I just -- I can't remember.

Q At some point, did she begin taking medication for ADHD prior to the accident, as you recall?

A Again, as I recall, yes.

Q Let me just -- everything is -- I just want what you know -- your knowledge today. Okay?

A Because I could be very far off.

Q I don't want you to guess or speculate. Just

tell me what your knowledge is. Okay?
A Okay.
Q It's your understanding that at some point prior to the accident she began taking medication for ADHD, correct?
A That is correct.
Q Do you recall how long before the accident she began taking medication for ADHD?
A I couldn't say.
Q Do you recall -- do you know -- strike that.
Does she have a primary -- did she have a primary care physician prior to the motor vehicle accident?
A Yes, she did.
Q What was that doctor's name?
A Dr. Donna Krauth, K-r-a-u-t-h.
Q Do you know -- strike that.
When Marcia was diagnosed with ADHD, what effect, if any, did that have on your marital relationship?
A I'd say the ADHD did not have any effect on our marital relationship.
Q At some point prior to the accident, Marcia was also diagnosed with a bipolar disorder, correct?
A That's correct.

Q Do you recall when Marcia was diagnosed with a bipolar disorder?
A I can't remember.
Q Was it ten years prior?
A You know, I'm sorry. I just cannot remember. You know, I just can't remember.
Q That's fine. Was she on medication for her bipolar disorder?
A Yes, she was.
Q What medicine -- what medication; do you recall?
A I couldn't say.
Q What effect, if any, did Marcia's bipolar disorder have on your marital relationship?
A Bipolar is -- you know, it certainly affected our marriage. You know, on those times when Marcia would be depressed and my not understanding how to deal with it or what to expect from it -- this was a brand new thing to me. You know, I didn't know how to handle it or what best to do.
So, you know, I mean, you know, it was -- it was, you know, a challenging, you know, thing when Marcia became depressed.
Q Can you describe for me your observations of Marcia's bipolar condition prior to the accident?

A Well, again, I'd say I'm no expert in bipolar.
Q Absolutely not. I understand that.
A I can't really describe her bipolar. What I can talk about is the, you know, occasional times when, you know, she became, you know, you know, unhappy and -- and -- and, you know, not -- you know, and not knowing what to do about it or how to handle it or how to be.
Q I guess my question is more how did the bipolar play itself out in Marcia's activities or her personality? Just generally, you know, your understanding of Marcia and how did the bipolar play out in that?
A Again, I want to separate bipolar from depression because I was no -- I couldn't tell you when she had -- you know, she had -- when she had anything having to do with bipolar. I mean, I'm no doctor. I couldn't -- I couldn't see that.
But I could see times when, you know, she, you know, became depressed particularly around, you know -- you know, when she had her period. You know, it -- you know, she, you know, became very, you know, -- she became, you know, you know, unhappy and, you know, depressed. I don't know.
I guess maybe -- if I'm not answering your

question -- I'm doing the best I can.
Q How long would -- typically would those depressed periods last for?
A You know, you know, one or two days a month.
Q How did you feel when those incidents -- depressed incidents occurred?
A Well, again, over time, you know, Marcia started taking medication. When we began to realize that this was becoming a thing -- you know, more than what it was before for whatever reason -- she started taking medication. So whatever she was feeling was certainly moderated a great deal.
So over -- you know, when it was first being experienced, I mean, it was a challenge. It was difficult. I mean, I had to figure out how to deal with this. Over time, as she began to take medications, it abated a great deal to the point where, you know, you know, it was largely unnoticeable.
So, you know, it was just a period of time that we tried to figure these things out.
Q How long of a period of time was it when you first noticed these depressive episodes until she started taking the medication and there was an improvement?
A Again, you know, this was a long time ago. I

can't remember.
Q Was it longer than a year; if you recall?
A Oh, this was in, you know, ~~the~~ mid-1990s.
Q Mid-nineties?
A Yes.
MR. DESCHENES: Can we take a quick break?
MR. SMITH: Sure.
(Off the record for a short break.)
Q (By Mr. Smith) Other than the ADHD that we talked about and the bipolar condition, was there any other medical or other diagnoses that had an effect on the way you felt about your relationship with Marcia prior to the accident obviously?
A Again, let me say the ADHD had nothing -- had no effect.
Q Okay. Sure.
A And the answer is no to the question.
Q I want to have you take a look at these, Harold. I'd ask you to take a quick look at that document. You don't need to -- I'm not going to grill you on it. I just want to see if you recognize it.
A Yes, certainly.
Q Directing your attention to the last page, I believe, what do you recognize that document to be, Harold?

A This was an interrogatory.
Q And you formulated those answers with the assistance of your Counsel; is that correct?
A Yes, that's correct.
Q And that's your signature on the last page?
A It is.
MR. SMITH: We can go ahead and mark that as Exhibit 1.
(Defendants' Deposition Exhibit No. 1 was marked for identification.)
Q (By Mr. Smith) I'm going to shift gears a little bit now and I'd like to talk a little bit about the accident that day.
I believe, you came upon the scene; is that correct?
A Yes, I did.
Q Why don't we start with, where were you when you found out an accident had occurred?
A I was working at home in my office.
Q And how were you notified?
A I received a phone call from a Medway official.
Q Do you recall approximately what time it was?
A It was about 1:15 or 1:30 that day.
Q Do you remember the Medway official?

