

**STATE OF MICHIGAN
IN THE SUPREME COURT**
(Appeal from the Court of Appeals)
(O,Connell, P.J., Servitto, J.J., and Cavanagh, J.J.)

FRANK ANTHONY SCOLA,

Plaintiff/Appellant,

v

JP MORGAN CHASE BANK, N.A.,
and JP MORGAN CHASE & CO,

Defendant/Appellee.

Supreme Court No. 158903

Court of Appeals No. 338966

Wayne County Circuit Court
Case No. 15-002804-NI
Hon. John A. Murphy (P24492)

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**APPENDIX TO PLAINTIFF/APPELLANT'S FRANK SCOLA'S
SUPPLEMENTAL BRIEF IN SUPPORT OF HIS LEAVE APPLICATION**

Prepared by:

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June 21, 2019

158903

FRANK ANTHONY SCOLA,
Plaintiff-Appellant,

v

SC: 158903
COA: 338966
Wayne CC: 15-002804-NI

JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, and JP MORGAN CHASE &
CO.,

Defendants-Appellees,

and

KATHLEEN SCOLA, ESTATE OF JOHN
BARROW BROWN, and CITY OF WAYNE,
Defendants.

On order of the Court, the application for leave to appeal the October 4, 2018 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the Court of Appeals erred in holding that the appellant's claim sounded in premises liability rather than ordinary negligence. In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellees shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellees shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellees' brief. The parties should not submit mere restatements of their application papers.

The Michigan Association for Justice, Michigan Defense Trial Counsel, Inc., and the Negligence Section of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

STATE OF MICHIGAN
COURT OF APPEALS

FRANK ANTHONY SCOLA,

Plaintiff-Appellant,

v

JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, and JP MORGAN CHASE &
CO.,

Defendants-Appellees,

and

KATHLEEN SCOLA, ESTATE OF JOHN
BARROW BROWN, Deceased, and CITY OF
WAYNE,

Defendants.

Before: O'CONNELL, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right a final order of dismissal in this premises liability action. Plaintiff's claims on appeal relate to an earlier order granting summary disposition to defendants JP Morgan Chase Bank, National Association, and JP Morgan Chase & Co. (Chase Bank defendants).¹ We affirm.

On June 27, 2003, when plaintiff was seven years old, he was the passenger in a car involved in a head-on collision. Plaintiff was riding in the middle seat of a station wagon driven by his mother, Kathleen Scola (Kathleen). Kathleen drove southbound on Wayne Road, needing to head east on Michigan Avenue, when she realized that she accidentally drove through the

¹ Stipulated orders of dismissal related to defendants Kathleen Scola, the estate of John Barrow Brown, and the city of Wayne were entered by the trial court and they are not parties to this appeal.

intersection with Michigan Avenue. In this area of downtown Wayne, Michigan Avenue splits into two one-way roads, with a city block in between them. Kathleen turned into the bank parking owned by Chase Bank defendants on Wayne Road, then exited the bank parking lot and turned right onto the one-way, westbound portion of Michigan Avenue. She thereafter was involved in a head-on collision with a car traveling westbound on Michigan Avenue. Plaintiff sustained serious injuries in the accident and filed this action in 2015. Plaintiff asserted that defendants were negligent in that they had a duty to maintain their parking lot in a safe condition for public travel, but failed to do so because there were no signs warning drivers exiting their parking lot that the intersecting roadway, Michigan Avenue, was a one-way westbound road, although it was foreseeable that drivers would turn in the wrong direction and into oncoming traffic.

Chase Bank defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) arguing, in part, that they did not have a duty to post any type of sign warning drivers of the one-way road and any danger associated with turning the wrong way on a one-way road was open and obvious. Plaintiff responded that the open and obvious doctrine did not apply because plaintiff's claim was not based on premises liability; rather, plaintiff's claim sounded in ordinary negligence. The trial court agreed with Chase Bank defendants and granted their motion.

The trial court did not specify under which court rule it granted the motion. When a party moves for summary disposition under multiple subrules, the trial court rules on the motion without specifying the subrule under which it made its decision, and the trial court considered documentary evidence beyond the pleadings, this Court reviews the decision as if it were based on MCR 2.116(C)(10). *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012). Although Chase Bank defendants moved for summary disposition pursuant to MCR 2.116(C)(8), they supported their motion with documentary evidence, including depositions. Thus, review on appeal is pursuant to MCR 2.116(C)(10). *Id.*

This Court reviews a motion for summary disposition de novo. *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115; 839 NW2d 223 (2013). A motion for summary disposition under MCR 2.116(C)(10) challenges the factual sufficiency of a plaintiff's claim. *Gorman*, 302 Mich App at 115. The trial court considers the evidence in the light most favorable to the nonmoving party. *Id.* Summary disposition is proper under MCR 2.116(C)(10) if “ ‘there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.’ ” *Id.* at 116 (citation omitted). There is a genuine issue of material fact “ ‘when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.’ ” *Id.* (citation omitted).

On appeal, plaintiff argues that the trial court erred in granting Chase Bank defendants' motion for summary disposition because the open and obvious doctrine does not apply to the one-way nature of Michigan Avenue in Wayne, Michigan, because it is not located on Chase bank defendants' premises; that plaintiff's claim was for ordinary negligence rather than premises liability; and, that a question of fact existed whether Chase Bank defendants had a duty to plaintiff to place a sign in the exit of its parking lot indicating that Michigan Avenue was a one-way street. We disagree.

Plaintiff's amended complaint included a count of "negligence" against Chase Bank defendants. " 'Michigan law distinguishes between claims arising from ordinary negligence and claims premised on a condition of the land.' " *Lymon v Freedland*, 314 Mich App 746, 756; 887 NW2d 456 (2016), quoting *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 692; 822 NW2d 254 (2012). Claims of ordinary negligence are based on the premise that an individual has a duty to follow an applicable standard of care when conducting an activity. *Lymon*, 314 Mich App at 756. Claims of premises liability are based on a defendant's duty as an owner, possessor, or occupier of land. *Id.* An action sounds in premises liability rather than ordinary negligence when an injury occurs from a condition of the land, rather than an activity or conduct that created the condition on the land. *Id.*

"[T]he gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007). Although labeled as a claim of "negligence" in plaintiff's amended complaint, plaintiff alleged that Chase Bank defendants

assumed responsibility for placement of traffic control signals, lane markings, channelization, and all other matters relating to the design, construction, and maintenance of its parking lot/driveway where it meets West Michigan Avenue so that entering West Michigan Avenue would be reasonably safe and convenient for public travel.

Plaintiff alleged that Chase Bank defendants had a duty "to maintain the transition from its private driveway/parking lot to West Michigan Avenue in a condition safe and fit for public travel" and that the lack of traffic control signs or devices in the "transition" was "an unsafe and defective condition." Plaintiff further alleged that the failure of Chase Bank defendants to "design, construct, and maintain" the parking lot and driveway was the alleged proximate cause of plaintiff's injuries. Plaintiff referred to the lack of signage as a "dangerous condition." At the hearing on Chase Bank defendants' motion for summary disposition, the trial court provided, "Even if we assume [p]laintiff was an invitee[,] this [c]ourt finds that the action sounds in premises liability." Plaintiff's claims sounded in premises liability because he argued that his injuries occurred from a condition of the land, namely, the lack of signage. Thus, plaintiff's claims sounded in premises liability. *Id.* We agree.

In premises liability actions, the plaintiff must prove the elements of negligence: " '(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages.' " *Buhalis*, 296 Mich App at 693, quoting *Benton v Dart Props, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). "The duty owed to a visitor by a landowner depends on whether the visitor was a trespasser, licensee, or invitee at the time of the injury." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013).

The trial court did not determine the status of plaintiff when he was on Chase Bank defendants' premises ("Even if we assume [p]laintiff was an invitee . . ."). Chase Bank defendants asserted that plaintiff was a trespasser in their motion for summary disposition and plaintiff agreed in his response. However, "invitee status is commonly afforded to persons

entering upon the property of another for business purposes.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). Plaintiff, Kathleen, and Susan Seibert, Kathleen’s sister seated in the passenger seat at the time of the accident, all testified that Kathleen had no intention of doing business at the bank when she turned into the parking lot. Her sole purpose was to get onto Michigan Avenue. However, a trespasser enters a landowner’s land without consent. *Sanders*, 303 Mich App at 4. Lieutenant Robert Puckett, the officer responding to the accident, testified that Kathleen did not break any law when she used the parking lot to turn around because she was not trying to avoid a traffic device. She was just lost. A licensee may enter the land of another by virtue of the landowner’s consent. *Id.* No evidence related to such consent was established in the trial court. Plaintiff’s issue on appeal relates only to the trial court’s application of the open and obvious doctrine. The trial court assumed, without deciding, that plaintiff was an invitee and he will thus be considered as such for purposes of appeal.

“It is well settled in Michigan that a premises owner must maintain his or her property in a reasonably safe condition and has a duty to exercise due care to protect invitees from conditions that might result in injury.” *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 90; 485 NW2d 676 (1992). However, a premises possessor does not owe a duty to protect or warn an invitee regarding dangers that are open and obvious. *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012). This is “because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid.” *Id.* at 461. “Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection.” *Id.* This inquiry involves an objective examination of the nature of the condition on the land. *Id.*

On appeal, plaintiff argues that the open and obvious doctrine does not apply to dangerous conditions that do not occur on a defendant’s premises, and here, the collision occurred off Chase Bank defendants’ premises, so premises liability and the open and obvious doctrine did not apply. As an initial matter, plaintiff did not allege in his complaint that the one-way nature of Michigan Avenue itself was the dangerous condition. Rather, he argued that the failure of Chase Bank defendants to place warning signs at the exit of the parking lot at Michigan Avenue was the alleged defect. Plaintiff argued in his motion for reconsideration, and on appeal, that the open and obvious doctrine did not apply because Michigan Avenue was not on the bank’s premises and the collision did not occur on the bank’s premises. However, the alleged dangerous condition, the lack of warning signage at the exit driveway, was located (or should have been located, according to plaintiff) on the bank’s premises. Thus, application of the open and obvious doctrine to the lack of signage regarding the one-way nature of Michigan Avenue is not precluded.

The lack of signage regarding the one-way nature of Michigan Avenue was open and obvious. “Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection.” *Id.* An average person with ordinary intelligence would have discovered that Michigan Avenue was one-way at the exit of the bank parking lot upon casual inspection without signs present. Lieutenant Puckett testified at deposition that there were one-way signs at the intersection of Wayne Road and Michigan Avenue at the time of his deposition in November 2015, and similar, if not the same, signs were present in 2003 at the time of this accident.

Kathleen drove through the intersection just before the accident, and testified that, if such signs were present, she did not see them. Timothy Robbins, one of plaintiff's experts, testified at deposition that there were only white lines on the roadway of Michigan Avenue, indicating that it was a one-way street. An average person with ordinary intelligence would have discovered the traffic signs at the intersection and the white lines on the roadway upon casual inspection in the absence of signs in the parking lot. *Id.* As the trial court noted, "A one-way lane is an everyday occurrence that all drivers face everyday [sic]." Therefore, the trial court did not err when it determined that the lack of signage indicating that Michigan Avenue was one-way was open and obvious.

Although plaintiff did not assert the existence of any special aspects in the lower court or on appeal, Chase Bank defendants asserted on appeal that there were no special aspects of the bank parking lot that removed it from the open and obvious doctrine. We agree.

An exception to the preclusion of liability for open and obvious dangers arises when special aspects of the condition of the land make even an open and obvious risk unreasonable. *Hoffner*, 492 Mich at 461. Special aspects exist when the open and obvious hazard is unreasonably dangerous or effectively unavoidable. *Id.* at 461-463.

[E]xceptions to the open and obvious doctrine are *narrow* and designed to permit liability for such dangers only in *limited*, extreme situations. Thus, an "unreasonably dangerous" hazard must be just that – not just a dangerous hazard, but one that is *unreasonably* so. And it must be *more than* theoretically or retrospectively dangerous, because even the most unassuming situation can often be dangerous under the wrong set of circumstances. An "effectively avoidable" hazard must truly be, for all practical purposes, one that a person is required to confront under the circumstances. A general interest in using, or even a contractual right to use, a business's services simply does not equate with a compulsion to confront a hazard and does not rise to the level of a "special aspect" characterized by its *unreasonable risk of harm*. [*Id.* at 472-473 (citations omitted; italics in the original).]

Only those special aspects that result in a uniquely high likelihood of harm or severity of harm may remove a condition from the open and obvious doctrine. *Id.* at 472 n 38.

At the hearing on Chase Bank defendants' motion for summary disposition, the trial court noted, "In order to be considered unreasonably dangerous[,] there must be something out of the ordinary, special about a particular open and obvious danger in order for the premises possessor to be expected to anticipate harm from that condition." There were no special aspects removing the bank parking lot driveway exiting onto one-way Michigan Avenue from the open and obvious danger doctrine. An exit from a business without one-way warning signs is a typical hazard that does not constitute a limited extreme situation. Although plaintiff incurred a serious injury to his kidney, "even the most unassuming situation can often be dangerous under the wrong set of circumstances." *Hoffner*, 492 Mich at 472. The driveway onto Michigan Avenue did not pose a uniquely high likelihood of harm or severity of harm and the condition must be more than theoretically or retrospectively dangerous to fall outside the doctrine. *Id.*

Furthermore, the alleged hazard was not effectively unavoidable. Kathleen chose to enter the bank parking lot solely as a route to get eastbound on Michigan Avenue. She could have turned around in a different business, or taken other roads to get onto eastbound Michigan Avenue. She could have gone directly to eastbound Michigan Avenue. She chose the bank parking lot because it was the first available drive to turn into after she accidentally drove through the intersection, not realizing that it was the one-way westbound portion of Michigan Avenue. Additionally, there were other exit driveways in the bank parking lot. It appears from the aerial photographs of the bank parking lot that there was the driveway from Wayne Road from which Kathleen entered the lot, the drive-through teller exit onto Michigan Avenue from which she exited, and a one-way entrance on Michigan Avenue into the parking lot with a corresponding one-way exit onto Michigan Avenue. Kathleen chose the drive-through teller driveway that exited onto Michigan Avenue because she ultimately needed to go eastbound on Michigan Avenue. She could have used the other parking lot exit onto Michigan Avenue. Thus, Kathleen was not required to confront the alleged hazard under the circumstances. *Id.*

Because we conclude that plaintiff's claims sounded in premises liability rather than ordinary negligence, plaintiff's issues on appeal relating to duty as an element of a prima facie case of negligence and Chase Bank defendants' alternative arguments on appeal related to proximate cause and design defect need not be determined.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto

STATE OF MICHIGAN
COURT OF APPEALS

FRANK ANTHONY SCOLA,
Plaintiff-Appellant,

UNPUBLISHED
October 4, 2018

v

No. 338966
Wayne Circuit Court
LC No. 15-002804-NI

JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, and JP MORGAN CHASE &
CO.,

Defendants-Appellees,

and

KATHLEEN SCOLA, ESTATE OF JOHN
BARROW BROWN, Deceased, and CITY OF
WAYNE,

Defendants.

Before: O'CONNELL, P.J., and CAVANAGH and SERVITTO, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent. I would reverse the order granting defendants' motion for summary disposition on the ground that the open and obvious doctrine precluded liability. Plaintiff established that a genuine issue of material fact existed as to whether defendants had a duty to warn drivers exiting their parking lot that the intersecting road is a one-way, westbound road—which was not open and obvious as evidenced by the fact that drivers turned in the wrong direction from defendants' parking lot on an almost daily basis.

As defendants acknowledge, “an invitee is entitled to the highest level of protection under premises liability law.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000). “The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards.” *Id.* at 597. Generally, a premises owner must exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by dangerous conditions on the property. *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88

(2012). If the dangerous conditions are hidden or latent, the premises owner must warn an invitee of the dangers. *Riddle v McLouth Steel Prod Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). But an unreasonable risk of harm does not exist if the invitee knows of the condition or if it is so obvious that the invitee might reasonably be expected to discover it. *Id.* “Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection.” *Hoffner*, 492 Mich at 461.

In this case, plaintiff presented sufficient evidence establishing that defendants’ parking lot exit was dangerous and defendants knew it was dangerous but did nothing about it. Plaintiff presented testimony from the owner of a business located directly across the street, David Zuckerman, who testified that he saw drivers turning the wrong way from defendants’ parking lot on an almost daily basis, and had for years. Zuckerman reported this dangerous condition to defendants’ employees several times before this accident but defendants did nothing to change it. Plaintiff also presented testimony from his expert in accident reconstruction and signs, Timothy Robbins, who testified that defendants’ parking lot exit had no warning signs regarding the intersecting one-way road, but did have a misleading arrow painted on the pavement indicating to drive straight ahead although drivers must only turn left to safely exit the parking lot. Robbins testified that a couple of simple signs and changing the direction of the arrow painted on the pavement could easily address this dangerous condition. Plaintiff’s safety expert, Walter Cygan, agreed with Robbins that an added safety feature to minimize the dangerous condition “would be a curved painted arrow on the pavement, leading in the correct direction.” Plaintiff also presented testimony from the police officer who responded to this accident, Robert Puckett, who testified that he assumed the driver of the vehicle plaintiff was riding in was lost and trying to get back onto Michigan Avenue when she turned the wrong way on this one-way road. Puckett assumed that was the case because it was “pretty typical we have people that go the wrong way on Michigan Avenue daily.” Further, the driver of the vehicle plaintiff was riding in, Kathleen Scola, testified that she was unfamiliar with the area and had missed her turn onto Michigan Avenue. She then pulled into defendants’ parking lot, followed the “exit only” sign, and proceeded to exit the wrong way on Michigan Avenue, into oncoming traffic, causing the head-on collision. Kathleen testified that the police officer who wrote her the ticket told her that she should fight the ticket because “it happens all the time . . . at that location.”

Defendants argued in the trial court, as they do on appeal, that the allegedly dangerous condition in this case was open and obvious because everyone knows that if you turn the wrong way on a one-way road, there is a potential to get into a car accident. But the issue in this case is not whether defendants had a duty to warn drivers that turning the wrong way on a one-way road is dangerous. Instead, the issue is whether defendants had a duty to warn drivers exiting their parking lot that the intersecting road is, in fact, a one-way, westbound road, i.e., that one must turn left upon exiting the parking lot. And I disagree with the majority opinion that because of the presence of a one-way sign at the intersection of Wayne Road and Michigan Avenue, as well as “white lines” on Michigan Avenue, it was reasonable to expect that an average person with ordinary intelligence who was leaving defendants’ parking lot would discover upon *casual inspection* that they were exiting onto a one-way, westbound road. See *Hoffner*, 492 Mich at 461.

Defendants also relied on this Court's opinion in *Balcer v Forbes*, 188 Mich App 509; 470 NW2d 453 (1991), to argue that they had no duty to warn of the presence of a one-way street. Defendants' reliance is misplaced. In that case, a driver of a vehicle exited a parking lot, turning the wrong way on a one-way street. *Id.* at 510. About a block later, that vehicle was struck by a second vehicle which was chasing a third vehicle at a high rate of speed. *Id.* This second vehicle also struck two pedestrians and a lawsuit was filed by and on behalf of those pedestrians. *Id.* One of the claims was a negligence claim against the owners and lessors of the parking lot where the first vehicle had exited, alleging that the failure to warn exiting patrons about the one-way street proximately caused the car accident and the plaintiffs' injuries. *Id.* at 510-511. This Court noted that the issue was whether the pedestrians were owed a duty:

Contrary to the parties' positions, however, the question is not the extent of the duty owed to invitees of the parking lot or motorists traveling on an adjacent roadway. Rather, the question we must resolve is what duty was owed to the plaintiffs, . . . pedestrians who were innocently crossing the street over a block away from defendants' premises. After thorough consideration, we conclude that no duty was owed to the plaintiffs. [*Id.* at 512.]

Clearly, the *Balcer* case is inapplicable. First, this Court specifically noted that the issue was not "the extent of the duty owed to invitees of the parking lot or motorists traveling on an adjacent roadway." *Id.* Second, the pedestrian-plaintiffs in that case were not owed a duty because they were unforeseeable plaintiffs, but in this case plaintiff was an invitee of defendants' parking lot. See *id.* at 513. And, third, unlike in the *Balcer* case, plaintiff's injuries were not "precipitated by an unforeseeable superseding cause." See *id.* at 514. Thus, contrary to defendants' claim, the *Balcer* case is inapposite and does not address the duty owed to invitees of a parking lot abutting a one-way road.

Accordingly, I would hold that, considering the record evidence in the light most favorable to plaintiff as the nonmoving party, plaintiff established that a genuine issue of material fact existed as to whether defendants had a duty to warn drivers exiting their parking lot that they must only turn left because it is not reasonable to expect that an average person with ordinary intelligence would discover upon casual inspection that the intersecting road is a one-way, westbound road. See *Hoffner*, 492 Mich at 461; *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115-116; 839 NW2d 223 (2013). Thus, I would reverse the order granting defendants' motion for summary disposition.

/s/ Mark J. Cavanagh

Court of Appeals, State of Michigan

ORDER

Frank Anthony Scola v JP Morgan Chase Bank National Association

Docket No. 338966

LC No. 15-002804-NI

Peter D. O'Connell
Presiding Judge

Mark J. Cavanagh

Deborah A. Servitto
Judges

The Court orders that the motion for reconsideration is DENIED.

Cavanagh, J., would grant the motion for reconsideration.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 20 2018

Date


Chief Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FRANK ANTHONY SCOLA,

Plaintiff,

Court No. 2015-002804-NI

v

HON. John A. Murphy

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,
JPMORGAN CHASE & CO.,
KATHLEEN SCOLA ESTATE OF
JOHN BARROW BROWN (Deceased)
and CITY OF WAYNE,
Jointly and Severally,

15-002804-NI

Defendants.

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**ORDER GRANTING DEFENDANTS, JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, AND JPMORGAN CHASE & CO.'S,
MOTION FOR SUMMARY DISPOSITION**

AT A SESSION OF SAID COURT, HELD IN THE
CITY-COUNTY BUILDING, CITY OF DETROIT,
COUNTY OF WAYNE, STATE OF MICHIGAN ON
1/31/2017

PRESENT: HON. JOHN A. MURPHY
CIRCUIT COURT JUDGE

This matter having come on before the Court by way of written motion, oral arguments having been heard, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that Defendants, JPMorgan Chase Bank National Association and JPMorgan Chase & Co.'s, Motion for Summary Disposition is hereby **granted** for the reasons set forth on the record. Plaintiff's Complaint against Defendants, JPMorgan Chase Bank National Association and JPMorgan Chase & Co., is hereby dismissed with prejudice and without costs. This is not the last pending claim and does not close the case.

/s/ John A. Murphy

Circuit Court Judge

Approved as to form:

/s/ Michael S. Daoudi (w/permission)

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/s/ Robert A. Marzano

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STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT - (WAYNE COUNTY)
FRANK ANTHONY SCOLA,
Plaintiff,
-vs-
Circuit Court No.
15-002804-NI
JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, JP MORGAN CHASE & CO.,
KATHLEEN SOLA ESTATE OF JOHN BARROW
BROWN (Deceased) and CITY OF WAYNE,
Jointly and Severally,
Defendants.
----- /

THIRD JUDICIAL
CIRCUIT COURT
17 JUN 15 PM 3:48
OFFICE OF
COURT REPORTING
CIVIL DIVISION

MOTION HEARING
Before the HONORABLE PRENTIS EDWARDS, Circuit Judge,
Detroit, Michigan, on January 13, 2017.

APPEARANCES:

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Detroit, Michigan

Friday, January 13, 2017 - 12:05 p.m.

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THE COURT: Scola versus JP Morgan.

Okay, we've got everybody?

MR. MARZANO: Got everybody, your Honor.

THE COURT: Okay, identify yourselves for
the record, please.

MR. MARZANO: Your Honor, I'll start. My
name is Robert Marzano. I represent JP Morgan Chase Bank
National Association and JP Morgan Chase & Company.

THE COURT: Okay.

MR. WILLIAMS: Mark, Mark Williams on
behalf of Defendant Scola.

MR. KIM: James Kim on behalf of Defendant
Estate of John Barrow Brown.

MR. DAOUDI: Good morning, your Honor. May
it please the Court, I'm Michael Daoudi and I'm on behalf
of the Plaintiff Frank Anthony Scola. Thank you.

THE COURT: Okay.

Okay, let's hear from the bank.

MR. MARZANO: All right. Excuse me, your
Honor.

Your Honor, this is, and I'll just refer to
us as the bank Defendants, the bank Defendants' Motion for

1 Summary Disposition brought pursuant to MCR 2.116(C)(8)
2 and (C)(10). Your Honor, I presume you've read everything
3 that's been filed.

4 THE COURT: It's quite a bit. I just got
5 it.

6 MR. MARZANO: Okay. Would you like me just
7 to cover the facts briefly as they apply to my client or
8 just stick to the argument?

9 How would you like me to proceed?

10 THE COURT: Let's see. Well, let's just
11 focus in on duty.

12 MR. MARZANO: Okay. Your Honor, before I
13 get to that I do want to bring up a point. One of the
14 arguments I raised in my reply you had needed a summary
15 disposition scheduling order and this was back when we met
16 with you in chambers at the settlement conference on
17 November 10 of 2016. In that order it's the Plaintiff's
18 response had to be filed by November the 30th. Their
19 response was not filed by November 30th. Now Plaintiff
20 has since then filed a reply to my reply which frankly I'd
21 argue is not even proper and said, well, hold it, that was
22 a holiday so I couldn't file it that day and the Court
23 gave him permission not to do it.

24 I haven't seen an order to that effect for
25 one thing. And two, your order said to have it filed by a

1 certain date. It didn't say to be filed on November 30th
2 it said by November 30th.

3 And according to your order if in fact the
4 Plaintiff didn't comply with the order his brief is not to
5 be considered and this Court is to take the position that
6 there is no opposition to my motion, so that's my first
7 argument, of course.

8 THE COURT: Okay.

9 MR. MARZANO: Okay, I will proceed on to
10 the duty argument.

11 Your Honor, the Plaintiff has essentially
12 said listen, as a private property owner the bank -- at
13 the time it was Bank One back in 2003 -- had an obligation
14 or a legal duty to put some type of directional sign or
15 warning signs onto private property telling drivers don't
16 turn the wrong way on the one-way street or somehow warn
17 them of the dangers of doing so.

18 There is absolutely no law that requires
19 the bank to do so. In fact, there's a state law that
20 talks about how since this is a state trunk line any
21 directional sign that the State deems appropriate the
22 State has to place on that road.

23 Now, Plaintiff has retained a gentleman by
24 the name of Walter Saigon (ph) and Mr. Saigon was deposed
25 a short time ago and he has held himself out to be an

1 expert in this case. Now I'm not stipulating to that at
2 this point in time but in his report that we received
3 before his deposition as well as during his deposition
4 Mr. Saigon testified that there was no standard, code,
5 law, statute or ordinance that would have required the
6 Chase Defendants to have placed any type of directional or
7 warning signs on this private property regarding the fact
8 that Michigan Avenue is a one-way street. So their own
9 expert they've purported or their own purported expert has
10 said, well, there's no legal obligation to do so but you
11 should have done it anyway.

12 The lieutenant who wrote the ticket
13 to Ms. Scola in this case testified that there was no law
14 that required the bank to put any type of warning sign on
15 its property. So the question becomes what legal
16 obligation did the bank have and there is no legal
17 obligation. There's no caselaw that says the bank's got
18 to place or a private property owner has to place a
19 warning directional sign warning drivers not to turn the
20 wrong way onto a wrong-way (sic) street or the fact that
21 there is a one-way street. So for that reason alone and
22 as to that duty issue the bank is requesting summary
23 disposition.

24 Now, the Plaintiff has raised in its
25 response, well, this is an ordinary negligence case as

1 well as a premises liability case. As to this particular
2 argument it makes no difference whether it's an ordinary
3 negligence case or a premises liability case because the
4 question is is there a legal duty and there is no legal
5 duty. There is no legal obligation. And I happened to
6 drive up and down that street. In some places it didn't
7 have them. I've become a little more cognitive now when I
8 pull out on a one-way street and look and see, hey, does
9 the private property that I'm pulling out on have to have
10 a one-way sign somewhere that says I can only turn one
11 way? I very rarely see that. Certainly a property owner
12 has the option to do that but there was no legal
13 obligation on the part of the bank and there wasn't in
14 2003 when this alleged incident took place.

15 Now, my second duty argument goes to the
16 open and obvious danger doctrine argument and again, I'm
17 arguing the second argument that under that doctrine
18 there's no duty to warn someone coming into someone's
19 parking lot not to turn the wrong way on a one-way street
20 or whether harm could result if one did so. It's an open
21 and obvious danger. We all know if you turn the wrong way
22 on a one-way street it's a potential to get into a car
23 accident. It's not a real rocket-science type of thing.
24 It's something we face everyday.

25 I was trying to look outside here. I know

1 it's the one-way street here and if I turn the wrong way
2 going down Jefferson there's a chance I may get hit by a
3 car. It's not something I need a warning from the City of
4 Detroit to say hey, don't turn this way because if you do
5 you might get hurt.

6 Now, Plaintiff has said, well, that's the
7 duty. That, that argument doesn't fly because this is an
8 ordinary negligence case not a premises case. Well, I
9 disagree because the whole crux of the Plaintiff's claim
10 is that an alleged defect on the bank's premises, a lack
11 of warning signs or directional signs was a proximate
12 cause of the Plaintiff's accident.

13 And he isn't saying the bank pushed the car
14 out into the street or somehow the bank had some person
15 saying go this way just to confuse the driver. There was
16 no active negligence on the part of anyone from the bank.
17 It was simply he simply has a claim that there's a defect
18 in the premises with respect to signage on the premises.

19 In my reply too I've also provided this
20 Court with the law which states that when an action
21 develops from the condition of the premises rather than an
22 activity or conduct that created the condition the action
23 is one of premises liability. And this is true even where
24 a plaintiff alleges that the premise possessor creates a
25 condition giving rise to the plaintiff's injury. Alleging

1 that one's action created a dangerous condition on the
2 premises does not transform a premises liability claim
3 into an ordinary negligence claim.

4 So again, you've asked me to address the
5 two issues -- two arguments I've made with respect to
6 duty. The first one, of course, is that there simply is
7 no legal duty.

8 And No. 2, under the open and obvious
9 danger doctrine there would be no obligation to warn
10 Ms. Scola who was coming to the bank, say hey, don't turn
11 the wrong way onto a one-way street 'cause you might get
12 into a car accident.

13 THE COURT: Okay, thanks.

14 Anything to add?

15 MR. MARZANO: Do you need me to address
16 anything else in my brief?

17 THE COURT: Not at this point. Not at this
18 point.

19 Did you want to add something?

20 MR. KIM: No, your Honor, not, not
21 pertaining to JP Morgan's --

22 THE COURT: Your client is?

23 MR. KIM: My, my client, your Honor, is the
24 Estate of John Barrow Brown.

25 THE COURT: Okay.

1 MR. KIM: And I did file a motion. I
2 basically adopted codefendant Scola's motion as it
3 pertained to the injuries.

4 THE COURT: Okay, let's hear from Plaintiff
5 as to the bank.

6 MR. DAOUDI: Yeah, your Honor, and good
7 morning.

8 THE COURT: Good morning.

9 MR. DAOUDI: Well, first to respond to the
10 duty issue, counsel does not touch upon the whole argument
11 we made regarding general negligence and the creating what
12 creates a duty under common law. And we cite the case of
13 *Buczowski versus McKay*, 441 Mich 96 and it lists -- it
14 says to determining whether a duty exists for negligence
15 purposes the Court looks at different variables, and one
16 is, of course, foreseeability of harm in which we then go
17 on to extrapolate independently the argument, the
18 foreseeability of harm to support the evidentiary support
19 we have for that.

20 Secondly, the existence of a relationship
21 between the parties involved; third, degree of certainty
22 of injury; closeness, 4, closeness of connection between
23 the conduct and the injury; 5, well, blame attached to the
24 conduct; 6, the public policy of preventing future harm;
25 and 7, the burdens or the consequences on imposing a duty

1 and resulting liability from breach.

2 Now, we went through each one under
3 analysis in our, in our response brief to, to Defendant's
4 claim on the duty. That was under the general negligence
5 and obviously we, we argue and we have a right to argue in
6 Michigan in the alternative and we, obviously we would go
7 for the general negligence to be the first argument to
8 defend this and, you know, suffice, then obviously
9 premises liability is in the alternative. I mean, we'd
10 argue both.

11 But we believe it's general negligence
12 because they actually do have a sign and Defendant,
13 Defendant Scola, Kathleen Scola certainly had no sign if
14 she was looking for a sign and the sign said exit, exit
15 only. It didn't say one way or what, do not turn right.
16 So it didn't have, they didn't take an active measure.
17 They took the active measure negligently, knowing what was
18 the most -- that they were sending people out into an exit
19 only driveway and it's the driveway exit where the,
20 there's three teller lanes and there's a through lane on
21 the right. So it's like four lanes that funnel into one
22 exit driveway onto, on Michigan Avenue and there's no
23 indication whatsoever that you're pulling, you're spilling
24 out onto a one-way road.

25 Excuse me, Judge, so I am recovering from a

1 cold so, and I sound hoarse. I apologize.

2 The other matter is we, we argued notice as
3 an argument because you can't have a duty without some
4 kind of notice. I understand it comes hand-in-hand. So
5 we've talked about notice too and we talked about Leo
6 Zuckerman (ph). Leo Zuckerman, it becomes Leo's Jewelry.
7 Leo's Jewelry sits right across the street. It's got a
8 whole set of windows from floor to ceiling that watches
9 this driveway on a regular basis. Leo Zuckerman had
10 banked at Chase Bank prior to this motor vehicle accident,
11 after this motor vehicle accident.

12 Prior to this motor vehicle accident
13 Mr. Zuckerman would watch cars on a daily basis, all the
14 way through today watch cars on a daily basis turn the
15 wrong way onto the Michigan Avenue exiting the bank. He
16 warned the bank. He told the bank this, seriously,
17 serious accidents can happen and someone's going to get
18 seriously injured. And we have, and we've sent the
19 testimony of him from his deposition.

20 So they had notice. They had constructive
21 notice 'cause it happened on a daily basis and it sits in
22 front of their eyes. They have direct notice, actual
23 notice because Mr. Zuckerman told them prior to the motor
24 vehicle accident about the, about the risk and what's
25 going on and that someone's going to get hurt. And the

1 fact the bank makes no response and they said we're going
2 to send it up the chain of command and what have you,
3 obviously nothing happened. And that's what he testified
4 to, nothing happened.

5 Kathleen Scola at her deposition referenced
6 pictures that were not provided to any of the parties up
7 until that time. At that time we had no idea -- no one
8 had captured the area of the scene of the area as it was
9 on that day up to that time. We had no idea. She
10 testified that she did take pictures and that there was an
11 exit sign and that's what she was looking for, a exit sign
12 and any other sign. She said I would look for any sign
13 and if there was a sign that said one way or no left turn
14 that she would follow it, she wouldn't disregard it.

15 Her intention, her thought was to go east
16 on westbound Michigan, Michigan Avenue and she didn't know
17 it was westbound. Her intention was that because that's
18 where she -- you know, she was unfamiliar with the area.
19 That was the first time she'd been there.

20 And so we, we -- in a requirement of the
21 response they request to produce those pictures. We
22 attached as Exhibit 1 from an artist in that, in that
23 initial response is this, the scene where it says, it
24 shows exit only. That's, that's what it says. So it --
25 and you also see Leo Zuckerman literally how he see -- how

1 he has a, a perfect view of what's going on at the end of
2 the day as he's testified to.

3 So between -- and, and Ms. Scola also
4 testified that those pictures were -- do capture the scene
5 as it was on the day of the incident, that she took the
6 picture like a couple of months or so later and something
7 between one month and the six months. This is in that
8 window it seems like based on testimony. But she says it
9 did capture it, so we do have an image of what it was and
10 they did have a sign says exit only.

11 You know, so they took this active step.
12 They did it negligently and that caused Ms. Scola to exit.
13 As soon as she exited she went the wrong way, and which
14 ended up her getting into a motor vehicle accident with
15 Mr. Barrow Brown which caused significant serious
16 impairment to my client Frank.

17 So as to duty that, that's, that's, I think
18 that and summarized it at this point. I know that it will
19 be a little more detail in the response.

20 THE COURT: Yes.

21 MR. DAOUDI: Is there any other area that
22 the Court may need me to respond to?

23 THE COURT: No, no. We'll grant the
24 motion. Even if we assume Plaintiff was an invitee this
25 Court finds that the action sounds in premises liability.

1 Premises possessor does not owe a duty to protect against
2 dangerous conditions that are open and obvious unless the
3 risk of harm unreasonable -- is unreasonable despite the
4 open and obvious danger.

5 In order to be considered unreasonably
6 dangerous there must be something out of the ordinary,
7 special about a particular open and obvious danger in
8 order for a premises possessor to be expected to
9 anticipate harm from that condition. A one-way lane is an
10 everyday occurrence that all drivers face everyday. We
11 assume a reasonable driver would take appropriate care for
12 one's own safety.

13 In terms of, of the nuisance issue this
14 Court finds that the type of nuisance Plaintiff could
15 conceivably claim existed in this matter could -- would be
16 a public nuisance. Plaintiff cannot maintain a claim for
17 a public nuisance in this matter because there is no
18 unreasonable interference with the common right enjoyed by
19 the general public in this case. Defendant's parking lot
20 was not open to the general public. For this reason alone
21 Plaintiff's nuisance claim, whether they may be a nuisance
22 per se or in fact is dismissed as well. Chase's motion
23 for summary is granted.

24 MR. MARZANO: Thank you, your Honor. I
25 will submit an order essentially stating that our motion

1 is granted for the reasons set forth in the record.

2 THE COURT: Okay. Thank you.

3 MR. MARZANO: Do you need me to stick
4 around for the rest of the arguments here?

5 THE COURT: No.

6 MR. MARZANO: Okay, thank you, your Honor.
7 (12:21 p.m., Attorney Marzano no longer
8 present)

9 THE COURT: Okay, let's hear from the,
10 Mr. Barrow and Mrs. Scola.

11 MR. WILLIAMS: Your Honor, well, on behalf
12 of Ms. Scola we filed a motion for summary disposition on
13 the issue of serious impairment. Based under MCL 500.3101
14 and 3125 it has to show that he sustained a serious
15 impairment that impaired his general ability to lead a
16 normal life. And that's been put through the ringer
17 several times up and down through the courts and you have
18 to, you do have to take it on a case-by-case basis.

19 But here we have a situation where Mr.
20 Scola was injured. He did sustain an injury to the
21 kidney. That's -- and nobody's disputing that. He was in
22 the hospital for seven days but after that he was
23 essentially fine. He was released to go back to school.
24 He went back to school as a seven-year-old boy, continued
25 through schooling and continued to go on about his normal,

1 everyday activities. The only thing he really testified
2 was really impaired throughout the course of this was a,
3 an inability to play tackle football. He played football
4 in the sense that he played soccer but he did not play
5 tackle football because they warned against him having
6 collisions or impacts against the area where the kidney
7 had previously been injured. And that's a prophylactic
8 measure but that doesn't affect his general ability to
9 lead a normal life.

10 So what we're left with is an individual
11 who's actually gone on to play soccer, run marathons. You
12 know, he's attending the University of Michigan, filed
13 this claim as he could and allowed under Michigan law
14 after he turned 18 against his mother for the injuries
15 that he sustained.

16 In Plaintiff's response they use an
17 approach of, well, he could have a lot of problems in the
18 future; he might have some issues with respect to his
19 kidney because one kidney is smaller than the other, which
20 is really kind of a red herring because the statute speaks
21 to how a person has been affected to the point where
22 they're making the claim not future possibilities. And in
23 fact, what he relies upon is speculative testimony from a
24 Dr. Kroneman (ph) who said, yeah, he might have a problem
25 in the future, he can't take blood pressure medications.

1 If he's diabetic that can create a problem. We don't know
2 if any of that stuff's going to occur. He had to admit
3 that.

4 So what we're left with is an individual
5 who essentially sustains an injury, recovers from it very
6 well and was able to function normally as an adult through
7 his adult life to the present time as an -- as he normally
8 would and the only thing he couldn't do during that whole
9 period, even after being monitored from by the physicians
10 at the University of Michigan was not to play tackle
11 football. So I don't think that that rises to the level
12 of a serious impairment of a body function and ask the
13 Court grant the motion and dismiss the case on that basis.

14 THE COURT: Okay, as to Mr. Barrow Brown?

15 MR. KIM: Your Honor, I basically adopt
16 their argument and I, and I don't believe that he was
17 playing tackle football even before this accident.

18 MR. WILLIAMS: That is correct. He did
19 testify to that.

20 THE COURT: Okay.

21 All right, let's hear from Plaintiff.

22 MR. DAOUDI: All right. Your Honor, my
23 client suffered a fractured right kidney pull injury that
24 allowed, that put him in the hospital for seven days. He
25 has, to this day has complaints of pain as has been

1 testified to is the fact.

2 We have, if you look to Defendant Scola's
3 deposition testimony, Kathleen Scola's deposition
4 testimony on Pages 56, 74, 75 and 76 pages she testifies
5 how he has not only physical pain, he has mental and
6 emotional challenges. His number one response to this is
7 to cry.

8 He lives in a type of shell type in terms
9 of living on a day-to-day because he has essentially one
10 kidney function. He has the left, which is considerably
11 over-sized because the right from the date of the motor
12 vehicle accident is basic, is, is not a, is not, is not
13 developed like a normal kidney would and is very, very
14 small. And in fact and if, if he loses his left the right
15 is not sufficient to sustain life. He would be an
16 immediate dialysis patient.

17 This injury on itself also increased his
18 risk of being -- to have dialysis by 25 percent as
19 compared to the general public and that's what
20 Dr. Kroneman said. He has a permanent 25 percent increase
21 for kidney, kidney failure, in a sense, from this
22 situation, be putting on dialysis.

23 He also, there's also a family history of
24 diabetes and high blood pressure and Mr. Kroneman had an
25 indication of high blood pressure and Mr., and

1 Dr. Kroneman noted that, that he already indicated he has,
2 he's had enuresis throughout this matter, which is
3 bedwetting. He's had, he, he's had to live a life where
4 he can't have any -- he can't defend himself. And if that
5 seems like if he needs to defend himself physically he has
6 to -- he can't. If he loses his left kidney or injures
7 it it's a, it's a game changer for him for life.

8 But he up to -- so to, to live with the one
9 kidney he has to live a certain lifestyle. He has to eat
10 right always. I mean, he has to, he has to make, has to
11 make sure he doesn't backslide that week in his health.
12 That gets high blood pressure. The doctor recommends he's
13 not to smoke, not to drink, these things that whether we
14 will be, good or bad, we have a right to do that he cannot
15 or should not do and has been told not to do it because,
16 because it would be adverse to his kidney function, the
17 one kidney function.

18 Also Dr. Kroneman in his testimony noted a
19 cyst on the left kidney when he -- he said this is, this
20 is, this is a big problem because if that, one, you can't
21 biopsy because if you hurt it or do something he's on
22 dialysis. So then he -- you had to -- you don't know
23 where that's going and that's an issue.

24 And so we have a seven-year-old who, you
25 know, this thing about, you know, he wants to play

1 football and so forth, it was essentially brought up at
2 case evaluation and it's a, the idea of dreams of
3 children. That's what they have. They have dreams of
4 playing, you know, in, with the Detroit Lion or whatever,
5 you know. And, and he did not play football. He could
6 from seven-years-old to this day no football, no contact
7 sport, no hockey, nothing. That if anything that he, he
8 has to think before he does with -- about his left kidney
9 because that is how he lives and, and he deals with that
10 with emotionally and he goes, he goes to church regularly
11 and he deals with the people at church.

12 There's, there's a, on Page 13, the bottom
13 of 13, starts in our argument of how he, how his injury
14 has affected him, and physically. It will, it will never
15 grow to the size of a healthy functioning kidney,
16 Dr. Kroneman at Page 58. He's not going to, he's not
17 going to rely on that right kidney for anything.

18 As of November 18, 2015 there's abnormal
19 function of his right kidney and that's from the
20 University of Michigan. Frank's left kidney can never be
21 biopsied, removed or donated. And he already has a cyst,
22 as I've mentioned to the Court and it cannot be biopsied
23 or removed otherwise he'd be a lifetime dialysis patient.

24 THE COURT: Well, you can stop there. I'm
25 inclined to deny the motion but I'll think it through and

1 we'll take it under advisement.

2 MR. DAOUDI: We'd also actually ask that
3 you not only deny but then grant summary disposition for
4 Plaintiff but we, we have something left, your Honor.

5 THE COURT: That's fine.

6 MR. DAOUDI: And we have -- I had to file
7 an emergency motion for last week. I didn't provide the
8 Court a courtesy copy so we bumped it to this week due
9 to --

10 THE COURT: I wasn't aware that there was a
11 motion for summary filed by the Plaintiff.

12 MR. DAOUDI: No, no, no, not a motion for
13 summary. It was a motion to compel outstanding discovery
14 from these two Defendants and also to allow the Plaintiff
15 to leave to file a summary disposition as to serious
16 impairment and liability because --

17 THE COURT: We'll have to Notice that up at
18 a later date. When can you do it after --

19 MR. DAOUDI: Okay, I'll renote it.

20 THE COURT: -- with regard to the principal
21 motion for this, for today.

22 MR. DAOUDI: All right.

23 THE COURT: So we're done.

24 MR. KIM: Thank you, your Honor.

25 MR. DAOUDI: There is one other thing. You

1 asked us to go to facilitation.

2 THE COURT: Yeah.

3 MR. DAOUDI: And I believe it should be,
4 and I think it was -- Bob knows more.

5 What date was this supposed to be by?

6 MR. MARZANO: Your Honor, I'll go back on
7 the record.

8 MR. WILLIAMS: January 23rd was the date
9 you required it by.

10 MR. DAOUDI: Yeah.

11 MR. WILLIAMS: But the date that was given
12 to us recently by Mr. Stewart Weiner was January 20th.

13 MR. DAOUDI: Right.

14 MR. WILLIAMS: I don't know what the status
15 is. I've agreed to that date but --

16 MR. DAOUDI: I know he was saying it was
17 such a conflict so we can't -- we, we're not able to make
18 that date is what I'm getting at.

19 THE COURT: Well that's good. I'll have it
20 resolved obviously before -- I'll have it resolved by
21 Monday. What's the date? That will be the 17th and you
22 have plenty of time to go to facilitation if the case is
23 still alive.

24 MR. DAOUDI: Okay. But that's what I'm
25 saying, we just weren't able to comply with the --

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THE COURT: Okay, that will do it.

MR. KIM: Thank, you, your Honor.

MR. DAOUDI: Okay, thanks a lot.

THE COURT: Thank you.

(Proceedings concluded at 12:31 p.m.)

-- -- --

1 STATE OF MICHIGAN)
2) ss.
3 COUNTY OF WAYNE)

4 I, VERDA J. TURNER, CSR-0102, an Official
5 Court Reporter in and for the Third Judicial Circuit
6 Court, Civil Division, State of Michigan, do hereby
7 certify that the foregoing Pages 1 through 25, inclusive,
8 were prepared by me in the matter of **FRANK ANTHONY SCOLA v**
9 **JP MORGAN CHASE BANK, et al**, Case No. 15-002804-NI, taken
10 on January 13, 2017 and was reduced to typewritten form
11 and comprise a true rendition of the proceedings taken by
12 means of video recordation without the benefit of a court
13 reporter present during the proceedings in the
14 above-entitled matter.

15 I further certify that I will assume no
16 responsibility for any events that occurred during the
17 above proceedings for any inaudible responses by any party
18 or parties that are not discernable on the video of the
19 proceedings.

20 *Verda J. Turner*
21 _____
22 Verda J. Turner, CSR-0102
23 Official Court Reporter

24 *June 15, 2017*
25 _____
 Date

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	REQUEST FOR HEARING ON A MOTION (PRAECIPE) ORDER/ADJOURNMENT	CASE NO. 15-002804-NI
---	--	------------------------------

Court Address 2 Woodward Ave., Detroit MI 48226 Courtroom Court Telephone No. 313-224-0142

Plaintiff name(s) and address(es)
FRANK ANTHONY SCOLA

No Known Address

Plaintiff's attorney, bar no., address, and telephone no.
Michael S. Daoudi, P-53261

346 Park St Ste 120
Birmingham MI 48009-3436

(248) 220-4377

v

Defendant name(s) and address(es)
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

No Known Address

Defendant's attorney, bar no., address and telephone no.
Robert A. Marzano; Mark E. Williams; James J. Kim;
Holly Stockton Battersby; Michael E. Rosati, P-51154;
51154; 41913; 75086; 72023; 34236
38505 Woodward Ave Ste 2000
Bloomfield Hills MI 48304-5096; 340 E Big Beaver Rd
Ste 250
Troy MI 48063-1229; 20750 Civic Center Dr Ste 400
Southfield MI 48076-4132; 27555 Executive Dr Ste 250
Farmington Hills MI 48331-3350; 27600 Executive Dr
Ste 250
Farmington Hills MI 48331-3500
(248) 594-6357; (248) 764-1210; (248) 945-3825
(248) 489-4100; (248) 489-4100

15-002804-NI
FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/27/2017 2:36:18 PM
CATHY M. GARRETT
/s/ Katrina Ross

- List additional attorneys on other side)
1. Motion Title: PLAINTIFF'S MOTION AND BRIEF FOR REHEARING OR RECONSIDERATION IN RESPONSE TO 1/31/2017 ORDER GRANTING DEFENDANTS, JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, AND JP MORGAN CHASE & CO.'S MOTION FOR SUMMARY DISPOSITION
 2. Moving Party: PLAINTIFF Telephone No. _____
 3. Please place on the motion calendar for:

Judge John A. Murphy	Bar No P-24492	Date	Time
----------------------	----------------	------	------

Adj. To: _____ Adj. To: _____ Adj. To: _____

4. I certify that I have had personal contact with _____ regarding concurrence in the relief sought in this motion and that concurrence has been denied or that I have made responsible and diligent attempts to contact counsel requesting concurrence with motion.

Date _____ Attorney _____ Bar No. _____

ORDER/ADJOURNMENT

DATED: 2/27/2017

No palpable error

IT IS ORDERED THAT THIS MOTION IS:

☒ DENIED ☐ GRANTED IN PART/DENIED IN PART ☐ TAKEN UNDER ADVISEMENT ☐ DISMISSED

☐ GRANTED AND IT FURTHER ORDERED AND ADJUDGED:


APPX 39

RECEIVED by MCOA 12/18/2017 2:10:41 PM

PICTURE TAKEN
BY DEFENDANT
KATHLEEN SCOLA,
TESTIFYING AS IT
WAS ON JUNE 27,
2003 MVC
ACCORDING TO
DEFENDANT
KATHLEEN SCOLA



RECEIVED by MSC 8/30/2019 5:17:37 PM

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Page 1

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3
4 FRANK ANTHONY SCOLA,
5 Plaintiff,
6 vs. Case No. 15-002804-NI
7 Hon. John A. Murphy
8 JP MORGAN CHASE BANK, NATIONAL
9 ASSOCIATION, JP MORGAN CHASE & CO.,
10 KATHLEEN SCOLA, and ESTATE OF JOHN
11 BARROW BROWN (deceased), Jointly
12 And Severally,
13 Defendants.
14 _____
15
16
17 The Deposition of KATHLEEN SCOLA,
18 Taken at 46333 Five Mile Road,
19 Plymouth, Michigan,
20 Commencing at 10:15 a.m.,
21 Wednesday, February 17, 2016,
22 Before Jenifer Poger, CSR-6006.
23
24
25

Page 2

1 APPEARANCES
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19
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25

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1	EXHIBITS	1	down, that's what she's using that little fancy
2		2	machine for, so we have to do some things to make her
3	EXHIBIT	3	life a little easier. Wait until I ask a question
4	(Exhibits attached to transcript.)	4	before you answer it and I'll try to give you that
5		5	same courtesy because if we talk over each other, it
6	DEPOSITION EXHIBIT 1	6	becomes a big mess for her. Try to answer verbally,
7	DEPOSITION EXHIBIT 2	7	yes or no as opposed to saying uh-huh, uh-uh, or
8	DEPOSITION EXHIBIT 3	8	gesturing with your hands. If you do those things, no
9	DEPOSITION EXHIBIT 4	9	big deal, most witnesses do it, we'll just ask if you
10	DEPOSITION EXHIBIT 5	10	meant yes or no. The only reason we're doing that is
11		11	to keep the record clear. If I ask a question and
12		12	you're not sure what I'm asking, just let me know that
13		13	you don't understand the question and I'll rephrase
14		14	it, but if you answer a question, I'm going to assume
15		15	that you understand what I was asking. Fair enough?
16		16	A. Fair.
17		17	Q. All right. What's your date of birth?
18		18	A. October 7, 1963.
19		19	Q. Do you have a Michigan driver's license?
20		20	A. Yes.
21		21	Q. Do you have it with you today?
22		22	A. Yes.
23		23	Q. Can I take a look at it?
24		24	A. Yes.
25		25	Q. Before you give it to me, show it to your attorney,
Page 6		Page 8	
1	Plymouth, Michigan	1	okay?
2	Wednesday, February 17, 2016	2	A. Okay.
3	10:15 a.m.	3	MR. KLEID: Thank you. The record should
4		4	reflect I've been handed a Michigan driver's license
5	KATHLEEN SCOLA,	5	for Kathleen Marie Dale Scola with an address of 12875
6	was thereupon called as a witness herein, and after	6	Heritage, Apartment 101, Plymouth, 48170, expiration
7	having first been duly sworn to testify to the truth,	7	date 10/7/19. Driver's license number is S 400 461
8	the whole truth and nothing but the truth, was	8	585 772. There is a restriction for corrective
9	examined and testified as follows:	9	lenses. Nothing on the back of the card.
10	MR. KLEID: Let the record reflect this	10	BY MR. KLEID:
11	deposition is being taken pursuant to Notice and is to	11	Q. How long have you been living at the Heritage address?
12	be used for all purposes allowed under the Michigan	12	A. A year and nine months.
13	Court Rules and the Michigan Rules of Evidence.	13	Q. Do you live there with anyone?
14	EXAMINATION	14	A. No, I live alone.
15	BY MR. KLEID:	15	Q. How long have you had the corrective lens restriction
16	Q. Can you state your full name for the record.	16	on your license?
17	A. Kathleen Marie Dale Scola.	17	A. Since I got my license as a teenager.
18	Q. My name is Aaron Kleid and I represent the Estate of	18	Q. So you had the corrective lens restriction on June 27,
19	John Brown which has been sued by your son, Frank, as	19	2003?
20	a result of a June 27, 2003 auto accident.	20	A. Yes.
21	Have you ever given a deposition before?	21	Q. Where did you live before 12875 Heritage?
22	A. No.	22	A. I lived in Redford Township.
23	Q. So I'm going to go over the ground rules real quick	23	Q. Do you remember the street address?
24	with you. We have a court reporter here and	24	A. 19909 Beech Daly Road.
25	everything that we're saying in the room she's marking	25	Q. When did you first move into that address?

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1 A. **1984.**
2 Q. Did you live there continuously until a year and nine
3 months ago?
4 A. **Yes, I did.**
5 Q. So you were living at 19909 Beech Daly Road at the
6 time of the accident?
7 A. **Yes.**
8 Q. Are you presently employed?
9 A. **Yes.**
10 Q. Where do you work?
11 A. **Northridge Church.**
12 Q. What's your position at Northridge Church?
13 A. **Facility supervisor.**
14 Q. How long have you been working at Northridge Church?
15 A. **Three and a half years, I think.**
16 Q. Has it always been as facility supervisor?
17 A. **No. Originally, I was a building attendant.**
18 Q. Are you presently married?
19 A. **No.**
20 Q. Divorced?
21 A. **Yes.**
22 Q. What year were you divorced?
23 A. **2003.**
24 Q. When in 2003?
25 A. **It was finalized in March.**

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1 Q. What's your ex-husband's name?
2 A. **Thomas.**
3 Q. Scola?
4 A. **Correct.**
5 Q. Does Thomas still live in Michigan?
6 A. **Yes.**
7 Q. Do you know where he lives?
8 A. **In Redford.**
9 Q. Do you know the street address or at least what street
10 he's on?
11 A. **Yes, I do.**
12 Q. Which one is it?
13 A. **19963 Beech Daly Road.**
14 Q. Any marriages besides the one to Thomas?
15 A. **No.**
16 Q. So you and Thomas had Frank, correct?
17 A. **Yes.**
18 Q. **Any other children besides Frank?**
19 A. **Yes.**
20 Q. How many?
21 A. **Three other children.**
22 Q. Why don't you give me their names and ages?
23 A. **Current ages?**
24 Q. Yes.
25 A. **Daniel, he's 25; Melissa, she's 23; William, he's 21.**

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1 Q. All of them last name Scola?
2 A. **Correct.**
3 Q. Do you have any other children besides the four we
4 just talked about?
5 A. **No.**
6 Q. Have you ever been a plaintiff or defendant in a
7 lawsuit?
8 A. **My divorce.**
9 Q. Other than that?
10 A. **Not to my recollection.**
11 Q. Have you ever been convicted the element which
12 contains theft or dishonesty?
13 A. **No.**
14 Q. You were involved in an auto accident back in June of
15 2003, that's the subject of this accident -- this
16 lawsuit, I'm sorry, correct?
17 A. **Correct.**
18 Q. Do you remember that accident?
19 A. **Yes.**
20 Q. Do you remember what car you were driving?
21 A. **Yes.**
22 Q. What were you driving?
23 A. **A 1996 Ford Taurus, station wagon.**
24 Q. Who owned that car?
25 A. **I did.**

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1 Q. **How many people were in the car?**
2 A. **Seven.**
3 Q. How many rows are in the car?
4 A. **Three.**
5 Q. Driver and front passenger then middle and a rear
6 seat, correct?
7 A. **Correct.**
8 Q. Who was in the front level, in the front?
9 A. **Myself.**
10 Q. You were driving?
11 A. **I was driving. My son, William and my sister Susan**
12 **Seibert.**
13 Q. How do you spell her last name?
14 A. **S-E-I-B-E-R-T.**
15 Q. Then in the middle?
16 A. **That is a little confusing to me.**
17 Q. Okay.
18 A. **But I can tell you who was in the middle but I don't**
19 **know in what order.**
20 Q. Fair enough.
21 A. **My daughter Melissa, Elizabeth Seibert.**
22 Q. Is that Susan's daughter?
23 A. **Correct. And then Frank.**
24 Q. While you may not remember the order, do you remember
25 where Frank was sitting in that arrangement?

