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COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS. SUPERIOR COURT
C.A. NO. 05-1360-BLS2
(Gants, J.)

MARCIA RHODES, HAROLD RHODES,
Individually and on Behalf of His Minor
Child and Next Friend, REBECCA RHODES,
Plaintiffs,

vs.

AIG DOMESTIC CLAIMS, INC., f/k/a AIG
TECHNICAL SERVICES, INC., NATIONAL
UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA, and ZURICH AMERICAN
INSURANCE COMPANY,
Defendants.

DEPOSITION OF MARCIA RHODES,
taken pursuant to Notice under the applicable
provisions of the Massachusetts Rules of Civil
Procedure on behalf of the Defendants, AIG
Domestic Claims, Inc., f/k/a AIG Technical
Services, Inc., National Union Fire Insurance
Company of Pittsburgh, PA, before Simonne J.
Elwood, R.P.R. and a Notary Public in and for
the Commonwealth of Massachusetts, at the
Radisson Hotel, 11 Beaver Street, Milford,
Massachusetts, commencing on Thursday, August
24, 2006 at 11:08 a.m.

NEAL A. SALLOWAY - COURT REPORTERS
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781-581-3993 - 978-535-0313 - FAX 978-536-3142

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EXHIBITS

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APPEARANCES:

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MARGARET M. PINKHAM, ESQ.
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280 TRUMBULL STREET
HARTFORD, CT 06103-3597
REPRESENTS ZURICH AMERICAN INSURANCE COMPANY

STIPULATIONS

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

It is further stipulated and agreed that the reading and signing of the deposition are not waived and to be read and signed under the pains and penalties of perjury.

It is further stipulated and agreed that the filing and sealing of the deposition are waived.

MARCIA RHODES

A witness called on behalf of the Defendants, AIG Domestic Claims, Inc., f/k/a AIG Technical Services, Inc., National Union Fire Insurance Company of Pittsburgh, PA, having been satisfactorily identified by the production of her Massachusetts driver's license (158502605) and duly sworn, under

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1 oath, by the Court Reporter and Notary
2 Public, was examined and testified as
3 follows:

4
5 DIRECT EXAMINATION

6 Q (By Mr. Zelle) Let me start, Marcia, by
7 saying again: I'm Tony Zelle, and I want to
8 begin by expressing my deepest sympathies for
9 the misfortune and also my admiration for
10 your efforts in rehabilitation and recovery.

11 As you probably gleaned, I'm
12 emotional, and I hope you'll forgive me. I
13 certainly will forgive you to take whatever
14 time you need. I'm going to try to make this
15 as comfortable as possible. If you don't
16 mind, I'll use your first name because I
17 think that makes things more conversational.
18 Take whatever breaks you need. If you want
19 to stop at any time for any reason, you don't
20 even have to tell me; just let me know, and
21 we'll take a break.

22 You know, if you need to exercise, do
23 your lifts or whatever, that's fine as well.

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1 case. It's called the, "Answer of Plaintiff,
2 Marcia Rhodes, to Defendant, National Union
3 Fire Insurance Company of Pittsburgh, PA's
4 First Set of Interrogatories," answers; and
5 when I show this to you, I'd like you to look
6 at the answer to the first interrogatory.
7 These are documents you signed, and the
8 question I'm going to ask you is whether
9 there's any information there that came from
10 a source other than your lawyers?
11 (Indicating)

12 MR. ZELLE: Could you mark this as
13 Exhibit No. 1?

14 (Whereupon the Stenographer Marked as
15 Exhibit No. 1 - Answer of Plaintiff, Marcia
16 Rhodes, To Defendant, National Union Fire
17 Insurance Company of Pittsburgh, PA's First
18 Set of Interrogatories.)

19 A (Reviewing document)

20 THE WITNESS: Could you read back the
21 question?

22 Q I can restate the question. The question,
23 Marcia, is whether there's any information in

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1 You have been deposed before, so I know you
2 understand that it's just a question and
3 answer; and as I said, I'll try to keep it as
4 informal and casual as I can.

5 If there's a question I ask you that
6 you don't fully understand or you just don't
7 get what I'm driving at, let me know, and
8 I'll clarify it. I want to make sure that
9 you understand my questions so that the
10 written transcript reflects the answers to my
11 questions.

12 Is there anything you want to mention
13 before we get started in terms of needs or
14 wants or desires?

15 A No.

16 Q Okay. Then why don't you state your full
17 name.

18 A Marcia Goldy Rhodes. G-O-L-D-Y.

19 Q Your address?

20 A 11 Janock, J-A-N-O-C-K, Road, Milford, Mass.
21 01757.

22 Q I'd like to start by showing you a document.
23 This is a pleading that was filed in this

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1 this answer that did not come to you from
2 your attorneys?

3 A (Reviewing document) Can I look at the
4 question.

5 Q You can. Feel free.

6 MS. PINKHAM: The question is about
7 the legal terms used.

8 A Okay. No. (Pause) Can I write on this?

9 Q Sure.

10 A (Indicating)

11 MS. PINKHAM: You just wanted the
12 answer to the first interrogatory, right,
13 Tony?

14 MR. ZELLE: Yes.

15 A Okay. The last line, Page 4, we did
16 discuss --

17 MS. PINKHAM: Hold on. You know what,
18 Marcia? In answering Mr. Zelle's questions,
19 please don't disclose any communications.

20 THE WITNESS: I'll say yes or no.

21 MS. PINKHAM: Correct.

22 A Yes.

23 Q So the answer to the question is, yes, all of

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1 the information reflected in this
 2 interrogatory answer came to you from your
 3 attorneys?
 4 **A Yes.**
 5 **Q** And who are the attorneys who you're
 6 referring to?
 7 **A Fred Pritzker and Margaret Pinkham.**
 8 **Q** Okay. Beyond what's set forth there, and let
 9 me put on the record that this interrogatory
 10 asked for you to state in complete detail all
 11 facts on which you base your claim against
 12 National Union -- or your claim that National
 13 Union violated and is liable to you under
 14 Chapter 93A and 176D. Beyond what's written
 15 here, do you have any information that hasn't
 16 been provided to you from your attorneys that
 17 is responsive to that question?
 18 **A No.**
 19 **Q** If you'll look at that Exhibit 1, and I'd
 20 like to direct your attention to the Answers
 21 to Interrogatory Nos. 11, 12 and 14; and,
 22 again, with respect to the answers, the
 23 information provided in those answers, my

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1 **A Nothing.**
 2 **Q** Okay. Similarly, if you'll look at No. 12,
 3 is there any information provided in your
 4 answer to Interrogatory No. 12 that is not
 5 information that you obtained either from
 6 your husband or your attorneys?
 7 **A Well, this whole line missing on 9/13.**
 8 **Q** I appreciate that, and I can only ask you,
 9 unfortunately, about the document I'm showing
 10 you.
 11 **A Okay.**
 12 MR. ZELLE: For the record, it's just
 13 a copying snafu.
 14 MS. PINKHAM: Do you have -- So your
 15 copy has --
 16 MR. ZELLE: Mine does, too.
 17 MR. VARGA: I might have a clean one
 18 if you want me to check.
 19 MR. ZELLE: Okay. Sure.
 20 MR. VARGA: Let me check.
 21 **Q** But thank you for pointing that out.
 22 **A Okay. No.**
 23 MR. ZELLE: Okay. We'll substitute

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1 question is whether all of the information
 2 provided in those answers is information that
 3 was provided to you by your attorneys?
 4 **A No.**
 5 **Q** The question was: Is all the information
 6 provided by your attorneys, and you're
 7 saying, no, that there's some information
 8 that wasn't provided by your attorneys?
 9 **A I'm saying that all this stuff was handled by**
 10 **my husband.**
 11 **Q** Okay. Then let me ask this: With respect
 12 to -- let's look at No. 11. The information
 13 contained in the answer to No. 11, is all of
 14 that information information that you
 15 received or are aware of through your
 16 husband?
 17 **A No.**
 18 **Q** Okay. What information, if any, in that
 19 answer to Interrogatory No. 11 is information
 20 that you obtained from someone other than
 21 your husband or your attorneys?
 22 **A Nothing.**
 23 **Q** Nothing?

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1 the better copies so that you can take a look
 2 at the line that was somehow or other not
 3 copied.
 4 (Whereupon the Stenographer remarked a
 5 cleaner copy of Exhibit No. 1 - Answer of
 6 Plaintiff, Marcia Rhodes, To Defendant,
 7 National Union Fire Insurance Company of
 8 Pittsburgh, PA's First Set of
 9 Interrogatories.)
 10 **A No.**
 11 **Q** Okay. Having looked at the better copy, your
 12 answer is?
 13 **A No.**
 14 **Q** Okay. If you could please look at the answer
 15 to Interrogatory No. 14, again, my question
 16 is whether there's any information in your
 17 answer to Interrogatory No. 14 that you
 18 obtained through a source other than your
 19 attorneys or your husband?
 20 **A No.**
 21 **Q** Okay. Did you ever have any direct
 22 communications with anyone from AIG or
 23 National Union?

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1 **A** **No.**
 2 **Q** Did you have any direct communications with
 3 anyone from Zurich?
 4 **A** **No.**
 5 **Q** Have you ever heard of a company called
 6 Crawford & Company?
 7 **A** **No.**
 8 **Q** So I assume it's fair to say that you've
 9 never had any communications with anyone from
 10 Crawford & Company?
 11 **A** **Yes.**
 12 MS. PINKHAM: Tony, can I just ask a
 13 clarifying question?
 14 MR. ZELLE: Sure.
 15 MS. PINKHAM: When you say direct
 16 communications with AIG, do you mean
 17 communications relating to the lawsuit?
 18 MR. ZELLE: Well, I didn't qualify it
 19 that way.
 20 **Q** How did you understand my question?
 21 **A** **Did I have anything, any kind of contact or**
 22 **knowledge about AIG.**
 23 **Q** Okay.

