

**In The Matter Of:**

*Hoiby vs.*

*Fleck*

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*Michelle R. Hoiby*

*August 22, 2014*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 IN AND FOR THE COUNTY OF MARICOPA

MICHELLE HOIBY, a married woman,  
 Plaintiff,

vs.

CHRISTOPHER GEORGE FLECK,  
 and JANE DOE FLECK, husband  
 and wife; JOHN DOES 1-5;  
 JANE DOES 1-5; and WHITE  
 PARTNERSHIPS 1-5,  
 Defendants.

No. CV2014-000797

DEPOSITION OF MICHELLE R. HOIBY

August 22, 2014  
 10:00 a.m.  
 Phoenix, Arizona

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Prepared by:  
 Marianne S. Burton, RFR  
 Arizona Certified  
 Reporter No. 50519

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1 DEPOSITION OF MICHELLE R. HOIBY

2

3 The deposition of MICHELLE R. HOIBY was

4 taken on August 22, 2014, commencing at 10:00 a.m., at

5 the Law Offices of Collin T. Welch, 2155 West Pinnacle

6 Peak Road, Suite 220, Phoenix, Arizona, before

7 Marianne S. Burton, a Certified Reporter, Certificate No.

8 50519, for the State of Arizona.

9

10 APPEARANCES:

11 For the Plaintiff:

12 DAVIS MILES McGUIRE GARDNER, PLLC  
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13

14

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10 (No exhibits marked.)

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1 MICHELLE HOIBY,

2 called as a witness herein, having been first duly sworn,

3 was examined and testified as follows:

4

5 EXAMINATION

6 BY MR. CARROW:

7 Q. Morning, ma'am.

8 Q. Could you state your full name, please.

9 A. Michelle Rae Hoiby.

10 Q. Have you ever gone by any other names?

11 A. Yes.

12 Q. What names are those?

13 A. Michelle Rae Pearce.

14 Q. Is that P-i- --

15 A. P-e-a-r-c-e.

16 Q. And Michelle Rae James.

17 Q. We're here today to talk about an accident that

18 happened on October 9th of 2012.

19 Q. Do you remember that date?

20 A. Yes.

21 Q. Does that sound right to you?

22 A. Yes.

23 Q. Is this your first deposition?

24 A. Yes.

25 Q. Okay. I'm sure your attorney's gone over

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1 what's going to happen today, but just so we have a clean  
2 record, I'm going to ask that we both follow some rules.  
3 All right?  
4 A. Okay.  
5 Q. First off, you probably know where I'm going  
6 with a question. If you could wait for me to finish  
7 asking before you answer, that would be great. Okay?  
8 A. Okay.  
9 Q. Also, if I ask a question and it doesn't make  
10 sense to you, just let me know. I'll rephrase.  
11 Sometimes my mouth is faster than my brain.  
12 A. Okay.  
13 Q. If you could answer in English and audibly --  
14 so if you go "uh-huh," "yeah," somebody's going to  
15 correct you. Nobody's picking on you. We just need to  
16 make a clear record. All right?  
17 A. Okay.  
18 Q. But if a question is pending, I just ask that  
19 you answer it first. Okay?  
20 A. Sure.  
21 Q. Are you currently married or single?  
22 A. Married.  
23 Q. What's your husband's name?  
24 A. Justin Hoiby.  
25 Q. How long have you two been married?

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1 A. Seven and a half years.  
2 Q. Do you have any children?  
3 A. Yes.  
4 Q. How many?  
5 A. One.  
6 Q. And is it a son or daughter?  
7 A. Daughter.  
8 Q. What's her name?  
9 A. Alexis.  
10 Q. How old is she?  
11 A. She is five and a half.  
12 Q. Are you currently employed?  
13 A. No.  
14 Q. When's the last time you worked?  
15 A. February of this year, 2014.  
16 Q. And where were you working?  
17 A. Mesa Mechanical.  
18 Q. What did you do there?  
19 A. I was a sales coordinator.  
20 Q. What does that job entail?  
21 A. Scheduling the salesperson for H-V-A-C or HVAC  
22 for new clients to check out their existing units and  
23 possibly selling them new units, and keeping up or  
24 visiting the Lowe's stores that they have programs with  
25 to offer promotions.

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1 Q. Is that a job like administrative, kind of like  
2 office --  
3 A. Yes.  
4 Q. How long had you worked there?  
5 A. It was a temporary job. I started in -- my  
6 goodness -- November, I believe.  
7 Q. So about three months?  
8 A. Yes.  
9 Q. And before that, where did you work?  
10 A. The Arizona Grand Resort and Spa.  
11 Q. What did you do there?  
12 A. I was a senior administrative assistant.  
13 Q. And how long did you work there?  
14 A. Three years.  
15 Q. And why did you leave?  
16 A. There were some issues with my supervisor.  
17 Q. Are you making a wage loss claim?  
18 A. No.  
19 Q. At the time of this accident, what kind of  
20 vehicle were you in?  
21 A. A 2006 Kia Sorento.  
22 Q. Is that a sedan?  
23 A. SUV.  
24 Q. Was anyone in the car with you?  
25 A. No.