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Page 15

1 A. I do not. I know that he was sitting next to another
2 person, but I don't --
3 Q. Everyone in there is sitting next to another person.
4 A. True.
5 Q. You're just not sure whether he's sitting on the
6 driver's side, passenger's side or in the middle,
7 correct?
8 A. Not exactly, no.
9 Q. Who is sitting in the back?
10 A. The rear seat was Laura Seibert.
11 Q. That's it, right?
12 A. That's it.
13 Q. How old was Frank at the time of the accident?
14 A. I don't remember exactly.
15 Q. If I was to say --
16 A. I think first grade.
17 Q. If I was to say he was around seven years old, does
18 that sound about right?
19 A. That sounds about right.
20 Q. Was there a car seat or booster seat available for
21 Frank in the car?
22 A. No.
23 Q. So he was just sitting directly on the actual
24 manufacturer's seat that's there?
25 A. Correct.

1 system.
2 Q. Where were you coming from?
3 A. I don't recall exactly.
4 Q. Why were you going to the testing center?
5 A. For a pending job that I had applied for.
6 Q. What were you planning on doing there, just taking
7 some sort of test that they required you to take to
8 get the job?
9 A. Yes.
10 Q. Why were these other six people coming with you?
11 A. I needed a baby-sitter --
12 Q. Okay.
13 A. -- and my sister didn't have a vehicle, so --
14 Q. All right, I get it. So were you going straight to
15 the testing center or first going home?
16 A. We were going straight to the testing center.
17 Q. Do you think maybe you had come from picking up the
18 Seiberts before the accident?
19 A. Yes.
20 Q. Where does your sister live now?
21 A. Redford.
22 Q. Do you know the street address?
23 A. Not exactly. I know she lives -- I know her street
24 name.
25 Q. Which is what?

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Page 16

1 Q. Was that standard for Frank when he would drive around
2 in the Taurus?
3 A. Yes.
4 Q. Was he belted?
5 A. Yes.
6 Q. Lap and shoulder belt or just a lap belt?
7 A. I believe it was a combination lap/shoulder belt but I
8 don't know -- I don't think it was at that time.
9 Q. You don't remember if there was a shoulder involved?
10 A. I don't think there was, not in that model of car.
11 Q. Okay.
12 A. Long time ago.
13 Q. Understood. What time did the accident occur,
14 approximately?
15 A. Approximately 11:00, I think.
16 Q. A.m.?
17 A. Yes.
18 Q. What was the weather?
19 A. It was a beautiful summer day.
20 Q. Roads were dry?
21 A. Correct.
22 Q. Where were you going?
23 A. I was heading to a testing center.
24 Q. What type of testing center?
25 A. Related to the job that I had which was for a school

1 A. Kinloch.
2 Q. Spell that.
3 A. K-I-N-L-O-C-H, I believe.
4 Q. Do Elizabeth and Laura live with her?
5 A. No.
6 Q. Do you know where they live?
7 A. Elizabeth lives in Westland.
8 Q. Is her last name still Seibert?
9 A. Correct.
10 Q. Where does Laura live?
11 A. She lives in Colorado Springs.
12 Q. Is her last name still Seibert?
13 A. Yes.
14 Q. Do you remember where the testing center was located?
15 A. I know it was in Wayne.
16 Q. But you don't know what street?
17 A. No.
18 Q. Back in June of 2003, were you familiar with downtown
19 Wayne?
20 A. No.
21 Q. To your knowledge, had you ever been to downtown Wayne
22 before June 27, 2003?
23 A. No.
24 Q. The accident occurred on westbound Michigan, right?
25 A. Well, I didn't know it was westbound.

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Page 19

1 Q. I understand, but the street where the accident
2 occurred on was westbound Michigan Avenue, correct?
3 A. **From what I understand.**
4 Q. Okay. What street had you been on before westbound
5 Michigan?
6 A. **I do not know the name of the street.**
7 Q. **From reading the Complaint, it sounds like you had**
8 **passed Michigan Avenue and then made a turn into the**
9 **bank to then get onto Michigan Avenue, right?**
10 A. **I did turn into the bank parking lot.**
11 Q. Okay.
12 **MARKED FOR IDENTIFICATION:**
13 **DEPOSITION EXHIBIT 1**
14 10:31 a.m.
15 **BY MR. KLEID:**
16 Q. I'm going to stand here, I hope that's okay.
17 A. **That is fine.**
18 Q. Sometimes people don't like when people stand over
19 them.
20 What I've done is I marked as Exhibit
21 Number 1 a satellite photo showing downtown Wayne
22 where the accident occurred, okay?
23 A. **Okay.**
24 Q. Does that look like the area where the accident
25 occurred?

1 Q. **You had to go east on Michigan to get to the testing**
2 **center though, correct?**
3 A. **I believe so.**
4 Q. Did you have some sort of computer-printed directions,
5 handwritten directions, how did you know where you
6 were going?
7 A. **I did not have computer-generated anything. I must**
8 **have had an address of some sort and that's all I**
9 **recall I had, an address.**
10 Q. But as far as directions to get there, that you didn't
11 have?
12 A. **No.**
13 Q. Was your sister familiar with downtown Wayne?
14 A. **No.**
15 Q. So it was sort of a blind leading the blind moment?
16 A. **Correct.**
17 Q. Okay.
18 **MARKED FOR IDENTIFICATION:**
19 **DEPOSITION EXHIBIT 2**
20 10:34 a.m.
21 **BY MR. KLEID:**
22 Q. What I've done is I marked as Exhibit 2 a photo of
23 southbound Wayne at Michigan. You see on top of -- as
24 you're traveling south on Wayne there is a traffic
25 light there, do you see that?

Page 18

Page 20

1 A. **An aerial shot does not look the same, but yes.**
2 Q. Fair enough. You agree that there is a portion of the
3 satellite photo that references a Chase Bank, correct?
4 A. **Yes.**
5 Q. There is also one that indicates Michigan Avenue?
6 A. **Yes.**
7 Q. And then there is a Michigan Avenue also to the south
8 of the photo as well, do you see that?
9 A. **I do.**
10 Q. So I can tell you, just to maybe speed things up a
11 little bit, the top Michigan Avenue is westbound, the
12 bottom one is eastbound, okay?
13 A. **Okay.**
14 Q. **So if this is the bank, the Chase Bank, let's just**
15 **presume I'm right for the purposes of this question,**
16 **were you coming south on this road and then turning**
17 **into the bank?**
18 A. **It would appear so.**
19 Q. So if I was to tell you that that was south Wayne
20 Road, you would agree that's what it says on the
21 photo?
22 A. **I agree.**
23 Q. Okay. Do you remember how long you were driving south
24 on Wayne Road?
25 A. **No.**

1 A. **I see that.**
2 Q. Can you see there also a one way sign there?
3 **MR. BOUFFORD:** Object as to form and
4 foundation as it relates to how it may have appeared
5 in 2003. Go ahead.
6 **BY MR. KLEID:**
7 Q. You see there is a one way sign?
8 A. **I see a one way sign. I have a question about this**
9 **picture though.**
10 Q. Sure, what's your question? Normally, I don't allow
11 that but what's your question?
12 A. **Is this heading south?**
13 Q. You are now looking southbound on Wayne Road. The
14 direction you were traveling and I will tell you that
15 the bank is on the left side of that photograph, okay?
16 A. **Okay.**
17 Q. Do you have your bearings now as you look at it?
18 A. **Yes.**
19 Q. Do you agree that there is a one way sign in between
20 the two traffic signals?
21 A. **I do.**
22 Q. Do you also agree that there is a sign at the corner
23 there that indicates no left turn?
24 A. **I do.**
25 Q. Now, I want you to presume for purposes of my question

Page 21

Page 23

1 that we have deposed the police officer who
2 investigated the accident and he indicated those two
3 things would have existed there back in June of 2003,
4 okay? Do you remember, as you're sitting here today,
5 seeing either the one way sign or the no left turn
6 sign that was there?
7 A. Absolutely not.
8 Q. What about the one way sign that's directly above the
9 no left turn sign?
10 A. No.
11 Q. Were you looking for signs like that?
12 A. Yes.
13 Q. And you're telling me you did not see them?
14 A. Correct.
15 Q. Are you suggesting that they weren't even there on the
16 day of the accident?
17 A. Yes.
18 Q. You would agree that a police officer who has been
19 working in the city of Wayne for -- I don't know how
20 many years he said, but I think it was over 15, would
21 probably be more familiar with the area than you?
22 A. Yes.
23 Q. Okay. So you're going south on Wayne, did you
24 recognize that you had passed over Michigan Avenue?
25 A. I did.

1 Q. Which is what you wanted to do?
2 A. That's what I wanted to do.
3 Q. Why didn't you just make the left turn right there?
4 A. I noticed the sign as I was traveling through the
5 intersection.
6 Q. For Michigan Avenue?
7 A. Right.
8 Q. So in other words, the reason you didn't turn was
9 because you didn't recognize that was Michigan Avenue
10 until you passed over it?
11 A. Correct.
12 Q. So at that point, did you make a decision that you
13 were going to turn into the bank to sort of come
14 around and make the eastbound turn?
15 A. Yes.
16 Q. Back in June of 2003, were you a Chase Bank customer?
17 A. No.
18 MR. BOUFFORD: Object as to foundation. I
19 don't think Chase Bank owned that location at that
20 point.
21 MR. MARZANO: I think it was a Bank One.
22 BY MR. KLEID:
23 Q. Were you a Bank One customer back in 2003?
24 A. No.
25 Q. Was your intention, when you went into the bank

Page 22

Page 24

1 Q. When you approached Michigan Avenue, was the light red
2 or green, if you remember?
3 A. It was green.
4 Q. Did you look to your right or left on Michigan Avenue
5 to see how the traffic was flowing?
6 A. I did look to my right.
7 Q. Did you see any cars?
8 A. I don't recall.
9 MR. DAOUDI: Just so the record is clear,
10 you're saying -- when she said the light was green,
11 she meant Wayne Road light was green, right?
12 BY MR. KLEID:
13 Q. In other words, the light for traffic south on Wayne
14 was green for you to proceed?
15 A. Yes.
16 Q. All right. If you wanted to go onto Michigan, why
17 didn't you just make the turn right then onto
18 Michigan?
19 A. I was in the -- I recall there being two lanes. I was
20 in the left lane of the two lanes and I would have
21 been in the wrong lane to turn right.
22 Q. If you were in the left lane, the left lane would have
23 allowed you, as you're going southbound Wayne, to go
24 east on Michigan, correct?
25 A. Yes.

1 parking lot, to do any business with the bank?
2 A. No.
3 Q. Your sole purpose was to use it as a cut around to get
4 onto Michigan Avenue?
5 MR. BOUFFORD: Objection, form and
6 foundation.
7 BY MR. KLEID:
8 Q. Right?
9 A. Restate?
10 Q. Sure. Your sole purpose in turning into the bank was
11 to get onto Michigan Avenue, right?
12 A. Yes.
13 Q. Was this solely your plan or was Ms. Seibert, your
14 sister, assisting you with this?
15 A. She made subtle comments but it was solely my
16 decision.
17 Q. So you went through the parking lot and approached the
18 exit area to get onto Michigan Avenue, correct?
19 A. Yes.
20 Q. Did you stop before you went onto Michigan Avenue?
21 A. I paused.
22 Q. Did you turn your signal on?
23 A. I don't recall.
24 Q. Did you look in either direction, either to your right
25 or to your left, before you made the turn onto

Page 25

Page 27

1 Michigan Avenue?
2 A. I did.
3 Q. Which direction did you look?
4 A. I looked both ways.
5 Q. Which way did you look first?
6 A. Left.
7 Q. To the west, correct?
8 A. Correct.
9 Q. Then you looked to the right?
10 A. Yes.
11 Q. Were you still paused when you looked to the right?
12 A. Yes.
13 Q. Did you see any cars approaching you?
14 A. No.
15 Q. Did you then go forward or look back to the left
16 again?
17 A. I went forward.
18 Q. You made a right turn?
19 A. Correct.
20 Q. Do you remember how many lanes Michigan Avenue had in
21 that area?
22 A. I believe four. I could be wrong.
23 MARKED FOR IDENTIFICATION:
24 DEPOSITION EXHIBIT 3
25 10:42 a.m.

1 Q. Then what did you do?
2 A. After pulling into the second lane, I noticed cars in
3 front of me.
4 Q. You noticed cars coming towards you?
5 A. I did.
6 Q. Did you see a car to your right approaching?
7 A. Not specifically, no.
8 Q. How many cars did you see approaching?
9 A. Minimally, three.
10 Q. Do you remember which lanes they were in?
11 A. I do not recall which lanes.
12 Q. Was one of them, at least, in your lane that you were
13 traveling in?
14 A. I did move my car.
15 Q. This is before you moved.
16 A. Okay, before I moved --
17 Q. In other words, the lane that you were in, that second
18 lane, was one of the cars that was approaching in that
19 lane?
20 A. Yes.
21 Q. How far away were the cars from you?
22 A. I don't know exactly, but it seemed to be at the next
23 intersection.
24 Q. Can you tell me how many feet or yards away that was?
25 A. A short city block. I don't know feet or yards. I

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1 BY MR. KLEID:
2 Q. So I marked as Exhibit Number 3 a photograph showing
3 westbound Michigan. Do you recognize the parking lot
4 to your left in that photo?
5 A. No.
6 Q. Okay. So if I was to ask you which exit ramp you
7 used, you couldn't tell me?
8 A. No.
9 Q. All right. When you made the turn onto Michigan
10 Avenue, which of those lanes did you turn into?
11 MR. BOUFFORD: I'm going to place a
12 continuing objection to the photographs as to their
13 appearance when they were taken to how they may have
14 appeared in 2003.
15 MR. KLEID: That's fine. I will tell you,
16 Counsel, Officer Puckett indicated they looked the
17 same back in '03 but that's okay, I'll give you a
18 continuing.
19 BY MR. KLEID:
20 Q. Do you remember which of these lanes you would have
21 pulled into when you made the right turn?
22 A. At that time, I turned into the second lane.
23 Q. The one in the photo that has the words West Michigan
24 Avenue on it?
25 A. I believe so.

1 think there was a light -- it appeared they were
2 stopped at a light.
3 Q. So what did you do once you noticed those three cars?
4 A. I veered to the right.
5 Q. And when we say the right, as we're looking at this
6 photo it would be the left-most lane?
7 A. Correct.
8 Q. The one that's at the southern curb, correct?
9 A. Yes.
10 Q. What did you do once you got into that lane?
11 A. I attempted to stop my vehicle.
12 Q. Did you stop it?
13 A. I am not clear whether or not it was 100 percent
14 stopped. I believe I was but I'm not 100 percent.
15 Q. It is possible that you may have still been moving
16 eastbound, correct?
17 A. Yes.
18 Q. Was there a car in that lane?
19 A. Yes.
20 Q. When is the first time you saw that car?
21 A. Well, from the moment that I made -- when I saw the
22 cars, all of the cars. I was watching all of the cars
23 coming towards me.
24 Q. Including the one that was in the southernmost lane?
25 A. Correct.

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1 Q. When you turned into that lane, how far away was that
2 southernmost car?
3 A. A good distance away.
4 Q. What's a good distance?
5 A. I would guess ten car lengths or more.
6 Q. So you've now gotten into the southernmost lane, you
7 may have still been moving though, correct?
8 A. May have.
9 Q. What happened next?
10 A. I braced myself and my sister braced herself for
11 impact because it became clear we were going to be
12 hit.
13 Q. And there, in fact, was an impact, correct?
14 A. Yes.
15 Q. From the time you made the right turn onto westbound
16 Michigan until the time of impact, did you or your
17 sister say anything out loud?
18 A. Yes.
19 Q. What did you say?
20 A. She said oh, my God and I said oh, my God and I don't
21 recall what else I said.
22 Q. When you yelled out oh, my God, was this right at the
23 time the impact was going to happen?
24 A. No.
25 Q. When did you say oh, my God?

1 A. I had to force my door open, it was crushed partially,
2 the car was totaled and I had to force my way out of
3 the car and I waved at the people at Chase Bank to
4 have them call 911.
5 Q. Did you have a conversation with the driver of the
6 other car?
7 A. No.
8 Q. Did anyone in your car have a conversation with the
9 driver of the other car --
10 A. No.
11 Q. -- to your knowledge?
12 A. No.
13 Q. How long did it take for the police to arrive?
14 A. I do not recall exactly, but it was five to ten
15 minutes.
16 Q. Do you remember speaking to the police officer when he
17 arrived on the scene?
18 A. Yes.
19 Q. More than one police officer or just one?
20 A. Just one.
21 Q. Do you know if he spoke with the other driver?
22 A. I remember seeing him speaking to the other driver.
23 Q. Did anyone else in your car speak with the police
24 officer?
25 A. I believe that my sister may have had a word or two

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1 A. Prior to impact.
2 Q. Were you already in the southernmost lane when you
3 said it?
4 A. Yes.
5 Q. Were there air bags in the Taurus?
6 A. No.
7 Q. The car that was traveling in the southernmost lane
8 and your car, it was the fronts of both cars that
9 struck each other?
10 A. Correct.
11 Q. After the accident, what did you do?
12 A. I was in shock.
13 Q. Okay.
14 A. I was upset, I was thankful I was alive because I
15 thought we were going to die. My son that was sitting
16 next to me was -- sorry.
17 Q. That's okay, do you want to take a break for a minute?
18 A. No. My son was all bloody, his face had hit the
19 dashboard.
20 Q. Had William been wearing a seat belt?
21 A. Yes.
22 Q. What about Frank?
23 A. At that time I was not aware of what was happening
24 with Frank. He did have a seat belt on though.
25 Q. Were you able to get out of the car?

1 with the police officer. I don't recall anything
2 clearly though.
3 Q. When you spoke with the police officer you gave him
4 the version of events as you best recalled?
5 A. Yes.
6 Q. You would agree that your memory about how the
7 accident occurred would have been better back in June
8 of 2003 than it is today?
9 A. Yes.
10 MARKED FOR IDENTIFICATION:
11 DEPOSITION EXHIBIT 4
12 10:52 a.m.
13 BY MR. KLEID:
14 Q. I marked as Exhibit 4 the police report that was done
15 by Officer Puckett. Have you seen this document
16 before?
17 A. I believe so.
18 Q. Why don't you take a look at it. Specifically, if you
19 go to page 2 on the bottom right corner you see there
20 is a narrative, says crash diagram and remarks, and
21 then it indicates what his investigation was. Why
22 don't you take a look at that.
23 A. Okay.
24 Q. Let me know when you're done looking at it.
25 A. Okay.

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1 Q. You would agree that that investigation that Officer
2 Puckett prepared made no mention of you getting into
3 one lane and then pulling into the next lane, correct?
4 **A. Correct.**
5 Q. All it indicates is you made the turn and you were in
6 the south-most lane?
7 **A. Yes.**
8 Q. There is no indication that you were stopping or
9 slowing at the time of the accident, right?
10 **A. Agreed.**
11 Q. Is there any statement that you've given to anybody,
12 any other law enforcement, your insurance company, an
13 attorney, that would indicate the version of events
14 you're giving me here today?
15 **MR. BOUFFORD:** Object to the extent that
16 may call for attorney/client privilege.
17 **MR. KLEID:** Yes, thank you, Counsel, I
18 apologize.
19 **BY MR. KLEID:**
20 Q. Obviously, if you had a conversation with anyone at
21 Dyki, Williams & Baranski that was -- that's
22 privileged, but what I want to know is if some lawyer
23 approached you and asked you to do a statement outside
24 of that situation or your insurance company or a law
25 enforcement agency or anything? Is there any

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1 documentation that shows the version of events you've
2 given me here today?
3 **A. That's hard to say. It's possible, maybe at the**
4 **hospital if they asked me for a version of the**
5 **accident.**
6 Q. When you say at the hospital, this is for Frank's
7 treatment?
8 **A. Yes. He was at two different hospitals. It may have**
9 **been stated at one of those two hospitals.**
10 Q. Which hospitals are these?
11 **A. Annapolis and U of M children's Mott.**
12 Q. Other than that, anything else, any other place where
13 you would have given the version of events you just
14 gave us here today?
15 **A. To a documentable source, other than my attorney, no.**
16 Q. Okay. You would agree with me that even if your
17 version of events is the actual way it happened,
18 regardless, you were traveling the wrong way on
19 Michigan Avenue, right?
20 **A. Yes.**
21 Q. And even if your version of events is the correct
22 version of events, Mr. Brown was traveling the right
23 way on Michigan Avenue?
24 **A. Correct.**
25 Q. Was he driving erratically?

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1 **A. No.**
2 Q. Was he speeding?
3 **A. I can't tell.**
4 Q. Now, at some point your son decided to bring this
5 lawsuit, right?
6 **A. Yes.**
7 Q. Were you involved in the process for that decision?
8 **A. To a certain extent, yes.**
9 Q. When your son met with his lawyer, Michael Daoudi,
10 were you present in the room with him?
11 **A. I was.**
12 Q. The version of events that's in the Complaint, that's
13 a version of events that you gave Mr. Daoudi, correct?
14 **A. I gave him some comments. I don't know how much.**
15 Q. It was just you and Frank in the room, right?
16 **A. Yes.**
17 Q. Now, Frank's already testified in this case, you're
18 aware of that?
19 **A. Yes.**
20 Q. Frank indicated to us he really doesn't know how the
21 accident occurred and pretty much the entire version
22 of events came from you?
23 **A. Okay.**
24 Q. Does that sound right?
25 **A. If that's what he said.**

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1 Q. How many times have you met with Mr. Daoudi?
2 **A. Maybe twice.**
3 Q. Have you met with Mr. Daoudi since the institution of
4 this lawsuit?
5 **A. No.**
6 Q. The first time was an introduction?
7 **A. Yes.**
8 Q. Do you remember when that was?
9 **A. No.**
10 Q. What was the reason for the second visit with Mr.
11 Daoudi?
12 **A. I don't recall. It was paperwork of some sort.**
13 Q. Do you remember any of the conversations you and Mr.
14 Daoudi had?
15 **A. I do recall me telling Mr. Daoudi I was concerned**
16 **about my son.**
17 Q. Concerned physically about your son?
18 **A. Physically, mentally, emotionally.**
19 Q. Was there any discussion with Mr. Daoudi about finding
20 a way to blame other parties for the accident besides
21 yourself?
22 **A. The conversation between Michael Daoudi and myself**
23 **specifically, no.**
24 Q. You said you're concerned about your son's physical
25 state, correct?

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1 A. Yes.
2 Q. Your son was able to graduate high school on time,
3 correct?
4 A. Yes.
5 Q. Your son is at the University of Michigan, correct?
6 A. Yes.
7 Q. In Ann Arbor?
8 A. Yes.
9 Q. That's a pretty good school, right?
10 A. Yes.
11 Q. Your son runs marathons?
12 A. He did.
13 Q. Has he stopped running marathons?
14 A. Yes.
15 Q. When is the last time he ran a marathon?
16 A. 2014, I think.
17 Q. How many marathons do you think he's run between 2003
18 and 2014?
19 A. About one and a half.
20 Q. He actually stopped running marathons for having
21 reasons nothing to do at all with this accident,
22 right?
23 A. I don't know.
24 Q. He was able to play on the soccer team when he was in
25 high school, wasn't he?

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1 A. He did.
2 Q. Okay. There was never any indication he wasn't
3 physically able to do all these activities?
4 A. Can you restate that?
5 Q. Sure. There was never any indication from a doctor or
6 from some school official that he couldn't be on the
7 soccer team?
8 A. No, there actually was medical people that told us
9 that he shouldn't play soccer and his soccer coach was
10 aware that we were kind of breaking the rules by
11 letting him be on soccer.
12 Q. So why were you willing to risk your son's health if
13 there was this concern from doctors?
14 A. There was questions -- there was a second doctor, or a
15 third doctor, another doctor, that said that the
16 probability of him being injured during a soccer game
17 was low and --
18 Q. Do you remember who that doctor was?
19 A. It was one of his kidney doctors and I do not recall
20 the doctor's name. That doctor was willing to
21 encourage him to do things he had prior been told he
22 should abstain from.
23 Q. So you were willing to trust this doctor who had
24 indicated that it was pretty unlikely anything was
25 going to happen?

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1 A. As a mother, it made me nervous as all get-out, but
2 you got to let go and at that point Frank was a high
3 school student and I wanted him to be making decisions
4 for his own self.
5 Q. In fact, you would agree with me nothing ever did
6 happen to Frank while he was playing soccer, at least
7 as it relates to his kidney?
8 A. I don't recall that. I know he had issues with his
9 health while playing soccer, but I can't say that any
10 of them were specific or nonspecific to his kidney.
11 Q. As one of the only witnesses to the accident, what is
12 it that you think Mr. Brown did wrong?
13 A. I think he should have stopped his vehicle. I think
14 he had time to stop his vehicle.
15 Q. But you would agree with me that you have already
16 indicated you didn't have time to stop your vehicle?
17 MR. DAOUDI: Objection, mischaracterization
18 of what she said.
19 BY MR. KLEID:
20 Q. Isn't that what you told me?
21 A. Can you restate?
22 Q. You indicated you're not sure you stopped your car,
23 right?
24 A. I did indicate that.
25 Q. So it's possible that you didn't have enough time to

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1 react to stop your car, correct?
2 A. Correct.
3 Q. So why is it Mr. Brown is held to a different standard
4 than you when it comes to stopping his car?
5 A. My recollection is that it was a stop light, that the
6 vehicles coming towards me were actually at a dead
7 stop prior to approaching my position on Michigan
8 Avenue, and I feel that approaching my vehicle after
9 being at a dead stop that his rate of speed would not
10 have been high enough that he couldn't have had
11 control of his vehicle.
12 Q. But you're also coming from a stop, weren't you? You
13 stopped to make the right turn onto Michigan?
14 A. Agreed.
15 Q. So you guys were pretty much in the same situation,
16 weren't you?
17 A. Possibly.
18 Q. Okay. Subject to your attorney's objection, Mr. Brown
19 did not get a ticket?
20 A. I don't know.
21 Q. You did though?
22 A. I'm sorry?
23 Q. You did get a ticket?
24 A. I did.
25 Q. Did you fight the ticket?

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1 A. I did.
2 Q. Did you go to court?
3 A. I did.
4 Q. Did you testify?
5 A. I spoke with the judge.
6 Q. Okay. Then what happened?
7 A. It didn't go well.
8 Q. When you say you spoke with the judge, did you speak
9 with the judge on the record in a courtroom?
10 A. We were in a courtroom, not being familiar with how
11 all that works, I don't know what is documented or
12 what's not documented, but the judge left the
13 courtroom, went to the location of the accident with
14 her court reporter, came back to the courtroom,
15 scolded me, berated me, did not dismiss the ticket,
16 which I was advised to fight by the officer who wrote
17 the ticket.
18 Q. You were found guilty?
19 A. Yes.
20 MR. BOUFFORD: Objection.
21 BY MR. KLEID:
22 Q. Yes?
23 A. I believe so.
24 Q. Do you remember --
25 MR. BOUFFORD: Object as to term guilt;

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1 found responsible?
2 MR. KLEID: Fair enough.
3 MR. BOUFFORD: Potentially. We don't
4 really know what happened.
5 BY MR. KLEID:
6 Q. You were found responsible for the accident, right?
7 A. The ticket was not dismissed.
8 Q. Do you remember what the ticket was for?
9 A. I did not remember exactly what the ticket was for.
10 However, reading this document it seems pretty clear.
11 Q. That it was for going the wrong way?
12 A. Yes.
13 MR. KLEID: I don't have anything else but
14 these gentlemen may.
15 EXAMINATION
16 BY MR. MARZANO:
17 Q. My name is Bob Marzano. I represent Chase Bank as the
18 successor to Bank One. I will try my best not to
19 repeat questions you have already been asked but if I
20 do, forgive me.
21 I understand this was your first time ever
22 in the parking lot of that Bank One the day of the
23 accident, correct?
24 A. Correct.
25 Q. Have you ever been back there since then?

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1 A. One time.
2 Q. When was that?
3 A. In 2003.
4 Q. When in 2003?
5 A. I cannot tell you the exact date. It was in the
6 summer of 2003.
7 Q. It was after this accident?
8 A. Correct.
9 Q. What was your purpose at that time?
10 A. I took pictures of the exit to take to court with me
11 to fight the ticket.
12 Q. Do you still have those pictures?
13 A. Yes.
14 Q. Have they been produced in this case?
15 A. No.
16 Q. Is there a reason why they've not been produced in
17 this case?
18 A. I had not met with my legal counsel.
19 Q. Do you have these pictures with you today?
20 A. No, I'm sorry, I don't.
21 Q. What do the pictures show?
22 A. The pictures show no signage of any type at that exit.
23 Q. At which exit?
24 A. Of the bank parking lot.
25 Q. Which exit did you use? If we look at Exhibit 3,

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1 assuming that that is what the exit still looks like,
2 which exit did you use that day?
3 A. The bank parking lot did not look like this picture in
4 2003.
5 Q. What looked different?
6 A. The building is different, the driveways are
7 different.
8 Q. Have you been back to that parking lot since that
9 summertime in 2003?
10 A. No.
11 Q. How many pictures did you take?
12 A. At least five.
13 Q. What type of camera did you use?
14 A. Probably a disposable.
15 Q. Does anyone have copies of these photographs as we sit
16 here right now other than yourself, to the best of
17 your knowledge?
18 A. To the best of my knowledge, no one has copies.
19 Q. Have you ever shown Mr. Daoudi these pictures?
20 A. I don't think so.
21 Q. Has anyone shown Mr. Daoudi these pictures?
22 A. I don't think so.
23 Q. Apart from the judge, you showed the pictures to the
24 judge, correct?
25 A. No.

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1 Q. You did not, why not?
2 A. **She had no interest in seeing the pictures.**
3 Q. Do you remember the judge's name?
4 A. **I do not, but I have her name written down somewhere.**
5 Q. Has anyone besides yourself seen these pictures?
6 A. **I believe my children.**
7 Q. What was the purpose of your children seeing these
8 pictures?
9 A. **At that time, probably just recalling the incident in**
10 **general.**
11 Q. If your son testified that you drove him back to the
12 site of the bank at a time other than what you told
13 me, would he be incorrect?
14 A. **Possibly.**
15 Q. Is it possible he could be correct?
16 **MR. DAOUDI:** Speculation.
17 A. **I guess that's a possibility, but I feel like that's**
18 **unlikely. I don't think I've ever done that.**
19 **BY MR. MARZANO:**
20 Q. You had no intention of conducting any business at
21 that property that day, correct, in the Bank One
22 property?
23 A. **Correct.**
24 Q. When did you first realize there allegedly was no
25 signage in the bank -- in the parking lot?

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1 A. **After the accident.**
2 Q. How long after the accident?
3 A. **Probably within 24 hours.**
4 Q. How did you come to that realization?
5 A. **Replaying the event over in my head.**
6 Q. Now, you testified that you were on your way to take
7 some type of test, correct?
8 A. **Correct.**
9 Q. Do you know what time the test was scheduled for?
10 A. **I do not remember exactly what time the test was at.**
11 Q. Would you have any documentation anywhere to this date
12 that would possibly tell you when that test was to
13 take place?
14 A. **It's unlikely.**
15 Q. Okay. Were you in a rush to get to your test?
16 A. **Yes.**
17 Q. You were running late?
18 A. **Possibly.**
19 Q. How long did you anticipate this test was going to
20 last, if you knew the time?
21 A. **Three to four hours, minimally.**
22 Q. Did you ever end up taking the test?
23 A. **Yes.**
24 Q. Was it after that day?
25 A. **Yes.**

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1 Q. Did it take you three to four hours?
2 A. **It took many hours, I can't recall exactly how many.**
3 Q. If you were on your way to take a test that you
4 thought would last three to four hours, why did you
5 have all the people you had in your car with you at
6 the time?
7 A. **I needed a baby-sitter and my sister was with me, she**
8 **was going to drop me off at the test and then take my**
9 **family with her on her events for the day.**
10 Q. Did she, at the time, own a car?
11 A. **I don't recall.**
12 Q. When you passed the intersection of Michigan Avenue as
13 you were heading south on Wayne Road, you realized you
14 had driven through the intersection, did that cause
15 you frustration at the time?
16 A. **Frustration, I'm not sure that's the word I would use.**
17 **I was stressed and I thought oh, I missed my turn.**
18 Q. Based upon that, was the bank the first turn you could
19 see to try to cut over to Michigan Avenue?
20 A. **Exactly.**
21 Q. Was the parking lot crowded that day?
22 A. **No.**
23 Q. Do you know how many cars were in the parking lot?
24 A. **I can't say exactly but there was less than ten.**
25 Q. Was there anyone in the drive-thru?

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1 A. **I think one car was in the drive-thru.**
2 Q. From the time you entered the parking lot of Bank One
3 to the time you actually physically turned onto
4 Michigan Avenue and exited the parking lot of Bank
5 One, how much time elapsed?
6 A. **Less than 30 seconds.**
7 Q. **Did you look for any signage as far as whether there**
8 **was a one way street, one way or another?**
9 A. **Not specifically. I did look left and right and in**
10 **front of me. I was not specifically looking for one**
11 **way signage because I had no reason to expect that.**
12 Q. You were looking right and left to see what traffic
13 was doing, right?
14 A. **Yes.**
15 Q. Did you see any traffic coming towards you from the
16 eastbound side?
17 A. **After I made the turn, I did.**
18 Q. How about before?
19 A. **No.**
20 Q. Did you see any coming from the westbound side?
21 A. **No.**
22 Q. Did you specifically look for any signage before
23 turning onto Michigan Avenue to see whether it was a
24 one way road or any signage that may have said
25 anything?

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1 A. I believe I saw a sign that said exit and that was the
2 only sign.
3 Q. Where was that sign located?
4 A. At the driveway of the bank.
5 Q. Where in the driveway?
6 A. On the right-hand side.
7 Q. How close to the road?
8 A. Within ten feet.
9 Q. What color was it?
10 A. White.
11 Q. What was the lettering on it?
12 A. Black.
13 Q. It just said exit?
14 A. I believe so.
15 Q. Were you looking for that sign or you just happened to
16 see it?
17 A. I was looking for the exit sign.
18 Q. You wanted to know how to get out of the parking lot?
19 A. Yes.
20 Q. Because you'd never been there before?
21 A. Yes.
22 Q. Because you were on your way to your test and you were
23 late, correct?
24 A. I was on my way to the test.
25 Q. Were you on time?

1 you had?
2 MR. DAOUDI: Objection, vague.
3 A. Can you restate that?
4 BY MR. MARZANO:
5 Q. I asked you when you first realized there was no sign
6 telling you this was a one way street and you said
7 about 24 hours after the incident I came to that
8 realization. I guess my question is -- I asked you
9 how did you come to that and you said you were
10 replaying the incident in your head, correct?
11 A. Yes.
12 Q. At the time of the accident you didn't think one way
13 or the other oh, I wouldn't have pulled out in the
14 street had there been a sign?
15 A. I remember being shocked that it was not a two-way
16 traffic road, and at the time being mystified by the
17 events that were happening and concluding how is this
18 happening that there is cars coming towards me, so --
19 Q. You didn't think of any sign right at the time of the
20 accident or shortly after until that 24 hour period,
21 is that accurate?
22 A. Yeah, I don't think it was until I was able to digest
23 the events of that whole thing that I realized there
24 was nothing -- there was no way -- because the amount
25 of guilt that I felt for this whole thing, I was

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1 A. I assumed I was on time.
2 Q. Are you aware of any obligation the bank had to
3 provide you with signage?
4 MR. DAOUDI: Objection calls for a legal
5 conclusion.
6 BY MR. MARZANO:
7 Q. I'm just asking if you know.
8 A. Not specifically.
9 Q. Do you know, generally, there is a requirement that
10 required the bank to do so?
11 MR. DAOUDI: Same objection.
12 A. I'll be honest, I thought the responsibility fell on
13 Wayne, the city, not on the bank, and so I really
14 didn't assume anything about the bank and their
15 responsibility.
16 BY MR. MARZANO:
17 Q. At any point in time did you learn that the
18 responsibility was not on Wayne?
19 A. No.
20 Q. Do you still think, as we sit here today, that it was
21 the city's obligation to put signage up?
22 A. Yes.
23 Q. When you say you realized about 24 hours after the
24 incident that there was not any signage at the bank,
25 would you agree with me that that was an afterthought

1 trying to figure out how did that happen and there was
2 no signage, there was no signage, you know.
3 Q. That came to you about 24 hours after the accident?
4 A. It could have been sooner than 24, that was a guess,
5 but yes.
6 Q. Was it within an hour or two of the accident that you
7 came to the realization or longer than that?
8 A. Now that you say that, I would say based on my
9 conversation with the officer at Annapolis Hospital, I
10 must have been aware prior to 24 hours because he told
11 me I should fight the ticket.
12 Q. Did the officer go to the hospital with you?
13 A. The officer was at the hospital.
14 Q. Where did he give you the ticket?
15 A. I believe it was at the hospital.
16 Q. He said here, you should fight this?
17 A. He didn't say those words exactly.
18 Q. What did he say exactly, if you recall?
19 A. I don't remember exactly, but he did say you should
20 fight this, this happens all the time there.
21 Q. On the street or at the bank?
22 A. At that location.
23 Q. Did you ask him why are you giving me a ticket then if
24 I am being told by you that I should fight it?
25 A. He was apologizing to me because I had two hurt

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1 **children in the hospital and he could tell, I assume,**
2 **that I was distraught and I think he was apologizing**
3 **to me because he felt bad that he had to give me a**
4 **ticket.**
5 Q. Was he on the scene of the accident as well?
6 A. **He was at the scene. I assumed it was him that was at**
7 **the scene. There was an officer at the scene as I**
8 **was, you know, juggling the events at the scene, there**
9 **was an officer there.**
10 Q. How did you leave the scene?
11 A. **I was in the ambulance.**
12 Q. Who else was in the ambulance with you?
13 A. **Frank for sure and I believe one of my other children,**
14 **maybe William.**
15 Q. Was your car still drivable?
16 A. **No.**
17 Q. What happened with the rest of the folks that were in
18 the car?
19 A. **I don't know. My ex-husband appeared at the scene and**
20 **then at the hospital. I believe a friend came and**
21 **transported some people.**
22 Q. Do you know how they would have found out about the
23 accident, they being your husband and your friend?
24 A. **I'm not sure.**
25 Q. Are you aware of any evidence that the bank assumed

1 A. **I do.**
2 Q. Do you know who your son's pediatrician was the day of
3 the accident?
4 A. **He went to an office that had several pediatricians.**
5 **He went to Botsford Pediatric Associates which had**
6 **several doctors, so I don't know which one**
7 **specifically knew his -- him well.**
8 Q. Your son testified during his deposition that he
9 suffered from posttraumatic stress disorder, anxiety
10 and received treatment in middle school for that
11 condition. Does that sound accurate to you?
12 A. **Yes.**
13 Q. Do you know who he treated with for that condition?
14 A. **No, I'm not sure what he's referring to.**
15 Q. Do you recall ever taking your son for any treatment,
16 to any medical care provider, for posttraumatic stress
17 disorder?
18 A. **He did not ever see a psychologist. He did discuss**
19 **his mental health with his pediatricians and his**
20 **nephrologist. He did discuss it with people in his**
21 **community as far as teachers, coaches, friends. It**
22 **was very real for him.**
23 Q. How so? What do you mean it was very real for him?
24 A. **He had a lot of emotional distress for many years.**
25 Q. Can you tell me when that emotional distress started?

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1 any type of obligation or duty to put signs up at that
2 location?
3 A. **I'm not aware of anything.**
4 Q. At the time, you said you could flag someone down at
5 Bank One and --
6 A. **I just went like this. I was yelling at anybody who**
7 **would hear me, but there was a window there with**
8 **people in it and I was yelling somebody call 911.**
9 Q. Did you actually speak with anyone from Bank One?
10 A. **No.**
11 Q. Have you ever spoken with anyone from Bank One?
12 A. **No.**
13 Q. How about Chase?
14 A. **No.**
15 Q. Are you a Chase member?
16 A. **No.**
17 Q. Have you reviewed your son's deposition transcript,
18 the deposition he gave in this case?
19 A. **To.**
20 Q. Did you speak to him about it?
21 A. **No.**
22 Q. You don't have any idea what questions he was asked
23 and what answers he gave?
24 A. **No.**
25 Q. Do you have a good relationship with your son?

1 A. **At the time of the accident, basically, with recovery**
2 **from the accident.**
3 Q. Do you know when it did stop?
4 A. **I don't know that it has.**
5 Q. Does your son, at the present time, as far as you
6 know, have any physical complaints related to this
7 accident?
8 A. **Yes.**
9 Q. What are those physical complaints?
10 A. **He has complained about his kidney pain pretty much**
11 **from that day.**
12 Q. When is the last time he told you he was having kidney
13 pain?
14 A. **Within the last year.**
15 Q. Is he having any other complaints besides kidney pain?
16 A. **Physically?**
17 Q. Or mentally or emotionally?
18 A. **Yes, that's a whole -- I mean, there's a lot I could**
19 **say, but I could say yes, he's had stress driving in**
20 **vehicles. He's had stress anticipating having pain,**
21 **every aspect of his life from that -- has affected him**
22 **either emotionally or physically.**
23 Q. What year did he get his driver's license?
24 A. **In 2015, I believe.**
25 Q. How old was he at that time?

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1 A. I think he was 18.
2 Q. Do you know why he waited until he was 18?
3 A. It was several circumstances, one just availability to
4 a car to take the test.
5 Q. Anything else?
6 A. Not specifically, no.
7 Q. Has there been anything else that, as far as you know,
8 has upset your son emotionally from the day of the
9 accident to the present date, besides the accident?
10 A. Not that I can recall at this time, that was a pretty
11 major life-changing thing.
12 Q. Was he upset about the divorce between you and your
13 husband?
14 A. He was very little and so I would say no.
15 Q. Was he the same age he was at the time of the
16 accident?
17 A. Yes, just prior.
18 Q. Has been through any counseling whatsoever due to
19 the divorce?
20 A. Prior to our divorce we did speak to a person for
21 custody reasons but no, never after.
22 Q. How did the custody turn out, who got who?
23 A. Well, it ended up being 50/50 but it didn't end up
24 staying 50.
25 Q. How did it end up?

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1 A. It ended up that I had 100 percent. It was not ever
2 legally changed but the children ended up staying with
3 me.
4 Q. What county were you divorced in?
5 A. Wayne.
6 Q. Have you ever discussed Bank One or Chase with any
7 attorney other than your own?
8 A. No.
9 Q. Have you ever spoken with your son's attorney or
10 anyone from his office about Bank One or Chase?
11 A. I'm aware that that's part of the -- they're one of
12 the defendants but not specifically, no.
13 Q. Did you ever discuss anything with the attorneys
14 representing your son about Bank One or Chase Bank?
15 A. Not that I recall.
16 Q. Do you know why they're being sued in this case?
17 A. I assume based on this experience and things I've read
18 that it's because of the signage.
19 Q. Have you ever been told that by anyone? You said you
20 assume. Have you ever been told -- and whatever you
21 and your attorney talked about don't tell me.
22 A. Not specifically, I don't think so.
23 Q. Who made the decision to file the lawsuit -- to
24 consult an attorney to potentially file a lawsuit in
25 this case?

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1 A. Frank.
2 Q. What role did you play?
3 A. Frank knew from the time of the accident, once he got
4 to be older, I told -- he knew that he was injured and
5 that there was a liability part of my automobile
6 insurance that he could make a claim against and I
7 told him that he would have to sue me if he wanted any
8 part of recovery for his injuries and that he needed
9 to have somebody else help him. I couldn't help him
10 if that's something he wanted to do, and so over the
11 course of his growing up he would remind me, you know,
12 mom, I could sue you, and I'd say, yeah. And then as
13 he got older he said I want to do this and I said
14 well --
15 Q. Did you encourage him or discourage him?
16 A. I tried to stay neutral because it involves me and
17 it's really up to him, it's his body, so I tried to be
18 neutral.
19 Q. When did he -- if you know, when did he decide to go
20 forward with this?
21 A. In high school. He was in high school.
22 Q. What year would that have been, do you know?
23 A. I can't say exactly but early on in high school. He
24 was -- he discussed it, brought it up more often.
25 Q. Do you know when he first met with a lawyer?

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1 A. I don't recall.
2 Q. Do you know how he found his lawyer?
3 A. We had discussed different things and he had, with my
4 help, we called the typical Sam Bernstein and lawyers
5 like that and found out that this was like not even
6 something that he could look into because of the type
7 of lawyers they are. I guess they do cases that are
8 right now, not old cases.
9 Q. Okay.
10 A. And we ended up finding a company called Goodwin &
11 Scieszka that referred Michael, and that's how Michael
12 came into Frank's life.
13 Q. So you were assisting your son finding a lawyer,
14 correct?
15 A. I did assist him.
16 Q. How is your son paying for college?
17 A. Frank has a Pell grant, he has a Michigan grant and he
18 has loans.
19 Q. Do you know how much he owes, how much the loans are?
20 A. At this time, I believe he has debt somewhere around
21 10 to 15,000.
22 Q. Does he have any other debt that you're aware of
23 besides the school loan?
24 A. I am not aware of any other debt.
25 Q. Have you discussed giving today's deposition with

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1 Frank at all?
2 A. No.
3 Q. Does he know you're here?
4 A. No.
5 Q. How often do you talk with him?
6 A. I saw him this past weekend.
7 Q. Was he home from college for the weekend?
8 A. We met at a restaurant with his siblings for a
9 birthday.
10 Q. Was it his birthday?
11 A. No, it was his brother's birthday.
12 Q. It just never came up that you had a deposition in the
13 case he's suing you in?
14 A. No. We were there to celebrate his brother and he
15 came with somebody else and I said good to see you,
16 you're so tall, and really we didn't talk about
17 anything.
18 Q. At the time of the accident, who owned your car?
19 A. I owned my car.
20 Q. Did your husband have any ownership?
21 A. In the divorce settlement I was -- that was the car
22 that I was given in the divorce settlement. I did not
23 actually purchase the car on my own.
24 Q. Was that divorce final before the accident?
25 A. In March of 2003 the divorce was final.

1 you pulled out onto Michigan Avenue, correct?
2 A. Yes.
3 Q. When you talked to the police officer at the scene
4 would you have told him the truth, that you pulled
5 into the second lane first and then pulled over to the
6 curb lane?
7 A. I don't recall my conversation with him in detail.
8 Q. But if you were asked -- if he asked where you started
9 from and your full travel from the Bank One parking
10 lot, would you have told him exactly what lane you
11 pulled into and then how you got to the curb lane?
12 A. Absolutely.
13 Q. When this judge, the traffic court judge, when she
14 said -- you said she left the courtroom with the court
15 reporter during your hearing, were you staying -- I'm
16 sorry, were you staying at the courthouse while she
17 left?
18 A. Yes.
19 Q. How long was she gone for?
20 A. Five, ten minutes.
21 Q. So she left while you were staying in the courthouse?
22 A. Yes.
23 Q. And she left and returned in about five, ten minutes?
24 A. Yes.
25 Q. You remember testifying that you were stressed, a

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1 MR. MARZANO: I'm going to pass. I think
2 I'm done. If I have something else, I'll come back.
3 EXAMINATION
4 BY MR. DAOUDI:
5 Q. Good afternoon. You're still under oath and I'm going
6 to ask you some questions. I'd like you to -- you
7 were asked some questions about the police report, the
8 narrative section. Can you look at that again?
9 A. Yes.
10 Q. Do you see anywhere where it states what lane you
11 actually pulled out of from Bank One and what lane you
12 actually pulled into on Michigan Avenue?
13 A. It mentions left curb lane.
14 Q. But does it refer -- it says driver number 2 in the
15 left curb lane. Does it say what lane you pulled out
16 of and which lane you went into?
17 A. No.
18 Q. You can't infer which lane -- strike that.
19 It doesn't state you pulled into the curb
20 lane. It doesn't state you pulled into the second
21 from the curb lane. It doesn't state you pulled in
22 third from the curb lane and it doesn't state you
23 pulled in the fourth lane from the curb lane, correct?
24 A. Correct.
25 Q. It doesn't state any lane you pulled into, just that

1 little rushed trying to get to your test --
2 A. Yes.
3 Q. -- before this accident took place?
4 A. Yes.
5 Q. You remember that line of questioning and you
6 answered. Let me ask you this: Were you in such a
7 stressed or rushed mode that you would not pay
8 attention to signage, street signage?
9 A. No.
10 Q. Even in the stressed or rush mode that you were in
11 trying to get to your testing, would you pay attention
12 to the rulings of the road?
13 A. Yes.
14 Q. If you were leaving a driveway and the driveway said
15 no right turn, would you disregard that sign and turn
16 right anyhow?
17 A. No.
18 Q. If there were signs that said -- when you were exiting
19 the Chase parking lot that said no right turn, would
20 you have abided by them and not made a right turn?
21 A. Yes, I would have abided by that.
22 Q. Were there any signs in the Chase parking lot that
23 said do not use this parking lot unless you're here
24 for business purposes only?
25 A. No.

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1 **MR. MARZANO:** Object to relevance.
2 **MR. DAOUDI:** Relevance is she's using the
3 parking lot.
4 **MR. MARZANO:** Objection to the --
5 **MR. DAOUDI:** To limit the use of the
6 parking lot, that's what I'm saying.
7 **BY MR. DAOUDI:**
8 Q. Was there any sign at Bank One that said you can't be
9 on this parking lot or on these premises unless you're
10 transacting business with Bank One?
11 A. I saw no sign.
12 Q. Or having an account with Bank One?
13 A. No.
14 Q. Did anyone from Bank One ever tell you you should not
15 have used our parking lot because you're not a Bank
16 One customer?
17 A. No.
18 Q. Have you ever gotten a letter from Bank One that said
19 you should not have used our parking lot?
20 A. No.
21 Q. When you said there was one car in the drive-thru --
22 I'm going to show you a picture.
23 **MARKED FOR IDENTIFICATION:**
24 DEPOSITION EXHIBIT 5
25 11:41 a.m.

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1 **BY MR. DAOUDI:**
2 Q. Can you take a look at those pictures in the order we
3 marked them?
4 A. Okay.
5 Q. If you start with number 1, it's like the overhead,
6 right?
7 A. Yes.
8 Q. Then 2, 3, 4, it's closer in number 2 and 3 is closer,
9 and number 4 is a different perspective?
10 A. Correct.
11 Q. So is that -- when you said you saw a car in the
12 drive-thru, did you go through that drive-thru? Is
13 that the exit you took, that driveway out onto
14 Michigan Avenue?
15 **MR. MARZANO:** Place an objection as to form
16 of the question. I'm not sure that's the way it
17 looked at the time of the accident.
18 A. Can you restate?
19 **BY MR. DAOUDI:**
20 Q. You see there is a drive-thru there?
21 A. Yes.
22 Q. And it seems like there's a lane all the way to the
23 right that's along the side of the drive-thru but it
24 doesn't have -- it's not part of the drive-thru
25 system, do you see that?

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1 A. I see that.
2 Q. Would you have taken that lane around the drive-thru
3 or did you go through the drive-thru, if you recall?
4 A. I think I did take that lane.
5 Q. Around the drive-thru?
6 A. I think so.
7 Q. And then you -- so the drive-thru lanes were to your
8 left?
9 A. Correct.
10 Q. Then you made it to the driveway to exit the parking
11 lot and that's where you stopped your vehicle and
12 looked both ways?
13 A. Yes.
14 Q. Are those pictures an accurate depiction of what the
15 area was like, maybe not exactly what you saw but what
16 it was like?
17 A. It's similar. I think it still looks a little
18 different in these pictures than it was at that time.
19 Q. All right.
20 A. But it's similar. I think it's still different.
21 Q. When you took your pictures of the Bank One exit for
22 your court case, was that the time you were talking
23 about when you went back to the scene?
24 A. Yes.
25 Q. And how many days after this accident did you take

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1 these pictures, approximately?
2 A. It was a while after. At least -- I can't recall
3 exactly but it was easily a month.
4 Q. But it wasn't like six months or a year or anything?
5 A. No, because the court date for my ticket was within a
6 certain time frame of the accident.
7 Q. When you took those pictures, did you see anything in
8 those pictures that was different when -- from the
9 time you exited that Bank One parking lot?
10 **MR. MARZANO:** Objection as to relevance, as
11 well as any question that may pertain to subsequent
12 remedial measures that may or may not have been taken.
13 A. Restate.
14 **BY MR. DAOUDI:**
15 Q. When you took those pictures, when you look at them
16 and when you took them at that time, did you see
17 anything different from the layout of the land in
18 terms of as you went through that drive and made it to
19 the driveway exit and you turned right; did you see
20 any difference of the scene?
21 A. No.
22 Q. Did you see any signs that were missing or added?
23 A. No.
24 Q. So even after your scenario, there was still no sign
25 that said no right turn or one way, you didn't see

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1 that in your pictures?
2 **A. No.**
3 Q. Regardless of -- I know you said you felt the city of
4 Wayne should be responsible for having signs at that
5 driveway entrance, right?
6 **A. I am not knowledgeable of who would have needed to put**
7 **a sign up, but it seems to me the city or the county**
8 **should have had some sort of marker there saying that**
9 **was a one way.**
10 Q. There were -- on your side of Michigan Avenue, when
11 you were taking pictures of the exit at that point,
12 there were no signs on your side of Michigan Avenue
13 that showed that this was one way or you couldn't turn
14 right, right?
15 **A. No signs, no.**
16 Q. And on the other side of Michigan Avenue across the
17 street straight ahead, there were no -- did you see
18 any signs that said no right turn or only turn one way
19 sign or anything like that?
20 **A. No.**
21 Q. When you're traveling on private property like at
22 Kroger or Meijer or the mall and there is a sign that
23 says stop or one way or anything, on private property,
24 do you obey those signs as if you were on public
25 roads?

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1 **A. Yes.**
2 Q. If you -- since you're not sure whether you were
3 stopped at the time of impact with Mr. Brown, could
4 you estimate your speed, if there was speed? Would
5 you have been barely moving or coming to a stop?
6 **A. Correct, I would have been barely moving. If I was**
7 **moving at all, I would have been barely moving.**
8 Q. Was it your intention to come to a stop -- were you
9 slowing your vehicle?
10 **A. I was, yes, slowing my vehicle. I was trying to stop**
11 **my vehicle and trying to -- then at that point, yeah,**
12 **wishing I could vaporize because I saw this oncoming**
13 **traffic and knew I was going to get hit.**
14 Q. As you were facing forward, did you see Mr. Brown
15 driving his car at you?
16 **A. Yes.**
17 Q. Was he -- was he looking at you or looking somewhere
18 else while he was driving his car?
19 **A. He was looking towards my vehicle.**
20 Q. Did he look at you and did you make eye contact?
21 **A. We did not make eye contact, but I did see him behind**
22 **the wheel. He had a really big huge brown boat of a**
23 **car and it was wide and big.**
24 Q. Did you watch him personally as he was approaching you
25 up to the point of impact?

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1 **A. Good question. I would say yes, and I was praying.**
2 Q. Did you see him realize or did you see any expression
3 on his face before the impact?
4 **MR. KLEID:** Object as to speculation.
5 **MR. DAOUDI:** Did she see it?
6 **MR. KLEID:** See what?
7 **MR. DAOUDI:** Any change of his face, shock
8 or anything.
9 **MR. KLEID:** The shock is the speculation
10 that I'm talking about.
11 **BY MR. DAOUDI:**
12 Q. Did you see any change in his face?
13 **A. No.**
14 Q. Did you see -- did you see any movement other than a
15 person driving a vehicle? Did his hands go up in the
16 air or eyes get larger or anything?
17 **A. No, my personal opinion was that he was not in control**
18 **of his vehicle and not aware of what was going on.**
19 Q. Did you -- when the impact occurred, was your foot on
20 the gas or the brake of your car?
21 **A. The brake.**
22 Q. If you were not stopped, because possibly you were,
23 right?
24 **A. Possibly.**
25 Q. If you weren't, were you barely moving?

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1 **A. I would say yes.**
2 Q. The police officer, did he -- what did he say to you
3 -- be specific as possible as to prior instances of
4 what you did, turning the wrong way on Michigan Avenue
5 from that Bank One parking lot, if you can recall?
6 **MR. MARZANO:** Objection, relevance,
7 hearsay.
8 **MR. KLEID:** I'll join in those.
9 **MR. MARZANO:** Speculation.
10 **MR. KLEID:** I'll join in that one, too.
11 **MR. DAOUDI:** It's a party.
12 **A. Can you restate?**
13 **BY MR. DAOUDI:**
14 Q. With as much specificity as you can draw, what did the
15 police officer say to you about prior cars turning the
16 wrong way out of the Bank One parking lot? And
17 subject to all the objections.
18 **A. Without knowing exactly his verbiage, I would say,**
19 **again, and I think I already said it, is that he said**
20 **he seemed apologetic he had to give me the ticket and**
21 **he said you can fight this ticket or you should fight**
22 **this ticket because this type of accident happens all**
23 **the time at that spot.**
24 Q. Okay.
25 **A. And I was, you know, very concerned about my children**

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1 who were there and so I took his word and just kind of
2 filed it in my brain and was more focused on my
3 children, not what he told me, and it wasn't until
4 later that I went okay.
5 Q. Your divorce happened about three months before this?
6 A. Exactly.
7 Q. So the divorce process was going through months, maybe
8 even a year before that, right?
9 A. Yes.
10 Q. And the kids knew about the divorce?
11 A. Oh, yeah.
12 Q. Mom and dad are getting divorced?
13 A. Yes.
14 Q. It wasn't like as of March of 2003 everyone started
15 living in different places, they were living where
16 they were living probably before that, right?
17 A. Yeah.
18 Q. So in your opinion, based on your observation of your
19 minor children at that time -- well, let's talk about
20 Frank only -- your opinion as to Frank at that time
21 from March to just before this accident, would there
22 have been any reason for him to need psychological
23 treatment for anything to do with the divorce?
24 MR. MARZANO: Objection, foundation.
25 MR. KLEID: And speculation.