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1 **Q** You've had no discussions with them?
 2 **A** **My husband handled everything.**
 3 **Q** Okay.
 4 MR. PRITZKER: Excuse me one moment.
 5 MR. ZELLE: Sure.
 6 (Mr. Pritzker, Ms. Pinkham and Ms.
 7 Rhodes confer off the record.)
 8 **A** **Yes. The answer is yes.**
 9 **Q** Okay. And during those discussions, was your
 10 husband always present?
 11 **A** **Yes.**
 12 **Q** Okay.
 13 **A** **Well, actually, fairly, I don't remember.**
 14 **Q** That's fine. And that's an appropriate
 15 answer, "I don't know. I don't remember."
 16 I'm not asking you to fill in facts if you
 17 can't do it.
 18 Again, without disclosing the
 19 substance of the discussions, did your
 20 attorneys communicate to you about the
 21 settlement demands that were made to the
 22 insurance companies and the offers that were
 23 made?

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1 MS. PINKHAM: Can we have a moment?
 2 MR. ZELLE: Sure.
 3 (Ms. Pinkham and Mrs. Rhodes confer
 4 off the record.)
 5 MR. ZELLE: All set?
 6 MS. PINKHAM: Yes.
 7 **A** **No.**
 8 **Q** Okay. I don't want you to disclose the
 9 substance of communications you had with your
 10 attorneys. I just wanted to know whether you
 11 had discussions with your attorneys about the
 12 litigation against Mr. Zalewski and the
 13 trucking companies?
 14 **A** **I don't understand the question.**
 15 **Q** Sure. Let me rephrase it. I'm looking for a
 16 yes or no answer because I don't want to
 17 invade on the attorney/client privilege.
 18 Have you had discussions with your
 19 attorneys concerning the litigation that was
 20 filed on your behalf and on behalf of your
 21 family against Mr. Zalewski and the trucking
 22 companies that were involved in the accident?
 23 **A** **No.**

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1 **A** **No.**
 2 **Q** Other than Ms. Pinkham and Mr. Pritzker, were
 3 there any other attorneys who you dealt with
 4 in connection with the claim against Mr.
 5 Zalewski and the trucking companies?
 6 **A** **No. No.**
 7 **Q** Did you have any involvement in determining
 8 the efforts to undertake to achieve a
 9 settlement of your claim?
 10 **A** **Yes.**
 11 **Q** Can you describe that for me?
 12 **A** **I knew there would be mediation.**
 13 **Q** Okay. Prior to that point in time, can you
 14 tell me the very first time that you had any
 15 involvement or discussions with anyone
 16 concerning settlement?
 17 **A** **That was the first time.**
 18 **Q** Okay. If I told you that the mediation took
 19 place in August of the year 2004, could you
 20 give me a more precise time when you first
 21 had any involvement in determining an amount
 22 or had any discussions concerning an amount
 23 of a settlement?

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1 **A** **No.**
2 **Q** Will you please describe your thoughts going
3 into the mediation relative to achieving a
4 settlement?
5 **A** **I thought we would.**
6 **Q** Okay. And what was it that you expected in
7 the way of a settlement?
8 **A** **I didn't have any expectations. Again, I let**
9 **my husband handle everything to do with it.**
10 **Q** Okay. I'm seeking to summarize your
11 husband's testimony from the other day, and
12 I'm sure your attorneys will correct me if
13 I'm not precise, but I believe he testified
14 that the family would have settled for
15 \$8 million. Does that comport with your
16 memory?
17 **A** **I don't remember.**
18 **Q** Okay. Did you rely exclusively on your
19 husband and the attorneys in determining the
20 fair settlement value of the case?
21 **A** **Yes.**
22 **Q** Did you form an opinion as to whether
23 \$8 million would be a fair and reasonable

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1 that, and it's hard for her to record it if
2 we're speaking at the same time. I know that
3 you're anticipating my questions.
4 **A** **I know.**
5 **Q** And I appreciate that, but let's make it
6 easier on her.
7 **A** **Okay.**
8 **Q** Okay. Do you have any knowledge as to why
9 the first demand was presented by your
10 lawyers to the defendants about a year
11 and-a-half after your accident?
12 **A** **No.**
13 **Q** Prior to the mediation, had you had any
14 discussions with your husband about
15 settlement?
16 **A** **No.**
17 **Q** Do you want to take a break?
18 **A** **I just want to get some coffee.**
19 **Q** Yes. That's fine.
20 (Break takes place at 11:32 a.m.)
21 (Back on the record at 11:34 a.m.)
22 **Q** Prior to the mediation, did you ever
23 communicate to anyone a desire to settle the

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1 settlement?
2 **A** **In truth, there's no number that I would**
3 **accept.**
4 **Q** I appreciate that. If I reframe the question
5 and left the word, "fair," out of the
6 question, do you think that -- or did you
7 agree with your husband that \$8 million would
8 be a reasonable value to put that litigation
9 behind you?
10 **A** **Again, I left all the decisions up to my**
11 **husband.**
12 **Q** Did you know that your lawyers had started
13 the settlement process by making a demand to
14 the defendant?
15 **A** **Yes.**
16 **Q** Do you know the amount of that demand?
17 **A** **No.**
18 **Q** Okay. If I told you that it was \$16 million,
19 would that refresh your recollection --
20 **A** **No.**
21 **Q** -- as to whether you knew it at the time?
22 **A** **No.**
23 **Q** Just for the benefit of Sam, she's recording

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1 claim?
2 **A** **Yes.**
3 **Q** Can you describe for me what you communicated
4 and to whom?
5 MS. PINKHAM: Apart from any
6 communications that you had with your
7 attorneys.
8 **A** **Yes. I wanted to get it over with.**
9 **Q** And did you have these discussions with
10 Harold?
11 **A** **I had one discussion with Harold.**
12 **Q** And can you tell me when that was?
13 **A** **Well, it was prior to mediation, but I don't**
14 **remember how prior.**
15 **Q** Okay. Other than that one discussion, did
16 you have any other discussions --
17 **A** **No.**
18 **Q** -- with anyone?
19 **A** **No. I know. I know. No, no.**
20 MS. PINKHAM: She wants to get it over
21 with.
22 **Q** Did you have discussions with Harold about
23 the settlement offers that were made either

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1 before during or after the mediation?
 2 **A After.**
 3 **Q** And --
 4 **A Actually, during and after.**
 5 **Q** Okay. Describe the conversations that you
 6 had with Harold regarding settlement offers
 7 that you had during the mediation?
 8 **A Harold thought things would go well.**
 9 **Q** What was your understanding of what he meant
 10 when he said, "go well"?
 11 **A Well, he told me that there were 20, 30**
 12 **people from the defendants' side and that**
 13 **between all those people, they would come up**
 14 **with a number.**
 15 **Q** Okay. And other than telling you that he had
 16 thought things would go well or that he
 17 thought things would go well, did he say
 18 anything else?
 19 **A It didn't go well.**
 20 **Q** Did he give you anymore detail other than
 21 that?
 22 **A No.**
 23 **Q** Prior to the mediation, had you made it clear

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1 **Q** Harold testified -- Again, I'm sure your
 2 lawyers will make note if I'm not precisely
 3 or accurately restating this, but he
 4 testified that he had a discussion with you
 5 and that the two of you agreed that
 6 \$8 million would be a reasonable number to
 7 settle the case. Do you have any
 8 recollection of that conversation?
 9 **A No.**
 10 **Q** I'm going to probably get to some more
 11 specific questions about the suffering and
 12 the damages that you are claiming in this
 13 case a bit later; but before I do, I wanted
 14 to ask you whether you can distinguish
 15 between the stress or the distress or
 16 physical injuries or pain that you have
 17 endured as a result of the accident and that
 18 which you are claiming was caused by the
 19 insurance companies, the defendants in this
 20 case?
 21 **A Are you asking me if there was different --**
 22 **All I can say there's levels of stress.**
 23 **Q** I think that's a fair interpretation.

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1 to Harold that you didn't want to have
 2 anything to do with the settlement?
 3 **A Yes.**
 4 **Q** And he adhered to your directions and left
 5 you out of it?
 6 **A Yes.**
 7 **Q** Other than the discussions during the
 8 mediation, did you have any other discussions
 9 with Harold regarding any settlement offers
 10 that were made by the defendants?
 11 **A He told me we were going to trial. That was**
 12 **all I remember.**
 13 **Q** Did you have any discussions with Harold
 14 about settlement offers that were made during
 15 the trial?
 16 **A No.**
 17 **Q** Did Harold ever share with you the settlement
 18 strategy that was being employed to reach an
 19 agreeable number with the defendants?
 20 **A Again, he mentioned that there was going to**
 21 **be mediation.**
 22 **Q** Okay.
 23 **A That was it.**

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1 **A Yes. There was a different -- a difference**
 2 **between or a different kind of level of**
 3 **stress.**
 4 **Q** Okay. Can you describe for me the difference
 5 that you're able to discern between the
 6 stress that you have endured as a result of
 7 the accident and the stress that you
 8 attribute to the conduct of the insurance
 9 companies?
 10 **A The stress I felt from the accident was the**
 11 **stress of having to go through a trial on a**
 12 **case that I believe would be settled without**
 13 **going to trial. The affect that this would**
 14 **have, primarily, on my daughter who, I**
 15 **believe, was only 14 at the time, stress that**
 16 **one has when one has to appear in court and**
 17 **testify. It was just -- it was horrible.**
 18 **Q** I beg your pardon, but I just couldn't
 19 discern from the answer whether that was
 20 stress and injury, certainly, that you're
 21 attributing the accident?
 22 **A Yes. First trial.**
 23 **Q** Okay.