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1 Q. Where were you headed?  
2 A. Home.  
3 Q. And where did you live at the time?  
4 A. The same residence I'm at now. It's 2808 East  
5 Baars Court.  
6 Q. Could you spell that for me?  
7 A. B-a-a-r-s, in Gilbert.  
8 Q. And how long have you lived there?  
9 A. Since 2008.  
10 Q. Where were you coming from?  
11 A. My office.  
12 Q. Was that at the Grand Resort?  
13 A. Yes. Sorry.  
14 Q. Where is the Grand Resort?  
15 A. It is on Baseline and the 10.  
16 Q. After you got home that night, did you have any  
17 plans?  
18 A. I did. I had plans to run errands. We were  
19 leaving for a trip the next day.  
20 Q. Where was the trip?  
21 A. Laguna, California.  
22 Q. And how long were you going to be gone?  
23 A. A week.  
24 Q. And where were you going to stay?  
25 A. The Inn at Laguna Beach.

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1 Q. What road were you on when this accident  
2 happened?  
3 A. The San Tan and the 202 freeway.  
4 Q. What time of day was the accident?  
5 A. Approximately 5 o'clock.  
6 Q. Could you describe the traffic in that area?  
7 A. Congested.  
8 Q. Was it rush hour traffic?  
9 A. Yes.  
10 Q. Was there any sort of road construction at that  
11 stretch where the accident happened?  
12 A. No.  
13 Q. Can you -- could you --  
14 A. Can I add something?  
15 Q. Sure.  
16 A. The lanes narrowed from I believe -- I want to  
17 say four to three. I could be wrong. It could have been  
18 five to four.  
19 Q. Do you recall what lane you were in?  
20 A. I was in the No. 1, next to the fast lane --  
21 I'm sorry, next to the HOV.  
22 Q. Where did the road merge?  
23 A. I believe it was around Gilbert Road.  
24 Q. Can you tell me how far away you were from  
25 there?

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1 was going at impact?  
2 A. I would say 45.  
3 Q. Can you tell me how long you observed the car  
4 before it struck you?  
5 A. A split second.  
6 Q. Can you tell me how long you were stopped when  
7 the accident happened?  
8 A. Probably five seconds.  
9 Q. Were you wearing your seat belt?  
10 A. Yes.  
11 Q. And is that a lap and shoulder harness?  
12 A. Yes.  
13 Q. Can you tell me, did your airbags deploy?  
14 A. They did not.  
15 Q. Did any part of your body strike anything  
16 within the car?  
17 A. Yes.  
18 Q. What?  
19 A. My right knee struck the -- I don't know if  
20 it's the under dash. And then my left wrist also hit  
21 the -- around the steering wheel -- or actually moved  
22 from the steering wheel.  
23 Q. Did you strike your head on anything?  
24 A. No. But the upper sunroof -- I'm not sure what  
25 it's called -- it's like the bar, the flap, came off and

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1 A. From where it merges?  
2 Q. From where the accident happened to where it  
3 began to merge.  
4 A. It was right before the merge. I can't tell  
5 you how many feet.  
6 Q. Couple hundred feet?  
7 A. Maybe a couple hundred feet.  
8 Q. Can you describe the collision for me, please?  
9 A. I was at a stop. The vehicle behind me -- I  
10 glanced in my rearview mirror, and he was going -- I  
11 don't know the approximate speed, but was not stopping.  
12 And then I was rear-ended from behind at a very high  
13 impact, which pushed my car into the right lane next to  
14 me in a bit of a swerve. And my vehicle has a kill  
15 switch on it, so it died. Of course, I didn't know it  
16 had a switch on it, so I couldn't move the vehicle. And  
17 that's how it ended.  
18 Q. When you got struck, did you hit any other  
19 objects?  
20 A. I did not.  
21 Q. You said you noticed in your rearview mirror  
22 that he wasn't stopping.  
23 Q. Could you see if he was slowing down?  
24 A. I did not see him slowing down.  
25 Q. Could you give me an estimate of the speed he

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1 hit me in the head and then flew through the car.  
2 Q. When you say the upper sunroof, are you talking  
3 about like the door or the sliding piece of material?  
4 A. No. It's the little flap for the wind, I  
5 believe it is. It kind of goes up and down slightly when  
6 you open the sunroof.  
7 Q. And that hit you in the head?  
8 A. Yes. A metal piece.  
9 Q. Did you lose consciousness?  
10 A. No.  
11 Q. At the time of the collision, did you have a  
12 cell phone?  
13 A. Yes.  
14 Q. Were you on your cell phone?  
15 A. No.  
16 Q. Can you tell me when the last time you had used  
17 your cell phone was before the accident?  
18 A. At the resort, at my job.  
19 Q. Can you tell me like how long before the  
20 accident that was?  
21 A. 30 minutes, approximately.  
22 Q. After the accident, do you know when the first  
23 time you had used your cell phone was?  
24 A. Probably within five minutes.  
25 Q. What's the first thing you did after the