A No, I don't.
Q After you received the call, you proceeded to the accident scene?
A Yes, I did. Yes, I did.
Q Do you want to take a break?
A No.
Q Okay.
A We've got to get through this.
Q I apologize.
A It's all right.
Q You left from Janock -- 11 Jancock Road --
A Janock.
Q -- Janock Road and you took a left onto Route 109, correct?
A (Witness nodded.)
Q As you approached the scene, did you notice whether there were any traffic signs like "men working" or anything of that nature as you approached the accident scene?
A I didn't notice anything like that.
Q And when you arrived at the scene, what type of vehicles did you notice that were there? By that question, I mean, was the fire department there? Were there police cars? What do you recall seeing?
A The first thing I -- the first thing I

definitely saw was Marcia's car nearly upside-down in the embankment just off of Route 109. I focused my attention on people trying to get Marcia out of -- out of the vehicle -- out of the Toyota. You know, what was fear as I was driving over there, you know, turned to, you know, just absolute scared to death.
Q Were the police already on the scene?
A There were police. There were EMTs. There were fire engines. I have a vague memory of another large truck also there, but I didn't pay attention to it.
Q Was that a large truck other than the tractor trailer that you recall?
A It was a large truck -- a large tractor trailer.
Q Oh, okay. And when you got to the scene, you went down to Marcia's car; is that correct?
A I started -- I parked the car. I started walking down towards the car when I believe either an EMT or a Medway policeman stopped me and asked me who I was and explained to me that Marcia had been in a serious accident and that they were trying to get her out of the car right at that time and did I want to go and see her.
Q Did you go down and see her?

A Yes. I went down the hill -- this is now, you know, a wooded area -- and grabbed Marcia by the hand just to let her know that I was there. By then, I was in complete tears. I mean, I was just -- I had lost all control. Normally, you know, I'm a very in-control person but now I'm just not.

Another official -- again, I can't remember who it was -- asked me to step back and put me into -- I don't remember what it was -- whether it was an EMT truck or something else -- to separate me from it. I mean, I later speculated that my crying wasn't helping Marcia. So they wanted me to calm down separately. But I could see that they were doing everything they could to extract Marcia from the car. This was quite an ordeal.

I then, at some point, calmed down enough that I went back. This happened to be at the time when they were bringing her out of the car and on a stretcher. I was maybe 20 feet away. An EMT -- an EMT performed a scratch test on Marcia's feet and there was no reaction. She looked at me and she shook her head no. I knew right then what was, you know, likely.

The EMT then told me they were going to rush her over to Milford Hospital, fill her with steroids. That was the normal procedure in the hope that that

would do something about what now appeared to be, you know, leg paralysis.

Q Did you ride in the ambulance with her?

A I followed along in my own car while they sped to the hospital -- to Milford Hospital on the other side of Milford.

Q How far away is that from --

A About three miles, I'd say.

Q About three miles.

When you got to the hospital -- strike that.

How long was Marcia in the hospital for immediately following the accident?

A Again, to the best of my memory, less than an hour. They pumped her full of steroids. They talked to me. They said, "This is a severe trauma. We're going to immediately transport her up to the UMASS trauma unit."

Q In Worcester?

A In Worcester. They were preparing her for transfer, while they were filling her with steroids, because she was covered with glass. She had cuts and bruises on her. So they were getting her ready. They couldn't transport her until the big dose of steroids had been done. But once they did, they took her to UMASS.

Q Did they medflight her or by ambulance?

A By ambulance.

Q And how long was she at the UMASS facility for?

A She spent 31 days at UMASS Memorial.

Q And were you with her each of these 31 days at the hospital? Did you stay up there?

A I saw her every day. On many nights, I spent -- on many nights, I slept at the hospital to be with her during the night.

Q Did you have any family members come up to take care of Rebecca or did the whole family come in?

A We were fortunate that -- it was either Marcia's friend Marion Kallen or Marcia's sister who met Becca at home when she got home from school because by then I was up at the hospital. I can't remember which one. After that, Marcia's parents came in; and Marcia's sister, you know, stayed with us.

Q The sister who lives in Falmouth?

A Her sister was living in Falmouth.

Q What's her name? MACKAY

A Sue -- Sue McKay, M-c- capital K -a-y.

Q How long did Sue stay with you?

A I can't remember. I mean --

Q That's okay. Upon her discharge from UMASS

Memorial, is that when she went to Fairlawn?

A Yes. She went to Fairlawn.

Q Did she come home for a period of time?

A No.

Q Went straight to Fairlawn?

A Yes.

Q How long was she at Fairlawn for?

A She was there for 66 days.

Q And the treatment she was receiving at Fairlawn, was that -- what kind of treatment was she receiving? Was it rehabilitation or was it still dealing with --

A Well, Marcia contracted several staph infections which required that Marcia not be able to do what was normal occupational and physical therapy. She had to be in a room. People who came to visit her had to be in gowns and gloves and masks. So for much of that time, she received little or no therapy as she recovered from, you know, these infections.

Q Those were contracted at UMASS, correct?

A I believe so. I mean, others would know better.

Q So of those 66 days, how many days were in isolation; do you recall?

A Again, others would know a lot better.