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1 MR. PRITZKER: In fairness, I don't
 2 think Mrs. Rhodes understands the distinctions
 3 that you're making.
 4 MR. ZELLE: Okay.
 5 MR. PRITZKER: I believe that she was
 6 referring to the stress of the first trial
 7 but that that stress was attributable to the
 8 insurer although you should clarify that for
 9 yourself.
 10 MR. ZELLE: Thanks.
 11 Q I understand, as I understand your answer,
 12 you are able to attribute some of your
 13 feelings of stress and anxiety and discomfort
 14 that you endured prior to the trial to the
 15 fact that there was a trial, is that a fair
 16 understanding?
 17 A **Rephrase.**
 18 Q Sure. The injury that you described,
 19 including your stress and the stress you felt
 20 as a result of dealing with Rebecca, --
 21 A **I might add that there was incredible stress**
 22 **on my husband.**
 23 Q And on your husband. Was you attribute that

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1 Q Is there anything specific, apart from and
 2 not specific of trial or testifying, but
 3 anything specific that occurred prior to
 4 trial that you believe occurred as a result
 5 of either my clients, AIG, National Union
 6 defendants or Zurich that you are aware of
 7 that contributed to that stress?
 8 A **I don't remember.**
 9 Q Okay.
 10 MS. PINKHAM: Tony, for clarification,
 11 are you talking about specific events that
 12 took place prior to the trial?
 13 Q Is that how you understood my question?
 14 A **I thought you meant overall feelings.**
 15 Q Right. Those feelings that you attributed to
 16 the apprehension of trial, is there anything
 17 more specific other than that apprehension of
 18 trial that you attribute the feelings to?
 19 A **Well, I wouldn't say it started with trial.**
 20 **It started with the day after the accident**
 21 **when nothing happened.**
 22 Q Is it fair to say that that was just the
 23 anxiety of the process of recovering,

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1 to the fact that you had to try the case, is
 2 that fair?
 3 A **Yes.**
 4 Q Okay. If you can please describe for me how
 5 that was different or distinguishable from
 6 the other emotional distress that you endured
 7 as a result of the accident?
 8 A **The accident itself?**
 9 Q Yes.
 10 A **Well, I was trying to -- everybody was**
 11 **telling me, and I was trying to move on from**
 12 **the accident; and yet, I couldn't move on**
 13 **because I knew all this was going to be**
 14 **brought up again. It was going to be a**
 15 **repeat of the deposition and more intense;**
 16 **and when I say, "stress," I also mean anger,**
 17 **a great deal of anger, disbelief,**
 18 **embarrassment. All these were sources of**
 19 **stress.**
 20 Q The trial, the fact that you would have to go
 21 through a trial is what you're suggesting
 22 created these feelings?
 23 A **Yes.**

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1 financially, for the injuries caused by the
 2 accident?
 3 A **I think it was part of the process; but,**
 4 **again, most of what I felt after the accident**
 5 **was intense anger.**
 6 Q Okay. Did you -- When you did testify at
 7 trial, testify about that anger, explain that
 8 to the jury?
 9 A **I don't remember.**
 10 Q Okay. Did you ever have any discussions with
 11 Harold the gist of which was it would be
 12 worth settling for less money to avoid having
 13 to go to trial?
 14 A **I don't remember.**
 15 Q Did you, yourself, consider the possibility
 16 of settling for less in order to avoid the
 17 stress of the litigation process, the
 18 deposition, the trial?
 19 A **I left -- I tried -- I know it's not fair,**
 20 **but I tried to keep as much stress out of my**
 21 **life and, unfortunately, my husband picked up**
 22 **that stress. I was trying to get on with my**
 23 **life.**

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1 Q You --

2 (Mr. Pritzker and Ms. Pinkham confer

3 off the record.)

4 Q I'll wait for your counsel to be done

5 conferring.

6 (Pause)

7 Q Your lawyers presented to the defendants a

8 video tape that's referred to as a Day in the

9 Life Video. Can you tell me whether you

10 understood the reason for preparing that

11 video?

12 A Yes.

13 Q What was your understanding?

14 A **To show what my life was like now that I had**

15 **this accident.**

16 Q Okay. And did you understand that that was

17 something that was not required by the

18 insurance companies or the defendants?

19 A No.

20 Q Was it your understanding that it was

21 required by the defendants?

22 A No.

23 Q Okay. What was your understanding as to the

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1 Q If I could direct your attention to that

2 Exhibit No. 1. Look at the answer to

3 Interrogatory No. 8.

4 A Okay.

5 Q And you might want to just follow along with

6 me. I'll read the interrogatory. It begins,

7 "Please state what amounts you contend would

8 have constituted a 'fair and equitable'

9 settlement amount --," and it goes on from

10 there.

11 The answer reads, "I did not have an

12 understanding of what would constitute a fair

13 and reasonable range of settlement. I relied

14 on the judgement of lawyers. Obviously,

15 every month that range increased because of

16 statutory interest." That last sentence,

17 that wasn't obvious to you, right?

18 A No.

19 Q That's just something your lawyers put in

20 there?

21 A I don't know.

22 Q Okay. But it's not anything that you were

23 aware of at the time that you responded to

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1 benefits of putting that together?

2 A **To clearly show what I was going through as a**

3 **result of this accident.**

4 Q Was it your understanding that to better

5 understand what you were going through as a

6 result of the accident, the defendants and

7 their insurance companies wanted to speak

8 with you and see you in a deposition?

9 A No.

10 Q Okay. What was your understanding of the

11 reason that your deposition was taken?

12 A **Just thought it was part of the**

13 **going-to-trial process.**

14 Q Okay. Did you have any discussions with

15 Harold about an element of financial recovery

16 that's called prejudgment interest?

17 A No.

18 Q Okay. Did you, at any time prior to

19 recovering from the defendants, understand

20 that whatever amount of money the jury

21 awarded there would be an additional 12

22 percent per year added to that amount?

23 A No.

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1 these interrogatories?

2 A Correct.

3 Q Okay. Or any time prior thereto?

4 A Correct.

5 Q Again, I'm seeking to restate testimony that

6 Harold provided the other day. He suggested

7 that in connection with the trial or going to

8 trial, he was concerned that a verdict could

9 be less than \$5 million, and my question,

10 Marcia, is whether you ever had any

11 discussions with Harold about that concern?

12 A I don't remember.

13 Q Do you remember any conversations with Harold

14 about what could happen or in terms of a jury

15 verdict?

16 A I don't remember.

17 Q Okay. Can you distinguish between any

18 injury, emotional injury or otherwise that --

19 Well, let me strike that question.

20 Is any of the emotional distress or

21 other injury that you have suffered caused by

22 any specific conduct on the part of AIG or

23 National Union?

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1 **A Are you talking about after the trial?**
 2 **Q** Before or after?
 3 **A I think the emotion that I felt was anger.**
 4 **Q** And my question is whether you can identify
 5 any specific conduct on the part of AIG
 6 that --
 7 **A No.**
 8 **Q** -- caused that anger?
 9 **A No.**
 10 **Q** Will you describe, generally, a conduct on
 11 the part of AIG and/or National Union that
 12 caused that anger?
 13 **A That it wasn't settled with mediation.**
 14 **Q** Let me ask you the same question just to,
 15 hopefully, expedited things here. Was there
 16 any specific conduct on the part of Zurich
 17 Insurance Company that caused you anger or
 18 any other emotional distress?
 19 **A Not -- not identified to any one insurance**
 20 **company. The whole process was the source of**
 21 **my anger.**
 22 **Q** And when you say the whole process, are you
 23 referring to the litigation process?

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1 **A It was my understanding from Harold that AIG**
 2 **did not want to settle.**
 3 **Q** What did Harold tell you?
 4 **A That AIG did not want to settle.**
 5 **Q** Okay. Was it your understanding from your
 6 conversation with Harold that AIG did not
 7 want to settle at all or that AIG did not
 8 want to settle for the amount that is being
 9 sought or demanded?
 10 **A No.**
 11 **Q** I think that was probably poor phrasing. It
 12 was an either/or question.
 13 **A Oh.**
 14 **Q** Was it your understanding that AIG wanted to
 15 settle but didn't want to pay as much as was
 16 being demanded?
 17 **A No.**
 18 **Q** What was your understanding?
 19 **A They didn't want to settle.**
 20 **Q** Okay. I don't want you to disclose the
 21 substance of any communications that you
 22 might have had with psychiatrists or
 23 psychologists or counselors or anything. I

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1 **A Yes.**
 2 **Q** I think you suggested this in your last
 3 response but are you able to distinguish
 4 between any anger that you're feeling that
 5 was caused by Zurich and anger that you're
 6 feeling that was caused by AIG?
 7 **A No. I mean, --**
 8 **(Ms. Pinkham and Mrs. Rhodes confer**
 9 **off the record.)**
 10 **MS. PINKHAM:** Are you asking about any
 11 point in time?
 12 **MR. ZELLE:** Yes. Before or after the
 13 trial.
 14 **(Ms. Pinkham and Mrs. Rhodes confer**
 15 **off the record.)**
 16 **A Ask the question again, please.**
 17 **Q** Sure. Are you able to distinguish between
 18 or -- I'm sorry.
 19 Are you able to attribute any of the
 20 anger you were feeling to -- independently,
 21 to either AIG or Zurich?
 22 **A Yes.**
 23 **Q** Will you describe that?

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1 just want a yes or no answer.
 2 Have you sought treatment from anyone
 3 for emotional distress that you attribute to
 4 the insurance companies as opposed to that
 5 which arose from the accident?
 6 **A Yes.**
 7 **Q** And, again, I don't want the substance of
 8 this, but if you could just identify for me
 9 when and how often you sought that treatment?
 10 **A I started when I found out that we were going**
 11 **to have to go to trial and continue, and it's**
 12 **still continuing.**
 13 **Q** About how long before trial; was it after the
 14 mediation?
 15 **A I don't remember.**
 16 **Q** The comment you made that it's continuing
 17 suggests that maybe I wasn't clear in asking
 18 the question. I'm trying to focus on the
 19 stress and anger you were feeling about
 20 having to go to trial and subsumed in that
 21 question is that once the trial was over, you
 22 weren't feeling stress about going to trial,
 23 so I want you, if you can, to break it down

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1 and just tell me whether prior to trial you
 2 sought treatment for the emotional distress
 3 that you were experiencing due to the fact
 4 that you would have to go to trial?
 5 MS. PINKHAM: I believe that question
 6 has been asked and answered. You can answer
 7 it again.
 8 **A Ask it again.**
 9 **Q** Sure. And by way of comment, I'm just trying
 10 to parse from your answer what I think are a
 11 couple of parts because I think you indicated
 12 that you were experiencing emotional distress
 13 because of the trial, is that right?
 14 **A Yes.**
 15 **Q** And did that emotional distress dissipate
 16 after the trial?
 17 **A No.**
 18 **Q** You indicated in your answer that you're
 19 continuing to seek treatment for emotional
 20 distress but because the trial is over, I
 21 need to know what you attribute that
 22 emotional distress to?
 23 **A That nothing happened.**

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1 **Q** Okay. And as you're sitting here today, it's
 2 your understanding that you still haven't
 3 gotten that money?
 4 **A I don't know.**
 5 **Q** Okay. The anxiety that you're feeling today
 6 is attributed to the fact that you don't know
 7 or that it's your understanding that you
 8 haven't gotten that money?
 9 **A My anxiety is the fact that we have to go to**
 10 **trial again.**
 11 **Q** Okay.
 12 MS. PINKHAM: Tony, for clarification
 13 purposes, when you use the word, "trial," for
 14 the rest of the deposition, can you clarify
 15 that when you're talking about a trial
 16 against the personal injury defendants versus
 17 the trial that is scheduled in this case?
 18 MR. ZELLE: Sure.
 19 MS. PINKHAM: Actually, during the
 20 pause, I never asked Marcia what time you
 21 wanted to have lunch. I don't know if you
 22 had discussed when you wanted to have a lunch
 23 break.

