

CIRCUIT COURT FOR FREDERICK COUNTY  
COURT HOUSE  
FREDERICK, MARYLAND 21701

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IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND  
EXLINE-HASSLER  
Plaintiff  
v. Civil Docket  
No. 10-C-12-000410  
PENN NATIONAL INSURANCE, ET AL.,  
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(JURY TRIAL - DAY THREE)

Frederick, Maryland  
January 24, 2013

BEFORE:

THE HONORABLE JULIE S. SOLT, JUDGE

APPEARANCES:

For the Plaintiff:  
LAURA C. ZOIS, ESQUIRE  
JOHN B. BRATT, ESQUIRE

For the Defendant:  
WALTER E. GILLCRIST, JR., ESQUIRE  
ANNE K. HOWARD, ESQUIRE

For Penn National Insurance, et al.:  
GUIDO PORCARELLI, ESQUIRE

TRANSCRIBED BY:  
Victoria Eastridge  
Official Transcriber  
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T A B L E O F C O N T E N T S

	P A G E
PRELIMINARY MATTERS	3
VOIR DIRE OF MR. HASSLER	11
WITNESSES:                      DIRECT:        CROSS:    REDIRECT:    RECROSS:	
For the Plaintiff:	
Steven Hassler                      32        57/69                      72        --	
Sharon Hamilton                    80        104/131                    132        138	
For the Defendant:	
Dr. London                            146        210                      263        272	
For the Defendant:	
EXHIBITS:                              IDENTIFICATION:                      EVIDENCE:	
For the Plaintiff:	
Exhibit No. 55    PRE-MARKED                      --	
(Deposition of Dr. London)	
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1 (Whereupon, at 10:22 o'clock, a.m., January 24, 2013  
2 before The Honorable Julie S. Solt, Judge, in Circuit  
3 Courtroom Number Four, the following commenced:)

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

5 (Jury not present.)

6 THE COURT: And good morning, everyone.

7 BY ALL: Good morning, Your Honor.

8 THE COURT: Back in the record again in the matter of  
9 Exline-Hassler v. Sapp, Civil Number 12-0410. All right, we  
10 have everyone present, and, uh, are we ready?

11 MS. ZOIS: We, we are, Your Honor, maybe we can have a  
12 two minute housekeeping discussion --

13 THE COURT: Certainly.

14 MS. ZOIS: -- just about wis (sic), witness scheduling  
15 today and some of the things that I anticipate may happen.  
16 Um, our first witness today will be Steve Hassler, which is  
17 Plaintiff's husband. I have her supervisor planning on being  
18 here as soon as she can, but she said that she thinks it will  
19 be 12:00. So, we have an hour and a half with just one  
20 witness. I don't know how long to anticipate he's going to  
21 be. Um, we'll attempt to use the Court's time productively  
22 after Mr. Hassler testifies and before Ms. Hamilton can get  
23 here, but it might be that the jury comes out, hears one  
24 witness and then has to leave before Sharon Hamilton comes  
25 out the things that I would probably do to fill the gap is

1 read answers to interrogatories into the record to prove my  
2 breach of contract claim outside the presence of the jury  
3 with the limits and that sort of thing, and then just proffer  
4 to the Court have the Penn National claims representative  
5 under subpoena to produce documents and to be prepared to  
6 testify as to what his testimony would be would I have been  
7 able to call him, so we can get those two administrative  
8 things out of the way, perhaps. So, I was just trying to let  
9 the Court know we are trying to move it along.

10 (Brief pause while Counsel confer off the record.)

11 MS. ZOIS: I don't know that she's gonna' want to do  
12 that.

13 MR. BRATT: Well, I'm just saying it's an option.

14 MS. ZOIS: My, um, my co-counsel recommended that  
15 perhaps we get the administrivia out of the way now and then  
16 hopefully we could roll straight from Mr. Hassler into the  
17 supervisor and then break for lunch, or . . .

18 MR. BRATT: Rather than have the jury come out, hear a  
19 witness, then go back, then wait.

20 THE COURT: So. I'll let --

21 MR. BRATT: I mean, I don't really care.

22 MS. ZOIS: And then my expectation is for this afternoon  
23 that Dr. London is, is going to, to come, and we agree to  
24 take him out of turn to accommodate the Defense.