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1 collision?  
2 A. Well, I sat there for a few minutes, not -- in  
3 shock, I would say. And then my purse had fallen off the  
4 seat, so I was reaching for my cell phone so that I could  
5 call 911. And then I got on the phone and called 911.  
6 Q. Did anyone come to talk to you before, like EMT  
7 or --  
8 A. Well, the driver of the car behind me, because  
9 I was in the second lane, had gotten up next to me and  
10 rolled down his window and asked if I was okay. My  
11 response was, "I think so." And I think that was it. I  
12 don't remember much of the conversation or if there was a  
13 long conversation. Because I know he had to get out of  
14 the way and people were driving by yelling at me.  
15 Q. Any witnesses or bystanders stop by to see if  
16 you were okay?  
17 A. No.  
18 Q. Did the police eventually show up?  
19 A. Yes.  
20 I had also called my husband right after I  
21 got off the phone with the police.  
22 Q. Did your husband come to the scene?  
23 A. Yes.  
24 Q. Do you remember who got there first?  
25 A. The police.

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1 Q. Did any ambulance or fire rescue show?  
2 A. No.  
3 Q. When the police show, what happens?  
4 A. He came up to my car and asked if I needed an  
5 ambulance, and my response was no. Or it might have been  
6 I don't think so. I can't remember.  
7 And so he explained that he was going to  
8 push my vehicle with his -- he was going to clear the  
9 traffic and then push my vehicle to the side of the road,  
10 which we did.  
11 Q. Did he just use his car for that?  
12 A. Yes.  
13 Q. Before the officer moved your car, did you take  
14 any pictures?  
15 A. No, not before.  
16 Q. After you got pushed to the side of the road --  
17 or strike that.  
18 Which direction were you pushed?  
19 A. To the right.  
20 Q. Okay. So like, what, to grass possibly or --  
21 A. To the -- I guess the gravel area or the side,  
22 shoulder of the highway.  
23 Q. Did you take pictures at that point?  
24 A. After I got out, yes.  
25 Actually, I can't remember if it was myself

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1 or my husband that took the pictures. I think it was my  
2 husband.  
3 Q. Did you ever get out of your car before the  
4 officer moved the car?  
5 A. I did not.  
6 Q. Were you feeling any pain at the scene of the  
7 accident?  
8 A. I started to feel pain in my left wrist and my  
9 right knee.  
10 Q. Anywhere else?  
11 A. My lower back and my head.  
12 Q. Where in your head were you feeling the pain?  
13 A. Well, right around the neck area.  
14 Q. And how about your lower back?  
15 A. Well, lower back.  
16 Q. That was a bad question.  
17 A. Sorry.  
18 Q. Can you describe the lower back pain?  
19 A. It was just a pulsing pain.  
20 Q. Did it run up or run down anywhere else?  
21 A. No.  
22 Q. Do you know how long you were at the scene of  
23 the accident?  
24 A. I don't remember.  
25 Q. When you initially got hit, do you remember did

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1 your foot leave the brake?  
2 A. I don't remember.  
3 Q. Do you remember if, by any chance after you got  
4 hit, your foot hit the gas?  
5 A. I don't believe so. I believe I may have tried  
6 to push the brake harder than I could or harder than  
7 normal.  
8 Q. Did you notice any sort of tire marks from  
9 where you were struck?  
10 A. Yes. Well, I didn't notice. The officer  
11 noticed.  
12 Q. Did he tell you what he saw?  
13 A. He told me after, when we had gotten to the  
14 side. And based on that, he, I guess, had said that he  
15 could see that it wasn't -- that I wasn't at fault. I  
16 don't know how he determined that.  
17 Q. Did you observe the tire marks?  
18 A. No.  
19 Q. Was your car drivable after it was pushed to  
20 the side of the road?  
21 A. No.  
22 Q. Do you know how the kill switch in your car  
23 works?  
24 A. I don't.  
25 Q. Do you know if that car -- or do you still have

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1 that car now?  
 2 A. Yes.  
 3 Q. Did your husband take you from the accident?  
 4 A. Yes. My husband and my daughter.  
 5 Q. Can you tell me the first place you went after  
 6 the accident?  
 7 A. Home.  
 8 Q. And what did you do when you got home?  
 9 A. I don't remember.  
 10 Q. Did you end up running errands that night?  
 11 A. No.  
 12 Q. Do you remember the first time you got  
 13 treatment?  
 14 A. The next morning.  
 15 Q. Where did you go?  
 16 A. It was an urgent care, and I don't remember off  
 17 the top of my head the name of it.  
 18 Q. Does East Valley Urgent Care sound right?  
 19 A. Yeah. I can tell you it was off of Higley and  
 20 the 202.  
 21 Q. Was that your first time going there?  
 22 A. No.  
 23 Q. When you went to that urgent care that first  
 24 time, do you remember what your complaints were?  
 25 A. Lower back.