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1 **Q** After the trial?
 2 **A After the trial.**
 3 **Q** Okay. And at some point after the trial, I
 4 believe in June of 2005, there was a payment
 5 that resolved the claim against the trucking
 6 companies. Are you aware of that?
 7 **A No.**
 8 **Q** Do you understand today that there's still a
 9 claim or that -- Strike that question.
 10 Today, is it your understanding that
 11 you have fully recovered what you're entitled
 12 to cover as a result of the trial against Mr.
 13 Zalewski and the trucking companies?
 14 **A No.**
 15 **Q** What is your understanding?
 16 **A My understanding is that this is being**
 17 **dragged out for an inordinate amount of time;**
 18 **and the longer it takes, the greater the**
 19 **stress.**
 20 **Q** Can you explain what you mean by, "this,"
 21 when you say, "This is being dragged out"?
 22 **A That the jury said that X was the award that**
 23 **we were supposed to get and that we didn't.**

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1 MR. ZELLE: Well, I'll break whenever
 2 you want to. I just as soon probably share
 3 this with you. I want to get this completed,
 4 and I don't think it's going to take much
 5 more than, at least for me to complete this,
 6 maybe a half-an-hour, 45 minutes. I suspect
 7 Greg will have some questions; but if you
 8 want to just keep going until it's done, it's
 9 totally up to you.
 10 THE WITNESS: I'd rather keep going
 11 and get it done.
 12 THE WITNESS: Sure. That sounds good.
 13 MS. PINKHAM: We'll take a break when
 14 you're done with your questions.
 15 MR. ZELLE: Okay. If you want to take
 16 a break now, that's fine, too, please.
 17 THE WITNESS: I'd like to be finished
 18 with you, but I'd like to take a break before
 19 I have to start with another lawyer.
 20 MR. ZELLE: And I won't take that
 21 personally if you want to be finished with
 22 me. Maybe I should.
 23 THE WITNESS: Okay.

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1 MR. ZELLE: But I won't.
 2 MS. PINKHAM: Tony, actually, let's
 3 take a quick bathroom break.
 4 MR. ZELLE: Sure.
 5 (Break takes place at 12:12 p.m.)
 6 (Back on record at 12:23 p.m.)
 7 MS. PINKHAM: Back on the record. I
 8 want to put something on the record to
 9 clarify something.
 10 So the record is clear, the plaintiffs
 11 are not seeking recovery for the emotional
 12 distress that Mrs. Rhodes feels as being
 13 part -- that's caused by the anxiety of
 14 having an entirely new action pending against
 15 the insurance companies in the prospect of
 16 the trial in early 2007. Although she does
 17 continue to feel anxiety caused by this
 18 current litigation, it is not something that
 19 we're going to seek recovery for at trial.
 20 MR. ZELLE: I'm not sure I understand
 21 what you're saying, but I don't think I need
 22 to clarify.
 23 Q Marcia, if you received the money that was

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1 had versus the trial that we're facing.
 2 MR. ZELLE: Okay.
 3 Q In connection with the litigation against Mr.
 4 Zalewski and the trucking company defendants,
 5 did that litigation make you more dependent
 6 on your husband; did the pendency of that
 7 litigation?
 8 A **Well, from the point of view, financially,**
 9 **yes.**
 10 Q What about emotionally?
 11 A **Well, you're talking about the time between**
 12 **when the jury said what the answer should be**
 13 **to the time when we actually got the money?**
 14 Q Well, that's part of it, but I can break it
 15 down for you.
 16 A **Break it down for me.**
 17 Q Why don't I ask you: During the time prior
 18 to the mediation, did the pendency that the
 19 fact that there was ongoing litigation affect
 20 your recovery in any way?
 21 MS. PINKHAM: Physical recovery or
 22 economical recovery?
 23 MR. ZELLE: I mean total.

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1 awarded to you by the jury through the trial
 2 and all of the interests and other costs and
 3 damages that you're entitled to recover if
 4 you obtained a jury verdict, would you be
 5 done with litigation?
 6 A **If they paid it. If they paid it.**
 7 Q Okay. And you wouldn't pursue any further
 8 litigation?
 9 A **No.**
 10 Q Okay. Focusing in on the litigation against
 11 Mr. Zalewski and the trucking company, --
 12 MR. ZELLE: And I'm sorry, Margaret,
 13 you said I should refer to that by something,
 14 specifically?
 15 MS. PINKHAM: Well, I just -- We were
 16 using the word, "trial," so --
 17 MR. ZELLE: I'm sorry. Did you want
 18 me to use a specific term referring to that,
 19 or I can use any term?
 20 MS. PINKHAM: Yes. Just as long as
 21 there's a distinction because we have a trial
 22 date in this case, so I think Marcia was
 23 getting confused about trial that we already

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1 Q I'm sure there are many more components than
 2 physical and economic, but I'm just talking
 3 about --
 4 A **There's psychological, too.**
 5 Q Of course. Of course.
 6 A **Ask the question again.**
 7 Q I sure will. Prior to the mediation, did the
 8 litigation and the factor of a trial make you
 9 more dependent on your husband?
 10 A **Before the mediation, it didn't dawn on me**
 11 **that there would be a trial. So, again, I**
 12 **left everything up to my husband.**
 13 Q Okay. The extent to which you were dependent
 14 on your husband for caregiving began in the
 15 period of time prior to the mediation.
 16 A **That's not true.**
 17 Q Well, actually, I hadn't asked the question;
 18 but since I clearly misstated something, why
 19 don't you clarify it for me?
 20 A **My husband took care of me from the moment**
 21 **the accident occurred, not just up to -- not**
 22 **just after the mediation. It was an ongoing**
 23 **thing from day one.**

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1 Q I understand. And I'm just trying to -- your
 2 lawyer suggested that I break it down in a
 3 time frame, so I was kind of going from day
 4 one up to the mediation. Would you be more
 5 comfortable to speak about it, generally?
 6 A **No.**
 7 Q Okay. During the time period prior to
 8 mediation, did you feel any emotional
 9 distress due to the fact that the claim
 10 against the trucking company and the trucking
 11 company defendants and Mr. Zalewski hadn't
 12 settled?
 13 A **My stress at times was directed at my**
 14 **recovery.**
 15 Q Okay. The pendency, at least, again, in the
 16 time period prior to the mediation, your
 17 anger and emotional distress and other
 18 psychological discomfort, what was that
 19 attributed to?
 20 A **The fact that I was now paralyzed and my life**
 21 **changed forever, and I had to learn and still**
 22 **have to learn, but I had to learn a whole new**
 23 **life.**

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1 Q Okay. During that -- The mediation, again,
 2 took place in August of 2004, and the trial
 3 took place the next month in September of
 4 2004. Prior to the trial, were you,
 5 physically, ready to begin rehabilitation?
 6 A **No.**
 7 Q Did the -- Strike that.
 8 Other than your physical and mental
 9 preparedness, was there anything that
 10 prevented you from beginning your
 11 rehabilitation?
 12 A **I don't understand your question.**
 13 Q Other than the -- Well, let me rephrase that.
 14 Is there anything that prevented you
 15 from beginning your rehabilitation other than
 16 your physical preparedness?
 17 A **I don't remember.**
 18 Q Okay. When did you begin your physical
 19 rehab?
 20 A **Well, I tried to start rehab at the Fairlawn**
 21 **which is at the hospital.**
 22 Q The inpatient kind of transition place?
 23 A **It was very hard to deal with rehabilitation.**

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1 Q And is that stress and those feelings
 2 continuing today?
 3 A **There's still -- There's still stress, but**
 4 **it's totally a different kind of stress.**
 5 Q Okay. I'm trying to focus on the source of
 6 the stress. Is that the same; you identified
 7 the accident and the rehabilitation and the
 8 paralysis?
 9 A **Well, there's -- Again, there's two different**
 10 **elements of stress. See, obviously, the**
 11 **accident; but my source of stress was**
 12 **directly related to what this was doing to my**
 13 **husband.**
 14 Q Okay. When you went to trial against the
 15 trucking company defendants, did you testify
 16 about the stress that you felt due to the
 17 affect of the accident on your husband?
 18 A **I don't remember.**
 19 Q Did you have sufficient energy to focus on
 20 your rehabilitation during the period of time
 21 prior to the mediation?
 22 A **I wasn't ready, physically, to work on**
 23 **rehabilitation.**

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1 Q What was it that made it hard to deal with
 2 rehabilitation beginning at Fairlawn and
 3 continuing as long as it has been difficult
 4 for you to focus on rehabilitation?
 5 A **The focus -- when I was at Fairlawn, it was**
 6 **physical problems besides the paralysis.**
 7 **There were other physical problems which**
 8 **prevented me from performing the necessary**
 9 **rehab that was expected of me.**
 10 Q Okay. Is there anything that the insurance
 11 companies have done that has prevented you
 12 from focusing your energies on
 13 rehabilitation?
 14 A **You mean before the trial?**
 15 Q At any time?
 16 A **Well, rehabilitation is a constant -- I can't**
 17 **think of the word, but it's not something**
 18 **that you date and say, "My rehabilitation**
 19 **really took a better turn at mediation or at**
 20 **trial." I mean, it's an ongoing process, and**
 21 **I don't separate phases of my rehabilitation**
 22 **in that manner.**
 23 Q Okay. Let me try to separate it by a date.