1 that he did express to me on a regular basis how he
2 felt limited and he -- the pain that he felt and the
3 limitations that he had caused him issues.
4 Q. Did that expression ever come through with tears by
5 him?
6 A. Oh, yeah, lots.
7 Q. Did it ever come through with him going to his room or
8 being secluded and want to be secluded for a period of
9 time to deal with it?
10 A. I want -- not remembering any incident specifically
11 but I would say yeah. Yes, I would say yes, he had
12 lots of behavior --
13 Q. Do you believe he had any mechanism that he would --
14 how he would deal with the stress or the emotions that
15 came from the injuries from this accident?
16 A. What was his common reaction? His tears.
17 Q. Tears?
18 A. Tears, tears and fear, you know, he expressed fear, he
19 expressed -- he expressed a lot of different emotions.
20 Q. Did he ever describe his life as living in a glass
21 bubble, he's fragile?
22 A. Oh, yeah, definitely.
23 Q. How did that impact his lifestyle and choices or did
24 it impact his lifestyle choices?
25 A. It did because he -- there were things he wanted to do

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1 A. No.
2 BY MR. DAOUDI:
3 Q. And there was no treatment for him, psychological
4 treatment, for him as a result of the divorce --
5 A. No.
6 Q. -- between those two dates?
7 After this accident, did Frank ever tell
8 you or express to you any ways about his life not
9 being normal in terms of other kids?
10 A. Yes.
11 Q. Comparing other kids, what they're doing, what he can
12 or can't do?
13 A. Yes.
14 Q. Was that a regular theme while he was a minor and
15 living with you?
16 A. Yes, even to this day.
17 Q. Did it ever cause him trouble with relationships with
18 other children, like did they pick on him for not
19 being able to do things or for being hesitant or
20 anything like that?
21 A. I think he drew a lot of compassion from people
22 because of his situation. I think people had a lot of
23 empathy for him. I don't think that his
24 relationships, having not been with him at school, I
25 can't say that anyone gave him a hard time, but I know

1 that he wasn't given permission to do because of
2 doctor's advice and most definitely because his father
3 and mother were afraid of him getting injured.
4 Q. Are you afraid now for your son for any reason?
5 A. I do worry about him only -- well, because I'm his
6 mom, but I know, you know, kidneys are necessary to
7 live and I know that one of his kidneys is not working
8 the way it's supposed to work or whatever the
9 condition of it is, so yeah, I have concerns.
10 Q. Does your family or your husband's family have any
11 history of renal failure at all, kidney failure?
12 A. Yes.
13 Q. Can you explain to me what it is?
14 A. Diabetes runs on both sides of the family and Frank's
15 uncle, who he was close to, died a couple years ago as
16 a result of diabetes and he was receiving kidney
17 dialysis twice a week prior to his death, and you
18 know, knowing, you know, his uncle died at 59, it's
19 just one of those things you think about. You hear
20 about somebody -- you know, if he had not injured his
21 kidney, Frank wouldn't think twice about kidneys, but
22 he thinks about kidneys, I think about kidneys as a
23 result of that.
24 Q. Was it ever stressed by any of the kidney specialists
25 that his health condition -- stay fit, be active, is

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1 even more essential in his life now due to the damage
2 to his kidney?
3 **A. Yes.**
4 **Q.** Regardless of -- I know you're not a lawyer, but
5 regardless of who you think is responsible or not, do
6 you believe that there should have been some signage
7 on or before entering Michigan Avenue from the Bank
8 One parking lot?
9 **A. Yes.**
10 **MR. MARZANO:** Objection, irrelevant.
11 **BY MR. DAOUDI:**
12 **Q.** Signage as to the direction of travel or not to turn
13 right, something like that?
14 **A. I think there should have been some sort of signage**
15 **saying there was a one way road.**
16 **Q.** Or not to turn right?
17 **A. Or not to turn right.**
18 **Q.** What middle school did Frank go to?
19 **A. Hilbert Middle School.**
20 **Q.** What about -- Frank's right kidney, what do you think
21 about the functioning of it or lack of, what happened
22 to him, do you know?
23 **A. From how far back?**
24 **Q.** From the beginning. First from the accident, what do
25 you know happened at the accident?

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1 **A. At the accident, I know that he went forward and then**
2 **went back and the seat belt cover of the -- the seat**
3 **belt had a hard plastic cover that when he went**
4 **forward and he went back, he went -- the hard plastic**
5 **ruptured his kidney internally and so you couldn't**
6 **tell he was injured by looking at him.**
7 **Q.** Are you speculating to that?
8 **MR. MARZANO:** I'm going to place an
9 objection. One is speculation, two is lack of
10 foundation.
11 **BY MR. DAOUDI:**
12 **Q.** Let's skip to the hospital, what did you find out from
13 the doctor what happened in terms of injuries that
14 Frank suffered from this accident?
15 **MR. BOUFFORD:** Object as well to
16 foundation.
17 **MR. KLEID:** Same.
18 **MR. MARZANO:** Same.
19 **A. They told us he had a fractured kidney and internal**
20 **bleeding.**
21 **BY MR. DAOUDI:**
22 **Q.** All right.
23 **A. So he was bleeding internally.**
24 **Q.** So you saw experts and specialists from that point
25 forward?

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1 **A. Yes.**
2 **Q.** And a year later and more, five years later, what is
3 the conclusion of what's happening to his kidney that
4 you know of?
5 **A. The conclusion was that the kidney did heal, the**
6 **bleeding stopped, and that the size of his kidney is**
7 **different, the shape of his kidney is different, and**
8 **that his left kidney is larger than it traditionally**
9 **would be in a person and they said it was compensating**
10 **for the right kidney. They were both functioning but**
11 **the right kidney, we were told to treat it as if he**
12 **had no right kidney and only had the left kidney.**
13 **Q.** Prior to this accident, did you ever have any
14 knowledge of Frank having any type of kidney problem,
15 malfunction or issue or any type of issues with his
16 kidney from any doctor?
17 **A. None at all.**
18 **MR. DAOUDI:** Thank you. I'm all set.
19 **MR. KLEID:** I have just a couple follow
20 up --
21 **MR. BOUFFORD:** Give me a minute with her.
22 (Off the record at 12:04 p.m.)
23 (Back on the record at 12:08 p.m.)
24 **MR. BOUFFORD:** I have no questions at this
25 point.

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1 RE-EXAMINATION
2 **BY MR. KLEID:**
3 **Q.** You feel the City of Wayne has some fault for the
4 accident, correct?
5 **A. I do not know who the responsibility would fall on,**
6 **whether it was the city or the county, but I**
7 **personally feel there should have been some sort of**
8 **road sign of some sort.**
9 **Q.** Whoever is responsible for the roadway, you feel they
10 have some responsibility for not putting the signage
11 up, right?
12 **A. Absolutely.**
13 **Q.** You feel that Mr. Brown has responsibility for the
14 accident as well?
15 **A. I do.**
16 **Q.** Do you feel you have any responsibility for the
17 accident?
18 **A. I do.**
19 **Q.** Between those three entities, who do you feel is most
20 at fault for the accident?
21 **MR. DAOUDI:** Objection, calls for a legal
22 conclusion.
23 **BY MR. KLEID:**
24 **Q.** I'm not asking for your legal opinion. You've gone
25 through this for over 12 years now, you've thought

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1 about it. Based on what you said, it's clearly been a
2 very effective moment in your family's life, so you've
3 thought about it, right?
4 **A. Yes, and that's a hard conclusion to come to, I'll be**
5 **honest.**
6 Q. When you say it's a hard conclusion, it's hard for you
7 to recognize you're the one who's mostly at fault for
8 the accident, right?
9 **MR. BOUFFORD:** Objection, form and
10 foundation, argumentative.
11 **A. I don't feel that way.**
12 **BY MR. KLEID:**
13 Q. Who do you feel is mostly at fault for the accident?
14 **A. I would say Mr. Brown because his vehicle hit my**
15 **vehicle when he could have probably -- had it been a**
16 **different person possibly, they would have stopped**
17 **their vehicle without the collision even happening.**
18 **MR. DAOUDI:** Same objection.
19 **BY MR. KLEID:**
20 Q. What do you mean by a different person?
21 **A. Because I want to give him the benefit of the doubt**
22 **that had it been a different driver, a different**
23 **person altogether, I don't feel that he had his wits**
24 **about him.**
25 Q. What about him -- you never spoke to the man, you

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1 never met him, right?
2 **A. I did see him and I was there.**
3 Q. So what was it about him that you feel he didn't have
4 his wits about him?
5 **A. He was an old man.**
6 Q. He was an old man who was driving the right way on the
7 road, correct?
8 **A. Yes, absolutely.**
9 Q. I mean, let's be honest, you were the only one who was
10 going the wrong way on a roadway?
11 **A. Absolutely.**
12 Q. You said, and I wrote this down because this
13 interested the heck out of me; it's your opinion that
14 Mr. Brown was not in control of his vehicle. How was
15 he not in control of his vehicle?
16 **A. He didn't stop.**
17 Q. There was a car that was barreling towards him in one
18 lane and then jumped into another lane, if we believe
19 your version of events, right?
20 **MR. BOUFFORD:** Objection,
21 mischaracterization of testimony. Never had there
22 been any indication whatsoever about barreling.
23 **BY MR. KLEID:**
24 Q. There was a car coming toward him the wrong way on the
25 roadway, correct?

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1 **A. I was in his lane. I was either stopped or barely**
2 **moving, so it would have been almost like in his line**
3 **of vision he would have -- let's presume I was heading**
4 **in the right direction and stopped in that lane. I**
5 **was stopped in that lane or almost stopped in that**
6 **lane, let's say I was heading the other way --**
7 Q. You mean the right way?
8 **A. The correct way. Let's say I was heading the correct**
9 **way on that road. If he was approaching my vehicle**
10 **from behind me possibly, like you do in a normal**
11 **traffic situation, he should have been able to judge**
12 **that and have said, oh, there's a car in front of me,**
13 **I need to slow down, I need to stop, like you would do**
14 **on an expressway, like you would do a normal street.**
15 **He wasn't obviously able to judge that I was not**
16 **moving or barely moving and that he needed to stop his**
17 **vehicle without hitting me.**
18 Q. He wasn't driving erratically, we already covered,
19 that, right?
20 **A. Yes.**
21 Q. You have no idea if he was speeding or not?
22 **A. I don't.**
23 Q. So I'm still having trouble understanding what it is
24 that you feel Mr. Brown did wrong when he was driving
25 his car in the same lane the entire time, going the

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1 proper direction on westbound Michigan Avenue?
2 **A. He should have --**
3 **MR. BOUFFORD:** Objection, asked and
4 answered.
5 **BY MR. KLEID:**
6 Q. Go ahead.
7 **A. I believe that anybody who gets a driver's license is**
8 **trained to stop a vehicle -- you're trained to use the**
9 **brake pedal if you are approaching some sort of**
10 **object, whether it's another vehicle, a stop sign, a**
11 **rock, a bush, a tree, you're going -- you're trained**
12 **to stop your vehicle. I feel he should have had ample**
13 **enough time to see me, whether I was heading towards**
14 **him or away from him. My vehicle, the front of my**
15 **vehicle or the back of my vehicle, to me, it makes no**
16 **difference. The vehicle, when he approached my**
17 **vehicle, he should have said oh, this vehicle is not**
18 **moving, I should stop and he did not.**
19 Q. All right. That's if we believe your version of
20 events, right?
21 **A. I would hope you would.**
22 Q. Well, the version of the events in the police report
23 is you made the turn and he was there?
24 **MR. DAOUDI:** Objection,
25 mischaracterization.

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1 **BY MR. KLEID:**
2 Q. Well, that's what the officer testified to. So we
3 would have to believe your version of events, right?
4 **A. I would hope you would believe my version, yes.**
5 Q. Well, I don't, but that's neither here nor there. If
6 we believe your version of events, you're first in the
7 second lane, correct?
8 **A. Yes.**
9 Q. When you turn into the right lane, I think you said
10 there's ten car lengths between you and Mr. Brown?
11 **A. I would say ten or more.**
12 Q. So now it's more than ten?
13 **MR. DAOUDI:** She testified ten or more.
14 **A. I believe that's what I said earlier.**
15 **BY MR. KLEID:**
16 Q. How many more than ten?
17 **A. It could have been up to 20.**
18 Q. 20 car lengths away and you didn't have any time to
19 react and do anything?
20 **A. Well, my other option would have been to go up onto**
21 **the sidewalk.**
22 Q. Why didn't you take that option?
23 **A. I've wondered that myself many times.**
24 Q. All right. This version, this idea in your head that
25 if he was traveling westbound and you were traveling

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1 westbound, that you feel it's the same way as you
2 traveling eastbound and him traveling westbound,
3 correct?
4 **A. Correct.**
5 Q. You agree that there is a difference in that if he
6 starts to slow down and your car is in front of him,
7 you're still moving forward as opposed to moving
8 towards him?
9 **A. Yes.**
10 **MR. KLEID:** I don't have anything else.
11 RE-EXAMINATION
12 **BY MR. MARZANO:**
13 Q. When you were driving through the Bank One parking
14 lot, were you looking for directional signs?
15 **A. Not specifically, no.**
16 Q. As you drove through the intersection of South Wayne
17 Road and Michigan Avenue before realizing that you had
18 passed the intersection, did you observe any
19 directional signs in that intersection?
20 **A. No.**
21 Q. So if there were directional signs present in the
22 intersection of Wayne and Michigan Avenue as you drove
23 through it, you just didn't see them, correct?
24 **A. I would have to agree with that.**
25 Q. Why did you take pictures to show the court? What

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1 were you trying to show the court when you fought your
2 ticket?
3 **A. I thought the ticket was written for -- my**
4 **recollection of it was impeding traffic but it says**
5 **otherwise, and I believe me not being familiar with**
6 **the law or fighting anything, that I needed to state**
7 **my case, whatever my case was; maybe I didn't need the**
8 **pictures.**
9 Q. My question is -- maybe I asked a bad question, maybe
10 you answered it. Typically, people take pictures to
11 show somebody something, there's something they're
12 trying to show. Were you trying to show the court
13 anything?
14 **A. I guess I would assume, having all these years pass**
15 **and not remembering exactly, but I would say that if**
16 **the ticket was written for driving the wrong way on a**
17 **one way, which I think that's what this document says,**
18 **is that I was trained to document that I had no way of**
19 **knowing it was a one way, and so the picture would**
20 **have been my evidence that there was no way for me to**
21 **know it was a one way.**
22 Q. You never got the opportunity to show the judge those
23 pictures, correct?
24 **A. I didn't, but her leaving the courthouse to go observe**
25 **that herself and then she returned and said I agree**

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1 **with you, there are no signs there, that didn't help**
2 **me.**
3 Q. And found you responsible despite that?
4 **A. Yes.**
5 Q. Did you have a lawyer?
6 **A. I didn't.**
7 Q. When she says there was no signs there, where was
8 there, if you know?
9 **A. The scene of the accident. She walked from the**
10 **courthouse to the scene from what I understand, not**
11 **being with her, but I was told that's where they were**
12 **leaving to go while I stood there in the courthouse**
13 **going okay.**
14 Q. Did you ever, at any time after the accident, contact
15 any person, governmental entity or anyone for that
16 matter, and say there should be signs in that parking
17 lot or in that area, somewhere around that area, to
18 let you know not to turn left -- right onto the one
19 way street?
20 **A. Other than at that court date, I don't recall ever**
21 **having a conversation with anybody else about that**
22 **specifically.**
23 Q. You mentioned when you were asked by your son's
24 attorney, you mentioned something about Frank's
25 situation, do you remember that testimony?

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1 A. Not specifically, no.
2 Q. He said how people treated him and people would treat
3 him nice because of his situation, do you remember
4 that?
5 A. Yeah.
6 Q. How did they find out about his situation, if you
7 know?
8 A. Well, because in school, a lot of times -- initially,
9 when he was a second grader, if he was experiencing
10 pain during his healing process, they would allow him
11 to leave the learning environment to go rest, and so
12 his classmates were aware there was something going on
13 with him, and then they gave him a lot of compassion,
14 and that's from second grade on. And he referred to
15 it on a regular basis to his classmates, well, I can't
16 do that.
17 Q. When you said he'd refer to it, it would be the
18 accident and the injury?
19 A. His injury, yeah, the state of his physical health.
20 Q. You said he had these limitations, what were the
21 limitations he had?
22 A. Well, originally, his limitations were broader and
23 wider because he was recovering from the injury.
24 Q. I mean, how long did it take him to recover from his
25 injury, if you know?

1 play football for the University of Michigan?
2 A. Oh, he probably still talks about that. He can't,
3 obviously.
4 Q. When you say he can't, is that because of his kidney
5 or his size?
6 A. Well, his kidney, yes, and his -- I don't know about
7 his size, because not everybody can play for the
8 University of Michigan, so I don't know that his skill
9 set would be such. Ambitious child.
10 Q. Has your son ever had dialysis before?
11 A. No.
12 Q. Has any doctor told him he will need dialysis in the
13 future?
14 A. No.
15 Q. You mentioned that there was a doctor who told you
16 that it would be -- it was even more important now for
17 your son to stay in shape because of his condition;
18 what was the name of that doctor?
19 A. I don't recall which doctor. It was a nephrologist.
20 Q. When was that stated?
21 A. Probably when he was either -- I would guess it was
22 middle school, because that's when he really started
23 talking about sports and actually -- and they were
24 actually available more readily.
25 Q. When is the last time you attended a doctor's

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1 A. Well, I would say he still has issues from that
2 injury, but for him to be functioning to the point
3 where it didn't affect him on a daily basis, I would
4 say middle school. By the time he was in middle
5 school he was really good as far as not having daily
6 issues from it, not to be coming up in daily
7 conversation.
8 Q. At that point, what were his limitations?
9 A. Prior to that point?
10 Q. No, at the time when he stopped bringing it up daily.
11 A. Every once in a while he would talk about my kidney is
12 bothering me today, you know, I really wanted to do
13 that thing, whatever sport or activity, and we would
14 have to have discussions and say, well, is that going
15 to be a smart move because of injury to you and -- or
16 even him having -- he would have flashbacks to pain,
17 just stuff like that.
18 Q. He played soccer, correct?
19 A. He did.
20 Q. Tried out for basketball, correct?
21 A. I don't recall that but maybe.
22 Q. Did your son ever express an interest to you in
23 playing football for the University of Michigan?
24 A. Yes.
25 Q. When was the last time he mentioned that he wanted to

1 appointment with your son?
2 A. Oh, I don't recall, it's been years.
3 Q. When you say years, would it have been in the 2000s?
4 I'm sorry, would it have been middle school, high
5 school?
6 A. I think high school.
7 Q. Do you remember what year of high school?
8 A. Maybe freshman year, but I can't say exactly.
9 Q. What was that appointment for, if you remember?
10 A. I think that we were wanting to know the status of his
11 kidney healing.
12 Q. Was it an annual checkup or an out-of-the-blue
13 checkup?
14 A. Originally, the doctors had said we should come back
15 and do checkups at a certain time frame and I think we
16 just kind of thought it's been a while, we should go
17 back.
18 Q. Do you remember how long -- what was the time before
19 that that you had gone?
20 A. A couple years.
21 Q. So probably middle school?
22 A. Yeah, I think so.
23 Q. What was the result of that examination, if you
24 recall?
25 A. I think that might have been the doctor that said yes,

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1 you have limitations but -- I don't know, I'm sorry,
2 it's confusing. They did say he was limited, he
3 shouldn't play football, he could play noncontact
4 sports like track, which is part of the reason why he
5 started running, tennis, things like that. I'm pretty
6 sure that's what they were telling us at that time but
7 he should maintain good health.
8 Q. Has any doctor told you, or anybody that you're aware
9 of, that you should not maintain good health?
10 A. You're absolutely right, no, I don't think so.
11 MR. MARZANO: Those are all the questions I
12 have.
13 RE-EXAMINATION
14 BY MR. DAOUDI:
15 Q. I just have a few, I'm sorry. Let's talk about Mr.
16 Brown first. Mr. Brown, he started from a stop that
17 you observed, right?
18 A. Yes.
19 Q. So when you observed him at the stop, that was at the
20 first intersection east -- you were heading east, so
21 the first intersection east of you?
22 A. Yes.
23 Q. And that meant your vehicle was on Michigan Avenue
24 heading east on Michigan Avenue?
25 A. Yes.

1 MR. MARZANO: Object to the form, it's
2 vague and irrelevant.
3 BY MR. DAOUDI:
4 Q. Do you understand the question?
5 A. I do.
6 Q. When you drive, do you look for all signs that are
7 applicable to you at that point in time?
8 A. Yes.
9 Q. Whether they're directional or nondirectional or stop
10 or they say jump or whatever, you look for the signs,
11 right?
12 A. Yes, I do.
13 Q. Just because you were not looking specifically for a
14 directional sign or not, maybe you were, I don't know,
15 but you were looking for any sign at that -- before
16 you exited Bank One, correct?
17 A. I would say I was looking for any signs.
18 Q. If a sign was there that said -- if the sign said you
19 couldn't turn left, would you have turned left against
20 the rules?
21 A. I wouldn't have gone against the signage, no.
22 Q. The citation you were given, that was for going the
23 wrong way on a one way street, right?
24 A. That's what it says on this form.
25 Q. That's what the judge found you responsible for,

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1 Q. So Mr. Brown started from a stop when you were already
2 on Michigan Avenue and heading eastbound?
3 A. Right.
4 Q. Did it appear -- at that point, how old were you,
5 approximately, at that time?
6 A. Gosh, I don't know, 40.
7 Q. And you said you got your license when you were 15?
8 A. 16.
9 Q. So did you drive regularly since 16 to 40?
10 A. Yes.
11 Q. So you -- can you observe a car reducing its speed and
12 recognize that by your eyes only?
13 A. I would say so.
14 Q. Did you observe or did it appear that Mr. Brown's
15 vehicle slowed or appear to slow down before the
16 impact with your vehicle?
17 A. No.
18 Q. With regard to Chase Bank, you were asked -- you
19 weren't looking for directional signs, do you remember
20 that question?
21 A. Yes.
22 Q. When you were looking, when you're driving you're
23 looking for signs, do you just look for a specific
24 type of sign only and forget about everything else or
25 do you look for all types of signage?

1 right?
2 MR. BOUFFORD: Objection, foundation. She
3 also indicated on the record that she had thought it
4 was for impeding traffic. So the hazardous action
5 that's listed on the UD-10, I don't know is the same
6 as on any civil infraction form.
7 BY MR. DAOUDI:
8 Q. You were never cited or given a ticket or accused of
9 disobeying any sign though?
10 A. Not at all, no.
11 Q. So you didn't get a ticket for not failing to obey a
12 sign or turning right when it said no right turn, that
13 wasn't the ticket, right?
14 A. Yes, that was not the ticket.
15 Q. Let's go back to when you were on southbound Wayne.
16 You were approaching Michigan Avenue, this is the
17 first time you've ever done this. When you were on
18 Wayne Road, at that point in time when you were just
19 about to start to cross Michigan Avenue, did you even
20 know that was Michigan Avenue?
21 A. No, I saw --
22 Q. When you -- when you realized that was Michigan
23 Avenue, it was too late for you to even turn left,
24 correct?
25 A. Yeah.

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1 Q. If you had known that was Michigan Avenue before you
2 got to the Michigan Avenue intersection, would you
3 have been paying attention for a sign that said no
4 left turn or no right turn or stop, or anything else?
5 **MR. BOUFFORD:** Objection, form and
6 foundation, calls for speculation.
7 **MR. KLEID:** Join.
8 **MR. MARZANO:** Join.
9 **BY MR. DAOUDI:**
10 Q. Do you understand the question?
11 **MR. BOUFFORD:** You can answer.
12 **A. No, please restate.**
13 **BY MR. DAOUDI:**
14 Q. Prior to you -- prior to you entering that
15 intersection, had you known that that was Michigan
16 Avenue, would you have been paying attention to
17 whether there were signs that said no left turn at
18 that intersection or not?
19 **A. Yes.**
20 Q. So when you -- as a matter of fact, when you -- at
21 that point in time when you did enter that
22 intersection from Wayne starting to cross into
23 Michigan, you never knew it was Michigan Avenue until
24 you got past a point that you could make a safe left
25 turn?

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1 **A. Absolutely.**
2 Q. So it would be irrelevant for you to even take -- not
3 pay attention, but even if a sign said you couldn't
4 turn left, you wouldn't be able to turn left?
5 **MR. MARZANO:** I would like to place an
6 objection to irrelevance, foundation.
7 **MR. KLEID:** Join.
8 **BY MR. DAOUDI:**
9 Q. Do you understand the question?
10 **MR. KLEID:** I sure didn't.
11 **A. I believe that what you're asking me is was it too**
12 **late for me to turn left at that point when I realized**
13 **it was Michigan Avenue and yes, it was too late**
14 **because at the rate of speed I was going, as I**
15 **recognized it was Michigan Avenue I would have had to**
16 **-- I would have been reckless driving at that point.**
17 **BY MR. DAOUDI:**
18 Q. You were asked about how long did it take for Frank to
19 recover and you said I don't think he's recovered.
20 That's what you said, right?
21 **A. Yes.**
22 Q. Let me ask you a question about his right kidney: As
23 it is today, it's not normal, right?
24 **MR. MARZANO:** Objection to form.
25 **MR. KLEID:** Join.

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1 **A. Absolutely, yes.**
2 **BY MR. DAOUDI:**
3 Q. The left kidney is not normal?
4 **MR. MARZANO:** Same objection.
5 **A. Yes.**
6 **BY MR. DAOUDI:**
7 Q. Has any doctor or specialist that you've seen said
8 that either the right kidney will become normal again
9 or is it always going to be the reduced size and shape
10 that it sustained because of this accident?
11 **MR. BOUFFORD:** Objection, form and
12 foundation.
13 **MR. KLEID:** Join.
14 **A. I was told that the kidney healed the way it healed**
15 **and it would most likely never change in size from**
16 **where it is -- was and is, I believe.**
17 **BY MR. DAOUDI:**
18 Q. I'd like you to read this report from a doctor. I'm
19 going to mark it with the blue. I think it starts
20 with I spent a significant amount of time discussing
21 with Frank and his mother strategies that are used to
22 preserve kidney function -- I want you to read that --
23 **MR. BOUFFORD:** Object as to foundation and
24 if you're asking her to -- I mean, if you want to ask
25 her about that information and then ask her if she

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1 doesn't recall, if that will refresh her recollection,
2 that's one thing, but to have her read it, I don't
3 think is appropriate. The document will speak for
4 itself. Ask your question.
5 **BY MR. DAOUDI:**
6 Q. Do you remember a Dr. Neil Blatt?
7 **A. I vaguely remember him, yes.**
8 Q. Did you ever -- do you remember on or about October
9 30, 2008 that you had a conversation with a kidney
10 specialist discussing Frank with you and strategies on
11 how to preserve his kidney function?
12 **MR. BOUFFORD:** Before we go on, I'm going
13 to object on the basis this is beyond the scope of
14 cross and redirect.
15 **MR. MARZANO:** Object to foundation. There
16 is no testimony that this guy has been established as
17 a kidney specialist. I'm not saying he isn't.
18 **BY MR. DAOUDI:**
19 Q. Do you remember a discussion like that with a doctor?
20 **A. I'm sure I did have a discussion with the doctor.**
21 Q. Did you -- did a doctor talk about early strategies
22 that are used to preserve kidney function?
23 **A. I would imagine he did.**
24 Q. Or early detection and control of blood pressure to
25 avoid hypertension --

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1 **MR. BOUFFORD:** Object to foundation.
2 Would reviewing those records help you?
3 **THE WITNESS:** I think so. Okay.
4 **MR. BOUFFORD:** Does that refresh your
5 recollection as to any conversations you had with Dr.
6 Blatt regarding the kidneys?
7 **THE WITNESS:** Yes.
8 **BY MR. DAOUDI:**
9 Q. Thank you. Did you review that paragraph,
10 specifically the one that I marked out?
11 **A. Yes, I did.**
12 Q. Were those discussions -- do you recall those
13 discussions with that doctor?
14 **A. I do.**
15 Q. Is this the doctor that you were referring to earlier?
16 **A. I believe so.**
17 **MR. DAOUDI:** Thank you.
18 **EXAMINATION**
19 **BY MR. BOUFFORD:**
20 Q. Is it true that Dr. Blatt had advised you that the
21 risks of kidney injury from participating in organized
22 sports would -- is relatively low?
23 **A. His verbiage there is -- I think it's contradictory.**
24 **You know, he states in there that he advised not to do**
25 **football and hockey but he allowed -- there was no**

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1 **issue with soccer and whatever other ones he mentioned**
2 **in there.**
3 **MR. MARZANO:** Object to the response as
4 nonresponsive to the question.
5 **BY MR. BOUFFORD:**
6 Q. But he did indicate that injury in participation in
7 organized sports was relatively low, is that correct?
8 **A. That's what he states in that statement, but I think**
9 **at the time of the actual conversation he was stating**
10 **it's high in hockey and football and contact sports,**
11 **but it would be low in these other sports.**
12 Q. In fact, he recommended against participating in
13 football or hockey, is that correct?
14 **A. Yes.**
15 Q. And Dr. Blatt also indicated that it would have been
16 much more likely that Frank would have suffered from a
17 head injury participating in sports than it would have
18 been for him to reinjure his kidney, is that correct?
19 **A. That is what he stated, but you also see he commented**
20 **on getting a kidney shield which contradicted that as**
21 **well.**
22 Q. Did you ever receive a copy of this letter directly
23 from Dr. Blatt, if you recall?
24 **A. I believe I do have a copy of that.**
25 Q. When you pulled out of the parking lot, it was onto

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1 eastbound or the easternmost side of Chase Bank,
2 correct?
3 **A. Yes.**
4 Q. I'm referring to Exhibit 1 here. When you pulled out
5 of the bank and initially pulled in -- your testimony
6 was you initially pulled into the second lane, is that
7 correct?
8 **A. Yes.**
9 Q. Then you were able to make it over to the curb lane?
10 **A. Yes.**
11 Q. And approximately how far down the street had you
12 traveled at that point?
13 **A. Hardly. Like one car length, if even that. I barely**
14 **-- my vehicle was small.**
15 Q. And at that point you were still able to see Chase
16 Bank, is that correct?
17 **A. Yes, it was right there.**
18 Q. Looking at the diagram --
19 **MR. BOUFFORD:** Do you mind if we mark your
20 Exhibit 1 or do you want me to mark on the exhibit?
21 **MR. KLEID:** I guess I'd only mind -- I need
22 to know what you want to do.
23 **MR. BOUFFORD:** Okay. Let's go off the
24 record for a second.
25 (Off the record at 12:41 p.m.)

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1 (Back on the record at 12:42 p.m.)
2 **BY MR. BOUFFORD:**
3 Q. With regard to Exhibit Number 1, to the best of your
4 recollection, can you draw a circle around the area
5 where you believe the accident took place?
6 **A. Certainly. I believe it was right here.**
7 Q. And can you draw a square in that area where you
8 believe -- or where Mr. Brown was when you first saw
9 his vehicle?
10 **A. A square?**
11 Q. Yes.
12 **A. Okay.**
13 Q. So it's clear, can you draw a little arrow to that
14 circle and a little arrow to the square just so we can
15 know exactly where you're talking about?
16 **A. Okay.**
17 Q. As Mr. Brown approached you, did you ever see him try
18 and move to the right lane or even onto the sidewalk
19 himself?
20 **A. No.**
21 Q. Did you ever see him put on his right turn signal in
22 an effort to try to get into the right lane next to
23 him?
24 **A. No.**
25 Q. Did you ever hear the squealing of brakes?

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1 A. No.
2 Q. Did you ever hear him honk his horn?
3 A. No.
4 Q. Did you see him attempt to make any evasive maneuver
5 to avoid the collision?
6 A. Not at all.
7 MR. BOUFFORD: No other questions.
8 RE-EXAMINATION
9 BY MR. KLEID:
10 Q. So what does the circle represent again?
11 MR. BOUFFORD: Where the accident took
12 place.
13 A. Where the accident happened.
14 MR. KLEID: Nothing else.
15 RE-EXAMINATION
16 BY MR. MARZANO:
17 Q. How is it that you realized you'd gone past Michigan
18 Avenue?
19 A. I saw the sign as I was going through the
20 intersection. The sign was in an odd -- I thought in
21 an odd spot as I was going through it and --
22 Q. Where was the sign located?
23 A. From my memory, the sign for Michigan Avenue was up
24 high and to my right on the southwest corner and I
25 thought I just was driving through the intersection

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1 looking for Michigan Avenue but expecting it to be
2 more on an eye level and to the right. Usually, you
3 see, as you're approaching an intersection, you see a
4 road sign prior to the road. I mean, that's my
5 experience.
6 Q. When you say up high, if you look at Exhibit 2, when
7 you say up high, do you mean up high like that on a
8 pole?
9 A. Yeah, but this intersection looks different in this
10 picture than it did at that time.
11 Q. In what way?
12 A. This is more updated. This pole and everything looks
13 different than the intersection did at that time. I
14 even think this parking lot that's behind the pole, I
15 don't remember that looking like that then.
16 Q. You're talking about the one on the right?
17 A. Yes, it looks -- this whole intersection in Exhibit 2
18 looks totally different to me.
19 Q. Did I understand -- I may have misunderstood what you
20 said, or maybe I heard you the wrong way -- did you
21 testify when Mr. Daoudi asked you a question about
22 when you're driving, you said you're always looking
23 for signs? Is that a yes?
24 A. Yes.
25 Q. Yet you testified after a few questions after that,

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1 that you weren't really looking for signs in the
2 intersection because they weren't relevant to you at
3 that time. Do you remember saying that or agreeing
4 with him on that?
5 A. I don't remember what his question was exactly and I
6 don't know my response exactly, sorry.
7 Q. I think the gist of his question, and I'm not speaking
8 for him so he can object if I'm wrong, but the gist of
9 his question was essentially as you traveled through
10 this intersection of Wayne Road and Michigan Avenue,
11 you didn't realize it was the intersection of Wayne
12 Road and Michigan Avenue so you really weren't paying
13 attention or looking for signs, and if I recollect
14 correctly, you agreed with him on that?
15 A. I think so. I think that, yes, I was nearly over 50
16 percent through that intersection when I realized it
17 was Michigan Avenue, and I saw no signage about one
18 way at all.
19 Q. But you were looking for it?
20 A. I think I would have noticed it had it been on that
21 right side, but --
22 Q. What about if it was on the left side?
23 A. Honestly, if it would have been on the left side near
24 the Chase Bank I probably would have noticed it,
25 because I visually saw Chase Bank and saw that as the

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1 solution to my impending need for Michigan Avenue.
2 Q. Would you agree with me that there are signs saying
3 not to make a left turn at an intersection onto a one
4 way road, chances are that the best placement for
5 those signs would be on the left side of the
6 intersection --
7 A. Yes.
8 Q. -- where you would be turning?
9 A. Yes.
10 MR. MARZANO: Those are all the questions I
11 have. Thank you.
12 (The deposition was concluded at 12:48 p.m.
13 Signature of the witness was not requested by
14 counsel for the respective parties hereto.)
15
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25


CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, JENIFER POGER, certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.



JENIFER POGER, CSR-6006

Notary Public,

Oakland County, Michigan.

My Commission expires: August 17, 2020

DAVID ZUCKERMAN
June 16, 2016

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE</p> <p>FRANK ANTHONY SCOLA, Plaintiff, vs. Case No. 2015-002804-NI Hon. John A. Murphy</p> <p>JP MORGAN CHASE BANK NATIONAL ASSOCIATION, JP MORGAN CHASE & CO., KATHLEEN SCOLA, and ESTATE OF JOHN BARROW BROWN (Deceased), and CITY OF WAYNE Jointly and severally, Defendants.</p> <hr/> <p>The Videotaped Deposition of DAVID ZUCKERMAN, Taken at 4635 Howe Road, Wayne, Michigan, Commencing at 9:09 a.m., Thursday, June 16, 2016, Before Laurie R. Mayer, CSR-5385.</p>	<p style="text-align: right;">Page 3</p> <p>1 JEFFREY D. TRIMBLE 2 Law Offices of Dyki, Williams & Baranski 3 340 East Big Beaver Road 4 Suite 250 5 Troy, Michigan 48083 6 (248) 764-1210 7 jeff_d_trimble@progressive.com 8 Appearing on behalf of the Defendant, Kathleen Scola. 9 10 JAMES J. KIM 11 Julie A. Taylor & Associates 12 20750 Civic Center Drive 13 Suite 400 14 Southfield, Michigan 48076 15 (248) 945-3825 16 james.kim.p07e@statefarm.com 17 Appearing on behalf the Defendant, 18 Estate of John Barrow Brown (Deceased). 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 MICHAEL S. DAOUDI 4 RENEE GRUBER 5 Law Office of Michael S. Daoudi, P.C. 6 346 Park Street 7 Suite 120 8 Birmingham, Michigan 48009 9 (248) 220-4377 10 msd4law@aol.com 11 Appearing on behalf of the Plaintiff. 12 13 ROBERT A. MARZANO 14 Plunkett Cooney 15 38505 Woodward Avenue 16 Suite 2000 17 Bloomfield Hills, Michigan 48304 18 (248) 594-6357 19 rmarzano@plunkettcooney.com 20 Appearing on behalf of the Defendant, 21 JP Morgan Chase National Association, 22 JP Morgan Chase & Co. 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 MICHAEL E. ROSATI 2 Johnson, Rosati, Schultz & Joppich, P.C. 3 27555 Executive Drive 4 Suite 250 5 Farmington Hills, Michigan 48331 6 (248) 489-4100 7 mrosati@jrsjlaw.com 8 Appearing on behalf of the Defendant, 9 City of Wayne. 10 11 ALSO PRESENT: 12 Steve Carley - Video Technician 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

DAVID ZUCKERMAN
June 16, 2016

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1	TABLE OF CONTENTS		1	Wayne, Michigan	
2			2	Thursday, June 16, 2016	
3	WITNESS	PAGE	3	9:09 a.m.	
4	DAVID ZUCKERMAN		4		
5			5	VIDEO TECHNICIAN: We are now on the	
6	EXAMINATION		6	record. This is the videotaped deposition of David	
7	BY MR. DAOUDI:	10	7	Zuckerman being taken on Thursday, June 16th, 2016.	
8	EXAMINATION		8	The time is now 9:09 a.m. We are located at 4635 Howe	
9	BY MR. MARZANO:	50	9	Road in Wayne, Michigan. We are here in the matter of	
10	EXAMINATION		10	Frank Anthony Scola vs. JPMorgan Chase Bank, et al.	
11	BY MR. KIM:	61	11	This is Case No. 15-002804-NI. This matter is being	
12	EXAMINATION		12	held in the State of Michigan in the 3rd Circuit Court	
13	BY MR. ROSATI:	62	13	for the County of Wayne.	
14	RE-EXAMINATION		14	My name is Steve Carley, video technician.	
15	BY MR. DAOUDI:	67	15	Will the court reporter swear in the witness and the	
16	RE-EXAMINATION		16	attorneys briefly identify themselves for the record,	
17	BY MR. MARZANO:	68	17	please?	
18			18	DAVID ZUCKERMAN,	
19	EXHIBITS		19	was thereupon called as a witness herein, and after	
20			20	having first been duly sworn to testify to the truth,	
21	EXHIBIT	PAGE	21	the whole truth and nothing but the truth, was	
22	(Exhibits attached to transcript.)		22	examined and testified as follows:	
23			23	MR. MARZANO: I'll start off. Good	
24	DEPOSITION EXHIBIT 1	22	24	morning, my name is Robert Marzano, I represent	
25	DEPOSITION EXHIBIT 2	22	25	JPMorgan Chase Bank National Association and JPMorgan	

Page 6			Page 8		
1	DEPOSITION EXHIBIT 3	22	1	Chase & Company.	
2	DEPOSITION EXHIBIT 4	22	2	MR. DAOUDI: My name is Michael Daoudi, I'm	
3	DEPOSITION EXHIBIT 5	22	3	counsel for the plaintiff, and associate, Renee	
4	DEPOSITION EXHIBIT 6	22	4	Gruber, is with us.	
5	DEPOSITION EXHIBIT 7	22	5	MR. ROSATI: I'm Mike Rosati, I represent	
6			6	the City of Wayne.	
7			7	MR. TRIMBLE: Jeff Trimble on behalf of	
8			8	defendant, Kathleen Scola.	
9			9	MR. KIM: I'm James Kim, I represent the	
10			10	Estate of John Barrow Brown.	
11			11	MR. DAOUDI: Mr. Marzano?	
12			12	MR. MARZANO: Sure. At this point before	
13			13	we get started I would like to place an objection on	
14			14	the record. I have filed an objection with the court	
15			15	regarding the taking of this deposition. My	
16			16	understanding, this deposition has been noticed as a	
17			17	trial deposition as well.	
18			18	This witness has not been identified on any	
19			19	witness list. There has been absolutely no discovery	
20			20	provided regarding this witness other than the fact	
21			21	that an expert testified -- or an alleged expert	
22			22	testified about a month or so ago that he had spoken	
23			23	with some person by the name of David Zuckerman, so my	
24			24	objection is to any questions asked during the	
25			25	deposition and as to this witness testifying at the	

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1 time of trial in this matter. Subject to my
2 objection, I won't hold up the deposition, it can go
3 forward.
4 MR. DAOUDI: Thank you. And just to make
5 sure everyone is on notice, there is a motion to amend
6 witnesses. I think it's -- the court moved it from
7 this Friday to Tuesday.
8 MR. MARZANO: Now, that I didn't know.
9 MR. ROSATI: We didn't know.
10 MR. DAOUDI: Now you're on notice.
11 MR. ROSATI: We are? We are?
12 MR. MARZANO: Was that moved to Tuesday?
13 MR. DAOUDI: We got a call saying -- was it
14 yesterday? Something like that, they moved it to --
15 MR. MARZANO: Do you know what time?
16 MS. GRUBER: 9:30.
17 MR. DAOUDI: I would imagine 9:00 or 9:30,
18 yeah, we will confirm that.
19 MS. GRUBER: Yeah.
20 MR. ROSATI: Will you e-mail us --
21 MR. DAOUDI: Yes.
22 MR. KIM: I just want to say I join in the
23 objection as well.
24 MR. DAOUDI: All right. Okay. Then we're
25 going to move forward with the deposition.

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1 MR. KIM: And this was James Kim
2 representing the estate.
3 MR. DAOUDI: And do you know what, I
4 thought everyone was here, I'm sorry, I would have
5 waited for you at least to walk in.
6 EXAMINATION
7 BY MR. DAOUDI:
8 Q. Okay. Well, this is -- you're Mr. Zuckerman, correct?
9 **A. Correct.**
10 Q. And you're here pursuant to subpoena that you were
11 served upon?
12 **A. I am.**
13 Q. And this is a trial deposition taken pursuant to
14 Michigan Court Rules and Rules of Evidence and to be
15 used for all its intended purposes.
16 Good morning and thank you for coming here
17 this early day and giving us your time for your
18 deposition. This is -- Mr. Zuckerman, have you ever
19 given your deposition before?
20 **A. I have.**
21 Q. All right. So you're probably a little familiar with
22 the routine, but the routine I'm talking about is that
23 everything is being recorded, and there's a court
24 reporter to your right and she's going to be taking
25 down every word we say and trying to take down every

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1 utterance we make, even a sound, and that's where I'm
2 getting at. It's best to -- I know you're being
3 recorded video -- with a video, but it's also best to
4 answer every question with a yes or a no or actually
5 orally respond. And this is a deposition to find
6 out -- and ask you questions to find out answers and
7 it's not meant to trick you or, you know, to try to do
8 anything different, so if you don't understand a
9 question, I would like you to tell me that so I can
10 clarify the question, okay?
11 **A. Okay.**
12 Q. Because if I ask you a question and you answer, I'm
13 going to assume you understood the question fully and
14 that your answer is, you know, complete and honest as
15 you know it to be; is that fair?
16 **A. Uh-huh -- yes.**
17 Q. Is that yes? Okay. Thank you.
18 **A. Yes.**
19 Q. All right. Let's start with some background
20 information. What's your full name?
21 **A. David A. Zuckerman.**
22 Q. What does the A stand for?
23 **A. Arnold.**
24 Q. And Mr. Zuckerman, what's your date of birth?
25 **A. November 26th, 1940.**

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1 Q. And your residence, personal residence, is that in the
2 State of Michigan?
3 **A. It's in Ann Arbor.**
4 Q. Okay. And how long have you lived in Ann Arbor for?
5 **A. Going on 28 years, I think.**
6 Q. The same place?
7 **A. Yes.**
8 Q. And let me ask you this. Where do you work?
9 **A. I work at Leo's Jewelry, downtown Wayne.**
10 Q. The city of Wayne?
11 **A. The city of Wayne.**
12 Q. And what's your association with Leo's Jewelry, owner,
13 employer?
14 **A. I'm a partner.**
15 Q. Okay. And how long have you been a partner with Leo's
16 Jewelry?
17 **A. 60 years.**
18 Q. And where is Leo's Jewelry located?
19 **A. 34900 Michigan Avenue.**
20 Q. Being a partner of the business, does that mean that
21 you're working there as well?
22 **A. Correct.**
23 Q. Okay. What's your regular schedule presently in terms
24 of like last year, what would be your average weekly
25 schedule?

1 **A. Monday through Saturday.**
 2 Q. And what kind of hours per day?
 3 **A. Well, I'm there usually by 9:00 and I leave around**
 4 **8:00.**
 5 Q. P.m.?
 6 **A. Uh-huh.**
 7 MR. MARZANO: Is that a yes?
 8 BY MR. DAOUDI:
 9 Q. Is that a yes?
 10 **A. Yes.**
 11 Q. Thank you. And that schedule in -- generally
 12 speaking, how far back in time can you say you've been
 13 maintaining that type of schedule?
 14 **A. I would say 20 years.**
 15 Q. Okay. And I know you probably have vacations here and
 16 there, just generally speaking. And when you say
 17 you've been a partner with Leo's Jewelry for 60 years,
 18 does that mean Leo's Jewelry has been at 34900
 19 Michigan Avenue for 60 years?
 20 **A. It's been in relatively the same location, we were two**
 21 **doors over for -- starting in 1956.**
 22 Q. Okay. And when did you move to the address you're at
 23 now?
 24 **A. 1975.**
 25 Q. All right. So since 1975 to now you've been in the

1 **A. Uh-huh.**
 2 Q. And how about anybody else?
 3 **A. Robert Abdo, A-b-d-o.**
 4 Q. How many years has Mr. Abdo been there?
 5 **A. 20.**
 6 Q. I will tell you what, there's something nice about a
 7 good staff, I will tell you. What -- how about the
 8 next I guess in seniority employee do you have?
 9 **A. 17 years.**
 10 Q. Wow. Okay. Who's that?
 11 **A. Michael Tomzyak.**
 12 Q. C-z-a-k?
 13 **A. It's T-o-m-z-y-a-k.**
 14 Q. Z-y-a-k? And that's 17 years.
 15 **A. Uh-huh.**
 16 Q. And what would be -- do you know the next level or
 17 next person in seniority?
 18 **A. Probably 15 years.**
 19 Q. And that person is?
 20 **A. That would be Shirley, our bookkeeper, Damico.**
 21 Q. How do you spell that?
 22 **A. D-a-m-i-c-o.**
 23 Q. That's one, two, three, four. Who else would be after
 24 that, do you know?
 25 **A. That would be -- it would be my -- well, I have a**

1 same location?
 2 **A. Yes.**
 3 Q. Okay. Do you -- just for my knowledge, do you rent or
 4 own the building?
 5 **A. I own the building.**
 6 Q. Okay. When -- how many employees currently do you
 7 have working at Leo's Jewelry?
 8 **A. Let's see.**
 9 Q. Approximately?
 10 **A. I would say eight.**
 11 Q. Does that include yourself?
 12 **A. No.**
 13 Q. Your current employees now of eight, what's the
 14 longest tenured employee that you have? How many
 15 years has that been, do you think?
 16 **A. 27 years.**
 17 Q. 27 years?
 18 **A. Uh-huh.**
 19 Q. And who's that person?
 20 **A. Christine Busby.**
 21 Q. Christine Busby?
 22 **A. Uh-huh, B-u-s-b-y.**
 23 Q. B-u-s?
 24 **A. Yes.**
 25 Q. B-y?

1 jeweler that works for me, I forgot him.
 2 Q. Okay.
 3 **A. He's been with me 42 years.**
 4 Q. And his name?
 5 **A. Robert Arbour, A-r-b-o-u-r.**
 6 Q. B-o-u-r. Go ahead?
 7 **A. Well, I have my daughter, she's been there eight**
 8 **years.**
 9 Q. Her name?
 10 **A. Her name is Alicia, A-l-i-c-i-a, Zuckerman, and we**
 11 **have some part-timers.**
 12 Q. Okay. When you say these -- these people are your
 13 employees, are these people all employees that work
 14 out of that location, 34900, what, Michigan Avenue?
 15 **A. Yes.**
 16 Q. Okay. I mean, does the bookkeeper work out of
 17 there --
 18 **A. Yes.**
 19 Q. Okay. So she doesn't work at her home or anything
 20 like that?
 21 **A. No.**
 22 Q. Okay. And the jeweler comes to your address and works
 23 there too?
 24 **A. Yes.**
 25 Q. Okay. Leo's Jewelry, it sits on Michigan Avenue --

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1 faces Michigan Avenue, correct?

2 **A. Correct.**

3 Q. And is -- Michigan Avenue runs -- it's a one-way

4 street, correct?

5 **A. Correct.**

6 Q. It runs westbound?

7 **A. Yes.**

8 Q. So Michigan Ave. -- or Leo's Jewelry sits on Michigan

9 Avenue on the north side of the street, correct?

10 **A. Yes.**

11 Q. Is there a bank on the south side across the street

12 from you?

13 **A. Yes.**

14 Q. What bank is that currently today?

15 **A. That's Chase.**

16 Q. Okay. Have -- do you -- do you -- for the time -- for

17 the -- since the year 2000 until now, have you known

18 that the building that the Chase Bank is in right now,

19 has it always been a bank as far as you know?

20 **A. Yes.**

21 Q. Have you ever banked at that bank?

22 **A. I have and I still am.**

23 Q. With Chase?

24 **A. Yes.**

25 Q. Okay. Did you bank -- and was it any other bank

Page 19

1 Q. I'm going to introduce pictures to the witness but I

2 would like everyone to take a look at them before I --

3 in fact, I'm going to use these two as well as the

4 other ones.

5 MR. MARZANO: At this time I would like to

6 place an objection on the record as to the -- as to

7 foundation with respect to the photographs as well as

8 at this time without hearing more testimony,

9 relevance. Essentially the photographs and the other

10 documents which you intend to introduce are

11 irrelevant.

12 MR. DAOUDI: Thank you.

13 BY MR. DAOUDI:

14 Q. Let me go back to -- first off, is this a copy of your

15 business card, your current business card?

16 **A. Yes.**

17 MR. DAOUDI: All right. I will move for

18 that admission. Does anybody have any objection?

19 MR. MARZANO: Subject to my previous

20 objections, no.

21 BY MR. DAOUDI:

22 Q. I'm going to show you a Google map. This is Wayne

23 Road, do you agree?

24 **A. Yes.**

25 Q. And this is Michigan Avenue?

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1 before that that you banked with?

2 **A. Yes.**

3 Q. What was it before?

4 **A. National Bank of Detroit, I believe, or was it --**

5 **yeah, I believe it was National Bank of Detroit.**

6 Q. Was it any other bank that you recall or --

7 **A. They've changed the names many times.**

8 Q. Okay. So that bank, the building, the Chase that

9 you're talking about, that sits on the south side of

10 Michigan Avenue?

11 **A. That's correct.**

12 Q. Okay. And so it -- and Michigan Avenue then separates

13 you two?

14 **A. Correct.**

15 Q. Let's talk about Leo's Jewelry in terms of the store

16 layout as it faces Michigan Avenue. Is it a wall from

17 one or the other that you can't see through or are

18 there windows, so can you explain that to me?

19 **A. On the front -- on the front entrance of the building**

20 **we have -- let me just see, it would be four, five,**

21 **six, eight -- eight. We have eight large**

22 **eight-foot-wide windows that stretch across 120 feet.**

23 Q. And are the windows -- they go from the -- from almost

24 to the floor to the ceiling?

25 **A. Yes.**

Page 20

1 **A. Yes.**

2 Q. Do you see the arrows pointing that way?

3 **A. Yes.**

4 Q. So we will put west over here, would that be correct,

5 north, south --

6 **A. Correct.**

7 Q. North, east, south, west?

8 **A. Yes.**

9 Q. North, east, south, west, never eat soggy wheat, do

10 you remember that? Okay. Is this the building, the

11 Chase -- the bank, the Chase Bank, is that the one you

12 were talking about?

13 **A. Yes.**

14 Q. On the south side of Michigan Avenue? Is that a yes?

15 **A. Yes.**

16 Q. And it says there's a building marked with Leo's

17 Jewelry, is that roughly correct in terms of location

18 as to how it's across the street?

19 **A. Yes.**

20 MR. DAOUDI: All right. I would like to

21 mark this as Exhibit 2.

22 BY MR. DAOUDI:

23 Q. Have you seen -- can you take a look at that and

24 compare it to Exhibit 2? It's a picture of Wayne and

25 Michigan, do you see that?

Page 21

1 **A. I do.**
2 Q. And do you see where the Chase Bank is on this
3 picture?
4 **A. Yes.**
5 Q. Would that be this building here?
6 **A. Yes.**
7 Q. All right. If I put an arrow pointing up to Chase,
8 would you agree with that?
9 **A. Yes.**
10 Q. I'm going to do this. Would you agree with that?
11 **A. Yes.**
12 Q. Okay. And do you know which building would be your
13 jewelry store offhand across the street? I know
14 they're not labeled.
15 **A. Right here.**
16 Q. This one here?
17 **A. Uh-huh.**
18 Q. I'm just going to put an arrow outside of it, LJ or --
19 yeah, Leo's Jewelry.
20 **A. Uh-huh.**
21 Q. Is that correct?
22 **A. Yes.**
23 Q. Would you agree with that?
24 **A. Yes.**
25 Q. All right.

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1 MARKED FOR IDENTIFICATION:
2 DEPOSITION EXHIBITS 1-7
3 9:28 a.m.
4 BY MR. DAOUDI:
5 Q. Mr. Zuckerman, I would like you to look at these four
6 exhibits, and do these capture perspective from inside
7 your store outside onto -- facing Michigan Avenue?
8 **A. They do, yes.**
9 Q. Okay. This first one, Exhibit 4, these are the
10 windows you're talking about in the front?
11 **A. Part of them.**
12 Q. Part of them, okay. And do you keep them clean, the
13 windows?
14 **A. We have them professionally cleaned every three weeks.**
15 Q. And in the meantime, if something happens where they
16 get more dirty than normal, do you clean them
17 yourselves or --
18 **A. They never get that dirty.**
19 Q. Okay. And Exhibit 5, is that another picture
20 depicting those windows from inside your store?
21 **A. Uh-huh.**
22 COURT REPORTER: Is that yes?
23 **A. Yes.**
24 BY MR. DAOUDI:
25 Q. Exhibit 6, the same thing, a little more focused?

Page 23

1 **A. Yes.**
2 Q. And Exhibit 7, the same thing but more focused?
3 **A. Yes.**
4 Q. Okay. Does the inside of your jewelry store give you
5 and your employees adequate vision to see the Chase
6 Bank across the street through your front windows?
7 MR. MARZANO: Before you answer, I will
8 place an objection as to any testimony that this
9 witness may offer as to other people's perceptions or
10 ability to view things. He can certainly testify to
11 his own but as far as what other people may or may not
12 be able to see, I don't believe he's qualified to do
13 so.
14 MR. ROSATI: I will join in the objection,
15 object to foundation.
16 MR. MARZANO: And speculation as well.
17 MR. DAOUDI: All right.
18 BY MR. DAOUDI:
19 Q. As to what you see in this -- does this jewelry store
20 give you adequate vision to see the Chase Bank across
21 the street through your front windows?
22 **A. Yes.**
23 Q. Do you -- can I see those? Do you see that's the --
24 this is Exhibit 3. Do you see it's the Chase Bank we
25 put the arrow on; is that correct?

Page 24

1 **A. Yes.**
2 Q. And you said you bank there, correct?
3 **A. Yes.**
4 Q. And do you ever use the drive-through lane?
5 **A. I do not.**
6 Q. Okay. Have you gone through that or exited from the
7 bank through that?
8 **A. I have.**
9 Q. Okay. Do you see off to the right of the building
10 there's another like a cover and three lanes looking
11 like they're going underneath it?
12 **A. Yes.**
13 Q. Is that the drive-through -- or exit?
14 **A. Yes, yes.**
15 Q. Or the -- what do you call those, those tellers, that
16 are the -- that you can go -- the teller by your car
17 through your car; is that right?
18 **A. Yes.**
19 Q. Okay. I want to put another arrow just below it.
20 This is the drive-through.
21 MR. ROSATI: Objection, leading the witness
22 all the way through this.
23 MR. MARZANO: I will join the objection.
24 BY MR. DAOUDI:
25 Q. Well, is that a drive-through lane?

Page 25

- 1 **A. Yes.**
 2 Q. Is that the exit -- one of the exits out of the
 3 parking lot from the bank?
 4 **A. Yes.**
 5 MR. ROSATI: Same objection.
 6 MR. MARZANO: Join.
 7 BY MR. DAOUDI:
 8 Q. Okay. When you -- when you -- since 2000 to the
 9 present, is it your knowledge that Michigan Avenue has
 10 always been a one way going westbound?
 11 **A. Yes.**
 12 Q. And I'm talking about the Michigan Avenue area that's
 13 depicted in Exhibit 3 and Exhibit 2 that separates
 14 your building from the Chase Bank, is that -- is that
 15 accurate?
 16 **A. Yes.**
 17 Q. Knowing that Michigan Avenue is a one-way street
 18 westbound, and based on your observations, can you
 19 describe for me if people coming out of that Chase
 20 Bank exit lot that came through the -- through that
 21 drive-through that we marked, onto Michigan Avenue,
 22 have any signage or anything similar warning of the
 23 one-way nature of Michigan Avenue?
 24 MR. ROSATI: Object to foundation.
 25 MR. MARZANO: I'm going to join as well as

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- 1 MR. MARZANO: Join.
 2 **A. There has never been any signage.**
 3 BY MR. DAOUDI:
 4 Q. Okay. Has that been the same case since -- let's go
 5 back to the year 2000. Since 2000 to the present, has
 6 that been the same?
 7 **A. Yes.**
 8 Q. Does that still go on today, if you know?
 9 MR. MARZANO: Objection, irrelevant.
 10 BY MR. DAOUDI:
 11 Q. Okay. You can go ahead and answer.
 12 **A. Yes.**
 13 Q. Since 2000, the year 2000, have you witnessed vehicles
 14 turn the wrong way onto Michigan Avenue as they exit
 15 out of that Chase Bank parking lot through the
 16 drive-through?
 17 **A. Yes.**
 18 MR. MARZANO: Before -- I guess now after
 19 the answer, I'm going to place an objection and,
 20 Counsel, as to relevance, I will explain it to you.
 21 Anything beyond 2000 -- or June 23rd of 2003 as far as
 22 I'm concerned is irrelevant. Whether to continue to
 23 keep interjecting and chopping up your record here,
 24 would you mind if I just have a continuing objection
 25 as to relevance as to anything that happened the day

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- 1 relevance.
 2 BY MR. DAOUDI:
 3 Q. Okay. Do you understand the question? I can repeat
 4 it, if you like?
 5 **A. Repeat it.**
 6 Q. Okay. Knowing that Michigan Avenue is a one-way
 7 street going west and based on your experience and
 8 observations, can you describe for me if you -- if
 9 people coming out of the Chase Bank parking lot onto
 10 Michigan Avenue using that exit that we're talking
 11 about with the drive-through have any signage or
 12 anything similar warning of the one-way nature of
 13 Michigan Avenue?
 14 MR. ROSATI: Same objection, also calls for
 15 speculation regarding all these people.
 16 MR. MARZANO: I will join in all three.
 17 MR. KIM: I will join.
 18 **A. There is no signage.**
 19 BY MR. DAOUDI:
 20 Q. So there's no -- okay. Do you -- when you're exiting
 21 onto Michigan Avenue coming through that drive-through
 22 exit, have you ever seen signage or any type of
 23 warning that describes the one-way nature of Michigan
 24 Avenue before you go onto it?
 25 MR. ROSATI: Object to the form.