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1 medicine doctor, Dr. Hope.  
 2 Q. Why did you go see Dr. Hope?  
 3 A. Because I didn't have a primary doctor, and she  
 4 was recommended to me.  
 5 Q. Who recommended her?  
 6 A. Leah Thompson.  
 7 Q. The actress?  
 8 A. I think that's her last name. She's just an  
 9 acquaintance. But no, not the actress.  
 10 Q. Did this accident happen on a Friday, do you  
 11 remember?  
 12 A. Yes.  
 13 Q. And you were supposed to leave for California  
 14 Saturday?  
 15 A. Saturday morning, yes.  
 16 Q. When you saw Dr. Hope, did Dr. Hope -- do you  
 17 remember the treatment you received?  
 18 A. I remember -- I don't remember exactly right  
 19 after. I know she had examined me. I think she had  
 20 given me some other muscle relaxers and then wanted to  
 21 see how I felt in a few days. And then we did a -- the  
 22 headaches were getting worse, and then she had sent me to  
 23 do a CAT scan, I believe.  
 24 Q. Do you know how many times you ended up seeing  
 25 Dr. Hope for this accident?

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1 MR. FINE: Form.  
 2 THE WITNESS: Lower back pain; head --  
 3 headaches -- wrist, and knee pain.  
 4 Q. BY MR. CARROW: Did you notice if the pain you  
 5 felt the day after the accident was different than the  
 6 pain you felt the day of the accident?  
 7 A. Yes.  
 8 Q. Was it worse?  
 9 A. It was worse.  
 10 Q. Do you remember what the doctors at urgent care  
 11 recommended?  
 12 A. They gave me muscle relaxers and treated it as  
 13 a slight concussion. Told me to rest and then follow-up  
 14 with a doctor.  
 15 Q. Do you know why they told you you had a slight  
 16 concussion?  
 17 A. They didn't say I had a slight concussion.  
 18 They wanted to treat it that way just because of the  
 19 whiplash.  
 20 Q. Did they recommend you go anywhere else?  
 21 A. Just to see my normal doctor, my primary  
 22 doctor.  
 23 Q. Who was your primary care doctor back then?  
 24 A. I didn't have -- well -- I didn't have a  
 25 primary care doctor. I ended up going to an internal

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1 A. I don't recall.  
 2 Q. Do you remember the name of her facility or his  
 3 facility?  
 4 A. I don't see her anymore. I don't remember off  
 5 the top of my head.  
 6 Q. Do you remember the name of the facility  
 7 Dr. Hope practiced out of?  
 8 A. Higley Medical Center maybe.  
 9 Q. Did you ever go there before this accident?  
 10 A. Not that I remember. I don't believe so.  
 11 Q. Going back to the urgent care, you said you had  
 12 been there before.  
 13 A. Yes.  
 14 Q. Do you recall what you treated for?  
 15 A. I believe it was food poisoning.  
 16 Q. Anything else?  
 17 A. Not for me, no.  
 18 Q. Did you end up going to California?  
 19 A. Yes.  
 20 Q. When did you go?  
 21 A. We left the next morning.  
 22 Q. Did you all leave as a family?  
 23 A. We went with another family who ended up  
 24 driving. Well, they were going to drive anyway. So our  
 25 family went with their family.

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1 Q. Did you stay an extra day for -- or strike  
2 that.  
3 You lost Saturday, it sounds like.  
4 A. Well, we had planned on leaving Saturday.  
5 Q. Okay. Let me back up.  
6 You ended up leaving Sunday, correct?  
7 A. No. We left Saturday.  
8 Q. You did leave Saturday?  
9 A. Yes.  
10 Q. Just later after your appointment?  
11 A. Yes.  
12 Q. Did you have any activities you were going to  
13 do while in Laguna?  
14 A. Yes.  
15 Q. What were you going to do?  
16 A. Well, visit with friends, shop, go to  
17 restaurants. We were on the beach, so a lot of beach  
18 activity. That's probably about it.  
19 Q. But, I mean, did you have anything like on  
20 Wednesday you were definitely doing this or --  
21 A. No.  
22 Q. Was there any activities that you could not do  
23 that you had planned on doing in Laguna?  
24 A. No.  
25 Q. How far is Laguna? Like a five, six-hour drive

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1 scan of your brain or your head?  
2 A. I don't think so.  
3 Q. Once you get back from vacation, do you know  
4 the next place you sought treatment was?  
5 A. I went to Dr. Hope. That was actually the  
6 first time I had been to her after the accident.  
7 Q. Okay. Eventually it looks like you went to  
8 Continuum Healthcare.  
9 A. Yes.  
10 Q. Do you know when that was in relation to the  
11 accident?  
12 A. Continuum Healthcare, is that the physical  
13 therapy?  
14 Q. I believe so.  
15 A. Okay. I didn't know the name of it.  
16 I don't remember. I want to say a week.  
17 Q. Had you ever been to Continuum Healthcare  
18 before the accident?  
19 A. No.  
20 Q. Had you ever been to any sort of physical  
21 therapy before this accident?  
22 A. Years before.  
23 Q. What was that for?  
24 A. Well, I had right knee -- or left knee surgery.  
25 Q. What happened to your left knee?