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1 Prior to June of 2005, a little over a
2 year ago, was there anything that the
3 insurance companies did that you were aware
4 of the insurance companies doing or believed
5 the insurance companies did that impeded your
6 rehabilitation?

7 **A There were things that could have been done
8 for my rehabilitation had we had the money.**

9 **Q** Okay. What was it that you would have done;
10 and, again, I'll just select, prior to the
11 mediation if you had all the money?

12 **A I don't remember.**

13 **Q** Okay. Well, let's just be generally. What
14 is it that you would have done for your
15 rehabilitation if you had the money?

16 **A Well, first of all, we would have had much
17 more -- I don't want to say around the clock,
18 but we had somebody coming in from 8:00 to
19 4:00, and we had to cut back to 8:00 to 12:00
20 which left my husband to deal with the
21 weekends, nights. I mean, the weekday nights
22 and the weekends. That was bad. If we had
23 money, we would have hired a case worker who**

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1 **A No.**

2 **Q** Is there anything else that affected the rate
3 of your rehabilitation that you want to
4 mention? *

5 **A I can't pinpoint a day of -- a difference
6 between one day and another day in the former
7 rehabilitation that I received. I only know
8 what we could have received, but I can't
9 differentiate between, "I did this to
10 rehabilitate; and then months later, I did
11 this to rehabilitate." I mean, it's just an
12 ongoing and still an ongoing process.**

13 **Q** Is there, in your mind, a period of time
14 when -- a specific period of time when the
15 lack of money caused you to forgo any
16 particular treatment?

17 **A Well, I know that my husband told me that to
18 maintain the care that we were getting, even
19 with the cut-back hours, would cause us to
20 have to liquidate assets that we had. That's
21 probably the only discussion we had about
22 money.**

23 **Q** Can you identify when it was that you cut

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1 **would have told us how to deal with pressure
2 sores that I received and stayed in bed for
3 ten months because there was nobody to tell
4 us how to solve this problem. There was a
5 good number of months before we finally found
6 out, and I don't remember how we found out,
7 but we found out about a wound clinic, and it
8 took another four months or five months after
9 we found out about it for the wounds to heal.
10 I believe that if we had somebody to oversee
11 our case, coordinate all these different
12 doctors and prescriptions and wounds and
13 back, you know, back sliding, I think we
14 would have done better if we had somebody
15 there to watch out for us, to take care of
16 us, teach us, which, at that time, we
17 couldn't afford.**

18 **Q** Did you speak with Harold about using your
19 savings to get a case worker?

20 **A No.**

21 **Q** Did you determine whether a case worker would
22 be covered in whole or in part by your health
23 insurance?

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1 back the care so that you no longer had the
2 afternoons covered?

3 **A No.**

4 **Q** Did the litigation against the trucking
5 company defendants and Mr. Zalewski affect
6 your relationship with Rebecca?

7 **A Do you mean knowing there was going to be a
8 trial or the time that they found him guilty
9 of negligence?**

10 **Q** Well, let's just talk about the knowing there
11 was going to be a trial?

12 **A I think my daughter put a brave front, but I
13 think she was scared to death. She was very
14 worried that she might say something that
15 would be hurtful to me, trying to protect me,
16 but she was just a kid. I remember when she
17 testified, she broke out in tears.**

18 **Q** Do you remember testifying at the trial about
19 the effect that the accident had on the
20 relationship with your daughter?

21 **A No.**

22 **Q** Do you remember Rebecca testifying about the
23 way in which she was affected by the

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1 accident?

2 **A No.**

3 **Q** In the -- In connection with the claim

4 against the trucking company defendants, you

5 were asked to see a doctor who examined you

6 that was examining you on behalf of the

7 defendants, do you remember that?

8 **A Yes.**

9 **Q** And did you ever, prior to seeing the doctor,

10 know that it would be a male doctor?

11 **A No.**

12 **Q** Did you know who -- Did you know the name of

13 the doctor before you went to see him?

14 **A No.**

15 **Q** Did you speak with Harold about the

16 examination by this doctor?

17 **A Only that it was for the defense.**

18 **Q** That it was a doctor hired by the defendants?

19 **A Yes.**

20 **Q** When you had that conversation with Harold,

21 did you indicate to him that you would prefer

22 a woman doctor?

23 **A I don't remember.**

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1 **A I believe she asked my husband.**

2 **Q** Okay. And what's your understanding of that

3 conversation?

4 **A I really don't know what he said to her.**

5 **Q** You didn't have any conversation with her

6 about that?

7 **A No.**

8 **Q** Did you have any conversation with Harold

9 about his conversations with Rebecca?

10 **A No.**

11 **Q** During the trial, were you present throughout

12 the trial or just on one or more days?

13 **A I don't remember.**

14 **Q** When you testified, did you explain to the

15 jury your past and present and expected

16 future condition?

17 **A Do you mean did I differentiate before -- my**

18 **life before the accident and my life now**

19 **after the accident?**

20 **Q** No. I'm asking: When you were testifying at

21 the trial against the trucking company

22 defendants and Mr. Zalewski whether you

23 testified about what you had experienced

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1 **Q** Did Harold ask you whether you would prefer a

2 woman doctor?

3 **A I don't remember.**

4 **Q** Would you have preferred a woman doctor?

5 **A Probably.**

6 **Q** Did it have any affect on you during the

7 examination that it was a male doctor?

8 **A Well, it was that much more embarrassing;**

9 **intrusive. I wasn't sure a male doctor could**

10 **relate.**

11 **Q** After the examination, did it continue to

12 bother you that it had been a male doctor?

13 **A I don't know. I didn't think about it.**

14 **Q** You were able to put that behind you?

15 **A I tried.**

16 **Q** Can you tell me what you did to help Rebecca

17 deal with the prospect of a trial?

18 **A No, I don't remember if I even talked to her**

19 **about it.**

20 **Q** Okay. Did Rebecca ever ask you why the case

21 hadn't settled?

22 **A Do you mean why we had to go to trial?**

23 **Q** Yes.

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1 since the accident, what you were

2 experiencing at that time and what you

3 expected your life to be like going forward?

4 **A No. I don't remember.**

5 **Q** Do you -- Strike that.

6 At some point during your recovery and

7 rehabilitation, did a doctor or doctors

8 recommend that you cut back on homecare to

9 help you become more self-sufficient?

10 **A No.**

11 **Q** In terms of the rehabilitation and home

12 health care, were the discussions with your

13 doctor with you and Harold, with you alone or

14 with Harold alone?

15 MS. PINKHAM: Can we have a time

16 frame?

17 **Q** There's no time frame in this question.

18 **A Which doctor?**

19 **Q** I'm speaking very generally about discussions

20 with doctors concerning -- let me limit it to

21 your home health care.

22 **A Every -- Every doctor I saw, Harold was**

23 **there.**

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1 Q Okay. Did the pendency of the trial against
 2 the trucking company defendants affect your
 3 ability to go about your daily activities?
 4 A **I think I tried to separate the two.**
 5 Q Okay. How about the pendency of the existing
 6 case and a trial that's been scheduled for
 7 sometime next year, is that affecting your
 8 ability to exercise control or engage in your
 9 daily activities?
 10 A **Well, there are certain -- certainly, certain**
 11 **things that have been suggested that we**
 12 **didn't have the resources for. Are you**
 13 **talking about after the time of the trial?**
 14 Q I think my last question was the trial that
 15 hasn't happened yet. I was asking about
 16 that. Has that trial or is that trial
 17 affecting your daily activities?
 18 A **I don't know. I try not to think about it.**
 19 Q And just to make sure I understand what
 20 you're saying: The trial that occurred back
 21 in September of 2004, prior to that trial,
 22 did the pendency of the litigation and the
 23 anticipation of that trial have any affect on

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1 started having the condition that led you to
 2 go to a wound clinic, how long had you been
 3 experiencing that before you were advised to
 4 go to a wound care clinic?
 5 A **The actual taking to the bed because the**
 6 **wound was in December, but I don't remember**
 7 **what year it was, and I finally got out of**
 8 **bed in October of the following year.**
 9 Q And when was it that you went to the clinic?
 10 A **It might have been June, July.**
 11 Q Okay. I think we can figure that out by
 12 reference to how long you were at the clinic.
 13 Do you remember how long that was?
 14 A **No.**
 15 Q Okay. Did you describe to the doctors with
 16 whom you were treating, prior to going to the
 17 wound care clinic, the condition that was
 18 treated at the wound care clinic?
 19 A **I didn't. Again, my husband took care of**
 20 **anything that he thought he could handle that**
 21 **he didn't want me to have to deal with.**
 22 Q When you were physically examined, again,
 23 this is in the period of time prior to going

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1 your daily activities?
 2 A **Well, of course, the periods that were**
 3 **directly related to the trial such as the Day**
 4 **in the Life Video, you know, being**
 5 **predisposed, whatever they call it.**
 6 Q Deposed?
 7 A **Deposed. Having to go through -- I mean,**
 8 **these were negative milestones that related**
 9 **to that trial.**
 10 Q Did you feel more housebound because the case
 11 did not settle, the case against the trucking
 12 companies?
 13 A **Well, again, I felt that we were limited by**
 14 **what we could afford to do in terms of care**
 15 **or rehabilitation, attempting to move on.**
 16 Q Apart from the financial constraints that
 17 you've eluded to, was there anything else
 18 about the ongoing litigation and the claim
 19 against the trucking companies that affected
 20 your life?
 21 A **I don't know.**
 22 Q When was it that -- and feel free to answer
 23 this question by reference to when you first

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1 to the wound care clinic, was the area
 2 affected by these wounds examined by your
 3 doctors?
 4 A **Did a doctor come to the house, you mean?**
 5 Q Whether it was in the house or whether it was
 6 when you went to a hospital or to a doctor,
 7 did any physician see the area affected by
 8 the wounds that you, ultimately, had treated
 9 at the wound care clinic?
 10 A **At the very beginning, yes.**
 11 Q Okay. And what doctor was that?
 12 A **That would have been Dr. Roaf.**
 13 Q And what did Dr. Roaf prescribe in the way of
 14 treatment for that condition?
 15 A **Well, her hope was that if I stayed on my**
 16 **side that the wounds would self-heal by not**
 17 **being on the wounds.**
 18 Q Did she continue to monitor that condition
 19 for you?
 20 A **Did she see me?**
 21 Q See you or ask you about that, the wounds?
 22 A **I don't know if she asked because, again,**
 23 **Harold would have dealt with it. We did not**

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1 go to her because they were too -- I wouldn't
2 be able to sit. So I couldn't go to her for
3 her to examine them again.