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- 1 after the incident forward in time because you keep --
 2 MR. DAOUDI: After the incident?
 3 MR. MARZANO: Correct.
 4 MR. DAOUDI: And forward. That's from 2003
 5 to the present?
 6 MR. MARZANO: Correct. Well, from June
 7 27th -- well, I think it would be June 28th of 2003 to
 8 the present because --
 9 MR. DAOUDI: Yeah, I was talking about
 10 before. Didn't I say --
 11 MR. MARZANO: You keep saying 2000 to the
 12 present, which takes us until this morning.
 13 MR. DAOUDI: Yeah, yeah. Okay. Let me
 14 take -- I do, you're right. Okay. I will give you
 15 that, yeah, if you want a running objection from the
 16 day after --
 17 MR. MARZANO: Anything that happened after
 18 the accident forward. How's that?
 19 MR. DAOUDI: That's fine.
 20 MR. MARZANO: Okay.
 21 MR. DAOUDI: That's fine.
 22 MR. MARZANO: For that reason, I won't keep
 23 objecting.
 24 MR. DAOUDI: But I'm not going to agree
 25 that it's not relevant. I'm just going to agree that

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1 you have an objection.
 2 MR. MARZANO: A continuing objection.
 3 MR. DAOUDI: Yeah, a continuing objection.
 4 MR. MARZANO: And I won't keep objecting
 5 every time you ask a question.
 6 MR. DAOUDI: That's fine.
 7 MR. MARZANO: Thank you.
 8 **BY MR. DAOUDI:**
 9 **Q. When you -- how -- since 2000 through the present,**
 10 **have you witnessed those -- that action of people**
 11 **turning the wrong way onto Michigan Avenue from that**
 12 **Chase Bank parking lot exit?**
 13 **A. Yes.**
 14 **Q. How about even before 2000, the year 2000, was it**
 15 **going on before that?**
 16 **A. Yes.**
 17 **Q. Let's just -- since the year 2000 to the present, does**
 18 **that happen, based on your observation, weekly or**
 19 **daily or monthly?**
 20 **MR. ROSATI: Object to form and foundation.**
 21 **MR. MARZANO: Join.**
 22 **A. Yes.**
 23 **BY MR. DAOUDI:**
 24 **Q. Which one is more accurate or more -- more?**
 25 **A. Almost daily.**

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1 **Q. Okay. So multiple times weekly it happens?**
 2 **A. Yes.**
 3 **Q. And you witness this?**
 4 **A. I do, yes.**
 5 **Q. Do you -- when you witness it are you usually inside**
 6 **your Leo's Jewelry Store?**
 7 **A. Yes.**
 8 **Q. Have you ever witnessed it outside of your Leo's**
 9 **Jewelry Store?**
 10 **A. Yes.**
 11 **Q. When you were outside of your store, where were you**
 12 **when you witnessed it?**
 13 **A. Right out in front of my store.**
 14 **Q. On the sidewalk?**
 15 **A. On the sidewalk.**
 16 **Q. When you are in the Chase Bank parking lot or the**
 17 **Chase Bank at all on foot or in the car, have you ever**
 18 **witnessed it from that perspective, people leaving the**
 19 **parking lot and turning the wrong way, if you recall?**
 20 **MR. MARZANO: I'm going to just object to**
 21 **the form of the question as well as the question being**
 22 **vague and ambiguous since there's no time limit as to**
 23 **what your question pertains to.**
 24 **BY MR. DAOUDI:**
 25 **Q. Since 2000.**

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1 **A. No.**
 2 **MR. MARZANO: I will rely on my previous**
 3 **objection.**
 4 **MR. DAOUDI: All right.**
 5 **A. No.**
 6 **BY MR. DAOUDI:**
 7 **Q. Okay. Do you -- when you observe this type of**
 8 **frequency, it's mainly from inside your Leo's Jewelry**
 9 **Store?**
 10 **A. Yes.**
 11 **Q. And do you discuss what you observe with other**
 12 **coworkers?**
 13 **A. Yes.**
 14 **Q. Do you -- when you discuss it, are other coworkers**
 15 **watching what you see also?**
 16 **A. Yes.**
 17 **MR. MARZANO: Objection, speculation.**
 18 **BY MR. DAOUDI:**
 19 **Q. While they're standing next to you when you are seeing**
 20 **the car turn -- a car turn left or turn the wrong way**
 21 **on Michigan Avenue out of Chase?**
 22 **A. Yes.**
 23 **Q. Do you -- what kind of reaction do you have with you**
 24 **and your coworkers after seeing that?**
 25 **MR. ROSATI: Object to the form of the**

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1 **question.**
 2 **MR. MARZANO: Join.**
 3 **A. It's -- it's a -- it's exasperating, it's scary.**
 4 **BY MR. DAOUDI:**
 5 **Q. And how long -- have you felt those type of feelings**
 6 **since -- at least since the year 2000 through the**
 7 **present of watching what's happening across the street**
 8 **with the Chase Bank exit?**
 9 **A. Yes.**
 10 **Q. When -- have you ever -- have you ever reported what**
 11 **you observe as something scary, cars turning the wrong**
 12 **way onto Michigan Avenue from the Chase Bank lot, to**
 13 **Chase Bank?**
 14 **A. I have, yes.**
 15 **MR. MARZANO: Again, I'm going to place an**
 16 **objection as to any questions pertaining to anything**
 17 **that happened after the incident at issue in this**
 18 **matter, and since you're using the word Chase Bank,**
 19 **I'm going to presume you're asking questions after the**
 20 **date of the incident?**
 21 **MR. DAOUDI: Well, I'm using -- okay.**
 22 **Well, I've been trying -- I mean, usually just because**
 23 **it's a defendant in this case, but I'll say just the**
 24 **bank then.**
 25 **MR. MARZANO: Okay. Well, anything that**

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1 pertains to any questions after the incident I'm going
2 to object to as irrelevant, and if there is no time
3 limitation, rather than keep interrupting you, I'm
4 going to object to the question as being vague and
5 ambiguous as to the form of the question. Go ahead,
6 and I apologize to interrupt you.
7 MR. DAOUDI: No problem.
8 MR. ROSATI: Join in the objection.
9 BY MR. DAOUDI:
10 Q. Do you remember the question?
11 MR. ROSATI: I don't remember the question.
12 BY MR. DAOUDI:
13 Q. Go ahead.
14 MR. ROSATI: I object.
15 **A. Repeat it again?**
16 BY MR. DAOUDI:
17 Q. Would you -- I kind of forgot.
18 MR. ROSATI: I'm 63-years old.
19 MR. DAOUDI: About the reporting to the
20 bank.
21 MR. ROSATI: But he can remember it.
22 BY MR. DAOUDI:
23 Q. Have you reported it to an employee of the bank?
24 **A. Yes.**
25 Q. Okay. Was -- do you remember the -- when you reported

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1 it, do you remember the year that you reported it?
2 **A. My latest reporting was probably a year ago up until**
3 **five years ago in between.**
4 Q. So your first reporting was maybe about five years
5 ago?
6 **A. No, my first reporting was years ago.**
7 Q. Okay. Years before or after the year 2000?
8 **A. Before.**
9 Q. Do you remember the bank, the name of the bank that
10 was there when you reported it? If you don't recall,
11 that's okay.
12 **A. I don't recall.**
13 Q. Do you remember if it was a bank?
14 **A. It's always been a bank.**
15 Q. When you reported it the first time before the year
16 2000, did you -- were you a member of that bank at
17 that time, do you recall?
18 **A. Yes.**
19 Q. And do you remember the person or individual or how
20 did you -- well, let's back up.
21 How did you report it the first time, did
22 you go in or did you make a phone call or did you
23 write a letter, I mean, how did you -- do you recall?
24 **A. I don't recall.**
25 Q. Okay. Do you -- what do you recall about reporting it

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1 the first time?
2 **A. I know that I -- I either called the bank or I walked**
3 **in and told them, the manager at that time, and I also**
4 **called the police department.**
5 Q. And what was the essence of your conversation with the
6 bank?
7 **A. They said they would report it to their higher**
8 **command.**
9 MR. MARZANO: I'm going to object as to
10 hearsay.
11 BY MR. DAOUDI:
12 Q. What did you --
13 MR. MARZANO: Hearsay.
14 BY MR. DAOUDI:
15 Q. What did you -- what did you -- I'm talking about the
16 essence of what you actually communicate to them. Did
17 you say I'm Mr. Zuckerman from across the street and
18 that type of --
19 MR. ROSATI: Leading.
20 **A. I told them that they need to put a sign outside of**
21 **their building because someone is going to get into a**
22 **severe accident.**
23 BY MR. DAOUDI:
24 Q. What did you mean, get into a severe accident? What
25 did you think was going to happen?

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1 **A. When people are going the wrong way and there's going**
2 **to be a head-on collision on Michigan Avenue.**
3 Q. And what was the response, if you recall, from the
4 bank employee the first time you reported it?
5 MR. MARZANO: Objection, hearsay.
6 Go ahead and answer.
7 **A. They said they would report it.**
8 BY MR. DAOUDI:
9 Q. That's what they told you?
10 **A. Yes.**
11 Q. When they said report it, did that mean they were
12 going to report -- did they say where they were going
13 to report it to?
14 MR. MARZANO: Same objection.
15 **A. No.**
16 BY MR. DAOUDI:
17 Q. Okay. You also said you went to the police station
18 and made a report; is that correct?
19 MR. ROSATI: Objection, that's not what he
20 said.
21 **A. I called the police station.**
22 BY MR. DAOUDI:
23 Q. Okay. When you called the police station, did you say
24 the same thing essentially to the police station?
25 **A. Yes.**

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1 Q. What was their response to you?
 2 **A. They will look into it.**
 3 Q. Okay. And to your knowledge, was anything ever done?
 4 MR. ROSATI: Foundation.
 5 MR. DAOUDI: His knowledge.
 6 MR. MARZANO: Join.
 7 **A. No.**
 8 BY MR. DAOUDI:
 9 Q. From your observations, was anything ever done?
 10 **A. No.**
 11 MR. ROSATI: Same objection.
 12 MR. MARZANO: Join.
 13 BY MR. DAOUDI:
 14 Q. And after that reporting, cars still kept turning the
 15 wrong way onto Michigan Avenue weekly or daily almost?
 16 **A. Yes.**
 17 MR. ROSATI: It's leading.
 18 MR. MARZANO: Join.
 19 BY MR. DAOUDI:
 20 Q. Your first reporting, was it in the 1990s? You said
 21 it was before the year 2000, correct?
 22 MR. ROSATI: It's leading again.
 23 **A. I would say yes to that, I would say yes to that.**
 24 BY MR. DAOUDI:
 25 Q. So your first -- so your first -- the date of your

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1 Q. One more or just the first time?
 2 **A. I can't be sure of it.**
 3 Q. Okay. Do you remember any of the names of the people
 4 that you reported the problem to as you saw it to --
 5 from the Chase Bank?
 6 **A. Only one.**
 7 Q. Who's that?
 8 **A. Jeffrey McKelvey.**
 9 Q. McKelvey?
 10 **A. McKelvey, K-e-l-v-e-y -- v-e-y, right.**
 11 Q. V-e-y?
 12 **A. Yes.**
 13 MR. ROSATI: McKelvey or?
 14 THE WITNESS: McKelvey.
 15 MR. ROSATI: M-c?
 16 THE WITNESS: M-c, then capital
 17 K-e-l-v-e-y.
 18 MR. ROSATI: Thank you.
 19 BY MR. DAOUDI:
 20 Q. Do you remember the year that you reported it to Mr.
 21 McKelvey?
 22 **A. Maybe three or four years ago.**
 23 MR. MARZANO: I will just place an
 24 objection on the record as to the relevance of any
 25 testimony regarding any statements made to or from

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1 first report was in the years of the 1990s; is that
 2 correct?
 3 MR. ROSATI: Leading.
 4 BY MR. DAOUDI:
 5 Q. Well, in the 1990s, was it the first time you reported
 6 it?
 7 MR. ROSATI: Same.
 8 MR. MARZANO: Join.
 9 **A. I can't be sure of that.**
 10 BY MR. DAOUDI:
 11 **Q. Okay. How many times do you recall that you reported**
 12 **this incident -- or this problem to Chase Bank?**
 13 **MR. MARZANO: Objection, vague and**
 14 **irrelevant.**
 15 **A. Three or four times.**
 16 BY MR. DAOUDI:
 17 Q. That's through the present date?
 18 **A. Yes.**
 19 Q. Since -- between the first time you reported it to the
 20 year 2003, how many times do you think you reported it
 21 to Chase Bank of those five times?
 22 **A. From the year 2000?**
 23 **Q. From the first time you reported it until the year**
 24 **2003, if you recall?**
 25 **A. At least once.**

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1 Chase Bank after the date of the incident, including
 2 Mr. McKelvey.
 3 BY MR. DAOUDI:
 4 Q. What you reported to Mr. McKelvey three to four years
 5 ago approximately, was that the same complaint you had
 6 each and every time before that?
 7 MR. MARZANO: Same objection.
 8 **A. Yes.**
 9 BY MR. DAOUDI:
 10 Q. Did Mr. McKelvey say to you that he had knowledge of
 11 that problem before you reported it to him?
 12 MR. MARZANO: Object -- two objections this
 13 time. This time I'm objecting to irrelevance and
 14 hearsay.
 15 MR. ROSATI: Join.
 16 **A. No.**
 17 BY MR. DAOUDI:
 18 Q. Did he describe -- did he -- what did he say to you?
 19 MR. MARZANO: Objection, hearsay and
 20 relevance.
 21 MR. ROSATI: Join.
 22 **A. He said he would report it.**
 23 BY MR. DAOUDI:
 24 Q. Did you follow up with Mr. McKelvey or did Mr.
 25 McKelvey follow up with you afterwards?

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1 MR. MARZANO: Same objections.
2 **A. I've talked to him about it more than a few times.**
3 BY MR. DAOUDI:
4 Q. Mr. McKelvey, to your knowledge, what was his title at
5 the bank at that time?
6 MR. MARZANO: Okay. Rather than keep
7 bouncing in every question, can I just have a
8 continuing objection as to relevance as to any
9 questions you ask about Mr. McKelvey?
10 MR. DAOUDI: Again, yes, but I'm not
11 agreeing to the --
12 MR. MARZANO: I understand. We'll work it
13 out.
14 MR. DAOUDI: -- substance.
15 That's right.
16 **A. He was a branch manager and was my -- actually he set**
17 **up all our new accounts at the bank for us.**
18 BY MR. DAOUDI:
19 Q. Okay.
20 **A. He was my contact at the bank basically.**
21 Q. Did you -- besides that one time calling the police
22 station, did you call the police station any other
23 time reporting the same problem?
24 **A. I think just once.**
25 Q. And the name of the police station you called, was it

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1 the City of Wayne Police Department?
2 **A. City of Wayne Police Department, yes.**
3 Q. If you recall, do you know who you spoke to when you
4 called the first time?
5 **A. No.**
6 Q. I would like to go back into the time line as to how
7 we first met, okay?
8 **A. Uh-huh.**
9 Q. Is that a yes?
10 **A. That's -- yes.**
11 **Q. Okay. Let's -- just a moment. Let me ask you this.**
12 **When you -- when you first saw me, where were you?**
13 **A. I was in my business.**
14 **Q. Where was I?**
15 **A. You were standing across the street in front of my**
16 **building along with this young lady.**
17 **Q. Who's sitting next to me, Renee?**
18 **A. Renee.**
19 **Q. Okay.**
20 **A. And another man.**
21 **Q. Where -- were you standing on your side of Michigan**
22 **Avenue or on the Chase Bank side?**
23 **A. On the Chase Bank side.**
24 **Q. And you could see us clearly?**
25 **A. I could see you clearly.**

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1 **Q. And from -- how long did you observe us before you**
2 **came out of your jewelry store?**
3 **A. Maybe two minutes.**
4 **Q. What did you observe us doing?**
5 **A. Well, I noticed that you looked professional and we**
6 **don't see professional people standing on the street**
7 **over there unless they're there to do a purpose, and I**
8 **said to myself, I hope they're there to take care of**
9 **that problem with turns, and I came out of the store**
10 **and I walked across the street to you, and I said I**
11 **hope you're here to fix that one way, to put the signs**
12 **up.**
13 **Q. You're talking about the signs for the people leaving**
14 **the bank parking lot?**
15 **A. Yes.**
16 **Q. The one where this arrow is pointing to?**
17 **A. Yes.**
18 **Q. In Exhibit 3? Okay.**
19 **A. Yes.**
20 **Q. So you approached the three of us on the other side of**
21 **the street?**
22 **A. Yes.**
23 **Q. And you came across the one-way street?**
24 **A. That's correct.**
25 **Q. Did you -- the person, the other gentleman next to us,**

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1 if I told you his name was Tim Robbins, would that
2 ring -- you know, jog your memory?
3 **A. Yes.**
4 **Q. Did -- did you hand over anything or give anything to**
5 **Tim Robbins or myself in terms of like business card?**
6 **A. Just a business card.**
7 **Q. Is this what Exhibit 1 is?**
8 **A. Yes.**
9 **Q. A copy of your business card?**
10 **A. Yes.**
11 **Q. Okay. What did you -- is there anything else that you**
12 **recall that you said to us besides what you've just**
13 **testified to?**
14 MR. MARZANO: Object to hearsay.
15 MR. ROSATI: Join.
16 BY MR. DAOUDI:
17 **Q. Let me ask. What he said to us is what I asked.**
18 MR. ROSATI: Same objection.
19 MR. MARZANO: Join.
20 **A. I don't remember.**
21 BY MR. DAOUDI:
22 **Q. Have you ever met prior to that meeting -- or not**
23 **meeting. Prior to you coming out and introducing**
24 **yourself, have you ever met any one of us --**
25 **A. No.**

<p style="text-align: right;">Page 45</p> <p>1 Q. -- the three -- those three people before?</p> <p>2 A. No.</p> <p>3 Q. And how long were you out there with us after you came</p> <p>4 out and introduced yourself?</p> <p>5 A. Five minutes.</p> <p>6 Q. And then where did you go after that, did you return</p> <p>7 back --</p> <p>8 A. I thought I returned back to my store.</p> <p>9 Q. Okay. Since then, have you and I ever seen each</p> <p>10 other --</p> <p>11 A. No.</p> <p>12 Q. -- until now?</p> <p>13 Until now?</p> <p>14 A. No.</p> <p>15 Q. Since then have you ever seen Tim Robbins, Mr.</p> <p>16 Robbins?</p> <p>17 A. No.</p> <p>18 Q. Since then has anybody from my office that I retained</p> <p>19 come to see you to meet with you?</p> <p>20 A. No.</p> <p>21 Q. Does Mr. Ogg, O-g-g?</p> <p>22 A. There was a...</p> <p>23 Q. Investigator?</p> <p>24 A. Investigator, yes, he called me.</p> <p>25 Q. Did he say he was from my office or was that maybe he</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. The pictures that were taken from your store, do you</p> <p>2 know who took them?</p> <p>3 A. No, I don't.</p> <p>4 Q. These pictures, Exhibits 4 through 7, are these</p> <p>5 accurate depictions of inside your store as of the</p> <p>6 recent day?</p> <p>7 A. Yes.</p> <p>8 Q. Is the layout of the -- from the inside of your store</p> <p>9 in these pictures, is that the same as it would have</p> <p>10 been in the year 2000 with the windows?</p> <p>11 A. Yes.</p> <p>12 MR. MARZANO: Objection, irrelevant.</p> <p>13 BY MR. DAOUDI:</p> <p>14 Q. And those same windows are the same perspective you</p> <p>15 would have on Michigan Avenue and Chase Bank is the</p> <p>16 same in the year 2000 as it would be in 2001?</p> <p>17 A. Yes.</p> <p>18 Q. And 2002?</p> <p>19 A. Yes.</p> <p>20 Q. And 2003?</p> <p>21 A. Yes.</p> <p>22 Q. And so on?</p> <p>23 A. Yes.</p> <p>24 Q. If -- you're a business owner -- excuse me, since --</p> <p>25 for 60 years you say you've been a partner with Leo's</p>
<p style="text-align: right;">Page 46</p> <p>1 didn't make himself clear? I'm not sure.</p> <p>2 MR. MARZANO: Objection, leading.</p> <p>3 MR. ROSATI: Join.</p> <p>4 A. I think he did say he was retained by your office --</p> <p>5 BY MR. DAOUDI:</p> <p>6 Q. Okay.</p> <p>7 A. -- I think.</p> <p>8 Q. All right.</p> <p>9 A. I'm not sure.</p> <p>10 Q. So how many -- did you meet him one time or more than</p> <p>11 once?</p> <p>12 MR. MARZANO: Objection, leading.</p> <p>13 MR. ROSATI: Join.</p> <p>14 A. Did you say meet?</p> <p>15 BY MR. DAOUDI:</p> <p>16 Q. How many -- did you meet him, did you ever meet with</p> <p>17 him?</p> <p>18 A. You know, I think he did come to my office, yes.</p> <p>19 Q. Did you -- how many times did you meet with him?</p> <p>20 A. One time.</p> <p>21 Q. Okay. Have you -- has anybody else met with you</p> <p>22 besides Mr. Ogg?</p> <p>23 A. No.</p> <p>24 Q. Has Renee ever been to your store that you recall?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 48</p> <p>1 Jewelers for 60 years, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Prior to that did you own businesses at all, any</p> <p>4 private businesses?</p> <p>5 MR. MARZANO: Objection, irrelevant.</p> <p>6 A. No.</p> <p>7 BY MR. DAOUDI:</p> <p>8 Q. Okay. For the 60 years as the owner of a business, do</p> <p>9 you try to make and believe that safety for your --</p> <p>10 for people who come around your business is necessary?</p> <p>11 MR. ROSATI: Foundation.</p> <p>12 MR. MARZANO: Join.</p> <p>13 BY MR. DAOUDI:</p> <p>14 Q. Their safety, do you like -- it should be safe when</p> <p>15 they come to your store?</p> <p>16 A. Absolutely, yes.</p> <p>17 MR. ROSATI: Leading, form and foundation.</p> <p>18 MR. MARZANO: Join.</p> <p>19 BY MR. DAOUDI:</p> <p>20 Q. When -- as a business owner of 60 years and you see</p> <p>21 what the -- as you testified, the lack of signage on</p> <p>22 the exit from the Chase Bank, if you were the business</p> <p>23 owner of Chase Bank for 60 years, would you have done</p> <p>24 something about putting signage?</p> <p>25 MR. MARZANO: Before you answer, sir, we</p>

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1 have some objections to place on the record. First
 2 I'm going to place an objection on the record as to
 3 relevance, second as to foundation and third as to
 4 form.
 5 MR. ROSATI: Join.
 6 BY MR. DAOUDI:
 7 **Q. So being a business owner in the City of Wayne for 60**
 8 **years, if you were the owner of that building and**
 9 **business across the street for those same years, would**
 10 **you have put up signs for the -- warning people who**
 11 **were exiting the Chase Bank lot of that driveway that**
 12 **there was a one -- Michigan Avenue is one way going**
 13 **west?**
 14 **MR. MARZANO: Same objections.**
 15 **A. Yes.**
 16 **MR. ROSATI: Join.**
 17 BY MR. DAOUDI:
 18 **Q. Would you have done that before the year 2000?**
 19 **MR. MARZANO: Same objection.**
 20 **MR. ROSATI: Join.**
 21 **A. Yes.**
 22 BY MR. DAOUDI:
 23 **Q. Would you have done that before the year 2003?**
 24 **A. Yes.**
 25 MR. MARZANO: Same objections as to really

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1 it's the same question.
 2 MR. ROSATI: Join and asked and answered, I
 3 suppose.
 4 MR. MARZANO: Yes, I will join in that too.
 5 MR. DAOUDI: Give me just a minute. We
 6 will take a break.
 7 VIDEO TECHNICIAN: The time is now 10:04
 8 a.m. We are off the record.
 9 (Recess taken at 10:04 a.m.)
 10 (Back on the record at 10:08 a.m.)
 11 VIDEO TECHNICIAN: The time is now 10:08
 12 a.m. We are back on the record.
 13 MR. DAOUDI: I had a chance to take a
 14 minute and I thank you for your time and I'm done with
 15 the deposition.
 16 EXAMINATION
 17 BY MR. MARZANO:
 18 Q. Mr. Zuckerman, my name is Bob Marzano, I represent the
 19 two Chase defendants in this lawsuit and I have some
 20 questions for you this morning as well. Going back, a
 21 little bit of your background information you
 22 provided, you testified earlier you've been a partner
 23 for 60 years in the business?
 24 **A. Yes.**
 25 Q. And based upon your date of birth, that would mean

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1 you've been a partner since age 15?
 2 **A. 15 1/2.**
 3 Q. Good for you.
 4 **A. That was when my father died.**
 5 Q. Okay. And your business has been in the City of Wayne
 6 for how long?
 7 **A. We started in the City of Wayne in 1940.**
 8 Q. 1940, okay. At any time while your business has been
 9 in the City of Wayne and you've been an employee there
 10 have you ever appeared in any City of Wayne city
 11 council meeting for any reason?
 12 **A. I've been to -- yes.**
 13 Q. Okay. And you testified earlier that with respect to
 14 your complaints you've made about the parking lot, and
 15 I'm only interested up until 2003 and specifically
 16 June 27th of 2003. Have you ever made a complaint to
 17 any city, state, county official about -- other than
 18 the police officer you testified to about that
 19 particular parking lot and the signage issue?
 20 **A. I'm not sure.**
 21 Q. Okay. And when you say you're not sure, does that
 22 mean you may have done something beyond that date or
 23 you just don't remember if you ever made a complaint
 24 or not?
 25 **A. I know I never made a formal complaint.**

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1 Q. Okay. And you've appeared at city council meetings
 2 for other business-related purposes, I presume,
 3 correct?
 4 **A. Only.**
 5 Q. Okay. And that's with complaints you had about other
 6 issues in the city or was it complimenting the city?
 7 **A. No, it was for building expansion, signage.**
 8 Q. Okay. Does your business have any sign saying that
 9 Wayne is a one-way road in the front there?
 10 **A. There's no need to have that on there.**
 11 Q. I just asked if it does or not?
 12 **A. No.**
 13 Q. Okay. Have you made any complaints prior to June
 14 27th, 2003 to any other business owners on Michigan
 15 Avenue in the area where your business is located
 16 about signage on their property?
 17 **A. No.**
 18 Q. Okay. Do you have any training or expertise in the
 19 field of warning signs or warning devices?
 20 **A. No.**
 21 Q. Okay. Do you have any training or experience in the
 22 field of engineering at all?
 23 **A. No.**
 24 Q. Okay. How about visual acuity, meaning how people see
 25 things?

<p style="text-align: right;">Page 53</p> <p>1 A. No.</p> <p>2 Q. Okay. Were you at work on June 27th of 2003?</p> <p>3 A. Probably.</p> <p>4 Q. Okay. Did you witness the incident that happened that</p> <p>5 we're here for today?</p> <p>6 A. I don't know about the incident.</p> <p>7 Q. Okay. So am I correct in saying to the ladies and</p> <p>8 gentlemen of the jury you didn't see the accident</p> <p>9 happen; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And you didn't see anything that happened after the</p> <p>12 accident as far as an investigation or any that would</p> <p>13 have transpired?</p> <p>14 A. No.</p> <p>15 Q. Okay. Did you ever speak with anyone involved in the</p> <p>16 accident in this matter?</p> <p>17 A. No.</p> <p>18 Q. Okay. My understanding is that you testified that you</p> <p>19 believe you may have made one complaint to whatever</p> <p>20 version of Chase Bank was present before 2003; is that</p> <p>21 correct?</p> <p>22 A. Before 2003?</p> <p>23 Q. Correct, specifically before June 27th, 2003.</p> <p>24 A. Yes, I would say yes.</p> <p>25 Q. Okay. Do you remember the name of the person you</p>	<p style="text-align: right;">Page 55</p> <p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 A. 45 days.</p> <p>4 Q. And when you say you're recording, you have</p> <p>5 surveillance cameras outside of your business,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that's for security purposes, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. When did you first start banking at whether it</p> <p>11 be National Bank of Detroit or Chase Bank or whatever</p> <p>12 it was, do you recall?</p> <p>13 A. Well, I can tell you we started -- well, I mean, we've</p> <p>14 always been with -- started with National Bank of</p> <p>15 Detroit back in the early -- late '50s, middle '50s,</p> <p>16 yes.</p> <p>17 Q. And you've been a continuous customer since then?</p> <p>18 A. Off and on.</p> <p>19 Q. Okay. Have you ever turned the wrong way out of that</p> <p>20 bank onto Michigan Avenue?</p> <p>21 A. No.</p> <p>22 Q. Okay. Are you aware -- back in June of 2003 is the</p> <p>23 time period I'm interested in. My question is going</p> <p>24 to pertain to any obstructions that would have been</p> <p>25 present to one exiting Bank One -- at the time, I will</p>
<p style="text-align: right;">Page 54</p> <p>1 spoke with at that time?</p> <p>2 A. No.</p> <p>3 Q. Okay. Was it a male or a female, if you recall?</p> <p>4 A. Male.</p> <p>5 Q. Okay. And do you know that person's job title by any</p> <p>6 chance?</p> <p>7 A. No.</p> <p>8 Q. Okay. If you hear a little bit of gap in my</p> <p>9 questioning, you've been asked a lot of the questions</p> <p>10 I was going to ask you, so I may just take a little</p> <p>11 time when I keep asking you the same questions. Have</p> <p>12 you ever taken any pictures of the bank at issue in</p> <p>13 this matter any time up to June 27th of 2003?</p> <p>14 A. Have I ever taken any pictures of the bank?</p> <p>15 Q. The bank property, I mean, whether you're coming out</p> <p>16 of the bank or going into the bank?</p> <p>17 A. No.</p> <p>18 Q. Okay. Have you ever taken any videos prior -- up to</p> <p>19 June 27th of 2003 of any cars coming in or out of the</p> <p>20 bank?</p> <p>21 A. I take them on a daily basis.</p> <p>22 Q. Okay. And do you still have any of those videos?</p> <p>23 A. If they're still on my recording.</p> <p>24 Q. Okay. Would your recording go back to June 27th of</p> <p>25 2003?</p>	<p style="text-align: right;">Page 56</p> <p>1 just let you know it was Bank One, exiting Bank One</p> <p>2 onto Michigan Avenue, anything that would have blocked</p> <p>3 the view of traffic that would have been approaching</p> <p>4 or the street or anything like that?</p> <p>5 A. No, I don't, I'm not -- no.</p> <p>6 Q. No. Okay. Thank you. I presume, but I want to make</p> <p>7 sure, you don't have any training in the field of law;</p> <p>8 is that correct?</p> <p>9 A. I'm not -- no.</p> <p>10 Q. Okay. As we sit here right now, do you -- would you</p> <p>11 agree with me that any information you have regarding</p> <p>12 the accident that we're here for today has come from</p> <p>13 someone else telling you about the accident?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that would have been either Mr. Daoudi, the</p> <p>16 plaintiff attorney, or someone associated with his</p> <p>17 office; is that correct?</p> <p>18 MR. DAOUDI: Objection, it -- facts not in</p> <p>19 evidence. Are you talking -- my line of</p> <p>20 questioning --</p> <p>21 MR. MARZANO: I'm asking --</p> <p>22 MR. DAOUDI: But I didn't talk about the</p> <p>23 accident, I didn't talk about the accident at all.</p> <p>24 MR. MARZANO: That's what I'm asking him</p> <p>25 though. Let him testify to it, not you, no offense</p>

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1 but --

2 MR. DAOUDI: No, I'm saying your question

3 is about what I questioned him about, which I never

4 did, so your question lacks foundation is what I'm

5 saying.

6 BY MR. MARZANO:

7 Q. Go ahead. Do you remember my question?

8 **A. I do.**

9 Q. Okay.

10 **A. The first and only time I learned about this accident**

11 **was when I first met the three of them, and I believe**

12 **Mr. Robbins, Tim Robbins, I think it is, mentioned**

13 **that he was -- that it was about an accident.**

14 Q. Did he give you any further details about the

15 accident?

16 **A. All I know is it was a mother and a son, I think.**

17 Q. Okay.

18 **A. I think.**

19 Q. All right. And what was your understanding of what

20 happened, if you know?

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

22 **Q. Okay. When you saw Mr. Robbins, Mr. Daoudi and**

23 **whoever else was present the first time you met them**

24 **or the only time you met them, as you said, where were**

25 **they? Were they on the Chase property?**

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1 **A. No, they were on -- they were standing across the**

2 **street almost directly in front of my store. They**

3 **were east of the driveway of the exiting -- of the --**

4 **of Chase Bank.**

5 **Q. So they were on the Chase Bank side of the street,**

6 **correct?**

7 **A. They were on the Chase side Bank, yes -- side, yes.**

8 Q. Have you spoken on the telephone with anyone from Mr.

9 Daoudi's office since first meeting them, whether it

10 be Mr. Daoudi, I presume his associate, Renee, or

11 anyone else for that matter?

12 **A. I only spoke with Renee and when she told me that we**

13 **were having a meeting here.**

14 Q. Anything else you talked about?

15 **A. Nothing else.**

16 Q. Okay. And you said there was a gentleman that came

17 out to your place of business that you met with?

18 **A. It was Mr. Ogg.**

19 Q. Mr. Ogg, okay. And what is it that -- did Mr. Ogg

20 ask -- did he ask you questions?

21 **A. Yes.**

22 Q. Okay. Did he have a tape recorder with him?

23 **A. Yes.**

24 Q. Okay. And did he tell you he was going to be

25 recording your conversation?

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1 **A. Yes.**

2 Q. Okay. Do you know whether a transcript has ever been

3 created of that conversation?

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

5 Q. Were you ever given a copy of the recording of your

6 conversation?

7 **A. No.**

8 Q. What questions were you asked? Again, we didn't tell

9 you at the beginning. If there's a question I ask

10 that you don't remember, it is okay to say I don't

11 remember.

12 **A. Okay. Well, it was how long have I been there, you**

13 **know, basically just a factual.**

14 Q. How long did that meeting last?

15 **A. I'm going to guess at 20 minutes.**

16 Q. Okay. And was there anyone present at the meeting

17 other than you and Mr. Ogg?

18 **A. No, just -- no.**

19 Q. Did he show you any documents at all?

20 **A. No.**

21 Q. Okay. Did -- have you reviewed any documents other

22 than what we've just placed -- been placed before you

23 today at today's deposition?

24 **A. No.**

25 Q. I'm just going to look over my notes here and --

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1 **A. Sure.**

2 Q. -- I think I may have asked all the questions I want

3 to ask.

4 Have you provided any statements in writing

5 whatsoever relative to this lawsuit filed by Mr.

6 Scola?

7 **A. No.**

8 Q. Okay. Do you know what exit the driver of the vehicle

9 involved in the accident that we're here for today

10 used at Chase Bank, then Bank One, on the date of the

11 incident?

12 **A. Would you repeat that, please?**

13 Q. Sure, that was kind of a convoluted question, I

14 apologize. Do you know what exit coming out of then

15 Bank One the driver of the vehicle that was

16 involved -- that was involved in the accident that

17 we're here for today used?

18 **A. What exit?**

19 Q. Yes.

20 **A. It's a common exit.**

21 Q. Well, I'm asking if you know because there's more than

22 one exit out of that bank, correct?

23 **A. Right.**

24 Q. In fact --

25 **A. No, I do not know what exit that -- I have no**

<p style="text-align: right;">Page 61</p> <p>1 knowledge of that.</p> <p>2 Q. So it could have been the drive-through exit, it could</p> <p>3 have been the parking lot, at one of the two parking</p> <p>4 lot exits as well, correct?</p> <p>5 A. Correct.</p> <p>6 Q. You just don't know?</p> <p>7 A. I don't know.</p> <p>8 MR. MARZANO: Okay. Thank you, sir. Those</p> <p>9 are all the questions I have for now.</p> <p>10 EXAMINATION</p> <p>11 BY MR. KIM:</p> <p>12 Q. Hi, Mr. Zuckerman, James Kim for Estate of Brown.</p> <p>13 Just one question for you.</p> <p>14 I just wanted to be clear that all the</p> <p>15 knowledge that you have about this accident was</p> <p>16 through Mr. Daoudi's office; is that correct?</p> <p>17 MR. DAOUDI: Objection.</p> <p>18 A. No.</p> <p>19 BY MR. KIM:</p> <p>20 Q. Was there any other source of knowledge for this</p> <p>21 accident besides what we talked about today?</p> <p>22 A. From Mr. Robbins.</p> <p>23 Q. Mr. Robbins, okay, who was standing with Mr. Daoudi on</p> <p>24 the day that you first met them?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 normally?</p> <p>2 A. I'm usually -- a lot of times I'm in my office but a</p> <p>3 lot of times I'm out on the floor and I basically have</p> <p>4 a good view of what's going on on the outside.</p> <p>5 Q. Do you do sales?</p> <p>6 A. I do.</p> <p>7 Q. Are you the top salesman at Leo's or is someone else</p> <p>8 better than you?</p> <p>9 A. All these young kids are much better.</p> <p>10 Q. They have more energy than we do, I suppose. You said</p> <p>11 you had an office inside the premises?</p> <p>12 A. Yes.</p> <p>13 Q. Where is that office located?</p> <p>14 A. In the center.</p> <p>15 Q. In the center of it?</p> <p>16 A. Not -- well, excuse me. It's -- it's -- I can show</p> <p>17 you on this picture.</p> <p>18 Q. I was going to ask you about those pictures in a</p> <p>19 minute.</p> <p>20 A. Okay. It would be right here.</p> <p>21 Q. Okay. What exhibit is that? Would you tell us for</p> <p>22 the record? Do you see a number on the bottom there?</p> <p>23 A. Is that 4?</p> <p>24 Q. I think that's 4, right?</p> <p>25 COURT REPORTER: If you can read my</p>
<p style="text-align: right;">Page 62</p> <p>1 MR. KIM: Thank you.</p> <p>2 EXAMINATION</p> <p>3 BY MR. ROSATI:</p> <p>4 Q. Mr. Zuckerman, I'm Mike Rosati, I represent the City</p> <p>5 of Wayne.</p> <p>6 What year was it that you called the police</p> <p>7 station?</p> <p>8 A. This has been an ongoing problem for over 27 years.</p> <p>9 Q. Okay. Do you understand my question?</p> <p>10 A. I understand your question. I don't know --</p> <p>11 Q. Okay.</p> <p>12 A. -- exactly.</p> <p>13 Q. That's fine. You called the police station once</p> <p>14 though about the problem --</p> <p>15 A. I did call.</p> <p>16 Q. -- of people turning the wrong way out of the bank?</p> <p>17 A. Yes.</p> <p>18 Q. All right. All those people you seen turn the wrong</p> <p>19 way out of the bank, have you ever seen an accident?</p> <p>20 A. Not -- not that I recall.</p> <p>21 Q. Have you ever been a witness on a police report on an</p> <p>22 accident from someone who turned the wrong way out of</p> <p>23 the bank parking lot?</p> <p>24 A. No.</p> <p>25 Q. When you're in the jeweler, what are you doing</p>	<p style="text-align: right;">Page 64</p> <p>1 handwriting. That's a 4.</p> <p>2 BY MR. ROSATI:</p> <p>3 Q. Can I see that for a minute?</p> <p>4 A. Sure.</p> <p>5 MR. DAOUDI: Just for the record, he was</p> <p>6 pointing to the left side of the photo.</p> <p>7 MR. ROSATI: I was going to do that. Thank</p> <p>8 you anyway.</p> <p>9 BY MR. ROSATI:</p> <p>10 Q. So you pointed to the left side of Exhibit 4. Is that</p> <p>11 a desk there?</p> <p>12 A. No, it's showcase.</p> <p>13 Q. So there's jewelry --</p> <p>14 A. Oh, in that picture, yeah, right at the very bottom,</p> <p>15 yes, at the bottom, yes, that is a desk.</p> <p>16 Q. Right there?</p> <p>17 A. That is a desk.</p> <p>18 Q. That's where you were pointing to, right, when you</p> <p>19 were testifying earlier?</p> <p>20 A. Well, my office is directly behind that.</p> <p>21 Q. Okay. Is it an enclosed office?</p> <p>22 A. Yes.</p> <p>23 Q. Walls and all that kind of stuff?</p> <p>24 A. Yes.</p> <p>25 Q. Windows in the walls?</p>

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1 **A. No.**
 2 Q. So how often are you in the office during the day?
 3 **A. In and out.**
 4 Q. In and out. Most of the time on the showroom floor
 5 though, right?
 6 **A. Yes.**
 7 Q. Supervising and sales --
 8 **A. And sales.**
 9 Q. -- as well, okay.
 10 When you're involved in supervising and
 11 sales, you're not looking out the windows, right?
 12 **A. I'm always looking out the windows.**
 13 Q. Even when you're involved in selling a piece of
 14 jewelry to someone?
 15 **A. Absolutely.**
 16 Q. And even when you're involved in supervising someone,
 17 maybe telling them what they're doing wrong on the
 18 floor or something like that?
 19 **A. Absolutely looking out the windows.**
 20 Q. All the time?
 21 **A. All the time.**
 22 Q. But when you're in your office, can you look out the
 23 windows?
 24 **A. No.**
 25 Q. Okay. Of the day --

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1 **A. I have a video.**
 2 Q. You have a video?
 3 **A. I have cameras in my office.**
 4 Q. So you watch -- oh, I see. So the feed from your
 5 security cameras out front of your office comes in --
 6 on the side of your business comes into your office,
 7 correct?
 8 **A. Correct.**
 9 Q. And you watch that feed?
 10 **A. Yes.**
 11 Q. All the time? All the time when you're in the office?
 12 **A. A great majority of the time.**
 13 Q. Okay. When was the bank building first there across
 14 the street from your business?
 15 **A. I'm thinking that they built that back in the '70s,**
 16 **early '70s.**
 17 MR. ROSATI: That's all the questions I
 18 have. Thank you.
 19 MR. TRIMBLE: I have no questions.
 20 MR. DAOUDI: All right. Just one minute.
 21 VIDEO TECHNICIAN: The time is now 10:25
 22 a.m. We are off the record.
 23 (Recess taken at 10:25 a.m.)
 24 (Back on the record at 10:27 a.m.)
 25 VIDEO TECHNICIAN: The time is now 10:27

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1 a.m. We are back on the record.
 2 RE-EXAMINATION
 3 BY MR. DAOUDI:
 4 Q. During Mr. Marzano's questioning he referenced the
 5 bank, there was a Bank One in June 2003, is that -- do
 6 you agree with that?
 7 **A. I think so, yes.**
 8 Q. From your knowledge as to the exits from the Chase
 9 parking lot onto Michigan Avenue, how many driveway
 10 exits onto Chase -- onto -- from the Chase parking lot
 11 onto Michigan Avenue do you recall?
 12 MR. MARZANO: Objection to form.
 13 MR. ROSATI: Join.
 14 **A. Onto Michigan Avenue, two.**
 15 BY MR. DAOUDI:
 16 Q. And do either of them have any signage as to the
 17 one-way nature of Michigan Avenue before entering
 18 Michigan Avenue from the parking lot?
 19 MR. MARZANO: Objection to form and to
 20 relevance.
 21 **A. I don't -- I'm not sure about the second entrance, the**
 22 **first one, but I never paid attention. I usually**
 23 **don't drive over there.**
 24 BY MR. DAOUDI:
 25 Q. The entrance that you're -- that you've been talking

Page 68

1 about throughout today's deposition and that you
 2 were -- specifically -- is that the entrance where the
 3 arrow was on Exhibit 3 for the drive-through exit?
 4 MR. ROSATI: Object to the form.
 5 BY MR. DAOUDI:
 6 Q. The drive-through?
 7 MR. MARZANO: Join.
 8 **A. Yes.**
 9 MR. DAOUDI: Okay. That's it?
 10 RE-EXAMINATION
 11 BY MR. MARZANO:
 12 Q. No, actually I have -- just so I'm clear, all your
 13 testimony today just pertains to the exit coming out
 14 of the drive-through of the bank, correct?
 15 **A. Correct.**
 16 Q. Okay. You had mentioned earlier -- we talked about
 17 the fact you had made a complaint to the best of your
 18 knowledge one time to someone at -- whether it was
 19 NBD, Bank One or Chase prior to June 27th of 2003, do
 20 you remember that?
 21 **A. Yes.**
 22 Q. Okay. Do you remember when that complaint was made,
 23 the date?
 24 **A. I do not.**
 25 Q. Do you remember the year?

DAVID ZUCKERMAN
June 16, 2016

Page 69

1 **A. I do not.**
2 Q. Do you remember the decade?
3 **A. It's been an ongoing thing all these years.**
4 Q. I'm just curious if you remember, was it the '90s, the
5 2000s, the '80s?
6 **A. I'm going to tell you that it was in the -- it was**
7 **probably in the '90s.**
8 Q. '90s, okay. I didn't have to ask if you remember the
9 century. Thank you, sir, those are the questions I
10 have.
11 **A. Sure. Okay.**
12 MR. ROSATI: Thank you for your time, we
13 appreciate it.
14 MR. DAOUDI: Thank you very much.
15 THE WITNESS: Okay. All set?
16 MR. DAOUDI: Yes.
17 VIDEO TECHNICIAN: That concludes today's
18 deposition. The time is 10:29 a.m., we are now off
19 the record.
20 (The deposition was concluded at 10:29 a.m.
21 Signature of the witness was not requested by
22 counsel for the respective parties hereto.)
23
24
25

Page 70

1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF WAYNE)
5
6 I, LAURIE R. MAYER, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to either party nor interested in the event of
14 this cause.
15
16
17
18
19
20
21
22 LAURIE R. MAYER, CSR-5385
23 Notary Public,
24 Wayne County, Michigan
25 My Commission expires: August 9, 2019



ROBERT PUCKETT
November 6, 2015

Page 1	Page 3																																																
<p>1 STATE OF MICHIGAN</p> <p>2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE</p> <p>3</p> <p>4 FRANK ANTHONY SCOLA,</p> <p>5 Plaintiff,</p> <p>6 vs. Case No. 15-002804 NI</p> <p>7 Hon. John Murphy</p> <p>8 JPMORGAN CHASE BANK, NATIONAL</p> <p>9 ASSOCIATION, JPMORGAN CHASE &</p> <p>10 CO., KATHLEEN SCOLA, and the Estate of</p> <p>11 JOHN BARROW BROWN (Deceased), jointly</p> <p>12 and severally,</p> <p>13 Defendants.</p> <p>14 _____/</p> <p>15</p> <p>16</p> <p>17 The Deposition of ROBERT PUCKETT,</p> <p>18 Taken at 33701 East Michigan Avenue,</p> <p>19 Wayne, Michigan,</p> <p>20 Commencing at 1:03 p.m.,</p> <p>21 Friday, November 6, 2015,</p> <p>22 Before Nora Morrissy, CSR-2642.</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MAYSAM ABDALLAH</p> <p>2 Plunkett Cooney, P.C.</p> <p>3 38505 Woodward Avenue, Suite 2000</p> <p>4 Bloomfield Hills, Michigan 48304</p> <p>5 248.901.4000</p> <p>6 mabdallah@plunkettcooney.com</p> <p>7 Appearing on behalf of the Defendant Chase.</p> <p>8</p> <p>9 MARK WILLIAMS</p> <p>10 Law Offices of Dyki, Williams & Baranski</p> <p>11 340 East Big Beaver Road, Suite 250</p> <p>12 Troy, Michigan 48083</p> <p>13 248.764.1210</p> <p>14 mark_e_williams@progressive.com</p> <p>15 Appearing on behalf of the Defendant Scola.</p> <p>16</p> <p>17 MELISSA COX</p> <p>18 Fausone Bohn LLP</p> <p>19 41700 Six Mile Road, Suite 101</p> <p>20 Northville, Michigan 48168-3460</p> <p>21 248.380.9976</p> <p>22 mcox@fb-firm.com</p> <p>23 Appearing on behalf of the witness.</p> <p>24</p> <p>25</p>																																																
Page 2	Page 4																																																
<p>1 APPEARANCES:</p> <p>2</p> <p>3 MICHAEL DAOUDI</p> <p>4 Law Offices of Michael S. Daoudi, P.C.</p> <p>5 346 Park Street, Suite 120</p> <p>6 Birmingham, Michigan 48009</p> <p>7 248.220.4377</p> <p>8 msd4law@aol.com</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 AARON KLEID</p> <p>12 Julie A. Taylor & Associates</p> <p>13 20750 Civic Center Drive, Suite 400</p> <p>14 Southfield, Michigan 48076-4132</p> <p>15 248.945.3819</p> <p>16 aaron.kleid.t113@statefarm.com</p> <p>17 Appearing on behalf of the Defendant Estate of John</p> <p>18 Brown.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <table> <tr> <th>Witness</th><th>Page</th></tr> <tr> <td>3 ROBERT PUCKETT</td><td></td></tr> <tr> <td>4</td><td></td></tr> <tr> <td>5</td><td></td></tr> <tr> <td>6 EXAMINATION</td><td></td></tr> <tr> <td>7 BY MR. KLEID:</td><td>5</td></tr> <tr> <td>8 EXAMINATION</td><td></td></tr> <tr> <td>9 BY MR. WILLIAMS:</td><td>18</td></tr> <tr> <td>10 EXAMINATION</td><td></td></tr> <tr> <td>11 BY MR. DAOUDI:</td><td>22</td></tr> <tr> <td>12 RE-EXAMINATION</td><td></td></tr> <tr> <td>13 BY MR. KLEID:</td><td>26</td></tr> <tr> <td>14</td><td></td></tr> <tr> <td>15 EXHIBITS</td><td></td></tr> <tr> <td>16</td><td></td></tr> <tr> <td>17 Exhibit</td><td>Page</td></tr> <tr> <td>18 (Exhibits attached to transcript.)</td><td></td></tr> <tr> <td>19</td><td></td></tr> <tr> <td>20 DEPOSITION EXHIBIT 1</td><td>9</td></tr> <tr> <td>21 DEPOSITION EXHIBIT 2</td><td>14</td></tr> <tr> <td>22 DEPOSITION EXHIBIT 3</td><td>15</td></tr> <tr> <td>23 DEPOSITION EXHIBIT 4</td><td>16</td></tr> <tr> <td>24 DEPOSITION EXHIBIT 5</td><td>17</td></tr> <tr> <td>25</td><td></td></tr> </table>	Witness	Page	3 ROBERT PUCKETT		4		5		6 EXAMINATION		7 BY MR. KLEID:	5	8 EXAMINATION		9 BY MR. WILLIAMS:	18	10 EXAMINATION		11 BY MR. DAOUDI:	22	12 RE-EXAMINATION		13 BY MR. KLEID:	26	14		15 EXHIBITS		16		17 Exhibit	Page	18 (Exhibits attached to transcript.)		19		20 DEPOSITION EXHIBIT 1	9	21 DEPOSITION EXHIBIT 2	14	22 DEPOSITION EXHIBIT 3	15	23 DEPOSITION EXHIBIT 4	16	24 DEPOSITION EXHIBIT 5	17	25	
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ROBERT PUCKETT
November 6, 2015

Page 5

1 Wayne, Michigan
2 Friday, November 6, 2015
3 1:03 p.m.
4
5 ROBERT PUCKETT,
6 was thereupon called as a witness herein, and after
7 having first been duly sworn to testify to the truth,
8 the whole truth and nothing but the truth, was
9 examined and testified as follows:
10 EXAMINATION
11 BY MR. KLEID:
12 Q. Can you please state your full name for the record?
13 A. **Robert Alan Puckett.**
14 Q. How do you spell your middle name?
15 A. **A L A N.**
16 Q. As I indicated to you before, my name is Aaron Kleid.
17 I represent the Estate of John Barrow Brown in
18 connection with a June 27, 2003, and that is not a
19 typo, accident.
20 I'm assuming you've had your deposition
21 taken before?
22 A. **Yes, I have.**
23 Q. All right. In connection with auto accident
24 investigations?
25 A. **Yes.**

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1 Q. Before I talk about this accident I just want to get a
2 little background on you.
3 Did you go to college?
4 A. **I did.**
5 Q. Which college?
6 A. **Siena Heights University. It's in Adrian, Michigan.**
7 Q. Did you graduate?
8 A. **I did.**
9 Q. What year?
10 A. **1994.**
11 Q. What was your degree in?
12 A. **Bachelor of Arts.**
13 Q. Any major?
14 A. **Criminal justice.**
15 Q. Any other college education?
16 A. **No.**
17 Q. Go to police academy?
18 A. **I did.**
19 Q. Where?
20 A. **Washtenaw Police Academy.**
21 Q. What year?
22 A. **1994.**
23 Q. Is the Wayne Police Department the only police force
24 you've ever been a member of?
25 A. **No.**

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1 Q. All right. So, then I'm just going to jump right into
2 it because it's Friday at 1:00 and there's no need for
3 us to be here all day.
4 Can you tell us where you are currently
5 employed?
6 A. **City of Wayne Police Department.**
7 Q. How long have you been working for the City of Wayne?
8 A. **Twenty plus years.**
9 Q. What's your present rank?
10 A. **Lieutenant.**
11 Q. How long have you been a lieutenant?
12 A. **I believe six years.**
13 Q. On June 27, 2003, what was your rank?
14 A. **Patrol officer.**
15 Q. How long had you been a patrol officer at the time of
16 the accident?
17 A. **Eight years, two months.**
18 Q. During the eight years and two months you were a
19 parole officer prior to the June 27, 2003 accident was
20 one of your job responsibilities the investigation of
21 auto accidents?
22 A. **Yes.**
23 Q. As part of the investigation of auto accidents you
24 would prepare police reports?
25 A. **That's correct.**

Page 8

1 Q. Where were you before Wayne?
2 A. **Part time for Hudson Police Department for**
3 **approximately nine months. And prior to that when I**
4 **was still in college I was a reserve officer for**
5 **Adrian Police Department but was not paid.**
6 Q. Now, we are here today about an accident as I said
7 before that occurred on June 27, 2003.
8 Do you have any independent recollection of
9 that accident?
10 A. **No.**
11 Q. You investigate hundreds of accidents a year, right?
12 A. **In my career, yes.**
13 Q. And unless there's something specifically unique about
14 it, a death, you're not going to remember it?
15 A. **That's correct.**
16 Q. Did you have to take a look at your police report to
17 gain a recollection of what happened in that accident?
18 A. **Yes, I did.**
19 Q. After you took a look at the police report, was there
20 anything about the accident that you started to
21 remember?
22 A. **No.**
23 Q. So, you still have no memory at all of it?
24 A. **Zero.**
25 Q. I figured as much. I'm going to mark as Exhibit 1 a

<p style="text-align: right;">Page 9</p> <p>1 copy of the police report that I've provided with by</p> <p>2 the City of Wayne.</p> <p>3 MARKED FOR IDENTIFICATION:</p> <p>4 DEPOSITION EXHIBIT 1</p> <p>5 1:08 p.m.</p> <p>6 BY MR. KLEID:</p> <p>7 Q. Is that what you have in front of you?</p> <p>8 A. That's correct, yes.</p> <p>9 Q. And this police report is also known as a UD-10?</p> <p>10 A. Yes.</p> <p>11 Q. Nowadays it's done pretty much on computer, but back</p> <p>12 then this is the way it was done, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Handwritten?</p> <p>15 A. Yes.</p> <p>16 Q. Based on your review of the report are you able to</p> <p>17 tell us where the accident took place?</p> <p>18 A. Near the intersection of West Michigan Avenue, US 12</p> <p>19 and Wayne Road in the City of Wayne.</p> <p>20 Q. Now, I noticed the first time I looked at this it</p> <p>21 looks like Michigan Avenue splits when it goes through</p> <p>22 downtown Wayne?</p> <p>23 A. That's correct.</p> <p>24 Q. So, in other words, it's not like east and west run</p> <p>25 next to each other, there's maybe what might be a city</p>	<p style="text-align: right;">Page 11</p> <p>1 westbound on West Michigan Avenue, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Kathleen Scola was traveling eastbound on West</p> <p>4 Michigan Avenue?</p> <p>5 A. Correct. Looks like the accident according to my</p> <p>6 report was in the left curb lane which would be the</p> <p>7 far south lane on West Michigan Avenue?</p> <p>8 Q. Is that a travel lane?</p> <p>9 A. Yes, it is a travel lane.</p> <p>10 Q. Back in '03 it was a travel lane?</p> <p>11 A. Yes, it's different now than it was in 2003.</p> <p>12 Q. What was different about the -- about West Michigan</p> <p>13 Avenue at that intersection back in '03?</p> <p>14 A. There were four lanes --</p> <p>15 MR. DAOUDI: Which intersection?</p> <p>16 MR. KLEID: The intersection of Wayne and</p> <p>17 Michigan.</p> <p>18 BY MR. KLEID:</p> <p>19 Q. You can go ahead.</p> <p>20 A. On West Michigan Avenue there were four lanes of</p> <p>21 traffic one way. Now there's parking on both sides of</p> <p>22 West Michigan Avenue.</p> <p>23 Q. When you arrived on the scene, were there any</p> <p>24 individuals who were complaining of any injuries?</p> <p>25 A. According to my report, yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 block between them?</p> <p>2 A. That's fair to say, yes.</p> <p>3 Q. But Wayne runs north and south?</p> <p>4 A. Yes.</p> <p>5 Q. Did the accident happen on Michigan or on Wayne?</p> <p>6 A. I have it on West Michigan Avenue.</p> <p>7 Q. According to the narrative report that you prepared,</p> <p>8 can you just tell me what happened in the accident?</p> <p>9 A. According to the report it indicates that this</p> <p>10 accident occurred approximately 195 feet east of Wayne</p> <p>11 Road on West Michigan Avenue. Driver number one which</p> <p>12 was driven by -- it's hard to see on my writing, maybe</p> <p>13 Kathleen, starts with an S --</p> <p>14 Q. Is it possible Scola?</p> <p>15 A. Yes. Pulled out of Bank One parking lot which is</p> <p>16 located right at West Michigan Avenue and Wayne Road.</p> <p>17 The signs are clearly posted one way on West Michigan</p> <p>18 Avenue, and unfortunately the driver turned right on</p> <p>19 to West Michigan Avenue going eastbound on West</p> <p>20 Michigan Avenue going the wrong way and later had an</p> <p>21 accident with driver number two.</p> <p>22 Q. Driver number two, is that Mr. Brown?</p> <p>23 A. John Brown was the driver of unit number two, correct.</p> <p>24 He was traveling westbound.</p> <p>25 Q. You presumed my next question. So, he was traveling</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Was that William Scola and Frank Scola?</p> <p>2 A. Correct, they were passengers in unit number one.</p> <p>3 Q. Did you have any discussion -- does your report</p> <p>4 indicate you had any discussion with Miss Scola as to</p> <p>5 what she was doing in the back?</p> <p>6 A. No.</p> <p>7 Q. If I was to tell you that there's an indication that</p> <p>8 Miss Scola had used the bank -- that had been</p> <p>9 traveling south on Wayne and used the bank to get on</p> <p>10 Michigan, would that be something that you felt would</p> <p>11 have violated traffic laws?</p> <p>12 MR. WILLIAMS: Objection to the form of the</p> <p>13 question. Go ahead.</p> <p>14 BY MR. KLEID:</p> <p>15 Q. You can answer.</p> <p>16 A. Can you repeat the question again?</p> <p>17 Q. Sure. If Miss Scola had indicated to you she was</p> <p>18 traveling south on Wayne and wanted to go east on</p> <p>19 Michigan so she used the bank parking lot as a</p> <p>20 pass-through, would that have violated any traffic</p> <p>21 rules?</p> <p>22 A. So, she's traveling south on Wayne Road and she's just</p> <p>23 taking a turn to get back on to West Michigan Avenue.</p> <p>24 Q. She's using the bank to do that.</p> <p>25 A. I don't think it's avoiding a traffic control device.</p>

<p style="text-align: right;">Page 13</p> <p>1 I'm not sure it would be any violation. She's just 2 lost and she's trying to get back on to Michigan 3 Avenue. 4 Q. If you knew that Frank Scola who is the party who was 5 injured in this case was seven years old and was not 6 in a car seat or a booster seat of any sort, is that a 7 traffic violation? 8 A. It is now. I'm not sure if the laws were the same 9 then as they are now, but, yeah, if they were not in a 10 booster seat. Now it would be against the law. 11 Q. All right, but you don't know if back in '03 that was 12 against the law? 13 A. I don't believe it was. 14 Q. Did you give anyone a ticket subject to counsel's 15 objection? 16 A. Yes. 17 Q. Who did you give a ticket to? 18 A. Driver number one for going the wrong way on Michigan 19 Avenue. 20 Q. Driver number one is Kathy Scola or was Kathy Scola? 21 A. Yes. 22 Q. What about Mr. Brown, did he get a ticket? 23 A. No. 24 Q. Did you assign any hazard to Mr. Brown in connection 25 with the accident?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Is that because Miss Scola would still have been 2 traveling the wrong way on West Michigan Avenue? 3 A. Yes, sir. 4 Q. If that information that we just talked about that you 5 read in paragraph 19, if that was true, would that 6 change your position regarding Mr. Brown's liability 7 in the case? 8 A. No. 9 Q. Just going to shoot through some photos that I took 10 off of Google Maps which I'm sure is legally 11 appropriate. Just for purposes of situating 12 ourselves, can you describe what you see in Exhibit 13 Number 3? 14 MARKED FOR IDENTIFICATION: 15 DEPOSITION EXHIBIT 3 16 1:17 p.m. 17 A. It's a map of the City of Wayne. Looks like Michigan 18 Avenue, Wayne Road. It shows both East and West 19 Michigan Avenue. Wayne Road and Second Street, 20 basically the center of the city. 21 BY MR. KLEID: 22 Q. All right. I'm going to hand you my pen. Could you 23 just circle the general area where the accident took 24 place? 25 A. It would be 190 --</p>
<p style="text-align: right;">Page 14</p> <p>1 A. He received no hazardous action. 2 Q. Did you feel based you on your report that he had done 3 anything wrong in connection with the accident? 4 A. No, sir. 5 MARKED FOR IDENTIFICATION: 6 DEPOSITION EXHIBIT 2 7 1:14 p.m. 8 BY MR. KLEID: 9 Q. In the complaint which I've marked as Exhibit Number 2 10 -- well, what I'm going to do I'm going to hand you 11 the complaint and ask you just to read to yourself 12 numbers 19 and 20. 13 Did you have a chance to look at 1 and 20? 14 A. I did. 15 Q. There is an indication in paragraphs 19 and 20 of the 16 complaint that Miss Scola realized she had made a 17 mistake and pulled her car to the southern curb lane 18 and stopped the car. 19 Is there any indication in your police 20 report that that's what happened? 21 A. No. 22 Q. Let's presume for a moment that that is what happened. 23 Would that change your determination as to who is at 24 fault for the accident? 25 A. No.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. It doesn't have to be exact. 2 A. I would say roughly in this area. 3 MARKED FOR IDENTIFICATION: 4 DEPOSITION EXHIBIT 4 5 1:18 p.m. 6 BY MR. KLEID: 7 Q. I marked another photo as Exhibit Number 4. Can you 8 tell me if you're able to tell what you're looking at 9 in that photo? 10 A. This is the intersection of West Michigan Avenue and 11 Wayne Road. 12 Q. Does it appear as though this is what southbound 13 traffic would see as it's passing over West Michigan 14 Avenue? 15 A. If I'm looking at the picture, I'm looking at 16 southbound, correct. 17 Q. There is a one-way sign over there right above the 18 Michigan Avenue sign. Do you know if -- a one-way 19 sign, may not be the exact same one, but if there was 20 a one-way sign back in 2003? 21 A. Not only would there have been a sign there, there 22 would be signs probably on Michigan Avenue as well 23 posted, but yes. 24 Q. But anyone traveling south on Wayne would have been 25 able to see a one-way sign?</p>

Page 17

1 **A. Correct.**
 2 Q. Is there also a sign there indicating no left turn?
 3 **A. Yes.**
 4 Q. And do you believe that that sign or at least
 5 something similar to that would have been there back
 6 in 2003?
 7 **A. Yes, I do.**
 8 Q. All right.
 9 MARKED FOR IDENTIFICATION:
 10 DEPOSITION EXHIBIT 5
 11 1:19 p.m.
 12 BY MR. KLEID:
 13 Q. Can you tell me what we are looking at in that photo,
 14 Exhibit Number 5?
 15 **A. I'm looking at a picture which is of West Michigan**
 16 **Avenue looking westbound approaching Wayne Road.**
 17 Q. Would this be roughly what Mr. Brown was looking at as
 18 he was approaching southbound Wayne or Wayne Road?
 19 **A. Yes.**
 20 Q. Now, you indicated all four of these -- or all of
 21 these lanes of travel were open back in 2003?
 22 **A. Yes, and they've done some curb work around it but**
 23 **there were four lanes of one-way traffic on West**
 24 **Michigan Avenue.**
 25 Q. Mr. Brown was in a travel lane at the time of the

Page 18

1 accident?
 2 **A. Yes.**
 3 Q. All right.
 4 MR. KLEID: I don't have anything else.
 5 EXAMINATION
 6 BY MR. WILLIAMS:
 7 Q. I just have a few questions. Officer, I introduced
 8 myself earlier. I represent Miss Scola, the defendant
 9 in this action. I just have a few follow-up
 10 questions.
 11 It's fair when brother counsel was asking
 12 you questions about whether -- well, when you stated
 13 assuming that the complaint allegations were true and
 14 that Miss Scola had actually turned the wrong way on
 15 to West Michigan Avenue and had brought her vehicle to
 16 a stop before being struck by Mr. Brown, there is a
 17 chance Mr. Brown could have avoided the accident as
 18 well?
 19 **A. Possibly.**
 20 Q. Do you remember who you talked to to get this
 21 information about where she was and how the accident
 22 actually occurred, in other words, did you talk to
 23 Miss Scola and to Mr. Brown?
 24 **A. Like I say, I don't remember talking to either one of**
 25 **them but I can tell you procedure with the traffic**


Page 19

1 **investigation is you speak with both drivers involved,**
 2 **any occupants and any witnesses.**
 3 Q. And you don't have any other notes or documents --
 4 **A. No, sir.**
 5 Q. -- or written statements or anything like that?
 6 **A. No, sir.**
 7 Q. The only thing we have left is the UD-10?
 8 **A. That's correct.**
 9 Q. And you note on your report that Bank One, that is now
 10 Chase at the same exact location?
 11 **A. That's correct.**
 12 Q. With respect to being in the parking lot, was there
 13 any signage or direction of travel noted within the
 14 parking lot of the then Bank One, now Chase back in
 15 2003?
 16 **A. I don't recall.**
 17 Q. And likewise, if one is exiting that parking lot, is
 18 there any signage directly on Michigan Avenue either
 19 on the south side or the north side of West Michigan
 20 Avenue with respect to which direction of travel that
 21 is?
 22 **A. I don't recall if there's anything or not.**
 23 Q. Okay. Did you confirm with Miss Scola that she had
 24 actually been proceeding southbound on Wayne before
 25 she made the turnaround in the bank parking lot?