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1 from Phoenix?  
2 A. I would say approximately six to seven hours  
3 depending on traffic and stopping.  
4 Q. What kind of car did you take?  
5 A. They drove -- the other family drove a Ford  
6 Expedition.  
7 Q. How was the drive for you?  
8 A. It was difficult to sit. I, of course, took  
9 the muscle relaxers so that helped.  
10 Q. Did you drive any?  
11 A. No.  
12 Q. Were you going to drive any to begin with?  
13 A. No.  
14 Q. Do you recall when you got your CT scan?  
15 A. I don't recall.  
16 Q. Was it like more than two weeks after the  
17 accident?  
18 A. I don't remember.  
19 Q. Do you know what the results of your CT scan  
20 was?  
21 A. I don't remember.  
22 Q. Before this accident -- or strike that.  
23 Do you know what you had the CT scan of?  
24 A. I believe it was just the brain or the head.  
25 Q. Before this accident, had you ever had a CT

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1 A. I tore my ACL and my MCL in a skiing accident.  
2 Q. After that surgery, had your knee recovered?  
3 A. Yes.  
4 Q. Did you have any limitations after the surgery?  
5 A. Let me back up.  
6 I didn't have surgery until a year after  
7 that accident, so I had limitations after the skiing  
8 accident for a year. There was things I couldn't do.  
9 But after the surgery was your question. No, no  
10 limitations.  
11 Q. I should clean up my question.  
12 Did you make a full recovery from your  
13 surgery?  
14 A. I did.  
15 Q. Other than for your knee, had you gone to  
16 physical therapy for any other reason before this  
17 accident?  
18 A. No.  
19 Q. Before this accident, had you ever been to a  
20 chiropractor?  
21 A. I believe one time.  
22 Q. Do you know what the reason was for that?  
23 A. I don't remember.  
24 Q. Do you remember the name of the chiropractor  
25 you went to?

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1 A. I don't. It was off of Shea Boulevard -- Shea  
2 and around Tatum.

3 Q. Do you remember the name of the physical  
4 therapy -- or physical therapist you went to for your  
5 knee?

6 A. English and Petersen, I believe it was.  
7 Jeff Petersen's the therapist.

8 Q. Do you think that was more than five years  
9 before the accident?

10 A. Oh, yes.

11 Q. When you started at Continuum for physical  
12 therapy, do you recall if your symptoms were still  
13 getting worse from after the accident?

14 A. My lower back and my head, yes.

15 Q. It was progressing or digressing?

16 A. Yes. It was getting worse.

17 Q. Getting worse?

18 A. Yes.

19 Q. Was there anything you noticed you just could  
20 not do as a result of this accident?

21 A. I couldn't lift my daughter. I could not -- I  
22 couldn't exercise. I was doing Zumba, and I couldn't do  
23 Zumba.

24 Q. Where did you do Zumba?

25 A. Studio Z.

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1 Q. Where is that?

2 A. Warner and Alma School.

3 I couldn't run. I couldn't ride my bike. I  
4 had a lot of difficulty at work.

5 Q. At the time of this accident, how old was your  
6 daughter? Like four about?

7 A. I would say four, yeah.

8 Q. In the two months before this accident, how  
9 often would you do Zumba?

10 A. Two to three times a week.

11 Q. Is Zumba like a class where you progress, like  
12 CrossFit or something like that?

13 A. It's a dance like, kind of. Not -- I don't  
14 want to say Jazzercise, but it's similar. It's  
15 high-energy nonstop dance, pretty much.

16 Q. But are you -- do you know what I mean? Like  
17 is there a progression to it? In karate you get a yellow  
18 belt, red belt --

19 A. No. Just getting better skill-wise.

20 Q. You don't get like a new hat or something?

21 A. No.

22 Q. How long had you been doing Zumba before the  
23 accident?

24 A. I started in January before the accident.

25 Q. So about 10 months possibly?

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1 A. Yeah.