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Q I just want what you recall.
A But out of the -- you know, out of the two months -- out of the, you know, nine weeks, I would say only the first six weeks she was in isolation. Only the last three weeks could she begin any kind of therapy but I may be wrong on that. It was a very difficult time. 2 weeks
Q So how long after the accident was it before she first came home?
A She came home on April 16, our anniversary.
Q By that time, you had had the -- strike that.
Had she received any occupational therapy those last three weeks at Fairlawn?
A You know, I'm sure she received some but the nature and extent, I couldn't say.
Q At the time of the accident, you were working for Visibillity still?
A Yes.
Q And did you work at all during that first -- until April 16 when she came home?
A I was able to do some work but I had to cut it down a great deal.
Q Can you give me an estimate? Were you working at 30 percent of what you were pre-accident, 40 percent?
A A quarter to a third.

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Q So she comes home in April?
A April.
Q You had done some modifications to the house by that time, correct?
A Yes.
Q Was she able to -- was she in a wheelchair when she came home?
A She came home in an ambulance.
Q And she wasn't able to self-transfer at that time, correct?
A Not at all.
Q Is that when Peg started working for you on April 16 when she got home?
A Not Peg but other home health aids.
Q And were they working eight to four or were they working around the clock when she first came home?
A For the first -- for the first two days, as best I can remember, we didn't have any help whatsoever. We were still organizing it. For about two weeks after those first two days, we were supplied some home health care from United Healthcare as well as from a service that I had contracted with.
After about two weeks -- I can't remember exactly -- the benefit with United Healthcare ran out. Now, I was doing private; and it was from 7:00 a.m.

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until, I would guess, 3:00 p.m.
Q And you were paying that out of your own pocket?
A Yes, I was and have been ever since.
Q Have been ever since?
A Right.
Q So approximately May -- May 1?
A No. I was paying -- because the United Healthcare only came in for two hours or three hours in the morning, I was still having private even in the beginning. So about April 20. Although, again, you know, I could tell you specifically, you know, through my records.
Q So from April 20 to the present, you've been paying out of pocket yourself for a home care provider?
A Home health aid.
Q A home health aid.
And that's, if I recall correctly, approximately $800 a week?
A Yes, including the agency fees.
Q Who do you contract through?
A Griswald Special Care.
Q How long has Peg been with you?
A I would guess since last March -- March 2003.
Q Now, when Marcia came home, occupational

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therapy and physical therapy were going to come in and help as well, correct, until the pressure sores --
A Again, all that takes awhile, you know, to get approvals from the insurance company. So it didn't begin immediately but it did begin after a while.
Q What's awhile to your best recollection?
A You know, first, they have a nurse come in and do an assessment. Then they go through an approval process. Then they get a schedule together. So I would say several weeks. It was -- you know, let me just -- you know --
MR. PRITZKER: Just answer the question.
THE WITNESS: Okay.
Q (By Mr. Smith) Once it finally got in place, that was before the gallbladder. The gallbladder was first and then the pressure sores came after that, correct?
A Yes.
Q Did physical therapy and occupational therapy come in at all prior to those two setbacks, I guess is the --
A As best I remember, certainly.
Q Were you involved in helping do any of the occupational therapy, the physical therapy, or any of those exercises?

A I wouldn't say I was involved. I would say I was trying to learn as much and watch as much as I possibly could to understand what was going on.

Q Did you go through a process of educating yourself -- I believe you referenced a web site before that's been helpful to you.

A I absorbed myself in learning everything I possibly could about spinal cord injury.

Q So at that time, up until the gallbladder setback, I guess is -- is that a -- I don't mean to be disrespectful in any stretch of the imagination.

A Emergency gallbladder surgery.

Q Right. Were you still working as well during that time period?

A Partially. Certainly, not as much. There, you know, just was so much to do.

MR. PRITZKER: Just answer the question.

THE WITNESS: Thank you.

Q (By Mr. Smith) What percentage of -- one hundred percent would be full time. What percentage were you working at that point?

A At what time period?

Q From the time period when she gets -- when Marcia gets home up until the emergency gallbladder surgery.

A Perhaps 20 percent, 25 percent.

Q Has the amount you've worked fluctuated during the time period since -- since the accident?

A Greatly.

Q So after the gallbladder incident -- emergency surgery, how long was she hospitalized at that point?

A She spent seven days at Milford Hospital and then two weeks at Fairlawn -- I mean, two weeks at Whittier Rehabilitation.

Q Then she returned home, correct?

A Then she came home.

Q Has there been a point since the accident for a week stretch -- a two-week stretch or a month stretch where you have not worked?

A Certainly.

Q Can you tell me when?

A In December -- in December 2002, Marcia began to develop what would grow to be a very serious case of pressure sores. In February 2003, Marcia broke ~~her~~ both ~~eight~~ legs. At the time when she -- between taking care of her pressure sores and caring for her broken leg and all of the incumbent, I stopped all work in approximately March 2003.

Q So from January of 2002 until March of 2003, you were working at the 20 percent -- 20 to 30 percent

range. Is that fair to say?

A I was doing minor projects for people as catch as catch can, yes.

Q And then as of March of 2003, you stopped working altogether, correct?

A Yes.

Q Was that due to Marcia's need for two people with her transfers and things of that nature?

A Yes.

Q So at some point, have you returned to full-time work or a percentage as we've been using it?

A Not full-time work but -- just actually in the last two weeks, I've taken on one new project just to see if I can handle it.

Q What you've had to do in terms of around the house and really in terms of your life together, has it been somewhat consistent since after the accident or did it get worse after the pressure sores developed?

Do you understand my question?

A I do. All I can say is that since she's been home it has just been horrible. I can, you know, recount to you -- you know, the day she came home -- forgive me. This gets a little delicate.