Page 20

1 **A. It's not in my report so I don't know if that**
 2 **conversation took place or not.**
 3 Q. So, in other words, you're not really sure as we sit
 4 here today which direction she actually came from to
 5 get into the bank parking lot?
 6 **A. That's correct.**
 7 Q. Now, you mentioned earlier that there was a few --
 8 some things had changed with respect to the number of
 9 lanes of travel, but the general configuration of what
 10 was shown in the overhead Google map is generally the
 11 same now as it was then, in other words, Michigan
 12 Avenue splits, it's split in the same way as it does
 13 now?
 14 **A. Yes.**
 15 Q. And there's a downtown area between the two splits?
 16 **A. Correct.**
 17 Q. And the last exhibit, I think it was number five, it
 18 shows there is a cutout in the curb here where there
 19 is parking. It looks like that has been made into a
 20 parking lane.
 21 Did that used to be a through lane or was
 22 that nonexistent in 2003?
 23 **A. It was a through lane, just a traffic lane.**
 24 Q. So, they added a curb and they actually made it into a
 25 parking lane?

<p style="text-align: right;">Page 21</p> <p>1 A. Correct.</p> <p>2 Q. And then you said that there's parking on both sides</p> <p>3 of Michigan Avenue. This shows this being a through</p> <p>4 lane presently.</p> <p>5 A. Just would be east of there on the same side there's</p> <p>6 parking. So, parking for 150 feet or so that it turns</p> <p>7 into more of a turn lane right there.</p> <p>8 Q. Then because I just drove through there and it looks</p> <p>9 like there was a -- the street before, is that like</p> <p>10 Third Street?</p> <p>11 A. Second Street.</p> <p>12 Q. East of Second Street there's parking there but when</p> <p>13 you get beyond that going west, that's when it becomes</p> <p>14 a turn lane to go south on Wayne Road?</p> <p>15 A. It's pretty accurate. There was a few parking spots</p> <p>16 on the south side from Second Street to Wayne Road,</p> <p>17 but it's fairly accurate, yes.</p> <p>18 Q. And you didn't take any photographs on the scene?</p> <p>19 A. No.</p> <p>20 Q. And there was no other investigation done by anybody</p> <p>21 in the police department to your knowledge?</p> <p>22 A. No, sir.</p> <p>23 Q. So, you were by yourself?</p> <p>24 A. Yes.</p> <p>25 Q. And it would have been reviewed by a sergeant I assume</p>	<p style="text-align: right;">Page 23</p> <p>1 transported to Annapolis Hospital.</p> <p>2 Just before that up to that point, is there</p> <p>3 any indication of who actually gave you that</p> <p>4 information?</p> <p>5 A. No.</p> <p>6 Q. When you arrived at the scene based on your report</p> <p>7 where were the vehicles?</p> <p>8 A. According to my report they were still on West</p> <p>9 Michigan Avenue in the south lane and I would have</p> <p>10 positioned my patrol vehicle just east of them to</p> <p>11 protect the scene and protect the vehicles.</p> <p>12 Q. The diagram above the narrative shows two vehicles</p> <p>13 overlapping a little bit, touching where they crash.</p> <p>14 Is that where you perceived the vehicle crash to be</p> <p>15 then?</p> <p>16 A. Yes.</p> <p>17 Q. Was there any indication based on your review of the</p> <p>18 report, I know you don't have any independent</p> <p>19 recollection of this event at all, but is there any</p> <p>20 indication that the vehicles were moved after impact</p> <p>21 to get to the side of the curb lane or that's where</p> <p>22 that impact occurred?</p> <p>23 A. I don't recall.</p> <p>24 Q. Based on your investigative report, is that where the</p> <p>25 impact occurred based on your notes?</p>
<p style="text-align: right;">Page 22</p> <p>1 for approval and that would be the extent of their</p> <p>2 involvement?</p> <p>3 A. Yes.</p> <p>4 MR. WILLIAMS: That's all I have, thank</p> <p>5 you.</p> <p>6 EXAMINATION</p> <p>7 BY MR. DAOUDI:</p> <p>8 Q. Officer, my name is Michael Daoudi, and I represent</p> <p>9 the plaintiff Kathleen Scola in this matter.</p> <p>10 MR. KLEID: Frank.</p> <p>11 MR. DAOUDI: Frank. Thank you, sorry.</p> <p>12 BY MR. DAOUDI:</p> <p>13 Q. I have some follow-up questions as to this incident.</p> <p>14 Just with regard to the police report, the narrative</p> <p>15 section on the second page, just so the record is</p> <p>16 clear, there's no indication who gave you that</p> <p>17 information, right?</p> <p>18 A. Well, I got that information from the passenger that</p> <p>19 complained of injuries, both passengers and from</p> <p>20 speaking with both drivers.</p> <p>21 Q. I'm talking about above, investigation revealed</p> <p>22 vehicle number one pulled out of the Bank One parking</p> <p>23 lot eastbound going the wrong way striking vehicle</p> <p>24 number two. Vehicle number two was westbound in the</p> <p>25 left curb lane, driver of vehicle number two was</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes.</p> <p>2 Q. You said earlier she's just lost and trying to get</p> <p>3 back on Michigan Avenue.</p> <p>4 Do you remember saying that?</p> <p>5 A. I assumed that.</p> <p>6 Q. I understand that. You're a police officer, you have</p> <p>7 20 plus years in the City of Wayne, and do you say</p> <p>8 that because of some experience with knowledge of that</p> <p>9 type of situation happening from people coming out of</p> <p>10 Bank One parking lot?</p> <p>11 A. It's pretty typical we have people that go the wrong</p> <p>12 way on Michigan Avenue daily. It's not common to have</p> <p>13 a lot of accidents but we do catch people that will</p> <p>14 pull out on to Michigan Avenue and catch themselves</p> <p>15 going the wrong way.</p> <p>16 Q. Do they pull out of Michigan Avenue coming out of the</p> <p>17 Bank One parking lot at all?</p> <p>18 A. I don't know that.</p> <p>19 Q. Knowing it happened in this case or at least that's</p> <p>20 what the investigation revealed, do you have any other</p> <p>21 independent recollection of that happening in other</p> <p>22 incidents that you investigated?</p> <p>23 A. No.</p> <p>24 Q. Have you traveled the route that was suggested in the</p> <p>25 investigative report here that you came out of the</p>

<p style="text-align: right;">Page 25</p> <p>1 Bank One parking lot and turned right, do you</p> <p>2 independently travel that route to see if there are</p> <p>3 any signs or anything from Bank One?</p> <p>4 A. No.</p> <p>5 Q. If you were to assume that there are no signs coming</p> <p>6 out of the Bank One parking lot that say no right</p> <p>7 turn, one way only, nothing, no indication at all, is</p> <p>8 there any type of responsibility as to Bank One that</p> <p>9 you know of from the City of Wayne perspective that</p> <p>10 they should have a warning to travelers leaving their</p> <p>11 parking lot to turn left only?</p> <p>12 A. No.</p> <p>13 Q. What's the typical response you find when you do</p> <p>14 approach the people that you stop or meet up with that</p> <p>15 make the wrong turn on Michigan Avenue?</p> <p>16 A. The typical response?</p> <p>17 Q. Yes.</p> <p>18 A. When I stop people?</p> <p>19 Q. Why they do that.</p> <p>20 A. Got turned around.</p> <p>21 Q. Didn't know it was one way maybe?</p> <p>22 A. Yes.</p> <p>23 Q. When you reference 195 feet, right, did you use some</p> <p>24 -- any tool to determine that or is that an estimate?</p> <p>25 A. I don't know exactly what I used there, could have</p>	<p style="text-align: right;">Page 27</p> <p>1 about where Miss Scola would have gotten over to the</p> <p>2 south most lane and came to a stop at that point,</p> <p>3 that's not indicated anywhere in your report, right?</p> <p>4 A. It does not say that she was stopped.</p> <p>5 Q. If she indicated that she came to a stop, is that</p> <p>6 something you would typically put in a report?</p> <p>7 A. Yes.</p> <p>8 Q. There was also some conversation about we don't know</p> <p>9 which individual gave you this version of events.</p> <p>10 If you have an accident and there's two</p> <p>11 different versions of events, do you typically mark</p> <p>12 down both versions?</p> <p>13 A. Yes.</p> <p>14 Q. If there's only one version listed, does that lead you</p> <p>15 to believe likely they both gave you the same version</p> <p>16 of the accident?</p> <p>17 A. Yes.</p> <p>18 MR. KLEID: Nothing further.</p> <p>19 MR. WILLIAMS: Nothing.</p> <p>20 MR. DAOUDI: Nothing further.</p> <p>21 (The deposition was concluded at 1:36 p.m.</p> <p>22 Signature of the witness was not requested by</p> <p>23 counsel for the respective parties hereto.)</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 26</p> <p>1 been an estimate but we do have laser units that we</p> <p>2 use to give a more of an accurate calibration.</p> <p>3 Q. Did you have -- did you use those units in 2003?</p> <p>4 A. Could have had a radar unit or laser, I'm not sure</p> <p>5 what I used, but --</p> <p>6 Q. That would measure the distance?</p> <p>7 A. Yeah. I don't know if I used a laser or it was just</p> <p>8 an estimated distance.</p> <p>9 Q. If it was an estimated distance, how do you measure</p> <p>10 195 feet, what's your I guess knowledge on --</p> <p>11 A. Three feet to a yard, I'm a hunter, played football.</p> <p>12 A hundred yards is three hundred feet, so, I just kind</p> <p>13 of guesstimate that.</p> <p>14 Q. All right.</p> <p>15 A. I'm pretty close.</p> <p>16 Q. Were you the only officer that came to the scene?</p> <p>17 A. I don't know for sure. It doesn't indicate in my</p> <p>18 report there were any other officers there but I was</p> <p>19 in charge of the accident and I took all the -- I took</p> <p>20 the report.</p> <p>21 MR. DAOUDI: I have no further questions.</p> <p>22 MS. ABDALLAH: No questions.</p> <p>23 RE-EXAMINATION</p> <p>24 BY MR. KLEID:</p> <p>25 Q. The version of events Mr. Williams and I were talking</p>	<p style="text-align: right;">Page 28</p> <p>1 CERTIFICATE OF NOTARY</p> <p>2 STATE OF MICHIGAN)</p> <p>3) SS</p> <p>4 COUNTY OF WAYNE)</p> <p>5</p> <p>6 I, NORA MORRISSY, certify that this</p> <p>7 deposition was taken before me on the date</p> <p>8 hereinbefore set forth; that the foregoing questions</p> <p>9 and answers were recorded by me stenographically and</p> <p>10 reduced to computer transcription; that this is a</p> <p>11 true, full and correct transcript of my stenographic</p> <p>12 notes so taken; and that I am not related to, nor of</p> <p>13 counsel to, either party nor interested in the event</p> <p>14 of this cause.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 NORA MORRISSY, CSR-2642</p> <p>23 Notary Public,</p> <p>24 Wayne, County, Michigan.</p> <p>25 My Commission expires: 9-13-19</p> 

WALTER CYGAN

Walter M. Cygan, CSP, PCE
Host Producer
"Safety Matters"

Safety Consulting

43202 Pointe Drive
Clinton Twp., Mich. 48038
(586) 226-2787

VIA FAX & MAIL

September 9, 2016

Michael Daoudi
Law Offices of Michael Daoudi, PC
346 Park Street, Suite 120
Birmingham, Michigan 48009

RE: Scola v JP Morgan Chase Bank
Case No. 2015-002804-NI

Dear Mr. Daoudi:

The following represents my report and opinions on the captioned case. It represents my application of safety engineering analysis, accident investigation, human factors, and defensive driving concepts for over 50 years.

My opinions are as follows:

1. From documents reviewed, Mr. Zuckerman indicated this scene has been the same for 27 years. Many times he mentioned this hazardous condition to the Branch Manager and the Police Department, but nothing was ever done.
2. Mr. Brown, an elderly man with years of driving experience, was coming from the traffic light to the accident point and had ample time and distance to perceive Ms. Scola and did not take any evasive measures to avoid the collision by swerving, applying brakes or slowing down. References for consideration were made to ten car lengths, 6 seconds and 150 feet.
3. Ms. Scola did see her predicament, applied the brakes and swerved from one lane to the curb lane. Her evasive measure was not sufficient to avoid contact.
4. Defensive driving for collision prevention requires a) recognize the hazard (b) understand the defense (c) act correctly in time. Mr. Brown could have slowed down and applied the brakes, but did not. Ms. Scola could have cleared Mr. Brown by jumping the curb, but did not.
5. The bank had no warning signs for exiting drivers like STOP, Wrong Way Arrows, and No Right Turn sign. This would have given an important visual cue to exiting drivers to avoid turning right. This common sense effort, while not a law, code or ordinance, was not a surprise to the bank per Mr. Zuckerman's efforts. Instead, the bank should have considered the gravity of these many warnings and acted on them. The safety staff of the bank should have considered this an integral part of the bank's safety responsibility to their customers. An added feature would be a curved painted arrow on the pavement, leading in the correct direction.

-2-

6. The City of Wayne should have participated in an investigative study to consider the problem that evolved from this accident. They could have offered previous studies for consideration regarding safe and adequate signage.

Mr. Robbins testified that Mr. Brown had a lot of time to perceive. Mr. Puckett testified it was typical to have wrong way drivers on Michigan Ave. daily. Question is why didn't the bank also notice this daily occurrence and do something about it? By design, the bank's vehicle drive thru system encourages more vehicle activity than a non vehicle system per day.

The preventability of this accident lies more greatly on the bank because they knew about the exposure for several years, but did nothing to minimize it. The US Post Office uses safety signs as does a nearby restaurant, so why not the bank? The City of Wayne could have assisted the bank too. Mr. Brown and Ms. Scola had safety options and evasive measures available, but not used.

My firm professional opinion is that the bank had the main responsibility for minimizing this dangerous condition, several years in the making, by their inaction. Ms. Scola, subjected to this condition for the first time, made an error, seeing the condition for the first time. Mr. Brown, an experienced driver who should have expected the unexpected, made an error. Mr. Robbins testified that if he made a traffic safety survey, he would have recommended safety signs and arrows.

I will testify to my report and opinions if required to do so. If there are conditions that change my report, I reserve the right to review those also.

Thank You,

Walter Cygan, CSP, PE

BJC/wc

Walter Cygan
December 15, 2016

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Page 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FRANK ANTHONY SCOLA.
Plaintiff.

vs. Case No. 15-002804-NI
Hon. John A. Murphy

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, JPMORGAN CHASE &
CO., KATHLEEN SCOLA, and
ESTATE OF JOHN BARROW BROWN
(Deceased), and CITY OF WAYNE,
Jointly and Severally,
Defendants.

The Deposition of WALTER CYGAN,
Taken at 346 Park Street, Second Floor,
Birmingham, Michigan,
Commencing at 1:22 p.m.,
Thursday, December 15, 2016,
Before Maureen Collier, CSR-7422.

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16 Bank, NA and JPMorgan Chase & Co.
17
18
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Page 4

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20
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15 (Exhibits 1, 4, 5 and 6 attached to transcript.)
16 (Exhibit 2 retained by counsel.)
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19 DEPOSITION EXHIBIT 1 10
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Walter Cygan
December 15, 2016

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<p>1 DEPOSITION EXHIBIT 4 74 2 (September 9, 2016 Report) 3 4 DEPOSITION EXHIBIT 5 115 5 (Photograph) 6 DEPOSITION EXHIBIT 6 127 7 (Photograph) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Q. Do you have any record, any -- keep count of that and 2 can you estimate it? 3 A. No, I'm sorry. I don't. 4 Q. More than 100? Less than 100? 5 A. Probably more than 100. 6 Q. Okay. All right. I suspect that this is the same 7 procedure as all the other depositions, but just so 8 that we have an understanding going forward: This is 9 a question-and-answer format. If I at any point in 10 time ask you any questions that you don't understand, 11 just let me know, and I'll rephrase them until we get 12 them to where you can understand them and answer. 13 A. Okay. 14 Q. Fair? 15 A. Thank you. 16 Q. If you need to take a break at all at any point in 17 time, just let me know. 18 A. Okay. 19 Q. Let me kind of start out with you were kind enough to 20 provide us some materials that you brought with you 21 from your file. Is this, what you have in front of 22 you, your entire file? 23 A. Yes. These are also my documents that I brought with 24 me. 25 Q. Okay. And is that what I have -- let me see that too,</p>
Page 6	Page 8
<p>1 Birmingham, Michigan 2 Thursday, December 15, 2016 3 1:22 p.m. 4 5 WALTER CYGAN, 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MR. GORDON: Let the record reflect this is 11 the date and time for the deposition of Walter Cygan. 12 Am I pronouncing that correctly, sir? 13 THE WITNESS: Yes, that's fine. 14 MR. GORDON: This is a discovery-only 15 deposition to be used for discovery and impeachment 16 purposes pursuant to MCR 2.302. 17 EXAMINATION 18 BY MR. GORDON: 19 Q. Mr. Cygan, my name is Henry Gordon. I represent the 20 Estate of John Brown in a lawsuit that's been filed by 21 Frank Scola. I'm here to ask you some questions 22 today. Have you had your deposition taken before? 23 A. Yes. 24 Q. How many times? 25 A. I don't know.</p>	<p>1 please. 2 A. Yeah. Those are essentially my notes of depositions 3 that I read. 4 Q. Okay. 5 A. And some sample references of a safety nature. 6 Q. Okay. And when you say sample references of a safety 7 nature, what do you mean by that? 8 A. Copies of the defensive driving course pages. 9 Q. Okay. 10 MR. MARZANO: While you're asking, mind if 11 I take a peek at that? Or unless you're going to ask 12 him some -- 13 MR. GORDON: Well, I'm going -- 14 MR. MARZANO: I'll get through it pretty 15 quick here. 16 BY MR. GORDON: 17 Q. Let me ask you this: Did you bring a curriculum 18 vitae? That was one of the things that we had asked 19 you for. 20 A. Yes, that should be in possibly the documents that 21 that gentleman has. 22 MR. MARZANO: I do have -- let me see. I 23 have mine I brought with me if you want to see it. 24 MR. GORDON: That would be great. 25 MR. MARZANO: Let me make sure there's not</p>

2 (Pages 5 to 8)

Walter Cygan
December 15, 2016

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<p>1 another one here. If there's one here, I'll give you 2 the one he's got. 3 THE WITNESS: Excuse me, but I don't 4 know -- you represent Mr. Brown. But I don't know -- 5 MR. GORDON: Yes. 6 THE WITNESS: -- who the other gentlemen 7 represent. 8 MR. DAOUDI: This is Mr. Mark Williams. He 9 represents Kathleen Scola. 10 THE WITNESS: Okay. 11 MR. DAOUDI: The mother. This is 12 Mr. Robert Marzano. He represents Chase Bank. 13 THE WITNESS: Okay. 14 MR. DAOUDI: And Mr. Gordon represents the 15 Estate of John Barrow Brown. 16 THE WITNESS: Yeah. 17 MR. GORDON: This was not yours. It was 18 his. This was the witness's. Is that right? 19 MR. MARZANO: That was the witness's. 20 That's correct. That was the documents you handed to 21 me. 22 MR. GORDON: Okay. I'm going to go ahead 23 and mark this as Exhibit 1, if I may. 24 BY MR. GORDON: 25 Q. Do you have any problem if I mark your CV, sir?</p>	<p>1 Q. And what year did you get the certificate from Detroit 2 College of Applied Science? 3 A. I think it was approximately 1957. 4 Q. Okay. And then besides -- is that a university or a 5 college? 6 A. No. It's a technical school. 7 Q. Technical school? Is that still in existence? 8 A. No. 9 Q. And then besides Catholic Central and the Detroit 10 College of Applied Science, do you have any other 11 formal education? 12 A. No. 13 Q. You're not a -- well, let me ask you this: The 14 certifications that you've identified, certified 15 safety professional and a registered professional 16 engineer. Are you a licensed engineer here in the 17 State of Michigan? 18 A. I'm a licensed engineer, but not by the State of 19 Michigan. 20 Q. Okay. 21 A. I'm licensed by the States of California and 22 Massachusetts. 23 Q. Okay. And when did you become licensed by California 24 and Massachusetts as an engineer? 25 A. I believe California was first in the '70s, and I</p>
Page 10	Page 12
<p>1 THE WITNESS: No. 2 MARKED FOR IDENTIFICATION 3 DEPOSITION EXHIBIT 1 4 (Curriculum Vitae) 5 1:26 p.m. 6 BY MR. GORDON: 7 Q. All right. So I've marked as Exhibit Number 1 your 8 curriculum vitae. And is this up-to-date as of like 9 through this year, 2016? 10 A. Yes. 11 Q. Okay. And this would provide me with your education, 12 your employment? 13 A. Yes. 14 Q. All your background? I'm not seeing it here. Where 15 did you go -- tell me where you went to school. Give 16 me your -- 17 A. I went to Catholic Central High School. 18 Q. Okay. And what year did you graduate from Catholic 19 Central? 20 A. In '55, 1955. 21 Q. Okay. And did you have -- where did you go to college 22 or university? 23 A. I went to a technical school, Detroit College of 24 Applied Science. And I got a certificate in 25 production engineering from them.</p>	<p>1 believe Massachusetts came in the '90s. 2 Q. Okay. And you weren't required to have any kind of a 3 degree in engineering to be able to take, sit for 4 those exams? 5 A. That's correct. 6 Q. What did the exams consist of? Do you remember? Was 7 it -- 8 A. Well, as I recall, it was an application. I didn't 9 take an examination per se. 10 Q. For California or for Massachusetts? 11 A. That's correct. 12 Q. All right. So to be a licensed engineer in 13 Massachusetts and California, you don't have to sit 14 for a proficiency exam. You just have to make an 15 application? 16 A. For the designation that I was after, I did not, yes. 17 Q. Okay. And what is your designation? 18 A. Licensed professional engineer safety. 19 Q. Okay. I'm seeing -- this one is called registered 20 professional engineer. Is there something different? 21 Am I missing that? 22 A. Yeah, that's just another organization that certifies 23 health care safety professionals. 24 Q. Okay. Do you have any of these certifications -- I 25 see that certified diplomat, forensic engineering,</p>

3 (Pages 9 to 12)

Page 13

1 certified safety and security professional, USA. What
2 is certified safety and security professional? What
3 does that entail?
4 **A. That's another organization that certifies people.**
5 Q. Okay. And what is your certification with them?
6 **A. It's the diplomat level of the National Academy of**
7 **Forensic Engineers.**
8 Q. Okay. And did you have to take any kind of an
9 examination to get that designation?
10 **A. No. But to become a member, you have to be a licensed**
11 **PE.**
12 Q. Okay. And the licensure you're talking about is the
13 one that you got from California or Massachusetts?
14 **A. Yes, correct.**
15 Q. For any of the certifications that you have listed on
16 your curriculum vitae, did you have to successfully
17 pass any kind of a proficiency examination to earn any
18 of those designations?
19 **A. I did for the CSP.**
20 Q. Okay. Let's talk about the -- that's the certified
21 safety professional?
22 **A. That's correct, yes.**
23 Q. When did you get that designation?
24 **A. That was in the early '70s. I don't remember the date**
25 **exactly.**

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1 Q. And what was the course material for certified safety
2 professional?
3 **A. Well, I don't remember exactly how they outlined our**
4 **preparation documents, but they included areas**
5 **involving life safety, building safety, fire safety,**
6 **and I can't remember all of the others. I'm sorry.**
7 Q. Okay. I'm not finding anywhere on here a designation
8 as an accident reconstruction expert. Are you
9 certified or designated for automobile accident
10 reconstruction?
11 **A. No.**
12 Q. Okay. Did you attempt or undertake to do any kind of
13 accident reconstruction here from the automobile
14 standpoint?
15 MR. DAOUDI: In this case?
16 MR. GORDON: Yes.
17 THE WITNESS: Not reconstruction per se,
18 no.
19 BY MR. GORDON:
20 Q. Okay. We'll get into that in just a minute in terms
21 of what exactly you did.
22 I see your employment, you say from 1991 to
23 the present date is with Cygan & Cygan. What is Cygan
24 & Cygan?
25 **A. That's a consulting company that I formed.**

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1 Q. Okay.
2 **A. It was me and my wife; that's why the Cygan & Cygan.**
3 Q. I see. And is that your sole source of employment and
4 income at this juncture?
5 **A. Yes.**
6 Q. Has that been the sole source of employment or income
7 since 1991?
8 **A. I'm pretty sure, yes.**
9 Q. And it's Cygan & Cygan. Tell me what you do there.
10 **A. Okay. I investigate accidents and then try to**
11 **determine the circumstances involving the accident,**
12 **identifying the hazards, the conditions of the**
13 **accident and the possible preventive measures that**
14 **would have prevented the accident from happening.**
15 Q. Okay. Now, are these accidents that you're talking
16 about, are these all car accidents or most of them
17 or --
18 **A. No. They could be different types of accidents.**
19 Q. Through the course of time from 1991 to the present,
20 how many accidents, as you put it, have you
21 investigated through Cygan & Cygan?
22 **A. I don't know. I don't think I could give you a**
23 **number.**
24 Q. Okay. More than 1,000?
25 **A. No.**

Page 16

1 Q. And out of the accidents that you investigated, are
2 you able to tell me what percentage involved car
3 accidents, automobile accidents?
4 **A. No. I couldn't break it down. I'm sorry.**
5 Q. Okay. Do you know -- and again, I don't want you to
6 guess, but you're the only one that would know. Would
7 most of the accidents that you have investigated at
8 Cygan & Cygan since 1991, would most of them be car
9 accidents or less than half? Would you be able to
10 say?
11 **A. No, I couldn't do that.**
12 Q. Okay. Some did. Some didn't. That's all you can
13 say.
14 **A. Yes.**
15 Q. But not all of them. Not all of them were car
16 accidents.
17 **A. That's correct.**
18 Q. Cygan & Cygan, let's kind of go over the last -- since
19 2000. You know, make it the last 15, 16 years.
20 **A. Okay.**
21 Q. What percentage of your time is spent involved in the
22 type of work that you're here for now, getting
23 involved in working on behalf of a party in a lawsuit?
24 MR. DAOUDI: I'm objecting. You're talking
25 about his professional time or his personal time or

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<p>1 all time, 24 hours a day or --</p> <p>2 BY MR. GORDON:</p> <p>3 Q. Well, let's start out with the professional time, and</p> <p>4 then we'll work back to the 24 hours. I'm talking</p> <p>5 about the time that you worked at Cygan & Cygan from</p> <p>6 2000 till now.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. What percentage of your time with Cygan & Cygan</p> <p>9 over that time frame, over the last 15 or 16 years,</p> <p>10 has been involved with being involved in what you're</p> <p>11 doing in this case?</p> <p>12 A. My professional time would have been 100 percent.</p> <p>13 Q. Okay. So 100 percent of what you do is getting</p> <p>14 involved as an expert in lawsuits.</p> <p>15 A. And accident cases, yes.</p> <p>16 Q. Okay. And out of that time, what percentage of the</p> <p>17 100 percent have you -- just so that we're clear, and</p> <p>18 I'm sure you know this, but in this case you've been</p> <p>19 employed to do some work for Mr. Daoudi's client who's</p> <p>20 the plaintiff; right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And my client is the person getting sued who's</p> <p>23 the defendant; right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. What percentage out of that 100 percent, what</p>	<p>1 THE WITNESS: Okay. Thank you. It looks</p> <p>2 like it's mine. I wouldn't normally say that that's</p> <p>3 exactly the way I would have developed it, but that</p> <p>4 was done by a developer or a company that helped me</p> <p>5 place it on that site.</p> <p>6 BY MR. GORDON:</p> <p>7 Q. Do you know the name of the company that did the</p> <p>8 website for you?</p> <p>9 A. No, I don't. I'm sorry.</p> <p>10 Q. But you've looked at the website, and the information</p> <p>11 on there is accurate?</p> <p>12 A. Reasonably accurate, yes.</p> <p>13 Q. I'm curious. One of the things that you note here in</p> <p>14 your website is that you're named uniquely qualified</p> <p>15 by the Michigan Court of Appeals.</p> <p>16 A. Yes.</p> <p>17 Q. Can you share with me the context with respect to how</p> <p>18 that endorsement was made by the Court of Appeals?</p> <p>19 A. Well, I had a case involving a store where a person</p> <p>20 fell at the end of the display rack, and that case</p> <p>21 reached the Court of Appeals, I guess. And they</p> <p>22 reviewed that case and also made that -- that was one</p> <p>23 of the statements that they made in that case.</p> <p>24 Q. Okay. Have you ever had any cases reach the Court of</p> <p>25 Appeals where the Court had decided not to qualify you</p>
Page 18	Page 20
<p>1 percentage of your time over the last 15 years has</p> <p>2 been involved in reviewing cases and getting involved</p> <p>3 on behalf of the plaintiff?</p> <p>4 A. I would say the plaintiff cases would be 90 to</p> <p>5 95 percent, and the balance would be defense cases.</p> <p>6 Q. Do you hold any state license here in the State of</p> <p>7 Michigan, one that was issued by a department or</p> <p>8 branch of the State of Michigan? Other than a</p> <p>9 driver's license.</p> <p>10 A. When you say state license, what do you mean?</p> <p>11 Q. State license or certification, a professional</p> <p>12 engineering license here from the State of Michigan, a</p> <p>13 license to be a physician, any license that the State</p> <p>14 might give you.</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 A. I can't think of any, no.</p> <p>18 Q. Now, I note that -- I had an opportunity to look on</p> <p>19 your website. Let me just show you this. Because</p> <p>20 this didn't really print out very well, but this is</p> <p>21 what I printed off the internet.</p> <p>22 Do you recognize that as -- and there's</p> <p>23 four pages. Do you recognize that as being your</p> <p>24 website, sir?</p> <p>25 MR. DAOUDI: You can go through it.</p>	<p>1 or admit you as an expert?</p> <p>2 A. Not to my knowledge, no.</p> <p>3 Q. Are you familiar with -- did you do any work on a case</p> <p>4 called Thomas versus Lakeview Meadows?</p> <p>5 A. I don't recall that either.</p> <p>6 Q. Okay. If I were to suggest to you that there's a case</p> <p>7 out there called Robert E. Thomas and Carolyn Thomas</p> <p>8 versus Lakeview Meadows Ltd where you were excluded</p> <p>9 from being an expert at the trial court level, and the</p> <p>10 Court of Appeals affirmed or agreed with the trial</p> <p>11 court that you weren't able to be an expert in that</p> <p>12 case. Does that refresh your recollection at all?</p> <p>13 A. No, it doesn't.</p> <p>14 MR. DAOUDI: I'm going to object to the</p> <p>15 foundation of the case that you're talking about.</p> <p>16 MR. GORDON: Okay.</p> <p>17 MR. DAOUDI: And what -- you're saying a</p> <p>18 hypothetical right now without allowing him to review</p> <p>19 any documents or --</p> <p>20 MR. GORDON: Okay. Well, we got his</p> <p>21 answer. But okay.</p> <p>22 BY MR. GORDON:</p> <p>23 Q. Do you remember a case -- does that case name ring a</p> <p>24 bell at all?</p> <p>25 A. No.</p>

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<p>1 MR. DAOUDI: Relevance. There's different 2 facts in that case. Could be -- I mean, we don't know 3 what you're talking about. 4 MR. GORDON: Fair enough. 5 BY MR. GORDON: 6 Q. That case -- do you remember a case that involved an 7 icy condition on a parking lot that you thought was 8 dangerous, and the Court of Appeals determined you 9 weren't qualified to be an expert in that case? 10 A. I don't remember the aspect of the Court of Appeals. 11 Q. Okay. 12 A. But I remember several cases I had that had slippery 13 parking lots. 14 Q. Okay. Do you remember any of those cases where you 15 weren't allowed to testify as an expert? 16 A. No. 17 MR. DAOUDI: I'm going to again -- you're 18 talking about ice cases. This is not an ice case or 19 slipperiness or -- you know. 20 MR. GORDON: Well, I understand. 21 MR. DAOUDI: Okay. 22 MR. GORDON: I'm trying to understand 23 the -- I just want to clarify the representation that 24 there's some endorsement that the Court of Appeals 25 finds him as a uniquely qualified expert. And I just</p>	<p>1 THE WITNESS: Is there a date that goes 2 with that? 3 BY MR. GORDON: 4 Q. I don't know the date of your involvement. This 5 particular case was decided October 4th, 2007. It's 6 2007-WL2892965. You can -- I've got a copy in my 7 computer. You can take a look at it if you'd like. 8 That doesn't refresh your recollection? 9 A. No. 10 MR. DAOUDI: Can I take a look? 11 MR. GORDON: Yeah, go ahead. 12 BY MR. GORDON: 13 Q. And I'm not really with regard to the facts. Just 14 with respect to your representation on the internet 15 that you've been found uniquely qualified by the Court 16 of Appeals. That doesn't refresh your recollection as 17 to the fact that the Court of Appeals had found you to 18 not be qualified as an expert in some cases? 19 A. Yes. 20 Q. Okay. When were you first contacted in this case, 21 sir? 22 A. I don't remember now. It could have been a couple of 23 months ago. I don't remember the date. 24 Q. Okay. 25 A. Specifically.</p>
Page 22	Page 24
<p>1 want to kind of go through the Court of Appeals 2 history with Mr. Cygan and his experience as an expert 3 in cases. That's all. 4 MR. DAOUDI: All right. 5 BY MR. GORDON: 6 Q. Are you familiar with a case -- do you remember a case 7 you were involved in called Boehmer, B-O-E-H-M-E-R, 8 versus North Branch Food Lockers? 9 A. No, I don't. 10 Q. Okay. Do you remember -- 11 MR. DAOUDI: Same objections. 12 MR. GORDON: That's fine. 13 BY MR. GORDON: 14 Q. Do you remember in that case -- and this is John, I'm 15 pronouncing it Boehmer but however -- B-O-E-H-M-E-R 16 versus North Branch Food Lockers, Inc. 17 It was a case in which you were providing 18 some opinions with respect to the handling of cattle 19 in a slaughterhouse? Does that ring a bell? 20 A. No. 21 Q. Okay. And in that case the Court of Appeals 22 determined that you weren't qualified to act as an 23 expert when you had been proffered by the plaintiff in 24 that case. Do you remember hearing that from anyone? 25 MR. DAOUDI: Same objections.</p>	<p>1 Q. Let's do this. Are you -- 2 MR. DAOUDI: I'm just going to object to 3 the line of questioning again about these opinions and 4 findings of Court. 5 I think you're mischaracterizing the 6 opinion that he wasn't -- it says here he lacks 7 sufficient experience concerning cattle handling and 8 slaughterhouse operations, not -- and that's why he 9 couldn't give expert testimony, because he lacked that 10 part, not because it was safety or anything else. So 11 I'm not sure what this is -- the relevance and -- 12 MR. GORDON: Well, let me try and speed 13 this up for you, Mike. This is a discovery-only 14 deposition. 15 MR. DAOUDI: I know. I know. 16 MR. GORDON: I will give you a continuing 17 objection. 18 MR. DAOUDI: Sure. Okay. 19 MR. GORDON: You can have -- and if you 20 think of objections tomorrow, you can call up and tell 21 me -- 22 MR. DAOUDI: I will. 23 MR. GORDON: -- and we'll contact the court 24 reporter, and we'll slip them in here. That's fine 25 with me. No problem. But whatever objections you</p>

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1 there's a copy of the police report.
2 **A. Yes.**
3 Q. Do you know when and where you got that?
4 **A. Also from Mr. Daoudi.**
5 Q. Okay. And did you rely on the information in the
6 police report at all as part of your basis for your
7 opinions in this case?
8 **A. Some of the information just for general knowledge of**
9 **the incident and a depiction of the vehicles with**
10 **respect to the bank, but that's it.**
11 Q. The next thing I've got is the City of Wayne's
12 mediation summary.
13 **A. Yes.**
14 Q. When and where did you get that from?
15 **A. Also from Mr. Daoudi. Probably all at the same time.**
16 Q. Did you review that at all?
17 **A. Yes, I did.**
18 Q. What was the purpose of reviewing that?
19 **A. Just to find out the degree of Wayne's involvement in**
20 **this case.**
21 Q. Okay. And did you rely at all on the mediation
22 summary from the City of Wayne --
23 **A. No.**
24 Q. -- in your opinions in this case?
25 **A. No.**

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1 Q. The next one is Frank Scola's case evaluation summary.
2 I take it you got that from Mr. Daoudi?
3 **A. Yes.**
4 Q. Did you rely on that at all or the information in
5 there --
6 **A. Well, if I did, one of the pages that I had brought**
7 **with my own handwriting would have identified that**
8 **so --**
9 Q. Okay. And just to kind of go through, you had the
10 deposition of Tim Robbins, Robert Puckett.
11 **A. Yes.**
12 Q. David Zuckerman.
13 **A. Yep.**
14 Q. Frank Anthony Scola. Susan Seibert (phonetic).
15 **A. Yep. These were all given to me at the same time.**
16 Q. Okay. Did you read these?
17 **A. Yes.**
18 Q. And then you've got a case evaluation summary from
19 Kathleen Scola, case evaluation summary from JPMorgan
20 Chase, National Association.
21 **A. Okay.**
22 Q. I've got a copy of the plaintiff's first amended
23 complaint. All of these materials that I just listed
24 to you you got from Mr. Daoudi; is that right?
25 **A. Yes.**

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1 Q. You got Kathleen Scola's response to JPMorgan's second
2 request for production. Did you review that?
3 **A. Yes, I did.**
4 Q. Was that at all important in the decisions and the
5 opinions that you made in case this?
6 **A. Again, if it was, it's probably in my notes.**
7 Q. Okay. So you have no notes of what --
8 **A. Yes.**
9 Q. The important things you have.
10 **A. I just don't want to be contrary about one and --**
11 Q. Not a problem.
12 **A. -- not factual about the other.**
13 Q. Okay. And then you also have the deposition
14 transcript of Kathleen Scola in your file; is that
15 right?
16 **A. Same response. Yes.**
17 Q. Okay. Yeah, the same response. So you got that from
18 Mr. Daoudi, and you did review it.
19 **A. Right.**
20 Q. Now, the notes that you have, let me see those.
21 Describe those for me.
22 **A. These are handwritten notes that I took based on the**
23 **information that I was reading.**
24 Q. Okay.
25 **A. One were some comments that I made notes about. And**

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1 **others are a little bit more specific, like comments**
2 **taken from Robbins, from Puckett, from Zuckerman, from**
3 **Kathy Scola. Also the -- my notes of Mr. Puckett and**
4 **another sheet of Mr. Robbins' testimony.**
5 Q. So your handwritten notes of what you took out of
6 these depositions that you thought was important;
7 right?
8 **A. Exactly, yeah.**
9 Q. Okay.
10 **A. The other one also of Mr. Robbins, Mr. Zuckerman. A**
11 **continuation of Mr. Zuckerman. And Kathleen Scola.**
12 **And that's it.**
13 Q. Okay. So those are all -- let me see that real quick.
14 **A. Yep.**
15 Q. I'm counting ten pages of yellow handwritten notes.
16 Is that what we've got here, sir?
17 **A. I didn't, I didn't count them. I don't know.**
18 Q. Let's just count them to make sure. If we're going to
19 mark one big file, that's fine with me. But I just
20 want to make sure that --
21 **A. How many pages did you say?**
22 Q. I thought there were ten. What did you count?
23 **A. That's what I counted. Ten.**
24 Q. Okay. Super. And then you've got a past due bill.
25 What's that?

8 (Pages 29 to 32)

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1 **A. Yes. That's a bill to Mr. Daoudi in September for my**
2 **time and charges on the review of these documents and**
3 **some research, photos, and developing my report.**

4 Q. Okay. Splendid. The next thing you've got, which I
5 think I've seen, is a -- looks like a two-page
6 document dated September 9, 2016. What is that?

7 **A. That's a copy of my report to Mr. Daoudi.**

8 Q. Okay.

9 **A. September 9th.**

10 Q. Of 2016?

11 **A. Yes.**

12 Q. All right. And does this document, the September 9,
13 2016 letter, this report, does this document set forth
14 all of the opinions and conclusions that you have on
15 this case?

16 **A. Yes, sir, to my knowledge.**

17 Q. Okay. When you were contacted, what were you asked to
18 do in this case?

19 **A. Well, to consider I -- the circumstances of the case**
20 **were outlined to me, and then my duties were indicated**
21 **as my consideration of the aspects of the case from a**
22 **human factors and safety standpoint as to what my**
23 **opinion would be about this case.**

24 Q. Okay. And what we see here in your September 9, 2016
25 report, is this your considerations from a human

1 there the one time that you went, what did you do?

2 **A. We looked at the premises, and we drove also the area**
3 **of where the premises were and a part of the route**
4 **that Ms. Scola would have taken when the accident**
5 **happened.**

6 Q. Let me make sure I understand you correctly. As part
7 of what you did, you looked at the premises, which
8 would be the bank --

9 **A. Yes.**

10 Q. And then you said you drove the area where the
11 premises were. Do you mean you drove inside the
12 parking lot there? Is that what you're saying?

13 **A. Yes.**

14 Q. Okay. Then you say you also drove a part of the route
15 Ms. Scola would have taken. Do I understand that to
16 mean that you would have gone for some time eastbound
17 on westbound Michigan Avenue?

18 **A. No. I was not on Michigan Avenue.**

19 Q. Okay.

20 **A. At any time.**

21 Q. Okay. So did you ever drive -- so you never drove on
22 the part of -- strike that.

23 You never drove on the road as part of your
24 investigation where the accident occurred.

25 **A. Correct.**

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1 factors and safety standpoint as to what your opinions
2 are?

3 **A. Yes.**

4 Q. Do you need -- have you asked for any other additional
5 information that you feel you need to provide your
6 full and complete set of opinions and conclusions in
7 this case?

8 **A. No.**

9 Q. Okay. So as we sit here today, you've got all of your
10 opinions and conclusions set. You don't need anything
11 else; correct?

12 **A. Correct.**

13 Q. Okay. You went to the scene, if I understand
14 correctly, one time; and that was in August of last
15 year?

16 **A. That's right, yes.**

17 Q. August actually of -- strike that. It was August of
18 this year, wasn't it? My apologies.

19 **A. Yes.**

20 Q. Okay. And how long were you at the scene?

21 **A. I don't remember time-wise. I would say approximately**
22 **an hour.**

23 Q. Who went there with you?

24 **A. Mr. Daoudi.**

25 Q. And in that approximate hour or however long you were

1 Q. Okay. Now, based upon your investigation here, just
2 kind of share with me, and you can look at your notes,
3 look at your report and tell me whatever you want,
4 what is your understanding of the facts in this case
5 that were important to your investigation and your
6 opinion?

7 **A. Well, I think for reference I'd like to be able to use**
8 **my report to Mr. Daoudi.**

9 Q. Please. Go ahead.

10 **A. Now I can't locate it. Oh, maybe that's it.**

11 Q. Here you go, sir. Is that it?

12 MR. DAOUDI: I think that is it right here.

13 MR. GORDON: Okay.

14 THE WITNESS: I'll use this one.

15 BY MR. GORDON:

16 Q. Okay. Good.

17 **A. Well, going consistently with my report, the first**
18 **item is Mr. Zuckerman having concerns about the scene**
19 **having been the same for 27 years. And also the fact**
20 **that he mentioned the condition to the branch manager**
21 **and the police department, but nothing was ever done.**

22 Q. And when you say the condition, what are you referring
23 to?

24 **A. The condition being the fact that there was no sign**
25 **directing vehicles onto that road.**

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Number 3 in K. Scola's deposition of 2/17/16. Have you seen that photograph?

A. Yes.

Q. All right. And can you tell me what that photo depicts? I mean, are you able to tell me that that's the area where you think the accident occurred that we're here about today, or do you just not know where the accident happened?

A. No. I just can't tell you by this.

MR. DAOUDI: Just for the record, the photo, because it's black and white, I think the photo was color.

MR. GORDON: Okay. If you've got a better photo, I'm happy to use it.

MR. DAOUDI: I'm sure we have -- the photo's available. What number is this, Scola?

THE WITNESS: Three.

MR. DAOUDI: We don't have one here.

BY MR. GORDON:

Q. Okay. Well, do you recognize -- let's look at Exhibit Number 2 here, sir. Do you recognize this photo? It says W. Michigan running through it. Do you recognize that as the area of West Michigan Avenue right near the bank parking lot that you went out to look at a matter of three or four months ago?

A. Well, obviously because it does say West Michigan. So I do.

Q. Okay. Let's just, for purposes of today's discussion, because all I want to do is get an orientation as to what you mean by the second lane.

A. Okay.

Q. I want you to assume that we're going to have some testimony that what I've marked here as Exhibit Number 2, which was Ms. Scola's Exhibit Number 3, is, in fact, a photograph looking westbound on Michigan Avenue in the area somewhere near this accident.

A. Okay.

Q. Now, assuming that you indicated that you believe the accident actually occurred in the second lane of traffic; correct?

A. Yes.

Q. Okay. Can you just take my pen and just draw a mark, a big X on what you think to be the second lane of traffic? I want to make sure that it's -- it's either this one or this one, I'm sure.

MR. DAOUDI: I'll just object again to the use of this document. Foundation. He doesn't know if it's the bank and --

MR. GORDON: Okay. And I guess we'll do our best lawyering to try and hook that up to people

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A. I just don't know how close the bank property would be looking at this.

Q. Okay.

A. This could be a part of it. It could be or could not be.

Q. Okay. Let me kind of see if we can look at this together.

MR. DAOUDI: He was referencing the parking lot to the left part of the page.

BY MR. GORDON:

Q. Are you able to -- I've moved this from your hand. I hope I didn't grab it. I'm sorry if I did.

A. That's okay.

Q. So you're able to -- we're seeing the same thing. As I'm looking at this photo, you're indicating that on the left side of the photo is where the bank parking lot is; correct?

A. Or could be.

Q. Could be. Okay. So looking at this photograph, you don't know -- you can't really tell if the bank parking lot is there or not in this photo. Is that what you're telling me?

A. That's correct.

Q. Okay. Do you recognize this photograph though as generally westbound, westbound Michigan Avenue?

who can identify it.

MR. DAOUDI: Right.

BY MR. GORDON:

Q. All right. Assuming that this winds up being westbound Michigan Avenue somewhere in the vicinity of the accident, the X that you've -- this lane where you put this X and drew a circle in it, that's what you mean by the second lane of traffic; correct?

A. Yes.

Q. And it's your understanding that the accident occurred, the collision between Mr. Brown and Ms. Scola occurred in the second lane of westbound Michigan Avenue; correct?

A. Yes.

Q. Okay. So assuming that we've got someone that would come in and say that this photograph is westbound Michigan Avenue somewhere in the area of the accident, you believe that the lane that you marked the X in is the lane where the collision actually took place; correct?

A. I think so.

Q. Okay. Mr. Daoudi is pointing you to something.

MR. DAOUDI: His report.

BY MR. GORDON:

Q. Your report.

11 (Pages 41 to 44)

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BY MR. GORDON:

Q. How long before the collision with Mr. Brown's car and Ms. Scola's car that you think happened in this left lane of traffic, how long was Ms. Scola actually traveling in the second lane of traffic where you marked the X before she swerved into the lane of traffic Mr. Brown was in and the collision between the two cars happened?

A. **I believe that that would have been a very short period of time, but I don't think I can give you an exact number.**

Q. Okay. You say a very short period of time. Can you tell me without speculating or guessing as to whether that was one second, two seconds, ten seconds?

MR. DAOUDI: Object to speculation.

MR. MARZANO: Join in that one.

THE WITNESS: This is only speculation

but --

BY MR. GORDON:

Q. Okay.

A. **-- I would say maybe three to five seconds.**

Q. Okay. And what do you base that speculation that you've indicated that Ms. Scola was traveling three to five seconds in the second lane of traffic before she swerved into Mr. Brown's lane of traffic?

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A. **Well, I was just considering the curvature of her vehicle at the time.**

Q. Okay.

A. **She wasn't where she wanted to be, and she continued to swerve to the right. So a swerving motion like that is something that does not take a lot of time.**

Q. Okay. Can you tell me, at the time of the collision between Mr. Brown and Ms. Scola's vehicles, can you tell me how many other vehicles were traveling westbound on Michigan Avenue in any of these other three lanes of traffic in the same direction that Mr. Brown was traveling?

A. **I can't tell you that.**

Q. Okay. Do you know if there were any other vehicles there, or would you just have to guess as to that as well?

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

Q. Did Ms. Scola testify that there were vehicles coming westbound in any of these other lanes of traffic?

A. **I don't recall that. I'd have to look at my notes.**

Q. Okay. Was that something that you incorporated into your opinions regarding Mr. Brown as to whether or not there were other vehicles in these other lanes of traffic on westbound Michigan at the time of the accident?

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A. **No.**

Q. So if I understand correctly, paragraph number two of your report, the enumerated paragraph where you say Mr. Brown, an elderly man with years of driving experience, that is an opinion or an observation that you make that's important to your opinions regarding Mr. Brown, correct, and his responsibility in this case?

A. **Yes.**

Q. All right. What do you think Mr. Brown did wrong in this case that caused the accident?

A. **Well, the first thing is that it would -- and this would just be speculation because I would surmise that he perceived something in front of him, and it didn't cause him to at least decelerate and slow down so that he could get a better perception of what was going on in front of him. And he didn't apply the brakes and continued in the same direction.**

Q. Okay. And when you say that's speculation on your part, that's -- you don't know that that happened or didn't happen; correct?

A. **That's right. Because he has passed away.**

Q. Okay. So you don't know whether or not -- you would have had to ask him if he decelerated or slowed down, and that's just a question that you'll never be able

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to answer because he's dead; right?

A. **Well, not only that, but also there was no reference made at all to skid marks.**

Q. Okay. By whom?

A. **By Mr. Brown that might have indicated his attempt to slow down or jam the brakes.**

Q. Mr. Brown didn't indicate a reference to skid marks when, sir?

A. **I'm sorry. There was no reference made about anything that could have been suggested by somebody like an officer, police officer.**

Q. Okay. Do you know if this particular police officer, Officer Puckett, went around the scene and tried to make observations to see if there were any kind of tire marks, whether they be skid marks or yaw marks?