4 Q Okay. When you testified at the trial with
5 the trucking company defendants, did you
6 testify about those pressure sores?

7 A I don't remember.

8 Q Did you testify about the dependency you had
9 on Harold?

10 A I don't remember.

11 Q Did you testify about the absence of a care
12 manager; I'm sorry; a homecare manager?

13 A A PCA?

14 Q Yes.

15 A You mean a PCA like --

16 Q No. A case manager?

17 A Again, I didn't talk to anybody about
18 anything except recovery. I left Harold to
19 deal with, again, the finances and what we
20 could and couldn't afford.

21 MS. PINKHAM: Tony, I think that
22 Marcia didn't hear it full, the question that
23 you just asked.

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1 A Well, I know it was recommended that we go to
2 Craig Institute. There were another -- other
3 recommendations that I don't remember what
4 they were. I just know there was. I don't
5 remember what they were for. Again, Harold
6 handled everything.

7 Q The Craig Institute is an inpatient treatment
8 center to recover or to develop skills for
9 dealing with paralysis, is that right?

10 A I believe so, yes.

11 Q Okay. Did you also learn of a program at the
12 Boston Medical Center --

13 A No.

14 Q -- for that?

15 A No.

16 Q You're not currently aware of a program at
17 Boston Medical Center?

18 A No.

19 Q The program at the Craig Institute, did you
20 ever -- I'm sorry. What was the reason that
21 you didn't pursue that, strictly based on the
22 cost?

23 A I believe so, yes.

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1 Q I can certainly ask you again. My question
2 was whether you, in the trial against the
3 trucking company defendants, whether you
4 testified about your not having a case
5 manager?

6 A I don't remember.

7 Q Can you tell me what you think you could have
8 accomplished in the way of recovery and
9 rehabilitation if you had all the money that
10 you needed, all the resources available from
11 day one?

12 A Well, I know that we would have been able to
13 do the suggestions that were being made to us
14 by different doctors on how to best treat
15 these different problems that I had, and I
16 know that we couldn't do it.

17 Q Can you tell me what suggestions were made
18 with respect to treatment of any specific
19 problems?

20 A Again, --

21 Q You've identified the wound clinic, and I
22 appreciate that. You don't have to mention
23 that again.

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1 Q Do you know what the cost was?

2 A No, I don't know.

3 Q Do you know whether it's covered by
4 insurance?

5 A No.

6 Q Have you received any compensation for the
7 injuries caused by the accident in June of
8 2002; I'm sorry; January of 2002?

9 A I don't know.

10 Q Are there any home improvement products that
11 you would like to undertake to facilitate
12 your getting around that you haven't yet
13 undertaken?

14 A Well, we certainly need to remodel the
15 kitchen which is not accessible to me.

16 Q And why is it that, to date, you haven't
17 remodeled the kitchen?

18 A No money.

19 Q Are there any other home improvements that,
20 besides the kitchen, that you haven't done to
21 date that you would like to do?

22 A I don't know.

23 Q When -- You did an addition in 2004; I think

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1 it was spring and summer of 2004; that
 2 involved an additional entrance. Can you
 3 describe that addition to me?
 4 **A Well, we had to knock out the wall of the**
 5 **dining room because I couldn't get through**
 6 **the door, and they had to restructure the**
 7 **house. Harold added on a separate bedroom**
 8 **for me so I wouldn't have to sleep in the**
 9 **living room anymore and a bathroom for**
 10 **someone in my condition, more of a family**
 11 **room than we had because the family room we**
 12 **had now was too small to accommodate the**
 13 **family. Harold put in a Chairmaster so that**
 14 **I could go from the first floor to the**
 15 **basement, and then he -- I wouldn't want to**
 16 **say refinish because it's not done yet, but**
 17 **he tried to set up an office so I would have**
 18 **someplace to work, and he also got me -- I**
 19 **don't know what it's called. What are those**
 20 **gym sets, that muscle you know, weights are**
 21 **involved? That's all I can think of.**
 22 **Q** Okay. What you just described, was that all
 23 of the home improvements you've done since

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1 MR. ZELLE: I don't know. I think we
 2 substituted a better copy on hers.
 3 MS. PINKHAM: She has hers.
 4 **A What number?**
 5 **Q** It's Interrogatory No. 9. It's near the
 6 bottom of Page 8.
 7 **A (Reviewing document)**
 8 **Q** And I just want you to look at the first
 9 phrase there. "I believe the family was
 10 willing to accept \$8 million to resolve the
 11 underlying matter --." And I will suggest
 12 that underlying matter means the case against
 13 the trucking company defendants. What was
 14 the source of your belief?
 15 **A It would have to be Harold.**
 16 **Q** Okay. Do you have any independent -- or did
 17 you have any independent thoughts about what
 18 the family would take to settle?
 19 **A I had the thought that there was no amount**
 20 **that they could give me that would ever**
 21 **settle this for me.**
 22 **Q** And, as you sit here today, do you have
 23 anything, in your mind, as to what it would

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1 the accident?
 2 **A Yes.**
 3 **Q** Okay. Do you know or can you tell me when it
 4 was that you in knocked out the -- I
 5 believe -- was it a dining room wall; you
 6 knocked out a wall to do the expansion, was
 7 that in the year, the first year after the
 8 accident?
 9 **A I don't remember. I have no memory of that.**
 10 **Q** Do you have any memory as to when any of the
 11 improvements you mentioned were done?
 12 **A No.**
 13 **Q** Okay. Is all of the personal finances for
 14 your family handled by Harold?
 15 **A Yes.**
 16 **Q** So apart from what he's told you, you don't
 17 have any information about your family's
 18 financial affairs?
 19 **A Correct.**
 20 **Q** Marcia, if you could look at that exhibit,
 21 the Interrogatory No. 9 that's on Page 8.
 22 MS. PINKHAM: Is this one missing a
 23 sentence, too?

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1 take to completely walk away from all
 2 litigation, a number?
 3 **A No.**
 4 **Q** Okay. Can you just bear with me for a
 5 minute? I want to make sure I didn't miss
 6 anything, but I think I'm finished.
 7 (Pause)
 8 **Q** In your antique business, this was something
 9 you did before the accident, is that right?
 10 **A Yes.**
 11 **Q** And now you've gotten back to that to some
 12 extent?
 13 **A To a very little extent.**
 14 **Q** Okay. Well, either before or after, when you
 15 sell or -- You buy and sell antiques, is that
 16 right?
 17 **A Yes.**
 18 **Q** When you buy and sell, do you negotiate over
 19 the price?
 20 **A Right now, I buy most things from eBay. So**
 21 **to the affect that it's an auction, --**
 22 **Q** That's negotiation. But I'm talking about --
 23 Let me ask you: Have you ever had a

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1 negotiation with a person either directly,
 2 face to face or telephone relative to the
 3 price of an antique that you were buying or
 4 selling?
 5 **A No.**
 6 **Q** That's all the questions I have, Marcia. I
 7 appreciate your time.
 8 MR. VARGA: Let's take a break.
 9 (Break takes place at 1:20 p.m.)
 10 (Back on the record at 1:39 p.m.)
 11 MS. PINKHAM: Back on the record.
 12 Mrs. Rhodes, before we broke, Mr.
 13 Zelle asked you whether you were aware of
 14 having received any compensation for the
 15 injuries that you suffered in January of
 16 2002. Would you like to restate your answer?
 17 THE WITNESS: Yes. I was aware that
 18 we did receive money sometime years -- at
 19 least a year later, but it wasn't the big
 20 portion of the money that we had received. I
 21 know about Zurich, and that money had kicked
 22 in.
 23 I thought you meant that month when

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1 **Q** And is it your understanding that you're
 2 still entitled to receive more money that was
 3 awarded to you by the verdict in September of
 4 2004?
 5 **A It's my understanding that once we received**
 6 **the money, that's it. We're done with the**
 7 **case.**
 8 **Q** When you say, "the money," what do you mean?
 9 **A Well, when I say -- Well, the insurance**
 10 **companies paid the amount that the jury said**
 11 **that they should pay, that that's the end of**
 12 **the case, that it's reached its conclusion.**
 13 **Q** Okay. And is it your understanding that
 14 you're still owed some money?
 15 MS. PINKHAM: I think she just
 16 answered that question.
 17 MR. PRITZKER: It was a little
 18 unclear, so answer it again.
 19 **A Well, it's my understanding that all the**
 20 **money the jury ordered us has been given to**
 21 **us.**
 22 **Q** Okay. And --
 23 **A When, I have no idea.**

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1 you asked me that question, January 2002, I
 2 thought you meant that month; and, no, nobody
 3 gave us anything that month.
 4 **Q** (Continued Direct Examination by Mr. Zelle)
 5 Okay. Let me just make sure I understand
 6 your clarification; and as you're sitting
 7 here right now, it's your understanding that
 8 you obtained a verdict from the jury,
 9 correct?
 10 **A Right.**
 11 **Q** And do you know how much that was?
 12 **A Nine million something.**
 13 **Q** Okay. And is it your understanding that
 14 there was -- that you're entitled to interest
 15 in addition to that number?
 16 **A It was my understanding that there was**
 17 **interest accrued because we hadn't received**
 18 **the money.**
 19 **Q** Okay. And, again, as you're sitting here
 20 today, you now remember that you have
 21 received some portion of the amount that was
 22 awarded to you?
 23 **A Yes. It just wasn't in January 2002.**

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1 **Q** Okay. And, again, it was my understanding
 2 from one of your prior answers that you said
 3 once you got all the money, you would be done
 4 litigating?
 5 **A That's what I thought.**
 6 **Q** So can you tell me why we're still
 7 litigating?
 8 **A Well, --**
 9 MS. PINKHAM: Just for the record, the
 10 answer to that prior question was, "If it had
 11 been paid."
 12 **A That's what I was going to say.**
 13 MS. PINKHAM: All right.
 14 **A I was going to say because it took them so**
 15 **long to pay, and the case was a no brainer.**
 16 **They just dragged it out and dragged it out**
 17 **for an inordinately long time keeping us**
 18 **involved and not being able to get past this**
 19 **case because it was taking so long to finish**
 20 **this case. In my opinion, it shouldn't have,**
 21 **you know, it should have been mediated, and**
 22 **that's it; the case was over because it was a**
 23 **simple case. At least that's what the judge**

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1 **who found Mr. Zalewski guilty for. So I**
2 **thought that it would resolve much more**
3 **quickly than it did.**

4 Q Did you have any discussions with Harold
5 during which he explained to you that the
6 reason the case wasn't settled was not a
7 question of Mr. Zalewski's responsibility or
8 the trucking company's responsibility, but it
9 was just a question or just a disagreement as
10 to how much?