The day she came home by ambulance, they put her into the hospital bed which had arrived but we

hadn't gotten a wheelchair yet. That was going to come. She did a bowel movement. I had absolutely no idea what to do. This just was beyond anything I understood how to do.

You know, as we got her, you know, ready to do bowel movements on the commode -- on the toilet, Marcia had to learn to do what's known as digital stimulation. I had to teach her how to do digital stimulation. I don't know if you know what that is but there cannot be a more degrading thing for a person than that. You know, degrading for her. Degrading for me. It was horrible.

As Marcia's period returned and she, you know -- you know, didn't have the dexterity to put in a Tampax, I had to do that for her. This was all more than you can possibly imagine. So humiliating. So degrading. So lacking in privacy. You know, we're married. So however she feels, I feel.

As she developed a worse and worse case of pressure sores -- I know you've seen some pictures but they don't do justice to how awful -- you can't imagine how bad that was.

I had to play medical care coordinator for everybody -- for all these different doctors that were doing things. The patient advocate for Marcia to make

sure she was getting the best medical care. I spent enormous amounts of time dealing with United Healthcare. You know, catastrophic injuries like this is just not something that health care providers are prepared to deal with. It's just enormous what you have to go through.

I had to be mother to Becca. I had to deal with all of Marcia's and all of Becca's psychological and social and emotional needs. I had to deal with, you know, all the legal stuff which is a daily reminder. You could never get away from it.

Q Are things getting any better?

A Are things getting any better? Marcia has been 32 weeks -- 32 weeks with a cast. Can you imagine 32 weeks with a leg cast? It's been impossible for her to learn how to self-catheterize. So wherever she goes out, she has a full catheter hanging out that to this day people still point at and look at. I don't know why.

She can't do any substantial physical therapy. When she's tried to do physical therapy, she developed bursitis and tendinitis because she just wasn't strong enough. This is the physical side.

What happens is, even though she might be feeling better physically because the pressure ulcers

are getting better, now comes the part of the emotional side of realizing this is for life. She's real angry at Carlo Zalewski. I'm not going to kid you. She's real angry at him. She doesn't understand why he didn't -- why he didn't stop.

You know, we live there. There's plenty of room to stop. She says that every time we go that way. We live right there. I try to avoid going that way but sometimes we go that way. She'll always say to me, "Why didn't he stop?", especially after we realized that this was not the first time this man went through this -- this street. He had done this a bunch of times before. So she's just angry.

MR. PRITZKER: Harold, --

THE WITNESS: I'm sorry.

MR. PRITZKER: -- I think you should wait for another question.

THE WITNESS: I'm sorry.

Q (By Mr. Smith) If the bed sores -- the pressure sores get better, is it anticipated that she may be able to get some further occupational therapy and be able to self-transfer? Is that the goal?

A First, her leg cast -- her leg has got to heal.

Q Right.

A Which is -- we don't know how much longer that's going to take. Then she'll restart, as if she had come home for the first day, all of her occupational therapy, all of her physical therapy --

Q Has the -- I'm sorry. Go ahead.

A -- and learn to do all those things --

Q Right.

A -- that she needs to learn in order to have independence.

Q I mean, but ultimately, the goal is that she will be able to self-transfer from the bed to the chair and the chair to the van and be able to do all those things, correct?

A That's one of many goals.

Q Do you need a break?

A No. It's okay.

Q Has the water therapy helped at all? How is that going?

A She's not been allowed to do aquatic therapy because she still has a broken leg.

Q Oh, that's right.

A And she's not able to self-catheterize yet and she still, you know, effectively has open wounds.

Q Have they given any timetable on the pressure sores? Is there -- is there --

A By my account, both have healed.

Q Okay.

A But we're going to the wound care center this week. I'm hopeful by their account they're also going to say that they have healed and that there are no other open sores but that remains to be seen.

Q What level are you working at now that you took on this new project?

A Ten percent.

Q Since the accident, have you been able, as a family, to take a vacation or go visit anyone?

A We have made -- you know, we have made several attempts at trying to do things but they have been consistently terrible experiences.

Marcia very much likes the Cape. On several occasions, we've tried to get to the Cape. Marcia's sister house, like most houses, doesn't accommodate. So you can't go visit, you know, people. We've tried various hotel rooms. While they'll say over the phone that they are disabled accessible, they are, in fact, not really. When you get down there and you find out that it is just not going to work, this becomes very debilitating and we turn around -- we do what we're going to do that day and come home.

Q So have there been any -- there have been some

day trips?
A Yes. And I believe that we were actually able to do one night trip because we just found a way to get through it.
Q Are you hoping to find a house on the Cape that is handicap accessible?
A Well, that's sort of long off right now, you know, but certainly, you know, in the future.
Q Have you been able to go out to eat to dinner or anything like that since the accident?
A It's recommended by Marcia's orthopedist and physiatrist that Marcia limit the amount of time in her chair to, you know -- they say 30 minutes. So we are able to go out to dinner. We do try to do that, you know, once a week as a family. But it's -- you know, it's a thing we try to do. We try to get home so Marcia's leg can get back into bed and won't swell up.
Q Do you still have the Friday night dinner together?
A We try. Though, again, Marcia's limited in how long she can sit in her wheelchair. So I would say, you know, maybe we've done it twice or three times over the last couple of months but not with the predictability that we were doing it.
Q Have you had friends over? Has she had the