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

Q. Okay.

A. **At this point.**

Q. So again, would it be fair to say that with respect to whether or not there were skid marks as you put it there, that you're speculating that Mr. -- that Officer Puckett would have gone and looked for the skid marks? And the fact that he didn't comment on them, means they weren't there?

MR. DAOUDI: Object to speculation.

13 (Pages 49 to 52)

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<p>1 THE WITNESS: To my knowledge at least, 2 yes. 3 BY MR. GORDON: 4 Q. Okay. And as Mr. Daoudi said, that would cause you 5 to -- you'd have to speculate to make that 6 determination; correct? 7 A. Correct. 8 Q. Okay. Because there may very well have been skid 9 marks. He just didn't observe the scene for them; 10 correct? 11 A. Yes. 12 Q. Okay. What other criticisms do you have of Mr. Brown 13 or have we covered them? 14 A. I think we covered them. 15 Q. Now, you indicated -- I'm trying to determine sort of 16 a basis, a scientific basis for your belief that 17 Mr. Brown did something wrong. 18 Do you have any documents here that you're 19 relying on in terms of what you believe Mr. Brown 20 should or should not have done that support your 21 opinion other than, you know, what Mr. Robbins said in 22 his deposition? 23 A. No, just that the understanding of driving concept 24 from my teaching of the defensive driving course of 25 the National Safety Council said that people should</p>	<p>1 A. Not per se, no. 2 Q. So you're not able to, for example, measure a skid 3 mark and determine how fast a person was going and how 4 long they'd been on the brake before the skid mark 5 starts and stops; correct? 6 A. No. 7 Q. And by the same token, even if someone was applying 8 the brakes, you still wouldn't be able to tell much 9 from a skid mark if there was a collision because the 10 collision may have stopped the process of the vehicle 11 coming to rest on its own; correct? 12 A. Yes. 13 Q. Okay. Any other criticisms or observations of 14 Mr. Brown's activities in this case in terms of his 15 fault or culpability for this accident other than what 16 you've already told me? 17 A. No. 18 Q. Okay. You referenced some driving course that you 19 were just talking about. 20 A. Yes. 21 Q. You have some documents there that talk about that? 22 A. Yes, I do. 23 Q. Okay. Thank you. And what you've shown me are two 24 pages, Page 35 and 34, which is Number 7, Driving 25 Quest. And that's from what publication?</p>
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<p>1 recognize the hazard, understand the defense, and act 2 correctly in time. 3 Well, nothing that I saw or read suggested 4 that he recognized the hazard. And if he didn't 5 recognize it, then I don't think he understood the 6 defense. 7 Q. Okay. And what do you base your belief that Mr. Brown 8 didn't recognize the hazard of a car driving the wrong 9 way down the street towards him? 10 A. Just the fact that there was nothing to suggest that 11 he did anything or took any action with his own 12 vehicle. 13 Q. Okay. And when you say there's nothing to suggest 14 that he did anything or took action with his own 15 vehicle, what do you mean by that? 16 A. Nothing that I recall seeing in the police report. 17 Q. Okay. What would you have expected to see that would 18 have caused you to believe that Mr. Brown did take 19 some action as you put it? 20 A. Well, if there were skid marks, the length of the skid 21 marks would have been some indication of his efforts 22 to recognize the hazard. 23 Q. Okay. You don't have any background in accident 24 reconstruction though, in automobile accident 25 reconstruction; correct?</p>	<p>1 A. Yes, from the defensive driving course number four, 2 and it was copy-written in 1999. 3 Q. Okay. Do you know where the greatest damage location 4 was for Mr. Brown's vehicle? 5 A. From Mr. Brown's? 6 Q. Yeah. What part of his vehicle had the greatest 7 damage? 8 A. Well -- 9 Q. If you know. 10 A. Just that I would have assumed that it was frontal 11 damage. 12 Q. Okay. Well, when you say you would assume it was 13 frontal, based on the fact that one car was going 14 westbound and one car was going eastbound; right? 15 A. That's correct. 16 Q. Was it though the center front of both vehicles or was 17 it the right side front or perhaps the right quarter 18 panel of both vehicles, or do you just not know? 19 A. I don't recall at this point. 20 Q. Well, when you say you don't recall, did you know the 21 answer to that based upon something you reviewed, and 22 you just can't remember? 23 A. If I reviewed it and it was there, I might have 24 forgotten it. 25 Q. But if it was important to your opinion, you would</p>

<p style="text-align: right;">Page 57</p> <p>1 have put it in this September 9th report.</p> <p>2 A. Yes.</p> <p>3 Q. And it's not in there; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Have you seen photographs of any of the</p> <p>6 vehicles involved in this accident, sir?</p> <p>7 A. No.</p> <p>8 Q. And that wouldn't be important to your opinions;</p> <p>9 correct?</p> <p>10 A. Not at this point.</p> <p>11 Q. I'm going to kind of take a look at this. I may have</p> <p>12 a couple other questions for you, but for right now I</p> <p>13 know these other folks have some questions.</p> <p>14 A. Okay.</p> <p>15 Q. So I'm going to just pass you along.</p> <p>16 A. All right.</p> <p>17 (Off the record at 2:28 p.m.)</p> <p>18 (Back on the record at 2:41 p.m.)</p> <p>19 EXAMINATION</p> <p>20 BY MR. MARZANO:</p> <p>21 Q. Mr. Cygan, my name's Bob Marzano. I represent the</p> <p>22 bank defendants in this case, and I have some</p> <p>23 questions for you as well.</p> <p>24 A. Yes, sir.</p> <p>25 Q. Your business address, according to your curriculum</p>	<p style="text-align: right;">Page 59</p> <p>1 are a licensed professional engineer is in</p> <p>2 Ms. Massachusetts and California; correct?</p> <p>3 A. That's correct.</p> <p>4 Q. What is your date of birth?</p> <p>5 A. I'm sorry?</p> <p>6 Q. Date of birth?</p> <p>7 A. 6/30/37.</p> <p>8 Q. All right. I think you testified earlier, and I</p> <p>9 hate -- if I'm repeating some of these questions, I'm</p> <p>10 sorry. Counsel covered a lot of this.</p> <p>11 You said you received your certified safety</p> <p>12 professional designation sometime in the 1970s;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And at the time in order to get that, you took</p> <p>16 a test did you say?</p> <p>17 A. Took an examination, yeah.</p> <p>18 Q. Only one test?</p> <p>19 A. It was an eight-hour exam; that's what I recall, yes.</p> <p>20 Q. Okay. Do you have to do anything to renew that</p> <p>21 designation?</p> <p>22 A. Yes. You have to provide information for</p> <p>23 recertification.</p> <p>24 Q. How often do you need to do that?</p> <p>25 A. I believe that's once every five years.</p>
<p style="text-align: right;">Page 58</p> <p>1 vitae, is 43202 Pointe Drive, Clinton Township,</p> <p>2 Michigan 48038. Is that accurate?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What state are you a resident in, Michigan?</p> <p>5 A. Michigan.</p> <p>6 Q. Have you ever lived in the State of California?</p> <p>7 A. No.</p> <p>8 Q. Have you ever worked in the State of California?</p> <p>9 A. Yes.</p> <p>10 Q. What have you done in the State of California?</p> <p>11 A. When I was employed by Argonon Insurance Company, I</p> <p>12 was working for my company at that time, in the '80s.</p> <p>13 Q. And when was that? So between 1975 and 1986?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever provided any type of expert testimony in</p> <p>16 California?</p> <p>17 A. No.</p> <p>18 Q. Have you ever lived in Massachusetts?</p> <p>19 A. No.</p> <p>20 Q. Have you ever worked in Massachusetts?</p> <p>21 A. No.</p> <p>22 Q. Have you ever provided any expert testimony in</p> <p>23 Massachusetts?</p> <p>24 A. No.</p> <p>25 Q. And my understanding is the only two states that you</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And what do you need to provide?</p> <p>2 A. Provide them documentation of my, updating of my</p> <p>3 professional skills, documents I may have read, or</p> <p>4 professional seminars that I attended.</p> <p>5 Q. All right. Did any of those things that you provided</p> <p>6 have anything to do with parking lot construction,</p> <p>7 signage on private property, or anything that you'll</p> <p>8 be testifying to regarding the bank in this matter?</p> <p>9 A. It could have been integrated into the program, but I</p> <p>10 just don't recall specifically.</p> <p>11 Q. When is the last time you sent this information to</p> <p>12 renew your designation as a certified safety</p> <p>13 professional?</p> <p>14 A. It was probably five years ago.</p> <p>15 Q. Okay. So you're up for renewal soon?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know when?</p> <p>18 A. No, I don't.</p> <p>19 Q. Okay. As far as a certified safety and security</p> <p>20 professional. does that designation have anything to</p> <p>21 do with any of the testimony you're going to be</p> <p>22 offering today regarding the bank defendant?</p> <p>23 A. No.</p> <p>24 Q. Okay. With respect to your designation as a certified</p> <p>25 diplomat forensic engineer, does that have any -- that</p>

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<p>1 designation have anything to do with the testimony 2 you'll be offering today with respect to the bank? 3 A. It does from the standpoint of the activity of the 4 bank being involved in the community and also in 5 safety activities. 6 Q. Okay. All right. When did you first get that 7 designation? 8 A. Which one are you referring to? 9 Q. The certified diplomat forensic engineer. 10 A. Okay. That was I believe in the '80s. 11 Q. And what is a certified diplomat forensic engineer? 12 A. Well, in order to have that designation, your 13 application has to include information on your 14 licensure as a PE, which would, in my case would have 15 been California and Massachusetts. And also my 16 experience in working on accident cases on an active 17 basis, like working with claims department and people 18 related to those departments. 19 Q. But specifically, if you have that designation, what 20 is it you can do with that designation? What does 21 that set you apart from anyone else from? 22 A. Well, it just means that I have more experience in 23 those areas based on my experience and that I have 24 been active in reviewing or investigating accidents 25 with somebody like the claims department people.</p>	<p>1 Q. Okay. Have you ever taught any classes in safety? 2 A. Yes, I have. 3 Q. When's the last time you taught a class in safety? 4 A. With Madonna University. It would have been 5 approximately eight or nine years ago. 6 Q. And specifically what is it you taught? 7 A. I'm sorry? 8 Q. What did you specifically teach at Madonna University 9 eight to nine years ago? 10 A. The basic text reference was the National Safety 11 Council's Accident Prevention Manual. 12 Q. And what type of accidents did it reference? 13 A. It could have referred to employee accidents, 14 contractor accidents, on the job, away from the job. 15 Q. Okay. Do you belong to any organizations that involve 16 attorneys? 17 A. I'm sorry? 18 Q. Do you belong to any organizations that involve 19 attorneys, such as the Michigan Association of Justice 20 or anything like that? 21 A. No. 22 Q. Have you ever spoken at any such events? 23 A. No. 24 MR. DAOUDI: What is that? 25 MR. MARZANO: The same events that I just</p>
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<p>1 Q. Okay. And to get that designation, you had to file an 2 application; correct? 3 A. Yes. 4 Q. Did you have to take any test at all? 5 A. I don't recall. 6 Q. Why is it that you do not have a PE or professional 7 engineering license in the State of Michigan? 8 A. I don't know. I -- it never came to me. 9 Q. Does the State of Michigan require testing for that 10 type of license, if you know? 11 A. I don't know. 12 Q. Okay. How often do you have to renew your certified 13 diplomat forensic engineer designation? 14 A. I believe that's once every three or five years. 15 Q. When's the last time you did it? 16 A. That was recent. 17 Q. How recent? 18 A. Probably a couple months ago. 19 Q. What did you have to do to do that? 20 A. I'm sorry? 21 Q. What did you have to do to renew that designation a 22 couple months ago? 23 A. I believe I just sent my fee for renewal indicating 24 with verification that I am still active in the safety 25 area.</p>	<p>1 referenced in my previous question. 2 MR. DAOUDI: Michigan Association of 3 Justice? 4 MR. MARZANO: Any events that involved 5 attorneys that he's aware of. 6 BY MR. MARZANO: 7 Q. The answer's no? 8 A. Correct. 9 Q. Okay. How many employees are employed at Cygan & 10 Cygan? 11 A. I'm the only one now. 12 Q. Have you ever consulted with any person or entity 13 outside the field of litigation with regard to 14 directional science on private property? 15 A. Well, while I worked for Meadowbrook Insurance Group, 16 we insured municipalities. And I made recommendations 17 to the municipalities about certain conditions that 18 presented possible hazardous conditions or exposures 19 to them. 20 Q. Did you ever consult with anyone though concerning 21 private property, not municipal property? 22 A. There were some situations where there was private 23 property involved, and so we generated some 24 documentation suggesting to them that they resolve 25 their issues.</p>

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<p>1 Q. What do you mean by that? Will you please be more 2 specific? 3 A. Well, they had some -- 4 MR. MARZANO: Off the record for just one 5 second. 6 (Off the record at 2:50 p.m.) 7 (Back on the record at 2:51 p.m.) 8 (The requested portion of the record was 9 read by the reporter at 2:51 p.m.) 10 THE WITNESS: People had allowed some of 11 their trees and flowers to create a blind spot at a 12 corner, and so we asked them that they try to remove 13 some of that or trim that so it removes the aspect of 14 a blind spot. 15 BY MR. MARZANO: 16 Q. How about have you consulted though in any type of 17 private property type situation with one-way signs or 18 directional signs at all? 19 A. I don't believe so. 20 Q. Okay. Have you ever given testimony or been asked to 21 give testimony in a litigated case involving one-way 22 signs or directional signs similar to the case we're 23 in today? 24 A. Not that I recall. 25 Q. Okay. Have you ever had anything to do -- have you</p>	<p>1 MR. DAOUDI: That's fine. 2 MR. MARZANO: And if I could request, I 3 don't need it today, a copy of that when you can get 4 it me. 5 MR. DAOUDI: The file? 6 MR. MARZANO: Yeah. 7 MR. DAOUDI: You want to send it to like a 8 copy service or something? 9 MR. MARZANO: I trust that you're not going 10 to take anything out of there. It's up to you. 11 MR. GORDON: That would make a lot of 12 sense. 13 MR. DAOUDI: How about this: The stuff 14 that is already -- that I just, you know, copied 15 already, I will say this was included, like a copy of 16 the amended complaint, copy of the deposition 17 transcripts. 18 MR. MARZANO: That's fine. You can send me 19 an inventory with what's not being produced. I don't 20 need Wayne's -- 21 MR. DAOUDI: Right. His ten pages of 22 handwritten notes, you know, we'll scan them and send 23 them out. 24 MR. MARZANO: Perfect. 25 MR. DAOUDI: Anything that you don't have</p>
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<p>1 ever worked at a bank before? 2 A. No. 3 Q. Okay. Have you ever assisted with a design of a 4 parking lot before? 5 A. No. 6 Q. How much money are you charging today for your 7 testimony per hour? 8 A. For the first two hours it's \$500. 9 Q. Per hour? 10 A. No. 11 Q. Okay. Total? 12 A. That's the first two hours. 13 Q. Okay. 14 A. And then after that it's \$200 an hour. 15 Q. Apart from Mr. Daoudi, have you spoken with anyone 16 else as a part of your investigation into this matter? 17 A. No. 18 MR. MARZANO: And I don't know if we've 19 done so; but if we have not, I'd like to mark 20 Mr. Cygan's file. I believe it will be Exhibit -- 21 COURT REPORTER: 3. 22 MR. MARZANO: 3? Counsel, do you have any 23 objection to that? I'm not saying it's admissible 24 evidence. I'm just saying we're going to mark it for 25 purposes of identification.</p>	<p>1 already, and I'll itemize otherwise. 2 MR. MARZANO: Fair enough. 3 MARKED FOR IDENTIFICATION: 4 DEPOSITION EXHIBIT 3 5 (Report) 6 2:54 p.m. 7 BY MR. MARZANO: 8 Q. Mr. Cygan, have you consulted with any type of 9 resources regarding your opinions pertaining to the 10 bank today? 11 A. Say that again. 12 Q. Sure. Have you consulted with any type of resources 13 with regard to your opinions pertaining to the bank 14 today? 15 A. I don't believe so. 16 Q. Okay. And you said you've been to the site of where 17 you believe the accident took place or in the general 18 vicinity one time; correct? 19 A. Yes. 20 Q. Okay. And you told us that your investigation at the 21 scene included driving around in a car where the 22 alleged incident took place or somewhere in that 23 vicinity on the bank property; correct? 24 A. Yes. 25 Q. Did you ever get out of the car and walk around at</p>

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<p>1 all?</p> <p>2 A. Yes, I believe we did.</p> <p>3 Q. And did you take any pictures at all?</p> <p>4 A. I took two pictures, but it wasn't on the bank</p> <p>5 property.</p> <p>6 Q. What did you take two pictures of?</p> <p>7 A. I thought I had them here somewhere. One picture was</p> <p>8 of a sign on the -- on Michigan Avenue that contained</p> <p>9 a one way -- a stop sign and a no right turn sign.</p> <p>10 And the other one was a picture at the post office</p> <p>11 with an arrow indicating direction.</p> <p>12 Q. Going back to the first photograph you said you took</p> <p>13 of all those signs, was that on private property?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. Do you recall the name of the place you took</p> <p>16 the picture of, the first one?</p> <p>17 A. No. I'm sorry.</p> <p>18 Q. Do you know if that business and those signs were in</p> <p>19 existence on June 23rd of 2003? I'm sorry. June 27th</p> <p>20 of 2003.</p> <p>21 A. I don't know that for a fact.</p> <p>22 Q. And do you know if the post office was there on June</p> <p>23 27th of 2003?</p> <p>24 A. I don't know that either.</p> <p>25 Q. Did you observe any businesses when you went out</p>	<p>1 A. Yeah, and my experience in the safety field.</p> <p>2 Q. Okay.</p> <p>3 A. And human factors.</p> <p>4 Q. We'll get to that in a second. Do you hold yourself</p> <p>5 out to be an expert in the area of parking lot design?</p> <p>6 A. That might depend on the specific nature of the issue.</p> <p>7 Q. Okay. Well, let's cut to the chase. Do you hold</p> <p>8 yourself out to be an expert in the area of parking</p> <p>9 lot signage?</p> <p>10 A. Well, I would a bank parking lot signage, yes.</p> <p>11 Q. What makes you an expert as far as bank parking lot</p> <p>12 signage is concerned?</p> <p>13 A. Because of what I have seen at the bank involved in</p> <p>14 this case.</p> <p>15 Q. So based upon your involvement in this case, you now</p> <p>16 believe you're an expert in that area.</p> <p>17 A. At this point, yes, about those specific issues.</p> <p>18 Q. Okay. And what is it specifically that has changed</p> <p>19 you from not being an expert in this area to now being</p> <p>20 an expert in this area since being involved in this</p> <p>21 case?</p> <p>22 A. Well, I'm going to Item Number 5 in my report.</p> <p>23 Q. Okay.</p> <p>24 A. That the bank had no warning signs for exiting</p> <p>25 drivers, like stop, wrong way arrows, and no right</p>
<p>1 there, private businesses, that did not have any</p> <p>2 directional signs on that property besides the bank?</p> <p>3 MR. DAOUDI: I'm just going to --</p> <p>4 relevance.</p> <p>5 THE WITNESS: I believe there were some,</p> <p>6 but I don't remember specifically which there were.</p> <p>7 BY MR. MARZANO:</p> <p>8 Q. Okay. You didn't take pictures of those properties,</p> <p>9 did you?</p> <p>10 A. No.</p> <p>11 Q. All right. Are there any papers, e-mails, videos or</p> <p>12 anything else related to any of your opinions</p> <p>13 pertaining to the bank in this matter that are not</p> <p>14 contained within your file?</p> <p>15 A. No.</p> <p>16 Q. Okay. Are there any written standards that you will</p> <p>17 be referencing with respect to your opinions in this</p> <p>18 matter as far as the bank is concerned?</p> <p>19 A. None that I -- no.</p> <p>20 Q. Are you aware of any standards that would be</p> <p>21 applicable to any of your opinions that you'll be</p> <p>22 rendering in this matter with respect to the bank?</p> <p>23 A. I'm not.</p> <p>24 Q. Okay. Am I correct in saying then that your opinions</p> <p>25 in the bank are basically based upon your opinions?</p>	<p>1 turn sign. This would have given an important visual</p> <p>2 cue to exiting drivers to avoid turning right.</p> <p>3 This common sense effort, while not a law</p> <p>4 code or ordinance, was not a surprise to the bank per</p> <p>5 Mr. Zuckerman's efforts. The bank should have</p> <p>6 considered the gravity of these many warnings and</p> <p>7 acted on them.</p> <p>8 The safety staff of the bank should have</p> <p>9 considered this an integral part of the bank's safety</p> <p>10 responsibility to their customers. The added feature</p> <p>11 would be a curved painted arrow on the pavement</p> <p>12 leading in the correct direction.</p> <p>13 Q. Okay. So based upon what you've just told me,</p> <p>14 essentially your observations, you now feel you're an</p> <p>15 expert in this area; correct?</p> <p>16 A. About those issues, yes.</p> <p>17 Q. Is there anything else that you believe qualifies you</p> <p>18 as an expert as to parking lot signage in this case</p> <p>19 apart from what you've just told me?</p> <p>20 A. No.</p> <p>21 Q. Okay. Are you claiming that the bank violated any</p> <p>22 written standards or other standards for that matter</p> <p>23 in this case?</p> <p>24 A. No. I believe I stated that there's -- that it would</p> <p>25 have been prudent for the bank to do that.</p>

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<p>1 Q. Okay. Well, we'll get to that in a second. Is there</p> <p>2 any scientific basis for your opinion regarding your</p> <p>3 criticisms of the bank in this matter?</p> <p>4 A. Any scientific?</p> <p>5 Q. Basis, yes. Is there any scientific basis for your</p> <p>6 opinion as to the bank in this matter? I mean, is</p> <p>7 there any type of science you're relying upon to come</p> <p>8 up with --</p> <p>9 MR. DAOUDI: The opinions in the report?</p> <p>10 MR. MARZANO: Yeah. Well, I mean, if he</p> <p>11 said scientifically here's what I've come up with,</p> <p>12 that's what I'm looking for.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. MARZANO:</p> <p>15 Q. Okay. Have you spoken with anybody who's assisted you</p> <p>16 in forming your opinions in this matter?</p> <p>17 A. No.</p> <p>18 Q. And is there any authority that you're aware of to</p> <p>19 support your opinions in this matter other than of</p> <p>20 course yourself?</p> <p>21 A. I don't know.</p> <p>22 Q. If you would please, for reference -- you have your</p> <p>23 report in front of you?</p> <p>24 A. Yes.</p> <p>25 Q. We've marked that as Exhibit 2, correct, or we have</p>	<p>1 presume that you're referring to Mr. Zuckerman's</p> <p>2 deposition transcript?</p> <p>3 A. Yes.</p> <p>4 Q. Is there anything else other than that for that part</p> <p>5 of the opinion you referenced? And again, I'm just</p> <p>6 asking as to that first statement.</p> <p>7 A. Yes.</p> <p>8 Q. From documents reviewed, Mr. Zuckerman indicated this</p> <p>9 scene has been the same for 27 years. And that many</p> <p>10 times he's mentioned this hazardous condition to the</p> <p>11 branch manager and the police department, but nothing</p> <p>12 was ever done.</p> <p>13 Was there anything besides Mr. Zuckerman's</p> <p>14 deposition transcript that you reviewed to come up</p> <p>15 with that statement?</p> <p>16 A. Well, I think Mr. Robbins indicated that if he did</p> <p>17 traffic -- a traffic safety survey, he would recommend</p> <p>18 the signs and arrows.</p> <p>19 Q. So you reviewed Mr. Robbins' deposition transcript as</p> <p>20 well; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree with me that he testified he was not</p> <p>23 qualified to testify with respect to signage on</p> <p>24 private property? Is that accurate?</p> <p>25 A. Would I agree?</p>
<p>1 not marked it yet?</p> <p>2 MR. GORDON: I didn't mark it, no.</p> <p>3 MR. MARZANO: Why don't we mark that as</p> <p>4 Exhibit Number 4; that way we have a reference point.</p> <p>5 MARKED FOR IDENTIFICATION</p> <p>6 DEPOSITION EXHIBIT 4</p> <p>7 (September 9, 2016 Report)</p> <p>8 3:02 p.m.</p> <p>9 BY MR. MARZANO:</p> <p>10 Q. And when you have it in front of you, let me know, and</p> <p>11 we can continue on.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. Let's start with Number 1. Number 1 states</p> <p>14 from documents reviewed, Mr. Zuckerman indicated the</p> <p>15 scene has been the same for 27 years. And then you go</p> <p>16 on to say many times he mentioned this hazardous</p> <p>17 condition to the branch manager and the police</p> <p>18 department, but nothing was ever done. Am I correct</p> <p>19 in reading that?</p> <p>20 A. Yes.</p> <p>21 Q. And that is your first opinion as to the bank;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. What documents have you reviewed to make this</p> <p>25 statement? And not trying to be tricky here. I</p>	<p>1 Q. That that was his testimony?</p> <p>2 A. I'm sorry. You better repeat that again.</p> <p>3 Q. Sure. You said you reviewed Mr. Robbins' testimony.</p> <p>4 Do you recall whether or not he testified he was able</p> <p>5 to provide expert testimony regarding signage on</p> <p>6 private property in this case?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay. Is there anything else beside Robbins'</p> <p>9 deposition transcript and Zuckerman's transcript you</p> <p>10 reviewed to support that part of your opinion?</p> <p>11 A. Well, Mr. Puckett stated that it's typical. We have</p> <p>12 people going the wrong way on Michigan Avenue daily.</p> <p>13 Q. You're referring to Police Officer Puckett's dep</p> <p>14 transcript?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did he say what part of Michigan Avenue he was</p> <p>17 referring to?</p> <p>18 A. I don't believe that he has.</p> <p>19 Q. Okay.</p> <p>20 A. But that's item -- Page 24, Line 11.</p> <p>21 Q. Okay. So you relied upon the statement that Police</p> <p>22 Officer Puckett testified that he has seen people</p> <p>23 going the wrong way on West Michigan Avenue daily, but</p> <p>24 you're not sure what part of West Michigan Avenue he</p> <p>25 was talking about; is that accurate?</p>

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<p style="text-align: right;">Page 81</p> <p>1 warning or directional signs present on the property 2 of Bank One before she turned the wrong way onto 3 Michigan Avenue on June 27th of 2003, if anything? 4 A. She said the bank was the first turn that she could 5 see. 6 Q. My question though is are you aware of any evidence 7 that she actually looked to see if there were any 8 warning signs present on the bank property before she 9 turned the wrong onto Michigan Avenue on the date of 10 the accident that we're here for today? 11 A. Would you repeat that question, please? 12 Q. Sure. Are you aware of any evidence that Kathleen 13 Scola, the lady that was involved in the accident, 14 ever looked to see if there were any warning or 15 directional signs present on the bank property before 16 she turned the wrong way onto Michigan Avenue on the 17 date of the accident that we're here for today? 18 A. No. 19 Q. Would you agree with me that if one does not look for 20 directional or warning signs, whether the presence of 21 such signs exist or not really make no difference to 22 that driver? I mean, if you're not looking for 23 something, it doesn't make a difference if it's there 24 or not. 25 A. No, I don't believe that.</p>	<p style="text-align: right;">Page 83</p> <p>1 care at this point. That's not my question. 2 THE WITNESS: You might as well say that 3 again, please. 4 BY MR. MARZANO: 5 Q. Yeah. No problem. Is your testimony today that if 6 signs would have been there, you're certain that 7 Kathleen Scola would have observed them before turning 8 onto Michigan Avenue? 9 MR. WILLIAMS: Objection. Calls for 10 speculation. 11 THE WITNESS: My opinion is yes, she would. 12 BY MR. MARZANO: 13 Q. And what's that opinion based on? How would you know 14 what she would have done 13 years ago? 15 A. Mainly because people are acclimated to standard or 16 often seeing signs like for railroad crossing, stop 17 signs, or going in a different direction or not making 18 a turn. 19 Q. But how can you tell me what one person would have 20 actually done on a certain date? I mean, would you 21 agree with me that you have to some degree guess as to 22 whether she would have done that or not? 23 I know what generally people would have 24 done, but how can you tell me what one person would 25 have actually done on a certain date?</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. Why not? 2 A. Because people with some, some knowledge of signage 3 are accustom to responding to directions or signs that 4 give them directions. So if they were there, she 5 would have noticed it. 6 Q. Well, you're guessing at that part; correct? 7 A. No. 8 Q. That she would have noticed. 9 A. That's from my experience. 10 Q. So your experience is that Kathleen Scola, though not 11 looking for signs on June 27th of 2003, would have 12 seen signs if they were there? 13 MR. DAOUDI: I'm going to object. I think 14 that's a mischaracterization of -- 15 MR. MARZANO: Well, that's why I'm asking 16 him. 17 MR. DAOUDI: -- Kathleen Scola's 18 deposition. 19 MR. MARZANO: Well, I'm asking him -- 20 MR. DAOUDI: But, I mean, you're asking 21 him -- 22 MR. MARZANO: -- if his testimony is if 23 signs were there, she would have seen them and he 24 knows that for a fact. That's what I'm asking him. 25 Whether she said she did or not, I don't</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Because that's what people do. 2 Q. Okay. Have you ever met Kathleen Scola? 3 A. No. 4 Q. Never spoken with her before? 5 A. No. 6 Q. Are you aware of anybody ever that's ever ignored 7 directional signs and done something the opposite way? 8 MR. DAOUDI: Purposely? 9 BY MR. MARZANO: 10 Q. Purposely or negligently. Either way. 11 A. No. 12 Q. No? You ever seen anybody run a red light? 13 A. I don't recall. 14 Q. You don't recall in your entire life if you've ever 15 seen someone run a red light? 16 A. Yes. 17 Q. Have you ever run a red light? 18 A. No. I'm sorry. I did. I did. 19 Q. Okay. 20 A. I was a police reserve at the time. 21 Q. Okay. So you did see somebody actually not follow a 22 directional warning sign. 23 A. Yes. 24 Q. Okay. 25 MR. DAOUDI: Object to relevance.</p>

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1 MR. MARZANO: Noted.
2 BY MR. MARZANO:
3 Q. Are you aware that there were warning signs at the
4 intersection of Wayne Road and Michigan Avenue clearly
5 stating that Michigan Avenue was a one-way street on
6 the date of this incident?
7 A. Yes.
8 Q. And are you aware that Kathleen Scola drove through
9 that intersection of Wayne Road and Michigan Avenue
10 only a few seconds before deciding to cut through the
11 Bank One's parking lot to get to Michigan Avenue?
12 A. Yes.
13 Q. Are you aware of whether or not she made an
14 observation of those directional warning signs as she
15 was driving through the intersection?
16 A. I believe she stated she had no reason to expect
17 signage.
18 Q. But it was there; correct?
19 A. Yes.
20 Q. And she didn't notice it, did she?
21 A. Right.
22 Q. I'm correct in saying that?
23 A. Yes.
24 Q. Okay.
25 MR. DAOUDI: I'm going to object that he

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1 wasn't there, and it's speculation.
2 MR. MARZANO: Well, it's no more
3 speculative than him saying what she would have done
4 on the day where he wasn't there either. So I'll tell
5 you what. You want to agree on both?
6 MR. DAOUDI: I'm not agreeing. I'm just
7 saying it's speculation.
8 MR. MARZANO: All right. I think his
9 testimony is what it is.
10 BY MR. MARZANO:
11 Q. Would you agree with me, Mr. Cygan, that there is no
12 law, code, or ordinance that required the bank to
13 place the warning or directional signs that you've
14 recommended on its private property on June 27th of
15 2003?
16 A. There is a duty; but no law, code, or ordinance.
17 Q. Okay. And is it your opinion that whether or not
18 signs should be placed is a matter of common sense,
19 like you stated in your report here? I just want to
20 make sure I understood that right. And I'm referring
21 to opinion number five, where it says this common
22 sense effort, while not a law, code, or ordinance, was
23 not a surprise to the bank per Mr. Zuckerman's
24 efforts. I read that correctly. Yes?
25 A. Yes.

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1 Q. When you refer to Mr. -- I'm sorry. Going back, would
2 you agree then, that's a common sense issue?
3 A. Yes.
4 Q. Okay. When you refer to Mr. Zuckerman's efforts as
5 stated in that paragraph 5, prior to the date of the
6 accident, are you referring to the times he had
7 mentioned it to the bank before the accident? Is that
8 what you mean by that? I assume you're not referring
9 to after the accident.
10 A. Could you state that again?
11 Q. Sure. And I apologize. In paragraph 5 you say as
12 per -- I'm sorry. You say the common sense effort --
13 this common sense effort, while not a law, code, or
14 ordinance, was not a surprise to the bank per
15 Mr. Zuckerman's efforts.
16 Are you referring there to the report or
17 reports Mr. Zuckerman allegedly made to the bank
18 before this accident?
19 A. Would you mind terribly -- I'm sorry.
20 Q. No, not at all.
21 A. Repeating it?
22 Q. Sure. And I'll see if I can make it a little easier
23 to understand.
24 You agree that that sentence I just read is
25 what's in your report; correct?

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1 A. Yes.
2 Q. What I'm trying to figure out is when you say per
3 Mr. Zuckerman's efforts, are you -- his efforts you're
4 referring to the time or times he reported to the
5 branch manager of the bank before this accident what
6 he observed. Is that accurate?
7 A. Well, the aspect of the condition was there all of
8 those years, regardless of what Mr. Zuckerman may have
9 stated or not stated. Okay?
10 Q. But your statement here, per Mr. Zuckerman's efforts,
11 I'm just asking what you mean by that. I assume you
12 mean by his reports to the branch manager; correct?
13 Or is -- I just want to make sure I understand what
14 that means.
15 A. If you're referring to common sense effort being
16 responsible to all people, yes.
17 Q. Well, you said per Mr. Zuckerman's efforts. What do
18 you mean by that?
19 A. Well, more importantly because of his efforts, he made
20 it known to the bank.
21 Q. So his reporting to the bank; correct?
22 A. Yes.
23 Q. Okay. That's all I was trying to figure out.
24 A. The fact that he went out of his way more than once.
25 Q. Would you know if he went out of his way more than

22 (Pages 85 to 88)

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<p>1 once before the accident?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Do you know if he went out of his way more than once</p> <p>4 before the accident?</p> <p>5 A. Well --</p> <p>6 Q. Because I think you told me earlier you weren't sure.</p> <p>7 Let me ask you this a different way. Is</p> <p>8 your opinion in this matter based upon your assumption</p> <p>9 that he had told the bank this more than once before</p> <p>10 the accident?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Perfect.</p> <p>13 (Off the record at 3:23 p.m.)</p> <p>14 (Mr. Williams exits the deposition at</p> <p>15 3:23 p.m.)</p> <p>16 (Back on the record at 3:23 p.m.)</p> <p>17 BY MR. MARZANO:</p> <p>18 Q. Do you know if Ms. Scola was ever a customer of this</p> <p>19 bank?</p> <p>20 A. Let me check.</p> <p>21 Q. Maybe I can help you cut to the chase. I'll represent</p> <p>22 she testified she's never been a customer of the bank,</p> <p>23 and I just -- do you disagree with that statement? Is</p> <p>24 there something you're aware of that --</p> <p>25 A. No.</p>	<p>1 signs on its property?</p> <p>2 A. No.</p> <p>3 Q. You mentioned that -- it says by design, the bank's</p> <p>4 vehicle drive-thru system encourages more vehicle</p> <p>5 activity than a non-vehicle system per day. Do you</p> <p>6 see that in your report?</p> <p>7 A. No. Where are you?</p> <p>8 Q. I'm referring to -- if you go to Page 2 under opinion</p> <p>9 number six, it talks about the City of Wayne.</p> <p>10 A. Okay.</p> <p>11 Q. The last line on the next paragraph says by design,</p> <p>12 the bank's vehicle drive-thru system encourages more</p> <p>13 vehicle activity than a non-vehicle system per day.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Did Kathleen Scola drive through the</p> <p>17 bank's drive-thru on June 27th of 2003?</p> <p>18 A. Well, she drove through bank property.</p> <p>19 Q. Did she drive through the drive-thru is my question.</p> <p>20 A. I'm going to have to check again. Well, that's still</p> <p>21 considered bank property though, isn't it, regardless?</p> <p>22 Q. I'm just asking if she drove through the drive-thru or</p> <p>23 not that day, if you know.</p> <p>24 MR. DAOUDI: I'm objecting to vague.</p> <p>25 BY MR. MARZANO:</p>
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<p>1 Q. Okay. Is there any type of manual or publication that</p> <p>2 you're aware of that would state that on June 27th of</p> <p>3 2003 that warning signs or directional signs were</p> <p>4 required to be on private property such as the bank at</p> <p>5 issue in this matter?</p> <p>6 A. Not to my knowledge, no.</p> <p>7 Q. All right. Going to some of the other statements made</p> <p>8 in here. This is more of in the paragraph section of</p> <p>9 your opinion.</p> <p>10 You state Mr. Puckett testified that it was</p> <p>11 typical to have wrong-way drivers on Michigan Avenue</p> <p>12 daily. Again, I think we've established you're not</p> <p>13 sure what part of Michigan Avenue Officer Puckett was</p> <p>14 referring to; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that Officer Puckett testified</p> <p>17 that there was no requirement that Bank One or the</p> <p>18 bank -- we'll just refer to it as the bank -- placed</p> <p>19 any warning signs or directional signs on its</p> <p>20 property? Are you aware of his testimony to that</p> <p>21 effect?</p> <p>22 A. Say that again, please.</p> <p>23 Q. Sure. Are you aware that Officer Puckett testified</p> <p>24 during his deposition that there was no requirement</p> <p>25 that the bank place any warning signs or directional</p>	<p>1 Q. Let me see if I can be more specific. Are you aware</p> <p>2 of any evidence that Kathleen Scola, on June 27th of</p> <p>3 2003, drove through the drive-thru lane of the then</p> <p>4 existing bank?</p> <p>5 MR. DAOUDI: I object to that and</p> <p>6 mischaracterization of the facts. I don't want to put</p> <p>7 words more -- if you want me to, I can. I stated my</p> <p>8 objection. I see the look on your face, but I don't</p> <p>9 know if you want me to explain --</p> <p>10 MR. MARZANO: There's no look on my face.</p> <p>11 I'm just waiting for an answer.</p> <p>12 MS. GRUBER: Can he look at a picture?</p> <p>13 THE WITNESS: Couldn't that have been</p> <p>14 construed as a drive-thru lane?</p> <p>15 BY MR. MARZANO:</p> <p>16 Q. What do you consider the drive-thru of the bank to be?</p> <p>17 Maybe we're talking about two different things. I'm</p> <p>18 referring to a drive-thru in the bank. I assume you</p> <p>19 meant this, and maybe I'm incorrect, and if I am,</p> <p>20 maybe I understand this better then, the drive-thru</p> <p>21 would be where you drive through, you deposit your</p> <p>22 money, and you continue on. Is that what you're</p> <p>23 talking about? Or are you talking about the exit way</p> <p>24 of the bank?</p> <p>25 A. No. I think it would have been the exit way from the</p>

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1 Q. Okay. Are there any opinions that you've been asked
2 to render in this case that you have told Mr. Daoudi
3 or anyone for that matter that you just can't
4 remember currently?
5 A. No.
6 Q. This opinion letter dated September 9th of 2016, is
7 this your one and only draft of this letter?
8 A. Yes, sir.
9 Q. Did you ever send it to Mr. Daoudi and say here's my
10 opinions, I want you to look at them before I sign
11 this letter or author it?
12 A. No.
13 Q. Did you ever speak with him or anyone from his office
14 on the phone before rendering your opinion about what
15 your opinions were going to be?
16 A. No.
17 Q. Okay. And unless something changes in this case, I
18 presume what you've testified to today as well as your
19 September 9th, 2016 opinion letter is the full amount
20 of your opinions in this case as to the bank?
21 A. Yes.
22 Q. Okay. Just out of curiosity. Do you have any
23 criticism of Kathleen Scola in this case?
24 A. I'm sorry?
25 Q. Just out of curiosity, do you have any criticisms as

1 without having any intention of doing business in the
2 parking lot. Do you have any problem with that at
3 all?
4 A. No, because that's just a human nature thing. You try
5 to take the shortest route possible.
6 Q. Are you aware of any laws that prohibit people from
7 cutting through parking lots to avoid directional
8 signs or warning signs?
9 MR. DAOUDI: Objection.
10 THE WITNESS: Well, if they know that's the
11 specifically what they're engaged in doing, that can
12 be a violation of the driving laws.
13 BY MR. MARZANO:
14 Q. Okay. Do you keep a case list?
15 A. No.
16 Q. Have you ever?
17 A. Do I?
18 Q. Have you ever kept a case list?
19 A. No.
20 Q. Have you ever testified in federal court before?
21 A. I may have. I don't recall exactly when.
22 Q. Okay. I think I heard you testify to this, and I
23 apologize for repeating this. Do you have a degree in
24 anything?
25 A. No.

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1 to Kathleen Scola in this case?
2 A. Well, I think I said that in my report. Item
3 Number 3. She did see her predicament, applied the
4 brakes and swerved from one lane to the curb lane.
5 Her evasive measure was not sufficient to avoid
6 contact.
7 Q. Okay. Do you have any criticisms of the fact that she
8 ignored the warning and directional signs in the
9 intersection of Wayne Road and Michigan Avenue as she
10 passed through there just a few seconds before she
11 turned into the Bank One property?
12 A. Do you know how many seconds?
13 Q. No. Couldn't have been too many.
14 A. I'm sorry. Say that --
15 Q. Yeah. Do you have any criticism of the fact that she
16 did not make any observations of the fact that there
17 was a no left turn sign, two one-way signs in the
18 intersection of Wayne and Michigan Avenue as she drove
19 through the intersection just seconds before she
20 turned into the bank property?
21 A. No, I don't.
22 Q. You don't have any problem with that?
23 A. No.
24 Q. Okay. How about the fact that she was cutting through
25 a parking lot? Is that any -- to get to another place

1 Q. Okay. You mentioned that 5 to 10 percent of your work
2 was for defense attorneys?
3 A. Yes.
4 Q. Can you name any of those defense attorneys?
5 A. Fitchett and Eavenson would be one.
6 Q. Tom Fitchett?
7 A. Yes.
8 Q. When's the last time you testified or did services for
9 them?
10 A. It's been a long time because I think he retired
11 since.
12 Q. Well, he's retired all right. He's retired from life.
13 A. Oh, has he? I didn't know.
14 Q. Yeah. He died a couple years ago.
15 A. Why didn't you tell me?
16 Q. He died a couple years ago. He's a friend of mine.
17 So he retired all right.
18 A. Fredericks is also a firm.
19 Q. Anybody else you can remember besides Fitchett and
20 Fredericks?
21 A. I think I mentioned Eavenson and Fredericks. I can't
22 remember anybody else.
23 Q. When is the last time you testified or offered
24 services to a defense attorney?
25 A. Would have been Fredericks a couple months ago.

25 (Pages 97 to 100)

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1 Q. Okay. And what's Fredericks' first name?
2 A. **Teresa, I think.**
3 Q. What type of case?
4 A. **It was a stair slip and fall case inside a building.**
5 Q. Okay. Have you ever provided any testimony on behalf
6 of Mr. Daoudi or anyone from his firm, assisted him in
7 any cases?
8 A. **Have I ever?**
9 Q. I'll rephrase my question. It was a bad question.
10 Has Mr. Daoudi or his firm ever retained
11 your services other than in this case that we're here
12 for today?
13 A. **Yes, I believe one more case.**
14 Q. And when was that, if you recall?
15 A. **I can't remember when or what the case was.**
16 Q. And you don't know anything about the case either?
17 A. **No. I'm sorry.**
18 Q. Is that matter concluded?
19 A. **I don't know that for sure either.**
20 Q. Okay. And I don't mean this to be derogatory in any
21 way, but you've mentioned several times through the
22 deposition that you can't remember certain things. Do
23 you have any problems with your memory at all?
24 A. **No.**
25 Q. Okay. Are you taking any medication today that would

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1 in any way affect your memory?
2 A. **None that would affect my memory, no.**
3 Q. Okay. Those are all the questions I have, sir. Thank
4 you.
5 A. **Okay.**
6 **(Off the record at 3:40 p.m.)**
7 **(Back on the record at 3:56 p.m.)**
8 **EXAMINATION**
9 **BY MR. DAOUDI:**
10 Q. Mr. Cygan, I'm going to ask you some questions, and
11 you're still under oath. Okay?
12 A. **Okay.**
13 Q. Based on from a human factors perspective coming
14 from -- well, strike that.
15 What are your qualifications or what
16 qualifies you as an expert for human factors, to be an
17 expert in human factors?
18 A. **My experience in reviewing accident sites with claims**
19 **personnel and injured people to try to determine the**
20 **causes of accidents and the situations for**
21 **preventability.**
22 Q. Where is the CV? Here's your CV.
23 A. **Okay.**
24 Q. Is there anything else in your CV that would indicate
25 anything besides just experiences that would help

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1 qualify you as an expert in human factors, anything
2 you can list, any treatise or anything you experienced
3 or --
4 A. **Well, my work with Chrysler Corporation also dealt**
5 **with talking with plant personnel, salaried and hourly**
6 **people about their accident situations, and analyzing**
7 **and investigating the accident situations that were of**
8 **a serious nature.**
9 Q. What other training did you have besides that for
10 human factors?
11 A. **I'm sorry?**
12 Q. Any other training besides that?
13 A. **No.**
14 Q. Is there any periodicals throughout the years that
15 you've read --
16 A. **Yes.**
17 Q. -- on human factors?
18 A. **Yes.**
19 Q. You said you taught courses for safety as well?
20 A. **Yes.**
21 Q. Is human factors different than safety or is human
22 factors the same thing?
23 A. **No. Human factors goes a step further in terms of**
24 **what it is that causes people to do what they do and**
25 **for products to be designed the way they are that may**

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1 **require a possible redesign because of the ergonomic**
2 **factors involved.**
3 Q. When you made your opinions as to the defendants in
4 this case, did you base those opinions based on the
5 principles in training and experience that you've had?
6 A. **Yes.**
7 Q. So when you're making an opinion from a human factors
8 perspective as to Chase Bank for signage issues or
9 lack of, or having a wrong type of sign, do you need
10 to have a signage degree in that or is that -- is your
11 perspective from a human factors perspective?
12 MR. MARZANO: Hang on. I want to place an
13 objection to the form of the question. You can go
14 ahead and answer.
15 THE WITNESS: It's largely from a human
16 factors perspective.
17 BY MR. DAOUDI:
18 Q. And does that include safety as well or is that a
19 different perspective?
20 A. **Yes. The same consideration would apply when you**
21 **consider handrails on stairs. Most people are right**
22 **handed, and most requirements specify that the**
23 **handrail should be on the right side of the stair**
24 **going down if there's only one handrail.**
25 Q. So in terms of -- like you're not an expert in parking

26 (Pages 101 to 104)

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1 lot design; correct? You're not an expert in parking
2 lots; right?
3 A. No.
4 Q. But in terms of giving a human factors expert opinion
5 in the design of -- or can you give a human factors
6 expert opinion in conjunction with a design of a
7 parking lot?
8 A. In conjunction with a design?
9 Q. Right.
10 A. Yes, and that would include things like signage and
11 adequacy of signage and proper direction of people to
12 use for various reasons, like normal, normal egress or
13 emergency egress, which would be different.
14 Q. Is that what you used to base your opinions as to
15 Chase Bank in this matter?
16 A. Yes.
17 Q. You were asked initially by Mr. Gordon -- you were
18 going through your file, and you were looking at some
19 photos of the file and whether you used these to
20 support your opinion.
21 A. Yes.
22 Q. Do you remember those questions?
23 A. Yes.
24 Q. When you first -- as you sit here today -- well, your
25 report is September; right?

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1 A. Yes.
2 Q. September 9, 2016.
3 A. Yes.
4 Q. And that's approximately three months ago.
5 A. Yes.
6 Q. And when you drafted your report, did you read
7 everything that was provided to you prior to drafting
8 your report?
9 A. Yes.
10 Q. And did you commit everything to memory that you read
11 that was provided to you?
12 A. Not to memory, no. I made notes.
13 Q. And so when you wrote your opinions on that report,
14 was it more close in time with your -- and as you
15 took, as you reviewed the documents I provided you?
16 A. Yes.
17 Q. So if your report -- for example, you said here I
18 think something about skid marks. No skid marks for
19 Kathy Scola.
20 A. Yes.
21 Q. There was no indication of skid marks. Do you
22 remember if Kathleen Scola testified that she didn't
23 hear John Barrow Brown hit the brakes and brake?
24 A. That's correct.
25 Q. Is that where you relied on your opinion in your

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1 report that there was no skid marks?
2 A. Yes.
3 Q. So if your opinions in your report are identified
4 within the transcript or some other document that was
5 provided to you, would that have been the basis on why
6 you gave that -- rendered that opinion?
7 A. Yes.
8 Q. You made handwritten notes in this case; correct?
9 A. Yes.
10 Q. When you rendered your opinions on the September 9th
11 report, you used your handwritten notes as well;
12 correct?
13 A. Yes.
14 Q. Did you also have at that time mental impressions that
15 would help render your opinion at that time?
16 A. Yes.
17 Q. And so those aren't put down from -- into paper, are
18 they, your mental impressions? They're in your head;
19 right?
20 A. Yes.
21 Q. Okay. So those weren't reduced to writing, were they?
22 A. No.
23 Q. But at the time you used those to make your report.
24 A. Yes.
25 Q. When you rendered your opinion as to any comments as

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1 to John Barrow Brown on the date of this incident, was
2 it from a human factors perspective, your opinion?
3 Was your opinion a human factors perspective?
4 A. Yes.
5 Q. You understand the essence of this case is Ms. Scola
6 turned the wrong way on Michigan Avenue exiting the
7 bank.
8 A. Yes.
9 Q. This is part of the package that says after MVA.
10 A. Okay.
11 Q. And I'm looking at the second page of it.
12 A. Yes.
13 Q. All right. I'm going to point to this structure here.
14 Is that the bank?
15 A. Yes.
16 Q. And do you see those lanes that are here?
17 A. Yes.
18 Q. As you recall, based on your being present there, were
19 those the drive-thru lanes and the passenger lane to
20 Michigan Avenue?
21 A. Yes.
22 Q. Do you see that, it says Michigan Avenue there?
23 A. Right.
24 Q. All right. And so traffic would be going to the left
25 side of the page; correct?

27 (Pages 105 to 108)

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1 A. Correct.
2 Q. And that would be westbound, I believe.
3 A. Yeah.
4 Q. And so to the left of the -- keep going back to the
5 structure. In fact, I'm going to circle or put a --
6 I'm going to put a star and then put an arrow. I'll
7 put a dot and an arrow. That's the bank; right?
8 A. Yeah.
9 Q. Okay.
10 A. Yes.
11 Q. Do you remember -- you said you were there; right?
12 A. Yeah.
13 Q. Do you have a memory of when you were there? Today do
14 you recall?
15 A. Yes.
16 Q. Okay. When you went to this side of the bank, the
17 east side of the bank --
18 A. Yes.
19 Q. -- this traffic on all these lanes, which way -- were
20 they all one way?
21 A. Yes.
22 Q. And were they one way towards Michigan Avenue?
23 A. Yes.
24 Q. Would it be possible, remotely possible that -- I
25 think Mr. Marzano asked you traffic exiting -- coming

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1 in off Wayne Road at the drive-thru lanes here, so if
2 they came in off Wayne Road and they found themselves
3 in the drive-thru lanes, could they exit Wayne Road
4 again? I mean, how would they do that if they're in
5 one way to force out at Michigan?
6 MR. MARZANO: Counsel, before we proceed,
7 we've used drive-thru lanes in two different versions
8 here. Are you talking about the type of drive-thru
9 lane where you deposit money from your car, or are you
10 just talking about a lane you drive through to get
11 where you're going?
12 BY MR. DAOUDI:
13 Q. Well, do you remember -- they're both there so
14 they're --
15 MR. MARZANO: I'm asking which one you're
16 talking about.
17 MR. DAOUDI: Well, all of them. All going
18 direct, all the same direction.
19 MR. MARZANO: But I'm saying there's a
20 drive-thru lane when you're in it where you have to
21 deposit your money to stay in your car; that is
22 different than a parking lot lane going through the
23 parking lot. Which one are you referring to?
24 (Mr. Gordon exits the room at 4:09 p.m.)
25 MR. DAOUDI: On the east side of the

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1 building. You remember -- let me see a photo of
2 the --
3 BY MR. DAOUDI:
4 Q. I'm going to go to the last page of the same exhibit
5 after the MVA.
6 A. Okay.
7 Q. It's Exhibit 3 but part of Exhibit 3.
8 A. Yes.
9 Q. The last page of that. Do you see that image with the
10 gray car in the front here?
11 A. Yes.
12 Q. And this is the image of the driveway --
13 A. Yes.
14 Q. -- exit that Ms. Scola came through?
15 A. Yes.
16 Q. And this would be the east side of the bank building;
17 is that correct?
18 A. Yes.
19 Q. Are all these -- these covered lanes, these three
20 lanes --
21 A. Yes.
22 Q. -- are those drive-thru where you can transact
23 business with the bank?
24 A. Yes.
25 Q. And the one to the far east lane --

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1 A. Yes.
2 Q. -- is that a drive through lane, like get through
3 without having to do business where you can just -- a
4 passenger, let's call it a passenger --
5 MR. MARZANO: I'm going to object to the
6 form of these questions, but go ahead and continue.
7 THE WITNESS: Yes.
8 BY MR. DAOUDI:
9 Q. Okay. Is that a passenger lane?
10 A. Yes.
11 Q. And are all these lanes one direction?
12 A. Yes.
13 Q. What direction? Are they going towards Michigan
14 Avenue or away from Michigan Avenue?
15 A. Towards Michigan Avenue.
16 Q. And if you're committed to any one of these lanes and
17 you came in from Wayne Road initially and you find
18 yourself committed to one of these lanes, is it
19 reasonable to suggest a person could get back to Wayne
20 Road and not exit Michigan Avenue?
21 MR. MARZANO: Objection. Speculation. But
22 go ahead. You can answer.
23 BY MR. DAOUDI:
24 Q. So if you came in off Wayne --
25 A. Yes.

28 (Pages 109 to 112)

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1 Q. -- and you found yourself in any one of these lanes.
2 A. Right.
3 (Mr. Gordon enters the room at 4:10 p.m.)
4 BY MR. DAOUDI:
5 Q. Is it -- from a human factors perspective, could you
6 expect that person to try to get back to Wayne Road
7 without exiting Michigan Avenue?
8 A. No.
9 Q. And would that be more dangerous to do if they put --
10 they would have to put it in reverse; right?
11 A. Yes.
12 MR. MARZANO: Objection to the form of the
13 question.
14 BY MR. DAOUDI:
15 Q. Well, would they have to put it in reverse?
16 A. Yes, they would.
17 Q. Do you even see enough room for a turnaround? Can you
18 even turn around?
19 A. No. There's no room here for a vehicle.
20 Q. Okay. So there's no, there's no place for a car to
21 turn around and go back.
22 A. Correct.
23 Q. Based on Ms. Scola -- let me see Ms. Scola's
24 deposition. I'm going to read you part of her
25 deposition. Start at Page 48, Line 22.

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1 Question: Did you specifically look for
2 any signage before turning onto Michigan Avenue to see
3 whether it was a one-way road or any signage that may
4 have said anything.
5 Answer: I believe I saw a sign that said
6 exit and that was the only sign.
7 Question: Where was that sign located.
8 Answer: At the driveway of the bank.
9 Question: Where in the driveway.
10 Answer: On the right-hand side.
11 Question: How close to the road.
12 Answer: Within ten feet.
13 Now, I'd like you to -- do you recall
14 reading that part of the transcript?
15 A. Yes, I do.
16 Q. So she recalled seeing a sign that said exit; correct?
17 A. Correct.
18 Q. Is that what she testified to?
19 A. Yes.
20 Q. Did you rely on that for any part of your opinion?
21 A. Yes.
22 MR. MARZANO: Counsel, can you identify
23 what it is you're handing the witness to look at now?
24 MR. DAOUDI: Yeah. I'm trying to find it
25 first.