2 Q. And you mentioned riding your bike and running  
3 as well.

4 A. Yes.

5 Q. Did you run more than ride bike or did it even  
6 out? How was that?

7 A. No. I think I rode my bike more than I ran.

8 Q. What kind of bike did you ride?

9 A. Just a mountain bike.

10 Q. Did you go mountain biking or did you have a  
11 mountain bike on the road or street?

12 A. Mountain bike on the street, yeah.

13 Q. How often would you ride your bike?

14 A. We would do it every weekend.

15 Q. Was it -- sounds like a family thing.

16 A. Yes.

17 Q. Was that you, your husband, and your daughter?

18 A. Yes.

19 Q. Your daughter would ride her bike?

20 A. My husband had one of those -- well, we have  
21 one of those pull things, and so he would pull her on his  
22 bike.

23 Q. Can you tell me when you were able, if at all,  
24 to resume Zumba or re-Zumba?

25 A. I don't recall. I didn't do it very much

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1 afterwards so...

2 Q. Do you know why?

3 A. Do I know -- I'm sorry?

4 Q. Do you know why you didn't resume Zumba?

5 A. Because I'm lazy.

6 Q. Have you replaced Zumba with anything else?

7 A. Yes.

8 Q. What do you do now?

9 A. I work out at the gym.

10 Q. Are you doing more like weights now?

11 A. Yes.

12 Q. When did you start using the gym?

13 A. Just recently, in July.

14 Q. What gym do you go to?

15 A. Planet Fitness.

16 Q. Are any of your workouts hindered by any injury  
17 from this accident?

18 A. My back, I have -- I'm trying to strengthen it  
19 a little bit more, but it's difficult because I still get  
20 back pain.

21 Q. Is that all in the low back?

22 A. Yes.

23 Q. Anywhere else?

24 A. No.

25 Q. Was there ever a period of time when you



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1 weren't working out?  
2 A. Yes.  
3 Q. When was that?  
4 A. After the accident, probably until -- well, I  
5 would say maybe four, five months after.  
6 Q. Can you tell me, if at all, were you -- strike  
7 that.  
8 Did you resume riding your bike?  
9 A. I don't recall.  
10 Q. How about running?  
11 A. No. I did maybe a year after. I'm trying to  
12 remember dates.  
13 Q. Well, when you ran, were you running outside or  
14 were you running on a treadmill?  
15 A. Outside.  
16 Q. Do you remember like what you would typically  
17 run?  
18 A. Two miles.  
19 Q. Did you use any programs to help run, like  
20 Couch to 5K or apps or anything?  
21 A. Mountain fitness.  
22 Q. Is it like an iPhone app?  
23 A. I don't have an iPhone, but it's an app. It's  
24 my phone app.  
25 Q. How often were you working at the time of the

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1 A. Yes.  
2 Q. Was any of it not painful or --  
3 A. My knee and my wrist were not -- wasn't  
4 painful.  
5 Q. Are you right-handed or left hand dominant?  
6 A. Right.  
7 Q. Was that your left or right wrist? I'm sorry.  
8 A. I believe it was my right.  
9 Q. As you sit here today, is there any part of  
10 your body you feel has not healed?  
11 A. My back.  
12 Q. Anything else?  
13 A. No.  
14 Q. And, say, in like the last month, can you tell  
15 me how many times you've experienced back pain?  
16 A. I experience it every day.  
17 Q. And do you attribute it to this accident?  
18 A. That's the only thing I can.  
19 Q. When is the last time you treated for your  
20 back?  
21 A. With Continuum.  
22 Q. Since being --  
23 Were you released by Continuum?  
24 A. Yes.  
25 Q. Have you ever tried to make any appointments

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1 accident?  
2 A. Every day.  
3 Q. You mean five days a week?  
4 A. I'm sorry. Five days a week, yes.  
5 Q. Was that a set schedule?  
6 A. Yes.  
7 Q. What were your hours typically?  
8 A. 7:30 to 4:00.  
9 Q. Is that Monday through Friday?  
10 A. Yes.  
11 Q. That week you missed work for vacation, were  
12 you able to start work like you were going to before this  
13 accident -- strike that. That was confusing.  
14 Were you able to start the week after --  
15 A. Yes.  
16 Q. And you didn't have to call in sick or anything  
17 like that?  
18 A. There might have been one day that I called in  
19 sick.  
20 Q. Was that after you had resumed working?  
21 A. Yes.  
22 Q. Did you feel that Continuum was helping you?  
23 A. Yes. Not necessarily for my head, but more for  
24 my wrist and my knee and my back.  
25 Q. The physical therapy, was it painful?