girls over at all to play Mah Jong?
A Mah Jong. Before the second renovation -- the larger renovation -- our house wasn't terribly large. Yes. People would come to visit but for short visits just to do it. I'd say that generally Marcia didn't like it because she didn't like having people see her in bed. So only her closest of close friends would she allow to come and see her, you know, in this way.
Now that we have, you know, this larger place and now that we have a place that we can eat dinner together at that we didn't have, you know, because of, you know, the living conditions, yes, Marcia's been able to have more people over and actually have one or two Mah Jong games, you know, which is a very good thing. This is a good thing.
Q Absolutely. How about her antique eBay web site? Has she been able to get back to that? Have you helped her out with that?
A We've -- you know, she's practically stopped her -- you know, her eBay store; but she is buying and selling, you know, items on eBay, you know, when her energy permits.
Q Who is coordinating all of -- yourself.
But is there a lead doctor that is coordinating her rehabilitation and her current care?

A Well, Marcia has a physiatrist, Dr. Elizabeth Roaf, whom we look to as the person who gives us overall guidance in terms of -- in terms of, you know, Marcia's ongoing care.
But it's just a -- Fred, did you want to --
MR. PRITZKER: Go ahead.
THE WITNESS: It's just recommendations. It's not an -- it's not an active -- it certainly is me that does all of the care coordination. You know, making sure that all of the doctors are appropriately informed of all the different activities and making sure that, you know, one plan is being followed.
Q (By Mr. Smith) Do you recall when the life care planner -- we were at your house -- she suggested maybe a spinal -- at B.U., I believe there's a two-week intensive course.
Is that something that you're contemplating at this time that may be beneficial once the pressure sores and her mobility increases somewhat?
A There are many things along those lines that would be very helpful to us once, you know, Marcia is able to, you know, transfer, you know, with just one person or by herself.
Q And when that point comes when she's able to transfer on her own, do you believe you'll need the

40-hour-a-week care that Peg provides now?
A I look at it as an indefinite, you know, for the rest was Marcia's life. Marcia can't -- will never be able to dress herself. You know, there are transfers, you know, like to and from a wheelchair from a bed which is reasonably not dangerous. Transfers to and from the commode or to and from a shower are very dangerous. I can't imagine, given where Marcia is today, that she'll ever be able to do those things.
Marcia will never, you know -- you know -- well, I say never -- for the foreseeable future, you know, be able to care for herself completely. You know, this is just sort of relating back to why we haven't made a plan for the basement because one of the things we're considering is a full-time live-in.
Q Who is Donna Krauth?
A As I mentioned to you, that's Marcia's internist, medical doctor.
Q Is that your doctor -- primary doctor as well?
A She's also mine.
Q Did you ever treat with Dr. Krauth prior to the accident on a counseling basis?
A She's a medical doctor.
Q So is that a no?
A No.

Q What are some of the things that Peg does for you? Does she do the shopping?
A No. I do the grocery shopping. Peg is -- Peg is -- I think of Peg as Marcia's. She's a home health aid for Marcia.
Q Okay.
A Everything else having to do with the household, you know, comes back to -- comes back to me.
Q Have you hired a housekeeper or anything?
A No. We have not hired a housekeeper.
Q So you do all the vacuuming, cleaning, laundry, all that now?
A Yes.
MR. SMITH: Off the record.
(Off the record colloquy.)
Q (By Mr. Smith) Harold, is the goal that someday in the future -- hopefully the near future -- that Marcia will be able to transfer out of bed into a wheelchair, go out the front door, get in the -- transfer into the vehicle that you purchased, and do what she wants to do?
A This is exactly what is described in all the spinal cord injury books, that by all accounts, you know, she's handicapped, not crippled. However -- and I would never say this in front of her -- I just don't

know. I just don't think she'll be able to do that. I don't believe that she's strong enough or will ever be strong enough to be able to effectively do this. It's very difficult for a female to develop the upper-body strength in order to do all those things that you just described but we can hope.
Q But ultimately, that is the hope and that is the goal?
A It is definitely the hope and the goal.
MR. SMITH: I think that's all I have, Harold. Thank you very much. These gentlemen may have a few questions for you.
(Off the record colloquy.)

DIRECT EXAMINATION

BY MR. DESCHENES:
Q Mr. Rhodes, my name is Greg Deschenes. I represent BMCA. I have a few follow-up questions for you.
Besides Marcia's antique business between 1986 and the year 2002, was she employed in any other capacity?
A She had done some accounting consulting, acting as a bookkeeper or, you know, along those lines. I can't remember if it stopped in 1996 or 1997. But through the period up until 1996 or 1997, she did do

some amount of, you know, bookkeeping consulting for friends -- people that she knew. Not true
Q And you recall that stopped some time in 1996, 1997?
A Yes, yes, yes. teaching. these were real clients
Q And do you recall who she performed those services for? Was it just friends and individuals or did she work for businesses as well?
A Businesses -- one that she worked for was -- what was it called? In Newton they call it the Tab. In metro west, it's got a different name. It's a local newspaper in metro west. You know, she did some accounting -- accounting consulting work.
Q Do you recall any other businesses that she did accounting work for?
A I can't remember.
Q But you believe that stopped some time in --
A Yes.
Q -- 1996 or 1997?
MS. PINKHAM: Let him --
Q (By Mr. Deschenes) You just have to wait until I finish the question --
A Thank you.
Q -- so we don't speak over each other and make it very difficult on the court reporter here.