25 MR. GILLCRIST: Your Honor, just a couple of things.

1 The, the Court's preference in terms of the schedule is  
2 obviously fine with us. Um, as far as Mr. Hassler goes, we  
3 do have a motion to make. Um, we learned last night that he  
4 actually sat in on a large part of our cross, we think it was  
5 our cross examination of Dr. Naff, which is a direct  
6 violation on the rule of witnesses, the rule on witnesses  
7 that this Court issued. Um, apparently, he's told his  
8 attorneys that it was 35 minutes. We don't know if that's  
9 correct or not, but apparently that's what Mr. Hassler has  
10 told his, told his wife's attorneys.

11 Um, I'm very concerned about this. We understand  
12 that Counsel, and we, we don't, we're not accusing of  
13 anything, we understand that Counsel had arranged for him to  
14 be here at 3 o'clock or so yesterday, so they had to know he  
15 was coming. Um, there were four people over on that side of  
16 the courtroom who had to have, uh, at least had an  
17 opportunity to see him enter the courtroom and be sitting  
18 there. Um, I've never met the man, my partner, Anne Howard,  
19 has never met the man, um, and we learned that he had been  
20 sitting in on this testimony. There was some very, we think,  
21 crucial testimony elicited, uh, particularly during our cross  
22 examination of Dr. Naff that would have certainly educated or  
23 given, uh, Plaintiff's Coun (sic), uh, Mr. Hassler knowledge  
24 of, of what this, what, where we were going with this witness  
25 and what this witness said.

1           Um, I think Counsel is under an obligation to not  
2 only make sure their witnesses are not in the courtroom, but  
3 at the very least, to use due diligence, and there obviously  
4 was no due diligence to keep Mr. Hassler out of the  
5 courtroom. So, in light of the violation of the rule on  
6 witnesses I would ask that he be stricken as a witness,  
7 excluded.

8           MR. PORCARELLI: Thank you, Your Honor, briefly I would,  
9 uh, adopt what Mr. Gillcrist has said, and, uh, I'd like to  
10 respond just briefly to one of the issues brought up by  
11 Plaintiff's Counsel. It would be my hope, since Your Honor  
12 has now covered, uh, what I think is an issue twi (sic), on  
13 two occasions already in this trial regarding Penn National  
14 adjuster. Um, I would ask that we not venture for a third  
15 time into this area. I think the proffer's been made on the  
16 record, and Your Honor's ruled on it in terms of the  
17 relevancy and getting into those issues. And at this point  
18 whether it is or it's not in front of the jury, um, it  
19 shouldn't be heard, and we would ask that that not occur.  
20 And that's everything I have for today.

21           THE COURT: With respect to Mr. Hassler, what it, um,  
22 just as, what's the, what are you, is his anticipated  
23 testimony?

24           MR. BRATT: Your Honor, Mr. Hassler is a damages  
25 witness. He is expected to testify about what his wife was

1 like before the car crash and what she's like after the car  
2 crash, and he also has some knowledge about the facts of this  
3 other, I guess, bumper tap fender bender in 2005 if he knew,  
4 knows there was very little damage to the car and knows his  
5 wife wasn't injured. He's a damages witness.

6 And I, I would like to make some corrections, Your  
7 Honor. Mr. Hassler was here for about 35 minutes is what he  
8 said, but when I asked him this morning, because I had  
9 anticipated this arising, what he told me was is for the  
10 first 20 minutes what he saw was the back of four lawyers at  
11 a bench conference listening to white noise, and then he  
12 heard about 10 or 15 minutes of Dr. Naff's testimony, which,  
13 based on my conversation with him was about how much Dr. Naff  
14 gets paid and being a witness and stuff, um, not substantive  
15 testimony, and I would suggest that if the Court is  
16 considering even granting this motion, which I don't think  
17 Your Honor should be, but if you are considering granting the  
18 motion I would ask Your Honor to bring Mr. Hassler in, swear  
19 him and voir dire on what, what exact, exactly he saw and  
20 heard as, and so the Court can make an informed decision  
21 about whether the motion should be granted or not.

22 Um, as far as due diligence, Your Honor, Mr.  
23 Hassler wasn't here, here at the beginning of the trial, he  
24 didn't hear the instruction on witnesses. As far as myself,  
25 I didn't know he was here, because I was doing the direct

1 examination of Dr. Naff, and Ms. Zois was running, and Ms.  
2 Harveson were running the equipment. The first time I saw, I  
3 knew that he was here is when during Mr. Gillcrist's cross  
4 examination Ms. Howard walked over to me and said who's that  
5 guy? And I looked and said, oh, I didn't know he was here,  
6 and then I immediately took him outside. Um, so, from our  
7 end we didn't know he was here, we were facing the Court.