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1 MR. MARZANO: That's okay. So we know for
2 the record.
3 MR. DAOUDI: I'll be right back.
4 (Off the record at 4:13 p.m.)
5 (Back on the record at 4:18 p.m.)
6 MARKED FOR IDENTIFICATION
7 DEPOSITION EXHIBIT 5
8 (Photograph)
9 4:18 p.m.
10 BY MR. DAOUDI:
11 Q. I'm going to mark this as Exhibit Number 5, a
12 photograph, part of the response from Kathleen Scola's
13 request for production.
14 This is a photo provided by Ms. Scola, and
15 she testified that it was taken at or near the time of
16 the motor vehicle collision. Have you had a chance to
17 review this photo?
18 A. Yes.
19 MR. MARZANO: I'm going to object to the
20 form of the question. I'm not so sure that's accurate
21 testimony because those were produced after her
22 testimony was given, so she didn't identify this
23 picture as one that she took. She said she took some
24 pictures.
25 MR. DAOUDI: She identified through her

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1 response to request for production of documents, and
2 the request was for --
3 MR. MARZANO: My objection stands. You can
4 go ahead and answer.
5 MR. DAOUDI: I'm just saying the request
6 said all the pictures that were taken at that time.
7 So she responded to it.
8 BY MR. DAOUDI:
9 Q. Do you see a sign in that picture?
10 A. Yes.
11 Q. And what does that sign say?
12 A. It says exit only.
13 Q. All right. Is that consistent with that testimony
14 that Ms. Scola -- or we read just a minute ago?
15 A. Uh-huh.
16 Q. Is that a yes?
17 A. Yes.
18 Q. So from a human factors perspective, Ms. Scola
19 testified that she saw an exit sign. And there is an
20 exit sign.
21 A. Yes.
22 Q. And it says exit only.
23 A. Yes.
24 Q. Is there any other -- let me see that.
25 This is her -- a copy of her response to

29 (Pages 113 to 116)

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1 the request for production of the documents.
2 **A. Okay.**
3 Q. I'd like you to look at the photos attached that she
4 provided that she said were taken at or near the time
5 of this collision. Take a look at each one, and do
6 you see a sign in that first one?
7 **A. No, I don't.**
8 Q. Okay. The second picture, do you see a sign in the
9 second picture?
10 **A. No.**
11 Q. And do you see a -- do you see a sign in the third
12 picture?
13 **A. No, I do not.**
14 Q. And when we're talking about signs, you're talking
15 about any directional signs for traffic; right?
16 **A. Right.**
17 Q. Okay. And this is the fourth picture.
18 **A. Yeah.**
19 Q. And I think that's -- the fourth picture, do you see
20 any signage in the fourth picture?
21 **A. No.**
22 Q. And then the fifth picture? That's the same one as
23 this Exhibit 5; right?
24 **A. It is, yes.**
25 Q. All right. So the last page, which is the fifth

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1 picture of this document, that's the one that has the
2 exit only sign in it; correct?
3 **A. Yes, yes.**
4 Q. So is that exit only sign to the right of the
5 driveway?
6 **A. Yes, it is.**
7 Q. And to the left of the driveway, if we go to picture
8 number -- in fact, I'm going to number these pictures.
9 I think I'd like to mark this response --
10 well, it's part of the exhibit already, right, Exhibit
11 3? So I'm going to number the pages of the pictures
12 only. So I'm going to put pic number one, pic number
13 two, pic number three, pic number four, and pic number
14 five. Okay?
15 **A. Yes.**
16 Q. And in pic number two, is that an image out to the
17 left side of the driveway as a person would be exiting
18 onto Michigan Avenue from that spot, the driveway that
19 Ms. Scola was leaving from?
20 **A. Yes.**
21 Q. And do you see any signage at or near the time of this
22 motor vehicle accident?
23 **A. No.**
24 Q. All right. So the signage that we have, that we know,
25 according to Ms. Scola, at or near the time -- on the

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1 day of this motor vehicle accident, said exit only.
2 **A. Yes.**
3 Q. In and of itself, from a human factors perspective --
4 strike that.
5 That sign, based on the rest of this scene
6 as you seen through all those pictures, is that enough
7 from a human factors perspective to warn a person that
8 they're coming onto a one-way road?
9 **A. No, not at all.**
10 Q. Based on the scenario that Chase Bank has been there
11 for -- or had his scenario for over 27 years,
12 according to Mr. Zuckerman --
13 **A. Yeah.**
14 Q. -- would you say that there is a reasonable degree for
15 foreseeability of harm in this scenario?
16 MR. MARZANO: Objection to the form of the
17 question.
18 THE WITNESS: Yes.
19 BY MR. DAOUDI:
20 Q. Do you foresee harm if there's no signage telling
21 people that they're coming onto a one-way road?
22 MR. MARZANO: Objection to the form of the
23 question.
24 THE WITNESS: Yes.
25 BY MR. DAOUDI:

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1 Q. When you went to the Chase Bank premises on that date,
2 did you see any sign that says people who -- or
3 anything that references or anything that if you're
4 not a bank customer, you're not allowed to be on the
5 property?
6 MR. MARZANO: Hang on. Before you
7 testify --
8 THE WITNESS: No.
9 MR. MARZANO: Let me get my objections out
10 before you answer. Okay?
11 THE WITNESS: I'm sorry.
12 MR. MARZANO: What I'll do to make it
13 easier is I'll raise my hand so you know I'm coming.
14 I'm going to place an objection as to that
15 question is irrelevant. What he saw in 2016 is
16 irrelevant to the facts in this case.
17 BY MR. DAOUDI:
18 Q. So in 2016 of this year, of the month in August that
19 we went there, did you see any indication on the
20 premises of the Chase Bank that suggested that you're
21 trespassing if you're not doing business here?
22 MR. MARZANO: Same objection. Go ahead.
23 THE WITNESS: No.
24 BY MR. DAOUDI:
25 Q. Okay. And from a human factors perspective, with

30 (Pages 117 to 120)

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1 Chase Bank being at the corner premises on Wayne Road
2 and Michigan at that corner, is it in your expert
3 opinion that they would know that people would be on
4 their premises who have no business to transact with
5 them?
6 MR. MARZANO: Hang on. I'm going to place
7 an objection as to speculation as to what some other
8 person might have in their mind.
9 MR. DAOUDI: Not just other people. Just
10 general public. Would they have access to --
11 MR. MARZANO: I'm objecting to him
12 testifying what any person on the face of the earth
13 would have in their mind as speculation. I also
14 object to the form of the question.
15 MR. DAOUDI: Okay.
16 MR. MARZANO: You can go ahead and answer.
17 BY MR. DAOUDI:
18 Q. Go ahead.
19 A. No.
20 Q. From your perspective as an expert in human factors
21 perspective, when Ms. Scola turned the wrong way onto
22 Michigan Avenue, was there a degree, a certainty of
23 injury that you could, from your expert opinion,
24 attest to?
25 MR. MARZANO: Objection. Speculation.

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1 THE WITNESS: Certainty of injury?
2 BY MR. DAOUDI:
3 Q. Well, is there a, is there a likelihood, is there a
4 relationship with her going the wrong way on one-way
5 traffic that she could get injured or her passengers
6 get injured from a motor vehicle accident?
7 MR. MARZANO: Object to the form of the
8 question.
9 THE WITNESS: Well, she didn't anticipate
10 that she was going the wrong way, so she had no
11 anticipation at that point in time because she wasn't
12 in fear of anything like the wrong way.
13 And even the bank tellers never said that
14 they noticed that activity going on; that they saw
15 cars going and making wrong way turns.
16 MR. MARZANO: I'm going to move to strike
17 that testimony on the record as pure speculation.
18 MR. DAOUDI: Well, it's a discovery dep.
19 MR. MARZANO: Well, I still can make a
20 motion now, do this on the record because this witness
21 can't testify to what another person thought that he's
22 never spoken to in his life. Go ahead. Keep going.
23 BY MR. DAOUDI:
24 Q. Based on Mr. Zuckerman's testimony of his 27 years, do
25 you feel from a human perspective, human factors

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1 perspective, that a bank teller -- where the bank
2 teller window is on the east side of the building,
3 would they have a daily observation of what would
4 transpire in terms of cars exiting onto Michigan
5 Avenue?
6 MR. MARZANO: Objection. Speculation.
7 THE WITNESS: Yes, they would.
8 BY MR. DAOUDI:
9 Q. And would they have been able to, from a human factors
10 perspective, observe cars going the wrong way?
11 MR. MARZANO: Same objection.
12 THE WITNESS: Yes, definitely.
13 BY MR. DAOUDI:
14 Q. If Mr. Zuckerman could see them -- or strike that.
15 Based on a human factors perspective, based
16 on Mr. Zuckerman's location, did he have -- is his
17 testimony reasonable based -- based on where his
18 building was located and how he observed?
19 MR. MARZANO: Objection to the form of the
20 question.
21 THE WITNESS: Yes.
22 MR. MARZANO: You're asking the witness to
23 testify as to the reasonableness of another person's
24 testimony?
25 MR. DAOUDI: I'm asking his expert opinion

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1 as to --
2 MR. MARZANO: He can't testify to the --
3 MR. DAOUDI: He can testify to that.
4 MR. MARZANO: He can do whatever he wants,
5 but my objection stands. I'm sorry. Go ahead.
6 BY MR. DAOUDI:
7 Q. When you went to the premises, you saw where Leo's
8 Jewelry was.
9 A. Yes.
10 Q. Where Mr. Zuckerman testifies where he's been able to
11 observe traffic coming out of the bank the wrong way.
12 A. Yes.
13 Q. Based on Mr. Zuckerman's testimony, in relation from
14 where he's perceiving what he sees on a daily basis
15 being across the street compared to being a -- the
16 bank has a teller window facing the traffic directly
17 onsite.
18 Isn't it, from a human factors perspective,
19 the teller or the bank employees would have been able
20 to -- had to have recognized or it was foreseeable to
21 recognize this problem of cars turning the wrong way
22 on Michigan Avenue?
23 MR. MARZANO: Before you answer, I'm going
24 to object to relevance and form. This is speculation.
25 But you can go ahead and answer.

31 (Pages 121 to 124)

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1 THE WITNESS: Yes, I would.
2 BY MR. DAOUDI:
3 Q. Did you base that on -- you went there in person.
4 You --
5 A. On my visit there, yes.
6 Q. Right. As you sit here today, you've had over
7 50 years of experience in safety engineering; correct?
8 A. Yes.
9 Q. In analysis?
10 A. Yes.
11 Q. And accident investigation?
12 A. Yes.
13 Q. And that includes the human factors perspective.
14 A. Yes.
15 Q. Based on Kathleen Scola's deposition testimony and
16 part of her -- the pictures that she provided.
17 A. Yes.
18 Q. Especially Exhibit 5 showing the sign, is there a
19 defective condition created by Bank One or Chase Bank
20 in this case?
21 MR. MARZANO: Objection to the form of the
22 question.
23 THE WITNESS: Yes.
24 BY MR. DAOUDI:
25 Q. Did this sign, does this sign fail to direct or advise

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1 traffic that they're approaching -- they're entering
2 into a one-way road?
3 MR. MARZANO: Counsel, can you for the
4 record refer to what --
5 MR. DAOUDI: Exhibit 5.
6 THE WITNESS: Yes, there is.
7 BY MR. DAOUDI:
8 Q. So this sign is defective in terms of advising the
9 traffic leaving the bank --
10 A. Correct.
11 Q. -- parking lot from where Kathleen Scola left, advised
12 that the traffic was entering a one-way road.
13 A. Yes.
14 MR. MARZANO: Object to the form of the
15 question.
16 BY MR. DAOUDI:
17 Q. In your expert opinion, based on this scenario you
18 observed of these pictures from Ms. Scola's response
19 to request to produce -- well, let me ask you this:
20 The pictures that you observed in this
21 response to request to produce, and if you look to
22 today --
23 MR. MARZANO: And as to any questions that
24 pertain to today's pictures, I object as to relevance.
25 MR. DAOUDI: I'll make this Exhibit 6.

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1 MARKED FOR IDENTIFICATION
2 DEPOSITION EXHIBIT 6
3 (Photograph)
4 4:33 p.m.
5 BY MR. DAOUDI:
6 Q. Does that look like a photograph that was captured
7 near the time that you were there?
8 A. Yes.
9 MR. MARZANO: Objection. Speculation.
10 Counsel, could you lay a foundation for what
11 photograph --
12 MR. DAOUDI: He just testified that this is
13 where --
14 MR. MARZANO: I asked you if you'll lay a
15 foundation where the photograph came from because you
16 said it looks like what he saw.
17 MR. DAOUDI: That's good enough for me.
18 MR. MARZANO: All right. We're good.
19 Leave it at that.
20 BY MR. DAOUDI:
21 Q. So that photograph looks like what you saw when you
22 went to the bank in August 2016; correct?
23 A. Yes.
24 Q. And when you compare that photo to the photograph in
25 Exhibit 5 and then look at -- looking to the left side

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1 of the driveway from pic two of Ms. Scola's responses,
2 what is the difference in these photos?
3 MR. MARZANO: Before you answer, Counsel,
4 so I don't keep objecting, can I have a continuing to
5 any questions that you ask him regarding anything
6 pertaining to this bank after the date of the incident
7 as irrelevant? I won't keep interrupting.
8 MR. DAOUDI: That's fine.
9 MR. MARZANO: Okay. Thank you.
10 BY MR. DAOUDI:
11 Q. Let's start with the left side.
12 A. Okay.
13 Q. This is the left side of the bank.
14 A. Yes.
15 Q. Pic two, pic number two from Ms. Scola's response on
16 the day of the motor vehicle accident; correct?
17 A. Yeah.
18 Q. Do you see any sign on this picture?
19 A. No, I don't.
20 Q. And if you look at Exhibit 6, do you see a sign?
21 A. Yes, I do.
22 Q. Do you see a sign that actually gives information to
23 the driver exiting the bank?
24 A. Yes.
25 Q. Or is that a back of a sign or front --

32 (Pages 125 to 128)

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1 A. **That's the back of a sign.**
2 Q. So is it giving information to the driver on how to
3 exit?
4 A. **I don't think so.**
5 Q. Well, do you see any writing on it?
6 A. **No. There's the back of the sign.**
7 Q. Okay. So does it give any information to a driver
8 who's exiting on how to exit?
9 A. **No.**
10 Q. Okay. Do you see -- going back to Exhibit 5, this is
11 the right side of the driveway; correct?
12 A. **Yes.**
13 Q. And it says exit only.
14 A. **Right.**
15 Q. So if you look to the right side in Exhibit 6, there
16 is a sign there; right?
17 A. **Yes, there is a sign.**
18 Q. But it's again the only back of a sign.
19 A. **Yep. Doesn't say anything.**
20 Q. So the sign has actually changed from giving some kind
21 of direct -- exit only from language to the drivers
22 that are exiting to giving no information to drivers
23 exiting.
24 A. **Correct.**
25 Q. Based on these circumstances, do you see that the same

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1 condition -- or is it maybe worse today than for a
2 driver who's exiting the bank exists today as it did
3 back on June 27, 2003?
4 A. **Well, I would say at least the same because the sign**
5 **doesn't say anything.**
6 Q. Okay. You were asked questions by Mr. Gordon
7 regarding John Barrow Brown, and you said -- the
8 question was what did you think Mr. Barrow Brown did
9 in this case. And you said this would be speculation.
10 What did you mean by this would be speculation?
11 A. **Well, that aspect of it because Mr. Brown is no longer**
12 **there to speak for himself.**
13 Q. All right. So your opinion though based on in your
14 report, was that based on the Kathleen Scola
15 deposition?
16 A. **Yes.**
17 Q. Was it based on the deposition of Mr. Tim Robbins?
18 A. **Yes.**
19 Q. With regards to any measurements or in terms of
20 seconds or timing of motor vehicle traffic, were you
21 relying on the expertise of Mr. Robbins for those
22 figures?
23 A. **Yes.**
24 Q. You didn't calculate any figures for yourself;
25 correct?

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1 A. **No, I did not.**
2 MR. GORDON: Do you have that driving book?
3 THE WITNESS: That booklet, I didn't intend
4 for that to be available to you. Just the copies of
5 those two pages.
6 BY MR. DAOUDI:
7 Q. Have you committed Mr. Zuckerman's deposition
8 testimony to your memory today?
9 MR. MARZANO: You're referring to his
10 entire deposition?
11 MR. DAOUDI: Right.
12 BY MR. DAOUDI:
13 Q. Did you commit his whole, entire deposition to memory
14 today?
15 A. **Not necessarily, no.**
16 Q. And when Mr. Zuckerman -- if you take Mr. Zuckerman
17 out of the equation completely, his testimony and all,
18 any warning to Chase Bank, let's remove all those out.
19 Okay? Based on the pictures that Ms. Scola provided
20 and based on testimony, do you find from a human
21 factors perspective that the bank had a duty to warn
22 its patrons or public who were using their exit to --
23 that they're going onto a one-way road and there was
24 nowhere to turn?
25 MR. MARZANO: I'll place an objection to

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1 the form of the question. The witness is not allowed
2 to testify as to duty. That is a question of law to
3 be decided by a Court. But subject to my objection,
4 you can proceed.
5 BY MR. DAOUDI:
6 Q. Go ahead.
7 A. **Yes, they did.**
8 Q. And did they have a duty to the public?
9 MR. MARZANO: Counsel, if I can, without
10 having to keep interrupting you, can I have a
11 continuing objection to any duty questions you ask of
12 this witness?
13 MR. DAOUDI: Right. That's fine.
14 BY MR. DAOUDI:
15 Q. Do they have a duty to the public --
16 A. **Yes.**
17 Q. -- to warn them?
18 A. **Yes.**
19 Q. And is that duty based on the foreseeability of the
20 harm to the person leaving not knowing that they're
21 entering a one-way road?
22 A. **Yes.**
23 Q. Is it also based on that there's a reasonable degree
24 of injury if that person's going the wrong way on a
25 one-way road?

33 (Pages 129 to 132)

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1 A. Yes.
2 Q. Is there a moral blame attached to that duty?
3 MR. MARZANO: Objection. Irrelevant.
4 THE WITNESS: Yes.
5 BY MR. DAOUDI:
6 Q. Is there, from a human factors perspective, is there a
7 public policy angle of preventing future harm that
8 should be part of an analysis whether to give warning
9 or not?
10 MR. MARZANO: Objection. Irrelevant.
11 THE WITNESS: Yes.
12 BY MR. DAOUDI:
13 Q. So in other words, is there a public policy against
14 future harm that Chase Bank should today or tomorrow
15 provide signs or in August 2006 provide signs to the
16 public exiting its driveway that there could be harm
17 if you turn right against the wrong-way --
18 MR. MARZANO: Same objection.
19 THE WITNESS: Yes.
20 BY MR. DAOUDI:
21 Q. -- traffic?
22 A. Can I have that booklet?
23 MR. GORDON: Well, it's part of your file.
24 We're going to go ahead and -- you can look at it if
25 you want. It's part of Exhibit Number 3.

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1 THE WITNESS: Okay.
2 MR. GORDON: We've marked it, and we're
3 going to make copies of it. But you can look at it.
4 You don't have to ask my permission.
5 BY MR. DAOUDI:
6 Q. Based on the pictures that Ms. Scola provided,
7 Exhibit 5 and --
8 MR. GORDON: Pics 1, 2, and 3?
9 MR. DAOUDI: Yeah. Where are they?
10 MR. GORDON: I don't know.
11 BY MR. DAOUDI:
12 Q. Pics 1 through 5.
13 A. Yeah.
14 Q. These are the photos that Ms. Scola provided. So
15 based on these images, there's no signage by Chase
16 Bank that provides notice to drivers leaving through
17 that driveway that turning right would be the wrong
18 way?
19 MR. MARZANO: Objection. Asked and
20 answered.
21 THE WITNESS: That's correct.
22 BY MR. DAOUDI:
23 Q. Do you see anything that suggests that -- do you see
24 any arrows in any of those images?
25 A. No.

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1 Q. Do you see anything that suggests there was no right
2 turn?
3 A. No.
4 Q. If arrows were placed on the ground painted, what
5 would you, from a human factors perspective, expect to
6 see to provide proper information to a person exiting?
7 Straight arrows or arrows to the left or arrows to the
8 right?
9 A. Yeah. It should be arrows curved to the left so that
10 that would direct a person in the proper direction.
11 Q. From a human factors perspective, if a person is
12 driving on a road and they have no -- they come to an
13 intersection but they have no intention of turning
14 left or right on that intersection, are they -- from a
15 human factors perspective, is it reasonable that they
16 not observe every sign at that intersection?
17 A. You mean if there's nothing else giving them
18 direction?
19 Q. No. I'm saying if they have no intention of -- if
20 they're driving on a road -- like, for example,
21 Ms. Scola was driving on Wayne Road.
22 A. Yeah.
23 Q. She has no intention of turning left or right where it
24 intersects Michigan Avenue. I believe her testimony
25 was that she didn't even know it was Michigan Avenue.

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1 She was looking for Michigan Avenue --
2 A. Yes.
3 Q. -- but she did not know. And she didn't realize it
4 was Michigan Avenue, when she saw the sign that said
5 Michigan Avenue until like she was about three
6 quarters away through the intersection.
7 I think her testimony also was that she, at
8 that point she was -- it would have been impossible to
9 turn left anyhow because --
10 MR. MARZANO: Is this a question or you're
11 just explaining --
12 MR. DAOUDI: The question's coming.
13 MR. GORDON: Really? Okay.
14 MR. MARZANO: Object to form.
15 BY MR. DAOUDI:
16 Q. From that testimony, is it reasonable to expect that
17 she did not see all signs at that intersection?
18 A. Yes.
19 Q. And that's from a human factors perspective; correct?
20 A. Yes.
21 MR. GORDON: Mike, while you're looking for
22 your next question, can I ask mine or are you --
23 MR. DAOUDI: I'd rather --
24 MR. GORDON: Well, okay. I mean, you'd
25 rather --

34 (Pages 133 to 136)

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1 MR. DAOUDI: Just continue.
2 MR. GORDON: Okay. Well, so you have
3 another question then? I'll take that as a yes.
4 MR. DAOUDI: Yeah.
5 BY MR. DAOUDI:
6 Q. Based on your review of the deposition testimonies in
7 this case and your physical inspection of the bank,
8 and including Mr. Zuckerman's deposition, do you
9 believe Chase Bank had knowledge -- or actual notice,
10 I'm sorry, notice of the defective condition on the
11 date of this motor vehicle accident?
12 MR. MARZANO: Objection. Speculation.
13 BY MR. DAOUDI:
14 Q. From a human factors perspective.
15 A. Yes.
16 Q. Do you believe -- based on your observation of the
17 pictures on the date of this motor vehicle accident as
18 provided by Ms. Scola and her testimony, is it
19 reasonable, foreseeable that motor operators would
20 turn the wrong way exiting that premises?
21 MR. MARZANO: Object to the form of the
22 question.
23 THE WITNESS: Yes.
24 MR. MARZANO: You said these pictures were
25 taken on the date of the accident, and they were not.

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1 BY MR. DAOUDI:
2 Q. I'm sorry. Capturing what it looked like on the date
3 of the accident.
4 MR. MARZANO: I still object to that, too.
5 Go ahead.
6 THE WITNESS: Yes.
7 MR. DAOUDI: I can pass him. I'll pass the
8 witness to you.
9 RE-EXAMINATION
10 BY MR. GORDON:
11 Q. Sir, I have a few questions for you.
12 MR. DAOUDI: I might not be done though.
13 BY MR. GORDON:
14 Q. First of all, I'm going to show you a couple of things
15 here. You had provided me with two pages out of
16 Exhibit Number 3 --
17 A. Yes.
18 Q. -- from this book also out of Exhibit Number 3 called
19 Defensive Driving Course Four; correct?
20 A. Yes.
21 Q. Would you agree with me that that book, the defensive
22 driving course, is not something that a person such as
23 Mr. Brown or anybody else here in Michigan needs to
24 pass before legally operating a motor vehicle on a
25 public highway in Michigan as of 2003? Agreed?

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1 A. Yes.
2 Q. Okay. So in other words, I mean, Mr. Daoudi, myself,
3 other counsel, we may not have taken that course. but
4 we can go ahead and drive on the roads here in
5 Michigan --
6 A. Yes.
7 Q. -- without that. Perfectly safe and acceptable;
8 correct?
9 A. Yes.
10 Q. Okay. There's no law -- you were asked about laws,
11 codes, ordinances and so forth with respect to the
12 bank signage. You would agree that there's no driving
13 law that Mr. Brown violated at the time of this
14 accident, wouldn't you?
15 A. A law that he violated?
16 Q. Yeah. Mr. Brown didn't violate any driving law, did
17 he?
18 A. I think he did, yeah.
19 Q. Well, tell me the law he violated.
20 A. Well, what he should have observed is the danger
21 taking place in front of him; and that having
22 occurred, he should have done something different with
23 his driving, namely first thing would be to
24 decelerate, and the second thing might be to try to --
25 if it was clear for him to do it, to turn out of the

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1 way.
2 Q. Okay. Mr. Cygan, I confused you with my question.
3 And I know it's late, and I apologize. You're not an
4 expert on accident reconstruction or -- correct?
5 A. Yes.
6 Q. On motor vehicle; correct?
7 A. Yes.
8 Q. My question was not what he could have or should have
9 done. My question is this: You said that he violated
10 a law, a driving law in Michigan. True?
11 A. Yes.
12 Q. That's your testimony.
13 A. Yes.
14 Q. You're under oath. Tell me the driving law he
15 violated.
16 A. That every driver should drive in a safe and prudent
17 manner.
18 Q. Okay. And he didn't do that by driving the correct
19 way down the street that day; that was because she
20 turned -- Ms. what's her name turned in front of him
21 and went the wrong way. He was suddenly not driving
22 in a safe and prudent manner because he didn't avoid
23 the accident.
24 A. The scene changed immediately.
25 Q. Okay.

35 (Pages 137 to 140)

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1 A. Yes.
2 Q. Did Ms. Scola drive in a prudent and safe manner?
3 A. No. I said that she made an error.
4 Q. Okay. Would you consider that -- you used the term
5 moral blame. Did she have some moral blame for
6 turning the wrong way into Mr. Brown's lane of
7 traffic?
8 A. Well, if she had known that there was a moral price to
9 pay for that, she might have been more attune to that.
10 Q. Does everyone who drives -- you talked about in your
11 report avoiding unexpected hazards. Does everyone who
12 drives here in Michigan, in your opinion, should they
13 know and try to avoid unexpected hazards?
14 A. Yes.
15 Q. Does everyone know when they're going to encounter an
16 unexpected hazard?
17 A. I don't think that that's something that is by
18 definition something that they would be faced with.
19 Q. I mean, you can't really -- if you don't know what a
20 hazard is, you can't expect it, right, if you don't --
21 A. Well, if you know it's going to hurt you, you would.
22 And as a driver, maybe that's part of what your
23 responsibility should be.
24 Q. Okay. There's no scientific basis for your
25 observations regarding Mr. Brown not taking any

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1 evasive action. That's just based on common sense and
2 your experience as a driver; correct?
3 A. And practical experience. And he assumedly had
4 several years of experience as an experienced driver.
5 Q. All right. But common sense and practical experience
6 then, in other words; correct?
7 A. Yes.
8 Q. Okay. How did you get to the deposition here today in
9 Birmingham?
10 A. How?
11 Q. Yeah.
12 A. In my vehicle.
13 Q. Okay. So you drove from Clinton Township to
14 Birmingham?
15 A. Yes.
16 Q. There wasn't anything about you driving here today
17 that would be unsafe; correct?
18 A. Nothing that I'm aware of.
19 Q. Okay. I just want to ask that because I noticed you
20 refer to Mr. Brown in your report as an elderly man.
21 There's nothing unsafe about an elderly man driving on
22 the streets here in Michigan, is there?
23 A. To my knowledge, no.
24 Q. Okay.
25 A. Would you consider me elderly?

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1 Q. How old are you, sir?
2 A. I can't tell you that.
3 Q. Well, you don't look a day over 79 to me, sir.
4 A. Okay. Thanks. I gave you my birth date.
5 Q. Thank you. That's all I have.
6 RE-EXAMINATION
7 BY MR. MARZANO:
8 Q. Mr. Cygan, in any part of your investigation, did you
9 ever go inside Leo's Jewelry?
10 A. No.
11 Q. Now, is it your testimony today that it is reasonable
12 for a driver to drive through an intersection and
13 ignore warning signs that exist in that intersection?
14 MR. DAOUDI: Objection. Vague.
15 THE WITNESS: You better say that again.
16 BY MR. MARZANO:
17 Q. Is it your testimony today that it is reasonable for a
18 driver to drive through an intersection and ignore the
19 warning and directional signs contained within that
20 intersection?
21 MR. DAOUDI: Objection. Vague.
22 THE WITNESS: I don't think it is, no.
23 BY MR. MARZANO:
24 Q. You don't think that's reasonable? It would be
25 unreasonable; correct?

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1 A. Yes.
2 Q. Now, you indicated that -- let me ask you this: What
3 is your basis for the claim that it was foreseeable to
4 people using the Bank One parking lot on or before
5 June 27th, 2003, that these people would turn the
6 wrong way? What is each and every fact that you're
7 relying upon for that opinion?
8 A. Well, I think I already testified that often the
9 inclination of people when they see no traffic in
10 front of them would be to make a right turn instead of
11 a left turn. But that could also vary on quite a few
12 circumstances, namely whether they wanted to go to the
13 left or go to the right and make some other judgments
14 about why those right or left turns.
15 Q. From a human -- is there anything else? I'm sorry.
16 A. No, I don't think so.
17 Q. From a human factors perspective, would you agree with
18 me that if Kathleen Scola had looked while driving
19 through the intersection of Wayne and Michigan Avenue
20 and saw the one-way signs that existed showing that
21 Michigan Avenue was a one-way road, it would have been
22 far less likely that she would have turned the wrong
23 way onto Michigan Avenue once she drove through the
24 bank parking lot?
25 MR. DAOUDI: I'm just going to object to

36 (Pages 141 to 144)

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1 speculation. Hypothetical.
2 (Mr. Gordon exits the deposition at
3 4:57 p.m.)
4 MR. DAOUDI: And she testified that's what
5 she saw.
6 BY MR. MARZANO:
7 Q. You can still answer my question.
8 MR. DAOUDI: Thank you.
9 THE WITNESS: You said less likely?
10 BY MR. MARZANO:
11 Q. Yeah. I mean, if she would have saw the warning signs
12 going through the intersection that it's a one-way
13 road, it's less likely she was going to turn the wrong
14 way on Michigan Avenue a few seconds later after going
15 through that parking lot.
16 MR. DAOUDI: Continuing objection?
17 MR. MARZANO: Yeah.
18 MR. DAOUDI: Okay.
19 THE WITNESS: I think she realized that she
20 had gone past.
21 BY MR. MARZANO:
22 Q. My question is if she had noticed those directional
23 signs in the intersection before turning into the Bank
24 One, it said one-way road, no left turn, it would have
25 been far less likely that she would have turned the

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1 A. That's it.
2 Q. That's it?
3 A. That's the end. I don't want to say anymore.
4 Q. Well, I'll ask you a different question then. If a
5 person is driving through an intersection that says
6 that the road going east/west is a one-way road, and
7 they make a turn into a parking lot and get onto that
8 same road within a minute or less, from a human
9 factors point of view, would you expect that person
10 who saw the warning signs not to make a wrong turn
11 onto that one-way road? Assuming that they saw the
12 signs that said it was a one-way road.
13 A. In most cases, yes.
14 Q. Okay. Thank you. I have no further questions.
15 MR. DAOUDI: You know, that's the
16 hypothetical so -- and again, I have those continuing
17 objections; right?
18 MR. MARZANO: Yes.
19 MR. DAOUDI: Okay. That's it. I'm all
20 set. We're all set.
21 MR. MARZANO: Thank you.
22 (The deposition was concluded at 4:59 p.m.
23 Signature of the witness was not requested by
24 counsel for the respective parties hereto.)
25

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1 wrong way coming out of that bank; correct? From a
2 human factors point of view.
3 A. Not necessarily.
4 Q. So you would have expected, from a human factors point
5 of view, if somebody had seen something saying a road
6 is a one-way road and not to turn left on that road
7 within let's just say a minute, that they'd already
8 forget that?
9 A. No. Their perception would be --
10 MR. DAOUDI: Same objection.
11 THE WITNESS: -- that there's a reason for
12 what they saw and what they made a judgment about.
13 BY MR. MARZANO:
14 Q. My question though is from a perception point of view.
15 I want you to assume she did see those signs. All
16 right? Just for purposes of my question --
17 A. Yes.
18 Q. -- she saw the signs that said Michigan Avenue's a
19 one-way road. You can't turn left on it.
20 A. She might not necessarily have associated that with
21 her --
22 Q. Might have been a different Michigan Avenue that she's
23 trying to get back onto?
24 A. Well, not necessarily because -- I'm sorry.
25 Q. No, go ahead.

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1 CERTIFICATE
2 STATE OF MICHIGAN
3 COUNTY OF MACOMB
4
5 I, MAUREEN COLLIER, a Notary Public in
6 and for the above county and state, do hereby certify
7 that this deposition was taken before me at the time
8 and place hereinbefore set forth; that the witness was
9 by me first duly sworn to testify to the truth; that
10 this is a true, full and correct transcript of my
11 stenographic notes so taken; and that I am not
12 related, nor of counsel to either party, nor
13 interested in the event of this cause.
14
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Maureen Collier



MAUREEN COLLIER, CS-4422
Notary Public
Macomb County, Michigan
My commission expires: February 9, 2021

37 (Pages 145 to 148)

TIMOTHY ROBBINS
April 20, 2016

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE</p> <p>FRANK ANTHONY SCOLA, Plaintiff,</p> <p style="text-align: center;">vs. Case No. 15-002804-NI Hon. John A. Murphy</p> <p>JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, JP MORGAN CHASE & CO., KATHLEEN SCOLA, and ESTATE OF JOHN BARROW BROWN (deceased), Jointly And Severally, Defendants.</p> <hr/> <p>The Deposition of TIMOTHY ROBBINS, Taken at 346 Park Street, Suite 120, Birmingham, Michigan, Commencing at 11:17 a.m., Wednesday, April 20, 2016, Before Jenifer Poger, CSR-6006.</p>	<p style="text-align: right;">Page 3</p> <p>1 JAMES J. KIM 2 Julie A. Taylor & Associates 3 20750 Civic Center Drive 4 Suite 400 5 Southfield, Michigan 48076 6 248.945.3819 7 james.kim.p07e@statefarm.com 8 Appearing on behalf of the Defendant, Estate of John 9 Barrow. 10 11 MARK E. WILLIAMS 12 Dyki, Williams & Baranski 13 340 East Big Beaver Road 14 Suite 250 15 Troy, Michigan 48083 16 248.764.1210 17 mark_e_williams@progressive.com 18 Appearing on behalf of the Defendant, Kathleen Scola. 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 3 MICHAEL S. DAOUDI 4 RENEE GRUBER 5 Law Offices of Michael S. Daoudi, P.C. 6 346 Park Street 7 Suite 120 8 Birmingham, Michigan 48009 9 248.220.4377 10 msd4law@aol.com 11 rgruber@lathamllaw.com 12 Appearing on behalf of the Plaintiff. 13 14 ROBERT A. MARZANO 15 Plunkett Cooney 16 38505 Woodward Avenue 17 Suite 2000 18 Bloomfield Hills, Michigan 48304 19 248.594.6357 20 rmarzano@plunkettcooney.com 21 Appearing on behalf of the Defendants, JP Morgan Chase 22 Bank, National Association, and JP Morgan Chase & Co. 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 MICHAEL E. ROSATI 2 Johnson, Rosati, Schultz & Joppich, P.C. 3 27555 Executive Drive 4 Suite 250 5 Farmington Hills, Michigan 48331 6 248.489.4100 7 mrosati@jrsjlaw.com 8 Appearing on behalf of the Defendant, City of Wayne. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

TIMOTHY ROBBINS
April 20, 2016

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1	TABLE OF CONTENTS	1	1.
2		2	MARKED FOR IDENTIFICATION:
3	WITNESS PAGE	3	DEPOSITION EXHIBIT 1
4	TIMOTHY ROBBINS	4	11:18 a.m.
5		5	BY MR. KIM:
6	EXAMINATION BY MR. KIM: 6	6	Q. What do you do?
7	EXAMINATION BY MR. MARZANO: 37	7	A. Reconstruct traffic crashes.
8	EXAMINATION BY MR. ROSATI: 47	8	Q. Who do you work for?
9	EXAMINATION BY MR. DAOUDI: 50	9	A. I work for myself. I own M Crash Group, L.L.C.
10	RE-EXAMINATION BY MR. KIM: 53	10	Q. What does M Crash Group, L.L.C. do?
11	RE-EXAMINATION BY MR. MARZANO: 54	11	A. Well, we primarily reconstruct crashes. We do human
12	RE-EXAMINATION BY MR. ROSATI: 56	12	factors, we do limited biomechanics, 3D laser
13		13	scanning, computer animation, computer-aided drafting,
14	EXHIBITS	14	and those all are facets of reconstruction.
15		15	Reconstruction, you can have a minimum training of
16	EXHIBIT PAGE	16	around 200 hours and it just goes up from there as far
17	(Exhibits attached to transcript.)	17	as what you learn and what you're educated in. We
18		18	have done a few other limited damage analysis that
19	DEPOSITION EXHIBIT 1 7	19	somebody claimed was a crash but seeing was this a
20	DEPOSITION EXHIBITS 2-3 14	20	crash, wasn't it a crash, things of that nature.
21		21	Q. How long have you owned M Crash Group?
22		22	A. I think I opened shop somewhere between 2001 and 2003.
23		23	Q. You refer to we, who works for M Crash Group?
24		24	A. My brother works for me full-time. He's an auto body
25		25	mechanic and he's been trained to do the scene scan,
Page 6		Page 8	
1	Birmingham, Michigan	1	scene measurements, if needed, vehicle inspections,
2	Wednesday, April 20, 2016	2	air bag module downloads, and he helps me, but I use
3	11:17 a.m.	3	we a lot. I guess when I was growing up, it was the
4		4	team thing and I'm a cop by trade and everything was
5	TIMOTHY ROBBINS,	5	we, so I apologize.
6	was thereupon called as a witness herein, and after	6	Q. Did anybody else at M Crash Group work on this case
7	having first been duly sworn to testify to the truth,	7	pertaining to Frank Scola?
8	the whole truth and nothing but the truth, was	8	A. No, I did everything on this file.
9	examined and testified as follows:	9	Q. Okay. You said you were a cop, what's your
10	MR. KIM: Let the record reflect this is	10	background?
11	the discovery deposition of Tim Robbins taken pursuant	11	A. Bachelor's degree in criminal justice public safety.
12	to Notice and in accordance with the Michigan Court	12	I've been a paramedic working in EMS since '89 or '98.
13	Rules and the applicable rules of Wayne County.	13	I'm still a licensed paramedic today. I was a deputy
14	EXAMINATION	14	sheriff in Alpena County in '95 to '97, Michigan State
15	BY MR. KIM:	15	Police '97 through 2012, Arenac County Sheriff's
16	Q. Mr. Robbins, I know you've given testimony before, but	16	Deputy 2012 until present, and then M Crash Group
17	if any of my questions are confusing, just let me know	17	started as a hobby. An attorney approached me to see
18	and I'll repeat or rephrase my question.	18	if I would do civil work. I didn't even know it
19	A. Yes, sir.	19	existed and I started doing civil work and the hobby
20	Q. What is your full name for the record.	20	grew into a business.
21	A. Timothy P. Robbins, R-O-B-B-I-N-S.	21	Q. Currently then, M Crash Group, is that your sole
22	Q. And you were kind enough to give us a copy of your	22	occupation?
23	curriculum vitae. Is this up-to-date?	23	A. No, I work as a deputy but I work part-time, so that
24	A. I believe so. Yes, I believe it is.	24	varies. Like October through December I work
25	MR. KIM: I'll mark this as Exhibit Number	25	full-time. The sheriff's department was two deputies

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- 1 **short, but this is my primary wage. I mean, I make 90**
 2 **percent plus of my wage from this company.**
 3 Q. How many investigations would you work on per year say
 4 in 2015 with M Crash Group?
 5 **A. I don't know. Obviously, some of them carry over but**
 6 **I'm going to guess between 100 and 180 on the books at**
 7 **any given time. Many of those are completed, waiting**
 8 **on the client to see is it going to settle or go to**
 9 **litigation or court, where is it at, but I don't keep**
 10 **track, so that's a guess.**
 11 Q. In 2015 then, 100 to 180 investigations or cases that
 12 you're working on, are those all accident
 13 reconstruction?
 14 **A. I believe so, yes. I mean, different facets of**
 15 **reconstruction but I can't think of anything that's**
 16 **outside the realm of reconstruction.**
 17 Q. Are most of those auto accidents or auto-related
 18 accidents?
 19 **A. Yes.**
 20 Q. About how many of those or a percentage of those would
 21 be auto related?
 22 **A. I'm guessing all of them at this point. When we talk**
 23 **auto, car, pedestrian, motorcycles, semi trucks,**
 24 **busses, but all are auto related.**
 25 Q. How many times have you testified like today while you

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- 1 **and I tell them I'm going to give you what I think is**
 2 **the truth and it's first come first serve.**
 3 Q. Do you charge like a flat rate for each investigation
 4 or do you do it by the hour, or what?
 5 **A. Hour, \$150 an hour, travel is one way longest trip,**
 6 **minimum testimony is \$600. I usually have to do at**
 7 **least a four hour block. If I go over the four hours**
 8 **for the minimum testimony, I'll charge 150 thereafter.**
 9 **I try to keep fees simple.**
 10 Q. The testimony, does it matter whether it's a discovery
 11 deposition or evidence deposition?
 12 **A. Testimony period, I charge the same rate.**
 13 Q. So I take it you keep track of the hours that you
 14 worked on a specific investigation?
 15 **A. You are correct.**
 16 Q. Do you know how many hours you worked on this
 17 investigation?
 18 **A. I don't have it tallied, but it looks like -- let me**
 19 **see, 15ish, somewhere in there, rough math going down**
 20 **the list.**
 21 Q. You're looking at a log that you maintained for this
 22 file?
 23 **A. Yes, just a typed-up log.**
 24 Q. Do you mind if we mark it as an exhibit?
 25 **A. Absolutely not.**

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- 1 were employed at M Crash Group?
 2 **A. Oh, hundreds. When I started in the state police I**
 3 **didn't do any federal obviously, I didn't know we had**
 4 **to keep track of all of them, so at one point I was**
 5 **retained for a federal case and I went back through**
 6 **and tried to recreate all the times I testified. I**
 7 **missed a lot, but I testify quite a bit.**
 8 Q. Hundreds of times while at M Crash Group?
 9 **A. Since 2001 or '03, yeah.**
 10 Q. How many depositions did you give last year?
 11 **A. I don't know. I don't keep those stats per se. I**
 12 **would have to -- I'm sure I could look on the federal**
 13 **list but I don't know off the top of my head.**
 14 Q. Of those 100 to 180 cases that you worked on last
 15 year, how many of those would you say, in terms of
 16 percentage-wise, were for plaintiffs or plaintiff's
 17 attorneys?
 18 **A. This is a weird guess but I'm going to guess 30**
 19 **percent defense, 70 plaintiff, obviously that varies.**
 20 Q. So last year it was approximately 70 percent for
 21 plaintiff and 30 percent for --
 22 **A. That's a guesstimate and I mean a rough guesstimate.**
 23 **Once again, I don't keep track.**
 24 Q. You don't keep a log of who your clients are?
 25 **A. No. I don't pay any attention. I take the clients in**

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- 1 Q. Did you bring your complete file with respect to this
 2 investigation?
 3 **A. I did, sir.**
 4 Q. Okay. And did you render some sort of report during
 5 your investigation of this file?
 6 **A. I did not, no.**
 7 Q. What's in your file?
 8 **A. I'll go through it real quick: A couple handwritten**
 9 **notes, there are vehicle stats for both vehicles, some**
 10 **Google Earth images and photographs, notes on the**
 11 **deposition of Kathleen Scola and Robert Puckett, the**
 12 **deposition of Kathleen Scola, the deposition of**
 13 **Anthony -- Frank Scola, I'm sorry, deposition of**
 14 **Robert Puckett, and then the police report, then it**
 15 **looks like plaintiff's first amended Complaint and I**
 16 **think the original Complaint is in here, along with my**
 17 **dep Notice.**
 18 Q. Who supplied you with these documents?
 19 **A. Some of them I pulled out like the Google Earth**
 20 **images, my notes, and everything else would have come**
 21 **from Mr. Daoudi.**
 22 Q. Did you -- obviously you learned where this accident
 23 took place?
 24 **A. I did.**
 25 Q. Where was it?

<p style="text-align: right;">Page 13</p> <p>1 A. Well, it was in the city of Wayne, and I apologize, 2 I'm not good getting down here in the big city, but it 3 was on West Michigan Avenue near Wayne Road. 4 Q. When were you first retained to work on this case? 5 A. The first note I have in the file is March 3rd of '16. 6 I may have been called earlier but I usually don't 7 start documenting until I get something to actually 8 review. 9 Q. Did you ever go out to the location of the accident? 10 A. I did. 11 Q. How many times? 12 A. Just once. 13 Q. When was that? 14 A. April 15 of '16. 15 Q. How many hours did you log in for that? 16 A. About three-quarters of an hour there and two hours to 17 drive down. 18 Q. You listed off some documents that you have. Did you 19 also say that you had some of your own notes? 20 A. Yes. 21 Q. Okay. And when you were at the scene, did you take 22 notes or -- 23 A. No, snapped a couple pictures, if you will, but I 24 didn't take any notes. 25 Q. What did you take photos of?</p>	<p style="text-align: right;">Page 15</p> <p>1 and took a picture down the road, so that would have 2 been the direction that Mr. Brown was coming from. 3 Q. What direction is that? 4 A. I apologize, we're looking west and he would have been 5 eastbound according to the police report, and I would 6 have to look at the Google Earth to see if that pairs 7 up -- I'm sorry, we're looking east in the picture, he 8 would have been westbound. 9 Q. Okay. 10 A. That's why you gave me that dumbfounded look. 11 Q. I always have that look. 12 When you snapped this picture looking 13 eastbound on Michigan Avenue -- 14 A. Yes. 15 Q. -- were you standing on this sidewalk, were you 16 standing in the -- 17 A. Standing between the curb and the sidewalk. 18 Q. You were not standing in the driveway or anything like 19 that? 20 A. No, I don't believe so. That's not to depict anything 21 except to remind me that the road is relatively 22 straight and flat. I snapped that not to document 23 anything except for that so I could remember when I 24 got here, basically. 25 Q. Okay. Did you take any sort of measurements at the</p>
<p style="text-align: right;">Page 14</p> <p>1 A. I just took photos of the general area. In fact, you 2 can look at them here. I took pictures looking down 3 the street and of the bank from the street, just 4 looking at the accident, if you will. 5 Q. Can I take a look at those photos? 6 A. Absolutely. These are other photos as well of Google 7 Earth that I think were supplied to me. 8 MARKED FOR IDENTIFICATION: 9 DEPOSITION EXHIBITS 2-3 10 11:31 a.m. 11 BY MR. KIM: 12 Q. Just so I have it clear, I've marked as Exhibit 3 13 photos that you snapped at the scene of the accident? 14 A. Yes. 15 Q. On April 15th, 2016? 16 A. Yes, correct. 17 Q. And it looks like you snapped two photos? 18 A. Yes. 19 Q. One is -- there's three on this one page, lower left 20 hand looks like a photo of a bank? 21 A. Yes. 22 Q. And lower right hand is looking which way down the 23 road? 24 A. That's a one way street, so it's in the same 25 perspective I took from the bank, I just turned around</p>	<p style="text-align: right;">Page 16</p> <p>1 scene? 2 A. I did not, no. 3 Q. Did you document -- do you know what the speed limit 4 was on Michigan Avenue? 5 A. Oh, I don't remember the day I was there what the 6 speed limit was and I know I drove by a sign but I 7 just don't remember. I looked at a few cases since 8 then. I can refer to the police report and see what 9 it was on the day of the crash. 10 Q. Do you know whether the accident took place at the 11 intersection of Wayne and Michigan or was it just -- 12 A. You know, that's an interesting point. If you read 13 Kathleen Scola's testimony, it would indicate that she 14 pulled out of the lot, and the way I understand 15 reading it and looking at the totality, she pulled out 16 of the lot or the drive-thru exit, turned right, 17 became parallel with the road, noticed she's going the 18 wrong way, pulled over and almost stopped or stopped 19 at the curb. 20 When you read the police officer's 21 testimony, he said it's 195 feet -- it would be east 22 of Wayne Road, so when you're facing -- out standing 23 in the exit lane facing out, he's saying that from 24 Wayne Road, which is a perpendicular road and off to 25 the left, 195 feet, but that can't be right because I</p>

<p style="text-align: right;">Page 17</p> <p>1 used Google Earth to do most of the distance 2 measurements, it's extremely accurate. 195 feet puts 3 it like 100 plus feet away or further to the left. 4 She made a right turn and if you look at the police 5 testimony, she can't make a right turn and be 195 feet 6 off to her left, so his measurement has to be wrong. 7 If she exits the drive-thru drive and turns right, 8 it's much further than 195 feet from Wayne Road. 9 Q. When you were at the scene, you did not take any 10 measurements from the driveway to the intersection, 11 did you? 12 A. No, I relied on Google Earth. I didn't take 13 measurements but there's standard protocol. For 14 instance, the land lines are 50 feet from one to the 15 next, so you can count and just on this aerial photo 16 you can count 50, 100, 150, 200, so even using that, 17 you can make determinations as to distance 18 estimations, but I didn't get a tape measure and 19 physically measure it, no. 20 Q. Did you get any schematics or contact anybody from the 21 City of Wayne or Bank One or JP Morgan Chase with 22 regard to schematics or blueprints or any sort of maps 23 of that area? 24 A. No, I just use Google Earth. 25 Q. Do you know whether -- when you say -- strike that.</p>	<p style="text-align: right;">Page 19</p> <p>1 distance from the western edge of that driveway 2 exiting onto West Michigan Avenue to the eastern edge 3 of the intersection of Wayne Road and Michigan Avenue? 4 A. I didn't measure it because nobody asked me to produce 5 that until today. If you want an estimation, 250ish, 6 give or take a little bit. 7 MR. DAOUDI: Just object to vague. There's 8 two driveways from Chase and the driveway -- are you 9 talking about the second driveway from the light? 10 MR. KIM: Well, there is, I believe, a 11 driveway exiting onto Michigan Avenue. 12 MR. DAOUDI: There is one -- there's two 13 driveways that come off Michigan Avenue. One turns 14 into the bank that's closer to the light and you come 15 back to the one that exits that Ms. Scola made a right 16 turn on. I think that's the driveway that goes to the 17 tellers and you go out, so it's probably the exit 18 driveway but I'm saying there's two driveways. Are 19 you talking about the driveway that Ms. Scola left 20 from? 21 BY MR. KIM: 22 Q. Where were you taking the picture? 23 A. Right here. 24 Q. That's after the tellers? 25 A. That's at the ATM. I think there's two teller lines,</p>
<p style="text-align: right;">Page 18</p> <p>1 Do you know that the image from Google 2 Earth that's contained in your file is how the scene 3 of the accident looked on June 27 of 2003? 4 A. I don't know, I wasn't there in 2003 and I haven't 5 seen any photos from 2003. It's my understanding it 6 was a one way road and the only thing that may have 7 changed is the left most lane. It's my understanding 8 it may have been a through lane and now it's 9 designated for parking, so when you're going 10 westbound, you now park on the left-hand curb where 11 before there was no parking there, it was a drive 12 lane. 13 Q. What makes you think it was a through lane back in 14 2003? 15 A. I can't remember who I heard that from. I don't know 16 if I read it in a deposition, if Mr. Daoudi and I were 17 talking in conversation, I'm not sure where that came 18 from. One thing I didn't do and might be able to be 19 done is go back in Google Earth archives and you can 20 step back and there is other aerial resources to see 21 what it was like then, if the aerial photographs are 22 good enough. They were a little sketchy back then. 23 Q. Did you talk to Kathleen Scola at all? 24 A. No, I haven't spoken to anybody that was deposed. 25 Q. So what is your -- what was the -- what is the</p>	<p style="text-align: right;">Page 20</p> <p>1 if I remember, and an ATM lane, but the outside lane 2 is just a pass-thru. 3 Q. You were talking about a drive-thru? 4 A. Yes. 5 Q. There is a driveway going out onto Michigan Avenue 6 from the drive-thru? 7 A. Yes, it's on the east side of the Chase building, that 8 east-sided driveway is the one I'm talking about. 9 Q. Is it your understanding that that's where Ms. Scola 10 was attempting to exit the lot? 11 A. Yes. 12 Q. Okay. You were looking at the Google Earth printout 13 and you were estimating that it was about 250 feet 14 from the western edge of that driveway for the 15 drive-thru to the eastern edge of Wayne Road and West 16 Michigan Avenue? 17 A. Yes. Once again, that's an approximation. 18 Q. Do you know where the accident took place in relation 19 to that driveway for the drive-thru? 20 A. Well, there is no physical evidence that says this is 21 the exact area of impact that occurred. All we have 22 is that it happened east of that intersection of that 23 drive-thru exit and Michigan. Just to be very fair, 24 if you can give me one second here, I actually put a 25 scale on the bottom of this diagram so I'm going to</p>

<p style="text-align: right;">Page 21</p> <p>1 see if that 250 is appropriate, and I don't know if it</p> <p>2 really matters at this point. Like I said, somebody</p> <p>3 can definitely -- yeah, 250 to 260 depending where the</p> <p>4 edge of that road is, so I was pretty close.</p> <p>5 Q. So you disagree with the police report and the</p> <p>6 officer's estimation of that distance?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know what the speed of Mr. Brown's vehicle was</p> <p>9 at the time of the collision?</p> <p>10 A. No.</p> <p>11 Q. I might have asked you this in a different way: Do</p> <p>12 you know what the speed of Ms. Scola's vehicle was at</p> <p>13 the time of the collision?</p> <p>14 A. Only from her deposition testimony that she was</p> <p>15 stopped or almost stopped, that's all I have.</p> <p>16 Q. Did you get any sort of indication of her speed</p> <p>17 looking at either the police officer's deposition or</p> <p>18 the police report?</p> <p>19 A. No.</p> <p>20 Q. Did you see anything that contradicted her testimony</p> <p>21 that she was stopped or almost stopped?</p> <p>22 A. No.</p> <p>23 Q. Do you know whether there are any -- strike that.</p> <p>24 Do you know whether Mr. Brown braked at all</p> <p>25 prior to the collision?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. No, I didn't see any evidence of that in the</p> <p>2 documentation that I have.</p> <p>3 Q. Okay. Do you know what route Ms. Scola took leading</p> <p>4 up to the accident?</p> <p>5 A. Yes and no. I read it, I didn't commit it to memory,</p> <p>6 and I'm not very familiar with this area. I thought</p> <p>7 she was on Wayne Road, realized she missed the road</p> <p>8 she wanted, which was Michigan, and tried to go</p> <p>9 through the lot to make a U-turn, if you will, or to</p> <p>10 get renegotiated, but I didn't trace it. I was more</p> <p>11 focused on her exiting and the immediate time right</p> <p>12 around the crash itself.</p> <p>13 Q. Is it your opinion that she was facing the wrong way</p> <p>14 when the accident happened?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you know whether there is any sort of indication</p> <p>17 that it was a one way street? You indicated that --</p> <p>18 sounds pretty obvious but how do you know it was one</p> <p>19 way?</p> <p>20 MR. DAOUDI: Where are you asking him to</p> <p>21 look, from what perspective, exiting the driveway from</p> <p>22 the bank Ms. Scola was at or from the intersection at</p> <p>23 Wayne Road and Michigan, which intersection?</p> <p>24 BY MR. KIM:</p> <p>25 Q. Fair enough. You indicated before when you snapped</p>
<p style="text-align: right;">Page 22</p> <p>1 A. No. There is no physical evidence there was braking.</p> <p>2 All we have is testimony from Ms. Scola that, if I</p> <p>3 recall right, she actually had time to look in his</p> <p>4 eyes, didn't seem like he braked, and when you look at</p> <p>5 somebody that was injured and -- relatively</p> <p>6 significantly, I thought. Was this one case where</p> <p>7 there was life flight or a kidney injury? That's a</p> <p>8 significant impact, that's not a low speed, five, ten</p> <p>9 mile and hour bumper-to-bumper impact.</p> <p>10 Q. You don't know what the speeds involved are?</p> <p>11 A. No, there is no way to mathematically calculate them.</p> <p>12 You can make some assumptions based on -- I don't even</p> <p>13 know if you can make assumptions based on acceleration</p> <p>14 capabilities of the vehicles. It would just be very</p> <p>15 subjective in that fact.</p> <p>16 Q. Other than the police report, did you have anything</p> <p>17 else in terms of the investigation at the time of the</p> <p>18 accident?</p> <p>19 A. No.</p> <p>20 Q. So no statements in 2003?</p> <p>21 A. All I have that I've read is the police report from</p> <p>22 2003 and everything that I've put on the list. If</p> <p>23 it's not there, I haven't looked at it.</p> <p>24 Q. You don't know whether there were any skid marks left</p> <p>25 by any of the vehicles at the scene?</p>	<p style="text-align: right;">Page 24</p> <p>1 that photo in Exhibit Number 3, that Michigan is one</p> <p>2 way going westbound; how do you know that?</p> <p>3 A. You don't, except for one fact, that to be quite</p> <p>4 frank, would elude a lot of people, it's the lane line</p> <p>5 colors. All the lane lines are white and any time all</p> <p>6 the lane lines are white on a public roadway, that's a</p> <p>7 one way street. Outside of that, there's zero</p> <p>8 evidence when you exit that drive that it's a left</p> <p>9 turn only, which to be quite frank is disheartening.</p> <p>10 I mean, when I was there there's sign posts there that</p> <p>11 say do not enter when you're coming off the road but</p> <p>12 there's nothing when you leave the lot saying left</p> <p>13 turn only. There was an arrow on the pavement,</p> <p>14 granted it's a long time after, but the arrow says</p> <p>15 straight out, it doesn't say left turn only either.</p> <p>16 If that roadway was partially snow covered and you</p> <p>17 couldn't see the lane lines, you'd have no</p> <p>18 determination it's one way unless all those lanes are</p> <p>19 filled with cars.</p> <p>20 Q. Do you know one way or the other if anything was</p> <p>21 obscuring the lines?</p> <p>22 A. I doubt it, I think it was June or July -- June 27th.</p> <p>23 Although my grandma said she remembers it snowing on</p> <p>24 the 4th of July, I doubt there was snow in June back</p> <p>25 then.</p>

- 1 Q. Do you know whether there is any indication that
2 Michigan Avenue is one way on any portion of the route
3 that Ms. Scola took up to the accident site?
- 4 **A. All right, I looked at Wayne and Michigan, there are**
5 **indications it's one way on Wayne at Michigan. I**
6 **didn't document what I saw. I looked at it briefly**
7 **and just based on memory alone, it looks like it met**
8 **the municipal traffic control device manual**
9 **guidelines, so there were markings there but I can't**
10 **tell you what they were in 2003, and I didn't document**
11 **them when I went through but I know they're present.**
- 12 Q. When you say Wayne and Michigan, are there two
13 intersections of Wayne and Michigan, one for Michigan
14 going west and one for Michigan going east?
- 15 **A. Yes, and I'm only speaking of westbound Michigan.**
16 **Actually, when I drove to the scene, I came southbound**
17 **Wayne, went past Michigan, then pulled into the Chase**
18 **parking lot, if I recall, and then parked and got out**
19 **on foot.**
- 20 Q. I'm sorry, backing up, you indicated that there are
21 indications that Michigan at the westbound
22 intersection of Michigan and Wayne Road, that Michigan
23 is a one way. What sort of indications did you
24 notice?
- 25 **A. Once again, I don't remember what I saw there. I just**

- 1 **noticed -- to be quite frank, I was using a GPS to get**
2 **here. I didn't notice it when I first went through.**
3 **I actually looked and saw them, but I don't remember**
4 **what they were. I don't remember if there is a sign**
5 **up high that said no left turn along with the traffic**
6 **control signals, but I just know that there was**
7 **something present when I drove through.**
- 8 Q. You didn't take any pictures of that intersection or
9 any sort of indication that westbound Michigan was one
10 way?
- 11 **A. I didn't take any. I don't know if they're in the**
12 **Google Earth. This is Puckett's Exhibit 4 that has a**
13 **Google Earth photo with the one way and it is hung up**
14 **high in between the traffic control devices for**
15 **southbound Wayne at the westbound Michigan exchange,**
16 **and then it appears way over on what would be the**
17 **southwest corner, it looks like a no left turn sign**
18 **with a one way sign above that, but I don't remember**
19 **any more than that. I do remember seeing a sign up**
20 **high. I don't think I noticed this sign when -- I**
21 **know when I drove through I didn't see anything**
22 **because I was following the GPS.**
- 23 Q. When you say you saw a sign way up high, was it higher
24 than the traffic control lights?
- 25 **A. It's suspended between the lights, yeah.**

- 1 Q. When you say it's high, you're talking about the level
2 of the lights?
- 3 **A. Yes.**
- 4 Q. When you're saying high, you don't mean it was too
5 high to see or anything like that?
- 6 **A. No.**
- 7 Q. Do you know how long Mr. Brown -- strike that.
8 Do you know how many lanes at the time of
9 this accident there were for westbound Michigan Avenue
10 where this accident took place?
- 11 **A. I believe there was -- let me double-check here. I**
12 **believe there were three. If the left-hand curb lane**
13 **was a through lane, then there would be three, parking**
14 **in the far right and it looks like three travel lanes.**
- 15 Q. It looks like in the photo that you took this year,
16 there is markings for the parking --
- 17 **A. Yes.**
- 18 Q. -- on the left side?
- 19 **A. Correct.**
- 20 Q. And when I say left side, left side if you're facing
21 westbound.
- 22 **A. Correct.**
- 23 Q. Okay. And do you know one way or another whether
24 those markings for parking were there on June 27,
25 2003?