I think you mentioned as an independent consultant you did two different kinds of work, primarily, and that the split was roughly fifty-fifty in terms of the kind of work that you do; is that correct?
A That would be correct.
Q The percentage of time that you used to spend in the home versus on-site for a client, was that percentage roughly the same fifty-fifty?
A It depended. If I was the acting V.P. of marketing, I would spend a great deal more time on-site; but these would be local companies. If it were project-based, I would work, you know, largely from home.
Q If it was a client, for instance, like the client in -- was it in Chicago?
A Yes.
Q What was the name of that company?
A Visibillity.
Q Would you also work out of the home working for that type of client --
A Yes.
Q -- if it was far away from home?
A Yes, absolutely.
Q Is there any way you could put a percentage on

the time you used to spend at home versus the time you'd spend on-site at a client's?

A Again, let me clarify. If the role were --

Q I understand it depends on the nature of the work that you were doing.

A It really does. So, you know, if it were -- I guess we could multiply it out. If I were an acting V.P. of marketing, I'd be 80 percent on-site and 20 percent at home. You know, I'd go in most every day. If it were a project, it would probably be just the opposite. You know, 20 percent on-site and 80 percent working at home.

Q I suppose it would also depend on whether the client was local or located in the midwest.

A Exactly. Exactly.

Q Did you work for many clients located outside of the local area?

A I've only worked for three companies over the ten-year period outside the Boston area and that was enough.

Q Makes sense in the high-tech industry.

A Yes. I tried very hard not to work for companies outside of Boston.

Q Did you have any California clients, for instance?

A Yes, Sun Microsystems.

Q Any other California clients?

A No. That was the only one.

Q What kind of work did you do for Sun Microsystems?

A I put together a new program for them in their educational services area. I could get technical about what it was but --

Q Please don't. Would that be considered a project as opposed to a vice president stint?

A Yes. Yes, definitely.

Q And the vice president of marketing stints that you would do, they generally would last for up to six months; is that correct?

A Six months or even up to a year.

Q And then what would happen? Would they fill the spot with the permanent --

A Yes.

Q -- let me just finish.

Would they fill the spot with a permanent director of marketing? It makes it easier, especially on the court reporter.

A Yes. One of my roles as the acting V.P. of marketing would be to help them --

Q To find a permanent --

A -- to find a permanent person.

Q You testified earlier about renovations done to your home and the potential for future projects with the kitchen and your basement. You may have answered this before but I'm not sure if I heard it.

Have you received any estimates or bids for that future work?

A No, we have not.

Q You also testified, I believe, about some of the items in the home that are not related to Marcia's accident that are new to the home after the renovations. I think you mentioned the big picture T.V.

Can you recall any other items like that? I'm not talking small things. I'm talking about larger items like the big picture T.V.

A I can only remember three items. Again, none of these have been accounted for in any of the --

Q I understand.

A It would be a home theater -- television theater system, furniture for the family room, and a dining room set. That would be it.

Q Can you recall anything else that was not related to her accident or the renovations related to her accident?

A No. Everything else --

Q You testified also about Marcia's ADHD diagnosis and bipolar diagnosis prior to the accident.

I believe you testified that she was diagnosed with those conditions some time in the mid-1990s; is that correct?

A Again, other people would know better; but to the best of my memory, that would be correct. Although, I could be, you know, all wrong with that answer.

Q Do you recall why she sought treatment at that time?

A Well, again -- I'm not allowed to speculate, am I?

MS. PINKHAM: If you know --

THE WITNESS: I don't know. I can speculate.

Q (By Mr. Deschenes) Well, let me ask you this, sir. Did you have any conversations with your wife at that time?

A No. Not about -- you know, not about why she was doing this directly.

Q Did she ever talk to you subsequent to that about why she was seeking treatment?

A Not, again, that I remember. I mean, this was a very private thing to her.

Q Did you suggest to her that she seek treatment for her mental conditions?
A No.
Q Prior to her seeking treatment for her condition at that time, though, you had noticed her bouts of depression; is that correct?
A Yes, certainly.
Q And did she also suffer from mood swings as a result of that condition?
A Again, let's separate the time between when she was being given appropriate medications and --
Q I'm talking about prior to the treatment.
A Before then, you know, you know, there were mood swings, yes; but they were greatly ameliorated, you know, through the medicine that she was given.
Q Right. After she received treatment?
A Yes.
Q And as a result of those depressions or mood swings, did you ever suggest to her that she seek help?
A No.
Q So she did it on her own?
A Yes.
Q Do you know was she seeing a psychiatrist or some sort of psychologist?
A A psychiatrist.