8 THE COURT: So, what I, what I want to do is this. I do  
9 not believe that there's any issue of due diligence on due  
10 diligence. Unfortunately, this is an open courtroom, people  
11 walk in and out. I don't know who witnesses are. I think,  
12 just to be clear, I know he was in for a while, it was not  
13 for a long time. I think, for everyone's sake, it's best to  
14 bring him in, put him under oath, just have, what he  
15 remembers from the testimony, and, uh, we'll go fr (sic),  
16 we'll go from there just so that the record is clear. I will  
17 tell you that I am, I just want to make the record clear, I  
18 am not inclined to strike him as a witness, but I just want  
19 to, for everyone's sake, to put on the record what he does  
20 recall observing for the time when he was in Court, and then,  
21 um, the record is clear in that way.

22 MR. BRATT: Okay. And I'll, and I'll go get him, he's  
23 right outside, whenever the Court's ready, 'cause I know  
24 there's another issue that Ms. Zois is going to have to  
25 address with -- I am, Your Honor, just for, so you know, I'm



1 not going to say anything to him about why he's being brought  
2 in here so if the --

3 THE COURT: So.

4 MR. BRATT: -- if the Court wanted to explain to him  
5 when he comes in.

6 THE COURT: Ex, exactly, and I'll just --

7 MR. BRATT: Thank you.

8 THE COURT: -- and I will, um --

9 MR. BRATT: I, I just don't want to talk to him between  
10 now and then.

11 THE COURT: No, it, that's okay. So.

12 MS. ZOIS: And with respect (sic), uh, respect to, um, my  
13 proffer as to what I would have elicited the testimony as far  
14 as the claims representative, which I believe just walked in,  
15 I'm certainly not trying to step on the Court's toes, I  
16 totally understand the Court's ruling, but I believe that in  
17 order to properly protect my record I do need to share with  
18 the Court what the expected testimony or what my proffered  
19 questions would have been, and I do want the ability to, to  
20 properly and succinctly, um, preserve the records. That's  
21 all, Your Honor. I'm not, I understand the Court's ruling,  
22 and I'm certainly not asking for a reconsideration of that.  
23 I just need to make sure that everything I needed or wanted  
24 to get out was on the record as to what I would have asked  
25 the claims representative, Your Honor.

1 MR. PORCARELLI: And if that's handled administratively  
2 just with --

3 THE COURT: That, it's be --

4 MR. PORCARELLI: -- um, as a proffer and questions only,  
5 I'm good with that.

6 THE COURT: That, that's exact --

7 MR. PORCARELLI: I just don't want my claims  
8 representative on the stand.

9 THE COURT: No, it would be, it would be handled as a  
10 proffer.

11 MR. PORCARELLI: Thank you.

12 THE COURT: So. Okay. Well, why don't we go get Mr.  
13 Hassler and we'll find out what he remembers, quite honestly,  
14 if he's probably like most witnesses that -- let's, let's  
15 find out what, what --

16 MR. BRATT: I believe that's going to be likely.

17 THE COURT: -- what, what, if anything, he recalls.

18 MR. BRATT: I'll go bring him in, Your Honor.

19 THE COURT: So, let's, let's find out, 'cause that's  
20 easy, this is an easy enough issue to resolve.

21 MR. GILLCRIST: Thank you, Your Honor.

22 THE COURT: Mr. Hassler, if you'd come on in, come on up  
23 to the witness stand. It's easiest if you walk on up that  
24 ramp.

25 THE CLERK: Go ahead and stand up there and raise your

1 right hand.

2 STEVEN HASSLER,

3 A witness, produced on call of the State, first  
4 having been duly sworn according to law, was  
5 examined and testified as follows:

6 VOIR DIRE

7 BY THE COURT:

8 Q Mr. Hassler, if you would tell me your name for the  
9 record?

10 A Steven Dwayne Hassler.

11 Q And, Mr. Hassler, I'm going to tell you right now  
12 you're not in any trouble, okay? But yesterday afternoon you  
13 came into court when another witness was testifying, is that  
14 correct?