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1 anywhere else?  
2 A. No.  
3 Q. Is there any reason why?  
4 A. I try to strengthen it myself.  
5 Q. Have you noticed if you feel your back has  
6 strengthened since being released from Continuum?  
7 A. When I do things, no. If I sit for long  
8 periods of time, if I exercise, if there are certain  
9 things that I do, it's -- I can feel the pain.  
10 Q. Are you currently a stay-at-home mom?  
11 A. Yes.  
12 Q. Is there anything that you just have a hard  
13 time doing now as a result of this accident?  
14 A. I mean, like I said, just working out. I have,  
15 still, trouble lifting my daughter, picking her up.  
16 She's getting too big anyway. But lifting things,  
17 standing long periods of time.  
18 Q. Do you do the cooking and cleaning?  
19 A. I think we -- well, I do it mostly.  
20 Q. It sounds like you don't do all of it.  
21 A. I don't do everything.  
22 Q. After this accident, were you involved in any  
23 other accidents?  
24 A. No.  
25 Q. After this accident, were you involved in any

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1 other type of trauma to your body?  
 2 A. No.  
 3 Q. When you were released at Continuum -- or by  
 4 Continuum -- did you have any pain complaints?  
 5 A. Did I have -- I'm sorry, I don't understand the  
 6 question.  
 7 Q. Like were you pain-free when you left?  
 8 A. No.  
 9 Q. And was it just your lower back at that point?  
 10 A. Yes.  
 11 Scratch that. My head was still -- I had  
 12 problems with headaches and dizziness and craziness with  
 13 my head.  
 14 Q. Let me ask about your headaches.  
 15 How often were you getting headaches after  
 16 the accident?  
 17 A. Every day.  
 18 Q. Was there anything you were taking for them?  
 19 A. I had -- the doctor had given me 800 milligrams  
 20 of ibuprofen.  
 21 Q. How often were you taking that?  
 22 A. Every day.  
 23 Q. Did you take anything else?  
 24 A. No.  
 25 Q. Did the headaches eventually stop?

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1 A. They lasted a very long time but eventually,  
 2 yes.  
 3 Q. Were you still getting headaches after you were  
 4 released?  
 5 A. Yes.  
 6 Q. How often?  
 7 A. Every day.  
 8 Q. As you sit here today, in, say, the last two  
 9 months, how often do you think you've gotten headaches?  
 10 A. In the last two months?  
 11 Q. Yes, ma'am.  
 12 A. I don't know. Minimal.  
 13 Q. Did the intensity of the headache ever lessen?  
 14 A. Eventually.  
 15 Q. Did you have to get refills on your medication?  
 16 A. I don't remember.  
 17 Q. Before this accident, had you ever treated for  
 18 headaches?  
 19 A. No.  
 20 There was a lot of dizziness too.  
 21 Q. Tell me about the dizziness.  
 22 A. Sitting at my desk, I would stand up and, for a  
 23 brief moment, I would have to hang onto the side of the  
 24 desk because I would get very dizzy. There were a couple  
 25 times where I had to sit down because I just couldn't --

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1 it was like everything in the room was spinning. And I  
 2 had like these surges, kind of like -- I don't know how  
 3 to describe it. Like a tingling, like I was seeing white  
 4 spots, kind of.  
 5 Q. How often did you get that?  
 6 A. Couple times a week.  
 7 Q. How long did that last?  
 8 A. I don't recall.  
 9 Q. When you got the dizziness, I think you  
 10 mentioned you stood up and you would get it.  
 11 A. Yes.  
 12 Q. Did you ever get that dizziness before standing  
 13 up?  
 14 A. I did.  
 15 Q. Had you ever been diagnosed with vertigo?  
 16 A. No.  
 17 Q. Did you ever explain this dizziness to your  
 18 doctor?  
 19 A. Yes.  
 20 Q. I have East Valley Urgent Care, Continuum  
 21 Healthcare, Integrative Medical Services, SimonMed  
 22 Imaging.  
 23 Do you recall going to any other doctors as  
 24 a result of this accident?  
 25 A. I don't.

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1 Q. Have you ever treated for dizziness before this  
 2 accident?  
 3 A. No.  
 4 Q. As you sit here today, have you recovered from  
 5 the dizziness?  
 6 A. Yes.  
 7 Q. Can you tell me when you recovered, you think,  
 8 from dizziness?  
 9 A. I don't remember exactly.  
 10 Q. Did you ever pass out as a result of the  
 11 dizziness?  
 12 A. No.  
 13 Q. Do you have any plans to see a doctor for this  
 14 accident now?  
 15 A. No.  
 16 MR. CARROW: Give me a few minutes. I just  
 17 want to see if I forgot something.  
 18 (Recessed from 10:43 a.m. to 10:48 a.m.)  
 19 MR. CARROW: Ma'am, I just have a few more  
 20 questions.  
 21 Q. Have you ever been a party to a lawsuit before  
 22 this?  
 23 A. Have I -- I'm sorry?  
 24 Q. Have you ever sued anybody or been sued?  
 25 A. Yes.