11 A **No, it wasn't because of how much. It was**
12 **because it wasn't given. I mean, our**
13 **discussion was that this case is not closed**
14 **because it took so long for us to receive the**
15 **money, that it took an inordinately long**
16 **time -- given the kind of case it was, given,**
17 **you know, it went to trial, a jury made a**
18 **decision, and I thought that was it, and I**
19 **find out that that's not it, that they don't**
20 **want to pay it.**

21 Q But is it your understanding that now it has
22 been paid?

23 A Yes.



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1 mediation, and my question for you is: Is
2 that the point in time when the stress of the
3 trial and the knowledge that you and your
4 daughter and your husband would have to
5 testify before a jury began?

6 A **Well, the stress of the whole thing began on**
7 **January 9, 2002. Was there considerably more**
8 **stress after we found out that there wasn't**
9 **going to be a decision at mediation? Yes.**

10 Q The stress that you described, though, as
11 beginning on January 9, 2002 was stress and
12 emotional difficulties that you experienced
13 as a consequence of the accident and the
14 changes in your life, correct?

15 A **Well, yes, but there was also a concern that**
16 **I had as to, "How are we going to pay for all**
17 **this?" I mean, I knew enough that my husband**
18 **was now my primary caregiver which meant he**
19 **wasn't going to work, and I just didn't know**
20 **where we would get the money while we were**
21 **waiting to get the money and, you know,**
22 **mediation. I thought -- again, I thought**
23 **that mediation would be the end of it; and**

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1 Q Okay. And now you're claiming that you're
2 entitled to more money because it should have
3 been paid sooner?

4 A Yes.

5 Q I don't have anything else. Thanks.

6
7 CROSS EXAMINATION

8 Q (By Mr. Varga) Mrs. Rhodes, the
9 clarification that you just gave with your
10 answer regarding the compensation you
11 received was given just after a break that we
12 took, correct, a few minutes ago?

13 A I believe so, yes.

14 Q During that break, you consulted with your
15 counsel, correct?

16 A I talked to them, yes.

17 Q Okay. You had testified earlier, Mrs.
18 Rhodes, I believe, that the fact that the
19 case, the underlying case against Mr.
20 Zalewski and Building Materials Corp. of
21 America and the other defendants, the fact
22 that that case was going to go to trial did
23 not occur to you until the time of the



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1 **when it wasn't, it was that much more**
2 **stressful, you know, plus there was anger.**

3 Q Okay. You said on a couple of occasions, I
4 think, that the stress was that much more --
5 I don't want to use the term, "severe," but
6 that there was a greater amount of stress
7 after the mediation because of the fact that
8 you realized then you were going to have to
9 go through a trial, correct?

10 A Yes.

11 Q Okay. Mrs. Rhodes, were you aware, in March
12 of 2004, that Zurich American Insurance
13 Company, my client, had made an offer to the
14 plaintiffs?

15 A No.

16 Q You had no knowledge of that whatsoever at
17 that time?

18 A **No, I don't remember. I mean, I couldn't --**
19 **I don't remember because I don't remember the**
20 **dates.**

21 Q That's okay. Let me do it in terms of events
22 then. Let's take the mediation which I think
23 we've agreed occurred in August of 2004,

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1 about a month before the trial. Were you
 2 aware prior -- or were you aware of the fact
 3 that, prior to the mediation, my client had
 4 made an offer to the plaintiffs for -- as
 5 compensation for injuries and losses that
 6 they claimed in the underlying case against
 7 Mr. Zalewski and the other defendants?
 8 **A No.**
 9 **Q** Okay. So you didn't know, therefore, that in
 10 March 2004, Zurich had offered \$2 million
 11 which compensated all of its policy proceeds?
 12 **A Yes. I knew that.**
 13 **Q** You did know that?
 14 **A I did know that Zurich was willing to pay up**
 15 **their portion of the, you know, the liability**
 16 **to them but nothing happened.**
 17 **Q** When did you become aware of that fact that
 18 Zurich was willing to say its portion of the
 19 liability as you say?
 20 **A Sometime before the trial when my husband was**
 21 **explaining to me why we were going to trial.**
 22 **Q** Okay. All right. And not before that point
 23 in time?

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1 **A I really can't remember.**
 2 **Q** Okay. Were you asked, at any point, whether
 3 to accept an offer of \$2 million to resolve
 4 the entire case and give up your rights to
 5 proceed further for additional money against
 6 the defendants?
 7 **A I left all that to my husband and my lawyers.**
 8 **Q** Okay. Are you aware that that \$2 million
 9 offer that was extended to the plaintiffs
 10 that constituted Zurich's policy limits of
 11 \$2 million was rejected in March of 2004?
 12 **A No.**
 13 **Q** Do you -- As you sit here today, if you will
 14 accept my representation that it was, in
 15 fact, rejected, do you agree that it should
 16 have been rejected?
 17 MR. PRITZKER: Objection. I think
 18 that's a very unfair question unless you put
 19 in the fact that it was for a release of all
 20 the defendants.
 21 **Q** Did you understand my question?
 22 **A Say it again.**
 23 MR. PRITZKER: I'm putting in an

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1 objection. You can rephrase the question.
 2 MR. VARGA: I understand.
 3 MR. PRITZKER: I think it would be
 4 appropriate to do so.
 5 MR. VARGA: I understand your
 6 objection.
 7 MR. PRITZKER: Do you want to continue
 8 to mislead her, Mr. Varga?
 9 MR. VARGA: I disagree that it's
 10 misleading, Mr. Pritzker. I'm not attempting
 11 to mislead anyone.
 12 **Q** My question was, again: Did you know or -- I
 13 think we've established that you did not know
 14 that that offer of \$2 million had been
 15 rejected in March of 2004?
 16 **A I thought the \$2 million was what they**
 17 **offered at mediation.**
 18 **Q** You thought that the \$2 million was what
 19 they, being Zurich, offered at mediation?
 20 **A No, that the crowd of 20 or 30 people had**
 21 **offered \$2 million which was ludicrous.**
 22 **Q** Okay. So your understanding, as a result of
 23 the mediation process or during the mediation

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1 process, was that the total amount that had
 2 been offered to plaintiffs in the mediation
 3 to settle the entire case and give up their
 4 rights, your rights against the defendants in
 5 the underlying case was \$2 million?
 6 **A Yeah. I believe that that was what was**
 7 **offered from everybody.**
 8 **Q** Okay. During the mediation?
 9 **A Yeah.**
 10 **Q** Okay. All right. Mrs. Rhodes, was there
 11 ever a point, prior to the trial, when the
 12 trial --
 13 **A Excuse me. Let me say something.**
 14 **Q** Sure.
 15 **A It wasn't -- When you say, "during the**
 16 **mediation," my knowledge of what they finally**
 17 **offered didn't occur until my husband got**
 18 **home.**
 19 **Q** From the mediation?
 20 **A From the mediation.**
 21 **Q** I see.
 22 **A I mean, I didn't know about anything that was**
 23 **going on during the mediation.**

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1 Q All right. So there were no phone calls back
 2 and forth between you and Harold during the
 3 mediation?
 4 A **The only phone call that he had was that he**
 5 **thought that we would be able to settle this**
 6 **in mediation.**
 7 Q I see. All right. Was there ever a point,
 8 to your knowledge, prior to the trial in the
 9 underlying case against Mr. Zalewski and the
 10 other defendants when you, personally, were
 11 willing to accept a payment of \$2 million or
 12 less in exchange -- Strike that.
 13 Was there ever a point, prior to the
 14 trial in the underlying action against Mr.
 15 Zalewski and the other defendants, in which
 16 you and your family were willing to accept
 17 the payment, total payment of \$2 million or
 18 less in exchange for giving up your rights to
 19 proceed further against those defendants for
 20 more money?
 21 A **I understood, after the mediation, that they**
 22 **had put an offer of \$2 million on the table**
 23 **and that that wouldn't even, according to my**

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1 **been settled when the jury verdict came in,**
 2 **and it should have been paid immediately and**
 3 **that it was still dragging on and on and on.**
 4 Q All right. And I'm sorry. Did you finish
 5 your answer?
 6 A **No.**
 7 Q I didn't mean to interrupt you. I apologize.
 8 Is it fair then for me to assume that Mr.
 9 Rhodes told you all of that after the trial
 10 in the underlying case?
 11 A **Yes.**
 12 Q Is there any particular conduct of Zurich
 13 American Insurance Company, Mrs. Rhodes, to
 14 which you attribute the injuries and the
 15 damages that you're claiming in this case;
 16 that is this case against the insurance
 17 companies?
 18 A **Well, I was hoping that we would receive**
 19 **enough money that we could start -- seriously**
 20 **start rehabilitation and allow us back to, at**
 21 **least, come to a point where we weren't**
 22 **worrying where the money was going to come**
 23 **from; but beyond that, --**