15 A Yes, I did.

16 Q Um, what do you remember hearing and occurring  
17 while you were in the courtroom was testifying?

18 A You had the speaker blocker on when I walked in,  
19 you, all of you was gathered around you.

20 Q All right.

21 A And then I remember the doctor statin' how much  
22 money he was gettin' paid, and then I was asked to be, to be  
23 led out. That's all I heard.

24 THE COURT: Mr. Gillcrist.

25 MR. GILLCRIST: Um, my I inquire, Your Honor?

1 THE COURT: You, mm-hmm, mm-hmm.

2 BY MR. GILLCRIST:

3 Q Mr. Hassler, um, do you remember last night being  
4 outside the courtroom and telling people that you were in the  
5 courtroom for 35 minutes?

6 A Do I remember telling somebody I was in there?

7 Q Yeah, do you remember saying that out loud?

8 A I said it out loud in here.

9 Q That you were in the courtroom for 35 minutes?

10 A For about 35 minutes.

11 Q Okay. And, so, if you were in for 35 minutes the  
12 only thing you remember the doctor talking about is, is how  
13 much money he got paid?

14 A Well, it took a while for you to get that out of  
15 him, yes.

16 Q Okay.

17 A That was --

18 Q Um, is it your recollection you did not hear any  
19 testimony about any of the, uh, prior history that he talked  
20 about in terms of your wife?

21 A No.

22 Q Okay. Um, and you were not here when he talked  
23 about and was shown any medical records?

24 A Nothin' about no medical records.

25 Q Okay, you sure about that?

1           A     I, I heard you ask about the vanilla (sic) envelope  
2 that he had and that was it.

3           Q     Okay. And you're sure you didn't hear anything  
4 about, um, any questions to Dr. Naff about, um, his knowledge  
5 of your wife's prior history made before the accident?

6           A     No, all I heard about was pay, that's all I was  
7 hearin', what he was gettin' paid.

8           Q     All right. Thank you.

9           THE COURT: Any questions?

10          MR. PORCARELLI: No questions.

11          THE COURT: Okay.

12          MR. BRATT: Nothing, Your Honor.

13          THE COURT: Thank you, you can go ahead and step down.

14          MR. BRATT: And you have to go back outside, Mr.  
15 Hassler.

16          THE COURT: And you get to do all this again, so.

17          MR. BRATT: You're not in trouble, relax.

18          MR. HASSLER: You want me back out?

19          MR. BRATT: Just hang out in the hallway.

20          THE COURT: Yeah, you can go back (unclear - two words).

21          MR. HASSLER: All right.

22          MR. BRATT: Everything's fine. Don't get all worried,  
23 everything's fine.

24                 (Brief pause while Mr. Hassler returned to the hallway.)

25          THE COURT: Any additional argument, Mr. Gillcrist?

1 MR. GILLCRIST: Well, Your Honor, I, I, it, it concerns  
2 me, it does, and I know he's gonna' say what he's gonna say,  
3 but, um, 35 minutes there weren't, wasn't 35 wor (sic),  
4 minutes worth of questioning about the doctor on his fees.  
5 Uh, there might have been 10 minutes. Um, and Counsel  
6 represented, uh, that there was a twen (sic), that, that he  
7 said today, this morning, that there, the attorneys were at  
8 the bench conference for 20 minutes. There was no 20 minute  
9 bench conference yesterday. Um, I'm also concerned, because  
10 I was personally outside last night as we were gathering our  
11 things, and he did in fact say he was in the courtroom for 35  
12 minutes. So, that had been brought to his attention, uh,  
13 Counsel had brought it to his attention that he shouldn't be  
14 in there apparently, and his reaction was well, I was only in  
15 there for 35 minutes or so. He had to have heard a lot more  
16 than that now. Obviously, I can't, uh, put words in his  
17 mouth, but I think there's more than meets the eye than what  
18 we're hearing on his testimony.

19 THE COURT: Based on what I've heard today, um, while  
20 there was technical violation for a period of time, and one I  
21 do not find it was induced at all by Counsel for Plaintiffs,  
22 um, and I'm not convinced that there's, has been any, um,  
23 testimony that this witness heard from sitting in through,  
24 uh, Dr. Naff's testimony for approximately 30 minutes, um,  
25 that would indicate that exclusion of this witness from

1     testifying before the jury is an appropriate remedy, so, the  
2     motion is denied.