Q A psychiatrist. Do you know who the psychiatrist was that she was seeing?
A Dr. Ben Aspel.
Q Is she still seeing him today?
A No.
Q Who does she see today?
A Dr. Kelly Clark.
Q And how often did she see Dr. Aspel?
A He handled medical management. So I would think like once every three weeks, once every four weeks.
Q And did she -- I'm talking about, once again, the period of time prior to the accident --
A Right.
Q -- back in the mid-1990s when she sought treatment and was diagnosed with these conditions.
Did she see any other kind of, you know, psychiatric help, a psychologist or a therapist?
A I don't -- I don't remember her seeing any.
Q You don't recall her seeing anyone besides the psychiatrist?
A Right.
Q You testified about the counseling that you've received from Linda Eisenberg.
MS. PINKHAM: Objection. He did not testify

about the counseling. Just so the record --
MR. DESCHENES: Well, he testified about the fact that he received counseling.
MS. PINKHAM: Yes.
Q (By Mr. Deschenes) You testified about that, sir, correct, and that was some time in 1997.
A (Witness nodded.)
Q I need to have a verbal answer.
MS. PINKHAM: You can answer.
THE WITNESS: I believe what I said was it began some time in 1997, 1998.
Q (By Mr. Deschenes) Right. She's at the -- is it the Milford Holliston Family Counseling Center? Is that the name of the facility?
A At the time when I began, she was at that center.
Q Where is she today?
A She's on her own private practice.
Q And where is she located?
A In Holliston, Mass.
Q Now, you testified that your wife would sometimes accompany you to the sessions that you had with Dr. Eisenberg; is that correct?
A Yes.
Q Okay. Did your wife suggest to you that you

seek that counseling?
MS. PINKHAM: Objection. Asked and answered.
MR. DESCHENES: No. I don't think it was asked or answered.
THE WITNESS: I'm sorry. Could you repeat the question?
Q (By Mr. Deschenes) Yes, sure.
Did your wife suggest to you that you seek that counseling?
A My wife suggest? I'm sure Marcia suggested that it would be helpful, you know, for me to get, you know, some --
Q Some help?
A -- some therapy but --
MS. PINKHAM: Okay. Are you done answering the question?
THE WITNESS: Yes.
Q (By Mr. Deschenes) So the answer is yes she did suggest it?
A I'm sure at some point Marcia had suggested, you know, that it might be a useful thing to do.
Q Okay. And without invading the privilege that you've claimed here -- because I don't want to get into that whole song and dance again -- can you tell me why Marcia used to accompany you once in a while to these

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sessions; if you can?
MS. PINKHAM: If it reveals the substance of your communications, then don't answer.
(Cell phone ringing.)
MR. DESCHENES: Off the record.
(Off the record colloquy.)
THE WITNESS: Can you repeat the question?
(The last question was read back by the Reporter.)
THE WITNESS: You know, the point of the therapy was to help me broaden my understanding about life. I believe at the therapist's suggestion --
MS. PINKHAM: Objection.
THE WITNESS: That's a good point.
It was -- it was helpful at some points to have Marcia along to help me further broaden my understanding about life. Okay?
Q (By Mr. Deschenes) Okay. So she wasn't there to talk about the marriage itself?
MS. PINKHAM: Objection.
MR. DESCHENES: Are you instructing him not to answer?
MS. PINKHAM: To the extent that any answer other than yes or no will waive your private communications with your doctor, you are free to not

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answer.
THE WITNESS: Could you repeat the question, please?
(The last question was read back by the Reporter.)
MS. PINKHAM: I'm going to instruct him not to answer.
MR. DESCHENES: Okay. I'll reserve all our rights. Let's move on.
Q (By Mr. Deschenes) Prior to the accident, did you ever hire or use a housekeeper at all?
A I think for a little while we had, you know, a housekeeper.
Q When was that?
A I would say in the mid-1990s but I think we were just dissatisfied with the various housekeepers that we had tried and, you know, felt it just was more money than the value that we were receiving.
Q How often would the housekeeper come in?
A Either once a week or once every two weeks.
Q Prior to the accident, did you ever have any kind of cook or anything like that?
A No.
Q Any other kind of domestic assistance?
A No.

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Q Prior to the accident, did you ever do any of the cooking in the household?
A If you mean picking up dinner from Kentucky Fried Chicken, yes, or something along those lines, then yes.
Q Then I'm a cook, too.
A I don't remember ever opening up the oven.
Q Okay.
MS. PINKHAM: Even to heat something up, Harold?
THE WITNESS: Well, there's a microwave.
Q (By Mr. Deschenes) And now do you do some of the family cooking?
A I do all of the cooking.
Q The day of the accident itself, did you talk to anyone at the scene of the accident besides the EMTs?
A I'm sure I spoke to a policeman. Which policeman that was, I can't remember.
Q Do you recall anything about your conversation with the policeman?
A Again, I would -- I believe that the conversation was only that they were trying to extract Marcia from -- you know, from there and that she would be taken directly to Milford Hospital but that was it.

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Q Is that all you can recall about your conversation?
A That's all I recall, right.
Q Page turning is a good sign.
Do you know how often prior to the accident Marcia used to see her psychiatrist?
A Again, I think you asked that question.
Q Okay. My apologies.
A Dr. Aspel, again, I would think was like once every three weeks; though, Marcia would know better.
MR. DESCHENES: That's all I have.

DIRECT EXAMINATION

BY MR. JOHNSON:
Q Mr. Rhodes, I'm John Johnson. I represent Penske Truck Leasing.
MR. DESCHENES: Do you want to come up here so you don't have to shout?
MR. JOHNSON: No but I will.
Q (By Mr. Johnson) Penske is a defendant in this case.
You told us that in terms of therapy before this accident happened that you had gone to a therapist whose name you didn't recall way back in the early nineties, I think it was; is that correct?
A Yes.