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1 Q. Was that for personal injury?  
 2 A. No.  
 3 Q. What was that for?  
 4 A. Divorce.  
 5 Q. Okay. And I may have asked you this already.  
 6 Have you had any car accidents before this accident?  
 7 A. Yes.  
 8 Q. When was the last one?  
 9 A. 2001.  
 10 Q. Were you injured in that accident?  
 11 A. No.  
 12 Q. Did you ever make any sort of recorded  
 13 statement about this accident?  
 14 A. No. I don't think I did. I don't remember.  
 15 It would have been with Progressive if so.  
 16 Q. And did you ever -- oh, I'm sorry.  
 17 A. I don't think so.  
 18 Q. Did you ever have to make an appearance in  
 19 traffic court, for whatever reason, for this accident?  
 20 A. No.  
 21 MR. CARROW: Ma'am, that is all the  
 22 questions I have for you. Thanks.  
 23 THE WITNESS: You're welcome.  
 24 MR. FINE: I just have some follow-up  
 25 questions on the issue of your employment.

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1 A. I don't remember that it ever -- I mean, it got  
 2 better, but I don't think it ever ceased. You know,  
 3 walking on cement and pavers throughout my days was hard  
 4 on my back where it wasn't before.  
 5 MR. FINE: No further questions.  
 6 Follow-up, Aaron?  
 7 MR. CARROW: Yeah, just a few.  
 8  
 9 FURTHER EXAMINATION  
 10 BY MR. CARROW:  
 11 Q. Had you ever been written up after this  
 12 accident for job performance?  
 13 A. No.  
 14 Q. Did you leave work as a result of this  
 15 accident -- or I'm sorry. Did you leave your position as  
 16 a result of this accident?  
 17 A. No.  
 18 Q. And I'm not going to go into it too much. Why  
 19 did you end up leaving?  
 20 A. Just a lot of uncomfortableness between my  
 21 supervisor -- inappropriate behavior.  
 22 Q. That's it. Thank you.  
 23 MR. CARROW: That's all I have.  
 24 MR. FINE: I'm going to leave this up to  
 25 you.

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1 EXAMINATION  
 2 BY MR. FINE:  
 3 Q. Now, when you went back to work after this  
 4 collision, do you remember having any consequences or  
 5 changes at work as a result of the pain you were feeling  
 6 from your injuries?  
 7 A. Yes. I had difficulty concentrating. I had  
 8 difficulty completing my day-to-day tasks. I -- just a  
 9 lot of confusion. I had -- I walked around a lot through  
 10 the resort, so I had a lot of back pain going up and down  
 11 stairs and just walking around doing my -- setting up  
 12 things is what I had to do, so I had some trouble doing  
 13 that. I had, like I said, the confusion and seeing the  
 14 stars and, you know...  
 15 I -- I was talked to a couple times about  
 16 messing up on my work quite a few times as far as -- as  
 17 far as like ordering stuff and forgetting things. So  
 18 that kind of thing, yeah.  
 19 Q. Do you remember even approximately when you  
 20 feel like the confusion issue stopped affecting your  
 21 performance at work? Was it days, weeks, months?  
 22 A. It was a couple months.  
 23 Q. What about the pain going up and down the  
 24 stairs, walking around the facility? Do you remember  
 25 when that ceased?

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1 You have a right to read this for accuracy  
 2 and sign off on it or make any changes you think didn't  
 3 reflect what you said today, or you can waive that. It's  
 4 entirely up to you.  
 5 THE WITNESS: Can I ask if that's  
 6 recommended?  
 7 MR. FINE: You can.  
 8 I always have to recommend it, because it's  
 9 the way to make sure it's more accurate.  
 10 THE WITNESS: Okay.  
 11 MR. FINE: We'll read and sign.  
 12 (The deposition concluded 10:52 a.m.)  
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1 SIGNATURE PAGE  
2 I, MICHELLE R. HOIBY, a deponent exercising  
3 my right to read and sign my deposition taken on  
4 August 22, 2014, place my signature hereon and make the  
following changes on this day of ,  
2014.

5 (IF THERE ARE NO CHANGES, WRITE "NONE.")  
6

7 \_\_\_\_\_  
8 MICHELLE R. HOIBY


9 PAGE LINE READS CHANGE TO REASON  
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1  
2 STATE OF ARIZONA )  
3 COUNTY OF MARICOPA )  
4

5 I, Marianne S. Burton, a Certified Reporter,  
6 Certificate No. 50519, in the State of Arizona, do hereby  
7 certify that the foregoing witness was duly sworn to tell  
8 the whole truth; that the foregoing pages constitute a  
9 full, true, and accurate transcript of all proceedings  
10 had in the foregoing matter, all done to the best of my  
11 skill and ability. Pursuant to request, notification was  
12 provided that the deposition is available for review and  
13 signature.

14  
15 I FURTHER CERTIFY that I am not related to  
16 nor employed by any of the parties hereto, and have no  
17 interest in the outcome.

18  
19 WITNESS my hand this 29th day of August,  
20 2014.

21  
22   
23 \_\_\_\_\_  
24 Marianne S. Burton  
25 Arizona Certified  
Reporter No. 50519

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