3             MR. GILLCRIST: Thank you, Your Honor.

4             THE COURT: Okay? And Counsel, why don't we, since  
5     they're still out, why don't we go ahead with you putting  
6     your proffers on and then we'll try to roll through, um, the  
7     morning before the doctors --

8             MS. ZOIS: Okay.

9             THE COURT: -- in the afternoon.

10            MS. ZOIS: That'd be great, Your Honor.

11            THE COURT: Mm-hmm.

12            MR. BRATT: Including this stuff on the contract claim,  
13     Your Honor?

14            THE COURT: Sure.

15            MR. BRATT: Okay. Thank you. I mean -- thank you --  
16     I'm sorry, Your Honor, I mean no disrespect, I forgot to  
17     stand up and that stuff.

18            MS. ZOIS: I try and kick him, but it doesn't always  
19     work. Um, so starting with, Your Honor, and I believe that,  
20     um, Mr. Porcarelli is, I'm suspecting, willing to stipulate  
21     that there hasn't been any breach of the contract and there  
22     hasn't been any payments made to Ms. Jacqueline Exline-  
23     Hassler under the un-insured, un-insured motorist provision  
24     of the policy, is that right?

25            MR. PORCARELLI: We can put on the record affirmatively

1 that the Plaintiff, Ms. Exline-Hassler has not breached her  
2 contract. Um, and that, and under the UM portion of the  
3 policy has not made a payment to date.

4 MS. ZOIS: And, Your Honor, I would just read into the  
5 record answers to interrogatories from Defendant Penn  
6 National, interrogatory number three, Insurance coverage.

7 "Please identify any policy of insurance or any  
8 insurance agreement that was in affect at the time of the  
9 occurrence, and identify the type of policy, the identity of  
10 the insurance company, the policy number and the policy limits  
11 and coverage afforded under the policy or policies."

12 Answer to number three. "Pennsylvania National  
13 Mutual Casualty Insurance Company issued a policy of insurance  
14 under policy number 1290012044 to Jacqueline Exline and Steven  
15 Hassler. The police," which I believe is, uh --

16 MR. PORCARELLI: Policy.

17 MS. ZOIS: -- uh, misspelled.

18 MR. PORCARELLI: Right.

19 MS. ZOIS: "The police (sic) period was from April 22<sup>nd</sup>,  
20 2009 through October 22<sup>nd</sup>, 2009. That policy provided  
21 uninsured motorist benefits in the amount of \$250,000 per  
22 person and \$500,000 per accident."

23 And I believe we have the policy dec sheet  
24 identified and marked, Your Honor, as Plaintiff's Exhibit  
25 Number 31, which I would offer to Madam Clerk, Your Honor.



1 THE COURT: You may.

2 MS. ZOIS: Um, addich (sic) --

3 MR. PORCARELLI: Well -- I'm sorry, didn't mean to  
4 interrupt.

5 MS. ZOIS: That's okay. Um, additionally, Your Honor,  
6 why, um, my (unclear - one word) thank you, may I approach  
7 the clerk, Your Honor?

8 THE COURT: You certainly may.

9 MS. ZOIS: Want to see it, Mr. Porcarelli?

10 (Brief pause while Counsel confer off the record.)

11 MS. ZOIS: Plaintiff's Exhibit Number 31. Um,  
12 additionally, Your Honor -- I'm sorry to turn my back on the  
13 Court --

14 THE COURT: Mm-hmm, all right.

15 MS. ZOIS: -- we would read into the record the answers  
16 to interrogatories of Defendant, Kirsten Sapp's answers to  
17 co-defendant, Penn National's interrogatory at Interrogatory  
18 Number 15.

19 "Identify which of the persons named in your  
20 answers are known or related to you." Skip that. Sixteen, I  
21 apologize, Your Honor, Question 16. "State whether or not  
22 there was in existence on the date of the occurrence a policy  
23 or policies of liability insurance, including any umbrella  
24 policy by which it terms may satisfy all or part of any  
25 judgment against you or indemnify you. If so, state the

1 limits of liability of each of the coverage's and the name  
2 and address of the insurance company, which issued the policy  
3 and all policy numbers and effective dates. Attach copies of  
4 all policies reflecting the limits of liability."