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1 **husband, and I'm sure he's right, that**
 2 **wouldn't even begin to cover the medical**
 3 **costs.**
 4 Q I see. So in answer to my question then,
 5 your answer would be, no, there was never
 6 such a time when you would have considered to
 7 accept that?
 8 A **Not during the mediation.**
 9 Q Okay. How about prior to the mediation?
 10 A **No. I left the decision to Harold and the**
 11 **lawyers.**
 12 Q All right. You had said earlier that, at
 13 some point, Mr. Rhodes told you that AIG and
 14 National Union did not want to settle the
 15 case; do you remember that testimony --
 16 A **No.**
 17 Q -- earlier today?
 18 A **Yes.**
 19 Q You remember?
 20 A **I don't remember the testimony, but I do**
 21 **remember that I was told that they were**
 22 **taking an inordinately long amount of time to**
 23 **settle the case and that it should have just**

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1 Q And I understand your answer. I think my
 2 question was a little different. Is there
 3 particular conduct on the part of my client,
 4 Zurich American Insurance Company, to which
 5 you attribute that injury that you just
 6 described?
 7 A **Yeah. They didn't pay right away.**
 8 Q Is it your belief, Mrs. Rhodes, today that my
 9 client had or should have paid the plaintiffs
 10 more money, prior to trial than \$2 million to
 11 settle the claim in the case, --
 12 A **Do I think they should have offered more than**
 13 **\$2 million?**
 14 Q If I can finish the question. I'm sorry. I
 15 don't mean to cut you off. But my question
 16 is: Do you have belief that prior to the
 17 trial that my client, Zurich American
 18 Insurance Company, should have paid you and
 19 your family more than \$2 million, its policy
 20 limit to settle the claims that you had made
 21 against Mr. Zalewski, GAF and the other
 22 defendants?
 23 A **Well, I didn't know a policy limit and who**

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1 had a policy limit and who was the umbrella
 2 company. I just know that my husband said
 3 that they offered two million something on
 4 the table, and he was very disappointed
 5 because he thought it would be settled with
 6 all those people there discussing the case,
 7 and he was very disappointed that they
 8 didn't.

9 Q Is there a particular point in time when you
 10 believe that Zurich should have offered you
 11 its policy limits of \$2 million?

12 A The day after the jury ordered a verdict.

13 Q I don't mean to confuse you, and I hope I
 14 didn't there, but my question is: Was there
 15 a particular point in time when you believe
 16 Zurich should have offered to pay you the
 17 \$2 million; not actually paid; but offered to
 18 pay you its \$2 million policy limits?

19 A I think they have should have offered before
 20 the trial.

21 Q Okay. Do you have a belief or a view as to
 22 when that should have occurred?

23 A You know, I think of this as a no brainer,

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1 A And the physical.

2 Q Yes. I want to segregate that for a moment.

3 A Well, it's hard to.

4 Q I understand. I understand. But your
 5 request or your case to the jury included a
 6 request for compensation for all of the
 7 emotional difficulties and anguish and
 8 anxiety that you experienced as a consequence
 9 of the accident and your -- the change in
 10 your life as a consequence of the accident,
 11 correct?

12 A Are you meaning to say that we were asking
 13 the jury to come up with a number that would
 14 compensate us for all that we had already
 15 been through?

16 Q That would include compensation for all that
 17 you had been through in terms of emotional
 18 distress and emotional anguish, anxiety and
 19 so forth.

20 A I would say that worrying about the whole
 21 thing caused stress, anxiety. Most of it was
 22 on my husband. It was my job to concentrate
 23 on dealing with this and getting better. He

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1 and I think that on January 10, 2002, they
 2 should have said, "Here's our limit. Here's
 3 what we can give you." And that would have
 4 helped incredibly.

5 Q In the underlying case, again, going back to
 6 the trial and the underlying case against Mr.
 7 Zalewski and GAF and the other defendants,
 8 you, personally, sought compensation from
 9 those defendants for all of the emotional
 10 distress and the anxiety and the anguish that
 11 you experienced as a consequence of the
 12 accident itself and the way that your life
 13 had changed as a consequence of the accident,
 14 correct?

15 A That I felt that all of it would be covered
 16 by \$2 million?

17 Q No, no, no. I'm sorry. I'm sorry. Let me
 18 ask the question again.

19 When you proceeded to trial in the
 20 underlying case, you sought -- am I correct
 21 that you sought compensation for all of the
 22 emotional distress and anxiety and mental
 23 suffering that you had experience?

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1 shielded me from just about everything that
 2 he could.

3 Q At the trial when you testified, did you --
 4 do you recall having testified about the
 5 emotional distress that you experienced as a
 6 consequence of seeing how the accident had
 7 impacted Harold?

8 A No, I don't remember.

9 Q Okay. I had asked you earlier whether there
 10 was particular conduct of Zurich American
 11 Insurance Company to which you attributed the
 12 damages you claim in this case, and you had
 13 said that they did not pay right away or
 14 words to that effect. Was there any other
 15 conduct that you would identify as cause of
 16 the damages that you claim in this lawsuit as
 17 against Zurich apart from the not paying
 18 right away in your words?

19 A I couldn't say.

20 Q In your answers to Zurich's interrogatories
 21 which you were served back in June of this
 22 year, there was a -- there was a question
 23 that asked you to describe the damages that

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1 you had sustained in this case, that you're
2 claiming in this case, and I want to just
3 quote from that for a moment, and you stated
4 in your answer that: I was damaged by
5 Zurich's failure to make a reasonable
6 settlement offer because the delay in
7 reaching an end point in the underlying
8 action made you more dependent on Mr. Rhodes
9 and caused some other problems; just to
10 paraphrase.

11 Do you have a belief as to how much
12 time or as to the length of the delay in the
13 resolution of the underlying case of Mr.
14 Zalewski and the other defendants was
15 attributable to Zurich?

16 **A I don't know.**

17 **Q** Is it your belief, Mrs. Rhodes, that had
18 Zurich made an offer of its policy limits of
19 \$2 million to you and your family, prior to
20 the time it did in March 2004, that you would
21 not have had to go to trial in the underlying
22 case against Mr. Zalewski and the other
23 defendants.

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1 **A I was looking for everything to be paid.**

2 **Q** Okay. I just want to make sure that you have
3 completed your answer. That's all.

4 All right. Just give me a second to
5 look through my notes, and I think I may be
6 close to finishing.

7 Mrs. Rhodes, just one thing I have a
8 follow-up on.

9 I think, earlier, you had testified
10 that before the mediation took place in
11 August of 2004, you were not physically ready
12 to undertake rehabilitation. My question is:
13 Can you -- and I don't want to intrude into
14 the specifics of all your conditions that I
15 know that you had to sustain, but was it
16 something, in particular, that made you,
17 physically, unable to proceed with
18 rehabilitation prior to that time?

19 **A Well, again, there was things we didn't know**
20 **that we should have known that from the**
21 **moment I -- actually, before the moment I**
22 **left the hospital, but the moment I left the**
23 **hospital, should have been available to us**

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1 **that weren't.**

2 **Q** Okay. And to recap, that's a case manager is
3 one of those things?

4 **A That's one of those things, yes.**

5 **Q** And rehabilitation in a facility like the
6 Craig Institute is another?

7 **A Yes.**

8 **Q** And was the third one home and health care,
9 personal care attendant?

10 **A Right. Yes. Having someone there, you know,**
11 **so the burden did not fall on Harold, we had**
12 **a professional coming in who knew what they**
13 **were doing to take care of me on a daily**
14 **basis.**

15 **Q** Okay. And just so I can understand. So what
16 you're saying is that had you had the funds
17 from the insurance companies to pay for those
18 three professionals or treatments that you
19 would have been in a better position and more
20 physically capable of beginning a
21 rehabilitation regimen?

22 **A Well, if you're talking about the first two**
23 **million, in my mind, that just brought us to**

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1 **where we were, financially, before the**
2 **accident assuming that Harold could go back**
3 **to work and knowing that Harold -- we didn't**
4 **get the money when I thought we were going to**
5 **get the money required Harold to continue on**
6 **as my care provider, certainly, had a**
7 **negative affect on our relationship as**
8 **husband and wife as opposed to, you know,**
9 **patient and caregiver. That was -- It**
10 **doesn't sound like a lot, but that is a lot;**
11 **and, you know, again, the -- I have to use**
12 **the word, "anger," but I just don't**
13 **understand why once the jury gave us the**
14 **number why we didn't just receive that number**
15 **from whichever insurance companies were the**
16 **source.**

17 **Q** And we may have touched on this earlier at
18 the beginning of this session, but did you
19 become aware, in December of 2004, that in
20 that month, Zurich American paid to the
21 plaintiffs \$2.3 million, approximately?

22 **A I don't remember when.**

23 **Q** You don't remember when you learned of it?

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1 A Yes. I have really no memory of it when I
2 learned about it.

3 Q I see. Mrs. Rhodes, I don't think I have any
4 further questions at this time.

5 MS. PINKHAM: I have nothing.

6 MR. ZELLE: Thank you.

7 (Whereupon the deposition of Marcia

8 Rhodes concluded at 2:11 p.m.)
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C E R T I F I C A T E

I, Simonne J. Elwood, R.P.R. and a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 24th day of August 2006, personally appeared before me Marcia Rhodes, at the Radisson Hotel, 11 Beaver Street, Milford, Massachusetts, in the aforecaptioned cause pending in the Suffolk County Superior Court, Commonwealth of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to computer transcription under my supervision. I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this ____ day of _____, 2006.

Simonne J. Elwood
REGISTERED PROFESSIONAL REPORTER

My Commission Expires: February 14, 2008

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C E R T I F I C A T E

I, MARCIA RHODES, do hereby certify that I have read the foregoing transcript of my testimony and further certify that said transcript is a true and accurate record of said testimony and signed under the pains and penalties of perjury.

Dated this ____ day of _____
2006.

MARCIA RHODES

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E R R A T A S H E E T

Date of Deposition: August 24, 2006

Case Name: Marcia Rhodes, et al vs. AIG Domestic Claims, Inc., et al
C.A. No. 05-1360-BLS2 (Gants, J.)

Deponent's Name: Marcia Rhodes

I, the undersigned, do hereby certify that I have read the foregoing deposition transcript and that to the best of my knowledge, said deposition transcript is true and accurate (with the exceptions of the following changes listed below):

MARCIA RHODES
Dated _____

- Page No. __ Line No. __ Correction _____
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