Q You also saw Dr. Eisenberg, correct?
A That's correct.
Q Did you receive any sort of other therapy for your mental health or emotional state at anytime before this accident happened?
A No.
Q How was your marriage to Marcia before the accident?
A You know --
Q Let me -- let me strike that question.
Did you and Marcia have any marital problems before the accident?
A Marcia and I loved each other very, very much. You know, the theme of our wedding was Always and our marriage vow was that we would be committed to each other forever. You know, if you're asking were there times when we had fights, yes, we had fights. If you're asking were we ever separated, absolutely not. If you're asking did we ever talk to divorce attorneys, absolutely not. We were, you know, committed to one another and our daughter and our family. You know, whatever issues we've had, we've worked them out.
Q Was there ever a time where either you or your wife left the home because of some problem in the marriage?

A Never.
Q What school does your daughter attend at the present time?
A Milford High.
Q What year is she?
A She's a sophomore.
Q Does she go to any therapy right now?
A Yes.
Q Who does she see?
A She sees Harriet Melrose. It's M-e-l-r-o-s-e.
Q Like the T.V. show. How often does she go to Harriet Melrose?
A Once a week.
Q Do you and Rebecca go to any therapy together since the accident?
A About once a month I will go to -- I will go to -- I will go to the session.
Q In terms of Mrs. Rhodes, does she participate in any of the therapy with you and your daughter?
A Marcia hadn't -- up until two weeks ago had never gone to any of the sessions. But about two weeks ago, she did, for the first time, go to a session with Becca to see Harriet.
Q But on her own, Mrs. Rhodes has been seeing Kelly Clark; is that right?

A Dr. Clark, yes.
Q You told us that Dr. Donna Krauth is both your -- was your personal physician as well as Mrs. Rhodes' personal physician; is that right?
A She's our --
Q Both before and after the accident at least from your terms?
A No. Dr. Krauth was not my doctor at the time of the accident.
Q Okay. So you've started seeing Dr. Krauth since the accident?
A Since the accident.
Q Would she be considered your primary care physician right now?
A Yes. Right.
Q Before the accident, was Mrs. Rhodes seeing Dr. Krauth?
A Yes.
Q Do you know for how long a period Mrs. Rhodes had been seeing Dr. Krauth?
A I can just say a long time.
Q In terms of the medical procedures that you talked about for your snoring, who was the doctor who took care of you for that?
A Oh, I can't remember. That was years and

years ago. They did a -- it wasn't -- because it --
MS. PINKHAM: Just answer the question.
THE WITNESS: Thank you. I don't remember.
Q (By Mr. Johnson) Always listen to Counsel.
A Thank you. I don't remember.
Q Do you remember the medical facilities where you were treated for that problem?
A No, I don't remember.
Q Was it at the Milford Hospital?
A No. It was -- it was downtown someplace.
Q And you think that was in the mid-nineties?
A Yes.
Q Do you remember who the doctor was who referred you downtown to get those problems cared for?
A It perhaps was Dr. Philip Goldsmith, who was, at the time, the internist or my general.
Q Dr. Goldsmith was your primary care physician?
A Right.
Q Where is Dr. Philip Goldsmith's office?
A In Brookline.
Q You told us that you were familiar with the area -- I'm shifting now -- familiar with the area where the accident happened; is that right?
A Correct.
Q And you had driven through there many times;

is that right?
A We live very close to it.
Q Had you ever seen any other construction projects or any construction projects going on on that roadway prior to the day of this accident?
A I don't recall.
Q Do you remember ever seeing any sort of signage along that roadway saying "work in progress", "construction site" or anything like that?
MS. PINKHAM: Time period?
Q (By Mr. Johnson) This is before the accident.
A Again, I don't recall.
Q Since the accident, you told us that you have driven -- as much as you've tried to avoid it, you have driven past there with Mrs. Rhodes; is that right?
A That is true.
Q At anytime when you were driving through there, has she described to you where she was stopped when she was struck in the rear?
A I don't believe she was ever that specific.
Q What did she tell you about the accident, if anything?
MS. PINKHAM: Time period? You mean as they're driving by or ever?
MR. JOHNSON: At anytime since the accident

happened.
THE WITNESS: That she hated driving down Route 109 in that location.
Q (By Mr. Johnson) Has she ever described to you the events of the day of the accident?
A I've never asked her about it.
Q Has she ever described them for you?
A No.
MR. JOHNSON: I'm not going to flip through any pages because I don't have any to flip through. Thank you very much. We appreciate your cooperation.
MR. SMITH: All done.
(The deposition of Harold Rhodes was concluded at 1:15 p.m.)
* * * * * * * * * * *

CERTIFICATE OF DEPONENT

I, Harold Rhodes, do hereby certify that the foregoing 106 pages is an accurate transcript, except as noted below, of testimony given by me October 1, 2003, in the cause of action, Marcia Rhodes et al. v. Carlo Zalewski et al.

CORRECTIONS

PAGE #	LINE #	CORRECTION

Signed under the pains and penalties of perjury this _____ day of _____, 2003.

_____
HAROLD RHODES

NOTARIAL CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF SUFFOLK)

I, Debra L. Kemp, Notary Public and Shorthand Reporter for the Commonwealth of Massachusetts, do hereby certify that pursuant to Notice, there came before me on the 1st day of October 2003, at 10:08 a.m., HAROLD RHODES, who was by me duly sworn to testify the truth in relation to the matters in controversy between the parties hereto; that said deposition was taken in stenotype by me at the time and place hereinbefore set forth and was thereafter reduced to typewritten form under my supervision, and that the same is a true and correct transcription of my stenotype notes then and there taken.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 11th day of October 2003.

_____
Debra L. Kemp, Notary Public
My commission expires:
May 2, 2008