5 Answer. "State Farm Policy Number 0724-045-20(b),  
6 policy limits of 100,000\300,000\100,000. Please find  
7 attached a specimen copy of an insurance policy of the form  
8 booklet as that issued to the Defendant. Defendant has  
9 requested a copy of the policy and will supplement this  
10 answer."

11 I don't know that we ever got a dec sheet from  
12 State Farm. We do have a copy of the form policy, which I  
13 don't think I need to introduce into evidence at this time,  
14 and, um, Plaintiff, uh, does agree that, obviously, these  
15 numbers don't go before the jury. I have no intention of  
16 mentioning --

17 THE COURT: I just put a big red sticker on the policy  
18 that says not to go back to jury, so.

19 MS. ZOIS: Right, this is purely outside the presence of  
20 the jury to --

21 THE COURT: Mm-hmm.

22 MS. ZOIS: -- to protect the record and indicate, uh, as  
23 to the, the underlying liability coverage and as to the UIM  
24 coverage that applies in this case so we can prove our breach  
25 of contract elements, Your Honor.

1 THE COURT: Okay.

2 MR. PORCARELLI: Uh, Your Honor, if I may be heard. We  
3 covered points one and two, which we've agreed to, and,  
4 obviously, the answer to interrogatory. We don't object to  
5 being read into the record as long as it stays on the record,  
6 and not go, not go back to the jury. Um, and obviously, with  
7 respect to point number five, which is Ms. Sapp's insurance  
8 policy with State Farm, we don't take issue with that one  
9 either, so we agree with it.

10 Um, but with regard to Plaintiff's Number 31, um,  
11 which is the policy dec sheet, um, given that the answers to  
12 interrogatories were read and we've agreed to them as  
13 reflecting what the \$250,000 is, we would object to the  
14 introduction of, on the dec sheet in the policy at this time.

15 THE COURT: I'm gonna' overrule the objection. I'm  
16 gonna' admit the policy. However, the policy itself will not  
17 be disclosed to the jury. That is for the record only.

18 MR. PORCARELLI: And by policy, including the  
19 declaration sheets that go with it.

20 THE COURT: Exactly. The Exhibit Number 31 --

21 THE CLERK: Yeah.

22 THE COURT: -- just so you know I have it --

23 THE CLERK: It's set aside, it's got a sticky on it --  
24 (Chuckling.)

25 THE COURT: It's not, not to go, and I --

1 MR. PORCARELLI: I, I, I knew you'd take care of me.

2 THE CLERK: We're good.

3 THE COURT: I did, I did with pink so that that does not  
4 go back, but the policy itself, for the record to be clear,  
5 I'm gonna' ad (sic), admit it, but we all agree it does not  
6 go back before the jury.

7 MR. PORCARELLI: Well, I'll respect Your Honor's  
8 decision on that, thank you.

9 THE COURT: Okay. And we'll check it many times before  
10 we get to that point, but like I said, I have my red stickies  
11 for that, pink stickies for that reason.

12 MS. ZOIS: That's Plaintiff's understanding as well,  
13 Your Honor, we had no intention of it being published to the  
14 jury at any point.

15 Um, as for the proffer for, um, the claims  
16 representative, I'll just start from scratch. Initially when  
17 Penn was a party to this case we subpoenaed the Penn National  
18 Corporate designee, um, for a couple of different issues, but  
19 since the March 26, 2008 report very clearly says MVA crash  
20 three years ago we thought it was imperative to be able to  
21 talk to Penn National who was her insurer back in, uh, 2005  
22 to discuss whether or not she made a bodily injury claim for  
23 that crash.

24 Now, before the Court's ruling Penn National was a  
25 Defendant. So, part of what Plaintiffs cross of the

1 Defendant defending the claim would be, um, would include the  
2 fact that the Penn National representative, um, does not have  
3 the 2005 claim file. We ask that they do a search and  
4 produce all the claim files that they could find under the  
5 time period of the policy that Ms. Exline-Hassler had the  
6 policy with Penn National and they were able to identify a  
7 claim in 2002, but not produce the claim file. Identify a  
8 claim from June 15<sup>th</sup>, 2005, but not produce the claim file.  
9 However, they were able to produce a claim file from 2004,  
10 which obviously precedes the 2005 claim and three other  
11 policies after, or three other claims after that. So,  
12 pursuant to Plaintiff's second request for request for  
13 production of documents that asks for any and all information  
14 they had regarding any claims that Plaintiff made with Penn  
15 National while she was insured with them they produced four  
16 claim files.