- 1 **A. I have no physical evidence to say one way or the**
2 **other. Like you asked before, I don't have anything**
3 **to point to you and say yes, absolutely.**
- 4 Q. Do you know how the lanes were demarcated on June 27,
5 2003?
- 6 **A. I don't have any physical evidence, but I do know that**
7 **the marking standards were the same back then as far**
8 **as the white lines only. The white lines in Michigan**
9 **have a standard gap, they're 13 foot lane lines with a**
10 **37 foot gap between, which is a total of 50 feet from**
11 **the beginning of one dashed white line to the other.**
12 **Same goes for yellow lines dividing a roadway. Those**
13 **standards haven't changed. But to say whether or not**
14 **everything was absolutely perfect, obviously I'm sure**
15 **lines have been painted since then and there may be an**
16 **inch or two variation but I would expect them to be**
17 **similar.**
- 18 Q. Do you know one way or another whether there were any
19 indications that Michigan was one way going westbound
20 as you're facing out the driveway for the drive-thru
21 back on the date of this accident?
- 22 **A. The police report says it was, so I would assume on**
23 **the day of the accident -- I'm sorry, Michigan**
24 **westbound, was that one way, is that what you're**
25 **asking?**

1 Q. Were there any indications for traffic exiting that
2 drive-thru onto Michigan that Michigan was one way
3 back on the date of the accident?
4 MR. DAOUDI: Object to vague. Indications
5 meaning?
6 BY MR. KIM:
7 Q. Signs or anything that would show a driver in that
8 driveway of the drive-thru that Michigan was one way?
9 **A. I have no physical evidence like photos, mapping,
10 anything of that nature. When I was here at the scene
11 a gentleman walked from -- I have his business card --
12 Leo's Jewelry and Gifts, David Zuckerman who is the
13 owner, he actually walked across the street, which I've
14 never had happen in the civil world, and said, I hope
15 you're here to fix the problem of people turning the
16 wrong direction out of this bank parking lot. And from
17 his indication there has never been any signage. He's
18 petitioned the bank to put signage up, and he said he's
19 been there 60 years. I didn't take a recorded
20 statement. I have a private investigator that I worked
21 with that I asked him to interview him but I haven't
22 heard back from the PI yet to see if that's been done,
23 so I do know that that's the only indication I have.**
24
25 Q. Do you know -- I think you indicated that this

1 **A. Yes.**
2 Q. And that Ms. Scola observed Mr. Brown all the way down
3 at that intersection up until that collision at Chase
4 Bank?
5 **A. Well, wherever the collision occurred, yes.**
6 Q. How much distance is there from that driveway
7 drive-thru to the intersection of Second Street?
8 **A. About 570ish. Once again, I'm doing some math here,
9 yeah.**
10 MR. DAOUDI: Is that from the most eastern
11 edge of that driveway?
12 THE WITNESS: That's the measurement I
13 have, yes. That's an approximation because I'm
14 measuring it off that map -- obviously, it's going to
15 vary if you go from the center of the lane line to the
16 exact edge and who determines where the center is and
17 so on and so forth.
18 BY MR. KIM:
19 Q. Based on your review of the records and the
20 depositions, do you know where Ms. Scola was when she
21 observed Mr. Brown way down by Second Street?
22 **A. No. I mean, once again, there is nothing that says
23 this was the area of impact, but she had enough time
24 to pull out, it appears to me, based on the totality
25 from her deposition and playing it out in my mind as I**

1 accident happened in the left most westbound lane of
2 Michigan Avenue, is that your understanding?
3 **A. Yes.**
4 Q. Do you know how long Mr. Brown had been in that lane
5 or driving in that lane prior to this accident?
6 MR. DAOUDI: Objection, how far back?
7 BY MR. KIM:
8 Q. Do you know at all? Do you have any knowledge of how
9 long Mr. Brown had been in that lane prior to the
10 accident?
11 **A. If you classify it as knowledge, all I have is from
12 what I understand from Kathleen Scola's deposition was
13 that she saw him at the light, the cars were stopped.
14 I would assume if they met the law, they were stopped
15 somewhere near the stop bar and that he proceeded in
16 that same lane the entire distance.**
17 **Now, once again, I have to look at the only
18 real evidence we have of the crash itself and what led
19 up to the crash is testimony. Physical evidence,
20 we've got roadway configurations and measurements, so
21 all I have is that testimony.**
22 Q. So he was -- so your testimony is that based on what
23 you've reviewed, Mr. Brown was in the left westbound
24 lane at least since the intersection with Second
25 Street?

1 **see everything, she had time to pull out, become
2 parallel, realize all these cars are facing her and
3 then pull to the right and almost stop or stop. So I
4 would expect that was going to happen within about 156
5 feet. The reason I say 156 feet is if she drove 156
6 feet, she could have simply pulled into the next
7 parking lot. There is another exit or entrance, she
8 could have just turned right and got out of the way,
9 so I would assume she couldn't turn there and hadn't
10 made it that far yet.**
11 Q. These are all based on your assumptions, right?
12 **A. Yes, based on the totality of the circumstances. I
13 have to be able to apply reason as a human factors
14 expert and reconstructionist, and reason is, here's a
15 driveway, I don't stop here and watch this happen, I
16 simply make a right turn.**
17 Q. You testified that you don't know exactly where this
18 accident took place east of the drive for the
19 drive-thru?
20 **A. Right, and I would expect it would be somewhere in
21 this 156 foot area.**
22 Q. Within 150 feet?
23 **A. 156.**
24 Q. 156 feet?
25 **A. Yes. You might be closer to right. There is a**

1 **variance there but that's the estimation based on the**
 2 **photos I have.**
 3 Q. I'm not giving an estimation. You don't know where
 4 along -- where within that 156 feet east of that
 5 drive-thru the accident took place, do you?
 6 **A. No, you're right, correct.**
 7 Q. You don't know the speeds of either vehicle at the
 8 time of the accident?
 9 **A. I do not have exact speeds, no.**
 10 Q. You don't know whether my client braked prior to the
 11 accident?
 12 **A. So your client must be Mr. Brown?**
 13 Q. Yes, I'm sorry.
 14 **A. No, I don't, and how much braking, there could have**
 15 **been slight braking, no braking. I just have the**
 16 **impression that Ms. Scola testified to.**
 17 Q. You don't know whether Mr. Brown's brakes were in
 18 disrepair or were defective or anything like that at
 19 the time of this accident, do you?
 20 **A. No, I don't.**
 21 Q. You don't know whether Mr. Brown lost control of his
 22 vehicle prior to this accident, do you?
 23 **A. No, I don't.**
 24 Q. You don't know what actions Mr. Brown took prior to
 25 this collision, do you?

1 **A. No. All I have is what Ms. Scola said, that she**
 2 **looked right in his eyes and he drove right into the**
 3 **impact, so I only have that, that's all there is.**
 4 Q. I know you said you didn't write a report, but did you
 5 come to any sort of conclusions after your
 6 investigation?
 7 **A. The only thing I did outside of review everything and**
 8 **visit the scene is I made some very brief mathematical**
 9 **calculations. So I simply looked at what are the**
 10 **acceleration capabilities of these two cars and based**
 11 **on public data, published data, both of these cars can**
 12 **accelerate at a relatively rapid speed. When we look**
 13 **at society in general, most people coming off a stop**
 14 **light will accel around a .15 acceleration factor,**
 15 **some a little faster, some slower. If I look at that**
 16 **acceleration factor and I look at the information that**
 17 **I do have, it shows that your client, Mr. Brown, would**
 18 **have had at least six seconds of seeing Ms. Scola. At**
 19 **some point there was six seconds she was out in front**
 20 **of him, minimum, before -- if he started from a stop,**
 21 **accelerated at a nominal pace and ran into her. It**
 22 **could have been high as 11, but it all depends on**
 23 **exactly where she was when he started, but at a**
 24 **minimum six seconds.**
 25 **When you look at what's widely accepted as**

1 **a perception reaction for something occurring in front**
 2 **of you as a second to a second and a half, we're way**
 3 **over that second and a half perception reaction. Even**
 4 **if you're doing something like checking your mirrors,**
 5 **which takes approximately a second, we're over two and**
 6 **a half seconds to perceive and react and mitigate**
 7 **this.**
 8 **So when I look at the totality of the**
 9 **circumstances, you can't deny Ms. Scola pulled out and**
 10 **made a right-hand turn on a one way street. The only**
 11 **indicator she would have had from that point of that**
 12 **driveway of a one way street are white lines, nothing**
 13 **else that I could see or that's been documented, but**
 14 **Mr. Brown had an excessive period of time to perceive**
 15 **that something was in front of him.**
 16 **When I put that into my mind and apply it**
 17 **to what if this would have been a disabled vehicle**
 18 **that was facing the right direction, he would have hit**
 19 **that, too. So there is definitely an issue there of**
 20 **why did he not perceive and react to this hazard in**
 21 **front of him.**
 22 Q. Do you know where Mr. Brown's vehicle was on Michigan
 23 Avenue when Ms. Scola pulled out onto Michigan Avenue?
 24 **A. No. All I know is at one point during that pulling**
 25 **out, if you will, he's at the stop bar with the rest**

1 **of the traffic.**
 2 Q. Do you know whether there was any other -- you
 3 indicated that -- strike that.
 4 Do you know how long she was facing the
 5 wrong way on Michigan Avenue by the time the accident
 6 took place?
 7 **A. The only thing I can look at is, once again, look at**
 8 **the acceleration factor for somebody that is making**
 9 **that simple turn, which is similar to coming off a**
 10 **stop sign or stop light, at about a .15 and that**
 11 **exposes her for somewhere between six and seven**
 12 **seconds or longer, you know, somewhere in that time**
 13 **frame.**
 14 Q. So your opinion -- is it your testimony that she was
 15 facing the wrong way on Michigan Avenue for six or
 16 seven seconds?
 17 MR. DAOUDI: Before impact?
 18 **A. Yes, I'm sorry, that would be right up to impact. So**
 19 **I'm clear, that's assuming that Ms. Scola moved about**
 20 **150 feet, so she's slowing down somewhere. If you**
 21 **back her up and say she went 100 feet, then we just**
 22 **take time and the time goes from her to Mr. Brown**
 23 **having more time to perceive and react. There's only**
 24 **so much time between these two vehicles approaching**
 25 **each other. You have a set amount of time, it's**

1 really where do you put the time. So those numbers
2 are based on about 150 feet, and she could have moved
3 100 feet, which like I said, would reduce her time but
4 increase the time Mr. Brown has to perceive and react.

5 BY MR. KIM:

6 Q. How much time was Ms. Scola total, before this
7 accident, facing the wrong way on Michigan Avenue?

8 A. It could be anywhere from six seconds up.

9 Q. Let's break this down: How much time was Ms. Scola
10 facing the wrong way on Michigan Avenue before the
11 accident?

12 A. I answered that just a minute ago. It could be six
13 seconds or a little higher, it could be a little
14 lower. I'm making these calculations from 150 feet.
15 So if you want to cut it down to 100 feet, then
16 somebody would have to redo the math. I just worked
17 this out this morning before I drove down. You can
18 drop it down to 50 feet and it would be less.

19 MR. KIM: I think that's all the questions
20 I have.

EXAMINATION

22 BY MR. MARZANO:

23 Q. I represent the bank. My name is Bob Marzano. First
24 of all, do you have any opinions with respect to the
25 bank in this case?

1 affects --

2 Q. That was my next question: Do you have any idea what
3 requirements, if any, exist for a private entity or
4 private business to provide signage for pedestrians on
5 a public road?

6 A. Well, this isn't a pedestrian.

7 Q. I'm sorry, drivers.

8 A. I don't, sir. Once again, I would expect that would
9 be premises liability. I can just tell you what I saw
10 and human factors, there is definitely an issue there
11 that could easily be assisted by posting a couple
12 simple signs and changing an arrow.

13 Q. Where would you put the signs if you were going to put
14 them somewhere?

15 A. The same exact place they have the do not enter signs.
16 If you pull off of Michigan into that, there's two signs,
17 one on the right and one on the left that says do not
18 enter. When you go to the opposite side, there is
19 nothing.

20 Q. Would you put anything across the street when you're
21 facing it before you turn on the road?

22 A. You can petition the city to do that but it's not
23 their property. I don't know if they legally could.
24 That would be up to the attorneys to see if that's
25 legally feasible.

1 A. Only what I've stated, that when I went there, what I
2 saw, that's all I can opine to. I don't have any
3 legal opinions. I mean, I'm not a liability expert as
4 far as the bank premises. I'm a crash
5 reconstructionist. You guys will have to duke that out
6 as attorneys, but what I do know is when I left that
7 bank parking lot, there was nothing indicating to me it
8 was a left turn only. There was one arrow painted on
9 the road that said straight out but you can't go straight
10 because it's a T intersection and
11 the only reason anybody would reasonably expect it's a
12 one way street is either by seeing all the lanes
13 filled with cars coming at them or realize that all these
14 lines are white on the roadway, faded white at that,
15 and they -- I got to have a yellow line delineating two
16 directional traffic, and to be frank, that's pretty nuance
17 for somebody that's not -- even someone familiar with
18 the area might not pick up on that right away.

20 Q. So I'm correct, you're not a sign expert, correct?

21 A. No. I can apply Michigan municipal traffic control
22 devices. I read it, I apply it, I use it, but as far
23 as a private drive, I don't know what those
24 requirements are. I only use the MMUTD, an
25 application to public roadway crashes and how it

1 Q. You don't have any idea what the exit looked like that
2 Ms. Scola took on the day of the incident, correct?

3 A. I have no photographs, no.

4 Q. You've been a police officer for quite some time,
5 yeah?

6 A. 20 years.

7 Q. If you had observed -- let's just say sometimes police
8 officers like to sit places and watch what drivers do,
9 and you notice a driver go through an intersection and
10 realize they missed something and they cut through a
11 business to get to a different intersection, in your
12 opinion, would that be a ticketable offense?

13 A. No. Michigan vehicle code tells you you're not
14 allowed to use a private driveway to avoid a traffic
15 control device. It doesn't say you can't necessarily
16 use a private drive because you're lost or want to get
17 back to a road, but if I see a red light and I'm going
18 to miss that red light and I cut through a private
19 drive, that's illegal, period.

20 Q. So you read the testimony of the police officer,
21 correct?

22 A. Yes, I did.

23 Q. One of the questions he was asked was whether -- he
24 was asked to assume there were no signs coming out of
25 the Bank One parking lot that say no right turn, one

<p style="text-align: right;">Page 41</p> <p>1 way only. He said there is no indication there is any 2 type of responsibility to Bank One that he was aware 3 of from the City of Wayne or otherwise that would 4 require the bank to provide a warning to travelers. 5 He said I'm not aware of anything. As we sit here 6 right now, is that your opinion as well or are you 7 saying you can't give an opinion? 8 A. I can't give an opinion, yes. And I apologize, just 9 to make the record clear, at one point I think I said 10 they could put no left turns. The bank could have put 11 up one way signs, whether it's no right turn, one way, 12 arrows, whatever, but I may have misquoted that 13 earlier. 14 Q. It would be -- just assume those signs did exist, it 15 would be speculation on your part that she would have 16 looked at those signs before making her turn, right? 17 A. Oh, yeah, I have no idea what people are paying 18 attention to, but if they're not there, then you can 19 easily speculate -- well, it's not speculation, she 20 didn't see them, they're not there, you don't see 21 them. 22 Q. What is your current address? 23 A. Well, I come from my house and I apologize, I'm a cop, 24 I don't give my home address. My business address -- 25 Q. Give me the city.</p>	<p style="text-align: right;">Page 43</p> <p>1 MR. WILLIAMS: So she would have been 2 facing north when she pulled out? 3 THE WITNESS: Yes. 4 MR. WILLIAMS: It would have been onto the 5 westbound portion of Michigan Avenue? 6 THE WITNESS: Correct. 7 MR. WILLIAMS: I just want to make sure 8 we're all clear. 9 BY MR. MARZANO: 10 Q. This was Kathleen Scola's Exhibit 3. As you see here, 11 there is a way out here, way out here. You're saying 12 it was this one here. If I'm coming out of the bank, 13 it would be the far right? 14 A. No, actually the exit is on the east side of the bank. 15 This is on the west side. When you're looking at the 16 map from the bank, there are two entrances on the west 17 side, on the east side is the exit. It looks like 18 this arrow here to the drive you just pointed is 19 pointing in, not out. 20 Q. Which of those two drives do you believe she took that 21 day? 22 A. Not either one of these. There's actually three. I'm 23 looking at something that nobody marked yet. 24 Q. Scola 1? 25 A. Can I look at that and I'll use that to be clear.</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Bay City, Michigan. 2 Q. That's fair. 3 A. Traffic wasn't even that bad. 4 Q. There are two potential ways to exit that bank. Do 5 you know which exit Ms. Scola took? 6 A. It's my understanding she took the exit that's on the 7 east side of the building, which is the ATM 8 drive-thru, there is also a lane on the far right that 9 allows -- 10 Q. She took the far -- 11 A. I don't know which one she took, but to be honest, if 12 I recall right, it goes out and kind of narrows 13 slightly at the sidewalk, so it's not like there's 14 three lanes exiting. 15 Q. You're not sure which one she took, is that your 16 answer? 17 A. I'm confident she took the east road, but there's only 18 -- legally, you can't have two or three cars parked 19 side by side all making a left turn, so they should 20 fall into one and follow each other. 21 MR. WILLIAM: Excuse me, just to be clear, 22 when you said east road, you mean eastbound portion of 23 Michigan Avenue? 24 THE WITNESS: No, the driveway on the east 25 side of the bank.</p>	<p style="text-align: right;">Page 44</p> <p>1 This a Google Earth image and you can mark it if you'd 2 like. This is Chase Bank and I'm pointing with my 3 finger to the big cash sign with Chase Bank. There's 4 two driveways on the west side of that bank and if I 5 recall, they're both in. There is also an exit on the 6 east side of the bank, and when you come around the 7 south side of the bank to the east, you can go through 8 two lanes for tellers, I believe one for the ATM and 9 the far lane is just a pass-through lane. It's my 10 understanding this is the exit she used. 11 Q. Not the pass-through lane but the ATM lane? 12 A. Well, it's just the east side. It's divided here. 13 It's my understanding she used this one. 14 Q. What's that based on? 15 A. Testimony and speaking to Mr. Daoudi. So I believe 16 that she used the ATM lane, quote, unquote, is I think 17 what she said in the deposition. The ATM exit, not 18 lane. 19 Q. Who was present when you went out to see the site? 20 A. Mr. Daoudi and Ms. Gruber. 21 Q. What research have you done in this matter? 22 A. Google Earth research, I looked through Michigan 23 municipal traffic control devices, I've looked through 24 motor vehicle code. I think I looked through, if I 25 recall, the Michigan municipal traffic code and I</p>

<p>Page 45</p> <p>1 believe that's it.</p> <p>2 Q. What's in that code?</p> <p>3 A. What code?</p> <p>4 Q. The Michigan municipal traffic code.</p> <p>5 A. It basically can be adopted by ordinances -- I don't</p> <p>6 know everything that's in it. It allows local</p> <p>7 municipalities to adopt some Michigan vehicle code and</p> <p>8 then there's some suggestive rules they can adopt that</p> <p>9 are a little more precise for like U-turns. Michigan</p> <p>10 vehicle code doesn't directly deal with U-turns where</p> <p>11 the municipal traffic code does.</p> <p>12 Q. As far as the Michigan municipal control device</p> <p>13 manual, that only applies to municipalities, correct?</p> <p>14 A. It only applies to government. That's one thing I was</p> <p>15 looking at, to see if it applies to private. It only</p> <p>16 applies to government roads.</p> <p>17 Q. That deals with signage, correct, traffic control</p> <p>18 signs?</p> <p>19 A. Signage, traffic control devices, lane lines, they're</p> <p>20 standard so that if you travel across the country,</p> <p>21 people have an expectation.</p> <p>22 Q. Would there be coverage in there for parking signs, no</p> <p>23 parking?</p> <p>24 A. There are if it's a government roadway, yes.</p> <p>25 Q. And how about one way signs?</p>	<p>Page 47</p> <p>1 Q. You don't plan to offer any testimony in this matter</p> <p>2 as an expert regarding any requirements that Bank One</p> <p>3 would have had at the time as far as signage?</p> <p>4 A. I can't, no. That's outside of my realm.</p> <p>5 MR. MARZANO: Those are all the questions I</p> <p>6 have.</p> <p>7 MR. WILLIAMS: No questions.</p> <p>8 EXAMINATION</p> <p>9 BY MR. ROSATI:</p> <p>10 Q. I have some questions, Tim. Have you been asked to</p> <p>11 render some opinion about the City of Wayne's</p> <p>12 liability in this case?</p> <p>13 A. I was asked to look at everything, basically, and I</p> <p>14 can't render an opinion. I don't see anything in any</p> <p>15 of the rules, regulations, codes, that say the City of</p> <p>16 Wayne had to do anything.</p> <p>17 Q. And do you know who had jurisdiction over Michigan</p> <p>18 Avenue at the point of this accident?</p> <p>19 A. I don't know. I mean, if I recall, is Michigan a U.S.</p> <p>20 road?</p> <p>21 Q. It's a state road, isn't it?</p> <p>22 A. It is. Sometimes the state contracts that to the</p> <p>23 government.</p> <p>24 Q. Do you know if the State of Michigan contracted with</p> <p>25 Wayne County to maintain Michigan Avenue?</p>
<p>Page 46</p> <p>1 A. There are for government roadways, yes.</p> <p>2 Q. And as far as you know, Michigan is a government road?</p> <p>3 A. Yes.</p> <p>4 Q. Anything but a private drive, correct?</p> <p>5 A. Yes. It's got to be owned by the government.</p> <p>6 Q. Are you accident-reconstruction certified?</p> <p>7 A. There is no certification.</p> <p>8 Q. So the training you had is through your job --</p> <p>9 A. No, no. There is no certification. There is an</p> <p>10 accreditation, a committee for traffic accident</p> <p>11 reconstruction that started out through NHTSA years</p> <p>12 ago, it's now its own entity. There's people from</p> <p>13 across the world that test to be accredited.</p> <p>14 Q. Are you accredited?</p> <p>15 A. Yes, I am.</p> <p>16 Q. How long?</p> <p>17 A. I can't remember. I think I'm on like my third stint.</p> <p>18 I took the job -- '04ish.</p> <p>19 Q. Is your investigation in this matter, as far as you</p> <p>20 know, complete as we sit here now?</p> <p>21 A. Well, based on the questions, I've got a note to see</p> <p>22 if I can find any maps from 2003 to get a better idea</p> <p>23 of what the roadway configuration is, but unless there</p> <p>24 is other information put in front of me or questions</p> <p>25 asked, I think so.</p>	<p>Page 48</p> <p>1 A. Don't know.</p> <p>2 Q. You didn't check any of that, right?</p> <p>3 A. That's not my bailiwick.</p> <p>4 Q. Who has jurisdiction over Wayne Road?</p> <p>5 A. It would either be the city or the county, it depends</p> <p>6 on what the contractual agreement is.</p> <p>7 Q. You didn't check that though?</p> <p>8 A. No.</p> <p>9 Q. It's a Wayne County road, are you aware of that?</p> <p>10 A. I don't know.</p> <p>11 MR. DAOUDI: Are you saying the road that's</p> <p>12 in Wayne County?</p> <p>13 BY MR. ROSATI:</p> <p>14 Q. Wayne County has jurisdiction over Wayne Road, doesn't</p> <p>15 it?</p> <p>16 MR. DAOUDI: You mean that's it's in Wayne</p> <p>17 County?</p> <p>18 MR. ROSATI: Jurisdiction is a technical</p> <p>19 legal term.</p> <p>20 BY MR. ROSATI:</p> <p>21 Q. Do you know what jurisdiction over a roadway means?</p> <p>22 A. I do. It's my understanding that outside the city,</p> <p>23 that is a county road that extends through the city,</p> <p>24 therefore the county would have primary jurisdiction.</p> <p>25 Whether or not they contractually gave that to the</p>

1 **city to maintain, I don't know.**
 2 Q. And you didn't check that in rendering whatever
 3 opinions you've got so far?
 4 **A. I was only looking at the crash and the signage**
 5 **immediately adjacent to the crash.**
 6 Q. Again, you didn't check the jurisdiction of Michigan
 7 Road?
 8 **A. I didn't check.**
 9 Q. Michigan Avenue, I'm sorry.
 10 **A. No.**
 11 Q. But you know generally speaking it is a state road?
 12 **A. I do.**
 13 Q. And you have no evidence to show that Wayne has
 14 maintained Michigan Avenue or has any responsibility
 15 for maintaining Michigan Avenue, do you?
 16 **A. I do not, no.**
 17 Q. You don't have any evidence that Wayne has placed
 18 signage along Michigan Avenue or is required to place
 19 signage along Michigan Avenue, do you?
 20 **A. I don't know, no.**
 21 Q. In fact, it would be the state, if the state has
 22 jurisdiction over that road, who would have primary
 23 responsibility and control of all signage along
 24 Michigan Avenue, isn't that correct?
 25 **A. As long as they didn't contractually give that to**

1 **somebody else, yes.**
 2 Q. At this point you have no evidence to show that there
 3 is any contract between the City of Wayne and the
 4 State of Michigan requiring them to put signage along
 5 Michigan Avenue?
 6 **A. I do not.**
 7 MR. ROSATI: That's about it.
 8 EXAMINATION
 9 BY MR. DAOUDI:
 10 Q. Did you take any video at the scene or use any video
 11 in your calculations, or just photos?
 12 **A. I just used photos. I can't remember if I videotaped**
 13 **when I drove out, if I mounted my cell phone camera on**
 14 **the way out. I'll have to look and see, and it might**
 15 **still be on my phone, but I didn't use it for anything**
 16 **at this point.**
 17 Q. When you determined -- we're talking about Defendant
 18 Brown at the light. We don't know how long that light
 19 was red after Ms. Scola testified she realized it was
 20 a red light and cars were stopped in front of her?
 21 **A. Correct.**
 22 Q. We don't know from that point when she realized how
 23 long it remained red after that, correct?
 24 **A. Correct.**
 25 Q. When you made your calculations, did you give

1 Defendant Brown the benefit of the doubt that after
 2 her perception of it being stopped, that then it
 3 turned green and start calculating?
 4 MR. KIM: Objection, form and foundation.
 5 **A. Yes, for the most part. What I did is, once again, I**
 6 **assume she drove 150 feet, stopped. I assume he's**
 7 **driving at a moderate acceleration speed, and once**
 8 **again, we get the minimum of six seconds. It can go**
 9 **as high as 11 that he has exposure of seeing her --**
 10 **including his time driving up to her, but once again,**
 11 **if you move her closer to the bank parking lot, it**
 12 **just extends the time that she would have been in his**
 13 **presence per se. So I'm kind of looking at the best**
 14 **numbers I can in light of the defendant and that's**
 15 **just what I've always done as a police officer when I**
 16 **provide something to the prosecution, I try to prove**
 17 **the defendant's correct and if I can't, then I know**
 18 **I've got a pretty solid case.**
 19 BY MR. DAOUDI:
 20 Q. You're talking about Defendant Brown?
 21 **A. Yes. I do that as police officer and I always start**
 22 **by looking at all the cases like that.**
 23 Q. I'm going to move to the questioning by Mr. Marzano
 24 about -- well, do you remember you explained to him
 25 there were two do not enter signs coming off Michigan

1 Avenue, that if you were to turn into that east
 2 driveway of the bank it says do not enter?
 3 **A. Yes.**
 4 MR. MARZANO: I'm going to place an
 5 objection as to relevance and form because there is no
 6 foundation that those signs existed at the time of the
 7 incident. That bank has changed ownership a few
 8 times. Subject to my objection, go ahead and ask
 9 away.
 10 BY MR. DAOUDI:
 11 Q. Those signs that you're referring to, were those bank
 12 signs, private signs, or were those city signs?
 13 **A. Private.**
 14 Q. So you're saying -- then you described what you would
 15 **have suggested about some options the bank could have**
 16 **done. You're talking about the other side of the sign that**
 17 **would have been facing a driver as they were exiting?**
 18 **A. Yes.**
 19 Q. It would have been a private sign for the bank at that
 20 time, too?
 21 **A. Yes.**
 22 Q. You were asked if your investigation was complete.
 23 Just to be clear, you did hire an investigator, right?
 24 **A. Yes.**
 25

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- 1 Q. Is his investigation ongoing that you know of?
- 2 **A. Yes, his information, I'm likely going to review and**
- 3 **follow through.**
- 4 Q. That could change -- I don't know, but that's still
- 5 open?
- 6 **A. True. I'm sorry, I'm thinking, I guess, investigation**
- 7 **I'm thinking more of a reconstruction. At this point**
- 8 **I'm done with everything I'm going to do. Outside of**
- 9 **new information, so yes.**
- 10 Q. Is there anything that you were asked that you would
- 11 like to supplement?
- 12 **A. No, I don't believe so.**
- 13 MR. DAOUDI: I'm all set.
- 14 RE-EXAMINATION
- 15 BY MR. KIM:
- 16 Q. Are you aware of any other witnesses to this accident?
- 17 **A. I'm not, no.**
- 18 Q. Those calculations are just based on your assumptions
- 19 of the speeds?
- 20 **A. They're based on acceleration factors.**
- 21 Q. You don't know the speeds of the vehicles, so they're
- 22 based on assumptions, correct?
- 23 **A. Yes, applying sound reconstruction principle, what the**
- 24 **general population does, what their actions are, their**
- 25 **human interaction and factors, that's all I have to be**

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- 1 **able to start to look at where these mathematical**
- 2 **range is based on what I expect to be reality. Every**
- 3 **once in a while you get somebody on the far end of a**
- 4 **bell curve that might be outside of that norm, but the**
- 5 **further out on the bell curve you get, the less likely**
- 6 **that is to occur.**
- 7 MR. KIM: That's all.
- 8 RE-EXAMINATION
- 9 BY MR. MARZANO:
- 10 Q. Would you agree or am I correct in stating you have no
- 11 idea what signage existed on the Bank One property
- 12 back when this accident happened?
- 13 **A. Correct.**
- 14 Q. You mentioned you hired an investigator, what is that
- 15 person's name?
- 16 **A. Alan Ogg, O-G-G.**
- 17 Q. What is his role? What have you hired him to do?
- 18 **A. I basically asked him to interview Mr. Zuckerman.**
- 19 Q. The jewelry owner?
- 20 **A. Yes.**
- 21 Q. For what reason?
- 22 **A. Well, he gave me some relatively decent statements,**
- 23 **like I've been here 60 years, it's almost daily, if**
- 24 **not daily people make the wrong turn. I talked to**
- 25 **different bank people and he knew their names and I**

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- 1 **just didn't have pencil and paper to write stuff down,**
- 2 **and I said I might have somebody contact you later.**
- 3 Q. Will that in any way affect your ability to testify
- 4 one way or the other as to the bank in this case?
- 5 **A. No, his testimony is what it is. Once again, I don't**
- 6 **understand or it's not my bailiwick, premises**
- 7 **liability of what the bank should or shouldn't do. I can**
- 8 **say from a human factors perspective that it's prudent**
- 9 **that they put out the appropriate signage, change the**
- 10 **arrow.**
- 11 **I mean, when I worked as a state trooper,**
- 12 **I'd go out with MDOT, we'd look at issues on roadways,**
- 13 **how can we design the roadways, entrances and exits,**
- 14 **and recommendations to help alleviate a problem. So if**
- 15 **I went out and did a traffic safety survey of this scene,**
- 16 **I would recommend, even though it's a private entity,**
- 17 **to put up do not turn or one way signs and change the**
- 18 **arrow on the pavement. I don't know if it's legally**
- 19 **binding or if it creates liability,**
- 20 **that's your guy's world, but I know it would be**
- 21 **prudent.**
- 22 Q. What is Alan Ogg's qualification?
- 23 **A. Al is a retired detective sergeant from the Michigan**
- 24 **State Police. We worked in Third District**
- 25 **headquarters together. He knows investigative**

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- 1 **procedures and he's a licensed private investigator.**
- 2 Q. But his only role in this case is you asked him to
- 3 interview this man?
- 4 **A. Yes. He'll be able to tell you this is what somebody**
- 5 **told me and this is what I documented, but he is not a**
- 6 **reconstructionist, nor will he have an opinion as to**
- 7 **liability.**
- 8 MR. MARZANO: Those are all the questions I
- 9 have.
- 10 RE-EXAMINATION
- 11 BY MR. ROSATI:
- 12 Q. Did you say the city has no responsibility to put
- 13 signage on private property?
- 14 **A. That's my understanding, yes. The Michigan Vehicle**
- 15 **Code says you shall stop exiting a private property, a**
- 16 **public roadway, but there's nothing in anything I can**
- 17 **say that says a government entity has to post**
- 18 **something on a private drive.**
- 19 MR. MARZANO: Objection, legal conclusion.
- 20 **A. That's only what I read. I'm not saying there's state**
- 21 **case law or anything but just from what I read.**
- 22 MR. ROSATI: Thank you.
- 23 (The deposition was concluded at 12:31 p.m. Signature
- 24 of the witness was not requested by counsel for the
- 25 respective parties hereto.)

TIMOTHY ROBBINS
April 20, 2016

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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF OAKLAND)
5
6 I, JENIFER POGER, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to, either party nor interested in the event
14 of this cause.
15
16
17
18
19
20
21
22 JENIFER POGER, CSR-6006
23 Notary Public,
24 Oakland County, Michigan.
25 My Commission expires: August 17, 2020



STATE OF MICHIGAN

IN THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE

FRANK ANTHONY SCOLA,

Plaintiff,

CASE NO. 2015-002804-NI

v.

HON. JOHN A. MURPHY

JP MORGAN CHASE BANK
 NATIONAL ASSOCIATION,
 JP MORGAN CHASE & CO.,
 KATHLEEN SCOLA,
 ESTATE OF JOHN BARROW BROWN (Deceased), and
 CITY OF WAYNE
 Jointly and severally,

15-002804-NI

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 WAYNE COUNTY CLERK
 12/28/2016 12:00:00 PM
 CATHY M. GARRETT

Defendants.

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PLAINTIFF'S FIRST AMENDED COMPLAINT**PURSUANT TO DEFENDANTS**

JP MORGAN CHASE BANK NATIONAL ASSOCIATION and
JP MORGAN CHASE & CO.,
SEPTEMBER 29, 2015 NOTICE OF NON-PARTY FAULT

COMPLAINT

NOW COME(S) the Plaintiff(s), FRANK ANTHONY SCOLA, by and through his attorney, LAW OFFICES OF MICHAEL S. DAOUDI, P.C., and for this complaint against the Defendant(s), J JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, JPMORGAN CHASE & CO., KATHLEEN SCOLA, ESTATE OF JOHN BARROW BROWN (deceased), and the CITY OF WAYNE states that:

PARTIES, JURISDICTION, & VENUE

1. On September 29, 2015 Defendants J JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, JPMORGAN CHASE & CO., filed a Notice of Non-Party Fault pursuant to MCR 2.112(K) naming City of Wayne as the non-party at fault. **(EXHIBIT “A”, September 29, 2015 Notice of Non-Party Fault)**
2. Plaintiff is a resident of Wayne County, Michigan.
3. Defendants, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and JPMORGAN CHASE & CO. are Foreign corporation(s) **(hereinafter referred to collectively as "Defendant JPMORGAN CHASE")** is/are a corporation(s) licensed in the State of Michigan conducting a regular and systematic part of business in Wayne County, Michigan, in which this matter is filed.
4. Upon information and belief, Bank One Corporation/Bank One, National Association **(hereinafter known as “BANK ONE”)** merged with Defendant JPMORGAN CHASE & CO. sometime in year 2004.
5. Upon information and belief, Bank One Corporation/Bank One, National Association merged with Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION sometime in year 2004.

6. Upon information and belief, Defendant, KATHLEEN SCOLA, is a resident of Wayne County, Michigan.
7. Upon information and belief, Defendant, JOHN BARROW BROWN, was a resident of Wayne County, Michigan on the date of the motor vehicle collision, but has been deceased since January 27, 2004.
8. Defendant, CITY OF WAYNE, is a chartered municipal corporation in the County of Wayne, State of Michigan.
9. This automobile collision occurred and jurisdiction exists in this court because of an automobile collision that occurred on June 27, 2003, at approximately 12:00 p.m./noon in the City of Wayne, County of Wayne, State of Michigan, on West Michigan Avenue.
10. At the aforementioned date and time of the collision, Plaintiff was a minor with the date of birth of March 8, 1996.
11. Pursuant to MCL 600.5851(1) Plaintiff has timely filed this lawsuit against all known defendants.
12. The amount in controversy is within the jurisdiction of this court because Plaintiff claims damages in excess of \$25,000.00, exclusive of interest or costs.

GENERAL ALLEGATIONS

13. Plaintiff incorporates by reference all other paragraphs in this Complaint.
14. On or about June 27, 2003, Plaintiff was a passenger of a 1989 Ford Taurus Wagon, bearing state of Michigan license plate number LQK445, which was proceeding/standing in an unsafe and unlawful manner heading/facing eastbound on West Michigan Avenue, which only allows at that location westbound traffic, in Wayne County, Michigan.

15. Upon information and belief, of the seven occupants in the 1989 Ford Taurus Wagon at the time of the collision, Plaintiff was seated in the center seat of the first row of seats behind the driver and front seat passenger.
16. Moments before the motor vehicle collision, Defendant KATHLEEN SCOLA was the driver of the 1989 Ford Taurus Wagon, bearing state of Michigan license plate number LQK445, and was initially travelling southbound on S. Wayne Road with the intention of heading eastbound on Michigan Avenue.
17. As Defendant KATHLEEN SCOLA was driving southbound on S. Wayne Rd. she passed over West Michigan Avenue.
18. The first driveway south of West Michigan Ave., off of S. Wayne Rd., was a private driveway to enter into the parking lot of then, Bank One Corporation, which Defendant KATHLEEN SCOLA did.
19. Defendant KATHLEEN SCOLA then navigated the Bank One Corporation parking lot to find herself at the end of a Bank One Corporation driveway facing West Michigan Ave.
20. Without any signage or warning device by Bank One Corporation, indicating a right hand turn is improper, dangerous, hazardous, and/or would be against one-way westbound traffic, Defendant KATHLEEN SCOLA turned right and headed eastbound on West Michigan Ave., a one-way street with westbound traffic only.
21. Almost immediately after Defendant KATHLEEN SCOLA made the turn, she realized she made a mistake and upon information and belief immediately maneuvered her motor vehicle to the most southern curb lane and then stopped her vehicle.
22. Upon information and belief, as Defendant KATHLEEN SCOLA and the occupants of her motor vehicle were standing on West Michigan Avenue in the most southern curb

lane, westbound traffic heading towards them began approaching; as the traffic approached, Defendant KATHLEEN SCOLA observed an elderly black male, JOHN BARROW BROWN, drive his 1990 Lincoln into the front-end of her 1989 Ford Taurus Wagon.

23. As a direct and proximate result of one, several, or all of the acts, omissions or failures to act on part of Defendants as alleged herein, Plaintiff suffered the injuries and damages set forth herein; and Plaintiff has been, and still is, undergoing continued diagnosis and treatment by medical professionals for the permanent injuries he sustained as a result of the subject motor vehicle collision.
24. Plaintiff's damages include, but are not limited to, the following injuries:
 - a. Significant Right Renal Laceration;
 - b. Large Amount of Hematoma Surrounding the Right Kidney;
 - c. Urine Leak From Near the Renal Collecting System;
 - d. Chest Pain / Difficulty Breathing
 - e. Nausea;
 - f. Vomiting;
 - g. Injuries to his back, neck, and other parts of his body as well as other related and appreciable difficulties, injuries, or consequences that have occurred, developed, or aggravated any preexisting problem;
 - h. Post traumatic stress disorder, post traumatic depression, anxiety, irritableness and/or any other disturbance in Plaintiff's mental functioning;
 - i. Sleep disorder(s) and/or difficulty sleeping;

- j. Sever shock, as well as physical pain and suffering as a result of being whipped around in the interior of the motor vehicle upon impact;
- k. Loss of life's pleasures, and loss of the ability to participate in the usual activities of life which he/she had indulged in prior to the incidents which form the basis of this action;
- l. Extreme physical pain, suffering, mortification, embarrassment, humiliation, mental and emotional anxiety/anguish/distress, and other injuries/damages to his mental and/or physical well-being;
- m. Extensive medical treatment, including hospitalization, physical therapy, medical therapy, medical testing, and doctor visits;
- n. Wage loss or actual future loss of earnings to the extent that such losses are recoverable in excess of the no-fault statutory monthly and yearly maximums that are found to apply to the cause;
- o. Degenerating posture (e.g., severe forward head and rounded shoulders);
- p. Loss of peace of mind and financial security;
- q. Such other and further damages, injuries, and the sequelae thereof, which are presently unknown, undiagnosed, and or/which may become apparent and/or develop in the future.

COUNT I
NEGLIGENCE AS TO
DEFENDANT KATHLEEN SCOLA

25. Plaintiff incorporates by reference all other paragraphs in this Complaint.

26. At all relevant times, Defendant KATHLEEN SCOLA was the sole owner of the 1989 Ford Taurus Wagon, bearing state of Michigan license plate number LQK44, which she was driving when this collision occurred.
27. At that time and place, Defendant KATHLEEN SCOLA turned her motor vehicle directly into the path of oncoming traffic, against the right-of-way, causing her vehicle to collide with the vehicle owned and driven by JOHN BARROW BROWN.
28. Defendant KATHLEEN SCOLA owed the following duties of care to the public and Plaintiff including but not necessarily limited to:
 - a. Drive with due care, caution, and circumspection in such a manner as not to endanger the safety, health, life, and property, of the public and Plaintiff(s);
 - b. To operate the vehicle on the roadway in a manner and at a rate of speed not greater than that which will permit it to be stopped within an assured, safe, and clear distance, MCLA 257.627;
 - c. Not to drive the vehicle recklessly and with willful and/or wanton disregard for the safety and rights of others, MCLA 257.626;
 - d. Not to drive in a careless or negligent manner to endanger or be likely to endanger others, MCLA 257.626b;
 - e. To keep the automobile constantly under control;
 - f. To attempt to stop the vehicle when Defendant knew or should have known that failure to do so would naturally and probably result in serious bodily and/or emotional injuries to Plaintiff(s);
 - g. To accord traffic on the through street the right of way;

- h. To have the motor vehicle he/she was driving equipped with brakes adequate to control the movement of, and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels, in compliance with, *inter alia*, MCLA 257.705;
 - i. To properly use the available brakes the motor vehicle was equipped with;
 - j. To come to a full stop before entering or crossing a roadway from an alley, private road, or driveway and to yield right of way to vehicles approaching on the roadway, specifically the vehicle being driven at that time by JOHN BARROW BROWN, *inter alia*, MCLA 257.652;
 - k. Such other wrongful acts and/or omissions as are presently unknown, but which may become known through the course of discovery and/or trial herein.
29. As a direct and proximate result of Defendant KATHLEEN SCOLA's negligence and including but not limited to the breach of these duties, the collision occurred and the injuries stated in this complaint resulted.
30. Prior to the incident, which forms the basis of this action, Plaintiff was a reasonably strong and healthy person and because of his injuries proximately caused by the negligent and/or otherwise improper acts and/or omissions of Defendant KATHLEEN SCOLA as set forth herein, he suffered grievous and serious impairment of body function.
31. As a direct and proximate result of Defendant KATHLEEN SCOLA's negligence, Plaintiff suffered serious injuries and may suffer future or permanent mental anguish, pain and suffering, injuries, and limitations, including serious impairment of body

function(s) and/or permanent serious disfigurement, and aggravation of any preexisting conditions, if any, and the sequelae thereof.

32. As a direct and proximate result of one, several or all of said acts, omissions or failure to act on the part of Defendant KATHLEEN SCOLA as herein alleged, the Plaintiff suffered other damages including but not limited to past, present, and/or future:

- a. Loss of wages and/or diminution of earning capacity to the extent that such losses are in excess of the Michigan No-Fault statute's monthly and yearly maximums and/or beyond the period covered by the Michigan No-Fault statute, as applicable to Plaintiff, and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity applicable to Plaintiff;
- b. Medical, hospital, surgical, ambulance, and related expenses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- c. Insurance deductibles and/or co-pays to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- d. Loss of insurability, benefits of insurance plans and/or policies, and/or increased insurance premiums;

- e. Other economic losses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- f. Such other and further damages as may be ascertained during the course of discovery and/or trial herein, to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

COUNT II
NEGLIGENCE AS TO
THE ESTATE OF JOHN BARROW BROWN (deceased)

- 33. Plaintiff incorporates by reference all other paragraphs in this Complaint.
- 34. Upon information and belief, at all relevant times, JOHN BARROW BROWN, who has since deceased and is named in this Complaint as the ESTATE OF JOHN BARROW BROWN (deceased), was the sole owner of the 1990 Lincoln, bearing state of Michigan license plate number UUA920, which he was driving when this collision occurred.
- 35. At the aforesaid time and place, JOHN BARROW BROWN, was operating his 1990 Lincoln westbound on West Michigan Avenue, in the most southern curb lane, when the front-end of his vehicle collided with the front-end of Defendant KATHLEEN SCOLA's vehicle.

36. Upon information and belief, at that time and place, Defendant KATHLEEN SCOLA pulled directly into the path of JOHN BARROW BROWN's vehicle; the most southern curb lane and the two vehicles collided.
37. JOHN BARROW BROWN, and now the ESTATE OF JOHN BARROW BROWN (deceased) owed the following duties of care to the public and Plaintiff, including but not necessarily limited to:
- a. Drive with due care, caution, and circumspection in such a manner as not to endanger the safety, health, life, and property, of the public and Plaintiff(s);
 - b. To operate the vehicle on the roadway in a manner and at a rate of speed not greater than that which will permit it to be stopped within an assured, safe, and clear distance, MCLA 257.627;
 - c. Not to drive the vehicle recklessly and with willful and/or wanton disregard for the safety and rights of others, MCLA 257.626;
 - d. Not to drive in a careless or negligent manner to endanger or be likely to endanger others, MCLA 257.626b;
 - e. To keep the automobile constantly under control;
 - f. To attempt to stop the vehicle when Defendant knew or should have known that failure to do so would naturally and probably result in serious bodily and/or emotional injuries to Plaintiff(s);
 - g. To have the motor vehicle he/she was driving equipped with brakes adequate to control the movement of, and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to

apply the brakes to at least two wheels, in compliance with, *inter alia*, MCLA 257.705;

- h. To properly use the available brakes the motor vehicle was equipped with;
 - i. To observe the highway in front of JOHN BARROW BROWN's vehicle when JOHN BARROW BROWN knew or should have known that failure to observe Defendant KATHLEEN SCOLA's slowing or stopped vehicle, would naturally and probably result in serious bodily and/or emotional injuries to Plaintiff(s);
 - j. Such other wrongful acts and/or omissions as are presently unknown, but which may become known through the course of discovery and/or trial herein.
38. As a direct and proximate result of JOHN BARROW BROWN's negligence and including but not limited to the breach of these duties, the collision occurred and the injuries stated in this complaint resulted.
39. Prior to the incident, which forms the basis of this action, Plaintiff was a reasonably strong and healthy person and because of his injuries proximately caused by the negligent and/or otherwise improper acts and/or omissions of JOHN BARROW BROWN/ ESTATE OF JOHN BARROW BROWN (deceased) as set forth herein, he suffered grievous and serious impairment of body function.
40. As a direct and proximate result of JOHN BARROW BROWN's negligence, Plaintiff suffered serious injuries and may suffer future or permanent mental anguish, pain and suffering, injuries, and limitations, including serious impairment of body function(s) and/or permanent serious disfigurement, and aggravation of any preexisting conditions, if any, and the sequelae thereof.

41. As a direct and proximate result of one, several or all of said acts, omissions or failure to act on the part of JOHN BARROW BROWN as herein alleged, the Plaintiff suffered other damages including but not limited to past, present, and/or future:
- a. Loss of wages and/or diminution of earning capacity to the extent that such losses are in excess of the Michigan No-Fault statute's monthly and yearly maximums and/or beyond the period covered by the Michigan No-Fault statute, as applicable to Plaintiff, and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity applicable to Plaintiff;
 - b. Medical, hospital, surgical, ambulance, and related expenses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
 - c. Insurance deductibles and/or co-pays to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
 - d. Loss of insurability, benefits of insurance plans and/or policies, and/or increased insurance premiums;
 - e. Other economic losses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any

amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;

- f. Such other and further damages as may be ascertained during the course of discovery and/or trial herein, to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

COUNT III
NEGLIGENCE AS TO
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and
JPMORGAN CHASE & CO.

42. Plaintiff incorporates by reference all other paragraphs in this Complaint.
43. BANK ONE now owned by either Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION or JPMORGAN CHASE & CO. assumed responsibility for placement of traffic control signals, lane markings, channelization, and all other matters relating to the design, construction, and maintenance of its parking lot/driveway where it meets West Michigan Avenue so that entering West Michigan Avenue would be reasonably safe and convenient for public travel.
- a. Where the parking lot/driveway meets West Michigan Avenue, hereinafter known as the "**Intersection.**"
44. The traffic signs and devices which control the flow of traffic at the Intersection and the condition in which those signs and devices are maintained directly relates to BANK ONE

now owned by Defendant JPMORGAN CHASE's duty to maintain the transition from its private driveway/parking lot to West Michigan Avenue in a condition safe and fit for public travel.

45. On June 27, 2003 BANK ONE now owned by Defendant JPMORGAN CHASE lacked traffic control signs and devices controlling the parking lot/driveway in and around the area where it meets West Michigan Avenue so that entering West Michigan Avenue from its private driveway, was an unsafe and defective condition.
46. BANK ONE now owned by Defendant JPMORGAN CHASE had/has the duty to post signs and other traffic control devices and warnings in the parking lot/driveway where it meets West Michigan Avenue and in such other positions and places as to give adequate warning of the dangers created when a driver is entering the roadway from its private driveway.
47. BANK ONE now owned by Defendant JPMORGAN CHASE failed to post signs and other traffic control devices and warnings, specifically but not limited to in the parking lot/driveway where it meets West Michigan Avenue so that traffic entering West Michigan Avenue would be reasonably safe and convenient for public travel, and specifically, advising the public that West Michigan Avenue travels westbound only, in all lanes, and not to turn right when exiting its parking lot/driveway where it meets West Michigan Avenue.
48. BANK ONE now owned by Defendant JPMORGAN CHASE had a continuing duty to inspect and maintain that intersection with reasonable signage and other traffic control devices and warnings, where the parking lot/driveway meets West Michigan Avenue, so that entering West Michigan Avenue would be reasonably safe and fit for travel.

49. A proximate cause of the collision described herein, and the resulting injury and damages sustained by the Plaintiff, was the failure of BANK ONE now owned by Defendant JPMORGAN CHASE to design, construct, and maintain the parking lot/driveway where it meets West Michigan Avenue so that it was necessarily safe and convenient for public travel so that entering West Michigan Avenue would be reasonably safe and convenient, all of which constituted a violation of the Defendant's common law duty in the following particulars:
- a. The failure to conduct a comprehensive engineering study and investigation of traffic conditions and physical characteristics at the Intersection in order to obtain data necessary for the proper redesign and construction of the Intersection and proper placements of signage and other traffic control devices and warnings at this Intersection.
 - b. Negligently failing to consider and to install, specifically but not limited to, 1) stop signs/signals, 2) no right turn signs/signals, and 3) signs/signals indicating that West Michigan Avenue travels only westbound.
50. Negligently failing to consider the need for and to install any of the following traffic control devices or warnings which would have created a reasonably safe intersection for travel, and which would have prevented the collision described herein:
- i. Pavement markings supplementing the regulatory signs, including but not limited to lane delineation and channelization, turning arrows marked upon the pavement, stop ahead markings on the pavement;
 - ii. Construction of a channelizing island, which would have allowed positioning of stop signs/signals, no right turn signs/signals, and

signs/signals indicating that West Michigan Avenue travels only westbound within the driver's cone of vision and thereby enhanced the target value of the signage controlling the Intersection;

- iii. Placing/implementing stop signs/signals, no right turn signs/signals, and/or signs/signals indicating that West Michigan Avenue travels only westbound within the driver's cone of vision and thereby enhanced the target value of the signage controlling the Intersection.

- 51. BANK ONE now owned by Defendant JPMORGAN CHASE failure to consider and place the traffic control devices, signage, and warnings, described above, the Defendant, by reason of these circumstances and surroundings created a dangerous condition which had a natural tendency to cause driver confusion and error, and to promote collisions on West Michigan Avenue by heading eastbound against westbound traffic.
- 52. BANK ONE now owned by Defendant JPMORGAN CHASE failure to regulate the traffic entering West Michigan Avenue from its private driveway and to install and maintain proper signage and channelization of traffic, the Defendant created a nuisance in fact in violation of its common law duties not to create and maintain a nuisance.
- 53. BANK ONE now owned by Defendant JPMORGAN CHASE had actual or constructive knowledge of the defective condition(s) as described herein that existed at the Intersection prior to and on the day of this motor vehicle collision, as there were no traffic control signals, lane markings, channelization, or warnings of any kind to give motorists entering West Michigan Avenue from its private driveway that West Michigan Avenue was a one-way road heading westbound only.

54. Defendant BANK ONE now owned by Defendant JPMORGAN CHASE owed the mentioned duties of care to the public and Plaintiff, including but not necessarily limited to:
- a. Such other wrongful acts and/or omissions as are presently unknown, but which may become known through the course of discovery and/or trial herein.
55. As a direct and proximate result of BANK ONE now owned by Defendant JPMORGAN CHASE negligence and including but not limited to the breach of these duties, the collision occurred and the injuries stated in this complaint resulted.
56. Prior to the incident, which forms the basis of this action, Plaintiff was a reasonably strong and healthy person and because of his injuries proximately caused by the negligent and/or otherwise improper acts and/or omissions of BANK ONE now owned by Defendant JPMORGAN CHASE as set forth herein, he suffered grievous and serious impairment of body function.
57. As a direct and proximate result of the negligence by BANK ONE now owned by Defendant JPMORGAN CHASE, Plaintiff suffered serious injuries and may suffer future or permanent mental anguish, pain and suffering, injuries, and limitations, including serious impairment of body function(s) and/or permanent serious disfigurement, and aggravation of any preexisting conditions, if any, and the sequelae thereof.
58. As a direct and proximate result of one, several or all of said acts, omissions or failure to act on the part of BANK ONE now owned by Defendant JPMORGAN CHASE as herein alleged, Plaintiff suffered other damages including but not limited to past, present, and/or future:

- a. Loss of wages and/or diminution of earning capacity to the extent that such losses are in excess of the Michigan No-Fault statute's monthly and yearly maximums and/or beyond the period covered by the Michigan No-Fault statute, as applicable to Plaintiff, and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity applicable to Plaintiff;
- b. Medical, hospital, surgical, ambulance, and related expenses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- c. Insurance deductibles and/or co-pays to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- d. Loss of insurability, benefits of insurance plans and/or policies, and/or increased insurance premiums;
- e. Other economic losses to the extent that such losses are not covered by Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;
- f. Such other and further damages as may be ascertained during the course of discovery and/or trial herein, to the extent that such losses are not covered by

Plaintiff's medical and/or Michigan No-Fault and/or other insurer(s), and/or in excess of any amounts paid, payable or required to be provided under the laws of any state or federal government or other entity as applicable to Plaintiff;

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

COUNT IV
SUCCESSOR LIABILITY AS TO
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and
JPMORGAN CHASE & CO.

59. Plaintiff incorporates by reference all other paragraphs in this Complaint.

60. Upon information and belief, Defendant JPMORGAN CHASE, is the successor corporation of BANK ONE.

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

COUNT V
NEGLIGENCE AS TO CITY OF WAYNE

61. Plaintiffs incorporate by reference all other paragraphs in this Complaint.

62. Defendant CITY OF WAYNE is negligent and is wholly or partially at fault for the claimed injuries and damages to Plaintiff based on the statement of fault made in Defendants' JPMORGAN CHASE BANK, NATIONAL ASSOCIATION and JPMORGAN CHASE & CO.'s September 29, 2015 Notice of Non-Party Fault.
(EXHIBIT "A", September 29, 2015 Notice of Non-Party Fault)

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

COUNT VI
RES IPSA LOQUITUR

63. Plaintiff incorporates by reference all other paragraphs in this Complaint.
64. Defendant KATHLEEN SCOLA is liable under the doctrine of *res ipsa loquitur* as the instrumentality causing Plaintiff's injuries and damages was in the exclusive control of Defendant, and the accident was one which ordinarily does not occur in the absence of negligence.
65. DEFENDANT ESTATE OF JOHN BARROW BROWN (deceased) is liable under the doctrine of *res ipsa loquitur* as the instrumentality causing Plaintiff's injuries and damages was in the exclusive control of Defendant, and the accident was one which ordinarily does not occur in the absence of negligence.
66. BANK ONE now owned by Defendant JPMORGAN CHASE is/ liable under the doctrine of *res ipsa loquitur* as the instrumentality causing Plaintiff's injuries and damages was in the exclusive control of Defendant, and the accident was one which ordinarily does not occur in the absence of negligence.

PLAINTIFF REQUESTS that this court award damages against Defendants in whatever amount he is found to be entitled in excess of \$25,000, plus interest, costs, and actual attorney fees.

Respectfully submitted,

LAW OFFICES OF

MICHAEL S. DAOUDI, P.C.

DATE: December 28, 2015

By: /s/ Michael S. Daoudi
MICHAEL S. DAOUDI (P53261)
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury of all issues as they relate to the above captioned cause of action.

Respectfully Submitted,

**LAW OFFICES OF
MICHAEL DAOUDI, P.C.**

DATE: December 28, 2015

By: /s/ Michael S. Daoudi
Michael S. Daoudi (P53261)
Attorney for Plaintiff

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on December 28, 2015 by:

☐ US MAIL ☐ FAX ☐ HAND DELIVERY
☒ E-FILING-ODYSSEY FILE & SERVE ☐ FEDERAL EXPRESS ☐ OTHER

/s/ Wendy B. Adelson

Wendy B. Adelson