17 Um, the scope of Plaintiff's inquiry into the  
18 corporate designee's testimony would, um, include areas of  
19 inquiries such as how is a claim filed generated, what sorts  
20 of things go into the claim file, if there's a bodily injury  
21 investigation how do you investigate into a bodily injury  
22 claim. If you discover that a person was injured in a car  
23 accident would you report this to the ISO national database?  
24 There's a, um, and I'm not sure how much Your Honor knows  
25 about claims practice, so I'll take it one step further, but

1 there's an ISO national database that all the insurance, 97  
2 percent of all the insurance companies, um, subscribe to, and  
3 what they do is when they are made aware of a claim they  
4 provide this national database what's called indexing  
5 information. And the indexing information includes the  
6 insured's name, the claimant's name, the type of vehicle they  
7 were driving, the type of payments made under the policy, a  
8 brief description of the accident, names of witnesses,  
9 parties, if there's, um, PIP payments or medical payments  
10 made, that's usually in the indexing information. So, it's  
11 basically a, a database that's shared by all the insurance  
12 companies so they can cross reference people's names,  
13 insurers, insured's, dates of accidents, types of claims that  
14 are made. So, the area of inquiry that I would have gone  
15 into with the corporate designee was here's what a claim file  
16 would or should like (sic) had an investigation been done in  
17 2005. If a bodily injury claim was made it would have been  
18 Penn's, uh, habit or practice to report that claim to the bod  
19 (sic), to this indexing service. Um, the, and I do know that  
20 Penn National did report this claim to the indexing service.  
21 Um, I, I do when I start a search on all my own clients.  
22 This claim does appear. Um, I did receive a, some  
23 documentation from State Farm to indicate that they did an  
24 index on my client, and Penn National did in fact supply this  
25 ISO data base information regarding this crash that we're

1 here about today.

2 So, essentially, the, the cross would have been if  
3 she had made a bodily injury claim in 2005 that's something  
4 you would have reported to the indexing bureau, um, I asked  
5 them to bring any indexing that they have, which I believe  
6 would, and I haven't seen it, I've subpoenaed, I have a  
7 subpoena that's out there that no records have been produced  
8 for, because of your Court's ruling would be my  
9 understanding, but I suspect that it did do indexing, and  
10 that there is no 2005 bodily injury claim showing up in the  
11 indexing.

12 Um, I would also ask, uh, and it, because at the  
13 time they were a Defendant, I think the fact that the  
14 Defendant themselves is taking a position contrary really to  
15 their own file in this case, so that would have been  
16 explored. For example, um, the Defendant is claiming that  
17 she's had chronic back pain for three years following the  
18 2005 crash, yet they don't have any indication in their own  
19 claim file, and they were her insurance company back in 2005  
20 to indicate that she made a bodily injury claim, and if they  
21 were following their own practices and procedures they would  
22 have reported that claim to the indexing bureau. So, it  
23 would have been a credibility bias cross examination that  
24 would help, um, you know, I'm essentially in the position of  
25 proving a negative at this point with that 2005 car crash so

1 I have to provide as much information to the jury as I  
2 possibly can that this information contained within this  
3 medical record is inaccurate and it is a mistake. So, to  
4 help, um, buttress the credibility of my client, who concedes  
5 she was in a car accident in 2005, however, the car accident  
6 in 2005 was a minor bumper tap, it was a hit and run, she  
7 made a property damage claim only with her insurance company,  
8 and was paid a payment after her deductible of less than  
9 \$250. So, I would also explore that with the claims  
10 representative, did you try and go back and find the  
11 cancelled check, did you try and go back to the accounting  
12 department? I don't know how much effort they put into  
13 trying to find the 2005 claim files so I would have explored  
14 that with him as well.

15 Um, also the fact that in 2005 Penn was her  
16 insurance company, this was a hit and run, they're asserting  
17 she's making a chronic back pain claim, I think that I would  
18 have elicited testimony from him that she had hit and run  
19 coverage, if she was injured in that crash it would have been  
20 something that would have been covered back in 2005 for, you  
21 know, not only her medical expenses for PIP, but also for a  
22 bodily injury claim under the under insured or a phantom  
23 vehicle insurance back in 2005, and they have no record that,  
24 that she made any such claim, um, but she could have very  
25 easily done that had she been severely injured in that crash